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Contents

Federal Register

Vol. 65, No. 15

Monday, January 24, 2000

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Hanford Health Projects Inter-tribal Council et al., 3718
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 3718–3719

Agriculture Department
See Food and Nutrition Service
See Food Safety and Inspection Service
See Natural Resources Conservation Service

Air Force Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Thorgersen ElectroLuminescence Corp., 3672

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
North Carolina, 3653

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Institute of Standards and Technology

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Contract market rule review procedures, 3623
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Lean hogs, 3667–3668
Live cattle, 3668–3669
London Clearing House; cross-margining program, 3669–3670

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Lancaster Colony Corp., 3670–3672

Defense Department
See Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Time-and-materials or labor-hours, 3761–3762
NOTICES
Meetings:
Science Board task forces, 3672

Delaware River Basin Commission
NOTICES
Meetings and hearings, 3672–3673

Economic Development Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Economic development assistance programs; unemployment and underemployment in economically depressed areas, etc., 3763–3770
National Technical Assistance, Training, Research, and Evaluation projects, 3771–3776

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Secretary of Energy Advisory Board, 3673–3674

Environmental Protection Agency
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Aerospace manufacturing and rework facilities, 3642–3648
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio and Kentucky, 3630–3642
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3680–3681
Meetings:
Science Advisory Board, 3681–3682
State FIFRA Issues Research and Evaluation Group, 3682
Pesticide, food, and feed additive petitions:
Acetochlor Registration Partnership et al., 3682–3690
AgrEvo USA Co., 3690–3693
Bird Shield Repellent Corp., 3693–3696
Prophyta Biologischer Pflanzenschutz GmbH, 3696–3699
Pesticides; emergency exemptions, etc.:
Tebufenozide, etc., 3699–3709
Superfund; response and remedial actions, proposed settlements, etc.:
Uniroyal Hill Street Site, IN, 3709
Toxic and hazardous substances control:
New chemicals; receipt and status information, 3709–3715

Federal Aviation Administration
RULES
Airworthiness directives:
Kaman Aerospace Corp., 3583–3584
PROPOSED RULES
Airworthiness directives:
CFM International, 3621–3623
Israel Aircraft Industries, Ltd., 3617–3619
Raytheon, 3619–3621
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Turbojet, turboprop, and turbofan engine induction system icing, 3752
Meetings:
Aviation Rulemaking Advisory Committee, 3752
Passenger facility charges; applications, etc.:
Gainesville Regional Airport, FL, 3752–3753
Redmond, OR, et al., 3753–3754

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
Earth stations operating with non-U.S. licensed space stations; application requirements; reconsideration, 3614
NOTICES
Common carrier services:
Satellite communications—
Global international section 214 authorizations; Exclusion List, 3715–3716

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ameren Operating Companies et al., 3676–3679
LG&E Energy Marketing, Inc., et al., 3679–3680
Applications, hearings, determinations, etc.:
National Fuel Gas Supply Corp., 3674
Questar Pipeline Co., 3674–3675
Texas Eastern Transmission Corp., 3675–3676
Transcontinental Gas Pipe Line Corp., 3676
Wells Rural Electric Co., 3676

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Valley County, ID, 3754–3755

Federal Railroad Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3755–3758

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 3716
Formations, acquisitions, and mergers, 3716–3717

Federal Trade Commission
NOTICES
Interlocking directorates:
Clayton Act; Section 8 jurisdictional thresholds, 3717

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3759
Surety companies acceptable on Federal bonds:
Suretec Insurance Co., 3760

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Columbian sharp-tailed grouse; status review, 3648–3649
NOTICES
Meetings:
Klamath River Basin Fisheries Task Force, 3731

Food and Drug Administration
RULES
Medical devices:
American Society for Testing and Materials; amendments to reflect current citations, 3584–3586
PROPOSED RULES
Human drugs:
Antibiotic drugs; marketing exclusivity and patent provisions, 3623–3627
Medical devices:
American Society for Testing and Materials; amendments to reflect current citations, 3627–3629
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 3719
Food additive petitions:
Cultor Food Science, Inc., et al., 3719
Grants and cooperative agreements; availability, etc.:
State Food Safety Task Force meetings; conference grants, 3720–3722
Meetings:
Allergenic Products Advisory Committee, 3722
Reports and guidance documents; availability, etc.:
Medical devices—
Medical device tracking, 3722–3723
Nitric oxide delivery apparatus, nitric oxide analyzer, and nitrogen dioxide analyzer; premarket notification submissions, 3723–3724

Food and Nutrition Service
NOTICES
Food distribution programs:
Emergency Food Assistance Program; commodities availability, 3650–3651

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission—
Food Additives and Contaminants Codex Committee, 3652–3653
Milk and Milk Products Codex Committee, 3651

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Time-and-materials or labor-hours, 3761–3762

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Indian Health Service
See Inspector General Office, Health and Human Services Department
See Substance Abuse and Mental Health Services Administration
NOTICES
Scientific misconduct findings; administrative actions:
Ho, John L., M.D., 3717

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3724–3725

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3725–3726
Meetings:
National Health Service Corps National Advisory Council, 3726
Rural Health National Advisory Committee, 3726–3727

Indian Health Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3727–3728

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 3728–3730

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 3730–3731

Internal Revenue Service
RULES
Income taxes:
Stock transfer rules, 3589–3609
Stock transfer rules; supplemental rules, 3586–3589
PROPOSED RULES
Income taxes:
Stock transfer rules; supplemental rules; cross reference, 3629–3630

International Trade Administration
NOTICES
Antidumping:
Bars and wedges and hammers and sledges from—
China, 3658–3660
Compact ductile iron waterworks fittings and glands from—
China, 3660–3661
Industrial phosphoric acid from—
Belgium, 3661–3662
Stainless steel bar from—
India, 3662–3666
Antidumping and countervailing duties:
Federal Register notices; format modification (size reduction), 3654–3658
Applications, hearings, determinations, etc.:
Agricultural Research Service, 3666
Boston University, 3666
University of—
North Carolina, 3666–3667

International Trade Commission
NOTICES
Import investigations:
Uranium from—
Russia, Ukraine, and Uzbekistan, 3737–3738

Justice Department
See Prisons Bureau
NOTICES
Pollution control; consent judgments:
Ambroid Co., Inc., 3738
Amity Products Carriers, Inc., 3738–3739
Didion Milling Co., Inc., 3739
Odabashian, Robert, et al., 3739–3740

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3731–3732
Environmental statements; availability, etc.:
New Mexico; public land health standards and livestock grazing management guidelines, 3732
Oil and gas leases:
New Mexico, 3732–3733
Various States, 3733–3734
Public land orders:
Colorado, 3733–3734
Realty actions; sales, leases, etc.:
Nevada, 3734
Resource management plans, etc.:
Owyhee Resource Area, ID, 3734–3735
Withdrawal and reservation of lands:
Idaho, 3735

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Time-and-materials or labor-hours, 3761–3762

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
National Leadership Grants for Libraries, 3742

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Program Advisory Committee, 3667

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 3736

National Science Foundation
NOTICES
Meetings; Sunshine Act, 3742

Natural Resources Conservation Service
NOTICES
Meetings:
Agricultural Air Quality Task Force, 3653

Nuclear Regulatory Commission
PROPOSED RULES
Performance-based activities; high-level guidelines, 3615–3617

Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Maritime Advisory Committee for Occupational Safety and Health, 3740–3741

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3741
Proposed collection; comment request; correction, 3741

Postal Service
RULES
Domestic Mail Manual and International Mail Manual:
Special services labels; barcode requirements, 3609–3614
NOTICES
Domestic rates, fees, and mail classifications:
Permanent nonletter-size business reply mail classification and fees; establishment, etc., 3742–3746

Presidential Documents
PROCLAMATIONS
Special observances:
Biotechnology Month, National (Proc. 7269), 3777–3780

Prisons Bureau
NOTICES
Environmental statements; availability:
Merced County, CA; Federal penitentiary at Castle Airport and Aviation Development Center, 3740

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3746–3747
Submission for OMB review; comment request, 3747

Reclamation Bureau
NOTICES
Meetings:
Bay-Delta Advisory Council, 3736–3737

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 3750
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 3750–3751
Applications, hearings, determinations, etc.:
Franklin Capital Corp., 3747–3748
Ibbotson Associates, Inc., 3748–3750

Small Business Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3751

State Department
NOTICES
Art objects; importation for exhibition:
Science Under Sail: Russia's Great Voyages to America (1728-1867), 3751–3752

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
SAMHSA special emphasis panels, 3730

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 3761–3762

Part III
Department of Commerce, Economic Development Administration, 3763–3770

Part IV
Department of Commerce, Economic Development Administration, 3771–3776

Part V
The President, 3777–3780

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3CFR

Proclamations:

7269 3779

10 CFR

Proposed Rules:

Ch. I 3615

14 CFR

39 3583

Proposed Rules:

39 (3 documents) 3617, 3619, 3621

17 CFR

Proposed Rules:

1 3623

21 CFR

801 3584

Proposed Rules:

314 3623

801 3627

28 CFR

1 (2 documents) 3586, 3589

7 3589

602 (2 documents) 3586, 3589

Proposed Rules:

1 3629

39 CFR

111 3609

40 CFR

Proposed Rules:

52 3630

63 3642

81 3630

47 CFR

25 3814

48 CFR

Proposed Rules:

43 3762

52 3762

50 CFR

Proposed Rules:

17 3648

VOL
65
ISS
15
JA
24
000
UMI

Rules and Regulations

Federal Register
Vol. 65, No. 15
Monday, January 24, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–72–AD; Amendment 39–11523; AD 99–26–04]

RIN 2120–AA64

Airworthiness Directives; Kaman Aerospace Corporation Model K1200 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Emergency Priority Letter Airworthiness Directive (AD) 99–26–04, which was sent previously to all known U.S. owners and operators of Kaman Aerospace Corporation (Kaman) Model K1200 helicopters by individual letters. This AD requires, before the first flight of each day, inspecting for clutch assembly integrity. Replacing any unairworthy clutch assembly with an airworthy clutch assembly is required before further flight. This amendment is prompted by two incidents of engine adapter flange failure and loss of power to the main rotors. The actions specified by this AD are intended to prevent failure of the engine adapter flange, loss of power to the main rotors, and a subsequent forced landing.

DATES: Effective February 8, 2000, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99–26–04, issued on December 8, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–72–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On December 8, 1999, the FAA issued Emergency Priority Letter AD 99–26–04, applicable to Kaman Model K1200 helicopters, which requires, before the first flight of each day, inspecting for clutch assembly integrity. Replacing any unairworthy clutch assembly with an airworthy clutch assembly is required before further flight. That action was prompted by two incidents of engine adapter flange failure and loss of power to the main rotors. One incident resulted in autorotation into trees with resulting loss of main rotor blades. The second incident resulted in a forced autorotation and damage to the nose landing gear. Subsequent investigation revealed that internal transmission clutch damage caused an engine adapter flange failure. This condition, if not corrected, could result in failure of the engine adapter flange, loss of power to the main rotors, and a subsequent forced landing.

The FAA has reviewed Kaman K–1200 K–MAX Maintenance Manual Temporary Revision (TR) No. 284, dated November 5, 1999, which revises the procedures for engine area daily inspections and TR No. 289, dated November 12, 1999, which describes the method of inspecting the transmission assembly.

Since the unsafe condition described is likely to exist or develop on other Kaman Model K1200 helicopters of the same type design, the FAA issued Emergency Priority Letter AD 99–26–04 to prevent failure of the engine adapter flange, loss of power to the main rotors, and a subsequent forced landing. The AD requires, before the first flight of each day, inspecting for clutch assembly integrity. Replacing any unairworthy clutch assembly with an airworthy clutch assembly is required before further flight. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspecting for clutch assembly integrity before the first flight of each day and replacing any unairworthy clutch assembly is required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 8, 1999 to all known U.S. owners and operators of Kaman Model K1200 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 21 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to inspect the clutch assembly and 5 work hours per helicopter to replace the clutch assembly, if necessary. The average labor rate is $60 per work hour. Required parts, if replacement of a clutch assembly is necessary, will cost approximately $16,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $459,500 per year, assuming 300 clutch assembly inspections, per helicopter, per year, and replacement of 5 unairworthy clutch assemblies.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be

amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–72–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–26–04 Kaman Aerospace Corporation: Amendment 39–11523. Docket No. 99–SW–72–AD.

Applicability: Model K–1200 helicopters, with clutch assembly, part number (P/N) K974002–701, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before the first flight of each day.

To prevent failure of the engine adapter flange, loss of power to the main rotors, and a subsequent forced landing, accomplish the following:

(a) Inspect the integrity of the clutch assembly, in a location where background noise would not hinder evaluation, by firmly and uniformly rotating the Kaflex shaft in the anti-rotating direction (counter-clockwise looking forward) while maintaining hand contact. The anti-rotation speed should be approximately one-fourth to one-half revolution per second. An unairworthy clutch will feel rough with a continuous dry "raspy" feel and sound, or it may feel as though the clutch has heavy detents or "catches" on the interior surface that impede the free rotary motion.

(b) Remove any unairworthy clutch assembly, P/N K974002–701, before further flight and replace with an airworthy clutch assembly.

Note 2: Kaman K–1200 K–MAX Maintenance Manual Temporary Revision (TR) No. 284, dated November 5, 1999, which revises the procedures for engine area daily inspections and TR No. 289, dated November 12, 1999, which describes the method of inspecting the transmission assembly, pertain to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on February 8, 2000, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99–26–04, issued December 8, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 13, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–1642 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 99N–4955]

Amendment of Various Device Regulations to Reflect Current American Society for Testing and Material Citations

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain references in various medical device regulations. The amendments update the references in those regulations to various standards of the American Society for Testing and Materials (ASTM) to reflect the current standards designations. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedures for notice-and-comment, to provide a procedural framework to finalize the rule in the event that the agency receives any significant adverse comment and withdraws the direct final rule.

DATES: The rule is effective June 7, 2000. Submit written comments on or before

April 10, 2000. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish in the **Federal Register** a document confirming the effective date of the direct final rule within 30 days after the comment period on this direct final rule ends. If the agency receives any adverse comments, FDA intends to withdraw this final rule by publication in the **Federal Register** of a document within 30 days after the comment period ends. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 801.410(d)(2) (21 CFR 801.410(d)(2)) and § 801.430(f)(2) (21 CFR 801.430(f)(2), effective June 7, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Background

The ASTM notified FDA that ASTM had been working on a project to help Federal agencies update and maintain the ASTM standards that are referenced in the Code of Federal Regulations (CFR's). Use of consensus standards such as those developed by ASTM is consistent with the purposes of the National Technology Transfer and Advancement Act of 1995, signed into law on March 7, 1996 (Public Law 104–113). As part of the ASTM project, ASTM informed FDA that many ASTM standards cited in FDA's food additive and device regulations were out-of-date and provided a list of standards with their current year designations. ASTM listed 58 different regulations which, in its opinion, needed to be updated.

FDA examined the ASTM's documentation and, upon closer examination, found that 56 of the 58 different FDA regulations identified by ASTM cited obsolete ASTM standards or that, in some cases, cited ASTM standards that had been withdrawn. Most regulations involved direct and indirect food additives, although two of the affected regulations involved medical devices. Consequently, through this rulemaking, FDA is revising the device regulations identified by ASTM that contain obsolete or withdrawn ASTM standards to reflect the current ASTM standards designations. FDA will update the citations for the food additive regulations in a separate rulemaking.

This direct final rule amends §§ 801.410(d)(2) and 801.430(f)(2) by incorporating by reference into the regulation the updated standard as follows:

- Section 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses*—The agency is amending paragraph (d)(2) by removing "ASTM Method D 1415–68 'Test for International Hardness of Vulcanized Rubber,'" and by adding in its place "ASTM Method D 1415–88, Standard Test Method for Rubber Property—International Hardness," and also by removing "ASTM Method D 412–68 'Tension Test of Vulcanized Rubber,'" and by adding in its place "ASTM Method D 412–97, Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension,".
- Section 801.430 *User labeling for menstrual tampons*—The agency is amending paragraph (f)(2) by removing "(ASTM), D 3492–83, 'Standard Specification for Rubber Contraceptives (Condoms)'" and by adding in its place "(ASTM) D 3492–96, Standard Specification for Rubber Contraceptives (Male Condoms)".

In addition, FDA is updating in § 801.410(d)(2) the address for the American Society for Testing and Materials.

II. Additional Information

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. FDA believes this rule is appropriate for direct final rulemaking because FDA views this rule as making noncontroversial amendments to existing regulations, i.e., adopting revised ASTM methods for certain medical device regulations, and FDA anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule to amend the relevant medical device regulations. The companion proposed rule is substantially identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comments. The comment period for the direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule of 75 days after January 24, 2000. If the agency receives any significant adverse comments, FDA intends to withdraw this final rule by publication in the **Federal Register** of a document within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the Administrative Procedure Act (5 U.S.C. 552 *et seq.*). If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation notice in the **Federal Register** within 30 days after the comment period ends. FDA intends to make the direct final rule effective June 7, 2000.

III. Environmental Impact

The agency has determined, under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and

benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The revised ASTM standard citations that FDA is adopting in the medical device regulations reflect minor changes to the currently listed methods in those regulations. The updated citations are the result of periodic reapprovals of long-standing test methods or standards and should have no significant adverse impact on those who use the standard. Thus, the rule is not a significant regulatory action as defined in Executive Order 12866, and so is not subject to review under the Executive Order.

Under section 603(a) of the Regulatory Flexibility Act (RFA), for any proposed rule for which the agency is required by section 553 of the Administrative Procedure Act or any other law to publish a general notice of proposed rulemaking, the agency is required to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The agency has published, in the companion proposed rule published elsewhere in this **Federal Register**, an initial regulatory flexibility analysis. Because the companion proposed rule is a proposed rule for which a general notice of proposed rulemaking is required, and therefore is subject to the RFA, the agency will consider any comments it receives on the initial regulatory flexibility analysis in the companion proposed rule when deciding whether to withdraw this direct final rule.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Interested persons may, on or before April 10, 2000, submit to the Dockets Management Branch (address above) written comments regarding this final rule. The comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the proposed rule and this direct final rule. In the event that the direct final rule is withdrawn, all comments received regarding the companion proposed rule and the direct final rule will be considered as comments on the proposed rule.

List of Subjects in 21 CFR Part 801

Hearing aids, Incorporation by reference, Medical devices, Professional and patient labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

§ 801.410 [Amended]

2. Section 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses* is amended in paragraph (d)(2) by removing "ASTM Method D 1415–68 'Test for International Hardness of Vulcanized Rubber,' " and by adding in its place "ASTM Method D 1415–88, Standard Test Method for Rubber Property—International Hardness,"; by removing "ASTM Method D 412–68 'Tension Test of Vulcanized Rubber,' " and by adding in its place "ASTM Method D 412–97, Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension,"; and by removing "1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.)" and by adding in its place "100 Barr Harbor Dr., West Conshohocken, Philadelphia, PA 19428, or available for inspection at the Center for Devices and Radiological Health's Library, 9200 Corporate Blvd., Rockville, MD 10850, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC."

§ 801.430 [Amended]

3. Section 801.430 *User labeling for menstrual tampons* is amended in paragraph (f)(2) by removing "(ASTM), D 3492–83, 'Standard Specification for Rubber Contraceptives (Condoms)' " and by adding in its place "(ASTM) D 3492–96, 'Standard Specification for Rubber Contraceptives (Male Condoms)' "; and by revising the footnote to read "Copies of the standard are available from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or available for inspection at the Center for Devices and Radiological Health's Library, 9200 Corporate Blvd., Rockville, MD 10850, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC."

Dated: December 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1404 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8863]

RIN 1545–AX64

Stock Transfer Rules: Supplemental Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide an election for certain taxpayers engaged in certain exchanges described in section 367(b). These regulations provide guidance for taxpayers that make the specified election in order to determine the extent to which income must be included and certain corresponding adjustments must be made. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective as of February 23, 2000.

Applicability Date. These regulations apply to section 367(b) exchanges that occur on or after February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Harris, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the

Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1666. Responses to this collection of information is mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1977, the IRS and Treasury issued proposed and temporary regulations under section 367(b) of the Internal Revenue Code (Code). Subsequent guidance updated and amended the 1977 temporary regulations (the 1977 regulations) several times over the next 14 years. On August 26, 1991, the IRS and Treasury issued proposed regulations §§ 1.367(b)–1 through 1.367(b)–6 (the 1991 proposed regulations). Comments to the 1991 proposed regulations were received, and a public hearing was held on November 22, 1991. In June of 1998, the IRS and Treasury issued final regulations under sections 367(a) and (b) (the 1998 regulations). The 1998 regulations addressed transactions under section 367(b) only to the extent the transactions are also subject to the stock transfer rules of section 367(a). Thus, the 1977 regulations have remained in effect to the extent not superseded by the 1998 regulations. The preamble to the 1998 regulations stated that the IRS and Treasury would issue guidance at a later date to address the portions of the 1991 proposed regulations related to section 367(b) that were not addressed in the 1998 regulations.

The IRS and Treasury adopted §§ 1.367(b)–1 through 1.367(b)–6 as final regulations under section 367(b) (see final section 367(b) regulations published elsewhere in this issue of the **Federal Register**). These temporary regulations relate to certain provisions of the 1991 proposed regulations not adopted in the final section 367(b) regulations (published elsewhere in this issue of the **Federal Register**).

General Purpose

These temporary regulations address the elimination of an election available to certain taxpayers under the 1991 proposed regulations that was not adopted in the final section 367(b) regulations (published elsewhere in this issue of the **Federal Register**).

Specific Provisions

A. § 1.367(b)–3T(b)(4): Election of Taxable Exchange Treatment

Section 1.367(b)–3 of the 1991 proposed regulations addressed transactions in which a foreign corporation transfers assets to a domestic corporation pursuant to a Subchapter C nonrecognition provision. These transactions include a section 332 liquidation of a foreign corporation into a domestic parent corporation and an asset reorganization, such as a C, D or F reorganization, of a foreign corporation into a domestic corporation. The 1991 proposed regulations required a U.S. shareholder of a foreign acquired corporation (or, in certain cases, a foreign subsidiary of the U.S. shareholder) to currently include in income the allocable portion of the foreign acquired corporation's earnings and profits accumulated during the U.S. shareholder's holding period (all earnings and profits amount). The final section 367(b) regulations (published elsewhere in this issue of the **Federal Register**) adopted this general rule.

Sections 7.367(b)–5(b) and 7.367(b)–7(c)(2)(ii) of the 1977 regulations and § 1.367(b)–3(b)(2)(iii) of the 1991 proposed regulations provided an exception to this rule, which permitted an exchanging shareholder to elect to recognize the gain (but not the loss) that it realizes in the exchange (taxable exchange election), rather than include the all earnings and profits amount in income. To the extent the all earnings and profits amount exceeds a shareholder's stock gain, the 1991 proposed regulations further required the foreign acquired corporation to reduce various tax attributes that would otherwise carryover to the domestic acquiring corporation (attribute reduction regime). The final regulations (published elsewhere in this issue of the **Federal Register**) did not adopt the taxable exchange election.

In order to provide taxpayers an opportunity to comment on this change, these temporary regulations provide the taxable exchange election in modified form. The modified election permits an exchanging shareholder to elect to treat a transaction as a taxable exchange, but limits application of the attribute reduction regime to a section 332 liquidation or to an inbound asset reorganization in which the foreign acquired corporation is wholly owned (directly or indirectly) by one U.S. person.

These temporary regulations apply to section 367(b) exchanges that occur between February 23, 2000, and February 23, 2001.

Further Explanation

For a more detailed discussion regarding section 367(b), see the final section 367(b) regulations published elsewhere in this issue of the **Federal Register**.

Special Analyses

It has been determined that these Temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further it is hereby certified pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the number of section 367(b) exchanges that require reporting under these regulations is estimated to be only 20 per year. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information. The principal author of these regulations is Mark Harris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(b)–3T also issued under 26 U.S.C. 367(a) and (b). * * *

Par. 2. Section 1.367(b)–3T is added to read as follows:

§ 1.367(b)–3T Repatriation of foreign corporate assets in certain nonrecognition transactions (temporary).

(a) through (b)(3). [Reserved]. For further guidance, see § 1.367(b)–3(a) through (b)(3).

(4) *Election of taxable exchange treatment*—(i) *Rules*—(A) *In general.* In lieu of the treatment prescribed by § 1.367(b)–3(b)(3)(i), an exchanging shareholder described in § 1.367(b)–3(b)(1) may instead elect to recognize the gain (but not loss) that it realizes in the exchange (taxable exchange election). To make a taxable exchange election, the following requirements must be satisfied—

(*1*) The exchanging shareholder (and its direct or indirect owners that would be affected by the election, in the case of an exchanging shareholder that is a foreign corporation) reports the exchange in a manner consistent therewith (see, e.g., sections 954(c)(1)(B)(i), 1001 and 1248);

(*2*) The notification requirements of paragraph (b)(4)(i)(C) of this section are satisfied; and

(*3*) The adjustments described in paragraph (b)(4)(i)(B) of this section are made when the following circumstances are present—

(*i*) The transaction is described in section 332 or is an asset acquisition described in section 368(a)(1), with regard to which one U.S. person owns (directly or indirectly) 100 percent of the foreign acquired corporation; and

(*ii*) The all earnings and profits amount described in § 1.367(b)–3(b)(3)(i) with respect to the exchange exceeds the gain recognized by the exchanging shareholder.

(B) *Attribute reduction*—(*1*) *Reduction of NOL carryovers.* The amount by which the all earnings and profits amount exceeds the gain recognized by the exchanging shareholder (the excess earnings and profits amount) shall be applied to reduce the net operating loss carryovers (if any) of the foreign acquired corporation to which the domestic acquiring corporation would otherwise succeed under section 381(a) and (c)(1). See also Rev. Rul. 72–421 (1972–2 C.B. 166) (see § 601.601(d)(2) of this chapter).

(*2*) *Reduction of capital loss carryovers.* After the application of paragraph (b)(4)(i)(B)(*1*) of this section, any remaining excess earnings and profits amount shall be applied to reduce the capital loss carryovers (if any) of the foreign acquired corporation to which the domestic acquiring corporation would otherwise succeed under section 381(a) and (c)(3).

(*3*) *Reduction of basis.* After the application of paragraph (b)(4)(i)(B)(*2*) of this section, any remaining excess earnings and profits amount shall be applied to reduce (but not below zero) the basis of the assets (other than dollar-denominated money) of the foreign acquired corporation that are acquired by the domestic acquiring corporation. Such remaining excess earnings and profits amount shall be applied to reduce the basis of such assets in the following order: first, tangible depreciable or depletable assets, according to their class lives (beginning with those assets with the shortest class life); second, other non-inventory tangible assets; third, intangible assets that are amortizable; and finally, the remaining assets of the foreign acquired corporation that are acquired by the domestic acquiring corporation. Within each of these categories, if the total basis of all assets in the category is greater than the excess earnings and profits amount to be applied against such basis, the taxpayer may choose to which specific assets in the category the basis reduction first applies.

(C) *Notification.* The exchanging shareholder shall elect to apply the rules of this paragraph (b)(4)(i) by attaching a statement of its election to its section 367(b) notice. See § 1.367(b)–1(c) For the rules concerning filing a section 367(b) notice.

(D) *Example.* The following example illustrates the rules of this paragraph (b)(4)(i):

Example—(i) *Facts.* DC, a domestic corporation, owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of $100, and DC has a basis of $80 in such stock. The assets of FC are one parcel of land with a value of $60 and a basis of $30, and tangible depreciable assets with a value of $40 and a basis of $80. FC has no net operating loss carryovers or capital loss carryovers. The all earnings and profits amount with respect to the FC stock owned by DC is $30, of which $19 is described in section 1248(a) and the remaining $11 is not (for example, because it was earned prior to 1963). In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled. Rather than including in income as a deemed dividend the all earnings and profits amount of $30 as provided in § 1.367(b)–3(b)(3)(i), DC instead elects taxable exchange treatment under paragraph (b)(4)(i)(A) of this section.

(ii) *Result.* DC recognizes the $20 of gain it realizes on its stock in FC. Of this $20 amount, $19 is included in income by DC as a dividend pursuant to section 1248(a). (For the source of the remaining $1 of gain recognized by DC, see section 865. For the treatment of the $1 for purposes of the foreign tax credit limitation, see generally section 904(d)(2)(A)(i).) Because the transaction is described in section 332 and because the all earnings and profits amount with respect to the FC stock held by DC ($30) exceeds by $10 the income recognized by DC ($20), the attribute reduction rules of paragraph (b)(4)(i)(B) of this section apply. Accordingly, the $10 excess earnings and profits amount is applied to reduce the basis of the tangible depreciable assets of FC, beginning with those assets with the shortest class lives. Under section 337(a) FC does not recognize gain or loss in the assets that it distributes to DC, and under section 334(b) (which is applied taking into account the basis reduction prescribed by paragraph (b)(4)(i)(A)(*3*) of this section) DC takes a basis of $30 in the land and $70 in the tangible depreciable assets that it receives from FC.

(ii) *Effective date.* This paragraph (b)(4) applies for section 367(b) exchanges that occur between February 23, 2000, and February 23, 2001.

(c) and (d) [Reserved]. For further guidance, see § 1.367(b)–3(c) through (d).

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
7.367(b)–1	1545–0026
7.367(b)–3	1545–0026
7.367(b)–7	1545–0026
7.367(b)–9	1545–0026
7.367(b)–10	1545–0026
* * * * *	

2. Adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(b)–3T	1545–1666
* * * * *	

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: December 22, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1379 Filed 1–21–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, and 602

[TD 8862]

RIN 1545–AI32

Stock Transfer Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations addressing the application of nonrecognition exchange provisions in Subchapter C of the Internal Revenue Code to transactions that involve one or more foreign corporations. These regulations provide guidance for taxpayers engaging in those transactions in order to determine the extent to which income shall be included and appropriate corresponding adjustments shall be made.

DATES: *Effective Date.* These regulations are effective as of February 23, 2000.

Applicability Dates. These regulations apply to section 367(b) exchanges that occur on or after February 23, 2000. However, taxpayers may choose to apply these regulations to section 367(b) exchanges that occur before February 23, 2000, as specified in § 1.367(b)–6(a)(2).

FOR FURTHER INFORMATION CONTACT: Mark D. Harris, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1271. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual reporting burden in these final regulations is 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1977, the IRS and Treasury issued proposed and temporary regulations under section 367(b) of the Internal Revenue Code (Code). Subsequent guidance updated and amended the 1977 temporary regulations (the 1977 regulations) several times over the next 14 years. On August 26, 1991, the IRS and Treasury issued proposed regulations §§ 1.367(b)–1 through 1.367(b)–6 (the 1991 proposed regulations). Comments to the 1991 proposed regulations were received, and a public hearing was held on November 22, 1991. In June of 1998, the IRS and Treasury issued final regulations under sections 367(a) and (b) (the 1998 regulations). The 1998 regulations addressed transactions under section 367(b) only to the extent the transactions are also subject to the stock transfer rules of section 367(a). Thus, the 1977 regulations have remained in effect to the extent not superseded by the 1998 regulations. The preamble to the 1998 regulations stated that the IRS and Treasury would issue guidance at a later date to address the portions of the 1991 proposed regulations related to section 367(b) that were not addressed in the 1998 regulations.

After consideration of the 1977 regulations and their updates and amendments, the 1991 proposed regulations and their updates and amendments, the 1998 regulations, and all comments received with respect to such regulations, the IRS and Treasury adopt §§ 1.367(b)–1 through 1.367(b)–6 as final regulations under section 367(b).

Overview

A. General Policies of Section 367(b)

Section 367(b) governs corporate restructurings under sections 332, 351, 354, 355, 356, and 361 (except to the extent described in section 367(a)(1)) in which the status of a foreign corporation as a "corporation" is necessary for application of the relevant nonrecognition provisions. Section 367(b) provides that a foreign corporation that is a party to one of the enumerated nonrecognition transactions shall be respected as a corporation, and thereby the parties involved in the transaction shall obtain the benefits of the applicable nonrecognition exchange provisions and their related provisions (such as section 381) (together, the Subchapter C provisions), except to the extent provided in regulations.

The principal purpose of section 367(b) is to prevent the avoidance of U.S. tax that can arise when the Subchapter C provisions apply to transactions involving foreign corporations. The potential for tax avoidance arises because of differences between the manner in which the United States taxes foreign corporations and their shareholders and the manner in which the United States taxes domestic corporations and their U.S. shareholders.

The Subchapter C provisions generally have been drafted to apply to domestic corporations and U.S. shareholders, and thus do not fully take into account the cross-border aspects of U.S. taxation (such as deferral, foreign tax credits, and section 1248). Section 367(b) was enacted to help ensure that international tax considerations in the Code are adequately addressed when the Subchapter C provisions apply to an exchange involving a foreign corporation. Because determining the proper interaction of the Code's international and Subchapter C provisions is "necessarily highly technical," Congress granted the Secretary broad regulatory authority to provide the "necessary or appropriate" rules, rather than enacting a complex

statutory regime. H.R. Rep. No. 658, 94th Cong., 1st Sess. 241 (1975).

Accordingly, as the preamble to the 1991 proposed regulations stated, the section 367(b) regulations require adjustments or inclusions in order to prevent the material distortion of income that can occur when the Subchapter C provisions apply to an exchange involving a foreign corporation. The 1991 proposed regulations simplified the 1977 regulations and were generally favorably received by taxpayers. The final regulations adopt the 1991 proposed regulations with modifications. The modifications are based on further considerations of fairness, simplicity, and administrability.

The final regulations also incorporate the section 367(b) rules contained in the 1998 regulations. The 1998 regulations finalized portions of the 1991 proposed regulations to the extent necessary to address the overlap between section 367(b) and the section 367(a) stock transfer rules. Because the scope of the final regulations is broader than that overlap, the final regulations adopt the 1998 section 367(b) provisions in a manner appropriate to their incorporation into the final regulations.

The IRS and Treasury are also issuing other guidance under section 367(b). Temporary and proposed regulations (published elsewhere in this issue of the **Federal Register**) address the elimination of an election available to certain taxpayers under the 1977 regulations and the 1991 proposed regulations. In addition, the IRS and Treasury intend to issue other proposed regulations that provide rules regarding the combination and separation of corporate-level tax attributes in applicable section 367(b) exchanges.

B. Specific Policies in Context of Inbound Nonrecognition Transactions

Section 1.367(b)–3 addresses transactions in which a foreign corporation transfers assets to a domestic corporation pursuant to a Subchapter C provision. These transactions include a section 332 liquidation of a foreign corporation into a domestic parent corporation and an asset reorganization, such as a C, D, or F reorganization, of a foreign corporation into a domestic corporation (inbound nonrecognition transactions). Section 381 generally provides rules regarding the extent to which corporate attributes carry over in such transactions.

The principal policy consideration of section 367(b) with respect to inbound nonrecognition transactions is the appropriate carryover of attributes from foreign to domestic corporations. This consideration has interrelated shareholder-level and corporate-level components. At the shareholder level, the section 367(b) regulations are concerned with the proper taxation of previously deferred earnings and profits. At the corporate level, the section 367(b) regulations are concerned with both the extent and manner in which tax attributes carry over in light of the variations between the Code's taxation of foreign and domestic corporations.

The section 367(b) regulations have historically focused on the carryover of earnings and profits and bases of assets, simultaneously addressing the shareholder and corporate level concerns by accounting for any necessary adjustments through an income inclusion by the U.S. shareholders of the foreign acquired corporation (and without limiting the extent to which the domestic acquiring corporation succeeds to the attributes). The 1991 proposed regulations required a U.S. shareholder of the foreign acquired corporation (or, in certain cases, a foreign subsidiary of the U.S. shareholder) to currently include in income the allocable portion of the foreign acquired corporation's earnings and profits accumulated during the U.S. shareholder's holding period (all earnings and profits amount). The requirement to include in income the all earnings and profits amount results in the taxation of previously unrepatriated earnings accumulated during a U.S. shareholder's (direct or indirect) holding period. This income inclusion prevents the conversion of a deferral of tax into a forgiveness of tax and generally ensures that the section 381 carryover basis reflects an after-tax amount. However, the all earnings and profits amount inclusion does not consider tax attributes that accrue during a non-U.S. person's holding period.

Commentators criticized the scope of the 1991 proposed regulations, arguing that the all earnings and profits amount should be limited to the amount that a shareholder would include in income as a deemed dividend under section 1248. The scope of the all earnings and profits amount is broader than the section 1248 amount because, for example, the all earnings and profits amount is calculated without regard to whether the foreign corporation is a CFC and without regard to a shareholder's gain in the stock. However, this view too narrowly construes the role of section 367(b) by focusing on potential shareholder-level consequences without adequately considering the section 367(b) policy of determining the appropriate carryover of corporate-level attributes in inbound nonrecognition transactions. Thus, the final regulations retain the 1991 proposed regulations' definition of all earnings and profits amount. The final regulations also generally retain (subject to a new de minimis exception) the taxation of all exchanging U.S. shareholders in inbound nonrecognition transactions.

In finalizing these regulations, the IRS and Treasury considered whether future section 367(b) regulations should limit the extent to which tax attributes carry over from foreign to domestic corporations. Such a limitation would more directly implement the section 367(b) policy related to the carryover of attributes and, as a result, reduce the class of U.S. persons required to have an income inclusion in connection with an inbound nonrecognition transaction. Such a limitation would also enable the section 367(b) regulations to address the carryover of attributes attributable to a non-U.S. person's holding period. The IRS and Treasury request comments as to the merits of an attribute carryover limitation, as well as other approaches that could address the carryover of tax attributes related to a non-U.S. person's holding period under section 367(b).

C. Specific Policies in Context of Foreign-to-Foreign Nonrecognition Transactions and Section 355 Distributions

Section 1.367(b)–4 addresses transactions in which a foreign corporation acquires the stock or assets of another foreign corporation in an exchange described in section 351 or a section 368(a)(1)(B), (C), (D), (E), (F) or (G) reorganization (foreign-to-foreign nonrecognition transactions). Section 1.367(b)–5 provides rules regarding a distribution by a foreign corporation of the stock or securities of a domestic or foreign corporation described in section 355. The historic policy objective of section 367(b) in both of these contexts has been to preserve the potential application of section 1248. Thus, the amount that would have been recharacterized as a dividend under section 1248 upon a disposition of the stock (section 1248 amount) generally must be included in income as a dividend at the time of the section 367(b) exchange to the extent such section 1248 amount would not be preserved immediately following the section 367(b) exchange.

The final regulations do not address all of the policy considerations raised by the application of the Subchapter C provisions to transactions described in §§ 1.367(b)–4 and 1.367(b)–5. For

example, current rules regarding the carryover or separation of foreign corporations' earnings and profits do not adequately consider the international aspects of the Code, most notably the foreign tax credit. Forthcoming proposed regulations will consider these issues. Until the IRS and Treasury promulgate such regulations, taxpayers should use a reasonable method (consistent with existing law and taking proper account of the purposes of the foreign tax credit regime) to determine the carryover and separation of earnings and profits and related foreign taxes.

Explanation of Provisions

The IRS received numerous comments on the 1991 proposed regulations. The following discussion summarizes the comments and changes to the 1991 proposed regulations.

A. § 1.367(b)–1(c): Notice Requirements

Section 1.367(b)–1(c) of the 1991 proposed regulations required any person that realizes income in a section 367(b) exchange to file a notice with respect to the exchange, regardless of such person's status as a U.S. person and its percentage ownership in the corporation that is a party to the section 367(b) exchange. Commentators criticized this notice requirement as overly broad. The 1998 regulations limited the notice requirement to shareholders that realize income and file a tax return under section 6012. The final regulations further revise the notice requirement and generally narrow its scope by requiring notice only with respect to persons and transactions that may be subject to an inclusion under the final regulations' operative provisions.

B. § 1.367(b)–2: Definitions and Special Rules

1. § 1.367(b)–2(d): All Earnings and Profits Amount

Section 1.367(b)–2(d) of the 1991 proposed regulations generally defined "all earnings and profits amount" as the allocable share of net positive earnings and profits accrued by a foreign corporation during a shareholder's holding period. The 1991 proposed regulations provided that the all earnings and profits amount is determined according to the attribution principles of section 1248. Because the section 1248 attribution rules incorporate the section 1223 holding period rules, commentators were concerned that the definition of all earnings and profits amount inappropriately included earnings and profits attributable to the holding period of non-U.S. persons by virtue of the rules of section 1223(2).

In response, the final regulations amend the definition of all earnings and profits amount to exclude amounts attributable to the holding period of non-U.S. persons. This modification applies to the extent the non-U.S. person was not directly or indirectly owned by U.S. persons with a 10 percent or greater interest when the earnings and profits accumulated. An example in the final regulations illustrates this new rule.

When applying the attribution principles of section 1248 for purposes of determining the all earnings and profits amount, the requirements of section 1248 unrelated to computing the amount of earnings and profits attributable to a shareholder's block of stock should not apply. The final regulations explicitly state this principle. The 1991 proposed regulations applied this principle, for example, when they provided that the all earnings and profits amount is calculated without regard to whether the foreign corporation is a controlled foreign corporation (CFC). The final regulations further specify that the all earnings and profits amount includes earnings attributable to an exchanging shareholder's stock, without regard to whether the exchanging shareholder owned 10 percent of the stock of the foreign acquired corporation. A new example in the final regulations illustrates these rules.

2. § 1.367(b)–2(e): Treatment of Deemed Dividends

Section 1.367(b)–2(e) of the 1991 proposed regulations provided that a deemed dividend shall be treated as an actual dividend. Thus, a deemed dividend was considered as paid out of the earnings and profits of a foreign corporation and was considered as having been paid through intermediate owners (when appropriate). One commentator noted that an inclusion under the 1991 proposed regulations could yield a different result from an inclusion under section 1248 because section 1248 treats a corporation as having paid the section 1248 amount directly to an exchanging shareholder despite any intermediate owners.

A deemed dividend under section 367(b) is distinguishable from a section 1248 inclusion because a section 1248 inclusion is not treated as a dividend at the corporate level. Thus, a corporation does not reduce its earnings and profits with regard to an inclusion under section 1248. Instead, the shareholder-level inclusion is considered eligible to be treated as previously taxed earnings and profits (PTI) upon a subsequent distribution. In light of this distinction between section 367(b) and section 1248, the final regulations retain the rule in § 1.367(b)–2(e) of the 1991 proposed regulations.

3. Final Regulation § 1.367(b)–2(j): Sections 985 Through 989

Section 1.367(b)–2(k) of the 1991 proposed regulations provided rules regarding currency exchange inclusions or adjustments that result from a section 367(b) exchange. The final regulations apply the principles of the 1991 proposed regulations, but provide the following modifications.

The 1991 proposed regulations required an acquired corporation that participates in a transaction described in section 381(a) to change its functional currency if the acquiring corporation has a different functional currency. The rule was intended to ensure that taxpayers use the correct functional currency after a section 367(b) exchange. However, functional currency is determined separately for each qualified business unit (QBU). In addition, the functional currency of a QBU of either the acquired or acquiring corporation may change as a result of a section 367(b) exchange. Accordingly, the final regulations provide that a QBU is deemed to have automatically changed its functional currency when its functional currency, as determined after a section 367(b) exchange, is different than before the exchange. Thus, the QBU is required to make appropriate adjustments under § 1.985–5.

The 1991 proposed regulations provided that, if an exchanging shareholder is required to include in income either the all earnings and profits amount or the section 1248 amount, then immediately before the exchange and solely for purposes of computing exchange gain or loss under section 986(c), the shareholder is treated as receiving a distribution of PTI from the appropriate foreign corporation. The purpose of this provision was to ensure that exchange gain or loss under section 986(c) is subject to current inclusion when the earnings of the foreign corporation are no longer deferred or to the extent a taxpayer does not retain its interest in PTI.

Section 1.367(b)–2(j)(2) of the final regulations expands the rules regarding the treatment of exchange gain or loss on PTI under section 986(c). An exchanging shareholder that is a U.S. person is required to recognize its section 986(c) gain or loss to the extent that deferral has ended with respect to

a foreign corporation's earnings (as can occur in the case of an inbound or foreign-to-foreign nonrecognition transaction) or the U.S. person has a diminished interest in the PTI after the exchange (as can occur in the case of a section 355 distribution by a foreign corporation). A different rule applies when a U.S. person indirectly holds (through a foreign exchanging shareholder) its interest in the foreign corporation with regard to which the PTI inclusion is measured. In that case, the indirect U.S. shareholder does not recognize section 986(c) gain or loss at the time of the section 367(b) exchange. In order to preserve such section 986(c) gain or loss for future inclusion by the indirect U.S. shareholder, the foreign exchanging shareholder is treated as having received a distribution of the PTI.

Other rules under sections 985 through 989, such as the branch termination rules, may also apply to the transaction.

C. § 1.367(b)–3: Repatriation of Foreign Corporate Assets in Certain Nonrecognition Transactions

Section 1.367(b)–3 provides rules with respect to inbound nonrecognition transactions.

1. § 1.367(b)–3(b): Exchanges of Stock

Section 1.367(b)–3(b) of the 1991 proposed regulations generally provided that if an exchanging shareholder is either (i) a 10 percent U.S. shareholder of the foreign acquired corporation or (ii) a foreign corporation with respect to which a U.S. person is either a section 1248 shareholder or a domestic corporation that meets the stock ownership requirements of section 902, the shareholder must include in income as a deemed dividend the all earnings and profits amount attributable to its stock in the foreign acquired corporation. The final regulations generally retain this rule. However, in order to provide greater consistency among its various ownership thresholds, the final regulations revise § 1.367(b)–3(b)(ii) so that § 1.367(b)–3(b) applies to a foreign corporation with respect to which there is, in general, a 10 percent U.S. shareholder.

The 1991 proposed regulations provided that the same country dividend exception in section 954(c)(3)(A)(i) does not apply to an exchanging shareholder that is a CFC. Commentators criticized this rule, stating that a deemed dividend under section 367(b) should not be treated more harshly than an actual dividend and that taxpayers can circumvent this rule by having a lower-tier foreign corporation distribute a dividend before an asset transfer. However, unlike a dividend distribution that qualifies for the same country dividend exception, an inbound asset transfer represents a current repatriation of earnings into the United States. Accordingly, the final regulations retain the rule in the 1991 proposed regulations that the same country dividend exception does not apply to an exchanging shareholder that is a CFC.

The 1991 proposed regulations generally required the recognition of exchange gain (or loss) to the extent that an exchanging shareholder's capital account in a foreign acquired corporation appreciated (or depreciated) as a result of changes in currency exchange rates. Such gain (or loss) is reflected in the basis of assets when translated at the spot rate. The preamble to the 1991 proposed regulations invited comments regarding the calculation of such exchange gain (or loss), particularly in cases when a shareholder acquired the foreign corporate stock by purchase rather than in connection with the corporation's formation. None of the comments suggested a method for determining and tracking shareholder capital accounts. Most comments focused on the potential complexity and compliance burdens created by the rule. After considering the administrability issues associated with the exchange gain (or loss) calculation, the final regulations do not adopt the provision requiring the recognition of exchange gain (or loss) on a shareholder's capital account. However, the final regulations reserve the issue for further consideration.

Sections 7.367(b)–5(b) and 7.367(b)–7(c)(2)(ii) of the 1977 regulations, and § 1.367(b)–3(b)(2)(iii) of the 1991 proposed regulations provided an exchanging shareholder with an opportunity to recognize the gain (but not the loss) that it realizes in the exchange (taxable exchange election), rather than including the all earnings and profits amount in income as a deemed dividend. This taxable exchange election, however, is inconsistent with the policies of section 367(b) that apply to inbound transactions. These policies, as previously discussed, are unrelated to an exchanging shareholder's outside gain on its stock.

Moreover, when the all earnings and profits amount exceeds a shareholder's gain on its stock, merely limiting the shareholder's inclusion to its outside stock gain creates the potential for the duplication and importation of losses. See TAM 9003005 (September 28, 1989) (interpreting the 1977 regulations) (available at IRS Freedom of Information Act Reading Room, 1111 Constitution Avenue, NW., Washington, DC 20224). The 1991 proposed regulations attempted to address this aspect of the taxable exchange election by requiring various attributes of the foreign acquired corporation (such as basis in its assets) to be reduced (attribute reduction regime) to the extent the all earnings and profits amount exceeds an exchanging shareholder's stock gain.

However, the taxable exchange election in the 1991 proposed regulations had other shortcomings. The election added substantial complexity to the regulations by requiring timely coordination between electing shareholders and the acquiring corporation to carry out the required attribute reductions. In addition, the attribute reduction regime can be unfair in situations involving more than one exchanging U.S. shareholder. For example, consider an inbound C, D, or F reorganization involving two U.S. shareholders of the foreign acquired corporation, one that makes the taxable exchange election (because its gain on the stock is less than its all earnings and profits amount) and one that does not. In connection with the electing shareholder's taxable exchange election, the 1991 proposed regulations required a proportionate reduction in certain tax attributes of the foreign acquired corporation. This reduction effectively allowed the electing shareholder to transfer to the acquiring corporation the burden created by its decision not to include in income its full all earnings and profits amount and, thereby, to effectively shift a portion of this burden to the non-electing shareholder (that has already paid U.S. tax on its full share of the foreign corporation's earnings and profits).

Finally, a taxable exchange election is not required by the statute. Section 367(b) directs the Secretary to prescribe regulations that provide the necessary or appropriate tax consequences that should accompany the application of the Subchapter C provisions to transactions involving foreign corporations. Section 367(b)(2) specifically provides that the section 367(b) regulations may include the circumstances under which "gain shall be recognized currently or amounts included in gross income currently as a dividend, or both * * *." Thus, the statute authorizes the IRS and Treasury to require an inclusion of amounts, as distinct from gain. As previously discussed, the all earnings and profits amount appropriately measures an exchanging shareholder's income

inclusion in connection with an inbound nonrecognition transaction.

After balancing the above considerations against the benefits of the taxable exchange election, the final regulations do not adopt the taxable exchange election. However, in order to provide taxpayers an opportunity to comment on this change to the 1977 regulations and the 1991 proposed regulations, the IRS and Treasury are concurrently issuing temporary and proposed regulations that provide the taxable exchange election in modified form. This election permits an exchanging shareholder to elect to treat a transaction as a taxable exchange, but modifies the attribute reduction regime by limiting its application to a section 332 liquidation or to an inbound asset reorganization in which the foreign acquired corporation is wholly owned (directly or indirectly) by one U.S. person. This limited application of the attribute reduction regime eliminates the potentially unfair results that can arise when attributes are reduced in a transaction involving multiple exchanging shareholders. This also reduces (although does not eliminate) the potential for the duplication and importation of losses that can arise in the absence of attribute reduction. The temporary regulation is effective for one year from the effective date of the final regulations.

2. § 1.367(b)–3(c): Exchanges of Stock by Other U.S. Persons

Section 1.367(b)–3(c) of the 1991 proposed regulations provided a special rule for U.S. persons that are not subject to the § 1.367(b)–3(b) requirement to include in income the all earnings and profits amount (generally, shareholders owning less than 10 percent of the foreign acquired corporation, hereinafter small shareholders). The 1991 proposed regulations required these small shareholders to recognize the gain on their stock in the foreign acquired corporation. This rule was included because of administrative concerns, since small shareholders may not have sufficient information to calculate their all earnings and profits amounts. In addition, a foreign acquired corporation may not have adequate information about its small shareholders' inclusions to properly adjust its earnings and profits for the deemed dividends that would arise in these situations.

Commentators requested that the final regulations provide small shareholders the option of including in income the all earnings and profits amount, rather than recognizing the gain on their stock. In response, the final regulations include such an election, provided that a small shareholder has sufficient information to substantiate its all earnings and profits amount and provided that the small shareholder furnishes proper certification to the foreign acquired corporation (or its successor in interest) so that the corporation can properly reduce its earnings and profits. Electing small shareholders must also comply with the section 367(b) notice requirement. A less extensive section 367(b) notice procedure is available if the foreign acquired corporation has never had earnings and profits that would result in any shareholder having an all earnings and profits amount.

Commentators also requested an election that would permit a domestic acquiring corporation to include in income the all earnings and profits amounts on behalf of the foreign acquired corporation's small shareholders. The final regulations do not adopt this suggestion because of its substantial administrative difficulties. For example, it is unlikely that a publicly traded foreign corporation (or its domestic acquirer) could ascertain each small shareholder's correct holding period in the stock of the foreign acquired corporation, which would be necessary to properly determine such a cumulative all earnings and profits amount inclusion.

The final regulations also include a new de minimis exception, which applies to small shareholders whose stock in the foreign acquired corporation has a fair market value below $50,000 on the date of the exchange. These shareholders are not required to include gain or a deemed dividend under the section 367(b) regulations.

3. § 1.367(b)–3(d): Carryover of Certain Attributes

Section 1.367(b)–3(d) of the 1991 proposed regulations clarified that a domestic acquiring corporation may succeed to foreign taxes paid or accrued by a foreign acquired corporation that are eligible for credit under section 906. A domestic acquiring corporation may not succeed to any other foreign taxes paid or accrued by a foreign acquired corporation because the earnings that carry over to a domestic acquiring corporation (other than earnings related to the taxes eligible for credit under section 906) are not subject to double taxation at the corporate level. This rule is consistent with the general policy of section 367(b) to permit the carryover of corporate tax attributes only when appropriate. The final regulations retain the rules of § 1.367(b)–3(d), and add an example that illustrates their application.

D. § 1.367(b)–4: Acquisition of Foreign Corporate Stock or Assets by a Foreign Corporation in Certain Nonrecognition Transactions

Section 1.367(b)–4 of the 1991 proposed regulations addressed foreign-to-foreign nonrecognition transactions. In general, if the exchange in such a transaction results in a section 1248 shareholder of the foreign acquired corporation losing its section 1248 shareholder status, § 1.367(b)–4(b) required the exchanging shareholder to currently include its section 1248 amount in income as a deemed dividend. The 1991 proposed regulations generally did not require an income inclusion in circumstances when a section 1248 shareholder retains its status. In the case of a lower-tier transaction (where the exchanging shareholder is a foreign corporation), the section 1248 amount was not included as foreign personal holding company income (FPHCI) under section 954(c). This provision permitted deferral of the section 1248 amount by preserving such earnings and profits as earnings of the foreign corporation that is the exchanging shareholder. The final regulations retain these general rules.

1. § 1.367(b)–4(b): Recognition of Income

Section 1.367(b)–4(b) of the 1991 proposed regulations provided an exception to its general rule if an exchanging shareholder receives stock of a domestic corporation. This provision, which the 1991 proposed regulations included in response to a criticism of the 1977 regulations, was intended to provide relief in cases when a domestic acquiring corporation issues its own stock in exchange for CFC stock and succeeds to the section 1248 amount allocable to the transferor U.S. shareholder. Because § 1.367(b)–4(a) of the 1991 proposed regulations already limited the application of § 1.367(b)–4 to an acquisition by a foreign corporation, such relief was unnecessary.

Moreover, the provision inadvertently did not require an inclusion of a section 1248 amount that may not be preserved immediately after the exchange. This could occur, for example, if a foreign acquiring corporation uses the stock of its domestic parent corporation to acquire the stock or assets of a foreign target corporation from a section 1248 shareholder. Accordingly, the final regulations do not adopt the 1991 proposed regulations' provision regarding receipt of stock of a domestic corporation in a transaction described in § 1.367(b)–4.

2. § 1.367(b)–4(d): Special Rule for Applying Section 1248 to Subsequent Exchanges

The 1998 regulations revised the rules of the 1991 proposed regulations regarding the application of section 367(b) and section 1248 to exchanges that follow a § 1.367(b)–4 exchange in which an exchanging shareholder is not required to include a section 1248 amount in income. Because of the limited scope of the 1998 regulations, its rule only addressed the application of section 367(b) and section 1248 following a stock transfer by a direct U.S. shareholder. The final regulations incorporate the principles of the 1998 regulations and expand their application to the class of transactions subject to § 1.367(b)–4, including asset transfers and transactions in which the exchanging shareholder is a foreign corporation. The final regulations also address the interaction of these rules with section 964(e), by providing the extent to which they apply to subsequent section 964(e) sales and exchanges. Two new examples in the final regulations, as well as an expanded restatement of the example provided in the 1998 regulations, illustrate the application of these rules.

Commentators also requested that the IRS and Treasury clarify the carryover of earnings and profits and tax accounts in transactions where an exchanging shareholder is not required to include a section 1248 amount, as well as the application of section 902 to distributions by a foreign acquiring corporation after such a section 367(b) exchange. The IRS and Treasury will address these issues in forthcoming proposed regulations.

E. § 1.367(b)–5: Distributions of Stock Described in Section 355

1. § 1.367(b)–5(b): Distribution by a Domestic Corporation

Section 1.367(b)–5(b) of the 1991 proposed regulations generally provided that a domestic corporation must recognize gain on a section 355 distribution of foreign stock to individuals. The final regulations retain this general rule, consistent with the recently promulgated final regulations under section 367(e) (governing a section 355 distribution by a domestic corporation of foreign stock to foreign persons).

Commentators requested that the final regulations clarify the proper method for determining whether a distributee is an individual. The same issue arises under section 367(e), and the final regulations adopt the approach of the section 367(e) regulations. Thus, a distributee is presumed to be an individual except to the extent that the distributing corporation certifies that the distributee is not an individual. However, a publicly traded distributing corporation may use a reasonable analysis with respect to distributees that are not five percent shareholders of publicly traded stock to demonstrate the number of distributees that are not individuals. A reasonable analysis includes a determination of the actual number of distributees that are not individuals or a reasonable statistical analysis of shareholder records and other relevant information. Section 1.367(b)–2(k) (§ 1.367(b)–2(l) of the 1991 proposed regulations) has also been amended to adopt the look-through provisions provided in § 1.367(e)–1(b)(2) for purposes of determining the identity of distributees when the domestic distributing corporation stock is held by a partnership, trust or estate.

2. § 1.367(b)–5(c): Pro Rata Distribution by a CFC

Section 1.367(b)–5(c) of the 1991 proposed regulations provided that, when a CFC distributes stock of a controlled corporation on a pro rata basis in a section 355 transaction, a distributee must reduce its post-distribution basis in either the distributing or controlled corporation stock to the extent its section 1248 amount attributable to such corporation is reduced as a result of the distribution. To the extent the reduction of the section 1248 amount exceeds the stock basis, the distributee must include the difference in income as a deemed dividend. The final regulations retain this general rule, subject to the following refinements.

The final regulations add new § 1.367(b)–5(c)(3), which provides that the basis adjustment provided in § 1.367(b)–2(e)(3)(ii) shall not apply if a deemed dividend is included in income pursuant to § 1.367(b)–5(c). Under § 1.367(b)–2(e)(3)(ii), a shareholder's basis is increased by the amount of a deemed dividend inclusion. In the context of a § 1.367(b)–5(c) inclusion, the § 1.367(b)–2(e)(3)(ii) basis increase would undermine the purpose of the section 367(b) regulations, because the basis increase would correspondingly decrease the shareholder's built-in gain, thereby reducing the section 1248 amount that is intended to be preserved after the transaction.

Furthermore, some taxpayers commented that the § 1.367(b)–5(c)(2) basis reduction can lead to the creation of phantom gain; that is, it can leave a shareholder with a cumulative amount of post-distribution built-in gain in the stock of the distributing and controlled corporations that exceeds its predistribution built-in gain. As a result, commentators requested that a reduction in the basis in one of the corporations give rise to a corresponding increase in the basis of the stock of the other corporation. In response, § 1.367(b)–5(c)(4) of the final regulations provides a basis redistribution rule, under which the basis of the stock of the distributing or controlled corporation (as applicable) is increased by the amount of the required decrease in basis in the other stock under § 1.367(b)–5(c)(2). However, basis cannot be increased above the fair market value of the stock and also cannot be increased to the extent the increase diminishes the postdistribution section 1248 amount with respect to such stock. This basis redistribution rule also applies with regard to deemed dividend inclusions under § 1.367(b)–5(c)(2). An example in the final regulations illustrates the application of these new rules.

3. § 1.367(b)–5(d): Non-Pro Rata Distribution by Controlled Foreign Corporation

Section 1.367(b)–5(d) of the 1991 proposed regulations provided that, if a CFC distributes controlled corporation stock on a non-pro rata basis, each distributee must include in income the amount of any reduction in its section 1248 amount with regard to either the distributing or controlled corporation. For this purpose, the 1991 proposed regulations treated a shareholder of the distributing corporation that does not exchange stock in the distributing corporation for stock in the controlled corporation (non-participating shareholder) as a distributee.

The 1991 proposed regulations provided that a non-participating shareholder may make an election (taxable distribution election), under which the distributing and controlled corporations are not treated as corporations for purposes of gain (but not loss) recognition by all persons affected by the taxable status of the transaction. The preamble to the 1991 proposed regulations invited comments as to whether the benefits of the taxable distribution election to non-participating shareholders are outweighed by the potential adverse effects on the other shareholders.

In response, commentators uniformly criticized the taxable distribution election. They argued that the election was inequitable because it enabled a non-participating shareholder (who may be a small shareholder) to unilaterally and retroactively invalidate the section

355 transaction for all parties involved. Commentators also pointed out that the taxable distribution election could distort the economic incentives in cross-border restructurings by requiring participating shareholders to consider identifying and making contractual arrangements (which could include monetary arrangements) with each non-participating shareholder in order to prevent them from electing to invalidate the section 355 transaction. Commentators thus argued in favor of not adopting the taxable distribution election in the final regulations.

The taxable distribution election is also not required by the statute. Section 367(b) directs the Secretary to prescribe regulations that provide the necessary or appropriate tax consequences that should accompany the application of the Subchapter C provisions to transactions involving foreign corporations. Section 367(b)(2) specifically provides that the section 367(b) regulations "shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a U.S. person. * * *" Accordingly, the section 367(b) regulations may address the tax consequences of a non-pro rata distribution to both participating and non-participating shareholders. In both cases, the diminution in a shareholder's potential section 1248 amount following a section 355 transaction appropriately measures the shareholder's inclusion with regard to a section 355 transaction involving a distributing corporation that is a controlled foreign corporation. Differing results depending on whether a shareholder is a participating shareholder or a non-participating shareholder can also be viewed as artificial, given that the distinction is often merely a function of alternative planning strategies.

In light of all of the above considerations, the final regulations do not adopt the taxable distribution election. As a result, all shareholders of a CFC that distributes stock on a non-pro rata basis must include in income the amount of any reduction in their section 1248 amount with respect to either the distributing or controlled corporation.

4. Final Regulation § 1.367(b)–5(f): Exclusion of Deemed Dividend From FPHCI

Commentators noted that the 1991 proposed regulations did not automatically exclude a § 1.367(b)–5(c) or (d) deemed dividend inclusion by an exchanging foreign corporate shareholder from FPHCI. Accordingly, the deemed dividend generally would be subpart F income and currently includible in income by a U.S. shareholder of the exchanging foreign corporation. As in the case of a lower-tier foreign-to-foreign transaction described in § 1.367(b)–4, the potential application of section 1248 can be preserved by excluding the deemed dividend from FPHCI. Thus, the final regulations adopt the suggestion and provide that a § 1.367(b)–5(c) or (d) deemed dividend inclusion by a foreign corporation is not included in FPHCI under section 954(c).

5. 1991 Proposed Regulation § 1.367(b)–5(f): Adjustments to Earnings and Profits

Section 1.367(b)–5(f) of the 1991 proposed regulations provided rules regarding the allocation of earnings and profits of a foreign transferor corporation in connection with a section 355 distribution. After further consideration, the IRS and Treasury have not included § 1.367(b)–5(f) of the 1991 proposed regulations in the final regulations. Forthcoming proposed regulations will more fully consider the allocation of earnings and profits in section 355 distributions where either (or both) the distributing or controlled corporation is a foreign corporation.

F. § 1.367(b)–6: Effective Date

The final regulations apply to section 367(b) exchanges that occur on or after February 23, 2000. The preamble to the 1991 proposed regulations solicited comments on whether the final regulations should provide an election to apply the regulations retroactively to exchanges that occur on or after August 26, 1991 (the date the 1991 proposed regulations were published in the **Federal Register**). Given the length of time that has elapsed since the issuance of the 1991 proposed regulations, the IRS and Treasury do not believe that such an election would be appropriate. This determination is consistent with the 1998 revision to § 1.367(b)–2(d) of the 1991 proposed regulations, which deleted the proposed special retroactive effective date for the definition of the all earnings and profits amount. A taxpayer may, however, elect to apply the final regulations to section 367(b) exchanges that occur (or occurred) before February 23, 2000, if the due date for the taxpayer's timely filed Federal tax return (including extensions) for the taxable year in which the section 367(b) exchange occurs (or occurred) is after February 23, 2000.

Removed Provisions

These regulations finalize substantially all of the 1991 proposed regulations. In connection with the finalization of these regulations, the 1977 regulations (other than § 7.367(b)–12) and the section 367(b) provisions contained in the 1998 regulations are removed. Section 7.367(b)–12 is retained to address distributions with respect to (or a disposition of) stock that was subject to certain provisions of the 1977 regulations in effect prior to February 23, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

Drafting Information. The principal author of these regulations is Mark Harris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 7

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 7, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.367(b)–2 and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(b)–2 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(b)–3 also issued under 26 U.S.C. 367(a) and (b). * * *

Section 1.367(b)–5 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(b)–6 also issued under 26 U.S.C. 367(a) and (b). * * *

Par. 2. Section 1.367(a)–3 is amended as follows:

1. Paragraph (d)(3) *Example 11*, paragraph (ii), the third sentence, the reference "§ 7.367(b)–7(c)(1)(i) of this chapter" is removed and "§ 1.367(b)–4(b)" is added in its place.

2. Paragraph (d)(3) *Example 11A*, paragraph (ii), the second, third and fourth sentences are removed and a sentence is added in their place.

3. Paragraph (e)(2), in the third, fourth, and fifth sentences, the parenthetical "(as in effect before February 23, 2000; see 26 CFR part 1, revised as of April 1, 1999)" is added immediately after "§ 7.367(b)–7 of this chapter" each place it appears.

4. Paragraph (g)(2)(iv), the parenthetical "(as in effect before February 23, 2000; see 26 CFR part 1, revised April 1, 1999)" is added immediately after "7.367(b)–2(b) of this chapter."

The revisions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(d) * * *

(3) * * *

Example 11A. * * *

(ii) *Result.* * * * Assuming § 1.367(b)–4(b) does not apply, there is no income inclusion under section 367(b), and the amount of the gain recognition agreement is $50.

Par. 3. Section 1.367(b)–0 is added to read as follows:

§ 1.367(b)–0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(b)–0 through 1.367(b)–6.

§ 1.367(b)–1 Other transfers.

(a) Scope.
(b) General rules.
(1) Rules.
(2) Example.
(c) Notice required.
(1) In general.
(2) Persons subject to section 367(b) notice.
(3) Time and manner for filing notice.
(i) United States persons described in § 1.367(b)–1(c)(2).
(ii) Foreign corporations described in § 1.367(b)–1(c)(2).
(4) Information required.
(5) Abbreviated notice provision.
(6) Supplemental published guidance.

§ 1.367(b)–2 Definitions and special rules.

(a) Controlled foreign corporation.
(b) Section 1248 shareholder.
(c) Section 1248 amount.
(1) Rule.
(2) Examples.
(d) All earnings and profits amount.
(1) General rule.
(2) Rules for determining earnings and profits.
(i) Domestic rules generally applicable.
(ii) Certain adjustments to earnings and profits.
(iii) Effect of section 332 liquidating distribution.
(3) Amount attributable to a block of stock.
(i) Application of section 1248 principles.
(A) In general.
(*1*) Rule.
(*2*) Example.
(B) Foreign shareholders.
(ii) Limitation on amounts attributable to holding periods determined under section 1223.
(A) Rule.
(B) Example.
(iii) Exclusion of lower-tier earnings.
(e) Treatment of deemed dividends.
(1) In general.
(2) Consequences of dividend characterization.
(3) Ordering rules.
(4) Examples.
(f) Deemed asset transfer and closing of taxable year in certain section 368(a)(1)(F) reorganizations.
(1) Scope.
(2) Deemed asset transfer.
(3) Other applicable rules.
(4) Closing of taxable year.
(g) Stapled stock under section 269B.
(h) Section 953(d) domestication elections.
(1) Effect of election.
(2) Post-election exchanges.
(i) Section 1504(d) elections.
(j) Sections 985 through 989.
(1) Change in functional currency of a qualified business unit.
(i) Rule.
(ii) Example.
(2) Previously taxed earnings and profits.
(i) Exchanging shareholder that is a United States person.
(ii) Exchanging shareholder that is a foreign corporation.
(3) Other rules.
(k) Partnerships, trusts and estates.

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

(a) Scope.
(b) Exchange of stock owned directly by a United States shareholder or by certain foreign corporate shareholders.
(1) Scope.
(2) United States shareholder.
(3) Income inclusion.
(i) Inclusion of all earnings and profits amount.
(ii) Examples.
(iii)Recognition of exchange gain or loss with respect to capital [reserved].
(4) [Reserved].
(c) Exchange of stock owned by a United States person that is not a United States shareholder.
(1) Scope.
(2) Requirement to recognize gain.
(3) Election to include all earnings and profits amount.
(4) De minimis exception.
(5) Examples.
(d) Carryover of certain foreign taxes.
(1) Rule.
(2) Example.

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) Scope.
(b) Income inclusion.
(1) Exchange that results in loss of status as section 1248 shareholder.
(i) Rule.
(ii) Examples.
(2) Receipt by exchanging shareholder of preferred or other stock in certain instances.
(i) Rule.
(ii) Examples.
(3) Certain recapitalizations.
(c) Exclusion of deemed dividend from foreign personal holding company income.
(1) Rule.
(2) Example.
(d) Rules for subsequent exchanges.
(1) In general.
(2) Subsequent dispositions by a foreign acquiring corporation.
(3) Examples.

§ 1.367(b)–5 Distributions of stock described in section 355.

(a) In general.
(1) Scope.
(2) Treatment of distributees as exchanging shareholders.
(b) Distribution by a domestic corporation.
(1) General rule.
(2) Section 367(e) transactions.
(3) Determining whether distributees are individuals.
(4) Applicable cross-references.
(c) Pro rata distribution by a controlled foreign corporation.
(1) Scope.
(2) Adjustment to basis in stock and income inclusion.
(3) Interaction with § 1.367(b)–2(e)(3)(ii).
(4) Basis redistribution.
(d) Non-pro rata distribution by a controlled foreign corporation.
(1) Scope.
(2) Treatment of certain shareholders as distributees.
(3) Inclusion of excess section 1248 amount by exchanging shareholder.
(4) Interaction with § 1.367(b)–2(e)(3)(ii).
(i) Limited application.
(ii) Interaction with predistribution amount.
(e) Definitions.
(1) Predistribution amount.
(2) Postdistribution amount.
(f) Exclusion of deemed dividend from foreign personal holding company income.
(g) Examples.

§ 1.367(b)–6 Effective dates and coordination rules.

(a) Effective date.
(1) In general.
(2) Exception.
(b) Certain recapitalizations described in § 1.367(b)–4(b)(3).

(c) Use of reasonable method to comply with prior published guidance.
(1) Prior exchanges.
(2) Future exchanges.
(d) Effect of removal of attribution rules.

Par. 4. Sections 1.367(b)–1 and 1.367(b)–2 are revised to read as follows:

§ 1.367(b)–1 Other transfers.

(a) *Scope.* The regulations promulgated under section 367(b) (the section 367(b) regulations) set forth rules regarding the proper inclusions and adjustments that must be made as a result of an exchange described in section 367(b) (a section 367(b) exchange). A section 367(b) exchange is any exchange described in section 332, 351, 354, 355, 356 or 361, with respect to which the status of a foreign corporation as a corporation is relevant for determining the extent to which income shall be recognized or for determining the effect of the transaction on earnings and profits, basis of stock or securities, basis of assets, or other relevant tax attributes. Notwithstanding the preceding sentence, a section 367(b) exchange does not include a transfer to the extent the foreign corporation fails to be treated as a corporation by reason of section 367(a)(1). See § 1.367(a)–3(b)(2)(ii) for an illustration of the interaction of section 367(a) and (b).

(b) *General rules*—(1) *Rules.* The following general rules apply under the section 367(b) regulations—

(i) A foreign corporation in a section 367(b) exchange is considered to be a corporation and, as a result, all of the related provisions (*e.g.*, section 381) shall apply, except to the extent provided in the section 367(b) regulations; and

(ii) Nothing in the section 367(b) regulations shall permit—

(A) The nonrecognition of income that would otherwise be required to be recognized under another provision of the Internal Revenue Code or the regulations thereunder; or

(B) The recognition of a loss or deduction that would otherwise not be recognized under another provision of the Internal Revenue Code or the regulations thereunder.

(2) *Example.* The following example illustrates the rules of this paragraph (b):

Example—(i) *Facts.* DC, a domestic corporation, owns 90 percent of P, a partnership. The remaining 10 percent of P is owned by a person unrelated to DC. P owns all of the outstanding stock of FC, a controlled foreign corporation. FC liquidates into P.

(ii) *Result.* FC's liquidation is not a transaction described in section 332. Nothing in the section 367(b) regulations, including § 1.367(b)–2(k), permits FC's liquidation to qualify as a liquidation described in section 332.

(c) *Notice Required*—(1) *In general.* A notice under this paragraph (c) (section 367(b) notice) must be filed with regard to any person described in paragraph (c)(2) of this section. A section 367(b) notice must be filed in the time and manner described in paragraph (c)(3) of this section and must include the information described in paragraph (c)(4) of this section.

(2) *Persons subject to section 367(b) notice.* The following persons are described in this paragraph (c)(2)—

(i) A shareholder described in § 1.367(b)–3(b)(1) that realizes income in a transaction described in § 1.367(b)–3(a);

(ii) A shareholder that makes the election described in § 1.367(b)–3(c)(3);

(iii) A shareholder described in § 1.367(b)–4(b)(1)(i)(A)(*1*) or (*2*) that realizes income in a transaction described in § 1.367(b)–4(a); and

(iv) A shareholder that realizes income in a transaction described in § 1.367(b)–5(c) or 1.367(b)–5(d) and that is either—

(A) A section 1248 shareholder of the distributing or controlled corporation; or

(B) A foreign corporation with one or more shareholders that are described in paragraph (c)(2)(iv)(A) of this section.

(3) *Time and manner for filing notice*—(i) *United States persons described in § 1.367(b)–1(c)(2).* A United States person described in paragraph (c)(2) of this section must file a section 367(b) notice attached to a timely filed Federal tax return (including extensions) for the person's taxable year in which income is realized in the section 367(b) exchange. In the case of a shareholder that makes the election described in § 1.367(b)–3(c)(3), notification of such election must be sent to the foreign acquired corporation (or its successor in interest) on or before the date the section 367(b) notice is filed, so that appropriate corresponding adjustments can be made in accordance with the rules of § 1.367(b)–2(e).

(ii) *Foreign corporations described in § 1.367(b)–1(c)(2).* Each United States person listed in this paragraph (c)(3)(ii) must file a section 367(b) notice with regard to a foreign corporation described in paragraph (c)(2) of this section. Such notice must be attached to a timely filed Federal tax return (including extensions) for the United States person's taxable year in which income is realized in the section 367(b) exchange and, if the United States person is required to file a Form 5471 (Information Return of U.S. Persons With Respect To Certain Foreign Corporations), the section 367(b) notice must be attached to the Form 5471. The following persons are listed in this paragraph (c)(3)(ii)—

(A) United States shareholders (as defined in § 1.367(b)–3(b)(2)) of foreign corporations described in paragraph (c)(2)(i) of this section; and

(B) Section 1248 shareholders of foreign corporations described in paragraph (c)(2)(iii) or (iv) of this section.

(4) *Information required.* Except as provided in paragraph (c)(5) of this section, a section 367(b) notice shall include the following information—

(i) A statement that the exchange is a section 367(b) exchange;

(ii) A complete description of the exchange;

(iii) A description of any stock, securities or other consideration transferred or received in the exchange;

(iv) A statement that describes any amount required, under the section 367(b) regulations, to be taken into account as income or loss or as an adjustment to basis, earnings and profits, or other tax attributes as a result of the exchange;

(v) Any information that is or would be required to be furnished with a Federal income tax return pursuant to regulations under section 332, 351, 354, 355, 356, 361 or 368 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by the person filing the section 367(b) notice;

(vi) Any information required to be furnished with respect to the exchange under sections 6038, 6038A, 6038B, 6038C or 6046, or the regulations under those sections, if such information has not otherwise been provided by the person filing the section 367(b) notice; and

(vii) If applicable, a statement that the shareholder is making the election described in § 1.367(b)–3(c)(3). This statement must include—

(A) A copy of the information the shareholder received from the foreign acquired corporation (or its successor in interest) establishing and substantiating the shareholder's all earnings and profits amount with respect to the shareholder's stock in the foreign acquired corporation; and

(B) A representation that the shareholder has notified the foreign acquired corporation (or its successor in interest) that the shareholder is making the election described in § 1.367(b)–3(c)(3).

(5) *Abbreviated notice provision.* In the case of a foreign acquired corporation that has never had earnings

and profits that would result in any shareholder having an all earnings and profits amount, a shareholder making the election described in § 1.367(b)–3(c)(3) may satisfy the information requirements of paragraph (c)(4) of this section by filing a section 367(b) notice that includes—

(i) A statement from the foreign acquired corporation (or its successor in interest) that the foreign acquired corporation has never had any earnings and profits that would result in any shareholder having an all earnings and profits amount; and

(ii) The information described in paragraphs (c)(4) (i) through (iii) of this section.

(6) *Supplemental published guidance.* The section 367(b) notice requirements may be updated or amended by revenue procedure or other published guidance.

§ 1.367(b)–2 Definitions and special rules.

(a) *Controlled foreign corporation.* The term *controlled foreign corporation* means a controlled foreign corporation as defined in section 957 (taking into account section 953(c)).

(b) *Section 1248 shareholder.* The term *section 1248 shareholder* means any United States person that satisfies the ownership requirements of section 1248 (a)(2) or (c)(2) with respect to a foreign corporation.

(c) *Section 1248 amount*—(1) *Rule.* The term *section 1248 amount* with respect to stock in a foreign corporation means the net positive earnings and profits (if any) that would have been attributable to such stock and includible in income as a dividend under section 1248 and the regulations thereunder if the stock were sold by the shareholder. In the case of a transaction in which the shareholder is a foreign corporation (foreign shareholder), the following additional rules shall apply—

(i) The foreign shareholder shall be deemed to be a United

States person for purposes of this paragraph (c), except that the foreign shareholder shall not be considered a United States person for purposes of determining whether the stock owned by the foreign shareholder is stock of a controlled foreign corporation, and

(ii) The foreign shareholder's holding period in the stock of the foreign corporation shall be determined by reference to the period that the foreign shareholder's section 1248 shareholders held (directly or indirectly) an interest in the foreign corporation. This paragraph (c)(1)(ii) applies in addition to the section 1248 regulations' incorporation of section 1223 holding periods, as modified by § 1.367(b)–4(d) (as applicable).

(2) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1—(i) *Facts.* DC, a domestic corporation, owns all of the outstanding stock of FC1, a controlled foreign corporation (CFC). FC1 owns all of the outstanding stock of FC2, a CFC. DC has always owned all of the stock of FC1, and FC1 has always owned all of the stock of FC2.

(ii) *Result.* Under this paragraph (c), DC's section 1248 amount with respect to its FC1 stock is computed by reference to all of FC1's and FC2's earnings and profits. See section 1248(c)(2). Because FC1's section 1248 shareholder (DC) always indirectly held all of the stock of FC2, FC1's section 1248 amount with respect to its FC2 stock is computed by reference to all of FC2's earnings and profits.

Example 2—(i) *Facts.* DC, a domestic corporation, owns 40 percent of the outstanding stock of FC1, a foreign corporation. The other 60 percent of FC1 stock is owned (directly and indirectly) by foreign persons that are unrelated to DC. FC1 owns all of the outstanding stock of FC2, a foreign corporation. On January 1, 2001, DC purchases the remaining 60 percent of FC1 stock.

(ii) *Result.* Under this paragraph (c), DC's section 1248 amount with respect to its FC1 stock is computed by reference to FC1's and FC2's earnings and profits that accumulated on or after January 1, 2001, the date FC1 and FC2 became controlled foreign corporations (CFCs). See section 1248(a). Because FC1 is not considered a United States person for purposes of determining whether FC2 is a CFC, FC1's section 1248 amount with respect to its FC2 stock is computed by reference to FC2's earnings and profits that accumulated on or after January 1, 2001, the date FC2 became an actual CFC.

Example 3—(i) *Facts.* FC1, a foreign corporation, owns all of the outstanding stock of FC2, a foreign corporation. DC is a domestic corporation that is unrelated to FC1, FC2, and their direct and indirect owners. On January 1, 2001, DC purchases all of the outstanding stock of FC1.

(ii) *Result.* Under this paragraph (c), DC's section 1248 amount with respect to its FC1 stock is computed by reference to FC1's and FC2's earnings and profits that accumulated on or after January 1, 2001, the first day DC held the stock of FC1. See section 1248(a). FC1's section 1248 amount with respect to its FC2 stock is computed by reference to FC2's earnings and profits that accumulated on or after January 1, 2001, the first day FC1's section 1248 shareholder (DC) indirectly held the stock of FC2.

Example 4—(i) *Facts.* DC, a domestic corporation, directly owns all of the outstanding stock of FC1 and FC2, controlled foreign corporations. DC has always owned all of the stock of FC1 and FC2. On January 1, 2001, DC contributes all of the stock of FC2 to FC1 in a nonrecognition exchange that does not require an income inclusion under the section 367(a) or 367(b) regulations. See §§ 1.367(a)–8 and 1.367(b)–4.

(ii) *Result.* Under this paragraph (c), DC's section 1248 amount with respect to its FC1 stock is computed by reference to all of FC1's and FC2's earnings and profits. See section 1248(c)(2). Because FC1's section 1248 shareholder (DC) always held (directly or indirectly) all of the stock of FC2, FC1's section 1248 amount with respect to its FC2 stock is computed by reference to all of FC2's earnings and profits.

(d) *All earnings and profits amount*—(1) *General rule.* The term *all earnings and profits amount* with respect to stock in a foreign corporation means the net positive earnings and profits (if any) determined as provided under paragraph (d)(2) of this section and attributable to such stock as provided under paragraph (d)(3) of this section. The all earnings and profits amount shall be determined without regard to the amount of gain that would be realized on a sale or exchange of the stock of the foreign corporation.

(2) *Rules for determining earnings and profits*—(i) *Domestic rules generally applicable.* For purposes of this paragraph (d), except as provided in sections 312(k)(4) and (n)(8), 964 and 986, the earnings and profits of a foreign corporation for any taxable year shall be determined according to principles substantially similar to those applicable to domestic corporations.

(ii) *Certain adjustments to earnings and profits.* Notwithstanding paragraph (d)(2)(i) of this section, for purposes of this paragraph (d), the earnings and profits of a foreign corporation for any taxable year shall not include the amounts specified in section 1248(d). In the case of amounts specified in section 1248(d)(4), the preceding sentence requires that the earnings and profits for any taxable year be decreased by the net positive amount (if any) of earnings and profits attributable to activities described in section 1248(d)(4), and increased by the net reduction (if any) in earnings and profits attributable to activities described in section 1248(d)(4).

(iii) *Effect of section 332 liquidating distribution.* The all earnings and profits amount with respect to stock of a corporation that distributes all of its property in a liquidation described in section 332 shall be determined without regard to the adjustments prescribed by section 312(a) and (b) resulting from the distribution of such property in liquidation, except that gain or loss realized by the corporation on the distribution shall be taken into account to the extent provided in section 312(f)(1). See § 1.367(b)–3(b)(3)(ii) *Example 3.*

(3) *Amount attributable to a block of stock*—(i) *Application of section 1248 principles*—(A) *In general*—(*1*) *Rule.* The all earnings and profits amount with respect to stock of a foreign corporation is determined according to the attribution principles of section

1248 and the regulations thereunder. The attribution principles of section 1248 shall apply without regard to the requirements of section 1248 that are not relevant to the determination of a shareholder's pro rata portion of earnings and profits. Thus, for example, the all earnings and profits amount is determined without regard to whether the foreign corporation was a controlled foreign corporation at any time during the five years preceding the section 367(b) exchange in question, without regard to whether the shareholder owned a 10 percent or greater interest in the stock, and without regard to whether the earnings and profits of the foreign corporation were accumulated in post-1962 taxable years or while the corporation was a controlled foreign corporation.

(*2*) *Example.* The following example illustrates the rules of this paragraph (d)(3)(i)(A):

Example—(i) *Facts.* On January 1, 2001, DC, a domestic corporation, purchases 9 percent of the outstanding stock of FC, a foreign corporation. On January 1, 2002, DC purchases an additional 1 percent of FC stock. On January 1, 2003, DC exchanges its stock in FC in a section 367(b) exchange in which DC is required to include the all earnings and profits amount in income. FC was not a controlled foreign corporation during the entire period DC held its FC stock.

(ii) *Result.* The all earnings and profits amount with respect to DC's stock in FC is computed by reference to 9 percent of FC's earnings and profits from January 1, 2001, through December 31, 2001, and by reference to 10 percent of FC's earnings and profits from January 1, 2002, through January 1, 2003.

(B) *Foreign shareholders.* In the case of a transaction in which the exchanging shareholder is a foreign corporation (foreign shareholder), the following additional rules shall apply—

(*1*) The attribution principles of section 1248 shall apply without regard to whether the person directly owning the stock is a United States person; and

(*2*) The foreign shareholder's holding period in the stock of the foreign acquired corporation shall be determined by reference to the period that the foreign shareholder's United States shareholders (as defined in § 1.367(b)–3(b)(2)) held (directly or indirectly) an interest in the foreign acquired corporation. This paragraph (d)(3)(i)(B)(*2*) applies in addition to the section 1248 regulations' incorporation of section 1223 holding periods, as modified by paragraph (d)(3)(ii) of this section and § 1.367(b)–4(d) (as applicable).

(ii) *Limitation on amounts attributable to holding periods determined under section 1223*—(A) *Rule.* In applying the attribution principles of section 1248 and the regulations thereunder to determine the all earnings and profits amount with respect to the stock of a foreign corporation, earnings and profits attributable to a section 1223(2) holding period that relates to a period of direct ownership of the stock of the foreign corporation by a non-United States person shall not be included, except to the extent of earnings and profits attributable to a period when the stock of the foreign corporation was indirectly owned by United States shareholders (as defined in § 1.367(b)–3(b)(2)).

(B) *Example.* The following example illustrates the rules of this paragraph (d)(3)(ii):

Example—(i) *Facts.* (A) FC1 is a foreign corporation. The outstanding stock of FC1 is directly owned by the following unrelated persons: 20 percent by DP, a domestic partnership; 20 percent by DC, a domestic corporation; 20 percent by FC, a foreign corporation that is directly and indirectly owned by foreign persons; 20 percent by FP, a foreign partnership that is equally owned by 2 partners, DI, a United States citizen, and FI, a nonresident alien; and 20 percent by a variety of minority shareholders, none of whom owns, applying the ownership rules of section 958, 10 percent or more of the outstanding stock of FC (the small shareholders).

(B) FC1 owns all of the outstanding stock of FC2, a foreign corporation that is not a controlled foreign corporation subject to the rules of section 953(c). FC2 has net positive earnings and profits. In a reorganization described in section 368(a)(1)(B), DA, a domestic corporation, acquires all of the stock of FC2 from FC1 in exchange for DA voting stock.

(ii) *Result.* (A) Under section 1223(2), DA holds the stock of FC2 with a holding period that includes the period that FC2 was held by FC1. As a result, the rules of this paragraph (d)(3)(ii) apply for purposes of computing DA's all earnings and profits amount.

(B) In applying the attribution principles of section 1248, earnings and profits attributable to a section 1223(2) holding period that refers to a period of direct ownership of the stock of a foreign corporation by a non-United States person are not included, except to the extent the stock of the foreign corporation was indirectly owned by United States shareholders as defined in § 1.367(b)–3(b)(2). Accordingly, DA's all earnings and profits amount does not include the FC2 earnings and profits attributable to FC, FI, and the small shareholders. DA's all earnings and profits amount does include the FC2 earnings and profits attributable to DP, DC, and DI. See § 1.367(b)–2(k) for rules concerning the treatment of partnerships under the section 367(b) regulations.

(iii) *Exclusion of lower-tier earnings.* In applying the attribution principles of section 1248 and the regulations thereunder to determine the all earnings and profits amount with respect to stock of a foreign corporation, the earnings and profits of subsidiaries of the foreign corporation shall not be taken into account notwithstanding section 1248(c)(2).

(e) *Treatment of deemed dividends*—(1) *In general.* In certain circumstances these regulations provide that an exchanging shareholder shall include an amount in income as a deemed dividend. This paragraph provides rules for the treatment of the deemed dividend.

(2) *Consequences of dividend characterization.* A deemed dividend described in paragraph (e)(1) of this section shall be treated as a dividend for purposes of the Internal Revenue Code. The deemed dividend shall be considered as paid out of the earnings and profits with respect to which the amount of the deemed dividend was determined. Thus, for example, a deemed dividend that is determined by reference to the all earnings and profits amount or the section 1248 amount will never be considered as paid out of (and therefore will never reduce) earnings and profits specified in section 1248(d), because such earnings and profits are excluded in computing the all earnings and profits amount (under paragraph (d)(2)(ii) of this section) and the section 1248 amount (under section 1248(d) and paragraph (c)(1) of this section). If the deemed dividend is determined by reference to the earnings and profits of a foreign corporation that is owned indirectly (*i.e.*, through one or more tiers of intermediate owners) by the person that is required to include the deemed dividend in income, the deemed dividend shall be considered as having been paid by such corporation to such person through the intermediate owners, rather than directly to such person.

(3) *Ordering rules.* In the case of an exchange of stock in which the exchanging shareholder is treated as receiving a deemed dividend from a foreign corporation, the following ordering rules concerning the timing, treatment, and effect of such a deemed dividend shall apply. See also paragraph (j)(2) of this section.

(i) For purposes of the section 367(b) regulations, the gain realized by an exchanging shareholder shall be determined before increasing (as provided in paragraph (e)(3)(ii) of this section) the basis in the stock of the foreign corporation by the amount of the deemed dividend.

(ii) Except as provided in paragraph (e)(3)(i) of this section, the deemed dividend shall be considered to be

received immediately before the exchanging shareholder's receipt of consideration for its stock in the foreign corporation, and the shareholder's basis in the stock exchanged shall be increased by the amount of the deemed dividend. Such basis increase shall be taken into account before determining the gain otherwise recognized on the exchange (for example, under section 356), the basis that the exchanging shareholder takes in the property that it receives in the exchange (under section 358(a)(1)), and the basis that the transferee otherwise takes in the transferred stock (under section 362).

(iii) Except as provided in paragraph (e)(3)(i) of this section, the earnings and profits of the appropriate foreign corporation shall be reduced by the deemed dividend amount before determining the consequences of the recognition of gain in excess of the deemed dividend amount (for example, under section 356(a)(2) or sections 356(a)(1) and 1248).

(4) *Examples.* The following examples illustrate the rules of this paragraph (e):

Example 1. DC, a domestic corporation, exchanges stock in FC, a foreign corporation, in a section 367(b) exchange in which DC includes the all earnings and profits amount in income as a deemed dividend. Under paragraph (e)(2) of this section, a deemed dividend is treated as a dividend for purposes of the Internal Revenue Code. As a result, if the requirements of section 902 are met, DC may qualify for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FC.

Example 2. DC, a domestic corporation, exchanges stock in FC1, a foreign corporation that is a controlled foreign corporation, in a transaction in which DC is required to include the section 1248 amount in income as a deemed dividend. A portion of the section 1248 amount is determined by reference to the earnings and profits of FC1 (the upper-tier portion of the section 1248 amount), and the remainder of the section 1248 amount is determined by reference to the earnings and profits of FC2, which is a wholly owned foreign subsidiary of FC1 (the lower-tier portion of the section 1248 amount). Under paragraph (e)(2) of this section, DC computes its deemed paid foreign tax credit as if the lower-tier portion of the section 1248 amount were distributed as a dividend by FC2 to FC1, and as if such portion and the upper-tier portion of the section 1248 amount were then distributed as a dividend by FC1 to DC.

Example 3. DC, a domestic corporation, exchanges stock in FC, a foreign corporation that is a controlled foreign corporation, in a transaction in which DC realizes gain of $100 (prior to the application of the section 367(b) regulations). In connection with the transaction, DC is required to include $40 in income as a deemed dividend under the section 367(b) regulations. In addition to receiving property permitted to be received under section 356 without the recognition of gain, DC also receives cash in the amount of $70. Under paragraph (e)(3) of this section, the $40 deemed dividend increases DC's basis in its FC stock before determining the gain to be recognized under section 56. Thus, in applying section 356, DC is considered to realize $60 of gain on the exchange, all of which is recognized under section 356(a)(1).

(f) *Deemed asset transfer and closing of taxable year in certain section 368(a)(1)(F) reorganizations*—(1) *Scope.* This paragraph applies to a reorganization described in section 368(a)(1)(F) in which the transferor corporation is a foreign corporation.

(2) *Deemed asset transfer.* In a reorganization described in paragraph (f)(1) of this section, there is considered to exist—

(i) A transfer of assets by the foreign transferor corporation to the acquiring corporation in exchange for stock (or stock and securities) of the acquiring corporation and the assumption by the acquiring corporation of the foreign transferor corporation's liabilities;

(ii) A distribution of such stock (or stock and securities) by the foreign transferor corporation to its shareholders (or shareholders and security holders); and

(iii) An exchange by the foreign transferor corporation's shareholders (or shareholders and security holders) of their stock (or stock and securities) for stock (or stock and securities) of the acquiring corporation.

(3) *Other applicable rules.* For purposes of this paragraph (f), it is immaterial that the applicable foreign or domestic law treats the acquiring corporation as a continuation of the foreign transferor corporation.

(4) *Closing of taxable year.* In a reorganization described in paragraph (f)(1) of this section, the taxable year of the foreign transferor corporation shall end with the close of the date of the transfer and the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the reorganization if—

(i) The acquiring corporation is a domestic corporation; or

(ii) The foreign transferor corporation has effectively connected earnings and profits (as defined in section 884(d)) or accumulated effectively connected earnings and profits (as defined in section 884(b)(2)(B)(ii)).

(g) *Stapled stock under section 269B.* For rules treating a foreign corporation as a domestic corporation if it and a domestic corporation are stapled entities, see section 269B. The deemed conversion of a foreign corporation to a domestic corporation under section 269B is treated as a reorganization under section 368(a)(1)(F).

(h) *Section 953(d) domestication elections*—(1) *Effect of election.* A foreign corporation that elects under section 953(d) to be treated as a domestic corporation shall be treated for purposes of section 367(b) as transferring, as of the first day of the first taxable year for which the election is effective, all of its assets to a domestic corporation in a reorganization described in section 368(a)(1)(F). Notwithstanding paragraph (d) of this section, for purposes of determining the consequences of the reorganization under § 1.367(b)–3, the all earnings and profits amount shall not be considered to include earnings and profits accumulated in taxable years beginning before January 1, 1988.

(2) *Post-election exchanges.* For purposes of applying section 367(b) to post-election exchanges with respect to a corporation that has made a valid election under section 953(d) to be treated as a domestic corporation, such corporation shall be treated as a domestic corporation as to earnings and profits that were taken into account at the time of the section 953(d) election or which accrue after such election, and shall be treated as a foreign corporation as to earnings and profits accumulated in taxable years beginning before January 1, 1988. Thus, for example, if the section 953(d) corporation subsequently transfers its assets to a domestic corporation (other than another section 953(d) corporation) in a transaction described in section 381(a), the rules of § 1.367(b)–3 shall apply to such transaction to the extent of the section 953(d) corporation's earnings and profits accumulated in taxable years beginning before January 1, 1988.

(i) *Section 1504(d) elections.* An election under section 1504(d), which permits certain foreign corporations to be treated as domestic corporations, is treated as a transfer of property to a domestic corporation and will generally constitute a reorganization described in section 368(a)(1)(F). However, if an election under section 1504(d) is made with respect to a foreign corporation from the first day of the foreign corporation's existence, then the foreign corporation shall be treated as a domestic corporation, and the section 367(b) regulations will not apply.

(j) *Sections 985 through 989*—(1) *Change in functional currency of a qualified business unit*—(i) *Rule.* If, as a result of a transaction described in section 381(a), a qualified business unit (as defined in section 989(a)) (QBU) has a different functional currency determined under the rules of section

985(b) than it used prior to the transaction, then the QBU shall be deemed to have automatically changed its functional currency immediately prior to the transaction. A QBU that is deemed to change its functional currency pursuant to this paragraph (j) must make the adjustments described in § 1.985–5.

(ii) *Example.* The following example illustrates the rule of this paragraph (j)(1):

Example—(i) *Facts.* DC, a domestic corporation, owns 100 percent of FC1, a foreign corporation. FC1 owns and operates a qualified business unit (QBU) (B1) in France, whose functional currency is the euro. FC2, an unrelated foreign corporation, owns and operates a QBU (B2) in France, whose functional currency is the dollar. FC2 acquires FC1's assets (including B1) in a reorganization described in section 368(a)(1)(C). As a part of the reorganization, B1 and B2 combine their operations into one QBU. Applying the rules of section 985(b), the functional currency of the combined operations of B1 and B2 is the euro.

(ii) *Result.* FC2's acquisition of FC1's assets is a section 367(b) exchange that is described in section 381(a). Because the functional currency of the combined operations of B1 and B2 after the exchange is the euro, B2 is deemed to have automatically changed its functional currency to the euro immediately prior to the section 367(b) exchange. B2 must make the adjustments described in § 1.985–5.

(2) *Previously taxed earnings and profits*—(i) *Exchanging shareholder that is a United States person.* If an exchanging shareholder that is a United States person is required to include in income either the all earnings and profits amount or the section 1248 amount under the provisions of § 1.367(b)–3 or 1.367(b)–4, then immediately prior to the exchange, and solely for the purpose of computing exchange gain or loss under section 986(c), the exchanging shareholder shall be treated as receiving a distribution of previously taxed earnings and profits from the appropriate foreign corporation that is attributable (under the principles of section 1248) to the exchanged stock. If an exchanging shareholder that is a United States person is a distributee in an exchange described in § 1.367(b)–5(c) or (d), then immediately prior to the exchange, and solely for the purpose of computing exchange gain or loss under section 986(c), the exchanging shareholder shall be treated as receiving a distribution of previously taxed earnings and profits from the appropriate foreign corporation to the extent such shareholder has a diminished interest in such previously taxed earnings and profits after the exchange. The exchange gain or loss recognized under this paragraph (j)(2)(i) will increase or decrease the exchanging shareholder's adjusted basis in the stock of the foreign corporation for purposes of computing gain or loss realized with respect to the stock on the transaction. The exchanging shareholder's dollar basis with respect to each account of previously taxed income shall be increased or decreased by the exchange gain or loss recognized.

(ii) *Exchanging shareholder that is a foreign corporation.* If an exchanging shareholder that is a foreign corporation is required to include in income either the all earnings and profits amount or the section 1248 amount under the provisions of § 1.367(b)–3 or 1.367(b)–4, then, immediately prior to the exchange, the exchanging shareholder shall be treated as receiving a distribution of previously taxed earnings and profits from the appropriate foreign corporation that is attributable (under the principles of section 1248) to the exchanged stock. If an exchanging shareholder that is a foreign corporation is a distributee in an exchange described in § 1.367(b)–5(c) or (d), then the exchanging shareholder shall be treated as receiving (immediately prior to the exchange) a distribution of previously taxed earnings and profits from the appropriate foreign corporation. Such distribution shall be measured by the extent to which the exchanging shareholder's direct or indirect United States shareholders (as defined in section 951(b)) have a diminished interest in such previously taxed earnings and profits after the exchange.

(3) *Other rules.* See sections 985 through 989 for other currency rules that may apply in connection with a section 367(b) exchange.

(k) *Partnerships, trusts and estates.* In applying the section 367(b) regulations, stock of a corporation that is owned by a foreign partnership, trust or estate shall be considered as owned proportionately by its partners, owners, or beneficiaries under the principles of § 1.367(e)–1(b)(2). Stock owned by an entity that is disregarded as an entity separate from its owner under § 301.7701–3 is owned directly by the owner of such entity. In applying § 1.367(b)–5(b), the principles of § 1.367(e)–1(b)(2) shall also apply to a domestic partnership, trust or estate.

Par. 5. Section 1.367(b)–3 is added to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a domestic corporation (the domestic acquiring corporation) of the assets of a foreign corporation (the foreign acquired corporation) in a liquidation described in section 332 or an asset acquisition described in section 368(a)(1).

(b) *Exchange of stock owned directly by a United States shareholder or by certain foreign corporate shareholders—(1) Scope.* This paragraph (b) applies in the case of an exchanging shareholder that is either—

(i) A United States shareholder of the foreign acquired corporation; or

(ii) A foreign corporation with respect to which there are one or more United States shareholders.

(2) *United States shareholder.* For purposes of this section (and for purposes of the other section 367(b) regulation provisions that specifically refer to this paragraph (b)(2)), the term *United States shareholder* means any shareholder described in section 951(b) (without regard to whether the foreign corporation is a controlled foreign corporation), and also any shareholder described in section 953(c)(1)(A) (but only if the foreign corporation is a controlled foreign corporation subject to the rules of section 953(c)).

(3) *Income inclusion*—(i) *Inclusion of all earnings and profits amount.* An exchanging shareholder shall include in income as a deemed dividend the all earnings and profits amount with respect to its stock in the foreign acquired corporation. For the consequences of the deemed dividend, see § 1.367(b)–2(e). Notwithstanding § 1.367(b)–2(e), however, a deemed dividend from the foreign acquired corporation to an exchanging foreign corporate shareholder shall not qualify for the exception from foreign personal holding company income provided by section 954(c)(3)(A)(i), although it may qualify for the look-through treatment provided by section 904(d)(3) if the requirements of that section are met with respect to the deemed dividend.

(ii) *Examples.* The following examples illustrate the rules of paragraph (b)(3)(i) of this section:

Example 1—(i) *Facts.* DC, a domestic corporation, owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of $100, and DC has a basis of $30 in such stock. The all earnings and profits amount attributable to the FC stock owned by DC is $20, of which $15 is described in section 1248(a) and the remaining $5 is not (for example, because it accumulated prior to 1963). FC has a basis of $50 in its assets. In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled.

(ii) *Result.* Under paragraph (b)(3)(i) of this section, DC must include $20 in income as a deemed dividend from FC. Under section

337(a) FC does not recognize gain or loss in the assets that it distributes to DC, and under section 334(b), DC takes a basis of $50 in such assets. Because the requirements of section 902 are met, DC qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FC.

Example 2—(i) *Facts.* DC, a domestic corporation, owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of $100, and DC has a basis of $30 in such stock. The all earnings and profits amount attributable to the FC stock owned by DC is $75. FC has a basis of $50 in its assets. In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled.

(ii) *Result.* Under paragraph (b)(3)(i) of this section, DC must include $75 in income as a deemed dividend from FC. Under section 337(a) FC does not recognize gain or loss in the assets that it distributes to DC, and under section 334(b), DC takes a basis of $50 in such assets. Because the requirements of section 902 are met, DC qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FC.

Example 3—(i) *Facts.* DC, a domestic corporation, owns 80 percent of the outstanding stock of FC, a foreign corporation. DC has owned its 80 percent interest in FC since FC was incorporated. The remaining 20 percent of the outstanding stock of FC is owned by a person unrelated to DC (the minority shareholder). The stock of FC owned by DC has a value of $80, and DC has a basis of $24 in such stock. The stock of FC owned by the minority shareholder has a value of $20, and the minority shareholder has a basis of $18 in such stock. FC's only asset is land having a value of $100, and FC has a basis of $50 in the land. Gain on the land would not generate earnings and profits qualifying under section 1248(d) for an exclusion from earnings and profits for purposes of section 1248. FC has earnings and profits of $20 (determined under the rules of § 1.367(b)–2(d)(2) (i) and (ii)), $16 of which is attributable to the stock owned by DC under the rules of § 1.367(b)–2(d)(3). FC subdivides the land and distributes to the minority shareholder land with a value of $20 and a basis of $10. As part of the same transaction, in a liquidation described in section 332, FC distributes the remainder of its land to DC, and the FC stock held by DC and the minority shareholder is canceled.

(ii) *Result.* Under section 336, FC must recognize the $10 of gain it realizes in the land it distributes to the minority shareholder, and under section 331 the minority shareholder recognizes its gain of $2 in the stock of FC. Such gain is included in income by the minority shareholder as a dividend to the extent provided in section 1248 if the minority shareholder is a United States person that is described in section 1248(a)(2). Under § 1.367(b)–2(d)(2)(iii), the $10 of gain recognized by FC increases its earnings and profits for purposes of computing the all earnings and profits amount and, as a result, $8 of such increase (80 percent of $10) is considered to be attributable to the FC stock owned by DC under § 1.367(b)–2(d)(3)(i)(A)(*1*). DC's all earnings and profits amount with respect to its stock in FC is $24 (the $16 of initial all earnings and profits amount with respect to the FC stock held by DC, plus the $8 addition to such amount that results from FC's recognition of gain on the distribution to the minority shareholder). Under paragraph (b)(3)(i) of this section, DC must include the $24 all earnings and profits amount in income as a deemed dividend from FC.

Example 4—(i) *Facts.* DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC1 also owns all of the outstanding stock of FC, a foreign corporation. The stock of FC has a value of $100, and DC1 has a basis of $30 in such stock. The assets of FC have a value of $100. The all earnings and profits amount with respect to the FC stock owned by DC1 is $20. In a reorganization described in section 368(a)(1)(D), DC2 acquires all of the assets of FC solely in exchange for DC2 stock. FC distributes the DC2 stock to DC1, and the FC stock held by DC1 is canceled.

(ii) *Result.* DC1 must include $20 in income as a deemed dividend from FC under paragraph (b)(3)(i) of this section. Under section 361, FC does not recognize gain or loss in the assets that it transfers to DC2 or in the DC2 stock that it distributes to DC1, and under section 362(b) DC2 takes a basis in the assets that it acquires from FC equal to the basis that FC had therein. Under § 1.367(b)–2(e)(3)(ii) and section 358(a)(1), DC1 takes a basis of $50 (its $30 basis in the stock of FC, plus the $20 that was treated as a deemed dividend to DC1) in the stock of DC2 that it receives in exchange for the stock of FC. Under § 1.367(b)–2(e)(3)(iii) and section 312(a), the earnings and profits of FC are reduced by the $20 deemed dividend.

Example 5—(i) *Facts.* DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC1 also owns all of the outstanding stock of FC1, a foreign corporation. FC1 owns all of the outstanding stock of FC2, a foreign corporation. The all earnings and profits amount with respect to the FC2 stock owned by FC1 is $20. In a reorganization described in section 368(a)(1)(D), DC2 acquires all of the assets and liabilities of FC2 in exchange for DC2 stock. FC2 distributes the DC2 stock to FC1, and the FC2 stock held by FC1 is canceled.

(ii) *Result.* FC1 must include $20 in income as a deemed dividend from FC2 under paragraph (b)(3)(i) of this section. The deemed dividend is treated as a dividend for purposes of the Internal Revenue Code as provided in § 1.367(b)–2(e)(2); however, under paragraph (b)(3)(i) of this section the deemed dividend cannot qualify for the exception from foreign personal holding company income provided by section 954(c)(3)(A)(i), even if the provisions of that section would otherwise have been met in the case of an actual dividend.

Example 6—(i) *Facts.* DC1, a domestic corporation, owns 99 percent of USP, a domestic partnership. The remaining 1 percent of USP is owned by a person unrelated to DC1. DC1 and USP each directly own 9 percent of the outstanding stock of FC, a foreign corporation that is not a controlled foreign corporation subject to the rule of section 953(c). In a reorganization described in section 368(a)(1)(C), DC2, a domestic corporation, acquires all of the assets and liabilities of FC in exchange for DC2 stock. FC distributes to its shareholders DC2 stock, and the FC stock held by its shareholders is canceled.

(ii) *Result.* (A) DC1 and USP are United States persons that are exchanging shareholders in a transaction described in paragraph (a) of this section. As a result, DC1 and USP are subject to the rules of paragraph (b) of this section if they qualify as United States shareholders as defined in paragraph (b)(2) of this section. Alternatively, if they do not qualify as United States shareholders as defined in paragraph (b)(2) of this section, DC1 and USP are subject to the rules of paragraph (c) of this section. Paragraph (b)(2) of this section defines the term United States shareholder to include any shareholder described in section 951(b) (without regard to whether the foreign corporation is a controlled foreign corporation). A shareholder described in section 951(b) is a United States person that is considered to own, applying the rules of section 958(a) and 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation. Under section 958(b), the rules of section 318(a), as modified by section 958(b) and the regulations thereunder, apply so that, in general, stock owned directly or indirectly by a partnership is considered as owned proportionately by its partners, and stock owned directly or indirectly by a partner is considered as owned by the partnership. Thus, under section 958(b), DC1 is treated as owning its proportionate share of FC stock held by USP, and USP is treated as owning all of the FC stock held by DC1.

(B) Accordingly, for purposes of determining whether DC1 is a United States shareholder under paragraph (b)(2) of this section, DC1 is considered as owning 99 percent of the 9 percent of FC stock held by USP. Because DC1 also owns 9 percent of FC stock directly, DC1 is considered as owning more than 10 percent of FC stock. DC1 is thus a United States shareholder of FC under paragraph (b)(2) of this section and, as a result, is subject to the rules of paragraph (b) of this section. However, for purposes of determining DC1's all earnings and profits amount, DC1 is not treated as owning the FC stock held by USP. Under § 1.367(b)–2(d)(3), DC1's all earnings and profits amount is determined by reference to the 9 percent of FC stock that it directly owns.

(C) For purposes of determining whether USP is a United States shareholder under paragraph (b)(2) of this section, USP is considered as owning the 9 percent of FC stock held by DC1. Because USP also owns 9 percent of FC stock directly, USP is considered as owning more than 10 percent of FC stock. USP is thus a United States shareholder of FC under paragraph (b)(2) of this section and, as a result, is subject to the rules of paragraph (b) of this section. However, for purposes of determining USP's all earnings and profits amount, USP is not treated as owning the FC shares held by DC1.

Under § 1.367(b)–2(d)(3), USP's all earnings and profits amount is determined by reference to the 9 percent of FC stock that it directly owns.

(iii) *Recognition of exchange gain or loss with respect to capital.* [Reserved]

(4) *Reserved.* For further guidance concerning section 367(b) exchanges occurring before February 23, 2001, see § 1.367(b)–3T(b)(4).

(c) *Exchange of stock owned by a United States person that is not a United States shareholder*—(1) *Scope.* This paragraph (c) applies in the case of an exchanging shareholder that is a United States person not described in paragraph (b)(1)(i) of this section (*i.e.*, a United States person that is not a United States shareholder of the foreign acquired corporation).

(2) *Requirement to recognize gain.* An exchanging shareholder described in paragraph (c)(1) of this section shall recognize realized gain (but not loss) with respect to the stock of the foreign acquired corporation.

(3) *Election to include all earnings and profits amount.* In lieu of the treatment prescribed by paragraph (c)(2) of this section, an exchanging shareholder described in paragraph (c)(1) of this section may instead elect to include in income as a deemed dividend the all earnings and profits amount with respect to its stock in the foreign acquired corporation. For the consequences of a deemed dividend, see § 1.367(b)–2(e). Such election may be made only if—

(i) The foreign acquired corporation (or its successor in interest) has provided the exchanging shareholder information to substantiate the exchanging shareholder's all earnings and profits amount with respect to its stock in the foreign acquired corporation; and

(ii) The exchanging shareholder complies with the section 367(b) notice requirement described in § 1.367(b)–1(c), including the specific rules contained therein concerning the time and manner for electing to apply the rules of this paragraph (c)(3).

(4) *De minimis exception.* This paragraph (c) shall not apply in the case of an exchanging shareholder whose stock in the foreign acquired corporation has a fair market value of less than $50,000 on the date of the section 367(b) exchange.

(5) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1—(i) *Facts.* DC1, a domestic corporation, owns 5 percent of the outstanding stock of FC, a foreign corporation that is not a controlled foreign corporation subject to the rule of section 953(c). Persons unrelated to DC1 own the remaining 95 percent of the outstanding stock of FC. DC1 has owned its 5 percent interest in FC since FC was incorporated. DC1's stock in FC has a basis of $40,000 and a value of $100,000. The all earnings and profits amount with respect to DC1's stock in FC is $50,000. In a reorganization described in section 368(a)(1)(C), DC2, a domestic corporation, acquires all of the assets and liabilities of FC in exchange for DC2 stock. FC distributes DC2 stock to its shareholders, and the FC stock held by its shareholders is canceled.

(ii) *Alternate result 1.* If DC1 does not make the election described in paragraph (c)(3) of this section, then the general rule of paragraph (c)(2) of this section applies and DC1 must recognize its $60,000 gain in the FC stock. Under section 358(a)(1), DC1 has a $100,000 basis (its $40,000 basis in the FC stock, plus the $60,000 recognized gain) in the DC2 stock that it receives in exchange for its FC stock. Because DC1 is not a shareholder described in section 1248(a)(2), section 1248 does not apply to recharacterize any of DC1's gain as a dividend.

(iii) *Alternate result 2.* If DC1 makes a valid election under paragraph (c)(3) of this section, then DC1 must include in income as a deemed dividend the $50,000 all earnings and profits amount with respect to its FC stock. Under § 1.367(b)–2(e)(3) and section 358(a)(1), DC1 has a $90,000 basis (its $40,000 basis in the FC stock, plus the $50,000 that was treated as a deemed dividend to DC1) in the DC2 stock that it receives in exchange for its FC stock. Because DC1 owns less than 10 percent of the voting stock of FC, DC1 does not qualify for a deemed paid foreign tax credit under section 902.

Example 2—(i) *Facts.* The facts are the same as in *Example 1*, except that DC1's stock in FC has a fair market value of $48,000 on the date DC1 receives the DC2 stock.

(ii) *Result.* Because DC1's stock in FC has a fair market value of less than $50,000 on the date of the section 367(b) exchange, the de minimis exception of paragraph (c)(4) of this section applies. As a result, DC1 is not subject to the gain or income inclusion requirements of this paragraph (c).

(d) *Carryover of certain foreign taxes*—(1) *Rule.* Unused foreign tax credits allowable to the foreign acquired corporation under section 906 shall carry over to the domestic acquiring corporation and become allowable under section 901, subject to the limitations prescribed by the Internal Revenue Code (for example, sections 383, 904 and 907). The domestic acquiring corporation shall not succeed to any other foreign taxes paid or incurred by the foreign acquired corporation.

(2) *Example.* The following example illustrates the rules of this paragraph (d):

Example—(i) *Facts.* DC, a domestic corporation owns 100 percent of the outstanding stock of FC, a foreign corporation. FC has net positive earnings and profits, none of which are attributable to DC's FC stock under § 1.367(b)–2(d)(3). FC has paid foreign taxes that are not eligible for credit under section 906. In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled.

(ii) *Result.* The liquidation of FC into DC is a section 367(b) exchange. Thus, DC is subject to the section 367(b) regulations, and must file a section 367(b) notice pursuant to § 1.367(b)–1(c). Pursuant to the provisions of paragraph (d)(1) of this section, the foreign taxes paid by FC do not carryover to DC because FC's foreign taxes are not eligible for credit under section 906.

Par. 6. Section 1.367(b)–4 is revised to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a foreign corporation (the foreign acquiring corporation) of the stock or assets of another foreign corporation (the foreign acquired corporation) in an exchange described in section 351 or a reorganization described in section 368(a)(1)(B), (C), (D), (E), (F) or (G). See § 1.367(a)–3(b)(2) for additional rules that may apply.

(b) *Income inclusion.* If an exchange is described in paragraph (b)(1)(i), (2)(i) or (3) of this section, the exchanging shareholder shall include in income as a deemed dividend the section 1248 amount attributable to the stock that it exchanges.

(1) *Exchange that results in loss of status as section 1248 shareholder*—(i) *Rule.* An exchange is described in this paragraph (b)(1)(i) if—

(A) Immediately before the exchange, the exchanging shareholder is—

(*1*) A United States person that is a section 1248 shareholder with respect to the foreign acquired corporation; or

(*2*) A foreign corporation, and a United States person is a section 1248 shareholder with respect to such foreign corporation and with respect to the foreign acquired corporation; and

(B) Either of the following conditions is satisfied—

(*1*) Immediately after the exchange, the stock received in the exchange is not stock in a corporation that is a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i)(A) of this section is a section 1248 shareholder; or

(*2*) Immediately after the exchange, the foreign acquiring corporation (or, in the case of a reorganization described in section 368(a)(1)(B), the foreign acquired corporation) is not a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i)(A) of this section is a section 1248 shareholder.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (b)(1):

Example 1—(i) *Facts.* FC1 is a foreign corporation that is owned, directly and indirectly (applying the ownership rules of section 958), solely by foreign persons. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of

FC2, a foreign corporation. Thus, under § 1.367(b)–2(a) and (b), DC is a section 1248 shareholder with respect to FC2, and FC2 is a controlled foreign corporation. Under § 1.367(b)–2(c)(1), the section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(C), FC1 acquires all of the assets and assumes all of the liabilities of FC2 in exchange for FC1 voting stock. The FC1 voting stock received does not represent more than 50 percent of the voting power or value of FC1's stock. FC2 distributes the FC1 stock to DC, and the FC2 stock held by DC is canceled.

(ii) *Result.* FC1 is not a controlled foreign corporation immediately after the exchange. As a result, the exchange is described in paragraph (b)(1)(i) of this section. Under paragraph (b) of this section, DC must include in income, as a deemed dividend from FC2, the section 1248 amount ($20) attributable to the FC2 stock that DC exchanged.

Example 2—(i) *Facts.* The facts are the same as in *Example 1*, except that the voting stock of FC1, which is received by FC2 in exchange for its assets and distributed by FC2 to DC, represents more than 50 percent of the voting power of FC1's stock under the rules of section 957(a).

(ii) *Result.* Paragraph (b)(1)(i) of this section does not apply to require inclusion in income of the section 1248 amount, because FC1 is a controlled foreign corporation as to which DC is a section 1248 shareholder immediately after the exchange.

Example 3—(i) *Facts.* The facts are the same as in *Example 1*, except that FC2 receives and distributes voting stock of FP, a foreign corporation that is in control (within the meaning of section 368(c)) of FC1, instead of receiving and distributing voting stock of FC1.

(ii) *Result.* For purposes of section 367(a), the transfer is an indirect stock transfer subject to section 367(a). See § 1.367(a)–3(d)(1)(iv). Accordingly, DC's exchange of FC2 stock for FP stock under section 354 will be taxable under section 367(a) (and section 1248 will be applicable) if DC fails to enter into a gain recognition agreement in accordance with § 1.367(a)–8. Under § 1.367(a)–3(b)(2), if DC enters into a gain recognition agreement, the exchange will be subject to the provisions of section 367(b) and the regulations thereunder, as well as section 367(a). If FP and FC1 are controlled foreign corporations as to which DC is a (direct or indirect) section 1248 shareholder immediately after the reorganization, then the section 367(b) result is the same as in *Example 2*—that is, paragraph (b)(1)(i) of this section does not apply to require inclusion in income of the section 1248 amount. Under these circumstances, the amount of the gain recognition agreement would equal the amount of the gain realized on the indirect stock transfer. If FP or FC1 is not a controlled foreign corporation as to which DC is a (direct or indirect) section 1248 shareholder immediately after the exchange, then the section 367(b) result is the same as in *Example 1*—that is, DC must include in income, as a deemed dividend from FC2, the section 1248 amount ($20) attributable to the FC2 stock that DC exchanged. Under these circumstances, the amount of the gain recognition agreement would equal the amount of the gain realized on the indirect stock transfer, less the $20 section 1248 amount inclusion.

Example 4—(i) *Facts.* DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC2 owns various assets including all of the outstanding stock of FC2, a foreign corporation. The stock of FC2 has a value of $100, and DC2 has a basis of $30 in such stock. The section 1248 amount attributable to the FC2 stock held by DC2 is $20. DC2 does not own any other stock in a foreign corporation. FC1 is a foreign corporation that is unrelated to DC1, DC2 and FC2. In a reorganization described in section 368(a)(1)(C), FC1 acquires all of the assets and liabilities of DC2 in exchange for FC1 voting stock that represents 20 percent of the outstanding voting stock of FC1. DC2 distributes the FC1 stock to DC1, and the DC2 stock held by DC1 is canceled. DC1 properly files a gain recognition agreement under § 1.367(a)–8 to qualify for nonrecognition treatment under section 367(a) with respect to DC2's transfer of the FC2 stock to FC1. See § 1.367(a)–8(f)(2).

(ii) *Result.* Pursuant to paragraph (b)(1)(i)(A) of this section, DC2 is the exchanging shareholder that is a section 1248 shareholder with respect to FC2, the foreign acquired corporation. Immediately after the exchange, DC2 is not a section 1248 shareholder with respect to FC1, the corporation whose stock is received in the exchange (because the DC2 stock is canceled). Thus, paragraph (b)(1)(i)(B) of this section is satisfied and, as a result, paragraph (b)(1)(i) of this section applies to DC2's section 361 exchange of FC2 stock. Accordingly, under paragraph (b) of this section, DC2 must include in income, as a deemed dividend from FC2, the section 1248 amount ($20) attributable to the FC2 stock that DC2 exchanges. This result arises without regard to whether FC1 and FC2 are controlled foreign corporations immediately after the exchange. For the tax treatment of DC2's transfer of assets (other than stock) to FC1, see sections 367(a)(1) and (a)(3), and the regulations thereunder. Because the exchange is also described in section 361(a) or (b), see section 367(a)(5) and any regulations thereunder. If any of the assets transferred are intangible assets, see section 367(d) and the regulations thereunder.

(2) *Receipt by exchanging shareholder of preferred or other stock in certain instances*—(i) *Rule.* An exchange is described in this paragraph (b)(2)(i) if—

(A) Immediately before the exchange, the foreign acquired corporation and the foreign acquiring corporations are not members of the same affiliated group (within the meaning of section 1504(a), but without regard to the exceptions set forth in section 1504(b), and substituting the words "more than 50" in place of the words "at least 80" in sections 1504(a)(2)(A) and (B));

(B) Immediately after the exchange, a domestic corporation meets the ownership threshold specified by section 902(a) or (b) such that it may qualify for a deemed paid foreign tax credit if it receives a distribution from the foreign acquiring corporation (directly or through tiers); and

(C) The exchanging shareholder receives preferred stock (other than preferred stock that is fully participating with respect to dividends, redemptions and corporate growth) in consideration for common stock or preferred stock that is fully participating with respect to dividends, redemptions and corporate growth, or, in the discretion of the Commissioner or the Commissioner's delegate (and without regard to whether the stock exchanged is common stock or preferred stock), receives stock that entitles it to participate (through dividends, redemption payments or otherwise) disproportionately in the earnings generated by particular assets of the foreign acquired corporation or foreign acquiring corporation.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (b)(2):

Example 1—(i) *Facts.* FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation, and FC2 has no outstanding preferred stock. The value of FC2 is $100 and DC has a basis of $50 in the stock of FC2. Under § 1.367(b)–2(c)(1), the section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 and, in exchange, DC receives FC1 voting preferred stock that constitutes 10 percent of the voting stock of FC1 for purposes of section 902(a). Immediately after the exchange, FC1 and FC2 are controlled foreign corporations and DC is a section 1248 shareholder of FC1 and FC2, so paragraph (b)(1)(i) of this section does not require inclusion in income of the section 1248 amount.

(ii) *Result.* Pursuant to § 1.367(a)–3(b)(2), the transfer is subject to both section 367(a) and section 367(b). Under § 1.367(a)–3(b)(1), DC will not be subject to tax under section 367(a)(1) if it enters into a gain recognition agreement in accordance with § 1.367(a)–8. Even though paragraph (b)(1)(i) of this section does not apply to require inclusion in income by DC of the section 1248 amount, DC must nevertheless include the $20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2)(i) of this section. Thus, if DC enters into a gain recognition agreement, the amount is $30 (the $50 gain realized less the $20 recognized under section 367(b)). If DC fails to enter into a gain recognition agreement, it must include in income under section 367(a)(1) the $50 of gain realized ($20 of which is treated as a dividend under section 1248). Section 367(b) does not apply in such case.

Example 2—(i) *Facts.* The facts are the same as in *Example 1*, except that DC owns

all of the outstanding stock of FC1 immediately before the transaction.

(ii) *Result.* Both section 367(a) and section 367(b) apply to the transfer. Paragraph (b)(2)(i) of this section does not apply to require inclusion of the section 1248 amount. Under paragraph (b)(2)(i)(A) of this section, the transaction is outside the scope of paragraph (b)(2)(i) of this section because FC1 and FC2 are, immediately before the transaction, members of the same affiliated group (within the meaning of such paragraph). Thus, if DC enters into a gain recognition agreement in accordance with § 1.367(a)–8, the amount of such agreement is $50. As in *Example 1,* if DC fails to enter into a gain recognition agreement, it must include in income $50, $20 of which will be treated as a dividend under section 1248.

Example 3—(i) *Facts.* FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation. The section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 in exchange for FC1 voting stock that constitutes 10 percent of the voting stock of FC1 for purposes of section 902(a). The FC1 voting stock received by DC in the exchange carries voting rights in FC1, but by agreement of the parties the shares entitle the holder to dividends, amounts to be paid on redemption, and amounts to be paid on liquidation, that are to be determined by reference to the earnings or value of FC2 as of the date of such event, and that are affected by the earnings or value of FC1 only if FC1 becomes insolvent or has insufficient capital surplus to pay dividends.

(ii) *Result.* Under § 1.367(a)–3(b)(1), DC will not be subject to tax under section 367(a)(1) if it enters into a gain recognition agreement with respect to the transfer of FC2 stock to FC1. Under § 1.367(a)–3(b)(2), the exchange will be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). Furthermore, even if DC would not otherwise be required to recognize income under this section, the Commissioner or the Commissioner's delegate may nevertheless require that DC include the $20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2)(i) of this section.

(3) *Certain recapitalizations.* An exchange pursuant to a recapitalization under section 368(a)(1)(E) shall be deemed to be an exchange described in this paragraph (b)(3) if the following conditions are satisfied—

(i) During the 24-month period immediately preceding or following the date of the recapitalization, the corporation that undergoes the recapitalization (or a predecessor of, or successor to, such corporation) also engages in a transaction that would be described in paragraph (b)(2)(i) of this section but for paragraph (b)(2)(i)(C) of this section, either as the foreign acquired corporation or the foreign acquiring corporation; and

(ii) The exchange in the recapitalization is described in paragraph (b)(2)(i)(C) of this section.

(c) *Exclusion of deemed dividend from foreign personal holding company income*—(1) *Rule.* In the event the section 1248 amount is included in income as a deemed dividend by a foreign corporation under paragraph (b) of this section, such deemed dividend shall not be included as foreign personal holding company income under section 954(c).

(2) *Example.* The following example illustrates the rule of this paragraph (c):

Example—(i) *Facts.* FC1 is a foreign corporation that is owned, directly and indirectly (applying the ownership rules of section 958), solely by foreign persons. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation. FC2 owns all of the outstanding stock of FC3, a foreign corporation. Under § 1.367(b)–2(c)(1), the section 1248 amount attributable to the stock of FC3 held by FC2 is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires from FC2 all of the stock of FC3 in exchange for FC1 voting stock. The FC1 voting stock received by FC2 does not represent more than 50 percent of the voting power or value of FC1's stock.

(ii) *Result.* FC1 is not a controlled foreign corporation immediately after the exchange. Under paragraph (b)(1) of this section, FC2 must include in income, as a deemed dividend from FC3, the section 1248 amount ($20) attributable to the FC3 stock that FC2 exchanged. The deemed dividend is treated as a dividend for purposes of the Internal Revenue Code as provided in § 1.367(b)–2(e)(2); however, under this paragraph (c) the deemed dividend is not foreign personal holding company income to FC2.

(d) *Rules for subsequent exchanges*—(1) *In general.* If income is not required to be included under paragraph (b) of this section in a section 367(b) exchange described in paragraph (a) of this section (non-inclusion exchange) then, for purposes of applying section 367(b) or 1248 to subsequent exchanges, the determination of the earnings and profits attributable to an exchanging shareholder's stock received in the non-inclusion exchange shall include a computation that refers to the exchanging shareholder's pro rata interest in the earnings and profits of the foreign acquiring corporation (and, in the case of a stock transfer, the foreign acquired corporation) that accumulate after the non-inclusion exchange, as well as its pro rata interest in the earnings and profits of the foreign acquired corporation that accumulated before the non-inclusion exchange. See also section 1248(c)(2)(D)(ii). The earnings and profits attributable to the stock received by an exchanging shareholder in the non-inclusion exchange shall not include any earnings and profits of the foreign acquiring corporation that accumulated before the non-inclusion exchange. In the case of a non-inclusion exchange in which the exchanging shareholder is a foreign corporation, this paragraph (d)(1) shall also apply for purposes of determining the earnings and profits attributable to the exchanging foreign corporation's shareholders, as well as for purposes of determining the earnings and profits attributable to the exchanging foreign corporation when applying section 964(e) to subsequent sales or exchanges of the stock of the foreign acquiring corporation.

(2) *Subsequent dispositions by a foreign acquiring corporation.* In the case of an exchange by a foreign acquiring corporation that is subject to section 367(b) or 964(e) and that follows a non-inclusion exchange (as defined in paragraph (d)(1) of this section), the rules of paragraph (d)(1) of this section shall not apply. However, as a result of such a subsequent exchange, proportionate reductions shall be made to the earnings and profits that accumulated before the non-inclusion exchange and that were attributed under paragraph (d)(1) of this section. Such reductions shall be made without regard to whether gain is recognized on the subsequent sale or exchange.

(3) *Examples.* The following examples illustrate the rules of this section:

Example 1—(i) *Facts.* DC1, a domestic corporation, owns all of the outstanding stock of FC1, a foreign corporation. DC1 has owned all of the stock of FC1 since FC1's formation. FC1 has $20 of earnings and profits, all of which is eligible for inclusion in the section 1248 amount attributable to DC1's stock in FC1. DC2, a domestic corporation, owns all of the outstanding stock of FC2, a foreign corporation. DC2 has owned all of the stock of FC2 since FC2's formation. FC2 has $40 of earnings and profits, all of which is eligible for inclusion in the section 1248 amount attributable to DC2's stock in FC2. DC1 and DC2 are unrelated. In a reorganization described in section 368(a)(1)(B), DC1 transfers all of the stock of FC1 to FC2 in exchange for 40 percent of FC2 stock. DC1 enters into a five-year gain recognition agreement under the provisions of §§ 1.367(a)–3(b) and 1.367(a)–8 with respect to its transfer of FC1 stock to FC2.

(ii) *Result.* (A) DC1's transfer of FC1 to FC2 is not described in paragraph (b)(1)(i), (2)(i), or (3) of this section. As a result, DC1 is not required to include in income the section 1248 amount attributable to its FC1 stock and the rules of paragraph (d)(1) of this section apply. Thus, for purposes of applying section 367(b) or 1248 to subsequent exchanges of FC2 stock, the determination of the earnings

and profits attributable to DC1's stock in FC2 will include a computation that refers to 40 percent of the post-reorganization earnings and profits of FC1 and FC2, and that refers to 100 percent of the $20 of pre-reorganization earnings and profits of FC1. The earnings and profits attributable to DC1's stock in FC2 will not include any of the $40 of earnings and profits accumulated by FC2 prior to the transaction. Those earnings and profits are attributable to DC2 under section 1248. However, paragraph (d)(1) of this section does not apply for purposes of applying section 367(b) or 964(e) to subsequent exchanges of FC1 stock by FC2. For these purposes, the determination of the earnings and profits attributable to FC2's stock in FC1 is made under the principles of section 1248 and, as a result, includes a computation that refers to the $20 of earnings and profits attributable to FC2's section 1223(2) holding period in the FC1 stock.

(B) In the event FC2 exchanges FC1 stock in a transaction that is subject to section 367(b) or 964(e), a proportionate reduction must be made to the $20 of earnings and profits that was previously attributed under paragraph (d)(1) of this section to DC1's stock in FC2. Thus, for example, if FC2 sells 50 percent of its FC1 stock (at a time when there have been no other reductions that affect the $20 of FC1 earnings and profits), paragraph (d)(2) of this section requires DC1 to proportionately reduce the $20 of earnings and profits that was previously attributed to its FC2 stock (to $10). This reduction occurs without regard to whether FC2 recognizes gain on its sale of FC1 stock.

Example 2—(i) *Facts.* The facts are the same as in *Example 1*, except that in a reorganization described in section 368(a)(1)(C), FC1 transfers all of its assets to FC2 in exchange for 40 percent of FC2 stock. FC1 then distributes the stock of FC2 to DC1, and the FC1 stock held by DC1 is canceled. None of FC1's assets include stock.

(ii) *Result.* FC2's acquisition of FC1 is not described in paragraph (b)(1)(i), (2)(i), or (3) of this section. As a result, DC1 is not required to include in income the section 1248 amount attributable to its FC1 stock and the rules of paragraph (d)(1) of this section apply. Thus, for purposes of applying section 367(b) or 1248 to subsequent exchanges, the determination of the earnings and profits attributable to DC1's stock in FC2 will include a computation that refers to 40 percent of the post-reorganization earnings and profits of FC2, and that refers to 100 percent of the pre-reorganization earnings and profits of FC1. The earnings and profits attributable to DC1's stock in FC2 will not include any of the $40 of earnings and profits accumulated by FC2 prior to the transaction. Those earnings and profits are attributable to DC2 under section 1248.

Example 3—(i) *Facts.* DC1, a domestic corporation, owns all of the outstanding stock of FC1, a foreign corporation. FC1 owns all of the outstanding stock of FC3, a foreign corporation. DC1 has owned all of the stock of FC1 since FC1's formation, and FC1 has owned all of the stock of FC3 since FC3's formation. FC3 has $20 of earnings and profits, all of which is eligible for inclusion in the section 1248 amount attributable to DC1's stock in FC1 and in the section 1248 amount attributable to FC1's stock in FC3. Such earnings and profits are similarly eligible for inclusion as a dividend attributable to FC1's stock in FC3 under section 964(e). DC2, a domestic corporation, owns all of the outstanding stock of FC2, a foreign corporation. DC2 has owned all of the stock of FC2 since FC2's formation. FC2 has $40 of earnings and profits, all of which is eligible for inclusion in the section 1248 amount attributable to DC2's stock in FC2. DC1 and DC2 are unrelated. In a reorganization described in section 368(a)(1)(B), FC1 transfers all of the stock of FC3 to FC2 in exchange for 40 percent of FC2 stock.

(ii) *Result.* (A) FC1's transfer of FC3 to FC2 is not described in paragraph (b)(1)(i), (2)(i), or (3) of this section. As a result, FC1 is not required to include in income the section 1248 amount attributable to its FC3 stock and the rules of paragraph (d)(1) of this section apply. Thus, for purposes of applying section 367(b) or 1248 to subsequent exchanges of FC1 stock, the determination of the earnings and profits attributable to DC1's stock in FC1 will include a computation that refers to 40 percent of the post-reorganization earnings and profits of FC2 and FC3, and that refers to 100 percent of the $20 of pre-reorganization earnings and profits of FC3. The earnings and profits attributable to FC1's stock in FC2 will not include any of the $40 of earnings and profits accumulated by FC2 prior to the transaction. Those earnings and profits are attributable to DC2 under section 1248. For purposes of applying section 367(b) or 964(e) to subsequent exchanges of FC2 stock, the determination of the earnings and profits attributable to FC1's stock in FC2 will include a computation that refers to 40 percent of the post-reorganization earnings and profits of FC2 and FC3, and that refers to 100 percent of the $20 of pre-reorganization earnings and profits of FC3. The earnings and profits attributable to FC1's interest in FC2 do not include any of the $40 of earnings and profits accumulated by FC2 prior to the transaction. However, paragraph (d)(1) of this section does not apply for purposes of applying section 367(b) or 964(e) to subsequent exchanges of FC3 stock by FC2. For these purposes, the determination of the earnings and profits attributable to FC2's stock in FC3 is made under the principles of section 1248 and, as a result, includes a computation that refers to the $20 of earnings and profits attributable to FC2's section 1223(2) holding period in the FC3 stock.

(B) In the event FC2 exchanges FC3 stock in a transaction that is subject to section 367(b) or 964(e), a proportionate reduction must be made to the $20 of earnings and profits that was previously attributed under paragraph (d)(1) of this section to DC1's stock in FC1 (for purposes of subsequent application of section 367(b) or 1248) as well as to FC1's stock in FC2 (for purposes of subsequent application of section 367(b) or 964(e)). Thus, for example, if FC2 sells 50 percent of its FC3 stock (at a time when there have been no other reductions that affect the $20 of FC3 earnings and profits), paragraph (d)(2) of this section requires DC1 and FC1 to proportionately reduce the $20 of earnings and profits that was previously attributed to their FC1 and FC2 stock, respectively (to $10). These reductions occur without regard to whether FC2 recognizes gain on its sale of FC3 stock.

Par. 7. Sections 1.367(b)–5 and 1.367(b)–6 are added to read as follows:

§ 1.367(b)–5 Distributions of stock described in section 355.

(a) *In general*—(1) *Scope.* This section provides rules relating to a distribution described in section 355 and to which section 367(b) applies. For purposes of this section, the terms *distributing corporation*, *controlled corporation*, and *distributee* have the same meaning as used in section 355 and the regulations thereunder.

(2) *Treatment of distributees as exchanging shareholders.* For purposes of the section 367(b) regulations, all distributees in a transaction described in paragraph (b), (c), or (d) of this section shall be treated as exchanging shareholders that realize income in a section 367(b) exchange.

(b) *Distribution by a domestic corporation*—(1) *General rule.* In a distribution described in section 355, if the distributing corporation is a domestic corporation and the controlled corporation is a foreign corporation, the following general rules shall apply—

(i) If the distributee is a corporation, then the controlled corporation shall be considered to be a corporation; and

(ii) If the distributee is an individual, then, solely for purposes of determining the gain recognized by the distributing corporation, the controlled corporation shall not be considered to be a corporation, and the distributing corporation shall recognize any gain (but not loss) realized on the distribution.

(2) *Section 367(e) transactions.* The rules of paragraph (b)(1) of this section shall not apply to a foreign distributee to the extent gain is recognized under section 367(e)(1) and the regulations thereunder.

(3) *Determining whether distributees are individuals.* All distributees in a distribution described in paragraph (b)(1) of this section are presumed to be individuals. However, the shareholder identification principles of § 1.367(e)–1(d) (including the reporting procedures in § 1.367(e)–1(d)(2) and (3)) shall apply for purposes of rebutting this presumption.

(4) *Applicable cross-references.* For rules with respect to a distributee that is a partnership, trust or estate, see § 1.367(b)–2(k). For additional rules relating to a distribution of stock of a foreign corporation by a domestic corporation, see section 1248(f) and the

regulations thereunder. For additional rules relating to a distribution described in section 355 by a domestic corporation to a foreign distributee, see section 367(e)(1) and the regulations thereunder.

(c) *Pro rata distribution by a controlled foreign corporation*—(1) *Scope.* This paragraph (c) applies to a distribution described in section 355 in which the distributing corporation is a controlled foreign corporation and in which the stock of the controlled corporation is distributed pro rata to each of the distributing corporation's shareholders.

(2) *Adjustment to basis in stock and income inclusion.* If the distributee's postdistribution amount (as defined in paragraph (e)(2) of this section) with respect to the distributing or controlled corporation is less than the distributee's predistribution amount (as defined in paragraph (e)(1) of this section) with respect to such corporation, then the distributee's basis in such stock immediately after the distribution (determined under the normal principles of section 358) shall be reduced by the amount of the difference. However, the distributee's basis in such stock shall not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, the distributee shall instead include such amount in income as a deemed dividend from such corporation.

(3) *Interaction with § 1.367(b)–2(e)(3)(ii).* The basis increase provided in § 1.367(b)–2(e)(3)(ii) shall not apply to a deemed dividend that is included in income pursuant to paragraph (c)(2) of this section.

(4) *Basis redistribution.* If a distributee reduces the basis in the stock of the distributing or controlled corporation (or has an inclusion with respect to such stock) under paragraph (c)(2) of this section, the distributee shall increase its basis in the stock of the other corporation by the amount of the basis decrease (or deemed dividend inclusion) required by paragraph (c)(2) of this section. However, the distributee's basis in such stock shall not be increased above the fair market value of such stock and shall not be increased to the extent the increase diminishes the distributee's postdistribution amount with respect to such corporation.

(d) *Non-pro rata distribution by a controlled foreign corporation*—(1) *Scope.* This paragraph (d) applies to a distribution described in section 355 in which the distributing corporation is a controlled foreign corporation and in which the stock of the controlled corporation is not distributed pro rata to each of the distributing corporation's shareholders.

(2) *Treatment of certain shareholders as distributees.* For purposes of the section 367(b) regulations, all persons owning stock of the distributing corporation immediately after a transaction described in paragraph (d)(1) of this section shall be treated as distributees of such stock. For other applicable rules, see paragraph (a)(2) of this section.

(3) *Inclusion of excess section 1248 amount by exchanging shareholder.* If the distributee's postdistribution amount (as defined in paragraph (e)(2) of this section) with respect to the distributing or controlled corporation is less than the distributee's predistribution amount (as defined in paragraph (e)(1) of this section) with respect to such corporation, then the distributee shall include in income as a deemed dividend the amount of the difference. For purposes of this paragraph (d)(3), if a distributee owns no stock in the distributing or controlled corporation immediately after the distribution, the distributee's postdistribution amount with respect to such corporation shall be zero.

(4) *Interaction with § 1.367(b)–2(e)(3)(ii)*—(i) *Limited application.* The basis increase provided in § 1.367(b)–2(e)(3)(ii) shall apply to a deemed dividend that is included in income pursuant to paragraph (d)(3) of this section only to the extent that such basis increase does not increase the distributee's basis above the fair market value of such stock and does not diminish the distributee's postdistribution amount with respect to such corporation.

(ii) *Interaction with predistribution amount.* For purposes of this paragraph (d), the distributee's predistribution amount (as defined in paragraph (e)(1) of this section) shall be determined without regard to any basis increase permitted under paragraph (d)(4)(i) of this section.

(e) *Definitions*—(1) *Predistribution amount.* For purposes of this section, the predistribution amount with respect to a distributing or controlled corporation is the distributee's section 1248 amount (as defined in § 1.367(b)–2(c)(1)) computed immediately before the distribution (and after any section 368(a)(1)(D) transfer connected with the section 355 distribution), but only to the extent that such amount is attributable to the distributing corporation and any corporations controlled by it immediately before the distribution (the distributing group) or the controlled corporation and any corporations controlled by it immediately before the distribution (the controlled group), as the case may be, under the principles of §§ 1.1248–1(d)(3), 1.1248–2 and 1.1248–3. However, the predistribution amount with regard to the distributing group shall be computed without taking into account the distributee's predistribution amount with respect to the controlled group.

(2) *Postdistribution amount.* For purposes of this section, the postdistribution amount with respect to a distributing or controlled corporation is the distributee's section 1248 amount (as defined in § 1.367(b)–2(c)(1)) with respect to such stock, computed immediately after the distribution (but without regard to paragraph (c) or (d) of this section (whichever is applicable)). The postdistribution amount under this paragraph (e)(2) shall be computed before taking into account the effect (if any) of any inclusion under section 356(a) or (b).

(f) *Exclusion of deemed dividend from foreign personal holding company income.* In the event an amount is included in income as a deemed dividend by a foreign corporation under paragraph (c) or (d) of this section, such deemed dividend shall not be included as foreign personal holding company income under section 954(c).

(g) *Examples.* The following examples illustrate the rules of this section:

Example 1—(i) *Facts.* USS, a domestic corporation, owns 40 percent of the outstanding stock of FD, a controlled foreign corporation (CFC). USS has owned the stock since FD was incorporated, and FD has always been a CFC. USS has a basis of $80 in its FD stock, which has a fair market value of $200. FD owns 100 percent of the outstanding stock of FC, a foreign corporation. FD has owned the stock since FC was incorporated. Neither FD nor FC own stock in any other corporation. FD has earnings and profits of $0 and a fair market value of $250 (not considering its ownership of FC). FC has earnings and profits of $300, none of which is described in section 1248(d), and a fair market value of $250. In a pro rata distribution described in section 355, FD distributes to USS stock in FC worth $100; thereafter, USS's FD stock is worth $100 as well.

(ii) *Result*—(A) FD's distribution is a transaction described in paragraph (c)(1) of this section. Under paragraph (c)(2) of this section, USS must compare its predistribution amounts with respect to FD and FC to its respective postdistribution amounts. Under paragraph (e)(1) of this section, USS's predistribution amount with respect to FD or FC is its section 1248 amount computed immediately before the distribution, but only to the extent such amount is attributable to FD or FC. Under § 1.367(b)–2(c)(1), USS's section 1248 amount computed immediately before the distribution is $120, all of which is

attributable to FC. Thus, USS's predistribution amount with respect to FD is $0, and its predistribution amount with respect to FC is $120. These amounts are computed as follows: If USS had sold its FD stock immediately before the transaction, it would have recognized $120 of gain ($200 fair market value $80 basis). All of the gain would have been treated as a dividend under section 1248, and all of the section 1248 amount would have been attributable to FC (based on USS's pro rata share of FC's earnings and profits (40 percent × $300)).

(B) Under paragraph (e)(2) of this section, USS's postdistribution amount with respect to FD or FC is its section 1248 amount with respect to such corporation, computed immediately after the distribution (but without regard to paragraph (c) of this section). Under § 1.367(b)–2(c)(1), USS's section 1248 amounts computed immediately after the distribution with respect to FD and FC are $60 and $0, respectively. These amounts, which are USS's postdistribution amounts, are computed as follows: Under the normal principles of section 358, USS allocates its $80 predistribution basis in FD between FD and FC according to the stock blocks' relative values, yielding a $40 basis in each block. If USS sold its FD stock immediately after the distribution, none of the resulting gain would be treated as a dividend under section 1248. If USS sold its FC stock immediately after the distribution, it would have a $60 gain ($100 fair market value—$40 basis), all of which would be treated as a dividend under section 1248.

(C) The basis adjustment and income inclusion rules of paragraph (c)(2) of this section apply to the extent of any difference between USS's postdistribution and predistribution amounts. In the case of FD, there is no difference between the two amounts and, as a result, no adjustment or income inclusion is required. In the case of FC, USS's postdistribution amount is $60 less than its predistribution amount. Accordingly, under paragraph (c)(2) of this section, USS is required to reduce its basis in its FC stock from $40 to $0 and include $20 in income as a deemed dividend from FC. Under paragraph (c)(3) of this section, the basis increase provided in § 1.367(b)–2(e)(3)(ii) does not apply with regard to the $20 deemed dividend. Under the rules of paragraph (c)(4) of this section, USS increases its basis in FD by the amount by which it decreased its basis in FC, as well as by the amount of its deemed dividend inclusion ($40 + $40 + $20 = $100).

Example 2—(i) *Facts.* USS1 and USS2, domestic corporations, each own 50 percent of the outstanding stock of FD, a controlled foreign corporation (CFC). USS1 and USS2 have owned their FD stock since it was incorporated, and FD has always been a CFC. USS1 and USS2 each have a basis of $500 in their FD stock, and the fair market value of each block of FD stock is $750. FD owns 100 percent of the outstanding stock of FC, a foreign corporation. FD owned the stock since FC was incorporated. Neither FD nor FC own stock in any other corporation. FD has earnings and profits of $0 and a fair market value of $750 (not considering its ownership of FC). FC has earnings and profits of $500, none of which is described in section 1248(d), and a fair market value of $750. In a non-pro rata distribution described in section 355, FD distributes all of the stock of FC to USS2 in exchange for USS2's FD stock.

(ii) *Result*—(A) FD's distribution is a transaction described in paragraph (d)(1) of this section. Under paragraph (d)(2) of this section, USS1 is considered a distributee of FD stock. Under paragraph (d)(3) of this section, USS1 and USS2 must compare their predistribution amounts with respect to FD and FC stock to their respective postdistribution amounts. Under paragraph (e)(1) of this section, USS1's predistribution amount with respect to FD or FC is USS1's section 1248 amount computed immediately before the distribution, but only to the extent such amount is attributable to FD or FC. USS2's predistribution amount is determined in the same manner. Under § 1.367(b)–2(c)(1), USS1 and USS2 each have a section 1248 amount computed immediately before the distribution of $250, all of which is attributable to FC. Thus, USS1 and USS2 each have a predistribution amount with respect to FD of $0, and each have a predistribution amount with respect to FC of $250. These amounts are computed as follows: If either USS1 or USS2 had sold its FD stock immediately before the transaction, it would have recognized $250 of gain ($750 fair market value—$500 basis). All of the gain would have been treated as a dividend under section 1248, and all of the section 1248 amount would have been attributable to FC (based on USS1's and USS2's pro rata shares of FC's earnings and profits (50 percent x $500)).

(B) Under paragraph (d)(3) of this section, a distributee that owns no stock in the distributing or controlled corporation immediately after the distribution has a postdistribution amount with regard to that stock of zero. Accordingly, USS2 has a postdistribution amount of $0 with respect to FD and USS1 has a postdistribution amount of $0 with respect to FC. Under paragraph (e)(2) of this section, USS1's postdistribution amount with respect to FD is its section 1248 amount with respect to such corporation, computed immediately after the distribution (but without regard to paragraph (d) of this section). USS2's postdistribution amount with respect to FC is determined in the same manner. Under § 1.367(b)–2(c)(1), USS1's section 1248 amount computed immediately after the distribution with respect to FD is $0 and USS2's section 1248 amount computed immediately after the distribution with respect to FC is $250. These amounts, which are USS1's and USS2's postdistribution amounts, are computed as follows: After the non-pro rata distribution, USS1 owns all the stock of FD and USS2 owns all the stock of FC. If USS1 sold its FD stock immediately after the distribution, none of the resulting $250 gain ($750 fair market value $500 basis) would be treated as a dividend under section 1248. If USS2 sold its FC stock immediately after the distribution, it would have a $250 gain ($750 fair market value—$500 basis), all of which would be treated as a dividend under section 1248.

(C) The income inclusion rule of paragraph (d)(3) of this section applies to the extent of any difference between USS1's and USS2's postdistribution and predistribution amounts. In the case of USS2, there is no difference between the two amounts with respect to either FD or FC and, as a result, no income inclusion is required. In the case of USS1, there is no difference between the two amounts with respect to its FD stock. However, USS1's postdistribution amount with respect to FC is $250 less than its predistribution amount. Accordingly, under paragraph (d)(3) of this section, USS1 is required to include $250 in income as a deemed dividend. Under § 1.367(b)–2(e)(2), the $250 deemed dividend is considered as having been paid by FC to FD, and by FD to USS1, immediately prior to the distribution. This deemed dividend increases USS1's basis in FD ($500 + $250 = $750).

§ 1.367(b)–6 Effective dates and coordination rules.

(a) *Effective date*—(1) *In general.* Sections 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur on or after February 23, 2000.

(2) *Exception.* A taxpayer may, however, elect to have §§ 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur (or occurred) before February 23, 2000, if the due date for the taxpayer's timely filed Federal tax return (including extensions) for the taxable year in which the section 367(b) exchange occurs (or occurred) is after February 23, 2000. The election under this paragraph (a)(2) will be valid only if—

(i) The electing taxpayer makes the election on a timely filed section 367(b) notice;

(ii) In the case of an exchanging shareholder that is a foreign corporation, the election is made on the section 367(b) notice that is filed by each of its shareholders listed in § 1.367(b)–1(c)(3)(ii); and

(iii) The electing taxpayer provides notice of the election to all corporations (or their successors in interest) whose earnings and profits are affected by the election on or before the date the section 367(b) notice is filed.

(b) *Certain recapitalizations described in § 1.367(b)–4(b)(3).* In the case of a recapitalization described in § 1.367(b)–4(b)(3) that occurred prior to July 20, 1998, the exchanging shareholder shall include the section 1248 amount on its tax return for the taxable year that includes the exchange described in § 1.367(b)–4(b)(3)(i) (and not in the taxable year of the recapitalization), except that no inclusion is required if both the recapitalization and the exchange described in § 1.367(b)–4(b)(3)(i) occurred prior to July 20, 1998.

(c) *Use of reasonable method to comply with prior published guidance*—

(1) *Prior exchanges.* The taxpayer may use a reasonable method to comply with the following prior published guidance to the extent such guidance relates to section 367(b): Notice 88–71 (1988–2 C.B. 374); Notice 89–30 (1989–1 C.B. 670); and Notice 89–79 (1989–2 C.B. 392) (see § 601.601(d)(2) of this chapter). This rule applies to section 367(b) exchanges that occur (or occurred) before February 23, 2000, or, if a taxpayer makes the election described in paragraph (a)(2) of this section, for section 367(b) exchanges that occur (or occurred) before the date described in paragraph (a)(2) of this section. This rule also applies to section 367(b) exchanges and distributions described in paragraph (d) of this section.

(2) *Future exchanges.* Section 367(b) exchanges that occur on or after February 23, 2000, (or, if a taxpayer makes the election described in paragraph (a)(2) of this section, for section 367(b) exchanges that occur on or after the date described in paragraph (a)(2) of this section) are governed by the section 367(b) regulations and, as a result, paragraph (c)(1) of this section shall not apply.

(d) *Effect of removal of attribution rules.* To the extent that the rules under §§ 7.367(b)–9 and 7.367(b)–10(h) of this chapter, as in effect prior to February 23, 2000 (see 26 CFR part 1, revised as of April 1, 1999), attributed earnings and profits to the stock of a foreign corporation in connection with an exchange described in section 351, 354, 355, or 356 before February 23, 2000, the foreign corporation shall continue to be subject to the rules of § 7.367(b)–12 of this chapter in the event of any subsequent exchanges and distributions with respect to such stock, notwithstanding the fact that such subsequent exchange or distribution occurs on or after the effective date described in paragraph (a) of this section.

§§ 1.367(b)–7 through 1.367(b)–9 [Removed]

Par. 8. Sections 1.367(b)–7 through 1.367(b)–9 are removed.

Par. 9. Section 1.381(b)–1, paragraph (a)(1), the second sentence is amended by removing the reference "7.367(b)–1(e)" and adding "1.367(b)–2(f)" in its place.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 10. The authority citation for part 7 is amended by removing the entries for §§ 7.367(b)–1, 7.367(b)–2, 7.367(b)–3, 7.367(b)–4, 7.367(b)–5, 7.367(b)–6, 7.367(b)–7, 7.367(b)–8, 7.367(b)–9, 7.367(b)–10, 7.367(b)–11, and 7.367(b)–13; and continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 11. Sections 7.367(b)–1 through 7.367(b)–11 and 7.367(b)–13 are removed as of February 23, 2000.

Par. 12. Section 7.367(b)–12 is amended by revising paragraph (a) to read as follows:

§ 7.367(b)–12 Subsequent treatment of amounts attributed or included in income (temporary).

(a) *Application.* This section applies to distributions with respect to, or a disposition of, stock—

(1) To which, in connection with an exchange occurring before February 23, 2000, an amount has been attributed pursuant to § 7.367(b)–9 or 7.367(b)–10 (as in effect prior to February 23, 2000; see 26 CFR Part 1 revised as of April 1, 1999); or

(2) In respect of which, before February 23, 2000, an amount has been included in income or added to earnings and profits pursuant to § 7.367(b)–7 or 7.367(b)–10 (as in effect prior to February 23, 2000); see 26 CFR Part 1 revised as of April 1, 1999).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 13. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. In § 602.101, paragraph (b) is amended in the table by adding an entry in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(b)–1	1545–1271
* * * * *	

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: December 22, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1377 Filed 1–21–00; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Barcode Requirements for Special Services Labels

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service has redesigned the following special services forms and labels: PS Form 3800, Receipt for Certified Mail; PS Form 3813–P, Receipt for Insured Mail—Domestic—International; PS Form 8099, Receipt for Recorded Delivery; Label 200, Registered Mail; and PS Form 3804, Return Receipt for Merchandise. In addition to the current Optical Character Reader font on the labels, the Postal Service is placing formatted barcodes. The USS–128 Subset A format barcode will be used on all USPS-printed retail labels for insured mail, recorded delivery mail, and registered mail. The USS Code 128 Subset C format will be used on all USPS-printed retail labels for certified mail and return receipt for merchandise. Customer-generated labels for these services will be either USS Code 128 or USS I 2 of 5 barcode format. Vendors and mailers preparing customer-generated labels will be required to comply with these requirements for special service labels by June 10, 2000. This final rule sets forth the new Domestic Mail Manual (DMM) and International Mail Manual (IMM) language.

DATES: Effective January 24, 2000. All parties must comply with this final rule by June 10, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Shriver, (202) 268–6554.

SUPPLEMENTARY INFORMATION: On October 6, 1999, the Postal Service published in the **Federal Register** a proposed rule seeking public comment on a proposal to require barcodes on special services labels. The Postal Service received responses from mailers offering comments, but only on the technical specifications in the proposed rule. Five comments were submitted on label dimensions and sizes, four concerned printing specifics, two expressed uncertainty about the required label stock, nine inquired on barcode specifics, and three sought clarification of compliance procedures. In order to address the highly specific nature of comments received regarding the technical specifications of barcodes for the new special services labels. the Postal Service is responding to each respondent's comments or concerns individually by letter.

This final rule gives notice of classification changes to implement barcoded special services labels. The Postal Service has invested in an information technology infrastructure that includes the capability to scan barcodes upon delivery. To maximize the cost-effectiveness of this infrastructure and to achieve long-standing goals for improved customer information management, the Postal Service has implemented a barcode system for specific special services like the one for Delivery Confirmation and Signature Confirmation services. The affected special services include certified mail, insured mail, recorded delivery mail, registered mail, and return receipt for merchandise. The infrastructure will be used as part of the Postal Service plan to optically scan and electronically store recipient signatures. The new retail label deployment for these special services began in January 2000.

Barcodes on special services labels will be scanned at acceptance and at delivery, and an electronic record will be created for each mailpiece. If the customer is not home to sign for delivery, the carrier will leave a PS Form 3849, Delivery Notification/Reminder/Receipt, to inform the customer that a mailpiece is waiting for pickup at the local office. The barcoded mailpiece will be scanned as an attempted delivery.

Mailers may use either of these special services label options:

a. USPS-printed forms obtained from a post office at no charge.

b. Privately printed forms that are nearly identical in design to USPS-printed special services forms (as authorized by USPS). Privately printed barcoded labels must meet the requirements in Publication 109, Special Services Technical Guide.

Vendors or producers of privately printed labels will need to receive certification of their labels from the National Customer Support Center (NCSC), as described in Publication 109. To receive certification, a vendor or label producer must supply for evaluation and approval a sample that includes 20 barcoded labels generated by each printing process or printing device to be used. The sample is sent to: Barcode Certification, National Customer Support Center, 6060 Primacy Parkway Ste 201, Memphis TN 38188–0001.

In the event that barcode print quality falls out of tolerance on privately printed labels after approval has been granted, the vendor or label producer will be contacted by USPS, and an effort will be made to jointly resolve the problem. Should circumstances warrant, the printing and use of mailer-printed labels may be discontinued until a vendor or label producer's printer(s) is re-certified.

Publication 109, Special Services Technical Guide, has been created to provide greater detail for label specifications, barcode symbology, label certification, and service type codes, instead of adding such specifications to the DMM, as proposed October 6, 1999. Publication 109 has been developed to provide mailers with a handbook containing detailed information on how to produce their own special services barcoded labels. Private printers producing special services labels must adhere to the standards set forth by the U.S. Postal Service and found in Publication 109.

For the reasons discussed above, the Postal Service is not amending the DMM with respect to the technical specifications included in the October 6 proposed rule. Instead, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual and International Mail Manual (IMM), which are incorporated by reference in the Code of Federal Regulations (see 39 CFR Part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

S SPECIAL SERVICES

* * * * *

S900 Special Postal Services

S910 Security and Accountability

S911 Registered Mail

* * * * *

3.0 MAILING

* * * * *

3.4 Label 200

(Amend 3.4 to include new barcode requirements to read as follows:)

Registered mail must bear a barcoded red Label 200 (see Exhibit 3.4). The label must be placed above the delivery address and to the right of the return address, or to the left of the delivery address on parcels. Any large-volume mailer can obtain Label 200 in rolls of 100.

ER24JA00.000

(Redesignate current 3.5 through 3.9 as 3.6 through 3.10. Insert new 3.5 to read as follows:)

3.5 Privately Printed Label 200

If authorized, a mailer may use a privately printed Label 200, Registered Mail, for domestic mail only. Privately printed labels must be nearly identical in design and color to the USPS form, with a barcode and human-readable numbers that meet USPS specifications in Publication 109. A minimum of three preproduction samples must be submitted to the business mail entry manager serving the mailer's location for review by the mailpiece design analyst. Once approved, the mailer must print sample labels with barcodes to be certified under the technical requirements in Publication 109.

* * * * *

S912 Certified Mail

* * * * *

2.0 MAILING

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2.3 Form 3800

(Amend 2.3 to include barcode requirements to read as follows:)

Certified mail must bear a barcoded green Form 3800, Receipt for Certified Mail (see Exhibit 2.3). The label part of the form must be placed above the delivery address and to the right of the return address, or to the left of the delivery address on parcels.

Exhibit 2.3 Certified Mail Label

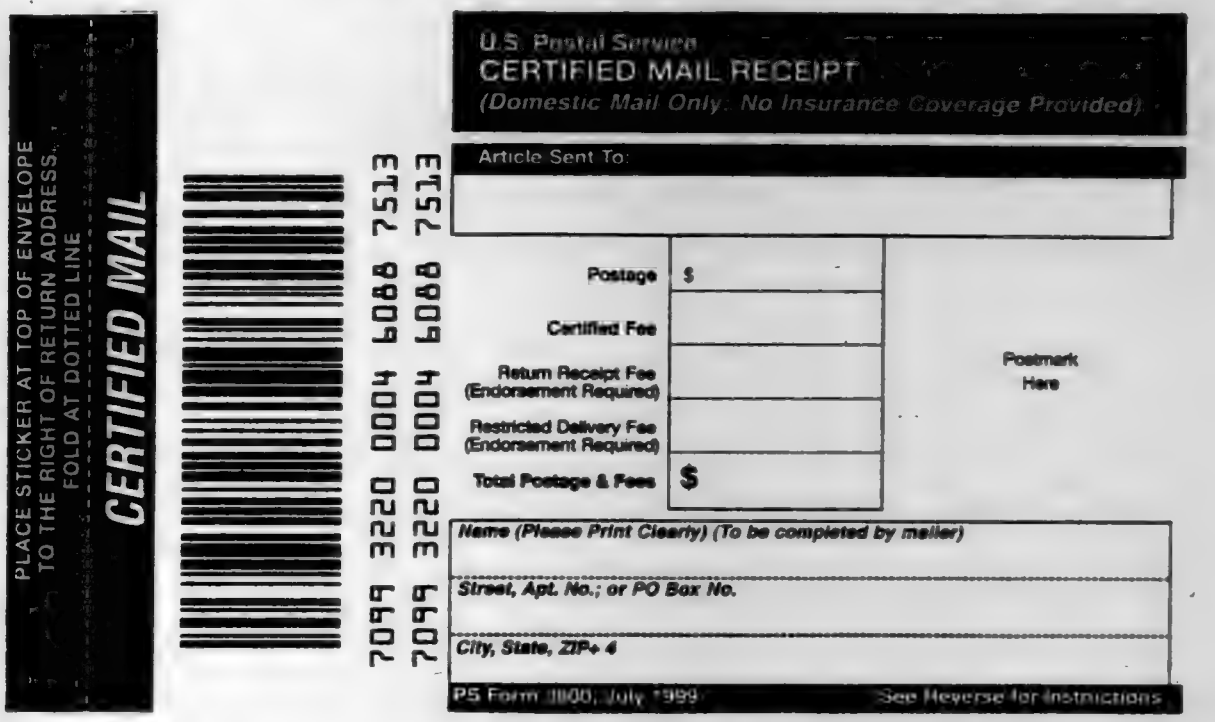

2.4 Privately Printed Form 3800

(Amend 2.4 by adding requirements for privately printed Form 3800 to read as follows:)

If authorized, a mailer may use a privately printed Form 3800, Receipt for Certified Mail. The privately printed form must be nearly identical in design, color, and fluorescent properties to the USPS form with a barcode and human readable numbers that meet the USPS specifications in Publication 109. A minimum of three preproduction samples must be submitted to the business mail entry manager serving the mailer's location for review by the mailpiece design analyst. Once approved, the mailer must print sample labels with barcodes to be certified under the technical requirements in Publication 109.

* * * * *

S913 Insured Mail

* * * * *

2.0 MAILING

* * * * *

2.3 Markings and Use of Form 3813–P

The treatment of parcels is determined by the insurance amount:

a. Insured for $50 or less: Each parcel must be stamped on the address side with an elliptical insured marking as shown in Exhibit 2.3. This marking must be placed above the delivery address and to the right of the return address.

b. Insured for more than $50: Each parcel must have barcoded Form 3813–P, Receipt for Insured Mail, shown in Exhibit 2.3, affixed above the delivery address and to the right of the return address. Form 3813–P must not be used for parcels insured for $50 or less.

c. All insured parcels, regardless of insurance amount, must be postmarked unless a postage meter stamp or permit imprint is used to pay postage.

Exhibit 2.3 Insurance Endorsements, Form 3813–P

Exhibit 2.3 Insurance Endorsements, Form 3813-P

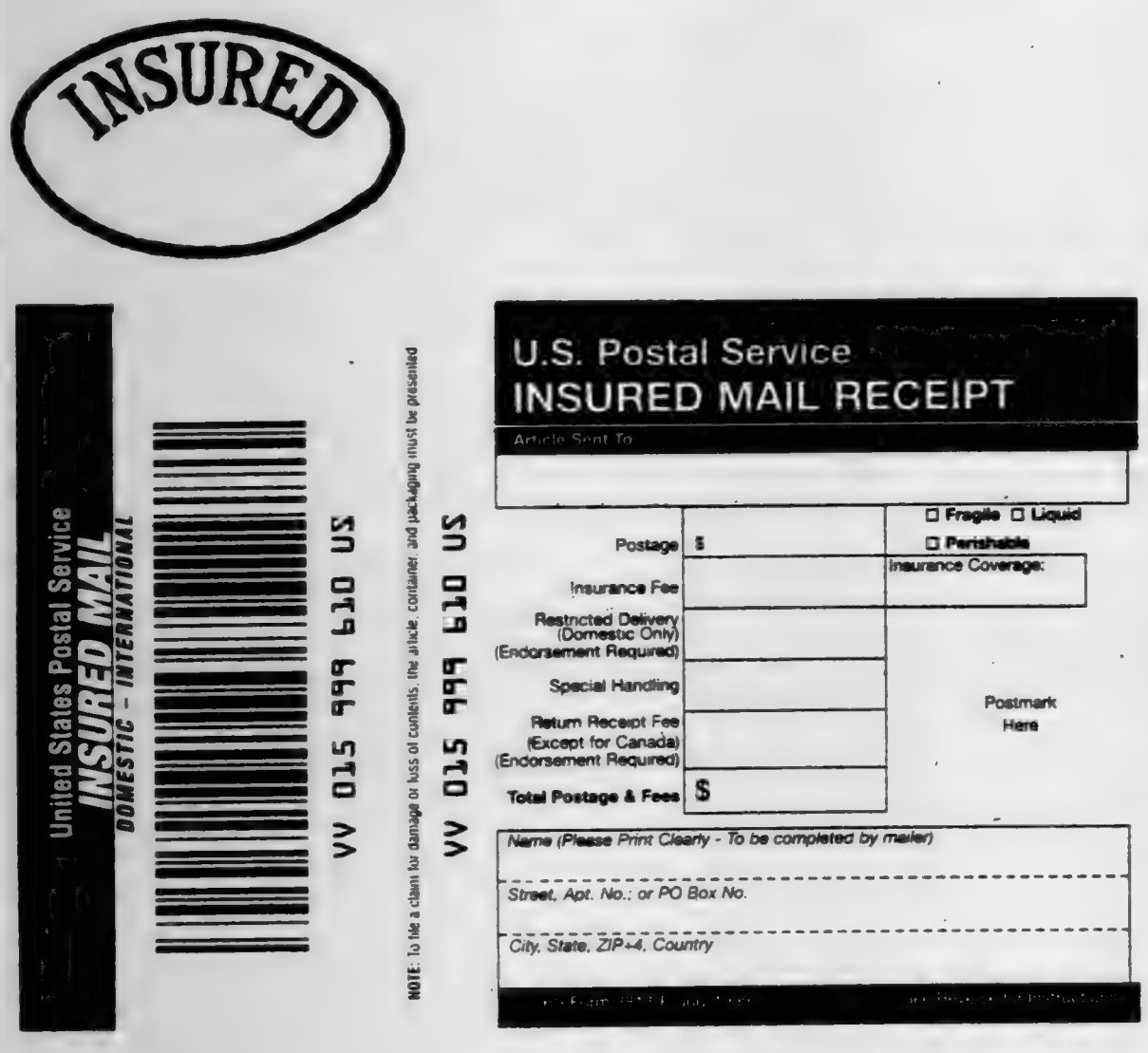

2.4 Privately Printed Form 3813–P

(Amend 2.4 by adding requirements for privately printed Form 3813–P to read as follows:)

If authorized, a mailer may use a privately printed Form 3813–P, Receipt for Insured Mail, for domestic mail only. The privately printed form must be nearly identical in design and color to the USPS form with a barcode and human readable numbers that meet the USPS specifications in Publication 109. A minimum of three preproduction samples must be submitted to the business mail entry manager serving the mailer's location for review by the mailpiece design analyst. Once approved, the mailer must print sample labels with barcodes to be certified under the technical requirements in Publication 109.

* * * * *

S917 Return Receipt for Merchandise

1.0 BASIC INFORMATION

(Delete 1.4 and 1.5. Renumber 1.6 as 1.4.)

* * * * *

2.0 MAILING

(Add new 2.4 and 2.5. Renumber current 2.4 as 2.6.)

2.4 Form 3804

Return receipt for merchandise mail must bear a barcoded brown Form 3804 (see Exhibit 2.4). The label part of the form and the endorsement "Return Receipt Requested" must be placed above the delivery address and to the right of the return address, or to the left of the delivery address on parcels.

Exhibit 2.4 *Return Receipt for Merchandise,* Form 3804

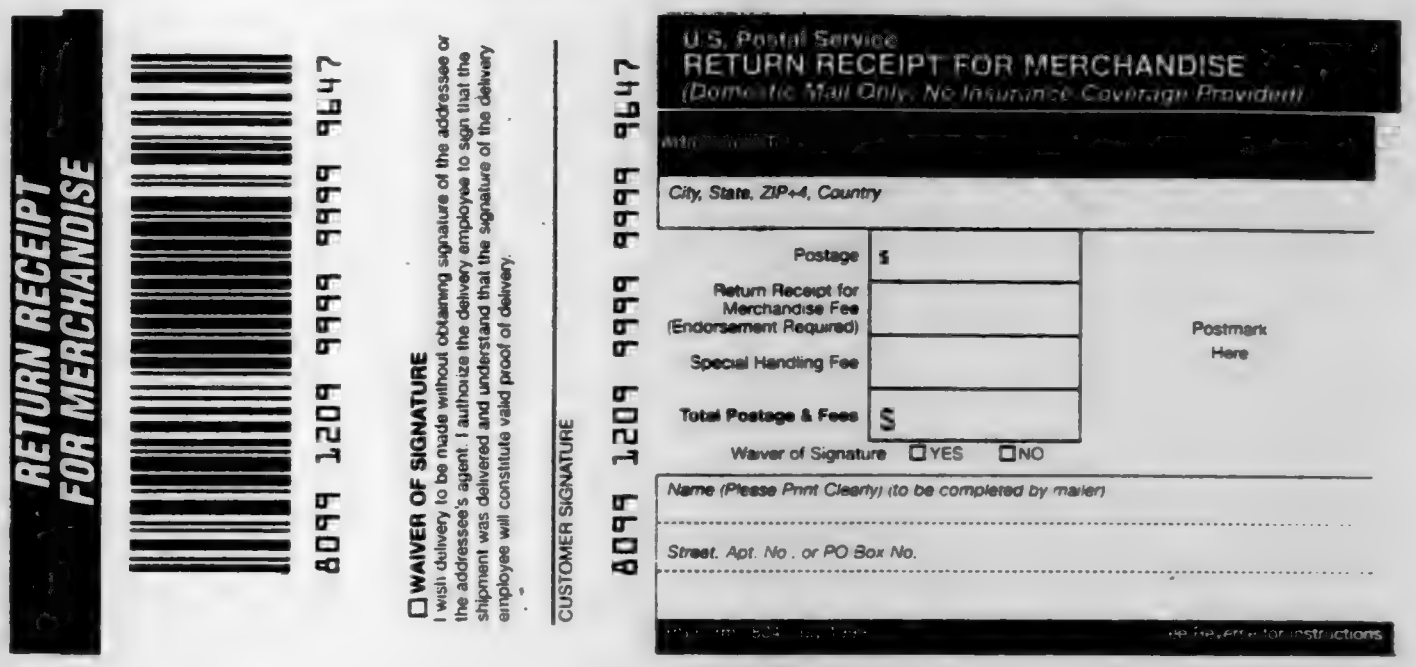

2.5 Privately Printed Form 3804

If authorized, a mailer may use a privately printed Form 3804, Return Receipt for Merchandise. The privately printed form must be nearly identical in design and color to the USPS form with a barcode and human readable numbers that meet the USPS specifications in Publication 109. A minimum of three preproduction samples must be submitted to the business mail entry manager serving the mailer's location for review by the mailpiece design analyst. Once approved, the mailer must print sample labels with barcodes to be certified under the technical requirements in Publication 109.

* * * * *

S921 Collect on Delivery (COD) Mail

* * * * *

2.0 COD FORMS

2.1 Availability and Conditions

(Amend 2.1 by adding reference to the barcode requirements to read as follows:)

Mailers must complete barcoded Form 3816, COD Mailing and Delivery Receipt (see Exhibit 2.1), and attach it either above the delivery address and to the right of the return address, or to the left of the delivery address on parcels. If more than three articles are sent at a time, the mailer may use Form 3816–AS, COD Mailing and Delivery Receipt.

(Add new Exhibit 2.1:)

Exhibit 2.1 Form 3816, COD Mailing and Delivery Receipt

(Label will appear in DMM.)

* * * * *

3.0 MAILING

* * * * *

(Amend title of 3.2 to read as follows:)

3.2 Numbering for Large Volumes

(Revise 3.2 to read as follows:)

A mailer who regularly mails a large volume of COD mail must ensure that a unique COD number is used for each article mailed.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Amend the following sections of the International Mail Manual (IMM) as set forth below:

Chapter 3 Special Services

* * * * *

320 Insurance

* * * * *

324 Processing Requests

324.1 Mailing Receipt and Insurance Number

(Amend heading and text of 324.11 to read as follows:)

324.11 General Use

All international parcels must be numbered. PS Form 3813–P, Receipt for Insured Mail—Domestic-International (label), provides a numbered insurance label for the parcel and an identically numbered mailing receipt for the sender. The receipt is issued to the sender as proof of mailing and proof of payment of insurance fee. For volume mailers, use PS Form 3877, Firm Mailing Book for Accountable Mail, as sender's receipt. Only labels printed by the Postal Service may be used on international insured mail.

* * * * *

330 Registered Mail

* * * * *

334 Processing Requests

334.1 Mailing Receipt and Registration Number

(Amend heading and text of 334.11 to read as follows:)

334.11 General Use

A receipt is issued for registered mail when it is accepted. For individual transactions, PS Form 3806, Receipt for Registered Mail, is used. When an average of three or more items are presented for registration at one time, PS Form 3877, Firm Mailing Book for Accountable Mail, may be used (see DMM S911.3.8). The registered number is determined by Label 200, Registered Mail, a preprinted, self-adhesive label with a number series of nine digits preceded by a Service Type Code of two alpha characters and followed by the Country Code of two alpha characters "US." Only labels printed by the Postal

Service may be used on international registered mail.

* * * * *

385 Recorded Delivery

* * * * *

385.4 Processing Requests

(Amend heading and text of 385.41 to read as follows:)

385.41 General Use

PS Form 8099, Receipt for Recorded Delivery, is used for recorded delivery. Only labels printed by the Postal Service may be used on recorded delivery mail.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–1570 Filed 1–21–00; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–111; FCC 99–325]

Common Carrier Services: Satellite Communications—Earth Stations Operating with Non-U.S. Licensed Space Stations; Application Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register** on November 15, 1999. They related to application requirements for earth stations communicating with non-U.S. licensed space stations.

EFFECTIVE DATES: The amendments to 47 CFR 25.137 published at 64 FR 61791 became effective on December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, (202) 418–1539.

SUPPLEMENTARY INFORMATION:

1. On October 29, 1999, the Commission released a First Order on Reconsideration, a summary of which was published in the **Federal Register**. See 64 FR 61791, November 15, 1999. The First Order on Reconsideration streamlined the process established in the Commission's 1997 DISCO II Order, by which non-U.S. licensed fixed-satellites providing service in the conventional C-and Ku-bands may serve the U.S. market. Because the amendments to 47 CFR 25.137 imposed modified information collection requirements, the amendments could not become effective until approved by the Office of Management and Budget ("OMB"), and no sooner than December 15, 1999. OMB approved these amendments on December 22, 1999.

2. The **Federal Register** summary stated that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval. The amendments to 47 CFR 25.137 became effective on December 22, 1999. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1619 Filed 1–21–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 15
Monday, January 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

High-Level Guidelines for Performance-Based Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is requesting public comment on its proposed high-level guidelines for developing performance-based activities. The guidelines would be used to assess NRC regulatory activities for performance-based approaches. Specifically, the guidelines are designed to assess whether candidate regulatory activities are amenable to a performance-based approach; identify those regulatory activities that should utilize performance-based approaches based on opportunities for regulatory improvement; and ensure consistency with the NRC's existing high-level regulatory goals and principles. Before it uses these proposed high-level guidelines, the staff plans to hold public meetings to obtain stakeholder input and to meet with the Advisory Committee on Reactor Safeguards (ACRS) and/or Advisory Committee on Nuclear Waste (ACNW) to obtain their feedback on the guidelines.

DATES: The comment period expires March 24, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be sent to: David L. Meyer, Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 202–634–3273 or toll-free at 1–800–397–4209, or by email at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: N. Prasad Kadambi, (301) 415–5896, Internet: npk@nrc.gov of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

In the Staff Requirements Memorandum (SRM) to SECY–99–176, "Plans for Pursuing Performance-Based Initiatives," issued on September 13, 1999, the Commission directed the staff to develop high-level guidelines to identify and assess the viability of candidate performance-based activities. Among other things, the Commission directed the staff to develop the guidelines with input from stakeholders and program offices, and to include discussion on how risk information might assist in the development of performance-based initiatives.

This **Federal Register** Notice (FRN) focuses on the staff's efforts to develop high-level guidelines for performance-based initiatives applicable to all NRC licensees. The development and use of these guidelines will be coordinated (including public meetings and workshops) with the efforts to risk-inform 10 CFR Part 50 and other regulations.

Public Meeting

The staff plans to hold a public meeting to obtain feedback on the proposed high-level guidelines for performance-based activities. The public meeting is scheduled for March 1, 2000, between 9:00 a.m. and 4:00 p.m., in the auditorium at the NRC headquarters (Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, 20852). The public should be aware that another meeting concerning efforts to risk-inform 10 CFR Part 50 is scheduled on February 24, 2000. That meeting, focused on reactors, will also consider performance-based revisions to 10 CFR Part 50 based on the high-level guidelines discussed in this FRN.

The meeting being noticed here will focus on the application of high-level guidelines to all regulatory activities (of which 10 CFR Part 50 would be a part) so as to make them more performance-based. This meeting is scheduled to occur 15 days prior to the expiration of the comment period mentioned above. This will allow for an exchange of views among stakeholders and the NRC staff. This interaction should be beneficial to the meeting participants in the development of written public comments.

This meeting is open to the general public to observe or to participate by making remarks; however, advance registration by February 1, 2000 is recommended. To register for attendance or to present prepared remarks, please contact N. Prasad Kadambi, USNRC, telephone: (301) 415–5896; facsimile: (301) 415–5160; internet: npk@nrc.gov.

Discussion

The high-level guidelines identified in this FRN are intended to be applied to future regulatory initiatives. As the effort to risk-inform regulatory activities (for example, in the reactors and materials areas) is performed, the high-level guidelines will be used to identify activities which can be made more performance-based. It should be noted that regulatory activities that cannot be made risk-informed could still be made more performance-based. In addition, candidates for performance-based activities may also be identified as a result of other mechanisms such as proposed changes arising from stakeholder input or from petitions for

rulemaking as identified in the Rulemaking Activity Plan.

The fundamental basis for developing these guidelines has been the SRM to SECY–98—44, "White Paper on Risk-Informed and Performance-Based Regulation," *http://www.nrc.gov/NRC/COMMISSION/SRM/1998–144srm.html*, in which the Commission provided a context and definition for performance-based approaches incorporating the following points:

- A regulation can be either prescriptive or performance-based.
- A performance-based regulatory approach establishes performance and results as the primary basis for regulatory decision making.
- Four attributes are identified which characterize a performance-based approach. These attributes, as discussed below, form an important part of the high-level guidelines which are being proposed herein.
- A performance-based approach can be implemented with or without the use of risk insights.

The proposed high-level guidelines are to be used to evaluate potential performance-based regulatory initiatives. When the guidelines are finalized, they will be incorporated into NRC procedures and policy documents used by staff in conducting day-to-day activities (*e.g.* Management Directives). These regulatory initiatives will complement and build upon what is accomplished through risk-informed initiatives, including the effort to risk-inform 10 CFR Part 50. Further, with successive application of the guidelines, it is anticipated that the staff will be able to reassess the utility of the guidelines such that they will evolve and improve over time.

High-Level Guidelines

The following proposed guidelines are being proposed such that they can be applied in the reactor, materials, and waste arenas. The nature of the regulated activity would determine which guidelines apply and the extent of the application.

A. Guidelines to Assess Viability

The NRC will apply the following guidelines (which are based on the four attributes in the White Paper) to assess whether a more performance-based approach is viable for any given new regulatory initiative. This assessment would be applied on a case-by-case basis and would be based on an integrated consideration of the individual guidelines. The guidelines are listed below:

- Measurable (or calculable) parameters to monitor acceptable plant and licensee performance exist or can be developed.
- For regulatory application, a parameter measured directly is preferred, although a calculation may also be acceptable; it should also be directly related to the safety objective of the regulatory activity being considered. For example, the sub-cooling margin available in the reactor coolant must be calculated from the coolant's pressure and temperature, which are monitored directly.
- Preferable parameters are those which licensees can readily access, or are currently accessing, in real time. For example, monitoring of radiological effluents at some facilities is done in real time. However, parameters monitored periodically to address postulated or design basis conditions, such as monitoring occupational radiological doses, may also be used.
- Objective criteria to assess performance exist or can be developed.
- Objective criteria are established based on risk insights, deterministic analyses and/or performance history.
- Licensees would have flexibility in meeting the established performance criteria when a performance-based approach is adopted.
- Programs and processes used to achieve the established performance criteria would be at the licensee's discretion.
- A framework exists or can be developed such that performance criteria, if not met, will not result in an immediate safety concern.
- A sufficient safety margin exists.
- Time is available for taking corrective action to avoid the safety concern.
- The licensee is capable of detecting and correcting performance degradation.

B. Guidelines to Assess Performance-Based Regulatory Improvement

If a more performance-based approach is deemed to be viable based on the guidelines in (A) above, then the regulatory activity would be evaluated against the following set of guidelines to determine whether, on balance, after an integrated consideration of these guidelines, there are opportunities for regulatory improvement:

- Maintain safety, protect the environment and the common defense and security.
- The level of conservatism and uncertainty in the supporting analyses would be assessed to ensure adequate safety margins.
- Increase public confidence.
- An assessment would be made to determine if the emphasis on results and objective criteria (characteristics of a performance-based approach) can increase public confidence.
- Increase effectiveness, efficiency and realism of the NRC activities and decision-making.
- Reduce unnecessary regulatory burden.
- A reasonable test shows an overall net benefit results from moving to a performance-based approach.
- A reasonable test would begin with a qualitative approach to evaluate whether there is merit in changing the existing regulatory framework. When this question is approached from the perspective of existing practices in a mature industry, stakeholder support for change may need to be obtained.
- If stakeholder input indicates that a change in regulatory practice is likely to be expensive, a much closer examination of the benefits would be warranted before such a change is pursued.
- A simplified definition of the overall net benefit (such as net reduction in worker radiation exposure) may be appropriate for weighing the immediate implications of a proposed change.
- The performance-based approach can be incorporated into the regulatory framework.
- The regulatory framework includes the regulation in the Code of Federal Regulations, the associated Regulatory Guide, NUREG, Standard Review Plan, Technical Specification, or inspection guidance. A feasible performance-based approach would be one which can be directed specifically at changing one, some, or all of these components.
- The performance-based approach would accommodate new technology.
- The incentive to consider a performance-based approach may arise from development of new technologies (such as advanced non-destructive evaluation techniques) as well as difficulty stemming from technological changes in finding spare components and parts.
- Advanced technologies may provide more economical solutions to a regulatory issue, justifying consideration of a performance-based approach.

C. Guidelines to Assure Consistency With Other Regulatory Principles

A proposed change to a more performance-based approach needs to be consistent and coherent with other overriding goals, principles and approaches involving the NRC's regulatory process. The main sources of these principles are the Principles of Good Regulation, the Probabilistic Risk Assessment (PRA) Policy Statement, the

Regulatory Guide 1.174, "An Approach for Using PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and the NRC's Strategic Plan. Consistent with the high-level at which the guidance described above has been articulated, specific factors which need to be addressed in each case (such as defense in depth and treatment of uncertainties) would depend on the particular regulatory issues involved.

Additional Information

The staff's proposed high-level guidelines reflect a measure of specificity designed to stimulate reactions, concerns, and views on the more detailed consideration or underpinnings of a set of high-level guidelines. In no way should this specificity be construed as an indication that the NRC has established any firm position regarding these guidelines. The NRC invites advice and recommendations from all interested persons on all aspects of its proposal. In addition, comments and supporting reasons are particularly requested in the following areas:

(1) Clarity and specificity of the guidelines;

a. Are the proposed guidelines appropriate and clear?

b. Are there additional guidelines that would improve clarity and specificity?

c. How does the "high-level" nature of the guidelines affect the clarity and specificity of the guidelines?

(2) Implementation of the guidelines;

a. What guidelines, if any, are mandatory for an activity to qualify as a performance-based initiative?

b. What is the best way to implement these guidelines?

c. How should the Backfit Rule apply to the implementation of performance-based approaches?

d. Should these guidelines be applied to all types of activity, *e.g.*, should they be applied to petitions for rulemaking?

e. Should these guidelines only be applied to *new* regulatory initiatives?

f. Will these guidelines be effective in determining whether we can make a regulatory initiative more performance-based? The staff proposes that these guidelines be added to our Management Directives such that whenever the NRC is involved in a rulemaking, or changing a regulatory guide or branch technical position, etc., we will consider the option of making it more performance-based.

(3) Establishment of objective performance criteria;

a. In moving to performance-based requirements, should the current level of conservatism be maintained or should introduction of more realism be attempted?

b. What level of conservatism (safety margin) needs to be built into a performance criterion to avoid facing an immediate safety concern if the criterion is not met?

c. Recognizing that performance criteria can be set at different levels in a hierarchy (*e.g.*, component, train, system, release, dose), on what basis is an appropriate level in the hierarchy selected for setting performance-based requirements, and what is the appropriate level of conservatism for each tier in the hierarchy?

d. Who would be responsible for proposing and justifying the acceptance limits and adequacy of objective criteria?

e. What are examples of performance-based objectives that are not amenable to risk analyses such as PRA or Integrated Safety Assessment?

f. In the context of risk-informed regulation, to what extent should performance criteria account for potential risk from beyond-design-basis accidents (*i.e.*, severe accidents)?

(4) Identification and use of measurable (or calculable) parameters;

a. How and by whom are performance parameters to be determined?

b. How do you decide what a relevant performance parameter is?

c. How much uncertainty can be tolerated in the measurable or calculated parameters?

(5) Pilot projects;

a. Would undertaking pilot projects in the reactor, materials, and waste arenas provide beneficial experience before finalizing the guidelines?

b. What should be the relationship between any such pilot projects and those being implemented to risk-inform the regulations?

Dated at Rockville, Maryland, this 14th day of January, 2000.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–1572 Filed 1–21–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–360–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra and Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra and Astra SPX series airplanes. This proposal would require replacement of the existing pneumatic de-icing boot pressure indicator switch with a newly designed switch. This proposal is prompted by an occurrence on a similar airplane model in which the pneumatic de-icing boot indication light may have provided the flightcrew with misleading information as to the proper functioning of the de-icing boots. The actions specified by the proposed AD are intended to prevent ice accumulation on the airplane leading edges, which could result in reduced controllability of the airplane.

DATES: Comments must be received by February 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–360–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this proposal may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–360–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–360–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 26, 1989, a British Aerospace Jetstream Model BA–3101 series airplane impacted the ground approximately 400 feet short of the runway while executing an instrument landing system (ILS) approach. The accident occurred at the Tri-Cities Airport, Pasco, Washington. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the flightcrew's decision to continue an unstabilized ILS approach that led to a stall, most likely of the horizontal stabilizer, and loss of control at low altitude. Contributing to the stall and loss of control was the accumulation of ice on the leading edge of the wing and the horizontal stabilizer, which degraded the aerodynamic performance of the airplane.

One result of the NTSB investigation was the determination that a flight deck wing de-icing light illuminated at a lower pressure than the pressure required to fully inflate the de-icing boots.

Based on an NTSB Safety Recommendation, the FAA reviewed the pneumatic de-icing boot system designs for airplanes operated under parts 121 and 135 of the Federal Aviation Regulations to ensure that the pneumatic pressure threshold at which each de-icing boot indication light is designed to illuminate is sufficient pressure for effective operation of the pneumatic de-icing boots. The FAA has determined that the pneumatic de-icing boot pressure indicator switch located on the flight deck of Model 1125 Westwind Astra and Astra SPX series airplanes may allow the flight deck indication light to illuminate at a lower pressure [13 pounds per square inch gage (psig)] than the pressure required to fully inflate the de-icing boots (15 psig). This condition, if not corrected, could result in ice accumulation on the airplane leading edges, which could result in reduced controllability of the airplane.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require that the existing pneumatic de-icing boot pressure indicator switch be replaced with a switch that activates the indicator light at 15 psig. The action would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD. Since the manufacturer has not yet developed a specific modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed modification. As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding the economic aspect of this proposal.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, LTD.: Docket 99–NM–360–AD.

Applicability: All Model 1125 Westwind Astra and Astra SPX series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the airplane leading edges, which could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, replace the pneumatic de-icing boot pressure indicator switch with a switch that activates the flight deck indicator light at 15 pounds per square inch gage, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1598 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–13–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Raytheon Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes, that currently requires the filling of two tooling holes on the firewalls of the left and right engine pylons with firewall sealant. This action would require the sealing of all unused (open) tooling holes on the firewalls of the left and right engine pylons, and would expand the applicability to include additional airplanes. This proposal is prompted by reports of additional unused (open) tooling holes, found at locations other than those currently addressed. The actions specified by the proposed AD are intended to prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

DATES: Comments must be received by February 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas, 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Pretz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 22, 1996, the FAA issued AD 96–24–16, amendment 39–9840 (61 FR 66878, December 19, 1996), applicable to certain Raytheon Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes, to require the filling of two tooling holes on the firewalls of the left and right engine pylons with firewall sealant. That action was prompted by notification from the manufacturer that these holes were not sealed during production. The requirements of that AD are intended to prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, reports have been received of airplanes with additional unused tooling holes, at locations other than those addressed in AD 96–24–16, on the left and right engine pylon firewalls, which may permit the passage of flames to the

structure and flammable fluids inboard of the engine pylon firewall.

Explanation of Relevant Service Information

Raytheon has issued Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998, which describes procedures for the sealing of all unused tooling holes on the firewalls of the left and right engine pylons. Revision 1 of the service bulletin was issued to address additional unused engine pylon firewall tooling holes at locations other than those indicated in the original service bulletin, dated March 26, 1996. Accomplishment of the actions specified in Raytheon Service Bulletin SB.54–1–3815B, Revision 1, is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would supersede AD 96–24–16 to require the sealing of all unused tooling holes on the firewalls of the left and right engine pylons. The actions would be required to be accomplished in accordance with Raytheon Service Bulletin SB.54–1–3815B, Revision 1, described previously.

Expanded Applicability

The applicability of the proposed AD has been expanded to include Model BAe 125–800B series airplanes, which have received FAA type certification and have a similar design to airplanes subject to the requirements of AD 96–24–16.

Cost Impact

There are approximately 340 Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 221 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 96–24–16, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane.

The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $26,520, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9840 (61 FR 66878, December 19, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Raytheon Aircraft Co. (Formerly Beech): Docket 99–NM–13–AD. Supersedes AD 96–24–16, Amendment 39–9840.

Applicability: Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP series airplanes; as listed in Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall, accomplish the following:

Restatement of Requirements of AD 96–24–16

(a) For airplanes identified in AD 96–24–16, amendment 39–9840: Within 6 months after January 27, 1997 (the effective date of AD 96–24–16), fill the two, unused tooling holes in the firewalls of the left and right engine pylons, in accordance with Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996, or Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.

New Requirements of This AD

(b) For all airplanes: Within 6 months after the effective date of this AD, fill all unused tooling holes in the left and right engine pylon firewalls with firewall sealant, in accordance with Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE–116W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections §§ 21.197 and

21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1597 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–40–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C series turbofan engines. This proposal would require initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage, and, if necessary, repair or replacement with serviceable parts. This proposal also would require the installation of new fuel pumps that incorporate an improved filter cover retention design (D-bolts) as terminating action to the inspections. This proposal is prompted by reports that fuel pump filter cover helicoil inserts have loosened or pulled out. The actions specified by the proposed AD are intended to prevent fuel leakage from between the fuel pump filter cover and gear housing, which could result in an engine fire and damage to the airplane.

DATES: Comments must be received by February 23, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of fuel leakage from between the fuel pump filter cover and gear housing on CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C series turbofan engines.

Investigation

The investigation revealed that fuel pump filter cover helicoil inserts have loosened or pulled out. The FAA has identified excessive torque during the installation of fuel filter cover bolts as the cause.

Improved Filter Cover

The manufacturer has introduced an improved filter cover retention design using a captured D-bolt and special locking nut that reduces the potential for filter cover bolt over torque damage and loss of bolted joint strength.

Unsafe Condition

This condition, if not corrected, could result in fuel leakage from between the fuel pump filter cover and gear housing, which could result in an engine fire and damage to the airplane.

Service Information

The FAA has reviewed and approved the technical contents of the following CFMI Service Bulletins (SBs), that describe procedures for visual inspections of inserts and bolts for damage, and provide criteria for rejection of hardware and necessary replacement with serviceable parts: CFM56–2 SB 73–110, Revision 2, dated April 29, 1999; CFM56

The FAA has also reviewed and approved the technical contents of the following CFMI SBs, that describe procedures for removal and replacement of fuel pumps (D-bolt fix): CFM56–2 SB 73—A113, dated August 17, 1999; CFM56–2A SB 73–A058, dated August 17, 1999; CFM56–2B SB 73–A079, dated August 17, 1999; CFM56–3/3B/3C SB 73-A129, dated August 17, 1999; CFM56–5 SB 73–A143, dated June 18, 1999; CFM56–5B SB 73–A062, dated June 18, 1999; CFM56–5C SB 73–A078, dated June 21, 1999.

Differences Between Service Bulletins and This AD

The referenced SBs describe a one-time inspection. This AD requires repetitive inspections at every filter change.

Proposed Inspections and Repair or Replacement

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require initial and repetitive visual inspections of helicoil inserts and bolts for damage defined in the applicable SBs. The inspections would be required at each fuel filter replacement. If the damage equals or exceeds the reject criteria, this AD would require, prior to further flight, removing the damaged hardware from service and replacement with serviceable parts, or repairing the damaged hardware.

Terminating Action

This AD would also require the installation of new fuel pumps that incorporate an improved filter cover retention design (D-bolts) as a terminating action to the inspections. The actions would be required to be accomplished in accordance with the SBs described previously.

Economic Analysis

There are approximately 8,781 engines of the affected design in the worldwide fleet. The FAA estimates that 4,063 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.3 work hours per engine to accomplish the proposed inspections and 3 work hours per engine to accomplish the proposed D-bolt installation, and that the average labor rate is $60 per work hour. The FAA therefore estimates the total cost to US operators of this proposed rule is $73,134 for one inspection and $4,958,658 for hardware/D-bolt installation.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFM International: Docket No. 99–NE–40–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, Airbus Industrie A319, A320, A321, and A340 series, and Boeing E–3, E–6, and KC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage from between the fuel pump filter cover and gear housing, which could result in an engine fire and damage to the airplane, accomplish the following:

Inspections

(a) Perform initial and repetitive visual inspections of fuel pump filter cover helicoil inserts and bolts for damage, as follows:

(1) Initially inspect at the next fuel filter replacement, but not to exceed 200 cycles-in-service (CIS) after either the effective date of this AD or the last inspection, whichever occurs first, in accordance with section 2., Accomplishment Instructions, of the applicable CFMI Service Bulletins (SBs) listed in paragraph (a)(4) of this AD.

(2) Thereafter, inspect at each fuel filter replacement in accordance with section 2., Accomplishment Instructions, of the applicable CFMI SBs listed in paragraph (a)(4) of this AD.

Replacement or Repair

(3) If damage equals or exceeds the reject criteria stated in section 2., Accomplishment Instructions, of the SBs listed in paragraph (a)(4) of this AD, prior to further flight remove the fuel pump from service and replace with serviceable part, or repair the helicoil, in accordance with section 2., Accomplishment Instructions, of the SBs listed in paragraphs (a)(4) or (b), as applicable, of this AD.

Applicable Inspection SBs

(4) Inspect, and replace, if necessary, in accordance with the following CFMI SBs, as applicable:

- CFM56–2 SB 73–110, Revision 2, dated April 29, 1999.
- CFM56–2A SB 73–055, Revision 1, dated April 29, 1999.
- CFM56–2B SB 73–076, Revision 1, dated April 29, 1999.
- CFM56–3/3B/3C SB 73–126, Revision 1, dated April 29, 1999.
- CFM56–5 SB 73–136, Revision 2, dated April 29, 1999.
- CFM56–5B SB 73–056, Revision 2, dated April 29, 1999.
- CFM56–5C SB 73–073, Revision 2, dated April 29, 1999.

Terminating Action

(b) Remove and replace the fuel pump at the next engine, gearbox, or fuel pump shop visit, but not later than 5 years from the effective date of this AD, in accordance with section 2., Accomplishment Instructions, of the following CFMI SBs, as applicable:

- CFM56–2 SB 73–A113, dated August 17, 1999.
- CFM56–2A SB 73–A058, dated August 17, 1999.
- CFM56–2B SB 73–A079, dated August 17, 1999.
- CFM56–3/3B/3C SB 73–A129, dated August 17, 1999.
- CFM56–5 SB 73–A143, dated June 18, 1999.
- CFM56–5B SB 73–A062, dated June 18, 1999.
- CFM56–5C SB 73–A078, dated June 21, 1999.

Installation of a new fuel pump with a new filter cover attachment in accordance with this paragraph constitutes terminating action to the inspections required by paragraph (a) of this AD.

Definitions

(c) For the purpose of this AD, a serviceable part is defined as a part with gear housing helicoil inserts that meet the inspection requirements of the applicable CFMI SBs listed in paragraph (a)(4) of this AD. A serviceable part is also defined as a part that has been modified in accordance

with the applicable CFMI SB listed in paragraph (b) of this AD.

Alternate Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 14, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–1641 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB50

Proposed Revision of the Commission's Procedures for the Review of Contract Market Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On November 26, 1999, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on a proposal to revise its procedures for the review of contract market rules and rule amendments (64 FR 66428). The original comment period expires January 25, 2000. By letter dated January 3, 2000, seven agricultural organizations requested a thirty day extension of the comment period to permit the membership of each organization to fully consider the implications of the proposed procedures.[1]

[1] The request was made in a January 3, 2000 letter jointly signed by the American Farm Bureau Federation, the American Soybean Association, the National Association of Wheat Growers, the National Cattlemen's Beef Association, the National Corn Grower's Association, the National Farmers Union, and the National Pork Producers Council.

The Commission has determined to extend the comment period for thirty days in order to insure that an adequate opportunity is provided for submission of meaningful comments.

EFFECTIVE DATE: Written comments must be received on or before February 24, 2000.

ADDRESSES: Comments on the proposal should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary @cftc.gov. Reference should be made to "Procedure for the Review of Contract Market Rules".

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone Number: (202) 418–5490. Facsimile Number: (202) 418–5536. Electronic Mail: tm@cftc.gov.

Issued in Washington, D.C. on January 18, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–1568 Filed 1–21–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 99N–3086]

RIN 0910–AB33

Marketing Exclusivity and Patent Provisions for Certain Antibiotic Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to exempt marketing applications for certain antibiotic drug products from regulatory provisions governing marketing exclusivity and patents. The proposal would apply to marketing applications for drug products containing an antibiotic drug that was the subject of a marketing application received by FDA before November 21, 1997, the effective date of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). This action is intended to bring the agency's regulations into conformance with certain transitional provisions of the Modernization Act. FDA is including in the proposed regulation a list of the active moieties of antibiotic drugs that were the subjects of marketing applications received by FDA before November 21, 1997.

DATES: Written comments by April 24, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. The Modernization Act

On November 21, 1997, the President signed the Modernization Act (Public Law 105–115). Section 125(b) of the Modernization Act repealed section 507 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 357 (1996)). Section 507 was the section of the act under which the agency certified antibiotic drugs. Section 125(b) of the Modernization Act also made conforming amendments to the act.

In the **Federal Register** of May 12, 1998 (63 FR 26066), and January 5, 1999 (64 FR 396), the agency issued conforming amendments to its regulations to remove provisions governing certification of antibiotic drugs (21 CFR parts 430 to 460) and to make other changes needed to reflect the repeal of section 507 of the act.

Section 125(d)(1) of the Modernization Act provides that marketing applications for antibiotic drugs that were approved under former section 507 of the act will be considered to have been submitted and approved under the new drug application (NDA) submission and approval provisions found at section 505(b) and (c) of the act (21 U.S.C. 355(b) and (c)). If the marketing application was an approved abbreviated antibiotic drug application, it will be considered to have been submitted and approved under the abbreviated new drug application (ANDA) provisions found in section 505(j) of the act.

The Modernization Act also exempts certain antibiotic-related drug marketing applications from the marketing exclusivity and patent provisions found

in section 505 of the act.[1] Under former section 507 of the act, antibiotic drug applications were not subject to the patent listing and exclusivity provisions in section 505 of the act. Section 125 of the Modernization Act preserves this distinction with an expansive line. Section 125 exempts those applications that contain an antibiotic drug that was the subject of a marketing application received by FDA under former section 507 of the act before November 21, 1997 (prerepeal antibiotic drugs). Drugs that were approved and marketed under former section 507 of the act, as well as those that were the subject of applications that may have been withdrawn, not filed, or refused approval under section 507 of the act are excluded from the patent listing and exclusivity provisions.

Specifically, section 125(d)(2) of the Modernization Act provides that marketing applications for drug products that contain prerepeal antibiotic drugs are not subject to the following provisions of section 505 of the act:

- The third and fourth sentences of section 505(b)(1) (requiring submission of patent information in NDA's).
- Section 505(b)(2)(A) (requiring that 505(b)(2) applications contain patent certifications).
- Section 505(b)(2)(B) (requiring that applications submitted under section 505(b)(2) of the act (505(b)(2) applications) contain a statement about relevant method of use patents).
- Section 505(b)(3) (requiring applicants submitting 505(b)(2) applications (505(b)(2) applicants) to provide notice to the patent owner and NDA holder of the certification of invalidity or noninfringement of a patent).
- Section 505(c)(2) (requiring submission of patent information if that information becomes available after an NDA is submitted).
- Section 505(c)(3) (providing for delayed effective dates of approval of 505(b)(2) applications under patent provisions of the act).
- Section 505(d)(6) (allowing FDA to refuse to approve an application that does not contain required patent information).
- Section 505(e)(4) (requiring FDA to withdraw approval of an application if the applicant refuses to submit required patent information).
- Section 505(j)(2)(A)(vii) and (j)(2)(A)(viii) (requiring ANDA's to contain patent certifications or other patent information).
- Section 505(j)(2)(B) (requiring ANDA applicants to provide notice to the patent owner and NDA holder of the certification of invalidity or noninfringement of a patent).
- Section 505(j)(5)(B) (providing for delayed effective dates of approval of ANDA's under patent provisions of the act).[2]
- Section 505(j)(5)(D) (describing submission of and effective dates of approval of ANDA's under marketing exclusivity provisions of the act).

Section 125(d)(3) of the Modernization Act authorizes FDA to make available to the public the established name of each antibiotic drug that was the subject of a marketing application received by FDA under former section 507 of the act before November 21, 1997.

II. Description of the Rule

A. List of Regulatory Provisions That Are Not Applicable

This proposed rule would exempt from the regulatory requirements that correspond to the statutory requirements described above, applications or abbreviated applications in which the drug product that is the subject of the application contains a pre-repeal antibiotic drug. Specifically, under the proposed rule, the following provisions found in part 314 (21 CFR part 314) would not apply to marketing applications for drug products that contain pre-repeal antibiotic drugs:

- Sections 314.50(h) and 314.53 (relating to submission of patent information in NDA's).
- Section 314.50(i) (relating to patent certifications and statements about relevant method of use patents in 505(b)(2) applications).
- Section 314.52 (relating to notices to the patent owner and NDA holder of certification of invalidity or noninfringement of a patent by 505(b)(2) applicants).
- Section 314.94(a)(12) (relating to patent certifications and statements about relevant method of use patents in ANDA's).
- Section 314.95 (relating to notices to the patent owner and NDA holder of certification of invalidity or noninfringement of a patent by ANDA applicants).
- Section 314.107(b) through (f) (relating to delayed effective dates of approval of ANDA's and 505(b)(2) applications under patent provisions of the act).
- Section 314.108(b) (relating to submission of and effective dates of approval of ANDA's and 505(b)(2) applications under marketing exclusivity provisions of the act).
- Section 314.125(b)(18) (relating to refusal to approve an NDA that does not contain required patent information).
- Section 314.150(a)(2)(v) (relating to withdrawal of approval of an NDA if the applicant refuses to submit required patent information).

The brief parenthetical descriptions of the various provisions of part 314 in this section and in the codified portion of this proposed rule (as well as the similar descriptions of provisions of section 505 of the act given in section I of this document) are provided merely as aids to the reader in understanding the scope of the proposed rule. They are not intended to have any regulatory significance and should not be understood to be statements of agency policy regarding the provisions they describe.

B. List of Pre-Repeal of Antibiotic Drugs

In applying section 125(d)(2) of the Modernization Act, the agency must determine whether a drug that is the subject of an NDA or ANDA contains a pre-repeal antibiotic drug. As described in section I, the Modernization Act specifies patent listing and exclusivity provisions that will not apply when the drug that is the subject of any application contains an antibiotic drug, and the antibiotic drug was the subject of any application received under section 507 of the act prior to November 21, 1997. Section 125(d)(3) of the Modernization Act also authorizes FDA to publish the established name of each antibiotic drug that was the subject of any application for marketing received by FDA under former section 507 of the act.

The term "antibiotic drug," as used in section 125(d) of the Modernization Act, is defined as:

> * * * any drug (except drugs for use in animals other than humans) composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other drug intended for human use containing any quantity of any chemical substance which is produced by a micro-organism and which has the capacity to inhibit or destroy micro-organisms in dilute solution (including a chemically synthesized equivalent of any such substance) or any derivative thereof.

21 U.S.C. 321(jj)

Thus, the term "antibiotic drug" includes not only the "chemical substance which is produced by a

[1] The Modernization Act does not affect whatever rights patent holders may have regarding patent term extensions under 35 U.S.C. 156 for patents claiming antibiotic drug products.

[2] The Modernization Act added a new section 505(j)(3) to the act. This resulted in the renumbering of sections 505(j)(3) through (j)(8) as sections 505(j)(4) through (j)(9), respectively.

micro-organism," and which "has the capacity to inhibit or destroy micro-organisms," but also "any derivative" of any such substance, such as a salt or ester of the substance.

For this reason, and the reasons discussed below, the determination under section 125(d) of the Modernization Act of whether a drug contains a pre-repeal antibiotic depends on whether the drug that is the subject of a marketing application contains an active moiety that can be found in a pre-repeal antibiotic drug.

An active moiety is the molecule or ion responsible for physiological or pharmacological action, excluding appended portions that would cause the drug to be an ester, salt, or other noncovalent derivative of the molecule (see § 314.108(a)). FDA has consistently looked at active moieties to determine if the exclusivity protection granted to a drug product would allow a subsequent ANDA or application described in section 505(b)(2) of the act to be submitted or approved.

The agency's primary regulation governing marketing exclusivity is found at § 314.108. This regulation, which was proposed in the **Federal Register** of July 10, 1989 (54 FR 28872), and made final in the **Federal Register** of October 3, 1994 (59 FR 50338), incorporated an interpretation of the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments) that had been adopted by the agency shortly after the enactment of the Hatch-Waxman Amendments on September 24, 1984. The Hatch-Waxman Amendments established the exclusivity and patent provisions that are addressed by the exemptions described in section 125(d)(2) of the Modernization Act, and are the subject of this rulemaking. In interpreting the exclusivity provisions in the Hatch-Waxman Amendments, the agency concluded that Congress did not intend to confer significant periods of exclusivity on minor variations of previously approved chemical compounds. (See, e.g., Congressional Record H9124 (September 6, 1984) (statement of Representative Waxman); H. Rept. 857, Part I, 98th Cong., 2d sess. 38 (1984).) Therefore, the agency determined that it is appropriate to assess whether the drug seeking exclusivity is a new chemical entity, that is, a drug that does not contain any previously approved active moiety.

This approach is also consistent with FDA's drug classification system, which assesses and classifies NDA's based upon the characteristics of the active ingredient or ingredients of the product. (See 54 FR 28872 at 28897.)

The language of section 125(d)(2) of the Modernization Act likewise supports the conclusion that Congress did not intend to confer exclusivity on, or require patent listing for, products that represent minor or incremental variations on pre-repeal antibiotic drugs. As discussed above, Congress in section 125(d)(2) of the Modernization Act chose to exclude all drugs containing pre-repeal "antibiotic drugs," a term that by definition includes the active drug substance and "any derivative thereof" (see section 201(jj) of the act (21 U.S.C. 321(jj)).

Accordingly, the agency is proposing to implement section 125(d)(2) of the Modernization Act by relying on a comparison of active moieties to determine whether the drug that is the subject of an NDA contains a pre-repeal antibiotic drug. NDA's for products that contain, for example, a salt of a pre-repeal antibiotic drug, or that propose such things as a new manufacturing process, new dosage form, or new use of a pre-repeal antibiotic drug, will be subject to the exceptions listed in section 125(d)(2) of the Modernization Act and proposed § 314.109(a).

To help interested persons determine which drug products would be exempt from the marketing exclusivity and patent provisions described above, FDA will maintain in the Code of Federal Regulations a list of the names of each pre-repeal active moiety. A proposed version of that list is included as § 314.109(b).

The list will provide all of the information required for an interested person to determine whether a marketing application is for a drug that contains a pre-repeal antibiotic drug. The list is intended to be comprehensive, but the inadvertent omission of an active moiety found in a pre-repeal antibiotic drug will not affect the regulatory status of a marketing application for a drug that contains that active moiety; the application will still be exempt from the statutory and regulatory requirements regarding marketing exclusivity and patents described above. A person who believes that a drug has been improperly included or omitted from the list should submit to the Dockets Management Branch (address above) written comments suggesting amendments to the list, along with any information that supports the suggested amendments. Comments should be identified with the docket number found in brackets in the heading of this document.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. Because, the proposed rule is a significant regulatory action as defined by the Executive Order and it was subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies, for the reasons discussed below, that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any one year. Exempting applications for certain antibiotic drugs from regulatory provisions dealing with marketing exclusivity and patent information will not result in any

increased expenditures by State, local, and tribal governments or the private sector. Because this proposed rule will not result in an expenditure of $100 million or more by any governmental entity or the private sector, no budgetary impact statement is required.

This proposed rule is intended to bring FDA's regulations governing the new drug approval process into conformance with the transitional provisions found in section 125(d)(2) of the Modernization Act. This proposed rule is not intended to create any rights or responsibilities that are not found in the statute. For these reasons, the agency believes that this proposed rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Executive Order; that it will not have a significant economic impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of $100 million.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before April 24, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e; sec. 125(d), Pub. L. 105–115, 111 Stat. 2296.

2. Add § 314.109 to subpart D to read as follows:

§ 314.109 Marketing exclusivity and patent provisions not applicable to certain antibiotic-related drug marketing applications.

(a) The following regulatory provisions do not apply to any application or abbreviated application in which the drug that is the subject of the application or abbreviated application contains an antibiotic drug that has the same active moiety (as defined in § 314.108(a)) as an antibiotic drug that was the subject of a marketing application received by FDA under former section 507 of the act (21 U.S.C. 357 (1996)) before November 21, 1997:

(1) Sections 314.50(h) and 314.53 (relating to submission of patent information in applications).

(2) Section 314.50(i) (relating to patent certifications and statements about relevant method of use patents in 505(b)(2) applications).

(3) Section 314.52 (relating to notices of certification of invalidity or noninfringement of a patent by 505(b)(2) applicants).

(4) Section 314.94(a)(12) (relating to patent certifications and statements about relevant method of use patents in 505(j) applications).

(5) Section 314.95 (relating to notices of certification of invalidity or noninfringement of a patent by 505(j) applicants).

(6) Section 314.107(b) through (f) (relating to delayed effective dates of approval of 505(j) applications and 505(b)(2) applications under patent provisions of the act).

(7) Section 314.108(b) (relating to submission of and effective dates of approval of 505(j) applications and 505(b)(2) applications under marketing exclusivity provisions of the act).

(8) Section 314.125(b)(18) (relating to refusal to approve an application that does not contain required patent information).

(9) Section 314.150(a)(2)(v) (relating to withdrawal of approval of an application if the applicant refuses to submit required patent information).

(b) The following are the active moieties of antibiotic drugs that were the subject of marketing applications received by FDA under former section 507 of the act before November 21, 1997. The list is intended to be comprehensive, but the inadvertent omission of an active moiety will not affect the regulatory status of a marketing application for a drug product that contains that active moiety.

Almecillin
Amdinocillin
Amikacin
Amoxicillin
Amphomycin
Amphotericin B
Ampicillin
Azacitidine
Azaserine
Azithromycin
Azlocillin
Aztreonam
Bacampicillin
Bacitracin
Benzyl penicilloyl-polylysine
Bleomycin
Candicidin
Capreomycin
Carbenicillin
Cefaclor
Cefadroxil
Cefamandole
Cefazolin
Cefdinir
Cefepime
Cefixime
Cefmenoxime
Cefmetazole
Cefodizime
Cefonicid
Cefoperazone
Ceforanide
Cefotaxime
Cefotetan
Cefotiam
Cefoxitin
Cefpiramide
Cefpodoxime
Cefprozil
Cefsulodin
Ceftazidime
Ceftibuten
Ceftizoxime
Ceftriaxone
Cefuroxime
Cephacetrile
Cephalexin
Cephaloglycin
Cephaloridine
Cephalothin
Cephapirin
Cephradine
Chloramphenicol
Chlortetracycline
Cilastatin
Clarithromycin
Clavulanate/clavulanic acid
Clindamycin
Clioquinol

Cloxacillin
Colistimethate
Colistin
Cyclacillin
Cycloserine
Cyclosporine
Dactinomycin
Dalfopristin
Daunorubicin
Demeclocycline
Detorubicin
Dicloxacillin
Dihydrostreptomycin
Dirithromycin
Doxorubicin
Doxycycline
Epirubicin
Erythromycin
Floxacillin
Fosfomycin
Fusidate/fusidic acid
Gentamicin
Gramicidin
Griseofulvin
Hetacillin
Idarubicin
Imipenem
Ivermectin
Kanamycin
Lincomycin
Loracarbef
Meclocycline
Meropenem
Methacycline
Methicillin
Mezlocillin
Minocycline
Mitomycin
Moxalactam
Mupirocin
Mycophenolate/mycophenolic acid
Nafcillin
Natamycin
Neomycin
Netilmicin
Niphimycin
Novobiocin
Nystatin
Oleandomycin
Oxacillin
Oxytetracycline
Paromomycin
Penicillamine
Penicillin G
Penicillin V
Phenethicillin
Piperacillin
Plicamycin
Polymyxin B
Quinupristin
Rifabutin
Rifampin
Rifamycin
Rolitetracycline
Sisomicin
Spectinomycin
Streptomycin
Streptozocin
Sulbactam
Sultamicillin
Tacrolimus
Tazobactam
Teicoplanin
Tetracycline
Ticarcillin
Tobramycin
Troleandomycin
Tyrothricin
Vancomycin
Vidarabine
Viomycin

Dated: October 5, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1536 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 99N–4955]

Amendment of Various Device Regulations to Reflect Current American Society for Testing and Materials Citations; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain references in various medical device regulations. The amendments would update the references in those regulations to various standards of the American Society for Testing and Materials (ASTM) to reflect the current standards designations. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments by April 10, 2000. If FDA receives no significant adverse comment on these various medical devices regulations within the specified comment period, the agency intends to publish in the **Federal Register** a document confirming the effective date of the final rule within 30 days after the comment period on the direct final rule ends. The direct final rule will be effective June 7, 2000. If FDA receives any significant adverse comment regarding this rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule comment period.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Background

The ASTM notified FDA that ASTM had been working on a project to help Federal agencies update and maintain the ASTM standards that are referenced in the Code of Federal Regulations (CFR's). Use of consensus standards such as those developed by ASTM is consistent with the purposes of the National Technology Transfer and Advancement Act of 1995, signed into law on March 7, 1996 (Public Law 104–113). As part of the ASTM project, ASTM informed FDA that many ASTM standards cited in FDA's food additive and device regulations were out-of-date and provided a list of standards with their current year designations. ASTM listed 58 different regulations which, in its opinion, needed to be updated.

FDA examined the ASTM's documentation and, upon closer examination, found that 56 of the 58 different FDA regulations identified by ASTM cited obsolete ASTM standards or that, in some cases, cited ASTM standards that had been withdrawn. Most regulations involved direct and indirect food additives, although two of the affected regulations involved medical devices. Consequently, through this rulemaking, FDA is proposing to revise the device regulations identified by ASTM that contain obsolete or withdrawn ASTM standards to reflect

the current ASTM standards designations. FDA will update the citations for the food additive regulations in a separate rulemaking.

This rule is proposing to amend §§ 801.410(d)(2) and 801.430(f)(2) (21 CFR 801.410(d)(2) and 801.430(f)(2)) by incorporating by reference into the regulation the updated standard as follows:

- Section 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses*—The proposal would amend paragraph (d)(2) by removing "ASTM Method D 1415–68 'Test for International Hardness of Vulcanized Rubber,' " and by adding in its place "ASTM Method D 1415–88, Standard Test Method for Rubber Property—International Hardness," and also by removing "ASTM Method D 412–68 'Tension Test of Vulcanized Rubber,' " and by adding in its place "ASTM Method D 412–97, Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension,".
- Section 801.430 *User labeling for menstrual tampons* —The proposal would amend paragraph (f)(2) by removing "(ASTM), D 3492–83, 'Standard Specification for Rubber Contraceptives (Condoms)' " and by adding in its place "(ASTM) D 3492–96, Standard Specification for Rubber Contraceptives (Male Condoms)".

In addition, FDA is updating in § 801.410(d)(2) the address for the American Society for Testing Materials.

II. Additional Information

This proposed rule is a companion to the direct final rule published in the final rule section of this issue of the **Federal Register**. This companion proposed rule is substantially identical to the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish in the **Federal Register** a confirmation within 30 days after the comment period ends confirming that the direct final rule will go into effect on June 7, 2000. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives any significant adverse comment regarding this rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will be considered as comments regarding the direct final rule.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

III. Environmental Impact

The agency has determined, under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The revised ASTM standard citations that FDA is adopting in the medical device regulations reflect minor changes to the currently listed methods in those regulations. The updated citations are the result of periodic reapprovals of long-standing test methods or standards and should have no impact on those who use the standard. Thus, the proposal is not a significant regulatory action as defined in Executive Order 12866, and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The proposed rule, if finalized, would simply update ASTM citations used in various device regulations. The updated citations are the result of periodic re-approvals of long-standing ASTM test methods or standards and will have no significant adverse impact on those who use the ASTM standards. Under the Regulatory Flexibility Act, FDA certifies that the proposed rule will not impose any additional regulatory burdens on small entities.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Interested persons may, on or before April 10, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 801

Hearing aids, Incorporation by reference, Medical devices, Professional and patient labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

§ 801.410 [Amended]

2. Section 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses* is amended in paragraph (d)(2) by removing "ASTM Method D 1415–68 'Test for International Hardness of Vulcanized Rubber,'" and by adding in its place "ASTM Method D 1415–88, Standard Test Method for Rubber Property—International Hardness,"; by removing "ASTM Method D 412–68 'Tension Test of Vulcanized Rubber,'" and by adding in its place "ASTM Method D 412–97, Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension,"; and by removing "1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20408)." and by adding in its place "100 Barr Harbor Dr., West Conshohocken, Philadelphia, PA 19428, or available for inspection at the Center for Devices and Radiological Health's Library, 9200 Corporate Blvd., Rockville, MD 10850, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC."

§ 801.430 [Amended]

3. Section 801.430 *User labeling for menstrual tampons* is amended in paragraph (f)(2) by removing "(ASTM), D 3492–83, 'Standard Specification for Rubber Contraceptives (Condoms)' " and by adding in its place "(ASTM) D 3492–96, 'Standard Specification for Rubber Contraceptives (Male Condoms)' "; and by revising the footnote to read "Copies of the standard are available from the American Society for Testing Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or available for inspection at the Center for Devices and Radiological Health's Library, 9200 Corporate Blvd., Rockville, MD 10850, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC."

Dated: December 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1405 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1

[REG–116048–99]

RIN 1545–AX63

Stock Transfer Rules: Supplemental Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes, by cross-reference to temporary regulations, amendments to the final regulations concerning the Federal tax treatment of certain exchanges subject to section 367(b) of the Internal Revenue Code (Code). The temporary regulations, published in the Rules and Regulations section of this issue of the **Federal Register**, provide an election for certain taxpayers engaged in certain exchanges described in section 367(b). The temporary regulations provide guidance for taxpayers that make the specified election in order to determine the extent to which income must be included and certain corresponding adjustments must be made. The text of the temporary regulations also serves as the text of the proposed regulations. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by April 24, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for April 20, 2000, must be submitted by March 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116048–99), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116048–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax—regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mark D. Harris, (202) 622–3860 (not a toll-free number); concerning submissions and the hearing, Guy Traynor, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 24, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.367(b)–3(b)(4). This information is required to properly make an election to include an amount in income that is different than the inclusion currently required under § 1.367(b)–3 of the final regulations. This information will be used to verify proper compliance with the section 367(b) regulations, including that the election provided herein was made and that the required adjustments will be made by all parties to the section 367(b) transaction. The collection of information is mandatory. The likely respondents are businesses or other for-profit institutions.

Estimated total annual reporting burden: 85 hours.

Estimated average annual burden hours per respondent: 4 hours, 15 minutes.

Estimated number of respondents: 20

Estimated annual frequency of responses: once

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 367(b). The temporary regulations contain rules that provide an election for certain taxpayers engaged in certain exchanges described in section 367(b).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Proposed Effective Date

Except as otherwise specified, these regulations are proposed to apply to section 367(b) exchanges that occur on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the number of section 367(b) exchanges that require reporting under these regulations is estimated to be only 20 per year. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulation and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 20, 2000, beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic by (preferably a signed original and eight (8) copies) March 31, 2000. However, comments not to be presented at the hearing must be submitted by April 24, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Mark Harris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Income taxes, Reporting and recordkeeping requirements.

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.367(b)–3 is amended by adding paragraph (b)(4) to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(b) * * *

(4) [The text of this proposed addition is the same as the text of § 1.367(b)–3T(b)(4) published elsewhere in this issue of the **Federal Register**].

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1378 Filed 1–21–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH–132; KY–116; KY–84; FRL–6527–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) has attained the public health-based 1-hour ozone National Ambient Air Quality Standard (NAAQS). If EPA takes final action on this proposal, the Cincinnati-Hamilton area will be redesignated to attainment of the 1-hour ozone NAAQS. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. This proposed determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. Preliminary ozone monitoring data for 1999 continue to show the area attaining the ozone NAAQS. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (CAA) are not applicable to the Cincinnati-Hamilton area.

The EPA is also proposing to approve the State of Ohio Environmental Protection Agency's (OEPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) requests to redesignate the Cincinnati-Hamilton

area to attainment of the 1-hour ozone NAAQS. The redesignation request from OEPA was received on July 2, 1999 and completed on December 22, 1999. The Cabinet sent the redesignation request to EPA on October 29, 1999. Approval of these redesignation requests would put into place a plan for maintaining the 1-hour ozone standard for the next 10 years.

The EPA is also re-proposing to approve an exemption from the nitrogen oxides (NO_X) requirements as provided for in section 182(f) for the Kentucky portion of the Cincinnati-Hamilton area. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. On November 11, 1994, the Cabinet submitted a request for a 182(f) NO_X exemption and on May 10, 1995, EPA proposed approval for the exemption. Subsequently, since the area monitored an exceedance that constituted a violation of the ozone NAAQS, EPA did not publish a final notice approving the NO_X exemption. Because the Cincinnati-Hamilton area is currently attaining the ozone NAAQS, EPA is proposing to grant the Kentucky portion a NO_X exemption. If final action is taken, then the Kentucky portion of the Cincinnati-Hamilton area would no longer be subject to NO_X requirements, however, all controls previously approved by the Cabinet must continue to be implemented.

DATES: Comments on EPA's proposed action must be received by February 23, 2000.

ADDRESSES: Written comments should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Kay Prince, Chief, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the OEPA's and the Cabinet's submittals and other information are available for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file OH 132, KY–116 and KY 84. Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058, (*jones.william@epa.gov*). Karla L. McCorkle, Environmental Scientist, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, 404–562–9043, (*mccorkle.karla@epa.gov*).

Table of Contents

I. Determination of Attainment
A. What action is EPA proposing to take?
B. Why is EPA taking this action?
C. What would be the effect of this action?
D. What is the background for this action?
E. Where is the public record and where do I send comments?
II. Redesignation Request
A. What action is EPA proposing to take?
B. Why is EPA taking this action?
C. What would be the effect of the redesignation?
D. What is the background for this action?
E. What are the redesignation review criteria?
F. What is EPA's analysis of the request?
G. Where is the public record and where do I send comments?
III. 182(f) NO_X Exemption for Kentucky
A. What action is EPA proposing to take?
B. Where is the public record and where do I send comments?
IV. Disclaimer Language Approving SIP Revisions in Audit Law States
V. What administrative requirements were considered?
A. Executive Order 12866
B. Executive Order 13132
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates Act
G. National Technology Transfer and Advancement Act

I. Determination of Attainment

A. What Action Is EPA Proposing To Take?

The EPA is proposing to determine that the Cincinnati-Hamilton moderate ozone nonattainment area has attained the NAAQS for ozone. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements (section 172(c)(1)), along with certain other related requirements, of Part D of Title 1 of the CAA, specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement and the 182(j) multi-state attainment demonstration requirement are not applicable to the Cincinnati-Hamilton area as long as it continues to attain the ozone NAAQS.

B. Why Is EPA Taking This Action?

The EPA proposes to redesignate the area because three years of ambient air monitoring data demonstrate that the ozone NAAQS has been attained and the area has satisfied the other requirements for redesignation. The EPA believes it is reasonable to interpret provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require State Implementation Plan (SIP) submissions, as described further below, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). The EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the entire Cincinnati-Hamilton area. Preliminary ozone monitoring data for 1999 continue to show that the area is attaining the ozone NAAQS.

C. What Would Be the Effect of This Action?

The requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment will not be applicable to the area. This proposal does not revoke the 1-hour standard (see discussion in II (A) of this document.)

D. What Is the Background for This Action?

Subpart 2 of part D of Title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. The EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an

ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* v. *EPA, 99 F.3d 1551 (10th Cir. 1996))*

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the CAA. The EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other states with respect to the NAAQS (see section 110(a)(2)(D)). The EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the CAA to require such emission reductions if necessary and appropriate to deal with transport situations.

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Cincinnati-Hamilton moderate ozone nonattainment area from the 1996 through 1998 ozone seasons. This data is summarized in Table 1 covering EPA's analysis of the redesignation request. Preliminary monitoring data for 1999 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that the area has attained the 1-hour ozone standard during the 1996–98 period, which is the most recent three-year time period of air quality monitoring data, and therefore is not required to submit an attainment demonstration, and a section 172(c)(9) contingency measure plan.

E. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. Public comments are solicited on EPA's proposed rulemaking action. Public comments received by February 23, 2000, will be considered in the development of EPA's final rulemaking action.

II. Redesignation Request

A. What Action Is EPA Proposing To Take?

The EPA is proposing approval of the maintenance plan submitted by the OEPA and the Cabinet and redesignation of the Cincinnati-Hamilton moderate ozone nonattainment area to attainment of the 1-hour ozone NAAQS. The Cincinnati-Hamilton area consists of the Ohio Counties of Butler, Warren, Clermont, and Hamilton and the Kentucky Counties of Boone, Campbell, and Kenton.

B. Why Is EPA Taking This Action?

The Cincinnati-Hamilton area meets the redesignation and maintenance plan requirements of the CAA.

EPA issued a proposal to determine the 1-hour ozone NAAQS inapplicable to the Cincinnati-Hamilton area in light of the new 8-hour ozone NAAQS on June 10, 1999 (64 FR 110), when the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *American Trucking Ass'ns, Inc.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999) and modified in rehearing on October 29, 1999, WL 979463, which created uncertainty regarding the 8-hour ozone standard. Thus, EPA proposed to rescind findings of inapplicability of the 1-hour ozone standard on October 25, 1999 (64 FR 57424). Therefore, the 1-hour ozone standard remains applicable in the Cincinnati-Hamilton area.

C. What Would Be the Effect of the Redesignation?

The redesignation would change the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton and the Kentucky Counties of Boone, Campbell, and Kenton from nonattainment to attainment for the 1-hour ozone standard. It would also put into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard.

D. What Is the Background for This Action?

The OEPA and the Cabinet submitted requests on August 16, 1999 and October 29, 1999, respectively, to redesignate the Ohio and Kentucky portions of the Cincinnati-Hamilton area from nonattainment to attainment for ozone.

Under section 107(d) of the 1977 amended CAA, the EPA promulgated the ozone attainment status for each geographic area of the country. All counties in the Cincinnati-Hamilton area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the CAA Amendments of 1990 were enacted. Pursuant to section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), the Ohio Counties of Butler,

Clermont, Hamilton, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton were designated as the Cincinnati-Hamilton moderate ozone nonattainment area, as a result of monitored violations of the ozone NAAQS during the 1987–1989 time frame. On November 14, 1994, OEPA submitted a redesignation request for the Ohio portion of the Cincinnati-Hamilton area and EPA published a proposed redesignation rulemaking on May 5, 1995 (60 FR 22337), for the Ohio portion of the Cincinnati-Hamilton area. On November 11, 1994, the Cabinet submitted a redesignation request for the Kentucky portion of the Cincinnati-Hamilton area and revised the request on July 19, 1995.

During July of 1995, an ozone monitor in the area recorded an exceedance of the ozone standard resulting in a violation of the 1-hour ozone NAAQS. As a result of the violation the area was no longer attaining the ozone air quality standard. On September 27, 1996 (61 FR 50718), EPA disapproved the redesignation request for the Kentucky portion of the Cincinnati-Hamilton area and on February 18, 1997 (62 FR 7194), EPA proposed to disapprove the redesignation request for the Ohio portion based on the area's violation of the ozone NAAQS. Both Ohio and Kentucky were not meeting the requirements for redesignation specified under section 107(d)(3)(E) of the CAA during the time period when these actions were taken by EPA. The EPA will not respond to comments received on the February 18, 1997, proposed rulemaking, since that request is now moot, having been superseded by a new request. This subsequent request is the subject of this proposed rulemaking.

The Cincinnati-Hamilton area has since recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1996 to 1998 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. Preliminary ozone monitoring data for 1999 continue to show the area is attaining the ozone NAAQS. On July 2, 1999, EPA received a redesignation request from OEPA which supersedes its request submitted on November 14, 1994. On August 16, 1999, OEPA submitted additional information for the request and on December 22, 1999, EPA received the results of OEPA's public hearing on the proposed revision which was the final portion of the initial request. On October 29, 1999, EPA received a request from the Cabinet to parallel process the prehearing redesignation submittal. On December 13, 1999, the Cabinet submitted to EPA the final redesignation request including the Cabinet's public hearing results.

E. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498) and supplemented on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994. (Nichols, October 1994)

2. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

3. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

4. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992)

5. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

6. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

7. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

F. What Is EPA's Analysis of the Request?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H, based on three complete, consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The OEPA and the Cabinet submitted ozone monitoring data for the April through October ozone season from 1996 to 1998. Table 1 below summarizes the air quality data from 1996–1998.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO—KENTUCKY AREA FROM 1996 TO 1998

Site	County	Year	Exceedances measured	Expected exceedances
Middletown	Butler	1996	1	1.0
Middletown	Butler	1997	1	1.0
Middletown	Butler	1998	0	0.0
Hamilton	Butler	1996	0	0.0
Hamilton	Butler	1997	0	0.0
Hamilton	Butler	1998	0	0.0
4430 SR 222	Clermont	1996	0	0.0
4430 SR 222	Clermont	1997	0	0.0
4430 SR 222	Clermont	1998	1	1.0
11590 Grooms Rd	Hamilton	1996	0	0.0
11590 Grooms Rd	Hamilton	1997	1	1.0
11590 Grooms Rd	Hamilton	1998	1	1.0
6950 Ripple Road	Hamilton	1996	0	0.0
6950 Ripple Road	Hamilton	1997	0	0.0
6950 Ripple Road	Hamilton	1998	0	0.0
Cincinnati	Hamilton	1996	0	0.0
Cincinnati	Hamilton	1997	0	0.0
Cincinnati	Hamilton	1998	0	0.0
Lebanon	Warren	1996	0	0.0
Lebanon (230 Cook Road)	Warren	1997	1	1.0
Lebanon (230 Cook Road)	Warren	1998	1	1.0
KY 338	Boone	1996	0	0.0
KY 338	Boone	1997	0	0.0
KY 338	Boone	1998	0	0.0
Dayton	Campbell	1996	1	1.0
Dayton	Campbell	1997	0	0.0
Dayton	Campbell	1998	0	0.0
Covington	Kenton	1996	1	1.0
Covington	Kenton	1997	0	0.0
Covington	Kenton	1998	1	1.0

This data has been quality assured and is recorded in AIRS. During the 1996 to 1998 time period, the Middletown, Grooms Road, Lebanon, and Covington monitors each recorded a total of 2.0 expected exceedances. This equates to 0.67 average expected exceedances per year and shows that the monitoring sites with the most exceedances are attaining the 1-hour ozone NAAQS. In addition, preliminary 1999 ambient air quality monitoring data indicate that the area continues to attain the 1-hour ozone standard. As a result, the Cincinnati-Hamilton area is currently meeting the air quality requirement for redesignation to attainment of the ozone NAAQS.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Before the Cincinnati-Hamilton area may be redesignated to attainment for ozone, it must have fulfilled the applicable requirements of section 110 and part D. The Calcagni memorandum dated September 4, 1992, states that areas requesting redesignation to attainment have to fully adopt rules and programs that come due prior to the submittal of a complete redesignation request. If unimplemented and not necessary, these rules/programs may be moved into the area's maintenance plan as contingency measures rather than fully approved into the SIP. As described below in the section of this notice addressing Volatile Organic Compounds (VOC) reasonably available control technology (RACT) rules, however, the EPA is allowing an exception to this policy. While all requirements that come due prior to the submission of the redesignation request remain applicable requirements, the EPA believes it is appropriate, in this instance, to allow an exception to policy (Calcagni, September 4, 1992) to provide that the requirement for certain VOC RACT rules may be complied with simply through their incorporation among the contingency measures in the maintenance plan. For reasons described later in this action, these measures need not be fully adopted and approved prior to redesignation. Furthermore, requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request would continue to be applicable to the area until a redesignation is approved, but are not required as a prerequisite for redesignation (see section 175A(c)). If the redesignation is disapproved, the States remain obligated to fulfill those requirements.

Section 110 Requirements. General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and Part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio and Kentucky SIPs were reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions.

Transport of Ozone Precursors to Downwind Areas. Modeling results utilizing EPA's regional oxidant model (ROM) indicate that ozone precursor

emissions from various states west of the ozone transport region (OTR) in the northeastern United States contribute to increases in ozone concentrations in the OTR. The EPA issued a SIP call on October 27, 1998, (63 FR 57356) requiring the District of Columbia (DC) and 22 states, including Ohio and Kentucky to reduce their emissions of oxides of nitrogen in order to reduce the transport of ozone and ozone precursors. The SIP Call submittal date of September 1999 has been stayed by the DC Circuit Court. Because of the stay of the submittal date, this is not an applicable requirement and thus, need not be met for purposes of redesignation.

EPA has determined that the Ohio and Kentucky SIPs for the Cincinnati-Hamilton 1-hour ozone nonattainment area satisfy all of the section 110 SIP requirements of the CAA.

Part D: General Provisions for Nonattainment Areas. Before the Cincinnati-Hamilton area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Cincinnati-Hamilton area was classified as moderate ozone nonattainment. Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements. EPA has determined that the redesignation request received from the OEPA and the Cabinet for the Cincinnati-Hamilton area has satisfied all of the relevant submittal requirements under section 172(c) necessary for the area to be redesignated to attainment. In the first part of this proposed rulemaking, EPA is proposing to determine that the requirement for a SIP revision providing an attainment demonstration to meet section 172(c)(1), 182(b)(1), and 182(j) is not applicable. The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP. On March 14, 1994, Ohio submitted an RFP plan for Cincinnati and on January 28, 1998 (63 FR 4188) EPA approved the RFP plan as meeting the 15 percent RFP requirements of section 182(b)(1)(A). By meeting the specific 15% RFP requirements of section 182(b)(1)(A), Cincinnati is also meeting the RFP requirement of section 172(c)(2). Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The OEPA submitted an actual emission inventory under section 182(a)(1) and EPA approved it on December 7, 1995 (60 FR 62737). The Cabinet submitted on September 11, 1998, a 15 Percent VOC Reduction Plan and the 1990 base year inventory for the Kentucky Counties of Boone, Campbell, and Kenton and EPA approved the submittal on December 8, 1998 (63 FR 67586). EPA has determined that the RFP and actual emission inventory requirement for Ohio and Kentucky is satisfied.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. The EPA has determined that areas being redesignated do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994. See discussion in the Grand Rapids, Michigan document published on June 21, 1996 (61 FR 31831). The States have demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect, and, therefore, the States need not have fully approved part D NSR programs prior to approval of the redesignation request for the Cincinnati-Hamilton area. The OEPA's federally delegated PSD program will become effective in the Cincinnati area upon redesignation to attainment. The Cabinet has a statewide NSR rule. EPA approved the latest version of the NSR rule on June 23, 1994 (59 FR 32343) and the latest version of the statewide PSD rule on June 24, 1998 (63 FR 39741). Kentucky's PSD requirements will remain enforceable after the redesignation of the Cincinnati-Hamilton area.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. of the Federal Transit Act ("transportation conformity"), as well as to all other Federally supported or funded projects ("general conformity"). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate. The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the ozone redesignation request for the Ohio and Kentucky portion of the Cincinnati-Hamilton area without a fully approved conformity SIP. See Detroit, Michigan, carbon monoxide redesignation published on June 30, 1999 (64 FR 35017), Cleveland-Akron-Lorain ozone redesignation published on May 7, 1996 (61 FR 20458), and Tampa, Florida, published on December 7, 1995 (60 FR 52748).

Subpart 2 Section 182 Requirements. The Cincinnati-Hamilton area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with the September 17, 1993, EPA guidance memorandum, the requirements which came due prior to the submission of the request to redesignate the area must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Those requirements are discussed below:

1990 Base Year Inventory. The 1990 base year emission inventory was due on November 15, 1992. OEPA submitted

the 1990 base year emission inventory on March 14, 1994, for the Ohio portion and EPA approved it on December 7, 1995 (60 FR 62737). The Cabinet submitted the 1990 base year emission inventory on September 11, 1998, and EPA approved it on December 8, 1998 (63 FR 67586).

Periodic Emissions Inventory. Periodic inventories were required to be submitted on November 15, 1995, and November 15, 1998, providing an estimate of emissions for 1993 and 1996, respectively. This inventory is not considered a SIP requirement for the Cincinnati-Hamilton area, therefore they do not need to be approved into the SIP. Ohio provided its most recent estimates of emissions for 1993 and 1996 in its redesignation request and these emissions are summarized in the tables provided in this proposed action. Kentucky also provided EPA with periodic emissions for 1993 and 1996.

Emission Statements. The emission statement SIP was due on November 15, 1992. The OEPA submitted an emission statement SIP for Ohio on March 18, 1994 and EPA approved it on October 13, 1994 (59 FR 51863). The Cabinet submitted the emission statement SIP for Kentucky on January 15, 1993 and supplemented the submittal on December 29, 1994 to satisfy the federal requirements. EPA published approval of the Kentucky emission statement on May 2, 1995 (60 FR 21445).

15 Percent Plan. The 15 percent RFP plan for VOC reductions was required to be submitted by November 15, 1993, and, therefore, is applicable to the Cincinnati-Hamilton moderate ozone nonattainment area. The OEPA submitted the 15 percent RFP plan on March 14, 1994 and EPA approved it on January 28, 1998 (63 FR 4188). The Cabinet originally submitted a 15 percent plan in November 1993 and revised the plan in March 1994. By the end of the 1994 ozone season, air quality monitoring data for the entire Cincinnati area showed attainment of the 1-hour ozone NAAQS. Therefore, on June 29, 1995, the Cabinet requested that EPA take no further action on the submitted 15 percent plan. Subsequently, during the 1995 ozone season the area monitored a violation making the 15 percent plan again an applicable requirement for the area. On September 11, 1998, the Cabinet submitted a revised 15 percent VOC Reduction Plan and EPA approved it on December 8, 1998 (63 FR 67586).

VOC RACT Requirements. SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) All sources covered by a CTG issued prior to November 15, 1990; (3) All other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and apply to the Ohio and Kentucky submittal. The EPA approved Ohio's VOC RACT rules on April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182) and October 23, 1995 (60 FR 54308). EPA approved Kentucky's VOC RACT rules on January 25, 1980 (45 FR 6092), August 7, 1981 (46 FR 40188), February 7, 1990 (55 FR 4169), June 23, 1994, (59 FR 32344), and June 28, 1996 (61 FR 33674). Upon redesignation of the area, all new major VOC sources locating in Kentucky and all major modifications to existing major VOC sources will continue to be subject to the RACT requirements. These actions satisfy requirements (2) and (3) above for the Ohio and Kentucky portion of the Cincinnati-Hamilton area. Since November 15, 1990, EPA has issued CTG documents for the VOC source categories of aerospace, synthetic organic compound manufacturing industry (SOCMI) reactor and distillation processes, shipbuilding, and wood furniture. To satisfy the requirement of (1) above, the Cabinet submitted a negative declaration on December 14, 1999 for the CTG categories of aerospace, SOCMI reactor and distillation processes, shipbuilding, and wood furniture. Ohio has satisfied requirement (1) above by including these CTG categories as contingency measures in their maintenance plan. This is discussed below.

In regards to requirement (1) above, EPA's policy on redesignations would require full adoption, submission and approval of these rules prior to approval of the redesignation request. Since the due date for the CTG RACT rules at issue preceded the submission of the redesignation request, EPA believes, however, that, in the context of the particular circumstances of this redesignation, that it is permissible to depart from that policy and instead accept a commitment to implement these RACT rules as contingency measures in the maintenance plan rather than require full adoption and approval of the rules prior to approval of the redesignation. See Grand Rapids, Michigan, redesignation (61 FR 31831, June 21, 1996). The State of Ohio has included these RACT rules as contingency measures in its maintenance plan for Cincinnati. The reasons justifying this exception to EPA's general policy are explained in the above cited Grand Rapids, Michigan, redesignation and as explained below. The EPA believes that several factors in combination justify this approach with respect to the Cincinnati-Hamilton redesignation. First, the RACT rules at issue in this redesignation were not needed to bring about attainment of the standard in Cincinnati. Second, Ohio has demonstrated continued maintenance of the ozone standard through 2010 without the implementation of these measures. Third, Ohio has placed other contingency measures in the maintenance plan that would bring about far greater emission reductions than the RACT rules and would therefore be substantially more effective in terms of correcting violations attributable to local emissions from the Cincinnati area that may occur after redesignation. An analysis of emission reduction estimates, based on documentation contained in Ohio's 15 percent RFP Plan, shows that the implementation of low Reid Vapor Pressure (RVP) or Reformulated Gasoline programs would bring about greater reductions than the CTG VOC RACT rules issued since 1990. As a consequence, EPA believes that the other, more effective contingency measures, should and would be implemented first even if the RACT rules were to be fully adopted prior to redesignation. The EPA emphasizes that even under the exception to its policy proposed herein, the requirement for these RACT rules remains an applicable requirement for purposes of evaluating the redesignation request since it predated the submission of the request. The requirement, however, would be met in the form of the submission and full approval of a commitment to adopt and implement these rules as contingency measures in the maintenance plan. (Under EPA's existing policy, contingency measures in maintenance plans may consist of commitments to adopt and implement measures upon a violation of the standard (Calcagni, September 1992)).

The EPA further notes that even without this exception to its general policy, the State would have been able to have the RACT rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. That could have occurred only after or upon EPA's full approval of the adopted RACT rules, however. Thus, the only difference between EPA's general policy and the exception to that policy described in this proposal is that a commitment to adopt and implement the RACT rules in an expeditious

manner, rather than fully adopted RACT rules, would be among the contingency measures in the maintenance plan. In light of the combination of factors discussed above, including in particular the presence of other, significantly more effective, contingency measures in the maintenance plan, EPA believes that this difference has no significant environmental consequence and that it is legally permissible to approve the Cincinnati-Hamilton redesignation on this basis.

Stage II Vapor Recovery. Section 182(b)(3) requires states to submit Stage II rules no later than November 15, 1992. The Ohio Stage II rules were submitted as a SIP revision on June 7, 1993 and on October 20, 1994. The EPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), EPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the September 17, 1993, EPA guidance document for such programs entitled "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." On February 3, 1998 the Cabinet submitted Stage II controls and EPA approved the rule on December 8, 1998 (63 FR 67586).

Only those Stage II provisions previously approved by EPA are part of the Cincinnati-Hamilton area maintenance plan. The September 17, 1993, guidance memorandum listed above states that once onboard vapor recovery regulations are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The EPA promulgated onboard vapor recovery rules in February 1994. Therefore, pursuant to section 202(a)(6) of the CAA, Stage II would no longer be required. However, both Ohio and Kentucky have opted to include reductions in VOCs from the Stage II program as part of the submitted maintenance plan and the previously approved 15 percent RFP plans (63 FR 4188 and 63 FR 67586).

Vehicle Inspection and Maintenance (I/M). The EPA's final I/M regulations in 40 CFR Part 85 require the States to submit a fully adopted I/M program by November 15, 1993. Ohio submitted rules for an enhanced I/M program (E–Check), on May 26, 1994 and EPA published approval of the rules on April 4, 1995 (60 FR 16989). On September 11, 1998, the Cabinet submitted the Kentucky I/M program and EPA approved the program rule on December 8, 1998 (63 FR 67586).

NO_X Requirement. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. The Administrator made such a determination for the Ohio portion of the Cincinnati-Hamilton nonattainment area on July 13, 1995 (60 FR 36060). After this waiver was approved, the Cincinnati-Hamilton area monitored a violation of the 1-hour ozone standard. Since that time the area has returned to monitoring attainment and continues to do so. EPA is leaving the NO_X waiver in place based on the area returning to attainment. Since the NO_X waiver is approved as a final rule, OEPA is not required to impose NO_X control measures pursuant to section 182(f) for the Cincinnati-Hamilton area to be redesignated. OEPA has committed to adopt NO_X RACT rules as a contingency measure to be implemented upon a violation of the ozone NAAQS which occurs after initial contingency measures are in place for the Cincinnati-Hamilton area.

On May 10, 1995, EPA proposed approval for an exemption from NO_X requirements for the Kentucky portion of the Cincinnati-Hamilton area. Subsequently, since the area monitored an exceedance that constituted a violation of the ozone NAAQS, EPA did not publish a final notice approving the NO_X exemption. As discussed below, EPA is also re-proposing to approve a request from the Cabinet for a section 182(f) NO_X exemption for the Kentucky portion of the Cincinnati-Hamilton area. This proposal is based on the area attaining the ozone NAAQS. Therefore, upon redesignation the Kentucky portion of the Cincinnati-Hamilton area would no longer be subject to NO_X requirements. However, all controls previously approved by the Cabinet must continue to be implemented, but no additional NO_X measures would be required.

Ohio and Kentucky have satisfied the requirement that the area must have a fully approved SIP under section 110(k) and the area must have met all applicable requirements under section 110 and part D.

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, Federal measures, and other state adopted measures. The improvement in air quality in the Ohio portion of the Cincinnati-Hamilton area is due to emissions reductions from the Federal Motor Vehicle Emissions Control Program (FMVECP), Stage II vapor recovery program, VOC RACT controls, and the partial implementation of E-Check. Between 1993 and 1996, the Ohio area's VOC emissions were reduced by 6.7 percent. Kentucky attributes the improvement in air quality to emission reductions achieved prior to the attainment year of 1996 through the following programs: FMVECP; VOC RACT; fleet turnover of automobiles; low Reid Vapor Pressure (RVP) gasoline; reformulated gasoline; and ceased operation and improved technology at facilities in the area. Between 1990 and 1996, the Kentucky area's VOC emissions were reduced by 2.93 tons per day. Additional programs have been implemented in the Kentucky area since the 1996 attainment year which have provided substantial emission reductions for Kentucky. These programs include: Stage II vapor recovery; vehicle emission testing program, increased rule effectiveness of Stage I vapor control; Architectural Coatings, Traffic Paints, Auto Body Refinishing, and Commercial/Consumer Products rules; and Open Burning controls. The State control programs listed above have been approved into the Ohio and Kentucky SIP. Based on the listed programs, Ohio and Kentucky have shown that the improvement in air quality is based on permanent and enforceable reductions in emissions and meets this requirement.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment and, a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future

emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The state must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include a list of potential contingency measures which ensure prompt correction of any violation of the ozone standard.

The OEPA and the Cabinet included a 1996 emissions inventory as the attainment inventory. Both of the maintenance plans for Ohio and Kentucky portion of the Cincinnati-Hamilton area provide emissions estimates from 1990 to 2010 for VOCs, NO_X, and carbon monoxide. The emissions in the Cincinnati-Hamilton area are projected to decrease from 1996 levels. The results of this analysis show that the area is expected to maintain the air quality standard for at least 10 years into the future after redesignation. Table 2 and Table 3 provide the emissions summary for VOCs and NO_X for the Ohio portion and Table 4 and Table 5 provide the emission summary for VOCs and $_X$ for the Kentucky portion of the Cincinnati-Hamilton area. Table 6 and Table 7, respectively provides the emissions summary for VOCs and NO_X for the entire Cincinnati-Hamilton area. Although carbon monoxide levels were provided, there is no requirement to evaluate these for an ozone area.

TABLE 2.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR OHIO COUNTIES (HAMILTON, BUTLER, CLERMONT, AND WARREN)

	1990 base	1993	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	70.9	72.8	74.9	77.0	79.2	81.4	83.0
Area	69.0	69.8	70.7	71.4	72.3	73.1	75.0
Mobile	125.8	85.3	67.1	49.6	41.6	36.8	37.9
Totals	265.7	227.9	212.7	198.0	193.1	191.3	195.9

TABLE 3.—NO_X EMISSIONS IN TONS PER SUMMER DAY FOR OHIO COUNTIES (HAMILTON, BUTLER, CLERMONT, AND WARREN)

	1990 base	1993	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	280.0	279.4	279.0	278.6	278.3	277.6	277.4
Area	29.8	30.3	30.9	31.4	32.1	32.2	34.0
Mobile	130.7	115.6	101.3	84.4	72.0	65.5	52.3
Totals	440.5	425.3	411.2	394.4	382.4	375.3	363.7

TABLE 4.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR KENTUCKY COUNTIES (BOONE, CAMPBELL, AND KENTON)

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2008 projected	2010 projected
Point	3.9	4.14	3.96	4.07	4.19	4.33	4.4
Area	12.6	13.57	10.27	10.45	10.76	11.13	11.35
Mobile	17.54	12.69	12.07	8.25	7.38	6.47	5.83
Non-Highway	8.6	9.31	9.58	9.82	10.23	10.65	10.97
Total	42.64	39.71	35.88	32.59	32.56	32.58	32.55

TABLE 5.—NO_X EMISSIONS IN TONS PER SUMMER DAY FOR KENTUCKY COUNTIES (BOONE, CAMPBELL, AND KENTON)

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2008 projected	2010 projected
Point	43.59	29.06	29.47	29.9	30.34	30.77	31.07
Area	0.42	12.07	0.33	0.34	0.34	0.35	0.37
Mobile	15.4	24.90	25.55	22.73	20.14	16.99	15.13
Non-Highway	9.23	0.51	12.87	13.27	13.95	14.69	15.2
Total	68.64	66.54	68.22	66.24	64.77	62.8	61.77

TABLE 6.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE CINCINNATI-HAMILTON AREA

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	74.8	79.04	80.96	83.27	85.59	87.4
Area	90.2	93.58	91.25	92.57	94.09	97.32
Mobile	143.34	79.79	61.67	49.85	44.18	43.73

TABLE 6.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE CINCINNATI-HAMILTON AREA—Continued

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Total	308.34	252.41	233.88	225.69	223.86	228.45

TABLE 7.—NO_X EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE CINCINNATI-HAMILTON AREA

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	323.59	308.06	308.07	308.2	307.94	308.47
Area	39.45	43.48	44.6	45.71	46.49	49.57
Mobile	146.1	126.2	109.95	94.73	85.64	67.43
Total	509.14	477.74	462.62	448.64	440.07	425.47

The OEPA and the Cabinet commit to continue the operation of the monitors in the area in accordance with 40 CFR part 58. The States will also track maintenance by regularly updating the emissions inventory for the area. The emission projections for 2010 are the budgets for transportation conformity.

The contingency plan for the Cincinnati-Hamilton area contains three major components: Attainment tracking, contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the Cincinnati-Hamilton area, and a mechanism with which to trigger the implementation of the contingency measures.

Two methods of attainment tracking will be utilized in the Ohio portion of the Cincinnati-Hamilton area: (1) Air quality monitoring using the existing ozone monitoring network, and (2) inventory updates on a regular schedule. Stationary, mobile, and area source inventories will be updated at a minimum of once every three years beginning with 1996. Area emission inventories will be updated using revised census data. Mobile source emission inventories will be updated using new vehicle miles traveled (VMT) estimates and any new EPA mobile emission models. Annual progress reports will summarize available VOC and NO_X emissions data.

The contingency measures to be considered for implementation for the Ohio portion of the Cincinnati-Hamilton area are listed below.

1. Lower RVP gasoline.
2. Reformulated gasoline.
3. Broader geographic coverage of existing regulations.
4. Application of RACT on sources covered by new control technology guidelines issued in response to the 1990 CAA Amendments.
5. Application of RACT to smaller existing sources.
6. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions. The transportation control measures to be considered would include: (1) Trip reductions programs, including but not limited to employer-based transportation management programs, area wide rideshare programs, work schedule change, and telecommuting; (2) transit improvements; (3) traffic flow improvements; and, (4) other measures.
7. Alternative fuel programs for fleet vehicle operations.
8. Controls on consumer products consistent with those adopted elsewhere in the United States.
9. VOC offsets for new or modified major sources.
10. VOC offsets for new or modified minor sources.
11. Increased ratio of VOC offsets required for new sources.
12. Requirements of VOC controls on new minor sources.

Selection of one or more of the contingency measures will be based on various considerations including cost-effectiveness, VOC reduction potential, economic and social consideration, and other factors the State determines to be appropriate.

Consideration and selection of one or more of the contingency measures will take place in the event the ozone NAAQS is violated. Initially, the State of Ohio will conduct an analysis to determine the level of control measures needed to assure expedient future attainment. If a subsequent violation of the ozone NAAQS occurs after implementation of the VOC controls measures, NO_X RACT will be activated. Contingency measures on the Ohio portion of the area will be implemented according to the following schedule:

TABLE 8.—CONTINGENCY MEASURE SCHEDULE FOR OHIO

Activity—VOC measure implementation	Completion time after triggering event
Verify a violation has occurred	1 month.
Identify VOC plan and submit schedule for implementation	3 months.
Implement VOC control program	12 months.
Activity—NO_X measure implementation	**Completion time for second triggering event after implementation of the VOC contingency measure**
Verify a violation has occurred	1 month.
Submit schedule for implementation of NO_X RACT	3 months.
Implement NO_X RACT	18 months.

Reformulated gasoline and low RVP gasoline would not be able to be implemented as contingency measures by the State of Ohio unless the State first requested and received from EPA a waiver of federal preemption under section 211(c)(4) of the CAA. However, in light of the State's listing of other potential contingency measures and the State's commitment to implement contingency measures within 12 months of a violation, the identification of reformulated gasoline and low RVP gasoline does not detract from the approvability of the contingency plan.

The Cabinet commits to perform triennial reviews of actual emissions for the redesignated area using the latest emission factors, models, and methodologies. The Cabinet will begin the triennial assessments in 2000 for calendar year 1999. At the time of this periodic inventory, the Cabinet will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth in activity levels. If any of these assumptions appear to have changed substantially, then the Cabinet will re-project emissions.

In the event that exceedances of the 1-hour ozone standard are measured in any portion of the nonattainment area, or if periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, the Cabinet will evaluate existing control measures to determine the further emission reduction measures that should be implemented at that time.

In the event of a monitored violation of the 1-hour ozone standard, the Cabinet commits to adopt, within nine months, one or more of the following contingency measures to achieve reductions sufficient to bring the area back into attainment with the 1-hour ozone NAAQS. All regulatory programs will be implemented within 18 months. The Cabinet will also evaluate existing control measures to see if any further emission reductions should be implemented at that time.

1. Implementation of a program to require additional emission reductions on stationary sources.

2. New Source Review.

3. Implementation of a more frequent, or more stringent vehicle emissions testing program.

4. Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles.

5. Trip-reduction ordinances.

6. Employer based transportation management plans, including incentives.

7. Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use.

8. Programs for new construction and major construction of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

The OEPA and the Cabinet submittals adequately address the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and therefore, satisfy the maintenance plan requirement.

The CAA section 175A(b) also requires the OEPA and the Cabinet to submit a revision of the SIP eight years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first-10 year period. The Cabinet has committed to submit the revision to the SIP 8 years after redesignation of the Cincinnati-Hamilton area. Ohio did not formally commit to submit this revision in the redesignation request, however, OEPA is still required to submit a revision to the SIP 8 years after this request is approved.

G. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule has been established under OH–132 and KY–116 and is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document.

Public comments are solicited on EPA's proposed rulemaking action. Public comments received by February 23, 2000, will be considered in the development of EPA's final rulemaking action. EPA will not respond to comments received on the February 18, 1997 (62 FR 7194), proposed rulemaking, since a new request has been submitted and is the subject of this proposed rulemaking.

III. 182(f) NO_X Exemption for Kentucky

A. What Action Is EPA Proposing To Take?

EPA is also re-proposing to approve an exemption from the NO_X requirement as provided for in Section 182(f) for the Kentucky portion of the Cincinnati-Hamilton area. Section 182(f) establishes NO_X requirements for ozone nonattainment areas which require the same provisions for major stationary sources of NO_X as apply to major stationary sources of VOCs. One of the requirements of major sources of VOCs is RACT. Therefore, pursuant to section 182 of the CAA, RACT is a requirement for major sources of NO_X in an ozone nonattainment area. However, it provides that these requirements do not apply to a nonattainment area outside an ozone transport region if the Administrator determines that NO_X reductions would not contribute to attainment. A NO_X exemption request must be based upon the most recent three years of monitoring data, and demonstrate that additional reductions of NO_X would not contribute to attainment of the NAAQS.

The EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled, "Section 182(f) Nitrogen Oxides (NO_X) Exemptions-Revised Process Criteria," decouples the section 182(f) exemptions from NO_X transport issues. The memorandum states that for an area that did not implement section 182(f) NO_X requirements, but did attain the ozone standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in the AIRS), it is apparent that additional NO_X reductions required by section 182(f) would not contribute to attainment of the NAAQS in the area.

On November 11, 1994, the Cabinet submitted a request for a 182(f) NO_X RACT exemption for the Kentucky portion of the Cincinnati-Hamilton area and on May 10, 1995 (60 FR 24813), EPA proposed approval of the exemption. Subsequently, since the area monitored an exceedance that constituted a violation of the ozone NAAQS, EPA did not publish a final notice approving the NO_X exemption.

Based on evidence that the area is currently demonstrating compliance with the ozone NAAQS, EPA is re-proposing approval of Kentucky's request to exempt the Kentucky portion of the Cincinnati-Hamilton area from the 182(f) NO_X requirement. Discussed in detail above, the EPA is also proposing to determine the Cincinnati-Hamilton area has attained the 1-hour ozone NAAQS. This proposed determination of attainment is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. Because the Cincinnati-Hamilton area has presently attained the ozone NAAQS, this

exemption request for the area meets the applicable requirements. If final action is taken on this proposal to exempt the Kentucky portion from 182(f) requirements, upon redesignation it would no longer be subject to NO_X requirements for moderate nonattainment areas. However, all controls previously approved by the Cabinet must continue to be implemented, but no additional NO_X measures would be required. If there is a violation of the ozone NAAQS in any portion of the Cincinnati-Hamilton area, the exemption would no longer be applicable.

B. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule has been established under KY–84 and is located only at the EPA Region 4 address in the **ADDRESSES** section at the beginning of this document. The address for sending comments to EPA Region 4 is also provided in the **ADDRESSES** section at the beginning of this document.

Public comments are solicited on EPA's proposed rulemaking action. Public comments received by February 23, 2000, will be considered in the development of EPA's final rulemaking action.

IV. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law Kentucky—"KRS 224.01–040" or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

V. What Administrative Requirements Were Considered?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial

number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 12, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Dated: January 7, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–1555 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6526–8]

RIN 2060–A177

National Emission Standards for Hazardous Air Pollutants: Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes to amend the national emission standards for hazardous air pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities to include a separate emission standard for exterior primers used for large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing facilities that produce fully assembled large commercial aircraft. We are proposing these amendments based on review of data that support significant technical concerns of an aircraft manufacturer's ability to achieve the current 350 grams per liter (g/L) (2.9 pounds per gallon (lb/gal)) hazardous air pollutant (HAP) and volatile organic compound (VOC) content limit requirements when using exterior primers.

DATES: *Comments:* Written comments must be received by February 23, 2000, unless a hearing is requested by February 3, 2000. If a hearing is requested, written comments must be received by March 9, 2000.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–20, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Public Hearing: Anyone requesting a public hearing must contact the EPA by February 3, 2000. If requested, a public hearing will be held February 7, 2000. If a public hearing is requested, the comment period will end 30 days after the date of the public hearing, in which case EPA will publish a document in the **Federal Register** announcing the hearing information and the extended comment period. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium. Persons interested in attending the hearing to present oral testimony should contact Ms. Dorothy Apple; Policy, Planning, and Standards Group (MD-13); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4487.

Docket: Docket number A–92–20, containing information relevant to this proposed rulemaking, is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Szykman or Mr. Jaime Pagan; Policy, Planning, and Standards Group, Emission Standards Division (MD–13); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2452 (Szykman) or (919) 541–5340 (Pagan), electronic mail address szykman.jim@epa.gov or pagan.jaime@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Facilities which are major sources of hazardous air pollutants and manufacture large commercial aircraft.

This table is not intended to be exhaustive but, rather, provides a guide for readers likely to be interested in the proposed amendments to the regulations affected by this action. If you have any questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

These proposed amendments, the promulgated NESHAP (40 CFR part 63, subpart GG), and other background information are available in Docket Number A–92–20 or by request from the EPA's Air and Radiation Docket and Information Center (**ADDRESSES**). These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTN) call Mr. Hersch Rorex (919) 541–5637. Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1, 6.1, Corel 8, or ACSII file format. Identify all comments and data in electronic form by the docket number A–92–20. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Outline. The information presented in this preamble is organized as follows:

I. Why are we taking this action?
II. What provisions of the Aerospace NESHAP would these proposed amendments affect?
III. Whom would these proposed amendments affect?
IV. What are the administrative requirements for this proposal?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
C. Paperwork Reduction Act
D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
E. Unfunded Mandates Reform Act
F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments
G. National Technology Transfer and Advancement Act
H. Executive Order 13132: Federalism

I. Why Are We Taking This Action?

On September 1, 1995, we promulgated the NESHAP for Aerospace Manufacturing and Rework Facilities (60 FR 45948). The NESHAP contains standards to control organic HAP and VOC emissions from primer application operations. These standards require the use of a primer with an organic HAP and VOC content level of 350 g/L (2.9 lb/gal) or less (40 CFR 63.745(c)(1),(2)) where no add-on control system is used, or the use of a control system to reduce the organic HAP and VOC emissions to the atmosphere by 81 percent or greater (§ 63.745(d)). We set these standards at the maximum achievable control technology (MACT) floor for new and existing sources.

In the preamble to the proposed NESHAP (59 FR 29241), we explained the basis of the MACT floor for primer application operations. We established the MACT floor for existing facilities based on the weighted average VOC content that represented the average of the top 12 percent of facilities. Because of the limited available data on the corresponding organic HAP content, we proposed a HAP content limit at the same level as the VOC content limit. Also, in applying these standards within the source category, we did not identify any technical reason to distinguish between the different types of market segments (commercial or military), or the work type (original equipment manufacture or rework). Therefore, we applied these standards to all market segments within the source category.

In public comments received on the proposed rule, aircraft manufacturers raised concerns about the inclusion of exterior primers for large commercial aircraft in the data set for the MACT floor on primer operations. The industry expressed concerns about whether a suitable exterior primer would be available by the September 1, 1998 NESHAP compliance deadline for existing sources. However, at that time, industry did not provide adequate supporting data to justify separate treatment of exterior primers for large commercial aircraft.

Recently, an aircraft manufacturer raised these same concerns and submitted additional data indicating that it has not been able to find a satisfactory exterior primer for use in manufacturing and assembling large commercial aircraft that will meet the current HAP and VOC content limits in the NESHAP and their own performance needs. This aircraft manufacturer has stated that several factors exist that create a distinction between facilities that produce fully assembled large commercial aircraft and facilities that manufacture other types of aerospace components and vehicles. One of the primary differences is the annual utilization rates for large commercial aircraft versus other aircraft. Large commercial aircraft often remain in constant use with multiple take-offs and landings daily and much higher annual flight hours than other aircraft. The total flight time, flight frequency, and flight altitudes for large commercial aircraft are often much higher than for other types of aircraft, such as defense aircraft and general aviation aircraft. These higher utilization rates associated with large commercial aircraft create distinct stresses for the paint systems used. In addition, the largest of the commercial aircraft are often designed for overseas travel (transcontinental routes) which creates a greater exposure to salt, a strong corrosive agent. Finally, this aircraft manufacturer has stated that differing paint requirements, such as replicability of color and gloss, and differing maintenance requirements due to its large number of customers (200 plus), are also factors that can contribute to the acceptability of a paint system. This aircraft manufacturer expressed significant technical concern about its ability to find an exterior primer that would provide adequate protection to large commercial aircraft without pitting or peeling and that would meet the VOC and HAP content standards for primers. This aircraft manufacturer has stated that available low-VOC exterior primers have very different physical and chemical properties, such as the rheology and cross-link density of the coating, from the primers that were in use when the MACT floor was established in 1995. Primers that were in use at that time contained 1,1,1

trichloroethane (TCA) but TCA has since been phased out due to its adverse effect on the stratospheric ozone layer. New TCA-free, high solids/low-VOC primers represent a distinct technology from the previous TCA primer technology. The manufacturer has stated that this has resulted in changes to the performance characteristics of the primer, particularly the adhesion, flexibility, and impact resistance, which have resulted in a greater chance of the coatings peeling and pitting. This aircraft manufacturer provided summary test data on the 50 exterior primers tested since the Aerospace NESHAP was promulgated.

The compliance date for the NESHAP was September 1, 1998. We have granted compliance extensions based on this issue; however, these extensions expired September 1, 1999.

Today, we are proposing to amend the current emission limits contained in 40 CFR 63.745(c)(1) and (2) for primer operations with no add-on control systems by proposing a separate emission limit of 650 g/L (5.4 lb/gal) or less of organic HAP and VOC for exterior primers as applied to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft; and an emission limit of 350 g/L (2.9 lb/gal) or less of organic HAP and VOC for exterior primers as applied to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at new affected sources that produce fully assembled large commercial aircraft. Our bases for these amendments are data recently submitted to us by a manufacturer of large commercial aircraft and a reevaluation of the original data used to establish the MACT floor for primer application operations. Also based on the fact that TCA-based primer is no longer available, as previously discussed, we reevaluated the original data used to establish the MACT floor for primer application operations of 350 g/L (2.9 lb/gal) or less of organic HAP and VOC.

In order to determine if a separate limit should be established for exterior primers used on large commercial aircraft at existing facilities that produce fully assembled large commercial aircraft, we considered whether these facilities are distinct from other segments of the industry. Because large commercial aircraft often have much higher annual utilization rates and greater exposure to corrosive environments, creating the need for higher performance coating systems, and the manufacturer of such aircraft has many different customer specifications it must satisfy, we determined that a separate limit should be established for these facilities. We then re-evaluated the original data only for facilities that manufactured fully assembled large commercial aircraft. In our re-evaluation of the data, we identified four facilities which manufactured fully assembled large commercial aircraft. To account for the fact that TCA-based primer is no longer available, we removed all TCA-based primer data. The data from these four facilities on the annual usage of primers used in the primer operations for large commercial aircraft had a VOC content that ranged from 650 g/L (5.3 lb/gal) to 670 g/L (5.6 lb/gal). A more detailed discussion of this analysis can be found in the Docket (No. A–92–20) within the document titled, "MACT Floor for Aerospace Commercial Aircraft Original Equipment Operations—Interior and Exterior Primers."

The Clean Air Act requires that emission standards for HAP established under section 112(d)(2) be based on "* * * the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standards applies * * *." This basis is commonly referred to as MACT.

Section 112(d)(3) further clarifies the minimum acceptable stringency for the MACT level of emission reduction. For new sources, MACT shall be no "* * * less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator." For existing sources, MACT "* * * shall not be less stringent, and may be more stringent than—

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources * * * in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing five sources * * * in the category or subcategory for categories or subcategories with fewer than 30 sources."

In prior rulemaking where fewer than five sources exist, we have based the MACT floor for existing sources on the average emission limitation achieved by all the sources. Use of the arithmetic average would result in a VOC content of 655 g/L. This method for calculating the MACT floor yields a number that does not correspond to an actual VOC content of primer used at these facilities. Therefore, we determined the MACT floor for these four facilities based on the median VOC content for primer operations at these facilities. The MACT floor for primer operations at these facilities is 650 g/L (5.4 lb/gal) or less of organic HAP and VOC. This represents the existing source MACT floor for all primer operations at facilities that manufacture fully assembled large commercial aircraft.

We then considered exterior versus interior primers. The data recently submitted to us by the aircraft manufacturer relate only to technical problems concerning the use of "exterior" primers at existing facilities that manufacture fully assembled large commercial aircraft. We do not have any data indicating that similar problems exist with the use of interior primers at these facilities. We believe that the 350 g/L (2.9 lb/gal) level has already been demonstrated to be an achievable level of control for interior primers used at facilities that manufacture fully assembled large commercial aircraft. Therefore, we propose to go beyond the MACT floor level of control (650 g/L (2.9 lb/gal) or less of organic HAP and VOC to 350 g/L (2.9 lb/gal) or less of organic HAP and VOC for interior primer operations used at existing and new facilities that manufacture fully assembled large commercial aircraft.

We are not proposing to establish MACT at a level beyond the MACT floor for exterior primers used on large commercial aircraft at facilities that produce fully assembled large commercial aircraft. This is because we believe that meeting a standard more stringent than a 650 g/L level is not technically achievable for all existing commercial production facilities that manufacture and assemble large commercial aircraft at this time. However, the manufacturer in question has stated that it will continue to test and evaluate exterior primers, used to manufacture and assemble large commercial aircraft, with the goal of achieving the current content limit of 350 g/L. Should this manufacturer find an exterior primer that meets its specifications and is lower than the proposed content limit of 650 g/L prior to promulgation of these proposed amendments, we intend to promulgate an emission limit for exterior primers used on large commercial aircraft at facilities that manufacture fully

assembled large commercial aircraft that would be at this lower level.

For new sources, section 112(d)(3) states that MACT "* * * shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator."

Based on our reevaluation of these original data, the new source MACT floor for primer operations used on large commercial aircraft at facilities that produce fully assembled large commercial aircraft is 650 g/L (5.4 lb/gal) or less of organic HAP and VOC. This represents the "best controlled similar source" from these four facilities. Since the original data were collected, new high-solids chemistry, without TCA, has been employed to achieve the 350 g/L levels. Some existing sources may not be able to use this new technology, combined with other changes to low-HAP and low-VOC topcoats and new application techniques, because of design constraints in their overall operation. The use of this technology may only be feasible for facilities with maximum flexibility in physical plant, climate control, contaminant control (keeping the surface clean prior to primer application), etc. However, for a new source that manufactures fully assembled large commercial aircraft, the operation as a whole could be designed to accommodate the new high-solids technology. Indeed, at least one large commercial aircraft facility is currently using this technology (Boeing Long Beach facility, formerly the McDonnell Douglas facility). This is new information that is not in the original data set used to determine the MACT floor.

Based on the recent data provided, EPA concludes that although technological problems exist at the 350 g/L level for most of the existing facilities, manufacturers can design new facilities with this new technology in mind. Thus, we believe that it is appropriate to set MACT above the floor for new facilities. As a result, we propose to set the limit for exterior primer used on large commercial aircraft at new facilities that produce fully assembled large commercial aircraft at 350 g/L (2.9 lb/gal) or less of organic HAP and VOC.

Although we are not addressing other sectors of the industry, such as the military, in today's proposal, we reviewed the data from the remainder of the responses to section 114 questionnaires for these sectors of the aerospace manufacturing and rework industry that perform primer operations. Our preliminary analysis indicates that the MACT floor for these sectors of the industry would also be in the range of 650 g/L, assuming that we removed the TCA-based data from the data set. However, even if the floor for these sectors were to change, we would see no reason not to adopt the current 350 g/L limit as an above-the-floor requirement. We have received no information indicating that this limit is not achievable for these sectors of the industry. In addition, on September 1, 1998, we issued amendments to the Aerospace NESHAP (63 FR 46533) that set new standards for the control of organic HAP and VOC emissions from primer and topcoat application operations for general aviation rework facilities. We believe that those standards resolved any similar problems for the general aviation rework facilities. Therefore, the proposed organic HAP and VOC emission limit of 650 g/L (5.4 lb/gal) or less for exterior primers applies only to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft.

In deciding how to define "large commercial aircraft," we evaluated several different criteria. A review of current Federal Aviation Agency (FAA) regulations revealed two definitions of large aircraft in the Code of Federal Regulations, Title 14 (-) Aeronautics and Space. Under title 14, part 1, general definitions are provided which are applicable for the majority of FAA regulations, sub-chapters A through K. Part 1.1 of title 14 defines large aircraft as "an aircraft of more than 12,500 pounds, maximum certified take-off weight." Under 14 CFR 268.1, which is a regulation applicable to air carriers known as air taxi operators and commuter air carrier operations, large aircraft is defined as "any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds." These definitions suggest the use of maximum certified take-off weight, maximum payload capacity, or maximum passenger capacity as possible criteria to define large aircraft. However, factors cited in the data submitted by the aircraft manufacturer indicated that total flight time, flight frequency and flight altitudes were distinguishing criteria which create more demanding performance characteristics for exterior primers used to manufacture and assemble large commercial aircraft. This suggests that one or all of these criteria could serve as another possible alternative for defining large commercial aircraft.

Based on our review of the data, we believe that the weight of the aircraft is the best defining factor. Greater weight frequently is related to aircraft that are designed to have greater flight time, flight frequency and flight altitude. After reviewing the FAA definitions of large aircraft, we believe that maximum take-off weight would be an appropriate criterion to define large commercial aircraft. The maximum take-off weight is well known and documented within the industry. However, based on the data received, the current definition within FAA regulations (a maximum take-off weight of 12,500 lbs) does not characterize the size of the aircraft where we believe the problems exist for exterior primers.

With respect to the second part of this definition, "commercial," this manufacturer has not indicated that this is a problem for the large military aircraft it manufactures. Therefore, we are defining the term commercial to exclude large aircraft manufactured for military use.

We are proposing to define a large commercial aircraft as an aircraft of more than 110,000 pounds, maximum certified take-off weight manufactured for non-military use. We are requesting comments on this definition along with the use of the other criteria discussed for defining large commercial aircraft.

II. What Provisions of the Aerospace NESHAP Would These Proposed Amendments Affect?

We are proposing to amend section 63.745(c)(1) and (2) of the NESHAP by adding a separate HAP and VOC content limit of 650 g/L for exterior primers applied to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft.

III. Whom Would These Proposed Amendments Affect?

These proposed amendments would affect you if you are the owner or operator of an existing or new exterior primer application operation at a facility that, either in part or in whole, manufactures and assembles large commercial aircraft and is a major source as defined in 40 CFR 63.2.

IV. What Are the Administrative Requirements for This Proposal?

A. Executive Order 12866, Regulator Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must

determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is determined to be "economically significant" as defined under Executive Order 12866, and concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

C. Paperwork Reduction Act

These proposed amendments would not impose any new information collection requirements would result in no change to the currently approved collection. The OMB has approved the information collection requirements contained in the Aerospace Manufacturing and Rework Facilities NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060–0314.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business that has less than 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These proposed amendments will not impose any requirements on small entities. They affect only manufacturers of large commercial aircraft. There are no small-entity manufacturers of large commercial aircraft.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. These proposed amendments would amend certain existing emission limits in a de-regulatory manner and would not impose any new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance

costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed amendments do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed amendments.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

These proposed action amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These proposed amendments would amend portions of an existing rule, the Aerospace NESHAP, in a de-regulatory manner. They would not impose any obligations on State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 11, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

2. Section 63.742 is amended by adding in alphabetical order definitions for "Exterior primer" and "Large commercial aircraft" to read as follows:

§ 63.742 Definitions.

* * * * *

Exterior primer means the first layer and any subsequent layers of identically formulated coating applied to the exterior surface of an aerospace vehicle or component where the component is used on the exterior of the aerospace vehicle. Exterior primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent exterior topcoats. Coatings that are defined as specialty coatings are not included under this definition.

* * * * *

Large commercial aircraft means an aircraft of more than 110,000 pounds, maximum certified take-off weight manufactured for non-military use.

* * * * *

3. Section 63.745 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water), as applied, for general aviation rework facilities, or 650 g/L (5.4 lb/gal) of exterior primer (less water), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft, or 350 g/L (2.9 lb/gal) of primer (less water), as applied.

(2) VOC emissions from primers shall be limited to a VOC content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water and exempt solvents), as applied, for general aviation rework facilities, or 650 g/L (5.4 lb/gal) of exterior primer (less water and exempt solvents), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft, or 350 g/L (2.9

lb/gal) of primer (less water and exempt solvents), as applied.

* * * * *

[FR Doc. 00–1557 Filed 1–21–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period for the Columbian Sharp-Tailed Grouse Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status review; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the reopening of the comment period for the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) status review. The comment period is reopened to accommodate requests by various federal and state wildlife resource agencies for additional time to provide input. Reopening of the comment period will also allow further opportunity for all interested parties to submit additional information and written comments to be considered by the Service for this status review (see **DATES** and **ADDRESSES**).

DATES: Written materials from all interested parties must be received by March 27, 2000.

ADDRESSES: Written comments, data, reports, map products, and other information concerning this status review should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia River Basin Field Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Chris Warren, at the address listed above (telephone 509/891–6839; facsimile 509/891–6748).

SUPPLEMENTARY INFORMATION:

Background

The Columbian sharp-tailed grouse is one of six recognized subspecies of sharp-tailed grouse that occur in North America (AOU 1957). Compared to the other subspecies, Columbian sharp-tailed grouse are described as slightly smaller with darker gray plumage. Historically, Columbian sharp-tailed grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central British Columbia.

Columbian sharp-tailed grouse rely on a variety of native habitats within the sagebrush-bunchgrass, meadow-steppe, mountain shrub, and riparian zones of the northwestern United States (Giesen and Connelly 1993). Various upland habitats, with a component of more dense riparian or mountain shrub habitat to provide escape cover, are important to the subspecies from spring to fall. The availability of suitable wintering habitat, containing a dominant component of deciduous trees and shrubs, is also thought to be a key element to healthy Columbian sharp-tailed grouse populations (Marks and Marks 1987, Giesen and Connelly 1993).

In 1979, the range wide population estimate for the Columbian sharp-tailed grouse was approximately 60,000 to 170,000 individuals, with roughly 60 to 80 percent occurring in British Columbia (Miller and Graul 1980). Miller and Graul (1980) also estimated that the subspecies occupied less than 10 percent of its historic range in Idaho, Montana, Utah, and Wyoming, 10 to 50 percent in Colorado and Washington, and 80 percent or more in British Columbia. The current minimum to maximum range wide population estimate for the Columbian sharp-tailed grouse is approximately 30,000 to 70,000 individuals, with roughly 60 to 70 percent occurring in southeastern Idaho. The Columbian sharp-tailed grouse has been extirpated from California (*circa* 1920), Nevada (*circa* 1950), and Oregon (*circa* 1960) (Miller and Graul 1980).

Declines in the overall abundance of Columbian sharp-tailed grouse and the extent of its occupied range have acted to isolate various populations of the subspecies. Three relatively large populations of Columbian sharp-tailed grouse still exist; one in northwestern Colorado to south-central Wyoming, one in southeastern Idaho to northern Utah, and one in central British Columbia. To varying degrees, the remaining areas occupied by the subspecies are made up of relatively small and isolated local populations.

Much of the historic area used by Columbian sharp-tailed grouse has been converted for crop production and affected by other influences including rural and suburban development, dam construction, minerals exploitation, chaining, herbicide spraying, and fire (Miller and Graul 1980, Wood 1991, Giesen and Connelly 1993). In addition, grazing practices over large portions of Columbian sharp-tailed grouse range may negatively impact native habitats (Hart *et al.* 1950, Miller and Graul 1980, Kessler and Bosch 1982, Giesen and Connelly 1993). Intensive grazing pressure may be especially detrimental to nesting and wintering habitats used by Columbian sharp-tailed grouse populations, primarily due to impacts on their cover and food resources.

Much of the area currently and potentially occupied by Columbian sharp-tailed grouse is in private ownership. Presently, large portions of these privately owned lands are withdrawn from crop production and planted to native and non-native cover under the Federal Conservation Reserve Program (CRP) (USDA 1998). CRP lands have become very important to Columbian sharp-tailed grouse in Colorado, Idaho, Oregon, Utah, and Washington. A number of CRP contracts are scheduled to expire from 1999 through the year 2002. The potential net changes that may occur under the CRP vary considerably by the counties and states occupied by Columbian sharp-tailed grouse. Presently, it is unclear what affects these potential changes may have on the subspecies' populations.

Currently, Columbian sharp-tailed grouse are hunted in Colorado, Idaho, and British Columbia. Hunting is not likely to have an additive affect over natural mortality for relatively large, stable populations of upland birds under managed conditions (Braun *et al.* 1994). However, depending on the status of the hunted population and hunter access patterns, some areas may act as population "sinks" and be adversely impacted by additional mortality. Incidental or illegal take of the subspecies may also occur, especially in areas hunted extensively for other upland game (Hart *et al.* 1950, Miller and Graul 1980).

Reintroduction efforts for Columbian sharp-tailed grouse have taken place in Washington, Montana, Oregon, Nevada, and Idaho. Many early reintroduction efforts conducted for prairie grouse (including sharp-tailed grouse) failed to produce self-sustaining populations or to increase the size or distribution of augmented populations (Toepfer *et al.* 1990). However, several recent efforts have shown greater potential to be effective as the techniques for reintroductions have improved.

The Service published a notice in the **Federal Register** on October 26, 1999, announcing that a range wide status review for the Columbian sharp-tailed

grouse was being conducted (64 FR 57620). The original comment period for this status review closed December 27, 1999. The Service will now accept information concerning this status review through March 27, 2000. The Service will also solicit the opinions of appropriate and independent specialists regarding the data, assumptions, and supportive information presented for the Columbian sharp-tailed grouse status review, per the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270).

References Cited

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Hart, C.M., O.S. Lee, and J.B. Low. 1950. The Sharp-tailed Grouse in Utah—Its Life History, Status, and Management. Pub. No. 3, Utah State Dept. of Fish and Game.

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Toepfer, J.E., R.L. Eng, and R.K. Anderson. 1990. Translocating Prairie Grouse: What Have We Learned? Trans. 55th N.A. Wildl. and Nat. Res. Conf. pp 569–579.

USDA. 1998. The Conservation Reserve Program: 16th Signup. January 29, 1998 Report by the Farm Service Agency. 249 pp.

Wood, M.A. 1991. Columbian Sharp-tailed Grouse Mitigation Implementation Plan for Western Montana. Report by the Montana Dept. of Fish, Wildlife, and Parks. 24 pp.

Author: The primary author of this notice is Chris Warren of the Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206 (Telephone: 509/891–6839).

Authority: The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 13, 2000.

Thomas Dwyer,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 00–1446 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–55–p

Notices

Federal Register
Vol. 65, No. 15
Monday, January 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

The Emergency Food Assistance Program, Availability of Commodities for Fiscal Year 2000

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing food assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2000. The commodities made available under this notice shall, at the discretion of the State, be distributed to organizations for use in preparing meals, and/or for distribution to households for home consumption.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities determined to be available for donation by the Secretary of Agriculture under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of commodities typically made available under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices and fruits. Donations of surplus commodities were initiated in 1981 as part of the Department's efforts to reduce stockpiles of government-owned commodities, such as cheese, flour, butter, and cornmeal, which had been acquired under section 416. These donations responded to concern over the costs to taxpayers of storing large quantities of foods, while at the same time there were persons in need of food assistance. The authority to donate surplus commodities for distribution through TEFAP is currently codified in Section 202 of the Emergency Food Assistance Act of 1983, 7 U.S.C. 7502 (EFAA).

The supply of surplus commodities has been drastically reduced from the levels available in the early 1980s. These reductions are the result of changes in the agricultural commodity loan programs which have brought supply and demand into better balance, and accelerated donations and sales. However, this trend reversed itself beginning in FY 1997. In FY 1999, the Department purchased over $106.4 million worth of surplus commodities. The large surpluses were the result of the reduction in foreign sales due primarily to the Asian economic downturn. The following surplus commodities were purchased for donation in FY 1999 but will be delivered in the first quarter of FY 2000, because they did not become available for purchase until late in the year: frozen bison and instant nonfat dried milk. In addition to delivering these products for distribution in FY 2000, the Department anticipates that there will be sufficient quantities of nonfat dry milk available for donation under section 416, and salmon, pork, walnut pieces, trailmix, and canned chicken purchased under section 32, to support the donation of these commodities for distribution through TEFAP in FY 2000. The Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the availability of commodities is subject to change.

Purchased Commodities

Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Pub. L. 100–435, which added sections 213 and 214 to the EFAA. Those sections require the Secretary to purchase commodities for distribution to States in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. Pursuant to section 871(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, Congress repealed the authorization of funds for food purchases under section 214 of the EFAA. In addition, section 871(g) added a new section 27 to the Food Stamp Act of 1977, 7 U.S.C. 2011 *et seq.* (FSA), under which the Secretary is required to use $100 million from the funds made available to carry out the FSA for each of FYs 1997 through 2002 to purchase a variety of nutritious and useful commodities and distribute the commodities to States for distribution through TEFAP. However, Pub. L. 106–78 (An Act making appropriations for the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2000, and for other purposes), limits the amount of funds available to purchase TEFAP commodities in FY 2000 to $98 million. A separate administrative funding appropriation of $45 million, as divided among the States, may be used, in whole or in part, at the discretion of each State, by the Department for the purchase of additional commodities for TEFAP.

For FY 2000, the Department anticipates purchasing the following commodities for distribution through TEFAP: fresh apples, peanut butter, roasted peanuts, rice, macaroni, spaghetti, egg noodles, oats, fortified cereal, bakery mix, egg mix, dehydrated potatoes, corn syrup, vegetable oil, dry bagged beans, raisins, prunes, the following canned foods: apple juice, applesauce, peaches, pears, plums, vegetarian beans, refried beans, green beans, potatoes, tomatoes, tomato sauce, vegetarian and tomato reduced-sodium soups, spaghetti sauce, tomato juice, corn, orange juice, grapefruit juice, pineapple juice, pork, tuna, beef, and chicken, as well as the following frozen foods: ground beef, whole chicken,

ground turkey, and turkey roasts. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above. State officials will be responsible for determining how to allocate the commodities each State receives among eligible organizations. States have full discretion in determining the amount of commodities that will be made available to organizations for distribution to needy households for use in home-prepared meals or for providing prepared meals to the needy at congregate feeding sites.

Dated: January 11, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–1575 Filed 1–20–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–002N]

Codex Alimentarius: 4th Session of the Codex Committee on Milk and Milk Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Agricultural Marketing Service and the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture; and the Food and Drug Administration, U.S. Department of Health and Human Services, are sponsoring a public meeting on February 15, 2000, to provide information and receive public comments on agenda items that will be discussed at the 4th Session of the Codex Committee on Milk and Milk Products, which will be held in Wellington, New Zealand, on February 28–March 3, 2000.

DATES: The public meeting is scheduled for Tuesday, February 15, 2000, from 9:00 a.m. to 12:00 noon.

ADDRESSES: The public meeting will be held in Room 0745, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW, Washington, DC 20250. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex/ccmmp4/MM00 01E.htm.* When submitting comments, send an original and two copies to the FSIS Docket Clerk and reference the Docket # *00–002N* and the appropriate document number. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Patrick J. Clerkin, telephone (202) 205–7760; Fax (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Milk and Milk Products was established to elaborate codes and standards for Milk and Milk Products. The Government of New Zealand hosts this committee and will chair the committee meeting.

Issues to be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex committees.

2. Draft Standard for Unripened Cheeses including Fresh Cheese at Step 7.

3. Review of the Proposed Draft and Draft Revised Standards: Cream; Fermented Milk Products; Dairy Spreads; Processed Cheese; Individual Cheeses; Whey Powders; and Edible Casein Products; at Step 4.

4. Heat Treatment Definitions.

5. Model Export Certificate for Milk Products.

6. Review of Proposals for New Standards for "Parmesan" and "Cheese Speciality".

Each issue listed will be fully described in documents distributed, or to be distributed, by the New Zealand Secretariat to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 19, 2000.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 00–1662 Filed 1–21–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–001N]

Codex Alimentarius Commission: Thirty-Second Session of the Codex Committee on Food Additives and Contaminants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Public meeting; request for comment.

SUMMARY: The Office of the Under Secretary for Food Safety, and the Food Safety and Inspection Service (FSIS), United States Department of Agriculture, and the Food and Drug Administration (FDA) are sponsoring a public meeting on February 4, 2000. The purpose of the meeting is to provide information and receive public comment on agenda items that will be discussed at the Thirty-second Session of the Codex Committee on Food Additives and Contaminants (CCFAC), which will be held in Beijing, China on March 20–24, 2000.

DATES: The public meeting is scheduled for Friday, February 4, 2000, from 1:30 p.m. to 3:00 p.m.

ADDRESSES: The public meeting will be held in Room 1409, FOB 8, 200 C. St. S.W., Washington, DC. Documents referenced in this notice can be reviewed at the FSIS Docket Clerk's office, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex/ccfac32/Fa00—01e.htm*. Send an original and two copies of comments to the FSIS Docket Clerk, Docket #00–001N, to the above address. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue S.W., Washington, DC 20250, Telephone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the principal international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The CCFAC establishes or endorses maximum or guideline levels for individual food additives, for contaminants (including environmental contaminants), and for naturally occurring toxicants in foodstuffs and animal feeds. In addition, the Committee prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives; recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for their determination in food; and considers and elaborates standards or codes for related subjects such as the labeling of food additives when sold as such and food irradiation. The Netherlands chairs the committee.

Issues To Be Discussed at the Public Meeting

The following lists the provisional agenda items that will be discussed during the public meeting on February 4, 2000:

1. Adoption of the Agenda.
2. Matters referred by the Codex Alimentarius Commission and other Codex Committees.
3. Summary Report of the 53rd Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA).
4. Action Required as a Result of Changes in Acceptable Daily Intake Status and other Toxicological Recommendations.
5. Discussion Paper on the Application of Risk Analysis Principles for Food Additives and Contaminants.

Food Additives

1. Endorsement and/or Revision of Maximum Levels for Food Additives in Codex Standards.
2. Consideration of the Codex General Standard for Food Additives.
3. Discussion Paper on the Use of Colours in Foods.
4. Discussion Paper on Processing Aids.
5. Proposed Draft Revision to the Codex General Standard for Irradiated Foods.
6. Specifications for the Identity and Purity of Food Additives Arising from the 53rd JECFA Meeting.
7. Proposed Amendments to the International Numbering System.

Contaminants

1. Endorsement and/or Revision of Maximum Levels for Contaminants in Codex Standards.
2. Consideration of the Codex General Standard for Contaminants and Toxins in Foods.
3. Methodology and Principles for Exposure Assessment in the Codex General Standard for Contaminants and Toxins in Foods.
4. Mycotoxins in Food and Feed:
   (a) Aflatoxin M_1 in Milk
   (b) Ochratoxin A in Cereals
   (c) Zearalenone
   (d) Patulin
   (e) Fumonisins.
5. Industrial and Environmental Contaminants in Foods:
   (a) Proposed Draft Code of Practice for Source Directed Measures to Reduce Contamination of Food with Chemicals
   (b) Lead
   (c) Cadmium
   (d) Dioxins.

General Issues

1. Proposals for Priority Evaluation of Food Additives and Contaminants by JECFA.
2. Other Business and Future Work:
   (a) Comments on Methods of Analysis for the Determination of Food Additives and Contaminants in Foods.
   (b) Comments on the Inventory of Processing Aids.
   (c) Comments on Packaging Provisions to Maintain the Stability of Iodized Salt in the Codex Standard for Food Grade Salt.

Each issue listed will be fully described in documents distributed, or to be distributed, by Commission Secretariat or by The Netherlands' Secretariat to the Meeting. Members of the public may review copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 4, 2000, public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women,

and persons with disabilities are aware of this public meeting notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 19, 2000.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 00–1663 Filed 1–21–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet for the second time in FY 2000 to discuss the relationship between agricultural production and air quality. Special emphasis will be placed on promoting a greater understanding of agriculture's impact on air quality and the role it plays in the local and national economy. The meeting is open to the public.

DATES: The meeting will convene Tuesday, February 15, 2000 at 8:30 a.m. and continue until 5:00 p.m. The meeting will resume Thursday, February 17, 2000 from 8:30 a.m. to 2:45 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service on or before February 7, 2000.

ADDRESSES: The meeting will be held at the Amerisuites, 6080 Bluebonnet Boulevard, Baton Rouge, LA 70809, telephone (225) 769–4400/Fax (225) 769–7444. Written material and requests to make oral presentations should be sent to George Bluhm, University of California, Land, Air, and Water Resources, 151 Hoagland Hall, Davis, CA 95616–6827.

FOR FURTHER INFORMATION: Questions or comments should be directed to George Bluhm, Designated Federal Official, telephone (530) 752–1018, fax (530) 752–1552, email bluhm@crocker.ucdavis.edu.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the November 9 and 10, 1999 meeting that may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.

Draft Agenda of the February 15 And 17, 1999 Meeting

A. Welcome to Louisiana by State and local officials
B. Business, Pearlie Reed, Chief, NRCS and Chairperson, AAQTF
1. Approve minutes of the November 9 and 10, 1999 AAQTF meeting
2. Update on Agricultural Burning Policy recommendation
3. Update on Voluntary Program recommendation
C. GIS as an Emission Factor Tool, LDEQ Staff
D. Subcommittee Reports, Pearlie Reed, Chief, NRCS and Chairperson, AAQTF
1. Confined animals and emission factors subcommittee report, John Sweeten, Chairperson
2. Research priorities and oversight subcommittee report, James Trotter, Chairperson
3. Monitoring and health effects subcommittee report, Phillip Wakelyn, Chairperson
E. EPA Update, Sally Shaver, EPA
F. Set date and location for next meetings

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the February 15 and 17, 2000 meeting. Persons wishing to make oral presentations should notify George Bluhm no later than February 7, 2000. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to George Bluhm no later than February 7, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact George Bluhm as soon as possible.

Dated: January 11, 2000.

Lawrence E. Clark,

Deputy Chief for Science and Technology, Natural Resources Conservation Service.

[FR Doc. 00–1632 Filed 1–21–00; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on February 9, 2000, at the North Carolina A&T State University, Hodgin Hall, Room 106, Greensboro, North Carolina 27411. The purpose of the meeting is to finalize a project proposal and to review civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 11, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–1600 Filed 1–21–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Reduction in the Size of Antidumping/Countervailing Duty Federal Register Notices

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Reduction in the Size of **Federal Register** Notices.

SUMMARY: On August 21, 1998, the Department of Commerce published a notice of intent to modify the manner in which its final determinations are made available to the public in an effort to reduce publishing costs. See 63 FR 44837. We proposed to publish a notice in the **Federal Register** (FR) announcing our final determinations in investigations and reviews and to make a decision memorandum available simultaneously on Import Administration's web page in which we would summarize comments and present our position on the issues.

Based on our budget constraints and the widespread access to the Internet, we are proceeding with reducing the size of our FR notices and ensuring access to decision memoranda on our web page. Based on our analysis of the comments received in response to our August 21, 1998, proposal we have alerted traditional services such as Lexis and Westlaw to our plans and they have indicated that they will make the decision memoranda available to their clients in an electronically searchable format.

EFFECTIVE DATE: February 15, 2000.

FOR FURTHER INFORMATION: Please contact Laura Merchant or Laurie Parkhill, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230, at (202) 482–0367 and (202) 482–4733, respectively.

The Applicable Statute: Under section 771(i) of the Tariff Act of 1930, as amended, the Department is required to make public the facts and conclusions of its determinations.

Background: On August 21, 1998, the Department of Commerce (the Department) published a notice of intent to modify the manner in which its final determinations are made available to the public in efforts to reduce publishing costs. We invited parties to comment on our proposal. The Department has evaluated the proposed changes and the comments regarding those changes and has decided to implement the proposal.

As described in the August 1998 proposal, final determinations will be divided into two sections: (1) the notice to be published in the FR; and (2) an "Issues and Decision Memorandum" to be posted simultaneously on the Import Administration web page. In addition, traditional services such as Lexis and Westlaw have indicated that they will make the decision memoranda available to their clients in an electronically searchable format. Access to paper copies of these documents will continue to be available through the IA Central Records Unit, room B–099 of the main Department building.

The published notice will contain information relating to the Department's decisions, including margins, Department contacts, deadlines, cash-deposit requirements, and, for administrative reviews, the duty-assessment methodology. The notice will state explicitly that the public can find a paper copy of the discussion of the issues and relevant memoranda on file in the IA Central Records Unit and will also provide the public with an Internet address that will allow public access to the electronic version of these documents.

The "Issues and Decision Memorandum" (Decision Memo) will contain the complete discussion of issues parties raise in case and rebuttal briefs, and it will be adopted and incorporated by reference into the notice we publish in the FR. It will be identical in content to the "Analysis of Comments" section in current final determinations. Specifically, the Decision Memo will be a memorandum from a Deputy Assistant Secretary with a summary of comments received and the Department's position with respect to each of those comments. The Decision Memo will be available on the IA web page simultaneously with the publication of the notice in the FR. We will follow this approach for all FR final notices regardless of the type of proceeding.

Locating Memoranda on the Internet: We will make the Decision Memo, and, as applicable, other memoranda, such as a scope memorandum, available on IA's web page. These memoranda will be located in the electronic library of IA documents. The Internet address for the final notices and Decision Memo will be: "www.ita.doc.gov/import_admin/records/frn". This address will take the user to a list of countries which contains electronic links to the FR notices and decision memoranda for each case pertaining to each country. Any special instructions parties might need to locate pertinent memoranda will be included in the FR notice. This index with links to relevant documents for each order will appear in the following sample format of the IA home page. The numbered items represent links to the corresponding documents.

[A-XXX–XXX]

Product
1. Final Results of Antidumping Duty Administrative Review (POR)
2. Decision Memorandum (Published 00/00/200X)

Examples of the FR document, Issues in Decision Memo, and Decision Memo are located in Appendices 1, 2, and 3 at the end of this notice.

Analysis of Comments Received

Comment 1: All commenters urged the Department not to change its present policy of publication. They argue that the proposed change will make it more difficult, time-consuming, and costly to research Departmental precedents and policy because the IA web site does not contain adequate text-searching tools which are available on other services including the Government Printing Office (GPO) web site. They conclude that to "publish" a Decision Memo only on IA's web site would effectively deny meaningful access to the Department's decisions through the GPO site and other commercial research services. This change, they contend, will reduce the Department's current level of transparency to all parties. At a minimum, commenters urge IA to either include a robust text-searching tool on its web site and/or arrange for traditional research services such as Lexis and Westlaw to include the Department's complete decisions in their services.

We have consulted with the traditional commercial services such as Westlaw and Lexis about our proposed changes. They have indicated that they will make IA's decision memoranda available through their services just as they make the FR Notices available to their customers. Access to IA's decision memoranda and related documents through traditional commercial services should mitigate these concerns. With this search capability and the wide availability of internet access, we believe that our decisions and policy will be more publicly available than is presently the case.

Comment 2: We received one comment arguing that we are required by statute to publish the full facts and our conclusions in the FR.

We disagree. The Department is required by section 771(i) of the Tariff Act of 1930, as amended, to make public its decisions and the basis of those decisions. Nowhere does the statute

require the Department to publish its decision in a specific publication.

The Department will continue to publish notices of final determinations containing all fundamental information relating to the Department's decisions. In addition, the Department will provide access to the electronic version of these documents through both the IA web site and through traditional commercial services. Paper copies will remain available through the IA Central Records Unit.

Comment 3: Several commenters argued that the proposed change will affect the quality of advocacy and quality of Department decision-making adversely because the Department will no longer be able to research electronically the entire set of its prior decisions.

We disagree. Changing the location of publicly available documents should have little impact on the quality of advocacy or our decision-making abilities. The Department's decision memoranda and related documents will continue to be available and accessible to the public through the IA web site, the Central Records Unit, and the traditional electronic research services.

Comment 4: Several commenters contend that our proposed change could result in increased costs, including the cost of maintaining the new information on the IA web page. One commenter anticipated that the costs of maintaining the information on our web site will rise beyond savings we anticipate. Another argued that, if the Department's proposed changes were to cause a delay in the resolution of any Antidumping or Countervailing proceedings, the additional amount of interest payable for estimated duties incurred during the delay could exceed the savings in publication costs.

We disagree. The information currently available in our FR notices will remain available to the public through other means, as well as continued access through Lexis and Westlaw, thereby providing the ability to research precedents and avoiding delay in access to the information. While the Department acknowledges additional effort may be involved in locating and tracing documents during the initial stages of transition to this new format, the technology and resources available should not increase time spent on researching Department decisions, policies, and precedents substantially. Any increased cost of conducting proceedings would not arise from changing the location of publicly available documents.

We do not anticipate significantly increased maintenance costs. Moreover, we expect significant increased net savings resulting from lower publishing costs. Additional server space on the IA web site as well as time compiling the documents onto the web page and making electronic copies available to the public and any commercial services cost far less than continuing to publish lengthy documents in the **Federal Register**.

Comment 5: We received several comments expressing a general fear of loss of access to IA decisions due to the unreliability of the Internet. Other commenters suggested that the availability of memoranda through the CRU is not an adequate substitute for access through the Internet. One commenter stressed the importance of continued availability of Department decisions in the CRU. Several comments noted that, unlike the IA web site, the GPO web site maintains searchable back issues of the FR from June 1980, from which the public may access and search Department decisions.

We understand this concern and will strive whenever possible to create alternative access locations for all publicly available documents using the CRU and traditional commercial Internet services. The Department will continue to maintain its files of all publicly available information in the CRU.

Contrary to what commenters contend, we believe that the historical information will be more publicly available than is presently the case. Lexis and Westlaw have indicated that they will include both the Department's FR notice and the accompanying Decision Memo in their databases which include information dating from 1980. Our Decision Memo and FR Notices will also be posted on the IA web site in addition to all of our FR notices published since 1995. In addition, all past and future FR Notices will remain on the GPO site.

Comment 6: Many commenters pointed out that the IA web site does not have a full-text searching capability like the Lexis and Westlaw sites. They contend that, without such a searching tool, the availability of decision memoranda on the IA web site cannot substitute for these current services.

As noted in response to Comment 1, the Department recognizes these concerns and has discussed solutions with Westlaw and Lexis to carry both the FR notice and the decision memoranda. In addition, the Department affirms its commitment to maintain an effective and user-friendly web site available to any party that does not have access to these commercial services. In addition to any searching capabilities that we can incorporate into our web site, we will also post our FR notices and decision memoranda using meaningful indexes and links.

Comment 7: Of great concern to all commenters is the lack of an effective search mechanism on IA's web site. We received comments suggesting that we include a search engine on our web site that is similar to the ones currently available through the leading commercial legal on-line services and the GPO web site. Three commenters suggested that, in addition to decision memoranda being posted on the Internet, prior decisions, disclosed orders, and interpretations of applicability in prior cases also be available through the web site, including all documents relevant to a particular case, a full history of agency analysis and actions, remand results, liquidation instructions, assessment rates in graphical format, and internal memoranda associated with each order.

If possible, we will incorporate a robust search engine on the IA web site as a substitute to what is currently available on the GPO web site. While including all relevant documents in a particular case, such as remand results, liquidation instructions, and assessment rates might be a valuable research tool in some cases, we are not prepared to make such a commitment at this time. The IA web site is an extremely useful and important information dissemination tool and we strive to post as many public documents as feasible in a useful fashion.

Comment 8: Several commenters proposed various indexing schemes to better identify and group documents on the IA web site for easy identification.

We are sympathetic to the need to identify notices and decision memoranda quickly and effectively on the IA web site. We view our web site to be an integral part of our information-dissemination efforts and will arrange the information in a way that is both useful and easy to locate.

Comment 9: We received one comment suggesting that, in lieu of our proposed changes to reduce the size of our final notices in the FR, subscription prices for the FR should be increased instead.

It is not in the Department's power to increase subscription prices to the FR, which is maintained by a separate federal agency, nor does the Department receive proceeds from such subscriptions. Therefore, this point is irrelevant.

Comment 10: We received two comments expressing concern over the simultaneous timing of the release of the Decision Memo on the Internet and

publication of the notice in the FR. These commenters feared simultaneous publication would not always run smoothly. One commenter suggested that publication of the notice alone should not be construed as satisfying our statutory obligation and that only when both documents are publicly available should our statutory obligation to publish our decisions be fulfilled. In addition, the commenter stressed the need to assign the exact same validity and importance of the on-line documents as documents which are currently published in the FR.

The Department has established procedures to ensure simultaneous release of documents on the Internet and in the FR. The Department will not consider its obligations fulfilled until both documents are available publicly.

Comment 11: We received one comment expressing concern that interested parties may not continue to receive an advance copy of the notice for publication in the FR and the Decision Memo or that the Department may publish the FR Notice but not release the Decision Memo to the parties on the same day.

The Department will continue to provide paper copies of the final notice and the Decision Memo to interested parties in advance of the date of publication of the FR notice under this new system.

Implementation

The procedures outlined in this notice will be applied to all final determinations which are subject to a publication requirement and issued after February 15, 2000, the effective date of this notice. If necessary, additional information on procedures to follow for locating our decisions on the internet will be posted on the IA web site at www.ita.doc.gov/import__admin/records/. Any questions concerning file formatting, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202)482–0866 or via e-mail at andrew__lee__beller@ita.doc.gov.

Dated: January 13, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix 1—Sample FR Document

This will be published in the FR. (Please note that this sample reflects final results of an administrative review. All IA final determinations will be subject to this modified format.)

DEPARTMENT OF COMMERCE

International Trade Administration

[Case Number]

(Product) from (Country); Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On (date), the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on (product) from (country). The merchandise covered by this order is (brief description). The review covers (number) manufacturers/exporters. The period of review is (date) through (date).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: (Insert date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: (Analyst), Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–XXXX.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On (date), the Department published the preliminary results of administrative review of the antidumping duty order on (product) from (country) (FR citation). The review covers (number) manufacturers/exporters. The period of review (POR) is (date) through (date). We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held a public hearing on (date). The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is (product) and (description). (Standard scope language will appear here unless, for reasons of length, the complete scope description is in a separate memorandum. Such a memorandum will also be available on the IA web site.)

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from (name), Deputy Assistant Secretary, Import Administration, to (name), Assistant Secretary for Import Administration, dated (date), which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading "(Applicable Country)." The paper copy and electronic version of the Decision Memo are identical in content.

Use of Facts Available (if Necessary)

For a discussion of our application of facts available, see the "Facts Available" section of the Decision Memo, which is on file in B–099 and available on the Web at www.ita.doc.gov/ import__admin/records/frn/, under the heading "(Applicable Country)."

Sales Below Cost in the Home Market (Where Applicable)

The Department disregarded home market sales below cost for (names of firms) in these final results of review.

Duty Absorption (Where Applicable)

We have determined that duty absorption has/has not occurred with respect to (name of firm) with respect to (XX) percent of sales which this firm made through its U.S. affiliated party. For a discussion of our determination with respect to this matter, see the "Duty Absorption" section of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading "(Applicable Country)."

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading "(Applicable Country)."

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period (date) through (date):

Manufacturer/exporter	Margin (Percent)
(Company Name)	XX.XX
(Company Name)	XX.XX

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of (product) from (country) entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis,* the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be (rate). This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

(Name)

Assistant Secretary for Import Administration

(Date)

Appendix 2—Issues in Decision Memo (Sample)

Comments and Responses

1. Facts Available
2. Discounts, Rebates, and Price Adjustments
3. Circumstance-of-Sale Adjustments
   A. Technical Services and Warranty Expenses
   B. Credit
   C. Indirect Selling Expenses
4. Level of Trade
5. Cost of Production and Constructed Value
   A. Cost-Test Methodology
   B. Research and Development
   C. Profit for Constructed Value
   D. Affiliated-Party Inputs
   E. Abnormally High Profits
   F. Credit and Inventory Costs
   G. Other Issues
6. Further Manufacturing
7. Packing and Movement Expenses
8. Affiliated Parties
9. Sample Sales and Prototypes/Zero-Price Transactions
10. Export Price and Constructed Export Price
11. Programming and Clerical Errors
12. Duty Absorption
13. Reimbursement
14. Tooling Revenue
15. Cash Deposit Financing
16. Miscellaneous Issues
    A. Ocean and Air Freight
    B. Burden of Proof
    C. HTS
    D. Certification of Conformance of Past Practice
    E. Pre-Existing Inventory
    F. Inland Freight
    G. Other Issues

Appendix 3—Sample Decision Memo

This will be available on IA's Web page.
(Case Number)
AR X/XX–X/XX
Public Document
MEMORANDUM TO: (Name)
Assistant Secretary for Import Administration
FROM: (Name)
Deputy Assistant Secretary for Import Administration
SUBJECT: Issues and Decision Memorandum for the Administrative Review of (product) from (country)—(date) through (date)

Summary

We have analyzed the comments and rebuttals of interested parties in the (date) administrative review of the antidumping duty order covering (product) from (country). As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttals by parties:

1. Facts Available
2. Discounts, Rebates, and Price Adjustments
3. Circumstance-of-Sale Adjustments
   A. Technical Services and Warranty Expenses
   B. Credit
   C. Indirect Selling Expenses
4. Level of Trade
5. Cost of Production and Constructed Value
   A. Cost-Test Methodology
   B. Research and Development
   C. Profit for Constructed Value
   D. Affiliated-Party Inputs
   E. Abnormally High Profits
   F. Credit and Inventory Costs
   G. Other Issues
6. Further Manufacturing
7. Packing and Movement Expenses
8. Affiliated Parties
9. Sample Sales and Prototypes/Zero-Price Transactions
10. Export Price and Constructed Export Price
11. Programming and Clerical Errors
12. Duty Absorption
13. Reimbursement
14. Tooling Revenue
15. Cash Deposit Financing
16. Miscellaneous Issues
    A. Ocean and Air Freight
    B. Burden of Proof
    C. HTS
    D. Certification of Conformance to Past Practice
    E. Pre-Existing Inventory
    F. Inland Freight
    G. Other Issues

Background

On (date), the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on (product) from (country). The merchandise covered by this order is (brief description). The period of review (POR) is (date) through (date). We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held a public hearing on (date).

Discussion of the Issues

1. Facts Available
   Comment 1:
   Department's Position:
2. *Discounts, Rebates, and Price Adjustments*
   Comment 1:
   Department's Position:
3. *Circumstance-of-Sale Adjustments*
Comment 1:
   Department's Position:

* * * * *

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the **Federal Register**.

AGREE__
DISAGREE__

(Name)
Assistant Secretary for Import Administration

(Date)

[FR Doc. 00–1654 Filed 1–21–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803, A–570–803]

Preliminary Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges from the People's Republic of China.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on bars and wedges and on hammers and sledges from the People's Republic of China ("PRC") (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department determined to conduct full reviews. As a result of these reviews, the Department preliminarily finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Reviews section of this notice.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

These reviews are being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Although we provide the full scope language for the order on heavy forged hand tools ("HFHTs") below, this determination applies only to the types of HFHTs which fall under the orders (A–570–803) on bars/wedges and hammers/sledges from the PRC. HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wool splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule ("HTS") item numbers 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kilograms (3.33 pounds) in weight and under, and hoes and rakes, and bars 18 inches in length and under. The HTS item numbers are provided for convenience and customs purposes only. The written description of the scope remains dispositive.

There has been one scope ruling with respect to the orders on HFHTs from the PRC in which the Forrest Tool Company's Max Multipurpose Tool was determined to be within the scope of the order (58 FR 59991; November 12, 1993).

These reviews cover imports from all manufacturers and exporters of bars and wedges and hammers and sledges from the PRC.

History of the Orders

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of HFHTs from the PRC on January 3, 1991 (56 FR 241). In this determination, the Department published four country-wide weighted-average dumping margins, one each for hammers/sledges, bars/wedges, picks/mattocks and axes/adzes. These margins were all subsequently affirmed when the Department issued the antidumping duty orders on HFHTs from the PRC on February 19, 1991 (56 FR 6622). Since the imposition of the orders, the Department has conducted several administrative reviews.[1] The orders remain in effect for all manufacturers and exporters of the subject merchandise from the PRC.

To date, the Department has not issued any duty absorption findings in these cases.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on bars and wedges and on hammers and sledges

[1] *See Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 60 FR 49251 (September 22, 1995); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61FR 15028 (April 4, 1996); as amended, *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review* 61 FR 24285 (May 14, 1996); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 51269 (October 1, 1996); as amended, *Heavy Forged Hand Tools from the People's Republic of China; Notice of Amendment of Final Results of Antidumping Duty Administrative Review*, 62 FR 24416 (May 5, 1997); *Heavy Forged Hand Tools from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 11813 (March 13, 1997); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 16758 (April 6, 1998); as amended, *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand from the Court of International Trade: Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China*, 63 FR 55577 (October 16, 1998) and *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand from the Court of International Trade: Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China: Correction*, 64 FR 851 (January 6, 1999); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999).

from the PRC (64 FR 35588), pursuant to section 751(c) of the Act. For both of the reviews, the Department received notices of intent to participate on behalf of O. Ames Co. and its division, Woodings-Verona (collectively, "domestic interested parties") on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested party status as domestic manufacturers of the subject merchandise. The Department received complete substantive responses from the domestic interested parties on August 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In addition, we received substantive responses on behalf of Fujian Machinery and Equipment Import and Export Corp., Shandong Huarong General Group Corp., Shandong Machinery Import and Export Corp., and Tianjin Machinery Import and Export Corp. (collectively, "respondents"). The respondents claimed interested party status under section 771(9)(A) of the Act as exporters of the subject merchandise. The Department determined that the respondent's response constituted an adequate response to the notice of initiation. As a result, the Department determined, in accordance with section 351.218(e)(2) of the *Sunset Regulations*, to conduct a full (240 day) review.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 26, 1999, the Department determined that the sunset reviews of the antidumping duty order on HFHTs are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 18, 2000, in accordance with section 751(c)(5)(B) of the Act. [2]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, domestic interested parties' and respondents' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In their substantive responses, the domestic interested parties argue that revocation of the orders would likely lead to continuation or recurrence of dumping. They base their conclusion on the combined facts that dumping has continued over the life of the orders at levels well above *de minimis* and that import volumes declined significantly after the issuance of the orders. The domestic interested parties maintain that imports of hammers/sledges from the PRC declined dramatically since the imposition of the order. They argue that Chinese exporters shipped approximately 8,735 units of striking tools (*e.g.*, hammers and sledges) in 1990, and this number fell to approximately 3,810 units in 1997 and 3,835 units in 1998. Moreover, the domestic interested parties argue that since the imposition of the order, import volumes of bars/wedges have declined from approximately 2,429 tons in 1989 to 2,233 tons in 1997. Therefore, they conclude that it is reasonable to assume that the PRC exporters could not sell in the United States without dumping, and in order to reenter to U.S. market, they would have to resume dumping (*see* August 2, 1999, substantive response of the domestic interested parties at 3–4).

The respondents argue that if the order were revoked, shipments would likely continue at average levels as seen in 1996 through 1998. They maintain that there is greater competition from other supplying countries and that demand in the U.S. is fairly inelastic, indicating that even with lower prices (without dumping duties), demand for imports of the subject merchandise from the PRC is not likely to change much (*see* July 30, 1999, substantive response of the respondents at 2).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As pointed out above, dumping margins above *de minimis* continue to exist for shipments of the subject merchandise from the PRC for at least one producer/exporter.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As mentioned above, the domestic interested parties maintain that imports of bars/wedges and hammers/sledges from the PRC declined significantly following the imposition of the order.

Using the Department's statistics, including IM146 reports, on imports of the subject merchandise from the PRC, the Department concludes that imports of bars/wedges and hammers/sledges from the PRC have fluctuated over the life of the order, showing no overall trend.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above *de minimis* levels is highly probative of the

[2] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 57628 (October 26, 1999).

likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level continues in effect for exports of the subject merchandise by at least one Chinese manufacturer/exporter. Therefore, given that dumping has continued over the life of the order, the Department preliminarily determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) We note that, to date, the Department has not issued any duty absorption findings in either of these cases.

In their substantive responses, the domestic interested parties recommend that the Department deviate from its normal practice of forwarding margins from the original investigation and instead recommend using margins from more recent administrative reviews. In the case of bars/wedges, the domestic interested parties recommend forwarding to the Commission a margin of 36.76 percent for Fujian Machinery & Equipment Import & Export Corp. and 38.30 percent for Shandong Machinery Import & Export Corp., as calculated in the second administrative review; 31.76 percent for Tianjin Machinery Import & Export Corp. and Liaoning Machinery Import & Export Corp., as calculated in the original investigation; and 34 percent for Shandong Huarong General Group Corp., as calculated in the sixth administrative review. The domestic interested parties argue that since the imposition of the order, the dumping margins have increased for three companies as well as for the PRC as a whole. They argue further that because import volumes of bars/wedges have declined since the imposition of the order, the Department should use a more recently calculated rate for several PRC companies.

For hammers/sledges, the domestic interested parties recommend forwarding to the Commission the margin of 45.42 percent calculated in the original investigation.

The respondents argue that the dumping margin likely to prevail if the order were revoked would be zero, but no higher than the average margin for the latest reviews. They base this argument on the fact that recent reviews conducted by the Department confirm that different surrogate steel values than were used in the original investigation significantly reduce the dumping margin (*see* July 30, 1999, substantive response of respondents at 3).

As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department may provide to the Commission a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order where that particular company increased dumping to maintain or increase market share. In this case, the domestic interested parties did not provide any company-specific argument or evidence that any Chinese companies have increased dumping in order to gain or maintain market share or increase import volumes. Moreover, while it is true that the dumping margins have increased for some Chinese companies, we have no company-specific information demonstrating that imports of the subject merchandise have not increased substantially over the life of the order. Since we have no company-specific information correlating an increase in exports for one company with an increase in the dumping margin for that particular company, we cannot conclude that use of more recently calculated margins is warranted in this case.

Additionally, the Department disagrees with the respondents' argument that a dumping margin of zero percent is likely to prevail were the order to be revoked. Specifically, as noted in the *Sunset Policy Bulletin*, the Department will consider forwarding to the Commission more recently calculated margins where dumping margins have declined over the life of the order and imports have remained steady or increased or where a company increases dumping in order to maintain or increase market share. The respondent's argument concerning changes in methodology (*e.g.*, different surrogate steel values) does not fit either criteria. Therefore, consistent with the *Sunset Policy Bulletin*, the Department preliminarily finds that the margins calculated in the original investigation are probative of the behavior of Chinese producers/exporters if the order were to be revoked as they are the only margins which reflect their behavior absent the discipline of the order. As such, the Department will report to the Commission the PRC-wide rates from the original investigation as contained in the Preliminary Results of Reviews section of this notice.

Preliminary Results of Reviews

As a result of these reviews, the Department preliminarily finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

PRC-wide	Margin (percent)
Bars/Wedges	31.76
Hammers/Sledges	45.42

Any interested party may request a hearing within 30 days of publication of this notice in accordance with19 CFR 351.310(c). Any hearing, if requested, will be held on March 15, 2000. Interested parties may submit case briefs no later than March 7, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than March 13, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than June 26, 2000.

These five-year ("sunset") reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1660 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–820]

Final Results of Five-Year ("Sunset") Review and Revocation of Antidumping Duty Order: Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On November 2, 1999, the Department of Commerce ("the

Department") initiated a sunset review of the antidumping duty order on certain compact ductile iron waterworks fittings and glands ("CDIW") from the People's Republic of China ("PRC"). Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, the Department issued the antidumping duty order on CDIW from the PRC (58 FR 47117). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated a sunset review of this order by publishing notice of the initiation in the **Federal Register**, November 2, 1999 (64 FR 59160). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review on this order.

No domestic interested party in the sunset review on this order responded to the notice of initiation by the November 17, 1999 deadline (*see* § 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(*3*) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order. Because no domestic interested party responded to the notice of initiation by the applicable deadline, November 17, 1999, we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: January 14, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1658 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Final Results of Full Sunset Review: Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Industrial Phosphoric Acid from Belgium.

SUMMARY: On September 23, 1999, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on industrial phosphoric acid from Belgium (64 FR 51511) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from the domestic interested parties. The Department did not receive a request for a public hearing, and, therefore, no hearing was held. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is industrial phosphoric acid ("IPA") from Belgium. IPA is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Background

On September 23, 1999, the Department issued its *Preliminary Results of Full Sunset Review: Industrial Phosphoric Acid from Belgium* (64 FR 51511) ("*Preliminary Results*"). In our *Preliminary Results*, we found that revocation of the order would likely result in continuation or recurrence of dumping. In addition, we preliminarily determined that the magnitude of the margin of dumping likely to prevail were the order revoked was 14.67 percent for Societe Chimique Prayon-Rupel, S.A. ("Prayon") as well as for "all other" producers and/or exporters.

On November 8, 1999, within the deadline specified in 19 CFR 351.309(c)(1)(i), we received comments on behalf of Albright and Wilson Americas, Inc., FMC Corporation, and Solutia Inc. (collectively, the "domestic interested parties"). We have addressed the comments received below.

Comments

Comment 1: The domestic interested parties maintain that the Department

correctly found that dumping would likely continue or recur if the antidumping duty order were revoked. The domestic interested parties base their conclusion on the fact that dumping has continued over the life of the order as well as the fact that import volumes have declined significantly over the life of the order. In addition, the domestic interested parties argue that the Department correctly rejected Prayon's argument that future exchange rates would eliminate Prayon's dumping margin.

Department: The Department agrees with the domestic interested parties. For reasons provided in greater detail in our *Preliminary Results*, we find that dumping has continued over the life of the order and is likely to continue if the order were revoked.

Comment 2: The domestic interested parties argue that the Department correctly chose the margin of dumping found in the original less than fair value ("LTFV") determination as the margin to report to the International Trade Commission ("the Commission"). The domestic interested parties maintain that the Department was correct in selecting the margins from the original investigation to forward to the Commission because these margins are the only calculated rates which reflect the behavior of producers/exporters without the discipline of the order in place.

Department: The Department agrees with the domestic interested parties. Again, for reasons provided in detail in our *Preliminary Results*, we find that the margins likely to prevail were the order revoked would be 14.67 percent for Prayon and 14.67 percent for "all others".

Final Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Prayon	14.67
All Others	14.67

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1659 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review of stainless steel bar from India.

SUMMARY: On August 25, 1999, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

This review covers three producers/exporters of stainless steel bar to the United States during the period February 1, 1998, through July 31, 1998.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: James Breeden or Melani Miller, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1174 or 482–0116, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1999, the Department published the preliminary results of the new shipper review of the antidumping duty order on stainless steel bar from India (64 FR 46350) ("*Preliminary Results*"). The manufacturers/exporters in this new shipper review are Jyoti Steel Industries ("Jyoti"), Parekh Bright Bars Pvt. Ltd. ("Parekh"), and Shah Alloys Ltd. ("Shah"). We verified information provided by Jyoti as discussed in the *Verification* section, below. We received a case brief from the petitioners [1] on December 22, 1999. We received rebuttal briefs from Jyoti and Shah on January 7, 2000.

Scope of the Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this review is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for

[1] Al Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Crucible Materials Corp., Electroalloy Corp., Republic Engineered Steels, Slater Steels Corp., Talley Metals Technology, Inc. and the United Steelworkers of America (AFL–CIO/CLC).

convenience and customs purposes, our written description of the scope of this review is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by Jyoti using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant cost data and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public and business proprietary versions of the verification report, dated December 13, 1999.

Comparisons

We calculated export price and normal value based on the same methodology used in the *Preliminary Results*, with the following exceptions:

With respect to Shah, we used facts available as discussed in the *Use of Facts Otherwise Available* section, below.

For Jyoti, we adjusted its direct material costs, internal taxes on direct material purchases, direct labor costs, variable overhead costs, general and administrative costs, interest expenses, and international freight expense based on information gathered at verification. *See* Memorandum to Susan H. Kuhbach: "Jyoti Steel Industries Verification Report" dated December 13, 1999 ("Verification Report") and "Company-specific Calculation Notes for Final Results: Jyoti Steel Industries" dated January 15, 2000.

Use of Facts Otherwise Available

Section 776(a)(2)(A) of the Act provides for the use of facts available when an interested party withholds information that has been requested by the Department. As described in more detail below, Shah failed to provide information explicitly requested by the Department; therefore, we have used facts otherwise available in determining Shah's dumping margin.

However, pursuant to section 782(e) of the Act, in using the facts otherwise available we must determine whether information Shah already submitted for the record of this review may be used in calculating a dumping margin. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but which does not meet all the applicable requirements established by the Department if—

(1) the information is submitted by the deadline established for its submission;

(2) the information can be verified;

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and

(5) the information can be used without undue difficulties.

While Shah did respond to our original questionnaire and supplemental questionnaires, it refused our request to revise its constructed value ("CV") using cost data relevant to the POR, or in the alternative, explain or document why the cost data it did submit was representative of the costs incurred during the POR. Because of Shah's refusal to respond to our requests for additional information, we did not verify the company as planned. Thus, pursuant to section 782(e)(3), we found the information on the record so incomplete for the POR being examined that we determined that it could not serve as a reliable basis for calculating a dumping margin. Also, pursuant to section 782(e)(4), Shah failed to act to the best of its ability in providing the requested information. Consequently, we are not using any of the information submitted by Shah for our final results and are relying instead on facts available.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party if it determines that party has failed to cooperate to the best of its ability. On August 19, 1999, we issued a supplemental questionnaire to Shah, which instructed the company to either revise its CV database based on costs incurred during the POR or to submit supporting documentation as to why its fiscal year cost information accurately reflected the costs incurred by the company during the POR. In its supplemental questionnaire response, Shah failed to address either issue. We issued Shah another supplemental questionnaire on September 29, 1999, requesting that it submit CV data based on actual costs incurred during the POR. Shah responded in its October 16, 1999, supplemental questionnaire response that it was not revising its CV database and that it was continuing to provide CV information based on fiscal year 1998–1999 data.

We find that by not providing necessary information specifically requested by the Department, Shah failed to cooperate to the best of its ability. Therefore, in selecting facts available, we have determined that an adverse inference is warranted. As adverse facts available, we have assigned a margin of 21.02 percent to Shah's sales of the subject merchandise.

This margin, calculated for sales by Mukand Limited during the original less than fair value ("LTFV") investigation, represents the highest weighted-average margin determined for any firm during any segment of this proceeding. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see*, H.R. Doc. 103–316, Vol. 1, 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no

circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

In our *Preliminary Results*, we applied a total adverse facts available margin for Parekh. We have not changed this finding for these final results. For a detailed explanation of our reasons for applying adverse facts available, please see our *Preliminary Results* and the Department's response to Comment 1 below.

Interested Party Comments

In accordance with 19 CFR 351.309, we invited interested parties to comment on our *Preliminary Results*. We received written comments from the petitioners and rebuttal comments from Jyoti and Shah.

Comment 1: Use of Facts Available for Parekh and Shah

The petitioners argue that the Department should rely on facts available for Parekh and Shah for purposes of the final results because each company failed to report critical information required for the calculation of dumping margins. With respect to Parekh, the petitioners note that the company failed to respond to the Department's supplemental request for information. Therefore, the petitioners argue that the Department should continue to rely on facts available when calculating Parekh's margin, as it did in the *Preliminary Results*. With respect to Shah, the petitioners argue that the Department has no choice but to apply the facts otherwise available because the company failed to report costs of production in a manner consistent with Department requirements and provided no explanation for its failure to do so. In support of their argument, the petitioners cite to the Department's December 17, 1999, memorandum which states that Shah's failure to comply with Department requests warrants the use of adverse facts available. *See* December 17, 1999, Memorandum from Team to Richard Moreland, "Failure by Shah Alloys to Respond to Requests for Information."

Shah argues that the CV information it provided to the Department was the only cost data that it had available when it received the Department's requests. Therefore, Shah contends that it has cooperated to the best of its ability with the Department requests for information.

Department's Position

We agree with the petitioners and have applied the facts otherwise available to both Shah and Parekh for the final results. As discussed in the *Preliminary Results*, we did not have the data necessary to calculate a dumping margin for Parekh, because Parekh failed to respond to the Department's supplemental questionnaire and request for cost information, and discontinued all communication with the Department. In light of this withholding of necessary information, pursuant to section 776(a)(2)(A) of the Act, we found it necessary to apply the facts available. Furthermore, not only did Parekh fail to provide necessary information specifically requested by the Department and to discontinue its participation in this review, Parekh provided the Department with no explanation or reasons for its failure to participate. Based on these facts, pursuant to section 776(b) of the Act, we determined that Parekh failed to cooperate to the best of its ability; therefore, we used an adverse inference when selecting among the facts otherwise available.

Moreover, we corroborated the facts available rate applied to Parekh as explained in the *Preliminary Results*. We have received no information that would call into question our corroboration of that rate and, therefore, continue to use it for our final results.

As noted above in the *Facts Otherwise Available* section, Shah did not submit information requested by the Department and failed to cooperate by not acting to the best of its ability to comply with a request for information. As was stated in the Department's December 17, 1999, memorandum, although Shah did submit cost information, that information was based on a time period that included eight months that were not included in the POR. We gave Shah numerous opportunities to explain why this data was representative of the costs incurred during the POR or to revise its data, opportunities that were declined by Shah. At the time the Department requested the cost information, Shah offered no explanation as to why it chose not to take advantage of the opportunities provided by the Department. It is only now, in its rebuttal brief, that Shah informs the Department that the cost data it had provided was the only cost data that it had available when it received the Department's requests. However, we find that this explanation is belated.

Section 776(a)(2)(A) of the Act provides for the use of facts available when an interested party withholds information that has been requested by the Department. As explained in the *Facts Otherwise Available* section above and in our *Preliminary Results*, because we found that both Shah and Parekh withheld critical information that was requested by the Department, the use of facts otherwise available is appropriate.

Furthermore, as is also noted above, in accordance with section 776(b) of the Act, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Because we found that neither Shah nor Parekh cooperated to the best of its ability, the use of an adverse inference is also appropriate for the final results for both Shah and Parekh.

Comment 2: The Department Should Apply Facts Available to Jyoti

The petitioners argue that Jyoti has significantly impeded the proceeding by failing to report its sales to third country markets and, therefore, the Department should rely on facts available for Jyoti. Moreover, contrary to Jyoti's explanation at verification that it misunderstood the Department's reporting instructions, the petitioners allege that record evidence indicates Jyoti clearly understood the Department's instructions. Given that Jyoti has intentionally withheld information requested, the Department should disregard the constructed value information submitted by Jyoti as the basis for the calculation of normal value and assign an adverse facts available rate to Jyoti for the final results. In support of their argument, the petitioners cite *Stainless Steel Sheet and Strip in Coils From Taiwan, Notice of Final Determination of Sales at Less than Fair Value*, 64 FR 30592 (June 8, 1999) ("*Sheet and Strip from Taiwan*"), in which the Department applied adverse facts available to a respondent company that failed to report all of its home market sales.

Jyoti argues that it reported the sales that are identical to its U.S. sales. The company states that the merchandise it sold to third country markets is different in physical and chemical properties. Thus, according to Jyoti, those sales should not have been reported.

Department's Position

As discussed in the *Preliminary Results*, Jyoti reported that it had a viable home market and no third-country market sales of the foreign like product. We agreed with Jyoti that it had a viable home market, but preliminarily determined that a "particular market situation" existed making it inappropriate to use home

market sales as a basis for normal value. Therefore, based upon our understanding at the time that Jyoti had no third country sales, we requested and received CV information from Jyoti and used it as the basis for normal value for the preliminary results. At verification, we discovered that Jyoti did make third-country sales of the foreign like product during the POR. However, as discussed in the verification report, we believe that the misreporting was based on a misunderstanding and that information was not intentionally withheld from the Department. *See* page 3 of the *Verification Report.*

We do not agree that applying adverse facts available is appropriate in this situation. Unlike the situation in *Sheet and Strip from Taiwan*, in this instance we find that Jyoti has had difficulty understanding our reporting instructions. This situation is complicated by the fact that it is the first time the company is involved with an antidumping proceeding. Jyoti's misunderstanding was substantiated at verification when company officials expressed their confusion regarding the reporting of third-country sales. Jyoti's rebuttal comments also illustrate its continued misunderstanding. While we have not found that Jyoti fully complied with this request for information, we have not found that this error in reporting demonstrates Jyoti's failure to cooperate to the best of its ability. Rather, Jyoti's subsequent responses to our supplemental questions and its cooperation at verification are indicative of a cooperative respondent. In addition, the CV information was verified by the Department and can be used without difficulties. Moreover, the information is complete and can serve as a reliable basis for calculating an antidumping duty margin.

Comment 3: Jyoti's CV Reporting Methodology

The petitioners contend that the information obtained by the Department at verification demonstrates that Jyoti's reporting methodology is flawed. Specifically, the petitioners argue that Jyoti's use of a single, average cost for all of its products fails to measure accurately the direct labor and overhead expenses allocable to the different bar sizes produced by Jyoti. The petitioners contend that Jyoti's failure to revise its allocation methodology, despite the requests made by the Department, warrants the use of facts available.

Jyoti contends that the size and simplicity of its operations does not necessitate allocating labor and overhead costs differently across the various bar sizes it produces. Jyoti further argues that any deviations from the single, average cost it reported are marginal and do not have an impact on the calculation of CV.

Department's Position

Although we found at verification that the allocation methodology used in Jyoti's questionnaire response contained certain errors, we agree with Jyoti that none of these errors was so significant as to warrant the rejection of Jyoti's data. In general, when we deem a respondent's data to be acceptable, our practice is to correct it for errors found at verification. Accordingly, we have reallocated Jyoti's direct labor and variable overhead expenses based on the information collected at verification for purposes of the final results.

Comment 4: Jyoti's Calculation of U.S. Credit Expense Is Incorrect

The petitioners argue that Jyoti's calculation of U.S. credit expense does not take into account the correct number of days between the shipment of the merchandise and the receipt of payment from the customer. According to the petitioners, the Department should adjust this expense to reflect the correct number of days outstanding between shipment and customer payment.

Jyoti argues that it has correctly used the number of days between the issuance of the invoice and receipt of payment from its bank.

Department's Position

We disagree with the petitioners that the calculation of credit expense is incorrect. The Department's preference is to use actual credit cost information. As discussed in the *Verification Report*, Jyoti finances its exports accounts receivable by entering into a discount arrangement with its bank. *See* page 4 of the *Verification Report.* Jyoti has submitted on the official record bank documentation detailing the credit costs incurred in connection with its U.S. sale. This information was also reviewed at verification. Because the reported amount represents the actual credit expenses incurred by Jyoti, we have continued to use it for our final results.

Comment 5: The Department Should Reject Jyoti's Offsets to Constructed Value

The petitioners argue that the Department should not allow an adjustment to constructed value for internal taxes on raw material purchases because Jyoti failed to provide evidence of rebates from the government. The petitioners note that it is the Department's practice to allow an adjustment for tax rebates only if a respondent can demonstrate a link between claimed rebates and its cost of manufacture. *See Canned Pineapple Fruit From Thailand, Final Results and Partial Recession of Antidumping Duty Administrative Review*, 64 FR 69481, 69485 (December 13, 1999). According to the petitioners, Jyoti failed to provide such a link and, thus, the Department should not allow this cost adjustment.

Jyoti contends that there is a direct link between the sales tax rebate and the cost of manufacture. However, Jyoti argues that this tax rebate is difficult to document because reimbursement occurs through the reduction of taxes payable to the government.

Department's Position

We agree with the petitioners, in part. At verification, company officials were unable to provide supporting documentation with respect to the rebates received in connection with sales taxes paid on raw material purchases. Accordingly, we have not made an adjustment to Jyoti's CV data for these tax rebates. However, company officials were able to document the refund of excise duties paid on the raw materials used to produce subject merchandise. Therefore, we have offset Jyoti's CV data by the amount of excise duties refunded in connection with the purchase of the raw materials used in the production of the subject merchandise.

Final Results of Review

As a result of this review, we find that the following margins exist for the period February 1, 1998, through July 31, 1998:

Manufacturer/Exporter	Margin (percent)
Jyoti	0.00
Parekh	21.02
Shah	21.02

The Department will disclose to a party to the proceeding calculations performed in connection with these final results within five days after the date of announcement or, if there is no public announcement, within five days after the date of publication of this notice. *See* 19 CFR 351.224. The result of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturers/exporters subject to this review. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales

to the total value of those sales examined. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates indicated above; (2) for companies not covered in this review, but covered in previous reviews or the LTFV investigation (59 FR 66915, December 28, 1994), the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or any previous review or the original investigation, the cash deposit rate will be the "all others" rate of 12.45 percent established in the LTFV investigation.

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1661 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–001. Applicant: USDA, Agricultural Research Service, 800 Buchanan Street, Albany, CA 94710. Instrument: Picking and Gridding Q-Bot System. Manufacturer: Genetix Ltd., United Kingdom. Intended Use: The instrument is intended to be used in experiments that will include: isolation, characterization and DNA sequencing of genes from organisms of agronomic importance; gridding of clone collections onto filters for gene isolation and genome characterization; construction of DNA microarrays; rearraying clones and samples into new matrix collections; replication of clones and clone library samples.

Application accepted by Commissioner of Customs: January 6, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–1657 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Boston University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–026. Applicant: Boston University, Boston, MA 02215. Instrument: Electron Microscope, Model JEM–2010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 63788, November 22, 1999. Order Date: May 24, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–1656 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of North Carolina; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–025. Applicant: University of North Carolina, Chapel Hill, NC 27599. Instrument: Nose Only Inhalation System. Manufacturer: ADG Developments Ltd., United Kingdom.

Intended Use: See notice at 64 FR 63788, November 22, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides delivery of drug aerosols by nose-only exposure to mycobacterium infected guinea pigs to evaluate novel therapies for the treatment of tuberculosis in animal models. The National Institutes of Health advises in its memorandum of December 10, 1999 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–1655 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Wednesday, February 2, 2000, from 8:30 a.m. to 5 p.m. The Advanced Technology Program Advisory Committee is composed of seven members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a background and briefing on the ATP, a briefing from each ATP program area, and a presentation by the ATP Economic Assessment Office. Discussions scheduled to begin at 8:30 a.m. and to end at 9:30 a.m. and to begin at 3 p.m. and to end at 5 p.m. on February 2, 2000, on the ATP budget issues and staffing of positions will be closed.

DATES: The meeting will convene February 2, 2000, at 8:30 a.m. and will adjourn at 5 p.m. on February 2, 2000.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 13, 2000 that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 13, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–1647 Filed 1–21–00; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–ZA05

Chicago Mercantile Exchange: Proposed Amendments to the Lean Hogs Futures and Option Contracts Increasing the Contracts' Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has proposed amendments to the Exchange's lean hogs cattle futures and option contracts. The proposed amendments would increase to 2,400 contracts from 2,000 contracts the speculative position limit applicable to individual non-spot contract months. The proposed amendments also would increase to 950 contracts from 650 contracts the speculative position limit that is applicable to positions held on and after the close of business of the fifth business day of the expiring contract month. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on February 24, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 8, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CME lean hogs futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird @cftc.gov

SUPPLEMENTARY INFORMATION: The lean hogs futures contract is cash settled based on cash prices reported by the U.S. Department of Agriculture during the last two trading days of expiring contract month. Contract months for the

lean hog futures option contract that correspond to contract months for the underlying lean hogs futures contract expire simultaneously with such futures contract months. Currently, traders' combined positions in the futures and option contracts are subject to speculative position limits of 2000 contracts for positions held in individual non-spot contract months and 650 contracts for positions held in the expiring contract month from the close of business on the fifth business day of that month through the last trading day of the expiring contract month (the tenth business day of the month).

The proposed amendments would increase the speculative position limit applicable to individual non-spot contract months to 2,400 contracts from 2,000 contracts. The proposed amendments also would increase to 950 contracts from 650 contracts the speculative limit applicable from the close of business on the fifth business day of the expiring contract month through the last trading day for that month.

The CME intends to make the proposed amendments effective upon Commission approval for all existing and newly listed contract months.

The Commission is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 146 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 14, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–1566 Filed 1–21–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–ZA04

Chicago Mercantile Exchange: Proposed Amendments to the Live Cattle Futures and Option Contracts Increasing the Contracts' Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has proposed amendments to the Exchange's live cattle futures and option contracts. The proposed amendments would increase to 3,200 contracts from 2,400 contracts the speculative position limit applicable to individual non-spot months. The proposed amendments also would increase to 900 contracts from 600 contracts the speculative position limit applicable to positions held in the expiring contract month from the close of business on the business day following the first Friday of the contract month to the business day preceding the last five trading days of the expiring month. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on February 24, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulations 140.96, has determined that publication of the proposed amendments is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 8, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the speculative position limits for the CME live cattle futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The live cattle futures calls for delivery of 40,000 pounds of live steers at specified CME-approved livestock yards located in Iowa, Kansas, Oklahoma, Texas, New Mexico and Colorado or, at the delivery receiver's request, at CME-approved cattle slaughter plants located near the CME-approved livestock yards. The live cattle futures option contract is exercisable into the futures contract and option contract months expire prior to the last five trading days for the underlying futures contract month (the last trading day for expiring contract months is the last business day of the month). Non-delivery period option contract months expire on the last Friday of the month and delivery period options expire on the business day preceding the last nine business days of the underlying futures contract month. Currently, traders' combined positions in the futures and option contracts are subject to speculative position limits of 2,400 contracts in individual non-spot contract months and 600 contracts commencing at the close of business on the business day following the first Friday of the contract month. In addition, positions in the expiring futures contract month are subject to a speculative position limit of 300 contracts during the last five trading days of the expiring contract month.

The proposed amendments would increase to 3,200 contracts from 2,400 contracts the speculative position limit applicable to combined futures and option positions in individual non-spot months. The proposed amendments also would increase to 900 contracts from 600 contracts the speculative position limit applicable to combined futures and option positions held in the expiring contract month from the close of business on the business day following the first Friday of the contract

month to the business day preceding the last five trading days of the expiring month. The speculative position limit applicable to futures positions during the last five trading days of the futures contract would remain unchanged at 300 contracts.

The CME intends to make the proposed amendments effective upon Commission approval for all existing and newly listed contract months beginning with the April 2000 contract month.

The Commission is requesting comments on the proposed amendment.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff at the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 14, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–1567 Filed 1–21–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–ZA06

The Chicago Mercantile Exchange's Proposal To Establish a Cross-Margining Program With the London Clearing House

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule amendments of the Chicago Mercantile Exchange to implement cross-margining with the London Clearing House.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted to the Commodity Futures Trading Commission ("Commission") proposed rule amendments that would establish a "two-pot" cross-margining program between the CME and the London Clearing House ("LCH"). The program would permit participants to cross-margin their positions at the CME Clearing House and LCH while holding those positions at each clearing house in separate accounts.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Division of Trading and Markets ("Division") has determined to publish the CME's proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before February 8, 2000.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5221 or by electronic mail to secretary@cftc.gov. Reference should be made to "Chicago Mercantile Exchange's Proposal To Establish A Cross-Margining Program With the London Clearing House."

FOR FURTHER INFORMATION CONTACT: Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1999, CME submitted to the Commission proposed rule amendments that would set forth a framework for the establishment of guaranteed cross-margining programs with other clearing organizations. These proposed rule amendments were submitted by CME in anticipation of its plan to establish a cross-margining program with LCH,[1] based on an electronic trading link between CME and the London International Financial Futures Exchange ("LIFFE").[2] All transactions executed at LIFFE are cleared by LCH. Because the October 22, 1999 submission lacked certain details regarding specifics of the CME–LCH program, CME agreed to allow the Commission to stay its review of the proposal until providing the Commission with such details. On December 27, 1999, CME submitted additional materials to the Commission, including a letter summarizing the proposal; a "Cross-Margining Agreement" between the CME, LCH and LIFFE; a copy of the "Cross-Margining Participant Agreement" for clearing members participating in the Cross-Margining Program; an opinion of outside counsel regarding the cross-border bankruptcy implications of the program's payment guaranty provision;[3] and an overview of the proposal's loss-sharing arrangement.

II. Description of the Proposed Cross-Margining Program

Under the program, CME clearing members that either (1) are clearing

[1] The proposed amendments involve CME Rules 802 and 830. Amended CME Rule 830 would, as proposed, add definitions distinguishing between a "Joint Cross-Margining Program," also known as the "one-pot" approach, and a "Guaranteed Cross-Margining Program," also known as the "two-pot" approach. Both of these approaches are described *infra*. Amendments to CME Rule 830 would also, among other things, delineate which Exchange members are eligible to participate in a guaranteed cross-margining program. Amended CME Rule 802, as proposed, would mandate how the obligations of a cross-margining program participant would be discharged in the event of default.

[2] CME submitted the proposed CME–LIFFE link to the Commission by letters dated November 23, 1999 and December 14, 1999. The Division informed CME that the CME–LIFFE link could become effective without prior Commission approval, pursuant to Commission Regulation 1.41(c), by letter dated December 21, 1999. In brief, the program permits individuals and firms with access to CME Globex terminals to obtain cross-exchange access through Globex to the contracts listed by LIFFE on LIFFE's electronic trading system, CONNECT, provided they are approved by LIFFE as members (pursuant to a fast-track procedure), affiliate with a clearing member of LCH to clear trades made in LIFFE contracts, and agree to abide by LIFFE rules. Likewise, individuals and firms with access to LIFFE CONNECT could obtain cross-exchange access through CONNECT to the contracts listed by CME on Globex, provided they are LIFFE members identified to CME, affiliate with a clearing member of CME to clear trades made in CME contracts, and agree to abide by the Globex trading rules of CME.

[3] The Division verbally requested a document of this nature during an August 19, 1999 meeting with representatives from CME.

members at both LCH and LIFFE, or (2) have affiliates that are clearing members at both LCH and LIFFE,[4] would be eligible to cross-margin proprietary positions that they maintain in Euro Euribor and Euro Libor futures and option contracts at LIFFE and Eurodollar futures and option contracts at CME. This program would take the "two-pot" approach to cross-margining, whereby performance bond and positions of participants are held in separate accounts by the CME Clearing House and by LCH, rather than a "one-pot" approach in which cross-margined positions and performance bond are maintained by the participating clearing organizations in jointly-held accounts. The CME Clearing House and LCH, by the terms of the Cross-Margining Agreement, would calculate daily the amount that each participant in the program could, with cross-margining, reduce its margin levels at LCH and CME. LCH and the CME Clearing House would then provide each other with cross-guaranties in the amount of the associated margin reductions to protect each clearing organization in the event of default by a clearing member of the other clearing organization. CME's proposal is unique in that, unlike the "two-pot" guaranteed cross-margining arrangement between the Government Securities Clearing Corporation and the New York Clearing Corporation ("NYCC") recently deemed approved by the Commission,[5] the current proposal raises issues of transnational insolvency which have not been previously considered in the cross-margining context.

III. Request for Comment

The Commission requests comment from interested persons concerning any aspect of CME's proposed cross-margining program. The Commission is especially interested in comments regarding the cross-border bankruptcy aspects of this proposal.

Copies of CME's proposed rule amendments and certain other materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments and related materials may also be obtained through the Office of the Secretariat by mail at the above address, by telephone at (202) 418–5100, or by electronic mail at secretary@cftc.gov. Other materials submitted by CME may be available upon request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's regulations thereunder, 17 CFR § 145 (1987), except to the extent they are entitled to confidential treatment as set forth in 17 CFR §§ 145.5, 145.9. Requests for copies of such materials should be made to the FOIA, Privacy Act, and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR §§ 145.7, 145.8.

Issued in Washington, D.C. on January 14, 2000 by the Commission.

Alan L. Seifert,

Deputy Director.

[FR Doc. 00–1569 Filed 1–21–00; 8:45 am]

BILLING CODE 6351–01–U

[4] All LIFFE clearing members must also be members of LCH.

[5] July 2, 1999, letter to George F. Haase, Jr., NYCC President, from David P. Van Wagner, Associate Director of the Division of Trading and Markets.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0004]

Lancaster Colony Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement Lancaster Colony Corporation, a corporation, containing a civil penalty of $150,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 8, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1351.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 18, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–1563 Filed 1–21–00;8:45am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket NO. 00–C0004]

Lancaster Colony Corporation, a Corporation; Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Lancaster Colony Corporation, a corporation (hereinafter, "Lancaster Colony" or "Respondent"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 C.F.R. § 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

The Parties

2. The staff is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), as amended, 15 U.S.C. § 2053.

3. Respondent Lancaster Colony is a corporation organized and existing under the laws of the State of Ohio with its principal corporate offices located in Columbus, Ohio. Lancaster Colony has an operating division named Candle-lite located in Cincinnati, Ohio, which manufactures and sells candles.

Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. Between August 1995 and February 1996, Lancaster Colony through its Candle-lite division, manufactured and sold nationwide, approximately three million Clearfire De-lite Candles (hereinafter the "Candles" or the "product"). A candle is a "consumer product and Lancaster Colony is a "manufacturer" of a "consumer product," which is "distributed in

commerce" as those terms are defined in sections 3(a)(1), (4), (11) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (4), (11).

6. The product is a candle made of a clear gel-like substance which is packaged in a textured glass jar.

7. The Candles are defective because they could flare up unexpectedly during use, causing the Candles' glass holders to overheat and break. If this occurs, consumers could be burned or injured by broken glass.

8. On or about November 20, 1995, Lancaster Colony first received a report of an incident involving Candle flare-up.

9. By December 31, 1995, Lancaster Colony was aware of approximately forty four incidents involving Candle flare-up, resulting in reports alleging five personal injuries and twenty one occurrences of property damage.

10. In January 1996, with the incidents continuing to mount, Respondent stopped manufacture of the Candles.

11. In February 1996, Respondent revised the formulation of its original Candle, in part, to address the flare-up problem, and introduced a new candle in its place.

12. On or about May 2, 1996, the date the staff conducted an establishment inspection of the firm, Respondent was aware of at least 142 incidents involving candle flare-ups, including reports of approximately 20 incidents involving personal injury and reports of more than 55 incidents involving property damage.

13. Although Lancaster Colony through its Candle-lite division, had obtained sufficient information to reasonably support the conclusion that these Candles contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission prior to the inspection, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Respondent's failure to report to the Commission, as required by section 15(b) of the CPSA, was committed "knowingly," as that term is defined in Section 20(d) of the CPSA, 15 U.S.C. § 2069(d), and Lancaster Colony is subject to civil penalties under Section 20 of the CPSA.

Response of Lancaster Colony

15. Lancaster Colony denies the allegations of the staff that the Clearfire De-lite candles contain a defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. § 2065(a); denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and further denies the other allegations of the CPSC staff as stated herein.

16. Lancaster Colony did not have reason to believe that these candles posed a substantial product hazard. Lancaster Colony believed the information available did not reasonably support the conclusion that the products were defective within the meaning of the CPSA or that they created an unreasonable risk of serious injury or death, and, therefore, no report was required under section 15(b) of the Act.

17. During the time period in which the CPSC alleges Lancaster Colony wrongfully failed to file a report, it conducted its own internal testing as well as independent testing at four different laboratories of 4,500 candles. Neither the in-house nor outside laboratories were able to recreate the scenario about which some consumers complained. These test results suggested to Lancaster Colony that no defect was present. Likewise, the extremely low complaint rate (0.00020) suggested to Lancaster Colony that any flare ups were due to consumer misuse and/or environmental contamination rather than an inherent product defect. Finally, based upon the nature of the complaints received by Lancaster Colony, the firm did not believe that the candles could create a substantial product hazard or create an unreasonable risk of serious injury or death. For these reasons, Lancaster Colony concluded, and outside counsel concurred, that it was not required to submit a report to the CPSC.

18. Nevertheless, Lancaster Colony cooperated fully with the Commission staff in designing and implementing a voluntary recall of the candles described in paragraphs 5 and 6 above.

19. By entering into this Settlement Agreement and Order, Lancaster Colony does not admit any liability or wrongdoing. This Settlement Agreement and Order is agreed to by Lancaster Colony solely for the purposes of avoiding the cost of litigation and does not constitute, and is not evidence of, an admission of liability or wrongdoing by Lancaster Colony.

Agreement of the Parties

20. The Commission has jurisdiction in this matter under the CPSA, U.S.C. §§ 2051–2084.

21. Lancaster Colony knowingly, voluntarily and completely waives any rights it may have (i) to an administrative or judicial hearing with respect to the Commission staff's allegations discussed in paragraphs 4 through 14 herein, and to the issuance of a complaint, (ii) to judicial review or other challenge or contest of the validity of the Commission's Order, (iii) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, has occurred, (iv) to a statement of findings of fact and conclusions of law with, and (v) to any claims under the Equal Access to Justice Act.

22. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 C.F.R. § 1118.20(f).

23. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service upon Respondent. Compliance by Lancaster Colony with this Final Settlement Agreement and Order releases it from liability arising from any allegations of violation of section 15(b) of the CPSA regarding the specific candles described in paragraphs 5 and 6 above.

24. Upon final acceptance of this Settlement Agreement, the Commission may publicize the terms of the Settlement Agreement and Order.

25. Lancaster Colony agrees to pay to the Commission a civil penalty in the amount of one hundred fifty thousand dollars ($150,000), in settlement of this matter, payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement.

26. This Settlement Agreement and Order are entered into for settlement purposes only and shall not constitute an admission or determination arising from the allegations that the candles contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

27. The provisions of this Settlement Agreement and Order shall apply to Lancaster Colony and its successors and assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

28. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings,

representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: December 10, 1999.

John L. Boylan,

Treasurer, Lancaster Colony Corporation.

The Consumer Product Safety Commission.

Alan H. Schoem,

Associate Executive Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: December 17, 1999.

Ronald G. Yelenik,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Lancaster Colony Corporation, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Lancaster Colony Corporation, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further Ordered, that within 20 days of service of the Final Order upon Respondent, Lancaster Colony Corporation shall pay to the order of the U.S. Treasury a civil penalty in the amount of one hundred fifty thousand dollars ($150,000).

Provisionally accepted and Provisional Order issued on the 18th day of January, 2000.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–1504 Filed 1–21–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Global Positioning Systems will meet in closed session on January 12–13, January 20–21, and January 24–25, 2000, at 3601 Wilson Boulevard, Suite 600, Arlington, Virginia 22203.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will receive briefings and discuss interim findings and tentative recommendations resulting from ongoing activities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1994), and that accordingly these meetings will be closed to the public. However, due to critical mission requirements for a report by the end of January, the Task force is unable to provide timely notice of the above mentioned meetings.

Dated: January 14, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–1545 Filed 1–21–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations (CFRs), which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Thorgersen ElectroLuminescence Corporation, a company doing business in Woodbury, CT, an exclusive license in any right, title and interest the Air Force has in U.S. Patent No. 5,213,099. The inventor, Lloyd D. Tripp, was a government employee at the time of the invention. The invention is entitled "Ear Canal Pulse/Oxygen Saturation Measuring Device" and issued on May 25, 1993.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–1601 Filed 1–21–00; 8:45 am]

BILLING CODE 5001–05–U

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, January 26, 2000. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 10:00 a.m. and will include a report on the agency's budget for 2001; a discussion of the Basin comprehensive planning process; an update on the U.S. Army Corps of Engineers proposal for undertaking projects jointly with the Commission; a status report on progress toward an agreement between the Army Corps and the Commission for storage at F.E. Walter Reservoir; a report on the status of a new basinwide flood coordination initiative; and a discussion of plans for a two-day Commission meeting in Reading, Pennsylvania in March.

In addition to the dockets listed below, which are scheduled for public hearing, the Commission will address the following at its 1:00 p.m. business meeting: minutes of the December 8, 1999 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue. The Commission also will conduct public hearings and consider a resolution to adopt the FY 2001 Budget and the 2000 Water Resources Program. It will consider additional resolutions to: authorize the Executive Director to contract with Water Resources Management, Inc. for a flow needs study for the Delaware River and major tributaries; and control toxic pollutants from point sources discharging to the Delaware River Estuary.

The dockets scheduled for public hearing will be as follows:

1. *Philadelphia Suburban Water Company D–98–11 CP.* An application to withdraw up to 4.0 million gallons per day (mgd) from East Branch Brandywine Creek for public water supply when stream flow exceeds 25 percent of the average daily flow and is greater than 90 mgd for the Brandywine River at Chadds Ford. The applicant proposes to serve East Brandywine and West Brandywine Townships, and potentially, Wallace Township, all in Chester County, Pennsylvania. The intake will be situated on the east bank of the East Branch Brandywine Creek just south of Marshall Road in Wallace Township. On an annual average use basis, withdrawal is expected to average approximately 0.76 mgd. When available, the raw water will be conveyed for storage in a nearby abandoned quarry (known as Cornog Quarry) with an estimated storage capacity of approximately 100 million gallons. Withdrawals ranging from 0.5 mgd to 1.0 mgd will then be made from the quarry, treated by a proposed new filter plant, and distributed to the project service area.

2. *Upper Moreland-Hatboro Joint Sewer Authority D–98–48 CP.* A project to rerate the applicant's existing sewage treatment plant (STP) from an annual average 7.0 mgd flow to 7.173 mgd; the maximum monthly flow rate will be 9.08 mgd. The additional capacity is needed due to growth within the existing service area of the Borough of Hatboro and portions of Horsham, Upper Dublin and Upper Moreland Townships, Montgomery County, Pennsylvania, and a portion of Warminster Township, Bucks County, Pennsylvania. The STP will continue to provide advanced secondary treatment and ultraviolet disinfection prior to discharge via the existing outfall to Pennypack Creek near Terwood Road in Upper Moreland Township, Montgomery County, Pennsylvania.

3. *Reichhold, Inc. D–99–32.* An application for approval of a ground water withdrawal project to supply up to 5.4 million gallons (mg)/30 days of water to the applicant's chemical manufacturing facility from new Well No. 37 in the Cheswold Aquifer, and to limit the withdrawal from all wells to 17 mg/30 days. The project is located in Kent County, Delaware.

4. *Gilbertsville Golf Club, Inc. D–99–47.* An application for approval of a ground water withdrawal project to supply up to 8.1 mg/30 days of water for irrigation of the applicant's golf course from new Well No. PW–2 in the Brunswick Formation, and to limit the withdrawal from all wells to 12.0 mg/30 days. The project is located in New Hanover Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Liberty Electric Power, LLC D–99–61.* An application to construct a nominal 500 megawatt natural gas-fired electric power plant to be located on a 25.5 acre site between Route 291 and the Amtrak/Septa railroad tracks in Eddystone Borough, Delaware County, Pennsylvania. The power generated will primarily supply the Pennsylvania-Jersey-Maryland grid. The Philadelphia Suburban Water Company will supply up to 6 mgd of water to the facility; and the applicant projects up to 4.7 mgd will be consumed. Approximately 1.3 mgd of process and sanitary wastewater will be conveyed to the DELCORA sewerage system which discharges to the Delaware River in Water Quality Zone 4.

6. *Kendal Corporation D–99–68.* An application to upgrade and expand the applicant's existing 0.07 mgd secondary treatment STP to provide tertiary treatment of 0.125 mgd to four retirement communities in Kennett and Pennsbury Townships, Chester County, Pennsylvania. Effluent will continue to be applied to the applicant's existing nine-acre spray field and a proposed additional spray irrigation site located approximately one-quarter mile east of State Routes 1 and 52 in Kennett Township. However, during the months of November through April, effluent will be discharged to an unnamed tributary of Bennetts Run in the Brandywine Creek watershed.

7. *Philadelphia Suburban Water Company D–99–69 CP.* An application to transfer up to 9.5 mgd of potable water to the applicant's public water distribution system via an interconnection with the City of Philadelphia Water Department. The transfer will enable the applicant to provide an additional source of water to serve projected demand in its Southern Division service area. The proposed interconnection will be located at the Philadelphia-Delaware County border off the Interstate 95 and State Route 291 interchange near the Philadelphia International Airport.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Secretary, Pamela M. Bush, at (609) 883–9500 ext. 203 or the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

Dated: January 11, 2000.

Pamela M. Bush,

Secretary.

[FR Doc. 00–1586 Filed 1–21–00; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

SUMMARY: This notice announces an open teleconference meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the findings and recommendations of a draft report prepared by a Laboratory Operations Board (LOB) Working Group. The Working Group reviewed the Department of Energy's Laboratory Directed Research and Development (LDRD) Program, which funds discretionary research and development at the Department's multi-program laboratories. The review is intended to provide independent external advice regarding the value, quality, nature of oversight and continued need and appropriate level of support for laboratory directed research and development at the Department's laboratories.

Name: Secretary of Energy Advisory Board—Laboratory Operations Board.

Dates: Thursday, January 27, 2000, 10:30 A.M.–12:30 P.M., Eastern Standard Time.

Addresses: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines is limited. Lines are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Laurie Keaton, LOB Staff Director, Office of Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7162 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide independent external advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Note: Copies of the draft report may be obtained from the following Internet address: *http://www.hr.doe.gov/seab/* or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

Tentative Agenda

Thursday, January 27, 2000

10:30A.M.–10:45 A.M.
Opening Remarks—Co-Chairs: E. Moniz & J. McTague
10:45 A.M.–11:15 A.M.
Overview of the LDRD Working Group Findings and Recommendations—Dr. Paul Fleury, Working Group Chairman
11:15 A.M.–12:00 P.M.
Public Comment Period
12:00 P.M.–12:15 P.M.
LDRD Working Group Comment and Action—Dr. Paul Fluery, LDRD Working Group Chairman
12:15 P.M.–12:30 P.M.
LOB Review and Comment
12:30 P.M.
Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to monitor the business of the Laboratory Operations Board and to submit written comments or comment during the scheduled public comment period. The teleconference meeting will be conducted in a fashion that will, in the Co-Chairs' judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Laboratory Operations Board is available at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on January 18, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–1626 Filed 1–21–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[National Fuel Gas Supply Corporation; Docket No. RP99–484–001]

Notice of Compliance Filing

January 18, 2000.

Take notice that on November 12, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing Amendment No. 3 to the transportation service agreement filed on August 26, 1999, in the above-referenced proceeding.

National Fuel states that the filing is being made in compliance with the Letter Order issued by the Commission on October 27, 1999. The order directed National Fuel to revise and refile its non-conforming service agreement for transportation service with ProGas U.S.A., Inc., to reflect the elimination of certain language found in the second footnote of Exhibit 1.

National Fuel states that in compliance with that directive, National Fuel submits Amendment No. 3 which replaces Exhibit 1 to the service agreement.

National Fuel states that copies of the filing are being mailed to all of National Fuel's customers, parties on the official service list compiled by the Secretary and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1583 Filed 1–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Questar Pipeline Company; Docket No. CP00–68–000]

Notice of Application

January 18, 2000.

Take notice that on January 10, 2000, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP00–68–000 an application pursuant to Section 7(c) of the Natural Gas act (NGA), for authorization to construct and operate pipeline and compression facilities in Utah, in order to increase the capacity of its system, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

Specifically, Questar proposes to construct and operate a 24-inch diameter loop of an existing section of its Main Line (M.L.) No. 40 and the entirety of its M.L. No. 41. Questar states that the loop, to be known as M.L. No. 104, will extend approximately 75.6 miles from Price, Utah, to the Payson, Utah, City Gate and on to an interconnection with Kern River Gas Transmission company (Kern River) located near Elberta, Utah. It is explained that the loop will be located in Carbon, Emery, Sanpete and Utah Counties, Utah. In addition, Questar proposes to add 9,336 site-rated horsepower of compression at Questar's existing Oak Spring Compressor station, near Price, Utah.

Questar states that the reason for the proposed construction is to expand the capacity of its southern transmission

system in order to gain access to increasing reserves of coal-seam gas reserves in the Price area, and to satisfy increased transportation demand. It is asserted that M.L. Nos. 40 and 41 are currently operating near maximum capacity. It is further asserted that the proposed looping and compression will add approximately 272,000 Dt equivalent of incremental capacity to Questar's southern transmission system. In addition to transporting gas from the Price area, Questar explains that it has entered into an agreement with CIG Resources Company to transport volumes delivered to Questar from Colorado Interstate Gas Company's Uinta Basin Lateral at Natural Buttes in Uinta County, Utah.

Questar states that once the proposed project is placed in service, Questar will sell a 50 percent interest to CIG Gas Supply Company (Supply) and then lease back the 50 percent interest to give Questar control over the facilities. It is explained that the sale/leaseback arrangement will enhance both companies' ability to meet market needs most efficiently. Questar explains that it will retain the right to re-purchase Supply's 50 percent interest at net book value.

The cost of the proposed construction is estimated at $80,850,975, including pipeline looping and compression facilities. Questar requests rolled-in rate treatment for the costs associated with the project, stating that the project is in accordance with the Commission's recent policy statement issued in PL99–3–000.

Questar asserts that it conducted an open season between December 28, 1998, and February 23, 1999, to determine market demand and asserts that the result was that Questar has executed firm transportation service contracts with three customers (CIG Resources Company, Questar Gas Company, and Texaco Natural Gas, Inc.) for a total of 270,000 Dt equivalent of reserved daily capacity with contract terms ranging from 5 to 10 years.

Any questions regarding the application may be directed to Alan K. Allred, Manager, Regulatory Affairs and Gas Supply Services, Questar Regulated Services Company, 180 East 100 South, P.O. Box 43560, Salt Lake City, Utah 84145–0360, (801) 324–5768.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein and if the Commission, on its own review of the matter, finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear, or be represented, at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–1581 Filed 1–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Texas Eastern Transmission Corporation; Docket No. CP00–67–000]

Notice of Request Under Blanket Authorization

January 18, 2000.

Take notice that on January 7, 2000, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP00–67–000 a request pursuant to Sections 167.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to construct, own, operate, and maintain certain facilities (Vermillion Lateral) located in Vermilion County, Illinois and Vermillion County, Indiana, to render interruptible lateral transportation service to Duke Energy Vermillion, LLC (DEV) under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern proposes to construct, own, operate, and maintain: (i) a measurement facility which will consist of one 6-inch and one 10-inch ultrasonic meter run plus associated pipline, electronic gas measurement equipment and associated instrumentation (M&R Station); and (ii) the Vermillion Lateral, which will consist of approximately 14.03 miles of 16-inch diameter pipeline that will extend from a proposed interconnect with Midwestern Gas Transmission Company (Midwestern), to be located at milepost 2116 − 1+9.93 in Vermilion County, Illinois, to the M&R Station which will be located at the interconnection with the DEV Plant at milepost 14.03 in Vermillion county, Indiana.

Texas Eastern states that the estimated cost of the Vermillion Lateral facilities is approximately $13 million dollars and that DEV will reimburse Texas Eastern for 100% of the costs and expenses associated with the construction and installation.

Midwestern proposes to construct, own, and operate an interconnect to be located at the intersection of the Vermillion Lateral and Midwestern's 30-inch mainline pipeline (Line No. 2100) located in Vermilion County, Illinois at milepost 2116 − 1+9.93, which will be constructed under Midwestern's Part 157 blanket construction certificate.

After receipt of the authorization requested and installation of the facilities for which authorization is requested herein, Texas Eastern states that it will deliver up to 200 MMcfd of natural gas to DEV at the DEV Plant, pursuant to a service agreement entered into under Texas Eastern's open access interruptible Rate Schedule IT–1. Texas Eastern declares that the transportation service to be rendered will have no effect on their peak day or annual deliveries and submits that its proposal herein will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 00–1580 Filed 1–21–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Transcontinental Gas Pipe Line Corporation; Docket No. RP99–291–000 and RP99–291–001]

Notice of Technical Conference

January 18, 2000.

Take notice that in the above proceeding concerning Transcontinental Gas Pipe Line Corporation's new Part 284 liquefied natural gas (LNG) storage services, a technical conference will be held on Tuesday, February 15, 2000 at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–1582 Filed 1–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Wells Rural Electric Company; Docket No. ER00–611–000 and EL00–19–000 (not consolidated)]

Notice of Issuance of Order

JANUARY 18, 2000. Wells Rural Electric Company (WREC) is a Nevada rural electric cooperative providing electrical service to approximately 5,300 customers in northeastern Nevada and Tooele County, Utah. On November 19, 1999, in Docket No. EL00–19–000, WREC filed a request for waiver of the requirements of Order Nos. 888 and 889. In its filing, WREC also requested certain waivers and authorizations. In particular, WREC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by WREC. On January 12, 2000, the Commission issued an Order Granting Request For Waivers of Order Nos. 888 And 889, Addressing Requests For Other Waivers And Accepting Agreements For Filing (Order), in the above-docketed proceedings.

The Commission's January 12, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by WREC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, WREC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of WREC compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of WREC's issuances of securities or assumptions of liabilities . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 11, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1584 Filed 1–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2667–002, et al.]

Ameren Operating Companies, et al.; Electric Rate and Corporate Regulation Filings

January 13, 2000.

Take notice that the following filings have been made with the Commission:

1. Ameren Operating Companies

[Docket No. ER99–2776–002]

Take notice that on December 17, 1999, Ameren Services Company (Ameren), on behalf of the Ameren Operating Companies, made a compliance filing at the direction of the Commission's order issued in the above-captioned proceeding on December 1, 1999.

Copies of the filing have been served on the Illinois Commerce Commission, the Missouri Public Service Commission and all parties to the proceeding.

Comment date: January 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Maine Public Service Company

[Docket No. ER00–1053–000]

Take notice that on January 11, 2000, Maine Public Service Company (MPS) submitted pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, revisions to its Open Access Transmission Tariff (OATT) to implement retail open access in the state of Maine, to reflect that on March 1, 2000 the Northern Maine Independent System Administrator, Inc. (Northern Maine ISA) will begin operations, to modify its rate formula for the rates charged under the OATT, and to make various other revisions and corrections to its OATT.

MPS proposes that the revised OATT rates, terms and conditions become effective March 1, 2000.

Copies of this filing were served on the current customers under the OATT, participants in Maine Public Utilities Commission Docket No. 99–185, the Northern Maine ISA, and the state commission within whose jurisdiction MPS transmits electricity under the OATT.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Avista Corporation

[Docket No. ER00–1054–000]

Take notice that on January 11, 2000, Avista Corporation (AVA), tendered for

filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commission's Regulations (18 CFR 35.12), an executed Service Agreement under AVA's FERC Electric Tariff First Revised Volume No. 9, with PP&L Montana, LLC.

AVA requests waiver of the prior notice requirement and requests that the Service Agreement be accepted for filing and made effective December 21, 1999.

The filing has been served upon the following: Ms. Michelle Palmer, PP&L Montana, LLC, 45 Basin Creek Road, Butte, MT 59701.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Avista Corporation

[Docket No. ER00–1055–000]

Take notice that on January 11, 2000, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commission's Regulations (18 CFR 35.12), an executed Service Agreement under AVA's FERC Electric Tariff First Revised Volume No. 10, with PP&L Montana, LLC.

AVA requests waiver of the prior notice requirement and requests that the Service Agreement be accepted for filing effective December 21, 1999.

The filing has been served upon the following: Ms. Michelle Palmer, PP&L Montana, LLC, 45 Basin Creek Road, Butte, MT 59701.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Avista Corporation

[Docket No. ER00–1056–000]

Take notice that on January 11, 2000, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commission's Regulations (18 CFR 35.12), an executed Mutual Netting/Settlement with British Columbia Power Exchange Corporation, (Powerex), effective January 1, 2000.

The filing has been served upon the following: Mr. David Wong, Credit Risk Manager, British Columbia Power Exchange Corporation, Suite 1400, 666 Burrard Street, Vancouver, BC, Canada V6C 2X8.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Atlantic City Electric Company; Delmarva Power & Light Company; Otter Tail Power Company

[Docket Nos. ER00–1057–000; ER00–1058–000; ER00–1064–000]

Take notice that on January 11, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C., Docket No. ER00–1059–000.

Take notice that on January 11, 2000, (PJM), tendered for filing three executed umbrella service agreements for network integration transmission service under state required retail access programs. The agreements are with ACN Energy, Inc., KeySpan Energy Services, Inc., and Worley & Obetz, Inc. d/b/a Advanced Energy.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. AmerGen Energy Company, L.L.C., Docket No. ER00–1060–000.

Take notice on January 11, 2000, AmerGen Energy Company, L.L.C. tendered for filing a Service Agreement with Dynegy Power Marketing, Inc. under its FERC Electric Tariff Original Volume No. 1.

AmerGen is requesting an effective date of December 15, 1999 for the Service Agreement.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company, Docket No. ER00–1061–000.

Take notice that on January 11, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, 2900 Ruan Center, Des Moines, Iowa 50309 tendered for filing proposed changes to its Open Access Transmission Tariff (OATT). The changes are for the purpose of updating the Index of Point-to-Point Transmission Service Customers and the Index of Network Integration Tranmission Service Customers.

MidAmerican proposes that the rate schedule changes become effective on January 13, 2000 and requests a waiver of the Commissions notice requirements.

The proposed rate schedule changes have been mailed to all Transmission Customers having service agreements under the OATT, the Iowa Utilities Board and the Illinois Commission, the South Dakota Public Service Commission.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation, Docket No. ER00–1062–000.

Take notice that on January 11, 2000, Florida Power Company (FPC) tendered for filing service agreements between TXU Energy Trading Company and FPC and Merchant Energy Group of the Americas, Inc. and FPC under FPC's Market-Based Wholesale Power Sales tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000.

The service agreement with Merchant Energy Group of the Americas, Inc. is proposed to be effective December 29, 1999 and the service agreement with TXU Energy Trading Company is proposed to be effective January 6, 2000.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company, Docket No. ER00–1063–000.

Take notice that on January 11, 2000, Virginia Electric and Power Company (Virginia Power) tendered on filing an Assignment and Assumption Agreement entered into by and among Strategic Energy, Ltd. (Assignor), Strategic Energy, LLC (Assignee) and Virginia Electric and Power Company (Virginia Power). Under this assignment, the Assignor assigns to the Assignee and the Assignee assumes all of the Assignor's rights and obligations pertaining to its Service Agreements with Virginia Power dated October 7, 1998 and accepted by Letter Order of the Commission on December 29, 1999 under Docket No. ER99–494–00 and ER99–495–000.

Virginia Power requests an effective date of the assignment of December 31, 1999.

Copies of this filing were served upon Strategic Energy LLC, the Virginia state Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company, Docket No. ER00–1065–000.

Take notice that on January 11, 2000, Portland General Electric Company (PGE) tendered for filing an Amendment No. 2 to the Power Sales Agreement between PGE and the Canby Utility Board (PGE Rate Schedule FERC No. 192). The Amendment changes the

termination date of the original agreement.

PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow Amendment No. 2 to PGE Rate Schedule FERC No. 192 to become effective January 12, 2000.

Copies of this filing were served upon the names listed in the filing letter.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc., Docket No. ER00–1066–000.

Take Notice that on January 11, 2000, PP&L, Inc. (PP&L) filed a Service Agreement dated January 5, 2000 with The Energy Authority (EA) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds EA as an eligible customer under the Tariff.

PP&L requests an effective date of January 5, 2000 for the Service Agreement.

PP&L states that copies of this filing have been supplied to EA and the Pennsylvania Public Utility Commission.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company and Kentucky Utilities Company, Docket No. ER00–1067–000.

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing fully executed Netting Agreements between the Companies and Illinova Power Marketing, Inc.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1068–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and Cinergy Operating Companies under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1069–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1070–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1071–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1072–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1073–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1074–000]

Take notice that on January 11, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Wisvest-Connecticut, LLC

[Docket No. ER00–1078–000]

Take notice that on January 12, 2000 Wisvest-Connecticut, LLC filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1579 Filed 1–21–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1188–031, et al.]

LG&E Energy Marketing Inc., et al.; Electric Rate and Corporate Regulation Filings

January 14, 2000.

Take notice that the following filings have been made with the Commission:

1. LG&E Energy Marketing Inc.; Energy Atlantic, LLC; Dynergy Power Services, Inc.; DC Tie, Inc.; Rainbow Energy Marketing Corporation

[Docket Nos. ER94–1188–031; ER98–4381–005; ER94–1612–024; ER91–435–032; ER94–1061–023]

Take notice that on January 12, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

2. Enova Energy, Inc.; Aurora Power Resources; PS Energy Group, Inc.; Golden Valley Power Company; The Mack Services Group

[Docket Nos. ER96–2372–017; ER98–573–004; ER99–1876–003; ER98–4334–005; ER99–1750–004]

Take notice that on January 13, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Northwest Natural Gas Company

[Docket No. ER97–683–006]

Take notice that on January 10, 2000, Northwest Natural Gas Company filed their quarterly report for the quarter ending December 31, 1999 for information only.

4. GPU Advanced Resources, Inc.; Fortistar Power Marketing LLC

[Docket Nos. ER97–3666–012; ER97–3666–013; ER98–3393–005]

Take notice that on January 13, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Energy Atlantic, LLC

[Docket No. ER98–4381–005]

Take notice that on January 12, 2000, Energy Atlantic, LLC filed their quarterly report for the quarter ending December 31, 1999, for information only.

6. Energy West Resources

[Docket No. ER99–874–000]

Take notice that on January 12, 2000, Energy West Resources, Inc., tendered for filings its amended petition to the Commission for acceptance of EWR Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

EWR intends to engage in wholesale electric power and energy purchases and sales as a marketer. EWR is not in the business of generating or transmitting electric power. EWR is a wholly owned subsidiary of EWI which owns and operates natural gas and propane distribution facilities.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. NJR Energy Services Company; MAC Power Marketing, L.L.C.

[Docket Nos. ER99–2384–003; ER98–575–005]

Take notice that on January 11, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

8. MidAmerican Energy Company

[Docket No. ER00–1075–000]

Take notice that on January 12, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, 2900 Ruan Center, Des Moines, Iowa 50309 tendered for filing proposed changes to its Open Access Transmission Tariff (OATT). The changes are for the purpose of accommodating retail open access in Illinois where MidAmerican operates as a public utility providing electric delivery service.

MidAmerican proposes that the rate schedule change become effective on April 1, 2000.

The proposed rate schedule changes have been mailed to all Transmission Customers having service agreements under the OATT, the Iowa Utilities Board and the Illinois Commission, the South Dakota Public Service Commission.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER00–1076–000]

Take notice that on January 12, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a request for modification of its tax factor applicable to service rendered under Schedules 7 and 8 and Attachment H of NYSEG's OATT.

NYSEG requests waiver of the Commission's sixty day notice requirement and an effective date of February 1, 2000, for the new tax factor.

NYSEG has served copies of the filing upon each OATT customer on the attached service list and the PSC.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. FPL Energy Power Marketing Inc.

[Docket No. ER00–1077–000]

Take notice that on January 12, 2000, FPL Energy Power Marketing, Inc. (FPLEPM) tendered for filing Amendment No. 1 to the Transitional Power Sales Agreement, System Sale of Energy, Capacity and Related Services [Fossil] between FPLEPM and Central Maine Power Company.

FPLEPM requests an effective date of January 1, 2000.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. West Texas Utilities Company

[Docket No. ER00–1079–000]

Take notice that on January 12, 2000, West Texas Utilities Company (WTU) filed a new Facility Schedule to its Interconnection Agreement with Brazos Electric Power Cooperative, Inc. (Brazos) to establish a new point of interconnection between WTU and Brazos.

WTU seeks an effective date of January 13, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Brazos and the Public Utility Commission of Texas.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER00–1080–000]

Take notice that on January 12, 2000, the California Independent System Operator Corporation (ISO), tendered for

filing a Participating Generator Agreement between the ISO and San Joaquin Cogen Limited for acceptance by the Commission.

The ISO states that this filing has been served on San Joaquin Cogen Limited and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective January 6, 2000.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Platte-Clay Electric Cooperative, Inc.

[Docket No. ER00–1081–000]

Take notice that on January 12, 2000, Platte-Clay Electric Cooperative Inc. (Platte-Clay) submitted for filing an agreement for the Interchange of Electric Power and Energy Between Platt-Clay Electric Cooperative Inc. and the City of Cameron, Missouri and various Border Customer Agreements Between Platte-Clay Electric Cooperative Inc. and Missouri Public Service, a Division of Utilicorp United, Inc. pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.12).

Platte-Clay's filing is available for public inspection at its offices in Kearney, Missouri.

Platte-Clay requests an effective date of January 18, 2000.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Avista Corporation

[Docket No. ER00–1082–000]

Take notice that on January 13, 2000, Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission, pursuant to Section 35.12 of the Commission's Regulations (18 CFR 35.12), an executed Mutual Netting Agreement with the Public Service Company of Colorado.

AVA requests an effective date of January 1, 2000.

The filing has been served on the following: Mr. Cary Oswald, Credit Analysis Manager, Public Analysis Manager, Public Service Company of Colorado, 1099 18th Street, Suite 3000, Denver, CO 80202.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1578 Filed 1–21–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6527–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for the Existing Concentration of Analytically Detectable Congeners of Polychlorinated Biphenyls, Dioxins, And Furans In Biosolids Generated By Publicly Owned Treatment Works (POTWs) Under the National Biosolids Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for the existing concentration of analytically detectable congeners of Polychlorinated Biphenyls, Dioxins, Furans, in Biosolids generated by POTWs under the National Biosolids Program (40 CFR part 503), EPA ICR 1930.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 24, 2000.

ADDRESSES: Interested persons may obtain a copy of this ICR without charge by contacting Ash Sajjad, NPDES Branch, Water Division (WN–16J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number (312) 886–6112, E-mail address "sajjad.ash@epa.gov".

FOR FURTHER INFORMATION CONTACT: Ash Sajjad, telephone number (312) 886–6112, facsimile number (312) 886–7804, E-mail address "sajjad.ash@epa.gov'.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are 25 of the 33 POTWs that generated analytically detectable concentration of polychlorinated biphenyls (PCBs) in their biosolids reported in the 1988 NSSS.

Title: Survey Of The Existing Concentration Of Analytically Detectable Congeners Of Polychlorinated Biphenyls, Dioxins, and Furans In Biosolids Generated By POTWs Under The National Biosolids Program (40 CFR part 503) (EPA ICR Number 1930.01).

Abstract: EPA plans to conduct a survey of biosolids generated by a randomly selected subgroup of up to twenty five POTWs from the thirty three POTWs which tested positive for PCBs and reported in the 1988 NSSS. Because the management of the biosolids program is the responsibility of the Office of Wastewater Management (OWM) in the Office of Water (OW), Environmental Protection Agency (EPA), and the Clean Water Act requires EPA to periodically review the regulations for the purpose of identifying additional toxic pollutants and promulgating regulations. The OWM designated Region 5, headquartered in Chicago, Illinois, to conduct this survey to assess the existing concentration of these pollutants in biosolids generated by POTWs. The specific purpose of this survey is to evaluate the need to develop regulations, policies, and guidance to control these pollutants in the environment. The USEPA will contract the sampling, chemical analysis of biosolids, and interpretation and reporting of analytical data to a contract laboratory selected through an open bidding process. The contract laboratory will be collecting representative grab samples of biosolids at suitable locations at the selected POTWs, and will measure the analytically detectable concentrations of the congeners of PCBs, dioxins, and furans using EPA Methods No. 1668 for PCBs, and Method No.1613 for dioxins and furans.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The information collection will involve an estimated 25 respondents at a cost of $1617 to those respondents. The total annual cost to both respondents and government including the laboratory contract is estimated at $38, 839. The annual number of responses are expected to be 25 or one response per respondent. The time required for a response ranges from 1 hour to 3 hours, with an average response time of 2 hours. An estimated 25 respondents are required to keep records at an average annual burden of 15 minutes per record keeper. The biosolids survey will entail 6.3 hours of recordkeeping, 5 hours for government as users of the data, for a total of 11.3 burden hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 12, 2000.

Jo Lynn Traub,

Director, Water Division, Region 5.

[FR Doc. 00–1556 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6528–2]

Science Advisory Board; Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the Science Advisory Board will hold public teleconference meetings on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating and teleconference lines are limited and available on a first-come basis.

1. Integrated Risk Project (IRP) Peer Review Subcommittee

The Integrated Risk Project (IRP) Peer Review Subcommittee of the Science Advisory Board will meet Tuesday February 15, 2000 from 3:00 to 5:00 pm. The meeting will be coordinated through a conference call connection located in Room 6013 of the Ariel Rios Building at the U.S. Environmental Protection Agency (EPA) located at 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The building entrance is adjacent to the Federal Triangle Metro Stop on 12th Street. For directions and further information concerning the meeting, please contact the individuals given below. The public is welcome to attend the meeting physically or through a telephonic link.

Purpose of the Meeting

At this meeting the Integrated Risk Project Subcommittee will review the report of the Integrated Risk Project: *Towards Integrated Environmental Decision-Making.*

2. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will meet Wednesday, February 16, 2000 from 12:00 am to 2:00 pm. The meeting will be coordinated through a conference call connection located in Room 6013 of the Ariel Rios Building at the U.S. Environmental Protection Agency (EPA) located at 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The building entrance is adjacent to the Federal Triangle Metro Stop on 12th Street. For directions and further information concerning the meeting, please contact the individuals given below. The public is welcome to attend the meeting physically or through a telephonic link.

Purpose of the Meeting

The purpose of this meeting is to plan for "Phase 2 of the Review of EPA's Peer Review Program: Effectiveness Evaluation."

Proposed Charge

The Subcommittee has tasked itself to develop specific guidance for the subsequent SAB evaluation of how peer reviews are conducted by the Agency Programs and Regions using specific case studies. The Committee will work to develop (a) an overall strategy for the review, (b) criteria for the selection of projects to review, and (c) options for how the review might be conducted, together with a recommended approach for consideration by the SAB's Executive Committee.

For Further Information Concerning the Meetings

Members of the public desiring additional information about either meeting should contact Dr. John R. Fowle III, Deputy Staff Director and Designated Federal Officer (DFO), Science Advisory Board (1400A), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0323; or via e-mail at fowle.jack@epa.gov or Ms. Wanda Fields, Management Assistant; telephone/voice mail at (202) 564–4539; fax at (202) 501–0256; or via email at fields.wanda@epa.gov. A copy of the draft agenda and copies of the background material will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Wanda Fields at the fax or address noted above. Additional instructions about how to participate in either conference call can be obtained from Ms. Fields.

Making Oral Presentations During the Meetings

Members of the public who wish to make a brief oral presentation at either meeting must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, February 10, 2000 in order to be included on the Agenda. Public comments will be limited to three

minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (*e.g.*, overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website *(http://www.epa.gov/sab)* and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: January 13, 2000.

Donald G. Barnes, PhD,

Staff Director, Science Advisory Board.

[FR Doc. 00–1560 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00639; FRL–6488–2]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee; Notice of Public Meeting

ACTION: Notice of public meeting.

SUMMARY: The SFIREG Water Quality and Pesticide Disposal Working Committee will hold a 2-day meeting, beginning on February 7, 2000 and ending on February 8, 2000. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The State FIFRA Issues Research and Evaluation Group (SFIREG) will meet on Monday, February 7, 2000 from 8:30 a.m. to 4:00 p.m. and on Tuesday, February 8, 2000 from 8:30 a.m. to 12:00 noon. There will be a CLOSED SESSION (Open Only to EPA and State Lead Agencies) on Monday, February 7, 2000 from 4:00 p.m.–5:00 p.m.

ADDRESSES: The meeting will be held at The Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA 22202.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P. O. Box 1249, Hardwick, VT 05843–1249; (802) 472–6956; fax: (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or Elaine Y. Lyon, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5306; fax number: (703) 308–1850; e-mail address: lyon.elaine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, but all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into the EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of the minutes, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also obtain electronic copies of the minutes, and certain other related documents that might be available electronically, from the Association of American Pesticide Control Officials (AAPCO) Internet Home Page at http://aapco.ceris.purdue.edu/doc/index.html. To access this document, on the Home Page select "SFIREG" and then look up the entry for this document under the "SFIREG Meetings."

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00639. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. Purpose of Meeting

Tentative Agenda:

1. Working committee issues and updates.
2. Update on pesticide field data plan.
3. Update on Total Maximum Daily Load & National Pollution Discharge Elimination System Draft Straw Proposal.
4. Office of Research and Developments grant to study "The Impact of Lawn Care Practices on Aquatic Ecosystems in Suburban Watersheds."
5. Update on Pesticides in Ground Water and Surface Water Data bases.
6. Working committee discussion on survey on aquatic pesticides and National Pollution Discharge Elimination System permitting.
7. Florida State University grant to develop Indicators.
8. Updates from the Office of Pesticide Programs and the Office of Enforcement and Compliance Assurance.
9. Other topics as appropriate.

List of Subjects

Environmental protection,

Dated: January 14, 2000.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 00–1547 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–909; FRL–6399–6]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–909, must be received on or before February 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in

person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION."

To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–909 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address	Petition number(s)
Shaja R. Brothers	Rm. 284, CM 2, 703–308–3194, e-mail: brothers.shaja@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA	PP 9E6025
James A. Tompkins (PM 25).	Rm. 239, CM 2, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.	Do.	PP 5F4505; PP 6F4791

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–909. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–909 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov* ," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–909. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Acetochlor Registration Partnership

PP 5F4505 and 6F4791

EPA has received pesticide petitions (PP 5F4505 and 6F4791) from Acetochlor Registration Partnership, c/o Zeneca Ag Products, 1800 Concord Pike, Wilmington DE 19850 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of acetochlor (2-chloro-2′-methyl-6′-ethyl-*N*-ethoxymethylacetanilide and it metabolites containing the ethyl methyl aniline (EMA) and the hydroxy methyl aniline (HEMA) moiety, to be expressed as acetochlor, EMA and HEMA and expressed as acetochlor equivalents in or on the raw agricultural commodity field, corn, forage at 3.0 part per million (ppm) (5F4505); corn, sweet, grain (K+CHWHR) at 0.05 ppm; corn, sweet, fodder at 1.0 ppm; and corn, sweet, forage at 1.4 ppm. (6F4791). PP 5F4505 also proposes to divide 40 CFR 180.470 into two sections: (a) Specific tolerances (containing the tolerances for field corn and sweet corn) and (b) Indirect or inadvertent tolerances (containing the tolerances for the rotational crops sorghum, soybean, wheat, and nonanimal grass feeds). PP 6F4791 also proposes that tolerances be established for the indirect or inadvertent residues of acetochlor in or on the the raw agricultural commodities when present therein as a result of the application of acetochlor to growing crops and other nonfood crops as follows: nongrass animal feeds, forage at 0.6 ppm and nongrass animal feeds, hay at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of acetochlor has been studied in corn and soybeans. The major metabolic pathways are: (i) Uptake of soil metabolites and subsequent metabolism, (ii) uptake of acetochlor followed by oxidative metabolism and conjugation, and (iii) uptake of acetochlor, conjugation with glutathione and subsequent catabolism. Acetochlor is completely metabolized in plants to produce a number of polar metabolites. EPA has determined that the residues of concern are those which contain the EMA and HEMA.

2. *Analytical method*. An adequate enforcement method for residues of acetochlor in crops has been approved. Acetochlor and its metabolites are hydrolyzed to either EMA or to HEMA which are determined by GC-MSD and expressed as acetochlor.

3. *Magnitude of residues*. Field residue trials in field corn with acetochlor were conducted in 32 plots in 8 states. The maximum combined residues (acetochlor and metabolites) were 2.52 ppm in corn forage, 0.217 ppm in corn fodder and <0.04 ppm in corn grain.

Fourteen field residue trials in sweet corn with acetochlor were conducted in 12 states. The maximum combined residues (acetochlor and metabolites) were 1.35 ppm in corn forage, 0.97 ppm in corn fodder and <0.05 ppm in grain.

Seventeen rotational crop residue trials were conducted in 17 states representing the top corn, alfalfa and clover producing regions in the U.S. The maximum combined residue (acetochlor and metabolites) in alfalfa forage was 0.540 ppm and the maximum alfalfa hay residue was 1.870 ppm. The maximum clover forage residue was 0.567 ppm, the maximum clover residue was 1.244 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicology data place technical acetochlor in toxicity category III for eye irritation, toxicity category III for acute oral, acute dermal, and acute inhalation. Technical acetochlor is in category IV for primary skin irritation and it is a skin sensitizer.

2. *Genotoxicty*. In mutagenicity testing, submitted by Monsanto, acetochlor was weakly positive in the Chinese hamster ovary/hypoxanthine-guanine phosphoribosyltransferase (CHO/HGPRT) gene mutation assay with and without activation in the mouse lymphoma assay. Acetochlor was negative in a DNA damage repair assay in rat hepatocytes, a *Salmonella* assay, and two (2) *in vivo* chromosomal aberration studies.

In mutagenicity tests conducted by ZENECA, acetochlor induced a reproducible, positive, mutagenic response in strain TA 1538 of *Salmonella typhimurium* with metabolic activation at 100 milligrams /plate (mg/p) (however, this was less than the 2X background mutation, but was significant at p less than 0.05). Significant increases in number of revertant colonies were not induced in strains TA 1535, TA 1537, TA98, and TA100. The effect in strain TA1538 although reproducible in the first study was not observed in a more extensive follow up study. Acetochlor was not

clastogenic in a mouse micronucleus test at doses tested (898 and 1,436 milligrams/kilograms (mg/kg) in males; 1,075 and 1,719 mg/kg in females). Acetochlor was clastogenic in cultured human lymphocytes both in the presence and absence of S9 mix at 100 mg/milliliters (ml), and in the absence of S9 mix at 50 mg/ml. It has subsequently been shown that the chloroacetyl substituent on acetochlor is the clastogenic moeity, however two structurally related chemicals containing this moiety have been shown to be non-carcinogens as defined by the US NTP.

Acetochlor induced a weak DNA repair (measured by UDS) in rat hepatocytes derived from animals exposed *in vivo* at 2,000 mg/kg. At this dose there is significant hepatotoxicity (depletion of glutathione, severe liver necrosis and substantial release of hepatic enzymes). Acetochlor was negative in the unscheduled DNA synthesis (UDS) assay at a maximum tolerated dose (MTD) of 1,000 mg/kg. In a structural chromosome aberration study, acetochlor at doses 1,000 and 2,000 mg/kg resulted in reduced pregnancy incidence, decreased implants per pregnancy incidence, increased preimplantion loss, and decreased time implant per pregnancy at weeks 2, 3 and 4 of this study. Early and late intrauterine deaths were not affected in this study. The Agency concluded there was positive evidence of mutagenicity at the mid- and high-dose levels in this study. The Acetochlor Registration Partnership has submitted new data which show that there were no mutagenic effects in this study. Acetochlor was negative in a DNA damage (comet) assay conducted using nasal tissue derived from rats treated with a supra-MTD of 1,750 ppm of acetochlor in the diet for either 7 days or 18 weeks.

3. *Reproductive and developmental toxicity.* In a developmental study submitted by Monsanto, with rats fed dosages of 0, 50, 200, and 400 mg/kg/day, acetochlor did not induce developmental toxicity in rats up to 400 mg/kg/day, the highest dose tested (HDT). The maternal no observed adverse effect level (NOAEL) was 200 mg/kg/day based on matting and/or staining of the anogenital region, a decrease in mean maternal weight gain during the treatment period, and in adjusted mean weight gain on gestation day 20 at 400 mg/kg/day (HDT).

In a developmental study submitted by ZENECA , with rats fed dosages of 0, 40, 150, and 600 mg/kg/day, the developmental NOAEL was 150 mg/kg/day based on increased resorptions, post-implantation loss, and decrease in mean fetal weight at 600 mg/kg/day (HDT). The maternal toxicity NOAEL for this study was 150 mg/kg/day based on animals sacrificed moribund, clinical observations, and decreased body weight gain at 600 mg/kg/day (HDT).

In a developmental study submitted by Monsanto, with rabbits fed dosages of 0, 15, 50, and 190 mg/kg/day, acetochlor did not induce developmental toxicity in rabbits up to 190 mg/kg/day (HDT). The maternal toxicity NOAEL was 50 mg/kg/day based on loss of body weight during dosing at 190 mg/kg/day (HDT).

In a developmental study submitted by ZENECA, with rabbits fed dosages of 0, 30, 100, and 300 mg/kg/day, acetochlor did not induce either maternal or developmental toxicity up to 300 mg/kg/day (HDT).

In a 2–generation reproduction study submitted by Monsanto, with rats fed dosages of 0, 30.4, 74.1, and 324.5 mg/kg/day (males) or 0, 44.9, 130.1, and 441.5 mg/kg/day (females), the reproductive NOAEL was 30.4 mg/kg/day for males and 44.9 mg/kg/day for females, based on decreased body weight gain of F2b pups at 74.1 mg/kg/day for males and 130.1 mg/kg/day for females. A NOAEL for systemic effects was not established.

In a 2–generation reproduction study submitted by ZENECA, with rats fed dosages of 0, 1.6, 21, and 160 mg/kg/day, the reproductive NOAEL was 21 mg/kg/day based on significant reductions in pup weight at lactational day 21 and total body weight gain during lactation at 160 mg/kg/day (HDT). The parental NOAEL was 21 mg/kg/day based on reductions in body weight, accompanied by slight reductions in food consumption and significant increases in relative organ weights at 160 mg/kg/day (HDT).

Conclusion. Acetochlor is not considered to be a material that causes developmental or reproductive toxicity. The lowest NOAEL for fetotoxicity was 21 mg/kg/day in a 2–generation reproduction study and the lowest NOAEL for fetotoxicity in a developmental study was 150 mg/kg/day.

4. *Subchronic toxicity.* A 3–month feeding study submitted by Monsanto with rats fed dosages of 0, 40, 100, and 300 mg/kg/day resulted in a NOAEL of 40 mg/kg/day based on loss of body weight and decreased food consumption at 100 mg/kg/day.

A 3–week dermal study submitted by Monsanto with rabbits fed dosages of 0, 100, 400, and 1,200 mg/kg/day resulted in a NOAEL for systemic effects of 400 mg/kg/day based on mortality and decreased body weight at 1,200 mg/kg/day, (HDT). The lowest effect level (LEL) for dermal irritation was 100 mg/kg lowest dose tested (LDT). A NOAEL for dermal irritation was not established.

A 3–week dermal study submitted by ZENECA with rats fed dosages of 0.1, 1.0, 10, or 100 mg/kg/day resulted in minimal to mild skin irritation after 21 days. Signs of systemic toxicity were not apparent at any level. Higher doses were not possible because of severe dermal toxicity at higher doses.

5. *Chronic toxicity.* In a 1–year feeding study submitted by Monsanto, with dogs fed dosages of 0, 4, 12, and 40 mg/kg/day, the NOAEL was 12 mg/kg/day based on decreased body weight gains in males, decreased terminal body weight in females, testicular atrophy with accompanying decreases in absolute and relative testicular weight, increase in relative liver weights in male and females, and clinical chemistry changes at 40 mg/kg/day (HDT).

In a 1–year feeding study submitted by ZENECA, with dogs fed dosages of 0, 2, 10, and 50 mg/kg/day, the NOAEL was 2 mg/kg/day based on increased salivation, ornithine carbamyl transferase, and triglyceride values accompanied by decreased blood glucose levels and liver glycogen levels at 10 mg/kg/day. Interstitial nephritis, tubular degeneration of the testes and hypospermia were reported.

In a chronic feeding/carcinogenicity study submitted by Monsanto, in which rats were fed dose levels of 0, 22, 69, and 250 mg/kg/day, a NOAEL for chronic effects was not established.

In a repeat chronic feeding/carcinogenicity study submitted by Monsanto, in which rats were fed dose levels of 0, 2, 10, and 50 mg/kg/day, the NOAEL for chronic effects was 10 mg/kg/day.

In a chronic feeding/carcinogenicity study submitted by ZENECA, in which rats were fed dose levels of 0, 0.8, 7.9, and 79.6 mg/kg/day, the NOAEL for chronic effects was 7.9 mg/kg/day.

Conclusion. The lowest NOAEL for chronic effects in dogs was 2 mg/kg/day and the lowest NOAEL for chronic effects in rats was 7.9 mg/kg/day. EPA has established the Reference Dose (RfD) for acetochlor at 0.02 mg/kg/day based on the 2.0 mg/kg/day NOAEL in the ZENECA dog study and the application of a 100–fold safety factor.

In a chronic feeding/carcinogenicity study submitted by Monsanto with mice fed dosages of 0, 75, 225, and 750 mg/kg/day (high dose determined to be 973 mg/kg/day by the ARP) carcinogenic effects noted included increased incidence of liver carcinomas in high-

dose males, total lung tumors in females at all dose levels, carcinomas of lungs in females fed 75 and 750 (973) mg/kg/day, uterine histiocytic sarcomas in females at all dose levels, and total benign ovarian tumors in mid-dose females. Other dose-related changes included: (1) Increased mortality and decreased mean body weights in both high-dose males and females, (2) decreased red blood cell count, hematocrit, and hemoglobin in high-dose females at terminal sacrifice, (3) increased white blood count in high-dose males at terminal sacrifice, (4) increased platelet count in mid-and high-dose females at terminal sacrifice, (5) increased mean liver weight and liver-to-body-weight ratios at study termination in all dose groups of males and in high-dose females; increased absolute and relative kidney weights in all dose groups of males at termination; increased absolute and relative adrenal weights in all groups of males and in high-dose females at study termination; and (6) increased interstitial nephritis in high-dose males and females.

In a chronic feeding/carcinogenicity study submitted by ZENECA with mice fed dosages 0, 1.1, 11, and 116 mg/kg/day in males and 0, 1.4, 13, and 135 mg/kg/day in females, carcinogenic effects noted included an increase in pulmonary adenoma in both male and females at the high dose. Pulmonary tumors were confirmed as adenomas or carcinomas of the lung parenchyma and were all of the alveolar type. The NOAEL for systemic toxicity in females was 13 mg/kg/day based on a significant increase in anterior polar vacuoles in the lens of the eye at 135 mg/kg/day.

In a chronic feeding/carcinogenicity study submitted by Monsanto, with rats fed dosages of 0, 22, 69, and 250 mg/kg/day (males) or 0, 30, 93, and 343 mg/kg/day (females), carcinogenic effects noted at 250 (highest dose determined to be 297 mg/kg/day) mg/kg/day in males and 343 mg/kg/day in females included hepatocellular carcinoma in both sexes and thyroid follicular cell adenoma in males. Nasal papillary adenomas were noted in male rats at 69 mg/kg/day and above and in females at 93 mg/kg/day. A NOAEL for chronic effects was not established.

In a repeat chronic feeding/carcinogenicity study submitted by Monsanto, in rats fed dosages of 0, 2, 10, and 50 mg/kg/day oncogenic effects noted at 50 mg/kg/day (HDT) included neoplastic nodules of the liver, follicular adenoma/cystadenoma of the thyroids and papillary edema of the mucosa of the nose/turbinates in high dose animals. The NOAEL for chronic effects was 10 mg/kg/day based on decreased body weights and body weight gain in both sexes, high cholesterol levels in males, increased absolute and relative kidney and liver weight in males, and increased testicular weights at 50 mg/kg/day (HDT).

In a 2–year chronic feeding/carcinogenicity study submitted by ZENECA, with rats fed dosages of 0, 0.8, 7.9, and 79.6 mg/kg/day, carcinogenic effects noted at 79.6 mg/kg/day (HDT) included a significant increase in nasal epithelial adenomas and thyroid follicular cell adenomas in both sexes at 79.6 mg/kg/day. Also, at that dose nasal carcinoma was present in two males and one female rat at this dose. Rare tumors in the form of benign chondroma of the femur and basal cell tumor of the stomach were also observed at 79.6 mg/kg/day. The systemic NOEL was 7.9 mg/kg/day based on decreased body weight gain, decreased food efficiency, increased organ to body weight ratios, increased plasma GGT and cholesterol at 79.6 mg/kg/day (HDT).

Conclusions. Three oncogenicity studies have been conducted with acetochlor in rats and two have been conducted in mice. In rats, increased incidences of tumors in nasal, thyroid and liver tissues were found only at dose levels equal to or exceeding the MTD. Liver tumors were found in only one rat study and at the highest dose tested (297mg/kg/day), a dose which greatly exceeded the MTD. The nasal tumors, found only at and above the MTD, are the only biologically relevant and reproducible oncogenic effect in rats.

In mice, increased incidences of tumors in liver, lung, and uterine tissues were observed. The liver tumors were observed only in one study, at the HDT (973mg/kg/day) a dose which greatly exceeded the MTD as evidenced by increased mortality of approximately 90%. The lung tumors and uterine histiocytic sarcomas were observed in all treated female groups in one study, but there was no dose-response relationship which makes the relationship to treatment and relevance equivocal. Lung tumors occurred only in high dose animals in the second mouse study and their incidence rate was within the historical control range for the laboratory. The rat and mouse liver tumors and the mouse lung and histiocytic sarcomas have been subjected to an independent pathology peer review.

Overall, the only clear oncogenic responses in rats or mice are found only at high dose levels at or above the MTD. This suggests that such tumors are not produced by genotoxic mechanisms, but by other threshold-dependent mechanisms. The weight of the evidence of all the genotoxicity studies conducted with acetochlor also supports the conclusion that tumor formation is not driven by genotoxic mechanisms. An overview of the genotoxicity studies with acetochlor has been reported by Ashby, et al. in Human and Experimental Toxicology, 15, 702, 1996 (EPA MRID NO. 44069503).

Mechanistic studies with alachlor, a structural analog of acetochlor which produces the same nasal and thyroid tumors in the rat, provide additional evidence that rodent tumors incident to acetanilide dosing are produced by indirect threshold mechanisms that are unique to the rat and not relevant to humans under realistic exposure levels. The Acetochlor Registration Partnership (ARP) has conducted and submitted a number of studies on the mechanism of tumor formation with acetochlor. The ARP believes these studies establish the basis for the use of a Margin of Exposure (MOE) for the cancer risk assessment for acetochlor.

6. *Animal metabolism.* The metabolism of acetochlor has been studied in goats, laying hens and rats. EPA has concluded that the nature of the residue in ruminants and poultry are adequately understood and the residue of concern is the same as that in corn.

7. *Metabolite toxicology.* EPA has determined that the residues of concern are those which contain the EMA and HEMA.

8. *Endocrine disruption.* Acetochlor is not a member of a class of chemicals associated with direct adverse effects on the endocrine system. The subchronic, chronic, developmental and reproductive studies with acetochlor satisfy the present data requirements, and they have measured many toxic endpoints which are sensitive to endocrine-modulation activity. Acetochlor has not produced effects in these toxicity studies that can be related to direct interference with female or male endocrine systems.

C. Aggregate Exposure

1. *Dietary exposure.* The nature of the residue in plants and animals is understood. Acetochlor metabolizes extensively to yield a number of polar metabolites. Tolerances have been established at 40 CFR 180.470 for raw agricultural commodities of field corn and indirect or inadvertent residues in or on sorghum, soybean and wheat. The tolerances are combined acetochlor, and metabolites that contain the EMA and HEMA moieties expressed as acetochlor. No tolerances have been established for livestock commodities because there is

no reasonable expectation of finite residues based on the results of exaggerated rate feeding studies.

i. *Food —a. Acute.* An acute dietary analysis was performed based on the EPA selected acute NOAEL of 150 mg/kg/day for developmental toxicity. The results of this analysis produced MOEs of greater than 70,000 for all 23 subgroups of the U.S. population. The most highly exposed subgroup, non-nursing infants, has a MOE of 77,000. EPA generally considers MOEs of greater than 100 to provide adequate acute dietary safety. Therefore, this evaluation demonstrates that acetochlor does not represent an acute dietary concern.

b. Chronic. The theoretical maximum residue contribution (TMRC) for the general U.S. population from all established uses combined with the proposed tolerance on corn forage is 1.11×10^{-4} mg/kg/day. For non-nursing infants less than 1 year old, the most highly exposed subgroup, the TMRC is 3.24×10^{-4} mg/kg/day. The TMRC is calculated assuming that all of the corn crop is treated with acetochlor, that all crop commodities bear tolerance-level residues, and that all rotation crops are grown in soil treated with acetochlor and thus all rotation crop commodities have tolerance level residues. A refined dietary exposure estimate, based on 30% of corn acres treated, actual maximum residues found in crop commodities, and reduction of residues in some processed commodities was calculated for the same population groups. The refined and more accurate exposure estimate, called the Anticipated Residue Contribution (ARC), is 1.0×10^{-5} for the U.S. general population and 2.7×10^{-5} for non-nursing infants. The TMRC represents only 0.55% of the RfD for the general population. The ARC represents only 0.05% of the RfD.

ii. *Drinking water.* Acetochlor is not registered for direct application to bodies of water. Seasonal run-off from treated fields can be transported to surface water. Since March 1995, the ARP has been monitoring drinking water from 175 community water systems (CWSs) which take their water supplies from surface water sources. The 175 CWSs take water from watersheds of all sizes in major acetochlor use areas but primarily from small watersheds located in areas of high-intensity corn production. Water samples taken every 2 weeks from mid March through early September from each CWS are analyzed for acetochlor. The results to date show that acetochlor was non-detected in about 80% of all individual samples of drinking water, with peak concentrations occurring mainly in May and June, the peak use season for acetochlor. Only about 10% of the participating CWSs had time-weighted annualized mean concentrations (AMC) above 0.1 parts per billion (ppb). There were no CWSs that had AMCs exceeding 2 ppb, the annual AMC limit set for acetochlor in the EPA-ARP registration agreement.

Although acetochlor is not expected to leach through most agricultural soils, there is a potential for limited ground water contamination in areas of highly permeable soils. To address this possibility, acetochlor products are labeled to prohibit use in fields where the depth to ground water is less than 30 feet and where the soils are "sands" with less than 3% organic matter; "loamy sands" with less than 2% organic matter; or "sandy loams" with less than 1% organic matter. However, shallow ground water contamination can also result from misuse, improper well construction and the movement of surface water into direct conduits to ground water. The ARP has been conducting a ground water monitoring (GWM) program consisting of 175 wells immediately adjacent to acetochlor treated fields since 1995. The wells are located in a variety of soil types to cover the range from light permeable soils to heavy less vulnerable soils, reflecting the soils on which corn is grown in the seven major corn-producing states. The ARP GWM wells are agricultural monitoring wells and do not adequately represent the drinking water wells across the entire country. Therefore, sporadic detections at very low levels cannot be extrapolated to provide accurate estimates of acetochlor in drinking water derived from ground water. A series of eight Prospective Ground Water (PGW) studies are being conducted by the ARP to monitor the movement of acetochlor to ground water under intensively instrumented fields, across a range of soil textures. Two studies initiated during 1995 are nearing completion and neither show any indication of acetochlor movement. Four studies commenced during 1996 and continue to show no acetochlor ground water contamination. Traces of acetochlor were detected at one of these sites at one sampling interval, soon after application. The residues were extremely low (0.06 ppb) and had dissipated by the next sampling interval.

The conditions of the registration of acetochlor include cancellation triggers based on detection scenarios in the Surface Water Monitoring Program, the Ground Water Monitoring Program and the Prospective Ground Water Program that will preclude any significant, widespread contamination of drinking water.

For the purpose of chronic risk assessment, a level of 0.1 ppb seems to represent a reasonable, upper-bound level for acetochlor in drinking water. Based on 0.1 ppb in the water and an assumed water consumption of 2 liters per day for an adult weighing 70 kg, the upper bound exposures would be 2.9×10^{-6} mg/kg/day.

For the purpose of assessing short term risk, a level of 2 ppb, the probable MCL, represents a reasonably conservative, upper bound level for acetochlor in drinking water. Based on 2 ppb in the water and an assumed water consumption of 2 liters per day for an adult weighing 70 kg and 1 liter per day for a child weighing 10 kg, the short-term exposure for the adult would be 5.7×10^{-5} mg/kg/day and for the child, 2.0×10^{-4} mg/kg/day.

2. *Non-dietary exposure.* Acetochlor is not registered for any use which would result in non-occupational, non-dietary exposure for the general population. Acetochlor is registered for use on corn, a commercial crop which is grown in fields remote from public-use areas. Acetochlor products are Restricted Use, for use only by Certified Applicators which means the general public cannot buy or use acetochlor.

D. Cumulative Effects

Toxicological testing of the chloroacetamide herbicide family in animals with high doses has produced a number of observed effects. Certain effects in some tissues are observed in two, three, or four members of the family, but there is no single effect that represents conclusive evidence of a common mechanism of toxicity existing throughout the chloroacetamide family.

EPA has not established procedures for determining when pesticides share a common toxic mechanism, or provided a definition of "concurrent exposure." At this time there is no established procedure for risk assessment of pesticides which may have a common mechanism by may differ in potency and exposure. Following an EPA proposal to the FIFRA Scientific Advisory Panel meeting on March 20, 1997 (Docket No. OPP–00466) that nasal tumors in alachlor, acetochlor, butachlor, and perhaps metolachlor may be formed by a common toxic mechanism, Monsanto Company has derived an equation to calculate a MOE for the combined, concurrent exposure to multiple chloroacetamide herbicides that may share a common mechanism for nasal tumors. The mechanism is thought to be metabolic production of

an electrophilic 3,5-dialkyl-benzoquinone-4-imine (DABQI) or similar compounds at sufficient levels to cause cytotoxicity, proliferation of nasal cells and neoplasms in nasal tissues. The equation, as presented in "Summary Information and Assessment as Required for the Reregistration of Alachlor by the Food Quality Protection Act of 1996" [MRID 44252200] is:

$MOE = 1 \div ([ala] \div [ala]_{10}) + ([Chlor1] \div [Chlor1]) + ([Chlor2] \div [Chlor2]_{10}) + ([Chlor3] \div [Chlor3]_{10}) + Etc$

In which, [ChlorX] represents the Aggregate Exposure to each individual chloroacetamide herbicide which shares the common mechanism with alachlor (ala), and $[ChlorX]_{10}$ represents the toxicological dose of that same herbicide which produced a measurable (10%) increase in tumors in tested animals (i.e., the ED_{10}). This equation gives the cumulative MOE relative to the ED_{10} and is valid assuming approximately constant relative potencies among the chloroacetamides at exposures below the ED_{10}. Since the ED_{10} will almost always exceed the NOAEL, this MOE will be smaller than the NOAEL-based MOE.

The ARP adopts this equation for the purpose of the cumulative risk assessment for chloroacetamides and to show that acetochlor uses meet the FQPA standard of reasonable certainty of no harm even if a common mechanism of toxicity is presumed to exist for several chloroacetamides.

E. Safety Determination

'1. U.S. population —i. U.S. general population -acetochlor alone. The upper bound Aggregate Exposure estimate for short-term exposures to acetochlor is 6.7×10^{-5} mg/kg/day. The Toxicity Endpoint Reference Committee has established 150 mg/kg/day as the acute dietary endpoint for risk assessment. Comparing the aggregate exposure to this endpoint indicates that short-term exposures have a margin of safety of 2,238,805.

The Aggregate Exposure estimate for chronic exposures to acetochlor is 1.29×10^{-5} mg/kg/day. This exposure utilizes only 0.065% of the RfD of 0.02 mg/kg/day. EPA generally has no concern about exposures below 100% of the RfD for the U.S population.

For cancer risk assessment, the ARP proposes that acetochlor be assessed by the MOE method that has been approved for cancer risk assessment of alachlor, a close structural analog which produces the same nasal and thyroid tumors in the rat. The appropriate cancer reference endpoint for acetochlor is the lowest NOAEL for tumors which is 26 mg/kg/day, the NOAEL for nasal tumors in the rat. Comparison of the aggregate exposure estimate of 1.29×10^{-5} mg/kg/day to the 26 mg/kg/day cancer endpoint gives a MOE (relative to this minimum NOAEL) of 2,015,504. The margins of safety for short-term exposure, chronic exposure and carcinogenicity are all adequate and support the conclusion that there is a reasonable certainty of no harm resulting from the established and proposed uses of acetochlor.

ii. *U.S. general population—acetamides common nasal mechanism.* The Aggregate Exposure (chronic) estimate for acetochlor is given above as 1.29×10^{-5} mg/kg/day. Using Aggregate Exposure estimates and ED_{10} derived by Monsanto for alachlor, butachlor and metolachlor, and this refined Aggregate Exposure estimate for acetochlor, the Common Mechanism MOE for all four pesticides was calculated.

Because some of these active ingredients have more than one chronic rat study, MOE ED_{10} was calculated using the lowest or worst case ED_{10}'s. (The lowest ED_{10}'s were 8.5 mg/kg/day for alachlor, 40.7 mg/kg/day for acetochlor and 85.1 mg/kg/day for butachlor. For metolachlor there were insufficient data to estimate an ED_{10} and a worst-case value of 150 mg/kg/day was used. The aggregate exposure estimates used for alachlor, butachlor, and metolachlor were 1.7×10^{-5}, 5.2×10^{-7}, and 2.1×10^{-4} mg/kg/day, respectively.) The Combined Mechanism MOE relative to the ED_{10} was 268596. This MOE is sufficiently large to demonstrate that there is a reasonable certainty of no harm from cumulative exposure to these chloroacetamides even if they are considered to share a common toxic mechanism.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of acetochlor, EPA considers data from developmental studies in the rat and the rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure to female test animals. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals data on systemic toxicity and the survival, growth and development of the offspring.

Based on the current toxicological data requirements, the acetochlor data base is complete and sufficient for assessing prenatal and postnatal effects on children. There are two developmental studies with acetochlor in both the rat and the rabbit and there are two reproduction studies in the rat. In the four developmental studies and two reproduction studies with acetochlor, the fetal NOAEL's were either equal to or higher than the maternal (systemic) NOAEL's, indicating that there is no increased sensitivity for offspring. The NOAEL of 2 mg/kg/day in the dog study which was used to establish the RfD is lower than the lowest developmental NOAEL by a factor of 75, and lower than the lowest reproductive NOAEL by a factor of 10, suggesting that the RfD is appropriate for assessing aggregate risk to infants and children. The results of the acetochlor testing establishes that there is reasonable certainty of no harm to infants and children from the proposed uses of acetochlor.

The upper bound Aggregate Exposure for infants or children is 2.27×10^{-4} mg/kg/day, representing the combination of dietary exposure for non-nursing infants less than 1 year old (the most highly exposed subgroup) with potential short-term exposure to drinking water containing 2.0 ppb acetochlor. This potential short-term exposure provides a margin of safety of 660,793 when compared to the toxicological reference point of 150 mg/kg/day for acute dietary exposures. Chronic exposure at this level would utilize only 1.1% of the RfD. EPA generally has no concern about chronic exposures that utilize less than 100% of the RfD. Cancer risk assessment for children is considered to be included in the adult assessment because of the long induction period for carcinogenic effects. The cumulative risk assessment for chloroacetamides is based on the proposed common mechanism for induction of nasal tumors, a process requiring a long dosing period. Therefore, the data presented support the conclusion that there is a reasonable certainty of no harm to infants or children will result from the established and proposed uses for acetochlor.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) Maximum Residue Levels established for residues of acetochlor on agricultural commodities.

II. Interregional Research Project Number 4

9E6025

EPA has received a pesticide petition (9E6025) from the Interregional Project Number 4 (IR-4), New Jersey

Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pyridate, 0-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl carbonothioate and its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (known as SAN 1367), and conjugates of SAN 1367 in or on the raw agricultural commodities peppermint tops and spearmint tops at 0.20 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This summary was prepared by Novartis Crop Protection, Inc., Greensboro, NC, 27419.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of pyridate in plants is well understood based on studies with broccoli, corn, and peanut. Pyridate is rapidly broken down by hydrolysis to its major degraded, SAN 1367. The SAN 1367 metabolite is further conjugated to glucoside and degraded.

2. *Analytical method.* The proposed analytical method is "Method of Analysis of Determination of Residues of Pyridate and its Metabolites CL 9673 and Conjugated CL 9673 in Plant Materials."

B. Toxicological Profile

1. *Acute toxicity.* Results of a rat acute oral study showed a lethal dose $(LD)_{50}$ of 4,690 mg/body weight (bwt)/day (5,993 mg/kg in males and 3,544 mg/kg in females).

In a rat acute dermal study, the LD_{50} was shown to be > 2,000 mg/kg. A rat acute inhalation study yielded a LD_{50} > 4.37 mg/milliliter (ml).

Results of a primary eye irritation study in the rabbit indicated that pyridate is a mild irritant.

A primary dermal irritation study showed pyridate to be a moderate skin irritant, whereas, a dermal sensitization study indicated it is a sensitizer.

2. *Genotoxicity.* Pyridate was tested in the Ames test, mouse micronucleus assay, chromosome aberration assay with Chinese hamster ovary cells (CHO), the REC assay, and rat hepatocyte unscheduled DNA synthesis assay. Results were negative for mutagenicity and chromosome aberrations.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in the rat dosed at 0, 55, 165, 400, or 495 mg/kg/day showed a maternal no observed adverse effect level (NOAEL) of 165 mg/kg/day, and a developmental NOAEL > 495 mg/kg/day.

A developmental toxicity study in the rabbit with doses of 0, 150, 300, or 600 mg/kg/day showed a maternal NOAEL of 300 mg/kg/day and a developmental NOAEL > 600 mg/kg/day.

Results of a multi-generational reproduction study with rats dosed at 0, 2.2, 10.8, or 67.5 mg/kg/day showed a NOAEL of 10.8 mg/kg/day for maternal and developmental toxicity.

4. *Subchronic toxicity.* Results of a 21–day dermal study showed a NOAEL > 1,000 mg/kg. A 90–day feeding study in rats dosed at 0, 62.5, 177, and 500 mg/kg/day showed a NOAEL of 62.5 mg/kg/day. No neuropathological effects were found.

A 90–day feeding study in dogs with doses of 0, 20, 60, or 200 mg/kg/day showed a NOAEL of 20 mg/kg/day. Slight degenerative myelopathy in the peripheral nerves was observed at the highest dose level, which is much higher than the NOAEL and the expected exposure from field use.

5. *Chronic toxicity.* A 1–year feeding study in dogs was conducted with doses of 0, 5, 20 or 60 mg/kg/day for 34 weeks. After week 34, the doses were increased to 30, 100, or 150 mg/kg/day because no toxic effects were evident at the lower doses. The final results showed a systemic NOAEL of 20 mg/kg/day.

A lifespan (121 week) chronic/carcinogenicity study in rats treated with analytical levels of 0, 2.2, 10.8, or 67.5 mg/kg/day (equivalent to 0, 48, 240, or 1,500 ppm) showed a systemic NOAEL of 10.8 mg/kg/day (240 ppm) based on body weight depression. No carcinogenic potential was observed.

In an 18–month carcinogenicity study, mice were fed doses of 0, 400, 800, 1,600 or 7,000 ppm of pyridate. In males, dose levels were approximately 0, 47.7; 97.1; 169.5, and 882.6 mg/kg bwt/day; in females, dose levels were approximately 0, 54.5, 114.6, 204.3, and 1,044.6 mg/kg bwt/day with a NOAEL at 800 ppm (97.1 mg/kg in males and 114.6 mg/kg in females). Results showed no evidence of carcinogenicity.

Carcinogenicity. Existing data demonstrate that there is no evidence of carcinogenicity in rats at 1,500 ppm (67.5 mg/kg/day) or mice at 7,000 ppm (883 mg/kg bwt/day in males, and 1,044.6 mg/kg bwt/day in females). These data have been obtained at dosing in excess of any dietary exposure.

6. *Animal metabolism.* Pyridate has been tested in rats, dogs, cattle, goats, and hens. In every study, pyridate was hydrolyzed to SAN 1367 and rapidly excreted, primarily through the urine as SAN 1367 or its glucoside or glucuronide conjugates. Pyridate and its metabolites are not persistent and do not accumulate in animal systems.

C. Aggregate Exposure

1. *Dietary exposure.* Pyridate is registered for use in corn, peanut, and cabbage. The pending petition add the use in/on peppermint tops and spearmint tops. The potential dietary exposure of the population to residues of pyridate or its metabolites is calculated based on Theoretical Maximum Residue Contribution (TMRC) for all crops with pyridate use. The TMRC is a worst case estimate of dietary exposure since it assumes that 100% of all crops for which tolerances are established are treated with pyridate, and that pesticide residues are present at the tolerance levels. Novartis maintains that this method of calculation result in an overestimation of the exposure and is considered conservative. Dietary exposure is not expected in meat, milk, poultry, or eggs, based on cow and hen feeding studies, animal metabolism studies, and the fact the residue studies indicate that residues are not present in crops fed to animals above the limit of detection.

i. *Chronic effects.* The chronic population adjusted dose (cPAD) has been established based on the chronic toxicity data base. The cPAD = 0.11 mg/kg bwt/day based on the NOAEL of 10.8 from the lifespan rat carcinogenicity study due to body weight depression in males, and assuming a safety factor of 100.

ii. *Acute effects.* Acute dietary analysis compared the daily dietary exposure to the lowest NOAEL for subchronic studies. EPA's current policy for Tier I analysis uses the conservation assumption that all residues are at a high end estimate or maximum, typically taken as the tolerance value. Acute dietary assessment for pyridate was generated by comparing the ratio of exposure and the NOAEL from the 90–day feeding study in dogs of 20 mg/kg bwt/day to determine a margin of exposure (MOE). The exposure estimate includes all current and pending tolerances from Sandoz Agro, Inc. and IR-4. A MOE of 100 or more is considered acceptable. For all subgroups evaluated, the MOE is greater than 140,000.

2. *Drinking water.* Drinking water is not expected to be a means of exposure to pyridate. Environmental studies indicate that pyridate binds to the soil and is rapidly hydrolyzed into its

metabolites. The metabolites are then photolyzed and further degraded and finally mineralized to CO_2. Leaching studies and lysimeter studies indicate that under typical agricultural conditions, neither pyridate nor its metabolites were detected below 30 centimeters. Ground water monitoring studies conducted in Europe have not confirmed any detection of pyridate or metabolites. Therefore, significant movement of pyridate is not likely and is not a considerable factor in assessing human health risk.

3. *Non-dietary exposure.* There are no registered uses for pyridate on residential or recreational turf. Therefore, non-dietary exposure of pyridate is not likely and not a factor in assessing human health risk.

D. Cumulative Effects

Pyridate belongs to the pyridazine group of herbicidal compounds and has a unique mode of action in plants. Sandoz does not have data to indicate a common mechanism of toxicity to other compounds in humans. Therefore cumulative effects from common mechanisms of action are unlikely.

E. Safety Determination

1. *U.S. population.* The cPAD is calculated to be 0.11 mg/kg bwt/day. The estimates of exposure are based on conservative assumptions that all crops with a tolerance for pyridate are treated and that all residues found are at the maximum or tolerance level. The dietary exposure to the U.S. population for the current uses plus the corn grain, peanut butter, and cabbage uses is estimated at most to be 6.0×10^{-5} mg/kg/bwt/day, which is 0.1% of the cPAD. Therefore, Novartis concludes that there is reasonable certainty of no harm from aggregate exposure of residues of pyridate or its metabolites including all dietary and other non-occupational exposures.

2. *Infants and children.* Pyridate is not a reproductive or developmental toxicant. Therefore no specific effects on infants and children are expected. Based on the weight of evidence of the toxicity studies, an additional safety factor is not warranted.

Using the same assumptions as above, the exposure to infants and children is presented as a percent of cPAD. The dietary exposure for the current uses plus the corn grain, peanut butter, and cabbage uses for non-nursing infants is estimated as 1.25×10^{-4} mg/kg/bwt/day, which is 0.1% of the cPAD. For children age 1–6, the estimated exposure is 1.43×10^{-4} mg/kg/day, 0.1% of the cPAD. Therefore, Sandoz concludes that there is reasonable certainty of no harm from aggregate exposure of residues of pyridate or its metabolites including all dietary and other non-occupational exposures.

F. International Tolerances

No international tolerances have been established for pyridate on peppermint tops and spearmint tops by CODEX Alimentarius Commission.

[FR Doc. 00–1553 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–914; FRL–6486–8]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–914, must be received on or before February 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–914 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–914. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–914 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–914. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgrEvo USA Company

PP 6F4693; 4F4380

EPA has received pesticide petitions (PP 6F4693, PP 4F4380) from AgrEvo USA Company, 2711 Centerville Road, Wilmington, DE 19808 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of flutolanil in or on the raw agricultural commodities potatoes at 0.20 parts per million (ppm), and potato waste (wet) at 0.40 ppm, rice at 2.0 ppm, rice straw at 12.0 ppm, and in or on the processed food commodities rice hulls at 7.0 ppm and rice bran at 3.0 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of flutolanil in plants is adequately understood for the purposes of this petition. Plant metabolism studies have been conducted in rice, cucumber, and peanuts. The metabolic profile for flutolanil was similar in all three crops. The major route of degradation was 4′-O-dealkylation to desisopropylflutolanil, followed by conjugation. Other metabolites may occur at very low levels due to hydroxylation and oxidation of the side chain, hydroxylation of the aniline ring, and methylation of the hydroxyl groups. These minor metabolites were also subject to conjugation. The residues of concern are the parent, flutolanil, and desisopropylflutolanil.

2. *Analytical method.* The analytical method designated AU-95R-04 has been independently validated and is adequate for enforcement purposes. A multi-residue method for flutolanil has been previously submitted to the EPA. The method is for use only by

experienced chemists who have demonstrated knowledge of the principles of trace organic analysis and have proven skills and abilities to run a complex residue analytical method, obtaining accurate results at the part per billion level. Users of this method are expected to perform additional method validation prior to using the method for either monitoring or enforcement. The method can detect gross misuse.

3. *Magnitude of residues.* Fourteen residue trials were conducted to determine the residues of flutolanil in potatoes after use as a seed piece protectant. Potato seed pieces were treated with flutolanil, planted, and the harvested potatoes analyzed for residues of flutolanil. In these studies, flutolanil-derived residues ranged from non-detectable (< 0.05 ppm) to 0.11 ppm in potato tubers.

A processing study was also conducted to support the use of flutolanil as a potato seed piece protectant. Concentration of residues was observed into wet peel (1.7x). No concentration was observed in potato granules, chips, or flakes.

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute studies was conducted indicating an acute oral lethal dose^{50} (LD^{50}) of > 10,000 milligrams/kilograms (mg/kg) for rats and mice; an acute rat dermal LD^{50} of > 2,000 mg/kg; an acute rat inhalation LC^{50} of > 5.98 mg/L; no dermal irritation; slight eye irritation; and no evidence of dermal sensitization.

2. *Genotoxicity.* Flutolanil has been tested in a battery of *in vitro* and *in vivo* assays. No evidence of genotoxicity was noted in gene mutation assays with *Salmonella, E. coli* or mouse lymphoma cells; a mouse micronucleus assay, or in an *in vitro* unscheduled DNA synthesis assay. A weakly positive response was noted in an *in vitro* cytogenetics assay in Chinese hamster lung cells but no evidence of clastogenicity was noted in an *in vitro* cytogenetics assay in human lymphocytes. The overall weight of evidence indicates that flutolanil is not genotoxic.

3. *Reproductive and developmental toxicity.* A 3–generation rat reproduction study was conducted at dietary concentrations of 0, 1,000 and 10,000 ppm. The no observed adverse effect level (NOAEL) for this study is considered to be 1,000 ppm (equivalent to 63 mg/kg/day), based on reduced pup weights late in lactation at 10,000 ppm. Because the Agency considered this study supplementary, a 2–generation rat reproduction study was subsequently conducted at dietary concentrations of 200, 2,000 and 20,000 ppm (equivalent to 1,936 mg/kg/day). The Agency, however, has concluded that the NOAEL of the original study (63 mg/kg/day) should continue to be used for risk assessment.

4. *Subchronic toxicity.* A 90–day rat feeding study was conducted at dose levels of 500, 4,000 and 20,000 ppm. The NOAEL in this study was considered to be 500 ppm (equivalent to 37 mg/kg/day for males and 44 mg/kg/day for females) based on increased liver weights at 4,000 ppm and slightly decreased body weights at 20,000 ppm.

5. *Chronic toxicity.* In a 2–year chronic toxicity/oncogenicity study, flutolanil was administered to rats at dietary levels of 0, 40, 200, 2,000 and 10,000 ppm. The NOAEL was considered to be 2,000 ppm (86.9 mg/kg/day for males and 103.1 mg/kg/day for females) based on reduced body weight gain in males and increased liver weights in females at 10,000 ppm. No evidence of carcinogenicity was observed.

6. *Animal metabolism.* Studies in rats, ruminants and poultry suggest that flutolanil is not well-absorbed following oral administration. Once absorbed, however, it is rapidly metabolized, primarily to desisopropylflutolanil and its conjugates, and rapidly excreted via urine and feces.

7. *Endocrine effects.* No special studies have been conducted to investigate the potential of flutolanil to induce estrogenic or other endocrine effects. However, no evidence of such effects has been observed in the subchronic, chronic or reproductive studies previously discussed. Thus, the potential for flutolanil to cause endocrine effects is considered to be minimal.

8. *Toxicity endpoint selection.* Flutolanil is of low acute toxicity via all routes of administration and did not induce significant maternal or developmental toxicity in either rats or rabbits, even at the limit dose of 1,000 mg/kg/day. Furthermore, no evidence of toxicity was noted following repeated dosing at 1,000 mg/kg/day in a 21–day dermal toxicity study.

Thus, acute dietary, occupational and residential risk assessments are not considered necessary. The Agency has concluded that the chronic Referene Dose (RfD) for flutolanil should be 0.63 mg/kg/day, based on the NOAEL of 63 mg/kg/day from the first rat multigeneration reproduction study and a 100–fold Uncertainty Factor. The Agency has also determined that the carcinogenicity classification for flutolanil should be "Group E--Evidence of Non-Carcinogenicity for Humans."

C. Aggregate Exposure

1. *Dietary exposure.* Flutolanil is registered for use on rice, peanuts, and turf and ornamentals. Registration for use on potatoes as a seed piece treatment has been proposed. Potential sources of non-occupational exposure would consist of any potential residues in food and drinking water, and from uses of flutolanil on residential turf or ornamentals. As previously indicated, in the absence of any acute toxicity concerns, only chronic exposures have been evaluated.

i. *Food.* Time-limited tolerances have been previously established for flutolanil in/on rice commodities, and tolerances with no time limitations are established for peanut commodities, meat, milk, and eggs. Tolerances have been proposed for flutolanil on potatoes. Potential dietary exposures to flutolanil from these food commodities were assessed using the Exposure® 1 software system (TAS, Inc.) and food consumption data from the 1977–1978 USDA Continuing Surveys of Food Consumption by Individuals (CSFII). For the purposes of this assessment, it was assumed that 100% of all of the above commodities contained residues of flutolanil at the existing or proposed tolerance levels.

ii. *Drinking water.* The potential for flutolanil to leach into ground water has been assessed in two terrestrial field dissipation studies, a long-term terrestrial field dissipation study, and an aquatic field dissipation study. Under field conditions, the half-life of flutolanil varied from 101 to 123 days in the long-term field soil dissipation study, which was consistent with the other field studies, and was approximately 180 days in the aquatic environment. Flutolanil strongly adsorbs to soil following application and did not exhibit mobility under either terrestrial or aquatic conditions. The water solubility of flutolanil is quite low (equivalent to 5.0 ppm). Based on these environmental fate data and the conditions of use, the potential for movement of flutolanil into ground water is very low, and as such the potential contribution of any such residues to the total dietary intake of flutolanil will be negligible. No Maximum Contaminant Level or Health Advisory Level for residues of flutolanil in drinking water has been established.

2. *Non-dietary exposure.* As a professional use turf and ornamental fungicide, flutolanil is used primarily (> 95%) on golf courses for control of brown patch disease (*Rhizoctonia solani*). Very limited use of flutolanil may occur on commercial ornamental

turf by professional lawn care applicators or on sod farms. The product is rarely, if ever, used on homeowner turf due to the fact that the diseases it controls (Brown patch, Fairy ring, and snow molds) occur in high-fertility, high-maintenance turf (e.g., golf courses), not in homeowner lawns. Thus, non-dietary exposure to flutolanil would be minimal. Furthermore, no dermal toxicity endpoints of concern have been identified for flutolanil. Thus, an assessment of non-dietary exposure and risk is not considered to be necessary.

D. Cumulative Effects

Flutolanil has demonstrated only minimal toxicity in animal studies. The mechanism of this toxicity is unknown. Furthermore, there are no available data to indicate that flutolanil has a common mechanism of toxicity with other substances. Thus, only the potential risks from flutolanil are being considered in this document.

E. Safety Determination

1. *U.S. population.* Based on the existing and proposed tolerances in potatoes, rice, peanuts and, secondary commodities, the Theoretical Maximum Residue Contribution (TMRC) of the current action is estimated to be 0.001353 mg/kg/day for the U.S. population in general. This exposure would utilize less than 1% of the RfD. There is generally no concern for exposures below 100% of the RfD since the RfD represents the exposure level at or below which daily exposure over a lifetime will not pose any appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will result in the U.S. population in general from aggregate exposure to flutolanil.

2. *Infants and children.* Data from reproductive and developmental toxicity studies are generally used to assess the potential for increased sensitivity of infants and children. No evidence of developmental toxicity was noted in rats or rabbits, even at the limit dose of 1,000 mg/kg/day. Reduced pup weights in the absence of parental toxicity were noted at the high-dose level (10,000 ppm) in a 3–generation rat reproduction study. However, no such effects were noted in a subsequent reproduction study, even at a higher dose level (20,000 ppm). Furthermore, the reduced weight gain in the first study began late in the lactation period, at a time when the pups were likely ingesting significant quantities of diet. Feed intake is much higher in young animals than in adults and the apparent increase in sensitivity may simply reflect the higher test material intake in these pups on a mg/kg basis compared to the adults. Thus, AgrEvo believes that the overall weight of evidence does not indicate any special concern for infants and children, and that no additional safety factor is necessary.

Based on the existing and proposed tolerances in rice, potatoes, peanuts, and secondary commodities, the TMRC from the current petition is estimated to be 0.006498 mg/kg/day for the most highly exposed subpopulation, non-nursing infants (less than 1 year old). This exposure would utilize approximately 1% of the RfD. Therefore, there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to flutolanil.

F. International Tolerances

No Codex Alimentarius Commission (CODEX) tolerances have been established for flutolanil.

[FR Doc. 00–1551 Filed 1–21–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–911; FRL–6485–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–911, must be received on or before February 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–911 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Judy Loranger, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8056; e-mail address: loranger.judy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–911. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM 2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–911 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–911. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 10, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Bird Shield Repellent Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petitions. These summaries were prepared by Bird Shield Repellent Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summaries may have been edited by EPA if the terminology used was unclear, the summaries contained extraneous material, or the summaries unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

I. Bird Shield Repellent Corporation

9F5055

EPA has received a pesticide petition 9F5055 from Bird Shield Repellent Corporation, P.O. Box 785, Pullman, WA 99163, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide methyl anthranilate in or on sunflower.

A. Product Name and Proposed Use Practices

The commercial name for the end use product containing methyl anthranilate (MA) is Bird Shield Repellent, EPA Reg. No. 66550–1. The product was approved for use as a bird repellent on cherries, blueberries and grapes on October 3, 1995. The active ingredient, methyl anthranilate, is a natural constituent of concord and heavy red grapes. It is listed by the U.S. Food and Drug Administration (FDA) as a flavoring compound under 21 CFR 182.60 and is classified as a Generally Recognized as Safe (GRAS) compound by the Expert panel of the Flavoring and Extract Manufacturer's Association (FEMA No. 2682). An exemption from the requirement of a tolerance for the active ingredient, methyl anthranilate for cherries, blueberries and grapes under 40 CFR 180.1143 became effective on April 26, 1995, as published in the **Federal Register** (60 FR 20432) (FRL–4941–8).

The mode of action is physical whereby the repellent irritates the bird's taste buds, olfactory sensors and skin. For this petition, methyl anthranilate is

sprayed in a water solution at a rate of 0.2862 pounds (lbs) per acre to sunflowers twice at 7-day intervals until harvest. Applications to the crop can be applied up to 2 days before harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Methyl anthranilate is a common component of concord and other red grapes as well as neroli, ylang-ylang, bergamot, jasmine and other essential oils. It is synthetically obtained by esterifying anthranilic acid with methanol in the presence of hydrochloric acid. In its crystalline form it is slightly soluble in water and freely soluble in alcohol or ether. Methyl anthranilate is commonly used as a perfume for ointments and cosmetics, and a flavoring agent in confectionary products, drugs and beverages. Methyl anthranilate readily volatilizes under ultraviolet (uv) light and elevated temperatures.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residue studies, using gas chromatography and mass spectrometry, show no residues at the time of harvest. No residues of methyl anthranilate are expected to occur at the time of harvest and thus the purpose for proposing an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* The analytical method for detecting and measuring the levels of the residue is described above.

C. Mammalian Toxicological Profile

Methyl anthranilate is approved by the FDA for food use as an artificial flavoring and fragrance agent. Bird Shield Repellent Corporation has reviewed the acute toxicological studies associated with these approvals and conducted additional studies for verification. Summaries of these studies are presented below:

1. *Mammalian.* Methyl anthranilate exhibits little or no mammalian toxicity. Methyl anthranilate metabolizes in the intestine when consumed. The lethal dose$_{50}$ (LD_{50}) values for methyl anthranilate were estimated to be greater than 5,000 milligrams/kilograms (mg/kg) in an acute oral toxicity study in rats (Toxicity category IV) and greater than 2,000 mg/kg in an acute dermal toxicity study in rats (Toxicity category III). The LC_{50} value in an acute inhalation study in rats was determined to be greater 2.24 mg/liters (L) (Toxicity category IV). Methyl anthranilate was found to cause moderate irritation in a rabbit skin irritation assay and corneal effects that cleared in 8 to 21 days in a rabbit eye irritation assay.

2. *Avian.* Methyl anthranilate exhibits little or no avian toxicity. Methyl anthranilate's irritating properties to avian species preclude ingestion. In an acute oral avian toxicity study, methyl anthranilate was found to be practically non-toxic to bobwhite quail. In a dietary study, methyl anthranilate was determined to be practically non-toxic to mallard ducks. Based on these studies, Bird Shield Repellent Corporation concludes that methyl anthranilate poses no unique or additional risk to avian species.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* The active ingredient in Bird Shield Repellent Concentrate, methyl anthranilate, is applied at a rate of 0.2862 lbs per acre. Because of the low use rates, no active ingredient residues are detectable using available methods on treated crops even immediately after application. Because of it's volatility, and degradation when exposed to ultraviolet light and elevated temperatures, no residues are expected at harvest. Dietary exposure to methyl anthranilate, via consumption of the treated food or feed, is expected to be low to negligible.

ii. *Drinking water.* The active ingredient is unlikely to be found in drinking water given the very low application rate and rapid degradation in soil.

2. *Non-dietary exposure.* Bird Shield Repellent Corporation believes that the potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use is primarily to the external, non-edible portions of the crop. This mode of application would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern. Increased non-dietary exposure of methyl anthranilate is not considered likely because of the low use rates and the lack of persistence of the active ingredient.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate given there is no indication of mammalian toxicity of methyl anthranilate and no information that indicates that the toxic effects would be cumulative with any other compounds. Moreover, methyl anthranilate does not exhibit a toxic mode of action in its target species.

F. Safety Determination

1. *U.S. population.* Methyl anthranilate's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals in which the chemical caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus the aggregate exposure to methyl anthranilate over a lifetime should pose negligible risks to human health.

2. *Infants and children.* Based on the lack of toxicity and low exposure there is reasonable certainty of no harm to infants, children or adults from aggregate exposure to the chemical's residues. Exempting methyl anthranilate from the requirement of a tolerance should pose no significant risk to human health or the environment.

G. Effects on the Immune and Endocrine Systems

Bird Shield Repellent Corporation has no information to suggest that methyl anthranilate will adversely affect the immune or endocrine systems.

H. Existing Tolerances

An exemption from the requirement of a tolerance for the active ingredient, methyl anthranilate for cherries, blueberries and grapes under 40 CFR 180.1143 became effective in the **Federal Register** of April 26, 1995 (60 FR 20432).

I. International Tolerances

Bird Shield Repellent Corporation is not aware of any tolerance, exemption from tolerance or maximum residue levels (MRLs) issued for methyl anthranilate outside the United States.

II. Bird Shield Repellent Corporation

9F5056

EPA has received a pesticide petition 9F5056 from Bird Shield Repellent Corporation, P.O. Box 785, Pullman, WA 99163, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide methyl anthranilate in or on corn.

A. Product Name and Proposed Use Practices

The commercial name for the end use product containing methyl anthranilate is Bird Shield Repellent, EPA Reg. No. 66550–1. The product was approved for use as a bird repellent on cherries, blueberries and grapes on October 3, 1995. The active ingredient, methyl anthranilate, is a natural constituent of concord and heavy red grapes. It is listed by the FDA as a flavoring compound under 21 CFR 182.60 and is classified as a GRAS compound by the Expert panel of FEMA No. 2682. An

exemption from the requirement of a tolerance for the active ingredient, methyl anthranilate for cherries, blueberries and grapes under 40 CFR 180.1143 became effective on April 26, 1995 as published in the **Federal Register** (60 FR 20432) (FRL–4941–8).

The mode of action is physical whereby the repellent irritates the bird's taste buds, olfactory sensors and skin. For this petition, methyl anthranilate is sprayed in a water solution at a rate of 0.2862 pounds (lbs.) per acre to corn twice and may be reapplied at 5 to 10 day intervals until harvest. Applications to the crop can be applied up to 2 days before harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Methyl anthranilate is a common component of concord and other red grapes as well as neroli, ylang-ylang, bergamot, jasmine and other essential oils. It is synthetically obtained by esterifying anthranilic acid with methanol in the presence of hydrochloric acid. In its crystalline form it is slightly soluble in water and freely soluble in alcohol or ether. Methyl anthranilate is commonly used as a perfume for ointments and cosmetics, and a flavoring agent in confectionary products, drugs and beverages. Methyl anthranilate readily volatilizes under ultraviolet (uv) light and elevated temperatures.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residue studies, using gas chromatograph and mass spectrometry, show no residues at the time of harvest. No residues of methyl anthranilate are expected to occur at the time of harvest and thus the purpose for proposing an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* The analytical method for detecting and measuring the levels of the residue is described above.

C. Mammalian Toxicological Profile

Methyl anthranilate is approved by the FDA for food use as an artificial flavoring and fragrance agent. Bird Shield Repellent Corporation has reviewed the acute toxicological studies associated with these approvals and conducted additional studies for verification. Summaries of these studies are presented below:

1. *Mammalian.* Methyl anthranilate exhibits little or no mammalian toxicity. Methyl anthranilate metabolizes in the intestine when consumed. The LD_{50} values for methyl anthranilate were estimated to be greater than 5,000 mg/kg in an acute oral toxicity study in rats (Toxicity category IV) and greater than 2,000 mg/kg in an acute dermal toxicity study in rats (Toxicity category III). The LC_{50} value in an acute inhalation study in rats was determined to be greater 2.24 mg/L (Toxicity category IV). Methyl anthranilate was found to cause moderate irritation in a rabbit skin irritation assay and corneal effects that cleared in 8 to 21 days in a rabbit eye irritation assay.

2. *Avian.* Methyl anthranilate exhibits little or no avian toxicity. Methyl anthranilate's irritating properties to avian species preclude ingestion. In an acute oral avian toxicity study, methyl anthranilate was found to be practically non-toxic to bobwhite quail. In a dietary study, methyl anthranilate was determined to be practically non-toxic to mallard ducks. Based on these studies, Bird Shield Repellent Corporation concludes that methyl anthranilate poses no unique or additional risk to avian species.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* The active ingredient in Bird Shield Repellent Concentrate, methyl anthranilate, is applied at a rate of 0.2862 lbs per acre. Because of the low use rates, no active ingredient residues are detectable using available methods on treated crops even immediately after application. Because of its volatility, and degradation when exposed to ultraviolet light and elevated temperatures, no residues are expected at harvest. Dietary exposure to methyl anthranilate, via consumption of the treated food or feed, is expected to be low to negligible.

ii. *Drinking water.* The active ingredient is unlikely to be found in drinking water given the very low application rate and rapid degradation in soil.

2. *Non-dietary exposure.* Bird Shield Repellent Corporation believes that the potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use is primarily to the external, non-edible portions of the crop. This mode of application would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern. Increased non-dietary exposure of methyl anthranilate is not considered likely because of the low use rates and the lack of persistence of the active ingredient.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate given there is no indication of mammalian toxicity of methyl anthranilate and no information that indicates that the toxic effects would be cumulative with any other compounds. Moreover, methyl anthranilate does not exhibit a toxic mode of action in its target species.

F. Safety Determination

1. *U.S. population.* Methyl anthranilate's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals in which the chemical caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus the aggregate exposure to methyl anthranilate over a lifetime should pose negligible risks to human health.

2. *Infants and children.* Based on the lack of toxicity and low exposure there is reasonable certainty of no harm to infants, children or adults from aggregate exposure to the chemical's residues. Exempting methyl anthranilate from the requirement of a tolerance should pose no significant risk to human health or the environment.

G. Effects on the Immune and Endocrine Systems

Bird Shield Repellent Corporation has no information to suggest that methyl anthranilate will adversely affect the immune or endocrine systems.

H. Existing Tolerances

An exemption from the requirement of a tolerance for the active ingredient, methyl anthranilate for cherries, blueberries and grapes under 40 CFR 180.1143 became effective on April 26, 1995 (60 FR 20432).

I. International Tolerances

Bird Shield Repellent Corporation is not aware of any tolerance, exemption from tolerance or MRL's issued for methyl anthranilate outside the United States.

[FR Doc. 00–1550 Filed 1–21–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–910; FRL–6484–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of

regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–910, must be received on or before February 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–910 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8077; e-mail address: Cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–910. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM 2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–910 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–910. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your

response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 5, 2000.

Janet L. Andersen,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

Prophyta Biologischer Pflanzenschutz GmbH

Pesticide Petition 9F6038

EPA has received a pesticide petition (PP) 9F6038 from Prophyta Biologischer Pflanzenschutz GmbH, Inselstrabe 12, D–23999 Malchow/Poel, Germany, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Coniothyrium minitans* strain CON/M/91–08.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Prophyta Biologischer Pflanzenschutz GmbH has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Prophyta Biologischer Pflanzenschutz GmbH and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Coniothyrium minitans strain CON/M/91–08 is proposed for use to control *Sclerotinia* species in the soil of any agricultural crop. The end-use product, CONTANS®WG, is applied as a spray to the soil, which is followed with mechanical incorporation (i.e., rotating) into the first one to two inches of the top soil layer. The product is applied as a preplant treatment, 3 to 4 months prior to planting the crop, or as a postharvest treatment to plant residues.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Coniothyrium minitans* strain CON/M/91–08 is the active ingredient in the proposed end-use product CONTANS® WG. CONTANS® WG is currently registered for use in Germany and Switzerland. An application for inclusion of the active ingredient (*Coniothyrium minitans* strain CON/M/91–08) in Annex I of Council Directive 91/414/EEC on the marketing of plant-protection products was sanctioned in 1998 and was published in the European Union Gazette.

Coniothyrium minitans was first described after isolation from *sclerotia* of *Sclerotinia sclerotiorum* in California in 1947 and has been investigated as a pesticide over the last 20 years. The occurrence of *Coniothyrium minitans* in the soil has been reported from many countries all over the world.

Coniothyrium minitans strain CON/M/91–08 is a naturally occurring soil fungus that primarily attacks and infects *sclerotia*. When the host organism (*sclerotia*) is present, *Coniothyrium minitans* starts to develop a vegetative organism and infects the host. The *Coniothyrium minitans* population decreases when the number of vital *sclerotia* drops. The vegetative organism disappears and the fungus rests in a spore stage. The spores of *Coniothyrium minitans* can survive ungerminated in disintegrated *sclerotia* for at least 1 year, and the fungus can be recovered from soil in *sclerotia* for up to 18 months following application. However, at soil temperatures above 25 °C, isolation of *Coniothyrium minitans* from *sclerotia* is not possible after 6 months.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* An analytical method for detecting and measuring the levels of residues is not applicable. *Coniothyrium minitans* strain CON/M/91–08 is applied to the soil and immediately mixed into the top soil layer prior to planting the crop, or after harvest. It is not applied to growing crops directly. Residues of *Coniothyrium minitans* strain CON/M/91–08 are not expected on agricultural commodities.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for detecting and measuring the levels of residues is not applicable. *Coniothyrium minitans* strain CON/M/91–08 is applied to the soil and immediately mixed into the top soil layer prior to planting the crop, or after harvest. It is not applied to growing crops directly. Residues of *Coniothyrium minitans* strain CON/M/91–08 are not expected on agricultural commodities.

C. Mammalian Toxicological Profile

CONTANS® WG, the end-use product which contains 5.3% active ingredient, was evaluated for acute toxicity through oral, dermal, inhalation and eye routes of exposure. The results of the studies indicated Toxicity Category III or IV, which pose no significant human health risks.

The acute oral toxicity of *Coniothyrium minitans* strain CON/M/91–08 in rats is greater than 2,500 milligrams per kilograms (mg/kg) (Toxicity Category III), the highest dose tested. The acute dermal toxicity of *Coniothyrium minitans* strain CON/M/91–08 in rats is greater than 2,500 mg/kg (Toxicity Category III), the highest dose tested. The acute intraperitoneal toxicity of *Coniothyrium minitans* strain CON/M/91–08 to rats is greater than 2,000 mg/kg, the highest does tested. The acute inhalation of *Coniothyrium minitans* strain CON/M/91–08 in rats is greater than 12.74 milligrams per liter (mg/L) of air (Toxicity Category IV). Eye irritation in rabbits was not observed at a dose of 0.1 milliliter (ml) (Toxicity Category IV). Skin irritation in rabbits was not observed at a dose of 0.5 ml (Toxicity Category IV). No dermal sensitization was observed in guinea pigs (Toxicity Category IV). Since its discovery in 1947, no incidents of hypersensitivity have been reported by researchers, manufacturers, or users.

A waiver is being requested for acute oral toxicity/pathogenicity, acute dermal toxicity/pathogenicity and acute pulmonary toxicity/pathogenicity data requirements, based on the fact that the active ingredient is not able to grow at temperatures above 32 °C, and thus would not be pathogenic or infective to humans. A growth temperature study has been submitted to support the waiver request. Additionally, acute toxicity studies have determined the end-use product containing the organism is not toxic, irritating or

sensitizing to test animals. Finally, the organism has never been reported as a pathogen of humans, or as causing any type of adverse effect to humans, in published literature or through commercial use.

D. Aggregate Exposure

1. *Dietary exposure* —i. *Food.* Dietary exposure from use of *Coniothyrium minitans* strain CON/M/91–08, as proposed, is minimal. *Coniothyrium minitans* strain CON/M/91–08 is applied to the soil and immediately mixed into the top soil layer prior to planting the crop, or after harvest. It is not applied to growing crops directly. Residues of *Coniothyrium minitans* strain CON/M/91–08 are not expected on agricultural commodities.

ii. *Drinking water.* Exposure to humans from residues of *Coniothyrium minitans* strain CON/M/91–08 in consumed drinking water would be unlikely. In a study to investigate the leaching behavior of *Coniothyrium minitans* strain CON/M/91–08, it was determined that there is no motility of the organism in the soil. Thus, it would not be possible for the organism to leach into drinking water. Also, due to the specific requirements for growth of *Coniothyrium minitans* strain CON/M/91–08, it is not likely that the organism could survive or persist in water.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are commercial, agricultural and horticultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

Personal protective equipment (PPE) mitigates the potential for exposure to applicators and handlers of the proposed products, when used in commercial, agricultural and horticultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, *Coniothyrium minitans* strain CON/M/91–08 would result in residues that would remain in human food items.

F. Safety Determination

1. *U.S. population. Coniothyrium minitans* strain CON/M/91–08 does not grow at temperatures above 32 °C, and thus would not be pathogenic or infective to humans. There have been no reports of toxins or secondary metabolites associated with the organism, and acute toxicity studies have shown that *Coniothyrium minitans* strain CON/M/91–08 is nontoxic, nonirritating and nonsensitizing when applied to test animals.

Coniothyrium minitans strain CON/M/91–08 is applied to soil and immediately mixed into the top soil layer prior to planting the crop, or after harvest. It is not applied to growing crops directly. Residues of *Coniothyrium minitans* strain CON/M/91–08 are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* As mentioned above, residues of *Coniothyrium minitans* strain CON/M/91–08 are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to *Coniothyrium minitans* strain CON/M/91–08 from the proposed uses.

G. Effects on the Immune and Endocrine Systems

Coniothyrium minitans strain CON/M/91–08 is a naturally occurring, nonpathogenic soil organism. To date there is no evidence to suggest that *Coniothyrium minitans* strain CON/M/91–08 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There are no existing tolerances for this ingredient.

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level (MRL) is not required for *Coniothyrium minitans* strain CON/M/91–08.

[FR Doc. 00–1552 Filed 1–21–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181072; FRL–6485–7]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. These exemptions or denials were issued during the period between January 1, 1999, through December 15, 1999, to control unforseen pest outbreaks. The actions detailed in this document do not represent every FIFRA section 18 emergency exemption decision issued by EPA during the above time period.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you petition EPA for authorization under section 18 of FIFRA to use pesticide products which are otherwise unavailable for a given use. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
State and Territorial government agencies charged with pesticide authority	9241	State agencies that petition EPA for section 18 pesticide use authorization

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in

determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181072. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U.S. States and Territories

Alabama

Department of Agriculture and Industries

Crisis: On August 24, 1999, for the use of tebufenozide on pasture land to control fall army worms. This program ended on October 31, 1999. Contact: Barbara Madden

On August 26, 1999, for the use of spinosad on soybeans to control caterpillars. This program ended on September 10, 1999. Contact: Andrew Ertman

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; April 9, 1999, to December 31, 1999. Contact: Barbara Madden

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm and tobacco budworm; August 3, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of tebufenozide in pasture land to control fall army worms; September 17, 1999, to October 31, 1999. Contact: Barbara Madden

Arizona

Department of Agriculture

Denial: On October 21, 1999 EPA denied the use of fipronil on cotton to control Lygus bugs. This request was denied because the claim of resistance was not fully substantiated. Contact: Andrew Ertman.

Specific: EPA authorized the use of tebuconazole on garlic to control garlic rust; May 19, 1999, to December 31, 1999. Contact: Steve Schaible

EPA authorized the use of metolachlor on spinach to control weeds; September 16, 1999, to May 15, 2000. Contact: Andrew Ertman

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle October 27, 1999, to October 21, 2000. Contact: Barbara Madden

Arkansas

State Plant Board

Crisis: On June 8, 1999, for the use of sodium chlorate on wheat as a harvest aid. This program ended on June 22, 1999. Contact: Libby Pemberton

On August 9, 1999, for the use of maleic hydrazide on rice to control red rice. This program ended on August 24, 1999. Contact: Steve Schaible

Denial: On February 16, 1999 EPA denied the use of bispyribac-sodium on rice to control Bermuda grass. This request was denied because at this time the Agency is not able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Additionally, EPA is unable at this time to conclude that there will not be unacceptable adverse effects to the environment, including non-target organisms, endangered species, and ground water resources. Bispyribac-sodium is an unregistered chemical for which EPA has minimal data previously reviewed. Contact: David Deegan.

On May 6, 1999 EPA denied the use of fenoxaprop-ethyl on rice to control Bermuda grass. This request was denied because this formulation of the pesticide included a new and unregistered inert ingredient, for which the Agency does not have adequate amounts of previously reviewed data with which it is able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Contact: David Deegan.

Specific: EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; April 30, 1999,

to September 30, 1999. Contact: David Deegan

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle June 3, 1999, to June 3, 2000. Contact: Barbara Madden

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm June 4, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of emamectin benzoate on cotton to control tobacco budworm June 18, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of tebufenozide on cotton to control beet armyworm June 18, 1999, to September 30, 1999. Contact: Andrea Beard

California

Environmental Protection Agency, Department of Pesticide Regulation

Crisis: On July 19, 1999, for the use of spinosad on blackeyed beans to control leafminers. This program ended on October 1, 1999. Contact: Andrew Ertman

On November 1, 1999, for the use of paraquat on artichokes to control various weeds and grasses. This program ended on November 1, 2000. Contact: Libby Pemberton

Specific: EPA authorized the use of tebuconazole on barley to control barley stripe rust; April 9, 1999, to August 15, 1999. Contact: Steve Schaible

EPA authorized the use of carfentrazone-ethyl on rice to control California arrowhead and Ricefield bulrush; April 22, 1999, to August 15, 1999. Contact: Steve Schaible

EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; April 30, 1999, to October 15, 1999. Contact: David Deegan

EPA authorized the use of tebuconazole on pistachios to control Alternaria late blight and Botryosphaeria panicle and shoot blight; May 4, 1999, to September 15, 1999. Contact: Steve Schaible

EPA authorized the use of hexythiazox on cotton to control various spider mites; May 6, 1999, to August 1, 1999. Contact: David Deegan

EPA authorized the use of propamocarb hydrochloride on tomatoes to control late blight; May 20, 1999, to May 19, 2000. Contact: Libby Pemberton

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of avermectin on basil to control leafminer; June 15, 1999, to September 30, 1999. Contact: Barbara Madden

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; July 23, 1999, to July 20, 2000. Contact: Barbara Madden

EPA authorized the use of imidacloprid on turnip greens and garden beets to control aphids; August 30, 1999, to August 6, 2000. Contact: Andrew Ertman

EPA authorized the use of avermectin on celeriac to control two spotted spider mite; September 10, 1999, to September 10, 2000. Contact: Dan Rosenblatt

EPA authorized the use of carboxin on onion seed to control onion smut; September 30, 1999, to May 31, 2000. Contact: Steve Schaible

EPA authorized the use of cyromazine on onion seed to control onion maggots; October 5, 1999, to May 31, 2000. Contact: Steve Schaible

EPA authorized the use of paraquat on artichokes to control various weeds and grasses; November 3, 1999, to November 3, 2000. Contact: Libby Pemberton

EPA authorized the use of tebuconazole on garlic to control garlic rust; November 4, 1999, to July 3, 2000. Contact: Steve Schaible

EPA authorized the use of spinosad on agricultural commodities to control exotic fruit flies in quarantine certification programs throughout the State; November 8, 1999, to November 8, 2002. Contact: Dan Rosenblatt

EPA authorized the use of imidacloprid on strawberries to control whiteflies; December 24, 1999, to December 23, 2000. Contact: Andrea Beard

Colorado

Department of Agriculture

Specific: EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid; May 13, 1999, to June 15, 1999. Contact: Andrew Ertman

EPA authorized the use of imazamox on dry beans to control various nightshade species and velvetleaf; June 1, 1999, to July 15, 1999. Contact: Barbara Madden

EPA authorized the use of propiconazole on dry beans to control rust; July 1, 1999, to August 31, 1999. Contact: Steve Schaible

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; July 23, 1999, to July 20, 2000. Contact: Barbara Madden

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 21, 1999, to September 17, 2000. Contact: Andrew Ertman

Connecticut

Department of Environmental Protection

Specific: EPA authorized the use of propiconazole on blueberries to control mummy berry disease; March 15, 1999, to June 30, 1999. Contact: Steve Schaible

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle September 2, 1999, to August 31, 2000. Contact: Barbara Madden

Delaware

Department of Agriculture

Specific: EPA authorized the use of chlorpropham on spinach to control chickweed; March 1, 1999, to March 5, 2000. Contact: David Deegan

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 24, 1999, to March 24, 2000. Contact: Barbara Madden

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to September 30, 1999. Contact: David Deegan

Florida

Department of Agriculture and Consumer Services

Crisis: On January 15, 1999, for the use of tebufenozide on lychee to control Lychee webworm. This program is expected to end on March 1, 2000. Contact: Barbara Madden

On March 2, 1999, for the use of tebufenozide on longan to control Lychee webworm. This program is expected to end on March 1, 2000. Contact: Barbara Madden

On May 19, 1999, for the use of naled in bait stations to control Oriental fruit fly. This program is expected to end on September 9, 2000. Contact: Dan Rosenblatt

Quarantine: EPA authorized the use of naled in bait stations to control the Oriental fruit fly; September 9, 1999, to September 9, 2002. Contact: Dan Rosenblatt

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; January 1, 1999, to January 1, 2000. Contact: Barbara Madden

EPA authorized the use of tebufenozide on lychee to control Lychee webworm; March 4, 1999, to March 1, 2000. Contact: Barbara Madden

EPA authorized the use of tebufenozide on longan to control Lychee webworm; March 4, 1999, to March 4, 2000. Contact: Barbara Madden

EPA authorized the use of myclobutanil on strawberries to control powdery mildew; March 18, 1999, to December 31, 1999. Contact: Steve Schaible

EPA authorized the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on strawberries to control gray mold; April 8, 1999, to May 15, 1999. Contact: Steve Schaible

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of imidacloprid on citrus to control the citrus leafminer and brown citrus aphid; July 1, 1999, to June 30, 2000. Contact: Andrew Ertman

EPA authorized the use of imidacloprid on legume vegetables Crop Group 6 to control silverleaf whitefly; September 27, 1999, to September 27, 2000. Contact: Andrea Beard

Georgia

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; January 1, 1999, to January 1, 2000. Contact: Barbara Madden

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

Hawaii

Department of Agriculture

Specific: EPA authorized the use of myclobutanil on watermelon to control powdery mildew; May 8, 1999, to May 7, 2000. Contact: David Deegan

Idaho

Department of Agriculture

Crisis: On March 15, 1999, for the seed treatment use of fosetyl-Al on peas to control downy mildew. This program ended on June 1, 1999. Contact: Steve Schaible

On June 23, 1999, for the use of cymoxanil on hops to control downy mildew. This program ended on September 10, 1999. Contact: Libby Pemberton

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; February 1, 1999, to February 1, 2000. Contact: Barbara Madden

EPA authorized the seed treatment use of fosetyl-Al on peas to control downy mildew; March 29, 1999, to June 1, 1999. Contact: Steve Schaible

EPA authorized the use of tebuconazole on barley to control barley stripe rust; April 23, 1999, to August 15, 1999. Contact: Steve Schaible

EPA authorized the use of myclobutanil on hops to control powdery mildew; April 27, 1999, to September 22, 1999. Contact: David Deegan

EPA authorized the use of tebuconazole on hops to control powdery mildew; April 27, 1999, to September 22, 1999. Contact: David Deegan

EPA authorized the use of imazamox on dry beans to control various nightshade species and velvetleaf; May 1, 1999, to July 1, 1999. Contact: Barbara Madden

EPA authorized the use of pyridate on mint to control redroot pigweed and kochia; May 1, 1999, to December 31, 1999. Contact: Barbara Madden

EPA authorized the use of paraquat dichloride on green peas grown for seed and dry peas to control weeds; May 25, 1999, to November 30, 1999. Contact: Libby Pemberton

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; June 10, 1999, to June 10, 2000. Contact: Libby Pemberton

EPA authorized the use of trifloxystrobin on hops to control powdery mildew; June 28, 1999, to September 22, 1999. Contact: Dave Deegan

EPA authorized the use of cyhexatin on hops to control Two-spotted spider mites; July 1, 1999, to September 20, 1999. Contact: David Deegan

EPA authorized the use of difenoconazole on sweet corn seed to control damping-off and die-back diseases; September 3, 1999, to September 3, 2000. Contact: Andrea Beard

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 8, 1999, to August 31, 2000. Contact: Andrew Ertman

EPA authorized the use of flufenacet on wheat to control Italian ryegrass or annual ryegrass; October 4, 1999, to June 30, 2000. Contact: Barbara Madden

Illinois

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; April 20, 1999, to April 20, 2000. Contact: Barbara Madden

EPA authorized the use of fomesafen on snap beans to control weeds; June 25, 1999, to August 31, 1999. Contact: Andrea Beard

EPA authorized the use of tebufenozide on apples to control the tufted apple bud moth; July 15, 1999, to August 31, 1999. Contact: Andrew Ertman

Indiana

Office of Indiana State Chemist

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; April 5, 1999, to April 5, 2000. Contact: Barbara Madden

EPA authorized the use of pyridate on mint to control redroot pigweed; May 1, 1999, to December 31, 1999. Contact: Barbara Madden

Iowa

Department of Agriculture and Land Stewardship

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 9, 1999, to March 8, 2000. Contact: Barbara Madden

Kansas

Department of Agriculture

Crisis: On June 11, 1999, for the use of metsulfuron-methyl on sorghum to control weeds. This program ended on August 15, 1999. Contact: Andrew Ertman

On August 18, 1999, for the use of bifenthrin on sorghum grown for seed to control Banks grass mite. This program ended on September 2, 1999. Contact: Andrea Beard

Denial: On May 5, 1999 EPA denied the use of propazine on sorghum to control broadleaf weeds. This request was denied because aggregate risk from the triazine herbicides exceeds the level the Agency considers to represent "a reasonable certainty of no harm." Contact: Steve Schaible.

Specific: EPA authorized the use of propiconazole on dry beans to control rust; June 1, 1999, to August 15, 1999. Contact: Steve Schaible

EPA authorized the use of metsulfuron-methyl on sorghum to control weeds; June 11, 1999, to August 15, 1999. Contact: Andrew Ertman

EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot; July 31, 1999, to September 30, 1999. Contact: Steve Schaible

Kentucky

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; October 28, 1999, to October 28, 2000. Contact: Barbara Madden

Louisiana

Department of Agriculture and Forestry

Crisis: On May 4, 1999, for the use of tebufenozide on rice to control fall armyworm. This program ended on September 1, 1999. Contact: Barbara Madden

On June 4, 1999, for the use of tebufenozide on sweet potatoes to control the beet armyworm. This program ended on October 31, 1999. Contact: Andrew Ertman

On June 23, 1999, for the use of tebufenozide on pasture land to control fall army worms. This program ended on October 15, 1999. Contact: Barbara Madden

On July 14, 1999, for the use of azoxystrobin on soybeans to control

aerial blight. This program ended on August 30, 1999. Contact: Jacqueline Gwaltney

On July 17, 1999, for the use of tebufenozide on soybeans to control fall armyworms. This program ended on August 2, 1999. Contact: Andrew Ertman

Denial: On August 23, 1999 EPA denied the use of clomazone on sugarcane to control Bermudagrass. This request was denied because EPA's review concluded that the situation was not an emergency. Weed control has become somewhat more problematic as total acreage in cultivation has increased, however this does not constitute an "urgent and non-routine" situation. Contact: David Deegan.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 5, 1999, to March 5, 2000. Contact: Barbara Madden

EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; March 15, 1999, to September 30, 1999. Contact: David Deegan

EPA authorized the use of maleic hydrazide on rice to control red rice; June 1, 1999, to September 30, 1999. Contact: Steve Schaible

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm; June 18, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of tebufenozide on cotton to control beet armyworm; June 18, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of azoxystrobin on soybean to control aerial blight; July 1, 1999, to August 30, 1999. Contact: Jacqueline Gwaltney

EPA authorized the use of tebufenozide on sweet potatoes to control the beet armyworm; July 16, 1999, to October 31, 1999. Contact: Andrew Ertman

EPA authorized the use of emamectin benzoate on cotton to control tobacco budworm; August 3, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of tebufenozide on pasture land to control fall army worms; September 17, 1999, to October 15, 1999. Contact: Barbara Madden

Maine

Department of Agriculture, Food, and Rural Resources

Specific: EPA authorized the use of oxyfluorfen on strawberries to control field pansy and wood sorrel; October 15, 1998 to October 15, 1999. Contact: Barbara Madden

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of propiconazole on blueberries to control mummy berry disease; April 15, 1999, to June 15, 1999. Contact: Steve Schaible

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle August 11, 1999, to August 5, 2000. Contact: Barbara Madden

Maryland

Department of Agriculture

Crisis: On July 7, 1999, for the use of fenpropathrin on soybean to control two-spotted spider mites. This program ended on September 30, 1999. Contact: Jacqueline Gwaltney

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; February 18, 1999, to February 17, 2000. Contact: Barbara Madden

EPA authorized the use of chlorpropham on spinach to control chickweed; March 1, 1999, to March 5, 2000. Contact: David Deegan

EPA authorized the use of propamocarb hydrochloride on tomatoes to control late blight; June 3, 1999, to June 3, 2000. Contact: Libby Pemberton

EPA authorized the use of metolachlor on spinach to control weeds; July 9, 1999, to April 30, 2000. Contact: Andrew Ertman

EPA authorized the use of fenpropathrin in soybeans to control two-spotted spider mite; July 15, 1999, to September 30, 1999. Contact: Jacqueline Gwaltney

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to September 30, 1999. Contact: David Deegan

Massachusetts

Department of Food and Agriculture

Specific: EPA authorized the use of propiconazole on blueberries to control mummy berry disease; April 22, 1999, to June 15, 1999. Contact: Steve Schaible

EPA authorized the use of pyridaben on cranberry to control Southern red mites; May 13, 1999, to August 31, 1999. Contact: David Deegan

EPA authorized the use of spinosad on cranberries to control sparganothis fruitworm; May 24, 1999, to August 15, 1999. Contact: Andrew Ertman

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle June 3, 1999, to June 3, 2000. Contact: Barbara Madden

Michigan

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; April 9, 1999, to September 30, 1999. Contact: Barbara Madden

EPA authorized the use of tebuconazole on wheat to control Fusarium head blight; May 6, 1999, to June 30, 1999. Contact: Steve Schaible

EPA authorized the use of myclobutanil on asparagus to control asparagus rust; May 13, 1999, to November 1, 1999. Contact: David Deegan

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; June 18, 1999, to June 18, 2000. Contact: Libby Pemberton

EPA authorized the use of fomesafen on snap beans to control redroot pigweed and puncturevine; June 25, 1999, to August 30, 1999. Contact: Andrea Beard

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to November 1, 1999. Contact: David Deegan

EPA authorized the use of triazamate on sugar beets to control root aphids; July 30, 1999, to September 15, 1999. Contact: Steve Schaible

Minnesota

Department of Agriculture

Crisis: On July 7, 1999, for the use of glufosinate-ammonium on sweet corn to control weeds. This program ended on July 15, 1999. Contact: Barbara Madden

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites; January 1, 1999, to January 1, 2000. Contact: Barbara Madden

EPA authorized the use of imazamox on imidazolinone tolerant canola to control wild mustard; March 8, 1999, to July 15, 1999. Contact: Barbara Madden

EPA authorized the use of ethalfluralin on canola to control kochia; March 30, 1999, to December 31, 1999. Contact: David Deegan

EPA authorized the use of tetraconazole on sugarbeets to control cercospora leaf spot; April 7, 1999, to September 30, 1999. Contact: David Deegan

EPA authorized the use of tebuconazole on barley and wheat to control Fusarium head blight; April 9, 1999, to August 25, 1999. Contact: Steve Schaible

EPA authorized the use of imazamox on dry beans to control various nightshade species and velvetleaf; May 1, 1999, to June 30, 1999. Contact: Barbara Madden

EPA authorized the use of propamocarb hydrochloride on potatoes

to control late blight; June 10, 1999, to June 10, 2000. Contact: Libby Pemberton

EPA authorized the use of propiconazole on dry beans to control rust; June 20, 1999, to August 31, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 9, 1999, to August 31, 2000. Contact: Andrew Ertman

Mississippi

Department of Agriculture and Commerce

Crisis: On August 12, 1999, for the use of spinosad on soybeans to control caterpillars. This program ended on August 27, 1999. Contact: Andrew Ertman

Denial: On July 2, 1999 EPA denied the use of fipronil on cotton to control the tarnished plant bug. This request was denied because effective registered pesticides are available and significant economic losses are not expected even under high pest pressure. Contact: Andrew Ertman.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; January 25, 1999, to January 25, 2000. Contact: Barbara Madden

EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; March 15, 1999, to September 15, 1999. Contact: David Deegan

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm and tobacco budworm; June 4, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of tebufenozide in cotton to control beet armyworm; June 18, 1999, to September 30, 1999. Contact: Andrea Beard

Missouri

Department of Agriculture

Specific: EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; July 9, 1999, to September 30, 1999. Contact: David Deegan

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; September 29, 1999, to September 29, 2000. Contact: Barbara Madden

Montana

Department of Agriculture

Crisis: On May 4, 1999, for the use of azoxystrobin on sugar beets to control rhizoctonia crown and root rot. This program ended on July 1, 1999. Contact: Jacqueline Gwaltney

On August 19, 1999, for the use of lambda-cyhalothrin on canola to control lygus bugs. This program ended on September 2, 1999. Contact: Andrew Ertman

Denial: On May 25, 1999 EPA denied the use of dimethenamid on sugar beets to control hairy nightshade and redroot pigweed. This request was denied based on the determination that situation is routine, not urgent, and nor are growers likely to suffer from significant economic losses if the request is denied. Contact: Barbara Madden.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites; February 18, 1999, to February 18, 2000. Contact: Barbara Madden

EPA authorized the use of ethalfluralin on canola to control kochia; March 30, 1999, to December 31, 1999. Contact: David Deegan

EPA authorized the use of imazamox on dry beans to control various nightshade species and velvetleaf; May 1, 1999, to June 30, 1999. Contact: Barbara Madden

EPA authorized the use of pyridate on mint to control redroot pigweed and kochia; May 1, 1999, to December 31, 1999. Contact: Barbara Madden

EPA authorized the use of azoxystrobin on sugar beets to control rhizoctonia crown and root rot; May 1, 1999, to July 1, 1999. Contact: Jacqueline Gwaltney

EPA authorized the use of lambda-cyhalothrin on canola to control flea beetles; May 18, 1999, to June 30, 1999. Contact: Andrew Ertman

EPA authorized the use of paraquat dichloride on dry peas to control weeds; May 25, 1999, to November 30, 1999. Contact: Libby Pemberton

EPA authorized the use of triazamate on sugar beets to control root aphids; July 30, 1999, to September 15, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 10, 1999, to August 31, 2000. Contact: Andrew Ertman

Nebraska

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 12, 1999, to March 12, 2000. Contact: Barbara Madden

EPA authorized the use of propiconazole on dry beans to control rust; June 15, 1999, to August 1, 1999. Contact: Steve Schaible

EPA authorized the use of triazamate on sugar beets to control root aphids; July 30, 1999, to August 31, 1999. Contact: Steve Schaible

EPA authorized the use of imazapic-ammonium on pastureland/rangeland including land in the Conservation Reserve Program to control leafy spurge; August 30, 1999, to August 30, 2000. Contact: Libby Pemberton

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 10, 1999, to August 31, 2000. Contact: Andrew Ertman

Nevada

Department of Agriculture

Specific: EPA authorized the use of tebuconazole on garlic to control garlic rust; May 19, 1999, to June 15, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 21, 1999, to September 17, 2000. Contact: Andrew Ertman

New Hampshire

Department of Agriculture

Specific: EPA authorized the use of propiconazole on blueberries to control mummy berry disease; April 1, 1999, to August 1, 1999. Contact: Steve Schaible

New Jersey

Department of Environmental Protection

Crisis: On April 8, 1999, for the use of propiconazole on blueberries to control mummy berry disease. This program ended on June 30, 1999. Contact: Steve Schaible

Specific: EPA authorized the use of chlorpropham on spinach to control chickweed; March 1, 1999, to March 5, 2000. Contact: David Deegan

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 10, 1999, to March 9, 2000. Contact: Barbara Madden

EPA authorized the use of propiconazole on blueberries to control mummy berry; April 22, 1999, to June 30, 1999. Contact: Steve Schaible

EPA authorized the use of imidacloprid on blueberries to control blueberry aphids; May 14, 1999, to August 15, 1999. Contact: Andrew Ertman

EPA authorized the use of imidacloprid on blueberries to control the oriental beetle; May 14, 1999, to August 15, 1999. Contact: Andrew Ertman

EPA authorized the use of imidacloprid on cranberries to control the cranberry rootworm; May 14, 1999, to September 1, 1999. Contact: Andrew Ertman

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of propamocarb hydrochloride on tomatoes to control late blight; June 3, 1999, to June 3, 2000. Contact: Libby Pemberton

New Mexico

Department of Agriculture

Specific: EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot; June 1, 1999, to September 30, 1999. Contact: Steve Schaible

EPA authorized the use of tebufenozide on cotton to control beet armyworm; June 18, 1999, to September 30, 1999. Contact: Andrea Beard

New York

Department of Environmental Conservation

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 9, 1999, to March 8, 2000. Contact: Barbara Madden

EPA authorized the use of desmedipham on garden beets to control broadleaf weeds; April 27, 1999, to July 31, 1999. Contact: Steve Schaible

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to September 30, 1999. Contact: David Deegan

North Carolina

Department of Agriculture

Crisis: On September 20, 1999, for the use of cyfluthrin and permethrin on livestock carcasses to control blowflies. Severe flooding from Hurricane Floyd gave rise to this public health crisis. This program ended on October 20, 1999. Contact: Steve Schaible

Denial: On July 2, 1999 EPA denied the use of clopyralid on apples to control clover. This request was denied based on the determination that the request does not meet the criteria of an emergency in accordance with 40 CFR section 166.3d. Contact: Barbara Madden.

On August 18, 1999 EPA denied the use of fluazinam on peanuts to control Sclerotinia blight. This request was denied because at this time the Agency's is not able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Additionally, EPA is unable at this time to conclude that there will not be unacceptable adverse effects to the environment, including non-target organisms, endangered species, and ground water resources. Fluazinam is an unregistered chemical for which EPA has minimal data previously reviewed. Contact: Barbara Madden.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; February 19, 1999, to February 19, 2000. Contact: Barbara Madden

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to September 30, 1999. Contact: David Deegan

North Dakota

Department of Agriculture

Denial: On September 27, 1999, EPA denied the use of ethalfluralin on crambe to control kochia. This request was denied based on the determination that the described situation is routine and chronic, and does not therefore meet the established criteria under which EPA grants emergency exemptions. Contact: David Deegan

Crisis: On June 25, 1999, for the use of clopyralid on flax and crambe to control canada thistle and perennial sowthistle. This program ended on July 31, 1999. Contact: Libby Pemberton

On June 18, 1999, for the use of sethoxydim on buckwheat to control volunteer grains and foxtail. This program ended on July 18, 1999. Contact: Libby Pemberton

On July 8, 1999, for the use of paraquat on dry peas to control weeds. This program ended on September 15, 1999. Contact: Libby Pemberton

On August 6, 1999, for the use of lambda-cyhalothrin on flax to control grasshoppers. This program ended on August 20, 1999. Contact: Andrew Ertman

Specific: EPA authorized the use of imazamox on imidazolinone tolerant canola to control wild mustard; March 8, 1999, to July 15, 1999. Contact: Barbara Madden

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 10, 1999, to March 9, 2000. Contact: Barbara Madden

EPA authorized the use of ethalfluralin on canola to control kochia; March 30, 1999, to December 31, 1999. Contact: David Deegan

EPA authorized the use of tetraconazole on sugarbeets to control cercospora leaf spot; April 7, 1999, to September 30, 1999. Contact: David Deegan

EPA authorized the use of tebuconazole on barley and wheat to control Fusarium head blight; April 9, 1999, to August 25, 1999. Contact: Steve Schaible

EPA authorized the use of imazamox on dry beans to control various nightshade species and velvetleaf; May 1, 1999, to June 30, 1999. Contact: Barbara Madden

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of propiconazole on dry beans to control rust; June 20, 1999, to August 31, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 10, 1999, to August 31, 2000. Contact: Andrew Ertman

Ohio

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; April 26, 1999, to February 26, 2000. Contact: Barbara Madden

EPA authorized the use of myclobutanil on caneberries to control orange rust; May 28, 1999, to October 31, 1999. Contact: Dave Deegan

EPA authorized the use of oxyfluorfen on strawberries to control broadleaf weeds; June 20, 1999, to December 15, 1999. Contact: Barbara Madden

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to September 30, 1999. Contact: David Deegan

Oklahoma

Department of Agriculture

Crisis: On June 28, 1999, for the use of metsulfuron-methyl on sorghum to control weeds. This program ended on September 15, 1999. Contact: Andrew Ertman

On September 3, 1999, for the use of bifenthrin on peanuts to control Banks grass mites. This program ended on October 30, 1999. Contact: Andrea Beard

Denial: On August 18, 1999 EPA denied the use of fluazinam on peanuts to control Sclerotinia blight. This request was denied because at this time the Agency's is not able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Additionally, EPA is unable at this time to conclude that there will not be unacceptable adverse effects to the environment, including non-target organisms, endangered species, and ground water resources. Fluazinam is an unregistered chemical for which EPA has minimal data previously reviewed. Contact: Barbara Madden.

Specific: EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; March 15, 1999, to October 15, 1999. Contact: David Deegan

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm June 4, 1999, to October 31, 1999. Contact: Andrea Beard

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot; June 15, 1999, to September 30, 1999. Contact: Steve Schaible

EPA authorized the use of tebufenozide on cotton to control beet armyworm; June 18, 1999, to October 31, 1999. Contact: Andrea Beard

EPA authorized the use of metsulfuron-methyl on sorghum to control weeds; June 28, 1999, to September 15, 1999. Contact: Andrew Ertman

EPA authorized the use of dicloran on peanuts to control Sclerotinia blight; July 15, 1999, to October 15, 1999. Contact: Barbara Madden

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; July 23, 1999, to July 20, 2000. Contact: Barbara Madden

EPA authorized the use of tebufenozide on peanuts to control beet armyworm; July 30, 1999, to October 15, 1999. Contact: Barbara Madden

Oregon

Department of Agriculture

Crisis: On March 26, 1999 for the use of tebuconazole Folicur 3.6 F Foliar Fungicide on hops to control powdery mildew. The state had requested a specific exemption for the use prior to the crisis declaration; the requested expiration date in the specific exemption was September 1, 1999. Contact: David Deegan

On April 29, 1999 for the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on caneberries to control gray mold. The state had requested a specific exemption for the use prior to the crisis declaration; the requested expiration date in the specific exemption was Septemeber 10, 1999. Contact: Steve Schaible

On May 12, 1999 for the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on strawberries to control gray mold. The state had requested a specific exemption for the use prior to the crisis declaration; the requested expiration date in the specific exemption was July 7, 1999. Contact: Steve Schaible

On July 1, 1999, for the use of cymoxanil on hops to control downy mildew. This program ended on September 10, 1999. Contact: Libby Pemberton

Denial: On September 20, 1999 EPA denied the uses of prohexadione calcium on apples and pears to control fire blight. These requests were denied because at this time the Agency's is not able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Additionally, EPA is unable at this time to conclude that there will not be unacceptable adverse effects to the environment. Prohexadione Calcium is an unregistered chemical for which EPA has minimal data previously reviewed. Contact: Andrea Beard.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites; February 1, 1999, to February 1, 2000. Contact: Barbara Madden

EPA authorized the use of ethoprop on baby hops and idle hops to control garden symphylans; March 24, 1999, to May 31, 1999. Contact: Steve Schaible

EPA authorized the use of tebuconazole on barley to control barley stripe rust; April 23, 1999, to August 15, 1999. Contact: Steve Schaible

EPA authorized the use of myclobutanil on hops to control powdery mildew; April 27, 1999, to September 22, 1999. Contact: David Deegan

EPA authorized the use of tebuconazole on hops to control powdery mildew; April 27, 1999, to September 22, 1999. Contact: David Deegan

EPA authorized the use of pyridate on mint to control redroot pigweed and kochia; May 1, 1999, to December 31, 1999. Contact: Barbara Madden

EPA authorized the use of propiconazole on raspberries to control yellow rust; May 18, 1999, to November 1, 1999. Contact: Steve Schaible

EPA authorized the use of paraquat dichloride on green peas grown for seed and dry peas to control weeds; May 25, 1999, to November 30, 1999. Contact: Libby Pemberton

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of triazamate on true fir Christmas trees to control root aphids; May 27, 1999, to October 31, 1999. Contact: Steve Schaible

EPA authorized the use of trifloxystrobin on hops to control powdery mildew; June 28, 1999, to September 22, 1999. Contact: Dave Deegan

EPA authorized the use of fludioxonil on stone fruit to control brown rot, gray mold and Rhizopus rot; July 14, 1999, to September 30, 1999. Contact: Andrew Ertman

EPA authorized the use of propyzamide on grasses grown for seed to control grassy weeds; July 15, 1999, to January 20, 2000. Contact: Andrew Ertman

EPA authorized the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on caneberries to control gray mold; July 22, 1999, to September 10, 1999. Contact: Steve Schaible

EPA authorized the use of ethoprop on baby mint to control garden symphylans; August 17, 1999, to September 15, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 8, 1999, to August 31, 2000. Contact: Andrew Ertman

EPA authorized the use of flufenacet on wheat to control Italian ryegrass or annual ryegrass; October 4, 1999 through to June 30, 2000. Contact: Barbara Madden

Pennsylvania

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; January 1, 1999, to January 1, 2000. Contact: Barbara Madden

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to September 30, 1999. Contact: David Deegan

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 3, 1999, to August 31, 2000. Contact: Andrew Ertman

EPA authorized the use of oxyfluorfen on strawberries to control field pansy, wood sorrel and groundsel; October 15, 1999, to December 15, 1999. Contact: Barbara Madden

Rhode Island

Department of Environmental Management

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; May 13, 1999, to May 13, 2000. Contact: Barbara Madden

South Carolina

Clemson University

Crisis: On April 8, 1999, for the use of the product Switch, containing the active ingredients fludioxonil and cyprodinil on strawberries to control gray mold. This program ended on June 15, 1999. Contact: Steve Schaible

On May 18, 1999, for the use of fludioxonil on stone fruit to control brown rot. This program ended on September 1, 1999. Contact: Andrew Ertman

Specific: EPA authorized the use of coumaphos in beehives to control varroa

mites and small hive beetle; January 1, 1999, to January 1, 2000. Contact: Barbara Madden

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

South Dakota

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; March 23, 1999, to March 23, 2000. Contact: Barbara Madden

EPA authorized the use of pendimethalin on mint to control kochia and redroot pigweed; March 31, 1999, to November 1, 1999. Contact: Steve Schaible

EPA authorized the use of tebuconazole on barley and wheat to control Fusarium head blight; June 5, 1999, to August 25, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; October 18, 1999, to June 30, 2000. Contact: Andrew Ertman

EPA authorized the use of imazapic-ammonium on pastureland and rangeland to control leafy spurge; October 25, 1999, to October 25, 2000. Contact: Libby Pemberton

Tennessee

Department of Agriculture

Crisis: On May 28, 1999, for the use of sulfentrazone on cowpeas and lima beans to control hophornbeam copperleaf. This program ended on September 30, 1999. Contact: Barbara Madden

Denial: On April 19, 1999 EPA denied the use of acifluorfen on lima beans, Southern peas, and cowpeas to control hophornbeam copperleaf. This request was denied because at this time, EPA is unable to make the safety finding required under the Food Quality Protection Act FQPA of 1996. Therefore, tolerances necessary under the Federal Food Drug and Cosmetic Act FFDCA, section 40816 can not be extended. Contact: Barbara Madden.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; February 12, 1999, to February 11, 2000. Contact: Barbara Madden

EPA authorized the use of sulfentrazone on cowpeas and lima beans to control hophornbeam copperleaf; June 1, 1999, to September 30, 1999. Contact: Barbara Madden

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

Texas

Department of Agriculture

Crisis: On June 28, 1999, for the use of metsulfuron-methyl on sorghum to control weeds. This program ended on July 12, 1999. Contact: Andrew Ertman

On September 8, 1999 for the use of fenbuconazole on grapefruit to control greasy spot. This program ended on October 1, 1999. Contact: Dan Rosenblatt

Denial: On March 9, 1999 EPA denied the use of diclosulam on peanuts to control weeds. This request was denied because adequate alternatives are available to control the weeds specified in this request. Contact: Barbara Madden.

On March 12, 1999 EPA denied the use of propazine on sorghum to control broadleaf weeds. This request was denied because aggregate risk from the triazine herbicides exceeds the level the Agency considers to represent a reasonable certainty of no harm. Contact: Steve Schaible

Specific: EPA authorized the use of tebuconazole on wheat to control leaf rust; March 12, 1999, to June 30, 1999. Contact: Steve Schaible

EPA authorized the use of carbofuran flowable formulation on cotton to control aphids; March 15, 1999, to September 30, 1999. Contact: David Deegan

EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot; May 19, 1999, to December 31, 1999. Contact: Steve Schaible

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of tebufenozide on cotton to control beet armyworm; June 10, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm; June 10, 1999, to October 1, 1999. Contact: Andrea Beard

EPA authorized the use of chlorfenapyr on cotton to control beet armyworm; June 14, 1999, to September 30, 1999. Contact: Andrea Beard

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle June 28, 1999, to June 28, 2000. Contact: Barbara Madden

EPA authorized the use of dicloran on peanuts to control Sclerotinia blight; July 1, 1999, to October 31, 1999. Contact: Barbara Madden

EPA authorized the use of metolachlor on spinach to control weeds; July 1, 1999, to July 1, 2000. Contact: Andrew Ertman

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to April 15, 2000. Contact: David Deegan

EPA authorized the use of bifenthrin on sorghum grown for seed to control Banks grass mite; August 24, 1999, to August 23, 2000. Contact: Andrea Beard

EPA authorized the use of fenbuconazole on grapefruit to control greasy spot; October 1, 1999, to October 1, 2000. Contact: Dan Rosenblatt

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; October 14, 1999, to September 29, 2000. Contact: Andrew Ertman

EPA authorized the use of norflurazon on bermudagrass to control annual grassy weeds; November 9, 1999, to November 9, 2000. Contact: Libby Pemberton

Utah

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mite; June 9, 1999, to June 8, 2000. Contact: Barbara Madden

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 30, 1999, to September 21, 2000. Contact: Andrew Ertman

Virginia

Department of Agriculture and Consumer Services

Denial: On August 18, 1999 EPA denied the use of fluazinam on peanuts to control Sclerotinia blight. This request was denied because at this time the Agency's is not able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Additionally, EPA is unable at this time to conclude that there will not be unacceptable adverse effects to the environment, including non-target organisms, endangered species, and ground water resources. Fluazinam is an unregistered chemical for which EPA has minimal data previously reviewed. Contact: Barbara Madden.

On September 17, 1999, EPA denied the use of Acibenzolar on tomatoes to control bacterial diseases. This request was denied because at this time the Agency's is not able to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Additionally, EPA is unable at this time to conclude that there will not be unacceptable adverse effects to the environment. Acibenzolar is an unregistered chemical for which EPA has minimal data previously reviewed. Contact: Andrea Beard.

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; June 14,

1999, to June 10, 2000. Contact: Barbara Madden

EPA authorized the use of myclobutanil on cucurbit vegetables to control powdery mildew; July 16, 1999, to October 31, 1999. Contact: David Deegan

EPA authorized the use of chlorpropham on spinach to control chickweed; December 1, 1999, to April 30, 2000. Contact: David Deegan

Washington

Department of Agriculture

Crisis: On February 26, 1999, for the use of flufenacet on wheat to control Italian ryegrass or annual ryegrass . This program ended on May 31, 1999. Contact: Barbara Madden

On April 28, 1999, for the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on caneberries to control gray mold. The state had requested a specific exemption for the use prior to the crisis declaration; the requested expiration date in the specific exemption was September 10, 1999. Contact: Steve Schaible

On May 11, 1999, for the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on strawberries to control gray mold. The state had requested a specific exemption for the use prior to the crisis declaration; the requested expiration date in the specific exemption was July 22, 1999. Contact: Steve Schaible

On July 2, 1999, for the use of imazamox on dry bean to control nightshade and velvetleaf. This program ended on/is expected to end on August 15 , 1999. Contact: Barbara Madden

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetle; February 1, 1999, to February 1, 2000. Contact: Barbara Madden

EPA authorized the seed treatment use of fosetyl-Al on peas to control downy mildew; March 1, 1999, to April 30, 1999. Contact: Steve Schaible

EPA authorized the use of propiconazole on blueberries to control mummy berry disease; March 15, 1999, to June 10, 1999. Contact: Steve Schaible

EPA authorized the use of propiconazole on cranberries to control cottonball disease; April 19, 1999, to July 31, 1999. Contact: Steve Schaible

EPA authorized the use of tebuconazole on barley to control barley stripe rust; April 23, 1999, to August 15, 1999. Contact: Steve Schaible

EPA authorized the use of myclobutanil on hops to control powdery mildew; April 27, 1999, to September 22, 1999. Contact: David Deegan

EPA authorized the use of tebuconazole on hops to control powdery mildew; April 27, 1999, to September 22, 1999. Contact: David Deegan

EPA authorized the use of pyridate on mint to control redroot pigweed and kochia; May 1, 1999, to December 31, 1999. Contact: Barbara Madden

EPA authorized the use of propiconazole on raspberries to control yellow rust; May 18, 1999, to July 1, 1999. Contact: Steve Schaible

EPA authorized the use of paraquat dichloride on green peas grown for seed and dry peas to control weeds; May 25, 1999, to May 30, 1999. Contact: Libby Pemberton

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of triazamate on true fir Christmas trees to control root aphids; May 27, 1999, to October 31, 1999. Contact: Steve Schaible

EPA authorized the use of pirimicarb on vegetable seed crops to control aphids; June 18, 1999, to September 15, 1999. Contact: Steve Schaible

EPA authorized the use of trifloxystrobin on hops to control powdery mildew; June 24, 1999, to September 22, 1999. Contact: Dave Deegan

EPA authorized the use of cyhexatin on hops to control Two-spotted spider mites; July 1, 1999, to September 20, 1999. Contact: David Deegan

EPA authorized the use of imazamox on dry beans to control nightshade and velvetleaf; July 2, 1999, to August 15, 1999. Contact: Barbara Madden

EPA authorized the use of Switch 62.5 WG containing the active ingredients fludioxonil and cyprodinil on caneberries to control gray mold; July 22, 1999, to September 10, 1999. Contact: Steve Schaible

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 8, 1999, to August 31, 2000. Contact: Andrew Ertman

EPA authorized the use of flufenacet on wheat to control Italian ryegrass or annual ryegrass; October 4, 1999, to June 30, 2000. Contact: Barbara Madden

EPA authorized the use of oxyfluorfen on strawberries to control broadleaf weeds; December 15, 1999, to August 15, 2000. Contact: Barbara Madden

West Virginia

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; May 20, 1999, to May 18, 2000. Contact: Barbara Madden

Wisconsin

Department of Agriculture, Trade, and Consumer Protection

Denial: On May 4, 1999 EPA denied the use of dimethenamid on dry bulb, onions to control annual grasses and broadleaf weeds. This request was denied because the situation is routine, not urgent, and nor are growers likely to suffer from significant economic losses if the request is denied. The availability of a new pesticide to control a chronic pest problem does not constitute a non-routine condition. Historically, use of hand labor has compensated for inadequate weed control by registered herbicides. Contact: Barbara Madden

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites; January 1, 1999, to January 1, 2000. Contact: Barbara Madden

EPA authorized the use of propiconazole on cranberries to control cottonball disease; April 15, 1999, to July 31, 1999. Contact: Steve Schaible

EPA authorized the use of pyridate on mint to control redroot pigweed; May 1, 1999, to December 31, 1999. Contact: Barbara Madden

EPA authorized the use of glufosinate-ammonium on sweet corn to control weeds; May 24, 1999, to July 15, 1999. Contact: Barbara Madden

EPA authorized the use of propamocarb hydrochloride on potatoes to control late blight; May 25, 1999, to May 25, 2000. Contact: Libby Pemberton

EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 9, 1999, to August 31, 2000. Contact: Andrew Ertman

Wyoming

Department of Agriculture

Denial: On May 24, 1999 EPA denied the use of fipronil on rangeland, non-crop land, and CRP land to control grasshoppers. This request was denied because the situation is routine, not urgent; it was determined that the use of registered alternatives in a RAATs strategy would adequately control rangeland grasshoppers. EPA also has concerns regarding potential ecological risk to non-target organisms from fipronil and its photodegradates. Contact: Steve Schaible

Specific: EPA authorized the use of imazamox on dry beans in Wyoming to control various nightshade species and velvetleaf; June 1, 1999, to July 15, 1999. Contact: Barbara Madden

EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; September 17, 1999, to September 15, 2000. Contact: Barbara Madden

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspection Service

Quarantine: EPA authorized the use of sodium carbonate 4.0% solution on surfaces potentially exposed to certain animal diseases, including semen containers, aircraft, and structural surfaces at animal import centers, plant inspection stations and ports to control certain animal diseases; April 15, 1999, to April 15, 2002. Contact: David Deegan

EPA authorized the use of sodium carbonate 4.0% solution plus sodium silicate 0.1% solution on aircraft surfaces potentially exposed to certain animal diseases, in or on semen containers to control certain animal diseases; April 15, 1999, to April 15, 2002. Contact: David Deegan

EPA authorized the use of sodium hypochlorite in a solution not to exceed 12.5% on surfaces potentially exposed to certain animal diseases, and to plant parts or plant materials to control certain animal diseases; April 15, 1999, to April 15, 2002. Contact: David Deegan

EPA authorized the use of sodium hydroxide in a 2.0% solution on exposed surfaces, animal product containers, hay and straw to control certain animal diseases; April 15, 1999, to April 15, 2002. Contact: David Deegan

Defense Department

Quarantine: EPA authorized the use of paraformaldehyde on biological containment areas, biological safety cabinets and equipment, and high efficiency particulate air filters in the ventilation system to control the release of infectious microorganisms from containment areas; July 6, 1999, to July 6, 2002. Contact: Libby Pemberton

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 11, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–1546 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6528–1]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Proposal of CERCLA section 122(h)(1) administrative cost recovery settlement for the Uniroyal Hill Street Site.

SUMMARY: The United States Environmental Protection Agency ("U.S. EPA") proposes to address the potential liability of Uniroyal, Inc., Uniroyal Holding, Inc., CDU Holding, Inc., and the CDU Holding, Inc. Liquidating Trust (the "Settling Parties") by execution of a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 122(h)(1) Administrative Order on Consent prepared pursuant to 42 U.S.C. 9622(h)(1) (the "Agreement"). The Agreement provides the Settling Parties certain covenants not to sue under CERCLA, 42 U.S.C. 9601 *et seq.*, as amended, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, as amended, with respect to the Uniroyal Hill Street Site (the "Site"), located in Mishawaka, Indiana. The key terms and conditions of the Agreement may be briefly summarized as follows: (1) The Settling Parties agree to pay $50,000 to the Hazardous Substances Superfund in satisfaction of U.S. EPA's allowed claim; (2) the Settling Parites agree to pay $50,000 to the City of Mishawaka, in satisfaction of their claim; (3) the Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or the Agreement; (4) subject to the reservations specified in the Agreement, U.S. EPA affords the Settling Parties a covenant not to sue for recovery of response costs pursuant to section 107 of CERCLA, 42 U.S.C. 9607(a), liability for injunctive relief or administrative order enforcement pursuant to section 106 of CERCLA, 42 U.S.C. 9606, liability for injunctive relief pursuant to section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and provides contribution protection as provided by CERCLA sections 113(f)(2) and 122(h)(4), 42 U.S.C. 9613(f)(2) and 9622 (h)(4), conditioned upon satisfaction of obligations under the Agreement. The Site is not on the NPL. The Agreement was signed by the Regional Administrator, U.S. EPA, Region 5, on December 23, 1999.

DATES: Written comments on the proposed Agreement must be received by U.S. EPA on or before February 23, 2000. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public hearing in the affected area.

ADDRESSES: The proposed Agreement and the U.S. EPA's response to any comments received will be available for public inspection at U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Agreement may be obtained from U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Uniroyal Hill Street Site, Mishawaka, Indiana, and U.S. EPA Docket No. V–W–99–C–575 and should be addressed to Ms. Hedi Bogda-Cleveland, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Ms. Hedi Bogda-Cleveland, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, at (312) 886–5825.

Dated: December 23, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–1554 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51940; FRL–6486–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 6, 1999 to December 31, 1999, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in

person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51940 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joe Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51940. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51940 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51940 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 6, 1999 to December 31, 1999, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 81 Premanufacture Notices Received From: 12/06/99 to 12/31/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0309	12/06/99	03/05/00	Eastman Chemical Company	(S) Plastic additive	(G) Substituted phtyalocyanine dye
P–00–0310	12/06/99	03/05/00	CBI	(G) For use as an exterior coating for aluminum "easy open ends" for the beer and beverage can market	(G) Acrylic polyester resin
P–00–0311	12/06/99	03/05/00	The Dow Chemical Company	(S) Chemical intermediate for use on site	(G) Alkylphenol, potassium salt
P–00–0312	12/06/99	03/05/00	The Dow Chemical Company	(G) Fuel additive and chemical intermediate	(G) Alkaryl polyoxyalkylene derivatives
P–00–0313	12/06/99	03/05/00	The Dow Chemical Company	(G) Fuel additive and chemical intermediate	(G) Alkaryl polyoxyalkylene derivative
P–00–0314	12/06/99	03/05/00	CBI	(G) Copying material	(G) Triphenylamine derivative
P–00–0315	12/07/99	03/06/00	CBI	(G) Electronics thermosetting adhesive	(G) Amino novolac
P–00–0316	12/07/99	03/06/00	CBI	(S) Antioxidant and /or stabilizer for coating	(G) Propanoic acid, 3-(alkylthio)-, thiobis (alkylphenylene ester
P–00–0317	12/08/99	03/07/00	Dow Corning Corporation	(S) Silicone textile treatment	(G) Amino-functional siloxane
P–00–0318	12/07/99	03/06/00	Ciba Specialty Chemicals Corporation	(G) Textive dye	(G) Cuprate(6-), [2-[[[3-[[4-fluoro-6-[[2-[[4-fluoro-6-[[4-[(sulfonated alkyl) azo]phenyl] amino] -1,3,5-triazin-2-yl]amino]-1-methylethyl]amino] -1,3,5-triazin-2-yl]amino]-2-(hydroxy-.kappa.0)-5-sulfophenyl]azo-.kappa.n2] phenylmethyl]azo-.kappa.n1]-4-sulfobenzoate (8-)]-, potassium sodium*
P–00–0319	12/07/99	03/06/00	CBI	(G) Wax	(G) Benzenedicarboxylic acid, alkyl alkylaminocarbonyloxyethyl ester
P–00–0320	12/07/99	03/06/00	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–00–0321	12/07/99	03/06/00	CBI	(G) Additive for manufacture of articles	(G) Polyamide amine epichlorohydrin resin
P–00–0322	12/07/99	03/06/00	CBI	(G) Additive for manufacture of articles	(G) Polyamide amine epichlorohydrin resin
P–00–0323	12/07/99	03/06/00	CBI	(G) Additive for manufacture of articles	(G) Polyamide amine epichlorohydrin resin
P–00–0324	12/07/99	03/06/00	CBI	(G) Additive for manufacture of articles	(G) Polyamide amine epichlorohydrin resin
P–00–0325	12/07/99	03/06/00	CBI	(G) Chemical process intermediate	(G) Polyamide amine
P–00–0326	12/09/99	03/08/00	CBI	(G) Additive for plastics and plastic surfaces; additive for surface coatings	(G) Aliphatic urethane
P–00–0327	12/09/99	03/08/00	CBI	(G) Inhibitor	(G) Amine salt
P–00–0328	12/10/99	03/09/00	CBI	(G) Intermediate for exterior coating for aluminum beer and beverage can ends	(G) Maleic anhydride polyester
P–00–0329	12/13/99	03/12/00	CBI	(G) Open non-dispersive (resin)	(G) Aliphatic polyisocyanate
P–00–0330	12/13/99	03/12/00	CBI	(S) Chemical intermediate	(S) Oxirane, [[[(1r,2s,5r)-5-methyl-2-(1-methylethyl) cyclohexyl] oxy]methyl]-*
P–00–0331	12/13/99	03/12/00	CBI	(S) Thickener for water-based binders in non-woven systems	(G) Vinylpyrrolidone vinylester copolymer
P–00–0332	12/13/99	03/12/00	CBI	(S) Adhesion promotor for coatings	(G) Olefinic adhesion promotor
P–00–0333	12/14/99	03/13/00	CBI	(G) Additive	(G) Salt of an acrylate copolymer
P–00–0334	12/14/99	03/13/00	CBI	(G) Additive	(G) Salt of an acrylate terpolymer

I. 81 Premanufacture Notices Received From: 12/06/99 to 12/31/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0335	12/13/99	03/12/00	Dainippon Ink and Chemicals, Inc.	(S) Uv curable resin for uv inks	(G) Polyurethane resin
P–00–0336	12/13/99	03/12/00	Cytec Industries Inc.	(G) Flocculant in oil/water separation, soil erosion stabilizer in irrigation farming, flocculant in municiple, mining and industrial waste water.	(G) Liquid anionic polymer
P–00–0337	12/13/99	03/12/00	Cytec Industries Inc.	(G) Flocculant in oil/water separation, soil erosion stabilizer in irrigation farming, flocculant in municiple, mining and industrial waste water.	(G) Liquid anionic polymer
P–00–0338	12/14/99	03/13/00	International Specialty Products	(S) Intermediate for photographic dyes	(S) 1-(2,5-dimethoxy-phenyl)-propan-2-one*
P–00–0339	12/14/99	03/13/00	International Specialty Products	(S) Intermediate in production of photographic dyes	(S) 1-(2,5-dimethoxy-phenyl)-propanol*
P–00–0340	12/15/99	03/14/00	Condea Vista Company	(S) Formulation of paraffin inhibitors for processing crude oil	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with ethene, ethenyl acetate and 2-ethylhexyl 2-propenoate*
P–00–0341	12/15/99	03/14/00	CBI	(S) An intermediate that will be isolated and used in the manufacture of an industrial coating that cures under exposure of ultra violet light	(G) Urethane acrylate
P–00–0342	12/15/99	03/14/00	CBI	(G) Open, non-dispersive use	(G) Blocked isocyanate polymer
P–00–0343	12/15/99	03/14/00	Novartis Crop Protection, Inc.	(S) Intermediate in the manufacture of an intermediate of a fungicide	(S) Ethanone, 1-[3-(trifluoromethyl)phenyl]-, oxime*
P–00–0344	12/15/99	03/14/00	CBI	(S) Base fluid for hydraulic fluids; base fluid for engine lubricants	(G) Mixed polyol-glycerol fatty aid ester
P–00–0345	12/15/99	03/14/00	CBI	(G) Component of coating with open use	(G) Styrene acrylate
P–00–0346	12/14/99	03/13/00	CBI	(G) Petroleum additive	(G) Alkylated phenol
P–00–0347	12/16/99	03/15/00	CBI	(G) Open non-dispersive (polyurethane microcellular elastomer)	(G) Aromatic isocyanate
P–00–0348	12/15/99	03/14/00	CBI	(G) Wax	(G) *N,N'*-bis (octadecanoyl) hexylenediamine, or hexamethyl enebiss tearamide*
P–00–0349	12/16/99	03/15/00	Ciba Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) Benzoic acid, 3,5-diamino-2,4-bis[[4-[[2-(sulfooxy)ethyl] sulfonyl]azo]-6-[[2-sulfo-4-[substituted]phenyl]azo]-, sodium salt
P–00–0350	12/17/99	03/16/00	CBI	(G) Open,non-dispersive use.	(G) Ketimine functional oligomer
P–00–0351	12/16/99	03/15/00	CBI	(G) Dye	(G) Sulphonated azo dye
P–00–0352	12/16/99	03/15/00	CBI	(G) Open non-dispersive (additive)	(G) Organic disulfide
P–00–0353	12/17/99	03/16/00	CBI	(G) Additive for surface coatings;additive for plastics and plastic surfaces	(G) Aliphatic urethane
P–00–0354	12/17/99	03/16/00	CBI	(G) Adhesive component	(G) Polyester-polyvinyl modified mdi-based polyurethane
P–00–0355	12/17/99	03/16/00	International Specialty Products	(S) Dye transfer inhibitor for detergents	(S) Acetic acid, chloro-, sodium salt, cmpd. with 4-ethenylpyridine homopolymer*
P–00–0356	12/21/99	03/20/00	Pilot Chemical Company	(G) Chemical intermediate - destructive use	(G) Alkarylsulfonic acid.
P–00–0357	12/21/99	03/20/00	CBI	(G) An open non-dispersive use	(G) Polyether - type polyurethane
P–00–0358	12/20/99	03/19/00	CBI	(G) Copying material	(G) Triphenylamine derivative
P–00–0359	12/20/99	03/19/00	Ruetgers Organics Corporation	(S) Ph adjuster	(G) Alkylnaphthalenesulfonic acid
P–00–0360	12/20/99	03/19/00	Arizona Chemical	(S) Tackifier for adhesives & hot melts	(G) Modified terpene-phenol resin
P–00–0361	12/22/99	03/21/00	Reichhold, Inc.	(G) Coating additive	(G) Triethylamine salt of aliphatic urethane polymer
P–00–0362	12/22/99	03/21/00	CBI	(G) Adhesive component	(G) 1,1′ methylenebis [isocyanatobenzene], polymer with polyether polyols, a polyester polyol, and a modified polyvinyl copolymer
P–00–0363	12/27/99	03/26/00	CBI	(G) Open-non-dispersive (co-reactant)	(G) Asphatic ester

I. 81 Premanufacture Notices Received From: 12/06/99 to 12/31/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0364	12/27/99	03/26/00	CBI	(G) Open, non-dispersive use	(G) Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt
P–00–0365	12/27/99	03/26/00	CBI	(G) Destructive use	(G) Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, salt
P–00–0366	12/28/99	03/27/00	CBI	(S) Intermediate synthesis for higher molecular weight polymer used in sheet molding; intermediate synthesis for higher molecular weight polymer used in injection molding	(G) Alloy of polyolefin and polyamide
P–00–0367	12/28/99	03/27/00	CBI	(S) Intermediate synthesis for higher molecular weight polymer used in sheet molding; intermediate synthesis for higher molecular weight polymer used in injection molding	(G) Alloy of polyolefin and polyamide
P–00–0368	12/27/99	03/26/00	CBI	(S) Thermal developer for paper	(G) Benzenesulfonamide derivative
P–00–0369	12/27/99	03/26/00	Bedoukian Research, Inc.	(S) Agricultural pheromone for use as sole active ingredient in monitoring traps. 40 CFR 152.10(b) (not pesticide);agricultural phenomone for use as sole active ingredient in traps to achieve pest control. 40 CFR 152.25(b)(4).	(S) 5-nonanone, 4-methyl-
P–00–0370	12/28/99	03/27/00	CBI	(S) Precursor used in the manufacture of acrylic monomer	(G) Aliphatic alcohol
P–00–0371	12/27/99	03/26/00	CBI	(G) Halogenating chemical intermediate for industrial chemical synthesis reactions	(G) Halogenated boron - alkyl cyanide complex
P–00–0372	12/28/99	03/27/00	CBI	(S) Monomer used in the manufacturer of acrylic polymers	(G) Acrylic monomer
P–00–0373	12/28/99	03/27/00	CBI	(S) Raw material used in the manufacture of photoresist	(G) P-hydroxystyrene-methacrylate copolymer
P–00–0374	12/27/99	03/26/00	CBI	(S) Polymer for adhesive manufacture	(G) Isocyanate functional polycarbamoyl (polyalkylene oxide)polyurea oligomer
P–00–0375	12/27/99	03/26/00	CBI	(S) Crosslinking urethane resin for coatings applied by electrode position	(G) Polyurethane crosslinking resin blocked with me et ketone oxime
P–00–0376	12/29/99	03/28/00	CBI	(S) Reactive dye for finishing cellulosic fabrics	(S) 1,5-naphthalenedisulfonic acid, 2(or 3)-[[8-amino-7-[[5-[[4-[4-[2-[[4-[[3-[[1-amino-7-[[1,5 (or 4,8) -disulfo-2-naphthalenyl]azo]-8-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-4-sulfophenyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-, sodium salt*
P–00–0377	12/27/99	03/26/00	Daikin America, Inc.	(S) Risin for paint	(G) Fluoroolefin copolymer
P–00–0378	12/28/99	03/27/00	CBI	(S) used to formulate water-based adhesive for technical lamination	(G) Polyester-polyurethane-elastomer dispersion
P–00–0379	12/28/99	03/27/00	Vianova Resins Inc., Mallard Creek Center	(S) Resin in automotive coatings	(G) Blocked polyurethane resin, amine salt
P–00–0380	12/28/99	03/27/00	International Specialty Products	(S) Intermediate in production of photographic dyes	(S) Benzeneethanol, 2,5-dimethoxy-.alpha.-methyl*
P–00–0381	12/29/99	03/28/00	CBI	(S) Elastomer resin for spinning into fiber*	(S) 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with α-hydro-omega-hydroxypoly(oxy-1,4-butanediyl) and 1,3-propanediol*
P–00–0382	12/29/99	03/28/00	CBI	(S) Elastomer resin for spinning into fiber*	(S) 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,3-propanediol, tetrahydrofuran and tetrahydro-3-methylfuran*

I. 81 Premanufacture Notices Received From: 12/06/99 to 12/31/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0383	12/29/99	03/28/00	CBI	(G) Component of coating with open use	(G) Water dispersible cationic acrylic resin
P–00–0384	12/29/99	03/28/00	CBI	(G) Component of coating with open use	(G) Water dispersible cationic acrylic resin
P–00–0385	12/29/99	03/28/00	CBI	(G) Component of coating with open use	(G) Water dispersible cationic acrylic resin
P–00–0386	12/29/99	03/28/00	CBI	(G) Component of coating with open use	(G) Water dispersible cationic acrylic resin
P–00–0387	12/29/99	03/28/00	CBI	(G) Component of coating with open use	(G) Water dispersible cationic acrylic resin
P–00–0388	12/29/99	03/28/00	CBI	(G) Component of coating with open use	(G) Water dispersible cationic acrylic resin
P–00–0390	12/29/99	03/28/00	CBI	(G) Component of low viscosity industrial lubricant	(S) C_{10} to C_{24} branched alkanes*

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 46 Notices of Commencement From: 12/06/99 to 12/31/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–2136	12/10/99	12/06/99	(G) Polyalphaolefins
P–96–1162	12/13/99	11/13/99	(G) Fatty acids, C_{18}-unsatd. dimers, polymers with ethylenediamine, a dibasic acid, diamines and a mono-basic acid.
P–96–1624	12/13/99	12/06/99	(G) Quaternary ammonium salt
P–97–0677	12/14/99	11/19/99	(G) Mixed alkyl aluminoxanes
P–97–1007	12/10/99	12/01/99	(G) Polyurethane prepolymer
P–98–0408	12/06/99	11/03/99	(G) Substituted styrene-acrylate polymer
P–98–0937	12/09/99	12/07/99	(G) Polyester polyether urethane block copolymer
P–98–0947	12/09/99	12/07/99	(G) Polyester polyether urethane block copolymer
P–98–1006	12/16/99	11/19/99	(G) Amino substituted butyric acid ester
P–99–0277	12/07/99	11/29/99	(G) 2,7-naphthalenedisulfonic acid, 5-substituted-4-hydroxy-3-substituted azo, salt
P–99–0523	12/09/99	12/01/99	(G) Substituted polyoxyethylene
P–99–0549	12/10/99	11/11/99	(G) Polyester urethane polymer
P–99–0698	12/17/99	12/08/99	(G) Aliphatic, aromatic polyol
P–99–0708	12/13/99	11/26/99	(G) Epoxy-isocyanate co-polymer
P–99–0775	12/14/99	11/24/99	(G) Alkyl methacrylate copolymer
P–99–0777	12/13/99	11/24/99	(G) Alkyl methacrylate copolymer
P–99–0815	12/14/99	12/04/99	(G) Complex acids/amine condensation products
P–99–0900	12/17/99	12/06/99	(G) Quinoline dyestuff
P–99–0917	12/10/99	11/24/99	(G) Methacrylate polymer
P–99–0919	12/10/99	11/24/99	(G) Methacrylate copolymer
P–99–0933	12/13/99	11/24/99	(G) Alkyl methacrylate copolymer
P–99–0990	12/17/99	12/10/99	(G) Cobaltate (5-, bis[4-[[6-[(substituted)-1,3,5-triazin-2-yl) amino]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-substituted-1-naphthalenesulfonato(4-)]-, pentasodium
P–99–0999	12/07/99	11/11/99	(G) Polyoxyethylene derivative
P–99–1010	12/09/99	11/24/99	(G) Substituted butanoic acid
P–99–1011	12/09/99	11/20/99	(G) Substituted halo butanoic acid, ester
P–99–1012	12/09/99	11/21/99	(G) Substituted butanoic acid, ester
P–99–1022	12/13/99	12/01/99	(G) Triazolo thiadiazinyl substituted acetamide
P–99–1025	12/13/99	12/01/99	(G) Substituted butanoic acid, heterocyclic hydrazide
P–99–1048	12/20/99	12/13/99	(G) Polycarbonate polyol
P–99–1067	12/13/99	11/15/99	(G) Poly (arylene ether)
P–99–1069	12/06/99	11/24/99	(G) Polyalkoxylated aromatic amine tint
P–99–1168	12/10/99	11/29/99	(G) Acrylic emulsion copolymer
P–99–1169	12/10/99	11/29/99	(G) Acrylic emulsion copolymer
P–99–1170	12/10/99	11/29/99	(G) Acrylic emulsion copolymer
P–99–1171	12/10/99	11/29/99	(G) Acrylic emulsion copolymer
P–99–1175	12/13/99	12/02/99	(G) Triazolo thiadiazinyl amino substituted acetamide
P–99–1176	12/14/99	11/24/99	(S) Hexanoic acid, 2-bromo-, methyl ester*
P–99–1200	12/06/99	11/10/99	(S) Alcohols, C_{11-14}-isoalkyl, C_{13}-rich, butoxylated ethoxylated*

II. 46 Notices of Commencement From: 12/06/99 to 12/31/99—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–1230	12/14/99	11/25/99	(S) 1,3-benzenedicarboxylic acid, polymer with 2-butyl-2-ethyl-1,3-propanediol, 1,4-cyclohexanedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid and 1,3-isobenzofurandione, 2-hydroxy-3-[(1-oxoneodecyl)oxy]propyl ester, 3-oxobutanoate*
P–99–1231	12/10/99	12/07/99	(S) Siloxanes and silicones, di-me, me hydrogen, me pr, reaction products with polyethylene-polypropylene glycol allyl bu ether and polyethylene-polypropylene glycol monoally ether*
P–99–1250	12/09/99	12/01/99	(G) Polyester polyol polyurethane and organopolysiloxane containing hydroxy group copolymer
P–99–1284	12/14/99	12/05/99	(G) Substituted benzenesulfonyl chloride*
P–99–1285	12/14/99	12/08/99	(G) Substituted benzenesulfinic acid salt
P–99–1290	12/16/99	12/03/99	(G) Substituted hydroxyphenyl halosubstituted benzamide
P–99–1303	12/14/99	12/07/99	(G) Substituted hydroxyhalophenyl halobenzamide
P–99–1304	12/09/99	11/30/99	(G) Substituted benzenesulfonic acid salt

List of Subjects

Environmental protection, Chemicals, Premanufacture notices, Test marketing exemptions.

Dated: January 12, 2000,

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–1549 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2844]

Process for Providing Service Under Global International section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a change in the International Bureau's interpretation of its Exclusion List in light of the Commission's decision in the DISCO II Recon. proceeding. This action will reduce the regulatory burden on carriers seeking to provide international services using certain non-U.S.-licensed satellite systems by permitting the use of pre-approved satellites under global international section 214 authorizations without the need to obtain separate authority for such non-U.S.-licensed satellites.

DATES: Effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION:

1. The International Bureau announces its interpretation of its Exclusion List for International section 214 Authorizations (Exclusion List) to conform to a recent Commission order streamlining rules relating to the use of non-U.S. licensed satellite systems. See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96–111, FCC 99–325 (64 FR 61791, November 15, 1999).

2. The Commission developed the Exclusion List as a procedural mechanism to identify restrictions on providing common carrier service. The Exclusion List identifies those countries or facilities that are not included within the scope of a global section 214 authorization (61 FR 15724, April 9, 1996). When a carrier seeks to use facilities or serve a country that is on the Exclusion List, the carrier must file a separate section 214 application pursuant to § 63.18(e)(4) of the Commission's rules.

3. Currently, the Exclusion List prohibits carriers from using all non-U.S.-licensed satellite systems without obtaining a separate section 214 authorization (64 FR 19057, April 19, 1999). The Commission, however, recently changed its rules regarding the use of non-U.S.-licensed satellite systems in the *DISCO II Recon.* proceeding. In the *DISCO II Recon.* proceeding, the Commission simplified the process by which authorized non-U.S.-licensed fixed satellites may serve the U.S. market. In particular, U.S. earth station operators with ALSAT licenses will be permitted to access a non-U.S.-licensed satellite to provide fixed-satellite service in the conventional C- or Ku-bands without further regulatory approval, once that non-U.S.-licensed satellite has been authorized to serve the United States. Originally, earth station operators with ALSAT licenses were permitted to access any U.S.-licensed satellite. In the *DISCO II Recon.* proceeding, these licensees' authority was expanded to include non-U.S.-licensed satellites on the Permitted Space Station List. Pursuant to the *DISCO II Recon.* proceeding, the International Bureau will keep a list of such authorized non-U.S.-licensed satellite systems to be referred to as the Permitted Space Station List (www.fcc.gov/ib/srd/se/permitted.html).

4. In light of the *DISCO II Recon.* proceeding, it is not necessary to require holders of global section 214 authorizations to file for and obtain a separate section 214 authorization for non-U.S.-licensed satellite systems that have been authorized to provide fixed-satellite service in the United States and placed on the Permitted Space Station List. Prior to placing a space station on the Permitted Space Station List, the Commission will conduct a proceeding that will provide parties notice and an opportunity to comment on any potential Title III or section 214 issues raised by permitting operators with ALSAT licenses to access the non-U.S.-licensed satellite.

5. Accordingly, we interpret the Exclusion List restriction for all non-U.S.-licensed satellite systems to refer only to non-U.S.-licensed satellite systems that are not listed on the Permitted Space Station List. This interpretation will avoid confusion, reduce regulatory burden, and ensure that the Exclusion List is consistent with the Commission's policies. This interpretation of the Exclusion List became effective December 22, 1999. The announcement of the effective date of the *DISCO II Recon.* proceeding is

published elsewhere in this issue of the FR. Until the *DISCO II Recon.* proceeding became effective, the Commission required that carriers wishing to use non-U.S.-licensed satellite systems must file a separate section 214 application pursuant to § 63.18(e)(4) of the Commission's rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment—Exclusion List for International Section 214 Authorizations Last Modified December 22, 1999

The following is a list of countries and facilities not covered by grant of global section 214 authority under § 63.18(e)(1) of the Commission's Rules, 47 CFR 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under § 63.18 of the Commission's Rules unless the carrier's section 214 authorization specifically lists the facility.

Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate section 214 application pursuant to § 63.18(e)(4) of the Commission's Rules. See generally 47 CFR 63.22.

Countries: Cuba (Applications for service to Cuba shall comply with the separate filing requirements of the Commission's Public Notice Report No. I–6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

Facilities: All non-U.S.-licensed satellite systems that are not on the Permitted Space Station List, maintained at *www.fcc.gov/ib/srd/se/permitted.html.* See International Bureau Public Notice, DA 99–2844 (rel. Dec. 17, 1999).

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission may then release an order amending the exclusion list. This list also is subject to change upon issuance of an Executive Order. See Streamlining the section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, 11 FCC Rcd 12,884, released March 13, 1996 (61 Fed. Reg. 15,724, April 9, 1996). A current version of this list is maintained at http://www.fcc.gov/ib/td/pf/exclusionlist.html. For additional information, contact the International Bureau's Telecommunications Division, Policy & Facilities Branch, (202) 418–1460.

[FR Doc. 00–1620 Filed 1–21–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 7, 2000.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. Horizon Bancorp Employees' Stock Bonus Plan Trust, Michigan City, Indiana; to acquire voting shares of Horizon Bancorp, and thereby indirectly acquire Horizon Bank, N.A., both of Michigan City, Indiana.

Board of Governors of the Federal Reserve System, January 18, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1577 Filed 1–21–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Assistant Vice President), 701 Easy Byrd Street, Richmond, Virginia 23261–4528:

1. FNB Corp., Asheboro, North Carolina; to acquire 100 percent of the voting shares of Carolina Fincorp, Inc., Rockingham, North Carolina, and thereby indirectly acquire Richmond Savings Bank, Inc., SSB, Rockingham, North Carolina.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Vision Bancshares, Inc., Gulf Shores, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Vision Bank (in organization), Gulf Shores, Alabama.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63102–2034:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Piedmont Bancorp, Inc., Hillsborough, North Carolina, and thereby indirectly acquire Hillsborough Savings Bank, Inc., SSB, Hillsborough, North Carolina.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Mesquite Financial Services, Inc., Alice, Texas; to acquire 100 percent of the voting shares of Falfurrias State Bank, Falfurrias, Texas. Comments on this application must be received by February 15, 2000.

E. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. Eggemeyer Advisory Corp.; WJR Corp.; Castle Creek Capital LLC; Castle Creek Capital Partners Fund I, LP; Castle Creek Capital Partners Fund IIa, LP; Castle Creek Capital Partners Fund IIb, LP, all of Rancho Santa Fe, California; to acquire up to 35 percent of the voting shares of First Community Bancorp, Rancho Santa Fe, California, and thereby indirectly acquire Rancho Santa Fe National Bank, Rancho Santa Fe,

California, and First Community Bank of the Desert, Indian Wells, California.

2. First Community Bancorp, Rancho Santa Fe, California; to become a bank holding company by acquiring 100 percent of the voting shares of Rancho Santa Fe National Bank, Rancho Santa Fe, California, and First Community Bank of the Desert, Indian Wells, California.

Board of Governors of the Federal Reserve System, January 18, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1576 Filed 1–21–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $16,732,000 for section 8(a)(1), and $1,673,200 for section 8(a)(2)(A).

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: H. Gabriel Dagen, Bureau of Competition, Office of Accounting and Financial Analysis, (202) 326–2573.

Authority: 15 U.S.C. 19(a)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–1653 Filed 1–21–00; 8:45am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

John L. Ho, M.D., Cornell University: Based on a report dated June 16, 1999, by Cornell University (Report), as well as information obtained by ORI during its oversight review, ORI found that Dr. John Ho, Associate Professor, Department of Medicine and Department of Microbiology at Cornell University Medical College, engaged in scientific misconduct by reporting falsified and fabricated research results in a National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant application.

Specifically, ORI found that Dr. John Ho committed scientific misconduct in connection with the data contained in Figure 10 of the Application that purportedly demonstrated cytokine production heterogeneity. Dr. John Ho falsified the text describing Panel 2 of Figure 10 by representing that the interferon-γ values reflected data from 25 donors when values from only four donors had been obtained. In addition, Dr. John Ho falsified the data entries for Panels 1 and 3 of Figure 10 by representing that approximately 19 and 25 donor samples, respectively, were studied when only three and six genuine values were obtained, the remaining symbols reflecting fabricated results.

Dr. John Ho has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed:

(1) to comply with all terms and conditions of the plan for remedial training and scientific and administrative oversight imposed by Cornell University. Pursuant to the Cornell Plan, Dr. John Ho can return to work at Cornell University only after it receives written confirmation from Dr. David Ho that Dr. John Ho has successfully completed a program of remedial training of at least one (1) year's duration at the Aaron Diamond Foundation. Under the terms of the Cornell Plan, Dr. John Ho will be subject to a two (2) year plan of scientific and administrative oversight of his research upon his return to Cornell University from the Aaron Diamond Foundation.

(2) that, for a period of three (3) years beginning on December 28, 1999, any institution (including but not limited to Cornell University and the Aaron Diamond Foundation) that submits an application for U.S. Public Health Service (PHS) support for a research project on which Dr. John Ho's participation is proposed or which uses him in any capacity on PHS supported research, or that submits a report of PHS-funded research in which he is involved, must concurrently submit to PHS and ORI:

a. a plan for supervision of his duties during the particular PHS-related project at issue, which must be designed to ensure the scientific integrity of his research contribution; and

b. a certification that the data provided by Dr. John Ho are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application or research report.

(3) to exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a three (3) year period beginning December 28, 1999.

Further, in the event that Dr. John Ho obtains a new employer at anytime during the three (3) year period beginning on December 28, 1999, Dr. John Ho has agreed to:

(1) notify ORI in writing no later than ten (10) business days after the commencement of his new employment of the name and address of his new employer;

(2) provide his new employer with a copy of the Agreement (including the Cornell Plan); and

(3) ensure that, for so long as the Cornell Plan is in effect, his new employer will agree to assume the scientific and research oversight responsibilities adopted by Cornell University pursuant to paragraphs 1, 2, and 3 of the Cornell Plan.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 00–1621 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4 p.m., February 9, 2000.

Place: DoubleTree Hotel Portland—Downtown, 310 S.W. Lincoln, Portland, Oregon 97201, telephone: (503) 221–0450.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including a presentation and discussion on the DOE Richland Indian Office, update on tribal cooperative agreements, and agency updates.

Matters To Be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Leslie C. Campbell, Executive Secretary HHES, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR (28737), fax 404/639–0654.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 18, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–1591 Filed 1–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5:30 p.m., February 10, 2000. 8 a.m.–4 p.m., February 11, 2000.

Place: DoubleTree Hotel Portland—Downtown, 310 S.W. Lincoln, Portland, Oregon 97201, telephone: (503) 221–0450.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters To Be Discussed: Agenda items include a continuing discussion on the health effects subcommittee evaluation, update on the membership selection process, and Public health assessments and reports. Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary HHES, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR(28737), fax 404/639–0654.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register**

notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 18, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–1590 Filed 1–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0144]

Agency Information Collection Activities; Announcement of OMB Approval; Biological Products Regulated Under Section 351 of the Public Health Service Act; Implementation of Biologics License; Elimination of Establishment License and Product License

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Biological Products Regulated Under Section 351 of the Public Health Service Act; Implementation of Biologics License; Elimination of Establishment License and Product License" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 20, 1999 (64 FR 56441), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0427. The approval expires on December 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 14, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–1537 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2549]

Agency Information Collection Activities; Announcement of OMB Approval; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Cosmetic Product Voluntary Reporting Program" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 28, 1999 (64 FR 58069), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0030. The approval expires on December 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 14, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–1538 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0175]

Cultor Food Science, Inc., DSM Food Specialties, and Protein Technologies International; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cultor Food Science, Inc., DSM Food Specialties, and Protein Technologies International have filed a petition proposing that the food additive regulations be amended regarding the safe use of natamycin on cheese.

FOR FURTHER INFORMATION CONTACT: Felicia Binion Williams, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3122.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4704) has been filed by Cultor Food Science, Inc., 430 Saw Mill River Rd., Ardsley, NY 10502; DSM Food Specialties, 700 American Ave., suite 300, King of Prussia, PA 19406; and Protein Technologies International, Checkerboard Square, St. Louis, MO 63164. The petition proposes that the food additive regulations in 21 CFR 172.155 *Natamycin (pimaricin)* be amended by listing only the use level of natamycin permitted in cheese and by eliminating the reference for the method of application.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 4, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–1541 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

State Food Safety Task Force Meetings; Availability of Conference Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the anticipated availability of conference grant funds for the support of State Food Safety Task Force meetings contingent on the availability of fiscal year (FY) 2000 funds. This initiative is intended to support and encourage State food regulatory agencies to establish (or provide support of existing) regularly scheduled Food Safety Task Force meetings. These meetings should foster communication and cooperation within the State among State and local food safety regulatory agencies and is part of the President's Food Safety Initiative (FSI).

DATES: For States with existing State Food Safety Task Forces, the lead/champion/food regulatory agency must submit applications by March 24, 2000. For States in the process of developing a State Food Safety Task Force, submit applications by April 15, 2000. If the closing date falls on a weekend, or the date falls on a holiday, the date of submission will be extended to the following workday.

ADDRESSES: Application forms are available from, and completed applications should be submitted to Cynthia M. Polit, Grants Management Office, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7180, e-mail: cpolit@oc.fda.gov. Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Cynthia M. Polit (address above).

Regarding the programmatic aspects of this notice: Paul M. Raynes, or Glenn E. Johnson, Division of Federal-State Relations (DFSR), Office of Regulatory Affairs (ORA), Food and Drug Administration (HFC–150), 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, or access the Internet at www.fda.gov/ora/fed_state/default.htm.

SUPPLEMENTARY INFORMATION: FDA will support meetings covered by this notice under section 1701 (300u-300u-5) of the Public Health Service (PHS) Act (42 U.S.C. 241) or the Radiation Control for Health and Safety Act of 1968 (Public Law 90–602) (42 U.S.C. 263b-n). FDA's Conference Grant Program is described in the Catalog of Federal Domestic Assistance, No. 93–103 and applicants are limited to State food safety regulatory agencies. Applications submitted under this program are subject to the requirements of Executive Order 12372. Requirements under the original FDA request for applications for its Conference Grant Program (52 FR 12257, April 15, 1987) apply. PHS strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit workplans that address specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of "Health People 2000" (Full Report, stock No. 017–0010–0474–0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

I. Background

ORA is the inspection component of FDA and has 1,000 investigators and inspectors who cover the country's approximately 95,000 FDA-regulated businesses. These investigators and inspectors inspect more that 15,000 facilities a year. In addition to the standard inspection program, they conduct special investigations, food inspection recall audits, perform consumer complaint inspections and sample collections. FDA has relied on the States in assisting with the above duties through formal contracts, partnership agreements, and other informal arrangements. Under the FSI, the demands on both the agency and the States will increase. Procedures need to be reviewed and innovative changes made that increase effectiveness and efficiency and conserve resources. ORA will support FSI by: (1) Providing effective and efficient compliance of regulated products, and (2) providing high quality, science-based work that maximizes consumer protection.

Under the FSI, FDA is encouraging State food safety regulatory agencies to establish (or provide support of existing) regularly scheduled Food Safety Task Force meetings. These meetings should foster communication and cooperation within the State among State and local food safety regulatory agencies. The purpose of the meetings should be to discuss/resolve issues at the State and local level relating to: (1) State/local agency roles and responsibilities, (2) capacity and resource needs, (3) outbreak coordination and investigations, (4) information sharing and data collection, (5) uniform regulatory standards, (6) communications and education, (7) State/local laboratory operations and coordination, and (8) adoption/implementation of the Food Code.

II. Project Goals, Definitions, and Examples

The purpose of these meetings is to foster communication and cooperation within the State among State and local food safety regulatory agencies. The meetings should: (1) Provide a forum for all the stakeholders of the food safety initiative; (2) assist in adopting or implementing the Food Code; and (3) promote the integration of a Statewide food safety system to become a cost effective, efficient system to maximize the protection of the public health.

Grant funds will be awarded for 1 year for direct costs only to secure meeting facility rental/expenses and in-state travel expenses for meeting attendees during the 1-year period. FDA and the U.S. Department of Agriculture region/district representatives may be invited to be a non-member liaison or advisor at the meetings but the task force should develop its own guidelines for work, consensus decisionmaking, size, and format at the initial meeting. Conference grant funds may not be used for Federal employees to travel to these meetings.

DFSR will provide meeting guidelines and other meeting organization documents as requested. Information on "Productive Meeting Fundamentals" is available via the Fax-on-Demand system by calling 301–827–4352 and requesting document #1606. A model partnership agreement may be obtained from Fax-on-Demand by requesting document #1605. FDA encourages at least two meetings a year for these task forces and recommends one each quarter.

III. Reporting Requirements

A final Program Progress Report or conference proceedings and a final Financial Status Report (FSR) (SF–269) are required within 90 days of the expiration date of the project period as noted on the Notice of Grant Award. An original and two copies of each report shall be submitted to FDA's Grants Management Office. Failure to file these

reports in a timely fashion may jeopardize future grant support.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. These grants will be subject to all policies and requirements that govern the conference grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 also apply to this program and are implemented through the U.S. Department of Health and Human Services (DHHS) regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOC's is included in the application kit. The SPOC should send any State review process recommendations to the FDA Grants Management Office (address above). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cutoff.

B. Eligibility

These grants are available to State food regulatory agencies (see section IV.A of this document).

C. Length of Support

The length of support will be for 1 year from the date of issuance of the award.

V. Review Procedure and Criteria

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Final funding decisions will be made by the Commissioner of Food and Drugs or her designee.

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or programmatic nature must be directed to the ORA Program Staff (address above) and all questions of an administrative or financial nature must be directed to the Grants Management Staff (address above). Applications will be given an overall score and judged based on all of the following criteria:

1. Participant determination of the size and membership of the meetings' operating rules and goals in relation to the mission and priorities of FDA;
2. Makeup of the participants to include State and local food safety agencies, industry, consumers, legislators (State and local) and other interested associations or groups. Recommended attendance at meetings is approximately 15 to 20 persons;
3. Information dissemination to constituents regarding the existence of the meetings and information regarding the goals and outcomes;
4. Biannual or quarterly meetings as necessary to accomplish the established goals;
5. Yearly self-evaluation concerning the progress toward achieving goals and outcomes.

VI. Submission Requirements

The original and two copies of the completed grant application Form PHS–5161–1 (Revised 5/96) for State and local governments should be delivered to the Grants Management Office (address above). The application receipt date is March 24, 2000, for applicants with an established task force and April 15, 2000, for applicants in the process of developing a task force. If the receipt date falls on a weekend or if the date falls on a holiday, the date of submission will be extended to the following workday. No supplemental material or addenda will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application facepage should be labeled "Response to RFA–FDA–ORA–00–1."

Note: A lead/champion/initiating State food regulatory agency who will coordinate/host and take the lead in establishing the Food Safety Task Force must be determined within the State prior to submission of an application. That lead/champion/initiating State food regulatory agency would prepare and submit the application. Only one grant will be awarded per State. Approximately $250,000 will be available in FY 2000, subject to the availability of funds. FDA anticipates making awards, not to exceed $5,000 in direct costs per award. Support of these grants will be for 1 year. The number of grants funded will depend on the quality of the applications received and the availability of Federal funds to support the grant. These grants are available to State food regulatory agencies that have an existing State Food Safety Task Force as well as State food regulatory agencies that are in the process of developing a State Food Safety Task Force. The formation of these Food Safety Task Force meetings will not interfere with existing advisory mechanisms within the Federal/State/local system and is not a mandatory requirement of FDA.

VII. Method of Application

A. Submission Instructions

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research, National Institutes of Health (NIH). Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed nonresponsive and returned to the applicant. Instructions for completing the application are included in Form PHS–5161–1. FDA is unable to receive applications via the Internet.

B. Format for Application

When using Form PHS 5161–1 (Revised 5/96), all instructions for the enclosed Standard Form 424 (SF424) should be followed using the nonconstruction application pages. The facepage of the application should be labeled "RFA–FDA–ORA–00–1."

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on PHS Form 5161–1 were approved and issued under the Office of Management and Budget Circular A–102.

C. Legend

Unless disclosure is required by FOIA as amended (5 U.S.C. 552), as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of an application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: January 12, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1539 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Allergenic Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 10, 2000, 8:30 a.m. to 3:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will receive an update on the organizational changes of the Laboratory of Immunobiochemistry, its regulatory activities (including reference replacements and lot release statistics) and its research activities. The committee will hear presentations and discuss the following regulatory issues: (1) Potency limits for standardized allergen vaccines, (2) selection of allergen extracts for standardization, and (3) a proposed algorithm for the standardization of new allergens.

Procedure: On February 10, 2000, from 8:30 a.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 26, 2000. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 3, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 11, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–1543 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0132]

FDA Modernization Act of 1997; Guidance on Medical Device Tracking; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised guidance document entitled "Guidance on Medical Device Tracking." This guidance document, which replaces the previous guidance issued on February 12, 1999, provides guidelines to manufacturers and distributors concerning their responsibilities for medical device tracking under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Guidance on Medical Device Tracking" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on "Guidance on Medical Device Tracking" to the contact person (address below). See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Chester T. Reynolds, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4618.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211 of FDAMA (Public Law 105–115) amended the tracking provisions of section 519(e) of the act (21 U.S.C. 360i(e)) to authorize FDA, at its discretion, to issue orders that require a manufacturer to track a class II or class III device if: (1) The failure of the device would be reasonably likely to have serious adverse health consequences; (2) the device is intended to be implanted in the body for more than 1 year; or (3) the device is life sustaining or life supporting and used outside a device user facility. The FDAMA tracking provisions became effective on February 19, 1998.

The revised final guidance replaces the February 1999 guidance and clarifies the devices that must be tracked. Agency experience indicates that industry and other interested parties are confused about the term "replacement heart valves" because there is more than one type. The category of replacement heart valves that must be tracked is limited to mechanical heart valves only and does not include human allograft (tissue) heart valves. The revised guidance document includes this descriptive limitation.

Agency experience also indicates that industry and other interested parties are confused about which infusion pumps are subject to medical device tracking because the types of fluids the pumps are intended to deliver may not be clear from indications for use set out in labeling. The previous guidance stated that infusion pumps, except those designated and labeled for use

exclusively for fluids with low potential risks, such as enteral feeding or anti-infectives, were subject to tracking. The agency has reevaluated the types of infusion pumps subject to tracking and the best way to describe them in the guidance document. The revised guidance explains that tracking is required only for electromechanical infusion pumps that are used outside a user facility. This was the agency's position in 1993 when tracking was originally implemented (58 FR 43442 at 43449). The phrase "electromechanical only" will be used to describe the pumps rather than a reference to the classification regulation. FDA believes this will clarify the guidance because the terms used in the classification language for infusion pumps may include types that do not require tracking.

Finally, the agency added abdominal aortic aneurysm stent grafts to the devices that must be tracked. The agency issued tracking orders for these devices on September 28, 1999, which were effective immediately. FDA determined that these devices meet the statutory tracking criteria under section 519(e) of the act because failure of the device would be reasonably likely to have serious adverse health effects. The agency may add or remove devices from the list of tracked devices as a result of its review of premarket applications, recall data, medical device reporting, inspections, petitions, postmarket surveillance, or other information.

II. Significance of Guidance

This guidance document represents the agency's current thinking on medical device tracking requirements, as amended by FDAMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable stâtute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 2 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Guidance on Medical Device Tracking" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (169) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Guidance on Medical Device Tracking," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance on Medical Device Tracking" will be available at http://www.fda.gov/cdrh/ochome.html.

IV. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance.

Dated: January 9, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–1542 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5297]

Medical Devices; Guidance Document for Premarket Notification Submissions for the Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance Document for Premarket Notification Submissions for the Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer." This guidance will serve as a special control for nitric oxide delivery apparatus; nitric oxide analyzer; and nitrogen dioxide analyzer. FDA's Center for Devices and Radiological Health (CDRH) believes that this guidance is necessary to provide reasonable assurance of the safety and effectiveness of these devices. The guidance document includes material specific for the devices, consensus standards for electrical safety, electromagnetic compatibility, software and hardware documentation, and resistance to environmental effects.

DATES: Written comments concerning this guidance document must be received by April 24, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document. Submit written requests for single copies of the guidance document entitled "Guidance Document for Premarket Notification Submissions for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. By April 24, 2000, written comments concerning this guidance document must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. After April 24, 2000, comments must be submitted to the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Michael G. Bazaral, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2000, FDA issued an order to Datex-Ohmeda, Inc., under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)) classifying the nitric oxide administration apparatus, the nitric oxide gas analyzer, and the nitric dioxide analyzer into class II (special controls). This guidance document is intended to serve as the special control for these devices.

FDA is making this guidance document effective immediately

because these devices are necessary for the administration of a drug that provides a significant public health benefit. The drug, which was approved by FDA on December 23, 1999, is used for the treatment of neonates with hypoxic respiratory failure associated with clinical or echocardiographic evidence of pulmonary hypertension. The drug improves oxygenation and reduces the need for extracorporeal membrane oxygenation.

The guidance document is intended to set forth the controls and testing that FDA believes ensure the safety and effectiveness of the nitric oxide administration apparatus, nitric oxide gas analyzer, and nitrogen dioxide gas analyzer. It also intends to provide comprehensive directions to enable a manufacturer to submit a 510(k) premarket notification demonstrating substantial equivalence for any or all three device types.

The guidance document identifies the risks associated with these types of devices and contains information that will help manufacturers address those risks. The guidance outlines the controls that should be incorporated in the devices for controlling risks, testing that should be completed for each device, and suggested methods for developing preclinical criteria. Other elements of the guidance document include: (1) General device description; (2) specific description of the information to support applications for each device; and (3) general considerations for each device, such as software and hardware testing.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the premarket notification submissions for the nitric oxide delivery apparatus, nitric oxide analyzer, and nitrogen dioxide analyzer. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the "Guidance Document for Premarket Notification Submissions for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1157) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the "Guidance Document for Premarket Notification Submissions for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "Guidance Document for Premarket Notification Submissions for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer" will be available at http://www.fda.gov/cdrh/ggpmain.html.

IV. Comments

Interested persons may, on or before April 24, 2000, submit to the Dockets Management Branch (address above) written comments regarding this immediately in effect guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–1535 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0298]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* Evaluation of New Medicare Members of Medicare+Choice Plans; *Form No.:* HCFA–R–0298 (OMB# 0938-New); *Use:* The objective of this survey is to understand the special information needs of new Medicare members, their sources of information, their preferred distribution channels, their understanding of the traditional Medicare program and their understanding of their particular +Choice plan, and the impact National Medicare Education Program activities may have on new members' decisions to choose a +Choice plan or change their plan; *Frequency:* On occasion; *Affected Public:* Individuals; *Number of Respondents:* 3000; *Total Annual Responses:* 3000; *Total Annual Hours:* 1212.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 28, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–1602 Filed 1–21–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration.

[Document Identifier: HCFA–R–0262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval expired; *Title of Information Collection:* The Adjusted Community Rate Proposal (ACRP) M+C Plan Benefit Package and Supporting Regulations in 42 CFR 417.401, 22.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, and 422.560–422.622; *Form No.:* HCFA–R–0262 (OMB# 0938–0763); *Use:* The plan benefit package data will be used to approve managed care organization benefits, approve adjusted community rate pricing packages, and support both managed care organization and HCFA beneficiary information campaign and marketing efforts. Respondents include any M+C organization that intends to offer an M+C plan in calendar years 2001–2003.

This collection will also allow the HCFA to provide a totally automated submission and review capability, replace text with data format, establish a standard set of benefit descriptions/definitions, provide a framework to describe benefits, reduce variation in benefit descriptions, and eliminate the need to validate Medicare Compare data; *Frequency:* Annual; *Affected Public:* Business or other for-profit, and Not-for-profit institution; *Number of Respondents:* 300; *Total Annual Responses:* 300; *Total Annual Hours:* 900.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 7, 2000.

John Parmigiani,

Acting Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–1603 Filed 1–21–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Assessment of the Impact of the National Practitioner Data Bank—NEW

Under the Health Resources and Services Administration (HRSA), Bureau of Health Professions (BHPr), the Division of Quality Assurance (DQA) is planning to conduct a survey to obtain information on the degree of user satisfaction with the National Practitioner Data Bank's (NPDB) querying and reporting processes, how users believe these processes can be improved, and how users perceive the usefulness of information they obtained from the NPDB for licensing and credentialing of health care entities, *e.g.* managed care organizations, State licensing boards for physicians and dentists, and professional societies. The study will also identify and survey non user entities. The information obtained in this study will be interpreted in relation to similar information from previous studies conducted by the DQA and the Office of the Inspector General.

The estimated response burden is as follows:

Questionnaire version	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Users Survey					
Reporting:					
Hospital	1031	1	1031	.25	257.8
Group Practice	210	1	210	.25	52.5
HMOs	161	1	161	.25	40.3

Questionnaire version	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
State Boards	81	1	81	.25	20.3
Malpractice Payers	188	1	188	.25	47.0
Professional Societies	67	1	67	.25	16.8
Other	209	1	209	.25	52.3
Querying:					
Hospital	770	1	770	.4	308
Group Practice	173	1	173	.4	69.2
HMOs	153	1	153	.4	61.2
State Boards	74	1	74	.4	29.6
Malpractice Payers	*	.....	.....	.....	.....
Professional Societies	66	1	66	.4	26.4
Other	184	1	184	.4	73.6
Match Responses:					
Hospital	770	2.6	2002	.33	660.7
Group Practice	173	2.8	484.4	.33	159.9
HMOs	153	2.2	336.6	.33	111.1
State Boards	74	2.2	162.8	.33	53.7
Malpractice Payers	*	.....	.....	.....	.....
Professional Societies	66	2.0	132	.33	43.6
Other	184	1.9	349.6	.33	115.4
Non-Users Survey					
Version/Entity Type:					
Hospital	.....	.....	.....	.....	.....
Group Practice	113	1	113	.1	11.3
HMOs	151	1	151	.1	15.1
State Boards	.....	.....	.....	.....	.....
Malpractice Payers	.....	.....	.....	.....	.....
Professional Societies	113	1	113	.1	11.3
Other	113	1	113	.1	11.3
Total Users	2,366	.....	6,834	.....	2,199
Total Non-Users	490	.....	490	.....	49
Total Users and Non-Users	2,856	.....	7,324	.....	2,248

*Cannot query the NPDB; thus these entities do not receive querying or match response questionnaires.
**These are the unduplicated numbers of entities required for the surveys.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 14, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–1533 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 2000.

Name: National Advisory Council on the National Health Service Corps (NHSC).

Date and Time:

February 10–11, 2000; 9 a.m.–noon.
February 12, 2000; 9 a.m.–4:30 p.m.
February 13, 2000; 9 a.m.–10:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, Phone: (301) 897–9400.

The meeting is open to the public.

Agenda: Items will include updates on the NHSC and Scholarships and Loan Repayments program; Health Professional Shortage Areas (HPSA) designations; and a report from the Philadelphia field office. The Council will be attending the Capitol Area Rural Health Roundtable on Thursday, February 10, from 3:00 p.m. to 5:00 p.m. A site visit will be on Friday, February 11. Transportation for the public will not be available.

For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Dated: January 14, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–1532 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 2000.

The National Advisory Committee on Rural Health will convene its thirty-fourth meeting at the time and place specified below:

Name: National Advisory Committee on Rural Health.

Date and Time:

February 7, 2000; 8:30 a.m.–4:45 p.m.
February 8, 2000; 8:30 a.m.–4:00 p.m.

February 9, 2000; 8:30 a.m.–10:30 a.m.P='02'≤

Place: Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington, D.C. 20001. Phone: (202) 628–2100.

The meeting is open to the public.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development, and administration of health care services in rural areas.

Agenda: Monday morning, February 7, at 8:30 a.m. the new chairperson, Senator Nancy Kassebaum Baker will open the meeting and welcome the Committee members. The first plenary session will be a presentation on the rural health issues in the Veterans Administration. At 10:00 a.m. the group will move to the National Rural Health Association's Policy Institute Congressional Forum (also convened in the same hotel). After lunch, presentations will include the Kaiser Commission on Medicaid and the uninsured; update on public health and hospital capital, and the Indian Health Service.

Tuesday morning at 8:30 a.m., there will be an update of the Office of Rural Health Policy activities, followed by presentations on Medicare payment in rural areas, rural mental issues, and an update on research and regulatory activities.

After lunch, Committee discussion will continue on issues presented by the Indian Health Service, and Veterans Administration.

The final plenary session will be convened on Wednesday, February 9 at 8:30 a.m. During this session the Committee will discuss future activities and next meeting. The meeting will be adjourned at 10:30 a.m.

Anyone requiring information regarding the subject Committee should contact Wayne W. Myers, M.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Sandi Lyles or Lilly Smetana, Office of Rural Health Policy, (301) 443–0835.

Dated: January 14, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–1534 Filed 1–21–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Collection: Common Reporting Requirements for Urban Indian Health Program; Republication

Editorial Note: In the issue of January 14, 2000, beginning on page 2417, FR Doc. 00–888 was printed as a duplicate of FR Doc. 00–887, beginning on page 2416. The correct FR Doc. 00–888 is published below.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: 09–17–0007, "Common Reporting Requirements for Urban Indian Health Program." *Type of Information Collection Request:* Extension of currently approved information collection, 09–17–0007, "Common Reporting Requirements for Urban Indian Health Program," which expires February 28, 2000. *Form Number:* Reporting formats contained in the Indian Health Service Urban Indian Health Programs Common Reporting Requirements Instruction Manual. *Need and Use of Information Collection:* American Indian/Alaska Native (AI/AN) urban health organization contracting with the IHS provide the information collected. The information is collected annual and is used to monitor contractor performance, prepare budget reports, allocate resources, and evaluate the urban health contract program.

Affected Public: Businesses or other for-profit organizations, individuals, not-for-profit institutions, and State, local, or Tribal Government. *Type of Respondents:* health care providers.

Table 1 below provides: Types of data collection instruments, Estimate number of respondents, Number of responses per respondent, Annual Number of Responses, Average burden hour per response, and total annual burden hour.

Data collection instructions	Estimated number or respondents	Responses per respondent	Annual number of responses	Average burden hr per response [1]	Total annual burden hours
Face Sheet	34	1	34	0.50 (30 mins)	17.0
Table 1	34	1	34	2.00 (120 mins)	68.0
Table 2	34	1	34	0.75 (45 mins)	26.0
Table 3	34	1	34	22.25 (135 mins)	77.0
Table 4	[2] 23	1	23	0.50 (30 mins)	12.0
Table 5	34	1	34	2.00 (120 mins)	68.0
Table 6	34	1	34	2.00 (120 mins)	68.0
Table 7	34	1	34	1.00 (60 mins)	34.0
Tabke 8	34	1	34	1.25 (75 mins)	43.0
Total	295		295		413.0

[1] For ease of understanding, burden hours are also provided in actual minutes.
[2] Excludes urban Indian health projects with no medical component.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumption used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Request For Further Information: Send your written comments, requests for more information of the proposed collection, or requests to obtain a copy of the data collection instrument(s) and

instructions to: Mr. Lance Hodahkwens, Sr., M.P.H. IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601: call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your E-mail requests, comments, and return address to: 1hodahkw@hqe.ihs.gov.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received on or before March 14, 2000.

Dated: January 7, 2000.

Michael H. Trujillo,

Assistant Surgeon General Director.

[FR Doc. 00–888 Filed 1–13–00; 8:45 am]

BILLING CODE 4150–16–M

Editorial Note: In the issue of January 14, 2000, beginning on page 2417, FR Doc. 00–888 was printed as a duplicate of FR Doc. 00–887 beginning on page 2416. FR Doc. 00–888 is being republished in this issue of January 24, 2000.

[FR Doc. 00–888 Filed 1–21–00; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS:	
ARIAS, MIGUEL DEPAULA, MIAMI, FL	01/19/2000
ASENCIO, MARIO, MIAMI, FL	01/19/2000
BAKER, ROBERT L, ST ROBERTS, MO	01/19/2000
BUNNA, JASON, SOLEDAD, CA	01/19/2000
DUPUY, SIDNEY J III, BREAUX BRIDGE, LA	01/19/2000
DUZAN, ROBIN, SOUTH SHORE, KY	01/19/2000
EDMONDS, DOROTHY A, BATON ROUGE, LA	01/19/2000
FERGUSON, RUTH, WICHITA, KS	01/19/2000
FLETCHER, JOHN D JR, CHARLESTON, SC	03/08/1900
GORDON, ALICE J, MARIANNA, FL	01/19/2000
HELLYER, DANIEL, MALTA, MT	01/19/2000
HOFFMAN, JAYNE, LAWRENCEVILLE, GA	01/19/2000
HOFFMAN, MARK D, LAWRENCEVILLE, GA	01/19/2000
JOSEPH, MORGAN, MOUSIE, KY	01/19/2000
JUDGE, DANIEL BARKSDALE, RIVERSIDE, CA	01/19/2000
LOFTON, BARBARA P, VESTAVIA HILLS, AL	01/19/2000
NEAL, ROY GLENN, IRVINE, KY	01/19/2000
NEAL, BESSIE, IRVINE, KY	01/19/2000
PETERSON, CHERYL, LINCOLN, NE	01/19/2000
REGINS, KATHRYN S, BATON ROUGE, LA	01/19/2000
SHACK, CAESAR SALANTO, JACKSONVILLE, FL	01/19/2000
WIEMAN, WILLIAM, GRAHAM, WA	01/19/2000
YANG, ROBERT CHANG-CHUN JR, LAND O'LAKES, FL	01/19/2000
FELONY CONTROL SUBSTANCE CONVICTION:	
SLACK, JUDITH A., LONGMONT, CO	01/19/2000
PATIENT ABUSE/NEGLECT CONVICTIONS:	
BAKER, GARY J, ANCHORAGE, AK	01/19/2000
BORER, STEPHANIE M, BUCYRUS, OH	01/19/2000
COLELLO, NATALIE D, PROVIDENCE, RI	01/19/2000
COLEMAN, SALLIE B, SALUDA, SC	01/19/2000
ELLYSON, REBEKKA ANN, CHICO, CA	01/19/2000
JONES, CHRISTIE, BLACKVILLE, SC	01/19/2000
KHAFAGA, MERVAT, CLEVELAND, OH	01/19/2000
MERCHANT, DAVID L, WINDSOR, VT	01/19/2000
OGUNDAPO, VANESSA I, CLEVELAND, OH	01/19/2000
ROGERS, ROY, SANTA MONICA, CA	01/19/2000
WILLIAMS, JACKSON, SYRACUSE, NY	01/19/2000
WOODS, WENDY L, CLEVELAND, OH	01/19/2000
YOUNG, NORD LEVERNE, SAN FRANCISCO, CA	01/19/2000
CONVICTION FOR HEALTH CARE FRAUD:	
NEAVETH, BRANDON RAY, DENVER, CO	01/19/2000
QUINONES, CATHERINE, ALBURQUERQUE, NM	01/19/2000
LICENSE REVOCATION/SUSPENSION/SURRENDERED:	
ABNEY, LINDA A, COLUMBIA, SC	01/19/2000
ADLER, ROGER E, JAMES ISLAND, SC	01/19/2000
ALLMON-RODRIGUEZ, KAREN J, SAN BRUNO, CA	01/19/2000
ANDERSEN, SUZANNE, NOVATO, CA	01/19/2000
ANDREWS, CRYSTAL DAWN, SHERMAN, TX	01/19/2000
APADACA, RAYMOND T, VENTURA, CA	01/19/2000

Subject city, state	Effective date
BAZEMORE, SHARON T, ELIZABETH CITY, NC	01/19/2000
BLACKMAN, SANDRA PHILERMENE, HIGHLAND, CA	01/19/2000
BONA, RANDOLPH J, BROOKLYN CENTER, MN	01/19/2000
BOWDEN, STEPHEN D, CHICO, CA	01/19/2000
BRAGG, STEVEN WAYNE, HARVEST, AL	01/19/2000
BUJAUCIUS, MERRYANN, NEWBURY, VT	01/19/2000
BYRD, TARESA MAY BRYANT, SPARKMAN, AR	01/19/2000
CARY, MONTE RAY, KISSIMMEE, FL	01/19/2000
CLARK, JAMES, NAPA, CA	01/19/2000
CORROW, CHRISTINE E, LYNDONVILLE, VT	01/19/2000
COTTER, ANDREA M, ST PAUL, MN	01/19/2000
EGRES, DEBORAH L, LAKE ORION, MI	01/19/2000
ELGIN, MELODY LOUISE, TULARE, CA	01/19/2000
ELSEA, CLARA E, BERRYVILLE, VA	01/19/2000
GARCIA, ANTON R, HICKORY HILLS, IL	01/19/2000
GRIFFITH, BONNIE DEAN, ANDERSON, CA	01/19/2000
HAMMER, MARTHA M, FLINT, MI	01/19/2000
HARRIS, CLIFTON GORDON III, VISALIA, CA	01/19/2000
HARRIS, RAMONA GAIL BULTER, UNION GROVE, AL	01/19/2000
HASTON, JAMES PARKER, HOUSTON, TX	01/19/2000
HILL, ANNE KATHOLEEN, BIRMINGHAM, AL	01/19/2000
HOGAN, JAMES T, MOOSE LAKE, MN	01/19/2000
HOGENSON, LORI A, DIXON, IL	01/19/2000
IRBY, JAMES H, ANDERSON, SC	01/19/2000
IRELAND, JULIE K, MONTICELLO, IA	01/19/2000
JENSEN, CHRISTINE A, MINNEAPOLIS, MN	01/19/2000
JONES, LINDA D, DES MOINES, IA	01/19/2000
KAREL, JAN, LEMON GROVE, CA	01/19/2000
KESTER, KELLIE L, FRIDLEY, MN	01/19/2000
LABOUNTY, CHRISTOPHER C, DULUTH, MN	01/19/2000
LAIR, CARL BRUCE, WEATHERFORD, TX	01/19/2000
LANEY, MELISSA DIANNE MILLER, DECATUR, AL	01/19/2000
LENART, PAUL J, URBANA, IL	01/19/2000
LUKE, STEVEN JEROME, OREM, UT	01/19/2000
MACKINS, WILLIAM E, COLORADO SPNGS, CO	01/19/2000
MAJOR, VICTORIA ANN, PIEDMONT, CA	01/19/2000
MARMIE, CANDACE L, LOVELAND, CO	01/19/2000
MCKEY, LINDA BENGELE, SUFFOLK, VA	01/19/2000
MEJIA, PHYLLIS A, WAYNESBORO, VA	01/19/2000
MILLER, ANDREA CAMILLE, POTTSBORO, TX	01/19/2000
MINER, RENEE L, SAINT JAMES, VT	01/19/2000
MRAZ, GINA C, MINNEAPOLIS, MN	01/19/2000
OZENBAUGH, SUSAN, COTTONWOOD, CA	01/19/2000
PAGE, KIMBERLEE B, AUSTIN, MN	01/19/2000
PENCE, DEBBIE LYNN, MT VERNON, WA	01/19/2000
PINAN, ROQUE E, COLCHESTER, VT	01/19/2000
POLLARD, OLIVIA M, DENVER, CO	01/19/2000
RICKETSON, GREER HOMER, NASHVILLE, TN	01/19/2000
RICKS, MELVIN THEODORE, SANTA CLARA, CA	01/19/2000
RIGSBY, ROBERT E, MAYO, FL	01/19/2000
ROBINS, KENITH L, PROVO, UT	01/19/2000
ROGERS, GARY DEAN, HUNTSVILLE, AL	01/19/2000
SPEEGLE, MICHAEL CLINTON, CULMAN, AL	01/19/2000
STANFIELD, MARILYN RENEE, TUSCUMBIA, AL	01/19/2000
STRONG, HELEN, DETROIT, MI	01/19/2000
SULTZ-ZIKE, DIANE MARCELLA, BAKERFIELD, CA	01/19/2000
TAYLOR, NELDA JEAN, THORSBY, AL	01/19/2000
VAN AUKEN, BRUCE P, ORLAND PARK, IL	01/19/2000
WATSON, CYNTHIA KATHYRN STREET, HOOVER, AL	01/19/2000
WHITE, PAUL D, SALIDA, CO	01/19/2000
WOOD, PATSY DEAN, PHENIX CITY, AL	01/19/2000
WYLIE, MELODY P, MONCRUE, NC	01/19/2000
FRAUD/KICKBACKS:	
FOREST HILLS NEUROPSYCHIATRIC, BELLEVUE, KY	05/28/1900
OWNED/CONTROLLED BY CONVICTED/EXCLUDED:	
COMMUNICARE HOME HEALTH CARE, SAN ANTONIO, TX	01/19/2000
FLORIDA MOBILE DENTAL, INC, HIALEAH, FL	01/19/2000
JOMA DIAGNOSTIC, CORP, MIAMI, FL	01/19/2000
MEDICAL CORPORATION, OAK RIDGE, LA	01/19/2000
NEURO-VASCULAR INSTITUTE, INC, MIAMI, FL	01/19/2000
STATEWIDE DENTAL SERVICES, MIAMI, FL	01/19/2000
SUGAR SHACK AMBULATORY, JACKSONVILLE, FL	01/19/2000
THE CREST CLINICS OF MIAMI, MIAMI, FL	01/19/2000
DEFAULT ON HEAL LOAN:	

Subject city, state	Effective date
AVEDISSIAN, GREGORY M, WORCESTER, MA	01/19/2000
CAMPBELL, ROCHELLE S, BATON ROUGE, LA	01/19/2000
COONTS, JERRY A, EL DORADO SPNGS, MO	01/19/2000
DAVIS, LARRY L, EL PASO, TX	01/19/2000
DAWS, MICHAEL R, ENGLEWOOD, CO	01/19/2000
DEMEHRI, SHERIAR F, LEONARDTOWN, MD	01/19/2000
DOWER, PATRICK B, NOKOMIS, FL	01/19/2000
EDWARDS, DOUGLAS R, JONESBORO, GA	01/19/2000
ENSLEY, DENNIS L, GREAT BEND, KS	01/19/2000
GUTHRIE, WANDA D, CHARLOTTE, NC	01/19/2000
KARAKIZIS, DEMETRIOS D, JAMAICA, NY	01/19/2000
KEMPIS, RICHARD A, SAN FRANCISCO, CA	01/19/2000
KERSTEIN, GARY R, LOUISVILLE, KY	01/19/2000
LESTER, ROBERT C, GRAND PRAIRIE, TX	01/19/2000
MADDOX, JOSEPH T, EVERETT, MA	01/19/2000
MARTIN, JOSEPH E, MORGAN HILL, CA	01/19/2000
MEYER, RICHARD D, POWDER SPRINGS, GA	11/04/1900
PATEL, AVINASH M, MANHATTAN, NY	01/19/2000
PAULE, LAWRENCE D, TOLLESON, AZ	01/19/2000
PURYEAR, CHERYLL D, SUGAR LAND, TX	01/19/2000
RILEY, DAVID C, MILWAUKEE, WI	01/19/2000
SHEEHAN, MATTHEW E, MEDFORD, OR	01/19/2000
SMITH, PAMELA R, HIGHLAND, CA	12/14/1900
STEINFELD, AUDREY G, NORTHRIDGE, CA	01/19/2000
STRICKLAND, DAVID K, BLACKSBURG, VA	01/19/2000
TURNQUEST, GREOGRY L, QUINCY, FL	01/19/2000

Dated: January 12, 2000.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–1604 Filed 1–21–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in November and December 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b© (6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: February 6–11, 2000.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: February 6–11, 2000, 8:30 a.m.—5 p.m./adjournment.

Panel: Community Treatment Program, PM 99–050

Contact: Danielle Johnson, Room 17–89, Parklawn Building, Telephone: 301–443–2683 and FAX: 301–443–1587.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: February 13–16, 2000.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: February 13–16, 2000, 8:30 a.m.—5 p.m./adjournment.

Panel: Substance Abuse and Mental Health Services Administration Conference Grant PA 98–090(a).

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Dated: January 10, 2000.

Coral Sweeney,

Review Specialist,

Substance Abuse and Mental Health Services Administration

[FR Doc. 00–1540 Filed 1–21–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel; Notice of Reestablishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the EOS Land Processes DAAC Science Advisory Panel.

The purpose of the Panel is to advise the U.S. Geological Survey, Earth Resources Observation Systems (EROS) Data Center in the definition, development, implementation, and operation of data processing, archiving, and distribution systems and associated science support capabilities required in its role as one of eight original DAACs established by the National Aeronautics and Space Administration (NASA) as part of the EOS Program. EOS is a major component of the U.S. Global Change Program.

The Panel is responsible for providing advice and consultation on a broad range of scientific technical topics and for representing the interests and requirements of the scientific research community in guiding development and operation of Land Processes DAAC systems and capabilities. Membership

on the Panel includes representation by scientists formally affiliated with the EOS Program and by scientists who do not have such formal affiliation, including representation from the U.S. academic research community.

The Panel functions solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice. Further information regarding the Land Processes DAAC Science Advisory Panel may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the EOS Land Processes DAAC Science Advisory Panel is necessary and in the public interest in connection with the performance of duties undertaken by the Department of the Interior pursuant to the Memorandum of Understanding between the U.S. Geological Survey and the National Aeronautics and Space Administration (NASA) for Experiment Land Remotely Sensed Data Processing, Distribution, Archiving and Related Science Support. The U.S. Geological Survey is authorized to cooperate with NASA in developing and operating the Land Processes DAAC pursuant to the Organic Act of the U.S. Geological Survey of March 3, 1879 (43 U.S.C. 31), Sec. 101(h) of P.L. 99–591 (An act making appropriations for the Department of Interior and related agencies for the fiscal year ending September 10, 1987, and for other purposes.), 100 Stat, 3341, 3341–252; and NASA's Section 203(c)(5) of the National Aeronautics and Space of 1958, as amended (42 U.S.C. 2473(C)(5)).

Dated: January 3, 2000.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 00–1599 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

Klamath River Basin Fisheries Task Force; Notice of Meeting

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 8:00 a.m. to 4:30 p.m. on Thursday, February 10, 2000 and from 8:00 a.m. to 1:00 p.m. on Friday, February 11, 2000.

PLACE: The meeting will be held at the Brookings Inn, 1143 Chetco Avenue, Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Elizabeth H. Stevens,

Acting Manager, California Nevada Operations.

[FR Doc. 00–1592 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WO–880–9500–PF–24–1A

Extension of Approved Information Collection; OMB Number 1004–0109

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of approval to collect certain information from the Governors of States to allow the BLM to compute units of payments due to local governments. The Payments in Lieu of Taxes (PILT) Act of September 13, 1982, as amended, requires that the Governor of each State furnish BLM with a listing of payments made to local governments by the State on behalf of the Federal Government under 11 receipt-sharing statutes. This information helps local governments recover some of the expenses incurred by providing services on public lands.

DATE: BLM must receive comments on the proposed information collection by March 24, 2000 to assure consideration.

ADDRESSES: You may mail comments to the Bureau of Land Management, (630), Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240. You may also hand deliver comments to Bureau of Land Management, Room 401, 1620 L Street, NW, Washington, DC 20036. To file comments electronically, send your comments via Internet to *WOComment@blm.gov*. Please include "ATTN: 1004–0109" and your name and return address in your Internet message. BLM will make comments available for public review in Room 401, 1620 L Street, NW, Washington, DC during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bill Howell, Budget Group, (202) 452–7721 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week, to contact Mr. Howell about the information collection.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in 43 CFR 1880 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them in its request for approval from the Office of Management and Budget under (44 U.S.C. 3501 *et seq.*).

BLM makes payments in lieu of taxes to units of local governments for certain Federal lands within their boundaries through authority provided by the PILT Act of October 20, 1976 (90 Stat. 2662, 31 U.S.C. 6901–6907). The implementing regulations located at 43 CFR Subpart 1881—Payments in Lieu of Taxes. The Governor of each State or his agent must furnish BLM with a listing of payments made to local governments

by the State on behalf of the Federal Government under 11 revenue-sharing laws specified at (31 U.S.C. 6903(a)(1)). BLM provides the States with a printout matrix designed to facilitate recording the requested information. Each printout lists each qualifying unit of local government down the left hand side of the page along with the unit of local government code used by the Census Bureau. Across the top of the printout are columns which indicate each of the revenue Acts. BLM uses the information provided by the States to compute the PILT payments to local governments within the State.

Based on BLM's experience in administering PILT, BLM estimates each State's reporting burden for this information collection to average 20 hours. The respondents already maintain this information for their own record-keeping purposes and need only transfer it to the matrix described above. The estimate includes time for research, time to transcribe and audit the data, and time to prepare the PILT submission. The respondents are offices designated by the Governor of each State, usually the Treasurer's office. The frequency of response is once annually, reporting on the previous fiscal year's revenues. The number of responses per year is 50. The estimated total annual burden on the States collectively is about 1,000 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: January 3, 2000.

Carole Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 00–1607 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–00–1020–PH]

Availability of Proposed Statewide Resource Management Plan Amendment/Final Environmental Impact Statement, of Land Use Plans in New Mexico for Implementation of New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management

AGENCY: Bureau of Land Management, New Mexico State Office.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Proposed Statewide Resource Management Plan Amendment/Final Environmental Impact Statement, of Land Use Plans in New Mexico for Implementation of New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management.

The Proposed Statewide Resource Management Plan

Amendment/Final Environmental Impact Statement addresses the effects of adopting statewide standards for public land health and guidelines for livestock grazing on BLM administered lands in New Mexico. When adopted the standards and guidelines would be incorporated into eight BLM land use plans that cover approximately 13.5 million acres of BLM-administered land. This action is proposed in accordance with revised regulations for livestock grazing on BLM-administered lands (43 CFR 4100).

The Proposed Plan is the New Mexico Resource Advisory Council (RAC) Alternative. The RAC modified the alternative based on public comment on the Draft, and to make the alternative more in concert with the regulations (43 CFR § 4180). All parts of the Proposed Plan may be protested. Only those persons or organizations who participated in the planning amendment and analysis process may protest issues previously raised in the Draft.

ADDRESSES: Protests must be sent to the Director (WO–210), Bureau of Land Management, Attn.: Brenda Williams, 1849 C Street, NW, Washington, DC 20240. Also send a Carbon Copy to the Office of the Lieutenant Governor, State Capitol, Santa Fe, New Mexico 87505—Attention Cecilia Abeyta. Protests must be postmarked on or before February 28, 2000. The protest must include the following information: (1) Name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue or issues being protested; (3) a statement of the parts or part being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning amendment process by the protesting party or an indication of the date the issue or issues were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong. For those who do not want to protest the Proposed Plan but wish to comment on the Proposed Plan, they may do so. All comments received will be considered in preparation of the Record of Decision. Comments must also be postmarked on or before February 28, 2000 and sent to: BLM—S&G Comment, NM931, P.O. Box 27115, Santa Fe, NM 87502–0115. At the end of the 30-day protest period, and following resolution of any protests, a Record of Decision will be published and the Resource Management Plans updated to reflect the Resource Management Plan Amendment changes. Single copies of the Proposed Statewise Resource Management Plan Amendment/Final Environmental Impact Statement can be obtained by writing or calling J.W. Whitney the BLM Project Team Leader. A limited number of copies of the Proposed Statewide Resource Management Plan Amendment/Final Environmental Impact Statement are available at BLM Field Offices in Farmington, Taos, Albuquerque, Socorro, Las Cruces, Roswell, Carlsbad and at the BLM State Office in Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: J.W. Whitney, BLM Project Leader, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–7115; telephone 505–438–7438.

SUPPLEMENTARY INFORMATION: Four alternatives are considered in detail in the Proposed Statewide Resource Management Plan Amendment/Final Environmental Impact Statement. The Four alternatives include: No Action Alternative (continuation of current management), RAC Alternative (Proposed Plan), County Alternative, and Fallback Alternative.

The RAC Alternative (Proposed Plan) has four Standards which include: an Upland Standard, a Biotic Standard, a Riparian Standard, and a Sustainable Communities and Human Dimension Standard.

Dated: January 14, 2000.

M.J. Chavez,

State Director.

[FR Doc. 00–1593 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01]; [NMNM 101077]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 101077 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: December 29, 1999.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 00–1606 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1310–00]

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent for Planning Analyses.

SUMMARY: The Jackson Field Office, Eastern States, will prepare Planning Analyses (PA) for consideration of leasing six scattered tracts of Federal mineral estate for oil and gas exploration and development. The PAs will be prepared in concert with Environmental Analyses (EA).

This notice is issued pursuant to Title 40 Code of Federal Regulations (CFR) 1501.7 and Title 43 CFR 1610.2(c). The planning effort will follow the procedures set forth in 43 CFR Part 1600.

The public is invited to participate in this planning process, beginning with the identification of planning issues and criteria.

DATES: Comments relating to the identification of planning issues and criteria will be accepted for thirty days from the date of this publication.

ADDRESSES: Send comments to Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Quazi T. Islam, Physical Scientist, Jackson Field Office, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider applications to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EAs. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of oil and gas exploration and development on the surface resources and (2) consideration of restrictions on lease rights to protect surface resources.

Due to the scattered nature of the six tracts proposed for leasing, a separate analysis will be prepared for each tract.

Tract locations, along with acreages, are listed below.

Alabama, Tuscaloosa County, Huntsville Meridian

T 18 S, R 8 W, Section 7; T 18 S, R 9 W, Sections 11 and 12; 200.94 acres.

Louisiana, Concordia Parish, 5th Principal Meridian

T 5 N, R 9 E, Sections 66 and 67; 112.80 acres.

Mississippi, Lamar County, St. Stephens Meridian

T 2 N, R 16 W, Sections 11, 12, 13, and 14; 1,470.0 acres.

Mississippi, Covington County, St. Stephens Meridian

T 8 N, R 14 W, Section 4; 40.0 acres.

Mississippi, Covington County, St. Stephens Meridian

T 6 N, R 54 W, Sections 8 and 17; 70.0 acres.

Virginia, Dickenson County

Tract No. 550G, Parcel A–3. 200.61 acres.

Due to the limited scope of this PA/EA process, public meetings are not scheduled.

Bruce E. Dawson,

Field Manager, Jackson Field Office.

[FR Doc. 00–1605 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–GS–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CO–930–1430–ET; COC–28531, COC–17321)

Public Land Order No. 7428; Revocation and Partial Revocation of Two Executive Orders Which Created Public Water Reserves; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Executive order in its entirety and partially revokes another Executive order insofar as they affect 491 acres of public lands withdrawn for the Bureau of Land Management's Public Water Reserve No. 139 and Public Water Reserve No. 107. This action will open these lands to surface entry under the public land laws and to nonmetalliferous location and entry under the United States mining laws. This action is consistent with the Northeast Resource Area Management Plan. The lands have been and will remain open to mineral leasing and to metalliferous mining.

EFFECTIVE DATE: February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. (1994), it is ordered as follows:

1. Executive Order No. 5593, dated April 4, 1931, which established Public Water Reserve No. 139, is hereby revoked in its entirety:

Sixth Principal Meridian

T. 4 N., R. 61 W.,
Sec. 5, S½NW¼.

The area described contains 80 acres in Weld County.

2. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described lands:

Sixth Principal Meridian

T. 5 N., R. 60 W.,
Sec. 27, SW¼NE¼
T. 4 N., R. 62 W.,
Sec. 12, SE¼SE¼.
T. 3 N., R. 71 W.,
Sec. 10, lot 4.
T. 1 N., R. 72 W.,
Sec. 6, lot 112, and lots 117 to 122, inclusive.
T. 7 S., R. 70 W.,
Sec. 20, SW¼SE¼.
T. 3 S., R. 72 W.,
Sec. 17, lots 52, 53, and 54.
T. 3 S., R. 73 W.,
Sec. 1, NW¼NE¼, NW¼SW¼, and E½SW¼;
Sec. 2, E½NE¼;
Sec. 11, NE¼NW¼ and SW¼SW¼.

The areas described aggregate 411 acres in Boulder, Weld, Gilpin, and Jefferson Counties.

2. At 9:00 a.m. on February 23, 2000, the lands described in Paragraphs 1 and 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of

existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 23, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on February 23, 2000, the lands described in Paragraphs 1 and 2 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 11, 2000.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 00–1608 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–61840]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a Public Park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 21, NE¼SE¼
Containing 40 acres.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau Planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 40 feet in width along the North boundary, 30 feet in width along the South boundary, 30 feet in width along the West boundary, and 40 feet in width along the East boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for public utility purposes which have been granted to Nevada Power Company by Permit No. N–38447 under the Act of October 26, 1976 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Public Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Public Park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 7, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–1611 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–015–1610–DG]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Record of Decision (ROD) for the Owyhee Resource Management Plan and Final Environmental Impact Statement (RMP/EIS).

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management and section 102(2)(c) of the National Environmental Policy Act, the Bureau of Land Management (BLM) has issued a Record of Decision (ROD) for the Proposed Owyhee Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS). The ROD documents approval of BLM's plan to manage the public lands within the Owyhee Resource Area during the next 15 to 20 years and beyond. The Owyhee RMP establishes direction for management on about 1.3 million acres of BLM administered public lands in the Owyhee Resource Area in southwest Idaho. The Owyhee RMP is the same as the Proposed Owyhee Resource Management Plan (Alternative E) published in July 1999.

EFFECTIVE DATE: The Owyhee Resource Management Plan is effective December 30, 1999. Implementation of the Owyhee RMP will begin immediately. Some RMP decisions require immediate action while other decisions are identified for implementation during

the life of the RMP. Some decisions will require action only when an activity is initiated.

ADDRESSES: Copies of the Record of Decision are available at the BLM, Lower Snake River District Office, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Daryl Albiston, Field Manager; or Fred Minckler, Team Leader at telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Owyhee Resource Area includes 1,320,032 acres of BLM administered public lands in western Owyhee County, Idaho. The Owyhee RMP is a general land use plan that establishes guidance for managing a broad spectrum of land uses and allocations and contains resource objectives, land use allocations, management actions and direction needed to achieve program and multiple use goals. The Owyhee RMP replaces the BLM's land management guidance for the Owyhee Resource Area contained in the Owyhee Management Plan (MFP) which was approved in 1981. The record of decision documents selection of Alternative E (the Proposed Owyhee RMP) as presented in the Proposed Owyhee Resource Management Plan and Final Environmental Impact Statement issued July 1999, with associated Appendices, Tables and Maps, as the approved Owyhee RMP.

The following are the major components of the approved RMP:

Manage land uses and activities to ensure properly functioning watershed conditions.

Manage vegetation to achieve healthy rangelands

Meet State of Idaho water quality standards.

Provide habitat for special status plants and animals and habitat for a high diversity of wildlife.

Provide habitat for a wild horse herd appropriate management level of 192 wild horses.

Provide for a sustained level of livestock use. Initially allocate 135,116 livestock AUMs.

Manage livestock grazing activities so goals for rangeland health are achieved.

Use fire as a management tool to improve rangeland health.

Manage Douglas-fir communities to emphasize forest health.

Recommend and manage nine river segments (163 miles) as suitable for designation as Wild and Scenic Rivers. Sixty (60) miles of eligible river segments were determined to be non-suitable and are released from further Wild and Scenic River consideration.

Designate 13 areas totaling 167,372 acres as Areas of Critical Environmental Concern (ACECs).

Continue management of 298,630 acres as Wilderness Study Areas (WSAs). 195,980 acres were previously recommended to Congress as suitable for Wilderness designation.

Designate off-highway motorized vehicle (OHMV) use as "Open" on 192 acres, "Limited" on 1,217,805 acres and "Closed" on 101,994 acres.

Identify 325,000 acres potentially available for disposal, subject to further review.

Dated: January 3, 2000.

Howard Hedrick,

Associate District Manager.

[FR Doc. 00–1609 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–33168]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of the Interior, Bureau of Land Management proposes to withdraw 19.09 acres of public land in Cassia County for the protection of the Burley Administrative Site. This notice closes the land up to 2 years from settlement, sale, location or entry, under all of the general land laws, including the mining laws, but not from leasing under the mineral leasing laws, subject to valid existing rights.

DATES: Comments and requests for a meeting should be sent on or before February 23, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, ID 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: On December 1, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land:

Boise Meridian

A parcel of land lying in the E½SW¼ of Section 32, Township 10 South, Range 23 East, Boise Meridian, the said parcel being more particularly described as follows: Beginning at a point 1500.4 feet north and 33.0 feet west of the quarter section corner common to Section 32, Township 10 South, Range 23 East and Section 5, Township 11 South, Range 23 East, Boise Meridian; said point being on the west right-of-way line of State Highway No. 27; thence N. 0°22′03″ E. along the highway right-of-way a distance of 515.12 feet; thence N. 89°27′57″ W. a distance 1184.19 feet to the centerline of the U.S.R.S. "H" Canal; thence S. 35°17′24″ W. along the canal centerline a distance of 80.64 feet; thence S. 21°20′41″ W. along the canal centerline a distance of 89.13 feet; thence S. 11°08′55″ W. along the canal centerline a distance of 221.23 feet to the west quarter section boundary of said section 23; thence S. 0°18′27″ E. along the quarter section boundary 501.81 feet; thence S.89°26′03″ E. a distance of 496.15 feet; thence N. 0°36′56″ E. a distance of 355.45 feet; thence S.89°21′29″ E. a distance of 800 feet to the point of beginning.

The area described aggregates 19.09 acres, more or less, in Cassia County.

The purpose of the proposed withdrawal is to protect the Burley Administrative Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to this date. The temporary uses which may be permitted during this segregative period are all uses other than settlement, sale, location, or entry, under the general land laws, including the mining laws.

Jimmie Buxton,

Branch Chief for Lands and Minerals.

[FR Doc. 00–1610 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 15, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 8, 2000.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Pulaski County: Brewer, Adrian, Studio, 510 Cedar St., Little Rock, 00000069

GEORGIA

Barrow County: Omer Christian Church and Cemetery, Jct. of GA 316 and GA 324, Winder, 00000074

Fulton County: Washington Park Historic District, Jct. of Martin Luther King, Jr. Dr. and Ashby St., Atlanta, 00000071

McDuffie County: Boneville Historic District, Jct. of Boneville Rd. and the Georgia RR, approx. 5 mi. SE of Thomson, Boneville, 00000072

Pierce County: Blackshear Depot, 200 S. Central Ave., Blackshear, 00000070

LOUISIANA

Winn Parish: Phillips School, Approx. ½ W of jct of LA 421 and Harrisburg Rd., Atlanta, 00000073

MASSACHUSETTS

Franklin County: Bardwell's Ferry Bridge, Bardwell's Ferry Rd. over the Deerfield R., Conway, 00000076

Norfolk County: Bent, G.H., Company Factory, 7 Pleasant St., Milton, 00000075

Worcester County: Bartlett's Bridge, Clara Barton Rd. over the French R., Oxford, 00000077

MICHIGAN

Wayne County: Gibraltar Road—Waterway Canal Bridge, (Highway Bridges of Michigan MPS) Gibraltar Rd. over Waterway Canal, Gibraltar, 00000082

Jefferson Avenue—Huron River and Harbin Drive—Silver Creek Canal Bridges (Highway Bridges of Michigan MPS) Jefferson Ave. over Huron R.; Harbin Dr. over Silver Creek Canal, Brownstone, 00000080

Lilley Road—Lower Rouge River, (Highway Bridges of Michigan MPS) Lilley Rd. over Lower Rouge R., Canton Township, 00000078

Waltz Road—Huron River Bridge, (Highway Bridges of Michigan MPS) Waltz Rd. over Huron R., Huron Township, 00000081

West Jefferson Avenue—Rouge River Bridge, (Highway Bridges of Michigan MPS) W. Jefferson Ave. over Rouge R., River Rouge, 00000079

MISSOURI

Barry County: Wheaton Missouri and North Arkansas Railroad Depot, Jct. of Main and Barnett Sts., Wheaton, 00000085

Cole County: Jefferson Female Seminary, 416 and 420 E. State St., Jefferson, 00000087

Madison County: Fredericktown Missouri Pacific Railroad Depot, 406 Villar St., Fredericktown, 00000088

St. Louis Independent city: 1907 Dorris Motor Car Company Building, 4063–4065 Forest Park Ave., St. Louis, 00000084

Security Building, 319 N. Fourth St., 01/10/2000, St. Louis, 00000083

Sullivan County: Green City Presbyterian Church, One East St., Green City, 00000086

NEW YORK

Livingston County: Union Block, 38–42 State St., Nunda, 00000092

Oneida County: Holland Patent Railroad Station, Park Ave., Holland Patent, 00000089

Miller—Wheeler House, 1423 Genesee St., Utica, 00000093

Saratoga County: Crescent Methodist Episcopal Church, Crescent, Crescent, 00000091

Grooms Tavern Complex, Sugar Hill Rd. at Grooms Rd., Grooms Corners, 00000094

Tompkins County: Newfield Covered Bridge, Covered Bridge St., Newfield, 00000095

Ulster County: South Gilboa Railroad Station, Bailey Spur Rd., South Gilboa, 00000090

OHIO

Cuyahoga County: Shore High School, 291 E. 22nd St., Euclid, 00000097

Ottawa County: Port Clinton, Adams St., Port Clinton, 00000096

SOUTH DAKOTA

Minnehaha County: South Dakota Dept. of Trans. Bridge No. 50–195–104, (Historic Bridges in South Dakota MPS) Local Rd. over the Big Sioux R., Sverdrup Township, 00000098

A Request for Removal has been made for the following Resource:

ALASKA

Yukon-Koyukuk Burough: Taylor, James, Cabins (Yukon River Lifeways TR) Right bank of the Yukon opposite Fourth of July Creek Eagle, 87001203

[FR Doc. 00–1630 Filed 1–21–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet on February 17, 2000 to discuss the CALFED Preferred Alternative, Water Use Efficiency, and CALFED Implementation, including the Ecosystem Restoration Program. This meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATE: The Bay-Delta Advisory Council will meet in Sacramento from 8:30 a.m. to 5:00 p.m. on Thursday, February 17, 2000 in the Auditorium of the Sacramento Association of Realtors.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Sacramento Association of Realtors' Auditorium at 2003 Howe Avenue, Sacramento CA 95825, (916) 922–8294.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the

CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: January 18, 2000.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 00–1594 Filed 1–21–00; 8:45am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–539–C, E and F (Review); Uranium From Russia, Ukraine and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty order on uranium from Ukraine and the suspended investigations on uranium from Russia and Uzbekistan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on uranium from Ukraine and the termination of the suspended investigations on uranium from Russia and Uzbekistan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 62691, November 17, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on May 8, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 25, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 15, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 19, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 17, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided

in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 5, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before June 5, 2000. On June 28, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 30, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 14, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1636 Filed 1–21–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act and the Solid Waste Disposal Act

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Ambroid Company, Inc.*, Civil Action No. 97–11377–JLT, was lodged on January 13, 2000, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the claims of the United States against J. Frank Strauss and Robert M. Kuzara in a complaint filed against these parties, and several others, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607. In the complaint, which was filed on June 17, 1997, the United States sought the recovery of past unreimbursed response costs incurred by the United States in connection with a drum removal action performed at the Yankee Chemical Superfund Site, located at 600 West Water Street, in Taunton, Massachusetts (the "Site"). The settlement also resolves the claims of the United States against Bank Hapoalim, B.M., a third-party defendant in the action. Pursuant to the proposed settlement, the Settling Defendants will reimburse the EPA Hazardous Substance Superfund in the amount of $50,000. The United States has provided a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as well as pursuant to Section 7003 of the Solid Waste Disposal Act, 42 U.S.C. § 6973, with respect to the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Amoroid Company, Inc.*, DOJ Ref. Number 90–11–3–1747. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at EPA Region 1, located at One Congress Street, Suite 1100, Boston, MA 02114 (contact Peter DeCambre, 617–918–1890). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1645 Filed 1–21–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act of 1990

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Amity Products Carriers, Inc.*, Civil Action No. 00–11–P–H, was lodged on January 7, 2000, with the United States District Court for the District of Maine. The proposed consent decree resolves the claims of the United States under Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b)(2)(A), against Amity Products Carriers, Inc. ("Settling Defendant"), in connection with the oil spill that occurred, on September 27, 1996, as a result of the collision of the Tank Vessel *Julie N* with the Million Dollar Bridge spanning the Fore River from Portland to South Portland, Maine, which resulted in the discharge of oil into the Fore River. The proposed consent decree also resolves the claims of the United States against Maritime Overseas Corporation, OSG Ship Management, Inc., as well as the officers, directors, and employees of those companies, as well as of the Settling Defendant, to the extent that their liability arises from actions taken in their official capacities as officers, directors, and employees of these corporations. The proposed settlement resolves the claims filed in a complaint on January 7, 2000. The complaint alleges, pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), that Settling Defendant, the owner of the *Julie N* at the time of the spill, is liable for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage. The proposed consent decree also resolves the claims of the State of Maine set forth in a similar complaint filed on January 7, 2000. *See State of Maine* v. *Amity Products Carriers, Inc.*, Civil Action No. 00–12–P–H.

Pursuant to the proposed consent decree, the Settling Defendant will make a payment of $1 million to the *Julie N* Oil Spill Restoration Account, which shall be used by Federal and State natural resource trustees to plan,

implement or oversee restoration of the natural resources injured by the *Julie N* spill in accordance with the Restoration Plan attached as Appendix B to the proposed consent decree. Pursuant to the Restoration Plan, the Trustees will use the funds to implement and oversee three restoration projects: a project intended to reduce the discharge of oil and grease from the streets of Portland into the Fore River, a project that will enhance a portion of the Scarborough Marsh, and a project that will involve the construction of a one-mile segment of a larger trail system in Portland. The Settling Defendant has already paid the trustees their costs of assessment, including $410,000 to the National Oceanic and Atmospheric Administration, $53,057.09 to U.S. Department of the Interior, and $24,531.79 to the State of Maine.

The Settling Defendant has agreed not to file claims against the United States in connection with the *Julie N* spill, but has reserved the right to submit claims for removal costs or damages with the Oil Spill Liability Trust Fund under Section 1013 of OPA, 33 U.S.C. § 2713, to the extent permitted by Section 1008 of OPA, 33 U.S.C. § 2708.

The Department of Justice will receive, for a period of forty-five (45) days from the date of this publication, comments relating to the proposed consent decree, including comments concerning the Restoration Plan attached as Appendix B to the proposed consent decree. Any comments should be addressed to Lois J. Schiffer, Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resource Division, P.O. Box 7611, Washington, D.C. 20044. Comments should state "Attention: Don Frankel" and refer to *United States* v. *Amity Products Carriers, Inc.*, DOJ Ref. Number 90–5–1–1–4390.

The proposed consent decree may be examined at the offices of the United States Attorney's Office for the District of Maine, East Tower, Sixth Floor, One Hundred Middle Street Plaza, Portland, ME 04101 (contact David Collins, 207–780–3257). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction costs).

Bruce Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1612 Filed 1–21–00; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on January 6, 2000, the United States lodged a proposed Consent Decree with the District Court for the Western District of Wisconsin, in *United States* v. *Didion Milling Company, Inc.*, Case No. 99–C–261–C (W.D. Wis.), under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b). The proposed Consent Decree resolves certain claims of the United States against Didion Milling, Inc., relating to its grain transfer facility that was located at St. Feriole Island in Prairie du Chien, Wisconsin. Under the proposed Consent Decree Didion will pay the United States a $107,500 civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Didion Milling Company, Inc.*, Case No. 99–C–261–C (W.D. Wis.), 90–5–2–1–2219/1. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, 660 W. Washington Ave., Suite 200, Madison, Wisconsin and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by overnight mail addressed to the Department of Justice Consent Decree Library, 13th Floor, 1425 New York Avenue, NW, Washington, DC 20005, or by regular mail addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $3.75 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1613 Filed 1–21–00 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert Odabashian, et al.* was lodged with the United States District Court for the Western district of Tennessee on December 17, 1999 (95–2361 G/Bre). The United States filed a First Amended Complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, against five defendants, including Chevron Chemical Company, LLC ("Chevron"). The First Amended Complaint alleges that the defendants are liable under Section 107 of CERCLA for costs incurred by the United States Environmental Protection Agency during a cleanup of the Pulvair Corporation Superfund Site in Millington, Tennessee. The proposed Consent Decree settles the liability of Chevron. Under the Consent Decree, Chevron agrees to reimburse the United States in the amount of $100,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *Robert Odabashian, et al.*, DOJ Ref. #90–11–3–1474.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Suite 410, 200 Jefferson Avenue, Memphis, TN 38103, and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303. A copy of the proposed Consent Decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents

per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1644 Filed 1–21–00; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Document Availability and Issuance of a Negative Declaration and Finding of No Significant Impact for the Water and Sewer Extension Project To Serve the United States Penitentiary at the Castle Airport and Aviation Development Center, Merced County, California

AGENCY: Federal Bureau of Prisons, Department of Justice/City of Atwater

SUMMARY: Notice Is Hereby Given regarding the availability of a Joint Initial Study/Environmental Assessment (IS/EA) for public review at the City of Atwater Planning Department, located at 750 Bellevue Road, Atwater, California 95301, in conformance with the California Environmental Quality Act (CEQA). The IS/EA is also available through the Federal Bureau of Prisons, 500 First Street NW, Washington DC 20534 in conformance with the National Environmental Policy Act (NEPA).

A Negative Declaration, filed by the Planning Department in conformance with CEQA, along with the Joint IS/EA may be reviewed at the City during normal business hours (8:00 AM to 5:00 PM) for a 30 day review period commencing on January 20, 2000.

The proposed project will extend municipal water and sewer services from the City of Atwater to the United States Penitentiary at the Castle Airport and Aviation Development Center. Given that the proposed project involves federal, state and local agencies, a joint CEQA/NEPA environmental document has been prepared.

All interested parties should review the document and provide written comments to the City of Atwater Planning Department (Attention: Mo Khatami, Planning and Redevelopment Director) no later than February 22, 2000. A separate Planning Commission public hearing notice will be issued by the City to provide an opportunity for interested parties to give oral comments.

Questions concerning the action can also be answered by: David J, Dorworth, 5stChief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534, Telephone (202) 514–6470, Telefacsimile (202) 616–6024, ddorworth@BOP.gov.

Dated: January 18, 2000.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 00–1617 Filed 1–21–00; 8:45 am]

BILLING CODE 4410–05–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Request for Nominations

AGENCY: Occupational Safety and Health Administration, (OSHA), Labor.

ACTION: Request for nominations for persons to serve on MACOSH.

SUMMARY: OSHA intends to renew the charter of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH). MACOSH advises the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards for the maritime industries of the United States. The Committee will consist of 15 members and will include a cross-section of individuals who represent the following interests: employers, employees; Federal and State safety and health organizations; professional organizations specializing in occupational safety and health; and national standards setting groups. OSHA invites persons interested in serving on MACOSH to submit their names in nomination for committee membership.

DATE: Nominations for MACOSH membership should be postmarked by March 6, 2000.

ADDRESSES: Nominations for MACOSH membership should be sent to: Chappell Pierce, Office of Maritime Standards, Room N–3609, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Office of Maritime Standards, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210; Telephone: (202) 693–2255.

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 1999, OSHA announced its intention to request that MACOSH be rechartered for another two years. MACOSH was established to advise the Secretary on various issues pertaining to providing safe and healthful employment in the maritime industries, which include shipyard and longshoring activities. The Secretary consults with MACOSH on rulemaking issues affecting the industry, and has sought the committee's advice on other issues including streamlining regulatory efforts and improving training and outreach programs. In addition, MACOSH recommends enforcement initiatives that will help improve the working conditions and the safety and health of men and women working in the maritime industry.

II. Nominations

OSHA is seeking men and women with an interest in the safety and health of workers in the maritime industry for membership on MACOSH. Interested persons may submit their own name or the name of another whom they believe to be interested in and qualified to serve on MACOSH. The Agency is looking for nominees to represent the following interests or categories: Employees, Employers, State or Federal Safety and Health Organizations, and Professional Organizations or National Standards-Setting Groups.

OSHA seeks a broad-based and diverse membership for MACOSH. Nominations of women and minorities are encouraged. Nominations of new members or re-nominations of former or current members will be accepted in all categories of membership. Interested persons may nominate themselves or may be nominated by organizations from one of the categories listed above. Nominations should include the name and address of the candidate. Each nomination should include a summary of the candidate's training or experience relating to safety and health in the maritime industry and the interest the candidate represents. In addition to listing the candidate's qualifications to serve on the committee, each nomination should state that the person consents to the nomination and acknowledges the responsibilities of serving on MACOSH.

III. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, pursuant to sections 6(b) and

7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, DC this 18th day of January 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–1643 Filed 1–21–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Notice of Special Enrollment Rights, Health Insurance Portability for Group Health Plans; Correction

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Correction.

SUMMARY: In notice document 99–33599 beginning on page 72696 in the issue of Tuesday, December 28, 1999, make the following correction:

On page 72697 in the first column in the second paragraph, the submission date for written comments was on or before January 27, 2000. It should be changed to read on or before February 28, 2000.

Dated: January 19, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 00–1637 Filed 1–21–00; 8:45am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 78–6

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 78–6. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 24, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 78–6 allows a multiple employer welfare benefit plan maintained for the purpose of providing apprenticeship or other training programs (apprenticeship plan) to (1) purchase personal property and (2) lease personal property or real property (other than office space as described in section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA)) from an employer who makes contributions to an apprenticeship plan (contributing employer), from a wholly-owned subsidiary of a contributing employer, or from an employee organization any of whose members' work results in contributions being made to the apprenticeship plan. In the absence of this exemption, sections 406(a)(1) (A), (C) and (D) of ERISA might prohibit part or all of these transactions.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This existing information collection should be continued because without this exemption, apprenticeship plans would have difficulty operating in accordance with the purposes for which they were established. For the Department to grant an exemption, however, it is required by the provisions of section 408(a) of ERISA to ensure the participants and beneficiaries are protected. It, therefore, included certain conditions and required that records be kept for six years from the date of the transaction so that the Department, contributing employers and their employees, the sponsoring employee organization, and plan participants can determine whether these conditions have been met. Without such records, the Department and other interested parties would be unable to enforce the terms of the exemption and ensure user compliance.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor

Titles: Prohibited Transaction Class Exemption 78–6

OMB Number: 1210–0080

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Estimated Total Burden Hours: 417

Respondents: 1,000

Frequency of Response: On occasion.

Responses: 5,000.

Annual hour burden: 5 minutes.

Total Burden Cost (Operating and Maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: January 19, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 00–1638 Filed 1–21–00; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice; National Leadership Grant for Libraries

SUMMARY: The Institute of Museum and Library Services has prepared a report regarding two funding categories for its National Leadership Grant for Libraries: education and training, and research and demonstration. The full text of the report can be found on the IMLS web site at *http://www.imls.gov/grants/library/lib__nlgl.asp#adv* or received by contacting the Institute at the address below.

The Institute of Museum and Library Services' National Leadership Grants for libraries are designed to support leading edge activities in the field of library and information science. In 1999, IMLS awarded over $10 million in awards for model projects in education and training, research and demonstration and the preservation and archiving of digital media. These grants also help to build digital library resources and to promote cooperation between libraries and museums. The Institute is the only federal agency that administers grants specifically targeted for libraries, library education and library research.

IMLS places a high priority on developing ongoing and open communication with the constituents it serves. Dialogue is essential to assuring that policy and grant making procedures are developed in concert with the needs of the library community. To further this dialogue IMLS held a series of meetings in 1999 in Washington, DC, with library leaders to exchange ideas about priorities for the education and training, and research and development grant categories of National Leadership Grants. The meetings were designed to promote discussion among library leaders to help ensure that funding priorities address current problems and provide leadership for future needs.

IMLS is an independent Federal grantmaking agency that fosters leadership, innovation, and a lifetime of learning by supporting the nation's 8,000 museums and 122,000 libraries. Created by the Museum and Library Services Act of 1996, P.L. 104–208, IMLS has an annual budget of $190 million. For more information about IMLS contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, (202) 606–8536, or *http://www.imls.gov.*

FOR FURTHER INFORMATION CONTACT: Comments and questions received by March 17, 2000 will be most useful. All interested parties should respond to: Barbara Holton, Office of Library Services, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, Washington, DC 20506, *bholton@imls.gov.*

Mamie Bittner,

Director, Public and Legislative Affairs, Institute of Museum and Library Services.

[FR Doc. 00–1588 Filed 1–21–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: February 2, 2000: 9:00 a.m.–5:30 p.m., Open Session; February 3, 2000: 8:30 a.m.–12:15 p.m., Open Session.

PLACE: The Arnold & Mabel Beckman Center, 100 Academy Drive, Irvine, California 92612.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, February 2

—Open Session Minutes, November 1999
—Closed Session Items for March 2000
—Chair's Report
—Director's Report
—NSF Strategic Plan
—NSB Report: Environmental Science & Engineering for the 21st Century
—Committee on Communication & Outreach Interim Report
—NSB Symposium: Communicating Science & Technology In the Public Interest

Thursday, February 3

—NSB Symposium: Communicating Science & Technology In the Public Interest, continued

Marta Cehelsky,

Executive Officer.

[FR Doc. 00–1750 Filed 1–20–00; 3:37 pm]

BILLING CODE 7555–01–M

POSTAL SERVICE

Establishment of Permanent Nonletter-Size Business Reply Mail Classification and Fees; Changes In Domestic Classification and Fees

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule and accompanying fee changes.

SUMMARY: This notice sets forth the changes to Domestic Mail Classification Schedule (DMCS) § 931 and the accompanying Fee Schedule 931 changes to be implemented as a result of the November 1, 1999, Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Establishment of Permanent Classification and Fees For Weight-Averaged Nonletter-Size Business Reply Mail, Docket No. MC99–2.

EFFECTIVE DATE: February 6, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Tidwell, (202) 268–2998.

SUPPLEMENTARY INFORMATION: On March 10, 1999, pursuant to its authority under 39 U.S.C. 3621 *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on the establishment of a permanent classification and fees for weight-averaged nonletter-size Business Reply Mail. The PRC designated the filing as Docket No. MC99–2. On March 19, 1999, the PRC published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** (64 FR 13613–13617).

On July 14, 1999, pursuant to its authority under 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its recommended decision on the Postal Service's request. The PRC recommended the establishment of the permanent weight averaging classification and fees which were requested by the Postal Service and ratified by the Docket No. MC99–2 parties in a Stipulation and Agreement.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's Docket No. MC99–2 recommendations on November 1, 1999. The Governors determined to approve those recommendations. A copy of the attachment to that decision, setting forth the Docket No. MC99–2 classification and fee changes approved by the Governors, is set forth below.

Also on November 1, 1999, the Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to make the Docket No. MC99–2 classification and fee changes approved by the Governors effective at 12:01 a.m. on February 6, 2000 (Resolution No. 99–12).

In accordance with the aforementioned Decision of the Governors and Resolution No. 99–12, the Postal Service hereby gives notice that the classification and fee changes

set forth below will become effective at 12:01 a.m. on February 6, 2000. Implementing regulations also become effective at that time, as noted elsewhere in this issue.

Stanley F. Mires,

Chief Counsel, Legislative.

(Attachment to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Establishment of Permanent Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail, Docket No. MC99–2)

BILLING CODE 7710–12–U

CHANGES IN THE DOMESTIC MAIL CLASSIFICATION SCHEDULE.

The following material represents changes to Domestic Mail Classification Schedule (DMCS) § 931 and Fee Schedule 931 which were approved by the Governors of the United States Postal Service in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99-2. Additions are underlined; deletions are stricken through.

Domestic Mail Classification Schedule § 931-- Business Reply Mail

931 BUSINESS REPLY MAIL

931.1 Definitions

931.11 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12 A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation.
~~This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.~~

931.2 Description of Service

~~931.21~~ The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3 Requirements of the Mailer

931.31 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

931.4 **Fees**

931.41 The fees for business reply mail are set forth in Fee Schedule 931.

931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

931.43 An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

931.5 ~~[RESERVED]~~

~~931.6~~ ~~Experimental~~ Nonletter-Size Weight Averaging Fees

~~931.61~~ ~~[RESERVED]~~

~~931.62~~ A nonletter-size weight averaging monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's weight averaging account is active.

~~This fee applies to the (no more than 10) advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment.~~

~~This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.~~

931.~~7~~6 **Authorizations and Licenses**

931.~~7~~61 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 931.

931.~~7~~62 Except as provided in section 931.~~7~~63, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.~~7~~6~~3~~3 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

931.~~7~~6~~4~~4 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.~~7~~6~~5~~5 Authorization to pay ~~experimental~~ nonletter-size weight-averaging business reply mail fees as set forth in Fee Schedule 931 may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

~~This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.~~

CHANGES IN DMCS FEE SCHEDULE 931.

The following material represents changes to DMCS Fee Schedule 931 approved by the Governors of the United States Postal Service in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99-2.

Fee Schedule 931 -- Business Reply Mail

	Fee
Active business reply advance deposit account:	
Per piece	
Qualified	$0.05
Nonletter-size, using weight averaging ~~(experimental)~~	0.01
Other	0.08
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	$0.30
Annual License and Accounting Fees:	
Accounting Fee for Advance Deposit Account	$300
Permit fee (with or without Advance Deposit Account)	$100
Monthly Fees for customers using weight averaging for nonletter-size business reply	$600
~~Nonletter size, using weight averaging (experimental)~~	

~~Experimental per piece and monthly fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire February 29, 2000, or upon implementation of permanent fees for weight-averaged nonletter-size business reply mail, whichever comes first.~~

[FR Doc. 00–1571 Filed 1–21–00; 8:45 am]
BILLING CODE 7710–12–C

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Survivor Questionnaire; OMB 3220–0032.

Under Section 6 of the Railroad Retirement Act (RRA), benefits that may be due on the death of a railroad employee *or* a survivor annuitant include (1) a lump-sum death benefit (2) a residual lump-sum payment (3) accrued annuities due but unpaid at death, and (4) monthly survivor insurance payments. The requirements for determining the entitlement of possible beneficiaries to these benefits are prescribed in 20 CFR 234.

When the RRB receives notification of the death of a railroad employee or survivor annuitant, an RRB field office utilizes Form RL–94–F, Survivor Questionnaire, to secure additional information from surviving relatives needed to determine if any further benefits are payable under the RRA. Completion is voluntary. One response is requested of each respondent.

The RRB proposes minor, non-burden impacting, formatting and editorial changes to Form RL–94–F. The completion time for the RL–94–F is estimated at between 5 to 11 minutes.

The RRB estimates that approximately 8,000 responses are received annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–1614 Filed 1–21–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application and Claim for RUIA Benefits Due at Death.

(2) *Form(s) submitted:* UI–63.

(3) *OMB Number:* 3220–0055.

(4) *Expiration date of current OMB clearance:* 4/30/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 200.

(8) *Total annual responses:* 200.

(9) *Total annual reporting hours:* 23.

(10) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RUIA, benefits under that Act accrued, but not paid because of the death of the employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–1615 Filed 1–21–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24254; 812–11250]

Franklin Capital Corporation; Notice of Application

January 18, 2000.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant, Franklin Capital Corporation, requests an order approving its Non-Statutory Stock Option Plan (the "Director Plan") and the grant of certain stock options under the Director Plan.

FILING DATES: The application was filed on August 6, 1998, and amended on April 14, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 11, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, 450 Park Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is an internally-managed business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Director Plan for directors who are not employees, officers, or interested persons (as defined in section 2(a)(9) of the Act) of the applicant ("Eligible Directors").[2] Applicant has a five member board of directors (the "Board"), four of whom are Eligible Directors. On August 5, 1997, applicant's Board adopted the Director Plan, and on September 9, 1997, applicant's shareholders approved the Director Plan. The Director Plan will become effective on the date that the Commission issues an order on the application (the "Approval Date").

3. The Director Plan provides for the grant of stock options to purchase shares of applicant's common stock ("Options") to each of the Eligible Directors on the Approval Date. A total of 30,000 shares of applicant's common stock is reserved for issuance under the Director Plan. Pursuant to the Director Plan, on the Approval Date, each of the Eligible Directors will be granted Options for 5,000 shares of common stock (20,000 shares total). The Options vest as follows: one-third of each Eligible Director's 5,000 Options will vest immediately, one-third will vest one year from the date of grant, and the remaining one-third will vest two years from the date of grant. The remaining 10,000 shares will be granted in the following manner: Options to purchase an additional 1,250 shares of common stock will be automatically granted to each Eligible Director upon his election, re-election, or appointment to the Board at the Year 2000 and Year 2001 annual shareholders' meetings.

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[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Each Eligible Director receives director's fees equal to $12,000 per year. The Eligible Directors do not receive any other compensation for their services.

4. Under the Director Plan, the exercise price for Options will be the fair market value of the applicant's stock, defined as the closing price on the American Stock Exchange on the date of grant. Options granted under the Director Plan are exercisable for a period of 10 years from the date of grant or a shorter period as the Board may establish. Options will become exercisable, in accordance with the vesting schedule prescribed in each Eligible Director's Option agreement. In the event of death or permanent and total disability of an Eligible Director during the Director's service, unexercised Options will become exercisable only during the period of twelve months following the date of death or disability. In the event of the termination of an Eligible Director's directorship for a reason other than by death or permanent and total disability, an Option shall be exercisable only during a period of thirty days following the date of termination. The Options will not be transferable except for disposition by gift, will, intestacy, or pursuant to a qualified domestic relations order as defined by section 414(p) of the Internal Revenue Code of 1986, as amended.

5. Applicant's officers and employees, including any employee directors, are eligible to receive stock options under the Franklin Holding Corporation Stock Incentive Plan (the "Employee Plan"). Eligible Directors are not eligible to receive stock options under the Employee Plan. The total number of shares of common stock issuable under the Director Plan and the Employee Plan is 75,000 shares (30,000 shares under the Director Plan and 45,000 shares under the Employee Plan), representing 10.3% of the 730,588 shares of applicant's stock outstanding as of December 31, 1999. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted to its directors, officers, and employees pursuant to the Employee Plan and the Director Plan.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Director Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states in support of the application that the Eligible Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of the Board. Applicant also states that the Eligible Directors provide guidance and advice on financial and operational issues, credit and loan policies, asset valuation, and strategic direction, as well as serve on committees. Applicant believes that the Options to be granted to the Eligible Directors provide significant incentives for the Eligible Directors to remain on the Board and to devote their best efforts to the success of applicant's business and the enhancement of shareholder value. Applicant also states that the Options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's shareholders.

4. Applicant submits that the terms of the Director Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the number of voting securities that would result from the exercise of all Options issued or issuable to the directors, officer, and employees under the Director Plan and the Employee Plan is 75,000 shares, or 10.3% of the company's outstanding stock, which is below the percentage limitations in the Act. Applicant asserts that, given the small amount of common stock issuable upon the exercise of Options under the Director Plan, the exercise of Options would not have a substantial dilutive effect on the net asset value of the applicant's stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1635 Filed 1–21–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1851/803–140]

Ibbotson Associates, Inc.; Notice of Application

January 18, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANT: Ibbotson Associates, Inc.

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the SEC as an investment adviser.

FILING DATES: The application was filed on August 2, 1999, and amended on December 8, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 14, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549–0609. Applicant, Ibbotson Associates, Inc., 225 North Michigan Avenue, Suite 700, Chicago, Illinois 60601–7676.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Attorney, at (202) 942–0646 or Jennifer L. Sawin, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an Illinois corporation with its principal place of business in Chicago, Illinois. Until July 8, 1997, Applicant was registered as an investment adviser with the SEC. Applicant is currently registered as an investment adviser in California, Illinois and New York.

2. Applicant provides services predominantly to institutional clients such as pension plans, pension consultants, investment advisers, broker-dealers, insurance companies and banks. None of Applicant's current clients are natural persons.

3. Applicant provides a wide range of services to its clients; these services include portfolio strategy design, asset allocation, assessment of investor risk tolerance and financial engineering, corporate finance, client specific research and educational programs. Applicant also assists institutional clients by designing model asset allocation portfolios or by designing a questionnaire for institutions to use in determining model portfolio allocations for their individual investor clients. Applicant's institutional clients, however, are responsible for their individual investor clients.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), added new section 203A to the Advisers Act. Under section 203A(a)(1),[1] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an investment adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act"). Section 203A(a)(2) defines the phrase "assets under management" as the "securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."[2]

2. Applicant states that it does not qualify for registration as an investment adviser with the SEC. Applicant states that it does not have $25 million or more in assets under management, does not serve as an investment adviser to an investment company registered under the Investment Company Act, and does not qualify for an exemption from the prohibition on SEC registration as provided in rule 203A–2 under the Advisers Act.

3. Applicant notes that section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A]."[3]

4. Applicant argues that prohibiting it from registering as an investment adviser with the SEC would be inconsistent with the purposes of section 203A. Applicant submits that Congress intended section 203A to divide responsibility for regulating investment advisers between the SEC and the states; the states should be responsible for regulating advisers "whose activities are likely to be concentrated in their home state," and "larger advisers, with national businesses" should be regulated by the Commission and "be subject to national rules."[4] Applicant asserts that Congress chose the "assets under management" requirement as a rough guide for this division, on the theory that investment advisers with $25 million or more of assets under management are likely to be national investment advisers that should be regulated by the SEC, while investment advisers managing less than $25 million in assets are likely to be smaller advisers that should be subject to the local rules of the states.

5. Applicant submits that Congress recognized that the "assets under management" requirement does not precisely differentiate national investment advisers from local investment advisers, and that some national investment advisers may not qualify for SEC registration under the test formulated by Congress. Applicant states that Congress acknowledged that "the definition of 'assets under management' * * * may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC."[5] Applicant further states that Congress intended the SEC to use its exemptive authority under section 203A(c) to remedy any unfairness, burdens or inconsistencies caused by the assets under management requirement by permitting, "where appropriate, the registration of such firms with the [SEC]."[6]

6. Applicant argues that it engages in a large, national investment advisory business of the type Congress contemplated when it provided the SEC exemptive authority under section 203A(c). Applicant asserts that by providing services to institutional clients across the country, its activities, like those of pension consultants exempted by SEC rule from the prohibition on SEC registration,[7] have a direct effect on billions of dollars of assets under management at the nation's investment companies, investment advisers, broker-dealers, insurance companies, banks, and other institutional investors.

7. Applicant submits further that it is inconsistent with the purposes of section 203A for a state to regulate investment advisers whose activities involve little or no traditional state interest. Applicant notes that, in section 203A, Congress preserved the states' ability to regulate certain investment adviser representatives of advisers registered with the SEC. Applicant further notes that under the SEC's definition of investment adviser representative,[8] only personnel who work principally with individual, rather than institutional, clients are subject to state regulation. Applicant argues that this definition recognizes that, consistent with Congress' intent in the Coordination Act, the states' primary interest is in oversight of representatives who have an individual, not an institutional, clientele. Applicant submits that in fashioning this definition, the SEC noted its belief that distinguishing between retail and other clients was consistent with the intent of

[1] 15 U.S.C. 80b–3a(a)(1).

[2] 15 U.S.C. 80b–3a(a)(2).

[3] 15 U.S.C. 80b–3a(c).

[4] S. Rep. No. 293, 104th Cong. 2d Sess. (1996) at 4.

[5] *Id.*

[6] *Id.* at 5.

[7] *See* 17 CFR 275.203A–2(b).

[8] *See* 17 CFR 275.203A–3(a)(1).

Congress as reflected in the Coordination Act.

8. Applicant argues that it is the type of investment adviser that Congress intended the Commission to consider exempting under section 203A(c). Applicant states that it provides services predominantly to institutions and that it believes that its business will remain predominantly institutional. Applicant will not market its services to individual investors, and in no case will it have (i) more than five clients who are natural persons (other than certain "excepted persons," as that term is defined in rule 203A–3, paragraph (a)(3)(i) under the Advisers Act [9]) or (ii) more than ten percent of its clients who are natural persons (other than certain excepted persons).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1634 Filed 1–21–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [65 FR 2656, January 18, 2000]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: January 18, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, January 20, 2000 at 11:00 a.m., has been canceled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 20, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–1753 Filed 1–20–00 3:47 pm]

BILLING CODE 8010–01–M

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[9] *See* 17 CFR 275.203A–3(a)(3)(i)

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42342; File No. SR–Amex–99–21)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Section 106 of the Amex Company Guide

DATE: January 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Exchange filed Amendments No. 1 [3] and No. 2 [4] to the proposed rule change on June 14, 1999 and December 1, 1999, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 106 of the *Amex Company Guide* to provide for the trading of narrow-based stock index warrants pursuant to new Rule 19b–4(e) [5] under the Act.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange proposes to amend Section 106 of the *Amex Company Guide* to provide for the trading of stock index industry group warrants [6] pursuant to new Rule 19b–4(e) under the Act. Section 106 of the *Amex Company Guide* currently authorizes the Exchange to trade warrants on a stock index industry group pursuant to Section 19(b)(3)(A) of the Act provided that the index meets the generic criteria set forth in Commentary .02 to Amex Rule 901C.[7] As discussed in the Commission release adopting new Rule 19b–4(e), however, the Exchange would no longer be required to submit, pursuant to new Rule 19b–4(e) under the Act, a proposed rule change to trade warrants on a new stock index industry group provided the index meets the generic criteria set forth in Commentary .02 to Amex Rule 901C.

In its release adopting new Rule 19b–4(e), the Commission noted that in order to rely on the amendment and not submit filings pursuant to Section 19(b)(3)(A) for warrants that satisfy the criteria of Rule 901C, a self-regulatory organization would be required to submit a proposed rule change for Commission approval to eliminate the Section 19(b)(3)(A) rule filing

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott Van Hatten, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 11, 1999 ("Amendment No. 1"). The Exchange originally filed the proposed rule change under Section 19(b)(3)(A) of the Act. Pursuant to Commission staff's request, the Exchange refiled the proposed rule change under Section 19(b)(2) of the Act.

[4] Letter from Scott Van Hatten, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 1, 1999 ("Amendment No. 2"). Amendment No. 2 states that the exchange will issue a circular prior to trading any new index warrant pursuant to Rule 19b–4(e) to (i) highlight specific risks associated with warrants on new indexes and remind members that index warrants are direct obligations of the issuer, which are not subject to a clearing house guarantee, (ii) clarify that index warrants may only be sold to accounts approved for standardized options trading, and (iii) clarify that the Exchange's options suitability standards apply to index warrants. Amendment No. 2 also states that Amex Rules 1100 through 1110, which govern issuer eligibility, margin requirements, discretionary accounts, supervision of accounts, position and exercise limits, reportable positions, and trading halts and suspensions, will apply to index warrants. Finally, Amendment No. 2 states that the Exchange's enhanced surveillance procedures will continue to apply to surveillance of index warrants traded pursuant to Rule 19b–4(e).

[5] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998).

[6] Amex Rule 900C defines "Stock Index Industry Group" as a stock index group relating to a stock index which reflects representative stock market values or prices of a particular industry or related industries (also referred to as a "narrow based index").

[7] The Commission granted approval to list and trade narrow-based index warrants pursuant to Section 19(b)(3)(A) in Securities Exchange Act Release No. 37007 (March 21, 1996), 61 FR 14165 (March 29, 1996).

requirement from its existing rules.[8] Accordingly, to enable the Exchange to use new Rule 19b–4(e), the Exchange proposes to eliminate the Section 19(b)(3)(A) rule filing requirement from Section 106 of the *Amex Company Guide*.[9] Amex Rule 901C will remain unchanged. The Exchange represents that the use of new rule 19b–4(e) will be in accordance with the terms and conditions set forth in the order approving the Rule.

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) As to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[8] *See supra* n. 5, at n. 89.

[9] The Commission approved a similar change to Amex Rule 901C to permit the trading of narrow-based index options pursuant to new Rule 19–4(e). *See* Securities Exchange Act Release No. 41091 (Feb. 23, 1999), 64 FR 10515 (March 4, 1999).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–21 and should be submitted by February 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–1574 Filed 1–21–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before February 23, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Pre-Disaster Mitigation Small Business Loan Application.

Form No: 5M.

Frequency: On Occasion.

Description of Respondents: Persons applying for pre-disaster mitigation loans.

Annual Responses: 2,500.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–1531 Filed 1–21–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3206]

Culturally Significant Objects Imported for Exhibition Determinations: "Science Under Sail: Russia's Great Voyages to America, 1728–1867"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Science Under Sail: Russia's Great Voyages to America, 1728–1867," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Anchorage Museum of History and Art, Anchorage, Alaska, from on or about May 4, 2000,

to on or about October 22, 2000; the California Academy of Sciences, San Francisco, California, from early February to early May, 2001; and perhaps at other U.S. venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: January 17, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–1640 Filed 1–21–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Engine Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments

SUMMARY: This notice announces the availability of Advisory Circular (AC) No. 20.XX, Turbojet, Turboprop & Turbofan Engine Induction System Icing.

DATES: Comments must be received on or before February 23, 2000.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299

FOR FURTHER INFORMATION CONTACT: John Fisher, Engine and Propeller Standards, Staff, ANE–110, at the above address, telephone (781) 238–7149, fax (781) 238–7199

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or argument as they desire. Commenters must identify the subject of the AC, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This AC is on the subject of continued airworthiness of aircraft engines certificated under Title 14 of the Code of Federal Regulation (CFR) parts 33 and 25. The information and guidance presented in this AC would provide a method that can be used to demonstrate compliance with the requirements of §§ 25.1093, 33.68, 33.77, and 33.89.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 401113, 44701–44702, 44704, provides guidance for these proposed requirements.

Issued in Burlington, Massachusetts, on January 13, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–1652 Filed 1–21–00; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Rulemaking Advisory Committee.

DATE: The meeting will be held on February 9, 2000 at 10 a.m.

ADDRESSES: The meeting will be held at the Department of Transportation, 400 7th Street, SW, Rooms 6200–6204, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Regina Jones, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9822; fax (202) 267–5075; e-mail Regina.Jones@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on February 9, 2000, at the Department of Transportation, 400 7th Street, SW, Rooms 6200–6204, Washington, DC 20590. The agenda will include:

- Use of proxy votes
- ARAC Chair
- Aviation Consumer Action Project (ACAP) motions

Attendance is open to the interested public but will be limited to the space available.

The public must make arrangements by February 7, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 18, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–1649 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Gainesville Regional Airport, Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gainesville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 23, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. Gene Clerkin, Director of Aviation of Gainesville-Alachua County Regional Airport Authority at the following address: Gainesville Regional Airport, 3880 N.E., 39th Avenue, Suite A, Gainesville, Florida 32609.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Gainesville-Alachua County Regional Airport authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Richard Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (401) 812–6331 extension 19. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gainesville Regional airport under the provisions of the aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gainesville-Alachua County Regional airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 12, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–C–00–GNV.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2000.

Proposed charge expiration date: September 1, 2008.

Total estimated PFC revenue: $3,053,325.

Brief description of proposed project(s): Terminal Hold Room Expansion; ALP Update/PFC Administration Fees; Airfield Safety Project-Runway 24 Protection Zone, Taxiway A Extension, Construct T-Hanger Taxiway, Construct Service Road, Security Upgrades and Access Road Reconstruction; Runway Vacuum Sweeper; ARFF Equipment; Security Equipment and Airfield Guidance Signs; Terminal Expansion and Renovation, Phases 1a and 1b; Passenger Lift Device, Runway and Taxiway Rehabilitation and Land Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Gainesville Regional Airport.

Issued in Orlando, Florida on January 14, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc 00–1651 Filed 1–21–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1999, there were five applications approved. Additionally, 14 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Appoved

Public Agency: City of Redmond, Oregon.

Application Number: 99–03–C–00–RDM.

Application Type: Impose and use of PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,021,900.

Earliest Charge Effective Date: December 1, 2000.

Estimated Charge Expiration Date: April 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Roberts Field—Redmond Municipal Airport.

Brief Description of Projects Approved for Collection and Use: Reconstruct taxiway F north and construct exit taxiway and holding apron.

Installation of distance-to-go signs on runway 10/28 and runway end identifier lights on runway 4.

Reconstruct taxiway F south and relocate taxiway H.

Construct building for storage and maintenance of airport snow and ice control equipment and materials.

Decision Date: December 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Scotts Bluff County, Gering, Nebraska.

Application Number: 99–01–I–00–BFF.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $108,000.

Earliest Charge Effective Date: March 1, 2000.

Estimated Charge Expiration Date: March 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection Only: Renovate terminal building.

Decision Date: December 13, 1999.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: City of Klamath Falls, Oregon.

Application Number: 99–01–C–LMT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $426,374.

Earliest Charge Effective Date: March 1, 2000.

Estimated Charge Expiration Date: November 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use

Airport master plan study.
Taxiway extension.
Revise airport layout plan.
Taxiway reconstruction.
Apron reconstruction.
Install Part 107 security gates.
Reconstruct T-hangar taxiway.
Sealcoat runway 7/25.
Taxiway construction.
Apron construction.
Access road construction.
Construct perimeter fencing.

Parking lot rehabilitation.
Land acquisition.
Terminal area improvements.
Airfield safety area study.
Pavement maintenance study.
Runway 7/25 safety area improvements.
Acquire snow removal equipment.
Acquire handicapped lift.
Brief Description of Project Withdrawn. Runway safety area design and construction.
Determination: This project was withdrawn by the public agency in its letter to the FAA dated September 24, 1999. Therefore, the FAA did not rule on this project in this decision.
Decision Date: December 20, 1999.
For Further Information Contact: Mary Vargas, Seattle Airports District Office, (425) 227–2660.
Public Agency: City of Minot, North Dakota.
Application Number: 99–04–C–00–MOT.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $757,551.
Earliest Charge Effective Date: June 1, 2000.
Estimated Change Expiration Date: February 1, 2004.
Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Minot International Airport.
Brief Description of Projects Approved for Collection and Use.
PFC program administration and application preparation.
Acquisition of passenger loading bridges.
Acquire aircraft rescue and firefighting (ARFF) vehicle.
Rehabilitate porous friction course.
Construct blast pads on runway 13/31.
Rehabilitate taxiway C.
Install distance remaining signs and modify existing signs.
Construct service road.
ARFF, snow removal equipment (SRE) and security radios.
Acquire ARFF vehicle.
Reconstruct and mark taxiway F.
Security access control system installation.
Install security fencing.
Replace segmented circle and rotating beacon, and install airport signs.
Acquire SRE (rotary snow blower).
Upgrade security access control system.
Rehabilitate taxiway A.
Decision Date: December 21, 1999.
For Further Information Contact: Irene Porter, Bismarch Airports District Office, (701) 250–4385.
Public Agency: New York State Department of Transportation, New Windsor, New York.
Application Number: 00–02–C–00–SWF.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $4,558,000.
Earliest Charge Effective Date: January 1, 2000.
Estimated Change Expiration Date: December 1, 2003.
Class of Air Carriers Not Required To Collect PFC'S: (1) Unscheduled air taxi carriers operating under Part 135; (2) unscheduled charter air carriers operating under Part 121.
Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Stewart International Airport.
Brief Description of Projects Approved for Collection and Use.
Overlay and groove runway 9/27.
Pavement management plan and topographic mapping.
Glycol collection improvements.
North cargo ramp expansion.
Aircraft ramps rehabilitation.
Decision Date: December 30, 1999.
For further information contact: Dan Vornea, New York Airports District Office, (516) 227–3812.

Amendments to PFC Approvals

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–01–C–01–ABI, Abilene, TX	05/05/99	1,210,647	2,008,611	09/01/05	01/01/15
97–01–C–02–MOB, Mobile, AL	10/25/99	1,300,000	1,791,374	06/01/99	06/01/99
98–01–C–01–JNU, Juneau, AK	12/01/99	1,089,272	1,172,772	04/01/00	06/01/00
92–01–I–05–SRQ, Sarasota, FL	12/01/99	21,737,893	21,287,893	03/01/01	01/01/01
92–03–C–02–SRQ, Sarasota, FL	12/01/99	650,000	1,100,000	07/01/01	07/01/01
96–04–C–01–PLN, Pellston, MI	12/01/99	27,600	16,265	09/01/02	07/01/02
95–02–C–04–STL, St. Louis, MO	12/01/99	108,214,867	108,214,867	07/01/98	07/01/98
98–05–C–01–MCO, Orlando, FL	12/09/99	231,705,000	111,484,000	05/01/05	01/01/01
93–02–C–01–SEA, Seattle, WA	12/09/99	47,500,500	48,790,226	01/01/96	01/01/96
94–02–C–02–GEG, Spokane, WA	12/09/99	4,992,228	4,913,994	05/01/00	05/01/00
92–01–C–03–HPN, White Plains, NY	12/20/99	22,383,000	19,383,000	02/01/15	10/01/03
92–01–C–04–DTW, Detroit, MI	12/21/99	1,820,657,000	1,604,483,000	10/01/31	10/01/29
92–03–C–02–DTW, Detroit, MI	12/21/99	60,000,000	54,967,000	10/01/31	10/01/29
98–05–C–02–MCO, Orlando, FL	12/29/99	111,484,000	111,734,000	01/01/01	01/01/01

Issued in Washington, DC, on January 14, 2000.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 00–1650 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Valley County, Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in Valley County, Idaho.

FOR FURTHER INFORMATION CONTACT: Loren D. Thomas, District Engineer, District 3, Idaho Transportation Department (ITD), 8150 Chinden Blvd., Boise, Idaho 83707, Telephone (208) 334–8300,

or

Jack T. Coe, Division Administrator, Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho, 83703, Telephone: 208–334–1843.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the ITD will prepare an environmental impact statement (EIS) on a proposal to improve State Highway 55 (SH–55) in Valley County, Idaho. The proposed improvements would involve seven miles of existing SH–55 from approximately 4 miles south of Smith's Ferry (Milepost 95) to Round Valley (Milepost 102).

The improvements on State Highway 55 are considered necessary to improve safety, increase capacity, accommodate economic development, and correct operational deficiencies in the roadway.

Alternatives under consideration include: (1) taking no action; (2) improving the existing two-lane highway along the North Fork of the Payette River; (3) constructing a two or four lane rural highway on new alignment. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies and citizens who have previously expressed interest in this proposed project. Scoping will begin with the publication of the Notice of Intent. As part of the scoping process, a series of public information meetings will be held in Valley County beginning in February 2000. In addition, a public hearing will be held. Public notice will be given of the time and place of any public information meetings and the public hearing. The draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the ITD or FHWA at the addresses provided above.

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: January 13, 2000.

Pamela S. Cooksey,

Assistant Division Administrator, Federal Highway Administration, Boise, Idaho.

[FR Doc. 00–1616 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice, and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 13, 1999 (64 FR 25952)

DATES: Comments must be submitted on or before February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety Analysis, Planning and Evaluation Division, RRS–21, Federal Railroad Administration (FRA), 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, FRA, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506; 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 13, 1999, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 64 FR 25952. FRA received several comments after issuing this notice. FRA has carefully evaluated these comments and has responded to them fully in the information collection submission which it is presently forwarding to OMB. A summary of the comments and FRA responses are given below. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c). Interested members of the public may obtain a free copy of this information collection submission by contacting Mr. Robert Brogan or Ms. Dian Deal at the telephone numbers listed above.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3607(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995.

The summaries below describe the nature of the ICRs and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: U.S. DOT Crossing Inventory Form.

OMB Control Number: 2130–0017.

Type of Request: Revision of a currently approved collection.

Affected Public: 675 railroads and 50 States.

Form(s): FRA F 6180.71.

Abstract: Form FRA 6180.71 is a voluntary form and is being revised to include additional data elements at the request of states and railroads. The form is also being revised to fulfill National Transportation Safety Board (NTSB) recommendations and to take advantage of recent advances in information technology. The form is used by states and railroads to periodically update certain cite specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT (formerly U.S. DOT–AAR) Crossing Inventory Form since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory is to provide for the existence of a uniform database which can be merged with accident data and used to analyze information for planning and implementation of crossing safety improvement programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory

in 1975, FRA assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide federal, state, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 2130–0017. OMB approved the burden in the original form through March 31, 2000. Based on the most recent information available, FRA estimates approximately 65,000 updates per year. This is a substantial reduction in updates from the previous estimate of responses and represents a corresponding reduction of 1,538 hours in the reporting and recordkeeping burden. The reduction in responses is due to a lower response rate from states and railroads over the past few years and the expected continuation of this trend. FRA is requesting a three-year approval from OMB for this information collection.

Summary of Comments: FRA received a total of five written sets of comments in response to its earlier notice. Most of the comments pertained to the data elements and layout of the form. Michigan Department of Transportation (MDOT) submitted a number of comments. It stated that the reasonable time for filling out the DOT Crossing Inventory Form should be longer. MDOT noted that it has one person to perform many data conversions to provide data to FRA in the format the agency needs. After careful review, FRA believes its estimate of the amount of time required to gather the necessary information and complete the form is accurate. Thus, FRA is not changing the burden time for this form. FRA's estimate is based on the types of updates currently being provided and on the average-time estimate provided by one state which recently completed a massive state-wide update of all their crossings. MDOT requested a clearer description of what constitutes a crossing, especially in multiple crossing situations and the appropriate way to assign U.S. DOT–AAR numbers to the crossings. FRA believes the term is clear and notes in its response that a crossing inventory number shall be assigned to a crossing which is defined as "the tracks between a pair of the same type of warning devices." See sections 1.5 and 2.3 of the 1996 Highway-Rail Crossing Inventory Instructions and Procedures Manual. While this may seem inconsistent at times in multiple track territory, it is required to properly define the warning devices and the character of the crossing. MDOT also requested that FRA make the Crossing Inventory Form available on its Website along with the ability to fill-in the form and transmit it to FRA. Upon approval by OMB, FRA will make available a blank form on its Website. The ability to fill-in the form and transmit it to FRA will not be available because the edit checks to insure data accuracy and quality would not be in place. The "GX 32" software is provided for this purpose. MDOT further requested that the railroad codes be made available on the FRA Website and also that the States and railroad be given the ability to download updated data from the Internet. FRA's response is that the railroad codes are already on the FRA Website under "View or Download FRA Auxiliary Tables." With regard to the second matter, the capability to download the current data in the File is already available on the FRA Website under "Download Database Files." Arrangements can also be made with FRA's data processing contractor to obtain and download updated files for the "GX 32" software. MDOT commented that a mechanism is needed to submit data that still has missing fields of information, and that some data is better than no data. FRA's response is that, if the agency allowed partial data submittal, there would be gaps in information, data accuracy and quality would suffer, and the probability would be high that missing data would not be submitted to complete the update or the addition to the new crossing. What is suggested can already be performed. The Crossing Inventory Form can be submitted with temporary or estimated information (for example, an estimate of highway traffic volume) and then it can be corrected or updated later. MDOT wanted to know exactly how latitude and longitude are determined and from what point in the crossings. In response, the new Instructions will define that actual recording of latitude and longitude be taken at the center of the crossing, that is, the midpoint of a diagonal line across the crossing between the primary warning devices facing the approach lanes of traffic. MDOT thought that a glossary of terms should be provided and that Item 5 of Part III: "Is highway paved?" should have the added designation of one-side only. In response, FRA does not believe a glossary of terms is needed. FRA recognizes that some states have specific and/or different procedures which they follow. However, for the National Inventory, the original Committee of States and Railroads established definitions that reflected the majority of users. Regarding Item 5, the instructions will indicate that if one side of the roadway is paved and the other is unpaved, it should be indicated as unpaved. MDOT observed that the states do not have the time/resources nor do the railroads to go out and specifically collect a special piece of data just because FRA has it on this form. In reply, FRA notes that the required information and data elements were defined by the states and railroads in 1973. In order to insure accuracy, consistency, and quality, FRA can not be flexible on allowing blank data fields. Lastly, MDOT had comments on system security and the integrity of data. FRA's response is to note that it accepts Inventory update information only from one designated contact person in each state and on each railroad. In order to insure the integrity and accuracy of the data, FRA requires all data elements be completed for new crossings before the record is inputted into the National File. The PCAPS (Personal Computer Accident Prediction System) program produces lists of the riskiest crossings for a specifically defined entity (state, county, city, railroad, or any combination thereof). If the data is not accurate, it is the responsibility of the state and/or railroad to provide updated information. It should be noted that the PCAPS program is only updated, produced, and distributed once per year.

A second set of comments was submitted by the Association of American Railroads (AAR). AAR recommended that the Crossing Inventory Form clearly identify the data elements which should be completed by the railroad industry and those elements which should be completed by the highway authority. FRA agrees, and has done this on the form (where possible), and in the instructions and additional materials which accompany the form instructions. AAR had several comments about the form itself. It requested that AAR's name be removed from the title of the form. FRA agrees. After consultation with the major Class I railroads which indicated their agreement, FRA has changed the title to "DOT Crossing Inventory Form." AAR suggested that time could be saved by eliminating the second box in data items

which require a yes or no answer. FRA agrees in principle. However, it was determined that, in order to be consistent with a choice for a response, a "yes" and "no" box be provided for all elements for questions where such a response was appropriate. This also assures that the respondent addresses the questions. Thus, two boxes remain for these questions. AAR observed that Part I of the form (May draft) contained several categories which should be included and identified under Part IV "Highway Department Information." In particular, he thought, data items 3, 13, 14, 15, 16, 18, 19, and 24 should be placed under Part IV. In response, FRA has clearly identified which data elements are to be completed by the railroad and which elements are to be completed by the highway authority in the Instructions and on the Form (again where possible). Part I "Location and Classification" of the revised form provides the critical information that is required for all crossings, whether public, private, or pedestrian, at-grade or grade separated. Parts II, III, and IV are only required to be completed if the crossing is public, although information in these parts will now be accepted and inputted into the File if it is supplied for private crossings. AAR suggested that instructions for Item 3 should be changed for crossings located on county lines to reflect the county responsible for maintenance at that crossing, and that High Speed Rail (HSR) codes be included in the instructions for Item 12. FRA agrees, and has added words to the instructions that the State/County that is responsible for maintenance at the crossing shall determine the location of the crossing, or an agreement/decision must be made between the jurisdictions as to the location of the crossing. The instructions will also reflect that HSR codes will be supplied by FRA as specific corridors are identified and that this field will normally be maintained by FRA's data processing contractor. AAR commented that Items 35, 36, and 37 of Part I, which FRA will have posted on its Website under Inventory History which identify contacts, do not add any significant value to the inventory data. FRA disagrees and notes that only telephone numbers and not names are required by these data elements. However, consideration will be given to not displaying this information on the FRA Website. AAR suggested that Items 1A through 1D of Part II "Detailed Railroad Information" need not be included on the form. FRA has revised and simplified these data elements in light of this observation. AAR requested that Item 1E of Part II which inquires "whether typical number of daily train movements are actual or estimated" be deleted. FRA agrees and has deleted this data element. AAR remarked that Part II Item 2B "Typical Speed Range Over Crossing" should identify maximum table speed (mph). FRA disagrees and feels that this information is necessary to identify if there are slow movements over the crossing. This information also helps planners to determine if Constant Warning Time (CWT) for the warning devices is needed. AAR stated that the instructions for Part I Item 11 "Train Detection" should only be provided for crossings with active warning devices. FRA agrees and has made the default "None" in the instructions. AAR noted that Part II Item 14 "Whistle Bans" does not make sense since FRA's anticipated proposed rule implementing the Swift Rail Act of 1994 would prohibit whistle bans. FRA agrees and has changed the title of Item 14 from "Whistle Ban" to "Quiet Zone" (now Part I Item 16). AAR observed that Item 16 of Part II should be in Part IV "Highway Department Information." FRA agrees with this categorization. FRA has moved this item to Part III "Traffic Control Information" (Item 5) and has also re-named it "Channelization Devices with Gates" for clarity. AAR suggested that Items 5 and 10 of Part III ("Physical Data") should be more appropriately categorized as roadway instead of highway. FRA does not agree. While it is true that several states use "highway" as a term to identify specific classifications of roadways, FRA desires that terminology on the form should be consistent such as the usage of "highway-rail crossings." This term is used to refer to all crossings whether they are on an actual highway, road, or street. AAR commented that the draft instructions should identify the appropriate authority. FRA agrees and the final instructions will have a table identifying the primary authority responsible for providing each data element and, if appropriate, the secondary authority as well. Lastly, AAR suggested the current method of forwarding changes to FRA increases administration duties for submitting parties and for FRA. In response, FRA notes that a facilitation process is already available which allows a railroad or States to use the "GX 32" program software to submit changes and updates.

A third set of comments was submitted by the Burlington Northern-Santa Fe Railway Company (BNSF). BNSF had a number of comments regarding the data elements of the form. He suggested that data items 12, 13, 16, 18, 19, and 24 of Part I "Location and Classification of All Crossings" be moved to Part III (which should contain items provided by the highway authority). In response, FRA has revised the form and also the instructions to more clearly identify which data elements are to be completed by the railroad and which elements are to be completed by the highway authority. BNSF suggested removing Part I Item 25B "Public Access" since he believed the answer to this item is always "no." FRA disagrees and has retained this item in the form. This field was specifically requested by a Class I railroad and is designed to cover those situations where the general public would use the crossing and not be aware that it was a private crossing. BNSF remarked that it did not wish to provide the information requested regarding the "Railroad Contact" in Item 35 of Part I. Again, this data element does not request names of individuals but only telephone numbers and is retained in the form. BNSF remarked that Part II "Detailed Railroad Information" should contain only data items that apply to railroads. FRA agrees and has taken steps in the revised form to separate Part II into two parts by creating a fifth part for the warning device information. BNSF further remarked that Item 1 "Typical Number of Daily Train Movements" of Part II should be dropped since it has never been able to determine the train movements by day or night. FRA disagrees and believes that this information is useful, particularly in the DOT Accident Prediction Formulas. However, changes have been effected in the revised form to simplify the information to be provided. BNSF advocated that Part II Item 2B "Typical Speed Range Over Crossing" be eliminated since determining what is typical for each crossing is not possible and can change over time. FRA disagrees and has retained this data element. In thru territory, the normal typical speed over the crossing would be constant, most probably the timetable speed. BNSF recommended that Part II Item 6E "Hump Crossing Sign W 10–5" be moved to Part III since this is information that the highway is responsible for providing. FRA agrees. FRA has created a new Part for Items 6 through 16 titled "Traffic Control Device Information" and has specified in the instructions that Item 6E is the responsibility of the highway authority. BNSF suggested that the part for "Other Colored" in Part II Item 7A "Gates" be removed. FRA has changed this data element (now Part III Item 3A) so that it will just count the number of gates

present at the crossing without distinction to the type or color. BNSF observed that the check box for "None" in Part II Item 11 "Train Detection" is not necessary and should be removed. The revised form retains this box since Item 11 provides a category "None" which would be checked or indicated if the crossing was not an active crossing. The default category would be "None" if no other box is checked. BNSF also advocated that Part II Item 14 "Whistle Ban" be removed from the inventory. As mentioned earlier, the revised form changes the title of Item14 from "Whistle Ban" to "Quiet Zone" (now Part I Item 16). BNSF commented that Part II Item 16 "Median Barriers with Gates" should be moved to Part III and be a part of the highway authority supplied data. Again, FRA notes that the highway authority will have the primary responsibility for supplying this data so it is retaining this data element. Like some other data elements, it is not difficult for railroads to observe that median barriers are present. Railroads would have secondary responsibility for submittal of this information. BNSF observed that most of the items in Part III "Physical Data" are data items known by the road authority and should be supplied by the road authority. In response, FRA has revised the form and instructions to clearly identify which data elements should be completed by the railroad and which data elements should be completed by the highway authority, and which can be completed by either. Lastly, regarding the typical number of daily train movements (Part II Item 1E), BNSF commented that it was not sure how indicating whether the typical number of daily train movements is an "actual" or "estimated" count will provide meaningful information to anyone. FRA agrees and Item 1E has been eliminated.

A fourth set of comments was submitted by the Virginia Department of Transportation (VDOT). VDOT noted that there is no place on the Crossing Inventory Form for independent cities. It wanted to know if there is an edit list of acceptable Counties/Cities in the FRA database. In response, FRA has provided an explanation in the Instruction Manual to ensure that Federal Information Processing Standards (FIPS) Codes are used in the Inventory File. FRA is evaluating placing the FIPS Codes on its Website. VDOT suggested that, regarding the instructions to Part I Item 7, the RRID No. (Item 8) box be used to enter the alpha component. In response, FRA notes that an alpha character can be entered in the "Milepost" field. However, because of data retrieval and printout anomalies, FRA strongly recommends that alpha characters be avoided. Usually avoiding the alpha character will not present a serious identification problem. VDOT suggested that the instructions to Item 3 of Part II be improved to clarify what are the acceptable types of "other" tracks and how they are defined. In response, the Instruction Manual supplied by FRA will provide examples of what to specify.

A fifth set of comments was submitted by unidentified individuals. One of these commenters requested an item for the "number of signal heads" be included in the form. FRA concurs that this is useful information and has added a data element for the "number of flashing light pairs" (now Part III item 3E). Another commenter suggested a change to both the Instructions and to Part II Item 6.C "Other Stop Signs." This commenter stated that there should not be any other stop signs other than the Standard Highway Stop Sign. FRA agrees. It has deleted Item 6C and has specified in the instructions that non-standard stop signs should be reported as "Other Signs," now Part III Item 2F. One commenter suggested that Part I Item 7 "Mile Post" should be one word. FRA agrees and has made the necessary change. Another commenter suggested that Part II Item 7A. "Gates" combine "red and white reflectorized "and "other colored" into one category. FRA concurs and Item 3A of Part III will just be a count of the number of gates present a the crossing without distinction to the type or color. There was also a suggestion that Part II Item 6A "Crossbucks" combine "reflectorized" and "non-reflectorized" into one category. FRA agrees and Part III Item 2A will just be a count of the number of Crossbucks present at the crossing without distinction to the type.

Another commenter requested that FRA create an additional Part on the form (there would be 5 Parts) and change Part II "Detailed Railroad Information" to "Highway Warning Device Information." FRA agrees and has created a fifth Part (which becomes Part III "Traffic Control Device Information"). One commenter recommended moving Part II Item 10 "Is Commercial Power Available?" to Part III "Physical Data." FRA concurs and has moved this item to Part III "Physical Data'(new Part IV). Two other form changes were requested by commenters. One was to change Part IV "Highway Department Information" (new Part V) to "Highway Information." The other was to change Part III "Physical Data" to "Physical Characteristics." FRA agrees and has made both changes. Several other suggestions were submitted. One concerned grouping Items 21, 22, 23, 24, and 25 together and inserting the subtitle "State Supplied Information" for this group. Another regarded changing the title of Part II from "Detailed Railroad Information" to "Detailed Information." FRA has implemented these last two suggestions in the revised form. Also recommended by commenters was to change the title of Part I "Location and Classification of All Crossings" to "Location and Classification Information," and to move "Whistle Ban" (Part II Item 14) to Part I and change the Item name to "Quiet Zone." FRA agrees with both suggestions and has revised the form accordingly. FRA has also moved Part III Item 6 "Pavement Marking" and Item 7 "Are Advanced Warning Signs Present?" to the section "Traffic Control Device Information" in response to comments.

Annual Estimated Burden: 3,104 hours

Addressee: Send comments regarding this ICR to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventh Street, NW, Washington, DC 20503; Attention: FRA Desk Officer.

Comments are invited on: Whether the proposed information collection is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–1506 Filed 1–21–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information; States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "States Where Licensed for Surety."

DATES: Written comments should be received on or before March 24, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, Room 608A, 3700 East West Highway, Hyattsville, Maryland, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: States Where Licensed for Surety.

OMB Number: 1510–0013.

Form Number: FMS 2208.

Abstract: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, "Surety Companies Acceptable on Federal Bonds".

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 318.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techiques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 18, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 00–1624 Filed 1–21–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Pools and Associations—Annual Letter

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "Pools and Associations—Annual Letter".

DATES: Written comments should be received on or before March 24, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, Room 608A, 3700 East West Highway, Hyattsville, MD 20872, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Pools and Associations—Annual Letter.

OMB Number: 1510–0008.

Form Number: None.

Abstract: The information is collected for the determination of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 150.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 18, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 00–1625 Filed 1–21–00; 8:45 am]

BILLING CODE 4810–35–M

VOL 65 ISS 15 JA 24 000 UMI

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Suretec Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35889 to reflect this addition: Suretec Insurance Company. Business address: 10000 Memorial Drive, Suite 330, Houston, TX 77024. Phone: (713) 812–0800. Underwriting limitation b/: $307,000. Surety licenses c/: TX. Incorporated in: Texas.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http:/www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 12, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–1623 Filed 1–21–00; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Monday,
January 24, 2000

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 43 and 52
Federal Acquisition Regulation; Time-and-Materials or Labor-Hours; Proposed Rule

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 43 and 52

[FAR Case 1999–606]

RIN 9000–AI65

Federal Acquisition Regulation; Time-and-Materials or Labor-Hours

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the requirements regarding changes to time-and-materials and labor-hour contracts.

DATES: Interested parties should submit comments in writing on or before March 24, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit e-mail comments via the Internet to:

farcase.1999__606@gsa.gov.

Please submit comments only and cite FAR case 1999–606 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 1999–606.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to conform the guidance in the clause at FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, with the guidance in Alternate II of the clause at FAR 52.243–1, Changes—Fixed Price, because most of the work performed under time-and-materials or labor-hour contracts involves services.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contractors are entitled to an equitable adjustment to contract terms and conditions if a change order is issued under the Changes clause of the contract. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–606), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 43 and 52

Government procurement.

Dated: January 18, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 43 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 43 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 43—CONTRACT MODIFICATIONS

2. Amend section 43.205 by revising paragraph (c) to read as follows:

43.205 Contract clauses.

* * * * *

(c) Insert the clause at 52.243–3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The contracting officer may vary the 30-day period in paragraph (c) of the clause according to agency procedures.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.243–3 by—

a. Revising the introductory text;

b. Revising the date of the clause;

c. Revising paragraph (a) of the clause;

d. In the introductory text of paragraph (b) and in paragraph (b)(4) by removing "shall" and adding "will" in their place;

e. In the first sentence of paragraph (c) by removing "must" and adding "shall" in its place; and

f. Revising paragraph (d). The revised text reads as follows:

52.243–3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause:

Changes—Time-and-Materials or Labor-Hours (Date)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(7) Amount of Government-furnished property.

* * * * *

(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed. (End of clause)

[FR Doc. 00–1589 Filed 1–21–00; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
January 24, 2000

Part III

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs—Availability of Funds Under the Public Works and Economic Development Act of 1965 and Trade Act of 1974; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339–9339–01]

RIN 0610–ZA14

Economic Development Assistance Programs—Availability of Funds Under the Public Works and Economic Development Act of 1965, as Amended, and Trade Act of 1974, as Amended

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces its policies and application procedures under the Public Works and Economic Development Act of 1965, as amended (PWEDA) for fiscal year 2000 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically-distressed areas and regions of the Nation, and to address economic dislocations resulting from sudden and severe job losses.

DATES: Unless otherwise noted below, applications are accepted on a continuous basis and will be processed as funds are available. Normally, two months are required for a final decision after the receipt of a completed application that meets all EDA requirements.

ADDRESSES: Addresses for EDA's six regional offices and Washington office are provided in Section XIII. Addresses for Economic Development Representatives (EDRs) are listed under each regional office.

FOR FURTHER INFORMATION CONTACT: Interested parties should contact the appropriate regional office or EDR as shown in Section XIII for community and regional economic development projects. For national technical assistance, research, and trade adjustment assistance projects, contact the headquarters program office as shown in Sections XI and XII, respectively.

SUPPLEMENTARY INFORMATION:

I. General Policies under PWEDA

In light of its limited resources and the demonstrated widespread need for economic development, EDA encourages only project proposals that will significantly benefit areas experiencing or threatened with substantial economic distress. EDA will focus its scarce financial resources on communities with the highest economic distress. Distress may exist in a variety of forms, including, but not limited to, high levels of unemployment, low income levels, large concentrations of low-income families, significant decline in per capita income, substantial loss of population because of the lack of employment opportunities, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, military base closures, natural or other major disasters, depletion of natural resources, and/or reduced tax bases.

Potential applicants are responsible for demonstrating to EDA, by providing statistics and other appropriate information, the nature and level of the distress their project efforts are intended to alleviate. In the absence of evidence of high levels of distress, EDA funding is unlikely.

EDA's strategic funding priorities are intended to implement PWEDA and to continue the general goals in place over the past six fiscal years, which have been refined to reflect the priorities of the U.S. Department of Commerce. Unless otherwise noted below, the funding priorities listed will be considered by the Selecting Official (depending upon the program, either the Regional Director or Assistant Secretary) after the project proposal has been evaluated based upon evaluation criteria described in EDA's regulations at 13 CFR Chapter III (64 FR 5347, February 3, 1999 and 64 FR 69867, December 14, 1999).

During FY 2000, EDA will give priority consideration to projects that help communities achieve and sustain economic growth, including those that support the Administration's "New Markets" and "Liveable Communities" initiatives and the priorities of the Department of Commerce, including, among other things, the following:

- Construction and rehabilitation of essential public works infrastructure and economic development facilities that are necessary to achieve long-term growth and provide stable and diversified local economies in the Nation's distressed communities;
- Assistance to communities suffering job losses and/or plant closings resulting from changing trade patterns. This may include, but is not limited to, projects for export promotion, identification of new markets and products, increased productivity, and diversification of the local economic base;
- Commercialization and deployment of technology, particularly information technology and telecommunications, and efforts that support technology transfer, application, and deployment for regional economic development. Also included under this category would be projects that support the development of new environmental technologies and techniques (e.g., innovative material recycling or reuse within the context of eco-industrial development, pollution control or treatment processes, and flood mitigation) that significantly enhance an area's economic development potential; Sustainable development programs that will provide long-term economic development benefits while promoting eco-efficiency. Included are diversification of natural resource dependent economies, eco-industrial parks, aquaculture facilities, brownfields' redevelopment, and other projects that increase efficient use of resources without compromising the environment for future generations;
- Projects from Minority Serving Institutions to plan and implement activities that will create opportunities for minority enterprise and technology-based employment in distressed areas;
- Entrepreneurial development, especially programs that build local capacity such as small business incubators and community financial intermediaries, and projects benefitting minorities, businesses owned by women, and people with disabilities (e.g., revolving loan funds);
- Economic adjustment, especially in response to military base and Department of Energy facility closures and downsizing, defense industry downsizing, and post-disaster, long-term economic recovery;
- Projects that fall under the New Markets Initiative—those that attract private investment in economically distressed inner city areas, small and medium-sized towns, rural areas, and Native American communities.
- Projects located in federally designated rural and urban Enterprise Communities and Empowerment Zones and state enterprise zones;
- Projects that demonstrate innovative approaches to economic development;
- Projects that support the economic development of Native American communities including Alaska Native Villages;
- Projects that support locally created partnerships that focus on regional solutions for economic development. Such projects will be given priority over proposals that are more limited in scope. For example, projects that evidence collaboration in fostering an increase in regional (multicounty and/or multistate) productivity and growth will be considered to the extent that such projects demonstrate a substantial

benefit to economically distressed areas of the region;

• Projects that support the Environmental Protection Agency's (EPA) designated brownfield pilots and Brownfield Showcase Communities that are eligible for EDA funding; and/or

• Projects that support the Council on Environmental Quality's American Heritage Rivers Initiative. EDA will to the extent practicable, given its limited resources, work with EDA eligible river communities on each of the 14 Presidentially designated rivers in achieving their economic development goals and objectives.

To the degree that one or more funding priorities are included (or packaged together) in the proposal, the ability to obtain EDA assistance may be enhanced.

II. Other Information and Requirements

EDA regulations at 13 CFR Chapter III published in the **Federal Register** (64 FR 5347, February 3, 1999, and 64 FR 32973, June 18, 1999 and 64 FR 69867, December 14, 1999), are available from EDA offices listed in Section XIII and from the EDA web site at *www.doc.gov/eda*.

Certain Departmental and other requirements are noted below. Additional information is available through links to EDA's web site at *www.doc.gov/eda* or from the appropriate EDA office listed in Section XIII.

A. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094.

B. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided: Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Drug-Free Workplace Requirements (Grants)" and the related section of the certification form prescribed above applies;

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

C. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

D. The implementing regulations of the National Environmental Policy Act (NEPA) require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b).

Depending on the project location, environmental information concerning specific projects can be obtained from the Regional Environmental Officer (REO) in the appropriate EDA regional office listed in Section XIII.

E. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

F. No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DoC are made.

G. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

H. Applicants should be aware that a false statement on the application is grounds for denial of the application or termination of the grant award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

I. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

J. Applicants seeking an early start, i.e., to begin a project before EDA approval, must obtain a letter from EDA allowing such early start. The letter allowing the early start will be null and void if the project is not subsequently approved for funding by the grants officer. Approval of an early start does not constitute project approval. Applicants should be aware that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs. Additionally, EDA also requires that compliance with environmental regulations, in accordance with the National Environmental Policy Act (NEPA), be completed before construction begins.

K. If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

L. Unless otherwise noted below, eligibility, program objectives, application procedures, selection procedures, evaluation criteria and other requirements for all programs are set forth in EDA's regulations at 13 CFR Chapter III (64 FR 5347, February 3, 1999, 64 FR 39273, June 18, 1999, and 64 FR 69867, December 14, 1999).

M. Area eligibility is determined at the time that EDA invites an application under 13 CFR 305 or 308 and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available for the area through the government of the State in which the area is located, i.e., conducted by or at the direction of the State government. Project areas must be

eligible on the date of submission of the application. In the case of any application received by EDA more than six months prior to the time of award, EDA will reevaluate the project to determine that the area remains eligible for EDA assistance before making the award.

EDA will reject any documentation of eligibility that it determines is inaccurate.

N. EDA is not authorized to provide any financial assistance directly to individuals for the purpose of starting a new business or expanding an existing business.

III. Special Need Criteria

An area is eligible pursuant to "Special Need" (13 CFR 301.2 (b) (3)), if the area meets one of the criteria described below:

A. Substantial out-migration or population loss. Applicants seeking eligibility under this criterion will be asked to present appropriate and compelling economic and/or demographic data to demonstrate the special need.

B. Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit. Applicants seeking eligibility under this criterion will be asked to present appropriate and compelling economic and/or demographic data to demonstrate the special need.

C. Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions.

1. A military base closure refers to a military base that was closed or is scheduled for closure or realignment pursuant to a Base Realignment and Closure Act (BRAC) process or other Defense Department process. The area is eligible from the date of Defense Department recommendation for closure until five years after the actual date of closing of the installation, provided that the closure recommendation is not sooner canceled.

2. A defense contractor reduction-in-force refers to a defense contractor(s) experiencing defense contract cancellations or reductions resulting from official DoD announcements and having aggregate value of at least $10 million per year. Actual dislocations must have occurred within one year of application to EDA and threatened dislocations must be anticipated to occur within two years of application to EDA. Defense contracts that expire in the normal course of business will not be considered in meeting this criterion.

3. A Department of Energy defense-related funding reduction refers to a Department of Energy facility that has experienced or will experience a reduction of employment resulting from its defense mission change. The area is eligible from the date of the Department of Energy announcement of reductions until five years after the actual date of reduced operations at the installation, provided that the reduction is not sooner canceled.

D. Natural or other major disasters or emergencies. An area that has received one of the following disaster declarations is eligible for EDA assistance for a period of 18 months after the date of declaration, unless further extended by the Assistant Secretary:

1. A Presidential Disaster Declaration authorizing FEMA Public Assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Public Law 93–288), 42 U.S.C. 5121 et seq.), or

2. A Federally Declared Disaster pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, (Public Law 94–265) as amended by the Sustainable Fisheries Act (Public Law 104–297), or

3. A Federal Declaration pursuant to the Consolidated Farm and Rural Development Act, as amended (Public Laws 92–419, 96–438, 97–35, 98–258, 99–198, 100–233, 100–387, and 101–624), or

4. A Federally Declared Disaster pursuant to the Small Business Act, as amended (Public Law 85–536).

E. Extraordinary depletion of natural resources. EDA presently recognizes the following conditions of extraordinary natural resource depletion:

1. Fisheries
2. Coal
3. Timber

Assistant Secretary modifications to the above listing of conditions of extraordinary natural resource depletion, as they may occur, will be announced in subsequent public notices.

F. Closure or restructuring of industrial firms, essential to area economies. An area that has experienced closure or restructuring of firms resulting in sudden job losses and meeting the following criteria:

1. For areas over 100,000 population, the actual or threatened dislocation is 500 jobs, or 1 percent of the civilian labor force (CLF), whichever is less.

2. For areas up to 100,000 population, the actual or threatened dislocation is 200 jobs, or 1 percent of the CLF, whichever is less.

Actual dislocations must have occurred within one year of application to EDA and threatened dislocations must be anticipated to occur within two years of application.

G. Local negative impacts of foreign trade. An area certified as eligible by the North American Development Bank (NADBank) Program or the Community Adjustment and Investment Program (CAIP) .

H. Other special need. The area is experiencing other special and/or extraordinary economic adjustment need as determined by the Assistant Secretary.

The applicant will be asked to present appropriate economic or demographic statistics to demonstrate a special need.

IV. Funding Availability

Under EDA's fiscal year 2000 appropriation, Pub. L. 106–113, program funds totalling $360,550,000 are available until expended. EDA has already received and begun processing requests for funding under its programs for fiscal year 2000. New requests submitted that require approval during this fiscal year will face substantial competition.

V. Authority

The authority for programs listed in Parts VI through XI is the Public Works and Economic Development Act of 1965, (Pub. L. 89–136, 42 U.S.C. 3121, *et seq.*), as amended, and as further amended by Pub. L. 105–393 (PWEDA). The authority for the program listed in Part XII is Title II Chapters 3 and 5 of the Trade Act of 1974, as amended, (19 U.S.C. 2341–2355; 2391) (Trade Act), as amended by Pub. L. 105–119.

VI. Program: Public Works and Economic Development Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development-Grants for Public Works and Infrastructure)

Funding Availability

Funds in the amount of $204,521,000 maybe appropriated for this program. The average funding level for a grant last fiscal year was $849,000.

VII. Program: Technical Assistance-Local Technical Assistance; National Technical Assistance; and University Centers

(Catalog of Federal Domestic Assistance: 11.303 Economic Development-Technical Assistance)

Funding Availability

Funds in the amount of $9,100,000 million have been appropriated for the Technical Assistance programs of which approximately $1,530,000 is available

for the Local Technical Assistance program; $1,101,000 for the National Technical Assistance program; and $6,469,000 for the University Center program. The average funding level in FY 1999 for Local Technical Assistance grants was $28,000; for National Technical Assistance grants, $108,000; and for University Center grants, $98,300.

EDA expects that most University Center funds will be used for support to existing University Centers. EDA is in the process of designating the University Center program as a multi-(up to three) year program and expects at least $6,469,000 in funding to be available in each of the second and third years. Applicants under EDA's University Center Technical Assistance programs may be invited to submit applications for multi-year awards, setting out the proposed budget and project activities for each year, up to three years. If accepted, such applications will simplify the application process in subsequent year or years, although in each year approval of an award will be dependent upon continued satisfactory performance during the preceding period, the availability of program funds, and will be at EDA's sole discretion. It is EDA's intention to have the multi-year funding cycle coincide with the peer review cycle called for under Section 506 of PWEDA and 13 CFR § 318.1.

A separate FR Notice will set forth the specific funding priorities, application process, and time frames for certain National Technical Assistance projects.

VIII. Program: Planning—Planning Assistance for Economic Development Districts, Indian Tribes, States, and Other Planning Organizations

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations; 11.305 Economic Development—State and Local Economic Development Planning)

Funding Availability

Funds in the amount of $24,000,000 have been appropriated for the Planning program. The funding levels for planning grants last year ranged from $10,000 to $200,000. EDA expects the majority of planning funds will be used for support to existing Economic Development District and Indian Tribe grantees. EDA is in the process of designating the Planning programs as multi-(up to three)year programs and expects at least $24,000,000 in funding to be available annually in the second and third years. Applicants under EDA's Planning programs may be invited to submit applications for multi-year awards, setting out the proposed budget and project activities for each year, up to three years. If accepted, such applications will simplify the application process in the subsequent year or years, although in each year approval of an award will be dependent upon continued satisfactory performance during the preceding period, the availability of program funds, and will be at EDA's sole discretion. It is EDA's intention to have the multi-year funding cycle coincide with the peer review cycle called for under Section 506 of PWEDA and 13 CFR § 318.2. At the discretion of the Regional Office, other applicants for planning assistance may be invited to submit applications for up to a three-year period. Funding in FY 2001 and FY 2002 for these other applicants will be contingent upon the availability of funds from Congress, satisfactory performance, and at the sole discretion of EDA.

IX. Program: Economic Adjustment Assistance

(Catalog of Federal Domestic Assistance: 11.307 Economic Development and Adjustment Assistance Program)

Funding Availability

Funds in the amount of $34,629,000 have been appropriated for this program. Of this amount, $12,000,000 is available for economic adjustment projects located in regions impacted by coal industry downsizing and timber industry issues with an additional $3,129,000 available for disaster mitigation uses.

The $3,129,000 for disaster mitigation and recovery will be available to support selected hazard prone communities (areas subject to natural disasters) including Project Impact communities (communities recognized for taking actions on their own to mitigate) designated by the Federal Emergency Management Agency (FEMA), for capacity building and mitigation activities in areas that are EDA eligible. In addition to the eligibility criteria set forth in EDA's regulation's at 13 CFR Chapter III (64 FR 5347, February 3, 1999 and 64 FR 69867, December 14, 1999) these communities must have experienced a natural disaster or be located in natural hazard prone areas.

The average funding level for a regular economic adjustment grant last year was $180,000.

X. Program: Defense Economic Conversion

(Catalog of Federal Domestic Assistance: 11.307 Economic Development and Adjustment Assistance Program; 11.300 Economic Development Grants; 11.303 Economic Development-Technical Assistance; 11.302 Economic Development—Support for Planning Organizations; 11.305 Economic Development—State and Local Economic Development Planning; 11.312 Economic Development—Research and Evaluation Program; and 11.313 Economic Development—Trade Adjustment Assistance)

Funding Availability

Funds in the amount of $77,300,000 have been appropriated for this program. The average funding level for a grant last year was $1,300,000.

Up to $2.5 million of defense adjustment funds will be available for projects that demonstrate innovative credit enhancement of debt financing for base-reuse infrastructure. In 1998, EDA published the results of its funded research project entitled Defense Adjustment Infrastructure Bonds: Credit Enhancement Grants Make Affordable Capital Available. During FY 2000, EDA encourages projects that apply the concepts explained in the study which is available on EDA's website at www.doc.gov/eda. EDA will give priority to projects that: (1) Fund financial studies to determine whether a base-reuse capital improvement financing scheme requires credit enhancement, and if so, to determine the most appropriate form(s) of credit enhancement (note that proposed credit enhancement schemes need not identify EDA as a funding source in order to be competitive); or (2) fund the credit enhancement of a bond for construction activities targeted to new or renovated infrastructure and/or buildings located on former military base property. Factors that will be considered in selecting projects under this demonstration will include: the economic distress of the community affected by the base closure; the projected economic development benefits, e.g., job creation and private sector investment, that will result from the construction of improvements that will be funded by the bond; and the degree to which the resulting activities can serve as a prototype for other areas facing major base conversion needs.

XI. Program: Research and Evaluation

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Funding Availability

Funds in the amount of $500,000 have been appropriated for this program. The average funding level for a grant last fiscal year was $41,000.

A separate FR Notice will set forth the specific funding priorities, application

process, and time frames for certain research and evaluation projects. For further information, contact: John McNamee, National Technical Assistance and Research Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 482–2309.

XII. Program: Trade Adjustment Assistance

(Catalog of Federal Domestic Assistance: 11.313 Economic Development—Trade Adjustment Assistance)

Funding Availability

Funds in the amount of $10,500,000 have been appropriated for this program. The typical funding level for a grant last year was $791,000. For further information on this program contact: Anthony J. Meyer, Coordinator, Trade Adjustment and Technical Assistance, Planning and Development Assistance Division, Economic Development Administration, Room 7317, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482–2127.

EDA REGIONAL OFFICES AND ECONOMIC DEVELOPMENT REPRESENTATIVES EDA REGIONAL OFFICES:

Economic Development Representatives	States Covered
William J. Day, Jr., Regional Director, Atlanta Regional Office, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, Georgia 30308–3510, Telephone: (404) 730–3002, Fax: (404) 730–3025, Internet Address: wday1@doc.gov	
PATTERSON, Gilbert, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, GA 30308, Telephone: (404) 730–3000, Internet Address: gpatters@doc.gov.	Mississippi. Georgia.
HUNTER, Bobby D., 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, Telephone: (606) 224–7426, Internet Address: bhunter@doc.gov.	Kentucky. North Carolina (Western).
DIXON, Patricia M., U.S. Department of Commerce-EDA, P. O. Box 1707, Lugoff, SC 29078, Telephone: (803) 408–2513, Internet Address: pdixon@doc.gov.	South Carolina. North Carolina (Eastern).
DENNIS, Bobby, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, GA 30308–3510, Telephone: (404) 730–3020, Internet Address: bdennis@doc.gov.	Alabama.
TAYLOR, Willie C., 401 West Peachtree Street, N.W., Suite 1820, Atlanta, GA 30308–3510, Telephone: (404) 730–3032, Internet Address: wtaylor5@doc.gov.	Florida.
REED, Tonia, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, Georgia 30308–3510, Telephone: (404) 730–3026, Internet Address: treed@doc.gov.	Tennessee.
Pedro R. Garza, Regional Director, Austin Regional Office, 327 Congress Avenue, Suite 200, Austin, Texas 78701–4037, Telephone: (512) 381–8144, Fax: (512) 381–8177, Internet Address: pgarza1@doc.gov	
Area Directors	
JACOB, Larry, Austin Regional Office 327 Congress Avenue, Suite 200 Austin, TX 78701–4037, Telephone: (512) 381–8157, Internet Address: ljacob@doc.gov.	New Mexico Oklahoma Texas (Northwest).
FRERKING, Sharon T., Austin Regional Office 327 Congress Avenue, Suite 200, Austin, Texas 78701–4037, Telephone: (512) 381–8154, Internet Address: sfrerking@doc.gov.	Arkansas Louisiana Texas (Southeast).
SPEARMAN, Sam, 700 West Capital, Room 2509, Little Rock, AR 72201, Telephone: (501) 324–5637, Internet Address: sspearma@doc.gov.	
DAVIDSON-EHLERS, Pamela 501 Magazine Street, Room 1025, New Orleans, LA 70130, Telephone: (504) 589–4179, Internet Address: pdavidso@doc.gov.	
C. Robert Sawyer, Regional Director, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, IL 60606, Telephone: (312) 353–7706, Fax: (312) 353–8575, Internet Address: rsawyer@doc.gov	
ARNOLD, John B. III, 104 Federal Building, 515 West First Street, Duluth, MN 55802, Telephone: (1–888) 865–5719 (Illinois), (218) 720–5326 (Minnesota), Internet Address: jarnold@doc.gov.	Illinois. Minnesota.
HICKEY, Robert F., Federal Building, Room 740, 200 North High Street, Columbus, Ohio 43215, Telephone: (1–800) 686–2603 (Indiana), (614) 469–7314 (Ohio), Internet Address: rhickey@doc.gov.	Ohio. Indiana.
PECK, John E., P.O. Box 517, Acme, Michigan 49610–0517, Telephone: (616) 938–1712 (Michigan), (1–888) 249–7597 (Wisconsin), Internet Address: jpeck@doc.gov.	Michigan. Wisconsin.
Anthony J. Preite, Regional Director, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, Telephone: (303) 844–4715, Fax: (303) 844–3968, Internet Address: jwoodwa2@doc.gov	
ZENDER, John P., 1244 Speer Boulevard, Room 632, Denver, CO 80204, Telephone: (303) 844–4902, Internet Address: jzender@doc.gov.	Colorado. Kansas.
CECIL, Robert, Federal Building, Room 823, 210 Walnut Street, Des Moines, IA 50309, Telephone: (515) 284–4746, Internet Address: bcecil@doc.gov.	Iowa. Nebraska.
HILDEBRANDT, Paul, Federal Building, Room B–2, 608 East Cherry Street, Columbia, MO 65201, Telephone: (573) 442–8084, Internet Address: phildeb1@doc.gov.	Missouri.
ROGERS, John C., Federal Building, Room 196, 301 South Park Ave., Drawer 10074, Helena, MT 59626, Telephone: (406) 441–1175, Internet Address: jrogers6@doc.gov.	Montana. Wyoming.
JUNGBERG, Cip, Post Office/Courthouse, 102 4th Ave., Room 216, P.O. Box 190, Aberdeen, South Dakota 57401, Telephone: (605) 226–7315, Internet Address: cjungberg@doc.gov.	South Dakota. North Dakota.
TURNER, Robert, Chief, Operations Management, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, Telephone: (303) 844–4474, Internet Address: rturner@doc.gov.	Utah.
Paul M. Raetsch, Regional Director, Philadelphia Regional Office, Curtis Center, Independence Square West, Suite 140 South, Philadelphia, PA 19106, Telephone: (215) 597–4603, Fax: (215) 597–6669, Internet Address: Praetsch@doc.gov	
GOOD, William A., Acting, Philadelphia Regional Office, The Curtis Center-Suite 140 South, Independence Square West, Philadelphia, PA 19106, Telephone: (215) 597–0405, Internet Address: wgood@doc.gov.	Delaware. District of Columbia.

EDA REGIONAL OFFICES AND ECONOMIC DEVELOPMENT REPRESENTATIVES EDA REGIONAL OFFICES:—Continued

Economic Development Representatives	States Covered
AUBE, Michael W., 48 Highland Avenue, Bangor, ME 04401–4656, Telephone: (207) 945–6985, Internet Address: Maube@doc.gov.	Connecticut. Maine. Rhode Island.
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HUMMEL, Edward, Philadelphia Regional Office, The Curtis Center-Suite 140 South, Independence Square West, Philadelphia, PA 19106, Telephone: (215) 597–6767, Internet Address: ehummel@doc.gov.	New Jersey. New York City (Long Island).
MARSHALL, Harold J. II, 620 Erie Boulevard West, Suite 104, Syracuse, NY 13204–2442, Telephone: (315) 448–0938, Internet Address: hmarshal@doc.gov.	New York. Vermont.
PECONE, Anthony M., 525 North Broad Street, West Hazelton, PA. 18201–1107, Telephone: (570) 459–6861, Internet Address: apecone@doc.gov.	Pennsylvania.
CRUZ, Ernesto L., IBM Building, Room 602, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–1738, Telephone: (787) 766–5187, Internet Address: ecruz@doc.gov.	Puerto Rico. Virgin Islands.
NOYES, Neal E., Room 474, 400 North 8th Street, P.O. Box 10229, Richmond, VA 23240–1001, Telephone: (804) 771–2061, Internet Address: nnoyes@doc.gov.	Virginia. Maryland.
DAVIS, R. Byron, 405 Capital Street, Room 411, Charleston, WV 25301–1727, Telephone: (304) 347–5252, Internet Address: bdavis3@doc.gov.	West Virginia.
A. Leonard Smith, Regional Director, Seattle Regional Office, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Fax: (206) 220–7669, Internet Address: Lsmith7@doc.gov	
RICHERT, Bernhard E. Jr., 550 West 7th Avenue, Suite 1780, Anchorage, AK 99501–7594, Telephone: (907) 271–2272, Internet Address: brichert@doc.gov.	Alaska.
SOSSON, Deena R., 801 I Street, Suite 411, Sacramento, CA 95814, Telephone: (916) 498–5285, Internet Address: dsosson@doc.gov.	California (Central).
CHURCH, Dianne V., 280 South First St., #135-B, San Jose, CA 95113, Telephone: (408) 535–5550, Internet Address: dchurch@doc.gov.	California (Central Coastal).
FUJITA, Gail S., P.O. Box 50264, 300 Ala Moaana Blvd, Federal Building, Room 5180, Honolulu, HI 96850, Telephone: (808) 541–3391, Internet Address: gfugita@doc.gov.	Hawaii. Guam. American Samoa. Marshall Islands. Micronesia. Northern Marianas. Republic of Palau.
AMES, Aldred F., Borah Federal Building, Room 441, 304 North 8th Street, Boise, ID 83702, Telephone: (208) 334–1521 (Idaho), (1–888) 693–1370 (Nevada), Internet Address: aames@doc.gov.	Idaho. Nevada.
BERBLINGER, Anne S., One World Trade Center, 121 S.W. Salmon Street, Suite 244, Portland, OR 97204, Telephone: (503) 326–3078, Internet Address: aberblin@doc.gov.	Oregon.
MARSHALL, Wilfred, 5777 West Centry Blvd., Suite 1675, Los Angeles, CA 90045, Telephone: (310) 348–5386, Internet Address: wmarshall@doc.gov.	California (Northern). California (Southern).
KIRRY, Lloyd P., Seattle Regional Office, Jackson Federal Building, 915 Second Avenue, Room 1856, Seattle, WA 98174, Telephone: (206) 220–7682, Internet Address: lkirry@doc.gov.	Washington.
MACIAS, Jacob (Acting), Seattle Regional Office, Jackson Federal Building, 915 Second Avenue, Room 1856, Seattle, WA 98174, Telephone: (206) 220–7666, Internet Address: jmacias@doc.gov.	Arizona.

For general information on EDA contact the appropriate Regional Office listed above or EDA's Office of Congressional Liaison and Program Research and Evaluation: Economic Development Administration, Room7814A, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482–2309, EDA website www.doc.gov/eda.

Dated: January 18, 2000.

Chester Straub, Jr.,

Acting Assistant Secretary for Economic Development.

[FR Doc. 00–1627 Filed 1–21–00; 8:45 am]

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Part IV

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215337–9337–01]

RIN 0610–ZA13

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Request for Grant Proposals (RFP) Upon Availability of Funds.

SUMMARY: A total of $361,879,000 is available to EDA for all its programs in FY 2000, of which approximately $1,601,000 will be available for National Technical Assistance, Training, Research, and Evaluation. EDA is soliciting proposals for the specific projects described herein: (1) Evaluation of EDA's Planning Program; (2) Evaluation of EDA's Local Technical Assistance Program; (3) Economic Assessment of Sustainable Development Projects; (4) Improving Technology-Led Economic Development Strategies; and (5) Reviews of Economic Development Literature and Practice. These projects will be funded if acceptable proposals are received. Remaining funding, if any, may be used to fund additional projects. EDA issues this Notice to describe the conditions under which eligible applications for these National Technical Assistance, Training, Research, and Evaluation projects under 13 CFR Part 307, Subpart C (64 FR 5347, 5428–5429; 64 FR 69878–879) will be accepted and selected for funding.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on February 16, 2000, at 10:00 a.m. EDT in the Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, Room 1414, at which time questions on these projects can be answered. Potential applicants are encouraged to provide written questions (See **ADDRESS** section below) by February 14, 2000. Prospective applicants unable to attend this pre-proposal conference may participate by teleconference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–5:00 EDT on February 15, 2000.

Proposals for funding under this program will be accepted through March 9, 2000, at the address provided below. Proposals received after 5:00 p.m. EDT, on March 9, 2000, will not be considered for funding.

By March 30, 2000, EDA will advise successful proponents to submit full applications. OMB has assigned application forms Control Number 0610–0094.

Completed applications must be submitted to EDA by April 19, 2000, at the address below. EDA anticipates that these projects will be funded about June 15, 2000, but will make the awards no later than September 30, 2000.

ADDRESSES: Send proposals to John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482–4085.

SUPPLEMENTARY INFORMATION:

I. Areas of Special Emphasis

• *Evaluation of EDA's Planning Program*

EDA invites proposals to evaluate the impact of its Economic Development District (EDD) Planning Program.

Background: Under its Planning Program, EDA provides ongoing funding, on an annual basis, to approximately 320 Economic Development Districts (EDD) to help in designing and implementing strategies and to build and maintain local institutional capacity for the economic development of the communities they serve. EDA planning grants fund a number of activities. These include developing and maintaining the Comprehensive Economic Development Strategy (CEDS) process, developing projects, coordinating local and regional economic development efforts in implementing the CEDS, identifying/attracting sources of funding and investment, and providing technical assistance to its member jurisdictions. The EDA grants provide communities with the critical resources to assist in organizing and carrying out long-and short-term strategies tailored to the their particular economic problems and opportunities. However, the fundamental impact of the program should be the sustainable economic development of the areas served.

EDA's Planning Program and the network of local partnerships it has supported have been critical to the effectiveness of economic development efforts at the local and regional level for more than 30 years. In 1998, EDA commissioned an independent evaluation of its regional planning process in order to increase the benefits of the process and enhance economic development capacity at the local level. That evaluation was completed in 1999. The current evaluation will complement this earlier evaluation by measuring the impact of EDA's assistance under the EDD Planning Program.

Scope of Work: The successful applicant will: (1) evaluate the impact of EDA funding of EDDs under its Planning Program, including (a) how well the program helps communities build long-term economic development capacity, (b) whether the strategies developed are realistic and responsive to the specific economic development needs of the areas served, (c) how effective the technical assistance provided by the EDD organization is to the member jurisdictions, and (d) how effectively EDDs implement the CEDS; (2) select a representative sample of EDD grantees, including a rural, urban and regional balance; (3) make site visits as necessary; (4) convene a panel of stakeholders; (5) as appropriate, make recommendations for improving the program; (6) prepare a final report; and (7) conduct briefings and/or training workshops as set forth in IV.E. below.

Cost: The total EDA share of the cost of this project may not exceed $249,000.

Timing: The project should be completed and the final report submitted within one year of project approval.

• *Evaluation of EDA's Local Technical Assistance Program*

Background: EDA's Local Technical Assistance Program provides funding to help communities solve specific economic development problems, respond to development opportunities, and build and expand local organizational capacity in distressed areas. Often, Local Technical Assistance projects consist of feasibility studies, support for other economic development providers, or similar projects necessary to prepare a community for further EDA support. In recent years, funding for the program has been approximately $1.5 million per year, with the average grant size approximately $25,000. The program was last evaluated in 1989.

Scope of Work: The successful applicant will: (1) examine selected projects funded in FY's 1996-1997, provided they have been completed no later than September 30, 1999, to identify common and variable features of representative projects; (2) where appropriate, make site visits to obtain more detailed project information; (3) evaluate the effectiveness of the Local Technical Assistance Program; (4) make recommendations as needed for improving the program; and (5) conduct briefings and/or training workshops as set forth in IV.E. below. In evaluating

program effectiveness, relevant questions include (but are not restricted to):

- Has the program influenced the design, implementation, or timing of local economic development projects?
- Has the program helped distressed communities undertake or eliminate specific economic development projects from their overall strategy?
- Has the program helped distressed communities build and expand local organizational economic development capacity?
- Has the program supported innovative economic development approaches and/or given local officials needed technical expertise?
- To what extent have the projects and/or the program targeted distressed areas?
- Were projects completed in a timely and cost-effective fashion?
- Were there common features that contributed to project success or failure?
- Could specific outcomes be tracked back to the completed Local Technical Assistance projects?

Cost: The total EDA share of the cost of this project may not exceed $149,000.

Timing: The project should be completed and the final report submitted within one year of project approval.

- *Economic Assessment of Sustainable Development Projects*

EDA invites proposals to assess the economic impacts of sustainable development projects in distressed communities.

Background: In recent years, EDA has funded many local projects to support sustainable development, including brownfields redevelopment, eco-industrial parks, aquaculture, and projects to support diversification of natural resource based economies (e.g., timber, fisheries, etc.). The agency also has funded several national studies of sustainable economic development strategies and collections of case studies describing strategies available to practitioners at the state and local level. This cumulative experience suggests that a significant barrier to sustainable economic development is the inability of prospective projects to demonstrate economic viability to potential investors and funding agencies.

This project is designed to assist individuals and organization that are undertaking sustainable development activities to collect data and develop methods for assessing the economic benefits and costs of their projects. EDA is primarily interested in assessments of direct economic impacts. Simulations that assess secondary, indirect, and induced impacts without generating original research of direct benefits and costs will not be considered. Utility of the research to economic development practitioners is essential. EDA seeks economic impact assessments that are replicable in other contexts, in order to help future sustainable development efforts. Impacts considered may be either on the supply side or the demand side of the market. However, the economic impacts described must be quantifiable and derived from real economic development projects. It is not necessary to assess all economic impacts for a given sustainable development activity, but those impacts that are considered should be researched as completely as possible. Given the time frame of this study, EDA anticipates that most proposals will relate to projects already underway. EDA is especially interested in studies that assess impacts that have not previously been described well (e.g., product quality impacts, equity impacts, etc.), studies that improve existing assessment methods, and/or studies that utilize new assessment methods.

Scope of Work: The successful applicant will: (1) quantitative describe the anticipated economic benefits and costs of one or more sustainable development project(s); (2) review prior economic assessments and literature relevant to assessing those impacts; (3) assess the direct economic benefits and costs of the project(s) as completely as possible, using methods deemed sound by mainstream professional economists; (4) place those economic benefits and costs in the context of the community the project is designed to serve; (5) prepare a final report that summarizes the research findings; and (6) conduct briefings and/or training workshops as set forth in IV.E. below.

Cost: EDA may provide funding up to $145,000 for all projects funded under this RFP. EDA anticipates making multiple awards from this total funding available.

Timing: The projects should be completed and the final reports submitted within nine months of project approval.

Improving Technology-Led Economic Development Strategies

EDA seeks proposals to improve the technology-led strategies for economic development in distressed communities.

Background: The current era of rapid technological change offers both promise and challenges to America's distressed communities. On the one hand, new technologies can help these communities enter and succeed in the economic mainstream by allowing them to engage in activities such as e-commerce, telemedicine, distance learning, and modernization of manufacturing. On the other hand, the speed of technological advance and the scale of investment and training needed threatens to leave behind those communities that lack a diverse economic base and solid infrastructure.

EDA assists distressed communities to design and implement their own technology-led economic development strategies. The agency also funds research to support its investment strategy by identifying areas where further investment is most needed, methods to improve the effectiveness of the agency's investments, and ways to leverage available funding. EDA research also assists local economic development practitioners by disseminating lessons learned by others in the field. To give some examples, EDA is presently funding an assessment of the technology infrastructure needs of America's distressed communities, and recently completed a similar needs assessment in Native communities. EDA is also funding the preparation of a handbook to help local practitioners prepare technology strategic plans. Other recent EDA research projects in this area include a collection of best practices in technology transfer and commercialization (underway); a review of state science and technology strategic plans (1997); and a comprehensive guide to business incubators (1996).

This project is designed to support EDA investments in technology-led economic development in distressed areas. Examples of acceptable projects include (but are not limited to):

- Assessments of past and current EDA technology investments;
- Research that identifies, describes, and evaluates specific strategies for technology-led economic development;
- Research that identifies national investment needs to support specific types of technology-led economic development; and
- Exploration of methods to enhance the effectiveness of existing technology-led strategies, including ways to expand available funding in a responsible fashion.

Projects must have significance to practitioners nationally. Local feasibility studies, needs assessments, and project implementation will generally not be funded unless the projects have compelling demonstration value and include a careful assessment of the strategy's replicability elsewhere. Likewise, purely theoretical research will not be funded without a convincing demonstration of its utility to practitioners.

Scope of Work: The successful applicant will: (1) describe specific strategies, needs, and/or methods to promote economically-important technological advance in distressed areas; (2) critically review relevant literature from academics, practitioners, and other sources and describe the contribution of the project to that field of knowledge; (3) evaluate the significance of the strategy to technology-led economic development, using methodologies generally accepted by scholars and experts in the field; (4) prepare a final written report of findings designed to improve economic development efforts by EDA and state and local practitioners; and (5) conduct briefings and/or training workshops as set forth in IV.E. below.

Cost: EDA may provide funding up to $145,000 for all projects funded under this RFP. EDA may make multiple awards from this total funding available.

Timing: The project should be completed and the final report submitted within one year of project approval.

• *Reviews of Economic Development Literature and Practice*

EDA invites proposals to review the literature and practical experience regarding issues of critical importance to economic development practitioners nationally.

Background: One of EDA's main functions is to disseminate high quality information about economic development policies, issues, strategies, and techniques to practitioners. EDA fulfills this function by a number of means, including newsletters, conferences, use of the Internet, and targeted research. This project would help present important and emerging theoretical issues to practitioners and policy makers.

EDA is especially interested in reviews supporting EDA's core programs and initiatives. Examples include: technology-led economic development; productivity enhancement through infrastructure investment; e-commerce; strategies and policies for dealing with sprawl; strategies that promote regional growth; counter-cyclical spending strategies; microenterprise development; economic development in Native communities; and support for regions harmed by international trade. EDA, however, welcomes other topics of importance to domestic economic development. Completed reviews must be analytical, and should identify important policy implications. They must also be prepared for practitioners rather than an academic audience.

EDA expects researchers to demonstrate familiarity with the proposed topic and ability to conduct a timely, thorough, and objective review. EDA welcomes strong graduate student participation in these projects, contingent on the student's ability to demonstrate expertise in the field of study. Where a student is to be a primary participant in the research, a faculty letter in support of the student's participation may be included in the proposal. This letter, not to exceed two pages, shall not be subject to the other page limits specified in Part III. B. EDA anticipates making multiple awards, but will not make multiple awards to any individual researcher. Authors are encouraged to submit the final review paper for publication.

Scope of Work: Successful applicants will:

(1) Prepare a review paper that: a) describes and analyzes critically key debates in the literature, analytical techniques of broad importance to practitioners; and/or the range of experience with specific economic development strategies; b) identifies important policy implications of the research; c) represents original research not previously submitted for publication elsewhere; d) is of length and quality suitable for publication in a peer reviewed journal; and e) is written in a style appropriate for practitioners.

(2) Conduct up to three presentations as described in IV.E below.

Cost: EDA may provide funding up to $72,500 for all reviews funded under this RFP. The total EDA share of the cost for any single review may not exceed $20,000. EDA anticipates that most proposals will be in the range of $10,000 to $15,000.

Timing: EDA anticipates that most reviews will take 6 months or less, but recognizes that this will vary with the nature of the research. Presentations may take place up to one year after the paper is submitted. All projects should be completed within nine months of project approval.

II. How To Apply

A. Eligible Applicants

See EDA's interim final rule at 13 CFR § 300.2 (64 F.R. 5347). Eligible applicants are as follows: institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals; areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states.

B. Proposal Submission Procedures

Proposals submitted should include: (1) a description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length); (2) a proposed budget and accompanying explanation; (3) resumes/qualifications of key staff (not to exceed two pages per individual or organization), and (4) a proposed time line for completion of the project. EDA will not accept proposals submitted by FAX or email. Proposals received after 5:00 p.m. EST on March 9, 2000, at the address provided above, will not be considered.

III. Selection Process and Evaluation Criteria

All proposals must meet EDA's statutory and regulatory requirements. Proposals will receive initial review by EDA to assure that they meet all requirements of this announcement and 13 CFR Chapter III (64 FR 5347), including eligibility and relevance to the specified project as described herein. EDA's general selection process and criteria are set out in 13 CFR §§ 304.1 and 304.2 (64 FR 5347–5348; 64 FR 69874–69875). Proposals that meet these requirements will then be evaluated by a review panel composed of at least three members. EDA will carry out its selection of proposals to be funded under the specific projects described in this RFP using the following criteria:

- The quality of a proposal's response to the scope of work proposed; and
- The ability of the prospective applicant to successfully carry out the proposed activities.

If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

IV. Additional Information and Requirements

A. Authority

The Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*),

including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393) (PWEDA) authorizes EDA to make grants for training, research, and technical assistance, including grants for program evaluation and project impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (42 U.S.C. 3147, § 207). This RFP is dependent upon the availability of funds in FY 2000 for this program. Public Law 106–113 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development Technical Assistance.
11.312 Research and Evaluation

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, Part 307 (64 FR 5347).

EDA assistance is focused on areas experiencing significant economic distress, defined principally as per capita income of 80 percent or less of the national average, or an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average.

D. Costs

Ordinarily, the applicant is expected to provide a 50 percent non-federal share of project costs. However, the Assistant Secretary may waive the required 50 percent matching share of the total project costs, provided the applicant can demonstrate: (1) the project is not feasible without, and the project merits such a waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50 percent non-federal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient (See 13 CFR § 307.9; 64 FR 5429).

E. Briefings and Reports

Unless otherwise noted, each award includes a requirement that the applicant conduct a total of up to seven briefings and/or training workshops for individuals and organizations interested in the results of this project. Potential applicants should be aware that the completion dates set forth above are for completion of the project and submission of the final written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's discretion. Usually, these consist of at least one briefing in Washington, DC, with the other briefings/workshops held in conjunction with one or more of EDA's regional conferences.

Unless otherwise noted, each award includes a requirement that the applicant submit an electronic version and 200 hard copies of the final report in formats acceptable to EDA.

F. Website

See 64 FR 9221–9226, Part II for additional information and requirements (available on the Internet at http://www.doc.gov/eda/html/notice.htm, under the heading "Economic Development Assistance Programs-Availability of Funds").

Dated: January 18, 2000.

Chester J. Straub, Jr.,

Acting Assistant Secretary for Economic Development.

[FR Doc. 00–1628 Filed 1–21–00; 8:45 am]

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VOL
65
ISS
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Federal Register

Monday,
January 24, 2000

Part V

The President

Proclamation 7269—National Biotechnology Month, 2000

VOL
65
ISS
15
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Federal Register
Vol. 65, No. 15
Monday, January 24, 2000

Presidential Documents

Title 3—

The President

Proclamation 7269 of January 19, 2000

National Biotechnology Month, 2000

By the President of the United States of America

A Proclamation

As we stand at the dawn of a new century, we recognize the enormous potential that biotechnology holds for improving the quality of life here in the United States and around the world. These technologies, which draw on our understanding of the life sciences to develop products and solve problems, are progressing at an exponential rate and promise to make unprecedented contributions to public health and safety, a cleaner environment, and economic prosperity.

Today, a third of all new medicines in development are based on biotechnology. Designed to attack the underlying cause of an illness, not just its symptoms, these medicines have tremendous potential to provide not only more effective treatments, but also cures. With improved understanding of cellular and genetic processes, scientists have opened exciting new avenues of research into treatments for devastating diseases—like Parkinson's and Alzheimer's, diabetes, heart disease, AIDS, and cancer—that affect millions of Americans. Biotechnology has also given us several new vaccines, including one for rotavirus, now being tested clinically, that could eradicate an illness responsible for the deaths of more than 800,000 infants and children each year.

The impact of biotechnology is far-reaching. Bioremediation technologies are cleaning our environment by removing toxic substances from contaminated soils and ground water. Agricultural biotechnology reduces our dependence on pesticides. Manufacturing processes based on biotechnology make it possible to produce paper and chemicals with less energy, less pollution, and less waste. Forensic technologies based on our growing knowledge of DNA help us exonerate the innocent and bring criminals to justice.

The biotechnology industry is also improving lives through its substantial economic impact. Biotechnology has stimulated the creation and growth of small businesses, generated new jobs, and encouraged agricultural and industrial innovation. The industry currently employs more than 150,000 people and invests nearly $10 billion a year on research and development.

Recognizing the extraordinary promise and benefits of this enterprise, my Administration has pursued policies to foster biotechnology innovations as expeditiously and prudently as possible. We have supported steady increases in funding for basic scientific research at the National Institutes of Health and other science agencies; accelerated the process for approving new medicines to make them available as quickly and safely as possible; encouraged private-sector research investment and small business development through tax incentives and the Small Business Innovation Research program; promoted intellectual property protection and open international markets for biotechnology inventions and products; and developed public databases that enable scientists to coordinate their efforts in an enterprise that has become one of the world's finest examples of partnership among university-based researchers, government, and private industry.

Remarkable as its achievements have been, the biotechnology enterprise is still in its infancy. We will reap even greater benefits as long as we

sustain the intellectual partnership and public confidence that have moved biotechnology forward thus far. We must strengthen our efforts to improve science education for all Americans and preserve and promote the freedom of scientific inquiry. We must protect patients from the misuse or abuse of sensitive medical information and provide Federal regulatory agencies with sufficient resources to maintain sound, science-based review and regulation of biotechnology products. And we must strive to ensure that science-based regulatory programs worldwide promote public safety, earn public confidence, and guarantee fair and open international markets.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2000 as National Biotechnology Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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Federal Register

Vol. 65, No. 15

Monday, January 24, 2000

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200	3
201–344	4
345–688	5
689–1050	6
1051–1296	7
1297–1528	10
1529–1754	11
1755–2016	12
2017–2280	13
2281–2520	14
2521–2834	18
2835–3118	19
3119–3374	20
3375–3582	21
3583–3780	24

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

1660 (See Proc. 7266)	2831
1704 (See Proc. 7266)	2831
1948 (See Proc. 7266)	2831
2050 (See Proc. 7266)	2831
2528 (See Proc. 7266)	2831
7263	2817
7264	2821
7265	2825
7266	2831
7267	2835
7268	2837
7269	3779

Executive Orders:

12543 (See Notice of December 29, 1999)	199
12544 (See Notice of December 29, 1999)	199
12947 (See Notice of January 19, 2000)	3581
13099 (See Notice of January 19, 2000)	3581

Administrative Orders:

Presidential Determinations:

No. 2000–9 of December 23, 1999	689

Notices:

December 29, 1999	199
January 19, 2000	3581

Memorandums:

January 5, 2000	2279, 3119

5 CFR

831	2281, 2521
842	2281, 2521

7 CFR

6	1297
201	1704
246	3375
371	1298
932	2839
959	2526
966	2281
982	2841
984	1755
997	1302
998	1302
999	1302
1220	1, 2844

Proposed Rules:

54	3155
253	2358
800	75
868	78
930	672
979	1347
993	2908
1280	1825
1301	1825
1304	1825
1305	1825
1306	1825
1307	1825
1308	1825

9 CFR

93	345
94	1304, 1529
96	1304
303	201
304	2283
312	2283
327	2283
350	2283
381	201, 2283, 2284
424	2284, 3121

Proposed Rules:

54	1074
79	1074
130	391

10 CFR

431	2227

Proposed Rules:

Ch. I	3615
2	3394
40	3394
50	1829, 3394
72	3397
430	2077
490	1831
960	2361
963	2361

11 CFR

Proposed Rules:

100	1074
102	1074
103	1074
104	1074
106	1074
107	1074
109	1074
110	1074
114	1074
116	1074

12 CFR

269a	2529
935	202
960	203

Proposed Rules:

5	3157
650	1676
900	324

910.....324
917.....81
941.....324

13 CFR

305.....2017
308.....2530
314.....2530
400.....1757
500.....1758

Proposed Rules:

120.....1349

14 CFR

21.....3540
23.....1758
27.....3540
29.....3540
39...1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540, 1761, 1762, 1763, 1765, 1767, 1769, 1771, 2017, 2019, 2285, 2287, 2289, 2844, 2861, 2862, 2864, 3379, 3583
61.....2022
67.....2022
71.....348, 349, 699, 700, 1308, 1309, 1774, 2537, 2538, 2539, 3381, 3382
91.....3540
95.....2291
97.....850, 2023, 2025
121.....2295
125.....2295
141.....2022
142.....2022
382.....352
1204.....2865

Proposed Rules:

39.....250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353, 1831, 1833, 1836, 1838, 1840, 2362, 2555, 3165, 3617, 3619, 3621
71.....402
91.....2077
108.....560
109.....560
111.....560
121.....2079
129.....560, 2079
191.....560

15 CFR

734.....2492
740.....2493
742.....2492
770.....2492
772.....2492
774.....2492
902.....30

Proposed Rules:

280.....1572
303.....731

16 CFR

256.....2867
1615.....1435
1700.....93

Proposed Rules:

250.....2912
310.....2912

17 CFR

232.....3123

Proposed Rules:

1.....3623
Ch. II.....3399

18 CFR

35.....810

Proposed Rules:

125.....1484
225.....1484
356.....1484

19 CFR

4.....2868

20 CFR

Proposed Rules:

604.....2080

21 CFR

101.....1000
173.....1776
177.....3384
201.....7
314.....1776
341.....7
369.....7
801.....3584
862.....2296
864.....2296
866.....2296
868.....2296
870.....2296
872.....2296
874.....2296
876.....2296
878.....2296
880.....2296
882.....2296
884.....2296
886.....2296
888.....2296
890.....2296
892.....2296
1308.....3124

Proposed Rules:

216.....256
314.....3623
801.....3627
870.....2364
890.....2364

22 CFR

514.....352

23 CFR

655.....9

24 CFR

35.....3386
902.....1712
968.....3386
1000.....3386

25 CFR

1.....2026
301.....2030
602.....2030

Proposed Rules:

1.....2081, 2084

26 CFR

1.....701, 1236, 1310, 2026, 2323, 3586, 3589
7.....3589
49.....1056
301.....215, 263, 1059, 2030
602.....1056, 1236, 1310, 2030, 2323, 3586, 3589

Proposed Rules:

1.....258, 1572, 2081, 2084, 3401, 3629
40.....1076

27 CFR

270.....1676

29 CFR

2550.....614
4044.....2329

30 CFR

202.....1542
203.....2874
206.....1542
250.....217, 2874, 3126
251.....2874
253.....2874
254.....2874
256.....2874
904.....2331
914.....1059
946.....1063

Proposed Rules:

206.....1580, 2557, 3167
944.....2364

31 CFR

1.....2333
317.....2034
375.....3113

32 CFR

Proposed Rules:

199.....2085
323.....3167
326.....2912
813.....419

33 CFR

110.....2876
117.....353, 710, 1543, 1543, 2035, 2036, 2038, 2539, 2541
154.....710
155.....710
165.....1065

Proposed Rules:

100.....2095
110.....1581, 2095
117.....1077
157.....2812
165.....1079, 2095

34 CFR

611.....1780

Proposed Rules:

Ch. VI.....1582

36 CFR

Proposed Rules:

5.....2920
13.....2920

37 CFR

4.....3127

Proposed Rules:

201.....3404

38 CFR

Ch. 1.....1544
3.....3388
17.....762
51.....762
58.....762

39 CFR

111.....1318, 3609

Proposed Rules:

111.....264
206.....403

40 CFR

9.....1950
49.....1322
52.....14, 16, 1068, 1545, 1787, 2039, 2042, 2046, 2048, 2052, 2334, 2674, 2877, 2880, 2883, 3130
60.....1323, 2336
63.....3276
70.....1787, 3130
81.....2883
82.....716
97.....2674
136.....3007
141.....1950
142.....1950
147.....2899
180.....1790, 1796, 1802, 1809
247.....2889
257.....1842
258.....1842
261.....2337
271.....2897
300.....19, 1070, 2903, 2905
445.....3007
712.....1548
716.....1554
721.....354

Proposed Rules:

52...104, 421, 732, 1080, 1583, 1841, 2367, 2557, 2560, 2920, 2921, 2924, 3168, 3630
63.....3169, 3642
70.....1841, 3168
81.....2924, 3630
180.....425
257.....1814
258.....1814
260.....3188
271.....2925
300.....1081, 2925, 2926
503.....1676

41 CFR

Ch. 301.....3392
301-10.....1268
301-11.....1326
301-51.....2541, 3054
301-52.....3054
301-54.....3054
301-70.....3054
301-71.....3054
301-74.....1326
301-76.....3054

Proposed Rules:

101-6.....2504
102-3.....2504

42 CFR

121.....1435
412.....1817, 3136
413.....1817
483.....1817
485.....1817

Proposed Rules:
405.....1081

44 CFR

64.....1554, 1555

Proposed Rules:
67.....1435

45 CFR

Proposed Rules:
160.....427
164.....427

46 CFR

Proposed Rules:
356.....646

47 CFR

0.....374
25.....3814
27.....3139
51.....1331, 2542
73.....219, 220, 1823, 1824, 3150, 3151, 3152
76.....375

Proposed Rules:
1.....2097
22.....2097
51.....2367
73.....270, 1843, 3188, 3406, 3407
74.....3188
101.....2097

48 CFR

205.....2056
209.....2056
235.....2057
241.....2058
243.....2056
252.....2056
253.....2055
1806.....3153
1813.....3153
1815.....3153
1835.....3153
1852.....3153
1872.....3153
2401.....3572
2402.....3572
2403.....3572, 3576
2409.....3572, 3576
2413.....3572
2414.....3572
2415.....3572
2416.....3572
2419.....3572
2424.....3572
2425.....3572
2426.....3572
2428.....3572
2432.....3572
2433.....3572
2436.....3572, 3576
2437.....3576
2439.....3572, 3576
2442.....3572, 3576
2446.....3572
2451.....3572
2452.....3572, 3576
2453.....3572, 3576

Proposed Rules:
1.....1438
2.....1438
4.....1438
7.....1438
8.....1438
11.....2272
15.....1438
16.....1438
17.....1438
22.....1438, 2272
27.....1438
28.....1438
31.....1438
32.....1438
35.....1438
36.....2272
37.....1438
42.....1438
43.....1438, 3762
44.....1438
45.....1438
49.....1438, 2272
51.....1438
52.....1438, 2272, 3762
53.....1438
212.....2104
242.....2104, 2109
247.....2104
252.....2104
253.....2109
1804.....429
1852.....429

49 CFR

1.....220
268.....2342
572.....2059

Proposed Rules:
40.....2573
209.....1844
222.....2230
229.....2230
1244.....732

50 CFR

17.....20, 2348, 3096
216.....30
226.....1584
300.....59
600.....221
635.....2075
648.....377, 1557, 1568
660.....221
679.....60, 65, 74, 380

Proposed Rules:
17.....1082, 1583, 1845, 3096, 3648
18.....109
86.....3332
216.....270, 1083
222.....270
223.....105
224.....1082
226.....105, 1584
300.....272
635.....3199
648.....275, 431
660.....2926

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 24, 2000

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Local agency expenditure reports; published 11-9-99
Local agency expenditure reports; published 12-22-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Food ingredients and radiation sources listed or approved for use; published 12-23-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Grants:
Rural Business Opportunity Program; published 12-23-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Source-specific plans—
Salt River Pima-Maricopa Indian Community, AZ; published 11-23-99

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Mississippi; published 1-4-00

NUCLEAR REGULATORY COMMISSION
Early site permits standard design certifications and combined licenses for nuclear power plants:
AP600 design certification; published 12-23-99

PERSONNEL MANAGEMENT OFFICE
Group life insurance, Federal employees:
New premium rates; published 12-23-99

POSTAL SERVICE
Domestic Mail Manual and International Mail Manual:
Special services labels; barcode requirements; published 1-24-00

SECURITIES AND EXCHANGE COMMISSION
Electronic Data Gathering, Analysis, and Retrieval (EDGAR):
Filer Manual—
Update adoption and incorporation by reference; published 1-20-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 12-20-99
Boeing; published 12-20-99
Bombardier; published 12-20-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 2-4-00; published 1-5-00
Sheep and lamb promotion and research; comments due by 2-1-00; published 1-12-00
Tobacco inspection:
Burley tobacco; moisture testing; comments due by 1-31-00; published 12-2-99

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 2-3-00; published 12-16-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspections:
Inspection services—
Retail operations exemption from requirements; comments due by 2-3-00; published 1-4-00

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; implementation; comments due by 1-31-00; published 12-30-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass; comments due by 2-2-00; published 1-3-00
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 2-4-00; published 12-21-99
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; annual specifications and management measures; comments due by 2-3-00; published 1-4-00
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 2-4-00; published 1-5-00
Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs; fishing quotas; comments due by 2-3-00; published 1-4-00
Ocean and coastal resource management:
Marine sanctuaries—
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; comments due by 2-1-00; published 11-19-99
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; scoping meetings; comments due by 2-1-00; published 12-27-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
AmeriCorps education awards; comments due by 1-31-00; published 12-1-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Retiree Dental Program; expansion of dependent eligibility; comments due by 1-31-00; published 12-1-99
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99
Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Perchloroethylene emissions from dry cleaning facilities—
Florida; comments due by 1-31-00; published 12-28-99
Air pollution; standards of performance for new stationary sources:
Commercial and industrial solid waste incineration units; comments due by 1-31-00; published 11-30-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-2-00; published 1-18-00
Illinois; comments due by 2-2-00; published 1-3-00
Montana; comments due by 2-2-00; published 1-3-00
New York; comments due by 2-4-00; published 1-5-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-acyl sarcosines and sodium N-acyl sarcosinates; comments due by 2-4-00; published 12-6-99
Tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3(1H-1,2,4-triazol-1-yl) propyl 1,1,2,2-tetrafluoroethyl ether]; comments due by 2-4-00; published 12-6-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 1-31-00; published 12-30-99
National priorities list update; comments due

by 1-31-00; published 12-30-99
Toxic substances:
Significant new uses—
Halogenated benzyl ester acrylate, etc.; comments due by 2-4-00; published 1-5-00
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection; comments due by 2-4-00; published 12-21-99

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Indiana; comments due by 1-31-00; published 12-17-99
Radio frequency devices:
Radio services operating below 30 MHz; conducted emission limits; comments due by 1-31-00; published 11-16-99
Radio stations; table of assignments:
Arizona; comments due by 1-31-00; published 12-30-99
California; comments due by 1-31-00; published 12-30-99
Louisiana; comments due by 1-31-00; published 12-30-99
Virginia and Maryland; comments due by 1-31-00; published 12-17-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99
Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Temporary Assistance for Needy Families Program—
High performance bonus rewards to States; comments due by 2-4-00; published 12-6-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Freedom of Information Act; implementation; comments due by 2-2-00; published 11-4-99
Human drugs:
Prescription drug marketing; comments due by 2-1-00; published 12-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicaid:
Managed care organizations; external quality review; comments due by 1-31-00; published 12-1-99
Medicare and Medicaid programs:
Religious nonmedical health care institutions and advance directives; comments due by 1-31-00; published 11-30-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Spalding's catchfly; comments due by 2-1-00; published 12-3-99

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Oil value for royalty due on Federal leases; establishment; comments due by 1-31-00; published 12-30-99

JUSTICE DEPARTMENT
Drug Enforcement Administration
List I chemical manufacturers, distributors, importers, and exporters; registration:
Registration and reregistration fees; comments due by 1-31-00; published 12-1-99
Correction; comments due by 1-31-00; published 12-16-99

LABOR DEPARTMENT
Employment and Training Administration
Birth and adoption unemployment compensation; comments due by 2-2-00; published 1-13-00

LABOR DEPARTMENT
Occupational Safety and Health Administration
Occupational safety and health standards:
Ergonomics program; comments due by 2-1-00; published 11-23-99

LABOR DEPARTMENT
Wage and Hour Division
Child labor; civil money penalties; inflation adjustment; comments due by 1-31-00; published 11-30-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Records management:
Agency records centers; storage standards update; comments due by 1-31-00; published 12-2-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Share insurance and appendix; update and clarification; comments due by 1-31-00; published 11-30-99

POSTAL SERVICE
Domestic Mail Manual:
Palletized standard mail and bound printed matter, etc.; preparation changes; comments due by 2-3-00; published 1-4-00

RAILROAD RETIREMENT BOARD
Railroad Unemployment Insurance Act:
Sickness and unemployment benefits; waiting period shortened, etc.; comments due by 2-1-00; published 12-3-99

SECURITIES AND EXCHANGE COMMISSION
Public utility holding companies:
Acquisition of U.S. utilities by foreign companies; internationalization; comments due by 2-4-00; published 12-21-99
Securities:
Unlisted trading privileges; comments due by 1-31-00; published 12-15-99

SMALL BUSINESS ADMINISTRATION
Business loans:
Certified development companies; areas of operations; comments due by 1-31-00; published 12-1-99

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Tariff-rate quota implementation for imports of sugar-containing products; comments due by 1-31-00; published 12-1-99

TRANSPORTATION DEPARTMENT
Coast Guard
American Society for Testing and Materials (ASTM); standards incorporated by reference; update; comments due by 1-31-00; published 12-1-99
Regattas and marine parades:
Port of Miami, FL; OPSAIL 2000; comments due by 1-31-00; published 12-17-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 1-31-00; published 12-30-99
Alexander Schleicher Segelflugzeugbau; comments due by 1-31-00; published 12-28-99
Boeing; comments due by 1-31-00; published 11-30-99
Constucciones Aeronauticas, S.A.; comments due by 2-4-00; published 1-5-00
Eurocopter Deutschland GmbH; comments due by 1-31-00; published 12-2-99
Eurocopter France; comments due by 1-31-00; published 11-30-99
Fokker; comments due by 2-3-00; published 1-4-00
Hartzell Propeller, Inc.; comments due by 2-1-00; published 12-3-99
Rolls Royce, plc; comments due by 2-1-00; published 12-3-99
Saab; comments due by 2-4-00; published 1-5-00
Turbomeca Arrius; comments due by 1-31-00; published 12-1-99
Class D airspace; comments due by 2-4-00; published 1-5-00
Class E airspace; comments due by 1-31-00; published 12-17-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Treasury securities, reopening; original issue discount; comments due by 2-3-00; published 11-5-99

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Well-grounded claims; comments due by 1-31-00; published 12-2-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-038-00098-9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0-99	(869-038-00100-4)	28.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	[8] July 1, 1999
900-1899	(869-038-00103-9)	21.00	July 1, 1999
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999
1911-1925	(869-038-00106-3)	18.00	July 1, 1999
1926	(869-038-00107-1)	30.00	July 1, 1999
1927-End	(869-038-00108-0)	43.00	July 1, 1999
30 Parts:			
1-199	(869-038-00109-8)	35.00	July 1, 1999
200-699	(869-038-00110-1)	30.00	July 1, 1999
700-End	(869-038-00111-0)	35.00	July 1, 1999
31 Parts:			
0-199	(869-038-00112-8)	21.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-038-00114-4)	46.00	July 1, 1999
191-399	(869-038-00115-2)	55.00	July 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999
630-699	(869-038-00117-9)	23.00	July 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999
33 Parts:			
1-124	(869-038-00120-9)	32.00	July 1, 1999
125-199	(869-038-00121-7)	41.00	July 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999
34 Parts:			
1-299	(869-038-00123-3)	28.00	July 1, 1999
300-399	(869-038-00124-1)	25.00	July 1, 1999
400-End	(869-038-00125-0)	46.00	July 1, 1999
35	(869-038-00126-8)	14.00	[8] July 1, 1998
36 Parts			
1-199	(869-038-00127-6)	21.00	July 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999
37	(869-038-00130-6)	29.00	July 1, 1999
38 Parts:			
0-17	(869-038-00131-4)	37.00	July 1, 1999
18-End	(869-038-00132-2)	41.00	July 1, 1999
39	(869-038-00133-1)	24.00	July 1, 1999
40 Parts:			
1-49	(869-038-00134-9)	33.00	July 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999
52 (52.01-52.1018)	(869-038-00136-5)	33.00	July 1, 1999
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999
60	(869-038-00139-0)	59.00	July 1, 1999
61-62	(869-038-00140-3)	19.00	July 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999
63 (63.1200-End)	(869-038-00142-0)	36.00	July 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999
72-80	(869-038-00144-6)	41.00	July 1, 1999
81-85	(869-038-00145-4)	33.00	July 1, 1999
86	(869-038-00146-2)	59.00	July 1, 1999
87-135	(869-038-00146-1)	53.00	July 1, 1999
136-149	(869-038-00148-9)	40.00	July 1, 1999
150-189	(869-038-00149-7)	35.00	July 1, 1999
190-259	(869-038-00150-1)	23.00	July 1, 1999
260-265	(869-038-00151-9)	32.00	July 1, 1999
266-299	(869-038-00152-7)	33.00	July 1, 1999
300-399	(869-038-00153-5)	26.00	July 1, 1999
400-424	(869-038-00154-3)	34.00	July 1, 1999
425-699	(869-038-00155-1)	44.00	July 1, 1999
700-789	(869-038-00156-0)	42.00	July 1, 1999
790-End	(869-038-00157-8)	23.00	July 1, 1999
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-038-00158-6)	14.00	July 1, 1999
101	(869-038-00159-4)	39.00	July 1, 1999
102-200	(869-038-00160-8)	16.00	July 1, 1999
201-End	(869-038-00161-6)	15.00	July 1, 1999
42 Parts:			
1-399	(869-038-00162-4)	36.00	Oct. 1, 1999
400-429	(869-034-00163-2)	44.00	Oct. 1, 1999
430-End	(869-038-00164-1)	54.00	Oct. 1, 1999
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-038-00167-5)	28.00	Oct. 1, 1999
45 Parts:			
1-199	(869-038-00168-3)	33.00	Oct. 1, 1999
200-499	(869-038-00169-1)	16.00	Oct. 1, 1999
500-1199	(869-034-00170-5)	30.00	Oct. 1, 1999
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
*1-40	(869-038-00172-1)	27.00	Oct. 1, 1999
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-038-00175-6)	26.00	Oct. 1, 1999
140-155	(869-038-00176-4)	15.00	Oct. 1, 1999
156-165	(869-038-00177-2)	21.00	Oct. 1, 1999
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-038-00180-2)	15.00	Oct. 1, 1999
47 Parts:			
*0-19	(869-038-00181-1)	39.00	Oct. 1, 1999
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-038-00186-1)	55.00	Oct. 1, 1999
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00189-6)	27.00	Oct. 1, 1999
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-038-00192-6)	25.00	Oct. 1, 1999
49 Parts:			
1-99	(869-038-00193-4)	34.00	Oct. 1, 1999
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-038-00195-1)	13.00	Oct. 1, 1999
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
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50 Parts:			
*1-199	(869-038-00200-1)	43.00	Oct. 1, 1999
200-599	(869-038-00201-9)	22.00	Oct. 1, 1999

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

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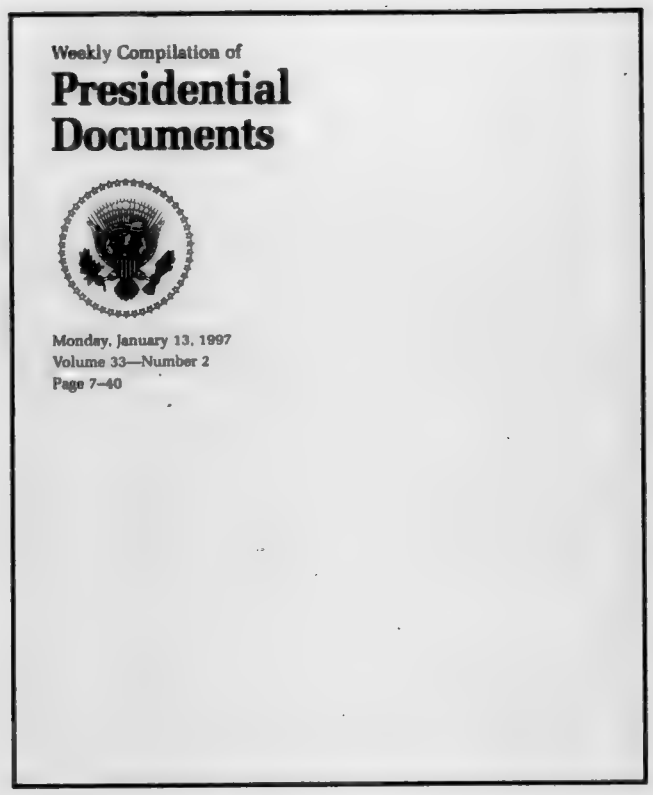

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Contents

Federal Register

Vol. 65, No. 16

Tuesday, January 25, 2000

Agency for International Development
NOTICES
Meetings:
Malaria Vaccine Development Program Federal Advisory Committee, 3937

Agriculture Department
See Federal Crop Insurance Corporation
See Foreign Agricultural Service
See Forest Service

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Baroid Corp. et al., 3977

Children and Families Administration
RULES
Foster care maintenance payments, adoption assistance, and child and family services:
Title IV-E foster care eligibility reviews and child and family services State plan reviews, 4019–4093
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3963–3964

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs Service
RULES
Drawback:
False drawback claims; penalties, 3803–3812
NOTICES
Customs bonds:
Authorized facsimile signatures and seals; approval to use, 4016–4017

Defense Department
NOTICES
Comprehensive small business subcontracting plans negotiation; test program, 3942–3944

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3944–3945
Submission for OMB review; comment request, 3945–3946
Grants and cooperative agreements; availability, etc.:
Developing Hispanic-Serving Institutions Program, 3946–3948
Elementary and secondary education—
Safe and Drug-Free Schools and Communities National Programs, 3948–3950
Postsecondary education:
National Direct and Federal Perkins Student Loan Programs; Directory of Designated Low-Income Schools; teacher cancellation benefits; availability, 3950–3951

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
2001 Future Energy Challenge; low-cost prototype inverters, 3951–3952

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin, 3860–3866
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Pulp and paper production, 3907–3936
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3957–3959
Meetings:
Scientific Counselors Board Executive Committee, 3959–3960
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Cherokee Nation, 3960–3962

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 3962

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 3799–3801
Boeing, 3801–3803
Eurocopter Deutschland GMBH, 3796–3798
McDonnell Douglas, 3794–3796
Short Brothers, 3798–3799

Federal Crop Insurance Corporation
RULES
Administrative regulations:
Reinsurance agreement; standards for approval; regulations for 1997 and subsequent reinsurance years, 3781–3782
Crop insurance regulations:
Forage production crop and forage seeding crop, 3782–3785

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 3962

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Cajun Electric Power Cooperative, Inc., et al., 3953–3955
Hydroelectric applications, 3955–3956
Meetings; Sunshine Act, 3956–3957
Applications, hearings, determinations, etc.:
Kern River Gas Transmission Co., 3953
Southwest Power Pool, Inc., 3953

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Jefferson, Clear Creek, Summit, Eagle, and Garfield Counties, CO, 4014–4015
Merced County, CA, 4015–4016

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulation Y):
Financial holding company requirements, 3785–3794
NOTICES
Banks and bank holding companies:
Change in bank control, 3962–3963
Formations, acquisitions, and mergers, 3963
Permissible nonbanking activities, 3963

Fish and Wildlife Service
RULES
Endangered and threatened species:
Rough popcornflower, 3866–3875
Willamette daisy, Fender's blue butterfly, and Kincaid's lupine, 3875–3890
NOTICES
Endangered and threatened species:
Endangered species conservation; habitat role clarification; workshops, 3972
Recovery plans—
Morro Bay kangaroo rat, 3973
Marine mammal permit applications:
Northern sea otters; extension of comment period, 3973

Foreign Agricultural Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Emerging Markets Program, 3937–3939

Forest Service
NOTICES
Appealable decisions; legal notice:
Southwestern Region, 3939–3941

Health and Human Services Department
See Children and Families Administration
See National Institutes of Health

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
NOTICES
Environmental statements; notice of intent:
Central Utah Project—
Diamond Fork System; action modifications, 3971–3972

Internal Revenue Service
RULES
Income taxes:
Intangible property; amortization, 3820–3843
Passive foreign investment companies—
Marketable stock definition, 3817–3820
Qualified covered calls; special rules and definitions, 3812–3814
S corporations—
Corporate subsidiaries treatment, 3843–3856
Small Business Job Protection Act of 1996—
Termination of Puerto Rico and possession tax credit; new lines of business prohibited, 3814–3817
PROPOSED RULES
Income taxes:
Partnerships; applying section 197 to amortization of intangible property, 3903–3907

International Trade Administration
NOTICES
Overseas trade missions:
2000 trade missions—
Private sector participants recruitment and selection (February-August), 3941–3942

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Atkemix Thirty-Seven, Inc., et al., 3975
Intalco Aluminum Corp., 3915–3976
Jupiter Oil Corp. et al., 3976
Production Plated Plastics, Inc., et al., 3976–3977

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3973–3975
Recreation management restrictions, etc.:
Scratchgravel Hills, Helena, MT; firearms, fireworks, and fires; prohibitions, 3975

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

Minerals Management Service
RULES
Outer Continental Shelf operations:
Royalty and offshore minerals management programs; appeals procedures; technical amendments, 3856–3857

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3980

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 3980

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 3965–3966
National Institute of Neurological Disorders and Stroke, 3965
National Institute of Nursing Research, 3965
Scientific Review Center, 3966–3967
Privacy Act:
Systems of records, 3967–3971

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 3892–3902

West Coast States and Western Pacific fisheries—
Coastal pelagic species, 3890–3892
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 3942

Northeast Dairy Compact Commission
NOTICES
Meetings, 3980

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act,
Reports and guidance documents; availability, etc.:
Staff meetings open to public; policy statement, 3982–3983
Applications, hearings, determinations, etc.:
Sequoyah Fuels Corp., 3980–3981

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3977–3980

Postal Service
RULES
Freedom of Information Act; implementation, 3857–3859

Public Health Service
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Liberty All-Star Equity Fund et al., 3983–3986
Meetings; Sunshine Act, 3986–3987
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 3987–4005
New York Stock Exchange, Inc., 4005–4008
Pacific Exchange, Inc., 4008–4009
Philadelphia Stock Exchange, Inc., 4010–4012

State Department
NOTICES
Meetings:
United States-Canada air quality agreement to address transboundary problem of ground-level ozone; preparations for negotiations on annex, 4012–4013

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Industries, Inc., et al., 4016

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 4013–4014

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 4014
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 4014

Treasury Department
See Customs Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4017–4018

Separate Parts In This Issue

Part II
Department of Health and Human Services, Children and Families Administration, 4019–4093

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
400 3781
457 3782

12 CFR
225 3785

14 CFR
39 (5 documents) 3794, 3796, 3798, 3799, 3802

19 CFR
162 3803
171 3803
191 3803

26 CFR
1 (5 documents) 3813, 3814, 3817, 3821, 3844
301 3844
602 (2 documents) 3821, 3844

Proposed Rules:
1 3903

30 CFR
251 3856
254 3856
282 3856

39 CFR
265 3857

40 CFR
180 3860

Proposed Rules:
63 3907

45 CFR
1355 4020
1356 4020
1357 4020

50 CFR
17 (2 documents) 3867, 3876
660 3890
679 3892

Rules and Regulations

Federal Register
Vol. 65, No. 16
Tuesday, January 25, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is revising the General Administrative Regulations, Subpart-L Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years. The intended effect of this rule is to clarify the time frame in which all requests for a final agency determination must be submitted.

EFFECTIVE DATES: This rule is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Heyward Baker, Director, Reinsurance Services Division, telephone (202) 720–4232.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

It has been determined by OMB that this rule is exempt from the information collection requirement contained under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On August 22, 1988, FCIC has implemented a process in cases when it suspects a violation of the provisions of the Standard Reinsurance Agreement where it provides the applicable reinsured company with a copy of initial findings, allowed the reinsured company to respond, and then issued a final determination. If the reinsured company disputed the final determination, the reinsured company was required to appeal within 45 days of receipt of the determination to the Deputy Manager of FCIC.

On May 1, 1995, FCIC revised this appeals process and now when a reinsured company disputed the final determination it was required to request a final agency determination from the Director of Compliance. The process also stated that the reinsured company "may" request the final agency determination within 45 days. A controversy has arisen with respect to whether the 45 day time frame is mandatory or permissive. Although FCIC has always treated the 45 day time frame as mandatory under both the old and new process, and the reinsured companies have routinely complied with this requirement, FCIC is revising the language to make it clear that the 45 day time frame is a mandatory requirement.

FCIC is also revising the section to have all requests for a final agency determination be submitted to the Deputy Administrator for Insurance Services or the Deputy Administrator for Compliance to be in conformance with the renaming of titles in the recent reorganization.

The changes in this rule do not change current requirements as understood by the reinsured companies and FCIC. This rule is merely interpretative and, therefore, exempt from the requirements for notice and comment and the 30 day delay in the effectiveness of this rule.

List of Subjects in 7 CFR Part 400

Administrative practice and procedures, Claims, Crop insurance, Penalties.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 400 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Section 400.169 is revised to read as follows:

§ 400.169 Disputes.

(a) If the company believes that the Corporation has taken an action that is not in accordance with the provisions of the Standard Reinsurance Agreement or any reinsurance agreement with FCIC, except compliance issues, it may request the Deputy Administrator of Insurance Services to make a final administrative determination addressing the disputed action. The Deputy Administrator of Insurance Services will render the final administrative determination of the Corporation with respect to the applicable actions. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt after the disputed action.

(b) With respect to compliance matters, the Compliance Field Office renders an initial finding, permits the company to respond, and then issues a final finding. If the company believes that the Compliance Field Office's final finding is not in accordance with the applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may request, the Deputy Administrator of Compliance to make a final administrative determination addressing the disputed final finding. The Deputy Administrator of Compliance will render the final administrative determination of the Corporation with respect to these issues. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt of the final finding.

(c) A company may also request reconsideration by the Deputy Administrator of Insurance Services of a decision of the Corporation rendered under any Corporation bulletin or directive which bulletin or directive does not interpret, explain, or restrict the terms of the reinsurance agreement. The company, if it disputes the Corporation's determination, must request a reconsideration of that determination in writing, within 45 days of the receipt of the determination. The determinations of the Deputy Administrator will be final and binding on the company. Such determinations will not be appealable to the Board of Contract Appeals.

(d) Appealable final administrative determinations of the Corporation under paragraph (a) or (b) of this section may be appealed to the Board of Contract Appeals in accordance with the provisions of subtitle A, part 24 of title 7 of the Code of Federal Regulations.

Signed in Washington, D.C., on January 18, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–1702 Filed 1–24–00; 8:45am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Production Crop Provisions; and Forage Seeding Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of forage production and forage seeding. The intended effect of this action is to provide policy changes to better meet the needs of the insured. The changes will be effective for the 2001 and subsequent crop years.

EFFECTIVE DATE: This rule is effective February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local

officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Thursday, August 26, 1999, FCIC published a notice of proposed rulemaking in the **Federal Register** at 64 FR 46599–46603 to revise 7 CFR 457.117, Forage Production Crop Insurance Provisions, 457.151 Forage Seeding Crop Insurance Provisions, and to delete 457.127 Forage Production Winter Coverage Endorsement, effective for the 2001 and succeeding crop years.

Following publication of the proposed rule on August 26, 1999, the public was afforded 30 days to submit written comments and opinions. A total of 8 comments were received from 2 reinsured companies, a Pennsylvania consulting firm, and the Pennsylvania State Secretary of Agriculture. The forage production comments received and FCIC's responses are as follows:

Comment: A reinsured company stated the provisions still contains a reference to the Winter Coverage Endorsement in section 7(c).

Response: FCIC has deleted the references.

Comment: A reinsured company recommended that optional units should not be available for forage producers because production records will need to be kept separate and, with multiple cuttings throughout the season, the insured would have to store or keep production records by optional units if a loss occurs.

Response: Producers are not required to obtain optional units. Offering optional units to forage producers will likely increase participation in the crop insurance program because there are some producers that feel it is worth the effort to maintain separate records, to get the additional benefit of optional units. Therefore, no change has been made.

Comment: A reinsured company asked whether the underwriting report is still required?

Response: The farmer certification and underwriting report is still required.

Comment: Reinsured companies, a Pennsylvania consulting firm, and the Pennsylvania Secretary of Agriculture expressed concern that forage production coverage should be raised to the level of other crop programs by providing quality adjustment provisions as in other crop insurance programs.

Response: It is important to provide quality protection to forage producers. However, at this time, FCIC has not been able to obtain the necessary data to offer coverage nor have the rates been established to cover the additional risks that may affect the quality of the forage. This would be a significant change that will likely result in higher premiums. FCIC will continue its effort to provide quality adjustment. Therefore, no change has been made.

Forage seeding comments and FCIC's responses are as follows:

Comment: A reinsured company stated that Wisconsin was omitted from the cancellation and termination dates list in section 5 of the proposed rule.

Response: FCIC has added Wisconsin.

Comment: A reinsured company recommended extending the forge seeding deadline in Wisconsin. They stated that a number of producers are seeding forage later than May and obtaining a successful stand. The Special Provisions lists May as deadline for seeding forage.

Response: FCIC welcomes producer data that helps to establish the appropriate seeding deadline for the various areas. However, it is too late to consider this information for the 2001 crop year. FCIC will consider this information for future changes in the deadlines. Therefore, no change has been made.

In addition to the changes described above, FCIC has made the following changes to the Forage Production Crop Provisions:

1. Section 1—Removed the definition of "crop year" from the final rule. The current regulation contains a more accurate definition of "crop year."

2. Section 7(a)(4) and (5)—Removed these provisions from the final rule because section 7(a)(5) was duplicative with section 7(a)(1) and section 7(a)(4) was inconsistent with section 7(a)(2) which stated that the insurance attaches for Lassen, Modoc, Mono, Shasta and Siskiyou Counties on April 15.

List of Subjects in 7 CFR Part 457

Crop insurance, Forage production, Forage seeding, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.117, for the 2001 and succeeding crop years, to read as follows:

PART 457–COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend 457.117 as follows:

Revise the heading and introductory text;

b. In section 1 of the crop insurance provisions delete the definitions of "fall planted" and "spring planted," add definitions of "direct marketing" and "windrow" and revise the definition of "cutting;"

c. In the crop insurance provisions delete section 2 and redesignate sections 3 through 12 as 2 through 11;

d. In the crop insurance provisions revise newly designated sections 4, 5, 6(a), 7(a), 7(b) introductory text and 7(b)(6), 8(b), 9, and 10(a); and

e. In the crop insurance provisions add examples (1) and (2) in section 10(b); all to read as follows:

§ 457.117 Forage production crop insurance provisions.

The Forage Production Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Cutting. The severance of the forage plant from its roots.

Direct marketing. Sale of the forage crop directly to consumers without the intervention of an intermediary such as a wholesaler, shipper, buyer, or broker. An example of direct marketing is selling directly to other producers.

* * * * *

Windrow. Forage that is cut and placed in a row.

* * * * *

4. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State	Cancellation/ termination date
California, Nevada and Utah	October 31;
All other states	September 30.

5. *Report of Acreage.*

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage production must be submitted on or before each forage production acreage reporting date specified in the Special Provisions.

6. *Insured Crop.*

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the forage in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share; and

(2) That is grown during one or more years after the year of establishment.

* * * * *

7. *Insurance Period.*

In lieu of the provisions of section 11 of the Basic Provisions:

(a) Insurance attaches on acreage with an adequate stand for the calendar year following the year of establishment for:

(1) All California counties accept Lassen, Modoc, Mono, Shasta and Siskiyou—December 1;

(2) Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington—April 15;

(3) Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming, and all other states—May 22;

(b) Insurance ends at the earliest of:

* * * * *

(6) The following dates of the crop year:

(i) California counties of Lassen, Modoc, Mono, Shasta and Siskiyou, and all other states—October 15;

(ii) The last day of the 12th month after the insured crop initially planted in all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou.

* * * * *

8. *Causes of Loss.*

* * * * *

(b) In addition to the causes of loss specifically excluded in section 12 of the Basic Provisions, we will not insure against damage of loss of production that occurs after removal from the windrow.

9. *Duties in the event of Damage or Loss.*

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the insured crop will not be harvested;

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing unless you have records verifying that the forage was direct marketed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal;

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and will be included as production to count; and

(d) You must notify us at least 5 days before grazing of insured forage begins so we can conduct an appraisal to determine production to count. Failure to give timely notice that the acreage will be grazed will result in an appraised amount of production to count of not less than the production guarantee per acre.

10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) * * *

(7) * * *

Example 1

Assume you have a 100 percent share in 100 acres of type A forage in the unit, with a guarantee of 3.0 tons per acre and a price election of $65.00 per ton. Due to adverse weather you were only able to harvest 50.0 tons. Your indemnity would be calculated as follows:

1. 100 acres type A × 3 tons = 300 ton guarantee;

2 & 3. 300 tons × $65 price election = $19,500 total value guarantee;

4 & 5. 50 tons production to count × $65 price election = $3,250 total value of production to count;

6. $19,500 value guarantee—$3,250 = $16,250 loss; and

7. $16,250 × 100 percent share = $16,250 indemnity payment.

Example 2

Assume you also have a 100 percent share in 100 acres of type B forage in the same unit, with a guarantee of 1.0 ton per acre and a price election of $50.00 per ton. Due to adverse weather you were only able to harvest 5.0 tons. Your total indemnity for forage production for both types A and B in the same unit would be calculated as follows:

1. 100 acres × 3 tons = 300 ton guarantee for type A; and 100 acres × 1 ton = 100 ton guarantee for type B;

2. 300 ton guarantee × $65 price election = $19,500 total value of the guarantee for type A; and 100 ton guarantee × $50 price election = $5,000 total value of the guarantee for type B;

3. $19,500 + $5,000 = $24,500 total value of the guarantee;

4. 50 tons × $65 price election = $3,250 total value of production to count for type A; and 5 tons × $50 price election = $250 total value of production to count for type B;

5. $3,250 + $250 = $ 3,500 total value of production to count for types A and B;

6. $24,500—$3,500 = $21,000 loss; and

7. $21,000 loss × 100 percent share = $21,000 indemnity payment.

* * * * *

3. Section 457.127 is removed and reserved.

4. Amend 457.151 as follows:

a. Revise the introductory text;

b. In the crop insurance provisions revise the definition in section 1 of "harvest";

c. In the crop insurance provisions redesignate sections 6 through 13 as 7 through 14;

d. In the crop insurance provisions revise section 5 and redesignated sections 7(b), 8, 11 introductory text, 11(a), 11(b), 13(a)(3);

e. In the crop insurance provisions add a new section 6 and an example to redesignated section 13(a)(3); all to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. *Definitions.*

* * * * *

Harvest. Severance of the forage plant from its roots. Acreage that is only grazed will not be considered harvested.

* * * * *

5. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation/termination dates
California, Nevada, New Hampshire, New York, Pennsylvania and Vermont.	July 31.
Montana, Minnesota, North Dakota, South Dakota, Wisconsin and Wyoming.	March 15.

6. *Report of Acreage.*

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage seeding must be submitted on or before each forage seeding acreage report date specified in the Special Provisions.

7. *Insured Crop.*

* * * * *

(b) That is planted during the current crop year, or replanted during the calendar year following planting, to establish a normal stand of forage;

* * * * *

8. *Insurable Acreage.*

In addition to the provisions of section 9 of the Basic Provisions:

(a) In California counties Lassen, Modoc, Mono, Shasta, Siskiyou and all other states, any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than 75 percent of a normal stand, must be replanted unless we agree that it is not practical to replant; and

(b) In California, unless otherwise specified in the Special Provisions, any acreage of the insured crop damaged anytime during the crop year to the extent that such acreage has less than 75 percent of a normal stand must be replanted unless it cannot be replanted and reach a normal stand within the insurance period.

* * * * *

11. *Replanting Payment.*

In lieu of the provisions contained in section 13 of the Basic Provisions:

(a) A replanting payment is allowed if:

(1) In California, unless specified otherwise in the Special Provisions, acreage planted to the insured crop is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of a normal stand remains and the crop can reach maturity before the end of the insurance period;

(2) In Lassen, Modoc, Mono, Shasta, Siskiyou Counties, California, and all other states:

(i) A replanting payment is allowed only whenever the Special Provisions designate both fall and spring final planting dates;

(ii) The insured fall planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent of a normal stand remains;

(iii) It is practical to replant;

(iv) We give written consent to replant; and

(v) Such acreage is replanted the following spring by the spring planting date.

(b) The amount of the replanting payment will be equal to 50 percent of the amount of indemnity determined in accordance with section 13 unless otherwise specified in the Special Provisions.

* * * * *

13. *Settlement of Claim.*

(a) * * *

(3) Multiplying the total acres with an established stand for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;

Example

Assume you have 100 percent share in 30 acres of type A forage in the unit, with an amount of insurance of $100.00 per acre. At the time of loss, the following findings are established: 10 acres had a remaining stand of 75 percent or greater. You also have 20 acres of type B forage in the unit, with an amount of insurance of $90.00 per acre. 10 acres had with a remaining stand of 75 percent or greater. Your indemnity would be calculated as follows:

1. 30 acres × $100.00 = $3,000 amount of insurance for type A;

20 acres × $90.00 = $1,800 amount of insurance for type B;

2. $3,000 + $1,800 = $4,800 total amount of insurance;

3. 10 acres with 75% stand or greater × $100 = $1,000 production to count for type A;

10 acres with 75% stand or greater × $90 = $900 production to count for type B;

4. $1,000+$900 = $1,900 total production to count;

5. $4,800 − $1,900 = $2,900 loss;

6. $2,900×100 percent share = $2,900 indemnity payment.

* * * * *

Signed in Washington, DC, on January 18, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–1703 Filed 1–24–00; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1057]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting on an interim basis effective March 11, 2000, and soliciting comment on a rule that establishes procedures for bank holding companies as well as foreign banks that operate a branch, agency, or commercial lending company in the United States to elect to become financial holding companies. The interim rule includes amended definitions of terms in existing Subpart A that are applicable to the new Subpart. The Board is promulgating this rule to implement provisions of the recently enacted Gramm-Leach-Bliley Act that enable bank holding companies and foreign banks that meet applicable statutory requirements to become financial holding companies and thereby engage in a broader range of financial and other activities than are permissible for bank holding companies.

The new Subpart sets forth the procedures by which bank holding companies and foreign banks may submit to the Board an election to become a financial holding company and describes the period in which the Board will act on financial holding company elections. This Subpart also enumerates the criteria that bank holding companies and foreign banks must meet in order to qualify as a financial holding company. In addition, the newly added sections set forth the limitations that the Board will apply to financial holding companies that fail to maintain compliance with applicable capital, management, and CRA criteria.

The Board has promulgated this Subpart on an interim basis, effective on March 11, 2000, in order to allow bank holding companies and foreign banks that meet applicable qualifications to become financial holding companies as soon as possible following the effective date of the relevant provisions of the Gramm-Leach-Bliley Act. The Board will allow bank holding companies and foreign banks to file elections in anticipation of the effective date of the Act and the interim rule and will review elections as promptly as possible after the effective date. The Board anticipates that as soon as March 13, 2000, the Board will begin notifying qualifying companies that elections filed in accordance with the interim rule are effective. This will enable companies that the Board determines qualify as financial holding companies to take advantage of the new powers granted by the Gramm-Leach-Bliley Act as early as March 13, 2000, which is the first business day following the effective date of the financial holding company provisions of the Act.

The Board solicits comments on all aspects of the interim rule and will amend the rule as appropriate in response to comments received.

DATES: This interim rule is effective on March 11, 2000. Comments must be received by March 27, 2000.

ADDRESSES: Comments should refer to docket number R–1057 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 on weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas M. Corsi, Managing Senior Counsel (202/452–3275), Ann E. Misback, Managing Senior Counsel (202/452–3788), Christopher W. Clubb, Counsel (202/452–3904), or Adrianne G. Threatt, Attorney (202/452–3554), Legal Division; Betsy Cross, Assistant Director (202/452–2574) or Melissa W. Clark, Manager, Global/International Applications (202/452–2277), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

Title I of the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)) repeals sections 20 and 32 of the Glass-Steagall Act (12 U.S.C. §§ 377 and 78, respectively) and is intended to facilitate affiliations among banks, securities firms, insurance firms, and other financial companies. To further this goal, the Gramm-Leach-Bliley Act amends section 4 of the Bank Holding Company Act (12 U.S.C. § 1843) ("BHC Act") to authorize bank holding companies and foreign banks that qualify as "financial holding companies" to engage in securities, insurance and other activities that are financial in nature or incidental to a financial activity. The activities of bank holding companies and foreign banks that are not financial holding companies would continue to be limited to activities authorized currently under the BHC Act, such as activities that the Board previously has determined in regulations and orders issued under section 4(c)(8) of the BHC Act to be closely related to banking and permissible for bank holding companies.

The Gramm-Leach-Bliley Act defines a financial holding company as a bank holding company that meets certain eligibility requirements. In order for a bank holding company to become a financial holding company and be eligible to engage in the new activities authorized under the Gramm-Leach-Bliley Act, the Act requires that all depository institutions controlled by the bank holding company be well capitalized and well managed. With regard to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, the Act requires the Board to apply comparable capital and management standards that give due regard to the principle of national treatment and equality of competitive opportunity.

To become a financial holding company, the Gramm-Leach-Bliley Act requires a bank holding company to submit to the Board a declaration that the company elects to be a financial holding company and a certification that all of the depository institutions controlled by the company are well capitalized and well managed. The Act also provides that a bank holding company's election to become a financial holding company will not be effective if the Board finds that, as of the date the company submits its election to the Board, not all of the insured depository institutions controlled by the company have achieved at least a "satisfactory" rating at the most recent examination of the institution under the Community Reinvestment Act (12 U.S.C. § 2903 *et seq.*) ("CRA").

The Gramm-Leach-Bliley Act grants the Board discretion to impose limitations on the conduct or activities of any financial holding company that controls a depository institution that does not remain both well capitalized and well managed following the company's election to be a financial holding company. The Act also requires the Board to prohibit a financial holding company from commencing additional activities under new subsection 4(k) or 4(n) of the BHC Act, or from acquiring control of companies engaged in such activities, if any insured depository institution controlled by the company fails to maintain at least a satisfactory CRA rating.

Interim Rule

In order to implement the provisions of the Gramm-Leach-Bliley Act governing the creation and conduct of financial holding companies, the Board is amending its Regulation Y by adding a Subpart I that (a) defines the term "financial holding company" and establishes procedures by which a bank holding company may become a financial holding company; (b) enumerates the criteria a bank holding company must meet in order for the Board to determine that an election is effective and describes the period within which the Board will act on an election; (c) sets forth the consequences if any depository institution controlled by a financial holding company fails to remain well capitalized and well managed, or if any insured depository institution controlled by the financial holding company fails to maintain at least a satisfactory CRA rating; and (d) specifically addresses procedures and requirements applicable to foreign banking organizations that seek to be treated as financial holding companies.

The Board welcomes comment on all parts of the interim rule.

Section 225.81 What is a Financial Holding Company?

The Gramm-Leach-Bliley Act defines a financial holding company as a bank holding company that meets certain specific requirements. In accordance with the Act, section 225.81 provides that, in order to qualify as a financial holding company, all depository institutions controlled by the company at the time of the election must be and

remain well capitalized and well managed, and the company must have made an effective election to become a financial holding company as described in section 225.82. The definition of the terms "well capitalized" and "well managed" are described below and are based on specific capital levels and examination ratings.

Section 225.82 How Does a Company Elect to Become a Financial Holding Company?

Subsection (a) provides that a bank holding company wishing to become a financial holding company must file a written declaration with the Board stating that the bank holding company elects to be a financial holding company. The Board envisions that a company's election to become a financial holding company could be a short and simple document signed by an official or representative with authority to bind the company. Subsection (b) sets forth the information required as part of a declaration, which is limited to information about the location and capital position of each of the depository institutions controlled by the company, and a certification that each such institution is both well capitalized and well managed as of the date the election is filed.

The Gramm-Leach-Bliley Act provides that an election to be a financial holding company is ineffective if the Board finds, within a specified period, that any insured depository institution controlled by the bank holding company (other than a recently acquired institution) does not have at least a satisfactory CRA performance rating. Subsection (c) implements this provision. The interim rule also provides that an election is ineffective if the Board finds during this period that any depository institution controlled by the bank holding company is not well managed and well capitalized, as these terms are objectively defined, as of the date of the election.

The Board recognizes that there may be instances in which a bank holding company meets the statutory requirements to be a financial holding company but on a consolidated basis is not well capitalized and well managed or does not have adequate financial or managerial resources to conduct financial activities in a safe and sound manner. Under these circumstances, the Board may have significant supervisory concerns about the ability of the company to conduct additional activities or make additional acquisitions. Subsection (d) reserves the general supervisory authority of the Board to restrict or limit the commencement or conduct of activities or acquisitions of a financial holding company if the Board finds that the financial holding company lacks the financial or managerial strength to engage in new activities, make new acquisitions, or retain ownership of companies engaged in financial activities.

Subsection (e) describes circumstances under which the Gramm-Leach-Bliley Act allows the Board to exclude an insured depository institution when reviewing whether a bank holding company meets the applicable CRA requirement for financial holding companies. As provided in the Act, the Board will not consider institutions acquired by the company within the 12-month period preceding an election to be a financial holding company for purposes of the CRA criteria provided that (i) the bank holding company has submitted a plan to the appropriate Federal banking agency for the institution to take actions necessary to achieve at least a "satisfactory" rating at the next CRA examination, and (ii) the appropriate Federal banking agency has accepted that plan.

Subsection (f) provides that, as a general matter, an election by a bank holding company to become a financial holding company will be effective on the 31st day after the election was received by the appropriate Federal Reserve Bank, unless the Board has notified the bank holding company prior to that date that its election is ineffective because an institution controlled by the company fails to meet an applicable requirement. The interim rule provides that the Board or the appropriate Federal Reserve Bank may affirmatively notify a bank holding company that an election is effective at any time during that 30-day period.

As noted above, the Board proposes to adopt the proposed rule on an interim basis, effective March 11, 2000 (which is the effective date of the financial holding company provisions of the Gramm-Leach-Bliley Act). This will allow bank holding companies and foreign banks that meet the qualifications to be financial holding companies to take advantage of the new authority granted by the Gramm-Leach-Bliley Act as soon as possible following the effective date of the relevant provisions of the Act.

The Board also proposes to allow bank holding companies and foreign banks to file elections to become financial holding companies immediately in anticipation of the effective date of the Act and interim rule. These elections will be considered to be made as of March 11, 2000, and must certify compliance with all applicable capital and management criteria as of March 11, 2000. While the 30-day period for ineligibility decisions does not begin on any election until the effective date of the Act, the Board will endeavor on March 13, 2000, which is the first business day following the effective date of the financial holding company provisions of the Act, to act on elections filed prior to February 15, 2000. The Board will act on all other elections as soon as practicable. Prior to the date that its election to become a financial holding company becomes effective, a bank holding company may not engage in the newly authorized activities described in new sections 4(k), 4(n), and 4(o) of the BHC Act.

Companies that are not now bank holding companies and seek to acquire a depository institution must still apply to the Board to become a bank holding company under section 3 of the BHC Act. A company may file a bank holding company application and a declaration to be a financial holding company at the same time. In that case, it is expected that the System would act to make the financial holding company election effective at the time the System acts on the underlying bank holding company application. Consequently, the company could become a financial holding company without filing a separate election after the company becomes a bank holding company.

Section 225.83 What Are the Consequences of Ceasing to Meet Applicable Capital and Management Requirements?

This section implements the provisions of the Gramm-Leach-Bliley Act that apply when a depository institution controlled by an existing financial holding company ceases to be both well capitalized and well managed. Subsection (a) states that the Board will notify a company in writing if the Board finds that not all depository institutions controlled by the company are well capitalized and well managed. In recognition of the fact that a company may know that one of its subsidiary depository institutions has ceased to be well capitalized or well managed before the Board will have access to such data, subsection (b) requires companies to notify the Board of the institutions involved and the areas of noncompliance promptly upon becoming aware of that the institution no longer meets applicable capital or management criteria.

Subsection (c) provides that, within 45 days (plus any additional time that the Board may grant) after receiving a

notice of noncompliance from the Board, the company must execute an agreement with the Board to comply with applicable capital and management requirements. An agreement required by this subsection to correct a capital or management deficiency must explain the actions that the company will take to correct each deficiency, provide a schedule within which each action will be taken, provide any other information required by the Board, and be acceptable to the Board.

Until a company has corrected the conditions described in a notice provided by the Board under subsection (a), the Gramm-Leach-Bliley Act allows the Board to impose any limitations on the conduct or activities of the company or any of its affiliates as the Board deems to be appropriate and consistent with the purposes of the BHC Act. In particular, subsection (d) states that, until the Board determines that all deficiencies have been corrected, a company may not engage in any additional activity or acquire control or shares of any company under section 4(k) of the BHC Act without prior approval from the Board.

Subsection (e) provides that, if the conditions giving rise to a notice of noncompliance are not corrected within 180 days (or such longer period permitted by the Board), the Board may order the company to divest its subsidiary depository institutions. A company may comply with an order to divest by instead ceasing to engage in activities that are permissible only for financial holding companies. The Board's ability to require divestitures and impose limitations on financial holding companies that fail to meet the capital and management requirements is in addition to, not in lieu of, the Board's ability to take supervisory actions and enforce compliance with applicable provisions of law under section 8 of the BHC Act and section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

Section 225.84 What Are the Consequences of Ceasing to Maintain a Satisfactory or Better Rating Under the Community Reinvestment Act at All Insured Depository Institution Subsidiaries?

The Gramm-Leach-Bliley Act requires the Board to prohibit a financial holding company from commencing any additional activity under sections 4(k) or 4(n) of the BHC Act, or from acquiring control of a company engaged in activities under those sections, if any insured depository institution controlled by the company receives a rating of less than "satisfactory" under the CRA. Subsection (a) provides that a financial holding company is deemed to have received notice that these prohibitions are in effect at the time the appropriate Federal banking agency for any insured depository institution controlled by the company or the Board notifies the institution or company that the institution has received a rating of "needs to improve" or "substantial noncompliance" under the CRA. The prohibitions will continue to apply until such time as each insured depository institution controlled by the company has received at least a "satisfactory" rating at its most recent examinations under the CRA.

This prohibition does not prevent a financial holding company from making additional investments as part of merchant banking, investment banking, or insurance company investment activities pursuant to section 4(k)(4)(H) or 4(k)(4)(I) of the BHC Act, provided that the company was lawfully engaged in the merchant banking, investment banking, or insurance company investment activity prior to the time that one of its insured depository institutions received less than a "satisfactory" rating under the CRA and the Board has not prohibited or limited these activities.

Under the Gramm-Leach-Bliley Act, financial holding companies that do not comply with the CRA requirement are not prohibited from making acquisitions or engaging in activities that meet the more narrow "closely related to banking" standard pursuant to 4(c)(8). Financial holding companies that seek to engage in activities or make acquisitions pursuant to section 4(c)(8) of the BHC Act must, however, comply with the requirements of that section as well as the notice and approval requirements of section 4(j).

Section 225.90 What are the Requirements for a Foreign Bank to be Treated as a Financial Holding Company?

A foreign bank that is a bank holding company because it owns a subsidiary bank in the United States must comply with the same requirements as any other bank holding company that elects to be a financial holding company. Most foreign banks, however, do not own subsidiary banks in the United States; instead, they operate through branches that are part of the foreign bank itself. [1] If a foreign bank operates a U.S. branch, the foreign bank (and any company that controls the foreign bank) is subject to the BHC Act as if the foreign bank or company were a bank holding company. Such foreign banks may, like U.S. bank holding companies, also elect to be treated as financial holding companies and thereby be able to engage in the new financial activities.

Under the Gramm-Leach-Bliley Act, a company qualifies to be a financial holding company only if its insured bank and thrift subsidiaries are well capitalized and well managed. These standards are not by their terms applicable to the branches of a foreign bank. Consequently, the Act provides that "the Board shall apply comparable capital and management standards to a foreign bank that operates a branch * * * in the United States giving due regard to the principle of national treatment and equality of competitive opportunity." The provision is necessary because it would be competitively harmful if a foreign bank that conducts a banking business in the United States in direct competition with U.S. banks could be treated as a financial holding company without meeting standards comparable to those applicable to U.S. banks. Without such a provision, a foreign bank could make securities and insurance acquisitions without meeting standards comparable to those applicable to U.S. banks, simply because the foreign bank conducts its U.S. banking business through a branch rather than through a subsidiary bank.

As described below, the Board is proposing to adopt standards and procedures that establish a flexible approach to carry out the statutory requirement for comparability of capital and management standards while, at the same time, assuring national treatment and equality of competitive opportunity for foreign banks operating in the United States.

Section 225.90 of the new Subpart sets forth the capital and management standards that foreign banks that maintain a branch, agency, or commercial lending company in the United States must meet in order to be considered to be "well capitalized" and "well managed" for purposes of being treated as financial holding companies. Under section 225.90, in order for a foreign bank or company to be treated as a financial holding company, the foreign bank must be well capitalized and well managed in accordance with standards comparable to those required of U.S. banks as determined by the Board, taking into account certain financial factors that may affect the analysis of capital and management.

[1] A foreign bank that operates a branch, agency or commercial lending company subsidiary in the United States is subject to the BHC Act as if it were a bank holding company. In this notice, the term "branch" is used to include all three forms of operation.

Section 225.90 provides two methods under which a foreign bank may be considered well capitalized. The first method is applicable to foreign banks whose home country supervisors have adopted risk-based capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision (Basel Accord). Under this method, the foreign bank's total and Tier 1 risk-based capital ratios, as calculated under its home country standard, must be at least 6 percent for Tier 1 capital to total risk-based assets and 10 percent for total capital to risk-based assets.

In addition, section 225.90 requires that the foreign bank's ratio of Tier 1 capital to total assets must be at least 3 percent. The Board solicits comment on this requirement. The Board believes that the imposition of a leverage ratio requirement on a foreign bank maintaining a branch, agency, or commercial lending company in the United States and that elects to be treated as a financial holding company is appropriate in order to ensure that the capital standards applicable to foreign banking organizations are comparable to those for domestic depository institutions. In addition, the Board believes that imposing a 3 percent leverage ratio requirement, rather than the 5 percent required for domestic depository institutions, is appropriate in recognition of the fact that foreign banks hold both banking and nonbanking operations under the foreign bank. Domestic bank holding companies, which also hold banking and nonbanking operations, are subject under Regulation Y to a minimum leverage ratio of 4 percent, or 3 percent if they have implemented the market risk amendment to the risk-based capital guidelines or have a composite supervisory rating of "1." Most internationally active foreign banks also follow the market risk guidelines.

The Board recognizes that many countries do not impose a leverage ratio or similar requirements. U.S. banks are, however, subject to a leverage ratio requirement and in order to assure comparability of capital standards, a leverage ratio requirement for foreign banks is being proposed.

The second method for a foreign banking organization to be considered well capitalized in section 225.90 applies to foreign banks whose home country supervisors have not adopted the Basel Accord standards and to any other foreign banking organizations that otherwise do not meet the standards set out under the first method. Any such institution may be considered "well capitalized" only by obtaining from the Board a prior determination that its capital is otherwise comparable to the capital that would be required of a U.S. bank.

In order to qualify as well managed under section 225.90, each U.S. branch, agency, and commercial lending company of a foreign banking organization must have received at least a satisfactory composite rating at the most recent assessment. In addition, the home country supervisor of the foreign bank must consider the overall operations of the foreign bank to be satisfactory.

In determining whether a foreign bank is well capitalized and well managed, the Board may take into account the foreign bank's composition of capital, accounting standards, long-term debt ratings, reliance on government support to meet capital standards, the extent to which the foreign bank is subject to comprehensive consolidated supervision, and other factors that may affect the analysis of capital and management. The Board will consult with the home country supervisor for the foreign bank as appropriate. The information gathered under these factors will assist the Board in determining whether the foreign bank operates under capital and managerial standards that are comparable to those applied to U.S. banks. The Board expects that most foreign banks that elect to be treated as financial holding companies will be subject to comprehensive consolidated supervision. An election by a foreign bank that is not subject to comprehensive consolidated supervision will receive a more detailed review.

Section 225.91 How May a Foreign Bank Elect To be Treated as a Financial Holding Company?

The procedures applicable to a foreign bank, or company that owns or controls the foreign bank, electing to become a financial holding company are similar to the procedures discussed above for domestic bank holding companies. The foreign bank or company must file a written declaration with the appropriate Reserve Bank that it elects to be treated as a financial holding company. The declaration must be accompanied by the risk-based and leverage capital ratios of the foreign bank as of the close of the most recent quarter and as of the close of the most recent audited reporting period, a certification that the foreign bank is well capitalized as of the date the foreign bank or company files its election, and a certification that the foreign bank is well managed as of the date the foreign bank or company files its election.

Section 225.92 How Does an Election by a Foreign Bank Become Effective?

An election filed by a foreign bank or company to become a financial holding company under section 225.91 will not become effective until the Board notifies the foreign bank or company that the foreign bank meets the standards set out above. The Board will notify the foreign bank or company of its finding within 30 days of the filing of the written declaration, unless the Board determines that it does not have sufficient information on which to base a determination. Before filing an election to be treated as a financial holding company, a foreign bank or company may file with the Board a request for review of its qualifications to be treated as a financial holding company. The Board will endeavor to make a determination on such requests within 30 days of receipt.

An election filed by a foreign bank or company under this section will be effective only if the Board finds that the foreign bank is well capitalized and well managed in accordance with capital and management standards comparable to those required of U.S. banks owned by financial holding companies, and, in the case of a foreign bank that operates a branch in the United States that is federally insured, the branch received a rating of at least "satisfactory" under the CRA at its most recent examination.

Section 225.93 What are the Consequences of a Foreign Bank Failing to Continue to Meet Applicable Capital and Management Requirements?

This section parallels section 225.83, with appropriate modifications. It sets forth the procedures to be followed in the event that a foreign bank that is treated as a financial holding company ceases to meet the applicable capital and management requirements. It provides for the execution of an agreement designed to bring the foreign bank back into compliance with the requirements of the regulation and permits the Board to impose certain limitations on the U.S. activities of such a foreign bank during any period of noncompliance. Finally, the section sets forth the consequences of a failure to correct the noncompliance within a period of 180 days. Such consequences could include termination of the foreign bank's U.S. branches and agencies and divestiture of its commercial lending company subsidiaries or ceasing to engage in the expanded activities permitted for financial holding companies.

Section 225.94 What are the Consequences of an Insured Branch Failing to Maintain a Satisfactory or Better Rating Under the Community Reinvestment Act?

This section provides that the provisions of section 225.84, with appropriate modifications, apply to a foreign bank that operates an insured branch, and its parent, and that is treated as a financial holding. For these purposes, the insured branch is treated as an "insured depository institution."

Subpart A General Provisions; Section 225.2—Definitions

The Board also is amending the definitions of "well capitalized" and "well managed" at sections 225.2(r)(2) and 225.2(s) to take account of the broader applicability of these definitions under the Gramm-Leach-Bliley Act. The definition of well capitalized has been amended to apply to all depository institutions, rather than insured depository institutions. The rule applies the same capital requirements to depository institutions that are not FDIC-insured for purposes of determining whether the institution is well capitalized as apply to insured depository institutions.

The definition of well managed has, in the case of depository institutions that have not received an examination rating, been amended in subparagraph (1)(ii) to allow the Board to determine that an institution is well managed after consulting with the appropriate Federal banking agency for the institution. In addition, the rule provides that a depository institution resulting from the merger of two or more institutions that are well managed would be considered to be well managed unless the Board determined otherwise after consulting with the appropriate Federal banking agency.

Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this interim regulation. This rule implements provisions of Title I of the Gramm-Leach-Bliley Act that allow entities that qualify as financial holding companies to engage in a broad range of securities, insurance, and other financial activities by providing the Board with a simple, post-commencement notice. The interim rule will enable bank holding companies and foreign banks that qualify as financial holding companies to engage in an expanded range of activities using a streamlined notification procedure.

The financial holding company election procedure described in this rule is voluntary, and the criteria set forth in the rule for an effective election filing are those required by the Gramm-Leach-Bliley Act. The Board has established a simple, one-time procedure involving minimum paperwork to fulfill the statutory election requirement. In addition, the new powers described in the Act and implemented by this regulation should enhance the overall efficiency of bank holding companies and the other financial companies that seek to affiliate with them. The rule applies to all companies that attempt to qualify as financial holding companies, regardless of their size, and allows small organizations to take advantage of the broad new powers conferred by the Gramm-Leach-Bliley Act with minimal additional burden. Finally, the Board specifically seeks comment on the likely burden this interim rule will impose on entities that elect to become financial holding companies.

Administrative Procedure Act

The Board will make this interim rule effective on March 11, 2000 without first reviewing public comments. Pursuant to 5 U.S.C. § 553, the Board finds that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective on March 11, 2000, due to the fact that the rule sets forth procedures to implement statutory changes that will become effective on March 11, 2000. The Board is seeking public comment on the interim rule and will amend the rule as appropriate after reviewing the comments.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

The collection of information requirements in this proposed rulemaking are found in 12 CFR 225.82 (a) and (b). This information is required to evidence compliance with the requirements of Title I of the Gramm-Leach-Bliley Act (Pub. L. No. 106–103, 113 Stat. 1338 (1999)) which amends section 4 of the Bank Holding Company Act (12 U.S.C. 1843). The respondents are current and future bank holding companies and foreign banking organizations.

The notice cited in 12 CFR 225.82(b) provides that a bank holding company may elect to become a financial holding company by filing a simple written declaration with the Federal Reserve. The declaration must include information identifying the company's subsidiary depository institutions and their capital ratios, and a certification that each depository institution is well capitalized and well managed (for specific details, see 12 CFR 225.82(b)). There will be no reporting form for this information collection. The agency form number for this declaration will be the FR 4010. The Board estimates that approximately half of all bank holding companies will file this declaration during the first year and that it will take on average approximately 15 minutes to complete this information. This would result in estimated annual burden of 625 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection is estimated to be $12,500.

The OMB control number for this interim rule is 7100–0292. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to this information collection unless the Board has displayed a valid OMB control number.

A bank holding company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANY AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831(i), 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.2(r)(2) and (s) are revised to read as follows:

§ 225.2 Definitions.

* * * * *

(r) * * *

(2) *Insured and uninsured depository institutions*— (i) *Insured depository institution.* In the case of an insured depository institution, "well capitalized" means that the institution has and maintains at least the capital levels required to be well capitalized under the capital adequacy regulations or guidelines applicable to the institution that have been adopted by the appropriate Federal banking agency for the institution under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(ii) *Uninsured depository institution.* In the case of a depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation, "well capitalized" means that the institution has and maintains at least the capital levels required for an insured depository institution to be well capitalized.

* * * * *

(s) *Well managed*—(1) *In general.* A company or depository institution is well managed if:

(i) At its most recent inspection or examination or subsequent review by the appropriate Federal banking agency for the company or institution, the company or institution received:

(A) At least a satisfactory composite rating; and

(B) At least a satisfactory rating for management and for compliance, if such a rating is given; or

(ii) In the case of a company or depository institution that has not received an examination rating, the Board has determined, after a review of managerial and other resources of the company or depository institution and after consulting the appropriate Federal banking agency for the institution, that the company or institution is well managed.

(2) *Merged institutions.* A depository institution that results from the merger of two or more depository institutions that are well managed shall be considered to be well managed unless the Board determines otherwise after consulting with the appropriate Federal banking agency for each depository institution involved in the merger.

(3) *Foreign banking organizations.* Except as otherwise provided in this part, a foreign banking organization shall qualify under this paragraph(s) if the combined operations of the foreign banking organization in the United States have received at least a satisfactory composite rating at the most recent annual assessment.

3. A new Subpart I is added after Subpart H to read as follows:

Subpart I—Financial Holding Companies

225.81 What is a financial holding company?
225.82 How does a company elect to become a financial holding company?
225.83 What are the consequences of failing to continue to meet applicable capital and management requirements?
225.84 What are the consequences of failing to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries?
225.90 What are the requirements for a foreign bank to be treated as a financial holding company?
225.91 How may a foreign bank elect to be treated as a financial holding company?
225.92 How does an election by a foreign bank become effective?
225.93 What are the consequences of a foreign bank failing to continue to meet applicable capital and management requirements?
225.94 What are the consequences of an insured branch failing to maintain a satisfactory or better rating under the Community Reinvestment Act?

Subpart I—Financial Holding Companies

§ 225.81 What is a financial holding company?

(a) *Definition.* A financial holding company is a bank holding company that meets the requirements of this section.

(b) *Requirements to be a financial holding company.* In order to be a financial holding company:

(1) All depository institutions controlled by the bank holding company must be and remain well capitalized;

(2) All depository institutions controlled by the bank holding company must be and remain well managed; and

(3) The bank holding company must have made an effective election to become a financial holding company.

(c) *Requirements for foreign banks that are or are owned by bank holding companies*—(1) *Foreign banks with U.S. branches or agencies.* A foreign bank that is a bank holding company and that operates a branch or agency or owns or controls a commercial lending company in the United States must comply with the requirements of this section, § 225.82 and §§ 225.90 through 225.93 in order to be a financial holding company.

(2) *Bank holding companies that own foreign banks with U.S. branches or agencies.* A bank holding company that owns a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States must comply with the requirements of this section and § 225.82, and the foreign bank must comply with §§ 225.90 through 225.93 in order for the company to be a financial holding company.

§ 225.82 How does a company elect to become a financial holding company?

(a) *Filing requirement.* A bank holding company may elect to become a financial holding company by filing a written declaration with the appropriate Federal Reserve Bank.

(b) *Contents of declaration.* The declaration must:

(1) State that the bank holding company elects to be a financial holding company;

(2) Provide the name and head office address of the company and of each depository institution controlled by the company;

(3) Certify that all depository institutions controlled by the company are well capitalized as of the date the company files its election;

(4) Provide the capital ratios for all relevant capital measures (as defined in section 38 of the Federal Deposit Insurance Act) as of the close of the previous quarter for each depository institution controlled by the company on the date the company files its election; and

(5) Certify that all depository institutions controlled by the company are well managed as of the date the company files its election.

(c) *Under what circumstances will the Board find an election to be ineffective?* An election to become a financial holding company shall not be effective if, during the period provided in paragraph (f) of this section, the Board

finds that as of the date the election is received by the appropriate Federal Reserve Bank:

(1) Any insured depository institution controlled by the bank holding company (except an institution excluded under paragraph (e) of this section) has not achieved at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the institution's most recent examination; or

(2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) *May the Board impose supervisory limits on financial holding companies?* The Board may, in the exercise of its supervisory authority, restrict or limit the commencement or conduct of additional activities or acquisitions of a financial holding company, or take other appropriate action, if the Board finds that the financial holding company does not have the financial resources, including capital resources, or managerial resources to engage in activities, make acquisitions, or retain ownership of companies permitted for financial holding companies.

(e) *How is CRA performance of recently acquired insured depository institutions considered?* An insured depository institution will be excluded for purposes of the review of CRA ratings described in paragraph (c)(1) of this section if:

(1) The bank holding company acquired the insured depository institution during the 12-month period preceding the filing of an election under paragraph (a) of this section;

(2) The bank holding company has submitted an affirmative plan to the appropriate Federal banking agency for the institution to take actions necessary for the institution to achieve at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the next examination of the institution; and

(3) The appropriate Federal banking agency for the institution has accepted that plan.

(f) *When is an election effective?* (1) *In general.* An election described in paragraph (a) of this section is effective on the 31st day after the date that the election was received by the appropriate Federal Reserve Bank, unless the Board notifies the bank holding company prior to that time that the election is ineffective.

(2) *Earlier notification that an election is effective.* The Board or the appropriate Federal Reserve Bank may notify a bank holding company that its election to become a financial holding company is effective prior to the 31st day after the election was filed with the appropriate Federal Reserve Bank. Such a notification must be in writing.

§ 225.83 What are the consequences of failing to continue to meet applicable capital and management requirements?

(a) *Notice by the Board.* If the Board finds that any depository institution controlled by a financial holding company ceases to be well capitalized or well managed, the Board will notify the company in writing that it is not in compliance with the applicable requirement(s) for a financial holding company and identify the areas of noncompliance.

(b) *Notification by a financial holding company required.* Promptly upon becoming aware that any depository institution controlled by the financial holding company has ceased to be well capitalized or well managed, the company must notify the Board and identify the depository institution involved and the area of noncompliance.

(c) *Execution of agreement acceptable to the Board*—(1) *Agreement required; time period.* Within 45 days after receiving a notice under paragraph (a) of this section, the company must execute an agreement acceptable to the Board to comply with all applicable capital and management requirements.

(2) *Extension of time for executing agreement.* Upon request by a company, the Board may extend the 45-day period under paragraph (c)(1) of this section if the Board determines that granting additional time is appropriate under the circumstances. A request by a company for additional time must include an explanation of why an extension is necessary.

(3) *Agreement requirements.* An agreement required by paragraph (c)(1) of this section to correct a capital or management deficiency must:

(i) Explain the specific actions that the company will take to correct all areas of noncompliance;

(ii) Provide a schedule within which each action will be taken;

(iii) Provide any other information that the Board may require; and

(iv) Be acceptable to the Board.

(d) *Limitations during period of noncompliance.* Until the Board determines that a company has corrected the conditions described in a notice under paragraph (a) of this section:

(1) The Board may impose any limitations or conditions on the conduct or activities of the company or any of its affiliates as the Board finds to be appropriate and consistent with the purposes of the Bank Holding Company Act; and

(2) The company and its affiliates may not engage in any additional activity or acquire control or shares of any company under section 4(k) of the Bank Holding Company Act without prior approval from the Board.

(e) *Consequences of failure to correct conditions within 180 days*—(1) *Divestiture of depository institutions.* If a company does not correct the conditions described in a notice under paragraph (a) of this section within 180 days of receipt of the notice or such additional time as the Board may permit, the Board may order the company to divest ownership or control of any depository institution owned or controlled by the company. Such divestiture must be done in accordance with the terms and conditions established by the Board.

(2) *Alternative method of complying with a divestiture order.* A company may comply with an order issued under paragraph (e)(1) of this section by ceasing to engage (both directly and through any subsidiary that is not a depository institution or a subsidiary of a depository institution) in all activities that are not permissible for a bank holding company to conduct under section 4(c)(8) of the Bank Holding Company Act. The termination of activities must be done within the time period referred to in paragraph (e)(1) of this section and subject to terms and conditions acceptable to the Board.

(f) *Consultation with other agencies.* In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities.

§ 225.84 What are the consequences of failing to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries?

(a) *Limitations on activities*—(1) *In general.* Upon receiving a notice regarding performance under the Community Reinvestment Act in accordance with paragraph (a)(2) of this section, a financial holding company may not:

(i) Commence any additional activity under subsection 4(k) or 4(n) of the Bank Holding Company Act; or

(ii) Directly or indirectly acquire control of a company engaged in any activity under subsections 4(k) or 4(n) of the Bank Holding Company Act.

(2) *Notification.* A financial holding company receives notice for purposes of this paragraph at the time that the appropriate Federal banking agency for any insured depository institution controlled by the company or the Board

provides notice to the institution or company that the institution has received a rating of "needs to improve record of meeting community credit needs" or "substantial noncompliance in meeting community credit needs" in the institution's most recent examination under the Community Reinvestment Act.

(b) *Exception for certain activities*—(1) *Continuation of investment activities.* The prohibition in paragraph (a) of this section does not prevent a financial holding company from continuing to make investments in the ordinary course of conducting investment activities under section 4(k)(4)(H) or insurance company investment activities under section 4(k)(4)(I) of the Bank Holding Company Act if:

(i) The financial holding company lawfully was a financial holding company and commenced the investment activity under section 4(k)(4)(H) or the insurance company investment activities under section 4(k)(4)(I) prior to the time that an insured depository institution controlled by the financial holding company received a rating below "satisfactory record of meeting community credit needs" under the Community Reinvestment Act; and (ii) The Board has not, in the exercise of its supervisory authority, advised the financial holding company that these activities must be restricted.

(2) *Activities that are closely related to banking.* The prohibition in paragraph (a) of this section does not prevent a financial holding company from commencing any additional activity or acquiring control of a company engaged in any activity under section 4(c) of the Bank Holding Company Act, if the company complies with the notice, approval, and other requirements under that section and section 4(j).

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as each insured depository institution controlled by the financial holding company has achieved at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the most recent examination of the institution.

§ 225.90 What are the requirements for a foreign bank to be treated as a financial holding company?

(a) *Foreign banks as financial holding companies.* A foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, and any company that owns or controls such a foreign bank, will be treated as a financial holding company if:

(1) The foreign bank is and remains well capitalized and well managed; and (2) The foreign bank, or the company that owns the foreign bank, has made an effective election to be treated as a financial holding company under this subpart.

(b) *Standards for "well capitalized."* A foreign bank will be considered "well capitalized" if either:

(1)(i) Its home country supervisor, as defined in § 211.21 of the Board's Regulation K (12 CFR 211.21), has adopted risk-based capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision (Basel Accord);

(ii) The foreign bank maintains a Tier 1 capital to total risk-based assets ratio of 6 percent and a total capital to total risk-based assets ratio of 10 percent, as calculated under its home country standard;

(iii) The foreign bank maintains a Tier 1 capital to total assets leverage ratio of at least 3 percent; and

(iv) The Board determines that the foreign bank's capital is comparable to the capital required for a U.S. bank owned by a financial holding company; or

(2) The foreign bank has obtained a determination from the Board under § 225.91(c) that the foreign bank's capital is otherwise comparable to the capital that would be required of a U.S. bank owned by a financial holding company.

(c) *Standards for "well managed."* A foreign bank will be considered "well managed" if:

(1) Each of the U.S. branches, agencies, and commercial lending subsidiaries of the foreign bank has received at least a satisfactory composite rating at its most recent assessment;

(2) The home country supervisor of the foreign bank considers the overall operations of the foreign bank to be satisfactory or better; and

(3) The Board determines that the management of the foreign bank meets standards comparable to those required of a U.S. bank owned by a financial holding company.

§ 225.91 How may a foreign bank elect to be treated as a financial holding company?

(a) *Filing requirement.* A foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, or a company that owns or controls such a foreign bank, may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank.

(b) *Contents of declaration.* The declaration must:

(1) State that the foreign bank or the company elects to be treated as a financial holding company;

(2) Provide the risk-based and leverage capital ratios of the foreign bank as of the close of the most recent quarter and as of the close of the most recent audited reporting period;

(3) Certify that the foreign bank meets the standards of well capitalized set out in § 225.90(b)(1)(i),(ii) and (iii) or § 225.90(b)(2) as of the date the foreign bank or company files its election; and

(4) Certify that the foreign bank is well managed as defined in § 225.90(c)(1) and (2) as of the date the foreign bank or company files its election.

(c) *Pre-clearance process.* Before filing an election to be treated as a financial holding company, a foreign bank or company may file a request for review of its qualifications to be treated as a financial holding company. The Board will endeavor to make a determination on such requests within 30 days of receipt.

§ 225.92 How does an election by a foreign bank become effective?

(a) *In general.* An election filed by a foreign bank or company under § 225.91 will not be effective unless the Board determines that—

(1) The foreign bank is well capitalized and well managed; and

(2) In the case of a foreign bank that operates a branch in the United States that is insured by the Federal Deposit Insurance Corporation, the branch has received at its most recent examination a rating of "satisfactory record of meeting community credit needs" or better under the Community Reinvestment Act.

(b) *Factors used in the Board's determination regarding comparability of capital and management.* In determining whether a foreign bank is well capitalized and well managed in accordance with comparable capital and management standards, the Board will give due regard to national treatment and equality of competitive opportunity. In this regard, the Board may take into account the foreign bank's composition of capital, accounting standards, long-term debt ratings, reliance on government support to meet capital requirements, the extent to which the foreign bank is subject to comprehensive consolidated supervision, and other factors that may affect analysis of capital and management. The Board will consult

with the home country supervisor for the foreign bank as appropriate.

(c) *Timing.* The Board will notify a foreign bank or company of its determination under this section within 30 days of the filing of the election unless the Board determines that it does not have sufficient information on which to base a finding.

§ 225.93 What are the consequences of a foreign bank failing to continue to meet applicable capital and management requirements?

(a) *Notice by the Board.* If a foreign bank or company has made an effective election to be treated as a financial holding company under this subpart and the Board finds that the foreign bank ceases to be well capitalized or well managed, the Board will notify the foreign bank or company in writing that it is not in compliance with the applicable requirement(s) for a financial holding company and identify the areas of noncompliance.

(b) *Notification by a financial holding company required.* Promptly upon becoming aware that it has ceased to be well capitalized or well managed, the foreign bank, or any company that controls such foreign bank, must notify the Board and identify the area of noncompliance.

(c) *Execution of agreement acceptable to the Board*— (1) *Agreement required; time period.* Within 45 days after receiving a notice under paragraph (a) of this section, the foreign bank or company must execute an agreement acceptable to the Board to comply with all applicable capital and management requirements.

(2) *Extension of time for executing agreement.* Upon request by a company, the Board may extend the 45-day period under paragraph (c)(1) of this section if the Board determines that granting additional time is appropriate under the circumstances. A request by a company for additional time must include an explanation of why an extension is necessary.

(3) *Agreement requirements.* An agreement required by paragraph (c)(1) of this section to correct a capital or management deficiency must:

(i) Explain the specific actions that the foreign bank or company will take to correct all areas of noncompliance;

(ii) Provide a schedule within which each action will be taken;

(iii) Provide any other information that the Board may require; and

(iv) Be acceptable to the Board.

(d) *Limitations during period of noncompliance.* Until the Board determines that a company has corrected the conditions described in a notice under paragraph (a) of this section:

(1) The Board may impose any limitations or conditions on the conduct or the U.S. activities of the foreign bank or company or any of its affiliates as the Board finds to be appropriate and consistent with the purposes of the Bank Holding Company Act; and

(2) The company and its affiliates may not engage in any new activity in the United States or acquire control or shares of any company under section 4(k) of the Bank Holding Company Act without prior approval from the Board.

(e) *Consequences of failure to correct conditions within 180 days*—(1) *Termination of offices and divestiture.* If a foreign bank or company does not correct the conditions described in a notice under paragraph (a) of this section within 180 days of receipt of the notice or such additional time as the Board may permit, the Board may order the foreign bank or company to terminate the foreign bank's U.S. branches and agencies and divest any commercial lending companies owned or controlled by the foreign bank or company. Such divestiture must be done in accordance with the terms and conditions established by the Board.

(2) *Alternative method of complying with a divestiture order.* A foreign bank or company may comply with an order issued under paragraph (e)(1) of this section by ceasing to engage (both directly and through any subsidiary) in all activities that are not permissible for a foreign bank to conduct under sections 2(h) and 4(c) of the Bank Holding Company Act. The termination of activities must be done within the time period referred to in paragraph (e)(1) of this section and subject to terms and conditions acceptable to the Board.

(f) *Consultation with other agencies.* In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities.

§ 225.94 What are the consequences of an insured branch failing to maintain a satisfactory or better rating under the Community Reinvestment Act?

(a) *Insured branch as an "insured depository institution."* A U.S. branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation shall be treated as an "insured depository institution" for purposes of § 225.84.

(b) *Applicability.* The provisions of § 225.84, with the modifications contained in this section, shall apply to a foreign bank that operates an insured branch referred to in paragraph (a) of this section, and any company that owns or controls such a foreign bank, that has made an effective election under § 225.92 in the same manner and to the same extent as they apply to a financial holding company.

By order of the Board of Governors of the Federal Reserve System, January 18, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–1646 Filed 1–24–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–309–AD; Amendment 39–11518; AD 2000–02–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires detailed visual and eddy current inspections of the lower wing skin at the 3 outboard fasteners of the stringer 64 end fitting to detect cracks; and corrective actions, if necessary. This amendment is prompted by reports of fatigue cracks found in the lower wing skin initiating from the outboard fasteners of the stringer 64 end fitting. The actions specified by this AD are intended to prevent such fatigue cracking, which could reduce structural integrity and loss of fail-safe capability of the airplane.

DATES: Effective February 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 29, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office,

3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on October 27, 1999 (64 FR 57806). That action proposed to require detailed visual and eddy current inspections of the lower wing skin at the 3 outboard fasteners of the stringer 64 end fitting to detect cracks; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 294 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $60,240, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–01 McDonnell Douglas: Amendment 39–11518. Docket 98-NM–309–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–57–100, Revision 01, dated August 26, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower wing skin, which could reduce structural integrity and loss of fail-safe capability of the airplane, accomplish the following:

Note 2: This AD will affect Principal Structural Elements (PSE) 57.08.037, 57.08.038, 57.08.021, and 57.08.022 of the DC–8 Supplemental Inspection Document (SID).

Inspection, Repair, and Modification

(a) Within 24 months after the effective date of this AD, perform detailed visual and eddy current inspections to detect cracks in the lower wing skin fastener holes in the area surrounding 3 outboard fasteners of the stringer 64 end fitting, in accordance with McDonnell Douglas Service Bulletin DC8–57–100, Revision 01, dated August 26, 1998.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any crack is detected in the skin fastener holes and it is less than 3.1 inches long, prior to further flight, repair in accordance with the service bulletin. Within 14,100 landings after accomplishment of the repair, inspect the lower wing skin to detect cracks, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is detected in the skin fastener holes and it is greater than or equal to 3.1 inches long, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If no crack is found, within 24 months after the effective date of this AD, accomplish the preventative modification (including stress or split sleeve coining the three fastener holes in the skin, and installing new pins), in accordance with the service bulletin. Accomplishment of this action constitutes terminating action for the requirements of this AD.

Note 4: This AD does not terminate the inspection requirements for PSE's 57.08.037, 57.08.038, 57.08.021, and 57.08.022 of the DC–8 SID in accordance with AD 93–01–15, amendment 39–6330.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraphs (a)(1) and (a)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC8–57–100, Revision 01, dated August 26, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 29, 2000.

Issued in Renton, Washington, on January 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1368 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–74–AD; Amendment 39–11517; AD 2000–01–19]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GMBH Model EC 135 P1 and EC 135 T1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Eurocopter Deutschland GMBH (ECD) Model EC 135 P1 and EC 135 T1 helicopters. This action requires inspecting main rotor expansion bolt safety wires, bolt heads, and bolt nuts; replacing any unairworthy expansion bolt with a hexagon bolt; and, as necessary, replacing any bolt nut before further flight. This AD also requires replacing each expansion bolt, regardless of condition, no later than January 31, 2000. This amendment is prompted by reports of main rotor blade expansion bolt nuts becoming loose. This condition, if not corrected, could result in severe vibration during flight and subsequent loss of control of the helicopter.

DATES: Effective February 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–74–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard A. Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on Model EC 135 P1 and EC 135 T1 helicopters. The LBA advises that severe vibrations occurred during a helicopter flight due to an expansion bolt nut becoming loose.

ECD has issued Alert Service Bulletin EC135–62A–005, Revision 1, dated November 16, 1999 (ASB). The ASB specifies inspecting the safety wire, bolt head, and bolt nut for the extent of thread protrusion of the expansion bolt through the end of the nut; replacing the expansion bolt by a hexagon bolt as necessary; and replacing the nut as necessary. In addition, all hexagon bolts must replace all expansion bolts no later than January 31, 2000. The LBA classified this ASB as mandatory and issued AD 1999–264, dated July 2, 1999, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

These helicopter models are manufactured in the Federal Republic of Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other ECD Model EC 135 P1 and EC 135 T1 helicopters of the same type designs registered in the United States, this AD is being issued to prevent a main rotor blade expansion bolt from becoming loose, severe vibration during flight, and subsequent loss of control of the helicopter. This AD requires, before further flight and at intervals not to exceed 15 hours time-in-service (TIS), inspecting the main rotor blade expansion bolt safety wire, bolt head, and bolt nut for the extent of thread protrusion of the expansion bolt through the end of the nut; replacing any unairworthy expansion bolt with a hexagon bolt; and replacing the nut as necessary. The AD also requires replacing all expansion bolts, part number (P/N) L621M1010 223, with hexagon bolts, P/N L621M1010 222, before further flight after January 31, 2000. The actions are required to be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspecting the main rotor blade expansion bolt safety wire, bolt head, and bolt nut; replacing any unairworthy expansion bolt with a hexagon bolt; and replacing the nut as necessary is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 14 helicopters will be affected by this AD, that it will take approximately 10 work hours to

accomplish inspecting and replacing the parts, and that the average labor rate is $60 per work hour. The ECD ASB states that the replacement parts kit, P/N EC 135–62A–005–2.C, will be provided on request to ECD at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,400.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–74–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–01–19 Eurocopter Deutschland GMBH: Amendment 39–11517. Docket No. 99–SW–74–AD.

Applicability: Model EC 135 P1 and EC 135 T1 helicopters, with main rotor blades up to and including serial number 834, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a main rotor blade expansion bolt nut becoming loose, causing severe vibration during flight, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 15 hours time-in-service, visually inspect the main rotor blade expansion bolt safety wire, bolt head, and bolt nut in accordance with the Accomplishment Instructions, paragraph 3.A., steps (1), (2), (3), (4), and (6) of Eurocopter Deutschland GMBH (ECD) Alert Service Bulletin EC 135–62A–005, Revision 1, dated November 16, 1999 (ASB). If the safety wire is improperly fitted, the bolt head is worn, the expansion bolt thread does not protrude through the end of the nut, the bolt head has metallic abrasions, the nut is loose, or the nut has metallic abrasions, before further flight, replace the expansion bolt, part number (P/N) L621M1010 223, with a hexagon bolt, P/N L621M1010 222, and, as necessary, replace the nut in accordance with paragraph 3.B. of the ASB.

(b) Replace all expansion bolts, P/N L621M1010 223, with hexagon bolts, P/N L621M1010 222, and, as necessary, replace the nuts before flight after January 31, 2000.

(c) Replacing the expansion bolts with hexagon bolts and replacing the nuts, as necessary, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits will not be issued.

(f) The inspection and replacement of the main rotor blade bolts shall be done in accordance with the Accomplishment Instructions, paragraph 3.A., Eurocopter Deutschland GMBH Alert Service Bulletin EC 135–62A–005, Revision 1, dated November 16, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 4, 2000.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (the Federal Republic of Germany) AD 1999–264, dated July 2, 1999.

Issued in Fort Worth, Texas, on January 11, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–1369 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–223–AD; Amendment 39–11520; AD 2000–02–02]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA, SD3–SHERPA, and SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA and SD3–SHERPA series airplanes, and certain Model SD3–30 series airplanes, that requires replacement of existing oxygen system "O" rings with improved wear-resistant "O" rings. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the loss of oxygen from the aircraft oxygen system, which could result in an insufficient supply of oxygen being provided to the airplane flight crew and passengers in the event of an emergency.

DATES: Effective February 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 29, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA, SD3–SHERPA, and SD3–30 series airplanes was published in the **Federal Register** on October 6, 1999 (64 FR 54237). That action proposed to require replacement of existing oxygen system "O" rings with improved wear-resistant "O" rings.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter requests that the applicability of the proposed AD be revised to include only those Model SD3–30 series airplanes on which an oxygen system is installed. The commenter states that only one variant of these airplanes was delivered in this configuration, and provides a list of the applicable serial numbers. The commenter notes that these serial numbers are also listed in Shorts Service Bulletin SD330–35–1, dated February 25, 1999, which is referenced as the appropriate source of service information in the proposed AD.

The FAA concurs that the requirements of the AD are applicable only to those airplanes on which an oxygen system is installed. The FAA has limited the applicability for Model SD3–30 series airplanes to those listed in Shorts Service Bulletin SD330–35–1, dated February 25, 1999, and has revised the Summary section of the AD to refer to "certain," rather than "all," Model SD3–30 series airplanes.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 62 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $186,000, or $3,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–02 Short Brothers PLC: Amendment 39–11520. Docket 99–NM–223–AD.

Applicability: All Model SD3–60 SHERPA and SD3–SHERPA series airplanes; and Model SD3–30 series airplanes as listed in Shorts Service Bulletin SD330–35–1, dated February 25, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of oxygen from the aircraft oxygen system, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD, replace oxygen system "O" rings, part number (P/N) MS28778, with improved wear-resistant "O" rings, P/N MS9068, in accordance with Shorts Service Bulletins SD360 Sherpa–35–2, dated February 25, 1999 (for Model SD3–60 Sherpa series airplanes); SD3 Sherpa–35–3, Revision 1, dated May 5, 1999 (for Model SD3 Sherpa series airplanes); and SD330–35–1, dated February 25, 1999 (for Model SD3–30 series airplanes); as applicable.

Spares

(b) As of the effective date of this AD, no person shall install an oxygen system "O" ring, P/N MS28778, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Shorts Service Bulletin SD3–60 Sherpa-35-2, dated February 25, 1999; Shorts Service Bulletin SD3 Sherpa-35-3, Revision 1, dated May 5, 1999; or Shorts Service Bulletin SD330–35–1, dated February 25, 1999; as applicable. Shorts Service Bulletin SD3 Sherpa-35-3, Revision 1, dated May 5, 1999, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4, 9, 10	1	May 5, 1999.
2, 3, 5–8, 11–14	Original	February 25, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directives 007–02–99 (for Model SD3–60 Sherpa series airplanes), 006–02–99 (for Model SD3 Sherpa series airplanes), and 008–02–99 (for Model SD3–30 series airplanes).

(f) This amendment becomes effective on February 29, 2000.

Issued in Renton, Washington, on January 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1502 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–09–AD; Amendment 39–11522; AD 2000–02–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes. This action requires performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane.

DATES: Effective February 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and all Model A300–600 and A310 series airplanes. The DGAC advises that an Airbus Model A300–600 series airplane flew with autopilot 1 (AP 1), pitch trim 1 (PT 1), and pitch trim 2 (PT 2) engaged. When the flight crew engaged the vertical speed mode and selected a new vertical speed in order to change the flight level, the vertical speed of the airplane changed but did not remain at the speed that had been selected by the flight crew.

After landing, the maintenance team performed a test with the autopilot engaged in vertical speed mode. When the team selected a vertical speed, the flight director pitch bars and control columns moved, but the pitch trim wheels did not move. An open circuit was found in the connection between flight control computer 1 (FCC 1) and flight augmentation computer 1 (FAC 1). That connection is necessary to generate the autotrim function.

With the autopilot engaged in command (CMD), the FCC command (COM) and monitor (MON) lanes send signals to the FAC in order to ensure the autotrim function. When the FAC does not receive the FCC COM signal or the FCC MON signal, the autotrim function is inhibited, which results in an out-of-trim condition. If an autopilot disconnect occurs when the airplane is in an out-of-trim condition, this condition, if not corrected, could result in a sudden change in pitch and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued All Operators Telexes (AOT) A300–22A0115 (for Model A300 series airplanes), A300–600–22A6042 (for Model A300–600 series airplanes), and A310–22A2053 (for Model A310 series airplanes), all dated December 23, 1999, which describe procedures for a pitch trim system test to detect any continuity defect, and follow-on corrective actions, if necessary. Corrective actions include repairing any discrepant wiring found in the pitch trim system. (The AOT's reference Aircraft Schematic Manual 22–27–00 as an additional source of service information for accomplishment of the repair.) The DGAC has classified these AOT's as mandatory and issued French airworthiness directive T2000–007–301(B), dated January 4, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane. This AD requires performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. The actions are required to be accomplished in accordance with the AOT's described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing additional actions that will positively address the unsafe condition addressed by this AD. Once these actions are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–09–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–04 Airbus Industrie: Amendment 39–11522. Docket 2000–NM–09–AD.

Applicability: Airbus Model A300 series airplanes, having manufacturer's serial number 159, 168, 188, 202, 205, 213, 299, or 302; and all Model A300–600 and A310 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane, accomplish the following:

Pitch Trim System Test

(a) Within 20 days after the effective date of this AD: Perform a pitch trim system test to detect any continuity defect in the autotrim function, in accordance with All Operators Telex (AOT) A300–22A0115 (for Model A300 series airplanes), A300–600–22A6042 (for Model A300–600 series airplanes), or A310–22A2053 (for Model A310 series airplanes), all dated December 23, 1999, as applicable.

(1) If no continuity defect is found, no further action is required by this paragraph.

Corrective Actions

(2) If any continuity defect is found, prior to further flight, accomplish the actions required by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, in accordance with the applicable AOT.

(i) Repair any discrepant wiring found in the pitch trim system.

(ii) Repeat the initial pitch trim system test required by paragraph (a) of this AD.

Note 2: All Operators Telexes (AOT) A300–22A0115, A300–600–22A6042, and A310–22A2053, all dated December 23, 1999, reference Aircraft Schematic Manual (ASM) 22–27–00 as an additional source of service information to accomplish the repair.

Reporting Requirement

(b) Within 10 days after accomplishing the pitch trim system test required by this AD, or within 10 days after the effective date of this AD, whichever occurs later: Submit a report of the inspection results (both positive and negative findings) to Airbus Customer Services, Engineering and Technical Support, Attention Mr. Vincent Frayssinet, AI/SE–E43; phone number 33 (0)5.62.11.04.96; Sita Code TLSBQ7X.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus All Operators Telex A300–22A0115, dated December 23, 1999; Airbus All Operators Telex A300–600–22A6042, dated December 23, 1999; or Airbus All Operators Telex A310–22A2053, dated December 23, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive T2000–007–301(B), dated January 4, 2000.

(f) This amendment becomes effective on February 9, 2000.

Issued in Renton, Washington, on January 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1595 Filed 1–24–00; 8:45 am]

BILLING CODE 4913–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–351–AD; Amendment 39–11521; AD 2000–02–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400 and –500 series airplanes, that requires replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. This amendment is prompted by reports indicating that the rod ends on several leading edge slat actuators have fractured. The actions specified by this AD are intended to prevent fatigue cracking of the rod ends of the leading edge slat actuators, which could result in uncommanded deployment of the wing leading edge slat and consequent reduced controllability of the airplane.

DATES: Effective February 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 29, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–300, –400 and –500 series airplanes was published in the **Federal Register** on August 19, 1999 (64 FR 45211). That action proposed to require replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Reference New Revision of Alert Service Bulletin

One commenter requests that the FAA revise the proposed rule to reference Boeing Alert Service Bulletin 737–27A1211, Revision 1, dated December 9, 1999, as an appropriate source of service information for accomplishment of the actions specified by the proposal. The proposed AD referenced the original issue of the alert service bulletin, dated November 19, 1998. The commenter states that referencing the revised alert service bulletin will minimize the amount of rework and parts necessary for airplanes that have received a certain other modification.

The FAA concurs with the commenter's request. The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1211, Revision 1. The instructions contained in Revision 1 of the alert service bulletin are substantially similar to those in the original issue of the alert service bulletin, but Revision 1 adds references to new part numbers and kits that will provide new alternatives for compliance with this AD. In addition, as the commenter states, Revision 1 of the alert service bulletin provides alternative procedures for accomplishing the replacement on airplanes that have received a certain other modification. Therefore, paragraph (a) of this final rule has been revised to state that replacement of existing actuators or rod ends with new parts may be accomplished in accordance with either the original issue or Revision 1 of the alert service bulletin.

Explanation of Additional Change

The **SUMMARY** section of the preamble of the proposed rule incorrectly states that the proposed AD would be applicable to *all* Boeing Model 737–300, –400, and –500 series airplanes. However, the applicability statement of the proposal correctly states that the proposed AD would be applicable to Boeing Model 737–300, –400, and –500 series airplanes having line numbers 1001 through 3063 inclusive. Accordingly, the **SUMMARY** section of this final rule has been corrected to state that this AD applies to *certain* Boeing Model 737–300, –400 and –500 series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,897 Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 720 airplanes of U.S. registry will be affected by this AD.

Replacement of the leading edge slat actuator with an actuator that has a new rod end is one option for compliance with this AD. Replacement of the actuators on slat positions 1, 2, 5, and 6 will take approximately 3 hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $32,252 per airplane. Based on these figures, the cost impact of the installation of actuators with new rod ends, as provided as one option by this AD, on U.S. operators is estimated to be $32,432 per airplane.

In lieu of installation of an actuator with a new rod end, this AD provides an option for replacement of the rod ends on the existing actuators. This action will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost between approximately $5,928 and $21,544 per airplane. Based on these figures, the cost impact of the replacement of the rod ends, as provided as one option by this AD, on U.S. operators is estimated to be between $6,168 and $21,784 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–03 Boeing: Amendment 39–11521. Docket 98–NM–351–AD.

Applicability: Model 737–300, –400, and –500 series airplanes; line numbers 1001

through 3063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rod ends on the leading edge slat actuators, which could result in uncommanded deployment of the wing leading edge slat and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD: Replace the leading edge slat actuator with an actuator that has a new rod end, or replace the rod end on the existing slat actuator with a new rod end, at slat positions 1, 2, 5, and 6; in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, or Revision 1, dated December 9, 1999.

Spares

(b) As of the effective date of this AD, no person shall install any part having a part number identified in the "Existing Part Number" column of Section 2.E. of Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998; or Boeing Alert Service Bulletin 737–27A1211, Revision 1, dated December 9, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 29, 2000.

Issued in Renton, Washington, on January 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1596 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162, 171 and 191

[T.D. 00–5]

RIN 1515–AC21

Penalties for False Drawback Claims

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations that implement section 622 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act concerning penalties for false drawback claims. The document sets forth: procedures that apply when false drawback claims are filed and penalties are thereby incurred; mitigation guidelines that Customs would follow in arriving at a just and reasonable assessment and disposition of liabilities when false drawback claims are filed and penalties are incurred; and more specific grounds and procedures for removing a participant from the drawback compliance program.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Wende Schuster, Penalties Branch, Office of Regulations and Rulings, 202–927–1537.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." Paragraph (a) of section 622 of the Mod Act amended the Tariff Act of 1930, as amended, by adding section 593A, which prohibits the filing of false (fraudulent or negligent) drawback claims and prescribes the actions that Customs may take, including the assessment of monetary penalties, if such claims are filed. New section 593A was codified as section 1593a of Title 19 of the United States Code (19 U.S.C. 1593a, hereinafter "the statute").

As in the case of penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), specific procedures and other requirements are set forth in the statute for prepenalty notices and penalty claims, the former not being required by the statute if the penalty is $1,000 or less, and provision is made for limited penalty assessment if there is a prior disclosure. The statute further provides for the applicability of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), which authorizes the administrative remission or mitigation of penalties. Written decisions, setting forth a final determination and findings of fact and conclusions of law upon which that determination was based, are also mandated by the statute.

The statute provides for the assessment of monetary penalties in amounts not to exceed a specific percentage of the actual or potential loss of revenue, with the applicable percentage depending on the level of culpability, whether there have been prior violations involving the same issue, and whether the violator is a participant in the Customs drawback compliance program. (The statute provides for the establishment of a drawback compliance program; regulatory provisions relating to the operation of that program were adopted as part of the amendments to the Customs Regulations regarding drawback published in the **Federal Register** as T.D. 98–16 on March 5, 1998, 63 FR 10970.) The statute also provides for the issuance of a notice of a violation (warning letter) in lieu of a monetary penalty in the case of a drawback compliance program participant who commits a first (that is, nonrepetitive) negligent violation.

On September 29, 1998, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 51868) setting forth proposed

amendments to the Customs Regulations to implement the statutory changes made by section 622(a) of the Mod Act. The proposed amendments involved changes to the penalty procedure provisions within Parts 162 and 171 of the Customs Regulations (19 CFR Parts 162 and 171), the addition of a new Appendix D to Part 171 setting forth guidelines for the imposition and mitigation of monetary penalties incurred under the statute, and changes regarding the grounds and procedures for revoking a certification for participation in the drawback compliance program contained in § 191.194 of the Customs Regulations (19 CFR 191.194) which was originally adopted in T.D. 98–16 mentioned above. The Notice of Proposed Rulemaking also stated that, in accordance with paragraph (b) of section 622 of the Mod Act (which provides that the provisions of the statute apply only to drawback claims filed on and after nationwide implementation by Customs of an automated drawback selectivity program and which mandates the publication in the *Customs Bulletin* of the effective date of that selectivity program), the proposed regulatory amendments, if adopted as a final rule, will not be effective until Customs implements an automated drawback selectivity program. Finally, the Notice of Proposed Rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule. The prescribed public comment period closed on November 30, 1998.

Discussion of Comments

Seven commenters responded to the solicitation of comments contained in the Notice of Proposed Rulemaking. The comments submitted are summarized and responded to below.

A. Part 162

Section 162.71—Definitions

Comment: Three commenters expressed concern that the meaning of "revenue," as used in the proposed texts, was not sufficiently clear, and they suggested that it should have the meaning of "drawback" as defined in § 191.2(i) of the Customs Regulations (19 CFR 191.2(i)). Two of these commenters specifically suggested as a solution the inclusion of a reference to § 191.2(i) in the definition of "loss of revenue" in the introductory text of proposed § 162.71(b), in the definition of "actual loss of revenue" in proposed § 162.71(b)(1) and in the definition of "potential loss of revenue" in proposed § 162.71(b)(2), each of which defines the term at issue with reference to "the amount of drawback that is claimed * * *."

Customs response: Customs agrees that the meaning of "revenue" should be clarified in the regulatory texts with reference to the meaning of "drawback" contained in § 191.2(i) within the drawback regulations. Customs also agrees that the best approach would be to insert a cross-reference to § 191.2(i) after the word "drawback" in the definitions of "loss of revenue" and "actual loss of revenue" and "potential loss of revenue" within proposed § 162.71(b) which, as set forth below, has been modified accordingly.

On a related matter, Customs notes that the current § 162.74 prior disclosure provisions adopted in T.D. 98–49 (which was published in the **Federal Register** at 63 FR 29126 on May 28, 1998, and corrected at 63 FR 35798 on July 1, 1998) included appropriate references to 19 U.S.C. 1593a but inadvertently did not include corresponding references to the tender of actual loss of "revenue" in paragraphs (a) and (c). Section 162.74 is amended below in order to correct this oversight.

Section 162.73a(b)(2) and Subsection (G)(2) of Appendix D to Part 171—Notice of Violation and Response Thereto

Comment: Four comments were received on proposed § 162.73a(b)(2) and subsection (G)(2) of Appendix D to Part 171, which concern alternatives to penalties for participants in the drawback compliance program. Under these provisions, when a participant commits a violation of section 593A, in the absence of fraud or a repeat violation and in lieu of a monetary penalty, Customs will issue a written notice of the violation (a warning letter). These commenters noted that there is no provision in either case for a person who receives such a warning letter to contest, challenge, or appeal it. The commenters proposed the inclusion of language in § 162.73a(b)(2) and in subsection (G)(2) of Appendix D to Part 171 to allow a person who receives a warning letter to have the opportunity to formally appeal that action within 30 days from issuance. Furthermore, these commenters suggested that the program participant should be entitled to challenge any denial of an appeal with Customs Headquarters within 30 days after the issuance of the applicable drawback office's appeal decision.

Customs response: Pursuant to § 162.73a(b)(2)(ii), within 30 days from the date of mailing of the warning letter under § 162.73a(b)(1)(ii)(A), the person concerned must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation. In consideration of the fact that the issuance of a warning letter has legal consequences in that it has an effect on the liability for a penalty for a subsequent repetitive violation, Customs agrees with the suggestion of these commenters that during the prescribed 30-day period the alleged violator should have the opportunity to refute the allegations made in the warning letter if he believes that no violation took place (in which case the need to take steps to prevent a recurrence would not exist). Accordingly, § 162.73a(b)(2)(ii) has been modified as set forth below to include a procedure for challenging a warning letter and to provide that if, after considering any arguments made in response to the warning letter, Customs determines that no violation occurred, Customs will in writing notify the person of that determination and rescind the warning letter; however, if Customs affirms the warning letter, the requirement to provide notice of the steps taken to prevent a recurrence would remain applicable and the person would have a minimum of 15 days in which to comply with that requirement. A conforming change has been included in corresponding subsection (G)(2) of Appendix D to Part 171 as set forth below.

While the alleged violator is specifically required under the statute to respond to the warning letter (see 19 U.S.C. 1593a(f)(3)), there is no statutory provision for an additional appeal mechanism at this stage in the penalty process. Customs believes that it would create an unacceptable administrative burden to provide for a further appeal procedure to Headquarters as suggested by these commenters.

Section 162.77a(c)—Exceptions to Prepenalty Notice

Comment: One comment was received on proposed § 162.77a(c) which provides that a prepenalty notice will not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is $1,000 or less. The commenter questioned whether a person will have the right to make an oral and written presentation if the amount of the proposed monetary penalty is $1,000 or less and, if so, whether the petitioner will have a 30-day deadline in which to file a petition for remission or mitigation.

Customs response: Even though Customs under the statute may only proceed directly with the issuance of a

penalty claim to the alleged violator (rather than first issue a prepenalty notice) when the penalty claim is $1,000 or less, the alleged violator will be afforded a reasonable opportunity under the provisions of 19 U.S.C. 1618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. Unless additional time has been authorized by Customs, under Part 171 the alleged violator will have 60 days from the date of mailing of the notice of penalty incurred in which to file a petition. In addition, under Part 171 the person named in the penalty notice may also request an opportunity to make an oral presentation seeking relief.

B. Appendix D to Part 171

Section (A)—Violations of Section 593A

Comment: Two commenters requested definitions of the terms "clerical error" and "mistake of fact" as used in proposed Appendix D to Part 171.

Customs response: The terms in question are already defined for purposes of new Appendix D to Part 171. It is noted in this regard that the definitions contained in § 162.71 apply for purposes of Subpart G of Part 162 and include a definition of "clerical error" in paragraph (c) (redesignated in this document as paragraph (e)) and a definition of "mistake of fact" in paragraph (d) (redesignated in this document as paragraph (f)). Therefore, since new Appendix D to Part 171 relates specifically to the imposition and mitigation of the penalties provided for in new § 162.73a (which, as adopted in this document, will fall within Subpart G of Part 162), those definitions also will apply for purposes of those Appendix D provisions.

Section (D), Paragraph (3)(e)—Exclusivity

Comment: One comment was received concerning proposed paragraph (3)(e) of section D which states that penalty claims under section D shall be the exclusive civil remedy for any drawback-related violation of section 593A. The commenter was of the opinion that Part 162 or Part 171 of the regulations should be revised to include the language of this provision.

Customs response: The language in question reflects the terms of the statute (19 U.S.C. 1593a(c)(5)) and was included in the Appendix for information purposes. Customs does not believe that it is necessary to repeat this statutory language in the Part 162 or Part 171 regulations.

Section (F), Paragraph (4)(a)—Contributory Customs Error

Comment: Two comments were received on proposed paragraph(4)(a) of section F which sets forth "contributory Customs error" as a mitigating factor. This provision states, in pertinent part, that if it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be canceled. One commenter stated that the text should include examples of Customs errors as the sole cause, the other commenter requested clarification on whether Customs will make the determination, and both commenters were of the opinion that the alleged violator should have an opportunity to appeal a determination that a Customs error was not the sole cause of the violation.

Customs response: One of the factors which may be considered by Customs in mitigation of a proposed or assessed penalty claim or final penalty amount is contributory Customs error. This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed Customs of all relevant facts. It is the responsibility of the particular Customs official to determine whether an error made by Customs was the sole cause of the violation. If a party is not satisfied with a decision made by Customs with regard to this factor, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer under Part 171. Finally, Customs does not believe that examples of Customs errors that are the sole cause of a violation should be included in the Appendix text because each case is unique and must be decided on its particular facts.

Section (F), Paragraph (4)(f)—Customs Knowledge

Comment: Two comments were received on proposed paragraph (4)(f) of section (F) which sets forth, as a mitigating factor in non-fraud cases, the fact that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. One commenter requested clarification on whether the alleged violator will be expected to demonstrate that Customs did not act and, if so, how the violator can prove that fact. The other commenter stated that specific guidelines should be provided regarding the type of evidence that must be produced to establish that Customs knew of the violation but never informed the violator.

Customs response: An alleged violator is responsible for proving by a preponderance of the evidence that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. However, if Customs can show that it was justified in withholding the information, then this factor will not be considered in mitigation of a proposed or assessed penalty. Because each case must be decided on its own unique facts, Customs does not believe that specific examples of types of evidence should be included here.

Section (G), Paragraph (1)—Drawback Compliance Program Participants In General

Comment: One comment was received concerning the separate treatment afforded drawback compliance program participants under section (G). This commenter argued that participants in the drawback compliance program should be subject to the same penalties (if not even more severe penalties) than persons who are not participants in the drawback compliance program. The commenter argued that exporters that are approved for participation in the drawback compliance program should be held to a higher standard of compliance with the drawback regulations than the infrequent exporter.

Customs response: The distinction between participants in the drawback compliance program and nonparticipants for purposes of assessing penalties for false drawback claims must remain in the guidelines because it reflects the terms of the statute (19 U.S.C. 1593a(f)) which specifically provides both for alternatives to penalties and for a lower penalty level when a party has been certified as a participant in the drawback compliance program.

Comment: Four commenters expressed concern that the subject of remission or mitigation of a monetary penalty incurred under 19 U.S.C. 1593a is not found in the proposed regulations themselves but rather appears only in proposed Appendix D to Part 171. The commenters were of the opinion that the status of the Appendix is more closely analogous to "guidelines" and does not rise to the level of a regulation. Three of these commenters specifically suggested that the first sentence of Appendix D to Part 171, or a slight variation thereof, should be added to the regulatory text.

Customs response: The commenters are correct that a distinction can be made between the guidelines in Appendix D to Part 171 and the regulatory texts in Parts 162 and 171, because the guidelines serve primarily to inform the general public regarding how Customs officers will carry out their statutory functions rather than to directly control the actions of the general public. However, Customs does not agree that the general language concerning remission or mitigation of a penalty under 19 U.S.C. 1593a at the beginning of Appendix D should be added to the regulatory text. Customs has included similar language involving remission or mitigation of a penalty in Appendix A to Part 171 (guidelines for disposition of violations of 19 U.S.C. 1497) and in Appendix B to Part 171 (revised penalty guidelines under 19 U.S.C. 1592). Customs believes that it is unnecessary to repeat in the regulatory text that which is already clearly and adequately stated in the guidelines and in the applicable statute.

C. Part 191

Section 191.194(e)(1)(ii)—Certification Removal for Noncompliance

Comment: One comment was received on proposed § 191.194(e)(1)(ii) which sets forth, as a ground for removal of a participant from the drawback compliance program, the failure to remain in compliance with the Customs laws and regulations. The commenter requested clarification regarding who within Customs is empowered to remove a program participant from the drawback compliance program. In addition, the commenter asked whether a party will be removed from the drawback compliance program if the party notifies Customs of a violation through a prior disclosure.

Customs response: The initial decision to remove a program participant from the drawback compliance program will be made by the appropriate Customs drawback office, and that decision may be appealed to the Office of Trade Programs at Headquarters. The eight drawback offices are located in Boston, MA; New York, N.Y.; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; and San Francisco, CA. It is the position of Customs that a party will not automatically be removed from the drawback compliance program for disclosing the circumstances of a violation by means of a prior disclosure. However, it always remains within the discretion of Customs to determine whether the circumstances of a particular violation warrant removal of a party from the drawback compliance program.

Section 191.194(e)(1)(iv)—Certification Removal for Felony or Misdemeanor

Comment: One comment was received on proposed § 191.194(e)(1)(iv) concerning removal of a participant from the drawback compliance program due to conviction of any felony or where the program participant has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime. The commenter requested that the regulation state which Customs official is empowered to make a determination that a program participant should be removed under this provision. It was the opinion of the commenter that the language of this provision is vague and does not afford the participant any due process. The commenter suggested either deleting the language or changing the language of this provision to read as follows: "The program participant is convicted of any felony or convicted of any misdemeanor involving theft, smuggling, or any theft-connected crime."

Customs response: As indicated in the previous comment response, the appropriate drawback office is initially responsible for determining whether a participant should be removed from the drawback compliance program, but Customs does not believe that it is necessary to specify this in the regulatory text. Customs does not believe that the language of this provision should be changed as specifically proposed by this commenter. To require that a participant be convicted of a felony or any misdemeanor involving theft, smuggling, or any theft-connected crime before removal from the drawback compliance program would be inconsistent with sound administrative practice, particularly in cases where there is an impact on the revenue.

Section 191.194(e)(3)—Effect of Removal

Comment: With regard to proposed § 191.194(e)(3) which concerns the effect of removal of certification for participation in the drawback compliance program, one commenter asked whether removal from the drawback compliance program automatically revokes the participant's other drawback privileges (that is, accelerated payment and waiver of prior notice).

Customs response: Pursuant to § 191.195 of the Customs Regulations (19 CFR 191.195), a party may make a combined application for certification in the drawback compliance program and for waiver of prior notice of intent to export and/or approval of accelerated payment of drawback. The basic purpose behind applying for certification for participation in the drawback compliance program is fundamentally different from the purpose served by applying for waiver of prior notice of intent to export and/or approval of accelerated payment of drawback. Accordingly, a party who is removed from the drawback compliance program will not automatically also lose a waiver of prior notice or accelerated payment of drawback privilege. However, the factual basis for removal from the drawback compliance program could also form the basis for a separate action to revoke the waiver of prior notice or accelerated payment privilege.

Comment: One comment was received on that portion of proposed § 191.194(e)(3) that provides that the removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. The commenter pointed out that there is no definition of "willfulness" in Part 191 nor any indication of what party will make that determination. The commenter also suggested removing the language in this provision which refers to the "public health, interest, or safety."

Customs response: Customs believes that the language in question should remain unchanged. As stated in the background portion of the Notice of Proposed Rulemaking, the language in question was taken from the provisions of the Administrative Procedure Act (see 5 U.S.C. 558(c)). Customs believes that it would be inappropriate to attempt to define in these regulations terms that are of such general application and not limited to drawback penalty concepts. Customs is responsible for determining whether the particular behavior of a program participant rises to the level of willfulness and whether this behavior warrants removal from the program.

D. Miscellaneous Comments

Comment: One commenter noted that there is no reference to a time limitation for the issuance of penalties or the recovery of the loss of revenue in the proposed regulations. The commenter also suggested that the proposed regulations be amended to include the context of 19 U.S.C. 1621 which covers the time period in which Customs may commence a suit or action in the case of an alleged violation under 19 U.S.C. 1592 or 1593a.

Customs response: Under 19 U.S.C. 1621, Customs is forever barred from recovering a penalty under 19 U.S.C. 1593a unless Customs commences an appropriate suit or action within five years from the date of discovery of the alleged violation if the violation resulted from fraud or within five years from the date the alleged violation was committed if the violation resulted from negligence. Customs does not believe that the regulations should be amended to include the provisions of 19 U.S.C. 1621 because that statute references 19 U.S.C. 1593a and is clear and unambiguous. There is no reason to repeat those statute of limitations provisions in the regulations.

Comment: Three commenters noted that in the Background section of the Notice of Proposed Rulemaking there was a reference to an "automated drawback selectivity program." The commenters stated that there are differences of opinion between the trade and Customs concerning exactly what selectivity is and how it is to be determined and implemented. For purposes of uniformity and certainty of application, the commenters requested that the term "Drawback Selectivity Program" be addressed in the regulations.

Customs response: The issue of drawback selectivity as it relates to penalties for false drawback claims was addressed in T.D. 98–88 which was published in the *Customs Bulletin* on November 25, 1998 (32 Cust. Bull. 47), pursuant to section 622(b) of the Mod Act as discussed above. In T.D. 98–88, Customs gave notice to the public that on August 29, 1998, Customs implemented, on a nationwide operational basis, an automated drawback selectivity program. This criteria-based selectivity program automates the previously manual, labor-intensive processing of drawback claims. The automated drawback selectivity program is significant because it will result in more efficient processing of drawback data and will move Customs one step closer to paperless processing of drawback claims. As a consequence of implementation of the drawback selectivity program and publication of T.D. 98–88, any person who files a false drawback claim on and after November 25, 1998, will become potentially liable for a monetary penalty under 19 U.S.C. 1593a. However, T.D. 98–88 further stated that, until such time as final regulations implementing the provisions of 19 U.S.C. 1593a are in effect, Customs does not intend to issue a penalty notice or take any other action authorized by 19 U.S.C. 1593a. With regard to the question of how selectivity will be implemented by Customs, the criteria used in the cargo selectivity process is based upon internal Customs enforcement policy and therefore is not an appropriate subject for this document.

Comment: One commenter requested advice regarding the effective date of the final rule.

Customs response: The regulatory changes adopted in this final rule are effective on the date set forth under the Effective Date caption in the preamble of this document, and that date is the date on which Customs will commence actions authorized by 19 U.S.C. 1593a (see the discussion of T.D. 98–88 in the preceding comment response).

Comment: One commenter requested examples of what would be considered a negligent violation and a fraudulent violation for purposes of assessing a penalty under 19 U.S.C. 1593a.

Customs response: In general, fraudulent and negligent violations are determined on a case-by-case basis depending upon the facts of the particular case. An example of a negligent violation for purposes of 19 U.S.C. 1593a is as follows: An importer makes a claim for drawback under 19 U.S.C. 1313(j)(2) (substitution unused merchandise drawback) for concentrated orange juice. The importer makes no effort to determine if the concentrated orange juice which is exported is commercially interchangeable with the concentrated orange juice that was imported as required by law and, in fact, the exported and imported juices are not commercially interchangeable.

An example of a fraudulent violation for purposes of 19 U.S.C. 1593a is as follows: A person makes a false drawback claim asserting that certain drawback eligible merchandise was exported from the United States. In connection with this claim, the claimant submits fabricated bills of lading or other documents of exportation. In actuality, the claimant knows that the merchandise was never exported from the United States.

Comment: With reference to the use of the term "a person" in the proposed drawback penalty regulations, one commenter requested clarification on when that term refers to a drawback claimant, a drawback broker or a drawback consultant, and when the term refers to a combination of these three persons.

Customs response: For purposes of drawback, a "person" or "party" is considered to include any person or company who is involved in providing data on which a drawback claim may be based or who is the drawback claimant. This would include importers, intermediary parties, drawback claimants, and agents such as drawback brokers and drawback consultants. Therefore, any party that provides information or documentation to one who intends to file a drawback claim may be subject to the drawback penalty provisions.

Comment: One commenter believed that a minimum penalty amount of $100 should be established for all willful and negligent violations under 19 U.S.C. 1593a in order for the amount of the penalty to have any real deterrent effect and in order to be more cost-effective.

Customs response: Rather than setting forth specific penalty amounts, the drawback statute provides for the assessment of monetary penalties in amounts not to exceed a specific percentage of the actual or potential loss of revenue, with the applicable percentage depending on the level of culpability, whether there have been prior violations involving the same issue, and whether the violator is a participant in the drawback compliance program. The guidelines for mitigation of a drawback penalty are general in nature and are intended to give Customs discretion in granting relief from a penalty below the statutory maximum amount in those cases where Customs deems that it is appropriate. Those guidelines were modeled on the 19 U.S.C. 1592 mitigation guidelines, and since the 19 U.S.C. 1592 mitigation guidelines do not provide for a minimum penalty amount for fraud, gross negligence or negligence cases, a minimum penalty amount was not included in the mitigation guidelines for 19 U.S.C. 1593a purposes. Customs would prefer to be able to automate non-serious penalties (penalties less than $1,000) by simply issuing a bill to the violator, so that the imposition and collection of a small penalty amount would be more cost-effective, but Customs does not have authority to take such action under the current statutory framework.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. In addition, a number of minor changes have been made in the regulatory texts to conform to statutory language and to reflect plain language principles.

Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth above and because the amendments closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects

19 CFR Part 162

Customs duties and inspection; Law enforcement; Penalties; Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure; Customs duties and inspection; Law enforcement; Penalties; Seizures and forfeitures.

19 CFR Part 191

Administrative practice and procedure; Customs duties and inspection; Drawback.

Amendments to the Regulations

For the reasons stated in the preamble, parts 162, 171 and 191 of the Customs Regulations (19 CFR parts 162, 171 and 191) are amended as set forth below:

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

2. In § 162.71, paragraphs (b) through (d) are redesignated as paragraphs (d) through (f), the heading for paragraph (a) is revised, and new paragraphs (b) and (c) are added, to read as follows:

§ 162.71 Definitions.

* * * * *

(a) *Loss of duties under section 592.*

* * *

(b) *Loss of revenue under section 593A.* When used in § 162.73a, the term "loss of revenue" means the amount of drawback (see § 191.2(i) of this chapter) that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) *Actual loss of revenue.* When used in §§ 162.73a, 162.74, 162.77a and 162.79b, the term "actual loss of revenue" means the amount of drawback (see § 191.2(i) of this chapter) that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) *Potential loss of revenue.* When used in § 162.77a, the term "potential loss of revenue" means the amount of drawback (see § 191.2(i) of this chapter) that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) *Repetitive violation.* When used in § 162.73a to describe a violation, "repetitive" has reference to a violation by a person that involves the same issue as a prior violation by that person.

* * * * *

3. A new § 162.73a is added to read as follows:

§ 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations,

(i) 20 percent of the loss of revenue for the first violation,

(ii) 50 percent of the loss of revenue for the first repetitive violation, or

(iii) One times the loss of revenue for the second and each subsequent repetitive violation.

(b) *Maximum penalty without prior disclosure for a drawback compliance program participant*—(1) *General.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has been certified as a participant in, and is generally in compliance with the procedures and requirements of, the drawback compliance program provided for in part 191 of this chapter, the monetary penalty or other sanction under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(i) For fraudulent violations, three times the loss of revenue; and

(ii) For negligent violations,

(A) Issuance of a written notice of a violation (warning letter) for the first violation and for any other violation that is not repetitive or that is repetitive but does not occur within three years from the date of the violation of which it is repetitive,

(B) 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive,

(C) 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive, or

(D) One times the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(2) *Notice of violation and required response to notice*—(i) The notice issued by Customs under paragraph (b)(1)(ii)(A) of this section will:

(A) State that the person concerned has violated section 593A;

(B) Explain the nature of the violation; and

(C) Warn the person concerned that future violations of section 593A may result in the imposition of monetary penalties. The notice will also warn the person concerned that repetitive violations may result in removal of certification under the drawback compliance program provided for in part 191 of this chapter until the person takes corrective action that is satisfactory to Customs.

(ii) Within 30 days from the date of mailing of the notice issued under paragraph (b)(1)(ii)(A) of this section:

(A) The person concerned must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation; or

(B) If the person concerned believes that no violation took place, he may advise Customs in writing of the basis for that position. If Customs agrees on further review that no violation in fact took place, Customs will in writing advise the person concerned and rescind the notice of violation. If on further review Customs remains of the opinion that the violation took place as alleged in the notice of violation, Customs will issue a written affirmation of the notice of violation advising the person concerned that the notice requirement of paragraph (b)(2)(ii)(A) of this section remains applicable and must be complied with either within the remainder of the prescribed 30-day period or within 15 days after issuance of the written affirmation, whichever period is longer.

(c) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure as provided in § 162.74, whether or not such person has been certified as a participant in the drawback compliance program under

part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, one times the loss of revenue; and

(2) For negligent violations, an amount equal to the interest accruing on the actual loss of revenue during the period from the date of overpayment of the claim to the date on which the person concerned tenders the amount of the overpayment based on the prevailing rate of interest under 26 U.S.C. 6621.

4. In § 162.74:

a. In paragraph (a)(1), the first sentence is amended by adding after "fees" the words "or actual loss of revenue";

b. In paragraph (c), the heading and the first, second, eleventh, and twenlfth sentences are amended by adding after "and fees" the words "or actual loss of revenue"; and

c. Also in paragraph (c), the fourth, seventh, and ninth sentences are amended by removing the words "or fees" wherever they appear and adding, in their place, the words "and fees or actual loss of revenue".

5. A new § 162.77a is added to read as follows:

§ 162.77a Prepenalty notice for violation of section 593A, Tariff Act of 1930, as amended.

(a) *When required.* If the appropriate Customs field officer has reasonable cause to believe that a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a) has occurred, and determines that further proceedings are warranted, the officer will issue to the person concerned a notice of intent to issue a claim for a monetary penalty.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice will:

(i) Identify the drawback claim;

(ii) Set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) Specify all laws and regulations allegedly violated;

(iv) Disclose all the material facts which establish the alleged violation;

(v) State whether the alleged violation occurred as a result of fraud or negligence; and

(vi) State the estimated actual or potential loss of revenue due to the drawback claim and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also will inform the person of his right to make an oral and a written presentation within 30 days of mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice will not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is $1,000 or less.

(d) *Prior approval.* If an alleged violation of 19 U.S.C. 1593a occurred as a result of fraud, a prepenalty notice will not be issued without prior approval by Customs Headquarters.

6. Section 162.79a is amended by removing the references "§ 162.76(b)(1) or § 162.77(b)(1)" and adding, in their place, "§ 162.76(b)(1), § 162.77(b)(1) or § 162.77a(b)(1) and (b)(2)".

7. Section 162.79b is revised to read as follows:

§ 162.79b Recovery of actual loss of duties, taxes and fees or actual loss of revenue.

Whether or not a monetary penalty is assessed under this subpart, the appropriate Customs field officer will require the deposit of any actual loss of duties, taxes and fees resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) or any actual loss of revenue resulting from a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties, taxes and fees or actual loss of revenue in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued, the port director will issue a written notice to the person of the liability for the actual loss of duties, taxes and fees or actual loss of revenue. The notice will identify the merchandise and entries involved, state the loss of duties, taxes and fees or loss of revenue and how it was calculated, and require the person to deposit or arrange for payment of the duties, taxes and fees or revenue within 30 days from the date of the notice. Any determination of actual loss of duties, taxes and fees or actual loss of revenue under this section is subject to review upon written application to the Commissioner of Customs.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 is revised to read in part as follows:

Authority: 19 U.S.C. 66, 1592, 1593a, 1618, 1624. * * *

2. Section 171.31a is revised to read as follows:

§ 171.31a Written decisions.

If a petition for relief relates to a violation of section 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a or 19 U.S.C. 1641), the petitioner will be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

3. Part 171 is amended by adding a new Appendix D to read as follows:

Appendix D to Part 171—Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1593A

A monetary penalty incurred under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a; hereinafter referred to as section 593A), may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618; hereinafter referred to as section 618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by Customs in arriving at a just and reasonable assessment and disposition of liabilities arising under section 593A within the stated limitations. It is intended that these guidelines will be applied by Customs officers in prepenalty proceedings, in determining the monetary penalty assessed in the penalty notice, and in arriving at a final penalty disposition. The assessed or mitigated penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1593a(i).

(A) Violations of Section 593A

A violation of section 593A occurs when a person, through fraud or negligence, seeks, induces, or affects, or attempts to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material, or aids or abets any other person in the foregoing violation. There is no violation if the falsity is due solely to clerical error or mistake of fact unless the error or mistake is part of a pattern of negligent conduct. Also, the mere nonintentional repetition by an electronic system of an initial clerical error will not constitute a pattern of negligent

conduct. Nevertheless, if Customs has drawn the person's attention to the nonintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 593A.

(B) Degrees of Culpability

There are two degrees of culpability under section 593A: negligence and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute or done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences from those facts, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Fraud.* A violation is determined to be fraudulent if the material false statement, omission or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

(C) Assessment of Penalties

(1) *Issuance of Prepenalty Notice.* As provided in § 162.77a of the Customs Regulations (19 CFR 162.77a), if Customs has reasonable cause to believe that a violation of section 593A has occurred and determines that further proceedings are warranted, a notice of intent to issue a claim for a monetary penalty will be issued to the person concerned. In issuing such prepenalty notice, the appropriate Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice will not be issued if the claim does not exceed $1,000.

(2) *Issuance of Penalty Notice.* After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (C)(1), the appropriate Customs field officer will determine whether any violation described in section (A) has occurred. If a notice was issued under paragraph (C)(1) and the appropriate Customs field officer determines that there was no violation, Customs will promptly issue a written statement of the determination to the person to whom the notice was sent. If the appropriate Customs field officer determines that there was a violation, Customs will issue a written penalty claim to the person concerned. The written penalty claim will specify all changes in the information provided in the prepenalty notice issued under paragraph (C)(1). The person to whom the penalty notice is issued will have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, Customs will provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(D) Maximum Penalties

(1) *Fraud.* In the case of a fraudulent violation of section 593A, the monetary penalty will be in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) *Negligence.*

(a) *In General.* In the case of a negligent violation of section 593A, the monetary penalty will be in an amount not to exceed 20 percent of the actual or potential loss of revenue for the first violation.

(b) *Repetitive Violations.* For the first negligent violation that is repetitive (i.e., involves the same issue and the same violator), the penalty will be in an amount not to exceed 50 percent of the actual or potential loss of revenue. The penalty for a second and each subsequent repetitive negligent violation will be in an amount not to exceed the actual or potential loss of revenue.

(3) *Prior Disclosure.*

(a) *In General.* Subject to paragraph (D)(3)(b), if the person concerned discloses the circumstances of a violation of section 593A before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this Appendix will not exceed:

(i) In the case of fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) If the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period that begins on the date of overpayment of the claim and ends on the date on which the person concerned tenders the amount of the overpayment.

(b) *Condition Affecting Penalty Limitations.* The limitations in paragraph (D)(3)(a) on the amount of the monetary penalty to be assessed apply only if the person concerned tenders the amount of the overpayment made on the claim either at the time of the disclosure or within 30 days (or such longer period as Customs may provide) from the date of notice by Customs of its calculation of the amount of overpayment.

(c) *Burden of Proof.* The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(d) *Commencement of Investigation.* For purposes of this Appendix, a formal investigation of a violation is considered to be commenced with regard to the disclosing party, and with regard to the disclosed information, on the date recorded in writing by Customs as the date on which facts and circumstances were discovered which caused Customs to believe that a possibility of a violation of section 593A existed.

(e) *Exclusivity.* Penalty claims under section D will be the exclusive civil remedy for any drawback-related violation of section 593A.

(E) Deprivation of Lawful Revenue

Notwithstanding section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties and taxes resulting from a violation of section 593A, Customs will require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(F) Final Disposition of Penalty Cases When the Drawback Claimant Is Not a Certified Participant in the Drawback Compliance Program

(1) *In General.* Customs will consider all information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed penalty. All factors considered should be stated in the decision.

(2) *Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *Nonrepetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the actual or potential loss of revenue to a maximum of 20 percent of the actual or potential loss of revenue.

(b) *Repetitive Negligent Violation.*

(i) *First Repetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the actual or potential loss of revenue to a maximum of 50 percent of the actual or potential loss of revenue.

(ii) *Second and Each Subsequent Repetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the actual or potential loss of revenue to a maximum of 100 percent of the actual or potential loss of revenue.

(c) *Fraudulent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 1.5 times the actual or potential loss of revenue to a maximum of 3 times the actual or potential loss of revenue.

(3) *Penalty Disposition When There Has Been a Prior Disclosure.*

(a) *Negligent Violation.* The final penalty disposition will be in an amount equal to the interest determined in accordance with paragraph (D)(3)(a)(ii).

(b) *Fraudulent Violation.* The final penalty disposition will be in an amount equal to 100 percent of the actual or potential loss of revenue.

(4) *Mitigating Factors.* The following factors will be considered in mitigation of the proposed or assessed penalty claim or final penalty amount, provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed

Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If the Customs error contributed to the violation, but the alleged violator is also culpable, the Customs error is to be considered as a mitigating factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be cancelled.

(b) *Cooperation With the Investigation.* To obtain the benefits of this factor, the alleged violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. An example of the cooperation contemplated includes assisting Customs officers to an unusual degree in auditing the books and records of the alleged violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the alleged violator may not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(c) *Immediate Remedial Action.* This factor includes the payment of the actual loss of revenue prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of revenue attributable to the violation. In appropriate cases, where the alleged violator provides evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(d) *Prior Good Record.* Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of filing drawback claims without violation of section 593A, or any other statute prohibiting the making or filing of a false statement or document in connection with a drawback claim. This factor will not be considered in alleged fraudulent violations of section 593A.

(e) *Inability to Pay the Customs Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay). In addition, the alleged violator must present information reflecting ownership and related domestic and foreign parties and must provide information reflecting its current financial condition, including books and records of account, bank statements, other tax records (for example, sales tax returns) and a list of assets with current values; if the alleged violator is a closely held corporation, similar current financial information must be provided on the shareholders, wherever they are located.

(f) *Customs Knowledge.* This factor may be used in non-fraud cases (which also are not the subject of a criminal investigation) if it is determined that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. This factor is not applicable when a substantial delay in the investigation is attributable to the alleged violator.

(5) *Aggravating Factors.* Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the final administrative penalty. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be used to offset the presence of mitigating factors. The following factors will be considered "aggravating factors", provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Obstructing an investigation or audit.

(b) Withholding evidence.

(c) Providing misleading information concerning the violation.

(d) Prior substantive violations of section 593A for which a final administrative finding of culpability has been made.

(e) Failure to comply with a Customs summons or lawful demand for records.

(G) Drawback Compliance Program Participants

(1) *In General.* Special alternative procedures and penalty assessment standards apply in the case of negligent violations of section 593A committed by persons who are certified as participants in the Customs drawback compliance program and who are generally in compliance with the procedures and requirements of that program. Provisions regarding the operation of the drawback compliance program are set forth in part 191 of the Customs Regulations (19 CFR part 191).

(2) *Alternatives to Penalties.* When a participant described in paragraph (G)(1) commits a violation of section 593A, in the absence of fraud or repeated violations and in lieu of a monetary penalty, Customs will issue a written notice of the violation (warning letter).

(a) *Contents of Notice.* The notice will:

(i) State that the person has violated section 593A;

(ii) Explain the nature of the violation; and

(iii) Warn the person that future violations of section 593A may result in the imposition of monetary penalties and that repetitive violations may result in removal of certification under the drawback compliance program until the person takes corrective action that is satisfactory to Customs.

(b) *Response to Notice.* Within 30 days from the date of mailing of the written notice, the person must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation unless the person establishes to the satisfaction of Customs that no violation took place (see § 162.73a(b)(2)(ii) of the Customs Regulations, 19 CFR 162.73a(b)(2)(ii)). If the person fails to provide the required notification in a timely manner, any penalty assessed for a repetitive violation under paragraph (G)(3) will not be subject to mitigation under this Appendix.

(3) *Repetitive Violations.*

(a) *In General.* A person who has been issued a written notice under paragraph (G)(2) and who subsequently commits a negligent violation that is repetitive (i.e., involves the same issue), and any other person who is a participant described in paragraph (G)(1) and who commits a repetitive negligent violation, is subject to one of the following monetary penalties:

(i) An amount not to exceed 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive;

(ii) An amount not to exceed 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive ; and

(iii) An amount not to exceed 100 percent of the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(b) *Repetitive Violations Outside 3-Year Period.* If a participant described in paragraph (G)(1) commits a negligent violation that is repetitive but that did not occur within 3 years of the violation of which it is repetitive, the new violation will be treated as a first violation for which a written notice will be issued in accordance with paragraph (G)(2), and each repetitive violation subsequent to that violation that occurs within any 3-year period described in paragraph (G)(3)(a) will result in the assessment of the applicable monetary penalty prescribed in that paragraph.

(4) *Final Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *In General.* Customs will consider all information in the petition and all available evidence, taking into account any mitigating factors (see paragraph (F)(4)), aggravating factors (see paragraph (F)(5)), and extraordinary factors in determining the final assessed penalty. All factors considered should be stated in the decision.

(b) *First Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2).* The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the loss of revenue to a maximum of 20 percent of the loss of revenue.

(c) *Second Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the loss of revenue to a maximum of 50 percent of the loss of revenue.

(d) *Third and Each Subsequent Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or*

(G)(3). The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the loss of revenue to a maximum of 100 percent of the loss of revenue.

(e) *Fraudulent Violations.* The final penalty disposition will be determined in the same manner as in the case of fraudulent violations committed by persons who are not participants in the drawback compliance program (see paragraph (F)(2)(c)).

(5) *Final Penalty Disposition When There Has Been A Prior Disclosure.* The final penalty disposition will be determined in the same manner as in the case of persons who are not participants in the drawback compliance program (see paragraph (F)(3)).

(H) Violations by Small Entities

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 593A may be waived for businesses qualifying as small business entities. Procedures that were established for small business entities regarding violations of 19 U.S.C. 1592 in Treasury Decision 97–46 published in the **Federal Register** (62 FR 30378) are also applicable for small entities regarding violations of section 593A.

PART 191—DRAWBACK

1. The authority citation for part 191 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

2. In § 191.194, paragraphs (e) and (f) are revised to read as follows:

§ 191.194 Action on application to participate in compliance program.

* * * * *

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 191.192;

(iii) The program participant repeatedly files false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the applicable drawback office will serve the program participant with written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Programs, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, Customs Headquarters will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a Customs notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Programs, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters will consider the allegations upon which the removal was based and the responses made to those allegations by the appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

Approved: January 19, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–1681 Filed 1–24–00; 8:45 am]

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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8866]

RIN 1545–AV48

Equity Options With Flexible Terms; Special Rules and Definitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on the application of the rules governing qualified covered calls. The new rules address concerns that were created by the introduction of new financial instruments after the enactment of the qualified covered call rules. The final regulations will provide guidance to taxpayers writing qualified covered calls.

EFFECTIVE DATE: These regulations are effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Pamela Lew of the Office of Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1998, the IRS published in the **Federal Register** proposed regulations (REG–104641–97, 63 FR 34616) addressing whether strike prices available for equity options with flexible terms affect the definition of a qualified covered call (QCC) under section 1092(c)(4) for equity options with standardized terms. No requests to speak at a public hearing were received, and no public hearing was held.

Two written comments were received. These comments focused on whether equity options with flexible terms should be eligible for QCC treatment. After considering these comments, the IRS and Treasury have decided to

address the eligibility of equity options with flexible terms and certain other equity options for QCC treatment in other forthcoming guidance.

One of the comments also suggested a clarifying change to the text of the proposed regulations. After revising the regulation to take into account this comment, the proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

Section 1092(c) defines a straddle as offsetting positions with respect to personal property. Under section 1092(d)(3), stock is personal property if the stock is part of a straddle that involves an option on that stock or substantially identical stock or securities. Under section 1092(c)(4), however, writing a QCC option and owning the optioned stock is not treated as a straddle for purposes of section 1092.

In order to be a QCC, a call option must, among other things, be exchange-traded and not be deep in the money. An option is deep in the money if the strike price of the option is lower than the lowest qualified bench mark for the stock. This bench mark is generally the highest available strike price for an option on the stock that is less than the applicable stock price.

At the time the QCC provisions were enacted, exchange-traded options were available only at standardized maturity dates and strike price intervals. This fixed-interval system was a basic assumption of the Congressional plan for QCCs and, more specifically, was the foundation for the definition of a deep-in-the-money option.

Certain options exchanges have begun to trade equity options with flexible terms. Unlike standardized exchange-traded options, these options could have strike prices at other than fixed intervals. For this reason, there is concern that the strike prices established for equity options with flexible terms could impact the bench-mark system for standardized exchange-traded options.

The proposed regulations provide that strike prices established by equity options with flexible terms are not taken into account in determining whether options that are not equity options with flexible terms are deep in the money. Thus, the existence of strike prices established by equity options with flexible terms does not affect the lowest qualified bench mark, as determined under section 1092(c)(4)(D), for an equity option with standardized terms.

One commentator was concerned that usage of the phrase "existence of strike prices established by equity options without standardized terms" might be interpreted as requiring actual trading at a particular strike price. The commentator suggested that the regulation be modified to discuss the availability of a strike price for equity options with flexible terms rather than the existence of a strike price established by equity options with flexible terms. This suggestion has been incorporated into the final regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *. Section 1.1092(c)–1 also issued under 26 U.S.C. 1092(c)(4)(H). * * *

Par. 2. Section 1.1092(c)–1 is added to read as follows:

§ 1.1092(c)–1 Equity options with flexible terms.

(a) *In general.* Section 1092(c)(4) provides an exception to the general rule that a straddle exists if a taxpayer holds stock and writes a call option on that stock. Under section 1092(c)(4), the ownership of stock and the issuance of a call option meeting certain requirements result in a qualified covered call, which is exempted from the general straddle rules of section 1092. This section addresses the consequences of the availability of equity options with flexible terms under the qualified covered call rules.

(b) *No effect on lowest qualified bench mark for standardized options.* The availability of strike prices for equity options with flexible terms does not affect the determination of the lowest qualified bench mark, as defined in section 1092(c)(4)(D), for an option that is not an equity option with flexible terms.

(c) [Reserved].

(d) *Definitions.* For purposes of this section

(1) *Equity option with flexible terms* means an equity option—

(i) That is described in any of the following Securities Exchange Act Releases—

(A) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34–36841 (Feb. 21, 1996); or

(B) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34–37336 (June 27, 1996); or

(C) Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options, Securities Exchange Act Release No. 34–39549 (Jan. 23, 1998); or

(D) Any changes to the SEC releases described in paragraphs (d)(1)(i)(A) through (C) of this section that are approved by the Securities and Exchange Commission; or

(ii) That is traded on any national securities exchange which is registered with the Securities and Exchange Commission (other than those described in the SEC Releases set forth in paragraph (d)(1)(i) of this section) or

other market which the Secretary determines has rules adequate to carry out the purposes of section 1092 and is—

(A) Substantially identical to the equity options described in paragraph (d)(1)(i) of this section; and

(B) Approved by the Securities and Exchange Commission in a Securities Exchange Act Release.

(2) *Securities Exchange Act Release* means a release issued by the Securities and Exchange Commission. To determine identifying information for releases referenced in paragraph (d)(1) of this section, including release titles, identification numbers, and issue dates, contact the Office of the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. To obtain a copy of a Securities Exchange Act Release, submit a written request, including the specific release identification number, title, and issue date, to Securities and Exchange Commission, Attention Public Reference, 450 5th Street, NW., Washington, DC 20549.

(e) *Effective date.* These regulations apply to equity options with flexible terms entered into on or after January 25, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 17, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1527 Filed 1–21–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8868]

RIN 1545–AV68

Termination of Puerto Rico and Possession Tax Credit; New Lines of Business Prohibited

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and Temporary regulations.

SUMMARY: This document amends the Income Tax Regulations by removing temporary regulations that provide guidance regarding the addition of a substantial new line of business by a possessions corporation that is an existing credit claimant and adding final regulations. These regulations are necessary to implement changes made by the Small Business Job Protection Act of 1996.

DATES: *Effective Date.* These regulations are effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel S. Karen, (202) 874–1490, or Jacob Feldman, (202) 622–3830 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1601(a) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (1996), amended the Internal Revenue Code by adding section 936(j). Section 936(j) generally repeals the Puerto Rico and possession tax credit for taxable years beginning after December 31, 1995. However, the section provides grandfather rules under which a corporation that is an existing credit claimant would be eligible to claim credits for a transition period. The Puerto Rico and possession tax credit and the Puerto Rico economic activity credit phase out for these existing credit claimants ending with the last taxable year beginning before January 1, 2006.

For taxable years beginning after December 31, 1995 and before January 1, 2006, the Puerto Rico and possession tax credit and the Puerto Rico economic activity credit apply only to a corporation that qualifies as an existing credit claimant (as defined in section 936(j)(9)(A)). The determination of whether a corporation is an existing credit claimant is made separately for each possession. A possessions corporation that adds a substantial new line of business (other than in a qualifying acquisition of all the assets of a trade or business of an existing credit claimant) after October 13, 1995, ceases to be an existing credit claimant as of the beginning of the taxable year during which such new line of business is added. Therefore, a possessions corporation that ceases to be an existing credit claimant either because it has added a substantial new line of business, or because a new line of business becomes substantial, during a taxable year may not claim the Puerto Rico and possession tax credit or the Puerto Rico economic activity credit for that taxable year or any subsequent taxable year.

On August 19, 1998, temporary regulations were published in the **Federal Register** (63 FR 44387). A cross referenced Notice of Proposed Rulemaking was also published in the **Federal Register** (63 FR 44416) on the same date. Three comments were received with respect to the Notice. No hearing was requested and none was held. The temporary regulations are, therefore, adopted as proposed with the following changes, as explained, below.

Explanation of Revisions and Summary of Comments

Minor and conforming changes were made in these final regulations. Several changes were also made in the final regulations with regard to the three comments that were received on the Notice of Proposed Rulemaking.

The first comment received addressed the issue as to whether the leasing of some of the assets of an existing credit claimant would result in a new line of business under section 936(j)(9)(B) with respect to the leasing activity. In response to the comment, the final regulations provide that the leasing out of assets by an existing credit claimant (and the employees necessary to operate the leased assets) will not be treated as a new line of business provided that: (1) The existing credit claimant used the leased assets in an active trade or business for at least five years; (2) the existing credit claimant does not through its own officers or staff of employees perform management or operational functions (but not including operational functions performed through leased employees) with respect to the leased assets; and (3) the existing credit claimant does not perform marketing functions with respect to the leasing of the assets. The income from the leasing of assets will not be income from the active conduct of a trade or business, and therefore, the existing credit claimant may not receive a possession tax credit with respect to such income.

A second comment asked for clarification as to whether a taxpayer seeking to be treated as an existing credit claimant through the acquisition of the assets of an existing credit claimant pursuant to section 936(j)(9)(A)(ii) must acquire all the assets of the acquired corporation even in cases in which the existing credit claimant has more than one trade or business. The final regulations have been clarified to conform to the language of section 936(j)(9)(A)(ii) and provide that an acquiring corporation need only acquire all the assets of a single trade or business to be treated as an existing credit claimant.

The third comment asked for clarification as to when the assets of a trade or business are measured for purposes of satisfying the requirement that all the assets of a trade or business must be acquired from an existing credit claimant in order to satisfy section 936(j)(9)(A)(ii). Specifically, the comment expressed concern that assets

of an existing credit claimant may be sold or otherwise disposed of between October 13, 1995, the date on which existing credit claimant status is established, and the date of acquisition. In response to the comment, the final regulations provide that the assets of a trade or business of an existing credit claimant are determined on the date of acquisition provided that the transferee actively conducts a trade or business in the possession with the acquired assets.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its effect on small business.

Drafting Information

The principal author of this regulation is Daniel S. Karen of the Office of the Associate Chief Counsel (International), within the office of Chief Counsel, IRS. However, other personnel from the IRS and the Department of the Treasury participated in the development of this regulation.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for 1.936–11T and by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *. Section 1.936–11 also issued under 26 U.S.C. 936(j). * * *

§ 1.936–11T

[Removed]

Par. 2. Section 1.936–11T is removed.

Par. 3. Section 1.936–11 is added to read as follows:

§ 1.936–11 New lines of business prohibited.

(a) *In general.* A possessions corporation that is an existing credit claimant, as defined in section 936(j)(9)(A) and this section, that adds a substantial new line of business during a taxable year, or that has a new line of business that becomes substantial during the taxable year, loses its status as an existing credit claimant for that year and all years subsequent.

(b) *New line of business*—(1) *In general.* A new line of business is any business activity of the possessions corporation that is not closely related to a pre-existing business of the possessions corporation. The term *closely related* is defined in paragraph (b)(2) of this section. The term *pre-existing business* is defined in paragraph (b)(3) of this section.

(2) *Closely related.* To determine whether a new activity is closely related to a pre-existing business of the possessions corporation all the facts and circumstances must be considered, including those set forth in paragraphs (b)(2)(i)(A) through (G) of this section.

(i) *Factors.* The following factors will help to establish that a new activity is closely related to a pre-existing business activity of the possessions corporation—

(A) The new activity provides products or services very similar to the products or services provided by the pre-existing business;

(B) The new activity markets products and services to the same class of customers;

(C) The new activity is of a type that is normally conducted in the same business location;

(D) The new activity requires the use of similar operating assets;

(E) The new activity's economic success depends on the success of the pre-existing business;

(F) The new activity is of a type that would normally be treated as a unit with the pre-existing business' in the business accounting records; and

(G) The new activity and the pre-existing business are regulated or licensed by the same or similar governmental authority.

(ii) *Safe harbors.* An activity is not a new line of business if—

(A) If the activity is within the same six-digit North American Industry Classification System (NAICS) code (or four-digit Standard Industrial Classification (SIC) code). The similarity of the NAICS or SIC codes may not be relied upon to determine whether the activity is closely related to a pre-existing business where the code indicates a miscellaneous category;

(B) If the new activity is within the same five-digit NAICS code (or three-digit SIC code) and the facts relating to the new activity also satisfy at least three of the factors listed in paragraphs (b)(2)(i)(A) through (G) of this section; or

(C) If the pre-existing business is making a component product or end-product form, as defined in § 1.936–5(a)(1),Q&A1, and the new business activity is making an integrated product, or an end-product form with fewer excluded components, that is not within the same six-digit NAICS code (or four-digit SIC code) as the pre-existing business solely because the component product and the integrated product (or two end-product forms) have different end-uses.

(3) *Pre-existing business*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, a business activity is a pre-existing business of the existing credit claimant if—

(A) The existing credit claimant was actively engaged in the activity within the possession on or before October 13, 1995; and

(B) The existing credit claimant had elected the benefits of the Puerto Rico and possession tax credit pursuant to an election which was in effect for the taxable year that included October 13, 1995.

(ii) *Acquisition of an existing credit claimant.* (A) If all the assets of one or more trades or businesses of a corporation of an existing credit claimant are acquired by an affiliated or non-affiliated existing credit claimant which carries on the business activity of the predecessor existing credit claimant, the acquired business activity will be treated as a pre-existing business of the acquiring corporation. A non-affiliated acquiring corporation will not be bound by any section 936(h) election made by the predecessor existing credit claimant with respect to that business activity.

(B) Where all of the assets of one or more trades or businesses of a corporation of an existing credit claimant are acquired by a corporation that is not an existing credit claimant, the acquiring corporation may make a section 936(e) election for the taxable year in which the assets are acquired with the following effects—

(*1*) The acquiring corporation will be treated as an existing credit claimant for the year of acquisition;

(*2*) The activity will be considered a pre-existing business of the acquiring corporation;

(*3*) The acquiring corporation will be deemed to satisfy the rules of section 936(a)(2) for the year of acquisition; and

(4) After making an election under section 936(e), a non-affiliated acquiring corporation will not be bound by elections under sections 936(a)(4) and (h) made by the predecessor existing credit claimant.

(C) For purposes of this section the assets of a trade or business are determined at the time of acquisition provided that the transferee actively conducts the trade or business acquired.

(D) A mere change in the stock ownership of a possessions corporation will not affect its status as an existing credit claimant for purposes of this section.

(4) *Leasing of Assets.*—(i) The leasing of assets (and employees to operate leased assets) will not, for purposes of this section, be considered a new line of business of the existing credit claimant if—

(A) the existing credit claimant used the leased assets in an active trade or business for at least five years;

(B) the existing credit claimant does not through its own officers or staff of employees perform management or operational functions (but not including operational functions performed through leased employees) with respect to the leased assets; and

(C) the existing credit claimant does not perform marketing functions with respect to the leasing of the assets.

(ii) Any income from the leasing of assets not considered a new line of business pursuant to paragraph (b)(4)(i) of this section will not be income from the active conduct of a trade or business (and, therefore, the existing credit claimant may not receive a possession tax credit with respect to such income).

(5) *Timing rule.* The tests for a new line of business in this paragraph (whether the new activity is closely related to a pre-existing business) are applied only at the end of the taxable year during which the new activity is added.

(c) *Substantial*—(1) *In general.* A new line of business is considered to be substantial as of the earlier of—

(i) The taxable year in which the possessions corporation derives more than 15 percent of its gross income from that new line of business (gross income test); or

(ii) The taxable year in which the possessions corporation directly uses in that new line of business more than 15 percent of its assets (assets test).

(2) *Gross income test.* The denominator in the gross income test is the amount that is the gross income of the possessions corporation for the current taxable year, while the numerator is the amount that is the gross income of the new line of business for the current taxable year. The gross income test is applied at the end of each taxable year. For purposes of this test, if a new line of business is added late in the taxable year, the income is not to be annualized in that year. In the case of a new line of business acquired through the purchase of assets, the gross income of such new line of business for the taxable year of the acquiring corporation that includes the date of acquisition is determined from the date of acquisition through the end of the taxable year. In the case of a consolidated group election made pursuant to section 936(i)(5), the test applies on a company by company basis and not on a consolidated basis.

(3) *Assets test*—(i) *Computation.* The denominator is the adjusted tax basis of the total assets of the possessions corporation for the current taxable year. The numerator is the adjusted tax basis of the total assets utilized in the new line of business for the current taxable year. The assets test is computed annually using all assets including cash and receivables.

(ii) *Exception.* A new line of business of a possessions corporation will not be treated as substantial as a result of meeting the assets test if an event that is not reasonably anticipated causes assets used in the new line of business of the possessions corporation to exceed 15 percent of the adjusted tax basis of the possessions corporation's total assets. For example, an event that is not reasonably anticipated would include the destruction of plant and equipment of the pre-existing business due to a hurricane or other natural disaster, or other similar circumstances beyond the control of the possessions corporation. The expiration of a patent is not such an event and will not permit use of this exception.

(d) *Examples.* The following examples illustrate the rules described in paragraphs (a), (b), and (c) of this section. In the following examples, X Corp. is an existing credit claimant unless otherwise indicated:

Example 1. X Corp. is a pharmaceutical corporation which manufactured bulk chemicals (a component product). In March 1997, X Corp. began to also manufacture pills (e.g., finished dosages or an integrated product). The new activity provides products very similar to the products provided by the pre-existing business. The new activity is of a type that is normally conducted in the same business location as the pre-existing business. The activity's economic success depends on the success of the pre-existing business. The manufacture of bulk chemicals is in NAICS code 325411, Medicinal and Botanical Manufacturing, while the manufacture of the pills is in NAICS code 325412, Pharmaceutical Preparation Manufacturing. Although the products have a different end-use, may be marketed to a different class of customers, and may not use similar operating assets, they are within the same five-digit NAICS code and the activity also satisfies paragraphs (b)(2)(i)(A), (C), and (E) of this section. The manufacture of the pills by X Corp. will be considered closely related to the manufacture of the bulk chemicals. Therefore, X Corp. will not be considered to have added a new line of business for purposes of paragraph (b) of this section because it falls within the safe harbor rule of (b)(2)(ii)(B).

Example 2. X Corp. currently manufactures printed circuit boards in a possession. As a result of a technological breakthrough, X Corp. could produce the printed circuit boards more efficiently if it modified its existing production methods. Because demand for its products was high, X Corp. expanded when it modified its production methods. After these modifications to the facilities and production methods, the products produced through the new technology were in the same six-digit NAICS code as products produced previously by X Corp. See paragraph (b)(2)(ii)(A) of this section. Therefore, X Corp. will not be considered to have added a new line of business for purposes of paragraph (b) of this section because it falls within the safe harbor rule of (b)(2)(ii)(A).

Example 3. X Corp. has manufactured Device A in Puerto Rico for a number of years and began to manufacture Device B in Puerto Rico in 1997. Device A and Device B are both used to conduct electrical current to the heart and are both sold to cardiologists. There is no significant change in the type of activity conducted in Puerto Rico after the transfer of the manufacturing of Device B to Puerto Rico. Similar manufacturing equipment, manufacturing processes and skills are used in the manufacture of both devices. Both are regulated and licensed by the Food and Drug Administration. The economic success of Device B is dependent upon the success of Device A only to the extent that the liability and manufacturing prowess with respect to one reflects favorably on the other. Depending upon the heart abnormality, the cardiologist may choose to use Device A, Device B or both on a patient. The manufacture of Device B is treated as a unit with the manufacture of Device A in X Corp.'s accounting records. The manufacture of Device A is in the six-digit NAICS code 339112, Surgical and Medical Instrument Manufacturing. The manufacture of Device B is in the six-digit NAICS code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing. (The manufacture of Device A is in the four-digit SIC code 3845, Electromedical and Electrotherapeutic Apparatus. The manufacture of Device B is in the four-digit SIC code 3841, Surgical and Medical Instruments and Apparatus.) The safe harbor of paragraph (b)(2)(ii)(B) of this section applies because the two activities are within the same three-digit SIC code and Corp. X satisfies paragraphs (b)(2)(i)(A), (B), (C), (D), (F), and (G) of this section.

Example 4. X Corp. has been manufacturing house slippers in Puerto Rico since 1990. Y Corp. is a U.S. corporation that

is not affiliated with X Corp. and is not an existing credit claimant. Y Corp. has been manufacturing snack food in the United States. In 1997, X Corp. purchased the assets of Y Corp. and began to manufacture snack food in Puerto Rico. House slipper manufacturing is in the six-digit NAICS code 316212 (Four-digit SIC code 3142, House Slippers). The manufacture of snack foods falls under the six-digit NAICS code 311919, Other Snack Food Manufacturing (four-digit SIC code 2052, Cookies and Crackers (pretzels)). Because these activities are not within the same five or six digit NAICS code (or the same three or four-digit SIC code), and because snack food is not an integrated product that contains house slippers, the safe harbor of paragraph (b)(2)(ii) of this section cannot apply. Considering all the facts and circumstances, including the seven factors of paragraph (b)(2)(i) of this section, the snack food manufacturing activity is not closely related to the manufacture of house slippers, and is a new line of business, within the meaning of paragraph (b) of this section.

Example 5. X Corp., a calendar year taxpayer, is an existing credit claimant that has elected the profit-split method for computing taxable income. P Corp. was not an existing credit claimant and manufactured a product in a different five-digit NAICS code than the product manufactured by X Corp. In 1997, X Corp. acquired the stock of P Corp. and liquidated P Corp. in a tax-free liquidation under section 332, but continued the business activity of P Corp. as a new business segment. Assume that this new business segment is a new line of business within the meaning of paragraph (c) of this section. In 1997, X Corp. has gross income from the active conduct of a trade or business in a possession computed under section 936(a)(2) of $500 million and the adjusted tax basis of its assets is $200 million. The new business segment had gross income of $60 million, or 12 percent of the X Corp. gross income, and the adjusted basis of the new segment's assets was $20 million, or 10 percent of the X Corp. total assets. In 1997, X Corp. does not derive more than 15 percent of its gross income, or directly use more that 15 percent of its total assets, from the new business segment. Thus, the new line of business acquired from P Corp. is not a *substantial* new line of business within the meaning of paragraph (c) of this section, and the new activity will not cause X Corp. to lose its status as an existing credit claimant during 1997. In 1998, however, the gross income of X Corp. grew to $750 million while the gross income of the new line of business grew to $150 million, or 20% of the X Corp. 1998 gross income. Thus, in 1998, the new line of business is substantial within the meaning of paragraph (c) of this section, and X Corp. loses its status as an existing credit claimant for 1998 and all years subsequent.

(e) *Loss of status as existing credit claimant.* An existing credit claimant that adds a substantial new line of business in a taxable year, or that has a new line of business that becomes substantial in a taxable year, loses its status as an existing credit claimant for that year and all years subsequent.

(f) *Effective date*—(1) *General rule.* This section applies to taxable years of a possessions corporation beginning on or after January 25, 2000.

(2) *Election for retroactive application.* Taxpayers may elect to apply retroactively all the provisions of this section for any open taxable year beginning after December 31, 1995. Such election will be effective for the year of the election and all subsequent taxable years. This section will not apply to activities of pre-existing businesses for taxable years beginning before January 1, 1996.

David Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: January 12, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1528 Filed 1–21–00; 8:45 am]

BILLING CODE 4831–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8867]

RIN 1545–AW69

Passive Foreign Investment Companies; Definition of Marketable Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1296 relating to the new mark-to-market election for stock of a passive foreign investment company (PFIC). The final regulations interpret changes made by the Taxpayer Relief Act of 1997. The final regulations affect persons holding PFIC stock that is regularly traded on certain U.S. or foreign exchanges or markets or holding stock in certain PFICs comparable to U.S. regulated investment companies (RICs).

DATES: *Effective Date:* January 25, 2000.

Applicability Dates: For dates of applicability see section 1.1296(e)–1(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Robert Laudeman, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1999, the IRS published in the **FEDERAL REGISTER** proposed regulations (REG–113744–98, 64 FR 5014) regarding the taxation of U.S. holders of PFIC stock. Three written comments regarding the proposed regulations were received. Because no one requested to speak at a public hearing, no hearing was held. After consideration of all of the comments received, the proposed regulations under section 1296 are adopted as final regulations with some changes. The changes are discussed below.

The preamble to the proposed regulations (64 FR 5014) provides a detailed discussion of the mark-to-market election for shareholders of PFIC stock and the proposed regulations.

Summary of Public Comments and Changes

Exchange or Other Market

The proposed regulations require that a foreign exchange or market be regulated or supervised by a governmental authority of the country in which the market is located. The proposed regulations also list additional characteristics that the foreign exchange or market must have for stock that is regularly traded on the exchange or market to be marketable stock for purposes of section 1296. Specifically, the proposed regulations require that the exchange have trading volume, listing, financial disclosure and other requirements designed to prevent fraud, perfect the mechanism of a free and open market, and protect investors.

The final regulations add a surveillance requirement and add the concept of perfecting a fair and orderly market to the requirements for exchanges. These changes are intended to clarify the characteristics that an exchange or other market must have in order to be a qualified exchange or market for purposes of section 1296 and to more closely represent common characteristics of foreign markets. See International Federation of Stock Exchanges (FIBV), *1998 Market Principles,* available by request from secretariat@fibv.com, and International Organization of Securities Commissions (IOSCO), *Supervisory Framework for Markets, Report by the Technical Committee,* May 1999 (visited Oct. 5, 1999) <http://www.iosco.org/iosco.html>.

Stock in Certain PFICs

The proposed regulations provide that stock in certain PFICs is *marketable stock* if the PFIC both is a corporation described in section 1296(e)(1)(B) (foreign corporations comparable to RICs) and offers for sale or has outstanding stock of which it is the

issuer and which is redeemable at its net asset value. The proposed regulations further provide that a PFIC is a corporation described in section 1296(e)(1)(B) only if the PFIC satisfies eight conditions listed in the proposed regulations with respect to the class of shares held by the electing taxpayer. The conditions are intended to describe PFICs that are comparable to RICs in relevant respects and to implement the intent of the statute by ensuring that the net asset valuations of such companies represent legitimate and sound fair market values for the companies' stock.

Two commentators asserted that the statute and legislative history indicate that Congress was only concerned that PFICs redeem stock at net asset values and that such values represent sound and legitimate fair market values and, therefore, it is not necessary that the PFIC resemble a RIC. The commentators suggest that the regulations be modified to include PFICs that redeem their stock at its net asset value but do not otherwise resemble RICs. Because the plain language of the statute clearly requires that the stock in any foreign corporation be comparable to a RIC, the final regulations retain the approach of requiring PFICs to be comparable to RICs in order for their stock to be marketable stock for purposes of section 1296(e)(1)(B).

The proposed regulations provide that a foreign corporation must have one hundred or more unrelated shareholders. One commentator recommended that the number be reduced to ten unrelated shareholders, arguing that a corporation with ten unrelated shareholders as opposed to one hundred unrelated shareholders has the same susceptibility to legal liabilities if valuations are inaccurate. Requiring that a PFIC have one hundred or more unrelated shareholders is comparable to the requirement imposed on RICs by section 851(a). In addition, the IRS and the Treasury Department believe that there will be less likelihood of share price manipulation with corporations that have one hundred or more unrelated shareholders. Consequently, the above described rule in the proposed regulations is not changed except that "one hundred or more" is corrected to read "more than one hundred" unrelated shareholders.

The proposed regulations require that the class of shares of the foreign corporation be readily available for purchase by the general public at its net asset value by new investors in initial amounts not greater than $10,000 (U.S.). One commentator recommended that this condition not be included in the final regulations because an investment ceiling will not make the valuation easier or less likely to be manipulated.

The condition in the proposed regulations regarding initial investments is not an investment ceiling. Rather, the condition specifies that the foreign corporation not require a minimum initial investment of greater than $10,000 (U.S.) and that shares of the foreign corporation be readily available for purchase by the general public at net asset values. For example, a foreign corporation that requires new investors to purchase shares for a minimum initial investment of $5,000 (U.S.) satisfies the condition. However, a foreign corporation that requires new investors to purchase shares for a minimum initial investment of $20,000 (U.S.) does not satisfy the condition. There is not any limit, however, on the total amount that a shareholder can invest. The final regulations clarify that this condition is not an investment ceiling.

Two additional requirements in the proposed regulations are that shares be available for purchase by the general public and that, no less frequently than annually, financial statements prepared by independent auditors be available to the public. One commentator asserted that availability to the general public of the shares of the foreign corporation and of the financial statements is not necessary and should not be required because it will not necessarily ensure a legitimate and sound fair market value for the foreign corporation's stock.

Availability of shares for purchase by the general public is comparable to the requirement of availability of shares of RICs for purchase by the general public. In addition, availability of shares for purchase by the the general public for net asset value (in addition to current investors being able to redeem shares for the same net asset value), will ensure that the net asset values are legitimate and sound. However, shares will not be considered available for purchase by the general public if the shares are only available to individuals with high annual incomes or high net worth. For example, limiting investors to individuals with annual incomes in excess of $200,000 or net worth in excess of $1 million will not be considered available for purchase by the general public.

Similarly, availability to the general public of audited financial statements is comparable to conditions imposed on RICs and will help to ensure that the foreign corporation's financial information is readily available to potential and current investors, which, in turn, will help ensure that the net asset values are legitimate and sound. Availability of financial statements to the general public requires no more than that the statements be available upon request to potential and current investors.

The proposed regulations require that quotations for the shares of the foreign corporation be determined and published on a daily basis in a widely-available medium, such as a newspaper of general circulation. One commentator asserted that the condition is not necessary because the mark-to-market election is made on an annual basis at the close of the taxpayer's taxable year. The commentator recommended that the condition be changed to require that values be communicated to shareholders, on at least an annual basis, in written form that serves as support for such valuation.

The final regulations do not adopt the commentator's recommendation. The publication of quotations for the shares is not intended to serve solely as a means for a current shareholder of the PFIC to determine the value of the PFIC on the mark date. The publication of quotations for the shares is comparable to the practice of RICs and helps to ensure that asset valuations are legitimate and sound by allowing potential investors as well as current shareholders to have ready access to price information.

Because quotations for the shares of some PFICs may not be published on a daily basis, the daily publication requirement in the proposed regulations is changed to require that quotations for the shares of the foreign corporation be determined and published no less frequently than weekly. In addition, the publication requirement is changed to clarify that the quotations must be published in a permanent medium not controlled by the issuer of the shares, such as an independent trade publication. The requirement that the medium be permanent does not require the medium to be saved in a printed form; archived electronic data not susceptible to subsequent alteration are permanent. This change is intended to assist shareholders and the IRS in verifying valuations.

The proposed regulations require that the foreign corporation be supervised or regulated as an investment company by a foreign government or instrumentality thereof. One commentator suggested that the condition be clarified with respect to the meaning of governmental supervision. In particular, the commentator asks whether a foreign jurisdiction that requires a local corporation to file information upon incorporation with the local government

or agency would qualify as supervision or regulation.

The condition in the proposed regulations is intended to require that the PFIC be supervised or regulated as an investment company in a manner comparable, but not identical, to RICs. Consequently, the final regulations clarify the type of supervision or regulation required. The final regulations provide that sufficient supervision or regulation requires that the government or agency have broad inspection and enforcement authority and effective oversight over investment companies to ensure that such companies provide complete and accurate disclosure of relevant financial information to shareholders and potential investors and to provide adequate sanctions for false or inadequate disclosure. The mere filing of information upon incorporation does not qualify as supervision or regulation.

Finally, the proposed regulations require that the foreign corporation have no senior securities authorized or outstanding, including any debt other than de minimis amounts. In addition, the proposed regulations require that the foreign corporation meet the PFIC income and asset tests in sections 1297(a)(1) and (2) with the requisite percentages increased from 75 percent to 90 percent and from 50 percent to 90 percent respectively. One commentator asserted that these conditions not be included in the final regulations because there is no basis for requiring a PFIC to have the same borrowing restrictions, asset composition, and characteristics of RICs in order for the PFIC's stock to be marketable stock under section 1296.

Conditions regarding debt and asset composition are essential characteristics of RICs. The IRS and the Treasury Department believe that Congress intended to provide mark-to-market treatment to shares of PFICs that are, in fact, comparable to RICs.

Special Rules for RICs

The proposed regulations provide that if shares in a PFIC are owned directly or indirectly by a RIC, that is offering for sale, or has outstanding any stock of which it is the issuer, and which is redeemable at net asset value, the PFIC shares shall be treated as marketable stock for purposes of section 1296. Section 1296(e)(2) further provides that except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other RIC which publishes net asset valuations at least annually. The IRS and Treasury Department invited comments regarding situations where PFIC stock held by other RICs that publish asset valuations at least annually should not be treated as marketable stock for purposes of section 1296.

One commentator explained why PFIC stock held by any closed-end RIC that publishes net asset values at least annually should be treated as marketable stock. In particular, that commentator pointed out that closed-end RICs are subject to many of the same regulatory requirements as open-end RICs. In addition, that commentator explained that an industry practice has developed under which closed-end RICs typically determine and publish current share prices, together with net asset values, on a weekly basis in print and other media.

At this time, the IRS and Treasury Department know of no reason not to treat PFIC stock held by closed-end funds that publish net asset values at least annually as marketable stock. Consequently, as provided by section 1296(e)(2), PFIC stock held by any closed-end RIC that publishes net asset values at least annually shall be treated as marketable stock. The final regulations, however, continue to reserve this issue in the event that it is determined that situations exist where PFIC stock held by closed-end RICs that publish net asset valuations at least annually should not be treated as marketable stock for purposes of section 1296. If such a situation is found to exist, the reservation will be replaced at that time by a new regulatory exception.

Special Analyses

It has been determined that these regulations are not significant regulatory actions as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a requirement for the collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert Laudeman of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *. Section 1.1296(e)–1 also issued under 26 U.S.C. 1296(e). * * *

Par. 2. Section 1.1296(e)–1 is added to read as follows:

§ 1.1296(e)–1 Definition of marketable stock.

(a) *General rule.* For purposes of section 1296, the term *marketable stock* means—

(1) Passive foreign investment company (PFIC) stock that is regularly traded, as defined in paragraph (b) of this section, on a qualified exchange or other market, as defined in paragraph (c) of this section;

(2) Stock in certain PFICs, as described in paragraph (d) of this section; and

(3) Options on stock that is described in paragraph (a)(1) or (2) of this section, to the extent provided in paragraph (e) of this section.

(b) *Regularly traded*—(1) *General rule.* For purposes of paragraph (a)(1) of this section, a class of stock that is traded on one or more qualified exchanges or other markets, as defined in paragraph (c) of this section, is regularly traded on such exchanges or markets for any calendar year during which such class of stock is traded, other than in de minimis quantities, on at least 15 days during each calendar quarter.

(2) *Anti-abuse rule.* Trades that have as one of their principal purposes the meeting of the trading requirement of paragraph (b)(1) of this section shall be disregarded. Further, a class of stock shall not be treated as meeting the trading requirement of paragraph (b)(1) of this section if there is a pattern of trades conducted to meet the requirement of paragraph (b)(1) of this section.

(c) *Qualified exchange or other market—(1) General rule.* For purposes of paragraph (a)(1) of this section, the term *qualified exchange or other market* means, for any calendar year—

(i) A national securities exchange that is registered with the Securities and

Exchange Commission or the national market system established pursuant to section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) A foreign securities exchange that is regulated or supervised by a governmental authority of the country in which the market is located and which has the following characteristics—

(A) The exchange has trading volume, listing, financial disclosure, surveillance, and other requirements designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open, fair and orderly, market, and to protect investors; and the laws of the country in which the exchange is located and the rules of the exchange ensure that such requirements are actually enforced; and

(B) The rules of the exchange effectively promote active trading of listed stocks.

(2) *Exchange with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(d) *Stock in certain PFICs*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, a foreign corporation is a corporation described in section 1296(e)(1)(B), and paragraph (a)(2) of this section, if the foreign corporation offers for sale or has outstanding stock of which it is the issuer and which is redeemable at its net asset value and if the foreign corporation satisfies the following conditions with respect to the class of shares held by the electing taxpayer—

(i) At all times during the calendar year, the foreign corporation has more than one hundred shareholders with respect to the class, other than shareholders who are related under section 267(b);

(ii) At all times during the calendar year, the class of shares of the foreign corporation is readily available for purchase by the general public at its net asset value and the foreign corporation does not require a minimum initial investment of greater than $10,000 (U.S.);

(iii) At all times during the calendar year, quotations for the class of shares of the foreign corporation are determined and published no less frequently than on a weekly basis in a widely-available permanent medium not controlled by the issuer of the shares, such as a newspaper of general circulation or a trade publication;

(iv) No less frequently than annually, independent auditors prepare financial statements of the foreign corporation that include balance sheets (statements of assets, liabilities, and net assets) and statements of income and expenses, and those statements are made available to the public;

(v) The foreign corporation is supervised or regulated as an investment company by a foreign government or an agency or instrumentality thereof that has broad inspection and enforcement authority and effective oversight over investment companies;

(vi) At all times during the calendar year, the foreign corporation has no senior securities authorized or outstanding, including any debt other than in de minimis amounts;

(vii) Ninety percent or more of the gross income of the foreign corporation for its taxable year is passive income, as defined in section 1297(a)(1) and the regulations thereunder; and

(viii) The average percentage of assets held by the foreign corporation during its taxable year which produce passive income or which are held for the production of passive income, as defined in section 1297(a)(2) and the regulations thereunder, is at least 90 percent.

(2) *Anti-abuse rule.* If a foreign corporation undertakes any actions that have as one of their principal purposes the manipulation of the net asset value of a class of its shares, for the calendar year in which the manipulation occurs, the shares are not marketable stock for purposes of paragraph (d)(1) of this section.

(e) [Reserved]

(f) *Special rules for regulated investment companies (RICs)*—(1) *General rule.* In the case of any RIC that is offering for sale, or has outstanding, any stock of which it is the issuer and which is redeemable at net asset value, if the RIC owns directly or indirectly, as defined in sections 958(a)(1) and (2), stock in any passive foreign investment company, that stock will be treated as marketable stock owned by that RIC for purposes of section 1296. Except as provided in paragraph (f)(2) of this section, in the case of any other RIC that publishes net asset valuations at least annually, if the RIC owns directly or indirectly, as defined in sections 958(a)(1) and (2), stock in any passive foreign investment company, that stock will be treated as marketable stock owned by that RIC for purposes of section 1296.

(2) [Reserved]

(g) *Effective date.* This section applies to shareholders whose taxable year ends on or after January 25, 2000 for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. In addition, shareholders may elect to apply these regulations to any taxable year beginning after December 31, 1997, for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 12, 2000.

Jonathan Talisman,

Assistant Secretary of the Treasury.

[FR Doc. 00–1530 Filed 1–21–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8865]

RIN 1545–AS77

Amortization of Intangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amortization of certain intangible property. The final regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991.

DATES: *Effective Date:* January 25, 2000.

Applicability Dates: These regulations apply to property acquired after January 25, 2000. Regulations to implement section 197(e)(4)(D) are applicable August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, for property acquired after July 25, 1991, if a valid retroactive election has been made under § 1.197–1T).

FOR FURTHER INFORMATION CONTACT: John Huffman at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1671.

The collection of information in this regulation is in § 1.197–2(h)(9). This information is required in order to provide guidance on the time and manner of making the election under section 197(f)(9)(B). Under this election, the seller of a section 197 intangible may pay a tax on the sale in order to avoid the application of the anti-churning rules of section 197(f)(9) to the purchaser. This information will be used to confirm the parties to the transaction, calculate any additional tax due, and notify the purchaser of the seller's election. The likely respondents are business or other for-profit institutions.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 27, 2000. Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Estimated total annual reporting burden: 1500 hours.

Estimated average annual burden hours per respondent varies from 2 to 4 hours, depending on individual circumstances, with an estimated average of 3 hours.

Estimated number of respondents: 500 per year.

Estimated annual frequency of responses: 1.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 16, 1997, the IRS published proposed regulations (REG–209709–94) in the **Federal Register** (62 FR 2336) inviting comments under sections 167(f) and 197. A public hearing was held May 15, 1997. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 162(k) Application

Example 4 of the proposed regulation § 1.197–2(k) provided that amounts paid for a covenant not to compete entered into in connection with a redemption was nondeductible under section 162(k) and thus not subject to section 197. Commentators suggested that guidance on the application of section 162(k) to transactions involving section 197 intangibles should be addressed in regulations under section 162(k). No reference to section 162(k) is made in the final regulations.

Purchase of a Trade or Business

Certain intangibles are excepted from the application of section 197 if they are not acquired as part of a purchase of a trade or business. The proposed regulations provide that, for purposes of section 197, a group of assets constitutes a trade or business if their use would constitute a trade or business under section 1060 (that is, if goodwill or going concern value could, under any circumstances, attach to the assets).

In addition, the proposed regulations treat a group of assets as a trade or business if they include any customer-based intangibles or, with certain exceptions, any franchise, trademark, or trade name (the per se rules). The preamble of the proposed regulations state that the IRS intends to provide additional guidance on the circumstances in which a group of assets is treated as a trade or business in regulations under section 1060.

Although a number of comments requested that the final regulations under section 197 provide such additional guidance, the final regulations generally retain, without amplification, the rules in the proposed regulations. The IRS and Treasury Department will, however, continue to consider this issue during the development of final regulations under section 1060.

Commentators also requested modifications to the per se rules. In response to these comments, the final regulations limit the applicability of these rules to the cases specifically described in the legislative history of section 197 (that is, the acquisition of a franchise, trademark, or trade name). The final regulations retain the proposed exceptions under which certain franchises, trademarks, and trade names are disregarded in applying the per se rules. In addition, the regulations clarify that a license of a trademark or trade name is also disregarded in applying the per se rules.

Computer Software

The final regulations contain rules that supersede certain of the procedures set forth in Revenue Procedure 69–21 (1969–2 C.B. 303), which provides guidelines relating to costs incurred to develop, purchase, or lease computer software. Specifically, the final regulations provide that purchased computer software is amortizable over 15 years if section 197 applies and over 36 months if the software is not a section 197 intangible. In addition, the regulations clarify that section 197 (rather than § 1.162–11) applies to certain costs incurred with respect to leased software (that is, costs to acquire a section 197 intangible that is a limited interest in software). Computer software costs included, without being separately stated, in the cost of the computer hardware (bundled software) continue to be capitalized and depreciated as part of the computer hardware. In addition, the final regulations treat software costs as currently deductible (and not subject to section 197) if they are not chargeable to capital account under the rules applicable to licensing transactions (discussed below) and are otherwise currently deductible. The final regulations clarify that, for this purpose, an amount described in § 1.162–11 is not currently deductible if, without regard to § 1.162–11, such amount is properly chargeable to capital account. A proper and consistent practice of taking software costs into account under § 1.162–11 may, however, be continued if the costs are not subject to section 197.

A revenue procedure superseding Rev. Proc. 69–21 and providing procedures consistent with the rules in the final regulations will be issued in the near future. In the meantime, taxpayers may not rely on the

procedures in Rev. Proc. 69–21 to the extent they are inconsistent with section 167(f), section 197, or the final regulations.

Mortgage Servicing Rights

The proposed regulations treat mortgage servicing rights relating to a pool of mortgages as a single asset under section 167(f) (relating to mortgage servicing rights not acquired as part of a purchase of a trade or business). Thus, if some but not all mortgages in a pool prepay, no loss is recognized. Commentators assert that each right in the pool is a discrete asset, and thus, taxpayers should be able to recognize a loss upon the prepayment of an individual mortgage within the pool. The Service and the Treasury Department believe this is generally inappropriate in cases where depreciation is based on the average useful life of the assets. See § 1.167(a)–8. Thus, the regulations retain the rule that no loss is recognized if some but not all mortgages in a pool prepay or are sold or exchanged. The final regulations provide, however, that if a taxpayer establishes multiple accounts within a pool at the time of its acquisition, gain or loss is recognized on the sale or exchange of all mortgage servicing rights within any such account.

When Section 197 Amortization Begins

The proposed regulations provide that amortization begins the later of the first day of the month in which the property is acquired, or the first month in which the active conduct of a trade or business begins. Commentators suggest that the literal language of section 197(a) allows amortization beginning with the month the intangible is acquired. Under section 197(c)(1), however, a section 197 intangible is amortizable only if it is held in connection with the conduct of a trade or business or an activity described in section 212. Moreover, there is no suggestion in the legislative history that Congress intended to apply a rule differing from those applicable under section 167 and former section 1253(d).

Former section 1253(d)(2) provided, in language similar to that in section 197(a), that the amortization of certain amounts begins in the taxable year in which the amounts are paid. Although section 1253(d)(2) did not contain any reference to section 162 or to use in a trade or business, it was nevertheless well established at the time of the enactment of section 197 that the provision embodied a trade or business requirement and that amounts were not deductible thereunder unless the taxpayer was operating or conducting a trade or business after the amounts were paid.

Commentators suggest that it is significant that section 167 refers to "property used in the trade or business" while property can qualify for amortization under section 197 if it is "held in connection with the conduct of a trade or business." Further, commentators assert that the language used in section 197 is closer to the "held in connection with his trade or business" language used in section 174, which does not require the current conduct of a trade or business, than to the language of section 167. The different language used in these provisions can be explained, however, without departing from previous practice under sections 167 and 1253(d) regarding the time at which amortization commences. Broader language under section 197 is necessary because it applies to assets, such as goodwill, that although held in connection with the conduct of a trade or business are not commonly viewed as being used in the trade or business. Further, modifying the language used in section 174 by adding the words "conduct of" indicates that Congress did not intend to change the longstanding trade or business requirement for purposes of determining when amortization commences.

Consequently, the final regulations retain the rule in the proposed regulations that amortization begins no earlier than the first day of the month in which the active trade or business or the activity described in section 212 begins.

Transactions Involving Partnerships

The final regulations relating to partnership transactions have been changed from the proposed regulations in several respects to reflect the recommendations of commentators. *Example 17* of the proposed regulation § 1.197–2(k) provided that a partner may amortize a § 743 adjustment with respect to a section 197 intangible only if the formation of the partnership and the sale of the partnership interest are "unrelated transactions." Commentators suggested that an unrelated transaction standard would create significant confusion for taxpayers. According to the commentators, taxpayers would have greater certainty with respect to their transactions, and the government still would be adequately protected, if these transactions were analyzed under general tax principles, including the step transaction doctrine. The final regulations remove the unrelated transaction requirement. However, if the transaction is structured so that, under general principles of tax law, the transaction is not properly characterized as a sale of a partnership interest, then section 197 will apply to the transaction as recast to reflect its true economic substance.

Certain commentators also requested that *Example 16* of proposed regulation § 1.197–2(k) be modified to allow a partnership to amortize an intangible contributed to the partnership under the transferred basis rules under section 197(f)(2), even if a partner related to the partnership under section 197(f)(9)(C) had owned the intangible during the transition period and, as part of an integrated transaction, had sold the intangible to an unrelated party before forming the partnership. The commentators suggested that because section 197(f)(9)(E) generally permits amortization for the stepped-up basis in a partnership transaction under section 743 where a section 754 election was in effect, amortization also should be allowed in a sale of an intangible followed by a contribution of the intangible to a partnership, an economically similar transaction. This recommendation was not adopted. In general, a partnership is treated as an entity separate from its partners in characterizing related party transfers. See, *e.g.*, Section 707(b)(1) (specifically referenced in section 197(f)(9)(C)(i)(I)). Section 197(f)(9)(E) does provide a special anti-churning rule for certain partnership transactions. However, this special rule is not applicable in situations where a partnership has a transferred basis in the intangible under section 723. With respect to the analogy under section 743, where a transferee is allowed to amortize a section 743 basis step-up, it is only the increase in basis that may be amortized, and the amortization attributable to the basis increase is segregated for use only by the transferee partner. Neither of these results necessarily follow from a sale of property followed by a contribution of the property to the partnership.

The proposed regulations did not allow partners to deduct, for federal income tax purposes, curative or remedial amortization allocations from the partnership in situations where the asset was a section 197(f)(9) intangible (and thus nonamortizable) in the hands of the contributing partner. Commentators have suggested allowing curative and remedial allocations under section 704(c). The final regulations generally permit a partnership to make curative or remedial allocations to its noncontributing partners of amortization relating to an asset that was amortizable (or a zero-basis intangible that otherwise would have

been amortizable) in the hands of the contributor. For assets that were section 197(f)(9) intangibles (and thus nonamortizable) in the hands of the contributor, however, the partnership may make deductible amortization allocations to the noncontributing partners under the remedial method only. The final regulations permit remedial allocations because, under section 704(c), remedial allocations treat the amortizable portion of contributed property like newly purchased property, with a new holding period and determinable allocation of tax items. This result, which is similar to the result obtained for basis increases under section 743, does not follow under the curative method because curative allocations are not determined as if the applicable property were newly purchased property. The decision to allow amortization for remedial allocations in these regulations also is consistent with the decisions regarding fungibility of partnership interests that are inherent in the recently finalized regulations under sections 743 and 755. Finally, the rules governing section 704(c) allocations of amortization from section 197 intangibles contributed to a partnership in a nonrecognition transaction are still subject to the anti-churning provisions. Accordingly, remedial allocations of deductible amortization expenses may not be made to a partner who is related to a partner that contributes an intangible subject to the anti-churning rules. Certain problems may arise in maintaining capital accounts where a partnership elects to make remedial allocations, and the anti-churning rules apply with respect to one or more partners. These problems also arise in the context of section 734(b) adjustments and are discussed in the preamble to the proposed regulations relating to the application of the anti-churning rules to basis adjustments under sections 732(b) and 734(b), which are being issued at the same date as these final regulations.

Commentators requested that the final regulations provide additional guidance on how the special anti-churning rule of section 197(f)(9)(E) applies to increases in the basis of property under sections 732, 734, and 743. In accordance with these comments, the final regulations provide rules for determining the amount of a basis adjustment under sections 732(d) and 743 that will be subject to the anti-churning rules. The Treasury Department and the IRS also are issuing, at the same time as these final regulations, proposed regulations addressing how to determine the amount of a basis adjustment under sections 732(b) and 734(b) that will be subject to the anti-churning rules.

Finally, the final regulations provide that where, for purposes of the anti-churning rules, a partner is treated as holding its proportionate share of partnership property under section 197(f)(9)(E), the continued or subsequent use (by license or otherwise) of an intangible by a partner could cause the anti-churning rules to apply with respect to that partner's share of the intangible in situations where a basis step-up under section 732(d) or 743(b) otherwise would be amortizable. This rule is necessary in order to prevent the circumvention of section 197(f)(9)(A) through the use of a partnership. The proposed regulations being issued in conjunction with these final regulations expand the application of this rule to basis adjustments under sections 732(b) and 734(b).

Contracts for the Use of a Section 197 Intangible

The proposed regulations provide that a right to use a section 197 intangible pursuant to a license, contract, or other arrangement is, itself, a section 197 intangible. The proposed regulations further provide that amounts paid for such a right are chargeable to capital account, whether or not the payments would have been deductible (for example, as a royalty) if the right were not a section 197 intangible. Under the proposed regulations, the amount chargeable to capital account is generally determined without regard to sections 483 and 1274 (that is, no part of the amount paid is recharacterized as unstated interest or original issue discount). Finally, the proposed regulations treat the acquisition of a franchise, trademark, or trade name as the acquisition of a trade or business, thereby preventing other intangibles acquired in the same transaction or series of related transactions from qualifying for any of the exceptions applicable to separately acquired property.

Commentators suggested that these rules have negative consequences for common cross-border and affiliate licenses, which frequently include, in addition to rights that would not be subject to section 197 if not acquired as part of a purchase of a trade or business, rights to use a trademark or trade name. Under prior law, amounts paid for these licenses were generally currently deductible. The proposed regulations, however, require amortization over 15 years. In addition, cost recovery over the 15-year period is significantly backloaded because the licenses generally involve contingent payments that are not includible in basis until the year in which they are paid or incurred and, in addition, the proposed regulations provide that sections 483 and 1274 are generally inapplicable.

After further consideration of this issue in light of the concerns raised by the commentators, the IRS and Treasury Department have concluded that, particularly in the case of common licensing transactions involving technology and similar intangible property, a different approach is appropriate. The clearest indication of Congressional intent on this issue is the statement in the legislative history to the effect that, with certain exceptions, section 197 generally does not apply to amounts that were otherwise currently deductible before the enactment of section 197. Nevertheless, the IRS and Treasury Department are also mindful that Congress directed the issuance of such regulations as may be appropriate to prevent avoidance of the purposes of section 197.

The final regulations generally provide that royalty payments under a contract for the use of section 197 intangibles unconnected with the purchase of a trade or business are not required to be capitalized. Licensing transactions will, however, be closely scrutinized under the principles of section 1235 for purposes of determining whether the payments are, in fact, deductible royalties or, instead, represent purchase price that should be charged to capital account.

The final regulations also modify the rule that treats the acquisition of a franchise, trademark, or trade name as the acquisition of a trade or business. Under the final regulations, the acquisition of an interest in a trademark or trade name is disregarded in determining whether acquired property is a trade or business if, under the principles of section 1253, the grant of the interest is not a transfer of all substantial rights in the trademark or trade name. Thus, the acquisition of such an interest in a trademark or trade name will not subject other intangibles acquired in the same transaction or series of related transactions to the generally less favorable rules applicable to intangibles acquired as part of a purchase of a trade or business.

To prevent abuses, the final regulations provide that if the right to use a section 197 intangible is provided under a license entered into as part of a purchase of a trade or business, amounts paid for the right are, as under the proposed regulations, chargeable to capital account. An exception, not contained in the proposed regulations, is provided for licenses of technology,

know-how, and other similar items (including most types of information base). Royalties paid under these licenses are not required to be capitalized if the taxpayer establishes that the payments are, in fact, deductible royalties under general tax principles and represent an arm's-length consideration for the transferred rights.

Finally, any amount otherwise chargeable to capital account with respect to a section 197 intangible and payable after the acquisition of the intangible to which it relates is treated, in determining the tax treatment of the purchaser, as an amount payable under a debt instrument. Thus, the extent to which such amounts are treated as payments of principal and the time at which the amount treated as principal is included in basis is determined under generally applicable rules relating to imputed interest and original issue discount. If, under these rules, a basis increase occurs after the beginning of the 15-year amortization period, the increase is amortized over the remainder of the 15-year period (or, in the case of an increase occurring after the end of the amortization period, is immediately deductible).

Anti-churning Rules

The anti-churning rules of section 197 prevent taxpayers from converting goodwill, going concern value, and similar assets held or used at any time during the transition period into amortizable section 197 intangibles through transactions such as transfers to related parties. The proposed regulations provide guidance on a number of specific issues arising under the anti-churning rules. The final regulations retain this guidance with certain modifications and, in addition, set forth the purpose of the anti-churning rules (generally, to prevent the amortization of certain intangibles that are not acquired after the applicable effective date in a transaction giving rise to a significant change in ownership or use). The final regulations further provide that the anti-churning rules are to be applied in a manner that carries out their purpose. The final regulations include a rule providing that a transaction will be presumed to have a principal purpose of avoiding the anti-churning rules if it does not effect a significant change in ownership or use.

The final regulations also provide additional guidance concerning the circumstances in which persons are treated as related for purposes of the anti-churning rules. Section 197 provides that a relationship is tested for purposes of the anti-churning rules both immediately before and immediately after the acquisition. The proposed regulations further provide that, in the case of intangibles acquired in a series of related transactions, testing begins immediately before the first acquisition and continues until immediately after the last acquisition. Comments suggested that momentary relationships created in the course of the acquisition should be disregarded for purposes of the anti-churning rules. Such relationships can arise, for example, in the course of a stock acquisition followed by a liquidation or when assets are contributed to a newly created subsidiary and, pursuant to a binding commitment, all stock of the subsidiary is sold to an unrelated person or persons immediately after the contribution.

To address these and similar situations, the final regulations provide that in the case of a series of related transactions (or a series of transactions that together comprise a qualified stock purchase within the meaning of section 338(d)(3)) a person is treated as related to another person if the relationship exists immediately before the earliest such transaction or immediately after the last such transaction. In addition, any relationship created as part of a series of related transactions in which a person acquires stock of a corporation followed by a liquidation of the acquired corporation under section 331 generally is disregarded. Further, as with all other provisions of the regulations relating to the anti-churning rules, these provisions are to be applied in a manner that carries out the purpose of the anti-churning rules.

The final regulations also provide guidance on the exemption from the anti-churning rules if the person from whom the taxpayer acquires an intangible elects to recognize gain and agrees to pay a specified amount of tax. In general, these rules are the same as those contained in the proposed regulations, except that the proposed regulations do not prescribe procedures for making the election. The final regulations provide guidance on the manner of making the election, including procedures that apply to persons not otherwise subject to Federal income tax.

Effective Dates

The regulations under sections 167(f) and 197 were proposed to apply on the date on which the final regulations are published in the **Federal Register**. Regulations to implement section 197(e)(4)(D) (separately acquired contracts of fixed duration or amount) were proposed to apply August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, if a valid retroactive election has been made under § 1.197–1T). Comments suggested that the applicability date should be modified to clarify that the regulations (other than the implementation of section 197(e)(4)(D)) apply only to property acquired on or after the date final regulations are published. This suggestion has been adopted. Accordingly, the final regulations generally apply only to intangible property acquired after the date they are published in the **Federal Register**.

The applicability date of the rules implementing section 197(e)(4)(D) is similarly clarified. Thus, the final regulations provide that these rules apply to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T). The regulations also provide consent for changes in method of accounting to comply with the rules and automatic procedures for making the change.

In addition, the final regulations permit taxpayers to apply the rules in the final regulations to property acquired before the applicability date of the final regulations (or to rely on the proposed regulations for such property) and provide similar consent and automatic change procedures for taxpayers that choose to apply the final regulations to pre-effective date acquisitions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that the time required to prepare and file the election statement and notify acquirers is minimal and will not have a significant impact on those few small entities that choose to make the election. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is John Huffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.197–2 also issued under 26 U.S.C. 197(g). * * *

Par. 2. Section 1.162–11 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.162–11 Rentals.

(a) * * * See § 1.197–2 for rules governing the amortization of costs to acquire limited interests in section 197 intangibles.

* * * * *

Par. 3. Section 1.167(a)–3 is amended by adding a sentence at the end to read as follows:

§ 1.167(a)–3 Intangibles.

* * * See sections 197 and 167(f) and, to the extent applicable, §§ 1.197–2 and 1.167(a)–14 for amortization of goodwill and certain other intangibles acquired after August 10, 1993, or after July 25, 1991, if a valid retroactive election under § 1.197–1T has been made.

Par. 4. Section 1.167(a)–6 is amended by adding two sentences at the end of paragraph (a) to read as follows:

§ 1.167(a)–6 Depreciation in special cases.

(a) * * * See § 1.167(a)–14(c)(4) for depreciation of a separately acquired interest in a patent or copyright described in section 167(f)(2) acquired after January 25, 2000. See § 1.197–2 for amortization of interests in patents and copyrights that constitute amortizable section 197 intangibles.

* * * * *

Par. 5. Section 1.167(a)–14 is added to read as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

(a) *Overview.* This section provides rules for the amortization of certain intangibles that are excluded from section 197 (relating to the amortization of goodwill and certain other intangibles). These excluded intangibles are specifically described in § 1.197–2(c)(4), (6), (7), (11), and (13) and include certain computer software and certain other separately acquired rights, such as rights to receive tangible property or services, patents and copyrights, certain mortgage servicing rights, and rights of fixed duration or amount. Intangibles for which an amortization amount is determined under section 167(f) and intangibles otherwise excluded from section 197 are amortizable only if they qualify as property subject to the allowance for depreciation under section 167(a).

(b) *Computer software*—(1) *In general.* The amount of the deduction for computer software described in section 167(f)(1) and § 1.197–2(c)(4) is determined by amortizing the cost or other basis of the computer software using the straight line method described in § 1.167(b)–1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning on the first day of the month that the computer software is placed in service. If costs for developing computer software that the taxpayer properly elects to defer under section 174(b) result in the development of property subject to the allowance for depreciation under section 167, the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software where these costs are separately stated and the costs are required to be capitalized under section 263(a).

(2) *Exceptions.* Paragraph (b)(1) of this section does not apply to the cost of computer software properly and consistently taken into account under § 1.162–11. The cost of acquiring an interest in computer software that is included, without being separately stated, in the cost of the hardware or other tangible property is treated as part of the cost of the hardware or other tangible property that is capitalized and depreciated under other applicable sections of the Internal Revenue Code.

(3) *Additional rules.* Rules similar to those in § 1.197–2 (f)(1)(iii), (f)(1)(iv), and (f)(2) (relating to the computation of amortization deductions and the treatment of contingent amounts) apply for purposes of this paragraph (b).

(c) *Certain interests or rights not acquired as part of a purchase of a trade or business*—(1) *Certain rights to receive tangible property or services.* The amount of the deduction for a right (other than a right acquired as part of a purchase of a trade or business) to receive tangible property or services under a contract or from a governmental unit (as specified in section 167(f)(2) and § 1.197–2(c)(6)) is determined as follows:

(i) *Amortization of fixed amounts.* The basis of a right to receive a fixed amount of tangible property or services is amortized for each taxable year by multiplying the basis of the right by a fraction, the numerator of which is the amount of tangible property or services received during the taxable year and the denominator of which is the total amount of tangible property or services received or to be received under the terms of the contract or governmental grant. For example, if a taxpayer acquires a favorable contract right to receive a fixed amount of raw materials during an unspecified period, the taxpayer must amortize the cost of acquiring the contract right by multiplying the total cost by a fraction, the numerator of which is the amount of raw materials received under the contract during the taxable year and the denominator of which is the total amount of raw materials received or to be received under the contract.

(ii) *Amortization of unspecified amount over fixed period.* The cost or other basis of a right to receive an unspecified amount of tangible property or services over a fixed period is amortized ratably over the period of the right. (See paragraph (c)(3) of this section regarding renewals).

(iii) *Amortization in other cases.* [Reserved]

(2) *Rights of fixed duration or amount.* The amount of the deduction for a right (other than a right acquired as part of a purchase of a trade or business) of fixed duration or amount received under a contract or granted by a governmental unit (specified in section 167(f)(2) and § 1.197–2(c)(13)) and not covered by paragraph (c)(1) of this section is determined as follows:

(i) *Rights to a fixed amount.* The basis of a right to a fixed amount is amortized for each taxable year by multiplying the basis by a fraction, the numerator of which is the amount received during the taxable year and the denominator of which is the total amount received or to be received under the terms of the contract or governmental grant.

(ii) *Rights to an unspecified amount over fixed duration of less than 15 years.* The basis of a right to an unspecified amount over a fixed duration of less than 15 years is amortized ratably over the period of the right.

(3) *Application of renewals.* (i) For purposes of paragraphs (c) (1) and (2) of this section, the duration of a right under a contract (or granted by a governmental unit) includes any renewal period if, based on all of the facts and circumstances in existence at any time during the taxable year in which the right is acquired, the facts clearly indicate a reasonable expectancy of renewal.

(ii) The mere fact that a taxpayer will have the opportunity to renew a contract right or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will generally not be taken into account in determining the duration of such right provided that the bidding produces a fair market value price comparable to the price that would be obtained if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's-length transaction.

(iii) The cost of a renewal not included in the terms of the contract or governmental grant is treated as the acquisition of a separate intangible asset.

(4) *Patents and copyrights.* If the purchase price of a interest (other than an interest acquired as part of a purchase of a trade or business) in a patent or copyright described in section 167(f)(2) and § 1.197–2(c)(7) is payable on at least an annual basis as either a fixed amount per use or a fixed percentage of the revenue derived from the use of the patent or copyright, the depreciation deduction for a taxable year is equal to the amount of the purchase price paid or incurred during the year. Otherwise, the basis of such patent or copyright (or an interest therein) is depreciated either ratably over its remaining useful life or under section 167(g) (income forecast method). If a patent or copyright becomes valueless in any year before its legal expiration, the adjusted basis may be deducted in that year.

(5) *Additional rules.* The period of amortization under paragraphs (c) (1) through (4) of this section begins when the intangible is placed in service, and rules similar to those in § 1.197–2(f)(2) apply for purposes of this paragraph (c).

(d) *Mortgage servicing rights—*(1) *In general.* The amount of the deduction for mortgage servicing rights described in section 167(f)(3) and § 1.197–2(c)(11) is determined by using the straight line method described in § 1.167(b)–1 (except that the salvage value is treated as zero) and an amortization period of 108 months beginning on the first day of the month that the rights are placed in service. Mortgage servicing rights are not depreciable to the extent the rights are stripped coupons under section 1286.

(2) *Treatment of rights acquired as a pool—*(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, all mortgage servicing rights acquired in the same transaction or in a series of related transactions are treated as a single asset (the pool) for purposes of determining the depreciation deduction under this paragraph (d) and any gain or loss from the sale, exchange, or other disposition of the rights. Thus, if some (but not all) of the rights in a pool become worthless as a result of prepayments, no loss is recognized by reason of the prepayment and the adjusted basis of the pool is not affected by the unrecognized loss. Similarly, any amount realized from the sale or exchange of some (but not all) of the mortgage servicing rights is included in income and the adjusted basis of the pool is not affected by the realization.

(ii) *Multiple accounts.* If the taxpayer establishes multiple accounts within a pool at the time of its acquisition, gain or loss is recognized on the sale or exchange of all mortgage servicing rights within any such account.

(3) *Additional rules.* Rules similar to those in § 1.197–2(f)(1)(iii), (f)(1)(iv), and (f)(2) (relating to the computation of amortization deductions and the treatment of contingent amounts) apply for purposes of this paragraph (d).

(e) *Effective date—*(1) *In general.* This section applies to property acquired after January 25, 2000, except that § 1.167(a)–14(c)(2) (depreciation of the cost of certain separately acquired rights) and so much of § 1.167(a)–14(c)(3) as relates to § 1.167(a)–14(c)(2) apply to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T).

(2) *Change in method of accounting.* See § 1.197–2(l)(4) for rules relating to changes in method of accounting for property to which § 1.167(a)–14 applies.

Par. 6. Section 1.197–0 is added to read as follows:

§ 1.197–0 Table of contents.

This section lists the headings that appear in § 1.197–2.

§ 1.197–2 Amortization of goodwill and certain other intangibles.

(a) Overview.
(1) In general.
(2) Section 167(f) property.
(3) Amounts otherwise deductible.
(b) Section 197 intangibles; in general.
(1) Goodwill.
(2) Going concern value.
(3) Workforce in place.
(4) Information base.
(5) Know-how, etc.
(6) Customer-based intangibles.
(7) Supplier-based intangibles.
(8) Licenses, permits, and other rights granted by governmental units.
(9) Covenants not to compete and other similar arrangements.
(10) Franchises, trademarks, and trade names.
(11) Contracts for the use of, and term interests in, other section 197 intangibles.
(12) Other similar items.
(c) Section 197 intangibles; exceptions.
(1) Interests in a corporation, partnership, trust, or estate.
(2) Interests under certain financial contracts.
(3) Interests in land.
(4) Certain computer software.
(i) Publicly available.
(ii) Not acquired as part of trade or business.
(iii) Other exceptions.
(iv) Computer software defined.
(5) Certain interests in films, sound recordings, video tapes, books, or other similar property.
(6) Certain rights to receive tangible property or services.
(7) Certain interests in patents or copyrights.
(8) Interests under leases of tangible property.
(i) Interest as a lessor.
(ii) Interest as a lessee.
(9) Interests under indebtedness.
(i) In general.
(ii) Exceptions.
(10) Professional sports franchises.
(11) Mortgage servicing rights.
(12) Certain transaction costs.
(13) Rights of fixed duration or amount.
(d) Amortizable section 197 intangibles.
(1) Definition.
(2) Exception for self-created intangibles.
(i) In general.
(ii) Created by the taxpayer.
(A) Defined.
(B) Contracts for the use of intangibles.
(C) Improvements and modifications.
(iii) Exceptions.
(3) Exception for property subject to anti-churning rules.
(e) Purchase of a trade or business.
(1) Goodwill or going concern value.
(2) Franchise, trademark, or trade name.
(i) In general.
(ii) Exceptions.
(3) Acquisitions to be included.
(4) Substantial portion.
(5) Deemed asset purchases under section 338.
(6) Mortgage servicing rights.
(7) Computer software acquired for internal use.
(f) Computation of amortization deduction.
(1) In general.
(2) Treatment of contingent amounts.
(i) Amounts added to basis during 15-year period.

(ii) Amounts becoming fixed after expiration of 15-year period.
(iii) Rules for including amounts in basis.
(3) Basis determinations for certain assets.
(i) Covenants not to compete.
(ii) Contracts for the use of section 197 intangibles; acquired as part of a trade or business.
(A) In general.
(B) Know-how and certain information base.
(iii) Contracts for the use of section 197 intangibles; not acquired as part of a trade or business.
(iv) Applicable rules.
(A) Franchises, trademarks, and trade names.
(B) Certain amounts treated as payable under a debt instrument.
(1) In general.
(2) Rights granted by governmental units.
(3) Treatment of other parties to transaction.
(4) Basis determinations in certain transactions.
(i) Certain renewal transactions.
(ii) Transactions subject to section 338 or 1060.
(iii) Certain reinsurance transactions.
(g) Special rules.
(1) Treatment of certain dispositions.
(i) Loss disallowance rules.
(A) In general.
(B) Abandonment or worthlessness.
(C) Certain nonrecognition transfers.
(ii) Separately acquired property.
(iii) Disposition of a covenant not to compete.
(iv) Taxpayers under common control.
(A) In general.
(B) Treatment of disallowed loss.
(2) Treatment of certain nonrecognition and exchange transactions.
(i) Relationship to anti-churning rules.
(ii) Treatment of nonrecognition and exchange transactions generally.
(A) Transfer disregarded.
(B) Application of general rule.
(C) Transactions covered.
(iii) Certain exchanged-basis property.
(iv) Transfers under section 708(b)(1).
(A) In general.
(B) Termination by sale or exchange of interest.
(C) Other terminations.
(3) Increase in the basis of partnership property under section 732(b), 734(b), 743(b), or 732(d).
(4) Section 704(c) allocations.
(i) Allocations where the intangible is amortizable by the contributor.
(ii) Allocations where the intangible is not amortizable by the contributor.
(5) Treatment of certain reinsurance transactions.
(i) In general.
(ii) Determination of adjusted basis.
(A) Acquisitions (other than under section 338) of specified insurance contracts.
(B) Insolvent ceding company
(C) Other acquisitions. [Reserved]
(6) Amounts paid or incurred for a franchise, trademark, or trade name.
(7) Amounts properly taken into account in determining the cost of property that is not a section 197 intangible.
(8) Treatment of amortizable section 197 intangibles as depreciable property.
(h) Anti-churning rules.
(1) Scope and purpose.
(i) Scope.
(ii) Purpose.
(2) Treatment of section 197(f)(9) intangibles.
(3) Amounts deductible under section 1253(d) or § 1.162–11.
(4) Transition period.
(5) Exceptions.
(6) Related person.
(i) In general.
(ii) Time for testing relationships.
(iii) Certain relationships disregarded.
(iv) De minimis rule.
(A) In general.
(B) Determination of beneficial ownership interest.
(7) Special rules for entities that owned or used property at any time during the transition period and that are no longer in existence.
(8) Special rules for section 338 deemed acquisitions.
(9) Gain-recognition exception.
(i) Applicability.
(ii) Effect of exception.
(iii) Time and manner of election.
(iv) Special rules for certain entities.
(v) Effect of nonconforming elections.
(vi) Notification requirements.
(vii) Revocation.
(viii) Election Statement.
(ix) Determination of highest marginal rate of tax and amount of other Federal income tax on gain.
(A) Marginal rate.
(*1*) Noncorporate taxpayers.
(*2*) Corporations and tax-exempt entities.
(B) Other Federal income tax on gain.
(x) Coordination with other provisions.
(A) In general.
(B) Section 1374.
(C) Procedural and administrative provisions.
(D) Installment method.
(xi) Special rules for persons not otherwise subject to Federal income tax.
(10) Transactions subject to both anti-churning and nonrecognition rules.
(11) Avoidance purpose.
(12) Additional partnership anti-churning rules
(i) In general.
(ii) Section 732(b) adjustments. [Reserved]
(iii) Section 732(d) adjustments.
(iv) Section 734(b) adjustments. [Reserved]
(v) Section 743(b) adjustments.
(vi) Partner is or becomes a user of partnership intangible.
(A) General rule.
(B) Anti-churning partner.
(C) Effect of retroactive elections.
(vii) Section 704(c) elections.
(A) Allocations where the intangible is amortizable by the contributor.
(B) Allocations where the intangible is not amortizable by the contributor.
(viii) Operating rule for transfers upon death.
(i) Reserved
(j) General anti-abuse rule.
(k) Examples.
(l) Effective dates.
(1) In general.
(2) Application to pre-effective date acquisitions.
(3) Application of regulation project REG–209709–94 to pre-effective date acquisitions.
(4) Change in method of accounting.
(i) In general.
(ii) Application to pre-effective date transactions.
(iii) Automatic change procedures.

Par. 7. Section 1.197–2 is added to read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

(a) *Overview*—(1) *In general.* Section 197 allows an amortization deduction for the capitalized costs of an amortizable section 197 intangible and prohibits any other depreciation or amortization with respect to that property. Paragraphs (b), (c), and (e) of this section provide rules and definitions for determining whether property is a section 197 intangible, and paragraphs (d) and (e) of this section provide rules and definitions for determining whether a section 197 intangible is an amortizable section 197 intangible. The amortization deduction under section 197 is determined by amortizing basis ratably over a 15-year period under the rules of paragraph (f) of this section. Section 197 also includes various special rules pertaining to the disposition of amortizable section 197 intangibles, nonrecognition transactions, anti-churning rules, and anti-abuse rules. Rules relating to these provisions are contained in paragraphs (g), (h), and (j) of this section. Examples demonstrating the application of these provisions are contained in paragraph (k) of this section. The effective date of the rules in this section is contained in paragraph (l) of this section.

(2) *Section 167(f) property.* Section 167(f) prescribes rules for computing the depreciation deduction for certain property to which section 197 does not apply. See § 1.167(a)–14 for rules under section 167(f) and paragraphs (c)(4), (6), (7), (11), and (13) of this section for a description of the property subject to section 167(f).

(3) *Amounts otherwise deductible.* Section 197 does not apply to amounts that are not chargeable to capital account under paragraph (f)(3) (relating to basis determinations for covenants not to compete and certain contracts for the use of section 197 intangibles) of this section and are otherwise currently deductible. For this purpose, an amount described in § 1.162–11 is not currently deductible if, without regard to § 1.162–11, such amount is properly chargeable to capital account.

(b) *Section 197 intangibles; in general.* Except as otherwise provided in paragraph (c) of this section, the term *section 197 intangible* means any property described in section 197(d)(1). The following rules and definitions provide guidance concerning property

that is a section 197 intangible unless an exception applies:

(1) *Goodwill.* Section 197 intangibles include goodwill. Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor.

(2) *Going concern value.* Section 197 intangibles include going concern value. Going concern value is the additional value that attaches to property by reason of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership, but does not include any of the intangibles described in any other provision of this paragraph (b). It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(3) *Workforce in place.* Section 197 intangibles include workforce in place. Workforce in place (sometimes referred to as agency force or assembled workforce) includes the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, the amount paid or incurred for workforce in place includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a highly-skilled workforce, an existing employment contract (or contracts), or a relationship with employees or consultants (including, but not limited to, any key employee contract or relationship). Workforce in place does not include any covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section.

(4) *Information base.* Section 197 intangibles include any information base, including a customer-related information base. For this purpose, an information base includes business books and records, operating systems, and any other information base (regardless of the method of recording the information) and a customer-related information base is any information base that includes lists or other information with respect to current or prospective customers. Thus, the amount paid or incurred for information base includes, for example, any portion of the purchase price of an acquired trade or business attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems. Other examples include the cost of acquiring customer lists, subscription lists, insurance expirations, patient or client files, or lists of newspaper, magazine, radio, or television advertisers.

(5) *Know-how, etc.* Section 197 intangibles include any patent, copyright, formula, process, design, pattern, know-how, format, package design, computer software (as defined in paragraph (c)(4)(iv) of this section), or interest in a film, sound recording, video tape, book, or other similar property. (See, however, the exceptions in paragraph (c) of this section.)

(6) *Customer-based intangibles.* Section 197 intangibles include any customer-based intangible. A customer-based intangible is any composition of market, market share, or other value resulting from the future provision of goods or services pursuant to contractual or other relationships in the ordinary course of business with customers. Thus, the amount paid or incurred for customer-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a customer base, a circulation base, an undeveloped market or market growth, insurance in force, the existence of a qualification to supply goods or services to a particular customer, a mortgage servicing contract (as defined in paragraph (c)(11) of this section), an investment management contract, or other relationship with customers involving the future provision of goods or services. (See, however, the exceptions in paragraph (c) of this section.) In addition, customer-based intangibles include the deposit base and any similar asset of a financial institution. Thus, the amount paid or incurred for customer-based intangibles also includes any portion of the purchase price of an acquired financial institution attributable to the value represented by existing checking accounts, savings accounts, escrow accounts, and other similar items of the financial institution. However, any portion of the purchase price of an acquired trade or business attributable to accounts receivable or other similar rights to income for goods or services provided to customers prior to the acquisition of a trade or business is not an amount paid or incurred for a customer-based intangible.

(7) *Supplier-based intangibles.* Section 197 intangibles include any supplier-based intangible. A supplier-based intangible is the value resulting from the future acquisition, pursuant to contractual or other relationships with suppliers in the ordinary course of business, of goods or services that will be sold or used by the taxpayer. Thus, the amount paid or incurred for supplier-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a favorable relationship with persons providing distribution services (such as favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts. The amount paid or incurred for supplier-based intangibles does not include any amount required to be paid for the goods or services themselves pursuant to the terms of the agreement or other relationship. In addition, see the exceptions in paragraph (c) of this section, including the exception in paragraph (c)(6) of this section for certain rights to receive tangible property or services from another person.

(8) *Licenses, permits, and other rights granted by governmental units.* Section 197 intangibles include any license, permit, or other right granted by a governmental unit (including, for purposes of section 197, an agency or instrumentality thereof) even if the right is granted for an indefinite period or is reasonably expected to be renewed for an indefinite period. These rights include, for example, a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license. The issuance or renewal of a license, permit, or other right granted by a governmental unit is considered an acquisition of the license, permit, or other right. (See, however, the exceptions in paragraph (c) of this section, including the exceptions in paragraph (c)(3) of this section for an interest in land, paragraph (c)(6) of this section for certain rights to receive tangible property or services, paragraph (c)(8) of this section for an interest under a lease of tangible property, and paragraph (c)(13) of this section for certain rights granted by a governmental unit. See paragraph (b)(10) of this section for the treatment of franchises.)

(9) *Covenants not to compete and other similar arrangements.* Section 197 intangibles include any covenant not to

compete, or agreement having substantially the same effect, entered into in connection with the direct or indirect acquisition of an interest in a trade or business or a substantial portion thereof. For purposes of this paragraph (b)(9), an acquisition may be made in the form of an asset acquisition (including a qualified stock purchase that is treated as a purchase of assets under section 338), a stock acquisition or redemption, and the acquisition or redemption of a partnership interest. An agreement requiring the performance of services for the acquiring taxpayer or the provision of property or its use to the acquiring taxpayer does not have substantially the same effect as a covenant not to compete to the extent that the amount paid under the agreement represents reasonable compensation for the services actually rendered or for the property or use of the property actually provided.

(10) *Franchises, trademarks, and trade names.* (i) Section 197 intangibles include any franchise, trademark, or trade name. The term *franchise* has the meaning given in section 1253(b)(1) and includes any agreement that provides one of the parties to the agreement with the right to distribute, sell, or provide goods, services, or facilities, within a specified area. The term *trademark* includes any word, name, symbol, or device, or any combination thereof, adopted and used to identify goods or services and distinguish them from those provided by others. The term *trade name* includes any name used to identify or designate a particular trade or business or the name or title used by a person or organization engaged in a trade or business. A license, permit, or other right granted by a governmental unit is a franchise if it otherwise meets the definition of a franchise. A trademark or trade name includes any trademark or trade name arising under statute or applicable common law, and any similar right granted by contract. The renewal of a franchise, trademark, or trade name is treated as an acquisition of the franchise, trademark, or trade name.

(ii) Notwithstanding the definitions provided in paragraph (b)(10)(i) of this section, any amount that is paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name and that is subject to section 1253(d)(1) is not included in the basis of a section 197 intangible. (See paragraph (g)(6) of this section.)

(11) *Contracts for the use of, and term interests in, section 197 intangibles.* Section 197 intangibles include any right under a license, contract, or other arrangement providing for the use of property that would be a section 197 intangible under any provision of this paragraph (b) (including this paragraph (b)(11)) after giving effect to all of the exceptions provided in paragraph (c) of this section. Section 197 intangibles also include any term interest (whether outright or in trust) in such property.

(12) *Other similar items.* Section 197 intangibles include any other intangible property that is similar in all material respects to the property specifically described in section 197(d)(1)(C)(i) through (v) and paragraphs (b)(3) through (7) of this section. (See paragraph (g)(5) of this section for special rules regarding certain reinsurance transactions.)

(c) *Section 197 intangibles; exceptions.* The term *section 197 intangible* does not include property described in section 197(e). The following rules and definitions provide guidance concerning property to which the exceptions apply:

(1) *Interests in a corporation, partnership, trust, or estate.* Section 197 intangibles do not include an interest in a corporation, partnership, trust, or estate. Thus, for example, amortization under section 197 is not available for the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not the interests are regularly traded on an established market. (See paragraph (g)(3) of this section for special rules applicable to property of a partnership when a section 754 election is in effect for the partnership.)

(2) *Interests under certain financial contracts.* Section 197 intangibles do not include an interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not the interest is regularly traded on an established market. However, this exception does not apply to an interest under a mortgage servicing contract, credit card servicing contract, or other contract to service another person's indebtedness, or an interest under an assumption reinsurance contract. (See paragraph (g)(5) of this section for the treatment of assumption reinsurance contracts. See paragraph (c)(11) of this section and § 1.167(a)–14(d) for the treatment of mortgage servicing rights.)

(3) *Interests in land.* Section 197 intangibles do not include any interest in land. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral right, timber right, grazing right, riparian right, air right, zoning variance, and any other similar right, such as a farm allotment, quota for farm commodities, or crop acreage base. An interest in land does not include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television service. The cost of acquiring a license, permit, or other land improvement right, such as a building construction or use permit, is taken into account in the same manner as the underlying improvement.

(4) *Certain computer software*—(i) *Publicly available.* Section 197 intangibles do not include any interest in computer software that is (or has been) readily available to the general public on similar terms, is subject to a nonexclusive license, and has not been substantially modified. Computer software will be treated as readily available to the general public if the software may be obtained on substantially the same terms by a significant number of persons that would reasonably be expected to use the software. This requirement can be met even though the software is not available through a system of retail distribution. Computer software will not be considered to have been substantially modified if the cost of all modifications to the version of the software that is readily available to the general public does not exceed the greater of 25 percent of the price at which the unmodified version of the software is readily available to the general public or $2,000. For the purpose of determining whether computer software has been substantially modified—

(A) Integrated programs acquired in a package from a single source are treated as a single computer program; and

(B) Any cost incurred to install the computer software on a system is not treated as a cost of the software. However, the costs for customization, such as tailoring to a user's specifications (other than embedded programming options) are costs of modifying the software.

(ii) *Not acquired as part of trade or business.* Section 197 intangibles do not include an interest in computer software that is not acquired as part of a purchase of a trade or business.

(iii) *Other exceptions.* For other exceptions applicable to computer software, see paragraph (a)(3) of this section (relating to otherwise deductible amounts) and paragraph (g)(7) of this section (relating to amounts properly taken into account in determining the cost of property that is not a section 197 intangible).

(iv) *Computer software defined.* For purposes of this section, computer software is any program or routine (that is, any sequence of machine-readable

code) that is designed to cause a computer to perform a desired function or set of functions, and the documentation required to describe and maintain that program or routine. It includes all forms and media in which the software is contained, whether written, magnetic, or otherwise. Computer programs of all classes, for example, operating systems, executive systems, monitors, compilers and translators, assembly routines, and utility programs as well as application programs, are included. Computer software also includes any incidental and ancillary rights that are necessary to effect the acquisition of the title to, the ownership of, or the right to use the computer software, and that are used only in connection with that specific computer software. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For example, a trademark or trade name that is ancillary to the ownership or use of a specific computer software program in the taxpayer's trade or business and is not acquired for the purpose of marketing the computer software is included in the definition of computer software and is not included in the definition of trademark or trade name. Computer software does not include any data or information base described in paragraph (b)(4) of this section unless the data base or item is in the public domain and is incidental to a computer program. For this purpose, a copyrighted or proprietary data or information base is treated as in the public domain if its availability through the computer program does not contribute significantly to the cost of the program. For example, if a word-processing program includes a dictionary feature used to spell-check a document or any portion thereof, the entire program (including the dictionary feature) is computer software regardless of the form in which the feature is maintained or stored.

(5) *Certain interests in films, sound recordings, video tapes, books, or other similar property.* Section 197 intangibles do not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (such as the right to broadcast or transmit a live event) if the interest is not acquired as part of a purchase of a trade or business. A film, sound recording, video tape, book, or other similar property includes any incidental and ancillary rights (such as a trademark or trade name) that are necessary to effect the acquisition of title to, the ownership of, or the right to use the property and are used only in connection with that property. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For purposes of this paragraph (c)(5), computer software (as defined in paragraph (c)(4)(iv) of this section) is not treated as other property similar to a film, sound recording, video tape, or book. (See section 167 for amortization of excluded intangible property or interests.)

(6) *Certain rights to receive tangible property or services.* Section 197 intangibles do not include any right to receive tangible property or services under a contract or from a governmental unit if the right is not acquired as part of a purchase of a trade or business. Any right that is described in the preceding sentence is not treated as a section 197 intangible even though the right is also described in section 197(d)(1)(D) and paragraph (b)(8) of this section (relating to certain governmental licenses, permits, and other rights) and even though the right fails to meet one or more of the requirements of paragraph (c)(13) of this section (relating to certain rights of fixed duration or amount). (See § 1.167(a)–14(c) (1) and (3) for applicable rules.)

(7) *Certain interests in patents or copyrights.* Section 197 intangibles do not include any interest (including an interest as a licensee) in a patent, patent application, or copyright that is not acquired as part of a purchase of a trade or business. A patent or copyright includes any incidental and ancillary rights (such as a trademark or trade name) that are necessary to effect the acquisition of title to, the ownership of, or the right to use the property and are used only in connection with that property. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. (See § 1.167(a)–14(c)(4) for applicable rules.)

(8) *Interests under leases of tangible property*—(i) *Interest as a lessor.* Section 197 intangibles do not include any interest as a lessor under an existing lease or sublease of tangible real or personal property. In addition, the cost of acquiring an interest as a lessor in connection with the acquisition of tangible property is taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, any portion of the purchase price attributable to favorable lease terms is taken into account as part of the basis of the shopping center and in determining the depreciation deduction allowed with respect to the shopping center. (See section 167(c)(2).)

(ii) *Interest as a lessee.* Section 197 intangibles do not include any interest as a lessee under an existing lease of tangible real or personal property. For this purpose, an airline lease of an airport passenger or cargo gate is a lease of tangible property. The cost of acquiring such an interest is taken into account under section 178 and § 1.162–11(a). If an interest as a lessee under a lease of tangible property is acquired in a transaction with any other intangible property, a portion of the total purchase price may be allocable to the interest as a lessee based on all of the relevant facts and circumstances.

(9) *Interests under indebtedness*—(i) *In general.* Section 197 intangibles do not include any interest (whether as a creditor or debtor) under an indebtedness in existence when the interest was acquired. Thus, for example, the value attributable to the assumption of an indebtedness with a below-market interest rate is not amortizable under section 197. In addition, the premium paid for acquiring a debt instrument with an above-market interest rate is not amortizable under section 197. See section 171 for rules concerning the treatment of amortizable bond premium.

(ii) *Exceptions.* For purposes of this paragraph (c)(9), an interest under an existing indebtedness does not include the deposit base (and other similar items) of a financial institution. An interest under an existing indebtedness includes mortgage servicing rights, however, to the extent the rights are stripped coupons under section 1286.

(10) *Professional sports franchises.* Section 197 intangibles do not include any franchise to engage in professional baseball, basketball, football, or any other professional sport, and any item (even though otherwise qualifying as a section 197 intangible) acquired in connection with such a franchise.

(11) *Mortgage servicing rights.* Section 197 intangibles do not include any right described in section 197(e)(7) (concerning rights to service indebtedness secured by residential real property that are not acquired as part of a purchase of a trade or business). (See § 1.167(a)–14(d) for applicable rules.)

(12) *Certain transaction costs.* Section 197 intangibles do not include any fees for professional services and any transaction costs incurred by parties to a transaction in which all or any portion of the gain or loss is not recognized under part III of subchapter C of the Internal Revenue Code.

(13) *Rights of fixed duration or amount.* (i) Section 197 intangibles do

not include any right under a contract or any license, permit, or other right granted by a governmental unit if the right—

(A) Is acquired in the ordinary course of a trade or business (or an activity described in section 212) and not as part of a purchase of a trade or business;

(B) Is not described in section 197(d)(1)(A), (B), (E), or (F);

(C) Is not a customer-based intangible, a customer-related information base, or any other similar item; and

(D) Either—

(*1*) Has a fixed duration of less than 15 years; or

(*2*) Is fixed as to amount and the adjusted basis thereof is properly recoverable (without regard to this section) under a method similar to the unit-of-production method.

(ii) See § 1.167(a)–14(c)(2) and (3) for applicable rules.

(d) *Amortizable section 197 intangibles*—(1) *Definition.* Except as otherwise provided in this paragraph (d), the term *amortizable section 197 intangible* means any section 197 intangible acquired after August 10, 1993 (or after July 25, 1991, if a valid retroactive election under § 1.197–1T has been made), and held in connection with the conduct of a trade or business or an activity described in section 212.

• (2) *Exception for self-created intangibles*—(i) *In general.* Except as provided in paragraph (d)(2)(iii) of this section, amortizable section 197 intangibles do not include any section 197 intangible created by the taxpayer (a self-created intangible).

(ii) *Created by the taxpayer*—(A) *Defined.* A section 197 intangible is created by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs for its creation, production, development, or improvement, whether the actual work is performed by the taxpayer or by another person under a contract with the taxpayer entered into before the contracted creation, production, development, or improvement occurs. For example, a technological process developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process is created by the taxpayer.

(B) *Contracts for the use of intangibles.* A section 197 intangible is not a self-created intangible to the extent that it results from the entry into (or renewal of) a contract for the use of an existing section 197 intangible. Thus, for example, the exception for self-created intangibles does not apply to capitalized costs, such as legal and other professional fees, incurred by a licensee in connection with the entry into (or renewal of) a contract for the use of know-how or similar property.

(C) *Improvements and modifications.* If an existing section 197 intangible is improved or otherwise modified by the taxpayer or by another person under a contract with the taxpayer, the existing intangible and the capitalized costs (if any) of the improvements or other modifications are each treated as a separate section 197 intangible for purposes of this paragraph (d).

(iii) *Exceptions.* (A) The exception for self-created intangibles does not apply to any section 197 intangible described in section 197(d)(1)(D) (relating to licenses, permits or other rights granted by a governmental unit), 197(d)(1)(E) (relating to covenants not to compete), or 197(d)(1)(F) (relating to franchises, trademarks, and trade names). Thus, for example, capitalized costs incurred in the development, registration, or defense of a trademark or trade name do not qualify for the exception and are amortized over 15 years under section 197.

(B) The exception for self-created intangibles does not apply to any section 197 intangible created in connection with the purchase of a trade or business (as defined in paragraph (e) of this section).

(C) If a taxpayer disposes of a self-created intangible and subsequently reacquires the intangible in an acquisition described in paragraph (h)(5)(ii) of this section, the exception for self-created intangibles does not apply to the reacquired intangible.

(3) *Exception for property subject to anti-churning rules.* Amortizable section 197 intangibles do not include any property to which the anti-churning rules of section 197(f)(9) and paragraph (h) of this section apply.

(e) *Purchase of a trade or business.* Several of the exceptions in section 197 apply only to property that is not acquired in (or created in connection with) a transaction or series of related transactions involving the acquisition of assets constituting a trade or business or a substantial portion thereof. Property acquired in (or created in connection with) such a transaction or series of related transactions is referred to in this section as property acquired as part of (or created in connection with) a purchase of a trade or business. For purposes of section 197 and this section, the applicability of the limitation is determined under the following rules:

(1) *Goodwill or going concern value.* An asset or group of assets constitutes a trade or business or a substantial portion thereof if their use would constitute a trade or business under section 1060 (that is, if goodwill or going concern value could under any circumstances attach to the assets). See § 1.1060–1T(b)(2). For this purpose, all the facts and circumstances, including any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of the assets, are taken into account in determining whether goodwill or going concern value could attach to the assets.

(2) *Franchise, trademark, or trade name*—(i) *In general.* The acquisition of a franchise, trademark, or trade name constitutes the acquisition of a trade or business or a substantial portion thereof.

(ii) *Exceptions.* For purposes of this paragraph (e)(2)—

(A) A trademark or trade name is disregarded if it is included in computer software under paragraph (c)(4) of this section or in an interest in a film, sound recording, video tape, book, or other similar property under paragraph (c)(5) of this section;

(B) A franchise, trademark, or trade name is disregarded if its value is nominal or the taxpayer irrevocably disposes of it immediately after its acquisition; and

(C) The acquisition of a right or interest in a trademark or trade name is disregarded if the grant of the right or interest is not, under the principles of section 1253, a transfer of all substantial rights to such property or of an undivided interest in all substantial rights to such property.

(3) *Acquisitions to be included.* The assets acquired in a transaction (or series of related transactions) include only assets (including a beneficial or other indirect interest in assets where the interest is of a type described in paragraph (c)(1) of this section) acquired by the taxpayer and persons related to the taxpayer from another person and persons related to that other person. For purposes of this paragraph (e)(3), persons are related only if their relationship is described in section 267(b) or 707(b) or they are engaged in trades or businesses under common control within the meaning of section 41(f)(1).

(4) *Substantial portion.* The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. The value of the assets acquired relative to the value of the assets retained by the transferor is not determinative of whether the acquired

assets constitute a substantial portion of a trade or business.

(5) *Deemed asset purchases under section 338.* A qualified stock purchase that is treated as a purchase of assets under section 338 is treated as a transaction involving the acquisition of assets constituting a trade or business only if the direct acquisition of the assets of the corporation would have been treated as the acquisition of assets constituting a trade or business or a substantial portion thereof.

(6) *Mortgage servicing rights.* Mortgage servicing rights acquired in a transaction or series of related transactions are disregarded in determining for purposes of paragraph (c)(11) of this section whether the assets acquired in the transaction or transactions constitute a trade or business or substantial portion thereof.

(7) *Computer software acquired for internal use.* Computer software acquired in a transaction or series of related transactions solely for internal use in an existing trade or business is disregarded in determining for purposes of paragraph (c)(4) of this section whether the assets acquired in the transaction or series of related transactions constitute a trade or business or substantial portion thereof.

(f) *Computation of amortization deduction*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, the amortization deduction allowable under section 197(a) is computed as follows:

(i) The basis of an amortizable section 197 intangible is amortized ratably over the 15-year period beginning on the later of—

(A) The first day of the month in which the property is acquired; or

(B) In the case of property held in connection with the conduct of a trade or business or in an activity described in section 212, the first day of the month in which the conduct of the trade or business or the activity begins.

(ii) Except as otherwise provided in this section, basis is determined under section 1011 and salvage value is disregarded.

(iii) Property is not eligible for amortization in the month of disposition.

(iv) The amortization deduction for a short taxable year is based on the number of months in the short taxable year.

(2) *Treatment of contingent amounts*—(i) *Amounts added to basis during 15-year period.* Any amount that is properly included in the basis of an amortizable section 197 intangible after the first month of the 15-year period described in paragraph (f)(1)(i) of this section and before the expiration of that period is amortized ratably over the remainder of the 15-year period. For this purpose, the remainder of the 15-year period begins on the first day of the month in which the basis increase occurs.

(ii) *Amounts becoming fixed after expiration of 15-year period.* Any amount that is not properly included in the basis of an amortizable section 197 intangible until after the expiration of the 15-year period described in paragraph (f)(1)(i) of this section is amortized in full immediately upon the inclusion of the amount in the basis of the intangible.

(iii) *Rules for including amounts in basis.* See §§ 1.1275–4(c)(4) and 1.483–4(a) for rules governing the extent to which contingent amounts payable under a debt instrument given in consideration for the sale or exchange of an amortizable section 197 intangible are treated as payments of principal and the time at which the amount treated as principal is included in basis. See § 1.461–1(a)(1) and (2) for rules governing the time at which other contingent amounts are taken into account in determining the basis of an amortizable section 197 intangible.

(3) *Basis determinations for certain assets*—(i) *Covenants not to compete.* In the case of a covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section (a covenant), the amount chargeable to capital account includes, except as provided in this paragraph (f)(3), all amounts that are required to be paid pursuant to the covenant, whether or not any such amount would be deductible under section 162 if the covenant were not a section 197 intangible.

(ii) *Contracts for the use of section 197 intangibles; acquired as part of a trade or business*—(A) *In general.* Except as provided in this paragraph (f)(3), any amount paid or incurred by the transferee on account of the transfer of a right or term interest described in paragraph (b)(11) of this section (relating to contracts for the use of, and term interests in, section 197 intangibles) by the owner of the property to which such right or interest relates and as part of a purchase of a trade or business is chargeable to capital account, whether or not such amount would be deductible under section 162 if the property were not a section 197 intangible.

(B) *Know-how and certain information base.* The amount chargeable to capital account with respect to a right or term interest described in paragraph (b)(11) of this section is determined without regard to the rule in paragraph (f)(3)(ii)(A) of this section if the right or interest relates to property (other than a customer-related information base) described in paragraph (b)(4) or (5) of this section and the acquiring taxpayer establishes that—

(*1*) The transfer of the right or interest is not, under the principles of section 1235, a transfer of all substantial rights to such property or of an undivided interest in all substantial rights to such property; and

(*2*) The right or interest was transferred for an arm's-length consideration.

(iii) *Contracts for the use of section 197 intangibles; not acquired as part of a trade or business.* The transfer of a right or term interest described in paragraph (b)(11) of this section by the owner of the property to which such right or interest relates but not as part of a purchase of a trade or business will be closely scrutinized under the principles of section 1235 for purposes of determining whether the transfer is a sale or exchange and, accordingly, whether amounts paid on account of the transfer are chargeable to capital account. If under the principles of section 1235 the transaction is not a sale or exchange, amounts paid on account of the transfer are not chargeable to capital account under this paragraph (f)(3).

(iv) *Applicable rules*—(A) *Franchises, trademarks, and trade names.* For purposes of this paragraph (f)(3), section 197 intangibles described in paragraph (b)(11) of this section do not include any property that is also described in paragraph (b)(10) of this section (relating to franchises, trademarks, and trade names).

(B) *Certain amounts treated as payable under a debt instrument*—(*1*) *In general.* For purposes of applying any provision of the Internal Revenue Code to a person making payments of amounts that are otherwise chargeable to capital account under this paragraph (f)(3) and are payable after the acquisition of the section 197 intangible to which they relate, such amounts are treated as payable under a debt instrument given in consideration for the sale or exchange of the section 197 intangible.

(*2*) *Rights granted by governmental units.* For purposes of applying any provision of the Internal Revenue Code to any amounts that are otherwise chargeable to capital account with respect to a license, permit, or other right described in paragraph (b)(8) of this section (relating to rights granted by a governmental unit or agency or

instrumentality thereof) and are payable after the acquisition of the section 197 intangible to which they relate, such amounts are treated, except as provided in paragraph (f)(4)(i) of this section (relating to renewal transactions), as payable under a debt instrument given in consideration for the sale or exchange of the section 197 intangible.

(*3*) *Treatment of other parties to transaction.* No person shall be treated as having sold, exchanged, or otherwise disposed of property in a transaction for purposes of any provision of the Internal Revenue Code solely by reason of the application of this paragraph (f)(3) to any other party to the transaction.

(*4*) *Basis determinations in certain transactions —*(*i*) *Certain renewal transactions.* The costs paid or incurred for the renewal of a franchise, trademark, or trade name or any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof are amortized over the 15-year period that begins with the month of renewal. Any costs paid or incurred for the issuance, or earlier renewal, continue to be taken into account over the remaining portion of the amortization period that began at the time of the issuance, or earlier renewal. Any amount paid or incurred for the protection, expansion, or defense of a trademark or trade name and chargeable to capital account is treated as an amount paid or incurred for a renewal.

(*ii*) *Transactions subject to section 338 or 1060.* In the case of a section 197 intangible deemed to have been acquired as the result of a qualified stock purchase within the meaning of section 338(d)(3), the basis shall be determined pursuant to section 338(b)(5) and the regulations thereunder. In the case of a section 197 intangible acquired in an applicable asset acquisition within the meaning of section 1060(c), the basis shall be determined pursuant to section 1060(a) and the regulations thereunder.

(*iii*) *Certain reinsurance transactions.* See paragraph (g)(5)(ii) of this section for special rules regarding the adjusted basis of an insurance contract acquired through an assumption reinsurance transaction.

(g) *Special rules*—(1) *Treatment of certain dispositions*—(i) *Loss disallowance rules*—(A) *In general.* No loss is recognized on the disposition of an amortizable section 197 intangible if the taxpayer has any retained intangibles. The retained intangibles with respect to the disposition of any amortizable section 197 intangible (the transferred intangible) are all amortizable section 197 intangibles, or rights to use or interests (including beneficial or other indirect interests) in amortizable section 197 intangibles (including the transferred intangible) that were acquired in the same transaction or series of related transactions as the transferred intangible and are retained after its disposition. Except as otherwise provided in paragraph (g)(1)(iv)(B) of this section, the adjusted basis of each of the retained intangibles is increased by the product of—

(*1*) The loss that is not recognized solely by reason of this rule; and

(*2*) A fraction, the numerator of which is the adjusted basis of the retained intangible on the date of the disposition and the denominator of which is the total adjusted bases of all the retained intangibles on that date.

(B) *Abandonment or worthlessness.* The abandonment of an amortizable section 197 intangible, or any other event rendering an amortizable section 197 intangible worthless, is treated as a disposition of the intangible for purposes of this paragraph (g)(1), and the abandoned or worthless intangible is disregarded (that is, it is not treated as a retained intangible) for purposes of applying this paragraph (g)(1) to the subsequent disposition of any other amortizable section 197 intangible.

(C) *Certain nonrecognition transfers.* The loss disallowance rule in paragraph (g)(1)(i)(A) of this section also applies when a taxpayer transfers an amortizable section 197 intangible from an acquired trade or business in a transaction in which the intangible is transferred basis property and, after the transfer, retains other amortizable section 197 intangibles from the trade or business. Thus, for example, the transfer of an amortizable section 197 intangible to a corporation in exchange for stock in the corporation in a transaction described in section 351, or to a partnership in exchange for an interest in the partnership in a transaction described in section 721, when other amortizable section 197 intangibles acquired in the same transaction are retained, followed by a sale of the stock or partnership interest received, will not avoid the application of the loss disallowance provision to the extent the adjusted basis of the transferred intangible at the time of the sale exceeds its fair market value at that time.

(ii) *Separately acquired property.* Paragraph (g)(1)(i) of this section does not apply to an amortizable section 197 intangible that is not acquired in a transaction or series of related transactions in which the taxpayer acquires other amortizable section 197 intangibles (a separately acquired intangible). Consequently, a loss may be recognized upon the disposition of a separately acquired amortizable section 197 intangible. However, the termination or worthlessness of only a portion of an amortizable section 197 intangible is not the disposition of a separately acquired intangible. For example, neither the loss of several customers from an acquired customer list nor the worthlessness of only some information from an acquired data base constitutes the disposition of a separately acquired intangible.

(iii) *Disposition of a covenant not to compete.* If a covenant not to compete or any other arrangement having substantially the same effect is entered into in connection with the direct or indirect acquisition of an interest in one or more trades or businesses, the disposition or worthlessness of the covenant or other arrangement will not be considered to occur until the disposition or worthlessness of all interests in those trades or businesses. For example, a covenant not to compete entered into in connection with the purchase of stock continues to be amortized ratably over the 15-year recovery period (even after the covenant expires or becomes worthless) unless all the trades or businesses in which an interest was acquired through the stock purchase (or all the purchaser's interests in those trades or businesses) also are disposed of or become worthless.

(iv) *Taxpayers under common control*—(A) *In general.* Except as provided in paragraph (g)(1)(iv)(B) of this section, all persons that would be treated as a single taxpayer under section 41(f)(1) are treated as a single taxpayer under this paragraph (g)(1). Thus, for example, a loss is not recognized on the disposition of an amortizable section 197 intangible by a member of a controlled group of corporations (as defined in section 41(f)(5)) if, after the disposition, another member retains other amortizable section 197 intangibles acquired in the same transaction as the amortizable section 197 intangible that has been disposed of.

(B) *Treatment of disallowed loss.* If retained intangibles are held by a person other than the person incurring the disallowed loss, only the adjusted basis of intangibles retained by the person incurring the disallowed loss is increased, and only the adjusted basis of those intangibles is included in the denominator of the fraction described in paragraph (g)(1)(i)(A) of this section. If none of the retained intangibles are held by the person incurring the disallowed loss, the loss is allowed ratably, as a deduction under section 197, over the remainder of the period during which

the intangible giving rise to the loss would have been amortizable, except that any remaining disallowed loss is allowed in full on the first date on which all other retained intangibles have been disposed of or become worthless.

(2) *Treatment of certain nonrecognition and exchange transactions*—(i) *Relationship to anti-churning rules.* This paragraph (g)(2) provides rules relating to the treatment of section 197 intangibles acquired in certain transactions. If these rules apply to a section 197(f)(9) intangible (within the meaning of paragraph (h)(1)(i) of this section), the intangible is, notwithstanding its treatment under this paragraph (g)(2), treated as an amortizable section 197 intangible only to the extent permitted under paragraph (h) of this section.

(ii) *Treatment of nonrecognition and exchange transactions generally*—(A) *Transfer disregarded.* If a section 197 intangible is transferred in a transaction described in paragraph (g)(2)(ii)(C) of this section, the transfer is disregarded in determining—

(*1*) Whether, with respect to so much of the intangible's basis in the hands of the transferee as does not exceed its basis in the hands of the transferor, the intangible is an amortizable section 197 intangible; and

(*2*) The amount of the deduction under section 197 with respect to such basis.

(B) *Application of general rule.* If the intangible described in paragraph (g)(2)(ii)(A) of this section was an amortizable section 197 intangible in the hands of the transferor, the transferee will continue to amortize its adjusted basis, to the extent it does not exceed the transferor's adjusted basis, ratably over the remainder of the transferor's 15-year amortization period. If the intangible was not an amortizable section 197 intangible in the hands of the transferor, the transferee's adjusted basis, to the extent it does not exceed the transferor's adjusted basis, cannot be amortized under section 197. In either event, the intangible is treated, with respect to so much of its adjusted basis in the hands of the transferee as exceeds its adjusted basis in the hands of the transferor, in the same manner for purposes of section 197 as an intangible acquired from the transferor in a transaction that is not described in paragraph (g)(2)(ii)(C) of this section. The rules of this paragraph (g)(2)(ii) also apply to any subsequent transfers of the intangible in a transaction described in paragraph (g)(2)(ii)(C) of this section.

(C) *Transactions covered.* The transactions described in this paragraph (g)(2)(ii)(C) are—

(*1*) Any transaction described in section 332, 351, 361, 721, or 731; and

(*2*) Any transaction between corporations that are members of the same consolidated group immediately after the transaction.

(iii) *Certain exchanged-basis property.* This paragraph (g)(2)(iii) applies to property that is acquired in a transaction subject to section 1031 or 1033 and is permitted to be acquired without recognition of gain (replacement property). Replacement property is treated as if it were the property by reference to which its basis is determined (the predecessor property) in determining whether, with respect to so much of its basis as does not exceed the basis of the predecessor property, the replacement property is an amortizable section 197 intangible and the amortization period under section 197 with respect to such basis. Thus, if the predecessor property was an amortizable section 197 intangible, the taxpayer will amortize the adjusted basis of the replacement property, to the extent it does not exceed the adjusted basis of the predecessor property, ratably over the remainder of the 15-year amortization period for the predecessor property. If the predecessor property was not an amortizable section 197 intangible, the adjusted basis of the replacement property, to the extent it does not exceed the adjusted basis of the predecessor property, may not be amortized under section 197. In either event, the replacement property is treated, with respect to so much of its adjusted basis as exceeds the adjusted basis of the predecessor property, in the same manner for purposes of section 197 as property acquired from the transferor in a transaction that is not subject to section 1031 or 1033.

(iv) *Transfers under section 708(b)(1)*—(A) *In general.* Paragraph (g)(2)(ii) of this section applies to transfers of section 197 intangibles that occur or are deemed to occur by reason of the termination of a partnership under section 708(b)(1).

(B) *Termination by sale or exchange of interest.* In applying paragraph (g)(2)(ii) of this section to a partnership that is terminated pursuant to section 708(b)(1)(B) (relating to deemed terminations from the sale or exchange of an interest), the terminated partnership is treated as the transferor and the new partnership is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination. (See paragraph (g)(3) of this section for the treatment of increases in the bases of property of the terminated partnership under section 743(b).)

(C) *Other terminations.* In applying paragraph (g)(2)(ii) of this section to a partnership that is terminated pursuant to section 708(b)(1)(A) (relating to cessation of activities by a partnership), the terminated partnership is treated as the transferor and the distributee partner is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination.

(3) *Increase in the basis of partnership property under section 732(b), 734(b), 743(b), or 732(d).* Any increase in the adjusted basis of a section 197 intangible under sections 732(b) or 732(d) (relating to a partner's basis in property distributed by a partnership), section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property after a distribution of property to a partner), or section 743(b) (relating to the optional adjustment to the basis of partnership property after transfer of a partnership interest) is treated as a separate section 197 intangible. For purposes of determining the amortization period under section 197 with respect to the basis increase, the intangible is treated as having been acquired at the time of the transaction that causes the basis increase. The provisions of paragraph (f)(2) of this section apply to the extent that the amount of the basis increase is determined by reference to contingent payments. For purposes of the effective date and anti-churning provisions (paragraphs (l)(1) and (h) of this section) for a basis increase under section 732(d), the intangible is treated as having been acquired by the transferee partner at the time of the transfer of the partnership interest described in section 732(d).

(4) *Section 704(c) allocations*—(i) *Allocations where the intangible is amortizable by the contributor.* To the extent that the intangible was an amortizable section 197 intangible in the hands of the contributing partner, a partnership may make allocations of amortization deductions with respect to the intangible to all of its partners under either the curative or remedial allocation methods described in the regulations under section 704(c). See § 1.704–3(c) and (d).

(ii) *Allocations where the intangible is not amortizable by the contributor.* To the extent that the intangible was not an amortizable section 197 intangible in the hands of the contributing partner, the intangible is not amortizable by the partnership. However, if a partner

contributes a section 197 intangible to a partnership and the partnership adopts the remedial allocation method for making section 704(c) allocations of amortization deductions, the partnership generally may make remedial allocations of amortization deductions with respect to the contributed section 197 intangible in accordance with § 1.704–3(d). See paragraph (h)(12) of this section to determine the application of the anti-churning rules in the context of remedial allocations.

(5) *Treatment of certain reinsurance transactions*—(i) *In general.* Section 197 applies to any insurance contract acquired from another person through an assumption reinsurance transaction. For purposes of section 197, an assumption reinsurance transaction is—

(A) Any arrangement in which one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company); and

(B) Any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338.

(ii) *Determination of adjusted basis*—(A) *Acquisitions (other than under section 338) of specified insurance contracts.* The amount taken into account for purposes of section 197 as the adjusted basis of specified insurance contracts (as defined in section 848(e)(1)) acquired in an assumption reinsurance transaction that is not described in paragraph (g)(5)(i)(B) of this section is equal to the excess of—

(*1*) The amount paid or incurred (or treated as having been paid or incurred) by the reinsurer for the purchase of the contracts (as determined under § 1.817–4(d)(2)); over

(*2*) The amount of the specified policy acquisition expenses that are attributable to the reinsurer's net positive consideration for the reinsurance agreement (as determined under § 1.848–2(f)(3)).

(B) *Insolvent ceding company.* The reduction of the amount of specified policy acquisition expenses by the reinsurer with respect to an assumption reinsurance transaction with an insolvent ceding company where the ceding company and reinsurer have made a valid joint election under section 1.848–2(i)(4) is disregarded in determining the amount of specified policy acquisition expenses for purposes of this paragraph (g)(5)(ii).

(C) *Other acquisitions.* [Reserved]

(6) *Amounts paid or incurred for a franchise, trademark, or trade name.* If an amount to which section 1253(d) (relating to the transfer, sale, or other disposition of a franchise, trademark, or trade name) applies is described in section 1253(d)(1)(B) (relating to contingent serial payments deductible under section 162), the amount is not included in the adjusted basis of the intangible for purposes of section 197. Any other amount, whether fixed or contingent, to which section 1253(d) applies is chargeable to capital account under section 1253(d)(2) and is amortizable only under section 197.

(7) *Amounts properly taken into account in determining the cost of property that is not a section 197 intangible.* Section 197 does not apply to an amount that is properly taken into account in determining the cost of property that is not a section 197 intangible. The entire cost of acquiring the other property is included in its basis and recovered under other applicable Internal Revenue Code provisions. Thus, for example, section 197 does not apply to the cost of an interest in computer software to the extent such cost is included, without being separately stated, in the cost of the hardware or other tangible property and is consistently treated as part of the cost of the hardware or other tangible property.

(8) *Treatment of amortizable section 197 intangibles as depreciable property.* An amortizable section 197 intangible is treated as property of a character subject to the allowance for depreciation under section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221, but if used in a trade or business and held for more than one year, gain or loss on its disposition generally qualifies as section 1231 gain or loss. Also, an amortizable section 197 intangible is section 1245 property and section 1239 applies to any gain recognized upon its sale or exchange between related persons (as defined in section 1239(b)).

(h) *Anti-churning rules*—(1) *Scope and purpose*—(i) *Scope.* This paragraph (h) applies to section 197(f)(9) intangibles. For this purpose, section 197(f)(9) intangibles are goodwill and going concern value that was held or used at any time during the transition period and any other section 197 intangible that was held or used at any time during the transition period and was not depreciable or amortizable under prior law.

(ii) *Purpose.* To qualify as an amortizable section 197 intangible, a section 197 intangible must be acquired after the applicable date (July 25, 1991, if the acquiring taxpayer has made a valid retroactive election pursuant to § 1.197–1T; August 10, 1993, in all other cases). The purpose of the anti-churning rules of section 197(f)(9) and this paragraph (h) is to prevent the amortization of section 197(f)(9) intangibles unless they are transferred after the applicable effective date in a transaction giving rise to a significant change in ownership or use. (Special rules apply for purposes of determining whether transactions involving partnerships give rise to a significant change in ownership or use. See paragraph (h)(12) of this section.) The anti-churning rules are to be applied in a manner that carries out their purpose.

(2) *Treatment of section 197(f)(9) intangibles.* Except as otherwise provided in this paragraph (h), a section 197(f)(9) intangible acquired by a taxpayer after the applicable effective date does not qualify for amortization under section 197 if—

(i) The taxpayer or a related person held or used the intangible or an interest therein at any time during the transition period;

(ii) The taxpayer acquired the intangible from a person that held the intangible at any time during the transition period and, as part of the transaction, the user of the intangible does not change; or

(iii) The taxpayer grants the right to use the intangible to a person that held or used the intangible at any time during the transition period (or to a person related to that person), but only if the transaction in which the taxpayer grants the right and the transaction in which the taxpayer acquired the intangible are part of a series of related transactions.

(3) *Amounts deductible under section 1253(d) or § 1.162–11.* For purposes of this paragraph (h), deductions allowable under section 1253(d)(2) or pursuant to an election under section 1253(d)(3) (in either case as in effect prior to the enactment of section 197) and deductions allowable under § 1.162–11 are treated as deductions allowable for amortization under prior law.

(4) *Transition period.* For purposes of this paragraph (h), the transition period is July 25, 1991, if the acquiring taxpayer has made a valid retroactive election pursuant to § 1.197–1T and the period beginning on July 25, 1991, and ending on August 10, 1993, in all other cases.

(5) *Exceptions.* The anti-churning rules of this paragraph (h) do not apply to—

(i) The acquisition of a section 197(f)(9) intangible if the acquiring taxpayer's basis in the intangible is determined under section 1014(a); or

(ii) The acquisition of a section 197(f)(9) intangible that was an

amortizable section 197 intangible in the hands of the seller (or transferor), but only if the acquisition transaction and the transaction in which the seller (or transferor) acquired the intangible or interest therein are not part of a series of related transactions.

(6) *Related person*—(i) *In general.* Except as otherwise provided in paragraph (h)(6)(ii) of this section, a person is related to another person for purposes of this paragraph (h) if—

(A) The person bears a relationship to that person that would be specified in section 267(b) (determined without regard to section 267(e)) and, by substitution, section 267(f)(1), if those sections were amended by substituting 20 percent for 50 percent; or

(B) The person bears a relationship to that person that would be specified in section 707(b)(1) if that section were amended by substituting 20 percent for 50 percent; or

(C) The persons are engaged in trades or businesses under common control (within the meaning of section 41(f)(1)(A) and (B)).

(ii) *Time for testing relationships.* Except as provided in paragraph (h)(6)(iii) of this section, a person is treated as related to another person for purposes of this paragraph (h) if the relationship exists—

(A) In the case of a single transaction, immediately before or immediately after the transaction in which the intangible is acquired; and

(B) In the case of a series of related transactions (or a series of transactions that together comprise a qualified stock purchase within the meaning of section 338(d)(3)), immediately before the earliest such transaction or immediately after the last such transaction.

(iii) *Certain relationships disregarded.* In applying the rules in paragraph (h)(7) of this section, if a person acquires an intangible in a series of related transactions in which the person acquires stock (meeting the requirements of section 1504(a)(2)) of a corporation in a fully taxable transaction followed by a liquidation of the acquired corporation under section 331, any relationship created as part of such series of transactions is disregarded in determining whether any person is related to such acquired corporation immediately after the last transaction.

(iv) *De minimis rule*—(A) *In general.* Two corporations are not treated as related persons for purposes of this paragraph (h) if—

(*1*) The corporations would (but for the application of this paragraph (h)(6)(iv)) be treated as related persons solely by reason of substituting "more than 20 percent" for "more than 50 percent" in section 267(f)(1)(A); and

(*2*) The beneficial ownership interest of each corporation in the stock of the other corporation represents less than 10 percent of the total combined voting power of all classes of stock entitled to vote and less than 10 percent of the total value of the shares of all classes of stock outstanding.

(B) *Determination of beneficial ownership interest.* For purposes of this paragraph (h)(6)(iv), the beneficial ownership interest of one corporation in the stock of another corporation is determined under the principles of section 318(a), except that—

(*1*) In applying section 318(a)(2)(C), the 50-percent limitation contained therein is not applied; and

(*2*) Section 318(a)(3)(C) is applied by substituting "20 percent" for "50 percent".

(7) *Special rules for entities that owned or used property at any time during the transition period and that are no longer in existence.* A corporation, partnership, or trust that owned or used a section 197 intangible at any time during the transition period and that is no longer in existence is deemed, for purposes of determining whether a taxpayer acquiring the intangible is related to such entity, to be in existence at the time of the acquisition.

(8) *Special rules for section 338 deemed acquisitions.* In the case of a qualified stock purchase that is treated as a deemed sale and purchase of assets pursuant to section 338, the corporation treated as purchasing assets as a result of an election thereunder (new target) is not considered the person that held or used the assets during any period in which the assets were held or used by the corporation treated as selling the assets (old target). Thus, for example, if a corporation (the purchasing corporation) makes a qualified stock purchase of the stock of another corporation after the transition period, new target will not be treated as the owner during the transition period of assets owned by old target during that period even if old target and new target are treated as the same corporation for certain other purposes of the Internal Revenue Code or old target and new target are the same corporation under the laws of the State or other jurisdiction of its organization. However, the anti-churning rules of this paragraph (h) may nevertheless apply to a deemed asset purchase resulting from a section 338 election if new target is related (within the meaning of paragraph (h)(6) of this section) to old target.

(9) *Gain-recognition exception*—(i) *Applicability.* A section 197(f)(9) intangible qualifies for the gain-recognition exception if—

(A) The taxpayer acquires the intangible from a person that would not be related to the taxpayer but for the substitution of 20 percent for 50 percent under paragraph (h)(6)(i)(A) of this section; and

(B) That person (whether or not otherwise subject to Federal income tax) elects to recognize gain on the disposition of the intangible and agrees, notwithstanding any other provision of law or treaty, to pay for the taxable year in which the disposition occurs an amount of tax on the gain that, when added to any other Federal income tax on such gain, equals the gain on the disposition multiplied by the highest marginal rate of tax for that taxable year.

(ii) *Effect of exception.* The anti-churning rules of this paragraph (h) apply to a section 197(f)(9) intangible that qualifies for the gain-recognition exception only to the extent the acquiring taxpayer's basis in the intangible exceeds the gain recognized by the transferor.

(iii) *Time and manner of election.* The election described in this paragraph (h)(9) must be made by the due date (including extensions of time) of the electing taxpayer's Federal income tax return for the taxable year in which the disposition occurs. The election is made by attaching an election statement satisfying the requirements of paragraph (h)(9)(viii) of this section to the electing taxpayer's original or amended income tax return for that taxable year (or by filing the statement as a return for the taxable year under paragraph (h)(9)(xi) of this section). In addition, the taxpayer must satisfy the notification requirements of paragraph (h)(9)(vi) of this section. The election is binding on the taxpayer and all parties whose Federal tax liability is affected by the election.

(iv) *Special rules for certain entities.* In the case of a partnership, S corporation, estate or trust, the election under this paragraph (h)(9) is made by the entity rather than by its owners or beneficiaries. If a partnership or S corporation makes an election under this paragraph (h)(9) with respect to the disposition of a section 197(f)(9) intangible, each of its partners or shareholders is required to pay a tax determined in the manner described in paragraph (h)(9)(i)(B) of this section on the amount of gain that is properly allocable to such partner or shareholder with respect to the disposition.

(v) *Effect of nonconforming elections.* An attempted election that does not

substantially comply with each of the requirements of this paragraph (h)(9) is disregarded in determining whether a section 197(f)(9) intangible qualifies for the gain-recognition exception.

(vi) *Notification requirements.* A taxpayer making an election under this paragraph (h)(9) with respect to the disposition of a section 197(f)(9) intangible must provide written notification of the election on or before the due date of the return on which the election is made to the person acquiring the section 197 intangible. In addition, a partnership or S corporation making an election under this paragraph (h)(9) must attach to the Schedule K–1 furnished to each partner or shareholder a written statement containing all information necessary to determine the recipient's additional tax liability under this paragraph (h)(9).

(vii) *Revocation.* An election under this paragraph (h)(9) may be revoked only with the consent of the Commissioner.

(viii) *Election Statement.* An election statement satisfies the requirements of this paragraph (h)(9)(viii) if it is in writing and contains the information listed below. The required information should be arranged and identified in accordance with the following order and numbering system:

(A) The name and address of the electing taxpayer.

(B) Except in the case of a taxpayer that is not otherwise subject to Federal income tax, the taxpayer identification number (TIN) of the electing taxpayer.

(C) A statement that the taxpayer is making the election under section 197(f)(9)(B).

(D) Identification of the transaction and each person that is a party to the transaction or whose tax return is affected by the election (including, except in the case of persons not otherwise subject to Federal income tax, the TIN of each such person).

(E) The calculation of the gain realized, the applicable rate of tax, and the amount of the taxpayer's additional tax liability under this paragraph (h)(9).

(F) The signature of the taxpayer or an individual authorized to sign the taxpayer's Federal income tax return.

(ix) *Determination of highest marginal rate of tax and amount of other Federal income tax on gain*—(A) *Marginal rate.* The following rules apply for purposes of determining the highest marginal rate of tax applicable to an electing taxpayer:

(*1*) *Noncorporate taxpayers.* In the case of an individual, estate, or trust, the highest marginal rate of tax is the highest marginal rate of tax in effect under section 1, determined without regard to section 1(h).

(*2*) *Corporations and tax-exempt entities.* In the case of a corporation or an entity that is exempt from tax under section 501(a), the highest marginal rate of tax is the highest marginal rate of tax in effect under section 11, determined without regard to any rate that is added to the otherwise applicable rate in order to offset the effect of the graduated rate schedule.

(B) *Other Federal income tax on gain.* The amount of Federal income tax (other than the tax determined under this paragraph (h)(9)) imposed on any gain is the lesser of—

(*1*) The amount by which the taxpayer's Federal income tax liability (determined without regard to this paragraph (h)(9)) would be reduced if the amount of such gain were not taken into account; or

(*2*) The amount of the gain multiplied by the highest marginal rate of tax for the taxable year.

(x) *Coordination with other provisions*—(A) *In general.* The amount of gain subject to the tax determined under this paragraph (h)(9) is not reduced by any net operating loss deduction under section 172(a), any capital loss under section 1212, or any other similar loss or deduction. In addition, the amount of tax determined under this paragraph (h)(9) is not reduced by any credit of the taxpayer. In computing the amount of any net operating loss, capital loss, or other similar loss or deduction, or any credit that may be carried to any taxable year, any gain subject to the tax determined under this paragraph (h)(9) and any tax paid under this paragraph (h)(9) is not taken into account.

(B) *Section 1374.* No provision of paragraph (h)(9)(iv) of this section precludes the application of section 1374 (relating to a tax on certain built-in gains of S corporations) to any gain with respect to which an election under this paragraph (h)(9) is made. In addition, neither paragraph (h)(9)(iv) nor paragraph (h)(9)(x)(A) of this section precludes a taxpayer from applying the provisions of section 1366(f)(2) (relating to treatment of the tax imposed by section 1374 as a loss sustained by the S corporation) in determining the amount of tax payable under paragraph (h)(9) of this section.

(C) *Procedural and administrative provisions.* For purposes of subtitle F, the amount determined under this paragraph (h)(9) is treated as a tax imposed by section 1 or 11, as appropriate.

(D) *Installment method.* The gain subject to the tax determined under paragraph (h)(9)(i) of this section may not be reported under the method described in section 453(a). Any such gain that would, but for the application of this paragraph (h)(9)(x)(D), be taken into account under section 453(a) shall be taken into account in the same manner as if an election under section 453(d) (relating to the election not to apply section 453(a)) had been made.

(xi) *Special rules for persons not otherwise subject to Federal income tax.* If the person making the election under this paragraph (h)(9) with respect to a disposition is not otherwise subject to Federal income tax, the election statement satisfying the requirements of paragraph (h)(9)(viii) of this section must be filed with the Philadelphia Service Center. For purposes of this paragraph (h)(9) and subtitle F, the statement is treated as an income tax return for the calendar year in which the disposition occurs and as a return due on or before March 15 of the following year.

(10) *Transactions subject to both anti-churning and nonrecognition rules.* If a person acquires a section 197(f)(9) intangible in a transaction described in paragraph (g)(2) of this section from a person in whose hands the intangible was an amortizable section 197 intangible, and immediately after the transaction (or series of transactions described in paragraph (h)(6)(ii)(B) of this section) in which such intangible is acquired, the person acquiring the section 197(f)(9) intangible is related to any person described in paragraph (h)(2) of this section, the intangible is, notwithstanding its treatment under paragraph (g)(2) of this section, treated as an amortizable section 197 intangible only to the extent permitted under this paragraph (h). (See, for example, paragraph (h)(5)(ii) of this section.)

(11) *Avoidance purpose.* A section 197(f)(9) intangible acquired by a taxpayer after the applicable effective date does not qualify for amortization under section 197 if one of the principal purposes of the transaction in which it is acquired is to avoid the operation of the anti-churning rules of section 197(f)(9) and this paragraph (h). A transaction will be presumed to have a principal purpose of avoidance if it does not effect a significant change in the ownership or use of the intangible. Thus, for example, if section 197(f)(9) intangibles are acquired in a transaction (or series of related transactions) in which an option to acquire stock is issued to a party to the transaction, but the option is not treated as having been exercised for purposes of paragraph (h)(6) of this section, this paragraph (h)(11) may apply to the transaction.

(12) *Additional partnership anti-churning rules*—(i) *In general.* In

determining whether the anti-churning rules of this paragraph (h) apply to any increase in the basis of a section 197(f)(9) intangible under section 732(b), 732(d), 734(b), or 743(b), the determinations are made at the partner level and each partner is treated as having owned and used the partner's proportionate share of partnership property. In determining whether the anti-churning rules of this paragraph (h) apply to any transaction under another section of the Internal Revenue Code, the determinations are made at the partnership level, unless under § 1.701–2(e) the Commissioner determines that the partner level is more appropriate.

(ii) *Section 732(b) adjustments—Reserved.*

(iii) *Section 732(d) adjustments.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of partnership property under section 732(d) if the distributee partner was not related (at the time of the transfer of the partnership interest) to the person who transferred the partnership interest with respect to which the distribution is being made.

(iv) *Section 734(b) adjustments—Reserved.*

(v) *Section 743(b) adjustments.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of partnership property under section 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership interest.

(vi) *Partner is or becomes a user of partnership intangible*—(A) *General rule.* If, as part of a series of related transactions that includes a transaction described in paragraph (h)(12) (iii) or (v) of this section, an anti-churning partner or a person related to an anti-churning partner becomes (or remains) a user of an intangible that is treated as transferred in the transaction (as a result of the partners being treated as having owned their proportionate share of partnership assets), the anti-churning rules of this paragraph (h) apply to the proportionate share of such intangible that is treated as transferred by the anti-churning partner, notwithstanding the application of paragraph (h)(12) (iii) or (v) of this section.

(B) *Anti-churning partner.* For purposes of this paragraph (h)(12)(vi), anti-churning partner means—

(*1*) With respect to all intangibles held by a partnership on or before August 10, 1993, any partner, but only to the extent that

(*i*) The partner's interest in the partnership was acquired on or before August 10, 1993, or

(*ii*) The interest was acquired from a person related to the partner on or after August 10, 1993, and such interest was not held by any person other than persons related to such partner at any time after August 10, 1993 (disregarding, for this purpose, a person's holding of an interest if the acquisition of such interest was part of a transaction or series of related transactions in which the partner or persons related to the partner subsequently acquired such interest),

(*2*) With respect to any section 197(f)(9) intangible acquired by a partnership after August 10, 1993, that is not amortizable with respect to the partnership, any partner, but only to the extent that

(*i*) The partner's interest in the partnership was acquired on or before the date the partnership acquired the section 197(f)(9) intangible, or

(*ii*) The interest was acquired from a person related to the partner on or after the date the partnership acquired the section 197(f)(9) intangible, and such interest was not held by any person other than persons related to such partner at any time after the date the partnership acquired the section 197(f)(9) intangible (disregarding, for this purpose, a person's holding of an interest if the acquisition of such interest was part of a transaction or series of related transactions in which the partner or persons related to the partner subsequently acquired such interest), and

(*3*) With respect to any intangible, a partner who received an interest in the partnership in exchange for such intangible (or a portion thereof) or a related person who received such interest in the partnership from such a partner, but only to the extent that the intangible (or portion thereof) transferred by such partner is not an amortizable section 197 intangible with respect to the partnership.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(vi)(B) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the relevant party made a valid retroactive election under § 1.197–1T.

(vii) *Section 704(c) allocations*—(A) *Allocations where the intangible is amortizable by the contributor.* The anti-churning rules of this paragraph (h) do not apply to the curative or remedial allocations of amortization with respect to a section 197(f)(9) intangible if the intangible was an amortizable section 197 intangible in the hands of the contributing partner (unless paragraph (h)(10) of this section applies so as to cause the intangible to cease to be an amortizable section 197 intangible in the hands of the partnership).

(B) *Allocations where the intangible is not amortizable by the contributor.* Notwithstanding paragraph (g)(3)(ii) of this section, where the section 197(f)(9) intangible was not an amortizable section 197 intangible in the hands of the contributing partner, a partner may not receive remedial allocations of amortization under section 704(c) that are deductible for Federal income tax purposes if that partner is related to the partner that contributed the intangible. Taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 and this paragraph (h). A method will be considered to contravene the purposes of the anti-churning rules if the effect of the book adjustments resulting from the method is such that any portion of the tax deduction for amortization attributable to section 704(c) is allocated, directly or indirectly, to a partner who is subject to the anti-churning rules with respect to such adjustment.

(viii) *Operating rule for transfers upon death.* For purposes of this paragraph (h)(12), if the basis of a partner's interest in a partnership is determined under section 1014(a), such partner is treated as acquiring such interest from a person who is not related to such partner, and such interest is treated as having previously been held by a person who is not related to such partner.

(i) [Reserved]

(j) *General anti-abuse rule.* The Commissioner will interpret and apply the rules in this section as necessary and appropriate to prevent avoidance of the purposes of section 197. If one of the principal purposes of a transaction is to achieve a tax result that is inconsistent with the purposes of section 197, the Commissioner will recast the transaction for Federal tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 197, in light of the applicable statutory and regulatory provisions and the pertinent facts and circumstances.

(k) *Examples.* The following examples illustrate the application of this section:

Example 1. Advertising costs. (i) Q manufactures and sells consumer products through a series of wholesalers and distributors. In order to increase sales of its products by encouraging consumer loyalty to its products and to enhance the value of the goodwill, trademarks, and trade names of the business, Q advertises its products to the consuming public. It regularly incurs costs to develop radio, television, and print advertisements. These costs generally consist

of employee costs and amounts paid to independent advertising agencies. Q also incurs costs to run these advertisements in the various media for which they were developed.

(ii) The advertising costs are not chargeable to capital account under paragraph (f)(3) of this section (relating to costs incurred for covenants not to compete, rights granted by governmental units, and contracts for the use of section 197 intangibles) and are currently deductible as ordinary and necessary expenses under section 162. Accordingly, under paragraph (a)(3) of this section, section 197 does not apply to these costs.

Example 2. Computer software. (i) X purchases all of the assets of an existing trade or business from Y. One of the assets acquired is all of Y's rights in certain computer software previously used by Y under the terms of a nonexclusive license from the software developer. The software was developed for use by manufacturers to maintain a comprehensive accounting system, including general and subsidiary ledgers, payroll, accounts receivable and payable, cash receipts and disbursements, fixed asset accounting, and inventory cost accounting and controls. The developer modified the software for use by Y at a cost of $1,000 and Y made additional modifications at a cost of $500. The developer does not maintain wholesale or retail outlets but markets the software directly to ultimate users. Y's license of the software is limited to an entity that is actively engaged in business as a manufacturer.

(ii) Notwithstanding these limitations, the software is considered to be readily available to the general public for purposes of paragraph (c)(4)(i) of this section. In addition, the software is not substantially modified because the cost of the modifications by the developer and Y to the version of the software that is readily available to the general public does not exceed $2,000. Accordingly, the software is not a section 197 intangible.

Example 3. Acquisition of software for internal use. (i) B, the owner and operator of a worldwide package-delivery service, purchases from S all rights to software developed by S. The software will be used by B for the sole purpose of improving its package-tracking operations. B does not purchase any other assets in the transaction or any related transaction.

(ii) Because B acquired the software solely for internal use, it is disregarded in determining for purposes of paragraph (c)(4)(ii) of this section whether the assets acquired in the transaction or series of related transactions constitute a trade or business or substantial portion thereof. Since no other assets were acquired, the software is not acquired as part of a purchase of a trade or business and under paragraph (c)(4)(ii) of this section is not a section 197 intangible.

Example 4. Governmental rights of fixed duration. (i) City M operates a municipal water system. In order to induce X to locate a new manufacturing business in the city, M grants X the right to purchase water for 16 years at a specified price.

(ii) The right granted by M is a right to receive tangible property or services described in section 197(e)(4)(B) and paragraph (c)(6) of this section and, thus, is not a section 197 intangible. This exclusion applies even though the right does not qualify for exclusion as a right of fixed duration or amount under section 197(e)(4)(D) and paragraph (c)(13) of this section because the duration exceeds 15 years and the right is not fixed as to amount. It is also immaterial that the right would not qualify for exclusion as a self-created intangible under section 197(c)(2) and paragraph (d)(2) of this section because it is granted by a governmental unit.

Example 5. Separate acquisition of franchise. (i) S is a franchiser of retail outlets for specialty coffees. G enters into a franchise agreement (within the meaning of section 1253(b)(1)) with S pursuant to which G is permitted to acquire and operate a store using the S trademark and trade name at the location specified in the agreement. G agrees to pay S $100,000 upon execution of the agreement and also agrees to pay, throughout the term of the franchise, additional amounts that are deductible under section 1253(d)(1). The agreement contains detailed specifications for the construction and operation of the business, but G is not required to purchase from S any of the materials necessary to construct the improvements at the location specified in the franchise agreement.

(ii) The franchise is a section 197 intangible within the meaning of paragraph (b)(10) of this section. The franchise does not qualify for the exclusion relating to self-created intangibles described in section 197(c)(2) and paragraph (d)(2) of this section because the franchise is described in section 197(d)(1)(F). In addition, because the acquisition of the franchise constitutes the acquisition of an interest in a trade or business or a substantial portion thereof, the franchise may not be excluded under section 197(e)(4). Thus, the franchise is an amortizable section 197 intangible, the basis of which must be recovered over a 15-year period. However, the amounts that are deductible under section 1253(d)(1) are not subject to the provisions of section 197 by reason of section 197(f)(4)(C) and paragraph (b)(10)(ii) of this section.

Example 6. Acquisition and amortization of covenant not to compete. (i) As part of the acquisition of a trade or business from C, B and C enter into an agreement containing a covenant not to compete. Under this agreement, C agrees that it will not compete with the business acquired by B within a prescribed geographical territory for a period of three years after the date on which the business is sold to B. In exchange for this agreement, B agrees to pay C $90,000 per year for each year in the term of the agreement. The agreement further provides that, in the event of a breach by C of his obligations under the agreement, B may terminate the agreement, cease making any of the payments due thereafter, and pursue any other legal or equitable remedies available under applicable law. The amounts payable to C under the agreement are not contingent payments for purposes of § 1.1275–4. The present fair market value of B's rights under the agreement is $225,000. The aggregate consideration paid for all assets acquired in the transaction (including the covenant not to compete) exceeds the sum of the amount of Class I assets and the aggregate fair market value of all Class II, Class III, Class IV, Class V, and Class VI assets by $50,000. See § 1.338–6T(b) for rules for determining the assets in each class.

(ii) Because the covenant is acquired in an applicable asset acquisition (within the meaning of section 1060(c)), paragraph (f)(4)(ii) of this section applies and the basis of B in the covenant is determined pursuant to section 1060(a) and the regulations thereunder. Under §§ 1.1060–1T(c)(2) and 1.338–6T(c)(1), B's basis in the covenant cannot exceed its fair market value. Thus, B's basis in the covenant immediately after the acquisition is $225,000. This basis is amortized ratably over the 15-year period beginning on the first day of the month in which the agreement is entered into. Although the payments under the agreement ($270,000) exceed the amount allocated to the covenant by $45,000, all of the remaining consideration ($50,000) is allocated to Class VII assets (goodwill and going concern value). See §§ 1.1060–1T(c)(2) and 1.338–6T(b).

Example 7. Stand-alone license of technology. (i) X is a manufacturer of consumer goods that does business throughout the world through subsidiary corporations organized under the laws of each country in which business is conducted. X licenses to Y, its subsidiary organized and conducting business in Country K, all of the patents, formulas, designs, and know-how necessary for Y to manufacture the same products that X manufactures in the United States. Assume that the license is not considered a sale or exchange under the principles of section 1235. The license is for a term of 18 years, and there are no facts to indicate that the license does not have a fixed duration. Y agrees to pay X a royalty equal to a specified, fixed percentage of the revenues obtained from selling products manufactured using the licensed technology. Assume that the royalty is reasonable and is not subject to adjustment under section 482. The license is not entered into in connection with any other transaction. Y incurs capitalized costs in connection with entering into the license.

(ii) The license is a contract for the use of a section 197 intangible within the meaning of paragraph (b)(11) of this section. It does not qualify for the exception in section 197(e)(4)(D) and paragraph (c)(13) of this section (relating to rights of fixed duration or amecause it does not have a term of less than 15 years, and the other exceptions in section 197(e) and paragraph (c) of this section are also inapplicable. Accordingly, the license is a section 197 intangible.

(iii) The license is not acquired as part of a purchase of a trade or business. Thus, under paragraph (f)(3)(iii) of this section, the license will be closely scrutinized under the principles of section 1235 for purposes of determining whether the transfer is a sale or exchange and, accordingly, whether the payments under the license are chargeable to

capital account. Because the license is not a sale or exchange under the principles of section 1235, the royalty payments are not chargeable to capital account for purposes section 197. The capitalized costs of entering into the license are not within the exception under paragraph (d)(2) of this section for self-created intangibles, and thus are amortized under section 197.

Example 8. License of technology and trademarks. (i) The facts are the same as in *Example 7*, except that the license also includes the use of the trademarks and trade names that X uses to manufacture and distribute its products in the United States. Assume that under the principles of section 1253 the transfer is not a sale or exchange of the trademarks and trade names or an undivided interest therein and that the royalty payments are described in section 1253(d)(1)(B).

(ii) As in *Example 7*, the license is a section 197 intangible. Although the license conveys an interest in X's trademarks and trade names to Y, the transfer of the interest is disregarded for purposes of paragraph (e)(2) of this section unless the transfer is considered a sale or exchange of the trademarks and trade names or an undivided interest therein. Accordingly, the licensing of the technology and the trademarks and trade names is not treated as part of a purchase of a trade or business under paragraph (e)(2) of this section.

(iii) Because the technology license is not part of the purchase of a trade or business, it is treated in the manner described in *Example 7*. The royalty payments for the use of the trademarks and trade names are deductible under section 1253(d)(1) and, under section 197(f)(4)(C) and paragraph (b)(10)(ii) of this section, are not chargeable to capital account for purposes of section 197. The capitalized costs of entering into the license are treated in the same manner as in example 7.

Example 9. Disguised sale. (i) The facts are the same as in *Example 7*, except that Y agrees to pay X, in addition to the contingent royalty, a fixed minimum royalty immediately upon entering into the agreement and there are sufficient facts present to characterize the transaction, for federal tax purposes, as a transfer of ownership of the intellectual property from X to Y.

(ii) The purported license of technology is, in fact, an acquisition of an intangible described in section 197(d)(1)(C)(iii) and paragraph (b)(5) of this section (relating to know-how, etc.). As in *Example 7*, the exceptions in section 197(e) and paragraph (c) of this section do not apply to the transfer. Accordingly, the transferred property is a section 197 intangible. Y's basis in the transferred intangible includes the capitalized costs of entering into the agreement and the fixed minimum royalty payment payable at the time of the transfer. In addition, except to the extent that a portion of any payment will be treated as interest or original issue discount under applicable provisions of the Internal Revenue Code, all of the contingent payments under the purported license are properly chargeable to capital account for purposes of section 197 and this section. The extent to which such payments are treated as payments of principal and the time at which any amount treated as a payment of principal is taken into account in determining basis are determined under the rules of § 1.1275–4(c)(4) or 1.483–4(a), whichever is applicable. Any contingent amount that is included in basis after the month in which the acquisition occurs is amortized under the rules of paragraph (f)(2)(i) or (ii) of this section.

Example 10. License of technology and customer list as part of sale of a trade or business. (i) X is a computer manufacturer that produces, in separate operating divisions, personal computers, servers, and peripheral equipment. In a transaction that is the purchase of a trade or business for purposes of section 197, Y (who is unrelated to X) purchases from X all assets of the operating division producing personal computers, except for certain patents that are also used in the division manufacturing servers and customer lists that are also used in the division manufacturing peripheral equipment. As part of the transaction, X transfers to Y the right to use the retained patents and customer lists solely in connection with the manufacture and sale of personal computers. The transfer agreement requires annual royalty payments contingent on the use of the patents and also requires a payment for each use of the customer list. In addition, Y incurs capitalized costs in connection with entering into the licenses.

(ii) The rights to use the retained patents and customer lists are contracts for the use of section 197 intangibles within the meaning of paragraph (b)(11) of this section. The rights do not qualify for the exception in 197(e)(4)(D) and paragraph (c)(13) of this section (relating to rights of fixed duration or amount) because they are transferred as part of a purchase of a trade or business and the other exceptions in section 197(e) and paragraph (c) of this section are also inapplicable. Accordingly, the licenses are section 197 intangibles.

(iii) Because the right to use the retained patents is described in paragraph (b)(11) of this section and the right is transferred as part of a purchase of a trade or business, the treatment of the royalty payments is determined under paragraph (f)(3)(ii) of this section. In addition, however, the retained patents are described in paragraph (b)(5) of this section. Thus, the annual royalty payments are chargeable to capital account under the general rule of paragraph (f)(3)(ii)(A) of this section unless Y establishes that the license is not a sale or exchange under the principles of section 1235 and the royalty payments are an arm's length consideration for the rights transferred. If these facts are established, the exception in paragraph (f)(3)(ii)(B) of this section applies and the royalty payments are not chargeable to capital account for purposes of section 197. The capitalized costs of entering into the license are treated in the same manner as in Example 7.

(iv) The right to use the retained customer list is also described in paragraph (b)(11) of this section and is transferred as part of a purchase of a trade or business. Thus, the treatment of the payments for use of the customer list is also determined under paragraph (f)(3)(ii) of this section. The customer list, although described in paragraph (b)(6) of this section, is a customer-related information base. Thus, the exception in paragraph (f)(3)(ii)(B) of this section does not apply. Accordingly, payments for use of the list are chargeable to capital account under the general rule of paragraph (f)(3)(ii)(A) of this section and are amortized under section 197. In addition, the capitalized costs of entering into the contract for use of the customer list are treated in the same manner as in *Example 7*.

Example 11. Loss disallowance rules involving related persons. (i) Assume that X and Y are treated as a single taxpayer for purposes of paragraph (g)(1) of this section. In a single transaction, X and Y acquired from Z all of the assets used by Z in a trade or business. Z had operated this business at two locations, and X and Y each acquired the assets used by Z at one of the locations. Three years after the acquisition, X sold all of the assets it acquired, including amortizable section 197 intangibles, to an unrelated purchaser. The amortizable section intangibles are sold at a loss of $120,000.

(ii) Because X and Y are treated as a single taxpayer for purposes of the loss disallowance rules of section 197(f)(1) and paragraph (g)(1) of this section, X's loss on the sale of the amortizable section 197 intangibles is not recognized. Under paragraph (g)(1)(iv)(B) of this section, X's disallowed loss is allowed ratably, as a deduction under section 197, over the remainder of the 15-year period during which the intangibles would have been amortized, and Y may not increase the basis of the amortizable section 197 intangibles that it acquired from Z by the amount of X's disallowed loss.

Example 12. Disposition of retained intangibles by related person. (i) The facts are the same as in *Example 11*, except that 10 years after the acquisition of the assets by X and Y and 7 years after the sale of the assets by X, Y sells all of the assets acquired from Z, including amortizable section 197 intangibles, to an unrelated purchaser.

(ii) Under paragraph (g)(1)(iv)(B) of this section, X may recognize, on the date of the sale by Y, any loss that has not been allowed as a deduction under section 197. Accordingly, X recognizes a loss of $50,000, the amount obtained by reducing the loss on the sale of the assets at the end of the third year ($120,000) by the amount allowed as a deduction under paragraph (g)(1)(iv)(B) of this section during the 7 years following the sale by X ($70,000).

Example 13. Acquisition of an interest in partnership with no section 754 election. (i) A, B, and C each contribute $1,500 for equal shares in general partnership P. On January 1, 1998, P acquires as its sole asset an amortizable section 197 intangible for $4,500. P still holds the intangible on January 1, 2003, at which time the intangible has an adjusted basis to P of $3,000, and A, B, and C each have an adjusted basis of $1,000 in their partnership interests. D (who is not related to A) acquires A's interest in P for $1,600. No section 754 election is in effect for 2003.

(ii) Because there is no change in the basis of the intangible under section 743(b), D merely steps into the shoes of A with respect to the intangible. D's proportionate share of P's adjusted basis in the intangible is $1,000, which continues to be amortized over the 10 years remaining in the original 15-year amortization period for the intangible.

Example 14. Acquisition of an interest in partnership with a section 754 election. (i) The facts are the same as in *Example 13*, except that a section 754 election is in effect for 2003.

(ii) Pursuant to paragraph (g)(3) of this section, for purposes of section 197, D is treated as if P owns two assets. D's proportionate share of P's adjusted basis in one asset is $1,000, which continues to be amortized over the 10 years remaining in the original 15-year amortization period. For the other asset, D's proportionate share of P's adjusted basis is $600 (the amount of the basis increase under section 743 as a result of the section 754 election), which is amortized over a new 15-year period beginning January 2003. With respect to B and C, P's remaining $2,000 adjusted basis in the intangible continues to be amortized over the 10 years remaining in the original 15-year amortization period.

Example 15. Payment to a retiring partner by partnership with a section 754 election. (i) The facts are the same as in *Example 13*, except that a section 754 election is in effect for 2003 and, instead of D acquiring A's interest in P, A retires from P. A, B, and C are not related to each other within the meaning of paragraph (h)(6) of this section. P borrows $1,600, and A receives a payment under section 736 from P of such amount, all of which is in exchange for A's interest in the intangible asset owned by P. (Assume, for purposes of this example, that the borrowing by P and payment of such funds to A does not give rise to a disguised sale of A's partnership interest under section 707(a)(2)(B).) P makes a positive basis adjustment of $600 with respect to the section 197 intangible under section 734(b).

(ii) Pursuant to paragraph (g)(3) of this section, because of the section 734 adjustment, P is treated as having two amortizable section 197 intangibles, one with a basis of $3,000 and a remaining amortization period of 10 years and the other with a basis of $600 and a new amortization period of 15 years.

Example 16. Termination of partnership under section 708(b)(1)(B). (i) A and B are partners with equal shares in the capital and profits of general partnership P. P's only asset is an amortizable section 197 intangible, which P had acquired on January 1, 1995. On January 1, 2000, the asset had a fair market value of $100 and a basis to P of $50. On that date, A sells his entire partnership interest in P to C, who is unrelated to A, for $50. At the time of the sale, the basis of each of A and B in their respective partnership interests is $25.

(ii) The sale causes a termination of P under section 708(b)(1)(B). Under section 708, the transaction is treated as if P transfers its sole asset to a new partnership in exchange for the assumption of its liabilities and the receipt of all of the interests in the new partnership. Immediately thereafter, P is treated as if it is liquidated, with B and C each receiving their proportionate share of the interests in the new partnership. The contribution by P of its asset to the new partnership is governed by section 721, and the liquidating distributions by P of the interests in the new partnership are governed by section 731. C does not realize a basis adjustment under section 743 with respect to the amortizable section 197 intangible unless P had a section 754 election in effect for its taxable year in which the transfer of the partnership interest to C occurred or the taxable year in which the deemed liquidation of P occurred.

(iii) Under section 197, if P had a section 754 election in effect, C is treated as if the new partnership had acquired two assets from P immediately preceding its termination. Even though the adjusted basis of the new partnership in the two assets is determined solely under section 723, because the transfer of assets is a transaction described in section 721, the application of sections 743(b) and 754 to P immediately before its termination causes P to be treated as if it held two assets for purposes of section 197. See paragraph (g)(3) of this section. B's and C's proportionate share of the new partnership's adjusted basis is $25 each in one asset, which continues to be amortized over the 10 years remaining in the original 15-year amortization period. For the other asset, C's proportionate share of the new partnership's adjusted basis is $25 (the amount of the basis increase resulting from the application of section 743 to the sale or exchange by A of the interest in P), which is amortized over a new 15-year period beginning in January 2000.

(iv) If P did not have a section 754 election in effect for its taxable year in which the sale of the partnership interest by A to C occurred or the taxable year in which the deemed liquidation of P occurred, the adjusted basis of the new partnership in the amortizable section 197 intangible is determined solely under section 723, because the transfer is a transaction described in section 721, and P does not have a basis increase in the intangible. Under section 197(f)(2) and paragraph (g)(2)(ii) of this section, the new partnership continues to amortize the intangible over the 10 years remaining in the original 15-year amortization period. No additional amortization is allowable with respect to this asset.

Example 17. Disguised sale to partnership. (i) E and F are individuals who are unrelated to each other within the meaning of paragraph (h)(6) of this section. E has been engaged in the active conduct of a trade or business as a sole proprietor since 1990. E and F form EF Partnership. E transfers all of the assets of the business, having a fair market value of $100, to EF, and F transfers $40 of cash to EF. E receives a 60 percent interest in EF and the $40 of cash contributed by F, and F receives a 40 percent interest in EF, under circumstances in which the transfer by E is partially treated as a sale of property to EF under § 1.707–3(b).

(ii) Under § 1.707–3(a)(1), the transaction is treated as if E had sold to EF a 40 percent interest in each asset for $40 and contributed the remaining 60 percent interest in each asset to EF in exchange solely for an interest in EF. Because E and EF are related persons within the meaning of paragraph (h)(6) of this section, no portion of any transferred section 197(f)(9) intangible that E held during the transition period (as defined in paragraph (h)(4) of this section) is an amortizable section 197 intangible pursuant to paragraph (h)(2) of this section. Section 197(f)(9)(F) and paragraph (g)(3) of this section do not apply to any portion of the section 197 intangible in the hands of EF because the basis of EF in these assets was not increased under any of sections 732, 734, or 743.

Example 18. Acquisition by related person in nonrecognition transaction. (i) A owns a nonamortizable intangible that A acquired in 1990. In 2000, A sells a one-half interest in the intangible to B for cash. Immediately after the sale, A and B, who are unrelated to each other, form partnership P as equal partners. A and B each contribute their one-half interest in the intangible to P.

(ii) P has a transferred basis in the intangible from A and B under section 723. The nonrecognition transfer rule under paragraph (g)(2)(ii) of this section applies to A's transfer of its one-half interest in the intangible to P, and consequently P steps into A's shoes with respect to A's nonamortizable transferred basis. The anti-churning rules of paragraph (h) of this section apply to B's transfer of its one-half interest in the intangible to P, because A, who is related to P under paragraph (h)(6) of this section immediately after the series of transactions in which the intangible was acquired by P, held B's one-half interest in the intangible during the transition period. Pursuant to paragraph (h)(10) of this section, these rules apply to B's transfer of its one-half interest to P even though the nonrecognition transfer rule under paragraph (g)(2)(ii) of this section would have permitted P to step into B's shoes with respect to B's otherwise amortizable basis. Therefore, P's entire basis in the intangible is nonamortizable. However, if A (not B) elects to recognize gain under paragraph (h)(9) of this section on the transfer of each of the one-half interests in the intangible to B and P, then the intangible would be amortizable by P to the extent provided in section 197(f)(9)(B) and paragraph (h)(9) of this section.

Example 19. Acquisition of partnership interest following formation of partnership. (i) The facts are the same as in *Example 18* except that, in 2000, A formed P with an affiliate, S, and contributed the intangible to the partnership and except that in a subsequent year, in a transaction that is properly characterized as a sale of a partnership interest for Federal tax purposes, B purchases a 50 percent interest in P from A. P has a section 754 election in effect and holds no assets other than the intangible and cash.

(ii) For the reasons set forth in *Example 16* (iii), B is treated as if P owns two assets. B's proportionate share of P's adjusted basis in one asset is the same as A's proportionate share of P's adjusted basis in that asset, which is not amortizable under section 197. For the other asset, B's proportionate share of the remaining adjusted basis of P is amortized over a new 15-year period.

Example 20. Acquisition by related corporation in nonrecognition transaction. (i) The facts are the same as *Example 18*, except that A and B form corporation P as equal owners.

(ii) P has a transferred basis in the intangible from A and B under section 362. Pursuant to paragraph (h)(10) of this section, the application of the nonrecognition transfer rule under paragraph (g)(2)(ii) of this section and the anti-churning rules of paragraph (h) of this section to the facts of this *Example 18* is the same as in *Example 16*. Thus, P's entire basis in the intangible is nonamortizable.

Example 21. Acquisition from corporation related to purchaser through remote indirect interest. (i) X, Y, and Z are each corporations that have only one class of issued and outstanding stock. X owns 25 percent of the stock of Y and Y owns 25 percent of the outstanding stock of Z. No other shareholder of any of these corporations is related to any other shareholder or to any of the corporations. On June 30, 2000, X purchases from Z section 197(f)(9) intangibles that Z owned during the transition period (as defined in paragraph (h)(4) of this section).

(ii) Pursuant to paragraph (h)(6)(iv)(B) of this section, the beneficial ownership interest of X in Z is 6.25 percent, determined by treating X as if it owned a proportionate (25 percent) interest in the stock of Z that is actually owned by Y. Thus, even though X is related to Y and Y is related to Z, X and Z are not considered to be related for purposes of the anti-churning rules of section 197.

Example 22. Gain recognition election. (i) B owns 25 percent of the stock of S, a corporation that uses the calendar year as its taxable year. No other shareholder of B or S is related to each other. S is not a member of a controlled group of corporations within the meaning of section 1563(a). S has section 197(f)(9) intangibles that it owned during the transition period. S has a basis of $25,000 in the intangibles. In 2001, S sells these intangibles to B for $75,000. S recognizes a gain of $50,000 on the sale and has no other items of income, deduction, gain, or loss for the year, except that S also has a net operating loss of $20,000 from prior years that it would otherwise be entitled to use in 2001 pursuant to section 172(b). S makes a valid gain recognition election pursuant to section 197(f)(9)(B) and paragraph (h)(9) of this section. In 2001, the highest marginal tax rate applicable to S is 35 percent. But for the election, all of S's taxable income would be taxed at a rate of 15 percent.

(ii) If the gain recognition election had not been made, S would have taxable income of $30,000 for 2001 and a tax liability of $4,500. If the gain were not taken into account, S would have no tax liability for the taxable year. Thus, the amount of tax (other than the tax imposed under paragraph (h)(9) of this section) imposed on the gain is also $4,500. The gain on the disposition multiplied by the highest marginal tax rate is $17,500 ($50,000 × .35). Accordingly, S's tax liability for the year is $4,500 plus an additional tax under paragraph (h)(9) of this section of $13,000 ($17,500—$4,500).

(iii) Pursuant to paragraph (h)(9)(x)(A) of this section, S determines the amount of its net operating loss deduction in subsequent years without regard to the gain recognized on the sale of the section 197 intangible to B. Accordingly, the entire $20,000 net operating loss deduction that would have been available in 2001 but for the gain recognition election may be used in 2002, subject to the limitations of section 172.

(iv) B has a basis of $75,000 in the section 197(f)(9) intangibles acquired from S. As the result of the gain recognition election by S, B may amortize $50,000 of its basis under section 197. Under paragraph (h)(9)(ii) of this section, the remaining basis does not qualify for the gain-recognition exception and may not be amortized by B.

Example 23. Section 338 election. (i) Corporation P makes a qualified stock purchase of the stock of T corporation from two shareholders in July 2000, and a section 338 election is made by P. No shareholder of either T or P owns stock in both of these corporations, and no other shareholder is related to any other shareholder of either corporation.

(ii) Pursuant to paragraph (h)(8) of this section, in the case of a qualified stock purchase that is treated as a deemed sale and purchase of assets pursuant to section 338, the corporation treated as purchasing assets as a result of an election thereunder (new target) is not considered the person that held or used the assets during any period in which the assets were held or used by the corporation treated as selling the assets (old target). Because there are no relationships described in paragraph (h)(6) of this section among the parties to the transaction, any nonamortizable section 197(f)(9) intangible held by old target is an amortizable section 197 intangible in the hands of new target.

(iii) Assume the same facts as set forth in paragraph (i) of this *Example 23*, except that one of the selling shareholders is an individual who owns 25 percent of the total value of the stock of each of the T and P corporation.

(iv) Old target and new target (as these terms are defined in § 1.338–1(c)(13)) are members of a controlled group of corporations under section 267(b)(3), as modified by section 197(f)(9)(C)(i), and any nonamortizable section 197(f)(9) intangible held by old target is not an amortizable section 197 intangible in the hands of new target. However, a gain recognition election under paragraph (h)(9) of this section may be made with respect to this transaction.

Example 24. Relationship created as part of public offering. (i) On January 1, 2001, Corporation X engages in a series of related transactions to discontinue its involvement in one line of business. X forms a new corporation, Y, with a nominal amount of cash. Shortly thereafter, X transfers all the stock of its subsidiary conducting the unwanted business (Target) to Y in exchange for 100 shares of Y common stock and a Y promissory note. Target owns a nonamortizable section 197(f)(9) intangible. Prior to January 1, 2001, X and an underwriter (U) had entered into a binding agreement pursuant to which U would purchase 85 shares of Y common stock from X and then sell those shares in a public offering. On January 6, 2001, the public offering closes. X and Y make a section 338(h)(10) election for Target.

(ii) Pursuant to paragraph (h)(8) of this section, in the case of a qualified stock purchase that is treated as a deemed sale and purchase of assets pursuant to section 338, the corporation treated as purchasing assets as a result of an election thereunder (new target) is not considered the person that held or used the assets during any period in which the assets were held or used by the corporation treated as selling the assets (old target). Further, for purposes of determining whether the nonamortizable section 197(f)(9) intangible is acquired by new target from a related person, because the transactions are a series of related transactions, the relationship between old target and new target must be tested immediately before the first transaction in the series (the formation of Y) and immediately after the last transaction in the series (the sale to U and the public offering). See paragraph (h)(6)(ii)(B) of this section. Because there was no relationship between old target and new target immediately before the formation of Y (because the section 338 election had not been made) and only a 15% relationship between old target and new target immediately after, old target is not related to new target for purposes of applying the anti-churning rules of paragraph (h) of this section. Accordingly, Target may amortize the section 197 intangible.

Example 25. Other transfers to controlled corporations. (i) In 2001, Corporation A transfers a section 197(f)(9) intangible that it held during the transition period to X, a newly formed corporation, in exchange for 15% of X's stock. As part of the same transaction, B transfers property to X in exchange for the remaining 85% of X stock.

(ii) Because the acquisition of the intangible by X is part of a qualifying section 351 exchange, under section 197(f)(2) and paragraph (g)(2)(ii) of this section, X is treated in the same manner as the transferor of the asset. Accordingly, X may not amortize the intangible. If, however, at the time of the exchange, B has a binding commitment to sell 25 percent of the X stock to C, an unrelated third party, the exchange, including A's transfer of the section 197(f)(9) intangible, would fail to qualify as a section 351 exchange. Because the formation of X, the transfers of property to X, and the sale of X stock by B are part of a series of related transactions, the relationship between A and X must be tested immediately before the first transaction in the series (the transfer of property to X) and immediately after the last transaction in the series (the sale of X stock to C). See paragraph (h)(6)(ii)(B) of this section. Because there was no relationship between A and X immediately before and only a 15% relationship immediately after, A is not related to X for purposes of applying the anti-churning rules of paragraph (h) of this section. Accordingly, X may amortize the section 197 intangible.

Example 26. Relationship created as part of stock acquisition followed by liquidation. (i) In 2001, Partnership P purchases 100 percent of the stock of Corporation X. P and X were not related prior to the acquisition. Immediately after acquiring the X stock, and

as part of a series of related transactions, P liquidates X under section 331. In the liquidating distribution, P receives a section 197(f)(9) intangible that was held by X during the transition period.

(ii) Because the relationship between P and X was created pursuant to a series of related transactions where P acquires stock (meeting the requirements of section 1504(a)(2)) in a fully taxable transaction followed by a liquidation under section 331, the relationship immediately after the last transaction in the series (the liquidation) is disregarded. See paragraph (h)(6)(iii) of this section. Accordingly, P is entitled to amortize the section 197(f)(9) intangible.

Example 27. Section 743(b) adjustment with no change in user. (i) On January 1, 2001, A forms a partnership (PRS) with B in which A owns a 60-percent, and B owns a 40-percent, interest in profits and capital. A contributes a nonamortizable section 197(f)(9) intangible with a value of $80 and an adjusted basis of $0 to PRS in exchange for its PRS interest and B contributes $120 cash. At the time of the contribution, PRS licenses the section 197(f)(9) intangible to A. On February 1, 2001, A sells its entire interest in PRS to C, an unrelated person, for $80. PRS has a section 754 election in effect.

(ii) The section 197(f)(9) intangible contributed to PRS by A is not amortizable in the hands of PRS. Pursuant to section (g)(2)(ii) of this section, PRS steps into the shoes of A with respect to A's nonamortizable transferred basis in the intangible.

(iii) When A sells the PRS interest to C, C will have a basis adjustment in the PRS assets under section 743(b) equal to $80. The entire basis adjustment will be allocated to the intangible because the only other asset held by PRS is cash. Ordinarily, under paragraph (h)(12)(v) of this section, the anti-churning rules will not apply to an increase in the basis of partnership property under section 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership interest. However, A is an anti-churning partner under paragraph (h)(12)(vi)(B)(*3*) of this section. Because A remains a user of the section 197(f)(9) intangible after the transfer to G, paragraph (h)(12)(vi)(A) of this section will cause the anti-churning rules to apply to the entire basis adjustment under section 743(b).

(l) Effective dates.—(1) *In general.* This section applies to property acquired after January 25, 2000, except that paragraph (c)(13) of this section (exception from section 197 for separately acquired rights of fixed duration or amount) applies to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T).

(2) *Application to pre-effective date acquisitions.* A taxpayer may choose, on a transaction-by-transaction basis, to apply the provisions of this section and § 1.167(a)–14 to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and on or before January 25, 2000.

(3) *Application of regulation project REG–209709–94 to pre-effective date acquisitions.* A taxpayer may rely on the provisions of regulation project REG–209709–94 (1997–1 C.B. 731) for property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and on or before January 25, 2000.

(4) *Change in method of accounting*—(i) *In general.* For the first taxable year ending after January 25, 2000, a taxpayer that has acquired property to which the exception in § 1.197–2(c)(13) applies is granted consent of the Commissioner to change its method of accounting for such property to comply with the provisions of this section and § 1.167(a)–14 unless the proper treatment of such property is an issue under consideration (within the meaning of Rev. Proc. 97–27 (1997–21 IRB 10)(see § 601.601(d)(2) of this chapter)) in an examination, before an Appeals office, or before a Federal court.

(ii) *Application to pre-effective date acquisitions.* For the first taxable year ending after January 25, 2000, a taxpayer is granted consent of the Commissioner to change its method of accounting for all property acquired in transactions described in paragraph (l)(2) of this section to comply with the provisions of this section and § 1.167(a)–14 unless the proper treatment of any such property is an issue under consideration (within the meaning of Rev. Proc. 97–27 (1997–21 IRB 10)(see § 601.601(d)(2) of this chapter)) in an examination, before an Appeals office, or before a Federal court.

(iii) *Automatic change procedures.* A taxpayer changing its method of accounting in accordance with this paragraph (l)(4) must follow the automatic change in accounting method provisions of Rev. Proc. 99–49 (1999–52 IRB 725)(see § 601.601(d)(2) of this chapter) except, for purposes of this paragraph (l)(4), the scope limitations in section 4.02 of Rev. Proc. 99–49 (1999–52 IRB 725) are not applicable. However, if the taxpayer is under examination, before an appeals office, or before a federal court, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the application with the National Office. The application must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the government, as appropriate.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows.

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB Control No.
* * * * *	
1.197–2	1545–1671
* * * * *	

David Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: January 14, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1380 Filed 1–20–00; 1:19 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8869]

RIN 1545–AU77

Subchapter S Subsidiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that relate to the treatment of corporate subsidiaries of S corporations and interpret the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996. These regulations provide the public with guidance needed to comply with applicable law and will affect S corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective January 20, 2000.

Applicability Date: For dates of applicability, see §§ 1.1361–4(a)(3)(iii), 1.1361–4(a)(5)(i), 1.1361–5(c)(2), 1.1361–6, 1.1362–8(e), and 301.6109–1(i)(4).

FOR FURTHER INFORMATION CONTACT: Jeanne M. Sullivan (202) 622–3050 (not

a toll-free number) or David J. Sotos (202) 622–3050 (Subchapter S); Michael N. Kaibni (202) 622–7550 (Subchapter C) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1590. Responses to these collections of information are required to determine the manner in which a corporate subsidiary of an S corporation will be treated under the Internal Revenue Code.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent/recordkeeper varies from 45 minutes to 1 hour, depending on individual circumstances, with an estimated average of 57 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 22, 1998, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–251698–96, 63 FR 19864) concerning the treatment of corporate subsidiaries of S corporations. The regulations interpreted rules added to the Internal Revenue Code (Code) by section 1308 of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (the Act), as amended by section 1601 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788 (the 1997 Act). The Act modified section 1361 of the Code to permit an S corporation: (1) To own 80 percent or more of the stock of a C corporation, and (2) to elect to treat a wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). The 1997 Act made a technical correction to section 1361 to provide regulatory authority to make exceptions to the general tax treatment of an election to be a QSub.

Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on October 14, 1998. After consideration of all the comments, the proposed regulations under sections 1361, 1362, and 1374 are adopted, as revised by this Treasury decision. The comments received and the revisions are discussed below. In addition, regulations under section 6109 are adopted to provide additional guidance consistent with the QSub provisions.

On January 13, 1997, the IRS published Notice 97–4, 1997–1 C.B. 351, to provide a temporary procedure for making a QSub (formerly QSSS) election. Taxpayers should continue to follow Notice 97–4 when making a QSub election until the QSub election form is published.

Explanation of Provisions

1. Step Transaction Doctrine

a. QSub Election

The proposed regulations provide that, when an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the parent S corporation immediately before the QSub election is effective. The tax treatment of this liquidation, alone or in the context of any larger transaction (for example, a transaction that also includes the acquisition of the subsidiary's stock), generally is determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine. However, the proposed regulations include a special transition rule that applies to certain elections effective prior to the date that is 60 days after publication of final regulations in the **Federal Register**. The transition rule suspends the application of the step transaction doctrine with respect to the acquisition of stock followed by a QSub election in cases where the S corporation and the subsidiary are related (as described in section 267(b)) prior to the acquisition of the subsidiary's stock.

Commentators expressed concern over the application of the step transaction doctrine to transactions that include the deemed liquidation that occurs as the result of a QSub election. These commentators argued that applying step transaction to the acquisition of stock that precedes a QSub election can cause the transaction to be recast as an asset acquisition under section 368 with results that may be inconsistent with the expectations of some taxpayers. Under step transaction principles, for example, if, pursuant to a plan, a shareholder contributes the stock of one wholly owned S corporation (S2) to another wholly owned S corporation (S1), and makes a QSub election for S2, the transaction generally would be a reorganization under section 368(a)(1)(D), with the possibility of gain recognition under section 357(c). See generally, Rev. Rul. 67–274 (1967–2 C.B. 141). In the opinion of these commentators, the legislative history of the QSub provisions indicates that the deemed liquidation that is incident to a QSub election should be respected as an independent, tax-free liquidation under section 332, rather than recast under the principles of the step transaction doctrine.

After consideration of all of the comments, Treasury and the IRS believe that the proposed regulations are consistent with the legislative history of the QSub provisions, conform the results of the deemed liquidation to the results that would obtain if an actual liquidation occurred, and follow the approach taken in other provisions of the tax law. (In regulations published on November 29, 1999 (64 FR 66580), rules for elective changes in the classification of an entity for Federal tax purposes also provide that the tax treatment of a change in the classification of an entity by election is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.) Accordingly, the final regulations provide that general principles of tax law, including step transaction, apply to determine the tax consequences of the transactions that include a QSub election. The final regulations provide examples illustrating the results of applying step transaction in the context of a QSub election.

The final regulations also provide for an extended transition period during which step transaction will be suspended. During the extended transition period, it is anticipated that proposed regulations published in the **Federal Register** on June 14, 1999, relating to the tax treatment of partially controlled subsidiaries under section 368(a)(1)(C) (64 FR 31770), will be finalized. These regulations generally reverse the IRS's position that the acquisition of assets of a partially controlled subsidiary does not qualify as

a tax-free reorganization under section 368(a)(1)(C). *See Bausch & Lomb Optical Co.* v. *Commissioner*, 30 T.C. 602 (1958), aff'd 267 F.2d 75 (2d Cir.), cert. denied, 361 U.S. 835 (1959); Rev. Rul. 54–396, 1954–2 C.B. 147. The regulations provide that preexisting ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization from being satisfied. See also Notice 2000–1, 2000–2 I.R.B. 1, which provides that the proposed regulations, when finalized, will provide that the regulations generally will apply to transactions occurring after December 31, 1999, with an exception for transactions pursuant to binding agreements. The finalization of these regulations will provide additional certainty as to the tax consequences of making a QSUB election in situations where an S corporation acquires the remainder of a partially controlled subsidiary in exchange for stock of the S corporation and immediately thereafter elects QSUB status with respect to the subsidiary.

b. QSUB Termination

Section 1361(b)(3)(C) provides that, if a QSUB election terminates, the corporation is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) from the S corporation in exchange for stock of the new corporation immediately before the termination. The proposed regulations provide that the tax treatment of this transaction or of a larger transaction that includes this transaction will be determined under the Code and general principles of tax law, including the step transaction doctrine. The proposed regulations include examples illustrating the application of the step transaction doctrine in the context of the termination of a QSUB election.

Commentators recommended that step transaction not apply to the termination of a QSUB election. Those commentators argue that the application of the step transaction doctrine causes inappropriate tax results in some situations. One example cited is the sale of 21 percent of the stock of a QSUB, thereby terminating the QSUB election. Under step transaction principles, the deemed formation of a new corporation that occurs as a result of the QSub termination fails to qualify under section 351 because the S corporation parent is not in control of the new corporation as defined in section 368(c) after the disposition. As a result of the failure to qualify under section 351, gain would be recognized on all of the QSub's assets.

Treasury and the IRS believe that it is appropriate to apply the step transaction doctrine to the termination of a QSub election. Applying the step transaction principles to the control requirement of section 351 after the disposition of QSub stock is completed is consistent with the legislative history of the QSub termination provisions. S. Rep. No. 104–281, 104th Cong., 2d Sess. 52 n.59 (1996). Moreover, in many cases, application of the step transaction doctrine will provide a more taxpayer favorable result than giving separate effect to each step. This may occur, for example, if 100 percent of the stock of a QSub is sold. In that case, applying step transaction principles would result in a fair market value basis for the former QSub's assets, rather than a lower carryover basis that would result (absent a section 338 election) from treating the deemed formation of the new corporation as an independent step qualifying under section 351. In order to assist taxpayers to understand the effect of QSub terminations, the final regulations include two examples that illustrate the contrasting tax consequences of purchasing 21 percent of the stock of a QSub as opposed to the tax consequences of contributing property to the QSub in exchange for 21 percent of the former QSub's stock. The final regulations include additional examples illustrating the consequences of revoking the QSub election prior to sale of the QSub's stock and of merging a QSub into a disregarded entity prior to such sale.

2. "F" Reorganizations During the Transition Period

As noted above, commentators generally oppose applying the step transaction doctrine to the acquisition of the stock of a corporation followed immediately by a QSub election. Some commentators, however, suggested that, for policy and other reasons, during the transition period, the formation of a new shell S corporation (Newco) by the shareholders of an existing S corporation, followed by the contribution of the stock of the existing S corporation to Newco, coupled with an immediate QSub election for the existing corporation, should be characterized as a reorganization under section 368(a)(1)(F) if all of the other requisites of that section are met. Treating the transaction as an "F" reorganization (as opposed to a stock acquisition followed by a section 332 liquidation) can be beneficial to taxpayers. For example, the existing S corporation's taxable year does not close if it undergoes an "F" reorganization.

In light of the underlying purpose of the transition rule as a relief provision for the benefit of taxpayers, during the extended transition period provided in the final regulations, the IRS will not challenge taxpayers who, through application of the step transaction doctrine to an acquisition of stock followed by a QSub election, obtain tax treatment similar to that applied in a valid reorganization under section 368(a)(1)(F) if, without regard to the transition rule, the transaction would properly qualify as such a reorganization.

3. Timing of Adoption of Plan of Liquidation

Under section 332(a), no gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation if the requirements of section 332(b) are satisfied. Those requirements include the adoption of a plan of liquidation at a time when the corporation receiving the distribution owns 80 percent or more of the stock of the liquidating corporation. A QSub election results in a constructive liquidation for Federal tax purposes. Formally adopting a plan of liquidation for the QSub, however, is potentially incompatible with the QSub provisions of the Code, which allow the state-law entity to continue to exist while liquidating only for Federal tax purposes. In order to provide tax treatment for the constructive liquidation incident to a QSub election that is compatible with the requirements of section 332, the proposed regulations include a provision that the making of a QSub election satisfies the requirement of adopting a plan of liquidation.

One commentator asked that the regulations provide a safe harbor with respect to the timing of the adoption of the plan of liquidation for purposes of section 332. The commentator argued that, where the acquisition of stock followed by the deemed liquidation does not constitute a reorganization (after appropriate application of step-transaction principles), the regulations should provide that, for purposes of applying section 332 to the liquidation incident to a QSub election, the S corporation will be deemed to adopt a plan of liquidation for its subsidiary as of the effective date of the election, which should not precede the acquisition by the S corporation of 100 percent of the stock of the subsidiary.

The timing of the adoption of the plan of liquidation is important in the

context of section 332 because only liquidating distributions to a corporation that owns 80 percent or more of the stock of the subsidiary when the plan is adopted qualify for tax-free treatment. A QSub election cannot be effective until the parent S corporation owns 100 percent of the subsidiary. Thus, the constructive liquidation incident to a QSub election cannot commence before that level of ownership is attained. Furthermore, providing certainty with respect to the deemed timing of the adoption of the plan of liquidation facilitates the efficient administration and use of the QSub provisions. Accordingly, to provide tax treatment of a QSub election that is compatible with the requirements of section 332, the final regulations provide that, for purposes of satisfying the requirement of section 332(b) that the parent corporation own stock in the subsidiary meeting the requirements of section 1504(a)(2) on the date of adoption of the plan of liquidation of the subsidiary, the plan of liquidation is deemed adopted immediately before the deemed liquidation incident to a QSub election unless a formal plan of liquidation that contemplates the filing of the QSub election is adopted on an earlier date. (Although no similar rule is contained in the rules for elective changes in the classification of an entity for Federal tax purposes, Treasury and the IRS intend to amend those regulations to include such a rule.) However, if as a result of the application of general tax principles the transactions that include the QSub election are treated as an asset acquisition, section 332 is not applicable and this rule has no relevance.

4. Insolvent Subsidiaries

In general, section 332 does not apply to the liquidation of an insolvent corporation, because the parent corporation does not receive at least partial payment for the stock of its subsidiary. See, e.g., § 1.332–2(b) and Rev. Rul. 68–602 (1968–2 C.B. 135). One commentator recommended that a QSub election made for an insolvent subsidiary be eligible for tax-free treatment under section 332. The commentator argued that the legislative history of the QSub provisions makes it clear that a QSub election should qualify as a liquidation under section 332 unless regulations provide otherwise and that taxpayers may be unaware of the harsh results of making a QSub election for an insolvent corporation.

Treasury and the IRS do not agree that the legislative history indicates that section 332 applies to the liquidation of an insolvent corporation. In order to assist taxpayers, an example illustrates the effect of a QSub election for an insolvent corporation.

5. Definition of Stock of the QSub

Commentators recommended that, for purposes of determining whether a subsidiary is wholly owned by the parent S corporation, arrangements that are not considered to be stock under the one-class-of-stock rules of § 1.1361–1(l) should be disregarded. The commentators noted that applying the principles of these regulations would provide certainty with respect to the subsidiary's eligibility to be a QSub and avoid difficult debt/equity determinations.

The final regulations adopt the position recommended by the commentators. The final regulations provide that, for purposes of determining whether the deemed liquidation of the subsidiary qualifies under section 332, the deemed exercise of an option under § 1.1504–4 and any instrument, obligation, or arrangement that would not be considered stock under the one-class-of-stock rules of § 1.1361–1(l) are disregarded in determining if the stock ownership requirements of section 332(b) are met. For example, an option that would not be treated as stock under § 1.1361–1, but that would be treated as exercised under § 1.1504–4, is disregarded. Similarly, if a QSub election terminates, in determining the applicability of section 351, the determination of whether stock ownership of the newly formed corporation satisfies the control requirement of section 368(c) is made without regard to instruments, obligations, or other arrangements that are not treated as stock for purposes of the 100 percent stock ownership requirement for the election.

The rule regarding options under § 1.1504–4 is included for purposes of applying section 332 because section 332 explicitly incorporates the affiliation rules of section 1504. See § 1.1504–4(a)(1) (the option rules apply to all provisions under the Code and the regulations to which affiliation within the meaning of section 1504(a) is relevant). The affiliation rules are not relevant for purposes of applying the rules regarding the 100 percent stock ownership requirement in section 1361(b)(3)(B)(i). Accordingly, the rule concerning the treatment of stock in applying the 100 percent stock ownership requirement does not refer to the option rules under § 1.1504–4.

6. Section 1374 and Excess Loss Accounts

Commentary on the proposed regulations identified certain discrepancies in the treatment of tiered groups of corporations when QSub elections are made for some or all of the members of the group and certain unintended implications of the sentence added to § 1.1374–8(b) in the proposed regulations.

a. Section 1374

Section 1374(d)(8) and § 1.1374–8(a) generally provide that, if an S corporation acquires assets in a transaction in which the S corporation's basis in the assets is determined (in whole or in part) by reference to a C corporation's basis in the assets (or any other property) (a section 1374(d)(8) transaction), section 1374 applies to the net recognized built-in gain attributable to the assets acquired in such a transaction. Section 1.1374–8(b) provides that, for purposes of the tax imposed under section 1374(d)(8), a separate determination of tax is made with respect to the assets the S corporation acquires in one section 1374(d)(8) transaction from the assets the S corporation acquires in another section 1374(d)(8) transaction and from the assets the corporation held when it became an S corporation.

A corporation's section 1374 attributes (loss carryforwards, credits, and credit carryforwards as provided in § 1.1374–1(c)) may be used only to reduce the section 1374 tax imposed on the disposition of assets held by the S corporation at the time it converted from C status. Likewise, section 1374 attributes acquired in one section 1374(d)(8) transaction may be used only to reduce tax on the disposition of assets acquired in that transaction. This results in separate section 1374 pools for purposes of calculating the tax imposed by section 1374.

One commentator noted that § 1.1374–8(b) of the proposed regulations implies that a QSub election for two or more corporations results in a section 1374(d)(8) transaction for each subsidiary and that this implication is contrary to the general timing rules of § 1.1361–4(b)(1). Those general timing rules provide that the deemed liquidation of a tiered group of C corporations that elect S and QSub status effective on the same day occurs at the close of the day before the effective date of the elections, while the parent is a C corporation. As a result of the operation of the general timing rules, there is a single section 1374 pool when the parent corporation's S election

is effective. Moreover, the commentator noted that a literal reading of § 1.1374–8(b) of the proposed regulations may cause the assets of an S corporation that is acquired by a C corporation to become subject to section 1374 when the acquiring C corporation immediately makes an S election for itself and a QSub election for the acquired S corporation. Finally, the commentator requested that the final regulations provide that when an S corporation acquires a tiered group of corporations and makes QSub elections effective on the same date for some or all of the corporations, the assets deemed acquired by the S corporation will be treated as acquired in a single section 1374(d)(8) transaction, consistent with the apparent intent of the general timing rules of § 1.1361–4(b)(1) of the proposed regulations.

b. Excess Loss Accounts

Section 1.1502–19 of the Income Tax Regulations provides rules requiring, in certain instances, a member (X) of a consolidated group of corporations to include in income its excess loss account (ELA) in the stock of another member (Y) of the group. An ELA reflects X's negative adjustments with respect to Y's stock to the extent the negative adjustments exceed X's basis in the stock. An ELA must be included in X's income if X is treated as disposing of Y's stock. See § 1.1502–19(b)(1). A merger or liquidation of X into an S corporation or an S election by X is treated as a disposition that triggers income recognition with respect to an ELA in Y stock. In contrast, X's income or gain in certain cases is subject to any nonrecognition or deferral rules applicable, including section 332. As a result, if Y liquidates into X in a transaction subject to section 332, there is no income recognition with respect to an ELA in Y's stock. See § 1.1502–19(b)(2)(i).

Under the general timing rules of § 1.1361–4(b)(1), if the common parent elects S status, the deemed liquidations of the subsidiary members of the consolidated group for which QSub elections are made (effective on the same date as the S election) occur as of the close of the day before the QSub elections are effective, while the S electing parent corporation is still a C corporation. As a result, there is no triggering of income with respect to ELAs in the stock of the subsidiary corporations if the liquidations qualify under section 332. In contrast, if a consolidated group of corporations is acquired by an S corporation and the acquiring S corporation makes QSub elections for the parent and members of the consolidated group, a deemed liquidation of the parent prior to the deemed liquidation of other members of the consolidated group may be a disposition that triggers income recognition with respect to ELAs in the subsidiaries' stock.

c. Modifications Adopted in the Final Regulations

The final regulations remove the proposed amendment to § 1.1374–8(b). Furthermore, an amendment to the general timing rules under § 1.1361–4(b)(1) for acquired S corporations clarifies that an acquired S corporation liquidates into an acquiring corporation as of the beginning of the day of acquisition, after the parent's S election, if any, is effective. There is no section 1374(d)(8) transaction when an S corporation acquires assets from another S corporation, if the acquired S corporation has no C corporation history. The modification to the timing rule also clarifies that there is no period during which an acquired S corporation is a C corporation if the QSub election is made effective as of the time of the acquisition.

As noted in the commentary, the order of the deemed liquidations for a tiered group of corporations for which QSub elections are made (effective on the same date) is significant for purposes of section 1374 and under § 1.1502–19. In many situations, it is preferable to have the deemed liquidations occur in order from the lowest tier subsidiary to the highest tier subsidiary, a bottom-up liquidation order. As a result of that ordering, the final liquidation of the highest tier subsidiary results in a single section 1374 pool for the group. In addition, in the case of a consolidated group of corporations, because the deemed liquidation of the common parent follows the deemed liquidation of its subsidiaries, there is no deconsolidation for purposes of § 1.1502–19 and no triggering of ELAs. In other circumstances, however, a top to bottom liquidation of a tiered group of subsidiaries may be preferable. Therefore, the final regulations allow the S corporation to specify the order of the deemed liquidations when QSub elections are made (effective on the same day) for a tiered group of subsidiaries. In default of an election, the deemed liquidations occur in succession on the effective date of the election, beginning with the lowest tier subsidiary.

7. Timing

One commentator noted a potential lack of coordination in the regulations that determine the timing of the termination of the S election of an acquired S corporation and the deemed liquidation incident to a QSub election for that S corporation. The commentator acknowledged that the intent of the proposed regulations is to provide that an acquired S corporation for which a QSub election is made effective immediately on acquisition should have no intervening C period.

Other timing issues can arise with respect to the termination of a QSub election. The regulations provide rules that govern the timing of the deemed liquidation incident to a QSub election and of the termination of a QSub election. The regulations also provide examples illustrating those rules. The regulations generally are intended to provide that a corporation may move between S and QSub status without an intervening C period, if the appropriate election is made effective as of the termination of the previous S or QSub election. The regulations are coordinated with provisions under section 338 and §§ 1.1362–2 and 1.1502–76 that have differing timing provisions.

8. Inadvertent QSub Election and Inadvertent Termination Relief

One commentator requested that the regulations provide inadvertent invalid QSub election relief similar to the relief that is available under section 1362(f) for inadvertent invalid S elections and inadvertent S terminations. The proposed regulations include a provision indicating that inadvertent QSub termination relief may be available under standards established by the Commissioner for inadvertent termination of an S election under § 1.1362–4.

The QSub provisions include no section analogous to section 1362(f) that allows the IRS to determine that a corporation is a QSub during a period when the corporation does not satisfy the requirement of section 1361(b)(3)(B)(i). For example, if the parent corporation inadvertently transfers one share of QSub stock to another person, the QSub election terminates. The subsidiary is not eligible to have a QSub election in effect for the period during which the parent does not own 100 percent of its stock. If the QSub election terminates because of the inadvertent termination of the parent's S election, however, relief may be available under section 1362(f). A favorable determination under that section causes the subsidiary to continue to satisfy the requirements of section 1361(b)(3)(B)(ii) during the period when the parent is accorded

relief for inadvertent termination of its S election. Moreover, if the parent fails to make a timely QSub election, relief may be available under the procedures applicable under § 301.9100–1 and § 301.9100–3.

The final regulations do not include the provision relating to the inadvertent termination of a QSub election. The removal of that provision is not intended to suggest that relief under section 1362(f) is not available in appropriate circumstances (such as those discussed above), but is intended to avoid confusion with respect to the scope of the IRS's statutory authority under section 1362(f).

9. Ordering Rule for Termination of QSub Elections

Commentators requested that the final regulations provide an ordering rule for the simultaneous termination of QSub elections as the result of the termination of an upper-tier subsidiary's QSub election. The final regulations provide that the terminations occur in succession, beginning with the upper-tier subsidiary, and include examples to illustrate the effect of simultaneous QSub terminations.

10. Banking Provisions

Consistent with the proposed regulations, the final regulations provide that any special rules applicable to banks under the Code continue to apply separately to banks as if the deemed liquidation incident to a QSub election had not occurred (the banking provisions). Commentators requested that the banking provisions be retroactive to the effective date of the Act, by election. As authorized by section 1601 of the 1997 Act, and as first announced in Notice 97–5 (1997–1 C.B. 352), the final regulations provide that the banking provisions apply to taxable years beginning after December 31, 1996. This rule applies to all taxpayers and is not subject to an election. The banking provisions also include a reference to other published guidance for section 265(b); see Rev. Rul. 90–44 (1990–1 C.B. 54, 57).

11. Taxpayer Identifying Numbers

The regulations provide clarification regarding employer identification numbers (EINs) for QSubs. The regulations restate the general rules that: (1) When an entity's classification changes as a result of an election, it retains its EIN; and (2) unless regulations or published guidance provide otherwise, a disregarded entity (including a QSub) must use its owner's EIN for Federal tax purposes.

Notice 99–6 (1999–3 I.R.B. 12) provides guidance that, under limited circumstances, a disregarded entity may use its own EIN. If a QSub wishes to use its own EIN in accordance with Notice 99–6 but did not have an EIN prior to becoming a QSub, it must apply for a new EIN.

If a subsidiary's QSub election terminates, the new corporation formed as a result of that termination must use its own EIN for Federal tax purposes. If the new corporation had an EIN before the effective date of its QSub election or during its QSub status, it should use that EIN. Otherwise, the new corporation must apply for a new EIN.

12. Effective Date and Transition Rules

The regulations generally apply to taxable years that begin on or after January 20, 2000; however, taxpayers may elect to apply the regulations in whole, but not in part (aside from those sections with special dates of applicability), for taxable years beginning on or after January 1, 2000, provided the corporation and all affected taxpayers apply the regulations in a consistent manner. To make the election, the corporation and all affected taxpayers must file a return or an amended return that is consistent with these rules for the taxable year for which the election is made. For purposes of this section, affected taxpayers means all taxpayers whose returns are affected by the election to apply the regulations. The rules relating to the treatment of banks apply to all taxable years beginning after December 31, 1996; see § 1.1361–4(a)(3)(iii). The provision relating to transitional relief from the step transaction applies to certain QSub elections effective on or before the end of calendar year 2000; see § 1.1361–4(a)(5)(i). Section 1.1361–5(c)(2), relating to automatic consent for an S or QSub election made for a corporation whose QSub election has terminated within the five-year period described in section 1361(b)(3)(D), applies to certain QSub elections effective after December 31, 1996. Section 301.6109–1(i), relating to EINs, applies on or after January 20, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant impact on a substantial number of small businesses. This certification is based upon the fact that the economic burden imposed on taxpayers by the collection of information and recordkeeping requirements of these regulations is insignificant. For example, the estimated average annual burden per respondent is less than one hour. Furthermore, most taxpayers will only have to respond to the requests for information contained in §§ 1.1361–3 and 1.1361–5 one time in the life of the corporation. Therefore, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Jeanne M. Sullivan and David J. Sotos of the Office of the Assistant Chief Counsel (Passthroughs & Special Industries); and Michael N. Kaibni of the Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Amend § 1.1361–0 as follows:

1. Revise the introductory text.
2. Remove the entry for § 1.1361–1(d)(3).

3. Add entries for §§ 1.1361–2, 1.1361–3, 1.1361–4, 1.1361–5, and 1.1361–6.

The revisions and additions read as follows:

§ 1.1361–0 Table of contents.

This section lists captions contained in §§ 1.1361–1, 1.1361–2, 1.1361–3, 1.1361–4, 1.1361–5, and 1.1361–6.

* * * * *

§ 1.1361–2 Definitions relating to S corporation subsidiaries.

(a) In general.
(b) Stock treated as held by S corporation.
(c) Straight debt safe harbor.
(d) Examples.

§ 1.1361–3 QSub election.

(a) Time and manner of making election.
(1) In general.
(2) Manner of making election.
(3) Time of making election.
(4) Effective date of election.
(5) Example.
(6) Extension of time for making a QSub election.
(b) Revocation of QSub election.
(1) Manner of revoking QSub election.
(2) Effective date of revocation.
(3) Revocation after termination.
(4) Revocation before QSub election effective.

§ 1.1361–4 Effect of QSub election.

(a) Separate existence ignored.
(1) In general.
(2) Liquidation of subsidiary.
(i) In general.
(ii) Examples
(iii) Adoption of plan of liquidation.
(iv) Example.
(v) Stock ownership requirements of section 332.
(3) Treatment of banks.
(i) In general.
(ii) Examples.
(iii)Effective date.
(4) Treatment of stock of QSub.
(5) Transitional relief.
(i) General rule.
(ii) Examples.
(b) Timing of the liquidation.
(1) In general.
(2) Application to elections in tiered situations.
(3) Acquisitions.
(i) In general.
(ii) Special rules for acquired S corporations.
(4) Coordination with section 338 election.
(c) Carryover of disallowed losses and deductions.
(d) Examples.

§ 1.1361–5 Termination of QSub election.

(a) In general.
(1) Effective date.
(2) Information to be provided upon termination of QSub election by failure to qualify as a QSub.
(3) QSub joins a consolidated group.
(4) Examples.
(b) Effect of termination of QSub election.
(1) Formation of new corporation.
(i) In general.
(ii) Termination for tiered QSubs.
(2) Carryover of disallowed losses and deductions.
(3) Examples.
(c) Election after QSub termination.
(1) In general.
(2) Exception.
(3) Examples.

§ 1.1361–6 Effective date.

Par. 3. Amend § 1.1361–1 as follows:

1. Revise paragraph (b)(1)(i).
2. Remove paragraph (d)(1)(i).
3. Redesignate paragraphs (d)(1)(ii), (d)(1)(iii), (d)(1)(iv), and (d)(1)(v) as paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv), respectively.
4. Revise newly designated paragraph (d)(1)(i).
5. Remove paragraph (d)(3).
6. Revise the first sentence of paragraph (e)(1).

The revisions read as follows:

§ 1.1361–1 S corporation defined.

* * * * *

(b) * * *

(1) * * *

(i) More than 75 shareholders (35 for taxable years beginning before January 1, 1997);

* * * * *

(d) * * *

(1) * * *

(i) For taxable years beginning on or after January 1, 1997, a financial institution that uses the reserve method of accounting for bad debts described in section 585 (for taxable years beginning prior to January 1, 1997, a financial institution to which section 585 applies (or would apply but for section 585(c)) or to which section 593 applies);

* * * * *

(e) * * *

(1) *General rule.* A corporation does not qualify as a small business corporation if it has more than 75 shareholders (35 for taxable years beginning prior to January 1, 1997).

* * *

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Par. 4. Add §§ 1.1361–2, 1.1361–3, 1.1361–4, 1.1361–5, and 1.1361–6 to read as follows:

§ 1.1361–2 Definitions relating to S corporation subsidiaries.

(a) *In general.* The term *qualified subchapter S subsidiary* (QSub) means any domestic corporation that is not an ineligible corporation (as defined in section 1361(b)(2) and the regulations thereunder), if—

(1) 100 percent of the stock of such corporation is held by an S corporation; and

(2) The S corporation properly elects to treat the subsidiary as a QSub under § 1.1361–3.

(b) *Stock treated as held by S corporation.* For purposes of satisfying the 100 percent stock ownership requirement in section 1361(b)(3)(B)(i) and paragraph (a)(1) of this section—

(1) Stock of a corporation is treated as held by an S corporation if the S corporation is the owner of that stock for Federal income tax purposes; and

(2) Any outstanding instruments, obligations, or arrangements of the corporation which would not be considered stock for purposes of section 1361(b)(1)(D) if the corporation were an S corporation are not treated as outstanding stock of the QSub.

(c) *Straight debt safe harbor.* Section 1.1361–1(l)(5)(iv) and (v) apply to an obligation of a corporation for which a QSub election is made if that obligation would satisfy the definition of straight debt in § 1.1361–1(l)(5) if issued by the S corporation.

(d) *Examples.* The following examples illustrate the application of this section:

Example 1. X, an S corporation, owns 100 percent of Y, a corporation for which a valid QSub election is in effect for the taxable year. Y owns 100 percent of Z, a corporation otherwise eligible for QSub status. X may elect to treat Z as a QSub under section 1361(b)(3)(B)(ii).

Example 2. Assume the same facts as in *Example 1*, except that Y is a business entity that is disregarded as an entity separate from its owner under § 301.7701–2(c)(2) of this chapter. X may elect to treat Z as a QSub.

Example 3. Assume the same facts as in *Example 1*, except that Y owns 50 percent of Z, and X owns the other 50 percent. X may elect to treat Z as a QSub.

Example 4. Assume the same facts as in *Example 1*, except that Y is a C corporation. Although Y is a domestic corporation that is otherwise eligible to be a QSub, no QSub election has been made for Y. Thus, X is not treated as holding the stock of Z. Consequently, X may not elect to treat Z as a QSub.

Example 5. Individuals A and B own 100 percent of the stock of corporation X, an S corporation, and, except for C's interest (described below), X owns 100 percent of corporation Y, a C corporation. Individual C holds an instrument issued by Y that is considered to be equity under general principles of tax law but would satisfy the definition of straight debt under § 1.1361–1(l)(5) if Y were an S corporation. In determining whether X owns 100 percent of Y for purposes of making the QSub election, the instrument held by C is not considered outstanding stock. In addition, under § 1.1361–1(l)(5)(v), the QSub election is not treated as an exchange of debt for stock with respect to such instrument, and § 1.1361–1(l)(5)(iv) applies to determine the tax treatment of payments on the instrument while Y's QSub election is in effect.

§ 1.1361–3 QSub election.

(a) *Time and manner of making election*—(1) *In general.* The corporation for which the QSub election is made must meet all the requirements of section 1361(b)(3)(B) at the time the election is made and for all periods for which the election is to be effective.

(2) *Manner of making election.* Except as provided in section 1361(b)(3)(D) and § 1.1361–5(c) (five-year prohibition on re-election), an S corporation may elect to treat an eligible subsidiary as a QSub by filing a completed form to be prescribed by the IRS. The election form must be signed by a person authorized to sign the S corporation's return required to be filed under section 6037. Unless the election form provides otherwise, the election must be submitted to the service center where the subsidiary filed its most recent tax return (if applicable), and, if an S corporation forms a subsidiary and makes a valid QSub election (effective upon the date of the subsidiary's formation) for the subsidiary, the election should be submitted to the service center where the S corporation filed its most recent return.

(3) *Time of making election.* A QSub election may be made by the S corporation parent at any time during the taxable year.

(4) *Effective date of election.* A QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing. For this purpose, the definition of the term *month* found in § 1.1362–6(a)(2)(ii)(C) applies. If an election form specifies an effective date more than two months and 15 days prior to the date on which the election form is filed, it will be effective two months and 15 days prior to the date it is filed. If an election form specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it is filed.

(5) *Example.* The following example illustrates the application of paragraph (a)(4) of this section:

Example. X has been a calendar year S corporation engaged in a trade or business for several years. X acquires the stock of Y, a calendar year C corporation, on April 1, 2002. On August 10, 2002, X makes an election to treat Y as a QSub. Unless otherwise specified on the election form, the election will be effective as of August 10, 2002. If specified on the election form, the election may be effective on some other date that is not more than two months and 15 days prior to August 10, 2002, and not more than 12 months after August 10, 2002.

(6) *Extension of time for making a QSub election.* An extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100–1 and 301.9100–3 of this chapter.

(b) *Revocation of QSub election*—(1) *Manner of revoking QSub election.* An S corporation may revoke a QSub election under section 1361 by filing a statement with the service center where the S corporation's most recent tax return was properly filed. The revocation statement must include the names, addresses, and taxpayer identification numbers of both the parent S corporation and the QSub, if any. The statement must be signed by a person authorized to sign the S corporation's return required to be filed under section 6037.

(2) *Effective date of revocation.* The revocation of a QSub election is effective on the date specified on the revocation statement or on the date the revocation statement is filed if no date is specified. The effective date specified on the revocation statement cannot be more than two months and 15 days prior to the date on which the revocation statement is filed and cannot be more than 12 months after the date on which the revocation statement is filed. If a revocation statement specifies an effective date more than two months and 15 days prior to the date on which the statement is filed, it will be effective two months and 15 days prior to the date it is filed. If a revocation statement specifies an effective date more than 12 months after the date on which the statement is filed, it will be effective 12 months after the date it is filed.

(3) *Revocation after termination.* A revocation may not be made after the occurrence of an event that renders the subsidiary ineligible for QSub status under section 1361(b)(3)(B).

(4) *Revocation before QSub election effective.* For purposes of Section 1361(b)(3)(D) and § 1.1361–5(c) (five-year prohibition on re-election), a revocation effective on the first day the QSub election was to be effective will not be treated as a termination of a QSub election.

§ 1.1361–4 Effect of QSub election.

(a) *Separate existence ignored*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, for Federal tax purposes—

(i) A corporation which is a QSub shall not be treated as a separate corporation; and

(ii) All assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and items of income, deduction, and credit of the S corporation.

(2) *Liquidation of subsidiary*—(i) *In general.* If an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation. Except as provided in paragraph (a)(5) of this section, the tax treatment of the liquidation or of a larger transaction that includes the liquidation will be determined under the Internal Revenue Code and general principles of tax law, including the step transaction doctrine. Thus, for example, if an S corporation forms a subsidiary and makes a valid QSub election (effective upon the date of the subsidiary's formation) for the subsidiary, the transfer of assets to the subsidiary and the deemed liquidation are disregarded, and the corporation will be deemed to be a QSub from its inception.

(ii) *Examples.* The following examples illustrate the application of this paragraph (a)(2)(i) of this section:

Example 1. Corporation X acquires all of the outstanding stock of solvent corporation Y from an unrelated individual for cash and short-term notes. Thereafter, as part of the same plan, X immediately makes an S election and a QSub election for Y. Because X acquired all of the stock of Y in a qualified stock purchase within the meaning of section 338(d)(3), the liquidation described in paragraph (a)(2) of this section is respected as an independent step separate from the stock acquisition, and the tax consequences of the liquidation are determined under sections 332 and 337.

Example 2. Corporation X, pursuant to a plan, acquires all of the outstanding stock of corporation Y from the shareholders of Y solely in exchange for 10 percent of the voting stock of X. Prior to the transaction, Y and its shareholders are unrelated to X. Thereafter, as part of the same plan, X immediately makes an S election and a QSub election for Y. The transaction is a reorganization described in section 368(a)(1)(C), assuming the other conditions for reorganization treatment (e.g., continuity of business enterprise) are satisfied.

Example 3. After the expiration of the transition period provided in paragraph (a)(5)(i) of this section, individual A, pursuant to a plan, contributes all of the outstanding stock of Y to his wholly owned S corporation, X, and immediately causes X to make a QSub election for Y. The transaction is a reorganization under section 368(a)(1)(D), assuming the other conditions for reorganization treatment (e.g., continuity of business enterprise) are satisfied. If the sum of the amount of liabilities of Y treated as assumed by X exceeds the total of the

adjusted basis of the property of Y, then section 357(c) applies and such excess is considered as gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(iii) *Adoption of plan of liquidation.* For purposes of satisfying the requirement of adoption of a plan of liquidation under section 332, unless a formal plan of liquidation that contemplates the QSub election is adopted on an earlier date, the making of the QSub election is considered to be the adoption of a plan of liquidation immediately before the deemed liquidation described in paragraph (a)(2)(i) of this section.

(iv) *Example.* The following example illustrates the application of paragraph (a)(2)(iii) of this section:

Example. Corporation X owns 75 percent of a solvent corporation Y, and individual A owns the remaining 25 percent of Y. As part of a plan to make a QSub election for Y, X causes Y to redeem A's 25 percent interest on June 1 for cash and makes a QSub election for Y effective on June 3. The making of the QSub election is considered to be the adoption of a plan of liquidation immediately before the deemed liquidation. The deemed liquidation satisfies the requirements of section 332.

(v) *Stock ownership requirements of section 332.* The deemed exercise of an option under § 1.1504–4 and any instruments, obligations, or arrangements that are not considered stock under § 1.1361–2(b)(2) are disregarded in determining if the stock ownership requirements of section 332(b) are met with respect to the deemed liquidation provided in paragraph (a)(2)(i) of this section.

(3) *Treatment of banks*—(i) *In general.* If an S corporation is a bank, or if an S corporation makes a valid QSub election for a subsidiary that is a bank, any special rules applicable to banks under the Internal Revenue Code continue to apply separately to the bank parent or bank subsidiary as if the deemed liquidation of any QSub under paragraph (a)(2) of this section had not occurred (except as other published guidance may apply section 265(b) and section 291(a)(3) and (e)(1)(B) not only to the bank parent or bank subsidiary but also to any QSub deemed to have liquidated under paragraph (a)(2) of this section). For any QSub that is a bank, however, all assets, liabilities, and items of income, deduction, and credit of the QSub, as determined in accordance with the special bank rules, are treated as assets, liabilities, and items of income, deduction, and credit of the S corporation. For purposes of this paragraph (a)(3)(i), the term bank has the same meaning as in section 581.

(ii) *Examples.* The following examples illustrate the application of this paragraph (a)(3):

Example 1. X, an S corporation, is a bank as defined in section 581. X owns 100 percent of Y and Z, corporations for which valid QSub elections are in effect. Y is a bank as defined in section 581, and Z is not a financial institution. Pursuant to paragraph (a)(3)(i) of this section, any special rules applicable to banks under the Internal Revenue Code continue to apply separately to X and Y and do not apply to Z. Thus, for example, section 265(b), which provides special rules for interest expense deductions of banks, applies separately to X and Y. That is, X and Y each must make a separate determination under section 265(b) of interest expense allocable to tax-exempt interest, and no deduction is allowed for that interest expense. Section 265(b) does not apply to Z except as published guidance may provide otherwise.

Example 2. X, an S corporation, is a bank holding company and thus is not a bank as defined in section 581. X owns 100 percent of Y, a corporation for which a valid QSub election is in effect. Y is a bank as defined in section 581. Pursuant to paragraph (a)(3)(i) of this section, any special rules applicable to banks under the Internal Revenue Code continue to apply to Y and do not apply to X. However, all of Y's assets, liabilities, and items of income, deduction, and credit, as determined in accordance with the special bank rules, are treated as those of X. Thus, for example, section 582(c), which provides special rules for sales and exchanges of debt by banks, applies only to sales and exchanges by Y. However, any gain or loss on such a transaction by Y that is considered ordinary income or ordinary loss pursuant to section 582(c) is treated as ordinary income or ordinary loss of X.

(iii) *Effective date.* This paragraph (a)(3) applies to taxable years beginning after December 31, 1996.

(4) *Treatment of stock of QSub.* Except for purposes of section 1361(b)(3)(B)(i) and § 1.1361–2(a)(1), the stock of a QSub shall be disregarded for all Federal tax purposes.

(5) *Transitional relief*—(i) *General rule.* If an S corporation and another corporation (the related corporation) are persons specified in section 267(b) prior to an acquisition by the S corporation of some or all of the stock of the related corporation followed by a QSub election for the related corporation, the step transaction doctrine will not apply to determine the tax consequences of the acquisition. This paragraph (a)(5) shall apply to QSub elections effective before January 1, 2001.

(ii) *Examples.* The following examples illustrate the application of this paragraph (a)(5):

Example 1. Individual A owns 100 percent of the stock of X, an S corporation. X owns 79 percent of the stock of Y, a solvent corporation, and A owns the remaining 21 percent. On May 4, 1998, A contributes its Y stock to X in exchange for X stock. X makes a QSub election with respect to Y effective immediately following the transfer. The liquidation described in paragraph (a)(2) of this section is respected as an independent step separate from the stock acquisition, and the tax consequences of the liquidation are determined under sections 332 and 337. The contribution by A of the Y stock qualifies under section 351, and no gain or loss is recognized by A, X, or Y.

Example 2. Individual A owns 100 percent of the stock of two solvent S corporations, X and Y. On May 4, 1998, A contributes the stock of Y to X. X makes a QSub election with respect to Y immediately following the transfer. The liquidation described in paragraph (a)(2) of this section is respected as an independent step separate from the stock acquisition, and the tax consequences of the liquidation are determined under sections 332 and 337. The contribution by A of the Y stock to X qualifies under section 351, and no gain or loss is recognized by A, X, or Y. Y is not treated as a C corporation for any period solely because of the transfer of its stock to X, an ineligible shareholder. Compare *Example 3* of § 1.1361–4(a)(2)(ii).

(b) *Timing of the liquidation*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) or (4) of this section, the liquidation described in paragraph (a)(2) of this section occurs at the close of the day before the QSub election is effective. Thus, for example, if a C corporation elects to be treated as an S corporation and makes a QSub election (effective the same date as the S election) with respect to a subsidiary, the liquidation occurs immediately before the S election becomes effective, while the S electing parent is still a C corporation.

(2) *Application to elections in tiered situations.* When QSub elections for a tiered group of subsidiaries are effective on the same date, the S corporation may specify the order of the liquidations. If no order is specified, the liquidations that are deemed to occur as a result of the QSub elections will be treated as occurring first for the lowest tier entity and proceed successively upward until all of the liquidations under paragraph (a)(2) of this section have occurred. For example, S, an S corporation, owns 100 percent of C, the common parent of an affiliated group of corporations that includes X and Y. C owns all of the stock of X and X owns all of the stock of Y. S elects under § 1.1361–3 to treat C, X and Y as QSubs effective on the same date. If no order is specified for the elections, the following liquidations are deemed to occur as a result of the elections, with each successive liquidation occuring on the same day immediately after the preceding liquidation: Y is treated as liquidating into X, then X is treated as liquidating

into C, and finally C is treated as liquidating into S.

(3) *Acquisitions.* (i) *In general.* If an S corporation does not own 100 percent of the stock of the subsidiary on the day before the QSub election is effective, the liquidation described in paragraph (a)(2) of this section occurs immediately after the time at which the S corporation first owns 100 percent of the stock.

(ii) *Special rules for acquired S corporations.* Except as provided in paragraph (b)(4) of this section, if a corporation (Y) for which an election under section 1362(a) was in effect is acquired, and a QSub election is made effective on the day Y is acquired, Y is deemed to liquidate into the S corporation at the beginning of the day the termination of its S election is effective. As a result, if corporation X acquires Y, an S corporation, and makes an S election for itself and a QSub election for Y effective on the day of acquisition, Y liquidates into X at the beginning of the day when X's S election is effective, and there is no period between the termination of Y's S election and the deemed liquidation of Y during which Y is a C corporation. Y's taxable year ends for all Federal income tax purposes at the close of the preceding day. Furthermore, if Y owns Z, a corporation for which a QSub election was in effect prior to the acquisition of Y by X, and X makes QSub elections for Y and Z, effective on the day of acquisition, the transfer of assets to Z and the deemed liquidation of Z are disregarded. See §§ 1.1361–4(a)(2) and 1.1361–5(b)(1)(i).

(4) *Coordination with section 338 election.* An S corporation that makes a qualified stock purchase of a target may make an election under section 338 with respect to the acquisition if it meets the requirements for the election, and may make a QSub election with respect to the target. If an S corporation makes an election under section 338 with respect to a subsidiary acquired in a qualified stock purchase, a QSub election made with respect to that subsidiary is not effective before the day after the acquisition date (within the meaning of section 338(h)(2)). If the QSub election is effective on the day after the acquisition date, the liquidation under paragraph (a)(2) of this section occurs immediately after the deemed asset purchase by the new target corporation under section 338. If an S corporation makes an election under section 338 (without a section 338(h)(10) election) with respect to a target, the target must file a final or deemed sale return as a C corporation reflecting the deemed sale. See § 1.338–10T(a).

(c) *Carryover of disallowed losses and deductions.* If an S corporation (S1) acquires the stock of another S corporation (S2), and S1 makes a QSub election with respect to S2 effective on the day of the acquisition, see § 1.1366–2(c)(1) for provisions relating to the carryover of losses and deductions with respect to a former shareholder of S2 that may be available to that shareholder as a shareholder of S1.

(d) *Examples.* The following examples illustrate the application of this section:

Example 1. X, an S corporation, owns 100 percent of the stock of Y, a C corporation. On June 2, 2002, X makes a valid QSub election for Y, effective June 2, 2002. Assume that, under general principles of tax law, including the step transaction doctrine, X's acquisition of the Y stock and the subsequent QSub election would not be treated as related. The liquidation described in paragraph (a)(2) of this section occurs at the close of the day on June 1, 2002, the day before the QSub election is effective, and the plan of liquidation is considered adopted on that date. Y's taxable year and separate existence for Federal tax purposes end at the close of June 1, 2002.

Example 2. X, a C corporation, owns 100 percent of the stock of Y, another C corporation. On December 31, 2002, X makes an election under section 1362 to be treated as an S corporation and a valid QSub election for Y, both effective January 1, 2003. Assume that, under general principles of tax law, including the step transaction doctrine, X's acquisition of the Y stock and the subsequent QSub election would not be treated as related. The liquidation described in paragraph (a)(2) of this section occurs at the close of December 31, 2002, the day before the QSub election is effective. The QSub election for Y is effective on the same day that X's S election is effective, and the deemed liquidation is treated as occurring before the S election is effective, when X is still a C corporation. Y's taxable year ends at the close of December 31, 2002. See § 1.381(b)–1.

Example 3. On June 1, 2002, X, an S corporation, acquires 100 percent of the stock of Y, an existing S corporation, for cash in a transaction meeting the requirements of a qualified stock purchase (QSP) under section 338. X immediately makes a QSub election for Y effective June 2, 2002, and also makes a joint election under section 338(h)(10) with the shareholder of Y. Under section 338(a) and § 1.338(h)(10)–1T(d)(3), Y is treated as having sold all of its assets at the close of the acquisition date, June 1, 2002. Y is treated as a new corporation which purchased all of those assets as of the beginning of June 2, 2000, the day after the acquisition date. Section 338(a)(2). The QSub election is effective on June 2, 2002, and the liquidation under paragraph (a)(2) of this section occurs immediately after the deemed asset purchase by the new corporation.

Example 4. X, an S corporation, owns 100 percent of Y, a corporation for which a QSub election is in effect. On May 12, 2002, a date on which the QSub election is in effect, X issues Y a $10,000 note under state law that matures in ten years with a market rate of interest. Y is not treated as a separate corporation, and X's issuance of the note to Y on May 12, 2002, is disregarded for Federal tax purposes.

Example 5. X, an S corporation, owns 100 percent of the stock of Y, a C corporation. At a time when Y is indebted to X in an amount that exceeds the fair market value of Y's assets, X makes a QSub election effective on the date it is filed with respect to Y. The liquidation described in paragraph (a)(2) of this section does not qualify under sections 332 and 337 and, thus, Y recognizes gain or loss on the assets distributed, subject to the limitations of section 267.

§ 1.1361–5 Termination of QSub election.

(a) In *general*—(1) *Effective date.* The termination of a QSub election is effective—

(i) On the effective date contained in the revocation statement if a QSub election is revoked under § 1.1361–3(b);

(ii) At the close of the last day of the parent's last taxable year as an S corporation if the parent's S election terminates under § 1.1362–2; or

(iii) At the close of the day on which an event (other than an event described in paragraph (a)(1)(ii) of this section) occurs that renders the subsidiary ineligible for QSub status under section 1361(b)(3)(B).

(2) *Information to be provided upon termination of QSub election by failure to qualify as a QSub.* If a QSub election terminates because an event renders the subsidiary ineligible for QSub status, the S corporation must attach to its return for the taxable year in which the termination occurs a notification that a QSub election has terminated, the date of the termination, and the names, addresses, and employer identification numbers of both the parent corporation and the QSub.

(3) *QSub joins a consolidated group.* If a QSub election terminates because the S corporation becomes a member of a consolidated group (and no election under section 338(g) is made) the principles of § 1.1502–76(b)(1)(ii)(A)(2) (relating to a special rule for S corporations that join a consolidated group) apply to any QSub of the S corporation that also becomes a member of the consolidated group at the same time as the S corporation. See *Example 4* of paragraph (a)(4) of this section.

(4) *Examples. The following examples illustrate the application of this paragraph (a):*

Example 1.Termination because parent's S election terminates. X, an S corporation, owns 100 percent of Y. A QSub election is in effect with respect to Y for 2001. Effective on January 1, 2002, X revokes its S election. Because X is no longer an S corporation, Y

no longer qualifies as a QSub at the close of December 31, 2001.

Example 2.Termination due to transfer of QSub stock. X, an S corporation, owns 100 percent of Y. A QSub election is in effect with respect to Y. On December 10, 2002, X sells one share of Y stock to A, an individual. Because X no longer owns 100 percent of the stock of Y, Y no longer qualifies as a QSub. Accordingly, the QSub election made with respect to Y terminates at the close of December 10, 2002.

Example 3. No termination on stock transfer between QSub and parent. X, an S corporation, owns 100 percent of the stock of Y, and Y owns 100 percent of the stock of Z. QSub elections are in effect with respect to both Y and Z. Y transfers all of its Z stock to X. Because X is treated as owning the stock of Z both before and after the transfer of stock solely for purposes of determining whether the requirements of section 1361(b)(3)(B)(i) and § 1.1361–2(a)(1) have been satisfied, the transfer of Z stock does not terminate Z's QSub election. Because the stock of Z is disregarded for all other Federal tax purposes, no gain is recognized under section 311.

Example 4. Termination due to acquisition of S parent by a consolidated group. X, an S corporation, owns 100 percent of Y, a corporation for which a QSub election is in effect. Z, the common parent of a consolidated group of corporations, acquires 80 percent of the stock of X on June 1, 2002. Z does not make an election under section 338(g) with respect to the purchase of X stock. X's S election terminates as of the close of the preceding day, May 31, 2002. Y's QSub election also terminates at the close of May 31, 2002. Under § 1.1502–76(b)(1)(ii)(A)(2) and paragraph (a)(3) of this section, X and Y become members of Z's consolidated group of corporations as of the beginning of the day June 1, 2002.

Example 5. Termination due to acquisition of QSub by a consolidated group. The facts are the same as in Example 4, except that Z acquires 80 percent of the stock of Y (instead of X) on June 1, 2002. In this case, Y's QSub election terminates as of the close of June 1, 2002, and, under § 1.1502–76(b)(1)(ii)(A)(1), Y becomes a member of the consolidated group at that time.

(b) *Effect of termination of QSub election*—(1) *Formation of new corporation*—(i) *In general.* If a QSub election terminates under paragraph (a) of this section, the former QSub is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before the termination from the S corporation parent in exchange for stock of the new corporation. he tax treatment of this transaction or of a larger transaction that includes this transaction will be determined under the Internal Revenue Code and general principles of tax law, including the step transaction doctrine. For purposes of determining the application of section 351 with respect to this transaction, instruments, obligations, or other arrangements that are not treated as stock of the QSub under § 1.1361–2(b) are disregarded in determining control for purposes of section 368(c) even if they are equity under general principles of tax law.

(ii) *Termination for tiered QSubs.* If QSub elections terminate for tiered QSubs on the same day, the formation of any higher tier subsidiary precedes the formation of its lower tier subsidiary. See Example 6 in paragraph (b)(3) of this section.

(2) *Carryover of disallowed losses and deductions.* If a QSub terminates because the S corporation distributes the QSub stock to some or all of the S corporation's shareholders in a transaction to which section 368(a)(1)(D) applies by reason of section 355 (or so much of section 356 as relates to section 355), see § 1.1366–2(c)(2) for provisions relating to the carryover of disallowed losses and deductions that may be available.

(3) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. X, an S corporation, owns 100 percent of the stock of Y, a corporation for which a QSub election is in effect. X sells 21 percent of the Y stock to Z, an unrelated corporation, for cash, thereby terminating the QSub election. Y is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) in exchange for Y stock immediately before the termination from the S corporation. The deemed exchange by X of assets for Y stock does not qualify under section 351 because X is not in control of Y within the meaning of section 368(c) immediately after the transfer as a result of the sale of stock to Z. Therefore, X must recognize gain, if any, on the assets transferred to Y in exchange for its stock. X's losses, if any, on the assets transferred are subject to the limitations of section 267.

Example 2. (i) X, an S corporation, owns 100 percent of the stock of Y, a corporation for which a QSub election is in effect. As part of a plan to sell a portion of Y, X causes Y to merge into T, a limited liability company wholly owned by X that is disregarded as an entity separate from its owner for Federal tax purposes. X then sells 21 percent of T to Z, an unrelated corporation, for cash. Following the sale, no entity classification election is made under § 301.7701–3(c) of this chapter to treat the limited liability company as an association for Federal tax purposes.

(ii) The merger of Y into T causes a termination of Y's QSub election. The new corporation (Newco) that is formed as a result of the termination is immediately merged into T, an entity that is disregarded for Federal tax purposes. Because, at the end of the series of transactions, the assets continue to be held by X for Federal tax purposes, under step transaction principles, the formation of Newco and the transfer of assets pursuant to the merger of Newco into T are disregarded. The sale of 21 percent of T is treated as a sale of a 21 percent undivided interest in each of T's assets. Immediately thereafter, X and Z are treated as contributing their respective interests in those assets to a partnership in exchange for ownership interests in the partnership.

(iii) Under section 1001, X recognizes gain or loss from the deemed sale of the 21 percent interest in each asset of the limited liability company to Z. Under section 721(a), no gain or loss is recognized by X and Z as a result of the deemed contribution of their respective interests in the assets to the partnership in exchange for ownership interests in the partnership.

Example 3. Assume the same facts as in *Example 1*, except that, instead of purchasing Y stock, Z contributes to Y an operating asset in exchange for 21 percent of the Y stock. Y is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) in exchange for Y stock immediately before the termination. Because X and Z are co-transferors that control the transferee immediately after the transfer, the transaction qualifies under section 351.

Example 4. X, an S corporation, owns 100 percent of the stock of Y, a corporation for which a QSub election is in effect. X distributes all of the Y stock pro rata to its shareholders, and the distribution terminates the QSub election. The transaction can qualify as a distribution to which sections 368(a)(1)(D) and 355 apply if the transaction otherwise satisfies the requirements of those sections.

Example 5. X, an S corporation, owns 100 percent of the stock of Y, a corporation for which a QSub election is in effect. X subsequently revokes the QSub election. Y is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before the revocation from its S corporation parent in a deemed exchange for Y stock. On a subsequent date, X sells 21 percent of the stock of Y to Z, an unrelated corporation, for cash. Assume that under general principles of tax law including the step transaction doctrine, the sale is not taken into account in determining whether X is in control of Y immediately after the deemed exchange of assets for stock. The deemed exchange by X of assets for Y stock and the deemed assumption by Y of its liabilities qualify under section 351 because, for purposes of that section, X is in control of Y within the meaning of section 368(c) immediately after the transfer.

Example 6. (i) X, an S corporation, owns 100 percent of the stock of Y, and Y owns 100 percent of the stock of Z. Y and Z are corporations for which QSub elections are in effect. X subsequently revokes the QSub elections and the effective date specified on each revocation statement is June 26, 2002, a date that is less than 12 months after the date on which the revocation statements are filed.

(ii) Immediately before the QSub elections terminate, Y is treated as a

new corporation acquiring all of its assets (and assuming all of its liabilities) directly from X in exchange for the stock of Y. Z is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) directly from Y in exchange for the stock of Z.

Example 7. (i) The facts are the same as in Example 6, except that, prior to June 26, 2002 (the effective date of the revocations), Y distributes the Z stock to X under state law.

(ii) Immediately before the QSub elections terminate, Y is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) directly from X in exchange for the stock of Y. Z is also treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) directly from X in exchange for the stock of Z.

Example 8. Merger of parent into QSub. X, an S corporation, owns 100 percent of the stock of Y, a corporation for which a QSub election is in effect. X merges into Y under state law, causing the QSub election for Y to terminate, and Y survives the merger. The formation of the new corporation, Y, and the merger of X into Y can qualify as a reorganization described in section 368(a)(1)(F) if the transaction otherwise satisfies the requirements of that section.

Example 9. Transfer of 100 percent of QSub. X, an S corporation, owns 100 percent of the stock of Y, a corporation for which a QSub election is in effect. Z, an unrelated C corporation, acquires 100 percent of the stock of Y. The deemed formation of Y by X (as a consequence of the termination of Y's QSub election) is disregarded for Federal income tax purposes. The transaction is treated as a transfer of the assets of Y to Z, followed by Z's transfer of these assets to the capital of Y in exchange for Y stock. Furthermore, if Z is an S corporation and makes a QSub election for Y effective as of the acquisition, Z's transfer of the assets of Y in exchange for Y stock, followed by the immediate liquidation of Y as a consequence of the QSub election are disregarded for Federal income tax purposes.

(c) *Election after QSub termination—*(1) *In general.* Absent the Commissioner's consent, and except as provided in paragraph (c)(2) of this section, a corporation whose QSub election has terminated under paragraph (a) of this section (or a successor corporation as defined in paragraph (b) of this section) may not make an S election under section 1362 or have a QSub election under section 1361(b)(3)(B)(ii) made with respect to it for five taxable years (as described in section 1361(b)(3)(D)). The Commissioner may permit an S election by the corporation or a new QSub election with respect to the corporation before the five-year period expires. The corporation requesting consent to make the election has the burden of establishing that, under the relevant facts and circumstances, the Commissioner should consent to a new election.

(2) *Exception.* In the case of S and QSub elections effective after December 31, 1996, if a corporation's QSub election terminates, the corporation may, without requesting the Commissioner's consent, make an S election or have a QSub election made with respect to it before the expiration of the five-year period described in section 1361(b)(3)(D) and paragraph (c)(1) of this section, provided that—

(i) Immediately following the termination, the corporation (or its successor corporation) is otherwise eligible to make an S election or have a QSub election made for it; and

(ii) The relevant election is made effective immediately following the termination of the QSub election.

(3) *Examples.* The following examples illustrate the application of this paragraph (c):

Example 1. Termination upon distribution of QSub stock to shareholders of parent. X, an S corporation, owns Y, a QSub. X distributes all of its Y stock to X's shareholders. The distribution terminates the QSub election because Y no longer satisfies the requirements of a QSub. Assuming Y is otherwise eligible to be treated as an S corporation, Y's shareholders may elect to treat Y as an S corporation effective on the date of the stock distribution without requesting the Commissioner's consent.

Example 2. Sale of 100 percent of QSub stock. X, an S corporation, owns Y, a QSub. X sells 100 percent of the stock of Y to Z, an unrelated S corporation. Z may elect to treat Y as a QSub effective on the date of purchase without requesting the Commissioner's consent.

§ 1.1361–6 Effective date.

Except as provided in §§ 1.1361–4(a)(3)(iii), 1.1361–4(a)(5)(i), and 1.1361–5(c)(2), the provisions of §§ 1.1361–2 through 1.1361–5 apply to taxable years beginning on or after January 20, 2000; however, taxpayers may elect to apply the regulations in whole, but not in part (aside from those sections with special dates of applicability), for taxable years beginning on or after January 1, 2000, provided all affected taxpayers apply the regulations in a consistent manner. To make this election, the corporation and all affected taxpayers must file a return or an amended return that is consistent with these rules for the taxable year for which the election is made. For purposes of this section, affected taxpayers means all taxpayers whose returns are affected by the election to apply the regulations.

Par. 5. Amend § 1.1362–0 by adding an entry for § 1.1362–8 to read as follows:

§ 1.1362–0 Table of contents.

* * * * *

§ 1.1362–8 Dividends received from affiliated subsidiaries.

(a) In general.

(b) Determination of active or passive earnings and profits.

(1) In general.

(2) Lower tier subsidiaries.

(3) De minimis exception.

(4) Special rules for earnings and profits accumulated by a C corporation prior to 80 percent acquisition.

(5) Gross receipts safe harbor.

(c) Allocating distributions to active or passive earnings and profits.

(1) Distributions from current earnings and profits.

(2) Distributions from accumulated earnings and profits.

(3) Adjustments to active earnings and profits.

(4) Special rules for consolidated groups.

(d) Examples.

(e) Effective date.

Par. 6. Section 1.1362–2 is amended by adding a sentence to the end of the paragraph (c)(5)(ii)(C) to read as follows:

§ 1.1362–2 Termination of election.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(C) * * * See § 1.1362–8 for special rules regarding the treatment of dividends received by an S corporation from a C corporation in which the S corporation holds stock meeting the requirements of section 1504(a)(2).

* * * * *

Par. 7. Section 1.1362–8 is added to read as follows:

§ 1.1362–8 Dividends received from affiliated subsidiaries.

(a) *In general.* For purposes of section 1362(d)(3), if an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term *passive investment income* does not include dividends from the C corporation to the extent those dividends are attributable to the earnings and profits of the C corporation derived from the active conduct of a trade or business (active earnings and profits). For purposes of applying section 1362(d)(3), earnings and profits of a C corporation are active earnings and profits to the extent that the earnings and profits are derived from activities that would not produce passive investment income (as defined in section 1362(d)(3)) if the C corporation were an S corporation.

(b) *Determination of active or passive earnings and profits—*(1) *In general.* An S corporation may use any reasonable method to determine the amount of

dividends that are not treated as passive investment income under section 1362(d)(3)(E). Paragraph (b)(5) of this section describes a method of determining the amount of dividends that are not treated as passive investment income under section 1362(d)(3)(E) that is deemed to be reasonable under all circumstances.

(2) *Lower tier subsidiaries.* If a C corporation subsidiary (upper tier corporation) holds stock in another C corporation (lower tier subsidiary) meeting the requirements of section 1504(a)(2), the upper tier corporation's gross receipts attributable to a dividend from the lower tier subsidiary are considered to be derived from the active conduct of a trade or business to the extent the lower tier subsidiary's earnings and profits are attributable to the active conduct of a trade or business by the subsidiary under paragraph (b)(1), (3), (4), or (5) of this section. For purposes of this section, distributions by the lower tier subsidiary will be considered attributable to active earnings and profits according to the rule in paragraph (c) of this section. This paragraph (b)(2) does not apply to any member of a consolidated group (as defined in § 1.1502–1(h)).

(3) *De minimis exception.* If less than 10 percent of a C corporation's earnings and profits for a taxable year are derived from activities that would produce passive investment income if the C corporation were an S corporation, all earnings and profits produced by the corporation during that taxable year are considered active earnings and profits.

(4) *Special rules for earnings and profits accumulated by a C corporation prior to 80 percent acquisition.* A C corporation may treat all earnings and profits accumulated by the corporation in all taxable years ending before the S corporation held stock meeting the requirements of section 1504(a)(2) as active earnings and profits in the same proportion as the C corporation's active earnings and profits for the three taxable years ending prior to the time when the S corporation acquired 80 percent of the C corporation bears to the C corporation's total earnings and profits for those three taxable years.

(5) *Gross receipts safe harbor.* A corporation may treat its earnings and profits for a year as active earnings and profits in the same proportion as the corporation's gross receipts (as defined in § 1.1362–2(c)(4)) derived from activities that would not produce passive investment income (if the C corporation were an S corporation), including those that do not produce passive investment income under paragraphs (b)(2) through (b)(4) of this section, bear to the corporation's total gross receipts for the year in which the earnings and profits are produced.

(c) *Allocating distributions to active or passive earnings and profits*—(1) *Distributions from current earnings and profits.* Dividends distributed by a C corporation from current earnings and profits are attributable to active earnings and profits in the same proportion as current active earnings and profits bear to total current earnings and profits of the C corporation.

(2) *Distributions from accumulated earnings and profits.* Dividends distributed by a C corporation out of accumulated earnings and profits for a taxable year are attributable to active earnings and profits in the same proportion as accumulated active earnings and profits for that taxable year bear to total accumulated earnings and profits for that taxable year immediately prior to the distribution.

(3) *Adjustments to active earnings and profits.* For purposes of applying paragraph (c) (1) or (2) of this section to a distribution, the active earnings and profits of a corporation shall be reduced by the amount of any prior distribution properly treated as attributable to active earnings and profits from the same taxable year.

(4) *Special rules for consolidated groups.* For purposes of applying section 1362(d)(3) and this section to dividends received by an S corporation from the common parent of a consolidated group (as defined in § 1.1502–1(h)), the following rules apply—

(i) The current earnings and profits, accumulated earnings and profits, and active earnings and profits of the common parent shall be determined under the principles of § 1.1502–33 (relating to earnings and profits of any member of a consolidated group owning stock of another member); and

(ii) The gross receipts of the common parent shall be the sum of the gross receipts of each member of the consolidated group (including the common parent), adjusted to eliminate gross receipts from intercompany transactions (as defined in § 1.1502–13(b)(1)(i)).

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. (i) X, an S corporation, owns 85 percent of the one class of stock of Y. On December 31, 2002, Y declares a dividend of $100 ($85 to X), which is equal to Y's current earnings and profits. In 2002, Y has total gross receipts of $1,000, $200 of which would be passive investment income if Y were an S corporation.

(ii) One-fifth ($200/$1,000) of Y's gross receipts for 2002 is attributable to activities that would produce passive investment income. Accordingly, one-fifth of the $100 of earnings and profits is passive, and $17 (⅕ of $85) of the dividend from Y to X is passive investment income.

Example 2. (i) The facts are the same as in *Example 1*, except that Y owns 90 percent of the stock of Z. Y and Z do not join in the filing of a consolidated return. In 2002, Z has gross receipts of $15,000, $12,000 of which are derived from activities that would produce passive investment income. On December 31, 2002, Z declares a dividend of $1,000 ($900 to Y) from current earnings and profits.

(ii) Four-fifths ($12,000/15,000) of the dividend from Z to Y are attributable to passive earnings and profits. Accordingly, $720 (⅘ of $900) of the dividend from Z to Y is considered gross receipts from an activity that would produce passive investment income. The $900 dividend to Y gives Y a total of $1,900 ($1,000 + $900) in gross receipts, $920 ($200 + $720) of which is attributable to passive investment income-producing activities. Under these facts, $41 ($920/1,900 of $85) of Y's distribution to X is passive investment income to X.

(e) *Effective date.* This section applies to dividends received in taxable years beginning on or after January 20, 2000; however, taxpayers may elect to apply the regulations in whole, but not in part, for taxable years beginning on or after January 1, 2000, provided all affected taxpayers apply the regulations in a consistent manner. To make this election, the corporation and all affected taxpayers must file a return or an amended return that is consistent with these rules for the taxable year for which the election is made. For purposes of this section, affected taxpayers means all taxpayers whose returns are affected by the election to apply the regulations.

§ 1.1368–0 [Amended]

Par. 8.

Amend § 1.1368–0 in the entry for § 1.1368–2(d)(2) by revising "Reorganizations" to read "Liquidations and reorganizations".

§ 1.1368–2 [Amended]

Par. 9. Amend § 1.1368–2 in paragraph (d)(2) by revising "Reorganizations" to read "Liquidations and reorganizations" in the heading and by revising "section 381(a)(2)" to read "section 381(a)" in the first sentence.

Par. 10. Amend § 1.1374–8 by adding one sentence to the end of paragraph (b) to read as follows:

§ 1.1374–8 Section 1374(d)(8) transactions.

* * * * *

(b) *Separate determination of tax.* * * * If an S corporation makes QSub elections under section 1361(b)(3) for a tiered group of subsidiaries effective on the same day, see § 1.1361–4(b)(2).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 11. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 12. Section 301.6109–1 is amended as follows:

1. Paragraph (i) is redesignated as paragraph (j) and the first sentence of newly designated paragraph (j)(1) is amended by removing the language "paragraph (i)" and adding "paragraph (j)" in its place.

2. A new paragraph (i) is added.

The addition reads as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(i) *Special rule for qualified subchapter S subsidiaries (QSubs)*—(1) *General rule.* Any entity that has an employer identification number (EIN) will retain that EIN if a QSub election is made for the entity under § 1.1361–3 or if a QSub election that was in effect for the entity terminates under § 1.1361–5.

(2) *EIN while QSub election in effect.* Except as otherwise provided in regulations or other published guidance, a QSub must use the parent S corporation's EIN for Federal tax purposes.

(3) *EIN when QSub election terminates.* If an entity's QSub election terminates, it may not use the EIN of the parent S corporation after the termination. If the entity had an EIN prior to becoming a QSub or obtained an EIN while it was a QSub in accordance with regulations or other published guidance, the entity must use that EIN. If the entity had no EIN, it must obtain an EIN upon termination of the QSub election.

(4) *Effective date.* The rules of this paragraph (i) apply on January 20, 2000.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 13. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 14. In § 602.101, paragraph (b) is amended by adding entries for §§ 1.1361–3, 1.1361–5, and 1.1362–8 to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1361–3	1545–1590
1.1361–5	1545–1590
* * * * *	
1.1362–8	1545–1590
* * * * *	

Robert E. Wenzel,

Deputy Commissioner, Internal Revenue Service.

Approved: January 19, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1718 Filed 1–20–00; 1:19 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 251, 254, and 282

RIN 1010–AC32

Outer Continental Shelf Appeals Procedures

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendments.

SUMMARY: This document makes technical changes to regulations that were published in various **Federal Register** documents and are codified in the July 1, 1999, edition of Title 30—Minerals Resources, Parts 200–699. The changes are necessary to make the references to appeals procedures in various parts of our regulations consistent with the new MMS appeal procedures regulations.

EFFECTIVE DATE: January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Gould, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

These technical amendments affect all offshore operators, lessees, and permittees. On May 13, 1999 (64 FR 26240), MMS published final regulations, effective the same date, governing the appeal of orders and decisions from MMS's Royalty Management and Offshore Minerals Management Programs in 30 CFR parts 208, 241, 242, 243, 250, and 290. The final regulations neglected to amend several other sections of our Offshore Minerals Management regulations in parts 251, 254, and 282 to make them consistent with the MMS Appeals rule. This was an inadvertent oversight that we are now correcting.

Need for Correction

As published, the final regulations contain inconsistencies with the intent of the appeals final rulemaking, which may prove to be misleading, and are in need of clarification.

List of Subjects

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Report and recordkeeping requirements, Research.

30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Report and recordkeeping requirements.

30 CFR Part 282

Continental shelf, Prospecting, Public lands—mineral resources, Public lands—rights-of-way, Report and recordkeeping requirements, Research.

Accordingly, 30 CFR parts 251, 254, and 282 are amended by making the following technical amendments:

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

1. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 251.10 [Amended]

2. In § 251.10, paragraph (c) is revised to read as follows:

§ 251.10 Penalties and appeals.

* * * * *

(c) *Procedures to appeal orders or decisions MMS issues.* See 30 CFR part 290 for instructions on how to appeal any order or decision that we issue under this part.

PART 254—OIL-SPILL RESPONSE REQUIREMENTS FOR FACILITIES LOCATED SEAWARD OF THE COAST LINE

3. The authority citation for part 254 continues to read as follows:

Authority: 33 U.S.C. 1321.

§ 254.8 [Amended]

4. Section 254.8 and its title are revised to read as follows:

§ 254.8 May I appeal decisions under this part?

See 30 CFR part 290 for instructions on how to appeal any order or decision that we issue under this part.

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

5. The authority citation for part 282 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 282.50 [Amended]

6. Section 282.50 is revised to read as follows:

§ 282.50 Appeals.

See 30 CFR part 290 for instructions on how to appeal any order or decision that we issue under this part.

Dated: January 11, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–1675 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–MR–U

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service regulations that govern the disclosure of information contained in PS Form 1093, Application for Post Office Box or Caller Service, and PS Form 1583, Application for Delivery of Mail Through Agent. The recorded business name, address, and telephone number of a post office box used for doing or soliciting business with the public will no longer be provided to the general public upon request. Disclosure to the public of information contained in Form 1583 will continue to be prohibited. In addition, information from both Forms 1093 and 1583 will no longer be made available in response to an oral request from a law enforcement agency engaged in a criminal investigation. Disclosure of information from either form also will be prohibited, except pursuant to the order of a court of competent jurisdiction, when the individual customer has presented the Postal Service with an appropriate court order of protection.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence Maxwell, (202) 268–5015.

SUPPLEMENTARY INFORMATION: This final rule adopts the change to the regulation governing disclosure of names and addresses of post office boxholders that was published as a proposed rule on August 26, 1999 (64 FR 46630). This change repeals the provision that authorized disclosure to the general public, upon request, of the name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public. The purpose of the change is to provide a greater degree of privacy and security to the growing number of small-business owners who operate out of the home. The background for this rulemaking was provided in the August 26 notice and will not be repeated here.

After consideration of the comments made on the August 26 proposal, which are discussed below, the Postal Service has decided to adopt as part of this final rule two additional changes to the regulations governing disclosure of information about post office boxholders and the customers of commercial mail receiving agencies (CMRAs). In response to concerns for the safety of battered individuals and their children, stalking victims, and other persons who consider themselves at risk of harm if their physical location is not kept private, the Postal Service will further restrict disclosure of the names and addresses of post office boxholders and CMRA customers in the following ways.

First, the existing provision that authorizes disclosure in response to oral requests of law enforcement agencies for criminal investigations, when made through the Inspection Service, is made inapplicable to information concerning post office boxholders and CMRA customers.

Second, when the individual boxholder has presented to the Postal Service a protective court order, information from neither Form 1093 nor Form 1583 will be made available under the existing provision that authorizes disclosure to federal, state, or local government agencies upon written request. In such a case, the government agency seeking the information must furnish to the Postal Service an order of a court of competent jurisdiction that requires disclosure to the agency. The Postal Service has already reserved the right to withhold information about a particular individual's address, including a boxholder's address, for sufficient reasons of personal safety, and has provided for the submission of protective court orders to block access of the general public in such situations. The present rule change respecting post office boxholders and CMRA customers will block access not just of the public but also of government agencies, including law enforcement agencies, when there is a protective order on file, unless the agency obtains a countervailing court order that requires the Postal Service to release the information.

As revised by this rule, the regulations that govern the disclosure of information contained in Form 1093 and 1583 may be summarized as follows. Information provided by a post office boxholder on Form 1093 will not generally be available to the public. It will be disclosed only to a government agency upon written certification of official need; to an appropriate person when needed for the service of process; and in compliance with a subpoena, when appropriate, or a court order. When the boxholder is an individual, as opposed to a business or organization, a subpoena will not be honored—a court order signed by a judge will be required. In addition, copies of the 1093 will not be disclosed except when requested by a government agency upon written certification of official need or in compliance with a subpoena or court order. When the boxholder has submitted a court order of protection, the Postal Service will not disclose the boxholder's name, address, or telephone number pursuant to any of the foregoing provisions, nor make available a copy of the form, unless the requester has obtained an order of a court of competent jurisdiction that requires the disclosure notwithstanding the existence of the boxholder's protective order.

Information provided by a CMRA customer on Form 1583 will not be available to the public. It will be disclosed only to a government agency upon written certification of official need or pursuant to a subpoena (only if the CMRA customer is not an individual) or to a court order. When the customer has submitted a court order of protection, however, the Postal Service will not disclose the customer's name or address pursuant to these provisions, unless the requester obtains a court order as provided in the foregoing paragraph.

Analysis of Comments Received

A total of 318 written comments were received in response to the August 26 proposed rule. Nineteen of these were from state agencies, four were from members of Congress, two were from public-interest organizations, and the bulk of the remainder were from CMRA customers and operators. Only one commenter objected to the proposal to

repeal the provision that authorizes disclosure of information concerning a post office boxholder who uses the box to do or solicit business with the public. This comment came from an asset recovery firm that routinely relies on the provision to arrange for the return of assets to boxholders.

Twenty-five commenters stated their unqualified approval of the proposal. Nineteen others limited their comments to approval of the existing regulations as they authorize disclosure to government agencies. These latter comments were provided by the Attorneys General for 18 states and one state agency for workforce development. The comments of the states' Attorneys General stressed the need of state law enforcement agencies (and those state agencies that work with them) for the information in connection with the investigation and prosecution of fraud, including consumer and charities fraud. They stated that it is "critical" that these investigatory agencies have access to the 1583s.

Twenty-four comments were limited to objections to the underlying CMRA regulations and so are not within the scope of the present rulemaking. While most of the remaining 80 percent of the commenters stated approval of the repeal of the provision allowing disclosure of information about post office boxholders doing business with the public, none discussed that provision; instead, they focused their attention on objections to various provisions relating to CMRA customers. Overall, these latter comments revealed widespread misinformation about the existing regulations and the limited nature of the current proposal. Only a few of those providing negative comments appeared to understand that no new disclosure was proposed in the August 26 notice. A number of comments revealed a fundamental misunderstanding of this rulemaking by complaining that the new rule would allow the release of private boxholder information when the box is being used to conduct business with the public. The Postal Service withdrew its proposal to make such a provision applicable to CMRA customers in the August 26 notice, and, in the same notice, proposed to eliminate the existing parallel provision respecting post office boxholders.

A national nonprofit organization interested in the prevention of domestic violence objected to the release of information from the Form 1583 to government agencies, including law enforcement agencies, without a warrant. The organization stated that it is "imperative" that no one obtain the address of a battered women's shelter without a warrant. The commenter expressed concern that disclosure to law enforcement would increase the possibility of unwitting release to the public, to a person impersonating a law enforcement officer, or to a law enforcement officer engaging in misconduct. Several other individual commenters objected to release of information in response to oral law enforcement requests made through the Inspection Service, because they thought that this would produce no "paper trail" and thus encourage abuse.

The national organization also objected to disclosure to government agencies in general as an expansion of the categories of persons having access to the information. This latter comment suggests a misunderstanding of what the current regulation permits. Postal regulations have authorized the disclosure of information from Form 1583 to government agencies, including law enforcement, in appropriate circumstances for as long as the Postal Service has used the form. This is not something newly proposed in one of the recent notices of proposed rules. While the Postal Service is unaware of any instance in which disclosure of this information to a government agency or law enforcement officer has resulted in harm to a boxholder or other individual, it is nonetheless sympathetic to the concern expressed in these comments. Because of the potential for abuse, it has decided to eliminate the longstanding rule that authorizes disclosure in response to oral requests of law enforcement agencies when conducting criminal investigations. The Postal Service is not, however, persuaded of the necessity to require government agencies to obtain a warrant as a precondition to access in all cases. This would place an undue burden on an agency's performance of legitimate law enforcement or other governmental functions. In the absence of any history of abuse of the provision, the Postal Service believes that the requirement that the requester certify in writing on agency letterhead that the information is required for the performance of official duties provides a reasonable amount of protection against unwarranted invasions of the privacy of most boxholders. For those boxholders who are in particular risk of danger if located, the Postal Service believes that it is not an unreasonable burden for them to obtain an appropriate protective order to be placed on file with the 1093 or the 1583, thus requiring the requesting agency to first obtain a court order.

This commenter also urged the need for security measures to govern the maintenance of Forms 1583 at the local post office and the need for a method by which a victim of abuse could confirm with local postal officials whether the information had been released. The Postal Service already has procedures in place, mandated by the Privacy Act of 1974, that address these last two concerns.

One private corporation claiming to comment "on behalf of the several million American citizens that choose to receive their mail at private and P.O. boxes" stated that the underlying CMRA revisions made final on March 25, 1999, "are in fact the only issue." Those revisions are not at issue, however, in the present rulemaking. Principal among its comments regarding the present rule is an objection to the "changes" in the August 26 notice that would allow release of information about private or post office boxholders to anyone without a warrant, subpoena, or court order. These "changes," the commenter states, are in conflict with the safeguards of the Privacy Act and violate the Fourth Amendment, which protects against warrantless searches and seizures. The commenter's references to "changes," supposedly made by the August 26 notice, indicate a basic misunderstanding of the Postal Service's regulations in this area. The regulations have long authorized disclosure to government agencies upon written certification and to law enforcement when oral requests are made through the Inspection Service. These objections, therefore, are to regulations that have been in effect for a long time, and not to any recently proposed changes. The Postal Service, moreover, is not persuaded that its regulations are in conflict with the Privacy Act or violate the Fourth Amendment. The Postal Service's routine uses provide sufficient authorization for disclosure of information on Form 1583 to government agencies, consistent with the requirements of the Privacy Act. The safeguards required by the Act have long since been implemented by the Postal Service with respect to the information contained in the 1583. Further, the Postal Service is not aware that any court has extended the protection of the Fourth Amendment to an individual's name or address. The commenter also states that the Privacy Act statement on Form 1583 is "defective" because it does not inform the customer how the information will be used or released. The Postal Service intends to amend the statement to bring

it into conformity with the regulations as revised by this final rule, after this rule becomes effective.

Almost all of the remaining commenters, primarily CMRA customers, echoed nearly verbatim the objections discussed in the preceding paragraph. A number of these commenters also took the opportunity to voice their objections to the underlying CMRA regulations, which will not be addressed here.

A nonprofit organization that is interested in rights and responsibilities in the "electronic world" objected to the creation of a national database of information from Form 1583, because the existence of such a database would be a "boon to identity thieves." Several other individual commenters stated their concern that the Postal Service will use Forms 1583 to create a national database. In the August 26 notice, the Postal Service addressed this concern by stating that the forms are maintained locally and that it has no intention of creating a national database with the information contained in them. The nonprofit organization stated that although the Postal Service may not intend to create such a database, this will necessarily be the result of storage of the forms in a Federal Records Center and from the maintenance of the forms at each CMRA and local post office. The Postal Service disagrees with this analysis. There is a great deal of difference in terms of risk to personal privacy between a collection of paper records locally maintained in secure conditions, or stored in boxes in a federal records depository, and information collected and maintained in a national electronic database. The secure storage of paper records simply does not pose the same kind of risk of improper data sharing as is posed by maintenance in an electronic database. Moreover, the maintenance of these paper forms over many years has not resulted in any incidents of identity theft so far as the Postal Service is aware. This commenter also complained that the proposal ignores the Fair Information Practices of the Federal Trade Commission. These guidelines, developed specifically in connection with the FTC's work regarding online privacy, are already embedded in the procedures required by the Privacy Act of 1974 and so are addressed elsewhere in the Postal Service's regulations that implement the Act. The regulation at hand is not the appropriate place for their inclusion. See the Postal Service's Privacy Act regulations, 39 CFR Part 266, and the system notice for the system of records titled USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents, last published in full at 54 FR 43660 (October 26, 1989), with amendments appearing at 59 FR 22874 (May 3, 1994) and 64 FR 8878 (February 23, 1999). Finally, this commenter claimed that the Postal Service is violating two provisions of the Privacy Act: subsection (e)(1) through the "over-collection of information," namely, the ages of any children who will receive mail at the CMRA address, and subsection (e)(2) by "coercing" the CMRA to collect the information rather than collecting the information itself. The Postal Service sees no merit in either contention. Subsection (e)(1) limits an agency's maintenance of information about an individual to that which is "relevant and necessary to accomplish a [legally required] purpose of the agency." The provision permitting the boxholder to list the names and addresses of his or her minor children is an exception to the general requirement that all individuals receiving mail through a private box submit a Form 1583. Ages are necessary to determine when the child no longer qualifies for this exception. Subsection (e)(2) provides for collection of information "to the greatest extent practicable directly from the subject individual." Since the CMRA customer is asked to fill out the Form 1583, the Postal Service believes that it is in compliance with this provision.

Finally, a number of commenters stated that the Postal Service has no authority to collect information about CMRA customers. Others stated that the Postal Service is expressly forbidden to collect the information. No reference to an authority for either proposition was given, and the Postal Service knows of none. The Postal Service believes it has ample authority to require agents for the receipt of mail to prove the bona fides of their agency agreements with postal customers. This cannot be done without submitting the names and addresses of the principals to such agreements.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of Information, Government employees, Release of information.

For the reasons set forth in this document, the Postal Service is amending 39 CFR Part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Section 265.6(d)(3) and (d)(8) are revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(3) *Post office boxholder information.* Information from PS Form 1093, Application for Post Office Box or Caller Service, will be provided as follows:

(i) Except as provided in paragraph (d)(3)(iii) of this section, information from PS Form 1093 will be provided only in those circumstances stated at paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(ii) Except as provided in paragraph (d)(3)(iii) of this section, copies of PS Form 1093 will be furnished only in those circumstances stated at paragraphs (d)(4)(i) and (d)(4)(iii) of this section.

(iii) When the boxholder files with the postmaster a copy of a protective court order, information from PS Form 1093 will not be disclosed except pursuant to the order of a court of competent jurisdiction.

* * * * *

(8) *Private mailbox information.* Information from PS Form 1583, Application for Delivery of Mail Through Agent, will be provided as follows:

(i) Except as provided in paragraph (d)(8)(iii) of this section, information from PS Form 1583 will be provided only in those circumstances stated at paragraphs (d)(4)(i) and (d)(4)(iii) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

(iii) Information concerning an individual who has filed a protective court order with the postmaster will not be disclosed except pursuant to the order of a court of competent jurisdiction.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–1668 Filed 1–24–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300963; FRL–6485–2]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on grapes and peanut nutmeats. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on grapes and peanuts. This regulation establishes maximum permissible levels for residues of bifenthrin in these food commodities. The tolerances will expire and is revoked on December 31, 2001.

DATES: This regulation is effective January 25, 2000. Objections and requests for hearings, identified by docket control number OPP–300963, must be received by EPA on or before March 27, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300963 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300963. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate), in or on grapes at 0.2 part per million (ppm), and in/on peanut nutmeats at 0.05 ppm. These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has

established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Bifenthrin on Grapes and Peanuts and FFDCA Tolerances

1. *Bifenthrin on grapes.* The Applicant states that when the special local needs registration for carbofuran was canceled in 1997, the grape growers were left without adequate control for the black vine weevil, a seriously damaging pest in vineyards. Black vine weevil populations build up to damaging levels gradually, tending not to be pests in younger vineyards. Thus, this pest was generally not present at significant levels immediately following loss of carbofuran; however, the applicant states that this year, populations have been reaching damaging levels. The applicant stated that none of the available alternatives provide adequate control to avoid significant economic losses from this pest in grapes.

2. *Bifenthrin on peanuts.* The Applicant states that although spider mite infestations have affected peanut growers for some years, the infestations have exceeded economically significant levels in recent years, and applications of available pesticides did not prevent these populations from rebounding quickly. In 1999, mite populations established earlier than normal, and the registered miticides were ineffective at providing adequate control, particularly with the hot dry weather conditions which are conducive to mite outbreaks. Additionally, it is believed that the mild winter contributed to a high overwintering survival rate, thus infestations were established earlier. With the infestations beginning so early, growers had to make multiple treatments with the alternatives, and were on the verge of using up their legal number of applications of these materials. However, spider mite outbreaks were still occurring at significantly damaging levels, and the Applicant stated that the use of bifenthrin was needed to avert significant economic losses from occurring. EPA has authorized under FIFRA section 18 the uses of bifenthrin on grapes for control of black vine weevil in Washington, and on peanuts for control of spider mites in Oklahoma. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifenthrin in or on grapes and peanut nutmeats. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address urgent non-routine situations and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on grapes and peanut nutmeats after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on grapes and peanuts or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Washington or Oklahoma to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for bifenthrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) on grapes at 0.2 ppm, and on peanut nutmeats at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bifenthrin are discussed in Unit II.A. of the Final Rule on Bifenthrin Pesticide Tolerances published in the **Federal Register** on June 30, 1999 (64 FR 35051) (FRL–6089–9).

B. Toxicological Endpoint

The toxicological endpoints for bifenthrin are discussed in Unit II.B. of the Final Rule on Bifenthrin Pesticide Tolerances published in the **Federal Register** on June 30, 1999.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate), in or on a variety of raw agricultural commodities. Tolerances are established on plant commodities ranging from 0.05 ppm on field corn grain to 10 ppm on dried hops. Tolerances are also established on animal commodities including meat, meat byproducts, and fat of cattle, goats, hogs, horses, poultry, sheep, and milk and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from bifenthrin as follows:

The acute dietary (food only) risk assessment was conducted by Novigen Science, Inc. In this acute analysis, Monte Carlo analysis (Tier 3) was used. For those foods identified by EPA as

single-serving commodities, Monte Carlo simulation is based on iterative sampling from individual residue values from field trial data reflecting maximum application rates and minimum preharvest intervals. For those considered to be blended or processed, mean field trial residues were calculated, substituting those samples for which residues were reported at or below the limit of detection (LOD) with one-half of the LOD. It was assumed that 100% of the crop was treated for the following tolerances: canola, citrus, snap beans, peas, lima beans, sweet corn, cucurbits, eggplant, and Brassica vegetable. One hundred percent crop treated was also assumed for these section 18 uses for grapes and peanuts. Secondary residues for meat and milk were derived from the total dietary burden and tissue-to-feed ratio, using the highest ratio for meat, and the average ratio for milk.

This analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals (CSFII) conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of exposure to residues in food. This is a highly refined assessment since percent of crop treated (PCT) was used (except as indicated above) and anticipated residues for all crops.

In conducting this Dietary Exposure Evaluation Model (DEEM) analysis for chronic food risk assessment, Novigen used anticipated residue values which were determined from field trial data conducted at maximum label conditions of maximum application rates and minimum preharvest intervals. Mean anticipated residue values were calculated, substituting one-half of the LOD for those samples for which residues were reported below the LOD. It was assumed that 100% crop treated for all crops except hops at 43%, cottonseed-oil and cottonseed-meal at 4%. Secondary residues for meat and milk were derived from the total dietary burden and tissue-to-feed ratio, using the average ratio for meat and milk. The analysis evaluates individual food consumption as reported by respondents in the USDA CSFII conducted in 1989 through 1992.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The percentages of the acute PAD (aPAD) utilized at the 99.9th percentile of exposure are 60% for the U.S. population, 75% for infants (< 1 year), and 99.7% for children (1 - 6 years old), the most highly exposed population subgroup. An acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups.

ii. *Chronic exposure and risk.* Dietary exposure (food only) for the most highly exposed population subgroup (children 1 - 6 years old), will utilize 8.2% of the chronic PAD (cPAD). The exposure for the U.S. population is 3% of the cPAD. A chronic dietary exposure (food plus water) of 100% or less of the cPAD is needed to protect the safety or all population subgroups.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. It was assumed that 100% crop was treated for all crops except hops at 43%, and cottonseed-oil and cottonseed-meal at 4%.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure

through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments. The estimated acute and chronic drinking water concentrations were generated with the EPA's Pesticide Root Zone Model/Exposure Analysis Modeling Systems (PRZM/EXAMS) model using the highest application rate of 0.5 pounds/acre, which is registered for use on cotton.

i. *Acute exposure and risk.* For the purposes of this acute risk assessment, the estimated acute maximum concentration for bifenthrin in surface and ground waters is 0.10 µg/L, which was used for comparison to the back-calculated DWLOCs for the acute endpoint. The DWLOCs for various population categories are 140 µg/L for the U.S. population, 180 µg/L for females 13 years and older, and 0.3 µg/L for children 1 - 6 years old. Acute exposure to bifenthrin in drinking water is below the calculated drinking water levels of concern.

ii. *Chronic exposure and risk.* For the purposes of the chronic risk assessment, the estimated chronic maximum concentration for bifenthrin in surface and ground waters is 0.032 µg/L, which was used for comparison to the back-calculated human health DWLOCs from the chronic (non-cancer) endpoint. These DWLOCs for various population categories are 530 µg/L for the U.S. population, 450 µg/L for females 13 years and older, and 140 µg/L for children 1 - 6 years old. Chronic exposure to bifenthrin in drinking water is below the calculated drinking water levels of concern.

iii. *Short- and intermediate-term exposure and risk (water).* For purposes of short- and intermediate-term risk assessment, the estimated chronic maximum concentration for bifenthrin in surface and ground waters is 0.032 µg/L, which was used for comparison to the back-calculated human health DWLOCs from the short- and intermediate-term endpoints. The DWLOCs for various population categories are 320 µg/L for the U.S. population, 270 µg/L for females 13 years and older, and 77 µg/L for children 1 - 6 years old. Short- and intermediate-term exposure to bifenthrin in drinking water is below the calculated drinking water levels of concern.

3. *From non-dietary exposure.* Bifenthrin is currently registered for use on the following residential non-food sites: outdoor lawn and garden, inside households, and termiticide use. These registered uses constitute short- and/or intermediate and chronic exposure.

i. *Chronic exposure and risk.* Although the registered termiticide use of bifenthrin constitutes a chronic exposure scenario, the exposure from this termiticide use is negligible considering the application technique of the termiticide use (buried underground) and the fact that the vapor pressure of bifenthrin is extremely low.

ii. *Short- and intermediate-term exposure and risk.* This risk assessment is based on post-application to treated lawns (turf use), a worst case scenario estimate of residential exposure. An assessment of applicator exposure was not included since the registered products are primarily limited to commercial use and, therefore, applied by professional lawn care operators. Inhalation, dermal, and oral non-dietary routes of exposure were evaluated by this short- and intermediate-term risk assessment. For adults, the routes of exposure from these registered residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (nondietary). The MOEs for residential exposures are 1,600 for adults, 610 for children (1 - 6 years), and 600 for infants (<≤ 1 year). These MOEs are well above the acceptable short-term aggregate MOE of 100.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Bifenthrin is a member of a class of chemicals commonly referred to as "Synthetic Pyrethroids." Other members of the class include cyfluthrin, cypermethrin, lambda-cyhalothrin, zeta-cypermethrin, deltamethrin, esfenvalerate, fenpropathrin, tefluthrin, and tralomethrin.

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk (food plus water).* Using the Monte Carlo analysis, it is estimated that the acute exposure to bifenthrin from food for the U.S. population subgroup will utilize 60% of the aPAD. Children 1 to 6 years are the most highly exposed population subgroup, with 99.7% of the aPAD utilized. (See discussion in Unit II.E.) An acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to bifenthrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for adults, infants and children. The estimated maximum concentration of bifenthrin in surface and ground water for acute exposure is below all DWLOCs.

2. *Chronic risk (food plus water plus residential).* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 3% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 to 6 years, with 8.2% of the cPAD utilized. [See discussion in Unit II.E. in the preamble of this document]. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bifenthrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, the estimated maximum concentration of bifenthrin in surface and ground water for chronic exposure is very small compared to the DWLOCs. Although the registered termiticide use of bifenthrin constitutes a chronic exposure scenario, the exposure from this termiticide use is negligible considering the application technique of the termiticide use (buried underground) and the fact that vapor pressure of bifenthrin is extremely low.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate

exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

In the case of bifenthrin, the registered residential use sites include outdoor lawn/gardens, inside households and termiticide. These uses constitute a short- and intermediate-term exposure scenario. The short- and intermediate-term aggregate risk assessment for bifenthrin includes inhalation, dermal, oral non-dietary, chronic food, and water exposure routes. The acceptable MOEs for short- and intermediate-term exposures are all at 100. For adults, the routes of exposure from these registered, residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (non-dietary). The MOEs for food (excluding water) and residential exposures is 1,100 for adults, 420 for children 1 to 6 years, and 500 for infants < 1 year. These MOEs are all above the acceptable short-term aggregate MOE of 100.

Since residue values in drinking water are not available, the DWLOCs have to be back-calculated. The short- and intermediate-term DWLOCs are 290 µg/L for adult males, 250 µg/L for adult females, 77 µg/L for children 1 to 6 years, and 77 µg/L for infants (< 1 year old). The estimated maximum concentration of bifenthrin in surface and ground water for chronic exposure 0.032 µg/L is very small compared to the DWLOCs.

4. *Aggregate cancer risk for U.S. population.* Bifenthrin has been classified as a group C carcinogen, using the Reference Dose (RfD) approach. Based on the recommendation that the RfD approach be used, a quantitative (q*) dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the DEEM chronic exposure analysis using the cPAD RfD. For the U.S. population, only 3% of the cPAD RfD is occupied by chronic food exposure. As stated previously, based on a comparison of the calculated DWLOCs and the estimated exposure to bifenthrin in drinking water (0.032 µg/L), EPA does not expect the aggregate exposure to exceed 100% of the cPAD RfD for adults.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bifenthrin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOAEL of 4 mg/kg/day. In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL 2 mg/kg/day. There were 5 of 23 (22%) litters affected with each litter having only 1 affected pup in the 2 mg/kg/day group, compared with zero in the control, 1 and 0.5 mg/kg/day groups. According to recent historical data (1992-1994) for this strain of rat, incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (HDT).

iv. *Prenatal and postnatal sensitivity*— a.*Prenatal.* Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Postnatal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion.* There is a complete toxicity data base for bifenthrin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the toxicity data and prenatal and postnatal toxicity of bifenthrin, no additional safety factor is needed to protect infants and children.

2. *Acute risk (food plus water.)* The percentages of the aPAD utilized at the 99.9th percentile of exposure are 75% for infants (< 1 year) and 99.7% for children (1 to 6 years), the most highly exposed population subgroup. An acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to bifenthrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for infants and children. The estimated maximum concentration of bifenthrin in surface and ground water for acute exposure is below the DWLOCs.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 8.2% of the cPAD for children (1 - 6 years old), the most highly exposed subgroup for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks

to human health. Despite the potential for exposure to bifenthrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* The MOEs for food (excluding water) and residential exposures is 430 for children (1 to 6 years), and 500 for infants (< 1 year). These MOEs are well above the acceptable short-term aggregate MOE of 100. The short- and intermediate-term DWLOCs are 77 µg/L for children (1 to 6 years), and 77 µg/L for infants (< 1 year). The estimated maximum concentration of bifenthrin in surface and ground water for chronic exposure (0.032 µg/L) is very small compared to the DWLOCs.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of bifenthrin in plants and animals is adequately understood. Studies conducted to delineate the metabolism of radio-labeled bifenthrin in various crops and animals show similar results. The residue of concern is the parent compound only.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated bifenthrin residue in plants and animals. Residues of bifenthrin are recoverable under Protocols D and E of the FDA Multiresidue Methods.

C. Magnitude of Residues

Residues of bifenthrin are not expected to exceed 0.2 ppm in/on grapes, and 0.05 ppm in/on peanut nutmeats, as a result of these uses. Since the use on peanuts prohibits the feeding of peanut hay to livestock, the existing tolerances for livestock commodities are considered to be adequate.

D. International Residue Limits

There are no Codex Maximum Residue Levels (MRLs) for these commodities.

E. Rotational Crop Restrictions

Crops with established U.S. tolerances may be rotated at any time. Leafy vegetable and root crops may be rotated 30 days following the final application. All other crops may be rotated 7 months following the final application.

VI. Conclusion

Therefore, the tolerances are established for residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in grapes at 0.2 ppm, and in peanut, nutmeats, at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300963 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 27, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–300963, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of

your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.442 is amended, by adding and alphabetically inserting the following entries to the table under paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	* *	*
Grapes	0.2	12/31/01
* *	* *	*
Peanuts, nutmeats	0.05	12/31/01
* *	* *	*

* * * * *

[FR Doc. 00–1667 Filed 1–24–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE44

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Plagiobothrys hirtus (Rough Popcornflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, have determined endangered status pursuant to the Endangered Species Act of 1973 (Act), as amended, for the plant *Plagiobothrys hirtus* (rough popcornflower). This species is restricted to wet swales and meadows in Douglas County, Oregon, where only 17 habitat patches exist for this species. Most populations are small with few individuals. The total

estimated number of plants is about 7,000 individuals within a combined area of about 18 hectares (45 acres). Threats to this species include destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction); spring and summer grazing by domestic cattle, horses, and sheep; roadside maintenance; and competition from native and non-native plant species. This rule implements the Federal protection afforded by the Act for this plant.

EFFECTIVE DATE: February 24, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Andrew Robinson, Botanist, at the above address, or by telephone at 503/231–6179.

SUPPLEMENTARY INFORMATION:

Background

Plagiobothrys hirtus is endemic to seasonal wetlands in the interior valley of the Umpqua River in southwestern Oregon (Amsberry and Meinke 1997b). *P. hirtus* was first collected by Thomas Howell in 1887 and described the following year as *Allocarya hirta* (Greene 1888). Subsequent taxonomic classification included *A. scouleri* var. *hirta*, *P. scouleri* var. *hirtus*, *A. calycosa*, and *P. hirtus* (Gamon and Kagan 1985). Johnston recognized two varieties of the species, *P. hirtus* var. *hirtus* and *P. hirtus* var. *collaricarpus* (Gamon and Kagan 1985). Later, Chambers (1989) considered the material included in the variety *collaricarpus* to be a variety of *P. figuratus*, which elevated the material assigned to *P. hirtus* var. *hirtus* to the full species *P. hirtus*.

A member of the borage family (Boraginaceae), *Plagiobothrys hirtus* is an annual herb on drier sites or perennial herb on wetter sites (Amsberry and Meinke 1997a). It reaches 30–70 centimeters (cm) (1–2 feet (ft)) in height and has a fairly stout stem with widely spreading, coarse, firm hairs on the upper part. The leaves of the main stem are opposite (paired), and the inflorescence (flower) is paired and without bracts (small leaf). The individual flowers are 1–2 millimeters (mm) (0.04-0.08 inches (in)) wide and white in color (Gamon and Kagan 1985). It grows in scattered groups and reproduces largely by insect-aided cross-pollination and partially by self-pollination. The species is distinguished from other *Plagiobothrys* species by coarse, sparse hairs on the stem and branches (Gamon and Kagan 1985).

Plagiobothrys hirtus grows in open, seasonal wetlands in poorly-drained clay or silty clay loam soils (Gamon and Kagan 1985) at elevations ranging from 30 to 270 meters (m) (98 to 886 ft) (Amsberry and Meinke 1997b). The species appears to be closely associated with the soil type Ruch-Medford-Takilma, and all known naturally-occurring populations occupy this soil type. The taxon is considered dependent on seasonal flooding and/or fire to maintain open habitat and to limit competition with invasive native and non-native plant species, such as Himalayan blackberry (*Rubus discolor*), Oregon ash (*Fraxinus latifolia*), teasel (*Dipsacus fullonum*), and pennyroyal (*Mentha pulegium*) (Gamon and Kagan 1985, Almasi and Borgias 1996). *P. hirtus* occurs in open microsites within the one-sided sedge (*Carex unilateralis*)—meadow barley (*Hordeum brachyantherum*) community type within interior valley grasslands. Other frequently associated species include tufted hairgrass (*Deschampsia cespitosa*), American slough grass (*Beckmannia syzigachne*), great camas (*Camassia leichtlinii* var. *leichtlinii*), water foxtail (*Alopecurus geniculatus*), baltic rush (*Juncus balticus*), wild mint (*Mentha arvensis*), Willamette downingia (*Downingia yina*), and bentgrass (*Agrostis alba*) (Gamon and Kagan 1985).

The species was collected only four times between 1887 and 1961, all at sites within Douglas County, Oregon (Gamon and Kagan 1985). The taxon was considered possibly extinct (Meinke 1982) until it was rediscovered in 1983 as a result of intensive field surveys (Jimmy Kagan, Oregon Natural Heritage Program, pers. comm. 1997). The location of the first specimen, collected by Thomas Howell, was given only as the Umpqua Valley (Greene 1888). The sites of collections from 1932 and 1939 were from 16 kilometers (km) (10 miles (mi)) east of Sutherlin and 3 km (2 mi) north of Yoncalla, respectively (Siddall and Chambers 1978). Both of these sites were surveyed in 1983, but no plants were found (Gamon and Kagan 1985). At the time, the sites were heavily grazed by sheep, which led the botanists to speculate that grazing was the probable cause of extirpation of the species (Gamon and Kagan 1985). In 1961, a collection was made adjacent to Interstate 5 south of Yoncalla, a site which remains in existence today (J. Kagan, pers. comm. 1997).

Despite the few pre-1961 collections, *Plagiobothrys hirtus* was probably widespread historically on the floodplains of the interior valleys of the Umpqua River. Because *P. hirtus* occurs in low-lying areas, seeds were likely dispersed by flood waters, resulting in a patchy, clumped distribution on the floodplains (Gamon and Kagan 1985). Natural processes such as flooding and fire maintained open, wetland habitat (Gamon and Kagan 1985). Draining of wetlands for urban and agricultural uses and road and reservoir construction, however, has altered the original hydrology of the valley to such an extent that the total area of suitable habitat for *P. hirtus* has been significantly reduced. Gamon and Kagan (1985) indicate that fire suppression allows the invasion of woody and herbaceous species into formerly open wetland habitats.

Plagiobothrys hirtus is now limited to 17 isolated patches of habitat in the vicinity of Sutherlin and Yoncalla, Oregon (Oregon Natural Heritage Program 1996). These disjunct habitat patches range in size from 0.04 to 6.9 hectares (ha) (0.1 to 17 acres (ac)) with population sizes for an individual patch ranging from 1 to 3,000 plants. The 17 habitat patches are estimated to have a total of about 7,000 plants and a combined area of less than 18 ha (45 ac). Of the 17 habitat patches, 1 site is 7 ha (17 ac), 3 sites are between 2 and 4 ha (5 and 10 ac), 4 are between 0.4 and 2 ha (1 and 5 ac), and 9 are less than 0.4 ha (1 ac) in size. The size of the habitat patch had no correlation with the number of plants occupying the patch. For example, 3,000 plants occupied a 4 ha (1 ac) habitat patch and the 7 ha (17 ac) habitat patch had only 50 scattered plants.

All existing populations are at risk of extirpation due to a variety of threats (Almasi and Borgias 1996; J. Kagan, pers. comm. 1997; Robert Meinke, Oregon State University, pers. comm. 1997). In addition to the ongoing threat of direct loss of habitat from conversion to urban and agricultural uses, hydrological alterations, and fire suppression, other threats to the species include spring and summer livestock grazing, roadside mowing, spraying, competition with non-native vegetation, and landscaping (Gamon and Kagan 1985; J. Kagan, pers. comm. 1995).

Fifteen of the 17 occupied habitat patches occur on private or commercial land. Three of these parcels are owned and managed by The Nature Conservancy. The other 12 habitat patches have no protective management for the species and are at risk of extirpation from development,

incompatible grazing and farming practices, and recreational activities (J. Kagan, pers. comm. 1997; R. Meinke, pers. comm. 1997). The two remaining known sites occur on public land owned by the Oregon Department of Transportation (ODOT), with a portion of one site partially occurring on private land as well.

Previous Federal Action

Federal action on *Plagiobothrys hirtus* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3) of the Act) and our intention to review the status of the plant species named in the report. As a result of this review, we published a proposed rule in the **Federal Register** on June 16, 1976 (41 FR 24523), to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. This list, which included *P. hirtus*, was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

We published an updated notice of review for plants on December 15, 1980 (50 FR 82480), including *Plagiobothrys hirtus* as a category 1 candidate species. At that time, category 1 candidates (now referred to as candidates) were those for which we believed we had substantial information to support a proposal to list the species as threatened or endangered. We changed the status of *P. hirtus* to category 2 in the November 28, 1983, supplement to the notice (45 FR 53657), and this species remained a category 2 in the September 27, 1985, notice of review (50 FR 39527). Category 2 candidates were those species for which we have enough information suggesting that listing is possibly appropriate, but conclusive data on vulnerability and threat were not available to support a proposed rule. In the February 21, 1990, notice of review (55 FR 6185), we designated *P. hirtus* as a candidate. On February 28, 1996, we published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. In that notice of review, we retained *P. hirtus* as a candidate species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This provision applied to *Plagiobothrys hirtus* because of the acceptance of the 1975 Smithsonian Report as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be reevaluated annually pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1996. On November 20, 1997, we published a proposed rule (62 FR 61953) for this species, and on January 22, 1998, we announced a notice of public hearing and extension of the comment period (63 FR 3301). Publication of this rule constitutes the final determination for the petitioned action.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

Summary of Comments and Recommendations

In the November 20, 1997, proposed rule (62 FR 61953) and associated notifications, we requested interested parties to submit factual reports or information that might contribute to the development of a final listing decision. We sent announcements of the proposed rule and notice of a public hearing to appropriate State and Federal agencies, county governments, city governments, scientific organizations, private land owners, industrial land owners and other interested parties and requested comments. We also published announcements of the proposed rule in the *Oregonian* on December 8, 1997, and the *Roseburg News-Review* on December 8, 1997. We held a public hearing on February 10, 1998, in Roseburg, Oregon, and extended the public comment period to February 23, 1998 (63 FR 3301).

We received six written comments during the comment period following the publication of the proposed rule. One individual who submitted a set of written comments also testified at the public hearing. Three commenters opposed and three favored the listing of *Plagiobothrys hirtus* as endangered. Several commenters provided information on the status of and threats to various populations of *P. hirtus* that updated the information presented in the proposed rule. We considered all comments and incorporated the information provided into the Background and Summary of Factors sections of this final rule. Comments of a similar nature or point regarding the proposed rule have been grouped into issues and are discussed below.

Issue 1: One commenter stated the Federal regulation of the rough popcornflower under the Act fails to meet the constitutional test of substantial impact upon interstate commerce, and thus the rule should be withdrawn.

Our Response: The Federal government has the authority under the commerce clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S. Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with *Plagiobothrys*

hirtus, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate—(1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because it prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial development that is part of interstate commerce.

Moreover, a substantial amount of interstate commerce arises from the efforts of conservation organizations to protect rare species. The Nature Conservancy, a national organization that engages in substantial interstate commerce through fund-raising and sale of its publications, has sought to protect *Plagiobothrys hirtus* through voluntary agreements and land acquisitions.

Issue 2: A second commenter opposed listing *Plagiobothrys hirtus* until a thorough scientific search has been conducted for additional populations in an area east of Sutherlin called the Nonpareil area.

Our Response: We have used previously published soil maps for the State of Oregon (United States Department of Agriculture 1991) as a tool to assess the likelihood of locating additional populations of *Plagiobothrys hirtus* in the Nonpareil area. Although there is a possibility that additional populations of *P. hirtus* occur in the vicinity based on soil types, land use patterns in the Nonpareil area are similar to those found south of Sutherlin. Thus, if additional occupied habitat is found in the Nonpareil area, it probably would be facing similar threats and would not reduce the need for listing *P. hirtus*. The Act requires us to list species based upon the threats facing the species and not on the number of plants or populations, as in this case.

Issue 3: The same commenter suggested captive propagation techniques should be developed and used to prevent the endangerment of *Plagiobothrys hirtus*.

Our Response: We concur that captive propagation may be an important technique used to recover *Plagiobothrys hirtus*. In fact, biologists have initiated monitoring, life history studies, and transplantation experiments using field-collected seed within some habitat patches. However, the Act requires us to conserve the ecosystems upon which endangered and threatened species depend and although these techniques are tools used by us and our cooperators to help reduce the threats to the species, these tools will not remove or reduce the threats to the level that the species will not require the protections of the Act.

Issue 4: The same commenter recommended additional public outreach and education, assuming the public will then come forward with information and locations of populations of *Plagiobothrys hirtus* presently unknown to us.

Our Response: In the proposed rule to designate *Plagiobothrys hirtus* as an endangered species published on November 20, 1997 (62 FR 61953), we requested public comments on "(2) The location of any additional occurrences of this species . . .". The comment period was extended on January 22, 1998 (63 FR 3301). We also continually seek information from the public on possible new locations of rare and endangered species. We have developed a public outreach plan to inform the public of this listing concurrent with the publication of this rule.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding pertinent scientific or commercial data relating to the biological and ecological information for *Plagiobothrys hirtus*. Two individuals responded to our request and supported the listing based upon the scientific data. We incorporated the comments as appropriate in this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine that *Plagiobothrys hirtus* should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and the regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Plagiobothrys hirtus* Greene (rough popcornflower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* *Plagiobothrys hirtus* has been, and continues to be, threatened by destruction and modification of its wetland habitat (R. Meinke, pers. comm. 1997). Although the species is believed to have been more abundant in the past throughout the interior valleys of the Umpqua River, it is now limited to 17 small, isolated habitat patches. Direct loss of habitat from hydrological alterations, wetland filling, livestock grazing, or conversion to other uses pose a threat to all 17 occupied habitat patches.

Five habitat patches were recently known to occur on private land within the urban boundary of the town of Sutherlin, but only two populations continue to exist, and they make up about 4.5 percent of the remaining occupied habitat. Since 1997, 34 percent of *P. hirtus* urban populations have been lost to development. Plant populations in both remaining sites have continued to decline in recent years (J. Kagan, pers. comm. 1995, 1997; Amsberry and Meinke 1997b).

Two sites were, at one time, a single large habitat patch of about 5 ha (13 ac) with about 300 to 500 plants growing in openings when discovered in 1983 (J. Kagan, pers. obs. 1983). By 1985, this site had fill dirt dumped in the wetlands, and a series of drainage ditches installed (John Gamon, Washington Natural Heritage Program and J. Kagan, pers. obs. 1985). As a result, the population was divided into two, with the second population occurring a few hundred feet from the first population, just south of a trailer park in a commercially viable vacant lot. In 1997, biologists estimated the total amount of habitat occupied by the 2 populations as 1 ha (2.5 ac). Additionally, in 1997 biologists observed survey markers at the sites, and both sites are frequently mown. A local resident indicated that the property was for sale and that unspecified development plans were being formulated (Kelly Amsberry, Oregon State University and R. Meinke, pers. obs. 1997). In 1998, one population was eliminated by grading and dumping with fill. The other population continues to exist, though only a few plants are left (K. Amsberry, pers. comm. 1998). It is likely that the drainage ditches are contributing to the loss of habitat by changing the hydrology of the sites.

The other existing urban population was found in 1983 with 60 to 100 plants. This undeveloped site is located adjacent to two highways in an area that is considered to be very valuable for commercial development. The population was estimated to have about 40 to 50 plants in 1997 (K. Amsberry and R. Meinke, pers. obs. 1997). The current owner plans to develop the site

eventually into a mall (Danny Lang, landowner, pers. comm. 1997).

A fourth population located in 1986 in a horse pasture with 30 to 40 *Plagiobothrys hirtus* plants no longer exists (J. Kagan, pers. obs. 1986). A visit in 1997 found that the site was now a housing development with a single *P. hirtus* plant residing in a vacant lot that was for sale (K. Amsberry, pers. obs. 1997). This last remaining plant was lost when developers constructed a new house in late 1997 or early 1998 (K. Amsberry, pers. comm. 1998).

A fifth urban population was also known to exist until recently. In 1983, J. Gamon and J. Kagan discovered the site which consisted of 100 to 500 plants in 1985. The presence of sewer and storm drains above ground level at that time suggested there were plans to fill the site by about 1.5 m (3 ft). Construction workers plowed or graded the site and, by 1997, only one plant remained (K. Amsberry and R. Meinke, pers. obs. 1997). In 1998, the remaining plant was lost due to development (K. Amsberry, pers. comm. 1998).

Ten occupied habitat patches are known from private land just south of the town of Sutherlin to just north of Wilbur. Three of these 10 populations (or 56 percent of the remaining occupied habitat) of *Plagiobothrys hirtus* occur on TNC lands, and have exhibited wide variations in numbers of plants over the recent past. The population on TNC land at Popcorn Swale demonstrated a particularly volatile pattern of change in abundance. TNC did their first count in 1995 and estimated more than 16,000 individuals. However, in 1996, the population plummeted to only 394 plants, a drop attributed to an extensive period of standing water on the preserve that year due to a wet spring (Almasi and Borgias 1996). In 1997, TNC estimated a population size of 3,630 individuals. These large fluctuations are not unexpected for a species with a primarily annual life cycle. The dramatic fluctuation over the period from 1995 to 1997 appears to correspond to the variation in spring season precipitation received and subsequent depth and duration of inundation observed on the preserve over that period (Darren Borgias, TNC, *in litt.* 1998). *P. hirtus* prefers shallow, seasonal pools in open grassland (Almasi and Borgias 1996), and all three populations are threatened by shading and competition by non-native and native shrubs and trees.

Four of the 10 *Plagiobothrys hirtus* populations on TNC land occur south of Sutherlin and make up about 21 percent of the remaining occupied habitat. Agricultural land conversion and livestock grazing have degraded the habitat of these populations. All four of these populations occur within fenced livestock pastures and are subjected to heavy grazing pressure (see Factor C).

The remaining 3 out of the 10 habitat patches south of Sutherlin account for approximately 3 percent of occupied habitat. Biologists have documented a decline over time at 1 site from 50 to 60 plants, to 10 to 20 plants. The other two sites tend to fluctuate in numbers. These three sites, as well as the TNC sites, are threatened by competition from invasion of non-native weedy vegetation and succession, which is causing a closure of the forest canopy (see Factor E).

Three other sites are known to occur outside of the town of Sutherlin. Two known habitat patches are located east of Sutherlin on private land. One site, about 2 ha (5.5 ac) in size, is by a road in an agricultural field and is estimated to be about 12.5 percent of the total remaining occupied habitat. The location of the site is in a wet depression in a hayfield. The hayfield was plowed and planted in grass hay, and biologists observed tractor tracks in the depression in which *Plagiobothrys hirtus* occurred after the grass hay was cut and baled. Cattle are turned out into the field in the fall. This population has at least 1,000 individual plants and is threatened by plowing, haying, and livestock grazing. The other site is much smaller, occupying less than 10 square meters (m^2) (108 square feet (ft^2)), and occurs in a seasonally wet roadside ditch along a private driveway. Only four or five individual plants occur at this site. Mowing and herbicide sprays threaten this population (K. Amsberry, pers. comm. 1998).

The third site is located west of Sutherlin, also in a roadside ditch, similar to the second population. This site contains a couple hundred plants, and site totals approximately 10 m^2 (108 ft^2). Threats to this population are also mowing and herbicide spraying.

The last two habitat patches, which contain about 3 percent of the occupied habitat, occur in a marshy area on public and private land about 22 km (14 mi) north of Sutherlin, near the town of Yoncalla. In 1983, the Oregon Department of Agriculture rediscovered the collection made in 1961 at this site (see "Background" section). About 200 plants were present in 1988 in 2 separate habitat patches. The northern patch is completely managed by ODOT. The southern patch is partially managed by ODOT, but a portion also occurs on private land. Overall, the population has continued to increase under management by ODOT. Although the population on public land appears vigorous, a portion of the population on the adjacent private land appears to have vanished (J. Kagan, pers. comm. 1997). The northern habitat patch contains 500 plants in a 2 by 20 m (6 by 65 ft) area (Amsberry and Meinke 1997b). The northern population appears stable; however, its small size and precarious location make predictions of its future stability risky (Amsberry and Meinke 1997b). Counts in 1997 estimated the number of plants in the southern patch to be 3,000 (Amsberry and Meinke 1997b).

Alterations in site hydrology pose the primary threat to the plants (R. Meinke, pers. comm. 1997). Right-of-way management also poses a threat to these two populations. For example, in early July of 1995, damage to the marked study plots of transplanted *Plagiobothrys hirtus* plants, established by the Oregon Department of Agriculture, occurred by ODOT maintenance activities. Inspection of the sites documented damage to the plants, revealing a near complete loss of all transplanted material and relevant plot location markers. The naturally occurring population received only superficial impacts (Nicholas Testa, ODOT, pers. comm. 1995). Since then ODOT has taken steps to prevent this situation from reoccurring (see "Available Conservation Measures" section and Factor D of this section for additional information).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* It is not known if the species is currently being collected. However, listing a species can precipitate commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection for both commercial and scientific purposes. Listing species as threatened or endangered publicizes their rarity and may make them more susceptible to collection or trampling by researchers or plant enthusiasts (Mariah Steenson, Portland Nursery, Inc., pers. comm. 1997; Mark Bosch, U.S. Forest Service, *in litt.* 1997). This species occurs in locations that are easily accessed by road, and the small population sizes make them vulnerable to overcollection by botanical enthusiasts.

Plagiobothrys hirtus is an attractive plant with flowers similar in appearance to forget-me-nots. The species is easily propagated in an artificial setting and transplanted. The species is conspicuous when in massed populations (Amsberry and Meinke 1997b). As a member of the

Boraginaceae, a family which contains numerous traditional medicinal herbs, *P. hirtus* could have pharmaceutical potential, though no research has been conducted on this subject (Amsberry and Meinke 1997b). The species may be sought for collection if its rarity and population locations become well known. Also, many species of *Plagiobothrys* look very much alike, and collectors could confuse *P. hirtus* with other more common *Plagiobothrys* species (Amsberry and Meinke 1997b). Most of the remaining populations of the species are so small that even limited collecting pressure could have significant adverse impacts.

Vandalism seems to be a potential threat for some populations. For example, after *Plagiobothrys hirtus* was listed as endangered by the State of Oregon, a landowner contacted the Oregon Division of State Lands to obtain a permit to develop the wetlands on his property to put in a small housing development. In processing his permit, the State informed the landowner of a *P. hirtus* population occupying that site. State-employed botanists contacted the landowner about protective measures for the population. The landowner allegedly responded by blading the site to level the swale the population was occupying and destroyed the population (J. Kagan, pers. comm. 1997).

Vandalism also occurred at a site near Sutherlin a few years ago. The Nature Conservancy informed a landowner of *Plagiobothrys hirtus* growing on his property and offered to purchase the property. The landowner declined the offer and dumped fill onto a portion of the population (J. Kagan, pers. comm. 1998).

C. *Disease or predation.* Past grazing has likely been a contributing factor to declining *Plagiobothrys hirtus* numbers throughout its historic range (Gamon and Kagan 1985). The timing and intensity of grazing are important factors in the effect of grazing on the plant. Livestock grazing during spring and early summer likely causes the most damage to this species. When herbivores eat the flower or seed head of the plant, the reproductive output for the year for that individual is destroyed. This activity may be more significant at sites where the species functions as an annual (Gamon and Kagan 1985). Biologists believe that sheep grazing may have been the main reason why at least two historical *P. hirtus* locations were extirpated.

Livestock graze in pastures containing four of the known habitat patches (Amsberry and Meinke 1997b). Currently, the grazing pressure is heavy at three of those sites, as evidenced by *Plagiobothrys hirtus* plants being restricted to bare ground between clumps of *Juncus* (Amsberry and Meinke 1997b). One site is grazed by horses, rather than by sheep or cattle, and the grazing pressure appears less intense than at the other sites as evidenced by larger, more vigorous patches of *P. hirtus* (Amsberry and Meinke 1997b).

However, where fires and flooding no longer occur, grazing may benefit the species. This species prefers open canopies and does not compete well with woody and non-native vegetation (Amsberry and Meinke 1997b). Fall grazing, in particular, may benefit the plant because it is dormant at this time and grazing can keep the habitat open by reducing the growth of weedy species (Gamon and Kagan 1985).

Herbivory due to small rodents has been observed on overwintering *Plagiobothrys hirtus* plants, but the long-term effects of this damage is not known (Amsberry and Meinke 1997b). This is particularly a problem in areas that have dense and overgrown vegetation. Amsberry and Meinke (1997b) documented aphids, which appear to prevent normal seed development and dispersal in some cases although rarely causing extensive damage, on scattered shoots and flowers. Amsberry and Meinke observed caterpillars on leaves and flowers of *P. hirtus*, but the effects are not believed to be significant (Amsberry and Meinke 1997b).

D. *Inadequacy of existing regulatory mechanisms.* Under the Oregon Endangered Species Act (ORS 564.100–564.135) and regulations (OAR 603, Division 73), the Oregon Department of Agriculture has listed *Plagiobothrys hirtus* as endangered (OAR 603–73–070). This statute prohibits the "take" of State-listed plants on State, county, and city owned or leased lands only. Most occurrences of *P. hirtus* occur on private land and are not subject to any current regulations. An occurrence adjacent to Interstate Highway 5, on lands managed by ODOT, was designated by the agency as a Special Management Area. The ODOT modified its mowing and spraying practices to protect the species at this site where the plant appears to be stable or increasing (N. Testa, pers. comm. 1997).

Section 404 of the Clean Water Act could provide some protection for *Plagiobothrys hirtus* under certain circumstances. Section 404 requires that a person proposing to discharge dredged or fill material into waters of the United States, including wetlands, must first obtain a permit from the U.S. Army Corps of Engineers (Corps). The Corps can deny or restrict such permits where necessary to prevent adverse effects on various resources, including water supplies, fisheries, and wildlife.

Section 404 is not, however, adequate to ensure protection of the wetland habitat upon which *Plagiobothrys hirtus* depends. First, section 404 does not regulate all discharges that may harm wetlands. Section 404 exempts from the permit requirement many farming, ranching, and silvicultural practices; construction of certain farm, forest and mining roads; construction of stock ponds and irrigation ditches; and several other activities. Second, section 404 does not regulate activities that may alter wetland habitats but do not involve discharges of dredged or fill material, such as application of herbicides or introduction of competing vegetation. Third, even where section 404 does apply, many activities are permitted by regulation under "nationwide permits" issued by the Corps (December 13, 1996; 61 FR 65873; 63 FR 36040). Under several of these nationwide permits, persons are allowed to fill wetlands without giving prior notice to the Corps, provided the fill is within certain volume or acreage limits. Many of the sites where *P. hirtus* occurs are small wetlands that could fall below these acreage limits. Section 404 would provide greater protection if *P. hirtus* were listed, because nationwide permits are not applicable where a discharge would jeopardize or adversely modify the critical habitat of a listed species (33 CFR 330.4(f)).

E. *Other natural or manmade factors affecting its continued existence.* Five of 10 existing habitat patches of *Plagiobothrys hirtus* occur adjacent to major highways (Interstate 5 and/or State Route 99), and another 2 populations occur in roadside ditches. Herbicide and pesticide spraying and mowing are often a part of routine maintenance of roadways. As with livestock grazing, mowing or pesticide spraying during the spring and summer have a direct effect by reducing seed set, which negatively affects populations of the species. Pesticides and herbicides have an indirect effect on the species because most *P. hirtus* plants rely on insect pollinators to reproduce, and these insect pollinators are vulnerable to pesticides and herbicides (Amsberry and Meinke 1997b). In addition, roadside occurrences are at risk of toxic chemical spills and runoff containing oil and grease (N. Testa, pers. comm. 1997). Vehicle accidents also increase the risk of fuel contamination or fire; such an accident recently occurred adjacent to the ODOT population, but

the species was not affected (N. Testa, pers. comm. 1997).

With the exception of the *Plagiobothrys hirtus* populations in ODOT's Special Management Area and TNC's Popcorn Swale, none of the roadside occurrences are protected from herbicide spraying, landscaping, or early season mowing. Herbicide spraying and mowing has affected and reduced at least one *P. hirtus* population (J. Kagan, pers. comm. 1995). A landowner at another known site reported that the ditch line along the State Route 99 has been sprayed 20 times or more in the last 28 years (James and Florence Klingler, landowners, *in litt.* 1998). Late season mowing has benefited the *P. hirtus* population at the ODOT site, probably by reducing competition from other plants and herbivory by voles (R. Meinke, pers. comm. 1997).

Encroachment by native and non-native plant species increases when natural processes like fire or flooding are altered (J. Kagan, pers. comm. 1997; R. Meinke, pers. comm. 1997). Invasion of vernal pools and wet areas by exotic grasses and herbs, as well as encroachment by native ash that increase shading, has caused the decline of this species in at least two populations. This taxon prefers full exposure to sun, and succession in some locations has increased shading by Oregon ash, willow (*Salix*), and the non-native common pear tree (*Pyrus*) (Amsberry and Meinke 1997b). In an experimental transplanting of this species into two sites on Bureau of Land Management (BLM) lands in 1998, the plants located in an open wet area did well, but the population planted in a wet area in shade died out, indicating that the species does not tolerate shading (K. Amsberry, pers. comm. 1998).

After a 1985 fire at one of the sites in Sutherlin, the plants responded the following year with vigorous growth (J. Kagan, pers. comm. 1997). As with late season grazing or mowing, late season fire is likely to be of benefit to the species by reducing encroaching vegetation. Fire occurring prior to seed set may have negative effects on *Plagiobothrys hirtus*. The encroachment of weedy, and especially woody, species may also alter site hydrology by capturing more of the available water, an alternative explanation for the dramatic collapse of the population at the TNC preserve between 1995 and 1996 (R. Meinke, pers. comm. 1997). The apparent population decline at another habitat patch may be due to trees shading much of the site (Amsberry and Meinke 1997b). However, the dramatic fluctuation in abundance, both up and down, appears to correspond more closely to dramatic annual fluctuation in precipitation and hydrology.

Because of the small, isolated nature of the occurrences and the few individuals present in most of them, *Plagiobothrys hirtus* is also more susceptible to random events, such as fires during the growing season, insect or disease outbreaks, or toxic chemical spills. The rapid, and as yet unexplained, collapse of the population at the TNC preserve argues for the protection of numerous patches to shield the species from random events that could cause the extinction of the species. Small, isolated populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. Currently, 58 percent or 9 of the habitat patches are less than 0.4 ha (1 ac). Only the Popcorn Swale population is greater than 4 ha (10 ac). The existence of both annual and perennial populations in *P. hirtus* suggests that some local genetic differentiation may already exist among populations of the species. Genetic drift within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Franklin 1980; Soulé 1980; Lande and Barrowclough 1987).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in developing this final rule. *Plagiobothrys hirtus* is imperiled by the filling of wetland habitat for development, livestock grazing, invasion by competitive plant species as a result of hydrological alteration and fire suppression, and roadside spraying and mowing, all of which continue to reduce plant numbers and habitat. The small, isolated occurrences, with few individuals, make the species more vulnerable to all threats. Much of the habitat where this species occurs is unprotected from these threats. In addition, continued decreases in the number of occurrences and individuals could result in decreased genetic variability. The varied and cumulative threats to *P. hirtus* indicate the species is in danger of extinction throughout its range and meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of *P. hirtus*, the preferred action is to list *P. hirtus* as endangered. Threatened status is not appropriate because all of the existing occurrences of *P. hirtus* are small, and 15 of 17 habitat patches have no protection from mowing, herbicide application, imminent urbanization, and grazing threats. In addition, one of the protected occurrences recently suffered a precipitous, and as yet unexplained, reduction in numbers.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (ii) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is prudent for the for the *Plagiobothrys hirtus*.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Plagiobothrys hirtus* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp.

2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Plagiobothrys hirtus* would be prudent.

Due to the small number of populations, *Plagiobothrys hirtus* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. We have examined the evidence available for *P. hirtus* and have found two documented cases of vandalism to two *P. hirtus* populations when the landowners were informed that the species occurred on their land (see factor B). No other specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species is available. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will further increase the degree of threat of taking or other human activity above that of the listing of the species. The two documented cases of vandalism occurred as a result of the listing of the species as endangered by the State of Oregon. We don't expect that a designation of critical habitat will increase the threat of taking by landowners since they are already aware of the species presence on their property.

In the absence of a finding that designation of critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat designation is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that designation of critical habitat is prudent for *Plagiobothrys hirtus*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Plagiobothrys hirtus* has allowed us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *Plagiobothrys hirtus* without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Plagiobothrys hirtus* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing can encourage and result in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

None of the known naturally occurring populations of *Plagiobothrys hirtus* occurs on Federal lands. Because *P. hirtus* occurs in wetlands, regulatory mechanisms under the Clean Water Act apply to this species. As part of our outreach efforts, we notify the Corps of known populations of *P. hirtus*.

Other Federal agencies' actions that may require consultation include the National Resource Conservation Service projects and Department of Housing and Urban Development and Veterans' Administration mortgage programs (Federal Home Administration loans). The Federal Highway Administration will become involved with *Plagiobothrys hirtus* when highway maintenance is funded, even in part, by the Federal government. Any State highway activity being implemented by ODOT that is partly funded by the

Federal government will be subject to consultation under the Act. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

Listing of this plant will provide for development of a recovery plan for the plant. Such a plan will bring together both State and Federal efforts for conservation of the plant. The plan will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities, assign responsibilities, and estimate costs of various tasks necessary to accomplish them. It will also describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to affected States for management actions promoting the protection and recovery of this species.

Five of the 17 habitat patches currently receive some protective management. Two patches are owned and managed by ODOT and are conserved under State law. The ODOT physically delineated the sites with plastic markers and signs designating them as Special Management Areas (Amsberry and Meinke 1997b). Mowing is restricted to late in the fall when *Plagiobothrys hirtus* is dormant (N. Testa, pers. comm. 1997). Three patches are in private, protective ownership, owned and managed by TNC. These patches, which currently contain about 3,630 individual plants, are being actively managed for the protection and development of *P. hirtus* habitat (Almasi and Borgias 1996) by reducing grazing of sites and eliminating exotic vegetation. The Nature Conservancy and ODOT have initiated monitoring, life history studies, and transplantation experiments using field-collected seed within these five habitat patches. The objectives of these efforts are to increase population sizes, and establish protocols for seed collection, greenhouse propagation, and transplantation techniques (Amsberry and Meinke 1997b).

During the spring of 1998, we assisted the BLM with experimental introductions using 1,000 greenhouse-grown plants that were planted at 2 different sites on BLM lands in suitable wetland habitats. We established the plants on an upland soil type with which *Plagiobothrys hirtus* is not typically associated and in an area that is outside the historic range of the species. One of these populations did well following the transplanting (K. Amsberry, pers. comm. 1998), but the plants need to persist for at least five years before the transplant can be considered a success. During the fall of 1998, the site was found to be under about 0.6 m (2 ft) of water, so the plantings may not survive. Two other transplants occurred at sites on ODOT and TNC properties into established populations to augment them.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

As published on July 1, 1994 (59 FR 34272), our policy is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Collection, damage, or destruction of this species on Federal land is prohibited, although in appropriate cases, we may issue a Federal endangered species permit for scientific or recovery purposes. We believe that, based upon the best available information, you can take the following actions without resulting in a violation of section 9, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, wetland modification; powerline construction, maintenance, and improvement; highway construction, maintenance, and improvement; and permits for mineral exploration and mining) when such activity is conducted in accordance with any reasonable and prudent measures given by us according to section 7 of the Act.

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(3) Normal landscape activities around your own personal residence.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal land if conducted in knowing violation of Oregon State law or regulations or in violation of State criminal trespass law.

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the State Supervisor of the Oregon State Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations concerning listed plants and animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance

number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

References Cited

A complete list of all references cited herein is available upon request from the Oregon State Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Flowering plants							
*	*	*	*	*	*		*
Plagiobothrys hirtus.	Rough popcornflower	U.S.A. (OR)	Boraginaceae	E	676	NA	NA
*	*	*	*	*	*		*

Dated: November 30, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–1562 Filed 1–24–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE53

Endangered and Threatened Wildlife and Plants; Endangered Status for "Erigeron decumbens" var. "decumbens" (Willamette Daisy) and Fender's Blue Butterfly ("Icaricia icarioides fenderi") and Threatened Status for "Lupinus sulphureus" ssp. "kincaidii" (Kincaid's Lupine)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service ("Service" or "we") determines endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for a plant and a butterfly, *Erigeron decumbens* var. *decumbens* (Willamette daisy) and Fender's blue butterfly (*Icaricia icarioides fenderi*), and determines threatened status for a plant, *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine). These species are restricted primarily to native prairie in the Willamette Valley of Oregon and are known currently from a few small remnants of a formerly widespread distribution. In addition to its Oregon occurrences, *L. sulphureus* ssp. *kincaidii* is known also from two small sites in southern Washington. Commercial and/or residential development, agriculture, silvicultural practices, road improvement, over-collection, herbicide use, and naturally occurring demographic and random environmental events threaten these three taxa. This final rule invokes the Federal protection and recovery provisions of the Act, as applicable for these plant and butterfly species.

EFFECTIVE DATES: February 24, 2000.

ADDRESSES: You may inspect the complete file for this rule, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Ave, Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr., Botanist; or Diana Hwang, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** section or telephone 503–231–6179, Facsimile 503–231–6195).

SUPPLEMENTARY INFORMATION:

Background

Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) are restricted primarily to the Willamette Valley of Oregon. The valley is a 209-kilometer (km) (130 miles (mi)) long and 32–64-km (20–40-mi) wide alluvial floodplain with an overall northward gradient (Orr *et al.* 1992). The valley is narrow and flat at its southern end, widening and becoming hilly near its northern end at the confluence of the Willamette and Columbia Rivers. We know of four sites containing *L. sulphureus* ssp. *kincaidii* approximately 60 km (38 mi) south of the Willamette Valley and within the Umpqua Valley of Douglas County, Oregon. In addition to its Oregon occurrences, *L. sulphureus* ssp. *kincaidii* is known from two small sites in Lewis County, southern Washington, 70 km (40 mi) north of the Willamette Valley.

The alluvial soils of the Willamette Valley and southern Washington host a mosaic of grassland, woodland, and forest communities. Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* occupy native grassland habitats within the Willamette Valley. Based on the limited available evidence, most Willamette Valley grasslands are early seral (one stage in a sequential

progression) habitats, requiring natural or human-induced disturbance for their maintenance (Franklin and Dryness 1973). The vast majority of Willamette Valley grasslands would likely be forested if left undisturbed (Johannessen *et al.* 1971). Important exceptions to this successional pattern are grass balds on valley hillsides that may be climax grasslands due to the presence of deep, fine-textured, self-mulching soils or xeric (very dry) lithosoils (Franklin and Dryness 1973).

Two native prairie types occur in the Willamette Valley, wet prairie and upland prairie. Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* are typically found in native upland prairie with the dominant species being *Festuca rubra* (red fescue) and/or *Festuca idahoensis* (Idaho fescue) and *Calochortus tolmiei* (Tolmie's mariposa), *Silene hookeri* (Hooker's catchfly), *Fragaria virginiana* (broadpetal strawberry), *Sidalcea virgata* (rose check-mallow), and *Lomatium* spp. (common lomatium) serving as herbaceous indicator species (Hammond and Wilson 1993). These dry, fescue prairies make up the majority of habitat for Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii*. Although Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* are occasionally found on steep, south-facing slopes and barren rocky cliffs, neither of these species are capable of occupying the most xeric oatgrass communities on these south-facing slopes.

The primary habitat for *Erigeron decumbens* var. *decumbens is native wetland prairie*. This habitat is characterized by the seasonally wet *Deschampsia caespitosa* (tufted hairgrass) community that occurs in low, flat regions of the Willamette Valley where flooding creates anaerobic and strongly reducing soil conditions. This wet prairie community includes *Juncus* spp. (rush) and *Danthonia californica* (California oatgrass) as co-dominant native species, as well as the introduced species *Festuca arundinaceae* (tall fescue), *Bromus japonicus* (Japanese brome) and *Anthoxanthum odoratum* (sweet vernal grass) (USFWS 1993). Another endangered species, *Lomatium bradshawii* (Bradshaw's lomatium) also grows in wet prairie habitat. Atypically, two populations of *E. decumbens* var. *decumbens* occur on top of a dry, stony butte in an upland prairie.

The impact of humans on the botanical communities of the Willamette Valley dates back several centuries to the Kalapooya Indians, who cleared and burned lands used for hunting and food gathering. Early accounts by David Douglas in 1826 indicate extensive burning of the valley floor, from its northern end at the falls of the Willamette River to its southern extremities near Eugene. Burned areas were documented by Douglas as being so complete as to limit the forage available for his horse and to reduce game availability (Douglas 1972). Accounts by other early explorers support Douglas' observations and suggest a pattern of annual burning by the Kalapooya resulted in the maintenance of extensive wet and dry prairie grasslands (Johannessen *et al.* 1971). Although much of the woody vegetation was prevented from becoming established on the grasslands by this treatment, the random survival of young fire-resistant species such as *Quercus garryana* (Oregon white oak) accounted for the widely spaced trees on the margins of the valley (Habeck 1961). After 1848, burning decreased sharply through the efforts of settlers to suppress large-scale fires. Consequently, the open, park-like nature of the valley floor was lost, replaced by agricultural fields, dense oak and fir forests, and scrub lands following logging.

The Willamette basin covers approximately 2,600,000 hectares (ha) (6,400,000 acres (ac)), which Lang (1885) estimated to consist of one-sixth prairie and five-sixths forest. We can analyze the extent of the prairie component through historical information from land survey records. Natural grasslands described by Federal land surveyors in the 1850s were broken down into three distinct types—oak savannah, upland prairie, and wet prairie (Habeck 1961). Of the estimated 409,000 ha (1,010,000 ac) of historic native grasslands extant prior to 1850, approximately 277,000 ha (685,000 ac) appears to have consisted of upland prairie and 132,000 ha (325,000 ac) of wet prairie (E. Alverson, The Nature Conservancy, Eugene, pers. comm., 1994).

This extensive resource was rapidly depleted through the conversion of native prairie to agricultural use during European settlement. Within 30 years of passage of the Donation Land Act of 1850, European-American settlers, who quickly subdivided their original land grants to accommodate the rapid increase in population, occupied most prairie lands (Lang 1885). Settlers first plowed the level, open tracts of prairie (Lang 1885) and only boggy, flood-prone areas prevented complete conversion of the native grassland community to cropped monocultures. After 1936, the U.S. Army Corps of Engineers (Corps) overcame limitations on development that had been imposed by seasonal flooding and a high water table by initiating water projects to provide flood control and security for expanded agricultural activity.

Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* likely once occurred over a large distribution throughout the historic native prairie. Native prairie vegetation in the Willamette Valley was decimated by the rapid expansion of agriculture during the 140-year period from the 1850s to the present. Humans also began suppressing the fire disturbance regime on native prairie habitat. Fire suppression allowed shrub and tree species to overtake grasslands, while agricultural practices hastened the decline of native prairie species through habitat loss and increased grazing (Johannessen *et al.* 1971; Franklin and Dyrness 1973). Fence rows and intervening strips of land along agricultural fields and roadsides served as the only refugia from these forces of change.

Although large prairie expanses dominated by native species had been lost by the early 1900's, many remnant grasslands with a large native species component have been recently identified. These remnants, often dominated by nonnative species, also support the only remaining occurrences of native prairie species in the Willamette Valley. Current estimates of the remaining native upland prairie in the Willamette Valley are less than 400 ha (988 ac) (Alverson, pers. comm. 1994). This estimate represents only one-tenth of one percent of the original upland prairie once available to Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii*. Fender's blue butterfly and/or *L. sulphureus* ssp. *kincaidii* and/or *Erigeron decumbens* var. *decumbens* currently occupy slightly more than one-half of this upland prairie habitat (62 sites, 210 ha (112.8 ac)). Within the remnant prairie habitat, *E. decumbens* var. *decumbens* occupies 28 sites across 116 ha (286 ac), *L. sulphureus* ssp. *kincaidii* occupies 54 sites across 158 ha (370 ac), while Fender's blue butterfly occupies 32 sites across 165 ha (408 ac). Similar losses have occurred for wet prairie habitats, but estimates of current acreage are not available.

Fender's Blue Butterfly

Fender's blue butterfly is one of about a dozen subspecies of Boisduval's blue butterfly (*Icaricia icariodes*). *Icaricia icarioides* is found in western North America; subspecies *fenderi* is restricted to the Willamette Valley (Dornfeld 1980;

R. H. T. Mattoni, University of California, pers. comm. to C. Nagano 1997; J. Emmel, Hemet, California, pers. comm. to C. Nagano 1997). Fender's blue butterfly was described by Ralph W. Macey (1931) as *Plebejus maricopa fenderi* based on specimens he had collected in Yamhill County, Oregon. The species *maricopa* is currently considered to be a synonym of the species *icarioides* (Miller and Brown 1981). The species *icaricia* has been determined to be a member of the genus *Icaricia*, rather than the genus *Plebejus* (Miller and Brown 1981; R. H. T. Mattoni, pers. comm. to C. Nagano 1997). Some researchers considered subspecies *fenderi* to be a synonym of the pardalis blue butterfly (*Icaricia icarioides pardalis*), an inhabitant of the central California Coast Range near San Francisco (Downey 1975; Miller and Brown 1981). We consider Fender's blue butterfly as a distinct taxon based on adult characters and geographic distribution (Dornfeld 1980; Hammond and Wilson 1993; R. H. T. Mattoni and J. Emmel, pers. comm. to C. Nagano 1997).

Fender's blue butterfly is small with a wingspan of approximately 2.5 centimeters (cm) (1 inch (in)). The upper wings of the males are brilliant blue in color, and the borders and basal areas are black. The upper wings of the females are completely brown colored. The undersides of the wings of both sexes are creamish tan, with black spots surrounded with a fine white border or halo. The dark spots on the underwings of male Fender's blue butterflies are small. In contrast, the dark spots on the underwings of the pembina blue butterfly (*Icaricia icariodes pembina*) are surrounded with wide white haloes, and the underside of the hindwings of Boisduval's blue butterfly (*Icaricia icariodes*) is very pale whitish gray with broad haloes around the black spots.

We do not know the precise historic distribution of Fender's blue butterfly due to the limited information collected on this subspecies prior to its description in 1931 (Macy 1931). Although Ralph W. Macy collected the type specimens for this butterfly in 1929, only a limited number of collections were made between the time of the subspecies' discovery and Macy's last observation on May 23, 1937, in Benton County, Oregon (Hammond and Wilson 1992a). A lack of information on the identity of the butterfly's host plant caused researchers to focus their survey efforts on common lupine species known to occur in the vicinity of Macy's collections. As a result, no Fender's blue butterflies were observed during 20 years of widespread investigation. Finally, Dr. Paul Hammond rediscovered Fender's blue butterfly in 1989 at McDonald Forest, Benton County, Oregon, on an uncommon species of lupine, *Lupinus sulphureus* ssp. *kincaidii*. Recent surveys have indicated that the insect is confined to the Willamette Valley and currently occupies 32 sites in Yamhill, Polk, Benton, and Lane Counties (Hammond and Wilson 1993; Schultz 1996). One population at Willow Creek is found in wet, *Deschampsia*-type prairie, while the remaining sites are found on drier upland prairies characterized by *Festuca* spp. Fender's blue butterflies occupy sites located almost exclusively on the western side of the valley, within 33 km (21 mi) of the Willamette River.

Although researchers have made only limited observations of the early life stages of Fender's blue butterfly, the life cycle of the species likely is similar to other subspecies of *Icaricia icarioides* (R. H. T. Mattoni, pers. comm. to C. Nagano 1997; G. Pratt, Riverside, California, pers. comm. to C. Nagano 1997; Hammond and Wilson 1993). Adult butterflies lay their eggs on perennial *Lupinus* sp. (Ballmer and Pratt 1988), the food plant of the caterpillar during May and June. Newly hatched larvae feed for a short time, reaching their second instar in the early summer, at which point they enter an extended diapause (maintaining a state of suspended activity). Diapausing larvae remain in the leaf litter at or near the base of the host plant through the fall and winter and may become active again in March or April of the following year. Some larvae may be able to extend diapause for more than one season depending upon the individual and environmental conditions (R. H. T. Mattoni pers. comm. to C. Nagano 1997). Once diapause is broken, the larvae feed and grow through three to four additional instars, enter their pupal stage, and then emerge as adult butterflies in April and May. Behavioral observations of Fender's blue butterfly indicate the larvae are alert to potential predators, with individuals dropping from their feeding position on lupine leaves to the base of the plant at the slightest sign of disturbance (C. Schultz, University of Washington, pers. comm. 1994). A Fender's blue butterfly may complete its life cycle in 1 year.

The larvae of many species of lycaenid butterflies, including *Icaricia icarioides*, possess specialized glands that secrete a sweet solution sought by some ant species who may actively "tend" and protect them from predators and parasites (Ballmer and Pratt 1988; G. Pratt, pers. comm. to C. Nagano 1997). Although ants tend other subspecies of Boisduval's blue butterfly during their larval stage (Downey 1962, 1975; Thomas Reid Associates 1982; R. H. T. Mattoni and G. Pratt, pers. comm. to C. Nagano 1997), limited observations of Fender's blue butterfly larvae in the field have failed to document such a mutualistic association (Hammond 1994). However, this situation may be due to the nocturnal activity patterns of the *Icaricia icarioides* larvae, because it appears that this species has an obligate relationship with ants (G. Pratt, pers. comm. to C. Nagano 1997). Schultz (pers. comm. 1994) has observed nonnative Argentine ants (*Iridomyrmex humilis*) tending Fender's blue butterfly larvae during indoor rearing trials.

Of the 32 sites where Fender's blue butterfly occurs, *Lupinus sulphureus* ssp. *kincaidii* co-occurs as a larval host plant at 27 of these. The near absence of the Fender's blue butterfly at sites without *Lupinus sulphureus* ssp. *kincaidii* suggests that *L. laxiflorus* (spurred lupine) and *L. albicaulis* (sickle keeled lupine) may be secondary food plants used by the insect (Hammond and Wilson 1993). Occurrences where Fender's blue butterfly apparently does not rely on *L. sulphureus* ssp. *kincaidii* as its primary host plant have been noted at Coburg Ridge where *L. laxiflorus* is the sole host plant across greater than 95 percent of the site (Schultz in litt. 1998), two other sites where *L. laxiflorus* is the primary food plant (Schultz 1996), and an additional two sites where *L. laxiflorus* co-occurs with *L. sulphureus* ssp. *kincaidii* (Hammond and Wilson 1993). Fender's blue butterfly also occupies six sites where *L. albicaulis* is the primary food plant; however, the butterfly is declining at two of these sites.

At this time we have no information to suggest that *Lupinus albicaulis* and/or *L. laxiflorus* are inferior host plants either physically or biochemically, or that the oviposition behavior of the Fender's blue butterfly prefers *L. sulphureus* ssp. *kincaidii*. It is possible that the co-occurrence of these two species is due to environmental factors favoring *L. sulphureus* ssp. *kincaidii* that also favor Fender's blue butterfly. However, this phenomenon of food plant specificity has been documented in other species of butterflies and moths (Longcore *et al.* 1997). We may say, however, that at the majority of sites where Fender's blue butterfly occurs, *L. sulphureus* ssp. *kincaidii* serves as the sole source for larval food and oviposition sites and native wildflowers for adult nectar. Research in collaboration with Katrina Dlugosh (Schultz *in litt.* 1998) indicates that native wildflowers in the Willamette

Valley prairies provide more nectar than nonnative flowers and that Fender's blue butterfly population density is positively correlated with the density of native wildflowers. In Lane County, key native flowers include *Allium amplectans*, *Calachortus tolmiei*, *Camassia quamash*, *Eriophyllum lanatum*, and *Sidalcea virgata* (Schultz *in litt.* 1998).

Lupinus Sulphureus ssp. Kincaidii

In 1924, C.P. Smith first described *Lupinus sulphureus* ssp. *kincaidii* as *L. oreganus* var. *kincaidii* from a collection made in Corvallis, Oregon (Kuykendall and Kaye 1993a). Phillips (1955) transferred the taxon to a subspecies status as *L. sulphureus* ssp. *kincaidii*. Hitchcock *et al.* (1961) retained the position noted by Phillips (1955), but preferred the combination as a varietal rank, *L. sulphureus* var. *kincaidii*.

Lupinus sulphureus ssp. *kincaidii* occupies 48 sites throughout the Willamette Valley. Four sites are in the Umpqua Valley of Douglas County, Oregon, and two sites are in southern Washington. The latitudinal range of the 54 sites of *L. sulphureus* ssp. *kincaidii* spans from Lewis County, Washington, south to Douglas County, Oregon, and a distance of 400 km (320 mi). This distribution implies a close association with native upland prairie sites that are characterized by heavier soils with mesic to slightly xeric soil moisture levels. At the southern limit of its range, the subspecies occurs on well-developed soils adjacent to serpentine outcrops where the plant is often found under scattered oaks (Kuykendall and Kaye 1993a).

Lupinus sulphureus ssp. *kincaidii* is easily distinguished from other sympatric members of the genus *Lupinus* with its low-growing habit and unbranched inflorescence. Its aromatic flowers have a slightly reflexed, distinctly ruffled banner, and are yellowish-cream colored, often showing shades of blue on the keel. The upper calyx lip is short, yet not obscured by the reflexed banner when viewed from above. The leaflets tend to a deep green with an upper surface that is often glabrous (smooth). The plants are 4 to 8 decimeters (dm) (16 to 32 in) tall, with single to multiple unbranched flowering stems and basal leaves that remain after flowering (Kuykendall and Kaye 1993a).

Lupinus sulphureus ssp. *kincaidii* is a long-lived perennial species, with a maximum reported age of 25 years (M. Wilson, Oregon State University, *in litt.*, 1993). Individual plants are capable of spreading by rhizomes (horizontal stems), producing clumps of plants exceeding 20 meters (m) (66 feet (ft)) in diameter (P. Hammond, independent consultant, pers. comm. 1994). The long rhizomes do not produce adventitious roots (secondary roots growing from stem tissue), apparently do not separate from the parent clump, and the clumps may be short-lived, regularly dying back to the crown (Kuykendall and Kaye 1993a). *L. sulphureus* ssp. *kincaidii* is pollinated by solitary bees and flies (P. Hammond, pers. comm. 1994). Seed set and seed production are low, with few (but variable) numbers of flowers producing fruit from year to year, and each fruit containing an average of 0.3–1.8 seeds (Liston *et al.* 1994). Seeds are dispersed from fruits that open explosively upon drying.

Erigeron Decumbens var. Decumbens

Thomas Nuttall (1840) based his description of *Erigeron decumbens* on a specimen he collected in the summer of 1835. The autonym *E. decumbens* var. *decumbens* was automatically established by Cronquist (1947) when he described *E. decumbens* var. *robustior*. Recent revisions of the *Erigeron* genus (Strother and Ferlatte 1988, Nesom 1989) treat the plant as a variety, *E. decumbens* var. *decumbens*.

According to Strother and Ferlatte (1988), *Erigeron decumbens* var. *decumbens* is geographically limited to the Willamette Valley and the morphologically similar *E. decumbens* var. *robustior* is restricted to Humboldt and western Trinity Counties, California. Intermediate specimens of *Erigeron* from southern Oregon are considered by Strother and Ferlatte (1988) to be robust specimens of *E. eatonii* var. *plantagineus*.

Clark *et al.* (1993) reviewed herbarium specimens and found a historical distribution of *Erigeron decumbens* var. *decumbens* throughout the Willamette Valley. He found frequent collections from the period between 1881 and 1934, yet no collections or observations from 1934 to 1980 (Clark *et al.* 1993). The species was rediscovered in 1980 in Lane County, Oregon, and has since been identified at 28 sites in Polk, Marion, Linn, Benton, and Lane Counties, Oregon. With only 28 occurrences and 116 ha (286 ac) of occupied habitat, *E. decumbens* var. *decumbens* has the most restricted range of the species being listed herein.

Erigeron decumbens var. *decumbens* is a perennial herb, 15 to 60 mm (0.6 to 2.4 in) tall, with erect to sometimes prostrate stems at the base. The basal leaves often wither prior to flowering and are mostly linear, 5 to 12 cm (2 to 5 in) long and 3 to 4 mm (0.1 to 0.2 in) wide. Flowering stems produce two to five heads, each of which is daisy-like, with pinkish to pale blue ray flowers and yellow disk flowers. Ray flowers often fade to white with age (Siddall and Chambers 1978). The morphologically similar *E. eatonii* occurs east of the Cascade Mountains, while the sympatric species *Aster hallii* flowers later in the summer. In its vegetative state, *Erigeron decumbens* var. *decumbens* can be confused with *A. hallii*, but close examination reveals the reddish stems of *A. hallii* in contrast to the green stems of *E. decumbens* var. *decumbens* (Clark *et al.* 1993).

As with many species in the family Asteraceae, *Erigeron decumbens* var. *decumbens* produces large quantities of wind-dispersed seed. Flowering typically occurs in June and July with pollination carried out by syphrid flies and solitary bees. Seeds are released in July and August. Although the seeds are wind-dispersed, the short stature of this species likely prevents the long-distance travel of many of these seeds. *Erigeron decumbens* var. *decumbens* is capable of vegetative spreading and is commonly found in large clumps scattered throughout a site (Clark *et al.* 1993).

Previous Federal Action

Erigeron decumbens var. *decumbens* was initially included as a category 2 candidate in a Notice of Review (NOR) published by us on December 15, 1980 (45 FR 82506). At that time, category 2 candidates were those species for which we had information indicating that listing may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. On November 28, 1983, we published an NOR upgrading this species to category 1 status (48 FR 53649). At that time, category 1 taxa were those for which we had sufficient data to support preparation of listing proposals. Subsequently, *E. decumbens* var. *decumbens* was reassigned category 2 candidacy in an NOR published on September 27, 1985 (50 FR 39527). On February 21, 1990, we published an NOR (55 FR 6202) that reinstated *E. decumbens* var. *decumbens* as a category 1 candidate and also designated *Lupinus sulphureus* ssp. *kincaidii* as a category 2 candidate (55 FR 6121). We published an NOR on February 28, 1996 (61 FR 7596), which updated the candidate species list and discontinued the use of categories. *Erigeron decumbens* var. *decumbens* was retained as a candidate species (a candidate was defined as any taxa meeting the definition of former category 1 species). *Lupinus sulphureus* ssp. *kincaidii* and other former category 2 candidates were not retained as

candidates. Since that NOR was published, we have reevaluated the available information and determined that listing is warranted for *L. sulphureus* ssp. *kincaidii*.

Fender's blue butterfly was initially assigned to category 3A taxa in the NOR published on January 6, 1989 (54 FR 572). The best available information at that time indicated that this butterfly was likely extinct because the subspecies had last been observed in 1937. Category 3A taxa were taxa for which we had pervasive evidence of extinction, however, if rediscovered, such taxa might be reconsidered for listing. The rediscovery of this butterfly in May 1989 prompted us to change the status of the subspecies to a category 2 candidate in the NOR published on November 21, 1991 (56 FR 58830). In the NOR published on February 28, 1996 (61 FR 7596), we retained Fender's blue butterfly as a candidate for listing. On January 27, 1998, we published a proposed rule (63 FR 3863) to list the Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) under the Act.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

Summary of Comments and Recommendations

In the January 27, 1998, proposed rule (63 FR 3863) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. Appropriate State agencies, county governments, city governments, Federal agencies, scientific organizations, private landowners, industrial landowners and other interested parties were contacted and requested to comment. Newspaper notices inviting public comments were published in the *Oregonian* on February 25–27, 1998, and the *Eugene Register Guard* on February 26–27, 1998. Following the publication of the proposed rule, we received 29 written comments during the comment period.

Five commenters opposed, and 24 favored the listing of *Erigeron decumbens* var. *decumbens* and *Icaricia icarioides fenderi* as endangered and *Lupinus sulphureus* ssp. *kincaidii* as threatened. Several commenters provided information on the status of, and threats to, various populations of *Erigeron decumbens* var. *decumbens*, *Icaricia icarioides fenderi*, and *Lupinus sulphureus* ssp. *kincaidii* that updated the information presented in the proposed rule. We incorporated that information into the Background and Summary of Factors Affecting the Species sections of this final rule, and we took it into consideration in the listing determination. We grouped comments questioning or opposing the proposed rule into issues that are discussed below.

Issue 1: One commenter stated that the information presented in the proposed rule was not accurate for his area and raised questions regarding the accuracy of data in other areas.

Our Response: We reviewed all the data concerning information regarding the area in question. On March 10, 1998, we sent three detailed maps depicting the location of *Lupinus sulphureus* ssp. *kincaidii* at the site and information we had on this locality to the commenter. These maps showed the historical locations of butterflies and *L. sulphureus* ssp. *kincaidii* in the area in question.

In our letter to the landowner, we sought clarification on the status of the population that is/was apparently on the commenter's land. Upon receipt of the letter, the landowner called us and informed us that he did not know the status of the population in question but could check later that summer.

On November 24, 1998, we contacted the landowner. The landowner informed us that a fence in the area where *Lupinus sulphureus* ssp. *kincaidii* occurred had been moved approximately 15 feet north. The area between the old fence and the new fence where *L. sulphureus* ssp. *kincaidii* had occurred was plowed. However, he thought that a couple *L. sulphureus* ssp. *kincaidii* plants occurred along the new fenceline but that the tall grass would probably eliminate them very shortly.

Issue 2: Two commenters opposed listing the Fender's blue butterfly because the butterfly has 360 acres to live on and all food they need if *Lupinus sulphureus* ssp. *kincaidii* is protected by listing.

Our Response: About 30 percent of the Fender's blue butterfly occurs at seven sites across 52 ha (128 ac) of habitat where *Lupinus sulphureus* ssp. *kincaidii* is not present and thus a substantial portion of the butterflies would not be protected by listing the plant. Although one purpose of the Act is to conserve ecosystems upon which endangered and threatened species depend, its listing provisions apply only to species rather than ecosystems (16 U.S.C. 1533).

Issue 3: Two commenters opposed the listing of the three species because it was not stated how much of the 2,600,000 ha (6,400,000 ac) of the Willamette Basin would be affected by this listing action. Commenters expressed concern that farm acreage would be taken out of production through this listing action and farm profits would be lost.

Our Response: The listing of the two plants and the butterfly will impact only those habitat hectares (acres) currently occupied by the species. Within this available habitat, *Erigeron decumbens* var. *decumbens* occupies 28 sites across 116 ha (286 ac), *L. sulphureus* ssp. *kincaidii* occupies 54 sites across 158 ha (370 ac), while Fender's blue butterfly occupies 32 sites across 165 ha (408 ac). The Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* co-occur at 25 sites across 113 ha (279 ac), and the *E. decumbens* var. *decumbens* co-occurs with both the butterfly and *L. sulphureus* ssp. *kincaidii* on 1 upland site across 49.5 ha (122 ac). Thus, the total area that would be impacted by the listing of these three species is 276 ha (684 ac), not 2,600,000 ha (6,400,000 ac).

Recovery planning for the species may include recommendations for land acquisition or easements involving private landowners. Some of these areas may be unoccupied prairie habitat. These efforts would be undertaken only with the voluntary cooperation of the landowner. In the majority of cases, private landowners are not prevented from using their land in the manner originally intended. Within the Willamette Valley wetland prairies, there are 26 sites across 116 ha (286 ac) where *Erigeron decumbens* var. *decumbens* occurs and that would require Federal regulatory agencies,

primarily the Corps, to ensure that certain actions on these sites, including the issuance of wetland permits under section 404 of the Clean Water Act, are not likely to jeopardize the continued existence of this species. In some cases, the Corps may require that private landowners who apply for permits reduce the scope or extent of their proposed fill project if the fill would adversely affect *E. decumbens* var. *decumbens*.

Landowners will be able to use occupied Fender's blue butterfly habitat (165 ha (407 ac)) as long as the use does not involve the take of the butterfly. The Act and its implementing regulations set forth a series of prohibitions and exceptions that apply to endangered wildlife, including prohibition of take (16 U.S.C. 1538). Take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these (16 U.S.C. 1532). Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. If certain requirements are met, these permits are available for incidental take in connection with otherwise lawful activities.

Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, require that a Taking Implication Assessment (TIA) be conducted "as a part of the final rulemaking to evaluate the risk of and strategies for avoidance of the taking of private property." However, the Attorney General's guidelines state that TIAs used to analyze the potential for Fifth Amendment "taking claims" are to be prepared after, rather than before, an agency makes a restricted discretionary decision. In enacting the Act, Congress required the Department to list a species based solely upon scientific and commercial data indicating whether or not the species is in danger of extinction. We may not withhold a listing based upon economic concerns. Therefore, even though a TIA may be required, a TIA for a listing action is finalized only after the final determination is made regarding whether to list the species.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding pertinent scientific or commercial biological and ecological data for *Erigeron decumbens* var. *decumbens*, Fenders blue butterfly, and *Lupinus sulphureus* ssp. *kincaidii*. We solicit such a review to ensure that listing decisions are based upon scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

Comments provided by Cathy L. Maxwell, Dr. Robert Michael Pyle, Cheryl B. Schultz, and Dr. Mark Wilson, Associate Professor of Botany and Plant Pathology at Oregon State University were incorporated into the final rule. Cathy L. Maxwell; Dr. Robert Michael Pyle; Cheryl B. Schultz; Dr. Mark Wilson; David Brittell, Assistant Director, Wildlife Management Program, Washington Department of Fish and Wildlife; and Diane S. Doss, Conservation Chair, Washington Native Plant Society, supported our position that *Erigeron decumbens* var. *decumbens* and Fender's blue butterfly were endangered and *Lupinus sulphureus* ssp. *kincaidii* was threatened throughout their limited range in the Willamette Valley of western Oregon and Boistfort Valley, Lewis County, Washington.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Fender's blue butterfly (*Icaricia icarioides fenderi), Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Over the last 140 years, humans have extensively altered native prairie in the Willamette Valley (see Background section of this final rule), which has resulted in a loss of greater than 99 percent of the only known habitat area for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* (E. Alverson, pers. comm. 1994).

Within the 88 remnants of native prairie occupied by these species in the Willamette Valley, the Fender's blue butterfly occurs at 32 sites (Hammond and Wilson 1993, Schultz 1996), *Lupinus sulphureus* ssp. *kincaidii* occurs at 54 sites (Kuykendall and Kaye 1993a), and *Erigeron decumbens* var. *decumbens* occurs at 28 sites (Clark *et al.* 1993). Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* are found in close association, occurring together at a total of 26 sites. *Erigeron decumbens* var. *decumbens* co-occurs with *L. sulphureus* ssp. *kincaidii* at only one site and with Fender's blue butterfly at only this same site, Baskett Butte. Typically these sites are small, with extirpation likely in the near future. Activities that destroy, modify, or curtail the habitat of *L. sulphureus* ssp. *kincaidii, E. decumbens* var. *decumbens*, and Fender's blue butterfly are discussed below.

The immediacy of the threat of habitat loss in the last remaining 88 remnants of native prairie occupied by these species has been well documented. Habitat at 80 percent of the sites (68 sites) is rapidly disappearing due to agriculture practices, development activities, forestry practices, grazing, roadside maintenance, and commercial Christmas tree farming.

Agricultural Activities

Agricultural activities likely impact at least 12 prairie remnants. Five of these remnants are wetland prairies occupied by *Erigeron decumbens* var. *decumbens*, seven are upland prairies of which six are occupied by *Lupinus sulphureus* ssp. *kincaidii*, and two are occupied by Fender's blue butterfly. In one case, a wheat field boundary adjustment near Buell in Polk County (Mill Creek Road South) is likely to lead to loss of a population of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* (Hammond 1994). By 1996, this boundary adjustment was impiemented with a diminished population of *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly still present. No Fender's blue butterflies, however, were observed at this site in 1997 (Hammond, pers. comm. 1997). The majority of the habitat supporting populations of each of these species are habitat remnants, such as small habitat patches remaining after other habitat loss has occurred. Small habitat patches that occur along State and county roadsides face greater threats from agriculture than those occurring along non-roadside areas. In past decades, many roadside habitats were less disturbed, but today roadside stretches of habitats adjoining grass seed farms are now being disked and/or sprayed with herbicides to kill all roadside vegetation (A. Robinson, U.S. Fish and Wildlife Service, pers. obs. 1997). Grass seed farms commonly use herbicide spraying to create bare soil to prevent the spread of weeds from roadsides into the grass seed fields. Many of these roadside areas are inhabited by populations of *E. decumbens* var. *decumbens*.

Development

Urban development has caused additional loss of prairie habitat (Clark *et al.* 1993; Hammond and Wilson 1992a, 1992b 1992c, 1994, 1996; Kuykendall and Kaye 1993a; Liston *et al.* 1994; Schultz, 1996; Sidall and Chambers 1978). Destruction of upland prairie habitat occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* at several sites since 1992 has caused the butterflies at these sites to either completely die out or to be reduced to low, non-viable numbers. Future losses for 47 prairie remnants are projected as a result of urban development (Hammond 1994, 1996), which is the largest single factor currently threatening the survival of these prairie species. Nineteen of these remnants are wetland prairies supporting *Erigeron decumbens* var. *decumbens*, and the other 28 are upland prairie remnants supporting populations of Fender's blue butterfly and/or *L. sulphureus* ssp. *kincaidii*.

Examples of this type of threat are the Dallas-Oakdale Avenue sites 1 and 2 covering about 2 ha (5 ac) occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* near the town of Dallas in Polk County. These sites are expected to be lost due to planned housing development (Hammond 1996). The loss of native prairie habitat is further exemplified by the destruction of a site supporting 6,000 plants in Lane County, formerly the largest occurrence of *Erigeron decumbens* var. *decumbens*, plowed under in 1986 prior to the development of an industrial and residential site (Kagan and Yamamoto 1987). Construction of a single driveway resulted in the loss of one site occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* in Kings Valley (Hammond 1994). Future highway construction potentially threatens the Nielson Road site of *E. decumbens* var. *decumbens* located in a highway expansion corridor in Lane County (USFWS 1994). The populations of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* at Wren in Benton County occur at 2 sites and cover about 9 ha (22 ac). Only a portion of the populations (7.4 ha) (18 ac) occur on land owned by The Nature Conservancy (TNC). Heavy clearing and mowing activities on private lands adjacent to the TNC property has caused the decline of the lupine and is reducing the butterfly population at the Wren site to a non-viable state (Hammond and Wilson 1993). At the Willow Creek Main site, owned by TNC, Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* occur together. This site is actively managed for the benefit of the species, and the lands are considered relatively secure from development threats. Although this TNC site is considered a secure habitat area, extensive damage to habitat occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* occurred in 1996 during high-voltage power-line repair work conducted on a utility corridor easement. Two other moderately sized habitat patches occupied by *E. decumbens* var. *decumbens* face habitat loss from trash dumping (at the Grande Ronde site) and urbanization (at the west Eugene site) (Clark *et al.* 1993).

Forestry Practices

Silvicultural activities for timber production have threatened 6 percent (5 sites) of the remaining 88 prairie occurrences. The Coburg Ridge area-2 site in Lane County is the largest site occupied by Fender's blue butterfly and is among the best examples of remnant upland native prairie in the Willamette Valley (Hammond 1994). Native species were severely damaged, however, by the application of grass-specific herbicide that eliminated grasses and severely damaged other herbaceous species prior to tree planting activities. Approximately 4 ha (10 ac) were sprayed with herbicide. The saddle section of Coburg Ridge (area-2) that received aerial application of the herbicide is used by Fender's blue butterfly due to the presence of *Lupinus laxiflorus*, an alternate host plant, but this site does not contain *L. sulphureus* ssp. *kincaidii* (Schultz 1996). Loss of such alternate host plant sites further limits the habitat that is available to support Fender's blue butterfly. Additional tree-planting efforts by an adjacent Coburg Ridge landowner threaten to alter a different portion of the grassland in area-2, which has displayed the highest levels of butterfly activity on Coburg Ridge in previous years (Schultz 1996). This site received spot herbicide application during the planting efforts, rather than the aerial broadcast method of the first case; therefore, the immediate effects to the habitat were not as severe. However, tree saplings were planted and as the trees grow they will eventually shade out the native prairie species, resulting in the loss of butterfly habitat.

Herbicide spraying associated with reforestation, after logging, has also altered habitat and caused a decline of a *Lupinus sulphureus* ssp. *kincaidii* population on Bureau of Land Management (BLM) properties. At the BLM Letitia Creek Site, *L. sulphureus* ssp. *kincaidii* is located within a timber sale unit proposed for future harvest at the beginning of year 2020. The Callahan Ridge BLM site is located on the boundary between timber available for harvest and a non-commercial rocky area that has been withdrawn from the timber base. No timber harvest has been scheduled for the timber portion of this site for the next 30 years. The Letitia Creek area, where plants of *L. sulphureus* ssp. *kincaidii* are located, was impacted when the jeep trail running along the ridge was renovated and the surrounding forest selectively logged. Renovation of the jeep road destroyed most of the plants along the road and only a small portion of the original population remains. The other large occurrence of the butterfly and *L. sulphureus* ssp. *kincaidii* is in Benton County on McDonald State Forest and adjacent private lands that could be similarly affected by surrounding silvicultural operations.

Grazing

Grazing currently impacts 13 of the occupied habitat patches, with 5 of these being wetlands occupied by *Erigeron decumbens* var. *decumbens*. Most of the habitat at the Oak Ridge south site, in Yamhill County, occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii*, has been lost due to heavy grazing (Hammond 1996). Another site of *L. sulphureus* ssp. *kincaidii*, covering about 4.6 ha (11 ac) at Crabtree Hill in Lane County, is being damaged by extensive livestock grazing. The Crabtree Hill population of 6,000 plants is the largest known *L. sulphureus* ssp. *kincaidii* population. At Boistfort Cemetery, cattle grazing remains as a threat to the *L. sulphureus* ssp. *kincaidii* population on the cemetery hill. Cattle at the Boistfort site had full access to the cemetery hill in the mid-1980s when cattle trails criss-crossed the hill and few lupines were observed (Maxwell *in litt.* 1998). In 1986, Maxwell estimated the plants on the cemetery hill to be 50 to 60 individuals (Maxwell *in litt.* 1998). In 1991, after cattle were removed from the site, Maxwell inventoried the cemetery hill and estimated 1,685 individuals of *L. sulphureus* ssp. *kincaidii*, with 58 plants located on the west-facing side of the hill where there was no evidence of cattle grazing, but where horses occurred (Maxwell *in litt.* 1998). Subsequent inventories at the cemetery site recorded similar numbers of individuals as the 1991 data, with minimal increases and decreases that could be accounted for by sampling error and environmental fluctuation. These data suggest that the removal of cattle from the hillside has helped to

increase the size of the *L. sulphureus* ssp. *kincaidii* population (Maxwell *in litt.* 1998). *Lupinus sulphureus* ssp. *kincaidii* on the west-facing part of the hill where horses continue to occur, however, show evidence of trampling, and populations have not experienced a similar upward trend (Maxwell *in litt.* 1998).

Roadside Maintenance

Another common threat to these species is roadside maintenance activities. At least 34 sites occur along roadsides and are impacted by maintenance activities. Five of these are wetland areas supporting *Erigeron decumbens* var. *decumbens*. Twenty-nine are upland sites (*Lupinus sulphureus* ssp. *kincaidii* occurs at 27 sites and Fender's blue butterfly occurs at 11 sites). Populations of Fender's blue butterfly and *L. sulpheureus* ssp. *kincaidii* were recently lost due to road maintenance activities at the Oak Ridge north site. When planned developments are completed on the Oak Ridge south site, the butterfly and lupine will essentially be extirpated from the Oak Ridge area (Hammond 1996). Two sites on Oregon Department of Transportation (ODOT) property and one site on land owned by the City of Corvallis receive only limited protection and could potentially be impacted by future development and highway maintenance activities. Publicly owned roadside sites receive varying degrees of protection on a district-by-district basis. Although some roadside sites have been marked as no-spray zones by the Native Plant Society of Oregon, this protective measure is not always effective. The roadside portion of a *L. sulphureus* ssp. *kincaidii* population in Kings Valley continues to receive herbicide application during roadside weed control activities, despite efforts to restrict spraying. Other roadside sites receive only sporadic protection during herbicide application. Privately managed roadside occurrences are also impacted by maintenance activities. Extensive mowing at the Wren sites in Benton County and Fir Butte Road roadside sites in Lane County have caused declines in Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* populations (Hammond 1994).

With frequent weed control efforts ongoing, as well as highway and driveway construction, small roadside occurrences of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are unlikely to persist. For example, another sensitive species, *Delphinium leucophaeum*, in Boistfort Valley, Lewis County, Washington, has been damaged by roadside herbicide spraying by the County. The spraying swath is sometimes 0.9 to 1.2 m (3 to 4 ft.) wide. Several *D. leucophaeum* plants were damaged by spray in 1991 (Maxwell *in litt.* 1998). Botanists met with the roadside management crew in May of 1991 to point-out and discuss no-spray zones where *D. leucophaeum* occur. Since then, *D. leucophaeum* plants have been lost twice because of landowners spraying the roadsides to control weedy nonnative species that invade their pastures and fields (Maxwell *in litt.* 1998). The *L. sulphureus* ssp. *kincaidii* population within the Boistfort Valley does not occur along the roadsides, but along a path that leads up to a pioneer cemetery. Since monitoring began in 1991, a 3-m (1-ft) wide strip has been sprayed with herbicides along the path and steps leading up to the cemetery. Some of the *Lupinus sulphureus* ssp. *kincaidii* plants are damaged by the annual spraying (Maxwell *in litt.* 1998).

Between 1994 and 1996, Fender's blue butterfly populations disappeared from (or were considered no longer viable) at least seven small roadside sites (Liberty Road, Monmouth Falls City Road, Fern Corner, Grant Creek, and McTimmonds Valley in Polk County, and two sites at Wren), and populations at many of the remaining roadside sites continue to decline. Between 1990 and 1992, three sites occupied by both Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* were lost in the McTimmond's Valley to the expansion of Christmas tree farming operations (Hammond 1994). Conversion of these three sites destroyed approximately 3 ha (7 ac) of habitat along roadside and private land that comprised the nucleus of two Fender's blue butterfly populations and a substantial number of *L. sulphureus* ssp. *kincaidii* plants. The two roadside occurrences of the butterfly that remain nearby are no longer considered viable due to the loss of the source butterfly populations and considerable numbers of *L. sulphureus* ssp. *kincaidii* plants. We do not know if the two roadside occurrences still exist, but if they do, they are not expected to persist for more than a few additional years (Hammond 1994).

In summary, habitat loss from a wide variety of causes (e.g., urbanization, agriculture, silvicultural practices, and roadside maintenance) is a severe problem faced by Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* at a majority of occupied sites. Land development and alteration in the Willamette Valley has been so extensive that almost all of the occurrences of the three species on the valley floor have essentially been relegated to small patches of habitat. Agricultural and urban development activities occurring on the valley floor have not affected three hilltop areas (Baskett Slough National Wildlife Refuge, Coburg Ridge, and McDonald State Forest) because of their topography. Only 20 of the 88 remnant prairie sites that are occupied by 1 or more of these species are currently not threatened with habitat destruction. However, these 20 sites are threatened by herbivory, competition by nonnative weedy species, and/or plant succession (see Factor E of this final rule for additional discussion). As habitat loss continues on these prairie remnants, populations of all 3 species in these 68 areas are likely to be extirpated. At least 14 of 32 sites occupied by Fender's blue butterfly, 49 of 54 sites occupied by *L. sulphureus* ssp. *kincaidii*, and 24 of 28 sites occupied by *E. decumbens* var. *decumbens* occur on private lands and, are expected to be lost in the near future unless conservation actions are implemented. The threat of extinction for these species is high, given the expected continuing extirpation of small populations, the continued habitat loss on moderate and large sites, and the continuing degradation of habitat, even on secure sites.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Rare butterflies, such as Fender's blue butterfly are highly prized by insect collectors. We know of no studies of the impact of such removal of individuals from natural populations of Fender's blue butterfly. However, studies of another lycaenid butterfly (Duffey 1968) and an endangered nymphalid butterfly (Gall, 1984a and 1984b) suggest it is likely that Fender's blue butterfly could be adversely affected by collection because of its small and isolated populations. An international commercial trade of butterfly species that are proposed for listing, as well as other imperiled or rare butterflies, exists (C. Nagano, J. Mendoza, and C. Schroeder, USFWS, pers. obs., 1992–1997), and we know of specimens of Fender's blue butterfly that have recently been offered for trade (C. Nagano, pers. obs.). Some collectors and dealers closely monitor our listing activities, and have stockpiled rare butterflies in anticipation of their designation as endangered or threatened species (C.D. Nagano and J. Mendoza, pers. obs., 1992). Collecting from small colonies or repeated handling and marking (particularly of females and in years of low abundance) could seriously

damage the populations through loss of individuals and genetic variability (Gall 1984b; Murphy 1988; Singer and Wedlake 1981). Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Butterfly collectors pose a threat because they may be unable to recognize when they are depleting butterfly colonies below the thresholds of survival or recovery, especially when they lack appropriate biological training or the area is visited for a short period of time (Collins and Morris 1985).

The 1989 rediscovery of this insect generated a great deal of publicity and interest, which in turn increased demand by collectors. Therefore, remaining populations of Fender's blue butterfly face strong pressure from some members of the collecting community. Collectors who highly prize rare butterflies often take all wild specimens obtainable for use in trade (U.S. Department of Justice, *in litt.* 1993). Because many of the Fender's blue butterfly populations occur along public roadsides, the species is easily acquired. The extremely limited numbers and distribution of many of the remaining populations makes this species vulnerable to extinction due to collection.

No current evidence exists of horticultural collection or other overutilization for scientific purposes for either *Erigeron decumbens* var. *decumbens* or *Lupinus sulphureus* ssp. *kincaidii*. However, the potential threat posed by collecting for personal herbarium specimens may be significant, particularly where populations are small, due to the species' rarity and the relative accessibility of roadside populations.

C. *Disease or predation.* Although most lepidopteran larvae suffer significant mortality from parasitoid attack, no instances of parasitism (Hammond and Wilson 1993) or disease (R.H.T. Mattoni, pers. comm. to C. Nagano 1997) have been documented for Fender's blue butterfly. Predation of adult Fender's blue butterflies by crab spiders has been observed on at least two occasions (Schultz *in litt.* 1998). The white and/or yellow crab spiders hide in the flowers of *Lupinus sulphureus* ssp. *kincaidii*, and in a variety of species that the Fender's blue butterfly uses for nectar, such as *Allium amplectans* (Schultz *in litt.* 1998). Under normal circumstances, predation likely was not a significant threat, but because the species has been reduced to such low levels, predation may significantly impact the persistence of remaining populations.

Lupinus sulphureus ssp. *kincaidii* evidently hosts a number of herbivorous and parasitic insect species. Gall-forming insects attack unopened flowers and the bases of woody stems. Weevils lay eggs in the developing floral embryos, and their offspring stimulate the fruit to produce callous tissue as a food source. Misdirection of the developing fruit by weevil larvae effectively prevents viable seed formation in the parasitized fruits (Kuykendall and Kaye 1993b). Weevil damage at some sites (e.g., Willow Creek) can be high, with some plants suffering 90 percent loss of mature fruits (E. Alverson, pers. comm. 1994). Herbivory has been documented at all three Fern Ridge Reservoir sites. Loss of floral parts through herbivory can also significantly reduce reproduction. Larvae of the silvery blue butterfly (*Glaucopsyche lygdamus*) graze flowers for pollen and in doing so effectively destroy them. At the Fir Butte site, silvery blue butterfly larvae cause significant seed damage, as well as pollen damage to *L. sulphureus* ssp. *kincaidii*. They often chew through maturing pods, devour some or all of the seeds, then move on to the next pod (Schultz *in litt.* 1998). Silvery blue larvae can reach high population densities at some of the sites and may reduce the fecundity of *L. sulphureus* ssp. *kincaidii*, but do not appear to cause the death of mature individual plants (C. Schultz, pers. comm. 1994). On July 14, 1991, at the Boistfort Prairie site, pods of *L. sulphureus* ssp. *kincaidii* were observed with larvae feeding on them, and ants were feeding on the juices excreted from the larvae (Maxwell *in litt.* 1998). In a sample of 10 *L. sulphureus* ssp. *kincaidii* plants, 5 damaged pods were observed (Maxwell *in litt.* 1998). In 1992, adult silvery blue butterflies were positively identified as being present, and the caterpillars of the blues were observed feeding on *L. sulphureus* ssp. *kincaidii*. In 1993, damage to *L. sulphureus* ssp. *kincaidii* pods was observed again, but less than in the previous 2 years (Maxwell *in litt.* 1998). Under normal circumstances, insect herbivory likely was not a significant threat, but because the species has been reduced to such low levels, herbivory may significantly impact the persistence of remaining populations.

Evidence of insect herbivory on *Erigeron decumbens* var. *decumbens* is limited. Insect species collected on *E. decumbens* var. *decumbens* in 1993 included sap-sucking insects (Hemiptera), a bruchid beetle, thrips, and mites (Clark *et al.* 1993). Other threats from herbivory include consumption of *E. decumbens* var. *decumbens* by cattle. However, no plants were found in areas currently or recently grazed during surveys conducted in 1986 (Kagan and Yamamoto 1987), and only one site was observed to support *E. decumbens* var. *decumbens* in the presence of cattle in 1993 (Clark *et al.* 1993).

D. *The inadequacy of existing regulatory mechanisms.* In 1963, the protection of natural botanical resources by the State of Oregon was initiated with the passage of the Oregon Wildflower Law (ORS 564.010–564.040). This law was designed to protect specific showy botanical groups including lilies, shooting stars, orchids, and rhododendrons from collection and trade by horticulturists interested in the cultivation of these species. It also prohibits the collection of wildflowers from "within 500 feet of the centerline of any public highway" (ORS 564.020 (2)). Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. We doubt that this law is effective in protecting *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* populations.

In 1987, Oregon Senate Bill 533 was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. This bill, known as the Oregon Endangered Species Act, mandates responsibility for threatened and endangered species in Oregon to two State agencies—the Oregon Department of Agriculture (ODA) for plant species (ORS 564.105) and the Oregon Department of Fish and Wildlife (ODFW) for "wildlife" species (ORS 496.172). As re-authorized in 1995 (HB 2120), the Oregon Endangered Species Act does not include invertebrate animals in the definition of "wildlife." Therefore, Fender's blue butterfly receives no protection under the Oregon Endangered Species Act. The Oregon Natural Heritage Program is the only State agency "which tracks locations of and works to protect the rare, threatened and endangered invertebrates of Oregon" (Oregon Natural Heritage Program 1993). The Heritage program has created a Sensitive Species invertebrate list, which includes Fender's blue butterfly as a "priority 1 species." Priority 1 species are "taxa that are threatened or endangered throughout their range" (Oregon Natural Heritage Program 1993). The program can assist planning agencies in managing lands for the benefit of rare invertebrate taxa, but it has no regulatory authority over rare

invertebrates (Jimmy Kagan, Oregon Natural Heritage Program, pers. comm. 1997).

The Oregon Endangered Species Act directs the ODA to maintain a strong program to conserve and protect native plant species classified by the State as threatened or endangered. *Erigeron decumbens* var. *decumbens*, as a State-listed endangered species, and *Lupinus sulphureus* ssp. *kincaidii*, as a State-listed threatened species, receive protection on State-managed lands under the Oregon Endangered Species Act. The ODA is able to regulate the import, export, or trafficking of State-listed plant species when they are in transit (under ORS 564.1200). The ODA's ability to protect plant populations, by restricting take under the Oregon Endangered Species Act, is limited to "land owned or leased by the state, or for which the state holds a recorded easement" (ORS 564.115). "Nothing in ORS 564.100 to 564.130 is intended . . . to require the owner of any commercial forest land or other private land to take action to protect a threatened species or endangered species" on their lands (ORS 564.135 (1)). As a result, populations of *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* on private lands receive minimal protection from their State status as endangered or threatened.

ODOT owns and manages roadside habitat where *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are present. The Oregon Endangered Species Act requires the protection of these State-listed species on this State-managed land. In conjunction with Oregon State University researchers and the Native Plant Society of Oregon, ODOT has responded by providing road crews with maps of these areas and instructions to avoid herbicide use in these areas.

Lupinus sulphureus ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, and Fender's blue butterflies receive protection within the boundaries of the Service's National Wildlife Refuges. All three species occur together only at Baskett Slough National Wildlife Refuge, where habitat for the benefit of these species is actively managed.

The BLM and the Forest Service (FS) manage lands occupied by *Lupinus sulphureus* ssp. *kincaidii*. On lands managed by the BLM, this species receives some protection through a general conservation agreement that applies to all Federal candidate species on BLM properties. The population of *L. sulphureus* ssp. *kincaidii* that occurs in the Umpqua National Forest is not covered under any conservation agreement.

On Corps lands, discretion for the protection and management of State-listed and Federal candidate species lies at the local level. Funds may be available in some years to proactively manage these species. *Lupinus sulphureus* ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, and Fender's blue butterfly have received habitat protection, as well as support for research activity from the Corps through allocation of personnel and supplies to these projects. This protection and cooperation is voluntary for candidate species and is dependent on the continuation of sufficient funding.

Populations of *Erigeron decumbens* var. *decumbens* occur in seasonally flooded wet prairies with hydric soils (Clark *et al.* 1993). Under section 404 of the Clean Water Act (CWA), the Corps regulates the discharge of fill into waters of the United States, including navigable waters, wetlands (e.g., wet prairies), and other waters (33 CFR parts 320–330). The CWA requires project proponents to obtain a permit from the Corps prior to undertaking many activities (e.g., grading, discharge of soil or other fill material) that would result in the filling of wetlands subject to the Corps' jurisdiction. The Corps published nationwide permit number 26 (NWP 26) to address fill of isolated or headwater wetlands. Under the 1996 reauthorization of NWP 26 (61 FR 65873), the Corps may automatically approve project proposals that involve the fill of wetlands less than 0.13 ha (0.33 ac) in size. Filling areas between 0.13 ha and 0.4 ha (0.33–1 ac) requires only notification to the Corps. When placement of fill would adversely modify between 0.4 and 1.2 ha (1 and 3 ac) of wetland, the Corps circulates a pre-discharge notification to us and other interested parties for comment to determine whether an individual permit should be required for the proposed fill activity and associated impacts.

Individual Corps permits are required for discharge of material that would fill or adversely modify greater than 1.2 ha (3 ac) of wetlands. The review process for individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, a cumulative analysis of wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require potential avoidance or mitigation for environmental impacts. On nationwide permits, the Corps has discretionary authority to require an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit unless a threatened or endangered species or other significant resources would be adversely affected by the proposed activity. When a listed species may be affected, consultation requirements of section 7 of the Act do pertain to the Corps' regulatory process.

Disking and some other farming, ranching, and silvicultural practices can degrade or destroy wetland habitat without a permit from the Corps because these activities are exempt from regulation under the CWA (33 CFR 323.4(a)). The discontinuous configuration of the existing wet prairies further obscures these wetland losses. Occurrences of *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly in upland (non-wetland) areas receive no protection under section 404 of the CWA.

The primary inadequacies in existing regulatory mechanisms pertain to populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* that occur on private lands. Privately owned lands where populations of these species occur constitute a significant portion of the range of these species and play a substantial role in their continued existence.

E. *Other natural or manmade factors affecting its continued existence.* The small and fragmented populations characteristic of the remaining Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* constitute a factor in affecting the continued existence of these taxa. Small populations are more vulnerable to all the natural and manmade factors that would not likely negatively influence relatively large and contiguous populations. Generally, the direct and indirect effects of small population size on most species, plant and animal, include loss of connectivity for dispersal, a decrease in genetic exchange, a resultant loss of population viability and vigor, and a hastening towards extinction (Gilpin and Soulé 1986).

Although few large sites (greater than 10 ha (25 ac)) are secure from habitat loss, large sites currently support relatively stable populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and provide the greatest potential for long-term persistence of the species if the current condition of these sites can be sustained or improved. The only large site occupied

by all of the species and that is considered relatively secure from habitat loss is Baskett Slough National Wildlife Refuge in Polk County, although the habitat condition is declining from invasion by nonnative weedy species (Hammond 1994, 1996; Hammond and Wilson 1993; Schultz 1994). The two remaining large butterfly sites (Coburg Ridge area-1 and 2, and McDonald State Forest 1) and the one remaining large *L. sulphureus* ssp. *kincaidii* site (McDonald State Forest 1) are not considered secure because these sites face loss or degradation of habitat through adjacent silviculture operations, ecological succession to shrub and forest, and competition from nonnative weedy species (Hammond 1994, Kuykendall and Kaye 1993a).

Erigeron decumbens var. *decumbens* occupies three large sites. One site on Corps property and another on TNC property are being managed to benefit native prairie species and are relatively secure. The third site occurs on private land and is not managed for native prairie species and is not protected from habitat loss.

The sites with small acreage where these three taxa occur, such as roadside and fence line/boundaries, face an immediate threat of destruction from a variety of disturbances. These disturbances include development, agriculture, silvicultural practices, roadside maintenance, and herbicide application. Of the 54 sites occupied by *Lupinus sulphureus* ssp. *kincaidii*, 45 occur on less than 3.4 ha (8.3 ac). On sites where Fender's blue butterflies are found to co-occur with *L. sulphureus* ssp. *kincaidii*, a similar pattern is suggested, with 24 of the 32 populations occurring on parcels of 3.4 ha (8.3 ac) or less. Of the 28 sites occupied by *Erigeron decumbens* var. *decumbens*, 20 are less than 3.4 ha (8.3 ac).

Given the impact of such habitat losses on these small habitat patches, the extirpation of most of the small Fender's blue butterfly populations is anticipated within the next 5 years. *Lupinus sulphureus* ssp. *kincaidii* may, however, survive for a longer time in these small sites. Nonetheless, because of the extensive habitat loss caused by development and agriculture, the extirpation of *L. sulphureus* ssp. *kincaidii* on the 45 small sites is also anticipated in the future. Similarly, these habitat losses are expected to also cause the extirpation of the 20 small populations of *Erigeron decumbens* var. *decumbens*. Should these smaller populations disappear, only large habitat sites will be left. Only eight sites of Fender's blue butterfly (75 percent reduction), nine sites of *L. sulphureus* ssp. *kincaidii* (74 percent reduction), and eight sites of *E. decumbens* var. *decumbens* (72 percent reduction) will remain.

The importance of these small populations, particularly for the Fender's blue butterfly, lies in their potential to serve as stepping stones between larger neighboring populations. The loss of these populations and the accompanying potential habitat would severely compromise the ability of *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* or the Fender's blue butterfly to disperse from larger sites (Hammond and Wilson 1993, Schultz 1996). Larger populations would become more isolated and extinction-prone as opportunities for migration and/or recolonization are limited.

A less visible threat to the smaller populations is a decrease in vigor and viability. For the Fender's blue butterfly, small numbers and localized populations increase the risk of loss through random genetic or demographic factors. (Gilpin and Soulé 1986, Kuykendall and Kaye 1993b, Lacy 1992, Hammond and Wilson 1993). Nineteen of the 32 Fender's blue butterfly sites contain an estimated 50 or fewer individuals. The threat of extinction due to naturally occurring genetic or demographic events can play a significant role in the instability of the species as a whole. The isolation of these small populations due to habitat fragmentation limits the potential for dispersal and migration and the resultant exchange of genetic material. Small, isolated populations with no opportunity of rescue from neighboring populations more easily become non-viable and/or extirpated.

This pattern of extinction and re-colonization of connected colonies of butterflies has been disrupted by the extensive fragmentation of remaining habitat and the disruption of the disturbance regimes that have maintained them. The remnant populations, now small in numbers, are either unconnected or exchange individuals to a very limited degree. With their limited dispersal abilities, low numbers, and dwindling habitat, a majority of the remaining populations of Fender's blue butterfly likely face permanent extirpation.

The effects of random environmental events are magnified in small populations. For instance, one small population of *Erigeron decumbens* var. *decumbens* previously found on Finley National Wildlife Refuge was lost due to erosion from a natural change in a waterway course (Meinke 1980). Large fluctuations in Fender's blue butterfly populations have been correlated with random variations in weather conditions from year to year (Shultz 1996). These large fluctuations make Fender's blue butterfly extremely susceptible to loss of habitat and host plants due to human-caused disturbance or invasive nonnative plants. Maxwell (*in litt.* 1998) observed fluctuations in the inventory counts for both *Lupinus sulphureus* ssp. *kincaidii* and *Delphinium leucophacum* over a 4-year period on the Boistfort Prairie. *Lupinus sulphureus* ssp. *kincaidii* counts ranged from 742 to 2,266 plants and strong evidence existed that these fluctuations in numbers were closely tied to weather patterns (Maxwell *in litt.* 1998). The timing of spring rains is very critical for production of above-ground biomass for these two species. In years with lower than average precipitation, these plant species may not even appear.

A serious long-term threat to all Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* sites is the change in community structure due to plant succession. Continuing plant succession has been documented on 70 of the 88 relic prairie sites occupied by 1 or more of these species. Invasion by alien plant species has been documented at 37 of these 88 prairie sites. The natural transition of grassland to forest in the absence of disturbance such as fire will lead to the eventual loss of these prairie sites unless they are actively managed (Clark *et al.* 1993; Franklin and Dyrness 1973; Hammond and Wilson 1993; Johannsesen *et al.* 1971; Kuykendall and Kaye 1993a). The presence of tall, fast-growing nonnative species speeds the conversion of upland native prairie to dense, rank grasslands and shrub lands. Invasive woody species of concern include nonnative plants such as *Rubus discolor* (Himalayan blackberry) and *Cytisus scoparius* (Scotch broom), and the native species *Toxicodendron diversiloba* (poison oak). Nonnative weedy herbaceous species include *Cirsium arvense* (Canada thistle). Nonnative grass species aggressive enough to suppress *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* include *Holcus lanatus* (velvet grass), *Dactylis glomerata* (orchard grass), *Brachypodium sylvaticum* (false-brome), and *Arrhenatherum elatius* (tall oat-grass) (Hammond 1996).

At prairie remnant roadside sites, the degree of the threat of succession varies, depending on the vegetation control employed by each county. Many Fender's blue butterfly populations are close to local extinction at small

roadside sites. Populations along the roadside generally have low numbers of individuals because habitat, often degraded, can be invaded by nonnative grasses. This situation usually leads to succession by shrubs and trees (Hammond 1996). For instance, one roadside site at Oak Ridge previously considered stable has declined since 1992 because large thickets of *Rubus* ssp. (blackberry) and *Cytisus scoparius* have invaded the site (Hammond 1996).

Non-roadside prairie remnant sites in general face the greatest threat from succession/weed expansion and invasion due to a lack of disturbance that disrupts successional progress. For instance, otherwise secure habitat on one Corps site has been heavily invaded by the nonnative plant *Arrhenatherum elatius*. The Fender's blue butterfly population on this site is becoming extremely small (Schultz 1996). Prime habitat occupied by *Erigeron decumbens* var. *decumbens* at the Baskett Butte site is rapidly being overtaken by native woody plants, nonnative grasses and trees (Hammond 1996). Approximately 25 percent of the large Coburg Ridge site occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* is threatened by the profuse shrub growth of *Cytisus scoparius* (Hammond 1996). Regardless of the size of the site, invasion by nonnative plants is a threat at all sites occupied by any of the three species addressed in this rule.

Compounding the threat of nonnative plant species is the control of weedy nonnative species by herbicides. Twenty-three *Lupinus sulphureus* ssp. *kincaidii* plants on the west side of the Boistfort Cemetery hill site were damaged by herbicide spray applied by a helicopter to eradicate Scotch broom and Canada thistle (Maxwell *in litt.* 1998). The application of pesticides and biological control agents to control insect pests, such as gypsy moths, is also a threat to Fender's blue butterfly. The potential threat from use of gypsy moth control agents on habitats occupied by the Fender's blue butterfly should not be dismissed even though the sensitivity of Fender's blue butterfly larvae to specific insecticides is not known (Hammond 1994). The use of microbial insecticides, such as *Bacillus thuringiensis* (Bt), has been shown to have significant residual toxic impacts on native butterflies. This negative impact is evident under field conditions, even with heavy rain and ultraviolet light exposure (Scriber and Gage 1995).

Summary

Natural and human-caused factors threaten the remaining populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*. As a result of their small size, nearly all of the populations are threatened by either nonnative species, natural succession, or demographic and genetic factors. Populations of Fender's blue butterfly at all 32 sites currently are threatened by at least 1 of these factors. All 28 sites of *E. decumbens* var. *decumbens* and all 54 sites of *L. sulphureus* ssp. *kincaidii* are threatened by these factors. The encroachment of nonnative plants, the successional advance of tree and shrub species, and other naturally occurring random events will, if unchecked, lead to further reductions in population size and number leading to reduced population viability and, ultimately, the extinction of these three native prairie species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in developing this final rule. Threats to Fender's blue butterfly are more imminent than threats to *Lupinus sulphureus kincaidii* because the butterfly has a unique biology and shorter lifespan. Fender's blue butterfly will exhibit more rapid declines in numbers and in the face of threats will be extirpated more quickly at any one location than either of the two plant species. Because of the longer lifespan of a perennial plant, small numbers of *L. sulphureus* ssp. *kincaidii* plants are likely to persist longer in any given habitat than are small numbers of butterflies. The threats to *Erigeron decumbens* var. *decumbens* are more imminent than threats to *L. sulphureus* ssp. *kincaidii* because of the small number of *E. decumbens* var. *decumbens* populations. Also, many of the *E. decumbens* var. *decumbens* populations grow along roadsides adjacent to agricultural development (especially grass seed farms) where herbicide spraying to create bare soil is common practice. Based on our evaluation of all the available information, Fender's blue butterfly and *E. decumbens* var. *decumbens* are presently in danger of extinction throughout all or a significant portion of their respective ranges, while *L. sulphureus* ssp. *kincaidii* is likely to become endangered within the foreseeable future. Therefore, we find that listing of Fender's blue butterfly (*Icaricia icarioides fenderi*) and *E. decumbens* var. *decumbens* (Willamette daisy) as endangered is appropriate, and listing of *L. sulphureus* ssp. *kincaidii* (Kincaid's lupine) as threatened is appropriate.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term "conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary (16 U.S.C. 1532(3)(5)(A)).

Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of these species to incidents of collection and/or vandalism. We also indicated that designation of critical habitat was not prudent because we believed the limited benefit provided by designation was outweighed by the increase in threats from collection and/or vandalism.

In the last few years, a series of court decisions have overturned our determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for Fender's blue butterfly (*Icaricia*

icarioides fenderi), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) would be prudent.

Due to the small number of populations, Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) are vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) and have not found specific evidence of taking, vandalism, collection, or trade of these species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to these species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat designation is prudent for Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy).

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for these species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm of animals and certain activities involving listed plants are discussed, in part, below.

Section 7(a)(2) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. If a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action is likely to adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Federal Highway Administration provides partial funding for State highway maintenance. Therefore, any roadside habitat supporting *Erigeron decumbens* var. *decumbens*, *Lupinus sulphureus* ssp. *kincaidii*, and/or Fender's blue butterfly populations would be subject to section 7 consultation on any federally funded maintenance activities. Also, if the U.S. Department of Housing and Urban Development, a Federal agency, is involved in the issuance of housing loans on private property supporting occurrences of *E. decumbens* var. *decumbens*, *L. sulphureus* ssp. *kincaidii*, or Fender's blue butterfly, such loans would be subject to review under section 7 of the Act. The BLM, FS, and Corps manage lands that are

known to contain existing populations of *E. decumbens* var. *decumbens*, *L. sulphureus* ssp. *kincaidii*, and Fender's blue butterfly. In these cases, consultation requirements placed upon Federal agencies by the Act would be required for actions that may affect these species. Furthermore, opportunities for land acquisition, conservation agreements, and other recovery strategies would be bolstered by listing these species as endangered or threatened.

Active management of native prairie remnants is being carried out by the Portland District Corps, our Western Oregon National Wildlife Refuge complex, Eugene District BLM, and the Washington and Oregon field offices of TNC. In 1997, the Corps initiated an attempt to create two new *Lupinus sulphureus* ssp. *kincaidii* populations from seed collected from five areas around Fern Ridge Reservoir. One site was adjacent to the Green Oaks site at Fern Ridge, and the other is at Row Point at Dorena Reservoir. Both are on Corps lands and both are protected. Thirty-nine seedlings resulted at Row Point and 200 seedlings survived at Green Oak in 1998.

We have conducted research at Baskett Slough National Wildlife Refuge on the effects of prescribed fire, fire suppression, mowing, and herbicide on native and nonnative prairie species including *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* and Fender's blue butterflies. We have also controlled tall oatgrass in Fender's blue butterfly habitat and completed demographic studies of *E. decumbens* var. *decumbens*. In addition to efforts directed at managing and rehabilitating the remnant prairie habitat on Baskett Butte, we have been involved in projects to restore prairie habitat in former farm fields on Baskett Slough and William L. Finley National Wildlife Refuges. At the William L. Finley Refuge, the population of *E. decumbens* var. *decumbens* that was lost to erosion during the 1980s along a cut bank of Muddy Creek was located less than 0.5 km (0.3 mi) from a field that was retired from cultivation for the purpose of a prairie restoration project. The current intent is to reestablish *Erigeron decumbens* var. *decumbens* on this restored prairie. Also, Bald Top Knoll of the William L. Finley National Wildlife Refuge has been identified as a potential restoration site for the Willamette Valley dry prairie ecotype.

Management of the six prairie remnants in the west Eugene wetlands of Lane County on BLM lands includes control of nonnative invasive species, primarily blackberry, tansy ragwort, meadow knapweed, and Scotch broom. BLM will use methods such as tractor mowing, hand pulling or cutting, and will remove native hardwoods and/or conifers needed to maintain these prairie remnants. As part of the West Eugene Wetlands Acquisition Program, BLM will acquire additional habitat supporting sensitive Willamette Valley prairie species as opportunities occur.

At the Boistfort Cemetery, extensive Canada thistle patches at the base of the south side of the hill near *Lupinus sulphureus* ssp. *kincaidii* were pulled by TNC volunteers in 1993. On June 25, 1994, TNC volunteers pulled Canada thistle and cut scotch broom on the north side of the hill. Volunteers did weed control by hand at this private site to aid the landowner and in turn reduce herbicide use thus helping to preserve rare plant populations.

On the TNC Willow Creek Natural Area, seedlings of *Lupinus sulphureus* ssp. *kincaidii* were introduced initially in 1995, then again in the fall of 1996, the spring of 1997, and the spring of 1998. TNC plans to continue monitoring through the year 2000 to evaluate how successful these efforts were.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. The prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants and 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction of the plants on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law (see 16 U.S.C. 1538 (a)(2)(B)). Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Lupinus sulphureus* ssp. *kincaidii* in the future if a special regulation is issued after opportunity for public notice and comment. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are not common in cultivation or in the wild.

The Act and implementing regulations also set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the range of a species. *Erigeron decumbens* var. *decumbens* and *Lupinus sulphureus* ssp. *kincaidii* are known to occur on Federal lands under the jurisdiction of the Service, Corps, BLM, or FS. With issuance of this final rule, these species

on Federal lands are protected from collection. *Erigeron decumbens* var. *decumbens* is protected from malicious damage or destruction on Federal land under section 9 of the Act. In appropriate cases, collection of these species could be allowed through the issuance of a Federal permit. We are not aware of any otherwise lawful activities being conducted or proposed on private land that will be affected by this listing and result in a violation of section 9 for these plants.

With issuance of this final rule, Fender's blue butterfly receives more extensive protection under the Act than described for *Erigeron decumbens* var. *decumbens*, and *Lupinus sulphureus* ssp. *kincaidii*. Section 9 prohibits the take of any listed wildlife species by any person subject to the jurisdiction of the United States. We believe that, based on the best available information, the following actions would not be violations of section 9:

(1) Possession, delivery, or movement, including interstate transport involving no commercial activity, dead specimens of Fender's blue butterfly that were collected prior to the date of publication in the **Federal Register** of this final regulation adding this taxon to the list of endangered species;

(2) Actions that may affect Fender's blue butterfly and are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with incidental take statements included in biological opinions issued under section 7 of the Act;

(3) Land actions or management carried out under a habitat conservation plan approved by us pursuant to section 10(a)(1)(B) of the Act; and

(4) Scientific research carried out under a permit issued by us pursuant to section 10(a)(1)(A) of the Act.

Potential activities involving Fender's blue butterfly that would likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Take of Fender's blue butterfly without a permit pursuant to section 10(a)(1)A) or an incidental take permit pursuant to section 10(a)(1)(B) of the Act (this includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions);

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken specimens of Fender's blue butterfly;

(3) Release of chemical or biological control agents that attack, damage, or kill any stage of this taxon, if not approved through section 7 consultation;

(4) In areas where Fender's blue butterfly occurs, the removal or destruction of the food plants being utilized by Fender's blue butterfly, defined as *Lupinus sulphureus* ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, *Lupinus. albicaulis*, and *Lupinus. laxiflorus*; and

(5) Destruction or alteration of Fender's blue butterfly habitat by grading, leveling, plowing, mowing, burning, herbicide or pesticide spraying, intensively grazing, or otherwise disturbing grasslands that result in the death or injury of adult Fender's blue butterflies and/or their larvae or eggs, through significant impairment of the species' essential breeding, foraging, sheltering, or other essential life functions.

You may direct questions regarding whether specific activities risk a violation of section 9 to the State Supervisor of our Oregon State Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plant and animal species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–2063; FAX 503–231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered plant species, see 50 CFR 17.62 and 17.63.

Executive Order 12866

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

References Cited

You may request a complete list of all references cited herein, as well as others, from the Oregon State Office (see **ADDRESSES** above).

Author

The primary author of this final rule is Dr. Andrew F. Robinson, Jr., Fish and Wildlife Biologist (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Butterfly, Fender's blue.	*Icaricia icarioides fenderi.*	U.S.A. (OR)	NA	E		NA	NA
*	*	*	*	*	*	*	

3. Amend § 17.12(h) by adding the following, in alphabetical order, under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Erigeron decumbens var. decumbens.	Willamette daisy	U.S.A. (OR)	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	
Lupinus sulphureus ssp. *kincaidii.* *Lupinus oreganus var. kincaidii* = *synonym.* *Lupinus sulphureus var. kincaidii* = *synonym.*	Kincaid's lupine	U.S.A. (OR, WA)	Fabaceae	T		NA	NA
*	*	*	*	*	*	*	

Dated: January 5, 2000.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 00–1561 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991229356–9356–01; 121799F]

RIN 0648–AN36

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final harvest guidelines.

SUMMARY: NMFS announces the annual harvest guidelines for Pacific sardine and Pacific mackerel in the exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species Fishery Management Plan (FMP) and its implementing regulations require NMFS to establish annual harvest guidelines for Pacific sardine and Pacific mackerel based on a formulas appearing in the FMP. The intended effect of this action is to establish allowable harvest levels for coastal pelagic species off the Pacific coast.

DATES: Effective January 1, 2000. Comments are invited until February 24, 2000.

ADDRESSES: Submit comments on the annual specifications to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, (Regional Administrator), NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The reports *Stock Assessment of Sardine for 1999 with Management Recommendations for 2000* and *Status of the Pacific Mackerel Resource and Fishery in 1999* are available from this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4030.

SUPPLEMENTARY INFORMATION: The FMP, which was partially approved by the Secretary of Commerce on June 10, 1999, and implemented by publication of a final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides managed species into the categories of *actively managed* and *monitored*. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Harvest guidelines for monitored species (jack mackerel, northern anchovy, and market squid), which are underutilized or managed primarily by California, are not based on current biomass estimates. Nonetheless, the FMP includes a constant allowable biological catch (ABC) for each monitored species based on long-term yields. If an ABC for a monitored species is reached, it would be designated an actively managed species; at that time, the Pacific Fishery Management (Council) would review the condition of the resource and recommend necessary management action. Except for northern anchovy, this is the first year of managing coastal pelagic species under this FMP.

At a public meeting each year, the biomass for each actively managed species is presented by the Council's Coastal Pelagic Species Management Team (Team) to the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass,

the harvest guideline, and the status of the fisheries is reviewed. This information is also reviewed by the Council's Scientific and Statistical committee. Following review by the Council and after hearing all public comments, NMFS publishes the annual harvest guidelines in the *Federal Register* before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 of each year and ends on December 31. The Pacific mackerel season begins on July 1 of each year and ends on June 30. Normally, the Pacific mackerel harvest guideline would be announced in June; however, the first harvest guidelines for both species will be effective on January 1, 2000, as this will be the first year of managing these species.

The FMP allows the Administrator, Southwest Region, NMFS to announce harvest guidelines before review by the Council if there is insufficient time for review. At its meeting in September 1999, the Council decided to use this procedure during the first year of managing Pacific sardine and Pacific mackerel because the sardine assessment would not be completed by its November 1999 Meeting. The Council plans to complete its review at its March 2000 meeting, when the stock assessment and fishery evaluation report for Pacific sardine will be presented. At the November meeting, the Team presented the Council with the Pacific mackerel assessment to establish a harvest guideline for the season that began on July 1, 1999. The Council adopted the Team's recommendations, including the necessary procedure to subtract the estimated harvest of Pacific mackerel from July 1, 1999, to December 31, 1999, to establish a harvest guideline beginning January 1, 2000, consistent with the beginning of the fishing season.

On December 9, 1999, consistent with the procedures of the FMP, the biomass report and attendant harvest guidelines for Pacific sardine and Pacific mackerel were reviewed at a public meeting of the Team at the NMFS Southwest Fisheries Science Center in La Jolla, California. A public meeting between the Team and the Subpanel was held on December 14, 1999, at the Southwest Region, NMFS, in Long Beach, California. No significant comments regarding the harvest guidelines were received.

The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine–Two Area Model (CANSAR–TAM). CANSAR is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 1999. The modification of CANSAR was developed to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Documentation of the 1999 estimate is described in the Council report *Stock Assessment of Sardine for 1999 with Management Recommendations for 2000* (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline for Pacific sardine:

1. *The biomass of age one sardine and above.* For 1999, this estimate is 1,581,346 metric tons (mt).

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters.* For 1999, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures, a higher fraction for warmer ocean temperatures and a lower fraction for cooler temperatures. Warm ocean temperatures favor the production of Pacific sardine. For 1999, the fraction used was 15 percent, based on three seasons of sea surface temperature at Scripps Pier, California.

Based on the estimated biomass of 1,581,346 mt and the formula in the FMP, a harvest guideline of 186,791 mt was calculated for the fishery beginning on January 1, 2000. The harvest guideline is allocated one third for Subarea A, which is north of 35° 40' N. lat. to the Canadian border, and two thirds for Subarea B, which is south of 35° 40' N. lat. to the Mexican border. Any unused resource in either area will be reallocated between areas to help ensure that optimum yield will be achieved. The northern allocation is 62,264 mt; the southern allocation is 124,527 mt.

The size of the Pacific mackerel population was estimated using a modified virtual population analysis stock assessment model, which employs both fishery dependent and fishery independent data to estimate abundance. The model was used to calculate biomass estimates through the end of 1998 and then project an estimate of biomass for July 1, 1999, based on the number of Pacific mackerel estimated to comprise each year class at the beginning of 1999, estimates of fishing mortality during 1998, assumptions of natural and fishing mortality through the first half of 1999, and estimates of age-specific growth. Documentation of the 1999 estimate is described in the Council report *Status of the Pacific Mackerel Resource and Fishery in 1999* (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline for Pacific mackerel:

1. *The biomass of Pacific mackerel.* For 1999, this estimate is 239,286 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent.

Based on the estimated biomass of 239,286 mt and the formula in the FMP, a harvest guideline of 46,428 was calculated for the fishery beginning on July 1, 1999. To determine a harvest guideline for the period beginning January 1, 2000, the estimated harvest of Pacific mackerel between July 1, 1999, through December 31, 1999, was subtracted from the harvest guideline. The amount harvested is 3,609 mt; therefore, the harvest guideline available to the fishery beginning on January 1, 2000, is 42,819 mt.

Classification

This action is authorized by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. § 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because establishing the harvest guidelines is a ministerial act, determined by applying formulas in the FMP. Accordingly, providing prior notice and an opportunity for public comment would serve no useful purpose.

Because this rule merely announces the result of harvest guideline calculations and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. § 553(d)(3) that delaying the effective

date of this rule for 30 days is unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2000.

Andrew R. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 00–1700 Filed 1–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000119015–0015–01; I.D. 010500A]

RIN 0648–AM32

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; revision to 2000 interim harvest specifications; request for comments.

SUMMARY: NMFS issues an emergency interim rule implementing reasonable and prudent alternatives (RPAs) to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. This emergency rule implements three types of management measures for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA): Measures to temporally disperse fishing effort; measures to spatially disperse fishing effort; and measures to provide sufficient protection from fisheries competition for prey in waters adjacent to rookeries and important haulouts. These emergency measures are necessary to avoid jeopardy and adverse modification.

DATES: Effective January 20, 2000, through July 19, 2000. Comments must be received by February 24, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion (BiOp) on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands subarea, the Revised Final Reasonable and Prudent Alternatives (RFRPAs), and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the emergency interim rule may be obtained from the same address. The BiOp and the RFRPAs are also available on the Alaska Region home page at *http://www.fakr.noaa.gov*. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background

In 1990, NMFS designated the Steller sea lion as a threatened species under the Endangered Species Act of 1973 (ESA). The designation followed severe declines throughout much of the GOA and Aleutian Islands region. In 1993, NMFS defined critical habitat for the species to include (among other areas), the marine areas within 20 nautical miles (nm) of major rookeries and haulouts of the species west of 144° W long. In 1997, NMFS recognized two separate populations, and reclassified the western population (west of 144° W long.) as endangered.

NMFS first began collecting information on the abundance of Steller sea lions during the 1950s and 1960s. However, the first counts based on reliable data were not available until the late 1970s; these counts reported approximately 109,800 animals. During the 1980s, a precipitous decline of Steller sea lions was observed. By 1996, counts declined to only 22,000 animals, a decline of 80 percent from the late 1970s. Counts of adult and juvenile Steller sea lions have continued to decline over the last few years, but at a lower rate. Due to the small population size, these recent reductions may be a serious obstacle to the recovery of the western population of Steller sea lions.

Multiple factors have contributed to the decline, but considerable evidence indicates that lack of available prey is a serious problem. Foraging studies confirm that Steller sea lions depend on pollock as a major prey source, and that they may be particularly sensitive to any reduced availability of prey during the winter. The significance of pollock in the diet of sea lions may have increased since the 1970s due to shifts in the Bering Sea ecosystem related to atmospheric and oceanographic changes. Pollock are also the target of the largest commercial fisheries in Alaska, fisheries that have grown increasingly concentrated in time and area. This concentration of effort occurs largely in areas designated as Steller sea lion critical habitat and may reduce prey availability during critical times in the life history of sea lions. Additional information on Steller sea lions and the pollock fisheries of the BSAI and GOA is contained in the BiOp and in the EA/RIR prepared for this action (see **ADDRESSES**).

Purpose and Need for Action

In accordance with the requirements of the ESA, the NMFS Office of Protected Resources issued a BiOp dated December 3, 1998, revised December 16, 1998, on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands subarea. The BiOp concluded that the BSAI and GOA pollock trawl fisheries, as projected for 1999 through 2002, were likely to jeopardize the endangered western population of Steller sea lions and destroy or adversely modify critical habitat designated for this population. "To jeopardize" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species" (50 CFR 402.02). The clause "adversely modify its critical habitat" means "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to

be critical" (50 CFR 402.02). The BiOp also concluded that the Atka mackerel fishery, as modified by recent regulatory changes (64 FR 3446; January 22, 1999), was not likely to jeopardize the endangered western population of Steller sea lions or destroy or adversely modify its critical habitat.

The BiOp did not prescribe a single set of RPAs for the BSAI and GOA pollock fisheries but rather established a framework to avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions or adversely modifying its critical habitat. The framework consisted of three principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) protection from fisheries competition for Steller sea lion prey in waters adjacent to rookeries and important haulouts. For each of these principles, the BiOp provided guidance on the development of management measures to meet the objectives and, ultimately, to avoid jeopardy and adverse modification. The BiOp stated that certain conservation measures could be phased in over a 2-year period.

In December 1998, NMFS staff briefed the Council on the BiOp. The Council then prepared recommendations for alternative management measures based on the RPA guidelines to avoid jeopardy and adverse modification. The Council's recommendation did not contain Bering Sea subarea (BS) B and C season specifications. However, the Council planned to recommend B and C season measures prior to the second half of 1999. The Council also recommended closing all but nine of the haulout zones specified by the BiOp in the BSAI and GOA. NMFS determined these recommendations to be acceptable as part of a 2-year phase-in strategy, in which equivalent or better protections would be extended for those areas for 2000 and beyond.

On December 16, 1998, NMFS adopted the measures recommended by the Council (with modifications) into the BiOp as part of an RPA for the fisheries. NMFS published an emergency interim rule implementing RPAs in the **Federal Register** on January 22, 1999 (64 FR 3437), amended on February 17, 1999 (64 FR 7814) and on February 25, 1999 (64 FR 9375), which was effective through July 19, 1999. The preamble to the emergency rule provides a detailed description of the purpose and need for the implementation of emergency measures in 1999.

The Council met again in February, April, and June 1999, to consider recommendations for extending the emergency rule for the second half of 1999, and, at its June meeting, voted to extend the emergency rule. Using the Council's recommendation, NMFS extended the emergency rule through December 31, 1999 (64 FR 39087, July 21, 1999; technical amendment 64 FR 43297, August 10, 1999), with revisions to include specifications for the B and C seasons in the BS.

In June 1999, the Council also deliberated on various management measures to implement permanently the RPA guidelines as described in the BiOp for 2000 and beyond. After significant debate and public comment, the Council voted to recommend a series of conservation measures to protect Steller sea lions.

Greenpeace, the American Oceans Campaign, and the Sierra Club challenged the BiOp in the U.S. District Court for the Western District of Washington. In an Order issued on July 9, 1999 (and amended on July 13, 1999), the Court upheld NMFS' no-jeopardy conclusion for the Atka mackerel fishery and the jeopardy conclusion for the pollock fisheries. However, the Court also found that "the Reasonable and Prudent Alternatives * * * were arbitrary and capricious * * * because they were not justified under the prevailing legal standards and because the record does not support a finding that they were reasonably likely to avoid jeopardy." On August 6, 1999, the Court remanded the BiOp back to NMFS for further analysis and explanation.

To comply with the Court's Order, NMFS conducted additional analyses and developed revised final RPAs (RFRPAs, October 15, 1999). The RFRPAs describe management measures that will avoid the likelihood that the pollock fisheries authorized by NMFS' regulations will jeopardize the continued existence of the endangered western population of Steller sea lions or adversely modify its critical habitat.

NMFS has determined that the Council's recommended measures, with certain modifications to season dates, haulout protections, and spatial dispersion in the Bering Sea, achieve the principles identified in the BiOp and the RFRPAs. The Council's recommendation, modified as necessary to avoid jeopardy and adverse modification, therefore forms the basis for the management measures contained in this emergency interim rule.

Elements of the Emergency Rule

Pollock Trawl Exclusion Zones

Under this emergency interim rule, directed fishing for pollock is prohibited within either 10 or 20 nm of rookeries and haulouts in the BS and GOA. The location, size, and period of each exclusion zone are set out in Tables 12, 13, and 20 of 50 CFR part 679. Table 20 for the Aleutian Islands subarea (AI), is reprinted to be consistent in format with Tables 12 and 13, however, no substantive changes were made (see the following discussion).

NMFS approved these exclusion zones on the basis of 10 Steller sea lion counts conducted since 1979, during the reproductive season (summer) and non-reproductive season (winter). NMFS used the following criteria to identify sites that require exclusion zones and to determine the period of the closure and the radius of the zone:

1. *Rookeries* If the site is a rookery, a 10 or 20-nm year-round pollock trawl exclusion zone.

2. *Summer haulouts* If the site is a summer haulout, with greater than 200 sea lions in a summer survey since 1979, and less than 75 sea lions in winter surveys since 1979, a 10 or 20-nm pollock trawl exclusion zone from June 1 through November 1.

3. *Winter haulouts* If the site is a winter haulout, with less than 200 sea lions in summer surveys since 1979, and greater than 75 sea lions in a winter survey since 1979, a 10 or 20-nm pollock trawl exclusion zone from November 1 through June 1.

4. *Year-round haulouts* If the site is a year-round haulout with greater than 200 sea lions in a summer survey since 1979, and greater than 75 sea lions in a winter survey since 1979, a 10 or 20 nm year-round pollock trawl exclusion zone.

The size of the exclusion zones in each area reflects the relative widths of the continental shelf. In the BS, the shelf is relatively wide and exclusion zones have radii of 20 nm. In the GOA, the shelf is narrower and exclusion zones have radii of 10 nm.

The BiOp allowed for a 2-year phase-in schedule for certain RFRPA measures including rookeries and haulout trawl exclusion zones. In the BSAI, under the emergency rule provisions for 1999, all exclusion zones had a 20-nm radius except for the Cape Sarichef zone, which had only a 10-nm raduis. For 2000 and beyond, the Council has recommended that the Cape Sarichef zone have a 20-nm radius, consistent with the BiOp. Therefore, under the emergency interim rule, all 25 exclusion zone sites in the BS are closed to trawling for pollock for a radius of 20 nm.

In the GOA, 53 sites qualified for closure to 10 nm, under criteria in the BiOp. However, in recommending management measures for 2000 and

beyond, the Council recommended no closure for the eight sites exempted under the previous emergency rule, and recommended an additional site, Spitz Island, be exempted. The Council's recommendation included no closures around Cape Barnabas, Gull Point, and Cape Ikolik, and modified trawl exclusion zones around Rugged Island, Point Elrington, The Needles, Mitrofania Island, Spitz Island, and Sea Lion Rocks. NMFS has reviewed these sites in the RFRPAs and determined that they require additional protection, and therefore is implementing an alternative suite of management measures.

Sites around Point Elrington and The Needles meet the criteria for pollock trawl exclusion zones but are not established as exclusion zones under this emergency interim rule. The sites lie entirely within Alaska State waters. Pollock fisheries in these areas are not managed under Federal regulations implementing FMPs. The State of Alaska has indicated its intent to develop equivalent protection measures for these haulouts in 2000. However, if the State fails to develop adequate protection measures for these two sites, NMFS will implement additional protection measures in these areas in 2001 under the authority of the ESA.

This emergency interim rule closes Sea Lion Rocks for a radius of 10 nm to all vessels greater than 60 ft (18.3 m) length overall (LOA). Due to safety concerns for small boats in the region and the relatively lower levels of harvests by these vessels, the area is not closed to vessels less than or equal to 60 ft (18.3 m) LOA. Historically, from 1994 through 1998, vessels longer than 60 ft (18.3 m) LOA have accounted for 72 percent of total harvests in this area. The RFRPAs concluded that excluding vessels greater than 60 ft (18.3 m) LOA from fishing within 10 nm of Sea Lion Rocks, and the subsequent harvest reductions under this closure, would provide sufficient protection against localized depletions of pollock.

Cape Barnabas, Gull Point, Rugged Island, Cape Ikolik, Spitz Island, and Mitrofania Island were proposed by the Council to be included as pollock trawl exclusion zones for 2000 and beyond with a variety of exemptions. However, this emergency rule closes these areas because they have been determined to be critical to the recovery of the western population of Steller sea lions.

In the Bering Sea, the Walrus Island rookery also meets the requirements under the RPA guidelines for closure to 20 nm. However, because this site falls entirely within the Pribilof Island Area Habitat Conservation Zone (see § 679.22(a)(6)), which is closed to trawling year-round, a 20-nm closure of this area would be redundant and is not necessary.

Aleutian Islands Closure

The RFRPA guidelines require that the AI be closed to directed fishing for pollock to protect the waters surrounding rookeries and major haulouts of Steller sea lions. This closure was implemented in 1999, by a reduction in TAC allocated to this subarea that provided for incidental catch only, and then by emergency interim rule. The closure of the AI is continued by this emergency interim rule.

Bering Sea Management Measures

Steller sea lion conservation area (SCA). This emergency interim rule establishes a conservation area to regulate total removals of pollock. This area was previously referred to as the combined Critical Habitat/Catcher Vessel Operation Area in previous emergency rulemaking and in supporting documents. The SCA includes the portion of Bering Sea critical habitat known as the Bogoslof foraging area and the portion of the Catcher Vessel Operational Area (CVOA) that extends eastward from the Bogoslof foraging area. This eastern block of the CVOA overlaps with the pollock trawl exclusion zone for Sea Lion Rocks (Amak Island). Inclusion of this eastern block in the SCA is necessary to provide sufficient protection from concentrated fishing and resulting localized depletions of sea lion prey in (1) the narrow corridor between the Bogoslof foraging area and the Sea Lion Rocks (Amak Island) trawl exclusion zone and (2) these adjacent portions of critical habitat.

The SCA consists of the area of the BS between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed: 55°00′ N lat. 170°00′ W long.; 55°00′ N lat. 168°00′ W long.; 55°30′ N lat. 168°00′ W long.; 55°30′ N lat. 166°00′ W long.; 56°00′ N lat. 166°00′ W long.; 56°00′ N lat. 163°00′ W long.

This emergency interim rule restricts pollock harvests within the SCA to a percentage of each sector's seasonal directed fishing allowance (DFA) according to the percentages set forth in Table 2 of the preamble. In the Bering Sea, the DFA is the amount of pollock available for harvest by each industry sector after subtracting the incidental catch allowance (ICA).

NMFS will monitor catch by each industry sector and close the SCA to directed fishing for pollock by sector when NMFS determines that the specified SCA limit has been reached. In accordance with the Council's intent, inshore catcher vessels less than or equal to 99 ft (30.2 m) LOA are exempt from SCA closures during the fall and winter months unless the cap for the inshore sector has been reached. Under the authority of the American Fisheries Act (AFA), NMFS will separate the inshore fishery into cooperative and non-cooperative sector allocations. For each sector, NMFS will announce the closure of the SCA to catcher vessels over 99 ft (30.2 m) LOA before the inshore sector SCA limit is reached. NMFS will implement the closure in a manner intended to leave remaining quota within the SCA that is sufficient to support directed fishing for pollock by vessels less than or equal to 99 ft (30.2 m) LOA for the duration of the inshore sector opening. This measure will be implemented during the fall and winter seasons only because of vessel safety concerns during these time periods of severe weather.

Fishing seasons. This emergency interim rule establishes new fishing seasons for the four sectors of the Bering Sea pollock fishery that are defined in the AFA. These new fishing seasons are summarized in Table 1 or the preamble. This emergency rule also repeals existing "fair start" provisions that required vessels fishing for pollock in the BS to cease fishing for groundfish during the week preceding each pollock season or face a mandatory stand-down period during the first week of the pollock season. The Council has determined that these fair start requirements are no longer necessary and has recommended an exclusive seasonal system (see Table 1 in the preamble).

The Council recommended a complex suite of seasons, stand-downs, and SCA limits. Under the RFRPAs, NMFS determined that stand-downs between the A/B and C/D seasons were unnecessary outside the SCA. However, NMFS also determined that the SCA was of special concern and that lengthening the seasons to attain spatial and temporal dispersion was a priority in this area. Therefore, the season dates as proposed by the Council have been altered to reflect these requirements. All sectors now have the same fishing season dates as described in the following Table 1.

TABLE 1.—BERING SEA SUBAREA POLLOCK FISHING SEASONS FOR ALL SECTORS

Bering Sea Subarea	Season [1]			
	A	B	C	D
Outside the SCA [2]	January 20—June 10 (combined A/B season)		June 10—November 1 (combined C/D season)	
Inside the SCA	Jan. 20–April 1	April 1–June 10	June 10–Aug. 20	Aug. 20–Nov. 1

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.
[2] For the area outside the SCA, there will be two seasonal pairs, A/B and C/D, that are allocated the annual Bering Sea subarea directed fishing allowance by sector. Fishing inside the SCA is authorized as a limit of the directed fishing allowance allocated to the area outside the SCA.

Temporal and Spatial Apportionment of DFA. The pollock DFA allocated to each industry sector is apportioned to the fishing seasons previously identified according to the formula set out in Table 2 of the preamble. The RFRPAs specify the amount of the total annual pollock TAC that can be taken from the SCA in each season: A season, 15 percent; B season, 5 percent; C season, 4.5 percent; D season, 7.5 percent. These limits are expressed as percentages of each sector's seasonal allocation of its DFA.

For example, if the inshore sector received an annual DFA allocation of 100,000 mt, 40 percent (40,000 mt) would be apportioned to the combined A/B season for the inshore sector. Of this amount, 42 percent (16,800 mt) could be taken within the SCA during the A season, and 14 percent could be taken within the SCA during the B season (5,600 mt).

Overages and underages of SCA amounts may be "rolled over" from the A season SCA limit to the B season SCA limit so that no single season exceeds 15 percent of the annual TAC, and that the combined A/B limit inside the SCA of 20 percent is not exceeded.

TABLE 2.—BS APPORTIONMENTS OF POLLOCK DFA IN PERCENT BY SEASON AND AREA

Industry sector	Seasonal DFA apportionment and harvest limits within the SCA (in percent)			
	A/B (40% of annual DFA)		C/D (60% of annual DFA)	
	A-SCA limit	B-SCA limit	C-SCA limit	D-SCA limit
Inshore	42	14	13.5	22.5
C/P	24.75	8.25	0	0
Mothership	37.5	12.5	0	0
CDQ	62	20.5	14	23

Definition of Directed Fishing for Pollock CDQ

This emergency interim rule adds a definition for "directed fishing for pollock CDQ" that is necessary to enforce directed fishing closures that apply to both the CDQ and non-CDQ pollock fisheries. The CDQ groups are prohibited from exceeding any of their groundfish CDQ allocations and are required to manage the catch of vessels fishing on their behalf within these CDQ allocations. Therefore, NMFS does not use maximum retainable amounts, prohibited species catch status, and announcements of directed fishing closures to manage the CDQ fisheries, as is done to manage the non-CDQ fisheries. The definition of directed fishing for pollock CDQ implemented in this emergency interim rule is based on the percent pollock in each CDQ haul using the 60-percent threshold recommended by the Council at its June 1999 meeting. NMFS is preparing proposed rulemaking that would permanently implement a definition of directed fishing for pollock CDQ. However, that regulatory amendment will not be in place in time for the start of the trawl fisheries in January 2000.

Under the definition added by this emergency interim rule, vessels fishing for the CDQ groups in any areas closed to directed fishing for pollock CDQ are prohibited from bringing onboard their vessel any trawl hauls in which pollock is equal to or greater than 60 percent of the total groundfish in the haul. Species composition collected by the observer onboard the vessel will be used to determine the percent pollock in each CDQ trawl haul.

Gulf of Alaska Management Measures

Fishing seasons and TAC apportionments. This emergency interim rule establishes new fishing seasons and pollock TAC apportionments in the Western and Central (W/C) Regulatory Areas of the GOA. These new fishing seasons are summarized in Table 3 of the preamble. The TAC for pollock in the combined W/C Regulatory Areas would continue to be apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Consistent with current regulations, pollock fishing seasons are not implemented for the Eastern Regulatory Area.

TABLE 3.—POLLOCK FISHING SEASONS AND TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA

Season	TAC Apportionment	Season Dates [1]
A	30%	January 20–March 1.
B	15%	March 15–May 31.
C	30%	August 20–September 15.
D	25%	October 1–November 1.

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.

2. *Pollock TAC apportionment within the Shelikof Strait conservation area.* Prior to 1999, pollock TAC within the W/C GOA was apportioned on the basis of biomass distribution as determined from triennial bottom trawl surveys. Bottom trawl surveys have been conducted in summer months, and additional hydroacoustic surveys have been conducted in winter months. These winter surveys indicate an extensive and relatively predictable spawning aggregation of pollock in the

winter period in Shelikof Strait. Under the emergency rule in 1999, a cap was set for the harvest from Shelikof Strait based on previous hydroacoustic surveys, and the GOA TAC was distributed to areas 610, 620, and 630 based on the trawl surveys. The cap in Shelikof Strait was determined using the estimated biomass from the most recent hydroacoustic survey divided by the estimated total GOA biomass from population modeling, and the quotient then multiplied by the GOA TAC for the A season.

In the GOA, overall pollock fishery harvest rates have varied from about 5 percent of the total biomass to about 10 percent since 1990. Since 1994, the estimated harvest rate in Shelikof Strait has been on the order of 1 percent to 3 percent of the total biomass, well below the overall harvest rate for the GOA. This discrepancy suggests that the biomass of pollock in Shelikof Strait is under-utilized relative to the biomass of pollock outside the Strait and, relative to the overall harvest rate, pollock biomass outside the Strait must be over-utilized. This relative over-utilization of pollock outside Shelikof Strait may have a detrimental effect on the availability of pollock to Steller sea lions in those outer regions.

The Shelikof Strait conservation area is defined as the area bounded by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.;
58°51′ N lat. 152°00′ W long.; and, the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to 57°00′ N lat. 154°00′ W long.; 56°30′ N lat. 154°00′ W long.; 56°30′ N lat. 155°00′ W long.; 56°00′ N lat. 155°00′ W long.; 56°00′ N lat. 157°00′ W long.; and the intersection of 157°00′ W long. with the Alaska Peninsula.

The Shelikof Strait conservation area TAC apportionment will be determined annually for the A and B seasons during the specification process. A separate TAC will be determined for this area based on winter hydroacoustic survey data. The GOA TAC for areas 610, and areas 620 and 630 outside of the Shelikof Strait conservation area, will be reduced proportionally by this amount. When NMFS determines that the A or B season pollock TAC from within the Shelikof Strait conservation area has been reached, NMFS will prohibit directed fishing for pollock within Shelikof Strait.

GOA Trip limits. The Council recommended that NMFS establish a 300,000-lb (136-mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA to support the temporal dispersion objectives of the RPAs. This emergency interim rule prohibits a catcher vessel fishing for groundfish in the GOA from retaining on board more than 300,000-lb (136-mt) of pollock harvested in the GOA. This trip limit does not exempt vessels from existing regulations that require 100-percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop fishing for pollock during a fishing trip before the 300,000-lb (136-mt) trip limit is reached to avoid a violation of either the 300,000 lb (136-mt) trip limit or the 100-percent retention requirement for pollock.

In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this emergency interim rule also prohibits vessels from operating as tenders in the GOA east of 157°00′ W long. Vessels operating as tenders in the GOA west of 157°00′ W long. are prohibited from retaining on board more that 600,000 lb (272 mt) (the equivalent of two fishing trips) of unprocessed pollock that was harvested in the GOA. The Council recommended that tendering west of 157°00′ W long. is necessary because smaller vessels delivering to Sand Point and King Cove may be more dependent on tenders than the larger vessels that operate east of 157°00′ W long. and deliver primarily to Kodiak.

Catcher Vessel Exclusive Fishing Seasons

The Council recommended that catcher vessels be prohibited from participating in directed fishing for pollock in both the BS and GOA in concurrent seasons, except for catcher vessels less than 125 ft (38.1 m) LOA in area 620 east of 157°00′ W long. and area 630. For example, if a catcher vessel chose to participate in the combined BS A/B season, it would not be eligible to participate in the W/C GOA until the start of the GOA C season. Similarly, if a catcher vessel chose to participate in the GOA A season, it would not be eligible to participate in the BS until the start of the next BS season, which would be the C/D season. The existing 3-day stand-down requirement at § 679.23(h) is revised to remove directed fishing for pollock from stand-down requirements, which would be redundant. However, a 3-day stand-down will remain in effect for vessels directed fishing for Pacific cod.

Revised Interim 2000 Harvest Specifications for Pollock in the BS and GOA

The regulatory changes in this emergency interim rule require revision of the 2000 interim harvest specifications for pollock in the BS and GOA. Existing regulations at 50 CFR 679.20(c)(2) do not require that interim harvest specifications for pollock in the BS and GOA be temporally or spatially dispersed. However, the BiOp concluded that the current program for managing the BS and GOA pollock fisheries could jeopardize Steller sea lions or their critical habitat. Therefore, to allow the Bering Sea and GOA pollock fisheries to commence on January 20, 2000, this emergency interim rule also adjusts the 2000 interim harvest specifications for pollock to comport with the RFRPA management measures outlined above.

The specifications for Bering Sea Subarea pollock in Table 1 of the BSAI 2000 interim harvest specifications (65 FR 60; January 3, 2000) are replaced by the following Table 4 in the preamble. This rule changes the interim specifications for pollock for two reasons: (1) To comport with the temporal and spatial dispersions required by the BiOp; and (2) to incorporate the Council's final 2000 TAC recommendations for pollock, which are increased from the 2000 proposed specifications.

TABLE 4.—REVISED INTERIM 2000 HARVEST AMOUNTS FOR POLLOCK IN THE BERING SEA SUBAREA

Species & Component	Area	A/B Season (mt)		
		Interim TAC	A–SCA Limit	B–SCA Limit
Pollock: [1]				
CDQ	BS	45,560	28,247	9,339
Incidental Catch Allowance (ICA)	BS	51,255	n/a	n/a
Inshore [2]	BS	194,769	81,803	27,268

TABLE 4.—REVISED INTERIM 2000 HARVEST AMOUNTS FOR POLLOCK IN THE BERING SEA SUBAREA—Continued

Species & Component	Area	A/B Season (mt)		
		Interim TAC	A–SCA Limit	B–SCA Limit
Offshore catcher/processor[3]	BS	155,815	38,564	12,855
Mothership	BS	38,954	14,608	4,869

[1] The AFA requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. Then, NMFS is subtracting 5 percent of the remainder as an incidental catch allowance for pollock, which is not apportioned by season or area. The remainder of this amount is further allocated by sector as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent.

[2] Under the emergency rule, NMFS will close the SCA to inshore vessels greater than 99 ft (30.2 m) LOA while maintaining a sufficient SCA allowance to support fishing activities by inshore catcher vessels under 99 ft (30.2 m) LOA for the duration of the current opening. However, once the specified SCA limit is reached, all inshore vessels will be prohibited from engaging in directed fishing for pollock inside the SCA.

[3] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

The first seasonal allowances for W/C GOA pollock in Table 1 of the GOA 2000 interim harvest specifications (65 FR 65; January 3, 2000) are replaced by the following Table 5.

TABLE 5.—REVISED FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE WESTERN (W) AND CENTRAL (C) REGULATORY AREAS OF THE GULF OF ALASKA (GOA)

Species and area	A season interim TAC (mt)
Pollock:	
W (610)	5,465
C (620 outside Shelikof Strait)	3,252
C (630 outside Shelikof Strait)	4,278
Shelikof Strait	14,366
Total	27,361

[1] The pollock catch limit for the Shelikof Strait conservation zone is determined by calculating the ratio of the most recent estimate of pollock biomass in Shelikof Strait (489,900 mt) divided by the most recent estimate of total pollock biomass in the GOA (933,000 mt). This ratio is then multiplied by the pollock TAC in the A season for the Western and Central areas of the GOA (27,361 mt).

Technical Amendment to Steller Sea Lion No-Trawl Zones in the Aleutian Islands Area

This emergency interim rule also makes technical changes to the existing no-trawl zones set out in Table 5 of 50 CFR part 679 by suspending it and by adding Table 20 to 50 CFR part 679. This is due to the availability of new information on the location of haulout sites as determined by NMFS during recent surveys.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to the National Environmental Policy Act an EA/RIR was developed for this action. It was determined that this action would not have a significant impact on the human environment. The EA/RIR may be obtained in hard copy from the Alaska Regional Office (see **ADDRESSES**) or via the internet at www.fakr.noaa.gov. NMFS is specifically requesting comments on the EA/RIR. NMFS will respond to those comments in the proposed rule to implement permanent Steller sea lion protection measures in the BSAI and GOA pollock fisheries.

This emergency action has been determined to be significant for purposes of E.O. 12866. This rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist which may duplicate, overlap, or conflict with this rule.

Failure to have the measures contained in this rule in place by January 20, 2000, would force delay of the start of the pollock fisheries of the BS and GOA, with significant costs to industry. As such, NMFS finds that the immediate need to effect the provisions of this emergency interim rule by January 20, 2000, in order to avoid unecessary closures that would cause extensive economic disruption to the pollock fisheries, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. The need for these measures to be in place by January 20, 2000, also constitutes good cause under authority set forth at 5 U.S.C. 553(d)(3) not to delay the effective date of this emergency interim rule for 30 days.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. These regulations have been drafted to comply with that directive. We seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition "Directed fishing for pollock CDQ" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing for pollock CDQ means, for purposes of enforcing closures to directed fishing for pollock CDQ elsewhere in this part, retrieving onboard a vessel a haul in which pollock represents 60 percent or more of the total groundfish catch by weight, as determined by the observer's species composition sample for each haul. The groundfish species used to calculate total catch include all the species and

species categories defined in Table 1 of the annual BSAI specifications.

* * * * *

3. In § 679.7, paragraph (b) is suspended and paragraph (j) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(j) *Prohibitions specific to the GOA (applicable through July 19, 2000)*—(1) *Southeast Outside trawl closure.* Use any gear other than non-trawl gear in the GOA east of 140° W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel at any time, more than 300,000 pounds (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.*—(i) Operate as a tender vessel east of 157°00′ W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157°00′ W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

* * * * *

4. In § 679.20, paragraphs (a)(5)(i)(A) and (a)(5)(ii)(B) are suspended, and new paragraphs (a)(5)(i)(C) and (a)(5)(ii)(C) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(C) *BSAI seasonal allowances (applicable through July 19, 2000)*—(1) *General.* Within any fishing year, the Regional Administrator may add or subtract the under harvest or over harvest of a seasonal allowance, by component, according to the harvest limitations here. The Steller Sea Lion Conservation Area (SCA) is defined at § 679.22(a)(11)(iv).

Bering Sea subarea	Combined A/B season, maximum overall harvest of 40% of annual vcxvccpollock TAC.	Combined C/D season, maximum overall harvest of 60% of annual pollock TAC.		
Inside SCA	Maximum harvest limit of 20% of annual pollock TAC for A+B combined, and 15% for A or B singly.	Maximum harvest limit of 4.5% of annual pollock TAC.	Maximum harvest limit of 7.5% of annual pollock TAC.	
Season	AB	C	D	

(2) *Inshore, catcher/processor, mothership, and CDQ components.* The portion of the Bering Sea subarea pollock directed fishing allowance allocated to each component under sections 206(a) and 206(b) of the American Fisheries Act will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(4)(i), as follows: A/B Season, 40 percent; C/D Season, 60 percent.

* * * * *

(ii) * * *

(C) *GOA seasonal allowances (applicable through July 19, 2000).* Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(d)(3) as follows: A Season, 30 percent; B Season, 15 percent; C Season, 30 percent; D Season, 25 percent. Within any fishing year, underharvest or overharvest of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment.

* * * * *

5. In § 679.22, paragraphs (a)(7) and (b)(2) are suspended, and new paragraphs (a)(8)(iv), (a)(11) and (b)(3) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iv) *Pollock closure* (applicable through July 19, 2000). Directed fishing for pollock is prohibited at all times within the Aleutian Islands subarea.

* * * * *

(11) *Steller sea lion protection areas, Bering Sea subarea and Bogoslof District (applicable through July 19, 2000)*—(i) *Year-round trawl closures.* Trawling is prohibited within 10 nm of each of the Steller sea lion rookeries shown in Table 12 to this part.

(ii) *Seasonal trawl closures.* During January 1 through June 10, or a date earlier than June 10 if directed fishing for pollock is prohibited for all sectors under § 679.20, trawling is prohibited within 20 nm of each of the Steller sea lion rookeries shown in Table 12 to this part.

(iii) *Pollock closures.* Directed fishing for pollock, including pollock CDQ, is prohibited within 10 or 20 nm of each of the sea lion haulout and rookery sites shown in Table 12 to this part. The radius in nm and time period that each closure is in effect are shown in Table 12 to this part.

(iv) *Steller sea lion conservation area (SCA)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for pollock CDQ is prohibited within the SCA for the duration of a fishing season when the Regional Administrator announces, by notification in the **Federal Register**, that the harvest of a seasonal limit of pollock within the SCA by an industry component reaches the applicable percentage specified in the table following paragraph (a)(11)(iv)(D) of this section.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170'00' W long. and 163'00' W long., south of straight lines connecting the following points in the order listed: 55°00″ N lat. 170°00″ W long.; 55°00″ N lat. 168°00″ W long.; 55°30″ N lat. 168°00″ W long.; 55°30″ N lat. 166°00″ W long.; 56°00″ N lat. 166°00″ W long.; and 56°00″ N lat. 163°00″ W long.

(C) *Seasons*—Subject to other provisions of this part, directed fishing for pollock within the SCA is authorized only during the following seasons:

(1) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., April 1;

(2) *B season.* From 1200 hours, A.l.t., April 1, through 1200 hours, A.l.t., June 10;

(3) *C season.* From 1200 hours, A.l.t., June 10, through 1200 hours, A.l.t., August 20;

(4) *D season.* From 1200 hours, A.l.t., August 20, through 1200 hours, A.l.t., November 1.

(D) *Criteria for closure*— (1) *General.* A directed fishing closure identified in paragraph (a)(11)(iv)(A) of this section will take effect when the Regional

Administrator determines that the harvest of a seasonal limit of pollock within the SCA by an industry component reaches the applicable percentage specified in the following table:

Industry sector	Seasonal directed fishing allowance limits within the SCA by industry component (in percent)			
	A/B season		C/D season	
	A–SCA limit	B–SCA limit	C–SCA limit	D–SCA limit
Inshore	42	14	13.5	22.5
Catcher/processor	24.75	8.25	0	0
Mothership	37.5	12.5	0	0
CDQ	62	20.5	14	23

(2) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit during the A and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the inshore limit specified in paragraph (a)(7)(iv)(D)(*1*) of this section has been met.

(b) * * *

(3) *Steller sea lion protection areas (applicable through July 19, 2000).*—(i) *Year-round trawl closures.* Trawling is prohibited in the GOA within 10 nm of the Steller sea lion rookeries shown in Table 13 to this part.

(ii) *Pollock closures.* Directed fishing for pollock is prohibited within 10 nm of each of the sea lion haulout and rookery sites shown in Table 13 to this part. The radius in nm and time period that each closure is in effect are shown in Table 13 to this part.

(iii) *Shelikof Strait conservation area.*—(A) *General.* Directed fishing for pollock is prohibited within the Shelikof Strait conservation area during the A and B seasons, defined at § 679.23(d)(3) of this part, when the Regional Administrator announces through notification in the **Federal Register** that the A or B season catch of pollock from within the Shelikof Strait conservation area reaches the amount determined by paragraph (b)(3)(iii)(C) of this section.

(B) *Boundaries.* The Shelikof Strait conservation area consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order: 58°51′ N lat. 153°15′ W long.; 58°51′ N lat. 152°00′ W long. and the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to 57°00′ N lat. 154°00′ W long.; 56°30′ N lat. 154°00′ W long.; 56°30′ N lat. 155°00′ W long.; 56°00′ N lat. 155°00′ W long.; 56°00′ N lat. 157°00′ W long.; and the intersection of 157°00′ W long. with the Alaska Peninsula.

(C) *Determination of TAC.* NMFS will publish the pollock TAC for the Shelikof Strait conservation area in the annual specifications pursuant to § 679.20(c). The TAC is determined by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the total pollock biomass in the GOA. NMFS will multiply this ratio by the overall pollock TAC for the GOA and then multiply that sum by the seasonal TAC apportionment to determine the Shelikof Strait apportionment.

* * * * *

6. In § 679.23, paragraphs (d)(2) and (e)(2) are suspended, and new paragraphs (d)(3), (e)(5), and (i) are added to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) *Directed fishing for pollock (applicable through July 19, 2000).* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., March 1;

(ii) *B season.* From 1200 hours, A.l.t., March 15, through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 20, through 1200 hours, A.l.t., September 15.

(iv) *D season.* From 1200 hours, A.l.t., October 1, through 1200 hours, A.l.t., November 1.

(e) * * *

(5) *Directed fishing for pollock in the Bering Sea subarea (applicable through July 19, 2000).*—(i) *Inshore, offshore catcher/processor, and mothership components and Pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea subarea or directed fishing for pollock CDQ in the Bering Sea subarea is authorized only during the following two seasons:

(A) *A/B season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., June 10;

(B) *C/D season.* From 1200 hours, A.l.t., June 10, through 1200 hours, A.l.t., November 1;

(ii) [Reserved]

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock (applicable through July 19, 2000).* Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction in area 620 east of 157°00′ W. long. and area 630. BS and GOA seasons are provided at § 679.23(d)(3) and § 679.23(e)(4).

If you own or operate a catcher vessel and engage in directed fishing for pollock in the—	During the—	Then you are prohibited from subsequently engaging in directed fishing for pollock in the—
Bering Sea subarea	A/B season	GOA until the following C season.
	C/D season	GOA until the A season of the next year.
GOA	A season	BSAI until the following C/D season.
	B season	BSAI until the following C/D season.
	C season	BSAI until the A/B season of the following year.
	D season	BSAI until the A/B season of the following year.

7. In 50 CFR part 679 Tables 16 through 19 are reserved; Tables 4, 5, and 6 are suspended; and Tables 12, 13, and 20 to 50 CFR part 679 are added to read as follows:

TABLE 12 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE BERING SEA SUBAREA

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within * * * (nm)		Trawling prohibited within (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	Jan. 1 through April 15	Year-round
Walrus	57 11.00 N	169 56.00 W			20	20		10
Uliaga	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W		20		
Chuginadak	52 46.70 N	169 41.90 W				20		
Kagamil	53 02.50 N	169 41.00 W				20		
Samalga	52 46.00 N	169 15.00 W				20		
Adugak	52 55.00 N	169 10.50 W			20	20		10
Umnak/Cape Aslik	53 25.00 N	168 24.50 W			20	20		
Ogchul	52 59.71 N	168 24.24 W			20	20		10
Bogoslof/Fire Island	53 55.69 N	168 02.05 W			20	20		10
Emerald	53 17.50 N	167 51.50 W				20		
Unalaska/Cape Izigan	53 13.64 N	167 39.37 W			20	20		
Unalaska/Bishop Pt	53 58.40 N	166 57.50 W			20	20		
Akutan/Reef-lava	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20	20		
Old Man Rocks	53 52.20 N	166 04.90 W			20	20		
Akutan/Cape Morgan	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	20	20	10
Rootok	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W		20		
Akun/Billings Head	54 17.61 N	165 32.06 W	54 17.57 N	165 31.71 W	20	20	20	10
Tanginak	54 12.00 N	165 19.40 W			20			
Tigalda/Rocks NE	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	20		
Unimak/Cape Sarichef	54 34.30 N	164 56.80 W			20	20		
Aiktak	54 10.99 N	164 51.15 W			20			
Ugamak	54 13.50 N	164 47.50 W	54 13.00 N	164 47.00 W	20	20	20	10
Round	54 12.05 N	164 46.60 W				20		
Sea Lion Rock (Amak)	55 27.79 N	163 12.24 W			20	20	20	10
Amak and rocks	55 24.20 N	163 09.60 W	55 25.90 N	163 09.90 W	20	20		

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

TABLE 13 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm) (year-round)
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	
Bird	54 40.16 N	163 17.57 W			10	10	
South Rocks	54 18.14 N	162 41.52 W			10	10	
Clubbing Rocks	54 41.98 N	162 26.74 W	54 42.00 N	162 26.50 W	10	10	10
Pinnacle Rock	54 46.06 N	161 45.85 W			10	10	10
Sushilnoi Rocks	54 49.30 N	161 42.73 W				10	
Olga Rocks	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10	10	
Jude	55 15.75 N	161 06.27 W			10	10	
Sea Lion Rocks (Shumagins) [4]	55 04.70 N	160 31.04 W			10	10	

TABLE 13 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA—Continued

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm) (year-round)
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	
The Whaleback	55 16.82 N	160 05.04 W			10	10	
Chernabura	54 45.18 N	159 32.99 W	54 44.87 N	159 35.74 W	10	10	10
Castle Rock	55 16.47 N	159 29.77 W				10	
Atkins	55 03.50 N	159 18.50 W			10	10	10
Spitz	55 46.80 N	158 53.20 W				10	
Mitrofania	55 50.00 N	158 42.00 W			10	10	
Kak	56 17.30 N	157 50.10 W				10	
Lighthouse Rocks	55 46.79 N	157 24.89 W			10	10	
Sutwik	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W		10	
Chowiet	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	10	10	10
Nagai Rocks	55 50.00 N	155 46.00 W			10	10	
Chirikof	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	10	10	10
Puale Bay	57 40.60 N	155 23.10 W			10	10	
Kodiak/Point Ikolik	57 17.12 N	154 48.29 W			10		
Takli	58 01.75 N	154 31.25 W				10	
Cape Gull	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W		10	
Sitkinak/Cape Sitkinak	56 34.30 N	153 50.96 W	56 34.20 N	153 51.05 W	10	10	
Kodiak/Cape Ugat	57 52.41 N	153 50.97 W			10	10	
Kodiak/Cape Barnabas	57 10.20 N	152 53.05 W			10	10	
Kodiak/Gull Point	57 21.45 N	152 36.30 W			10	10	
Shakun Rock	58 32.80 N	153 41.50 W			10	10	
Twoheaded Island	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10	10	
Cape Douglas (Shaw Island)	59 00.00 N	153 22.50 W				10	
Latax Rocks	58 40.10 N	152 31.30 W			10	10	
Ushagat/SW	58 54.75 N	152 22.20 W				10	
Ugak	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W		10	
Sea Otter Island	58 31.15 N	152 13.30 W			10	10	
Long	57 46.82 N	152 12.90 W			10		
Kodiak/Cape Chiniak	57 37.90 N	152 08.25 W			10	10	
Sugarloaf	58 53.25 N	152 02.40 W			10	10	10
Sea Lion Rocks (Marmot)	58 20.53 N	151 48.83 W			10	10	
Marmot	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	10	10	10
Perl	59 05.75 N	151 39.75 W			10	10	
Outer (Pye) Island	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	10	10	10
Steep Point	59 29.05 N	150 15.40 W				10	
Chiswell Islands	59 36.00 N	149 34.00 W			10	10	
Rugged Island	59 49.80 N	149 23.30 W	59 51.00 N	149 25.30 W	10		
Point Elrington [4]	59 56.00 N	148 15.20 W					
Wooded Island (Fish)	59 52.90 N	147 20.65 W			10	10	
The Needles [4]	60 06.64 N	147 36.17 W					
Glacier Island	60 51.30 N	147 14.50 W			10	10	
Seal Rocks	60 09.78 N	146 50.30 W			10	10	
Cape Hinchinbrook	60 14.00 N	146 38.50 W				10	
Hook Point	60 20.00 N	146 16.50 W				10	
Cape St. Elias	59 48.00 N	144 35.50 W			10	10	

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.

[2] Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.

[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[4] Vessels less than or equal to 60 ft. (18.3m) LOA are exempt from the 20 nm closure at Sea Lion Rocks.

[5] Restrictions at Point Elrington and The Needles will be considered by the Alaska Board of Fisheries because these areas fall completely within the State of Alaska management area of Prince William Sound.

TABLE 20 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE ALEUTIAN ISLANDS SUBAREA

Management area/island/site [1, 2, 3]	Boundaries to				Trawling prohibited within— (nm) year-round
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Yunaska Island	52 41.40 N	170 36.35 W			10
Kasatochi Island	52 11.11 N	175 31.00 W			10
Adak Island	51 35.50 N	176 57.10 W	51 37.50 N	176 59.60 W	10
Gramp Rock	51 28.87 N	178 20.58 W			10
Tag Island	51 33.50 N	178 34.50 W			10
Ulak Island	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10

TABLE 20 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE ALEUTIAN ISLANDS SUBAREA—Continued

Management area/island/site [1, 2, 3]	Boundaries to				Trawling prohibited within—(nm) year-round
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Semisopochnoi/Pochnoi Point	51 57.30 N	179 46.00 E			10
Semisopochnoi/Petrel Point	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Amchitka Island/East Cape	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka Is/Column Rocks	51 32.32 N	178 49.28 E			10
Ayugadak Point	51 45.36 N	178 24.30 E			10
Kiska Island/Lief Cove	51 57.19 N	177 20.41 E	51 57.24 N	177 20.49 E	10
Kiska Island/Cape St. Stephen	51 52.50 N	177 13.00 E	51 53.50 N	177 12.00 E	10
Buldir Island	52 20.38 N	175 53.85 E	52 20.25 N	175 54.03 E	10
Agattu Island/Cape Sabek	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Agattu Island/Gillon Pt	52 24.13 N	173 21.31 E			10
Attu Island/Cape Wrangell	52 55.36 N	172 27.22 E	52 55.34 N	172 27.55 E	10
Seguam Island	52 21.05 N	172 34.40 W	52 21.02 N	172 33.06 W	20
Agligadak Island	52 06.09 N	172 54.23 W			20

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[FR Doc. 00–1708 Filed 1–20–00; 3:26 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 65, No. 16
Tuesday, January 25, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100163–00]

RIN 1545–AX73

Applying Section 197 To Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the amortization of certain intangible property to partnership transactions involving sections 732(b) and 734(b). The proposed regulations interpret the provisions of section 197(f)(9), reflecting changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 24, 2000. Outlines of topics to be discussed at the public hearing scheduled for May 24, 2000, at 10 a.m. must be received by May 3, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–100163–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100163–00), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/regslist.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert G. Honigman, (202) 622–3050; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document proposes to amend section 197 of the Income Tax Regulations (26 CFR Part 1) to provide additional rules regarding the application of section 197(f)(9) to partnership transactions under sections 732(b) and 734(b).

Background

On January 16, 1997, the IRS published proposed regulations (REG–209709–94) in the **Federal Register** (62 FR 2336) inviting comments under sections 167(f) and 197, including the anti-churning rules in section 197(f)(9). Commentators requested that the final regulations provide additional guidance on how the special anti-churning rule of section 197(f)(9)(E) applies to increases in the basis of partnership property under sections 732, 734, and 743. In accordance with these comments, these proposed regulations provide rules for determining the amount of a basis adjustment under sections 732(b) and 734(b) that will be subject to the anti-churning rules. Final regulations being issued at the same time as these proposed regulations provide rules for determining the amount of a basis adjustment under sections 732(d) and 743(b) that will be subject to the anti-churning rules.

Explanation of Provisions

A. In General

Section 197(f)(9)(E) provides that, in applying the anti-churning rules for basis adjustments under sections 732, 734, and 743, determinations are made at the partner level, and each partner is treated as having owned and used such partner's proportionate share of the partnership's assets. With respect to basis adjustments under sections 732(b) and 734(b), this rule requires taxpayers and the IRS to analyze transactions that actually involve a distribution of property from the partnership to a partner as deemed transactions involving transfers of property directly among the partners.

B. Two-Step Analysis

The proposed regulations embody a two-step analysis in determining whether the anti-churning rules apply to the deemed transfer of intangibles in transactions giving rise to basis adjustments under sections 732(b) and 734(b). First, it is necessary to determine whether the portion of an intangible that a partner is deemed to transfer is treated, immediately prior to the deemed transfer, as being subject to the anti-churning rules for purposes of applying these provisions. Second, if the partner's share of the intangible is treated, immediately prior to the deemed transfer, as being subject to the anti-churning rules for purposes of applying these provisions, it is necessary to determine whether the deemed transferor and transferee are related so that the anti-churning rules will continue to apply to the intangible after the deemed transfer.

For purposes of applying the first prong of the analysis, when a partner acquires an interest in a partnership, the proposed regulations treat the partner as acquiring an undivided interest in all section 197(f)(9) intangibles held by a partnership at the time that the partner acquires an interest in the partnership. If a partner acquires an interest in a partnership from an unrelated person after August 10, 1993 (or, in certain cases, after July 25, 1991), the partner's share of any intangible held by the partnership as of August 10, 1993 (or, in certain cases, after July 25, 1991) is treated as no longer subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers of intangibles in transactions that give rise to the basis adjustments under sections 732(b) and 734(b). With respect to intangibles acquired by the partnership after August 10, 1993, that are subject to the anti-churning rules in the hands of the partnership, a partner's share of the intangible is treated as not subject to the anti-churning rules for purposes of analyzing these basis adjustments if the partner acquired the interest in the partnership from an unrelated person after the partnership acquired the tainted intangible. Once a partner's

share of an intangible is treated as no longer subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers, that share of the intangible will remain untainted even if the partner transfers the interest to the original transferor or a person who is related to the original transferor, so long as the transfers are not part of the same transaction or series of related transactions. Special rules are provided where a partner acquires a partnership interest in exchange for property contributed to a partnership.

For purposes of applying the anti-churning rules to basis adjustments under section 732(b), the distributee partner is deemed to acquire the distributed intangible directly from the continuing partners of the distributing partnership. The proposed regulations contain a favorable stacking rule that treats the distributee partner as acquiring the intangible first from the continuing partners for whom transfers would not be subject to the anti-churning rules (either because the continuing partner's share of the intangible is treated, for purposes of this rule, as not being subject to the anti-churning rules or the distributee partner is not related to the continuing partner) to the extent of such partners' share of appreciation in the intangible.

The proposed regulations contain a special rule to ensure that, in analyzing subsequent transfers, a partner cannot treat the entire intangible as no longer subject to the anti-churning rules simply because the full basis of the intangible (which may be significantly less than the intangible's fair market value) becomes amortizable as a result of the favorable stacking rule that applies to section 732(b) basis adjustments.

For purposes of applying the anti-churning rules to basis adjustments under section 734(b), the continuing partners are deemed to acquire interests in the intangible that remains in the partnership from the partner who received a distribution (giving rise to the section 734(b) basis adjustment) of property other than the intangible. To the extent that the distributee partner could transfer the intangible directly to a continuing partner (who may be the distributee partner) and the transfer would not be subject to the anti-churning rules (either because the distributee partner's share of the intangible is treated (for purposes of this rule) as not being subject to the anti-churning rules or the continuing partner is not related to the distributee (except in certain circumstances)), the basis adjustment will be amortizable with respect to the continuing partner.

The proposed regulations contain a special rule which provides that if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner to the extent that the continuing partner's partnership interest was received in exchange for the intangible.

In addition to issues relating to determining the amount of a basis adjustment that is subject to the anti-churning rules, the Treasury Department and the IRS also recognize that certain problems may arise in maintaining capital accounts where a portion of a section 734(b) adjustment is allocated to an intangible that is subject to the anti-churning rules with respect to one or more partners. In some situations, the failure to allocate deductions for amortization to any partner whose allocable share of a section 734(b) adjustment is subject to the anti-churning rules will distort the partners' economic agreement. For example, where partners agree to share depreciation and amortization deductions equally, if one partner's share of a section 734(b) adjustment allocable to an intangible asset is subject to the anti-churning rules, the capital accounts of the partners will not reflect an equivalent sharing of the economic amortization from the asset absent special adjustments to account for the disparity between the allocation of tax amortization and the intended allocation of economic amortization. Furthermore, divergence of book and tax accounts with respect to an intangible that may result from such special adjustments can cause problems in allocating the correct amount of taxable gain or loss to the appropriate parties upon disposition of the intangible. Similar problems may arise as a result of allowing remedial allocations for intangibles that otherwise are subject to the anti-churning rules and are addressed in § 1.197–2(h)(12)(vii)(B). These regulations are not intended to create such distortions. Nevertheless, a general rule that resolves these distortions in all situations (including different allocations of gain and depreciation or amortization) would be extremely complicated and, perhaps, unduly narrow.

Therefore, the proposed regulations provide that taxpayers may use any reasonable method to determine amortization for book purposes in these situations, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 (i.e., the effect of the book adjustments will not be such that a partner who is subject to the anti-churning rules will receive, directly or indirectly, deductions for amortization, for Federal income tax purposes, attributable to the section 734(b) adjustment). The Treasury Department and IRS may consider providing guidance with respect to this issue in the future and request comments relating thereto.

C. Effective Date

These regulations are proposed to apply to distributions occurring on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The Treasury Department and IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for May 24, 2000, at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For

information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by April 24, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Robert G. Honigman, Office of the Assistant Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.197–2 is amended by:

1. Revising paragraphs (h)(12)(ii), (h)(12)(iv), and (h)(12)(vi).

2. Adding *Examples 28, 29,* and *30* to paragraph (k).

3. Adding a sentence at the end of paragraph (l)(1).

The additions and revisions read as follows:

§ 1.197–2 Amortization of goodwill and other intangibles.

* * * * *

(h) * * *

(12) * * *

(ii) *Section 732(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) apply to any increase in the adjusted basis of a section 197(f)(9) intangible under section 732(b) to the extent that the basis increase exceeds the total unrealized appreciation from the intangible allocable to—

(*1*) Partners other than the distributee partner or persons related to the distributee partner;

(*2*) If the distributed intangible is a section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, the distributee partner and persons related to the distributee partner to the extent that—

(*i*) They acquired an interest or interests in the partnership after August 10, 1993; and

(*ii*) Such interest or interests were held after August 10, 1993, by a person or persons other than the distributee partner or persons who were related to the distributee partner, and the acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest or interests; and

(*3*) If the distributed intangible is a section 197(f)(9) intangible that is acquired by the partnership after August 10, 1993, and that is not amortizable with respect to the partnership, the distributee partner and persons related to the distributee partner to the extent that—

(*i*) They acquired an interest or interests in the partnership after the partnership acquired the distributed intangible; and

(*ii*) Such interest or interests were held after the partnership acquired the distributed intangible, by a person or persons other than the distributee partner or persons who were related to the distributee partner, and the acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest or interests.

(B) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(ii)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the relevant party made a valid retroactive election under § 1.197–1T.

(C) *Intangible still subject to anti-churning rules.* Notwithstanding paragraph (h)(12)(ii) of this section, in applying the provisions of this paragraph (h) with respect to subsequent transfers, the distributed intangible remains subject to the provisions of this paragraph (h) in a percentage (determined at the time of the distribution) equal to—

(*1*) The sum of—

(*i*) The amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section; and

(*ii*) The total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply; over—

(*2*) The fair market value of such intangible.

(D) *Partner's allocable share of unrealized appreciation from the intangible.* The amount of unrealized appreciation from an intangible that is allocable to a partner is the amount of taxable gain that would have been allocated to that partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraphs (h)(12)(ii)(A)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership. However, if the partner contributed the distributed section 197(f)(9) intangible to the partnership, the interest acquired by such partner in exchange for the intangible is treated as not being described in paragraphs (h)(12)(ii)(A)(*2*) or (*3*) of this section.

* * * * *

(iv) *Section 734(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) do not apply to a continuing partner's share of an increase in the basis of a section 197(f)(9) intangible held by a partnership under section 734(b) to the extent that the continuing partner is an eligible partner.

(B) *Eligible partner.* For purposes of this paragraph (h)(12)(iv), eligible partner means—

(*1*) A continuing partner that is not the distributee partner or a person related to the distributee partner;

(*2*) With respect to any section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, a continuing partner that is the distributee partner or a person related to the distributee partner to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after August 10, 1993; and

(*ii*) Such interest was held after August 10, 1993 by a person or persons who were not related to the distributee partner, and the acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest; or

(*3*) With respect to any section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, a continuing partner that is the distributee partner or a person related to the distributee partner to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after the partnership acquired the relevant intangible; and

(*ii*) Such interest was held after the partnership acquired the relevant intangible by a person or persons who were not related to the distributee partner, and the acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(iv)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the distributee partner made a valid retroactive election under § 1.197–1T.

(D) *Partner's share of basis increase.* For purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase is equal to—

(*1*) The total basis increase allocable to the intangible; multiplied by

(*2*) A fraction equal to—

(*i*) The unrealized appreciation from the intangible that would have been allocated to the continuing partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction; over

(*ii*) The total unrealized appreciation from the intangible that would have been realized by the partnership if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Interests acquired by contribution*—(1) *Application of paragraphs (h)(12)(iv)(B)(2) and (3) of this section.* Solely for purposes of paragraphs (h)(12)(iv)(B)(2) and (3) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership. However, if the partner contributed the distributed section 197(f)(9) intangible to the partnership, the interest acquired by such partner in exchange for the intangible is treated as not being described in paragraphs (h)(12)(iv)(B)(*2*) or (*3*) of this section.

(*2*) *Special rule with respect to paragraph* (h)(12)(iv)(B)(*1*) of this section. Solely for purposes of paragraph (h)(12)(iv)(B)(1) of this section, if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner to the extent that the continuing partner's partnership interest was received in exchange for the intangible.

(F) *Effect of section 734(b) adjustment on partners' capital accounts.* If one or more partners are subject to the anti-churning rules under this paragraph (h) with respect to a section 734(b) adjustment allocable to an intangible asset, taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 and this paragraph (h). A method will be considered to contravene the purposes of the anti-churning rules if the effect of the book adjustments resulting from the method is such that any portion of the tax deduction for amortization attributable to the section 734 adjustment is allocated, directly or indirectly, to a partner who is subject to the anti-churning rules with respect to such adjustment.

* * * * *

(vi) *Partner is or becomes a user of partnership intangible*— (A) *General rule.* If, as part of a series of related transactions that includes a transaction described in paragraph (h)(12)(ii), (iii), (iv), or (v) of this section, an anti-churning partner becomes (or remains) a user of an intangible that is treated as transferred in the transaction (as a result of the partners being treated as having owned their proportionate share of partnership assets), the anti-churning rules shall apply to the proportionate share of such intangible that is treated as transferred by the anti-churning partner, notwithstanding the application of paragraph (h)(12)(ii), (iii), (iv), or (v) of this section.

* * * * *

(k) * * *

Example 28. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest prior to the effective date.

(i) In 1990, A, B, and C each contribute $150 cash to form general partnership ABC for the purpose of engaging in a consulting business and a software manufacturing business. The partners agree to share partnership profits and losses equally. In 2000, the partnership distributes the consulting business to A in liquidation of A's entire interest in ABC. The only asset of the consulting business is a nonamortizable intangible, which has a fair market value of $180 and a basis of $0. At the time of the distribution, the adjusted basis of A's interest in ABC is $150. A is not related to B or C.

(ii) Under section 732(b), A's adjusted basis in the intangible distributed by ABC is $150, a $150 increase over the basis of the intangible in ABC's hands. In determining whether the anti-churning rules apply to any portion of the basis increase, A is treated as having owned and used A's proportionate share of partnership property. Thus, A is treated as holding an interest in the intangible during the transition period. Because the intangible was not amortizable prior to the enactment of section 197, the section 732(b) increase in the basis of the intangible may be subject to the anti-churning provisions. Paragraph (h)(12)(ii) of this section provides that the anti-churning provisions apply to the extent that the section 732(b) adjustment exceeds the total unrealized appreciation from the intangible allocable to partners other than A or persons related to A, as well as certain other partners whose purchase of their interests meet certain criteria. Because B and C are not related to A, and A's acquisition of its partnership interest does not satisfy the necessary criteria, the section 732(b) basis increase is subject to the anti-churning provisions to the extent that it exceeds B and C's proportionate share of the unrealized appreciation from the intangible. B and C's proportionate shares of the unrealized appreciation from the intangible is $120 (2/3 of $180). This is the amount of gain that would be allocated to B and C if the partnership sold the intangible immediately before the distribution for its fair market value of $180. Therefore, $120 of the section 732(b) basis increase is not subject to the anti-churning rules. The remaining $30 of the section 732(b) basis increase is subject to the anti-churning rules. Accordingly, A is

treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $120 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $30.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-third of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $120 = $60), over the fair market value of the distributed intangible ($180).

Example 29. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest after the effective date. (i) The facts are the same as in example 28, except that B and C form ABC in 1990. A does not acquire an interest in ABC until 1995. In 1995, A contributes $150 to ABC in exchange for a one-third interest in ABC. At the time of the distribution, the adjusted basis of A's interest in ABC is $150.

(ii) As in *Example 28*, the anti-churning rules do not apply to the increase in the basis of the intangible distributed to A under section 732(b) to the extent that it does not exceed the unrealized appreciation from the intangible allocable to B and C. Under paragraph (h)(12)(ii) of this section, the anti-churning provisions also do not apply to the section 732(b) basis increase to the extent of A's allocable share of the unrealized appreciation from the intangible because A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by the partnership before A acquired the ABC interest. Under paragraph (h)(12)(ii)(E) of this section, A is deemed to acquire the ABC partnership interest from an unrelated person because A acquired the ABC partnership interest in exchange for a contribution to the partnership of property other than the distributed intangible and, at the time of the contribution, no partner in the partnership was related to A. Consequently, the increase in the basis of the intangible under section 732(b) is not subject to the anti-churning rules to the extent of the total unrealized appreciation from the intangible allocable to A, B, and C. The total unrealized appreciation from the intangible allocable to A, B, and C is $180 (the gain the partnership would have recognized if it had sold the intangible for its fair market value immediately before the distribution). Because this amount exceeds the section 732(b) basis increase of $150, the entire section 732(b) basis increase is amortizable.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-sixth of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $150 = $30), over the fair market value of the distributed intangible ($180).

Example 30. Distribution of section 197(f)(9) intangible contributed to the partnership by a partner. (i) The facts are the same as in *Example 29*, except that C purchased the intangible used in the consulting business in 1988 for $60 and contributed the intangible to ABC in 1990. At that time, the intangible had a fair market value of $150 and an adjusted tax basis of $60. When ABC distributes the intangible to A in 2000, the intangible has a fair market value of $180 and a basis of $60.

(ii) As in *Examples 28* and *29*, the adjusted basis of the intangible in A's hands is $150 under section 732(b). However, the increase in the adjusted basis of the intangible under section 732(b) is only $90 ($150 adjusted basis after the distribution compared to $60 basis before the distribution). Pursuant to paragraph (g)(2)(ii)(B) of this section, A steps into the shoes of ABC with respect to the $60 of A's adjusted basis in the intangible that corresponds to ABC's basis in the intangible and this portion of the basis is nonamortizable. B and C are not related to A, A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by ABC before A acquired the ABC interest. Therefore, under paragraph (h)(12)(ii) of this section, the section 732(b) basis increase is amortizable to the extent of A, B, and C's allocable share of the unrealized appreciation from the intangible. The total unrealized appreciation from the intangible that is allocable to A, B, and C is $120. If ABC had sold the intangible immediately before the distribution to A for its fair market value of $180, it would have recognized gain of $120, which would have been allocated $10 to A, $10 to B, and $100 to C under section 704(c). Because A, B, and C's allocable share of the unrealized appreciation from the intangible exceeds the section 732(b) basis increase in the intangible, the entire $90 of basis increase is amortizable by A. Accordingly, after the distribution, A will be treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $90 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $60.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-half of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($60) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($120 − $90 = $30), over the fair market value of the distributed intangible ($180).

* * * * *

(l) * * *

(1) *In general.* * * * Paragraphs (h)(12)(ii), (iv) and (vi) of this section apply to partnership distributions occurring on or after the date final regulations are published in the **Federal Register**.

* * * * *

David Mader,

Acting Deputy Commissioner of Internal Revenue Service.

[FR Doc. 00–1381 Filed 1–20–00; 1:19 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6523–8]

RIN 2060–AH74

National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule amendments and notice of public hearing.

SUMMARY: Under the Clean Air Act (Act), EPA issued a final rule (63 FR 18504, April 15, 1998) to reduce hazardous air pollutant (HAP) emissions from the pulp and paper production source category. That rule (known as the Pulp and Paper national emission standard for hazardous air pollutants (NESHAP) or pulp and paper NESHAP) is the air component of the integrated air and water rules for the pulp and paper industry (known as the Pulp and Paper Cluster Rules). In this action, we are proposing to amend certain passages

of regulatory text in the 1998 pulp and paper NESHAP by adding equivalent compliance alternatives. These proposed amendments do not change the level of control or compromise the environmental protection achieved by the 1998 pulp and paper NESHAP. We are reopening the public comment period for comment only on the amendments proposed in today's action. We are proposing amendments to the pulping process vent standards and the biological treatment system standards to address technical issues identified after promulgation. Also, drafting errors identified after promulgation are being corrected in today's action.

DATES: *Comments.* The EPA will accept comments regarding these proposed amendments on or before March 10, 2000.

Public Hearing. A public hearing regarding the proposed amendments will be held if requests to speak are received by the EPA by February 7, 2000. If a public hearing is requested, the hearing will be held on February 11, 2000.

ADDRESSES: *Comments.* Submit written comments (in duplicate, if possible) to Docket No. A–92–40 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to Mr. Stephen Shedd at the address listed below.

Docket. Docket No. A–92–40 contains supporting information for this proposed action and the prior promulgated and proposed amendments to the 1998 NESHAP and is available for inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5397, and e-mail at "shedd.steve@epa.gov". For questions on compliance and applicability determinations, contact Mr. Seth Heminway, Office of Enforcement and Compliance Assessment (2223A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; telephone (202) 564–7017 and e-mail at "heminway.seth@epa.gov".

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this proposed action include:

Category	SIC code	NAICS code	Examples of regulated entities
Industry	26	3221	Pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber.

This list is not intended to be exhaustive. It provides a guide regarding the types of entities that we expect to regulate by this proposed action. To determine whether your facility would be regulated by this action, you must carefully examine the applicability criteria in part 63, subparts A and S of title 40 of the Code of Federal Regulations.

Technology Transfer Network. The Technology Transfer Network (TTN) is a network of electronic bulletin boards for the EPA. The TTN provides information and technology exchange in various areas of air pollution control. Information regarding the basis and purpose of this proposed action, the rule, and other relevant documents can be found on the pulp and paper page of EPA's TTN Unified Air Toxics World Wide Web site (UATW) at "http://www.epa.gov/ttn/uatw/pulp/pulppg.html". For more information on the TTN, call the HELP line at (919) 541–5384.

Public Hearing. If a public hearing is requested by the required date (see **DATES** section in this document), the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons interested in presenting oral testimony or inquiring as to whether a hearing will be held should contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5671. The record for the hearing will remain open for 30 days after the hearing date to provide an opportunity for submittal of rebuttal and additional information.

In accordance with section 307(d)(5) of the Act, EPA will hold a public hearing, if requested, to discuss the proposed amendments. If a public hearing is held, the EPA may ask clarifying questions during the oral presentations but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement (see **DATES** and **ADDRESSES**). The EPA will consider written statements and supporting information with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rule development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket except for certain interagency documents will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Act.)

Outline. Information on the proposed amendments is organized as follows:

I. Description of the Proposed Amendments

A. Introduction
B. Is a performance test required for boilers that introduce HAP emission streams with the combustion air (§ 63.443(d))?
C. Biological Treatment System Standards
   1. Introduction for Proposed Amendments
   2. Can a finite list of HAPs be used in demonstrating compliance for biological treatment systems (§ 63.457(l))?
   3. Given the finite number of HAPs in regulated condensates, what is the appropriate emission standard for biological treatment systems (§ 63.446(e))?
   4. What minimum measurement level should be used in analyzing total HAPs in liquid streams (§ 63.457(c))?
D. Biological Treatment System Performance Test Requirements
   1. Introduction
   2. Given the proposed changes, how do I conduct a performance demonstration for a biological treatment system (§ 63.457(l))?
   3. What procedures must be followed to determine the fraction of compounds degraded in nonthoroughly mixed open biological treatment systems (§ 63.457(l))?
E. Open Biological Treatment System Monitoring Requirements
   1. Introduction

2. May a mill use site-specific monitoring parameters for open biological treatment systems instead of the parameters specified in the final rule (§ 63.453(j))?
3. In the event of a parameter excursion, must I conduct in-zone sampling of nonthoroughly mixed open biological treatment systems when unsafe conditions exist (§ 63.453)?
4. Are the biological treatment system monitoring requirements applicable to both open and closed biological treatment systems (§ 63.453)?
5. Given the proposed changes, how do I conduct daily compliance monitoring for open biological treatment systems (§ 63.453(j))?
6. Do I still have to conduct the first quarter compliance tests for total HAPs (§ 63.453(j))?
7. May I use monitoring parameter values recorded during a compliance monitoring test to expand the established parameter operating range (§ 63.455(e))?

F. Drafting Error Corrections

II. Administrative Requirements

A. Paperwork Reduction Act
B. Executive Order 12866: Regulatory Planning and Review
C. Executive Order 13084: Consultations and Coordination With Indian Tribal Governments
D. Regulatory Flexibility Act
E. Unfunded Mandates Reform Act
F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
G. National Technology Transfer and Advancement Act
H. Executive Order 13132 (Federalism)

I. Description of the Proposed Amendments

A. Introduction

The Pulp and Paper NESHAP was promulgated on April 15, 1998 (63 FR 18504) and was codified as 40 CFR part 63, subpart S. Since promulgation, the rule has been amended by four **Federal Register** notices (63 FR 42238, 63 FR 49455, 63 FR 71385, and 64 FR 17555) to correct minor drafting errors and inadvertent omissions, clarify the intent of the final rule, and provide technical amendments. The above promulgated rule and amendments are hereafter referred to as the "final rule" in this preamble. Today, we are proposing additional changes to the final rule that affect the compliance demonstration for combustion devices used to control pulping vent gases and for biological treatment systems used to treat pulping condensates. The equivalent compliance alternatives proposed in today's amendments do not change the level of control or compromise the environmental protection achieved by the final rule. We are reopening the comment period for comments only on the amendments proposed in today's action.

Following promulgation, we received comments from the industry regarding the pulping process vent and condensate standards. The comments focused on performance testing requirements for combustion devices used to control HAP vent gas streams, and the monitoring and test methods used for demonstrating initial and continuous compliance using biological treatment systems.

We have evaluated the comments and decided to propose amendments to the final rule to address the issues raised by the commenters. For the pulping process vent standards for kraft, soda, and semi-chemical mills, we are proposing to remove the requirement, in some cases, to conduct an initial performance test or continuous temperature monitoring of the control device.

For biological treatment systems, we are proposing several changes. Under the proposed amendments, you would be allowed to use an optional format of the emission limit, expressed as a minimum HAP mass removal, and to use four specific HAPs as a surrogate for total HAPs. We are also proposing to allow you to determine site-specific monitoring parameters for open biological treatment systems as an alternative to using the parameters specified in the final rule. Additionally, we are proposing new test procedures, including special monitoring procedures, for nonthoroughly mixed biological treatment systems.

The rationale for the proposed amendments is presented in the following sections. The rationale for each change is presented in a question and answer format.

B. Is a Performance Test Required for Boilers That Introduce HAP Emission Streams With the Combustion Air (§ 63.443(d))?

We are proposing to remove the requirement for conducting an initial performance test in some cases. The pulping process vent requirement being proposed today (§ 63.443(d)(4)) eliminates the initial performance test and continuous temperature monitoring if HAP vent gases are introduced with the combustion air into a boiler or recovery furnace with a heat input capacity greater than or equal to 44 megawatts (MW)(150 million British thermal units per hour, Btu/hr).

In the final rule, one option for controlling HAP emission streams from kraft, soda, and semi-chemical pulping systems is to route the streams to a boiler, lime kiln, or recovery furnace (§ 63.443(d)(4)). The final rule does not require you to conduct an initial performance test or continuously monitor the operating temperature of the combustion unit if the HAP emission stream enters the unit with the primary fuel or enters directly into the flame zone.

Following promulgation, we received comments indicating that pulping vent gases are typically controlled in boilers and recovery furnaces by mixing the vent gases with the combustion air (not introduced directly into the flame zone). The commenters stated that conducting an initial performance test on these combustion devices to demonstrate compliance with the standard would not be reasonable due to the large volume of air flow through these devices. The commenters requested that the initial performance test requirement for these boilers be removed from the final rule.

We have reviewed the performance of combustion devices used to control HAP emissions and found that many standards allow boilers with heat input capacities greater than or equal to 44 MW (150 million Btu/hr) to control HAP emission streams without conducting an initial performance test. The supporting information ("Reactor Processes in the Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards," EPA–450/3–90–016b, March 1993) shows that "large" boilers with heat input capacities greater than or equal to 44 MW (150 million Btu/hr) are typically operated at temperatures and residence times exceeding the levels needed to achieve at least 98 percent reduction of HAPs (as required in the final rule (§ 63.443(d)(1))) when the HAP gases are introduced with the combustion air. In contrast, boilers with heat input capacities less than 44 MW are generally not operated at levels that would ensure at least 98 percent HAP reduction unless the HAP emission stream is introduced with the primary fuel or into the flame zone. Using this same rationale, the National Emission Standard for Organic HAP from Process Vents, Storage Vessels, Transfer Operations, and Wastewater (subpart G of part 63), the NESHAP for Petroleum Refineries (subpart CC of part 63), and several other NESHAP allow these large boilers to be used to control HAP emission streams without conducting an initial performance test and without monitoring operating temperature if the HAP emission streams are introduced with the combustion air, with the primary fuel, or into the flame zone.

Consequently, we are proposing to amend the vent control requirements for kraft, soda, and semi-chemical pulping mills to eliminate the initial performance test and continuous monitoring requirements if you

introduce the regulated HAP emission streams with the combustion air into a boiler or recovery furnace with a heat input capacity greater than or equal to 44 MW (150 million Btu/hr). However, an initial performance test and continuous monitoring of the operating temperature are required if you introduce the HAP emission streams with the combustion air into a boiler or recovery furnace with a heat input capacity less than 44 MW. Lime kilns must demonstrate compliance with the final rule by introducing HAP emission streams with the primary fuel or into the flame zone because we do not have any data that show lime kilns can achieve 98 percent destruction by introducing the HAP emission streams by any other means.

Although an initial performance test and continuous monitoring are not required for these large boilers, you must design and operate the closed-vent system according to the requirements specified in the final rule (§ 63.450) and conduct the periodic visual inspections and leak detection tests (§ 63.453) of the closed-vent system components. You must record the results of these inspections and tests and comply with the reporting requirements (§ 63.455) of the final rule. Also, you must keep records of the boiler or recovery furnace downtime (§ 63.10(c)(8)) to demonstrate compliance with the excess emission allowance standards (§ 63.443(e)).

C. Biological Treatment System Standards

1. Introduction for Proposed Amendments

One of the options for complying with the pulping condensate standards in the final rule is to discharge the applicable condensates below the liquid surface of a biological treatment system that achieves 92 percent reduction of total HAPs. Following promulgation, commenters raised several compliance issues associated with using biological treatment systems to comply with the condensate standards. The commenters were concerned that they would have difficulty demonstrating a 92 percent reduction of total HAPs in biological treatment systems. Therefore, they requested the flexibility to use the mass removal option, which is allowed for other treatment devices. The commenters also stated that their analytical labs were having difficulty using Method 305 to evaluate condensate samples for total HAP compounds. The commenters stated their belief that the number of measurable HAPs in the regulated condensate streams is very limited, and that testing for a specific list of HAPs would reduce the complexity and cost compliance testing. The commenters recommended a specific list of HAPs to measure in biological treatment systems. Additionally, in meetings with industry representatives after promulgation, it was identified that some biological treatment systems used in the industry were not thoroughly mixed. Therefore, the performance tests procedures in the final rule, which were established for thoroughly mixed systems, are not appropriate in all cases for nonthoroughly mixed systems.

Since promulgation, several meetings between the EPA and industry representatives were held to discuss these issues. We have reviewed the comments and information obtained during these meetings and decided to propose amendments to the final rule to address these concerns.

2. Can a Finite List of HAPs be Used in Demonstrating Compliance for Biological Treatment Systems (§ 63.457(l))?

We have found that the regulated condensate streams contain a finite number of measurable HAPs. Today's proposed action amends the test methods and procedures section (§ 63.457(l)) to specify that only four HAP compounds (acetaldehyde, methanol, methyl ethyl ketone, and propionaldehyde) are to be measured to determine compliance with all biological treatment standards, instead of measuring for all 188 HAP compounds.

The final rule (§ 63.457(g)) requires measurement of the total HAPs for mills that comply with the condensate standards using a biological treatment system. At promulgation of the final rule, we had limited data on the speciation profile of total HAPs in regulated condensate streams. We needed additional data to establish a specific list of the 188 HAPs for compliance testing.

To support the development of a specific list of HAPs, the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), submitted to EPA a study (Hazardous Air Pollutants Present in Kraft Mill Condensates and Their Significance for the Hard-piping Option Under Maximum Achievable Control Technology (MACT), December 1998) (Docket No. A–92–40) of the condensate streams contained in steam stripper feed tanks at eight mills. They sampled condensates in steam stripper feed tanks since these are the same condensates that the final rule regulates. We gave NCASI a list of 108 volatile HAPs to be evaluated in the study. This list specifies the HAPs that volatilize most readily from biological treatment systems. The NCASI used a test method with a nominal detection limit between 0.5 and 1 part per million by weight (ppmw) to analyze the steam stripper feed tank contents. This detection limit was selected because the final rule (§ 63.457(j)(4)) specifies those HAP compounds with concentrations at the point of determination that are either below 1 ppmw or below the detection limit are not required to be included in the total HAP compliance demonstrations.

The NCASI data report that the HAP compounds with concentrations greater than 1 ppmw in regulated condensate streams are methanol, methyl ethyl ketone, acetaldehyde, and propionaldehyde. Methanol accounts for approximately 98.5 percent of the total HAP mass with acetaldehyde, methyl ethyl ketone, and propionaldehyde accounting for the remaining 1.5 percent.

We have reviewed the test methods and sampling procedures used in the NCASI study and concur that the methods and procedures were appropriate. We have also reviewed the criteria used by NCASI for selecting the condensate streams to be analyzed, and we agree that the condensate streams sampled are representative of the range of condensate streams found at kraft mills. Therefore, we agree that acetaldehyde, methanol, methyl ethyl ketone, and propionaldehyde account for the total of HAP compounds in the regulated condensate streams. Identifying a specific list of HAPs will achieve the EPA's and industry's goal of reducing the performance testing and monitoring burden without reducing the emission reductions achieved by the final rule. Today's proposal amends the test methods and procedures section (§ 63.457(l)) of the final rule to specify that the HAPs in the regulated condensate streams are determined by measuring acetaldehyde, methanol, methyl ethyl ketone, and propionaldehyde.

3. Given the Finite Number of HAPs in Regulated Condensates, What is the Appropriate Emission Standard for Biological Treatment Systems (§ 63.446(e))?

In today's action, we are proposing to amend the test methods and procedures section of the final rule to add a mass standard and two alternative compliance procedures for biological treatment systems. The two alternative procedures require sending additional condensates to the biological treatment

system by calculating the standards on an individual HAP or methanol basis. These proposed revisions to the emission standards and test methods and procedures sections of the final rule are necessary to implement the reduced list of HAPs in condensates, discussed earlier in section I.C.2 of this preamble, and to simplify the testing and monitoring procedures for biological treatment systems.

Since promulgation, we held several meetings with industry representatives to discuss ways to simplify the testing and monitoring procedures for demonstrating compliance of biological treatment systems, considering the condensate speciation data submitted after promulgation (see section I.C.2 of this preamble). Industry representatives suggested that mills be allowed to conduct the initial performance and subsequent compliance monitoring tests only for the major HAP constituent of the regulated condensates, methanol. Industry representatives also requested that they be allowed to comply with the mass removal standard, kilograms of total HAPs per megagram of oven-dried pulp, which is allowed for steam strippers.

We have considered the data and industry comments and decided to propose a mass standard and two alternative compliance procedures in today's action. We believe a mass removal standard is appropriate (as an alternative to the current percent reduction standard) for biological systems since we established one for steam strippers and it provides equivalent environmental protection. To establish the level of the mass standard for biological treatment units to be equivalent to steam strippers, adjustments needed to be made to the proposed mass and current percent reduction standards for biological treatment units. We believe that the mass standard should be set at the current level of the standard and the test procedures should be adjusted to address the proposed list of HAPs (only four HAPs instead of all 188 HAP compounds). In meetings following promulgation, the industry representatives recommended only testing for methanol which is the major HAP constituent in the regulated condensates. During those meetings, we reiterated that steam strippers operating at a 92 percent efficiency to remove methanol, also removed nearly all of the other volatile HAP compounds (see the preamble to the final rule, 63 FR 18524). However, in biological treatment units, the amount of biodegradation of those nonmethanol HAP compounds is less than for methanol. To balance this difference, we are proposing two alternative procedures that require additional condensate to be sent to the biological treatment system. These two procedures require you to measure the four HAPs and comply with the current percent reduction or proposed mass standard on either an individual HAP or methanol basis, as discussed in the following sections.

A. *Individual HAP procedure.* The condensate control options in the final rule were developed based on the performance of a steam stripper achieving 92 percent reduction of methanol. We have determined that a steam stripper operating at 92 percent reduction of methanol achieves at least 99 percent reduction of the other HAP compounds (acetaldehyde, methyl ethyl ketone, and propionaldehyde) in the regulated condensates (determination contained in Docket No. A–92–40). Thus, we are setting the percent reduction standard at 92 percent for methanol and 99 percent for acetaldehyde, methyl ethyl ketone, and propionaldehyde.

For the mass standard, we calculated the required mass removal that is equivalent to those percent reduction levels. To set the mass standard for each compound, we used the required mass removal of methanol (10.2 and 6.6 pounds of methanol per oven-dried ton of pulp (lb/ODTP)) and the average composition of the four HAP compounds found in the NCASI testing discussed earlier in section I.C.2 of this preamble. For mills that perform bleaching, the mass standard is 10.2 lb/ODTP for methanol, 0.104 lb/ODTP for acetaldehyde, 0.052 lb/ODTP for methyl ethyl ketone, and 0.010 lb/ODTP for propionaldehyde. For mills that do not perform bleaching, the mass standard is 6.6 lb/ODTP for methanol, 0.067 lb/ODTP for acetaldehyde, 0.034 lb/ODTP for methyl ethyl ketone, and 0.0067 lb/ODTP for propionaldehyde.

B. *Methanol procedure.* Industry requested the second procedure proposed in today's action to simplify testing requirements and reduce the complications in analyzing HAP compounds which are present in low concentrations in the regulated condensates. As discussed earlier, this is an alternative approach to balance the difference in HAP removal efficiencies between steam strippers and biological treatment systems while allowing mills to demonstrate compliance by measuring only methanol. Sending additional condensate to the biological treatment system achieves this balance. In meetings following promulgation, industry representatives suggested a procedure for determining an estimate of the required amount of additional condensate HAP mass that you must send to the biological treatment system. Under this concept, you would assume that a steam stripper complying with the condensate standards is achieving 92 percent reduction of methanol and 100 percent reduction of all other HAP compounds present in the regulated condensates.

For example, assume that a hypothetical bleached kraft mill determines that the regulated condensates contain 90 percent methanol. If the mill sends 12 lb/ODTP of methanol to a steam stripper, then the mill is also sending 1.3 lb/ODTP of nonmethanol HAPs. If the steam stripper achieves 92 percent reduction of methanol and 100 percent removal of nonmethanol HAPs, then the steam stripper would be achieving a total HAP removal of 12.3 lb/ODTP. If you make the conservative assumption that biological treatment systems do not achieve any degradation of nonmethanol HAP compounds, then the mill using a biological treatment system would need to remove 12.3 lb/ODTP of methanol. Under this concept, we would require a mill using a steam stripper to remove 10.2 lb/ODTP of methanol to comply with the standard, while we would require a mill using a biological treatment system to remove 11.4 lb/ODTP of methanol to comply with the standard.

We agree with the industry representatives that this approach provides an alternative to the individual HAP approach discussed earlier (section I.C.3.A of this preamble). Under this second alternative procedure in today's proposed action, you measure the mass of the four HAPs in the regulated condensates entering the biological treatment system and determine the ratio of nonmethanol HAP mass to methanol mass. Compliance with the percent reduction or proposed mass removal standard is then determined using that ratio and the appropriate procedures in appendix C of part 63, using methanol measurements instead of measurements for all four HAPs in the condensate streams.

In today's action, we are proposing to amend the kraft pulping process condensate standards (§ 63.446(e)(2)) to specify that biological treatment systems may be used to comply with the proposed mass removal and percent reduction requirements, using either the individual HAP or methanol procedure. Additionally, we are proposing to revise the test methods and procedures section (§ 63.457(g) and (l)) of the final rule to include the alternative procedures for

demonstrating compliance for biological treatment systems.

4. What Minimum Measurement Level Should Be Used in Analyzing Total HAPs in Liquid Streams (§ 63.457(c))?

You must use the procedure proposed in today's action to determine the minimum measurement level (MML) of a specific HAP for the liquid stream test method that you select to demonstrate compliance. Also, you must use this MML value in all compliance calculations if the test method does not detect a value at or below the MML. Today's proposed action amends the test methods and procedures section (§ 63.457(c)) of the final rule to add two alternative procedures to determine the MML.

The final rule and the amendments proposed in today's action require kraft mills to determine the HAP or methanol concentration in liquid streams (*e.g.*, steam stripper outlet or biological treatment system inlet or outlet) to demonstrate compliance with the condensate standards. Following promulgation, commenters stated that there could be some cases where the concentration of a particular HAP may be too low to quantify using a given test method. Consequently, the commenters stated that because the compliance demonstration calculations for the percent reduction, mass removal, and control device outlet concentration treatment options require a HAP concentration, an MML was needed.

We have evaluated the comments and decided to propose in today's action two alternative procedures to determine the MML that you must use in compliance calculations. Also, a quality assurance procedure is being proposed in today's action that must be followed for either alternative, in addition to the quality assurance procedures required in § 63.7(c) of the NESHAP general provisions. These procedures were developed by EPA's testing group and industry representatives to provide you with flexibility in determining the appropriate MML. The two alternative procedures are: (1) a procedure for each analytical laboratory to follow to determine the MML for each test method setup, and (2) a procedure to follow if a group chooses to collect sufficient data to determine the MML for a given test method.

In the first procedure for determining the MML of a particular HAP using one of the test methods specified in the § 63.457(c)(3) of the final rule, you must perform the following procedures each time that the analytical equipment for the test method is set up: (1) assume a concentration that you believe represents the MML; (2) measure the concentration in a minimum of three replicate samples that contain the target HAP at the MML concentration, using the selected test method; and (3) calculate the relative standard deviation (RSD) and the upper confidence limit at the 95 percent confidence level of the resulting concentration values, using the assumed MML as the mean.

In the first step of this procedure, you must assume a concentration value for the particular HAP in question (*e.g.*, acetaldehyde, methanol, methyl ethyl ketone, or propionaldehyde) that you believe represents the MML. However, the MML chosen must not be below the calibration standard of the selected test method.

In the second step of this procedure, you must measure the concentration of the target HAP in a minimum of three replicate condensate samples, using the selected test method. All replicate condensate samples must be run through the entire analytical procedure. Spiking of the liquid samples with a known concentration of the target HAP may be necessary to ensure that the HAP concentration in the three samples is at the MML.

In the final step of this procedure, you must calculate the RSD and the upper confidence limit at the 95 percent confidence level, using the measured HAP concentrations determined in step 2 of the procedure. If the upper confidence limit of the RSD is less than 30 percent, then the selected MML is acceptable, and this MML value would be established for the laboratory's analytical equipment setup and procedure used in this analysis. If the upper confidence limit of the RSD is greater than or equal to 30 percent, then the selected MML is too low and a higher MML must be selected.

In the second procedure proposed in today's action, a group (*e.g.*, company or trade association) would determine the MML and present supporting data to demonstrate, to the EPA's satisfaction, that the selected MML is appropriate. To support the selected MML, enough data would need to be collected from different laboratories to demonstrate that the appropriate MML for a particular test method and specific HAP was determined. Once EPA approval is obtained, then the MML value would be established, and this value would be used in compliance demonstration calculations. Also, any laboratory may use the MML value provided that the proper quality assurance procedures are followed, including the quality assurance procedures discussed in the following paragraph.

Once the MML has been determined using one of the alternative procedures, the analytical laboratory that you choose to conduct the initial performance test analysis must also follow the quality assurance procedure proposed in today's action to demonstrate that they are performing the test method correctly. The proposed quality assurance procedure specifies that the analytical laboratory must measure the concentration of the target HAP in a minimum of three replicate condensate samples using the selected test method. The upper confidence limit of the RSD at the 95 percent confidence level determined using the measured HAP concentrations must be less than 30 percent. If the upper confidence limit of the RSD is greater than or equal to 30 percent, then the test method is not being performed correctly. If you have not met the quality assurance procedure, then the analytical equipment must be corrected, and you must repeat the quality assurance procedure until met.

Today's action proposes to amend the test methods and procedures section (§ 63.457(c)) of the final rule to (1) specify that the MML must be used in compliance demonstrations if the selected test method indicates nondetect for a specific HAP, and (2) to include the procedures for determining the MML. In today's proposed action, we are also amending the delegation of authority section (§ 63.458) of the final rule to specify that the procedure for obtaining EPA approval of the demonstrated MML is not delegated to the States.

D. Biological Treatment System Performance Test Requirements

1. Introduction

At promulgation, the only treatment option available for biological treatment systems was the percent reduction option. Today's proposed amendments allow mills to use biological treatment systems to comply with the condensate standard mass removal requirements and to use four specific HAPS as a surrogate for total HAPS. Consequently, these proposed amendments alter the procedures for conducting performance tests of biological treatment systems.

2. Given the proposed changes, how do I conduct a performance demonstration for a biological treatment system (§ 63.457(l))?

To conduct a performance test of an open or closed biological treatment system, you would first measure the mass of the four specific HAPs entering the biological treatment system. The

subsequent compliance procedures would differ depending on if you are complying with the proposed percent reduction or mass removal treatment options.

For biological treatment systems, table 1 presents a summary of the proposed performance test requirements including those in today's action. Briefly, to conduct a performance test of a biological treatment system, you would measure the mass of the four HAPs in the regulated condensates entering the biological treatment system. Then you determine the fraction of compounds that are biodegraded (f_{bio}) in the biological treatment system, using the appropriate procedures in appendix C of part 63. Using the inlet mass of the four HAP compounds and the value of f_{bio}, you would demonstrate compliance with the percent reduction or mass removal treatment options on an individual HAP or methanol basis using the procedures specified in § 63.457(l).

TABLE 1.—SUMMARY OF THE PERFORMANCE TEST PROCEDURES FOR BIOLOGICAL TREATMENT SYSTEMS

Determine the inlet and outlet HAP mass flow rates by—	Determine the fraction of HAP compounds degraded in the biological treatment system using—	Demonstrate compliance with the condensate standards using—
Measuring the volumetric flow rate of the liquid streams entering and exiting the treatment system using the procedures specified in § 63.457(c)(2), Measuring the concentration of acetaldehyde, methanol, methyl ethyl ketone, and propionaldehyde in the liquid streams using one of the test methods specified in § 63.457(c)(3), and Calculating the individual HAP mass flow rates using the equations specified in § 63.457(j).	The inlet and outlet concentration procedure (procedure 3) in appendix C of part 63, for thoroughly mixed systems, or The multiple zone concentration measurements procedure (procedure 5) in appendix C of part 63, for nonthoroughly mixed systems.	The individual HAP percent reduction or mass removal procedures specified in § 63.457(l) (1) and (2), or The methanol percent reduction or mass removal procedures specified in § 63.457(l) (3) and (4).

After promulgation of the final rule, a few mills said that they intended to use closed biological treatment systems (both aerobic and anaerobic systems) to comply with the kraft pulping process condensate standards. The mill representatives have mentioned multiple types of systems, however, we have not received any specific information detailing system designs or how they would conduct the performance demonstration for a closed biological treatment system. Consequently, we cannot amend the final rule to specifically address closed biological treatment systems, and we believe that setting one procedure for a few systems with varying designs would be impractical. Typically, closed biological treatment systems would need to test all inlets and outlets and demonstrate compliance with the applicable emission standard and demonstrate appropriate continuous compliance monitoring procedures. Appendix C of part 63 contains test procedures that can be used for most known designs of closed systems. If the design of the systems mentioned by industry representatives meets the calculation procedures of appendix C, then you could use appendix C procedures. For other designs, you must present for EPA approval the design of the system and a test and monitoring plan. The above information is provided for discussion purposes only, and we are not requesting or taking comment or planning to propose test procedures for all designs of closed biological treatment systems in this proposal or comment period.

3. What Procedures Must Be Followed To Determine the Fraction of Compounds Degraded in Nonthoroughly Mixed Open Biological Treatment Systems (§ 63.457(1))?

We plan to propose in the near future a new procedure for calculating the site-specific fraction of organic compounds biodegraded in nonthoroughly mixed open biological treatment systems (or units) under a separate action. This new procedure, called the Multiple Mixing Zone Concentration Measurements Procedure, will be proposed as an addition to appendix C of part 63.

The performance test and monitoring procedures in the final rule for open biological treatment systems were developed under the presumption that all biological treatment systems at kraft mills would be thoroughly mixed systems, and that the Inlet and Outlet Concentration Measurement Procedure in appendix C of part 63 would be the most appropriate procedure for you to use to determine the performance of the open biological treatment system at pulp mills. However, the Inlet and Outlet Concentration Measurement Procedure is not appropriate for evaluating the performance of nonthoroughly mixed biological treatment systems. In meetings with industry representatives following promulgation, it was identified that the biological treatment systems at most mills do not meet the criteria (uniform biomass distribution and organic compound concentrations) for thoroughly mixed systems. Consequently, another procedure is needed because appendix C of part 63 does not contain a concentration measurement procedure for modeling nonthoroughly mixed systems.

The soon-to-be proposed amendments to appendix C of part 63 will include a concentration measurement procedure for determining f_{bio} in nonthoroughly mixed biological treatment systems. A draft copy of these soon-to-be proposed procedures is contained in the docket for today's proposed action (see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections at the beginning of this preamble for docket information). In developing the new procedure, we worked with industry representatives, including NCASI. The new procedure, Multiple Zone Concentration Measurements—Procedure 5, specifies the biological treatment system information that you must have to use the new procedure.

Additionally, there are two documents ("Technical Support Document for Evaluation of Thoroughly Mixed Biological Treatment Units" and the "Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones") that provide technical information on how to determine if a biological treatment system is thoroughly mixed and how to evaluate the performance of a nonthoroughly mixed biological treatment system using multiple mixing zones. The first document is available from the public

docket and from the pulp and paper page of EPA's TTN UATW at "http://www.epa.gov/ttn/uatw/pulp/pulppg.html". The second document is near completion and will also be available at the pulp and paper page of the UATW at the address listed above, and a copy of the latest draft is contained in the public docket.

E. Open Biological Treatment System Monitoring Requirements

1. Introduction

The monitoring requirements (§ 63.453(j)) in the final rule require mills using an open biological treatment system to conduct daily parameter monitoring and quarterly performance tests. The parameter values must be established during a performance test. Whenever a parameter excursion occurs, you can conduct a performance test of the open biological treatment system to demonstrate that the system is in compliance with the applicable emission limit even though a parameter exceedance occurred. Quarterly performance tests must be conducted for total HAPs in the first quarter, however the tests may be conducted for methanol in the remaining quarters.

After promulgation, several issues were identified regarding the monitoring requirements for open biological treatment systems. In today's action, we are proposing the following changes to address the issues:

- Allowing you to determine site-specific monitoring parameters for biological treatment systems;
- Providing an alternative procedure for estimating the fraction of organic compounds degraded in a nonthoroughly mixed biological treatment system during unsafe sampling conditions;
- Clarifying the monitoring requirements for open versus closed biological treatment systems;
- Removing the requirement to test for total HAPs in the first quarter performance test; and
- Specifying the period for notifying the Administrator if you intend to use data collected during a performance test to expand the allowable range of a monitoring parameter.

The proposed amendments are discussed in sections I.E.2 through I.E.7 of this preamble.

2. May a Mill Use Site-Specific Monitoring Parameters for Open Biological Treatment Systems Instead of the Parameters Specified in the Final Rule (§ 63.453(j))?

Today's action proposes to amend the final rule to specify that mills may establish site-specific monitoring parameters for open biological treatment systems. The mill must conduct a performance test to demonstrate that the monitoring parameters are appropriate to determine continuous compliance with the applicable emission standard. The monitoring parameters and the operating ranges that demonstrate continuous compliance must be approved by the permit authority.

The final rule (§ 63.453(j)) requires daily monitoring of outlet soluble biochemical oxygen demand (BOD_5) concentration and other system operating parameters. Additionally, you must collect and archive inlet and outlet grab samples. The grab samples must be used to demonstrate compliance if the soluble (BOD_5), mixed liquor volatile suspended solids (MLVSS), or the aerator horsepower monitoring parameters fall outside the range established during the initial performance test.

After promulgation, commenters indicated that the monitoring parameters in the final rule might not be appropriate for all open biological treatment systems, especially for nonthoroughly mixed systems. The commenters requested that the final rule be revised to give mills the flexibility to monitor different parameters for open biological treatment systems on a case-by-case basis.

We agree that in some circumstances operating parameters other than those specified in the final rule may provide assurance that continuous compliance with the emission limits is being achieved for nonthoroughly mixed systems. The monitoring requirements in the final rule were established under the presumption that all biological treatment systems in the pulp and paper industry were thoroughly mixed and would, therefore, use the inlet and outlet procedure in appendix C of part 63 to determine the performance of the system. However, for nonthoroughly mixed biological treatment systems, the treatment unit must be divided into mixing zones, and concentration monitoring must be conducted within each zone.

In today's action, we are proposing to add a new paragraph to the open biological treatment system monitoring requirements (§ 63.453(j)(2)) that would allow mills the option to determine site-specific monitoring parameters. The site-specific monitoring parameters must be developed based on a performance test and must be approved by the Administrator using the procedures specified in the final rule (§ 63.453(n)). In § 63.453(n), the final rule specifies that you must conduct a performance test to determine the appropriate parameters to be monitored continuously and corresponding parameter values. The rationale and supporting documentation for the parameter selection must also be provided for the Administrator's approval. The Administrator in this case is the delegated implementation and enforcement State authority.

3. In the Event of a Parameter Excursion, Must I Conduct In-Zone Sampling of Nonthoroughly Mixed Open Biological Treatment Systems When Unsafe Conditions Exist (§ 63.453)?

No. Today's proposed amendments contain a modeling procedure that can be used until such time as the unsafe conditions pass and in-zone sampling and a full performance test can be conducted. The alternative modeling procedure is proposed as appendix E of part 63—Test Procedure for Nonthoroughly Mixed Biological Treatment Units at Kraft Pulp Mills Under Unsafe Sampling Conditions. In addition, today's action proposes conforming amendments to the monitoring requirements section (§ 63.453(p)(1)). An amendment to the recordkeeping requirements (§ 63.454(e)) section of the final rule is also being proposed to require you to maintain descriptions of the unsafe conditions that would warrant the use of the modeling procedure.

The kraft pulping process condensate standards of the final rule require periodic performance testing of open biological treatment systems that are used as control devices. During discussions following promulgation, industry representatives noted that there are times when sampling and monitoring of multizone biological treatment systems would expose workers to unsafe conditions. Examples of unsafe conditions provided by industry representatives include: weather conditions (e.g., high wind, fog, lightning, heavy rain, hail storm, sleet, and snow); lack of outdoor lighting; availability of boats; personnel availability; heavy foam layer; and high hydrogen sulfide concentration.

Industry representatives requested that when unsafe conditions occur they be able to use a modeling approach (proposed as appendix E of part 63) developed by NCASI that approximates the total HAP or methanol concentrations within the mixing zones of a biological treatment system. The approach consists of three components: (1) Confirmation that the open biological treatment system can be represented by Monod kinetics, (2) data collection to characterize the

performance of the open biological treatment system, and (3) data collection during unsafe conditions.

Under the first component of the modeling approach, the value of the saturation coefficient, Ks, must be determined. The determination that the value of Ks is a constant is used to demonstrate that the mill's open biological treatment system being tested can be represented by Monod kinetics. Under the second component of the modeling approach, you would determine the number and characteristics of each mixing zone in the open biological treatment system, and the recycle ratio of the internal recirculation between the mixing zones. Technical information on how to evaluate open biological treatment systems with multiple mixing zones can be found in the "Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones" (discussed in section I.D.3 of this preamble). Under the third component, inlet and outlet concentration data are collected during conditions when conducting in-zone sampling is determined to be unsafe. These data are used with the characterization data developed under the first component to estimate the HAP concentrations in each of the mixing zones. The industry representatives noted that collection of inlet and outlet samples would not be affected by unsafe conditions.

We analyzed the above industry concerns, and we agree that in rare circumstances there may be conditions when sampling in each zone of an open biological treatment system could expose workers to dangerous, hazardous, or otherwise unsafe conditions. During these conditions, we believe that the above modeling procedure proposed in appendix E of part 63 is a reasonable procedure to follow until the full in-zone sampling and performance test can be conducted to determine the system's compliance with the applicable emission limit. If the mass removal or percent reduction calculations using the value of f_{bio} determined from the procedures in appendix E of part 63 show that the open biological treatment system is not achieving the applicable emission limit, then this is considered a violation of the applicable emission standard. However, if the compliance demonstration calculations using the value of f_{bio} derived from the appendix E of part 63 procedures show a mass removal or percent reduction greater than or equal to that required by the final rule, then the mill is in compliance with the daily monitoring procedures. When conditions permit, a full performance test using the procedures specified in § 63.457 must be performed to demonstrate compliance with the applicable emission standard.

Further, we believe the conditions that warrant the use of the proposed calculations will be limited to those conditions that are beyond the mill's control, such as extreme weather conditions and presence of high and heavy foam or high concentrations of hydrogen sulfide. The mill operator should use remote and automated sampling systems wherever possible to decrease the number and frequency of possible unsafe conditions. We believe that unsafe conditions do not include conditions that are within the control of the mill, such as unavailability of outdoor lighting, boats, or mill personnel. If these later types of conditions cannot be addressed by the mill and made safe for mill personnel, then this will severely limit the ability of the mill and control agency to determine compliance and allow use of an open biological treatment system as a control device. We believe that those conditions are within the control of the operator and that unless they are addressed and fixed by the operator, the other NESHAP control options (recycling, steam stripping, or closed biological systems) must be used to meet the kraft pulping process condensate standards.

The proposed amendments (§ 63.453(p)) specify that if performing the sampling and test procedures for nonthoroughly mixed systems would expose a worker to dangerous, hazardous, or otherwise unsafe conditions, the proposed appendix E of part 63 calculation can be used to estimate compliance of biological treatment systems instead of the full multiple mixing zone performance test procedures specified in the test methods and procedures section (§ 63.457(l)) of the final rule. The proposed amendments to § 63.457(l) also specify that the value of the biorate constant must be determined during the initial performance test (§ 63.457(l)(4)).

The proposed amendments also specify that as soon as practical (but within 24 hours) after the dangerous, hazardous, or otherwise unsafe conditions have passed, you must conduct the full multiple mixing zone performance test procedures (§ 63.457(l)). The performance test is required, regardless of whether or not the monitoring parameter values are within the approved range, following the period of unsafe conditions. The purpose of the test is to confirm that the dangerous, hazardous, or otherwise unsafe conditions did not alter the performance of the system and to confirm that the treatment system operation is achieving the required removal through biodegradation and not through volatilization.

Amendments to the recordkeeping requirements section (§ 63.454) of the final rule are being proposed that would require you to maintain onsite a written record identifying the specific conditions under which sampling of the open biological treatment system would expose a worker to dangerous, hazardous, or otherwise unsafe conditions. The proposed amendments specify that this written record must include a written explanation of why the in-zone sampling cannot be performed under those conditions. The proposed amendments also specify that whenever dangerous, hazardous, or otherwise unsafe conditions prevent you from conducting the sampling and test requirements for nonthoroughly mixed open biological treatment systems, you must notify the Administrator (the delegated permit authority) as soon as practicable of the onset of the dangerous, hazardous, or otherwise unsafe conditions. The notification must include the reason why the specified sampling and test requirements could not be performed.

4. Are the Biological Treatment System Monitoring Requirements Applicable To Both Open and Closed Biological Treatment Systems (§ 63.453)?

The biological treatment system monitoring and test procedures specified in the final rule are applicable only to open biological treatment systems. Following promulgation, commenters questioned if closed aerobic and anaerobic biological treatment systems would be required to comply with the monitoring procedures specified in § 63.453(j) and (p). Today's action proposes to add the word "open" to citations in the monitoring requirements section of the final rule where the term "biological treatment system" is used.

In the final rule, we intended that the reference to "biological treatment system" in the monitoring requirements section meant open biological treatment systems. Although the test methods and procedures specified in § 63.457(l) refer to open biological treatment systems, we inadvertently omitted the word "open" in the § 63.453(j) and (p) of the final rule. Today's action proposes amendments to the sections mentioned above to clarify that these requirements are applicable only to open biological treatment systems.

If you choose to comply using a closed biological treatment system, you must determine appropriate monitoring parameters and establish the parameter values or ranges during the performance test using the procedures specified in § 63.453(m) and (n). Both the monitoring parameters and the parameter values or ranges must be approved by the Administrator (see section I.D.2 of this preamble for additional discussion).

5. Given the Proposed Changes, How Do I Conduct Daily Compliance Monitoring for Open Biological Treatment Systems (§ 63.453(j))?

The flow diagram shown in figure 1 summarizes the daily monitoring requirements for open biological treatment systems. In figure 1, today's proposed changes are depicted by dashed lines and rounded boxes.

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Figure 1. Proposed Changes to Daily Monitoring Requirements for Open Biological Treatment Systems

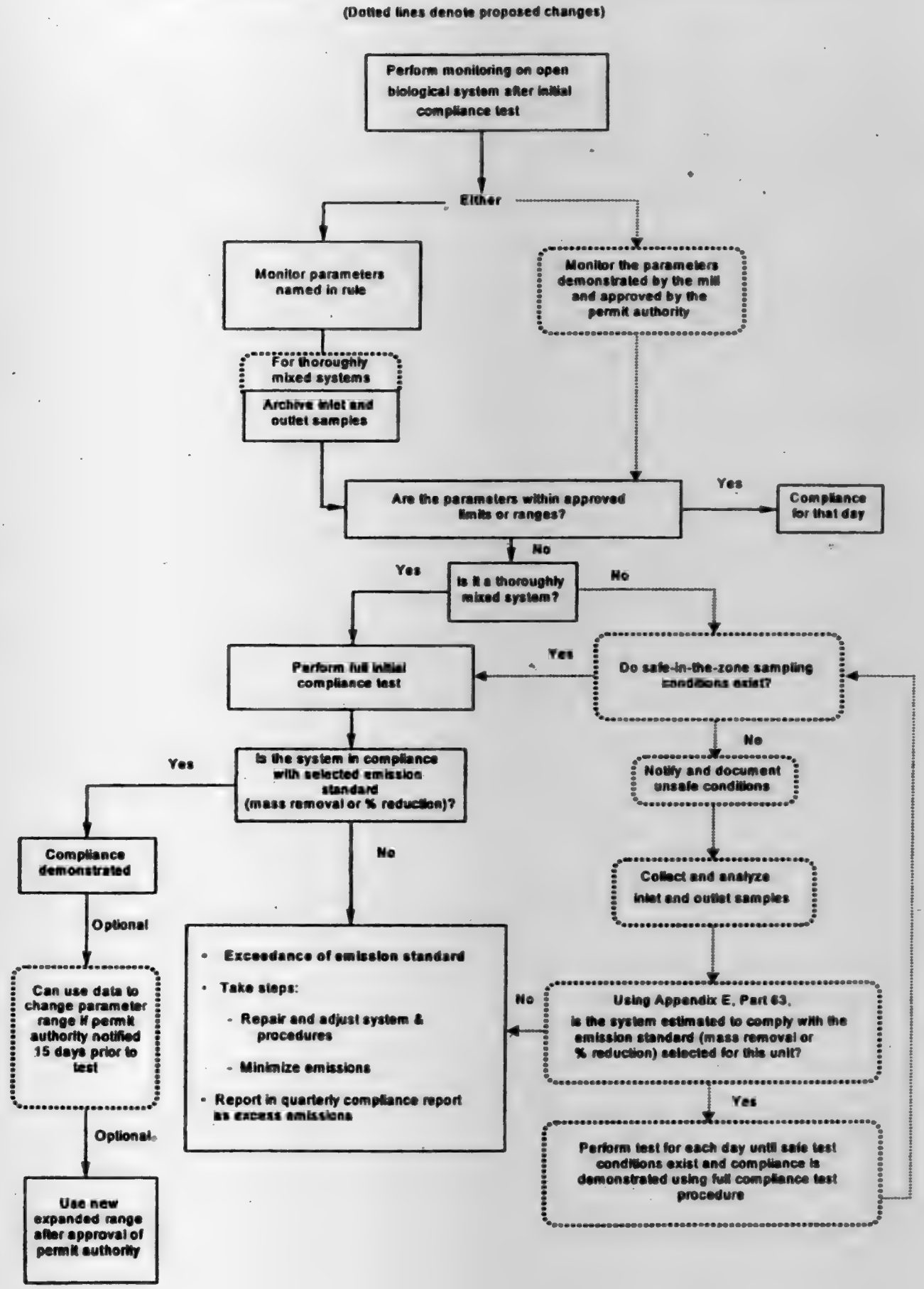

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Mills must monitor on a daily basis either the parameters specified in the final rule (§ 63.453(j)(1)) or site-specific parameters that have been approved (proposed § 63.453(j)(2), see section I.E.2 of this preamble). If the monitoring parameters are within the values or ranges established during the initial performance test, compliance with the applicable emission standard is demonstrated for that day. If the monitoring parameters are outside the established values or ranges, you must conduct a performance test to confirm compliance of the open biological treatment system. The performance test must be performed using the same procedures (*i.e.*, the appropriate procedures in appendix C of part 63) that were followed during the initial performance test.

During periods of monitoring parameter excursions, you must take steps to repair or adjust the process operation to end the parameter excursion, and you must take steps to minimize the total HAP emissions to the atmosphere (§ 63.453(p)(4)). However, the samples for the optional performance test to confirm compliance with the applicable emission limit must be collected before these repair steps are implemented (§ 63.453(p)(2)) since the steps taken to end the parameter excursion or minimize total HAP emissions would influence the results of the performance test.

The final rule (§ 63.453(p)(3)) provides a special procedure to model the fraction of compounds that are biodegraded in nonthoroughly mixed systems. This modeling procedure applies whenever unsafe conditions would prevent mill personnel from conducting in-zone sampling. After the unsafe conditions have passed, you must confirm compliance of the nonthoroughly mixed biological treatment system by conducting a full performance test using the initial performance test procedures.

6. Do I Still Have To Conduct the First Quarter Compliance Tests for Total HAPs (§ 63.453(j))?

Yes. The requirement for quarterly performance tests of open biological treatment systems is retained in the final rule. However, in today's action, we are proposing to allow you to initially demonstrate compliance with the condensate standards by testing for four specific HAPs. Additionally, in today's action we are proposing amendments to the condensate standards that allow you to comply with a percent reduction or mass removal standard using the individual HAPs or using methanol under certain conditions. Consequently, we are proposing to amend the quarterly performance test requirements in the final rule to incorporate these proposed changes.

The final rule (§ 63.453(j)(2)(ii)) requires you to conduct quarterly performance tests to confirm the performance of open biological treatment systems. The first quarter test is performed for total HAPs while the remaining quarterly tests may be performed for methanol or total HAPs. Also, in the final rule, mills that use a biological treatment system to comply with the condensate standards were limited to the percent reduction standard (§ 63.446(e)(2)).

As discussed in section I.C.2 of this preamble, we are proposing to allow you to measure total HAPs as acetaldehyde, methanol, methyl ethyl ketone, and propionaldehyde since these four compounds represent the majority of the HAPs present in the regulated condensate streams. No changes were necessary to the monitoring section (§ 63.453(j)) text in the final rule to address limiting the analysis to four HAP compounds. The rule text references the test methods and procedures section (§ 63.457(g)) that has already been corrected for this change. Also, in section I.C.3 of this preamble, we are proposing to add a mass removal standard for biological treatment systems. Because the monitoring section of the final rule, as written, does not mention a mass removal standard, we are proposing in today's action to amend the monitoring rule text to include this proposed treatment option.

In today's proposed action, we are specifically requesting comment on the requirement to test for the four HAPs in the first quarter of each year. Industry representatives suggested that testing for the four HAPs in the first quarter of each year was unnecessary because the majority of HAPs in the regulated condensates is one compound (methanol). Also, because the contribution from the other nonmethanol HAPs is small, variations in the composition of these nonmethanol HAPs would be insignificant. The industry representatives suggested that testing for the four HAPs is only necessary if new or modified pulping process condensates are generated, or when changes occur in the annual bleached and unbleached oven-dried ton of pulp production rates used to prorate the mass removal standards. At this time, we do not have data that address the variability of the HAP composition of the regulated condensates. Therefore, in today's action, we are proposing to retain the requirement for annual testing of the four HAPs in the first quarter. However, if data are submitted with public comments on this proposal, we will consider removing the requirement and allowing you to conduct the quarterly performance tests after the initial first quarter test for methanol only.

7. May I Use Monitoring Parameter Values Recorded During a Compliance Monitoring Test To Expand the Established Parameter Operating Range (§ 63.455(e))?

Yes. You may use monitoring parameter values recorded during a compliance test to expand the established parameter operating range, after approval from your permit authority. Under the general provisions to the final rule, you must notify the permit authority 60 days prior to conducting the initial and subsequent performance tests. However, for the reasons set forth below, we are proposing to change the timing of the notification for certain compliance monitoring performance tests from 60 days to 15 days with a 24-hour confirmation notification.

The final rule (§ 63.457(n)) specifies that you must establish the value or range of values parameter required to be monitored. After promulgation, commenters stated that some open biological treatment system operating parameters (*e.g.*, liquid temperature, biomass concentration, dissolved oxygen concentration) vary with seasonal changes. Because of a limited time period in which to characterize the performance of their open biological treatment system and establish appropriate monitoring parameter values, the commenters noted that they might not see the full range of operating conditions before the compliance date of the final rule. The commenters noted that a monitoring parameter could be outside its established range even though the open biological treatment system continued to achieve compliance with the applicable emission limit. Therefore, the commenters requested that they be allowed to use monitoring parameter values recorded during the compliance monitoring test (*i.e.*, post-initial performance test) required to be conducted due to a parameter excursion (§ 63.453(p)) to change the established operating range for that parameter. To do this, the commenters requested that the notification be reduced from 60 days to 24 hours or the same day as the compliance test.

We agree with the commenters that they should be allowed to change their allowable monitoring parameter ranges

or values using data recorded during any valid subsequent compliance tests required in the monitoring requirements section (§ 63.453(p)) of the final rule. Our intent is evident since the final rule (§ 63.457(n)(1)), as written, specifies that the appropriate value for a monitoring parameter must be established during the initial performance test and any subsequent performance tests, such as compliance tests required by § 63.453(p). Subsequent compliance tests are those tests used to expand the monitoring parameter value or range of values that have been previously selected by the mill and approved by the permit authority. However, the NESHAP general provisions (§ 63.7(b)) specify that the Administrator must be notified at least 60 days before the compliance test is scheduled to begin.

Because these subsequent compliance tests are triggered by monitoring parameter excursions or by conditions that cannot be manipulated by the owner or operator, the performance tests are not scheduled months in advance. Therefore, the 60-day period for notifying the permit authority is not appropriate in all cases. However, a short-term notification (24 hours or the same day) as suggested by the industry representatives would not provide permitting agencies with sufficient time to have an observer present during the subsequent performance test.

We believe that the 15-day notification is the minimum period that is appropriate to allow permit authorities time to plan and attend the subsequent compliance test and given that the exact time of the compliance test may not be known at the time of the 15-day notification, the 24-hour confirmation notification is reasonable. We also agree that all biological treatment system operating conditions cannot be anticipated due to rare circumstances that are outside the control of the mill operator. In these limited cases, shorter notification periods may be necessary and are appropriate with prior approval by the permit authority and properly recorded.

In today's action, we are proposing an amendment to the reporting requirements section (§ 63.455(e)) of the final rule that requires a 15-day notification of intent to conduct a subsequent performance test followed by a 24-hour confirmation notification. The purpose of the 15-day notification is to give permitting agencies an early indication of a possible subsequent performance testing, and the 24-hour confirmation notification would establish the exact date and time for conducting the subsequent performance test.

F. Drafting Error Corrections

Minor drafting errors were identified in the final rule after promulgation. Today's action makes the following corrections:

- Corrects the citations for the condensate segregation requirements in § 63.446(i) of the final rule from (c)(2) to (c)(2) and (3).
- Adds the word "mills" between the words "unbleached" and "specified" in the condensate standards (§ 63.446(i)) of the final rule.
- Removes the comma after the word "reestablish" in § 63.453(n) of the final rule.
- Replaces the word "shall" with the word "may" in the biological treatment system monitoring requirements (§ 63.453(p)) of the final rule.
- Corrects the liquid sampling procedures reference in § 63.457(c)(1) of the final rule from "specified in Method 305 of part 60, appendix A" to "of the test method selected to determine liquid stream total HAP or methanol concentrations."
- Corrects the citation in the condensate segregation procedures (§ 63.457(m)(1) and (m)(1)(iii)) of the final rule from § 63.446(c)(1) to § 63.446(c)(2).
- Corrects the citation in the condensate segregation procedures (§ 63.457(m)(2) and (m)(2)(ii)) of the final rule from § 63.446(c)(2) to § 63.446(c)(3).
- Removes the spaces between the "degree" symbol (°) and the abbreviations for Celsius (C) and Fahrenheit (F) in § 63.457(n) of the final rule.

II. Administrative Requirements

A. Paperwork Reduction Act

The EPA submitted the information requirements of the previously promulgated NESHAP for approval to the Office of Management and Budget (OMB) on April 27, 1998 under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The EPA prepared an Information Collection Request (ICR) document (ICR No. 1657.03), and a copy may be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460 or by calling (202) 260–2740. You may also request a copy by e-mail at: "farmer.sandy@epa.gov" or from the Office of Policy website at: "http://www.epa.gov/icr". The information requirements are not effective until OMB approves them.

Today's proposed amendments to the NESHAP will have no impact on the information collection burden estimates made previously. Consequently, EPA has not revised the ICR.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51375, October 4, 1993), EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The NESHAP published on April 15, 1998 was considered significant under Executive Order 12866. Accordingly, EPA prepared a regulatory impact analysis (RIA). The amendments proposed today make technical revisions and correct inadvertent omissions. The OMB evaluated this action and determined it to be nonsignificant; thus, it did not require OMB review.

C. Executive Order 13084: Consultations and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or if EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order

13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed action does not significantly or uniquely affect the communities of Indian tribal governments. The final rule published on April 15, 1998 (1998 NESHAP) does not create mandates upon tribal governments. Today's proposed action does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action. These proposed amendments would not result in increased impacts to small entities, and the changes to the final rule in today's proposed action provide additional flexibility to the final rule by adding equivalent treatment alternatives.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any 1 year. The amendments proposed in today's action provide additional flexibility to the final rule and reduce compliance costs. Therefore, today's proposed rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the proposed regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the proposed rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, so that the analysis required under section 5–501 of the order has the potential to influence the regulation. This proposed rule falls into that category only in part: the minimum rule stringency is set according to a congressionally mandated, technology-based lower limit called the "floor," while a decision to increase the stringency beyond this floor can be partly based on risk considerations.

No children's risk analysis was performed for the 1998 NESHAP rulemaking because no alternative technologies exist that would provide greater stringency at a reasonable cost, and therefore the results of any such analysis would have no impact on the stringency decision. Today's proposed action is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through the OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

Today's proposed action does not establish new or modify existing technical standards. Therefore, consideration of voluntary consensus standards is not relevant to this action.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

These proposed amendments to a final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. While the final rule published on April 15, 1998 (1998 NESHAP) does not create mandates upon State, local, or tribal governments EPA involved State and local governments in its development. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Today's proposed action does not create a mandate upon State, local, or tribal governments, and they have been briefed on the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: January 10, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

2. Amend § 63.443 by revising paragraph (d)(4) to read as follows:

§ 63.443 Standards for the pulping system at kraft, soda, and semi-chemical processes.

* * * * *

(d) * * *

(4) Reduce total HAP emissions using one of the following:

(i) A boiler, lime kiln, or recovery furnace by introducing the HAP emission stream with the primary fuel or into the flame zone; or

(ii) A boiler or recovery furnace with a heat input capacity greater than or equal to 44 megawatts (150 million British thermal units per hour) by introducing the HAP emission stream with the combustion air.

* * * * *

3. Amend § 63.446 by revising paragraphs (e)(2) and (i) to read as follows:

§ 63.446 Standards for kraft pulping process condensates.

* * * * *

(e) * * *

(2) Discharge the pulping process condensate below the liquid surface of a biological treatment system and treat the pulping process condensates to meet the requirements specified in paragraph (e)(2)(i) or (ii) of this section.

(i) On an individual HAP basis, using the procedures specified in § 63.457(l)(1) or (2), either:

(A) Reduce methanol by 92 percent or more by weight and reduce acetaldehyde, methyl ethyl ketone, and propionaldehyde each by 99 percent or more by weight; or

(B) At mills that do not perform bleaching, remove 3.3 kilograms or more of methanol per megagram (6.6 pounds per ton) of ODP, remove 0.034 kilograms or more of acetaldehyde per megagram (0.067 pounds per ton) of ODP, remove 0.017 kilograms or more of methyl ethyl ketone per megagram (0.034 pounds per ton) of ODP, and remove 0.003 kilograms or more of propionaldehyde per megagram (0.0067 pounds per ton) of ODP; or

(C) At mills that perform bleaching, remove 5.1 kilograms or more of methanol per megagram (10.2 pounds per ton) of ODP, remove 0.052 kilograms or more of acetaldehyde per megagram (0.104 pounds per ton) of ODP, remove 0.026 kilograms or more of methyl ethyl ketone per megagram (0.052 pounds per ton) of ODP, and remove 0.005 kilograms or more of propionaldehyde per megagram (0.010 pounds per ton) of ODP.

(ii) On a methanol basis, using the test procedures in § 63.457(l)(3) or (4) to determine the additional condensates to be treated, either:

(A) Reduce methanol by 92 percent or more by weight; or

(B) At mills that do not perform bleaching, remove 3.3 kilograms or more of methanol per megagram (6.6 pounds per ton) of ODP; or

(C) At mills that perform bleaching, remove 5.1 kilograms or more of methanol per megagram (10.2 pounds per ton) of ODP.

* * * * *

(i) For the purposes of meeting the requirements in paragraph (c)(2), (c)(3), (e)(4), or (e)(5) of this section at mills producing both bleached and unbleached pulp products, owners and operators may meet a prorated mass standard that is calculated by prorating the applicable mass standards (kilograms of total HAP per megagram of ODP) for bleached and unbleached mills specified in paragraph (c)(2), (c)(3), (e)(4), or (e)(5) of this section by the ratio of annual megagrams of bleached and unbleached ODP.

4. Amend § 63.453 by revising paragraphs (j), (n), and (p) to read as follows:

§ 63.453 Monitoring requirements.

* * * * *

(j) Each owner or operator using an open biological treatment system to comply with § 63.446(e)(2) shall perform the daily monitoring procedures specified in either paragraph (j)(1) or (j)(2) of this section and shall conduct a performance test each quarter using the procedures specified in paragraph (j)(3) of this section.

(1) Comply with the monitoring and sampling requirements specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this section.

(i) On a daily basis, monitor the following parameters for each open biological treatment unit:

(A) Composite daily sample of outlet soluble BOD_5 concentration to monitor for maximum daily and maximum monthly average;

(B) Mixed liquor volatile suspended solids;

(C) Horsepower of aerator unit(s);

(D) Inlet liquid flow; and

(E) Liquid temperature.

(ii) If the Inlet and Outlet Concentration Measurement Procedure (Procedure 3) in appendix C of part 63 is used to determine the fraction of HAP compounds degraded in the biological treatment system as specified in § 63.457(l), conduct the sampling and archival requirements specified in paragraphs (j)(1)(ii)(A) and (j)(1)(ii)(B) of this section.

(A) Obtain daily inlet and outlet liquid grab samples from each biological treatment unit to have HAP data available to perform quarterly compliance tests specified in paragraph (j)(3) of this section and the compliance tests specified in paragraph (p) of this section.

(B) Store the samples as specified in § 63.457(n) until after the results of the soluble BOD_5 test required in paragraph (j)(1)(i)(A) of this section are obtained. The storage requirement is needed since the soluble BOD_5 test requires 5 days or more to obtain results. If the results of the soluble BOD_5 test are outside of the range established during the initial performance test, then the archive sample shall be used to perform the mass removal or percent reduction determinations.

(2) As an alternative to the monitoring requirements of paragraph (j)(1) of this section, conduct daily monitoring of the site-specific parameters established according to the procedures specified in paragraph (n) of this section.

(3) Conduct a performance test as specified in § 63.457(l) within 45 days after the beginning of each quarter and meet the applicable emission limit in § 63.446(e)(2) (i) or (ii).

(i) The performance test conducted in the first quarter (annually) shall be performed for total HAP and the percent reduction or mass removal obtained from the test shall be at least as great as the total HAP percent reduction or mass removal specified in § 63.446(e)(2) (i) or (ii).

(ii) The remaining quarterly performance tests shall be performed for either methanol or total HAP and the percent reduction or mass removal obtained from the test shall be at least as great as the methanol or total HAP percent reduction or mass removal determined in the previous first-quarter test specified in paragraph (j)(3)(i) of this section.

* * * * *

(n) To establish or reestablish the value for each operating parameter required to be monitored under paragraphs (b) through (j), (l), and (m) of this section or to establish appropriate parameters for paragraphs (f), (i), (j)(2), and (m) of this section, each owner or operator shall use the following procedures:

* * * * *

(p) Each owner or operator of an open biological treatment system complying with paragraph (j) of this section may perform the procedures specified in this paragraph and record the results as soon as practicable whenever the monitoring parameters specified in paragraphs (j)(1)(i) (A) through (C) of this section or any of the monitoring parameters specified in paragraph (j)(2) are below minimum operating parameter values or above maximum operating parameter values established in paragraph (n) of this section.

(1) Determine compliance with § 63.446(e)(2) using the test procedures specified in § 63.457(l) and the monitoring data specified in paragraph (j)(1) or (j)(2) of this section that coincide with the time period of the parameter excursion except as provided in paragraph (p)(3) of this section.

(2) A parameter excursion is not a violation of the applicable emission standard if the results of the compliance test conducted under paragraph (p)(1) of this section demonstrate compliance with § 63.446(e)(2), and no maintenance or changes have been made to the process or control device after the beginning of a parameter excursion that would influence the results of the determination.

(3) If an owner or operator determines that performing the required procedures under paragraph (p)(1) of this section for a nonthoroughly mixed open biological system would expose a worker to dangerous, hazardous, or otherwise unsafe conditions, all of the following procedures shall be performed:

(i) Calculate the mass removal or percent reduction value using the procedures specified in § 63.457(l) except the value for f_{bio} shall be determined using the procedures in appendix E of this part.

(ii) Repeat the procedures in paragraph (p)(3)(i) of this section for every day until the unsafe conditions have passed.

(iii) If the percent reduction or mass removal determined in paragraph (p)(3)(i) of this section is less than the percent reduction or mass removal values specified in § 63.446(e)(2), as appropriate, then this is a violation of the applicable standard.

(iv) The determination that there is a condition that exposes a worker to dangerous, hazardous, or otherwise unsafe conditions shall be documented according to requirements in § 63.454(e) and reporting in § 63.455(f).

(v) The requirements of paragraphs (p)(1) and (2) of this section shall be performed and met as soon as practical but no later than 24 hours after the conditions have passed that exposed a worker to dangerous, hazardous, or otherwise unsafe conditions.

(4) During periods of monitoring parameter excursions, the following requirements shall be met:

(i) Steps shall be taken to repair or adjust the operation of the process to end the parameter excursion period;

(ii) Steps shall be taken to minimize total HAP emissions to the atmosphere during the parameter excursion period.

5. Amend § 63.454 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 63.454 Recordkeeping requirements.

(a) The owner or operator of each affected source subject to the requirements of this subpart shall comply with the recordkeeping requirements of § 63.10, as shown in table 1 of this subpart, and the requirements specified in paragraphs (b) through (e) of this section for the monitoring parameters specified in § 63.453.

* * * * *

(e) The owner or operator of an open nonthoroughly mixed biological treatment system complying with § 63.453(p)(3) instead of § 63.453(p)(1) shall prepare a written record identifying the specific conditions that would expose a worker to dangerous, hazardous, or otherwise unsafe conditions. The record must include a written explanation of the specific reason(s) why a worker would not be able to perform the sampling and test procedures specified in § 63.457(l).

6. Amend § 63.455 by adding paragraphs (e) and (f) to read as follows:

§ 63.455 Reporting requirements.

* * * * *

(e) If the owner or operator uses the results of the compliance test required in § 63.453(p)(1) to revise the approved values or ranges of the monitoring parameters specified in § 63.453(j)(1) or (2), the owner or operator shall submit an initial notification of the subsequent compliance test to the Administrator as soon as practicable, but no later than 15

days, before the compliance test required in § 63.453(p)(1) is scheduled to be conducted. The owner or operator shall notify the Administrator as soon as practicable, but no later than 24 hours, before the performance test is scheduled to be conducted to confirm the exact date and time of the performance test.

(f) To comply with the open biological treatment system monitoring provisions of § 63.453(p)(3), the owner or operator shall notify the Administrator as soon as practicable of the onset of the dangerous, hazardous, or otherwise unsafe conditions that did not allow a compliance determination to be conducted using the sampling and test procedures in § 63.457(l). The notification shall occur no later than 24 hours after the onset of the dangerous, hazardous, or otherwise unsafe conditions and shall include the specific reason(s) that the sampling and test procedures in § 63.457(l) could not be performed.

7. Amend § 63.457 by revising paragraphs (c)(1) introductory text and (c)(4) introductory text, (g), (l), (m)(1) introductory text, (m)(1)(iii), (m)(2) introductory text, (m)(2)(ii), and (n), and add paragraphs (c)(5) and (6) to read as follows:

§ 63.457 Test methods and procedures.

* * * * *

(c) * * *

(1) Samples shall be collected using the sampling procedures of the test method listed in paragraph (c)(3) of this section selected to determine liquid stream HAP concentrations;

* * * * *

(4) To determine soluble BOD_5 in the effluent stream from an open biological treatment unit used to comply with § 63.446(e)(2) and § 63.453(j), the owner or operator shall use Method 405.1 of part 136 of this chapter with the following modifications:

* * * * *

(5) If the test method used to determine HAP concentration indicates that a specific HAP is not detectable, the value determined as the minimum measurement level (MML) of the selected test method for the specific HAP shall be used in the compliance demonstration calculations. To determine the MML for a specific HAP using one of the test methods specified in paragraph (c)(3) of this section, one of the procedures specified in paragraphs (c)(5)(i) and (ii) of this section shall be performed.

(i) To determine the MML for a specific HAP, the following procedures shall be performed each time the method is used.

(A) Select a concentration value for the specific HAP in question to represent the MML. The selected value of the MML selected shall not be below the calibration standard of the selected test method.

(B) Measure the concentration of the specific HAP in a minimum of three replicate samples using the selected test method. All replicate samples shall be run through the entire analytical procedure. The samples must contain the specific HAP at the selected MML concentration and should be representative of the liquid streams to be analyzed in the compliance demonstration. Spiking of the liquid samples with a known concentration of the target HAP may be necessary to ensure that the HAP concentration in the three replicate samples is at the selected MML.

(C) Calculate the relative standard deviation (RSD) and the upper confidence limit at the 95 percent confidence level using the measured HAP concentrations determined in paragraph (c)(5)(i)(B) of this section. If the upper confidence limit of the RSD is less than 30 percent, then the selected MML is acceptable. If the upper confidence limit of the RSD is greater than or equal to 30 percent, then the selected MML is too low and the procedures specified in paragraphs (c)(5)(i)(A) through (C) of this section must be repeated.

(ii) Provide for the Administrator's approval the selected value of the MML for a specific HAP and the rationale for selecting the MML including all data and calculations used to determine the MML. The approved MML must be used in all applicable compliance demonstration calculations.

(6) When using the MML determined using the procedures in paragraph (c)(5)(i) or (ii) of this section, the analytical laboratory conducting the analysis must perform and meet the following quality assurance procedures.

(i) Measure the concentration of the specific HAP in a minimum of three replicate samples using the selected test method.

(ii) Calculate the RSD and the upper confidence limit at the 95 percent confidence level using the measured HAP concentrations determined in paragraph (c)(6)(i) of this section. If the upper confidence limit of the RSD is less than 30 percent, then the test method is being performed correctly. The upper confidence limit of the RSD must be less than or equal to 30 percent.

* * * * *

(g) *Condensate HAP concentration measurement.* For purposes of complying with the kraft pulping condensate requirements in § 63.446, the owner or operator shall measure the total HAP concentration as methanol except as specified in § 63.446(e)(2).

* * * * *

(l) *Biological treatment system percent reduction and mass removal calculations.* To demonstrate compliance with the condensate treatment standards specified in § 63.446(e)(2) and the monitoring requirements specified in § 63.453(j)(3) using a biological treatment system, the owner or operator shall use one of the procedures specified in paragraphs (l)(1) through (4) of this section. Owners or operators using a nonthoroughly mixed open biological treatment system shall also comply with paragraph (l)(5) of this section.

(1) *Percent reduction individual HAP procedure.* For the purposes of complying with the condensate treatment requirements specified in § 63.446(e)(2)(i)(A), the percent reduction due to destruction in the biological treatment system shall be calculated using the following equation:

$$R = f_{bio} \times 100$$

Where:

R=Destruction of each individual HAP specified in § 63.446(e)(2)(i)(A) in the biological treatment system (percent).

f_{bio}=The fraction of each individual HAP removed in the biological treatment system. The site-specific biorate constants shall be determined using the procedures specified and as limited in Appendix C of part 63.

(2) *Mass removal individual HAP procedure.* For the purposes of complying with the condensate treatment requirements specified in § 63.446(e)(2)(i)(B) or (C), the mass removal in the biological treatment system shall be calculated using the following equation:

$$E = (F) * (f_{bio})$$

Where:

E=mass of each individual HAP specified in § 63.446(e)(2)(i)(B) or (C) removed in the biological treatment system (kg/Mg ODP).

F=mass of each individual HAP entering the biological treatment system determined using the procedues specified in paragraph (j)(2) of this section(kg/Mg ODP).

(3) *Percent reduction methanol procedure.* For the purposes of complying with the condensate treatment requirements specified in § 63.446(e)(2)(ii)(A), the methanol

percent reduction shall be calculated using the following equation:

$$R = \frac{f_{bio}(MeOH)}{(1+1.087(r))} * 100$$

Where:
R=percent destruction.
r=ratio of the sum of acetaldehyde, methyl ethyl ketone, and propionaldehyde mass to methanol mass determined using the procedures in paragraph (j)(2) of this section.
f_{bio}(MeOH)=the fraction of methanol removed in the biological treatment system. The site-specific biorate constants shall be determined using the appropriate procedures specified in appendix C of part 63.

(4) *Mass removal methanol procedure.* For the purposes of complying with the condensate treatment requirements specified in § 63.446(e)(2)(ii)(B) or (C), the methanol mass removal shall be calculated using the following equation:

$E=Eb*(f_{bio}(MeOH)/(1+1.087(r)))$

Where:
E=methanol mass removal (kg/Mg ODP);
Eb=inlet mass flow rate of methanol (kg/Mg ODP) determined using the procedures in paragraph (j)(2) of this section;

(5) The owner or operator of a nonthoroughly mixed open biological treatment system using the monitoring requirements specified in § 63.453(p)(3) shall follow the procedures specified in appendix E of this part during the initial and any subsequent performance tests.

* * * * *

(m) * * *

(1) To demonstrate compliance with the percent mass requirements specified in § 63.446(c)(2), the procedures specified in paragraphs (m)(1)(i) through (iii) of this section shall be performed.

* * * * *

(iii) Compliance with the segregation requirements specified in § 63.446(c)(2) is demonstrated if the condensate stream or streams from each equipment system listed in § 63.446(b)(1) through (3) being treated as specified in § 63.446(e) contain at least as much total HAP mass as the target total HAP mass determined in paragraph (m)(1)(ii) of this section.

(2) To demonstrate compliance with the percent mass requirements specified in § 63.446(c)(3), the procedures specified in paragraphs (m)(2)(i) through (ii) of this section shall be performed.

* * * * *

(ii) Compliance with the segregation requirements specified in § 63.446(c)(3) is demonstrated if the total HAP mass determined in paragraph (m)(2)(i) of this section is equal to or greater than the appropriate mass requirements specified in § 63.446(c)(3).

(n) *Open biological treatment system monitoring sampling storage.* The inlet and outlet grab samples required to be collected in § 63.453(j)(2) shall be stored at 4°C (40°F) to minimize the biodegradation of the organic compounds in the samples.

8. Amend § 63.458 by adding paragraph (b)(5) to read as follows:

§ 63.458 Delegation of authority.

* * * * *

(b) * * *

(5) Section 63.457(c)(5)(ii)—Determination of the minimum measurement level in liquid streams for a specific HAP using the selected test method.

9. Add appendix E to part 63 to read as follows:

Appendix E to Part 63—Monitoring Procedure for Nonthoroughly Mixed Open Biological Treatment Units or Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions

I. Purpose

This procedure is required to be performed in subpart S of this part, entitled National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. Subpart S requires this procedure in § 63.453(p)(3) to be followed during unsafe sampling conditions when it is not practicable to obtain representative samples of hazardous air pollutant (HAP) concentrations from an open biological treatment unit. It is assumed that inlet and outlet HAP concentrations from the open biological treatment unit may be obtained during the unsafe sampling conditions. The purpose of this procedure is to estimate the concentration of HAPs within the open biological treatment unit based on information obtained at inlet and outlet sampling locations in units that are not thoroughly mixed and therefore have different concentrations of HAPs at different locations within the unit.

II. Definitions

Biological treatment unit = wastewater treatment unit designed and operated to promote the growth of bacteria to destroy organic materials in wastewater.

f_{bio} The fraction of organic compounds in the wastewater biodegraded in a biological treatment unit.
Fe=The fraction of applicable organic compounds emitted from the wastewater to the atmosphere.
K1=First-order biodegradation rate constant, L/g mixed liquor volatile suspended solids (MLVSS)-hr
KL=Liquid-phase mass transfer coefficient, m/s
Ks=Monod biorate constant at half the maximum rate, g/m^3

III. Test Procedure for Determination of f_{bio} for Nonthoroughly Mixed Open Biological Treatment Units Under Unsafe Sampling Conditions

This test procedure is used under unsafe sampling conditions that do not permit practicable sampling of open biological treatment units within the unit itself, but rather relies on sampling at the inlet and outlet locations of the unit. This procedure may be used only under unsafe sampling conditions to estimate f_{bio}. Once the unsafe conditions have passed, then the formal compliance demonstration procedures of f_{bio} based upon measurements within the open biological treatment unit must be completed.

A. Overview of Estimation Procedure

The steps in the estimation procedure include data collection, the estimation of concentrations within the unit, and the use of Form 1 to estimate f_{bio}. The data collection procedure consists of two separate components. The first data collection component demonstrates that the open biological treatment unit can be represented by Monod kinetics and characterizes the effectiveness of the open biological treatment unit as part of the initial performance test, and the second data collection component is used when there are unsafe sampling conditions. These two data collection components are used together in a data calculation procedure based on a Monod kinetic model to estimate the concentrations in each zone of the open biological treatment unit. After the first two components of data collection are completed, the calculation procedures are used to back estimate the zone concentrations, starting with the last zone in the series and ending with the first zone.

B. Data Collection Requirements

This method is based upon: modeling the nonthoroughly mixed open biological treatment unit as a series of well-mixed zones with internal recycling between the units; and assuming that two Monod biological kinetic parameters can be used to characterize the biological removal rates in each unit. The data collection procedure consists of two separate components. The first data collection component is part of the initial performance test, and the second data collection component is used during unsafe sampling conditions.

1. Initial Performance Test

The objective of the first data collection component is to demonstrate that the open biological treatment unit can be represented by Monod kinetics and to characterize the performance of the open biological treatment unit. An appropriate value of the biorate constant, Ks, is determined using actual sampling data from the open biological treatment unit. This is done during the initial performance test when the open biological treatment unit is operating under normal conditions. This specific Ks value obtained during the initial performance test is used in the calculation procedure to characterize the open biological treatment unit during unsafe sampling conditions. The following open biological treatment unit characterization information is obtained from the first component of the data collection procedure:

(1) The value of the biorate constant, Ks;

(2) The number and characteristics of each zone in the open biological treatment unit (depth, area, characterization parameters for surface aeration, submerged aeration rates, biomass concentration, concentrations of organic compounds, dissolved oxygen (DO), dissolved solids, temperature, and other relevant variables); and

(3) The recycle ratio of internal recirculation between the zones.

The number of zones and the above characterization of the zones are also used to determine the performance of the unit under the unsafe sampling conditions of concern.

2. Data Collected Under Unsafe Sampling Conditions

In the second data collection component, obtained under unsafe sampling conditions, the measured inlet and outlet HAP concentrations and the biomass concentration are obtained for the open biological treatment unit. After the site specific data collection is completed on the day a parameter excursion occurs, the inlet and outlet concentrations are used with the prior open biological treatment unit characterization to estimate the concentrations of HAPs in each zone. The following information on the open biological treatment unit must be available in the second data collection component:

(1) Basic unit variables such as inlet and recycle wastewater flow rates, type of agitation, and operating conditions;

(2) The value of the inlet and outlet HAP concentrations; and

(3) The biomass concentration in the open biological treatment unit.

C. One Time Determination of a Single Value of Ks (Initial Performance Test)

A single value of Ks is calculated using Form 3 for each data set that is collected during the initial performance test. A single composite value of Ks, deemed to be representative of the biological unit, is subsequently selected so that the f_{bio} values calculated by the procedures in this appendix (using this single value of Ks) for the data sets collected during the initial performance test are within 10 percent of the f_{bio} value determined by using Form 1 with these same data sets. The value of Ks meeting these criteria is obtained by the following steps:

(1) Determine the median of the Ks values calculated for each data set;

(2) Estimate f_{bio} for each data set using the selected Ks value (Form 1 and Form 2);

(3) Calculate f_{bio} for each data set using Form 1; and

(4) Compare the f_{bio} values obtained in steps (2) and (3); if the f_{bio} value calculated using step (2) differs from that calculated using step (3) by more than 10 percent, adjust Ks (decrease Ks if the f_{bio} value is lower than that calculated by Form 1 and vice versa) and repeat this procedure starting at step (2). If a negative value is obtained for the values of Ks, then this negative kinetic constant may not be used with the Monod model. If a negative value of Ks is obtained, this test procedure cannot be used for evaluating the performance of the open biological treatment unit.

D. Confirmation of Monod Kinetics (Initial Performance Test)

i. Confirmation that the unit can be represented by Monod kinetics is made by identifying the following two items:

(1) The zone methanol concentrations measured during the initial performance test; and

(2) The zone methanol concentrations estimated by the Multiple Zone Concentrations Calculations Procedure based on inlet and outlet concentrations (Column A of Form 2). For each zone, the concentration in item 1 is compared to the concentration in item 2.

ii. For each zone, the estimated value of item 2 must be:

(1) Within 25 percent of item 1 when item 1 exceeds 8 mg/L; or

(2) Within 2 mg/L of item 1 when item 1 is 8 mg/L or less.

iii. Successful demonstration that the calculated zone concentrations meet these criteria must be achieved for 80 percent of the performance test data sets.

iv. If negative values are obtained for the values of K1 and Ks, then these negative kinetic constants may not be used with the Monod model, even if the criteria are met. If negative values are obtained, this test procedure cannot be used for evaluating the performance of the open biological treatment unit.

E. Determination of KL for Each Zone (Unsafe Sampling Conditions)

i. A site-specific liquid-phase mass transfer coefficient (KL) must be obtained for each zone during the unsafe sampling conditions. Do not use a default value for KL. The KL value for each zone must be based on the site-specific parameters of the specific unit. The first step in using this procedure is to calculate KL for each zone in the unit using Form 4. Form 4 outlines the procedure to follow for using mass transfer equations to determine KL. Form 4 identifies the appropriate form to use for providing the detailed calculations to support the estimate of the value of KL. Forms 5 and 6 are used to provide individual compound estimates of KL for quiescent and aerated impoundments, respectively. A computer model may be used to perform the calculations. If the WATER8 model or the most recent update to this model is used, then report the computer model input parameters that you used as an attachment to Form 4. In addition, the Bay Area Sewage Toxics Emission (BASTE) model version 3.0 or equivalent upgrade and the TOXCHEM (Environment Canada's Wastewater Technology Centre and Environmega, Ltd.) model version 1.10 or equivalent upgrade may also be used to determine KL for the open biological treatment unit with the following stipulations:

(1) The programs must be altered to output a KL value that is based on the site-specific parameters of the unit modeled; and

(2) The Henry's law value listed in Form 4 must be substituted for the existing Henry's law values in the models.

ii. The Henry's law value listed in Form 4 may be obtained from the following sources:

(1) Values listed by EPA with temperature adjustment if needed;

(2) Measured values for the system of concern with temperature adjustment; or

(3) Literature values of Henry's law values for methanol, adjusted for temperature if needed.

iii. Input values used in the model and corresponding output values shall become part of the documentation of the f_{bio} determination. The owner or operator should be aware that these models may not provide equivalent KL values for some types of units. To obtain an equivalent KL value in this situation, the owner or operator shall either use the appropriate procedure on Form 4 or adjust the KL value from the model to the equivalent KL value as described on Form 4.

iv. Report the input parameters that you used in the computer model on Forms 5 and 6 as an attachment to Form 4. If you have submerged air flow in your unit, you must correct the value of KL estimated on Form 4 with the correction factor determined using Form 7 before using the value of KL with Form 2.

F. Estimation of Zone Concentrations (Unsafe Sampling Conditions)

Form 2 is used to estimate the zone concentrations of HAPs based on the inlet and outlet data. The value of Ks entered on the form is that single composite value of Ks discussed in section III.C of this appendix. This value of Ks is calculated during the Initial Performance Test (and subsequently updated, if necessary). A unique value of the biorate K1 is entered on line 4 of Form 4, and the inlet concentration is estimated in Column A of Form 4. The inlet concentration is located in the row of Form 2 corresponding to zone 0. If there are three zones in the system, n-3 equals 0 for the inlet concentration row. These estimated zone concentrations are then used in Form 1 to estimate f_{bio} for the treatment unit.

G. Quality Control/Quality Assurance (QA/QC)

A QA/QC plan outlining the procedures used to determine the measured inlet and outlet concentrations during unsafe conditions and how the zone characterization data were obtained during the initial performance test shall be prepared and submitted with the initial performance test report. The plan should include, but may not be limited to:

(1) A description of each of the sampling methods that were used (method, procedures, time, method to avoid losses during sampling and holding, and sampling procedures) including simplified schematic drawings;

(2) A description of how that biomass was sampled from the activated sludge unit, including methods, locations, and times;

(3) A description of what conditions (DO, temperature, etc.) are important, what the target values are in the zones, how the factors were controlled, and how they were monitored. These conditions are primarily used to establish that the conditions of the initial performance test correspond to the conditions of the day in question;

(4) A description of how each analytical measurement was conducted, including preparation of solutions, dilution procedures, sampling procedures, monitoring of conditions, etc;

(5) A description of the analytical instrumentation used, how the instruments were calibrated, and a summary of the accuracy and precision for each instrument;

(6) A description of the test methods used to determine HAP concentrations and other measurements. Section 63.457 (c)(3) specifies the test methods that must be used to determine HAP concentrations;

(7) A description of how data are captured, recorded, and stored; and

(8) A description of the equations used and their solutions for sampling and analysis, including a reference to any software used for calculations and/or curve-fitting.

IV. Calculation of Individual f_{bio} (Unsafe Sampling Conditions)

Use Form 1 with your zone concentration information to estimate the value of f_{bio} under unsafe sampling conditions. Form 1 uses measured concentrations of HAPs in the unit inlet and outlet, and Form 1 also uses the estimated concentrations in each zone of the unit obtained from Form 2. This procedure may be used on an open biological treatment unit that has well-defined zones within the unit. Use Form 1 to determine f_{bio} for each open biological treatment unit as it exists under subpart S of part 63. The first step in using Form 1 is to calculate KL for each zone in the unit using Form 4. Form 7 must also be used if submerged aeration is used. After KL is determined using field data, measure the concentrations of the HAPs in each zone. In this alternative procedure for unsafe sampling conditions, the actual measured concentrations of the HAPs in each zone are replaced with the zone concentrations that are estimated with Form 2. After KL and the zone concentrations are determined, Form 1 is used to estimate the overall unit Fe and f_{bio} for methanol.

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Form 1

DATA FORM FOR THE ESTIMATION OF MULTIPLE ZONE BIODEGRADATION FROM UNIT CONCENTRATIONS

NAME OF THE FACILITY for site specific biorate determination		
COMPOUND for site specific biorate determination		Methanol
Number of zones in the biological treatment unit	1	
VOLUME of full-scale system (cubic meters)	2	
Average DEPTH of the full-scale system (meters)	3	
FLOW RATE of wastewater treated in the unit (m3/s)	4	
Recycle flow of wastewater added to the unit, if any (m3/s)	5	
Concentration in the wastewater treated in the unit (mg/L)	6	
Concentration in the recycle flow, if any (mg/L)	7	
Concentration in the effluent (mg/L).	8	

TOTAL INLET FLOW (m3/s) line 4 plus the number on line 5	9	
TOTAL RESIDENCE TIME (s) line 2 divided by line 9.	10	
TOTAL AREA OF IMPOUNDMENT (m2) line 2 divided by line 3	11	

Zone number	Concentration for zone, Ci (mg/L)	Area of the zone, A (m2)	Estimate of KL in the zone (m/s) from Form 4	AIR STRIPPING KL A Ci (g/s)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
TOTALS sum for each zone.		12		13

Removal by air stripping (g/s). Line 13.	14	
Loading in effluent (g/s). Line 8 times line 9.	15	
Total loading (g/s). (Line 5 * line 7) + (line 4* line 6).	16	
Removal by biodegradation (g/s) Line 16 minus (line 14 + line 15).	17	
Fraction biodegraded: Divide line 17 by line 16..	18	
Fraction air emissions: Divide line 14 by line 16.	19	
Fraction remaining in unit effluent: Divide line 15 by line 16.	20	

Form 2

DATA FORM FOR THE DETERMINATION OF ZONE CONCENTRATIONS FROM KS AND INLET/OUTLET DATA

COMPOUND for site specific biorates determination	methanol	
Influent Flow (m3/s)	1	
Inlet Concentration (g/m3)	2	
Outlet Concentration (g/m3) - Use value from line 3 as Ci value in column A for final Zone (zone n) in table below	3	
Saturation Coefficient, Ks (g/m3) From Form XIV	4	
Biorate K1 (1/s) - Estimate	5	
Number of Zones	6	

Adjust K1 value (line 5) until Column A, Row (n - line 6) is within +/- 5% of line 2.

Instructions for completion of table: (1) Transfer value from line 3 into row n, column A. (2) Enter data for all zones into columns B, D, E, G, H, & K. (3) Beginning with row n, perform calculations for columns F. I, J, L, M, N, & O for that zone only. (4) Calculate row n-1, column A using results from previous row (i.e., J_{i-1}, M_{i-1}, N_{i-1}). (5) Repeat steps (3) and (4) until a row of calculations has been completed for each zone. (6) row n - line 6, column A is the calculated inlet concentration.

	A	B	C	D	E	F	G	H
Zone Number	C_i $(J_{i-1} + N_{i-1})/O_{i-1}$ g/m3	Temp C	(1.045)^(B-25)	biomass g/m3	Volume m3	line 5 * A*C*D *E/(line 4+ A) g/s	KL m/s	Area m2
n								
n-1								
n-2								
n-3								
n-4								

	I	J	K	L	M	N	O
Zone Number	A*G*H g/s	Reaction F+I g/s	Backmix BMi	$(1+BM_i+BM_{i+1})$ $*C_i$ * line 1 g/s	$BM_{i+1} * C_{i+1}$ * line 1 g/s	Flux L-M g/s	$(1+BM_i)$ * line 1 g/s
n							
n-1							
n-2							
n-3							
n-4							

Form 3

Form XIV DATA FORM FOR THE DETERMINATION OF MONOD CONSTANTS FROM ZONE CONCENTRATIONS WITH BACKMIXING

COMPOUND for site specific biorates determination		
Influent Flow (m3/s)		
Inlet Concentration (g/m3) - Use value from line 2 as Ci-1 value in column D for Zone 1 in table below		

	A	B	C	D	E			H
Zone Number	Ci g/m3	Backmix (BMi)	$(1+BM_i+BM_{i+1})*C_i$ g/m3	$(1+BM_i)*C_{i-1}$ g/m3	$BM_{i+1} * C_{i+1}$ g/m3	m/s	m2	A*F*G g/s
1								
2								
3								
4								
5								

	I	J	K	L	M	N	O
Zone Number	Volume m3	Temp C	(1.045)^(J-25)	biomass g/m3	I*K*L gm	M/[line 1*(D+E-C)-H] s	1/A m3/g
1							
2							
3							
4							
5							

Plot values in column N on y axis, and values in column O on x axis, up to, and including first row where Ci is equal to MDL or to last zone.

Y intercept from plot. (g-s/m3)	3	
K1 (1/s). 1/line 3	4	
Slope of line	5	
Ks (g/m3). Line 5 times line 4	6	

Rev. 3/15/99

Form 4

PROCEDURES FORM FOR THE ESTIMATION OF THE KL FROM UNIT SPECIFICATIONS

NAME OF THE FACILITY for site specific biorate determination	
NAME OF UNIT for site specific biorate determination	
NAME OF COMPOUND	
HENRY'S LAW constant for the compound (mole fraction in gas per mole fraction in water at 25 degrees Celsius)	

IDENTIFY THE TYPE OF UNIT (check one box below)

Quiescent impoundment	1	
Surface agitated impoundment	2	
Surface agitated impoundment with submerged air	3	
Unit agitated by submerged aeration gas	4	

PROCEDURES BASED UPON THE TYPE OF UNIT

1. Use the quiescent impoundment model to determine KL. Use Kq as KL as determined from Form 5.
2. Use the quiescent impoundment model to determine KL for the quiescent zone, Form 5. Use the aerated impoundment model to determine KL for the agitated surface, Form 6.
3. Use the quiescent impoundment model to determine Kq for the quiescent zone, Form 5. Use the aerated impoundment model to determine KL for the agitated surface, Form 6. The total system KL is the sum of the KL from Form 6 and the equivalent KL from Form 7
4. Use the aerated impoundment model to determine KL if the surface is agitated. Use the quiescent impoundment model if the surface is not agitated. KL includes the effect of volatilization in the air discharge, the equivalent KL from Form 7. See section 4.6.1 in the EMISSION MODEL REPORT

Estimate of KL obtained from above procedures (m/s)	5	

Form 5

FORM FOR CALCULATING THE MASS TRANSFER COEFFICIENT FOR A QUIESCENT SURFACE IMPOUNDMENT

FACILITY NAME for site specific biorate determination

COMPOUND for site specific biorate determination: Methanol

Input values

Enter the following:

F - Impoundment fetch (m)
D - Impoundment depth (m)
U10 - Windspeed 10 m above liquid surface (m/s)
Dw - Diffusivity of compound in water (cm2/s)
Dether - Diffusivity of ether in water (cm2/s)
μG - Viscosity of air, (g/cm-s)
G - Density of air, (g/cm3)
Da - Diffusivity of compound in air, (cm2/s)
A - Area of impoundment, (m2)
H - Henry's law constant, (atm-m3/g mol)
R - Universal gas constant, (atm-m3/g mol. K)
μL - Viscosity of water, (g/cm-s)
L - Density of liquid, (g/cm3)
T - Impoundment temperature, (C)

Calculate the following:

Calculate F/D:

Calculate the liquid phase mass transfer coefficient, kL, using one of the following

A. procedures, (m/s)

Where F/D < 14 and U10 > 3.25 m/s, use the following procedure from MacKay and

1 Yeun:

Calculate the Schmidt number on the liquid side, ScL, as follows:

ScL = μL/ LDw

Calculate the friction velocity, U*, as follows, (m/s):

U* = 0.01 x U10(6.1 + 0.63 U10)^0.5

Where U* is > 0.3, calculate kL as follows:

kL = (1.0 x 10^-6) + (34.1 x 10^-4)U* x ScL^-0.5

Where U* is < 0.3, calculate kL as follows:

kL = (1.0 x 10^-6) + (144 x 10^-4)(U*)^2.2 x ScL^-0.5

For all other values of F/D and U10, calculate kL using the following procedure from

2 Springer:

Where U10 is < 3.25 m/s, calculate kL as follows:

Form 5

kL = 2.78 x 10^-6(Dw/Dether)^2/3

Where U10 is > 3.25 and 14 < F/D < 51.2, Calculate kL as follows:
kL = [2.605 x 10^-9(F/D) + 1.277 x 10^-7] U10^2 (Dw/Dether)^2/3

Where U10 > 3.25 m/s and F/D > 51.2, calculate kL as follows:
kL = (2.611 x 10^-7)U10^2 (Dw/Dether)^2/3

B. Calculate the gas phase mass transfer coefficient, kG, using the following procedure from MacKay and Matsasugu, (m/s):

Calculate the Schmidt number on the gas side, ScG, as follows: ScG =μG/ GDa

Calculate the effective diameter of the impoundment, de, as follows, (m):
de = (4A/3.14)^0.5

Calculate kG as follows, (m/s): kG = 4.82 x 10^-3 U10^.78 ScG^-0.67 de^-0.11

C. Calculate the partition coefficient, Keq, as follows: Keq = H/[R(T+273)]

D. Calculate the overall mass transfer coefficient, Kq, as follows, (m/s):
1/Kq = 1/kL + 1/(Keq-kG)

Where the total impoundment surface is quiescent:
KL = Kq

Where a portion of the impoundment surface is turbulent, continue with Form 6.

Form 6

DATA FORM FOR CALCULATING THE MASS TRANSFER COEFFICIENT FOR AN AERATED SURFACE IMPOUNDMENT

Facility Name:	
Waste Stream Compound:	Methanol

Enter the following:

J - Oxygen transfer rating of surface aerator, (lb O2/hr-hp)	
POWR - Total power to aerators, (hp)	
T - Water temperature, (C)	
Ot - Oxygen transfer correction factor	
MWL - Molecular weight of liquid	
At - Turbulent surface area of impoundment, (ft2)	
(If unknown, use values from Table 1)	
A - Total surface area of impoundment, (ft2)	
rho L - Density of liquid, (lb/ft3)	
Dw - Diffusivity of constituent in water, (cm2/s)	
Do - Diffusivity of oxygen in water, (cm2/s)	
d - Impeller diameter, (cm)	
w - Rotational speed of impeller, (rad/s)	
a - Density of air, (gm/cm3)	
N - Number of aerators	
gc - Gravitation constant, (lbm-ft/s2/lbf)	
d* - Impeller diameter, (ft)	
Da - Diffusivity of constituent in air, (cm2/s)	
MWa - Molecular weight of air	
R - Universal gas constant, (atm-m3/g mol. C)	
H = Henry's law constant, (atm-m3/g mol)	

Calculate the following:

A. Calculate the liquid phase mass transfer coefficient, kL, using the following Equation from Thibodeaux:,

kL =[8.22 x 10^-9 J (POWR)(1.024)^(T-20) Ot 10^6 MWL/(At x rhoL/62.37)] (Dw/Do)^0.5, (m/s)

B. Calculate the gas phase mass transfer coefficient, kG, using the following procedure from Reinhardt:,

Calculate the viscosity of air, μa, as follows, (g/cm.s):
μa = 4.568 x 10^-7 T + 1.7209 x 10^-4

Calculate the Reynold's number as follows:
Re = d^2 w a/μa

Calculate power to impeller, PI, as follows, (ft.lbf/s):
PI = 0.85 (POWR) 550/N

Form 6

Calculate the power number, p, as follows:
p = Pl gc/(rho d^5 w^3)

Calculate the Schmidt number, ScG, as follows:
ScG = μa/ aDa

Calculate the Fronde number, Fr, as follows:
Fr = d*w^2/gc

Calculate kG as follows:
kG = 1.35 x 10^-7 Re ^1.42 p^0.4 ScG^0.5 Fr^-0.21 Da MWa/d, (m/s)

C. Calculate the partition coefficient, Keq, as follows:
Keq = H/[R(T+273)]

D. Calculate the overall turbulent mass transfer coefficient, Kt, as follows, (m/s):
1/Kt = 1/kL + 1/(Keq*kG)

E. Calculate the quiescent mass transfer coefficient, Kq, for the impoundment using Form 5.

F. Calculate the overall mass transfer coefficient, KL, for the impoundment as follows:
KL = (A-At)/A *Kq + At*Kt/A

Form 6 Table 1

PROCEDURES FORM FOR THE ESTIMATION OF THE KL FROM WATER8 a,b

Motor horsepower	At, Turbulent area,		Effective depth	V, Agitated volume	aV, Area per volume
hp	ft2	m2	ft	ft3	ft2/ft3
5	177	16.4	10	1,767	0.1002
7.5	201	18.7	10	2,010	0.1000
10	227	21	10.5	2,383	0.0953
15	284	26.4	11	3,119	0.0911
20	346	32.1	11.5	3,983	0.0869
25	415	38.6	12	4,986	0.0832
30	491	45.7	12	5,890	0.0834
40	661	61.4	13	8,587	0.0770
50	855	79.5	14	11,970	0.0714
60	1075	100	15	16,130	0.0666
75	1452	135	16	23,240	0.0625
100	2206	205	18	39,710	0.0556

a Data for a high speed (1,200) rpm) aerator with 60 cm propeller diameter (d).

b This table provides information potentially useful for the value of At.

Form 7

DATA FORM FOR THE ESTIMATION OF THE EQUIVALENT KL FROM AIR STRIPPING DUE TO SUBMERGED AERATION.

NAME OF THE FACILITY for site specific biorate determination		
COMPOUND for site specific biorate determination		Methanol
VENT RATE of total gas leaving the unit (G, m3/s)	1	
TEMPERATURE of the liquid in the unit (deg. C)	2	
ESTIMATE OF Henry's law constant (H, g/m3 in gas / g/m3 in liquid). Corrected for the temperature on line 3.	3	
AREA OF REACTOR (m^2)	4	

CALCULATION OF THE ESTIMATE OF EQUIVALENT KL

[H G] ESTIMATE (m3/s) Multiply the number on line 1 by the number on line 3. Enter the results here.	5	
EQUIVALENT KL. Divide the number on line 5 by the number on line 4. Enter the results on line 6.	6	

[FR Doc. 00–1038 Filed 1–24–00; 8:45 am]
BILLING CODE 6560–50–C

Notices

Federal Register
Vol. 65, No. 16
Tuesday, January 25, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Malaria Vaccine Development Program, Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 9 a.m. to 5 p.m. on February 2, 2000 and from 9 a.m. to noon on February 3, 2000 at the Conference Room of the Environmental Health Project located in Suite 300, 1611 North Kent Street in Arlington, VA 22209–2111.

The agenda will concentrate on the activities of the MVDP over the past six months and on future plans. The meeting will be open to the public on 2 February unless it is necessary to discuss procurement sensitive information; should this be the case, it will be announced and the meeting closed at the appropriate time. Such issues will be discussed on 3 February on which date the meeting will be closed. Any interested person may attend the meeting, may file written statements with the committee before or after the meeting, or present any oral statements in accordance with procedures established by the committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting or to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MVDP Federal Advisory Committee at the Office of Health and Nutrition, USAID/G/PHN/HN/EH, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728, Fax (202) 216–3702, cdiggs@usaid.gov.

Carter Diggs,

USAID Designated Federal Officer, Technical Advisor, Malaria Vaccine, Development Program.

[FR Doc. 00–1672 Filed 1–24–00; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Fiscal Year 2000 Emerging Markets Program and Solicitation of Private Sector Proposals

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service (FAS) invites proposals for using technical assistance to promote the export of, and improve the market access for, U.S. agricultural products to emerging markets in fiscal year (FY) 2000 under the Emerging Markets Program (the Program).

DEADLINE: All proposals must be received by 5:00 p.m. Eastern Standard Time, March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for program guidelines and additional information may be obtained from, and proposals submitted to: Emerging Markets Office, Foreign Agricultural Service, Room 6506 South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1032, Fax: (202) 690–4369, E-mail: *emo@fas.usda.gov.* It is strongly recommended that any U.S. organization considering applying to the Program for FY 2000 funding assistance first obtain a copy of the 2000 Emerging Markets Program Guidelines. The guidelines are also available on the FAS Home Page on the Internet: http://www.fas.usda.gov/excredits/em-markets/em-markets.html.

The FAS issued a **Federal Register** notice on January 3, 2000, announcing the availability of funding for the Market Access Program (MAP) and the Foreign Market Development (FMD) (Cooperator) Program, and encouraging applicants to these programs to use the Unified Export Strategy (UES) format. Some applicants may also wish to use the UES format in order to apply to the Emerging Markets Program.

SUPPLEMENTARY INFORMATION:

Introduction

The Program is authorized by section 1542(d)(1)(D) of the Food, Agriculture, Conservation, and Trade Act of 1990. Up to $10 million is available to fund the Program each fiscal year. The purpose of the Program is to assist U.S. organizations, public and private, to improve market access and to develop and promote U.S. agricultural products or processes in low- to-middle-income countries that offer promise of emerging market opportunities in the near- to medium-term. This is to be accomplished by providing U.S. technical assistance through projects and activities in those emerging markets.

The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Program Priorities

Because funds are limited and the range of potential emerging market countries is worldwide, proposals will be considered which focus on those countries which meet the above definition and have (1) a per capita income less than $9,360 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 1999]; and (2) a population greater than 1 million. These categories may encompass suitable regional groupings, *e.g.*, the islands of the Caribbean Basin. (Consult the 2000 Emerging Markets Program Guidelines available from the contact and address identified above for further information.)

The underlying premise of the Program is that there are distinctive characteristics of emerging agricultural markets that necessitate or benefit significantly from technical assistance through the public sector before the private sector moves to develop these markets through normal corporate or

trade promotional activities. The emphasis of the program is on funding, on a project-by-project basis, marketing opportunities which involve risks that the private sector would not normally undertake alone. The Program complements the efforts of other FAS marketing programs. Once a market access issue has been addressed by this Program, further market development activities may be considered under other programs such as GSM-102 or GSM-103 credit guarantee programs, the Facilities Guarantee Program, the Suppliers' Guarantee Program, the MAP, the FMD Programs, or the section 108 foreign currency program.

Any United States agricultural or agribusiness organization, university, or state department of agriculture, is eligible to participate in the Program. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by U.S. industry.

In general, priority consideration will be given to those proposals that identify and seek to address specific problems or constraints in rural business systems or food and agribusiness systems in emerging markets through technical assistance to expand or maintain U.S. agricultural exports.

The following marketing criteria will be used to determine the suitability of projects for funding by the Program:

1. Low U.S. market share and significant market potential.

• Is there a significant lag in U.S. market share of a specific commodity in a given country or countries?

• Is there an identifiable obstacle or competitive disadvantage facing U.S. exporters (*e.g.*, competitor financing, subsidy, competitor market development activity) or systemic obstacle to imports of U.S. products (*e.g.*, inadequate distribution, infrastructure impediments, insufficient information, lack of financing options or resources)?

• What is the potential of a project to generate a significant increase in U.S. agricultural exports in the near- to medium-term? [Estimates or projections of trade benefits to commodity exports, and the basis for evaluating such, must be included in proposals submitted to the Program.)

2. Recent change in a market.

• Is there, for example, a change in a sanitary or phytosanitary trade barrier; a change in an import regime or the lifting of a trade embargo; a shift in the political or financial situation in a country?

Content of Proposal

CCC will also review the following information, which should be included in the proposal, in considering the suitability of projects. (1) Cost-sharing: Information indicating the willingness of private agribusiness to commit its own funds along with those of the Program to seek export business in an emerging market. The Program is intended to complement, not supplant, the efforts of the U.S. private sector. The percentage of private funding proposed for a project will therefore be a critical factor in determining which proposals are funded under the Program. While no minimum or maximum is specified, the absolute amount of private sector funding proposed may also affect the decision to fund a proposal. Cost-sharing provided by private industry may be professional time of staff assigned to the project or actual cash invested in the proposed project. However, proposals in which private industry is willing to commit actual funds, rather than contributing such in-kind items as staff resources, will be given priority consideration. (2) Market Analysis and Statement of Specific Benefit(s) to U.S. Exports: A brief underlying analysis of the target market which supports the objectives of the proposed project and the benefits that can be expected to accrue to U.S. commodity exports as a result of successful completion of the project. (3) Justification for Federal Funding: A clearly stated argument supporting the need for Program funding.

For additional details that should be included in each application, see "Submissions" below.

Priority Considerations

The following subject areas for technical assistance activities to promote markets for U.S. agricultural product exports will be given priority consideration for funding under the Program:

—Projects and activities which use technical assistance designed specifically to improve market access in emerging foreign markets. Examples: activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share; responses to time-sensitive market opportunities;

—Marketing and distribution of more value-added products, including new products or uses. Examples: food service development; market research on potential for consumer-ready foods or new uses of a product;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems, *e.g.*, distribution, which affect more than one industry. Examples: grain storage handling and inventory systems development; distribution infrastructure development;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. product exports;

—Assessments and follow up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, and to determine the potential use for general export credit guarantees, including especially the Facilities Guarantee Program, for commodities, facilities and services. Examples: product needs assessments and market analysis; assessments for using facilities credits to address infrastructural impediments;

—Projects that help foreign governments to collect and use market information and to develop free trade policies that benefit American exporters as well as the target country or countries. Examples: agricultural statistical analysis; development of market information systems; policy analysis;

—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system. Examples: retail training; marketing seminars; transportation seminars; training keyed to opening new or expanding existing markets.

Retail Training: U.S. organizations which may be interested in applying for funding assistance to support retail training are urged to review a data base of FAS-supported activities on this topic so to avoid possible duplication and/or overlap of training in similar markets or on similar commodities. The data base will be available on the FAS Internet web site by mid-January 2000.

Projects which promote markets for any agricultural products, except tobacco, are eligible for consideration. Projects which include multiple commodities are also eligible.

Ineligible activities include in-store promotions; restaurant promotions; branded product promotions (including labeling and supplementing normal company sales activities intended to increase awareness and stimulate sales of branded products); advertising; administrative and operational expenses for trade shows; and for the preparation and printing of brochures, flyers, posters, etc. except in connection with specific technical assistance activities such as training seminars.

Funding of Proposals

Funding for technical assistance projects is made on the basis of proposals to the Emerging Markets Office (EMO). In general, each proposal submitted in response to this announcement will compete against all such proposals received under the same announcement. Proposals will be judged not only on their ability to provide benefits to the organization receiving Program funds, but which also represent the broader interests of the industry which that organization represents.

The limited funds of the Program and the range of emerging markets worldwide in which the funds may be used preclude EMO from approving large budgets for single projects. The Program is intended to provide appropriate USDA assistance to projects which also have a significant amount of financial contributions from other sources, especially U.S. private industry. There is no minimum or maximum amount set for EMO-funded projects; however, most are funded at the level of less than $500,000 and for a duration of 1 year or less. Funding is normally made available on a cost-reimbursable basis.

Multi-Year Proposals

These may be considered in the context of a strategic plan and detailed plan of implementation. Funding in such cases is normally provided 1 year at a time, with commitments beyond the first year subject to interim evaluations.

Projects Already in Progress

Funding may be considered for technical assistance projects that have already begun with the support and financial assistance of a private entity, and for which government funding for continuation of the project is requested. Such proposals must meet the criteria of the Program, including cost-sharing for the portion of the project for which government funding is requested. Note: While this announcement solicits proposals from private U.S. agricultural organizations for consideration and funding on a competitive basis, the EMO may also consider proposals on an accelerated basis depending upon the technical and time requirements of the proposal. If approved, such proposals would be covered through the Technical Issues Resolution Fund or the Quick Response Market Fund. For details concerning these specialty funds, see the program guidelines.

Project Reports

Results of all projects supported financially by the Program must be reported in a performance report to EMO. Because public funds are used to support the project, these reports will be made available to the public by the EMO.

Submissions

To assist FAS in making determinations under the Program, FAS recommends that all proposals contain complete information about the proposed project and that the proposals not be longer than 10 pages. The recommended information includes: name of person/organization submitting proposal; date of proposal; organization affiliation and address; telephone and fax numbers; full title of proposal; precis of the proposal, including objectives, proposed activities, benefits to U.S. agricultural exports, target country/countries for proposed activities, projected starting date for project, and funding amount requested; summary and detailed description of proposed project; statement of problem (specific trade constraint) to be addressed through the proposed project; benefits to U.S. agricultural exports as a result of the proposed project, including specific performance measures; supporting market analysis of the target market(s)—brief economic analysis for each commodity and country, including current market conditions and relevant trade data—and existing percentage of U.S. export market share, and the basis or source(s) for this data; information on whether similar activities are or have previously been funded in target country/countries (*e.g.*, under MAP and/or FMD programs); a clearly stated explanation as to why participating organization(s) are unlikely to carry out activities without Federal financial assistance; time line(s) for project implementation; detailed project budget, including other sources of funding for the project and contributions from participating organizations (additional requirements are contained in the program guidelines); Federal tax ID number of the responsible organization. Qualifications of applicant(s) should be included, as an attachment.

Proposals must be submitted in both printed form and on computer diskette, using WordPerfect or Word or compatible format.

Signed at Washington, D.C. on January 14, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 00–1704 Filed 1–24–00; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice—Availability of appealable decisions; legal notice of availability for comment of decisions that may be appealable under 36 CFR part 215.

SUMMARY: Responsible Officials in the Southwestern Region will publish notices of availability for comment and notices of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for the purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 shall begin January 25, 2000, and continue until further notice.

ADDRESSES: Southwestern Region, ATTN: Regional Appeals Coordinator, 517 Gold Avenue SW, Room 5432, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Christina Gonzalez, 505–842–3219.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is

listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. As provided in 36 CFR 215.5, the time frame for appeal shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions affecting New Mexico Forests: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico, for comment and decisions affecting National Forest System Lands in the State of New Mexico and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions affecting Arizona Forests: "The Arizona Republic" published daily in Phoenix, Maricopa County, Arizona, for comment and decisions affecting National Forest System lands in the State of Arizona and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Oklahoma, and Texas; Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: "Union County Leader", published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma: "Boise City News", published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: "The Dalhart Texan", published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma: "Cheyenne Star", published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas: "The Canadian Record", published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland in Gray County, Texas: "The Pampa News", published on Friday and Sunday in Pampa, Gray County, Texas.

Arizona National Forests

Apache-Sitgreaves National Forests

Notice by Forest Supervisor of Availability for Comment and Decisions: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Alpine District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona. Chevelon District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona. Clifton District: "Copper Era", published weekly on Wednesday in Clifton, Greenlee County, Arizona. Heber District: "The White Mountain Independent', published Tuesday and Friday in Show Low and Navajo County, Arizona. Lakeside District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navjo County, Arizona. Springerville District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona.

Coconino National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Beaver Creek District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Blue Ridge District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Peaks District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Long Valley District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Mormon Lake District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Sedona District: "Red Rock News", published Wednesday and Friday in Sedona, Coconino County, Arizona.

Coronado National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "The Arizona Daily Star", published daily, in Tucson, Pima County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Douglas District: "Daily Dispatch", published Tuesday-Friday, and Sunday in Douglas, Cochise County, Arizona. Nogales District: "Nogales International", published on Tuesday and Friday in Nogales, Santa Cruz County, Arizona. Sierra Vista District: "Sierra Vista Herald", published Sunday-Friday, in Sierra Vista, Cochise County, Arizona. Safford District: "Eastern Arizona Courier", published weekly on Wednesday, in Safford, Graham County, Arizona. Santa Catalina District: "The Arizona Daily Star", published daily, in Tucson, Pima County, Arizona.

Kaibab National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: North Kaibab District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Tusayan District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Williams District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona.

Prescott National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Bradshaw District: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona. Chino Valley District: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona. Verde District: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona.

Tonto National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Mesa Tribune", published daily in Mesa, Maricopa County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Cave Creek District: "Foothills Sentinel", published weekly on Wednesday in Cave Creek, Maricopa County, Arizona. Globe District: "Arizona Silver Belt", published weekly on Thursday in Globe, Gila County, Arizona. Mesa District: "Mesa Tribune", published daily in Mesa, Maricopa County, Arizona. Payson District: "Payson Roundup", published weekly on Friday in Payson, Gila County, Arizona. Pleasant Valley District: "Payson Roundup", published weekly on Friday in Payson, Gila County, Arizona. Tonto Basin District: "Payson Roundup", published weekly on Friday in Payson, Gila County, Arizona.

New Mexico National Forests

Carson National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Canjilon District: "Rio Grande Sun", published Wednesday in Espanola, Rio Arriba County, New Mexico. El Rito District: "Rio Grande Sun", published Wednesday in Espanola, Rio Arriba County, New Mexico. Jicarilla District: "Farmington Daily Times", published daily in Farmington, San Juan County, New Mexico. Camino Real District: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico. Tres Piedras District: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico. Questa District: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico.

Cibola National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions affecting lands in New Mexico, except the National Grasslands: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by Forest Supervisor of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Texas and Oklahoma: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: "Union County Leader", published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma: "Boise City News", published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: "Dalhart Texan", published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland, Roger Mills County, Oklahoma: "Cheyenne Star", published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland, Hemphill County, Texas: "The Canadian Record", published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland, Gray County, Texas: "The Pampa News", published on Friday and Sunday in Pampa, Gray County, Texas.

Notice by District Ranger of Availability for Comment and Decisions: Mt. Taylor District: "Cibola County Beacon", published on Wednesday and Friday in Grants, Cibola County, New Mexico. Magdalena District: "Defensor-Chieftain", published Wednesday and Saturday in Socorro, Socorro County, New Mexico. Mountainair District: "Estancia Valley Citizen", published weekly on Friday in Estancia, Torrance County, New Mexico. Sandia District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Kiowa National Grassland: "Union County Leader", published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland: "Boise City News", published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Black Kettle National Grassland: "Cheyenne Star", published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland: "The Canadian Record", published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland: "The Pampa News", published on Friday and Sunday in Pampa, Gray County, Texas.

Gila National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico.

Notice by District Ranger of Availability for Comment and Decision: Black Range District: "The Herald", published on Tuesday, in Truth or Consequences, Sierra County, New Mexico. Quemado District: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico. Reserve District: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico. Glenwood District: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico. Silver City District: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico. Wilderness District: "Silver City Daily Press', published Monday–Saturday in Silver City, Grant County, New Mexico.

Lincoln National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Alamagordo Daily News", published daily in Alamogordo, Otero County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Sacramento District: "Alamogordo Daily News", published daily in Alamogordo, Otero County, New Mexico. Guadalupe District: "Carlsbad Current Argus", published daily except Saturday, in Carlsbad, Eddy County, New Mexico. Smokey Bear District: "Ruidoso News", published Monday and Thursday in Ruidoso, Lincoln County, New Mexico.

Sante Fe National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Albuquerque Journal", published daily in Alburquerque, Bernalillo County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Coyote District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico, Cuba District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Espanola District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Jemez District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Pecos-Las Vegas District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico.

Dated: January 11, 2000.

James T. Gladen,

Deputy Regional Forester, Resources.

[FR Doc. 00–1671 Filed 1–24–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions; Invitation to Participate

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions to be held between February and August 2000. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Hotel and Recreation Equipment Trade Mission, Santo Domingo and Puerto Plata, Dominican Republic, February 8–11, 2000. Recruitment closes January 31, 2000.

For further information contact: Sheila de Andujar, Trade Event Manager, C.S. Santo Domingo, American Embassy, Unit 5515, APO AA 34041, Tel: 809–221–2171 ext. 408, Fax: 809–688–4838 E-mail: sheila.andujar@mail.doc.gov.

Information Technology Dealmaker, Toronto, Canada, February 9–10, 2000. Recruitment closes January 31, 2000.

For further information contact: Viktoria Palfi, Project Manager, U.S. Commercial Service, Toronto, 480 University Avenue, Suite 602, Toronto, ON M5G 1V2, Tel: 416–595–5412, ext. 229, Fax: 416–595–5419, E-mail: viktoria.palfi@mail.doc.gov.

Corporate Executive Office Program at Meditech Asia Show, Bangkok, Thailand, March 1–4, 2000. Recruitment closes February 15, 2000.

For further information contact: Kellie Holloway, Phoenix EAC, 901 N. Central Avenue, Suite 970, Phoenix, AR 85012, Tel: 602–640–2513, ext. 16, Fax: 602–640–2518. E-mail: Kelly.Holloway@mail.doc.gov.

Manufacturing Matchmaker India, New Delhi, Chennai, Mumbai, and Pune, India, April 3–11, 2000. Recruitment closes April 11, 2000.

For further information contact: Sam Dhir, U.S. Department of Commerce, Tel: 202–482–4756, Fax: 202–482–0178, E-mail: Sam.Dhir@mail.doc.gov.

Telecommunications Matchmaker Trade Delegation, Madrid, Spain and Rome, Italy, April 10–15, 2000. Recruitment closes February 28, 2000.

For further information contact: Molly Costa, U.S. Department of Commerce, Tel: 202–482–0693, Fax: 202–482–0178, E-mail: Molly.Costa@mail.doc.gov.

Women In Trade Business Development Mission, France and the Netherlands, May 7–12, 2000. Recruitment closes March 22, 2000.

For further information contact: Loretta Allison, U.S. Department of Commerce, Tel: 202–482–5479, Fax; 202–482–1999, E-mail: Loretta_Allison@ita.doc.gov.

U.S. Information Technology Trade Mission to Far East Asia, Taipei, Taiwan, Seoul and Pusan, South Korea, June 11–17, 2000. Recruitment closes April 15, 2000.

For further information contact: Tu-Trang Phan, U.S. Department of Commerce, Tel: 202–482–0480, Fax: 202–482–3002, E-mail Tu-Trang_Phan@ita.doc.gov.

Telecommunication Trade Mission to Chile and Argentina, June 18–23, 2000. Recruitment closes May 31, 2000.

For further information contact: Richard Paddock, U.S. Department of Commerce, Tel: 202–482–5235, Fax: 202–482–5834, E-mail Richard_Paddock@ita.doc.gov.

Medical Devices and Biotechnology Trade Mission to Australia, Melbourne, Sydney, and Brisbane, June 25–30, 2000. Recruitment closes May 5, 2000.

For further information contact: Bart Meroney, U.S. Department of Commerce, Tel: 202–482–5014, Fax: 202–482–0975, E-mail: Bart_Meroney@ita.doc.gov.

Medical Device Trade Mission, Taiwan, Malaysia, and Singapore, August 19–31, 2000. Recruitment closes June 30, 2000.

For further information contact: Steven R. Harper. U.S. Department of Commerce, Tel: 202–482–2991, Fax: 202–482–0975, E-mail: Steven_Harper@ita.doc.gov.

For further information contact: Reginald Beckham, U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: January 19, 2000.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 00–1705 Filed 1–24–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011900A]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Board (Board) will hold a public meeting.

DATES: The meeting will be held Thursday, February 10, 2000, from 1:00–5:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Hotel, 901 N. Fairfax Street, Alexandria, VA; telephone 703–683–6000.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Council and Board will consider the following items: Discuss the development of a conservation equivalency amendment for summer flounder; discuss the development of an amendment to review allocation of annual total allowable catch and discards and revise summer period state by state quotas for scup; possible review and comment on 2000 specifications for summer flounder, scup, and black sea bass; discussion of disapproved portions of Sustainable Fisheries Act amendment for summer flounder, scup, and black sea bass; and discussion of other measures that would be included in amendments to summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Council and Commission for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis, 302–674–2331, at least 5 days prior to the meeting date.

Dated: January 19, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–1701 Filed 1–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Notice of test program.

SUMMARY: The Department of Defense is amending its Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans to implement Section 817 of the National Defense Authorization Act for Fiscal Year 2000. Section 817 provides for a five year extension of the DoD Test Program for negotiation of comprehensive small business subcontracting plans from September 30, 2000 to September 30, 2005.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Ivory Fisher, Office of Small and Disadvantaged Business Utilization, OUSD (A&T) SADBU, 1777 North Kent Street, Suite 9100, Arlington, VA 22209, telephone (703) 588–8616, telefax (703) 588–7561.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 834 of Public Law 101–189, as amended, the Department of Defense (DoD) established a Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (the Program) to determine whether the use of comprehensive subcontracting plans on a corporate, division, or plant-wide basis would increase subcontracting opportunities for small business concerns. DoD amended the Program to implement the requirements of Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). The amendments: (1) Provide for subcontracts that are awarded by participating contractors performing as subcontractors, under DoD contracts, to be included in comprehensive small business subcontracting plans, and (2) to cover the HUBZone Act of 1997 implementation in the Federal Acquisition Regulation (FAR), which results in the addition of HUBZone small businesses to the categories of small business concerns that must be addressed by comprehensive small business subcontracting plans.

Ivory Fisher,

Office of Small and Disadvantaged Business Utilization.

The revised test plan is as follows:

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

I. Purpose

This document implements Section 834 of Public Law 101–189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The primary purpose of the Comprehensive Small Business Subcontracting Plan Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals under Department of Defense (DoD) contracts.

II. Authority

The Program is established pursuant to Section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

III. Program Requirements

A. The Program shall be conducted from October 1, 1990, through September 30, 2005.

B. The selection of contractors for participation in the Program shall be in accordance with Section 811(b)(3) of the National Defense Authorization Act For Fiscal Year 1996, Public Law 104–106. Eligible contractors are large business concerns at the major (total) corporate level that, during the preceding fiscal year:

1. Were performing under at least three DoD prime contracts; furnished supplies or services (including professional services) to DoD, engaged in research and development for DoD, or performed construction for DoD; and were paid $5,000,000 or more for such contract activities; and

2. Achieved a small disadvantaged business (SDB) subcontracting participation rate of 5 percent or more during the preceding fiscal year. However, this requirement does not apply to the eight original contractors accepted into the Program. Additionally, a large business with an SDB subcontracting participation rate of less than 5 percent during the preceding fiscal year may request, through the designated contracting activity, to participate in the Program if the firm submits a detailed plan with milestones leading to attainment of at least a 5 percent SDB subcontracting participation rate by September 30, 2000, *2005*.

C. Contractors selected for participation shall:

1. Be eligible in accordance with paragraph III(B);

2. Establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year, except that a division or plant that historically reported through a higher-level division, but would meet the criteria of paragraph III(B)(2), shall be permitted to participate in the Program if the lower-level division, plant or profit center can demonstrate a 5 percent or greater subcontract performance level with SDB concerns;

3. Have reported to DoD on the SF 295 for the previous fiscal year, except as provided in paragraph III(C)(2);

4. Accept an SDB goal for each fiscal year of not less than 5 percent, or an SDB goal that is in accordance with the milestone established under paragraph III(B)(2);

5. Comply with the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) Section 215.605 for source selection purposes;

6. Offer a broad range of subcontracting opportunities;

7. Voluntarily agree to participate; and

8. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

IV. Elements of the Comprehensive Small Business Subcontracting Plan

A. The comprehensive small business subcontracting plan shall address each of the 11 elements set forth in paragraph (d) of the clause at FAR 52.219–9, "Small Business Subcontracting Plan."

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, HUBZone small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts and subcontracts under DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business concerns. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, HUBZone small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit subcontracting plans to the contracting officer as far in advance as possible to the beginning of the fiscal year in which the contractor proposes to participate.

Procedures

A. The Service Acquisition Executive within each military department and defense agency having contractors that meet the requirements of paragraphs III(B) and (C) shall designate at least three but nor more than five contracting activities to participate in the Program. In selecting the contracting activities to participate in the Program, the Services Acquisition Executive shall ensure that the designated activities cover a broad range of supplies and services.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business

Utilization, for their military department or defense agency, select as many eligible prime contractors (at least five) for participation under the Program as deemed appropriate.

2. Establish a "Comprehensive Small Business Subcontracting Plan" negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Encourage prime contractors interested in participating in the program to enter the program on a plant or facility basis.

2. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

3. By October 1, and annually thereafter, review, negotiate and approve on behalf of DoD a comprehensive subcontracting plan for each selected contractor.

4. Distribute copies of the approved subcontracting plan in accordance with paragraph VI(A).

5. Upon negotiation and acceptance of the comprehensive subcontracting plan, obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by Section 211 of Public Law 95–507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

6. Upon receipt of the information provided by the participating contractor under paragraph V(C)(4), direct the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clause at DFARS 252.219–7004 for the clause at FAR 52.219–9, and will delete the clauses at FAR 52.219–10 and 52.219–16 and DFARS 252.219–7003 and 252.219–7005, as appropriate.

7. Review annually, with the contract administration activity, the contractor's performance under the plan. Document the review findings and distribute, in accordance with paragraph VI(A), within 45 days of the end of the fiscal year.

8. By November 15 of the year after acceptance, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

9. By December 15, 2005, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the Program. The report distribution will be in accordance with paragraph VI(A).

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the SF 295 during the preceding fiscal year, except that those contractors that historically reported through a higher headquarters can elect to participate as a separate (lower-level) reporting profit center, plant or division if the contractor achieved an SDB subcontracting performance rate of 5 percent or greater in the preceding fiscal year.

2. Upon negotiation of an acceptable comprehensive subcontracting plan, shall be exempt from individual contract-by-contract reporting requirements for DoD contracts and subcontracts under DoD contracts unless otherwise required in accordance with paragraph III(C)(5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of Section 211 of Public Law 95–507 for large business subcontractors which are not participating in the Program. Consequently, large business concerns which are not participating in the Program receiving a DoD subcontract in excess of $500,000 ($1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at FAR 52.219–9. Participating contractors are prohibited from flowing down the "Comprehensive" subcontracting deviation provisions of DFARS 252.219–7004. Accordingly, large business subcontractors to the participating contractors who themselves are not participating in the Program shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business concerns.

5. Upon expulsion from the Program or Program termination on September 10, 2005, shall negotiate and establish individual subcontracting plan son all future DoD contracts that otherwise meet the requirements of Section 211 of Public Law 95–507.

VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals

A. Upon negotiation and acceptance of comprehansive subcontracting plans and goals, the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition and Technology), 1777 North Kent Street, Suite 9100, Arlington, VA 22209

2. Director, Small and Disadvantaged Business Utilization, for the military department or defense agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the SF 295 "Summary Subcontract Report" in accordance with the instructions on the back of the form on a semi-annual basis, except as noted below:

1. One copy of the SF 295 and attachments shall be submitted to Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition and Technology), 1777 North Kent Street, Suite 9100, Arlington, VA 22209.

2. Participating contractors shall enter in Item 14 Remarks block the annual corporate, division or plant-wide small business, small disadvantaged business and women-owned small business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in Item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see paragraph IV(A) (2)).

4. Participating contractors shall also enter separately in Item 14 on a semi-annual cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 "Subcontract Report For Individual Contracts" for DoD contracts during their participation in the Program.

January 18, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–1544 Filed 1–21–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of

Management and Budget (OMB) has been requested by January 31, 2000. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 27, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 19, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Reinstatement.
Title: Grant Performance Report.
Abstract: ED uses the information collection specific to ED FORM 524–B for the award and administration of multi-year discretionary grants. The Department has substantially increased the flexibility of the grant process by enabling all years of multi-budgets to be negotiated at the time of the initial award. (ED GAPS001) and to submit only performance report (ED FORM 524–B) to receive continuation funding. This clearance also includes government-wide common rules for institutions of HIgher Education, Non-Profit agencies, and State and local governments.

Additional Information: There is an urgent need for the six principal offices to disseminate the approved Grant Performance Report (524–B) at scheduled technical assistance meetings in February and March in order for recipients to prepare the reports accurately and to submit them in a timely manner. Failure to receive the information and technical assistance would result in additional hardship to an estimated 6,000 recipients.

Failure to receive the reports in a timely manner would delay ED from issuing the continuation awards in accordance with Departmental directives. Also, the reported information is needed for ED to document program and administrative performance on essential indicators described in ED's strategic plan as required by the Government Performance and Results Act.

We are requesting an Emergency Clearance by OMB for the Grant Performance Report (524–B). When the emergency clearance has been granted the Department will submit the same document to OMB for a three year clearance.

Frequency: One time. High-risk grant organizations may be required to report more frequently.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 6,000. *Burden Hours:* 120,000.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements, contact Terry O'Malley at (202) 395–6466. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–1707 Filed 1–24–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 24, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2)

Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 19, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatment.
Title: Applications for Grants under the Class Size Reduction Program.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 14.
Abstract: This application will be used to award grants to State educational agencies for the purpose of reducing class size.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–1706 Filed 1–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 24, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 20, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 20;
Burden Hours: 400.
Abstract: This program provides a communication link on current and future program directions, research-based activities, and other information related to effective drug and violence prevention strategies between the Department of Education and State and local education agencies and other public and private organizations involved with safe and drug-free schools programs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to AXT at (703) 426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–1754 Filed 1–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No 84.031S]

Developing Hispanic Serving Institutions Program

AGENCY: Department of Education.

Notice inviting applications for new awards for fiscal year (FY) 2000.

Purpose of Program: Grants to Hispanic Serving Institutions (HSI) under the Developing Hispanic Serving Institutions Program assist eligible Hispanic Serving institutions of higher education to expand their capacity to serve Hispanic and low-income students by enabling them to improve their academic quality, institutional management, and fiscal stability and to increase their self-sufficiency. Five-year development grants and one-year planning grants are awarded.

Eligible Applicants: Institutions that, at the time of application, have an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students, and provide assurances that not less than 50 percent of their Hispanic students are low-income individuals.

Special Notes

1. If an institution is the recipient of a grant under the programs authorized under Part A or B of Title III of the Higher Education Act of 1965, as amended(HEA), the institution may not receive a grant under the HSI Program if any part of the grant period for the HSI Program grant would overlap with the grant awarded under Part A or B of Title III. Thus, such an institution may not apply for a grant under the HSI Program in this competition. Further, an institution that is a recipient of a grant under Part A or B may not relinquish that grant in order to apply for a grant under the HSI Program. The programs authorized under Part A of Title III of the HEA include the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, Alaska Native-Serving Institutions Program, and Native Hawaiian-Serving Institutions Program. The programs authorized under Part B of Title III of the HEA include the Strengthening Historically Black Colleges and Universities Program and the Strengthening Historically Black Graduate Institutions Program.

2. An institution that does not fall within the limitation described in paragraph 1 may apply for a grant under both the programs authorized under Title III Part A of the HEA and the HSI Program. However, the institution may receive only one grant under any of those programs. Accordingly, if an institution applies for a grant under more than one program, it should indicate that fact in each application, and should further indicate which grant it wishes to receive if it is selected to receive a grant under more than one program.

3. We have changed the way we collect information for determining the value of endowment funds and total expenditures for library materials. As a result of that change, we do not now have base year data beyond 1996–1997 data. Consequently, in order to award FY 2000 grants in a timely manner, we will use 1996–1997 base year data.

Applications Available: January 25, 2000.

Deadline for Transmittal of Applications: March 10, 2000.

Deadline for Intergovernmental Review: May 10, 2000.

Methods for Submission of Grant Applications: We will accept applications in two formats, a paper application and a diskette application. You must submit one original (hard copy with signatures) and two diskettes. Each diskette must contain a copy of the entire application for the FY 2000 grant competition, excluding the following forms (which should be included with the hard copy only): the Application for Federal Education Assistance Form (ED 424), HSI Certification Form (ED 851S–7), the Assurances and Certification Forms and the Endowment Fund Assurance Form (ED 851S–8). The hard copy and the two diskettes must be postmarked on or before the closing date of the competition.

Under both formats we have established mandatory page limits. Reviewers will be instructed not to read applications beyond the stated page limits. If, to meet the page limit, you use a larger page or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application. For this purpose, an application narrative includes the institutional narrative, the comprehensive development plan, activity narratives, and the project management narrative.

- The narrative of a development grant application may not exceed 60 pages. Additionally, essential appendices may be attached but may not exceed 5 pages each.
- The narrative of a cooperative arrangement grant application may not exceed 120 pages. Additionally, essential appendices may be attached but may not exceed 10 pages each.
- The narrative of a planning grant application may not exceed 20 pages. Additionally, essential appendices may be attached but may not exceed 5 pages each.

The cover page (ED Form 424 and the tiebreaker information page on the back of ED Form 424) and all certificates and assurances must accompany the original application and are not included within the page limits.

1. A 'page' is 8.5" x 11", on one side only, with 1" margins top, bottom, right and left.

2. You must double-space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space charts, forms, tables, figures or graphs.

Electronic Field Readings: During FY 2000, all grant applications under the HSI Program will be reviewed by readers from a secure website. The reviewers will provide comments and award points online. Reviewers will have the opportunity to discuss any significant point differences in a virtual chat room environment.

Note: Some of the procedures in these instructions for transmitting applications differ from those in 34 CFR 75.102. Under 5 U.S.C. 553, the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Available Funds: Total estimated funding available is $42,500,000 for FY 2000. Approximately $16,500,000 will support 39 continuing grants. Approximately $26,000,000 will be available for the new grant competition.

Estimated Range of Awards:

Development Grants: $350,000-$400,000 per year.

Planning Grants: $30,000—$35,000 for one year.

Estimated Average Size of Awards:

Development Grant: $375,000 per year.

Planning Grant: $32,500 for one year.

Estimated Number of Awards:

Development Awards: 65.

Planning Grant Awards: 10.

Project Period:

60 months for development grants.

12 months for planning grants.

Note: The Department is not bound by any estimates in this notice.

Statutory Priorities

Under Section 511(d) of the HEA, we give priority to applications that contain satisfactory evidence that the Hispanic Serving institution has entered into or will enter into a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under Title V of the HEA) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education. We anticipate that we will fund under this competition only applications that meet this priority.

As described under Section 514(b) of the HEA, we give priority to grants for cooperative arrangements that are geographically and economically sound or will benefit the applicant Hispanic Serving Institution. We anticipate that we will fund only those applications that meet this priority under this competition.

Special Funding Consideration

In tie-breaking situations described in 34 CFR 606.23 of the HSI Program regulations, we award one additional point to an application from an

institution that has an endowment fund for which the market value in 1996–97, per full-time equivalent (FTE) student, was less than the average per FTE student at similar type institutions; and one additional point to an application from an institution that had expenditures for library materials in 1996–97, per FTE student, that were less than the average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must be able to demonstrate that the market value of its endowment fund per FTE student, or expenditures for library per FTE student, were less than the following approximated national averages for year 1996–97.

	Average market value of endowment fund per FTE student	Average Library expenditures for materials per FTE student
Two-year public institutions	$1,332	$45
Two-year nonprofit private institutions	11,567	121
Four-year public institutions	2,829	165
Four-year nonprofit private institution	42,579	254

If a tie still remains after applying the additional points, we determine that an institution will receive an award according to a combined ranking of two-year and four-year institutions. This ranking is established by combining library expenditures and endowment values per FTE student. The institutions with the lowest combined library expenditures per FTE student and endowment values per FTE student are ranked higher in strict numerical order.

Applicable Regulations

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and (b) the regulations for the HSI Program in 34 CFR Part 606. The HSI final regulations, 34 CFR part 606, were published in the **Federal Register** on December 15, 1999,64 FR 70146–70155.

For Applications or Information Contact: Jessie DeAro, Title V-Developing Hispanic Serving Institutions Program, U.S. Department of Education, Office of Postsecondary Education, Higher Education Programs, 1990 K Street N.W., 6th floor, Washington DC 20006–8501. Telephone (202) 502–7562. The email address for Jessie DeAro is jessie__dearo@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person specified in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

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http://www.ed.gov/news.html

http://ocfo.ed.gov/fedreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the previously mentioned web sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document Published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 USC 1059c.

Dated: January 19, 2000.

A. Lee Fritschler,

Assistant Secretary Office of Postsecondary Education.

[FR Doc. 00–1725 Filed 1–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program

AGENCY: Department of Education

ACTION: Notice of proposed priority and selection criteria for fiscal year 2000 and subsequent years.

SUMMARY: The Secretary announces a proposed priority, eligible applicants, and selection criteria for fiscal year (FY) 2000 and, at the discretion of the Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs—Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on an identified national need—the development and dissemination of a newsletter with information about effective practices to prevent drug use and violent behavior among youth. *The Challenge* newsletter will provide a communication link on current and future program directions, research-based activities, and other information related to effective drug and violence prevention strategies between the U.S. Department of Education and State and local education agencies and other public and private organizations involved with safe and drug-free schools programs.

Eligible Applicants: Eligible applicants under this competition are public and private nonprofit organizations and individuals.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3E310, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who

needs assistance to review the comments. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

DATES: Comments must be received by the Department on or before February 24, 2000.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Gail Beaumont, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E310, Washington, DC 20202–6123. Comments may be sent through the Internet: *comments@ed.gov*. You must include the term "Federal Activities Grants Program" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Gail Beaumont, Safe and Drug-Free Schools Programs, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E310, Washington, DC 20202–6123, (202) 260–3954. Fax: (202) 260–7767. Internet: http//www.ed.gov/offices/OESE/SDFS.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed above.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority for fiscal year 2000, and related selection criteria. Under the absolute priority, the Secretary intends to award one cooperative agreement for up to 36 months; this cooperative agreement will support a means of communicating with the field on current and future program directions, research-based activities, and other information related to effective drug and violence prevention practices through *The Challenge* newsletter. The primary audience for *The Challenge* is classroom teachers.

Applicants must demonstrate extensive knowledge of elements of effective drug and violence prevention programs and current research in the area of drug and violence prevention programs and current research in the area of drug and violence prevention. Funds under the Safe and Drug-Free Schools Program reach 97 percent of the nation's school districts. While most school districts have implemented drug and violence prevention activities in some form, too often these activities are narrow in scope and are not based on science. Many school districts lack data on the effects of their drug and violence prevention programs on student behavior. They need information about programs that have proven to be effective or promising that they can adopt for their students. Although research exists on drug and violence prevention strategies that have positive results, too often this research is not known to school personnel, and does not get translated into practice. *The Challenge* will provide classroom teachers and other professionals with information about effective or promising drug and violence prevention programs and strategies, articles by experts in the prevention field, and other timely information covering a broad range of topics that comprise the expanding knowledge base on drug and violence prevention.

With regard to content, the following information describes examples of topics and types of articles that have been featured in past issues of *The Challenge:*

- Information about principles of effective drug and violence prevention programs.
- Key elements or characteristics of successful drug and violence prevention programs.
- Research studies and data related to drug and violence prevention.
- Articles by recognized experts in fields related to safe and drug-free schools.
- Articles describing model programs.
- Information that describes discretionary grant activities funded under the Safe and Drug-Free Schools Program, National Programs, including resources and products resulting from the activities.
- Timely information on special topics such as emerging trends in use of specific drugs, or early warning signs of violent behavior.
- Resources and helplines for obtaining information and materials on drug and violence prevention.

While applicants are expected to address in their applications the topics and types of articles described in the above list, the list is by no means comprehensive. Applicants are encouraged to offer suggestions on ways to communicate with the field on key issues.

Frequency of past publication of *The Challenge* has ranged from 6–10 times per year, and the number of pages has ranged from 4–26 pages per issue. The number of copies has been 50,000 per issue. These numbers are offered as guides based on past practice, and are not requirements of the current competition. Applicants are encouraged to offer suggestions regarding the length and frequency of publication, as well as number of copies per issue and dissemination plan.

The applicant funded under the absolute priority in this notice will have the responsibility to design, develop, publish, disseminate, and manage all aspects of *The Challenge* consistent with the specific requirements in the absolute priority below. In submitting their proposals for funding, applicants are encouraged to offer suggestions and ideas for *The Challenge* in addition to those specified in the absolute priority.

Absolute Priority: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition *only* applications that meet this absolute priority. Under the absolute funding priority for this competition, applicants must propose projects that:

(1) Design, develop, publish, and disseminate *The Challenge*, a newsletter for educators, prevention specialists, and other professionals in fields related to education and drug and violence prevention to provide information above effective practices to prevent drug use and violent behavior among youth.

(2) Manage all aspects of *The Challenge*, including developing contents of each issue, writing or soliciting articles for each issue, preparing artwork, handling all design and pre-production tasks, and printing and mailing.

(3) Create, maintain, and expand a subscriber data base for ED.

(4) Evaluate on an ongoing basis the impact of *The Challenge* on the intended audience, and use evaluation results for continuous improvement of the newsletter.

(5) Develop, create, and maintain a Web site to post each issue and receive reader comments and suggestions.

(6) Agree to have content of the newsletter reviewed and approved by the Department of Education prior to publication.

Selection Criteria

The following selection criteria will be used to evaluate applications for one cooperative agreement under this competition. The maximum score for all these criteria is 100 points. The

maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Significance. (10 points)

In determining the significance of the proposed project, the following factor is considered: The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) Quality of the project design. (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5)

(c) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (15)

(3) Adequacy of resources. (10 points)

In determining the adequacy of resources for the proposed project, the following factor is considered: The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(4) Quality of management plan. (25 points)

In determining the quality of the management plan for the proposed project, the following factors are considered.

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5)

(b) The adequacy of mechanisms for ensuring high quality products and services from the proposed project, including qualifications and experience of key personnel in writing and editing newsletters for education, prevention and related fields. (10)

(c) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5)

(d) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (5)

(5) Quality of project evaluation. (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the evaluation plan provides for an ongoing evaluation of the effectiveness of *The Challenge* newsletter, and its impact on the intended audience. (10)

(b) The extent to which the evaluation results will be used for continuous improvement of *The Challenge.* (5)

(c) The extent to which the methods of evaluation are appropriate to the context within which the project operates. (5)

(d) The extent to which the methods of evaluation will provide performance feedback and permit periodic assignment of progress toward achieving intended outcomes. (5)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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Program Authority: 20 U.S.C. 7131. (Catalog of Federal Domestic Assistance Number 84.184P Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—*The Challenge* Newsletter)

Dated: January 19, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–1726 Filed 1–24–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.037]

Office of Student Financial Assistance; Federal Perkins and National Direct Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of availability of the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1999–2000 School Year.

SUMMARY: We are announcing that the 1999–2000 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (The Directory) is now available on the Department of Education's (the Department's) Web site. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a designated elementary or secondary school having a high concentration of students from low-income families. In the 1999–2000 Directory, we list, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1999–2000 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available at the Department's Web site.

ADDRESSES: You may obtain information concerning specific schools listed in the Directory from Chrissa Allen, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, S.W., (Portals Building, Room 6200), Washington, D.C. 20202–5447, Telephone (202) 708–7738. You may

obtain information concerning deferment and cancellation of a National Direct or Federal Perkins loan from Gail McLarnon, Program Specialist, Product Development Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, S.W., (Regional Office Building 3, Room 3045), Washington, D.C. 20202–5447, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (Firs) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Directories are also available in an electronic format at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education, including its regional offices. Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Alternate Format Center at (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: We select schools that qualify a borrower for deferment and cancellation benefits under the procedures contained in the Federal Perkins Loan Program regulations in 34 CFR 674.53, 674.54 and 674.55.

We have determined that, for the 1999–2000 academic year, full-time teaching in the schools set forth in the 1999–2000 Directory qualifies a borrower for deferment and cancellation benefits.

We are providing the Directory to each institution participating in the Federal Perkins Loan Program in an electronic format only. Borrowers and other interested parties may check the Web site or their lending institution, the appropriate State or Territory Department of Education, a regional office of the Department of Education, or contact us directly at the Office of Student Financial Assistance concerning the identity of qualifying schools for the 1999–2000 academic year. We retain, on a permanent basis, copies of past Directories.

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Program Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

Dated: January 19, 2000.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 00–1727 Filed 1–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Solicitation for Expressions of Interest; Low-Cost Prototype Inverters

AGENCY: U.S. Department of Energy.

ACTION: Notice of Solicitation for Participation in Competition to Create Low-Cost Inverters.

SUMMARY: The U.S. Department of Energy (DOE), in partnership with the National Association of State Energy Officials (NASEO), the Institute of Electrical and Electronics Engineers (IEEE), and other sponsors announces an opportunity for qualified colleges and university engineering programs to submit proposals to compete for a cash prize for funds to build prototype, low-cost inverters, in a contest titled the 2001 Future Energy Challenge. This competition is open to schools with ABET-accredited engineering programs or the equivalent.

DATES: Additional information on this competition and application requirements will be mailed beginning February 1, 2000, with a due date for receipt of application requirements of April 3, 2000. Schools selected to compete in the 2001 Future Energy Challenge will be notified by May 1, 2000. The competition will be scheduled for late May or early June 2001.

ADDRESSES: If your school is interested in receiving an application requirements package for the 2001 Future Energy Challenge, complete the attached form and fax or mail it to the address on the form. You can also e-mail your response to: *samuel.biondo@hq.doe.gov*. Be sure to include all the information requested on the form or in your e-mail message. The application requirements package will also provide information on how you might qualify for seed money from other sponsors. (Note: The agency or organization providing the seed money will solicit and evaluate the application requirements for seed funding, not DOE.)

SUPPLEMENTARY INFORMATION: The 2001 Future Energy Challenge seeks to dramatically improve the design and reduce the cost of DC–AC inverters and interface systems for use in distributed generation systems. DOE is joining with NASEO, and possibly others, to sponsor this competition with the goal of making these interface systems practical and cost effective. The objectives are to design elegant, manufacturable systems that would reduce the costs of commercial interface systems by at least 50% and, thereby, accelerate the deployment of distributed generation systems in homes and buildings. Schools with the capability to undertake the challenging task of designing complete systems or modifying commercial inverters to achieve design and manufacturability improvements that lead to cost reductions of 50% or better are invited to submit proposals to DOE to compete. Schools may elect to compete in one of three classes: an engineering design study class that involves a thorough design, analysis, cost, and simulation study; a scale prototype class in which hardware is built and demonstrated at a fraction of the target power level; and a full prototype class that leads to a comprehensive hardware system. Schools should plan to form multi-disciplinary teams to address the energy source characteristics (selected from fuel cells, solar panels, or other direct energy conversion devices), design the power electronics, design packaging and thermal management systems, develop filtering and other interface sub-systems, analyze process costs and manufacturability, and perform economic and life-cycle cost analyses.

The hardware prototypes judged as best will be tested by fuel cell manufacturers, at DOE energy technology centers, or at national laboratory facilities as interfaces for a fuel cell source. The school with the most cost-effective, fully functional design that can meet the aggressive cost target will win a prize of at least

$50,000. Proposals will be judged by a distinguished panel of experts from the IEEE.

Issued in Washington, D.C., on January 14, 2000.

Robert W. Gee,

Assistant Secretary for Fossil Energy.

BILLING CODE 6450-01-P

2001 Future Energy Challenge

Response to the U.S. Department of Energy's Solicitation for Expressions of Interest – Low-Cost Prototype Inverters

Name of Proposed Team Leader: _____

Affiliation: _____

Address of Proposed Team Leader: _____

_____

_____

Phone Number: _____

E-Mail: _____

Date of This Response: _____

[FR Doc. 00–1720 Filed 1–24–00; 8:45 am]

BILLING CODE 6450-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–163–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 19, 2000.

Take notice that on January 13, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 13, 2000.

Seventh Revised Sheet No. 70
Third Revised Sheet No. 88
First Revised Sheet No. 88–A
First Revised Sheet No. 89
Third Revised Sheet No. 90
Ninth Revised Sheet No. 500–A
Ninth Revised Sheet No. 600–A
Ninth Revised Sheet No. 700–A
Eighth Revised Sheet No. 891

Kern River states that the purpose of this filing is to establish procedures in its tariff to allow shippers to net and/or trade shipper imbalances.

Kern River states that is has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1693 Filed 1–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Southwest Power Pool, Inc.; Notice of Settlement Conference

DATE: January 19, 2000.

Take notice that a Settlement Conference will be convened to discuss compensation for deferred maintenance costs in Docket No. ER99–4392–000. The Settlement Conference is scheduled for Monday, January 24, 2000, at 10:00 a.m. The Settlement Conference will be held at the Offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, for the purpose of exploring settlement of the captioned proceeding.

Any party as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information contact Moira Notargiacomo at (202) 208–1079.

David P. Boergers,

Secretary.

[FR Doc. 00–1691 Filed 1–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–48–000, et al.]

Cajun Electric Power Cooperative, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 18, 2000.

Take notice that the following filings have been made with the Commission:

1. Cajun Electric Power Cooperative, Inc., and Louisiana Generating LLC

[Docket No. EC00–48–000]

Take notice that on January 13, 2000, Louisiana Generating LLC (Generating) tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of certain transmission facilities associated with generating facilities being sold to Louisiana Generating LLC by Cajun Electric Power Cooperative, Inc. (Cajun). Generating also requested approval of the assignment of four power sales agreements from Cajun to Generating.

Comment date: February 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Ameren Services Company

[Docket No. ER00–1084–000]

Take notice that on January 13, 2000, Ameren Services Company (Ameren) tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren and the City of Sikeston, Board of Municipal Utilities. Ameren asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER98-4440–000 with an executed Agreement.

Ameren requests that the Service Agreement become effective August 3, 1998.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Ameren Services Company

[Docket No. ER00–1085–000]

Take notice that on January 13, 2000, Ameren Services Company (Ameren) tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren and Duke Energy Trading & Marketing, L.L.C. Ameren asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. 98–3886–000 with an executed Agreement.

Ameren requests that the Service Agreement become effective August 3, 1998.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–1086–000]

Take notice that on January 13, 2000, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 2 to the Meter Service Agreement between the ISO and PG&E Energy Services Corporation, for acceptance by the Commission. The ISO states that Amendment No. 2 modifies Schedule 1 of the Meter Service Agreement to reflect changes in meter information concerning meter resources and their locations.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER00–1087–000]

Take notice that on January 13, 2000, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 1 to the Meter

Service Agreement between the ISO and Cabrillo Power II LLC, for acceptance by the Commission. The ISO states that Amendment No. 1 modifies Schedule 1, Section 3.3.2 of the Meter Service Agreement to reflect changes in meter information concerning meter locations and addresses.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER00–1088–000]

Take notice that on January 13, 2000, Northeast Utilities Service Company (NUSCO) tendered for filing, a First Amendment to its Service Agreement No. 55 under FERC Electric Tariff Original Volume No. 9, under which New Hampshire Electric Cooperative (NHEC) takes Network Integration Transmission Service under the NU System Companies' Open Access Transmission Service Tariff.

NUSCO states that the amendment changes the delivery points identified in Service Agreement No.55 and is being filed to correspond to a settlement reached between the NU System Companies and NHEC and filed with the Commission in Docket Nos. EL96–53–000 and EL95–37–000.

NUSCO requests waiver of the Commission's regulations to allow the amendment to become effective as of January 1, 2000, the effective date requested for the Settlement.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER00–1089–000]

Take notice that on January 13, 2000, PECO Energy Company (PECO) filed an amendment to its Electric Tariff Original Volume No. 1 accepted by the Commission in Docket No. ER95–770, as subsequently amended and accepted by the Commission in Docket No. ER97–316. The amendment requests Commission authorization to make market based sales of specified ancillary services.

PECO requests a waiver of the Commission's regulations to permit the revised tariff sheets to become effective January 14, 2000.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER00–1090–000]

Take notice that on January 13, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing a quarterly report for the quarter ending December 31, 1999.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER00–1091–000]

Take notice that on January 13, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and SRW Cogeneration Limited Partnership (SRW).

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Illinova Power Marketing, Inc.

[Docket No. ER00–1092–000]

Take notice that on January 13, 2000, Illinova Power Marketing, Inc. (IPMI) tendered for filing Electric Power Transaction Service Agreements under which Cargill Alliant, LLC and Springfield City Water Light & Power will take service pursuant to IPMI's power sales tariff, Rate Schedule FERC No. 1.

IPMI has requested an effective date of December 14, 1999, for each service agreement.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cadillac Renewable Energy LLC

[Docket No. ER00–1097–000]

Take notice that on January 12, 2000, Cadillac Renewable Energy LLC filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cleco Utility Group, Inc.

[Docket No. ER00–1098–000]

Take notice that on January 10, 2000, Cleco Utility Group, Inc., Transmission Services (CLECO) filed their service agreements for non-firm and short term firm point-to-point transmission services by CLECO to Cargill and Alliant, LLC.

CLECO requests an effective date of December 22, 1999.

Copies of this filing have been served to: Ms. Arlene Jorgensen Hillestad, Contract Administrator, Cargill-Alliant, LLC, P. O. Box 5653, Minneapolis, MN 55440–5653.

Comment date: January 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. ACN Power, Inc.

[Docket No. ER00–1102–000]

Take notice that on January 11, 2000, ACN Power, Inc. tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that ACN Power, Inc. had completed all the steps for pool membership. ACN Power, Inc. requests that the Commission amend the WSPP Agreement to include it as a member.

ACN Power, Inc. requests an effective date of January 6, 2000 for the proposed amendment.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Indianapolis Power & Light Company

[Docket No. OA00–4–000]

Take notice that on January 6, 2000, Indianapolis Power & Light Company (Indianapolis) submitted standards of conduct under Order No. 889 *et seq.*[1]

Indianapolis states that it served copies of the filing on the service list, to the Indiana Utility Regulatory Commission, Cinergy Corp., and Hoosier Energy Rural Electric Cooperative, Inc.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1690 Filed 1–24–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

January 19, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2589–024.

c. *Date filed:* July 29, 1999.

d. *Applicant:* Marquette Board of Light and Power.

e. *Name of Project:* Marquette Hydroelectric Project.

f. *Location:* On the Dead River near the City of Marquette, Marquette County, Michigan. The project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. David E. Hickey, Marquette Board of Light and Power, 2200 Wright Street, Marquette, MI 49855, (906) 228–0322.

i. *FERC Contact:* Lee Emery, *lee.emery@ferc.fed.us,* or (202) 219–2778.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following two existing facilities: The Marquette Development No. 2 includes (1) Forestville Reservoir with a surface area of 110 acres and a storage volume of 2,900 acre-feet, impounded by (2) a 202-foot-long, 62-foot high, concrete-capped Cyclopean masonry dam with crest elevation 771.0 feet NGVD, which acts as a spillway under extremely high flows, with (a) a 197-foot-long concrete retaining wall, (b) a 75-foot-long training wall, and (c) a 33-foot-wide intake structure, with inclined trashracks, which discharges into (3) a 90-inch-diameter, wood-stave penstock, about 4,200 feet long, which conveys the water to (4) a concrete surge tank. From the surge tank, the water is carried by (5) two 440-foot-long, 78-inch-diameter steel penstocks to (6) Powerhouse No. 2, which is a 40-foot by 96-foot reinforced concrete and brick structure containing (7) two, two-phase, 60-cycle horizontal turbine-generator sets with a combined generating capacity of 3,200 kilowatts, which transmits power to the 12,500 kV power distribution system.

The Marquette Development No. 3 includes (8) Tourist Park Reservoir with a surface area of 100 acres and a storage volume of 875 acre-feet, impounded by (9) a dam composed of (a) a 37-foot-long left spillway dike with a crest elevation of 642.84 feet NGVD, (b) an 80-foot long, 21-foot high, uncontrolled concrete ogee-shaped overflow spillway, with a crest elevation of 638.84 feet NGVD, (c) a gated spillway with two electric-hoist-operated, 10-foot-high by 10-foot-wide Taintor gates with a crest elevation of 629.84 feet NGVD, (d) a 758-foot-long right dike, with a reinforced concrete core wall with a crest elevation of 642.84 feet NGVD, and (e) a reinforced concrete intake structure with inclined trash racks, located 123 feet from the right end of the right dike, and having a single 20-foot-wide by 17-foot high bay. This bay controls water flowing into (10) an 8-foot-diameter, 150-foot long steel penstock, supported on nine reinforced-concrete pedestals spaced 16 feet apart, which carries water to (11) Powerhouse No. 3, which is a 28-foot by 40-foot reinforced concrete and brick structure containing (12) one two-phase, 60-cycle vertical turbine-generator set with a generating capacity of 700 kW, which transmits power to the 12,500kV power distribution system.

m. *Locations of the application:* A copy of the application for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 00–1692 Filed 1–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

January 19, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 26, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda (Note—Items listed on the agenda may be deleted without further notice).

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 733rd—Meeting January 26, 2000; Regular Meeting (10:00 a.m.)

CAH–1.
Omitted
CAH–2.
Docket# P–11282, 003, Summit Hydropower, Inc.
CAH–3.
Docket# P–4270, 005, Mountain Rhythm Resources
CAH–4.
Omitted

Consent Agenda—Electric

CAE–1.
Docket# ER00–713, 000, Southwest Power Pool, Inc
CAE–2.
Docket# ER00–661, 000, American Electric Power Service Corporation
CAE–3.
Docket# ER00–710, 000, Southhaven Power, LLC
Other#s ER00–741, 000, Canal Emirates Power International, Inc.
ER00–744, 000, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC and PPL Susquehanna, LLC
CAE–4.
Docket# ER00–663, 000, Puget Sound Energy, Inc.
Other#s ER00–664, 000, Puget Sound Energy, Inc.
ER00–665, 000, Puget Sound Energy, Inc:
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ER00–675, 000, Puget Sound Energy, Inc.
ER00–676, 000, Puget Sound Energy, Inc.
ER00–677, 000, Puget Sound Energy, Inc.
ER00–678, 000, Puget Sound Energy, Inc.
CAE–5.
Docket# ER00–718, 000, Tampa Electric Company
CAE–6.
Docket# ER00–569, 000, CSW Operating Companies
CAE–7.
Omitted
CAE–8.
Docket# ER00–746, 000, Amergen Energy Company, L.L.C.
CAE–9.
Docket# EL99–75, 002, California Power Exchange Corporation
Other#S EC96–19, 051, California Power Exchange Corporation
ER96–1663, 053, California Power Exchange Corporation
ER00–723, 000, California Power Exchange Corporation
CAE–10.
Docket# ER99–2012, 002, North American Electric Reliability Council
CAE–11.
Docket# ER99–3719, 000, Mountain West Independent System Administrator
Other#s EC99–100, 000, Sierra Pacific Power Company and Nevada Power Company
CAE–12.
Docket# ER99–3886, 001, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–13.
Omitted
CAE–14.
Docket# ER00–657, 000, Pacific Gas and Electric Company
CAE–15.
Docket# ER00–335, 000, Central Vermont Public Service Corporation
CAE–16.
Docket# ER98–2668, 008, Duke Energy Moss Landing LLC
Other#S ER98–2669, 007, Duke Energy Oakland LLC
ER98–4296, 005, Duke Energy Oakland LLC
ER98–4300, 005, Duke Energy Moss Landing LLC
ER99–1127, 006, Duke Energy Moss Landing LLC
ER99–1128, 006, Duke Energy Oakland LLC
CAE–17.
Docket# ER99–978, 000, Boston Edison Company
Other#S EL99–31, 000, Boston Edison Company
CAE–18.
Docket# ER99–2339, 002, Sierra Pacific Power Company
CAE–19.
Docket# ER99–1618, 000, Atlantic City Electric Company
Other#S ER99–1618, 001, Atlantic City Electric Company
CAE–20.
Docket# ER99–3887, 000, Midamerican Energy Company
Other#S EL99–92, 000, Midamerican Energy Company
ER99–4226, 000, Ameren Operating Companies
ER99–4415, 000, Illinois Power Company
ER99–4470, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
ER99–4530, 000, Illinois Power Company
EL00–7, 000, Illinois Power Company
EL00–16, 000, Ameren Operating Companies
EL00–21, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–21.
Docket# ER98–441, 005, Southern California Edison Company
Other# ER98–2550, 002, Southern California Edison Company
ER98–495, 005, Pacific Gas and Electric Company
ER98–1614, 003, Pacific Gas and Electric Company
ER98–2145, 003, Pacific Gas and Electric Company
ER98–496, 004, San Diego Gas & Electric Company
ER98–2160, 002, San Diego Gas & Electric Company
ER98–2668, 006, Duke Energy Moss Landing LLC
ER98–2669, 005, Duke Energy Oakland LLC
ER98–4296, 003, Duke Energy Oakland LLC
ER98–4300, 003, Duke Energy Moss Landing LLC
ER99–1127, 004, Duke Energy Moss Landing LLC
ER99–1128, 004, Duke Energy Oakland LLC
ER98–441, 008, Southern California Edison Company
ER98–441, 009, Southern California Edison Company
CAE–22.
Docket# ER99–2326, 002, Pacific Gas and Electric Company
Other#S EL99–68, 002, Pacific Gas and Electric Company
CAE–23.
Docket# EC98–40, 002, American Electric Power Company, Inc. and Central and South West Corporation
Other#S ER98–2770, 002, American Electric Power Company, Inc. and Central and South West Corporation
ER98–2786, 003, American Electric Power Company, Inc. and Central and South West Corporation
CAE–24.

Docket# ER99–3339, 001, California Independent System Operator Corporation

CAE–25.
Docket# ER97–1523, 017, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
Other#s OA97–470, 014, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
ER97–4234, 016, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation

CAE–26.
Omitted

CAE–27.
Docket# RM00–7, 000, Revision of Annual Charges Assessed to Public Utilities

CAE–28.
Docket# EL00–15, 000, Pittsfield Generating Company, L.P.

CAE–29.
Docket# EL00–10, 000, Open-Access Same-Time Information System and Standards of Conduct

CAE–30.
Docket# EL00–8, 000, White River Electric Association Incorporated
Other#s EL00–14, 000, McDonough Power Cooperative

CAE–31.
Docket# EL00–23, 000, Choptank Electric Cooperative

CAE–32.
Docket# EL00–1, 000, AES NY, L.L.C. V. Niagara Mohawk Power Corporation

CAE–33.
Docket# EL99–90, 000, City of Wichita, Kansas V. Western Resources, Inc.

CAE–34.
Docket# EL00–9, 000, Cherokee County Cogeneration Partners, L.P. V. Duke Energy Corporation
Other#s ER99–2331, 002, Duke Energy Corporation

CAE–35.
Omitted

CAE–36.
Docket# OA97–433, 005, Public Service Company of New Mexico
Other#s OA97–720, 005, Public Service Company of New Mexico

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP00–145, 000, Sumas International Pipeline Inc.

CAG–2.
Docket# RP00–157, 000, Kern River Gas Transmission Company

CAG–3.
Omitted

CAG–4.
Omitted

CAG–5.
Docket# RP96–272, 014, Northern Natural Gas Company

CAG–6.
Docket# RP00–152, 000, Northern Natural Gas Company

CAG–7.
Docket# RP00–141, 000, Pine Needle LNG Company, LLC

CAG–8.
Omitted

CAG–9.
Docket# RP99–481, 000, Transwestern Pipeline Company
Other#s RP99–481, 001, Transwestern Pipeline Company

CAG–10.
Docket# RP99–20, 000, Vidor Pipeline Company

CAG–11.
Omitted

CAG–12.
Docket# RP00–39, 001, Natural Gas Pipeline Company of America

CAG–13.
Omitted

CAG–14.
Docket# RP99–518, 002, PGE Gas Transmission, Northwest Corporation

CAG–15.
Omitted

CAG–16.
Omitted

CAG–17.
Docket# RP93–5, 031, Northwest Pipeline Corporation
Other#s RP93–5, 036, Northwest Pipeline Corporation
RP93–96, 006, Northwest Pipeline Corporation

CAG–18.
Docket# RP96–129, 006, Trunkline Gas Company
Other#s RP96–129, 005, Trunkline Gas Company
RP96–129, 007, Trunkline Gas Company

CAG–19.
Omitted

CAG–20.
Docket# RP99–514, 001, Destin Pipeline Company, L.L.C.

CAG–21.
Omitted

CAG–22.
Docket# CP87–203, 007, CNG Transmission Corporation
Other#S CP99–106, 000, NE Hub Partners, L.P. V. CNG Transmission Corporation

CAG–23.
Omitted

CAG–24.
Docket# CP98–596, 001, Columbia Gulf Transmission Company

CAG–25.
Docket# PL99–3, 001, Certification of New Interstate Natural Gas Pipeline Facilities

CAG–26.
Docket# RM00–5, 000, Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act

CAG–27.
Omitted

CAG–28.
Docket# RP00–63, 000, Great Lakes Gas Transmission Limited Partnership

CAG–29.
Docket# CP99–322, 000, El Paso Natural Gas Company
Other#s CP99–323, 000, El Paso Natural Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Omitted

PR–2.
Docket# RM00–6, 000, Well Category Determinations Proposed Rulemaking

II. Pipeline Certificate Matters

PC–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–1791 Filed 1–21–00; 12:20 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6527–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, MACT Subpart KK, National Emission Standards for the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: MACT Subpart KK, National Emission Standards for the Printing and Publishing Industry, OMB Control Number 2060–0335 which expires on March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://*

www.epa.gov/icr and refer to EPA ICR No.1739.03. For technical questions about the ICR contact Ginger Gotliffe at 202–564–7072.

SUPPLEMENTARY INFORMATION:

Title: MACT Subpart KK, National Emission Standards for the Printing and Publishing Industry (OMB Control No. 2060–0335; EPA ICR No.1739.03) expiring 03/31/00. This is a request for extension of a currently approved collection.

Abstract: The Maximum Achievable Control Technology (MACT) for the Printing and Publishing Industry were promulgated on May 30, 1996 (61 FR 27131). These standards apply to the following facilities in 40 CFR part 63, subpart KK: publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing presses at major sources. The effective date is May 30, 1999 for sources existing on May 30, 1996. For new sources or reconstructed sources after May 30, 1996, the effective date is start-up or May 30, 1996, whichever is later.

These standards of performance for this category of major sources and area sources of hazardous air pollutants are required by section 112 of the Clean Air Act. Facilities may meet the standards by materials substitution, by installing control devices, or by a combination of both. The information that is required to be submitted to the Agency or kept at the facility is needed to insure compliance with the regulation. These include initial one time notifications, performance tests plans and reports and records of maintenance and shutdown, startup, and malfunctions. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, leaks are being detected and repaired and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. For facilities that install CMS there are performance test, and maintenance reports. Excess emissions reports are submitted semiannually. Responses to the collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/29/99 (64 FR 41110); no comments/comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 192 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses.

Estimated Number of Respondents: 135.

Frequency of Response: one time notifications, semiannual reports.

Estimated Total Annual Hour Burden: 52,495

Estimated Total Annualized Capital, O&M Cost Burden: $403,000

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1739.03 and OMB Control No. 2060–0335 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 11, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–1664 Filed 1–24–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6528–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, EPA No. 1765.02, OMB No. 2060–0353, expires March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1765.02. For technical questions about the ICR contact Mark Morris at (919) 541–5416.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (OMB Control No. 2060–0353; EPA ICR No. 1765.02), expiring March 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The information collection includes initial and periodic reporting necessary for the EPA to ensure compliance with Federal standards for volatile organic compounds in automobile refinish coatings. Respondents are manufacturers and importers of automobile refinish

coatings and coating components. Responses to the collection are mandatory under 40 CFR part 59, subpart B–National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

The information collection includes initial and periodic reporting necessary for the EPA to ensure compliance with the promulgated federal rule for automobile refinish coatings. The rule will be enforced through random sampling of coatings to determine VOC content. All manufacturers and importers of coatings and coating components subject to this rule must submit an initial report. The initial report must include the name and mailing address of the manufacturer or importer. The rule requires that containers of all subject automobile refinish coatings and coating components display the date of manufacture or a code indicating the date of manufacture. All manufacturers and importers of subject coatings and coating components must submit an explanation of all date codes used on automobile refinish coating and coating component containers. Date code explanations can be submitted with the initial report. Thereafter, respondents must submit explanations of any new date codes within 30 days of their first use. The EPA is required under section 183(e) of the Clean Air Act (Act) to regulate VOC emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included in Group 1 of the list, and the standards for such coatings were promulgated on September 11, 1998 (63 FR 48806).The reports required under the rule enable the EPA to identify all coating and coating component manufacturers and importers in the United States, and to determine which coatings and coating components are subject to the rule based on dates of manufacture. Agency enforcement personnel will use the information collected to identify manufacturers and importers subject to the rule and to determine which coatings and coating components are subject to the rule by dates of manufacture.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 27, 1999 (64 FR 46906); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and importers of coatings/components for Automobile Refinishing.

Estimated Number of Respondents: 10.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 22 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1765.02 and OMB Control No. 2060–0353 in any correspondence. Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, NW, Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 19, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–1738 Filed 1–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6528–4]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The meeting will be held on February 9–10, 2000. On Wednesday, February 9, the meeting will begin at 9 a.m., and will recess at 4:30 p.m. On Thursday, February 10, the meeting will reconvene at 8:45 a.m. and adjourn at approximately 1 p.m. All times noted are Eastern Time.

ADDRESSES: The meeting will be held at the Washington Monarch Hotel, 2401 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, SW., Washington, DC 20460, (202) 564–6853.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: Discussion on ORD's Particulate Matter$^{2.5}$ Research Program and BOSC subcommittee Draft Reports on Particulate Matter, and SAB and BOSC subcommittee Review of ORD's Science to Achieve Results (STAR) Program. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington , DC 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

Dated: January 18, 2000.

John C. Puzak,

Acting Director, National Center for Environmental Research and Quality Assurance.

[FR Doc. 00–1665 Filed 1–24–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–CN; FRL–6490–1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Cherokee Nation Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On November 19, 1999, the Cherokee Nation submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the Cherokee Nation's application, and provides a 45–day public comment period and an opportunity to request a public hearing on the application.

DATES: Comments, identified by docket control number PB–402404–CN, must be received on or before March 10, 2000. In addition, a public hearing request may be submitted on or before March 10, 2000.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–CN in the subject line on the first page of your response:

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, Environmental Protection Agency, Region VI, 6PD–T, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the Cherokee Nation. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PB–402404–CN. The official record consists of the documents specifically referenced in this action, this notice, the Cherokee Nation's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region VI Office, Environmental Protection Agency, Multi-Media Planning and Permitting Division, Toxics Section, 1445 Ross Avenue, Dallas, TX.

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–CN in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region VI, Multi-Media Planning & Permitting Division, Toxics Section, 1445 Ross Avenue, Suite 1200, 6PD-T, Dallas, TX 75202–2733.

2. *In person or by courier.* Deliver your comments and hearing requests to: Environmental Protection Agency, Multi-Media Planning & Permitting Division, Toxics Section, 7th Floor, 1445 Ross Avenue, Dallas, TX. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: "steele.eva@epamail.epa.gov" or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–CN. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

The Cherokee Nation has submitted an application to EPA Region VI, under section 404 of TSCA and has requested approval of their lead-based paint training and certification program. This application will be reviewed by EPA within 180 days of receipt of a complete application. If EPA subsequently finds that the program does not meet all the requirements for approval of a Tribal program, EPA will work with the Tribe to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the Cherokee Nation.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the Cherokee Nation's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the Cherokee Nation's proposed program has been provided by the applicant:

On November 19, 1999, the Cherokee Nation applied to EPA for authorization to administer and enforce a Tribal Lead-Based Paint Program. The Cherokee Nation originally enacted on January 26, 1998, the Cherokee Nation Lead-Based Paint Management Act. L-98, 63 CNCA. Article 12, 1201, Section 601 *et seq.* (hereinafter known as the Act) This tribal statute designates the Department of Environmental Protection as the official Cherokee Nation agency for implementing the lead-based paint reduction and regulation program. This statute instructs the Department of Environmental Protection through the Cherokee Nation Environmental Protection Act to promulgate rules governing lead-based paint services, including lead-based paint contractor certification and accreditation of approved training providers and programs.

In addition to authority under the Cherokee Nation Environmental Code, the Act provides Cherokee Nation Environmental Protection with the power and duty to enforce the Act, rules, certification and accreditations. The Act authorizes the Cherokee Nation Department of Environmental Protection to issue, refuse to issue, renew, reactivate, reinstate, modify, suspend, or revoke certifications and accreditations.

The Cherokee Nation Lead-Based Paint Management Rules were promulgated on August 30, 1998. In general, 40 CFR part 745, subpart L and Oklahoma Administrative Code 252:110 were incorporated by reference when possible. The items not incorporated by reference are those that are otherwise mandated by the Act. Items pertaining to dates and deadlines were not incorporated by reference since the legislation provides those.

The scope of the Cherokee Nation Rules applies to all individuals and firms engaged in lead-based paint services in target housing and child-occupied facilities. It contains procedures and requirements for the accreditation of lead-based paint services training programs, procedures and requirements for the certification of individual and firms engaged in Lead-Based Paint services, and work practice standards for performing such services.

Accreditation is only available to educational institutions and government agencies offering ongoing and continuous lead-based paint training programs. Accreditation is available for both initial and refresher courses for inspector, risk assessor, supervisor, project designer and abatement worker. It is not available to training programs offering courses on a one time-only basis or for a period of less than 12 months. As an effort to maintain quality training, accreditation is not available for refresher courses only. If a training program wishes to receive accreditation for a refresher course, it must receive accreditation for the initial training course as well. The Cherokee Nation Lead Rules outline the accreditation timelines and the fees for initial and renewal accreditation. Renewal must be done on an annual basis.

Certification is required for all individuals and firms who perform or offer to perform Lead-Based Paint services in target housing and child-occupied facilities in the Cherokee Nation. Certification is available for inspector, risk assessor, supervisor, project designer, abatement worker, and firm. Only the Oklahoma Department of Environmental Quality (ODEQ)

accredited LBP training will be accepted for certification in the Cherokee Nation. Chapter 110 of ODEQ rules outlines the certification timelines and the fees for initial and renewal certification in the Cherokee Nation. Renewal must be done on an annual basis. All initial applicants for inspector, risk assessor, and supervisor in the Cherokee Nation must successfully complete the DEQ certification. All renewal applicants for inspector, risk assessor, and supervisor in the Cherokee Nation must complete the DEQ certification exam every third year.

The Cherokee Nation Lead Rules incorporate by reference the work practice standards from 40 CFR 745.227. These work practice standards must be followed when performing all lead-based paint activities. Work practice standards are outlined for inspection, lead hazard screen, risk assessment, abatement, collection and laboratory analysis of samples, composite dust sampling, and recordkeeping.

As required by 40 CFR 745.327, the Cherokee Nation will establish a Memorandum of Agreement with the Region VI, Regional Administrator. The Memorandum of Agreement will include provisions for the timely and appropriate referral to the Region VI, Regional Administrator for those criminal enforcement matters where the Cherokee Nation does not have the authority. The Agreement will also identify any enforcement agreements that may exist between the Cherokee Nation and any State.

IV. Federal Overfiling

Section 409(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: January 6, 2000.

Carl E. Edlund,

Director, Multi-Media Planning & Permitting Division, Region VI.

[FR Doc. 00–1739 Filed 1–24–00; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 10, 2000 (65 FR 1389) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 13, 2000. We then gave notice on January 12, 2000 (65 FR 1892) of the regular meeting cancellation and scheduling of a special meeting on January 27, 2000. This notice is to amend the original agenda for the upcoming special meeting.

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 27, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board is open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for January 27, 2000, is amended to read as follows:

OPEN SESSION

A. Approval of Minutes
  —December 9, 1999 (Open and Closed)
B. Reports
  1. Farm Credit Administration's Y2K Status Report
  2. Y2K Status Report (Systemwide Level)
C. New Business
  Regulations
  —Termination of Farm Credit Status-Proposed Rule; Supplemental and Extension of comment period (12 CFR Part 611)

Dated: January 21, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration.

[FR Doc. 00–1833 Filed 1–21–00; 2:36 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE . TIME: Thursday, January 27, 2000 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public. The following item has been added to the agenda. Express Advocacy Rule (11 CFR 100.22).

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 00–1759 Filed 1–21–00; 11:00 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 7, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Edwin Henry Eichler, Pigeon, Michigan; to acquire additional voting shares of Bay Port Financial Corporation, Bay Port, Michigan, and thereby indirectly acquire voting shares

of Bay Port State Bank, Bay Port, Michigan.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Dan Howard Galbraith, Lawrence, Kansas, and Jan Louise Galbraith, Tulsa, Oklahoma; to acquire voting shares of Second Century Financial Corporation, Perry, Kansas, and thereby indirectly acquire voting shares of The Bank of Perry, Perry, Kansas.

Board of Governors of the Federal Reserve System, January 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1694 Filed 1–24–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with Hardwick Holding Company, Dalton, Georgia, and thereby indirectly acquire voting shares of Hardwick Bank & Trust Company, Dalton, Georgia, and First National Bank of Northwest Georgia, Calhoun, Georgia.

In connection with this proposal, BB&T Corporation requests permission to exercise an option to acquire up to 19.9 percent of the voting securities of Hardwick Holding Company under certain circumstances.

Board of Governors of the Federal Reserve System, January 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1695 Filed 1–24–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Birthright, Incorporated, Montgomery, Alabama; to engage de novo through its subsidiary, Jackson, Shanklin, & Sonia Securities, LLC, New Orleans, Louisiana, in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire Ragen MacKenzie Group Incorporated, Seattle, Washington, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage, riskless principal, private placement, and other agency transactional services, pursuant to § 225.28(b)(7) of Regulation Y; underwriting and dealing in government obligations and money market instruments in which state member banks may underwrite and deal under 12 U.S.C. 335 and 24; and investing and trading activities other than in bank ineligible securities, pursuant to § 225.28(b)(8) of Regulation Y; and in underwriting and dealing in all types of debt and equity securities, other than interests in open-end investment companies, see J.P. Morgan & Co., Inc., et al., 75 Fed. Res. Bull. 192 (1989).

Board of Governors of the Federal Reserve System, January 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1696 Filed 1–24–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: National Child Abuse and Neglect Data System.

OMB No.: 0980–0256.

Description: The Administration on Children, Youth and Families established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1996 amendments (Pub. L. 93–247) to the Child Abuse Prevention and Treatment Act [42 U.S.C. 5101 *et seq.*], as amended, which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports. In 1988, ACYF embarked on a collaborative effort with the States to develop a voluntary national data collection and analysis program, to collect, compile,

and make available State child abuse and neglect reporting information from child protective services agencies in the 50 States, the District of Columbia, and the territories.

NCANDS has two components. The Summary Data Component (SDC) survey collects aggregate data on key child protective services statistics. The Detailed Case Data Component (DCDC) collects case-level data on each child reported as an alleged victim of child maltreatment. The Children's Bureau is currently preparing the 9th annual report based on the NCANDS data.

In 1996, the Child Abuse Prevention and Treatment Act was amended by Public Law 104–235 to require that any State receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (DHHS) to provide specific data on child maltreatment to the extent practicable. The legislation specified the following data elements.

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

(A) substantiated;

(B) unsubstantiated; or

(C) determined to be false.

(3) Of the number of children described in paragraph (2)—

(A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) the number that received services during the year under the State program funded under this section or an equivalent State program; and

(C) the number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of child protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out-of-court contacts between such individuals and children.

The reporting requirements specified in CAPTA, as amended, have been met through recent revisions to the SDC. After discussions with the States and pilot testing with a small number of States, the reporting requirements are being integrated into the current DCDC. With this modification to the NCANDS, States will be able to annually report on child maltreatment using either the SDC or the DCDC. States that participate in the DCDC will no longer need to additionally respond to the SDC Survey in order to meet the annual reporting requirements.

The information collected by NCANDS will be used to understand better the experiences of children and families served by CPS and to guide policy and program development at the national and local levels. An annual report, entitled Child Maltreatment, will continue to be published. Data collected through the NCANDS will also be used to support the Department in responding to the requirements of the Government Performance and Results Act; publishing State data in the annual report to Congress on child welfare outcomes; and monitoring States through the Child and Family Services Review process.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DCDC	30	1	130	3900
SDC	22	1	40	880

Estimated Total Annual Burden Hours: 4780.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 18, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00–1670 Filed 1–24–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 17–18, 2000.

Time: February 17, 2000, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 45, Room 3AN–18B, MD 20892.

Time: February 18, 2000, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 45, Room 3AN–18B, MD 20892.

Contact Person: Mary J. Stephens-Frazier Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health HHS)

Dated: January 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1685 Filed 1–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders A, February 17, 2000, 7:30 p.m. to February 19, 2000, 5:00 p.m., Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on January 11, 2000, 65 FR 1642.

The meeting will be held February 17, 2000, 8:00 a.m. to February 18, 2000, 5:00 p.m. The meeting will is closed to the public.

Dated: January 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Cmte. Policy.

[FR Doc. 00–1686 Filed 1–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: January 27, 2000.

Time: 2:30 PM to 4:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1687 Filed 1–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Meeting of the National Reading Panel

Notice is hereby given of the Washington D.C. area meeting of the National Reading Panel. The meeting will be held on Monday, January 31, 2000, from 8:00 AM to 6:00 PM. The meeting location is the National Institutes of Health, Building 31, C Wing-Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland, 20816. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel is studying the effectiveness of various approaches to teaching children how to read and report on the best ways to apply these findings in classrooms and at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel is building on the findings presented by the National Research Council's Committee on the Prevention of Reading Difficulties in Young Children. Based on these findings and the National Reading Panel's own review of the literature, the Panel will: determine the readiness for application in the classroom of the results of these research studies; identify appropriate means to rapidly disseminate this information to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The agenda for this meeting will include discussion and final acceptance of the reports by The National Reading Panel. A period of time will be set aside at approximately 3:00 PM on Monday, January 31 for members of the public to address the Panel and express their views regarding the Panel's mission.

Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., Executive Director, National Reading Panel, c/o Mr. Patrick Riccards and either mail them to the Widmeyer-Baker Group, 1825 Connecticut Avenue, NW, Fifth Floor, Washington, D.C. 20009, or e-mail them to patrickr@twog.com, or fax them to 202–667–0902. Requests for addressing the Panel should be received by January 27, 2000. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each. Although the time permitted for oral presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Mr. Patrick Riccards at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Patrick Riccards by January 27, 2000.

Dated: January 13, 2000.

Duane Alexander,

Director, National Institute of Child Health and Human Development.

[FR Doc. 00–1688 Filed 1–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 31, 2000.
Time: 3:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David M. Monsees, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg,nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Empahsis Panel.
Date: February 1, 2000.
Time: 2:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 7–8, 2000.
Time: 8:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday, Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 7–8, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.
Contact Person: Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, General Medicine B Study Section.
Date: February 7–8, 2000.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW, Washington, DC 20007.
Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 4.
Date: February 7–8, 2000.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Mushtaq A. Khan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group, Surgery and Bioengineering Study Section.
Date: February 7–8, 2000.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Teresa Nesbitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, nesbittt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 2.
Date: February 7–8, 2000.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: David M. Monsees, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 7–8, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, N.W., Washington, DC 20036.

Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Teresa Nesbitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110 MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1684 Filed 1–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; Altered System of Records

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notification of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the National Institutes of Health is publishing a notice of a proposal to alter the system of records 09–25–0165, "National Institutes of Health Loan Repayment Program HHS/NIH/OD." The main purposes of the major alteration include: (1) Addition of new programs, (2) change of the system name to 09–25–0165, "National Institutes of Health Office of Loan Repayment and Scholarship (OLRS) Records System, HHS/NIH/OD," (3) the addition of applicants, participants and individuals interested in scholarship or loan repayment programs of the NIH to "Categories of Individuals Covered by the System;" and (4) two new and two modified routine uses to reflect the added programs.

DATES: The NIH invites interested parties to submit comments on the proposed uses on or before February 24, 2000. The NIH has sent a Report of the Altered System to the Congress and to the Office of Management and Budget (OMB) on January 19, 2000. The alteration of this system of records will be effective 40 days from the date submitted to the OMB, unless NIH receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, (301) 496–2832. (This is not a toll-free number). Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, MD 20814–9121, (800) 528–7689 (toll-free number).

SUPPLEMENTARY INFORMATION: Sections 487A–C, and E of the Public Health Service (PHS) Act (42 U.S.C. 288–1, 2, 3, and 5), as amended, authorizes the Secretary to implement and establish programs of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct research, as employees of the NIH or to conduct research with respect to contraception or infertility as employees or affiliates of the National Institute of Child Health and Human Development (NICHD) Intramural Laboratories and NICHD Extramural sites, in consideration of the Federal Government agreeing to repay, for each year of service, not more than $35,000 of the principal and interest of the educational loans of such health professionals. These programs include the following: (1) The NIH AIDS Research Loan Repayment Program, (2) the NIH General Research Loan Repayment Program, (3) the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds, and (4) the Contraceptive and Infertility Research Loan Repayment Program.

Section 487D of the PHS Act (42 U.S.C 288–4) authorizes a scholarship program for individuals who agree to pursue, as undergraduates, academic programs appropriate for careers in professions needed by the NIH and who agree to serve as NIH employees in exchange for receipt of the scholarship. This program is known as the NIH Undergraduate Scholarship Program (UGSP) for Individuals from Disadvantaged Backgrounds.

The NIH is recommending this proposed major alteration to expand system coverage for three new programs: (1) The General Research Loan Repayment Program, (2) the Contraceptive and Infertility Research Loan Repayment Program, and (3) the Undergraduate Scholarship Program. The proposed name change for this system of records to "National Institutes of Health (NIH) Office of Loan Repayment and Scholarship (OLRS) Records System, HHS/NIH/OD," is recommended to reflect the addition of records authorized by Sections 487B–D of the Public Health Service Act (42 U.S.C. 288–2, 288–3, and 288–4), as added June 10, 1993, by Pub. L. 103–43. NIH is proposing to change the "Categories of Individuals Covered by the System" to include applicants, participants and individuals interested in scholarship or loan repayment programs of the NIH. The proposed "Categories of Records in the System" adds (a) program application and associated forms; (b) academic and research progress reports (which include related data, correspondence, and professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions); (c) financial data, including loan balances, deferment, forbearance, and repayment/delinquent/default status information; (d) commercial credit reports; and (e) educational data including tuition and other expenses, and academic programs and class standing.

In addition, two new routine uses and two modified routine uses are proposed: (a) New Routine Use No. 16—the disclosure of identifying information to: Designated coordinators at schools participating in the scholarship program for the purpose of determining educational expenses and resulting levels of scholarship support, and guiding and informing these recipients about the nature of their professional service obligation to the NIH; and to medical and graduate schools, attended by UGSP scholars who have elected to defer their service obligation, for the purpose of determining their academic status and verifying the validity of the NIH UGSP service deferment; (b) New Routine Use No. 17—the disclosure of records to Department contractors and subcontractors for the purpose of recruiting, screening, and matching health professionals for NIH

employment in qualified research positions under the NIH Loan Repayment and Scholarship Programs (LRSPs); (c) Modified Routine Use No. 8—the disclosure of identifying information to a consumer reporting agency (credit bureau) to obtain an applicant's or participant's commercial credit report to: (1) Establish his/her creditworthiness, (2) assess and verify his/her ability to repay debts owed to the Federal Government, and (3) determine and verify the eligibility of loans submitted for repayment; and (d) Modified Routine Use No. 15—the disclosure of information provided by a lender or educational institution to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government.

Only authorized users will have access to the records contained in the system. Authorized users include the following: system managers and their staffs, OLRS staff, financial, fiscal and records management personnel, legal personnel, computer personnel, and NIH contractors and subcontractors, all of whom are responsible for administering or monitoring the LRSPs. Access is limited to those individuals trained in accordance with Privacy Act procedures. Contractors will be required to maintain, and will also be required to ensure that subcontractors maintain confidentiality safeguards with respect to the records covered by this system.

The 09–25–0165 system notice was last published in the **Federal Register** on January 20, 1995. We are republishing the system notice in its entirety below to incorporate the proposed changes.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: January 14, 2000.

Anthony L. Itteilag,

Deputy Director for Management, National Institutes of Health.

09–25–0165

SYSTEM NAME:

"National Institutes of Health (NIH) Office of Loan Repayment and Scholarship (OLRS) Records System, HHS/NIH/OD."

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Loan Repayment and Scholarship (OLRS), National Institutes of Health, 7550 Wisconsin Avenue, Rooms 604 & B1–16, Bethesda, Maryland 20814–9121.

See Appendix I for a listing of NIH offices responsible for administration of the NIH LRSPs. Write to the System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are receiving, or who have received funds under the NIH LRSPs; and individuals who are interested in participation in the NIH LRSPs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number (SSN), program application and associated forms, service pay-back obligations, employment data, professional performance and credentialing history of licensed health professionals; personal, professional, and demographic background information; academic and research progress reports (which include related data, correspondence, and professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions); standard school budgets; financial data including loan balances, deferment, forbearance, and repayment/delinquent/default status information; commercial credit reports; educational data including tuition and other related educational expenses; educational data including academic program and status; employment status verification (which includes certifications and verifications of continuing participation in qualified research); Federal, State and local tax related information, including copies of tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 487A–E (42 U.S.C. 288–1, 288–2, 288–3, 288–4, 288–5) of the PHS Act, as amended, authorize the NIH to establish and implement (a) multiple programs of educational loan repayment for qualified health professionals who agree to conduct research, subject to each program's specific statutory requirements; and (b) a scholarship program for undergraduates who agree to pursue academic programs appropriate for careers in professions needed by the NIH and who agree to serve as NIH employees. The provisions of subpart III of part D of title III of the PHS Act (42 U.S.C. 254l *et seq.*), as amended, governing the National Health Service Corps (NHSC) loan repayment and scholarship programs, are incorporated in these authorities, except as inconsistent with Sections 487A–E. The Internal Revenue Code at 26 U.S.C. 6109 requires the provision of the SSN for the receipt of loan repayment and scholarship funds under the NIH LRSPs. The Federal Debt Collection Procedures Act of 1990, Public Law 101–647 (28 U.S.C. 3201) requires that an individual who has a judgement lien against his/her property for a debt to the United States shall not be eligible to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as a beneficiary, until the judgement is paid in full or otherwise satisfied. Thus, individuals applying to the LRSPs are required to disclose in their applications whether they have a judgement lien against them arising from a debt to the United States.

PURPOSE(S):

These records are used to: (1) Identify and select applicants for the NIH LRSPs; (2) monitor loan repayment and scholarship activities, such as payment tracking, academic status and performance, research and related services, deferment of service obligation, and default; and (3) assist NIH officials in the collection of overdue debts owed under the NIH LRSPs. Records may be transferred to System No. 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH LRSPs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal when: (a) HHS or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the

United States Government, is a party to litigation or has an interest in such litigation, and by careful review, HHS determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by HHS to be for a purpose that is compatible with the purpose for which the records were collected.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

4. The NIH may disclose records to HHS contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. The NIH may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional and or academic accomplishments and plans, performance, credentials, and educational background, and to determine if an applicant is suitable for participation in the NIH LRSPs.

6. The NIH will disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain an applicant or participant's commercial credit report for the following purposes: (1) To establish his/her creditworthiness; (2) To assess and verify his/her ability to repay debts owed to the Federal Government; and (3) To determine and verify the eligibility of loans submitted for repayment. Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the applicant or claim is being processed.

7. The NIH may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money, other than Federal salaries, payable to or held on behalf of the individual.

c. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

8. The NIH may disclose information from this system of records to another agency that has asked the HHS to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the offset.

9. The NIH may disclose to the IRS information about an individual applying for any NIH loan repayment or scholarship program authorized by the Public Health Service Act to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

10. The NIH may report to the IRS, as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under statute or regulations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. The NIH may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. The NIH may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

13. The NIH may disclose information from this system of records to other Federal agencies that also provide loan repayment or scholarship at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment or scholarship programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

14. The NIH will disclose from this system of records to the Department of Treasury, IRS: (1) A delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that the IRS can offset against the debt any income tax refunds which may be due to the individual.

15. The NIH may disclose information provided by a lender or educational institution to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government and the nature of the debt.

16. The NIH will disclose records consisting of names, disciplines, current mailing addresses, and dates of scholarship support and dates of graduation of scholarship recipients to: (a) Designated coordinators at each school participating in the scholarship program for the purpose of determining educational expenses and resulting levels of scholarship support, and for the purpose of guiding and informing these recipients about the nature of their

service obligations to the NIH; and (b) medical and graduate schools, attended by UGSP scholars who have elected to defer their service obligation, for the purpose of determining their academic status and verifying the validity of the NIH UGSP service deferment.

17. The NIH may disclose records to HHS contractors and subcontractors for the purpose of recruiting, screening, and matching health professionals for NIH employment in qualified research positions under the NIH LRSPs. In addition, HHS contractors and subcontractors: (1) may disclose biographic data and information supplied by potential applicants (a) to references listed on application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and (b) to a State or local government medical licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing; (2) may disclose biographic data and information supplied by references listed on application and associated forms to other references for the purpose of inquiring into the applicant's professional qualifications and suitability; and (3) may disclose professional suitability evaluation information to NIH officials for the purpose of appraising the applicant's professional qualifications and suitability for participation in the NIH LRSPs. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent debts to the Federal Government by making these debts part of their credit records, and (2) to enable NIH to improve the quality of loan repayment and scholarship decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, file cards, microfiche and electronic media, including computer tape, discs, servers connected to local area networks, and Internet servers.

RETRIEVABILITY:

Records are retrieved by name, NIH Institutes and Centers, Social Security number, or other identifying numbers or characteristics.

SAFEGUARDS:

1. Authorized Users: Access to information is limited to authorized personnel in the performance of their duties. Authorized personnel include system managers and their staffs, NIH OLRS officials and staff, financial, fiscal and records management personnel, legal personnel, computer personnel, and NIH contractors and subcontractors—all of whom are responsible for administering the NIH LRSPs.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the storage locations after duty hours, including weekends and holidays.

3. Procedural and Technical Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Data on local area network computer files is accessed by keyword known only to authorized personnel. Codes by which automated files may be accessed are changed periodically. This procedure also includes deletion of access codes when employees or contractors leave. New employees and contractors are briefed and the security department is notified of all staff members and contractors authorized to be in secured areas during working and nonworking hours. This list is revised as necessary. Individuals remotely accessing the secured areas of the OLRS Internet sites have separate accounts and passwords. Passwords are assigned by project staff and may include both alphabetic and non-alphabetic characters. These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–537–1. Participant case files are transferred to a Federal Records Center one year after closeout and destroyed five years later. Closeout is the process by which it is determined that all applicable administrative actions and disbursements of benefits have been completed by the OLRS and service obligations have been completed by the participant. Applicant case files are destroyed three years after disapproval or withdrawal of their application. Appeal and litigation case files are destroyed six years after the calendar year in which the case is closed. Other copies of these files are destroyed two years after the calendar year in which the case is closed.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, Maryland 20814–9121.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. A written request must contain the name and address of the requester, Social Security number, and his/her signature which is either notarized to verify his/her identity or includes a written certification that the requester is the person he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records pertaining to an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: dates of enrollment in the NIH LRSPs and current enrollment status, such as pending application approval or approved for participation.

An individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, Social Security number, dates of enrollment in an NIH loan repayment or scholarship program, and at least one piece of tangible identification, such as driver's license, passport, or voter registration card. Identification papers with current photographs are preferred but not required. If an individual has no identification papers but is personally known to an agency employee, such employees shall make a written record verifying the individual's identity. Where the individual has no identification papers, the responsible agency official shall require that the individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. Since positive identification of the caller or sender cannot be established, telephone and electronic mail requests are not honored.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; participating lending and loan servicing institutions; educational institutions; other Federal agencies; consumer reporting agencies/credit bureaus; and third parties that provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Locations

Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, Maryland 20814–9121

Center for Information Technology, National Institutes of Health, Building 12A, Room 1011, 9000 Rockville Pike, Bethesda, Maryland 20892

Clinical Center, National Institutes of Health, 6100 Executive Boulevard, Room 3E01, Bethesda, MD 20892–7509

National Cancer Institute, National Institutes of Health, Building 31, Room 11A19, 9000 Rockville Pike, Bethesda, MD 20892–2590

National Heart, Lung, and Blood Institute, National Institutes of Health, Building 10, Room 7N220, 9000 Rockville Pike, Bethesda, MD 20892–1670

National Institute of Dental and Craniofacial Research, National Institutes of Health, Building 31, Room 2C23, 9000 Rockville Pike, Bethesda, MD 20892–2290

National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892–1818

National Institute of Neurological Disorders and Stroke, National Institutes of Health, Building 10, Room 5N220, 9000 Rockville Pike, Bethesda, MD 20892–4152

National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 7A05, 9000 Rockville Pike, Bethesda, MD 20892–2520

National Institute of Mental Health, National Institutes of Health, Building 10, Room 4N222, 9000 Rockville Pike, Bethesda, MD 20892

National Institute of General Medical Sciences, Pharmacological Sciences Program, National Institutes of Health, Building 45, Room 2AS–43, 9000 Rockville Pike, Bethesda, MD 20892–6200

National Institute of Child Health and Human Development, National Institutes of Health, Building 31, Room 2A25, 9000 Rockville Pike, Bethesda, MD 20892

National Institute of Child Health and Human Development, National Institutes of Health, Building 61E, Room 8B01A, Bethesda, MD 20892

National Eye Institute, National Institutes of Health, Building 10, Room 10N202, 9000 Rockville Pike, Bethesda, MD 20892–1858

National Institute of Environmental Health Sciences, National Institutes of Health, South Campus, Building 101, Room A–210, 111 Alexander Drive, Research Triangle Park, NC 27709

National Institute on Aging, Gerontology Research Center, National Institutes of Health, 4940 Eastern Avenue, Baltimore, MD 21224

National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 45, Room 5AN40, 9000 Rockville Pike, Bethesda, MD 20892

National Institute of Deafness and Communication Disorders, National Institutes of Health, Building 31, Room 3C02, 9000 Rockville Pike, Bethesda, MD 20892–2320

National Institute on Drug Abuse, National Institutes of Health, Parklawn Building, Room 9A30, 5600 Fishers Lane, Rockville, MD 20857

National Center for Research Resources, National Institutes of Health, One Rockledge Center, Room 6070, 6705 Rockledge Drive, Bethesda, MD 20892–7965

National Institute for Nursing Research, National Institutes of Health, Building 31, Room 5B25, 9000 Rockville Pike, Bethesda, MD 20892–2178

National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Building 31, Room 1B58, 9000 Rockville Pike, Bethesda, MD 20892–2088

National Human Genome Research Institute, National Institutes of Health, 49 Covent Drive, Building 49, Room 4A06, 9000 Rockville Pike, Bethesda, MD 20892–4470

Office of Financial Management, National Institutes of Health, Building 31, Room B1B47, 9000 Rockville Pike, Bethesda, Maryland 20892

[FR Doc. 00–1689 Filed 1–24–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent to Prepare an Environmental Assessment for the Diamond Fork Proposed Action Modifications

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Assessment for the Diamond Fork Proposed Action Modifications.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Central Utah Water Conservancy District (CUWCD), Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), and the Department of the Interior (Interior) announces their intent to prepare an Environmental Assessment (EA) on the Diamond Fork Proposed Action Modifications.

This EA will address modifications to the Proposed Action as a result of value engineering studies on the Proposed Action of the Diamond Fork System 1999 Final Supplement to the Final Environmental Impact Statement (FSFEIS) that was filed with the Environmental Protection Agency July 1, 1999. A Record of Decision (1999 ROD) documenting the selection of the Proposed Action Alternative as presented in the FSFEIS was signed by the Assistant Secretary—Water and Science on September 29, 1999. The 1999 ROD allowed for value engineering studies, pursuant to public law 104–

106, to be conducted on the Proposed Action to further reduce environmental impacts or project construction costs. Based on value engineering studies the following modifications to the Proposed Action will be addressed in the EA: (1) Replacing a series of tunnels and pipelines with one tunnel and one pipeline; (2) relocating flow control facilities; and (3) adjusting the alignment of the Diamond Fork System. The proposed modifications will reduce environmental impacts and reduce project construction costs while not changing the Proposed Action's purposes or needs as described in the FSFEIS and 1999 ROD.

DATES: Information relating to the EA will be announced in local newspapers and/or mailed to interested parties. Upon completion of a draft EA a notice of availability will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harold Sersland, Environmental Program Manger, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058–7303, (801) 226–7110.

SUPPLEMENTARY INFORMATION: The purpose of this Notice of Intent is to inform the public, local, State, and Federal government agencies that an EA will be prepared. Information, data, opinions, and comments obtained on the draft EA may be used in the preparation of the final EA.

Dated: January 19, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–1714 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Notice of Intent To Clarify the Role of Habitat in Endangered Species Conservation; Announcement of Workshops

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; reopening of comment period.

SUMMARY: We (the U.S. Fish and Wildlife Service) reopen the comment period on our notice of intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. We are reopening the comment period to allow us to receive comments in conjunction with two critical habitat workshops to be held with major stakeholders. We will analyze additional comments received during this comment period from workshop participants, others who wish to comment on issues raised at the workshop, and any additional comments, as well as those we received during the two previous comment periods, and will consider these comments when preparing new proposed guidance, policy, or regulations, as appropriate.

DATES: We will accept comments on this guidance until February 24, 2000. The first workshop will be held in Reston, Virginia, on February 8, 2000, and the second in Tempe, Arizona, on February 11, 2000. Members of the public who wish to attend as an observer are requested to contact the U.S. Institute for Environmental Conflict Resolution (see **ADDRESSES** section) by February 3, 2000.

ADDRESSES: Submit your comments to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ–420, Washington, D.C. 20240. If you are interested in attending a workshop as an observer, contact Tina Urbina, Executive Assistant, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tempe, Arizona 85701, telephone 520/670–5299, facsimile 520/670–5530.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1999 (64 FR 31871), we published a notice of our intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. In that notice, we sought comments on the benefits of the designation of critical habitat, beyond the benefits that result from the act of listing species as endangered or threatened, and what considerations should be included in determining whether a designation of critical habitat is prudent. We also requested comments and suggestions on how we can effectively streamline the process of designating critical habitat and specifically whether and how our existing regulations might or should be changed to accomplish this goal. Additionally, we requested comments and suggestions on possible legislative actions that might improve the effectiveness and efficiency of the critical habitat process. We reopened the comment period on August 30, 1999 (64 FR 47195), in order to provide additional time for interested parties to comment on this important issue.

Based on our preliminary review of the comments, a wide range of opinions exists on the role of habitat in endangered species conservation. We felt it would be beneficial to have a focus group provide their individual views on these issues. We have contracted with the U.S. Institute for Environmental Conflict Resolution to hold two workshops with major stakeholders to discuss critical habitat issues, such as the regulatory effect of designating critical habitat, linking critical habitat designation to recovery planning, and the relationship between critical habitat and habitat conservation planning under section 10 of the Act. These participants will not act as a committee and there will be no attempt to seek a group recommendation on any issue. The workshops are scheduled to be held in Reston, Virginia, on February 8, 2000, and Tempe, Arizona, on February 11, 2000. In order to facilitate a meaningful discussion, we have invited a small number of participants representing Federal, State, and local governments, Congress, resource user groups, environmental organizations, and academia. Additional seats will be available for members of the public to attend as observers, who will be given a limited time on the agenda to provide comments. If you would like to attend as an observer, please contact the U.S. Institute for Environmental Conflict Resolution (see **ADDRESSES** section) by February 3, 2000, so that we can judge the amount of interest.

Public Comments Solicited

We will take into consideration any comments and additional information received. We will make available for your review and comment any proposed guidance, policy, or regulatory changes that are developed.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: January 19, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–1745 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Morro Bay Kangaroo Rat (Dipodomys heermanni morroensis) Draft Revised Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service announces the availability of the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) draft revised recovery plan for public review. This kangaroo rat is believed to exist at one site in San Luis Obispo County, California.

DATES: Comments on the draft revised recovery plan received by March 27, 2000 will be considered by the Fish and Wildlife Service.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). The draft revised recovery plan will also be available at the San Luis Obispo County Public Library. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Catherine Mc Calvin, at the above Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The Morro Bay kangaroo rat is listed as endangered (35 FR 16047). This species is restricted to less than 200 acres. It is currently known from one site. The Morro Bay kangaroo rat is threatened by habitat loss from development. In addition, the very low numbers of individuals and populations of this species puts it at great risk of extinction due to random naturally-occurring (stochastic) events.

The objective of this revised plan is to provide a framework for the recovery of the Morro Bay kangaroo rat so that protection by the Endangered Species Act is no longer necessary. Actions necessary to accomplish this objective include protecting species habitat through acquisition, conservation easements, and Habitat Conservation Plans; managing species habitat; conducting management-oriented research on the ecology and biology of the species; reviewing and revising management and recovery guidelines; locating additional populations; and establishing new populations within the historic range of the species.

Public Comments Solicited

The Service solicits written comments on this draft revised recovery plan. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 19, 2000.

Elizabeth H. Stevens,

Acting, California/Nevada Operations Manager, Fish and Wildlife Service, Region 1, Sacramento, California.

[FR Doc. 00–1715 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Species Permit Applications; Notice of Extension of Comment Period

The Fish and Wildlife Service gives notice that the comment period is extended on the notice of receipt of applications for two applications submitted by International Animal Consulting Group, Inc. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18). The applications, 018196 and 018197, are for conducting certain activities with marine mammals, specifically taking northern sea otters (*Enhydra lutris lutris*) from the wild in Alaska for export and public display at two Japanese aquariums. The extension will allow all interested parties to submit written comments. The Fish and Wildlife Service published a notice of receipt of the applications on Friday, December 17, 1999. The current comment period closes on January 26, 2000. Written comments may now be submitted until January 31, 2000, and should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

Dated: January 21, 2000.

Kristen Nelson,

Chief, Branch of Permits (Domestic), Office of Management Authority.

[FR Doc. 00–1769 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0121

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request an extension of approval for the collection of information from applicants to lease and develop solid minerals other than coal and oil shale. The BLM uses the information supplied to determine

whether an applicant, permittee, or lease is qualified to hold an interest under the terms of the Mineral Leasing Act of 1920 (MLA). BLM also uses this information to determine if development plans will adequately protect Federal land and that the property amounts of rental and royalty are collected.

DATE: Comments on the proposed information collection must be received by March 27, 2000 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group, 1849 C St., N.W., Room 401LS, Washington, D.C. 20240. Comments may be sent by Internet to: WOComment@wo.blm.gov. Please include: "Attn.: 1004–0121" and your name and address in your Internet message. Comments will be available for public review at the L Street address during regular business hours (7:45 am to 4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Philip Allard, Solid Minerals Group, (202) 452–5195. For assistance in reaching the above contact, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The regulations at 5 CFR 1320.12(a) require BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of collecting the information on those who must respond, including through the use of automated, electronic, mechanical, or technological collection techniques or other forms of information technology.

BLM plans to seek from the Office of Management and Budget extension of approval for the information collection requirements in 43 CFR Parts 3500 through 3590, which cover the leasing of solid minerals other than coal and oil shale and operations on those leases. These regulations implement the statutory authority governing leasing activities on Federal lands found in the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

The implementing regulations outline procedures for members of the public to submit applications, offers, statements, petitions, and various forms. The information required in the applications, statements and petitions is needed by BLM to determine applicant qualifications to hold a lease to obtain a benefit under the terms of the MLA, its subsequent amendments, related statutes, and the regulations. Information collection requirements are based on the statutory requirements concerning the qualifications and eligibility to hold title to or interest in Federal mineral leases and on the regulatory requirements relating to the identification, location and quality of minerals under application and identification of proposed operational activities. The affected public consists of all present and prospective holders of Federal solid mineral leases other than coal or oil shale, prospecting permits, use permits, and exploration licenses.

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS

Type of information collection	Number of responses	Hours per response	Total hours
Prospecting Permit	25	1	25
Exploration Plan for Prospecting Permit	20	80	1,600
Prospecting Permit Extension	5	1	5
Preference Right Lease	2	100	200
Competitive Lease Bid	5	40	200
Fringe Acreage Lease or Lease Modification	5	40	200
Assignment or Sublease	40	2	80
Lease Renewals or Adjustments	15	1	15
Use Permit	1	1	1
Exploration License	1	3	3
Exploration Plan for Exploration License	1	80	80
Development Contract	1	1	1
Bond	150	4	600
Mine Plan	5	150	750
Total	276	.....	3,760

Based on its experience administering the leasing program, BLM estimates that it will take an average of about 14 hours per response to complete the applications, petitions, offers and statements required. The applicants will have access to records, plats and maps necessary for providing legal land descriptions. The type of information necessary is outlined in the regulations and is already maintained by the respondents for their own record keeping purposes and needs only to be compiled in a reasonable format. The estimate also includes the time required for assembling the information, as well as the time of clerical personnel, if needed.

BLM estimates that approximately 276 filings will be made annually for a total of 3,760 reporting hours. Respondents vary from individuals to small businesses and major corporations. Any interested member of the public may request and obtain, without charge, copies of any of forms listed in this notice by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

All responses to this notice will be summarized and included in the request for Office of Management and Budget

approval. All comments will become part of the public record.

Dated: January 4, 2000.

Carole Smith,

Bureau of Land Management Information Collection Clearance Officer.

[FR Doc. 00–1740 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–00–1020–PA]

Montana; Scratchgravel Hills Area Recreation Management Restrictions

AGENCY: Bureau of Land Management, Interior.

ACTION: Updating Scratchgravel Hills Area Recreation Management Restrictions.

SUMMARY: Under authority of 43 CFR 8364.1 and as a result of the approval of the Scratchgravel Hills Cooperative Agreement on July 11, 1985, the following restrictions for the use of the Scratchgravel Hills, adjacent to Helena, Montana, became effective August 15, 1985:

1. The use, possession afield, or discharge of all firearms is prohibited year-round in the Scratchgravel Hills, except during such big game seasons as may be established by the Montana Department of Fish, Wildlife, and Parks.

2. The possession and use of fireworks is prohibited year-round.

To comply with requests from the Helena Interagency Fire Dispatch Center, Lewis and Clark County Sheriff Department, local fire districts and Scratchgravel Hills residents, this notice adds the following restriction:

3. The building, maintaining, attending or using a campfire, charcoal fire, cooking fire or warming fire is prohibited year-round.

Principal Meridian, Montana

These regulations apply to public lands in:
T. 11 N., R. 4 W.,
Secs. 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 33, 34, 35, and 36.
T. 10 N., R. 4 W.,
Secs. 1, 2, 3, 4, and 5.

The purpose of these restrictions is to minimize hazards to visitors and surrounding residences, and to minimize the possibility of wildfire. The public lands within the designated area will remain open to other resource and recreation uses unless otherwise restricted.

Penalties: As prescribed under the Federal Land Policy and Management, 43 USC Section 1733 (a). Violation is punishable by fines and/or imprisonment under 43 CFR 8360.0–7.

EFFECTIVE DATE: These management restrictions will go into effect upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Steve Hartmann, Acting Field Manager, P.O. Box 3388, Butte, Montana 59702, 406–494–5059.

Dated: January 12, 2000.

Steve Hartmann.

Acting Field Manager.

[FR Doc. 00–1674 Filed 1–24–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in Civil Action No. 99–2673–Civ–T–24B was lodged with the United States District Court for the Middle District of Florida on November 23, 1999.

In this action the United States sought injunctive relief and recovery of response costs under Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Stauffer Chemical Superfund Site in Tarpon Springs, Florida ("the Site").

Under a proposed Consent Decree, Atkemix Thirty-Seven, Inc., the present owner and operator of the Site, and Rhone-Poulenc Ag Company, Inc., the former owner and operator of the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's remaining past response costs, and pay future response costs, in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will extend the public comment period for an additional thirty (30) days and will receive comments until February 22, 2000 relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atkemix Thirty-Seven, Inc., and Rhone-Poulenc Ag. Company, Inc.*, (M.D.F1.), DOJ #90–11–2–1227/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa Florida 33602; the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611, (202) 514–1547. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of 25 cents per page for reproduction costs, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 1676 Filed 1–24–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 17, 1999 a proposed Consent Decree (the "Consent Decree") in *United States* v. *Intalco Aluminum Corporation* ("Intalco"), Civil Action No. CS–99–0324 was lodged with the United States District Court for the Eastern District of Washington.

In this action the United States sought to recover the United States Department of Agriculture Forest Service's ("Forest Service") past costs incurred in connection with past response actions at the Holden Mine Site (the "Site"), located in the Wenatchee National Forest in Chelan County, Washington. Throughout the history of mining operations at Holden Mine, large quantities of mine tailings were deposited in and around the Site and caused releases of hazardous substances. In 1989 and 1990 the Forest Service performed a variety of actions costing approximately $6 million to stabilize the tailings and prevent further environmental degradation. Under the Consent Decree, Intalco will reimburse the Forest Service $3.1 million for those past costs. Under an Administrative Order on Consent entered into between the Forest Service, Intalco, the Environmental Protection Agency and the State of Washington, Department of Ecology, Intalco is performing a Remedial Action and Feasibility Study for the Site, which is expected to result in selection of a remedy to address hazardous substances at the Site. Under

the Consent Decree, Intalco agrees to perform or fund the remedy, subject to future orders or decrees. Additionally, Intalco agrees not to sue the United States for any response costs associated with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Intalco Aluminum*, D.J. Ref. 90–11–2–1135.

The Consent Decree may be examined at the Office of the United States Attorney, Suite 300, United States Courthouse, 920 West Riverside, Spokane, Washington, 99210; at the Office of the Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801; at the Office of the Holden Village, Holden, Washington; and a copy may be obtained from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $26.75 payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1677 Filed 1–24–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on January 6, 2000, a proposed consent decree in *United States* v. *Jupiter Oil Corp., et al.*, C.A. No. 98–CV–72684–DT (E.D. Mich.), was lodged with the United States District Court for the Eastern District of Michigan. The proposed consent decree would resolve pending claims of the United States against defendants, Jupiter Oil Corporation and Blake Energy Company, Inc., in the above-referenced action.

The Amended Complaint in the above-referenced civil action seeks injunctive relief and civil penalties for violations of the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, at an underground injection well known as the Smith E 01, located in St. Clair County, Michigan. The complaint alleges that defendants failed to comply with various reporting requirements and mechanical integrity demonstration requirements set forth in applicable regulations, an undergound injection control ("UIC") permit, and in Final Administrative Orders issued by the United States Environmental Protection Agency.

The proposed consent decree would require defendants to achieve and maintain compliance with the Safe Drinking Water Act, applicable regulations thereunder, and terms of the UIC permit for the Smith E 01 Well. In addition, the proposed consent decree would require defendants to pay a civil penalty of $50,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Jupiter Oil Corp., et al.*, C.A. No. 98–CV–72684–DT (E.D. Mich.), and the Department of Justice Reference No. 90–5–1–1–4482.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 231 West Fort Street, Suite 2001, Detroit, MI 48226; and at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611. In requesting a copy, please refer to DJ #90–5–1–1–4482, and enclose a check in the amount of $3.50 (14 pages at 25 cents per page for reproduction costs). Makes checks payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1678 Filed 1–24–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Stipulation and Settlement Agreement Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed stipulation and settlement agreement in *United States, et al.* v. *Production Plated Plastics, Inc. et al.*, Civil No. K87–CV–138 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on January 3, 2000.

The United States brought its action pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. 6928(a) and (g). The Complaint alleged that at relevant times the Defendants were the owners and/or operators of a manufacturing facility in Richland, Michigan (Richland Facility), where Defendants stored and disposed of hazardous waste in violation of RCRA. The Complaint sought: (1) The imposition of injunctive orders requiring Defendants to cease the improper storage and disposal of hazardous waste, and to prepare and implement closure plans for the Richland Facility's hazardous waste regulated units; and (2) the assessment of civil penalties for the alleged violations of RCRA.

The United States and its co-plaintiff, the State of Michigan, prevailed against Ladney and two other defendants in a 1992 train in this case. The proposed stipulation and settlement agreement would resolve Ladney's liability to the United States' claims against Ladney under RCRA. Ladney will be required to pay the United States $100,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation and settlement agreement. In accordance with RCRA Section 7003(d), 42 U.S.C. 6973(d), commentors also may request an opportunity for a public meeting in the affected areas to discuss the proposed covenants not to sue under RCRA Section 7003, 42 U.S.C. 6973.

All comments, and/or requests for a public meeting under RCRA Section 7003(d) should refer to *United States et al.* v. *Production Plated Plastics, et al.*, Civil No. K87–CV–138 (W.D. Mich.) and DOJ Reference No. 90–7–1–377A.

The proposed stipulation and settlement agreement may be examined at: (1) The Office of the United States Attorney for the Western District of Michigan, 330 Ionia, NW., Grand Rapids, Michigan 49503, (616) 456–2404; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Stuart Hersh (312)–886–6235).

A copy of the proposed stipulation and settlement agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In

requesting a copy, please refer to the reference case and DOJ Reference Number and enclose a check in the amount of $3.50 for the document (14 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1679 Filed 1–24–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Motion to Modify Final Judgment and Memorandum in Support of Motion to Modify; United States v. Baroid Corp., et al.

Notice is hereby given that Smith International, Inc. ("Smith") has filed with the United States District Court for the District of Columbia a motion to modify the judgment in *United States* v. *Baroid Corporation, et al.*, Civil Action No. 93–2621. The Department has consented to modification of the Judgment but has reserved the right to withdraw its consent if it determines that, based upon comments filed or other information, consent to the modification is not in the public interest.

This case was filed on December 23, 1993, and alleged that the merger of Dresser Industries, Inc. ("Dresser") and Baroid Corporation ("Baroid") might substantially lessen competition in the United States in the manufacture and sale of two oil field service products, including drilling fluids, in violation of Section 7 of the Clayton Act. The Final Judgment was entered on April 12, 1994 and modified on September 19, 1996.

Under the Final Judgment, Dresser was required to divest either its 64 percent partnership interest in M–I Drilling Fluids Company or Baroid's wholly owned subsidiary, Baroid Drilling Fluids, Inc. Pursuant to the judgment, Dresser divested its partnership interest in M–I to Smith.

Paragraph IV.F. of the Final Judgment states that the purchaser of the divested drilling fluids business may not combine that business with any one of three named companies. One of those companies is Schlumberger Ltd. ("Schlumberger"). In July 1999, Smith formed a drilling fluids joint venture with Schlumberger, and the United States petitioned the United States District Court for the District of Columbia to find Smith and Schlumberger in civil and criminal contempt for violating the Final Judgment by forming the joint venture. In December 1999, the District Court found Smith and Schlumberger guilty of criminal contempt and imposed a $750,000 fine against each company. Smith and Schlumberger settled the civil contempt case, agreeing to disgorge a total of $13.1 million in joint venture profits.

Smith's motion proposes modifying the Final Judgment to remove Schlumberger from Paragraph IV.F. The United States has consented, subject to the comment period, to the modification as being in the public interest because of Schlumberger's failure to achieve more than 2 percent of the U.S. drilling fluid market in the six years since the Final Judgment was filed.

Copies of the Complaint and Judgment, the pleadings related to the 1996 modification, Smith's motion and supporting memorandum, and the United States' consent are available for inspection in Room 215, Antitrust Division, U.S. Department of Justice, 325 7th St., NW., Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Comments to the Department of Justice and to the Court regarding the proposed modification of the Final Judgment are invited from members of the public. They should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, Suite 500, 325 7th Street, NW., Washington, DC 20530 (202–307–6351.) Such comments must be received within 30 days.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

[FR Doc. 00–1680 Filed 1–24–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0104(2000)]

Inorganic Arsenic; Extension of the Office of Management and Budget (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction in, and extension of, the information collection requirements contained in the Inorganic arsenic standard (29 CFR 1910.1018).

REQUEST FOR COMMENT: The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information collection and transmission techniques.

DATES: Submit written comments on or before March 27, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0104(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Nancy Dorris, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the Inorganic arsenic standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Nancy Dorris or Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the Inorganic arsenic standard, contact OSHA on the Internet at *http://www.osha-slc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to

provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). In this regard, the information collection requirements in the Inorganic arsenic standard provide protection for employees from the adverse health effects associated with exposure to inorganic arsenic. The Inorganic arsenic standard requires employers to: Monitor employees' exposure to inorganic arsenic; monitor employee health; develop and maintain employee exposure-monitoring and medical records; notify local OSHA area office in writing of regulated areas, and changes to these areas; and provide employees with information about their exposures and health effects of exposure to inorganic arsenic.

II. Proposed Actions

OSHA proposes to extend the OMB approval for the collection of information (paperwork) contained in the Inorganic arsenic standard (29 CFR 1910.1018). OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Inorganic arsenic standard (29 CFR 1910.1018).

Type of Review: Extension of currently approved information collection requirements.

Title: Inorganic arsenic standard.

OMB Number: 1218–0104.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 42.

Frequency: On occasion.

Total Responses: 58,763.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 1.67 hours to complete a medical examination.

Estimated Total Burden Hours: 7,381 hours.

Estimated Cost (Operation and Maintenance): $1,142,802.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, D.C. on January 19, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–1722 Filed 1–24–00 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0128(2000)]

Coke Oven Emissions Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction in, and extension of, the information collection requirements contained in the Coke Oven Standard (29 CFR 1910.1029).

REQUEST FOR COMMENT: The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information collection and transmission techniques.

DATES: Submit written comments on or before March 27, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0128(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection request (ICR) supporting the need for the information collection requirements in the Coke oven emissions standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the Coke Oven Emissions Standard, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information collection requirements in the Coke Oven Emissions Standard provide protection for employees from the adverse health effects associated with exposure to coke oven emissions. In this regard, the Coke Oven Emissions Standard requires employers to monitor employees' exposure to coke oven emissions, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to coke oven emissions.

II. Proposed Action

OSHA proposes to extend the OMB approval for the collection of information (paperwork) contained in

the Coke Oven Emissions Standard (29 CFR 1910.1029). OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Coke Oven Emissions Standard.

Type of Review: Extension of currently-approved information collection requirements.

Title: Coke Oven Emissions Standard.

OMB Number: 1218–0128.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 14.

Frequency: On occasion.

Total Responses: 83,111.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 4 hours to complete a medical examination.

Estimated Time Burden Hours: 60,664.

Estimated Cost (Operation and Maintenance): $1,365,825.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 6–96 (62 FR 111).

Signed at Washington, D.C., on January 19, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–1723 Filed 1–24–00 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0170(2000)]

1,3-Butadiene; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction in, and extension of, the information collection requirements contained in the 1,3-Butadiene Standard (29 CFR 1910.1051).

REQUEST FOR COMMENT: The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information collection and transmission techniques.

DATES: Submit written comments on or before March 27, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0170(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 2000 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the 1,3-Butadiene Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the 1,3-Butadiene Standard, contact OSHA on the Internet at *http://www.osha-slc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information collection requirements in the 1,3-Butadiene Standard provide protection for employees from the adverse health effects associated with exposure to 1,3-Butadiene. In this regard, the 1,3-Butadiene Standard requires employers to: Monitor employees' exposure to 1,3-Butadiene; develop and maintain compliance and exposure-goal programs if employee exposures to 1,3-Butadiene are above the Standard's permissible exposure limits or action level; monitor employee health; maintain employee exposure-monitoring and medical records, and provide employees with information about their exposures and the health effects of exposure to 1,3-Butadiene.

II. Proposed Actions

OSHA proposes to extend the OMB approval for the collection of information (paperwork) contained in the 1,3-Butadiene Standard (29 CFR 1910.1051). OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the 1,3-Butadiene Standard (29 CFR 1910.1051).

Type of Review: Extension of currently approved information collection requirements.

Title: 1,3-Butadiene Standard (29 CFR 1910.1051).

OMB Number: 1218–0170.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 255.

Frequency: On occasion.

Total Responses: 492,849.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 1.5 hours for an employee to complete a medical examination.

Estimated Total Burden Hours: 2,894.

Estimated Cost (Operation and Maintenance): $83,080.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, D.C. on January 19, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–1726 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

AGENCY: The U.S. National Commission of Libraries and Information Science.

DATE, TIME, AND PLACE: Closed Meeting (Closing this meeting is taken in accordance with the exemption provided under Title 45, CFR, Part 1703.202(a)(9); February 17, 2000 from 8:30 a.m. to 10:30 a.m., Los Angeles Times Building, 145 South Spring Street, Los Angeles, CA. Discussion Topic: The National Award for Library Service. Open Meetings: February 17, 2000 from 10:45 a.m. to 5:00 p.m., Los Angeles Times Building, 145 South Spring Street, Los Angeles, CA.

MATTERS TO BE DISCUSSED:

Administrative matters
Acting Chairperson's report
Executive Director's report
Discussion, Plans for NCLIS Hearing on Scholarly Publishing in April 2000
NCLIS Program/Committee Updates
Sister Libraries, A White House Millennium Council Project
Update, The future of the National Technical Information Service
UNESCO relations
Presentation, *Los Angeles Times* Literacy Initiative (Reading by 9)
February 18, 2000 from 10:00 a.m. to 1:00 p.m., Los Angeles Public Library, 630 W. Fifth Street, Meeting Room A.

DISCUSSION TOPIC: The role of the Commission in the areas of literacy and information literacy; focus will be on activities of school, academic and public libraries as well as Federal government initiatives.

For security reasons, the *Los Angeles Times* Building requires pre-registration for attendance. To attend meeting on February 17, please notify Barbara Whiteleather (telephone: 202–606–9200; fax: 202–606–9203; e-mail: bwhiteleather@nclis.gov) no later than one week in advance of the meeting.

To request further information or to make special arrangements for persons with disabilities, contact Barbara Whiteleather (telephone: 202–606–9200; fax: 202–606–9203; e-mail: bwhiteleather@nclis.gov) no later than one week in advance of the meeting.

Dated: January 7, 2000.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 00–1793 Filed 1–21–00; 2:22 pm]

BILLING CODE 7527–$$–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[00–007]

Notice of agency report forms under OMB review

AGENCY: National Aeronautics and Space Administration (NASA)

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

DATES: All comments should be submitted on or before March 27, 2000.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA Contractor Financial Management Reports

OMB Number: 2700–0003

Type of review: Extension

Need and Uses: The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3512.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 850.

Responses Per Respondent: 12.

Annual Responses: 10,200.

Hours Per Request: 9 hrs.

Annual Burden Hours: 91,500.

Frequency of Report: quarterly/monthly.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–1669 Filed 1–24–00; 8:45 am]

BILLING CODE 7510–01–U

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also continue its deliberative meeting, which was convened at the December 1, 1999 and January 5, 2000 Commission meetings, to consider whether to implement an assessment/refund supply management program.

DATES: The meeting will begin immediately following the public hearing on technical amendments to the Over-order Price Regulation scheduled to commence at 10 a.m. on Wednesday, February 2, 2000.

ADDRESSES: The meeting will be held at The Centennial Inn, Armenia White Room, 96 Pleasant Street, Concord, New Hampshire (I–93 Exit 14).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: January 19, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–1711 Filed 1–24–00; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Consideration of Amendment Request for Sequoyah Fuels Corp., Gore, Oklahoma and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering

issuance of a license amendment (LA) to materials license SUB–1010 issued to Sequoyah Fuels Corp. (SFC), to remove license conditions controlling flammable substances near the uranium hexafluoride (UF_6) cylinders at its site near Gore, Oklahoma, per SFC request dated November 19, 1999.

On November 21, 1994, SFC requested a license amendment to remove the requirements for an emergency plan (EP) because the facility was no longer operating. License conditions to preclude a uranium uptake by members of the public from postulated fire involving UF_6 cylinders were added to the license. LA number 20 was approved on February 1, 1995.

In 1998, SFC commenced activities to wash all remaining cylinders. SFC has completed cylinder washing, thereby removing the residual UF_6, so the postulated fire-related event could not result in a uranium uptake by a member of the public. Therefore, SFC wishes to remove the license conditions. An NRC administrative review, documented in a letter to SFC dated December 22, 1999, found the request for a LA acceptable to begin a technical review.

If the NRC approves the LA, the approval will be documented in a LA to NRC's license SUB–1010. However, before approving the proposed LA, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to: Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; between 7:45 am and 4:15 pm Federal workdays; or

2. By mail, telegram, or facsimile addressed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Sequoyah Fuels Corporation, PO Box 610, Gore, Oklahoma, Attention: Mr. John Ellis, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h):

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION: The application for the LA and supporting documentation are available for inspection on NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. Questions with respect to this action should be referred to Mr. James Shepherd, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6712. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 18th day of January 2000.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–1731 Filed 1–24–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 24, 31, February 7 and 14, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 24

Tuesday, January 25

9:00 a.m. Briefing on NRC Staff's Response to DOE's Draft Environmental Impact Statement (EIS) for a Proposed HLW Geologic Repository (Public Meeting).

Wednesday, January 26

9:25 a.m. Affirmation Session (Public Meeting) (if needed).

9:30 a.m. Briefing on Status of NMSS Programs, Performance, and Plans (Public Meeting) (Contact: Claudia Seelig, 301–415–7243).

Week of January 31—Tentative

There are no meetings scheduled for the Week of January 31.

Week of February 7—Tentative

Wednesday, February 9

10:00 a.m. Briefing on Status of Research Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289).

Thursday, February 10

9:25 a.m. Affirmation Session (Public Meeting) (if needed).

9:30 a.m. Briefing on Status of CFO Programs, Performance, and Plans (Public Meeting).

Friday, February 11

9:30 a.m. Briefing on Status of Spent Fuel Projects (Public Meeting).

Week of February 14—Tentative

There are no meetings scheduled for the Week of February 14.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on January 10, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules

that "Discussion of Management Issues (Closed—Ex. 2)" be held on January 10, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 20, 2000.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 00–1792 Filed 1–21–00; 12:53 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Staff Meetings Open to the Public: Proposed Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to revise Section D of its current policy statement that NRC staff follows in opening to public observation meetings between the NRC staff and one or more outside persons. The NRC proposes to announce via the Internet from the NRC Web site at *http://www.nrc.gov*, its staff meetings that will be open to the public. The NRC proposes to discontinue announcing public staff meetings, meeting changes, and cancellations through its public meeting notice system provided by NRC's electronic bulletin board and a telephone recording, and through the Weekly Compilation of Press Releases and posting in the NRC's Public Document Room (PDR). The policy would also be amended to state that staff meetings will be announced as soon as the staff is certain that a meeting will be held and firm arrangements have been made, but generally no fewer than 10 calendar days before the meeting. Also, the policy would be amended to eliminate the current practice of only posting meetings scheduled within 60 days.

The Commission will not finalize revisions to the Policy Statement or discontinue its current methods of informing the public of open staff meetings until public comments have been received and evaluated as to whether changes in the proposed course are warranted.

DATES: Submit comments by March 27, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to guarantee its consideration of comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., on Federal workdays.

Examine comments received at the NRC Public Document Room, 2120 L Street NW. (Lower level), Washington, D.C.

A copy of NRC's current Policy Statement on Staff Meetings Open to the Public and this proposed revision to the policy statement are available at the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. This site also enables you to submit comments on the proposed policy statement. Comments may be uploaded as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, 301–415–5905; email: cag@nrc.gov.

FOR FURTHER INFORMATION CONTACT: John Craig, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–8703: email: *jwc1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC first published its policy on open staff meetings in the **Federal Register** on June 28, 1978 (43 FR 28058). Subsequently, the NRC published a new Policy Statement on Staff Meetings Open to the Public in the **Federal Register** on September 20, 1994 (59 FR 48340). Section D of that policy statement implemented an electronic bulletin board and a telephone recording as the primary mechanisms for announcing staff meetings open to the public.

II. Proposed Change to the Policy Statement

The proposed change would revise Section D to state that staff meetings open to the public will be announced via the Internet from the NRC Web site, (*http://www.nrc.gov*). In 1997, the NRC began to announce staff meetings open to the public on the NRC Web site, in addition to the two mechanisms indicated in Section D. The public is provided access to the NRC Web site in the NRC Public Document Room, and may access it from personal computers as well. The NRC staff studied the use of the Electronic Bulletin Board and telephone recordings of the Public Meeting Notice System and compared this use with the same information provided via the Internet. The Bulletin Board averaged 33 calls per month and the telephone recording averaged 49 calls per month, as compared to 1,465 views per month of this information on the Internet. It has become apparent that with the increasing use of the Internet to obtain information, the NRC Web site is the primary mechanism by which the public accesses announcements of NRC staff meetings open to the public. Additionally, the study revealed that the public does not rely on the telephone recording to determine if meetings have been changed or canceled. The public usually contacts the NRC staff person listed in each meeting announcement, or accesses the NRC Web site to determine if there is a change in the schedule or location of a meeting. Consequently, the Commission has determined that the Electronic Bulletin Board and the telephone recording are not used sufficiently to merit continuation. Furthermore, the NRC does not believe that eliminating the telephone recording will adversely affect the ability of the public to find out whether meetings have been changed or canceled. The NRC plans to retain the telephone number, with a new recording that refers the public to the NRC Web site and the toll-free telephone number of the PDR. For people who cannot access the NRC Web site, assistance on scheduled NRC meetings will be available through NRC staff at the PDR, by calling toll-free 1–800–397–4209.

The NRC does not distribute a summary compilation of meeting notices in the Weekly Compilation of Press Releases; therefore, that provision in Section D has been eliminated. Also, because the public can gain access to the NRC Web site using a computer at the PDR, the proposed revision no longer requires that paper copies of meeting notices be posted at the PDR. Specific comments regarding the discontinuation of announcing staff public meetings through the electronic bulletin board and telephone recording and through the weekly compilation of

press releases and posting in the NRC's PDR are requested.

This policy statement would also be revised to state that staff meetings will be noticed as soon as the NRC staff is certain that a meeting will be held and that firm arrangements have been made, but generally no fewer than 10 calendar days before the meeting. Under the current policy, the NRC staff is instructed to provide a notice to the public meeting notice coordinator at least 10 days in advance of the date of the meeting, with certain exceptions. The goal of that practice was to ensure that the subsequent administrative processing of the notice for public notification would result in the public having at least a one-week notice of the open staff meeting. However, the current NRC guidance for this policy, Management Directive 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff", states that "[m]eetings open to the public should normally be *announced to the public* [emphasis added] and to the Commission at least 10 calendar days in advance of the date of the meeting. * * * The change to the policy would specify that the public can expect to receive notification of a staff meeting open to the public via the NRC Web site 10 calendar days in advance. The change will bring the policy statement into line with the Management Directive.

Experience has also shown that sometimes a staff meeting that is going to be open to the public needs to be scheduled quickly, and thus time is not available for the public to receive notice at least 10 calendar days in advance of the meeting. In these cases where an exception to the 10 calendar day policy must be made, the proposed change states that the staff will try to give notice as promptly as possible.

The current policy also provides for such exceptions, but the proposed policy would tie the exceptions to the NRC's strategic plan performance goals. The current draft of the strategic plan includes performance goals to: (1) Maintain safety; (2) increase public confidence; (3) reduce unnecessary regulatory burden; and (4) make NRC activities and decisions more effective, efficient and realistic. When the final version of the strategic plan is available, the Commission will consider whether the performance goals in the plan necessitate additional changes to NRC's policy of opening staff meetings to the public.

With respect to the third and fourth draft performance goals noted above, the Commission anticipates that they would be used sparingly and only when circumstances would not reasonably permit the 10 calendar-day notice. Comment is explicitly requested to identify circumstances in which these performance goals may justify an exception to the 10 calendar-day notice period.

To explain how these performance goals would be used to evaluate whether exceptions should be made to the 10 calendar-day notice period, the following examples are given. To maintain safety, it may be necessary to hold a meeting called on short notice to resolve a licensee safety issue. To increase public confidence, the NRC would hold a meeting as soon as is practical for a critical licensee safety issue requiring immediate attention even if the meeting notice period was less than 10 calendar days. To reduce unnecessary regulatory burden, it may be necessary for the staff to interact with an applicant for a license amendment frequently and on short notice in order to meet aggressive licensing schedules for high-priority reviews. The meeting notice would indicate that meetings will be held on the application for the stated period of time and that specifics on individual meetings will be provided with as much notice as possible. As shown in the three examples, the staff may have to provide less than the 10 calendar-day notice to make activities and decisions more effective, efficient and realistic for aggressive licensing schedules and unforeseen circumstances that require timely response.

Also, the policy is revised to eliminate the current practice of only posting meetings scheduled within 60 days. This restriction was placed in the current policy because of limited computer storage capacity available when the Public Meeting Notice System was designed in the early 1990s.

The Commission is requesting comments on the proposed discontinuation of providing notice of staff meetings open to the public through the electronic bulletin board and telephone recording as well as through the Weekly Compilation of Press Releases and posting in the NRC's Public Document Room.

The Commission will not finalize revisions to the Policy Statement or discontinue its current methods of informing the public of open staff meetings until any public comments have been evaluated as to whether changes in the proposed course are warranted.

Accordingly, the Commission is proposing to revise Section D of the Commission's Policy Statement on Staff Meetings Open to the Public, to read as follows:

Notice to the Public

1. Meeting announcement information is to be provided to the public as soon as the staff is certain that a meeting will be held and firm date, time, and facility arrangements have been made, but generally no fewer than 10 calendar days before the meeting. Where a meeting must be scheduled but cannot be announced 10 calendar days in advance, the staff will provide as much advance notice as possible. Public notice of meetings will be made via the Internet from the NRC Web site at *http://www.nrc.gov*. Meeting notices, changes to scheduled meetings, and cancellations will be updated on the NRC Web site each Federal work day, as appropriate. Information regarding public meetings can be obtained from the Public Document Room by calling toll-free at 1–800–397–4209.

2. Meeting announcements will include the date, time, and location of the meeting, as well as its purpose, the NRC office(s) and outside participant(s) in attendance, and the name and telephone number of the NRC contact for the meeting.

Dated at Rockville, MD, this 19th day of January, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–1730 Filed 1–24–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24255, 812–11774]

Liberty All-Star Equity Fund, et al.; Notice of Application

January 19, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

APPLICANTS: Liberty All-Star Equity Fund ("Equity Fund"), Liberty All-Star Growth Fund, Inc. ("Growth Fund"), Liberty Funds Trust IX ("Liberty Trust") on behalf of its sole series, Liberty All-Star Growth & Income Fund ("Growth &

Income Fund"), Liberty Variable Investment Trust ("LVIT") on behalf of one of its services, Liberty All-Star Equity Fund, Variable Series ("Equity Fund, VS," collectively with Equity Fund, Growth Fund and Growth & Income Fund, the "Funds"), Liberty Asset Management Company ("LAMCO"), J.P. Morgan Investment Management Inc. ("J.P. Morgan"), J.P. Morgan Securities Inc. ("Morgan Securities"), and William Blair & Company, L.L.C. ("William Blair").

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in offerings underwritten by a principal underwriter affiliated with one of the investment advisers. The transactions would be between a broker-dealer or principal underwriter and a portion of the investment company's portfolio not advised by the adviser affiliated with the broker-dealer or principal underwriter. Applicants also request relief to permit a portion of the portfolio to purchase securities in offerings underwritten by a principal underwriter affiliated with the investment adviser to that portion if the purchase is in accordance with all of the conditions of rule 10f–3 under the Act, except for the provision that would require aggregation of certain purchases.

FILING DATES: The application was filed on September 16, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 14, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, D.C. 20549–0609. Applicants: Equity Fund, Growth Fund, Liberty Trust and LAMCO, 600 Atlantic Avenue, Boston, MA 02210–2214; LVIT, One Financial Center, Boston, MA 02111; J.P. Morgan, 522 Fifth Avenue, New York, NY 10036; Morgan Securities, 60 Wall Street, New York, NY 10260; and William Blair, 222 W. Adams Street, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Anu Dubey, Senior Counsel, at (202) 942–0687, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Equity Fund, a Massachusetts business trust, and Growth Fund, a Maryland corporation, are registered under the Act as closed-end management investment companies. Liberty Trust and LVIT are Massachusetts business trusts registered under the Act as open-end management investment companies.

2. LAMCO is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and is responsible for the general management and investment of each Fund's assets. LAMCO also provides administrative services to each Fund, some of which are delegated to LAMCO's affiliate, Colonial Management Associates, Inc. The assets of each Fund are allocated by LAMCO among three to five subadvisers ("Subadvisers"). Each Subadviser has discretion to purchase and sell securities for a discrete portion of a Fund portfolio's assets in accordance with the Fund's objectives, policies, and restrictions. Each Subadviser is paid a fee by LAMCO out of the management fee received by LAMCO from the Funds. None of the Subadvisers (except by virtue of serving as Subadviser to a discrete portion of a Fund) has any affiliation with the Funds or LAMCO or with any person that serves as promoter or principal underwriter to the Funds.

3. J.P. Morgan, a subsidiary of J.P. Morgan & Co. Incorporated ("JPM Incorporated"), a bank holding company, is an investment adviser registered under the Advisers Act that serves as Subadviser to Growth Fund, Equity Fund, and Equity Fund, VS. Morgan Securities is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and, as a wholly-owned subsidiary of JPM Incorporated, is under common control with J.P. Morgan. William Blair is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Exchange Act that serves as Subadviser to Growth Fund through its investment management services department. William Blair conducts brokerage activities through its institutional sales and trading department, an operating division separate from its investment management services department.

4. The requested relief would permit: (a) William Blair, Morgan Securities, or any broker-dealer registered under the Exchange Act that itself serves as Subadviser (either directly or through a separate operating division) or is an affiliated person (an "Affiliated Broker-Dealer") of J.P. Morgan, William Blair, or another investment adviser serving as Subadviser (an "Affiliated Subadviser") to one or more Multi-Managed Funds (as defined below) to engage in principal transactions with a portion of the Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (an "Unaffiliated Subadviser") (each such portion, an "Unaffiliated Portion"); (b) an Affiliated Broker Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to utilize such brokerage services, without complying with rule 17e–1(b) and (c) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser (an "Affiliated Underwriter"); and (d) a portion of the Fund advised by an Affiliated Subadviser ("Affiliated Portion") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

5. Applicants request that the exemptive relief apply to the Funds or any existing or future registered management and investment company (a) advised by LAMCO or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with LAMCO and (b) at least one other investment adviser registered under the Advisers Act or exempt from such registration (the Funds and such investment companies, each a "Multi-Managed

Fund"). The relief also would apply as described in the application to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter. Any entity that currently intends to rely on the order is named as an applicant. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales and purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(e) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus an affiliated person of an affiliated person ("second-tier affiliate") of a Fund, including the Unaffiliated Portion. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser to a discrete portion of a Fund) is an affiliated person or a second-tier affiliate of LAMCO, the unaffiliated Subadviser making the investment decision, or any officer, director or employee of the Multi-Managed Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that LAMCO's power to dismiss Subadvisers or to change the portion of a Fund allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Fund.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Fund. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that LAMCO does not dictate brokerage allocation or investment decisions to any Fund advised by a Subadviser, or have the contractual right to do so. Applicants contend that, in managing a discrete portion of a Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Fund involved, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers

1. Section 17(e)(2) of the Act prohibits an affiliate or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of the Fund) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e–1 (b)

and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser to a discrete portion of a Fund) is an affiliated person or a second-tier affiliate of LAMCO, the Unaffiliated Subadviser to the Unaffiliated Portion of the Fund, or any officer, director or employee of the Multi-Managed Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of such is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a distinct portion of a Fund, is considered an investment adviser to the entire Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Fund) is an affiliated person or a second-tier affiliate of LAMCO, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Fund, or any officer, director, or employee of the Multi-Managed Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in this application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Fund) will be an affiliated person or a second-tier affiliate of LAMCO, any Unaffiliated Subadviser or any officer, director or employee of a Multi-Managed Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion of a Fund during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion of the Fund with purchases by an Unaffiliated Portion.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1734 Filed 1–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 24, 2000.

A closed meeting will be held on Tuesday, January 25, 2000 at 11:00 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commission, the Secretary to the

Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Tuesday, January 25, 2000, will be:

A litigation matter;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 20, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–1806 Filed 1–21–00; 2:40 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42344; File No. SR–NASD–99–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., To Modify the NASD's Small Order Execution System and SelectNet Service

January 14, 2000.

I. Introduction

On February 5, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to amend the rules governing Nasdaq's Small Order Execution System ("SOES") and SelectNet Service ("SelectNet"). Notice of the proposed rule change was published for comment in the **Federal Register** on April 22, 1999.[3] The Commission received 79 comment letters regarding the proposal.[4] On August 24, 1999, December 8, 1999, and January 4, 2000, Nasdaq filed Amendment Nos. 1, 2, and 3 to the proposal.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Background

The NASD implemented SOES in 1984 to provide for the automatic execution of small retail agency orders at the best bid or offer (the "inside market").[6] Orders entered into SOES generally are routed automatically on a rotating basis to the SOES market makers displaying the best bid or ask price. SOES also allows market participants to "preference" (*i.e.*, direct) an order to a designated market maker.[7] SOES currently provides for "tiered" maximum order sizes in Nasdaq National Market ("NNM") securities of 1000, 500, or 200 shares, depending on the trading characteristics of a security.[8] The maximum SOES order size for Nasdaq SmallCap securities is 500 shares.[9] SOES participation is mandatory for all market makers in NNM securities[10] and voluntary for market makers in Nasdaq SmallCap securities. SOES reports trades for public dissemination and sends both sides of a transaction to the applicable clearing corporations designated for clearance and settlement.

SelectNet is an electronic, screen-based order routing system that allows market makers and order entry firms (referred to collectively as "participants") to negotiate securities transactions in Nasdaq securities through computer communications rather than by telephone.[11] Unlike SOES, SelectNet does not provide automatic executions. SelectNet allows participants to negotiate for a larger size or a price superior to the current inside quote. In addition, SelectNet participants may indicate that an order or counter-offer will be in effect from between three and 99 minutes, specify a day order, and indicate whether price or size are negotiable or whether a specific minimum quantity is acceptable. Participants may accept, price improve, counter, or decline a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844. In addition to providing notice of the current proposal, Securities Exchange Act Release No. 41296 also re-opened the comment period for File No. SR–NASD–98–17, regarding Nasdaq's proposal to establish an integrated order delivery and execution system ("IODES Proposal"). The IODES Proposal was published for comment in the **Federal Register** on March 12, 1998. *See* Securities Exchange Act Release No. 39718 (March 4, 1998), 63 FR 12124. Subsequently, the Commission extended the comment period for the IODES Proposal through May 8, 1998. *See* Securities Exchange Act Release No. 39794 (March 25, 1998), 63 FR 15471 (March 31, 1998).

[4] A list of the commenters appears in Appendix A.

[5] *See* letter from Robert E. Aber, General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission, dated August 24, 1999 ("Amendment No. 1"); letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 1999 ("Amendment No. 2"); and letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated January 4, 2000 ("Amendment No. 3"). Amendment Nos. 1 and 2 responded to concerns raised by the commenters. Specifically, Amendment No. 1 discussed electronic communication network ("ECN") participation in the proposed Nasdaq National Market System ("NNMS"); ECN reserve size interaction with NNMS; unlisted trading privilege ("UTP") exchange participation in NNMS; the elimination of SelectNet preferencing; NNMS fees; order entry firm participation in NNMS; the timeframe for implementing NNMS; and the continuation of SelectNet. Amendment No. 2 discussed the five-second interval delay between automatic executions; the elimination of SelectNet liability orders; SelectNet preferencing away from the inside market; technology concerns; the potential for manipulative order entry strategies; the reserve size feature; the maximum order size for NNMS; and the elimination of the No Decrementation functionality. Amendment No. 3 revised NASD Rule 4730 (to be renumbered as NASD Rule 4753) to provide that the delay between SOES executions during locked and crossed markets for market makers in SmallCap securities will remain at five seconds.

[6] *See* Securities Exchange Act Release Nos. 21433 (October 29, 1984), 49 FR 44042 (November 1, 1984) (File No. SR–NASD–84–26) (notice of proposal to implement SOES); and 21743 (February 12, 1985), 50 FR 7432 (February 22, 1985) (order approving File No. SR–NASD–84–26).

[7] *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988) (order approving File No. SR–NASD–88–1) ("1988 Order").

[8] *See* 1988 Order and NASD Rule 4710(g).

[9] *See* NASD Rule 4710(g).

[10] *See* 1988 Order and NASD Rule 4611(f).

[11] The Commission approved SelectNet, which originally was referred to as the Order Confirmation Transaction Service, on a permanent basis in 1988. *See* Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988) (order approving File No. SR–NASD–88–11). *See also* Securities Exchange Act Release Nos. 28636 (November 21, 1990), 55 FR 49732 (November 30, 1990) (order approving File No. SR–NASD–90–51) (implementing enhancements to SelectNet); and 30581 (April 14, 1992), 57 FR 14596 (April 21, 1992) (order approving File No. SR–NASD–91–51) (expanding SelectNet's hours of operation to include a pre-opening session from 9:00 a.m. to 9:30 a.m. Eastern Time and an after-hours session from 4:00 p.m. until 5:15 p.m. Eastern Time).

SelectNet order. If a participant elects to counter an offer, SelectNet allows the participants to negotiate by exchanging counter-offers until they reach an agreement. After the participants reach an agreement, the execution is "locked in," reported to the tape for public dissemination, and sent to the clearing organization for comparison and settlement.

SelectNet currently allows participants to broadcast orders to all market participants or to preference an order to a designated market maker. Although SelectNet is an order delivery service rather than an order execution service, Nasdaq believes that a preferenced SelectNet order presented to a market maker at its displayed quote generally gives rise to liability under Exchange Act Rule 11Ac1–1 ("Firm Quote Rule") for the market maker to execute the transaction at that price.[12] As discussed more fully below, Nasdaq proposes to eliminate most SelectNet liability orders.

Nasdaq has designated SelectNet as the link to the electronic communications networks ("ECNs") pursuant to the Commission's Order Handling Rules.[13] SelectNet also allows exchanges that trade Nasdaq securities on an unlisted trading privilege ("UTP") basis to access Nasdaq market makers.[14] As discussed more fully below, SelectNet will continue to perform both of these functions under the current proposal.

Nasdaq maintains that although SOES and SelectNet provide valuable services to market participants, the operation of two separate and independent execution systems has resulted in the long-standing problem of potential dual liability for market makers. According to Nasdaq, multiple access points to a market maker's quote, through SOES and SelectNet as well as a firm's internal order delivery and telephone facilities, can routinely subject market makers to unintended double liability for orders that reach a market maker's quote at or near the same time through different systems. Nasdaq asserts that the potential for unexpected and increased order liability reduces market maker incentives to commit capital and display larger quote sizes, thereby depriving the Nasdaq market of valuable liquidity.

Nasdaq proposes to implement a new trading environment to address these problems. Specifically, Nasdaq proposes to modify SOES and SelectNet to (1) Re-establish SelectNet as a non-liability order delivery and execution system for NNM securities; and (2) Recast SOES as it is used to trade NNM securities.[15] The recast SOES will be called the Nasdaq National Market Execution System ("NNMS"). Nasdaq believes that the proposed changes will reduce instances of dual liability in the most active Nasdaq securities while improving the speed of executions and increasing the access of all market participants to the full depth of a security's trading interest.

B. NNMS

As proposed, NNMS would: (1) Increase the maximum order size for NNM securities that are eligible for automatic execution to 9,900 shares;[16] (2) Allow market makers and order entry firms to enter proprietary orders into NNMS and obtain automatic executions for proprietary and agency orders in NNM securities; (3) Reduce the current 17-second delay between executions against the same market maker to five seconds;[17] (4) Enable NNM orders to interact automatically with a market maker's displayed size and reserve size, including, if approved by the Commission in a separate pending proposal, a market maker's agency quotes,[18] after yielding priority to displayed quotations at the same price; (5) Eliminate the No Decrementation ("No Dec") feature for NNM securities, which currently allows continuous executions against a market maker's quote at the same price without decrementing the quoted size; and (6) Eliminate the SOES preferencing feature for NNM securities. Several of these changes are discussed in more detail below.

1. Automatic Executions for Orders of up to 9,900 Shares in NNM Securities

SOES currently permits the automatic execution of retail agency orders of 200, 500, or 1,000 shares at the inside market. NNMS will provide automatic executions at the inside market for orders of up to 9,900 shares in NNM securities. Automatic executions through NNMS will be available not only for retail agency orders, but also for market makers' proprietary orders and for the orders of order entry firms.

2. Reserve Size

The NNMS reserve size functionality would allow a market maker or its customer to display publicly part of the full size of its order or interest with the remainder of its order or interest held in undisplayed reserve. The undisplayed portion of the order or interest would be displayed in whole or in part as the displayed portion of the order or interest is executed. To use the reserve size function, a market maker must initially display a minimum of 1,000 shares in its quotation, or in its agency quotation, if the Commission approves the display of separate agency quotes, and it must refresh its proprietary or agency quote to a minimum of 1,000 shares. After a market maker's or its customer's displayed quotation was decremented to zero due to NNMS executions, Nasdaq would refresh the market maker's or its customer's displayed size from reserve size to a level designated by the market maker or its customer or, in the absence of such a designation, to the automatic refresh size (*i.e.*, 1,000 shares).[19] A market maker that wished to refresh a displayed proprietary or agency quote at the inside market at the same price level would be required to refresh his proprietary or agency quotation at the level of 1,000 shares or more to continue using reserve size. A market maker that wished to refresh and display his proprietary or agency quote at the same inside price at

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[12] Nasdaq notes that the Firm Quote Rule does not apply if: (1) prior to the receipt of an order in a security, a broker or dealer has communicated to its exchange or association a revised quotation size or a revised bid or offer; or (2) at the time an order in a security is presented, a broker or dealer is in the process of effecting a transaction in that security, and immediately after the completion of that transaction, the broker or dealer communicates to its exchange or association a revised quotation size or a revised bid or offer for the security.

[13] *See* Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997) (order approving File No. SR–NASD–96–43).

[14] *See* Securities Exchange Act Release No. 38191 (January 22, 1997), 62 FR 4562 (January 30, 1997) (notice of filing and immediate effectiveness of File No. SR–NASD–97–02).

[15] For Nasdaq SmallCap securities, SOES generally will remain unchanged.

[16] The current order size maximums for NNM securities through SOES are 1,000, 500, or 200 shares.

[17] After SOES executes an unpreferenced market order or marketable limit order against a SOES market maker, the market maker currently is not required to execute another unpreferenced SOES order in that security at the same bid or offer until 17 seconds have elapsed, absent a quotation update by the market maker within the 17-second period. *See* Securities Exchange Act Release No. 39490 (December 24, 1997), 63 FR 897 (January 7, 1998) (order approving File No. SR–NASD–97–50).

[18] Nasdaq filed a proposal with the Commission that would permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol ("agency quote"). *See* Securities Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198 (March 11, 1999) (notice of filing of SR–NASD–99–09) ("Agency Quote Proposal"). The Commission subsequently extended the comment period for the Agency Quote Proposal. *See* Securities Exchange Act Release No. 41243 (April 1, 1999), 64 FR 17428 (April 9, 1999). The Agency Quote Proposal currently is pending with the Commission.

[19] In addition, NNMS's autoquote refresh function would allow a market maker whose displayed proprietary quotation and reserve size have been decremented to zero due to NNMS executions to elect to have Nasdaq refresh the market maker's quotation (1) at a price interval designated by the market maker; and (2) to the size level designated by the market maker or, in the absence of such a size level designation, to the automatic refresh size.

a size less than 1,000 shares would be permitted to do so, but would not be permitted to use NNMS's reserve size feature.[20]

Orders entered in NNMS would be executed automatically against displayed quotations and reserve size (including agency quotes, if the Commission approves the display of separate agency quotes), in price/time priority. For quotations at the same price level, NNMS would yield priority to all displayed quotations over reserve size, so that NNMS would execute against displayed quotations in time priority and then against reserve size in time priority.

3. Elimination of the No Dec Feature for NNM Securities

The No Dec feature allows continuous executions against a market maker's quotation at the same price without decrementing the quoted size. Nasdaq proposes to eliminate the No Dec feature for NNM securities. Nasdaq believes that the No Dec feature has become less important because market makers now are able to manage their quotations by displaying their actual size. In addition, Nasdaq believes that the No Dec feature will become less important in a market where market makers will have the ability to refresh their quotations at a size they determine. Nasdaq also believes that the No Dec feature inhibits quote competition among market participants and discourages the full display of trading interest.

4. Elimination of SOES Preferencing

Nasdaq proposes to eliminate the existing SOES preferencing feature for NNM securities because it is inconsistent with the processing of orders in time priority as contemplated in Nasdaq's new trading environment. Nasdaq also believes that preferencing in an automatic execution system reduces incentives for market makers to compete aggressively for orders by showing the full size and true price of their trading interest. Moreover, Nasdaq believes that the preferencing feature might place the agency quotes of public customers at a disadvantage.

5. Execution Fees

NNMS would impose a $0.50 per side fee for each execution. To reduce user cost and facilitate the use of NNMS's reserve size functionality, a simultaneous and instantaneous execution against an NNMS participant's displayed size and reserve size would be treated for billing purposes as a single execution.

6. Penalties for Withdrawals

Like today, under the proposal, a market maker's failure to update a fully exhausted quote would result in the system placing the market maker's quote in a "closed" state that, if not updated within five minutes, would be cause for suspension of the market maker's quote for 20 business days.[21]

C. Modifications to SelectNet

Through rule changes requiring the use of "oversized" preferenced SelectNet orders, Nasdaq proposes to eliminate the use of most SelectNet liability orders and thereby re-establish SelectNet as an order delivery and negotiation system. Specifically, subject to the exceptions discussed below, Nasdaq proposes to revise its rules to implement an "oversized order requirement," which will prohibit members from directing a SelectNet preferenced order to an NNMS market maker, including the market maker's agency quote, if the Commission approves the display of separate agency quotes, unless the preferenced order is designated as either (1) "All-or-None" ("AON") of a size that is at least 100 shares greater than the displayed amount of the NNMS market maker's quote to which the order is directed; or (2) "Minimum Acceptable Quantity" ("MAQ") with a MAQ value of at least 100 shares greater than the displayed amount of the NNMS market maker's quote to which the order is directed. SelectNet will be programmed to reject preferenced messages that fail to satisfy these requirements.[22] In Nasdaq's view, the oversized order requirement will ensure that market makers are not subject to liability under the Firm Quote Rule for SelectNet preferenced orders directed to them. Accordingly, Nasdaq believes that the proposal will reduce instances of dual liability resulting from the receipt of orders through asynchronous systems. Nasdaq notes that the recipient of an oversized NNM SelectNet order may choose to execute the incoming order or initiate an electronic negotiation in response to the message.[23]

As discussed below, the oversized order requirement will not apply to UTP exchanges, which will be able to send and receive SelectNet liability orders. In addition, market participants will continue to use SelectNet liability orders to access ECNs that choose to participate in Nasdaq's new trading environment as order entry ECNs.

D. UTP Exchange Participation

Under the proposal, SelectNet will continue to serve as the primary linkage between UTP exchanges and Nasdaq. UTP exchanges will continue to receive and be obligated to execute preferenced SelectNet liability orders, and they will retain their ability to send SelectNet preferenced liability orders to Nasdaq market makers. Although a market maker may be subject to dual liability if a UTP exchange accesses the market maker with a SelectNet liability order and, at the same time, an NNMS market maker or order entry firm accesses the market maker via NNMS, Nasdaq believes that the potential dual liability will be manageable.

E. ECN Participation

An ECN will be able to participate in NNMS as either an order entry ECN or as a full participant ECN. The manner in which an ECN chooses to participate in NNMS will be governed by an

[20] This restriction would not apply for interim executions against a market maker's non-updated proprietary or agency quote. For example, if a market maker displaying an initial proprietary or agency quotation of 1,000 shares with 5,000 shares in reserve were accessed automatically by NNMS for 300 shares in displayed size, the market maker or its customer would be allowed to continue to display its remaining 700 shares and keep 5,000 shares available in reserve size. If the market maker or its customer subsequently updated either its displayed or reserve size, or its quoted price, the market maker would be obligated to increase the displayed size of its proprietary or agency quote to 1,000 shares to continue to use NNMS's reserve size feature.

[21] Market makers will continue to have the ability, through Nasdaq's automatic quote update facility, to pre-select a tick value and have Nasdaq refresh the market maker's proprietary quote away from the inside market. This capability will not apply to a market maker's agency quote because that quotation would represent agency interest. If a market maker's quote is refreshed to a different price or size level, another order will not be delivered to that market maker for five seconds after that quote is refreshed at the new price or size level. Nasdaq recently proposed an order display facility ("Order Display Facility Proposal") that would eliminate the 20-day suspension. *See* Securities Exchange Act Release No. 42166 (November 22, 1999), 64 FR 69125 (December 6, 1999) (notice of filing of File No. SR–NASD–99–53). Under the Order Display Facility Proposal, if a market maker's quote/order decremented to zero, and the market maker did not update its principal quote/order, transmit an attributable revised quote/order to Nasdaq, or have another principal (*i.e.*, non-agency quote) attributable quote/order in the system, Nasdaq would place the market maker's quote (both sides) in a closed state for three minutes. At the end of that time, if the market maker did not voluntarily update or withdraw its quote from the market, Nasdaq would refresh the market maker's quote/order to 100 shares at the lowest market maker bid and highest market maker offer being displayed in that security at that time and reopen the market maker's quote.

[22] SelectNet will continue to accept orders of any size (subject to the current 999,999-share system limit) for Nasdaq SmallCap securities.

[23] Nasdaq notes that this is not to be understood to prohibit liability for each of potentially two quotes displayed by market makers under the Agency Quote Proposal.

addendum to the Nasdaq Workstation II Subscriber Agreement for ECNs.[24]

An order entry ECN will participate in Nasdaq in substantially the same manner as ECNs participate in Nasdaq today. Market participants will continue to access order entry ECNs via the SelectNet linkage and will be able to send preferenced SelectNet messages (*i.e.*, liability orders) of up to 999,999 shares to order entry ECNs. Unlike a full participant ECN, an order entry ECN will not provide automatic executions for orders received from NNMS participants. An order entry ECN will be able to send oversized SelectNet orders to NNMS market makers and other ECNs. In addition, an order entry ECN may request order entry capability in NNMS, which will allow the ECN to obtain automatic executions against the quotations of NNMS market makers, including agency quotations, if the Commission approves the display of separate agency quotes.

A full participant ECN will agree to provide automatic executions for orders the ECN receives from other NNMS participants through NNMS. A full participant ECN will not receive SelectNet preferenced liability orders.[25] Like an order entry ECN, a full participant ECN may request order entry capability in NNMS, which will allow the ECN to obtain automatic executions against the quotations of NNMS market makers, including agency quotations, if the Commission approves the display of separate agency quotes.

Due to the time and the technology constraints affecting some ECNs, Nasdaq believes that, on an interim basis, ECNs should have an option regarding their manner of participation in Nasdaq's new system. Accordingly, Nasdaq does not propose at this time to require all ECNs to register as full participant ECNs, although Nasdaq will reconsider this issue in the future.

F. Nasdaq SmallCap Securities

For Nasdaq SmallCap securities, the trading rules for automatic execution through SOES will remain unchanged. Accordingly, participation in the automatic execution system for SmallCap securities will continue to be voluntary, and automatic executions will be available only for the small orders of public customers. The current maximum order size limits also will remain in effect. After Nasdaq has had experience with NNMS, it will consider whether the functionality of the NNMS system should be made available for the trading of SmallCap securities.

Nasdaq originally proposed to revise NASD Rule 4730(b)(3) (to be renumbered as NASD Rule 4753(b)(3)) to provide that during locked and crossed markets, SOES will execute orders against the quotations of market makers in SmallCap securities that are locked or crossed at 17-second intervals, rather than five-second intervals, as currently required. Nasdaq amended its proposal to maintain the current five-second delay between SOES executions during locked and crossed markets.[26]

G. Technical Amendments

Nasdaq proposes technical, non-substantive changes to several rules in the NASD Rule 4600 Series and throughout the NASD Manual. In particular, Nasdaq proposes to revise NASD Rule 4613, "Character of Quotations," to eliminate the references to SOES tier sizes for the NNM quotations of market makers. In addition, Nasdaq will rescind or conform other rules that refer to SOES, including NASD Rule 4611(f), "Registration as a Nasdaq Market Maker," NASD Rule 4619, "Withdrawal of Quotations and Passive Market Making," NASD Rule 4620, "Voluntary Termination of Registration," NASD Rule 4632, "Trade Reporting," NASD Rule 4618(c), "Clearance and Settlement," and the NASD Rule 4700 Series (SOES).

III. Summary of Comments

The Commission received 79 comment letters regarding the proposed rule change. The commenters included broker-dealers, registered representatives, ECNs, academics, professional associations, and a registered national securities exchange.[27] Nineteen commenters, including the Trading Committee of the Securities Industry Association ("SIA"),[28] the Investment Company Institute ("ICI"),[29] and Charles Schwab,[30] supported the proposal.[31] The Trading Committee of the SIA, for example, believed that the proposal would reduce the problem of dual liability for market makers and improve the speed of executions.[32] Similarly, the ICI maintained that the proposal would increase the speed of executions and enhance access to the full depth of a security's trading interest by all market participants.[33] One trader and investor believed that the proposal would result in a more liquid and more transparent Nasdaq market.[34]

Fourteen commenters supported the proposal but voiced concerns with some aspects of the proposed changes. Morgan Stanley Dean Witter ("Morgan Stanley"), for example, generally supported the proposed rule change because it will reduce instances of double liability for market makers, but recommended several modifications to the proposal.[35] Similarly, the Electronic Traders Association ("ETA") supported the proposal but expressed reservations regarding, among other things, the operation of the fee system for NNMS.[36] Donaldson, Lufkin & Jenrette ("DLJ") believed that the proposal "can bring substantial benefits" to Nasdaq but noted that the proposal fails to eliminate all instances of dual liability.[37] The

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[24] *See* NASD Rule 4623(b)(3).

[25] Telephone conversation between Thomas P. Moran, Assistant General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on October 5, 1999.

[26] *See* Amendment No. 3, *supra* note 5. The proposal, as amended, retains proposed changes to the rule text of renumbered NASD Rule 4753(b)(3) to clarify that the interval for execution of orders against the quotations of market makers that have locked or crossed the market applies to SmallCap securities as well as NNM securities. Telephone conversation between Thomas P. Moran, Assistant General Counsel, Nasdaq, and Ira L. Brandriss, Division, Commission, on January 14, 2000.

[27] A list of the commenters appears in Appendix A.

[28] The SIA is comprised of over 740 North American securities firms.

[29] 29 The ICI is an association of 7,576 mutual fund companies, 479 closed-end investment companies, and 8 sponsors of unit investment trusts.

[30] *See* Schwab Letter, Appendix A.

[31] Thirteen commenters who supported the proposal are persons associated with a Nasdaq market maker, the Security Investment Company of Kansas City. These commenters submitted identical letters which maintained that the proposal will provide prompt access to the best prices in the Nasdaq market, reduce the potential dual liability of market makers, and improve the speed of executions. *See* Halford Letter, Cave Letter, Gaines Letter, Hook Letter, Kitzmiller Letter, Frankel Letter, Schmidt Letter, Mytinger Letter, McCann Letter, Turpin Letter, Malmstrom Letter, Boyle Letter, Means Letter, and Weisenborn Letter, Appendix A. The Kansas City Securities Association ("KCSA") submitted a similar letter. *See* KCSA Letter, Appendix A.

[32] *See* SIA Letter, Appendix A.

[33] *See* ICI Letter, Appendix A.

[34] *See* Mktmaven Letter, Appendix A.

[35] *See* Morgan Stanley Letter, Appendix A. Morgan Stanley believed that the proposal should be modified to (1) retain the existing 17-second delay in executions against a market maker; (2) retain the No Dec feature for market makers' proprietary quotations; (3) provide a firm quote compliance facility that would allow a market maker to indicate that it has received a telephone order to trade at its displayed quotation; and (4) modify the availability of the 9,900-share NNMS maximum order size.

[36] *See* ETA Letter, Appendix A. The ETA is an association of order entry and other related firms.

[37] *See* DLJ Letter, Appendix A. DLJ believed that Nasdaq should not implement the proposed changes to SOES and SelectNet prior to the year 2000. In addition, DLJ stated that it would require at least six months from the time Nasdaq publishes its changes to the Application Programming Interface ("API") for DLJ to program, test, and install new systems. As discussed more fully below, other commenters also expressed concern regarding the time for implementing the proposed changes.

Electronic Trading Group ("ETG"), a proprietary trading firm that makes markets in listed and Nasdaq securities, "strongly support[ed]" the proposal but maintained that the proposed changes fail to create a level playing field for all market participants.[38]

Forty-one commenters opposed or noted concerns with the proposal without expressing general support for the proposed changes.[39] One commenter stated that it did not support any of the features in the proposed system and recommended that Nasdaq instead adopt its previously proposed IODES system, excluding the proposed limit order book.[40] Another commenter urged the Commission to reject the current proposal.[41]

Nasdaq responded to the commenters in Amendment Nos. 1 and 2 to the proposal.[42] The views of the commenters are discussed below.

A. Elimination of SelectNet Liability Orders

Thirty-two commenters objected to the elimination of most preferenced SelectNet liability orders for NNM securities. Many of the commenters asserted that the elimination of SelectNet liability orders will limit their ability to obtain executions at quotes outside the current inside market (*i.e.*, the best bid or offer), a capability that the commenters believed is crucial for investors.[43] In this regard, several commenters maintained that investors are willing to forego the inside price for the ability to access the liquidity outside the inside market, or to obtain an execution when a stock's price is moving rapidly.[44] One commenter maintained that an order might not be executable at the current inside price if a market maker at the inside is slow to update its 100-share quotation.[45] Accordingly, the commenter found it "imperative that investors be able to enter orders at prices outside the current inside market."[46]

Other commenters maintained that the oversized order requirement might fail to provide an effective means for accessing a quotation because, in some instances, it would require an investor to assume an unwanted short position. For example, an investor seeking to sell 500 shares would be required to assume an 800-share short position to SelectNet preference a market maker quoting 1200 shares.[47]

Other commenters believed that the proposed changes could undermine the integrity of the Nasdaq market. For example, one commenter feared that the elimination of SelectNet liability orders would produce a market that could permit market makers to refuse to fill an order and not move their quote.[48] The commenter also asserted that a market maker would be able to "hold" the market by repeatedly entering 100-share quotations at five-second intervals.[49] Another commenter stated that market makers would be able to "ignore" oversized orders preferenced to them through SelectNet.[50] Similarly, another commenter, asserting that the oversized order requirement "opens up numerous possibilities for [market maker] manipulation," maintained that market makers might post artificially inflated quotes because they will not be required to trade at their quotations.[51]

One commenter recommended that the proposed system be designed to require a market maker to honor all orders in a manner consistent with the Firm Quote Rule at the price and up to the size the market maker elects to display until the market maker exhausts or changes his quotation.[52] In addition, the commenter asserted that the elimination of SelectNet liability orders is unnecessary because the existing exceptions to the Firm Quote Rule adequately address the issue of potential double liability when a market maker is in the process of effecting an execution, after which he will update his quote.[53]

Other commenters suggested that Nasdaq address the issue of dual liability by retaining SelectNet liability orders only for quotations outside the current inside market.[54] Because automatic executions through NNMS will be available only for quotations at the inside market, these commenters believed that retaining SelectNet liability orders solely for quotations outside the current inside market would eliminate the potential for dual liability while allowing market participants to continue using the existing SelectNet preferencing feature for quotations outside the current inside market.

Other commenters expressed concern that market makers will continue to be exposed to potential double liability through SelectNet liability orders from UTP exchanges.[55]

B. ECN Participation

As noted above, the proposal will allow ECNs to participate in NNMS either as full participants or as order entry participants. Several ECNs criticized both alternatives. One commenter, for example, asserted that full participation would disadvantage an ECN because (1) The ECN's reserve quotations would not participate in the NNMS sweep of the ECN's top-of-the-file orders; [56] (2) The ECN would be subject to potential double executions; [57] and (3) The ECN would be required to provide access through NNMS to brokers that pay no ECN

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[38] *See* ETG Letter, Appendix A. Among other things, ETG supported the implementation of a consolidated order book to provide price protection and time priority of orders. *See also* Sierra Nevada Letter (supporting the proposed changes as an interim measure).

[39] In addition, six comment letters related solely to Nasdaq's IODES Proposal. *See* Lek Letter, USCC Trading I and II, Hill Letter, and Knight I and II, Appendix A. As noted above, the notice of filing for the current proposal also re-opened the comment period for Nasdaq's IODES Proposal. *See* note 3, supra.

[40] *See* A.G. Edwards Letter, Appendix A.

[41] *See* Weil Letter I and Weil Letter II, Appendix A.

[42] *See* note 5, *supra*.

[43] *See, e.g.*, Chung Letter, Deeney Letter, Erman Letter, Fennell Letter, King Letter, Lin Letter, Mt. Pleasant Letter, Mack Letter, Nemcic Letter, Norman Letter, O'Reilly Letter, Rudd Letter, Schiller Letter, Swenson Letter, Teitelman Letter, Vercellone Letter, Wolverton Letter, and Zucker Letter, Appendix A.

[44] *See e.g.*, Weintraub Letter, Swenson Letter, Haber Letter, Deeney Letter, King Letter, Nemcic Letter, Schiller Letter, Vercellone Letter, Snell Letter, and Teitelman Letter, Appendix A.

[45] *See* Atreya Letter, Appendix A.

[46] *See* Atreya Letter, Appendix A.

[47] *See* Catrina Letter, Appendix A. Similarly, the commenters expressed concern that the proposed rule may require an investor to purchase or sell more shares than the investor intended to purchase or sell. *See* Mack Letter, Lin Letter, and Catrina Letter, Appendix A. Moreover, the commenters noted that a short sale on a downtick would violate the short sale rule. *See, e.g.*, Atreya Letter, Vercellone Letter, Deeney Letter, Lin Letter, and Schiller Letter, Appendix A.

[48] *See* Whitcomb Letter, Appendix A. Similarly, the ETA asserted that the failure of market makers to honor their quotations in a manner consistent with the Firm Quote Rule would result in misleading and inaccurate quotations that would reduce the efficiency of the Nasdaq market and undermine investor confidence. *See* ETA Letter, Appendix A.

[49] *See* Whitcomb Letter, Appendix A.

[50] One commenter asserted, for example, that market makers "can and will ignore" non-liability SelectNet orders. *See* Mount Pleasant Letter, Appendix A. Another commenter maintained that it would have no recourse when non-liability SelectNet orders go unfilled. *See* ACIM Letter, Appendix A.

[51] *See* Haber Letter, Appendix A. The commenter noted that a market maker could withdraw its quotation when the inside market approached the market maker's quotation.

[52] *See* ETA Letter, Appendix A.

[53] *See* ETA Letter, Appendix A.

[54] *See* Norman Letter and O'Reilly Letter, Appendix A.

[55] *See, e.g.*, DLJ Letter, A.G. Edwards Letter, and STA Letter, Appendix A. The STA asserted that any possibility of dual liability must be eliminated.

[56] *See* Bloomberg Letter, Appendix A.

[57] Double liability could arise due to the time lag between the execution of an order on the ECN's own system and the subsequent receipt of an execution for the same order from Nasdaq. *See* Bloomberg Letter, Appendix A. Other ECNs also criticized the potential for double liability. *See* Instinet Letter and BRUT Letter, Appendix A (asserting that dual liability is inappropriate for ECNs because ECNs act solely as agents).

fees.[58] On the other hand, the commenter maintained that order entry participation would "marginalize" an ECN by omitting the ECN's orders from the NNMS sweep.[59]

Similarly, another commenter asserted that an order entry ECN would be able to execute transactions against preferenced SelectNet orders but, unlike market makers and full participant ECNs, would not be able to interact automatically with other NNMS orders on the basis of strict price/time priority.[60] A third commenter believed that order entry participation is not a viable alternative because an ECN must be accessible by widely used order delivery and execution systems to remain competitive.[61] Several ECNs recommended that Nasdaq implement an order delivery system, rather than a system that provides for automatic executions.[62]

On the other hand, other commenters criticized the proposal for providing two levels of participation for ECNs. One commenter asserted that because the proposal allows ECNs, but not other market participants, to choose between two levels of participation in NNMS, the proposal fails to promote fair competition between market participants and therefore is inconsistent with the Congressional finding in Section 11A(a)(1)(C) under the Act.[63] In addition, the commenter expressed concern that lack of uniform access to ECN quotes would provide opportunities for manipulative and fraudulent quotation and order entry strategies similar to those noted in Nasdaq's IODES proposal.[64] The commenter believed that Nasdaq should revise its proposal to require the full participation of ECNs and UTP exchanges in NNMS.[65]

Other commenters also believed that Nasdaq should require ECNs to become full participants in NNMS, and, accordingly, subject to automatic executions.[66] One commenter expressed concern that a market maker might post its quotes in an order entry ECN to avoid automatic executions,[67] and other commenters asserted that automatic executions against an ECN's quotes are "essential to provide equal access to all market participants."[68]

C. UTP Exchange Participation

The Chicago Stock Exchange ("CHX") asserted that the proposal improperly excludes the UTP exchanges, including the CHX, from full participation in NNMS.[69] The CHX noted that the proposal will allow UTP specialists to send preferenced orders through SelectNet but will not permit them to use NNMS, which, unlike SelectNet, provides for automatic executions. The CHX maintained that the inability of its specialists to participate in NNMS will "cripple the CHX's UTP program."[70]

D. Technology Concerns

Several commenters raised technology issues in connection with the proposal, including concerns regarding the capability of Nasdaq's systems to promptly deliver messages relating to the trading process. In this regard, one commenter recommended that Nasdaq "demonstrate that it has the capability to deliver immediately to market makers and executing broker-dealers executions, quote updates, size decrements, and other message traffic that is critical to the trading process."[71] The commenter maintained that prompt message delivery is crucial in light of the proposed reduction in time delays between executions against a market maker from 17 seconds to five seconds.[72] Noting that there can be a time delay of five seconds or more between the entry of a SOES order and the market maker's receipt of notice of the execution, another commenter expressed concern that an increase in messaging traffic resulting from the proposed changes will increase the delay in providing notice of an execution and, accordingly, will increase the potential for double liability.[73]

Two commenters expressed concern that SOES, which uses technology inferior to that used by SelectNet, will replace SelectNet as the primary means of inter-participant trading.[74] One commenter feared that the impact of existing problems associated with SOES technology would be exacerbated by the increased use of SOES.[75]

In addition, several commenters noted that firms must have sufficient time to modify their computer systems to implement the proposed changes. In

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[58] *See* Bloomberg Letter, Appendix A.

[59] *See* Bloomberg Letter, Appendix A.

[60] *See* Instinet Letter, Appendix A.

[61] *See* BRUT Letter, Appendix A.

[62] *See* Instinet Letter and Archipelago Letter, Appendix A. *See also* Bloomberg Letter, Appendix A.

[63] *See* Knight Letter II, Appendix A.

[64] *See* Knight Letter II, Appendix A. In the IODES Proposal, Nasdaq stated that the dichotomy between market makers, which provide automatic executions, and ECNs, which do not provide automatic executions, had resulted in anomalies in the processing of orders through SOES. Nasdaq noted that because ECNs and UTP exchanges do not provide automatic executions, Nasdaq had implemented systems changes designed to suspend executions in SOES whenever an ECN or UTP exchange was alone at the inside market. Nasdaq noted that because an ECN quote at the inside effectively halted SOES executions for a security, it might also cause SOES orders to be rejected back to the sending firm. Accordingly, Nasdaq stated that an ECN customer potentially could enter an order to control the inside price and create an advantage in SOES for the ECN customer or another order entry firm to jump ahead of orders that would have been executed if they had not been returned. The ECN customer could then change its quote before the quote could be accessed through SelectNet or the ECN's internal system. After a new dealer inside price had been established, a new SOES order that entered the system would be executed as the first order against the first market maker at the new inside price. Under these circumstances, customer orders could be disadvantaged because orders entered earlier in time would be forced to go to the back of the queue. Nasdaq noted in the IODES Proposal that it had addressed this problem through a software modification that holds customer orders sent through SOES in queue for up to 90 seconds when an ECN or UTP participant is alone at the inside, instead of immediately rejecting the order. In addition, Nasdaq noted in the IODES Proposal Nasdaq that SOES users had alleged that some traders might be using ECNs to affect the way that SOES handles automatic executions. To avoid this potential problem, Nasdaq proposed to require all participants receiving orders through the proposed IODES system, including ECNs, to be subject to automatic executions. *See* IODES Proposal, *supra* note 3. *See also* Mack Letter, Appendix A (asserting that market makers should not be permitted to use an ECN to block or stop a stock).

[65] *See* Knight Letter II, Appendix A.

[66] *See, e.g.*, ACIM Letter, King Letter, Mack Letter, and Vercellone Letter, Appendix A.

[67] *See* King Letter, Appendix A.

[68] *See* ACIM Letter, Appendix A. *See also* Vercellone Letter, Appendix A.

[69] *See* CHX Letter, Appendix A.

[70] *See* CHX Letter, Appendix A.

[71] *See* STA Letter, Appendix A.

[72] *See* STA Letter, Appendix A. Another commenter stated that it is unclear whether Nasdaq's systems capacity will accommodate the greater speed of automatic execution. *See* Morgan Stanley Letter, Appendix A.

[73] *See* ASC Letter, Appendix A. *See also* BRUT Letter (noting that the issue of dual liability centers on Nasdaq's delay in communicating notices of SOES executions to market makers, and that the delay in notification may increase with an increase in SOES messages), and Archipelago Letter (maintaining that any Nasdaq routing system must route messages as quickly as possible), Appendix A.

[74] *See* Archipelago Letter, Appendix A. *See also* ASC Letter, Appendix A.

[75] *See* ASC Letter, Appendix A. The commenter noted several problems associated with SOES technology, including the following: (1) The Permanent Virtual Circuits connecting Nasdaq and market participants fail to indicate whether the opposite party is able to receive data, thereby permitting one party to send messages without realizing that the other party has not received the messages due to a malfunctioning application; (2) due to the lack of automatic re-route facilities, messages must be re-routed manually when a circuit is down, which may result in extended outages; (3) retransmitted messages may be unrecoverable due to the system's procedures for numbering missing messages; (4) the system's sequence number field is unable to fully represent numbers above 9999, so that an application cannot determine the correct sequence number of a retransmission once the total messages received exceeds 10,000; (5) execution messages do not include a unique identifier to prevent duplicate trade reports; and (6) due to delays in message processing, it may take up to 30 minutes to retransmit a message. *See also* Archipelago Letter, Appendix A.

this regard, one commenter estimated that it would require at least six months from the time Nasdaq publishes it changes to the Application Programming Interface ("API") to program, test, and install new systems.[76]

E. NNMS System Features

1. Automatic Execution for Orders up to 9,900 Shares

Although many commenters supported Nasdaq's proposal to establish a maximum automatic execution order entry size of 9,900 shares for NNMS securities, one commenter maintained that the 9,900-share order entry size was arbitrary,[77] and another asserted that Nasdaq provided no basis for the 9,900-share maximum order size.[78]

Other commenters believed that allowing automatic executions for orders of up to 9,900 shares would drastically reduce small investors' access to executions[79] and prevent small investors from competing with market makers, a purpose inconsistent with the original purpose for establishing SOES.[80]

On the other hand, Charles Schwab maintained that increasing the availability of the automatic execution system would provide market makers with a crucial tool to access the best available prices in the market, and, consequently, to manage risk and obtain liquidity for customer orders.[81]

2. Availability of Automatic Execution

Several commenters believed that the proposed rule change would allow market makers, but not order entry firms, to engage in proprietary trading against market makers' quotes on NNMS.[82]

3. Reducing the Delay Between Automatic Executions From 17 Seconds to Five Seconds

Although many commenters supported the proposed reduction in the delay between automatic executions against a market maker from 17 seconds to five seconds, Morgan Stanley expressed concern that the reduction would provide market makers with insufficient time to react to virtually continuous executions against their quotations and would create significant difficulty for market makers in maintaining control over their positions and effectuating a coherent market making strategy.[83]

4. Reserve Size Feature

Several commenters supported the reserve size feature, asserting that it would increase liquidity and facilitate more rapid executions of larger-sized orders.[84] Other commenters, however, expressed concern regarding Nasdaq's ability to monitor and ensure the proper use of the reserve size feature.[85] In addition, some commenters asserted that reserve size is inconsistent with market transparency. Morgan Stanley, for example, stated that "[r]eserve size hides the true depth of trading interest from the marketplace and acts as a disincentive to display liquidity."[86] Similarly, one market maker maintained that the reserve size feature would hinder proprietary trading by market makers, which make their proprietary trading decisions based upon the size of an order being offered.[87] Accordingly, the commenter believed that the proposal would diminish liquidity on Nasdaq.[88]

5. Elimination of the No Dec Feature

Archipelago asserted that Nasdaq should retain the No Dec feature because it reduces quote update traffic, thereby mitigating the capacity strain on Nasdaq's network. Morgan Stanley believed that the No Dec feature serves as a useful quote maintenance tool that Nasdaq should retain in a modified form.[89] Another commenter asserted that the elimination of the No Dec feature would make it more difficult for market makers to provide orderly markets.[90]

However, two commenters favored the elimination of the No Dec feature.[91] One commenter asserted that the elimination of the No Dec feature would prevent a market maker at the inside from repeatedly renewing a 100-share quote.[92] The commenter believed that the elimination of the No Dec feature, combined with the reserve size feature, would improve the functioning of the market.[93]

F. NNMS Fees

One commenter expressed concern that the fee system for NNMS might operate in a discriminatory and anticompetitive manner.[94]

IV. Discussion

After carefully considering all of the comments, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD. In particular, the Commission finds that the proposal is consistent with the requirements of Sections 15A(b)(6) and (11), and 11A(a)(1)(C) of the Act.[95] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C), Congress found that it is in the public interest and appropriate for the protection of investors and the

[76] *See* DLJ Letter, Appendix A. *See also* STA Letter, ASC Letter (noting that implementation of the proposed changes will require considerable effort by market participants), and BancBoston Letter (noting that Order Audit Trail System, extended trading hours, Year 2000, and decimalization have placed significant resource strains on BancBoston and other market participants), Appendix A.

[77] *See* ACIM Letter, Appendix A.

[78] *See* Archipelago Letter, Appendix A. The commenter maintained that wholesale market makers and ECNs, the market participants that most frequently post large quoted sizes, wish to make quotes fully accessible for the entire size, and, accordingly, the 9,900-share maximum size is an impediment to prompt access to liquidity.

[79] *See* O'Leary Letter, Appendix A. The commenter asserted that in fast market conditions, several 9,900-share orders would absorb the highest quality executions ahead of an individual investor's order.

[80] *See* Galchen Letter, Appendix A.

[81] *See* Schwab Letter, Appendix A.

[82] *See, e.g.*, Miller Letter, Whitcomb Letter, ETA Letter, Sierra Nevada Letter, Mount Pleasant Letter, and Sudit Letter, Appendix A.

[83] *See* Morgan Stanley Letter, Appendix A.

[84] *See, e.g.*, Samarasinghe Letter, Haber Letter, and Lin Letter. One commenter supported executions against a market maker's reserve size, but argued that reserve size feature may present misleading information. *See* Wilson Letter, Appendix A.

[85] *See, e.g.*, King Letter (asserting that the reserve size feature will foster manipulative and fraudulent practices), Snell Letter (questioning the enforcement of the reserve size feature), and Wolverton Letter (maintaining that the reserve size feature will permit market makers to "hide" shares behind their displayed quotes), Appendix A. *See* also Sievers Letter.

[86] *See* Morgan Stanley Letter, Appendix A. *See also* Mack Letter and Wilson Letter, Appendix A.

[87] *See* Sievers Letter, Appendix A.

[88] *See* Sievers Letter, Appendix A.

[89] *See* Morgan Stanley Letter, Appendix A. Morgan Stanley believed that Nasdaq should retain the No Dec feature, but that it should be available only to market makers displaying a size of at least 1,000 shares.

[90] *See* Caris Letter, Appendix A.

[91] *See* Wilson Letter and Lin Letter, Appendix A.

[92] *See* Lin Letter, Appendix A. The commenter asserted that a market maker at the inside might repeatedly renew a 100-share quote in an effort to sustain the price of a stock. The commenter noted that the repeated renewal of the quotation might hinder the efforts of other market participants to fill larger-sized orders in the stock.

[93] *See* Lin Letter, Appendix A.

[94] *See* ETA Letter, Appendix A.

[95] 15 U.S.C. 78o–3(b)(6) and (11), and 15 U.S.C. 78k–1(a)(1)(C).

maintenance of fair and orderly markets to assure: (1) The economically efficient execution of securities transactions; (2) Fair competition among brokers and dealers; (3) The availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) The practicability of brokers executing investors' orders in the best market; and (5) An opportunity for investors' orders to be executed without the participation of a dealer.[96]

Specifically, as discussed more fully below, the Commission finds that the proposed changes are designed to protect investors and the public interest and to assure the economically efficient execution of securities transactions by allowing market makers, public customers, and order entry firms to obtain automatic executions for orders of up to 9,900 shares in NNM securities. By reducing instances of double liability for market makers in NNM securities, the proposal potentially may encourage market makers in NNM securities to display larger sized quotations, thereby adding liquidity to the market for NNM securities and helping to assure the economically efficient execution of transactions in NNM securities. In addition, by reducing the delay between executions against a market maker from 17 seconds to five seconds, the proposal may facilitate the price discovery process and promote quote competition among market makers, thus helping to ensure the best execution of customer orders. The Commission believes that the proposed changes potentially may enhance the efficiency and increase the depth and liquidity of the market for NNM securities, to the benefit of all market participants.

A. Automatic Executions for Orders of up to 9,900 Shares in NNM Securities

SOES currently permits the automatic execution of retail agency orders of 200, 500, or 1,000 shares at the inside market. NNMS will provide automatic executions at the inside market for orders of up to 9,900 shares in NNM securities. Automatic executions through NNMS will be available not only for retail agency orders, but also for market makers' proprietary orders and for the orders of order entry firms.

Several commenters expressed concerns regarding the automatic execution feature of NNMS. Specifically, the commenters maintained that the 9,900-share order entry size was arbitrary,[97] that it would reduce small investors' access to executions,[98] and that it would prevent small investors from competing with market makers, a purpose inconsistent with the original purpose for establishing SOES.[99] In addition, some commenters believed that NNMS would be available for the proprietary trading of market makers, but not for order entry firms.[100]

In response to the concern about the availability of NNMS, Nasdaq clarified that NNMS will be available to all NASD member firms, including order entry firms.[101] In addition, in response to the concerns regarding the 9,900-share maximum order size entry in NNMS, Nasdaq stated that the 9,900-share maximum is a technological system constraint of the NNMS automatic execution platform.[102] Nasdaq also maintained that because the current average size of a SelectNet execution is 800 shares, the 9,900-share maximum NNMS order size should be sufficient to handle the majority of SelectNet orders that will migrate to NNMS.[103] Nasdaq noted that orders of over 10,000 shares would be processed through a combination of NNMS, SelectNet, and other means.[104]

The Commission believes that the proposed automatic execution feature of NNMS is consistent with Section 15A(b)(6) of the Act because it is designed to protect investors and the public interest. In addition, the Commission believes that the proposed automatic execution feature of NNMS is consistent with Congress's finding in Section 11A(a)(1)(C)(i) of the Act that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions. In this regard, the Commission believes that the immediacy and certainty of order execution for NNM orders of up to 9,900 shares should strengthen the Nasdaq market and benefit market participants by permitting the prompt, efficient execution of orders of up to 9,900 shares at the best available price. Because NNMS will provide automatic executions against displayed quotations and against reserve size, NNMS's automatic execution feature will provide prompt access to all of the available liquidity in a security at the current inside market.

In addition, the Commission notes that the proposal will extend the benefits associated with automatic executions to order entry firms and to the proprietary orders of market makers. The Commission agrees with the NASD that allowing automatic executions for broker-dealers' proprietary trades potentially may encourage broker-dealers to commit capital to the market, thereby adding to the depth and liquidity of the market for NNM securities.

Further, the Commission believes that the 9,900-share maximum order size is reasonable in light of the system constraint of the NNMS automatic execution platform. According to the NASD, the 9,900-share maximum order size should accommodate the size of the orders that are likely to be processed through NNMS.

With regard to small investors' access to executions, the Commission notes that NNMS's automatic execution feature will be available equally for the orders of market makers, order entry firms, and public customers. Accordingly, the Commission believes that the automatic execution feature of NNMS is reasonably designed to provide market makers, order entry firms, and public customers with equal access to the current inside market in NNM securities.

B. Reserve Size Feature of NNMS

The reserve size feature of NNMS will allow an NNMS market maker or its customer to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To use the reserve size feature, a market maker's quotation, including its agency quotation, if the Commission approves the display of separate agency quotes, initially must display a minimum of 1,000 shares, and the quotation must be refreshed to 1,000 shares to continue using the reserve size feature.

Several commenters expressed concerns with the reserve size feature. In particular, some commenters questioned Nasdaq's ability to monitor and ensure the proper use of the reserve size feature.[105] One commenter contended that reserve size is inconsistent with market transparency and that reserve size would hide the

[96] In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[97] *See* ACIM Letter, Appendix A. *See also* Archipelago Letter, Appendix A.

[98] *See* O'Leary Letter, Appendix A.

[99] *See* Galchen Letter, Appendix A.

[100] *See, e.g.*, Miller Letter, Whitcomb Letter, ETA Letter, Sierra Nevada Letter, Mount Pleasant Letter, and Sudit Letter, Appendix A.

[101] *See* Amendment No. 1, *supra* note 5.

[102] *See* Amendment No. 2, *supra* note 5.

[103] *See* Amendment No. 2, *supra* note 5.

[104] *See* Amendment No. 2, *supra* note 5.

[105] *See, e.g.*, King Letter, Snell Letter, and Wolverton Letter, Appendix A.

depth of trading interest and act as a disincentive to display liquidity.[106] One market maker maintained that reserve size would hinder proprietary trading by market makers and, accordingly, would diminish liquidity on Nasdaq.[107]

In response to the commenters, Nasdaq asserted that reserve size would be likely to increase the amount of shares market participants commit to the market because the non-display of the reserve shares would lessen the potential negative price impacts associated with the display of larger trading interest.[108] In addition, Nasdaq maintained that the requirement that a market participant seeking to use reserve size in NNMS display a minimum of 1,000 shares also would serve to increase liquidity by providing an incentive to display a larger quotation size.[109]

The Commission believes that the reserve size feature will encourage participation in NNMS by providing market makers and their customers with greater flexibility in the handling of large orders. Increased participation in NNMS should, in turn, enhance the depth and the liquidity of the market for NNM securities, to the benefit of all market participants. The requirement that a market participant display a minimum of 1,000 shares to use the reserve size feature should encourage market participants to display orders of at least 1,000 shares, which may reduce volatility and enhance market depth at a given price. In addition, because all displayed quotations in NNMS at the same price level will have priority over reserve size quotations at that price level, NNMS will provide an incentive for market participants to display their orders.

The Commission also believes that reserve size could prove useful to institutions wishing to minimize the market impact of their orders. In addition, the reserve size feature of NNMS will allow market makers quoting in Nasdaq to compete more effectively with alternative trading systems that provide a reserve size feature. The Commission expects NASD Regulation to monitor trading to ensure the proper use of the reserve size feature (particularly priority rules) and compliance with the requirements applicable to the use of reserve size.

[106] *See* Morgan Stanley Letter, Appendix A.

[107] *See* Sievers Letter, Appendix A.

[108] *See* Amendment No. 2, *supra* note 5.

[109] *See* Amendment No. 2, *supra* note 5.

C. Reduction of the 17-Second Delay Between Executions Against a Market Maker

Nasdaq proposes to reduce the current 17-second delay between executions against the same market maker to five seconds. As noted above, one commenter believed that the proposed five-second delay between executions against a market maker would provide market makers with insufficient time to react to executions against their quotations and would create significant difficulty for market makers in maintaining control over their positions and effectuating a coherent market making strategy.[110] In addition, several commenters expressed concerns regarding the ability of Nasdaq's systems to promptly notify market participants of executions against their quotations.[111]

In response, Nasdaq maintained that a five-second interval delay (with an additional two-second internal Nasdaq system processing time) is an appropriate compromise between the need for fast executions and the need to provide market makers with adequate time to manage their capital risk through monitoring and updating their quotes in response to rapidly changing market conditions.[112] Nasdaq stated that it would monitor market performance in NNMS as it related to the five-second interval delay and would consider modifying that time period, in consultation with Commission staff.[113] As discussed more fully in Section IV.I, *infra*, Nasdaq stated that proposed enhancements to its systems, including a new central message switch that will provide faster delivery of automatic execution confirmation messages, will help to ensure that Nasdaq has the technological capability to promptly deliver notices of automatic executions.[114]

The Commission believes that the proposal to reduce the delay between executions against the same market maker from 17 seconds to five seconds will help to ensure that a market maker has no more time than is necessary after an execution before it must update its quotes. This requirement will help to ensure that a market maker cannot attempt to avoid its market making obligations by delaying after an NNMS execution before entering an updated quote.[115] As a result, the reduced time delay between executions against a market maker's quote should increase a market maker's compliance with its obligation to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers should, in turn, enhance the integrity of the Nasdaq market by helping to ensure the best execution of customer orders and improving the price discovery process for NNM securities.

As discussed more fully in Section IV.I, *infra*, the Commission believes, based on Nasdaq's representations, that planned enhancements to Nasdaq's systems, including the planned implementation of a new central message switch in January 2000, should enable Nasdaq to promptly deliver execution messages to market participants.[116] Accordingly, based on Nasdaq's representations, the Commission believes that Nasdaq will have the technological capability to implement the proposed five-second delay between executions against a market maker's quotation.

D. Elimination of the No Dec Feature for NNM Securities

Nasdaq proposes to eliminate the No Dec feature for NNM securities. The No Dec feature allows continuous executions against a market maker's quotation at the same price without decrementing the quoted size. Nasdaq believes that the No Dec feature has become less important because market makers are able to manage their quotations by displaying their actual size. In addition, Nasdaq believes that the No Dec feature will become less important in a market where market makers will have the ability to refresh their quotations at a size they determine.

Several commenters questioned the elimination of the No Dec feature. One commenter maintained that Nasdaq should retain the No Dec feature because it reduces quote update traffic, thereby mitigating the capacity strain on Nasdaq's network.[117] Other commenters maintained that the No Dec feature serves as a useful quote maintenance tool and that the elimination of the No Dec feature would make it more difficult

[110] *See* Morgan Stanley Letter, Appendix A.

[111] *See* STA Letter, Morgan Stanley Letter, ASC Letter, and BRUT Letter, Appendix A.

[112] *See* Amendment No. 2, *supra* note 5.

[113] *See* Amendment No. 2, *supra* note 5.

[114] *See* Amendment No. 2, *supra* note 5.

[115] A market maker that can avoid updating its quote for a period of time can take advantage of its temporary ability to avoid NNMS executions and wait to see how other market makers update their quotes. This delay could serve to lessen competition among market makers. *See* Securities Exchange Act Release No. 39490 (December 24, 1997), 63 FR 897 (January 7, 1998) (order approving File No. SR–NASD–97–50).

[116] *See* Amendment No. 2, *supra* note 5.

[117] *See* Archipelago Letter, Appendix A.

for market makers to provide orderly markets.[118]

In response, Nasdaq asserted that the elimination of the No Dec feature will allow market participants to more easily execute multiple customer orders at the inside and move the market to new quote levels, thereby aiding the price discovery process.[119] In addition, Nasdaq maintained that the No Dec feature is incompatible with the NNMS processing functions that immediately access displayed and reserve size and move through different price levels. Nasdaq noted that in NNMS the full size of reserve share amounts will be immediately and automatically accessible (after executions against displayed quotations), while the No Dec feature makes additional shares available on a piecemeal basis each time a quote is accessed and only after an interval delay between executions. Thus, Nasdaq concluded that NNMS's reserve size feature would speed executions, while the No Dec feature would result in slower executions.[120]

The Commission believes that it is reasonable for Nasdaq to eliminate the No Dec feature for NNM securities. Specifically, the Commission believes that the elimination of the No Dec feature should result in quicker executions and prompt access to the available liquidity at the current inside market. The Commission also believes that the elimination of the No Dec feature may allow the market to adjust more quickly to information, thereby facilitating price discovery and improving the efficiency of the Nasdaq market.

The Commission notes that market makers now have the ability to quote in actual size, and therefore have an enhanced ability to manage their quotations. In addition, NNMS's reserve size refresh and autoquote refresh features should help market makers that elect to use reserve size to manage their quotations.[121] Because the reserve size refresh function and the autoquote refresh function, as well as the ability to quote actual size, will assist market makers, the Commission believes that market makers will be able to manage their quotations after Nasdaq eliminates the No Dec feature.

With regard to the commenter's concern that the elimination of the No Dec feature might strain the capacity of Nasdaq's network, the Commission does not believe, based on Nasdaq's representations regarding planned enhancements to its systems[122] (as discussed more fully in Section IV.I, *infra*), that the elimination of the No Dec feature will result in a capacity strain on Nasdaq's network.

E. Elimination of SOES Preferencing for NNMS Securities

Nasdaq proposes to eliminate the SOES preferencing feature for NNM securities because it is inconsistent with the processing of orders in time priority and because the preferencing feature might place the agency quotations of public customers, if the Commission approves the display of separate agency quotes, at a disadvantage. In addition, Nasdaq believes that preferencing in an automatic execution system reduces incentives for market makers to compete aggressively for orders by showing the full size and true price of their trading interest.

The Commission believes that it is reasonable for Nasdaq to eliminate the SOES preferencing feature to provide for the processing of orders in price/time priority. The processing of orders in price/time priority should help to ensure that all orders are processed in a fair, equal, and orderly manner. Accordingly, the Commission finds that the elimination of SOES preferencing is designed to protect investors and the public interest by helping Nasdaq to maintain a fair and orderly market.

F. SelectNet Liability Orders

Nasdaq proposes to revise SelectNet to require the use of "oversized" preferenced SelectNet Orders. As discussed above, the proposed oversized order provisions will allow members to direct a SelectNet preferenced order to an NNMS market maker, including the market maker's agency quote, if the Commission approves the display of separate agency quotes, only if the order is designated as AON or MAQ for a size that is at least 100 shares greater than the displayed amount of the quote to which the order is directed. The oversized order requirement is designed to reduce instances of double liability for market makers. UTP exchanges, however, will continue to send and receive SelectNet liability orders. In addition, order entry ECNs will be able to receive SelectNet liability orders.

As discussed above, thirty-two commenters objected to the elimination of SelectNet liability orders. Among other things, the commenters argued that (1) the ability to preference outside the current inside market is crucial to investors who, in some cases, would be willing to forego the inside price to access the liquidity outside the current inside market;[123] (2) the oversized order requirement might require an investor to assume an unwanted position;[124] (3) the elimination of SelectNet liability orders might undermine the integrity of the Nasdaq market because market participants will not be required to trade at their quotations;[125] (4) the elimination of SelectNet liability orders is unnecessary because the Firm Quote Rule addresses the issue of potential double liability when a market maker is effecting an execution;[126] (5) Nasdaq should retain SelectNet liability orders for quotations outside the current inside market;[127] (6) market makers will not be obligated to respond to non-liability SelectNet orders;[128] and (7) a market maker at the inside would be able to "hold" the market by repeatedly entering 100-share quotations at five-second intervals.[129]

In response to the commenters, Nasdaq maintained that the elimination of SelectNet preferencing was essential to achieving two of the proposal's goals, the reduction of dual liability[130] and the establishment of a single order execution system.[131] Nasdaq concluded that neither the Firm Quote Rule nor the retention of SelectNet liability orders for quotations outside the inside market offered viable means for preserving SelectNet liability orders. Specifically, Nasdaq asserted that retaining SelectNet liability orders for quotations outside the current inside market would create confusion in a fast-moving market and could result in significant unanticipated dual liability for market makers during

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[118] *See* Morgan Stanley Letter and Caris Letter, Appendix A.

[119] *See* Amendment No. 2, *supra* note 5.

[120] *See* Amendment No. 2, *supra* note 5.

[121] The reserve size refresh function will refresh a market maker's displayed proprietary or agency quote, if the Commission approves the display of separate agency quotes, from its reserve size at the automatic refresh size or at a size level designated by the market maker. The autoquote refresh function will allow a market maker whose displayed proprietary quotation and reserve size have been decremented to zero to elect to have Nasdaq refresh the market maker's quotation price by an interval designated by the market maker and to refresh the market maker's displayed size to a level designated by the market maker or to the automatic refresh size (*i.e.*, 1,000 shares).

[122] *See* Amendment No. 2, *supra* note 5.

[123] *See, e.g.*, Weintraub Letter, Swenson Letter, Haber Letter, Deeney Letter, King Letter, Nemcic Letter, Schiller Letter, Vercellone Letter, Snell Letter, and Teitelman Letter, Appendix A. *See also* Chung Letter, Deeney Letter, Erman Letter, Fennell Letter, Lin Letter, Mt. Pleasant Letter, Mack Letter, Norman Letter, O'Reilly Letter, Rudd Letter, and Zucker Letter, Appendix A.

[124] *See* Catrina Letter, Mack Letter, and Lin Letter, Appendix A.

[125] *See* Whitcomb Letter and Haber Letter, Appendix A. *See also* ETA Letter, Appendix A.

[126] *See* ETA Letter, Appendix A.

[127] *See* Norman Letter and O'Reilly Letter, Appendix A.

[128] *See* Mount Pleasant Letter, Appendix A.

[129] *See* Whitcomb Letter, Appendix A.

[130] *See* Amendment No. 1, *supra* note 5.

[131] *See* Amendment No. 2, *supra* note 5.

periods of rapid price change.[132] Nasdaq also believed that the Firm Quote Rule would not eliminate the potential for double liability because Nasdaq currently maintains two systems, SOES and SelectNet, that deliver liability orders. Thus, according to Nasdaq, a market maker who receives a SelectNet message at its price and size, followed immediately by a SOES execution against its quote, would be obligated to fill both orders.[133]

In response to the commenters' concerns regarding their ability to access quotations outside the inside market in the absence of SelectNet liability orders, Nasdaq stated that market participants may attempt to access such quotations through oversized SelectNet orders or through traditional means of communication.[134] In addition, Nasdaq noted that market participants will be able to enter limit orders in NNMS outside the current inside market that will be entitled to execution at the limit price or better if the inside market rises or falls to the price level of the limit order.[135] Nasdaq also maintained that SelectNet preferencing outside the inside market would be inconsistent with the orderly and fair processing of orders in the Nasdaq market and that, in light of NNMS' reserve size feature, efforts to access a quotation outside the current inside market without attempting to exhaust interest at the inside could be inconsistent with a broker's duty of best execution.[136] Nasdaq acknowledged that market makers will not be obligated to respond to non-liability SelectNet messages, but maintained that the implementation of a single liability/execution system is essential to reduce dual liability.[137]

In response to the commenters who raised concerns about the potential for manipulative activity in NNMS, Nasdaq asserted that NASD Regulation would closely monitor quotation and order entry activity to ensure the protection of all market participants.[138] In addition, in response to the commenter who believed a market maker would be able to "hold" the market by repeatedly renewing a 100-share quotation at five-second intervals because market participants would not be able to use SelectNet liability orders to exhaust the market maker's quotation, Nasdaq maintained that the commenter's description of trading activity was inaccurate and provided examples supporting its position.[139]

The Commission believes that the oversized order requirement and the resulting elimination of most SelectNet liability orders is a reasonable means to address the problem of double liability.[140] As noted above, Nasdaq has stated that double liability is a "significant and ongoing problem" and that reducing double liability is one of the proposal's primary goals. The Commission believes that reducing double liability may encourage market makers to display larger sized quotations, thereby providing greater liquidity to the market for NNM securities. The reduction in double liability also may enhance market makers' ability to reflect size in their quotations based on market and business factors with less concern for the potential for double liability. In addition, by preventing market participants from preferencing a quotation outside the current inside market, the elimination of most SelectNet liability orders may facilitate the fair and orderly processing of orders in the Nasdaq market.

With regard to obtaining access to liquidity outside the current inside market, the Commission notes that market participants may attempt to access quotations outside the current inside market through the use of oversized SelectNet orders or through traditional means of communication (*e.g.*, telephone orders). Accordingly, the Commission believes that the availability of oversized SelectNet orders, as well as traditional means of communication, should provide market participants with adequate means to access quotations outside the current inside market.

As discussed above, several commenters believed that the proposed reduction in SelectNet liability orders would result in misleading or inaccurate quotations because market makers would not be required to trade at their quotations.[141] In response, Nasdaq stated that NASD Regulation would closely monitor quotation and order entry activity to ensure the protection of all market participants.[142] The Commission expects NASD Regulation to carefully monitor the conduct of market participants and to bring appropriate disciplinary action against any market participant who enters false or misleading quotations in NNMS or engages in other conduct that is inconsistent with just and equitable principles of trade.

G. ECN Participation in NNMS

Under the proposal, an ECN may participate in NNMS as either an order entry ECN or as a full participant ECN. Market participants will access an order entry ECN through SelectNet liability orders, and an order entry ECN will not provide automatic executions for orders received from those participants. An order entry ECN may request order entry capability in NNMS, which will allow it to obtain automatic executions against the quotations of NNMS market makers, including agency quotes, if the Commission approves the separate display of agency quotes.

A full participant ECN will provide automatic executions for orders the ECN receives through NNMS. Like an order entry ECN, a full participant ECN may request order entry capability in NNMS to obtain automatic executions for orders it sends through NNMS.

As discussed more fully above, ECNs and other market participants criticized the provisions of the proposal relating to ECN participation in NNMS. Two ECNs asserted that order entry participation would marginalize an ECN and was not a viable means for participating in NNMS.[143] One ECN maintained that full participation would disadvantage an ECN because (1) the ECN's reserve quotations would not participate in the NNMS sweep of the ECN's top-of-the-file orders; (2) the ECN would be subject to potential double executions; and (3)

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[132] *See* Amendment No. 1, *supra* note 5.

[133] *See* Amendment No. 2, *supra* note 5.

[134] *See* Amendment No. 1, *supra* note 5.

[135] *See* Amendment No. 2, *supra* note 5.

[136] *See* Amendment No. 2, *supra* note 5.

[137] *See* Amendment No. 2, *supra* note 5. Nasdaq also noted that the elimination of SelectNet liability orders would apply equally to all market participants. *Id.*

[138] *See* Amendment No. 2, *supra* note 5.

[139] Specifically, Nasdaq provided scenarios indicating that a market maker could not "hold" the market at a price level. In Nasdaq's first scenario, NNMS receives a market order to sell 1,200 shares. Market maker A ("MMA") is alone at the inside bid of $20 for 100 shares, with 1,100 shares in reserve (the example assumes a previous partial execution against MMA's non-updated quote because reserve size would not be available unless MMA initially displayed a minimum of 1,000 shares). In this case, the order would execute automatically in full at $20 against displayed and reserve size and MMA's quote would be decremented to zero and refreshed or placed in a closed quote status. In the second scenario, NNMS receives a market order to sell 1,200 shares and MMA is alone at the inside bid of $20 for 100 shares, with no shares in reserve. In this case, NNMS would execute against MMA's quote and then move immediately to execute against the quotes at the next lower price level. Thus, the market would not be held at $20. If the inside offer moved to $20, MMA would violate NASD Rule 4613(e) (regarding locked and crossed markets) if MMA entered a locking bid of $20. *See* Amendment No. 2, *supra* note 5.

[140] As discussed above, UTP exchanges will continue to send and receive SelectNet liability orders. In addition, market participants will access order entry ECNs through SelectNet liability orders.

[141] *See* Whitcomb Letter, ETA Letter, and Haber Letter, Appendix A.

[142] *See* Amendment No. 2, *supra* note 5.

[143] *See* Bloomberg Letter and BRUT Letter, Appendix A.

the ECN would be required to provide access through NNMS to brokers that pay no ECN fees.[144]

One market maker criticized the proposal for providing two levels of participation for ECNs but not for other market participants.[145] Several commenters believed that Nasdaq should require ECNs to be full participants in NNMS and, accordingly, subject to automatic executions.[146] In addition, one commenter expressed concern that lack of uniform access to ECN quotes would provide opportunities for manipulative and fraudulent quotation and order entry strategies.[147] Another commenter asserted that a market maker might post its quotes in an order entry ECN to avoid automatic executions.[148]

In response to the concerns regarding ECN participation, Nasdaq stated that it proposed two levels of ECN participation after some ECNs indicated that their systems were not capable of supporting a full automatic execution interface with Nasdaq at this time.[149] In addition, Nasdaq indicated that it would monitor ECN activity in NNMS with a view towards fully integrating all ECNs in the future through enhanced automation.[150] Nasdaq maintained that the proposal balances the benefits of ECN participation in NNMS with current technological constraints and provides maximum flexibility for ECNs while reducing market makers' dual liability concerns.[151]

With regard to the interaction of an ECN's reserve size with NNMS, Nasdaq stated that ECNs currently do not allow Nasdaq access to the reserve size share amounts residing in their systems.[152] Nasdaq indicated that to the extent that an ECN agrees to share its reserve size information with Nasdaq and subject the reserved shares to the automatic execution parameters outlined in the proposal, Nasdaq would be willing to program NNMS to interact with the ECN's reserve size.[153]

In response to concerns that NNMS will provide an opportunity for manipulative and fraudulent quotation and order entry activity, Nasdaq stated, as noted above, that NASD Regulation would closely monitor quotation and order entry activity to ensure the protection of all market participants.[154]

The Commission finds that Nasdaq's proposal for ECN participation in NNMS provides an effective means for integrating ECNs into NNMS. By allowing an ECN to participate in NNMS either as a full participant ECN or as an order entry ECN, the proposal provides ECNs with the flexibility to determine the method of participation in NNMS that is most appropriate for the ECN at this time. The Commission also believes that providing two options for ECN participation in NNMS is reasonable and necessary because, according to Nasdaq, some ECNs currently are not capable of supporting a full automatic execution interface with Nasdaq. Moreover, it is not likely that ECNs that choose order entry participation will be marginalized because ECNs are frequently at the best quote in the market. Further, these ECNs have the ability to obtain automatic executions against the quotes of NNMS market makers if they so choose.

With regard to the concern that the lack of uniform access to ECN quotes will provide opportunities for manipulative and fraudulent quotation and order entry strategies in NNMS, the Commission expects NASD Regulation to carefully monitor trading in NNMS to detect manipulative quotation or order entry strategies and to bring appropriate disciplinary action against a market participant who engages in such strategies or other conduct that is inconsistent with just and equitable principles of trade.

H. UTP Exchange Participation in NNMS

Under the proposal, SelectNet will continue to serve as the primary linkage between UTP exchanges and Nasdaq. UTP exchanges will receive and be obligated to execute preferenced SelectNet liability orders and they will retain their ability to send SelectNet preferenced liability orders to Nasdaq market makers.

The CHX asserted that the proposal improperly excludes the UTP exchanges, including the CHX, from full participation in NNMS.[155] The CHX noted that the proposal would allow UTP specialists to send preferenced orders through SelectNet but will not permit them to use NNMS, which, unlike SelectNet, provides for automatic executions.

In response, Nasdaq noted that Nasdaq market makers currently are not able to obtain automatic executions against exchange specialists.[156] Nasdaq asserted that it would be inappropriate and inconsistent with the fair competition mandate of the Act for Nasdaq to provide CHX specialists with the ability to obtain automatic executions against Nasdaq members while the CHX and the other exchanges decline to provide Nasdaq members with automatic execution access to the quotes of exchange specialists through the Intermarket Trading System.[157]

The Commission believes that it is reasonable for Nasdaq to continue to use SelectNet as the primary linkage between Nasdaq and the UTP exchanges, allowing UTP exchange specialists to access the Nasdaq market through SelectNet liability orders. The Commission believes that the use of SelectNet linkage will provide UTP exchange specialists with adequate access to the Nasdaq market.

I. Technology Concerns

Several commenters expressed concerns regarding Nasdaq's technological capability to implement the proposed changes. In particular, one commenter noted that Nasdaq's systems must be able to promptly deliver critical message traffic, including messages relating to executions, size decrements, and quote updates.[158] The commenters argued that prompt message delivery is critical in light of the proposed reduction in time delays between executions against a market maker from 17 seconds to five seconds,[159] and they noted that a delay in providing notice of an execution increases the potential for double liability.[160] One commenter feared that the impact of existing problems associated with SOES technology will be exacerbated by the increased use of SOES under the proposal.[161] In addition, several commenters noted that firms must have sufficient time to modify their computer systems to implement the proposed changes.[162]

In response, Nasdaq indicated that it has and will continue to take all appropriate steps to assure the adequacy and sufficiency of the proposed systems changes.[163] Specifically, Nasdaq represented that its current automatic execution platform can be expanded

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[144] *See* Bloomberg Letter, Appendix A.

[145] *See* Knight Letter II, Appendix A.

[146] *See* Knight Letter II, ACIM Letter, King Letter, Mack Letter, and Vercellone Letter, Appendix A.

[147] *See* Knight II, Appendix A. *See also* Mack Letter, Appendix A.

[148] *See* King Letter, Appendix A.

[149] *See* Amendment No. 1, *supra* note 5.

[150] *See* Amendment No. 1, *supra* note 5.

[151] *See* Amendment No. 1, *supra* note 5.

[152] *See* Amendment No. 1, *supra* note 5.

[153] *See* Amendment No. 1, *supra* note 5.

[154] *See* Amendment No. 2, *supra* note 5.

[155] *See* CHX Letter, Appendix A.

[156] *See* Amendment No. 1, *supra* note 5.

[157] *See* Amendment No. 1, *supra* note 5.

[158] *See* STA Letter, Appendix A.

[159] *See* STA Letter, Appendix A.

[160] *See* ASC Letter, Appendix A. *See also* BRUT Letter, Appendix A.

[161] *See* ASC Letter, Appendix A. *See also* BRUT Letter, Appendix A.

[162] *See* DLJ Letter, Appendix A. *See also* STA Letter and BancBoston Letter, Appendix A.

[163] *See* Amendment No. 1, *supra* note 5.

rapidly to add sufficient capacity to handle the increased volume of message traffic moving into automatic execution under NNMS.[164] In this regard, Nasdaq noted that it plans to replace its current Tandem K-Series host processors with new Tandem S-Series models, resulting in an approximate 25% increase in system capacity and processing speed.[165] Nasdaq stated that this increase would be augmented further by software application tuning (*e.g.*, the addition of more parallel processes to handle order flow) that will expand capacity well beyond the needs of NNMS.[166] In addition, because SelectNet uses more message capacity than SOES due to SelectNet's broadcast, negotiation, and response capabilities, Nasdaq believes that the movement of order traffic to the SOES-based automatic execution platform will reduce overall network traffic levels, thereby increasing the speed and reliability of the entire Nasdaq market.[167]

In response to the commenters' concerns regarding Nasdaq's ability to provide prompt notice of an execution, Nasdaq asserted that the delays in execution report delivery result from competition for system resources in the Nasdaq central message switch.[168] Nasdaq maintained that the migration of message traffic from SelectNet to NNMS would significantly reduce the message traffic causing these delays.[169] In addition, Nasdaq indicated that it expects to roll out an improved central message switch in January 2000, which should dramatically increase the speed of automatic execution confirmation messages and more closely synchronize automatic execution transactions with execution updates to market makers and ECNs.[170]

Nasdaq also noted that it is in the process of testing a Transmission Control Protocol/Internet Protocol ("TCP/IP")-based, API communications protocol for NNMS, which Nasdaq expects to implement by the end of February 2000.[171] Nasdaq stated that the API would allow NNMS participants to more seamlessly link their internal systems with NNMS for trading, risk management, and regulatory compliance purposes.[172] Nasdaq asserted that the TCP/IP protocol should increase the speed and reliability of NNMS and remove most, if not all, of the technological objections to NNMS.[173]

The Commission believes that the proposed enhancements to Nasdaq's systems, including the new Tandem S-Series host processors and software modifications, the improved central message switch, and the TCP/IP-based, API communications protocol for NNMS, will help to ensure that Nasdaq has the technological capability to implement the proposed changes. The Commission expects that Nasdaq will implement these changes before it moves to the new NNMS trading platform. The Commission also expects Nasdaq to provide sufficient lead time for market participants before implementing NNMS, and to closely monitor operation of NNMS and to implement additional technological changes as necessary.

J. NNMS Fees

One commenter expressed concern that the fee system for NNMS may operate in a discriminatory and anticompetitive manner.[174]

In response, Nasdaq noted that the fees to be assessed under NNMS mirror the current fees for Nasdaq's automatic execution facilities (*i.e.*, $0.50 per side) and SelectNet ($1.00 per execution, order entry side only).[175] Nasdaq will treat a simultaneous execution against an NNMS participant's displayed and reserve sizes as a single execution. For example, a 5,000-share NNMS automatic execution order that interacts with the quotes of three market participants will result in a $0.50 fee for the order entry firm and a $0.50 fee for each of the three market participants whose quotes were accessed, regardless of whether the order also interacted with any of the market participants' reserve sizes.[176] Nasdaq indicated that it is reviewing modifications that may reduce NNMS fees in the future.[177]

The Commission believes that the proposed NNMS fees provide for the equitable allocation of reasonable dues, fees, and other changes, consistent with Section 15A(b)(5) of the Act.

K. Executions Against SOES Market Makers During Locked and Crossed Markets

The Commission believes that it is reasonable for Nasdaq to retain the current five-second delay between SOES executions against the quotation of market maker in SmallCap securities during locked and crossed markets.[178] The Commission believes that retaining the five-second delay between SOES executions during locked and crossed markets will help to ensure that locked or crossed markets are resolved promptly, thereby improving market quality, providing more informative quotation information, and contributing to the maintenance of a fair and orderly market. In addition, the Commission believes, as it has concluded previously, that the five-second delay between SOES executions during locked and crossed markets provides market makers with a brief period to update their quotations while encouraging market makers to quickly remedy a locked or crossed market.[179] Accordingly, the Commission believes that the proposal to retain the five-second delay between SOES executions during locked and crossed markets is reasonably designed to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

L. Technical Amendments

The Commission believes that the proposed technical, non-substantive amendments to the NASD Manual will clarify the NASD's rules to reflect the proposed changes. Because these changes will reduce confusion and help to ensure compliance with the NASD's rules, the Commission finds that the changes are designed to protect investors and the public interest.

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 respond to the concerns raised by the commenters, provide additional representations concerning the operation of the proposal, and clarify the proposed changes. Among other things, Amendment No. 1 makes clear that order entry firms will be able to participate in NNMS and that Nasdaq would be willing to program NNMS to interact with an ECN's reserve size to the extent that the ECN agrees to share its reserve size information with Nasdaq and subject the reserved shares to the automatic execution parameters outlined in the proposal. Amendment No. 2 describes Nasdaq's technological capability to implement the proposed changes and provides additional

[164] *See* Amendment No. 2, *supra* note 5.
[165] *See* Amendment No. 2, *supra* note 5.
[166] *See* Amendment No. 2, *supra* note 5.
[167] *See* Amendment No. 2, *supra* note 5.
[168] *See* Amendment No. 2, *supra* note 5.
[169] *See* Amendment No. 2, *supra* note 5.
[170] *See* Amendment No. 2, *supra* note 5.
[171] *See* Amendment No. 2, *supra* note 5.
[172] *See* Amendment No. 2, *supra* note 5.
[173] *See* Amendment No. 2, *supra* note 5.
[174] *See* ETA Letter, Appendix A.
[175] *See* Amendment No. 1, *supra* note 5.
[176] *See* Amendment No. 1, *supra* note 5.
[177] *See* Amendment No. 1, *supra* note 5.
[178] *See* Amendment No. 3, *supra* note 5.
[179] *See* Securities Exchange Act Release No. 38115 (January 3, 1997), 62 FR 1351 (January 9, 1997) (order approving File No. SR–NASD–95–54).

explanations concerning the rationale for the proposed changes. Amendment No. 3 strengthens the proposal by retaining the current five-second delay between SOES executions during locked and crossed markets, thereby encouraging market makers to quickly correct locked or crossed quotations. Accordingly, the Commission believes that granting accelerated approval of Amendment Nos. 1, 2, and 3 is appropriate and consistent with Sections 15A(b)(6) and 19(b)(2) of the Act.[180]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–11 and should be submitted by February 15, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act (specifically, Sections 11A and 15A of the Act) and the rules and regulations thereunder applicable to a national securities association.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[181] that the proposed rule change (SR–NASD–99–11), as amended, be and hereby is approved.

[180] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[181] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[182]

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Comment Letters Regarding SR–NASD–99–11

1. Letter from John M. Schaible, President, NexTrade, to Jonathan G. Katz, Secretary, SEC, dated May 3, 1999.
2. Letter from Steven Weil to SEC, dated May 8, 1999 ("Weil Letter I").
3. Letter from Steven Weil to Jonathan G. Katz, Secretary, SEC, dated May 7, 1999. ("Weil Letter II").
4. Letter from Kenneth D. Pasternak, President, and Walter F. Raquet, Chief Operating Officer, Knight Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 21, 1999 ("Knight Letter I").
5. Letter from James M. Hensley, President, Sierra Nevada Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 24, 1999 ("Sierra Nevada Letter").
6. Letter from Brent M. Weisenborn, Chairman, Security Investment Company of Kansas City ("KCMO"), to Jonathan G. Katz, Secretary, SEC, dated May 25, 1999 ("Weisenborn Letter").
7. Letter from Mktmaven to SEC (sent by e-mail) dated May 24, 1999 ("Mktmaven Letter").
8. Letter from Samuel F. Lek, Chief Executive Officer, Lek Schoenau & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Lek Letter").
9. Letter from James F. Mytinger, Treasurer, Kansas City Securities Association, to Jonathan G. Katz, Secretary, SEC, dated May 26, 1999 ("KCSA Letter").
10. Letter from Christopher Halford, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Halford Letter").
11. Letter from Stuart Cave, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Cave Letter").
12. Letter from Ludwell G. Gaines III, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Gaines Letter").
13. Letter from Steven R. Hook, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Hook Letter").
14. Letter from Richard Kitzmiller, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Kitzmiller Letter").
15. Letter from Jeffrey Frankel, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Frankel Letter").
16. Letter from Bruce K. Schmidt, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Schmidt Letter").
17. Letter from James F. Mytinger, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Mytinger Letter").
18. Letter from Trent McCann, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("McCann Letter").
19. Letter from Lance Turpin, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Turpin Letter").
20. Letter from Kyle Malmstrom, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Malmstrom Letter").
21. Letter from Ron F. Boyle III, KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Boyle Letter").
22. Letter from Carl L. Means, Jr., KCMO, to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Means Letter").
23. Letter from Oren Galchen to Jonathan G. Katz, Secretary, SEC, dated May 22, 1999 ("Galchen Letter").
24. Letter from Richard Y. Roberts, Thelen Reid & Priest LLP, on behalf of the Electronic Traders Association ("ETA"), to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("ETA Letter").
25. Letter from Robin Roger, Principal and Counsel, Morgan Stanley Dean Witter, to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Morgan Stanley Letter").
26. Letter from Dan Liu, Executive Vice President, *et. al.*, Automated Securities Clearance Ltd., to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("ASC Letter").
27. Letter from David K. Whitcomb, Professor of Finance and Economics, Rutgers University, Faculty of Management, Department of Finance and Economics, to Jonathan G. Katz, Secretary, SEC, dated June 1, 1999 ("Whitcomb Letter").
28. Letter from Brian Hyndman, President, *et al.*, The Brass Utility, L.L.C., to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("BRUT Letter").
29. Letter from Diane Murphy, Managing Director/Nasdaq Trading, BancBoston Robertson Stephens, to Jonathan G. Katz, Secretary, SEC, dated June 1, 1999 ("BancBoston Letter").
30. Letter from Bruce Miller, Professor of Accounting, The Anderson School at UCLA, to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Miller Letter").

[182] 17 CFR 200.30–3(a)(12).

31. Letter from Timothy J. Wilson to Jonathan G. Katz, Secretary, SEC, dated May 23, 1999. ("Wilson Letter").

32. Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated June 1, 1999 ("ICI Letter").

33. Letter from Dinuka L. Samarasinghe to Jonathan G. Katz, Secretary, SEC, dated May 23, 1999 ("Samarasinghe Letter").

34. Letter from Gregg Giaquinto, In-House Counsel, Electronic Trading Group, L.L.C. ("ETG"), to Jonathan G. Katz, Secretary, SEC, dated June 1, 1999 ("ETG Letter").

35. Letter from Paul R. Rudd to Jonathan G. Katz, Secretary, SEC, dated May 23, 1999 ("Rudd Letter").

36. Letter from William B. Norman to Jonathan G. Katz, Secretary, SEC, dated May 25, 1999 ("Norman Letter").

37. Letter from Michael O'Reilly to Jonathan G. Katz, Secretary, SEC, dated May 25, 1999 ("O'Reilly Letter").

38. Letter from Gabriel Levin to Jonathan G. Katz, Secretary, SEC, dated May 21, 1999 ("Levin Letter").

39. Letter from Jeremy Zucker to Jonathan G. Katz, Secretary, SEC, dated March 29, 1999 ("Zucker Letter").

40. Letter from David O'Leary to Jonathan G. Katz, Secretary, SEC, undated, received June 3, 1999 ("O'Leary Letter").

41. Letter from Tolga Erman to Jonathan G. Katz, Secretary, SEC, dated May 25, 1999 ("Erman Letter").

42. Letter from Piers Fennell to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Fennell Letter").

43. Letter from Mike Wolverton to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Wolverton Letter").

44. Letter from Neal King to Jonathan G. Katz, Secretary, SEC, dated May 24, 1999 ("King Letter").

45. Letter from Nikhil Atreya to Jonathan G. Katz, Secretary, SEC, dated May 27, 1999 ("Atreya Letter").

46. Letter from Joel Haber to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Haber Letter").

47. Letter from Joshua Weintraub to Jonathan G. Katz, Secretary, SEC, undated, received June 2, 1999 ("Weintraub Letter").

48. Letter from Bryan D. Chung to Jonathan G. Katz, undated, received June 2, 1999 ("Chung Letter").

49. Letter from Jeffrey A. Deeney to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Deeney Letter").

50. Letter from Steven Weil to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Weil Letter III").

51. Letter from Bob Sievers, Access Securities, to SEC, dated June 2, 1999 ("Sievers Letter").

52. Letter from Steve Swanson, President, Mount Pleasant Brokerage Services, LP, to Jonathan G. Katz, Secretary, SEC, dated June 1, 1999 ("Mt. Pleasant Letter").

53. Letter from Arthur J. Kearney, Chairman, and Leopold Korins, President and CEO, Security Traders Association ("STA") to Jonathan G. Katz, Secretary, SEC, dated June 3, 1999 ("STA Letter").

54. Letter from Howard Teitelman to Jonathan G. Katz, Secretary, SEC, dated May 20, 1999 ("Teitelman Letter").

55. Letter from Justin Schiller to Jonathan G. Katz, Secretary, SEC, undated, received June 4, 1999 ("Schiller Letter").

56. Letter from James T. Snell, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated May 24, 1999 ("Snell Letter").

57. Letter from Matthew D. Nemcic to Jonathan G. Katz, Secretary, SEC, undated, received June 3, 1999 ("Nemcic Letter").

58. Letter from Kenneth D. Pasternak, President, and Walter F. Raquet, Chief Operating Officer, Knight Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 4, 1999 ("Knight Letter II").

59. Letter from Richard D. Schenkman, Executive Vice President, Instinet Corporation, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1999 ("Instinet Letter").

60. Letter from Paul B. O'Kelly, Chicago Stock Exchange ("CHX"), to Jonathan G. Katz, Secretary, SEC, dated June 7, 1999 ("CHX Letter").

61. Letter from Bernard L. Madoff, Chairman, Trading Committee, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC, dated June 2, 1999 ("SIA Letter").

62. Letter from Brian L. Mack to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 ("Mack Letter").

63. Letter from Jon Vercellone to Jonathan G. Katz, Secretary, SEC, undated, received June 4, 1999 ("Vercellone Letter").

64. Letter from Yu-Hui J. Lin to Jonathan G. Katz, Secretary, SEC, dated May 30, 1999 ("Lin Letter").

65. Letter from Cornel Catrina to Jonathan G. Katz, Secretary, SEC, dated May 29, 1999 ("Catrina Letter").

66. Letter from William H. Sulya, Senior Vice President and Director of Nasdaq/OTC Trading, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), to Margaret H. McFarland, Deputy Secretary, SEC, dated June 7, 1999 ("A.G. Edwards Letter").

67. Letter from Greg Swenson to Jonathan G. Katz, Secretary, SEC, undated, received June 8, 1999 ("Swenson Letter").

68. Letter from Kevin M. Foley, Bloomberg L.P. ("Bloomberg"), to Jonathan G. Katz, Secretary, SEC, dated June 4, 1999 ("Bloomberg Letter").

69. Letter from Hill, Thompson, Magid & Co., Inc. ("Hill"), to Jonathan G. Katz, Secretary, SEC, dated June 7, 1999 ("Hill Letter").

70. Letter from Mike Cormack, Manager, Equity Trading, American Century Investment Management ("ACIM"), to Jonathan G. Katz, Secretary, SEC, dated June 3, 1999 ("ACIM Letter").

71. Letter from Ephraim F. Sudit, Ph.D., Professor of Accounting and Information Systems, Rutgers University, to Jonathan G. Katz, Secretary, SEC, dated June 1, 1999 ("Sudit Letter").

72. Letter from Matthew D. Lang, Senior Compliance Officer, USCC Trading, to Jonathan G. Katz, Secretary, SEC, dated June 8, 1999 ("USSC Trading Letter I").

73. Letter from Robert L. Padala, Managing Director, Over-the-Counter Trading, Donaldson, Lufkin & Jenrette ("DLJ"), to Jonathan G. Katz, Secretary, SEC, dated June 14, 1999 ("DLJ Letter").

74. Letter from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C. ("Archipelago"), to Jonathan G. Katz, Secretary, SEC, dated June 14, 1999 ("Archipelago Letter").

75. Letter from Darren Caris, Torrey Pines Securities, to Jonathan G. Katz, Secretary, SEC, dated June 16, 1999 ("Caris Letter").

76. Letter from Neil C. Feldman, President, USCC Trading, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1999 ("USCC Trading Letter II").

77. Letter from Lon Gorman, Executive Vice President, Charles Schwab ("Schwab"), to Jonathan G. Katz, Secretary, SEC, dated June 16, 1999 ("Schwab Letter").

78. Letter from Michael T. Dorsey, Senior Vice President and General Counsel, Knight Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 23, 1999 ("Knight Letter III").

79. Letter from Maria A. Silverstein, The Security Traders Association of New York, to Jonathan G. Katz, Secretary, SEC, and Robert Colby, Deputy Director, Division of Market Regulation, SEC, dated March 22, 1999.

[FR Doc. 00–1697 Filed 1–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42345; File No. SR–NASD–99–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of Trade and Quote Halt Authority for the NASD's OTCBB Service

January 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On November 16, 1999, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On December 3, 1999, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD and Nasdaq are proposing to amend the rules of the NASD to establish authority to halt trading in certain specific circumstances in securities included in the OTC Bulletin Board Service ("OTCBB"). The NASD and Nasdaq are also proposing to make changes to the Plan Of Allocation And Delegation Of Functions By NASD To Subsidiaries to clarify that the Stockwatch section of Nasdaq would have authority to effectuate OTCBB halts. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule 6545. Trading and Quotation Halt in OTCBB-Eligible Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, Nasdaq may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in the over-the-counter ("OTC") market of a security or an American Depository Receipt ("ADR") that is included in the OTC Bulletin Board ("OTCBB") if:

(1) The OTCBB security or the security underlying the OTCBB ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns ("Foreign Regulatory Halt"); provided, however, that Nasdaq will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; or

(2) The OTCBB security or the security underlying the OTCBB ADR is a derivative or component of a security listed on or registered with a national securities exchange, The Nasdaq Stock Market, or foreign securities exchange or market ("listed security") and the national securities exchange, The Nasdaq Stock Market or foreign securities exchange or market, imposes a trading halt in the listed security[5] or

(3) The issuer of the OTCBB security or the security underlying the OTCBB ADR fails to comply with the requirements of SEC Rule 10b–17 regarding untimely Announcements of Record Dates.

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, Nasdaq will promptly evaluate the information and determine whether a trading and quotation halt in the OTCBB security is appropriate.

(2) Should Nasdaq determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when Nasdaq determines that the basis for the halt no longer exists, or when five business days have elapsed from the date Nasdaq initiated the trading and quotation halt in the security, whichever occurs first. Nasdaq shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) Violation of OTCBB Trading and Quotation Halt Rule

If a security is subject to a trading and quotation halt initiated pursuant to this rule, it shall be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member:

(i) To effect, directly or indirectly, a trade in such security; or

(ii) To publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any quotation medium. For purposes of this Rule, "quotation medium" shall mean any: system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers; or publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations to others.[6]

Plan Of Allocation And Delegation Of Functions By NASD To Subsidiaries

I–III. No Change

IV. Stockwatch

The Stockwatch section handles the trading halt functions for The Nasdaq Stock market *securities* [and], exchange-listed securities traded in the over-the-counter market (*i.e.*, the Third Market), *and securities quoted in the Over-the-Counter Bulletin Board.* Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by NASD Regulation, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that NASD Regulation may deem necessary. NASD Regulation staff at all times will have access to all records and files of the stockwatch function.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John F. Malitzis, Esq., Assistant General Counsel, Nasdaq to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC dated November 12, 1999. (Amendment No. 1 added language to proposed NASD Rule 6545(a)(2) giving the NASD the authority to halt the trading of a derivative or component of a security listed on a foreign market or exchange if the foreign securities exchange or market imposes a trading halt in the listed securities.)

[4] *See* letter from John F. Malitzis, Esq., Assistant General Counsel, Nasdaq to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC dated December 3, 1999. (Amendment No. 2 revised the definition of "quotation medium" in Rule 6545(c)(ii) and conformed the language in footnote 12 to reflect the requirements of NASD Rule 6740 and SEC Rule 15c2–11.)

[5] *See* Amendment No. 1, *supra* note 3.

[6] *See* Amendment No. 2, *supra* note 4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. As part of the NASD's ongoing effort to address abuses in thinly traded, thinly capitalized securities and to increase investor protection in the trading of over-the-counter ("OTC") market, the NASD, Nasdaq, and NASD Regulation have been reviewing whether to establish trading and quotation halt authority for securities that are not listed on an exchange or on Nasdaq, but are traded by NASD members in the OTC market. Nasdaq specifically focused on expanding its current trading halt authority, which generally extends to Nasdaq-listed securities and exchange-listed securities traded off an exchange[7] (*i.e.*, third market), to those securities quoted on the OTCBB. The OTCBB is an NASD system which, pursuant to delegated authority. the Nasdaq Stock Market, Inc. is responsible for operating.

Based on this review, the NASD and Nasdaq are proposing to expand Nasdaq's authority so that Nasdaq may impose quotation and trading halts in OTCBB securities when: (1) The OTCBB security is dually listed or registered and a foreign regulatory authority or market halts trading in the security; (2) the OTCBB security is a derivative or component of a security listed on Nasdaq, a domestic exchange, or foreign exchange/market (*e.g.*, a convertible security or warrant) and Nasdaq, the exchange, or foreign exchange/market halts trading in the underlying security;[8] or (3) the OTCBB issuer does not timely provide the NASD with information required by Exchange Act Rule 10b–17.[9]

Currently, NASD Rule 4120 authorizes Nasdaq to impose trading halts in Nasdaq-listed securities and securities listed on a national securities exchange and traded in the third market. There are, however, no rules that grant Nasdaq authority to impose trading or quotation halts in OTCBB securities. Additionally, unlike the Nasdaq market, there is no listing agreement between Nasdaq and OTCBB issuers, and thus Nasdaq does not have the ability to compel such issuers to disclose information to Nasdaq. Accordingly, it is difficult for Nasdaq to unilaterally imposes halts in the OTCBB because, in most cases, information from the issuer is necessary to assess the situation and determine if a a halt and/or resumption of trading is appropriate.[10] In light of the foregoing the NASD and Nasdaq are proposing to vest Nasdaq with proscribed trading-halt authority.

Foreign Regulatory Authority Halts. First, the NASD and Nasdaq are proposing to impose trading and quotation halts in OTCBB eligible securities when a foreign market or regulatory authority has imposed a halt in the security in their market for regulatory reasons. This authority would permit Nasdaq to halt an OTCBB security or OTCBB ADRs when a foreign market on which the OTCBB issue is also traded, or a regulatory authority which has oversight authority for the OTCBB security, halts trading in the security or the security underlying the ADR for "regulatory" reasons. (Nasdaq currently has similar trading-halt authority for Nasdaq-listed securities.)[11] Under the proposal, upon receipt of information from a foreign securities market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered or from a regulatory authority overseeing such issuer, exchange, or market, Nasdaq's Stockwatch section will evaluate the information (generally, a trade-halt order issued by the foreign market or regulatory authority) and determine whether a halt in the OTCBB security is appropriate. Nasdaq will impose such a halt only when the foreign market or regulatory authority has imposed its halt because of potential fraudulent conduct or other public interest concerns. Nasdaq will not impose a halt if the foreign entity's halt is based on the dissemination of material news, an issuer's failure to meet regulatory filing requirements imposed by a foreign market or regulatory authority, or for operational reasons (*e.g.* order imbalance in the foreign market).[12]

For this and the proposed halts described below, an OTCBB halt would be lifted if Nasdaq determines that the basis of the halt no longer exists or upon the passage of five trading days, which ever occurs first.[13] If a stock is halted for five days and then the halt is lifted, at the time the halt is lifted, market makers will be required to fulfill their obligations under Exchange Act Rule 15c2–11 prior to initiating a priced or unpriced quotation in the security.[14]

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[7] *See* NASD Rule 4120. NASD Rule 4120 provides that Nasdaq may halt trading: (1) In the over-the-counter market of a security listed on Nasdaq to permit the dissemination of material news; (2) in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; (3) by: (i) Consolidated Quotation System ("CQS") market makers in a CQS security when a national securities exchange imposes a trading halt in that CQS security because of an order imbalance or influx ("operational trading halt"); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security; (4) in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or (5) in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to (i) material news; (ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in NASD Rule 4300 and 4400 Series; or (iii) or any other information which is necessary to protect investors and the public interest.

[8] *See* Amendment No. 1, *supra* note 3.

[9] Separately, NASD Regulation focused on establishing authority to impose trading and quotation halts in non-Nasdaq, non-OTCBB, OTC securities. Based on its review, NASD Regulation is issuing *Notice to Members 99–69*, in which it is soliciting comments on whether NASD Regualtion should have authority to halt trading in non-Nasdaq, non-OTCBB, OTC securities: (1) When the security is dually listed and a foreign regulatory authority or market halts trading; or (2) when the security is a derivative of a Nasdaq or exchange-listed security and Nasdaq or a national securities exchange halts trading in the underlying security. NASD Regulation is seeking comments from its membership prior to filing a rule proposal with the Commission because NASD Regulation's proposal is broader than that proposed in this filing. *See* Amendment No. 1, *supra* note 3.

[10] Under section 12(k) of the Act, the Commission may impose trading suspensions in the U.S. securities markets. *See* 15 U.S.C. 781–12(k). Additionally, NASD Rule 3340 prohibits members from trading any security as to which a trading halt is in effect. When the Commission suspends trading in an OTCBB security, Nasdaq announces the halt via the NEWS frame on the Nasdaq Workstation II and prohibits trading and quotations on the OTCBB.

[11] *See* NASD Rule 4210(a)(4).

[12] The NASD and Nasdaq do not propose to halt for material news because Nasdaq does not have a formal listing agreement with OTCBB issuers, and thus cannot compel the full disclosure and dissemination of material news. The NASD and Nasdaq do not propose to halt trading if an issuer fails to meet filing/disclosure requirements imposed by a foreign regulatory authority or market, because Nasdaq would, in essence, be importing filing obligations of a foreign regulatory authority on OTCBB issuers when such requirements may not currently exist in the United States for such issuers. Lastly, the NASD and Nasdaq are not proposing to halt trading based on a foreign exchange's operational halt, such as an order imbalance, because Nasdaq generally does not halt for operational reasons.

[13] Of course, if an issuer failed to meet the eligibility requirements contained in NASD rules 6530 and 6540, which impose certain regulatory filing requirements for securities to be included in the OTCBB, the security would be removed from the OTCBB.

[14] That is, if Nasdaq directs all members to cease quoting a security for five or more business days, pursuant to NASD Rule 6740 and Exchange Act Rule 15c2–11, members will be required to file a Form 211 prior to the resumption of quotations in the OTCBB. *See* 17 CFR 240.15c2–11. The NASD and Nasdaq note that the Commission recently issued for comment a reproposal of amendments to Exchange Act Rule 15c2–11. *See* Securities Exchange Act Release No. 41110 (February 25,

Continued

Nasdaq will notify market participants and the public of halts through the NASD Regulation and Nasdaq Websites (*e.g.*, OTCBB.com, Nasdaqtrader.com, NASDR.com), as well as the Nasdaq NEWS frame on the Nasdaq Workstation II.

Halts in Derivative Securities. Nasdaq currently has the authority to halt trading in a Nasdaq-listed derivative security when a national securities exchange or Nasdaq halts trading in the underlying equity security that is listed on the exchange or Nasdaq.[15] Halt authority only extends to derivatives listed on Nasdaq, and does not extend to derivatives quoted in the OTCBB. Thus, for example, Nasdaq or an exchange may halt trading in a security, but trading may continue in the OTCBB derivative security. Since the trading price of the OTCBB derivative is dependent on the price of the underlying listed security, it is difficult to accurately price the derivative security when there is no current pricing information on the underlying security. Such difficulty in pricing may lead to disorderly markets and investor confusion. According, the NASD and Nasdaq are proposing to halt trading and quotations in OTCBB securities when the OTCBB security is a derivative or component of a security listed on Nasdaq, a domestic exchange, or Nasdaq, foreign market/exchange, and the exchange, or foreign market/exchange imposes a trading halt in the underlying listed security.[16]

OTCBB Halts for Failure to Comply With Exchange Act Rule 10b–17. Finally, the NASD and Nasdaq are proposing to halt quotations and trading in an OTCBB security if the issuer fails to comply with the requirements of Exchange Act Rule 10b–17 regarding Untimely Announcements of Record Dates.[17] Exchange Act Rule 10b–17 requires issuers to give, in a timely fashion, the NASD information relating to: (1) A dividend or other distribution in cash or in kind; (2) a stock split or reverse split; and (3) a rights or other subscription offering. Under Exchange Act Rule 10b–17, the issuer is required to provide this information to the NASD no later than 10 days prior to the record date or, in case of a rights subscription or other offering if such 10 days advance notice is not practical, on or before the record date.[18]

For both Nasdaq-listed and OTCBB securities, Nasdaq publishes the record date of the action and the ex-date in its "Daily List" on the Nasdaq Websites. This provides information to broker-dealers, clearing agencies, and the public regarding the record date and settlement of such trades. For Nasdaq-listed securities, if an issuer does not provide the information in a timely manner, Nasdaq may request the Rule 10b–17 information from the issuer and halt trading pending receipt of such information.[19] Nasdaq may then issue a Uniform Practice Code ("UPC") notice informing members of the status of the record date and underlying event in order to clarify any confusion in the marketplace regarding the pricing or settlement of these trades.

While OTCBB issuers are also required to give the NASD information proscribed by Exchange Act Rule 10b–17 in a timely manner, Nasdaq does not currently have authority to institute trading halts in an OTCBB security when such information has not been timely provided. In the past, OTCBB issuers have failed to provide the NASD with the information required by Exchange Act Rule 10b–17, such as a stock split or the payment of a cash dividend, which has caused confusion in the marketplace because the information has been disseminated unevenly. When this has occurred, some market participants had become aware of the information (which impacts the pricing of the security) and had adjusted their quotes and/or trading activity accordingly. Others, however, had been unaware of this information and did not adjust their quotes and/or trading activity, thus resulting in anomalous pricing. In these situations, unlike Nasdaq-listed stocks, Nasdaq was not able to halt trading, gather information and issue a clarifying UPC notice. Rather, trading continued despite the uneven distribution of information or the distribution of misinformation, while Nasdaq staff attempted to gather information to clarify the situation. To minimize the potential for disorderly markets and investor confusion, the NASD and Nasdaq are proposing to halt trading and quotations in an OTCBB security when the issuer fails to give the NASD notice of the information specified in Exchange Act Rule 10b–17.

Finally, the NASD and Nasdaq are proposing to amend the Plan Of Allocation And Delegation Of Functions By NASD To Subsidiaries to clarify that the Stockwatch section of Nasdaq would have authority to effectuate OTCBB halts

2. Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the NASD and Nasdaq believe that the proposal is consistent with the provisions of Section 15A(b)(11) of the Act.[21] Section 15A(b)(11) of the Act requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. As noted above, because the proposed rule change will expand Nasdaq's authority to initiate trading halts in OTCBB issues based on regulatory halts imposed by other markets or regulatory authorities, the proposed rule will prevent fraudulent practices and protect investors. Moreover, the proposal will authorize Nasdaq to halt trading when there is a failure to timely provide the NASD with information mandated by Exchange Act Rule 10b–17, which if not timely and evenly disseminated could have a dramatic impact on the pricing and trading of OTCBB issues. Thus, the proposal is designed to protect investors and to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

1999), 64 FR 11124 (March 8, 1999). The NASD and Nasdaq will monitor developments regarding Exchange Act Rule 25c2–11 and plan to make any necessary changes to conform the rules proposed in this filing with any changes to Exchange Act Rule 15c2–11.

[15] *See* NASD Rule 4120(a)(3)(ii).

[16] *See* Amendment No. 1, *supra* note 3.

[17] *See* 17 CFR 240.10b–17.

[18] *Id.*

[19] *See* NASD Rule 4210(a)(5).

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] 15 U.S.C. 78*o*–3(b)(11).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof the the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–99–33 and schould be submitted by February 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1698 Filed 1–24–00; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42343; File No. SR–NYSE–99–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 431 ("Margin Requirements")

January 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend NYSE Rule 431, "Margin Requirements," to establish margin requirements for day trading in customer accounts of member organizations. The text of the proposal is below. Deletions are in brackets, and additions are in italics.

Rule 431—Margin Requirements

No change to 431(a) through (b)(3).

(b)(4) equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). *The minimum equity requirement for a "pattern day trader" is $25,000 pursuant to paragraph (f)(8)(B)(iv)(1) of this Rule.*

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T of the Board of Governors of the Federal Reserve System and after such withdrawal the equity in the account is at least the greater of $2,000 *($25,000 in the case of "pattern day traders")* or an amount sufficient to meet the maintenance margin requirements of this Rule.

No change to 431(c) through (f)(8)(A)(iii).

(f)(8)(B) Day Trading.

(i) The term "day trading" means the purchasing and selling *or the selling and purchasing* of the same security on the same day *in a margin account except for:*

(a) a long security position held overnight and sold the next day prior to any new purchases of the same security, or

(b) a short security position held overnight and purchased the next day prior to any new sales of the same security.

(ii) [A "day trader" is any customer whose trading shows a pattern of day trading.] *The term "pattern day trader" means any customer who executes four (4) or more day trades within five (5) business days. However, if the number of day trades is 6% or less of total trades for the five (5) business day period, the customer will no longer be considered a pattern day trader and the special requirements under paragraph (f)(8)(B)(iv) of this Rule will not apply.*

(iii) The term "day trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in paragraph (c) of this Rule, multiplied by four, for equity securities.

Whenever day trading occurs in a customer's margin account the [margin to be maintained] *special maintenance margin required for the day trades in equity securities* shall be [the margin on the "long" or "short" transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day trading occurs in the account of a "day trader" the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required by Regulation T of the Board of Governors of the Federal Reserve System or as required pursuant to the other provisions of this Rule, whichever amount is greater.] *25% of the cost of all the day trades made during the day. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of this Rule. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed.*

(iv) Special Requirements for Pattern Day Traders

(1) Minimum Equity Requirement for Pattern Day Traders—The minimum equity required for the accounts of customers deemed to be pattern day traders shall be $25,000. This minimum equity must be maintained in the customer's account at all times (see Supplementary Material .40 of this Rule).

(2) Pattern day traders cannot trade in excess of their day trading buying power as defined in paragraph (f)(8)(B)(iii) above. In the event a pattern day trader exceeds its day trading buying power which creates a special maintenance margin deficiency, the following actions will be taken by the member organization.

(a) The account will be margined based on the cost of all the day trades made during the day, and

(b) The customer's day trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (c) of this Rule, multiplied by two, for equity securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(3) Pattern day traders who fail to meet their special maintenance margin calls as required within five business days from the date the margin deficiency occurs will be permitted to execute transactions only a cash available basis for 90 days or until the special maintenance margin call is met.

(4) Pattern day traders are restricted from utilizing the guaranteed account provision pursuant to paragraph (f)(4) of this Rule for meeting the requirements of paragraph (f)(8)(B).

(5) Funds, deposited into a day trader's account to meet the minimum equity or maintenance margin requirements of this Rule 431(f)(8)(B) cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit.

(f)(8)(C) When the equity in a customer's account, after giving consideration to the other provisions of this Rule, is not sufficient to meet the requirements of paragraph (f)(8)(A) or (B) additional cash or securities must be received into the account to meet any deficiency within [seven] *five* business days of the trade date.

In addition, on the sixth business day only, member organizations are required to deduct from net Capital the amount of unmet maintenance margin calls pursuant to SEA Rule 15c3–1.

* * * * *

Supplementary Material

.10–.20 No change.

.30 In the event that the organization at which a customer seeks to open an account knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the minimum equity required under paragraph (f)(8)(B)(iv)(1) above ($25,000) must be deposited in the account prior to commencement of day trading.

.40 When a customer engages in pattern day trading, the minimum equity required under paragraph (f)(8)(B)(iv)(1) above ($25,000) must be deposited in the account before such customer may continue day trading.

.50 For purposes of paragraph (f)(8)(B)(iv)(2)(a) above, "time and tick" (i.e., calculating margin utilizing each trade in the sequence that it is executed, using the highest open position during the day) may not be used for a pattern day trader who exceeds their day trading buying power.

.60 For purposes of paragraph (f)(8)(B)(iii) and (iv)(2)(b), the day trading buying power for non-equity securities may be computed using the applicable special maintenance margin requirements pursuant to other provisions of this Rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 431 to implement specific requirements for day trading in customer accounts of member organizations. The primary purpose of the proposal is to require that minimum levels of equity and margin be deposited and maintained in day trading accounts sufficient to support the risks associated with day trading activities.

NYSE Rule 431 prescribes the minimum margin amount required to be maintained in customer accounts of member organizations. As a result of recent amendments to federal margin regulations and a rapidly changing industry environment, the Exchange established, in April 1996, a Rule 431 Committee (the "Committee") to review margin requirements and make recommendations for change. The Committee established subcommittees to review specific provisions of NYSE Rule 431. A special subcommittee was formed recently to address the risks associated with day trading in customer accounts. The Exchange's Board of Directors has approved a number of proposed amendments resulting from Committee recommendations.

This proposal amends NYSE Rule 431 to establish special maintenance margin requirements for customers that engage in day trading, and specific minimum equity requirements and buying power limitations for customers that demonstrate a pattern of day trading.

According to the Exchange, the recent growth and advances in technology have contributed to a dramatic increase in day trading by customers and in the establishment of broker-dealers whose primary business is to provide customers with direct links to the securities markets by allowing them to trade their own portfolios on-line. In this environment, day traders attempt to make profits on intra-day price movements of stock in the securities markets.

The proposed amendments to NYSE Rule 431(f)(8)(B) define "day trading" as "the purchase and sale of the same security in the same day in a margin account." An exception to the definition is provided when: (1) a long security position is carried in the account overnight, and sold the next day prior to any new purchases of that security; or (2) a short security position is carried overnight and purchased the next day prior to any new sales of that security, (*i.e.*, closing transactions to wrap-up the prior day's activities prior to *any new* purchases or sales of the same security). While such transactions would not fall within the definition of day trading, any further commitments with respect to that security (*i.e.*, any subsequent purchase or sale) would be deemed day trading.

A customer will be deemed as a "pattern day trader" if there are four or more day trades within five business days in an account, provided that the number of day trades is more than 6% of total trades in the account for the five day period.[3] The 6% criteria is proposed so that customers who engage in a large number of transactions overall are not inappropriately deemed a pattern day trader solely because they exceeded the "more-than-four-trade" standard. For example, a customer who transacts four day trades within five business days and who also has a total of 100 transactions in that time period would not be deemed a pattern day trader, because less than 6% of the total trades were day trades.

The proposal also defines "day trading buying power" to provide a maximum level of day trading allowed by "pattern day traders" without restrictions. For equity securities, buying power is the equity in the account at the close of the business day, less any maintenance margin, multiplied by four. For non-equity securities, buying power shall be computed using applicable special maintenance margin requirements pursuant to other provisions of the Rule.

The proposed amendments require day traders to maintain special maintenance margin commensurate with their levels of day trading activity. For day trades in equity securities, the required special maintenance margin is 25% of the cost of all day trades during the day. For non-equity securities, margin required is the same as maintenance margin required pursuant to other provisions of NYSE Rule 431. However, when two or more day trades occur on the same day in the customer's account, the required margin may be based on the highest open position

[3] "Pattern day trading" status is determined on a rolling five business day basis. Telephone conversation among Donald van Weezel, Managing Director, Regulatory Affairs, NYSE; Albert Lucks, Director, Credit Regulation, NYSE; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation; Thomas McGowan, Assistant Director, Division of Market Regulation; Joseph Morra, Attorney; and Melinda Diller, Attorney, Commission, January 7, 2000.

during that day. This computation requires maintenance of "time and tick" records to document the sequence in which each day trade was completed.

Further, under the amended Rule, the time frame for meeting day trading special maintenance margin calls will be reduced from seven business days to five business days. If the special maintenance margin call is not met within five business days from the date the special margin deficiency occurred, pattern day traders will be restricted to day trading on a cash available basis only for 90 days, or until the special call for additional funds is met. Member organizations will incur a one time capital charge for the amount of any unmet deficiency on the sixth business day.

Currently, NYSE Rule 431 requires $2,000 minimum equity for a customer to open a margin account. The Exchange is proposing to require that a pattern day trader's account maintain a minimum equity of $25,000 at all times. In the event that a pattern day trader's account falls below the required minimum equity, no further day trades will be permitted until the requisite equity level is maintained. In addition, member organizations that have advance knowledge or reason to believe that a new account will pattern day trade must require the customer to deposit $25,000 minimum equity into the account prior to the commencement of day trading activity.

The proposal will also restrict pattern day traders from trading in excess of their day trading buying power. If the day trading buying power is exceeded, and this results in a special maintenance margin deficiency, the following actions must be taken by member organizations: (i) the account will be margined based on the total cost of all day trade purchases for that day; and (ii) the customer's day trading buying power will be reduced by the maintenance margin amount required.

To provide greater financial stability to such accounts, the proposal requires that a day trading customer deposit into the day trading account a sufficient amount of money to meet minimum equity and maintenance margin requirements. Such deposits will not be allowed to be withdrawn for at least two business days.

In addition, pattern day traders will be prohibited from utilizing "cross guarantees" otherwise permitted in margin accounts. These prohibitions are intended to address instances where margin calls in day trading accounts are met by cross-guarantees within different customer accounts at the same broker-dealer. The net effect of these prohibitions is to require that each pattern day trading account meets its requirements independently by utilizing funds actually on deposit in the account.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(5)(b) of the Act,[4] which requires that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

The Exchange believes that the proposed rule change is also consistent with Section 7(a) of the Act[5] and with the rules and regulations of the Board of Governors of the Federal Reserve System, because it prevents the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–47 and should be submitted by February 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1699 Filed 1–24–00 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78g.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42350; International Series Release No. 1211; File No. SR–NYSE–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees for Canadian Companies

January 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2000, the New York Stock Exchange, Inc. ("NYSE" or Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its customs and practices for calculating continuing annual listing fees for Canadian companies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

It has been the custom and practice of the Exchange to calculate the continuing annual fee for Canadian companies listed before September 8, 1989 on the basis of total worldwide shares, with a 50% discount for companies with more than half of their operations outside the United States. The continuing annual fee for Canadian companies listed after September 8, 1989 and all other non-U.S. companies has been calculated based on shares issued in the U.S. The proposed change will calculate continuing annual fees for all Canadian companies based on shares issued in the U.S., thereby conforming the continuing annual fee for Canadian companies listed before September 8, 1989, to the standard applied to all other non-U.S. companies.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[3] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.[4]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–01 and should be submitted by February 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1735 Filed 1–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42349; File No. SR–PCX–99–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Authorizing the PCX ITS Coordinator to Accept Inbound Commitments on Behalf of Other PCX Specialists

January 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. PCX submitted an amendment on November 2, 1999 ("Amendment No. 1"),[3] and an amendment on December 7, 1999 ("Amendment No. 2").[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to adopt a new rule to allow the ITS Coordinator[5] in a given equity issue to accept ITS

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[3] 15 U.S.C. 78f(b)(4).

[4] The Exchange requested accelerated approval in its filing with the Commission. However, the Exchange retracted its request in a telephone conversation between Amy Bilbija, Counsel, NYSE, and Terri Evans, Special Counsel, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on January 11, 2000.

[5] 17 CFR 200.30–3(a)(12).

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael Pierson, Director, Regulatory Policy, PCX, to Marla Chidsey, Law Clerk, Division of Market Regulation, Commission, dated November 1, 1999. Amendment No. 1 clarifies whether the ITS coordinator must still confirm with other PCX specialists, executions made on behalf of those other PCX specialists, before executions occur.

[4] *See* Letter from Michael Pierson, Director, Regulatory Policy, PCX, to Marla Chidsey, Law Clerk, Division of Market Regulation, Commission, dated December 6, 1999. Amendment No. 2 adds Rule 5.20(a)(xi) defining the term "PCX Coordinating Specialist" as the specialist responsible for coordinating the acceptance of inbound ITS commitments.

[5] The Commission would like to clarify that the term "ITS Coordinator" is used interchangeably with the term "PCX Coordinating Specialist" as defined in new Rule 5.20(a)(xi).

commitments on behalf of other specialists in that issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

At the PCX, there are generally two registered specialists per equity issue traded on the Exchange.[6] However, there is only one specialist per issue who acts as the ITS Coordinator. The ITS Coordinator is generally responsible for coordinating acceptance of incoming ITS commitments among the specialists in a particular stock. The PCX expects that there will continue to be only one ITS Coordinator per stock after the Exchange expands the number of specialists per issue.

Currently, any PCX specialist may send an outbound ITS commitment to another market center without that ITS Coordinator's assistance. A PCX specialist who is not an ITS Coordinator may also receive inbound ITS commitments without the involvement of the ITS Coordinator, as long as the ITS Coordinator is not designated to participate in the trade as a result of the inbound commitment.[7] However, if an inbound commitment involves more than one PCX specialist as the contra side, then the ITS Coordinator is required to coordinate the execution of the commitment among the PCX participants verbally.

The current PCX rules do not expressly authorize the ITS Coordinator to accept ITS commitments on behalf of other specialists. The ITS Coordinator needs to obtain the verbal consent of the other specialist before accepting an inbound commitment on behalf of that other specialist. The PCX is now proposing to provide the ITS Coordinator with the express authority to accept ITS commitments on behalf of other specialists. The Exchange believes that this rule change is necessary in order to assure that there will be no delays in the acceptance of inbound ITS commitments, where there is more than one specialist quoting at the price of the inbound commitment.[8]

For example, assume Specialist A and Specialist B (PCX specialists) are both bidding $20 (the national best bid) for 500 shares of XYZ stock. If the PCX receives an inbound ITS commitment to sell 1,000 shares of stock, and if Specialist A is the ITS Coordinator, then Specialist A will confirm with Specialist B that 500 shares of XYZ may be accepted by Specialist A on Specialist B's behalf. The proposed rule change would allow Specialist A to accept the 500 shares on Specialist B's behalf, on the ground that Specialist B's bid for 500 shares is still outstanding at the time that Specialist A receives the inbound commitment for 1,000 shares. Whenever an inbound ITS commitment is received on the PCX, the specialists whose quotes prompted the inbound commitment will be notified by a "shadow" message that the inbound commitment has been received on the PCX.[9]

Specifically, the PCX is proposing to adopt new Rule 5.20, Commentary .04, which will provide that in the case of the assignment of an ITS stock to more than one PCX Registered Specialist, the PCX Coordinating Specialist or PCX Registered Specialist at whose ITS station an ITS commitment to trade is received is authorized to accept such commitment at the PCX bid or offer price, if still available (or at a better price if available), and up to the size of the PCX bid or offer without the need to communicate with other PCX members.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–37 and should be submitted by February 15, 2000.

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[6] The PCX expects that there will be more than one specialist per stock when its competing specialist program is implemented. *See* Exchange Act Release No. 41327 (April 22, 1999), 64 FR 23370 (April 30, 1999).

[7] The ITS Coordinator need not coordinate the commitment if he or she is not quoting at the price of the inbound commitment and is not representing an order at that price.

[8] Priority and parity rules will not be affected by the proposed rule change. Telephone conversation between Michael Pierson, Director, Regulatory Policy, PCX, and Christine Richardson, Attorney, and Marla Chidsey, Attorney, Division of Market Regulation, Commission (January 18, 2000).

[9] *See also* Amendment No. 1.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1736 Filed 1–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42346; File No. SR–Phlx–99–57]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options

January 18, 2000

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx requests permanent approval for the elimination of position and exercise limits [3] on Flexible Exchange Options on equity securities ("FLEX equity options").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx requests permanent approval of the pilot program eliminating position and exercise limits on FLEX equity options. FLEX equity options at the Phlx have been trading since January 1998.[4] The Commission approved the elimination of position and exercise limits on FLEX equity options, on a two-year pilot basis, concurrently with the approval of the trading of FLEX equity options.[5]

In addition to eliminating position and exercise limits, the pilot program required that a member or member organization (other than a Specialist or Registered Options Trader) report to the Exchange information for each account that maintains a position on the same side of the market in excess of the position limit established pursuant to the applicable exchange rule for Non-FLEX Equity options of the same class. The report included information regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account.[6]

Furthermore, the Commission, in its order approving the pilot program, required the Exchange to submit a report containing a description of: (i) the types of strategies used by FLEX Equity options market participants and whether FLEX Equity options are being used in lieu of existing standardized equity options; (ii) the type of market participants using FLEX Equity option both before and during the pilot program, including how the utilization of FLEX Equity options has changed; (iii) the average size of FLEX Equity option contracts both before and during the pilot program, the size of the largest FLEX Equity option contract on any given day both before and during the pilot program, and the size of the largest FLEX Equity option held by any single customer/member both before and during the pilot program; and (iv) any impact on the prices of underlying stocks during the establishment or unwinding of FLEX positions that are greater than three times the standard position limit. Phlx filed its report, which will be discussed below, on July 15, 1999.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (approving SR–Phlx–96–38).

[5] The Commission notes that it recently approved identical proposed rule changes from the American Stock Exchange, Chicago Board Options Exchange and the Pacific Exchange. *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158 (December 30, 1999) (approving SR–Amex–99–40, SR–PCX–99–41, and SR–CBOE–99–59).

[6] The Exchange also required that an updated report be filed when a change in the options position occurred or when a significant change in the hedge of that position occurred.

[7] 15 U.S.C. 78f(b)(5).

the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–57 and should be submitted by February 15, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[8] Specifically, the Commission believes that the rule proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule change is consistent with Section 11A of the Act in that the permanent elimination of position and exercise limits for FLEX Equity options allows the Exchange to better compete with the growing over-the-counter ("OTC") market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets. The attributes of the Exchange's options markets versus a OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of The Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.

The Commission has generally taken a gradual, evolutionary approach toward expansion of position and exercise limits. Given that the current pilot program has run for the past two years without incident, the Commission believes that it is appropriate to approve the pilot on a permanent basis. First, the FLEX Equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts (or the number of contracts having $1 million of underlying equivalent value) to open a transaction in a new series,[9] FLEX Equity options are designed to appeal to institutional investors, and it is unlikely that many retail investors would be able to engage in options transactions at that size. Second, all of the Exchange's other current rules and provisions governing FLEX Equity options remain applicable.[10] Third, the OCC will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the proposed elimination of position and exercise limits for FLEX Equity options could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Fifth, the enhanced reporting requirements should help the Exchange to monitor accounts under risk and to take any appropriate action. Finally, the Exchange's surveillance program will be applicable to the trading of FLEX Equity options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

As described above, the Exchange has adopted important safeguards that will allow it to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. The Exchange requires each member or member organization (other than a Specialist, a Registered Options Trader, a Market Maker, or a Designated Primary Market Maker) that maintains a position on the same-side of the market in excess of the position limit level established pursuant to the applicable Exchange rule [11] for Non-FLEX Equity options of the same class to report information to the exchange regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account. By monitoring accounts in excess of the Non-FLEX Equity option position limit in this manner, the Exchange should be provided with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, this information should allow the Exchange to determine whether a large position could have an undue effect on the underlying market and to take the appropriate action.

The Commission believes that it is reasonable to treat FLEX Equity options differently than regular standardized options. FLEX options compete directly with OTC options. The Commission believes that it would be beneficial to attract OTC activity back to a more transparent market with a clearinghouse guarantee. Hence, a liberalization of position limits for FLEX Equity options is a measured deregulatory means to enable the Exchange to compete with the OTC market while preserving important oversight safeguards.

As noted above, the Exchange was required to submit a report assessing the effects of the pilot program. This information was required to allow the Commission to valuate the consequences of the program and to determine whether permanent approval was appropriate. The Commission has reviewed Phlx's report. Although the Commission cannot entirely rule out the potential for future adverse effects on the securities markets for the FLEX Equity options or component securities underlying FLEX Equity options, the report supports permanent approval of the pilot because such effects and abuses have not occurred over the two year pilot period.

In the report, the Exchange indicates that there were no instances of any unusual market effects developing out of FLEX trades. Through 1998, there were a total of 189 trades, 47 transacted by institutions and 142 undertaken by retail customers. The average institutional trade size was 772 contracts with the largest trade involving 8,000 contracts. Retail investor trades averaged 120 contracts with the largest trade involving 1,760 contracts. [12] During 1998, four firms executed trades on behalf of a total of 15 retail customers. Based on the above, the Exchange concludes that that elimination of position and exercise limits for FLEX Equity options did not have any impact on the prices of the underlying stocks during the establishment or unwinding of FLEX Equity positions.

Finally, given the size and sophisticated nature of the FLEX Equity options market, the reporting and margin requirements, and the fact that the pilot program has run the past two years without incident, the Commission

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[8] *See* 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[9] *See* Phlx Rule 1079(a)(8)(A)(ii).

[10] *See* Phlx Rule 1079.

[11] *See* Phlx Rule 1001.

[12] The Commission notes that the minimum value size for an opening transaction (other than FLEX quotes responsive to a FLEX request for quotes) in any FLEX series in which there is no open interest at the time the request for quotes is submitted is the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities. However, the minimum value size for a transaction in any currently-opened FLEX series is 100 contracts in the case of opening transactions for FLEX Equity options and 25 contracts in the case of closing transactions in FLEX Equity options. *See* Phlx Rule 1079(a)(8)(A)(ii) and (a)(8)(B)(i).

believes that eliminating position and exercise limits for FLEX Equity options on a permanent basis does not substantially increase manipulative concerns. The Commission continues to believe that the enhanced market surveillance of large positions should help the Exchange to take the appropriate action in order to avoid any manipulation or market risk concerns. The Commission expects the Exchange to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in FLEX options and the underlying stocks, should any unanticipated adverse market effects develop. In summary, because of the special nature of the FLEX Equity markets, the Commission believes that the Exchange's proposals should be approved on a permanent basis. In permanently approving the proposals, the Commission believes that the distinctions between the FLEX Equity options market and the standardized equity options market, as described above, warrant the different regulatory applications of position and exercise limits under the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that because permanent approval of the proposal will allow the pilot program to continue uninterrupted based on the same terms and conditions of the original pilot, it is consistent with the protection of investors and the public interest to approve the proposed rule changes on an accelerated basis. Furthermore, as noted above, the Commission recently approved identical proposed rule changes from the American Stock Exchange, Chicago Board Options Exchange and the Pacific Exchange.[13] A full 21-day comment period was provided for those proposals and no comments were received. Accordingly, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[14]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–99–57) is approved.

[13] *See supra* note 5.

[14] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1737 Filed 1–24–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3207]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting to Discuss Preparations for Negotiations on an Annex to the United States-Canada Air Quality Agreement to Address the Transboundary Problem of Ground-Level Ozone

SUMMARY: The United States government, through an interagency working group chaired by the U.S. Department of State, is seeking authority to negotiate an annex to the United States-Canada Air Quality Agreement of 1991. The proposed annex would seek to address transboundary ground-level ozone air quality problems by establishing commitments to reduce emissions of major constituents of air pollution. In preparation for the proposed negotiations, the United States will establish a negotiating team consisting of representatives of the U.S. Department of State, the U.S. Environmental Protection Agency, and other interested U.S. government agencies. In addition, three representatives of interested party groups (one each from industry/mining/labor, U.S. states, and environmental groups) will be invited to participate on the U.S. delegation to the talks. The first negotiating session is expected to take place in Ottawa, Canada, in February 2000. The U.S. Department of State will host a public meeting in advance of this session to outline issues likely to arise in the context of the negotiations, to invite public comment, and to invite interested parties to collaborate on selecting their group's representative on the U.S. delegation. The public meeting will take place on Friday, February 4, 2000, from 9:00 a.m. to 11:00 a.m. in Room 1107 of the U.S. Department of State, 2201 C Street NW, Washington, D.C. To expedite their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647–5947) their name, organization, date of birth and Social Security number by close of business on Wednesday, February 2, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Ms. Cornelia Weierbach, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520. Phone 202–647–4548, fax 202–647–5947, e-mail weierbachcm@state.gov.

SUPPLEMENTARY INFORMATION:

Air Quality Cooperation With Canada

The United States and Canada committed themselves to addressing transboundary air pollution issues in the 1991 United States-Canada Air Quality Agreement. Since that Agreement entered into force, work has focused on achieving reductions in emissions of the two major acid rain pollutants: sulfur dioxide (SO_2) and nitrogen oxides (NO_X). Both parties have recorded excellent progress in complying with the SO_2 and NO_X emission reduction goals in the Agreement. Cooperative efforts on transboundary air pollution issues have led to the recognition that the U.S. and Canada have substantial common interests in the mitigation of ground-level ozone and particulate matter pollution.

In April 1997, President Clinton met with Canadian Prime Minister Chretien to discuss, among other issues, bilateral transboundary pollution control initiatives. At that time, the U.S. Environmental Protection Agency (EPA) Administrator and the Canadian Minister of the Environment signed the Program to Develop a Joint Plan of Action for Addressing Transboundary Air Pollution. The focus of this initiative was on ground-level ozone and particulate matter. In June 1998, these officials endorsed a report from the U.S.-Canada Air Quality Committee in which the Committee undertook to deliver, by April 1999, recommendations on the negotiation of an ozone annex to the U.S.-Canada Air Quality Agreement. On April 6, 1999, the Committee recommended the negotiation of an ozone annex to the U.S.-Canada Air Quality Agreement. Both the Administrator and the Minister agreed with this recommendation.

U.S. Domestic Framework for Controlling Ground-Level Ozone and Related Precursors

The United States has a strong regulatory program under the Clean Air Act (the Act) to reduce significantly emissions of ozone forming pollutants—NO_X and volatile organic compounds

(VOCs). This regulatory program is expected to form the basis of any commitments made by the U.S. under an ozone annex to the U.S.-Canada Air Quality Agreement.

The EPA has established national ambient air quality standards (NAAQS) for several pollutants, including ozone. To help achieve these air quality standards, EPA has issued a series of national regulations over the past 20 years designed to continue to diminish significantly emissions of VOCs and NO_X from light-duty vehicles, and NO_X from heavy-duty vehicles. In addition, EPA has begun phasing in control programs to reduce these emissions from non-road engines. It has also reduced sulfur in diesel fuels, and required cleaner, less volatile gasoline (*i.e.*, gasoline with a lower Reid Vapor Pressure) in most urban areas in the country. Several additional programs and regulations have been or are being phased in to further reduce emissions of NO_X, sulfur and VOCs from vehicles and/or fuels.

Under the Act, EPA requires stringent levels of control for newly built or modified industrial sources of ozone precursor emissions of NO_X and VOCs. EPA has also issued a series of emission standards that are significantly reducing emissions of NO_X from existing industrial sources.

Relation to the UNECE LRTAP Protocol

Parties to the U.N. Economic Commission for Europe's (UNECE) Convention on Long-Range Transboundary Air Pollution (LRTAP) recently signed a Protocol to Abate Acidification, Eutrophication, and Ground-Level Ozone (the LRTAP Protocol). The U.S. and Canada are both Parties to the LRTAP Convention, and each has signed the Protocol. Under the LRTAP Protocol, the U.S. and Canada have agreed to bring forward emission reduction commitments for SO_2, NO_X, and VOCs when negotiations on an ozone annex to the U.S.-Canada Air Quality Agreement are completed. The agreements in the LRTAP Protocol were based on an understanding by the European parties that the U.S. and Canada intended to negotiate an ozone annex, and would be committing to specific control programs and/or emission reductions under that annex. Their obligations under the annex would then be incorporated automatically into the LRTAP Protocol. Negotiation of this annex would, therefore, provide the basis of commitments under the LRTAP Protocol.

Participation of Interested Party Representatives on the U.S. Delegation

In order to further the public interest, the Department of State, in consultation with other U.S. government agencies, will invite three representatives from among all interested members of the public to participate in the negotiations as (non-U.S. government) members of the U.S. delegation. One individual will be invited to represent each of the following groups: industry/mining/labor, U.S. states, and environmental/public interest groups. Organizations that are members of each group are invited to nominate a spokesperson and collaborate on the selection of the representative who will participate on the U.S. delegation.

The spokesperson of each group should notify the Office of Environmental Policy, U.S. Department of State, not later than February 11, 2000, of the group's selection of its representative. Further discussion of this process will take place at the February 4, 2000 public meeting.

Timetable and Point of Contact

The United States and Canada expect to begin negotiations on the ozone annex in February 2000, and expect to complete negotiations by the end of 2000, with negotiating sessions to occur every three to four months. In preparation for the proposed negotiation, the Administration is preparing its position for the negotiation, and has scheduled a public meeting to be held on Friday, February 4, 2000 from 9:00 a.m. to 11:00 a.m. in Room 1107 of the U.S. Department of State. Members of the Interagency Committee who will participate in the proposed negotiation will provide an overview of U.S. preparations for the first session. The U.S. Department of State is issuing this notice to help ensure that interested and potentially affected parties are aware of and knowledgeable about these negotiations, and have an opportunity to offer comments. Prior to subsequent briefings, we will be contacting organizations/individuals that have expressed an interest by mail, fax or e-mail. Those organizations/individuals which cannot attend the February 4, 2000 meeting, but wish to either submit a written comment or to remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (phone 202–647–9266; fax 202–647–5947) with their statement and/or their name, organization, address, telephone and fax numbers, and their e-mail address.

Dated: January 19, 2000.

Daniel Fantozzi,

Director, Office of Environmental Policy.

[FR Doc. 00–1733 Filed 1–24–00; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1515).

TIME AND DATE: 9 a.m. (CST), January 27, 2000.

PLACE: TVA Environmental Research Center Auditorium, Muscle Shoals, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on December 8, 1999.

New Business

B—Purchase Award

B1. Supplement to contract with U.S. Fleet Leasing for fleet maintenance services.

B2. Cooperative/contract agreement with Bicentennial Volunteers, Incorporated, for volunteer, special projects, and staff augmentation services.

C—Energy

C1. Supplement to Contract No. 99PPW–235218–002 with ABB Environmental Systems to design, manufacture, and deliver selective catalytic reduction process equipment for any TVA fossil plant.

C2. Supplement to Contract No. 98P6D–195379 with General Electric Company for the manufacture and turnkey installation of new simple cycle dual fuel combustion turbine generating units.

E—Real Property

E1. Public auction sale of approximately 0.23 acre of land located on Cherokee Lake in Grainger County, Tennessee (Tract No. XCK–581) to resolve an existing house encroachment on one lot and to provide adequate area on a second adjoining lot to permit home construction.

E2. Grant of permanent easement, without charge, except for payment of TVA's administrative costs, to the State of Tennessee for highway improvement purposes, affecting 5 acres of land on Watts Bar Lake in Rhea County, Tennessee (Tract No. XTWBR–141H).

E3. Grant of a permanent recreation easement, without charge, except for payment of TVA's administrative costs,

to the City of Clinton, Tennessee, affecting approximately 3.9 acres of land on Melton Hill Lake in Anderson County, Tennessee (Tract No. XTMHR–19RE).

E4. Grants of two permanent easements, without charge, except for payment of TVA's administrative costs, to Notla Water Authority for a water treatment facility and raw water intake site, affecting approximately 21 acres of land located on Nottely Lake in Union County, Georgia (Tract No. XTNLR–34WP and XTNLR–35E).

E5. Sale of noncommercial, nonexclusive permanent easements to Mark Margetts (Tract No. XTELR–211RE), Oscar Lidstrom (Tract No. XTELR–213RE), and Michael Campbell (Tract No. XTELR–214RE) for construction and maintenance of recreational water-use facilities, affecting approximately 0.34 acre of Tellico Lake shoreline in Loudon and Monroe Counties, Tennessee.

E6. Grant of a permanent easement, without charge, except for TVA's administrative costs, for the upgrade of a wastewater treatment plant, to Jefferson City, Tennessee, affecting approximately 1.3 acres of land on Cherokee Lake in Jefferson County, Tennessee (Tract No. XTCK–64SP).

E7. Public auction sale of approximately 3.4 acres of a portion of the Oxford, Mississippi, primary substation property located in Lafayette County, Mississippi (Tract No. XOXPSS–1).

E8. Public auction sale of approximately 3.07 acres of TVA land (the site of the former Mayfield, Kentucky, Area Operating Headquarters) located in Graves County, Kentucky (Tract No. XMAH–1).

F—Unclassified

F1. Filing of condemnation cases to acquire permanent easements and rights-of-way for electric transmission lines at the Shelby-Covington Tap to Brighton Transmission Line, in Tipton County, Tennessee, and Murfreesboro-Smyrna No. 2 Transmission Line, in Rutherford County, Tennessee.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: January 20, 2000.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 00–1702 Filed 1–24–00; 11:00 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending January 14, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–6774.
Dated Filed: January 10, 2000.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/102 dated December 16, 1999.
Finally Adopted Resos/Recommended Practices r1–49 Minutes—PSC/Minutes/012 dated December 16, 1999.
Intended effective date: June 1, 2000.

Docket Number: OST–2000–6786.
Dated Filed: January 11, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0403 dated 7 January 2000.
Mail Vote 059—Resolution 070tt—TC3 Excursion Fares between South East Asia and South Asian Subcontinent.
Intended effective date: 1 April 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–1728 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 14, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–6777.
Dated Filed: January 11, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 8, 2000.
Description: Application of Trans Borinquen Air, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing Foreign Charter Air Transportation between the United States, Puerto Rico, Dominican Republic and the Caribbean.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–1729 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson, Clear Creek, Summit, Eagle, and Garfield Counties, Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a programmatic Environmental Impact Statement (EIS) will be prepared for the I–70 Mountain Corridor from the intersection of State Highway C470 in Jefferson County to Glenwood Springs in Garfield County, a distance of approximately 140 miles crossing five counties in Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Sands, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone: 303/969–6730, extension 362.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), and as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and FHWA regulations (23 CFR part 771), the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), is issuing this notice of intent to prepare a programmatic Tier 1 EIS. The EIS will be prepared in compliance with CEQ regulations at 40 CFR 1501.7 and as authorized by 40 CFR 1502.20 and 23 CFR 771.111(g), to take a broad view of the transportation issues and alternative solutions to assist in identifying needed safety and mobility improvements and reducing congestion on the I–70 Mountain Corridor. The Federal Railroad Administration, though not having jurisdiction over the project, will serve as a cooperating agency, providing technical assistance on rail technology.

The U.S. Environmental Protection Agency also will serve as a cooperating agency. In addition, FHWA and CDOT will coordinate closely with the U.S. Forest Service, Federal Transit Administration, and other federal, state, and local agencies throughout the preparation of the programmatic EIS.

Recognizing the need to act on projected increases in congestion and other mobility problems that have been forecasted over a period of the next 20 years, CDOT commissioned the I–70 Mountain Corridor Major Investment Study (MIS), which was completed in late 1998. The recommended improvements resulting from the MIS address alternatives for increased safety and to accommodate existing and future traffic demand. Reference is made to such MIS, which is available for examination at the Colorado Department of Transportation, Region One, 18500 East Colfax Avenue, Aurora, Colorado 80011.

As the next step and to meet objectives in the MIS, CDOT planned to prepare a site-specific EIS to address a 16-mile-long corridor between U.S. 40 and Floyd Hill, Clear Creek County (**Federal Register** Vol. 64, No. 103, pages 29079–29080, May 28, 1999), an area in need of immediate improvements, in conjunction with a secondary and cumulative impact study of the entire I–70 Mountain Corridor. However, in response to public concern, CDOT will postpone the preparation of the site-specific EIS and begin preparation of the programmatic EIS.

The programmatic EIS will enable CDOT and FHWA to address the transportation problems of the I–70 Mountain Corridor comprehensively as part of the overall I–70 Mountain Corridor transportation system. The overall project termini will extend from C470 to Glenwood Springs in order to assess the transportation problems within the I–70 Mountain Corridor. While the project termini are proposed to match the problem area, some of the proposed solutions will extend into other major locales or corridors (*e.g.*, metropolitan Denver area). The transportation elements identified in the MIS include fixed guideway transit, improved rubber tire transit, highway improvements, aviation, and alternate routes. These and any other reasonable alternatives identified through public comment during scoping will be addressed. The programmatic EIS will develop a 20-year transportation plan and a 50-year vision for the I–70 Mountain Corridor with the intent to balance competing interests and uses of the corridor. The 20-year plan will be a cost-constrained plan that will prioritize improvements and establish procedures for site-specific environmental studies. The programmatic EIS will identify the locations, modes of transportation, critical environmental resources, and general mitigation policy for the preferred alternative.

The approach to the assessment of environmental impacts will begin with agency and public scoping to identify the issues and concerns associated with the corridor. The results of scoping will help define the alternatives and the scope of the environmental studies to be conducted. Alternatives proposed in the MIS and identified through scoping will be evaluated and screened to narrow the range of alternatives considered for the I–70 Mountain Corridor programmatic EIS. Alternatives examined will be eliminated either through screening or advanced to environmental analysis for the programmatic EIS. The assessment will focus on cumulative environmental impacts. The studies and assessment will be documented in the draft programmatic EIS. After its publication, the draft programmatic EIS will be available for agency and public review and comment, and public hearings will be held. On the basis of the draft programmatic EIS and the comments received, a preferred alternative 20-year plan and 50-year vision will be selected and preparation of the final programmatic EIS and Record of Decision will proceed.

The Record of Decision for the programmatic EIS will not result in the environmental clearance of any I–70 transportation-related improvements. However, individual projects could proceed for I–70 improvements if they comply with 23 CFR 771.111(f) criteria: (1) Connect logical termini and be of sufficient length to address environmental issues on a broad scope, (2) have independent utility or independent significance, and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. To date, projects that comply with 23 CFR 771.111(f) include the Eagle County Airport Interchange, Hogback Park-n-Ride, Georgetown Rockslide Mitigation Project, Colorado Intermountain Fixed Guideway Authority Demonstration and Testing Project, Intermountain Connection Project, and Eisenhower Tunnel Lighting Improvements. If any other projects emerge during the programmatic EIS that comply with 23 CFR 771.111(f), they will be noticed publicly in advance. At present, it is anticipated that the I–70 Mountain Corridor programmatic EIS process will be completed in late 2002.

Integral with the programmatic EIS process, CDOT and FHWA will conduct an extensive and broad public involvement program to keep federal, state, and local agencies, organizations, and interested individuals informed and to provide ample opportunities for such agencies, organizations, and the public to participate throughout the three-year process. To ensure that the full range of issues and alternatives related to this proposed action are identified and addressed, written comments, suggestions, or questions should be directed to the FHWA at the address provided above or directed to:

Ms. Cecelia Joy, Planning and Environmental Manager, Colorado Department of Transportation-Region 1, 18500 East Colfax Avenue, Aurora, Colorado 80011, Telephone: 303/757–9112.

Information describing the purpose of the project, proposed alternatives, area to be evaluated, public involvement program, and preliminary project schedule will be available upon request by contacting Cecelia Joy at the address and telephone number noted above. Scoping comments may be made verbally or in writing to Ms. Joy and at future public meetings, the locations, dates, and times of which will be announced through public notice (newspaper advertisements and other means), as contemplated by 40 CFR 1506.6 and the following CDOT public notice procedure for comparable actions.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 13, 2000.

Ronald A. Speral,

Program Team Leader, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 00–1710 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Merced County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed expressway

project in Merced County,in Merced County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Tally, Team Leader, District Operations—North, California Division, 980 9th Street, Suite 400, Sacramento, CA 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) and the Merced County Department of Public Works, will prepare an environmental impact statement (EIS) on a proposal to construct a regional arterial, the Campus Parkway, in Merced County. The proposed project would involve the construction of an alignment, between the State Route 99/Mission Avenue Interchange to the southwest and the Bellevue Road to the northeast. The project would be approximately 10.5 kilometers (6.5 miles) in length.

Construction of this corridor is considered necessary to provide for the locally projected future traffic demand and conform with the regional transportation planning for the year 2020. The proposed project would provide access to the Merced's eastern industrial area, the northern area of the city of Merced, and the University Community Specific Use Development Plan area near Lake Yosemite, which encompasses the site for the campus of the University of California at Merced. Alternatives under consideration include: (1) Taking no action and (2) constructing a four-lane limited access highway on the ultimate six-lane Right-of-Way. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letter describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public information meetings will be held in Merced County between March and November 2000. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues relate to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance program Number 20.205, Highway research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 19, 2000.

Robert F. Tally,

Team Leader, District Operations—North California Division, Federal Highway Administration.

[FR Doc. 00–1712 Filed 1–24–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33844]

Kansas City Southern Industries, Inc., et al.—Corporate Family Transaction Exemption

Kansas City Southern Industries, Inc. (KCSI), Kansas City Southern Lines, Inc. (KCSL), The Kansas City Southern Railway Company (KCSR), KCS Transportation Company (KCST), Gateway Western Railway Company (GWWR), and Gateway Eastern Railway Company (GWER) (collectively, applicants),[1] have filed a verified notice of exemption. The exempt transaction involves KCSR's acquisition of KCST's rail subsidiaries, GWWR and GWER, through acquiring KCST's stock from KCSL.

The applicants reported that they intended to consummate the transaction immediately upon the effective date of the exemption. The earliest the transaction could be consummated was January 17, 2000, 7 days after the exemption was filed.[2]

The purpose of the transaction is to facilitate the planned spinoff of KCSI's financial subsidiaries into a corporation separate from KCSI, and to bring all of KCSI's commonly controlled railroads under the direct control of KCSR.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Although applicants do not expect any employees to be adversely affected by this control transaction, they have agreed to apply employee protective conditions pursuant to 49 U.S.C. 11326(a). Therefore, any employees adversely affected by the control transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33844, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William A. Mullins, Esq., Troutman Sanders, LLP, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 18, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–1648 Filed 1–24–00; 8:45 am]

BILLING CODE 4915–00–P

[1] KCSI is a publicly traded, noncarrier holding company with both rail and nonrail assets. KCSL, a noncarrier holding company which owns direct and indirect interests in rail transportation companies, is a direct wholly owned subsidiary of KCSI. KCSR, a Class I rail carrier operating in the States of Nebraska, Iowa, Kansas, Missouri, Oklahoma, Arkansas, Texas, Louisiana, Mississippi, Tennessee, and Alabama, is a wholly owned subsidiary of KCSL and an indirect wholly owned subsidiary of KCSI. KCST, a noncarrier, is a wholly owned subsidiary of KCSL and an indirect wholly owned subsidiary of KCSI. KCST owns all of the stock of GWWR, a Class II rail carrier operating in the States of Kansas, Missouri and Illinois. GWWR owns all of the stock of GWER, a Class III rail carrier operating in the State of Illinois.

[2] Upon completion of the transaction, KCSR will indirectly control GWWR and GWER.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–6]

Bonds; Approval To Use Authorized Facsimile Signatures and Seals

The use of facsimile signatures and seals on Customs bonds by the

following corporate sureties has been approved effective this date: Hartford Casualty Insurance Company, Hartford Fire Insurance Company.

Authorized facsimile signature on file for: James M. Gorman, Attorney-in-fact.

The corporate sureties have provided the Customs Service with a copy of the signature to be used, copies of the corporate seals, and certified copies of the corporate resolutions agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the sureties' right to affix signatures and seals manually.

Dated: January 19, 2000.

Jerry Laderberg,

Chief, Entry Procedures and Carriers Branch.

[FR Doc. 00–1683 Filed 1–24–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a veteran's marital status.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 27, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0114" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form 21–4170 is used to develop the evidence necessary to make a determination as to whether a claimed common law marriage can be recognized by VA.

Without this information, VA would have no means of determining the proper marital status of the veteran.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

Dated: December 23, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00– 1716 Filed 1–24–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed for a veterans service organization to represent a claimant in the prosecution of a VA claim.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 27, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0321" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

OMB Control Number: 2900–0321.

Type of Review: Extension of a previously approved collection.

Abstract: The form is used by VA beneficiaries to appoint any one of a number of recognized service organizations to represent them in the prosecution of their VA claims. The information is used to determine who has access to the beneficiary's claim file. In addition, it determines who has the right to receive copies of correspondence from VA to the beneficiary. Title 38, U.S.C. 5902 (b)(2), provides that VA may recognize representatives of service organizations to assist beneficiaries in the prosecution of VA claims, but that no individual shall be recognized unless such individual has filed a power of attorney, executed in a manner prescribed by VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 325,000.

Dated: December 23, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–1717 Filed 1–24–00; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
January 25, 2000

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1355, 1356 and 1357

Title IV–E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356 and 1357

RIN 0970–AA97

Title IV–E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Final Rule.

SUMMARY: This final rule amends existing regulations concerning Child and Family Services by adding new requirements governing the review of a State's conformity with its State plan under titles IV–B and IV–E of the Social Security Act (the Act), and implements the provisions of the Social Security Act Amendments of 1994 (Pub. L. 103–432), the Multiethnic Placement Act (MEPA) as amended by Pub. L. 104–188, and certain provisions of the Adoption and Safe Families Act (ASFA) of 1997 (Pub. L. 105–89).

In addition, this final rule sets forth regulations that clarify certain eligibility criteria that govern the title IV–E foster care eligibility reviews which the Administration on Children, Youth and Families conducts to ensure a State agency's compliance with statutory requirements under the Act, and makes other technical changes to the race and ethnicity data elements in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy McHugh, Director, Policy Division, Children's Bureau, Administration on Children, Youth and Families at (202) 401–5789.

SUPPLEMENTARY INFORMATION:

I. Background
II. Approach
  A. Consultation With the Field
  B. Analysis and Decision-Making
  C. Regulation in Context
III. Discussion of Major Changes and Provisions of the Final Rule
  A. Definitions
  B. Child and Family Service Reviews
  C. Enforcement of Section 471(a)(18) of the Act
  D. Reasonable Efforts and Contrary to the Welfare Determinations and Documentation
  E. Case Plans and Case Review Requirements
  F. Title IV–E Reviews
  G. Special Populations
IV. Section-by-Section Discussion of Comments
V. Impact Analysis
Final Rule

I. Background

Titles IV–B and IV–E of the Social Security Act (the Act) are the primary sources of Federal funds for State child welfare services, foster care and adoption assistance. The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272), amended title IV–B child welfare services to institute financial incentives for States to provide certain protections for children in foster care under section 427 of the Act. Public Law 96–272 also established Part E of title IV of the Act, "Federal Payments for Foster Care and Adoption Assistance." The foster care component of the Aid to Families with Dependent Children (AFDC) program, which had been an integral part of the AFDC program under title IV–A of the Act, was transferred to the new title IV–E, effective on October 1, 1982.

In August 1993, under the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Congress again amended title IV–B, creating two subparts and extending the range of child and family services funded under title IV–B to include family preservation and family support services. The family preservation and support services were designed to strengthen and support families and children in their own homes, as well as children in out-of-home care.

Later, through the Social Security Amendments of 1994, Congress repealed section 427 and amended section 422 of the Act to include, as State plan assurances, the protections formerly required in section 427 of the Act. As a result, ACF is no longer conducting "427" reviews to determine if a State is eligible to receive additional title IV–B, subpart 1 funds. Besides mandating the Secretary to promulgate regulations for reviews of State child and family service programs, the amendments to the Act at section 1123A required the Department to make technical assistance available to the States, and afforded States the opportunity to develop and implement corrective action plans designed to ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

In 1994, Congress passed the Multiethnic Placement Act (MEPA), Public Law 103–382, to address excessive lengths of stay in foster care experienced by children of minority heritage. One factor believed to be contributing to these excessive lengths of stay in foster care was State agencie' attempts to place children of minority heritage in foster and adoptive homes with parents of similar racial or ethnic backgrounds. The MEPA forbids the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. At the same time, Congress added a title IV–B State plan requirement to section 422(b)(9) of the Act, to compel States to make diligent efforts to recruit prospective foster and adoptive parents who reflect the racial and ethnic diversity of the children in the State for whom foster and adoptive homes are needed.

As originally enacted, section 553 of MEPA permitted States to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parent to meet the needs of a child of such background, as one of several factors in making foster and adoptive placements. In 1996, through section 1808, "Removal of Barriers to Interethnic Adoptions," of the Small Business Job Protection Act (Pub. L. 104–188), Congress repealed section 553 of MEPA, believing that the "permissible consideration" language therein was being used to obfuscate the intent of MEPA. Section 1808 of Public Law 104–188 amended title IV–E by adding a State plan requirement, section 471(a)(18) of the Act, which prohibits the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. Section 1808 of Public Law 104–188 also dictates a penalty structure and corrective action planning for any State that violates section 471(a)(18) of the Act.

On November 19, 1997, President Clinton signed the first broad-based child welfare reform legislation since Public Law 96–272 was enacted in 1980. The Adoption and Safe Families Act (ASFA) of 1997, Public Law 105–89, seeks to provide States with the necessary tools and incentives to achieve the original goals of Public Law 96–272: safety; permanency; and child and family well-being. The impetus for the ASFA was a general dissatisfaction with the performance of State' child welfare systems in achieving these goals for children and families. The ASFA seeks to strengthen the child welfare system's response to a child's need for safety and permanency at every point along the continuum of care. In part, the law places safety as the paramount concern in the delivery of child welfare

services and decision-making, clarifies when efforts to prevent removal or to reunify a child with his or her family are not required, and requires criminal record checks of prospective foster and adoptive parents. To promote permanency, ASFA shortens the time frames for conducting permanency hearings, creates a new requirement for States to make reasonable efforts to finalize a permanent placement, and establishes time frames for filing petitions to terminate the parental rights for certain children in foster care.

II. Approach

A. Consultation With the Field

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on September 18, 1998 (63 FR 50058–50098) with a 90-day public comment period. We received 176 letters within that period from State and local child welfare agencies, national and local advocacy groups for children, educational institutions, and individual social workers. Other commenters on the NPRM included: Members of Congress, providers of child welfare services, State and local courts, national and State associations representing groups of practitioners, Indian tribes, and local community organizations.

Prior to developing the NPRM, we consulted extensively with the child welfare field. We conducted a series of focus groups related to the child and family services reviews with representatives of State programs and national organizations, as well as with family and child advocates. In addition, State and Federal teams conducted 12 in-depth on-site pilots of the child and family services reviews that shaped our development of the regulation. We also conducted pilots of the title IV–E eligibility reviews in 12 States during the fiscal years 1995 through 1998. Shortly after the enactment of ASFA, we held focus groups in Washington, D.C. and in each of the 10 Federal regions to obtain input from the field on the implementation of the new law.

B. Analysis and Decision-Making

We received a wide range of written comments on the NPRM, representing a multitude of perspectives on Federal monitoring of State child welfare programs and meeting title IV–E statutory requirements. We received widespread support for an outcomes-focused approach to the child and family services reviews and the inclusion of a program improvement process subsequent to determinations of substantial nonconformity, and have thus retained these features in the final rule. We also received comments expressing concerns about other provisions of the NPRM.

The major concerns from commenters centered around provisional and two-tiered licensing systems for foster care homes, objectivity and clarity of substantial conformity determinations in the child and family services reviews, the enforcement of the Multiethnic Placement Act (as amended), documentation of reasonable efforts and other judicial determinations, and exemptions and exceptions from the termination of parental rights provisions. We amended and clarified many aspects of the final rule in response to these major issues and to other comments. To guide us in maintaining an appropriate balance in our analysis of the comments and decisionmaking for the final rule we used several principles. Those principles are to:

Focus on Achieving the Goals of Safety, Permanency and Well-being in State Child Welfare Systems

We believe that the Adoption and Safe Families Act of 1997 clearly establishes safety, permanency and well-being as the key goals for State child welfare systems. We were mindful, therefore, to have regulatory provisions that would support these statutory goals. For example, in the NPRM we proposed to prohibit provisional, or less than full licensure of foster care providers for title IV–E purposes. Many commenters opposed this prohibition for various reasons. Some were concerned that since relative caregivers were often granted less than full licensure, disallowing this practice for title IV–E purposes would reduce kinship care and the stability it can provide in a child's life. While we encourage States to consider permanency in kinship care arrangements, the ASFA clearly requires the safety of the child to be the paramount concern that will guide all child welfare services. In addition, the statute on its face requires that a home is fully licensed or approved as meeting the State's licensing standards for the purpose of title IV–E eligibility. Therefore, we decided to retain the proposed prohibition on less than full licensure, in part because the statute as amended by ASFA compels us to ensure that children are in safe placements.

We also chose to strengthen our focus on safety, permanency and well-being in the child and family services reviews in a number of ways. Many commenters were unclear about how we would measure these outcomes, so we have strengthened our process for measuring and determining substantial conformity with the safety and permanency outcomes in particular, through the statewide assessment. We also heard concerns that one of the safety outcomes was in fact two separate outcomes, so we have divided the first safety outcome accordingly. We believe that these modifications will help clarify our expectations for States to achieve these outcomes.

Another example of strengthening our focus on permanency is in the termination of parental rights provisions. Many commenters believed that certain groups of children in foster care should be exempted from the application of the provision for States to file a petition to terminate parental rights. Consistent with the statutory framework and desire for timely permanency for all children in foster care, we have clarified that no group of children is to be exempted from the TPR provision and State or tribal agencies may make exceptions to the TPR requirements only on a case-by-case basis.

Move Child Welfare Systems Toward Achieving Positive Child and Family Outcomes While Maintaining Accountability

As we noted in the NPRM, we have dramatically changed the focus of State program reviews by examining the results that child and family services programs achieve, rather than the accuracy and completeness of the case file documentation. Most commenters overwhelmingly supported this approach as one that would improve the provision of child welfare services for children and families, and we have thus retained a focus on outcomes in the final rule.

Some of the comments, however, also suggested that the flexibility that is inherent in an outcomes-based approach must be properly balanced with sufficient Federal oversight and State accountability. We agree that flexibility and accountability must be balanced, and have strengthened several provisions in the final rule in this respect. For example, for States who were determined to be out of substantial compliance on a child and family services review, we proposed to allow States two years, with a possible extension to three years, to complete a program improvement plan. Some commenters supported this length of time as sufficiently flexible to address needed areas of improvement, while others believed the program improvement period to be too long. In response, we have clarified that we do not expect States to take the full two

years to complete program improvement in all cases, and note that a State will only be able to extend a program improvement plan to three years in rare circumstances subject to the approval of the Secretary. Finally, we will apply penalties for nonconformity as soon as a State fails to improve on an area of nonconformity within the interval noted in the program improvement plan, rather than at the conclusion of the entire plan. We believe that these changes to the final rule properly focus the State on achieving outcomes while maintaining flexibility and accountability.

We also believe it necessary to ensure State accountability in the areas of documentation of reasonable efforts and contrary to the welfare determinations and requirements related to enforcement of section 471(a)(18) of the Act. Some commenters were concerned that the documentation requirements and enforcement of section 471(a)(18) of the Act were too inflexible. However, we believe that State accountability and Federal oversight in these critical areas of child and family protections and anti-discrimination consistent with the statute, will lead to better outcomes for children and families.

Use Non-Regulatory Resources to Support Federal Statutory and Regulatory Provisions

As we analyzed the comments, we carefully considered whether Federal regulations were the appropriate vehicle to address certain comments. We believe that we can better respond to some comments in a venue separate from the regulatory process, such as through technical assistance activities or program guidance.

For instance, some commenters requested regulations on title IV–E training or programs under title IV–B of the Act. We have very limited authority to expand the scope of the final rule beyond the issues presented for public comment in the NPRM, but we are now aware of certain issues that we may consider for future clarification. Other commenters asked for specific guidance on working to reunify children with parents who have substance abuse problems, or guidelines for judges on reasonable efforts, while others requested information about "best practices" in concurrent planning. We are committed to providing practice level guidance and will provide technical assistance in a variety of forms rather than in regulation. Other commenters requested Federal funds to subsidize legal guardianships, or train courts and their staff. Under current authority, title IV–E funds cannot be used for these purposes. However, we can direct States to our resource centers who may have information on seeking non-Federal funding sources for such initiatives.

C. Regulation in Context

This final rule incorporates many provisions of recently enacted legislation, including the Adoption and Safe Families Act of 1997, the Multiethnic Placement Act of 1994 as amended, and the Social Security Act Amendments of 1994. We received some comments that criticized us for not focusing on the requirements of ASFA and other amending legislation. We believe that some commenters were unclear that, to a large extent, provisions of ASFA, MEPA, etc. amend the Social Security Act (the Act), and that we refer to the requirements by their citation in the Act, rather than their citations in the amending legislation. We believe that this final rule does address the requirements of the amending legislation in the context of the existing requirements of titles IV–B and IV–E of the Act.

In addition to the guidance provided by this final rule, we encourage administrators to use the appropriate statutes as references in implementing Federal requirements. Also, the final rule amends existing regulations at 45 CFR part 1355 and 45 CFR part 1356. Therefore, we encourage the reader to examine and implement the rules herein in conjunction with existing regulations that have not been amended.

III. Discussion of Major Changes and Provisions of the Final Rule

Discussed below are some of the major changes and provisions of the final rule. A more thorough response to the individual comments can be found in the section-by-section discussion.

A. Definitions

Overall, we received comments that requested greater clarity on several definitions. We frequently encountered comments that noted that the Federal definitions did not encompass the variety of State definitions or practice. Where a definition was not essential to the proper implementation of the program, we chose to be flexible and leave definitions to the State's discretion. In particular, we deleted definitions of a "full hearing" and a "temporary custody hearing" as the comments revealed that they were limiting and not helpful to States. We also received comments that requested additional definitions for terminology used in the statute or in the regulation, *e.g.*, "compelling reasons," "aggravated circumstances," and "reasonable efforts." In most cases we chose not to regulate additional definitions as we do not wish to be more prescriptive and restrict State flexibility.

The proposed definition of the "date a child is considered to have entered foster care" elicited many comments requesting more clarity and State flexibility. In response, we have revised the definition to mirror the statutory language more closely. The "date a child is considered to have entered foster care" is no longer different for children placed in foster care under voluntary placement agreements, but more consistently applied. We also have clarified that a State can use a date earlier than the outside Federal limit set in the statute to begin the "clock" for satisfying the requirements for holding periodic reviews, permanency hearings, and for the termination of parental rights (TPR).

We received many comments on the definition of a "foster family home" that urged us to allow provisional licensure and a two-tiered system of licensing and approval. Despite these comments, we are prohibiting these practices, consistent with the statute, to ensure that children receiving title IV–E funds are placed safely in licensed homes. In recognition that some time may lapse between the date when a foster family home satisfies all requirements for licensure or approval and the actual date the license is issued, we will allow States to claim title IV–E reimbursement during this period, not to exceed 60 days. To accommodate those States where current State practice is not consistent with the requirements for foster family homes, we will allow a six-month period for States to bring current foster family homes to the appropriate licensing standards.

B. Child and Family Services Reviews

We received many comments in response to the proposed child and family services review process that have helped us strengthen it significantly from that proposed in the NPRM. In the NPRM and in the early pilot reviews, we relied heavily on the findings from the on-site reviews to make determinations about substantial conformity. In the final rule, we believe we have balanced our use of statewide quantitative indicators with case-specific qualitative observations in our decision-making about substantial conformity. Among the major changes we have made in the child and family review process are the following: We have strengthened the use of the statewide assessment, selected particular statewide data indicators to use in determining substantial

conformity, more clearly defined the process for reviewing the systemic factors, clarified the criteria for determining substantial conformity, increased the frequency of full reviews for States not in substantial conformity, added a discrepancy resolution process, and added graduated penalties for continuous nonconformity.

Most of the comments we received, particularly from the States, strongly favored the change to the results-and outcome-based review process proposed in the NPRM from the prior emphasis on compliance with procedural requirements. Similarly, we received very strong support for proposing a review process that provides time for States to improve programs and enhance services to children and families rather than one that imposes immediate penalties for nonconformity with certain requirements. A number of comments also indicated concerns about the details of the review process and raised issues about the overall approach that ACF is taking in reinventing the child and family services reviews.

Since we did not include all of the details of the reviews in the proposed rule, we would like to explain the procedures in more detail prior to addressing the major changes we made to the child and family services review.

We will review State programs in two areas: (1) Outcomes for children and families in the areas of safety, permanency, and child and family well-being; and (2) systemic factors that directly impact the State's capacity to deliver services leading to improved outcomes. The outcomes are as follows:

Safety Outcomes

1. Children are, first and foremost, protected from abuse and neglect.
2. Children are safely maintained in their homes whenever possible and appropriate.

Permanency Outcomes

1. Children have permanency and stability in their living situations.
2. The continuity of family relationships and connections is preserved for children.

Child and Family Well-Being Outcomes

1. Families have enhanced capacity to provide for their children's needs.
2. Children receive appropriate services to meet their educational needs.
3. Children receive adequate services to meet their physical and mental health needs. Each outcome is evaluated by using specific performance indicators and two outcomes are evaluated using data indicators as well.

State programs will also be reviewed to determine the extent to which the State agency has implemented State plan requirements that build the capacity to deliver services leading to improved outcomes. We describe such State plan requirements as systemic factors. These systemic factors include: (1) Statewide information systems; (2) case review system; (3) quality assurance system; (4) staff and provider training; (5) service array; (6) agency responsiveness to the community; and (7) foster and adoptive parent licensing, recruitment and retention. Each of the systemic factors subject to review is based on specific State plan requirements. Our review and assessment of the systemic factors will be based on the extent to which the State is in conformity with those State plan requirements.

We also want to clarify how the various components of the review process will inform decisions regarding substantial conformity.

Four sources of information are included in the child and family services reviews in order to make decisions about substantial conformity:

- Statewide AFCARS and NCANDS data on foster care, adoption and child protective services, including the State's performance on statewide data indicators with respect to the national standards for such;
- Narrative information on outcomes and systemic factors;
- Case-specific qualitative information and family interviews on outcomes; and
- Interviews with non-case-specific State and local community representatives on outcomes and systemic factors.

To complete this review effort, several tools will be used, including:

- A field-tested CFSR procedures manual that addresses the steps to be followed in the reviews and supplements information included in the rule;
- A statewide assessment instrument that directs the utilization of statewide foster care, adoption and child protection data to complete a narrative discussion of the outcomes and systemic factors reviewed, and the State's performance in meeting the standards for the statewide data indicators;
- An on-site intensive review instrument;
- Interview protocols for use with State and local stakeholders; and
- A summary of findings and recommendations form that enables the review team to address each outcome and systemic factor reviewed. This form, when completed, serves as the report of the review findings to the State.

There are five steps in the review process, from the point of initiating the review to assessing penalties where determinations of nonconformity are made:

- Prior to the State beginning work on the statewide assessment, ACF prepares and transmits data profiles of the State's foster care and child protective service populations, using AFCARS and NCANDS data submitted by the State. Some examples of the data included in the profiles include the length of stay in foster care, foster care re-entries, and repeat maltreatment rates of children. The data will indicate whether or not the State meets the national standards for those statewide data indicators used to determine substantial conformity.
- The State then completes the statewide assessment. This task requires the State to examine the data relative to the State programs, goals, and objectives, and consider them in light of the outcomes for children and families subject to review. The State also addresses in narrative the systemic issues under review relative to their influence on the State's capacity to deliver effective services. Based on the quantitative and qualitative findings of the statewide assessment, the State and the ACF Regional Office jointly make decisions about the locations of the on-site review activities and the types of cases that will be reviewed on-site.
- The on-site review is conducted by a joint Federal-State team that combines both the outcomes and the systemic factors being reviewed. In reviewing for the outcomes, a sample of cases is reviewed intensively using information from the case record and interviews with family members, the caseworker, and service providers involved with the family. The findings from the sample of cases are combined with the State's performance on selected Statewide data indicators to make determinations about substantial conformity on the outcomes. In reviewing for the systemic factors, interviews are conducted with State and local representatives, *e.g.*, courts, other agencies, foster families, and foster care review boards. The information from these stakeholder interviews is combined with information on the systemic factors in the statewide assessment to make determinations about substantial conformity on the systemic factors.
- The review team recommends a determination regarding substantial conformity, for each of the outcomes and systemic factors reviewed. The basis for the determinations is a

combination of quantitative and qualitative information from the statewide assessment and the on-site review related to each outcome and systemic factor.

• States are immediately informed of any penalties associated with outcome and systemic factors determined not to be in substantial conformity. Program improvement plans are developed to address each area of nonconformity and the State has a limited period of time to successfully complete the program improvement plan before penalties are actually taken.

A number of the comments we received reflected a need for more clarity regarding the overall process. As noted earlier, we did not include all the details of the reviews in the proposed rule, but chose to regulate only the basic framework of the process, including the overall approach to the reviews, the standards for substantial conformity, and the State plan requirements subject to review as required in section 1123A of the Act. We chose to address specifics about how the reviews will be conducted, the performance indicators that will be used to measure outcomes, and some aspects of the process for determining substantial conformity in a procedures manual we developed separately from the NPRM. This procedures manual will supplement the regulation with additional detail that State and Federal staff will need to conduct the reviews. The procedures manual will be in final form for the initial reviews to be conducted following publication of this rule.

While we recognize the need to be clear on the details of the review process, we also need to maintain the flexibility to make appropriate changes that support the results-focused approach to Federal reviews of State programs. Although we have field-tested the proposed review process extensively in 12 States to date, we believe that not regulating certain aspects of the review process affords both the Federal government and the States an ongoing opportunity to benefit from lessons learned in future reviews and make improvements to the process where needed.

We have made significant changes to the review protocol in response to the concerns raised through public comment. The most significant concerns relate to:

• The process and specific criteria for determining substantial conformity with State plan requirements;

• The degree of subjectivity involved in determining substantial conformity;

• The small sample size used in the on-site portion of the reviews; and,

• The amount of penalties associated with nonconformity.

The following addresses the major issues noted above that were the subject of the majority of the comments and changes to the regulation:

Determining Substantial Conformity With State Plan Requirements

Most of the respondents to the NPRM generally supported a determination of "substantial conformity," rather than requiring a determination of conformity on each specific title IV–B and IV–E State plan requirement. Of particular concern to commenters were:

• The standards used to make determinations of substantial conformity for outcomes;

• The process for resolving discrepancies in the aggregate data from the statewide assessment and the information obtained from the on-site review; and,

• The criteria used to determine substantial conformity for the systemic factors being reviewed.

Standards used to make determinations of substantial conformity for outcomes. The primary concerns regarding this issue include a lack of clarity with respect to how substantial conformity is determined and the standards that States are expected to meet in achieving substantial conformity. Commenters particularly requested that we set a more tangible, objective standard for substantial conformity. In response to these comments, and concerns raised about the sample size for the on-site portion of the review, statewide data indicators that are measured against national standards, in combination with the findings of the on-site review, will be used to determine substantial conformity.

Statewide data indicators. The following statewide data indicators will be used in combination with findings of the on-site review to determine substantial conformity with the outcomes.

Outcome S1: Children are, first and foremost, protected from abuse and neglect. Data indicators: Repeat maltreatment. Of all children who were victims of substantiated or indicated child abuse and/or neglect during the period under review, what percentage had another substantiated or indicated report within a 12-month period?

Maltreatment of children in foster care. Of all children in foster care in the State during the period under review, what percentage was the subject of substantiated or indicated maltreatment by a foster parent or facility staff?

Outcome P1: Children will have permanency and stability in their living situations. Data indicators: Foster care re-entries. Of all children who entered care during the period under review, what percentage re-entered foster care within 12 months of a prior foster care episode?

Length of time to achieve the permanency plan.

Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, what percentage was reunified in less than 12 months from the time of the latest removal from home?

Of all children who exited care to a finalized adoption, what percentage exited care in less than 24 months from the time of the latest removal from home?

Stability of foster care placement. Of all children served who have been in foster care less than 12 months from the time of the latest removal from home, what percentage have had no more than two placement settings?

Length of stay in foster care. For a recent cohort of children entering foster care for the first time in the State, what is the median length of stay in care prior to discharge?

The national standard for each statewide data indicator identified above will be based on the 75th percentile of all State' performance for that data indicator, as reported in AFCARS and NCANDS. We considered using the 90th percentile and the median to establish the national standard and rejected both because these standards, respectively, were deemed either too high or too low. This is illustrated, based on 1998b (April 1–September 30) AFCARS data, and 1997 NCANDS data (available for repeat maltreatment only) in the chart below.

Measure	Median	75th	90th
% of children with repeat maltreatment within a 12-month period	11	7	2
% of children re-entering foster care	20	13	5
% of children reunified in less than 12 months from latest removal	72	80	88
% of children adopted in less than 24 months from the latest removal	16	26	43
% of children in care less than 12 months with no more than 2 placements	63	77	85

Measure	Median	75th	90th
Median length of stay in foster care prior to discharge (months)	18	12	10

Note: Data for maltreatment of children in foster care is not available for the purposes of this illustration, but will be available when we calculate the standard.

We recognize that we have set a high standard. However, we think it is attainable and that our overall approach for moving States to the standard through continuous improvement is sound.

We anticipate that the standard for each data indicator based on AFCARS data will be derived from the 1998b, 1999c (complete Federal fiscal year) and 2000a (October 1–March 31) reporting periods and the standard for each data indicator based on NCANDS data will be derived from the 1997 and 1998 reports. However, if we have more current and complete data available, for example the 1998 and 1999 NCANDS reports, we will use these data submissions to develop the standard. By using multiple reporting periods we will increase the number of States that participate in setting the standard.

As we considered how to develop the national standard, we noticed that States with smaller caseloads were clustered in the upper percentiles with respect to performance on the data indicators. We did not want States with larger caseloads to be disadvantaged, therefore, we explored setting multiple standards based on caseload size. We derived the variable "number of children in foster care per 10,000 children under 18 years old in the general population" and used it to test State performance on certain statewide data indicators. We found no correlation between the variables. In short, caseload size was not useful in explaining the variation in State performance with respect to the national standards, so it was not considered in setting the national standards.

Because this concept of setting a national standard for data and basing substantial conformity, in part, on a State's ability to meet such a standard is untested, we purposely limited the number of outcomes to which we assigned statewide data indicators. For example, we did not assign data indicators to Safety Outcome #2 or Permanency Outcome #2, although we will consider adding indicators to those outcomes at a later time. We will also consider adding to or revising the data indicators listed above as needed. For example, we will consider adding timeliness of initiating investigations of child maltreatment to the safety outcomes later if there is a broad enough national data base through NCANDS to support that indicator. In addition, to date, there are no uniform national data indicators collected through AFCARS or NCANDS that can be used to review for the Well-being outcomes.

We expect the statewide data indicators to change over time and, therefore, did not regulate them. We chose to base the first set of statewide data indicators on the outcome measures that were developed in accordance with section 203 of the ASFA for two reasons:

- We received many comments requesting that the section 203 measures and the child and family services reviews be consistent with one another; and,
- The section 203 measures were developed in conjunction with a consultation group and were published in the **Federal Register** for public comment.

We would also like to note that many of the data indicators and performance measures we selected are consistent with and support the work of ACF in meeting the requirements of the Government Performance and Results Act of 1993 (GPRA). Under GPRA, Federal agencies are required to work with the States to establish performance goals and monitor performance results for all Federal programs. We believe that the outcomes and data indicators used in the CFSR support one of ACF's objectives under GPRA to increase the safety, permanency, and well-being of children and youth.

We have, however, in regulation, retained our authority to add new data indicators, change existing data indicators, and suspend the use of data indicators as appropriate. We took a similar approach to setting the national standards. The standards will not change every year. Rather, we have retained our authority to periodically review and revise the standards if experience with the reviews indicates adjustments are necessary.

Findings from the on-site portion of the review. During the on-site portion of the review, a set of performance indicators is used to review the outcome and determine the extent to which the outcome has been achieved. Since the individual circumstances of each child and family are unique, the performance indicators serve most effectively as a guide to help the reviewer gather appropriate information from a variety of sources. Experience has taught us that reviewing only the information that is recorded in a written case record is insufficient for assessing outcome achievement. Therefore, the reviewer explores the performance indicators through the case record review and through interviews with the individuals relevant to each case. Some components of the indicators are quantitative, such as the number of entries into foster care a child has experienced or the number of reports of maltreatment that have been received on a child. However, there are also indicators that are qualitative in nature that help explain the circumstances behind the numbers, such as reasons for re-entry into foster care or the nature of the reports of maltreatment received on a child. Indicators are rated as an area of strength or an area in need of improvement. For outcomes that have multiple indicators, if all but one of the indicators are rated as a "strength," the outcome is determined "substantially achieved" in that particular case. We learned from the pilots that the information gathered in the on-site review using instruments structured in this way most often led reviewers to a general consensus regarding the degree of outcome achievement.

Standard for substantial conformity with the outcomes. For the outcomes to which statewide data indicators are assigned, a State must meet both the national standard for the statewide data indicators and substantially achieve the outcome in 90 percent (95 percent in reviews subsequent to the initial review) of the cases reviewed on-site to be considered in substantial conformity. We will resolve any discrepancies between the Statewide data and the on-site review findings so that substantial conformity does not rely totally on one or the other information source. This approach permits on-site exploration of the reasons why performance with respect to the statewide data indicators might not be an accurate indicator of statewide performance. Outcomes for which there are no assigned statewide data indicators must be substantially achieved in 90 percent (95 percent in reviews subsequent to the initial review) of the cases reviewed on-site to be considered in substantial conformity.

Program improvement regarding statewide data indicators. Any State found not to be in substantial conformity with an outcome must enter into a program improvement plan. When the national standard is not met on any of the statewide data indicators used to determine substantial conformity, States must engage in continuous improvement toward the national standard in the program improvement plan. This means that ACF will negotiate with the State to determine how much progress toward meeting the standard, in terms of absolute percentage points, the State

will make to successfully complete a program improvement plan. We retain final authority to determine how much improvement the State must make. In reviews subsequent to the initial child and family services review, we will consider prior program improvement efforts, including continuous improvement in meeting the national standard, when negotiating the degree of improvement required to successfully complete a program improvement plan.

Resolving discrepancies in the aggregate data from the statewide assessment and the information obtained from the on-site review pertaining to the outcomes. We received a number of comments addressing this issue, particularly concerning how discrepancies between the two sets of information will be resolved. New § 1355.33(d) provides more detailed information on the steps we will take to resolve discrepancies between the aggregate data and the findings of the on-site portion of the review. In order to resolve discrepancies between the statewide assessment and the findings of the on-site portion of the review we will provide the State the option of either of the following:

- The submission of additional information by the State that will explain or resolve the discrepancy, such as additional data or analysis of the existing data, or
- ACF and the State will review additional cases, but only for the indicators with a discrepancy that must be resolved. The total number of cases reviewed may not exceed 150 cases, and will represent a statistically significant sample with a 90 percent (or 95 percent in subsequent reviews) compliance rate, a tolerable sampling error of 5 percent, and a confidence coefficient of 95 percent. The conclusions made from reviewing the additional cases will form the basis for determining substantial conformity.

Criteria used to determine substantial conformity for the systemic factors being reviewed. The concerns related to determining substantial conformity for the systemic factors: (1) Statewide information systems, (2) case review system, (3) quality assurance system, (4) staff and provider training, (5) service array, (6) agency responsiveness to the community, and (7) foster and adoptive parent licensing, recruitment and retention were similar to those for the outcome areas: A lack of clarity on how substantial conformity is determined and on the standards that States are expected to meet in achieving substantial conformity. In response to these concerns, we have established a process for rating the State's conformity with State plan requirements that is based on information obtained from the statewide assessment and the on-site stakeholder interviews. Information from the statewide assessment and interviews with stakeholders on-site must support a determination of substantial conformity. The review team will rate the State's performance for each systemic factor using a Likert-type scale, with criteria attached to each rating, based on the total information obtained from a variety of stakeholders interviewed on-site.

Except for "information system capacity," all of the systemic factors reviewed have more than one State plan requirement associated with them that are included in the review process. A State's conformity with each systemic factor will be rated on a scale of 1–4, based on the extent to which there are processes in place which meet the State plan requirements associated with that systemic factor. For example:

Not in substantial conformity		Substantial conformity	
1	2	3	4
None of the State plan requirements is in place.	Some or all of the State plan requirements are in place, but more than one of the requirements fails to function at the level described in each requirement*.	All of the State plan requirements are in place, and no more than one of the requirements fails to function as described in each requirement*.	All of the State plan requirements are in place and functioning as described in each requirement.

*For the systemic factor, "information system capacity," if it is determined that a system is in place but not functioning at the level described in the one State plan requirement reviewed, that factor is rated a "2", rather than a "3".

The statewide assessment requires the State to evaluate each of the State plan requirements. Information from that source is used in part to determine how the State is complying with each State plan requirement. During the on-site review, selected local and statewide stakeholders will be interviewed and asked a series of questions that relate to the State plan requirements. Not every stakeholder interviewed will be able to address each systemic issue thoroughly. Thus, for each systemic factor, the review team must use the total information obtained from all the interviews to evaluate the extent to which the requirements are being met. Both the information from the statewide assessment and the stakeholder interviews must indicate that the State should receive a "3" rating or better for that systemic factor in order for the State to be found in substantial conformity. To ensure objectivity in the information gathered through stakeholder interviews, we have amended the regulation at § 1355.33(c)(4)(iv) to set minimum requirements with respect to the selection of stakeholders who must be interviewed.

Subjectivity in Determining Substantial Conformity

Many respondents to the NPRM indicated that we needed to strengthen the rule to assure increased objectivity in making determinations of substantial conformity. Given the focus of the reviews on qualitative measures and degrees of outcome achievement, concerns raised included reviewers making subjective judgments on outcome achievement, holding States accountable for these judgments, and a lack of clarity on the standards used to make decisions.

We agree that the need to insure objectivity in the decision-making process is extremely important. In fact, we realized early in the design process of the reviews that proposing a results-focused review, as opposed to the checklist-style reviews of documentation conducted in the past, would raise concerns about the level of objectivity in the reviews. However, to design a review process that focuses on results and outcomes we must evaluate not only what happens to children and families as a result of the State' interventions, but the circumstances and mitigating factors that affect both the interventions and the results. To accomplish this, our review process must utilize both quantitative and qualitative assessments. We also realize that determinations regarding outcome

achievement in the areas of safety, permanency and well-being require judgments based on the specific circumstances of individual children and families, and that we need to standardize the criteria for making those judgments in order to ensure objectivity.

As noted in the NPRM, we included several criteria and procedures in the pilot reviews that were designed to make the reviews as objective as possible and to result in consistency among reviewers and across States in making critical judgments about outcome achievement. Those measures include:

- Using statewide aggregate data and qualitative information from the statewide assessment to understand and interpret the status of outcomes and systemic factors;
- Applying uniform criteria or performance indicators that guide reviewers to an accurate conclusion about the extent to which the outcome is being achieved in each case;
- Training State and Federal reviewers in the use of standardized review instruments and protocols; and,
- Using a quality assurance procedure during the course of the review by requiring local team leaders to review case ratings and debrief daily with reviewers to ensure that criteria are applied consistently.

In piloting the reviews, we also determined that the objectivity and uniformity of the process could be strengthened in several areas. For example, we learned that the Statewide assessment was prepared differently among the pilot States and that the manner of collecting the data for the safety and permanency profiles was not uniform, particularly in States where AFCARS or NCANDS data were unavailable. These factors made it difficult to rely upon information in the statewide assessment.

In regard to case selection, we found that the manner of selecting cases for the on-site review varied among States in ways that made it difficult to assure randomness. Through the pilots and the comments we received on the instruments, we became aware that the protocols used to review cases could be improved to reflect, more objectively, those factors that determine conformity with State plan requirements.

In response to these lessons and others, we have strengthened the provisions for objectivity in the reviews by adding a number of measures to the final rule and the CFSR procedures manual. We are also making substantial changes to the content of the instruments used in the reviews that will assist in making objective determinations and addressing the relevant areas of State plan conformity.

Most of the comments regarding subjectivity were related to the on-site review. The comments we received concerning subjectivity in the review process arise from genuine concerns that States be held accountable to an objective set of criteria. We also have learned from the pilot reviews that we must be willing to accept the professional judgment of reviewers in determining substantial conformity. Where there are adequate procedures in place to assure consistency and accuracy in decision-making, as we have described above, we believe professional judgments will be objective.

We recognize that it is much more difficult to determine whether or not a child is safe than it is to determine, for example, that a date on a court order meets specified time frames. Reviewing for outcomes requires gathering both qualitative and quantitative information, examining the information within an appropriate context and, ultimately, making a judgment about how well the outcome is or is not being achieved. Caseworkers in the field must make these judgments every day, and children's lives depend upon the accuracy of that process. A review process that only checks for procedural requirements and does not evaluate the quality of the decision-making process and service delivery that we expect of caseworkers is not likely to yield findings that will help States improve those processes where needed.

Sample Size for On-Site Reviews

In the NPRM, we proposed to review a sample of 30–50 cases. Most of the comments we received indicated strong concerns that reviewing only 30–50 cases may not be representative of the State' service populations and would not lead to credible judgments of substantial conformity. A number of commenters questioned how such a small sample could be statistically valid and expressed concern over imposing penalties based on a small sample of cases. Some respondents indicated a fear that we would be basing decisions about substantial conformity on "anecdotal" information in the absence of a much larger sample.

Clearly, to many of the commenters, sample size is a major issue, and we wish to explain our rationale for making only modest changes to this feature of the review in the final rule, based on the lessons we learned in the course of piloting the new review process. We want to emphasize that two changes also address these concerns about the sample size: Adding the statewide data indicators and a process to resolve discrepancies that may include reviewing additional cases.

- We found little discrepancy between the statewide data and the findings from the small sample. We should note that we experienced minimal disagreement among reviewers (State and Federal) and between the statewide data and the findings made on the basis of the small samples in the pilot reviews. The findings of the pilots were similar to those noted in State quality assurance systems, where those systems were in place in pilot States. In most situations, the findings provided State officials with sufficient details about the functioning of their programs to make improvements where needed and to build on existing strengths in their programs.
- We learned that we cannot make accurate decisions in a results-focused review by only reviewing documentation in records. We began by pulling a large sample in the first four pilot States. We conducted a record review in all the cases, similar to prior reviews, except we were attempting to capture both qualitative outcome and quantitative information from the records. In a smaller subsample of the larger sample, we interviewed the relevant parties and focused less on record documentation and more on what was actually occurring in each case. Inevitably, the review team found that the small sample and the strategy of in-depth analysis through interviews was a more reliable source of information on outcomes and conformity with applicable requirements. The information obtained solely from the case records was often incomplete, not current, and left information gaps. Basically, we learned that we cannot apply traditional checklist-type reviews of documentation to determine the quality of decision-making and service delivery.
- We learned that reviewing cases intensely, including all the relevant interviews, requires a large number of staff resources and is an extremely time-consuming process. The process of reviewing case records and conducting multiple interviews in each case reviewed, combined with other review team activities, allows a reviewer time for only two cases, possibly three, in one week. Even with a sample size of 50 cases, the process requires a team of approximately 25 reviewers in order to complete the on-site review in one week. Increasing the sample to 150 cases or more would mean that either a team of 75 reviewers would be needed to review a State in one week, or 25

reviewers would have to remain on-site for three weeks to complete the review. Either option creates unreasonable expectations for States and the Federal government in terms of staff resources and cost and, therefore, does not constitute a cost-effective approach to the reviews.

As originally proposed in the NPRM, the sample would be comprised of both in-home and foster care cases. In-home cases do not provide insight into the State's performance with respect to the permanency outcomes, meaning that not every case in the sample would inform decisions regarding substantial conformity for the permanency outcomes. On the other hand, we need to assure that the sample accurately captures information on in-home service cases in order to examine the safety outcomes based on recent practice and for children who never entered the foster care system.

Therefore, in certain circumstances, the sample size may be increased to assure that all program areas identified in the statewide assessment for further review are adequately represented. In addition, we are requiring, in regulation, that the sample of 30–50 cases include children who entered foster care in the State during the year under review.

We have also added provisions to the rule for resolving discrepancies between the aggregate data and the findings of the on-site review that address the sample of cases reviewed. We are providing States the option of resolving such discrepancies through the submission of additional information, or by ACF and the State reviewing additional cases that, in combination with the 30–50 cases reviewed on-site, will be a sufficient number to comprise a statistically significant sample. ACF and the State will determine jointly the exact number of additional cases to be reviewed, however, the total number of cases may not exceed 150. We chose a maximum of 150 cases because it exceeds the highest number of cases necessary to review a sample that will be statistically significant with a compliance rate of 90 percent (or 95 percent for subsequent reviews), a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. In order to assure that the sample of cases reviewed in the on-site review and the additional cases actually comprise one random sample, we will randomly select the oversample of 150 cases for the on-site review, from which a subsample of 30–50 cases will be drawn. If the State chooses a review of additional cases to resolve a discrepancy, those cases will be selected from the same oversample. In this manner, we believe we will address concerns about the size of the sample, particularly in cases where discrepancies in the findings exist and must be resolved.

We recognize that the sample size does not represent a faultless approach to reviewing State programs, and we fully understand the varying perspectives on this issue. We must emphasize, however, that the quality of information gathered from the overall process, and not the on-site sample in isolation, will benefit children and families by tracking their outcomes and allowing States to focus on program improvements where needed.

Penalties Associated With Nonconformity

We have made an important change in the final rule regarding withholding of funds in situations where States remain in nonconformity continuously on the same outcomes or systemic factors, and for States that elect not to engage in a program improvement plan. The final rule provides for graduated penalties in successive reviews if areas of nonconformity remain uncorrected. We have also applied the maximum withholding to those States that do not implement program improvement plans to correct the areas of nonconformity.

The comments we received on the imposition of penalties raised a number of issues that we considered in making this change to the rule. Some comments indicated concerns that the Federal government is not meeting its stewardship responsibilities by not taking a more aggressive approach to penalizing States found not to be in substantial conformity. Other comments indicated that the potential for penalties is substantial and could have a serious effect on the capacity of States to administer their programs. We also were encouraged to use the process for imposing penalties to assure that program improvements are made when and where they are needed.

We wish to note that we have not proposed an "all or nothing" approach to penalizing States. We have been faithful to the statutory mandate that applicable penalties be commensurate with the extent of nonconformity. Further, we have designed a review process that is based on substantial conformity with the requirements, rather than total compliance without exception, to be consistent with the statutory mandate. Penalties are attached to each outcome and systemic factor determined to be in nonconformity. We are providing time-limited opportunities for States to make needed program improvements prior to withholding of Federal funds for nonconformity. Only when States fail to take advantage of program improvement opportunities or complete a plan successfully will they be faced with an actual loss of Federal funding as a result of the child and family services reviews.

At the same time, we have taken seriously the stewardship responsibilities of the Federal government in enforcing conformity with State plan requirements. These responsibilities are clear and we have not abandoned them. We intend to withhold Federal funds where States are not using those funds to achieve their designated purpose. To clarify that the need to make program improvements will be strongly enforced, we are strengthening sections of the final rule to assure that penalties will be taken in a timely and certain manner.

We do not wish to impose penalties in a manner that will impair a State's ability to provide essential services to children and families. However, we have a responsibility to assure that State plan requirements are met and that children and families are served in ways that will provide for their safety, permanency, and well-being.

C. Enforcement of Section 471(a)(18) of the Act

We received a large response to the section of the regulation that enforces the Multiethnic Placement Act, as amended. Several commenters sought practice guidance on how to implement the law. We believe that we have addressed these issues in other forums through policy issuances and HHS-funded technical assistance and guides. Other commenters were concerned that we were not maintaining the partnership approach exemplified in the child and family services reviews. We have made no changes to the regulation in response to these comments, since we find that the statute is definitive in the manner in which we are to implement corrective action and enforce compliance with section 471(a)(18) of the Act.

In response to other comments, we have:

- Clarified that we will consider a State in violation of section 471(a)(18) when it maintains a policy, practice, law or procedure that, on its face, clearly violates section 471(a)(18) of the Act;
- Required States to notify ACF upon a final court finding that the State has violated section 471(a)(18) of the Act;
- Allowed States up to 30 days to develop a corrective action plan to respond to a violation of section 471(a)(18) of the Act resulting from a

State's statute, regulation, policy, procedure or practice, and six months in which to complete the plan;

- Clarified which title IV–E funds will be reduced in the event of a violation of section 471(a)(18) of the Act; and
- Added a definition of the term "entity."

D. Reasonable Efforts and Contrary to the Welfare Determinations and Documentation

Many commenters believed that the requirements for reasonable efforts and contrary to the welfare determinations as proposed were inconsistent with current State practice. In some instances we agree that the regulation was unnecessarily restrictive, and have made the following changes to preserve State flexibility while keeping within the statute and maintaining the integrity of the program:

- Removed the distinction between emergency and non-emergency removals in the sections of the rule on contrary to the welfare and reasonable efforts to prevent removal. This change is in response to concerns that the distinction was artificial.
- Allowed States up to 60 days to obtain a judicial determination with regard to reasonable efforts to prevent removal of a child from home. This responds to concerns that our proposed policy restricted the timing for obtaining such a determination to a specific date rather than within a specified time frame.
- Consolidated the requirements regarding reasonable efforts to reunify the child with the family and efforts to make and finalize alternate permanent placements into a single requirement to be more consistent with actual State practice. Within 12 months of the date the child is considered to have entered foster care, the State is to obtain a judicial determination that the State agency made reasonable efforts with respect to the permanency plan that is in effect.

In other areas, we explained why we are maintaining our policy position rather than changing the regulation in response to commenter' concerns. We affirmed that judicial determinations regarding contrary to the welfare and reasonable efforts are inextricably linked to a child's eligibility for title IV–E. The statute makes these judicial determinations eligibility requirements which we cannot change despite the many opposing comments. We also retained the requirement for the State to make a contrary to the welfare determination in the first court order sanctioning the removal of the child from the home, because it is a longstanding critical protection for children and families. Finally, we are not relaxing the documentation requirements or allowing *nunc pro tunc* orders because we wish to preserve the certainty that these determinations are made in accord with the statute.

E. Case Plans and Case Review Requirements

To clarify our existing policy with regard to the timing of the case plan, we have amended the regulation to allow States up to 60 days from a child's removal from the home to develop the case plan. We also made a significant policy shift in the requirements for subsequent permanency hearings. We are now requiring subsequent permanency hearings for all children, including children placed in a permanent foster home or a preadoptive home. We believe that the ASFA compels us to ensure, through the protection of a permanency hearing, that permanency will be achieved for these children.

We received a significant number of requests to limit the TPR provision to only certain groups of the foster care population. We are unable to make this change in the regulation, as no statutory authority exists for doing so, and the clear intent of ASFA was to speed critical decision-making for all children in foster care. We clarify in the final rule that the exceptions to the requirement to file a petition for TPR must be done on a case-by-case basis and added additional examples of a compelling reason. We also clarify that States must begin the process of finding and approving an adoptive family for a child when the State files a petition for TPR.

F. Title IV–E Reviews

We made several changes to strengthen and clarify the title IV–E reviews. The title IV–E reviews are designed to review the eligibility of children in foster care and providers receiving title IV–E funds. Those changes to the final rule include:

- Clarifying that when using an alternate sampling methodology when AFCARS data are unavailable, we will review a six-month period that coincides with the AFCARS reporting period;
- Allowing all State' initial primary reviews to be held at a 15 percent threshold of ineligible cases regardless of whether or not the review occurs within the first three years of the final rule;
- Providing, on a case-by-case basis, an extension of a program improvement plan when a legislative change is necessary for the State to achieve substantial compliance; and
- Increasing the initial amount of time to develop a program improvement plan from 60 days to 90 days for States found not to be in substantial conformity as a result of a title IV–E foster care eligibility review.

G. Special Populations

Several issues of note recurred as themes throughout the comments and the regulation. One was the application of the rules to certain populations, such as Indian tribal children, adjudicated delinquent children, and unaccompanied refugee minors. We clarify how in particular the provisions of the final rule apply to these populations of children, but also emphasize that overall the statute must apply to these children as they would any other child in foster care. We have no statutory authority to exempt any group from provisions such as the safety requirements or termination of parental rights requirements. Furthermore, we strongly believe that, while these requirements must apply to all children, the statute affords the State agency the flexibility to engage in appropriate individual case planning.

For Indian tribes, numerous other issues were raised with regard to how title IV–E requirements and, more specifically, the recent amendments made by the Adoption and Safe Families Act apply to Indian tribes as sovereign nations. While we are committed to the government-to-government relationship between the Federal government and Indian tribes, the foster care program under title IV–E is statutorily targeted to State agencies, and Indian tribes cannot receive title IV–E funds directly. Indian tribes can gain access to title IV–E funds on behalf of title IV–E eligible children if they enter into agreements with State agencies. Accordingly, Indian tribes must operate within the parameters of a particular State plan and the specifics of the agreement. Some commenters also requested that we explain how the requirements of the Indian Child Welfare Act work in the context of the ASFA. Although we can affirm that States must comply with ICWA and that nothing in this regulation supersedes ICWA requirements, we cannot expound on ICWA requirements since they fall outside of our statutory authority.

IV. Section-by-Section Discussion of Comments

Part 1355—General

Section 1355.20 Definitions

This section amends 45 CFR 1355.20 to revise the definitions of foster care and foster family home and to define new terms used throughout the regulation.

Child care institution. Comment: Some commenters requested that we provide more specific guidance or parameters to determine whether a facility is a "child care institution" and offered a variety of suggestions and recommendations. For example, one commenter asked that we confirm whether the definition of "child care institution" precludes group child care programs from taking steps to assure safety for foster children, including locking facility doors at night and taking other reasonable measures to prevent foster children from leaving the facility without consent.

Response: We understand the desire for more expansive guidance for determining whether a facility is appropriate for title IV–E eligible children. We strongly believe that any such guidance should be developed with input from the field. We have begun this consultation process by inviting comments on a notice published in the **Federal Register** on December 7, 1998 (63 FR 67484). That notice specifically requested comments on defining appropriate child care facilities in which children adjudicated delinquent may be placed. Taking into account the comments received on the **Federal Register** notice, we are considering our options for setting forth more expansive guidance for identifying child care institutions that are appropriate for title IV–E eligible children.

Comment: One commenter suggested that language such as "or tribal licensing authorities" be inserted after "State" to clarify the definition of "child care institutions" on Indian reservations.

Response: We concur with the commenter and have revised the definition in the final rule to reflect the tribal licensing authority.

Comment: One commenter noted that many "child care institutions" care for more than 25 children.

Response: The limit of 25 children, by statute, specifically applies to public child care institutions and not private facilities. Therefore, no changes to the final rule are warranted.

Date a child is considered to have entered foster care.

Comment: We received a great number of comments and suggestions regarding how to define the date a child is considered to have entered foster care in accordance with section 475(5)(F) of the Act (the date the State is to use in calculating when to hold periodic reviews in accordance with section 475(5)(B) of the Act, permanency hearings in accordance with section 475(5)(C) of the Act, and for complying with the termination of parental rights (TPR) provision under section 475(5)(E) of the Act). Some commenters wanted us to define the term by using the date on which the child actually enters foster care and the agency assumes responsibility for the placement and care of the child. Others suggested that we define the term based on a variety of other points in time, such as: The date of a judicial determination that it was contrary to the child's welfare to remain at home; the date of the full hearing; the date of the initial shelter care hearing; the date of removal; or, the date a petition for removal is filed. Many commenters observed that, by linking the date the child is considered to have entered foster care to a finding of abuse or neglect and the agency receiving responsibility for placement and care of the child, we incorrectly implied that the aforementioned decisions occur at the same hearing when, in fact, these judicial decisions are often made at separate hearings.

Response: The time frames for considering when a child has entered foster care, *i.e.*, the earlier of a judicial finding of abuse or neglect or 60 days from the date the child is removed from the home, are statutory. However, nothing precludes a State from using a point in time that is earlier than that required by statute or regulation, such as the date the child is physically removed from the home. We have changed the regulation to reflect this option. Clearly, if a State uses the date a child is physically removed from the home, the requirements for holding periodic reviews, permanency hearings, and complying with the TPR provision within the time frames prescribed would be satisfied.

We also have removed to the reference to the agency's responsibility for the placement and care of the child so that the definition more closely follows the statutory language and is consistent with actual practice.

Comment: One commenter suggested that the time a child spends in shelter care not be factored into calculating the timing for holding periodic reviews, permanency hearings, and for complying with the TPR provision.

Response: Under long-standing Departmental policy, shelter care is considered a form of foster care (see the definition of "foster care" at 45 CFR 1355.20). Shelter care is one of many possible settings in which children in foster care are placed. Therefore, time spent in shelter care counts in determining when to hold periodic reviews, permanency hearings, and for complying with the TPR provision. We have made no changes to the final rule in response to this comment.

Comment: One commenter requested that we delete the word "physically" from the regulatory definition of the date a child is considered to have entered foster care to adhere strictly to the statutory language which provides no qualification of the term "removal."

Response: While we have deleted the word "physically" from the definition, we have retained the policy on physical removals because it is consistent with the intent of ASFA regarding expedited permanency. Linking the definition of the date a child is considered to have entered foster care to a physical removal ensures that children do not languish in care awaiting a judicial order that says that the child is removed from the home.

We have, however, created an exception. Under § 1356.21(k), we permit constructive removals (*i.e.*, paper removals) to equalize the situation in relative and nonrelative foster family homes. If a child is constructively removed from the home, the date he or she is considered to have entered foster care, absent a finding of abuse or neglect, is the date that is 60 days from the date of the constructive removal. We have amended the regulatory text by cross-referencing § 1356.21(k), which sets the parameters for the acceptable forms of removals.

Comment: One commenter was concerned about what appeared to be an inconsistency between the date a child is considered to have entered foster care and the timing for developing case plans. The outside limit for considering a child to have entered foster care is 60 days from the date of removal, while § 1356.21(g)(2) requires case plans to be developed within 60 days of the State agency " * * * assuming responsibility for providing services including placing the child * * *"

Response: We understand the confusion and have amended the regulatory language at § 1356.21(g)(2) to state clearly that case plans must be developed within 60 days of the date the child is removed from the home.

Comment: We received several comments opposing the manner in which we applied this definition to

voluntary placement agreements. In the NPRM, we set the date a child is considered to have entered foster care for a child placed via a voluntary placement agreement as the date the voluntary placement agreement is signed by all relevant parties. Many commenters wanted to be able to use the date the child actually is placed in foster care since the child may not enter foster care the same day the agreement is signed. Some commenters believed we lacked a statutory basis for not applying section 475(5)(F) of the Act to all children, irrespective of how they enter foster care.

Response: We concur that it is more appropriate to adopt a consistent application of section 475(5)(F) of the Act for all children. We have amended the definition of the date a child is considered to have entered foster care so that it makes no distinction for children who enter foster care via a voluntary placement agreement. Therefore, children placed in foster care via a voluntary placement agreement will be considered to have entered foster care no later than 60 days after the child is removed from the home.

We want to take this opportunity, however, to note that the purpose of the 60-day limit at section 475(5)(F) of the Act is to ensure that periodic reviews, permanency hearings, and application of the TPR provision are not delayed as a result of contested involuntary removals. The danger of such a delay often does not exist when children are removed from their homes pursuant to a voluntary placement agreement. When children are removed from home via a voluntary placement agreement, we encourage States to use the date the child is placed in foster care (rather than 60 days later) as the date for calculating when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

Comment: A few commenters requested guidance on how to apply the definition to children who are voluntarily relinquished by their parents for adoption.

Response: The date a child is considered to have entered foster care according to the statute is the earlier of a judicial finding of abuse or neglect or 60 days from the date the child was removed from the home. Typically, there is no finding of abuse or neglect in a voluntary relinquishment, so the date of entry into foster care would be no later than 60 days from the date the child was removed from the home.

Comment: One commenter requested that we specifically clarify, in regulation, that the date the child is considered to have entered foster care does not affect the date Federal financial participation (FFP) may be claimed for foster care maintenance payments. One commenter observed that there is a connection between maintaining eligibility for title IV–E funding and the date a child is considered to have entered foster care.

Response: Both commenters are correct. Establishing initial eligibility for title IV–E funding and initial claiming for FFP have no relationship to the date the child is considered to have entered foster care defined at section 475(5)(F) of the Act. The purpose of that provision is to set the "clock" for determining when to satisfy the requirements for holding periodic reviews, permanency hearings, and the TPR provision. A child's initial eligibility for title IV–E funding is not related to this time frame. We have amended the regulation at § 1355.20 accordingly.

The date a child is considered to have entered foster care is, however, related to maintaining a child's eligibility for title IV–E funding. Under § 1356.21(b)(2), we require the State to use the date the child is considered to have entered foster care in determining when to obtain a judicial determination that it made reasonable efforts to finalize a permanency plan. We intentionally linked the timing for obtaining this judicial determination to the date the child is considered to have entered foster care so that such determinations could occur at the permanency hearing, the logical time for making such determinations.

Comment: Several commenters requested guidance for applying the statutory definition of the date a child is considered to have entered foster care to children who are adjudicated delinquent, particularly for those children who enter foster care subsequent to placement in a detention facility.

Response: In general, a date that is no later than 60 days from the date the child was physically removed from his or her home should be used in calculating when to satisfy the requirements for holding periodic reviews, permanency hearings, and for complying with the TPR provision, because judicial determinations regarding abuse or neglect are not typically made for children who are adjudicated delinquent. For children who enter foster care subsequent to placement in a detention facility, States should follow existing policy as stated in ACYF–PA–87–02 in calculating when to develop case plans, hold periodic reviews and permanency hearings, and comply with the TPR provision.

ACYF–PA–87–02 requires States to satisfy the requirements for developing case plans, holding periodic reviews and permanency hearings (the requirements at section 427 of the Act at the time ACYF–PA–87–02 was written) for all children supervised by or under the responsibility of another public agency with which the title IV–B/IV–E agency has an agreement under title IV–E, and on whose behalf the State makes title IV–E foster care maintenance payments. Since the State cannot claim Federal financial participation under title IV–E for children in detention facilities, the "clock" for calculating when to comply with the requirements for developing case plans, holding periodic reviews and permanency hearings, and the TPR provision begins when the child is placed in foster care.

Although the ASFA was passed long after ACYF–PA–87–02 was issued, we think that the existing policy is an appropriate interpretation of section 475(5)(F) with respect to adjudicated delinquents who enter foster care subsequent to placement in a detention facility.

Comment: A few commenters suggested that we adjust the date a child is considered to have entered foster care for Indian children to accommodate the time involved in tribal identification and notification required by the Indian Child Welfare Act.

Response: We are sensitive to the fact that tribal identification and notification may take time and limit the amount of time the tribe or State has in making reasonable efforts to finalize a permanency plan prior to the permanency hearing. However, we have no authority to set a different "date of entry into foster care" for a particular group of the foster care population. Nothing precludes the agency and court at the permanency hearing from taking into consideration the amount of time it took the State to comply with tribal identification and notification requirements when determining appropriate permanency plans for Indian children.

Comment: Several commenters did not want the definition of the date a child is considered to have entered foster care to apply to the six-month periodic reviews. The commenters are concerned that, if the definition were so applied, children could potentially be in foster care for eight months before a review is held.

Response: We chose to apply section 475(5)(F) of the Act to the six-month periodic reviews, permanency hearings, and the TPR provision, for two reasons. First, nothing prohibits the State from holding six-month periodic reviews

based on the date the child is physically removed from the home. Second, setting different "clocks" for calculating when to hold periodic reviews and permanency hearings, and for complying with the TPR provision would add administrative burdens on States.

For example, we believe that we would encumber State systems by requiring a State to hold six-month periodic reviews based on the date the child is removed from the home while holding permanency hearings based on section 475(5)(F) of the Act. In that situation, the State would be obliged to hold two periodic reviews prior to the permanency hearing, the second of which would have to be held two months before the permanency hearing if the date of entry into foster care were 60 days from the date the child is removed from the home. Therefore, we have not made any changes to the final rule as a result of this comment.

Foster care. No comments were received on this definition and therefore no changes are being made to the language proposed in the NPRM.

Foster care maintenance payments. Comment: One commenter questioned our ability to revise the definition of foster care maintenance payments to include travel for visits with workers, which is currently covered as a title IV–E administrative expense. Another commenter recommended that a revision to the definition be made to include the travel costs for a parent to visit his/her child(ren) as an allowable title IV–E foster care maintenance payment cost.

Response: The first commenter's observation is correct. Including the phrase "agency workers * * *" in the definition goes beyond the statute and was an error on our part. The statute clearly allows reasonable travel by the child for visitation with family. We have revised the definition in the final rule, deleting the words "agency workers," to conform to the statute. ACYF–PIQ–97–01 addresses the second commenter's request to expand foster care maintenance payments to include travel by the parent(s). Such costs are service related and may be charged to title IV–B, title XX or the State. No change has been made to expand foster care maintenance payments to include other travel.

Comment: We received several requests to expand the definition of foster care maintenance payments to cover a variety of items. For example, one commenter recommended that a State be able to claim child care when the foster parent is attending a school meeting or medical and mental health staffings for another foster child in his/her care.

Response: The definition of foster care maintenance payments cited in the NPRM mirrors the statutory language at section 475(4) of the Act. We do not have the authority to extend the definition beyond the statute. Furthermore, ACYF–PIQ–97–01 explains that child care provided to a foster child when a foster parent is attending activities that go beyond the scope of "ordinary parental duties" are reimbursable under title IV–E. The PIQ provides a thorough discussion on the child care costs that can be included in the title IV–E foster care maintenance payment.

Comment: One commenter asked if the State could seek foster care maintenance payments for appropriate child care costs if the State has a two-tiered licensing system, "licensed" for center-based and "regulated" for home-based child care.

Response: A State's use of specific terminology or type of child care licensing system has no bearing on whether the costs of child care can be included in title IV–E foster care maintenance payments. As long as the child care facility or individual (in the case of home-based child care) is licensed, or otherwise officially authorized or approved by the State as meeting the requirements for a child care facility, the State may claim the costs of allowable child care as part of a foster care maintenance payment.

Comment: Two commenters requested that the language in the preamble to the NPRM which stated that payments for child care could be a separate payment to the child care provider or included in the basic maintenance payment be inserted in the regulatory text of the final rule.

Response: We agree and have amended the regulation accordingly.

Foster family home. Comment: We received many comments on the definition of "foster family home" and related concerns regarding title IV–E eligibility and reimbursement. Several commenters noted that in some States, the terms "approved" and "licensed" are interchangeable, while in other States there are separate standards for each of these categories. States sometimes establish separate standards, *i.e.*, approval and provisional licensure, as opposed to full licensure, for relative caretakers. Some commenters suggested that we allow States to claim title IV–E for eligible children placed with relative caretakers who meet the State standards for approval or provisional licensure, rather than the State's higher standards for full licensure. Some commenters noted that relative placements encourage continuity in a child's life, allowing the child to maintain a sense of identity and minimize separation and attachment issues. One commenter expressed a belief that the statutory language of "licensed or approved" implies that different standards are acceptable. Another commenter suggested that to require that approval and licensure be held to the same standard is an extremely problematic higher standard than has been required in the past.

Response: We have given considerable thought to these comments and have tried to balance the integrity of the requirement, the safety of the child and existing State licensing practices. We did not change the requirements: (1) That approved foster family homes must meet the same standards as licensed foster family homes; or (2) that relatives must meet the same licensing/approval standards as nonrelative foster family homes for the reasons below.

Section 471(a)(10) of the Act requires that a State's title IV–E plan provide for the establishment or designation of a State authority that is responsible for establishing and maintaining standards for foster family homes and child care institutions. This section also requires that the title IV–E State plan provide for the application of these standards to "any" foster family home or child care institution receiving either title IV–B or title IV–E funds. Further, the statutory definition of "foster family home" in section 472(c) of the Act states that a foster family home is a home "* * * which is licensed by the State in which it is situated or has been approved (by the State licensing authority) as meeting the standards established for such licensing." Clearly, the statute did not intend that there be separate standards for licensing and approval.

The plain language of the statute requires that, to be considered a foster family home for the purpose of title IV–E eligibility, the home must be either licensed or approved as meeting State licensing standards. It also is clear from the language in section 471(a)(10) of the Act that the State licensing standards must be applied to "any" foster family home that receives funding under titles IV–E or IV–B. The licensing provisions of the Act make no exceptions for different categories of foster care providers, including relative caretakers.

In past title IV–E foster care eligibility reviews, we have verified the existence of a license without differentiating among the types, and we understand State concerns in this regard. We also agree that placements that meet the

child's need for attachment and continuity should be encouraged. We further recognize that, consistent with section 471(a)(19) of the Act, States must consider giving preference to a relative caregiver, provided that the relative caregiver meets all relevant State child protection standards. However, given the emphasis in ASFA on child safety, and the plain language of the statute with respect to the licensing requirements, we believe that it is incumbent upon us, as part of our oversight responsibilities, to fully implement the licensing and safety requirements specified in the statute by requiring that foster care homes, whether relative or nonrelative, be fully licensed by the State.

Comment: In some States, relative caretakers must meet the standards for full licensure, but the State allows for a waiver of certain provisions for these specific caretakers. One commenter asked if the language requiring that "approved" and "licensed" homes meet the same standard would restrict the use of these waivers to approve relative foster family homes. Other commenters requested that we continue our current policy of allowing certain requirements to be waived for relatives.

Response: Waivers are not addressed in the regulatory text. However, as we have explained in ACYF–PIQ–85–11, special situations may arise with relative caretakers in individual cases where there are grounds for waiving certain requirements, such as square footage of the relative's home. The safety standards, however, cannot be waived in any circumstance. ACYF–PIQ–85–11 has not been withdrawn and, therefore, continues to reflect current policy. To the extent that waivers are allowed, they must be granted on a case-by-case basis, based on the home of the relative and the needs of the child. The State may not exclude relative homes, as a group, from any requirements.

Comment: Several commenters requested that we reconsider our position on requiring that a foster family home be fully licensed before the State is eligible to claim for title IV–E. We were advised that in some States, a provisional license is issued so that a child may be placed in a foster home while the State is awaiting criminal background checks or waiting for the prospective foster parents to complete required training. In other States, a provisional license is issued to all new foster homes during a probationary period, even though the home meets the requirements for a full license or approval.

Response: We considered the commenter' suggestions, but we believe that the statute requires a foster family home to meet all of the State requirements for full licensure or approval to be eligible for title IV–E purposes. Accordingly, if a State issues an interim license (provisional, emergency, etc.) pending satisfaction of all licensing standards (*e.g.*, while the State is awaiting the results of a criminal records check or the completion of training), then the State may not claim title IV–E funds on behalf of a child in that home.

Since there seems to be some confusion over the nomenclature used in the draft regulation, we have revised the regulatory language in § 1355.20 to remove the reference to provisional licensure and to articulate that before a State may claim title IV–E funds, it must find that the home meets the State's licensing standards.

Comment: Several commenters offered varying suggestions on the concept of allowing retroactive payments. Generally, the commenters suggested that we allow States to claim title IV–E reimbursement back to the date of placement once the home becomes fully licensed.

Response: The statute predicates foster family home eligibility on licensure or approval of the home. Allowing retroactive payments to the child's date of placement would be inconsistent with this requirement. In addition, we do not wish to provide financial incentives for States to place children in homes before the safety of the children in those homes can be assured.

However, we recognize that some time may elapse between the date that satisfaction of the requirements is received and documented and the date on which the license is actually issued. We have concluded that 60 days is an ample period of time to allow between the time the State receives all the information on a home and the date on which the full license is issued. Therefore, we are permitting States to claim title IV–E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Comment: One commenter requested that we allow States a six-month period to grandfather in homes that are currently operating under a provisional license, so long as the safety of the child is preserved.

Response: We will allow States a grace period to bring homes currently operating with less than a full license or approval to full licensure/approval status. Accordingly, if a State is currently claiming title IV–E foster care for a foster family home that does not meet fully the State licensing standards, the State has no more than six months from the effective date of this final rule to grant a full license or approval for these homes. After that date, a State may not claim title IV–E funds for any child in a home that does not meet the State's full licensing or approval standards.

Comment: One commenter suggested that provisional and emergency licensure be defined, and a distinction be drawn between these two types of licenses.

Response: The terms provisional licensure and emergency licensure are not used in the regulation. Thus, we see no reason to impose a definition of these terms on States.

Comment: One commenter recommended that the definition of "foster family home" begin with a statement indicating that this definition is for purposes of title IV–E foster care so that it is not wrongly applied to exclude non-licensed placements from the section 422 requirements.

Response: We concur with the commenter and have revised the regulation to clarify that the definition relates to title IV–E eligibility only. It should be noted that section 471(a)(10) of the Act more broadly requires that a State's title IV–E plan provide that a State's established licensing standards apply to "any" foster family home or child care institution receiving either title IV–B or IV–E funds. This is a State plan conformance issue, however, and not a title IV–E eligibility issue.

Comment: A commenter opposed inclusion of group homes, agency operated boarding homes and other institutional settings in the definition of "foster family home." The commenter noted that Congress clearly has indicated a desire to avoid a child's placement in such settings unless it is necessitated by repeated extreme disruptions of the preferred family settings. It was suggested that the definition include only homes of individuals or families licensed or approved by the State licensing or approval authorities that provide 24-hour out-of-home care for children.

Response: Group homes, agency operated boarding homes and other facilities have been included in the definition of "foster family home" since the title IV–E regulations were issued in 1983. The purpose of including these facilities has been to assure that all foster care placements meet the minimum safety requirements by being licensed or approved under State law or

rules. We believe this is a safety issue for children and not a statement of placement preference; therefore, we have retained the language in the final rule.

Comment: We received some comments concerning the licensing of homes by tribal authorities. A few commenters suggested that tribes should have the authority to license tribal homes irrespective of where they are located, and that the language in the definition of "foster family home" implies that tribes only have the authority to license homes that are on or near reservations. A couple of commenters suggested that not to allow tribes this authority would be a violation of tribal sovereignty and jurisdiction. One commenter suggested that this is an overreaching of the Federal government rather than a safety issue. It was suggested that HHS strike "or with respect to foster family homes on or near Indian reservations" from the definition.

Response: The authority of Indian tribes to license homes that are "on or near Indian reservations" has been part of the title IV–E regulations since May 23, 1983. This provision is consistent with the Indian Child Welfare Act (ICWA) of 1978. Section 1931 of ICWA authorizes Indian tribes and tribal organizations to establish and operate child and family services programs "on or near reservations," including a system for licensing or otherwise regulating Indian foster and adoptive homes. We are maintaining the language to remain consistent with the ICWA.

Comment: One commenter asked whether the definition of "foster family home" should be interpreted to mean that homes approved through the tribal process must meet the same standard as homes licensed by the State.

Response: The definition of "foster family home" should not be interpreted in that manner. The definition of "foster family home" gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with ICWA at section 1931(b) which states that for purposes of qualifying for funds under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.

Comment: One commenter was concerned about the requirement that approved and licensed homes must meet the same standard. The commenter noted that States sometimes use waivers to approve Indian foster homes which may not meet certain criteria, such as square footage requirements, in order to comply with the ICWA placement preferences. The commenter recommended that we include language to assure that this type of waiver continues to be permissible.

Response: Our current policy, set forth in ACYF–PIQ–85–11, recognizes that there may be exceptional circumstances that arise with a specific relative caretaker where there are grounds for waiving a licensing requirement, such as square footage, in order to place a child. The policy set forth in that issuance applies also to licensing or approving tribal relative foster homes, either by a State or tribal licensing authority. This waiver authority does not extend to all foster homes, but only to relative homes in certain circumstances delineated in ACYF–PIQ–85–11, as determined by the licensing authority on a case-by-case basis. We did not address the issue of waivers in the NPRM or final rule, but clarify here that the existing policy stands.

Full hearing. Comment: Several commenters objected to a definition for "full hearing" because it did not coincide with some States' terminology. Many commenters requested clarification, while others recommended changes in the definition that would accommodate the specific terms and proceedings used in their States.

Response: We defined a full hearing in an attempt to establish a universal term for the hearing at which the State agency is assigned responsibility for placement and care of a child who is removed from home. Given the multiple requests for clarification and the conflicting nature of the recommendations, it is likely that any definition for "full hearing" would be problematic given the variety of State-specific practices. Therefore, we have deleted this definition from the final rule.

Full review. No comments were received on this definition and therefore no changes are being made to the language proposed in the NPRM.

Legal guardianship. Comment: A few commenters supported the definition of legal guardianship as written in the proposed rule. However, some commenters requested clarification that the term "custody," as used in the definition, refers only to physical custody of the child rather than legal custody. The commenters asserted that some States retain legal custody of the child in guardianship situations.

Response: The definition in the final rule is taken directly from the statute which makes no distinction between physical and legal custody. We believe that the definition is intended to include all legal guardianship arrangements that are permanent.

Comment: A commenter wanted to know how the Federal definition for legal guardianship will be applied to States that do not have the same definition in their State statutes.

Response: There is no Federal requirement for States to have the statutory definition of legal guardianship in State law. The statute requires States to evaluate certain permanency goals, including legal guardianship, for children during the development of the case plan and the course of a permanency hearing. We believe that the definition was developed to clarify that States should consider legal guardianships that are permanent and self-sustaining as a permanency option for children in foster care.

Comment: There were several comments on funding legal guardianships. We received a suggestion that title IV–E funding be made available for subsidized legal guardianship. Another commenter asked for clarification on financial and medical assistance available for children placed in legal guardianship and how to access funding for legal guardianship. A third commenter requested that we clarify that a State is not precluded from providing financial assistance in legal guardianships.

Response: While legal guardianship arrangements may be appropriate permanency plans, we have no statutory authority to make title IV–E funding available for subsidized legal guardianships. However, some States are using title IV–E funds to subsidize legal guardianships under the terms of a title IV–E demonstration waiver approved by the Secretary. The statute does not preclude States from subsidizing legal guardianships with State funds.

Comment: A commenter requested that we make a greater distinction between legal guardianships and other living arrangements such as permanent foster care placements and parent-child relationships. The commenter believed that children placed in legal guardianships often are not subject to ongoing judicial review, and that in contrast to parent-child relationships, a child is not entitled to inherit from a guardian, and vice versa.

Response: The term legal guardianship should be used in reference to the requirements on reasonable efforts to finalize a permanency plan, case plans,

permanency hearings, and TPR. In that context, States determine whether a legal guardianship is the most appropriate permanency option for a child. We do not believe it is appropriate for us to regulate the definition of a legal guardianship further.

Comment: One commenter requested guidance on the use of legal guardianship as a permanency option. The commenter requested that we share lessons learned from the title IV–E demonstration waiver States.

Response: Information on the findings from the States with demonstration waivers will be disseminated when available. This information will be better provided through our resource centers and technical assistance activities rather than through regulation.

National Child Abuse and Neglect Data System (NCANDS). No comments were received on this definition and therefore no changes are being made to the language proposed in the NPRM.

Partial Review. The Department is responsible for State compliance with all aspects of the title IV–B and IV–E plan requirements and not only the elements covered by the child and family service reviews. Accordingly, we have revised the definition of "partial review," to clarify its application to title IV–E and title IV–B compliance issues that are outside the scope of the child and family services review. This partial review may cover whatever the Secretary considers necessary to make a determination regarding State plan compliance. An example of an area which is not subject to the full child and family services review but subject to a partial review is compliance with AFCARS. The procedures and standards for AFCARS compliance are set forth in 45 CFR 1355.40.

Permanency Hearing. Comment: One commenter disagreed with the requirement that permanency hearings be held within 12 months of the date a child is considered to have entered foster care. The commenter felt that it did not give families sufficient time to make their homes ready for the child to return.

Response: The requirement to conduct permanency hearings no later than 12 months from when a child enters foster care is statutory. One of the main purposes of ASFA was to encourage States and parents to achieve permanency for children in a more timely manner.

Comment: One commenter did not think that permanency hearings should be conducted by any entity other than a court.

Response: The option for administrative bodies, appointed or approved by the court, to conduct permanency hearings is expressly permitted at section 475(5)(C) of the Act.

Comment: Several commenters were opposed to the requirement that any body that conducts permanency hearings may not be part of or under the supervision or direction of the State agency. One commenter asked if this requirement extended to other public agencies with which the State agency has an agreement.

Response: Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes any body appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the State agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the State agency has an agreement. In accordance with ACYF–PIQ–85–2, title IV–E requirements extend to any other public agency with which the State agency enters an agreement for the performance of title IV–E administrative functions, including responsibility for placement and care of the child.

Comment: One commenter requested that the definition of "permanency hearing" be revised to indicate specifically that a tribal agency is permitted to appear before a tribal court and that the tribal court has the authority to make all the necessary rulings with respect to permanency hearings.

Response: The statutory and regulatory language both clearly indicate that permanency hearings may be held before a tribal court. The references to State courts in the permanency hearing requirements in section 475(5)(C) of the Act and in the definition of permanency hearing at § 1355.20 should be understood to include tribal courts.

Comment: A few commenters requested additional guidance regarding whether reunification efforts can be extended beyond the permanency hearing or if an alternate permanency plan must be set at the permanency hearing if the child and family cannot be reunited at that time.

Response: A major purpose of ASFA is to promote timely permanency planning. We recognize, however, that there are situations when reunification cannot occur within 12 months but it is not appropriate to abandon it as the permanency plan at the permanency hearing. It is acceptable to extend reunification efforts past the permanency hearing if the parent(s) has been diligently working toward reunification and the State and court expect that reunification can occur within a time frame that is consistent with the child's developmental needs.

Comment: One commenter wanted to know if the permanency hearing was similar to a dispositional hearing or an administrative review. This commenter also wanted to know if the hearing could still be held within 18 months of a child entering foster care.

Response: The ASFA changed the name of the former "dispositional hearing" to "permanency hearing" and the timing was changed from 18 months to 12 months (see p. 50072 of the NPRM). No statutory flexibility exists with respect to the time line in the ASFA for conducting permanency hearings.

Comment: One commenter asked that we clarify whether the permanency goal of placement with a fit and willing relative was optional because the commenter's State had eliminated it as a permanency goal. A few commenters asked that we specifically identify placement in "another planned permanent living arrangement" as the appropriate permanency option for all unaccompanied refugee minors. These commenters requested that, in establishing placement in "another planned permanent living arrangement" as the appropriate permanency option for unaccompanied refugee minors, this group of the foster care population be exempted from the requirement to provide a compelling reason for not setting reunification, adoption, legal guardianship or placement with a fit and willing relative as the permanency plan.

Response: We do not believe it is appropriate for ACF or States to exclude any permanency options from consideration or to identify one permanency goal as the appropriate permanency goal for an entire group of the foster care population. Permanency planning is based on the best interests, individual needs, and circumstances of the child. The requirement to document, to the court, a compelling reason for setting a permanency plan other than reunification, adoption, legal guardianship, or placement with a fit and willing relative is statutory and cannot be waived for any group of the foster care population.

Comment: We had several commenters request that we include

placement in a permanent foster family home and emancipation in the list of permanency goals at section 475(5)(C) of the Act that are exempt from the compelling reason requirement in that section. Some commenters also asked us to include long term foster care and emancipation as other planned permanent living arrangements.

Response: Section 475(5)(C) of the Act specifies that the only permanency options the State may set without a compelling reason to do so include reunification, adoption, legal guardianship, or placement with a fit and willing relative. Therefore, "another planned permanent living arrangement" would be any permanent living arrangement that is not enumerated in statute.

Comment: One commenter suggested that we amend the section of the definition that describes the decisions to be made at a permanency hearing. The commenter suggested that the term "should" be replaced with "will" in the definition. The commenter thinks the term "will" is consistent with ASFA's intent to ensure permanency while "should" is noncommittal.

Response: We agree and have amended the language accordingly.

Comment: One commenter was opposed to the prohibition of paper reviews, *ex parte* hearings, and agreed orders as satisfying the requirements of a permanency hearing.

Response: Section 475(5)(C) of the Act requires the State to ensure "* * * procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents * * *." In our view, paper reviews, *ex parte* hearings, and agreed orders fail to provide these important safeguards. No change was made to the regulation based on this comment.

Comment: One commenter was opposed to the use of the term "compelling reason" for setting another planned permanent living arrangement as the permanency plan. The commenter feels the term suggests a legal burden of proof that is not appropriate for establishing permanency plans.

Response: The term "compelling reason" is taken directly from the statutory language. Moreover, the term was adopted because far too many children are given the permanency goal of long-term foster care, which is not a permanent living situation for a child. The requirement is in place to encourage States to move children from foster care into the most appropriate permanent situation available.

Comment: We received several comments regarding the preamble language to paragraph 1356.21(g) in the NPRM which states that States should exhaust all efforts to place a child in a permanent home outside the foster care system before placing the child in a permanent foster care setting. The commenters feel this language has created a standard above the "compelling reason" requirement prescribed in statute.

Response: We want to clarify that the language should not be interpreted to set a standard above what is set in statute. It was intended to encourage States to seriously consider placement options outside of foster care before settling on a permanent foster care placement as the permanency plan.

Statewide Assessment (formerly State self-assessment). No comments were received on this definition, so we made no changes to the definition itself. We did, however, change the name from "State self-assessment" to "statewide assessment." The term "statewide assessment" more accurately reflects the comprehensive nature of the assessment conducted during the first phase of a child and family services review.

Temporary custody proceeding.

Comment: Several commenters objected to a definition for a temporary custody proceeding. Some commenters expressed confusion while others asserted that the definition, especially in combination with the definition for a "full hearing," did not accurately reflect the variety of State proceedings where placement and care responsibility is granted to the State agency.

Response: In the proposed rule we defined "temporary custody proceeding" as the first judicial proceeding held at or shortly after the emergency removal of a child from the home. We intended to clarify when the State court must make certain reasonable efforts and contrary to the welfare judicial determinations. However, we concur that a Federal definition for a temporary custody proceeding is not helpful in clarifying when the court must make certain title IV–E eligibility determinations, and we have deleted the definition.

Sections 1355.31–1355.37 The Child and Family Services Reviews

Section 1355.31 Elements of the Child and Family Services Review System

This section describes the scope of the child and family services reviews as including programs administered by States under titles IV–B and IV–E of the Act.

All of the relevant comments on this section are addressed in the following sections.

Section 1355.32 Timetable for the Reviews

This section specifies the review timetable for the initial and the subsequent reviews as required by section 1123A of the Act, and sets forth rules for reinstatement of reviews based on information that a State is not in substantial conformity.

Section 1355.32(a) Initial Reviews

This section sets forth the timetable for the initial child and family services reviews.

Comment: We received many comments concerning the time that it will take for States to become familiar with the new review process. Most of the commenters indicated that it will take significant time for States to prepare for the reviews and requested that ACF add to this section a requirement that we provide an advance six-month, or longer, notification to States prior to initiating the review process. Similarly, most of these commenters indicated that the six-month period proposed between publication of the final rule and initiation of the new review schedule is necessary and some comments suggested that a longer time frame to begin reviews is desirable. A small number of comments dissented on this provision.

Response: We acknowledge that advance notice and preparation are required for the child and family services reviews. The exact period of preparation may vary by State and may change as the States and ACF become more familiar with the process. Taking into consideration that Federal staff will also require a period of time to prepare adequately for each review, we do not anticipate lack of advance notice becoming an issue. Therefore, we do not intend to regulate the notification period. We have, however, extended the time for completing the initial reviews to up to 4 years following the effective date of the final rule.

Comment: We received comments requesting coordination among the components of the child and family services reviews with other Federal planning and review functions, *i.e.*, coordinating the statewide assessment with the CFSP and coordinating the reviews with the title IV–E reviews.

Response: We have designed the child and family services reviews to build on and coordinate with the process in place

for title IV–B State planning as set forth in 45 CFR part 1357. The timing of the statewide assessments will, in part, be determined by the timing of the actual reviews which will vary from State to State, and coordination with the timing of the annual progress and services reports (APSRs) may not be possible.

We considered combining the child and family services and the title IV–E reviews but believe that conducting the two reviews at the same time would pose a serious burden on States, given the intensity of the review processes and the level of State effort required for each. We will coordinate the actual timing of the two different reviews such that States will not be over-burdened.

Section 1355.32(b) Reviews Following the Initial Review

This section sets forth the timetables for subsequent child and family services reviews.

Comment: We received a range of comments on the proposed frequency of the reviews. Although a number of comments supported the proposed schedule, some commenters suggested that reviewing at five-year intervals for States determined to be in substantial conformity is insufficient to assure the safety and permanency of children. Others suggested that the interim statewide assessments should not be required at three-year intervals if the State is in substantial conformity, but should either be eliminated or occur less frequently.

Response: We proposed a five-year review cycle for States found in substantial conformity and do not think that it compromises our ability to ensure children's safety and permanency for the following reasons:

sbull; A full or partial child and family services review can be reinstated whenever information from any source indicates that the State is not in substantial conformity;

- The standard for achieving substantial conformity is high;
- States in substantial conformity are required to complete a statewide assessment at the three-year point between full reviews;
- The title IV–B five-year Child and Family Services plan, and the related annual updates, provide significant insight into the functioning of the State child welfare program and a mechanism for identifying potential conformance issues with respect to safety and permanency.

Because we believe that other types of reviews and information gathering provide insight into State performance between on-site reviews, we have not changed the requirement to review States every five years if they are determined to be in substantial conformity. Likewise, we have not eliminated or changed the requirement for the statewide assessment to be completed every three years because we believe that the use of information from that source is an important mechanism for helping States maintain successful performance.

In order to address the comments about assuring the safety and permanency of children between reviews, we have changed the requirement for States determined not to be in substantial conformity to be reviewed at two-year intervals, rather than three-year intervals.

Section 1355.32(c) Reinstatement of Reviews Based on Information That a State Is Not in Substantial Conformity

This section sets forth the requirements for a reinstatement of a full or partial review and describes the types of information that may require a review.

Comment: We received many comments suggesting that the regulation should denote that ACF and the State negotiate a specific time frame for the receipt of additional information as part of the detailed inquiry to determine if more frequent reviews should be reinstated, and that only after that time has been exceeded should we be authorized to proceed with an additional review.

Response: The time frame and circumstances of the request for information will vary depending upon the nature of the information required to determine if more frequent reviews should be reinstated. We have a responsibility to assure compliance with State plan requirements and it may be necessary to require information of a particular nature within a specific time frame. Thus, we will not provide for a negotiated time frame.

Comment: We received many comments indicating concern about the sources of information that could trigger reinstatement of reviews based on information that a State is not in substantial conformity. Specifically, objections were raised regarding inclusion of information from public and private organizations and from the disposition of class action lawsuits. The main concern was the accuracy of information from these and other sources.

Response: Section 1123A(b)(1)(C) of the Act gives the Secretary the authority to reinstate more frequent reviews based on information indicating that the State may not be in conformity with the State plan. The statute is silent with respect to the source of the information that would trigger an unplanned review. Therefore, we deleted the list of potential sources of information that could trigger an investigation and, instead, reiterated the statutory language.

We do recognize that the specific sources mentioned in the NPRM, and others not mentioned, may not always provide accurate information about the State' compliance with State plan requirements. The provision for ACF to conduct detailed inquiries prior to initiating more frequent reviews is designed to address this issue by ascertaining the validity of the information. A decision whether or not to reinstate reviews to determine substantial conformity will only be made after the validity of the information is determined.

Comment: We received questions concerning the process for reinstating reviews based on information that a State may not be in substantial conformity. Specifically, questions were raised about the content and format of the more frequent reviews.

Response: The reinstatement of reviews could take the form of a full or partial review, both of which are defined in § 1355.20. We prefer not to specify an exact format for each reinstated review in the rule, since the nature of the concerns triggering the review and the intensity of reviews needed will vary. We have, however, clarified in the regulation that any inquiry conducted by ACF does not replace a full review as scheduled according to § 1355.32(b).

Section 1355.32(d) Partial Reviews Based on Noncompliance With State Plan Requirements That are Outside the Scope of a Child and Family Services Review

This new section was added to set parameters for addressing noncompliance with title IV–B and IV–E State plan requirements that are outside the scope of a child and family services review.

Comment: A few commenters questioned our proposal to review for only certain State plan requirements in the child and family services reviews, rather than all State plan requirements.

Response: We have selected those requirements for the child and family services review that are most directly related to the achievement of successful outcomes in the areas of safety, permanence and child and family well-being. However, the State remains responsible for complying with all State plan requirements for titles IV–B and IV–E, even if each requirement is not

subject to review in the child and family services review. Therefore, we have added § 1355.32(d) to clarify that we will use a partial review to determine conformity with State plan requirements outside the scope of the child and family services reviews. Because defining the variety of State plan compliance issues in advance is not possible, we will approach each circumstance on a case-by-case basis. Consistent with section 1123A, the necessary elements of the program improvement plan and, if necessary, the amount of the withholding, will be commensurate with the extent of the State's non-conformity.

Section 1355.33 Procedures for the Review

This section sets forth the review process and outlines general procedures for the statewide assessment and the on-site review.

Comment: Overall, we received many comments from the States favoring the use of the statewide assessment process and applauding the partnership between State and Federal reviewers who comprise the proposed review teams. Many comments indicated support for the joint planning of the on-site review and the proposal that it be guided by information in the statewide assessment. Others wrote in support of the increased focus on outcomes from prior reviews and the comprehensive nature of the reviews in covering the range of child and family services.

Response: None needed.

Comment: We received comments regarding the review' reliance on existing data sources, specifically AFCARS. Some comments supported the use of existing data sources for the reviews, while some suggested that these data may not be reliable or capable of addressing safety and permanency adequately.

Response: We understand the concerns regarding the AFCARS data and acknowledge that the data in the earliest AFCARS submissions had weaknesses with respect to quality. The quality of the data has increased with every submission and we see this trend continuing as a result of three factors:

(1) *Penalties.* Since October 1994, States have been required to participate in AFCARS and, beginning in Federal fiscal year 1998, penalties were imposed on States not in compliance with AFCARS submission requirements. The number of States submitting penalty-free data has increased significantly since penalties have been imposed.

(2) *State self-analysis prior to submission.* Two types of software are available to afford States the opportunity to ensure the quality of their data prior to submitting it to ACF. The first performs more than 800 checks on various relationships among AFCARS data elements to ensure the accuracy of the data. The second is the same software ACF uses to assess data quality and is the basis for imposing penalties.

(3) *Incentives.* Two sources provide incentives for improving AFCARS data. First, the ASFA established the Adoption Incentive Program, section 473A of the Act, under which States receive a bonus for increasing the numbers of children adopted out of the public child welfare system. While the statute provides flexibility with respect to data sources used for establishing initial baselines, AFCARS data must be used in calculating bonuses for the number of adoptions over the baseline. Second, under section 479A of the Act, the Department is required to develop a set of outcome measures based, to the maximum extent possible, on AFCARS data. State performance will be rated based on these outcome measures.

AFCARS is the statutorily-mandated information collection system for the Federal child welfare programs. Thus, it is the appropriate data source for use in Federal reviews.

Section 1355.33(a) The Full Child and Family Services Reviews

This section states that the review will be a two-phase process and describes the composition of the review team.

Comment: We received a number of comments about the composition of the review team, including requests for specific representatives on the team, such as representatives of citizen review panels. Some commenters raised concerns that the training and backgrounds of review team members reflect strength in child welfare practice. One respondent suggested that representatives of the Department's Office for Civil Rights (OCR) in particular receive training in the processes and issues covered by the child and family services reviews.

Response: We recognize the necessity of having reviewers who are knowledgeable about child and family services and this is an important matter for internal ACF consideration. However, the existing regulations that implement title IV–B of the Act specify the types of representatives with whom the State should consult in its planning processes, and we anticipate that States will utilize many of these same individuals or types of representatives in staffing the child and family services review teams. We will also provide guidance to States for the selection of team members and train both Federal and State members of the review teams on the review procedures as the reviews are conducted. For those reasons, we did not regulate the specific State or Federal representatives who will participate on the review team.

Section 1355.33(b) Statewide Assessment

This section describes the first phase of the full review, the statewide assessment.

Comment: There were a wide variety of concerns about objectivity in the review process, most of which were directed toward the sample of cases to be reviewed on-site and the role of the statewide assessment.

Response: We are making revisions to the following sections of the rule to increase the objectivity of the reviews and support accurate determinations of substantial conformity:

- In § 1355.33(b)(1), we require that the statewide assessment address each systemic factor under review, including the statewide information system, case review system, quality assurance system, staff training, service array, agency responsiveness to the community, and foster and adoptive parent licensing, recruitment and retention.
- In § 1355.33(b)(2), we require that the State, using data from AFCARS, NCANDS, or, for the initial review, another source approved by ACF, assess the outcome areas of safety, permanency, and well-being of children and families served by the State agency, including a discussion of the State's performance in meeting the national standard established for the statewide data indicators.
- In § 1355.33(b)(5), we require that the completed statewide assessment include a list of all the persons external to the State agency who had input into the preparation of the statewide assessment in order to assure that the required participation and consultation in § 1355.33(a)(2)(ii) and (iv) actually occurred.
- In § 1355.33(b)(6), we require that the State submit the statewide assessment to ACF within 4 months of our transmission of the information for the statewide assessment to the State. We anticipate that we will need 60 days to review the statewide assessment and notify the State of any potential areas that might be an issue during the on-site review. It will also afford the State an opportunity to gather additional information in advance of the review to clarify any concerns raised; and,

• In § 1355.33(c)(5), we regulate the size of the on-site sample of cases to be reviewed and require that the cases be selected randomly from AFCARS and NCANDS, or, for the initial review, another approved source. This will promote consistency and help to eliminate bias in the sample.

Comment: We received a few comments that expressed concern about the use of the statewide assessment in county-administered States. Commenters noted that particular items in the statewide assessment have the potential for variance among counties.

Response: We recognize the issues raised by reviewing programs in county-administered versus State-administered systems. Following the pilot reviews, however, we concluded that we could not design a separate review process to measure State compliance for county-administered system. States, not counties, are ultimately responsible and held accountable for compliance with State plan requirements. The statewide assessment is designed to be completed by the State, not by individual counties, and responses should reflect official State policies and the most typical State practice, while noting where outstanding exceptions exist.

Section 1355.33(c) On-site Review

This section describes the second phase of the full review, the on-site review.

Comment: We received some comments about the geographic areas to be covered by the on-site review as stated in paragraph (c)(1) through (3). In particular, some concern was expressed that including the State's largest metropolitan area would lessen the representativeness of the sample and would target the area of the State with the most resources. Another comment requested that the review also include rural areas of the State.

Response: Urban areas often provide a disproportionate number of families who have contact with the child welfare system. In order to serve its stated purpose of improving outcomes for children and families, the proposed review process must include this population of children and families. For example, the reviews could not accurately claim to represent statewide issues in Illinois without reviewing Chicago, in New York without reviewing New York City, or in California without reviewing Los Angeles. It is also important to represent the range of other environments in the State including rural and suburban areas with their unique family and resource issues. However, since the reviews will only permit on-site activities in a limited number of locations, we prefer not to regulate geographic sites other than the largest metropolitan area. Beyond that, we have provided for the statewide assessment to guide the State and Regional ACF Offices in determining the most appropriate review sites given each State's unique characteristics, issues and population.

Comment: We received comments requesting that specific representatives be interviewed as part of the on-site review process as described in paragraph (c)(4). Most often, the commenters suggested a requirement that parents and adoptive parents be included, as well as the courts or administrative body that conducts administrative reviews in the States. One respondent also noted that special consideration should be given to the circumstances under which children and families should or should not be interviewed and the weight that should be given their responses.

Response: Parents and adoptive parents will be routinely interviewed on cases selected for the on-site review. While the rule does not specify the community stakeholders who will be interviewed in addition to the case-specific representatives, a number of representatives with both statewide and local perspectives on the systemic functioning of the child and family services delivery system will be interviewed. Representatives from the courts or other administrative review bodies will be included, as well as children's guardians ad litem and other individuals representing the child's best interests. We are producing, separate from the rule, a procedures manual for use in conducting the reviews that lists the community representatives to be interviewed. The procedures manual and the training provided by ACF to the reviewers will also address the circumstances under which children and families should or should not be interviewed.

Comment: Some commenters requested that we require case information obtained by reviewers to be kept confidential.

Response: All case-specific information disclosed during a child and family services review is confidential. Both titles IV–B and IV–E have restrictive disclosure provisions (found at section 471(a)(8) of the Act and 45 CFR 205.50). One of the purposes for which a State is authorized to disclose such information, however, is for an audit or similar activity conducted by the Department in connection with the State plan. Further, Federal regulations at 45 CFR 205.50 require that recipients of information concerning children and families receiving assistance and/or services from the title IV–B/IV–E agency be held to the same standards of confidentiality as the agency. The confidentiality standards for case-specific information are addressed in the procedures manual for use in conducting the child and family services review. In addition, the confidentiality of case records routinely will be reinforced during reviewer training prior to each review.

States have complete flexibility in establishing procedures to ensure that confidentiality requirements are met. During the pilot reviews, some States chose to require the reviewers who were not State or Federal employees to sign confidentiality agreements prior to reviewing confidential information.

Comment: We received a number of comments requesting that we not use the term "social worker" unless it is a specific reference to professionally trained social workers, *i.e.*, persons with B.S.W. or M.S.W. degrees.

Response: Recognizing that not all caseworkers in public agencies have academic degrees in social work, we are changing the term "social worker" in the rule to "caseworker."

Section 1355.33(d) Resolution of Discrepancies Between the Statewide Assessment and the On-site Review

This new section was added to describe the steps we will take in resolving discrepancies between the aggregate data and the findings of the on-site review.

ACF will provide States with the option of submitting additional information to resolve the discrepancy, or for ACF and the State to review additional cases, using only those indicators in which the discrepancy occurred. ACF and the State will determine an additional number of cases to be reviewed, not to exceed a total of 150 cases. As described in section 1355.33(c)(6), the additional cases, in combination with the 30–50 cases reviewed on-site, will comprise a statistically significant sample with a 90 percent (or 95 percent for subsequent reviews) compliance rate, a tolerable error rate of 5 percent, and a confidence coefficient of 95 percent. We will pull the additional cases from an oversample of cases for the on-site review, so that both sets of cases will comprise one sample. Only those indicators in which the discrepancy occurred will be subject to review.

Section 1355.33(e) Partial Review (1355.33(d) in the NPRM)

This section describes the partial review process.

We redesignated § 1355.33(d) as § 1355.33(e) and made a technical edit to clarify that the partial review requirements in this section relate to the partial child and family services reviews. We have also clarified that a partial review does not substitute for the regularly scheduled full reviews.

Section 1355.33(f) Notification (1355.33(e) in the NPRM)

This section describes the manner in which ACF will notify States of whether the State is operating in substantial conformity.

Comment: Some comments requested that the regulation require more detail to be included in the ACF notification letter to States, informing them if they are operating, or not operating, in substantial conformity.

Response: In the interest of providing the States with timely feedback on the child and family services reviews, we have designed a review process that is less dependent upon lengthy reports than in the past. The review team will provide the State with verbal information on the findings of the review throughout the on-site review and subsequent exit conference. The written description of the findings will begin with the evaluation of the statewide assessment and will be updated as a result of the on-site review. The notification to the State following the on-site review is a confirmation of those findings and will provide specific information to allow a State to know where it is operating in or out of conformity.

Section 1355.34 Criteria for Determining Substantial Conformity

This section pertains to the criteria that must be satisfied to find a State in substantial conformity, including a discussion of outcomes, level of achievement of outcomes, and criteria related to a State agency's capacity to deliver services leading to improved outcomes for children and families.

Section 1355.34(a) Criteria To Be Satisfied

This section describes the elements on which a State's substantial conformance with title IV–B and title IV–E State plan requirements will be based.

Comment: Some respondents requested that decisions regarding substantial conformity not be reliant on the resolution of discrepancies between aggregate data from the statewide assessment and the findings of the on-site review.

Response: It was always our intention to resolve discrepancies between aggregate data from the statewide assessment and the findings of the on-site review. Now that substantial conformity is based on statewide data indicators, as well as the findings of the on-site review, we believe that if significant discrepancies occur among the sources of information used to determine substantial conformity, they must be reconciled so an accurate determination can be made. To clarify our procedures to resolve these discrepancies, we are adding a new § 1355.33(d) that gives States the option of either submitting additional information to resolve discrepancies between the statewide data indicators, or the State and ACF reviewing additional cases for the indicators where the discrepancy exists.

Section 1355.34(b) Criteria Related to Outcomes

This section sets forth the criteria related to outcomes that will be evaluated to determine a State's substantial conformance.

Comment: We received many comments supporting the proposed approach of limiting the reviews to those State plan requirements that relate specifically to outcomes and the delivery of improved services. Some comments questioned the authority of HHS to select only certain State plan requirements for review in the child and family services reviews.

Response: The child and family service reviews focus on the most prominent aspects of the programs under review, specifically child safety, permanency for children in foster care, and well-being of all the children served by the programs. This focus in no way alters the requirements imposed on States to operate their programs in conformity with all applicable State plan requirements.

Therefore, in response to this comment, a new paragraph (d) under § 1355.32, "Partial reviews based on noncompliance with State plan requirements that are outside the scope of a child and family services review" has been added to clarify parameters for addressing issues regarding compliance with title IV–B and title IV–E State plan requirements that are outside the scope of these reviews. If needed, we will conduct partial reviews to resolve such issues regarding compliance. Partial reviews of this nature will not necessarily follow the prescribed format of the child and family services review. Rather, such partial reviews will address whatever the Secretary deems necessary in order to make a determination concerning State plan compliance.

If a State is determined to be out of compliance with a State plan requirement under either title IV–E or title IV–B, there will be an opportunity for program improvement, consistent with section 1123A of the Act, before funds are withheld.

Comment: A significant number of comments noted that Safety Outcome #1 is actually two separate outcomes.

Response: We agree and have revised § 1355.34(b)(1)(i)(A) and (B). We separated Safety Outcome #1 into its two component parts and will use them as the two safety outcomes, replacing the current Safety Outcome #2 (The risk of harm to children will be minimized.). The two safety outcomes now read as follows:

Outcome S1: Children are, first and foremost, protected from abuse and neglect.

Outcome S2: Children are safely maintained in their homes whenever possible and appropriate.

In this manner, we will address safety as a State's primary concern while measuring compliance with the statutory requirement to maintain children safely in their own homes when possible.

Comment: One commenter questioned whether safely maintaining children in their own homes is, in fact, a safety outcome. The commenter suggested that it would be more appropriately assessed as a permanency outcome.

Response: Although this outcome addresses decisions about whether to remove children and place them in foster care or maintain them in their own homes, it is, in fact, a safety outcome. ASFA is clear that the child's health and safety must be the primary concern in decisions to remove or to reunify. In reviewing the circumstances of those children who remain in their own homes, we intend to review for their safety and well-being, and not for the foster care provisions under the permanency outcomes that are not applicable to them. We will evaluate the permanency outcomes only for those children who have been removed from their homes and placed in foster care, since foster care is intended to be a temporary setting.

Comment: We received numerous comments questioning the applicability of certain performance indicators to their related outcomes. One example cited was Well-Being Outcome #1, Families have enhanced capacity to provide for their children's needs. Commenters raised concerns that the performance indicators associated with it are measures of process and do not equate with enhanced capacity for parents.

Response: For each outcome to be reviewed, we selected indicators that, if met, are both within the scope of the State agency's range of responsibilities and are likely to promote outcome achievement. Each of the on-site indicators includes a subset of questions and issues that permits reviewers to explore the indicator below the surface level. We believe that this type of exploration during the on-site review is necessary to evaluate the quality of work and the successful achievement of outcomes for children and families. It is unlikely that individual performance indicators, in isolation, can be used to evaluate the outcomes accurately. In combination, however, the set of performance indicators associated with each outcome will provide a balanced perspective on the outcome.

Comment: A number of comments were received indicating concern that Well-Being Outcome #2, Children receive appropriate services to meet their educational needs, is not an outcome that can necessarily be achieved by the child welfare system. Other comments were received questioning if this outcome, as it is stated, meets the definition of an outcome.

Response: The outcome delineated in § 1355.34(b)(1)(iii)(B), addresses the responsibilities of public child welfare agencies in regard to the educational needs of children in their care and custody. Certain aspects of the educational status of children are not within the control of the public child welfare agency. We are reluctant to describe the outcome in more definitive terms and hold the State accountable for educational outcomes that must be addressed primarily through the State's educational agencies. Rather, we have proposed to review those responsibilities that the State child welfare agency legitimately has in this area: Considering and addressing educational needs for children in case planning; obtaining and considering educational records for children in its care; and, where appropriate, advocating for children's educational needs with the education authorities in the State.

Comment: A few commenters raised concerns that length of stay in foster care and number of adoptions from the public child welfare system were not included as outcomes for the child and family services reviews.

Response: We agree that it is critical to track the length of a child's stay in foster care and the number of adoptions from the public child welfare system. We have included length of stay as a statewide data indicator and we are addressing numbers of adoptions by looking at the length of time between a child's entry into foster care and a finalized adoption. In this manner, we capture not only the number of adoptions but also assess State performance in expediting this permanency goal.

Comment: Commenters noted that some of the outcomes and indicators may not be appropriate for all types of cases in the system, particularly the well-being outcomes as they relate to families who are receiving child protective services.

Response: We recognize that not all of the outcomes and indicators will be applicable to every type of case reviewed. In most areas, we have allowed for nonapplicability to be noted on the review instrument. However, we also believe that the well-being outcomes very often do apply to children and families who are served in their own homes, in addition to children placed in out-of-home care. For example, the well-being outcomes address issues such as: A family's ability to meet a child's needs; educational achievements of children; and children's physical and mental health needs. We believe that these are concerns that should be addressed by child welfare systems regardless of whether the child is in out-of-home-care or not.

Comment: We received many comments urging consistency between the outcomes used in the child and family services reviews, and those outcomes that will be included in the annual report to Congress on State performance.

Response: We agree with the commenters that it is critical that we coordinate the annual report on State performance in child welfare, required by Section 203 of the ASFA, with the child and family services reviews and have taken the necessary steps to do so. Specific statewide data indicators, drawn from the outcome measures included in the annual report, in addition to the findings of the on-site review, will be used as the basis for determinations of substantial conformity on one outcome measure of safety and one of permanency. As we gain experience in using statewide data indicators for making determinations of substantial conformity, such data indicators may change. However, we have committed in regulation, to the extent practical and feasible, to keeping the data indicators used in the child and family services review consistent with the measures developed pursuant to section 203 of the ASFA.

Section 1355.34(c) Criteria Related to State Agency Capacity to Deliver Services Leading to Improved Outcomes for Children and Families

This section describes criteria for seven core systemic factors that will be evaluated to determine the State agency's capacity to deliver services that improve outcomes for children and families.

Comment: A number of comments suggested a need for greater detail in the regulation on how determinations of substantial conformity will be made for the systemic factors being reviewed.

Response: A detailed description of the changes to the process for making determinations of substantial conformity can be found under the "Discussion of Major Changes and Provisions of the Final Rule" section. We amended § 1355.34(c) so that determining substantial conformity with the systemic factors includes a process by which the review team rates the State's conformity with State plan requirements, based on information obtained from the statewide assessment and the on-site review. Information from BOTH the statewide assessment and the on-site portion of the review must support a determination of substantial conformity. State performance will now be rated for each systemic factor, using a Likert-type scale, *e.g.*, 1–4 with criteria attached to each rating, based on the total information obtained from a variety of stakeholders interviewed on-site.

Comment: We received several comments suggesting that States found to be in substantial conformity on the outcomes should not be reviewed for conformity with the systemic factors, stating that these are process measures. Other comments requested deleting some of the systemic requirements.

Response: The purpose of the child and family services reviews is to determine compliance with State plan requirements as well as the outcomes for children. Some requirements are related directly to outcomes in the areas of safety, permanency, and well-being, while others are related to systemic factors that States are accountable for implementing in return for receipt of Federal funds. We do not believe that a process limited to procedural requirements can assure improved outcomes for children and families. We do believe, however, that the presence of specific systemic factors is essential to assuring that States have the capacity to deliver services in a manner that is most likely to help children and families achieve desirable outcomes. We cannot forego the responsibility to

review systemic factors, and abandoning that responsibility would weaken the potential of the child and family service review process to help States identify areas where needed improvements can lead to better outcomes.

Comment: We received a number of comments requesting that the child and family services reviews include the full range of training activities permitted under title IV–E, including pre-employment training of State staff and long-term training that permits staff to obtain social work degrees.

Response: We have proposed to review staff and provider training according to State plan requirements in those areas, as stated in the NPRM. Although pre-employment and long-term staff training are allowable title IV–E training costs, there are no State plan requirements for these activities that would be subject to the child and family services review.

Comment: Several commenters expressed concern that the child and family services review does not include the ASFA requirements.

Response: The child and family services review does examine a State's compliance with several requirements of the ASFA. However, the rule does not specifically cite the ASFA in identifying those State plan requirements under review. The ASFA is not cited because it primarily amends the Social Security Act, which is the authorizing legislation for the Federal child welfare programs.

Comment: We received a comment that the NPRM fails to recognize two distinct case review systems in Public Law 96–272 and ASFA and does not acknowledge the value of the periodic case review system in place since 1980. The comment noted that periodic review should be recognized as necessary to insure safety and permanency.

Response: This comment seems to confuse the State's periodic administrative or judicial review of individual cases with the Federal review of State plan requirements. The purpose of the child and family service review, in part, is to test whether a State has appropriately implemented the case review system required by Public Law 96–272 and strengthened by ASFA. We concur with the commenter that periodic reviews and other requirements of the case review system are critical protections for children and help to promote timely permanency.

Comment: We received some comments questioning the applicability of the review of State plan requirements to the tribes and the Indian Child Welfare Act (ICWA), and whether a State's compliance with ICWA will be part of the review. Some commenters raised questions about how particular State plan requirements will be considered for tribes that receive their title IV–B allocations directly.

Response: In both the statewide assessment and the on-site review instruments, we have included items that address how States are meeting ICWA requirements. Further, in the pilot reviews, we found that the review process helped us successfully assess whether or not the interaction between the State and tribes satisfied title IV–B and title IV–E requirements for tribal children. However, the child and family services reviews are not intended to review for ICWA compliance, per se, but to review for the effectiveness of the broad child and family service system relative to State plan requirements. Further, the reviews are based on the entire child and family service system as indicated by the use of AFCARS and NCANDS data as an integral part of the process, and assessing penalties for nonconformity on a pool of funds that includes both titles IV–B and IV–E. For these reasons, we did not tailor the CFSR specifically to examine ICWA requirements.

Similarly, because the child and family service reviews are designed to review the entire system of child and family services, which includes both titles IV–B and IV–E, this review process is not designed for tribes that receive title IV–B funding only. Furthermore, section 1123A of the Act directed the Department to develop a review system for State compliance with the State plans under titles IV–B and IV–E of the Act. Therefore, tribes that receive title IV–B allocations will not be reviewed under the child and family services review process.

Section 1355.34(d). Availability of Review Instruments

This section states that copies of the review instruments will be made available to the State.

Comment: We received several comments in response to our request for suggestions on the most effective method for keeping States updated on the content of the review instruments. One of the recommendations was to provide States with a copy of the instrument that will be used for the review at least six months before the review is conducted.

Response: We appreciate the State' need to have as much advance exposure as possible to the most current review instruments. We anticipate revising the instruments as appropriate, based on lessons learned from ongoing reviews and from State' feedback to us. Given that we expect the statewide assessment process to take approximately six months, we easily anticipate having review instruments available to the State well before the on-site portion of the review is conducted. In addition, we plan to post the instruments on the ACF website (http://www.acf.dhhs.gov/programs/cb/) in order to make the most current version of the instruments available at all times.

Section 1355.35 Program Improvement Plans

This section pertains to the development of program improvement plans for States determined not to be in substantial conformity with State plan requirements, including the time frames for submission and implementation of the plans.

Section 1355.35(a) Mandatory Program Improvement Plan

This section describes elements of a program improvement plan for those States found not to be operating in substantial conformity.

Comment: We received comments concerning Federal technical assistance to States upon a finding of nonconformity, ranging from a need to develop the capacity for technical assistance prior to initiating reviews to suggesting that the need for technical assistance is not a valid reason for delaying penalties or the frequency of reviews.

Response: Section 1123A of the Act requires that States be afforded opportunities to correct areas of nonconformity with the use of technical assistance prior to having penalties withheld. While we have not regulated this aspect of the review process, we are committed to developing effective sources and means for providing technical assistance to States.

Comment: We received many comments concerning possible conflicts between program improvement plans and requirements for State consent decrees. Concerns were raised that program improvement plans not be required to include any action steps or goals that are inconsistent with a State's consent decree. Some respondents also requested that the provisions of a State's consent decree not automatically be required to be included in a program improvement plan.

Response: ACF is responsible for reviewing compliance with State plan requirements, and we must assure that the program improvement plan addresses applicable requirements. We did not include any provisions in the NPRM that would require States to include the provisions of consent

decrees into program improvement plans. We cannot assure that the provisions of a State's consent decree do not conflict with Federal requirements. It is the State' responsibility to ensure that no such conflict exists. We are willing to work with States to minimize such conflict within our statutory and regulatory mandates.

Comment: We received a small number of comments suggesting that States determined not to be in substantial conformity should be penalized for ASFA violations immediately, rather than suspending the penalties pending implementation of a program improvement plan. The same comments suggested that the term "program improvement plan" deviates from the "corrective action" language of the statute and undermines the enforcement role of HHS.

Response: Section 1123A(b) of the Act requires that States be afforded the opportunity to correct areas of noncompliance prior to withholding Federal funds. ASFA primarily amends sections of the Social Security Act to which section 1123A applies. Moreover, ASFA did not supercede section 1123A, nor did it amend section 1123A to require immediate penalties for failure to comply with the ASFA requirements.

The use of the term "program improvement plan" in no way deviates from statutory requirements since the result is still that the State must correct any identified areas of nonconformity with State plan requirements. The term "program improvement plan" underscores the intent of the reviews to serve as a means of assisting States to help families and children experience improved outcomes as a result of the services provided by the State and funded by the State and Federal governments. Failure to successfully complete a program improvement plan will result in penalties.

Section 1355.35(b) Voluntary Program Improvement Plan

This section sets forth the condition, under which States found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan.

There were no comments on this section and no changes have been made to this section.

Section 1355.35(c) Approval of Program Improvement Plans

This section sets forth the approval process for the program improvement plan.

Comment: With a few exceptions, most of the comments we received on the time frames for submitting and re-submitting program improvement plans following reviews encouraged us to lengthen the time frames.

Response: We recognize that the development and revision of program improvement plans requires considerable effort. Given the complexity of the issues that will be addressed in many program improvement plans, we are extending the length of time for the initial submission of the program improvement plan by the State to ACF from 60 days to 90 days. We are retaining the 30-day time frame for re-submitting plans that are not initially approved by ACF. Given the potential consequences for children and families of delaying efforts to correct areas of need, we do not believe we can further lengthen the time frames to develop the plans.

Section 1355.35(d) Duration of Program Improvement Plans

This section sets forth the time frame for successful completion of provisions in a State's program improvement plan.

Comment: We received a number of comments in favor of the two-year maximum time frame for implementing program improvement plans, with the opportunity for a one-year extension in certain circumstances. Some comments, however, indicated the time period was too long and should be shortened.

Response: We have retained this feature in the final rule. However, not all program improvement plans will require two years to implement and the specific time frame for each State's plan will be negotiated and agreed upon between the State and ACF. We are aware though, from the complex issues being litigated or settled by a number of States on behalf of their child welfare systems, that some improvements will require extensive periods of time to implement. Systemic changes that lead to identifiable improvements in the outcomes for children and families cannot always be achieved by simply modifying a policy, creating new tracking procedures or implementing new standards. However, in consideration of the comments on this issue and those pertaining to § 1355.36 that we strengthen the certainty of a penalty when a State fails to make program improvements, we are making the following changes in the rule for the time allotted to implement program improvement plans:

- ACF will require time frames for a program improvement plan to be consistent with the seriousness and complexity of the remedies required for any areas determined not in substantial conformity.
- We are requiring in paragraph (d)(2) that particularly egregious areas of nonconformity impacting the safety of children in the State's responsibility receive priority in both the content and time frames of the program improvement plans and must be satisfactorily addressed in less than two years.
- We are adding a requirement to paragraph (d)(3) that the Secretary approve any extensions of deadlines in the program improvement plans and any requests to extend the program improvement plan by a third year. The circumstances under which requests for extensions would be approved are expected to be very rare and will require compelling documentation. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.
- Finally, in paragraph (d)(4) we are requiring that monitoring of the implementation of the State' program improvement plans include quarterly status reports by the States to ACF, unless the State and ACF agree to less frequent reports. These reports will inform ACF of the State's progress in implementing the plan.

Section 1355.35(e) Evaluating Program Improvement Plans.

This section describes the joint process the State agency and ACF will use to evaluate the program improvement plan. This section also describes the frequency of evaluating progress and the terms for renegotiating a program improvement plan.

No comments were received on this section. Changes were made to this section only to the extent necessary to keep it consistent with the changes made to the other sections of § 1355.35.

Section 1355.35(f) Integration of Program Improvement Plans With CFSP Planning.

This section requires that elements of the program improvement plan be incorporated into the goals and objectives of the State's CFSP and annual reviews and progress reports related to the CFSP.

No comments were received on this section and no changes have been made to the final rule.

Section 1355.36 Withholding Federal Funds Due to Failure To Achieve Substantial Conformity or Failure to Successfully Complete a Program Improvement Plan

This section sets forth the penalties associated with a State's failure to operate a program in substantial conformity; implements the statutory

requirement to specify the methods for withholding Federal funds for substantial nonconformity; and describes the amount of Federal funds that are subject to a penalty. The suspension of withholding during the course of a State's program improvement plan, and termination of the penalty upon successful completion of the plan are also discussed.

Section 1355.36(a) For the Purposes of This Section

This section defines "title IV–B funds" and "title IV–E funds" for the purpose of this section.

Comment: We received comments that the regulation, rather than the preamble, should state that the title IV–E administrative costs to which withholding applies does not include funds allocated for training.

Response: In the proposed rule, we specified that the administrative costs of the foster care maintenance payments program are included in the pool of funds from which penalties will be assessed. In the final rule, rather than listing those title IV–E components that are excluded from the penalty pool, we have amended the regulatory language to more specifically identify the administrative costs of the foster care maintenance payments program as the source of title IV–E funds for the penalty pool.

Section 1355.36(b) Determination of the Amount of Federal Funds To Be Withheld

This section describes the manner in which ACF will determine the amount of the State title IV–B and IV–E funds to be withheld if the State is not operating in substantial conformity.

Comment: We received many comments in favor of the proposal that funds not be withheld from a State if the determination of nonconformity was caused by the State's correct use of formal written statements of Federal law or policy provided by HHS, but a few comments objected to this provision.

Response: This is a statutory requirement under section 1123A of the Act. Therefore, we have not made changes to the final rule.

Comment: We received comments regarding the proposed requirement that, upon finding that a State is not in substantial conformity, funds be withheld for the year under review and for each succeeding year until the State's failure to comply is ended either through the successful completion of a program improvement plan or until a subsequent full review determines the State is operating in substantial conformity. The commenter requested assurance that withholding is not unnecessarily extended because of HHS" lack of capacity to assess the completion of the plan or to conduct another review.

Response: The rule specifies the time frames for conducting reviews and for the duration of program improvement plans. Adherence to those time frames should limit delays in determining the status of the State' substantial conformity. We do not believe any change to the regulation is necessary.

Comment: We received many comments pertaining to the amount of the penalties. The comments ranged from the suggestion that the proposed penalties are too low to the idea that they are too high. Some respondents expressed concern about the cumulative effects of penalties for a variety of Federal reviews of child welfare programs and systems, and urged us to consider a consolidated penalty proposal based on a performance-based incentive system for child welfare or a reinvestment policy for nonconformity. Comments on the pool of funds from which penalties will be taken ranged from requests to specifically limit the pool to increasing it to include additional funds.

Response: We have given serious consideration to the comments on the amount of the penalties and the pool from which they are to be taken and believe that a change is warranted. We wish to promote practice improvements through the review process, and do not wish to use the penalty process to prevent States from making the needed improvements. However, we must make clear that the failure to correct areas of nonconformity identified in the reviews will result in substantial financial penalties. Therefore, we have added sections 1355.36(b)(7) and (b)(8) to provide a graduated penalty for continuous nonconformity.

To strengthen our commitment to program improvement through the review process, we have added these sections to the final rule that will increase the penalty for outcomes and systemic factors that remain in continuous nonconformity on successive reviews. States that continue to remain out of substantial conformity on successive reviews can now be penalized up to two percent per outcome or systemic factor at the second full review in which the nonconformity continues, and up to three percent per outcome or systemic factor at the third and subsequent full reviews in which the nonconformity continues. We believe the possibility of increased withholding of funds will encourage States to engage in active program improvement planning and make efforts to resolve areas of nonconformity as early as possible.

We believe that this revised penalty structure is in accordance with the Social Security Act Amendments of 1994 (Pub. L. 103–342), since we are making the amount of the penalty commensurate with the level of nonconformity and providing States an opportunity to engage in corrective action prior to withholding funds. We tried to establish penalties in amounts that create significant motivators for States to improve programs while not denying services to needy children that are critical to their safety, permanency, and well-being. We believe the approach contained in these final rules balances the issues in a manner that promotes the overall goal of program improvement in States.

The State's entire title IV–B allocation is included in the pool from which penalties will be taken because we are reviewing for all the programs funded by title IV–B in the State. A portion of the title IV–E administrative funds is included in the pool from which penalties will be taken, since a smaller percentage of title IV–E requirements are reviewed in the child and family services reviews.

In addressing the comments that advocated for funding reinvestment, the statute specifically mandates withholding Federal funds as penalties for nonconformity, rather than reinvesting. Also, the statutes for various programs carry penalty provisions that HHS cannot waive in favor of a consolidated, performance-based incentive system in child welfare.

We recognize the commenter' concerns that States found to be the most egregious in their non-conformity, based on the child and family services reviews, may also be determined out of conformity in other reviews, *e.g.*, title IV–E eligibility reviews and other reviews that cover related issues and requirements. Such States could be exposed to multiple penalties in a fiscal year. We strongly encourage States in those situations to take full advantage of the opportunities for technical assistance and program improvement planning in order to increase the effectiveness of their programs and improve the outcomes of children and families served by the programs.

Section 1355.36(c) Suspension of Withholding

This section describes the circumstances under which ACF will suspend the withholding of funds for those States found not to be operating in substantial conformance.

We did not receive comments on this particular section and have made no changes to the regulation.

Section 1355.36(d) Terminating the Withholding of Funds

This section describes the circumstances under which ACF will terminate the withholding of State funds related to nonconformity.

We did not receive comments on this particular section and have made no changes to the regulation.

Section 1355.36(e) Withholding of Funds

This section describes the circumstances under which ACF will withhold funds for those States determined not to be in substantial conformity.

Comment: A number of commenters suggested that we emphasize that penalties will be enforced.

Response: As we consider the amount of the penalty and the provisions for withholding funds due to nonconformity, we think that this is an area where stronger provisions are needed. We want to convey in the rule our sense of urgency about the need to implement needed improvements in child and family services and to make the application of penalties consistent with that sense of urgency. As a result, we have amended the regulatory language at § 1355.36(e)(2) so that proposed penalties associated with a particular outcome or systemic area will be imposed when the State fails to come into substantial conformity or fails to make the necessary progress with respect to the statewide data indicators by the date specified in the PIP, rather than waiting for the completion of the entire PIP. Some problems may only require six months to fix, for example, while others may require the full two years. In this manner, if the State is required to complete an action step in six months, fails to do so, and the Secretary does not approve an extension, an immediate penalty will be assessed for that area of nonconformity. We also added a provision at § 1355.36(e)(4) that applies the maximum withholding of funds of 42 percent of the pool to States that elect not to engage in program improvement planning or to otherwise correct areas determined not to be in substantial conformity.

Comment: There were several alternatives suggested regarding the basis for computing interest on penalties and the time frame during which interest will accrue.

Response: The Department has established regulations with respect to interest on withheld funds to which we are bound.

Section 1355.37 Opportunity for Public Inspection of Review Reports and Materials

This section provides that States must make certain sources of information related to the child and family services reviews available for public inspection.

Comment: We received several comments requesting that States be given flexibility in the methods of making the review reports and materials available for public inspection. Some commenters suggested we take a more prescriptive approach with respect to this issue.

Response: Given the variance across State systems, we think it is important to permit States flexibility in satisfying this requirement. While the suggestions we received regarding ways States should publicize information related to the child and family services review were excellent, they would be more appropriately deployed through technical assistance efforts with States rather than requiring them through regulation.

Comment: We received comments requesting that ACF provide official public notice of reviews in advance of the reviews.

Response: We are considering options for implementing this suggestion. However, we do not believe it is an appropriate issue for regulation.

Section 1355.38 Enforcement of Section 471(a)(18) of the Act Regarding the Removal of Barriers to Interethnic Adoption

This section implements the enforcement of section 471(a)(18) of the Act which specifically prohibits the denial of the opportunity to any person to become an adoptive or a foster parent, or the delay or denial of the placement of a child in an adoptive or foster family home on the basis of the race, color, or national origin of the child or of the adoptive or foster parent. In addition to the specific comments on § 1355.38, we received a number of general comments and requests related to the statutory language itself at section 471(a)(18) of the Act.

Many commenters requested that the final rule include a section on what constitutes a delay or denial of a child's adoptive or foster care placement and when race, color, or national origin can be used in child placement decisions. Several commenters also requested that the final rule include a discussion of good social work practice and define "best interest of the child" as it relates to section 471(a)(18) of the Act. A large number of commenters also requested that the final rule include language that stated that compliance with section 471(a)(19) (which allows the State to give preference to a relative over a non-related caregiver) and section 422(b)(9) (which requires the State to make diligent efforts to recruit potential foster and adoptive families that reflect the ethnic and racial diversity of children needing an adoptive or foster home) would not be considered a violation of section 471(a)(18) of the Act.

Also, many commenters believed the tone of the section to be adversarial and requested that the section be revised to mirror the partnership approach used in the child and family services review. A few commenters believed the enforcement of section 471(a)(18) of the Act is too heavily focused on the rights of adults rather than the needs of the child. Additionally, a few commenters were concerned that vigorous enforcement of section 471(a)(18) of the Act may have a negative effect on the quality of services available to children.

In contrast to these comments, one commenter voiced concern that § 1355.38 did not adequately enforce section 471(a)(18) of the Act. The commenter believed that additional enforcement mechanisms and administrative authority should be included in the final rule.

The regulatory language in § 1355.38 closely follows the statutory language and represents our commitment to diligently enforce these provisions of law. We have made only limited revisions to this portion of the regulation in response to comments, as we believe that enforcement of section 471(a)(18) of the Act is clearly defined by the statute. We would like to note that the statutory language guiding this section is very different from that underpinning the child and family services reviews, and it is this distinction that accounts for the difference in the approaches taken.

The request for guidance on what constitutes a delay or denial of a child's adoptive or foster care placement and when race, color, or national origin can be used in child placement decisions; a discussion section on good social work practice; and the inclusion of a definition of "best interest of the child" as it relates to section 471(a)(18) of the Act all represent practice level issues. Practice level issues are more appropriately addressed through technical assistance rather than regulation. Also, the determination of delay or denial in foster care or adoption is based on the facts of the specific case. Thus, we did not include

any additional guidance in the final rule.

We also did not include qualifying statements regarding relative preference and/or diligent recruitment in the final rule. The activities regulated in this final rule are procedural directives for implementation of financial sanctions. Thus, we do not intend to cite all the activities which may or may not violate section 471(a)(18) of the Act. Given the number of comments received, we are providing the following discussion on relative preference and diligent recruitment as they relate to section 471(a)(18) of the Act:

- Section 471(a)(19) of the Act allows the State to give preference to an adult relative over a nonrelated caregiver, when placing a child for adoption or in foster care provided that the relative caregiver meets all relevant child protection standards. Relative preference recognizes the importance of maintaining biological relationships. Prioritizing biological ties is not a form of race preference; rather it is an acknowledgment of the significance of these ties. Relatives come under the same scrutiny as nonrelatives and must meet the same Federal title IV–E requirements to become foster and/or adoptive parents. In all circumstances, the best interests of the child must determine a placement decision. A State's appropriate use of the relative placement preference does not constitute a violation of section 471(a)(18) of the Act.
- Section 422(b)(9) of the Act requires the State to make diligent efforts to recruit potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State needing an adoptive or foster home. Diligent recruitment activities are necessary to ensure that all qualified members of a community, who may be excluded from or reluctant to request services, have the opportunity to become a foster or adoptive parent. Diligent recruitment can provide a broad pool of placement resources for those children waiting for foster or adoptive homes. A State's general diligent recruitment activities do not constitute a violation of section 471(a)(18) of the Act. General diligent recruitment activities should not discriminate on the basis of race, color or national origin by excluding families who are not targeted for services and denying them the opportunity to be a part of the pool of available families for children of different backgrounds.
- The purpose of the Multiethnic Placement Act of 1994 (MEPA) was threefold: (1) To decrease the length of time a child waits to be adopted; (2) to prevent discrimination in foster care and adoption; and (3) to promote the recruitment of ethnic and minority families that reflect the children in the public child welfare system. We do not interpret any of these purposes to be mutually exclusive. In the Removal of Barriers to Interethnic Adoption (IEP) provisions, which amended MEPA, Congress further clarified that race, color, or national origin should not be routinely considered in foster care and adoption placements. The IEP also contained enforcement provisions. The IEP did not change the recruitment provision contained at section 422(b)(9) of the Act.

We recommend that the State or entity review Federal policy guidance already issued on the MEPA, as amended by IEP (found at *http://www.acf.dhhs.gov/programs/cb/*). Additionally, both the Office of Civil Rights (OCR) and ACF Regional Offices stand ready to provide guidance to any State with a specific policy question.

Rather than attempting to identify the multiple situations which may lead to a violation of section 471(a)(18) of the Act, we have found that providing technical assistance to specific State questions is most useful. Technical assistance is available through the ACF and OCR regional offices, as well as through the federally funded national resource centers. Periodically the Department will review the issues raised to determine the need for additional guidance.

Specific questions and comments are addressed in the following paragraphs.

Section 1355.38(a) Determination That a Violation Has Occurred in the Absence of a Court Finding

This section sets forth the requirements for determining a violation of section 471(a)(18) of the Act during the course of a child and family services review, the filing of a complaint, or some other mechanism.

Comment: One commenter requested clarification of the term "entity in the State" as used in section 471(a)(18) of the Act, specifically if it includes private agencies. Another commenter inquired about the application of section 471(a)(18) of the Act to court findings and if ACF has the authority to sanction the court as an "entity."

Response: We have added a definition for "entity" in § 1355.20 in response to this comment. According to the statute any entity in a State that receives title IV–E funds must comply with section 471(a)(18) of the Act. We define the term "entity" to include private agencies. A State court is not an "entity," for purposes of this provision, to the extent that it issues decisions or opinions, or performs other judicial functions. If, on the other hand, an administrative arm of a State court carries out title IV–E administrative functions pursuant to a contract with the State agency, then it is an "entity" for these narrow purposes. If the private agency, an administrative arm of the court, or any other entity is found not to be in compliance with section 471(a)(18) of the Act, ACF has the authority to collect all of the title IV–E funds received by the entity for the quarter the violation occurred.

Comment: Several commenters requested that the final rule contain the "HHS criteria" that ACF will use to determine if a violation of section 471(a)(18) of the Act has occurred.

Response: HHS has not developed any specific "criteria" for determining if a violation of section 471(a)(18) of the Act has occurred. HHS will determine on a case-by-case basis whether the State has delayed or denied a child's adoptive or foster care placement or denied a person the opportunity to become an adoptive or foster parent based on race, color, or national origin. It is impossible to define every situation and circumstance that would result in a civil rights violation. Thus, the regional office will review the specific facts of each case to determine if a State or entity is in violation of section 471(a)(18) or if a policy or practice is consistent with previously issued guidance. No change has been made to the final rule as a result of this comment.

Comment: One commenter requested that the final rule provide guidance on how a complaint from a prospective foster or adoptive parent who is not selected for a specific placement and is of a different race, color, or national origin of the child to be placed, will be handled (*i.e.*, the roles of all parties involved, if the State will have an opportunity to respond to the allegation, etc.).

Response: We have not defined specific procedures for the determination of a violation, or the procedures for handling allegations of a violation in regulation, as we expect that these determinations will be made on a case-by-case basis and rely on the specific facts of each situation.

Comment: Many commenters requested that the final rule detail the contents of the notification letter that ACF will provide to the State found to be in violation of section of 471(a)(18) of the Act and suggested that the letter include specific information on the roles and responsibilities of HHS and the State.

Response: We intend to draw on this suggestion, and others like it, in

preparing the internal agency procedures that will be used to investigate and respond to a violation of section 471(a)(18) of the Act. However, we believe this level of specificity is inappropriate for regulation. No change has been made to the final rule.

Comment: Several commenters objected to the phrase "* * * if applied, would likely result in a violation against a person * * *" in paragraph (a)(2)(iii). The commenters stated that this ambiguous phrase may result in a violation being based on a hypothetical situation.

Response: We concur with the commenters that the phrase "* * * would likely result * * *" may appear ambiguous. We have reworded paragraph (a)(2)(iii) to clarify that a violation will be based on policies, procedures, practices, regulations, and laws that on their face violate the law.

Section 1355.38(b) Corrective Action and Penalties for Violations With Respect to a Person or Based on a Court Finding

This section sets forth the requirements for corrective action and penalties for a violation of section 471(a)(18) of the Act with respect to a person or based on a court finding.

Comment: One commenter requested that we define the term "court finding," to clarify what court is being referred to in this section as it relates to the assessment of penalties for a violation of section 471(a)(18) of the Act.

Response: While we do not intend to define the term "court finding," we would like to clarify that any Federal or State court's finding of a violation of section 471(a)(18) of the Act may result in the assessment of a penalty by ACF. Under the statute, an individual who believes that he or she has been aggrieved by a section 471(a)(18) violation, may bring action in the United States District Court. The final rule will not be this specific because the District Court finding can be appealed to a higher court; thus a court other than the United States District Court may ultimately determine that a 471(a)(18) violation has taken place.

Comment: Several commenters opposed the immediate assessment of the penalty for a violation with respect to a person, suggesting that there should be an opportunity for corrective action beforehand.

Response: We believe that the statute is clear at 474(d)(1) that there is to be an immediate penalty, without corrective action beforehand, where there is a violation with respect to a person. This is consistent with the Department's commitment to aggressive enforcement of section 471(a)(18) of the Act. Thus, no change has been made to the final rule as a result of these comments.

Comment: Several commenters opposed the immediate assessment of a penalty for a violation based on a court finding, suggesting that ACF/OCR investigations be the sole basis for assessing a penalty.

Response: Section 474(d)(3) of the Act affords an individual who is aggrieved by a violation of section 471(a)(18) of the Act the right to file a lawsuit against the State or entity. In accordance with the statute, a violation with respect to an individual requires an immediate penalty if the court finds that the State has violated section 471(a)(18) of the Act. Thus, we do not intend to investigate a case where the court has already rendered a finding. If a State, an entity, or an individual is dissatisfied with the court's finding, the appropriate action of recourse is to appeal through the judicial system. No change has been made to the final rule as a result of these comments.

Comment: Several commenters expressed concern about dual penalties (from both the Court and ACF) that States may incur based on a court finding of a violation of section 471(a)(18) of the Act.

Response: We do not believe that dual penalties will result from the situation as described. The statute allows for an individual aggrieved by a violation of section 471(a)(18) of the Act the right to bring action and seek relief from the State. If the court finds that the individual has been aggrieved by the State, it is possible that monetary compensation may be awarded to the individual as relief for the State's action. This monetary award is not a penalty. Penalties by ACF are required by the statute when the State violates the law. No change has been made to the final rule as a result of these comments.

Comment: A few commenters recommended that the final rule require the State to notify ACF of a court's finding that the State is in violation of section 471(a)(18) of the Act, since ACF will not be a party to the proceedings.

Response: We agree with the commenter' recommendation and have revised the final rule to require a State found by a court to be in violation of section 471(a)(18) to notify ACF. A new paragraph, § 1355.38(b)(4), requires the State to notify the appropriate ACF regional office of the violation within 30 days from date of entry of the final judgement once all appeals have been exhausted, declined, or the appeal period has expired.

Section 1355.38(c) Corrective Action for Violations Resulting From a State's Statute, Regulation, Policy, Procedure, or Practice

This section sets forth the requirements for corrective action when a State's statute, regulation, policy, procedure, or practice is found to be in violation of section 471(a)(18) of the Act.

Comment: We received several comments relating to the time period provided for corrective action. One commenter stated that six months for corrective action is too short, while another commenter stated that six months is excessively long.

Response: The statute specifies at 474(d)(1) of the Act, that the time period to implement a corrective action plan for section 471(a)(18) of the Act must not exceed six months. We have made a change to the regulation to require a State to complete a corrective action plan within six months. All corrective action plans will not require six months to complete. ACF has the authority to establish a shorter time frame for the completion of the corrective action plan consistent with the seriousness, complexity, and the remedy required by the violation.

Comment: Another commenter recommended that the time limit for ACF to approve or disapprove a State's corrective action plan be defined in the final rule to avoid a State's being penalized due to delayed action by ACF.

Response: ACF recognizes the need for approving corrective action plans in a timely manner but did not include the commenter's recommendation in the final rule. To respond to the commenter's concern we have revised § 1355.38(c)(1). The State will have 30 days after receipt of written notification of noncompliance with section 471(a)(18) of the Act, to develop a corrective action plan and submit it to ACF for approval. Once the corrective action plan is approved by ACF, the State will have six months to complete the corrective action and come into compliance before a penalty is applied. The calculation for the six months will begin after ACF has approved the plan.

A State's completion of a corrective action plan within the specified time will not, in itself, prevent the assessment of a penalty. The completed corrective action plan must result in the State coming into compliance with section 471(a)(18) of the Act to avoid incurring a penalty. We have revised the final rule to clarify this point at § 1355.38(c)(1) and also at (g)(1)–(4).

Additionally, we have revised § 1355.38(c)(3) to provide the State with

an additional 30 days to revise and resubmit the corrective action plan in the event the State's corrective action plan is not approved by ACF. If the State fails to resubmit the corrective action plan within the 30 days, a penalty will be assessed.

Comment: One commenter was concerned that §§ 1355.38(c)(1) and (g)(3) were inconsistent. The commenter believed paragraph (c)(1) provides a State with six months before assessing a penalty while paragraph (g)(3) imposes a reduction beginning with the quarter that the State received notification.

Response: Paragraphs (c)(1) and (g)(3) are not inconsistent. Paragraph (c)(1) provides the State with six months to complete corrective action before a penalty is assessed. Paragraph (g)(3) defines the starting point for assessing the penalty in the event a State declines to participate in corrective action or fails to successfully complete the corrective action plan within six months.

Comment: One commenter disagreed with the use of the word "implement," in original paragraph (c)(4), to mean "begin" and stated that "implement" means to "complete."

Response: In light of the addition of up to a 60-day period for the State to develop the corrective action plan, we have revised the definition of "implement" in the final rule to mean "complete." Paragraphs (c)(4) and (5) were deleted and paragraph (c)(1) now reads that a State in violation of section 471(a)(18) of the Act will have six months to complete corrective action and come into compliance once its plan has been approved before a penalty is assessed.

Comment: One commenter requested that the State be allowed to make changes to the corrective action plan without incurring additional penalties.

Response: As written, the regulation does not preclude the State from making changes to the corrective action plan. The changes made to the corrective action plan must be approved by ACF and completed within the original six-month time frame.

Section 1355.38(d) Contents of a Corrective Action Plan

This section describes the contents of a corrective action plan.

We did not receive comments related to this section but have revised this section to coincide with changes made in § 1355.38(c). Paragraph (d)(4) defines the completion date for the corrective action and deletes the option to extend the corrective action completion date.

Section 1355.38(e) Evaluation of Corrective Action Plans

This section describes the evaluative steps that ACF will take to review the implementation of corrective action plans submitted by States who have been found to be in violation of section 471(a)(18) of the Act.

We received no comments related to this section but revised this section to coincide with changes made to § 1355.38(c) and (d). This section now states that ACF will evaluate the corrective action plan within 30 days of the six-month completion date.

Section 1355.38(f) Funds To Be Withheld

This section defines the term "title IV–E funds" in the context of this section.

Comment: One commenter requested clarification on the use of the word "claims."

Response: In describing the penalty for a violation of section 471(a)(18) of the Act, the statute at 474(d)(1) uses the phrase, "otherwise payable to the State under this part" in reference to the amount of title IV–E funds to be reduced. We interpret this to mean the Federal share of allowable title IV–E costs paid or advanced to the State and have revised § 1355.38(f) in the final rule to reflect this interpretation. The reader should note that it does not matter whether the costs are reported as a current expenditure or as an adjustment; all title IV–E funds expended during the quarter(s) the State is determined to be in violation of section 471(a)(18) of the Act will be subject to a penalty.

Section 1355.38(g) Reduction of Title IV–E Funds

This section describes the circumstances under which a State's title IV–E funds will be reduced by ACF due to a violation of section 471(a)(18) of the Act.

Comment: Several commenters expressed concern about ACF's authority to continue a penalty into the next fiscal year.

Response: The regulation does not provide for a continuation of a penalty into the subsequent fiscal year if a State fails to come into compliance. ACF may and has the authority to initiate a full or partial review in a subsequent fiscal year for those States that are in violation of section 471(a)(18) of the Act and have failed to complete corrective action to come into compliance. Thus, any statute, regulation, policy, procedure or practice that remains uncorrected from a previous fiscal year may result in a new finding of a violation of noncompliance with section 471(a)(18) of the Act. We will not disregard an uncorrected violation simply because a fiscal year has ended. It is part of the Department's oversight responsibility to ensure that all States are in compliance with section 471(a)(18) of the Act at any given time and any uncorrected violation may be subject to a review at the beginning of a new fiscal year.

Comment: One commenter is concerned that the use of fiscal sanctions for every quarter that the State has not completed a corrective action plan is overly harsh.

Response: We are unable to modify the penalty structure as it is defined in law. The statute clearly states that penalties are to be applied quarterly when a State is in violation of section 471(a)(18) or has not successfully implemented a corrective action plan; and that the penalty will be applied until the State achieves compliance or until the end of the fiscal year.

Comment: Several commenters requested that the final rule permit the suspension of the penalty while the State appeals a court finding of a violation of section 471(a)(18) of the Act.

Response: We concur and have included such language in the final rule at paragraph (g)(6). This clarifies that penalties will not be imposed until a final determination regarding a violation is made through the judicial appeal process.

Section 1355.38(h) Determination of the Amount of Reduction of Federal Funds

This section describes the specific amount a State's title IV–E funds will be reduced by ACF in the event of a section 471(a)(18) violation and provides instructions related to interest liability.

Comment: One commenter requested that the final rule clarify that the calculation of the penalty is quarterly.

Response: We have revised paragraph (h) to clarify that the penalty is calculated and assessed quarterly.

Comment: One commenter believed that five percent is the penalty and not a cap.

Response: Five percent is both a penalty and a cap. The statute at section 474(d)(1) of the Act requires that the third or subsequent violation(s) in a fiscal year will result in a five percent reduction of title IV–E funds payable to the State in that quarter. The statute also sets an annual cap whereby no State's fiscal year payment will be reduced by more than 5 percent.

Comment: One commenter requested clarification on the State agency's

responsibility for interest if an entity such as a private agency violates section 471(a)(18) of the Act.

Response: The State agency or entity that has been found to be in violation is responsible for the interest. No change has been made to the final rule.

Section 1355.39 Administrative and Judicial Review

This section provides States found not to be in substantial conformity with titles IV–B and IV–E State plan requirements, or in violation of section 471(a)(18) of the Act, with an opportunity to appeal.

Comment: One commenter recommended that the final rule provide the State with the right to immediately appeal a determination of substantial nonconformity or require ACF to provide the State with a detailed report of the reasons underlying the finding prior to the development and implementation of a program improvement plan.

Response: A final determination regarding State nonconformity is not made until the State has had an opportunity for corrective action. Therefore, it would be premature to provide for an appeal to the DAB prior to that time. However, we will provide written notification, within 30 days following the child and family services review, that the State is, or is not, operating in substantial conformity. While we understand the commenter's desire to have a detailed report of the review findings, specifying the details of the notification letter is not appropriate for regulation. Additionally, we have designed the review process to be less dependent upon a lengthy report. The team will provide the State with verbal information on the findings of the review throughout the on-site review and subsequent exit conference. The notification letter will confirm findings of the onsite review, which builds on information initially reported in the State prepared statewide assessment, and will include sufficient information for a State to know where it is operating in or out of conformity. No change has been made to the final rule.

Comment: One commenter recommended that the final rule require ACF to assume the responsibility for any costs related to the development and implementation of the program improvement plan in the event ACF determines that the State is not operating in substantial conformity but a subsequent DAB decision finds that the State is operating in substantial conformity.

Response: We do not concur with the commenter's proposal that ACF should assume full costs for the program improvement plans in the event the DAB overturns an ACF finding of substantial nonconformity. The State may claim FFP for appropriate program improvement plan activities under title IV–E.

Comment: One commenter stated that if private agencies are to be sanctioned for a violation as "entities in the State," they should have an opportunity for appeal.

Response: We concur with the commenter and have revised the final rule to allow such entities the opportunity to appeal to the DAB.

Section 1355.40 Foster Care and Adoption Data Collection

We have made a technical amendment to conform with new Federal requirements related to the collection of race and ethnicity data. On October 30, 1997, the Office of Management and Budget (OMB) published a notice in the **Federal Register** (62 FR 58781–58790) announcing its decision to revise Statistical Policy Directive No. 15, *The Race and Ethnic Standards for Federal Statistics and Administrative Reporting.* OMB's Statistical Policy standards provide a common language to promote uniformity and comparability of data on race and ethnicity for the population groups specified in the directive. The Department is required to collect information in accordance with the directive's standards.

The revised standards have five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. The new standards allow individuals of mixed race to identify with more than one race. Also, OMB revised the two categories for data on ethnicity to: "Hispanic or Latino" and "Not Hispanic or Latino." The AFCARS currently collects information on the race and ethnicity of children in foster care and those who have been adopted, foster parents, and adoptive parents. However, we must change the definitions of the racial classifications, revise ethnicity classifications, and allow multiple-race identification in AFCARS race data elements to comply with the OMB Directive. In ACYF–CB–PI–99–01 (issued January 27, 1999) we informed States of the required changes to the AFCARS collection of race data as a result of a change in OMB policy. States were directed to change race and ethnicity collections for the report period beginning October 1, 1999. Since these changes are already underway in the States and a matter of HHS policy, we are codifying these changes as technical amendments in this final rule.

Section 1355.40(a) Scope of the Data Collection System

We removed a reference to the former protections in section 427 of the Act in paragraph (a)(2) and replaced it with the correct citation. Congress repealed section 427 of the Act with Public Law 103–432, effective October 1, 1997. The protections previously included in section 427 of the Act are now included as assurances in section 422(b)(10) of the Act.

Appendix A to Part 1355

In Appendix A to part 1355, Section I, we included the new race and ethnicity classifications consistent with OMB's Statistical Policy Directive Number 15. All of the foster care race elements (elements II.C.1, IX.C.1 and IX.C.3) are listed in the element chart alphabetically as they are in the directive.

In section II to appendix A, we removed the obsolete reference to the section 427 protections and replaced it with the correct statutory reference. In Section II, II.C.1, we added new race definitions and made an editorial change regarding how a person's race and ethnicity is determined. Consistent with the OMB Directive, we make this change to emphasize that self-identification or self-reporting is the preferred method of gathering information on race or ethnicity except where this is not practical. Obviously, in the case of young children, racial or ethnic self-identification is not practical and is therefore primarily determined by the parent. We recommend that caseworkers ask children (if age appropriate) and adults to identify all the racial categories that apply.

In ACYF–CB–PI–99–01 we provided policy guidance on the use of the category "unable to determine" as it applies to situations where a parent or other adult caretaker is unwilling to identify their race or that of the child. We have included that clarification in this regulation. If a parent or caretaker is unwilling to identify a race, then the State should classify the information as "unable to determine," indicating that the State attempted to gather the information but was unable to do so. This will provide for better data as the State will not overstate the amount of missing data for this element and jeopardize conformity with the missing data standards. Finally, we amend the way that a State must code the data for the race categories to properly identify a single race, multiple race or "unable to determine" response.

We have made changes similar to those above in Section II, II.C.2, which define the Hispanic and Latino ethnicity classifications. In addition, we have deleted the last sentence of the paragraph that required the State to indicate that the child is not of Hispanic ethnicity only when the origin of the child is clear. We believe that this distinction is unnecessary and inconsistent with our approach to other regulatory definitions on race and ethnicity.

In Section II, IX.C, we now cross-reference only the definitions of race and ethnicity classifications used in the section on child demographics (II.C). The existing regulations also cross-reference the definition of "unable to determine," however, this definition as stated is not applicable to adults. For adults, the code "f. unable to determine," must be used only in circumstances where the parent is unwilling to identify his or her race or ethnicity. During AFCARS pilot reviews, we found that States were inappropriately coding missing information as "unable to determine." When data is missing or not known because the State has not asked an individual for information on race or ethnicity, the response must be left blank.

Finally, in Section II, we have deleted paragraph IX.D on coding ethnicity data. This paragraph incorrectly cross-referenced the section on disabilities. We have incorporated the relevant portions of the instruction in paragraph IX.C.

Appendix B to Part 1355

In appendix B to part 1355, we have made the same amendments to the race and ethnicity adoption data elements as those listed above for the foster care elements.

Appendix D to Part 1355

In appendix D to part 1355, we amended the race and ethnicity elements in the foster care and adoption record layouts consistent with the OMB directive. We amended the coding notes that precede each record layout table to clarify that the race classifications are now elements where more than one response is allowed.

We also made a technical change to the foster care and adoption record layouts to accommodate the year 2000 century date change. Prior to October 1996, States were required by regulation to report date information in decade format. In response to the year 2000 and the data issues associated with the processing of date information, we issued an information memorandum, ACYF–IM–CB–96–08 (April 17, 1996), requiring States to report in century date format. We are now making the requisite technical change to the regulation.

Appendix E to Part 1355

In appendix E to part 1355, we made several technical edits to replace all references to "Hispanic origin" with "Hispanic or Latino ethnicity" in order to be consistent with the OMB directive (see element charts and Section B.2.a.(8)). In section A.2.a.(18) for foster care and section B.2.a.(9) for adoption, we have added an internal consistency validation for race elements. Internal consistency validations evaluate the logical relationship between data elements in a record. We also revised cross-references to the internal consistency checks throughout the Appendix to accommodate the addition.

Part 1356—Requirements Applicable to Title IV–E

Section 1356.20 State Plan Document and Submission Requirements

Section 1356.20(e)(4) State Plan Document and Submission Requirements

This section implements the authority of ACF Regional HUB Directors and Administrators and the Commissioner of ACYF to approve State plans and amendments that govern State programs under section 471 of the Act.

No comments were received on this section and no changes were made in the final rule.

Section 1356.21 Foster Care Maintenance Payments Program Implementation Requirements

In this section, we clarified existing policies and set forth additional foster care maintenance requirements which have a direct impact on determining the eligibility of children in the title IV–E foster care program.

Comment: A few commenters were concerned that § 1356.21 of the regulation was not sensitive to and appeared inconsistent with the Indian Child Welfare Act (ICWA).

Response: The purpose of the regulation is to implement the title IV–E foster care program, not the requirements of the ICWA. We want to be clear that nothing in these regulations supersedes the requirements of the Indian Child Welfare Act. States must continue to comply fully with ICWA.

Comment: We received a large number of general comments expressing disappointment that following the outcome orientation of the child and family services review that § 1356.21 of the regulation reverts to a process orientation.

Response: We agree, this section of the regulation is process-oriented. The purpose of this section is to regulate title IV–E eligibility criteria and procedural requirements, which are inherently process-oriented.

Comment: One commenter suggested we provide language throughout this section that distinguishes title IV–E eligibility criteria from State plan requirements.

Response: Title IV–E eligibility criteria are distinguished from State plan requirements in § 1356.21. We have amended § 1356.71(f) and (g) to clearly enumerate the title IV–E eligibility criteria. However, we agree that we may have caused some confusion by addressing a particular State plan requirement in the reasonable efforts section relating to permanency hearings that must be held within 30 days of a judicial determination that reasonable efforts to reunify a child and family are not required. Also, the leading sentences to § 1356.21(h) suggest that the permanency hearing is an eligibility criterion. We have deleted language that could cause any confusion between title IV–E eligibility criteria and State plan requirements.

Comment: Some commenters recommended that the regulations include a new section that describes tribal authority and responsibilities in satisfying title IV–E requirements when tribes and States enter into title IV–E agreements. One commenter also requested that the suggested section include a provision that permits the Secretary to waive title IV–E provisions with respect to any title IV–E agreement between an Indian tribe and a State. The commenter believed such a provision would make it easier for State-tribal agreements to be established.

Response: The regulations are written from the perspective of the State agency because the statute makes the State child welfare agency ultimately responsible for the proper administration of the title IV–E program. Section 472(a)(2) of the Act permits other public agencies to have responsibility for placement and care of children in foster care under an agreement with the State child welfare agency. The State and the public entity with which it is entering into an agreement, whether it is a tribe, juvenile justice agency, etc., must determine between themselves how roles and responsibilities for meeting title IV–E requirements will be shared. The requirements of the title IV–E program do not, and cannot, change merely because a public entity other than the

State child welfare agency has responsibility for placement and care of certain children in foster care. Tribes and other public entities with which the State agency has entered into agreements do, however, have the latitude to develop their own procedures for satisfying title IV–E requirements as long as the State child welfare agency's ultimate responsibility for compliance is assured. We have not made any changes to the regulation based on these comments.

Section 1356.21(a) Statutory and Regulatory Requirements of the Federal Foster Care Program

This section introduces the title IV–E implementation requirements for eligibility of Federal financial participation (FFP) under the title IV–E foster care program.

Comment: One commenter observed that §§ 1356.22 and 1356.30 should be included in the references in this paragraph.

Response: We concur and have amended the paragraph accordingly.

Section 1356.21(b) Reasonable Efforts

This section sets forth the ASFA requirement that the State hold the child's health and safety as its paramount concern when making reasonable efforts.

Comment: We received several suggestions to include, in the regulation, the preamble language at page 50073 of the NPRM which describes the threefold purpose of the reasonable efforts requirements. The basis for this suggestion was a concern that the focus of the regulation was on the steps the State agency must take in order to access Federal funds rather than the intent of the statute. The commenters believe the inclusion of this language in the regulation will provide an outcome oriented balance to the process orientation of this section of the regulation.

Response: We concur and have amended § 1356.21(b) accordingly.

Comment: Many commenters requested that we delete the preamble language at page 50073 of the NPRM that provides examples of questions the courts should consider in determining whether the agency satisfied the reasonable efforts requirements. These commenters are concerned that examples provided in regulation or policy guidance become de facto policy. Conversely, we received many comments not only supporting the list in question, but encouraging us to include it in the text of the regulation and expand it to include more guidance on reasonable efforts to make and finalize permanent placements.

Response: We intend for examples to set parameters for the appropriate use of the flexibility that is inherent in some title IV–E provisions. We believe the examples will be helpful to State child welfare agencies in preparing for hearings at which reasonable efforts determinations are to be made. We do, however, think the list is more appropriate as policy guidance rather than regulatory text and therefore, did not change the regulation to include the examples.

Comment: One commenter suggested that we include regulatory language which places the burden of proof in satisfying the reasonable efforts requirements on the State agency.

Response: We believe that the very nature of the reasonable efforts determination indicates the burden of proof is on the State agency. Section 472(a)(1) of the Act requires that the court determine whether the State agency made reasonable efforts in accordance with section 471(a)(15) of the Act. We believe that the suggested change is unnecessary, therefore, and have made no changes to the regulation.

Comment: We received a few comments suggesting that we have no statutory basis for requiring a judicial determination that the State made reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited. We also received several comments supporting the requirement for three separate reasonable efforts determinations but questioning our authority to link title IV–E funding to such determinations.

Response: The judicial determinations are based in the statute. Section 472(a)(1) of the Act contains two eligibility criteria. The first pertains to the child's removal from home. Such removal must be based on a voluntary placement agreement or a judicial determination that it was contrary to the child's welfare to remain at home. The second eligibility criterion requires a judicial determination that the State made reasonable efforts of the type described in section 471(a)(15) of the Act. Section 471(a)(15) of the Act requires the State agency to make reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited. The requirements for judicial determinations regarding reasonable efforts are title IV–E eligibility criteria. If the eligibility criteria are not satisfied, the child is not eligible for title IV–E funding.

Comment: One commenter suggested we permit a 60-day extension to the time frames prescribed in the regulation for obtaining judicial determinations regarding reasonable efforts to address the problem of continuances.

Response: We are sympathetic to the issue of continuances. However, we believe that the need for timely judicial determinations is more appropriately addressed by building capacity through training judges and attorneys rather than extending the time frames for satisfying title IV–E eligibility criteria. Therefore, we have not modified the regulation in response to this comment.

Comment: We received a few comments observing that a sentence in the preamble for this section mistakenly read, "Congress provided a list of circumstances in which reasonable efforts are required."

Response: Yes, this was a misprint. The sentence should have read, "Congress provided a list of circumstances in which reasonable efforts are **not** required (emphasis added)."

Section 1356.21(b)(1) Judicial Determination of Reasonable Efforts To Prevent a Child's Removal From the Home

This section sets forth the statutory requirement of a judicial determination that reasonable efforts were made to prevent removal of a child from his or her home.

Comment: Numerous commenters informed us that the distinction we made between emergency and non-emergency removals was not reflective of State practice.

Response: We concur that the distinction was not useful. We have removed the distinction and consolidated the requirements for reasonable efforts to prevent removals into a single paragraph, (b)(1). States will now have up to 60 days from the time a child is removed from the home to obtain a judicial determination regarding reasonable efforts to prevent removal.

Comment: We received an overwhelming number of comments on the timing prescribed for obtaining judicial determinations that the State made reasonable efforts to prevent removals. The proposed language required such determinations to be made "* * * at the first full hearing pertaining to the removal of the child or no later than 60 days after a child has been removed from home, whichever is first." Commenters interpreted this

language to preclude such determinations from being made at an earlier time, thus delaying title IV–E eligibility.

Response: We did not intend to prohibit these determinations from being made at an earlier time and we have amended the regulation language in paragraph (b)(1)(i) accordingly. The rule now requires the State agency to obtain a judicial determination that it either made or was not required to make reasonable efforts to prevent a child's removal from home no later than 60 days from the date the child was removed from the home.

Comment: Many commenters believed that we were overly harsh in prohibiting title IV–E eligibility for an entire foster care episode if the reasonable efforts to prevent removal requirements were not satisfied. Some suggested that the State be permitted to establish the child's eligibility when and if this requirement is met at a later date.

Response: The requirement for the State to make reasonable efforts to prevent removals is a fundamental protection under the Act and one of several title IV–E eligibility criteria used in establishing eligibility. From both a practice and an eligibility perspective, it is impossible for the State to provide efforts to prevent the removal of a child from home after the fact.

In terms of practice, there is a profound effect on the child and family once a child is removed from home, even for a short time, that cannot be undone. If the child is returned after services have been delivered, or even immediately, the State has reunified the family, not prevented a removal.

The statute requires that title IV–E eligibility be established at the time of a removal. If the State does not make reasonable efforts to prevent a removal or fails to obtain a judicial determination with respect to such efforts, the child can never become eligible for title IV–E funding for that entire foster care episode because there is no opportunity to establish eligibility at a later date. Once title IV–E eligibility is initially established, the judicial determination regarding the reasonable efforts the State made to finalize a permanency plan is required to maintain title IV–E eligibility.

Comment: A couple of commenters stated that it was impossible to satisfy the proposed requirements for making reasonable efforts to prevent removals for unaccompanied refugee minors.

Response: We have no authority to waive title IV–E eligibility requirements for any child or group of children. If the State wishes to claim title IV–E funds for unaccompanied refugee minors, then all title IV–E eligibility criteria must be satisfied.

Section 1356.21(b)(2) Judicial Determination of Reasonable Efforts to Finalize a Permanency Plan

This section (formerly § 1356.21(b)(3) and (b)(4) of the NPRM) describes the requirements for obtaining a judicial determination to finalize a permanency plan.

Comment: Most commenters expressed confusion regarding when the "clock" starts for obtaining judicial determinations that the State made reasonable efforts to reunify the child and family or to make and finalize an alternate permanency plan. A few commenters observed that often the permanency plan may change from reunification to an alternate permanency plan prior to the State obtaining a judicial determination regarding its efforts to reunify the child and family. These commenters requested clarification about which permanency plan the court must rely on to make its determination in such situations. A couple of commenters suggested that we not permit States to change the permanency plan outside a permanency hearing or without a court order so that the court has an opportunity to determine if the State agency did make reasonable efforts to reunify the child and family before sanctioning the change in the permanency plan.

Response: After reviewing the comments and the proposed requirements, we determined that our proposal in the NPRM with respect to reasonable efforts to reunify a child and family and to make and finalize alternate permanency plans was confusing and not responsive to actual practice. To simplify the requirements, we have consolidated the reasonable efforts requirements regarding efforts to reunify the child and family and to make and finalize alternate permanent placements into a single requirement related to making reasonable efforts to finalize a permanency plan. In new paragraph (b)(2), we require the State to obtain a judicial determination that it made reasonable efforts to finalize the permanency plan that is in effect, regardless of what it is, within 12 months of the date the child is considered to have entered foster care in accordance with the definition of such at § 1355.20. The State must obtain such a determination every 12 months thereafter while the child is in foster care. Our purpose in imposing this policy, as stated in the NPRM, is to tie the timing for obtaining reasonable efforts determinations regarding permanency to the timing of the permanency hearing because it is a logical determination to make at such hearings and it would ease administrative burden.

In determining whether the State made reasonable efforts to finalize a permanency plan, the court's determination should be based on the permanency plan that is in effect at the time at which the agency is seeking such a determination. We are not requiring the State to obtain judicial determinations on its efforts regarding permanency plans that it has abandoned.

We realize that obtaining reasonable efforts determinations regarding finalizing permanency plans every 12 months while a child is in foster care is a significant departure from current practice and that States will need transition time to implement this requirement for children who have been in foster care for more than 12 months. Therefore, we will not take adverse action against States who cannot comply with this requirement for a period of 12 months from the effective date of this final rule.

Finally, we think it appropriate to permit the State agency to alter the permanency plan outside a permanency hearing and will not require the court to approve such a plan before the State agency can act on it. When a State agency has placement and care responsibility for a child, it is responsible for setting and acting on the appropriate permanency plan. We understand that, in some States, courts provide such active oversight during the course of a permanency hearing that the court actually sets the permanency plan. That is the State's prerogative. Federal law does not require the courts to play such a prescriptive role in the permanency planning process. Section 475(5)(C) of the Act requires the court to review the permanency plan presented to it by the State agency.

Comment: We received several comments objecting to the proposal that children, for whom judicial determinations are not made regarding reasonable efforts to reunify and to make and finalize alternate permanency plans, become ineligible for title IV–E funding until such a determination is made.

Response: We did not amend the regulation based on these comments because the requirements for judicial determinations are statutory. To be eligible for title IV–E funding, section 472(a)(1) of the Act requires the State to obtain a judicial determination regarding its reasonable efforts of the type described in section 471(a)(15) of

the Act. Section 471(a)(15) of the Act, among other things, requires the State to make reasonable efforts to finalize permanency plans. If these criteria are not satisfied, the child is ineligible for title IV–E funding.

Comment: We received a number of comments opposing the requirement that judicial determinations regarding reasonable efforts to finalize permanency plans be made at least every 12 months. These commenters suggested that such determinations should be required every six months to be consistent with the ASFA's focus on expedited permanency.

Response: We agree that six-month intervals for making determinations regarding reasonable efforts to effect a permanency plan may provide an incentive for expediting permanency. However, requiring such judicial determinations to be made at the interval suggested would limit the flexibility provided at section 475(5)(B) of the Act for holding the periodic reviews required therein before an administrative body rather than a court. We cannot justify a requirement that would limit flexibility provided by the statute, particularly since we know it would place a significant burden on the courts and State agencies. Therefore, we have made no changes to the regulation.

We believe that the six-month periodic reviews will encourage a timely permanency planning process. These reviews must determine, in part: "the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan * * * and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship." Thus, the statute already compels States to review reasonable efforts to achieve permanency every six months.

Comment: One commenter requested that we amend the regulatory language to ensure that courts oversee reunification efforts between unaccompanied refugee children and the party designated as the child's permanent placement.

Response: The courts oversee the State agency's efforts to finalize permanency plans, regardless of what the permanency plan is or with whom the child is to be placed. Therefore, we do not believe we must regulate such an assurance for a particular group of children in foster care.

Section 1356.21(b)(3) Circumstances in Which Reasonable Efforts Are Not Required to Prevent a Child's Removal From Home or to Reunify the Child and Family

This section (formerly § 1356.21(b)(5) in the NPRM) describes the circumstances in which reasonable efforts to prevent a removal or to reunify a child with his or her family are not required.

Comment: Many commenters requested additional guidance in defining aggravated circumstances in which reasonable efforts are not required. The majority of commenters supported State autonomy in identifying those aggravated circumstances but wanted further guidance or clarification.

Response: Congress provided specific examples of aggravated circumstances in the statute which we have included in the regulation. Section 471(a)(15)(D)(i) of the Act requires the State to define, in law, those aggravated circumstances in which reasonable efforts are not required. We believe that the State legislative process will produce decisions that are based on public debate, consideration, and broad input from all interested and relevant parties. We strongly believe that providing Federal guidance beyond what is included in the statute is inconsistent with the intent of the statute to provide States with maximum flexibility in this area.

Comment: Several commenters urged us to permit the court to determine that reasonable efforts are not required in circumstances other than those enumerated at section 471(a)(15)(D) of the Act when the State agency provides evidence to that effect. These commenters believe that the interpretation that they are requesting is consistent with the Rule of Construction at section 478 of the Act. Many commenters made this suggestion because they were uncomfortable with the preamble discussion which submits that an assessment of the family that indicates that the child is not safe in the home would satisfy the reasonable efforts requirements.

Response: We understand the commenter' concern; however, the statute specifically enumerates those circumstances in which reasonable efforts are not required. Section 478 of the Act clarifies that the State court continues to have discretion when making judgements about the health and safety of the child. However, it does not grant ACF the authority to add or change the list at section 471(a)(15)(D) of the Act. As written, the statute requires the State to make reasonable efforts in all cases unless one of the circumstances at section 471(a)(15)(D) of the Act exists.

The aforementioned interpretation of the statute should not be construed to support unwarranted attempts to preserve families. Rather, when reasonable efforts are required, the State agency and the courts must determine the level of effort that is reasonable, based on safety considerations and the circumstances of the family. Sometimes, based on its assessment of a family, the State agency determines that it is reasonable to make no effort to maintain the child in the home or to reunify the child and family. In such circumstances, if the court determines that the agency's assessment of the family is accurate and its actions were appropriate, the court should find that the agency's efforts in such cases were reasonable, not that reasonable efforts were not required.

Comment: One commenter recommended that we permit Indian tribes to identify in tribal code those aggravated circumstances in which reasonable efforts are not required in accordance with section 471(a)(15)(D)(i) of the Act.

Response: When entering into a title IV–E agreement with a State, the tribe must adhere to the list of aggravated circumstances defined in State law. The statute at section 471(a)(15)(D)(i) specifically requires that the aggravated circumstances in which reasonable efforts are not required be defined in State law. Moreover, other public agencies and tribes that enter into agreements with the State agency are not operating or developing their own title IV–E program separate and apart from that operated under the State plan. Rather, the agency or tribe is agreeing to operate the title IV–E program established under the State plan for a specific population of children in foster care. Therefore, the other public agency or tribe is bound by any State statute related to the operation of the title IV–E program. We expect the State child welfare agency to engage the tribes, and any other agency with which it has title IV–E agreements, in developing its list of aggravated circumstances.

Comment: In the preamble to proposed § 1356.21(b)(5), we explained that a court determination that reasonable efforts to prevent a child's removal were not required did not remove the State's obligation to make reasonable efforts to reunify the child and family. Only a judicial determination that reasonable efforts to reunify the child and family are not required removes that obligation. Several commenters requested that we

eliminate this requirement because they believe it to be unduly burdensome.

Response: We believe that States will frequently encounter circumstances in which they are exempt from making efforts to prevent a child's removal from the home but it is appropriate to make reasonable efforts to reunify the child and family. We think the policy described in the comment above ensures that decision making is based on the individual circumstances of the child and family rather than blanket exceptions. Moreover, the statute supports such an interpretation. Section 471(a)(15)(D) of the Act enumerates circumstances in which reasonable efforts of the type described at section 471(a)(15)(B) of the Act are not required. Two distinct types of reasonable efforts are described at section 471(a)(15)(B) of the Act: to prevent removals; and to reunify children and their families. Therefore, a judicial determination exempting the State from providing each type of reasonable effort must be made. We have retained this requirement.

Comment: A couple of commenters requested that we clarify that we are not prescribing the timing for judicial determinations that reasonable efforts are not required to reunify the family.

Response: The commenters are correct that we are not prescribing the time frame for judicial determinations that reasonable efforts to reunify the child and family are not required. We do not think it is appropriate to prescribe a time frame for obtaining such a determination and have made this clarification in paragraph (b)(3). However, all judicial determinations with respect to reasonable efforts to prevent removals, even determinations that such efforts are not required, must be obtained within the time frame prescribed in paragraph (b)(1), within 60 days of the date the child is removed from the home.

Comment: We received a number of comments regarding the list of felonies at § 1356.21(b)(5) used to identify when reasonable efforts are not required. The comments included requests for clarification regarding whether a criminal conviction is required, support for requiring a criminal conviction, and opposition to requiring a criminal conviction.

Response: We have amended § 1356.21(b)(3)(ii) to clarify that a parent must be convicted of one of the felonies enumerated before the court can determine that reasonable efforts are not required. (We have similarly amended language in § 1356.21(i)(1)(iii) which requires TPR when a parent is convicted of one of the enumerated felonies). The statutory language specifically calls for a court of competent jurisdiction to find that one of the felonies was committed. In our opinion, this language requires a criminal conviction. As we stated in the NPRM, however, in circumstances in which the criminal proceedings have not been completed or are under appeal, the court that hears child welfare dependency cases determines whether it is reasonable to attempt to reunify the child with his/her parent. It is important for this decision to be based on the developmental needs of the child and the length of time associated with completion of the criminal proceedings or the appeals process.

Section 1356.21(b)(4) Concurrent Planning

This section (formerly § 1356.21(b)(6) in the NPRM) implements the statutory provision which provides States the option of using concurrent planning.

Comment: One commenter suggested that we require an assessment of every family to determine the appropriateness of concurrent planning before the State implements it for that family.

Response: We agree that the commenter's suggestion is consistent with good practice. However, it would be overly prescriptive to include such a requirement in regulation since concurrent planning is an option for the State, and not a mandate.

Comment: One commenter encouraged us to prohibit States from using concurrent planning for unaccompanied refugee minors.

Response: The choice to engage in concurrent planning is optional and should be made on a case-by-case basis. We see no reason to prohibit the use of this technique for a particular group of children in foster care.

Comment: One commenter asked if the State must present the concurrent plan to the court and if the court must make a reasonable efforts determination with respect to the concurrent plan.

Response: The answer to both questions is no. The State is not required to present the plan for the purposes of obtaining a reasonable efforts determination by the court. The concurrent planning option is addressed in the reasonable efforts section because, among other things, that section of the regulation addresses permanency planning activities, of which concurrent planning is one.

Comment: One commenter suggested we broaden the concurrent planning language in the regulation to include all types of permanency plans. As presented in the NPRM, we only address concurrent planning with respect to reunification and adoption. The commenter thinks the regulation should clarify that concurrent planning may be used regardless of what the alternate permanency plan is.

Response: We agree and have amended the language in paragraph (b)(4) accordingly.

Section 1356.21(b)(5) Use of the Federal Parent Locator Service

This section (formerly § 1356.21(b)(7) in the NPRM) provides for the use of the Federal Parent Locator Service (FPLS) to search for absent parents in order to expedite permanency for children.

Comment: A number of commenters suggested we provide guidance regarding the timing for use of the Federal Parent Locator Service. Comments ranged from suggesting that we encourage States to locate absent parents and/or putative fathers as soon as possible to requiring that such searches take place within 30 days of the child entering foster care.

Response: While we agree with the idea that searches for absent parents should be conducted as soon as possible after a child enters care, we do not think it is appropriate to include such practice level guidance in regulation. We have, however, made an editorial change in paragraph (b)(5) to note that we are not restricting when a State can seek the services of the FPLS.

Section 1356.21(c) Contrary to the Welfare Determination

This section sets forth the requirements that there be a judicial determination stating that remaining in the home would be contrary to the child's welfare.

Comment: We received numerous comments regarding the distinction in the NPRM between emergency and non-emergency removals. The comments were similar to those we received regarding reasonable efforts to prevent removals; that the distinction is not consistent with actual practice in many States.

Response: We concur and have removed the distinction between emergency and non-emergency removals in the final rule. Now a State will need to obtain a contrary to the welfare determination in the first court order removing the child from the home, regardless of whether there is an emergency or non-emergency situation.

Comment: Commenters overwhelmingly opposed our proposed requirement that contrary to the welfare determinations be made at the first hearing pertaining to the child's removal from home. The commenters said we were inappropriately overturning policy established by the

Departmental Appeals Board (DAB) decision #1508, which permitted States up to six months to obtain a contrary to the welfare determination.

Response: We recognize that some States may have made changes to their contrary to the welfare policies based on this DAB decision. However, at the time that the DAB made that ruling, the Department did not have regulations addressing the timing of contrary to the welfare determinations. Therefore, we are now taking this opportunity to clarify in regulation our policy on this issue. Our reasons for establishing this policy are set forth below:

The contrary to the welfare determination was the first of the existing protections afforded to children and their families by the Federal foster care program and has been in effect since the inception of the program in 1961 when it was operated under title IV–A. The statute then, and now, recognizes the severity of removing a child, even temporarily, from home. This protection is in place because Congress believed that judicial oversight would prevent unnecessary removals and act as a safeguard against potential inappropriate agency action. This policy is consistent with Congressional intent and stands as proposed in the NPRM. The contrary to the welfare determination must be made in the first court order sanctioning the removal of the child from home, as is explicitly required at section 472(a)(1) of the Act.

Comment: Several commenters requested that we clarify that we did not intend to consider an emergency order (sometimes referred to as a "pick-up order" or "ex-parte order") as the first court ruling for the purpose of meeting the contrary to the welfare requirements.

Response: We did not make any distinction about the type of order in which the contrary to the welfare determination is required. We mean the very first court order pertaining to the child's removal from home. If the emergency order is the first order pertaining to a child's removal from home, then the contrary to the welfare determination must be made in that order to establish title IV–E eligibility. We understand that some States must change their practices and even State statutes to meet this requirement. The critical nature of this protection requires us to maintain this policy.

Comment: One commenter suggested we eliminate the contrary to the welfare requirement because it provides an incentive for workers not to remove children from their homes.

Response: The contrary to the welfare determination is a statutory requirement and a critical protection that must be afforded to all children and their families to assure that unnecessary removals are minimized. We have, therefore, made no change to the regulation.

Comment: A few commenters opposed the policy to make children for whom the contrary to the welfare requirements are not satisfied ineligible for title IV–E funding. Commenters thought we were particularly harsh in making the child ineligible for that entire foster care episode.

Response: Consistent with the reasonable efforts to prevent removals requirements, the contrary to the welfare determination is a critical statutory protection and a criterion for establishing title IV–E eligibility. Once a child is removed from home, the State cannot go back and fix an inappropriate removal. If a child's removal from home is not based on a judicial determination that it was contrary to the child's welfare to remain in the home, the child is ineligible for title IV–E funding for the entire foster care episode subsequent to that removal because there is no opportunity to satisfy this eligibility criterion at a later date. The same does not hold true for all other eligibility criteria. For example, judicial determinations regarding reasonable efforts to finalize a permanency plan, placement in a licensed foster family home or child care institution, and State agency responsibility for placement and care are all title IV–E eligibility criteria that can be reestablished if lost or established at a later time if missing at the beginning of a foster care episode. This is not the case with the contrary to the welfare determination.

Comment: A number of commenters pointed out a technical discrepancy between the contrary to the welfare and reasonable efforts to prevent removals requirements regarding the consequence for not meeting these requirements. In the NPRM, we stated that, if the reasonable efforts to prevent removals requirements are not met, the child is ineligible for title IV–E funding for the remainder of "that stay" in foster care. The language for the contrary to the welfare determination states that the child is not eligible for the duration of "his/her" stay in foster care. The commenters are concerned that the language for the contrary to the welfare requirements could be construed to mean the child is never eligible for title IV–E funding again.

Response: We have amended the language at § 1356.21(c) so that it is consistent with that at § 1356.21(b)(1). If the contrary to the welfare requirements are not satisfied, the child is not eligible for title IV–E funding for the remainder of that stay in foster care.

Comment: One commenter suggested that unaccompanied refugee minors be exempt from the contrary to the welfare requirements.

Response: We have no authority to waive or exempt any group of children in foster care from this provision. It is a title IV–E eligibility criterion that must be satisfied if a State claims title IV–E funding for a child.

Comment: A few commenters requested that we accept a judicial determination that the removal of the child from the home was in the best interests of society in satisfying the contrary to the welfare requirements.

Response: This suggestion would not comport with the law or the intent of the title IV–E foster care program. The statute is clear that for title IV–E purposes a removal from the home must be based on a determination that remaining in the home would be contrary to the child's welfare. We have clarified this requirement previously in ACYF–PIQ–91–03 which states that, "* * * if the court order indicates only that the child is a threat to the community, such language would not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare * * *". We find no basis to overturn this policy as it is intended to ensure that children are not unnecessarily removed from their homes and is based on the child's best interests.

Section 1356.21(d) Documentation of Judicial Determinations

This section establishes the documentation requirements for the reasonable efforts and contrary to the welfare determinations.

Comment: Many commenters wrote in support of our proposed policy of requiring judicial determinations to be explicit, made on a case-by-case basis, and so stated in the court order. Others felt that we were being overly prescriptive in this section. Those commenters expressed concern that this requirement prohibits the use of preprinted forms that include checklists for making the necessary judicial determinations. A few suggested that we permit the court order to reference the facts in a court report, related psychiatric or psycho-social report, or sustained petition to demonstrate that the determination was based on the individual circumstances of that case. A few commenters even suggested that we delete the paragraph in its entirety.

Response: In keeping with the supportive comments we received on

the need for individualized judicial determinations, we have not made changes in this section, but would like to clarify our reasons for the policy. Our purpose for proposing this policy can be found in the legislative history of the Federal foster care program. The Senate report on the bill characterized the required judicial determinations as "* * * important safeguard(s) against inappropriate agency action * * *" and made clear that such requirements were not to become "* * * a mere *pro forma* exercise in paper shuffling to obtain Federal funding * * *" (S. Rept. No. 336, 96th Cong., 2d Sess. 16 (1980)). We concluded, based on our review of State' documentation of judicial determinations over the past years, that, in many instances, these important safeguards had become precisely what Congress was concerned that they not become.

Our primary concern is that judicial determinations be made on a case-by-case basis and it was not our intent to create a policy that was overly prescriptive and burdensome. States have a great deal of flexibility in satisfying this requirement. The suggestion that the court order reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition as a mechanism for demonstrating that judicial determinations are made on a case-by-case basis is an excellent one and would satisfy this requirement. If the State can demonstrate that such determinations are made on a case-by-case basis through a checklist then that is acceptable also.

Comment: A few commenters asked for clarification regarding the language that must be contained in judicial determinations that satisfy title IV–E eligibility criteria. The commenters wanted to know if these determinations needed to use the exact terms "reasonable efforts" and "contrary to the welfare."

Response: Existing policy does not require the judicial determinations to use the exact terminology of the statute. We have no intention of overturning this policy. In fact, in the preamble to this section in the NPRM, we specifically stated that,

> * * * (t)he judicial determinations themselves need not necessarily include the exact terms "contrary to the welfare" and "reasonable efforts," but must convey that the court has determined that reasonable efforts have been made or are/were not required (as described in section 471(a)(15) of the Act), and that it would be contrary to the welfare of a child to remain at home.

Comment: One commenter was opposed to our requiring specific judicial determinations. The commenter felt we should be able to cull out the fact that the court made the appropriate determinations by reading the hearing record.

Response: While we can allow some flexibility in this area, it is a statutory requirement that the specific judicial determinations regarding reasonable efforts and contrary to the welfare be explicit in court orders. Section 1356.21(d)(1) of the regulation states that we will accept transcripts of the court proceedings if the necessary judicial determinations are not explicit in the court orders.

Comment: Overwhelmingly, commenters were opposed to the prohibition on nunc pro tunc orders. Commenters generally felt that the States would be punished for the failure of the court to fulfill its responsibility. Some commenters suggested we permit nunc pro tunc orders only to clarify or correct technical errors.

Response: We placed the ban on nunc pro tunc orders because we discovered that they were being used months, sometimes years, later to meet reasonable efforts and contrary to the welfare requirements that had not been met at the time the original hearing took place. We are sensitive to the issue of technical errors. However, it is permissible for States to use transcripts of court proceedings to verify that judicial determinations were made in the absence of the necessary orders. We have, therefore, made no changes to the regulation to modify the ban on nunc pro tunc orders.

Comment: Some commenters opposed our decision not to accept judicial determinations regarding reasonable efforts and contrary to the welfare determinations which merely reference State statute.

Response: We believe that judicial determinations should be as meaningful as possible and child-specific in order to ensure that the circumstances of each child are reviewed individually. We believe that explicit documentation is a way to ensure that such determinations actually occur and could find no compelling argument to change our position. We will not accept judicial determinations that merely reference State statute to satisfy the reasonable efforts and contrary to the welfare determinations.

Section 1356.21(e) Trial Home Visits

This section defines trial home visits for the purposes of establishing title IV–E eligibility.

Comment: Most commenters supported allowing title IV–E eligibility to continue for six months while a child is on a trial home visit.

Response: No response is necessary to these comments, but we changed the term "foster care setting," to "foster care," to have consistent terminology throughout the rule.

Comment: A commenter sought clarification of whether there is a regulatory definition of a trial home visit.

Response: There is no regulatory definition of the term "trial home visit," as it is within the State's discretion to define. We do not believe that it would be appropriate for us to develop a regulatory definition. We also do not believe that we could develop a definition that would be inclusive of the variety of State policies on trial home visits or that a definition would be helpful. In practice, a trial home visit is intended to be a short term option in preparation for returning the child home permanently.

Comment: A commenter asserted that the law does not recognize or define a trial home visit, and therefore, we have no authority to require a determination of title IV–E eligibility for children who reenter foster care after a trial home visit that lasts more than six months.

Response: While it is true that the statute does not explicitly address trial home visits and determinations of title IV–E eligibility, we believe our policy is consistent with the statute. Further, we are allowing maximum flexibility to States regarding establishing title IV–E eligibility if the child reenters foster care. If a trial home visit continues for an extended period, the circumstances of the original removal are likely to have changed. For that reason, a State must determine title IV–E eligibility upon a child's reentry into foster care. When a trial home visit extends beyond six months and the child returns to foster care, the child is then considered to be entering a new placement.

Comment: A commenter sought clarification on whether a continuance of a hearing scheduled to address the trial home visit satisfied the requirement that for title IV–E funding to continue, a court must order a longer visit.

Response: The provision establishes a six-month outer limit for a trial home visit, except when a court orders a longer visit. A court continuance of a hearing regarding the trial home visit does not satisfy this requirement.

Section 1356.21(f)—Case Review System

This section establishes the case review system requirements for the title IV–E foster care program.

Comment: A few commenters requested that the regulations contain more guidance on how the case review system could determine the safety of the child and ensure that the child was maintained safely in the home.

Response: We believe that we can better respond to these comments through the provision of technical assistance as this is more of a practice issue. Nor do we think that prescribing how a State must maintain a child's safety would be useful, since safety considerations will vary on a case-by-case basis.

Comment: Another commenter suggested that the time frames for all case review requirements (permanency hearings, TPR and periodic reviews) were arbitrary, and should not be prescribed in regulations. The commenter recommended that the time frames should be flexible to accommodate court calendars.

Response: We do not have the authority to waive time frames for case review requirements because the law requires that States hold court hearings and periodic reviews within very specific time frames. We believe that States must be held accountable to these statutory time frames, and therefore, offer no changes to the case review system. A major goal of ASFA was to tighten case review time frames to prevent children from experiencing extended stays in foster care.

Section 1356.21(g) Case Plan Requirements

This section establishes the development and documentation requirements for case plans.

Comment: The majority of commenters on this section supported the requirement in § 1356.21(g)(1) that States develop the case plan with the child's parent or guardian.

Response: None needed.

Comment: Several commenters suggested that we amend § 1356.21(g)(1) to instruct the State to document a parent's inability or refusal to participate in the development of the case plan. Another commenter suggested that we require a State to document in the case plan the efforts caseworkers employed to engage the parent in the development of the plan.

Response: We expect that States will document efforts made to engage parents in developing the case plan, but we do not believe that it is necessary to prescribe this documentation. We believe it is especially critical that caseworkers engage parents early on because of the new time frames for permanency established by the ASFA.

Comment: A couple of commenters suggested that case plans be developed within 30 days of a State agency assuming responsibility for placement and providing services. One commenter believed that according to our proposed rule, case plans might not be developed until 120 days after a child has been actually removed from the home.

Response: The proposed rule at § 1356.21(g)(2) mirrored the language in existing regulations which required the case plan to be developed within 60 days of a State assuming responsibility for providing services, including placing the child. We are not convinced that shortening the time frame for developing case plans to 30 days will have any measurable effect on the quality and function of a case plan, and therefore, are not changing the regulation in this manner. We believe that one of the commenters may have misinterpreted the proposed rule to mean that States have up to 60 days from the date the child is considered to have entered care according to 475(5)(F) of the Act to develop the case plan. We would like to clarify that the date the child is considered to have entered foster care is irrelevant for purposes of developing the case plan. Rather, the case plan must be developed within 60 days of the child's removal from the home.

Comment: Some commenters suggested that we require specific steps in § 1356.21(g)(5) that a State should take to make and finalize alternate permanency placements.

Response: We believe that the specific steps a State agency makes to finalize alternate permanency placements are practice issues that need to be determined on a case-by-case basis. Therefore, we are not including these specific steps in regulation. A State agency can best formulate the steps necessary to achieve permanency based on the best interests of the child and the child's permanency plan. Court review and oversight of the permanency plan should provide an adequate check on State efforts in this area.

Comment: A few commenters suggested that we include in the final rule the language from section 475(1)(E) of the Act, which requires States, at a minimum, to document the steps and child-specific recruitment efforts if the child's permanency goal is adoption or placement in another permanent home. A couple of commenters also requested that we include in the final rule the statutory examples of child-specific recruitment efforts, *i.e.*, the use of State, regional and national adoption exchanges.

Response: We agree that a clearer statement of the requirement to document the steps to permanently place the child is warranted. We have, therefore, made changes to the language and included it in a new paragraph, 1356.21(g)(5). We have amended the language in the regulation so that the documentation of "child specific recruitment efforts" is only applicable to children with case plan goals of adoption and not to other permanency goals. We believe that the illustrative list which mentions adoption exchanges and the reference to recruitment limits the requirement to children with case plan goals of adoption. States still need to document the steps taken to secure a permanent placement for children with alternate permanency goals.

Comment: A commenter requested clarification on the differences between a case plan and a permanency plan.

Response: We use the term "case plan" to refer to a plan developed to meet the statutory requirements of sections 422(b)(10)(B)(ii), 471(a)(16), 475(1) and 475(5)(A) of the Act. The case plan is a written document which includes, in part: a description of the child's placement; a discussion of the safety and appropriateness of the placement; a plan for ensuring that the child and family receive services designed to facilitate the return of the child to a safe home or to another permanent placement; the health and educational records of the child; when appropriate, a description of the programs and services which will facilitate the child's transition from foster care to independent living; and, documentation of the steps to place the child in a permanent living arrangement.

The "permanency plan," while it may be described in the case plan or may be a portion of the case plan, is what the planned permanency living arrangement will be for the child, *e.g.*, reunification with the family, or adoption. We understand that some States use the term "permanency plan" synonymously with "case plan," because it conveys what the case plan is designed to accomplish. We do not believe that it is necessary to require States to use distinct terminology, as long as States meet the requirements of the statute and regulations.

Comment: A commenter suggested that we require courts to approve case plans.

Response: There is no statutory basis for requiring judicial approval of the State agency's case plan document. The court's role is to: exercise oversight of the permanency plan; review the State agency's reasonable efforts to prevent

removal from the home, reunify the child with the family and finalize permanent placements; and to conduct permanency hearings. The State agency is responsible for developing and implementing the case plan. We see no additional benefit in requiring court approval of the case plan.

In addition, we are clarifying in the regulation at § 1356.21(g)(3) that it is not permissible for courts to extend their responsibilities to include ordering a child's placement with a specific foster care provider. To be eligible for title IV–E foster care maintenance payments the child's placement and care responsibility must either lie with the State agency, or another public agency with whom the State has an agreement according to section 472(a)(2) of the Act. Once a court has ordered a placement with a specific provider, it has assumed the State agency's placement responsibility. Consequently, the State cannot claim FFP for that placement.

Comment: A couple of commenters requested that we specify that long term foster care is an appropriate permanency goal for unaccompanied refugee minors.

Response: The determination of the appropriateness of a permanency goal must be made by the State on a case-by-case basis and take into consideration the best interests of the child. The State agency is the responsible party for making this determination, with the oversight of the court. We, therefore, will not regulate appropriate permanency goals for any group of children.

Comment: A commenter suggested that we require case plans to address the child's developmental needs and acquisition of life skills.

Response: We believe that the statute at section 475(1) of the Act already requires States to document how the services provided will meet the needs of the child, and in the case of a child whose goal is independent living, the programs and services that will enable the child to transition into independent living. We do not believe that any additional regulation in this area is required.

Section 1356.21(h) Application of Permanency Hearing Requirements

This section implements the new ASFA requirements related to permanency hearings and modifies and clarifies existing policy. It also sets forth requirements for an administrative body appointed or approved by the court to conduct permanency hearings.

Comment: One commenter was concerned that children would become ineligible for title IV–E funding if the permanency hearing requirements were not satisfied as prescribed.

Response: We agree that the language at paragraph (h)(1) presented the permanency hearing as an eligibility criterion. That is not the case and we have amended the paragraph to clarify that, in meeting the requirements of the permanency hearing, the State must comply with section 475(5)(C) of the Act and this paragraph. The permanency hearing is a State plan requirement. It is not a title IV–E eligibility criterion. If the State fails to meet the permanency hearing requirements, it is out of compliance with the State plan. The child does not become ineligible for title IV–E funding.

Comment: We received a number of comments regarding paragraph (h)(2) which provides guidance related to determining for whom the State must hold permanency hearings. Commenters thought the paragraph was confusing and unclear about whether we were referring to initial or subsequent permanency hearings. We also received a request not to refer to these permanent placements as "court sanctioned" because the commenter felt the terminology meant the court chooses the placement, which would make the placement ineligible for title IV–E funding.

Response: In the NPRM, we proposed to retain the provision in the current regulation for permitting the State to waive subsequent permanency hearings for children placed in permanent foster family homes. The number of comments received prompted us to review this section of the proposed rule against the statutory language as amended by ASFA. Based on that review, we have decided to delete the paragraph in its entirety. When ASFA was passed the language from the definition of permanency hearing in section 475(5)(C) of the Act that addressed children remaining in foster care on a "permanent or long term basis" was removed. Instead, the ASFA requires the State to document a compelling reason for establishing a permanency plan that does not call for the child to exit foster care through reunification, adoption, legal guardianship, or placement with a fit and willing relative. Therefore, all children in foster care must be afforded the benefit of permanency hearings while they are in foster care.

Although the paragraph in question has been deleted from the regulation, we wanted to take this opportunity to respond to the observation that the State may not claim FFP when the court orders a specific placement for a child. The commenter is correct. Section 472(a)(2) of the Act requires responsibility for the child's placement and care to be with the State agency. When the court orders a specific placement, it in essence takes on the State's responsibility for the child's placement and the child becomes ineligible for title IV–E funding. To make this clear, we have amended § 1356.21(g) to note this restriction. The court may sanction a permanent foster family home through its oversight of the permanency plan, however, this does not give the court the authority to determine a specific placement for the child.

Finally, we recognize that States will need transition time to begin holding subsequent permanency hearings for children who formerly were exempt from this requirement. We will not take adverse action against a State that cannot comply with this requirement for a period of 12 months from the effective date of this final rule.

Comment: One commenter suggested that the requirement in paragraph (h)(2) for holding a permanency hearing within 30 days of a judicial determination that reasonable efforts are not required, be extended to circumstances beyond those identified at section 471(a)(15)(D) of the Act. Another wanted us to exempt unaccompanied refugee minors from this provision altogether.

Response: The statute is very specific to those circumstances enumerated at section 471(a)(15)(D) of the Act. We have no authority to expand that list. However, the State may hold a permanency hearing any time it deems it to be appropriate to do so. We also have no authority to exempt unaccompanied refugee minors from this requirement.

Comment: Some commenters noted that the language in § 1356.21(h)(3) (proposed § 1356.21(h)(4)) is inconsistent with the definition of "permanency hearing" at § 1355.20. The language at § 1356.21(h)(3) limited the alternate planned permanent living arrangement options to a foster family home.

Response: We concur with the commenter and have amended paragraph (h)(3) to use the exact statutory language, "* * * another planned permanent living arrangement * * *."

Comment: Some commenters objected to the inclusion of an example of a compelling reason for the State to choose another planned permanent living arrangement over reunification, guardianship, or adoption in the text of the regulation. These commenters believe that examples included in regulation become *de facto* policy.

Response: We do not believe that examples in regulation become *de facto* policy, nor were they intended to do so. However, we do not believe the example provided in the NPRM fully illustrates how to comply with this provision and have included additional examples in paragraph (h)(3) to more accurately reflect its intent.

Section 1356.21(i) Requirements for Filing a Petition to Terminate Parental Rights Per Section 475(5)(E) of the Social Security Act

This section implements the new ASFA provisions regarding termination of parental rights.

Comment: Many commenters sought exemptions for specific populations from the requirement for States to file or join TPR petitions for certain children who have been in foster care for 15 out of the most recent 22 months, abandoned infants, or children of parents who have committed certain felonies. Several commenters noted that many tribal cultures and traditions do not recognize the concepts of terminating parental rights and adoption, and requested a specific exemption from the application of the provision to tribes. Several commenters also wanted an exemption for unaccompanied refugee minors in foster care. The commenters noted that according to Federal regulations for child welfare services to unaccompanied refugee minors (see 45 CFR part 400, subpart H) such children "are not generally eligible for adoption since family reunification is the objective of the [unaccompanied refugee minor child welfare] program." Similarly, some advocates and providers who work to preserve or reunify foreign-born children with their families, noted that the TPR requirement may hinder international reunification efforts by switching the focus from reunification to adoption after fifteen months. A few commenters also wanted exemptions for juveniles adjudicated delinquent, children voluntarily placed in foster care, and children deemed "persons in need of services" who are not considered abused or neglected.

Response: We have no statutory authority to provide an exemption for particular populations from the requirement to file a TPR for certain children. Thus, we did not make any exemptions to the requirement in the regulation. The TPR requirement is designed to encourage State agencies to make timely decisions about permanency for children in foster care. Congress developed the TPR provision to be applied to all children in foster care, whatever their entry point into the system. Exempting groups of children from the requirements would be contrary to ASFA's goal to shorten children's time in foster care. However, we are changing § 1356.21(i)(2)(ii) in two ways. First, to clarify that the State agency must apply the exceptions to the requirement to file a petition for TPR by considering the best interests of the individual child on a case-by-case basis. Second, we added two more examples of compelling reasons regarding unaccompanied refugee minors and situations involving international legal or foreign policy issues.

Comment: A commenter requested an explanation of how the TPR requirement applies to Indian tribes and the relationship to Indian Child Welfare Act requirements. A commenter suggested that the regulation clarify that tribal agencies can elect not to file a petition for TPR in certain circumstances.

Response: The Indian Child Welfare Act of 1978 (ICWA), Public Law 95–608, was passed in response to concerns about the large number of Indian children who were being removed from their families and tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. The addition of the requirement in section 475(5)(E) of the Act to file a petition for TPR for certain children in no way diminishes the requirements of ICWA for the State to protect the best interests of Indian children. Furthermore, States are required to comply with the ICWA requirements and develop plans that specify how they will comply with ICWA in section 422(b)(11) of the Act.

The requirement in section 475(5)(E) of the Act applies to Indian tribal children as it applies to any other child under the placement and care responsibility of a State or tribal agency receiving title IV–B or IV–E funds. While we recognize that termination of parental rights and adoption may not be a part of an Indian tribe's traditional belief system or legal code, we have no statutory authority to provide a general exemption for Indian tribal children from the requirement to file a petition for TPR. If an Indian tribe that receives title IV–B or IV–E funds has placement and care responsibility for an Indian child, the Indian tribe must file a petition for TPR or, if appropriate, document the reason for an exception to the requirement in the case plan, on a case-by-case basis.

Comment: We received many comments on the time frame in which a State must file a petition for TPR according to § 1356.21(i)(1)(i). Many commenters objected to our requiring a State to file a petition for TPR at the end of the child's fifteenth month in foster care, and suggested that we allow a grace period of up to 60 days. These commenters believed that to meet this time frame, a State agency would need to make decisions on permanency before the end of the fifteenth month, which they felt was unreasonable. A few commenters supported the provision as written. A commenter suggested that the State file before the end of the fifteenth month, and another suggested that we establish no time frames for filing the petition.

Response: We believe that States will have adequate time to prepare petitions for TPR, when appropriate, by the end of the child's fifteenth month in foster care. Furthermore, we can find no statutory basis for allowing a grace period for States to file a petition for TPR for children who have been in foster care for 15 out of the most recent 22 months. To meet the permanency hearing requirements, the State agency must prepare a permanency plan for the child to present to the court within 12 months. This will require the State agency to begin working with the family early on, so that the State agency can make appropriate decisions about permanency goals for the child, including whether to file a petition for TPR and pursue adoption.

Comment: A commenter suggested that once a State agency has determined that a child is an abandoned infant or a parent has committed certain felonies as described in section 475(5)(E) of the Act, the State file a petition within one week of that determination. The NPRM required that a State file such petitions within 60 days of the determination of abandonment or a parent's felony conviction.

Response: We do not concur with the commenter's suggestion to require a State to file a TPR petition within one week of a determination that the child is abandoned or that a parent has committed certain felonies. We continue to believe that 60 days is a reasonable period of time for the State agency to complete the necessary administrative and legal work required to file a petition for TPR.

Comment: A few commenters expressed uncertainty about whether a State must file a petition for TPR after a child has been in foster care for 15 months or 22 months.

Response: The State agency is required either to file a petition for TPR or document an exception to the requirement when a child has been in foster care for 15 cumulative months out of 22 months. If the child has been in care for 15 cumulative months, the State should not wait for 22 months of a child's stay in foster care to elapse before filing a petition for TPR. We do not believe that any change to the regulation is necessary.

Comment: A commenter expressed concern that the TPR requirement would be misinterpreted as prohibiting a State from filing a petition for TPR before a child has been in foster care for 15 months out of the most recent 22 months.

Response: We would like to clarify that a State continues to have the discretion to file a petition for TPR whenever it is in the best interests of the child to do so. In addition, Congress passed a Rule of Construction at section 103(d) of Public Law 105–89 reaffirming a State's ability to file a petition for TPR before it is mandated by Federal statute or for reasons other than those indicated in Federal law. Therefore, States should view the Federal statutory time frames of 15 out of 22 months of a child's stay in foster care as the maximum length of time that can elapse before a State agency must file a petition or document an exception for TPR.

Comment: We received a range of suggestions and comments on our proposal to exclude runaway episodes and trial home visits from the calculation of the 15-month time frame a child spends in foster care for TPR purposes. A few commenters opposed our exclusion of runaway episodes and trial home visits for various reasons. One commenter suggested that including trial visits and runaway episodes in the calculation was a way to ensure that no child languished in foster care. Another commenter suggested that we allow States to determine whether such time should be included. A third commenter was concerned that excluding runaway episodes and trial home visits increased the record keeping burden on States. A couple of commenters supported the provision as written. These commenters believed that our proposed policy is consistent with efforts to reunify the family when that is the goal.

Response: We considered all of these viewpoints and do not believe a change in the regulation is warranted. We believe that it is inappropriate to count time a child is on a runaway episode because during that time the agency is unable to provide services to the child or the family. Similarly, counting time when a child is at home with the family toward the time for calculating when to file a petition for TPR is inappropriate. While the child may be in the legal custody and under the supervision of the State agency, both the child and the parent consider him or her to be at home. However, as we discussed above, the State has the discretion to file a petition for TPR whenever it is in the best interests of the child to do so.

Comment: A commenter suggested that we define the number of calendar or business days that constitute a month for the purposes of calculating 15 out of the 22 most recent months for the TPR requirement. The commenter suggested we define a month as 30 days, presumably so that time less than a month spent in foster care would not be counted toward the requirement.

Response: We have decided not to define a "month" and leave it to the State's discretion.

Comment: We received a range of comments to our proposal that States need only apply the provision to file a TPR petition when a child has been in care 15 out of the most recent 22 months once, when the State determines that an exception applies. Several commenters voiced support for the proposed rule as written. Another commenter supported the proposed provision overall, but suggested that we include language in the regulation that explicitly requires States periodically, to reevaluate the need to file a petition for termination of parental rights. Many commenters opposed the provision believing that children may stay indefinitely in foster care once a State makes an exception to the TPR requirement.

Response: We understand the concern that children may continue to languish in foster care once a State applies an exception if this decision is never reevaluated. Nevertheless, we did not change the one-time application of the TPR provision for two reasons. First, the statutory construction of the provision makes it applicable only once. Second, we believe that there are at least two existing opportunities for the State to reevaluate an exception to the TPR requirement: the six-month periodic review and the permanency hearing.

We encourage States to use the six-month periodic review to review the continuing appropriateness of an exception to the requirement to file a petition for TPR within the context of the requirements in section 475(5)(B) of the Act. States also have another opportunity to reevaluate the decision not to pursue a TPR petition at the permanency hearing, which must be held at least every 12 months. The permanency hearing must address whether the child's permanency plan is to reunify the child with the family, file a petition for TPR and move toward adoption, or place the child with a fit and willing relative, legal guardian, or in another planned permanent living arrangement. The State is required to reevaluate the permanency plan during the course of the permanency hearing, regardless of whether the State agency has previously applied an exception to the requirement to file a petition for TPR. As such, we believe there are multiple safeguards to ensure that children do not languish in foster care.

Comment: A few commenters expressed doubt that States would use the exceptions in paragraph (i)(2) in appropriate cases and suggested that we discourage States from using the exceptions in the regulations. The commenters expressed concern that the exceptions could be used as a loophole to cover a State agency's deficiency in proper case planning or service delivery.

Response: We understand these concerns, however, the exceptions to the requirement to file a petition for TPR are statutory. We expect that States will apply the exceptions to filing a petition for TPR judiciously and on a case-by-case basis. We believe the intent of the requirement to file a petition for TPR for certain children was to encourage State agencies to make timely decisions about permanency for children in foster care. The exceptions were developed to allow State agencies to exercise individual case planning and seek an alternative permanent placement when adoption may not be appropriate or available for a child.

Comment: A couple of commenters raised concerns about the exception to filing a petition for TPR in situations where the child is placed with a relative. The commenters sought more guidance on how and when States should use this exception.

Response: The statute provides the State with the option not to file a petition for TPR when a child is placed with a relative. We encourage the use of relative placements as an option for ensuring that the child achieves permanency, and not only as a temporary placement. A State must continue to develop and reevaluate a child's case plan goal and conduct permanency hearings if the State decides not to file a petition for TPR because the child is placed with a relative. Relative placements should not preclude consideration of legalizing the permanency of the placement through adoption or legal guardianship.

Comment: The majority of comments supported our decision not to define the

term "compelling reason," as it is used in section 475(5)(E) of the Act, to allow exceptions to the requirement to file a petition for TPR. A couple of commenters wanted us to define the term.

Response: We concur with the majority of commenters who did not want us to define the term "compelling reason" as used in the statute and have made no changes to the regulation. We believe that the determination of what constitutes a "compelling reason" must be based on the individual circumstances of the child and the family, and that a Federal definition would not be helpful in that process. We believe that the examples provided on possible compelling reasons provide adequate guidance about the practical application of this term without limiting a State's flexibility.

Comment: We received both criticism and support for listing two examples of a compelling reason not to file a petition for TPR. Many commenters did not want the two examples of compelling reasons included in the regulation for a variety of reasons. Some commenters believed that the examples would become "de facto policy," and would therefore exempt groups of children from the requirement. Similarly, other commenters thought that specifying examples of compelling reasons was inconsistent with our decision not to define the term. Some commenters believed that the examples were too broad, and if used, would mitigate the effectiveness of the requirement.

On the other hand, many commenters supported the inclusion of the examples of compelling reasons. Some commenters expressed that the examples provided critical guidance to the field and would temper concerns about increases in the number of "junk" petitions and legal orphans. Other commenters wanted us to include the language from the preamble discussion on the examples in the regulation text, and some wanted us to expand the list of examples of compelling reasons. Commenters suggested that the expanded list of compelling reasons could include: A child belongs to a particular population (*i.e.*, adjudicated delinquents, Indian tribal children, and unaccompanied refugee minors); a child has not completed treatment in a residential facility; a child's parent had not been notified by the State agency that TPR was a possible outcome; a parent has made significant measurable progress to meet the requirements of the case plan; or, a child had a permanency goal other than adoption.

Response: In developing the two broad examples, we wished to provide some basic guidance to States short of the definition that most commenters opposed. We have, therefore, decided to retain the two examples of compelling reasons in the proposed regulation and added two additional examples. Unaccompanied refugee minors are those children who enter the country unaccompanied and are not destined to a parent, relative, or custodial adult. We received a number of comments noting that the Office of Refugee Resettlement (ORR) within the Department maintains a policy that reunification, in general, is the appropriate goal for these children while they are classified as unaccompanied refugee minors. ORR's regulation at 45 CFR part 400, Subpart H, defines an unaccompanied refugee minor and the rare circumstances in which adoption may be appropriate. In order to clarify that we do not intend to contradict HHS policy in this regard, we are listing this as another example of a compelling reason for not filing or joining a petition for TPR. We have also added a fourth example to address situations in which international legal or foreign policy considerations may affect a child's status. We are not including other populations as part of the examples of compelling reasons because we believe that the broad examples provide a framework that allows a State sufficient room to make decisions regarding filing a petition for TPR on a case-by-case basis that is in the best interests of an individual child.

Comment: One commenter suggested that the regulations clarify that compelling reasons for not filing for TPR may be defined in tribal policy. Another commenter suggested clarifying that the tribe rather than the State could document the compelling reason.

Response: The regulations are written from the State perspective because the State agency is ultimately responsible for the administration of the title IV–E program. If the tribe has responsibility for the placement and care of a child pursuant to a title IV–E agreement with a State, not only would it be permissible for the tribal agency to identify the compelling reason for not filing a petition for TPR, it would be the tribal agency's responsibility. Tribes and States may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis.

Comment: A commenter suggested that we clarify the terminology for the second compelling reason example in § 1356.21(i)(2)(ii)(B) from "insufficient grounds for filing a petition to terminate parental rights exist," to "no grounds to file a petition to terminate parental rights exist."

Response: We concur that the suggested language more accurately conveys our point that a compelling reason for not filing a petition for TPR may be that there are no grounds in State law on which to pursue a legal action to terminate parental rights. Therefore, we have made the suggested change in the regulation text. States, however, are not permitted to have State laws that carve out groups of the foster care population to be exempted from the requirement to file a petition for TPR.

Comment: A commenter wanted us to elaborate on the exception to TPR where the State has not provided the services identified in the case plan. The commenter may be concerned that we were not encouraging States to provide services in a more timely way. Another commenter questioned whether this exception also applied in situations where the specified services were not available, how the determination is made, and by whom.

Response: This exception to the requirement to file a petition for TPR is taken directly from the statute, as are all of the exceptions. We do not believe it is necessary to elaborate in the regulation on how the State agency should make the determination that the necessary services have not been provided. The exception affirms that the provision of services, early in a child's placement in foster care, is often crucial to either enabling the child to return to a safe and stable home or making a determination to move forward with a petition for TPR. By using the exception, a State agency can avoid penalizing the parent if the necessary services are not available or accessible to a parent or child. We encourage States to strengthen service delivery systems and to use this exception judiciously. We will be monitoring State' use of all of the exceptions in the child and family services review.

Comment: Many commenters sought clarification about the requirement at § 1356.21(i)(3) for a State concurrently to recruit and approve an adoptive family for a child while a State petitions for TPR. Most commenters wanted language added to the regulation text that interpreted the statutory provision to mean that a State agency should begin the process of finding an adoptive family at the time a petition for TPR is filed. Some commenters were concerned that the proposed rule and statutory language imply or encourage a State agency to wait until it has an adoptive family available for the child before the State agency proceeds with filing a

petition for TPR. Another commenter wanted to know if this requirement could be waived for children who did not have a goal of adoption.

Response: We understand the commenter' concern regarding the wording of this requirement and have made some changes to the regulatory language in § 1356.21(i)(3). The final rule now clarifies that the State must begin the process to find an adoptive family for the child concurrently with filing a petition for TPR. We believe that this provision was developed to ensure that a child does not wait unnecessarily between the time a TPR is granted and the child's permanent placement in a home. The requirement should not be interpreted to suggest that a State wait until an adoptive family is found for a specific child before a TPR petition is filed. We cannot waive the requirement to find an adoptive family for a child concurrently with the filing of a petition for TPR as there is no statutory authority to do so.

Comment: Several commenters sought clarification on whether the fact that a child had been in foster care for 15 out of the most recent 22 months was legal grounds for a State to file a TPR petition. Some commenters believed that we should specifically exclude the time frame as grounds for a TPR, while others thought that we should require or permit the time frame to be grounds for TPR.

Response: States are neither required nor prohibited by Federal statute from making a child's length of stay in foster care legal grounds to file or grant a petition for TPR. We have made no changes to the regulation in response to these comments.

Comment: A couple of commenters asked for greater specificity on the roles of the court and the agency with respect to the exceptions to filing a petition for TPR for certain children in foster care. In the preamble to the NPRM we noted that there was no requirement for the court to make a judicial determination if a State made a compelling reason exception to filing a petition for TPR. A commenter disagreed and suggested that Congressional intent was for the State agency to make an evidentiary case to the court regarding whether an exception was appropriate for the child. Another commenter suggested that we specify that court decisions prevail in situations where the court and State agency disagree on pursuing TPR.

Response: The requirement to file a petition for TPR or to document an exception to the requirement is the State agency's responsibility. The statutory language is clear that for a compelling reason, or any other exception to the requirement to file a petition for TPR, there is no requirement for a judicial determination. However, the State agency is to document in the case plan, which is available for court review, the compelling reason for why filing a petition for TPR is not in the best interests of the child. Clearly, courts play an important oversight role for children in foster care. The court exercises authority in making decisions at permanency hearings regarding the child's permanency plan. It is at these times that the court should review State agency decisions with regard to the requirement to file a petition for TPR. Finally, we have no authority to suggest that courts prevail in situations where there is a disagreement between the court and the State agency on filing a petition for TPR. We have made no change to the regulation in response to these comments.

Comment: Several commenters sought regulations on the responsibilities of courts and State agencies to finalize proceedings to terminate parental rights once the State agency has filed a petition for TPR. A couple of commenters proposed that we suggest a particular time frame for the court to finalize a TPR, and one suggested a time frame of six months. A third commenter suggested that we require the State agency to continue to file petitions for TPR if a court denies the original petition.

Response: We understand the concern that court and State agency delays occur once a petition for TPR is filed such that it could be several years before a child is finally adopted. However, our authority does not extend into the finalization of proceedings for termination of parental rights as this is a matter of State law. Therefore, we did not make any changes to the regulation in response to these comments.

Comment: A few commenters suggested that we note the importance of making reunification efforts with both parents and when necessary, filing TPR petitions on both parents.

Response: We believe that we have addressed this issue in a separate section of the regulation. We indicate in § 1356.21(b)(5) that State title IV–B/IV–E agencies can use the Federal Parent Locator Service (FPLS) in expediting permanency. In that paragraph we encourage States to use the FPLS to locate absent parents in order to explore permanent placements or pursue TPR. To avoid duplication, we chose to make such a statement in the reasonable efforts section to encourage States to find noncustodial parents early in a child's stay in foster care.

Comment: We received several comments that requested funding or program guidance on staff training, assessments, case planning, and concurrent planning around permanency.

Response: We believe that we can better provide practice-level guidance through technical assistance rather than through regulation.

Section 1356.21(j) Child of a Minor Parent in Foster Care

This section implements the statutory provision related to the title IV–E eligibility of the child of a minor parent who is in foster care.

Comment: A commenter suggested replacing "must include amounts * * * " to "may include amounts * * * " as some States give minor parents financial responsibility for the child.

Response: To revise this provision to be permissive would be in conflict with the statutory requirement. Section 475(4)(B) of the Act specifically requires that the foster care maintenance payment made on behalf of the minor parent "shall" include amounts that may be necessary to cover the foster care maintenance costs of a child of a minor parent when the parent and child are in the same foster family home or child care institution. We, therefore, did not change this paragraph of the regulation to reflect the commenter's suggestion.

Section 1356.21(k) Removal From the Home of a Specified Relative and § 1356.21(l) Living With a Specified Relative

Section 1356.21(k) describes, for the purposes of meeting the requirements of section 471(a)(1) of the Act, a "removal." Section 1356.21(l) sets forth the required conditions for living with a specified relative prior to removal from the home.

Because of the complexity of this issue, we thought it best to explain again how the policy has changed before discussing the comments on this section of the regulation. To be eligible for title IV–E funding, a child must, among other things, be removed from the home of a relative as the result of a voluntary placement agreement or a judicial determination that continuation in the home would be contrary to the child's welfare. Under prior policy, we interpreted the term "removal" to mean a physical removal. As a result, if a child was residing with an interim caretaker who was a relative between the time the child lived with the custodial parent and when he or she entered foster care, and the State intended to remove custody from the

parent but let the child remain with that interim caretaker relative, the child could not be eligible for title IV–E funding because the child was not physically removed from the home of a relative. This policy created a disincentive for relative placements. To remove this inequity between relative and nonrelative caregivers, we now permit the removal of the child from the home, in such circumstances, to be a "constructive" (*i.e.*, a nonphysical) removal.

As a result of the comments we received on this proposed policy, we closely examined the examples provided in the preamble to the NPRM and the proposed regulatory text against the statute. As a result of this further review, we do not believe that example (3) on page 50078 of the preamble should have been included. In example (3), the living with and removal from requirements were satisfied by a *physical* removal from the interim relative caretaker with whom the child lived for seven months. A physical removal from the home of an interim relative caretaker cannot satisfy title IV–E eligibility because it is not the result of a voluntary placement or a judicial determination, as required by section 472(a)(1) of the Act.

We offer a summary of examples to clarify when a child would be eligible for title IV–E foster care under the rule. These examples presume that the child is eligible for AFDC (according to the State plan in effect on July 16, 1996) in the home of the parent or other specified relative:

- The child lived with either a related or nonrelated interim caretaker for less than six months prior to the State's petition to the court for removal of the child. The State licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV–E foster care if he or she lived with the parent within six months of the State's petition to the court, and was constructively removed from the parent (*i.e.*, there was a paper removal of custody).
- The child lived with either a related or nonrelated interim caretaker for more than six months prior to the State's petition to the court. The State licenses the home as a foster family home and the child remains in that home in foster care. The child is ineligible for title IV–E foster care since he or she had not lived with the specified relative within six months of the State's petition to the court, and was not removed from the home of a relative. (The constructive removal does not apply to this situation because it had been more than six months since the child lived with the parent.)
- The child lives with a related interim caretaker for seven months before the caretaker contacts the State to remove the child from his/her home. The agency petitions the court and the court removes custody from the parents and the agency physically removes the child from the home of the interim related caretaker. The child would not be eligible for title IV–E foster care since he or she had not lived with the parent or other specified relative from whom there was a constructive removal within six months of the initiation of court proceedings. (Although the child was physically removed from the home of the related interim caretaker, that removal cannot be used to determine title IV–E eligibility since the removal was not the result of a voluntary placement agreement or judicial determination, as required in section 472(a)(1) of the Act. Nor does constructive removal apply to this situation because it had been more than six months since the child lived with the parent from whom custody was removed.)
- The child lived with a nonrelated interim caretaker for seven months before the caretaker asks the State to remove the child from his/her home and place the child in foster care. The child is ineligible for title IV–E foster care because he or she had not lived with a parent or other specified relative within six months of the petition.
- The child is in a three-generation household in which the mother leaves the home. The grandmother contacts the State agency four months later and the agency petitions the court within six months of the date the child lived with the mother in the home. The State licenses the grandmother's home as a foster family home and the child continues to reside in the home in foster care. The child is eligible for title IV–E foster care since he or she lived with the parent within six months of the State's petition to the court, and was constructively removed from the parent's custody.

The regulatory text has been amended to reflect this change in policy and to more clearly delineate the requirements of living with and removal from the home of a specified relative.

Comment: Several commenters supported the policy on living with and removal from the home of a specified relative. One commenter noted that the new policy enhances a child's ability to remain with a relative and preserve the child's culture, as well as minimizes the number of out-of-home placements a child otherwise might experience.

Response: No changes were necessary in response to these comments.

Comment: Three commenters opposed the policy. Some of the commenters shared beliefs that: (1) The proposed policy creates a six-month statute of limitations period within which an abused and abandoned child must apply for foster care or be forever barred from receiving such benefits; (2) the policy impermissibly narrows title IV–E eligibility for children living with a relative; and (3) the policy discriminates against relative homes, and is in violation of the language and intent of ASFA.

Response: We have retained the proposed policy for the reasons that follow. In order to be eligible for title IV–E foster care, a child must be eligible for AFDC in his or her own home in the month of the voluntary placement agreement or initiation of court proceedings (*i.e.*, petition). However, if a child is not living with the custodial relative in the month of the voluntary placement agreement or petition, then the statute allows a six-month period during which the child may reside with an interim caretaker and still be eligible for title IV–E. In these circumstances, if a child is not living with the specified relative from whom he or she is being removed in the month of the voluntary placement agreement or petition, the child can be deemed eligible for that month if: (1) The child had been living with that specified relative at some time within the six-month period prior to that month; and (2) would have been eligible in the home of that specified relative in the month of the voluntary placement agreement or petition if the child had continued to reside with the relative. This is a longstanding Departmental policy based upon the statutory language in section 472(a)(4)(ii) of the Act, and consistent with the purpose of the program which is to provide continuing support for an AFDC-eligible child when he or she cannot live safely at home.

It is a misinterpretation to suggest that the proposed policy narrows title IV–E eligibility for children living with relative caretakers and is discriminatory against relatives as foster caretakers. Rather than limiting a child's eligibility or discriminating against relative homes, the policy supports children remaining with related caretakers when the State determines that they cannot live safely in their own homes, and applies the living with and removal from requirements equitably to both relative and nonrelative caretakers. Under the previous policy, if a parent left a child with a nonrelated caretaker and the agency petitioned the court for

removal of custody from the parent in less than six months from the date the child lived with the parent, the otherwise eligible child would have been eligible to receive title IV–E if the interim caretaker was subsequently licensed or approved as a foster family home by the State and the child remained in that home. Conversely, if the parent left the child with a related caretaker and the same circumstances existed, the otherwise eligible child would not have been eligible for title IV–E foster care because: (1) In the absence of the parents, the home and customary family setting was considered to have shifted to the home of the other relatives; and (2) the child was living with another relative at the time of petition and not physically removed from that home. The revised policy provides equitable treatment in either circumstance and encourages a child's continued placement with a relative caretaker when he or she cannot remain safely at home. The policy does not discriminate against relatives, and is consistent with the intent of ASFA.

Comment: Two commenters referenced the *Land* v. *Anderson* case and related litigation that are currently in the Ninth Circuit Court of Appeals. One commenter recommended that we follow the analysis in the *Land* v. *Anderson* case and the other commenter urged us to withdraw the proposed policy and await the outcome of the Ninth Circuit case.

Response: The final rule with respect to the issue before the above referenced court reflects longstanding Departmental policy that is in keeping with the statutory requirements. That policy continues to be in effect. Should the Ninth Circuit Court of Appeals rule against the Department, that decision would be subject to further review by the Supreme Court, and it would not, in any event, necessarily require a nationwide change in Federal law or policy. No changes were made to the regulation as a result of this comment.

Comment: One commenter suggested that the six-month time limit should be waived for relative care to support the child remaining with a family member.

Response: We are unable to waive the six-month time limit because it is statutory. The statute at section 472(a)(4) of the Act requires, among other things, that a child be living with and removed from the home of a specified relative at the time of the voluntary placement agreement or initiation of court proceedings. Section 472(a)(4)(B)(ii) of the Act provides an exception to that requirement by allowing a six-month period that the child can live with an interim caretaker and still be eligible for title IV–E foster care. We do not have the authority to waive a statutory provision and, therefore, did not revise the regulations. The flexibility we have afforded States, however, is to allow constructive removals (*i.e.*, paper or nonphysical removals) in order to provide equal treatment for related and nonrelated caregivers.

Comment: One commenter supported allowing "legal" removals, but did not believe that the revised interpretation of the removal requirement was clearly expressed. The commenter suggested language be included that more clearly states that "legal" removals are allowed.

Response: We concur with the comment and have revised the regulatory language to clarify that either physical or constructive removals are allowed.

Comment: A commenter suggested that "interim caretaker" be defined.

Response: We have revised the regulatory language to clearly provide for the use of constructive removals. In doing so, we have removed all references to interim caretakers. Therefore, there is no need to define this term in the regulation.

Comment: A commenter expressed concern that the restriction of "within six months" appears to contradict other areas of title IV–E eligibility where removal from the home of a specified relative is a determining factor.

Response: Removal from the home of a specified relative is one of several criteria for title IV–E eligibility, as is the six-month living with requirement. The commenter did not cite references for the sections of the Act about which the concern was raised and we do not find any specific citation that conflicts with the six-month limitation. No changes were made to the regulation based upon this comment.

Comment: One commenter asked if a child must be AFDC eligible as if he or she had been living in his or her home in the removal month even in circumstances where the child is not physically removed from that home.

Response: In determining title IV–E foster care eligibility, a child must be eligible for AFDC in the month in which either a voluntary placement agreement is entered into or a petition to the court is initiated to remove the child from his or her home. If the child is not living with a specified relative at that time, then section 472(a)(4)(B)(ii) of the Act allows a six-month period of time during which the child could have been living with an interim caretaker. Under these circumstances, a child can be considered AFDC eligible in the month of the voluntary placement agreement or petition if: (1) The child had been living with the specified relative at some time within the six-month period prior to that month; and (2) would have been eligible in the home of the specified relative in that month if he or she had continued to reside with the relative.

Comment: One commenter asked if there must be a physical removal for a child who lives with the same relative after legal custody is transferred to the State.

Response: Two possible scenarios can be derived from this question. In the first, a child is living with his or her parent, custody is transferred to the State but the child remains in the home of the parent. In this situation, the child is not in foster care and ineligible for title IV–E foster care. However, in a second scenario, the child is living with a related interim caretaker for less than six months prior to the State's petition to the court for removal of the child, and custody is removed from the parent. The related caretaker is licensed as a foster family home and the child continues to live in that home. In this situation, the child remains with the related caretaker, who is now a licensed foster parent, and the child is eligible for title IV–E foster care.

Comment: One commenter asked whether the child must have been living with the specified relative from whom custody is removed. The commenter pointed out that, at times, a child could be absent from such a home for six months or longer.

Response: Yes. The child must have been living with the specified relative from whom custody is removed at some time within the six-month period prior to the month of the voluntary placement agreement or initiation of court proceedings.

Comment: One commenter questioned the State agency's ability to make after the fact assessments of the need for foster care placement when families make such placements initially without the agency's involvement or determination that such placement/family disruption was necessary. The commenter expressed concern that this could create an incentive to get higher foster care rates in lieu of lower TANF rates.

Response: The purpose of title IV–E foster care is to provide assistance for the maintenance of AFDC-eligible children who cannot remain safely in their own homes. It is not for the purpose of maintaining children in the homes of noncustodial relatives when protection in their own home is not an issue. The revised policy assures equitable treatment for relative and nonrelative interim caretakers when the

child can no longer remain safely with the parent or other custodial relative. There are, however, certain requirements that must be met for AFDC-eligible children in every case: (1) There must be either a voluntary placement agreement between the custodial relative and the State agency, or court findings that it is contrary to the child's welfare to remain at home and that reasonable efforts have been made to prevent placement; (2) the foster care provider's home (whether related or not) must be fully licensed or approved in accordance with the State licensing standards; and (3) the protective and permanency requirements in the Act must be met. We want to emphasize that title IV–E foster care funds are available only when the child is at-risk in his or her own home and all other eligibility criteria are met.

Section 1356.21(m) Review of Payments and Licensing Standards

This section sets forth the State plan requirement regarding review of the appropriateness of payments under title IV–E, as well as State licensing/approval standards for foster homes. No comments were received on this paragraph and therefore we made no changes to the regulation.

Section 1356.21(n) Foster Care Goals

This section provides the requirements related to foster care goals that must be established by States.

Comment: One commenter requested an explanation of the criteria for these goals, and who will identify the goals.

Response: The criteria for establishing these goals, and who will identify the goals, is left to the individual States to determine. One example would be to set goals to reduce the number of children, in a given year, who have remained in foster care for at least 24 months by a certain percentage for each succeeding year and provide the steps that the State will take to achieve these incremental reductions. States also may want to align their foster care goals with those used for the annual report on State performance under section 479A of the Act.

Section 1356.21(o) Notice and Opportunity To Be Heard

This section implements the new requirement of the case review system that mandates giving notice of hearings and an opportunity to be heard to foster parents, preadoptive parents and relative caregivers.

Comment: We received several comments concerning the notification process for this requirement. Some commenters suggested that the regulation not be prescriptive concerning who must provide the notice, while others recommended that we clarify the manner in which the notice is given and who is responsible for providing the notice. One commenter cautioned that we not presume that foster parents will receive notice in the same manner as other parties. Another commenter suggested that the State agency be responsible for providing notice. One commenter raised a concern that more court hearings could occur as a result of improper notice. Another commenter recommended that we state the intent of this provision is for notice to be given in a timely manner and that the hearings be conducted in a location accessible to the child's family.

Response: We concur with the commenters who suggested that the regulation not be prescriptive with respect to who must provide the notice of the opportunity to be heard. Since the State title IV–B/IV–E agency has the ultimate responsibility for implementing the case review system requirements in section 475(5)of the Act and we do not regulate the courts, we believe that such decisions are best left to the State. Although we expect that a State will choose to use the same procedure for giving notice to foster parents, relative caretakers, and preadoptive parents as it does for the parents and others who are parties to the case, this is a State decision.

We also agree with the comment that suggested we clarify that the notification of the opportunity to be heard be given in a timely manner and have revised paragraph (o) accordingly. The right to notification of an opportunity to be heard is meaningless unless the individuals are notified of the opportunity to be heard at the review or hearing in a timely manner.

In addition, we understood the suggestion that we require that the location of the reviews and hearings be accessible to parents to mean the parents from whom the child was removed and not the foster parents, preadoptive parents or relative caretakers. We did not revise the regulation as a result of this comment since such a requirement is not covered by the statutory provision, the purpose of which is to afford the primary caregivers for a child who is in an out-of-home placement the opportunity to provide relevant information about the child at the review and hearing.

Comment: One commenter suggested that the regulatory language for this section be the same as that in the Act.

Response: These regulations implement the Act and clarify for States the requirements related to the statutory provisions. We believe that this section needs additional language to clarify the statutory provisions and therefore have not revised the regulation in the suggested manner.

Comment: One commenter suggested that we require States to provide extended family members with written notice of a child's entrance into foster care, timelines and permanency goals.

Response: States are not prohibited from providing extended family members with written notification of a child's entrance into foster care, if doing so is appropriate for the situation, in the best interests of the child, and consistent with the administration of the State's title IV–E State plan. However, we believe that the suggestion goes beyond the statutory authority; therefore we have not made this a requirement in the regulation.

Comment: One commenter requested more guidance on what documentation the State has to give caregivers, e.g., court reports, in preparation for their appearance in court. This commenter also requested that we require States to provide notice to caregivers who have had the child for at least three months during the two years preceding the hearing.

Response: The requirement that States give foster parents, preadoptive parents and relative caretakers notice of and an opportunity to be heard affords these individuals with a right to provide input to these reviews and hearings. However, it does not confer a right to appear in person at the review or hearing. The requirement can be met as the State sees fit, such as by notification to the individuals that they have an opportunity to attend the review or hearing and provide input, or notification that they can provide written input for consideration at the review or hearing. Since this provision does not make these individuals a legal party to the case and does not give them a right to appear at the review or hearing, it is up to the State to determine what documentation, if any, to provide, consistent with Federal and State confidentiality laws.

In addition, requiring that a State provide notice of an opportunity to be heard to previous caregivers goes beyond the statutory language. The statute requires only that notice be given to caregivers "providing care" for the child. This does not, however, prohibit a State from offering previous caregivers the opportunity to be heard, if the State determines it is appropriate for a particular child's situation.

Comment: We received several comments requesting clarification around the types of hearings these individuals should be attending, and the extent of their participation in the hearings. One commenter recommended that the regulation clearly lay out the types of hearings at which foster parents, preadoptive parents and relative caretakers have notice/opportunity to be heard. Some commenters pointed out that section 475(5)(G) of the Act gives foster parents, preadoptive parents, and relative caregivers the right to notice and the opportunity to be heard at "any review or hearing," and is not limited to "any review or permanency hearing." However, one commenter did not feel it would make sense to give them the opportunity to participate in purely procedural hearings, such as discovery hearings or hearings addressing purely legal issues. One commenter requested that HHS delete the requirement that these individuals be provided an opportunity to be heard at the six-month case reviews, and that the decision to invite individuals other than the biological parents should be made on a case-by-case basis.

Response: The proposed regulation provides the types of hearings and reviews that require notice and an opportunity to be heard for foster parents, preadoptive parents and relative caretakers. We made a minor revision to the regulatory language, however, to clarify that the review is the six-month periodic review as described in section 475(5)(B) of the Act. We did not make any further revisions as a result of these comments as we do not believe that they can be supported by the statute. The statute specifically requires that these caretakers be provided notice and an opportunity to be heard at "any review or hearing" held with respect to the child. We, therefore, do not have the statutory authority to waive that requirement by allowing a State to determine on a case-by-case basis whether these caretakers should be provided an opportunity to be heard at the reviews. Also, as stated above, the notice and opportunity to be heard does not mean that these individuals have to be invited to the reviews and hearings. This requirement can be met by providing the caretakers with an opportunity to present either written or oral input that can then be considered at the review or hearing.

Comment: Some commenters suggested that these individuals should not have the right to be present during entire hearings or access to confidential information regarding biological parents that is likely to be disclosed in a full hearing.

Response: We believe that the regulation is consistent with the statute with respect to the rights of the foster parents, preadoptive parents and relative caretakers regarding this provision and, therefore, did not make any changes. The provision only offers an opportunity to be heard and does not afford these individuals standing as a party in the case. As discussed in the preamble of the NPRM, the court, however, is not precluded from making appropriate rulings with respect to any of these individuals. Rather than prescribing in regulation that these individuals cannot be present during the entire hearing or be provided with confidential information, we believe those decisions are best left to the State and the court to determine, consistent with Federal and State confidentiality laws and the best interests of the child.

Comment: We received several comments concerning legal standing and party status for foster and preadoptive parents and relative caregivers. One commenter suggested adding language to the effect that the court can give standing to these individuals, and further recommended that the States set criteria for receiving standing, such as when the child has been in a particular foster home for a year. One commenter believes that these individuals need not be given the right to legal counsel because they do not have standing.

Response: State courts have the authority to make appropriate rulings with respect to these individuals. We believe that to impose requirements on States related to standing goes beyond the intent of the provision. In addition, the right to provide input on a case at a hearing does not convey the right to legal counsel to these individuals. We have not made any changes to the regulation in response to these comments.

Section 1356.22 Implementation Requirements for Children Voluntarily Placed in Foster Care

This section sets forth requirements States must meet to receive Federal financial participation (FFP) for children removed from home under a voluntary placement agreement.

Comment: We received several comments expressing concern around the application of the TPR requirement to children voluntarily placed in foster care. Some commenters believe that application of the TPR provision to this population goes beyond the statute. One commenter requested that unaccompanied refugee minors placed voluntarily be exempt from the TPR provision.

Response: We do not have the statutory authority to provide an exemption from the requirement to file a TPR for particular populations of children. Thus, we did not change the regulation to provide an exemption for children, including unaccompanied refugee minors, placed in foster care by a voluntary placement agreement. The TPR requirement is designed to encourage State agencies to make timely decisions about permanency for children in foster care. Congress developed the TPR provision to be applied to all children in foster care, whatever their entry point into the system. Exempting groups of children from the requirements would be contrary to ASFA's goal to shorten a child's time in foster care. Exceptions to the requirement to file a petition for TPR must be applied on a case-by-case basis considering the best interests of the child, consistent with § 1356.21(i)(2).

Comment: Many commenters expressed concern that there are insufficient protections for parents who voluntarily place their children in foster care, and that States have an affirmative obligation to notify parents of the ASFA requirements. Some commenters suggested that States be required to provide written notification to the parents or guardian at the time they voluntarily place their children in foster care of the requirements for periodic reviews, case plans, permanency hearings, and the TPR provisions.

Response: The statute and the regulation provide sufficient protections to parents who voluntarily place their children in foster care. Section 472(f)(2) of the Act requires that the voluntary placement agreement specify, at a minimum, the legal status of the child and the rights and obligations of the parents or guardian, the child, and the agency while the child is in an out-of-home placement. Further, the statute at section 472(g) of the Act suggests that a voluntary placement agreement is a temporary status, such that the parents or guardian have the capacity and right to revoke such agreement unless a court determines that return to the home would be contrary to the best interests of the child. The regulation at § 1356.22(c) emphasizes the rights of the parents in this regard as it requires the State to have uniform procedures, consistent with State law, for revocation by the parents of a voluntary placement agreement. In addition, the regulation at § 1356.21(g) requires that the case plan be developed jointly with the parent or guardian. Furthermore, it is incumbent

upon the State to work toward a timely reunification when the case plan goal is to return the child to his or her parents or guardian. We, therefore, do not believe that it is necessary to further prescribe what the State must present to the parents or guardian when they voluntarily place a child in foster care.

Comment: One commenter was opposed to the requirement that States establish a procedure for revocation of a voluntary placement agreement by the parents. The commenter believed that this is an unnecessary requirement unless the Department has evidence suggesting that parents have difficulty revoking these agreements and having their children returned.

Response: The requirement that States establish a procedure for revocation of a voluntary placement agreement is not new. This has been included in the voluntary placement agreement requirements since the regulations were issued in 1983. In fact, at that time, the Department determined that since the practice among States in returning children voluntarily placed is sufficiently responsive, we did not need to impose further requirements on States to specify the timing and procedures for the return home of a voluntarily placed child, as public comment had suggested at that time. We believe the requirement that the State have uniform procedures, consistent with State law, for revocation of such agreements provides a safeguard for parents who voluntarily place their children into foster care and, therefore, did not revoke this requirement.

Comment: One commenter suggested that § 1356.22(a)(3) be revised to read, "45 CFR 1356.21 (f), (g), (h), and (i)."

Response: We concur with these comments and have amended the regulation accordingly. We agree that paragraph (f) should be included since it sets forth the sections of the statute to which a State must adhere in order to meet the case review system requirements. The case review system applies to all children in foster care, including children placed through a voluntary placement agreement. In addition, we concur with the inclusion of § 1356.21(g) in this provision since the State is required to develop a case plan for each child in foster care, including those voluntarily placed. We also agree with the exclusion of paragraph (j) since that sets forth the requirements for an infant born to, and placed with, a minor parent who is in foster care.

Section 1356.30 Safety Requirements for Foster Care and Adoptive Home Providers

This section pertains to safety requirements for foster care and adoptive home providers, and sets forth conditions under which States cannot license or approve foster and adoptive homes if the State finds that prospective foster or adoptive parents have been convicted of certain crimes.

Comment: We received several comments and questions regarding the application of the criminal records check requirement to the individuals and groups contained within the definition of foster care in § 1355.20 of the regulation. Some commenters recommended that the criminal records check provision not be applied to child care facilities or to unlicensed relatives. One commenter suggested that child care facilities not be included in the requirement, but that upon discovery of a criminal record, the facility be required to undertake corrective action.

Response: To address these comments, we would like to clarify the requirements for States that institute the criminal records check provision and the requirements for States that do not. The criminal records check provision does not extend to child care facilities; the statute specifically limits this requirement to prospective foster and adoptive parents. However, in order to be an eligible provider for title IV–E funding purposes, in all cases where no criminal records check is conducted, the licensing file must include documentation that safety considerations with respect to the caretakers have been addressed. This safety documentation requirement applies to child care institutions in every situation and to prospective foster and adoptive parents in States that opt out of the criminal records check provision. Since this provision is a title IV–E funding requirement, it does not extend to relative homes that are not licensed or approved in accordance with State licensing standards because children placed in such homes are not eligible for title IV–E funding.

Comment: Two commenters asked if this section applies to currently licensed foster parents and approved adoptive parents whose licensure or approval predates the passage of ASFA.

Response: The provision applies to "prospective" foster and adoptive parents. Therefore, the provision applies to foster and adoptive parents who are licensed or approved after the date of enactment of the law (November 19, 1997), or the approved delayed effective date if the State required legislation to implement the provision.

Comment: A commenter requested that we extend the requirements for a criminal records check by encouraging States to complete checks for any member of the household over the age of 18.

Response: To require that a State conduct criminal records checks for anyone other than prospective foster and adoptive parents goes beyond the statute.

Comment: One commenter requested clarification that this provision not be interpreted to require prospective foster/adoptive parents to be U.S. residents for the last five years. The commenter expressed belief that such an interpretation would be unfair to prospective caretakers of refugee minors.

Response: This provision does not impose a time-specified U.S. residency requirement on prospective foster and adoptive parents. However, for the State to claim title IV–E funds on behalf of a foster or an adoptive child, the prospective parent and the child must meet the requirements in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 related to qualified aliens. ACYF–CB–PIQ–99–01 provides guidance with respect to when alien foster and adoptive parents and children can be eligible for title IV–E.

Comment: Several comments were received requesting flexibility in awarding adoptive/foster home licenses to individuals who have been convicted of certain crimes within the last five years. There is a concern regarding the requirement to automatically deny eligibility to prospective adoptive and foster parents who have had drug convictions within five years. It was recommended that States be allowed to make individual assessments of the prospective parent's ability to care for a child. Also, it was recommended that States have flexibility in decisions concerning rehabilitated relatives.

Response: The statute is very explicit in specifying that in such situations "final approval shall not be granted." We, therefore, did not make the suggested changes because the statute does not support such an interpretation.

Comment: One commenter recommended that the phrase in § 1356.30(b)(4), "violent crime, including rape, sexual assault * * *," be revised to reflect the ASFA language of "crime involving violence." The commenter was concerned that certain nonviolent crimes, such as robbery, may involve violent actions that should be considered when determining the

suitability of prospective foster and adoptive parents.

Response: We concur with this comment and have revised the regulation to reflect the statutory language.

Comment: A commenter expressed concern with the inconsistency of allowing States to reunite children with biological parents who have committed certain crimes, but denying child placements with foster or adoptive parents who have committed these same crimes.

Response: We do not believe the statute is inconsistent in this regard. Although the safety of children is the paramount concern in both in-home and out-of-home situations, biological parents, who have certain rights with respect to their children, cannot be compared to a foster parent, who is a substitute caretaker when the child cannot be maintained safely in his or her own home. It is up to a State's discretion to determine, in individual cases, whether a child and biological parent should be reunited in cases where the parent has been convicted of certain crimes. It also is incumbent upon the State in its custodial role of a child to provide scrutiny of its foster parents to assure they meet certain established safety (and other) standards before a child is placed in the home.

Comment: A question was raised about whether "a drug-related offense" includes an alcohol-related felony conviction.

Response: The criminal records check provision at section 471(a)(20)(A) of the Act would apply in such situations. Alcohol is considered a drug and a felony conviction for an alcohol-related offense is a serious crime. Therefore, unless the State opts out of the provision, an alcohol-related felony conviction within the last five years would prohibit the State from placing children with the individual for the purpose of foster care or adoption under title IV–E.

Comment: One commenter supported the criminal records check provision, but raised a concern that prospective foster and adoptive parents not be subjected to duplicate or multiple requirements when several jurisdictions, with differing licensing and background checks, are involved. The commenter noted that involvement of multiple jurisdictions in an adoption may sometimes become a stumbling block to achieving permanency and finalizing adoptions.

Response: This issue is a matter of State discretion. The criminal records check provision is intended to assure the safety of children in foster care and adoptive placements. The State agency is responsible for determining the type of background checks necessary to meet the safety standards established by the State.

Comment: A commenter requested clarification concerning which criminal records check provisions apply to title IV–B and which apply to title IV–E. The commenter believes that § 1356.30(b), (c), and (d) are requirements only for title IV–E, and that (e) should be for children in licensed homes receiving title IV–E in States that opt out of the criminal records check requirement. The commenter suggests that an additional item (f) be added to address safety as a title IV–B requirement for all non-title IV–E out-of-home placements.

Response: The criminal records check requirement is both a title IV–E State plan provision and an eligibility requirement for title IV–E funding. The specific statutory language of the provision limits its authority to eligibility for the title IV–E foster care maintenance payment and adoption assistance programs under a State's title IV–E State plan. We, therefore, do not have the statutory authority to apply the requirement for criminal records checks to all non-title IV–E out-of-home placements of children and did not make this change in the regulation.

The regulation at § 1356.30(e), as proposed in the NPRM, would apply more broadly than only to those States that opt out of the criminal records check requirement. Since we may not have made this clear, we have separated the requirements of this paragraph into two sections for the final rule to clarify the criteria for title IV–E eligibility. We revised § 1356.30(e) to apply only in States that opt out of the criminal records check. We also added a paragraph (f) to set forth the safety requirements that must be addressed for child care institutions, which are not covered under the criminal records check provision. This revision only clarifies the requirements; it does not change the substance of the requirements in any way.

Comment: We received several comments concerning the inability to claim title IV–E until the criminal records check is completed. Commenters noted that the length of time required to complete background checks, particularly Federal Bureau of Investigations (FBI) checks, unfairly penalizes States. Several commenters recommended that States be allowed to claim FFP retroactively to the date of placement once the criminal records check has been completed, while others suggested that HHS allow provisional licensure for up to six months as long as application for the criminal records check is made within 30 days of placement. Another commenter suggested that States be allowed to claim FFP if the safety of the placement is documented, including checking the names of prospective parents against the State's child abuse registry, while awaiting completion of the background check.

Response: Federal matching funds for payments to foster family homes under title IV–E cannot be permitted until all State requirements for licensure are satisfied. Further, the criminal records check provision restricts eligibility for title IV–E funding until after the home has been finally approved for the placement of a title IV–E eligible child. In fact, the plain language of the criminal records check provision requires such checks on prospective foster and adoptive parents "before" the parent can be approved for "placement of a child" for whom foster care maintenance payments or adoption assistance payments "are to be made." Accordingly, to allow a State to claim retroactively back to the date of placement would be in conflict with the statute which bases foster family home eligibility on licensure or approval of the home, including completion of a criminal records check.

However, we recognize that some time may elapse between the date the requirements are satisfied and the date on which the license or approval actually is issued to the foster home. We have concluded that 60 days is an ample period of time to allow between the time the State receives all the information on a home that is required to fully license or approve it and the date on which such license or approval is issued. Therefore, we have revised the definition of "foster family home" in the regulation to allow a State to claim title IV–E reimbursement for a period, not to exceed 60 days, between satisfaction of the approval or licensing requirements and the actual issuance of a full license or approval. This accommodation does not conflict with the statutory requirement that all licensure requirements must be satisfied before a foster home is eligible for title IV–E funding. Rather, it is recognition that a period of time may elapse between when the eligibility criteria are met and the time it takes a State to issue a license or approval.

Comment: One commenter opposed linking criminal records checks to title IV–E eligibility.

Response: Since the requirement for criminal records checks is statutorily linked to title IV–E eligibility, we did not change the regulation.

Comment: One commenter requested that we specify that the costs of conducting criminal records checks are allowable administrative costs under title IV–E.

Response: The regulations at § 1356.60(c)(2) allow States to claim costs associated with the recruitment and licensing of foster homes as administrative costs under title IV–E. ACYF–PA–83–01 identifies additional allowable administrative costs specific to the title IV–E adoption assistance program. Since the criminal records check provision is a condition of licensure or approval in States that do not opt out of the provision, costs associated with criminal records checks for prospective foster and adoptive parents are allowable under title IV–E when claimed pursuant to an approved cost allocation plan. No revisions were made to this section of the regulation since this is already covered in § 1356.60 which addresses fiscal requirements for title IV–E.

Comment: We received many comments concerning the levels of background checks required, *e.g.*, local, State, and Federal. Comments ranged from those that approve of State discretion in deciding what level of checks to conduct, to those that believe HHS should require both State and Federal background checks. One commenter suggested that we require all States to conduct Federal criminal records checks on prospective parents who have been living in a State for less than two years, while another suggested we require States to conduct background checks in States where the prospective parent previously resided.

Response: We have carefully considered the comments in this area. We concur with the commenters who approved of State discretion with respect to the level of background checks to conduct and, therefore, did not make any changes to the regulation. Although the comments with respect to expanding the criminal records check requirement were good suggestions, we believe that, in the absence of any statutory direction in this area, such decisions are best left to the State. We do, however, encourage States to be thorough in their safety assessments of foster homes and to utilize the information sources available to them to the fullest extent possible to assure the safety of children in out-of-home placements.

Comment: We received some comments suggesting that HHS require more extensive background checks, including child abuse registries, domestic violence registries, and adult protective services records.

Response: These are good suggestions and we encourage States to routinely include checks of State registries to assist in determining whether a potential foster family home is safe. However, we believe that to require a State to include such checks under this provision goes beyond the statutory authority.

Comment: One commenter expressed concern that past suspicions of child abuse and neglect will be discarded, and suggested that a National central registry be established for child abuse and neglect records.

Response: The establishment of a National central registry, and a requirement that States participate in such a registry, goes beyond the statutory authority. We did not make any changes to the regulations based on this comment since it does not relate directly to criminal records checks.

Comment: Two commenters expressed concern that States may opt out of the criminal records check requirement.

Response: The statute specifically makes the criminal records check requirement a State option. However, § 1356.30(e) and (f) of the regulation require States that opt out of the requirement to address and document safety in foster and adoptive homes, as well as child care institutions.

Comment: One commenter requested that the regulations be revised to specify that an Indian tribe may elect not to conduct or require criminal records checks on foster or adoptive parents if it obtains an approved resolution from the governing body of the Indian tribe.

Response: While we understand that Tribes often license or approve foster homes, we are unable to modify the regulation based on this comment. Tribes may only receive title IV–E funds pursuant to a title IV–E agreement with a State. A tribe that enters into such an agreement must comport with section 471(a)(20) of the Act and § 1356.30 in accordance with the State plan in order to receive title IV–E funding on behalf of children placed in the homes it licenses. The statute expressly gives the State the authority to opt out of section 471(a)(20) of the Act through State legislation or a letter from the Governor to the Secretary. Agreements between the State child welfare agency and other public agencies or tribes permit those entities to have placement and care responsibility for a particular group of the foster care population under the approved State plan. Such agreements do not permit other public agencies or tribes to develop a distinct title IV–E program separate from that operated under the approved State plan.

Comment: We received several comments asking for clarification concerning § 1356.30(e) and the procedures and documentation required to show that safety considerations have been made in States that have elected not to conduct or require criminal records checks. One commenter asked for guidance on what processes and procedures should be in place in lieu of a criminal records check. Another commenter suggested that the regulations require minimum documentation, such as: Written results of an on-site inspection of the home, group care facility, or institution; a statement that the home meets the minimal standards for health and safety; and an assurance that the caregivers have plans or procedures for protecting the safety of children.

Response: Although these were good suggestions, we do not believe that we have the statutory authority to specify the mechanism or documentation required to verify that safety considerations have been made. Although we leave that decision to the State, we continue to require that the licensing file for the foster family, adoptive family, child care institution and relative placement contain documentation that shows safety considerations have been addressed. In addition, we made a minor revision to the regulation to clarify that the documentation must verify that the safety considerations have been addressed. We strongly encourage States to conduct thorough safety checks and utilize all available information sources to the fullest to assure the safety of children in out-of-home placements.

Comment: One commenter asked for clarification that for States that have elected not to conduct or require criminal records checks, title IV–E may be claimed as long as the licensing file contains documentation that safety considerations have been addressed.

Response: We do not believe that a change is required in the regulation to confirm that title IV–E can be claimed in such circumstances. However, we have separated the requirements of this paragraph into two sections for the final rule to clarify the criteria for title IV–E eligibility. We revised § 1356.30(e) to apply only in States that opt out of the criminal records check. We also added a paragraph (f) to set forth the safety requirements that must be addressed for child care institutions, which are not covered under the criminal records check provision.

Section1356.50 Withholding of Funds for Noncompliance With the Approved Title IV–E State Plan.

Although we did not propose amendments to § 1356.50 of the regulations in the NPRM, we are amending it in this final rule to bring the cross-references contained therein into conformity with the new regulations.

Section 1356.60 Fiscal Requirements (Title IV–E)

This section sets for the fiscal requirements and available federal financial participation for title IV–E costs

In § 1356.60(b) we have made a technical amendment to the existing regulation with regard to matching for title IV–E training, in order to make it consistent with the statute. The existing regulation at § 1356.60(c)(4) authorizes States to use administrative funds at a matching rate of 50% for the training of foster and adoptive parents and staff of licensed or approved child care institutions that provide care for children receiving assistance under title IV–E. The existing regulation also limits associated costs to per diem and travel expenses. Since the promulgation of that regulation, the statute has been amended by section 13715 of the Omnibus Budget Reconciliation Act of 1993, to authorize State' use of training funds at a 75% match rate for the short-term training of current or prospective foster or adoptive parents as well as staff of licensed child care institutions. Under the statute, a State's claims may include but are not limited to per diem and travel.

The Department has followed the overriding statutory language since it was enacted (see ACYF–PI–94–15 and ACYF–PA–90–01). However, we would like to take this opportunity to make the regulatory language consistent with the statute. Because this change is technical in nature, and does not affect policy, we have included this change in this final rule. We are rescinding existing paragraph § 1356.60(c)(4) and amending § 1356.60(b)(1) to make this technical change.

Section 1356.71 Federal Review of the Eligibility of Children in Foster Care and the Eligibility of Foster Care Providers in Title IV–E Programs

This section sets forth the requirements governing Federal reviews of State compliance with the title IV–E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

Section 1356.71(a) Purpose, Scope and Overview of the Process

Comment: Three commenters were of the opinion that the title IV–E review, because its major focus is on documentation, is inconsistent with the new outcomes-based review for child and family services. Two commenters said that this review relies solely on individual case eligibility for payments absent any consideration of good casework practice and procedures.

Response: The title IV–E foster care eligibility review and the child and family services review are different in purpose and scope. The purpose of the title IV–E eligibility review is to validate the accuracy of a State's claims to assure that appropriate payments are made on behalf of eligible children, to eligible homes and institutions, at allowable rates. These determinations are made most effectively by an examination of the case record and payment documentation. The title IV–E review has been revised, within existing statutory constraints, to strengthen the State and Federal partnership through the provision of corrective action and technical assistance. While we acknowledge the importance of positive outcomes for the children and families the title IV–E foster care program serves, we also acknowledge our attendant stewardship responsibility in the administration of this program.

Comment: We received five comments indicating that the title IV–E eligibility review penalizes child welfare agencies when certain eligibility requirements beyond the State's control, specifically those related to the documentation of judicial determinations, are not met.

Response: We recognize that child welfare agencies ultimately may be held accountable and lose title IV–E funding when documentation of the required title IV–E judicial determinations is not secured. Because the statute specifically requires judicial determinations regarding contrary to the welfare and reasonable efforts, however, we have no authority or flexibility to modify these requirements. Where the statute permits, we have afforded State child welfare agencies additional time to obtain the required judicial determinations.

Section 1356.71(b) Composition of Review Team and Preliminary Activities Preceding an On-Site Review

This section describes the composition of the on-site review team and the preliminary activities which the State must undertake prior to the on-site review.

Comment: We received four comments regarding the composition of the review team, including requests for specific representatives on the team, such as State foster care review board members, child advocates, and individuals with expertise on unaccompanied refugee minors. One commenter requested that we require States to include local agency staff on the review team.

Response: The purpose of the title IV–E financial review is to assess payment accuracy through an examination of case record documentation. Those individuals recommended above to participate on the title IV–E review team possess expertise that would be utilized more effectively on a review of service delivery issues, such as the child and family services review. During the title IV–E pilot reviews, we learned that the Federal/State team combination assisted States in identifying strategies for training, technical assistance and corrective action, and augmented the knowledge of State staff about title IV–E eligibility requirements. For these reasons, we see no benefit in expanding the review team composition to include external representatives. The State may, however, exercise its discretion in deciding the range of State and/or local staff to include on the team.

Comment: One commenter noted that the requirement that the State submit the complete payment history records for each sample case does not comport with the regulation governing records retention at 45 CFR part 74. The commenter inquired if ACF could require States to retain the payment history for a child in out-of-home care for more than three years. We received an additional comment about the difficulty of obtaining the payment history for a child in care for 10 years. A third commenter requested clarification regarding whether complete payment history encompassed only the six-month period under review or the complete life of the case. Another commenter said that complete payment history should be required only when the case is determined to be ineligible.

Response: There is no inconsistency between the requirement that a State provide the complete payment history and the regulation at 45 CFR 74.53(b) which, in pertinent part, states that "Financial records * * * shall be retained for a period of three years from the date of submission of the *final expenditure report* * * .*" (emphasis added). For a child in out-of-home care, the final expenditure report would not be submitted to ACF until such child is discharged from foster care. Since the title IV–E review is designed to look at a sample of more recent cases and because ASFA reinforces moving

children to permanency more expediently, we hope not to encounter any case where a child has been in foster care for 10 years. In those rare instances where we do review such a case, however, the payment history must reflect the title IV–E foster care payments for the duration of that child's placement, irrespective of the initial date of placement, if the case is still open and title IV–E payments continue to be made on that child's behalf. For these reasons, we do not agree that this requirement conflicts with 45 CFR part 74 and have made no modifications to this section.

We have concerns with the recommendation that the complete payment history be required only after a case is determined to be ineligible. The purpose of the title IV–E foster care eligibility review is to assure that appropriate payments are made on behalf of eligible children at allowable rates to eligible homes and institutions. Our experience has demonstrated that assuring that "appropriate payments are made * * * at allowable rates" is determined as the result of identifying duplicate payments, overpayments, underpayments, erroneous payments and related fiscal issues for each case under review at the time the case is being reviewed. Therefore, we have made no modification to this section.

Comment: We received one comment that ACF should allow sufficient time for States to prepare for the review.

Response: We acknowledge our responsibility to assure that States receive ample notice in order to prepare for a title IV–E review. We recognize that the specific preparation time may vary by State and may change as States become more familiar with the process. Taking into consideration the fact that Federal staff also will require time to prepare adequately for each review, we do not anticipate the lack of advance notice becoming an issue and, therefore, prefer not to regulate the notification period. We fully expect that States and Regional Offices will negotiate this aspect of the review in a mutually agreeable manner.

Section 1356.71(c) Sampling Guidance and Conduct of Review

This section describes the process to be used to select the title IV–E foster care sample of children to be reviewed.

Comment: Two commenters recommended that the description of the alternative sampling frame to be utilized when AFCARS data are unavailable or deficient should specify that the period under review is six months.

Response: We concur and have revised paragraph (c)(1) to clarify that the period under review is to be consistent with one AFCARS six-month reporting period when an alternative sampling methodology is utilized.

Comment: We received numerous comments about the sample that included a range of concerns regarding its statistical validity, its applicability to States of differing sizes with varying populations of children in foster care, its accuracy and its reliability. Three commenters questioned the rationale for random sampling as the preferred methodology. Several commenters objected to the error rate thresholds as abstract and unreasonably high. One commenter supported the thresholds as fair and reasonable. Several commenters urged us not to regulate the sampling methodology at all.

Response: The proposed sampling methodology is designed to provide national consistency in sample selection, reduce the burden on States associated with drawing their own samples, utilize the AFCARS database, and assure statistical validity. In our attempt to achieve a balance between partnership and stewardship, we considered and evaluated several sampling methodologies. The methodology chosen was the result of internal deliberations with ACF statisticians and is similar to the sampling methodology deployed throughout the history of the title IV–E reviews, with a significant modification that affords States an opportunity for program improvement prior to an extrapolated disallowance. We chose simple random sampling as the preferred methodology as we believe it will result in the most representative sample. However, we expect that States will work closely with ACF statisticians in pulling a sample that is representative and fair. We further expect that regulating the sample will afford States and ACF maximum accuracy, uniformity, consistency, and reliability.

Comment: One commenter found the terms "first" and "second" confusing, particularly when applied to the subsequent three-year reviews.

Response: We concur and have modified this and related sections to use the terms "primary" and "secondary," respectively, to describe the reviews. The review of 80 cases is the primary review. In those instances where the 15 percent threshold is exceeded and the State enters into a PIP, followed by a review of 150 additional cases, this subsequent review will be referred to as the secondary review.

Comment: One commenter recommended that all States have an opportunity to have their primary review at the 15 percent threshold, since all primary reviews may not be completed within three years of the final rule. Another commenter noted that the title IV–E monitoring regulations do not indicate when ACF will begin conducting these reviews. A third commenter indicated that States should be afforded ample time to implement the various requirements.

Response: We agree in principle and have modified this section accordingly to reflect that each State's primary review will be subject to the 15 percent threshold. We fully anticipate that ACF and States will work together to assure that the primary reviews are held within a reasonable period of time after publication of the final rule. In any event, we do not expect that States will procrastinate in scheduling their primary reviews once they have been approached by ACF.

Comment: One commenter recommended that we delete the words "determined to be" from the discussion of disallowances in this section, noting that the disallowance will be applicable for the period of time that the case was ineligible and not from the date the reviewer discovered the ineligibility.

Response: We concur and have modified this section accordingly. Any disallowance will be applicable to the period of time during which the case is ineligible and not from the date the reviewer makes the determination of ineligibility.

Comment: Several commenters recommended that the secondary review should be limited to cases where children entered foster care after the PIP was implemented. Four commenters said that the final rules should not apply to children who entered foster care before the rule was finalized.

Response: We do not concur that the secondary review should include only cases of children who entered foster care after the program improvement plan was implemented or that the final rule apply only to children who entered foster care after its promulgation. We will apply the final rule prospectively so that States are only responsible for meeting the new requirements following the effective date of the final rule. Compliance with the requirements will be evaluated against the standards in effect at the time the action was taken. Therefore, the checklist will be modified so that we review for the ACF policy in effect at the time of the action and it reflects the transition time indicated in the pertinent sections of §§ 1355.20 and 1356.21(b)(2) related to

licensing of foster family homes and the reasonable efforts determination regarding finalizing permanency plans.

Comment: One commenter requested the discussion of the 10 percent and 15 percent error thresholds be clarified to make it apparent that the error threshold for the primary review is eight cases or fewer and four cases or fewer—not simply "8" and "4."

Response: We agree and have modified the regulations such that they consistently express that the error threshold for the primary review is eight or fewer and four or fewer cases—not simply eight or four. We further have revised this section to clarify that the error rate applicable to the secondary review of 150 cases is 10%.

Comment: One commenter requested that unaccompanied refugee minors be excluded from the sample of title IV–E cases reviewed.

Response: Any child on whose behalf title IV–E payments were made is subject to review. No statutory basis exists to exclude any specific population from review and, consequently, no modifications were made to this section.

Section 1356.71(d) Requirements Subject to Review

This section describes the requirements subject to the title IV–E eligibility reviews.

Comment: One commenter noted that section 475(1) of the Act was inappropriately cross-referenced in paragraph (2).

Response: We concur and have changed this cross-reference to § 1356.30 which addresses the safety requirements for foster care and adoptive home providers.

Comment: One commenter suggested that all title IV–E requirements be reviewed, including sections 471(a)(16), 475(1) and 475(5)(B) of the Act which are the requirements for case plans and six-month periodic reviews.

Response: The focus of the title IV–E foster care eligibility review is those child eligibility criteria set forth at section 472(a)(1)–(4) of the Act and the criminal records checks required at section 471(a)(20) of the Act. The sections noted by the commenter are addressed in the child and family services review of State plan requirements, and we made no changes to this section.

Section 1356.71(e) Review Instrument

This section informs States that a checklist will be used to substantiate child and provider eligibility during the on-site title IV–E foster care eligibility review.

Comment: Three commenters requested that the review instrument be made available immediately rather than upon publication of the final rule.

Response: It would be premature for us to publish the review instrument until the rule becomes final. Once that occurs, we will modify the instrument to reflect the final rule and make it publicly available.

Section 1356.71(f) Eligibility Determination—Child

This section sets forth the case record requirement of documentation to verify a child's eligibility.

Comment: Two commenters requested that the specific child eligibility requirements be included in this section.

Response: We concur that this would be helpful to States and have modified this section accordingly.

Section 1356.71(g) Eligibility Determination—Provider

This section sets forth the requirement for the licensing file for each case under review.

Comment: One commenter supports obtaining the licensing file and indicates that we should look "beyond" the actual license. Another commenter requested that the specific provider eligibility requirements be included in this section. A third commenter wanted to know the specific licensing standards to which States will be held accountable for the title IV–E foster care eligibility reviews. A fourth commenter requested clarification regarding the scope and extent of the provider review.

Response: The State plan requirement at section 471(a)(10) of the Act vests the State with the responsibility for establishing minimum licensing standards regarding safety, admissions policies, sanitation, and civil rights for foster family homes and child care institutions. The State is required to apply its licensing standards to any foster family home or child care institution receiving funds under titles IV–B and IV–E, and for the purposes of title IV–E, only place children in facilities that meet the Federal definition of a foster family home or child care institution. However, it is not within the scope of the title IV–E foster care eligibility review to examine the State licensing standards. For the title IV–E eligibility review, we will determine that the foster family home or facility has a valid license that encompasses the period of the child's stay under review and that the safety requirements at § 1356.30 have been addressed. We made no changes to the regulation as a result of this comment.

During a title IV–E eligibility review, we will examine a provider's license to determine that; it is an appropriate type of facility (*i.e.*, meets the definition of a foster family home or child care institution), the license is valid for the duration of the child's placement, and the safety requirements at § 1356.30 have been addressed. We made no changes to the regulation as a result of this comment.

Section 1356.71(h) Standards of Compliance

This section defines the terms "substantial compliance" and "noncompliance," and describes the disallowances and program improvement plan process.

Comment: One commenter indicated that reviews should be conducted annually, as opposed to at three-year intervals. Another commenter recommended that we conduct monthly audits. A third commenter suggested reviews at five-year instead of three-year intervals after a State completes its primary review.

Response: The frequency of the title IV–E reviews is not statutorily mandated. We decided that three years was a reasonable time frame, considering that some States may be required to develop a PIP after their primary review. For some States, the PIP will be effective for as long as one year. Furthermore, the title IV–E review is not the sole mechanism in place to assure the propriety and accuracy of State' claiming procedures, since the ACF Regional Offices review the quarterly claims submitted by the States. For these reasons, and because States will be undergoing an intensive child and family services review following the publication of the final rule, we have made no modification to this section.

Comment: One commenter was of the opinion that more meaningful sanctions should be imposed. Another commenter supported ACF's proposal for the disallowance of funds, indicating that it provides an incentive for States to come into compliance.

Response: We carefully considered various options in developing the penalty structure for ineligible cases and believe that our proposal achieves the appropriate balance between partnership and stewardship. We have developed a more collaborative approach with the goal of bringing about the desired results utilizing a process that includes technical assistance and corrective action.

Section 1356.71(i) Program Improvement Plans

This section sets forth the requirement for States, determined not to be in substantial compliance, to develop a program improvement plan.

Comment: One commenter requested that we consider a provision for a State to negotiate the extension of a PIP in those instances when a legislative amendment is necessary for the State to achieve substantial compliance.

Response: We concur and have modified paragraph (i)(1)(i) to reflect that the duration of the program improvement plan will be determined jointly by the State and the ACF Regional Office, but shall not exceed one year, unless legislative action is required. In such cases, the State and ACF will negotiate the terms and length of the extension not to exceed the last day of the first legislative session after the date of the program improvement plan. We believe that this time frame is sufficient for a State to make necessary statutory changes to achieve substantial compliance.

Comment: Several commenters said that 60 days is insufficient time for a State to produce a comprehensive program improvement plan, since such a plan will require collaboration with multiple external entities. Proposed time frames ranged from 120 days to two years. Some commenters indicated that, under exceptional circumstances, a 30-day extension should be an option.

Response: An extensive period of time should not elapse from the completion of the on-site review to the development of the PIP. We do recognize, however, that occasionally circumstances may warrant the need for additional time for the State to collaborate with entities outside the child welfare agency, *e.g.*, the court system. We have, therefore, amended paragraph (i)(2) to reflect a modification from 60 days to 90 days for the development of the PIP.

Section 1356.71(j) Disallowance of Funds

This section sets describes how funds to be disallowed will be determined.

Comment: Two commenters noted that we reference a nonexistent paragraph "(k)" in the NPRM.

Response: We recognize this oversight and have removed the reference to paragraph (k) and clarified that, in the event that a State fails to submit a PIP, we will immediately proceed to the secondary review process.

Comment: One commenter noted that the sample period for a review after the completion of a PIP should be the first full AFCARS period subsequent to completion of the PIP.

Response: It is our intent to select a sample of cases from AFCARS for the secondary review after the PIP has been completed. In most instances, the most recent State AFCARS submission subsequent to the completion of the PIP will constitute the period under review.

Comment: One commenter recommends that the first review under the new protocol should be a joint pilot review with no disallowances taken in order to demonstrate ACF's assertion that the primary objectives of the reviews include promoting federal/state partnerships, focusing on program improvements and generating useful information.

Response: We conducted 12 title IV–E foster care eligibility pilot reviews over the past three years to inform the development of the new protocol. States were afforded many opportunities to volunteer for these pilots. We do not concur with the recommendation that we defer sanctions until after the primary review, since in the development of the process we already have suspended disallowances for more than three years.

Comment: One commenter requested clarification regarding the term "universe of claims paid." Another commenter requested clarification regarding the scope of the title IV–E foster care disallowance and what was included in it.

Response: The term "universe of claims paid" means the Federal share of allowable title IV–E foster care maintenance payments and administrative costs for the period of time the case is ineligible. All title IV–E funds expended during the quarter(s) the case is ineligible will be subject to disallowance, including funds for administrative costs. We have revised this paragraph in the final rule to specify which funds will be reduced.

Part 1357—Requirements Applicable to Title IV–B

Section 1357.40 Direct Payments to Indian Tribal Organizations (Title IV–B, Subpart 1, Child Welfare Services)

This section provides the requirements for Indian Tribal Organizations to apply for and receive direct funds under title IV–B, subpart 1.

We made a technical change to § 1357.40 in the final rule to incorporate a 1995 change to the regulation that was mistakenly eliminated by a subsequent final rule. On June 2, 1995, we published a final rule (60 FR 28735–28737) amending the regulations governing direct payments to Indian Tribal Organizations (ITOs) for child welfare services. The revised regulations added a description of the formula used to calculate the amount of Federal funds available to eligible ITOs under title IV–B. A new paragraph, § 1357.40(g)(6), was added to implement the new formula. On November 18, 1996, we published a comprehensive final rule for title IV–B, Child and Family Services (61 FR 58632–58663), which amended § 1357.40 and inadvertently omitted the paragraph including the grant formula for ITOs.

We are taking this opportunity to restore the grant formula for ITOs to the regulation as we have been using this formula since it was effective in FFY 1996 (see ACYF–IM–CB–95–28). We have, therefore, made a technical amendment to add the grant formula in a new paragraph, § 1357.40(d)(6).

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This final rule amends existing regulations concerning Child and Family Services by adding new requirements governing the review of a State's conformity with its State plan under titles IV–B and IV–E of the Social Security Act (the Act), and implements the provisions of the Social Security Act Amendments of 1994 (Pub. L. 103–432), the Multiethnic Placement Act (MEPA) as amended by Public Law 104–188, and certain provisions of the Adoption and Safe Families Act (ASFA) of 1997 (Pub. L. 105–89).

In addition, this final rule sets forth regu'ations that clarify certain eligibility criteria that govern the title IV–E foster care eligibility reviews that the Administration on Children, Youth and Families (ACYF) conducts to ensure a State agency's compliance with statutory requirements under the Act.

We received no comments on this section.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule does not have federalism implications as defined in the Executive Order.

Family Well-Being Impact

As required by Section 654 of the Treasury and General Government Appropriations Act of 1999, we have assessed the impact of this final rule on family well-being. The final rule implements requirements of titles IV–B and IV–E of the Social Security Act relating to Federal monitoring and oversight of State child welfare programs. The rule will promote child safety, child and family well-being and permanence for those children who must be removed from their families temporarily to assure their safety. The final rule will help to ensure that States are taking appropriate steps to protect children and to strengthen, support and stabilize both biological and adoptive families.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant number of small entities" an analysis must be prepared describing the rule's impact on small entities. "Small entities" are defined by the Act to include small businesses, small nonprofit organizations and small governmental entities. These regulations do not affect small entities because they are applicable to State agencies that administer the child and family services programs and the foster care maintenance payments program.

We received no comments on this section.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation).

Comment: One commenter argued that the regulation was not in compliance with the Unfunded Mandates Reform Act (UMRA) because the ASFA requirements significantly increase the administrative burden and cost for State courts and agencies, which are not offset by an increase in Federal funding.

Response: Section 201 of the UMRA states that, "[e]ach agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." The UMRA is not applicable to the codification of the ASFA requirements because they are specifically set forth in law. Rather, it is the requirements and procedures of the child and family services review and the title IV–E eligibility review processes which come under the auspices of the UMRA.

This final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more. We anticipate that one-third (17) of the States will be reviewed under both review procedures each year and that, each year, approximately five States will be required to complete a corrective action plan in response to section 471(a)(18) compliance issues, for an annual cost of $352,420. This estimate is based on the burden hours associated with each information collection identified in the "Paperwork Reduction Act" section.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This final rule contains information collection requirements in certain sections that the Department has submitted to OMB for its review.

The sections that contain information collection requirements are: 1355.33(b) on statewide assessments, and (c) on-site review; 1355.35(a) on program improvement plan; 1355.38(b) and (c) on corrective action plans; and 1356.71(i) on program improvement plan. Section 1356 on State plan document and submission requirements (OMB Number 0980–0141) and case plan requirements (OMB Number 0980–0140) contains information collections. However, these are approved collections and no changes are being made at this time.

The respondents to the information collection requirements in this rule are State agencies. The Department requires this collection of information: (1) In order to review State' compliance with the provisions of the statute and implementing regulations of titles IV–B and IV–E of the Act; and (2) effectively implement the statutory requirement at section 1123A of the Act which requires that regulations be promulgated for the review of child and family services programs, and foster care and adoption assistance programs for conformity with State plan requirements.

Comment: A few commenters noted that the estimate for the burden hours associated with § 1355.33(c), the on-site portion of the child and family services review, was too low. The commenters observed that extensive training is required to prepare reviewers.

Response: We agree and have amended the estimate accordingly. In addition, we have significantly increased the estimated burden for the on-site portion of the child and family services review to account for the logistics associated with scheduling interviews.

Collection	Number of respondents	Number of responses	Average burden hours per response	Total burden hours
1355.33(b)—Statewide assessment	17—State agencies administering the title IV–B & E Programs.	17	240	4,080
1355.33(c)—On-site review	17—State agencies administering the title IV–B & E programs.	595	18	10,710
1355.35(a)—Program improvement plan	17—State agencies administering the titles IV–B & IV–E programs.	17	80	1,360
1355.38(b) and (c)—Corrective action plan	5—State agencies administering titles IV–B and IV–E.	5	80	400
1356.71(i)—Program improvement plan	17—State agencies administering the title IV–E program.	17	63	1,071

We received and considered 38 letters in response to the preclearance Notice (63 FR 52703 (October 1, 1998)) published in order to obtain approval of this information collection under the Paperwork Reduction Act. Several commenters submitted comments on the October 1, 1998 Notice in conjunction with their comments on the NPRM. The comment period for the October 1, 1998 Notice closed on December 1, 1998 while the comment period for the NPRM closed on December 17, 1998. In our opinion, to consider late comments constitutes an arbitrary extension of the comment period for certain groups or individuals. Those comments pertaining to the October 1, 1998 Notice that were submitted in conjunction with the comments on the NPRM were late and were not considered.

In the October 1, 1998 Notice, we published, in their entirety, the statewide assessment, on-site review instrument, and stakeholder interview guide used in conducting the child and family service review. Overwhelmingly, the comments we received were very technical in nature. Commenters offered specific suggestions for rephrasing or adding questions, for quantifying responses, for changes in terminology, and for increasing the objectivity of the instruments. In response to the comments received, each instrument has undergone significant revision. We streamlined the statewide assessment so that it targets State performance in satisfying the relevant State plan requirements and reports on the statewide data indicators used for determining substantial conformity. The on-site review instrument and stakeholder interview guide have been revised to increase objectivity in drawing conclusions regarding the State's performance in achieving the outcomes and in implementing the systemic factors. Copies of the instruments will be distributed to all State agencies and posted on the ACF web site immediately following the effective date of this regulation.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs-Social programs.

45 CFR Part 1356

Adoption and foster care, Grant programs-social programs

45 CFR Part 1357

Child and family services, Child welfare, Grant programs-Social programs

(Catalog of Federal Domestic Assistance Program Numbers 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; and 93.645, Child Welfare Services—State Grants)

Approved: September 23, 1999.

Donna E. Shalala,

Secretary.

Dated: August 25, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble we are amending 45 CFR parts 1355, 1356, and 1357 to read as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

2. Section 1355.20 is amended by revising the definition of *Foster care* and by adding the following definitions in alphabetical order to read as follows:

§ 1355.20 Definitions.

(a) * * *

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

* * * * *

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to § 1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV–E eligibility.

* * * * *

Entity, as used in § 1355.38, means any organization or agency (*e.g.*, a private child placing agency) that is separate and independent of the State agency; performs title IV–E functions pursuant to a contract or subcontract with the State agency; and, receives title IV–E funds. A State court is not an "entity" for the purposes of § 1355.38 except if an administrative arm of the State court carries out title IV–E administrative functions pursuant to a contract with the State agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV–E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. "Daily supervision" for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or

judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and State review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in § 1355.34 of this part. A full review consists of two phases, the statewide assessment and a subsequent on-site review, as described in § 1355.33 of this part.

* * * * *

Legal guardianship means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93–247), as amended.

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State review of one or more federally-assisted child and family services program(s) in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the State and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the State plan requirements of titles IV-B and IV-E as listed in § 1355.34 of this part; and

(2) For the purpose of title IV-B and title IV-E State plan compliance issues that are outside the prescribed child and family services review format, *e.g.*, compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State plan compliance.

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the State filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

* * * * *

Statewide assessment means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining, in part, the State's substantial conformity with the State plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part. The statewide assessment refers to the completion of the federally-prescribed assessment instrument by members of a review team that meet the requirements of § 1355.33(a)(2) of this part.

3. New §§ 1355.31 through 1355.39 are added to read as follows:

§ 1355.31 Elements of the child and family services review system.

Scope. Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs administered by States under subparts 1 and 2 of title IV–B of the Act, and reviews of foster care and adoption assistance programs administered by States under title IV–E of the Act.

§ 1355.32 Timetable for the reviews.

(a) *Initial reviews.* Each State must complete an initial full review as described in § 1355.33 of this part during the four-year period after the final rule becomes effective.

(b) *Reviews following the initial review.*

(1) A State found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed statewide assessment to ACF three years after the

on-site review. The statewide assessment will be reviewed jointly by the State and the Administration for Children and Families to determine the State's continuing substantial conformity with the State plan requirements subject to review. No formal approval of this interim statewide assessment by ACF is required.

(2) A State program found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in § 1355.35 of this part; and

(ii) Begin a full review two years after approval of the program improvement plan.

(c) *Reinstatement of reviews based on information that a State is not in substantial conformity.*

(1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the State may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry and require the State to submit additional data whenever ACF receives information that the State may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF's satisfaction that the State is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under § 1355.32(b).

(4) ACF may proceed with a full or partial review if the State does not provide the additional information as requested, or the additional information confirms that the State may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with State plan requirements that are outside the scope of a child and family services review.* When ACF becomes aware of a title IV–B or title IV–E compliance issue that is outside the scope of the child and family services review process, we will:

(1) Conduct an inquiry and require the State to submit additional data.

(2) If the additional information and inquiry indicates to ACF's satisfaction that the State is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the State does not provide the additional information as requested, or the additional information confirms that the State may not be in compliance.

(4) If the partial review determines that the State is not in compliance with the applicable State plan requirement, the State must enter into a program improvement plan designed to bring the State into compliance. The terms, action steps and time-frames of the program improvement plan will be developed on a case-by-case basis by ACF and the State. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the State's title IV–B or IV–E allocation. If the State remains out of compliance, the State will be subject to a penalty related to the extent of the noncompliance.

(5) Review of AFCARS compliance will take place in accordance with 45 CFR 1355.40.

§ 1355.33 Procedures for the review.

(a) The full child and family services reviews will:

(1) Consist of a two-phase process that includes a statewide assessment and an on-site review; and

(2) Be conducted by a team of Federal and State reviewers that includes:

(i) Staff of the State child and family services agency, including the State and local offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the State, in collaboration with the ACF Regional Office, from those with whom the State was required to consult in developing its CFSP, as described and required in 45 CFR part 1357.15(l);

(iii) Federal staff of HHS; and

(iv) Other individuals, as deemed appropriate and agreed upon by the State and ACF.

(b) *Statewide assessment.* The first phase of the full review will be a statewide assessment conducted by the internal and external State members of the review team. The statewide assessment must:

(1) Address each systemic factor under review, including the statewide information system; case review system; quality assurance system; staff training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanency, and well-being of children and families served by the State agency using data from AFCARS, NCANDS, or, for the initial review, another source approved by ACF. The State must also analyze and explain its performance in meeting the national standards for the statewide data indicators;

(3) Assess the characteristics of the State agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the State's child and family services programs that require further examination through an on-site review;

(1) Include a listing of all the persons external to the State agency who participated in the preparation of the statewide assessment pursuant to §§ 1355.33(a)(2)(ii) and (iv); and

(2) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the statewide assessment to the State.

(c) *On-site review.* The second phase of the full review will be an on-site review.

(1) The on-site review will cover the State's programs under titles IV–B and IV–E of the Act, including in-home services and foster care. It will be jointly planned by the State and ACF, and guided by information in the completed statewide assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions of the State, as agreed upon by the ACF and the State; however, the State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the State's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions referenced in paragraph (c)(2) of this section.

(4) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Interviews with caseworkers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other

individuals or bodies assigned responsibility for representing the best interests of the child.

(5) The sample will range from 30–50 cases. Foster care cases must be drawn randomly from AFCARS, or, for the initial review, from another source approved by ACF and include children who entered foster care during the year under review. In-home cases must be drawn randomly from NCANDS or from another source approved by ACF. To ensure that all program areas are adequately represented, the sample size may be increased.

(6) The sample of 30–50 cases reviewed on-site will be selected from a randomly drawn oversample of no more than 150 cases. The oversample must be statistically significant at a 90 percent compliance rate (95 percent in subsequent reviews), with a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. The additional cases in the oversample not selected for the on-site review will form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the data indicators and the on-site reviews in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the statewide assessment and the findings of the on-site portion of the review.* Discrepancies between the statewide assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the State's option:

(1) The submission of additional information by the State; or

(2) ACF and the State will review additional cases using only those indicators in which the discrepancy occurred. ACF and the State will determine jointly the number of additional cases to be reviewed, not to exceed a total of 150 cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review.* A partial child and family services review, when required, will be planned and conducted jointly by ACF and the State agency based on the nature of the concern. A partial review does not substitute for the full reviews as required under § 1355.32(b).

(f) *Notification.* Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the statewide assessment and the findings of the on-site portion of the review, ACF will notify the State agency in writing of whether the State is, or is not, operating in substantial conformity.

§ 1355.34 Criteria for determining substantial conformity.

(a) *Criteria to be satisfied.* ACF will determine a State's substantial conformity with title IV–B and title IV–E State plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for statewide data indicators associated with specific outcomes for children and families;

(2) Its ability to meet criteria related to outcomes for children and families; and

(3) Its ability to meet criteria related to the State agency's capacity to deliver services leading to improved outcomes.

(b) *Criteria related to outcomes.*

(1) A State's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect; and,

(B) Children are safely maintained in their own homes whenever possible and appropriate;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children's needs;

(B) Children receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A State's level of achievement with regard to each outcome reflects the extent to which a State has:

(i) Met the national standard(s) for the statewide data indicator(s) associated with that outcome, if applicable; and,

(ii) Implemented the following CFSP requirements or assurances:

(A) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(B) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(C) The requirements in section 422(b)(9) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances by the State as required by section 422(b)(10)(C)(i) and (ii) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(11) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(12) of the Act regarding a State's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(G) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A State will be determined to be in substantial conformity if its performance on:

(i) Each statewide data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as "substantially achieved" in 95 percent of the cases examined during the on-site review (90 percent of the cases for a State's initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

(4) The Secretary will, using AFCARS and NCANDS, develop statewide data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary will add, amend, or suspend any such statewide data indicator(s) when appropriate. To the extent practical and feasible, the statewide data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105–89).

(5) The initial national standards for the statewide data indicators described in paragraph (b)(4) of this section will be based on the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS. The Secretary may adjust these national standards if appropriate. The initial national standard will be set using the following data sources:

(i) The 1997 and 1998 submissions to NCANDS (or the most recent and complete 2 years available), for those

statewide data indicators associated with the safety outcomes; and,

(ii) The 1998b, 1999c, and 2000a submissions to AFCARS (or the most recent and complete report periods available), for those statewide data indicators associated with the permanency outcomes.

(c) *Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Based on information from the statewide assessment and onsite review, the State must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the State plan requirements associated with the systemic factor must be in place, and no more than one of the state plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section, is rated on the basis of only one State plan requirement. To be considered in substantial conformity, the State plan requirement associated with statewide information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide information system:* The State is operating a statewide information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(10)(B)(i) of the Act);

(2) *Case review system:* The State has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parent' home where such placement is in the child's best interests; for visits with a child placed out of State at least every 12 months by a caseworker of the agency or of the agency in the State where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(A) of the Act);

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the State has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the State agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(10(B)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in any review or hearing held with respect to the child (sections 422(b)(10)(B)(ii) and 475(5)(G) of the Act).

(3) *Quality assurance system:* The State has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State where services included in the CFSP are provided;

(ii) Is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) Is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) Provides reports to agency administrators on the quality of services evaluated and needs for improvement; and

(v) Evaluates measures implemented to address identified problems.

(4) *Staff training:* The State is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the State's CFSP;

(ii) Addresses services provided under both subparts of title IV–B and the training plan under title IV–E of the Act;

(iii) Provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the State's CFSP; and,

(v) Provides short-term training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under title IV–E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the Statewide assessment and on-site review determines that the State has in place an array of services (45 CFR 1357.15(n) and section 422(b)(10)(B)(iii) and (iv) of the Act) that includes, at a minimum:

(i) Services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) Services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) Services designed to enable children at risk of foster care placement to remain with their families when their safety and well-being can be reasonably assured;

(iv) Services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) Services that are accessible to families and children in all political subdivisions covered in the State's CFSP; and,

(vi) Services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:*

(i) The State, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State and county agencies responsible for implementing

the CFSP and other major stakeholders in the services delivery system including, at a minimum, tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(4));

(ii) The agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.16(a));

(iii) There is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) There is evidence that the State's services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(n)).

(7) *Foster and adoptive parent licensing, recruitment and retention:*

(i) The State has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State to every licensed or approved foster family home or child care institution receiving funds under title IV–E or IV–B of the Act (section 471(a)(10) of the Act);

(iii) The State complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed (section 422(b)(9) of the Act); and,

(v) The State has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(12) of the Act).

(d) *Availability of review instruments.* ACF will make available to the States copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

§ 1355.35 Program improvement plans.

(a) *Mandatory program improvement plan.*

(1) States found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(i) Be developed jointly by State and Federal staff in consultation with the review team;

(ii) Identify the areas in which the State's program is not in substantial conformity;

(iii)Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(iv) Set forth the amount of progress the statewide data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the State's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(vi) Identify how the action steps in the plan build on and make progress over prior program improvement plans;

(vii) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(2) In the event that ACF and the State cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a written rationale for assigning such content or degree of improvement.

(b) *Voluntary program improvement plan.* States found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The State and Regional Office agree that there are areas of the State's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the State's failure to achieve the goals described in the voluntary program improvement plan.

(c) *Approval of program improvement plans.*

(1) A State determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the State receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the State will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the State does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of § 1355.36 of this part will begin.

(d) *Duration of program improvement plans.*

(1) ACF retains the authority to establish time frames for the program improvement plan consistent with the seriousness and complexity of the remedies required for any areas determined not in substantial conformity, not to exceed two years.

(2) Particularly egregious areas of nonconformity impacting child safety must receive priority in both the content and time frames of the program improvement plans and must be addressed in less than two years.

(3) The Secretary may approve extensions of deadlines in a program improvement plan not to exceed one year. The circumstances under which requests for extensions will be approved are expected to be rare. The State must provide compelling documentation of the need for such an extension. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) States must provide quarterly status reports (unless ACF and the State agree upon less frequent reports) to ACF. Such reports must inform ACF of progress in implementing the measures of the plan.

(e) *Evaluating program improvement plans.* Program improvement plans will be evaluated jointly by the State agency and ACF, in collaboration with other members of the review team, as

described in the State's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the State is operating in subsequent substantial conformity or has reached the negotiated standard with respect to statewide data indicators that fail to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the State and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the State's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the State and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The State and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the State's program determined not to be in substantial conformity and/or achieve a standard for the statewide data indicators that is acceptable to ACF;

(ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved;

(iii) The terms of the renegotiated plan are approved by ACF; and

(iv) The Secretary approves any extensions beyond the two-year limit.

(f) *Integration of program improvement plans with CFSP planning.* The elements of the program improvement plan must be incorporated into the goals and objectives of the State's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.

(a) *For the purposes of this section:*

(1) The term "title IV–B funds" refers to the State's combined allocation of title IV–B subpart 1 and subpart 2 funds; and

(2) The term "title IV–E funds" refers to the State's reimbursement for administrative costs for the foster care program under title IV–E.

(b) *Determination of the amount of Federal funds to be withheld.* ACF will determine the amount of the State title IV–B and IV–E funds to be withheld due to a finding that the State is not operating in substantial conformity, as follows:

(1) A State will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV–B and IV–E funds will not be withheld from a State if the determination of nonconformity was caused by the State's correct use of formal written statements of Federal law or policy provided the State by DHHS.

(3) A portion of the State's title IV–B and IV–E funds will be withheld by ACF for the year under review and for each succeeding year until the State either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV–B and title IV–E funds subject to withholding due to a determination that a State is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The State's allotment of title IV–B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the State's Federal claims for title IV–E foster care administrative costs for each of the years to which withholding applies;

(5) The amount of funds to be withheld from the pool in paragraph (b)(4) of this section will be computed as follows:

(i) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in § 1355.34(b)(1) of this part that is determined not to be substantially achieved; and

(ii) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in § 1355.34(c) of this part that is determined not to be in substantial conformity.

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the State is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV–B and title IV–E funds to be withheld due to the State's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) States determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to two percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the State's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) States determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to three percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the State's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent

of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) *Suspension of withholding.*

(1) For States determined not to be operating in substantial conformity, ACF will suspend the withholding of the State title IV–B and title IV–E funds during the time that a program improvement plan is in effect, provided that:

(i) The program improvement plan conforms to the provisions of § 1355.35 of this part; and

(ii) The State is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) *Terminating the withholding of funds.* For States determined not to be in substantial conformity, ACF will terminate the withholding of the State's title IV–B and title IV–E funds related to the nonconformity upon determination by the State and ACF that the State has achieved substantial conformity or has successfully completed a program improvement plan. ACF will rescind the withholding of the portion of title IV–B and title IV–E funds related to specific goals or action steps as of the date at the end of the quarter in which they were determined to have been achieved.

(e) *Withholding of funds.*

(1) States determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV–B and title IV–E funds which are to be withheld.

(2) Title IV–B and title IV–E funds will be withheld based on the following:

(i) If the State fails to submit status reports in accordance with § 1355.35(d)(4), or if such reports indicate that the State is not making satisfactory progress toward achieving goals or actions steps, funds will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

(ii) Funds related to goals and action steps that have not been achieved by the specified completion date will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the completion date of the affected goal or action step; and

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the State to be in substantial conformity or the State successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the State is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

(4) A State agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV–B and title IV–E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The State agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.13.

§ 1355.37 Opportunity for Public Inspection of Review Reports and Materials.

The State agency must make available for public review and inspection all statewide assessments (§ 1355.33(b)), report of findings (§ 1355.33(e)), and program improvement plans (§ 1355.35(a)) developed as a result of a full or partial child and family services review.

§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) *Determination that a violation has occurred in the absence of a court finding.*

(1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a State or an entity in the State:

(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;

(ii) Has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or,

(iii) With respect to a State, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the State or entity with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this section.

(5) Compliance with the Indian Child Welfare Act of 1978 (Pub. L. 95–608) does not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.*

(1) A State found to be in violation of section 471(a)(18) with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A State determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The State may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the State must revise and resubmit the plan for approval until it has an approved plan.

(4) A State found to be in violation of section 471(a)(18) by a court must notify ACF within 30 days from the date of entry of the final judgement once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a State's statute, regulation, policy, procedure, or practice.*

(1) A State found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written

notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the State will have to complete the corrective action and come into compliance. If the State fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the State must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the State does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) Identify the issues to be addressed;

(2) Set forth the steps for taking corrective action;

(3) Identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) Specify the completion date. This date will be no later than 6 months from the date ACF approves the corrective action plan.

(e) *Evaluation of corrective action plans.* ACF will evaluate corrective action plans and notify the State (in writing) of its success or failure to complete the plan within 30 calendar days. If the State has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the State's title IV–E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term "title IV–E funds" refers to the amount of Federal funds advanced or paid to the State for allowable costs incurred by a State for foster care maintenance payments, adoption assistance payments, administrative, and training costs under title IV–E and the State's allotment for the Independent Living program.

(g) *Reduction of title IV–E funds.*

(1) Title IV–E funds shall be reduced in specified amounts in accordance with paragraph (h) of this section under the following circumstances:

(i) A determination that a State is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or;

(ii) After a State's failure to implement and complete a corrective action plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a State, in writing, that it has committed a section 471(a)(18) violation with respect to a person, the State's title IV–E funds will be reduced for the fiscal quarter in which the State received such written notification and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is earlier.

(3) For States that fail to complete a corrective action plan within 6 months, title IV–E funds will be reduced by ACF for the fiscal quarter in which the State received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the State completes the corrective action plan and comes into compliance, whichever is earlier.

(4) If, as a result of a court finding, a State is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the State is notified (in writing) of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is sooner.

(5) The maximum number of quarters that a State will have its title IV–E funds reduced due to a finding of a State's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgement is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV–E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) of the Act.

(1) State agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the State is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the State comes into compliance with section 471(a)(18). The reduction in title IV–E funds will be computed as follows:

(i) 2 percent of the State's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the State's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the State's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the State agency) which violates section 471(a)(18) of the Act during a fiscal quarter with respect to any person must remit to the Secretary all title IV–E funds paid to it by the State during the quarter in which the entity is notified of its violation.

(3) No fiscal year payment to a State will be reduced by more than 5 percent of its title IV–E funds, as defined in paragraph (f) of this section, where the State has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The State agency or entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.13.

§ 1355.39 Administrative and judicial review.

States determined not to be in substantial conformity with titles IV–B and IV–E State plan requirements, or a State or entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in § 1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in § 1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the State or entity receives notice of the decision by the Board. Appeals of adverse

Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a State or entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

4. Amend § 1355.40 by revising the second sentence in paragraph (a)(2) to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.*

(1) * * *

(2) * * * This includes American Indian children covered under the assurances in section 422(b)(10) of the Act on the same basis as any other child. * * *

* * * * *

Appendix A to Part 1355—Foster Care Data Elements

5. Appendix A to part 1355 is amended as follows:

a. Amend Section I by revising data elements II.C.1. and heading of 2., IX.C.1., headings of 2. and 4., and IX.C.3.

b. Amend Section II by revising the first paragraph on "Reporting population" and the instruction paragraphs II.C. and IX.C., and

c. Remove paragraph IX.D. to read as follows:

Section I—Foster Care Data Elements

* * * * *

II. Child's Demographic Information

* * * * *

C. Race/Ethnicity
1. Race
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity_____

* * * * *

IX. Foster Family Home-Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)

* * * * *

C. Race/Ethnicity
1. Race of 1st Foster Caretaker
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of 1st Foster Caretaker_____

* * * * *

3. Race of 2nd Foster Caretaker (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of 2nd Foster Caretaker (If applicable)_____

* * * * *

Section II—Definitions of and Instructions for Foster Care Data Elements

Reporting population. The population to be included in this reporting system includes all children in foster care under the responsibility of the State agency administering or supervising the administration of the title IV-B Child and Family Services State plan and the title IV-E State plan; that is, all children who are required to be provided the assurances of section 422(b)(10) of the Social Security Act.

* * * * *

II. Child's Demographic Information

* * * * *

C. Race/Ethnicity**

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a through e) that apply with a "1." For those that do not apply, indicate a "0." Indicate "f. Unable to Determine" with a "1" if it applies and a "0" if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is "unable to determine" because the child is very young or is severely disabled and no person is available to identify the child's race. "Unable to determine" is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer "yes" if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. "Unable to Determine" is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic or Latino. "Unable to determine" is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

* * * * *

IX. Family Foster Home-Parent(s) Data

* * * * *

C. Race—Indicate the race for each of the foster parent(s). See instructions and definitions for the race categories under data element II.C.1. Use "f. Unable to Determine" only when a parent is unwilling to identify his or her race. Hispanic or Latino Ethnicity—Indicate the ethnicity for each of the foster parent(s). See instructions and definitions under data element II.C.2. Use "f. Unable to Determine" only when a parent is unwilling to identify his or her ethnicity.

* * * * *

Appendix B to Part 1355—Adoption Data Elements

6. Appendix B to part 1355 is amended as follows:

a. Amend Section I by revising data elements II.C.1., headings of 2. and 4., II.C.3., II.C. and VI.C. b. Amend Section II by revising the instruction paragraphs II.C. and VI.C. to read as follows:

Section I—Adoption Data Elements

* * * * *

II. Child's Demographic Information

* * * * *

C. Race/Ethnicity
1. Race
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity_____

* * * * *

VI. Adoptive Parents

* * * * *

C. Race/Ethnicity
1. Adoptive Mother's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of Mother (If Applicable)_____

* * * * *

3. Adoptive Father's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander

e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of Father (If Applicable)_____

* * * * *

Section II—Definitions of Instructions for Adoption Data Elements

* * * * *

II. Child's Demographic Information

* * * * *

C. Race/Ethnicity

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a–e) that apply with a "1." For those that do not apply, indicate a "0." Indicate "f. Unable to Determine" with a 1" if it applies and a "0" if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is "unable to determine" because the child is very young or is severely disabled and no person is available to identify the child's race. "Unable to determine" is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer "yes" if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. "Unable to Determine" is used because the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic or Latino. "Unable to determine" is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

* * * * *

VI. Adoptive Parents

* * * * *

C. Race/Ethnicity—Indicate the race/ethnicity for each of the adoptive parent(s). See instructions and definitions for the race/ethnicity categories under data element II.C. Use "f. Unable to Determine" only when a parent is unwilling to identify his or her race or ethnicity.

* * * * *

Appendix D to Part 1355—Foster Care and Adoption Record Layouts

7. Appendix D to part 1355 is amended as follows:

a. Amend Section A by revising 1.b.(2) and (3), revising the Element No., Data element description, and No. of numeric characters columns of the table under c. for certain elements, and revising the number of "Total characters";

b. Amend Section A by revising 2.b.(3) and the table under c. including the No. of characters for Element No. 02 and the number for "Record Length";

c. Amend Section B by revising 1.b.(2) and (3), revising the Element No., Data element description, and No. of numeric characters columns of the table under c. for certain elements, and revising the number of "Total characters"; and

d. Amend Section B by revising 2.b.(3) and the table under c. including the No. of characters for Element No. 02 and the number for "Record Length", to read as follows:

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. * * *

b. * * *

(2) Enter date values in year, month and day order (YYYYMMDD), *e.g.*, 19991030 for October 30, 1999, or year and month order (YYYYMM), *e.g.*, 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 8, 11–15, 26–40, 52, 54 and 59–65, which are "select all that apply" elements, enter a "1" for each element that applies, enter a zero for non-applicable elements.

* * * * *

c. foster care Semi-Annual Detailed Data elements Record layout follows:

Element No.	Appendix A data element	Data element description	No. of numeric characters
		* * * * * * *	
02	I.B.	Report period ending date	6
		* * * * * * *	
05	I.E.	Date of most recent periodic review	8
06	II.A.	Child's date of birth	8
		* * * * * * *	
08	II.C.1.	Race	
08a		American Indian or Alaska native	1
08b		Asian	1
08c		Black or African American	1
08d		Native Hawaiian or Other Pacific Islander	1
08e		White	1
08f		Unable to Determine	1
09	II.C.2.	Hispanic or Latino Ethnicity	1
		* * * * * * *	
18	III.A.1.	Date of first removal from home	8

Element No.	Appendix A data element	Data element description	No. of numeric characters
		* * * * * * *	
20	III.A.3.	Date child was discharged from last foster care episode	8
21	III.A.4.	Date of latest removal from home	8
22	III.A.5.	Removal transaction date	8
23	III.B.1.	Date of placement in current foster care setting	8
		* * * * * * *	
45	VII.B.1.	Year of birth (1st principal caretaker)	4
46	VII.B.2.	Year of birth (2nd principal caretaker)	4
47	VIII.A.	Date of mother's parental rights termination	8
48	VIII.B.	Date of legal or putative father's parental rights	8
		* * * * * * *	
50	IX.B.1.	Year of birth (1st foster caretaker)	4
51	IX.B.2.	Year of birth (2nd foster caretaker)	4
52	IX.C.1.	Race of 1st foster caretaker	
52a		American Indian or Alaska Native	1
52b		Asian	1
52c		Black or African American	1
52d		Native Hawaiian or Other Pacific Islander	1
52e		White	1
52f		Unable to Determine	1
53	IX.C.2.	Hispanic or Latino ethnicity of 1st foster caretaker	1
54	IX.C.3.	Race of 2nd foster caretaker	
54a		American Indian or Alaska Native	1
54b		Asian	1
54c		Black or African American	1
54d		Native Hawaiian or Other pacific Islander	1
54e		White	1
54f		Unable to Determine	1
55	IX.C.4.	Hispanic or Latino ethnicity of 2nd foster caretaker	1
56	X.A.1.	Date of discharge from foster care	8
57	X.A.2.	Foster care discharge transaction date	8
		* * * * * * *	
		Total Characters	197

2. Foster Care Semi-Annual Summary Data Elements Record

a. * * *

b. * * *

(3) Enter date values in year, month order (YYYYMM), *e.g.*,199912 for December 1999.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	No. of characters
	* * * * *	
02	Report period ending date (YYYYMM).	6
	* * * * *	
	Record Length	174

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

a. * * *

b. * * *

(2) Enter date values in year, month and day order (YYYYMMDD), *e.g.*, 19991030 for October 30, 1999, or year and month order (YYYYMM), *e.g.*, 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 7, 11–15, 25, 27 and 29–32 which are "select all that apply" elements, enter a "1" for each element that applies; enter a zero for non-applicable elements.

c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	No. of numeric characters
		* * * * * * *	
02	I.B.	Report period ending date	6
		* * * * * * *	
05	II.A.	Date of birth	6
		* * * * * * *	
07	II.C.1	Race.	
07a		American Indian or Alaska Native	1
07b		Asian	1
07c		Black or African American	1
07d		Native Hawaiian or Other Pacific Islander	1

Element No.	Appendix B data element	Data element description	No. of numeric characters
07e		White	1
07f		Unable to Determine	1
08	II.C.2.	Hispanic or Latino ethnicity	1
*	* * * * * * *		
16	IV.A.1	Mother's year of birth	4
17	IV.A.2.	Father's (Putative or legal) year of birth	4
*	* * * * * * *		
19	V.A.1.	Date of mother's termination of parental rights	8
20	V.A.2.	Date of father's termination of parental rights	8
21	V.B.	Date adoption legalized	8
*	* * * * * * *		
23	VI.B.1.	Mother's year of birth (if applicable)	4
24	VI.B.2.	Father's year of birth (if applicable)	4
25	VI.C.1.	Adoptive mother's race	
25a		American Indian or Alaska Native	1
25b		Asian	1
25c		Black or African American	1
25d		Native Hawaiian or Other Pacific Islander	1
25e		White	1
25f		Unable to Determine	1
26	VI.C.2.	Hispanic or Latino Ethnicity	1
27	VI.C.3.	Adoptive father's race	
27a		American Indian or Alaska Native	1
27b		Asian	1
27c		Black or African American	1
27d		Native Hawaiian or Other Pacific Islander	1
27e		White	1
27f		Unable to Determine	1
28	VI.C.4.	Hispanic or Latino Ethnicity	1
		Total Characters	111

2. Adoption Semi-Annual Summary Data Elements Record

a. * * *

b. * * *

(3) Enter data values in year, month order (YYYYMM), *e.g.*, 199912 for December 1999.

c. Adoption Semi-Annual Summary Data Element Record Layout follows:

Element No.	Summary data file	No. of characters
*	* * * * *	
02	Report period ending date (YYYYMM).	6
*	* * * * *	
	Record Length	174

Appendix E to Part 1355—Data Standards

8. Appendix E to part 1355 is amended as follows:

a. Amend Section A.2. by adding paragraph a.(18);

b. Revise Section A.3. paragraph a.(1), and the element description for Element No. 09, 53, and 55 of the chart under b.(2);

c. Amend Section B.2. by revising paragraph a.(8) and adding paragraph a.(9); and

d. In Section B.3. revise paragraph a.(1), the element description for Element No. 08, 26 and 28 of the chart under b.(2), to read as follows:

A. Foster Care

* * * * *

2. Detailed Data File Submission Standards

a. * * *

(18) In Elements 8, 52, and 54, race categories ("a" through "e") and "f. Unable to Determine" cannot be coded "0," for it does not apply. If any of the race categories apply and are coded as "1" then "f. Unable to Determine" cannot also apply.

* * * * *

3. Missing Data Standards

* * * * *

a. * * *

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)–(18) above, and

* * * * *

Element No.	Element description
*	* * * * *
09	Child's Hispanic or Latino Ethnicity
*	* * * * *
53	Hispanic or Latino Ethnicity of 1st foster caretaker
*	* * * * *
55	Hispanic or Latino Ethnicity of 2nd foster caretaker

* * * * *

B. Adoption

* * * * *

2. Detailed Data Elements File Submission Standards

a. * * *

(8) If the "Family Structure" (Element 22) is option 3, Single Female, then the Mother's Year of Birth (Element 23), the "Adoptive Mother's Race" (Element 25) and "Hispanic or Latino Ethnicity" (Element 26) must be completed. Similarly, if the "Family Structure" (Element 22) is option 4, Single Male, then the Father's Year of Birth (Element 24), the Adoptive Father's Race" (Element 27) and "Hispanic or Latino Ethnicity" (Element 28) must be completed. If the "Family Structure" (Element 22) is option 1 or 2, then both Mother's and Father's "Year of Birth," "Race" and "Hispanic or Latino Ethnicity" must be completed.

(9) In Elements 7, 25, and 27, race categories ("a" through "e") and "f. Unable to Determine" cannot be coded "0," for it does not apply. If any of the race categories apply and are coded as "1" then "f. Unable to Determine" cannot also apply.

* * * * *

3. Missing Data Standards

* * * * *

a. * * *

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(9) above, and

* * * * *

Element No.	Element description
* * * * *	
06	Is the child of Hispanic or Latino ethnicity?
* * * * *	
26	Hispanic or Latino ethnicity of mother
* * * * *	
28	Hispanic or Latino ethnicity of father

* * * * *

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

9. The authority citation for Part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, and 42 U.S.C. 1302.

10. Section 1356.20 is amended by revising the first two sentences of paragraph (e)(4) to read as follows:

§ 1356.20 State plan document and submission requirements.

* * * * *

(e) * * *

(4) *Action.* Each Regional Administrator, ACF, has the authority to approve State plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. * * *

* * * * *

11. Section 1356.21 is revised to read as follows:

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV–E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

(b) *Reasonable efforts.* The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.*

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV–E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.*

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under title IV–E from the end of the twelfth month following the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, or the end of the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that

continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV–E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV–E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0980–0140)

(h) *Application of the permanency hearing requirements.*

(1) To meet the requirements of the permanency hearing, the State must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child entered foster care as defined at section 475(5)(F) of the Act;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the State

does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the State, the child is being cared for by a relative;

(ii) The State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

(iii) The State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of *foster care maintenance payments.*

(k) *Removal from the home of a specified relative.*

(1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation with the force of law.

(o) *Notice and opportunity to be heard.* The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not include the right to standing as a party to the case.

12. Section 1356.30 is redesignated as § 1356.22 and revised to read as follows:

§ 1356.22 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(10) and 475(5) of the Act;

(3) 45 CFR 1356.21 (f), (g), (h), and (i); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The State agency must establish and maintain a uniform procedure or system, consistent with State law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

13. New § 1356.30 is added to read as follows:

§ 1356.30 Safety requirements for foster care and adoptive home providers.

(a) Unless an election provided for in paragraph (d) of this section is made, the State must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home

operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

(1) Child abuse or neglect;

(2) Spousal abuse;

(3) A crime against a child or children (including child pornography); or,

(4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

(1) Physical assault;

(2) Battery; or,

(3) A drug-related offense.

(d)(1) The State may elect not to conduct or require criminal records checks on prospective foster or adoptive parents by:

(i) Notifying the Secretary in a letter from the Governor; or

(ii) Enacting State legislation.

(2) Such an election also removes the State's obligation to comport with paragraphs (b) and (c) of this section.

(e) In all cases where the State opts out of the criminal records check requirement, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

(f) In order for a child care institution to be eligible for title IV–E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

14. Section 1356.50 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1356.50 Withholding of funds for noncompliance with the approved title IV–E State plan.

(a) To be in compliance with the title IV–E State plan requirements, a State must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV–E State plan requirements, a State that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

* * * * *

15. Section 1356.60 is amended by revising paragraph (b)(1) and removing paragraph (c)(4) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(b) *Federal matching funds for State and local training for foster care and adoption assistance under title IV–E.*

(1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of:

(i) Training personnel employed or preparing for employment by the State or local agency administering the plan, and;

(ii) Providing short-term training (including travel and per diem expenses) to current or prospective foster or adoptive parents and the members of the state licensed or approved child care institutions providing care to foster and adopted children receiving title IV–E assistance.

* * * * *

§§ 1356.65 and 1356.70 [Removed]

16. Sections 1356.65 and 1356.70 are removed.

17. New § 1356.71 is added to read as follows:

§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV–E programs.

(a) *Purpose, scope and overview of the process.*

(1) This section sets forth requirements governing Federal reviews of State compliance with the title IV–E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to State agencies that receive Federal payments for foster care under title IV–E of the Act.

(3) The review process begins with a primary review of foster care cases for the title IV–E eligibility requirements. States determined to be in substantial compliance based on the primary review will not be subject to another review for three years. States that are determined not to be in compliance will develop and implement a program improvement plan designed to correct the areas of non-compliance, and a secondary review will be conducted after completion of the program improvement plan.

(b) *Composition of review team and preliminary activities preceding an on-site review.*

(1) The review team must be composed of representatives of the State agency, and ACF's Regional and Central Offices.

(2) The State must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) *Sampling guidance and conduct of review.*

(1) The list of sampling units in the target population (*i.e.*, the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the State agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a State's most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by ACF in conjunction with the State agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV–E foster care program will be selected for the primary review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is found to be in error.

(4) At the completion of the primary review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the State will be considered in substantial compliance. For primary reviews held subsequent to the initial primary reviews, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight or fewer ineligible cases)

to less than 10 percent (four or fewer ineligible cases)). A State agency which meets this standard is considered to be in "substantial compliance" (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(5) A State which has been determined to be in "noncompliance" (*i.e.*, not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. For the secondary review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is found to be in error.

(6) At the completion of the secondary review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(d) *Requirements subject to review.* States will be reviewed against the requirements of title IV–E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)–(4) of the Act) to include:

(i) Judicial determinations regarding "reasonable efforts" and "contrary to the welfare" in accordance with § 1356.21(b) and (c), respectively;

(ii) Voluntary placement agreements in accordance with § 1356.22;

(iii) Responsibility for placement and care vested with the State agency;

(iv) Placement in a licensed foster family home or child care institution; and,

(v) eligibility for AFDC under such State plan as it was in effect on July 16, 1996.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c) of the Act and § 1356.30.

(e) *Review instrument.* A title IV–E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) *Eligibility determination—child.* The case record of the child must contain sufficient documentation to verify a child's eligibility in accordance with paragraph (d)(1) of this section, in order to substantiate payments made on the child's behalf.

(g) *Eligibility determination—provider.*

(1) For each case being reviewed, the State agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

(i) Public child care institutions with 25 children or less in residence;

(ii) Private child care institutions;

(iii) Group homes; and

(iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the State has complied with the safety requirements for foster and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the State agency may provide supplemental information from other sources (*e.g.*, a computerized database).

(h) *Standards of compliance.*

(1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

(2) Substantial compliance and noncompliance are defined as follows:

(i) *Substantial compliance*—For the primary review (of the sample of 80 cases), no more than eight of the title IV–E cases reviewed may be determined to be ineligible. (This critical number of allowable "errors," *i.e.*, ineligible cases, is reduced to four errors or less in primary reviews held subsequent to the initial primary review). For the secondary review (if required), *substantial compliance* means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) *Noncompliance*—means not in substantial compliance. For the primary review (of the sample of 80 cases), nine or more of the title IV–E cases reviewed must be determined to be ineligible. (This critical number of allowable "errors," *i.e.*, ineligible cases, is reduced to five or more in primary reviews subsequent to the initial primary review). For the secondary review (if required), *noncompliance* means both the case ineligibility and dollar error rates exceed 10 percent.

(3) ACF will notify the State in writing within 30 calendar days after the completion of the review of whether the State is, or is not, operating in substantial compliance.

(4) States which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) *Program improvement plans.*

(1) States which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by State and Federal staff;

(ii) Identify the areas in which the State's program is not in substantial compliance;

(iii) Not extend beyond one year. A State will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State legislative action is required. In such instances, an extension may be granted with the State and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first legislative session after the date of the program improvement plan; and

(iv) Include:

(A) Specific goals;

(B) The action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) States determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the State receives written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a State agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the State agency, the State's

progress in completing the prescribed action steps in the program improvement plan.

(4) If a State agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) States which are in found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been ineligible.

(2) States which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the State's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent the State is in noncompliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period (*i.e.*, all title IV-E funds expended for a case during the quarter(s) that case is ineligible). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The State agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.13.

(4) States may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR Part 16.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

18. The authority citation for part 1357 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

19. Section 1357.40 is amended by revising paragraph (d)(6) to read as follows:

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV–B, subpart 1, child welfare services).

* * * * *

(d)* * *

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV–B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the act and revised as appropriate.

[FR Doc.00–1122 Filed 1–24–00; 8:45 am]

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VOL
65
ISS
16
JA
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Federal Register

Vol. 65, No. 16

Tuesday, January 25, 2000

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200	3
201–344	4
345–688	5
689–1050	6
1051–1296	7
1297–1528	10
1529–1754	11
1755–2016	12
2017–2280	13
2281–2520	14
2521–2834	18
2835–3118	19
3119–3374	20
3375–3582	21
3583–3780	24
3781–4094	25

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

1660 (See Proc. 7266)	2831
1704 (See Proc. 7266)	2831
1948 (See Proc. 7266)	2831
2050 (See Proc. 7266)	2831
2528 (See Proc. 7266)	2831
7263	2817
7264	2821
7265	2825
7266	2831
7267	2835
7268	2837
7269	3779

Executive Orders:

April 17, 1926 (Revoked in part by PLO 7428	3733
5593 (Revoked in part by PLO 7428	3733
12543 (See Notice of December 29, 1999)	199
12544 (See Notice of December 29, 1999)	199
12947 (See Notice of January 19, 2000)	3581
13099 (See Notice of January 19, 2000)	3581

Administrative Orders:

Presidential Determinations:

No. 2000–9 of December 23, 1999	689

Notices:

December 29, 1999	199
January 19, 2000	3581

Memorandums:

January 5, 2000	2279, 3119

5 CFR

831	2281, 2521
842	2281, 2521

7 CFR

6	1297
201	1704
246	3375
371	1298
400	3781
457	3782
932	2839
959	2526
966	2281
982	2841
984	1755
997	1302
998	1302
999	1302
1220	1, 2844

Proposed Rules:

54	3155
253	2358
800	75
868	78
930	672
979	1347
993	2908
1280	1825
1301	1825
1304	1825
1305	1825
1306	1825
1307	1825
1308	1825

9 CFR

93	345
94	1304, 1529
96	1304
303	201
304	2283
312	2283
327	2283
350	2283
381	201, 2283, 2284
424	2284, 3121

Proposed Rules:

54	1074
79	1074
130	391

10 CFR

431	2227

Proposed Rules:

Ch. I	3615
2	3394
40	3394
50	1829, 3394
72	3397
430	2077
490	1831
960	2361
963	2361

11 CFR

Proposed Rules:

100	1074
102	1074
103	1074
104	1074
106	1074
107	1074
109	1074
110	1074
114	1074
116	1074

12 CFR

225	3785

269a....2529
935....202
960....203

Proposed Rules:
5....3157
650....1676
900....324
910....324
917....81
941....324

13 CFR
305....2017
308....2530
314....2530
400....1757
500....1758

Proposed Rules:
120....1349

14 CFR
21....3540
23....1758
27....3540
29....3540
39....1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540, 1761, 1762, 1763, 1765, 1767, 1769, 1771, 2017, 2019, 2285, 2287, 2289, 2844, 2861, 2862, 2864, 3379, 3583, 3794, 3796, 3798, 3799, 3802
61....2022
67....2022
71....348, 349, 699, 700, 1308, 1309, 1774, 2537, 2538, 2539, 3381, 3382
91....3540
95....2291
97....350, 2023, 2025
121....2295
125....2295
141....2022
142....2022
382....352
1204....2865

Proposed Rules:
39....250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353, 1831, 1833, 1836, 1838, 1840, 2362, 2555, 3165, 3617, 3619, 3621
71....402
91....2077
108....560
109....560
111....560
121....2079
129....560, 2079
191....560

15 CFR
734....2492
740....2493
742....2492
770....2492
772....2492
774....2492
902....30

Proposed Rules:
280....1572
303....731

16 CFR
256....2867
1615....1435
1700....93

Proposed Rules:
250....2912
310....2912

17 CFR
232....3123

Proposed Rules:
1....3623
Ch. II....3399

18 CFR
35....810

Proposed Rules:
125....1484
225....1484
356....1484

19 CFR
4....2868
162....3803
171....3803
191....3803

20 CFR

Proposed Rules:
604....2080

21 CFR
101....1000
173....1776
177....3384
201....7
314....1776
341....7
369....7
801....3584
862....2296
864....2296
866....2296
868....2296
870....2296
872....2296
874....2296
876....2296
878....2296
880....2296
882....2296
884....2296
886....2296
888....2296
890....2296
892....2296
1308....3124

Proposed Rules:
216....256
314....3623
801....3627
870....2364
890....2364

22 CFR
514....352

23 CFR
655....9

24 CFR
35....3386
902....1712
968....3386
1000....3386

25 CFR
1....2026
301....2030
602....2030

Proposed Rules:
1....2081, 2084

26 CFR
1....701, 1236, 1310, 2026, 2323, 3586, 3589, 3813, 3814, 3817, 3821, 3844
7....3589
49....1056
301....215, 263, 1059, 2030, 3844
602....1056, 1236, 1310, 2030, 2323, 3586, 3589, 3821, 3844,

Proposed Rules:
1....258, 1572, 2081, 2084, 3401, 3629, 3903
40....1076

27 CFR
270....1676

29 CFR
2550....614
4044....2329

30 CFR
202....1542
203....2874
206....1542
250....217, 2874, 3126
251....2874, 3856
253....2874
254....2874, 3856
256....2874
282....3856
904....2331
914....1059
946....1063

Proposed Rules:
206....1580, 2557, 3167
944....2364

31 CFR
1....2333
317....2034
375....3113

32 CFR

Proposed Rules:
199....2085
323....3167
326....2912
813....419

33 CFR
110....2876
117....353, 710, 1543, 1543, 2035, 2036, 2038, 2539, 2541
154....710
155....710
165....1065

Proposed Rules:
100....2095
110....1581, 2095
117....1077
157....2812
165....1079, 2095

34 CFR
611....1780

Proposed Rules:
Ch. VI....1582

36 CFR

Proposed Rules:
5....2920
13....2920

37 CFR
4....3127

Proposed Rules:
201....3404

38 CFR
Ch. 1....1544
3....3388
17....762
51....762
58....762

39 CFR
111....1318, 3609
265....3857

Proposed Rules:
111....264
206....403

40 CFR
9....1950
49....1322
52....14, 16, 1068, 1545, 1787, 2039, 2042, 2046, 2048, 2052, 2334, 2674, 2877, 2880, 2883, 3130
60....1323, 2336
63....3276
70....1787, 3130
81....2883
82....716
97....2674
136....3007
141....1950
142....1950
147....2899
180....1790, 1796, 1802, 1809, 3860
247....2889
257....1842
258....1842
261....2337
271....2897
300....19, 1070, 2903, 2905
445....3007
712....1548
716....1554
721....354

Proposed Rules:
52....104, 421, 732, 1080, 1583, 1841, 2367, 2557, 2560, 2920, 2921, 2924, 3168, 3630
63....3169, 3642, 3907
70....1841, 3168
81....2924, 3630
180....425
257....1814
258....1814
260....3188
271....2925
300....1081, 2925, 2926
503....1676

41 CFR
Ch. 301....3392
301-10....1268
301-11....1326
301-51....2541, 3054
301-52....3054

301-54.....3054
301-70.....3054
301-71.....3054
301-74.....1326
301-76.....3054
Proposed Rules:
101-6.....2504
102-3.....2504

42 CFR

121.....1435
412.....1817, 3136
413.....1817
483.....1817
485.....1817
Proposed Rules:
405.....1081

44 CFR

64.....1554, 1555
Proposed Rules:
67.....1435

45 CFR

1355.....4020
1356.....4020
1357.....4020
Proposed Rules:
160.....427
164.....427

46 CFR

Proposed Rules:
356.....646

47 CFR

0.....374
25.....3814
27.....3139
51.....1331, 2542
73.....219, 220, 1823, 1824, 3150, 3151, 3152
76.....375
Proposed Rules:
1.....2097
22.....2097
51.....2367
73.....270, 1843, 3188, 3406, 3407
74.....3188
101.....2097

48 CFR

205.....2056
209.....2056
235.....2057
241.....2058
243.....2056
252.....2056
253.....2055
1806.....3153
1813.....3153
1815.....3153
1835.....3153
1852.....3153
1872.....3153
2401.....3572
2402.....3572
2403.....3572, 3576
2409.....3572, 3576
2413.....3572
2414.....3572
2415.....3572
2416.....3572
2419.....3572
2424.....3572
2425.....3572
2426.....3572
2428.....3572
2432.....3572
2433.....3572
2436.....3572, 3576
2437.....3576
2439.....3572, 3576
2442.....3572, 3576
2446.....3572
2451.....3572
2452.....3572, 3576
2453.....3572, 3576
Proposed Rules:
1.....1438
2.....1438
4.....1438
7.....1438
8.....1438
11.....2272
15.....1438
16.....1438
17.....1438
22.....1438, 2272
27.....1438
28.....1438
31.....1438
32.....1438
35.....1438
36.....2272
37.....1438
42.....1438
43.....1438, 3762
44.....1438
45.....1438
49.....1438, 2272
51.....1438
52.....1438, 2272, 3762
53.....1438
212.....2104
242.....2104, 2109
247.....2104
252.....2104
253.....2109
1804.....429
1852.....429

49 CFR

1.....220
268.....2342
572.....2059
Proposed Rules:
40.....2573
209.....1844
222.....2230
229.....2230
1244.....732

50 CFR

17.....20, 2348, 3096, 3867, 3876
216.....30
226.....1584
300.....59
600.....221
635.....2075
648.....377, 1557, 1568
660.....221, 3890
679.....60, 65, 74, 380, 3892
Proposed Rules:
17.....1082, 1583, 1845, 3096, 3548
18.....109
86.....3332
216.....270, 1083
222.....270
223.....105
224.....1082
226.....105, 1584
300.....272
635.....3199
648.....275, 431
660.....2926

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 25, 2000

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Administrative regulations:
Reinsurance agreement; standards for approval; published 1-25-00

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Inspection services; enforcement actions; refusal, suspension, or withdrawal; published 11-29-99
Pathogen reduction; hazard analysis and critical control point (HACCP) systems—
Generic E. coli testing for sheep, goats, equines, ducks, geese, and guineas; published 11-29-99
Sanitation requirements for official establishments; technical corrections; published 1-14-00

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designations applications—
Commission review and approval; procedures; published 11-26-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 11-26-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin; published 1-25-00

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf operations:
Royalty and offshore minerals management programs; order appeals; published 1-25-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 12-21-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Intangible property; amortization; published 1-25-00
Passive foreign investment companies—
Marketable stock definition; published 1-25-00
Qualified covered calls; special rules and definitions; published 1-25-00
Small Business Job Protection Act of 1996—
Termination of Puerto Rico and possession tax credit; new lines of business prohibited; published 1-25-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 2-4-00; published 1-5-00
Sheep and lamb promotion and research; comments due by 2-1-00; published 1-12-00
Tobacco inspection:
Burley tobacco; moisture testing; comments due by 1-31-00; published 12-2-99

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 2-3-00; published 12-16-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspections:
Inspection services—
Retail operations exemption from requirements; comments due by 2-3-00; published 1-4-00

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; implementation; comments due by 1-31-00; published 12-30-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass; comments due by 2-2-00; published 1-3-00
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 2-4-00; published 12-21-99
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; annual specifications and management measures; comments due by 2-3-00; published 1-4-00
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 2-4-00; published 1-5-00
Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs; fishing quotas; comments due by 2-3-00; published 1-4-00
Ocean and coastal resource management:
Marine sanctuaries—
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; comments due by 2-1-00; published 11-19-99
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; scoping meetings; comments due by 2-1-00; published 12-27-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
AmeriCorps education awards; comments due by 1-31-00; published 12-1-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Retiree Dental Program; expansion of dependent eligibility; comments due by 1-31-00; published 12-1-99
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99
Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Perchloroethylene emissions from dry cleaning facilities—
Florida; comments due by 1-31-00; published 12-28-99
Air pollution; standards of performance for new stationary sources:
Commercial and industrial solid waste incineration units; comments due by 1-31-00; published 11-30-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-2-00; published 1-18-00
Illinois; comments due by 2-2-00; published 1-3-00
Montana; comments due by 2-2-00; published 1-3-00
New York; comments due by 2-4-00; published 1-5-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-acyl sarcosines and sodium N-acyl sarcosinates; comments due by 2-4-00; published 12-6-99
Tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3(1H-1,2,4-triazol-1-yl) propyl 1,1,2,2-tetrafluoroethyl ether]; comments due by 2-4-00; published 12-6-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due

by 1-31-00; published 12-30-99

National priorities list update; comments due by 1-31-00; published 12-30-99

Toxic substances:

Significant new uses—

Halogenated benzyl ester acrylate, etc.; comments due by 2-4-00; published 1-5-00

Water supply:

National primary drinking water regulations—

Radon-222; maximum contaminant level goal; public health protection; comments due by 2-4-00; published 12-21-99

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Indiana; comments due by 1-31-00; published 12-17-99

Radio frequency devices:

Radio services operating below 30 MHz; conducted emission limits; comments due by 1-31-00; published 11-16-99

Radio stations; table of assignments:

Arizona; comments due by 1-31-00; published 12-30-99

California; comments due by 1-31-00; published 12-30-99

Louisiana; comments due by 1-31-00; published 12-30-99

Virginia and Maryland; comments due by 1-31-00; published 12-17-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99

Veterans' employment; comments due by 2-1-00; published 12-3-99

Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:

Temporary Assistance for Needy Families Program—

High performance bonus rewards to States; comments due by 2-4-00; published 12-6-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Freedom of Information Act; implementation; comments due by 2-2-00; published 11-4-99

Human drugs:

Prescription drug marketing; comments due by 2-1-00; published 12-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Managed care organizations; external quality review; comments due by 1-31-00; published 12-1-99

Medicare and Medicaid programs:

Religious nonmedical health care institutions and advance directives; comments due by 1-31-00; published 11-30-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Spalding's catchfly; comments due by 2-1-00; published 12-3-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Oil value for royalty due on Federal leases; establishment; comments due by 1-31-00; published 12-30-99

JUSTICE DEPARTMENT

Drug Enforcement Administration

List I chemical manufacturers, distributors, importers, and exporters; registration:

Registration and reregistration fees; comments due by 1-31-00; published 12-1-99

Correction; comments due by 1-31-00; published 12-16-99

LABOR DEPARTMENT

Employment and Training Administration

Birth and adoption unemployment compensation; comments due by 2-2-00; published 1-13-00

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:

Ergonomics program; comments due by 2-1-00; published 11-23-99

LABOR DEPARTMENT

Wage and Hour Division

Child labor; civil money penalties; inflation adjustment; comments due by 1-31-00; published 11-30-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99

Veterans' employment; comments due by 2-1-00; published 12-3-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:

Agency records centers; storage standards update; comments due by 1-31-00; published 12-2-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Share insurance and appendix; update and clarification; comments due by 1-31-00; published 11-30-99

POSTAL SERVICE

Domestic Mail Manual:

Palletized standard mail and bound printed matter, etc.; preparation changes; comments due by 2-3-00; published 1-4-00

RAILROAD RETIREMENT BOARD

Railroad Unemployment Insurance Act:

Sickness and unemployment benefits; waiting period shortened, etc.; comments due by 2-1-00; published 12-3-99

SECURITIES AND EXCHANGE COMMISSION

Public utility holding companies:

Acquisition of U.S. utilities by foreign companies; internationalization; comments due by 2-4-00; published 12-21-99

Securities:

Unlisted trading privileges; comments due by 1-31-00; published 12-15-99

SMALL BUSINESS ADMINISTRATION

Business loans:

Certified development companies; areas of operations; comments due by 1-31-00; published 12-1-99

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Tariff-rate quota implementation for imports of sugar-containing products; comments due by 1-31-00; published 12-1-99

TRANSPORTATION DEPARTMENT

Coast Guard

American Society for Testing and Materials (ASTM); standards incorporated by reference; update; comments due by 1-31-00; published 12-1-99

Regattas and marine parades:

Port of Miami, FL; OPSAIL 2000; comments due by 1-31-00; published 12-17-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-31-00; published 12-30-99

Alexander Schleicher Segelflugzeugbau; comments due by 1-31-00; published 12-28-99

Boeing; comments due by 1-31-00; published 11-30-99

Constucciones Aeronauticas, S.A.; comments due by 2-4-00; published 1-5-00

Eurocopter Deutschland GmbH; comments due by 1-31-00; published 12-2-99

Eurocopter France; comments due by 1-31-00; published 11-30-99

Fokker; comments due by 2-3-00; published 1-4-00

Hartzell Propeller, Inc.; comments due by 2-1-00; published 12-3-99

Rolls Royce, plc; comments due by 2-1-00; published 12-3-99

Saab; comments due by 2-4-00; published 1-5-00

Turbomeca Arrius; comments due by 1-31-00; published 12-1-99

Class D airspace; comments due by 2-4-00; published 1-5-00
Class E airspace; comments due by 1-31-00; published 12-17-99
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Treasury securities, reopening; original issue discount; comments due by 2-3-00; published 11-5-99
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Well-grounded claims; comments due by 1-31-00; published 12-2-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

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Contents

Federal Register

Vol. 65, No. 17

Wednesday, January 26, 2000

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Canine and equine semen from Canada, 4173–4176

Army Department
See Engineers Corps
NOTICES
Meetings:
U.S. Military Academy, Board of Visitors, 4231–4232
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Encryption and authentication; multifunction strain-temperature gauge and a qunatum key distribution system, 4232
Technical arts; long-term stretcher carry harness, silicon carbide chip bonding, and monolithic metal billets fabrication methods, 4232

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4249

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 4230–4231

Comptroller of the Currency
PROPOSED RULES
Debt cancellation contracts; bank sales, 4176

Consumer Product Safety Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4231

Customs Service
PROPOSED RULES
Country of origin marking, 4193–4203

Defense Department
See Army Department
See Engineers Corps
See Navy Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred research and development costs, 4327–4329
Drafting principles, 4345–4347

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 4236–4237
Recommendations:
Fissionable and other nuclear material that for safety reasons should not be permitted to remain unremediated; stabilization and safe storage, 4237–4240

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4240–4241
Submission for OMB review; comment request, 4241–4242
Grants and cooperative agreements; availability, etc.:
Even Start Statewide Family Literacy Initiative, 4341–4343

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Energy efficient building equipment and envelope technologies, Round, II, 4242–4243

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Energy conservation:
Weatherization assistance program for low-income persons, 4331–4340

Engineers Corps
RULES
Navigation regulations:
Bonneville Lock and Dam, OR, et al.; restricted area boundary adjustments, 4124–4125
NOTICES
Environmental statements; availability, etc.:
Flagstaff, AZ; Rio de Flag flood control study, 4232
Environmental statements; notice of intent:
Los Angeles County, CA; Newhall Ranch specific plan, 4232–4234
St. Louis County, MO; Missouri River flood plain developments, 4234–4235
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Concrete armor unit for protecting coastal and hydraulic structures and shorelines; various countries
Correction, 4235–4236

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Georgia, 4133–4136
Indiana, 4126–4133
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 4208–4210

Georgia, 4210–4211
Indiana, 4207
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4243–4244
Air quality implementation plans; approval and promulgation; various States:
Source-specific plans—
Navajo Nation, AZ; correction, 4244–4245
Hazardous materials:
Confidential business information and data transfer, 4245–4246

Federal Aviation Administration
RULES
Airworthiness directives:
Agusta S.p.A., 4100–4102
de Havilland, 4099
Class D airspace, 4102–4103
Class E airspace, 4103
PROPOSED RULES
Airworthiness directives:
Boeing, 4179–4182
McDonnell Douglas, 4182–4192
Class E airspace, 4192–4193
NOTICES
Advisory circulars; availability, etc.:
Aircraft products and parts—
Aircraft engines, electrical and electronic engine control systems, 4296
Airport noise compatibility program:
Chandler Municipal Airport, AZ, 4296–4297
Meetings:
Aviation Rulemaking Advisory Committee, 4297

Federal Communications Commission
RULES
Common carrier services:
Telecommunications facilities; inside wiring quality standards, 4137–4140
Television broadcasting:
Two way transmissions; multipoint distribution service and instructional television fixed service licenses participation, 4136–4137
PROPOSED RULES
Television broadcasting:
Broadcast licensees; public interest obligations, 4211–4217
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 4246
Submission for OMB review; comment request, 4246–4247
Meetings:
Emergency Alert System National Advisory Committee, 4247

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Alaska Village Electric Cooperative, Inc., 4243

Federal Maritime Commission
NOTICES
Agreements filed, etc., 4247
Complaints filed:
Crowley Liner Services, Inc., et al., 4247–4248
Freight forwarder licenses:
Senator International Ocean LLC, et al., 4248

Federal Railroad Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4297–4301

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 4248

Fish and Wildlife Service
RULES
Endangered and threatened species:
Baker's and yellow larkspurs; coastal northern California, 4156–4162
Critical habitat designations—
Woundfin and Virgin River Chub, 4140–4156
Newcomb's snail; Hawaiian Islands, 4162–4169
PROPOSED RULES
Endangered Species Convention:
Appendices and amendments—
Alligator snapping turtle and all species of map turtles native to U.S., 4217–4221
NOTICES
Meetings:
Klamath Fishery Mangement Council, 4256

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Ractopamine hydrochloride, 4111–4112
Human drugs:
Total parenteral nutrition; aluminum in large and small volume parenterals; labeling requirements, 4103–4111
Medical devices:
Manufacturers, importers, distributors, and health care facilities; reporting requirements, 4112–4121
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4249–4252
Food for human consumption:
Food labeling—
Health claims and label statements; scientific data and information request; correction, 4252–4253
Human drugs:
Pediatric parenteral multivitamin products; drug efficacy study implementation, 4253–4256

Forest Service
NOTICES
Appealable decisions; legal notice:
Intermountain Region, 4226–4227
Meetings:
Intergovernmental Advisory Committee, 4227–4228

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred research and development costs, 4327–4329
Drafting principles, 4345–4347
NOTICES
Medical standard form (SF 539); cancellation, 4248–4248

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau
NOTICES
Meetings:
Blackstone River Valley National Heritage Corridor Commission, 4256
Exxon Valdez Oil Spill Public Advisory Group, 4256

Internal Revenue Service
RULES
Income taxes:
Business expenses; substantiation, 4121–4124
PROPOSED RULES
Income taxes:
Nonqualified preferred stock, 4203–4207

International Trade Administration
NOTICES
Antidumping and countervailing duties administrative reviews, 4228–4229

International Trade Commission
NOTICES
Import investigations:
Enhanced dram devices containing embedded cache memory registers, components, and products containing same, 4259–4260
Spiral grilled products including ducted fans and components, 4260–4261
Steel rails from—
Canada, 4261

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4261

Land Management Bureau
NOTICES
Closure of public lands:
Utah, 4256–4257
Resource management plans, etc.:
Grant, Hidalgo, Luna et al. Counties, NM, 4257–4258

Minerals Management Service
NOTICES
Meetings:
Minerals Management Advisory Board, 4258

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred research and development costs, 4327–4329
Drafting principles, 4345–4347

National Institute of Standards and Technology
NOTICES
National Voluntary Conformity Assessment System Evaluation Program:
Quality system registrars; accreditation bodies recognition, 4229–4230

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 4172
Magnuson-Stevens Act provisions—
Foreign fishing; transshipment permits, 4169–4172
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 4221–4225

Navy Department
NOTICES
Environmental statements; availability, etc.:
WINSTON S. CHURCHILL (DG 81 flight IIA class destroyer); ship shock trials, 4236

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 4268–4295
Applications, hearings, determinations, etc.:
Northeast Nuclear Energy Co., et al., 4265
Southern California Edison Co., 4265–4266
Southern California Edison Co.; correction, 4265
Wisconsin Public Service Corp., 4266–4267

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 4261–4262

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4262–4265

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Reclamation Bureau
RULES
Farm operations in excess of 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water, 4303–4325
NOTICES
Environmental statements; availability, etc.:
Salton Sea Restoration Project; Coachella and Imperial Counties, CA, 4258–4259

Small Business Administration
PROPOSED RULES
Small business size standards:
Compliance with other agency programs, 4176–4179
NOTICES
Disaster loan areas:
Kentucky, 4295
Washington, 4295

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service

Separate Parts in This Issue

Part II
Department of the Interior, Bureau of Reclamation, 4303–4325

Part III
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 4327–4329

Part IV
Department of Energy, Energy Efficiency and Renewable Energy Office, 4331–4340

Part V
Department of Education, 4341–4343

Part VI
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 4345–4347

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR

Proposed Rules:

98 4173

10 CFR

Proposed Rules:

440 4332

12 CFR

Proposed Rules:

Ch. I 4176

13 CFR

Proposed Rules:

121 4176

14 CFR

39 (2 documents) 4095
71 (2 documents) 4102

Proposed Rules:

39 (6 documents) 4182
71 4192

19 CFR

Proposed Rules:

134 4193

21 CFR

201 4103
556 4111
558 4111
803 4112
804 4112

26 CFR

1 4121
602 4121

Proposed Rules:

1 4203

33 CFR

207 4124

40 CFR

52 (2 documents) 4126

Proposed Rules:

52 (3 documents) 4207

43 CFR

428 4303

47 CFR

21 4136
68 4137
74 4136

Proposed Rules:

73 4211

48 CFR

Proposed Rules:

1 ..... 4328, 4345
31 4327
52 4345

50 CFR

17 (3 documents) 4140
600 4169
622 4172
660 4169

Proposed Rules:

23 4217
622 4221

VOL
65
ISS
17
JA
26
000
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Rules and Regulations

Federal Register
Vol. 65, No. 17
Wednesday, January 26, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–179–AD; Amendment 39–11531; AD 2000–02–13]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. This amendment also requires eventual installation of a system that will prevent such positioning of the power levers during flight. Such installation will terminate the requirement for installation of a placard. This amendment is prompted by reports of operation of the airplane with the power levers positioned below the flight idle stop during flight. The actions specified by this AD are intended to prevent such positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

EFFECTIVE DATE: March 1, 2000.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on July 7, 1998 (63 FR 36619). That action proposed to require installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, that action proposed to require eventual installation of an FAA-approved system that would prevent such positioning of the power levers during flight. Installation of that system would eliminate the requirement for installation of the placard.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

1. Support for the Proposal

One commenter supports the proposed rule.

2. Request to Withdraw the Proposal: No Unsafe Condition

Several commenters point out the following: No new incidents of beta during flight have been reported since 1996, and reports were from foreign operators. Since those previous reports, the AFM has been revised to prohibit positioning of the power levers below the flight idle stop (beta) during flight, and the pilot training syllabus on prohibition of beta during flight has been revised. The commenters further state that sufficient tactile, visual, and audio cues exist to advise the flightcrew if the propeller is in beta range. One commenter, the manufacturer, points out that the power lever triggers cannot be applied accidentally. Movement of the triggers requires purposeful "reach and lift" action to engage beta. Therefore, the manufacturer asserts that unintentional engagement of beta during flight cannot occur. Another commenter states that a mechanical system cannot preclude inappropriate operation; however, proper training of pilots can. These commenters conclude that, with the previously mentioned procedures already in place, the unsafe condition specified in the proposed rule does not exist.

The FAA does not concur that the subject unsafe condition does not exist in Model DHC–8 series airplanes. The FAA acknowledges that other safeguards currently in practice, such as AFM revisions and the revised pilot training syllabus, do provide certain tactile, visual, and audio cues. (See Comment 7 for related discussion on visual cues.) However, despite the implementation of those safeguards, the FAA has received reports of operation of the airplane with the power levers positioned below the flight idle stop during flight on de Havilland Model DHC–8 series airplanes. One report indicated that such operation resulted in significant engine damage. Therefore, the FAA considers that sufficient data exist to demonstrate that an unsafe condition exists on Model DHC–8 series airplanes. Further, the FAA has determined that positioning of the power levers below the flight idle stop could result in engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

3. Request to Withdraw the Proposal: Airplane Already Meets Intent of 14 CFR Part 25.1155

Several commenters state that the current design meets the requirements of part 25 of the Federal Aviation Regulations (14 CFR part 25.1155), and one other commenter asserts that the current design already goes beyond those requirements. One of the commenters points out that part 25 of the Federal Aviation Regulations (14 CFR part 25) only addresses unintentional or uninformed actions, and does not address intentional acts. Another commenter states that if the FAA is going beyond its statutory authority and being inconsistent in application of requirements without

providing justification, the commenter would view the proposed rule as arbitrary rulemaking.

The FAA does not concur that the AD should be withdrawn. The issuance of this AD is based on the finding that an unsafe condition exists or is likely to develop in this airplane series. The FAA points out that an airplane's type design is approved only after the FAA makes a determination that it complies with all applicable part 25 (14 CFR part 25) airworthiness requirements. In adopting and maintaining those requirements, the FAA has made the determination that they establish an appropriate level of safety. However, actual in-service experience (as well as other factors, such as manufacturers' fatigue testing, etc.) may reveal problems in an airplane or its components that were not envisioned or predictable at the time of type certification. When these problems create an unsafe condition, this means that the intent of the original level of safety is no longer being achieved. When actions or procedures have been identified that will positively correct the unsafe condition and restore the airplane to its original level of safety, an AD is the appropriate vehicle for mandating that such actions be accomplished.

4. Request to Withdraw the Proposal: Proposed Installation May Introduce an Unsafe Condition

Several commenters state that introduction of a beta lockout system will not provide any added safety benefit, and could actually cause an unsafe condition if the beta lockout system were to fail during landing. These commenters point out that failure of the lockout system to release may prevent the selection of propeller beta pitch angles (on the ground after landing) could, in fact, cause an over run, loss of control of the airplane during landing, or an accident. This commenter also states that with an "override" function, the flightcrew is required to perform an additional task to unlock the power levers so they can select "Beta/Disking & Reverse." Another commenter states that installation of a mechanical lockout system would require an additional cockpit procedure and associated training. That commenter points out that such an additional cockpit procedure would contribute to the crew workload during the most critical phase of flight. Further, the commenter contends that the additional cockpit procedure could result in delay in placing the airplane in the desired configuration when required.

The FAA does not concur that the installation of a beta lockout system may introduce an unsafe condition. The FAA has already required retrofit of a similar lockout system on three other turbopropeller-powered airplane models. Further, several turboprop airplanes were designed and certified with beta lockout systems. Both the retrofit and the original designed lockout systems have been operating safely for close to ten years with no adverse landing or rollout service history. No change is required to the final rule as a result of these comments.

5. Request to Delay Issuance of the Final Rule

Two commenters state that the proposed rule is premature and inconsistent, and that any rulemaking effort should wait until the Aviation Rulemaking Advisory Committee (ARAC) submits its findings and recommendations regarding a change to the Federal Aviation Regulations. One of those commenters points out that ARAC is not expected to submit its recommendations to the FAA until July 31, 2001. That commenter contends that, until changes to part 25 of the Federal Aviation Regulations have been accomplished, the proposal is premature, and, at best, shows an inconsistency by the FAA as a result of arbitrary rulemaking without explanation. Another commenter requests that the FAA delay issuance of a rule pending a detailed safety study review of the current design, with the objective of determining if the Bombardier design proposal for a beta warning horn addresses the unsafe condition.

The FAA does not consider that delaying this action until after the release of the ARAC recommendation is warranted since sufficient technology currently exists to devise and install a beta lockout system. The purpose of the ARAC task is to determine whether changes to existing design standards are appropriate. These standards would be applicable only to future designs. In tasking ARAC on this subject, the FAA never intended that ARAC address issues relating to unsafe conditions found on previously certificated designs. Further, the FAA has determined that the warning horn is not sufficient to address the unsafe condition, and does not prevent moving the power lever into the beta range during flight.

6. Request to Revise Paragraph (b) of the Proposal

Several commenters request that the FAA require installation of a beta warning horn rather than the beta lockout modification required by paragraph (b) of the proposal. These commenters also point out that Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, did not determine that a beta lockout system was necessary. Those commenters question why the FAA has determined that installation of the beta lockout system is necessary when TCCA has not mandated such an installation. One commenter, the manufacturer, states that TCCA is planning to require mandatory installation of the beta warning horn, which would be substantially less expensive than installation of a beta lockout system, and would still provide an equivalent level of safety. Some commenters state that the description of the installation specified in paragraph (b) of the proposal is not sufficient to provide actual guidelines for the development of a beta lockout system. However, another commenter states that paragraph (b) of the proposal limits how operators can comply with the requirements.

Another commenter requests that specific training for prohibiting beta during in-flight be required instead of the beta lockout system. Additionally, another commenter states that the service experience of the Model DHC–8 series airplane does not distinguish itself in comparison to other airplane models considering the fact that crews of other types of airplanes could intentionally position the power lever in the beta range.

Other commenters state that a beta lockout system still wouldn't preclude intentional use of beta during flight because of the override function. The manufacturer states that the proposal implies that installation of a beta lockout system would preclude the pilot from being able to position the power lever below flight idle during flight. However, the manufacturer points out that with an override function, intentional positioning of the power levers below the flight idle stop during flight cannot be prevented. The manufacturer concludes, therefore, that the declared unsafe condition cannot be eliminated by the installation of a beta lockout system with an override function. The manufacturer asserts that, if it can be concluded that intentional positioning of power levers below flight idle stop during flight can only be deterred, the beta warning horn provides such deterrence. The manufacturer states that a beta warning horn provides a loud, easily identifiable aural warning, which would "sound" with any movement of the power levers

below the flight idle stop. The manufacturer further notes that TCCA has accepted the beta warning horn modification as an enhanced level of safety.

The FAA does not concur with the requests to revise the requirement specified in paragraph (b) of the final rule. The FAA acknowledges that additional airplane flight manual limitations and additional pilot training have enhanced the operational safety of the airplane. However, those actions have not proven to solve the long-term problem involving unsafe operation of other turbopropeller-powered airplanes with a similar throttle quadrant design and service histories involving unsafe operation. Despite the addition of those actions, reports of beta during flight continued.

Further, the FAA does not concur with the commenters' requests to require a beta warning horn in lieu of a beta lockout system. The FAA points out that it appears that certain actions taken by the flightcrew are reflexive, and, as such, the action of placing the power levers below flight idle during flight may not always be interrupted by the horn. Additional data indicate that if beta operation is attempted with a warning horn as the only safety system, it is possible that in the time it takes for the flightcrew to react and return the power levers to the flight range, an overspeed of the propeller could occur that might cause engine damage or failure, and consequent reduced controllability of the airplane. Further, the beta horn (even though distinctive) may be accompanied by an airplane overspeed warning horn, along with other warnings, which may be confusing to the flightcrew. The FAA points out that, in at least one previous accident caused by inflight beta uses on another turbpropeller-powered airplane, the pilot attempted to decelerate the airplane from an overspeed condition (airplane speed was initially above Vmo). In that case, the airspeed aural warning was already sounding at the time the inflight beta event occurred. The FAA notes that many transport category airplanes powered by turbopropeller engines are operated at or near Vmo during descent in order to maintain adequate Air Traffic Control (ATC) separation from the faster flying turbojet-powered airplanes. Therefore, the FAA considers that use of a beta warning horn could be preceded or accompanied by an airplane overspeed aural warning, and could result in confusion to the flightcrew. Although the FAA acknowledges that a beta warning horn should deter the pilot from using beta in flight, the horn does not physically keep the power levers from being placed in the beta mode during flight. As explained previously, several turbopropeller-powered airplanes were designed and certified with beta lockout systems, and the FAA has required retrofit of a similar lockout system on three other turbopropeller-powered airplane models. Both the original design lockout systems and the retrofit have been operating safely for close to ten years with acceptable landing or rollout service history.

In response to commenters that questioned why the FAA is requiring installation of a beta lockout system and TCCA has not, the FAA notes that, while the United States and Canada observe the provisions of the bilateral airworthiness agreement, it remains the responsibility of the FAA to monitor and maintain the continuing airworthiness of U.S-type certificated and -registered airplanes. The bilateral airworthiness agreement does not restrict the FAA from issuing AD's based upon its own finding of an unsafe condition, regardless of the decision relative to the same subject made by another airworthiness authority. The FAA has examined the reports of operation of the airplane with the power levers positioned below the flight idle stop during flight on Model DHC–8 series airplanes, has examined other available data, and has determined that an unsafe condition exists. Therefore, the FAA finds that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

In reponse to the commenter's statement that paragraph (b) of the proposed rule limits the ways operators can comply with the requirements, the FAA points out that the language specified in that paragraph is purposefully general in nature to allow for some flexibility by the operators in complying with the requirements of that paragraph. Further, the FAA also points out that paragraph (d) of the final rule also contains a provision for operators to request approval of an alternative method of compliance.

7. Requests to Revise Paragraph (c) of the Proposal

One commenter requests that the proposed allowance for Minimum Master Equipment List (MMEL) relief of two days, as specified in paragraph (c) of the proposal, be extended to three days. Another commenter, the manufacturer, states that, where a legitimate system failure has necessitated the use of the override system, operators should not be penalized with a mandatory maintenance action in order to dispatch the airplane. The manufacturer considers a lockout system to be a secondary non-essential system to the existing design, and, therefore, dispatching the airplane with a failed lockout system for a limited time would not jeopardize the safety of the airplane. The manufacturer further states that if a pilot chooses to use the override system just prior to touchdown during inclement weather (e.g., low visibility, contaminated runway), those conditions could be considered emergency situations. Use of an override system in such an emergency should not require maintenance action to return the airplane to dispatch configuration. For those reasons, the manufacturer requests that the proposed MMEL relief of two days be extended in accordance with criteria to be identified in the DHC–8 MMEL.

The FAA concurs that the MMEL relief specified in paragraph (c) of the proposal may be extended to three flight days. However, although use of the override system may be made available as a means to gain additional stopping performance in the event of a failed beta lockout system, the FAA does not consider low visibility or contaminated runway scenarios to constitute an emergency. Further, the override function is used only when a system failure or potentially inadequate ground/air logic is indicated while the airplane is on the ground. The FAA has determined that in those situations a maintenance action must be taken.

8. Request to Require Only the Placard Installation

One commenter contends that the only action that the FAA should require is the installation of a placard. The commenter asserts that adding the placard, in combination with the current pilot training curriculum, provides an adequate level of safety. The commenter further points out that only a placard is necessary for many other airplane models.

The FAA does not concur that installation of the placard should be the only requirement of this AD. The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by reliance upon visual cues such as placards. Such visual cues may not be providing the degree of safety assurance necessary for certain transport airplanes. This, coupled with a better understanding of the human factors associated with reliance upon visual cues, has led the FAA to consider placing less emphasis on such visual

cues and more emphasis on design improvements. The required installation of a beta lockout system is consistent with these considerations.

The FAA acknowledges that installing a placard is the only requirement for some transport airplanes. Those airplanes, however, do not have the same service experience as Model DHC–8 series airplanes. As explained in Comment 6, the FAA has required the installation of a beta lockout system on other airplane models that have similar service experiences to those of Model DHC–8 series airplanes.

9. Request to Extend the Compliance Time

One commenter, the manufacturer, requests that the compliance time for the installation of the beta lockout system be revised from one year to 2½ years. The manufacturer explains that a beta lockout design could be available within one year of being mandated, but cautions that a compliance time of 18 months after the design approval is necessary.

Two other commenters request that the compliance time be changed to two years to allow time for design approval and actual installation. One other commenter states that one year is not enough time, but does not suggest an alternative compliance time.

The FAA concurs that the compliance time to install the beta lockout system may be extended somewhat. The FAA has taken into consideration the complexity of accomplishing the installation of a beta lockout system and the time that will be needed to develop and approve a service bulletin, and has concluded that a two-year compliance time to install the beta lockout system may be established without adversely affecting safety. Paragraph (b) of the final rule has been revised accordingly.

10. Requests to Revise the Cost Estimate

One commenter, the manufacturer, considers the cost estimate provided in the proposal to be significantly lower than actual costs. The manufacturer states that it has information indicating that the lockout implementation on another airplane model is estimated at an average of $24,000 per airplane ($12,000 for parts and $12,000 for labor). The manufacturer points out that the proposal does not account for the potential loss of revenue incurred by airplane downtime for incorporation of the change. The manufacturer is concerned that the lower cost estimate of $17,800 in the proposal may be misleading to operators.

One commenter considers that the requirements of the proposal go beyond the current requirements for continued airworthiness; therefore, the costs that were disregarded in the proposal as necessary for "maintaining a safe airplane" should be attributed solely as a direct result of the AD and should be addressed as such. Another commenter requests an explanation as to why a complete cost-benefit analysis is unnecessary and redundant. That same commenter requests that the FAA provide a cost-benefit analysis before a determination is made to require actions that may be unnecessary for an airplane that is already safe.

Based on information provided by the manufacturer, the FAA concurs that the estimated cost for the installation of the beta lockout system should be adjusted, and has revised the final rule accordingly. However, the FAA does not concur that a cost-benefit analysis should be accomplished for this AD. As stated in the proposal, as a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

11. Request to Clarify Intent of the Proposed Rule

Several commenters request that an accurate description of the unsafe condition be provided. Other commenters request clarification as to whether the FAA is trying to prevent an unsafe condition that could be caused by unintentional pilot actions or by intentional pilot actions.

The FAA considers that an adequate description of the unsafe condition has already been presented in the Notice of Proposed Rulemaking (NPRM). The FAA has determined that operation of the airplane with power levers positioned below the flight idle stop during flight could result in engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane. Since the FAA has received reports of those types of incidents occurring on Model DHC–8 series airplanes, the FAA has determined that such an unsafe condition exists in those models.

Regardless of whether in-flight operation in beta resulted from intentional or unintentional pilot actions, the purpose of this AD is to prevent such operation. The FAA considers a requirement to install beta lockout to be the most effective means to achieve that objective.

12. Request to Ensure Consistent Requirements

One commenter points out that the design of the power lever system on Model DHC–8 series airplanes is different than that of other turbopropeller-powered airplanes that are addressed by AD's similar to the proposal. Several commenters assert that there seems to be different requirements for certain similar airplanes and similar requirements for different airplanes. The commenters request that the FAA "level the playing field" to ensure requirements are consistent for all airplane models.

The FAA acknowledges that there are different requirements for certain airplane models. As discussed previously, the requirements for different airplanes are based on certain aspects of design and service history of each different airplane model. Therefore, the FAA considers that the "playing field is level" in that the basic requirements for airplanes with similar design and service histories are equivalent.

13. Request for a Public Meeting

One commenter requests that a public meeting be held to discuss the proposed rule. The commenter states that the proposed beta lockout system will not improve safety. The commenter contends that since the manufacturer, operators, and TCCA do not support the proposal, a public meeting should be held to determine the most appropriate action.

The FAA does not concur that a public meeting is necessary to discuss the final rule. A Notice of Proposed Public Meeting was published in the **Federal Register**, and that meeting took place on June 11 and 12, 1996. Draft design criteria that the FAA was considering for use in evaluating a beta lockout system were included in that notice. The public meeting was held for the purpose of soliciting and reviewing information from the public on what type of FAA action would be appropriate to prevent future occurrences of inflight beta operation on all turbopropeller-powered airplanes. Further, a 90-day comment period was

specified in the NPRM to allow an adequate period of time for commenters to respond. The fact that the final rule has been revised in response to certain information supplied by the commenters demonstrates the success of this process. For those issues on which commenters continue to disagree with the FAA's conclusions, given the extensive public participation to date, it is unlikely that yet another public meeting would resolve the issues. Therefore, further delay of this AD is inappropriate.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 185 de Havilland Model DHC–8–100, and –200, and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the installation of the placard, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the placard installation on U.S. operators is estimated to be $11,100, or $60 per airplane.

Since the manufacturer has not yet developed a specific system commensurate with the requirements of this AD, the FAA is unable to provide specific information as to the number of work hours or cost of parts that will be required to accomplish the installation. However, based on similar installations of such systems accomplished previously on other airplane models, the FAA can reasonably estimate that approximately 200 work hours per airplane will be necessary to accomplish the system installation. The FAA also estimates that required parts will cost approximately $12,000 per airplane. Based on these figures, the cost impact of the required system installation on U.S. operators is estimated to be $4,440,000, or $24,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–13 de Havilland: Amendment 39–11531. Docket 98–NM–179–AD.

Applicability: All Model DHC–8–100, –200, and –300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, install a placard in a prominent location on the instrument panel of the cockpit that states: "Positioning of the power levers below the flight idle stop during flight is prohibited. Such positioning may lead to loss of airplane control, or may result in an engine overspeed condition and consequent loss of engine power."

(b) Within 2 years after the effective date of this AD, install a system that would prevent positioning the power levers below the flight idle stop during flight, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Following accomplishment of that installation, the placard required by paragraph (a) of this AD may be removed.

(c) In the event that the system required by paragraph (b) of this AD malfunctions, or if the use of an override (if installed) is necessary, the airplane may be operated for three days to a location where required maintenance/repair can be performed, provided the system required by paragraph (b) of this AD has been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on March 1, 2000.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00– 1772 Filed 1–21–00; 11:20 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–69–AD; Amendment 39–11528; AD 2000–02–09]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta Model AB412 helicopters with certain rescue hoists installed. This action requires replacing the rescue hoist hook assembly retention pin (retention pin) and periodically inspecting the rescue hoist. This amendment is prompted by an incident in which a rescue hoist hook assembly separated from a helicopter due to a missing retention pin. The actions specified in this AD are intended to prevent separation of the rescue hoist hook assembly from the helicopter due to failure of the retention pin. Loss of the rescue hoist hook assembly could result in loss of the person on the rescue hoist. Also, with the loss of the weight of the hoist cable assembly, the rescue hoist cable could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade and subsequent loss of control of the helicopter.

DATES: Effective February 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–69–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, has notified the FAA that an unsafe condition may exist on Agusta AB412 helicopters with rescue hoist, part number (P/N) BL10300–60 or P/N BL10300–59, installed. The RAI advises that replacement of the retention pin and certain inspections must be accomplished in accordance with Agusta Service Bulletin 412–59, Revision A, dated May 18, 1998, to prevent loss of a rescue hoist hook assembly. Loss of the rescue hoist hook assembly could result in loss of the person on the rescue hoist. Also, with the loss of the weight of the hoist cable assembly, the rescue hoist cable could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade and subsequent loss of control of the helicopter.

The FAA has reviewed Agusta Service Bulletin 412–59, Revision A, dated May 18, 1998, which describes procedures for inspecting the rescue hoist and replacing the retention pin.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model AB412 helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of the rescue hoist hook assembly from the helicopter due to failure of the retention pin. This AD requires, before further flight, replacing the retention pin, P/N BL2395, of the hook assembly, P/N S6150–61090–1, unless already accomplished. Thereafter, prior to each flight during which the rescue hoist will be operated, this AD requires:

- Inspecting the rescue hoist for oil leakage and proper electrical and mechanical connections.
- Inspecting the retention pin ring assembly for safety wire integrity;
- Inspecting the pin that is installed on the housing for absence of rotation between the housing and adapter; and
- Inspecting the rescue hoist hook to ensure it rotates freely relative to the housing (number 3 on Figure 1).

This AD also requires, at intervals not to exceed 25 hours time-in-service (TIS):

- Inspecting the rescue hoist attachment and support for cracks, wear, corrosion, damage, and security;
- Inspecting the rescue hoist cable for fraying, wear, and corrosion; and
- Inspecting the rescue hoist cable for proper routing through the guide rollers, pulley, and drum.
- Finally, this AD requires, at intervals not to exceed 12 calendar months:
- Inspecting the retention pin for scratches or deformations, and replacing the retention pin if scratches or deformations are found.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the safe operation of the rescue hoist. Therefore, the inspections are required prior to further flight, and this AD must be issued immediately.

None of the Agusta Model AB412 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 2.5 work hours to accomplish all of the corrective actions (replacing the retention pin and inspecting) initially, at an average labor rate of $60 per work hour. Required parts would cost $85. Based on these figures, the cost impact of this AD would be $235 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified

under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–69–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–02–09 Agusta: Amendment 39–11528. Docket No. 98–SW–69–AD.

Applicability: Model AB412 helicopters with rescue hoist, part number BL10300–60 or BL10300–59, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the rescue hoist hook assembly from the helicopter due failure of the rescue hoist hook assembly retention pin (retention pin), accomplish the following:

(a) Before further flight, replace the retention pin, part number (P/N) BL2395, of the rescue hoist hook assembly, P/N S6150–61090–1, as follows:

(1) Disconnect the helicopter battery and ensure the external electrical power is not connected.

(2) Remove the safety wire and remove and discard the retention pin. Retain the two washers, P/N AN960C816L, for reuse (Figure 1).

(3) Install a zero-hours time-in-service (TIS) retention pin, P/N BL2395, and the two washers, P/N AN960C816L, (Figure 1). Safety wire the retention pin to the hook assembly using safety wire, P/N MS 20995C32.

(b) Before further flight, and thereafter prior to each flight in which the rescue hoist will be operated:

(1) Inspect the rescue hoist for oil leakages and proper electrical and mechanical connections.

(2) Inspect the retention pin, P/N BL2395, of the ring assembly, P/N BL2441, for safety wire integrity.

(3) Inspect the pin, P/N NAS516C4–6 or P/N MS171524, installed on the housing, P/N BL1357–1, and verify the absence of any rotation between the housing and the adapter, P/N BL1355, (Figure 1).

(4) Inspect the rescue hoist hook to ensure it rotates freely relative to the housing (number 3 on Figure 1).

(5) Correct any discrepancies found in step (1), (2), (3), or (4).

(c) At intervals not to exceed 25 hours time-in-service (TIS), inspect the rescue hoist as follows:

(1) Inspect the attachment and support for cracks, wear, corrosion, damage, and security. Replace any parts that have cracks, wear, corrosion, or damage with an airworthy part.

(2) Inspect the cable for fraying, wear, and corrosion. If fraying, wear, or corrosion is found, replace the cable with an airworthy cable.

(3) Inspect the cable for proper routing through the guide rollers, pulley, and drum. Correct cable routing if necessary.

(d) At intervals not to exceed 12 calendar months, inspect the retention pin as follows:

(1) Referring to Figure 1, remove the safety wire and the retention pin. Retain the two washers, P/N AN960C816L, for re-use. Inspect the retention pin for scratches or deformations. If a scratch or deformation is found, replace the retention pin with an airworthy retention pin.

(2) Install the retention pin and the two washers, P/N AN960C816L, (Figure 1). Safety wire the retention pin to the hook assembly using safety wire, P/N MS20995C32.

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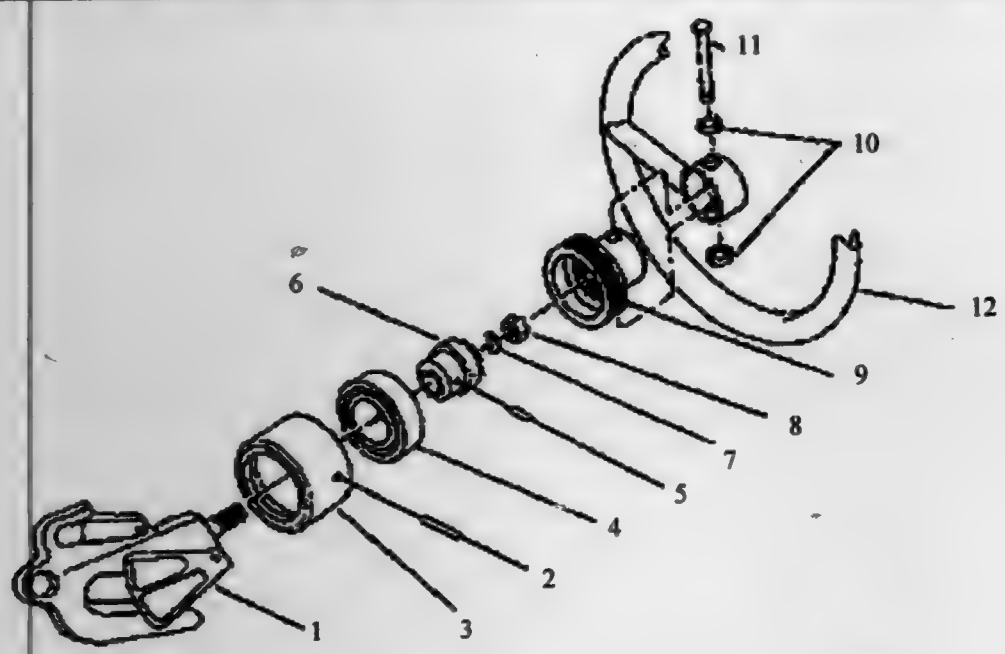

Hook Assembly S6150-61090-1

1	S6150-61522-2	Hook
2	NAS516C4-6 (alternative MS171524)	PIN
3	BL1357-1	Housing
4	BL1360	Bearing
5	BL1358	Pin
6	BL1356	Nut
7	AN960C816L	Washer
8	AN310C8	Nut
9	BL1355	Adapter
10	AN960C8	Washer
11	BL2395	Pin
12	BL2441	Ring Assembly

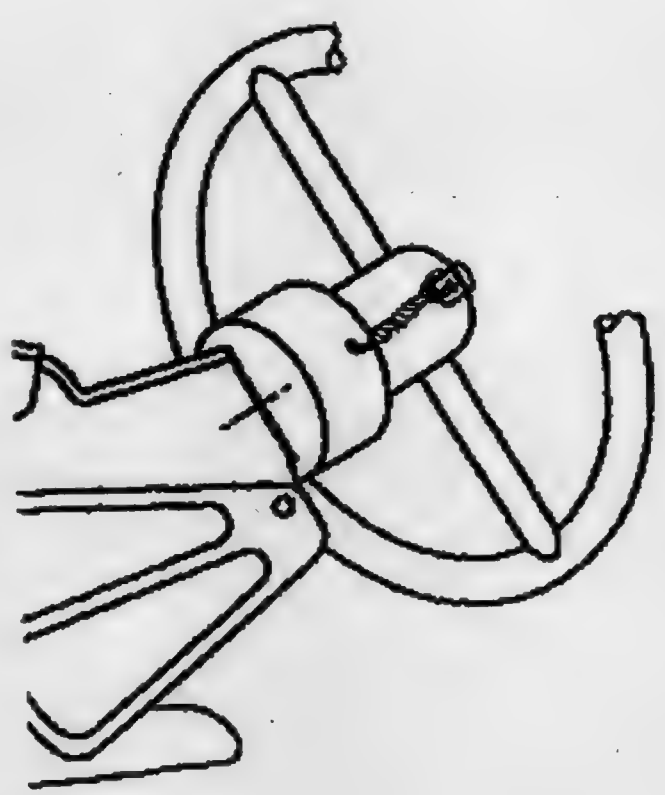

Figure 1

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Regulations Group, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) This amendment becomes effective on February 10, 2000.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 98–186, dated May 26, 1998.

Issued in Fort Worth, Texas, on January 19, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–1770 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–27]

Amendment of Class D Airspace; Jacksonville Whitehouse NOLF, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the amendatory language of a final

rule that was published in the **Federal Register** on January 10, 2000, (65 FR 1309), Airspace Docket No. 99–ASO–27.

EFFECTIVE DATE: January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr10ja00–6, Airspace Docket No. 99–ASO–27, published on January 10, 2000, (65 FR 1309), amended Class D surface area airspace at Jacksonville Whitehouse NOLF, FL. An error was discovered in the amendatory language identifying the airspace description. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication for describing Jacksonville Whitehouse NOLF, FL, Class D surface area airspace at Jacksonville Whitehouse NOLF, FL, as published in the **Federal Register** on January 10, 2000, (65 FR 1309), (**Federal Register** Document DOCID: fr10ja00–6; page 1309), is corrected as follows:

Section 71.1 [Corrected]

* * * * *

ASO FL D Jacksonville Whitehouse NOLF, FL [Corrected]

By removing "be effective during the specific dates and times established in advance by a Notice to"

* * * * *

Issued in College Park, Georgia, on January 10, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–1815 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–92]

Establishment of Class E Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule that establishes Class E airspace area at Burlington, VT (KBTV) to provide for adequate controlled airspace for aircraft executing instrument approaches to the Burlington International Airport at times when the Burlington Air Traffic Control Tower is closed. This action also corrects a typographical error in the docket number and changes the longitude and latitude of the Burlington International Airport to reflect North American Datum (NAD) 1983.

EFFECTIVE DATE: The direct final rule published at 64 FR 68008 is effective 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 6, 1999 (64 FR 68008). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 24, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

This direct final rule also corrects the docket number for this action to 99–ANE–92. The docket number used for the publication of the direct final rule was previously used for another airspace action. That other action, however, was issued from FAA Headquarters, while this action was issued from the New England Region. Therefore, the FAA has determined that the error in the docket number caused no confusion to interested persons wishing to comment on this proposal and corrects the docket number in this action.

Lastly, the longitude and latitude coordinates published in the direct final rule must be updated to reflect North American Datum (NAD) 1983. The FAA has determined that neither of these corrections expands the scope of the direct final rule.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the establishment of Class E airspace at Burlington, VT as published in the **Federal Register** on December 6, 1999 (64 FR 68008), **Federal Register** document 99–31518: page 68009, column 2; and the description in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.7; are corrected to read as follows:

Subpart E—Class E Airspace

* * * * **

Paragraph 6002—Class E Airspace Areas Designated as Extending Upward From the Surface of the Earth

* * * * **

ANE VT E2 Burlington, VT [New]

Burlington International Airport, VT (Lat. 44°28′23″ N, long. 73°09′01″ W.)

Within a 5-mile radius of Burlington International Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on January 13, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–1814 Filed 1–25–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N–0056]

RIN 0910–AA74

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to add certain labeling requirements for aluminum content in large volume parenterals (LVP's), small

volume parenterals (SVP's), and pharmacy bulk packages (PBP's) used in total parenteral nutrition (TPN). FDA is also specifying an upper limit of aluminum permitted in LVP's and requiring applicants to submit to FDA validated assay methods for determining aluminum content in parenteral drug products. The agency is adding these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially among premature neonates and patients with impaired kidney function.

DATES: This rule is effective January 26, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA published a notice of intent in the **Federal Register** on May 21, 1990 (55 FR 20799) announcing FDA's concerns about toxic aluminum levels in TPN and requesting comments. As a result of the comments received, on January 5, 1998, FDA published a proposed rule in the **Federal Register** (63 FR 176) in which it proposed to: (1) Establish a maximum permissible level of aluminum in LVP's used in TPN therapy; (2) require that the maximum level of aluminum permitted in LVP's used in TPN therapy be stated on the package insert of all LVP's used in TPN therapy; (3) require that the maximum level of aluminum at expiry be stated on the immediate container label of SVP's and PBP's used in the preparation of TPN solutions; (4) require that the package insert of all LVP's and SVP's, including PBP's, contain a warning statement about aluminum toxicity in patients with impaired kidneys and neonates receiving TPN therapy; and (5) require that applicants and manufacturers develop validated assay methods for determining the aluminum content in parenteral drug products used in TPN therapy and submit the validated assay methods to FDA for approval.

FDA has become increasingly concerned about the aluminum content in parenteral drug products, which could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. FDA included specific references in the proposed rule that supported the following information about aluminum toxicity (63 FR 176). Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum. Many drug products used routinely for TPN may contain levels of aluminum sufficiently high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract and aluminum circulates, and it is deposited in human tissues.

Aluminum toxicity is difficult to identify in neonates because few reliable techniques are available to evaluate bone metabolism in premature neonates. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature neonates. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized.

Classic manifestations of aluminum intoxication in patients with impaired kidney function include fracturing osteomalacia, encephalopathy, and microcytic hypochromic anemia. Aluminum may prevent calcium absorption in premature neonates receiving TPN therapy. In addition, aluminum loading may be a factor in the bone disease of very ill neonates with reduced kidney function who have received long-term parenteral therapy with aluminum-contaminated fluids.

FDA received 21 comments on the proposed rule and addresses each of those comments in section III of this document. FDA is adopting this final rule as described below. The agency has also made minor edits to the final rule in response to the President's June 1, 1998, memorandum on plain language in Government writing.

II. Highlights of the Final Rule

FDA is implementing this final rule because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially premature neonates and patients with impaired kidney function.

The new regulations added to part 201 ((21 CFR 201) at § 201.323(a)) limit the aluminum content for all LVP's used in TPN therapy to 25 micrograms per liter (µg/L). This requirement applies to all LVP's used in TPN therapy, including, but not limited to, parenteral amino acid solutions, highly concentrated dextrose solutions, parenteral lipid emulsions, saline and electrolyte solutions, and sterile water for injection.

New § 201.323(b) requires the package insert for all LVP's used in TPN therapy to state that the drug product contains no more than 25 µg/L of aluminum. This statement must be included in the "Precautions" section of the labeling.

New § 201.323(c) requires the product's maximum level of aluminum at expiry to be stated on the immediate container label of SVP's and PBP's used in the preparation of TPN solutions. The statement on the immediate container label must read as follows: "Contains no more than —— µg/L of aluminum." For those SVP's and PBP's that are lyophilized powders used in the preparation of TPN solutions, the maximum level of aluminum at expiry must be printed on the immediate container label as follows: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than —— µg/L." The maximum level of aluminum must be stated as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after January 26, 2001. The labeling requirement applies to all SVP's and PBP's used in the preparation of TPN solutions, including, but not limited to: Parenteral electrolyte solutions, such as calcium chloride, calcium gluceptate, calcium gluconate, magnesium sulfate, potassium acetate, potassium chloride, potassium phosphate, sodium acetate, sodium lactate, and sodium phosphate; multiple electrolyte additive solutions; parenteral multivitamin solutions; single-entity parenteral vitamin solutions, such as vitamin K injection, folic acid, cyanocobalamin, and thiamine; and trace mineral solutions, such as chromium, copper, iron, manganese, selenium, and zinc.

New § 201.323(d) requires the package insert for all LVP's, SVP's, and PBP's used in TPN to contain a warning statement. The warning statement must be included in the "Warnings" section of the labeling. The warning must contain the following language:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

Research indicates that patients with impaired kidney function, including premature neonates, who receive parenteral levels of aluminum at greater than 4 to 5 µg/kg/day accumulate aluminum at levels associated with central nervous system and bone toxicity. Tissue loading may occur at even lower rates of administration.

FDA removed the phrase "intended for patients with impaired kidney function and for neonates receiving TPN therapy" from the first sentence of § 201.323(d) because the phrase duplicated information contained in the actual warning and because the phrase made the first sentence of § 201.323(d) unclear.

New § 201.323(e) requires applicants and manufacturers to use validated assay methods to determine the aluminum content in parenteral drug products used in TPN therapy. The assay methods must comply with current good manufacturing practice regulations under part 211 (21 CFR part 211) (see § 211.194(a)). Holders of approved applications for LVP's, SVP's, and PBP's used in TPN therapy are required to submit a supplement to FDA under § 314.70(c) (21 CFR 314.70(c); see also 21 U.S.C. 356a(b)) describing the assay method used for determining the aluminum content. Applicants must submit the validation method used and the release data for several batches. In addition, manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections (see 21 CFR 211.160 and 211.180(c)).

New § 201.323 applies to all human drug LVP's, SVP's, and PBP's used in TPN. Licensed biological products are not covered by this rule.

III. Comments on the Proposed Rule

FDA received 21 comments on the proposed rule from professional associations, prescription drug manufacturers, Congress, individuals on TPN, and a hospital. Most comments supported the proposed limit for aluminum content in LVP's and the labeling requirement for SVP's and PBP's. Four comments suggested changes to the proposed warning statement. A summary of the comments received and the agency's responses follow.

A. Levels of Aluminum Content in LVP's

The agency stated in the proposed rule that it was considering setting an upper limit of 25 µg/L for LVP's used in TPN therapy. This requirement would apply to all LVP's used in TPN therapy, including, but not limited to, parenteral amino acid solutions, highly concentrated dextrose solutions, parenteral lipid emulsions, saline and electrolyte solutions, and sterile water for injection. The agency also proposed that the package insert for all LVP's used in TPN therapy state that the drug product contains no more than 25 µg/L.

1. Fifteen comments strongly supported a limit on aluminum of 25 µg/L. Two of the comments specifically supported the accompanying proposal that the package insert state that the drug product contains no more than 25 µg/L of aluminum.

FDA agrees that 25 µg/L of aluminum is a reasonable limit. As stated in the proposed rule, the 25 µg/L limit is feasible and necessary for the safe and effective use of LVP's used in TPN therapy.

Two comments, one from an LVP manufacturer and the other from a trade association, stated that 25 µg/L is not a reasonable limit for the varying reasons outlined in comments 2 through 8, in section III. A of this document.

2. These comments stated that data from production batches show potential rejections of finished batches at release if a limit of 25 µg/L is adopted. One of these comments specified that more than 10 percent of assay results exceed the proposed limit. It also stated that their current batch analysis showed a 95 percent confidence that at least 99 percent of the batch contained less than 50.37 µg/L of aluminum at release.

FDA understands that not all current batches of LVP's will meet a 25 µg/L level of aluminum. FDA will implement this rule 1 year after the date of publication to allow companies an opportunity to meet the specifications in this rule. FDA is not adopting a higher level because FDA believes a 25 µg/L level of aluminum is necessary to protect the public health.

3. The same two comments said that glass leaching over time increases aluminum levels so that initial levels cannot be established low enough to ensure batch acceptability by the end of the expiry period.

The intention of this rule is to reduce aluminum to an acceptable level in TPN products. A manufacturer can reduce toxicity by any of several routes, including using containers made of different materials.

4. One of these comments requested that FDA set the maximum level of aluminum using the procedure specified in the draft guidance entitled "Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances" (draft Q6A guidance) (62 FR 62890). This draft guidance states that a limit on impurities can be determined by (1) Determining the level at which the impurity is present in relevant batches and then (2) determining the mean plus upper confidence limit for the impurity where the upper confidence limit is three times the standard deviation of batch analysis data.

FDA is not using the procedures specified in the draft Q6A guidance because it is not appropriate to use current product aluminum levels to determine upper limits when the goal is to reduce aluminum levels to at or below the limit defined as safe. Further, the guidances entitled "Q3A: Impurities in New Drug Substances," (January 1996) and "Q3B Impurities in New Drug Products," (November 1997) address the issue of quantification of impurities. These guidances state that limits should be set no higher than the level that can be justified by safety data. The guidances also state that, for impurities known to be unusually potent or to produce toxic or unexpected pharmacological effects, the quantitation and detection limit of the analytical methods should be commensurate with the level at which the impurities must be controlled. FDA's primary concern in enacting this rule is ensuring the safety of the patient population and limiting exposure to the impurity. FDA has determined that the 25 µg/L limit is necessary for the safe and effective use of LVP's in TPN therapy.

5. These comments also stated that current assay methods cannot reliably distinguish between 25 µg/L and 30 µg/L. The comment did not provide supporting data or evaluation of the specific methods claimed to lack the required accuracy.

FDA understands that methods are currently available that are capable of detecting aluminum concentrations at 25 µg/L levels. In particular, FDA is aware that graphite furnace atomic absorption spectrometometry can be a sufficiently accurate validation method. However, FDA will accept any validated analytical method to assay aluminum content in TPN.

6. One of these comments suggested that FDA should require labeling of LVP's with an average and a range of aluminum values at expiry, obtained from five production scale batches, instead of requiring a limit of 25 µg/L

of aluminum in LVP's. The labeling would state "Approximate average aluminum value— µg/L. Approximate aluminum range —— µg/L to — µg/L." The same comment requested that FDA apply the same labeling standards to LVP's, SVP's, and PBP's, under the rationale that some LVP's are identical in composition to PBP's.

FDA notes that if a manufacturer makes a PBP specifically for LVP use, the PBP should not contain more than 25 µg/L of aluminum so that the LVP manufactured from the PBP does not contain more than 25 µg/L of aluminum. FDA is implementing the 25 µg/L limit for LVP's rather than permitting an average or a range of aluminum levels to be stated for LVP's because the agency believes that it is more appropriate to set a maximum level due to the large volume of use of these products. FDA has determined that the 25 µg/L limit is necessary for the safe and effective use of LVP's used in TPN therapy. FDA's basis for not requiring SVP's and PBP's to be labeled with an average and a range of aluminum levels is discussed in response to comment 11 in section III. B of this document.

7. This same comment stated that establishing a 25 µg/L limit on LVP's would not have the desired effect of reducing aluminum levels in TPN because the majority of aluminum contamination is due to SVP's, not LVP's. A different comment requested that FDA narrow coverage of the rule to only those products that contribute significant amounts of aluminum to TPN: Calcium gluconate, calcium gluceptate, potassium phosphates, and sodium phosphates. The comment stated that calcium gluconate alone can contribute 88 percent of the total aluminum present in a TPN formulation.

FDA recognizes that numerous factors contribute to aluminum contamination in TPN therapy. Therefore, FDA is addressing the problem in several different ways in an effort to reduce aluminum contamination, rather than reducing aluminum from one source.

8. Another comment noted that the United States Pharmacopeia (USP) has limited aluminum levels in monographs for substances used in hemodialysis, including: Calcium acetate, calcium chloride, magnesium chloride, potassium chloride, sodium acetate, sodium bicarbonate, and sodium chloride. The comment stated that additional steps could be taken to limit aluminum levels in monographs of substances used in the manufacture of TPN solutions. Although FDA believes USP's limits add a valuable contribution to limiting aluminum contamination, FDA believes the additional measures set forth in this final rule are needed to prevent an unsafe level of aluminum in TPN.

B. Aluminum Levels in SVP's and PBP's

In the proposed rule, FDA proposed requiring that the maximum level of aluminum at expiry be stated on the immediate container label of SVP's and PBP's used in the preparation of TPN solutions. FDA proposed that the statement on the immediate container label read as follows: "Contains no more than —— µg/L of aluminum." For those SVP's and PBP's that are lyophilized powders used in the preparation of TPN solutions, FDA proposed that the maximum level of aluminum at expiry be printed on the immediate container label as follows: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than—— µg/L." FDA proposed that the maximum level of aluminum must be expressed as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches; or (3) the maximum historical level, but only until completion of production of the first five batches after the rule takes effect.

9. Two comments supported FDA's proposal. One comment requested that FDA further specify limitations on aluminum content for SVP's.

FDA plans to implement the labeling requirements for SVP's and PBP's as proposed. FDA does not consider it appropriate to consider SVP's as a single category because SVP's are used for many indications other than TPN and in target populations where aluminum toxicity is not an issue.

10. One comment asked that FDA set a minimum level below which the amount of aluminum would not need to be declared.

FDA believes it is important for health care practitioners to know as much as possible about the aluminum levels being consumed by their patients. FDA believes the knowledge that a product has a low level of aluminum is just as important as the knowledge that a product contains high levels of aluminum. This labeling requirement permits health care professionals administering the drug to be able to calculate the total aluminum exposure the patient receives from multiple sources, and to be able to make appropriate substitutions to prepare "low aluminum" parenteral solutions for use in patients who are in high risk groups. Therefore, FDA believes all LVP's, SVP's, and PBP's used in TPN should be labeled with their aluminum levels.

11. One comment stated that information about the average amount of aluminum and its range at expiration for LVP's and SVP's is more useful than the maximum historical value at expiration, since otherwise a physician may overestimate the amount of aluminum being delivered to the patient. Another comment proposed that FDA require labeling of SVP's and PBP's with an average and a range of aluminum values at expiry, obtained from five production scale batches, such that the labeling would state "Approximate average aluminum value —— µg/L. Approximate aluminum range —— µg/L to—— µg/L."

The agency believes that information about the maximum concentration of aluminum potentially present at expiry is more useful to the practitioner. FDA's intention is to limit exposure to aluminum, and the use of average values or range at expiration would not achieve this goal as effectively.

C. Applicability to Biologics

In the proposed rule, FDA stated that licensed biological products were not covered by the proposal.

12. Twelve comments stated that biologics, specifically albumin, plasminate, and any other colloidal volume expanders, should be regulated. The Center for Biologics Evaluation and Research at the FDA is currently considering whether to regulate the levels of aluminum in licensed biological products. However, such regulation is outside the scope of this final rule.

D. Statement Regarding Maximum Intake of Aluminum

FDA proposed requiring a statement regarding the maximum daily aluminum intake recommended for patients. FDA sought comment on whether adding the language "Patients should receive no more than 4 to 5 µg/kg/day of aluminum" to the warning statement was appropriate and on whether a 4 to 5 µg/kilogram (kg)/day level is reasonable and adequate to protect the public health.

13. Two comments stated that FDA should include definitions of safe, unsafe, and toxic levels of aluminum. Three comments said that FDA should provide health professionals with a best estimate as to what constitutes a toxic aluminum load.

One comment stated that proposing to limit aluminum to 4 to 5 µg/kg/day would either make TPN formulations unavailable to neonates or expose doctors to liability, because it is a

difficult level to meet. Another comment said that 4 to 5 µg/kg/day is too low and may not allow patients to receive adequate amounts of calcium and phosphates. One comment noted that parenteral limits are much lower than oral limits, and expressed the belief that the proposed language did not offer guidance with respect to combined oral and parenteral daily limits. Another comment noted that the proposal does not provide a therapeutic alternative to too high aluminum levels, and asked that FDA include in the statement a definition of the populations truly at risk.

One comment stated that it would be difficult for health care professionals to calculate total aluminum intake, particularly for neonates receiving multiple intravenous infusions. Another comment stated that the factors that affect plasma aluminum clearance [1] can influence sensitivity to aluminum load [2] at any concentration of aluminum infused, and therefore aluminum concentration in TPN cannot be correlated directly to aluminum plasma levels.

Two comments recommended alternative statements. One suggested using the following language: "Daily parenteral intake of greater than 4 to 5 µg/kg/day of aluminum has been associated with central nervous system and bone toxicity." Another suggested using the following warning: "No aluminum toxicity to the brain or bone of premature neonates has been documented with intakes below 5 µg/kg/day; however, tissue loading may still occur at that rate of administration to preterm infants."

One comment requested that FDA require such a warning statement only for those SVP's for which aluminum is a significant problem.

Based on these comments, FDA revised the warning to include a statement on current findings rather than a statement about maximum safe levels. FDA included specific references in the proposed rule (63 FR 176).

E. Acceptable Assay Methods for Determining Aluminum Levels

FDA proposed permitting applicants and manufacturers to have the discretion and flexibility to develop their own validated assay methods as long as the methods are in compliance with current good manufacturing practices requirements. Holders of approved applications for LVP's, SVP's and PBP's used in TPN therapy would be required to submit a supplement under part 314 (21 CFR part 314) in § 314.70(c) that described the method used for determining aluminum content. Holders of pending applications would be required to submit an amendment under § 314.60 or § 314.96. For SVP's not subject to approved applications, manufacturers would be required to maintain records for examination by FDA during inspections.

14. One comment stated that the USP provides an established system and procedure for the development of uniform analytical methods. The comment asked that FDA request that U.S.P. develop assay methods for determining aluminum content in parenterals rather than requiring individual companies to do so.

FDA believes that more than one analytical method may be suitable or necessary to assay aluminum content in different TPN products. Once FDA has reviewed several methods, it may evaluate whether it is appropriate to develop uniform analytical procedures. Individual companies may provide their validated analytical methods to USP for publication. Through this process, USP may establish a uniform analytical method for determining aluminum content in parenterals. FDA will accept any method that is validated and in compliance with current good manufacturing practice requirements.

15. One comment supported FDA's proposal. The comment also stated that analytical methods should be those in general use, such as flameless atomic absorption spectroscopy with a graphite furnace, and the method should be sufficiently sensitive to detect aluminum at the µg/L and not the milligram (mg) per liter level.

Again, FDA will accept any method that is validated and in compliance with current good manufacturing practice requirements. Any analytical method must be sensitive enough to detect aluminum at the µg/L and not the mg/L level, because the aluminum limits for LVP's and the required labeling statements for LVP's, SVP's, and PBP's are measured in µg/L.

F. Date of Implementation of the Final Rule

FDA proposed that any final rule that issued based on its proposed rule would become effective 1 year after the final rule's date of publication in the **Federal Register**. After that date, new drug applications (NDA's) submitted under § 314.50 and abbreviated new drug applications (ANDA's) submitted under 21 CFR 314.94 would have to comply with the new requirements under § 201.323.

16. One comment proposed an implementation date of 4 years after publication of the final rule in the **Federal Register** to account for the time necessary to collect and analyze data. Another comment suggested an implementation date of 31/2 years after publication of the final rule, or whenever data from five batches of product became available and the supplement was approved. This comment stated that the additional time is necessary to collect aluminum levels at expiry by an appropriate and validated method, since companies do not presently have such data.

Under the final rule, a manufacturer may use: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after this rule takes effect. This means that if expiry data under (1) and (2) of comment 16 in section III. F of this document are not available within 1 year, data available for the product during that year can be used under (3) of comment 16. As a manufacturer accrues additional data, it can then also use methods (1) and/or (2) of comment 16.

17. One comment asked whether FDA expects supplements to be submitted and approved and labeling changed within 1 year of publication of the final rule, or simply for supplements to be submitted within 1 year of publication of the final rule.

FDA expects supplements to be submitted and labeling to be changed within 1 year of publication of this final rule. Under current regulations (§ 314.70(c)) and the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 356a(b)), a manufacturer can file a changes being effected supplement for immediate implementation of this change. Thus, FDA believes implementation should take place in 1 year.

G. Cost of Implementing the Rule

FDA estimated in the proposed rule that the annualized cost to amino acid suppliers to implement the proposed rule would be $1,416,622. This figure includes first year or one-time costs estimated at $20 million.

18. One comment stated that wholesale raw material amino acids for intravenous use is a fraction of the $109 million market cited by FDA, and is actually much closer to $40 million. The comment went on to state that this market is shrinking and will continue to

[1] The clearance rate for aluminum is the rate at which aluminum is removed from the body by normal body functioning.

[2] Aluminum load is the amount of aluminum in the body.

do so for the foreseeable future. The comment estimated that, in light of these figures, the annual cost of compliance would represent 3 percent of sales, almost as much as the 4 percent spent by the industry on research and development. Another comment stated that the proposed rule underestimated the cost for compliance because validation without USP guidance would be difficult and because the number of worker hours required to test products is large.

FDA believes that the benefits of removing the health hazard outweigh costs to industry. FDA provides additional economic analysis based on these comments in section VII of this document.

19. The same comment stated that for LVP manufacturers, costs are even higher. The comment stated that the Eastern Research Group (ERG) study "grossly underestimated the expense associated with label copy changes, non-compliant raw materials, finished product, and did not consider product recalls, which are inevitable, given the technically unfeasible 25 µg/L limit."

FDA has reanalyzed these expenses in section VII of this document.

IV. Legal Authority

FDA's rule to regulate the aluminum content of certain parenteral drug products and to require aluminum content to be stated in the labeling of certain drug products is authorized by the Federal Food, Drug, and Cosmetic Act (the act). Section 502(a) of the act (21 U.S.C. 352(a)) prohibits false or misleading labeling of drugs, including, under section 201(n) of the act (21 U.S.C. 321(n)), failure to reveal material facts relating to potential consequences under customary conditions of use. Section 502(f) of the act requires drug labeling to have adequate directions for use, adequate warnings against use by patients where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration, as necessary to protect users. In addition, section 502(j) of the act prohibits the use of drugs that are dangerous to health when used in the manner suggested in their labeling. Drug products that do not meet the requirements of section 502 of the act are deemed to be misbranded.

In addition to the misbranding provisions, the premarket approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act (21 U.S.C. 355), FDA will approve a new drug application (NDA) only if the drug is shown to be safe and effective for its intended use under the conditions set forth in the drug's labeling. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act.

Part 201 sets out FDA's general labeling regulations. Under § 201.100(d), prescription drug products must bear labeling that contains adequate information by which licensed practitioners can use the drugs safely and for their intended purposes. Section 201.57 describes specific categories of information, including information for drug use in selected subgroups of the general population and warnings on adverse reactions and potential safety hazards that must be present to meet the requirements of § 201.100. In addition, under 21 CFR 314.125, an NDA will not be approved unless there is adequate safety and effectiveness information for the labeled uses and the product complies with the requirements of part 201.

Any drug product not in compliance with § 201.323 is misbranded under section 502 of the act and an unapproved new drug under section 505 of the act.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a class of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Implementation Plan

This final rule is effective on January 26, 2001. After that date, NDA's submitted under § 314.50 and abbreviated new drug applications (ANDA's) submitted under § 314.94 must comply with the labeling requirements under § 201.323. Holders of approved NDA's or ANDA's must meet the requirements of proposed § 201.323 by submitting supplements under § 314.70 or § 314.97. Applicants for LVP's used in TPN therapy and SVP's used as additives in TPN solutions are required to submit a supplement under § 314.70(c) that describes the assay method for determining the aluminum content. Applicants must submit validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment under § 314.60 or § 314.96.

VII. Analysis of Impacts

A. Introduction

FDA has examined the impact of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation). The expected aggregate costs of this final rule, and the anticipated impact of the rule on small entities, are described in the analysis below. FDA concludes that this final rule is consistent with the regulatory philosophy and the principles set forth in the Executive Order and in these two statutes.

B. Compliance Requirements and Costs

In this final rule, FDA is amending its regulations by establishing a maximum permissible aluminum limit for LVP's used in TPN, as well as requiring certain label and package insert information for aluminum content in LVP's and SVP's used in TPN. The agency is issuing this rule to lower the risk of aluminum toxicity in light of evidence linking the use of parenteral drugs containing aluminum to morbidity and mortality among patients on TPN therapy. FDA estimates total annualized compliance costs for the final rule at about $23.8 million. Further, for reasons explained elsewhere in this section of the document, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. FDA has not identified any other Federal rules that duplicate, overlap, or conflict with this final rule.

In the preamble to the proposed rule, FDA relied on the report of its

contractor, ERG, for its estimates of compliance cost burdens of the proposed rule. Total annualized compliance costs were estimated at $20.1 million. This was composed of a one time cost of $63.8 million annualized at $9.8 million (over 10 years at a 7 percent discount rate) plus recurring annual costs of $10.3 million. Over 50 percent of the total costs would be due to actions undertaken to manufacture LVP solutions and their components that would comply with the aluminum limit requirements.

In response to the proposed rule, FDA received many comments, some of which referred to the cost estimates contained in the ERG report. As a result of these comments, ERG reanalyzed areas of concern specified in the comments and made some modifications to its original analysis of compliance costs. These changes are included in an addendum to the initial compliance cost analysis (available in the docket). As a result, FDA concludes that the final rule will impose annualized compliance costs of about $23.8 million on the affected industries, an increase of $3.7 million from its cost estimate for the proposed rule. This is composed of a one time cost of $67.3 million annualized at $10.6 million (over 10 years at a 7 percent discount rate) plus recurring annual costs of $13.2 million. The remainder of this section summarizes the addendum and responds to other comments concerning economic issues mentioned earlier in this preamble.

One comment to the proposal stated that FDA had underestimated the costs of label copy changes, noncompliant raw materials, finished product, and product recalls. As a result, ERG contacted industry to gain more information and data, where possible, to improve the accuracy of these estimates. ERG's new research into pharmaceutical labeling costs shows that compliance costs for the label changes, including inventory losses occurring at the changeover, are higher for this rule than previously estimated. Accordingly, FDA has increased its labeling change estimate to about $588,000 annually.

The original ERG report estimated compliance costs for final release testing for aluminum in finished LVP products and their raw material inputs at about $4.5 million annually. After subsequent discussions with industry, ERG recognized that some LVP production lots will fail to meet the required aluminum limit, but noted that this loss of finished product will be reduced by measures to lower the aluminum level of the raw material inputs. Similarly, ERG found that the cost of product recalls will be low due to the final release testing of LVP products, but it could not predict the likely frequency of such recalls.

The same comment also suggested that dextrose suppliers would incur compliance costs because some dextrose products contain aluminum at a level that might exceed the proposed limit. Upon further consideration of the possible existence of noncompliant raw materials, including dextrose and amino acids, and discussions between industry and ERG, FDA adjusted its original cost estimate to include an additional $2.72 million annually due to losses from noncompliant raw materials.

Another comment stated that FDA had underestimated laboratory assay method validation costs. Following ERG's review of its original analysis and further discussions with industry, FDA agrees with the comment as it relates to LVP manufacturers and has increased one-time assay method validation costs for this sector from $737,000 to $2.1 million. Further research into current compliance rates across all industry sectors, however, resulted in lowering assay method validation costs for some other sectors. The net result is a slight increase in total annualized assay method validation costs to about $1.72 million. Further, the estimate of annualized equipment purchase costs has been increased by $350,000.

Another comment referred to a statistic FDA used to show the relative size of the expected cost impact on amino acid suppliers. Specifically, the comment disagreed with the FDA statement that annual compliance costs for raw material amino acid suppliers would represent only 0.09 percent of sales, having been derived from $1.4 million in compliance costs and $1.6 billion in total amino acid sales. The comment proceeded with its own estimate of the relative size of the compliance cost for these suppliers, calculating it to be 3 1/2 percent of the $40 million in amino acid sales to TPN solution manufacturers, a level roughly equivalent to total research and development costs. Upon further analysis, FDA reaffirms its estimate of the average annual compliance cost per amino acid manufacturing establishment of about $1.4 million. However, because there are approximately nine supplier establishments, the total cost would be about $12.75 million, which equates to an even greater percentage of total sales of amino acids to TPN solution manufacturers, about 32 percent, than the comment suggested. The costs, nevertheless, amount to only about 0.09 percent of the total $1.6 billion in sales of amino acids to all industries as stated in the proposal.

As in its original analysis, ERG discussed but could not reliably forecast the likelihood that some suppliers of amino acids and possibly dextrose would abandon the TPN solution market, due to the relatively small percentage of total amino acid and dextrose sales to TPN manufacturers. Because the industry currently uses nine different suppliers, FDA does not anticipate product shortages. Nevertheless, the agency will remain alert to the possibility.

Any professional skills necessary for implementation of this final rule should already exist within the firms and should not need to be newly acquired.

C. Affected Entities

If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the significant economic impact of such a rule on small entities. In the proposed rule, FDA relied on the estimated compliance costs by type of establishment as projected by ERG. That analysis determined that very few of the affected companies are considered small by the standards of the Small Business Administration (SBA).[3] Therefore, the agency certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The agency received no comments specifically directed at this certification. Nevertheless, due to comments on other aspects of its estimates and modifications to the original analysis, FDA has reanalyzed the small business impacts of the final rule.

Fewer than 8 of the 24 companies identified in the ERG report as a manufacturer or supplier of TPN products or their inputs are small businesses according to the SBA definitions. No more than four SVP manufacturers are small under the SBA definitions. Moreover, since the average annualized cost for these establishments is estimated at about $51,000 each, the estimated annualized compliance costs for these companies are expected to account for less than one percent of their annual revenues. FDA further identified one amino acid supplier that may be a small business; but again, the annualized compliance costs for this firm would be less than 1 percent of annual revenues. The size of one dextrose supplier and one electrolyte

[3] SBA considers a small business in this context to be one with fewer than 750 employees (Ref. 2).

supplier could not be confidently determined due to the scarcity of data. Therefore, it was not possible to determine whether the compliance costs of these firms would represent more than 1 percent of their revenues. Based on the very few small firms that might incur a significant impact, the Commissioner of Food and Drugs certifies under section 605(b) of the Regulatory Flexibility Act that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before establishing any rule that requires expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation, or about $108 million in 1999) in any one year. The publication of this final rule concerning the regulation of TPN containing aluminum is not expected to result in expenditures of funds by State, local, or tribal governments, or the private sector in excess of $100 million annually. Because the agency estimates the largest 1-year expenditure to be about $80.5 million (representing the sum of one-time expenditures and annual expenditures), no further analysis is warranted according to the Unfunded Mandates Reform Act.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition.

Description: FDA is amending its regulations to add certain labeling requirements for aluminum content in LVP's, SVP's and PBP's used in TPN. FDA is also specifying an upper limit of aluminum permitted in LVP's and requiring manufacturers to submit to FDA for approval validated assay methods for determining aluminum content in parenteral drug products. The agency is adding these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially premature neonates and patients with impaired kidney function.

Based on data concerning the number of applications for LVP's, SVP's, and PBP's used in TPN received by the agency, FDA estimates that the labeling for approximately 200 products will be changed under § 201.323(b), (c), and (d). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each labeling change. Based on data collected by the Eastern Research Group (Ref. 1) concerning the number of affected manufacturers, FDA estimates that approximately 65 respondents will each submit one validated assay method annually under § 201.323(e). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each validated assay.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
201.323(b), (c), (d)	200	1	200	14	2,800
201.323(e)	65	1	65	14	910
Total					3,710

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA did not receive any comments on the paperwork reduction aspects of the proposed rule.

The information collection provisions of this final rule have been submitted to OMB for review.

Before this rule becomes effective, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the information collection displays a current OMB control number.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a Federalism summary impact statement is not required.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eastern Research Group, Addendum to Compliance Cost Analysis for a Regulation for Parenteral Drug Products Containing Aluminum, April 15, 1999.

2. U.S. Small Business Administration, Table of Size Standards, 1996.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.323 is added to subpart G to read as follows:

§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.

(a) The aluminum content of large volume parenteral (LVP) drug products used in total parenteral nutrition (TPN)

therapy must not exceed 25 micrograms per liter (µg/L).

(b) The package insert of LVP's used in TPN therapy must state that the drug product contains no more than 25 µg/L of aluminum. This information must be contained in the "Precautions" section of the labeling of all large volume parenterals used in TPN therapy.

(c) The maximum level of aluminum present at expiry must be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages (PBP's) used in the preparation of TPN solutions. The aluminum content must be stated as follows: "Contains no more than—— µg/L of aluminum." The immediate container label of all SVP's and PBP's that are lyophilized powders used in the preparation of TPN solutions must contain the following statement: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than —— µg/L." This maximum level of aluminum must be stated as the highest of:

(1) The highest level for the batches produced during the last 3 years;

(2) The highest level for the latest five batches, or

(3) The maximum historical level, but only until completion of production of the first five batches after January 26, 2001.

(d) The package insert for all LVP's, all SVP's, and PBP's used in TPN must contain a warning statement. This warning must be contained in the "Warnings" section of the labeling. The warning must state:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

Research indicates that patients with impaired kidney function, including premature neonates, who receive parenteral levels of aluminum at greater than 4 to 5 µg/kg/day accumulate aluminum at levels associated with central nervous system and bone toxicity. Tissue loading may occur at even lower rates of administration.

(e) Applicants and manufacturers must use validated assay methods to determine the aluminum content in parenteral drug products. The assay methods must comply with current good manufacturing practice requirements. Applicants must submit to the Food and Drug Administration validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment under § 314.60 or § 314.96 of this chapter.

Dated: December 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1788 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Ractopamine Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly and Co. The NADA provides for use of a ractopamine hydrochloride Type A medicated article to make Type B and Type C medicated swine feeds. The Type C medicated finishing swine feeds are used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness. The regulations are also amended to provide for an acceptable daily intake (ADI) for ractopamine and tolerances for drug residues in edible products derived from treated swine.

DATES: This rule is effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 140–863 that provides for use of Paylean® (ractopamine hydrochloride) Type A medicated article to make Type B and Type C medicated swine feeds. The Type C medicated finishing swine feeds must contain at least 16 percent crude protein. Feeds containing 4.5 grams per ton (g/t) ractopamine hydrochloride are used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness. Feeds containing 4.5 to 18 g/t ractopamine hydrochloride are used for improved feed efficiency and increased carcass leanness. The NADA is approved as of December 22, 1999, and the regulations in part 558 (21 CFR part 558) are amended by adding § 558.500 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Furthermore, § 558.4(d) is amended in the "Category I" table by adding an entry for "ractopamine" to provide for the assay limits for Type A medicated articles and Type B/C medicated feeds and the maximum Type B medicated feed level.

In addition, part 556 (21 CFR part 556) is amended by adding § 556.570 to establish an ADI for total ractopamine and tolerances for residues of ractopamine in edible tissues of treated swine.

In accordance with the freedom of information provisions of 21 CFR part and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for food-producing animals qualifies for 5 years of marketing exclusivity beginning December 22, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been previously approved for any other application filed under section 512(b)(1).

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.570 is added to subpart B to read as follows:

§ 556.570 Ractopamine.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of ractopamine is 1.25 micrograms ractopamine hydrochloride per kilogram of body weight per day.

(b) *Tolerances.* Swine—Tolerances are established for residues of ractopamine hydrochloride parent (marker residue) in edible swine tissues of 0.05 part per million (ppm) in muscle, and 0.15 ppm in liver (target tissue). Residues of ractopamine in swine muscle are not indicative of the safety of residues in other edible tissue.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.4 is amended in paragraph (d) in the "Category I" table by adding an entry alphabetically for "Ractopamine" to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent [1] type A	Type B maximum (200x)	Assay limits percent [1] type B/C [2]
* *	*	* *	* *
Ractopamine	85–105	1.8 g/lb (0.4%)	80–110
* *	*	* *	* *

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

5. Section 558.500 is added to subpart B to read as follows:

§ 558.500 Ractopamine.

(a) *Approvals.* Type A medicated articles: 9 grams of ractopamine hydrochloride per pound to 000986 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Related tolerances.* See § 556.570 of this chapter.

(d) *Conditions of use.* (1) *Swine*—(i) *Amount.* 4.5 grams of ractopamine hydrochloride per ton of Type C feed for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; 4.5 to 18 grams per ton for improved feed efficiency and increased carcass leanness; fed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight.

(ii) *Limitations.* Feed continuously as sole ration. Not for use in breeding swine.

(2) [Reserved]

Dated: January 13, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–1789 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N–0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing reporting by manufacturers, importers, distributors and health care (user) facilities of adverse events related to medical devices. Amendments are being made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Susan E. Bounds, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION:

I. General

In the **Federal Register** of September 14, 1984 (49 FR 36326), FDA issued medical device reporting regulations for manufacturers and importers under the act and the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), which required medical device user facilities and distributors to report certain device-related adverse events.

Distributor reporting requirements became effective on May 28, 1992, following the November 26, 1991 (56 FR 60024), the publication of those provisions in a tentative final rule. In the **Federal Register** of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law and were now codified in part 804 (21 CFR part 804).

On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Public Law 102–112) amending certain provisions of section 519 of the act (21 U.S.C. 360i) relating to reporting of adverse device events. Among other things, the 1992 amendments amended section 519 of the act to modify the requirements for manufacturer and importer reporting. Under the regulations issued under the SMDA and the 1992 amendments, importers are required to report as manufacturers if they are engaged in manufacturing activities or to report as distributors if they are engaged solely in distribution activities.

On November 21, 1997, the President signed FDAMA (Public Law 105–115) into law. FDAMA made several changes regarding the reporting of adverse experiences related to devices. On May 12, 1998, FDA published a proposed rule (63 FR 26129) (hereinafter referred to as the May 1998 proposal) and a direct final rule (63 FR 26069) (hereinafter referred to as the May 1998 direct final rule) to implement the amendments to the Medical Device Reporting (MDR) provisions. FDA received at least one significant adverse comment on the direct final rule. Accordingly, consistent with FDA's procedures on direct final rulemaking, FDA is withdrawing the May 1998 direct final rule and is addressing the comments in this final rule based upon the May 1998 proposal.

The May 1998 proposal was intended to amend the medical device reporting requirements to implement the following changes made by FDAMA:

1. Section 213(a) of FDAMA revised section 519(a) of the act to eliminate distributors as an entity required to report adverse device events. Importers are still required to report under section 519(a) of the act.

2. Section 213(a) of FDAMA also amended section 519(a) of the act to clarify that existing requirements for distributors to keep records concerning adverse device events and make them available to FDA upon request continue to apply.

3. Section 213(a)(2) of FDAMA revoked section 519(d) of the act, which required manufacturers, importers, and distributors to submit to FDA an annual certification concerning the number of reports filed under section 519(a) in the preceding year. As a result, certification requirements are eliminated.

4. Section 213(c)(1)(A) of FDAMA revised section 519(b)(1)(C) of the act to require that device user facilities submit an annual rather than a semiannual summary of their reports to FDA.

5. Section 213(c)(1)(B) of FDAMA eliminated section 519(b)(2)(C) of the act. This section had required FDA to disclose, upon request, the identity of a device user facility making a report under section 519(b) of the act if the identity of the device user facility was included in a report required to be submitted by a manufacturer, distributor, or importer. As a result of this change by FDAMA, FDA now may disclose the identity of a device user facility only: in connection with an action concerning a failure to report or false or fraudulent reporting; in a communication to the manufacturer of the device; or to the employees of the Department of Health and Human Services, the Department of Justice, and duly authorized committees and subcommittees of Congress.

6. Section 422 of FDAMA states that FDA's regulatory authority under the act, relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. The proposal stated that, under this rule of construction, the reporting requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco would remain unchanged.

Furthermore, along with the substantive changes to the MDR provisions required by FDAMA, the agency proposed certain nonsubstantive changes to the organization of the provisions contained in parts 803 (21 CFR part 803) and 804. These organizational changes did not affect any reporting burdens; rather, the changes were made for the sake of clarity and consistency within the CFR.

II. Summary of Comments

The agency received nine comments submitted by medical device manufacturers, importers, distributors, and trade associations.

1. Four comments stated that the agency did not follow Congress' direction that FDA consider changing the distributor recordkeeping requirements. The Congressional Conference Committee (the Conference Committee) recommended that FDA consider limiting the length of time that distributors are required to retain records to a period of 6 years (the current requirement is a minimum of 2 years, or the expected life of the product). The Conference Committee also recommended that FDA consider providing for electronic retention of records.

The agency disagrees that it did not properly follow Congress' direction or intent. The Conference Committee recommended that the agency consider changes to the distributor recordkeeping requirements. However, FDAMA contained no provisions that required any specific changes to the requirements.

The agency carefully considered the recommendations of the conference committee. The agency determined that the protection of the public health would not be adequately served if distributor recordkeeping was limited to a period of 6 years. Under the new quality system regulations contained in part 820 (21 CFR part 820), manufacturers (including initial distributors of foreign manufacturers) must retain records for a period equal to the design and expected life of the device (but no less than 2 years). The agency believes it is appropriate to require distributors to retain records for the same time period. This is especially important because distributors are no longer required to report any adverse event information to the agency, and the agency's primary access to the distributor complaint information is through its periodic inspection and examination of the distributor records.

FDA also considered electronic retention of distributor records. Prior to FDAMA and the proposed rule, the agency had not prohibited the electronic retention of records, nor did it intend to prohibit electronic recordkeeping based upon the proposal. When the distributor recordkeeping requirements were shifted from part 804 to part 803, the language remained largely unchanged. However, in order to avoid further confusion regarding electronic retention of records, the agency is modifying proposed § 803.18(d)(1) to clarify that distributor records may be either written or electronic.

2. Three comments stated that in describing distributor recordkeeping, reference to the quality system regulations, specifically § 820.198 (Complaint files), is inappropriate because § 820.198 applies only to manufacturers.

The agency agrees with this comment in part. The section being revoked (804.35) references § 820.198 because many of the recordkeeping requirements in § 820.198 would apply to all distributors. However, for the sake of clarity, the agency is revising § 803.18(d) to remove the reference to § 820.198, and is substituting language to identify the relevant requirements from § 820.198 that apply to distributors who are not importers.

3. Two comments suggested that the requirement that importers submit

adverse event reports within 10 days be changed to allow 30 days for reporting.

The agency agrees and is modifying the regulation accordingly. Prior to the SMDA, importers were subject to the same reporting timeframes as manufacturers under the 1984 MDR regulation. Consistent with the requirements of the SMDA, the 10-day reporting requirement was imposed on distributors and, because part 804 defined distributors to include importers, the 10-day reporting requirement was imposed on importers as well. Under FDAMA, distributors are no longer required to submit adverse event reports, but the reporting requirements continue to apply to importers. Because importers are subject to many of the same requirements as manufacturers under the new quality system regulations contained in part 820, the agency will allow importers the same 30 days it provides manufacturers to gather information and submit reports.

4. One comment stated that the fields to be filled out on FDA Form 3500A (MEDWATCH reporting form) should be specifically identified for importers. The comment also requested clarification regarding whether the agency's definition of "importer" for the purpose of MDR includes firms who sell directly to the ultimate user.

The agency agrees that the fields to be filled out by importers on FDA Form 3500A should be specified within the regulation. Because the requirements and burdens would not be affected by revising the style and format of § 803.43, the agency is modifying the section to be consistent with §§ 803.32 and 803.52, which describe the information to be submitted on the MEDWATCH form. Furthermore, proposed § 803.43 was inadvertently misnumbered. For the sake of consistency in numbering, the final rule will renumber this section as § 803.42.

The agency notes that, because "distributors" had previously been defined to include "importers," FDA Form 3500A does not specifically address importer information and does not use the term "importers." However, block F of the MEDWATCH form is identified for use by device user facilities and distributors. An importer should continue to complete blocks A, B, D, E, and F until the form is revised to remove references to "distributor" and replace them with "importer."

The agency clarifies that firms who purchase products from a foreign manufacturer and sell directly to the ultimate user are considered retailers and not importers under part 803 and are not required to report.

5. One comment stated that distributor reporting is important for the protection of the public health. The comment recommended, as an alternative to distributor reporting, a modification to the medical device labeling requirements to require that manufacturer contact information be included in the labeling for all devices in order to ensure proper adverse event reporting.

The agency agrees that consumers are likely to contact medical device distributors with their device complaints. Without distributor reporting, it is possible that the agency will not receive information regarding some complaints. However, under FDAMA, the agency no longer has the authority to require distributor reporting.

Although distributors are no longer under an obligation to report adverse device events, the agency continues to encourage distributors to provide manufacturers with adverse event information so that consumer complaints may be appropriately investigated and reported.

The alternative suggestion that manufacturer contact information be included in device labeling would be likely to increase the amount of information the manufacturer and the agency receives from the consumer. However, implementing this type of change to the medical device labeling regulation is beyond the scope of this rule. The agency is currently reviewing its medical device labeling regulation and considering certain modifications. The question of manufacturer contact information appearing on device labeling will be considered as part of that regulatory effort.

6. One comment stated that the agency erroneously interpreted section 422 of FDAMA, regarding the regulation of tobacco products, tobacco ingredients, or tobacco additives. The comment stated that section 422 simply provides that nothing in FDAMA shall affect the question of whether or not FDA has authority to regulate such products. The comment suggests that, if FDA has the authority to regulate such products, they should be regulated in the same manner as other medical devices.

The agency disagrees with this comment. Section 422 of FDAMA states that "Nothing in this Act or the amendments made by this Act shall be construed to affect the question of whether the Secretary of Health and Human Services has any authority to regulate any tobacco product, tobacco ingredient, or tobacco additive." Although this language may suggest that FDAMA is simply silent regarding the agency's authority to regulate tobacco, section 422 goes on to state that "Such authority, if any, shall be exercised under the Federal Food, Drug, and Cosmetic Act as in effect on the day before the date of the enactment of this act." Beyond the question of whether the agency has authority to regulate tobacco, this language directs the agency as to how it should exercise any such authority once pending litigation is resolved.

Under section 422 of FDAMA, therefore, Congress neither affirms nor denies the agency's authority to regulate tobacco, but it does direct the agency to continue regulating tobacco as it had been doing prior to FDAMA (if authority to regulate tobacco exists). Prior to FDAMA, distributor reporting and manufacturer and distributor certification were required under the act. If the agency were to exercise its authority under the act "as in effect on the day before the date of the enactment of [FDAMA]," distributor reporting and manufacturer and distributor certification requirements would continue to apply to manufacturers and distributors of cigarettes and smokeless tobacco products.

However, while the agency disagrees with the comment's interpretation of section 422 of FDAMA, FDA finds persuasive the comment's arguments that tobacco manufacturers and distributors should be exempt from the requirement of annual certification of MDR's and that distributors should be exempt from MDR reporting requirements under the residual authority of the act. The agency has authority under section 519(c) of the act to exempt, by regulation, any class of persons from the medical device reporting requirements upon a finding that such reporting by that class is not necessary to "assure that a device is not adulterated or misbranded or * * * otherwise to assure its safety and effectiveness" (21 U.S.C. 360i(c)). The agency finds that the statutory criteria for exemption are met because reasonable assurances will be provided by the remaining medical device reporting requirements, that is, reporting and recordkeeping required by manufacturers and importers and recordkeeping required by distributors.

7. On its own initiative, FDA has revised § 803.22(b)(2) to make clear that importers who receive reportable information about a device not imported by them need not submit a report to FDA but, instead, must forward the information to FDA along with a cover letter explaining that they do not import the device in question.

8. On its own initiative, FDA has determined that it is not necessary for importers to submit supplemental reports under § 803.56 as proposed. Instead, FDA will require importers to submit additional information only when requested by FDA under § 803.15. No change to § 803.15 is necessary.

9. Also on its own initiative, FDA has made some nonsubstantive changes to the definitions in § 803.3 in order to integrate the requirements for importer reporting into part 803.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies the elimination of reporting by distributors, continues reporting by importers as they have been doing to date with an extension of the time for reporting, increases protection from disclosure of the identity of device user facilities that have submitted reports, reduces summary reporting by device user facilities from semiannual to annual, eliminates annual certification for manufacturers and distributors (including importers) of medical devices, and makes other nonsubstantive changes. The agency certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. This final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Reporting and recordkeeping requirements for manufacturers, importers, user facilities, and distributors of medical devices under the FDA Modernization Act (FDAMA)—General Requirements.

Description: FDAMA contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. This section of FDAMA also modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities.

This final rule amends FDA's regulations in part 803 and revokes part 804 to reflect the changes to medical device reporting made by FDAMA. The final rule has also been amended to implement the exemptions for manufacturers and distributors of cigarettes and smokeless tobacco products discussed below.

In accordance with 5 CFR 1320.8(d), on May 12, 1998, requests for public comment were published in the **Federal Register** (see 63 FR 26069 and 63 FR 26129). Several comments were received in response to the proposed rule and are discussed in detail previously in this final rule.

Four comments objected that FDA did not follow the congressional recommendation in the conference report on FDAMA that FDA limit the time that distributors be required to keep records to a maximum of 6 years. The direct final rule required that distributors keep records for 2 years or the expected life of the device, whichever is greater.

FDA carefully considered the recommendations of the conference committee. The agency determined that the protection of the public health would not be adequately served if distributor recordkeeping was limited to a period of 6 years. Under the new quality system regulations contained in part 820, manufacturers (including initial distributors of foreign manufacturers) must retain records for a period equal to the design and expected life of the device (but no less than 2 years). The agency believes it is appropriate to require distributors to retain records for the same time period. This is especially important because distributors are no longer required to report any adverse event information to the agency, and the agency's primary access to the distributor complaint information is its periodic inspection and examination of the distributor records.

FDA considered electronic retention of distributor records. Prior to FDAMA and the May 1998 proposal, the agency had not prohibited the electronic retention of records, nor did it intend to prohibit electronic recordkeeping based upon the May 1998 proposal. When the distributor recordkeeping requirements were shifted from part 804 to part 803, the language remained largely unchanged. However, in order to avoid further confusion regarding electronic retention of records, the agency is modifying proposed § 803.18(d)(1) to clarify that distributor records may be either written or electronic.

Three comments stated that it is inappropriate to refer to the quality systems regulations (§ 820.198) in describing distributor recordkeeping because § 820.198 does not apply to distributors.

FDA agrees and has revised § 803.18(d) accordingly to remove the reference to § 820.198. FDA is substituting language to identify the relevant requirements from § 820.198 that apply to distributors who are not importers. FDA notes, however, that § 820.198 does apply to importers of devices.

Two comments suggested that the reporting timeframe for importers should be changed to 30 days from 10 days.

FDA agrees with these comments and has revised the final rule. Previously,

importers were included in part 804 with the reporting requirements for distributors. Because distributors are no longer required to report, part 804 is eliminated and importers are included in part 803 with manufacturers. The 30-day timeframe is consistent with the timeframe for manufacturers.

One comment suggested that the form for reporting adverse events (FDA Form 3500A) should be revised to refer specifically to importers. Another comment asked for clarification as to whether a person who sells directly to the ultimate user may be considered an "importer".

The agency agrees that the fields to be filled out by importers on FDA Form 3500A should be specified within the regulation. Because the requirements and burdens would not be affected by revising the style and format of § 803.43, the agency is modifying the section to be consistent with §§ 803.32 and 803.52, which describe the information to be submitted on the MEDWATCH form. Furthermore, proposed § 803.43 was inadvertently misnumbered. For the sake of consistency in numbering, the final rule will renumber this section as § 803.42.

The agency notes that, because "distributors" had previously been defined to include "importers," FDA Form 3500A does not specifically address importer information and does not use the term, "importers." However, block F of the MEDWATCH form is identified for use by device user facilities and distributors. An importer should continue to complete blocks A, B, D, E, and F until the form is revised to remove references to "distributor" and replace them with "importer." The agency clarifies that firms who purchase products from a foreign manufacturer and sell directly to the ultimate user are considered retailers and not importers under part 803 and are not required to report.

One comment suggested that distributor reporting is important for the protection of the public health and recommended that, as an alternative to distributor reporting, FDA should require manufacturer contact information on the labeling to assure proper adverse event reporting.

The agency agrees that consumers are likely to contact medical device distributors with their device complaints. Without distributor reporting, it is possible that the agency will not receive information regarding some complaints. However, under FDAMA, the agency no longer has the authority to require distributor reporting. Although FDA cannot require distributor reporting, FDA encourages distributors to report adverse event information to manufacturers so that they may investigate and report it as appropriate. The suggestion that FDA require manufacturer contact information on the labeling is beyond the scope of this rule and FDA will consider it separately.

One comment objected that FDA incorrectly interpreted section 422 of FDAMA regarding the regulation of tobacco products, tobacco ingredients and tobacco additives. The comment stated that section 422 only means that nothing in FDAMA shall affect whether FDA has the authority to regulate tobacco products. The comment further said that section 422 of FDAMA does not mean, as FDA believes, that the requirements, such as MDR reporting, for manufacturers and distributors of tobacco products are unchanged by FDAMA.

The agency disagrees with this comment. Section 422 of FDAMA states that "Nothing in this Act or the amendments made by this Act shall be construed to affect the question of whether the Secretary of Health and Human Services has any authority to regulate any tobacco product, tobacco ingredient, or tobacco additive." Although this language may suggest that FDAMA is simply silent regarding the agency's authority to regulate tobacco, section 422 of FDAMA goes on to state that "Such authority, if any, shall be exercised under the Federal Food, Drug, and Cosmetic Act as in effect on the day before the date of the enactment of this act." Beyond the question of whether the agency has authority to regulate tobacco, this language directs the agency as to how it should exercise such authority once pending litigation is resolved.

Under section 422 of FDAMA, therefore, Congress neither affirms nor denies the agency's authority to regulate tobacco, but it does direct the agency to continue regulating tobacco as it had been doing prior to FDAMA (if authority to regulate tobacco exists). Prior to FDAMA, distributor reporting and manufacturer and distributor certification were required under the act. If the agency were to exercise its authority under the act "as in effect on the day before the date of the enactment of [FDAMA]," distributor reporting and manufacturer and distributor certification requirements would continue to apply to manufacturers and distributors of cigarettes and smokeless tobacco products.

However, while the agency disagrees with the comment's interpretation of section 422 of FDAMA, FDA finds persuasive the comment's arguments that tobacco manufacturers should be exempt from the requirement of annual certification of MDR's and that distributors should be exempt from MDR reporting requirements under the residual authority of the act. The agency has authority under section 519(c) of the act to exempt, by regulation, any person from the medical device reporting requirements upon a finding that such reporting is not necessary to "assure that a device is not adulterated or misbranded or * * * otherwise to assure its safety and effectiveness" (21 U.S.C. 360i(c)). The agency finds that the statutory criteria for exemption are met in light of the fact that Congress has repealed the requirements for manufacturer and distributor annual certification and distributor reporting. A reasonable assurance of the safety and effectiveness of tobacco products will be provided by the remaining medical device reporting requirements, that is, reporting and recordkeeping required of manufacturers and importers and recordkeeping required of distributors.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section/FDA Form	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
803.15	50	1	50	4	200
803.19	150	1	150	3	450
803.22(b)(2)	100	1	100	.25	25
803.33 (FDA Form 3419)	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.55 (FDA Form 3417)	1,000	20	20,000	1.1	22,000
Total					25,060

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per recordkeeper	Total hours
803.17	2,000	1	2,000	3.3	6,600
803.18	39,764	1	39,764	1.5	59,646
Total					66,246

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens under this direct final rule are explained as follows:

A. Reporting Requirements

Prior to the program change reflected in this rule, distributors (including importers) were required to submit supplemental information under § 804.32. Distributors (who are not importers) are no longer required to submit MDR reports (including supplemental reports), and FDA has determined that it will not be necessary for importers to submit supplemental information except when FDA requests additional information under § 803.15. FDA has revised the final rule accordingly. Section 803.15 provides that FDA may request a reporter to submit additional or clarifying information concerning an MDR report when FDA determines that additional information is necessary for the protection of the public health. The burden estimate for this section includes only the burden for importers.

Prior to the program change reflected in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this rule, § 803.19 is modified to transfer the exemption provisions for importers of medical devices from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices are no longer required to submit MDR reports under this rule. The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.22(b)(2) provided that, if a manufacturer erroneously receives information about an adverse event concerning a device that they had not manufactured, the manufacturer must submit the report to FDA along with a cover letter explaining that the device in question was not manufactured by that firm. This final rule amends § 803.22(b)(2) to apply the same requirement to importers. The requirements of § 803.22(b)(2) were not previously reviewed by OMB under the PRA. Thus, the estimated burden reflects FDA's experience with this provision with regard to manufacturers and includes the estimated burden for both manufacturers and importers.

Prior to the program change reflected in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this rule, user facilities are required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission. FDA Form 3419 is being revised to reflect this change.

Under this rule the reporting requirement for importers of medical devices previously codified under § 804.25 is being transferred to § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. Section 803.40 requires importers to submit reports within 30 days after learning of the reportable event rather than 10 days as provided in § 804.25; this change does not affect the burden.

This rule does not amend § 803.55 but FDA is seeking approval for FDA Form 3417 on which baseline reports are to be submitted. The agency's estimate is based on FDA's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. As stated above, FDA is also exempting manufacturers and distributors of cigarettes and smokeless tobacco products from the requirement of annual certification. Therefore, under this rule, §§ 803.57 and 804.30 are being eliminated.

Because distributors, including distributors of cigarettes and smokeless tobacco products, will no longer be required to report, the final rule also removes §§ 804.25 (Reports by distributors), 804.32 (Supplemental information), and 804.33 (Alternative reporting requirements).

B. Recordkeeping Requirements

Prior to the program change reflected in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint

processing, and documentation of information related to MDR's. Under this rule, the requirements for establishing written MDR procedures for importers of medical devices have been transferred to § 803.17. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities, and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered "usual and customary" under 5 CFR 1320.3(b)(2).

Prior to the program change reflected in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this rule, § 803.18 is modified to transfer the recordkeeping requirements for importers and other distributors of medical devices including cigarettes and smokeless tobacco products from § 804.35 and § 804.35 is removed. As discussed above, this recordkeeping may be done in an electronic format.

Under the proposed rule, distributors of cigarettes and smokeless tobacco products would have been required to establish written internal procedures for evaluating and reporting events. Because distributors of cigarettes and smokeless tobacco products will not be required to report under the final rule, § 804.34 is deleted from the final rule.

The information collections of this final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions of this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed, must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. Medical device distributors, as defined in § 803.3, are also required to maintain records of incidents (files). Furthermore, manufacturers and importers are also required to report certain device malfunctions. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

* * * * *

3. Section 803.3 is amended by redesignating paragraphs (m) through (ee) as paragraphs (n) through (ff), respectively; by revising paragraph (c), the first sentence of paragraph (f), newly redesignated paragraphs (p) introductory text and (p)(1), paragraph (r) introductory text and paragraph (r)(2), and by adding paragraphs (g) and (m) to read as follows:

§ 803.3 Definitions.

* * * * *

(c) *Become aware* means that an employee of the entity required to report has acquired information reasonably suggesting a reportable adverse event has occurred.

(1) Device user facilities are considered to have "become aware" when medical personnel, as defined in paragraph (s) of this section, who are employed by or otherwise formally affiliated with the facility, acquire such information about a reportable event.

(2) Manufacturers are considered to have become aware of an event when:

(i) Any employee becomes aware of a reportable event that is required to be reported within 30 days or that is required to be reported within 5 days under a written request from FDA under § 803.53(b); and

(ii) Any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable MDR event or events, from any information, including any trend analysis, necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

(3) Importers are considered to have become aware of an event when any employee becomes aware of a reportable event that is required to be reported by an importer within 30 days.

* * * * *

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in paragraphs (l), (b), (t), (u), and (v), respectively, of this section, which is not a "physician's office," as defined in paragraph (w) of this section.

* * *

(g) *Distributor* means, for the purposes of this part, any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under paragraph (o) of this section.

* * * * *

(m) *Importer* means, for the purposes of this part, any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under paragraph (o) of this section.

* * * * *

(p) *Manufacturer or importer report number* means the number that uniquely identifies each individual adverse event report submitted by a

manufacturer or importer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device, or the registration number for the importer. (If the manufacturing site or the importer does not have a registration number, FDA will assign a temporary MDR reporting number until the site is officially registered. The manufacturer or importer will be informed of the temporary number.);

* * * * *

(r) *MDR reportable event (or reportable event)* means:

(1) * * *

(2) An event about which manufacturers or importers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.9 [Amended]

4. Section 803.9 *Public availability of reports* is amended by adding "or" after the semicolon at the end of paragraph (c)(2), by removing paragraph (c)(3), and by redesignating paragraph (c)(4) as paragraph (c)(3).

5. Section 803.10 is amended by revising the heading and paragraph (a)(2), and by adding paragraph (b) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

(a) * * *

(2) User facilities must submit annual reports as described in § 803.33.

(b) Importers must submit MDR reports of individual adverse events within 30 days after the importer becomes aware of an MDR reportable event as described in § 803.3. Importers must submit reports of device-related deaths or serious injuries to FDA and to the manufacturer and reports of malfunctions to the manufacturer.

* * * * *

§ 803.11 [Amended]

6. Section 803.11 *Obtaining the forms* is amended in the first sentence by adding the word ", importers," after the phrase "User facilities".

7. Section 803.12 is amended by revising paragraph (b) to read as follows:

§ 803.12 Where to submit reports.

* * * * *

(b) Each report and its envelope shall be specifically identified, e.g., "User Facility Report," "Annual Report," "Importer Report," "Manufacturer Report," "5–Day Report," "Baseline Report," etc.

* * * * *

§ 803.17 [Amended]

8. Section 803.17 *Written MDR procedures* is amended in the introductory text by adding the word ", importers," after the phrase "User facilities".

9. Section 803.18 is amended by revising the heading, the first sentence of paragraphs (a) and (b)(1) introductory text, paragraphs (b)(1)(ii) and (b)(2), and the second sentence of paragraph (c), and by adding paragraph (d) to read as follows:

§ 803.18 Files and distributor records.

(a) User facilities, importers, and manufacturers shall establish and maintain MDR event files. * * *

(b)(1) For purposes of this part, "MDR event files" are written or electronic files maintained by user facilities, importers, and manufacturers. * * *

* * * * *

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (*e.g.*, an importer, distributor, or manufacturer).

(2) User facilities, importers, and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) * * * Manufacturers and importers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. * * *

(d)(1) A device distributor shall establish and maintain device complaint records containing any incident information, including any written, electronic, or oral communication, either received by or generated by the firm, that alleges deficiencies related to the identity (*e.g.*, labeling), quality, durability, reliability, safety, effectiveness, or performance of a device. Information regarding the evaluation of the allegations, if any, shall also be maintained in the incident record. Device incident records shall be prominently identified as such and shall be filed by device, and may be maintained in written or electronic form. Files maintained in electronic form must be backed up.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the record.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

* * * * *

§ 803.19 [Amended]

10. Section 803.19 *Exemptions, variances, and alternative reporting requirements* is amended by adding in paragraphs (b) and (c) the word ", importers," before the phrase "or user facility", and by adding in paragraph (c) a comma after the word "variance".

11. Section 803.20 is amended by revising the last sentence of the introductory text of paragraph (a), paragraph (a)(1), and the first sentence of paragraph (a)(2), and by adding paragraph (b)(2) to read as follows:

§ 803.20 How to report.

(a) * * * The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device, and the "initial reporter" (*i.e.*, the first person or entity that submitted the information to the user facility, manufacturer, or importer).

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers. * * *

(b) * * *

(2) Importers are required to submit death and serious injury reports to FDA and the device manufacturer and submit malfunction reports to the manufacturer only:

(i) Within 30 days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury.

(ii) Within 30 days of receiving information that a device marketed by the importer has malfunctioned and that such a device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.22 [Amended]

12. Section 803.22 *When not to file* is amended by adding in paragraphs (a) and (b)(1) the word ", importer," after the word "facility" and in paragraph (b)(2) by adding the phrase "or importer" after the word "manufacturer" each time it appears and by adding the phrase "or imported" after the word "manufactured" each time it appears.

§ 803.33 [Amended]

13. Section 803.33 *Semiannual reports* is amended by revising the heading to read "Annual reports"; in the introductory text of paragraph (a) by removing the phrase "(for reports made July through December) and by July 1 (for reports made January through June)"; in the introductory text of paragraph (a) and paragraphs (a)(5), (a)(7) introductory text, and (c) by removing the word "semiannual" wherever it appears and adding in its place the word "annual"; in paragraph (a)(1) by revising the reference "§ 803.3(dd)" to "§ 803.3(ee)"; in paragraph (a)(2) by removing the phrase "and period, e.g., January through June or July through December" and in paragraph (a)(7)(vi) by adding the word "importer," after the word "distributor,".

14. Subpart D, consisting of §§ 803.40 and 803.42, is added to read as follows:

Subpart D—Importer Reporting Requirements

Sec.

803.40 Individual adverse event reporting requirements; importers.
803.42 Individual adverse event report data elements.

§ 803.40 Individual adverse event reporting requirements; importers.

(a) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.42 on FDA form 3500A as soon as practicable, but not later than 30 days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b) An importer shall submit to the manufacturer a report containing information required by § 803.42 on FDA form 3500A, as soon as practicable, but not later than 30 days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the importer's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.42 Individual adverse event report data elements.

Individual medical device importer reports shall contain the following information, in so far as the information is known or should be known to the importer, as described in § 803.40, which corresponds to the format of FDA Form 3500A:

(a) Patient information (Block A) shall contain the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Block B) shall contain the following:

(1) Adverse event or product problem;

(2) Outcomes attributed to the adverse event, that is:

(i) Death;

(ii) Life threatening injury or illness;

(iii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iv) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem to include a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Other relevant patient history including preexisting medical conditions.

(c) Device information (Block D) shall contain the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to the manufacturer, and if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not list products that were used to treat the event.)

(d) Initial reporter information (Block E) shall contain the following:

(1) Name, address, and phone number of the reporter who initially provided information to the user facility, manufacturer, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to FDA, if known.

(e) Importer information (Block F) shall contain the following:

(1) Whether reporter is an importer;

(2) Importer report number;

(3) Importer address;

(4) Contact person;

(5) Contact person's telephone number;

(6) Date the importer became aware of the event (month, day, year);

(7) Type of report (initial or followup (if followup, include report number of initial report));

(8) Date of the importer report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to FDA "Coding Manual For Form 3500A");

(11) Whether a report was sent to FDA and the date it was sent (month, day, year);

(12) Location, where event occurred;

(13) Whether a report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address; if available.

§ 803.57 [Removed]

15. Section 803.57 *Annual certification* is removed.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

16. Part 804 is removed.

Dated: August 6, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1785 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8864]

RIN 1545–AV87; 1545–AT97

Substantiation of Business Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary Income Tax Regulations that provide rules for the substantiation of certain business expenses under sections 62 and 274 of the Internal Revenue Code (Code). Individuals and other taxpayers who claim or reimburse certain business expenses will be affected by these regulations.

DATES: *Effective date.* These regulations are effective January 26, 2000.

Date of Applicability. For date of applicability, see §§ 1.62–2(m) and 1.274–5(m).

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–0771. Responses to this collection of information are required in order to deduct certain business expenses or exclude from income certain reimbursed business expenses of employees.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent or recordkeeper varies from 10 minutes to 20 hours, depending on individual circumstances, with an estimated average of 1.3 hours.

Comments concerning the accuracy of this burden estimate and suggestions or reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On November 6, 1985, the IRS published in the **Federal Register** (50 FR 46006) temporary regulations (TD 8061) adding § 1.274–5T regarding substantiation of expenses with documentary evidence under section 274(d) of the Code. A notice of proposed rulemaking (LR–145–84, 1985–2 C.B. 809) cross-referencing the temporary regulations was published in the **Federal Register** (50 FR 46087) for the same day. The notice of proposed rulemaking invited comments on only those portions of the temporary regulations under § 1.274–5T that amended § 1.274–5 (now designated § 1.274–5A) to reflect contemporaneous legislation.

On March 25, 1997, the IRS published in the **Federal Register** (62 FR 13988) temporary regulations (TD 8715) amending paragraphs (c)(2)(iii)(B) and (f)(4) of § 1.274–5T. The amendments raised the receipt threshold from $25 to $75 and authorized the Commissioner to prescribe rules modifying the substantiation requirements for an adequate accounting by an employee to an employer. Under the amendment, the Commissioner could publish rules defining the circumstances (including the use of specified internal controls) under which an employee may make an adequate accounting to his employer by submitting an expense account alone, without the necessity of submitting documentary evidence (such as receipts). A notice of proposed rulemaking (REG–209785–95, 1997–1 C.B. 753) cross-referencing the temporary regulations was published in the **Federal Register** (62 FR 14051) for the same day.

On October 1, 1998, the IRS published a notice of proposed rulemaking (REG–122488–97, 1998–42 I.R.B. 19) in the **Federal Register** (63 FR 52660), proposing amendments to the Income Tax Regulations (26 CFR part 1) under sections 62(c) and 274(d) of the Code regarding substantiation of expenses using mileage and per diem rates. Specifically, the amendments removed the limitation in § 1.274(d)–1(a)(3) that provides that mileage allowances prescribed in rules by the Commissioner are available only to the owner of a vehicle. On that date the IRS also published temporary Income Tax Regulations (TD 8784, 1998–42 I.R.B. 4) under section 62(c) and 274(d) of the Code in the **Federal Register** (63 FR 52600), relating to the substantiation of expenses under a reimbursement or other expense allowance arrangement.

Comments were received in response to the 1985 proposed regulations, and a public hearing was held on March 3, 1986. Few of the written comments, and none of the comments at the hearing, relate to the provisions in this Treasury Decision. Written comments were also received with respect to the 1997 proposed regulations, but no public hearing was requested or held. No comments were received, and no hearings were requested or held, with respect to the 1998 proposed regulations.

Summary and Discussion of Comments

This Treasury Decision incorporates the suggestions made in the written comments with some exceptions. With respect to the 1985 regulations, one commentator suggested that the definition of an adequate accounting in § 1.274–5T(f)(4), in the case of automobile expense reimbursements, should be satisfied by a reimbursement based on data on the type of automobile and local operating and fixed costs. Although this suggestion has not been specifically adopted in the final regulations, the standard mileage rate revenue procedure provides for this type of substantiation. See, e.g., section 8 of Rev. Proc. 98–63, 1998–52 I.R.B. 25.

Another commentator suggested, inter alia, (1) adding exceptions to the documentary evidence requirements under § 1.274–5T(c)(2)(iii) and (2) providing that the Commissioner, in establishing a meal allowance under § 1.274–5T(j), may allow a specific dollar allowance per meal. These suggestions are not adopted because the intent of the regulations is to give the Commissioner the discretion to make these practical decisions.

Similarly, with respect to the 1997 regulations, commentators made suggestions regarding the specific content of the guidance to be issued under the proposed regulations at § 1.274–5(f)(4). We did not incorporate these suggestions because the regulations are designed to describe appropriate published guidance of general applicability, not the specific

provisions of such guidance. However, all of the comments will be taken into consideration by the Commissioner in issuing published guidance.

Explanation of Provisions

This Treasury Decision adopts the revision to § 1.62–2(e)(2) proposed in REG–122488–97, with minor changes. This Treasury Decision also adopts §§ 1.274–5(c)(2)(iii), (f)(4), (g), (j), and (m) as proposed by LR–216–84, modified by REG–209785–95 and REG–122488–97, and removes and reserves the corresponding provisions in § 1.274–5T. Finally, this Treasury Decision adopts the proposal in REG–122488–97 to remove §§ 1.62–2T, 1.274(d)–1, and 1.274(d)–1T.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Sections 1.274–5(c)(2)(iii) and (f) were originally proposed by a notice of proposed rulemaking (LR–145–84) that was issued on November 6, 1985. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply with respect to those collections of information. With respect to the collection of information in § 1.274–5(c)(iii)(B) as proposed by REG–209785–95 on March 25, 1997, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, by increasing the receipt threshold from $25 to $75, these regulations reduce the existing recordkeeping requirements of taxpayers, including small entities. The regulations do not otherwise significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the IRS submitted the notices of proposed rulemaking preceding these regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final and temporary regulations is Edwin B. Cleverdon, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.274–5 also issued under 26 U.S.C. 274(d). * * *

PAR. 2. Section 1.62–2 is amended by:

1. Revising paragraph (e)(2).
2. Removing the last two sentences of paragraph (m).
3. Adding a sentence to the end of paragraph (m).

The revision and addition read as follows:

§ 1.62–2 Reimbursement and other expense allowance arrangements.

* * * * *

(e) * * *

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See § 1.274–5. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, § 1.274–5(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, § 1.274–5(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See § 1.274–5(g), however, which grants the Commissioner authority to prescribe rules permitting the amount of certain expenses to be deemed substantiated to the payor (in lieu of substantiating the actual amount of such expenses) by means of per diem or mileage rates for travel away from home or transportation expenses. See also § 1.274–5(j)(1), which grants the Commissioner the authority to establish a method under which a taxpayer may use a specified amount for meals while traveling away from home in lieu of substantiating the actual cost of meals, and § 1.274–5(j)(2), which grants the Commissioner the authority to establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274–5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

* * * * *

(m) * * * Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred after December 31, 1997.

§ 1.62–2T [Removed]

Par. 3. Section 1.62–2T is removed.

Par. 4. Section 1.274–5 is added to read as follows:

§ 1.274–5 Substantiation requirements.

(a) and (b) [Reserved]. For further guidance, see § 1.274–5T(a) and (b).

(c) *Rules of substantiation*—(1) [Reserved]. For further guidance, see § 1.274–5T(c)(1).

(2) *Substantiation by adequate records*—(i) and (ii) [Reserved]. For further guidance, see § 1.274–5T(c)(2)(i) and (ii).

(iii) *Documentary evidence*—(A) Except as provided in paragraph (c)(2)(iii)(B), documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support an expenditure, is required for—

(*1*) Any expenditure for lodging while traveling away from home, and

(*2*) Any other expenditure of $75 or more except, for transportation charges, documentary evidence will not be required if not readily available.

(B) The Commissioner, in his or her discretion, may prescribe rules waiving the documentary evidence requirements in circumstances where it is

impracticable for such documentary evidence to be required. Ordinarily, documentary evidence will be considered adequate to support an expenditure if it includes sufficient information to establish the amount, date, place, and the essential character of the expenditure. For example, a hotel receipt is sufficient to support expenditures for business travel if it contains the following: name, location, date, and separate amounts for charges such as for lodging, meals, and telephone. Similarly, a restaurant receipt is sufficient to support an expenditure for a business meal if it contains the following: name and location of the restaurant, the date and amount of the expenditure, the number of people served, and, if a charge is made for an item other than meals and beverages, an indication that such is the case. A document may be indicative of only one (or part of one) element of an expenditure. Thus, a cancelled check, together with a bill from the payee, ordinarily would establish the element of cost. In contrast, a cancelled check drawn payable to a named payee would not by itself support a business expenditure without other evidence showing that the check was used for a certain business purpose.

(iv) and (v) [Reserved]. For further guidance, see § 1.274–5T(c)(2)(iv) and (v).

(d) and (e) [Reserved]. For further guidance, see § 1.274–5T(d) and (e).

(f) *Reporting and substantiation of expenses of certain employees for travel, entertainment, gifts, and with respect to listed property*—(1) through (3) [Reserved]. For further guidance, see § 1.274–5T(f)(1) through (3).

(4) *Definition of an adequate accounting to the employer*—(i) *In general.* For purposes of this paragraph (f) an *adequate accounting* means the submission to the employer of an account book, diary, log, statement of expense, trip sheet, or similar record maintained by the employee in which the information as to each element of an expenditure or use (described in paragraph (b) of this section) is recorded at or near the time of the expenditure or use, together with supporting documentary evidence, in a manner that conforms to all the adequate records requirements of paragraph (c)(2) of this section. An adequate accounting requires that the employee account for all amounts received from the employer during the taxable year as advances, reimbursements, or allowances (including those charged directly or indirectly to the employer through credit cards or otherwise) for travel, entertainment, gifts, and the use of listed property. The methods of substantiation allowed under paragraph (c)(4) or (c)(5) of this section also will be considered to be an adequate accounting if the employer accepts an employee's substantiation and establishes that such substantiation meets the requirements of paragraph (c)(4) or (c)(5). For purposes of an adequate accounting, the method of substantiation allowed under paragraph (c)(3) of this section will not be permitted.

(ii) *Procedures for adequate accounting without documentary evidence.* The Commissioner may, in his or her discretion, prescribe rules under which an employee may make an adequate accounting to an employer by submitting an account book, log, diary, etc., alone, without submitting documentary evidence.

(iii) *Employer.* For purposes of this section, the term *employer* includes an agent of the employer or a third party payor who pays amounts to an employee under a reimbursement or other expense allowance arrangement.

(5) [Reserved]. For further guidance, see § 1.274–5T(f)(5).

(g) *Substantiation by reimbursement arrangements or per diem, mileage, and other traveling allowances*—(1) *In general.* The Commissioner may, in his or her discretion, prescribe rules in pronouncements of general applicability under which allowances for expenses described in paragraph (g)(2) of this section will, if in accordance with reasonable business practice, be regarded as equivalent to substantiation by adequate records or other sufficient evidence, for purposes of paragraph (c) of this section, of the amount of the expenses and as satisfying, with respect to the amount of the expenses, the requirements of an adequate accounting to the employer for purposes of paragraph (f)(4) of this section. If the total allowance received exceeds the deductible expenses paid or incurred by the employee, such excess must be reported as income on the employee's return. See paragraph (j)(1) of this section relating to the substantiation of meal expenses while traveling away from home, and paragraph (j)(2) of this section relating to the substantiation of expenses for the business use of a vehicle.

(2) *Allowances for expenses described.* An allowance for expenses is described in this paragraph (g)(2) if it is a—

(i) Reimbursement arrangement covering ordinary and necessary expenses of traveling away from home (exclusive of transportation expenses to and from destination);

(ii) Per diem allowance providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination); or

(iii) Mileage allowance providing for ordinary and necessary expenses of local transportation and transportation to, from, and at the destination while traveling away from home.

(h) [Reserved]. For further guidance, see § 1.274–5T(h).

(i) [Reserved].

(j) *Authority for optional methods of computing certain expenses*—(1) *Meal expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for meals while traveling away from home in lieu of substantiating the actual cost of meals. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel. See paragraphs (b)(2) and (c) of this section.

(2) *Use of mileage rates for vehicle expenses.* The Commissioner may establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. The method may include appropriate limitations and conditions in order to reflect more accurately vehicle expenses over the entire period of usage. The taxpayer will not be relieved of the requirement to substantiate the amount of each business use (i.e., the business mileage), or the time and business purpose of each use. See paragraphs (b)(2) and (c) of this section.

(k) and (l) [Reserved]. For further guidance, see § 1.274–5T(k) and (l).

(m) *Effective date.* This section applies to expenses paid or incurred after December 31, 1997.

PAR. 5. Section 1.274–5T is amended by:

1. Revising paragraphs (c)(2)(iii), (f)(4), (g) and (j).

2. Adding a sentence at the end of paragraph (m).

The revision and addition read as follows:

§ 1.274–5T Substantiation requirements.

* * * * *

(c) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.274–5(c)(2)(iii).

* * * * *

(f) * * *

(4) [Reserved]. For further guidance, see § 1.274–5(f)(4).

* * * * *

(g) [Reserved]. For further guidance, see § 1.274–5(g).

* * * * *

(j) [Reserved]. For further guidance, see § 1.274–5(j).

* * * * *

(m) *Effective date.* * * * Paragraphs (c)(2)(iii), (f)(4), (g), and (j) of this section apply to expenses paid or incurred after December 31, 1997.

§ 1.274(d)–1 [REMOVED]

Par. 6. Section 1.274(d)–1 is removed.

§ 1.274(d)–1T [REMOVED]

Par. 7. Section 1.274(d)-1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (b) is amended by adding the following entry to the table:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
1.274–5	1545–0771
* * * * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 28, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1382 Filed 1–21–00; 3:06 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 207

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations which establish restricted areas at Bonneville Lock and Dam, at McNary Lock and Dam, at Ice Harbor Lock and Dam, at Lower Monumental Lock and Dam, at Little Goose Lock and Dam, and at Lower Granite Lock and Dam on the Columbia and Snake Rivers, Oregon and Washington. The Corps is making adjustments in the restricted area boundaries to provide a greater margin of vessel safety from sudden dangerous currents, turbulence, and whirlpools caused by the operation of spillways, electrical generators, and navigation locks. Vessels, except Government vessels, are prohibited within the restricted areas. The restricted areas upstream and downstream from the spillways can be extremely dangerous should vessels be in the restricted area when water is released. The electrical generators and spillway gates are remotely controlled from Portland and not operated by personnel at the facility. The equipment can be activated within seconds, creating very dangerous water currents, turbulence, and whirlpools. Operation of the navigation lock also creates a very dangerous condition in the downstream area. Water that is discharged from the lock discharge culvert can create waves up to 6 feet high. Therefore, the downstream areas are reclassified from "hazardous" to "restricted" at McNary Lock and Dam, Columbia River, River Mile 292.0; at Ice Harbor Lock and Dam, Snake River, River Mile 9.7; at Lower Monumental Lock and Dam, Snake River, River Mile 41.6; at Little Goose Lock and Dam, Snake River, River Mile 70.3; and at Lower Granite Lock and Dam, Snake River, River Mile 107.5. A change in alignment of the upstream restricted areas at Bonneville Lock and Dam, at McNary Lock and Dam and at Ice Harbor Lock and Dam are to provide additional protection for the boating public.

DATES: The final rule is effective February 25, 2000.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OD, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. James Hilton, Dredging and Navigation Branch, CECW–OD at (202) 761–8830, or Jim Runkles, (541) 374–8344, ext. 254 for Bonneville Lock and Dam or Ms. Ann Glassley at (509) 527–7115 for McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite Locks and Dams.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on Wednesday, October 13, 1999, vol. 64, No. 197, pages 55441—55442. Pursuant to its authorities in Sections 4, 7, and 28 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations in 33 CFR Part 207.718(v), (w)(1), (w)(4), (w)(5), (w)(6), (w)(7), and (w)(8). Paragraph (v) is deleted since the area below the dams at McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite is changed from "hazardous" to "restricted". Signs mark the restricted areas. The redesignation of the downstream area from "hazardous" to "restricted" is to prohibit vessels, except government vessels, from entering the area. Under a hazardous designation, vessels could enter at their own risk. An increase in fishing vessels into the hazardous area in pursuit of adult salmon and steelhead is of great concern, since the electrical generators and spillway gates are operated remotely from Portland. There are no personnel at the dam to warn boaters of an immediate release of water. Paragraph (w)(1) is amended to provide an additional margin of safety for recreational boaters operating above and below Bonneville Lock and Dam during the discharge of water from the Juvenile Bypass System outfall structures. Paragraphs (w)(4), (w)(5), (w)(6), (w)(7), and (w)(8) are amended to provide a greater margin of safety for recreational

boaters from sudden dangerous currents, turbulence and whirlpools caused by the operation of spillways, electrical generators, and navigation locks. Operation of the electrical generators and spillway gates are remotely controlled from Portland, Oregon. The regulation governing the navigation locks and approach channels, Columbia and Snake Rivers, Washington and Oregon, 33 CFR 207.718 was adopted on January 23, 1978 (43 FR 3115). The last amendment to 33 CFR 207.718 was April 4, 1991 (56 FR 13765). This final rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this final rule would not have a significant impact on small business entities.

Comments on the Proposed Rule

No comments were received to the October 13, 1999, **Federal Register** notice of proposed rulemaking. However, there was an error in the proposed upstream restricted area boundaries at Ice Harbor Lock and Dam, Lower Monumental Lock and Dam, and Little Goose Lock and Dam. The Corps Walla Walla District issued a public notice on December 16, 1988, regarding proposed changes to restricted area boundaries at McNary, Ice Harbor, Lower Monumental and Little Goose Locks and Dams. However, the restricted area boundaries in the October 13, 1999, **Federal Register** contained errors in direction and distances from the December 16, 1988 public notice. The revised restricted upstream boundary at Ice Harbor Dam provides a greater distance from the dam to protect boaters. The revised restricted upstream boundary at Lower Monumental Dam shifts the north boundary waterward to place the boat ramp outside the restricted area. The upstream restricted area boundary line at Little Goose Dam that runs on an angle of 345° 26′ true for a distance of 620 yards to the north shore is amended to delete the distance, since the shore line is subject to change by lake level fluctuations and natural causes.

List of Subjects in 33 CFR Part 207

Navigation (water), Water transportation, Vessels.

For reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations is amended, as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.718 is amended by removing and reserving paragraph (v) and revising paragraphs (w)(1), (w)(4), (w)(5), (w)(6), (w)(7), and (w)(8) to read as follows:

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oreg. and Wash.

* * * * *

(v) [Reserved]

(w) * * *

(1) *At Bonneville Lock and Dam.* The water restricted to all vessels, except Government vessels, are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above the first powerhouse, spillway, and second powerhouse (excluding the new navigation lock channel) and all waters below the first powerhouse, spillway, second powerhouse, and old navigation lock. This is bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the river and running in a South 65 degrees West direction a distance of approximately 2,100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington shore. Signs designate the restricted areas. The approach channel to the new navigation lock is outside the restricted area.

* * * * *

(4) *At McNary Lock and Dam.* The waters restricted to all vessels, except to Government vessels, are described as all waters commencing at the upstream end of the Oregon fish ladder thence running in the direction of 39° 28′ true for a distance of 540 yards; thence 7° 49′ true for a distance of 1,078 yards; thence 277° 10′ for a distance of 468 yards to the upstream end of the navigation lock guidewall. The downstream limits commence at the downstream end of the navigation lock guidewall thence to the south (Oregon) shore at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(5) *At Ice Harbor Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters within a distance of about 800 yards upstream of the dam lying south of the navigation lock and bound by the line commencing at the upstream end of the guidewall, and running a direction of 91° 10′ true for a distance of 575 yards; thence 162° 45′ to the south shore, a distance of about 385 yards. The downstream limits commencing at the downstream end of the guidewall; thence to the south shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(6) *At Lower Monumental Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 46° 25′ true for a distance of 344 yards; thence 326° 19′ true for a distance of 362 yards; thence 243° 19′ true for a distance of 218 yards; thence 275° 59′ true to the north shore a distance of about 290 yards. The downstream limits commence at the downstream end of the navigation lock guidewall; thence to the north shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(7) *At Little Goose Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 60° 37′ true for a distance of 676 yards; thence 345° 26′ true to the north shore. The downstream limits commence 512 yards downstream and at right angles to the axis of the dam on the south shore; thence parallel to the axis of the dam to the north shore. Signs designate the restricted areas.

(8) *At Lower Granite Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall thence running in the direction of 131° 31′ true for a distance of 608 yards; thence 210° 46′ true to the south shore, a distance of about 259 yards. The downstream limits commence at the downstream end of navigation lock guidewall; thence to the south shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

* * * * *

Dated: January 18, 2000.

Approved:

Eric R. Potts,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 00–1631 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–AR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 87–1a; FRL–6527–8]

Approval of Post-1996 Rate of Progress Plan: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving the Lake and Porter Counties, Indiana Post-1996 Rate of Progress (ROP) Plan, including a 1990 inventory adjustment, as revisions to the State Implementation Plan (SIP). The Indiana Department of Environmental Management (IDEM) submitted the Post-1996 ROP Plan on December 17, 1997, with a supplemental submission on January 22, 1998.

The control strategies in the plan are designed to reduce volatile organic compounds (VOC) emissions in Lake and Porter Counties by 9 percent (%) from 1990 baseline levels. The Clean Air Act (the Act) requires that these reductions occur by November 15, 1999. The Post-1996 ROP Plan is designed to reduce VOC emissions in Lake and Porter Counties by at least 77,366 pounds (lbs) per day; from a projected 369,387 lbs/day to 292,021 pounds/day.

VOC emissions combine with oxides of nitrogen in the atmosphere to form ground-level ozone, a pollutant which can cause inflammation of the lungs, decrease lung capacity, and aggravate asthma. The purpose of this **Federal Register** action is to explain what EPA is approving and to discuss the rationale for today's approval.

DATES: This rule is effective on March 27, 2000, unless EPA receives relevant adverse written comments by February 25, 2000. If EPA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request for this direct final rule are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Ryan Bahr at (312) 353–4366, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, at (312) 353–4366.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our", are used we mean EPA. This Supplementary Information section is organized as follows:

I. *General Information on this Approval*
- What is EPA approving?
- Why is EPA approving this submittal?
- Who is affected by this action?

II. *Background on IDEM Submittal*
- What is a Post-1996 ROP Plan?
- What pollutants does the IDEM Post-1996 ROP Plan reduce?
- What geographic area does the IDEM Post-1996 ROP Plan affect?
- Why did IDEM submit a SIP revision request for the Post-1996 ROP Plan?
- What information did IDEM submit in its request?
- What mobile source budget did IDEM identify in the Post-1996 ROP Plan?
- What action has EPA previously taken on the mobile source budget?
- What public review opportunities did IDEM provide for the Post-1996 ROP Plan?
- What prior action has EPA taken on Rate of Progress Plans for Lake and Porter, Counties Indiana?

III. *Content of IDEM Submittal*
- What changes did IDEM make to the 1990 VOC emission inventory in this submission?
- What control strategies did IDEM implement to achieve reductions?
- The Post-1996 ROP Plan control strategies and their emission reductions.
- The Post-1996 ROP Plan control strategies; emission reduction calculations.

IV. *EPA analysis of IDEM submittal*
- What guidance documents and requirements apply to the Post-1996 ROP Plan submittal?
- Why was the 1996 15 Percent ROP Target Level for Lake and Porter Counties recalculated?
- How was the 1996 Target Emission Level for Lake and Porter Counties recalculated?
- How was the Post-1996 ROP Plan required emission reduction calculated?
- Why is EPA approving the Post-1996 ROP Plan submittal?

V. *Final Rulemaking Action*

VI. *Administrative Requirements*
- A. Executive Order 12866
- B. Executive Order 13045
- C. Executive Order 13084
- D. Executive Order 13132
- E. Regulatory Flexibility Act
- F. Unfunded Mandates
- G. Submission to Congress and the Comptroller General
- H. National Technology Transfer and Advancement Act
- I. Petitions for Judicial Review

I. General Information on this Approval

What is EPA approving?

In today's action, EPA is approving the Lake and Porter Counties, Indiana Post-1996 Rate of Progress (ROP) Plan, including a 1990 inventory adjustment, as a revision to the State Implementation Plan (SIP). IDEM submitted these items on December 17, 1997, and January 22, 1998.

Why is EPA approving this submittal?

The Post-1996 ROP Plan satisfies the requirements of the Clean Air Act. Specifically, the plan:

- Revises the 1990 base year emission inventory,
- Identifies control measures to achieve a projected 9% VOC emission reduction in Lake and Porter Counties,
- Documents the 9% reductions to occur by November 15, 1999, and,
- Identifies a 1999 mobile source emissions budget for VOC.

EPA found that the Post-1996 ROP Plan contains 77,660 pounds VOC/day of emission reductions in Lake and Porter Counties that are creditable. This exceeds the required reduction of 77,366 pounds VOC/day. The Act requires these reductions because VOC emissions combine with oxides of nitrogen in the atmosphere to form ground-level ozone, a pollutant which can cause inflammation of the lungs, decrease lung capacity, and aggravate asthma.

Section 182(c)(2)(B) of the Act requires submittal of a demonstration that the SIP will result in a 9% emission reduction by November 15, 1999. This 9% needs to be in addition to the emission reduction requirement for a 15% reduction by November 15, 1996. Indiana submitted the demonstration as part of the Post-1996 ROP Plan.

Who is affected by this action?

The Post-1996 ROP Plan refers to various emission control regulations which IDEM estimates will achieve the 9% emission reductions for Lake and Porter Counties. The regulations, both Federal and State, impact a wide variety of industries and businesses. For the most part, these regulations have already been implemented. All of them have already been approved into the SIP or promulgated by EPA. Today's approval does not establish any new requirements. The plan identifies and documents how existing SIP and Federal regulations achieve the necessary 9% emission reductions. The plan, by documenting emission reductions, demonstrates the progress being made toward cleaner air for the

people that live and work in Lake and Porter Counties, Indiana.

II. Background on IDEM Submittal

What is a Post-1996 Rate Of Progress (ROP) Plan?

A Post-1996 ROP Plan documents the control strategies a State is implementing to reduce emissions of ozone precursors by 9% from 1990 baseline emissions. Section 182(b)(1) of the Act requires States to develop these Post-1996 ROP Plans for ozone nonattainment areas which have been classified as serious and above. Lake and Porter Counties are classified as severe nonattainment for ozone. To be approvable, a State must show that the 9% emission reduction will occur by November 15, 1999.

The Plan is called a "Post-1996" ROP Plan because the Act also requires that by November 15, 1996, the States implement control strategies achieving 15% emission reduction for ozone nonattainment areas classified as moderate and above. The Post-1996 ROP Plan continues the 3% per year reductions from November 16, 1996, through November 15, 1999.

What pollutants does the IDEM Post-1996 ROP Plan Reduce?

The IDEM Post-1996 ROP Plan identifies VOC control strategies. VOC emissions combine with oxides of nitrogen in the atmosphere to form ground-level ozone. Ozone can cause inflammation of the lungs, decrease lung capacity, and aggravate asthma.

What geographic area does the IDEM Post-1996 ROP Plan affect?

IDEM's Post-1996 ROP Plan is applicable to the severe ozone nonattainment area of Lake and Porter Counties, Indiana. Lake and Porter Counties are part of the Chicago-Gary-Lake County ozone nonattainment area, which is classified as severe nonattainment for ozone.

Why did IDEM submit a SIP revision request for the Post-1996 ROP Plan?

Lake and Porter Counties are classified as severe nonattainment for ozone. For that reason, section 182(c)(2)(B) of the Act requires that these areas reduce emissions of ozone precursors by 3% per year, and that the State submit a Post-1996 ROP Plan to identify and document those reductions.

What information did IDEM submit in its request?

On December 17, 1997, Indiana submitted to EPA the Lake and Porter Counties Indiana Post-1996 ROP Plan. EPA found this submittal to be complete in a letter to IDEM dated December 30, 1997.

The ROP Plan contains documentation and control strategies for both the 9% reduction requirement and 3% contingency measures, as well as a revision to the 1990 VOC emission inventory. The contingency measures include agreed orders for Keil Chemical and United States Steel Gary Works. EPA will address the contingency measures and these agreed orders in a subsequent rulemaking action.

The submittal also contains a mobile source emission budget for VOC. IDEM supplemented its submittal on January 22, 1998, to clearly identify the mobile source emission budget.

What Mobile Source Budget did IDEM identify in the Post-1996 ROP Plan?

IDEM supplemented its submittal on January 22, 1998 to clearly identify a 1999 mobile source budget for VOCs of 40,897 pounds VOC per summer day, as contained in Table 16 of the Post-1996 ROP Plan.

What action has EPA previously taken on the mobile source budget?

At the time that EPA received this submittal, the transportation rules (62 FR 43780) required EPA to review mobile source budgets within 45 days of submittal. After receiving the supplemental submittal regarding the budget on January 22, 1998, EPA completed that review of the budget. EPA found the 1999 VOC budget of 40,897 pounds VOC per summer day adequate in a February 2, 1998, letter. Since that time, Lake and Porter Counties have been required to restrict their 1999 modeled mobile source VOC emissions to below that budget.

What public review opportunities did IDEM provide for the Post-1996 ROP Plan?

On October 13, 1997, IDEM published a notice of public hearing for the Post-1996 ROP Plan and opened a public comment period through December 1, 1997. IDEM held a public hearing on the proposed ROP Plan on November 13, 1997. The submittal summarizes the public comments and IDEM's responses to those comments.

What prior action has EPA taken on Rate of Progress Plans for Lake and Porter Counties Indiana?

On April 3, 1997, EPA proposed approval and solicited public comment on Indiana's 15% ROP plan. EPA finalized approval of the 15% ROP plan on July 18, 1997 (62 FR 38457). The 15% ROP plan was designed to reduce VOC emissions in Lake and Porter Counties by 68,242 pounds per day.

III. Content of IDEM Submittal

What changes did IDEM make to the 1990 VOC emission inventory in this submission?

IDEM has revised the 1990 Lake and Porter Counties base year VOC emissions inventory. The revision increases the base year VOC emissions inventory by 195,349 pounds/day, a 46% increase. The resulting 1990 VOC emissions inventory for Lake and Porter Counties is 620,070 pounds/day (typical weekday emissions during the period of June through August).

Both the 15 percent ROP plan and the Post-1996 ROP Plan depend on the level of the 1990 base year VOC emissions. EPA has encouraged the States to update the 1990 base year emissions as needed, and to make appropriate changes in ROP plans. EPA recognizes that the base year emissions estimates (or the estimated emissions for any other year) are not fixed over time and that new data can improve these estimates. Such is the case in this ROP submittal.

In July and August 1993, the United States Steel Corporation (US Steel) commented to IDEM on the 1990 base year inventory. US Steel stated that the 1990 base year emissions inventory underestimated VOC emissions from the US Steel coke oven by-product recovery plant. When IDEM received these comments, it was in the final stages of preparing the base year emissions inventory and did not have time to further investigate US Steel's claim prior to submitting the inventory to the EPA.

EPA approved IDEM's 1990 base year emissions inventory for Lake and Porter Counties on January 4, 1995 (60 FR 375). The rulemaking suggested that IDEM give further consideration to the comments of US Steel and acknowledged that IDEM would need extra time to consider relevant data prior to amending the base year emissions inventory, if warranted.

After taking a more detailed look at the emissions from the coke oven by-product recovery sector, IDEM concluded that it was appropriate to revise the 1990 base year emissions inventory. Both State rule 326 IAC 14–9 and the Federal National Emission Standard for Hazardous Air Pollutants (NESHAP) regulate benzene emissions from coke oven by-product recovery plants. The rules were implemented in 1991 and not 1990, as assumed in the original 1990 base year emissions inventory. IDEM is now correcting this

assumption, resulting in the need to increase the 1990 base year emissions.

To accurately reflect the overall emissions from this category, IDEM increased the resolution of the emissions inventory for the emissions from coke oven by-product recovery plants. These enhanced emission calculations provided the context for the compliance data from US Steel, allowing IDEM to more accurately determine the correct 1990 emissions level.

IDEM concluded that the 1990 base year emissions were significantly higher than the base year inventory originally adopted and has requested that the 1990 SIP base year inventory be adjusted accordingly.

What control strategies did IDEM implement to achieve reductions?

The Post-1996 ROP Plan Control Strategies and their Emission Reductions.

Control Strategies	Emission Reductions (Pounds VOC/day)	Date of EPA Promulgation or Approval
Coke Oven By-Product Recovery Plant NESHAP (40 CFR Part 61 Subpart L).	55,371	Promulgated September 14, 1989 (54 FR 38044) Amended September 19, 1991 (56 FR 47404)
Inland Steel Coke Battery Shutdowns (326 IAC 6–1–10.1(k)(5)) (40 CFR 52.770(c)(99)).	6,666	Approved June 15, 1995 (60 FR 31412)
Reformulated Gasoline Use in Small Engines (40 CFR Part 80).	575	Promulgated February 16, 1994 (59 FR 7716)
New Small Engine Emission Standards (40 CFR Part 90)	6,034	Promulgated July 3, 1995 (60 FR 34581)
Volatile Organic Liquid Storage Reasonably Available Control Technology (326 IAC 8–9) (40 CFR 52.770(c)(111)).	2,700	Approved January 17, 1997 (62 FR 2593)
Coke Oven NESHAP (40 CFR Part 63 Subpart L)	6,314	Promulgated October 27, 1993 (58 FR 57911)
Total Emission Reduction	77,660	

In determining what control measures a State can use in its Post-1996 ROP Plan strategy, emission reductions from control measures are creditable to the extent they occur before November 15, 1999. The General Preamble for the Implementation of Title I of the Act also interprets and clarifies the Act's requirements for crediting control strategies. The Preamble provides that all credited emission reductions must be real, permanent, and enforceable, and discusses how these criteria can be met with specific strategies (57 FR 13497). EPA has explained these requirements in more detail in the guidance documents listed in this **Federal Register**.

The Post-1996 ROP Plan Control Strategies; Emission Reduction Calculations

To achieve the required 9% VOC emission reduction requirement, IDEM reviewed and chose the following emission control measures.

Coke Oven By-Product Recovery Plants NESHAP. This Federal NESHAP at 40 CFR Part 61, Subpart L, applies to all furnace and foundry coke oven by-product recovery plants. The NESHAP requires the use of gas blanketing to control emissions from tar intercepting sumps, process vessels, and naphthalene processing operations. The NESHAP also covers controlling emissions from equipment leaks, coolers, and light oil processes.

As noted above, Indiana promulgated rule 326 IAC 14–9 in 1988, covering some of the emissions for this source category. It was scheduled for implementation in 1990, but was actually implemented in 1991. EPA approved the rule as part of the State's Reasonably Available Control Technology (RACT) SIP on September 17, 1992 (57 FR 42889).

IDEM has requested credit in its Post-1996 ROP Plan for reductions from coke oven by-product recovery plants that went beyond rule 326 IAC 14–9. EPA believes this approach is consistent with EPA guidance which provides that only the emission reductions from NESHAPS that go beyond RACT rules in existence before November 15, 1990, can be credited in ROP plans. Based on this guidance, the State determined the emission reduction resulting from the NESHAP that went beyond that of rule 326 IAC 14–9.

IDEM has determined that the NESHAP has resulted in additional VOC emission reductions of 45,300 pounds/day at the US Steel mill and 10,071 pounds/day at the Bethlehem Steel mill, for a total additional VOC emission reduction of 55,371 pounds/day.

Furthermore, EPA has determined that while the reductions from 326 IAC 14–9 are not creditable toward the 9% reduction requirements, they should be removed from the baseline emission inventory before determining the required reductions for the ROP purposes. This approach acknowledges that while these reductions were not actually made before 1990, they are also not part of the 1990 Act's ROP process.

Inland Steel Coke Oven Battery Shutdowns. Indiana rule 326 IAC 6–1–10.1(k)(5) (adopted by the State in March 1993), required Inland Steel Flat Products to shut down coke batteries numbers 6 through 11 before November 1996. Inland Steel no longer holds a valid operating permit for these coke batteries. In addition, based on a consent decree between the State and Inland Steel, Inland Steel cannot bank the VOC emission reductions from these coke battery closures for future use. IDEM considers them to be permanent emission reductions.

IDEM notes that, since it found emissions from the coke oven by-products recovery to be higher than was originally reported in the 1990 base year inventory, additional emission reduction credits are available. Note that IDEM increased the 1990 base year VOC emissions in this source category, as discussed above.

To calculate the emission reduction credit for this source, IDEM had to take into account emission reduction credits already applied in prior submittals, in particular in the 15 percent ROP plan, to avoid double counting. IDEM increased the resolution of the emissions inventory for this source so that it could consider the impacts of the previously implemented rule 326 IAC 14–9 and previously credited controls.

IDEM found that it could credit an additional VOC emission reduction (beyond that credited in the 15 percent ROP plan) of 6,666 pounds/day to the Inland Steel coke oven battery shutdowns. The IDEM submittal credits 6,288 pounds/day to the 9 percent ROP emission reduction requirement, and

378 pounds/day to the 3 percent contingency requirement. However, EPA is today crediting the full 6,666 pounds VOC/day toward the 9% requirement. This excess reduction accounts for discrepancies identified in other sections of IDEM's submittal.

IDEM had credited a VOC emission reduction of 3,984 pounds/day for this source closure in prior air quality plan submittals, and is not taking credit for that portion in the 9 percent post-1996 ROP Plan.

Effects of Reformulated Gasoline on Small, Non-Road Engines. The emission reduction for this source category applies to 2-stroke and 4-stroke non-road engines. The emission reduction results from the implementation of the Act's requirement for the use of reformulated gasoline in ozone nonattainment areas classified as severe and above.

To determine the emission reduction credit, IDEM used August 1993 guidance from EPA to calculate the emission reduction by engine type. The emission reductions only apply to exhaust and evaporative emissions. Based on the EPA guidance, IDEM did not account for emission reductions resulting from changes in refueling emissions.

Tables 1 and 17 of the Post-1996 ROP Plan, document a VOC emission reduction of 1,292 pounds/day for this source category. However, the detailed emissions summary contained in Appendix C–1 of the submittal calculates a VOC emission reduction of 575 pounds per day. The emission reductions achieved by the use of reformulated gasoline in small, non-road engines and the regulation for new small engines need to be calculated together, since both affect small engines. A calculation error was made when disaggregating the results of that analysis. In Tables 1 and 7, 715 pounds VOC/day were inadvertently shifted from the emissions listed for the "new small engine standards" to the emissions reduction credited for "effects of reformulated gasoline on small, non-road engines." This approval corrects that error and credits the effects of reformulated gasoline on small, non-road engines with a 575 pound VOC/day emission reduction.

When this error was made, an additional 2 pounds VOC/day were added to the effects of reformulated gasoline on small, non-road engines. This 2 pound deficit will be made up by the excess credit for the Inland Steel coke oven battery shutdowns. In IDEM's submittal, it only took credit for Inland Steel coke oven battery shutdowns for 6,288 out of a total 6,666 pounds VOC/day. This approval more than makes up the 2 pound deficit by applying all 6,666 pounds VOC/day to the Post-1996 9% reduction.

New Small Engine Standards. IDEM calculated the impact of new federal standards codified at 40 CFR Part 90 for small engines by following November 28, 1994, EPA guidance titled "Future Non-road Emission Reduction Credits for Court-Ordered Non-Road Standards". IDEM determined the emission impacts for each equipment type and engine type in Lake and Porter Counties. Appendix C–2 of the Post-1996 ROP Plan submittal specifies the emission reduction for each equipment and engine type combination by county. IDEM calculated emission impacts after removing the impacts of reformulated gasoline, as specified in the EPA guidance.

IDEM determined, as demonstrated in Appendix C–2 of the Post-1996 ROP Plan, that the small engine standards would reduce 1999 emissions by 6,034 pounds VOC/day. However, tables 1 and 18 of the Post-1996 ROP submittal document a VOC emission reduction from this control category equaling only 5,319 pounds/day.

As noted above, IDEM inadvertently shifted 715 pounds VOC/day to reformulated gasoline when listing the measures in the tables. EPA has made this correction to the tables in today's **Federal Register**. The new small engine standard is being credited at 6,034 pounds VOC/day reduction.

Volatile Organic Liquid Storage Reasonably Available Control Technology. The VOC impact of this control is based on the calculated impacts of State rule 326 IAC 8–9, adopted by the Indiana Air Pollution Control Board on May 3, 1995 and approved by EPA on January 17, 1997 (62 FR 2593). This rule became effective in Indiana on October 1, 1995, and was to be phased in over several years, with most sources needing to comply by May 1, 1996. The rule applies to storage vessels with a capacity greater than 39,000 gallons that are used to store volatile organic liquids with a maximum true vapor pressure of 1.52 pounds per square inch or greater.

The rule requires the use of internal floating roofs with vapor-mounted primary and secondary seals with controlled fittings in fixed roof tanks. It also requires the replacement of vapor-mounted primary seals with liquid-mounted primary seals or shoe seals and installation of secondary seals with controlled fittings in external floating roof tanks.

The emission reduction total for this control measure assumes a VOC emission reduction of 96 percent in fixed roof tanks, 29 percent in internal floating roof tanks, and 65 percent for external floating roof tanks. The emission reduction calculation also assumes an 80 percent rule effectiveness level.

All external floating roof tanks have to comply with the State rule by May 1, 1996. Existing internal floating roof tanks have up to 10 years to comply with the rule. IDEM only claims an emission reduction credit for external floating roof tanks and fixed roof tanks.

This approval credits a VOC emission reduction of 2,700 pounds VOC/day for this source control measure in 1999, documented in Table 21 and Appendix C–5 of the Post-1996 ROP submittal.

Coke Oven Batteries NESHAP. The coke oven batteries NESHAP, promulgated by EPA on October 27, 1993, and codified at 40 CFR Part 63, Subpart L, applies to all coke oven batteries in existence prior to December 4, 1992, including by-product and nonrecovery coke oven batteries, and to all new coke oven batteries constructed on or after December 4, 1992. The rule mandates emission limits and/or controls for door leaks, topside port leaks, offtake system leaks, visible emissions, and charging systems.

IDEM calculated the emission reductions based on EPA guidance in the preamble to the 1993 NESHAP (58 FR 57898). Appendix C–4 of the ROP Plan submittal documents in detail the individual source calculations used by IDEM to calculate the total VOC emission reduction. This approval credits a total VOC reduction of 6,314 pounds/day.

IV. EPA Analysis of IDEM Submittal

What guidance documents and requirements apply to the Post-1996 ROP Plan submittal?

EPA has developed a number of guidelines specifically addressing the review of Post-1996 ROP Plans. In addition, EPA guidelines concerning the review of 15 percent ROP plans (1996 ROP plans) address many issues of relevance in the review of the Post-1996 ROP Plans. These documents address such topics as: (1) the requirements of the Act; (2) development of baseline and target emission estimates; (3) emission inventory projection procedures; and, (4) recommended emission reduction levels for various emission control measures.

Rate-of-Progress Plan Policy References

1. *Clean Air Act* (42 U.S.C. 7401–7626), as amended November 15, 1990.

2. *Procedures for Preparing Emissions Projections*, EPA–450/4–91–019, Environmental Protection Agency, July 1991.

3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," Proposed Rule, **Federal Register**, 57 FR 13498, April 16, 1992.

4. Memorandum, "November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories," from J. David Mobley, Edwin L. Meyer, and G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

5. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans*, EPA–452/R–92–005, October 1992.

6. Memorandum, "Quantification of Rule Effectiveness Improvements," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

7. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993.

8. Memorandum, "Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans'," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

9. Memorandum, "15 Percent Rate-of-Progress Plans," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

10. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA–452/R–93–007, May 1993.

11. Memorandum, "Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures," from G.T. Helms, Ozone/Carbon Monoxide Programs Branch, and Susan Wyatt, Chemicals and Petroleum Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 6, 1993.

12. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–005, June 1993.

13. Memorandum, "Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, July 28, 1993.

14. Memorandum, "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 13, 1993.

15. Memorandum, "Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

16. Memorandum, "VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase I Reformulated Gasoline," from Phil Lorang, Office of Mobile Sources, Environmental Protection Agency, August 18, 1993.

17. Memorandum, "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

18. Memorandum, "Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings," from John S. Seitz, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

19. Memorandum, "Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans," from John S. Seitz, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

20. Memorandum, "Clarification of Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

21. Memorandum, "Review and Rulemaking on 15 Percent Rate-of-Progress Plans," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

22. Memorandum, "Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 29, 1993.

23. Memorandum, "Rate-of-Progress Plan Guidance on the 15 Percent Calculations," from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

24. Memorandum, "Clarification of Issues Regarding the Contingency Measures That are Due November 15, 1993, for Moderate and Above Ozone Nonattainment Areas," from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

25. Memorandum, "Credit for 15 Percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

26. Memorandum, "Transmittal of NO x Substitution Guidance, " from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

27. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration*, EPA–452/R–93–015, January 1994.

28. Memorandum, "Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, January 21, 1994.

29. Memorandum, "Post-1996 Rate-of-Progress Plan Guidance for Ozone Nonattainment Areas," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, January 24, 1994.

30. Memorandum, "Guidance on Projection of Nonroad Inventories to Future Years," from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

31. Memorandum, "Post-1996 Rate-of Progress Plan Guidance for Ozone Nonattainment Areas," from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, February 22, 1994.

32. Memorandum, "Clarification of Policy for Nitrogen Oxides (NO_x) Substitution," from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 5, 1994.

33. Memorandum, "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

34. Memorandum, "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

35. Memorandum, "Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations," from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

36. Memorandum, "Future Nonroad Emission Reduction Credits for Locomotives," from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

37. Memorandum, "Ozone Attainment Demonstration," from Mary Nichols, Assistant Administrator, Office of Air and Radiation, Environmental Protection Agency, March 2, 1995.

38. Memorandum, "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

39. Memorandum, "Fifteen Percent Rate-of-Progress Plans—Additional Guidance," from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

40. Memorandum, "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," from John S. Seitz, Director, Office of Air Quality Planning and Standards,

Environmental Protection Agency, June 22, 1995.

41. Memorandum, "Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule," from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

Why Was the 1996 15 Percent ROP Target Level for Lake and Porter Counties Recalculated?

The 15% plan target emission level needed to be recalculated because IDEM has revised the 1990 VOC emission inventory. The Post-1996 ROP Plan uses the 15% plan's 1996 target level as a starting point. IDEM calculated the 1999 target emission level directly from this 1996 target level. IDEM then subtracted the 1999 target emission level from the projected 1999 inventory to determine how much VOC emission reductions are needed. In this manner, instead of revisiting the 15% plan, the Post-1996 ROP Plan has to provide for ample reductions to meet the 1999 target.

How Was the 1996 Target Emission Level for Lake and Porter Counties Recalculated?

Recalculation of 1996 target emission level	Pounds VOC/day
1990 Total VOC Emissions	620,070
1990 Rate-Of-Progress Emissions (A) (Anthropogenic Emissions Only)	577,190
1990–1996 Non-creditable Reductions	187,591
1990 Adjusted Base Year Emissions (B) (1990 ROP Emissions minus non-creditable reductions)	389,599
15 Percent of 1990 Adjusted Base Year Emissions (C)	58,440
1996 Target Emission Level (B)–(C)	331,159

1990–1996 Non-Creditable Reductions: Coke Oven By-Product Recovery=129,913 pounds VOC/day; Federal Motor Vehicle Control Program (FMVCP)=59,950 pounds VOC/day; Reid Vapor Pressure (RVP)=728 pounds VOC/day.

To determine the 1990 adjusted base year inventory, IDEM started with the 1990 base year emission inventory approved by EPA on January 4, 1995 (60 FR 375), which EPA found met the requirements of sections 172(c)(3) and 182(a)(1) of the Act for Lake and Porter Counties. IDEM then revised the inventory as described earlier. The revision resulted in total 1990 adjusted base year emissions of 620,070 pounds VOC/day. IDEM subtracted biogenic emissions and emissions from outside Lake and Porter Counties from the 1990 base year inventory to determine that the 1990 ROP inventory level is 577,190 pounds VOC/day.

IDEM used EPA's Mobile Source Emissions Model (MOBILE) 5a to calculate the emission reductions from the pre-1990 FMVCP and 1990 RVP regulations; IDEM then subtracted these reductions and the emission reductions from coke oven by-product recovery plants from the 1990 ROP inventory level to find the 1990 adjusted base year inventory level of 389,599 lbs VOC/day.

IDEM then multiplied the adjusted base year emissions by 15% resulting in a required reduction of 58,440 pounds VOC/day. To obtain the 1996 emission target level, IDEM subtracted the 15% required emission reductions from the 1990 ROP emissions resulting in a 1996 target level of 331,159 pounds VOC/day.

How Was the Post-1996 ROP Plan Required Emission Reduction Calculated?

9% ROP Summary For Lake and Porter Counties

Calculation of reduction needs by 1999	Pounds VOC/day
1990 Lake and Porter Counties Total VOC Emissions (A)	620,070
1990 Rate-Of-Progress Emissions (B) (Anthropogenic Emissions Only)	577,190
1990–1999 Non-creditable Reductions	224,841
1990 Adjusted Base Year Emissions (C) (1990 ROP Emissions minus Noncreditable Reductions)	352,349
9 Percent of 1990 Adjusted Base Year Emissions (D)	31,711
FMVCP Fleet Turnover Correction (The difference between 1996 and 1999 FMVCP implementation)	7,427
1996 Emission Target Level	331,159
1999 Target Emission Level (E) (1996 Emissions Target Level minus 9% and fleet turnover)	292,021
Projected 1999 VOC Emissions (F) (1990 Adjusted Base Year Emissions plus Growth Factors)	369,387
ROP Reduction Requirement to achieve 9 percent net of growth (G) (1999 Projected Emission (F) minus 1999 Target Level (E))	77,366

1990–1999 Non-Creditable Reductions: Coke Oven By-Product Recovery=159,736 pounds VOC/day; Federal Motor Vehicle Control Program (FMVCP)=64,377 pounds VOC/day; Reid Vapor Pressure (RVP)=728 pounds VOC/day.

(A) IDEM revised the "1990 Lake and Porter Counties total VOC emissions", as described earlier, resulting in 1990 emissions of 620,070 pounds VOC/day.

9% ROP Summary For Lake and Porter Counties

Calculation of reduction needs by 1999	Pounds VOC/day

(B) IDEM determined the "1990 ROP emissions" (577,190 pounds VOC/day) by subtracting from the 1990 total emissions the biogenic emissions and emissions outside of the nonattainment area.

(C) IDEM calculated the "1990 adjusted base year emissions" as 351,440 pounds VOC/day by subtracting from the 1990 ROP inventory any non creditable emission reductions which are projected to occur between 1990 and 1999. EPA slightly revised IDEM's calculations when a computational error was found. The corrected "1990 adjusted base year emissions" are 352,349 pounds VOC/day. This correction results in a higher adjusted base year and affects each of the remaining computations, except for the 1999 projected VOC emissions.

(D) EPA calculated the "9% of adjusted base year emissions" as 31,711 pounds VOC/day by multiplying the 1990 adjusted base year inventory by 9%.

(E) EPA calculated the "1999 emissions target level" as 292,021 pounds VOC/day by subtracting from the 1996 emission target level inventory the FMVCP fleet turnover correction and the 9% reduction requirement.

(F) IDEM calculated the "1999 projected VOC emissions" as 369,387 pounds VOC/day. In the Post-1996 ROP Plan, IDEM projected the point, area, and non-road mobile source emission inventories using either source-supplied data, population forecasts, historical data, or, the U.S. Department of Commerce Bureau of Economic Analysis (BEA) regional growth data. IDEM included in the Post-1996 ROP Plan the growth factors used together with documentation for the assumptions made.

IDEM projected the on-road mobile source emission inventory using MOBILE5a. IDEM calculated these growth estimates in a manner consistent with EPA's guidance documents.

(G) EPA then determined the "ROP reduction requirement to achieve 9 percent net of growth" as 77,366 pounds VOC/day by subtracting the 1999 emission target level from the 1999 projected VOC emissions.

Why is EPA approving the Post-1996 ROP Plan submittal?

The Post-1996 ROP Plan satisfies the requirements of the Clean Air Act. Specifically, the plan:

- Revises the 1990 base year emission inventory,
- Identifies control measures to achieve a projected 9% VOC emissions reductions in Lake and Porter Counties,
- Documents the 9% reductions to occur by November 15, 1999, and,
- Identifies a 1999 mobile source emissions budget for VOC.

The Post-1996 ROP Plan projects reductions in VOC emissions in Lake and Porter Counties of 77,660 pounds VOC/day. This exceeds the required reduction of 77,366 pounds VOC/day. Indiana can use the excess reduction of 294 pounds VOC/day toward meeting future ROP emission reduction requirements.

Section 182(c)(2)(B) of the Act requires submittal of a demonstration that the SIP will result in a 9% emission reduction by November 15, 1999. This 9% needs to be in addition to the emission reduction requirement for a 15% reduction by November 15, 1996. Indiana submitted the demonstration as part of the Post-1996 ROP Plan.

V. Final Rulemaking Action

EPA approves Indiana's Post-1996 ROP Plan, including the 1990 inventory adjustments, submitted December 17, 1997, and January 22, 1998, for Lake and Porter Counties, as a revision to the SIP. Final approval of the Post-1996 ROP Plan also approves the 1999 mobile source emission budget of 40,897 pounds VOC per summer day.

This action will be effective on March 27, 2000.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by February 25, 2000. Should the Agency receive such comments, it will publish a withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on March 27, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the E.O. to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must

prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: January 6, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.777 is amended by adding paragraph (u) to read as follows:

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbon).

* * * * *

(u) On December 17, 1997, and January 22, 1998, Indiana submitted the Post-1996 rate-of-progress plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 182(c)(2)(B) of the Clean Air Act, as amended in 1990. The plan contains a 1999 mobile source vehicle emission budget for volatile organic compounds of 40,897 pounds per average summer day.

[FR Doc. 00–1558 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–043–1–9905a; and GA–045–1–9906a; FRL–6528–9]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Enhanced Inspection and Maintenance Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted, in two separate packages, by the State of Georgia in November and December of 1998. Both submittals request revisions to the enhanced Inspection and Maintenance (I/M) program, in accordance with the requirements of Section 110 of the Clean Air Act as amended in 1990 (CAA) and section 348 of the National Highway Systems Designation Act (NHSDA). In total, these submittals request revisions to modify the following sections: "Emission Inspection Procedures," "Inspection Station Requirements," "Certificate of Emissions Inspection," "Definitions," "Waivers," "Inspection Fees," and the "Accelerated Simulated Mode (ASM) Start-up Standards" found in Appendix H of the Enhanced I/M Test Equipment, Procedures, and Specifications—Phase II.

DATES: This direct final rule is effective March 27, 2000 without further notice, unless EPA receives adverse comment by February 25, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Dale Aspy (November 1998 submittal) or Lynorae Benjamin (December 1998 submittal) at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Dale Aspy, 404/562–9041; Lynorae Benjamin, 404/562–9040.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 1220, Atlanta, Georgia 30354. 404/363–7000.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at 404/562–9041 or Lynorae Benjamin at 404/562–9040.

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final Action, provide additional information concerning the revisions to the enhanced I/M portion of the Georgia SIP.

I. Background

On December 13, 1996 (61 FR 65496), EPA published a notice of proposed rulemaking (NPR) for the State of Georgia. The NPR proposed conditional interim approval of Georgia's enhanced I/M program, for the Atlanta ozone nonattainment area, submitted to satisfy the applicable requirements of both the CAA and the NHSDA. The formal SIP revision, submitted on March 27, 1996, by the Georgia Environmental Protection Division (EPD) of the Department of Natural Resources, contained plans to implement the program in two phases. The plan for Phase 1 described how the program would be expanded from the four counties in the previous program to the 13 ozone nonattainment counties. Phase 1 implemented a two speed idle (TSI) test and a gas cap pressure check for all vehicles that were subject to an emissions inspection. The implementation of Phase 2 required an ASM test for vehicles older than six model years, while newer vehicles continued to be subject to the TSI test. Phase 2 also implemented minor changes in software. The program was conditionally approved because it lacked ASM test method specifications and a requirement to implement the program in a timely manner. Subsequently, on January 31, 1997, the EPD submitted the necessary ASM test method, satisfying one of the conditions for program approval. These specifications were largely based upon EPA's specifications for the ASM test. Therefore, on August 11, 1997 (62 FR 42916) EPA noted the test specifications condition of the December 13, 1996, proposal was met and removed, and final interim approval was given to the program.

Additional detailed discussion of the Georgia enhanced I/M SIP and the rationale for EPA's action are explained in the proposal notice published December 13, 1996, reference above and in the final interim approval notice published on August 11, 1997 (62 FR 42916), and will not be restated here.

II. Analysis of State's Submittal

On November 4, 1998, EPD submitted a revision to the SIP that modified portions of the enhanced I/M program. Specifically, the submission deleted emergency rules contained in the "Emission Inspection Procedures," and the "Inspection Station Requirements" for the Georgia I/M regulation. These emergency rules were adopted when the ASM portion of the program could not be implemented on schedule due to delays in the delivery of hardware and software. The emergency rules allowed stations to check vehicle emissions on the TSI through December 1, 1998. However, the required hardware and software were delivered prior to the expected date, allowing ASM testing to start earlier than anticipated. Additionally, the "Certificate of Emissions Inspection" was changed to require a telephone number for tracking purposes. The details of the modifications requested in the November 1998 submittal are discussed below.

Emission Inspection Procedures

Paragraph 7 in the Emission Inspection Procedures (Georgia Rule 391–3–20–.04) is deleted entirely, removing the provision that allowed older vehicles to be tested with the TSI procedure.

Inspection Station Requirements

Sections (1)(a)(3) and (1)(c)(3) are deleted from Georgia Rule 391–3–20–.09, thereby removing the provisions that allowed certain newer vehicle only inspection stations or fleet inspection stations to test older vehicles with the TSI procedure.

Certificate of Emissions Inspection

A new subparagraph (2)(b) of Georgia Rule 391–3–20–.13 completely replaces the former subparagraph, requiring a telephone number in addition to the other information previously required on the repair information form.

On December 4, 1998, the EPD submitted additional revisions to the SIP to modify portions of the enhanced I/M program. Specifically, the submission updates the I/M Test Manual definition so that it refers to the version of the *Enhanced I/M Test Equipment, Procedures and Specifications—Phase II* dated September 10, 1998; extends the $200 waiver expenditure requirement through December 31, 1999; and extends the $25.00 fixed test fee and the issuing of an administrative fee credit of $6.30 to an inspection station owner for each ASM test performed through June 30, 1999. The details of the modifications requested in the December 1998 submittal are discussed below.

Definitions

The State updated the I/M Test Manual definition so that it refers to the most recent version of the Enhanced I/M Test Equipment, Procedures and Specifications—Phase II dated September 10, 1998.

Waivers

The revision extended the $200 waiver expenditure requirement through December 31, 1999. This extension reflects a change in EPA's policy which will mandate the $450 wavier amount (plus an increase for inflation) to be implemented after January 1, 2000. EPA is approving the State's request to extend the deadline for the full implementation of the cost waiver including the CPI adjustment until January 1, 2000. This allows the State to complete one full cycle of testing with the $200 cost waiver and also allows the State to complete a full cycle of testing with the full $450 plus the annual CPI adjustment made retroactively to 1989 cost waiver before January 1, 2002, which is the performance standard modeling evaluation date. EPA believes, that consistent with its interpretation that the start dates and evaluation dates have been extended by approximately two years by the NHSDA, the full implementation of the waiver can also be extended by two years.

Inspection Fees

The revision extended the $25.00 fixed test fee and the issuing of an administrative fee credit of $6.30 to an inspection station owner for each ASM test performed through June 30, 1999.

ASM-Start-Up

The revision delayed implementation of the final emissions standards for the dynamometer tests through December 31, 1999. This allows one year of ASM testing at the phase in cut points. The delay in implementing the final ASM standards was caused by the delay in starting Phase 2, the ASM portion, of the Georgia I/M program due to ASM hardware and software delivery problems.

III. Final Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revisions of

the Federally approved SIP for conformance with provisions of the CAA and EPA guidance and has determined that these requests conform to those requirements. Therefore, this action revises the State's enhanced I/M program as presented in the Analysis of State's Submittal section of this document.

The EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should adverse comments be filed. This rule will be effective March 27, 2000 without further notice unless the Agency receives adverse comments by February 25, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 27, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the E.O. to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 5, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. In § 52.570(c), the table is amended by revising the entry for 391–3–20 to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * *	* * *	* *	* *	*
391–3–20	Enhanced Inspection and Maintenance.	November 12, 1998	March 27, 2000.	
* * *	* * *	* *	* *	*

[FR Doc. 00–1834 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97–217, DA 00–99]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration.

SUMMARY: This item gives notice of the filing of petitions for reconsideration and sets out the dates for oppositions and replies to those oppositions.

DATES: Oppositions to the petitions for reconsideration are due February 10, 2000. Replies to oppositions are due February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: The Commission has received six petitions for further reconsideration of its *Report and Order on Reconsideration*, MM Docket, 97–217, 64 FR 63727. The petitions were filed by: Wireless Cable Association International, *et al.*; the Catholic Television Network; BellSouth; the Archdiocese of Los Angeles; IPWireless, Inc.; and the National ITFS Association. In the *Report and Order on Reconsideration*, the Commission made changes to the rules adopted in previous order which enabled licensees in the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") to engage in fixed two-way transmissions. The petitioners seek further changes. The full text of the petitions for further reconsideration are available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street,

SW Room CY–B402, Washington, DC 20554.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Román Salas,

Secretary.

[FR Doc. 00–1797 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 88–57; FCC 99–405]

Review of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of the Commission's Rules Filed by the Electronic Industries Association

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Commission rules regarding the establishment of quality standards for inside wiring, to promote the availability of quality telecommunications facilities that will not frustrate consumer access to existing and advanced telecommunications services. The Commission also affirms the gold or gold equivalent standard for connectors, and decline to designate schools and hospitals as multiunit structures, establish requirements compelling notification of building owners and tenants with respect to additional network protectors, and establish a standard time period for carrier responses to customer requests for inside wiring information.

DATES: Effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Vincent Paladini, Attorney, 202/418–2332, Fax 202/418–2345, TTY 202/418–2224, *vpaladin@fcc.gov*, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (Third R&O) in CC Docket No. 88– 57; FCC 99–405, adopted December 21, 1999, and released January 10, 2000. The complete text of this Third R&O is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., Suite CY–B400, Washington, D.C. 20554, phone (202) 314–3070.

Synopsis of the Third Report and Order

1. In the Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of § 68.213 of the Commission's Rules filed by the Electronic Industries Association, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88–57, RM–5643, 12 FCC Rcd 11897, (1997), 62 FR 36476, the Commission included a Second Further Notice of Proposed Rulemaking requesting comment on proposed modifications to the demarcation point rule, BICSI's proposed enhanced wire quality standards, and the gold or gold equivalent standard.

2. In this Order, we adopt material standards for copper, twisted pair wire used in new, simple inside wiring installations. We introduce this standard into our regulations to identify a "standard industry practice." This action will benefit consumers and small businesses using legacy voice telecommunications services as well as those seeking to access broadband services. We envision that consumers may enforce this rule by prosecuting claims against builders and contractors that have utilized inferior wiring in new construction. For example, an aggrieved consumer or building owner, beset by problems caused by poor quality inside wire, may make a civil claim against a builder or contractor for breach of implied warranty of merchantability or fitness for a particular purpose. We also anticipate that telecommunications wiring standards will be adopted by building industry organizations, and reflected in local building codes.

3. Poor-quality, non-twisted pair inside wiring can cause network harm in the form of "cross-talk," resulting in a loss of privacy, interference with digital transmission, and disruption of telephone conversations. The presence of inferior wiring may not be immediately apparent to homeowners and homebuyers, since the potential for future problems may be difficult to detect. Once a problem is discovered, homeowners often must rewire the affected premises to rectify the problem, at a cost substantially higher than the cost of initially installing quality inside wiring.

4. A primary cause of this troublesome situation is that the simple inside wiring market does not function correctly because homebuyers are shut out of the inside wire selection process. Building contractors and developers generally select telecommunications wire long before the homebuyer has entered the picture, and that this situation allows builders to prioritize lower cost over quality when purchasing wire to be used for simple inside wiring. When homeowners become aware of the problem, such as when they attempt to install an additional line or experience audible cross-talk, it is often too late to seek reparations from the builder or contractor. Thus, since the "purchasing entity," in this case the builder or contractor, is not held accountable for the problems caused by its least-cost-based decision, market forces will not protect the consumer's interest in quality inside wiring. Thus, we establish a wire quality standard to correct this market malfunction.

5. We find that it is in the public interest to adopt inside wiring quality standards in order to protect consumers and the PSTN from such harm. Thus, we amend § 68.213(c) of the Commission's rules to adopt enhanced wire quality standards for simple inside wiring. Specifically, we require that copper inside wiring installed July 24, 2000, shall be, at a minimum, solid, 24 gauge or thicker, twisted pairs, marked to indicate compliance with the electrical specifications for Category 3, as defined in the ANSI/EIA/TIA Building Wiring Standards. Inside wiring material exceeding the minimum requirements specified in § 68.213(c) as amended by this Order may be used and should be marked to indicate those characteristics. We note that the inside wiring requirements that we adopt in this Order apply only to copper conductor specifically installed for use as simple inside wiring for telecommunications service. We define the scope of this regulation specifically to avoid precluding the development and use of other transmission media that may be able to function in place of twisted pair copper inside wiring.

6. We emphasize that the inside wiring quality standards we adopt in this do not imply that inferior materials may be used instead of copper. Under § 68.108 of our rules, carriers are afforded certain self-help privileges

enabling them to take necessary actions to protect the PSTN, such as temporarily disconnecting or refusing to connect inside wiring or CPE that is likely to cause harm to the PSTN.

7. We also establish that wire must be marked for compliance with the Commission's inside wiring quality standard at one-foot intervals, as described in § 68.213(c)(3) of our rules as amended by this Third Report and Order. The new standard will become effective July 24, 2000.

8. The growing market presence of communications equipment and technology, such as facsimiles, modems, and ISDN, that have low tolerance for transmission anomalies and interference, such as those caused by poor connectors, indicates that the public interest will be served by supporting industry initiatives that pursue improved telecommunications transmission quality. Furthermore, the current standard has been in place for more than a year and has not been the subject of any criticism. Consequently, we decline to further revise § 68.500 with respect to the gold or gold equivalent standard.

9. In the 1997 Rulemaking, the Commission proposed that schools, hospitals and other similar facilities be considered multiunit premises under the Commission's demarcation point rule. Nothing in the record evinces difficulties in this area or indicates that case-by-case resolution of this issue would be problematic. Thus, we decline to determine that schools, hospitals, and similar facilities should be classified as multiunit premises under the demarcation point rule.

10. In the 1997 *Rulemaking*, the Commission requested comment identifying a reasonable time for telephone companies to respond to requests for disclosure of information regarding the wiring layout of buildings, including information about inside wiring on the customer's side of the demarcation point. The record does not indicate uncertainty or problems in this area. Thus, we decline to identify a specific period as reasonable for the purposes of customer requests for inside wiring information.

Paperwork Reduction Act

11. It appears that record keeping would not increase or significantly decrease as a result of the Commission's affirmation and clarification of the demarcation point definition gold and gold equivalence standard, and modification of the inside wiring material requirements rules. No new skills are necessary to comply with this amendment by telephone companies, wire maintenance and installation companies, and wire manufacturers.

Final Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act (RFA) the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Order on Reconsideration, Second Report and Order, and Second Notice of Proposed Rulemaking*. See 5 U.S.C. 603(a).

(1) Need For, and Objectives of, the Proposed Rules

13. The Commission, in compliance with section 1 and Title II of the Communications Act of 1934, as amended in the Telecommunications Act of 1996, promulgates rules in this *Third Report and Order* by amending § 68.213 of its rules to establish minimum standards for simple inside wiring to be connected to the public switched telecommunications network. This rule change will benefit consumers and small businesses by ensuring that telecommunications wiring in new installations will be capable of accommodating clear telecommunications and digital transmissions. Consumers and small businesses will also benefit from the decreased necessity for the expensive replacement of poor quality simple inside wiring, as may be required to accommodate extra lines for additional telephones, personal computers, fax machines, and ISDN or xDSL services. Furthermore, this rule change will staunch the increasing incidence of cross-talk and the risk of network harm associated with the installation of poor quality inside wiring.

(2) Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

14. We have reviewed the general comments to identify issues that may have significant economic impact on small businesses, and find that no issues were raised in direct response to the IRFA. Furthermore, all commenters addressing the issue of amending Part 68 our rules to provide enhanced standards for inside wiring supported the proposed amendment.

(3) Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of these SIC categories. We then discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules. Finally, we discuss the number of electrical contractors that may be affected by the proposed rules, and the extent to which they may be affected.

16. Consistent with our prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of "small entity" and "small business concern." While such a company may have 1,500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field or operation or are not independently owner and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term "small incumbent LECs" to refer to any incumbent LEC that arguably might be defined by the SBA as a small business concern.

17. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers and

resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this *Third Report and Order.*

18. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephony company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small businesses under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this *Third Report and Order.*

19. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appear to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Third Report and Order.*

20. *Manufacturers of Telecommunications Equipment.* The Commission has not developed a definition for small manufacturers of telecommunications terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661) which defines a small manufacturer as one having 1,000 or fewer employees. According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and seven had between 1,000 and 1,499 employees. Consequently, we estimate that there are fewer than 443 small manufacturers of telecommunications terminal equipment that may be affected by the decision and rules proposed in this *Third Report and Order.*

21. *Electrical Contractors.* Electrical Contractors in this category (SIC 1731) are primarily engaged in electrical work at the construction site. This category includes establishments engaged in the installation of telecommunication equipment, sound equipment, burglar alarms, fire alarms, and telephones. According to the 1997 Economic Census there are 61,414 electrical contractors. Of that number, 61,405 electrical contractors have fewer than 1000 employees, and 61,375 have fewer than 500 employees. Consequently, we estimate that up to 61,405 small electrical contractors may be affected by the decision and rules proposed in this *Third Report and Order.*

22. *Telecommunications Wiring Manufacturers.* Manufacturers in this category (SIC 3357B) are primarily engaged in manufacturing telephone and telegraph wire and cable. This category includes establishments engaged in the manufacture of inside wiring cable. According to the 1997 Economic Census there are 28 telephone and telegraph wire and cable manufacturers, of which 18 are involved in the manufacture of inside wiring cable. The Small Business Administration has determined that manufacturing establishments in this category with fewer than 750 employees qualify as small manufacturers. Consequently, we estimate that no more than 18 inside wiring cable manufacturers may be affected by the decision and rules proposed in this *Third Report and Order.*

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. *Reporting.* None.

24. *Recordkeeping.* It appears that recordkeeping would not increase or significantly decrease as a result of our affirmation and clarification of our demarcation point definition gold and gold equivalence standard, and modification of our inside wiring material requirements rules. We anticipate that no new skills are necessary to comply with this amendment by telephone companies, wire maintenance and installation companies, and wire manufacturers.

25. Other Compliance Requirements. None.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. We have considered the effect of enhanced wiring requirements on the building industry in general, and specifically with regard to the following entities: General Contractor, Single Family Houses (SIC 1521); General Contractor, Residential Buildings, Other than Single Family (SIC 1522); General Contractors, Nonresidential Buildings (SIC 1542), and Building Construction Trade Contractors, Electrical (SIC 1731), and find that these rule modifications will not cause significant negate impact. To the extant that enhanced wire quality standards for simple inside wiring may adversely affect small building contractor, it appears to be an insignificant cost in comparison to the value and public interest in the elimination of cross-talk interference to the service of third party customers that is directly attributable to the use of low-quality telephone inside wiring.

(6) Federal Rules that Overlap, Duplicate, or Conflict With These Rules

27. None.

Report to Congress

28. The Commission will include a copy of this Final Regulatory Flexibility Analysis, along with this Third Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**.

Ordering Clauses

29. Accordingly pursuant to the authority contained in Sections 1, 4(I) and (j), 11, 201–205, 218, 220, 256, and 405 of the Communications Act as amended, 47 U.S.C. sections 151, 154(I), 151(j), 161, 201–205 and 218, 220, 256, and 405, and 5 U.S.C. 552 and 553, this Third Report and Order and Order on Reconsideration *is adopted*, and part 68 of the Commission's Rules *is amended* as set forth. Sections 1, 4, 405, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 405 and 610, part 68 of the Commission's rules is amended as set forth.

30. That the rule amendments set forth *shall be effective* July 24, 2000.

List of Subjects in 47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Hearing aid compatibility, Incorporation by reference, Reporting and recordkeeping requirements, Telephone, Volume control.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 68 as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for part 68 continues to read as follows:

Authority: Sections 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

2. Section 68.213 is amended by revising paragraph (c) to read as follows:

§ 68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

* * * * *

(c) Material requirements. (1) For new installations and modifications to existing installations, copper conductors shall be, at a minimum, solid, 24 gauge or larger, twisted pairs that comply with the electrical specifications for Category 3, as defined in the ANSI EIA/TIA Building Wiring Standards.

(2) Conductors shall have insulation with a 1500 Volt rms minimum breakdown rating. This rating shall be established by covering the jacket or sheath with at least 15 cm (6 inches) (measured linearly on the cable) of conductive foil, and establishing a potential difference between the foil and all of the individual conductors connected together, such potential difference gradually increased over a 30 second time period to 1500 Volts rms, 60 Hertz, then applied continuously for one minute. At no time during this 90 second time interval shall the current between these points exceed 10 milliamperes peak.

(3) All wire and connectors meeting the requirements set forth in paragraphs (c)(1) and (c)(2) shall be marked, in a manner visible to the consumer, with the symbol "CAT 3" or a symbol consisting of a "C" with a "3" contained within the "C" character, at intervals not to exceed one foot (12 inches) along the length of the wire.

* * * * *

[FR Doc. 00–1795 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Woundfin and Virgin River Chub

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for the Virgin River chub (*Gila seminuda*) and the woundfin (*Plagopterus argentissimus*) in accordance with the Endangered Species Act of 1973, as amended. The Virgin River chub and woundfin are listed as endangered. Both species occur within the area designated as critical habitat. The designation includes portions of the Virgin River in Utah, Arizona, and Nevada. We are designating 140.1 kilometers (km) (87.5 miles (mi)) of critical habitat for the woundfin (approximately 12.5 percent of its historical range) and the Virgin River chub (65.3 percent of its historical range). The majority of the land to be designated as critical habitat is under Federal ownership (57.7 percent) or private ownership (39.9 percent). This critical habitat designation includes portions of the mainstem Virgin River and its associated 100-year floodplain. Under section 7 of the Endangered Species Act (Act) of 1973, as amended, Federal agencies are required to ensure that their actions are not likely to destroy or adversely modify designated critical habitat. Section 4 of the Act required us to consider economic and other impacts prior to making this final decision on the size and scope of the designation.

EFFECTIVE DATE: February 25, 2000.

ADDRESSES: You may inspect the complete file for this rule, by appointment, during normal business hours at the office of the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Field Supervisor, Salt Lake City Field Office, at the above address, (801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The woundfin (*Plagopterus argentissimus*) and Virgin River chub (*Gila seminuda*) are currently listed as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). In the subsequent text, we refer to the woundfin and Virgin River chub as "listed fishes." The Virgin River originates in south-central Utah, running in a southwest direction to northwestern Arizona, and southeastern Nevada for approximately 320 km (200 mi) before emptying into Lake Mead. Prior to the completion of Boulder (Hoover) Dam in 1935, the Muddy River in southeastern Nevada joined the Virgin River before the latter emptied into the Colorado River. These two rivers now flow separately into the Overton Arm of Lake Mead. The Virgin River chub and woundfin have declined in numbers due to the cumulative effects of dewatering from numerous diversion projects; proliferation of nonnative fishes; and alterations to natural flow, temperature, and sediment regimes.

Woundfin

Based on early records, the original range of the woundfin extended from near the junction of the Salt and Verde Rivers at Tempe, Arizona, to the mouth of the Gila River at Yuma, Arizona (Gilbert and Scofield 1898; Minckley 1973). Woundfin were also found in the mainstem Colorado River from Yuma (Jordan and Evermann 1896; Meek 1904; Follett 1961) upstream to the Virgin River in Nevada, Arizona, and Utah and into La Verkin Creek, a tributary of the Virgin River in Utah (Gilbert and

Scofield 1898; Snyder 1915; Miller and Hubbs 1960; Cross 1975). However, because no barriers or habitat considerations exist that would have precluded woundfin from existing further upstream in these rivers, we believe that the woundfin likely occurred further upstream in the Verde, Salt, and Gila Rivers in Arizona.

Except for the mainstem of the Virgin River, woundfin are extirpated from most of their historical range. Woundfin presently range from Pah Tempe Springs (also called La Verkin Springs) on the mainstem of the Virgin River and the lower portion of La Verkin Creek in Utah, downstream to Lake Mead. A single specimen was taken from the middle Muddy (Moapa) River, Clark County, Nevada, in the late 1960s. However, no additional specimens have been collected from that drainage since that time (Deacon and Bradley 1972).

Adult and juvenile woundfin inhabit runs and quiet waters adjacent to riffles with sand and sand/gravel substrates. Adults are generally found in habitats with water depths between 0.15 and 0.43 meters (m) (0.5 and 1.4 feet (ft)) with velocities between 0.24 and 0.49 meters per second (m/s) (0.8 and 1.6 feet per second (ft/s)). Juveniles select areas with slower and deeper water, while larvae are found in backwaters and stream margins which are often associated with growths of filamentous algae. Spawning takes place during the period of declining spring flows.

Virgin River Chub

The Virgin River chub was first described as a full species (*Gila seminuda*) in 1875 (Cope and Yarrow 1875). Later, Ellis (1914) considered this chub to be an intermediate between the roundtail chub (*G. robusta*) and bonytail chub (*G. elegans*), and reduced it to a subspecies (*G. robusta seminuda*) of the roundtail chub. The fish was believed to be restricted to the Virgin River between Hurricane, Utah, and its confluence with the Colorado River.

In a recent taxonomic study of the genus *Gila* using morphological and genetic characters, DeMarais *et al.* (1992) concluded that the prior treatment of the Virgin River chub as a subspecies of roundtail chub was inappropriate and arbitrary. The authors asserted that full species status (*Gila seminuda*) was warranted for the Virgin River chub, which likely arose through introgressive hybridization involving *G. robusta* and *G. elegans* (DeMarais *et al,* 1992). Moreover, DeMarais *et al.* (1992) concluded that the chub found in the Muddy (=Moapa) River, a Virgin River tributary, was also *G. seminuda,* although the Muddy River population was "distinctive." Prior to this conclusion, this geographically isolated population of Virgin River chub was considered a separate, unnamed subspecies of roundtail chub (*G. robusta spp.*), and was referred to as the Moapa roundtail chub (Minckley 1973, Smith *et al.* 1977). We, along with the American Fisheries Society and American Society of Ichthyologists and Herpetologists Fish Names Committee (Mr. Joseph S. Nelson, American Fisheries Society, *in litt.* 1993) have accepted the taxonomic revisions of *Gila.*

In past candidate notices of review, we considered the Muddy River population of Virgin River chub to be a category 2 candidate species (December 30, 1982, 47 FR 58455; January 6, 1989, 54 FR 556; November 21, 1991, 56 FR 58804). At that time, category 2 candidate species were those species for which we had information indicating that listing may be appropriate, but did not have enough information on file to support issuance of a proposed rule to list. In our February 28, 1996, candidate notice of review (61 FR 7596), we discontinued the designation of category 2 candidates. The final rule listing the Virgin River chub as an endangered species (August 24, 1989; 54 FR 35305) specifically excluded the Muddy River population, because at the time it was classified as an undescribed subspecies. The Muddy River is not included in this final rule designating critical habitat for the Virgin River chub because at the time that the proposed critical habitat designation and economic analysis were prepared, we did not consider the Muddy River population to be listed. Therefore, in order to respond in a timely manner and make a final determination with regard to critical habitat for the Virgin River chub, this final rule encompasses only the mainstem Virgin River. A separate listing determination, which will include analyses on the status of the species and whether listing the fish in the Muddy River is warranted, will be prepared for this population and made available for public review and comment. The prudency and determinability of critical habitat for the Muddy River population will be addressed at that time.

The Virgin River chub was first collected in the 1870s from the Virgin River near Washington, Utah. Historically, it was collected in the mainstem Virgin River from Pah Tempe Springs, Utah, downstream to the confluence with the Colorado River in Nevada (Cope and Yarrow 1875; Cross 1975), though it may have occurred upstream of that point. Presently, the Virgin River chub occurs within the mainstem Virgin River from Pah Tempe Springs, Utah, downstream to at least the Mesquite Diversion, located near the Arizona-Nevada border.

Adult and juvenile Virgin River chub select deep runs or pools with slow to moderate velocities containing boulders or other instream cover over a sand substrate. Generally, larger fish occupy deeper habitats; however, there is no apparent correlation with velocity. Chub are generally found in velocities ranging up to 0.76 m/s (2.5 ft/s).

Importance of the Virgin River Floodplain

Preservation of the river channel alone is not sufficient to ensure the survival and recovery of the woundfin and Virgin River chub. The Virgin River floodplain is integral to preserving the integrity of the primary constituent elements (defined below) and maintaining the natural dynamics of the Virgin River. Components of a healthy river system needed for these fish include the mainstem channel, where water is maintained most or all of the year, and upland habitats that are inundated during spring flows. Studies of the major floodplain rivers of the world have documented the value of flooded bottomlands and uplands for fish production (Welcomme 1979). For example, loss of floodplain habitats in the Missouri River Basin has reduced fish biomass production as much as 98 percent (Karr and Schlosser 1978). These seasonally flooded habitats contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides nutrients and terrestrial food sources to aquatic organisms (Hesse and Sheets 1993). The Virgin River contains little aquatic vegetation and contains a minimum amount of autochthonous (produced within the river) organic matter. Thus, the fauna of the Virgin River is heavily dependent on allochthonous energy inputs from the floodplain that provides or supports much of the food base. This rich, terrestrial food source may enhance fish growth, fecundity, and/or survival.

Use of these inundated floodplain areas increases the energy available for spawning and is necessary for reproductive success in some species (Finger and Stewart 1987). In many cyprinid fishes, including these listed fishes, spawning is associated with seasonal rains and flooding of rivers. Flood-related changes in the river

environment induce spawning for many species, while the loss of these seasonal changes due to water withdrawals and channel constrictions may be a contributing factor limiting recruitment for these fish (Hontele and Stacey 1990).

Protection of floodplain areas also provides the spatial and temporal scope for natural physical processes, including flooding, to occur (National Research Council 1992). These processes over time shape and reshape the river, constantly redefining the physical habitat and complexity of the river. Large flow events allow the river to meander, thereby creating and recreating the mosaic of habitats necessary for the survival and recovery of the listed fishes. As long as this physical reshaping occurs, the habitat complexity and biological productivity associated with river-floodplain systems necessary for the survival and recovery of the listed fishes will be maintained.

Inundation of floodplain habitats during spring flows also provides areas with warmer water temperatures, lower water velocity habitat used for resting, and cover from predation. Recent studies in the Colorado River system show that the life histories and welfare of native riverine fishes are linked to the maintenance of a natural or historical flow regime (*i.e.*, hydrological pattern of high spring and low autumn and winter flows that vary in magnitude and duration depending on annual precipitation patterns and runoff from snowmelt) (Tyus and Karp 1989, 1990). Minckley and Meffe (1987) suggest that loss of flooding will result in extirpation of many of the native fish species in the Colorado River system.

Previous Federal Action

We listed the woundfin as endangered on October 13, 1970 (35 FR 16047), and proposed critical habitat on November 2, 1977 (42 FR 57329). However, on March 6, 1979, we withdrew the proposal for critical habitat (44 FR 12382) due to the 1978 amendments to the Act, which required proposals to be withdrawn if not finalized within 2 years. A Woundfin Recovery Plan was originally approved in July 1979 and subsequently revised on March 1, 1984.

On August 21, 1978, we proposed listing the Virgin River chub as endangered and designating critical habitat (43 FR 37668). We also withdrew this proposal (45 FR 64853; September 30, 1980), due to the 1978 amendments to the Act. On June 24, 1986, we again proposed the listing as endangered and the designation of critical habitat for the Virgin River chub (51 FR 22949). The final rule to list the Virgin River chub as endangered was published on August 24, 1989 (54 FR 35305). We postponed the designation of critical habitat to allow time to undertake an analysis of the economic and other impacts of the designation as required by section 4(b)(2) of the Act. When the Virgin River chub was listed, the Muddy River form was specifically excluded because it was believed to be a separate, unnamed subspecies of roundtail chub (Moapa roundtail chub= *Gila robusta* ssp.).

On March 18, 1994, the U.S. District Court, Colorado (Court) ordered us to designate critical habitat for the Virgin River chub, woundfin, and Virgin spinedace (*Lepidomeda mollispinis mollispinis*) (if it became listed under the Act before December 31, 1994). The Court ordered that critical habitat be proposed no later than April 1, 1995, and be finalized by December 1, 1995. We proposed the Virgin spinedace for listing as a threatened species on May 18, 1994 (59 FR 25875), but did not include critical habitat in that proposed rule because we believed that all three fish species would receive greater conservation benefit if critical habitat for all three was designated simultaneously. We published a proposed rule designating critical habitat for the three fishes on April 5, 1995 (60 FR 17296). On April 11, 1995, we entered into the Virgin Spinedace Conservation Agreement and Strategy with other Federal, State, and private local entities to eliminate or reduce impacts threatening the continued existence of the Virgin spinedace. A Virgin River Fishes Recovery Plan, including the woundfin, Virgin River chub, and Virgin spinedace, was finalized on April 19, 1995. Because of the conservation efforts being implemented on behalf of the Virgin spinedace, we withdrew the proposed listing and critical habitat designation of the Virgin spinedace on February 6, 1996 (61 FR 4401). Therefore, the Virgin spinedace is no longer included in this critical habitat designation.

Prior to publication of a final rule designating critical habitat for the woundfin and Virgin River chub, Congress enacted a moratorium on final listing actions and we postponed further actions to finalize critical habitat. Disruptions in the listing budget beginning in Fiscal Year 1995 and the moratorium on certain listing actions, including critical habitat designations, during parts of Fiscal Years 1995 and 1996 remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. By that time, we had accrued a serious backlog of listing actions. To deal with this backlog, we developed and published Interim (61 FR 9651) and Final (61 FR 24722) Listing Priority Guidelines for Fiscal Year 1996. The guidelines described a multi-tiered approach to working through the listing backlog and identified critical habitat designations as our lowest listing priority. On December 5, 1996, we published our Final Listing Priority Guidance for Fiscal Year 1997 (61 FR 64475), which maintained this prioritization.

On May 8, 1998, we published our Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). The designation of critical habitat remained our lowest priority. However, in December 1998, the 10th Circuit Court ruled that we could no longer use this justification for not designating critical habitat and ordered us to designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*). Shortly after that decision, the plaintiffs in the Virgin River fishes case filed a motion requesting that we be ordered to finalize critical habitat designation for the woundfin and Virgin River chub. On August 27, 1999, the U.S. District Court of Colorado ordered us to finalize critical habitat designation for the woundfin and Virgin River chub by January 20, 2000.

Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. As explained above, critical habitat was delayed for a variety of reasons. With this final rule, however, critical habitat is now designated for the woundfin and Virgin River chub in the Virgin River.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section

3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (*i.e.*, the species is recovered and removed from the list of endangered and threatened species).

We are required to base critical habitat decisions upon the best scientific and commercial information available (50 CFR 424.12) after taking into account economic and other impacts of such designation. In designating critical habitat for the woundfin and Virgin River chub, we have reviewed the overall approaches to the conservation of the woundfin and Virgin River chub undertaken or proposed by local, State, and Federal agencies operating within the Virgin River basin and the identified steps necessary for the species recovery outlined in the Virgin River Fishes Recovery Plan. We also have reviewed available information that pertains to the geographic range of the species in the Virgin River and the habitat requirements of each species. That information includes that received during the public comment periods associated with this rulemaking (described below).

Effect of Critical Habitat Designation

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The designation of critical habitat is one of several measures available to assist in the conservation and recovery of a species. Critical habitat may help focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether the areas are currently occupied by the listed species. Such designation may alert Federal agencies, States, the public, and other organizations to the areas' importance. Critical habitat also identifies areas that may require special management considerations or protection.

The designation of critical habitat directly affects only Federal agencies, by prohibiting actions they fund, authorize, or carry out from destroying or adversely modifying critical habitat. Individuals, firms, and other non-Federal entities are not affected by the designation of critical habitat so long as their actions do not require support by permit, license, funding, or other means from a Federal agency.

An understanding of the interplay of the jeopardy and adverse modification standards is necessary to evaluate the likely outcomes of both consultation under section 7 and the environmental, economic and other impacts of any critical habitat designation. Implementing regulations (50 CFR part 402) define "jeopardize the continued existence of" (a species) and "destruction or adverse modification of" (critical habitat) in virtually identical terms. "Jeopardize the continued existence of" means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species." "Destruction or adverse modification" means a direct or indirect alteration that "appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species."

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Thus, for most species, actions likely to result in destruction or adverse modification of critical habitat are nearly always found to jeopardize the species concerned. Only in a few instances might an action be found to adversely modify critical habitat without also being found to jeopardize the continued existence of the species. This situation might occur in unoccupied habitat or occupied habitat that may become unoccupied in the future. In most cases, the existence of a critical habitat designation does not materially affect the outcome of consultation. This reality is often in contrast to the public perception (and the assumption used in the previous economic analysis as described in this final rule) that the adverse modification standard sets a lower threshold than the jeopardy standard in all instances. The similar nature of the jeopardy and adverse modification standards and the application of the standards is true for the listed Virgin River fishes as well. The area of the river system being designated as critical habitat in this final rule is occupied by the listed fishes.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or those activities that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined below) to an extent that the value of designated critical habitat for both the survival and recovery of a listed species is reduced appreciably.

Federal activities in the Virgin River basin that may adversely modify critical habitat include actions that reduce the volume and timing of water flows, destroy or eliminate access to spawning and nursery habitat, prevent recruitment, appreciably impact food sources, contaminate the river, or significantly increase predation and competition by nonnative fishes (Table 1). Examples of such activities may include construction and operation of hydroelectric facilities, additional irrigation diversions, flood control structures, bank stabilization structures, oil and gas drilling, golf courses, and resort facilities, as well as mining, grazing, additional pumping to meet municipal water demands, and stocking or introduction of nonnative fishes.

TABLE 1.—IMPACTS OF WOUNDFIN AND VIRGIN RIVER CHUB LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities impacted by species listing only [1]	Additional activities impacted by critical habitat designation [2]
Federal activities potentially affected [3].	Activities such as construction and operation of hydroelectric facilities, flood control, additional irrigation diversions, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, that the Federal Government carries out that may jeopardize the continued existence of a listed species (only activities impacting the occupied portions of the river system).	None.
Private activities potentially affected [4].	Activities such as additional irrigation diversions, flood control, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, municipal water supplies, golf courses, resort facilities, water wheeling, water leasing, and dewatering of springs for municipal and industrial purposes that require a Federal action (permit, authorization, or funding) that may jeopardize the continued existence of the species (only activities impacting the occupied portions of the river system).	None.

[1] This column represents the impacts of the final rules listing the woundfin (October 13, 1970; 35 FR 16047) and Virgin River chub (August 24, 1989; 54 FR 35305) under the Endangered Species Act and covers land in the occupied portion of the river system only. These rules prohibited actions funded, authorized, or carried out by Federal agencies that jeopardized the continued existence of the species. "Jeopardizing the continued existence of the species," as defined by the Act, would result from an action that would appreciably reduce the likelihood of the species' survival and recovery.

[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

These types of activities have already been examined during formal and informal consultations with us since the listing of the species as endangered. No additional restrictions to these activities as a result of critical habitat designation are anticipated. For example, existing Federal activities in the area include the Pah Tempe Pipeline, Halfway Wash Project, Lake Powell Pipeline, water wheeling, water leasing, Washington Fields Pumpback, and dewatering of springs for municipal and industrial purposes.

Areas outside of critical habitat, containing one or more of the primary constituent elements, may still be important for the conservation of a species. Some areas do not contain all of the constituent elements and may have those missing elements restored in the future. Such areas may be important for the long-term recovery of the species even if they are not designated critical habitat because they may serve to maintain ecosystem integrity, thereby indirectly contributing to recovery.

In summary, designation of critical habitat focuses on the primary constituent elements within the defined areas and their contribution to the species' recovery, and includes consideration of the species' biological needs and factors that will contribute to their recovery (*i.e.*, distribution, numbers, reproduction, and viability). In evaluating Federal actions, we will consider the actions' impacts on the primary constituent elements of water, physical habitat, and biological environment (discussed below). The ability of an area to provide these constituent elements into the future and to contribute to the recovery of the species will also be considered. The potential level of allowable impacts or habitat reduction in critical habitat will be determined on a case-by-case basis during section 7 consultation.

Primary Constituent Elements

In identifying areas as critical habitat, 50 CFR 424.12 provides that we consider those physical and biological features that are essential to a species' conservation and that may require special management considerations or protection. Such physical and biological features, as outlined in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

In determining critical habitat for the woundfin and Virgin River chub, we focused on the primary physical and biological elements essential to the conservation of each species. Prior to designating an area as critical habitat, we assessed the area for all applicable constituent elements.

The primary constituent elements of critical habitat determined necessary for the survival and recovery of these Virgin River fishes are water, physical habitat, and biological environment. The desired conditions for each of these elements are further discussed below.

Water—A sufficient quantity and quality of water (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species. This includes the following:

(1) Water quality characterized by natural seasonally variable temperature, turbidity, and conductivity;

(2) Hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular life stages at certain times of the year; and

(3) Flood events inundating the floodplain necessary to provide the organic matter that provides or supports the nutrient and food sources for the listed fishes.

Physical Habitat—Areas of the Virgin River that are inhabited or potentially habitable by a particular life stage for each species, for use in spawning, nursing, feeding, and rearing, or corridors between such areas:

Woundfin

(1) River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats;

(2) Areas inhabited by adult and juvenile woundfin include runs and

pools adjacent to riffles that have sand and sand/gravel substrates;

(3) Areas inhabited by juvenile woundfin are generally deeper and slower. When turbidity is low, adults also tend to occupy deeper and slower habitats;

(4) Areas inhabited by woundfin larvae include shoreline margins and backwater habitats associated with growths of filamentous algae.

Virgin River Chub

(1) River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats; and

(2) Areas with slow to moderate velocities, within deep runs or pools, with predominately sand substrates, particularly habitats which contain boulders or other instream cover.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to nonnative fish species in many areas. Fourteen introduced species, including red shiner (*Cyprinella lutrensis*), black bullhead (*Ameiurus melas*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*), compete with or prey upon the listed fishes. Of these, the red shiner is the most numerous and has been the most problematic for the listed fishes. Red shiners compete for food and available habitats and are known to prey on the eggs and early life stages of the listed fishes. Components of this constituent element include the following:

(1) Seasonally flooded areas that contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides and supports much of the food base of the listed fishes; and

(2) Few or no predatory or competitive nonnative species in occupied Virgin River fishes' habitats or potential reestablishment sites.

Critical Habitat Designation

Woundfin—The area designated as critical habitat for the woundfin is the mainstem Virgin River and its 100-year floodplain (as defined below), extending from the confluence of La Verkin Creek, Utah, to Halfway Wash, Nevada, and includes 59.6 km (37.3 mi) of the mainstem Virgin River in Utah, 50.6 km (31.6 mi) in Arizona, and 29.9 km (18.6 mi) in Nevada (Table 2). This designation totals 140.1 km (87.5 mi) of the mainstem Virgin River, which represents approximately 12.5 percent of the woundfin's historical habitat. Due to the lack of historical data on the distribution of the woundfin in Arizona, this percentage is only an estimate. The area of the Virgin River designated as critical habitat consists of the remaining occupied habitat for the woundfin, and this portion of the Virgin River flows through both public and private lands (Table 3).

TABLE 2.—CRITICAL HABITAT IN KILOMETERS (MILES) FOR VIRGIN RIVER LISTED FISHES

State	Woundfin	Virgin River chub	State totals
Arizona	50.6 (31.6)	50.6 (31.6)	50.6 (31.6)
Nevada	29.9 (18.6)	29.9 (18.6)	29.9 (18.6)
Utah	59.6 (37.3)	59.6 (37.3)	59.6 (37.3)
Total	140.1 (87.5)	140.1 (87.5)	140.1 (87.5)

TABLE 3.—CRITICAL HABITAT SHORELINE OWNERSHIP IN KILOMETERS (MILES) OF CRITICAL HABITAT OCCUPIED BY THE WOUNDFIN AND VIRGIN RIVER CHUB [1]

Ownership	Woundfin and Virgin River chub	Percent
Federal	80.9 (50.5)	57.7
State	3.3 (2.1)	2.4
Private	55.9 (34.9)	39.9
Total	140.1 (87.5)	100.0

[1] Landownership was typically the same on both riverbanks. However, in several reaches (1.5 km or less), the river forms a boundary between Federal and private lands. Based upon the location of the channel, these reaches were identified as either Federal or private, not both. Therefore, distances given may be doubled to represent ownership along both riverbanks.

Virgin River Chub—The area designated as critical habitat for the Virgin River chub is the mainstem Virgin River and its 100-year floodplain (as defined below), extending from the confluence of La Verkin Creek to Halfway Wash and is identical to the designation for the woundfin (Table 2). The designation for this species represents approximately 65.8 percent of the Virgin River chub's historical habitat within the Virgin River Basin. The area of the Virgin River designated as critical habitat consists of the remaining occupied habitat for the Virgin River chub, which flows through both public and private lands (Table 3).

The designation of critical habitat for both listed fishes includes the mainstem Virgin River currently occupied by the species. The 100-year floodplain of the Virgin River is included in the designation of critical habitat for both species, but we are designating only those portions of the 100-year floodplain that contain at least one of the primary constituent elements for critical habitat. We chose the 100-year floodplain for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area. The 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), while not included on standard topographic maps, is an area of land that would be inundated by a flood having a one

percent chance of occurring in any given year. It is the Federal standard for protection of life and property and is delineated and readily available on FEMA floodplain maps. This boundary, rather than some other delineation, was primarily chosen for two reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.*, allowing the river to meander within its main channel in response to large flow events, thereby recreating the mosaic of habitats necessary for the survival and recovery of Virgin River endangered fishes); and (2) conservation of the 100-year floodplain also helps protect the riparian areas and provide essential nutrient recharge to the Virgin River, which contributes to successful spawning and recruitment of endangered fishes.

Some developed lands within the 100-year floodplain boundary are not considered critical habitat because they do not contain the primary constituent elements. These include, but are not limited to, existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion canals outside of natural stream channels, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments. These developed areas do not contain the primary constituent elements and do not furnish habitat or biological features for the listed fishes, and generally will not contribute to the species' recovery. However, some activities in these areas (if federally funded, authorized, or carried out) may affect the constituent elements of the designated critical habitat and, therefore, may be affected by critical habitat designation, as discussed later in this final rule.

Summary of Changes From the Proposed Rule

During the public comment period for the proposed rule (60 FR 17296), we received information provided by the Nevada Division of Wildlife and Bio/West, Inc. indicating that very few woundfin or Virgin River chub have ever been collected below Halfway Wash, Nevada. The backwater effect of the high water line of Lake Mead has resulted in a large amount of sand deposition below Halfway Wash. This deposition has changed the morphology of the river from a single channel to a highly braided river reach consisting of multiple rivulets, thereby reducing the gradient of the river and resulting in an extremely shallow multiple channeled habitat, not suitable for either woundfin or Virgin River chub. Based on this information, we changed the critical habitat boundary in Nevada from the highwater level of Lake Mead to Halfway Wash. This change reduced the critical habitat in Nevada by 11.6 km (7.3 mi) from what was described in the proposed rule. Additionally, critical habitat as proposed for the Virgin spinedace (60 FR 17296) was formally withdrawn on February 6, 1996 (61 FR 4401). This action further reduced the designation by 179 km (112.0 mi).

One assumption that we used in the economic analysis was that the threshold for an action to result in an adverse modification determination was less than the threshold for an action to jeopardize the continued existence of a species. The economic impacts summarized in the proposed rule were based on this assumption. Since the development of the economic analysis and subsequent proposed rule designating critical habitat in the Virgin River basin, we have determined that, in most cases, actions that are likely to result in the destruction or adverse modification of critical habitat are nearly always found to jeopardize the continued existence of the species concerned. This determination is based, in part, on numerous consultations concerning listed fish and critical habitat designated in the 100-year floodplain in the upper Colorado River basin. These consultations have demonstrated little or no difference in the results of application of the jeopardy and adverse modification standard. We further discuss the effect of this determination in the "Consideration of Economic and Other Impacts" section of this final rule.

As originally proposed, the critical habitat designation included five separate river reaches (Maddux *et al.* 1995). We structured the proposal this way to coincide with the economic analysis and to facilitate exclusion of areas if the economic impacts of designation of critical habitat outweighed the benefits, provided that exclusion would not result in the extinction of either species. For the final designation, we have simplified the boundaries by combining all five reaches into a single section of river.

Consideration of Economic and Other Impacts

Section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts in determining whether to exclude any proposed area(s) from the final designation of critical habitat. We may exclude an area from critical habitat designation if the benefits of its exclusion outweigh the benefits of its inclusion in critical habitat, unless failure to designate the area would result in extinction of the species concerned. In 1995, we conducted an analysis on the potential economic impacts of the proposed critical habitat designation (Brookshire *et al.* 1995).

When we directed the economic analysis in 1995, we assessed the biological requirements for the recovery of the listed fishes and the regional economic activities as the basis of the analysis. The biological requirements needed to ensure recovery of the listed fishes include adjustments in water diversions in the Virgin River basin and/or mitigation of nonflow-related activities within the 100-year floodplain. We also took into consideration the effects of potential recovery efforts on future water depletions in the basin. The study region for the economic analysis included Washington and Iron Counties in Utah, Clark County in Nevada, and the portion of Mohave County in Arizona located north of the Colorado River.

We believed that Washington County, Utah, and Clark County, Nevada, would be directly affected by any actions taken by the Service on behalf of the listed fishes. These counties are presently among the fastest growing in the United States. From 1980 to 1990, Washington County's population grew by 52 percent, while Clark County's grew by 62.5 percent. Iron County, Utah, (north of Washington County) is a rapidly growing area that is economically closely linked to Washington County. Although the Virgin River does not flow through Iron County, any economic impacts on Washington County would be felt in Iron County as well. The Virgin River also flows through a portion of Mohave County in Arizona. This area has a very small population and a modest economic base.

In the 1995 economic analysis, we analyzed the economic impacts of insuring that the biological requirements of the listed fishes were met in the Virgin River Basin. Our analysis included impacts that were attributable to the listing itself, through the requirement that Federal agencies consult with us to ensure that their actions do not jeopardize the continued existence of the species. Habitat requirements of the listed fishes have been addressed by the jeopardy standard in each consultation we have done since the fishes were listed. Although we separately analyzed the incremental effects of the critical habitat designation above and beyond the effects of listing, that separation was based on the incorrect assumption that

the threshold for an action to result in an adverse modification determination is less than the threshold for determining that the action will likely jeopardize the continued existence of a species. We now recognize that our analysis should have been restricted to the specific impacts of designating critical habitat, if any, that would occur above and beyond the economic impacts of the listing, an interpretation upheld by recent case law (*New Mexico Cattle Growers Association et al.* v. *United States Fish and Wildlife Service, et al.*, CIV No. 98–0275 BB/DJS–ACE).

In the economic analysis, we also made an assumption that as a species moves from near extinction to recovery, the likelihood that any given project will cause adverse modification remains relatively constant, while the likelihood of jeopardy decreases. While this assumption will hold true in some circumstances, it has turned out to be a more complicated situation than initially presumed. Specifically, factors that alter the likelihood of jeopardy will only alter the likelihood of adverse modification to the extent that they affect critical habitat. However, because the adverse modification determination has its foundation in the likelihood of survival and recovery, as does the jeopardy determination, factors that increase the likelihood of adverse modification should logically increase the likelihood of jeopardy as well. In other words, adverse modification determinations will generally coincide with jeopardy determinations.

After years of conducting consultations under section 7 of the Act on actions affecting both a listed species and its critical habitat, we have learned that the two thresholds are nearly identical. In fact, biological opinions which conclude that a Federal agency action is likely to adversely modify critical habitat but not to jeopardize the species for which it is designated are extremely rare historically. Although the Service has participated in thousands of formal consultations (an estimated 900 in Fiscal Year 1999 alone), no such biological opinions have been issued in recent years. The similar application of the two standards is true in the specific case of the listed Virgin River fishes as well. In this final rule we review the results of the economic analysis in light of the correct assumption (that the thresholds for adverse modification and jeopardy are usually identical.)

Results of the Economic Analysis

Because the entire economic analysis was based on our incorrect assumption that the threshold for an action to result in an adverse modification determination is less than the threshold for an action to jeopardize the continued existence of a species, we conclude that even the small potential impacts attributable to critical habitat designation as discussed in the economic analysis, and summarized in the proposed rule, were overstated and are primarily attributable to the listing of the woundfin and Virgin River chub.

We have concluded that no incremental economic impacts are associated with the critical habitat designation above and beyond the effects of listing the species. Therefore, we do not believe that any benefit results from excluding any area from designation, nor that any benefit of exclusion outweighs the benefit of critical habitat designation. Consequently, we have simplified the critical habitat boundaries originally described in the proposed rule by combining the areas described as five reaches into a single section of river.

Summary of Comments

On April 5, 1995, we published the proposed rule and notice of public hearing in the **Federal Register** (60 FR 17296). We solicited public comment on the proposed critical habitat designation and its associated draft economic analysis. The public comment period was open from April 5, 1995, to June 5, 1995, and was further extended by request to June 20, 1995 (60 FR 31444). During the comment period, we conducted a public hearing in St. George, Utah, on May 8, 1995. Additional notification of the public hearing and comment period was provided by letter to appropriate State agencies, county governments, Federal agencies, and other interested parties. Notice of the proposed rule, comment period, and the public hearing was also published in the *Kingman Daily Miner, Desert Valley Times, Daily Spectrum, Deseret News, Salt Lake Tribune, Las Vegas Review Journal*, and *Las Vegas Sun*. During the comment period, we received 14 written comment letters and 6 people testified at the public hearing. Copies of all comments were made available to the public at the Washington County Library, Utah.

Prior to the court order to finalize critical habitat designation, on August 9, 1999, we published in the **Federal Register** (64 FR 43206) a notice of availability of a draft environmental assessment on the proposed action of designating critical habitat. The public comment period was open from August 9, 1999, to September 8, 1999. Additional notification of the availability of the draft environmental assessment and comment period was provided by letter to appropriate State agencies, county governments, Federal agencies, and other interested parties. During the comment period, we received 12 written comment letters. After a review of all comments received in response to the draft environmental assessment, on November 24, 1999, we published a notice of availability of the final environmental assessment and finding of no significant impact for designation of critical habitat for the listed fishes (64 FR 66192).

Some of the information provided during the comment periods is reflected in this final rule. A summary of the other issues raised in the written and oral comments regarding the proposed rule, economic analysis, and draft environmental assessment is provided below.

Issue 1: The critical habitat designation is based on the assumption that fish populations have declined in occupied reaches. The critical habitat designation is not warranted because numbers of individuals of these species may not have declined, although number of miles occupied has decreased.

Service Response: We disagree. At the time of listing, we determined that both the woundfin and Virgin River chub warranted protection under the Act due to a number of factors. These factors included both a decline in the occupied range of the species as well as a decline in the abundance of the species. In addition, current data, both published and unpublished, indicate that the decline in the woundfin population is continuing. Deacon (1988) showed that a substantial decline in woundfin occurred in the Virgin River above Quail Creek Reservoir and below Pah Tempe Springs between 1976 and 1993. He attributed this decline, in part, to a decrease in water quality because flows above Pah Tempe Springs were diverted at the Quail Creek Diversion. Prior to 1985, these flows had previously diluted the high saline input from Pah Tempe Springs. Holden and Zucker (1996) analyzed data from 1976–1993 that showed a very clear long-term decline of woundfin at long-term sampling stations in Utah, Arizona, and Nevada. When they plotted the data as number of woundfin caught per seining effort per year, they found a statistically significant negative trend over time ($p < 0.05$) at all stations except one during the fall season, indicating an overall decline in the woundfin population. Monitoring data from the Utah Division of Wildlife Resources (unpublished data, Recovery Team Meeting Minutes, April 29, 1999) show a substantial

decline from 1994 (total number=456 (spring), 604 (fall)) to 1999 (total number=77 (spring), 162 (fall)).

Anecdotal, historical information suggests that Virgin River chub were very abundant before the 1900s and that the abundance and range of Virgin River chub has declined substantially throughout its range in Utah, Arizona, and Nevada since white settlement and water development. Reasons for this decline are thought to be mainly habitat destruction. Habitat is degraded through dewatering of the river system such that some areas are inundated by reservoirs and other areas are completely dewatered. Also, competition from nonnative species which may prey on young life-stages of Virgin River chub may contribute to population declines (Holden 1977).

Virgin River chub have the lowest densities of any native fish in the Virgin River (Radant and Coffeen, 1986; Hardy and Addley 1994). However, observed numbers may or may not reflect actual abundance. Because Virgin River chub occupy deep holes and habitats that are often logistically difficult to sample, catch rates can be erratic and sampling can be difficult to standardize. Based on the long-term data available, Virgin River chub show a general decline in Utah, Arizona, and Nevada, particularly since the mid-1980s. Yet in some areas (below Hurricane Bridge and below Washington Diversion) numbers are stable or within the range of variability noted in the late 1970s and early 1980s (Hardy and Addley 1994). Hardy and Addley are careful to note that declines may be due to droughts and other natural climatic changes. Natural droughts are no doubt exacerbated by water development and the human need for water during these years. More recent data are being analyzed to determine the current status of Virgin River chub and to determine if declining trends continued through the late 1990s.

Issue 2: The lower portion of La Verkin Creek should be included as critical habitat for the woundfin.

Service Response: Although woundfin are occasionally collected in this reach, we are aware of no data that indicate that this area is being used for reproduction or as a nursery or that it is essential for the conservation of the species. Therefore, it is not included in this final critical habitat designation.

Issue 3: Why did we not include the Muddy River in Nevada as critical habitat for the Virgin River chub?

Service Response: Please see our discussion of the Muddy River population in the Background section of this final rule. Because the Muddy River population was not listed, critical habitat designation is not appropriate. However, we intend to conduct a separate listing determination for the Muddy River population, which will include an analysis of the status of the species and a determination about the prudency and determinability of a critical habitat designation.

Issue 4: The area from Quail Creek Diversion to Pah Tempe Springs should be included in the critical habitat designation for the woundfin.

Service Response: While it is possible that this area was historical habitat for the Virgin River chub, woundfin have never been found in this reach. It is a high-gradient reach of the river that has gone dry annually for the past 80 years. When critical habitat was proposed, this reach of the river was left out because it was dry dammed. Since critical habitat was proposed, 3 cfs of flows have been restored to this reach of the river. However, since that time only one Virgin River chub has been collected in this reach of the Virgin River. We do not believe that this reach provides those physical or biological features essential to the conservation of either species.

Issue 5: Additional streams in Arizona should be designated as critical habitat.

Service Response: On July 24, 1985, we proposed the reintroduction of the woundfin into the Gila River drainage in Arizona and determined this population to be "nonessential experimental" in accordance with section 10(j) of the Act (50 FR 30188). The Act prohibits inclusion of nonessential experimental population areas in critical habitat designations.

Issue 6: The Virgin River in Utah was segmented into numerous reaches for designation; no segmenting was done in Nevada or Arizona.

Service Response: Please see our discussion under the "Summary of Changes to the Proposed Rule" section of this final rule.

Issue 7: How is the 100-year floodplain defined, and which parts of the floodplain are critical habitat?

Service Response: Please see the discussion under the "Critical Habitat Designation" section of this proposed rule.

Issue 8: A 10-year floodplain designation should be sufficient because the riparian community is maintained at this flow level.

Service Response: Critical habitat, among other things, is intended to identify areas that may require special management protection or consideration. Our intention in designating a portion of the floodplain as critical habitat is to encompass not only the area which provides a major source of food and nutrients to the river, but also the area within which the river meanders. Only areas that contain at least one of the primary constituent elements are considered critical habitat. Critical habitat that would encompass a 10-year floodplain would not contain these attributes. Moreover the selection of the 100-year floodplain is consistent with and supports the goals of Virgin River Management Plan (1999) and the Proposed Virgin River Resource Management and Recovery Program, both of which contain provisions for the protection and enhancement of the 100-year floodplain.

Issue 9: Critical habitat designation is not prudent because of preparation of the Virgin River Management Plan.

Service Response: As discussed in the implementing regulations at 50 CFR 424.12, critical habitat is considered not prudent when one or more of the following situation exists:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species.

In the absence of any information that indicates that critical habitat will increase the degree of threat to a species threatened by taking or other human activity, any small benefit of designation requires that the designation be found prudent. Although we supported development of the Virgin River Management Plan (1999), this plan does not increase the degree of threat to the species nor negate any benefits that may be provided to the species from critical habitat designation. Therefore, such designation must be found prudent. The extent to which this plan will protect the Virgin River is still unknown. Additionally, this plan only covers the Utah portion of the habitat. We anticipate that the Virgin River Management Plan and critical habitat designation will complement each other.

Issue 10: The Service should do NEPA on critical habitat designation.

Service Response: Please see our discussion under the "Required Determinations" section of this final rule.

Issue 11: The designation does not give full consideration to existing and future water rights.

Service Response: Critical habitat designation for the Virgin River listed fishes does not modify nor nullify any existing State water law, compact agreement, or treaty. Impacts to water development opportunities within the States are mainly attributable to the effects of listing these species. It is our

intent to fully consider State water law, interstate compact agreements, and treaties in protecting and recovering the listed fishes. As an example, we worked with the State of Utah and the WCWCD to develop a Virgin River Management Plan. This plan is intended to address both the needs for future water development and recovery of the listed fishes consistent with State water laws and other agreements.

Issues and Responses Pertaining to the Economic Analysis

Because the entire economic analysis was based on our incorrect assumption that the threshold for an action to result in an adverse modification determination is less than the threshold for an action to jeopardize the continued existence of a species, in this final rule we have concluded that even the small, potential impacts attributable to critical habitat designation as discussed in the economic analysis, and summarized in the proposed rule, were overstated and are primarily attributable to the listing of the woundfin and Virgin River chub. Although many of the points raised by various commentors on the economic analysis are no longer relevant given our conclusions about the economic impacts of critical habitat, we offer the following responses to the issues raised about the analysis.

Issue 12: The economic analysis incorrectly assumes that converting agriculture to secondary/culinary water will reduce current flows to the river.

Service Response: The economic analysis assumed that converting agricultural water to Municipal and Industrial (M&I) water might result in decreased river flows. The Utah State Water Plan for the Virgin River Basin reports water depletion figures for agricultural use to be 45 percent and for M&I use to be 63 percent. Therefore, converting agricultural use to M&I would result in a net decrease in water returns of 19 percent. Although return flows may be greater than those used in the economic analysis, the points at which these flows are returned to the river remain unknown.

Issue 13: The economic analysis did not assess impacts to Mohave County, Arizona.

Service Response: The majority of Mohave County's economic activity falls outside of the Virgin River study area, however, a small part of Mohave County, was included, mainly around the town of Litchfield, Arizona. There is little economic activity in this part of Mohave County, and it includes 0.39 percent of the total population of the study area. Consequently, the economic activity occurring in Mohave County was shared out of the total activity for the Virgin River area based on population. This activity was then incorporated into the Clark County analysis.

Issue 14: The Washington County Water Conservancy District's (WCWCD) water plans should have been incorporated into the economic analysis, and sensitivity analyses regarding the hydrologic assumptions should have been conducted.

Service Response: The WCWCD's water plans, as represented by the report "Population Projections and Future Water Demands", prepared by Boyle Engineering (1994) for WCWCD, were, in fact, used in creating the baseline scenario. The hydrologic assumptions were structured such that the resulting economic analysis always yielded a worst-case set of economic impacts. Thus, sensitivity analysis would only lower the impacts presented in the report.

Issue 15: The Service's choice of the modeling methodology and the choice of discount rates used in the economic analysis were presented without explanation of why other models or discount rates were rejected.

Service Response: The Act requires the calculation of the economic impacts of critical habitat designation. The use of the contingent valuation method for inclusion in cost-benefit analysis is not germane. Our use of input-output analysis yielded both the direct and indirect impacts associated with recovery needs of the listed fishes. Regarding the discount rate, the discounting procedures and assumptions used represent the "industry standard." The extant economic literature clearly calls for a positive discount rate for economic analyses addressing water allocation issues.

Issue 16: Private landowner effects, water right reallocations, loss of open space, and community character should have been addressed by the economic analysis.

Service Response: There are no additive impacts to private property owners from critical habitat designation that were not present when the species were listed. If Federal funding or Federal permits are required for a private action, the Federal action agency must then consult with the Service. All transactions associated with the reallocation of water are voluntary market transactions and are not impacts of this action. The extent to which the community chooses to allow the loss of open space and changes in community character is beyond the scope of the economic analysis. It should be noted, however, that the designation of critical habitat along another river-floodplain system, the 100-year floodplain of the Colorado River, has not precluded the setting aside of open space or development of parks and trails within the floodplain or adjacent to the river.

Issue 17: It was improper to attribute benefits of water conservation to critical habitat designation in the economic analysis.

Service Response: Water conservation will be realized, with or without the listed fishes or a critical habitat designation, by water management and conservation measures currently being implemented or planned in the future within the study area, in particular, Washington County. The economic analysis did not attribute the benefits of water conservation to listed fishes recovery and conservation. Rather, the water conservation scenario serves to demonstrate that the economic impacts of the listed fishes including designation of critical habitat can be mitigated with moderate conservation efforts.

Issue 18: The economic analysis did not document the gross overuse and waste of water in Washington County.

Service Response: The report "Population Projections and Future Water Demands", prepared by Boyle Engineering (1994) for WCWCD addressed these matters. Further analysis in these regards is beyond the scope of the economic analysis.

Issue 19: Not enough weight is given in the economic analysis to the consequences of the conversions of agricultural lands in Washington County due to critical habitat.

Service Response: The agricultural lands conversions that are projected to occur during the economic analysis study period are generated by the population growth that is projected for the region, not by the needs of the listed fishes or the designation of critical habitat. These agricultural lands are, in fact, incorporated in the baseline projection of the economy without taking the fish needs into consideration. The fish needs may accelerate the retirement of agricultural water rights in order to maintain water in the Virgin River for the listed fishes and still allow for water development to occur to meet the needs of a growing human population. This incremental retirement of water and conversion of land is attributable mainly to the listing of these fishes and was incorporated into the economic analysis.

Issue 20: The time period for the economic analysis is too short and omits the long term impacts of the designation of critical habitat.

Service Response: The study period for the economic analysis (1995–2040) was selected for the reasons described previously in this rule. By the end of this period, the population of Washington County is projected to be 380,600 people. Development projections undertaken by Boyle Engineering (1994) place the maximum population of Washington County at approximately 850,000 at population density levels consistent with the present lifestyles of the area. Thus, the population will have reached a steady state by the end of the study period used in the economic analysis and further impacts are not anticipated.

The comment further assumes that water maintained to meet the flow needs of the fish in critical habitat is lost to the national economy. While the Washington County area cannot develop this water, Las Vegas, Nevada, could use it after it reaches Halfway Wash. From a national perspective, the water may well have a higher value in Las Vegas than in Washington County, Utah, because of the larger, more diverse economy in Clark County, Nevada.

Issue 21: The retirement of agricultural lands is not correctly addressed in the economic analysis. If land retirements are market driven, then the low productivity lands will be converted first and the high productivity lands last.

Service Response: This point is correct. The economic analysis uses the average (county-level) productivity to value all agricultural lands. This approach overstates the economic impacts due to the listed fishes and critical habitat designation because the discounted present value of agricultural retirements is higher when the average land value is used. This is consistent with the approach calculating the worst-case economic impacts.

Issue 22: The economic analysis does not measure the national efficiency effects of critical habitat designation.

Service Response: In accordance with the Act and the regulations that implement it, the final designation of critical habitat is made on the basis of the best available scientific data, after taking into consideration the probable economic and other impacts of the designation upon proposed or ongoing activities. The national efficiency effects are computed and reported in the economic analysis prepared by Brookshire *et al.* 1995 (see Chapter 8) and summarized in the proposed rule. The economic analysis discusses the conditions under which the factor payments computed from the input-output analysis may be used to value the national efficiency changes.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. This final rule identifies the areas being designated as critical habitat for the woundfin and Virgin River chub. The designation will not have an annual economic effect of $100 million. Our summary of the economic impacts of designation is discussed earlier in this final rule. This rule will not create inconsistencies with other agencies' actions. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Proposed and final rules designating critical habitat for listed species are issued under the authority of the Act. Critical habitat regulations are issued under procedural rules contained in 50 CFR part 424. Based on previous formal and informal consultations with other Federal agencies under section 7 of the Endangered Species Act, the Service has determined that there are no economic impacts of critical habitat designation above and beyond the impacts of the original listing of the species. Cases identified in the economic analysis as a potential economic impact of critical habitat designation are actions that would also result in a finding of "jeopardize the continued existence of the species" during section 7 consultation. Thus, any economic impact associated with the Virgin River chub and woundfin is one incurred by the original listing of the species, not by this critical habitat designation.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As explained previously in this final rule, the designation will not have economic effects above and beyond those attributed to the listing of the species. This is because the prohibition against destroying or adversely modifying critical habitat is essentially duplicative of the prohibition against jeopardizing the continued existence of the species, and therefore, there are no additional economic effects that are not already incurred by the listing of the species.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. As explained in this rule, we do not believe that the designation will have economic effects above and beyond those attributed to the listing of the species. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, because the designation will not have significant economic effects above and beyond the listing of the species. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Based on our analysis of the economic impacts of this rule as discussed above, and in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not significantly affect small governments because it will not place additional burdens on small (State, local, or Tribal) governments. This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a significant regulatory action under the Unfunded Mandates Reform Act.)

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. Although the critical habitat designation includes 55.9 kilometers of privately owned shoreline of the mainstem Virgin River, this final rule will not "take" private property rights and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands, or to private lands if a Federal nexus exists (i.e., if a Federal agency authorizes or funds an action on private land). Private actions without a federal nexus on private land are not subject to any critical habitat prohibitions. Any private actions on private land that have a Federal nexus are already subject to consultation under section 7 of the Endangered Species Act. Because we have identified no economic effects of critical habitat designation above and beyond those that have accrued from the listing of these species, there are no takings implications.

Federalism

In accordance with Executive Order 13132, this final rule will not affect the structure or role of States, and will not have direct, substantial, or significant

effects on States. As previously stated, critical habitat is applicable only to Federal lands or to non-Federal lands to the extent that activities require Federal funding or permitting. Also, we have determined that additional economic impacts would not result from this critical habitat designation.

In keeping with Department of the Interior policy, we requested information from and coordinated development of the critical habitat proposal with the appropriate State resource agencies in Utah, Arizona, and Nevada. On August 9, 1999, we published in the **Federal Register** (64 FR 43206) a notice of availability of a draft environmental assessment on the proposed action of designating critical habitat. The public comment period was open from August 9, 1999, to September 8, 1999. Additional notification of the availability of the draft environmental assessment and comment period was provided by letter to appropriate State agencies, county governments, Federal agencies, and other interested parties. During the comment period, we received 12 written comment letters, which were considered in finalizing this rule.

It is our intent to fully consider State water law, interstate compact agreements, and treaties in protecting and recovering the listed fishes. As an example, we worked with the State of Utah and the WCWCD to develop a Virgin River Management Plan (1999). This plan is intended to address both the needs for future water development and recovery of the listed fishes consistent with State water laws and other agreements. The selection of the 100-year floodplain as the boundary for this critical habitat designation is consistent with and supports the goals of the Virgin River Management Plan and the Proposed Virgin River Resource Management and Recovery Program, both of which involve the State of Utah.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The final designation of critical habitat for the woundfin and Virgin River chub has been reviewed extensively. Every effort has been made to ensure that the rule contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. denied* 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We have completed that analysis through an Environmental Assessment and Finding of No Significant Impact.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and procedures outlined by the Department of the Interior (512 DM 2), we recognize our responsibility to work with federally recognized Tribes on a Government-to-Government basis. Moreover, the 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species." We are unaware of any Tribal lands containing habitat essential to the conservation of the listed fishes.

References Cited

A complete list of all references cited is available upon request from the Field Supervisor, Salt Lake City Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Henry R. Maddux and Janet Mizzi, previously of our Salt Lake City Field Office, Patty Stevens of our Denver Regional Office, and Keith Rose of our Salt Lake City Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend section 17.11(h) by revising the entry in the critical habitat column of the entry for "Chub, Virgin River," and "Woundfin", under FISHES, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	*
Chub, Virgin River ...	*Gila robusta seminuda.*	U.S.A. (AZ, NV, UT)	.....do	E	361	§ 17.95(e)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	* * *	*	*	*	*
Woundfin	*Plagopterus argentissimus.*	U.S.A. (AZ, NV, UT), Mexico.	Entire, except Gila River drainage, AZ, NM.	E	2,193	§ 17.95(e)	NA
*	*	*	* * *	*	*	*	*

3. Amend Section 17.95(e) by adding critical habitat of the Virgin River chub (*Gila robusta seminuda*) and woundfin (*Plagopterus argentissimus*) in the same alphabetical order as these species occur in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

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Virgin River Chub (*Gila seminuda*)

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 Bureau of Land Management (BLM) maps (Surface Management Status 30 x 60 Minute Quadrangle). Legal descriptions for Overton (Nevada-Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30 x 60 Minute Quadrangle). The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing at least one of the constituent elements are considered critical habitat. Critical habitat designated for the Virgin River chub is as follows:

Utah, Washington County; Arizona, Mohave County; Nevada, Clark County. The Virgin River and its 100-year floodplain from its confluence with La Verkin Creek, Utah in T.41S., R.13W., sec.23 (Salt Lake Base and Meridian) to Halfway Wash, Nevada T.15S., R.69E., sec.6 (Salt Lake Base and Meridian).

The primary constituent elements of critical habitat determined necessary for the survival and recovery of these Virgin River fishes are water, physical habitat, and biological environment. The desired conditions for each of these elements are further discussed below.

Water—A sufficient quantity and quality of water (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species. This includes the following:

1. Water quality characterized by natural seasonally variable temperature, turbidity, and conductivity;

2. hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular life stages at certain times of the year; and

3. flood events inundating the floodplain necessary to provide the organic matter that provides or supports the nutrient and food sources for the listed fishes.

Physical Habitat—Areas of the Virgin River that are inhabited or potentially habitable by a particular life stage for each species, for use in spawning, nursing, feeding, and rearing, or corridors between such areas:

1. River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats; and

2. areas with slow to moderate velocities, within deep runs or pools, with predominately sand substrates, particularly habitats which contain boulders or other instream cover.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to nonnative fish species in many areas. Fourteen introduced species, including red shiner (*Cyprinella lutrensis*), black bullhead (*Ameiurus melas*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*), compete with or prey upon the listed fishes. Of these, the red shiner is the most numerous and has been the most problematic for the listed fishes. Red shiners compete for food and available habitats and are known to prey on the eggs and early life stages of the listed fishes. Components of this constituent element include the following:

1. Seasonally flooded areas that contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides and supports much of the food base of the listed fishes; and

2. few or no predatory or competitive nonnative species in occupied Virgin River fishes' habitats or potential reestablishment sites.

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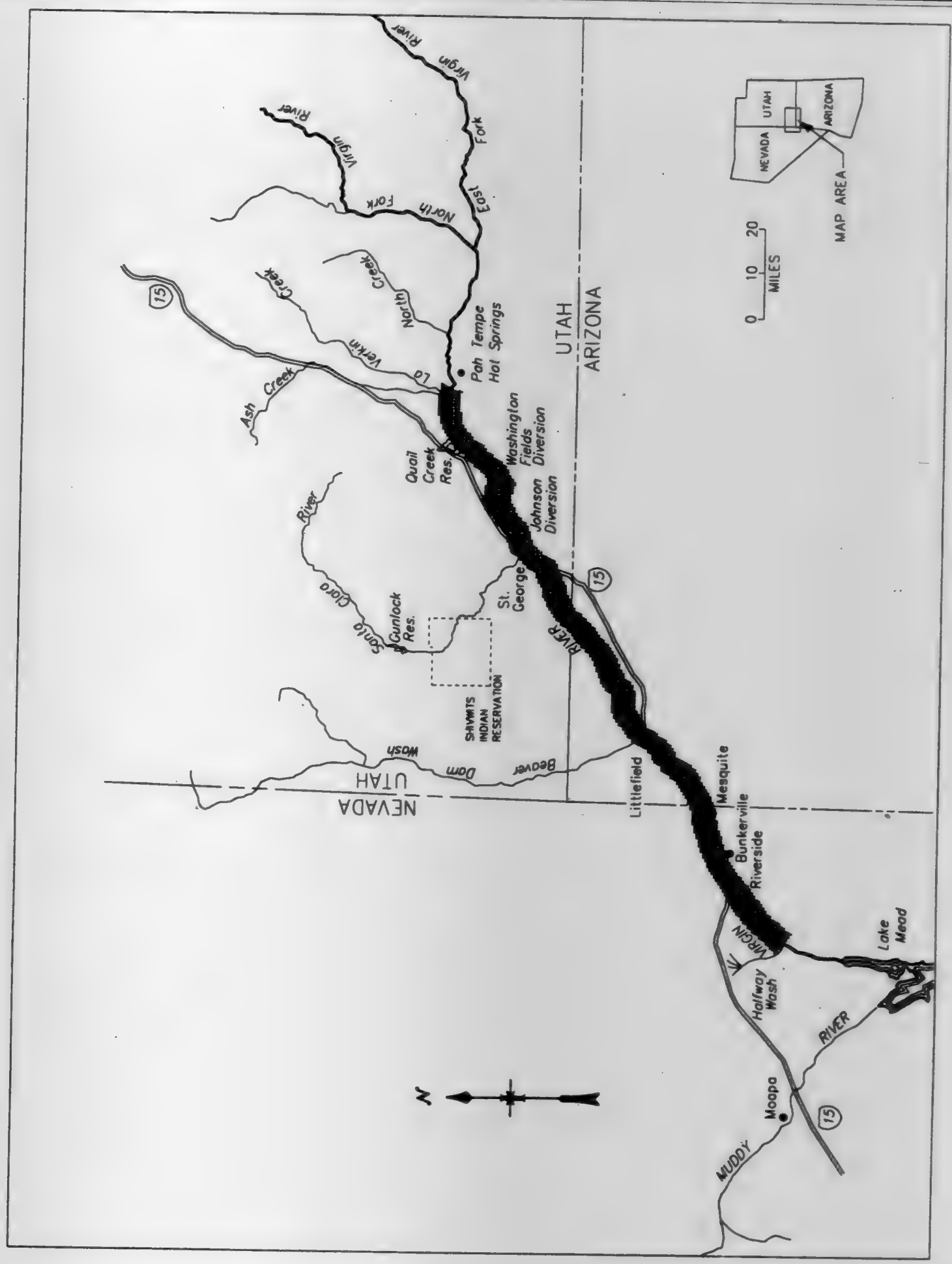
Virgin River
North Fork
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North Creek
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Ash Creek
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UTAH
ARIZONA
Quail Creek Res.
Washington Fields Diversion
Johnson Diversion
Gunlock Res.
Santa Clara River
St. George
RIVER
SHIVWITS INDIAN RESERVATION
Beaver Dam Wash
NEVADA
UTAH
Littlefield
Mesquite
Bunkerville
Riverside
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Woundfin (*Plagopterus argentissimus*)

Legal descriptions for St. George (Utah–Arizona) and Littlefield (Arizona) were obtained from the 1987 BLM maps (Surface Management Status 30 x 60 Minute Quadrangles). Legal descriptions for Overton (Nevada–Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30 x 60 Minute Quadrangles). The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing at least one of the constituent elements are considered critical habitat. Critical habitat designated for the woundfin is as follows:

Utah, Washington County; Arizona, Mohave County; Nevada, Clark County. The Virgin River and its 100-year floodplain from its confluence with La Verkin Creek, Utah in T.41S., R.13W., sec.23 (Salt Lake Base and Meridian) to Halfway Wash, Nevada T.15S., R.69E., sec.6 (Salt Lake Base and Meridian).

The primary constituent elements of critical habitat determined necessary for the survival and recovery of these Virgin River fishes are water, physical habitat, and biological environment. The desired conditions for each of these elements are further discussed below.

Water—A sufficient quantity and quality of water (*i.e.*, temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species. This includes the following:

1. Water quality characterized by natural seasonally variable temperature, turbidity, and conductivity;

2. hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular life stages at certain times of the year; and

3. flood events inundating the floodplain necessary to provide the organic matter that provides or supports the nutrient and food sources for the listed fishes.

Physical Habitat—Areas of the Virgin River that are inhabited or potentially habitable by a particular life stage for each species, for use in spawning, nursing, feeding, and rearing, or corridors between such areas:

1. River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats;

2. areas inhabited by adult and juvenile woundfin include runs and pools adjacent to riffles that have sand and sand/gravel substrates;

3. areas inhabited by juvenile woundfin are generally deeper and slower. When turbidity is low, adults also tend to occupy deeper and slower habitats;

4. areas inhabited by woundfin larvae include shoreline margins and backwater habitats associated with growths of filamentous algae.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to nonnative fish species in many areas. Fourteen introduced species, including red shiner (*Cyprinella lutrensis*), black bullhead (*Ameiurus melas*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*), compete with or prey upon the listed fishes. Of these, the red shiner is the most numerous and has been the most problematic for the listed fishes. Red shiners compete for food and available habitats and are known to prey on the eggs and early life stages of the listed fishes. Components of this constituent element include the following:

1. Seasonally flooded areas that contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides and supports much of the food base of the listed fishes; and

2. few or no predatory or competitive nonnative species in occupied Virgin River fishes' habitats or potential reestablishment sites.

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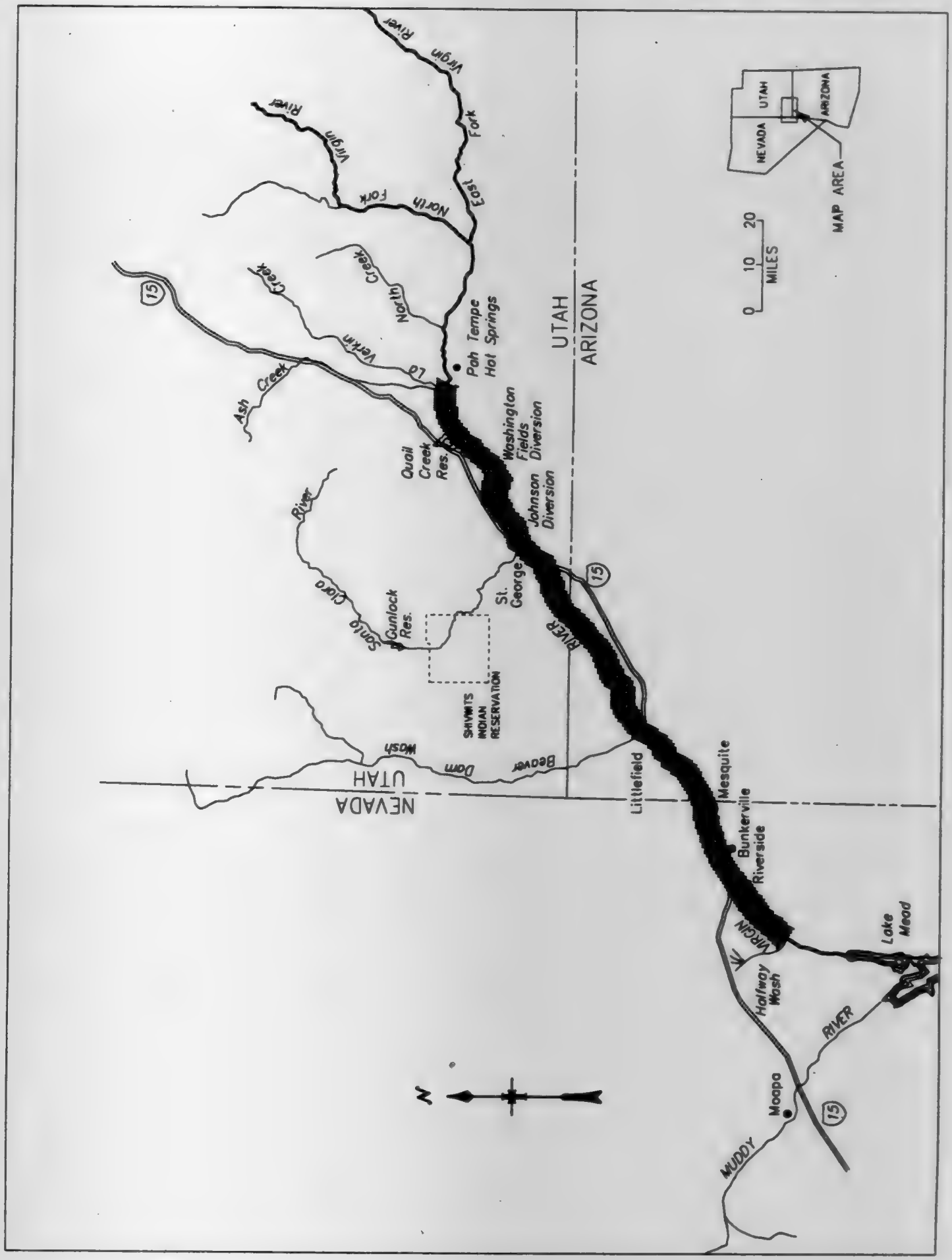
Virgin River
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Pah Tempe Hot Springs
UTAH
ARIZONA
Washington Fields Diversion
Quail Creek Res.
Johnson Diversion
River
Gunlock Res.
St. George
RIVER
15
SHIVWITS INDIAN RESERVATION
Beaver Dam Wash
NEVADA
UTAH
Littlefield
Mesquite
Bunkerville
Riverside
Lake Mead
VIRGIN
Hallway Wash
RIVER
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Dated: January 18, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–1746 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE23

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Larkspurs From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended for two plants—*Delphinium bakeri* (Baker's larkspur) and *Delphinium luteum* (yellow larkspur). These species grow in a variety of habitats including coastal prairie, coastal scrub, or chaparral in Sonoma and Marin Counties in northern California. Habitat loss and degradation, sheep grazing, road maintenance activities, and overcollection imperil the continued existence of these plants. Random events increase the risk of extinction to the extremely small plant populations. This rule implements the Federal protection and recovery provisions afforded by the Act for these two species.

EFFECTIVE DATE: February 25, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W2606, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6464; facsimile 916/414–6486).

SUPPLEMENTARY INFORMATION:

Background

Delphinium bakeri (Baker's larkspur) and *D. luteum* (yellow larkspur) were found historically in coastal prairie, coastal scrub, or chaparral habitats. Urban development, agricultural land conversion, and livestock grazing have destroyed much of the habitat and extirpated numerous populations of these two plants in coastal Marin and Sonoma Counties in northern California. The historical range of *Delphinium bakeri* and *D. luteum* did not extend beyond coastal Marin and Sonoma Counties.

Ewan (1942) described *Delphinium bakeri* based on type material collected by Milo Baker in 1939 from Coleman Valley, Sonoma County, California. In the most recent treatment, Warnock (1993) retained the taxon as a full species. Historically, *D. bakeri* was known from Coleman Valley in Sonoma County and from a site near Tomales in Marin County. *Delphinium bakeri* occurs on decomposed shale within the coastal scrub plant community from 120 to 150 meters (m) (400 to 500 feet (ft)) in elevation (California Natural Diversity Database (CNDDB) 1997).

Delphinium bakeri is a perennial herb in the buttercup family (Ranunculaceae) that grows from a thickened, tuber-like, fleshy cluster of roots. The stems are hollow, erect, and grow to 65 centimeters (cm) (26 inches (in)) tall. The shallowly five-parted leaves occur primarily along the upper third of the stem and are green at the time the plant flowers. The flowers are irregularly shaped. The five sepals (outer most whorl or set of floral parts) are conspicuous, bright dark blue or purplish, with the rear sepal elongated into a spur. The inconspicuous petals occur in two pairs. The lower pair is oblong and blue-purple; the upper pair is oblique and white. Seeds are produced in several dry, many-seeded fruits, which split open at maturity on only one side (*i.e.*, several follicles). *Delphinium bakeri* flowers from April through May (Warnock 1993).

Habitat conversion, grazing, and/or roadside maintenance activities have extirpated occurrences of *Delphinium bakeri* in Marin and Sonoma Counties (California Department of Fish and Game (CDFG) 1994). The CDFG (1994) also reported the species is declining. The only known remaining population, with a total of about 35 plants, is found on a steep road bank on private and county land in Marin County that is threatened by road work, overcollection, and sheep grazing. Because of its extreme range restriction and small population size, the plant is also vulnerable to extinction from random natural events, such as fire or insect outbreaks (CNDDB 1997).

Heller (1903) described *Delphinium luteum* based on type material collected from "grassy slopes about rocks, near Bodega Bay, along the road leading to the village of Bodega" in Sonoma County. Although Jepson (1970) reduced *D. luteum* to a variety of *D. nudicaule*, it is currently recognized as a full species (Warnock 1993). *Delphinium luteum* occurs on rocky areas within coastal scrub plant community, including areas with active rock slides, from sea level to 100 m (300 ft) in elevation (Guerrant 1976).

Delphinium luteum is a perennial herb in the buttercup family (Ranunculaceae) that grows from fibrous roots to 56 cm (22 in) tall. The leaves are mostly basal, fleshy, and green at the time of flowering. The flowers are cornucopia-shaped. The five conspicuous sepals are bright yellow, with the posterior sepal elongated into a spur. The inconspicuous petals occur in two pairs. The upper petals are narrow and unlobed; the lower petals are oblong to ovate. The fruit is a follicle. *Delphinium luteum* flowers from March to May.

Never widely distributed, historical populations of *Delphinium luteum* have been partially or entirely extirpated by rock quarrying activities, overcollecting, residential development, and sheep grazing, resulting in the species now being even more narrowly distributed (Guerrant 1976; CNDDB 1998; Betty Guggolz, Milo Baker Chapter, California Native Plant Society (CNPS), pers. comm. 1995). The CDFG (1994) reported the species is declining. The two remaining populations near Bodega, both on private land, total fewer than 50 plants. Development, overcollection, and sheep grazing threaten the remaining two populations. Because of its extreme range restriction and small population size, the plant is also vulnerable to extinction from random natural events, such as fire or insect outbreaks (CNDDB 1998; B. Guggolz, pers. comm. 1995).

Previous Federal Action

Federal Government actions on the two species began as a result of section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Delphinium bakeri* and *D. luteum* as endangered. We published a notice on July 1, 1975 (40 FR 27823) of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and our intention to review the status of the plant taxa named in the report. The above two taxa were included in the

July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *D. bakeri* and *D. luteum* were included in this **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than two years old. In the December 10, 1979, notice (44 FR 70796), we published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

We published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Delphinium bakeri* and *D. luteum* as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, we published a supplement to the Notice of Review (48 FR 53640). This supplement changed *D. bakeri* and *D. luteum* from category 1 to category 2 candidates. Category 2 taxa were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules.

The plant notice was revised on September 27, 1985 (50 FR 39526). *Delphinium bakeri* and *D. luteum* were again included as category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision *D. bakeri* and *D. luteum* were included as category 1 candidates. We made no changes to the status of the two species in the plant notice published on September 30, 1993 (58 FR 51144). On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the use of candidate categories and considered the former category 1 candidates as simply "candidates" for listing purposes. Both species were included as candidates in the February 28, 1996, Notice of Review.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This provision applied to *Delphinium bakeri* and *D. luteum*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, we found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1983 through 1994, and we published a proposed rule on June 19, 1997 (62 FR 33383).

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

We have updated this rule to reflect any changes in distribution, status, and threats since publishing the proposed rule and to incorporate information obtained through the public comment period. This additional information did not alter our decision to list these species.

Summary of Comments and Recommendations

In the June 19, 1997, proposed rule (62 FR 33383) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. A 60-day comment period closed on August 18, 1997. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties and requested comments. We sent copies of the proposed rule and the request for comments letter to seven local libraries for public display. We published newspaper notices in the *Press Democrat* and *Marin Independent Journal* on June 25, 1997; *Sonoma County Independent* on June 26, 1997; and *Petaluma Argus Courier* on June 27, 1997, which invited general public comment.

During the public comment period, we received written comments from five individuals or agencies. Three commenters expressed support for the listing proposal, and two commenters opposed the proposal. Supporting comments were received from the CNPS and two individuals from Washington State University. The two commenters from Washington State University sent a letter informing us of their research on the genetic variation in *Delphinium luteum*. Opposing comments were received by the Washington Legal Foundation and the Marin Farm Bureau. Opposing comments and other comments questioning the proposed rule were organized into specific issues. These issues and our response to each are summarized below.

Issue 1: One commenter stated that the Service should not list *Delphinium bakeri* and *D. luteum* because it has no authority to list or regulate species under the Act that are not involved in interstate commerce. This commenter further believed that Federal listing for *D. bakeri* and *D. luteum* is unnecessary since it would not confer greater protection than California State law already provides for these indigenous plants.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect these species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhapimodas terminatus abdominalis*). As with *Delphinum bakeri* and *D. luteum*, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate:

(1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and because doing so regulates commercial development that is part of interstate commerce.

Issue 2: One commenter urged us not to list *Delphinium bakeri* and *D. luteum*, stating that "the listing of the two larkspurs violates the Principles of Federalism," and that "California has ample resources to regulate and protect these two larkspur species," and (therefore) "should be able to make its own decisions regarding these plants found within its own border." The commenter further stated that this listing has significant impacts on the rights of private property owners to make reasonable use of their property.

Our Response: As we stated in the proposed rule (62 FR 33383), existing State and local regulations are inadequate to protect these species. The Act does not prevent the State of California from protecting and regulating the two larkspur species. Federal and State regulations complement each other. As discussed further in Factor D of the "Summary of Factors Affecting the Species" section of this final rule, the California Environmental Quality Act (CEQA) and California Endangered Species Act (CESA) apply to actions on private and State lands. For plants, the Federal Endangered Species Act primarily covers Federal land and Federal actions that may affect proposed and listed species.

The listing of plants under the Federal Endangered Species Act does not necessarily restrict any uses of private land unless Federal funding, authorization, or a permit is involved. For example, such private land uses as proper livestock grazing, clearing a defensible space for fire protection around one's personal residence, landscaping (including irrigation), or fence maintenance are not affected by Federal listing of plants. If an activity is conducted, authorized, or funded by a Federal agency, the Federal action agency must consult with us when the activity may affect listed species.

Issue 3: One commenter was concerned that once an endangered species is listed, the designation of critical habitat under the Act would result in a taking of land. This commenter further stated that the "take" provision as applied to the two larkspurs will have a dramatic and disruptive impact on local land use and planning.

Our Response: As discussed in the "Critical Habitat" section of this final rule, a critical habitat determination is not being made at this time for these plants. The "take" prohibition, as defined in section 9 of the Act, generally does not apply to plants (except when such take is prohibited by state law or occurs in the course of a violation of state criminal trespass law).

Issue 4: One commenter said that we should consider the adverse economic effect that the listing would have on the local agriculture industry.

Our Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions," H.R. Rep. No. 97–835, 97th Cong., 2nd Sess. 19 (1982). As further stated in the legislative history, "applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word 'solely' in the legislation," H.R. Rep. No. 97–835, 97th Cong. 2nd Sess. 19 (1982). Because we are precluded from considering economic impacts in a final decision to list a species, we cannot examine such impacts.

Issue 5: One commenter stated that the plants are in existence because of agriculture and not the opposite.

Our Response: As discussed under Factor A of the "Summary of Factors Affecting the Species" section of this final rule, historical habitat of *Delphinium bakeri* was eliminated by agricultural conversion. The discussion under Factor C explains that both species are limited in their range, have few individuals, and are extremely vulnerable to trampling.

Peer Review

In accordance with interagency peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. The three requested reviewers concurred with the accuracy of the rule and supported listing these taxa. Information provided was incorporated and is presented in the final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) that implement the listing provisions of the Act established the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Delphinium bakeri* Ewan (Baker's larkspur) and *Delphinium luteum* Heller (yellow larkspur) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* Of the two remaining populations of *Delphinium luteum*, one located at an old rock quarry site near Bodega has been partially destroyed and fragmented by historical quarry activities. The number of plants remaining at this site continues to decline. Population numbers were between 100 to 200 plants in 1978 (Ed Guerrant, Berry Botanic Garden, pers. comm. 1995), but recent counts indicate that only 30 to 40 individuals remain (B. Guggolz, pers. comm. 1995). The other extant site has fewer than 10 remaining individuals. A historical site near the town of Graton was converted to residential uses by 1987 (CNDDB 1997).

Historically, habitat of *Delphinium bakeri* was eliminated by agricultural conversion to grainfields (Ewan 1942). Remaining habitat may be threatened by sheep grazing (CNDDB 1997). One extirpated population was subjected to sheep grazing, but it is unknown if grazing was the primary cause of its demise. The few remaining individuals (approximately 35) are extremely vulnerable to impacts that otherwise might not be significant. Threats to the lone remaining site of *D. bakeri* are discussed under factors B through E. At the rock quarry site near Bodega Bay, the Bodega Harbor landowners association is proposing to build an equipment storage shed and a public trail that would be close to the remaining plants. Although the proposed storage equipment shed would be located on degraded habitat and would have no direct impact on the extant population of *D. luteum*, the public trail would be located adjacent to

the population. The proximity of the trail to the plants would increase the threat from collection (see factor B). Urban development, and its associated recreational activities, continue to threaten the remaining population of *D. luteum* (B. Guggolz, pers. comm. 1995). Although the project proponents have been notified that construction of the shed and trail may be detrimental to *D. luteum*, we understand that the project remains proposed as is.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* Overutilization is a threat for both species. In 1992, all the follicles (a single-celled cavity that acts like a many-seeded fruit, which upon drying splits open to release seeds) were collected from the plants at the only known site of *Delphinium bakeri* (CDFG 1993). Because these follicles contained the plants' seeds, all sexual reproduction for 1992 was lost. Were this collection to occur regularly or in conjunction with unrelated natural events (*e.g.*, fire), the species may be lost. Due to its distinctive yellow flowers, which is uncommon for larkspurs, *D. luteum* is of considerable horticultural interest. Collecting is thought to have extirpated at least one occurrence of *D. luteum* located southwest of Tomales (CNDDB 1997). Additionally, some of the historical decline to *D. luteum* can be attributed to collecting. *Delphinium luteum* was offered for purchase in horticultural trade journals during the 1940's and 1950's (Michael Warnock, Sam Houston University, pers. comm. 1994). Plants can still be procured from a local nursery, although their seed source is not from the wild. Garden-grown seed is also available through an international garden society (NARGS 1998). Both populations of *D. luteum* are near residential areas, about 30 m (100 ft) from the nearest house, and are subject to collecting. Unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this rulemaking.

C. *Disease or Predation.* Most *Delphinium* species are toxic to cattle but not sheep. Ewan (1942) noted that *Delphinium bakeri* did not appear to be poisonous to livestock. However, its toxicity has not been tested. Sheep grazing may threaten the plant (CNDDB 1997). One extirpated population was subjected to grazing, but it is unknown if grazing was the primary cause of its demise. The few remaining individuals (approximately 35) are extremely vulnerable to impacts that otherwise might not be significant. Although *D. luteum* has persisted at two sites with sheep grazing for many decades, because of the very low number of individuals in the population, any loss of flowers and/or seeds could significantly reduce chances for the long-term survival of this species (see Factor E).

D. *The Inadequacy of Existing Regulatory Mechanisms.* The California Fish and Game Commission (CFGC) listed *Delphinium bakeri* and *Delphinium luteum* as rare species in 1979 under the California Native Plant Protection Act (CNPPA) (Div. 2 Ch. 10, Section 1900 *et seq.* of the Fish and Game Code). Although the "take" of State-listed plants is generally prohibited under CNPPA (See Sec. 1908), the extent of protection for State-listed plants has been a matter of some uncertainty. CNPPA limits the State's ability to regulate or prohibit the take of plants during agricultural operations, timber harvesting, or mining assessment work, or removal of plants from certain facilities and right-of-way [see Sec. 1913 (a) and (b)]. Under another provision of CNPPA, landowners in some circumstances can remove plants after providing CDFG at least 10 days advance notice [see Sec. 1913(c)]. The scope of these exceptions to CNPPA take prohibition, and consequently to the protection for plants, are unsettled and suspect. State designation as a rare, threatened, or endangered species under the CNPPA does provide for consideration of impacts by State agencies under CEQA, described below.

The CEQA (chapter 2 section 21050 *et seq.* of the California Public Resources Code) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a mandatory finding of significance if a project has the potential to "reduce the number or restrict the range of a rare, threatened, or endangered plant or animal." Species that can be shown to meet the criteria for State listing and have been designated as rare, threatened, or endangered, such as *D. bakeri* and *D. luteum*, must be considered under CEQA guidelines (CEQA Section 15380). Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In a case that the lead agency decides that overriding considerations make mitigation infeasible, projects may be approved that cause significant environmental damage, such as destruction of State-listed species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved. In addition, revisions to CEQA guidelines have been proposed which, if implemented, may weaken protections for State-listed, rare, threatened, and endangered species.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* The remaining population of *Delphinium luteum* at the rock quarry may be threatened by users of a trail associated with the extension of an existing golf course into the current county scenic easement that exists on the site (B. Guggolz, pers. comm. 1995). This easement is not a conservation easement with us but may offer some limited, incidental protection to the species in terms of controlling development to protect the viewshed. However, the trail's close proximity to the remaining populations of *D. luteum* may increase the amount of collection of the species by people using the trail.

The remaining population of *Delphinium bakeri* occurs on a steep road bank that is adjacent to a county road in Marin County. Some potential exists for herbicide spraying and road maintenance activities that could be detrimental to this species due to the extremely low number of individuals that remain. The degree of threat that these activities pose to the remaining population of *D. bakeri* is uncertain at this time.

Because few populations and/or individuals remain, both *Delphinium bakeri* and *D. luteum* are likely threatened by genetic drift (random change in particular gene frequency that may lead to preservation or extinction of certain genes and an overall reduction of genetic variability). *D. bakeri* has 1 population consisting of 35 plants. *Delphinium luteum* has 2 populations, totaling fewer than 50 plants. Small populations often are subject to increased genetic drift and inbreeding as consequences of their small populations (Ellstrand and Elam 1993). A loss of genetic variability, and consequent reduction in genetic fitness, provides less opportunity for a species to successfully adapt to environmental change (Ellstrand and Elam 1993).

The combination of few populations, small number of individuals found within each population, narrow range, and restricted habitat make these two plant species susceptible to destruction

of all or a significant part of any population from random natural events, such as fire, drought, disease, or other natural occurrences (Shaffer 1981; Primack 1993). Random events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution become as limited as they have for both *Delphinium bakeri* and *D. luteum* (Primack 1993). Once a plant population becomes significantly reduced due to habitat destruction and fragmentation, the remnant population has a greater probability of extinction from random events.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining this final rule. Habitat loss and degradation, sheep grazing, inadequate regulatory mechanisms, naturally occurring events, small plant populations, road maintenance activities, and overcollection imperil the continued existence of these plants. *Delphinium bakeri* has 1 population with a total of 35 plants. *Delphinium luteum* has 2 small populations with a total of fewer than 50 plants. Both plant species are in danger of extinction throughout all of their range, and the preferred action is therefore to list *D. bakeri* and *D. luteum* as endangered. Other alternatives to this action were considered but not preferred because not listing or listing as threatened would not be consistent with the Act.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Delphinium bakeri* and *D. luteum* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Delphinium bakeri* and *D. luteum* would be prudent.

Due to the small number of populations both *Delphinium bakeri* and *D. luteum* are vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Delphinium bakeri* and *D. luteum* and have not found specific evidence of taking, vandalism, collection, or trade of either species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for both *Delphinium bakeri* and *D. luteum*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Delphinium bakeri* and *D. luteum* has allowed us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *Delphinium bakeri* and *D. luteum* without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for both *Delphinium bakeri* and *D. luteum* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders

and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. None of the populations of either species occur on Federal land. Although one of the populations occurs adjacent to a county road, we believe it is unlikely that any activities would occur that involve the use of Federal Highway funds. We anticipate few if any section 7 consultations for either species.

Listing these two plants would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan(s) also would describe site-specific management actions necessary to achieve conservation and survival of the two plants. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction any such plant. In addition, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued for the two species because they are not common in cultivation or in the wild.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

We believe that, based upon the best available information, the following actions will not likely result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, livestock grazing, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with consultation conducted under section 7 of the Act;

(2) Residential landscape maintenance (including irrigation) and the clearing of vegetation around one's personal residence as a firebreak.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands; and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection

requirement. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references in this document is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this final rule is Kirsten Tarp, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section); telephone 916/414–6464.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Delphinium bakeri	Baker's larkspur	U.S.A. (CA)	Ranunculaceae	E	681	NA	NA
*	*	*	*	*	*	*	
Delphinium luteum	Yellow larkspur	U.S.A. (CA)	Ranunculaceae	E	681	NA	NA
*	*	*	*	*	*	*	

Dated: December 15, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–1827 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE27

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Newcomb's Snail From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the Newcomb's snail (*Erinna newcombi*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater snail is restricted to the Hawaiian Island of Kauai. The distribution of this snail has greatly decreased from the known historic distribution, and the existing populations are presently limited to restricted habitats within six perennial streams on State land. The six known populations of Newcomb's snail and its habitat are currently threatened by predation by a non native predatory snail, two species of non native marsh flies, a non native fish, and two species of non native frogs. These populations are also subject to an increased likelihood of extirpation from naturally occurring events, including natural disasters such as hurricanes and landslides. This final rule implements the Federal protection provisions provided by the Act for Newcomb's snail.

EFFECTIVE DATE: This rule takes effect February 25, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Pacific Islands Manager, Pacific Islands Ecoregion (see **ADDRESSES** section) (808/541–2749; facsimile: 808/541–2756).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago comprises eight main islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii) and their offshore islets, plus the shoals and atolls of the Northwest Hawaiian Islands. The main islands and the northwestern chain were formed sequentially by basaltic lava that emerged from a crustal hot spot currently located near the southeast coast of the island of Hawaii (Stearns 1985). Hawaii is the youngest island in the chain and is characterized by gently sloping shield volcanoes and currently active lava flows. Volcanoes on the other islands are either dormant or extinct. Ongoing erosion has formed steep-walled valleys with well developed soils and stream systems throughout the chain. Kauai, the oldest and most northwesterly of the main islands, is characterized by high rainfall, deep valleys, numerous perennial streams, and luxuriant vegetation.

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968 and Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kauai. Newcomb's snail is unique among the Hawaiian lymnaeids in that the slender, tapering shape typically associated with the shells of lymnaeids has been completely lost. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 inches (in.)) long and 3 mm (0.12 in.) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell

morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. and A. Adams (Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus *Lymnaea*. Morrison (1968) opposed Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna*. Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie *et al.* (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi*. This scientific name is currently accepted for Newcomb's snail.

Newcomb's snail is an obligate freshwater species. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation, and there are no dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Dispersal of Newcomb's snail among stream systems is probably very infrequent due to their obligate freshwater habitat requirements. Historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. This life history differs greatly from the freshwater Hawaiian neritid snails (*Neritina* spp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). Larvae of these neritid snails can likely disperse across the oceanic expanses that separate the Hawaiian Islands and colonize streams on any or all of these islands. This dispersal capacity is not available to Newcomb's snail.

The specific habitat requirements of Newcomb's snail include fast flowing perennial streams with stable overhanging rocks, springs, rock seeps, and waterfalls (Michael Kido, University of Hawaii, *in litt.* 1994; Stephen Miller, U.S. Fish and Wildlife Service (Service), pers. obs. 1994; Polhemus *et al.* (1992); Burch 1968; Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kauai indicate that Newcomb's snail is rarely found in these main channels (Adam Asquith, Service, pers. obs. 1994; Don Heacock, State of Hawaii, Department of Land and Natural Resources, *in litt.* 1995; M. Kido, *in litt.* 1994, 1995; S. Miller, pers. obs. 1994a, b; Timbol 1983). The limited occurrence of this snail in main stream channels may be due to scouring by sediment, rocks, and boulders that are moved downstream during heavy rains. Consequently, available suitable habitat is generally associated with small feeder streams, seeps, and waterfalls.

The present known range of Newcomb's snail is limited to six stream systems. Each stream supports a single population of Newcomb's snail (A. Asquith, pers. obs. 1994; M. Kido, *in litt.* 1994; S. Miller, pers. obs. 1994a, b; Hubendick 1952). These populations are located in the Hanalei River, Kalalau Stream, the Lumahai River, the North Fork of the Wailua River, Makaleha Stream, and Waipahee Stream. Makaleha and Waipahee Streams both flow into Kapaa Stream. The populations fall into two groups; populations first observed prior to 1925 and populations observed since 1993. Five populations were identified prior to 1925. Three of these populations (Wainiha, Hanakapiai, and Hanakoa) no longer exist. Of the two remaining pre–1925 populations, one (Waipahee) is small and the other (Kalalau) is relatively large (see below). These data indicate that the number of populations of Newcomb's snail has been greatly reduced since 1925, perhaps by as much as 60 percent.

Since 1990, surveys of at least 46 streams, tributaries and springs on Kauai have located 4 previously unknown populations of Newcomb's snail (A. Asquith, pers. obs. 1994; D. Heacock, *in litt.* 1995; M. Kido, *in litt.* 1994, 1995; S. Miller, pers. obs. 1994a, b; Timbol 1983). Three of these populations are small (see below), and the fourth population has been described as large.

No historic information is available on the population sizes of Newcomb's snail. However, recent reports indicate that two of the six known populations of Newcomb's snail are relatively large, the Kalalau and Lumahai populations. The high density of individuals in the Kalalau population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper permanent waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller, pers. obs. 1994b). The total area occupied by these snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Little information on specific size or area is currently available for the population of Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido, *in litt.* 1995).

The population in Makaleha Stream is divided into two subpopulations. One subpopulation is estimated at 30 snails/m^2 (2 to 3 snails/ft^2) distributed over 2 to 3 m^2 (21 to 32 $ft2^2$) (M. Kido, *in litt.* 1994). This is considerably smaller than the previously described population in Kalalau Stream. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non native predators and the deliberate use by humans of one species of organism to feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs covers approximately 20 to 30 m^2 (212 to 318 ft^2) (S. Miller, pers. obs. 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/m^2 (1 to 3 snails/ft^2) (S. Miller, pers. obs. 1994a).

The sizes of the three other populations of Newcomb's snail have been characterized as small. The population in the Waipahee Stream is estimated to cover 5 to 10 m^2 (53 to 106 ft^2) with a density of approximately 50 to 80 snails/m^2 (4 to 8 snails/ft^2) (A. Asquith, pers. obs. 1994). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations (M. Kido, *in litt.* 1994, 1995). One subpopulation has approximately 10 to 20 snails/m^2 (1 to 2 snails/ft^1) and occupies 2 to 3 m^2 (21 to 32 ft^2) (M. Kido, *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations are reported to be small with very few snails (M. Kido, *in litt.* 1995). The population found in the North Fork of the Wailua River, is best described as short-lived.

Based on these data, we estimate that the six known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the two populations at Kalalau and Lumahai.

Previous Federal Action

The February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which

we have on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We published a proposed rule on July 21, 1997 (62 FR 38953), to list this species as threatened.

Based on all available information including comments received in response to the proposal (see Comments and Recommendations Section of this final rule), we have now determined Newcomb's snail to be threatened. The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. This final rule is a Priority 2 action. We have updated this rule to reflect any changes in information concerning distribution, status and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the July 21, 1997, proposed rule (62 FR 38953) and associated notifications, we requested interested parties to submit factual reports or information that might contribute to a final determination. The comment period was reopened and extended until December 15, 1997, to accommodate a request for a public hearing (62 FR 60676). We sent announcements of the proposed rule and notice of public hearings to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested comments. We also published announcements of the proposed rule in the *Honolulu Star-Bulletin, Honolulu Advertiser* (Oahu), and the *Garden Island* (Kauai) on August 8, 1997. We held a public hearing on December 3, 1997, in Lihue, Kauai, Hawaii. We accepted comments on the proposed rule until the extended comment period closed.

We received a total of 10 written comments on the proposed rule, 6 by mail and 4 at the public hearing. One Federal agency commented but neither supported nor opposed the proposal. Four Hawaii State agencies provided comments, two that supported the proposal, and two that were neutral. One Kauai County agency indicated support for our efforts in the identification of species habitat areas and in maintaining a census of species but was concerned that the development or maintenance of current or future water resources could be unnecessarily restricted by listing of the Newcomb's snail. The proposal was supported by one individual, one conservation organization and one scientific museum, and opposed by one nonprofit legal foundation. In addition, three commentors expressed support for the designation of critical habitat.

In accordance with our peer review policy promulgated July 1, 1994 (59 FR 34270), we solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for the Newcomb's snail. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis, including input of appropriate experts and specialists. We received from these experts written comments that provided additional information on numbers of populations and individuals, distribution, and editorial changes. We incorporated peer review comments into this final rule as appropriate.

A public hearing was requested by Hawaii's Department of Land and Natural Resources (DLNR). The hearing was held at the Outrigger Kauai Beach Hotel in Lihue, Kauai on December 3, 1997, with 13 attendees. Nine oral statements and four written comments were received during the hearing, and, with one exception, all commentors supported the listing. In addition, five commentors expressed support for the designation of critical habitat.

We considered all comments, including oral testimony presented at the public hearing, and also the comments from the peer reviewers who responded to our request to review the proposed rule. We grouped comments of a similar nature by issue and summarized as follows:

Issue 1: Critical habitat should be designated.

Response: This issue is addressed under the "Critical Habitat" section of this final rule.

Issue 2: Current or future water resources development or maintenance could be unnecessarily restricted by listing of the Newcomb's snail.

Response: Section 4(b)(1)(A) of the Act requires us to make listing decisions solely on the basis of the best scientific and commercial data available, without regard to economics or other similar impacts. The legislative history of this statutory provision makes clear that economic impacts may not be considered in determining whether a species should be listed as endangered or threatened: "The addition of the word "solely" is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The committee strongly believes that economic considerations have no relevance to determinations regarding the status of species * * *" (H.R. Rep. No. 97–835, 97th Cong., 2d Sess. 19, (1982). Therefore, we have not considered the impacts of listing on economic development in making this listing determination.

Issue 3: Listing of Newcomb's snail is premature at this time because further research is needed to provide information on how best to protect it.

Response: We believe that listing of Newcomb's snail is warranted at this time due to the factors addressed under the "Summary of Factors Affecting the Species" section of this final rule. The requirement that section 4 listing determinations be based on the "best" scientific and commercial data available requires us to consider the best information available at the time of the listing decision. Therefore, the threats facing the species and its habitat, the limited range, and relatively small population size are good indicators that this species warrants listing. Additional information, that may be needed to determine how best to protect the species, may be developed and used in the recovery planning process.

Issue 4: There are significant water resource and habitat-related questions that should be evaluated prior to imposing blanket restrictions on development in habitat areas.

Response: Again, it is not appropriate to consider impacts on economic development in making a determination to list a species (see response to Issue 2). Further, implementing the Act would not necessarily result in blanket land use restrictions. Under section 7 of the Act, Federal actions including funding,

licensing, and permitting that may affect the species will require consultation between the Federal action agency and us to insure the Federal action is not likely to jeopardize the continued existence of Newcomb's snail. Section 9 of the Act prohibits persons from "taking" listed species. Taking is defined to include significant habitat modification where it actually kills or injures the listed species. However, these provisions do not amount to "blanket" prohibitions on development. Section 10 of the Act provides for the issuance of permits for the incidental take of listed species resulting from otherwise lawful activities when sufficient protection for the species is provided.

Issue 5: One respondent asserted that listing this species would exceed the scope of the Federal commerce power under the Commerce Clause of Article I, section 8 of the U.S. Constitution.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S. Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with Newcomb's snail, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce; and (2) Activities substantially affecting interstate commerce, because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends, and because doing so regulates commercial development that is part of interstate commerce.

Peer Review

The Service routinely has solicited comments from parties interested in, and knowledgeable of, species that have been proposed for listing as threatened or endangered species. The July 1, 1994, Peer Review Policy (59 CFR 34270) established the formal requirement that a minimum of three independent peer reviewers be solicited to review the Service's listing decisions. During the July 21, 1997, to December 15, 1997, comment period, the Service solicited the expert opinions of three biologists having recognized expertise in malacology and/or conservation biology to review the proposed rule. The Service received comments from all three reviewers within the comment period. All concurred with the Service on factors relating to the taxonomy, population models, and biological and ecological information.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that Newcomb's snail should be classified as a threatened species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Newcomb's snail (*Erinna newcombi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although modification of habitat is not an immediate threat, water development and diversion projects have been proposed within Newcomb's snail habitat in the past. For example, in 1994, a proposed water development project at Makaleha Springs (State of Hawaii 1994) threatened to destroy the population of Newcomb's snail at this site. This project was ultimately rejected by the State of Hawaii, Commission on Water Resource Management. However, the County of Kauai, Department of Water can submit a new application for future development of the water resources at Makaleha Springs.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting Newcomb's snail at the present time.

C. *Disease or predation.* Predation by the non native rosy glandina snail (*Euglandina rosea*) is a serious threat to the survival of Newcomb's snail. This predatory snail was introduced into Hawaii in 1955 (Funasaki *et al.* 1988), and has established populations throughout the main islands. The rosy glandina feeds on snails and slugs, and field studies have established that it will readily feed on native snails found in Hawaii (Hadfield *et al.* 1993). Furthermore, Kinzie (1992) demonstrated that the rosy glandina snail can fully submerge itself under water and feed on aquatic snails such as the Newcomb's snail. The rosy glandina has been observed on wet, algae-covered rocks of the Makaleha Springs Stream very near individuals of Newcomb's snail (S. Miller, pers. obs. 1994a), and is believed to prey on them. The rosy glandina snail has caused the extinction of many populations and species of native snails throughout the Pacific islands (Hadfield *et al.* 1993; Miller 1993; Hopper and Smith 1992; Murray *et al.* 1988; Tillier and Clarke 1983), and represents a significant threat to the survival of Newcomb's snail.

Predation on the eggs and adults of native Hawaiian lymnaeid snails by two non native species of *Sciomyzidae* flies also represents a significant threat to the survival of Newcomb's snail. Two species of marsh flies (*Sepedomerus macropus* and *Sepedon aenescens*) that feed on lymnaeid snails (Davis 1960) were introduced into Hawaii in 1958 and 1966, respectively, as biological control agents for a non native lymnaeid snail, *Fossaria viridis* (Funasaki *et al.* 1988). *Fossaria viridis* was targeted for biocontrol because it is an intermediate host of the cattle liver fluke (*Fasciola gigantica*) (Alicata 1938; Alicata and Swanson 1937). These authors misidentified *Fossaria viridis* as *Fossaria ollula*, as discussed in Morrison (1968). The non-native lymnaeid and the two biocontrol flies occur on Kauai as well as on other islands in Hawaii (Funasaki *et al.* 1988; Davis and Chong 1969; Davis 1960; Hubendick 1952). One of the marsh fly species has been observed at a site (Hanakoa Stream) where Newcomb's snail was historically recorded but is no longer present (S. Miller, pers. obs. 1994b). Another marsh fly was observed near the waterfall of a Kauai stream that had many dead lymnaeids in the waterfall plunge pool (S. Miller, pers. obs. 1994b). These biocontrol agents represent a significant threat to Newcomb's snail and other native lymnaeid snails.

Predation by several introduced aquatic species is also a possible threat to populations of Newcomb's snail (D. Heacock, *in litt.* 1997). These non native aquatic species include the green swordtail (*Xyphophorus helleri*), a fish introduced in 1922 for mosquito control; and two accidental introductions, the American bullfrog (*Rana catesbiana*), which was first recorded in 1867, and the wrinkled frog (*Rana rugosa*), which was first recorded in 1896 (State of Hawaii 1995).

D. *The inadequacy of existing regulatory mechanisms.* Newcomb's snail is not currently listed as an endangered or threatened species in

Hawaii. When this rule becomes effective and the species is listed under the Act, the State of Hawaii Endangered Species Act (HRS, sect. 195D–4(a)) will automatically be invoked. The State statute reads "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species pursuant under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). However, without listing, none of these provisions would apply to Newcomb's snail.

Furthermore, current State and Federal regulatory mechanisms are inadequate to protect the species. All six of the known extant populations of Newcomb's snail occur in streams in conservation areas that are managed by the State of Hawaii primarily for watershed protection, including uses such as public drinking water, and cultural and agricultural activities. In 1987, the State of Hawaii established a Commission on Water Resource Management (CWRM) which, among other things, was responsible for issuing stream alteration permits for activities, such as water diversion and channelization, that impact Hawaii's streams and springs (State of Hawaii 1993). Since 1987, the State assumed control over all water in the State. Therefore, a State of Hawaii water permit is required for all aquatic activities such as withdrawal of water for public consumption, agricultural purposes (*i.e.*, irrigation), and stream modifications (channelization and realignment).

Protection of the streams in which Newcomb's snail occurs is inadequate under the existing State permitting process because it lacks requirements for the protection and conservation of sensitive aquatic biota. In 1992, the Hawaii State legislature passed a resolution that called for the CWRM to finalize, adopt, and implement a stream protection system, and in 1993, the CWRM appointed the Stream Protection and Management Task Force (Sierra Club Legal Defense Fund 1994). The task force made a series of recommendations on the information that should be included in stream permit applications and the types of activities that might be allowed in streams. In addition, the task force recommended for several streams, including some of the Kauai streams in which Newcomb's snail occurs, "heritage" status, which would have provided them with additional protection. The task force recommendations have not been adopted.

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States (33 CFR parts 320–330). Waters of the United States include navigable waters and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands. Section 404 regulations require that applicants obtain a permit for projects that involve the discharge of fill material into waters of the United States. Projects may qualify for authorization under several nationwide permits if the project falls below certain thresholds, such as affecting less than 1.2 hectares (ha) (3 acres (ac)) or less than 152 linear m (500 linear ft) of stream bed. Projects meeting the criteria for a nationwide permit are normally permitted with minimal environmental review by the Corps. However, if any listed species might be affected or is in the vicinity of the project, a prospective permittee may not begin work under the nationwide permit until the Corps satisfies the requirements of the Act. No activity is authorized by any nationwide permit if that activity is likely to jeopardize the continued existence of any listed species (see 33 CFR 330.4(f)).

Individual permits are required for the discharge of fill material into wetlands above the thresholds established by the nationwide permits. The review process for the issuance of individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, individual permit applications require alternative analysis and an assessment of cumulative wetland impacts is required for and there is a 30-day public review period. Resulting permits may include special conditions that require the avoidance or mitigation of environmental impacts. If a listed species is affected, the Corps must consult with us under section 7 of the Act.

Most of the Newcomb's snail populations are fairly small, and the habitat they occupy tends to be small seeps covering less than 1.2 ha (3 ac). Projects that may potentially impact this species could be permitted under the nationwide permit process with limited environmental review or notification because they generally fall under the nationwide permit thresholds. No other federally protected species found within the same or adjacent habitat would invoke a formal environmental review. Unless this species is listed, requiring the Corps to comply with section 7 of the Act, entire populations of the Newcomb's snail, or portions thereof, could conceivably be eliminated if fill material were discharged into the streams and seeps they occupy.

Federal regulations for the introductions of biocontrol agents have not adequately protected Newcomb's snail in the past. As a result, several non-native aquatic species and two non native fly species, which may be the most serious present threats to the Newcomb's snail's continued existence, were purposefully introduced by the State of Hawaii's Department of Agriculture or other agricultural agencies (Funasaki *et al.* 1988). Currently, our Pacific Islands Office reviews proposals to release biocontrol agents by the Hawaii State Department of Agriculture for potential effects on listed species. However, since post-release biology and host range are difficult to predict from laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992), the release or augmentation of non native species may pose threats to Newcomb's snail in the future.

E. *Other natural or manmade factors affecting its continued existence.* Because of the small, isolated nature of occurrences of Newcomb's snail, and the few individuals present in most of them, this species is also more susceptible to random events that may affect its continued existence. As indicated above, the six known populations of Newcomb's snail cover very small areas in settings that may be subjected to extreme effects associated with exceptionally heavy rainfall or hurricanes. Hurricanes struck the island of Kauai in 1983 and 1992. Rainfall associated with hurricanes can wash out streams (Polhemus 1993) and create landslides that can alter stream flow (Jones *et al.* 1984). Events such as these could destroy the habitat of Newcomb's snail or physically displace individuals into areas where they cannot survive.

Reduced stream flow due to water development projects, droughts, or other natural or human causes may have several potential negative effects on the ability of Newcomb's snail to complete its life cycle. Loss of water could reduce

or eliminate the habitat of Newcomb's snail and possibly lead to increased intraspecific competition or desiccation and death. Reduced water flow could also lead to increased predation by non native predators. Low flows may allow marsh flies or the rosy glandina snail easier access to individual snails that are otherwise protected by the force of water movement. Droughts are not uncommon in the Hawaiian Islands. Between 1860 and 1986 the island of Kauai was affected by 33 droughts, 20 of which significantly affected the available water supply on the island (Giambelluca *et al.* 1991). The development of water resources also is a continuing issue. These projects divert water from streams, springs and aquifers that may otherwise maintain habitats for Newcomb's snail.

Intentional or accidental introductions of snail predators constitute a significant threat to Newcomb's snail. The State of Hawaii continues to carry out an active program of introductions of biological control agents. These organisms are primarily introduced to control agricultural pests, and their impacts on native species have only recently been considered in evaluating release programs. The marsh flies and the rosy glandina snail are examples of biological control agents that were introduced to Hawaii without adequate assessment of their impact on Newcomb's snail or other native Hawaiian species.

Finally, the combined effects of numerous factors can degrade stream ecosystems, leading to a decline in snail population size and an increase in the likelihood of extinction from naturally occurring or human caused events.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Newcomb's snail (*Erinna newcombi*) as threatened. All populations are threatened or potentially threatened by predation by non native snails, flies, frogs, and fish; habitat destruction or modification from water development or diversion projects; habitat destruction or displacement of individuals by stream wash outs from heavy rainfall or landslides that can alter stream flow; and inadequate existing regulatory mechanisms. Currently, the 6 populations support 6,000 to 7,000 individuals but historical information indicates that the number of populations has been greatly reduced since 1925, perhaps by as much as 60 percent. Perhaps over 90 percent of the individuals are located in only two populations. The small sizes of four of the six populations and limited distribution make these populations vulnerable to extinction from reduced reproductive vigor or from random environmental events. Because this species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, this species fits the definition of threatened as defined in the Act. Therefore, the determination of threatened status for Newcomb's snail is warranted.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) That may require special management considerations or protection and; (ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Erinna newcombi* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Erinna newcombi* would be prudent.

Due the small number of populations, *Erinna newcombi* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Erinna newcombi* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Erinna newcombi*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately

complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Erinna newcombi* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Erinna newcombi* without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Erinna newcombi* as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified in 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include the Corps authorization of projects such as the construction of drainage diversions, roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), U.S. Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System, and projects funded by U.S. Housing and Urban Development or Natural Resource Conservation Service funded projects.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.32 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, you may also obtain permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range. We believe that, based on the best available information, the following activities will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Scientific or recreational activities within the main channel of streams that support populations of Newcomb's snail, but exclusive of the specific sites known to support populations of this snail;

(2) Activities authorized, funded, or carried out by Federal agencies (if the species were found on Federal lands), (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

Potential activities involving Newcomb's snail that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Release, diversion, or withdrawal of water that results in displacement, disruption of breeding or feeding, or death of individual snails;

(2) Actions that lead to the destruction or alteration of the occupied habitat of Newcomb's snail (e.g., in-stream dredging, rock removal, channelization, discharge of fill material, actions that result in siltation of the habitat, and diversion of ground water flow required to maintain the habitat).

(3) Introduction of species that are predators or competitors of aquatic snails, especially non native snails in the family Lymnaeidae and the closely related family Physidae.

(4) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section).

You should direct questions regarding whether specific activities will constitute a violation of section 9 of the Act to the Manager of the Pacific Islands Ecoregion (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; facsimile 503/231–6243).

Hawaii State Law

As previously stated, Federal listing will automatically invoke listing under the State's endangered species act. State law prohibits taking of listed wildlife and plants in the State and encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited in this rule, as well as other references, is available upon request from the Pacific Islands Ecoregion office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Dr. Steve Miller and Christa Russell, with contributions from Christine Willis, at telephone 808/541–3441 or facsimile 808/541–3470 (see **ADDRESSES** section). Recent data on the distribution of Newcomb's snail was contributed by Dr. Adam Asquith, US Fish and Wildlife Service, Pacific Islands Ecoregion.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
*	*	*	*	*	*	*	*
Snail, Newcomb's	*Erinna newcombi*	U.S.A. (HI)	NA	T	680	NA	NA
*	*	*	*	*	*	*	*

Dated: December 31, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–1828 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–9347–01; I.D. 120299C]

Magnuson-Stevens Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 2000 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 2000 groundfish fishery specifications and management measures for the Pacific Coast groundfish fishery, which were published on January 4, 2000.

DATES: Effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kate King or Yvonne deReynier, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Background

The 2000 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 4, 1999 (65 FR 221). The specifications contained a number of errors that need to be corrected.

Corrections

In rule FR Doc. 99–33966 beginning on page 221, in the issue of Tuesday, January 4, 2000 (65 FR 221), make the following corrections:

1. On page 239, in the second column, in paragraph (11), delete the paragraph and replace it with "(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, and the open access limit is smaller than the limited entry limit, then the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited

entry permit and uses open access gear, and the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear".

2. On page 241, in the first column in paragraph A(16)(c), the first sentence should read "Special provisions will be made for "B" platoon vessels later in the year so that the amount of fish made available in 2000 to both "A" and "B" vessels is the same"

3. Table 2 starting on page 241 is corrected to read as follows:

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Table 2. Minor Rockfish Species (excludes thornyheads)

Minor Rockfish (North of 40°10' N. lat.)	Minor Rockfish (South of 40°10' N. lat.)
NEARSHORE	NEARSHORE
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, S. nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	SHELF
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufinanus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufinanus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redbanded, S. babcocki
pinkrose, S. simulator	redstriped, S. proriger
pygmy, S. wilsoni	rosethorn, S. helvomaculatus
redbanded, S. babcocki	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinis
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigrocinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigrocinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	SLOPE
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
rougheye, S. aleutianus	Pacific ocean perch, S. alutus
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

BILLING CODE 3510-22-C

4. On page 241, in the third column, in paragraph A(20)(b), the first sentence should read "Shelf rockfish consists of canary rockfish, shortbelly rockfish,

widow rockfish (*Sebastes entomelas,*) yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2".

5. On page 247, in the second column, in paragraph D(1)(a)(i), remove "Cape Mendocino" and replace it with "40°10′ N. lat.".

6. On page 247, in the third column, in paragraph (D)((1)(b), delete "Cape Mendocino" and replace it with "40°10′ N. lat.".

7. On page 247, in the third column, in paragraph (D)(2), "34≥" is corrected to read "34 inches".

8. On page 248, in the third column, in paragraph B, (3), "limited" is corrected to read "limit".

9. On page 248, in the third column, in paragraph (B)(4) the paragraph should read "Other rockfish are subject to the same trip limits as the limited entry fishery as published in this document. The limits will not change unless the tribal limits are separately changed."

Dated: January 20, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–1841 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 012100A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf group king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, January 24, 2000, through June 30, 2000, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone was reached on January 23, 2000. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, January 24, 2000.

The Florida west coast subzone extends from 87°31′06″ W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4′ N. lat. (due east of the Miami-Dade/Monroe County, FL, boundary) through March 31, 2000; and (2) 25°48′ N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 2000 through October 31, 2000.

Classification

This action responds to the best available information recently obtained from the fishery. The reduced trip limit must be implemented immediately because 75 percent of the quota has been harvested. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–1807 Filed 1–21–00; 3:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 17
Wednesday, January 26, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 99–023–1]

Importation of Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations concerning the importation of animal semen. Under this proposal, we would eliminate importation requirements for all canine semen from anywhere in the world and for equine semen from Canada. We believe these changes are warranted because canine semen and equine semen from Canada pose no threat of introducing diseases to U.S. livestock. This action would reduce regulatory requirements for the importation of semen while continuing to protect the health of U.S. livestock.

We also propose to require that other animal semen, except for equine semen from Canada, be imported only in shipping containers that bear the official government seal of the national veterinary service of the region of origin. This action would help prevent the importation of animal semen that does not meet the requirements of our regulations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 27, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–023–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–023–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, National Center for Import and Export (NCIE), VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 govern the importation of animal germ plasm to prevent the introduction of contagious diseases of livestock and poultry into the United States. Subparts A and B of part 98 apply to animal embryos, and subpart C (referred to below as "the regulations") applies to animal semen.

Canine and Mule Semen

Section 98.30 of the regulations defines terms used in subpart C. We propose to amend the definition of *Animals* in that section by removing dogs and mules from the definition. This change would eliminate importation requirements for canine semen.

We propose this action because canine semen does not pose a threat of introducing diseases to livestock. Further, because mules are sterile hybrids, mule semen is not collected. Therefore, we believe that it is not necessary to continue to regulate these items.

This change would reduce requirements for the importation of canine semen while continuing to protect the health of U.S. livestock.

Equine Semen From Canada

Section 98.36 of the regulations sets forth the requirements for importing animal semen from Canada. We propose to amend this section by eliminating importation requirements for equine semen from Canada.

We propose this action because Canada is free from contagious equine diseases that are transmitted by semen, including dourine and piroplasmosis. We realize that infectious equine anemia occasionally occurs in Canada, but that disease is not transmitted by semen.

If we remove the importation requirements for equine semen from Canada, we would no longer be able to determine whether equine semen imported into the United States from Canada originated in Canada or was imported into Canada from another region. However, equine semen imported into Canada must meet import requirements equivalent to those in place for the importation of equine semen into the United States. Therefore, we have determined that information on the origin of the equine semen imported into the United States from Canada is not necessary.

This change would reduce requirements for the importation of equine semen from Canada while continuing to protect the health of U.S. livestock.

Official Seals on Shipping Containers

We also propose to require that animal semen, except for equine semen from Canada, be imported in shipping containers sealed by an official seal of the national veterinary service of the region of origin and that the seal number of each shipping container be written on the health certificate accompanying the shipment. We also propose to specify that the imported semen must remain in the sealed container until arrival in the United States and, at the U.S. port of entry, an inspector determines that either: (1) The seal numbers on the health certificate and shipping container match; or (2) the seal numbers on the health certificate and shipping container do not match, but an APHIS representative at the port of entry is satisfied that the shipping container contains the semen described on the health certificate, import permit, declaration, and any other accompanying documents. Office International des Epizooties already requires that shipping containers of animal semen be sealed by an official seal of the national veterinary service of the region of origin. Therefore, it is standard industry practice to seal

containers of animal semen for importation into the United States with official seals. As such, we do not believe this change would have a significant effect on exporters or importers.

This action would help inspectors detect shipping containers of imported animal semen that may have been opened, and potentially had their contents removed, replaced, or tampered with, between the time the container was packed and the time it arrived in the United States. Therefore, this action would help prevent the importation of animal semen that does not meet the requirements of our regulations.

Plain Language

On June 1, 1998, President Clinton issued a memorandum requiring agencies to write all documents in plain language. Specifically, for regulations, agencies must use plain language in all proposed rules published in the **Federal Register** after January 1, 1999. Agencies must also use plain language in all final rules published in the **Federal Register** after January 1, 1999, except when the proposed rule was published before January 1, 1999. For existing regulations, the memorandum encourages agencies to rewrite in plain language whenever possible.

We try to make our regulations as clear as possible. With the plain language initiative, we will increase our efforts to use common terms, active verbs, personal pronouns, and short sentences. We will also use special formats, as well as other techniques, to make our regulations easier to understand.

In this proposed rule, we propose to use tables rather than traditional paragraphs for § 98.36. We would like your comments on whether the proposed table format for § 98.36 would make requirements easier to follow. Please send your comments on this issue, and any other discussed in this proposed rule, to the address listed in **ADDRESSES**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We propose to amend our regulations for importing animal semen. Under our proposal, we would eliminate importation requirements for canine and mule semen from anywhere in the world and for equine semen from Canada. This means that canine and mule semen from anywhere in the world, and equine semen from Canada, would no longer need an import permit, declaration, health certificate, or other document and would not have to meet any other requirements in our regulations when imported into the United States. We believe these changes are warranted because canine and mule semen from anywhere in the world, as well as equine semen from Canada, pose no threat of introducing diseases to U.S. livestock. This action would reduce requirements while continuing to protect the health of U.S. livestock.

This action would benefit U.S. importers of canine semen from anywhere in the world and equine semen from Canada because it would ease the importation of these products. (This action would have no affect on the importation of mule semen because mule semen is not collected and, therefore, not imported.) As noted above, importers of canine semen from anywhere in the world and equine semen from Canada would no longer need to obtain an import permit, health certificate, or declaration before importing the semen into the United States. This would slightly reduce the time and money required for the importation of these products. The principal monetary savings to affected importers would be the $39.50 per load fee currently charged for a permit to import animal semen into the United States (see table of user fees in 9 CFR part 130.8).

APHIS would also benefit from this action because we would no longer have to use our resources to issue import permits or perform other duties required by the regulations for the importation of canine semen from anywhere in the world or equine semen from Canada.

However, we believe that the benefits of this action would be small because of the apparently small volume of U.S. imports of canine semen from anywhere in the world and equine semen from Canada. Specific data on the volume of these imports is not available, which leads us to believe that the volume of those imports is relatively small. As a point of reference, the value of U.S. imports of bovine semen from all countries of the world in 1998 amounted to approximately $14 million. That means those imports comprised only 0.1 percent of the value of U.S. imports of all products of animal origin from all countries of the world in 1998. Because the volumes of U.S. imports of canine semen and equine semen were not reported as separate categories for 1998, we expect the value of those imports each amounted to less than $14 million.

We also propose to require that other animal semen from anywhere in the world, except for equine semen from Canada, be imported only in shipping containers that bear an official government seal. The seal number of each shipping container would have to appear on the health certificate that accompanies the shipment. This action would help prevent the importation of animal semen that does not meet the requirements of our regulations.

Because it is standard industry practice to seal containers of animal semen for importation into the United States with official seals, we do not believe this change would have a significant impact on exporters, importers, or APHIS. For veterinarians in the country of export, writing the seal numbers of the shipping containers on the health certificate accompanying the shipment and, for APHIS, checking to see that the seal numbers match would require a small amount of time, but we do not believe that would have a significant impact on affected persons.

The Regulatory Flexibility Act requires us to consider the economic impact of our rule changes on small entities. The businesses in the United States that would be affected by the proposed rule change are importers of canine semen from anywhere in the world and equine semen from Canada. The number of these businesses is not known, but there are probably few because of the apparently small volume of U.S. imports of canine and equine semen. Therefore, this action would likely not have an economic effect on a substantial number of U.S. businesses, large or small.

The businesses that would be affected are likely small in size, at least by the standards of the Small Business Administration (SBA). This assumption is based on SBA's information for providers of services involving animal semen, or similar services, in the United States. In 1993, there were 1,671 U.S. firms engaged in buying and/or marketing certain farm products, including animal semen. Of those 1,671 firms, 97 percent had fewer than 100 employees, the SBA's small entity threshold for such firms. In addition, in 1993, there were 6,804 U.S. firms engaged in performing certain services for pets, equines, and other animal specialities, including artificial insemination and breeding services. The per firm sales average of those 6,804 firms was $115,290, a figure well below the SBA's small entity threshold for such firms of $5 million. However, as previously discussed, this proposed rule

is not expected to have a significant economic effect on affected businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 98.30, the definition of *Animals* would be revised to read as follows:

§ 98.30 Definitions.

* * * * *

Animals. Cattle, sheep, goats, other ruminants, swine, horses, asses, zebras, and poultry.

* * * * *

3. Section 98.35 would be amended as follows:

a. By redesignating paragraphs (d)(7) and (d)(8) as paragraphs (d)(8) and (d)(9), and by adding a new paragraph (d)(7) to read as set forth below.

b. By adding a new paragraph (f) to read as set forth below.

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(d) * * *

(7) The seal number on the shipping container;

* * * * *

(f) All shipping containers carrying animal semen for importation into the United States must be sealed with an official seal of the national veterinary service of the region of origin. The health certificate must show the seal number on the shipping container. The semen must remain in the sealed container until arrival in the United States and, at the U.S. port of entry, an inspector determines that either:

(1) The seal numbers on the health certificate and shipping container match; or

(2) The seal numbers on the health certificate and shipping container do not match, but an APHIS representative at the port of entry is satisfied that the shipping container contains the semen described on the health certificate, import permit, declaration, and any other accompanying documents.

4. Immediately before § 98.36, the heading "Canada" would be removed.

5. Section 98.36 would be revised to read as follows:

§ 98.36 Animal semen from Canada.

(a) *General importation requirements for animal semen from Canada.*

If the product is . . .	Then . . .
(1) Equine semen	There are no importation requirements under this part.
(2) Sheep or goat semen	The importer or his agent, in accordance with §§ 98.34 and 98.35 of this part, must present: (i) An import permit; (ii) Two copies of a declaration; and (iii) A health certificate.
(3) Animal semen other than equine, sheep, or goat semen	See paragraph (b) of this section.

(b) *Importation requirements for animal semen other than equine, sheep, or goat semen from Canada.*

If the product is offered for entry at a . . .	And . . .	Or . . .	Then . . .
(1) Canadian land border port listed in § 98.33(b) of this part.	The donor animal was born in Canada or the United States and has never been in a region other than Canada or the United States.	The donor animal was legally imported into Canada, released to move freely in Canada, and has been released in Canada for no less than 60 days.	The importer or his agent, in accordance with § 98.35 of this part, must present: (i) Two copies of a declaration; and (ii) A health certificate.
(2) Canadian land border port listed in § 98.33(b) of this part.	The donor animal does not meet the special conditions listed above in paragraph (b)(1) of this table.		The importer or his agent, in accordance with §§ 98.34 and 98.35 of this part, must present: (i) An import permit; (ii) Two copies of a declaration; and (iii) A health certificate.
(3) Port not listed in § 98.33(b) of this part.			The importer or his agent, in accordance with §§ 98.34 and 98.35 of this part, must present: (i) An import permit; (ii) Two copies of a declaration; and (iii) A health certificate.

Done in Washington, DC, this 20th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–1803 Filed 1–25–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket No. 00–04]

Debt Cancellation Contracts

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is seeking comment on whether it is necessary or appropriate to issue regulations governing bank sales of debt cancellation contracts. Currently, no comprehensive Federal regulations specifically govern this activity. The purpose of this request for comments is to help us determine whether to issue a proposed rule covering bank sales of these products.

DATES: Comments must be received by March 27, 2000.

ADDRESSES: Please direct your comments to: Docket No. [00–04], Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities, at (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

Debt cancellation contracts (DCCs) are bank products that are contracts with a borrower providing for the cancellation of the borrower's obligation to repay an outstanding loan upon the occurrence of a certain event, such as the borrower's death or disability.

The authority of national banks to offer DCCs is well established. In 1963, the OCC concluded that offering DCCs was incidental to the express authority of a national bank to make loans, and was therefore a permissible activity pursuant to 12 U.S.C. 24(Seventh). We codified this interpretation in 1971, thus confirming a national bank's authority to sell DCCs. 12 CFR 7.7495 (1972). The Eighth Circuit Court of Appeals upheld the OCC's interpretation in *First National Bank of Eastern Arkansas* v. *Taylor*, 907 F.2d 775, *cert. denied*, 498 U.S. 972 (1990), holding that our construction of the statute was reasonable and that a national bank's ability to sell debt cancellation contracts was within the scope of the bank's powers authorized by 12 U.S.C. 24(Seventh).

In 1996, we amended the rule governing DCCs, which was renumbered as 12 CFR 7.1013, to provide that a national bank may offer DCCs that will cancel a debt obligation upon either the death or disability of the borrower.

Current § 7.1013 states that:

> A national bank may enter into a contract to provide for loss arising from cancellation of an outstanding loan upon the death or disability of a borrower. The imposition of an additional charge and the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of a national bank.

We further noted that, on a case-by-case basis, we may permit DCCs where the cancellation of the borrower's obligation is triggered by events other than death or disability. 61 FR 4849, 4852 (April 1, 1996).

We have not issued any regulations relating to DCCs since 1996, and there is currently no comprehensive Federal consumer protection scheme that covers national bank offerings of DCCs. The purpose of this advance notice of proposed rulemaking is to request comments on whether we should issue regulations governing DCCs, and if so, what specific provisions we should include in these regulations.

Comment Solicitation

We invite you to comment on all aspects of the issues presented in this advance notice of proposed rulemaking. Specifically:

1. Should we issue regulations governing DCCs that, for example, establish standards for the disclosure of terms, notices, contract termination, contract charges, and dispute resolution?

2. Should we include debt suspension agreements in any regulations covering DCCs?

3. Should we address other areas or issues by regulation? Commenters are invited to provide specific suggestions for provisions that would protect consumers, prohibit abusive practices, and ensure the safety and soundness of national banks.

In addition, commenters are invited to address the impact that a regulation governing DCCs would have on community banks. We recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, we specifically request comment on the impact that a regulation governing DCCs would have on community banks' current resources and available personnel with the requisite expertise, and whether the goals of this regulation could be achieved, for community banks, through an alternative approach.

Dated: January 13, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–1748 Filed 1–25–00; 8:45 am]

BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Size Standards for Compliance With Programs of Other Agencies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its size regulations. The proposed amendment requires an agency to consult in writing with SBA before proposing small business size standards for use in its programs, if those size standards are other than those established by SBA. It removes the requirement that the agency have the SBA Administrator's approval for the contemplated size standards prior to the proposed rule. Rather, the agency must seek the SBA Administrator's approval only before it adopts size standards in a final rule. As does the existing regulatory text, the proposed amendment sets forth the minimum information agencies must furnish the SBA Administrator to support its request for approval of its contemplated size standards.

DATES: SBA must receive comments on or before March 27, 2000. SBA will make all public comments available to any person or entity upon request.

ADDRESSES: Address all comments concerning this proposed rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: The Small Business Act (section 3(a)&(b), 15 U.S.C. 632) (Act) provides for the establishment of small business size standards. The Act authorizes the Administrator of SBA to "specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act *or any other Act*" (emphasis added). The Act thereby gives the SBA Administrator exclusive authority to establish small business size standards for all Federal agencies, in the absence of other specific statutory authority. Unless a statute specifically provides size standards for an agency's program or gives an agency authority to do so, the agency must use the applicable size standards established by the Administrator of SBA. However, the Act allows an agency to "prescribe a size standard for categorizing a business concern as a small business concern" (section 3[a][2][C]) of the Act) provided the contemplated size standard meets certain criteria and the agency first obtains approval of the SBA Administrator.

Currently, Small Business Size Regulations in 13 CFR 121.902 establish procedures for agencies, other than SBA, to follow before they prescribe size standards for their own use. These regulations require an agency contemplating the use of size standards different from those established by SBA to obtain the SBA Administrator's approval to do so before it proposes them for comment as part of its rulemaking process. If an agency believes that size standards different from those established by SBA are appropriate for its purposes, it must propose the specific size standards, explain why it believes they are appropriate for their intended purposes and why SBA's are not, and seek public comment on them. The proposed size standards must be specific and must meet the criteria set forth in the Act and SBA regulations.

This proposed rule is limited to modifying the procedure that agencies must follow when requesting the SBA Administrator's approval to use special size standards. If the rule is adopted, it will only require the agency to consult in writing with SBA's Office of Size Standards before proposing to use an alternative size standard. The agency will only be required to request the SBA Administrator's approval of the size standard before it publishes its final rule as part of its rulemaking process.

The written consultation must include what size standard the agency is proposing, to what program it will apply, how the agency arrived at this particular size standard for this program, and why SBA's existing size standards do not satisfy their program requirements. Such written consultation shall take place at least fourteen (14) calendar days before issuing the proposed rule. SBA believes that less than fourteen (14) calendar days is not sufficient time for SBA to review the proposed size standards and respond to the agency's consultation. The consultation will allow SBA to review the proposed size standards and advise the agency as soon as practicable of issues, such as those in conflict with the Act or SBA's Small Business Size Regulations. Such issues could become a bar to the SBA Administrator's approval, unless they are addressed. SBA's Office of Size Standards will acknowledge receipt of an agency's written consultation.

SBA intends that "consultation," as it is described above, will fulfill the requirements of this proposed rule, and expects that there shall be no further required discussions, except at the option of the requesting agency. SBA is committed to ensuring that such consultation with the Office of Size Standards will not delay or otherwise interfere with the agency's rulemaking process.

This procedure will be a simpler one than now exists, because, if adopted, it will only require the SBA Administrator's approval before the agency issues its final rule adopting the contemplated size standards, rather than before it proposes them. It also will require the agency to furnish SBA a copy of the proposed rule at the time the agency publishes it for public comment. It is important to note that this is a procedural modification, and that SBA is not changing any substantive requirements.

SBA proposes to amend these procedures in its regulations for the following reasons:

1. It Will Streamline the Rule Making Process

Obtaining SBA approval for contemplated size standards prior to a proposed rule can encumber the process by which an agency implements legislation or otherwise fulfills its statutory mandates. The number of agencies seeking the SBA Administrator's approval has not been large. However, the number and complexity of requests from a small number of agencies, together with the limited time within which they must complete their actions, leads SBA to conclude that this modification is necessary. SBA has experienced a number of requests for approval of alternative small business size standards from agencies that are required to comply with Congressional mandates within limited time frames. Under SBA's existing regulations, which this rule amends, agencies frequently cannot seek and obtain the SBA Administrator's approval within time frames statutorily allowed.

2. The Prescribed Size Standards Adopted in an Agency's Final Rule May Not Be the Same as Those the SBA Administrator Had Approved for the Proposed Rule, Unless SBA Amends This Regulation

An agency may receive a large number of comments on its proposed size standards, and the comments may or may not support the proposal, to varying degrees. Comments to proposed rules weigh heavily on agency decisions concerning final rules. Therefore, it sometimes happens that an agency, after evaluating the comments it received, could issue a final rule with small business size standards that differ from those in the proposed rule. The agency's final rule will reflect public comments to the proposed rule. Because the authority to approve small business size standards resides solely with the SBA Administrator, SBA believes that the current procedures can have results inconsistent with the Act and congressional intent. It can also happen, though infrequently, that after an agency has reviewed and considered the comments, it will not issue any final rule. Rather, it may then issue another proposed rule, taking into consideration the comments it received. If the newly contemplated size standards are not the same as the agency originally proposed, the agency must request the SBA Administrator's approval a second time for this new proposal. This procedural change, if adopted, will let an agency determine, after considering public comments, what size standards it believes it should include in its final rule, or whether it will elect to use the SBA size standards. SBA, for its part, will review no more than one request, based on the agency's decision relative to its final rule.

3. An Agency That Contemplates Using Small Business Size Standards, Other Than Those Established by SBA, Will Have SBA's Input Before It Issues Its Proposed Rule

SBA intends the written consultation to be considerably simpler than a request for the SBA's approval before a proposed rule, and will not delay the rulemaking proceedings of the agency. It will give SBA the background and supporting information for the agency's contemplated size standards. SBA can then, if necessary, comment on the contemplated size standards, and provide the agency with further advice and direction on formulating the size standards and its reasons for proposing them. This can reduce future delays and possible barriers in the administrative process, when the agency requests the SBA Administrator's approval to prescribe the size standards in its final rule.

4. SBA Will Have, as Part of Its Decision Making Process, the Requesting Agency's Proposed Rule, Its Explanation and Justification for the Standards, Copies of the Public Comments to the Size Standards in the Proposed Rule, as Well as a Draft Copy of the Agency's Intended Final Rule

In its final rule the agency will address the comments and justify adopting the size standards. Under existing regulations, which this rule proposes to change, after reviewing the comments received and reaching its final decision based on them, an agency only notifies SBA of its intent to publish a final rule, and furnishes this information to SBA. SBA believes comments can and do provide a requesting agency with more information to justify the size standards it elects to implement, whether they are the same as it proposed or not. Without this procedural change, SBA will continue to be asked to approve size standards on which interested parties have not commented. Commenters may raise important issues regarding the size standards that an agency needs to consider before making its decision on the size standards. Based on the comments, the requesting agency may opt for size standards that differ from what it had proposed. Since the Act precludes an agency from prescribing size standards that SBA has not approved, the agency would have to resubmit it for SBA approval. By simplifying these procedures, SBA will have at hand and be able to evaluate the same information the requesting agency uses.

This proposal will only change the procedures an agency must follow when it requests the SBA Administrator's approval to prescribe size standards, other than those promulgated by SBA, for its programs. It changes no substantive requirement or small business criteria in connection with requesting the Administrator's approval. The proposed change will, SBA believes, simplify the rulemaking process for other agencies and for itself, without compromising the statutory requirement that other agencies obtain the SBA Administrator's approval for size standards they contemplate prescribing for their use. Similarly, when an agency contemplates using alternative size standards for its Regulatory Flexibility Analysis, this proposed rule does not change the Regulatory Flexibility Act requirement that it consult with SBA's Office of Advocacy before it does so.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this rule, if adopted, would not be a significant rule within the meaning of Executive Order 12866. It will not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition. SBA has made this determination for the following reasons: 1) The proposed change is procedural, not substantive, in nature; (2) the proposed change applies to Federal agencies only; and (3) the proposed change applies only when a Federal agency contemplates categorizing an entity as a small business concern for its programs using standards other than those established by SBA. SBA has also made this determination based on the nature, number and complexity of requests from Federal agencies that have made such requests. SBA does not believe that this amendment will increase the nature, number or frequency of these requests.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications.

For purposes of Executive Order 12988, SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this proposed rule, if promulgated as a final rule, would not have a significant economic effect on a substantial number of small entities since the procedure applies to the work of federal agencies and imposes no burden on small businesses. For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small business.

Accordingly, SBA proposes to amend part 121 of 13 CFR as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.902 is revised to read as follows:

§ 121.902 What size standards are applicable to programs of other agencies?

The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless the agency and SBA agree otherwise.

3. Section 121.903 is revised to read as follows:

§ 121.903 May an agency use size standards for its programs that are different than those established by SBA?

(a) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide SBA size standards are not suitable for their programs, then agency heads may establish more appropriate small business definitions for the exclusive use in such programs, but only when:

(1) The size standards will determine the size of a small manufacturing concern by its average number of employees based on the preceding twelve calendar months, determined according to § 121.106; the size of a small services concern by its average annual gross receipts over a period of at least three years, determined according to § 121.104; the size of other small concerns on data over a period of at least three years; or, other factors approved by SBA;

(2) The agency has consulted in writing with SBA's Assistant Administrator for Size Standards at least fourteen (14) calendar days before publishing the proposed rule which is part of the rulemaking process. The written consultation will include: what size standard the agency contemplates using; to what agency program it will apply; how the agency arrived at this particular size standard for this program; and, why SBA's existing size standards do not satisfy the program requirements.

(3) The agency proposes the size standards for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553;

(4) The agency provides a copy of the proposed rule, when it publishes it for public comment as part of the rulemaking process, to SBA's Assistant Administrator for Size Standards;

(5) SBA's Administrator approves the size standards before the agency adopts a final rule or otherwise prescribes them for its use;

(6) The agency's request to SBA for the Administrator's approval be accompanied by at least the following: copies of all comments on the proposed size standards received in response to the proposed rule; reasons for adopting size standards other than SBA's; a copy of the intended final rule, including the preamble, or a separate written justification for the intended size standards followed by a copy of the intended final rule and preamble prior to its publication; other information SBA may request in connection with the request; and certification that it complies with the Small Business Act (§ 3[a] & [b]) and with 13 CFR part 121; and

(b) When approving any size standards established pursuant to this section, SBA's Administrator will ensure that the size standards vary from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(c) Where the agency head is developing size standards for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish size standards different from SBA's which are more appropriate for such analysis.

4. Section 121.904 is added to read as follows:

§ 121.904 When does SBA determine the size status of a business concern?

For compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

Dated: January 14, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–1438 Filed 1–25–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–67–AD]

RIN 2120–AA64

Airworthiness Directives Boeing Model 747SP, SR, –100, –200, and –300 Series Airplanes Equipped with Pratt & Whitney Model JT9D–3, –7, –7Q, and –7R4G2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747SP, SR, –100, –200, and –300 series airplanes, that currently requires repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This action would require installation of a terminating modification, and would add repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This proposal is prompted by the results of a safety review of the thrust reverser systems on Model 747 series airplanes. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–67–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA,

Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 21, 1995, the FAA issued AD 95–16–02, amendment 39–9321 (60 FR 39631, August 3, 1995), applicable to certain Boeing Model 747SP, SR, –100, –200, and –300 series airplanes, to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. That action was prompted by the results of an investigation, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

In the preamble to AD 95–16–02, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Since the issuance of that AD, the FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following a 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

- 747–78–2134, Revision 3, dated March 19, 1998, which describes procedures for installation of provisional wiring for the additional locking system on the thrust reversers.
- 747–78–2052, Revision 5, dated February 22, 1996, which describes procedures for removal of the thrust reverser sequencing mechanism and installation of a solenoid operated shutoff valve.

The service bulletins described previously reference the Boeing Standard Wiring Practices Manual, which describes wire installation procedures, and Boeing 747 Airplane Maintenance Manual (AMM) as additional sources of service information for accomplishment of the modifications.

- 747–78–2152, Revision 1, dated December 12, 1996; Revision 2, dated December 18, 1997; and Revision 3, dated August 26, 1999, which describe procedures for, among other things, installation of the following:

1. Four additional microswitches and associated wiring in the aisle stand P8 panel;
2. New relay panels P252 and P253 and associated wiring;
3. Left and right wing/body disconnect panels, engine struts, and associated wiring;
4. Four circuit breakers and associated wiring changes in the P6 and P8 panels; and
5. Sync lock and associated wiring on each thrust reverser.

Accomplishment of Boeing Service Bulletin 747–78–2152, Revision 1, Revision 2, or Revision 3, requires prior or concurrent accomplishment of Boeing Service Bulletins 747–78–2134, Revision 3, and 747–78–2052, Revision 5. Accomplishment of these actions would eliminate the need for certain repetitive tests.

The modification procedures described by Boeing Service Bulletins 747–78–2152 and 747–78–2134 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletins 747–78–2152, Revision 1, Revision 2, and Revision 3, and 747–78–2134, Revision 3, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and, therefore, proposes that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–16–02 to continue to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This proposed AD would require installation of a modification, and would add repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive functional tests to detect discrepancies of the actuation system lock (also called a sync lock) on each thrust reverser would be required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual (AMM). Correction of any discrepancy detected would be required to be accomplished in accordance with the AMM.

Differences Between Service Bulletins and This Proposed AD

Operators should note that, although Boeing Service Bulletin 747–78–2152, Revision 1, Revision 2, and Revision 3 recommend no specific compliance time for accomplishment of the additional lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that

it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify repetitive functional testing of the additional lock installation following accomplishment of that installation, the FAA has determined that repetitive functional tests of the additional lock installation on each thrust reverser, at intervals not to exceed 3,000 flight hours, will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 457 airplanes of the affected design in the worldwide fleet. The FAA estimates that 220 airplanes of U.S. registry would be affected by this proposed AD.

The operational tests that are currently required by AD 95–16–02, and retained in this AD, take approximately 16 work hours (4 per engine) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $211,200, or $960 per airplane, per test cycle.

It would take approximately 544 work hours per airplane, to accomplish the proposed wiring modifications, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the wiring modifications proposed by this AD on U.S. operators is estimated to be $7,180,800, or $32,640 per airplane.

It would take approximately 104 work hours (26 per engine) per airplane, to accomplish the proposed removal of the thrust reverser sequencing mechanism and installation of a solenoid operated shutoff valve, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the removal and installation proposed by this AD on U.S. operators is estimated to be $1,372,800, or $6,240 per airplane.

It would take approximately 568 work hours per airplane, to accomplish the proposed sync lock hardware installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $7,497,600, or $34,080 per airplane.

The functional tests proposed in this AD would take approximately 8 work hours (2 hours per engine) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $105,600, or $480 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9321 (60 FR 39631, August 3, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–67–AD. Supersedes AD 95–16–02, amendment 39–9321.

Applicability: Model 747SP, SR, –100, –200, and –300 series airplanes equipped with Pratt & Whitney Model JT9D–3, –7, –7Q, and –7R4G2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–16–02

Operational Test

(a) Within 90 days after September 5, 1995 (the effective date of AD 95–16–02, amendment 39–9321), perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours until accomplishment of paragraph (c) of this AD.

Corrective Action

(b) If any of the tests required by paragraph (a) of this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct any discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Modifications

(c) Within 36 months after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) Install an additional locking system on each thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2152, Revision 1, dated December 12, 1996; Revision 2, dated December 18, 1997; or Revision 3, dated August 26, 1999.

(2) Remove the thrust reverser sequencing mechanism and install a solenoid operated shutoff valve in accordance with Boeing Service Bulletin 747–78–2052, Revision 5, dated February 22, 1996.

(3) Install provisional wiring for the additional locking system on the thrust reversers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2134, Revision 3, dated March 19, 1998.

Repetitive Tests

(d) Within 3,000 flight hours after accomplishment of paragraph (c) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual (AMM), Section 78–34–11, dated October 25, 1997. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair in accordance with the procedures described in the AMM. Repeat the functional tests thereafter at intervals not to exceed 3,000 flight hours.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with paragraphs (a) and (b) of AD 95–16–02, amendment 39–9321, are approved as alternative methods of compliance with the corresponding paragraphs in this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1778 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–215–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes. This proposal would require a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at a certain station to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. This proposal also would require installation of spacers between the galley power feeder cable clamps and fuselage structure. This proposal is prompted by reports indicating that the galley power feeder cables chafed against a certain fuselage frame in the forward lower cargo compartment, which resulted in electrical arcing. The actions specified by the proposed AD are intended to prevent such chafing and arcing due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99-NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–215–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of two incidents in which the galley power feeder cables chafed against the fuselage station Y=635.000 frame in the forward lower cargo compartment, which resulted in electrical arcing. These incidents occurred on McDonnell Douglas Model DC–10 series airplanes. Investigation revealed that there was insufficient clearance between the cables and the airplane structure. This condition, if not corrected, could cause arcing of the galley power feeder cables against the airplane structure, which could result in smoke and fire in the forward lower cargo compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999, which describes procedures for a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at station Y=635.000 to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. The corrective actions include repair or replacement of chafed cables with new cables; repair of damaged frames; and replacement of damaged insulation blankets with new insulation blankets. This service bulletin also describes procedures for installation of spacers between the galley power feeder cable clamps and fuselage structure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 168 airplanes of the affected design in the worldwide fleet. The FAA estimates that 103 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–215–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the galley power feeder cables against the airplane structure due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment, accomplish the following:

Inspection, Installation of Spacers, and Corrective Actions, If Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the galley external power feeder cables and fuselage structure at station Y=635.000 to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any damage or chafing is detected, prior to further flight, accomplish the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) of this AD, as applicable, in accordance with Condition 2 of the Accomplishment Instructions of the service bulletin.

(i) Repair or replace the chafed cables with new cables.

(ii) Repair the damaged frame.

(iii) Replace the damaged insulation blanket with a new blanket; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install spacers between the galley power feeder cable clamps and fuselage structure.

(2) If no damage or chafing is detected, prior to further flight, install spacers between the galley power feeder cable clamps and fuselage structure in accordance with Condition 1 of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1777 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at a certain fuselage station to detect chafing and arcing damage, and corrective actions, if necessary; and installation of a standoff and clamp. This proposal is prompted by an incident in which the power feeder cables in the cabin electrical system were found to be chafed and arced against a fuselage frame due to insufficient clearance between the cables and airplane structure. The actions specified by the proposed AD are intended to prevent such chafing and arcing, which could cause smoke and fire in the overhead of the main cabin.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–214–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which the power feeder cables in the cabin electrical system had chafed and arced against the fuselage frame at station Y=1099.000 between longerons 9 and 10 (right side). The cable had burned in half, damaging

a three-inch section of the fuselage frame and adjacent insulation blankets. This incident occurred on a McDonnell Douglas Model DC–10 series airplane. The cause of the chafing was insufficient clearance between the electrical power cable and the fuselage structure. This condition, if not corrected, could result in smoke and fire in the overhead of the main cabin.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999. The service bulletin describes procedures for a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at station Y=1099.000 between longerons 9 and 10 (right side) to detect chafing and arcing damage; installation of a standoff and clamp at station Y=1093.000, longeron 10; and corrective actions, if necessary. The corrective actions involve repair or replacement of damaged power feeder cables, airplane structure, or insulation blankets with new parts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Typographical Error in Service Information

Operators should note the applicability statement of the proposed AD differs from the effectivity listing of the referenced service bulletin in that it includes McDonnell Douglas Model DC–10–15 series airplanes in the applicability statement. The service bulletin contains a typographical error that identifies Model "DC–10–20" series airplanes (which do not exist) as one of the affected models rather than Model DC–10–15 series airplanes. However, the manufacturer's fuselage numbers listed in the service bulletin corresponds to the affected Model DC–10–15 series airplanes. Therefore, the applicability statement of the proposed AD correctly refers to the subject service bulletin for the listing of affected airplanes.

Cost Impact

There are approximately 160 airplanes of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–214–AD.

Applicability: Model DC–10 series airplanes and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the power feeder cables against the fuselage structure, which could cause smoke and fire in the overhead of the main cabin, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection of the power feeder cables in the cabin electrical system, airplane structure, and insulation blankets at station Y=1099.000 between longerons 9 and 10 (right side) for evidence of chafing and arcing damage, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect

obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 Corrective Action

(1) If no chafing or damage to the power feeder cables, structure, or insulation blankets is detected: Prior to further flight, install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 1 of the Work Instructions of the service bulletin.

Condition 2 Corrective Action

(2) If any chafed power feeder cable is detected, and if no damage to adjacent structure or insulation blankets is detected: Prior to further flight, repair or replace the power feeder cables in the cabin electrical system with new power feeder cables; and install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 2 of the Work Instructions of the service bulletin.

Condition 3 Corrective Action

(3) If any chafed power feeder cable is detected, and if any damage to the adjacent structure and/or insulation blankets is detected: Prior to further flight, accomplish the actions specified in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this AD, as applicable, in accordance with Condition 3 of the Work Instructions of the service bulletin.

(i) Repair or replace the damaged power feeder cables in the cabin electrical system with new power feeder cables.

(ii) Repair or replace the damaged structure with new structure.

(iii) Repair or replace the damaged insulation blankets with new insulation blankets; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install a standoff and clamp at station Y=1093.000, longeron 10.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1776 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes. This proposal would require a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. This proposal is prompted by a report of smoke coming out of the flight engineer's upper right circuit breaker panel, which was followed by circuit breakers popping and the panel lights going out. The actions specified by the proposed AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California. 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–213–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of

a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which smoke came out of the flight engineer's upper right circuit breaker panel which was followed by circuit breakers popping and the panel lights going out. This incident occurred on a McDonnell Douglas Model DC–10 series airplane. Investigation revealed that the wire segments of the wire bundle routed through the feed through behind the flight engineer's station had been damaged. This condition has been attributed to excessive preloading of the support clamp and bracket during manufacturing. Such excessive preloading caused the wire bundle support clamp to rotate, which resulted in the wire bundle contacting the lower edge of the feed through. This condition, if not corrected, could result in chafing of electrical wires and consequent electrical arcing, which could result in smoke and fire in the cockpit.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated May 6, 1999. The service bulletin describes procedures for a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed; and repair of the wires, and modification of the wire bundle support clamp on the aft side of the flight engineer's station, if necessary. The modification includes installation of a grommet around the lower edge of the feed through and new support bracket, and relocation of the wire bundle support clamp. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AD, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

MCDONNELL DOUGLAS:

Docket 99–NM–213–AD.

Applicability: All Model DC–10 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

Inspection

(a) Within 1 year after the effective date of this AD, perform a one-time detailed visual inspection to determine if the wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated May 6, 1999.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(1) For airplanes identified as Group 1 in the service bulletin: Accomplish paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, no further action is required by this AD.

(ii) If any damaged or chafed wire is found, prior to further flight, repair in accordance with the service bulletin;

(2) For airplanes identified as Group 2 in the service bulletin: Accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, within 1 year after the effective date of this AD, revise the wire bundle support clamp installation at the flight engineer's station in accordance with the service bulletin.

(ii) If any damaged or chafed wire is found, prior to further flight, repair the wiring, and revise the wire bundle support clamp installation at the flight engineer's station, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1775 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes. This proposal would require a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary. This proposal is prompted by incidents of smoke and electrical odor in the flight compartment and cabin area as a result of failure of circuit breakers. The actions specified by the proposed AD are intended to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.,

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–212–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of smoke and electrical odor in the flight compartment and cabin area of McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that long-term use and break down of the internal components of the circuit breakers, manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation, contributed to internal overheating and arcing of the circuit breakers. This condition, if not corrected, could result in smoke and fire in the flight compartment and main cabin.

The subject circuit breakers on certain Model DC–10 series airplanes are similar to those on the affected McDonnell Douglas Model DC–9 series airplanes. Therefore, both of these models may be subject to this same unsafe condition.

Other Related Rulemaking

The FAA is considering further rulemaking for certain McDonnell Douglas Model DC–9 series airplanes to address the identified unsafe condition.

The FAA, in conjunction with Boeing and operators of Model DC–10 series

airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999. The service bulletin describes procedures for a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and replacement of any circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation with a new circuit breaker. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that the proposed AD would require replacement of any circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation with a new circuit breaker within 18 months after the effective date of this AD. The service bulletin recommends that the replacement should be accomplished within 12 months from the issuance of the service bulletin. In developing an appropriate compliance time for this proposed action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts. The FAA has determined that 18 months represents an appropriate interval of time allowable wherein an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, it would take approximately 80 work hours per airplane to accomplish the proposed inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440,000, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–212–AD.

Applicability: Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 18 months after effective date of this AD: Perform a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breaker in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, no further action is required by this paragraph.

(2) If any Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, prior to

further flight, replace the circuit breaker with a new circuit breaker in accordance with the service bulletin.

Spares

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker, part number 104–205–104, 104–210–104, 104–215–104, 104–220–104, 104–225–104, 104–230–104, 104–235–104, 104–250–104, 447–205–102, 448–205–102, 505–205–102, 506–205–102, 447–507–102, 448–507–102, 505–507–102, 506–507–102, 447–210–102, 448–210–102, 505–210–102, 506–210–102, 447–215–102, 448–215–102, 505–215–102, 506–215–102, 447–220–102, 448–220–102, 505–220–102, 506–220–102, 447–225–102, 448–225–102, 505–225–102, 506–225–102, 448–235–102, 505–235–102, 506–235–102.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1774 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes. This proposal would require a one-time inspection of the wiring and wire bundles of the aft main avionics rack (MAR) to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushions inserts of the wiring clamps; and corrective actions, if necessary. This proposal is prompted by an incident in which the automatic and manual cargo door test in the cockpit was inoperative during dispatch of the airplane, due to wiring of the main avionics rack chafing against clamps as a result of the wire bundles being installed improperly during production of the airplane. The actions specified by the proposed AD are intended to ensure that the wires that route from the main wire bundles to the MAR and associated brackets, clamps, braces, standoffs, and clips are installed properly. Improper installation of such wiring and structure could cause chafing of the wires/wire bundles, which could result in electrical arcing, smoke, and possible fire in the MAR.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–211–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which the automatic and manual cargo door test in the cockpit was inoperative. This incident occurred on a McDonnell Douglas Model MD–11 series airplane during dispatch.

Investigation revealed the insulation of a wire located on the aft main avionics rack (MAR) was worn through, and that the wire shorted to a coax clamp. The wires that route from the main wire bundles to the MAR also were found contacting clamps at other locations of the MAR. The cause of such chafing has been attributed to improper

installation of the wire bundles in the MAR during production of the airplane.

Improper installation of the wires that route from the main wire bundles to the MAR or improper installation of the associated brackets, clamps, braces, standoffs, or clips could cause chafing of the wires/wire bundles, which could result in electrical arcing, smoke, and possible fire in the MAR.

The subject MAR on Model DC–10 series airplanes are similar to those on the affected McDonnell Douglas Model MD–11 series airplanes. Therefore, both of these airplanes may be subject to the same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

On April 13, 1999, the FAA issued AD 99–09–03, amendment 39–11135 (64 FR 19689, April 22, 1999), applicable to certain McDonnell Douglas MD–11 series airplanes, to require one-time inspection of the wiring and wire bundles of the aft MAR to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary. However, this proposed AD would not affect the current requirements of that previously issued AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999, which describes procedures for a one-time general visual inspection to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary. The corrective actions include repairing damaged wiring; routing and tying all wires/wire bundles so that they are not in contact with adjacent wire bundles, clamps, or structure; installing silicone rubber coated glass cloth wrapping on wiring; and a general visual inspection of all brackets, clamps, braces, standoffs, and clips to make sure they are not bent or twisted and come in contact with wires/wire bundles. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and the Referenced Alert Service Bulletin

The alert service bulletin specifies the following corrective actions for certain conditions: realigning the rubber cushion and replacing the clamp. However, the alert service bulletin does not provide any instructions for accomplishment of those procedures or reference other service information. The FAA has verified with the manufacturer that the appropriate source of service information for accomplishment of those procedures is McDonnell Douglas Process Engineering Order DPS 1.834–7, Revision CF, dated June 29, 1999. Therefore, this AD requires that those actions be accomplished in accordance with the process engineering order.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection of the wiring and wire bundles, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $54,000, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSESS.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–211–AD.

Applicability: Model DC–10–10, –15, –30, –30F, and –40 series airplanes and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.
Compliance: Required as indicated, unless accomplished previously.

To ensure that the wires that route from the main wire bundles to the main avionics rack (MAR) and associated brackets, clamps, braces, standoffs, and clips are installed properly, accomplish the following:

One-Time General Visual Inspection

(a) Within 60 days after the effective date of this AD, perform a one-time general visual inspection of the wiring and wire bundles of the aft MAR to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Where there are differences between this AD and the referenced alert service bulletin, the AD prevails.

Note 4: The wording "main avionics rack" in this AD and the wording "main radio rack" in the alert service are used interchangeably.

Corrective Actions

(b) If any damaged wring is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the alert service bulletin.

(c) If any wire/wire bundle is detected to be riding or chafing on the subject areas during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Route and tie all wires/wire bundles so they are not in contact with adjacent wire bundles, clamps or structure, and install silicon rubber coated glass cloth wrapping on wiring, if necessary, in accordance with the alert service bulletin.

(2) Perform a general visual inspection of all brackets, clamps, braces, standoffs, and clips to make sure they are not bent or twisted and do not come in contact with wires/wire bundles, in accordance with the alert service bulletin. If any of these parts is bent or twisted or is in contact with wires/wire bundles, prior to further flight, reposition in accordance with the alert service bulletin.

(3) Perform a general visual inspection of the clamps for proper alignment or for damage of the rubber cushion, in accordance with the alert service bulletin. If any clamp is not aligned properly, prior to further flight, realign the clamp in accordance with the alert service bulletin. If any rubber cushion is damaged, prior to further flight, replace the clamp in accordance with the alert service bulletin.

(d) If any damaged rubber cushion insert is detected during the inspection required by paragraph (a) of this AD, prior to further flight, replace the clamp with a new or serviceable clamp in accordance with McDonnell Douglas Process Engineering Order DPS 1.834–7, Revision CF, dated June 29, 1999.

(e) If any rubber cushion insert is out of alignment, prior to further flight, visually realign the cushion.

Reporting Requirement

(f) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1773 Filed 1–25–00; 8:45 am]

BILLING CODE 4010–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–24 and 00–ASO–1]

Proposed Establishment of Class E Airspace; Whitesburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal and Notice of Proposed Rulemaking.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) [Docket No. 99–ASO–24] which proposed to amend the Class E airspace at Wise, VA and proposes to establish Class E airspace at Whitesburg, KY, [Docket No. 00–ASO–1]. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Whitesburg Appalachian Regional Hospital. The operating status of the heliport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. The NPRM is being withdrawn as a result of the determination that the additional airspace to establish a point in space SIAP for Whitesburg Appalachian Regional Hospital, Whitesburg, KY, does not join the Wise, VA, Class E5 airspace.

DATES: Comments must be received on or before February 25, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–1, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Whitesburg, KY. A GPS SIAP, helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Whitesburg Appalachian Regional Hospital. The operating status of the heliport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above teh surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

On December 17, 1999, a NPRM was published in the **Federal Register** to amend the Wise, VA, Class E5 airspace, to include a helicopter point in space approach which has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY, (64 FR 70610). It has been determined that the Whitesburg Appalachian Regional Hospital Class E5 airspace area would not join the Wise, VA, Class E5 airspace.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follow:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows: Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Whitesburg, KY [New]

Whitesburg Appalachian Regional Hospital, Whitesburg, KY, Point In Space Coordinates
Lat 37°07′16″N, long. 82°50′34″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (lat. 37°07′16″N, long. 82°50′34″W) serving Whitesburg Appalachian Regional Hosptial, Whitesburg, KY.

* * * * *

Issued in College Park, Georgia, on January 12, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–1816 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AC32

Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to restructure and clarify the country of origin marking rules set forth in part 134 of the Customs Regulations. These proposed amendments do not create any new marking requirements, but rather clarify the existing ones. These proposals are being made to promote the concept of informed compliance by the trade and proper field administration of the statutory requirements.

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Questions with regard to the following

subject areas may be directed to the following staff attorneys of the Special Classification and Marking Branch, (202) 927–2310: Definitions of "country," "country of origin" and "ultimate purchaser"—Kristen VerSteeg; Marking of containers—Monika Brenner; and Marking and certification requirements for processed and repackaged articles—Burton Schlissel.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a) of the Tariff Act of 1930 (hereinafter "Tariff Act"), as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. 1304.

In view of the extensiveness of the marking requirements and exceptions under section 304, the regulations implementing this law by necessity are very detailed. Over the years Customs has received comments from various members of the trade community expressing difficulty in understanding their basic obligations under the marking statute. For example, importers have expressed difficulty in understanding when they or their transferees would be considered the "ultimate purchaser" under section 304, or when a container would have to be marked with its own origin.

Acknowledging these types of concerns and the fact that the current Customs Regulations may not sufficiently assist importers in meeting their statutory obligations, Customs announced in a Notice of modification of a country of origin marking ruling letter published in the Customs Bulletin (30 Cust. B. & Dec. 14 at 22) on April 3, 1996, that it would undertake a revision of 19 CFR part 134. In adherence to this commitment, Customs is now initiating significant restructuring and clarification of the provisions contained in part 134.

Customs believes that these proposals, which do not create any new marking requirements, but rather clarify the existing ones, will promote the concept of informed compliance by facilitating compliance by the trade and proper field administration of the statutory requirements. Customs is encouraged in this regard by the trade's positive response to its recent amendments relating to "marking when name of country or locality other than country of origin appears" (Treasury Decision (T.D.) 97–72), which made the regulations not only less rigid, but more consistent with Customs current practices. Below is a description of the proposed changes set forth in this document.

I. Restructuring of Part 134

During the course of this review of part 134, Customs discovered that one of the major reasons part 134 of the Customs Regulations is difficult to follow is due to the order of the provisions setting forth the marking requirements and exceptions under the statute. Presently, the subpart setting forth "Exceptions to Marking Requirements" is placed in the regulatory scheme after the subpart concerning "Marking of Containers or Holders". We believe that the logical sequence would be to place the subpart pertaining to "exceptions" to the marking requirements immediately following the subpart containing the general marking requirements. Moreover, since a majority of the marking requirements for containers arise in connection with an article that is excepted from individual marking, we believe it makes it easier to understand the statutory requirements and is more conducive to informed compliance if the container marking requirements are set forth in the regulations after both the general marking requirements and exceptions for marking of individual articles. Accordingly, Customs is proposing that the order of subparts under part 134 be redesignated so that current subpart D ("Exceptions to Marking Requirements") is redesignated as subpart C and current subpart C (Marking of Containers or Holders) is redesignated as subpart D.

II. Definition of "Country"

The definition of the term "country" is found in ¶134.1(a), Customs Regulations (19 CFR 134.1(a)). In the past, Customs has relied upon advice received from the Department of State in making determinations regarding the "country of origin" of a good for marking purposes. For example, based upon instructions received from the Department of State, in T.D. 49743, dated November 10, 1938, Customs held that, as a result of a change in jurisdiction from Czechoslovakia to Germany in the Sudenten areas under German occupation, products manufactured in these areas and exported on or after the date of German occupation were considered products of Germany for country of origin marking purposes. In *United States* v. *Friedlaender* & Co., 27 C.C.P.A. 297 (February 26, 1940); C.A.D. 104 (1940), the court concurred with Customs decision that merchandise which had been exported at a time in which the Czechoslovakian location of manufacture was under German occupation should be marked to indicate "Germany" as the country of origin. Subsequently, acting upon information received from the Department of State that the boundaries of Czechoslovakia had been reestablished as they had existed prior to the date of occupation by Germany, Customs held in T.D. 51360, dated November 30, 1945, that articles manufactured or produced in Czechoslovakia after May 8, 1945, should be regarded as products of Czechoslovakia and marked accordingly.

More recently, by letter dated October 24, 1994, the Department of State notified the Department of the Treasury that, in view of certain developments, principally the Israeli-PLO Declaration of Principles on Interim Self-Government Arrangements (signed on September 13, 1993), the primary purpose of 19 U.S.C. 1304 would be best served if goods produced in the West Bank and Gaza Strip were permitted to be marked "West Bank" or "Gaza Strip." Accordingly, in T.D. 95–25, published in the **Federal Register** (60 FR 17067) on April 6, 1995, Customs notified the public that, unless excepted from marking, goods produced in the West Bank or Gaza Strip shall be marked as "West Bank" or "Gaza Strip" and not contain the words "Israel," "Made in Israel," "Occupied Territories-Israel," or words of similar meaning. Subsequently, upon receipt from advice from the Department of State that it considered the West Bank and Gaza Strip to be one area for political, economic, legal and other purposes, Customs notified the public that acceptable country of origin markings for goods produced in the territorial areas known as the West Bank or Gaza Strip include the following: "West Bank/Gaza," "West Bank/Gaza Strip" "West Bank and Gaza," "West Bank and Gaza Strip," "West Bank," "Gaza" and "Gaza Strip." (*See*, T.D. 97–16, published in the **Federal Register** (62 FR 12269) on March 14, 1997).

Therefore, in light of Customs past reliance on advice from the Department of State, Customs is proposing that § 134.1(a), of the Customs Regulations (19 CFR 134.1(a)) be amended to allow

greater flexibility to encompass changes by the Department of State in the political recognition of territories and nation-states.

III. Definition of "Country of Origin"

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809). Subtitle D of Title III addresses textiles and includes section 334 (codified at 19 U.S.C. 3592) which provides rules of origin for textiles and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of "textiles and apparel products." Accordingly, on September 5, 1995, Customs published § 102.21, Customs Regulations (19 CFR 102.21), in the **Federal Register** (60 FR 46188), implementing section 334. Thus, with limited exceptions, effective July 1, 1996, the country of origin for a textile or apparel product is determined by a sequential application of the origin rules set forth in ¶ 102.21.

Section 334(b)(1) of the URAA sets forth general principles concerning how the origin of textile and apparel products should be determined, stating, in pertinent part, that the origin rules set forth in section 334 apply "for purposes of the customs laws and the administration of quantitative restrictions * * * " There is no dispute that section 304 of the Tariff Act of 1930 is a customs law. Although the current language of 19 CFR 134.1(b), which defines "country of origin," previously has been modified to incorporate other recent legislative action (*e.g.*, the implementation of the North American Free Trade Agreement (NAFTA)), no reference is made to those rules affecting the determination of origin of textile and apparel articles. This document proposes to include such a reference.

IV. Definition of "Ultimate Purchaser"

Section 304 requires that articles of foreign origin be marked as legibly, indelibly, and permanently as the nature of the article will permit to indicate to the *ultimate purchaser in the United States*, the name of the country of origin. Congressional intent in enacting the marking statute, was:

> that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will. *United States* v. *Friedlaender & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

The term "ultimate purchaser" currently is defined in § 134.1(d) of the Customs Regulations (19 CFR 134.1(d)) as "the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the "ultimate purchaser" is the last person in the United States who purchases the good in the form in which it was imported." As an example of "ultimate purchaser", § 134.1(d) states that a U.S. manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation, "even though the process may not result in a new and different article."

On the other hand, § 134.35(a) Customs Regulations (19 CFR 134.35(a)), which is currently set forth in the regulations under the subpart covering "exceptions to marking requirements", applies the principle of the decision in the case of the *United States* v. *Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) in determining the ultimate purchaser for non-NAFTA origin articles. Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the new and different article will be considered the "ultimate purchaser" of the imported article.

In *United States* v. *Gibson-Thomsen Co., Inc., supra* (1940), the court considered the acceptability of country of origin marking on imported merchandise which would be ultimately obscured by subsequent processing in the United States. Upon review of the legislative history of section 304(a), Tariff Act of 1930, the court found nothing to indicate that Congress intended to require that an imported article used as a material in the manufacture of a new article with a new name, character and use be marked so as to indicate the foreign origin of the material to the retail purchaser. Accordingly, the court concluded that the U.S. processor was the "ultimate purchaser" of the imported materials and held that the articles were properly marked upon importation.

While the incorporation of the *Gibson-Thomsen* decision into the Customs Regulations in general is appropriate, its placement in the subpart relating to "exceptions to the marking requirements" causes confusion in understanding the marking statute. The court in *Gibson-Thomsen* did *not* create a new marking exception to the marking requirements under section 304(a). Rather, the court provided an interpretation of when one of the elements of the marking requirement is satisfied, *i.e.*, the requirement that a good be marked until it reaches the ultimate purchaser in the U.S.

The example currently cited in § 134.1(d)(1), that a manufacturer who subjects the imported article to a process may be the "ultimate purchaser" *even though the process may not result in a new and different article* represents a glaring contradiction to the new name, character and use test of *Gibson-Thomsen, supra*. Therefore, Customs is proposing to amend the regulations to clarify that only the *Gibson-Thomsen* standard (which Customs has incorporated into the NAFTA Marking Rules) will be applicable for determining whether a U.S. processor of imported articles becomes the "ultimate purchaser" for purposes of section 304. This standard should be set forth in the definitions under "general provisions" as opposed to the subpart pertaining to the exceptions to marking requirements.

Also problematic for Customs and importers is the identity of the "ultimate purchaser" of an article supplied by one party to another, as a gift or other distribution outside the context of a direct purchase transaction. Customs has consistently ruled that when an article is provided as a gift or convenience, the donee or recipient is the ultimate purchaser and the article must be individually marked with its country of origin (*See* HRL 709964 (May 7, 1979), also published as Customs Service Decision (C.S.D.) 79–406, 13 Cust. Bull. 1609 (1979), where Customs held that the "ultimate purchaser" of imported plastic pencils distributed as giveaway advertising material was the donee).

However, in *Pabrini, Inc.* v. *United States*, 630 F. Supp. 360 (CIT 1986), the court discussed the identity of the "ultimate purchaser" of imported umbrellas distributed to race track patrons upon payment of the regular admission fee. The court observed that, although Customs had applied the requirements of the marking statute to gifts since 1924, the language of the current statute which specifically protects an "ultimate purchaser in the United States" was not adopted until 1938, as part of the Customs Administrative Act of 1938, chapter 679, section 3, 52 Stat. 1077 (*See* T.D. 40547, dated December 6, 1924, where six unmarked clocks purchased abroad as gifts for friends were denied entry). The court examined the congressional history of the 1938 statute and found no

evidence of congressional intent in the 1938 revision with respect to the meaning of the "ultimate purchaser", but noted that the term "consumer" had been used in colloquy at hearings before the subcommittee (*Pabrini, supra,* citing *Customs Administrative Act: Hearings on H.R. 8099 Before a Subcomm. Of the Comm. On Finance, United States Senate,* 75th Cong., 3d Sess. 57 (1938)). Ultimately, the court made no finding regarding the validity of 19 CFR 134.1(d), but determined that the race track patrons, by paying the price of regular admission, were not donees of gifts, but rather were the "ultimate purchasers" of the imported umbrellas.

Articles distributed in the context of an employer-employee relationship have been treated somewhat differently. In HRL 732793 (December 29, 1989), Customs held that the commercial employer, not the recipient of the gloves was the "ultimate purchaser" of disposable string knit gloves sold to the employer for distribution to their employees. (*See also* C.S.D. 89–89 (March 18, 1989); HRL 703319 (May 14, 1974); HRL 729800 (October 10, 1989); and HRL 734681 (October 16, 1992)).

Finally, there is the dichotomy which appears in the language of the current regulations, which provide that the "ultimate purchaser" of an article from a non-NAFTA country distributed as a gift is the recipient, but the "ultimate purchaser" of a similar article which is a good of a NAFTA country is the purchaser of the gift (19 CFR 134.1(d)(4)). Thus, in this instance, the identity of the "ultimate purchaser" is dependent upon the origin of the article, permitting disparate resolution for articles similarly distributed.

Therefore, in view of the absence of evidence of a contrary legislative intent or judicial interpretation, Customs is proposing to consider the "ultimate purchaser in the United States" for purposes of section 304(a) as representing only the person who is the last *purchaser in the United States,* as opposed to the last *recipient* in the United States, of the imported article in all cases regardless of either the origin of the imported article or the purpose for which the imported article is distributed.

Accordingly, in view of the foregoing discussions, Customs is proposing that § 134.35 be removed and that § 134.1(d) of the Customs Regulations (19 CFR 134.1(d)) be amended.

V. Revision of 19 CFR 134.1(d) Regarding Textiles

As previously indicated in the discussion of the definition of "country of origin," the country of origin of textile or apparel products is generally determined in accordance with the Uruguay Round Agreements Act (URAA), *supra,* section 334 (codified at 19 U.S.C. 3592). A U.S. processor of foreign textile or apparel products is the "ultimate purchaser" of such articles if such processing effects a change in the country of origin (*i.e.,* a "substantial transformation") of the imported article under the section 334 rules of origin, which are implemented under 19 CFR 102.21. Customs has taken this position in numerous rulings based upon the fact that—(1) except for determining the origin of goods processed in Israel, section 334 applies for all "origin" determinations for purposes of the "customs laws", (2) section 304 of the Tariff Act is a customs law, and (3) the origin question in "ultimate purchaser" determinations involving U.S. processing is whether, as a result of such processing, the imported article is still of "foreign origin". *See,* HRL 559625 (January 19, 1996); *See also* HRL 559627 (June 27, 1996), and HRL 559760 (July 19, 1996). Therefore, for textile or apparel products within the scope of section 334, URAA, § 134.1(d) is proposed to be amended to expressly reflect that only § 102.21 rules are applicable for determining who is the "ultimate purchaser" on the basis of the post-importation processing in the U.S.

VI. Addition of Definition of "Usual Containers"

Section 304(b) states in part that usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin. Currently, the term "usual container" is defined in § 134.22(d)(1), Customs Regulations. Since the statutory exception for section 304(b) applies to all "usual containers" used as such at the time of importation and not just to usual containers that are goods of a NAFTA country, to avoid confusion and promote clarity and understanding of the general marking requirements, Customs is proposing that the regulation establishing the definition of "usual container" be set forth in a more general area of part 134. Accordingly, Customs is proposing that § 134.22(d)(1) be removed and the text of that current section be moved to the general provisions of subpart A, as a new § 134.1(l). Other provisions relating to the marking requirements for usual containers should continue to be set forth in the specific subpart for containers with cross references to the definition in § 134.1(l) as appropriate.

VII. Articles Usually Combined

Section 134.14(b), Customs Regulations was promulgated pursuant to 19 U.S.C. 1304(a)(2) to provide that the marking on an imported article shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation. The phrase "combined with another article" was initially intended to refer to a combining of an imported article with another article without any process of manufacture or production and in such a manner that their separate identities are maintained and do not become integral parts of an article manufactured or produced in the U.S. *See* T.D. 49715 (October 4, 1938). As various rulings indicate, the scope of § 134.14 was expanded from the initial example provided therein regarding the combination of an imported article with a marked bottle. Accordingly, Customs is proposing to set forth another example to show that § 134.14 also refers to situations in which an imported article is later combined after importation with another article which is not necessarily a container.

VIII. Exceptions to Marking Requirements (Redesignated Subpart C)

1. To clarify that some of the provisions set forth under current § 134.32 pertain to articles that are not required to be marked under section 304 in the first instance, *e.g.,* as in current § 134.32(m) "products of U.S. exported and returned" or current § 134.32(j) "articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation", Customs is proposing that the first paragraph of current § 134.32 be amended. It is noted that it is proposed to redesignate current § 134.32 as § 134.22.

2. Current § 134.26 (proposed to be redesignated as § 134.34) discusses imported articles repacked or manipulated and current § 134.34 (proposed to be redesignated as § 134.24) pertains to certain repacked articles. In order to clarify the distinction between these two sections, Customs is proposing to amend current § 134.34 (proposed to be redesignated as § 134.24) to make it clear that this section only applies when both the articles and their containers are unmarked as to country of origin at the time of importation, but are intended to be repacked into containers that will be marked with the origin of the imported articles. Also, Customs is proposing to add an example to illustrate the circumstances in which certification

requirements may be imposed as part of the port director's discretion to authorize the marking exception under current § 134.32(d) (proposed to be redesignated as § 134.22(d)) when the articles will be repacked after release from Customs custody.

IX. Marking of Containers—General Requirements (Redesignated Subpart D)

Certain portions of the container marking regulations in part 134 which were promulgated by T.D. 72–262, 37 FR 20318 (1972), do not reflect current law or are otherwise out-of-date or unclear. As previously noted in this document, Customs is proposing that the definition for "usual containers" be moved to the General Provisions under subpart A. As discussed more fully below, additional modifications are needed to clarify the general requirements relating to the marking of containers. If the following changes are adopted, current §§ 134.23 and 134.24 will be removed and the provisions thereof that are not duplicative will be incorporated into § 134.32 which is proposed to be a revised and redesignated version of current § 134.22. Proposed § 134.32 will set forth the general requirements and exceptions for marking all containers.

1. Sections 304(a)(3)(A) through (K) of the Tariff Act (19 U.S.C. 1304(a)(3)(A) through (K)) provide for various circumstances where an article is excepted from the marking requirements. Section 304(b) of the Tariff Act (19 U.S.C. 1304(b)) generally provides that where an article is excepted from the marking requirements, its immediate container or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked to indicate to the ultimate purchaser the country of origin of such article. Section 304(b), however, excepts from marking usual containers in use as such at the time of importation.

In *Bausch & Lomb Inc.* v. *United States,* 17 CIT 790 (August 5, 1993), the United States Court of International Trade noted that while an importer of foreign origin eyeglass cases could insert eyeglasses into the cases so that the cases may be considered as "usual containers in use as such at the time of importation" and be excepted from marking pursuant to 19 U.S.C. 1304(b), the court stated that since the cases at issue were empty and were not being used as usual containers at the time of importation, the cases were required to be marked with their own origin at the time of importation.

It is clear from a reading of 19 U.S.C. 1304(b) that usual containers used as such at the time of importation are not required to be marked with their own country of origin whether or not they are goods of a NAFTA country. Therefore, proposed § 134.32 reflects that (1) any usual container, whether or not a good of a NAFTA country, which is used as such at the time of importation, is not required to be marked with its own country of origin and (2) any language pertaining to whether a usual container is disposable is not relevant.

2. Currently, § 134.22(a) implements 19 U.S.C. 1304(b) and states that where an article is excepted from the marking requirements, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article, whether or not the article is marked to indicate its country of origin. Also, current § 134.24(d)(2) requires the container to be marked with the country of origin of its contents in cases where the articles within the container are marked but the container is normally sold without being opened by the ultimate purchaser. To reconcile the overlap between these two provisions, the last portion of current § 134.22(a) pertaining to whether or not the article is marked is not set forth in proposed § 134.32. Current § 134.24(d)(1) is also removed because this section basically contains the same requirements that are set forth in current § 134.22(a) and (e) and repeated in proposed § 134.32(a) and (c).

3. As stated earlier, in *Bausch & Lomb, supra,* the court acknowledged that a usual container not in use as such at the time of importation is to be treated as an article, required to be marked pursuant to 19 U.S.C. 1304(a), and is not subject to the exception under 19 U.S.C. 1304(b). Current § 134.22(b), however, requires that a container or holder which itself is an imported article, shall be marked with its own origin in addition to any marking which may be required to show the country of origin of its contents. Current § 134.22(b) also requires, pursuant to Annex 311 of the NAFTA, that no such marking is required for any good of a NAFTA country which is a usual container.

Therefore, in proposed § 134.32, Customs is proposing to clarify current § 134.22(b) to distinguish between usual containers used as such at the time of importation, usual containers not used as such at the time of importation, and containers or holders which do not meet the definition of a "usual container". The last portion of current § 134.22(b) pertaining to the exception for usual containers not in use at the time of importation which is a good of a NAFTA country is proposed to be repeated in proposed § 134.32(c)(2)(i) as it was promulgated to implement a provision of the NAFTA Annex 311.

Proposed § 134.32 also reflects the removal of the last sentence in current § 134.22(d)(2) pertaining to a container which is imported empty. In addition, it is proposed to not set forth the contents of current § 134.24(c)(2) in the proposed revision as it essentially contains the same requirements as current § 134.22(b) (proposed to be contained in § 134.32(d)).

4. Currently, § 134.22(b) requires containers or holders to be marked with their own country of origin when they are treated as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Current §§ 134.23 and 134.24 provide for the marking of containers or holders designed and capable of reuse and those containers not designed for or capable of reuse (disposable vs. non-disposable containers). Customs believes the confusion created by some of these provisions stems from the incorrect premise that there is a necessary distinction between these categories of containers and the categories of "usual" versus "non-usual" containers. Since the statute exempts "usual" containers from individual marking when in use at the time of importation, every container should first be measured against the definition of "usual container" to see whether a statutory marking exemption is applicable. The provisions in current §§ 134.23 and 134.24, generally do not provide this approach. To eliminate the confusion and sometimes totally unnecessary distinctions drawn between containers which are disposable vs. non-disposable and imported empty vs. imported full, Customs is proposing to make the following regulatory changes: (1) remove current § 134.23(a) since all usual containers used as such at the time of importation are excepted from marking; (2) remove current § 134.23(b) since the substance of this provision is already incorporated in the definition of "usual containers", which Customs is proposing to be moved to subpart A of part 134; and (3) remove current § 134.24(a) since disposable containers are encompassed within the definition of "usual containers".

5. Current § 134.22(c) provides that containers or holders which bear the name and address of a person or company in the U.S. which is not the country of origin shall be marked, in close proximity to such address, with the origin of the contents. This section is analogous to current § 134.46 which,

prior to its recent amendment, required an article indicating the name of a geographic location other than the true country of origin of the article to be marked in close proximity and in comparable size lettering with the country of origin of the article preceded by the words "Made in", "Product of", or words of similar meaning. In a final rule published August 20, 1997, in the **Federal Register** (62 FR 44211, T.D. 97–72), Customs amended § 134.46 to require such special marking only if the name of the geographic location that is not the country of origin may mislead or deceive the ultimate purchaser as to the actual country of origin. Therefore, Customs is proposing to modify current § 134.22(c) (to be redesignated as § 134.32(e)) to mirror the new § 134.46.

6. Customs, in order to provide further clarity, is proposing that the requirements set forth in current §§ 134.24(b) and 134.24(c)(1), *i.e.*, pertaining to the marking of the outermost containers of disposable containers imported empty, be placed within § 134.32 (the wholly revised and redesignated § 134.22) which will provide the general marking requirements for containers. Customs is also proposing to move the requirements of current § 134.24(d)(2) and (3), to the general rules for marking containers in § 134.32.

7. Subsection (b) of 19 U.S.C. 1304 provides that where an article is excepted from the marking requirements pursuant to 19 U.S.C. 1304(a)(3)(F), (G), or (H), its usual container also shall not be subject to the marking requirements. Furthermore, 19 U.S.C. 1304(j)(1)(C) generally provides that where an article that qualifies as a good of a NAFTA country is excepted from the marking requirements pursuant to 19 U.S.C. 1304(a)(e)(E) or (J) or 19 U.S.C. 1304(j)(1)(B)(i) or (ii), its "usual container" shall not be subject to the marking requirements. Currently, § 134.22(e) implements the above statutory provisions. In order to clarify when these exceptions for marking "usual containers" are applicable, Customs is proposing that they be moved to the same section which sets forth the circumstances for required marking of usual containers. Accordingly, these exceptions are proposed to be set forth in the wholly revised and redesignated § 134.32.

X. Marking of Containers—Repacked and Processed Articles

Currently, § 134.32 contains the general exceptions to the marking requirements. *See also* 19 U.S.C. 1304(a)(3). Among the exceptions are articles set forth in current § 134.33, known as the "J-list."

In T.D. 83–155, dated October 24, 1983 (48 FR 33860), Customs amended part 134 by adding a new section, 19 CFR 134.25, which pertains to the repacking of "J-list" articles and articles incapable of being marked. While the articles subject to these exceptions are not required to be marked, the containers or holders of these articles are subject to the marking requirements. The new section was added to address the issue of repacking in the U.S. by the importer or a subsequent purchaser of articles excepted from marking, after release of such articles from Customs custody. In such cases, it was often found that the new container in which the article was repacked for sale to the ultimate purchaser was not marked, thus frustrating the intent of Congress that the ultimate purchaser in the U.S. be aware of the country of origin of the article.

To ensure that the importer properly mark the repacked articles if the importer does the repacking or that subsequent repackers are made aware of their country of origin marking obligations, § 134.25 currently requires importers to certify to the port director that: (a) if the importer does the repacking, the new container will be marked to indicate the country of origin of the article; or (b) if the article is sold or transferred, the importer will notify the subsequent repurchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

In addition, current § 134.25 specifically provides that if the importer fails to comply with the certification requirements, the importer may be subject to assessment of liquidated damages under 19 CFR 134.54 for failure to mark or redeliver merchandise released from Customs custody and marking duties pursuant to 19 U.S.C. 1304(h). This section further provides that the importer also may be subject to a penalty under 19 U.S.C. 1592, if fraud or negligence is involved.

By T.D. 84–127 dated July 2, 1984 (49 FR 22793), Customs added 19 CFR 134.26 to the regulations which was intended to cover those situations involving the repacking of marked articles in retail containers (*e.g.*, blister packs) after their release from Customs custody. As in current 19 CFR 134.25, § 134.26 currently requires the importer to certify to the port director that: (a) if the importer does the repacking, the country of origin information appearing on the article will not be obscured or concealed, or else the container will be marked in accordance with applicable law and regulation; or (b) if the article is sold or transferred, the importer will notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. As under current 19 CFR 134.25, under current § 134.26, the importer may be subject to the imposition of liquidated damages, marking duties and penalties for failure to comply with the notification and certification requirements.

Current §§ 134.25 and 134.26 were intended to apply to articles which are repacked after importation, and the repacker is not the 'ultimate purchaser" under 19 CFR 134.1(d) as a result of operations performed in the U.S. In cases where the repacker is the ultimate purchaser neither the article nor the container in which it is repacked is required to be marked. Consistent with the foregoing, Customs has frequently held that "repacking" to an article that may have been further processed, but not substantially transformed. *See, e.g.*, HRL 734989 (June 23, 1993).

However, the language in current § 134.25 is imprecise and does not convey the intent, as noted, that the regulations were intended to cover not only those articles that are subject to mere repackaging but also articles that have been processed but not substantially transformed (or which have not become a good of the U.S. under the NAFTA Marking Rules). Current § 134.26 does cover articles 'repacked or manipulated"; however, this provision similarly fails to indicate that it is not applicable when the manipulation results in a substantial transformation. In addition, the penalty provisions in both sections do not spell out the extent of the importer's statutory liability, which continues (unless the notice requirements are satisfied) even though the article is sold or transferred to subsequent repackers until the article reaches the ultimate purchaser.

It is further noted that the heading of current 19 CFR 134.25 refers only to certain articles that are excepted from marking, *i.e.*, J-list articles and articles incapable of being marked. Since this provision should encompass all articles excepted from individual marking but not from marking on their containers upon repacking or processing, Customs is proposing that the title and body of the provision be amended to reflect that the certification requirements extend to such other articles.

Therefore, Customs is proposing changes consistent with the foregoing discussion to clarify the scope of current §§ 134.25 and 134.26, and the extent of

the importer's liability under 19 U.S.C. 1304(a):

In accordance with prior Customs rulings, these regulations are proposed to be amended to provide that the term "repacker" shall include a U.S. party who also processes the articles when such operations in the U.S. do not amount to a substantial transformation (including an origin change under the NAFTA Marking Rules). This definition will make clear that there may be more than one repacker, prior to transfer to an ultimate purchaser. Examples will illustrate how the importer's statutory liability continues through all repackers until the article reaches the ultimate purchaser unless the certification requirements under the regulations are satisfied.

The definition of "repacker" is proposed to be included as paragraph (b) in both proposed redesignated § 134.33 (which consists basically of current § 134.25) and § 134.34 (which consists basically of current § 134.26). Current paragraphs (b), (c), (d), and (e) of § 134.25 are proposed to become paragraphs (c), (d), (e) and (f), respectively, of proposed § 34.33; and paragraphs (b), (c), (d), (e) and (f) of current § 134.26 are proposed to become paragraphs (c), (d), (e), (f), and (g), respectively, of proposed § 134.34.

Finally, since, as proposed, paragraphs (b) of both proposed §§ 134.33 and 134.34 will include a processor within the definition of "repacker," the heading of § 134.34 will reflect that the section covers only "repacked" articles. There is no necessity for the term "manipulated" included within the heading as it is currently included within § 134.26.

XI. Removal of 19 CFR 134.47

In a final rule published in the **Federal Register** (62 FR 44211) on August 20, 1997, T.D. 97–72, § 134.46 was amended to ease the requirement that whenever words appear on imported articles indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity and in comparable size lettering to those words preceded by the words "Made in," "Product of," or words of similar meaning. As a result of this amendment, the special marking requirements of § 134.46 are triggered only if the non-origin reference "may mislead or deceive the ultimate purchaser as to the actual country of origin."

Section 134.47 (19 CFR 134.47) provides that when as part of a trademark or trade name or there appears as part of souvenir marking, the name of a location in the U.S., or the words "United States" or "America", the article shall be legibly, conspicuously and permanently marked to indicate the name of the country of origin of the article preceded by "Made in," "Product of," or other similar words, in close proximity or in some other conspicuous location. Unlike § 134.46, § 134.47 does not require the name of the country of origin to appear in at least a comparable size lettering as the non-origin reference. Section 134.47 is also less stringent than § 134.46 in that the latter provision requires the country of origin to appear "in close proximity" to the non-origin reference, while the former provision only requires that the country of origin appear "in close proximity to the U.S. locality information or in some other conspicuous location."

Customs believes there is no legal or practical reason for maintaining the disparity between the special marking requirements set forth in § 134.47 and those set forth in § 134.46, as amended by T.D. 97–72. The purpose of the requirements in both provisions, when triggered, is the same: to prevent the ultimate purchaser from being misled or deceived as to the actual country of origin of the article. A reference to a place other than the country of origin on an imported article or its container has the same potential for misleading or deceiving the ultimate purchaser when it appears as part of a trademark, trade name or souvenir marking as when it does not. Therefore, if such marking may mislead or deceive the ultimate purchaser as to the actual country of origin, it is immaterial that such marking appears as part of a trademark, trade name or souvenir marking, and the special marking requirements of § 134.46, should be applicable. Accordingly, Customs proposes to remove § 134.47 from the regulations. If this proposal is adopted, § 134.46, when triggered, will apply to any non-origin type reference, including those that are part of a trademark, trade name or souvenir marking.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Regulatory Flexibility Act

Insofar as the proposed amendments merely clarify existing regulations, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Canada, Country of origin marking, Customs duties and inspection, Imports, Labeling, Marking, Mexico, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendment

It is proposed to amend part 134, Customs Regulations (19 CFR part 134) as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.1 (19 CFR 134.1) is proposed to be amended by revising paragraphs (a), (b) and (d) and adding a new paragraph (l) to read as follows:

§ 134.1 Definitions.

* * * * *

(a) *Country.* "Country" means the political entity known as a nation. In addition, colonies, possessions, or protectorates outside the boundaries of the mother county may be considered separate countries. For other territorial areas, advice received from the U.S. Department of State or appropriate interagency council will be considered for determining whether a particular

territorial area should be treated as a "country" for marking purposes.

(b) *Country of origin.* "Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part; for a non-textile or non-apparel good of a NAFTA country, this determination will be made pursuant to the NAFTA Marking Rules. Except when determining whether a textile or apparel article is a product of Israel, the country of origin of all textile or apparel products will be determined in accordance with the rules set forth in § 102.21 of this chapter.

* * * * *

(d) *Ultimate purchaser.* The "ultimate purchaser" is generally the last person in the United States who purchases the good in the form in which it was imported.

(1) *Where a substantial transformation of an imported article has occurred as a result of processing in the United States.*

(i) *Non-textile or non-apparel products of a NAFTA country.* If a non-textile or non-apparel good of a NAFTA country will be used in the United States in manufacture, the manufacturer is the "ultimate purchaser" if it subjects the imported article to a process that would result in the good becoming a good of the United States under the NAFTA Marking Rules. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accordance with this part.

(ii) *Non-textile or non-apparel products other than goods of a NAFTA country.* If a non-textile or non-apparel imported article other than a good of a NAFTA country will be used in the United States in manufacture, the manufacturer is the "ultimate purchaser" if the processing results in a substantial transformation of the imported article, *i.e.*, the creation of a new article having a name, character, and use differing from that of the imported article, in accordance with the principle set forth in the case of *United States* v. *Gibson-Thompson Co.*, 27 C.C.P.A. 267 (C.A.D. 98).

(iii) *Textile or apparel products.* If an imported textile or apparel product will be processed in the United States, the processor is the "ultimate purchaser" if it subjects the imported article to a process that would result in the good becoming a good of the United States under § 102.21 of this chapter.

(2) *Where no substantial transformation of an imported article has occurred during processing in the United States.*

(i) *Non-textile or non-apparel products of a NAFTA country.* If a non-textile or non-apparel good of a NAFTA country will be used in manufacture in the U.S. and the manufacturing process does not result in one of the changes set forth in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the "ultimate purchaser" and the article shall be marked in accordance with this part.

(ii) *Non-textile or non-apparel products other than goods of a NAFTA country.* For non-textile or non-apparel products other than goods of a NAFTA country, if the manufacturing process does not result in a substantial transformation of the imported article, then the consumer or user of the article who obtains the article after the processing will be regarded as the "ultimate purchaser" and the article must be marked in accordance with this part.

(iii) *Textile or apparel products.* If an imported textile or apparel product will be further processed in the United States and the processing does not result in one of the changes set forth in § 102.21 of this title as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the "ultimate purchaser" and the imported textile or apparel product shall be marked in accordance with this chapter.

(3) *Goods sold at retail.* If an article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. For example, where an imported screwdriver is repackaged in the U.S. as part of a tool kit, the "ultimate purchaser" is the retail purchaser, not the repackager.

(4) *Gifts or Samples.* If the imported article is distributed as a gift or sample free of charge, the last person who purchases the gift or sample is the "ultimate purchaser." For example, where imported printed material is distributed as part of an unsolicited mailing, the recipient is not the "ultimate purchaser."

(5) *Articles purchased by an employer.* If an imported article is purchased by an employer on behalf of an employee, then the employer is the "ultimate purchaser" of the article. However, if the employee contributes to the purchase of the imported article, then the employee is considered the "ultimate purchaser" of the article. For example, where imported work gloves are sold to industrial supply distributors, who sell them to commercial employers (*e.g.*, meat cutters, hospitals, restaurant food handlers) which distribute the gloves to their employees for use on the premises, the "ultimate purchaser" of the imported articles is the commercial employer.

(l) Usual containers—A "usual container" means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

3. It is proposed to amend § 134.14 (19 CFR 134.14) by removing paragraph (b); redesignating paragraph (c) as paragraph (b); and adding two examples following paragraph (a) to read as follows:

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser.*

* * * * *

Example 1. A ball point pen of Israeli origin and metal pen holder of Mexican origin are packaged together as a set in the United States. Pursuant to paragraph (a) of this section, the pen must be marked in such a manner as to distinguish the Israeli origin pen from the Mexican component, and it would be appropriate to mark the set "Pen Made in Israel, Holder Made in Mexico".

Example 2. Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "Label made (or printed) in (name of country)" or words of similar meaning. See subpart D of this part for marking of bottles, drums, or other containers.

* * * * *

4. It is proposed to redesignate subpart C, "Marking of Containers or Holders", consisting of §§ 134.21 through 134.26 as subpart D. It is proposed to redesignate §§ 134.21 and 134.22, respectively, as §§ 134.31 and 134.32, remove §§ 134.23 and 134.24,

and redesignate §§ 134.25 and 134.26, respectively, as §§ 134.33 and 134.34.

5. It is proposed to redesignate subpart D, "Exceptions to Marking Requirements", consisting of §§ 134.31 through 134.36, as subpart C. It is proposed to redesignate §§ 134.31 through 134.34, respectively, as §§ 134.21 through 134.24, remove § 134.35, and redesignate § 134.36 as § 134.25.

6. It is proposed to amend redesignated § 134.22 by revising the introductory paragraph to read as follows:

§ 134.22 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are either excepted from or are not subject to the marking requirements (*See* subpart D of this part for marking of containers):

* * * * *

7. It is proposed to amend redesignated § 134.24 by revising the heading and introductory paragraph (a) and adding an example after paragraph (a)(2) to read as follows:

§ 134.24 Repacked unmarked articles and containers.

(a) If imported articles or their outside containers are both not marked with the origin of the articles at the time of importation, but the articles are intended to be repacked into containers marked with the country of origin of the articles, an exception under § 134.22(d) may be authorized in the discretion of the port director under the following conditions:

* * * * *

Example. Unmarked surgical pack wrappers are imported in bulk cartons which are also not marked, but will be repacked by the importer into containers for sale exclusively to hospitals. Since the wrappers at the time of importation are not individually marked to indicate their country of origin or imported in marked containers that will reach the hospitals (ultimate purchasers), as a condition for granting an exception under § 134.22(d) the port director has discretion to require that—the importer mark the repacked wrappers under Customs supervision; or the importer execute a written certification that the repacked wrappers will be properly marked and submit a sample of the remarked wrappers.

* * * * *

8. It is proposed to revise redesignated § 134.32 to read as follows:

§ 134.32 General rules for marking of containers or holders.

(a) *Marking the origin of contents*—(1) *Contents excepted from marking.* Except as provided in paragraph 134.32(b)(1) of this section, whenever an article is excepted from the marking requirements by subpart C of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article.

Example 1. Dog rawhide bones incapable of being marked by means of a sticker, dye, ink, or tag because of their porous, rough, and uneven texture and potential harm to the animal are excepted from individual country of origin marking pursuant to § 134.22(a), but their outermost container or holder in which the bones ordinarily reach the ultimate purchaser shall be marked to indicate the country origin of the bones.

Example 2. Tomatoes imported from Mexico are excepted from the country of origin marking requirements pursuant to § 134.23, as J-List articles. When imported in master containers, these containers must be marked with the origin of the tomatoes. Furthermore, if the tomatoes are repacked into trays for distribution and sale at retail grocery stores, the trays must be marked with the origin of the tomatoes

Example 3. An ancient Turkish statue is imported into the United States. Pursuant to § 134.22(i) it is excepted from individual country of origin marking requirements. The container in which the statue reaches the ultimate purchaser must be marked to indicate the origin of the statue.

(2) *Contents not excepted from marking.* When an article not excepted from marking is sold in a container or holder that is normally not opened by the ultimate purchaser or the marking on the article is not visible through the container (*e.g.*, individually wrapped soap bars or tennis balls in a vacuum sealed can), the container shall be marked to indicate the country of origin of its contents, regardless of whether the contents are marked.

Example 1. Surgical instruments of foreign origin are each packed inside opaque sealed bags, and are sold exclusively to hospitals. Although the surgical instruments are individually etched with their country of origin pursuant to § 134.43(a), since the ultimate purchasers, i.e., the hospitals cannot view the marking through the opaque bag, the outside container in which the hospitals receive the surgical instruments shall be marked with the origin of the surgical instruments.

Example 2. Small statues or figurines are articles that purchasers typically remove from their box to examine for damage prior to purchase. Accordingly, if figurines of foreign origin are legibly marked with their country of origin in a conspicuous place, their unsealed containers do not have to be marked with the country of origin, provided the containers themselves do not contain any markings that would trigger the application of paragraph (e) of this section 134.32(e).

(b) *Exception for marking the origin of contents*—(1) *Certain excepted articles.* The outermost container or holder in which the article ordinarily reaches the ultimate purchaser is not required to be marked if:

(i) It is a container or holder of an article excepted from marking pursuant to § 134.22(f), (g), or (h); or

(ii) It is a container of a good of a NAFTA country which is excepted from marking pursuant to § 134.22(e), (f), (g), (h), (i), (p), or (q).

Example. A major department store imports holiday decorations such as artificial trees, garlands, and wreaths of French-origin, and ornaments of German-origin only for use in the decoration of their stores and not for resale. Provided local port officials are satisfied that the ultimate purchaser, *i.e.*, the department store, is aware of the origins of the decorations and that the decorations will not be resold in the United States, both the decorations and their cartons in which the decorations are packed are excepted from marking pursuant to § 134.22(f).

(c) *Marking of the origin of usual containers*—(1) *Usual Container used as such at the time of importation.* A usual container, as defined in § 134.1(l) which is in use at the time of importation is not required to be marked with its own country of origin regardless whether it is reusable or not.

Example. Sunglasses of foreign origin are each packed and imported inside eyeglass cases of foreign origin. The sunglasses are marked as to their origin by means of an adhesive sticker on the lenses. As the eyeglass cases are considered usual containers and are used as such at the time of importation, they are not required to be marked with their own country of origin provided local Customs officials at the port of entry are satisfied that the eyeglass cases will reach the ultimate purchaser with the sunglasses packed therein.

(2) *Usual container not used as such at the time of importation.* (i) Except for a good of a NAFTA country, a usual container, as defined in § 134.1(l), which is not used as such at the time of importation shall be marked to indicate clearly the country of its own origin, unless the container itself is excepted from marking under subpart C of this part. A good of a NAFTA country which is a usual container is not required to be individually marked with its own origin whether or not in use as a usual container at the time of importation.

Example. Wooden crates of Mexican and Guatemalan origin are imported into the United States by the truckload and stacked upon each other. Once they are imported, they are sold to farmers who use them to transport their Florida tomatoes to market. As the wooden crates may be considered the usual containers of tomatoes, but are not used as such at the time of importation, the crates of Guatemalan origin each must be marked to clearly indicate that they are of Guatemalan origin, such as "Crate Made in Guatemala". However, since goods of a

NAFTA country that are usual containers are not required to be marked, the crates of Mexican origin that are imported by the truckload will not be required to be marked, provided Customs officials at the port of entry are satisfied that the Mexican crates will be used as usual containers after importation.

(ii) Regardless of the origin, if usual containers not in use as such at the time of entry are packed and imported in multiple units (dozens, gross, *etc.*), only the outermost container in which the usual containers reach the ultimate purchaser in the U.S. needs to be marked.

Example. Unmarked petri dishes of Canadian origin are imported inside large cartons and sold to Biologics Company in the United States. Biologics who fills the petri dishes with microorganisms for sale to various customers in the science community, is the ultimate purchaser of the dishes. Since the petri dishes are the usual containers of microorganisms, but are not used as such at the time of importation, the large carton (outer container) in which the petri dishes are packed and imported must be marked to indicate their Canadian origin.

(iii) If a usual container is marked with its own country of origin at the time of importation and the marking will be visible after it is filled, the marking shall clearly indicate that the named country pertains to the container only and not the contents. For example, if bottles, drums, or other containers imported empty, to be filled in the United States, are individually marked with their own origin, they shall be marked with such words as "Bottle (or container) made in (name of country)".

(d) *Container or holder other than usual containers.* Regardless of origin, a container or holder considered as an imported article under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and not considered a "usual container" as defined in § 134.1(l), shall be marked to clearly indicate the country of its own origin in addition to any marking which may be required to show the country of origin of its contents, except when such container or holder itself is excepted from marking under subpart C of this part.

Example 1. Suntan lotion of French origin is imported inside a plastic bracelet of Pakistani origin. Since the bracelet is not a container in which suntan lotion ordinarily reaches the ultimate purchaser, the bracelet is not considered a usual container and must be marked with its own country of origin, along with the origin of the suntan lotion if the origins are not the same. An appropriate marking would be "Suntan lotion Made in France, Bracelet Made in Pakistan".

Example 2. Necklaces of Italian origin illegibly stamped "Italy" are imported into the United States for retail sale. At the time of importation, each necklace is packed in a jewelry box of Taiwanese origin constructed of a hard-shell plastic covered by a gray velvet type material. The boxes open and close with the aid of a hinge, and the inside of the boxes is covered with a satin material. As the jewelry boxes are not usual containers, they must be marked to clearly indicate their own origin, along with the origin of the necklaces since the necklaces themselves are not legibly marked. A marking such as "Box Made in Taiwan; Necklace Made in Italy" would be acceptable.

(e) *Marking of containers of imported articles when a name of country or locality other than the country of origin of its contents appears on a container or holder.* In any case in which the words "United States", or "American", the letters "U.S.A.", any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the contents were manufactured or produced appear on the container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the contents, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in", "Product of", or other words of similar meaning.

Example. The Canadian company "Courrege" distributes bracelets of French origin. The bracelets will be sold in jewelry boxes containing the words "Distributed by Courrege, Ottawa", and the bracelets are legibly stamped "Made in France". As the words "Distributed by Courrege, Ottawa" may mislead the ultimate purchaser that Canada is the country of origin, the boxes must be labeled "Made in France" or similar words on the same side as the words "Distributed by Courrege, Ottawa" and in at least a comparable size.

9. It is proposed to amend redesignated § 134.33 as follows:

a. Revise the heading;

b. Remove in paragraph (a) the words at the beginning of the first sentence "If an article subject to these requirements is intended to be repacked in new containers" and add in their place the words "With the exception of articles whose containers are not required to be marked under § 134.32(b) of this part, if an article listed under § 134.23 or otherwise excepted from the marking requirements under § 134.22 is intended to be repacked in new containers"

c. Redesignate current paragraphs (b) through (e), respectively as new paragraphs (c) through (f);

d. Add a new paragraph (b); and

e. Add three examples following redesignated paragraph (f).

The revisions and additions read as follows:

§ 134.33 Containers or holders for repacked J-list articles and other articles excepted from marking.

* * * * *

(b) *Repacker.* A "repacker" means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

* * * * *

(f) *Duties and penalties.*

* * * * *

Example 1. The importer enters bulk packed articles from China which are incapable of being marked. The articles are not processed in any way while in the importer's possession but are sold to a person in the U.S. who will repackage the articles into individual containers without further processing for sale to retail purchasers. The importer does not notify the repacker of the marking requirements and provide the port director with a certification pursuant to this section. The articles are excepted from marking under § 134.22(a) of this part. Since the containers of the articles are not excepted from marking under § 134.32(b), and the transferee is considered a repacker under paragraph (b) of this section, the importer's failure to comply with the certification requirements may subject him to duties and penalties as provided under paragraph (e) of this section. The importer would also be obligated to comply with the certification requirements under similar facts if the articles were on the "J-list" (§ 134.23).

Example 2. The importer enters an article from Mexico which was produced more than 20 years ago, and in its original packaging resells it to a person in the U.S. who repacks it for sale to an ultimate purchaser. Under § 134.22(i), the article is excepted from the marking requirements. In addition, since the article is a good of a NAFTA country, the container is also excepted from the marking requirements pursuant to § 134.32(b). Therefore, the certification requirements of this section are not applicable.

Example 3. The importer enters an article from China which is on the J-list. The container housing the article is properly marked with China as the country of origin. The importer sells the article in its original packaging to a customer in the U.S. who processes it and then repacks it for sale to a third party. The third party in turn processes the article and repacks it for sale to a retail customer who consumes the article. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). Although the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements, the immediate customer repacks the article in

properly marked containers. However, the third party processor fails to mark the new container after processing and repacking the article, as required under 19 U.S.C. 1304. In this example, the article is excepted from individual marking but each new container in which the article is repacked is required to be marked with the country of origin, until the article reaches the ultimate purchaser, in this case, the retail customer. As a result of the importer's failure to comply with the certification requirements of this section the importer may be subject to the assessment of marking duties and penalties as provided under paragraph (e) of this section.

10. It is proposed to amend redesignated § 134.34 as follows:

a. Revise the heading;

b. Redesignate current paragraphs (b), (c), (d), (e) and (f), respectively, as new paragraphs (c), (d), (e), (f) and (g);

c. Add a new paragraph (b); and

d. Add an example after redesignated paragraph (f).

The revisions and additions will read as follows:

§ 134.34 Repacked marked articles.

* * * * *

(b) *Repacker.* A "repacker" means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but, as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

* * * * *

(f) *Duties and penalties.*

* * * * *

Example. The importer enters articles from China which are individually marked with their country of origin. He sells the articles in their bulk packaging to a customer in the U.S. who processes the articles and also repacks them in bulk for sale to a third party. The third party repacks them into blister packs for sale to retail customers. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). However, the blister packages obscure the country of origin marking on the article. Although it is clear that the articles will be repackaged for retail sale, the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements. In this example, having reasonable knowledge of the subsequent repacking of the articles into retail containers after release from Customs custody imposes an obligation upon the importer to notify its U.S. customer of the marking requirements and to provide the required certification to the port director. Since the importer has failed to comply with the certification requirements of this provision, and the retail packages obscure country of origin marking, the importer may be subject to duties and penalties as provided under paragraph (f) of this section.

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§ 134.47 [Removed]

11. It is proposed that § 134.47 (19 CFR 134.47) be removed.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 19, 2000.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–1682 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105089–99]

RIN 1545–AX38

Guidance Under Section 356 Relating to the Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance relating to nonqualified preferred stock. The proposed regulations address the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain reorganizations and distributions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for 10 a.m., May 31, 2000, must be received by May 10, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105089–99), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105089–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard E. Coss, (202) 622–7790; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 354, 355, 356, and 1036 of the Internal Revenue Code (the Code). Section 1014 of the Taxpayer Relief Act of 1997 (TRA of 1997), Public Law 105–34, enacted on August 5, 1997, amended sections 351, 354, 355, 356, and 1036 of the Code. As amended, these sections, in general, provide that nonqualified preferred stock (as defined in section 351(g)(2)) (NQPS) received in an exchange or distribution will not be treated as stock or securities but, instead, will be treated as "other property" or "boot." As a result, the receipt of NQPS in a transaction occurring after the NQPS provisions are effective will, unless a specified exception applies, result in gain (or, in some instances, loss) recognition. Section 351(g)(4) provides authority to issue regulations to carry out the purposes of these provisions.

Section 351(g)(2)(A) defines NQPS as preferred stock if (1) the holder has the right to require the issuer or a related person to redeem or purchase the stock, (2) the issuer or a related person is required to redeem or purchase the stock, (3) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or (4) the dividend rate on the stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. Factors (1), (2), and (3) above will cause an instrument to be NQPS only if the right or obligation may be exercised within 20 years of the date the instrument is issued and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

These rights or obligations do not cause preferred stock to be NQPS in certain circumstances described in section 351(g)(2)(C). In one such

exception, contained in section 351(g)(2)(C)(i)(II), a redemption or purchase right shall not cause stock to be NQPS if the stock containing the right is transferred in connection with the performance of services for the issuer or a related person (and represents reasonable compensation), and the right may be exercised only upon the holder's separation from service.

The NQPS provisions also provide certain exceptions to the treatment of NQPS as boot. Under sections 354(a)(2)(C), 355(a)(3)(D), and 356(e)(2), NQPS is treated as stock, and not other property, in cases where the NQPS is received in exchange for, or in a distribution with respect to, NQPS. As a result, the receipt of NQPS in exchange for NQPS will not result in gain or loss recognition.

Under prior law, preferred stock generally did not constitute boot in a reorganization or in a distribution under section 355 of the Code. The legislative history of the NQPS provisions indicates that Congress was concerned about nonrecognition transactions in which a secure preferred stock instrument is received in exchange for common stock or riskier preferred stock. The committee reports state that "[c]ertain preferred stocks have been widely used in corporate transactions to afford taxpayers non-recognition treatment, even though the taxpayers may receive relatively secure instruments in exchange for relatively risky investments," and that "[t]he Committee believes that when such preferred stock instruments are received in certain transactions, it is appropriate to view such instruments as taxable consideration, since the investor has often obtained a more secure form of investment." H.R. Rep. No. 148, 105th Cong., 1st Sess. 472 (1997); S. Rep. 33, 105th Cong., 1st Sess. (1997).

The NQPS provisions apply to transactions after June 8, 1997, but will not apply to any transaction (1) made pursuant to a written agreement which was binding on such date and at all times thereafter, (2) described in a ruling request submitted to the IRS on or before such date, or (3) described in a public announcement or filing with the Securities and Exchange Commission on or before such date. Section 1014(f) of TRA of 1997.

A temporary regulation published as T.D. 8753 in the **Federal Register** on January 6, 1998, provides that, notwithstanding contemporaneously issued final regulations treating certain rights to acquire stock as securities that can be received tax-free in reorganizations and section 355 distributions, a right to acquire NQPS received in exchange for stock other than NQPS (or for a right to acquire stock other than NQPS) will not be treated as a security, and that NQPS received in exchange for stock other than NQPS (or for a right to acquire stock other than NQPS) will not be treated as stock or a security. The temporary regulation added § 1.356–6T, and applies to NQPS (or a right to acquire such stock) received in connection with a transaction occurring on or after March 9, 1998 (other than transactions described in section 1014(f)(2) of TRA of 1997).

Explanation of Provisions

The proposed regulations address three technical issues relating to the question of whether certain preferred stock instruments qualify as NQPS.

The first issue addressed by the proposed regulations is whether stock described in section 351(g)(2) that was issued in a transaction on or before June 8, 1997, qualifies as NQPS (even though the receipt of such stock would not have been boot because the transaction in which it was received occurred prior to the NQPS provisions' effective date). Although the NQPS provisions generally are effective with respect to transactions occurring after June 8, 1997, neither the effective date provisions of section 1014(f) of TRA of 1997 nor the legislative history of the NQPS provisions addresses this issue.

The proposed regulations provide that stock described in section 351(g)(2) is NQPS regardless of the date on which the stock is issued. The IRS and Treasury believe that this represents the proper interpretation of the NQPS provisions; a contrary interpretation would give rise to results that are inconsistent with other NQPS provisions and their underlying policy.

For example, assume that corporation (T) issues preferred stock described in section 351(g)(2) to shareholder (X) in 1996, and that X surrenders the T stock and receives NQPS of acquiring corporation (P) in a reorganization occurring after June 8, 1997 (when the NQPS provisions are effective). If the T preferred stock received in 1996 is not NQPS, X will recognize gain (if any) on the exchange. This result is unwarranted, because X is not receiving a more secure type of investment for a relatively risky type of investment, and exchanges of NQPS for NQPS are otherwise governed by the nonrecognition rules of sections 354, 355, and 356.

The second issue addressed by the proposed regulations is the treatment of NQPS received in a reorganization in exchange for (or in a distribution with respect to) preferred stock that is not NQPS solely because, at the time the original stock was issued, a redemption or purchase right was not exercisable until after a 20-year period beginning on the issue date, or a redemption or purchase right was exercisable within a 20-year period but was subject to a contingency which made remote the likelihood of the redemption or purchase, or, in the case of an issuer's right to redeem or purchase stock described in section 351(g)(2)(A)(iii), was unlikely to be exercised within a 20-year period beginning on the issue date (or because of any combination of these reasons). To illustrate, assume that after June 8, 1997, T issues preferred stock to X that permits the holder to require T to redeem the stock on demand, but not before the stock is held for 22 years. Assume that seven years later, the T stock is exchanged in a reorganization for P preferred stock with substantially identical terms that permits the holder to require P to redeem the stock after 15 years.

Technically, this transaction could be viewed as a taxable exchange because X is receiving P stock that meets the definition of NQPS in exchange for T stock that is not NQPS (QPS). However, the IRS and Treasury believe that nonrecognition treatment is appropriate because the P stock represents a continuation of the original investment in the T stock.

The proposed regulations provide a rule that treats the P stock received in such transactions as QPS if the P stock is substantially identical to the T preferred stock surrendered (or the T stock on which a distribution is made). The substantially identical requirement is necessary to ensure that this rule does not permit the NQPS provisions to be circumvented through exchanges of QPS for more secure NQPS. The P stock is considered to be substantially identical to the T stock if two conditions are met. The first condition is that the P stock does not contain any terms which, in relation to the terms of the T stock, decrease the period in which a redemption or purchase right will be exercised, increase the likelihood that such a right will be exercised, or accelerate the timing of the returns from the stock instrument (including the receipt of dividends or other distributions). The second condition is that, as a result of the receipt of P stock in the transaction, the exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the T stock. To illustrate the two conditions, if the P stock contains a

term that permits the stock to be redeemed before the date on which the T stock could be redeemed, or if, at the time of the transaction, the T stock is not more likely than not to be redeemed within a 20-year period beginning on the issue date of the T stock but the P stock is more likely than not to be redeemed within a 20-year period beginning on the issue date of the T stock, the P stock is not substantially identical to the T stock.

Under this rule, the P stock received will continue to be treated as QPS in subsequent transactions, and similar principles will apply to those transactions. For example, if the P stock is later exchanged in a reorganization for substantially identical stock of another acquiring corporation, the acquiring corporation stock will also be treated as QPS. However, if the P stock is later exchanged for stock described in section 351(g)(2) that is not substantially identical, the receipt of the stock will be treated as boot.

The third issue addressed by the proposed regulations is how to interpret the provision that exempts from the definition of NQPS certain preferred stock containing a purchase or redemption right that may only be exercised on the holder's separation from service (compensation stock). To be exempted from the definition of NQPS under this provision, stock must be "transferred in connection with the performance of services" and must represent "reasonable compensation." A commentator has questioned how these requirements apply in the context of a reorganization or distribution. The concern is that, when an employee of T receives P preferred stock in a reorganization in exchange for T stock of equal value, the P stock received could be considered transferred in exchange for stock (rather than for services), or could be considered not to represent reasonable compensation (because the P stock received in the equal value exchange represents no additional compensation to the employee). The legislative history of the NQPS provisions does not address these ambiguities.

The IRS and Treasury believe that the exemption for compensation stock is intended to apply in situations where an employee previously received compensation stock and then surrenders that stock in a reorganization in exchange for new compensation stock containing a similar purchase or redemption right that can only be exercised upon separation from service. The proposed regulations provide a rule that treats the P preferred stock received in such transactions as satisfying the "transferred in connection with the performance of services" and the "reasonable compensation" requirements if the T stock surrendered (or the T stock on which a distribution is made) was originally transferred to the T employee in connection with the performance of services and represented reasonable compensation at the time of the transfer. This rule applies regardless of whether the T stock is common or preferred stock. No inference is intended regarding the meaning of the phrases "transferred in connection with the performance of services" and "reasonable compensation" for purposes other than the exemption from the definition of NQPS in section 351(g)(2)(C)(i)(II).

The proposed regulations also provide that the principles of the rules described above apply to transactions involving rights to acquire NQPS that are subject to § 1.356–6T.

Proposed Effective Date

The proposed regulations are proposed to be effective for transactions on the date that final regulations are published in the **Federal Register**. Notwithstanding the prospective effective date of the proposed regulations, the IRS and Treasury believe that the regulations prescribe the proper treatment of the transactions they address, and the IRS generally will not challenge return positions consistent with the regulations. However, a transaction involving rights to acquire NQPS that occurs before the effective date of § 1.356–6T will be treated in accordance with the law governing rights to acquire stock in effect at that time.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies, if written) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how the regulations may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 31, 2000, beginning at 10 a.m., in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the hearing access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 10, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Richard E. Coss, Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the

following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.354–1 also issued under 26 U.S.C. 351(g)(4).

Section 1.355–1 also issued under 26 U.S.C. 351(g)(4). * * *

Section 1.356–7 also issued under 26 U.S.C. 351(g)(4). * * *

Section 1.1036–1 also issued under 26 U.S.C. 351(g)(4). * * *

Par. 2. Section 1.354–1 is amended by adding paragraph (f) as follows:

§ 1.354–1 Exchanges of stock and securities in certain reorganizations.

* * * * *

(f) *Nonqualified preferred stock.* See § 1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See § 1.356–7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 3. Section 1.355–1 is amended by adding paragraph (d) as follows:

§ 1.355–1 Distributions of stock and securities of a controlled corporation.

* * * * *

(d) *Nonqualified preferred stock.* See § 1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See § 1.356–7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 4. Section 1.356–7 is added to read as follows:

§ 1.356–7 Rules for treatment of nonqualified preferred stock and other preferred stock received in certain transactions.

(a) *Stock issued prior to effective date.* Stock described in section 351(g)(2) is nonqualified preferred stock (NQPS) regardless of the date on which the stock is issued. However, sections 351(g), 354(a)(2)(C), 355(a)(3)(D), 356(e), and 1036(b) do not apply to any transaction occurring prior to June 9, 1997, or to any transaction occurring after June 8, 1997, that is described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, 921.

(b) *Receipt of preferred stock in exchange for (or distribution on) substantially identical preferred stock* (1) *General rule.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock is not NQPS, even though it is described in section 351(g)(2), if it is received in exchange for (or in a distribution with respect to) preferred stock (the original preferred stock) that is not NQPS (QPS), provided—

(i) The original preferred stock is QPS solely because, on its issue date, a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) was not exercisable until after a 20-year period beginning on the issue date, the right or obligation was exercisable within the 20-year period beginning on the issue date but was subject to a contingency which made remote the likelihood of the redemption or purchase, or the issuer's (or a related party's) right to redeem or purchase the stock was not more likely than not to be exercised within a 20-year period beginning on the issue date, or because of any combination of these reasons; and

(ii) the stock received is substantially identical to the original preferred stock.

(2) *Substantially identical.* The stock received is substantially identical to the original preferred stock if—

(i) the stock received does not contain any term or terms which, in relation to any term or terms of the original preferred stock, decrease the period in which a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) may be exercised, increase the likelihood that such a right or obligation may be exercised, or accelerate the timing of the returns from the stock instrument, including the timing of actual or deemed dividends or other distributions received on the stock; and

(B) as a result of the exchange or distribution, exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the original preferred stock.

(3) *Treatment of stock received.* The stock received will continue to be treated as QPS in subsequent transactions involving such stock, and the principles of this paragraph (b) apply to such transactions as though the stock received is the original preferred stock issued on the same date as the original preferred stock.

(c) *Stock transferred for services.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock containing a right or obligation described in clause (i), (ii) or (iii) of section 351(g)(2)(A) that is exercisable only upon the holder's separation from service from the issuer or a related person (as described in section 351(g)(3)(B)) will be treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II), if such preferred stock is received in exchange for (or in a distribution with respect to) existing stock containing a similar right or obligation (exercisable only upon separation from service) and the existing stock was transferred in connection with the performance of services for the issuer or a related person (and represented reasonable compensation when transferred). In applying the rules relating to NQPS, the preferred stock received will continue to be treated as transferred in connection with the performance of services (and representing reasonable compensation) in subsequent transactions involving such stock, and the principles of this paragraph (c) apply to such transactions.

(d) *Rights to acquire stock.* For purposes of § 1.356–6T, the principles of paragraphs (a), (b), and (c) of this section apply.

(e) *Examples.* The following examples illustrate paragraphs (a), (b), and (c) of this section. For purposes of the examples in this paragraph (e), T and P are corporations, A is a shareholder of T, and, except for in *Example 1*, A surrenders and receives (in addition to the stock exchanged in the examples) common stock in the reorganizations described.

Example 1. In 1995, A transfers property to T and receives T preferred stock that is described in section 351(g)(2) in a transaction under section 351. In 2002, pursuant to a reorganization under section 368(a)(1)(B), A surrenders the T preferred stock in exchange for P NQPS. Under paragraph (a) of this section, the T preferred stock issued to A in 1995 is NQPS. However, because section 351(g) does not apply to transactions occurring before June 9, 1997, the T NQPS was not "other property" within the meaning of section 351(b) when issued in 1995. Under sections 354(a)(2)(C) and 356(e)(2), the P NQPS received by A in 2002 is not "other property" within the meaning of section 356(a)(1)(B) because it is received in exchange for NQPS.

Example 2. T issues QPS to A on January 1, 2000 that is not NQPS solely because the holder cannot require T to redeem the stock until January 1, 2022. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock, including the term that the holder cannot require the redemption of the stock until January 1, 2022. Because the P stock and the T stock have identical terms, and because the redemption did not become more likely than

not to occur within the 20-year period that begins on January 1, 2000 (which is the issue date of the T preferred stock) as a result of the exchange, under paragraph (b) of this section, the P preferred stock received by A is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

Example 3. The facts are the same as in Example 2, except that, in addition, in 2010, pursuant to a recapitalization of P under section 368(a)(1)(E), A exchanges the P preferred stock above for P NQPS that permits the holder to require P to redeem the stock in 2020. Under paragraph (b) of this section, the P preferred stock surrendered by A is treated as QPS. Because the P preferred stock received by A in the recapitalization is not substantially identical to the P preferred stock surrendered, the P preferred stock received by A is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

Example 4. T issues preferred stock to A on January 1, 2000 that permits the holder to require T to redeem the stock on January 1, 2018, or at any time thereafter, but which is not NQPS solely because, as of the issue date, the holder's right to redeem is subject to a contingency which makes remote the likelihood of redemption on or before January 1, 2020. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock. Immediately before the exchange, the contingency to which the holder's right to cause redemption of the T stock is subject makes remote the likelihood of redemption before January 1, 2020, but the P stock, although subject to the same contingency, is more likely than not to be redeemed before January 1, 2020. Because, as a result of the exchange of T stock for P stock, the exercise of the redemption right became more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock, the P preferred stock received by A is not substantially identical to the T stock surrendered, and is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

Example 5. The facts are the same as in *Example 4*, except that, immediately before the merger of T into P in 2007, the contingency to which the holder's right to cause redemption of the T stock is subject makes it more likely than not that the T stock will be redeemed before January 1, 2020. Because exercise of the redemption right did not become more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock as a result of the exchange, the P preferred stock received by A is substantially identical to the T stock surrendered, and is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

Example 6. A is an employee of T. In connection with A's performance of services for T, T transfers to A in 2000 an amount of T common stock that represents reasonable compensation. The T common stock contains a term granting A the right to require T to redeem the common stock, but only upon A's separation from service from T. In 2005, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A receives, in exchange for A's T common stock, P preferred stock granting a similar redemption right upon A's separation from P's service. Under paragraph (c) of this section, the P preferred stock received by A is treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II). Thus, the P preferred stock received by A is QPS.

(f) *Effective dates.* This section applies to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.1036–1 is amended by adding paragraph (d) as follows:

§ 1.1036–1 Stock for stock of the same corporation.

* * * * *

(d) *Nonqualified preferred stock.* See § 1.356–7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788,921.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1529 Filed 1–21–00 11:59 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 87–1b; FRL–6527–9]

Approval of Post-1996 Rate of Progress Plan: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve Indiana's Post-1996 Rate of Progress Plan for Lake and Porter Counties, Indiana, submitted on December 17, 1997, and January 22, 1998. The Plan identifies volatile organic compound control measures and documents projections that those measures provide 3% per year (9% total) emission reductions in Lake and Porter Counties between 1996 and 1999. Our approval means that EPA finds the State Plan meets Clean Air Act (Act) requirements. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 25, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4366.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: January 6, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–1559 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0210; FRL–6529–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District and Sacramento Metropolitan Air Quality Management District portions of the California State Implementation Plan (SIP). These revisions concern the control of volatile organic compound (VOC) emissions from gasoline transfer into stationary storage container, delivery vessels and bulk plants, and from organic chemical manufacturing operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 25, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP include: San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants; and Sacramento Metropolitan Air Quality Management District's (SMAQMD) Rule 464, Organic Chemical Manufacturing Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 21, 1998 and May 13, 1999 respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Joaquin Valley Area and the Sacramento Metropolitan Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Joaquin Valley Area is classified as serious; the Sacramento Metropolitan Area is classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on August 29, 1998 and May 13, 1999, including the rules being acted on in this document. This document addresses EPA's proposed action for SJVUAPCD Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants, and SMAQMD Rule 464, Organic Chemical Manufacturing Operations. SJVUAPCD adopted Rule 4621 on June 18, 1998 and SMAQMD adopted Rule 464 on July 23, 1998. These submitted rules were found to be complete on October 2, 1998 (Rule 4621) and June 10, 1999 (Rule 464) pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V [3] and are being proposed for approval into the SIP.

SJVUAPCD's Rule 4621 controls VOC emissions from gasoline transfer into stationary storage containers, delivery vessels, and bulk plants; and SMAQMD's Rule 464 controls VOC emissions from organic chemical manufacturing operations. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] San Joaquin Valley Area retained its designation of nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to Rule 4621 are entitled, "Control of Hydrocarbons from Tank Gasoline Terminals," EPA–450/2–77–026 and "Control of Volatile Organic Emissions from Bulk Gasoline Plants," EPA–450/2–77–035. There is no single CTG document applicable to Rule 464. However, the following CTG documents were used as guidance in evaluating the rule: "Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry," EPA–450/4–91–031, "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Manufacturing Industry," EPA–450/2–78–029, and draft CTG entitled "Control of Volatile Organic Compound Emissions from Industrial Wastewater," EPA–453/D–930056. Other guidance documents used in evaluating Rule 464 are: "Control of Volatile Organic Compound Emissions from Batch Processes—Alternative Control Techniques Information Document,", 40 CFR Part 60, subparts VV, NNN, RRR, and 40 CFR Part 63, subparts F and G. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On May 2, 1996, EPA approved into the SIP a version of SJVUAPCD Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants that had been adopted by SJVUAPCD on May 20, 1993. Revisions to this rule were subsequently adopted on June 18, 1998 and submitted to EPA on August 21, 1999. SJVUAPCD's submitted Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants includes the following significant changes from the current SIP:

- Addition of applicability threshold to tank capacity (i.e, 250–19,800 gallons) from Section 5, Requirements, of the SIP approved version of the rule for clarity;
- Addition of requirements for inspection, frequency of inspection and repair response period;
- Addition of leak-free requirements for loading racks, aboveground tanks, and vapor collection equipment.
- Addition of new recordkeeping requirements;
- Addition of new provisions, new definitions and revisions of some, and other minor changes to improve enforceability and clarity; and
- Deletion of extraneous provisions and obsolete requirements in the rule.

There is currently no version of SMAQMD Rule 464, Organic Chemical Manufacturing Operations in the SIP. The submitted is divided into five sections consisting of the following:

- General provisions which include applicability and exemptions;
- Definitions pertinent to the rule;
- Standards for various process equipment including: reactors, distillation columns, crystallisers, evaporators, dryers, process tanks, wastewater, storage tanks, and liquid transfer;
- Administrative requirements; and
- Monitoring, recordkeeping, and test methods.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants, and SMAQMD's Rule 464, Organic Chemical Manufacturing Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13132

Executive Order 13132, Federalism, (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 14, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–1839 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–043–1–9905b; and GA–045–1–9906b; FRL–6528–8]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revision to Enhanced Inspection and Maintenance Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted, in two separate packages, by the State of Georgia in November and December of 1998. Both submittals request revisions to the enhanced Inspection and Maintenance (I/M) program, in accordance with the requirements of Section 110 of the Clean Air Act as amended in 1990 (CAA) and section 348 of the National Highway Systems Designation Act (NHSDA). In total, these submittals request revisions to modify the following sections: "Emission Inspection Procedures," "Inspection Station Requirements," "Certificate of Emissions Inspection," "Definitions," "Waivers," "Inspection Fees," and the "Accelerated Simulated Mode (ASM) Start-up Standards" found in Appendix H of the Enhanced I/M Test Equipment, Procedures, and Specifications—Phase II. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 25, 2000.

ADDRESSES: All comments should be addressed to: Dale Aspy (November 1998 submittal) or Lynorae Benjamin (December 1998 submittal) at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Dale Aspy, 404/562–9041; Lynorae Benjamin, 404/562–9040.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. 404/363–7000.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at 404/562–9041 or Lynorae Benjamin at 404/562–9040.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: January 5, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–1835 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–360; FCC 99–390]

Public Interest Obligations of Television Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document solicits comments on how broadcasters can best serve the public interest as they transition to digital transmission technology. The document is guided by several proposals the Commission has received and other recommendations that have been made in recent years.

DATES: Comments are due on or before March 27, 2000; reply comments are due on or before April 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy and Rules Division, Mass Media Bureau (202) 418–2130, TTY (202) 418–1169.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry ("*NOI*"), FCC 99–390, adopted December 15, 1999; released December 20, 1999. The full text of the Commission's *NOI* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC. The complete text of this *NOI* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Synopsis of Notice of Inquiry

I. Introduction

1. Television is the primary source of news and information to Americans, and provides hours of entertainment every week. In particular, children spend far more time watching television that they spend with any other type of media. Those who broadcast television programming thus have a significant impact on society. Given the impact of their programming and their use of the public airwaves, broadcasters have a special role in serving the public. For over seventy years, broadcasters have been required by statute to serve the "public interest, convenience, and necessity." Congress has charged the Federal Communications Commission with the responsibility of implementing and enforcing this public interest requirement. Indeed, this is the "touchstone" of the Commission's statutory duty in licensing the public airwaves. Under the Communications Act of 1934, the Commission may issue, renew, or approve the transfer of a broadcast license only upon first finding that doing so will serve the public interest.

2. There has been considerable debate over the years about how the Commission should carry out this statutory mandate. Currently, broadcasters must comply with a number of affirmative public interest programming and service obligations. For example, broadcast licensees must provide coverage of issues facing their communities and place lists of programming used in providing significant treatment of such issues in their public inspection files. Broadcasters must also comply with statutory political broadcasting requirements regarding equal opportunities, charges for political advertising, and reasonable access for federal candidates. In addition, television broadcasters must provide children's educational and informational programming under the Children's Television Act of 1990. In terms of programming obligations, broadcasters are also prohibited from airing programming that is obscene, and restricted from airing programming that is "indecent" during certain times of the day. Similarly, broadcasters also have obligations regarding closed captioning, equal employment opportunity, sponsorship identification, and advertisements during children's programming.

3. The discussion of television broadcasters' public interest obligations has been renewed by their transition from analog to digital television (DTV) technology. This is due in part to the new opportunities DTV provides. DTV holds the promise of reinventing free, over-the-air television by offering broadcasters new and valuable business opportunities and providing consumers new and valuable services. DTV broadcasters will have the technical capability and regulatory flexibility to air high definition TV (HDTV) programming with state-of-the-art picture clarity; to "multicast" by simultaneously providing multiple channels of standard digital programming and/or HDTV programming; and to "datacast" by providing data such as stock quotes, or interactive TV via the DTV bitstream.

4. In establishing the statutory framework for the transition to DTV, Congress directed the Commission to grant any new DTV licenses to all existing television broadcasters. Congress stated in section 336 of the Communications Act that "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity." Likewise, in implementing section 336 in the 5th Report and Order in the DTV proceeding (62 FR 26966, May 16, 1997), the Commission reaffirmed that digital TV broadcasters remain public trustees and must serve the public interest, and that existing public interest obligations continue to apply to all broadcast licensees.

5. The Commission also indicated, however, that "[b]roadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television." Commenters in the DTV proceeding adopted different views on this issue, with some arguing that broadcasters' public interest obligations in the digital world "should be clearly defined and commensurate with the new opportunities provided by the digital channels broadcasters are receiving," while others contended that "current public interest rules need not change simply because broadcasters will be using digital technology to provide the same broadcast service to the public." The Commission declined to resolve the

issue in the DTV proceeding, instead choosing to issue a notice to consider all views at a later point.

6. We undertake that task with this *NOI*. In doing so, we are guided by several proposals and recommendations made in recent years. Among the most significant of these are the recommendations of the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Advisory Committee"). The Advisory Committee was comprised of a broad cross-section of interests, consisting of twenty-two members chosen by the President from "the commercial and noncommercial broadcasting industry, computer industries, producers, academic institutions, public interest organizations, and the advertising community." On December 18, 1998, the Advisory Committee submitted a report, which contains ten separate recommendations on the public interest obligations digital television broadcasters should assume. On October 20, 1999, Vice President Gore submitted a letter to Chairman Kennard asking the Commission to focus on several of the Advisory Committee's recommendations in particular.

7. In addition to the Advisory Committee's recommendations, on June 3, 1999, People for Better TV filed a petition for rulemaking and a petition for notice of inquiry. People for Better TV also includes a number of diverse groups. People for Better TV argues that the Telecommunications Act of 1996 requires the Commission to determine the public interest obligations of DTV broadcasters, that the advent of DTV requires the Commission to consider public interest obligations anew, and to clarify whether existing guidelines apply, and that both broadcasters and the public need a basic set of public interest standards. The group contends that the Commission should initiate a rulemaking proceeding to determine the public interest obligations of digital broadcasters. People for Better TV also urged the Commission to issue a notice of inquiry and hold hearings on the public interest obligations of digital television licensees, focusing on a variety of categories. On November 16, 1999 People for Better TV submitted a letter to Chairman Kennard reiterating its request that the Commission initiate a proceeding to determine the public interest obligations of DTV broadcasters.

8. We are also guided by the thoughts and work of other advocates regarding broadcasters' public interest obligations, including those proposals that are not as closely tied to the new opportunities inherent in digital technology. The conversion from analog to digital is a long transition, and both analog and digital broadcasters must operate consistently in the public interest during the transition. At the same time, we acknowledge that many broadcasters have served the public interest in numerous ways over the years. According to a report of the National Association of Broadcasters published in 1998, the nation's broadcasters provided $6.85 billion in community service in 1996. Therefore, by this *NOI*, we are asking broadcasters and members of the public to present their views or ideas on how best to implement the public interest standard during the transition. As the courts have acknowledged, and the transition to DTV reinforces, the public interest standard is "a supple instrument" designed to be flexible enough to accommodate the "dynamic aspects of radio transmission," and we believe that it is an appropriate time to create a forum for public debate.

II. Areas of Inquiry and Request for Comments

9. At this the advent of the digital age, we seek comment on how broadcasters can best serve the public interest during and after the transition to digital technology. We seek comment on challenges unique to the digital era, how broadcasters can meet their public interest obligations on both their analog and digital channels during the transition period, and on various proposals and recommendations that have been made on how broadcasters could better serve their communities of license. We welcome other proposals, and request parties to articulate legal bases for their proposals, and explain how they would serve the public interest.

A. Challenges Unique to the Digital Era

10. More than 100 DTV stations are currently on the air. These broadcasters, as well as all television licensees upon the conversion to DTV, have the flexibility either to "multicast," to provide HDTV, or to "multiplex" DTV programming and "ancillary and supplementary services" at the same time. Both the Act and the Commission's implementing actions make it clear that DTV broadcasters must continue to serve the public interest. We seek comment on how to define these obligations. We are especially interested in specific proposals addressing whether and how existing public interest obligations should translate to the digital medium.

11. In implementing section 336, the Commission required that broadcasters air "free digital video programming service the resolution of which is comparable to or better than that of today's services, and aired during the same time period that their analog channel is broadcasting." In doing so, the Commission stated that "broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees." It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children's educational and informational programming, among other things. But as People for Better TV ask, how do these obligations apply to a DTV broadcaster that chooses to multicast? Do a licensee's public interest obligations attach to the DTV channel as a whole, such that a licensee has discretion to fulfill them on one of its program streams, or to air some of its public interest programming on more than one of its program streams? Should, instead, the obligations attach to each program stream offered by the licensee, such that, for example, a licensee would need to air children's programming on each of its DTV program streams? The Advisory Committee Report contemplates that, under certain circumstances, a digital broadcaster should not have nonstatutory public interest obligations imposed on channels other than its "primary" channel. A majority of the members of the Advisory Committee believe that the FCC should prohibit broadcasters from segregating candidate-centered programming to separate program streams, because they believe that would violate candidates' reasonable access and equal opportunities. We seek comment on these approaches. In addition, how should we take into account the fact that DTV broadcasters can choose either to multicast multiple standard definition DTV program streams or broadcast one or two HDTV program streams during different parts of the day? In addressing these issues, commenters should discuss the requirements of section 336(d) of the Act, which states that a "television licensee shall establish that *all* of its program services on the existing or advanced spectrum are in the public interest."

12. People for Better TV propose several other ways that digital broadcasters might better serve the nation's children, such as setting aside a minimum number of hours each week to provide educational programs or

services, which might include data transmission for schools. In addition, PBTV suggests that the increased information capability of digital technology could improve the current voluntary ratings system. We seek comment on these ideas. In addition, should the ratings of programs promoted by broadcasters be consistent with the rating of the program during which the promotions run? We also ask commenters to address how the policies set forth in the Children's Television Policy Statement should be applied in the digital environment.

13. By definition, ancillary and supplementary services, such as datacasting or paging, are services other than free, over-the-air services. Do a licensee's public interest obligations apply to its ancillary and supplementary services? In addressing these issues, commenters should discuss the relevance of several sections of section 336. People for Better TV contends that "the public interest standard attends to all DTV uses of the spectrum," and points out that section 336(a)(2) states that the Commission "shall adopt regulations that allow the holders of [DTV] licenses to offer such ancillary and supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity." We note that section 336(e) requires the Commission to collect fees from DTV broadcasters that offer ancillary and supplementary services, which fees must "recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provision of section 309(j) of this Act and the Commission's regulations thereunder." In addition, section 336(b)(3) simply requires the Commission to "apply to any other ancillary and supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person." The Advisory Committee Report recommends that "[b]roadcasters that choose to implement datacasting should transmit information on behalf of local schools, libraries, community-based organizations, governmental bodies, and public safety institutions." The Advisory Committee Report suggests that "[t]his activity should count toward fulfillment of a digital broadcaster's public interest obligations," without indicating which regulations are applicable to ancillary and supplementary services. We seek comment on this proposal. How would datacasting count toward the DTV broadcasters' public interest obligations? We also seek comment more generally on whether the public interest obligations should apply to ancillary and supplementary services, and if so, how.

B. Responding to the Community

14. One of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Another of its most basic obligations in responding to the public's informational needs is to air emergency information. Technological advances, including digital technology, may allow broadcasters to fulfill these obligations better. In addition, broadcasters might make information about their programming more accessible, and therefore more responsive, to their communities of license through posting such information on websites on the Internet. As broadcasters move forward with their transition to digital technology, we seek to find ways to help them serve their communities better and more fully.

1. Disclosure Obligations

15. People for Better TV states that DTV broadcasters should "disclose their public interest programming and activities on a quarterly basis, matched against ascertained community needs," gathered by reaching out to "ordinary citizens and local leaders" and sought through "postal and electronic mail services as well as broadcast announcements." The Advisory Committee Report recommends that DTV broadcasters "should be required to make enhanced disclosures of their public interest programming and activities on a quarterly basis, using standardized check-off forms that reduce administrative burdens and can be easily understood by the public." The Advisory Committee Report explains that effective self-regulation requires broadcasters to make available to the public adequate information about what they are doing. The Committee notes that the Commission already requires all TV broadcasters to place in their public files separate quarterly reports on their non-entertainment programming responsive to community needs and on their children's programming, and recommends that the Commission require broadcasters to augment these reports. The enhanced disclosures "should include but not be limited to contributions to political discourse, public service announcements, children's and educational programming, local programming, programming that meets the needs of underserved communities, and community-specific activities." The Committee also recommends that digital TV broadcasters take steps to distribute public interest information more widely, through newspapers and websites. We seek comment on these recommendations.

16. Our rules currently require commercial TV broadcasters to include in their public file, among other things, citizen agreements, records concerning broadcasts by candidates for public office, annual employment reports, letters and e-mail from the public, issues/programming lists, records concerning children's programming commercial limits, and children's television programming reports. Should broadcasters provide the additional types of public service information proposed by the Advisory Committee Report and People for Better TV? Should they provide information in addition to, or in lieu of, that proposed by the Advisory Committee and People for Better TV? Should the public file contain information on what programming has closed captioning and video description? We seek comment on the extent to which the Advisory Committee's and People for Better TV's proposals parallel the Commission's previous ascertainment requirements, which the Commission repealed in the 1980s, and we ask parties to address whether the Commission's reasons for eliminating those requirements apply to our consideration of these proposals. These ascertainment guidelines set forth specific standards for broadcasters on consulting with community leaders, identifying and responding to community needs and problems through programming, and maintaining and making available various records on their ascertainment procedures.

17. We currently allow licensees to maintain their public inspection file in computer databases, and encourage licensees that elect this option to post their public file on any websites they maintain. We seek comment on how many broadcasters provide their public file in this format, and the costs and benefits of doing so. In particular, we seek comment on how broadcasters could use the Internet to ensure that they are responsive to the needs of the public. We seek comment on whether broadcasters should be required to make their public files available on the Internet, and whether those broadcasters that maintain a station website on the Internet could or should use the Internet to interact directly with the public, perhaps by establishing forums in

which the public could post comments and engage in an ongoing dialogue about the broadcaster's programming. How could these websites and forums be made accessible to persons with disabilities? In addition, we seek comment on whether it would promote responsiveness to the community to require the disclosure of certain information (e.g., the individual ultimately responsible for a program's airing or content) that would enable public input more easily and meaningfully.

2. Disaster Warnings

18. The Advisory Committee Report recommends that "[b]roadcasters should work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit disaster warning information. The means chosen should be minimally intrusive on bandwidth and not result in undue additional burdens or costs on broadcasters. Appropriate regulatory authorities should also work with manufacturers of digital television sets to make sure that they are modified to handle these kinds of transmissions." The Advisory Committee Report explains that digital technology will provide innovative and new ways to transmit warnings, such as pinpointing specific households or neighborhoods at risk, and suggests that DTV broadcasters take advantage of these technological advances. The Advisory Committee Report also states that most of these innovations will require only minimal use of the 6 MHz bandwidth allocated to digital broadcasters.

19. We seek comment on the Advisory Committee Report's recommendation. One of broadcasters' fundamental public interest obligations is to warn viewers about impending disasters and keep them informed about related events. What unique capabilities does digital technology give broadcasters to deliver disaster-related information? What role should the Commission play to encourage broadcasters to deploy such technology to deliver enhanced disaster information? How can we facilitate the realization of the Advisory Committee's goals? We note that the Commission recently adopted its "Emergency Alert System" requirements, set forth in part 11 of the Commission's rules. Should the Commission adopt any different requirements for DTV broadcasters?

3. Minimum Public Interest Obligations

20. The Advisory Committee Report recommends that "[t]he FCC should adopt a set of mandatory minimum public interest requirements for digital broadcasters * * * that would not impose an undue burden on digital broadcast stations, * * * should apply to areas generally accepted as important universal responsibilities for broadcasters," and should be phased in over several years.

21. We seek comment on the Advisory Committee Report's recommendations regarding minimum public interest requirements. Many members of the Advisory Committee were concerned that not all television broadcasters would adopt voluntary measures, while other members strongly opposed Commission-imposed minimum public interest requirements as unnecessary, preferring to give television broadcasters maximum flexibility and discretion in meeting their public interest obligations. Other parties have argued in our DTV proceeding that the Commission should adopt more specific public interest programming requirements given the new opportunities broadcasters will have in converting to DTV. They also express the concern that television broadcasters are not airing a sufficient amount of public interest programming, including local public affairs programming.

22. We invite comment on this debate. Should the Commission establish more specific minimum requirements or guidelines regarding television broadcasters' public interest obligations? Would this make the license renewal process more certain and meaningful by spelling out the public interest standard in more detail? How would such minimum requirements be defined? What additional costs, if any, would those requirements impose? Are there sufficient marketplace incentives to ensure the provision of programming responsive to community needs, obviating the need for additional requirements?

C. Enhancing Access to the Media

23. One of the Commission's long-standing goals in the area of broadcast regulation is to enhance the access to the media by all people, including people of all races, ethnicities, and gender, and, most recently, disabled persons. Congress emphasized this goal when it amended section 1 of the Communications Act in 1996 to refine this agency's mission to make available "to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service * * * ." It further highlighted this goal when it added provisions to the Act concerning people with disabilities, such as section 713 relating to closed captioning and video description. Given the efficiencies of digital technology, DTV broadcasters will be able to "multicast" and air several programs at the same time, as well as provide more information within the signal of each programming stream. We seek comment on the ways broadcasters can use this technology to provide greater access to the media.

1. Disabilities

24. Digital technology offers great possibilities for broadcasters to make their programming more accessible to persons with disabilities. For example, digital technology could enable viewers to change the size of captions in order to see both captions and the text appearing on a TV screen. In addition, digital technology permits broadcasters to provide several different audio programs, which could make video description more widely available.

25. In urging that the Commission issue this *NOI*, People for Better TV ask that the Commission emphasize, among other things, the "expansion of services to person with disabilities." The group specifically suggests that a "digital broadcast station should provide closed captioning and description services for the blind of PSAs, public affairs programming, and political programming." It urges that "[c]aptioning and descriptions in these areas should be phased in over the first 4 years of a station's digital broadcasts, but should be completed no later than 2006." Similarly, the Advisory Committee Report recommends that digital TV broadcasters "take full advantage" of new digital technologies to provide "maximum choice and quality for Americans with disabilities, where doing so would not impose an undue burden on the broadcasters." The Committee specifically enumerates closed captioning, video description, and disability access to ancillary and supplementary services. The Committee asks broadcasters to take full advantage of digital closed captioning technology that will enable viewers to change the size of captions to see both the caption and text otherwise behind the caption, and also calls on broadcasters to expand gradually captioning on PSAs, public affairs programming, and political programming. The Committee also requests digital broadcasters to allocate sufficient bandwidth among their multiple audio channels to make expanded use of video description technology feasible. The Committee further suggests that any digital broadcaster that provides ancillary and supplementary services not impinge on

the 9600 baud bandwidth currently set aside for closed captioning, and encourages broadcasters to explore new digital technologies to expand access to such services to persons with disabilities, such as offering text options for material presented orally and an audio option for material presented visually. The Committee finally recommends that the Commission and other regulatory authorities work with set manufacturers to ensure that modifications in audio channels, decoders, and other technical areas are designed to ensure the most efficient, inexpensive, and innovative capabilities for disability access.

26. We seek comment on these proposals. We note that the Commission has adopted closed captioning rules to implement section 305 of the 1996 Act. These closed captioning rules require broadcasters (both analog and digital TV broadcasters, among other video programming distributors and providers) to caption new programming gradually, according to a phase-in schedule, and to caption 75% of "pre-rule" programming by 2008. Our rules also require broadcasters to pass through the captioning provided by program suppliers, unless it requires reformatting. Certain types of programming and providers, however, are exempt from these requirements. Should the Commission impose different requirements on DTV broadcasters? We note that we have recently proposed to adopt technical standards for the display of closed captioning on DTV receivers, and to require the inclusion of closed captioning decoder circuitry in DTV receivers.

27. With respect to video description, we note that the Commission has submitted two reports to Congress, pursuant to section 305(f) of the 1996 Act (codified as section 713(f) of the 1934 Act), and recently proposed limited rules to phase video description into the marketplace. In both of its reports to Congress, the Commission noted that, since digital technology does not have the capacity limitations of analog, its more widespread deployment will, in turn, make more widespread video description available. The Commission therefore suggested that any phase-in schedules should take into account the transition to DTV. In the *Video Description Notice*, we thus proposed limited rules for analog broadcasters, but made clear our intention to extend video description to digital broadcasters. We seek comment on how the Commission could encourage DTV broadcasters to take advantage of the enhanced capabilities of the technology to provide more video description.

28. The Advisory Committee Report also recommends that DTV broadcasters make ancillary and supplementary services available to persons with disabilities. We seek comment on what types of ancillary and services broadcasters might provide, and on how they could be made accessible to persons with disabilities.

2. Diversity

29. Diversity of viewpoint, ownership, and employment have long been and continue to be a fundamental public policy goal in broadcasting. In section 309(j) of the Act, Congress directed the Commission to prescribe competitive bidding rules to promote "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." In part, to fulfill that mandate, we offered a bidding credit to new entrants in our recent auction of broadcast licenses. Prior to the adoption of section 309(j), and throughout its history, the Commission has also pursued a number of initiatives to diversify broadcast station ownership and employment. For example, the Commission identified "diversification of control of the media of mass communications" as "a factor of primary significance" in its comparative licensing processes, and adopted diversity and minority "preferences" in certain of its random selection processes. In addition, we are currently conducting a number of studies to evaluate the barriers to acquisition of broadcast licenses, and barriers to entry or growth, that small, minority-, and women-owned businesses face, as well as to examine the impact of our multiple ownership rules on broadcast station ownership, and the impact of small, minority, and women ownership of broadcast stations on service. The Commission has also adopted equal opportunity rules that are designed to foster opportunity in the broadcast industry for minorities and women. The outreach portion of these rules was struck down on constitutional grounds by the D.C. Circuit. However, we issued a *Notice of Proposed Rulemaking* (63 FR 66104, December 1, 1998) proposing new EEO rules, and expect to issue an order in the near future.

30. Broadcasters have voluntarily pursued a number of initiatives to foster diversity. Most recently, broadcasters created an investment fund, with current initial cash commitments of $175 million and ultimate purchasing power of possibly $1 billion, to spur ownership of television and radio by minorities and women. In addition, many broadcasters have made voluntary commitments to abide by equal opportunity principles, whether required by law to do so or not.

31. People for Better TV ask that DTV broadcasters exploit digital technology to reflect the diversity of their communities, through any number of practices. The group explains that network programming cannot respond to diverse needs of each community, and so local stations must come to know and provide service to diverse communities. It asks that broadcasters support the goal of diversity and report quarterly on their efforts.

32. The Advisory Committee Report states that "[d]iversity is an important value in broadcasting, whether it is in programming, political discourse, hiring, promotion, or business opportunities within the industry." As such, it recommends that "broadcasters seize the opportunity inherent in the digital television technology to substantially enhance the diversity available in the television marketplace." Many of the Advisory Committee's other recommendations bear on its goal of diversity in broadcasting. For example, the Advisory Committee Report advocates flexibility in multiplexing so that broadcasters can create new opportunities for minority entrepreneurship through channel-leasing arrangements, partnerships and other creative business arrangements. In addition, the Advisory Committee Report recommends that, out of the returned analog spectrum one new 6 MHz channel for each viewing community be reserved for noncommercial purposes, including educational programming directed at minority groups and other underserved segments of the community. The Committee also recommends that "broadcasters voluntarily redouble their individual and collective efforts during the digital transition to encourage effective participation by minorities and women at all levels of the industry," including hiring and promotion policies that result in significant representation of minorities and women in the decision-making positions in the broadcast industry. The Committee hopes that all of the recommendations will help independent producers provide new programming. We note that several major civil rights organizations, including NAACP and La Raza, have raised similar concerns about the lack of cultural diversity on network programming.

33. The Advisory Committee Report generally does not contain separate,

stand-alone recommendations on how to achieve diversity in broadcasting; its recommendations are largely contained within other portions of the report on which we have sought comment above. In addition, as indicated, the Commission currently has a number of initiatives underway designed to diversify broadcast ownership and employment. What other ways could and should the Commission encourage diversity in broadcasting, consistent with relevant constitutional standards? We seek comment on innovative ways unique to DTV that the Commission could use to encourage diversity in the digital era, and encourage commenters to submit specific proposals.

D. Enhancing Political Discourse

34. The Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees to air programming regarding political campaigns. The Supreme Court likewise has recognized the impact television broadcasting has on our political system: "Deliberation on the positions and qualifications of candidates is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates. A majority of the population cites television as its primary source of election information, and debates are regarded as the 'only occasion during a campaign when the attention of a large portion of the American public is focused on the election, as well as the only campaign information format which potentially offers sufficient time to explore issues and policies in depth in a neutral forum.'" We seek comment on ways that candidate access to television and thus the quality of political discourse might be improved. We propose no rules or policies in this *NOI*. Rather our goal in this *NOI* is to initiate a public debate on the question of whether, and how, broadcasters' public interest obligations can be refined to promote democracy and better educate the voting public. This debate will greatly assist the Commission and Congress in determining what, if any, further steps should be taken on these important issues.

35. We note that some broadcasters have devoted many hours of program time to political coverage. According to a report recently issued by the National Association of Broadcasters ("NAB Report"), in the 1996 election cycle broadcasters valued the time they voluntarily devoted to political campaigns at $148.4 million. This programming took the form of coverage of debates, conventions and issue fora. Many more hours of news programming not accounted for in these figures have been dedicated to covering local and national campaigns. In addition, during the 1996 elections, the Fox, PBS, and ABC networks voluntarily provided free airtime to the major presidential candidates using a variety of formats. For example, during the last six weeks of the 1996 presidential campaign the Fox television network offered each major presidential candidate free airtime, including the opportunity to make ten one-minute position statements that were broadcast in prime time. The PBS and ABC television networks also set aside free airtime for presentations by the major presidential candidates, and the A.H. Belo Corporation provided free airtime in selected federal congressional elections and gubernatorial races. The Commission exempted these efforts from the equal opportunity requirements, finding that the proposals qualified as on-the-spot coverage of a bona fide news event. We seek comment on what the Commission can do to encourage these kinds of voluntary efforts by television broadcasters.

36. On the other hand, we note that there are indications that many television broadcasters are providing scant coverage of local public affairs, and what coverage there is may be shrinking. For instance, a 1998 study by the University of Southern California Annenberg School for Communication found that only 0.31% of local news focused on the California governor's race, compared to a figure of 1.8% in 1974. Similarly, an April 1998 Joint Report by the Media Access Project and the Benton Foundation found that, in the markets examined, 35% of the stations provide no local news, and 25% offer neither local public affairs programming nor local news.

37. The Advisory Committee Report recommends that television broadcasters provide five minutes each night between 5:00 p.m. and 11:35 p.m. (or the appropriate equivalent in Central and Mountain time zones) for "candidate-centered discourse" thirty days before an election. The Committee envisions maximum flexibility for broadcasters, allowing them to choose the candidates and races—federal, state, and local—that deserve more attention. The Committee envisions that stations could choose formats, which might include giving candidates one minute of airtime, conducting mini-debates, or doing brief interviews, or including the "discourse" in newcasts. We seek comment on this idea. More generally, are there steps the Commission can take to promote voluntary efforts to enhance political debate and the information the public receives concerning candidates?

38. Others have proposed that the Commission adopt rules requiring broadcast licensees to provide time to candidates. Although the Advisory Committee Report proposed voluntary efforts, thirteen members of the Committee—a majority—contend that the Committee's recommendations do not go far enough, and that the Commission should, among other things, require television broadcasters to provide some airtime for national and local candidates. In addition, former FCC General Counsel Henry Geller, on behalf of himself and others, ask the Commission to require television broadcasters to provide political candidates a reasonable amount of time each day in advance of a general election. More specifically, Geller et al. propose that the Commission require television broadcasters to provide twenty minutes of airtime each day thirty days before a general election in even-numbered years, and fifteen days before in odd-numbered years, when there are fewer elections. Geller et al. suggest that the Commission give television broadcasters the flexibility to decide how to provide the total of twenty minutes, except that the time should be provided between 6:00 a.m. to midnight, with at least five minutes in prime time. Geller et al. further suggest that the Communications Act requires the Commission to leave the selection of the races to be covered to the licensees. Geller et al. contend that the Commission's public interest authority extends to requiring broadcasters to provide time. We seek comment on these approaches, and on the Commission's authority to require broadcasters to provide airtime to political candidates. We also seek comment on the Advisory Committee's recommendation that the Commission should prohibit television broadcasters from adopting blanket bans on the sale of airtime to state and local candidates.

IV. Administrative Matters

39. *Comments and Reply Comments.* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties must file comments on or before March 27, 2000, and reply comments on or before April 25, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998).

40. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *edfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

41. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

42. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, S.W., 2–C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99–360), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., CY–B402, Washington, D.C. 20554.

43. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, S.W., CY–A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov*. Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf*. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

44. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Arminta Henry at (202) 4810–0260, TTY (202) 418–2555, or *ahenry@fcc.gov*.

45. *Ex Parte Rules*. Pursuant to the provisions of 47 CFR 1.1204(b)(1) this is an exempt proceeding. *Ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.

IV. Ordering Clause

46. Pursuant to the authority contained in sections 4(i), 303(g), 303(r), 336 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), 336, and 403, this *Notice of Inquiry* is adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1794 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AF69

Proposed Rule: Notice of Intent To Include Several Native U.S. Species in Appendix III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international treaty, regulates international trade in certain animals and plants. Countries that have ratified or acceded to CITES monitor and regulate species listed in Appendices I, II, and III. Any country that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties; any country that is a Party may unilaterally list its native species in CITES Appendix III. Parties submit an Appendix III listing to the CITES Secretariat, which then notifies all CITES Party countries of this listing. With this proposed rule, we are announcing a proposal to include the Alligator snapping turtle (*Macroclemys temminckii*) and all species of map turtles (*Graptemys* sp.), native US species, in CITES Appendix III.

DATES: You must send us your comments on this proposed rule by March 13, 2000.

ADDRESSES: You may send comments about this proposed rule to the Chief, Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Fax number: 703–358–2276, E-mail: r9osa@fws.gov. Comments and other information received are available for public inspection, by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia, address. You may obtain information about permits by contacting the Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax number: 703–358–2095, E-mail: r9ia__@fws.gov, website: http:/www.fws.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, US Fish and Wildlife Service, Washington, DC, telephone: 703–358–1708, fax: 703–358–2276, E-mail: Susan__Lieberman@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Appendix III Background

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. CITES lists these species in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that CITES must regulate so that trade in other listed species may be brought under effective control (e.g., because of similarity of appearance between listed species and other species). Appendix III includes native species identified by any Party country that needs to be regulated to prevent or restrict exploitation and that requests the help of other Parties to monitor and control the trade of that species.

To include a species in Appendices I or II, a Party country must propose an amendment to the Appendices for

consideration at a biennial meeting of the Conference of the Parties (COP). The adoption of such a proposal is by approval of at least two-thirds of the Parties present and voting. A Party country makes the addition of a native species in Appendix III, however, independently, without the vote of other Parties, under Articles II and XVI of the CITES treaty. As described below, Appendix III listings have many advantages, and many species are currently listed in CITES Appendix III. A list of all species included in the three Appendices is presented in 50 CFR Part 23 and is also available on request from us (see **ADDRESSES**, above). A list of the species and the text of the CITES treaty are also available from the Fish and Wildlife Service website at: http://www.fws.gov. We propose to include native U.S. species in Appendix III to derive the following benefits:

1. Appendix III listings are based on an individual country's decision that its domestic conservation program for its own species involved in international trade requires the assistance of the other CITES Parties through the enforcement of CITES trade restrictions. Since the decision on Appendix-III listing is made by an individual country, no vote of the CITES Parties is required, as would be necessary for Appendix-I and -II listing actions. The effect of this independent listing is that, if an Appendix-III species' situation improves or new information shows that it no longer needs to be listed, the listing country can remove the species from the list without consulting the other CITES parties. Therefore, the United States could remove a species it listed on Appendix III without requiring a vote of the CITES Parties, or even without waiting for a meeting of the CITES Conference of the Parties.

2. Listing U.S. native species in Appendix III would in appropriate cases enhance the enforcement of State and Federal conservation measures enacted for the species in international (and domestic) trade. When a shipment containing a non-listed, native species is exported from the United States, it is a lower inspection priority for both an importing country and the Service than if the shipment contained CITES-listed species. When CITES-listed species, including Appendix-III species, are exported, the shipment is inspected and monitored both at the port of departure and the port of arrival in the importing country. Furthermore, many foreign importing countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these foreign importing countries the legal basis and priority obligation to inspect such shipments, and deal with CITES and national violations when they detect them.

3. The practical outcome of listing a species in Appendix III is that records are kept and trade in the species is monitored. We will gain and share new information on the trade with State fish and wildlife agencies, interjurisdictional fisheries commissions, and others who have jurisdiction over resident populations of this species. They will then be able to better determine the impact of the trade on resident species and the effectiveness of existing State management activities, regulations, and cooperative efforts.

4. When we list a U.S. native species on CITES Appendix III, a CITES Party is required to deny the export of a specimen of that species if it originated in the United States and was acquired or taken in violation of the laws of the United States. Closer inspection by importing countries helps to protect U.S. native Appendix-III species from illegal trade and reinforces U.S. Federal and State laws, particularly since a CITES Appendix-III export permit is issued only after we have made a legal acquisition finding.

5. When any live CITES-listed species (including Appendix-III) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival of the animals while they are in transport. All of the species proposed for listing in Appendix III by the Service through this notice are traded as live animals (although some trade in alligator snapping turtle meat also occurs).

6. By listing a species in Appendix III, international trade data and other relevant information can be gathered to help policy makers determine whether we should propose the species for addition to Appendix II, remove it from Appendix III, or retain it in Appendix III.

7. Since many States regulate commercial trade in a number of wildlife species, data gathering on Appendix-III species, through international import/export control and permit issuance, will help to control illegal wildlife harvest and trade within the United States.

Criteria for Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of the CITES treaty states that "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade." Article XVI, paragraph 1, of the treaty states further that "Any party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I." At the ninth meeting of the Conference of the Parties to CITES (COP9), held in the United States in 1992, the Parties adopted Resolution Conf. 9.25, which provides further guidance to Parties for the listing of their native species in Appendix III. The Resolution recommends that: "A Party (a) Ensure that (i) The species is native to its country; (ii) Its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation; and (iii) Its national enforcement measures are adequate to implement these regulations; and (b) Determine that, notwithstanding these regulations and measures, there are indications that the cooperation of the Parties is needed to control illegal trade; and (c) Inform the Management Authorities of other range States, the known major importing countries, the Secretariat and the Animals Committee or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion." Therefore, we have used the following criteria in deciding to propose listing these U.S. species in Appendix III, and we will use these criteria for future proposed listings:

1. The species must be native to the United States. Although the species do not have to be endemic to the United States, a significant portion of their range should be in the United States.

2. The species must be subject to regulation within the United States, at either the State or Federal level. At least one State and preferably more than one (if found in more than one State) should have laws or regulations to control the take, trade, or possession of the species.

3. The species must be subject to international trade. We should also have some evidence that illegal trade

(violating Federal or State laws or regulations) is occurring. The supporting evidence can be extensive, documented, or even anecdotal (although if so it must be verifiable).

4. Significant evidence that international or domestic trade in the species may not be occurring at sustainable levels does not have to exist, although such information is important. However, a need must exist to monitor international trade in the species and have the assistance of importing countries to identify and possibly confiscate shipments illegally exported from the United States.

5. The Treaty does not allow the exclusion of particular parts or products for any species listed in Appendix I or the exclusion of parts or products of animal species in Appendix II. Article XVI of the treaty, however, allows for either all specimens of a species or only certain identifiable parts or products of a specimen to be listed in Appendix III. For example, the current listing in CITES Appendix III of *Swietenia macrophylla* (bigleaf mahogany) by Bolivia, Brazil, Costa Rica, and Mexico includes only logs, sawn wood, and veneer sheets. Therefore, if the criteria listed above are met, we could list any designated parts, products, or life stages of a species in Appendix III, if we inform the CITES Secretariat of the limited listing.

Submission of Information to the CITES Secretariat

Besides this proposed rule, we will consult with any other range countries where the species being considered for Appendix III can also be found. For this listing, we will consult Canada regarding *Graptemys geographica*. After reviewing the results of these consultations and the information submitted in response to this proposed rule, we will decide whether to include these species in CITES Appendix III. We will publish that information in the **Federal Register** and notify the public of our decision on whether we will submit these species to the CITES Secretariat for inclusion in Appendix III. Upon notifying the Secretariat, the listing will take effect 90 days after the CITES Secretariat informs the CITES Parties of the listing.

Change in Status of Appendix III Species Based on New Information

We will monitor the trade of any U.S. Appendix-III species. If either of the following occurs, we will consider removing the species from Appendix III: (1) International trade in the species is very limited (fewer than 5 shipments per year or fewer than 100 individual animals or plants); or (2) Trade (legal and illegal) in the species (either internationally or in interstate commerce) is determined, after consulting with the States, not to be a concern.

If, after monitoring the trade of any U.S. Appendix-III species and evaluating its status in the wild, we determine that the species meets the CITES criteria for listing in Appendix II, based on Resolution Conf. 9.24, Annex 2a or 2b, we could consider proposing listing the species in Appendix II. Based on those criteria, the species would qualify for Appendix II if "It is known, inferred or projected that the harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by *either*: (i) Exceeding, over an extended period, the level that can be continued in perpetuity; *or* (ii) Reducing it to a population level at which its survival would be threatened by other influences." The species would also qualify for listing in Appendix II if "The specimens resemble specimens of a species included in Appendix II under the provisions of Article II, paragraph 2(a), or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them."

Practical Effects of Listing a Native U.S. Species in Appendix III

Permits and other requirements: The export of an Appendix-III species requires that before specimen(s) leave the country, the U.S. Fish and Wildlife Service's Office of Management Authority (OMA) must issue an export permit and the exporter must declare the export to our Office of Law Enforcement (LE). The requirement to declare a shipment to LE and comply with applicable regulations for wildlife exports is not changed by the CITES listing. OMA can issue a permit only if the applicant obtained the specimen(s) legally, without violating any applicable U.S. laws, including relevant State wildlife laws and regulations, and the live specimens are packed and shipped according to the IATA Live Animals Regulations to reduce the risk of injury and cruel treatment. No scientific non-detriment finding is required by the Service's Office of Scientific Authority (OSA). However, OMA, in determining if the applicant legally obtained the specimens, is required to consult relevant State agencies. Since the conservation and management of these species is under the jurisdiction of State agencies, it is their responsibility to decide if shipments follow State laws and regulations. OSA will monitor and evaluate the trade, to decide if there is a conservation concern that would require any further Federal action on our part.

Process, Findings, and Fees: To apply for a CITES permit, an applicant is required to furnish to OMA a completed CITES export permit application with a $25 check or money order to cover the cost of processing the application. You may obtain information about CITES permits from our website or from OMA (see: **ADDRESSES**, above). We will review the application to decide if the export meets the following criteria: (a) You did not obtain the specimen in violation of any U.S. Federal or State laws. You must provide documentation showing that you legally obtained the specimen. The applicant is often required to have a State license or permit to engage in certain activities with native species. When applying to OMA for a permit, an applicant is required to furnish copies of any license or permit. OMA will also contact the relevant U.S. States to verify the legality of collecting and possessing this particular native species. (b) As required by CITES, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES treaty requirement (and applicable CITES resolutions) by stating clearly on all CITES permits that shipments must comply with the IATA *Live Animals Regulations*. The LE Wildlife Inspectors are authorized to inspect shipments of CITES-listed species during export to ensure that the shipment complies with these regulations. Additional information on permit requirements is available from the OMA; additional information on declaration of shipments, inspection, and clearance of shipments is available on request from the Office of Law Enforcement.

Species Proposed for Listing in Appendix III

We propose to list the following species in CITES Appendix III:

1. *Macroclemys temminckii* (Alligator Snapping Turtle)

Macroclemys temminckii is found in the following States: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. It is confined to river systems that drain into the Gulf of Mexico. It is widely distributed in the Mississippi Valley from as far north as Kansas, Illinois, and Indiana to the Gulf. The species has been found in most river systems from the Suwanee River, Florida, to eastern Texas. *M. temminckii* is the largest freshwater turtle in North

America. Adults are usually found in deeper water of large rivers and their major tributaries and are also found in lakes, canals, oxbows, swamps, ponds, and bayous associated with river systems. Management and regulation in the States are quite varied, and include, among others: Prohibitions on all take from the wild; prohibitions on all commercial take from the wild; inclusion on State lists of endangered and threatened wildlife; prohibitions on all possession, buying, selling, sale, transport, or export; and closed seasons.

The species does not breed until 11–13 years and lays one clutch of 9–52 eggs/year. The species has declined throughout its range (mainly the Mississippi River drainage and other river systems in the Southeast), due particularly to loss of bottomland hardwood forests, but also extensive collection for personal consumption and commercial marketing of meat. Because of the species life history, collection of breeding adults can quickly become unsustainable. Intensive collecting has severely depleted local populations and altered demographic structure in others, such as in southern Louisiana. The species is considered threatened in much of the northern part of its range and has been considered for candidate status under the Endangered Species Act (ESA). IUCN (the World Conservation Union) classifies *M. temminckii* as "vulnerable" (a species that will likely move into the "endangered" category in the future, if the factors leading to its endangerment continue operating). Although commercial use is prohibited in most States other than Louisiana (which allows wild-capture) and Mississippi (farm-hatched only), people can take the species for personal use in most States, and there is almost no management of the species by State agencies. Anecdotal information from turtle trappers shows that *M. temminckii* has declined drastically throughout its range, due to over-collection and habitat loss.

Small specimens of *M. temminckii* are used for the domestic pet trade, and the larger specimens are traded as meat for human consumption. Some hatchlings offered by dealers are said to have been "captive-bred," although these are likely to have been hatched from eggs collected from nests in the wild. Larger specimens, costing as much as $750 each or $1,100 per pair, are less commonly offered in the pet trade. To supply most of the hatchling turtles, more than 1,000 female turtles are held in live ponds until June, when their eggs are fertile and are laid. The turtles are then butchered for their meat, and the eggs are artificially hatched. The *M. temminckii* meat trade is much larger than the pet trade.

Analysis of import/export data obtained from the Office of Law Enforcement showed that live *M. temminckii* have been exported in increasing numbers in recent years. The annual exports of live specimens have increased from 290 in 1989, to 4,447 in 1994. We also know that illegal trade occurs. The export figures from 1989–1994 reveal that international trade in *M. temminckii* primarily for human consumption and as pets increased dramatically during the 6-year period. Besides international trade, a significant domestic trade reportedly exists.

The Chelonian Advisory Group (CAG) to the American Association of Zoological Parks and Aquariums recommended that *M. temminckii* become a high priority for future conservation efforts. The CAG reported to the Captive Breeding Specialist Group of the IUCN that this species was one of three North American turtles most in need of management.

The United States submitted a proposal to CITES COP10 in Zimbabwe (June 1997) to include the species in CITES Appendix II. The proposal was withdrawn after some countries expressed the view that international trade is small and conservation problems for the species should be dealt with through domestic measures. The State of Louisiana also opposed the proposal then. Many countries at the COP suggested that, for an endemic species such as this, inclusion in Appendix III would be preferable.

2. *Graptemys* spp.: All 12 Species of Map Turtles

The 12 Graptemys species (see Table below) are endemic to the United States, except *G. geographica*, which ranges into southern Quebec. Most species have fairly restricted ranges in various drainages in the southeastern United States. Three species, *G. geographica*, *G. pseudogeographica* (= *kohnii*), and *G. ouachitensis*, are widespread and locally common (the Mississippi and Missouri River drainages). *G. pseudogeographica* and *G. ouachitensis* probably account for most of the trade. Populations of most species have declined because of habitat degradation. Two species (*G. flavimaculata*, *G. oculifera*) are listed as threatened under the Federal Endangered Species Act and endangered by the State of Mississippi. A third species (*G. nigrinoda*) is also listed as endangered by the State of Mississippi. Reproductive potential is moderate: 20–30 eggs total in several clutches. Overall, the more restricted species in the Southeast may have lower reproductive potential.

Scientific name	Common name
Graptemys barbouri ..	Barbour's map turtle.
Graptemys caglei	Cagle's map turtle.
Graptemys ernsti	Escambia map turtle.
Graptemys flavimaculata.	Yellow-blotched map turtle.
Graptemys gibbonsi ..	Pascagoula map turtle.
Graptemys nigrinoda	Black-knobbed map turtle.
Graptemys oculifera ..	Ringed map turtle.
Graptemys pulchra	Alabama map turtle.
Graptemys versa	Texas map turtle.
Graptemys geographica.	Common map turtle.
Graptemys ouachitensis.	Ouachita map turtle.
Graptemys pseudogeographica.	False map turtle.

Hatchlings of many of the map turtle species are popular in the pet trade because of their bright colors. Turtle farmers in recent years in the Southeast have apparently achieved considerable success with captive-breeding operations, but we believe all such operations draw upon the wild to replace breeding stock. The degree of wild harvest is unknown but could be very substantial. Many species of *Graptemys* are also eaten, but it is not known if much meat is handled commercially. Export numbers have risen dramatically, from 8,600 in 1991 to 37,000 in 1993 and probably more than 100,000 in 1995. More recent data are not readily available. The majority of these may represent farm-raised animals that may or may not been taken directly from the wild.

The United States submitted a proposal to CITES COP10 in 1997 to include nine species of map turtles in Appendix II (and to leave as unlisted the three more common species). Prior to that meeting, most but not all range States supported that proposal. The proposal obtained the majority of votes, but was not adopted since it missed the necessary two-thirds majority by one vote, with 37 for and 19 against. We believe that including the whole genus (the nine rarer species and the three more heavily traded species) in Appendix III is preferable, to both adequately monitor trade and obtain the advantages of Appendix III listings.

Required Determinations

The Office of Management and Budget has not reviewed this document under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant effect on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule establishes the means to monitor the international trade in several native U.S. species and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of these species, we estimate that the costs to implement this rule will be less than $2,000,000 annually due to the costs associated with obtaining permits. Similarly, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This proposed rule does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Under Executive Order 12630, this proposed rule does not have significant takings implications since there are no changes in what may be exported. The permit requirement will not alter the current criteria for exports of these specimens.

Under Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment because it will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this proposed rule will generate information that will be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs will need to be developed to fulfill the purpose of this proposed rule. We have consulted the States, through the International Association of Fish and Wildlife Agencies, on this proposed action.

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. The referenced information collection is covered by an existing OMB approval and has been assigned clearance No. 1018–0093, Form 3–200–27, with an expiration date of January 31, 2001; implementing regulations for the CITES documentation appear at 50 CFR 23. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. The action is categorically excluded under 516 DM 2, Appendix 1.10 in the Departmental Manual. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language that interferes with its clarity? What else could we do to make this proposed rule easier to understand? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the regulation in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the regulation?

EO 12866 provides for a 60-day comment period as a general practice. But, in this case, we believe that a 60-day comment period is unnecessary for the following reasons: (1) Since the proposed listings included species that were previously proposed for listing in Appendix II at the last COP, the Service has received substantial comments in the past, and (2) The Service has had preliminary discussions with various State wildlife agencies regarding the proposed listings. In addition, we believe that the listing of these species on Appendix III should correspond closely with the next COP, which will be held in April 2000.

Authors: This proposed rule was prepared by Dr. Susan Lieberman and Timothy VanNorman, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

This proposed rule, if adopted, would result in a final decision that would amend 50 CFR 23.23 by adding Alligator snapping turtle (*Macroclemys temminckii*) and all species of map turtles (*Graptemys* sp.) to Appendix III of CITES for the United States. After analysis of the comments on the proposed rule, we will publish our decision in the **Federal Register**. If adopted, we would submit the additions to the CITES Secretariat, who has 90 days for inclusion in Appendix III and formal notification to the CITES Party countries. Therefore, the effective date for implementing the amendment to 50 CFR 23 would be 90 days from publishing the final rule. However, we will contact the Secretariat prior to publishing the final rule, if adopted, to clarify the exact time period required by the Secretariat to implement the listing.

Dated: December 21, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–1790 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000120016–0016–01; I.D. 112299C]

RIN 0648–AM70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag, Red Grouper, and Black Grouper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues proposed regulations to implement a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These proposed

regulations would increase the commercial and recreational minimum size limits for gag and black grouper; prohibit the commercial harvest and the sale or purchase of gag, black grouper, and red grouper from February 15 to March 15 each year; and establish two areas in the eastern Gulf of Mexico that would be closed to all fishing (except fishing for highly migratory species). The intended effect of these proposed regulations is to protect the spawning aggregations for these species and to prevent overfishing.

DATES: Comments must be received no later than 5:00 p.m., eastern standard time, on February 10, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), and requests for copies of minority reports submitted by some Council members should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; or e-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: roy.crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council has proposed adjusted management measures (regulatory amendment) for the Gulf gag and black grouper fisheries for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the FMP's framework procedure for annual adjustments in total allowable catch and related measures (framework procedure). This proposed rule would implement the measures contained in the Council's regulatory amendment.

Background

The actions proposed in this regulatory amendment are intended to prevent overfishing by reducing the recreational and commercial harvest of gag, black grouper, and red grouper, and to evaluate the effectiveness of area closures in protecting gag spawning aggregations and male gag. The 1998 and 1999 NMFS Reports to Congress on the Status of Fisheries of the United States listed gag as approaching an overfished condition. The Council included black grouper in the regulatory amendment as a precautionary measure and because the identification of gag and black grouper is often confused. The Council included red grouper in the prohibition-of-sale measure because a closed season for gag and black grouper only would result in commercial fishermen targeting red grouper, with an incidental bycatch and related release mortality of gag and black grouper. Furthermore, the Council was concerned that a measure protecting only gag and black grouper would shift effort to red grouper and exacerbate problems with that stock; a recent NMFS stock assessment suggests that red grouper are overfished.

The proposed rule would (1) increase the recreational minimum size limits for gag and black grouper from 20 inches to 22 inches (50.8 cm to 55.9 cm) immediately and by 1 inch (2.5 cm) each subsequent year (effective dates 1 and 2 years, respectively, after the effective date of the final rule) until 24 inches (61.0 cm) is reached; (2) increase the commercial minimum size limit for gag and black grouper from 20 inches to 24 inches (50.8 cm to 61.0 cm); (3) prohibit the sale of gag, black grouper, and red grouper harvested from the Gulf EEZ from February 15 to March 15; and (4) establish two areas in the eastern Gulf (Madison and Swanson sites and Steamboat Lumps) that would be closed to all fishing, except fishing for highly migratory species—tunas, sharks, and billfishes. The Council has requested that NMFS' Highly Migratory Species Division (HMS Division), Office of Sustainable Fisheries, issue a compatible rule prohibiting fishing for all Atlantic highly migratory species in these two areas. The HMS Division is currently considering this request and expects to take appropriate action soon. The boundaries of the two proposed closed areas (219 square nautical miles (751 km^2) total area) are as follows:

Madison and Swanson Sites

NW corner	29°17′ N. lat., 85°50′ W. long.
NE corner	29°17′ N. lat., 85°38′ W. long.
SW corner	29°06′ N. lat., 85°50′ W. long.
SE corner	29°06′ N. lat., 85°38′ W. long.

Steamboat Lumps

NW corner	28°14′ N. lat., 84°48′ W. long.
NE corner	28°14′ N. lat., 84°37′ W. long.
SW corner	28°03′ N. lat., 84°48′ W. long.
SE corner	28°03′ N. lat., 84°37′ W. long.

The proposed minimum size limits recommended by the Council are intended to allow some female gag to reach sexual maturity and spawn before being subjected to fishing mortality. Most gag mature at ages of 3 to 4 years

and a length of about 24 inches (61.0 cm). The regulatory amendment suggests that the immediate 22-inch (55.9-cm) recreational size limit would reduce recreational landings by as much as 16 percent, and the immediate 24-inch (61.0-cm) commercial size limit would reduce commercial landings by about 6 percent. The proposal to increase the recreational size limit to 24 inches (61.0 cm) 2 years after initial implementation of this rule could reduce recreational landings by as much as 36 percent compared with the current 20–inch (50.8-cm) size limit. It is likely that the reduction in recreational harvest in subsequent years will be moderated by the increasing availability of larger gag resulting from the previous increases in the minimum size limit.

The no-sale provision from February 15 to March 15 each year is expected to reduce the commercial gag and black grouper harvest by about 10 percent and the commercial red grouper harvest by about 7 percent; however, these estimates assume that commercial fishing effort will not shift in response to this measure. Comments by the NMFS Southeast Fisheries Science Center suggest that shifts in fishing effort (i.e., for example increased effort immediately before the closure) are likely to reduce the effectiveness of this measure.

In addition to its goal of reducing the harvest, the Council acted out of concern that male gag have been depleted and that action is needed to protect them. The best scientific available information suggests that the proportion of males in the population has decreased dramatically over the past 20 years. The Council heard conflicting scientific testimony regarding the need for establishing closed areas to protect male gag and considered several options. The Council's rationale for the proposed closed areas is to allow research on the effects of area closures on gag populations. The areas selected for closure are believed to be important spawning areas for gag, which spawn in dense aggregations that are particularly vulnerable to fishing. The Council believes that a closure of the two areas to only gag fishing probably would not have the intended effect because continued fishing for other reef fish species would result in a large bycatch of gag. Thus, the proposed closure applies to all fishing (except fishing for highly migratory species). The closed areas are in relatively deep water where the survival rate of discarded bycatch species would be low. The closure would extend for 4 years to allow NMFS and the Council to evaluate the utility of closed areas for grouper management.

The two closed areas are expected to reduce commercial landings of gag by about 2 percent, black grouper by about 1.5 percent, and red grouper by about 0.6 percent. If fishing effort shifts from the closed area into other areas, the actual reduction in landings would be less. The closed areas are expected to have little effect on recreational landings.

The NMFS Southeast Fisheries Science Center expressed the following concerns regarding the proposed closed areas: (1) Existing baseline data are inadequate to evaluate changes in gag populations that could be attributed to the closure; (2) the duration of the closure (4 years) is too short to expect measurable benefits and changes resulting from the closure; (3) no criteria are proposed with which to judge the "success" or "failure" of the closure; and (4) Gulf-wide conclusions about the efficacy of closed areas would necessitate an experimental design utilizing replicate closed areas and controls. NMFS seeks public comment regarding these concerns.

Council members opposing portions of the regulatory amendment submitted three minority reports. One minority report argued that (1) the proposed measures are insufficient to prevent overfishing and would place a greater share of the burden from the reduction in harvest on the recreational sector; (2) the 1-month closure of the commercial fishery was too short to be effective; (3) the closure of the two areas to all fishing unnecessarily restricts fishing for species other than reef fish; and (4) the closure should apply only to reef fish fishing and bottom fishing with gear capable of catching reef fish. Two other minority reports argued that: (1) the delay in increasing the recreational minimum size limit to 24 inches (61.0 cm) is unjustified and recommended an immediate increase to 24 inches (61.0 cm); (2) the measures in the regulatory amendment are not based upon the best available science, specifically referring to comments by a consultant hired by the commercial industry; (3) the 1-month closure of the commercial fishery only is unfair and that the recreational fishery should also be closed; and (4) the regulatory amendment fails to reduce bycatch in the recreational fishery. Copies of the minority reports are available (see **ADDRESSES**).

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities as required by 5 U.S.C. § 604(a). A summary of the IRFA follows.

The Council determined that 340 commercial vessels and a small, but undetermined, number of for-hire vessels historically fishing in the EEZ of the Gulf of Mexico would be adversely affected by the action to close areas on a year-round basis. The typical commercial vessel participating in this fishery uses handline gear, has an average length of 38 ft (11.6 m), and generates average annual gross revenues of about $50,000. The minimum size limit and the seasonal no-sale provision in combination would affect 754 commercial vessels and a substantial, but unknown, number of for-hire vessels. Since some vessels will be affected by all the actions, the numbers are not additive; to add them would result in double counting. Hence, the expectation is that at least 754 commercial vessels constituting over 62 percent of the commercial fleet and a substantial, but unknown, number of for-hire vessels will be affected. All of the businesses supported by these vessels are classified as small business entities, and a substantial number of small business entities would be affected by the proposed actions. The proposed measures would be expected to reduce annual gross revenues by more than 5 percent.

The Council proposed this rule because the gag stock is approaching an overfished condition and because the Magnuson-Stevens Act requires that the Council take action to prevent overfishing. The proposed management measures are intended to prevent fishing mortality from exceeding a rate that corresponds to a 20 percent static spawning potential ratio, which was the FMP's threshold for defining overfishing at the time the regulatory amendment was prepared. The Magnuson-Stevens Act, as amended, provides the legal basis for the rule.

In addition to the actions described in this proposed rule, the Council considered and rejected the following gag management alternatives: (1) Set a total allowable catch; (2) allocate a total allowable catch between recreational and commercial users; (3) set a separate bag limit; and (4) set a commercial trip limit. The Council rejected these alternatives in order to minimize adverse impacts on small business entities and because overfishing of gag and black grouper stocks could be prevented by the selected alternatives. A discussion of the alternatives considered by the Council follows.

The proposed alternative for the gag and black grouper minimum size limit

is an immediate increase in the commercial size limit from 20 to 24 inches (50.8 cm to 61.0 cm) and an immediate increase in the recreational minimum size limit from 20 to 22 inches (50.8 cm to 55.9 cm) followed by 1–inch (2.54-cm) increases for each of the next 2 years, at which time the recreational and commercial minimum size limits will be identical—24 inches (61.0 cm). The Council considered and rejected four alternatives to change the size limits for gag and black grouper, including the status quo 20-inch (50.8–cm) minimum size limit. The Council rejected the status quo size limit because the reduction in fishing mortality would not be sufficient to prevent overfishing. The other rejected alternatives would have increased the minimum size limit from 20 inches (50.8 cm) to 24 inches (61.0 cm), but the schedule of the increase varied. The short-term adverse economic impact of the size limit increase was greatest with an immediate increase to 24 inches (61.0 cm) and least with an increase of one 1 inch (2.54-cm) every 2 years. However, postponement of the size-limit increase will also delay fishing-mortality reductions, which are needed to prevent overfishing. The proposed alternative would provide an immediate and substantial reduction in fishing mortality while minimizing adverse economic impacts. The number of for-hire businesses expected to be affected by the size limits is unknown; these businesses tend to employ traditional charter fishing boats with offshore capability.

The Council considered and rejected three alternatives, including the status quo, to the proposed February 15 to March 15 prohibition of sale of gag, black grouper, and red grouper. The Council rejected the status quo because it would not reduce overfishing. Two other rejected alternatives would have prohibited sale of these species for longer periods (2 or 4 months) and would have resulted in greater adverse economic impacts. The Council rejected these alternatives based on its belief that the proposed alternative, combined with the other proposed measures, would reduce fishing mortality sufficiently to prevent overfishing while minimizing the short-term negative impacts on small entities.

The Council considered several alternatives for the gag area closure, including proposals to close specific areas to commercial and recreational fishing during part or all of a 4-year period. The proposed alternative would prohibit recreational and commercial fishing for all species under the Council's FMPs for a 4-year period in two specific areas of the eastern Gulf where gag are known to be present. The Council requested that NMFS issue a compatible rule prohibiting fishing for highly migratory species in these two areas and establishing a marine reserve that would expire in 4 years unless, based on the effectiveness of this measure in protecting spawning aggregations and male gag, the Council and NMFS extended the measure. The Council considered and rejected four alternatives, including the status quo. Depending upon the size of the alternative reserve and the extent of fishing activity in that area, some of the rejected alternatives would have had more severe impacts on fishermen, and some would have had less severe impacts than the proposed alternative. Larger areas with extensive fishing activity would have greater adverse economic impacts but provide greater protection to spawning aggregations and male gag. To help mitigate the unavoidable negative economic impacts associated with the preferred alternative, the Council established the 4-year expiration date to ensure that the negative impacts would not continue if the objectives associated with the area closure were not being accomplished. The areas chosen for closure would provide the best cases for scientific study, would help prevent overfishing and protect spawning aggregations during the 4-year period while minimizing adverse impacts relative to some of the rejected alternatives.

No additional reporting, record keeping, or other compliance costs were identified. No duplicative, overlapping, or conflicting Federal rules were identified.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 5 0 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 20, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, add paragraph (k), reserved by the November 2, 1999, publication (64 FR 59125) and add paragraph (o) to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(k) *Closure of the Madison and Swanson sites and Steamboat Lumps.* No person may fish within the Madison and Swanson sites or Steamboat Lumps for any species of fish except highly migratory species. This prohibition is effective through [the date 4 years after the effective date of the final rule that implements this paragraph]. For the purpose of this paragraph (k), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*). The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

* * * * *

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of the area harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the bag and possession limit specified in § 622.39(b), provided the vessel is operating as a charter vessel or headboat. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

3. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iii) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—(*1*) Effective [30 days after the date of publication of the final rule implementing paragraph (d)(2)(iii)(B)(*1*) of this section] to [the date 1 year after the effective date of the final rule]—22 inches (55.9 cm), TL.

(*2*) Effective from [the date 1 year after the effective date of the final rule implementing paragraph (d)(2)(iii)(B)(*1*) of this section] to [the date 2 years after that effective date]—23 inches (58.4 cm), TL.

(*3*) Effective on and after [the date 2 years after the effective date of the final rule implementing paragraph (d)(2)(iii)(B)(*1*) of this section]—24 inches (61.0 cm), TL.

* * * * *

4. In § 622.45, paragraph (c)(4) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(c) * * *

(4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf EEZ. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

* * * * *

[FR Doc. 00–1808 Filed 1–21–00; 3:56 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 17
Wednesday, January 26, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.
ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after January 1, 2000. The list of newspapers will remain in effect until June 1, 2000 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Larry L. Larson, Director, Intermountain Region, 324 25th Street, Ogden, UT 84401, Phone (801) 625–5269.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notices in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman,* Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune,* Salt Lake City, Utah.

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: *Salt Lake Tribune,* Salt Lake City, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah.

Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah.

Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star-Tribune,* Casper, Wyoming.

Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah.

Roosevelt and Duchesne District Ranger decisions: *Uintah Basin Standard,* Roosevelt, Utah.

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho.

Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho.

Idaho City District Ranger decisions: *The Idaho Statesman,* Boise, Idaho.

Cascade District Ranger decisions: *The Advocate,* Cascade, Idaho.

Lowman District Ranger decisions: *The Idaho City World,* Idaho City, Idaho.

Emmett District Ranger decisions: *The Messenger-Index,* Emmett, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune,* Casper, Wyoming.

Jackson District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Buffalo District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Big Piney District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Pinedale District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Greys River District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Kemmerer District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Caribou National Forest

Caribou Forest Supervisor decisions: *Idaho State Journal,* Pocatello, Idaho.

Soda Springs District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Montipelier District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Westside District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum,* St. George, Utah.

Pine Valley District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Cedar City District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Powell District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Escalante District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Teasdale District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper,* Richfield, Utah.

Loa District Ranger decisions: *Richfield Reaper,* Richfield, Utah.

Richfield District Ranger decisions: *Richfield Reaper,* Richfield, Utah.

Beaver District Ranger decisions: *Richfield Reaper,* Beaver, Utah.

Fillmore District Ranger decisions: *Richfield Reaper,* Fillmore, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press,* Elko, Nevada.

Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*, Reno, Nevada.

Sierra Ecosystem Coordination Center (SECO)

Carson District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.
Bridgeport District Ranger decisions: *The Review-Herald*, Mammoth Lakes, California.

Spring Mountains National Recreation Area Ecosystem (SMNRAE)

Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*, Las Vegas, Nevada.

Central Nevada Ecosystem (CNECO)

Austin District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada.
Ely District Ranger decisions: *Ely Daily Times*, Ely, Nevada.

Northeast Nevada Ecosystem (NNECO)

Mountain City District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.
Ruby Mountains District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.
Jarbidge District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.
Santa Rosa District Ranger decisions: *Humboldt Sun*, Winnemucca, Nevada.

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate*, Price, Utah.
Sanpete District Ranger decisions: *The Pyramid*, Mt. Pleasant, Utah.
Ferron District Ranger decisions: *Emery County Progress*, Castle Dale, Utah.
Price District Ranger decisions: *Sun Advocate*, Price, Utah.
Moab District Ranger decisions: *The Times Independent*, Moab, Utah.
Monticello District Ranger decisions: *The San Juan Record*, Monticello, Utah.

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman*, Boise, Idaho.
Weiser District Ranger decisions: *Signal American*, Weiser, Idaho.
Council District Ranger decisions: *Council Record*, Council, Idaho.
New Meadows, McCall, and Krassel District Ranger decisions: *Star News*, McCall, Idaho.

Salmon and Challis National Forests

Salmon Forest Supervisor decisions: *The Recorder-Herald*, Salmon, Idaho.
Cobalt District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.
North Fork District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.
Leadore District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.
Salmon District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.
Challis Forest Supervisor decisions: *The Challis Messenger*, Challis, Idaho.
Middle Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho.
Challis District Ranger decisions: *The Challis Messenger*, Challis, Idaho.
Yankee Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho.
Lost River District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News*, Twin Falls, Idaho.
Burley District Ranger decisions: *Ogden Standard Examiner*, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit. *South Idaho Press*, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions: *The Times News*, Twin Falls, Idaho.
Ketchum District Ranger decisions: *Wood River Journal*, Hailey, Idaho.
Sawtooth National Recreation Area: *Challis Messenger*, Challis, Idaho.
Fairfield District Ranger decisions: *The Times News*, Twin Falls Idaho.

Targhee National Forest

Targhee Forest Supervisor decisions: *The Post Register*, Idaho Falls, Idaho.
Dubois District Ranger decisions: *The Post Register*, Idaho Falls, Idaho.
Island Park District Ranger decisions: *The Post Register*, Idaho Falls, Idaho.
Ashton District Ranger decisions: *The Post Register*, Idaho Falls, Idaho.
Palisaded District Ranger decisions: *The Post Register*, Idaho Falls, Idaho.
Teton Basin District Ranger decisions: *The Post Register*, Idaho Falls, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald*, Provo, Utah.
Pleasant Grove District Ranger decisions: *The Daily Herald*, Provo, Utah.
Heber District Ranger decisions: *The Daily Herald*, Provo, Utah.
Spanish Fork District Ranger decisions: *The Daily Herald*, Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune*, Salt Lake City, Utah.
Salt Lake District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah.
Kamas District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah.
Evanston District Ranger decisions: *Uintah County Herald*, Evanston, Wyoming.
Mountain View District Ranger decisions: *Uintah County Herald*, Evanston, Wyoming.
Ogden District Ranger decisions: *Ogden Standard Examiner*, Ogden, Utah.
Logan District Ranger decisions: *Logan Herald Journal*, Logan, Utah.

Dated: January 3, 2000.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 00–1829 Filed 1–25–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on February 3, 2000, at the Embassy Suites Portland Downtown, 319 SW Pine Street, Portland, Oregon 97204–2726. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to: briefings and discussion on the Survey and Manage Draft Supplemental Environmental Impact Statement, the new National Forest Management Act regulations, and the President's Roadless Area initiative. The IAC meeting will be open to the public is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Curt Loop, Acting Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: January 13, 2000.

Curtis A. Loop,

Acting Designated Federal Official.

[FR Doc. 00–1749 Filed 1–25–00; 8:45 am]

BILLING CODE 3410–31–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitutional Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2000.

	Period to be reviewed
Antidumping duty proceedings	
Canada: A–122–047	
Elemental Sulphur	12/1/98–11/30/99
Husky Oil Limited	
Petrosul International	
Chile: A–337–804	
Certain Preserved Mushrooms	8/5/98–11/30/99
Nature's Farm Products	
Ravine Foods	
Japan: A–588–046	
Polychloroprene Rubber	12/1/98–11/30/99
Denki Kagaku Kogyo Kabushiki Kaisha	
Tosoh Corporations	
Mexico: A–201–504	
Porcelain-On-Steel Cooking Ware	12/1/98–11/30/99
Cinsa, S.A. de C.V.	
Esmaltaciones de Norte America, S.A. de C.V.	
Republic of Korea: A–580–810	12/1/98–11/30/99
Welded ASTM A–312 Stainless Steel Pipe	
SeAH Steel Corporation, Ltd.	
Taiwan: A–583–815	12/1/98–11/30/99
Welded ASTM A–312 Stainless Steel Pipe	
Ta Chen Stainless Steel Pipe	
The People's Republic of China: A–570–827	12/1/98–11/30/99
Certain Cased Pencils*	
China First Pencil Company, Ltd.	

	Period to be reviewed
China Second Pencil Company, Ltd. Shanghai Three Star Stationery Company, Ltd. Beijing Pencil Factory Dalian Pencil Factory Donghua Pencil Factory Harbin Pencil Factory Jiangsu Pencil Factory Jinan Pencil Factory Juihai Pencil Factory Julong Pencil Factory Qingdao Pencil Factory Shenyiang Pencil Factory Songnan Pencil Factory Tianjin Pencil Factory Xinbang Joint Venture Pencil Factory Anhui Import/Export Group Corporation Anhui Light Industrial Products I/E Corporation Anhui Provincial Imports & Exports Corporation Beijing Light Industrial Products I/E Corp. China First Pencil Company, Ltd. China Second Pencil Company, Ltd. China National Light Industrial Products Import & Export Corporation (all branches) Dalian Light Industrial Products Import/Export Corporation Jiangsu Light Industrial Products Import/Export Group Corp. Jilin Provincial Machinery & Equipment Import & Export Corporation Liaoning Light Industrial Products Import/Export Corporation Qingdao Light Industrial Products Import/Export Corporation Shandong Light Industrial Products Import/Export Corporation Sichuan Light Industrial Products Import/Export Corporation Tianjin Stationery and Sporting Goods Import/Export Corporation Zhenjiang Foreign Trade Corporation Laizhou City Guangming Pencil-Making Lead Co., Ltd. *If one of the above named companies does not qualify for a separate rate, all other exporters of certain cased pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
The People's Republic of China: A–570–506 Porcelain-O-Steel Cooking Ware* ..... Clover Enamelware Enterprises, Ltd. Lucky Enamelware Factory Limited *If one of the above named companies does not qualify for a separate rate, all other exporters of porcelain-on-steel cooking ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	12/1/98–11/30/99
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 20, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 00–1851 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 000106008–0008–01]

RIN: 0693–XX49

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) hereby announces the establishment of a sub-program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program to recognize bodies that accredit quality

system registrars that register organizations that produce medical devices. This sub-program is being established in accordance with NVCASE regulations in response to a request from a Federal Agency, the Food and Drug Administration (FDA). Accreditation bodies recognized by NIST may then accredit quality system registrars to register applicable organizations that demonstrate that they satisfy designated foreign or domestic mandated regulatory requirements.

The action taken under this notice addresses both generic and specific NVCASE requirements to allow NIST to support the FDA in fulfilling its obligations as designating authority under the current United States (U.S.)/ European Union (EU) Mutual Recognition Agreement (MRA) medical devices sectoral annex. If additional MRAs covering medical devices are negotiated between the United States and another country or region, additional specific requirements may also be included under this NVCASE activity.

Sub-program requirements have been developed in accordance with NVCASE regulations and with public consultation. Public input was obtained at an open meeting on April 15, 1999, and from comments received through May 15, 1999.

DATES: Applications will be received beginning February 1, 2000.

ADDRESSES: Applications for recognition may be obtained from, and returned to, Robert L. Gladhill, NVCASE Program Manager, NIST, 100 Bureau Drive, Mail stop 2100, Gaithersburg, MD 20899–2100, by fax (301) 975–5414, or E-mail at robert. gladhill@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, 100 Bureau Drive, Mail stop 2100, Gaithersburg, MD 20899–2100, telefax: (301) 975–5414, or E-mail: robert.gladhill@nist.gov.

SUPPLEMENTARY INFORMATION: This NVCASE sub-program to recognize accreditation bodies that accredit quality system registrars is being established in accordance with the NVCASE Regulations (15 CFR part 286.2(b)(3)(ii)). The generic requirements and specific criteria for this NVCASE sub-program have been established in accordance with NVCASE regulations (15 CFR Part 286.5). Public input on the establishment of both generic requirements and specific criteria for the medical devices sector was received during an open workshop held at the Department of Commerce on April 15, 1999. This workshop was announced in the **Federal Register** vol. 64, No. 42/Thursday, March 4, 1999. Follow-up comments were accepted from the public through May 15, 1999.

NIST will apply the generic requirements contained in the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 61—"General Requirements for Assessment and Accreditation of Certification/Registration Bodies" to all applicant accreditation bodies. Quality system registrars applying to recognized accreditors shall be assessed against the requirements of ISO/IEC Guide 62—"General Requirements for Bodies Operating Assessment and Certification/ Registration of Quality Systems." These generic requirements will be supplemented by specific sectoral criteria contained in individual supplements to the NVCASE Program Handbook, for example, European Commission document MEDDEV 2.10/2 "Designation and Monitoring of Notified Bodies within the framework of the directives on medical devices." Such specific sectoral criteria are developed through consultation with the public and appropriate experts.

As stated in the NVCASE regulations (15 CFR Part 286.4), the NVCASE program is operated on a cost reimbursement basis. It is open for voluntary participation by any U.S. based body that conducts activities relating to conformity assessment falling within the program's scope. Pursuant to this notice, NIST will accept applications from interested accreditation bodies for recognition to accredit quality system registrars under the U.S./EU MRA medical devices sectoral annex. Prospective accreditation bodies must submit a complete application and required fees by March 15, 2000 in order to be included in the initial group to be evaluated.

The evaluation of the first group of accreditation bodies applying for NVCASE recognition will begin on or about April 3, 2000. All accreditation bodies that have submitted a complete application and required fees to NIST by March 15, 2000, will be included in this initial group. Applications received subsequently will be considered on an as-received basis for evaluation after the initial group of applicants has been considered.

NIST expects to announce recognition of qualified accreditation bodies in the initial applicant group on or about June 1, 2000. On or about the same time, NIST also expects to identify and list an initial group of qualified registrars. Each registrar listed under the provisions of the U.S./EA MRA will be designated by NIST as a conformity assessment body (CAB).

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by OMB under the following control Number : 0693–0019.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget Control Number.

Dated: January 18, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–1744 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

January 20, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward applied to the 1999 limits. The current limit for Category 666–P is also being reduced for special carryforward that was applied to the 1999 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 20, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on January 27, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits:	
360	5,874,932 numbers.
361	6,831,315 numbers.
363	49,489,371 numbers.
369–F/369–P [2]	2,742,869 kilograms.
369–S [3]	837,418 kilograms.
666–P [4]	659,891 kilograms.
666–S [5]	4,287,658 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[5] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–1813 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of November 15, 1999 (64 FR 61852), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205). No comments were received in response to this notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for a period of three years from the date of approval by OMB.

The Safety Standard for Walk-Behind Power Lawn Mowers establishes performance and labeling requirements for mowers to reduce unreasonable risks of injury resulting from accidental contact with the moving blades of mowers. Certification regulations implementing the standard require manufacturers, importers and private labelers of mowers subject to the standard to test mowers for compliance with the standard, and to maintain records of that testing. The records of testing and other information required by the certification regulations allow the Commission to determine that walk-behind power mowers subject to the standard comply with its requirements. This information also enables the Commission to obtain corrective actions if mowers fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR part 1205.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of walk-behind power lawn mowers.

Estimated number of respondents: 20.

Estimated average number of hours per respondent: 390 per year.

Estimated number of hours for all respondents: 7,800 per year.

Estimated cost of collection for all respondents: $170,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by February 25, 2000 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 20, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–1779 Filed 1–25–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 24 February 2000.

Place of Meeting: Veterans Affairs Conference Room, Room 418, Senate Russell Office Bldg, Washington, DC.

Start Time of Meeting: Approximately 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel Lawrence J. Verbiest, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. All proceedings are open.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–1821 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DOD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A multifunction strain-temperature gauge and A Quantum Key Distribution System for encryption and authentication.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Microfabricated Multifunction Strain-Temperature Gauge.
Inventors: Jih-Fen Lei, Gustave C. Fralick and Michael J. Krasowski.
Patent Number: 5,979,243.
Issued Date: November 9, 1999.

Title: Positive-Operator-Valued-Measure Receiver For Quantum Cryptography.
Inventors: Howard E. Brandt and John M. Myers.
Patent Number: 5,999,285.
Issued Date: December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–1824 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A harness for long-term stretcher carry, A method of bonding a silicon carbide chip to a semiconductor and a method for fabricating high-density monolithic metal billets.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Harness For Long-Term Stretcher Carry.
Inventors: Joseph J. Knapik, Valerie J.B. Rice, Dennis M. Hash and William H. Harper.
Patent Number: 5,967,145.
Issued Date: October 19, 1999.

Title: Bonding Of Silicon Carbide Chip With A Semiconductor.
Inventors: Timothy Mermagen, Judith McCullen, Robert Reams and Bohdan Dobriansky.
Patent Number: 5,990,551.
Issued Date: November 23, 1999.

Title: Hot Explosive Consolidation Of Refractory Metal And Alloys.
Inventors: Laszlo J. Kecskes.
Patent Number: 5,996,385.
Issued Date: December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.
SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer
[FR Doc. 00–1826 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Rio de Flag Flood Control Study Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DoD.
ACTION: Notice (extension of comment period).

SUMMARY: Notice of Availability of the public review and comment period for the Study, City of Flagstaff, Coconino County, Arizona; dated November 1999 was published in the **Federal Register**, Volume 64, No. 223 on November 19, 1999. Due to additional concerns and requests from the public, the review period for this proposed project has been extended to March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David Compas, (213) 452–3850.
SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–1822 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Future 404 Permit Actions for the Newhall Ranch Specific Plan and Associated Facilities along Portions of the Santa Clara River and Its Side Drainages, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.
ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, the Corps of Engineers announces its intent to prepare a Draft Environmental Impact Statement (DEIS)

to address proposed future 404 permit activities associated with the phased development of the Newhall Ranch Specific Plan, and associated Water Reclamination Plant, along a portion of the Santa Clara River, Los Angeles County, California. To eliminate duplication of paperwork, the Corps of Engineers intends on preparing a joint DEIS and Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act prepared by the California Department of Fish and Game per 40 CER 1506.2 and 1506.4.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Henderson, U.S. Army Corps of Engineers, Attention: Regulatory Branch, 2151 Alessandro Drive, Suite 255, Ventura, California 93001, phone: (805) 641–1128, e-mail: bhenderson@spl.usace.army.mil

SUPPLEMENTARY INFORMATION:

1. Backgound

The Newhall Ranch Project is located in nothern Los Angeles County and encompasses approximately 12,000 acres. The Santa Clara River and State Route 126 traverse the northern portion of the Specific Plan area. The river extends approximately 5.5 miles east to west across the site. In March 1999, the Los Angeles County Board of Supervisors approved the Specific Plan which establishes the general plan and zoning designations necessary to develop the site with residential, commercial, and mixed uses over the next 20 to 30 years. The Newhall Ranch Specific Plan also includes a Water Reclamation Plant at the western edge of the project area. Individual projects, such as residential, commercial, and industrial developments, roadways, and other public facilities would be developed over time in accordance with the development boundaries and guidelines in the approved Specific Plan. Many of these developments would require work in and near the Santa Clara River and its side drainages ("waters of the United States").

The Newhall Ranch Company would develop most of the above facilities. However, other entities could construct some of these facilities using the approvals or set of approvals issued to The Newhall Ranch Company. The proposed 404 permit would also include routine maintenance activities to be carried out by Los Angeles County Department of Public Works using the 404 permit issued to The Newhall Ranch Company. Any party utilizing a 404 permit issued to The Newhall Company would be bound by the same conditions in the 404 permit.

2. Proposed Action

The project proponent and landowner, The Newhall Ranch Company, has requested a long-term 404 permit from the Corps of Engineers. The project to be addressed in the EIS consists of those facilities associated with the Newhall Ranch Specific Plan that would require a 404 permit including the following:

- Bank protection comprised of buried soil cement or buried riprap with native vegetation planted in the overlying soil in areas proposed for land development, and grouted riprap and gunite placed near bridge abutments;
- Two new bridges constructed across the Santa Clara River at Potrero Valley Road and Long Canyon Road;
- Modifications of several side drainages (*i.e.* San Martinez Grande, Chiquito, Potrero, Long, and Middle canyons) for drainage and flood control purposes (larger drainages noted above are proposed to be modified and reconstructed as open soft-bottom channels with grade control structures; buried storm drains are proposed for smaller drainages with peak flows of less than 2,000 cfs);
- Two wastewater lines placed across the river at Potrero Canyon and upstream of Long Canyon Road;
- Potentially other utility line crossings for water, oil, and gas lines;
- Numerous storm drain outlets, most of which are anticipated to empty into water quality control facilities prior to discharging to the river;
- Several bridges or drainage facilities associated with the Magic Mountain Parkway and Valencia Boulevard extensions;
- Bank protection associated with the Water Reclamation Plant;
- Various trails and observation platforms for recreational, educational, and wildlife viewing purposes; and
- Routine maintenance of the above flood control facilities by removal of sediment or vegetation to preserve hydraulic design capacity and protect property.

3. Scope of Analysis

The DEIS will be a project-level document which addresses a number of interrelated actions over a specific geographic area that (1) would occur as logical parts in the chain of contemplated actions, and (2) would be implemented under the same authorizing statutory or regulatory authorities. The information in the EIS will be sufficient for the Corps to make a decision on the issuance of a long-term 404 permit for the Newhall Ranch Specific Plan.

The document will be a joint Federal and state document. The California Department of Fish and Game (CDFG) will prepare an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act for the same project. The Corps and CDFG will work cooperatively to prepare a joint DEIS/DEIR document, and to coordinate the public noticing and hearing processes under Federal and state laws.

The impact analysis will follow the directives in 33 CFR 325 which requires that it be limited to the impacts of the specific activities requiring a 404 permit and only those portions of the project outside of "waters of the United States" over which the Corps has sufficient control and responsibility to warrant Federal review. The Corps will extend the geographic scope of the environmental analysis beyond the boundaries of "waters of the United States" in certain areas to address indirect and cumulative impacts of the regulated activities, and to address connected actions pursuant to NEPA guidelines (40 CFR 1508(a)(1)). In these upland areas, the Corps will evaluate impacts to the environment and identify feasible and reasonable mitigation measures and the appropriate state or local agencies with authority to implement these measures if they are outside the authority of the Corps. In evaluating impacts to areas and resources outside the Corps' jurisdiction, the Corps will consider the information and conclusions from the Final Program EIR for the Specific Plan prepared by Los Angeles County Department of Regional Planning. However, the Corps will exercise its independent expertise and judgement in addressing indirect and cumulative impacts to upland areas due to issuance of the proposed 404 permit.

4. Alternatives

Various alternatives will be addressed in the EIS that would avoid or lessen any significant impacts associated with the proposed facilities, and/or that would reduce impacts to the aquatic environment, while still meeting the overall project purpose and need. The applicant has identified the project purpose and need as providing facilities for drainage, flood control, transportation, water and wastewater treatment, and utilities, as well as maintenance activities necessary to implement the approved Specific Plan. Alternatives to be considered include modifications (*e.g.*, size, location, etc.) to the proposed facilities, or alternative designs for these facilities. Alternatives will focus on alternative methods to

achieve the required flood control, river crossing, and drainage within the context of the Specific Plan. Specific alternatives will be developed after public scoping is completed, but will include the following types of alternatives:

- Alternative bridge locations or designs including changes in the precise alignments of the proposed bridges within specified corridors across the river, and the use of alternative bridge pier and embankment designs to reduce impacts to riparian resources.
- Alternative bank protection designs including use of environmental (biotechnical) or non-traditional bank protection methods, such as geotextiles.
- Complete avoidance of encroachment where bank protection would not be placed within the banks and channel of the mainstem of the Santa Clara River and flood control improvements would not be implemented along side drainages.
- Reduced encroachment along the mainstem where the proposed encroachment along the mainstem of the Santa Clara River for bank protection would be reduced by relocating certain reaches of bank protection to upland areas, outside the banks of the Santa Clara River.
- Reduced encroachment along side drainages where the proposed number of side drainages converted to storm drains or uniform flood control channels would be reduced.

5. Scoping Process

Federal, State, and local agencies and other interested private citizens and organizations are encouraged to send their written comments to Mr. Bruce Henderson at the address provided above. This scoping comment period will expire 30 days from the date of this notice.

Significant issues to be analyzed in depth in the DEIS include:

- Hydrology, flooding, and sedimentation—a description of the potential impacts of bank protection and bridges; analysis of the change in river and tributary hydrology and hydraulics, particularly related to flood frequency and location, peak discharge, bank and channel bed erosion, water velocity, scouring potential at bridges, and alteration of sediment deposition patterns.
- Water quality—potential effects on quality of surface and ground water due to construction activities in the watercourses and due to urban stormwater runoff associated with adjacent upland development. The effect of any discharges of treated wastewater from the proposed Water Reclamation Plant on surface and ground water will also be addressed.
- Wetlands and riparian vegetation—potential effect on the nature and amount of wetland and riparian vegetation within the watercourses, and potential changes in successional patterns in the watercourses due to altered hydrology and sedimentation patterns.
- Threatened and endangered species—potential adverse impacts on listed and other sensitive species including, but not limited to, the unarmored three-spine stickleback, arroyo chub, Santa Ana sucker, least Bell's vireo, southwestern willow flycatcher, and arroyo toad due to habitat loss, changes in hydrology, and/or human encroachment. A Section 7 endangered species consultation will be conducted with the U.S. Fish and Wildlife Service for potential impacts to listed species. Impacts to designated critical habitat for the least Bell's vireo will also be addressed in the consultation.
- Fish and wildlife—in general, potential changes in populations of the native fauna due to reduction or alteration of the wetland and adjacent upland habitats along the Santa Clara River and its side drainages.
- Air quality—potential impact of emissions associated with the construction of project facilities on local and regional air quality, and conformity with the South Coast Air Quality Management Plan.
- Cultural Resources—potential impacts on archeological, ethnographic, paleontologic, and historic resources.
- Visual Resources—potential changes in the natural and man-made visual settings due to new bridges, bank protection, and urban development.
- Cumulative impacts—combined impacts of the proposed project and other ongoing and future projects affecting the Santa Clara River within both Los Angeles and Ventura counties, in relation to the Newhall Ranch Specific Plan.

Coordination will be undertaken with the U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Game, California Regional Water Quality Control Board, and the California Coastal Commission.

6. Scoping Meetings

A public scoping meeting to receive input on the scope of the EIS will be conducted on February 9, 2000 at 7:00 p.m. at the Valencia High School Auditorium, located at 27810 North Dickason Drive, Valencia, California. Participation in the scoping meeting by Federal, state, and local agencies, and other interested private citizens and organizations is encouraged.

7. DEIS Schedule

A Draft EIS is expected to be issued for public review in summer of 2000 and a Final EIS to be issued in late 2000.

Gregory D. Showalter

Army Federal Register Liaison Officer.

[FR Doc. 00–1825 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Missouri River Flood Plain Developments Between Missouri River Miles 29.6 to 38.4, St. Louis County, Missouri

AGENCY: U.S. Army Corps of Engineers, St. Louis District, DOD.

ACTION: Notice of intent.

SUMMARY: St. Louis District, U.S. Army Corps of Engineers (SLD) is issuing this notice that an Environmental Impact Statement (EIS) will be prepared to address cumulative and future impacts to the Missouri River flood plain, resulting from permitted actions evaluated under Section 404 of the Clean Water Act. The study area is from approximate Missouri River mile 29.6 to 38.4, along the right descending bank of the Missouri River in St. Louis County, Missouri. Most of this area of flood plain is currently protected by the Howard Bend Levee, which connects to the Riverport Levee. No pending regulatory permits are required at this time for proposed development projects within this area. However, it is the intent of SLD to prepare an EIS to address the cumulative impacts that have occurred to the aquatic resources in this area from permitted activities, as well as to address the impacts to the environment for several large projects forecast in the future, that may require Section 404 permits.

ADDRESSES: U.S. Army Corps of Engineers, St. Louis District, Construction-Operations Readiness Division, Regulatory Branch, 1222 Spruce Street, St. Louis, MO 63103–2833.

FOR FURTHER INFORMATION CONTACT: Mr. Danny McClendon, (314) 331–8580 or Danny D. Mcclendon@mvs02.usace.army.mil

SUPPLEMENTARY INFORMATION: During the last 25 years, the Missouri River flood plain between approximate Missouri River miles 27.0 (Earth City Levee) and 47.0 (Monarch-Chesterfield Levee) in St. Louis County, Missouri, has been subjected to extensive levee construction and development for agricultural, industrial, and commercial purposes. These activities have impacted the aquatic environment and fish and wildlife resources in this reach of flood plain. Construction of the Earth City Levee to a 500-year level of protection in 1972, construction of the Riverport Levee to a 500-year level of protection in 1988, reconstruction and recertification of the Monarch-Chesterfield Levee to a 100-year level of protection in 1997 and current proposal to raise this levee to a 500+-year level of protection, reconstruction of a portion of the Howard Bend Levee to a 100-year level of protection in 1966 and current proposal to raise this levee to a 500+-year level of protection, current construction of the Page Avenue Extension Project, and resultant commercial and industrial development and agricultural conversions has resulted in a disjointed analysis of natural resource impacts in relation to Section 404 of the Clean Water Act. Prior to February 1995, the regulatory responsibility for Section 404 permits in the Missouri River flood plain in St. Louis County, Missouri were with the Kansas City District, Corps of Engineers (KCD). As of February 1, 1995, this responsibility was transferred to the St. Louis District, Corps of Engineers (SLD). The Earth City Levee, Riverport Levee, and Page Avenue Extension Project involved legal challenges, which resulted in certain limitations and special conditions for future Corps permit actions. In addition, KCD recognized the piecemeal development of the levee protected areas within the Monarch-Chesterfield flood plain and placed a moratorium on individual developments without the preparation of an environmental analysis. The SLD continued this moratorium on development in the protected areas within the Monarch-Chesterfield flood plain until late 1996 and late 1997, upon which time the SLD issued Section 404 permits for the remaining wetlands within the levee protected area based upon two consolidated permit applications and environmental analysis. Large-scale mitigation was required for these permit actions. In 1997, the SLD initiated a study to determine the feasibility of raising the Monarch-Chesterfield Levee. The SLD is currently preparing an EIS for this project. In addition, the Missouri Department of Transportation completed an EIS for the Page Avenue Extension Project in 1992, and the National Park Service completed a Supplemental EIS for the Page Avenue Extension Project in 1995. Therefore, the scope of this current EIS will focus on the section of Missouri River flood plain between the Monarch-Chesterfield Levee and Interstate 70, and a north/south connector road corridor running through the Howard Bend flood plain, with a beginning point at Interstate 70 and a terminus at Olive Boulevard, between Route 141 (Woods Mill Road) and Creve Coeur Mill Road (to be known at the Howard Bend Flood Plain EIS). This EIS will not reevaluate the Page Avenue Extension Project, the Monarch-Chesterfield Levee Project, the Riverport or Earth City Levees, or any other previously approved or permitted projects by the Corps of Engineers located in the study area. However, the EIS will take into account the cumulative and secondary impacts of these projects on the remaining aquatic resources within the study area, and address any special conditions or requirements of these previous projects.

Alternatives

The Corps of Engineers has 3 alternative courses of action available:

1. The "no action" alternative would be to not grant any future Section 404 permits within the study area.

2. Continue to process Section 404 permit applications on a case-by-case basis for future developments within the Howard Bend Flood Plain study area, without developing a Strategic Area Management Plan (SAMP).

3. Evaluate the environmental effects of future developments within the Howard Bend Flood Plain study area leading to the development of a Strategic Area Management Plan (SAMP) to address the cumulative and secondary impacts of developments in this area, and develop a comprehensive plan to protect or mitigate important aquatic resources due to permitted activities.

Scoping and Public Involvement

Public involvement will be sought during scoping and conduct of the study in accordance with NEPA procedures. A public scoping process will help to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. The Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all Federal, State and local agencies, Indian Tribes, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts and permits or other approvals that may be required.

Key areas to be analyzed in-depth in the draft EIS will include the flood plain, wetlands, water quality, fisheries, wildlife, parks, infrastucture, cultural resources, socioeconomic resources, recreation, transportation, and cumulative and secondary enviromental impacts.

Other Environmental Review and Coodination Requirements

All review and coordination requirements will be fulfilled via this NEPA process. On-going permit actions and studies are continually coordinated with agencies and interested publics.

Scoping Meeting

A scoping meeting for this EIS will be held in conjunction with a public workshop that will be held in March 2000. The exact date has not been set and can be requested by calling (314) 331–8580.

Availability of Draft EIS

The draft EIS is scheduled for release in late 2000 to early 2001.

Michael R. Morrow,

COL, EN, Commanding.

[FR Doc. 00–1823 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–GS–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Exclusive License of Partially Exclusive License

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice (correction).

SUMMARY: In the previous **Federal Register** notice (Vol. 64, No. 233, pages 68090–68091) Monday, December 6, 1999 make the following corrections.

On page 68091, column one, thirtieth line in the Supplementary paragraph, the words addressing "Concrete Technology Corporation, P.O. Box 1159, Tacoma, WA 98401" was erroneously listed. The correct wording is "W.F. Baird and Associates, 2981 Yarmouth Greenway, Madison, WI 53711."

FOR FURTHER INFORMATION CONTACT: For further information, please refer to the previous point of contact official in the original notice.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–1820 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearings and Extension of Public Comment Period for the Draft Environmental Impact Statement (DEIS) for the Shock Trial of the WINSTON S. CHURCHILL (DDG 81)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a DEIS evaluating the environmental effects for the shock trial of the WINSTON S. CHURCHILL (DDG 81) at a site to be located offshore of either Norfolk, Virginia, Mayport, Florida, or Pascagoula, Mississippi. The DON is the lead agency and the National Marine Fisheries Service (NMFS) is a cooperating agency in the development of the DEIS. The comment period, previously announced in the **Federal Register** on December 10, 1999 (64 FR 69267) has been extended. This notice announces the dates and locations for the three public hearings and the extension of the public review period. Public hearings will be held in order to receive oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES AND ADDRESSES: The public hearings will be jointly hosted by the DON and the NMFS. The hearings have been scheduled as follows:

1. March 13, 2000, 7:00 PM, Granby High School Auditorium, 7101 Granby Street, Norfolk, Virginia.
2. March 14, 2000, 7:00 PM, Pensacola Junior College, Hagler Auditorium, 1000 College Boulevard, Pensacola, Florida.
3. March 15, 2000, 7:00 PM, Fletcher High School Auditorium, 700 Seagate Avenue, Neptune Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Carroll, Marconi Systems Technologies, 2611 Jefferson Davis Highway, Suite 5000, Arlington, Virginia 22202, telephone (703) 413–4099 or e-mail address at ddg81eis@tst.tracor.com.

SUPPLEMENTARY INFORMATION: Per Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the DON has prepared and filed with the EPA a DEIS evaluating the environmental effects for the shock trial of the WINSTON S. CHURCHILL (DDG 81), at a site to be located offshore of either Norfolk, Virginia, Mayport, Florida, or Pascagoula, Mississippi. The DON is the lead agency and the NMFS is a cooperating agency in the development of the DEIS. The NMFS is concurrently evaluating the DON's request for a Letter of Authorization for the Incidental Take of Marine Mammals in their regulatory role under the Marine Mammal Protection Act.

A Notice of Availability for the DEIS appeared in the **Federal Register** on December 10, 1999 (64 FR 69267). That Notice stated that comments on the DEIS were due by January 24, 2000. The DON is extending the public comment period to March 31, 2000. All written comments should be postmarked no later than that date. This comment period is expected to coincide with the NMFS comment period provided in its Advance Notice of Proposed Rule (ANPR) on the DON'S application for the taking of marine mammals incidental to the proposed shock trial of the WINSTON S. CHURCHILL. The NMFS will provide details on the ANPR by separate notice in the **Federal Register**.

The DON will conduct three public hearings to receive oral and written comments concerning the DEIS and the ANPR. A brief presentation will precede a request for public information and comments. DON representatives will be available at each hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearings and submitted in writing either at the hearing or mailed to Ms. Lyn Carroll (see address below).

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DEIS is available for public review at the following libraries:

—Beaches Branch Library, Jacksonville Public Libraries, 600 3rd Street, Neptune Beach, Florida.
—Center for Naval Analysis, The Library, 4401 Ford Avenue, Alexandria, Virginia.
—Main Library, Norfolk Public Library, 301 East City Hall Avenue, Norfolk, Virginia.
—Main Library, Jacksonville Public Libraries, 122 North Ocean Street, Jacksonville, Florida.
—Main Library, Pascagoula Public Library, 3214 Pascagoula Street, Pascagoula, Mississippi.
—Main Library, Pensacola Public Library/West Florida Regional Library, 200 W. Gregory Street, Pensacola, Florida.
—Pell Marine Science Library, University of Rhode Island, Narragansett Bay Campus, Narragansett, Rhode Island.
—SIO Library Mono, Scripps Inst of Oceanography, 9500 Gilman Drive, La Jolla, California.
—St. Mary's Public Library, 100 Herb Bauer Drive, St. Mary's, Georgia.
—University of Southhampton, National Oceanographic Library, Express Dock, Southhampton, United Kingdom.

Dated: January 20, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–1802 Filed 1–25–00; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 6 p.m., February 9, 2000.

PLACE: Ambassador Hotel, Trinity Room, 3100 I–40 West, Amarillo, Texas.

STATUS: Open. While the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the

public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board is visiting the Pantex Plant as a part of its oversight of the Department of Energy's (DOE) defense nuclear facility safety management program. The Board's enabling legislation requires health and safety oversight encompassing design, construction, operation and decommissioning activities.

The Board wishes also to avail itself of the opportunity of this visit to meet with the stakeholders and local members of the public. The session is intended to be informal and to provide an opportunity for members of the public, DOE, and its contractor employees or their representatives to comment on or provide information directly to the Board regarding matters affecting health or safety at Pantex.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Dated: January 24, 2000.

John T. Conway,

Chairman.

[FR Doc. 1966 Filed 1–24–00; 12:44 pm]

BILLING CODE 3670–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2000–1]

The Need to Stabilize and Safely Store Large Amounts of Fissionable and Other Nuclear Material That for Safety Reasons Should Not Be Permitted to Remain Unremediated

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. § 2286a(a)(5) concerning the need to stabilize and safely store large amounts of fissionable and other nuclear material that for safety reasons should not be permitted to remain unremediated.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before February 25, 2000.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: January 20, 2000.

John T. Conway,

Chairman.

Recommendation 2000–1

It is now almost six years since the Defense Nuclear Facilities Safety Board (Board) transmitted to the Secretary of Energy its Recommendation 94–1 entitled, "Improved Schedule for Remediation in Defense Nuclear Facilities Complex." That Recommendation pointed to the existence of large quantities of unstable fissionable material and other radioactive material that had been left in the production pipeline following termination of nuclear weapons production. These materials required prompt conversion to more stable forms, to prevent deterioration leading to inevitable spread of radioactive contamination. Further, some of the material was in such a state that serious safety problems could be expected in a very short period of time if remediation did not take place.

The Recommendation identified safety problems posed by plutonium both as metal and in chemical compounds, and plutonium-bearing materials such as residues and spent nuclear fuel. Most of this material was and still is at three sites: Savannah River, Hanford, and Rocky Flats Environmental Technology Site (RFETS). A substantial amount of spent nuclear fuel also existed at the Idaho National Engineering and Environmental Laboratory. In the Implementation Plan responding to the Recommendation, the Department of Energy (DOE) justifiably saw fit to add to the sources of concern the enriched uranium solution stored at the Savannah River Site, accumulated from processing of spent nuclear fuel, and the highly radioactive uranium-233 in the decommissioned Molten Salt Reactor Experiment (MSRE) at the Oak Ridge National Laboratory. The highly enriched uranium solution, amounting to many thousands of gallons of liquid, is stored outside the H-Canyon in large tanks where over a period of time precipitation resulting from freezing, chemical changes, or evaporation of liquid could produce sediments posing a threat of accidental criticality. The MSRE has been shut down for many decades, and deterioration, the onset of which had already been detected, could in time release its radioactive material into the environment.

Materials Stabilized Since the Recommendation

In the years since the Recommendation, progress has been made at defense nuclear facilities in remediating the most hazardous material. Most sites have repackaged plutonium metal and oxides that had been left in containers in contact with plastic that could become a source of hydrogen gas. Deteriorating spent nuclear fuel elements stored in the 603 Basin at the Idaho National Engineering and Environmental Laboratory have been moved to the 666 Basin where control of water purity is much better. Substantial amounts of spent nuclear fuel elements and nuclear targets stored in basins at the Savannah River Site have been chemically processed and plutonium and other radioactive material so extracted have been stored. Most of the plutonium in solution at the Savannah River Site has been converted to metal and along with other plutonium metal at the Site has been packaged in seal-welded containers with inert atmospheres by means of the bagless transfer system. Almost all of the plutonium-bearing solutions in facilities at the RFETS have been chemically treated to remove the plutonium, which has then been stored as more stable oxide. Numerous drums containing radioactive residues, mostly at the RFETS, have been vented to prevent buildup of pressure by gas liberated through chemical reactions and by effects of radioactive decay. Though non-technical problems continue to plague actions to store nuclear waste in the Waste Isolation Pilot Plant (WIPP) facility in New Mexico, some storage at that site has taken place, and presumably momentum will build toward highly important shipment of more material to that disposal site. In these ways, most of the very immediate concerns prompting the Recommendation have been eased.

Furthermore, after a long period when it seemed that little was being accomplished, progress has been made toward cleanup of the important K-East and K-West fuel storage basins at the Hanford Site. Remediation of many of the cleanup problems at the RFETS has taken on momentum after a long initial period when little was accomplished. Some of the most notable advances have been made by arrangements to ship plutonium-bearing material to the Savannah River Site and to WIPP.

Approximately 300,000 liters of plutonium solution in the F-Canyon at

the Savannah River Site have now been converted to metal in the FB-Line. This material is stored in approximately 80 welded stainless steel cans that will serve as the inner containers to meet DOE–STD–3013. Plutonium solutions resulting from stabilization of Mark-31 spent nuclear fuel have also been converted to metal, and along with the preexisting metal items in the FB-Line, are also stored in similar DOE–STD–3013 inner containers.

Problems Remaining

Severe problems continue to impede other remedial measures that had been promised in the original Implementation Plan issued by the Secretary of Energy in response to Recommendation 94–1, and in Revision 1 to that Plan as issued on December 28, 1998. For a variety of reasons, many of them stated below, most of the remaining milestones in the Implementation Plans will not be met. Among the remaining problems are the following:

• Approximately 34,000 liters of plutonium-bearing solution remain in the H-Canyon at the Savannah River Site. Originally this material was to have been stabilized by March 2000 in the HB-Line Phase 2 facility; however, preparing that facility for operation was not funded in FY 1999. The revised Implementation Plan deferred stabilization until June 2002. The contractor has provided an unofficial revised estimate of completion by December 2002, but that date is alleged to be at risk because the resources (mainly technical personnel) are not available to support development of procedures and Authorization Basis documents. There is at present no high confidence startup schedule.

• In the F-Area at the Savannah River Site are approximately 800 kilograms of plutonium oxide. This oxide was to have been fired at high temperature in accordance with DOE–STD–3013 and packaged in 3013-compliant containers by May 2002. So far there has been no appreciable action toward these objectives. The stated reason has been deferral of a decision to build the Actinide Packaging and Storage Facility (APSF), though as the Board noted in an earlier letter to the Assistant Secretary for Environmental Management, a decision not to build the facility appears already to have been made. This activity is at present not funded, nor is any funding planned for a facility which could be used in stabilizing and storing this material. Though Implementation Plans had originally set target dates for accomplishment of the actions, no dates based on revised plans have been established.

• In the F-Area at the Savannah River Site are also about 400 kilograms of plutonium in the form of miscellaneous residues. Several paths for processing the residues have been proposed, depending on their characteristics, but all the plutonium should end up as metal or oxide fired at high temperature according to DOE–STD–3013. Originally all were to occur by May 2002. Other than startup of the FB-Line for characterizing the material, there has been no appreciable action so far toward the final objectives. As for the oxides referred to above, stabilization and packaging of this material were to be accomplished in the APSF, and are now being delayed.

• One tank in the F-Canyon at Savannah River contains approximately 14,400 liters of a solution of americium and curium. These elements, which are highly radioactive, are raw materials for production of californium-252 (Cf^{252}) in the High Flux Isotope Reactor at Oak Ridge. There are continuing needs for Cf^{252}. Dispersal of the americium and curium material through loss of integrity of the tank and its appendages, such as might be caused by corrosion or seismic action, would create an almost insurmountable problem of spread of radioactive contamination. The original Implementation Plan foresaw conversion of the dissolved elements by November 1999 to a vitreous form suitable for storage until use. Difficulties with the melter planned for the operation caused deferral of the operation to September 2002 according to the revised Implementation Plan. At present the activity is alleged to be under-funded, though a Request for Proposal has been issued seeking a commercial contract for the action. The most optimistic estimate of a completion date is November 2004.

About 6,000 liters of a solution of neptunium-237 (Np^{237}) are in tanks in the H-Canyon at the Savannah River Site. This isotope is the raw material for production of plutonium-238 (Pu^{238}), which has such uses as a heat source for production of electricity for some NASA missions. Initial plans were to vitrify this material by September 2003. The revised Implementation Plan stated that instead it was to be converted to oxide through use of the HB-Line Phase 2 facility. The revised Implementation Plan deferred the estimated date of completion to December 2005. An additional six-month delay is now foreseen, though that view may still be optimistic since adequacy of funding so far in the future cannot be assured.

• About 230,000 liters of highly-enriched uranyl nitrate solution are held in tanks outside the H-Canyon at the Savannah River Site. The quantity of solution will continue to increase as a result of stabilization of spent Mark 16/22 fuel elements. This solution is a hazard because freezing, evaporation, or chemical change could lead to a uranium concentration and a threat of accidental criticality. The intent has been to add depleted uranium to this solution, reducing the enrichment to a range suitable for use in fuel elements for Tennessee Valley Authority's light water reactors. Though the Tennessee Valley Authority has concurred in principle with the arrangement, an agreement to proceed has been held up by allegedly insufficient out-year funding by DOE to execute its share of the agreement. Meanwhile, the estimated costs have been increasing. An original date of December 1997 had been set for conversion of the uranium to oxide. The revised Implementation Plan delayed that date by six years to December 2003. There is no credible date for removal of the hazard. Assigned storage space for the solution is now nearly full.

• About seven tonnes of heavy metal, principally highly-enriched uranium, is still in irradiated Mark 16/22 fuel elements at the Savannah River Site. A campaign to process Mark 16/22 fuel elements was to have been completed by December 2000, according to the original Implementation Plan. The revised Plan changed that date to December 2001. The processing is now only about 25% complete, because of an alleged shortage of personnel and some technical issues delaying restart of the H-Canyon second solvent extraction cycle. Mark 16/22 fuel element processing stopped in September 1999 and will not resume until startup of second cycle operations, which is now scheduled for April 2000. The stated completion date is now about May 2003, though processing may have to be halted again in the future because of inadequate additional space for storage of uranium solutions (see the previous item).

• The Plutonium Finishing Plant (PFP) at the Hanford Site contains more than 300 kilograms of plutonium in 4,300 liters of solution. This was to have been stabilized by January 1999 through use of a vertical denitration calciner. Technical problems and allegedly insufficient financial resources hampered completion of the vertical calciner and treatment of the solution by that date, and attempts to improve the schedule through use of a prototype calciner were also inadequate. The plan

has recently been changed, and it is now intended that the plutonium will be precipitated and thermally stabilized by December 2001, by means of the magnesium hydroxide process. Although this process has already been used to stabilize thousands of liters of solution at the RFETS, DOE and its contractor at Hanford are still trying to prove it will work with the PFP solutions. The story of inability to treat plutonium solutions at PFP has been typical of a sequence of ineffective activities at that Plant, generally the result of poor management.

- Approximately 700 kilograms of plutonium exist at PFP in the form of metal or alloys. The facility has spent a significant amount of time pursuing various alternative strategies for processing and packaging this material and now plans to brush loose oxide from the metal and package it in welded double containers in accordance with DOE-STD–3013 by March 2001, a noteworthy improvement over the original Implementation Plan's date of May 2002. The oxide from brushing and some severely corroded metal would be thermally stabilized to oxide as called for by the standard and added to the material in the following item.
- About 1,500 kilograms of plutonium exist at PFP in the form of oxide. About one year ago the staff at PFP began stabilizing this material through use of two muffle furnaces. The throughput of two furnaces was not enough to deal with the quantity of material in existence, but it was initially claimed that available funds were inadequate for installation of additional furnaces. It is now planned that three additional furnaces are to be brought on line by February 2000, and four more double capacity furnaces in May 2002. The oxide will be packaged to meet DOE-STD–3013 after stabilization. The original Implementation Plan proposed completion of packaging by May 2002. The present plan would accomplish the job by about May 2004.
- Several dozen kilograms of plutonium exist at the PFP dispersed in approximately 1,600 polystyrene cubes, called polycubes. This material was used in the past in criticality studies. The polycubes have become friable through the effects of radiolysis and have become a contamination dispersal hazard. The method of treatment and stabilization of this material was under discussion for some time with various alternatives being considered. At present it is planned to oxidize the material in the muffle furnaces with the polystyrene converted to gas and the plutonium converted to stable oxide and then packaged as above. The original Implementation Plan proposed completion of treatment by some method by January 2001. Although the current goal is treatment by August 2002, this date may be delayed when the throughput of the muffle furnaces is determined in February 2000.
- Hundreds of kilograms of plutonium are in residues of various forms at PFP. These were to have been packaged and disposed of by different methods by May 2002 according to the original Implementation Plan. Cementation of sand, slag, and crucible materials began, but that process was shut down several years ago after only 240 kilograms had been treated. It is now planned that the activity will be completed by April 2004.
- The K-East and K-West fuel storage basins at the Hanford Site contain approximately 2,100 tonnes of spent uranium fuel from past operation of the N-Reactor. At one time this material was to have been chemically processed in the Purex plant, but it was left stranded when DOE decided about ten years ago to decommission Purex. The spent fuel at these basins has been corroding for some decades and since the Basins are very near the Columbia River and have been known to leak during the past, remediation of this situation has been high on the Board's priority list. Progress toward remediation had seemed adequate some time ago, but with the change of contractors at Hanford a few years ago progress appeared to stall. Resumption of progress has recently been noted, but years of schedule loss have occurred. This activity has consumed a large part of the financing that had been planned for other activities at the Hanford Site such as cleanup of PFP. The planned date of cleanout of the Basins had been December 1999 according to the original Implementation Plan. It is now anticipated that removal of fuel from the Basins will be completed by December 2003, and removal of sludge from oxidation will have been accomplished by August 2005. By that time cleanup of these Basins will have cost between one and two billion dollars.
- About one tonne of plutonium metal and oxide at the Los Alamos National Laboratory was recently declared to be excess to the needs of the defense program, and it awaits repackaging in accordance with DOE-STD–3013. According to the original Implementation Plan repackaging should take place by May 2002. At present there is no plan for repackaging any of the material.
- More than one tonne of plutonium exists in residues at the Los Alamos National Laboratory. The original Implementation Plan estimated that all would have been stabilized and repackaged by May 2002. All high risk items have been processed at this time. Although newly produced residues are being properly packaged, little work is being done at this time to take care of legacy residues. The estimated date for dealing with the legacy materials is now September 2005.

The above are not all of the materials referred to in Recommendation 94–1, but they are the major ones for which remediation schedules have fallen well behind those contemplated by the Recommendation and by the original Implementation Plan.

Fiscal Problem

The most common reason given for failure to meet schedules has been insufficient financial support. That being so, the Board does not understand why the Department of Energy has not obeyed the statutory requirement in the Atomic Energy Act as amended in 42 U.S.C.§ 2286d(f)(2),

> (2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 91 of this Act [42 U.S.C. § 2121], the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination.

In any case, simultaneous implementation of all elements of Recommendation 94–1 to schedules previously committed seems to be impossible under present circumstances allegedly because of budgetary constraints. Given this fiscal reality, DOE is faced with the need to:

1. advise Congress and the President of the shortfall in funds to satisfy all the safety enhancements to meet Recommendation 94–1, and
2. prioritize and schedule tasks to be undertaken with available funds according to consideration of risks.

Recommendation

In the Board's view, material remaining in liquids generally poses the greatest hazard, because of higher possibility of dispersal and because of potential criticality. Among these liquids the highly enriched uranium solutions stored in tanks outside the H-Canyon at the Savannah River Site require the most attention because of criticality concerns. Following the solutions in importance are unstabilized

plutonium oxides and plutonium metal remaining in containers with normal atmosphere, especially at locations in moist climates. Closely following in importance are various plutonium-bearing residues which are not as well isolated or packaged as they should be. Accordingly, the Board recommends the following technical actions in descending order of priority.

1. Stabilize the uranium solution in tanks outside the H-Canyon at the Savannah River Site, to remove criticality concerns. This should not await plans to convert the uranium to fuel for Tennessee Valley Authority's nuclear reactors.

2. Remediate the highly-radioactive solutions of americium and curium in the F-Canyon at the Savannah River Site. The currently-planned deferral of vitrification of this material is highly undesirable.

3. Remediate the solution of neptunium now stored in H-Canyon at the Savannah River Site.

4. Convert remaining plutonium solutions to stable oxides or metals, and subsequently package them into welded containers with inert atmosphere. The principal remaining solutions are in H-Canyon at the Savannah River Site, and the Plutonium Finishing Plant at the Hanford Site.

5. Treat the plutonium-bearing polycubes at PFP to remove and stabilize the plutonium.

6. Continue stabilization of spent nuclear fuel at Savannah River.

7. Stabilize and seal within welded containers with an inert atmosphere the plutonium oxides produced by various processes at defense nuclear facilities, and which are not yet in states conforming to the long-term storage envisaged by DOE–STD–3013. These oxides are found at the F Area of the Savannah River Site, the RFETS, the Plutonium Finishing Plant at the Hanford Site, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.

8. Enclose existing and newly-generated legacy plutonium metal in sealed containers with an inert atmosphere. Removal of loose oxide should of course take place just before sealing.

9. Remediate and/or safely store the various residues which are found at all three of the production sites, as well as the Lawrence Livermore National Laboratory and the Los Alamos National Laboratory.

It is assumed that the schedule for remediation of the spent fuel in the K-Basins at the Hanford Site will continue as currently planned.

The ordering of priorities should not be understood as implying a lack of importance attached to those lower in the sequence. It is simply a recognition that under the circumstances the greater hazards should be addressed first and with greatest firmness. All elements of the original Recommendation 94–1 retain their importance and none are to be considered unessential.

Also, the Board's staff has been discussing with DOE staff an ordering of tasks subject to Recommendation 94–1 in accordance with ease of their performance. Those actions which can readily be conducted within present resources should certainly go forward, as long as items of high safety priority receive the proper attention.

The severity of the problems which are the subject of this Recommendation and Recommendation 94–1 and the urgency to remediate them argue forcefully for the Secretary to avail himself of the authority under the Atomic Energy Act to "implement any such Recommendation (or part of any such Recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection." *See,* 42 U.S.C. § 2286d(e). The Board suggests that the Secretary avail himself of this provision.

In addition, because stabilization of materials remaining from the Weapons Production Program continues to be of such importance, the Board recommends that:

10. An estimate be made of the total funding shortfall for timely completion of all 94–1 commitments according to the accepted Implementation Plans, and

11. Congress and the President be notified of the shortfall in accordance with statutory requirements.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy, Defense Nuclear Facilities Safety Board

January 14, 2000.

The Honorable Bill Richardson, Secretary of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1000.

Dear Secretary Richardson: On May 26, 1994, the Defense Nuclear Facilities Safety Board (Board) submitted to the Secretary of Energy Recommendation 94–1, dealing with the need to stabilize and safely store large amounts of fissionable and other nuclear material that for safety reasons should not be permitted to remain unremediated. The Board was especially concerned about specific liquids and solids in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines and various defense facilities remaining in the manufacturing pipeline when pit production was terminated in 1988. On August 31, 1994, Secretary O'Leary agreed with and accepted the recommendation. On February 28, 1995, Secretary O'Leary forwarded to the Board the Department of Energy's (DOE) plan for implementation of the Board's recommendation on this issue. Subsequently, on December 28, 1998, you forwarded to the Board a revision to Secretary O'Leary's original Implementation Plan for Recommendation 94–1.

During the past year, the Board and its staff have been closely following and noting further slippage in the time table for meeting the dates set forth in the Implementation Plan. While a great deal has been accomplished in meeting the safety objective set forth in Recommendation 94–1 particularly with regard to those materials that constituted the most imminent hazards, the Board is concerned that severe problems continue to exist and delay the implementation of Recommendation 94–1. After careful consideration, the Board has concluded that the progress being made in certain of the stabilization activities addressed by Recommendation 94–1 does not reflect the urgency that the circumstances merit and that was central to the Board's recommendation.

The Board will continue to follow and urge DOE to implement Recommendation 94–1. In addition, the Board, on January 14, 2000, unanimously approved Recommendation 2000–1 which is enclosed for your consideration.

42 U.S.C. § 2286d(a) requires that after your receipt of this recommendation, the Board promptly make it available to the public in DOE's regional public reading rooms. The Board believes the recommendation contains no information that is classified or otherwise restricted.

To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have it promptly placed on file in your regional public reading rooms.

The Board will also publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 00–1743 Filed 1–25–00; 8:45 am]
BILLING CODE 3670–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 27, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 20, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Household Education Survey of 2001 (NHES: 2001).

Frequency: Biennially.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 1,140; Burden Hours: 485.

Abstract: The NHES: 2001 will be a survey of households using random-digit-dialing and computer-assisted telephone interviewing. The topical components are Early Childhood Program Participation, Before- and After-School Programs and Activities, and Adult Education and Lifelong Learning. Respondents to the first two components will be parents of children from birth to age 6 who are not yet in kindergarten and children in kindergarten through grade 8, respectively. Respondents to the third component will be persons age 16 and older who are not enrolled in elementary or secondary school. This survey will provide NCES with current measures of educational participation for preschool children and adults and will also provide much needed baseline information from a national sample on the out-of-school activities of school-age children.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–1757 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 20, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Applications for Grants Under the Reading Excellence Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 39; Burden Hours: 1,872.

Abstract: This application will be used to award grants to State educational agencies for the purpose of providing reading improvement and family literacy programs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or

should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–1755 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 20, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision
Title: State Report Card on Teacher Preparation Programs
Frequency: One time
Affected Public: State, local and Tribal Gov'ts
Reporting and Recordkeeping Hour Burden:
Responses: 57 Burden Hours: 114
Abstract: There is a Congressionally mandated study of teacher certification and licensure requirements, called for in section 207 of P.L. 105–244, the Higher Education Amendments of 1998 (20 USC 1027). Section 207, subsection (c), paragraph (1) calls for information in three areas to be submitted by the states to the Secretary of Education within six months of the passage of the legislation (i.e. April 8, 1999). The three areas are: (Subsection (b), paragraph (1): "A description of the teacher certification and licensure assessments, and any other certification and licensure requirements, used by the State."; • Subsection (b), paragraph (5): "The percentage of teaching candidates who passed each of the assessments used by the State for teacher certification and licensure, disaggregated and ranked, by the teacher preparation program in the State from which the teacher candidate received the candidate's most recent degree, which shall be made available widely and publicly"; • Subsection (b), paragraph (6): "Information on the extent to which teachers in the State are given waivers of State certification or licensure requirements, including the proportion of such teachers distributed across high-and low-poverty districts and across subject areas."

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–1756 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Energy Technology Center; Notice of Intent To Issue a Federal Assistance Solicitation (PS)

AGENCY: National Energy Technology Center (NETL), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue a PS No. DE–PS26–00NT40781 entitled "Energy Efficient Building Equipment and Envelope Technologies, Round II." The PS will solicit the submission of innovative technologies that have the potential for significant energy savings in residential and commercial buildings. Through this solicitation, the Department of Energy is seeking to support projects that are advancing energy efficient equipment, envelope technologies and whole building technologies. Specifically, the objective of the procurement is to accelerate high-payoff technologies that, because of their risk, are unlikely to be developed in a timely manner without a partnership between industry and the Federal government.

DATES: The solicitation will be available from NETL's Internet address at http://www.netl.doe.gov/business. Prospective offerors who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business/index.html. Provide your e-mail address and click on the heading "Energy Efficiency and Renewable Energy." Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public. Those prospective offerors who obtain a copy of the solicitation through the Internet should check the location frequently for any solicitation amendments. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted

and/or honored. The actual solicitation document will allow for requests for explanation and/or interpretation. Solicitations will not be distributed in paper form or on diskette. The solicitation will be available on or about February 12, 2000. The exact date and time for the submission of proposals will be indicated in the solicitation. However, at least a forty-five day response time is currently planned.

ADDRESSES: Acquisition and Assistance Division, U.S. Department of Energy, National Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Vicky L. Shears, Contract Specialist, U.S. Department of Energy, National Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880; Telephone 304/285–4083.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select a group of projects programmatically balanced with respect to: (1) Technology category (equipment end users, envelopes and whole buildings); (2) building type (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale but will support proof of concept projects.

The research and development areas of interest are as follows: Building Equipment—energy conversion and control equipment supplying lighting, space conditioning (heating, cooling, dehumidification and ventilation), water heating, refrigeration, appliance services and electric power to building occupants and commercial operations; Building Envelope—materials, components and systems for windows, walls, roofs, foundations and other elements which comprise building exteriors and provide thermal integrity and day lighting; and Whole Building Technologies—the integration of components and systems which govern overall energy use and indoor environmental quality in a building.

The solicitation covers research in four technology maturation stages. Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing; Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing).

Multiple awards are expected regardless of the technology maturation stage(s) proposed. For projects spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Additional decision points may be required depending upon the length of any one maturation stage. It is anticipated that eight to ten awards will be made with an average total estimated cost from $200,000 to $1,000,000. It is DOE's desire to encourage the widest participation including the involvement of individuals, corporations, non-profit organizations, and state or local governments or other entities. In order to gain the necessary expertise to review proposals, non-Federal personnel may be used as evaluators or advisors in the evaluation of proposals, but will not serve as members of the technical evaluation committee. This particular program is covered by Sections 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of at least 20 percent from non-Federal sources for research and development projects. In accordance with FAR 52.232–18, "Availability of Funds," funds are not presently available for this procurement. The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made.

Issued January 19, 2000.

Randolph L. Kesling,

Division Director, Acquisition and Assistance Division.

[FR Doc. 00–1801 Filed 1–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11690–001–Alaska]

Alaska Village Electric Cooperative, Inc.; Notice of Availability of Draft Environmental Assessment

January 19, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for Alaska Village Electric Cooperative, Inc.'s proposed Old Harbor Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project would be located near the city of Old Harbor, Alaska on Kodiak Island, partly on the Kodiak National Wildlife Refuge. This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Commission's Public Reference Room, Room 2A, at 888 First Street, NE, Washington, DC 20426, and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments to this DEA should be filed within 45 days from the date of this notice and addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, please contact Nan Allen, Project Coordinator, at (202) 219–2938.

David P. Boergers,

Secretary.

[FR Doc. 00–1752 Filed 1–25–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0226, expiring

April 30, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 25, 2000.

ADDRESSES: Comments should be submitted to the attention of Air Docket A–91–42; Environmental Protection Agency; 401 M Street, SW. (MC–6102); Washington, DC 20460 (submissions may be faxed to (202) 260–4400). The Air Docket is located in Room M–1500; Waterside Mall (Ground Floor); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. The docket may be inspected Monday through Friday from 8:00 a.m to 5:30 p.m. A reasonable fee may be charged for copying docket materials. For further questions, contact the docket at (202) 260–7549.

FOR FURTHER INFORMATION CONTACT: Kelly Davis at phone (202) 564–2303, fax: (202) 565–2096 or email: *davis.kelly@epa.gov*

SUPPLEMENTARY INFORMATION:

Title: Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990 (OMB Control No. 2060–0226; EPA ICR No. 1596.04) expiring 4/30/00. This is a request for extension of a currently approved collection.

Abstract: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA Section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under Section 612 for anyone who sells or, in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Under CAA Section 114(c), emissions information may not be claimed as confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates 330 total respondents per year for all SNAP activities included in this ICR. Each respondent will respond only once, with a total annual hour burden of 10,363 hours. The labor cost associated with these hours is approximately $52.00/hour, equaling a total labor cost of $538,772 per year. The annualized start-up and operation and maintenance costs total $44,452. The total annual cost burden of this information collection is $583,224.

An ICR SF–83 Supporting Statement for this collection request is available in Air Docket A–91–42 Category IX–A–22 by contacting the Docket at (202) 260–7548. This supporting statement provides detailed explanation and calculations of the burden presented above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 18, 2000.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 00–1837 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–3]

Notice of Correction and Clarification of Statements Contained in Notice of Proposed Source Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation and in Notice of Proposed Source Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction and clarification.

SUMMARY: EPA is hereby correcting and clarifying certain statements contained in the Notice of Proposed Source Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation as well as certain similar statements contained in the Notice of Proposed Source Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation relating to the Navajo Nation's authority under the Clean Air Act to regulate emissions from the Four Corners Power Plant and the Navajo Generating Station, coal-fired power plants located on the Navajo Indian Reservation near Farmington, New Mexico and Page, Arizona, respectively.

FOR FURTHER INFORMATION CONTACT: David R. LaRoche, Office of Air and Radiation (OAR 6101–A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; (202) 564–7416.

SUPPLEMENTARY INFORMATION: On September 8, 1999, EPA published two notices in the **Federal Register** requesting comment on proposed source-specific federal implementation plans (FIPs) under the Clean Air Act (CAA or the Act) for the Four Corners Power Plant (FCPP) and the Navajo Generating Station (NGS). See 64 FR 48731 (September 8, 1999); 64 FR 48725 (September 8, 1999). As detailed more fully in those notices, EPA intends the proposed FIPs, if adopted, to federalize provisions from the New Mexico and Arizona State Implementation Plans with which FCPP and NGS, respectively, had previously been complying. By letter dated November 8,

1999, Arizona Public Service Company (APS) submitted comments on the proposed FIP for FCPP and, among other things, raised questions about certain statements contained in the proposed FIP relating to the Navajo Nation's authority to regulate emissions from FCPP under the CAA. Similar statements relating to the Navajo Nation's CAA authority to regulate emissions from NGS are contained in the proposed FIP for that facility. EPA is hereby correcting and clarifying these statements. EPA had intended to correct and clarify these statements in the preambles to the final FIPs, which have not yet been promulgated. However, EPA believes that it is appropriate to correct and clarify these statements at this time because of confusion they may have caused in pending litigation involving EPA's Tribal Authority Rule (TAR), 63 FR 7254 (Feb. 12, 1998), under the Clean Air Act.

EPA stated in the preamble to the proposed FIP for FCPP that "[u]pon review of the circumstances surrounding the location and operation of FCPP on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation." 64 FR at 48732. Similarly, in the preamble to the proposed FIP for NGS, EPA stated that "[u]pon review of the circumstances surrounding the location and operation of NGS on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation." 64 FR at 48726. These and several other statements in the preambles to the proposed FIPs mistakenly suggested that EPA had determined the question of whether the Navajo Nation may regulate FCPP and NGS under the CAA. However, as EPA will reiterate in the preambles to the final FIPs for both facilities, the proposed FIPs were based on federal authority only. In order to exercise such federal authority over FCPP and NGS, EPA did not need to, nor did it, decide whether the Navajo Nation may regulate those facilities under the CAA.

EPA is aware of covenants, contained in leases between FCPP and the Navajo Nation and between NGS and the Navajo Nation, relating to the Nation's authority to regulate these facilities. APS and NGS contend that these covenants prevent the Navajo Nation from regulating either of the facilities under the CAA. While in the preamble to the final TAR EPA expressed its view that Congress has delegated authority to eligible tribes to implement CAA programs over all air resources within the exterior boundaries of their reservations, EPA also noted that the Agency: will consider on a case-by-case basis whether special circumstances exist that would prevent a tribe from implementing a CAA program over its reservation. * * * If EPA determines that there are special circumstances that would preclude the Agency from approving a tribal program over a reservation area, the Regional Administrator would limit the tribal approval accordingly under [the TAR]. 63 FR at 7256.

In issuing the proposed FIPs, EPA did not determine whether the Navajo Nation may regulate FCPP or NGS in light of the covenants. EPA is not required to, and does not intend to, decide that issue in the context of taking final action on the proposed FIPs. Moreover, to date, the Navajo Nation has not applied to be treated in the same manner as a state (TAS) for purposes of regulating FCPP or NGS under the CAA. If the Navajo Nation applies to run a CAA regulatory program covering FCPP or NGS, EPA would evaluate at that time the effect, if any, of the covenants on the Nation's authority to regulate those facilities under the CAA. Before any such determinations would be made, FCPP, NGS and the public would have the opportunity, both at the time of the TAS eligibility application, as well as at the time the Navajo Nation applies for CAA program approval, to express their views to EPA.

Dated: January 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–1838 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–6]

Access to Confidential Business Information by Hazmed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Access to Data and Request for Comments.

SUMMARY: EPA will authorize its contractor, HAZMED to access confidential business information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations (40 CFR Part 2, Subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. HAZMED will provide support to the Office of Solid Waste (OSW) in operating the RCRA CBI Center (CBIC), a secure storage areas that contains all records/documents that are received by OSW with a claim of business confidentiality.

DATES: Access to confidential data submitted to EPA will occur no sooner than February 7, 2000.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Comments should be identified as "Access to Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contract No. OW–0502–NAWW, HAZMED will assist the Information Management Branch, within the Communications, Information, and Resources Management Division, of the Office of Solid Waste (OSW) in operating the RCRA Confidential Business Information Center (CBIC). OSW collects data from industry to support the RCRA hazardous waste regulatory program. Some of the data collected from industry are claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR Part 2, Subpart B, OSW has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals. HAZMED shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual. HAZMED will also provide data base management support to the RCRA CBIC document tracking system.

The U.S. Environmental Protection Agency has issued regulations (40 CFR Part 2, Subpart B) that outlines business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. HAZMED will be authorized to have access to RCRA CBI under the

EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual."

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide HAZMED access to the CBI records located in the RCRA CBIC. Access to RCRA CBI under this contract will take place at EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: January 11, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–1836 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 18, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0878.

Expiration Date: 08/31/02.

Title: Wireless E911 Rule Waivers for Handset Based Approaches to Phase II ALI Requirements.

Form No.: N/A.

Estimated Annual Burden: 2,000 burden hours annually, 40 hours per response; 50 responses.

Description: The information filed as part of a one-time petition for waiver of § 20.18(e) will be used to ensure timely compliance with the Commission's critical E911 regulations, provide the Commission with current information on the station of Automatic Location Identification technology, and thus ensure the dependability and responsiveness of E911 services.

Federal Communications Commission

OMB Control No.: 3060–0900.

Expiration Date: 12/31/02.

Title: Compatibility of Wireless Services with Enhanced 911—Second Report and Order in CC Docket 94–102.

Form No.: N/A.

Estimated Annual Burden: 2,190 burden hours annually, approximately 8 hours per response; 270 responses.

Description: The information by manufacturers or carriers wishing to incorporate new or modified E911 call processing modes will be used to keep the Commission informed of technological developments and thus to ensure that the Commission's regulations are kept current and reflect the preferences of the industry in complying E911 regulations. The information to be submitted with applications equipment authorizations for analog cellular telephones are necessary to ensure industry compliance with 911 call completion regulations. The voluntary education program will enable consumers to use wireless analog sets to make E911 calls in an informative manner, ensuring a fast, reliable response.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1799 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

January 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 4,000 respondents. 8,000 annual responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 8,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The *Third Report and Order* in CC Docket 94–102 revises rules applicable to wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, in providing call location information as part of Enhanced 911 (E911) services. The Commission adopted the *Third R&O* to encourage the deployment of the best location technology for each area being served, promote competition in E911 location technology, and speed implementation of E911. As part of these revised rules, the *Third R&O* adopted a requirement that, by October

1, 2000, all wireless carriers subject to the E911 rules report to the Commission their plans for implementing Phase II E911 features. This means the report should be filed one year in advance of the deadline for implementation (i.e., October 1, 2001). This report must include the technology they plan to use to provide caller location and whether this technology requires replacement or upgrades of any wireless handsets. If the carrier employs a handset-based approach, the carrier should also report its plans to provide location information to roamers under the "best practice" obligations imposed by the *R&O*. Carriers may revise their plans after the report is filed, however, carriers must file updates notifying the Commission of any changes to their files plans within 30 days of the adoption date of any such change. This paperwork burden is scheduled to go into effect on March 3, 2000.

This is a new collection imposed on carriers. The information submitted to the Commission will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for preparing for full Phase II E911 implementation. These advance reports will provide helpful, if not essential, information for coordinating carrier plans with those of manufacturers and PSAPs. Also, they will assist the Commission's efforts to monitor Phase II developments and to take necessary actions to maintain the Phase II implementation schedule.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1798 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–75]

Emergency Alert System National Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 19, 2000, the Commission released a public notice announcing the February 25, 2000, meeting and agenda of the Emergency Alert System National Advisory Committee (NAC). The meeting will serve to advise the Commission on Emergency Alert System issues.

DATES: February 25, 2000, 9:00 A.M.–Noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Commission Meeting Room, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Emergency Alert System Staff, Federal Communications Commission, 445 12th Street, SW, Commission Meeting Room, Washington, DC 20554 (phone: (202) 418–1228) (fax: (202) 418–2817).

SUPPLEMENTARY INFORMATION: In 1994, the Federal Communications Commission (FCC) established the Emergency Alert System (EAS) to replace the Emergency Broadcast System (EBS). EAS uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. At the same time, the FCC added a new part 11 to its rules containing EAS regulations. 47 CFR 11. The National Advisory Committee (NAC) was established to assist the FCC in administering EAS. Its third annual meeting will be held on February 25, 2000, in Washington, DC and the general topic will be emergency communication matters relating to EAS.

Summary of Proposed Agenda:

—Registration

—Opening remarks by NAC Chair

—Presentations by the National Weather Service and the Federal Emergency Management Agency

—FCC update on EAS actions

—Reports from NAC working groups

—Reports from the Society of Broadcast Engineers and the Society of Cable Television Engineers Working Groups and PEPAC

—Discussion concerning EAS and DTV and digital radio

—Future EAS requirements and NAC recommendations to FCC

—Election of EAS Officers

—Adjournment

Administrative Matters:

Attendance at the NAC meeting is open to the public, but limited to space availability. Members of the general public may file a written statement with the FCC at the above contact address before or after the meeting. Members of the public wishing to make an oral statement during the meeting must consult with the NAC at the FCC contact address prior to the meeting. Minutes of the meeting will be available after the meeting at the contact address.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1796 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011275–009.

Title: Australia/United States Discussion Agreement.

Parties: Columbus Line, P&O Nedlloyd Limited, Australia-New Zealand Direct Line, Cool Carriers AB, Seatrade Group N.V., FESCO Ocean Management Inc.

Synopsis: The proposed amendment would permit the parties to enter into joint service contracts, multiple carrier individual service contracts, and to adopt voluntary guidelines with respect to their individual service contracts.

Agreement No.: 203–011435–005.

Title: APL/MLL/Lykes Space Charter Agreement.

Parties: American President Lines, Ltd., APL Co. PTE LTD, Mexican Line Limited, Lykes Lines Limited, LLC.

Synopsis: The proposed modification adds Lykes Lines Limited as a party to the agreement and makes other non-substantive changes to the agreement.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1856 Filed 1–25–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 00–02]

Crowley Liner Services, Inc. and Trailer Bridge, Inc., v. Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Crowley Liner Services, Inc. and Trailer Bridge, Inc. ("Complainants"), against Puerto Rico

Ports Authority ("Respondent"). The complaint was served on January 20, 2000. Complainants allege that Respondent violated sections 10 (d)(1) and (d)(4) of the Shipping Act of 1984, 46 U.S.C. app. § § 1709 (d)(1) and (d)(4), and violated the terms of a Settlement Agreement in FMC Docket No. 95–10, by assessing excess dockage charges on the basis of a new vessel measurement system contrary to the terms of its tariffs, giving no notice of such changes, and not following procedures as set forth in the Settlement Agreement.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 22, 2001, and the final decision of the Commission shall be issued by May 22, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1855 Filed 1–25–00; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Senator International Ocean LLC, 11250 NW 25th Street, Suite 124, Miami, FL 33172. Officers: Christian M. Ollino, Vice President (Qualifying Individual), Mario Alfonso, President.

Cargo Management International, 401 N. Oak Street, Inglewood, CA 90302. Officer: Ray A. Vidal, C.E.O. (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Pioneer International Corp., 80 Everett Avenue, Suite 325, Chelsea, MA 02150. Officers: Pamela Ann Grzonka, Asst. Vice President (Qualifying Individual), David W. Maloney, President.

PMG Containerline, Inc., 6300 Hazeltine National Dr., Suite 100, Orlando, FL 32822. Officers: James G. Gain, President (Qualifying Individual), Thomas R. Murray, Vice President.

HR Services d/b/a HR Shipping Services, 211 North Union Street, Suite 100, Alexandria, VA 22314. Officer: Nigel J. McCallum, V.P. Operations (Qualifying Individual).

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Senator International Freight Forwarding LLC, 11250 N.W. 25th Street, Suite 124, Miami, FL 33172. Officers: Mario Alfonso, President (Qualifying Individual), Uwe Kirschbaum, Chairman.

Commercial Transport Co., 16820 Lee Road, Humble, TX 77396, Robert R. Chapa, Sole Proprietor.

Martin E. Button, Inc., 55 New Montgomery Street, Suite 400, San Francisco, CA 94105. Officers: Jennifer Rixford, Secretary (Qualifying Individual), Martin E. Button, President.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1857 Filed 1–25–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 12:00 noon, Monday, January 31, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Proposals concerning renovation of a Federal Reserve Bank building. (This item was originally announced for a closed meeting on January 24, 2000.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1891 Filed 1–21–00; 4:36 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the following Standard Form is cancelled: SF 539, Medical Record—Abbreviated Medical Record.

Since the Department of Defense (DoD) is the only agency still using this form, they have created a new form—DD 2770, Abbreviated Medical Record. This form is available from the DoD's web page. Address: http://web1.whs.oad.mil/icdhome/DDEFORMS.HTM

DATE: Effective on January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: January 11, 2000.

Barbara M. Williams,

Deputy Standard and Optional, Forms Management Officer.

[FR Doc. 00–1854 Filed 1–25–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–20]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

Continuing Medical Education (CME) Activity Registration Form—(0923–0013)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. As stated in CERCLA, the Administrator of ATSDR is charged to "assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on this topic".

The development and use of activity registration forms for documenting participation in these activities at these meetings is an integral part of this process. This attendance documentation process is required by the Accreditation Council for Continuing Medical Education (ACCME), the body that authorizes agencies and institutions to award nationally recognized continuing medical education (CME) credit. As a condition of relicensure, physicians in 40 states are required to participate in CME courses. Individual physicians in these states are required to submit the number of hours of CME credit to state boards of professional registration at the time of relicensure. Failure by the physician to provide this information in a timely fashion will result in suspension of professional licensure.

This request is for a 3-year extension of the current OMB approval of uniform CME activity registration forms—one machine entry form and the other manually entered—to serve as the initial step in the development of an attendance documentation system. Other than their time, there will be no cost to the respondents.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden per response	Total burden
Manual Entry Registration Form	2,000	1	4/60	133
Scantron Registration Form	3,000	1	5/60	250
Total				383

Dated: January 20, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–1762 Filed 1–25–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0595]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 26, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has

submitted the following proposed collection of information to OMB for review and clearance.

Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA

Description: The Food and Drug Administration Modernization Act of 1997 (FDAMA) contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. This section of FDAMA also modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities.

The final rule published elsewhere in this issue of the **Federal Register** amends FDA's regulations in part 803 (21 CFR part 803) and revokes part 804 (21 CFR part 804) to reflect the changes to medical device reporting made by FDAMA. The final rule has also been amended to implement the exemptions for manufacturers and distributors of cigarettes and smokeless tobacco products discussed in the next paragraphs.

In accordance with 5 CFR 1320.8(d), requests for public comment were published in the **Federal Register** of May 12, 1998 (63 FR 26069 and 63 FR 26129). Several comments were received in response to the proposed rule. A detailed discussion of the comments and FDA's response is included in the preamble to the final rule published elsewhere in this issue of the **Federal Register**.

Four comments objected that FDA did not follow the congressional recommendation in the conference report on FDAMA that FDA limit the time that distributors be required to keep records to a maximum of 6 years. The direct final rule required that distributors keep records for 2 years or the expected life of the device, whichever is greater.

FDA carefully considered the recommendations of the conference committee. The agency determined that the protection of the public health would not be adequately served if distributor recordkeeping was limited to a period of 6 years. Under the new quality system regulations contained in part 820 (21 CFR part 820), manufacturers (including initial distributors of foreign manufacturers) must retain records for a period equal to the design and expected life of the device (but no less than 2 years). The agency believes it is appropriate to require distributors to retain records for the same time period. This is especially important because distributors are no longer required to report any adverse event information to the agency, and the agency's primary access to the distributor complaint information is its periodic inspection and examination of the distributor records.

FDA considered electronic retention of distributor records. Prior to FDAMA and the proposed rule, the agency had not prohibited the electronic retention of records, nor did it intend to prohibit electronic recordkeeping based upon the proposal. When the distributor recordkeeping requirements were shifted from part 804 to part 803, the language remained largely unchanged. However, in order to avoid further confusion regarding electronic retention of records, the agency is modifying proposed § 803.18(d)(1) to clarify that distributor records may be either written or electronic.

Three comments stated that it is inappropriate to refer to the quality systems regulation (§ 820.198) in describing distributor recordkeeping because § 820.198 does not apply to distributors.

FDA agrees and has revised § 803.18(d) accordingly to remove the reference to § 820.198. FDA is substituting language to identify the relevant requirements from § 820.198 that apply to distributors who are not importers. However, FDA notes that § 820.198 does apply to importers of devices.

Two comments suggested that the reporting timeframe for importers should be changed to from 10 days to 30 days.

FDA agrees with these comments and has revised the final rule. Previously, importers were included in part 804 with the reporting requirements for distributors. Because distributors are no longer required to report, part 804 is eliminated and importers are included in part 803 with manufacturers. The 30-day timeframe is consistent with the timeframe for manufacturers.

One comment suggested that the form for reporting adverse events (FDA Form 3500A) should be revised to refer specifically to importers. Another comment asked for clarification as to whether a person who sells directly to the ultimate user may be considered an "importer."

The agency agrees that the fields to be filled out by importers on FDA Form 3500A should be specified within the regulation. Because the requirements and burdens would not be affected by revising the style and format of § 803.43, the agency is modifying the section to be consistent with §§ 803.32 and 803.52, which describe the information to be submitted on the MEDWATCH form. Proposed § 803.43 will be redesignated as § 803.42 in the final rule.

The agency notes that, because "distributors" had previously been defined to include "importers," FDA Form 3500A does not specifically address importer information and does not use the term, "importers." However, block F of the MEDWATCH form is identified for use by device user facilities and distributors. An importer should continue to complete blocks A, B, D, E, and F until the form is revised to remove references to "distributor" and replace them with "importer." The agency clarifies that firms who purchase products from a foreign manufacturer and sell directly to the ultimate user are considered retailers and not importers under part 803, and they are not required to report.

One comment suggested that distributor reporting is important for the protection of the public health and recommended that, as an alternative to distributor reporting, FDA should require manufacturer contact information on the labeling to ensure proper adverse event reporting.

The agency agrees that consumers are likely to contact medical device distributors with their device complaints. Without distributor reporting, it is possible that the agency will not receive information regarding some complaints. However, under FDAMA, the agency no longer has the authority to require distributor reporting. Although FDA cannot require distributor reporting, FDA encourages distributors to report adverse event information to manufacturers so that they may investigate and report it as appropriate. The suggestion that FDA require manufacturer contact information on the labeling is beyond the scope of this rule and FDA will consider it separately.

One comment objected that FDA incorrectly interpreted section 422 of FDAMA regarding the regulation of tobacco products, tobacco ingredients, and tobacco additives. The comment stated that section 422 of FDAMA only means that nothing in FDAMA shall affect whether FDA has the authority to regulate tobacco products. The comment further said that section 422 of FDAMA does not mean, as FDA believes, that the requirements, such as medical device report (MDR) reporting, for manufacturers and distributors of

tobacco products are unchanged by FDAMA.

The agency disagrees with this comment. Section 422 of FDAMA states that "Nothing in this Act or the amendments made by this Act shall be construed to affect the question of whether the Secretary of Health and Human Services has any authority to regulate any tobacco product, tobacco ingredient, or tobacco additive." Although this language may suggest that FDAMA is simply silent regarding the agency's authority to regulate tobacco, section 422 goes on to state that "Such authority, if any, shall be exercised under the Federal Food, Drug, and Cosmetic Act as in effect on the day before the date of the enactment of this act." Beyond the question of whether the agency has authority to regulate tobacco, this language directs the agency as to how it should exercise such authority once pending litigation is resolved.

Under section 422 of FDAMA, therefore, Congress neither affirms nor denies the agency's authority to regulate tobacco, but it does direct the agency to continue regulating tobacco as it had been doing prior to FDAMA (if authority to regulate tobacco exists). Prior to FDAMA, distributor reporting and manufacturer and distributor certification were required under the Federal Food, Drug, and Cosmetic Act (the act). If the agency were to exercise its authority under the act "as in effect on the day before the date of the enactment of [FDAMA]," distributor reporting and manufacturer and distributor certification requirements would continue to apply to manufacturers and distributors of cigarettes and smokeless tobacco products.

However, while the agency disagrees with the comment's interpretation of section 422 of FDAMA, FDA finds persuasive the comment's arguments that tobacco manufacturers should be exempt from the requirement of annual certification of MDR's and that distributors should be exempt from MDR reporting requirements under the residual authority of the act. The agency has authority under section 519(c) of the act (21 U.S.C. 360i(c)) to exempt, by regulation, any person from the medical device reporting requirements upon a finding that such reporting is not necessary to "assure that a device is not adulterated or misbranded or * * * otherwise to assure its safety and effectiveness." The agency finds that the statutory criteria for exemption are met in light of the fact that Congress has repealed the requirements for manufacturer and distributor annual certification and distributor reporting. A reasonable assurance of the safety and effectiveness of tobacco products will be provided by the remaining medical device reporting requirements, that is, reporting and recordkeeping required of manufacturers and importers and recordkeeping required of distributors.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
803.15	50	1	50	4	200
803.19	150	1	150	3	450
803.22(b)(2)	100	1	100	0.25	25
803.33 (FDA Form 3419)	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.55 (FDA Form 3417)	1,000	20	20,000	1.1	22,000
Total					25,060

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per recordkeeper	Total hours
803.17	2,000	1	2,000	3.3	6,600
803.18	39,764	1	39,764	1.5	59,646
Total					66,246

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens under the direct final rule (63 FR 26069) are explained in the following paragraphs.

I. Reporting Requirements

Prior to the program change reflected in this rule, distributors (including importers) were required to submit supplemental information under § 804.32. Distributors (who are not importers) are no longer required to submit MDR reports (including supplemental reports), and FDA has determined that it will not be necessary for importers to submit supplemental information except when FDA requests additional information under § 803.15. FDA has revised the final rule accordingly. Section 803.15 provides that FDA may request a reporter to submit additional or clarifying information concerning an MDR report when FDA determines that additional information is necessary for the protection of the public health. The burden estimate for § 803.15 includes only the burden for importers.

Prior to the program change reflected in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this rule, § 803.19 is modified to transfer the exemption provisions for importers of medical devices from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices are no longer required to submit MDR reports under this rule.

The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.22(b)(2) provided that, if a manufacturer erroneously receives information about an adverse event concerning a device that they had not manufactured, the manufacturer must submit the report to FDA along with a cover letter explaining that the device in question was not manufactured by that firm. This final rule amends § 803.22(b)(2) to apply the same requirement to importers. The requirements of § 803.22(b)(2) were not previously reviewed by OMB under the PRA. Thus, the estimated burden reflects FDA's experience with this provision with regard to manufacturers and includes the estimated burden for both manufacturers and importers.

Prior to the program change reflected in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this rule, user facilities are required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission. FDA Form 3419 is being revised to reflect this change.

Under this rule the reporting requirement for importers of medical devices previously codified under § 804.25 is being transferred to § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. Section 803.40 requires importers to submit reports within 30 days after learning of the reportable event rather than 10 days as provided in § 804.25; this change does not affect the burden.

This rule does not amend § 803.55, but FDA is seeking approval for FDA Form 3417 on which baseline reports are to be submitted. The agency's estimate is based on FDA's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. As stated previously, FDA is also exempting manufacturers and distributors of cigarettes and smokeless tobacco products from the requirement of annual certification. Therefore, under this rule, §§ 803.57 and 804.30 are being eliminated.

Because distributors, including distributors of cigarettes and smokeless tobacco products, will no longer be required to report, the final rule also removes §§ 804.25 (distributor reporting), 804.32 (supplemental information), and 804.33 (alternative reporting requirements).

II. Recordkeeping Requirements

Prior to the program change reflected in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint processing, and documentation of information related to MDR's. Under this rule, the requirements for establishing written MDR procedures for importers of medical devices have been transferred to § 803.17. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities, and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered "usual and customary" under 5 CFR 1320.3(b)(2).

Prior to the program change reflected in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this rule, § 803.18 is modified to transfer the recordkeeping requirements for importers and other distributors of medical devices, including cigarettes and smokeless tobacco products from § 804.35; therefore, § 804.35 is removed. As discussed previously, this recordkeeping may be done in an electronic format.

Under the proposed rule, distributors of cigarettes and smokeless tobacco products would have been required to establish written internal procedures for evaluating and reporting events. Because distributors of cigarettes and smokeless tobacco products will not be required to report under the final rule, § 804.34 is removed.

Dated: January 18, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–1786 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]

Food Labeling; Health Claims and Label Statements; Request for Scientific Data and Information; Reopening of Comment Period

Editorial Note: Due to a printing error FR Document 00–1127 did not appear in the printed version of the **Federal Register** on Wednesday, January 19, 2000. It is printed in its entirety below.

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for written comments; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 75 days the comment period for the submission of scientific data, research study results, and other related information on four substance-disease relationships that was announced in the **Federal Register** of September 8, 1999 (64 FR 48841). This action is being taken in response to requests for more time to submit data and information to FDA.

DATES: Written comments by April 3, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 8, 1999 (64 FR 48841), FDA requested scientific data, research study results, and other related information on four substance-disease relationships in order to reevaluate the scientific evidence for these relationships. FDA stated that it was taking this action to comply with a

recent court decision in which FDA was instructed to reconsider whether to authorize health claims for these relationships in dietary supplement labeling. The four health claims are: "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," "Consumption of fiber may reduce the risk of colorectal cancer," "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." The agency stated that it will use the data and information to determine, for each substance-disease relationship, if an appropriate scientific basis exists to support the issuance of a proposed rule to authorize a health claim for the relationship.

The agency received requests to reopen the comment period on the September 8, 1999, notice to allow interested persons to comment after reviewing FDA's guidance on the "significant scientific agreement" standard for health claims in 21 U.S.C. 343(r)(3)(B)(i) and 21 CFR 101.14(c). The availability of that guidance was announced on December 22, 1999 (64 FR 71794). The agency has agreed to reopen the comment period on the September 8, 1999, notice for 75 days in response to the requests.

The agency has established four dockets to compile information relating to each of the four topic areas; docket numbers are specified in Table 1 below. FDA is allowing 75 days for the submission of additional data. Individuals and organizations submitting information or data relating to a specific topic should submit two copies of the information to the Dockets Management Branch (address above) by April 3, 2000. Separate submissions should be made for each topic area, and each submission should be identified with the appropriate docket number given below. Submissions received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Scientific data, research study results, and other related information on four substance-disease relationships that is submitted to the FDA must be considered publicly available. If used in the agency's scientific review, information submitted to FDA will become part of the public record for the evaluation of these relationships.

TABLE 1.

Topic	Docket No.
Antioxidant vitamins and cancer	91N–0101
Fiber and colorectal cancer	91N–0098
Omega-3 fatty acids and coronary heart disease	91N–0103
Folic acid (dietary supplement vs. food form) and neural tube defects	91N–100H

Dated: January 11, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1127 Filed 1–18–00; 8:45 am]

BILLING CODE 4160–01–F

Editorial Note: Due to a printing error FR Document 00–1127 did not appear in the printed version of the **Federal Register** on Wednesday, January 19, 2000. It is printed in its entirety above.

[FR Doc. 00–1127 Filed 1–25–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N–0113; DESI 2847]

Pediatric Parenteral Multivitamin Products; Drug Efficacy Study Implementation; Announcement of Marketing Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that pediatric parenteral multivitamin drug products that are formulated as set forth in this document are effective for treating certain vitamin deficiencies. FDA is further announcing the conditions for the approval and marketing of the drug products for the indications for which they are now regarded as effective.

DATES: Supplements to the conditionally approved new drug application (NDA) must be submitted by March 27, 2000.

ADDRESSES: Communication in response to this notice should be identified with the reference number DESI 2847 and directed to the attention of the appropriate office named below.

Supplements to the conditionally approved NDA (identify with NDA number): Division of Metabolic and Endocrine Drug Products (HFD–510), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications (ANDA's): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

Requests for opinion of the applicability of this notice to a specific product: Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of July 27, 1972 (37 FR 15027), FDA announced its evaluations of reports received from the National Academy of Sciences/National Research Council Drug Efficacy Study Group on certain parenteral multivitamin drug products. The agency stated that the products, as then formulated, lacked substantial evidence of effectiveness for their claimed indications. The conclusion was not based on any individual vitamin's lack of effectiveness; rather, certain essential vitamins in the available formulations were either not included or included in too great or too small amounts.

In a followup notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), FDA granted parenteral multivitamin products a temporary exemption (paragraph XIV, category 11) from the time limits imposed for the implementation of the Drug Efficacy Study. The temporary exemption was based primarily on the recognized critical medical importance of

parenteral multivitamin therapy and the lack of alternative drugs. The agency allowed these products to remain on the market as then formulated, while complex technical and medical problems were being resolved and rational formulations were being developed and tested.

To facilitate the determination of rational multivitamin formulations and their evaluation, FDA accepted the assistance offered by the American Medical Association (AMA). In December 1975, the AMA submitted its "Guidelines for Multivitamin Preparations for Parenteral Use," which recommended specific amounts of individual vitamins and procedures for evaluating the stability, safety, and effectiveness of the formulations.

The AMA report stressed that the guideline formulations were estimated from the existing Recommended Daily Allowance, which in turn is based on dietary population surveys. The assumptions applied by the AMA to correlate the established dietary allowances of the essential vitamins to the parenteral administration of vitamins to patients in various disease states required that clinical trials be conducted to evaluate the guideline formulations.

FDA accepted the AMA guidelines with minor reservations and, subsequently, in a **Federal Register** notice published July 13, 1979 (44 FR 40933), amended the terms of the December 1972 paragraph XIV temporary exemption to require conditional approval of an NDA or supplemental NDA within specific time frames as a condition for the continued marketing of a parenteral multivitamin drug product. The agency agreed not to initiate regulatory proceedings against these products under the following requirements: (1) Reformulation in accord with the AMA guidelines as to the number and quantities of vitamins in the formulation; (2) an outline of proposed studies along the lines set forth in the AMA report, to evaluate the stability and biological availability of the reformulated preparations; and (3) a plan or protocol for clinical effectiveness studies in accord with the AMA guidelines. A reformulated product could be marketed in place of the previous formulation after agency review and conditional approval of the submission. This procedure allowed continued marketing of parenteral multivitamins while clinical testing and evaluation of the AMA guideline formulations were being carried out.

After evaluating available data, FDA classified the AMA guideline adult formulations as effective in the **Federal Register** of September 17, 1984 (49 FR 36446). That notice also revoked the paragraph XIV exemption of all products listed in the notice, including the following pediatric product conditionally approved under the terms of the July 13, 1979, notice (in accordance with current labeling practice, amounts previously listed in United States Pharmacopeia units have been converted to weights):

NDA 18–920; M.V.I. Pediatric (lyophilized), each vial containing vitamin A (retinol) 0.7 milligrams (mg)/vial, vitamin D (ergocalciferol) 10 micrograms (µg)/vial, vitamin E (dl-alpha tocopherol acetate) 7 mg/vial, vitamin C (ascorbic acid) 80 mg/vial, folic acid 140 µg/vial, niacin (niacinamide) 17.0 mg/vial, vitamin B_2 (riboflavin-5′-phosphate sodium) 1.4 mg/vial, vitamin B_1 (thiamine hydrochloride) 1.2 mg/vial, vitamin B_6 (pyridoxine hydrochloride) 1.0 mg/vial, vitamin B_{12} (cyanocobalamin) 1 µg/vial, dexpanthenol (d-pantothenyl alcohol) 5.0 mg/vial, biotin 20 µg/vial, vitamin K (phytonadione) 200 µg/vial; Astra Zeneca, 50 Otis St., Westborough, MA 01581 (formerly held by Armour Pharmaceutical Co., P.O. Box 511, Kankakee, IL 60901).

The September 17, 1984, notice stated that further evaluation of pediatric parenteral multivitamin formulations containing vitamin E was required. The notice went on to state that until the time that such evaluation was completed, pediatric multivitamin products could be marketed only under the terms and conditions of the July 13, 1979, **Federal Register** notice.

The effectiveness of the AMA guideline pediatric formulations was considered by an AMA–FDA committee in the Workshop on Multivitamin Preparations for Parenteral Use on August 21, 1985, and by FDA's Endocrinologic and Metabolic Drugs Advisory Committee on March 3 and 4, 1986. Based on a review of the committees' recommendations and other available material, the Director of the Center for Drug Evaluation and Research has determined that the 1975 AMA guideline pediatric formulations are effective multivitamin preparations.

It should be noted, however, that although the intravenous preparation is properly formulated in composition and dosage amount of essential vitamins, it supplies inadequate amounts of vitamin A, particularly to low birth weight infants. In addition, the issue of whether the solubilizers used in pediatric preparations contribute to toxicity remains unresolved. Further study of the pediatric formulations is needed to determine a vehicle for administration of multivitamins to low birth weight infants that will provide adequate amounts of vitamin A and avoid possible toxicity associated with the use of solubilizers employed in pediatric preparations. Future approval of a more appropriate formulation for low birth weight infants may restrict the labeling of the current formulation to use in infants weighing more than 3 kilograms (kg).

The continuing exemption announced in the September 17, 1984, notice for pediatric parenteral multivitamin products is hereby revoked. These products are regarded as new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). Therefore, a fully approved NDA is required to market them. M.V.I. Pediatric (NDA 18–920) received conditional approval under the terms of the July 13, 1979, notice. A supplemental NDA is now required for M.V.I. Pediatric to revise the labeling and to update its conditionally approved NDA.

In addition to the product specifically named above, this notice applies to any product that is not the subject of an approved application and is identical or, under 21 CFR 310.6, is related or similar to M.V.I. Pediatric. It is the responsibility of all drug manufacturers and distributors to review this notice to determine whether it covers any drug product that they manufacture or distribute. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Prescription Drug Compliance and Surveillance (address above).

II. Conditions for Approval and Continued Marketing of Formulations Evaluated as Effective

A. Effectiveness Classification

FDA has reviewed all available evidence and concludes that pediatric parenteral drug products formulated as listed below are effective for the applicable indication set forth in the labeling conditions below.

B. Conditions for Approval and Marketing

FDA is prepared to approve ANDA's and supplements to the conditionally approved NDA named above under conditions described here.

1. Form of Drug

(a) *Intravenous multivitamin preparations.* The preparation is an aqueous solution or lyophilized powder suitable for reconstitution and/or secondary dilution prior to intravenous

infusion and contains the specified amounts of the following individual vitamins, either as the moiety listed below or as the chemically equivalent salt or ester.

(i) *Pediatric formulation* (intended for infants and children under age 11)[1]

Ingredient	Amount per unit dose
Fat-Soluble Vitamins	
A (retinol)	0.7 mg
D (ergocalciferol or cholecalciferol)	10 µg
E (alpha-tocopherol)	7 mg
K_1 (phytonadione)	200 µg
Water-Soluble Vitamins	
C (ascorbic acid)	80 mg
Folic acid	140 µg
Niacin	17 mg
B_2 (riboflavin)	1.4 mg
B_1 (thiamine)	1.2 mg
B_6 (pyridoxine)	1.0 mg
B_{12} (cyanocobalamin)	1.0 µg
Pantothenic acid	5.0 mg
Biotin	20.0 µg

[1] For infants weighing less than 1 kg the daily dose is 30 percent of the indicated formulation. Do not exceed this daily dose. For infants weighing 1 to 3 kg the daily dose is 65 percent of the indicated formulation.

(b) *Intramuscular multivitamin preparations.* The preparation is a sterile solution suitable for intramuscular injection.

(i) *Pediatric formulation.* The vitamin composition of the pediatric intramuscular formulation shall be that of the pediatric intravenous preparation named above without the fat-soluble vitamins.

2. Labeling Conditions

(a) The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

(b) The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

(i) *Intravenous Pediatric Multivitamin Preparations.* This formulation is indicated as a daily multivitamin maintenance dosage for infants and children up to 11 years of age receiving parenteral nutrition.

It is also indicated in other situations where administration by the intravenous route is required. Such situations include surgery, extensive burns, fractures and other trauma, severe infectious diseases, and comatose states, which may provoke a "stress" situation with profound alterations in the body's metabolic demands and consequent tissue depletion of nutrients.

The physician should not await the development of clinical signs of vitamin deficiency before initiating vitamin therapy.

This product (administered in intravenous fluids under proper dilution) contributes intake of these necessary vitamins toward maintaining the body's normal resistance and repair processes.

Patients with multiple vitamin deficiencies or with markedly increased requirements may be given multiples of the daily dosage for two or more days as indicated by the clinical status.

(ii) *Intramuscular Pediatric Multivitamin Preparations.* This product is indicated for infants and children up to 11 years of age for conditions in which: (1) Intake or absorption of the water-soluble vitamins is inadequate and oral intake must be supplemented; or (2) there is a known or suspected serious depletion of the water-soluble vitamins, and immediate treatment by the intramuscular route is advisable.

Conditions that may require parenteral administration of water-soluble vitamins may include disorders that can affect oral intake, gastrointestinal absorption, or utilization. Such conditions include comatose states, persistent vomiting, prolonged fever, severe infectious diseases, major surgery, extensive burns, fractures and other traumas, diarrhea, achlorhydria, or liver disease.

The physician should not await the development of clinical signs of vitamin deficiency before initiating therapy because there are few specific or pathognomonic signs of early vitamin deficiencies.

(c) CONTRAINDICATIONS: Known hypersensitivity to any of the vitamins or excipients in this product or a preexisting hypervitaminosis.

Allergic reaction has been known to occur following intravenous administration of thiamine and vitamin K. The formulation is contraindicated prior to blood sampling for detection of megaloblastic anemia, as the folic acid and the cyanocobalamin in the vitamin solution can mask serum deficits.

(d) PRECAUTIONS: (The following paragraph should appear in bold type)

Caution should be exercised when administering this multivitamin formulation to patients on warfarin sodium-type anticoagulant therapy. In such patients, periodic monitoring of prothrombin time is essential in determining the appropriate dosage of anticoagulant therapy.

Adequate blood levels of vitamin E are achieved when this product is given to infants at the recommended dosage. Larger doses or supplementation with oral or parenteral vitamin E are not recommended because elevated blood levels of vitamin E may result.

Studies have shown that vitamin A may adhere to plastic, resulting in inadequate vitamin A administration in the doses recommended with this product. Additional vitamin A supplementation may be required, especially in low birth weight infants.

3. Marketing Status

(a) Marketing of the drug product that is now the subject of a conditionally approved NDA may be continued

provided that on or before March 27, 2000, the holder of the application has submitted: (i) A supplement for revised labeling necessary to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted; and (ii) a supplement to provide updated information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). FDA will evaluate the submitted material and, if the material is adequate, will grant full approval to the conditionally approved NDA.

(b) Approval of an ANDA must be obtained in accordance with section 505(j) of the act (21 U.S.C. 355(j)) before marketing such products. Marketing prior to approval of an ANDA will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: January 4, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–1787 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 3, 2000.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 6:00 PM in the Great Hall of the Northbridge Town Hall, located on Main Street in Whitinsville, MA for the following reasons:

1. Approval of Minutes
2. Presentation of FY2000 Development Budget
3. Senator John H. Chafee Heritage Award

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 00–1629 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group, Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: February 10, 2000, at 1:00 p.m.

ADDRESSES: Fourth floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A. 4 of the Memorandum of agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The agenda will include discussions about the draft Gulf Ecosystem Monitoring program.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 00–1751 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–RG–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. This objectives of this meeting are to hear technical reports, review the 1999 fishery season, and discuss and plan management of the 2000 season. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, February 23, 2000; from 8:00 a.m. to 5:00 p.m. on Thursday, February 24, 2000; and from 8:00 a.m. to 12:00 p.m. on Friday, February 25, 2000.

PLACE: The meeting will be held at the Best Western Beachfront Harbor, 16008 Boat Basin Rd., Harbor, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: January 14, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations.

[FR Doc. 00–1761 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–00–1430–BD; UTU–75494]

Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Order for temporary emergency closure of portions of the "Moon

House" route and "Snow Flat Spring Cave" route which were identified as "ways" within the Fish Creek Canyon Wilderness Study Area (WSA) during the wilderness inventory of these Public Lands in San Juan County, Utah, to all motorized and mechanical vehicles.

SUMMARY: This action temporarily closes to motorized and mechanical vehicular use portions of the Moon House and Snow Flat Spring Cave routes inventoried as "ways" within the Fish Creek Canyon WSA on public land administered by the Bureau of Land Management in San Juan County, Utah. Specifically that portion of the Moon House route to be closed is the way that begins at the southern boundary of Section 35 in T. 38 S., R. 19 E., SLBM and continues to the edge of McCloyd Canyon. Specifically the portion of the Snow Flat Spring Cave route to be closed is the way in Sections 1 and 12 of T. 39 S., R. 19 E., SLBM, that begins at the end of the cherry stemmed road approximately one-half mile from the Snow Flat Road (Mormon Trail). The way will be closed from that point to the edge of McCloyd Canyon. The routes have seen no authorized vehicular traffic in more than eight years because they had been closed with signs posted stating "No Motor Vehicles." San Juan County officials recently removed these signs without authorization. Publicity surrounding the County's removal of the signs is anticipated to increase vehicular traffic substantially. There is imminent threat of considerable adverse effects to wilderness characteristics and cultural resources. A substantial increase in vehicle use of these routes would seriously degrade wilderness suitability and may constrain Congress from designating those portions of the WSA affected by the routes into the National Wilderness Preservation System. Increased vehicular use would also cause considerable adverse effects upon cultural resources through surface disturbance and removal of artifacts. This temporary emergency closure will take effect immediately. Authority for this temporary emergency closure order is contained in 43 CFR 8341.2. This temporary closure will remain in effect until permanent designation procedures are followed as identified in 43 CFR 8342.

FOR FURTHER INFORMATION CONTACT: Kent E. Walter, Field Office Manager, 435 North Main (P.O. Box 7), Monticello, Utah 84535, (435) 587–1500.

Dated: January 12, 2000.

Kent E. Walter,

Field Office Manager.

[FR Doc. 00–1764 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–2810–AF]

Notice of Intent to Prepare a Resource Management Plan (RMP) Amendment; Las Cruces Field Office, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an RMP amendment and invitation to participate in identification of issues and planning criteria.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces Field Office, New Mexico, is initiating the preparation of an RMP Amendment which will include an environmental assessment (EA). The Amendment would allow the implementation of the Fire Management Plan, Phase I. The Plan would guide Fire Management Policy and Practices on public land administered by the Las Cruces Field Office. These lands include approximately 5.9 million acres in Grant, Hidalgo, Luna, Sierra, Dona Ana, and Otero Counties in southwestern New Mexico. A map of this area is available at the Las Cruces Field Office. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria.

DATES: Comments relating to the identification of issues and planning criteria will be accepted until February 28, 2000.

ADDRESSES: Comments should be sent to: Helen Graham, Team Leader, Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Jim McCormick, Assistant Field Manager, Renewable Resources or Helen Graham, Team Leader, Las Cruces Field Office at (505) 525–4300.

SUPPLEMENTARY INFORMATION: The Fire Management Plan would amend the White Sands RMP and the Mimbres RMP.

Anticipated issues to be addressed in the development of the amendment include, but are not limited to, the following:

(1) The impact of smoke from wildfire and prescribed fire;

(2) The impact of wildfire, prescribed fire, and suppression activity on soil erosion and surface water quality;

(3) The impact of fire suppression activity on resource values;

(4) The impact of wildfire, prescribed fire, and suppression activity on wildlife, and special status species;

(5) The impact of wildfire, prescribed fire, and suppression activity on vegetation;

(6) The impact of wildfire, prescribed fire, and suppression activity on cultural resources;

(7) The proliferation of undesirable, non-native species due to fire and/or fire exclusion;

(8) The risks associated with hazardous fuel (grass, brush, etc.) accumulation in the vicinity of urban interface, sensitive features, and other improvements; These issues are not final and may be refined or expanded through active public input.

The RMP Amendment will be developed by an interdisciplinary team using representation from the Team Leader, Fire Management Specialist, Range Management Specialist, Wildlife Biologist(s), Archeologist, Soil Scientist, Hydrologist, Outdoor Recreation/ Wilderness Planner, and Writer-Editor. Additional technical support will be provided by other specialists as needed.

Public participation activities during the planning process will include consultation with cooperating agencies, mail outs, media notices, **Federal Register** notices, and public meetings.

Three public scoping meetings will be held to obtain public input regarding the RMP Amendment. The public scoping meeting will be held at the following times and locations:

Date	Time	Location
February 15, 2000	7:00–9:00 p.m	BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM.
February 16, 2000	7:00–9:00 p.m	Lordsburg Civic Center, 313 East Fourth St., Lordsburg, NM.
February 17, 2000	7:00–9:00 p.m	Otero County Courthouse, Commission Chambers, Room 253, 1000 New York Ave., Alamogordo, NM.

Complete records of the planning process will be available for public review at the BLM, Las Cruces Field Office at the address above.

Joseph B. Peterson,

Acting Field Manager, Las Cruces.

[FR Doc. 00–1763 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee (Committee), on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies. Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal departments. At this tenth meeting, the Committee will elect a Chairperson, Vice Chairperson, and Parliamentarian, and consider revised by-laws. The Phosphate, Trona and Leaseable Solid Minerals; Coal; Accounting Relief for Marginal Properties; and Freedom of Information Act Subcommittees will also present interim reports. The Minerals Management Service (MMS) will be prepared to discuss Royalty in Kind pilots, Royalty Management Program's reengineering overview and Operational Models, MMS's Strategic Plan for 2001–2005, and the April Award Ceremony.

DATES: The meeting will be held on Friday, February 4, 2000, 8:30 a.m. to 4:30 p.m. Central Standard time.

ADDRESSES: The meeting will be held at the Wyndham Greenspoint Hotel, 12400 Greenspoint Drive, Houston, Texas 77060, telephone number (713) 875–1652.

FOR FURTHER INFORMATION CONTACT: Mr. Gary L. Fields, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3062, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3781.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to Mr. Gary L. Fields, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: January 18, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–1747 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Salton Sea Restoration Project, Coachella and Imperial Counties, California, INT–DES–00–03

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Salton Sea Authority (SSA) have prepared a joint DEIS/DEIR for the Salton Sea Restoration Project (SSRP). The Salton Sea is an artificially maintained inland body of water located in the southeastern corner of California, southeast of Palm Springs, and spans Riverside and Imperial counties. Based on scientific, environmental, and feasibility studies conducted for the SSRP, five project alternatives were developed to address project goals. The DEIS/DEIR describes and presents the environmental effects of the five alternatives as well as the No Action Alternative. Public hearings will be held to receive written or verbal comments on the DEIS/DEIR from interested organizations and individuals on the environmental impacts of the proposal. A Notice of Public Hearing will be published at a later date with dates, times, and locations of the hearings.

DATES: A 90-day public review period commences with the publication of this notice. Submit written comments on the DEIS/DEIR on or before April 25, 2000.

ADDRESSES: Written comments on the DEIS/DEIR should be addressed to Mr. Tom Kirk, Director, Salton Sea Authority, 78–401 Highway 111, Suite T, La Quinta, CA 92253; or to Mr. William Steele, Program Manager, Salton Sea Project, Bureau of Reclamation, PO Box 61470, Boulder City, NV 89006–1470.

The document is available on the Internet at http:@@www.lc.usbr.gov. Copies of the DEIS/DEIR may be requested from Mr. Steele at the above address or by calling (702) 293–8129. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIS/DEIR are available for public inspection.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Kirk, SSA, at (760) 564–4888; or Mr. William Steele, Reclamation, at (702) 293–8129.

SUPPLEMENTARY INFORMATION: The SSRP was developed to comply with Public Laws 102–575 and 105–372 which direct the Secretary of the Interior to "conduct a research project for the development of a method or combination of methods to reduce and control salinity, provide endangered species habitat, enhance fisheries, and protect recreational values * * * in the area of the Salton Sea" as well as "complete all studies, including, but not limited to environmental and other reviews, of the feasibility and benefit-cost of various options that permit the continued use of the Salton Sea as a

reservoir for irrigation drainage and (i) reduce and stabilize the overall salinity of the Salton Sea; (ii) stabilize the surface elevation of the Salton Sea; (iii) reclaim, in the long term, healthy fish and wildlife resources and their habitats; and (iv) enhance the potential for recreational uses and economic developments of the Salton Sea." The following five project goals were developed: (1) Maintain the Sea as a repository for agricultural drainage; (2) provide a safe, productive environment at the Sea for resident and migratory birds and endangered species; (3) restore recreational uses at the Sea; (4) maintain a viable sport fishery at the Sea; and (5) enhance the Sea to provide economic development opportunities. The DEIS/DEIR presents a No Action Alternative, five action alternatives, as well as a suite of common actions developed to enhance the action alternatives. The action alternatives are approached as each consisting of two phases: (i) "short-term" or Phase 1 of each action alternative is designed to reduce and stabilize salinity for at least 30 years; and (ii) Phase 2 or "long-term" actions designed to last no less than 70 to 100 years. Each alternative, including the No Action Alternative, is evaluated against three inflow scenarios: (1) current (present-day) inflow of 1.36 million acre-feet per year (maf/yr); (ii) a reduction of 300,000 acre-feet per year (af/yr) to 1.06 maf/yr; and (iii) a total inflow reduction of 536,000 af/yr to 0.8 maf/yr. Phase 1 action alternatives include: (1) construction of evaporation ponds that would concentrate salinity within their boundaries to reduce salinity in the Sea, and also could potentially serve as a displacement mechanism to control the Sea's elevation; (2) construction of an Enhanced Evaporation System (EES), a system that sprays a fine mist of water into the air to accelerate evaporation and create a saline precipitate; (3) a combination of an EES with an evaporation pond; or (4) an in-Sea EES within an evaporation pond. Phase 2 action alternatives involve supplementing inflows to the Sea, creating displacement structures for elevation control, and creating longer lasting export options.

Copies of the DEIS/DEIR are available for public inspection and review at the following locations:

- Salton Sea Authority, 78–035 Calle Estado, La Quinta, California 92253–2930; telephone: (760) 564–4888
- Bureau of Reclamation, Salton Sea Project Office, PO Box 61470, Boulder City, Nevada 89006–1470; telephone: (702) 293–8129
- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington, DC 20240; telephone: (202) 208–4662
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072
- Bureau of Reclamation, Public Affairs Office, PO Box 61470, Boulder City, Nevada 89006–1470; telephone: (702) 293–8420
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001, telephone: (202) 208–5815
- Sonny Bono Salton Sea National Wildlife Refuge, 906 West Sinclair Road, Calipatria, CA 92233, telephone: (760) 348–5278
- Coachella Valley Water District, Highway 111 and Avenue 52, Coachella, CA 92236, telephone: (760) 398–2651
- Imperial County Administrative Center, 940 West Main Street, Suite 208, El Centro, CA 92243–2875, telephone: (760) 339–4290
- Imperial Irrigation District, 333 East Barioni Boulevard, Imperial, CA 92251, telephone: (760) 339–9426
- Supervisor, District 4 (Supervisor Roy Wilson), 46–200 Oasis Street, Suite 318, Indio, CA 92201, telephone: (760) 863–8211
- Bombay Beach Community Services District, 9590 Avenue C, Niland, CA 92257, telephone: (760) 354–1209
- Salton Sea State Park, 100–225 State Park Road, North Shore, CA 92254, telephone: (760) 393–1338
- Riverside County (Supervisor Roy Wilson's Office), 4080 Lemon Street, 12th Floor, Riverside, CA 92502, telephone: (909) 955–1040
- Community Services District, 2098 Frontage Road, Salton City, CA 92275, telephone: (760) 394–4446
- San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–8050, telephone: (619) 594–6014
- San Diego Central Library, 820 East Street, San Diego, CA 92101–6478, telephone: (619) 236–5800
- Palm Springs Public Library, 300 South Sunrise Way, Palm Springs, CA 92262–7699, telephone: (619) 323–8298
- Clark County Library, 1401 E. Flamingo Road, Las Vegas, Nevada 89119, telephone: (702) 733–7810
- Yuma County Library District, 350 Third Avenue, Yuma, AZ 85364, telephone: (520) 782–1871
- The Burton Barr Central Library, 1221 North Central Avenue, Phoenix AZ 85004, telephone: (602) 262–4636
- Los Angeles Public Library, 630 West Fifth Street, Los Angeles, CA 90071–2097, telephone: (213) 228–7515
- University of Redlands, Armacost Library, 1249 E. Colton Avenue, Redlands, CA 92374–3758, telephone: (909) 335–4022
- University of California, Riverside, Riverside, CA 92517–5900, telephone: (909) 787–3221
- California State Polytechnic University, Pomona, 3801 West Temple Avenue, Pomona, CA 91768, telephone: (909) 869–3088
- University of California, Davis, 100 North West Quad, Davis, CA 95616–5292, telephone: (530) 752–2110

Dated: January 21, 2000.

William Steele,

Program Manager, Salton Sea Project, Bureau of Reclamation.

[FR Doc. 00–1843 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–421]

Certain enhanced dram devices containing embedded cache memory registers, components thereof, and products containing same; Notice of Commission determination not to review an initial determination terminating the investigation on the basis of a settlement agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 8) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-referenced investigation based on a complaint filed by Enhanced Memory Systems, Inc. (EMS) of Colorado

Springs, Colorado. The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain enhanced DRAM devices containing embedded cache memory registers, components thereof, or products containing them by reason of infringement of claims 26 or 27 of U.S. Letters Patent 5,721,962 or claims 2, 6, 17, 18, 27, 28, 29, 30, or 31 of U.S Letters Patent 5,887,272. NEC Corporation, NEC Electronics, Inc. and NEC USA Inc. (collectively, "NEC") were named as respondents.

On November 12, 1999, EMS and NEC filed a joint motion to terminate the investigation based on a settlement agreement. On November 22, 1999, the Commission investigative attorney filed a response in support of the joint motion to terminate. On December 20, 1999, the presiding ALJ granted the joint motion and issued an ID (Order No. 8) terminating the investigation on the basis of the settlement agreements. The ALJ found no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: January 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1831 Filed 1–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–426]

Certain Spiral Grilled Products Including Ducted Fans and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 26, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Vornado Air Circulation Systems, Inc. of Andover, Kansas. A supplementary letter was filed on January 7, 2000. On December 28, 1999, the Commission voted to extend the deadline by which it had to decide whether to institute an investigation based on the complaint. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of (i) infringement of claims 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of U.S. Letters Patent Re. 34,551, and (ii) misappropriation of trade dress. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1999).

SCOPE OF INVESTIGATION

Having considered the complaint, the U.S. International Trade Commission, on January 18, 2000 Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of infringement of claims 15, 16, 17, 18, 19, 20, 21, 22, 23, or 24 of U.S. Letters Patent Re. 34,551.

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(c) whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Vornado Air Circulation Systems, Inc., 415 E. 13th, Andover, Kansas 67002.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Holmes Products Corp., 233 Fortune Blvd., Milford, MA 01757–1740

Holmes Products (Far East) Ltd., 9th Floor, No. 9 Wing Hong St., Cheung Sha Wan, Kowloon, Hong Kong

Holmes Products (Far East) Ltd., Taiwan Branch (Bahamas), 13F–2, 97 Chung Hsin Road, Section 4 Sanchung City, Taipei, Hsien, Taiwan

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in

accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: January 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1830 Filed 1–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review)]

Steel Rails From Canada

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty and antidumping duty orders on steel rails from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 1999 (64 FR 29353, June 1, 1999) and determined on September 3, 1999 that it would conduct expedited reviews (64 FR 50108, September 15, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 24, 2000. The views of the Commission are contained in USITC Publication 3269 (January 2000), entitled Steel Rails from Canada: Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review).

By order of the Commission.

Issued: January 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1858 Filed 1–25–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 12, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date or this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Survey of Physicians Board Certified in Internet Medicine with a Sub-Speciality in Pulmonary Medicine, Pulmonary Clinics and Facilities.

OMB Number: 1215–ONEW.

Frequency: 1 Time.

Affected Public: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Number of Respondents: 2,000.

Total Burden Hours: 333 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: DCMWC will mail surveys to 2,000 specified physicians, clinics and facilities and utilize the results in determining whether to implement changes to the medical testing component of its program. The Department would like to ascertain the extent to which physicians, clinics and facilities, use spirometers that are capable of producing a flow-volume loop. In addition, the Department seeks information on the fees necessary to attract highly qualified physicians to perform the medical testing and evaluation that the Department is required to provide under the Black Lung Benefits Act. The information obtained from this survey will assist the Department in administering the program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–1781 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on

Construction Safety and Health (ACCSH) will meet on February 17, 2000, at the Holiday Inn O'Hare International, 5440 North River Road, Rosemont, IL. This meeting is open to the public.

TIMES, DATES, ROOMS: ACCSH will meet from 8 a.m. to Noon, Thursday, February 17. ACCSH work groups will meet from 8 a.m. to 5 p.m., Monday, February 14.

SUPPLEMENTARY INFORMATION: For further information contact Veneta Chatmon, Office of Public Affairs, Room N–3647, telephone (202) 693–1999, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals needing special accommodation should contact Veneta Chatmon no later than February 1, 2000, at the above address.

ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The agenda items include:

- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration Charles N. Jeffress.
- ACCSH Work Group Updates, including:
  - Musculoskeletal Disorders,
  - Fall Protection,
  - Sanitation,
  - Process Safety Management.
- Open Forum—Public questions, complaints and compliments are welcome.

The following ACCSH Work Groups are scheduled to meet at the Holiday Inn O'Hare International on Monday, February 14:

- Fall Protection—8–10 a.m.
- Multi-employer citation policy—10:15 a.m.–12:15 p.m.
- Sanitation—1–3 p.m.
- Musculoskeletal Disorders—3:15–5:15 p.m.

The Training Work Group is scheduled to meet on Wednesday, February 16 at the OSHA Training Institute, 1555 Times Drive, Des Plaines, IL.

Other workgroups may meet after adjournment of the ACCSH meeting on Thursday, February 17, 2000.

For further information on ACCSH activities and scheduling please refer to the OSHA Web site at *http://www.osha.gov* or call Jim Boom in OSHA's Directorate of Construction at (202) 693–1839.

Interested persons may submit written data, views or comments, preferably with 20 copies, to Veneta Chatmon, at the address above. Submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Signed at Washington, DC this 19th day of January, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–1780 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 90–1

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection requests (ICR) incorporated in Prohibited Transaction Class Exemption 90–1, involving insurance company pooled separate accounts. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions involving insurance company pooled separate accounts in which employee benefit plans participate and which are otherwise prohibited by ERISA. Specifically, the exemption allows persons who are parties in interest of a plan that invests in a pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that certain conditions are met, the Department requires that records regarding the exempted transaction be maintained for six years.

II. Desired Focus of Comments

The Department is particularly interested in comments which

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This exemption provides individuals or entities which are parties in interest to a plan that invests in an insurance company pooled separate account with the ability to engage in transactions with the separate account and to avoid potential hardships and possible fiduciary liability under ERISA. For the Department to grant an exemption, however, plan participants and beneficiaries must be protected. The Department therefore included certain exemption conditions, one of which requires that records of a transaction

between the party in interest to a plan and the insurance company pooled separate account be kept by the insurance company for six years from the date of the transaction. The majority of this recordkeeping is considered to be usual business practice in the insurance industry. Without this ICR, the Department would be unable to effectively enforce the terms of the exemption, insure user compliance, and protect the interests of participants and beneficiaries.

Type of Review: Extension of currently approved collections of information.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 90–1—Pooled Separate Accounts.

OMB Number: 1210–0083.

Recordkeeping: Six years.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 128.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 11 hours.

This notice requests comments on the extension of the ICR included in Prohibited Transaction Class Exemption 90–1. The Department is not proposing or implementing changes to the existing ICR at this time. Comments received in response to this notice will be summarized and/or incorporated in the submission to OMB for continued clearance of the ICR; they will also become a matter of public record.

Dated: January 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–1782 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 94–20

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, report burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection requests (ICR) incorporated in Prohibited Transaction Class Exemption 94–20, Purchases and Sales of Foreign Currencies. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof that is a party in interest with respect to such plan. In the absence of this exemption, certain aspects of these transactions could be prohibited by section 406(a) of the Employee Retirement Security Act of 1974 (the Act).

II. Desired Focus of Comments

The Department is particularly interested in comments which—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This existing collection of information should be continued because without the relief provided by this exemption, foreign exchange transactions between a bank or an affiliate thereof and an employee benefit plan with respect to which the bank or an affiliate is a trustee, custodian, fiduciary, or other party in interest would violate certain provisions of the Act. Specifically, individuals or entities which are parties in interest with respect to a plan would not be permitted to engage in a purchase or sale of foreign currencies between the bank, broker-dealer, or a affiliate thereof and an employee benefit plan, thus creating a potential hardship to those affected. The exemption has one basic information collection condition—the bank or broker-dealer or affiliates thereof are required to maintain within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, records of the foreign exchange transaction. Without such records, the Department would be unable to effectively enforce the terms of the exemption, insure user compliance, and protect the interests of employee benefit plan participants and beneficiaries.

Type of Review: Extension of currently approved collections of information.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 94–20, Purchases and Sales of Foreign Currencies.

OMB Number: 1210–0085.

Recordkeeping: Six years.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 35.

Average Time per Response: 5 minutes.

Total Responses: 175.

Estimated Total Burden Hours: 15.

This notice requests comments on the extension of the ICR included in Prohibited Transaction Class Exemption 94–20. The Department is not proposing or implementing changes to the existing ICR at this time. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the

information collection request; they will also become a matter of public record.

Dated: January 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 00–1783 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Revision of Information Collection; Comment Request; Prohibited Transaction Exemptions 76–1 and 77–10

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Pension and Welfare Benefits Administration is soliciting comments concerning revision of two currently approved information collection requests (ICRs), Prohibited Transaction Class Exemption 76–1, OMB Number 1210–0058, and Prohibited Transaction Class Exemption 77–10, OMB Number 1210–0081. The Department proposes to revise the ICR currently approved under OMB Number 1210–0058 by incorporating the information collection provisions of Prohibited Transaction Class Exemption 77–10 into OMB Number 1210–0058, and allowing OMB Number 1210–0081 to expire on April 30, 2000. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 76–1 permits parties in interest, under specified conditions, to (A) make delinquent employer contributions; (B) receive loans; (C) and, obtain office space, administrative services and goods from plans. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act).

Under Part C of Prohibited Transaction Class Exemption 76–1, a multiple employer plan may provide administrative services or goods to a participating employer, a union, or another plan which is a party in interest. Under section 406(b)(2) of the Act, however, fiduciaries are prohibited from involving an employee benefit plan on behalf of a party (or representing a party) whose interests are adverse to the interests of a plan or to the interests of its participants or beneficiaries. Therefore, transactions between parties in interest involving administrative goods and services, exempt under the terms of Prohibited Transaction Class Exemption 76–1, might still be prohibited under section 406(b)(2) in the absence of a separate exemption. Prohibited Transaction Class Exemption 77–10, authorizes a multiple employer plan to provide the goods and services described in Part C if certain conditions are met and provides relief from the provisions of section 406(b)(2).

II. Desired Focus of Comments

The Department is particularly interested in comments which

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Actions

Because Prohibited Transaction Class Exemption 77–10 (OMB Number 1210–0081) complements Prohibited Transaction Class Exemption 76–1 (OMB Number 1210–0058), the Department proposes to combine the information collection provisions of both under one OMB control number (OMB Number 1210–0058). The Department believes the public will benefit by having the opportunity to comment on the information collection provisions at the same time because Prohibited Transaction Class Exemption 77–10 is not likely to be used without its counterpart Prohibited Transaction Class Exemptions 76–1, Part C, and because the paperwork burden for both exemptions is essentially a single burden. After the information collection provisions of Prohibited Transaction Class Exemption 77–10 are incorporated in the revised ICR under 1210–0058, the Department intends to allow the control number for Prohibited Transaction Class Exemption 77–10 to expire.

The existing collection of information under Prohibited Transaction Class Exemptions 76–1 and 77–10 should be continued because without the relief provided by these exemptions: contributing employers would not be able to make late or partial payments to plans, even in justifiable circumstances; contributing employers would be unable to obtain construction financing from plans and the plans would be denied this investment opportunity; and plans would not be able to receive income from leasing available office space or providing services to certain parties in interest.

The recordkeeping requirements incorporated within Prohibited Transaction Class Exemption 76–1 are intended to protect the interest of plan participants and beneficiaries. Each part of the exemption differs somewhat in paperwork. Under Part A, the terms of an arrangement or agreement between a plan and a participating employer extending time for a contributing or accepting less than the amount owed must be set forth in writing. Also, a determination by a plan to consider an unpaid employer contributing as uncollectible must be set forth in writing. Under Part B, before a construction loan is made by a plan to a participating employer, the employer and the plan must receive a written commitment for permanent financing from a person other than the plan concerning full repayment of the loan upon completion of construction. In

addition, the plan must maintain for six years such records as are necessary to enable the Department, Internal Revenue Service (IRS), plan participants, beneficiaries, participating employers, and others to determine whether the conditions of the exemptions have been met. Part C permits plans to lease office space and provide administrative services or sell goods to a participating employer or union or to another plan. Under Part C, the plan must maintain for six years following the date of termination of the lease or of the provision of services such records as are necessary to enable persons from the Department, IRS, and other related parties to determine whether the conditions of the exemption have been met.

Information collection under Prohibited Transaction Class Exemption 77–10 requires that a multiple employer plan which shares office space, administrative services, or goods or which provides administrative services or goods (as under Part C of Prohibited Transaction Exemption 76–1), maintain, during the time of the transactions and six years from the time of termination, such records as are necessary to enable the Department, IRS, and other related parties to determine whether the conditions of the exemption have been met. The recordkeeping requirements are intended to protect the interests of plan participants and beneficiaries and are essentially the same recordkeeping requirements as under Part C of Prohibited Transaction Class Exemption 76–1.

Type of Review: Revision of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration.

Titles: Prohibited Transaction Class Exemptions 76–1 and 77–10.

OMB Number: 1210–0058.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 3,000.

Frequency of Response: On occasion.

Responses: 3,000.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 750.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: January 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–1784 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit 3; Notice of Consideration of Approval of Transfer of Facility; Operating License and Conforming Amendment, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (64 FR 2990). This action is necessary to correct the comment period expiration dates.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

1. On page 2991, in the second column, the first complete paragraph, in the first line, February 7, 2000, is corrected to read February 8, 2000.

2. On page 2991, in the third column, the first complete paragraph, in the third line, February 17, 2000, is corrected to read February 18, 2000.

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–1811 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (64 FR 2991). This action is necessary to correct the comment period expiration date.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

On page 2992, in the third column, the third complete paragraph, in the first line, February 17, 2000, is corrected to read February 18, 2000.

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–1809 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (64 FR 2993). This

action is necessary to correct the comment period expiration date.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 2994, in the second column, the fifth complete paragraph, in the first line, February 17, 2000, is corrected to read February 18, 2000.

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–1610 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License DPR–43 Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License DPR–43 issued to Wisconsin Public Service Corporation (the licensee) for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would change Technical Specification (TS) Section 4.2.b, ''Steam Generator Tubes,'' to extend the use of the length-based pressure boundary definition (L criterion) for the Westinghouse steam generator hybrid expansion joint sleeved tubes through the operating cycle 24 (approximately from May 2000 to Fall of 2001). The existing TS 4.2.b.4.c restricts use of L criterion to operating cycle 23 which is scheduled to end in mid-April 2000.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation of the facility with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The extension of the L criterion for cycle 24 does not change the results of the structural testing performed in 1998. The physical characteristic (undegraded hardroll length) of the pressure boundary definition also does not change. The L criterion will continue to be implemented as described in the original, approved amendment. The conservatisms upon which NRC approval was based still exist. Therefore, the conservatisms still provide assurance that safety margins will continue to be met and uncertainties will remain acceptably low. Extending the use of the L criterion does not increase the probability of a MSLB [main steam line break] event. Based on the above, it may be concluded that application of the parent tube pressure boundary L criterion through cycle 24 will not result in a significant increase in the probability of an accident previously evaluated.

The conservatively bounding primary-to-secondary MSLB leak rate of 1 gpm [gallons-per-minute], which was approved for cycle 23, will continue to be applied to the calculation for postulated MSLB leakage for cycle 24. Application of this leak rate to the postulated leakage calculation will continue to ensure primary-to-secondary leakage will not exceed the current maximum allowable during a MSLB event. Maintenance of the current maximum allowable primary-to-secondary leak rate during a MSLB event ensures off-site doses will not exceed a small fraction of 10 CFR 100 and control room doses will not exceed GDC [General Design Criteria] -19 criteria. Therefore, it may be concluded that the application of the parent tube pressure boundary L criterion through cycle 24 will not increase the consequences of an accident previously evaluated.

2. Does operation of the facility with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The extension of the L criterion through cycle 24 will not introduce a change to the design basis or operation of the plant. Neither the physical characteristics nor implementation of the L criterion has been changed. As determined in the original L criterion submittal, the continued implementation of a parent tube pressure boundary does not effect or interact with other portions of the reactor coolant system. Continued implementation of the L criterion does not effect any other tubes outside the repaired area or any other components. The qualification testing performed in 1998 remains valid and supports the conclusion that the joint retains structural integrity consistent with RG [Regulatory Guide]—1.121 and leakage integrity with regards to 10 CFR [Code of Federal Regulations] 100 and GDC–19. Any hypothetical accident as a result of PTIs [parent tube indications] left in service by the L criterion continues to be bounded by the existing tube rupture analysis. Therefore, application of the L criterion through cycle 24 will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does operation of the facility with the proposed amendment involve a significant reduction in a margin of safety?

The safety factors used to establish the L criterion continue to be consistent with safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in the SG [steam generator] design. Based on the sleeve-to-tube geometry, it is unrealistic to consider that application of L criterion could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The performance characteristics of postulated degraded HEJ [hybrid expansion joint] sleeves have been verified through testing to retain structural integrity and preclude significant leakage during both normal operating and MSLB conditions. Conservatisms that allowed approval of the L criterion for cycle 23 still exist and apply as discussed in the safety evaluation of this submittal. Leakage rates determined and approved for the original L criterion submittal will continue to be implemented. Therefore, there is not a significant reduction in the margin of safety for extension of the L criterion through cycle 24.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the

amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW.; Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 25, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 22, 1999, as supplemented January 17, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1812 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 31, 1999, through January 14, 2000. The last biweekly notice was published on January 12, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration of Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 25, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: December 17, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification 2.1.1.2 to incorporate cycle-specific safety limit minimum critical power ratios (SLMCPRs) for the core that will be loaded during the upcoming refueling outage

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment establishes a revised SLMCPR value of 1.07 for two recirculation loop operation and 1.09 for single recirculation loop operation. The derivation of the cycle-specific SLMCPRs was performed using NRC approved methods and uncertainties described in Amendment Number 25 to NEDE–24011–P–A (GESTAR II) and Licensing Topical Reports NEDC–32601P–A, "Methodology and Uncertainties for Safety Limit MCPR Evaluations" and NEDC–32694P–A, "Power Distribution Uncertainties for Safety Limit MCPR Evaluation."

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable.

The probability of an evaluated accident is not increased by revising the SLMCPR values. The change does not require any physical plant modifications or physically affect any plant components. Therefore, no individual precursors of an accident are affected.

The proposed license amendment establishes a revised SLMCPR that ensures that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences. Specifically, the reload analysis demonstrates that a SLMCPR value of 1.07 (1.09 for single loop operation) ensures that less than 0.1 percent of the fuel rods will experience boiling transition during any plant operation if the limit is not violated.

Based on (1) the determination of the new SLMCPR values using NRC approved methods and uncertainties, and (2) the operability of plant systems designed to mitigate the consequences of accidents not having been changed; the consequences of an accident previously evaluated have not been increased.

Therefore, the proposed Technical Specification change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment involves a revision of the SLMCPR from 1.11 to 1.07 for two recirculation loop operation and from 1.13 to 1.09 for single loop operation based on the results of analysis of the Cycle 8 core which will once again be fully loaded with GE11 fuel. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed license amendment establishes a revised SLMCPR value of 1.07 for two recirculation loop operation and 1.09 for single recirculation loop operation. The derivation of these revised SLMCPRs was performed using NRC approved methods and uncertainties described in Amendment Number 25 to NEDE–24011–P–A (GESTAR II) and Licensing Topical Reports NEDC–32601P–A, "Methodology and Uncertainties for Safety Limit MCPR Evaluations" and NEDC–32694P–A, "Power Distribution Uncertainties for Safety Limit MCPR Evaluation." Use of these methods ensures that the resulting SLMCPR satisfies the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limit is not violated. Based on the assurance that the fuel design safety criteria will be met, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: December 17, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement (SR) 3.6.1.3.9 to relax the SR frequency by allowing a representative sample of excess flow check valves (EFCVs) to be tested every 18 months, such that each EFCV will be tested at least once every 10 years. Current SR 3.6.1.3.9 requires all EFCVs to be tested every 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current [SR] frequency requires each reactor instrumentation line EFCV to be tested every 18 months. The EFCVs at Fermi 2 are designed to close automatically in the event of a line break downstream of the valve. Indicating lights on a control room panel monitor EFCV positions. These valves may be reopened by actuation of a solenoid valve, which is operated from a local control panel. EFCVs at Fermi 2 are designed and installed following the guidance of Regulatory Guide 1.11. This proposed change allows a reduced number of EFCVs to be tested every 18 months. Industry operating experience, documented in BWROG [Boiling Water Reactor Owners Group] Report B21–00658–01, concludes that a change in surveillance test frequency has a minimal impact on the reliability for these valves. A failure of an EFCV to isolate cannot initiate previously evaluated accidents; therefore, there can be no increase in the probability of occurrence of an accident as a result of this proposed change.

Fermi 2 UFSAR [Updated Final Safety Analysis Report], Subsection 15.6.2 evaluates an instrument line pipe break within secondary containment. The evaluation assumes that a small instrument line instantaneously and circumferentially breaks at a location where it may not be possible to isolate it and where immediate detection is not automatic or apparent. The evaluation concluded that pressurization of the secondary containment would not result from an instrument line break and a failure of the associated EFCV to isolate the ruptured line. The standby gas treatment system is not impaired by this event, and the calculated offsite exposure is substantially below the guidelines of 10 CFR 100. Additionally, coolant lost from such a break is inconsequential when compared to the makeup capabilities of the feedwater or RCIC [reactor core isolation cooling] system. The BWROG report concludes that the risk to the public with the extended testing interval is several orders of magnitudes below the general public annual exposure limits in 10 CFR 20.105.

Although not expected to occur as a result of this change, the postulated failure of an EFCV to isolate as a result of reduced testing is bounded by the analysis in the UFSAR. Therefore, there is no increase in the previously evaluated consequences of the rupture of an instrument line and there is no potential increase in the radiological consequences of an accident previously evaluated as a result of this change.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change allows a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. Industry operating experience as documented in the BWROG report provides supporting evidence that the reduced testing frequency will not affect the high reliability of these valves. The potential failure of an EFCV to isolate as a result of the proposed reduction in test frequency is bounded by the evaluation of an instrument line pipe break described in Subsection 15.6.2 of the UFSAR. This change is not a physical alteration of the plant and will not alter the operation of the structures, systems and components as described in the UFSAR. Therefore, a new or different kind of accident will not be created.

3. The change does not involve a significant reduction in the margin of safety.

The consequences of a postulated instrument line pipe break have been evaluated in Subsection 15.6.2 of the UFSAR. The evaluation assumed the line instantaneously and circumferentially breaks at a location where it may not be possible to isolate it and that the EFCV fails to isolate the break. Therefore, any potential failure of an EFCV as a result of the reduced testing frequency is bounded by this evaluation and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 18, 1999.

Description of amendment request: The proposed change would amend Technical Specification 3.5.3 and its associated Bases to reflect a change in the reactor coolant system (RCS) low pressure setpoint for Arkansas Nuclear One, Unit 1 (ANO–1). The RCS low pressure setpoint has been adjusted in the conservative direction to account for both the uncertainties associated with the actual value and the current number of plugged steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change to raise the current technical specification (TS) ESAS [Engineered Safeguards Actuation Signal] setpoint for low RCS pressure does not require new hardware or physical equipment modifications to the plant design. By raising the setpoint, a more prompt actuation of associated safeguards equipment will be achieved for the accident scenarios previously analyzed in the ANO–1 Safety Analyses Report (SAR). A more expeditious actuation will ensure a more timely response to the accident and serve to potentially decrease the consequences of an accident. The RCS Pressure LO LO [Low Low] alarm setpoint has also been raised and applicable procedures revised to provide the operator sufficient time to bypass the actuation during controlled plant maneuvers.

Therefore, the raising of the low RCS pressure ESAS setpoint from 1526 psig [pounds per square inch, guage] to 1585 psig does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change is relevant to accident response and mitigation and has no [a]ffect on accident initiation. An inadvertent actuation of the HPI [high pressure injection] system could result in pressurizing the RCS to the point where a pressurizer safety valve could open and subsequently fail to close, resulting in a loss of coolant accident.

However, this event remains unaffected for normal power operations and requires discussion of depressurization events only, such as a planned cooldown, when an inadvertent actuation could occur earlier due to the proposed higher setpoint. This concern is mitigated by the increase of the RCS Pressure LO LO alarm setpoint from approximately 1550 psig to 1640 psig, thus providing the operator ample time to bypass the low RCS pressure ESAS setpoint prior to inadvertent actuation. Therefore, no new, previously unevaluated event has been introduced relating to the inadvertent actuation of HPI components due to the proposed change.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change conservatively raises the existing low RCS pressure ESAS setpoint to a new value using existing installed equipment. The new value provides protection for the entire spectrum of break sizes based on applicable evaluations and considers the effects of projected steam generator tube plugging activities. The setpoint is also sufficiently below normal operating pressure to aid in preventing spurious initiation.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does *not* involve a significant hazards consideration.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas

Date of amendment request: November 16, 1999.

Description of amendment request: The proposed changes to the Arkansas Nuclear One, Units 1 and 2 (ANO–1 and ANO–2), Technical Specifications (TSs) and associated Bases would provide a 30-day allowable outage time (AOT) for Startup Transformer No. 2 (SU#2) which is an offsite power source shared by both units. This 30-day AOT would be used infrequently for the purpose of performing preventative maintenance on the transformer to increase its reliability. The current TS constraints would require both units to be in cold shutdown in order to perform this maintenance. In addition, changes have been requested to the requirements associated with demonstrating the operability of the emergency diesel generators to increase the reliability of this power supply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed changes has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Based on existing methodologies, guidance, and procedures utilized at ANO, including required assessments of risk associated with any significant maintenance activity, the provision of a 30-day AOT for preplanned preventative maintenance on SU#2 is acceptable. The resulting increase in overall risk was considered to fall into NRC Risk Region III ("Very Small Change"). Additionally, removal of SU#2 from service in any plant mode of operation has been previously evaluated and found acceptable given the existing guidance and regulations associated with offsite power sources.

Five offsite power feeds are available to the ANO switchyard with no more than two of the feeds in close proximity to one another for a given length, except within the switchyard itself. Failure of one feed, regardless of the cause, will result in no more than one additional failure, leaving at least three offsite power sources yet available, assuming the failure remains outside the ANO switchyard. For events that pose a threat within the ANO switchyard, four redundant Class 1E EDGs [emergency diesel generators] and one Alternate AC [alternating current] diesel generator are capable of supply power to the units. Upon loss of the remaining offsite power transformer of a unit which may be off-line, offsite power may be restored via backfeed operations from the Main Transformers to the Unit Auxiliary transformer to supply in-house loads. This ensures the availability of redundant power sources, including the applicable contingencies established during safety-related equipment maintenance performed at ANO, are sufficient in maintaining safe unit operations during preplanned preventative maintenance on SU#2 transformer. Therefore, providing a 30-day AOT for preplanned preventative maintenance on SU#2, not to be applied more than once in any 10-year period, does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

The elimination of excessive EDG operability demonstrations (cold starts) during periods when another required power source is inoperable acts to enhance overall EDG reliability and is consistent with guidance provided in NRC Generic Letter 84–15 "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability" and the Revised Standard Technical Specifications (NUREG–1430 and –1432). Verification of the operability of the remaining EDG will be performed within 24 hours should the failure mechanism that caused the inoperability of the redundant EDG be concluded to be a common cause type failure. The start test in the latter case acts to ensure that an EDG source remains available when the cause of the failure of the redundant EDG might impact the remaining EDG.

Therefore, eliminating excessive EDG cold starts does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The removal of SU#2 from service to support needed maintenance activities has been previously evaluated for all modes of plant operation. Extending the current AOT to 30 days on a limited basis does not result in any new accident initiator. The EDGs are not considered accident initiators, but are designed to support mitigation of accident scenarios. The elimination of excessive EDG cold starts acts to enhance overall EDG reliability and has no effect on accident development.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The associated probabilistic risk assessments indicate that the proposed 30-day AOT for SU#2 does not involve a significant increase in overall site risk, nor reduce the margin to safety. Thorough contingency action planning, which acts to maintain the operability of other equipment important to safety during the SU#2 maintenance window, additionally acts to ensure the margin to safety is maintained. The EDGs are important to safety in that they are designed to supply power to safety system components and equipment during a loss of offsite power. The elimination of excessive cold starts of the EDGs acts to enhance the overall reliability of the EDGs and, therefore, proper mitigation of accident scenarios is likewise enhanced.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does *not* involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1999.

Description of amendment request: The proposed license amendment request would revise Fuel Handling Accident (FHA) dose calculations for 3 scenarios documented in the River Bend Station, Unit 1 (RBS), Updated Safety Analysis Report (USAR). The first is a FHA in the fuel building, assumed to occur 24 hours post-shutdown. A second FHA analysis was prepared to support Amendment 35 to RBS Technical Specifications (TS) which assumed a FHA occurs in the primary containment 80 hours post-shutdown during Local Leakage Rate Testing (LLRT). A third analysis was prepared in support of Amendment 85 to the RBS TS which assumed the containment is open at 11 days.

These analyses are being updated to account for several changes. The primary reason for the revisions, as stated by the licensee, was to update the analyses to reflect current RBS operating strategies and make the analyses consistent with each other. Specifically, Cases 1 and 2 of the three analyses assumed a Radial Peaking Factor (RPF) of 1.5 consistent with Regulatory Guide (RG) 1.25. However, current core design strategies could lead to an RPF as high as 1.65. In addition, to account for the potential impact of extended burnup fuel in future operating cycles, an increased iodine-131 gap fraction of 0.12 was more conservatively assumed in lieu of the 0.10 recommended by RG 1.25. The revised analysis also includes a change to the control room atmospheric dispersion factors (χ/Q) for the Main Control Room (MCR) ventilation system. Credit is taken for Standard Review Plan (SRP) Section 6.4 guidance for manual dual control room air intakes in that the χ/Q's are divided by 4. The revised FHA analyses also credit this action at a 20 minute delay to be consistent with the Loss of Coolant Accident (LOCA) analysis.

Furthermore, an error was discovered in one of the FHA calculations. The release rate assumed in the analysis did not ensure that the RG 1.25 assumption of a 2-hour release was preserved. The error is the result of an inherent bias in the secondary mixing effects in the dose calculation. The results continue to be bounded by the guidance contained in SRP 15.7.4 and RG 1.25.

Reanalysis showed that the release rate error, compounded with the other changes discussed above, resulted in calculated doses greater than those currently found in the RBS USAR. In addition, some of the doses were also greater than those presented in the Amendment 85 submittal. However, the licensee has stated that the results of the revised analyses remain "well within" 10 CFR 100, the guidance contained in SRP 15.7.4, and RG 1.25. Since the analyses results are above those reported in the RBS USAR, the criterion of 10 CFR 50.59(a)(2)(i) is, therefore, satisfied. Accordingly, the licensee has concluded that these changes involve an unreviewed safety question.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The analyses changes described by this proposed change to the USAR are not initiators to events, and, therefore, do not involve the probability of an accident. The changes to the FHA calculations for radiological doses following a FHA reflect the current operating strategies and make the analyses consistent. These changes included:

- accounting for the impact of extended burnup fuel,
- addressing a change to the control room atmospheric dispersion factors assumed in the analysis, and
- revising the Radial Peaking Factor (RPF) used in the analysis. Current core design strategies could lead to a RPF higher [than] that assumed in Regulatory Guide 1.25.

The TRANSACT code is used for offsite dose and control room dose calculations. The TRANSACT code is derived from the TACT V code documented in NUREG/CR–5109. RBS has benchmarked the TRANSACT code as discussed in the request dated August 17, 1995, (RBG–41728) which resulted in the NRC granting Amendment 85.

The revisions to the FHA are used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions include:

- initial fuel movement in the Fuel Building 24 hours after shutdown,
- fuel movement in Primary Containment after 80 hours with leakrate testing being conducted, and
- fuel movement in Primary Containment with the Primary Containment open.

Because the analyses affected by the changes are not considered an initiator to any previously analyzed accident, these changes cannot increase the probability of any previously evaluated accident. Therefore, this change does not increase the probability of occurrence of an accident evaluated previously in the safety analysis report (SAR).

This proposed change to the USAR does increase the consequences of an accident, but the increase is within all regulatory limits and guidance. While the calculated off-site and control room doses of a FHA did increase, the dose consequences remain below the regulatory limits of 10 CFR 100 and 10 CFR 50, Appendix A, GDC [General Design Criterion]–19 as approved per NUREG–0989, and the guidance contained in SRP 15.7.4 of less than 25% of the 10 CFR 100 limits. The cause of these events remains the failure of the fuel assembly lifting mechanism. These analyses demonstrated that for the worst case bundle drop, the regulatory dose guidelines of SRP 15.7.4 continue to be satisfied for the required decay periods.

This change accounts for the potential effects of current fuel design and operating strategies including increased burnup of fuel, increased iodine-131 fraction released, Main Control Room ventilation system operation, and release rate timing assumptions. Reanalysis of the off-site dose calculation demonstrates that the revised doses are increased but remain less than the regulatory limits of 10 CFR 100 and within the guidance of SRP 15.7.4. Therefore, this change does not significantly increase the consequences of an accident previously evaluated in the SAR.

The proposed changes, in conjunction with existing administrative controls, bound the conditions of the current design basis fuel handling accident analysis. The analysis also concludes the limiting offsite radiological consequences are well within the acceptance criteria of NUREG[–]0800, Section 15.7.4 and 10 CFR 50, Appendix A, GDC[–]19. The analysis is also conducted in a conservative manner containing margins in the calculation of mechanical analysis, iodine inventory, and iodine decontamination factor. Each of these conservatisms will further decrease the consequences. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

This change does not involve initiators to any events in the SAR, nor does the activity create the possibility for any new accidents. Rather, this change is a result of the evaluation of the most limiting FHA, which can occur at River Bend.

The proposed changes to the dose analyses are consistent with previous limits, only revising previous evaluations to account for current operating strategies and assumptions. These changes included:

- accounting for the impact of extended burnup fuel,
- addressing a change to the control room atmospheric dispersion factors assumed in the analysis, and
- revising the Radial Peaking Factor (RPF) used in the analysis. Current core design strategies could lead to a RPF higher [than] that assumed in Regulatory Guide 1.25.

The radiological consequences remain within accepted limits of 10 CFR 100 and guidance of the Standard Review Plan (NUREG–0800) Section 15.7.4. Therefore, these changes are consistent with the design basis analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The dose consequences are calculated in accordance with regulatory guidance found in Regulatory Guide 1.25 and the SRP [S]ection 15.7.4. The RBS analyses conservatively assumed that failures are consistent with those in the standard General Electric GESTAR II. These analyses result in a bounding number of fuel failures. The RBS analyses are also consistent with those approved by the NRC [Nuclear Regulatory Commission] in support of Technical Specification Amendments 35 and 85 to the River Bend Station license (NPF–47). The radiological dose consequences resulting from these failures are therefore analyzed using accepted methods and criteria. In addition, the analyses contain known conservatisms and margins to ensure the results will remain bounding.

The revised limits are used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the current regulatory limits and guidance. Safety margins and analytical conservatisms have been evaluated and are well understood. Conservative methods of analysis are maintained through the use of accepted methodology and benchmarking the proposed methods to previous analysis. Margins are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed change only eliminates some excess conservatism from the analysis.

In addition, EOI [Entergy Operations, Inc.] has implemented NUMARC [Nuclear Management and Resources Council (now NEI)] 91–06 guidelines for shutdown operations at RBS. Shutdown Operations Protection Plan and Primary-Secondary Containment Integrity procedures presently include guidance for closure of the containment hatch and other significant openings in containment, in addition to the requirements contained in the license and design basis. This additional protection will enhance the ability to limit offsite effects.

Acceptance limits for the fuel handling accident are provided in 10 CFR 100 with additional guidance provided in NUREG[–]0800, Section 15.7.4. The proposed changes continue to ensure that the whole-body and thyroid doses at the exclusion area and low population zone boundaries, as well as control room doses, are below the corresponding regulatory limits. These margins are unchanged, therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The commission has provided guidance concerning the application of the standards of 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986) of amendments that are not considered likely to involve a significant hazards consideration. This proposed amendment is very similar to example (vi):

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

As we have shown in the preceding discussion, this refinement to the FHA dose calculation results in a small increase to the consequences of a previously analyzed accident, but the results of the change remain clearly within the guidelines of 10 CFR 100, Appendix A, GDC[–]19, and the guidance of SRP [S]ection 15.7.4, without reducing a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 20, 1999.

Description of amendment request: The proposed amendment would change River Bend Station (RBS) Technical Specification (TS) 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," to allow the Inclined Fuel Transfer System (IFTS) primary containment isolation blind flange to be removed during MODE 1, 2, or 3. In its application, the RBS licensee stated that, with the blind flange removed and certain restrictions and administrative controls in place, the IFTS penetration would not represent an uncontrolled breach of the containment boundary and that the containment isolation function would continue to be provided through implementation of these additional controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change permits removal of the blind flange on the Inclined Fuel Transfer System (IFTS) when primary containment operability is required in MODE[S] 1, 2, and 3. This will permit operation of the IFTS while the plant is operating. With respect to the probability of an accident, this aspect of the containment structure does not directly interface with the reactor coolant pressure boundary. The removal of this blind flange does not involve modifications to plant systems or design parameters that could contribute to the initiation of any accidents previously evaluated. Operation of IFTS is unrelated to the operation of the reactor, and there is no aspect of IFTS operation that could lead to or contribute to the probability of occurrence of an accident previously evaluated. Removal of the blind flange and operation of IFTS does not result in changes to procedures that could impact the occurrence of an accident.

With respect to the issue of consequences of an accident, the function of the containment is to mitigate the radiological consequences of a loss of coolant accident (LOCA) or other postulated events that could result in radiation being released from the fuel inside containment. While the proposed change does not change the plant design, it does permit alteration of the containment boundary for the IFTS penetration. Altering the containment boundary in this case (*i.e.*, removing the blind flange) results in some IFTS components possibly being subjected to containment pressure in the event of a LOCA. However, the additional post-accident peak pressure load to be imposed upon the components in the IFTS if the blind flange is removed is a small fraction of their design capability. Therefore, they are considered an acceptable barrier to prevent uncontrolled release of post-accident fission products for this proposed change.

The proposed change required examination of two potential leakage pathways. The larger

is the IFTS transfer tube, itself. The other, much smaller one, is a branch line used for draining the IFTS transfer tube during its operation. It is clear that the gate valve at the bottom of the transfer tube is always water sealed and maintained so by the submergence of the water in the transfer tube and in the fuel building spent fuel storage pool (the lower pool). The height of this water seal is greater than that necessary to prevent leakage from the bottom of the transfer tube during accidents that result in the calculated peak post-DBA [design basis accident] LOCA pressure, P_a. Furthermore, the hydraulically operated gate valve in the lower end of the tube will remain closed, and has pressure retaining capability greater than that of the containment structure itself. The potential leakage pathway from the drain piping which attaches to the transfer tube will be isolated if required, via administrative controls on the drain piping isolation valve. Additionally, the drain piping isolation valve will be added to the Primary Containment Leakage Rate Testing Program (Technical Specification 5.5.13) to ensure that leakage past this valve will be maintained consistent with the leakage rate assumptions of the accident analysis. Due to the test methodology, the portion of the large transfer tube piping outboard of the blind flange (the portion of the tube which becomes exposed to the containment atmosphere during the draining portion of the IFTS operation) will also be part of the leakage rate test boundary and will therefore also be tested. Therefore, no unidentified leakage will exist from the piping and components that are outboard of the blind flange, and the leakage rate assumptions of the accident analysis will be maintained. Note that the bottom gate valve in the IFTS transfer tube will remain closed for this test evolution.

Therefore, the proposed change does not result in a significant increase in the probability of the consequences of previously evaluated accidents, provided the bottom gate valve remains closed during MODE 1, 2, or 3 operation.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous analyzed.

The proposed change consists of the removal of a passive component which is not part of the primary reactor coolant pressure boundary nor involved in the operation or shutdown of the reactor. Being passive, its presence or absence does not affect any of the parameters or conditions that could contribute to the initiation of any incidents or accidents that are created from a loss of coolant or an insertion of positive reactivity. Realigning the boundary of the primary containment to include portions of the IFTS is also passive in nature and therefore has no influence on, nor does it contribute to the possibility of a new or different kind of incident, accident or malfunction from those previously analyzed. Furthermore, operation of the IFTS is unrelated to the operation of the reactor and there is no mishap in the process that can lead to or contribute to the possibility of losing any coolant from the reactor or introducing the chance for an insertion of positive or negative reactivity, or any other accidents different from and not bounded by those previously evaluated.

Therefore, the proposed change does not result in creating the possibility of a new or different kind of accident from any accident previously evaluated, provided the bottom gate valve remains closed during MODE 1, 2, or 3 operation.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change involves the realignment of the primary containment boundary by removing the blind flange which is a passive component. The margin of safety that has the potential of being impacted by the proposed change involves the dose consequences of postulated accidents which are directly related to potential leakage through the primary containment boundary. The potential leakage pathways due to the proposed change have been reviewed, and leakage can only occur from the administratively controlled IFTS transfer tube drain piping, and from the IFTS transfer tube itself. A dedicated individual will be designated to provide timely isolation of this drain piping during the duration of time when this proposed change is in effect. The conservatively calculated dose which might be received by the designated individual while isolating the drain piping is calculated to be 3.8 rem TEDE [total effective dose equivalent], which remains within the guidelines of General Design Criterion (GDC) 19 (10 CFR 50, Appendix A, Criterion 19). Furthermore, the drain piping isolation valve will be added to the Primary Containment Leakage Rate Testing Program (Technical Specification 5.5.13) to ensure that leakage from the piping and components located outboard of the blind flange will be maintained consistent with the leakage rate assumptions of the accident analysis.

Studies of the capability of the IFTS system to withstand containment pressurization under severe accident conditions have been conducted. These studies conclude that IFTS, including the transfer tube and its valves, has a capability to withstand beyond design basis severe accident containment pressures which is greater than that of the containment structure itself. The RBS Emergency Operating Procedures (EOPs) are based on an ultimate containment failure pressure capability of 53 psig [pounds per square inch—gauge], which represents a margin of safety of 38 psi above the 15 psig containment design pressure. This margin of safety is not impacted with the IFTS blind flange removed as long as the IFTS bottom valve remains closed. This capability to withstand containment pressurization under severe accident conditions envelops other non-DBA LOCA scenarios, such as the small break LOCA. For the large break LOCA, additional defense-in-depth is provided by maintaining a water seal greater than P_a above the outlet of the IFTS transfer tube in the lower pool.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St.Charles Parish, Louisiana

Date of amendment request: July 15, 1999 (NPF–38–216).

Description of amendment request: One proposed change adds a Technical Specification (TS) Bases Control Program to the Waterford 3 TS Administrative Controls Section, modeled after the guidelines contained in NUREG–1432. Additionally, the proposed change corrects an editorial error identified in the TS following issuance of Amendment 146, dated October 19, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed changes to the Waterford 3 [Waterford Steam Electric Station, Unit 3] Technical Specifications add a TS Bases Control Program and correctly reference the appropriate document where administrative controls were relocated. The TS Bases Control Program will provide administrative controls that ensure changes to the TS Bases are appropriately reviewed and consistent with the Updated Final Safety Analysis Report (UFSAR). The addition of the proposed program does not affect any accident initiator or mitigation of any events analyzed in Chapter 15 of the UFSAR. Also, neither change has any affect on the operation of any structures, systems, or components or the assumptions of any accident analyses.

The TS Bases Control Program will ensure that any change to the Bases that involves an unreviewed safety question will receive prior Nuclear Regulatory Commission approval. Changing the reference to the Quality Assurance Program Manual (QAPM) for the item relocated to the QAPM is purely administrative.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed changes to the Waterford 3 TS add a TS Bases Control Program and correctly reference the appropriate document where administrative controls were relocated. The addition of a TS Bases Control Program represents an administrative function performed under existing regulatory controls consistent with 10 CFR 50.59. The proposed change to reference the appropriate document where an administrative control was relocated is purely administrative in nature. The change merely corrects the Technical Specifications wording to reflect the actual location of the record retention requirements for records of reviews performed on changes to the Process Control Plan (PCP) and Offsite Dose Calculation Manual (ODCM) in the QAPM.

These proposed changes do not involve a change in plant design or affect the configuration or operation of any structure, system, or component, nor does it involve any potential initiating events that would create any new or different kind of accident. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes to the Waterford 3 TS add a TS Bases Control Program and correctly reference the appropriate document where administrative controls were relocated. The addition of a TS Bases Control Program is an administrative change and has no [a]ffect on a margin of safety, as defined by Section 2 of the TS. The only [a]ffect of the TS Bases Control Program is to establish controls over how TS Bases changes are reviewed and implemented consistent with 10 CFR 50.59.

The proposed change to a reference in the Administrative Controls section merely corrects the TS wording to reflect the actual location of the record retention requirements for records of reviews performed on changes to the PCP and ODCM in the QAPM.

These proposed changes do not involve a change in plant design or have any affect on the plant protective barriers. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1999 (NPF–38–217).

Description of amendment request: The proposed change creates a new Technical Specification (TS) for the Main Feedwater Isolation Valves Section modeled after the guidelines of TS 3.7.3 in NUREG–1432. Additionally, the letter provides for Nuclear Regulatory Commission (NRC) Staff review of an unreviewed safety question regarding the crediting of the Reactor Trip Override feature and Auxiliary Feedwater Pump high discharge pressure trip as assisting the operation of the Main Feedwater Isolation Valves during their required safety function, to close on a Main Steam Isolation Signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change to add the Main Feedwater Isolation Valves (MFIVs) to the Technical Specifications (TS) and provide an allowed outage time of 72 hours with appropriate required ACTIONs does not affect the operation of any structures, systems, or components or the assumptions of any accident analyses. The MFIVs are primarily designed to mitigate the consequences of a Main Steam Line Break (MSLB), and the Feedwater Line Break (FWLB). This TS change ensures the 5 second closure time currently assumed in the Waterford 3 [Waterford Steam Electric Station, Unit 3] analysis, thus it preserves the current analysis. Hence, the consequences of accidents previously evaluated do not change. Therefore, this change does not involve an increase in the consequences of any accident previously evaluated. Adding the MFIVs to the TS will not initiate an accident. Providing a TS and allowed outage time makes no changes to the plant and, thus, no increase in the probability of any accident previously evaluated.

The accidents/events that may be affected by the proposed resolution to credit the Reactor Trip Override (RTO) circuitry for the Steam Generator [SG] Feed Pumps (SGFPs) during SGFP operation and the crediting of the Auxiliary Feedwater (AFW) pump high discharge pressure trip during AFW pump operation are the MSLB and the FWLB.

The crediting of the RTO circuitry for the SGFPs and the crediting of the AFW pump trip will not affect the probability of occurrence of a MSLB or FWLB. Neither the SGFPs nor the AFW pump are initiators of either line break.

The crediting of the RTO circuitry for the SGFPs and the crediting of the AFW pump trip will not adversely affect the consequences of a MSLB or FWLB. Ultimately, the RTO feature allows more reliable MFIV closure by reducing the differential pressure against which the MFIVs must close while not introducing a new failure mechanism such as a Loss of Feedwater or water hammer event.

The RTO feature (which has always been a part of the Waterford 3 plant design) mitigates the consequences of the MSLB and MFLB by reducing flow to the affected steam generator and containment.

The Loss of Feedwater Event can be initiated by the loss of a SGFP. The currently analyzed Loss of Feedwater Event evaluates the loss of both SGFPs, which bounds a potential loss of one SGFP. Therefore, any modification that could increase the probability of a pump trip could increase the probability of this event. Since the proposed solution of crediting RTO features of the SGFPs and the trip of the AFW pump for the MFIV margin issue uses existing functions, no new features/trips will be added, and there is no increase in the probability or consequences of a Loss of Feedwater Event. The only plant modification being made is to enhance RTO such that it will run the SGFPs back to a minimum speed on a reactor trip, even when the FWCS [Feedwater Control System] is in manual. Although this slows the pump down, feedwater and the SGFPs remain available and the Loss of Feedwater Event probability is not significantly increased. The modification to make RTO function when the FWCS is in manual is not significant since the FWCS is in manual such a short period of time during plant operation.

The AFW system is not credited in any accident analysis. The Emergency Feedwater (EFW) system is relied upon in the safety analyses to replenish SG inventory. Therefore, crediting the AFW pump discharge pressure trip will not involve an increase in the probability or consequences of any accident.

In conclusion, the proposed TS change and resolution to the MFIV margin issue will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of

accident from any accident previously evaluated?

Response: The proposed TS change in itself does not change the design or configuration of the plant. No new or different equipment is being installed by the TS. No new or different accidents result from the addition of the MFIVs to the TS. Previously performed accident analyses remain valid. The proposed allowed outage time and required actions of the proposed TS do not change the procedural operation of the plant, but specify the requirements for treatment of the MFIVs under the plant TS. Therefore, no new or different type of accident from any accident previously evaluated is created.

No new system interaction is created by crediting the existing RTO and AFW pump trip. Failure to isolate feedwater would require two failures, failure of the RTO or AFW circuitry, in addition to the failure of the Main Feedwater Regulating Valves (MFRVs) and Startup Feedwater Regulating Valves (SFRVs) to close, and is beyond single failure criteria. If the RTO and AFW features were the single failure, then closure of the regulating valves would be credited for MSIS [Main Steam Isolation Signal] isolation since the regulating valves were designed to close against SGFP shutoff head.

RTO and AFW pump trips would not be considered initiators of a MSLB or FWLB, but could be considered initiators of a Loss of Feedwater Event. However, this event is bounded by the analyzed Waterford 3 Loss of Feedwater Events. No new event is created. The only hardware change being made is the use of RTO for pump run back when the FWCS is in manual. The existing signal will be used and routed through the same methods as are currently installed, ensuring it will run the pump back appropriately. Therefore, no new system interactions or events are created.

The new method of potential failure that has not previously been evaluated is in the fact that Waterford 3 would now be crediting a non-safety related circuit for closure of the safety related MFIVs. Non-safety features are not normally credited for the proper operation of a safety related component. However, in this case, for the valve to close in the 5 seconds assumed in safety analyses, the RTO and AFW pump trip will be credited. Because this is new, different and not a previously approved allowance, this resolution must be submitted for NRC Staff approval. Entergy believes this resolution is acceptable based on the high degree of reliability of these components.

The system design, as discussed above, does not increase the potential for a Loss of Feedwater Event and current analyses bound all potential accident scenarios. Therefore, the proposed TS change and resolution to the MFIV margin issue will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The MFIVs have no [a]ffect on a margin of safety as defined by Section 2 of the TS. Their only [a]ffect is response to the accidents described above, which will be enhanced by specifying an allowed outage time, action requirements and surveillance requirements in the TS. Therefore, no reduction in the margin of safety is involved with the addition of these valves to the TS.

No new system interaction is created by the crediting of the RTO feature or the AFW pump trip, or the addition of RTO operation in manual.

The proposed resolution does affect a part of a protective boundary, the MFIV, which serves to isolate the Main Feedwater system from portions of the system inside containment. However, it does not affect operation or function of the valve itself since no changes to the valve are being made. The proposal allows increased margin for valve closure; therefore, margins of safety are not affected. The valve will close within the time limits required by safety analyses and general design criteria.

Therefore, the proposed TS change and resolution to the MFIV margin issue will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1999 (NPF–38–218).

Description of amendment request: The proposed changes extend the Reactor Coolant System Pressure Temperature Curves to 20 Effective Full Power Years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed changes will not increase the probability or consequences of any accident previously evaluated since the proposed changes revise the pressure/temperature limits in accordance with 10 CFR 50, Appendix G, utilizing the latest NRC [Nuclear Regulatory Commission] guidelines in Regulatory Guide 1.99, Revision 2, relative to estimating neutron irradiation damage to the reactor vessel. The proposed changes also maintain the conservative limits with respect to the low temperature overprotection (LTOP) system and heatup and cooldown restrictions.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed since they do not introduce new systems, failure modes, or other plant perturbations. The proposed changes revise the pressure/temperature limits in accordance with 10 CFR 50, Appendix G, utilizing the latest NRC guidelines in Regulatory Guide 1.99, Revision 2, relative to estimating neutron irradiation damage to the reactor vessel.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes will not involve a significant reduction in the margin of safety since equal or more stringent pressure/temperature limitation requirements for reactor operation will be applied. The proposed changes were derived in accordance with approved NRC methodology which was developed to assure the reactor coolant system pressure boundary is designed with sufficient margin to withstand any condition during normal operation including anticipated operational occurrences and system inservice leak and hydrostatic tests.

These requirements were revised in accordance with 10 CFR 50, Appendix G, utilizing the latest NRC guidance in Regulatory Guide 1.99, Revision 2, relative to estimating neutron irradiation damage to the reactor vessel. The LTOP system limits were also reanalyzed for the proposed changes.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 19, 1999. (NPF–38–219).

Description of amendment request: The proposed changes modify Waterford Steam Electric Station, Unit 3 (Waterford 3) Technical Specification (TS) 4.5.2.f.2 by increasing the performance requirement for the low pressure safety injection (LPSI) pumps. The change revises the LPSI pump Surveillance Requirements to measure pump developed head, instead of pump discharge pressure. The associated changes to TS Bases are included in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: Increasing the LPSI pump performance requirements will not increase the probability or consequences of any accidents. There are no physical changes to the pump. The only procedure changes required are to Surveillance Procedure OP–903–030, "Safety Injection Pump Operability Evaluation." The changes do not impact plant operating procedures. The LPSI system is primarily designed to mitigate the consequences of a large break Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not alter plant operations, nor does it alter the physical plant. The change only increases existing equipment performance requirements. No different accidents result from the increase in performance requirements. No change is being made to the parameters within which the plant is operated. The setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only increase the performance requirements of the LPSI pumps.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: To the contrary, the change increases LPSI pump performance requirements, increasing the margin between the TS performance requirements and the analytical limit.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 4, 1999 (NPF–38–222).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.5.2 to extend the allowed outage time (AOT) to seven days for one high pressure safety injection (HPSI) train inoperable and TS 3.5.3 to change the end-state to HOT SHUTDOWN with at least one OPERABLE shutdown cooling train in operation. Additionally, an AOT of 72 hours in TS 3.5.2 is imposed for other conditions where the equivalent of 100 percent emergency core cooling system (ECCS) subsystem flow is available. If 100 percent ECCS flow is unavailable due to two inoperable HPSI trains, an ACTION has been added to restore at least one HPSI to OPERABLE status within one hour or place the plant in HOT STANDBY in six hours and to exit the MODE of applicability in the following six hours. In the event the equivalent of 100 percent ECCS subsystem flow is not available due to other conditions, TS 3.0.3 is entered. The Limiting Condition for Operation terminology is being changed for consistency with the ECCS requirements. Additionally, the associated TS Bases are being changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The High Pressure Safety Injection System (HPSI) is part of the Emergency Core Cooling System subsystem. Inoperable HPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The HPSI system is primarily designed to mitigate the consequences of a Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analyses. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the HPSI AOT extension, probabilistic safety assessment (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. These analyses are detailed in report CE NPSD–1041, "Joint Applications Report for High Pressure Safety Injection System Technical Specification Modifications," March 1998.

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.2 does not affect the probability or the consequences of an accident.

The proposed change allows a combination of equipment from redundant trains to be inoperable provided that at least the equivalent of a single ECCS subsystem remains operable. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing equipment from redundant trains to constitute a single operable subsystem does not increase the probability that a failure leading to an analyzed event will occur. The ECCS components are passive until an actuation signal is generated. This change does not increase the failure probability of the ECCS components. This change reduces the plant's susceptibility to common cause failures. As such, the probability of occurrence for a previously analyzed accident are not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only provide the plant some flexibility in maintaining the minimum equipment required to be operable to perform the ECCS function while in this condition. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analysis to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes involve no significant increase in risk. These evaluations are detailed in report CE NPSD–1041. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 72 hours with components inoperable in both ECCS subsystems, is acceptable based on the remaining ECCS components providing 100% of the required ECCS flow. The reduced potential for a self-induced plant transient resulting from unit shutdown required for a second inoperable ECCS train is minimized. Therefore, the change does not involve a significant reduction in the margin of safety, and is offset by minimizing the potential for a self induced plant transient.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 4, 1999 (NPF–38–223).

Description of amendment request: **The proposed change modifies Technical Specification (TS) 3.5.2 to extend the allowed outage time (AOT) to seven days for one low pressure safety injection (LPSI) train inoperable. Additionally, an AOT of 72 hours is imposed for other conditions where the equivalent of 100 percent emergency core cooling system (ECCS) subsystem flow is available. If 100 percent ECCS flow is unavailable due to two inoperable LPSI trains, an ACTION has been added to restore at least one LPSI train to OPERABLE status within one hour or place the plant in HOT STANDBY in six hours and to exit the MODE of applicability in the following six hours. In the event the equivalent of 100 percent ECCS subsystem flow is not available due to other conditions, TS 3.0.3 is entered. The Limiting Condition for Operation terminology is being changed for consistency with the ECCS requirements. Additionally, the associated TS Bases are being changed.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The Low Pressure Safety Injection System (LPSI) is part of the Emergency Core Cooling System subsystem. Inoperable LPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analysis. Hence, the consequences of accidents previously evaluated do not change.

In order to fully evaluate the LPSI AOT extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD–995, Combustion Engineering Owners Group "Joint Applications Report for Low Pressure Safety Injection System AOT Extension."

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.2 does not affect the probability or the consequences of an accident.

The proposed change allows a combination of equipment from redundant trains to be inoperable provided that at least the equivalent of single train of ECCS remains operable. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing equipment from redundant trains to constitute a single operable train does not increase the probability that a failure leading to an analyzed event will occur. The ECCS components are passive until an actuation signal is generated. This change does not increase the failure probability of the ECCS components. This change reduces the plant's susceptibility to common cause failures. As such, the probability of occurrence for a previously analyzed accident are not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No. The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only provide the plant some flexibility in maintaining the minimum equipment required to be operable to perform the ECCS function while in this Condition. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD–995. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 72 hours with components inoperable in both ECCS trains, is acceptable based on the remaining ECCS components providing 100% of the required ECCS flow. The reduced potential for a self-induced plant transient resulting from unit shutdown required for a second inoperable ECCS train is minimized. Therefore, the change does not involve a significant reduction in the margin of safety, and is offset by minimizing the potential for a self induced plant transient.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: December 3, 1998.

Description of amendment requests: The proposed amendments would add a new Technical Specification (T/S) and associated Bases for the distributed ignition system (DIS). The proposed change incorporates the technical requirements of NUREG–1431, Revision 1, "Standard Technical Specifications, Westinghouse Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The T/S being proposed for the DIS is consistent with its design and operation as previously reviewed and approved, and therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendments involve new requirements for the T/Ss and do not delete any existing requirements.

2. The proposed amendment will not create the possibility of a new or different kind of accident previously evaluated.

The T/S being proposed for the DIS is consistent with its design and operation as previously reviewed and approved, and therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The T/S being proposed for the DIS is consistent with [the] design and operation as previously reviewed and approved, and therefore, does not involve a significant reduction in a margin of safety. Compliance with the proposed T/S will provide additional assurance of system availability to maintain a margin of safety for containment integrity during degraded core events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 15, 1999.

Description of amendment request: This proposed technical specification (TS) change will revise the average power range Monitors (APRMs) neutron flux-high (flow biased) allowable value based on a revised power to flow map. The revised power to flow map extends the current plant operating domain to above the rated rod line, to within an envelope referred to as the maximum extended load line limit (MELLL) and adds the increased core flow (105%) region. The current power to flow map is based on a region bounded by the extended load line limit (ELLL) and evaluations prepared as part of the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Attachment 3 [to the December 15,1999 application] (Reference 1) evaluates operation in the Maximum Extended Load Line Limit (MELLL) and Increased Core Flow (ICF) regions and the impact on equipment and safety system performance. Impacts on containment, the reactor vessel, Recirculation System, reactor vessel internals, limiting transients for the Cycle 20 reload (upcoming refuel outage), Loss of Coolant Accident (LOCA), and Anticipated Transients Without SCRAM (ATWS) events were evaluated. The conclusion is that for all events, accidents, and equipment evaluated, operation and event response remain within previously established design limits and acceptance criteria. No changes in the initiators of accidents previously evaluated are being made by this change. Because operation in the expanded regions maintains adequate design margin and there are no changes in the accident initiators, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

In support of operation in the MELLL region, the proposed change modifies (increases) the Average Power Range Monitor (APRM) Neutron Flux-High (Flow Biased) allowable value. Changes to the setpoint and allowable value will be implemented in accordance with approved setpoint methodology and plant procedures (References 7 and 8). As noted in Technical Specifications (TS) Bases Section B.3.3.1.1.2.b: "No specific safety analyses take credit for the APRM Neutron Flux-High (Flow Biased) Function." The APRM allowable value credited in accident analyses is based on the 120% fixed scram-allowable value (TS Table 3.3.1.1–1, Function 2.c), which remains unchanged as a result of this requested TS change. Though not credited in analyses, the limiting flow biased value of 119% Reactor Thermal Power (RTP) also remains unchanged. Evaluations presented in Attachment 3 demonstrate that operation in the MELLL envelope, with reliance on the credited fixed scram allowable value (analytically assumed at 123% RTP to justify a 120% TS allowable value), results in event and accident responses within design limits and established acceptance criteria. Therefore, no significant increase in source term, radiological consequences or other accident consequences occurs as a result of the proposed change.

The proposed change has no affect on operation in the ICF region. The allowable value, as part of the proposed change, will reach its clamped upper limit value of 119% reactor thermal power. Core flows at or above this level will result in the allowable value reaching its current TS upper limit of 119%. As stated above, the limiting value remains unchanged as part of this request.

The postulated failure mechanisms for the equipment are not changed, nor are any

design limits exceeded. The proposed change will result in the need to replace APRM equipment to allow operation in the extended power to flow domain. These replacements will be evaluated per the requirements of 10 CFR 50.59 as part of the Cooper Nuclear Station (CNS) design change process to confirm no Unreviewed Safety Question is created. Therefore, implementation of this proposed TS amendment will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident than previously evaluated.

This proposed change does not modify the functional requirements of the affected equipment, create any new system interfaces or interactions, create any new process conditions that exceed design limits, nor create any new system failure modes or sequences of events that could lead to an accident.

The postulated failure mechanisms for the equipment are not changed, nor are any design limits or acceptance criteria exceeded. The proposed change will result in the need to replace APRM equipment to allow operation in the extended power to flow domain. These replacements will be evaluated per the requirements of 10 CFR 50.59 as part of the CNS design change process to confirm no Unreviewed Safety Question is created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

Change to the APRM Neutron Flux-High (Flow Biased) allowable value is still limited by the 119% RTP value of TS. This value is not credited in the safety analyses. In addition, the existing 120% fixed scram allowable value (TS Table 3.3.1.1–1, Function 2.c) still provides the same margin to the Analytical Limit of 123% RTP. Analyses documented in Attachment 3 demonstrate that for operation in the MELLL envelope or ICF region, adequate margin to design limits is maintained and event acceptance criteria are met. Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 22, 1999.

Description of amendment request: The proposed license amendment requests Nuclear Regulatory Commission (NRC) review and approval of revisions to the Cooper Nuclear Station (CNS) design basis accident (DBA) radiological assessment calculational methodology used to demonstrate compliance with the Exclusion Area Boundary and Low Population Zone dose acceptance criteria specified in 10 CFR 100.11, and the control room dose acceptance criteria discussed in General Design Criteria (GDC) 19 of 10 CFR 50, Appendix A. The revisions entail a complete rewrite of the radiological assessment calculational methodology. The proposed changes do not revise the accident category, general accident description, identification of accident cause, frequency classification, starting conditions of the accident, accident sequence of events, or system operation as described in the CNS Updated Safety Analysis Report (USAR). The revised radiological assessment calculational methodology does, however, involve changes to the radiological consequence summary, fission product release from fuel assumptions, fission product release to secondary containment assumptions and conditions, fission product release to the environs assumptions and initial conditions, and radiological effects summary described in the CNS USAR. Additionally, the revised CNS DBA radiological assessment calculational methodology incorporates the GDC 19 control room dose acceptance criteria determination as part of the assessment. Previously the control room dose assessment was maintained as separate design calculations and not included in the CNS USAR DBA radiological assessment summaries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions to the Design Basis Accident (DBA) radiological assessment calculational methodology do not affect the accident initiators or precursors of accidents previously evaluated. The proposed revisions to the methodology do not affect the existing design, function or operation of systems, structures or components in the facility. No new or different type of plant equipment is installed by the revised radiological assessment calculational methodology. Plant operating modes are not changed due to the proposed revision to the DBA radiological assessment calculational methodology. The proposed revisions are calculational in nature and serve only to incorporate more recent site specific meteorological data, reflect plant specific system operating parameters and design, utilize more widely accepted accident assumptions for a facility of Cooper Nuclear Station's vintage, incorporate the Technical Information Document (TID–14844) source term to be consistent with the accident assumptions used, update fuel parameter considerations to include higher burnup fuel designs, and to utilize generic and updated calculational and software methodologies to perform the analysis. These revisions improve the consistency between the accident dose calculation assumptions and improve the documentation basis for each accident calculation. The revisions utilize conservatively lower accident mitigation system filter efficiency assumptions and incorporate plant specific accident mitigation system operating parameter and design assumptions which result in a calculated radiological consequence increase. Operation of accident mitigation systems, structures and components is not altered by the changes in accident mitigation assumptions. Due to the broad changes in the calculational methodology and assumptions, and an increase in the postulated accident source term, the calculated radiological dose consequences of each design basis accident have changed and in some cases increased. In each case, however, the calculated radiological dose consequences satisfy the Exclusion Area Boundary and Low Population Zone radiological dose acceptance criteria specified in 10 CFR 100 and the control room dose acceptance criteria discussed in General Design Criteria 19 (GDC 19) of 10 CFR 50, Appendix A. Therefore, the proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The proposed revisions to the DBA radiological assessment calculational methodology do not change the existing design, function or operation of systems, structures or components in the facility. No new or different type of plant equipment is installed by this change. There are no changes to existing design parameters governing plant operation, plant operating modes, or changes in system interfaces. No new types of accident initiators or precursors are created by the proposed revision to the DBA radiological assessment calculational methodology. The proposed revisions are calculational in nature and serve only to incorporate more recent site specific meteorological data, reflect plant specific system operating parameters and design, utilize more widely accepted accident assumptions for a facility of Cooper Nuclear Station's vintage, incorporate the TID–14844 source term to be consistent with the accident assumptions used, update fuel parameter considerations to include higher burnup fuel designs, and to utilize generic and updated calculational and software

methodologies to perform the analysis. These revisions improve the consistency between the accident dose calculation assumptions and improve the documentation basis for each accident calculation. Therefore, the proposed change does not create the possibility of a new or different kind of accident previously evaluated.

3. Does not create a significant reduction in the margin of safety.

The proposed revisions to the DBA radiological assessment calculational methodology do not involve a relaxation in the criteria used to establish safety limits or a relaxation in the limiting conditions for operation. The accident analysis sequence of events remains unchanged. The proposed change will not result in any challenges to plant equipment, fuel integrity, or the reactor coolant system pressure boundary. The proposed revisions are calculational in nature and serve only to incorporate more recent site specific meteorological data, reflect plant specific system operating parameters and design, utilize more widely accepted accident assumptions for a facility of Cooper Nuclear Station's vintage, incorporate the TID–14844 source term to be consistent with the accident assumptions used, update fuel parameter considerations to include higher burnup fuel designs, and to utilize generic and updated calculational and software methodologies to perform the analysis. These revisions improve the consistency between the accident dose calculation assumptions and improve the documentation basis for each accident calculation. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 19, 1999.

Description of amendment request: The licensee proposes to change the Technical Specifications (TS) by relocating the specific requirements of TS 6.4.3, "Nuclear Safety Audit Review Committee (NSARC)," to the Quality Assurance Program located in the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed change does not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed change is administrative in nature and does not decrease the effectiveness of programmatic controls or the procedural details of assuring operation of the facility in a safe manner.

The relocation of the Nuclear Safety Audit Review Committee requirements from the Technical Specification to a new Appendix 17C in UFSAR Chapter 17.2 does not alter the performance or frequency of these activities. Future changes to the Quality Assurance Program are subject to the 10 CFR 50.54(a) and 10 CFR 50.59 and change processes.

The proposed change will not degrade the ability of systems, structures and components important to safety to perform their safety function. The proposed change will not change the response of any system, structure or component important to safety as described in the UFSAR. Since the plant response to an accident will not change, there is no change in the potential for an increase in the consequences of an accident previously analyzed. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed change. The proposed change has no adverse impact on component or system interactions. The proposed change will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSAR. The proposed change is administrative in nature and does not change the level of programmatic controls and procedural details of assuring operation of the facility in a safe manner. The proposed changes involve the relocation of the requirements of the Nuclear Safety Audit Review Committee from TS 6.4.3 to Updated Final Safety Analysis Report, Chapter 17.2, "Quality Assurance Program" in a new Appendix 17C. Future changes to the Quality Assurance Program are subject to the 10 CFR 50.54(a) and 10 CFR 50.59 and change processes.

Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes involve the relocation of the requirements of the Nuclear Safety Audit Review Committee from TS 6.4.3 to Updated Final Safety Analysis Report, Chapter 17.2, "Quality Assurance Program" in a new Appendix 17C. There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change is administrative in nature and does not change the level of programmatic controls and procedural details controls of assuring operation of the facility in a safe manner.

Future changes to the Quality Assurance Program are subject to the 10 CFR 50.54(a) and 10 CFR 50.59 change processes. Therefore, relocation of the requirements contained in TS 6.4.3 to the Update Final Safety Analysis Report does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 29, 1999.

Description of amendment request: The licensee proposes to change Technical Specification (TS) Surveillance Requirement (SR) 4.8.1.1.2f., to relocate sub requirement 4.8.1.1.2f.1 which requires inspection of the emergency diesel generators (EDGs) on an 18-month cycle to be subjected to an inspection in accordance with manufacturers recommendations, to the Seabrook Station Technical Requirements Manual (SSTRM).

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated. The proposed change does not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Performance of EDG inspection activities based on condition-based maintenance rather than time-directed maintenance will neither exacerbate nor significantly increase the probability or consequences of an accident previously evaluated in the Seabrook Station UFSAR. North Atlantic has extensive experience and expertise in operating and maintaining the EDGs to determine the appropriate maintenance activities for demonstrating operability of the EDGs. North Atlantic will continue to use, in conjunction with manufacturer recommendations, prudent engineering judgment when conducting testing, preventive and corrective maintenance activities on the EDGs. In addition, the other surveillance testing required by SR 4.8.1.1.2f would continue to ensure that the EDGs are capable of performing their safety function.

Throughout the first six fuel cycles, overall EDG condition has steadily improved with the use of improved design, utilization of better condition monitoring tools and procedures and the reduction of intrusive preventative maintenance tasks made possible by the improved on-line condition monitoring methods. These improvements resolved problems that were recognized during the early years of EDG operation.

North Atlantic has implemented the Maintenance Rule Program in accordance with the provisions of 10 CFR 50.65, Regulatory Guide (RG) 1.160, and NUMARC 93–01, "Industry Guide for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

North Atlantic's maintenance rule program establishes specific performance criteria for SSCs. Reliability and unavailability performance criteria have been assigned to risk significant and standby safety-related non-risk significant SSCs. Other in-scope SSCs have been assigned appropriate reliability and/or plant level performance criteria. SSCs that are determined to not meet the established performance criteria are designated as (a)(1) and are subject to action plans, goal setting, and goal monitoring. Performance of (a)(1) SSCs is compared to the established goals. When it is determined that the performance goals have been achieved, a SSC may be returned to the normal performance monitoring (a)(2) status.

With regard to the EDGs, these components and the associated support systems are risk significant and standby safety-related. The experience to date, applying the Maintenance Rule Program to the EDGs, has proven to be positive. Risk informed decision-making concerning the benefits of maintenance and time out of service has maintained reliable EDGs with unavailability consistent with the assumptions in the Seabrook Station Probabilistic Risk Assessment (PRA).

Furthermore, Operations Department personnel perform daily, weekly, biweekly, monthly and quarterly walkdowns and inspections of various items as well as the monthly surveillance run on each diesel. These inspections, combined with system control panel alarms, engine oil sampling and on-line monitoring of engine vibration and running performance (cylinder firing, fuel delivery and exhaust temperatures), enable expeditious response to a developing degraded condition and provide a mechanism for failure identification prior to performance of the refueling interval surveillances.

Based on the reviews of the surveillance tests, inspections and maintenance activities, it is concluded that there is no significant impact on the reliability of the EDGs and, therefore, there is no significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed change. The proposed change has no adverse affect on component or system interactions. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change does not adversely affect equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change does not adversely affect the EDG's ability to ensure that sufficient power is available to supply the safety related equipment required for: 1) the safe shutdown of the facility, and 2) the mitigation and control of accident conditions within the facility.

Surveillance testing of the EDGs during normal plant operation provides assurance that the proposed change will not adversely affect the reliability of the EDGs. North Atlantic will continue to use, in conjunction with manufacturer's recommendations, prudent engineering judgment when conducting testing, preventive, and corrective maintenance activities on the EDGs. In addition, the other surveillance testing required by SR 4.8.1.1.2f would continue to ensure that the EDGs are capable of performing their safety function. Thus, it is concluded that the EDGs would continue to be available upon demand to mitigate the consequences of an accident and, therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities.Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 3, 1999.

Description of amendment request: The licensee proposes to change the technical specifications (TS) by incorporating reference to the American Society for Testing and Materials (ASTM) Standard D3803–1989, "Standard Test Method for Nuclear-Grade Activated Charcoal," as the test protocol for charcoal filter laboratory testing. In addition, there will be a change to Surveillance Requirements 4.7.6.1d.5) and 4.9.12d.4) specifying a minimum required heater output based on design rated voltage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes modify the Technical Specifications to reference

appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in ESF [engineered safety feature] filtration systems in accordance with ASTM D3803–89. The testing methodology associated with ASTM D3803–89 provides more stringent requirements than what is currently employed. These more stringent requirements will not result in operations that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

The proposed change associated with verification of heater capacity dissipation by specifying a minimum required output based on design rated voltage does not affect continued operability of the heater. Stipulating the design rated voltage ensures the heater(s) remains capable of performing its safety function. Specifying an upper kW range band is restrictive and has been determined to be unnecessary. There is no safety concern with the heaters operating at a higher kW output. Operating at a higher kW output improves dehumidification. Should maximum operating bus voltage conditions be experienced it does not pose a fire hazard or dry-out concern for the charcoal filters.

There are no changes to previous accident analyses. The radiological consequences associated with these analyses remain unchanged. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the design assumptions, conditions or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes have no impact on component or system interactions.

The proposed changes modify the Technical Specifications to reference appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems in accordance with ASTM D3803–89. The changes do impose different, more conservative testing requirements, on the ESF filtration systems charcoal samples. However, there is no alteration in the methods employed to obtain the charcoal sample and testing is performed offsite.

The proposed change associated with verification of heater capacity dissipation by specifying a minimum required output based on design rated voltage does not affect continued operability of the heater. The design function of the heater for humidity control remains unchanged. Deletion of the upper kW range does not pose a fire or dry-out concern for the charcoal filters.

These changes are consistent with the safety analyses and licensing basis. The proposed changes do not introduce any new modes of plant operation, or alter any operational setpoints.

Since the proposed changes do not involve the physical alteration of SSCs (i.e., no new or different type of equipment to be installed) or changes in the methods governing normal plant operation, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes modify the Technical Specifications to reference appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems in accordance with ASTM D3803–89. The imposition of the more conservative charcoal filter testing requirements associated with ASTM D3803–89 has no significant impact on a margin of safety. The conservative nature of ASTM D3803–89 is by definition, providing additional restrictions to enhance plant safety.

The proposed change associated with specifying a minimum required heater output based on design rated voltage does not reduce the ability of the heater to provide the minimum required kW output for humidity control. Deletion of the upper kW range does not pose a fire or dry-out concern for the charcoal filters.

The proposed changes maintain requirements within the safety analysis and licensing basis. Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 7, 1999.

Description of amendment request: The proposed changes affect Technical Specification 3/4.7.8, "Plant Systems, Snubbers," by removing the current special exception which precludes applying the eighteen month functional testing surveillance to the Steam Generator Hydraulic Snubbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The snubbers provide a restraint function to mitigate the consequences of a Main Steam Line Break (MSLB) or to limit seismic induced movements of the steam generators so as to protect the attached Reactor Coolant System (RCS) piping and therefore prevent the initiation of a Loss of Coolant Accident (LOCA).

While the proposed surveillance changes will extend the time period required for 100% inspection of all steam generator snubbers and also the actual service life of the snubber seals, the testing of samples at reduced intervals will actually provide a more reliable and timely indication of snubber functionality and provide increased assurance that generic concerns associated with this snubber set will be detected prior to any failure. The proposed surveillance requirements are the same as currently used for the balance of Millstone Unit No. 2 hydraulic snubbers. Given the complete similarity of design and operation for these components, the sampling approach is well suited for these snubbers. Given the general acceptance of a 10% sampling approach in the general snubber population, its use here for this homogenous set of components is fully justified. In addition to the 10% sample that will be functionally tested on an eighteen month interval, a concurrent 100% visual inspection is conducted during each test period, providing added assurance that no seal failures will go undetected for any significant period. This visual inspection program is unchanged from the existing surveillance program as currently documented in the Millstone Unit No. 2 Technical Specification. The anticipated reliability under the new surveillance frequency and testing methods proposed for the steam generator snubbers will not affect the probability of occurrence of a LOCA or a MSLB as the snubbers' ability to perform their function will prevent over stressing of either the Main Steam (MS) or RCS piping attached to the steam generators. Furthermore, the anticipated reliability under the new surveillance frequency and testing methods proposed for the steam generator snubbers will ensure that the existing evaluated consequences for these accidents will not be increased. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Bases Section 3/4.7.8 will delete the text associated with the current exception taken for steam generator snubbers. This change will make the discussion in the Bases consistent with the proposed Technical Specification changes. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not alter how any structure, system, or component functions. There will be no effect on equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request does not impact the probability of an

accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The only accidents possible due to failure of the steam generator snubbers to operate properly is increased stresses on both the MS and RCS piping attached to the steam generator due to either additional constraint in the case of premature lockup, or lack of proper constraint in the case of failure to lock-up under dynamic loading. Since the worst case scenario of such a failure would be the initiation of a LOCA, which is currently evaluated in the SAR [safety analysis report], there is no possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will allow use of the preferred approach to snubber surveillance which is in effect for the balance of Millstone Unit No. 2 snubbers. The steam generator snubbers have been previously exempt from the standard approach to snubber surveillance due to the difficulty previously encountered in testing these large and inaccessible components. Given the reliability of these snubbers is not expected to change in that the same requirements as for all other hydraulic snubbers will now consistently be met, there is no significant reduction in a margin of safety. The proposed changes will not alter any of the assumptions used in the accident analysis, nor will they cause any safety system parameters to exceed their acceptance limit. The proposed changes will not affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed changes will update the list of documents describing the analytical methods used to determine the core operating limits, specified in Technical Specification 6.9.1.8b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change in document 1 of Technical Specification 6.9.1.8b is made to provide the most recent, Nuclear Regulatory Commission (NRC) approved, methodology description and benchmarking results of the reactor analysis system used in the core neutronics analysis of cycle 14 and beyond. This change has no impact on plant equipment operation. Since the change only affects the neutronics analysis of the core, it cannot affect the likelihood or consequences of accidents. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change in document 8 of Technical Specification 6.9.1.8b is made to include the most recent, NRC approved, Emergency Core Cooling System (ECCS) model used in Large Break Loss of Coolant Accident (LBLOCA) applications. This model contains resolution of the deficiencies reported under 10 CFR 50.46(a) in a letter dated May 20, 1999. The use of the revised methodology also constitutes an improvement over the previous methodology. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes in document 4 of Technical Specification 6.9.1.8b are administrative in nature. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in document 1 of Technical Specification 6.9.1.8b is made to provide the most recent, NRC approved, methodology description and benchmarking results of the reactor analysis system used in the neutronics analysis of cycle 14 and beyond. The proposed change in document 1 of Technical Specification 6.9.1.8b will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. It does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated.

The proposed change in the documents in number 8 of Technical Specification 6.9.1.8b is made to include the most recent, NRC approved, ECCS model used in LBLOCA applications. The proposed change in document 8 of Technical Specification 6.9.1.8b will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. It does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated.

The proposed changes in document 4 of Technical Specification 6.9.1.8b are administrative in nature. These changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated.

These changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change in document 1 of Technical Specification 6.9.1.8b is made to provide the most recent, NRC approved, methodology description and benchmarking results of the reactor analysis system used in the neutronics analysis of cycle 14 and beyond. It has no impact on plant equipment operation. The proposed change in document 8 of Technical Specification 6.9.1.8b is made to include the most recent, NRC approved, ECCS model used in LBLOCA applications. This model contains resolution of the deficiencies reported under 10 CFR 50.46(a) in a letter dated May 20, 1999. The use of the revised methodology still provides a conservative simulation of the LBLOCA and conservative core neutronics analysis. The use of the revised methodology also constitutes an improvement over the previous methodology. The new documents will clearly identify the approved Siemens Topical Reports applicable to Millstone Unit No. 2 and will ensure that methodology changes will be identified and submitted to the NRC for approval, as required. The proposed changes in document 4 of Technical Specification 6.9.1.8b are administrative in nature. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 6, 1999.

Description of amendment request: The proposed changes will modify the Technical Specification (TS) surveillance requirements associated with ensuring a limited number of charging and high pressure safety injection pumps are capable of injecting into the Reactor Coolant System when the plant is shutdown. In addition, the TS Bases will be modified to address these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modifications to the surveillance requirements (SRs) associated with Technical Specifications 3.1.2.3, 3.1.2.4, and 3.4.9.3 will remove information that specifies the methods to be used to perform the associated SRs. These SRs verify the maximum number of charging and high pressure safety injection (HPSI) pumps capable of injecting into the RCS [Reactor Coolant System] when the plant is shut down. This information will be transferred to the associated Bases. Additional methods associated with the charging pumps, which are technically equivalent to the current method, will be included in the Bases change. This will not change the requirement to verify that the associated pumps are not capable of injecting into the RCS when the plant is shut down.

The proposed changes to the Technical Specifications and Bases will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification and Bases changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not significantly alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed modifications to the surveillance requirements associated with Technical Specifications 3.1.2.3, 3.1.2.4, and 3.4.9.3 will remove information that specifies the methods to be used to perform the associated surveillance requirements. This will not change the requirement to verify that the associated pumps are not capable of injecting into the RCS when the plant is shut down.

The proposed changes to the Technical Specifications and Bases will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 7, 1999.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) are associated with the action requirement to suspend positive reactivity additions. These changes will remove the action requirement to suspend positive reactivity additions from TS 3.4.2.1, "Reactor Coolant System—Safety Valves," 3.4.2.2, "Reactor Coolant System—Safety Valves," and 3.7.6.1, "Plant Systems—Control Room Emergency Ventilation System," and provide guidance in the Bases for other TSs that require the suspension of positive reactivity addition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications 3.4.2.1 and 3.4.2.2

The proposed changes to Technical Specifications 3.4.2.1 and 3.4.2.2, which address the pressurizer code safety valves in Modes 1 through 4, will combine these two specifications into one Technical Specification, 3.4.2. The slight reduction in the Mode of Applicability for the new Technical Specification, to be consistent with the Mode of Applicability for Technical Specification 3.4.9.3, which addresses the Low Temperature Overpressure Protection (LTOP) System, is too small to result in a change in plant operations. The LCO [limiting condition for operation] for the pressurizer code safety valves in Mode 4 with all Reactor Coolant System (RCS) cold leg temperatures > 275 °F will be expanded to require all pressurizer code safety valves to be operable, instead of at least one pressurizer code safety valve. This more restrictive change will require additional accident mitigation equipment to be operable. The proposed action requirements for plant operation in Modes 1, 2, and 3 have been expanded to require the plant to be in Mode 3 within 6 hours and in Mode 4 within the following 6 hours, instead of just Mode 4 within 12 hours. In addition, the action requirements will be modified to address 2 inoperable pressurizer code safety valves. An entry into Technical Specification 3.0.3 will no longer be necessary if both pressurizer code safety valves are inoperable. In addition, the proposed action requirements are more restrictive than the action requirements of Technical Specification 3.0.3. The proposed action requirements for Mode 4 with all RCS cold leg temperatures > 275 °F are different. The new Mode 4 action requirements will direct the plant to be cooled down to the applicability of Technical Specification 3.4.9.3, which will require the LTOP System to be placed in service to provide RCS overpressure protection. The proposed action requirements will ensure that the plant is placed in a condition where sufficient accident mitigation equipment will be available.

The proposed Technical Specification, 3.4.2, will ensure the RCS has adequate overpressure protection when operating above 275 °F. If the pressurizer code safety valves are not operable, the proposed Technical Specification will require a plant shutdown that will place the plant within the capability of the LTOP System to provide RCS overpressure protection. The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.7.6.1

The proposed change to Technical Specification 3.7.6.1 will remove the requirement to suspend positive reactivity additions if both control room ventilation trains are inoperable in Modes 5 and 6. The Control Room Ventilation System is required

to be operable in Modes 5 and 6 to protect the control room operators from an event that results in a rapid release of radioactivity, such as a fuel handling accident. In Modes 5 and 6, the positive reactivity addition methods of concern are boron dilution, RCS cooldown (negative isothermal temperature coefficient), and control rod withdrawal. Positive reactivity additions associated with fuel handling are already addressed by the additional action requirement in this specification to suspend core alterations. Control rod withdrawal is prohibited by Technical Specification 3.1.3.7, unless the RCS boron concentration is greater than or equal to the refueling boron concentration of Technical Specification 3.9.1. If the RCS is borated to the refueling concentration, sufficient negative reactivity has been added to compensate for the positive reactivity addition associated with control rod withdrawal in Modes 5 and 6. Therefore, only boron dilution and RCS temperature changes are of concern. However, both of these methods will result in slow changes to core reactivity in Modes 5 and 6, and since adequate shutdown margin (SDM) will have been established prior to entering Mode 5 or 6 (Technical Specifications 3.1.1.2 and 3.9.1), neither method will result in a rapid release of radioactivity. Therefore, the requirement to suspend positive reactivity additions is not necessary for the protection of the control room operators.

The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed change can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not significantly alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to combine Technical Specifications 3.4.2.1 and 3.4.2.2 into a new Technical Specification, 3.4.2, will result in a slight reduction in the Mode of Applicability for the new Technical Specification, will require both pressurizer code safety valves to be operable in Mode 4 with all RCS cold leg temperatures > 275 °F, will modify the action requirements in Modes 1, 2, and 3 to add a requirement to be in Mode 3 within 6 hours and to address two inoperable pressurizer code safety valves, and will provide different action requirements for Mode 4 with all RCS cold leg temperatures > 275 °F. The reduction in Mode of Applicability is too small to adversely impact plant operations. Requiring both pressurizer code safety valves to be operable in Mode 4 with all RCS cold leg temperatures > 275 °F will provide additional accident mitigation equipment. The modified action requirement to be in Mode 3 within 6 hours will not change the requirement to be in Mode 4 within 12 hours. The action requirements added to address two inoperable pressurizer code safety valves are more restrictive than the action requirements of Technical Specification 3.0.3. The new Mode 4 action requirements will direct the plant to be cooled down to the applicability of Technical Specification 3.4.9.3, which will require the LTOP System to be placed in service to provide RCS overpressure protection. The proposed action requirements will ensure that the plant is placed in a condition where sufficient accident mitigation equipment will be available.

The proposed change to Technical Specification 3.7.6.1 will remove the requirement to suspend positive reactivity additions if both control room ventilation trains are inoperable in Modes 5 and 6. The Control Room Ventilation System is required to be operable in Modes 5 and 6 to protect the control room operators from an event that results in a rapid release of radioactivity, such as a fuel handling accident. The proposed change will only impact slow methods to change core reactivity, such as boron dilution and RCS temperature changes. Therefore, the action requirement to suspend positive reactivity additions is not necessary for the protection of the control room operators.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: November 23, 1999.

Description of amendment request: **The proposed change affects Technical Specification 4.0.5, "Limiting Conditions for Operation and Surveillance Requirements" by adding a biennial or 2-year surveillance interval and incorporating a required frequency for performing inservice testing activities of once per 731 days.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change amends Technical Specification Section 4.0.5.b by adding a biennial or 2 year surveillance to the existing list. This surveillance interval is included as part of the current Millstone Unit Nos. 2 and 3 Inservice Test (IST) surveillance program. Inclusion of this surveillance interval in the facility Technical Specifications clarifies the applicability of this surveillance interval and affords operational flexibility in the event a surveillance cannot be completed within the required interval.

The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed change can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The biennial surveillance relates to performing inservice testing of plant components. The possibility of a new or different kind of accident from any accident previously evaluated is not created because the proposed Technical Specification change does not introduce a new mode of plant operations and does not involve physical modifications to the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

There is no impact on the margin of safety as defined in the Technical Specifications. Performance of surveillance tests at regular intervals provides assurance of reliability and availability of accident mitigating equipment. The Technical Specifications provide the required frequency for performing surveillance testing. Adding a new surveillance frequency to the Technical Specifications will provide consistent yet acceptable flexibility in scheduling surveillance tests and provide additional assurance that testing will be performed in a timely manner.

The proposed change will have no adverse effect on plant operation or equipment

important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 29, 1999.

Description of amendment request: The requested changes would revise Technical Specification (TS) 3/4.6.6, "Supplementary Leak Collection and Release System," (SLCRS), TS 3/4.7.7, "Control Room Emergency Ventilation System," (CREVS), TS 3/4.7.9, "Auxiliary Building Filter System," (ABFS), and 3/4.9.12, "Fuel Building Exhaust System," (FBES), in response to Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal." The requested changes require testing of nuclear-grade activated charcoal to be conducted in accordance with American Society for Testing Materials (ASTM) D3803-1989, "Standard Test Method for Nuclear-Grade Activated Carbon," as recommended by GL 99–02.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve any Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed TS revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change modifies the TS to reference ASTM D3803–[19]89 for performing laboratory testing of nuclear-grade charcoal in ESF [Engineered Safeguards Features] filtration systems. The testing methodology associated with ASTM D3803–[19]89 provides more stringent requirements than what is currently employed. These more stringent requirements, along with a factor of safety of greater than or equal to two in regards to the charcoal efficiency assumed in the design bases dose analysis will not result in operations that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. There are no related modifications to any systems. The proposed change does not affect procedures governing plant operations. Therefore there is no significant increase in the probability [or consequences] of occurrence of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change modifies the TS to reference ASTM D3803–[19]89 for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems. The proposed change does not involve the physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. This change does impose different, more conservative testing requirements on the ESF filtration system charcoal samples. However there is no alteration in the methods employed to obtain the charcoal sample and testing is performed offsite. These changes are consistent with the safety analyses and licensing basis. Furthermore, the proposed changes do not introduce any new modes of plant operation, or alter any operational setpoints. Thus the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Involve a significant reduction in the margin of safety.

The proposed change modifies the TS to reference ASTM D3803–[19]89 for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems. The imposition of the more conservative charcoal filter testing requirements associated with ASTM D3803–[19]89 along with a factor of safety of greater than or equal to two, in regards to the charcoal efficiency assumed in the design bases dose analysis has no impact on, nor decreases the margin of plant safety. The conservative nature of ASTM D3803–[19]89 is by definition, providing additional restrictions to enhance plant safety. This change maintains requirements within the safety analysis and licensing basis. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the TS affected by the proposed change.

As described above this TSCR [Technical Specification Change Request] does not impact the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, (LGS) Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 5, 1999.

Description of amendment request: The proposed changes will revise LGS Technical Specifications (TSs) to incorporate revised testing and acceptance criteria for the performance of laboratory analysis of safety-related nuclear-grade activated charcoal in response to Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999. In addition, minor editorial changes are being proposed for wording consistency and to correct a typographical error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal samples from Reg. [Regulatory] Guide 1.52 to ASTM D3803–1989 in accordance with Generic Letter 99–02, and establishing a new methyl iodide penetration acceptance criteria does not involve any physical changes or modifications to the function or operation of any safety-related structure, system, or component. The new testing methodology will enable a more accurate, conservative and reliable determination of the charcoal decontamination efficiencies associated with the SGTS [Standby Gas Treatment System], RERS [Reactor Enclosure Recirculation System], and CREFAS [Control Room Emergency Fresh Air System] which will better assure that the assumed charcoal efficiencies credited in the licensed accident

analysis are adequately maintained. Implementing this change will only involve revisions to existing procedures.

The SGTS, RERS, and CREFAS are standby systems that are designed to mitigate the consequences of the analyzed accidents. No analyzed accident initiating events are impacted, no new accident initiators or new failure modes are created and the credited charcoal efficiency for each system in the licensed accident analyses is not changing as a result of the proposed changes. The ability of the SGTS, RERS, and CREFAS to perform all of their safety-related mitigation functions as designed will not be affected by the proposed changes. Furthermore, the change in the testing methodology and acceptance criteria will not result in increasing the dose rates currently calculated in the existing accident analyses.

In addition, the proposed minor editorial changes are administrative in nature and do not impact the operation, physical configuration, or function of plant equipment or systems. The proposed editorial changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal in accordance with Generic Letter 99–02, and establishing new methyl iodide penetration acceptance criteria is not an accident initiator, does not create any new failure modes, nor does it result in the occurrence of an accident. This change does not result in any physical plant modification and does not affect the safety-related function, assigned charcoal efficiency assumed in the accident analyses, or operation of the SGTS, RERS, and CREFAS. This change will only involve revisions to existing procedures.

In addition, the proposed minor editorial changes are administrative in nature and do not alter plant configuration, require that new equipment be installed, alter assumptions made about accidents previously evaluated, or impact the operation or function of plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The safety-related air cleaning units used in ESF [Engineered Safety Feature] ventilation systems reduce the potential onsite and offsite consequences of a radiological accident by adsorbing radioiodine. Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal samples from Reg. Guide 1.52 to ASTM D3803–1989 in accordance with Generic Letter 99–02, and the establishment of new methyl iodide penetration acceptance criteria does not increase the dose rates above what is currently calculated in the accident analyses.

In addition, the proposed minor editorial changes are administrative in nature and do not involve any physical changes to plant structures, systems or components (SCCs), or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed editorial changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions of operation, or design parameters for any SSC. The proposed editorial changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting any accident analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 17, 1999.

Description of amendment request: **The proposed changes will revise the Peach Bottom Units 2 and 3 Technical Specifications (TSs) Section 5.5.7.c., Ventilation Filter Testing Program (VFTP), in accordance with Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal." This TS change will (1) specify that the laboratory testing for methyl iodide penetration be performed referencing ASTM D3803–1989 at a temperature of 30 °C (86 °F), and (2) revise the acceptance criteria for methyl iodide penetration.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear grade activated charcoal samples from RG [Regulatory Guide] 1.52 to ASTM [American Society for Testing and Materials] D3803–1989 and the establishment of new methyl iodide penetration acceptance criteria and test temperature in accordance with Generic Letter 99–02, do not involve any changes or modifications to the function or operation of any safety related structure, system, or component. The new testing methodology enables a more accurate and conservative charcoal decontamination efficiency to be determined which better assures that the assumed charcoal efficiency credited in the licensed accident analysis is being adequately maintained. Implementing this change only involves revisions to existing procedures.

The SGTS [Standby Gas Treatment System] and MCREVS [Main Control Room Emergency Ventilation System] are standby systems that are designed to mitigate the consequences of the analyzed accidents. No analyzed accident initiating events are impacted, no new accident initiators or new failure modes are created and the credited charcoal efficiency for each system in the licensed accident analyses is not changing. The change in laboratory testing methodology does not degrade the ability of these systems to perform all of their safety related mitigation functions as designed.

Therefore, the proposed changes described above do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear grade activated charcoal in accordance with Generic Letter 99–02 and establishing new methyl iodide penetration acceptance criteria is not an accident initiator, does not create any new failure modes, nor does it result in the occurrence of an accident. This change does not result in any physical plant modification and does not affect the safety related function, charcoal efficiency, or operation of the SGTS or MCREVS. This change only involves revisions to existing procedures to comply with NRC guidance from GL 99–02.

Therefore, the possibility of a new or different kind of accident than previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The safety related air cleaning units used in ESF [Engineered Safety Feature] ventilation systems reduce the potential onsite and offsite consequences of a radiological accident by absorbing radioiodine. Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal samples from RG 1.52 to ASTM D3803–1989 in accordance with Generic Letter 99–02. and the establishment of new methyl iodide penetration acceptance criteria does not increase the dose rates above what is currently calculated in the accident analyses.

Therefore, the above change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 16, 1999.

Description of amendment request: The proposed amendment would revise the Trojan Nuclear Plant (TNP) Permanently Defueled Technical Specifications by removing Figure 4.1–1, "Site and Exclusion Area Boundaries," from Section 4.0, "Design Features," and incorporate the applicable portion of this figure in the Trojan Nuclear Plant Defueled Safety Analysis Report. Other associated administrative changes resulting from the deletion of Figure 4.1–1, as well as an editorial change to the table of contents, are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment consists of changes that are administrative and/or editorial in nature, in that the physical and operational characteristics of the TNP site are unchanged. As such, the requested amendment does not in any way affect systems, structures, or components that could initiate or be required to mitigate the consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested license amendment consists of changes that are administrative and/or editorial in nature, in that the physical and operational characteristics of the TNP site are unchanged. As such, the requested amendment does not affect systems, structures, or components in any way not previously evaluated, and no new or different failure modes will be created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The requested license amendment consists of changes that are administrative and/or editorial in nature, in that the physical and operational characteristics of the TNP site are unchanged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas R. Nichols, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 27, 1999.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 4.6.2.2.b, "Suppression Pool Spray," and 4.6.2.3.b, "Suppression Pool Cooling," to modify the acceptance criteria associated with flow rate testing of the Residual Heat Removal (RHR) system pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The RHR system will continue to function as designed. The RHR system is designed to mitigate the consequences of an accident, and therefore, cannot contribute to the initiation of any accident. The proposed TS surveillance requirement changes implement testing methods that more appropriately control and reflect RHR operation and establish acceptance criteria, which ensure that Hope Creek's licensing and design basis assumptions are met. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the RHR system is operated is not affected by these proposed changes. The proposed surveillance requirement acceptance criteria ensure that the RHR safety functions will be accomplished. Therefore, the proposed TS changes would not result in the increase of the consequences of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the RHR system is not changed from that currently described in Hope Creek's licensing basis. The RHR system will continue to function as designed to mitigate the consequences of an accident. Implementing the proposed changes does not result in plant operation in a configuration that would create a different type of malfunction to the RHR system than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in Hope Creek's licensing basis regarding the safety related functions of this system.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal would implement testing methods that adequately demonstrate RHR pump capability and establish acceptance criteria consistent with Hope Creek's licensing basis. The ability of RHR to perform its safety functions is not adversely affected by these proposed changes. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 29, 1999.

Description of amendment request: The proposed amendments would revise the Salem Nuclear Generating Station Technical Specification requirements for instrumentation in the reactor trip system by adding tolerances to certain setpoint values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents of concern affected by the over-temperature or over-power delta temperature [trip signal] which have been evaluated are unaffected by the proposed editorial changes thus the changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The changes proposed are editorial in nature and do not alter physical configuration, replace or modify existing equipment, affect operating practices or create any new or different accident precursors which could impact on the accident analysis. Thus there is no possibility of a new or different kind of accident as a result of the proposed changes.

3. Does not involve a significant reduction in a margin of safety.

No margin of safety wil. be reduced by the proposed changes. The proposed changes do not adversely affect the ability of the trip systems to operate when called upon. Rather, these changes should result in clarity regarding the proper calibration of the trip instrumentation and therefore the margin of safety is preserved for those events in which there is a dependence upon an over-temperature or over-power delta temperature trip signal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 30, 1999.

Description of amendment request: The proposed amendment would allow the Rochester Gas and Electric Corporation to revise Sections 5.5.10 (a.3), (c.5), and (d.3) of the Ginna Station Improved Technical Specifications (ITS) to provide a reference to American Society for Testing and Materials (ASTM) Standard Procedure D3803–1989 as the procedure for performing laboratory testing of charcoal adsorbers that are installed in the Ginna Control Room Emergency Air Treatment System (CREATS), Containment Post-Accident Sampling System (CPASS), and Spent Fuel Pool Charcoal Absorber System (SFPCAS). These charcoal adsorbers for the CREATS and CPASS are installed for the purpose of reducing the levels of radioactive iodide species released to the containment and control room during a postulated design basis, while the charcoal adsorbers in the SFPCAS are installed for reducing the levels of radioactive iodide species released to the auxiliary building during a postulated fuel handling accident. The changes to ITS Sections (a.3), (c.5), and (d.3) will also provide a specific test temperature and humidity level for performing the testing of the charcoal adsorbers, and to increase the allowable penetration of methyl iodide to these systems from 10% to 14.5%. The requests for the changes are consistent with the staff's position stated in NRC Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. With respect to the more restrictive proposals associated with providing a reference to ASTM D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," and providing a specific test temperature and relative humidity for testing the charcoal adsorbers, the proposed changes do not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes add a reference to the latest approved test protocol and provide for specific test conditions. This does not increase the probability of an accident previously evaluated since the tests are of themselves not an accident initiator. The proposed changes are in accordance with NUREG–1431 guidance and provide a higher assurance of the ability of the charcoal adsorbers to perform as assumed in the accident analysis. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes add specific details of charcoal adsorber testing and do not of themselves involve a physical alteration of the plant (*ie.* no new or different type of equipment will be added to perform the required testing) or changes in the methods governing normal plant operation. The changes only involve implementing currently approved test methodology. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes only add conservatism in the test requirements for the charcoal adsorbers credited in the accident analysis. ASTM D3803–1989 is considered to be the most accurate and most realistic protocol for testing charcoal in ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. Therefore, this change does not involve a significant reduction in a margin of safety.

With respect to the less restrictive proposal to increase the allowable test limit for methyl iodide penetration of charcoal adsorbers, the changes do not involve a significant hazards consideration as discussed below:

(4) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes revise the acceptance criteria for the allowed penetration of methyl iodide during the testing of charcoal adsorbers in the plant ventilation systems. This does not increase the probability of an accident previously evaluated since the tests are of themselves not an accident initiator. Because ASTM D3803–1989 is a more accurate and demanding test than older tests this new protocol will allow the use a safety factor of 2 for determining the acceptance criteria for charcoal filter efficiency. The new acceptance criteria continue to ensure that the efficiency assumed in the accident analysis is still valid. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes of revising charcoal adsorber testing acceptance criteria do not of themselves involve a physical alteration of the plant (*ie.* no new or different type of equipment will be added to perform the required testing) or changes in the methods governing normal plant operation. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes only revise the test acceptance criteria of charcoal adsorbers as the result of implementing testing in accordance with ASTM D3803–1989. ASTM D3803–1989 is considered to be the most accurate and most realistic protocol for testing charcoal in ventilation systems because it offers the greatest assurance of

accurately and consistently determining the capability of the charcoal. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the preceding information, the Rochester Gas and Electric Corporation determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Marsha Gamberoni, Acting.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: September 30, 1999 (TS 98–005).

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant Unit 1 Technical Specifications (TS) analytical methods for core operating limits to implement an analysis supporting a more negative moderator temperature coefficient (MTC) for the end of cycle condition. This alternate methodology is based on a Westinghouse Electric Company analysis documented in reports WCAP–15088–P, Revision 1 (proprietary), "Safety Evaluation Supporting a More Negative EOL Moderator Temperature Coefficient Technical Specification for the Watts Bar Nuclear plant," and WCAP–15099–P, Revision 1 (non-proprietary, same title).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The more negative EOL [end-of-life] MTC does not increase the probability of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. No new performance requirements are being imposed on any system or component such that any design criteria will be exceeded. The conservative MDC [moderator density coefficient] assumption in the current analyses of record has been confirmed to remain bounding for the more negative proposed TS values. Therefore, no change in the modeling of the accident analysis conditions or response is necessary in order to implement this change. The consequences of an accident previously evaluated in the FSAR are not increased due to the more negative EOL MTC. The dose predictions presented in the FSAR remain valid such that no more severe consequences will result.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The more negative EOL MTC does not create the possibility of an accident which is different than any already evaluated in the FSAR. No new failure modes have been defined for any system or component nor has any new limiting single failure been identified. Conservative assumptions for MDC have already been modeled in the FSAR analyses and it has been determined that the more negative MTC values to be implemented in the TS will continue to be bounded by these assumptions.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The evaluation of the more negative EOL MTC has taken into account the applicable technical specifications and has bounded the conditions under which the specifications permit operation. The applicable technical specification is Section 5.9.5.b which lists methods approved by the NRC for use in determining the core operating limits. The values of the LCO [limiting condition for operation] and SRs [surveillance requirements] are located in the COLR [core operating limits report]. The analyses which support these technical specifications have been evaluated. The results as presented in the FSAR remain bounding for the more negative EOL MTC. Therefore, the margin of safety, as defined in the bases to these technical specifications, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 21, 1999.

Description of amendment request: This proposed change revises the control rod block requirements consistent with the BWR/4 Standard Technical Specifications. Some functions are proposed to be relocated to the Technical Requirements Manual, the requirements for the retained functions are clarified, and two functions are added to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocated functions are not assumed as initial conditions for, nor are they credited in the mitigation of, any design basis accident or transient previously evaluated. Since reactor operation with these revised and relocated Specifications is fundamentally unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events nor assumed mitigation of design basis accident or transient events.

More stringent and purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes affects any parameters or conditions that could contribute to the initiation of an accident. No new accident modes are created since the manner in which the plant is operated is unchanged. No safety-related equipment or safety functions are altered as a result of these changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation, and there are no changes being made to safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. Since the changes have no effect on any safety analysis assumption or initial condition, the margins of safety in the safety analyses are maintained. In addition, neither administrative changes with no technical impact, nor the imposition of more stringent requirements have a negative impact on a margin of safety. Therefore, the proposed

changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas.

Date of amendment request: December 15, 1999 (ET 99–0050).

Description of amendment request: The proposed amendment would modify the Improved Technical Specifications (ITSs) that were issued in Amendment No. 123 on March 31, 1999, and implemented on December 18, 1999. The proposed changes would expand the region of acceptable seal injection flow in Figure 3.5.5–1 of ITS 3.5.5 and provide the following 10 editorial changes: (1) delete the redundant "%" sign in the allowable value for function 4 in Table 3.3.1–1 on reactor trip system instrumentation, (2) delete the extra spacing in the description of function 20 in Table 3.3.1–1, (3) insert periods at the end of the text for Conditions M and N in the actions for limiting condition for operation (LCO) 3.3.2 on engineered safety features actuation system instrumentation (ESFASI), (4) spell "requirements" correctly in function 5.c of Table 3.3.2–1 for ESFASI, (5) delete the unneeded "SR 3.3.2.6" from the surveillance requirements column for Function 7.a in Table 3.3.2–1, (6) align the wording "Coincident with Safety Injection" with the title of Function 7.b in Table 3.3.2–1, (7) align the data in the 4 columns of Table 3.3.7–1, CREVS [control room emergency ventilation system] Actuation Instrumentation, for Function 3 with the first line of the title of the function, (8) align the specified completion time in Condition B of the actions for LCO 3.7.1 for main steam safety valves with text for the Required Action B.2, (9) add the acronym "EES" to Emergency Exhaust System in the table of contents and use the acronym in the upper right-hand-corner of the 4 ITS pages for LCO 3.7.13 on the emergency exhaust system, and (10) uncapitalize the word "Associated" in Condition B of the actions for LCO 3.8.4 on DC sources—operating because it should not be capitalized. The licensee would also add text to the Bases to the applicable safety analyses for the seal injection flow of LCO 3.5.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The restriction on RCP [reactor coolant pump] seal injection flow limits the amount of ECCS [emergency core cooling system] flow that would be diverted from the injection path following an accident. This limit is based on safety analysis assumptions that are required because RCP seal injection flow is not isolated during SI [safety injection]. The intent of the LCO 3.5.5 limit on seal injection flow is to make sure that flow through the RCP seal water injection line is low enough to ensure that sufficient centrifugal charging pump injection flow is directed to the RCS [reactor coolant system] via the injection points. The expansion of the Acceptable Range for the flow limits does not impact the assumed ECCS flow that would be available for injection into the RCS following an accident.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. Since the change continues to ensure 100 percent of the assumed charging flow is available, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed editorial changes involve corrections to the improved Technical Specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new of different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose any new or eliminate any old requirements. The expansion of the Acceptable Range for the [seal injection] flow limits does not impact the assumed ECCS flow that would be available for injection into the RCS following an accident.

The proposed editorial changes involve corrections to the improved Technical Specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications.

Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change [for seal injection flow] does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The expansion of the Acceptable Range for the flow limits does not impact the assumed ECCS flow that would be available for injection into the RCS following an accident.

The proposed editorial changes involve corrections to the improved Technical Specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and

page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket, Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 22, 1999.

Brief description of amendments: The amendments would delete the Donald C. Cook (D.C. Cook), Unit 1 and 2, Technical Specification (TS) 5.4.2, "Reactor Coolant System Volume," because the information regarding the reactor coolant system (RCS) is not required by TS Section 5.0, "Design Features," for compliance with 10 CFR 50.36(c)(4). Changes to the RCS volume information are included in the D.C. Cook Updated Final Safety Analyses Report, and are controlled in accordance with 10 CFR 50.59.

Date of publication of individual notice in ***Federal Register***: January 13, 1999 (65 FR 2199).

Expiration date of individual notice: February 14, 2000.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, and October 14, 1999.

Description of amendment request: The amendment converts the current Technical Specifications (TSs) for the James A. FitzPatrick Nuclear Power Plant, to a set of improved TSs based upon NUREG–1433, "Standard Technical Specifications for General Electric Plants BWR/4" Revision 1 dated April 1995.

Date of publication of individual notice in **Federal Register**: November 8, 1999 (64 FR 60854).

Expiration date of individual notice: December 8, 1999.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Co., LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 11, 1999.

Brief description of amendment: The amendment made various title changes to the plant organization.

Date of issuance: January 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 219.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: July 14, 1999 (64 FR 38027).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: October 2, 1998, as supplemented by letters dated April 13, 1999, and September 15, 1999. Information in Commonwealth Edison correspondence dated July 8, 1999, and August 30, 1999, was also considered during the review of the amendments.

Brief description of amendments: The amendments replace the custom operational technical specifications with a set of permanently defueled technical specifications that reflect the permanently shutdown and defueled status of the Zion Nuclear Power Station, Units 1 and 2. The amendments also delete certain license conditions from the operating licenses that are no longer applicable to the facility in its permanently shutdown and defueled condition. Information supplied in Commonwealth Edison letters dated July 8, 1999, August 30, 1999, and September 15, 1999, provided clarifying information and did not expand the scope of the original **Federal Register** notice dated June 2, 1999, and did not change the staff's proposed no significant hazards finding.

Date of issuance: December 30, 1999.

Effective date: December 30, 1999.

Amendment Nos.: Unit 1—180; Unit 2—167.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications and the operating licenses.

Date of initial notice in ***Federal Register***: June 2, 1999 (64 FR 29709).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1999.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: September 10, 1999 (NRC–99–0072), as supplemented November 19, 1999 (NRC–99–0107).

Brief description of amendment: The amendment revises the Technical Specification surveillance requirements for the Division I 130/260-volt dc battery to accommodate the design of the replacement battery.

Date of issuance: January 12, 2000.

Effective date: As of the date of issuance and shall be implemented prior to the startup from the seventh refueling outage.

Amendment No.: 136.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: November 3, 1999 (64 FR 59800) The November 19, 1999, letter provided clarifying information that was within

the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 16, 1999, supplemented November 3, 1999.

Brief description of amendments: The amendments revise Section 3.8.4, "DC Sources—Operating" of the Technical Specifications. Specifically, the amendments modify Surveillance Requirements (SRs) 3.8.4.8 and 3.8.4.9 and the associated Bases SR 3.8.4.8 and 3.8.4.9 to allow testing of the direct current (dc) channel batteries with the units on line. The change to SR 3.8.4.8 would also prohibit the diesel generator batteries from being service tested while the units are on line.

Date of issuance: January 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment Nos.: Unit 1–183; Unit 2–175.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 20, 1999 (64 FR 56529). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 7, 2000.

No significant hazards consideration comments received: No.

First Energy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: September 9, 1999.

Brief description of amendment: This amendment revised the Perry Nuclear Power Plant Environmental Protection Plan by eliminating the requirement to sample Lake Erie sediment in the Perry and Eastlake Plant area for Corbicula, since Corbicula and zebra mussels have already been identified, and control and treatment plans have been implemented which are effective for both species.

Date of issuance: January 5, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 110.

Facility Operating License No. NPF–58: This amendment revised the Environmental Protection Plan.

Date of initial notice in ***Federal Register***: November 3, 1999 (64 FR 59802). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: November 3, 1999.

Brief description of amendments: The amendments allow use of fuel rods with ZIRLO cladding, specify an alternate methodology to determine the integral fuel burnable absorber (IFBA) requirements for Westinghouse fuel assemblies stored in the new fuel storage racks, and delete the designation of the fuel assembly types allowed in the spent fuel storage racks and the new fuel storage racks.

Date of issuance: January 6, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 239 and 220.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 1, 1999 (64 FR 67335).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1998, as supplemented by letters dated March 25, September 29, and November 3, 1999.

Brief description of amendments: The amendments change the way passive failures in the auxiliary saltwater (ASW) and component cooling water (CCW) systems are mitigated during the long-term recovery period following a loss-of-coolant accident (LOCA). Specifically, plant procedures will no longer require ASW and CCW system train separation after the transfer to hot leg recirculation following a LOCA.

Date of issuance: January 13, 2000.

Effective date: January 13, 2000, and shall be implemented in the next periodic update to the FSAR Update in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 1—138, Unit 2—138.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Final Safety Analysis Report Update.

Date of initial notice in ***Federal Register***: October 7, 1998 (63 FR 53953).

The supplemental letters dated March 25, September 29, and November 3, 1999, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2000.

No significant hazards consideration comments received: No.

PP&L, Inc., Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: March 12, 1999, as supplemented by letter dated November 1, 1999.

Brief description of amendment: This amendment revised the Minimum Critical Power Ratio safety limits in TS Section 2.1.1.2 and modified the references in TS Section 5.6.5 of a critical power correlation applicable to Siemens Power Corporation Atrium-10 fuel.

Date of issuance: December 30, 1999.

Effective date: As of date of issuance and shall be implemented upon startup from the Unit 1 eleventh refueling and inspection outage currently scheduled for spring 2000.

Amendment No.: 186.

Facility Operating License No. NPF–14: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 7, 1999 (64 FR 17029).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 1, 1998, as supplemented by your letters of April 21, July 19, October 18, and November 11, 1999.

Brief Description of amendments: The proposed amendments would revise the Technical Specifications to reflect replacing the current Model 51 steam generators with Westinghouse Model

54F steam generators. The replacement program includes re-analyzing and evaluating loss-of-coolant-accident (LOCA) and non-LOCA mass and energy releases, containment and sub-compartment pressure and temperature responses, dose analyses, and the effects on nuclear steam supply and balance of plant systems.

Date of issuance: December 29, 1999.

Effective date: As of the date of issuance and shall be implemented prior to Unit 1 entering Mode 5 for Cycle 17 (Spring 2000) and prior to Unit 2 entering Mode 5 for Cycle 15 (Spring 2001).

Amendment Nos.: Unit 1–147; Unit–238.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Improved Technical Specifications.

Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56533). The supplemental letters dated October 18, and November 11, 1999, provided clarifying information that did not change the initial proposed no significant hazards consideration determinations.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1999.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 22, 1998, as supplemented by letters dated June 16, October 21 and 27, November 17, and December 9, 1999.

Brief description of amendments: The amendments revised the Technical Specifications to reflect the steam generator water level low-low trip setpoint differences between the existing Model E and the replacement Model Delta-94 steam generators for the reactor trip system and the engineered safety features actuation system instrumentation.

Date of issuance: December 29, 1999.

Effective date: December 29, 1999, to be implemented following replacement of Unit 1 Model E steam generators with Model Delta-94 steam generators and prior to entry into Operational Mode 3.

Amendment Nos.: Unit 1—120; Unit 2—108.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 9, 1998 (63 FR 48268).

The June 16, October 21 and 27, November 17, and December 9, 1999, supplements provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1999.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of January 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1732 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster [#3232]]

State of Kentucky

As a result of the President's major disaster declaration on January 10, 2000, I find that Crittenden, Daviess, and Webster Counties in the State of Kentucky constitute a disaster area due to damages caused by tornadoes, severe storms, torrential rains, and flash flooding that occurred on January 3–4, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 10, 2000 and for economic injury until the close of business on October 10, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Caldwell, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Ohio, and Union Counties in Kentucky; Hardin County, Illinois; and Spencer and Warrick Counties in Indiana.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—7.500%

Homeowners without credit available elsewhere—3.750%

Businesses with credit available elsewhere—8.000%

Businesses and non-profit organizations without credit available elsewhere—4.000%

Others (including non-profit organizations) with credit available elsewhere—6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%

The number assigned to this disaster for physical damage is 323212, and for economic injury the numbers are 9G4100 for Kentucky, 9G4200 for Illinois, and 9G4300 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–1804 Filed 1–25–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Economic Injury Disaster #9G20

State of Washington

King, Pierce, Snohomish, Thurston, and Whatcom Counties and the contigous counties of Chelan, Grays Harbor, Island, Kitsap, Kittitas, Lewis, Mason, Okanogan, Skagit, and Yakima in the State of Washington constitute an economic injury disaster area due to the effects of the warm water current known as El Nino beginning in 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on September 22, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: Dec. 22, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 00–1805 Filed 1–25–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Compliance Criteria for 14 CFR 33.28, Aircraft Engines, Electrical and Electronic Engine Control Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) No. 33.28–1, Compliance Criteria for 14 CFR 33.28, Aircraft Engines, Electrical and Electronic Engine Control Systems.

DATES: Comments must be received on or before April 25, 2000.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Cosimo Bosco, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7118, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject Act may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This proposed AC provides guidance material for methods of complying with § 33.28, Electrical and Electronic Control (EEC) Systems. Initially, EEC technology was primarily applied to engines designed for large transport aircraft applications; the certification practice and implementation of § 33.28 was oriented toward these applications. When the use of EEC technology was limited to a small group of manufacturers, the information and guidance provided in the rule itself was adequate. However, with the proliferation of EEC controls, the need for additional advisory material has become evident in several recent engine certification programs. Additionally, industry representatives that design engines for applications other than large transport aircraft certificated under part 25 have questioned the criteria used to determine equivalence to the typical hydromechanical systems.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on January 14, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–1818 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review, Chandler Municipal Airport, Chandler, Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces that it is reviewing a proposed Noise Compatibility Program submitted by the city of Chandler for the Chandler Municipal Airport (CHD), Chandler, Arizona under the provisions of Title I of the Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR Part 150 were in compliance with applicable requirements effective June 24, 1999. The proposed Noise Compatibility Program will be approved or disapproved on or before July 11, 2000.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is January 13, 2000. The public comment period ends March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007 World Way Postal Center, Los Angeles, CA, 90009–2007. Telephone Number (310) 725–3614. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Chandler Municipal Airport which will be approved or disapproved on or before July 11, 2000. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Chandler Municipal Airport, effective on January 13, 2000. It is requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a minimum of 180 days, will be completed on or before July 11, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable.

Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 615, Washington, DC 20591
Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, CA, 90261
Mr. Greg Chenoweth, Manager, Chandler Municipal Airport, 2380 South Stinson Way, Chandler, AZ 85249–1728

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on January 13, 2000.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 00–1819 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is schedule for February 8, 2000, from 10 am to 1 pm.

ADDRESSES: Federation Aviation Administration, 800 Independence Avenue, Room 810, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ad hoc ARAC meeting to be held Febuary 8, 2000, at the Federal Aviation Administration, 800 Independence Ave., Room 810, Washington, DC. The meeting is being held to approve items that had been expected to be voted on, but were not because of time constraints, at the December 1999 TAE meeting. At that time, TAE members agreed to hold an ad hoc meeting/teleconference for the expressed purpose of voting on only those items carried over from the December meeting.

The agenda will include the following actions:

- The Engine Harmonization Working Group (HWG) plans to request approval to submit a package to the FAA for formal legal and economic reviews. The package contains a proposed notice of rulemaking and associated advisory circulars that address type certificates for aircraft propellers, fatigue limits and evaluation, propeller control system, vibration and fatigue evaluation, safety analysis, and propeller certificate handbook.
- The Human Factors HWG will be requesting approval of its work plan on flight crew error/flight crew performance considerations in the flight deck certification process.
- The Electrical System HWG plans to request TAE approval to submit its report on electrical generating and distribution systems and electrical bonding and protection against lighting and static electricity.
- The Loads and Dynamics HWG plans to request approval of a proposed advisory circular addressing design dive speed.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by teleconference by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT** after Febuary 2. The public must make arrangements by February 4 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 20, 2000.

Anthony F. Fazio,

Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–1817 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 27, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number —. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington,

D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). See CFR Part 232, Appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR Part 232, Appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 800 tags.

Average Time Per Response: 5 minutes per tag.

Estimated Total Annual Burden: 67 hours.

Status: Regular Review.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Abstract: Under 49 CFR Part 207, railroads are required to notify states of all designated railroad police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 30 railroads.

Frequency of Submission: On occasion.

Total Responses: 330 (30 rpts. + 300 rcds.)

Average Time Per Response: 5 hrs. p/rpt. + 10 min. p/rcd.

Estimated Total Annual Burden: 200 hours.

Status: Regular Review.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.7—Waivers	100,000 employees	2 letters	2 hours	4 hours	$116
219.9.(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hours	2 hours	$70
219.11(b)(2)—Gen'l conditions for chemical tests	450 Medical Fac.	1 document	15 minutes	15 minutes	$72
219.11 (g) & 219. 302 (c)(2)(ii)—Training-Alcohol and Drug.	5 railroads	5 programs	3 hours	15 hours	$525
—Training	200 railroads	250 training class	3 hours	750 hours	$26,250
230.23 (d)—Notice of Educ'l Materials to employees	200 railroads	200 sets-material	1 hour	200 hours	$7,000
—Notice to Employee Organizations	15 railroads	15 notices	1 hour	15 hours	$525
219.104/219.107/40.47—Removal from cov. Service	200 railroads	20 letters	1 hour	20 hours	$700
219.201 (c) Good Faith Determination	200 railroads	10 reports	30 minutes	5 hours	$175
219.203/207/209—Notifications by Phone to FRA	200 railroads	104 phone calls	10 minutes	17 hours	$595
219.205—Sample Collection and Handling	450 railroads	400 forms	15 minutes	100 hours	$2,900
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17 hours	$595
219.209 (b)—Narrative Response-refusal to provide sample.	450 railroads	0 reports	0 min./hr.	0 hours	$0
219.209 (c)—Records-Tests promptly admin	450 railroads	40 records	30 minutes	20 hours	$700
219.211 (b)—Analysis and follow-up MRO	450 railroads	8 reports	15 minutes	2 hours	$70
219.211 (e)—Written response from employees to FRA re: results of toxicological analysis.	200 employees	0 written response	0 min./hr.	0 hour	$0
219.211 (h)—Recordkeeping-Post Accident Toxicology Tests.	25 laboratories	N/A	N/A	N/A	N/A
219.211 (i)—Employees request for a retest of split blood and urine samples.	450 railroads	0 letters	0 min./hr.	0 hours	$0
219.213 (b)—Notice of Disqualification	450 railroads	0 notices	0 min./hr.	0 hours	$0
219.302 (f)—Tests not promptly administered	450 railroads	200 records	30 minutes	100 hours	$3,500
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	40 hours	200 hours	$7,000
219.405 (c) (1)—Report by Co-worker	200 railroads	200 reports	5 minutes	17 hours	$493
219.407—Alternate Policies	200 railroads	0 policy doc.	0 min./hr.	0 hours	$0
—Amendments/Revocations	200 railroads	0 amend/rev.	0 min./hr.	0 hour	$0
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	10 minutes	117 hours	$4,095
219.601 (a)—RR Random Drug Testing Programs	5 railroads	5 programs	1 hour	5 hours	$175
—Amendments	450 railroads	20 amendments	1 hour	20 hours	$700
219.601 (b)(4/; 219.601 (d)—Notices to Employees	450 railroads	4,000 notices	.5 minute	33 hours	$1,155
—New Railroads	5 railroads	5 notices	10 hours	50 hours	$1,750
—Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417 hours	$14,595
219.601 (b) (1)—Random Selection Proc.—Drug	450 railroads	5,400 documents	4 hours	21,600 hours	$756,000
219.603 (a)—Specimen Security-Notice By Employee Asking to be Excused-Urine Testing.	20,000 employees	200 excuse doc.	2 minutes	7 hours	$203
219.607—RR Random Alcohol Testing Programs	5 railroads	5 programs	1 hour	5 hours	$175
—Amendments to Approved Program	450 railroads	20 amendments	1 hour	20 hours	$700
219.607 (b) (1)—Random Selection Proc.—Alcohol	450 railroads	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
219.607 (c) (1)—Notice to Employees	450 railroads	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
—New Railroads	5 railroads	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
219.609—Notice by Employee to be Excused from Random Alcohol Testing.	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
219.703 (a)&40.23-Specimen Security	450 railroads	40,000 forms	15 minutes	10,000 hours	$290,000
219.705 (c)—Approval to test for Additional Controlled Substances or alternative methods.	200 railroads	0 Requests	0 hours	0 hours	$0
219.707 9(c) (d)&40.33—Review by MRO of Urine Drug Testing Results/ Employee Notification.					
—Positive Drug Test Result	200 MROs	980 reports	2 hours	1,960 hours	$68,600
—Copies of Positive Test Results to Employees	450 railroads	980 tests	.15 minutes	245 hours	$8,575
—Negative Test Results	450 railroads	48,020 letters	10 minutes	8,003 hours	$280,105
219.709—Retests-Written Request by Employee	450 railroads	10 letters	30 minutes	5 hours	$145

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.711 (c)&40.25 (f) (22) (ii)—Employee Consent	100,000 employees	60 letters	5 minutes	5 hours	$145
—Employee Release Form	450 railroads	12,863 letters	5 minutes	1,072 hours	$31,088
~~219.715&40.57/59/61—Alcohol Testing Procedures~~	[1]219.703	[1]219.703	[1]219.703	[1]219.703	[1]219.703
40.65—Admin. of Confirmatory Tests	40,000 employees	20 tests	30 minutes	10 hours	$290
—Notice to Employee—Confirmation Test	200 railroads	200 notices	1 hour	200 hours	$7,000
—Submission of Test Result to Employer	200 railroads	20 tests	15 minutes	5 hours	$175
40.69—Inability to provide an adequate breath amount	200 railroads	10 cases	12 minutes	2 hours	$70
—Evaluation from Licensed Physician	200 railroads	10 cases	1 hour	10 hours	$290
—Written Statement from Physician	200 railroads	10 cases	1 hour	10 hours	$350
40.81—Availability/Disclosure of Alcohol Testing Information about Individual Employees.	200 railroads	60 letters	5 minutes	5 hours	$145
—Copies of Records—Breath Alcohol Test	40,000 employees	4 requests	30 minutes	2 hours	$64
40.83—Maintenance/Disclosure of Records concerning EBTs and BATs.	450 railroads	1,500 records	5 minutes	125 hours	$4,375
219.801—Reporting Alcohol Misuse Prevention Program Results in a Management Info. System					
—Alcohol Testing Management Info. System Data Collection Form.	53 railroads	25 forms	4 hours	100 hours	$3,500
—Easy Data Collection Form—No Alcohol Misuse	53 railroads	25 forms	2 hours	50 hours	$1,750
219.803—Reporting Drug Misuse Prev. Results in a Management Info. System					
—Drug Testing Management Info. Sys. Data Collection Form.	53 railroads	25 forms	4 hours	100 hours	$3,500
—Drug Testing Management Info. Sys.-Zero Positives—Data Collection Form.	53 railroads	25 forms	2 hours	50 hours	$1,750
219.901—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375 hours	$293,125
—Summary Report of Breath Alcohol/Drug Test	450 railroads	200 reports	2 hours	400 hours	$14,000
40.23(d)(2)(ii)—Written Instructions on Specimen Col	0 railroads	0 instructions	0 minutes	0 hours	$0
40.29 (a)(2)&(b)—Lab. Chain of Custody Proc.	25 laboratories	58,212 forms	15 minutes	14,553 hours	$422,037
40.31 (c) (1)—RR Blind Performance Test Proc.	25 laboratories	1,176 tests	1 minute	20 hours	$580
40.29 (g) (1)&(5)—Lab Test Result Rpts to MRO	25 laboratories	52,920 reports	30 minutes	26,460 hours	$767,340
40.29 (g) (6)—Lab/Monthly Stat Summary of Urinalysis	25 laboratories	2,400 reports	2 hours	4,800 hours	$139,200
40.29 (g) (8)&(m)—Recordkeeping—Labs.	25 laboratories	25 document files	240 hours	6,000 hours	$174,000
40.31(d) (6) Unsatisfactory Perf. Test Results	25 laboratories	2 reports	10 hours	20 hours	$580
40. 31(d) (7)&(8)—False Positive Error/Retesting	25 laboratories	1 report	50 hours	50 hours	$1,450
—False Positive on Blind Test Performance	25 laboratories	1 report	50 hours	50 hours	$1,450
40.33—Reporting/Review—Split Sample Test Results	200 railroads	18 letters	30 minutes	9 hours	$315
—Split Sample Failure to Reconfirm Drug Presence.	200 railroads	2 reports	30 minutes	1 hour	$35
40.37—Employee's Request for Access to Test Records.	100,000 employees	30 requests	30 minutes	15 hours	$435

[1] Incl. under.

Respondent Universe: 450 railroads.
Frequency of Submission: On occasion.
Total Responses: 357,251.
Estimated Total Annual Burden: 106,470 hours.
Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 C.F.R. 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on January 19, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–1800 Filed 1–25–00; 8:45 am]
BILLING CODE 4910–13–U

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Federal Register

Wednesday,
January 26, 2000

Part II

Department of the Interior

Bureau of Reclamation

43 CFR Part 428

Information Requirements for Certain Farm Operations in Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations in Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds a new part to the Bureau of Reclamation's (Reclamation) regulations. This part supplements the Acreage Limitation Rules and Regulations, which implement the Reclamation Reform Act of 1982 (RRA). The final rule requires certain farm operators to submit RRA forms that describe the services they perform and the land they service. The rule also addresses the eligibility of certain formerly excess land held in trusts or by legal entities to receive nonfull-cost Reclamation irrigation water.

DATES: *Effective date:* This rule is effective October 1, 2000, except that §§ 428.9 and 428.10 are effective January 1, 2001.

APPLICABILITY DATES: For the applicability dates of this rule, see § 428.11.

ADDRESSES: A copy of all comments received on the proposed rule are available for review. To make arrangements to review those comments, please write to: Commissioner's Office, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, Attn: Erica Petacchi, or e-mail epetacchi@usbr.gov.

FOR FURTHER INFORMATION CONTACT: Steve Richardson, Chief of Staff, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, telephone (202) 208–4291.

SUPPLEMENTARY INFORMATION: This section provides the following information:

I. Background
II. Summary of the Final Rule as Adopted
III. Public Involvement
IV. Procedural Matters

I. Background

This final rule supplements the Acreage Limitation Rules and Regulations, 43 CFR part 426, that govern implementation and administration of the RRA. The rule creates a separate Code of Federal Regulations part, 43 CFR part 428, addressing information requirements for certain farm operators and the eligibility of certain formerly excess land held in a trust or by a legal entity or any combination of trusts and legal entities to receive nonfull-cost Reclamation irrigation water.

This final rule was preceded by a proposed rule, which we published in the **Federal Register** (63 FR 64154, Nov. 18, 1998), and an Advance Notice of Proposed Rulemaking (ANPR), that we also published in the **Federal Register** (61 FR 66827, Dec. 18, 1996). When we finalized the Acreage Limitation Rules and Regulations (43 CFR part 426), we published the ANPR to address certain issues not dealt with in 43 CFR part 426. Please see the preambles to the ANPR and the proposed rule for a more complete history of this regulation.

II. Summary of the Final Rule as Adopted

The final rule will extend RRA certification and reporting forms requirements to farm operators who:

(1) Provide services to more than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity, or

(2) Provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres.

In addition, this part prevents former owners of excess land who sold or transferred the excess land at an approved price from receiving nonfull-cost water on that land if they are now farming it as farm operators. This provision only applies to formerly excess land held in trusts or by legal entities.

The provisions of 43 CFR part 426 not specifically addressed in this rule are unchanged.

Summary of Changes We Made Since the Proposed Rule

In response to comments, we renamed the term "custom operator" to "custom service provider" in the definitions section (43 CFR 428.3). In addition, we made it clear that a custom service provider is an individual or legal entity that provides one specialized, farm related service to the land in question.

In the section that establishes the RRA forms submittal requirement for farm operators (43 CFR 428.4), we narrowed the requirement for part owners of legal entities that are farm operators and must submit forms. The final rule now provides that indirect owners of legal entities that are farm operators meeting the criteria of section 428.4(a) must submit forms to us annually only if any of the land to which services are being provided by that legal entity is land that the part owner formerly owned as excess land and sold or transferred at an approved price. We have also clarified in this section that farm operators cannot use verification forms and that they are not subject to the landholding change requirements of 43 CFR 426.18.

We made a minor change in 428.9(a)(2) to add the words "or transferred" after "sold", so that these regulations are consistent with part 426.

Finally, we altered § 428.11 to provide for a later effective date than provided in the proposed rule; specifically the effective date will be January 1, 2001, rather than 2000. However, our intent is to make the rule effective for the 2001 water year in all districts. In § 428.11 we have included an October 1, 2000, effective date for those few districts whose water year commences before January 1, to accomplish that objective.

III. Public Involvement

We invited comments for a total of 120 days, and received comments from 33 sources: 16 from water/irrigation/drainage districts; 3 from public interest groups (including environmental and water users groups); 4 from members of the Congress; 4 from farms (or farm operators or custom service providers); 1 from a Federal government agency; 1 from a county government agency; 1 from a law firm; 2 from trusts (one trustee and one trust beneficiary); and 1 from a joint power authority. The commenters' letters came from the following States: 26 from California; 2 from Arizona; 2 from Colorado; 1 from Washington; 1 from Utah; and 1 from Virginia. We note that some of the letters had more than one signature, to reflect that more than one person or entity endorsed those comments.

The following section presents our responses to these public comments. We sorted these comments into subjects such as authority, trusts, the ANPR, environmental concerns, impacts and need for the rule. Then, we sorted comments that referred to specific sections of the proposed rule.

Public Comments and Responses on General Issues

The following section presents public comments on the proposed rules that are general in nature. This section includes comments on the ANPR, the Paperwork Reduction Act of 1995, trusts, impacts of the rule, authority, need for the rule, and National Environmental Policy Act (NEPA) issues.

General Issues

Comment: We believe that the adoption of westwide regulations to

address a limited problem is unwarranted.

Response: We believe that this issue has the potential to emerge westwide, and a regulation of general applicability is necessary to ensure consistent implementation and enforcement of the RRA.

Comment: The RRA did not create any farm size limitations, but continued to provide "ownership" limitation and extend the new concept of full-cost pricing to certain "leased" lands.

Response: While the RRA did not create farm size limits, it did tie eligibility of land for nonfull-cost irrigation water to acreage owned or leased. Congress also reaffirmed its policies that the benefits of irrigation water should be distributed widely and that excess landholdings should be broken up into family size farms. The regulations we finalize today will continue to implement the ownership and leasing limitations of the RRA by helping us identify farm operators of relatively large tracts of land. Once we identify them, we will require those farm operators to submit documentation concerning their farm operating arrangements to us for review, so we can determine if they are leases for acreage limitation purposes. If we determine a farm operating arrangement is a lease, we would apply retroactively the applicable nonfull-cost entitlement (the maximum acreage a landholder may irrigate with Reclamation irrigation water at the nonfull-cost rate; 43 CFR 426.2) to the landholding of that lessee (the farm operator). If the farm operator had been providing services to more acreage than the applicable nonfull-cost entitlement under his/her/its farm operating arrangements that are determined to be leases, the full-cost rate would apply.

Comment: The proposed rules would use a different standard of how to identify a lessee and who makes the most decisions regarding the farm. Any divergence from the economic-interest test causes uncertainty and poses a major risk to your ability to enforce reclamation law consistently.

Response: With the final rule, we are not diverging from the economic-interest test found in the Acreage Limitation Rules and Regulations, 43 CFR part 426. We are collecting information that will enable us to apply the economic-interest test more effectively.

Comment: The apparent intent of the regulation is to assist you in determining whether a lease exists. Your current enforcement capabilities enable the collection of information necessary to make this determination.

Response: As we explained in the proposed rule preamble, we currently do not have enough information to determine which farm operators should be reviewed to determine if their farm operating arrangements are leases for acreage limitation purposes. We have tried to collect this information from landholders in the past, but this approach is not effective. Requiring certain farm operators to submit RRA forms is the most effective means of obtaining the necessary information.

Comment: Why not just ask the landholders if you need information to determine (1) Who has use or possession of the land being farmed under a farm operating arrangement, (2) Who is responsible for payment of operating expenses, and (3) Who is entitled to receive the profits from the farming operation. You could get the information about who receives the economic benefit from the land and who has use and possession of the land from the current forms. Then, if that information shows that a party other than the owner, lessee, or sublessee qualifies as a lessee, you could require the named party to provide supplemental information.

Response: We have asked landholders to provide information concerning their operators and found that this approach is not effective in identifying farm operators providing services to more than 960 acres westwide. If we were to rely entirely on information provided by landholders, we would have to review many more farm operating arrangements than necessary, because we would not know until we actually contacted the farm operator and reviewed his/her/its farm operating arrangement if that farm operator was providing services to more than 960 acres. This would mean that districts would be required to contact all farm operators included on RRA forms to obtain their farm operating arrangements, most of which we would later determine were unnecessary to obtain due to the overall number of acres the farm operator was farming. The only alternatives are to either (1) Have certain farm operators submit RRA forms or (2) Collect information concerning farm operators identified on landholder forms westwide and collate the data to determine which farm operators are providing services to more than 960 acres. We have already tried the latter alternative and found it to be inefficient and ineffective. Rather than requiring districts to collect and submit to Reclamation information from all farm operators identified on RRA forms submitted by landholders, and then having to review all of that data, we believe it is in the best interest of all parties if we first narrow the field of farm operators that need to be reviewed. In order to effectively narrow the scope of the audit effort, we will require certain farm operators to submit RRA forms.

Comment: The proposed rule is flawed because it attempts to create an "entity" for purposes of reclamation law where none currently exists. There is no logical reason or purpose to create this new "entity." There are plenty of established, recognized, and accepted legal forms of business "entities" already, such as sole proprietorships, partnerships, trusts, corporations, etc.

Response: In implementing these final rules, we will not be creating a new "entity." We defined farm operators so that those affected by the regulations would know who must submit RRA farm operator forms.

Comment: The potential for evasion and abuse of the law remain, despite the good intentions in the proposed rule. You could make clear that any "scheme or device" employed to evade a requirement or limitation in the regulations will be punished in some way. The record of abuses of reclamation law in California is now so well documented that no one could fault you for taking steps to protect the taxpayers and clean up enforcement.

Response: We can only respond to what we actually find and can reasonably anticipate in the regulated community. We believe we have crafted a regulation to ensure that the acreage limitation provisions of the RRA are enforced properly. As a result we do not believe this suggested change is necessary.

Comment: We believe that the call for additional administrative discretion to address "scheme or device" violations would cause problems for water districts and water users who are in good faith trying to comply with the law.

Response: We believe we have crafted a regulation to ensure that the acreage limitation provisions of the RRA are enforced properly.

Comment: If you publish a final rule like the proposed one, please include a way for people to request formal, written rulings on their farm service contracts, similar to the ones you provide for trusts.

Response: Landholders and farm operators have always been welcome to submit farm operating agreements to us for review and a determination of whether the arrangement is a lease for acreage limitation purposes. This practice will continue; however, we have not included it in the regulation. The review procedure for trusts is also

not established in the Acreage Limitation Rules and Regulations.

Comment: The proposed rule does not work and should be withdrawn.

Response: We disagree. We have made several modifications to the final rule at the suggestion of commenters, and we believe that the rule will help us administer reclamation law more effectively.

Comment: Repeated tinkering with the reclamation law regulations causes destabilization for water districts. It makes no difference to us that you propose to add a new "supplemental" section instead of reopening the existing regulations.

Response: The law and regulatory programs are rarely static; adjustments are necessary from time to time to ensure the program is working as it should.

Comment: If you do anything, you should strengthen the regulations. Any weakening of these already limited regulations will perpetuate abuses of reclamation law.

Response: While we have made modifications to the final rule as a result of public comments, we do not believe the final rule is weakened by those changes.

Comment: It appears that the reforms the Congress mandated in 1982 may finally be implemented westwide. However, I remain concerned that, without further refinement, these regulations will remain open to abuse.

Response: We have made several adjustments to the final rule and believe the regulations will allow us to enforce the RRA westwide.

Comment: You admit there are no actual abuses of the existing regulations concerning trusts, but you are worried about "potential future abuses." If there are no violations by the 75 trusts with more than 960 acres, then adopting these regulations would be an abuse of discretion.

Response: The large trusts we have reviewed have been found either (1) To lease out the land held in trust or (2) To have a farm operating arrangement that is not a lease for acreage limitation purposes. This does not in any way mean we have found all farm operators providing services to more than 960 acres and reviewed the associated farm operating arrangements. Because we do not currently collect forms from farm operators, we do not have the information we need to identify all farm operators providing services to relatively large amounts of acreage.

Comment: We believe the Natural Resources Defense Council lawsuit was intended to punish a very small segment of the farming community for perceived abuses of reclamation law, but the proposed regulations sweep into the same bucket the great majority of large and small farmers who follow the law.

Response: We contend that the regulation is narrowly tailored and will not affect the majority of farmers westwide.

Comment: If your real motive is to punish those who have manipulated the regulations so as to qualify for Federal water, then why not merely use the remedies you already have and simply turn off the water to those few? We suspect an ulterior motive, perhaps to make more irrigators ineligible to qualify for Reclamation water.

Response: As discussed above and in the proposed rule preamble, we do have remedies for violations of the law. However, we do not have enough information in all cases to determine if a violation has occurred so that we may apply those remedies. The final rule will help us collect that information.

Comment: The current regulations carry out the intent of the RRA.

Response: The final rule will supplement the current regulations and enable us to more effectively carry out the intent of the RRA.

Comment: We request that you start a stakeholder process, that includes both field hearings and workshops, to explain the intent and application of the rule before you adopt any final rule. Public participation is crucial before you make any final decisions.

Response: We do not believe that field hearings or workshops are necessary, because the scope of the final rule is so narrow. We have collected public comments from the ANPR and the proposed rule and have carefully explained the intent and application of the rule in these rulemaking documents. However, we do anticipate holding workshops after we publish the rule to explain their effects.

ANPR

Comment: Your responses to comments on the ANPR acknowledge that the only issue requiring further review is how those trusts holding more than 960 acres westwide are farming their land. Yet under the logic that large trusts might be replaced with some other arrangement that reclamation law critics would regard as violating the intent of the law, the proposed rule contains such vague, sweeping requirements that it is likely to impact even the smallest landowners.

Response: We believe that the final rule is narrow in scope and will not affect the majority of water users.

Comment: The custom farmer reporting provisions exceed the scope of the ANPR. In public statements, you had limited the discussion to large trusts.

Response: We explained in the ANPR that we were collecting comments in order to formulate a proposed rule to address concerns about compliance with Federal reclamation law by large trusts and other as yet unregulated forms of landholdings in excess of 960 acres. When we analyzed comments submitted by the public, we found that we needed to make changes in order to address problems associated with large farming operations.

Comment: We thought the reason for proposing new regulations was to limit certain large trusts, but it appears the regulations far exceed this objective. We relied on your assurances that changes in the regulations would only deal with trusts. At several meetings and conference calls after you published the ANPR, you confirmed that you did not intend to reopen issues from the regulations that had been recently adopted (43 CFR 426). We believe that this proposed rule does not comply with the ANPR nor with the record produced at your workshop held in Sacramento on March 14, 1997. You have misled the public about the purpose of the proposed rulemaking, since the only relationship between the proposed rule and the ANPR is that you are attempting to deal with farm operators of "large trusts."

Response: The purpose of an ANPR is to gather information and public comment in order to form issues to address in a proposed rule. In the ANPR published on December 18, 1996, we asked for input on how we can ensure compliance with the acreage limitation provisions by large trusts *and other forms of landholdings in excess of 960 acres.* Our intent has remained the same as it was at the time we published the ANPR, and that is to ensure that everyone that receives Reclamation irrigation water complies with Federal reclamation law, including the acreage limitation provisions.

Information Collection and Forms (Paperwork Reduction Act of 1995)

Comment: You should develop separate forms for farm operators. A true farm operator has no interest in the land it operates, so that land cannot be considered to be part of the farm operator's landholding. It is therefore inappropriate for a farm operator to submit landholder reporting or certification forms.

Response: We have reviewed this issue and concur. A separate form named the "Declaration of Farm Operator Information" (Form 7–

21FARMOP) has been developed. Farm operators who provide services to more than 960 acres held in trusts or by legal entities will complete this form. In addition, we have prepared a tabulation sheet (Tabulation G of "Declaration of Farm Operator Information" Forms) that districts will complete as part of their summary form packages.

Comment: You should tailor forms for farm operators and submit drafts for public comment.

Response: Both the Form 7–21FARMOP and Tabulation G were included in the package of RRA forms for the year 2000 submitted to the Office of Management and Budget for review and approval. The public was provided two comment periods on the RRA forms. The first 60-day comment period was provided in the **Federal Register** (64 FR 174, Jan. 4, 1999). The second required comment period of 30 days was also announced in the **Federal Register** (64 FR 28009, May 24, 1999). As part of our continuing effort to provide information on acreage limitation activities to those affected, the draft RRA forms, including the Form 7–21FARMOP and Tabulation G, were sent to all districts that are subject to the acreage limitation provisions on January 8, 1999, along with a copy of the **Federal Register** notice. It should be noted that our current approval of the RRA forms, including the Form 7–21FARMOP and Tabulation G is for both the 2000 and 2001 water years. Thus, no further action will be taken with respect to these forms before they are first required to be completed for the 2001 water year.

Comment: You should remove the information requirement imposed on indirect owners of farm operators.

Response: We have partially incorporated this comment in the final rule. We do not need to know about part owners of entities who are farm operators unless a part owner formerly owned all or a portion of the land in question as excess and sold or transferred it at an approved price. We need information from those part owners in order to fully implement the excess land provision found in § 428.9 of the final rule. Accordingly, we have narrowed the scope of the information requirements for part owners of farm operators.

Comment: We do not believe the proposed collection of information is necessary for the performance of your functions.

Response: We are required to ensure that farm operating arrangements are not leases for acreage limitation purposes. The Congress reinforced its desire for us to take such action when it specifically required the auditing of operations as part of the Omnibus Budget Reconciliation Act of 1987 (43 USC 390ww; Section 224[g]). The most effective way to accomplish this requirement is to obtain information from farm operators. The proposed collection of information is intended to be a more effective and efficient method than those used to date to identify those farm operators who we are most interested in auditing.

Comment: Your estimated burden for the proposed collection of information appears accurate, except that the total number of respondents affected could increase if the potential loopholes are corrected and the RRA is actually fully enforced.

Response: We have reviewed the requirement of who would be required to submit the new Form 7–21FARMOP and decided not to expand it beyond the criteria identified in the proposed rules. Accordingly, we stand by the estimated burden reported in the proposed rules.

Comment: The proposed rule changes would improve enforcement of the acreage limitations, but you must modify the language to close all loopholes to ensure that nobody is exempt due to unintended wording, omissions or oversights. For instance, the rules need to expand collection requirements to include all "farm operators," including "custom operators." We suggest that you require all operators to fill out the forms.

Response: We believe that it would be an inefficient use of resources for landholders, farm operators, districts, and us, if the final rule required "custom operators" (custom service providers) to complete the Form 7–21FARMOP. By the way the term "custom service provider" is defined, we would not find them to be a lessee under any circumstance. Accordingly, there is no value added in requiring custom service providers to complete RRA forms.

Comment: You should extend the regulations to include reporting on the direct and indirect ownership of excess acreage lands. Shell games regarding indirect ownership devices should be clearly discouraged.

Response: We have required the reporting of direct and indirect ownership of excess land since the 1997 water year. We recommend the commenter examine the "Designation of Excess Land" (Form 7–21XS) and associated instructions for further information.

Comment: We agree with the goals stated in the proposed rule, but we believe you should collect information through audits instead of the proposed information gathering system. This would be more effective and less burdensome.

Response: In order to be able to run an effective audit program, we first have to be able to identify the individuals, entities, and organizations that need to be audited. We have found that the RRA forms submitted by landholders have the additional benefit of being an effective means to identify those landholders who should be audited or otherwise reviewed. The RRA form for farm operators simply extends this concept to farm operators. Once the farm operators are identified, their operations will still have to be audited before we can determine if they are leases for acreage limitation purposes.

Comment: What will be the incentive for "operators" that are not landowners to file certification forms?

Response: There are various incentives for farm operators to submit the required RRA forms. The first is to ensure the land to which they are providing services does not lose its eligibility to receive Reclamation irrigation water. The second incentive is to not owe the district(s) in question $260 when we issue an administrative fee bill to recover the additional costs we incur as a result of the farm operator not submitting the required form. An additional incentive may be to maintain an effective business relationship with landholders by ensuring compliance with all statutory and regulatory provisions, which will impact the landholders if compliance is not achieved.

Comment: Who would audit and determine accuracy of the reports submitted by farm operators?

Response: It is our responsibility to audit the RRA forms submitted by farm operators. The responsibility of the districts is to collect such forms and to complete the Tabulation G annually based on the information provided on the Form 7–21FARMOP. Nevertheless, it must be remembered that the primary purposes of the forms requirement for certain farm operators is to identify farm operators and provide us with information to determine an audit priority of their associated farm operating arrangements, not to audit the Form 7–21FARMOP.

Comment: How will the government verify the data submitted by farm operators?

Response: We will use the documentation associated with the farm operating arrangement that we review during an audit to verify the data. We will also review information submitted by landholders who have hired the farm

operator in question to verify information provided by the farm operator on the Form 7–21FARMOP.

Comment: Regarding the forms you submitted for comment on January 8, 1999, we believe there will be problems for irrigation districts trying to get people to turn in the forms. A district would send the new form to all farm operators identified on the landowners' forms. However, consider a situation where a farm operator who operates on more than 960 acres in more than one district fails to file forms. While one district may not find this to be a problem, because the farm operator works less than 960 acres in that district, the combined acreage requires that the farm operator file forms. How would either district know that they should not deliver water until the forms are filed? It seems that each district would have to require farm operators to file forms regardless of whether the proposed rules require them to do so.

Response: We have not extended the RRA forms requirements to all farm operators. If a district determines that it would be best to require all farm operators to submit Form 7–21FARMOP, that is the district's prerogative. An alternative would be to send Form 7–21FARMOP to all farm operators identified on landholder forms and let the farm operator decide if he/she/it is required to complete it and return it to the district. Moreover, districts often have knowledge of large farm operators doing business in the region and could send these operators forms. We anticipate holding workshops after we publish the rule to ensure that districts, landowners, and farm operators have notice of the final rule.

Comment: Is a farm operator who is required to report the landholdings on which he provides services eligible to apply class 1 equivalency under 43 CFR 426.11? If so, can equivalency be applied to all land attributed to a particular farm operator, if it is otherwise eligible nonexcess land?

Response: Farm operators are not eligible to use class 1 equivalency factors. Class 1 equivalency factors are not to be used in determining if an individual, legal entity, or organization is required to submit RRA forms. This prohibition is clearly stated in 43 CFR 426.18(g)(3)(i). If, upon review of the farm operating arrangement, a farm operator is determined to be a lessee, then and only then will that lessee be eligible to utilize available class 1 equivalency factors in determining how much land can be selected as nonfull-cost when the lessee completes the "Selection of Full-Cost Land" (Form 7–21FC).

Trusts

Comment: We object to the proposed rules and urge Interior to refrain from further rulemakings that target trusts.

Response: The purpose of the final rule is to identify certain farm operators whose farm operating arrangements will then be audited to determine if they are leases for acreage limitation purposes. Determining if a farm operating arrangement is a lease for acreage limitation purposes is not a new compliance activity, nor does it specifically "target" trusts. The rule will also ensure the intent of the excess land provisions is being met.

Comment: We object to any change in the law or regulations that deprives us of our ability to do what we believe is in the best interest of the trust's beneficiaries. We object to any change in the regulations which would preclude us from selecting the best possible farm manager for the trust.

Response: The regulation would not prevent you from selecting the best farm manager for your trust as long as the farming arrangement you agree to is not a lease for acreage limitation purposes (this does not represent any change from the current regulatory environment). The regulation would, however, require you to pay the full-cost rate for the water received on the land if you employ a farm operator who once held that land as excess land and sold or transferred it at an approved price.

Comment: Trusts that you already approved should not be subject to any additional regulations.

Response: As with most regulatory programs, in recognition of changing conditions from time to time, we need to adjust regulations to ensure that we continue to properly implement the law. Nevertheless, there are no new additional regulatory requirements being imposed on trusts by this rulemaking, unless the trust holds formerly excess land and the trustee contracts with a farm operator who was the former owner of that land who sold or transferred it at an approved price. In such cases the trustee has three options: (1) Before January 1, 2001, hire a different individual or legal entity to provide services to the land; (2) Pay the full-cost rate for Reclamation irrigation water delivered to such land; or (3) Do not irrigate the land in question with Reclamation irrigation water.

Comment: The 960-acre limitation on trusts is reasonable, but trusts in existence before January 1, 2000 should be exempt from this regulation.

Response: We have not placed a 960-acre limitation on trusts. Rather, the rule requires farm operators to submit RRA forms if they provide services to more than 960 acres held in trusts or by legal entities. We therefore have not accommodated this suggestion in the final rule.

Comment: Our entire farming arrangement, including the initial engagement of the former landholder as farm manager, was approved by the Department of the Interior at the time the trust was created. Any change in that situation appears to be targeted in a punitive way to this trust and its beneficiaries.

Response: The Secretary approves trusts under Section 214 of the RRA and, on occasion, has determined that certain farm operating arrangements are not in fact leases. The Secretary does not approve "entire farming arrangements," nor would doing so preclude the exercise of rulemaking authority under Section 224(c) of the RRA. Moreover, this rule is not targeted at any particular arrangement. This rulemaking addresses the practice of landholders selling excess land at an approved price and then being hired by the new landholder to continue to farm the former land as a farm operator. This practice has been used by existing large trusts in the Central Valley Project. Without the finalization of the proposed rule, this practice may spread to other areas, thereby allowing excess landholders to fashion arrangements that permit them to continue substantially the same enterprise using subsidized water. By eliminating any incentive for the excess landowner to maintain any interest, either property or contractual, in its formerly excess lands, we believe we will have furthered the policies set forth in Section 209 of the RRA and the excess land provisions of Federal reclamation law. Further, Reclamation has decided not to make this provision effective until January 1, 2001, to provide time for trustees and others who may have hired the former excess landowner to determine how best to continue to farm the land.

Comment: We disagree that excess landowners deed land to trusts in order to abuse the congressional intent of reclamation law. As farmers get older, they use the trusts to preserve their heritage for future generations. This allows small family farms to remain intact after the death of the head of the household.

Response: The Congress was clear with regard to excess land. The landowner is to divest all interest in that land if such land is to become eligible to receive Reclamation irrigation water. No exceptions were made for estate planning purposes.

Impacts of the Rule

Comment: The impacts of the rule on farmers and districts would be outrageous with no resulting benefits; we request that you rescind the proposed rule.

Response: The final rule does provide a benefit to landholders and districts because it will help minimize the likelihood that districts and landholders will face cost prohibitive retroactive charges. Under the Acreage Limitation Rules and Regulations, if we determine a farm operating arrangement is a lease, the applicable nonfull-cost entitlement is applied retroactively to the landholding of that lessee (the farm operator). If the farm operator had been providing services to more acreage than the applicable nonfull-cost entitlement under his/her/its farm operating arrangements, the full-cost rate would be applicable. If the farm operating arrangements have been in place for a number of years, the resulting bill to the district could be in the tens of thousands of dollars. It is likely that districts will ultimately hold the landowner and lessee responsible for payment of such a bill.

The final rule provides us with an effective means to identify farm operators who are providing services to land totals that exceed the maximum acreage limitation entitlement (the ownership and nonfull-cost entitlements; 43 CFR 426.2). As a result, we will be able to request that the associated farm operating arrangement be submitted for review early in the process and, hopefully, minimize the likelihood of districts facing full-cost bills long after the lessee (farm operator) provided the services.

Comment: You have grossly understated the impacts of the proposed rules, particularly on small farmers. Many small farmers have their land planted to permanent crops. These farmers, unlike large farming operations, cannot afford all of the equipment necessary to farm the land, and rely heavily on contractors. These contractors provide services to many farmers to spread their investment in the equipment across the requisite number of acres. Although you say the effect of the proposed rules should be limited to approximately 100 farming operations westwide, this is simply not the case.

Response: The regulation itself is limited to those farm operators providing services to trusts and legal entities and to their formerly excess land. The primary way a small farmer will be impacted is if that landholder is a trust or legal entity and its farm operator is required to submit an RRA form because he/she/it is providing services to more than 960 acres held in trusts and by legal entities, but does not. The trust or legal entity can remedy this problem by encouraging its farm operator to submit the required form. Of course, if it turns out that the farm operator is a lessee for acreage limitation purposes, then the nonfull-cost entitlement would be applied, which would happen even without this regulation. The other way a small farmer would be impacted is if the landholder (1) Is a trust or legal entity, (2) Holds formerly excess land, and (3) Hires a farm operator who was the former owner of that land when it was excess and who sold or transferred it at an approved price. We do not believe there are many "small farmers" who face this situation.

Comment: The proposed rule would have significant impacts on many growers who receive Reclamation water. Many farms could suffer if you force the vendors to file forms just to justify doing business in our district. This could mean loss of jobs in those companies and loss of profits.

Response: We fail to see how requiring a farm operator to file an RRA form could result in a loss of jobs or profits to companies who provide farm operating services.

Comment: The regulation could negatively affect individuals who are not part of any "large trust" and who are in full compliance with reclamation law.

Response: The regulation could negatively affect individuals who are not part of any "large trust" only if such individuals are not currently in full compliance with Federal reclamation law, e.g., if their farm operating arrangement is really a lease for acreage limitation purposes. A primary purpose of this regulation is to collect information to ensure certain farm operating arrangements are in full compliance.

Comment: By its vague and overgeneralized approach, the proposed rule is sweeping in its information requirements and puts districts at risk of violating the prohibition on water deliveries to non-reporting service providers they do not even know exist.

Response: In order to help implement this new RRA forms requirement and provide district staff time to familiarize themselves with farm operators providing services in their districts, we have provided for a later effective date than we included in the proposed rule; specifically the effective date will be January 1, 2001, rather than 2000.

Comment: RRA forms and regulations require an exceptional time commitment, both to comment on new regulations/forms and to monitor acreage limitation and eligibility status. RRA regulations are becoming more complicated and more difficult to administer.

Response: Unfortunately, the enforcement and administration of the RRA is somewhat complicated because of the nature of the provisions included in the Act. Reclamation has tried to simplify the forms requirements where possible.

Comment: The regulation places an unreasonable burden on irrigation districts. Each district will have to send out forms, collect and store them, be subject to audits, all of which will increase costs. There will be increased time and expense for district personnel to receive, review, reissue forms, and track the receipt of the new forms for a farm operator. You should make a finding and determination of the impact that the regulations would have on irrigation districts who are responsible for implementing the regulations.

Response: We believe such impacts would be minimal westwide. We have no evidence that currently there is widespread use of farm operators providing services to more than 960 acres held in trusts or by legal entities. We prepared an Environmental Assessment (EA) on this rulemaking, and we refer the commenter to that EA for further information concerning impacts.

Comment: The information requirements are burdensome because no time limit is placed on determining prior ownership of formerly excess land and it requires information to be submitted by parcel.

Response: All RRA forms require information to be submitted by land parcel. As a result, we anticipate that the information requirement for certain farm operators will be no more burdensome than the information requirements imposed on landholders.

Comment: It is inappropriate to require information from parties not directly benefitting, when the consequences fall on the actual beneficiaries, not those parties.

Response: We do not believe it is inappropriate to require certain farm operators to submit RRA forms. Farm operators directly benefit from providing services to land by receiving payment for those services.

Comment: We are concerned about this regulation causing an adverse impact of the future eligibility of irrigation land. For example, we are concerned that when a deed covenant

on acquired excess land expires, the proposed rules could keep the buyer's land ineligible for project water indefinitely, if the farm operator was the former owner of the land when it was excess.

Response: This rulemaking will not prohibit the delivery of irrigation water to formerly excess lands being operated by the former owner. Rather, the full-cost rate will be charged for water delivered to formerly excess lands operated by the former owner of such lands. This rule creates a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess land in parcels of 960 acres or less to independent parties.

Comment: Your field offices have been downsized. How will you find money in the budget for compliance specialists to enforce these regulations? If operators fail to file forms, how will anyone ever know?

Response: We already are required to audit farm operators. The requirement for farm operators to submit RRA forms should simplify the process used to determine what farm operators are providing services to more than 960 acres. We expect to find instances of farm operators not filing RRA forms through our normal water district review process and audits of large landholders.

Authority

Comment: You do not have statutory authority to issue § 428.9 of the proposed rule. The proposed rule contains no reference to its statutory authority, and in the preamble, there is only one attempt to explain that RRA Section 209 authorizes the proposed rule. We assert that Section 209 does not authorize the proposed rule, because nothing in that Section authorizes Interior to impose eligibility or pricing restrictions on owners or farm managers once lands have been disposed of in compliance with Federal reclamation law to nonexcess owners.

Response: We believe that we have such authority based on the excess land provisions of Federal reclamation law, specifically Section 209 of the RRA, and our general rulemaking authority to carry out the provisions of the RRA, as set forth in Section 224.

Under the Supreme Court's decision in *Chevron USA, Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), an agency may issue regulations to the extent that its statutory interpretations reasonably relate to the purposes of the enabling act and are within the agency's grant of authority. Section 209 of the RRA requires landholders to dispose of their interest in excess lands in order for such land to be eligible to receive Reclamation irrigation water. By eliminating the capacity of an excess landowner to retain or obtain an interest in its formerly excess lands, the Congress created a strong incentive for excess landowners to dispose of their excess lands and sever their relationship with such lands.

In practice, we have found that the capacity of an excess landowner either to retain or obtain a contractual interest in formerly held excess lands creates an incentive in the excess landowner, contrary to that created by the Congress in Section 209, to dispose of the excess lands to a trust or other legal entity that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest. Rather than disposing of the excess lands through independent sales in tracts of 960 acres or less, a former excess owner could dispose of its excess lands to a large trust or other legal entity that the former owner itself created or with which the former owner has a continuing relationship or interest, which would allow the former owner, by contract, to continue to farm its formerly excess lands as a single unit. We would view such practices as an abuse of the excess lands laws because through these dispositions, a situation is created where substantially the same enterprise—using the same employees, same equipment, and same water at the nonfull-cost rate on the same undivided tract of land—continues to farm the same large acreage.

We believe allowing such practices is contrary to policies enunciated by the Congress in enacting Section 209 of the RRA. Under Federal reclamation law, the Congress sought to provide irrigation water to small family-owned farms in its effort to develop the West and increase agricultural production, but in a manner that did not fuel land speculation or contribute in any way to the monopolization of lands in the hands of a few private individuals. *Peterson* v. *U.S. Dept. of the Interior*, 899 F. 2d 799, 802–03 (9th Cir.), *cert. denied*, 498 U.S. 1003 (1990). The policy was and still is to make the benefits from the program "available to the largest number of people, consistent with the public good." *Ivanhoe Irrigation Dist.* v. *McCracken*, 357 U.S. 275, 292 (1958). In 1982, the Congress amended Federal reclamation law with the RRA to curb known abuses like leasing and to limit the water subsidy being provided. The Congress did not see any public purpose or rationale for providing taxpayer subsidies to large-scale farming interests that could well afford to pay for the public benefits they receive. Full-cost pricing for farms in excess of the acreage limitations was a compromise between the economics of current farming enterprises and the policy of broad distribution of water benefits to small farmers.

We have already developed and enacted regulations found in 43 CFR 426 to carry out the Congress's intent in the excess lands provisions. However, the development of current practices that impede the fulfillment of congressional intent requiring the total divestiture of a former owner's interest in its excess lands in independent transactions of 960 acres or less requires the supplementation of the rules dealing with the disposition of excess lands. To reduce the incentive to create and engage in practices contrary to congressional intent in enacting Section 209, we are exercising our rulemaking authority under Section 224(c) of the RRA. By requiring full-cost pricing of water delivered to lands operated by a former owner of excess lands, the final rule creates a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess lands in parcels of 960 acres or less to independent parties, as intended by the Congress.

Comment: Section 428.9 is clearly beyond the scope of your authority under the RRA, and you should delete it in its entirety. A true operating arrangement is not an interest in the land or a lease. Your assertion that the contractual relationship between the former excess landowner as farm operator and the current landholder represents a continuing financial interest in the land is not true. The RRA does not attempt to limit the former excess owner's relationship with the new landholder, and you have no authority to do so.

Response: As discussed in the above response, our reading of Section 209 and congressional intent in enacting the excess land provisions provides the authority for this rulemaking. Moreover, we are not limiting the relationship between the new landholder and the former owner. We are monitoring the relationship between the former owner and its formerly excess land to ensure that the excess land is eligible to receive Reclamation irrigation water in accordance with the RRA. If excess land

is truly being sold or transferred in a manner that results in the intent of the excess land provisions being fulfilled, then this rulemaking should have no impact on those new landowners.

Comment: There is no authority that provides that the farm manager, under a farm management agreement, owns an "interest" in the farmed land. In fact, authorities conflict with this proposition. (In the case of *Von Goerlitz* v. *Turner*, 65 Cal. App. 2d 425, 429 (1944) it was held that an operating agreement does not create an "interest" in real property.) Interior itself has never interpreted the entry into a farm management agreement as creating an "interest" in property. Interior has always recognized that the reclamation laws relate only to "ownership" and "leasing" of lands, not to farm size, and not to operation under a management agreement.

Response: By requiring full-cost pricing of water delivered to lands operated by a former owner of excess lands, the final rule creates a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess lands in parcels of 960 acres or less to independent parties, as intended by the Congress. This causes no harm to the former owner of that land. If the former owner wants to continue to be involved in the land in question either as a lessee or a farm operator providing services, the former owner may do so, and the land will be eligible to receive Reclamation irrigation water. However, where the former owner contracts to farm formerly excess land, such deliveries will be at the full-cost rate.

Comment: With regard to farm operators who provide services to land sold or transferred out of excess status, there does not appear to be any legal basis to preclude delivery of water to such land, because it has been brought into compliance with the acreage limitation provisions by the sale.

Response: See our response to the first comment in this section. The final rule does not preclude water delivery to formerly excess lands. It is up to the new landowner how the land is to be farmed, factoring in the costs for Reclamation irrigation water, and this final rule provides options regarding the use of Reclamation irrigation water.

Comment: The RRA does not give you a basis to impose the full-cost rate on a qualified recipient, except as determined by the recipient's landholding, which according to Section 202 of the RRA, must be owned or operated under a lease.

Response: See response to first comment in this subsection. Section 209 clearly expresses the Congress's intent that a former owner of excess land must totally divest its interest in his/her/its formerly excess lands. Using full-cost pricing to discourage the former owner of excess lands from providing services to formerly excess land as a farm operator serves as a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess lands in parcels of 960 acres or less to independent parties, as intended by the Congress. In fulfilling congressional intent regarding disposition of excess lands, we determined that we could allow the delivery of irrigation water to such lands if the full-cost rate was paid because full-cost pricing serves as a sufficient disincentive against the former owner transferring the land to an entity that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest without foreclosing all farming options available to the current owner.

Comment: You lack authority for this rulemaking because the Secretary of the Interior has approved the large trust arrangements, and the Congress exempted trusts from the acreage limitation provisions.

Response: See response to first comment in this subsection. The RRA does not exempt trusts from application of the acreage limitation provisions. It exempts trustees acting in a fiduciary capacity from application of the acreage limitation provisions if the trusts meet certain criteria. In approving trusts, the Secretary determined whether these criteria have been met. Moreover, the rulemaking does not impose additional requirements on trusts per se. It addresses practices of excess landowners that have developed since the enactment of the RRA to avoid Section 209 and the Congress's intent that former owners of excess lands totally divest themselves of interests in excess lands by disposing of excess lands in parcels of 960 acres or less to independent parties.

Comment: You do not have the authority to adopt regulations that would apply ownership or full pricing limitations to lands held in trust. The Congress explicitly addressed the applicability of these limitations in Section 214 of the RRA, which is clear and unambiguous. You must give effect to this explicit congressional intent, and not try to finalize these regulations.

Response: The provisions of Section 214 apply solely to a trustee acting in a fiduciary capacity and only if the trust in question meets certain criteria. The RRA does not provide that land held in trust is totally exempt from the application of the acreage limitation provisions. All land held in trust is attributed to either the beneficiaries, grantors, or trustees, depending on the type of trust and if the criteria found in 43 CFR 426.7 have been met. The acreage limitation entitlements and other landholdings of the parties to whom the land held in trust is attributed will determine if that land is eligible to receive Reclamation irrigation water and at what price.

Comment: Interior faces substantial legal barriers when it seeks to change RRA regulations, including breach of contract, regulatory takings, and administrative res judicata (see *United States* v. *Utah Construction & Mining Co.*, 384 U.S. at 394, 421–422.)

Response: These regulations supplement the 1996 RRA regulations to address some current practices engaged in by former owners of excess lands that are contrary to the policies set forth by the Congress in the RRA. We do not believe that any claims based on breach of contract, regulatory takings, administrative res judicata, or statutory violations have merit. While it is unclear what contract is alleged to be breached or what vested property right will be taken, these regulations should not affect any contracts between Reclamation and the districts. Moreover, landowners have no vested right to the delivery of nonfull-cost water to excess lands regardless of who owns, leases, or operates the lands. We believe that this rulemaking is rationally related to the provisions of the RRA and the Congress's concerns to promote small farming operations and equitable distribution of water under modern farming conditions.

Comment: The proposed rule would impose significant information requirements on non-water using parties identified in the rule as "farm operators." Neither the RRA nor other Federal reclamation law contemplates placing information requirements on parties other than landowners and water users. It is unclear whether you have the legal authority to compel parties other than project beneficiaries to submit information to you.

Response: Section 224(c) of the RRA requires us to collect all data needed to carry out and ensure compliance with the acreage limitation provisions of

Federal reclamation law. We have determined that we need additional information concerning farm operators to ensure that we are aware of those providing services to more than 960 acres held in trusts or by legal entities. Only by reviewing farm operating arrangements can we be sure that they are not really leases for acreage limitation purposes.

Need for the rule

Comment: We believe that until there is actual evidence that the vast majority of water users are not in strict compliance with the current RRA regulations, you should not impose additional burdens upon the water users.

Response: Most parties have long agreed that Reclamation should be auditing farm operating arrangements to ensure they are not leases for acreage limitation purposes. If we do not take such action, we believe that in a relatively short time the vast majority of water users would not be in strict compliance. A primary purpose of this regulation is to more effectively identify farm operating arrangements that should be reviewed to determine if they are leases.

Comment: Expanding the reporting and certification net to capture more than what is required for the economic interest standard is a waste of time, will add an additional burden to districts westwide, and will do nothing to help compliance with the RRA.

Response: We are expanding the RRA forms requirements so that we can more efficiently and effectively identify those farm operators that need to be audited to determine if their farm operating arrangements are leases for acreage limitation purposes. We will audit all farm operators who will be required to submit the new Form 7–21FARMOP. At that point, we will apply the economic interest-test.

Comment: You could more fully utilize the sources of information already available, such as the Farm Service Agency and existing RRA forms.

Response: We have been utilizing both of these sources of information concerning farm operators. Records maintained by the Farm Service Agency (FSA) are useful. However, because of the differences between the acreage limitation program and the FSA programs, the FSA records do not always provide the information we need to identify farm operators. As for the RRA forms, we have been collecting information on farm operators since 1988. However, as we explained in the Preamble to the proposed rule, this effort requires the district staff to provide information to us on every farm operator reported by landholders on RRA forms submitted to the district. We must then collate that information to determine if any farm operators are providing services to more than 960 acres and, thus, be the subject of an audit. Any differences in the information included on the RRA forms by landholders concerning names, addresses, telephone numbers, etc. materially affect the effectiveness of this process. This entire system can be significantly simplified for both the districts and us by requiring only those farm operators who provide services to more than 960 acres to submit RRA forms.

Comment: New farm operator forms are not necessary. Landowners could just note the taxpayer identification number of the entity providing farm operating services on their annual certification forms. Then, if Interior determines an operator is operating more than 960 acres, it could collect applicable data as per RRA Section 224(c). The burden should lie with Interior, not with farmers and farm operators.

Response: Requiring landholders to include the taxpayer identification number for farm operators on landholders forms would reduce problems associated with using names, addresses and telephone numbers as identifiers; however, it is only a partial solution. This is because taxpayer identification numbers apply only to legal entities. Individuals who are providing services as farm operators have social security numbers and while we can ask, we cannot require an individual to provide his or her social security numbers on RRA forms. We also do not believe a landholder would normally have the taxpayer identification number for farm operators with whom the landholder has contracted for services. Thus, this would add to the burden landholders face in completing their RRA forms. Finally, a requirement to include the taxpayer identification number for farm operators on landholder forms does not address the problems we have encountered with districts annually having to provide us with information on all operators providing services to land in their districts or the need to then collate that data in order to determine which farm operators are providing services to more than 960 acres.

Comment: Farm operator information is already provided on individual, entity, and trust forms. To require an additional farm operator form is redundant and burdensome. We suggest that you could change Forms 7–21Summ–C and 7–21Summ–R to include information on whether a landholder utilizes an operator, and if so, whether the operator works on more or less than 960 acres. You could then review the forms and compile a list of farm operators—this would allow you to gauge the scope and size of the problem without causing hardship on custom operators, landowners, and districts.

Response: This suggestion would require districts to include additional information on the tabulation sheets they are required to annually submit with their summary forms. We will require districts, as a result of this final rule, to complete a new tabulation sheet providing limited information from the new Form 7–21FARMOP submitted by farm operators. The difference is that the commenter's suggestion would significantly increase the burden on districts as compared to what this final rule will require, because rather than providing information on the tabulations sheets for less than an anticipated 200 farm operators submitting forms, district staff would be required to submit information on every farm operator reported on landholder forms. In addition, this suggestion would not relieve the need for us to collate that information to determine which farm operating arrangements need to be audited. The only way this suggestion would address that problem is for us to require much more detailed information on landholder forms concerning any farm operating arrangements. That information would then have to be included by districts on tabulation sheets. Such an arrangement would increase the RRA forms burden on both landholders and districts.

Comment: You already have the tools available to determine whether a farming arrangement is a lease since all leases must be in writing. You should focus on your current enforcement powers instead of imposing new useless requirements.

Response: It is true that all leases must be in writing. However, if we only reviewed those farming arrangements that the landowner and other party readily admit are leases, then we would not be in compliance with the statutory requirement to review compliance by all individuals and legal entities. This includes reviewing operating arrangements to determine if they are really leases for acreage limitation purposes.

Comment: There are sufficient legal remedies under reclamation law to correct perceived abuses and to stop water deliveries to "entities" that are not in compliance with acreage limitation.

Response: We agree we have legal remedies to correct abuses. The regulation is intended to gather information more effectively to determine if there has been an "abuse" and further define noncompliance with respect to the excess land provisions.

Comment: Because you may not apply ownership and full-cost limitations to lands held in trust, the information collection from farm operators that perform operations on trust lands in excess of 960 acres is unnecessary.

Response: The acreage limitation requirements are in fact applied to land held in trust. They are applied in two ways. First, all land held in trust must be attributed to individuals or entities, be it the beneficiaries, trustees, or grantors. The acreage limitation entitlements and westwide landholdings of those individuals and entities to whom the land is attributed determine if the land held in trust is eligible to receive Reclamation irrigation water and how much must be paid for such water. The second application occurs if the trustee should lease out the land held in trust. The nonfull-cost provisions apply to that lessee. The new information collection is to ascertain if the trustee has employed a farm operator so that we can review the farm operating arrangement to determine if it is really a lease for acreage limitation purposes.

NEPA Review

Comment: The environmental impact statement (EIS) prepared for the last rulemaking generated substantial public involvement and resulted in "preferred alternative" regulations that did not include farm operator reporting requirements. Those regulations were finalized subject only to the trust issues discussed in the ANPR. We do not think that anything has changed since the preparation of the EIS to warrant this or any other change in the RRA regulations.

Response: This rulemaking is a result of the trust issues discussed in the ANPR.

Comment: The law is clear that any new rulemaking that considers limiting water subsidies in the 17 Western States but then results in a final set of regulations that fails to limit subsidies is fatally defective if the regulations are not fully analyzed under NEPA. The effect on the environment of failing to enforce the RRA's pricing limits is simply too great to allow for categorical exclusion.

Response: We believe that the categorical exclusion is justified for this rulemaking. However, in order to be responsive to public comments, we have prepared an Environmental Assessment to more carefully analyze the regulation under NEPA.

Comment: You should consider the alternative of returning any water savings from the Central Valley Project to the Trinity River for implementation of the Trinity River Flow Decision.

Response: This suggestion falls outside of the scope of this rulemaking. In addition, we do not anticipate any water savings, since it is more than likely that landholders will adjust their farming practices to minimize any impact of this final rule.

Part 428—Summary of Changes; Public Comments and Responses

This section of the preamble describes changes from the proposed rule to the final rule and provides responses to public comments received on the proposed rule by section.

Section 428.1 Purpose of this Part

This section concisely identifies the issues that 43 CFR part 428 addresses. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

Section 428.2—Applicability of this Part

This section summarizes to whom the final rule applies and provides that this rule supplements the regulations found in 43 CFR part 426. We made no changes to this section in the final rule as compared to the proposed rule.

Comments Concerning § 428.2—Applicability of this Part

Comment: The language in § 428.2(a) will add another layer of categorization of landholders, which will only add to the confusion for landholders and districts. This categorization will add to the administrative burden on districts and Reclamation.

Response: We agree that at least initially another RRA forms submittal threshold and the limitation of the application to farm operators providing services to trusts and legal entities could cause confusion. However, we believe this is preferable to the burden associated with requiring all farm operators to submit Form 7–21FARMOP if they are providing services to more than 40, 80, or even 240 acres.

Comment: The proposed regulations concerning "farm operator" are not necessary because the original act makes no mention of this group and more importantly the farm operator has nothing to do with the ownership of the land which is the basis for eligibility.

Response: While ownership is the basis for determining the eligibility of land to receive Reclamation irrigation water, the price to be paid for such water is based on the amount of eligible acreage, leased or owned, to be irrigated. As a result, farm operating arrangements must be reviewed to determine if they are leases for acreage limitation purposes and thus subject to application of the nonfull-cost entitlement provisions of the RRA.

Comment: The text of § 428.2 includes a possible oversight: subsection (b) extends the regulations to certain operators of formerly excess land (those who previously owned the land). But it does not address the fact that the operator can mask his true identity, perhaps by setting up a second legal entity to farm the land, or adding one limited partner so that the two identities are not identical. The use of "indirect" ownership devices and creation of new legal entities should not be allowed to frustrate the purpose of the regulations. While § 428.4(b) helps somewhat by bringing indirect owners of farm operators into the definition, that may not be enough if the operating entity that is indirectly owned is still not the same as the original ownership entity. Also, § 428.9(b)(2) helps by making clear that part owners of legal entities are still subject to the new regulations, but this still assumes the operating and owning entity are technically the same. You must change the regulations to address what happens when the original owner simply changes the legal entity that it uses to operate the formerly excess land, even though the benefits still flow to the same person or persons.

Response: We have not made any changes to the regulation as a result of this comment. While we recognize that those who really want to evade the new RRA forms requirement may find a way to do so, we must balance our efforts to close such possible loopholes with the additional burdens such actions will have on the public.

Comment: Section 428.2 states that the proposed rule applies to farm operators who provide services to more than 960 acres. If a district has not conformed to the discretionary provisions of the RRA does the 960-acre threshold still apply?

Response: Yes, the 960-acre forms submittal threshold applies to all farm operators regardless of the acreage limitation status of the district where the land in question is located.

Comment: Section 428.2(b) requires annual forms for "anyone who is the indirect owner of a legal entity that is a farm operator * * *" What about publicly traded corporations that fit the definition of "farm operator"? Does this mean that shareholders of corporate

farm operators must file individual forms every year? What about other part owners where there is no change in the operation?

Response: Section 428.2(b) does not establish forms requirements for farm operators. However, in § 428.4(b) which does establish those requirements, we have made it clear that part owners of legal entities that are farm operators which are required to submit RRA forms only have to submit a Form 7–21FARMOP if a portion or all of the land to which the legal entity is providing services was formerly owned by the part owner as excess and sold or transferred at an approved price. Accordingly, if a corporation is a farm operator that is required to submit an RRA form, only those shareholders that formerly owned land as excess and sold or transferred it at an approved price that is now being farmed by that corporation would have to submit Form 7–21FARMOP annually.

Comment: We understand the proposed rule to mean that if the same contractor does work on my ranch and someone else's that the two farms would be considered as one, so that if the total acreage reaches 960, the remainder of the property would be ineligible.

Response: That is not a correct interpretation. The simple fact that a farm operator is providing services to more than 960 acres held in trusts or by legal entities does not result in the ineligibility of land. The regulation only requires such farm operators to submit RRA forms. The land only becomes ineligible for delivery of Reclamation irrigation water if a farm operator does not submit the required RRA form; then all of the land to which that farm operator is providing services would be ineligible until the form is submitted. If as a result of an audit of a farm operating arrangement, it is determined the farm operator is a lessee, then the nonfull-cost entitlement would apply. This does not affect the eligibility of the land; rather, it will impact the price paid for Reclamation irrigation water delivered to a portion of the land that is leased.

Comment: We request clarification as to how land held by a 100 percent family-owned entity would be affected—would land be counted against the farm operator as land held by a legal entity?

Response: Yes, there is no exception for family-owned entities.

428.3—Definitions Used in this Part

This section establishes acreage limitation program definitions for terms that are not defined in 43 CFR part 426. We made two changes to this final rule as compared to the proposed rule as a result of comments received. First, we changed the term "custom operator" to "custom service provider." We believe that change will eliminate any confusion that may have occurred when we used the terms "custom operator" and "farm operator." The second change we made was to make it clear that when we define "custom service provider," we are referring to an individual or legal entity that is providing one specialized service to the landowner, lessee, sublessee, or farm operator. We used in the proposed rule the phrase "a specialized, farm related service * * *" which seemed to cause some confusion.

Comments Concerning § 428.3—Definitions Used in this Part

Comment: The definition of farm operator is unnecessary, unsupported in reclamation law, and far too broad.

Response: We disagree with the commenter. The Congress decided in 1987 that we were to audit operators, and it was clear those operators were a distinct group from landholders. We have had definitions of "operator," "custom farming service," "principal operator," etc., that we use in reviewing farm operating arrangements for quite some time. We believe that such definitions are necessary for effective enforcement of the RRA.

Comment: The regulation creates a great deal of uncertainty regarding the definition of an operator. This is unnecessary because the Congress has dealt with this definition in reclamation law.

Response: On the contrary, this definition will provide districts, landholders, and others a clearer understanding of the term "farm operator." We are not aware of any definition of the term "operator" created by the Congress in conjunction with the acreage limitation provisions.

Comment: Definition of "farm operator" could be interpreted to include any number of employees or contractors who assist in a farming operation but are not invested in the farming enterprises.

Response: The definition of "farm operator" specifically excludes employees for whom the employer pays social security taxes. It also specifically excludes custom service providers if that individual or legal entity provides one specialized, farm-related service. If a contractor is providing multiple services and those services are being provided to more than 960 acres held in trusts or by legal entities, then we want to know about that contractor for further review.

Comment: The definition of "farm operator" is not sufficient. Many operators provide multiple services to one landholder, often this is done by verbal agreement. This could fall under either "farm operator" or "custom operator."

Response: We disagree. However, we have revised the definition of "custom service provider" to make it clear that it only includes those individuals or entities providing one specialized, farm-related service. All individuals or entities providing multiple services to one landholder would be classified as "farm operators," with the exceptions included in that definition (e.g., spouses and minor children).

Comment: The definition of "farm operator" is inconsistent with the term "custom operator." What is the meaning of "performs any portion of the farming operation"? Custom operators perform part of the farming operation and may make a decision, based on equipment availability and crop maturity when the crop is fertilized, sprayed, or harvested.

Response: What we mean is that any individual or legal entity that is providing more than one specialized, farm-related service is a "farm operator" for acreage limitation purposes. In order to make sure that landholders and others do not consider "management" of the farm to be one service, we have made it clear in the definitions that all farm managers are considered to be "farm operators."

Comment: The definition of "farm operator" is far too broad; we understand it to mean that anyone else except "custom operators" is a "farm operator." This could affect farm managers who are employees of the farmer and carry out the directions of the farmer. These managers do not share in the risk of the operation, and should not be included in the definition.

Response: As we have stated, if the "farm manager" is an employee of the farmer for whom the landholder (employer) is paying social security taxes, then we do not consider that individual to be a farm operator. However, a farm manager who is an "employee" of the landholder, but the landholder is not paying social security taxes will be considered to be a farm operator for acreage limitation purposes. Other than completing an RRA form if required, generally this should cause no problems since a true employee of a landholder is not likely to have an arrangement that we will consider to be a lease for acreage limitation purposes. If the land in question is formerly excess land and the "employee" is the former landowner, all the current landholder will need to do to avoid application of

the new excess land provision is to make the individual a true employee by paying the social security taxes.

Comment: You should redefine "farm operator" as follows: "*Farm Operator* means an individual or legal entity other than a landholder that performs a substantial portion of the farming operation on behalf of the landholder. Farm operator does not include (i) custom service providers, (ii) ancillary service providers, or (iii) employees for whom the landholder pays social security taxes."

Response: We have not incorporated this suggested change in the final rule. We have learned that including a phrase such as "substantial services" in a definition makes administration and enforcement difficult.

Comment: The definitions of "farm operator" and "custom operator" are confusing and should be more clearly distinguished. We believe you are attempting to distinguish between those who provide discrete services to a farm under the direction of the landholder or other operator, and those individuals and legal entities that truly "operate" the farm on behalf of the landholder. Using the term "operator" in both definitions blurs the distinction. We suggest you use "custom service provider" for the category of those who do not have to file forms. We suggest you define the term to mean an individual or legal entity that provides a discrete service or a limited range of discrete services, and provide as many examples as possible, including:

- pest control advisors,
- irrigation consultants,
- fertilizer applicators, and
- labor contractors.

Response: We have made the suggested change to "custom operator"; it is "custom service provider" in the final rule. However, we have decided not to add more examples to the "list" of services that would be considered to be "custom services," because it would be impossible to make an all-inclusive list as part of the regulation and we do not want to give the impression that we have created an all-inclusive list. The definitions are clear that any specialized, farm related service will be considered, as long as that service is not "management."

Comment: You should exclude certain contracting arrangements from the application of the proposed rule. Commission merchants may offer financing and consulting services to a landholder, but do not share in the risk of loss of the farming operation. Also, specialty crops are produced on a forward or output contract basis. A commodity buyer similarly offers financing and consulting services to the landholder, but does not share in the profits or risk of loss of the farming operation. We suggest that you include these "ancillary service providers" within the custom service definition, or create an exclusion from the definition of farm operator.

Response: We have not included the suggested change in the final rule. It has been our experience that upon review, some forward contracting arrangements actually include transfers of economic risk from the landholder to the forward contractor. We have also seen "forward contracts" where the landholder's responsibilities have been reduced to basically being a gate-keeper, while the forward contractor performs all of the work or arranges for all of the work to be done. Consequently, we have determined that we need to audit forward contracting and similar arrangements to ensure they are not leases for acreage limitation purposes.

Comment: The definitions of "farm operator" and "custom operator" are not understandable, and the distinction between the two is not clear—by "farm operator" do you mean farm managers only? Is a tomato cannery that provides both contract planting and harvesting a "custom operator" or a "farm operator"?

Response: A custom service provider is an individual or legal entity that is providing one specialized, farm-related service to a landholder or farm operator. Everyone else is a farm operator, including all farm managers. The only exceptions are for spouses, minor children, and employees for whom social security taxes are being paid by the employer. Since the subject tomato cannery is providing a planting service and a harvesting service to the same land, it is a farm operator of that land.

Comment: You should delete the term "farm manager."

Response: We have not incorporated this suggestion. It is important for everyone to understand that we consider all farm managers to be "farm operators." Otherwise, it could be interpreted that the farm manager is an exempt custom service provider because the farm manager only provides one service; namely, management of the farm.

Comment: In many cases it is virtually impossible to determine whether a contractor hired by a farmer is a farm operator or a custom operator, because many "custom operators" may provide more than one service. Is the distinction between the two based on the number of services a contractor provides?

Response: Yes. We have made that clear in the final rule by revising the definition of custom service provider to state that it is an individual or legal entity that provides one specialized, farm-related service to the land in question.

Comment: Section 428.3 defines farm operator, but does not address the reclamation law status of the farm operator. This raises several questions about how the regulations would apply:

- If a farm operator only performs services in a district that has not conformed to the RRA discretionary provisions, is the farm operator subject to prior law provisions?
- Can a farm operator make an irrevocable election to conform to the discretionary provisions?
- Would a farm operator that benefits more than 25 natural persons be considered a limited recipient (defined in 43 CFR 426.2)?
- If a farm operator is attributed to a foreign entity or nonresident aliens, do all the provisions of the proposed rules still apply?

Response: A farm operator is not subject to either the discretionary provisions or the prior law provisions, since we are not applying the acreage limitation provisions to farm operators. However, if after reviewing the associated farm operating arrangement, it is determined that a farm operator is a lessee, then the farm operator will be required to submit the appropriate certification or reporting forms. Whether or not that lessee is subject to the discretionary or prior law provisions will then depend on the acreage limitation status of the district where the lessee holds the land in question and if the lessee has made an irrevocable election. If the lessee is subject to the discretionary provisions and is a legal entity, whether or not the entity is a qualified recipient or a limited recipient will depend on how many natural persons the legal entity benefits.

If a farm operator is a foreign entity or nonresident alien and provides services to more than 960 acres held in trusts or by legal entities, the foreign entity or nonresident alien will be required to submit a Form 7–21FARMOP. If it is determined that the associated farm operating arrangement is a lease, then whether or not the foreign entity lessee or nonresident alien lessee is eligible to receive Reclamation irrigation water will depend on if they meet the criteria provided in 43 CFR 426.8.

Comment: If a farm operator is employed for an "agreed-upon payment," does this make the farm operator a custom operator and therefore exempt?

Response: We cannot provide a general answer to this question. We have reviewed more than one farm operating arrangement where the farm operator is employed for an "agreed-upon payment" and then find a bonus clause included elsewhere in the documentation. If the farm operator is being compensated solely on a dollar-per-hour or dollar-per-acre basis, then they have not assumed any economic risk and the arrangement will not be determined to be a lease for acreage limitation purposes. However, that does not make the farm operator exempt from the RRA forms requirement if he/she/it is providing services to more than 960 acres held in trusts or by legal entities. Only by identifying such farm operators and reviewing the associated farm operating arrangements can we determine if the farm operating arrangement is or is not a lease for acreage limitation purposes.

Comment: The proposed rule does not take into consideration the actual farming practices in the west. Is a processor of any kind of an agricultural commodity that finances a grower considered to be a "custom farmer" or a "farm operator" because they provide one or more services to the farm? What if this processor has several thousand acres of this crop? We do not think that the Congress intended to do this in 1982.

Response: If a processor is only providing financing, then the processor will not be considered to be a farm operator. However, if the processor, for example, is providing financing, harvesting services, and marketing the crop we will consider that processor to be a farm operator. If that processor is providing multiple services to more than 960 acres held in trusts or by legal entities, the processor will need to submit a Form 7–21FARMOP. Regardless of whether a processor has to submit an RRA form or not, if it turns out, upon review of the farm operating arrangements, that the processor is a lessee for acreage limitation purposes, the nonfull-cost entitlement will apply to that processor. That was the intent of the Congress when they required us in 1987 to audit landholdings and operations.

Comment: Section 428.2 states that the new regulations apply only to "farm operators," and the definition of this term excludes "custom operators." But the second term is defined so broadly that many true farm operators might believe that they qualify as a "custom operator" and fail to comply with any part of the new regulations. To fix this gigantic loophole which could render the whole rulemaking pointless, the definition of "custom operator" must be tightly reworded so that operators know exactly who is covered.

Response: We have revised the definition of "custom service provider," which is now defined very narrowly. That is, it includes only individuals or legal entities that provide one specialized, farm-related service.

Comment: In order to ensure that you receive information on the full range of operators who may meet the standards for "use or possession of land" or "economic risk," the definition of "farm operator" must include "custom operators," or else you should place some reporting requirements on "custom operators." Without requiring some response from these entities, you would be relying on self-definition and self-reporting to determine which operators have to submit forms. An entity could determine that it is a custom operator, and be completely exempt from the new reporting requirements.

Response: We have not incorporated this suggested change. To do so would be imposing an RRA forms requirement on individuals and legal entities that we would never determine to be lessees for acreage limitation purposes. Accordingly, we do not need to collect information from such parties and to do so would not be in the spirit of the Paperwork Reduction Act of 1995.

Comment: Based on the definition of "farm operator," independent contractors who perform specialized services for farms and have no vested interest in the outcome of the crops would have to fill out forms.

Response: If an independent contractor is providing more than one service to more than 960 acres held in trusts or by legal entities, then that independent contractor will have to complete the Form 7–21FARMOP. Even without this form requirement, we would want to review the associated farm operating arrangement to ensure it is not a lease for acreage limitation purposes.

Comment: Instead of creating a new section on farm operators, you should create a definition of "economic interest." This would avoid the confusion regarding custom operators and place the responsibility of reporting accurately on the landowner/operator, not the district.

Response: We are not sure if the commenter is suggesting a change to the definitions in this rulemaking or to the information submitted by landholders on their RRA forms. We have not made any change to the final rule based on this comment; however, the question of who has all or a portion of the economic risk in a farm operating arrangement remains a key component of our review of farm operating arrangements.

428.4 Who Must Submit Forms Under this Part

This section establishes an RRA forms submittal requirement for farm operators who provide services to more than 960 acres held in a single trust or legal entity or any combination of trusts and legal entities. We have made several changes to this section of the final rule as compared to the proposed rule, primarily in response to comments received. Specifically, we have made it clear that farm operators will be submitting forms to districts, not directly to us. We have reviewed the references we included in the proposed rule to the "exceptions" provided in 43 CFR 426.18(g)(2) and (3) and determined adjustments were needed. We have limited which part owners of legal entities providing services to more than 960 acres held in trusts or by legal entities must submit a farm operator form. We have made it clear that farm operators will not be eligible to use a verification form, even if their farm operations do not change from year to year. Farm operators will also not be subject to the RRA forms requirement associated with landholding changes, if their farm operations change during a water year after they have submitted their RRA form for that year.

Paragraph (a) provides the general criteria as to which farm operators must annually submit RRA forms to districts. In the proposed rule, we referenced "exceptions" included in 43 CFR 426.18(g)(2) and (3). Upon review, we determined that we need to better explain the forms requirements concerning entities that are farm operators and are wholly owned subsidiaries, rather than simply referring to 43 CFR 428.18(g)(2). Accordingly, we have included that explanation as the new § 428.4(a)(2). The provisions of 43 CFR 426.18(g)(3)(i) (cannot utilize class 1 equivalency factors in determining if RRA forms must be submitted) apply to this new RRA forms submittal requirement without such being specified, since this final rule supplements 43 CFR part 426. The provisions of 43 CFR 426.18(g)(3)(ii) (part owners not considering certain involuntarily acquired land in determining if RRA forms must be submitted) do not apply to this final rule, because § 428.4(b) specifies which part owners of legal entities that are farm operators must submit RRA forms, regardless of how much land is attributed to the part owner in question. Consequently, we

removed all references to 43 CFR 426.18(g)(2) and (3) from the final rule.

Paragraph (b) continues to address the applicability of the RRA forms submittal requirements to indirect owners of a legal entity that is a farm operator and is required to submit RRA forms. We have limited the application of the RRA forms submittal requirements to only those part owners who owned the land the legal entity is now providing services to, when that land was excess and those part owners sold or transferred that land at an approved price.

Paragraph (c) is new in the final rule. It provides that a verification form cannot be used to meet a farm operator's annual RRA form submittal requirement.

Paragraph (d) is new in the final rule. It provides that once a farm operator has met his/her/its RRA forms submittal requirements for a water year, no additional RRA form needs to be submitted for that year, even if the farm operator experiences a change to the farm operating arrangements reported on the form that was submitted.

Comments Concerning § 428.4—Who Must Submit Forms Under this Part

Comment: We strongly support the proposal to expand information collection requirements to farm operators, since without this change, any meaningful enforcement of the acreage limitation provisions is impossible.

Response: We agree. The final rule retains the expansion of the information collection requirements to certain farm operators.

Comment: Regarding the 960-acre threshold for submission of forms, although the regulation requires reporting by operators of multiple holdings that total more than 960 acres, these holdings are limited to lands held by trusts and legal entities, leaving the situation of lands held by individuals unclear. We believe that trusts and legal entities and individuals should submit forms, so you can make the nonfull-cost eligibility determination as to all large scale operators.

Response: We have reviewed this matter and decided at this time not to further expand the information collection in the regulation to include farm operators providing services to more than 960 acres held by individuals or any combination of individuals, trusts, and legal entities. Nevertheless, just because such farm operators do not have to submit an RRA form, it does not mean their farm operating arrangements will not be audited when Reclamation becomes aware of their existence. On the contrary, we will audit such farm operators, and if we determine their farm operating arrangements are leases for acreage limitation purposes, we will apply the nonfull-cost entitlement accordingly. The same holds true for any legal entities that are farm operators, but would be limited recipients if they were landholders and are providing services to any acreage.

Comment: You should rewrite § 428.4(a)(1) to add the words "directly or indirectly" after "services" so it reads: "You provide services directly or indirectly to more than 960 acres westwide . . ." This is necessary because otherwise, operating companies could choose a new corporate shell for each 960 acres they operate. Subsection (b) tries to solve this problem, but does not because the triggering standard is in subsection (a).

Response: We have not incorporated this comment. However, we have explained how the parent entity of wholly owned subsidiaries must submit a Form 7–21FARMOP and include on that form all land to which its wholly owned subsidiaries are providing services.

Comment: All landholdings that farm more than 960 acres must have forms submitted which clarify whether there are farm operators or custom operators affiliated with that farm or operation. In the case of any landholding or farm that claims to have no farm operator subject to the new rules, yet reports one or more custom operators serving that farm, you should ensure that adequate documentation is provided to ensure the intent of the regulations is met, and there is no "farm operator" in fact.

Response: Any landholding that includes more than 960 acres (other than for a trust) must be in compliance with the current acreage limitation provisions. Accordingly, all ineligible excess land is not receiving Reclamation irrigation water, and any land selected as full-cost is either not receiving Reclamation irrigation water or the full-cost rate is being paid for the delivery of such water to that land. We see no value in auditing farm operating arrangements associated with such lands, since entering into a farm operating arrangement does not alter the fact that the land in question is either ineligible excess land or subject to the full-cost rate. A landholder who holds less than 960 acres westwide should not be responsible for determining if his/her/its farm operator is providing services to more than 960 acres westwide.

Comment: We believe the proposed rules impose significant and unnecessarily burdensome reporting requirements on "farm operators."

Response: We disagree. We estimate that the reporting burden would be increased by less than 200 hours (or on average 1 hour, 18 minutes per Form 7–21FARMOP) as a result of the final rule.

Comment: Section 428.4 is far too broad in its reach. It would be enough to limit the certification requirement to farm operators providing services to "a single trust or legal entity." But then the section continues to require certification from such providers to "any combination of trusts and legal entities." This language covers not only large trusts or other legal entities, but sweeps in every single testamentary trust and intervivos trust, no matter how small. Farm operators who think they are working only for a series of individuals or entities will become subject to the regulation without knowing it if some landowner dies leaving a testamentary trust. There are countless trusts and legal entities, including part-ownerships created through inheritance or other family arrangements that have nothing to do with large trusts created to hold excess land, and operated by the original owner.

Response: We have considered this issue and determined to make no change to the regulation. We do not need to collect additional information that only concerns the landholdings and operations of single trusts or legal entities that hold more than 960 acres. This is because we already know about all trusts that hold more than 960 acres, their farm operators have been identified, and any associated farm operating arrangements have been reviewed to determine if they are leases for acreage limitation purposes. As for legal entities, if a legal entity holds more than 960 acres, the land is either eligible excess due to an exception included in the acreage limitation provisions (e.g., the involuntary acquisition provisions), ineligible excess, or full-cost. Again, we do not need any additional information from such legal entities because the forms they already submit results in the determination of the eligibility of the land and the water rate to be paid, regardless of any existing farm operating arrangement.

The information we do not have concerns farm operators who are providing services to multiple landholders, the total of which would exceed the applicable nonfull-cost entitlement if the farm operating arrangement was determined to be a lease. We cannot make an exception for testamentary trusts or any other types of trusts from the RRA forms requirements,

because to do so would create a means for avoiding our intent to identify farm operators providing services to more than 960 acres held in any combination of trusts and legal entities. The RRA did not make any distinction between trusts established for families, inheritance purposes, etc., and we will not initiate such a distinction in these rules.

Comment: Requiring indirect owners of farm operators to submit forms under § 428.4 is burdensome and unnecessary. If indirect owners are shown on the farm operator's form, the only purpose served by indirect owner forms would be to determine if the indirect owner exceeds the acreage limitations through farm operator arrangements. To do this implies that all farm operators are lessees until proven otherwise. The RRA does not support this, or require it.

Response: We have incorporated this suggestion in the final rule. We have limited the requirement to submit an RRA form by part owners of legal entities who are farm operators to those part owners who formerly owned the land in question as excess and sold or transferred that land at an approved price. We need information from such part owners in order to administer § 428.9 of the final rule.

Comment: Determining who must submit forms will be very hard, if not impossible, for the districts.

Response: We realize that it will be harder for districts to identify farm operators who will need to submit RRA forms than to identify landowners and lessees. In order to facilitate this activity we encourage districts to provide information to all their landholders concerning the new requirements, especially those landholders who include information about farm operators on the RRA forms they submit. We have also changed the effective date to January 1, 2001, rather than 2000, to provide all parties an opportunity to prepare for the new requirements.

Comment: The landholder has the burden of identifying what farm operators must submit forms.

Response: We disagree. The farm operator is responsible for knowing how much land is held in trusts and by legal entities to which he/she/it provides services. If that acreage totals more than 960 acres, the farm operator must submit the new Form 7–21FARMOP. Farm operators are responsible for being aware of and in compliance with all statutory, regulatory, and other requirements that impact their activities. The landholder also may have contractual remedies against a farm operator whose failure to comply with legal requirements causes damages to a landholder. Moreover, the landholder is receiving the benefits of the Reclamation irrigation program and is responsible at all times for maintaining its farming enterprise in full compliance with existing law.

Comment: If the farm operator does not assume any risk in the growing, harvesting and sale of the crops, does the farm operator still have to comply with the proposed rules?

Response: Yes, a farm operator would still need to submit RRA forms if he/she/it provides services to more than 960 acres held in trusts or by legal entities.

Comment: Instead of requiring farm operators to file forms, you should add to the existing forms a requirement that the landowner identify anyone other than the lessee listed (if any) who has the use or possession of the property, is responsible for paying the operation expenses or is entitled to any of the profits. If there are questions about the arrangement disclosed, you have the authority to request copies of contracts, examine financial records, etc.

Response: We considered this approach, but decided against it. The alternative to requiring the submission of RRA forms from the farm operators in question is to request data on an as-needed basis and require landholders to provide information on their RRA forms about any farm operators with which they contract. We have been using this approach since 1988 and have determined that the approach taken in this rule will be more effective. Further, the approach suggested by the commenter places a greater burden on both the districts and Reclamation, than if certain farm operators are required to submit RRA forms. The commenter's approach also greatly increases the likelihood that all farm operators providing services to more than 960 acres westwide will not be identified. We need to identify those farm operators providing services to multiple landholdings, the total of which exceed 960 acres. Then we can determine if the arrangements under which the services are being provided are leases for acreage limitation purposes.

Comment: What determined that 960 acres should be the form submittal threshold for farm operators? If the reason for the 960 acres is to identify those who formerly owned lands as excess and are operating them again, the 960-acre form submittal threshold may not be sufficient for identification of such lands. Farm operators should be subject to the certification/reporting thresholds currently established.

Response: We chose the 960-acre forms submittal threshold for farm operators because it is the maximum acreage limitation entitlement. We agree that certain farm operators, if they were landholders, would have much lower acreage limitation entitlements applicable. However, we have determined at this time not to impose forms requirements on such farm operators. As for the excess land provision, we believe that the 960-acre forms submittal threshold for farm operators will help us find many of the farm operators who are directly providing services to their formerly excess land or indirectly providing those services as part owners of legal entities that are farm operators.

Comment: If the proposed rule is adopted, the submittal threshold for farm operators should not be less than 960 acres.

Response: We have not changed the forms submittal threshold in the final rule.

Comment: Landowners who wish to receive water should only have to file their eligibility papers one time, not every year, and require a refiling only when there is a change in ownership.

Response: This comment is outside of the scope of the proposed rulemaking and this final rule. RRA forms submittal requirements for landholders were reviewed and adjusted during the rulemaking that was completed on December 18, 1996. Annual RRA forms submission for all landholders remains a statutory and regulatory requirement. All exemptions from this requirement are provided in 43 CFR 426.18(g).

428.5 Required Information

This section specifies what information farm operators must submit. Paragraph (a) provides that we will determine what RRA form farm operators will complete, while paragraph (b) requires farm operators to include on that form all land to which they are providing services that is subject to the acreage limitation provisions.

Paragraph (c) provides a list of the information we will require farm operators to provide on their RRA forms. This list is not to be considered an all-inclusive list.

We made no changes to this section in the final rule as compared to the proposed rule.

Comments Concerning § 428.5—Required Information

Comment: The information you would request would provide you no benefit, and may potentially damage the parties providing it. This is an invasion of privacy, and farm operators and landowners may have more incentive to

avoid filing the forms than to comply, because of fear of adverse business consequences if the information is available to anyone that could misuse the information. For example, it is unlikely that a farm operator would be willing to disclose to its customers the names of all the other customers of that farm operator and a list of the lands owned or leased by those other customers. Similarly, landowners may be unwilling to allow a farm operator to disclose to another landowner the information about that landowner's operations—who determines when services should be performed, which services are provided to that landowner, etc.

Response: We contend the information we will collect from farm operators will be very useful. We do not believe the new RRA forms requirements are any more of an invasion of privacy than it is for a lessee who must provide information about the land being leased and the terms of the lease agreement. Section 224(c) of the RRA authorizes Reclamation to collect all data necessary to carry out the acreage limitation provisions. Therefore, if a farm operator wants to provide services to land that is subject to the acreage limitation provisions, that farm operator must be prepared to provide us with information, whether it be through the submittal of an RRA form or in response to a request for information that he/she/it receives. In addition, information provided by farm operators on Form 7–21FARMOP is protected by the Privacy Act of 1974 as is information provided by landholders on other RRA forms.

Comment: We generally agree with the listing of information you would collect on the farm operator forms, but you should clarify § 428.5(c)(7) to exclude the assignment of accounts receivable as collateral.

Response: We have considered this suggested change and decided to not include it in the final rule. We believe the provision in question is clear. It asks if the farm operating agreement itself can be used as collateral in any loan, not if the farm operator can assign accounts received as collateral.

Comment: You should not require farm operators to provide the following information: details on all lands that he or she works on, including legal descriptions and acreage; who decides what services are needed; a list of services provided for each parcel; whether he can use his agreement with the landowner as collateral for any loan; and whether he can be sued by the landowner. If you try to implement this, it will take another bureaucracy of people to administer it and check the forms.

Response: On the contrary, including all of this information on the form will help us effectively utilize our limited resources dedicated to acreage limitation administration and enforcement. The information we ask from farm operators is necessary so that we can prioritize our audit efforts in determining if farm operating arrangements are leases. Without some of the information, such as legal descriptions, we would not know if all the land was owned by one trust, related companies, etc. It should also be noted that this information needs to be provided to us when we audit such farm operators, even if we do not ask for it on an RRA form.

Comment: This information collection does not appear to address the issue of financial risk. If it is going to address the issue of who has use of the land, I think it should address financial risk, or else leave both issues to be decided through a review of the actual agreement.

Response: We think that many commenters have the belief that we will be able to determine if a farm operating arrangement is a lease for acreage limitation purposes simply by reviewing the information provided on the Form 7–21FARMOP. That is simply not the case. We will have to review associated farm operating documents (e.g., farm operating agreements, farm management agreements) before making such a determination. After we have some experience with the forms submitted by farm operators, we may revise those forms to include additional questions, some of which may be about financial risk. If we decide to revise the Form 7–21FARMOP in the future, we will provide the public with ample opportunity to comment through the process associated with the Paperwork Reduction Act of 1995.

Comment: Farm operator or custom operator information will be virtually impossible to acquire or verify.

Response: We disagree. Farm operators will submit forms, and then we can audit the farm operating arrangements to determine if they are leases, and thus, subject to application of the nonfull-cost entitlement. Verification of the information submitted will be possible by comparing the information on the Form 7–21FARMOP with the documentation associated with the farm operating arrangement and the information submitted on the landholders' RRA forms.

Comment: The reporting regulations ask the right questions regarding farm operations, but they do not necessarily ask those questions of all the right people. To avoid the problem of you having to survey all Reclamation-irrigated land that is not reported on by farm operators, I suggest you require that landowners subject to RRA reporting requirements also submit information about their farm operators. Those landowners who employ farm operators would have to supply the names, addresses, and other identifying information for these entities. Without this, you would remain virtually blind with respect to those farm operators who fail to report.

Response: Direct landowners have been required to provide information on their RRA forms concerning certain farm operators since the late 1980's. The required information has included the name, address, and telephone number for each farm operator by land parcel.

428.6 Where To Submit Required Forms and Information

This section specifies where farm operators are to submit their completed RRA forms. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

428.7 What Happens if a Farm Operator Does Not Submit Required Forms?

This section establishes what will happen if a farm operator does not submit the required RRA form. Paragraph (a) provides that if a farm operator does not submit the required RRA form, the district is not to deliver Reclamation irrigation water to the land in question and nobody is to accept delivery of such water to that land. We made no changes to this paragraph.

Paragraph (b) specifies that once the required RRA form is submitted, eligibility of the land in question to receive Reclamation irrigation water will be restored. We made no changes to this paragraph.

Paragraph (c) provides that we will impose the administrative fee defined in 43 CFR 426.20 if a farm operator fails to submit the required RRA forms and the land in question receives Reclamation irrigation water despite noncompliance with the forms requirements. We made changes to this paragraph to make it clear that we will determine the amount of any applicable administrative fee in the manner we do for landholders.

Comments Concerning § 428.7—What Happens if a Farm Operator Does Not Submit Required Forms?

Comment: A district is powerless to require compliance from a farm operator

that it has no relationship with. Districts have no legal ability to do so, and they do not want it. Districts have no way to identify farm operators within their service areas and will have no way of enforcing the proposed rules unless an operator voluntarily complies.

Response: We suggest that districts review RRA forms submitted by trusts and legal entities. That will provide an initial basis of who might be a farm operator that will be required to submit the new Form 7–21FARMOP, since landholders have been required to provide limited information concerning any operators for a number of years. The year 2000 can be used by districts to start reviewing such forms and preparing lists of farm operators who might need to be contacted. Then, starting with the 2001 water year, district staff can contact such operators to determine if they provide multiple services to more than 960 acres held in trusts or by legal entities, or simply send them a copy of the Form 7–21FARMOP with instructions.

Comment: Districts may be unfairly at risk for an administrative fee under the following example: Farm Operator X operates a 640 acre farm in District A and a 960 acre farm owned by a trust located in District B. If District A is unaware of the fact that the farm operator is operating more than 960 acres total, and they fail to get a form, then District A may be at risk for an administrative fee. This may also place the landowner at risk for full-cost charges.

Response: If the land in District A is held by a trust or legal entity, then the District A would be subject to receiving an administrative fee bill if Reclamation irrigation water is delivered to the land in question. District B would also be subject to such a bill, if it too delivered Reclamation irrigation water to Farm Operator X without a form being on file. At that point, the districts have the option of contacting the farm operator to collect the assessed administrative fee; how districts encourage payment is up to each district. The landowners will not be at risk for full-cost charges, because we no longer apply the compensation rate (full-cost) for instances of violations of RRA forms submittal requirements. However, if it turns out that a farm operating arrangement is a lease for acreage limitation purposes, then full-cost charges may apply. That would be the case regardless of whether the RRA forms submittal requirement applies to farm operators.

Comment: The proposed rules are unworkable for both districts and landowners. Farm operators are independent contractors and cannot be controlled by the farmers that hire them. Farmers have no way of correcting a problem caused by a farm operator failing to file forms other than firing them. Terminating contractors may be difficult, legally or practically.

Response: If a landholder is concerned about a farm operator being in compliance with the RRA forms requirements, that landholder has the option of including in any written farm operating agreement a requirement that the farm operator must be in compliance with those provisions. If a landholder cannot control or terminate their farm operator, the landholder's lack of control might indicate that the farming arrangement has characteristics of a lease.

Comment: The prohibition in § 428.7 against delivering water to land if a farm operator fails to submit forms is particularly harsh. It will take time after the landholders submit forms for an irrigation district to determine whether a farm operator has submitted their forms. To allow a district to determine which lands have become ineligible because of this failure, the submission date for farm operators' forms should be at least 60 days after the landholders submit their forms.

Response: We have considered this comment and decided not to incorporate it in the final rule. We encourage districts to take advantage of the delay in implementing this final rule, until the 2001 water year, to identify farm operators who may be subject to the new RRA forms requirement. Based upon more than a decade of administration of forms requirements, it is our experience that districts have proven effective in obtaining voluntary compliance. Moreover, when we discover a failure to comply with the forms requirement of this final rule during a water year (after irrigation water has been delivered), then we would make a "final determination" that the farm operator has not complied with this final rule. Such "final determinations" are subject to the notice and appeal provisions of 43 CFR 426.24.

428.8 What Can Happen if a Farm Operator Makes False Statements on the Required Forms

This section provides what action we can take if a farm operator makes a false statement on his/her/its RRA form. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

428.9 Farm Operators Who are Former Owners of Excess Land

This section establishes a restriction on former owners of excess land who sold or transferred such land at an approved price from becoming the farm operator of their formerly excess land, if that land is to be eligible to receive Reclamation irrigation water. This restriction is limited to land held in trust or by a legal entity and two exceptions are provided as explained below.

Paragraph (a) specifies that formerly excess land may not receive Reclamation irrigation water if that land is now held by a trust or legal entity and the individual or legal entity that formerly owned the land as excess and sold or transferred it at an approved price is the direct or indirect farm operator of that land.

Paragraph (b) provides two exceptions to this restriction: The land becomes exempt from the acreage limitation provisions or the full-cost rate is paid for Reclamation irrigation water delivered to such land. This paragraph also explains how the full-cost rate will be applied if a legal entity that is the farm operator has a part owner who formerly owned the land as excess and sold or transferred it at an approved price.

We have made grammatical changes to this section, and also added the words "or transferred" after the word "sold" in 428.9(a)(2), so that these regulations are consistent with part 426.

Comments Concerning § 428.9—Farm Operators Who are Former Owners of Excess Land

Comment: We agree with you clamping down on the operation of formerly excess land by those with ties to the former excess landowner. A situation where the prior owner of excess land serves as the current farm operator for a trust is a clear abuse of the RRA, and I applaud your decision to look past trust arrangements to the reality of the single underlying farm operation.

Response: We believe this provision will make our enforcement efforts under the RRA more effective.

Comment: With respect to the excess land provisions, I believe it is appropriate to extend the prohibition against receiving Reclamation water to farm operators operating land they formerly owned. However, the regulation appears to leave open the possibility that a simple corporate shell or other legal fiction could be used to allow continued operation by an entity controlled by the former owner of

excess land. You should modify the regulation to ensure that such transactions cannot be used to shield the former owner.

Response: We do not believe this result would occur because the proposed rule clearly refers to indirect farm operators in § 428.9(a)(3). Accordingly, we made no revisions to this section of the final rule.

Comment: We do not understand Interior's statement that the intent of the excess land provisions is not met in the example given in the proposed rule at 63 FR 64155. The farm operator would not earn a share of the profits or income on the land that was sold. If the farm operator is paid a fixed fee for services, and profits go to trust beneficiaries, why does this not meet the intent of reclamation law?

Response: The intent of the excess land provisions of Federal reclamation law is for the former owner of the excess land to be totally divested of any interest in excess land, if such land is to become eligible to receive Reclamation irrigation water when it is sold or transferred. The reason the excess land provisions were created was to provide farming opportunities to new family farmers. The intent of the excess land provisions cannot be met if the land is being sold or transferred to non-farmers, speculators, investors, absentee owners, etc., who then hire the former owner to farm the land for a fixed fee for service. The final rule strongly encourages the former owner of excess land to have only the most limited relationship with that land. Specifically, the former owner can provide one specialized, farm-related service to the new landholder as a custom service provider. If the new landholder believes the former owner is indispensable to the operation of the land, the full-cost rate can be paid for any Reclamation irrigation water delivered to that land.

Comment: The excess land provisions with respect to the operation of formerly excess land by a former owner are draconian. Exceptions should be made, such as when a farmer moves operations from one region to another. In order for the land to be profitable while the new operation is beginning, the farmer often leases land back to the previous landowner or lessee. The new owner should not be penalized for using the most qualified farm operator (the former owner).

Response: The excess land provision only applies to farm operators who are providing services to excess land they formerly owned and disposed of at an approved price. If the farm operator moves operations from one region to another, that farm operator is not likely to be providing services to land he/she/it formerly owned as excess and sold or transferred at an approved price. As for new owners utilizing the former excess landowner to farm the land, the entire point of the excess land provisions of Federal reclamation law is to provide farming opportunities for new family farmers, not to continue farming opportunities for the former landowner, now with the availability of Reclamation irrigation water. We would also like to note that 43 CFR 426.12(g) already prohibits that new owner from leasing the land to the former owner of that land when it was excess, unless the new owner and lessee do not intend to use Reclamation irrigation water or they intend to pay the full-cost rate.

Comment: You should not adopt the proposed rule, but if you do, the two exemptions provided should be the minimum. You should add at least one additional exemption: Expiration of the deed covenant associated with the sale of formerly excess land should negate application of the proposed rule. You should include this as § 428.9(b)(3)

Response: While we seriously considered adding this additional exemption, we have decided not to include any further exemptions in § 428.9(b) than those found in the proposed rule.

Comment: Section 426.14 of the current rules provides that nonexcess land acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise remains eligible to receive irrigation water for 5 years. During the 5-year period, you charge the same rate for water as you charged the former owner (unless the land becomes subject to full-cost pricing through leasing). Our question is that if the acquiring lender or landowner uses a farm operator on the involuntarily acquired land, will you price the water under the current rules, or will it be subject to § 428.9 (b)(2) of the proposed rules?

Response: The acquiring lender or landowner would be subject to § 428.9 in its entirety if they hire as a farm operator the former owner of that land when it was excess and who sold or transferred it at an approved price.

Comment: Section 428.9(b)(2), which requires districts to calculate separate water rates for each proportional owner or for different parcels owned by one landowner, exceeds your regulatory powers.

Response: Districts are already required to calculate separate water rates for different parcels owned by one landowner and for those parcels owned by proportional owners, as required by 43 CFR 426.12(g)(3). For example, if a landowner leases a portion of his land to a lessee who selects the land as full-cost, the district must apply the full-cost rate to only those portions of the landowner's land. In fact, except for limited recipients that did not receive Reclamation irrigation water on or before October 1, 1981, the nonfull-cost entitlement requires districts to apply the nonfull-cost rate to selected portions of a landholding and the full-cost rate to the rest of the land for any landholder whose westwide landholding exceeds the applicable nonfull-cost entitlement.

Comment: Requiring a farmer to fire a non-complying operator may limit or prohibit a farmer from employing someone with a specialized and necessary service, one that may not be easily replaced. The proposed rule leaves farmers at the mercy of operators that must be willing to comply with burdensome RRA rules, when these operators are not a problem according to reclamation law.

Response: While there may be situations where only one individual or legal entity has the knowledge and expertise to provide a specific, specialized farm-related service to land in an area, we believe such instances are rare. Nevertheless, if it is only one service that is being provided, other than management of the land, there should be no need to terminate the contract or arrangement, because such a individual or legal entity can probably be classified as a custom service provider as defined in § 428.3.

Comment: We are not aware of more than two or three farming operations where § 428.9 would apply. It appears to us that you have specifically targeted one company's farm operator arrangement with a specific trust in an attempt to appease certain environmental groups. Such a targeted rulemaking is abusive and clearly violates the equal protection provisions of the Constitution.

Response: This rule is not targeted at any particular arrangement. This rulemaking addresses the practice of landholders selling excess land at an approved price and then being hired by the new landholder to continue to farm the formerly owned land as a farm operator. We believe this practice has been used by some existing large trusts in the Central Valley Project. Without the finalization of the proposed rule, this practice may spread to other areas, thereby allowing excess landholders to fashion arrangements that permit them to continue substantially the same enterprise using subsidized water. By

eliminating any incentive for the excess landowner to maintain any interest, either property or contractual, with its formerly excess lands, we believe we will have furthered the policies set forth in Section 209 of the RRA and the excess land provisions of Federal reclamation law.

428.10 District's Responsibilities Concerning Certain Formerly Excess Land

This section specifies that districts are not to deliver Reclamation irrigation water to formerly excess land that is prohibited from receiving such water under § 428.9. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

428.11 Effective Date

This section provides details concerning the effective date of this final rule. We have made several changes to this section of the final rule as compared to the proposed rule, primarily in response to comments received and to reflect when the final rule is likely to be published in the **Federal Register**. Specifically, we decided to postpone the effective date for implementation of this rule until January 1, 2001.

Paragraph (a) provides a January 1, 2001, implementation date for all provisions of the final rule. However, our intent is to make this rule effective for the 2001 water year. Since there are a few districts that are subject to the acreage limitation provisions whose water years commence before January 1, we have recognized that fact by including an October 1, 2000, effective date for such districts concerning the forms requirements for farm operators.

As with the proposed rule, in paragraph (b) we make it clear that on January 1, 2001, the excess land provisions will apply to all farm operating arrangements then in effect and those that may be agreed to in the future. This has the effect of applying the excess land provisions of the final rule both prospectively to future farm operating arrangements and retroactively to those already in place starting on January 1, 2001.

Comments Concerning § 428.11—Effective Date

Comment: Regarding § 428.11, the second sentence seems to limit the applicability of this effective date to only one of the 10 subsections of the regulations. This is confusing and could lead to enforcement problems and possibly litigation over the intent of the regulations. We suggest you include the sentence in § 428.9, instead.

Response: In preparing the final rule, we have made it clear that all provisions of the final rule will be effective with the 2001 water year.

Comment: The January 1, 2000, effective date is not fair and does not allow enough time for landholders to make other farming arrangements to avoid cost implications. You should pick some later date to allow irrigation districts, landholders, and farm operators adequate time to adjust their operations to conform to the regulations. Many tree and vine operators have long-term operating agreements.

Response: In response to this and similar comments, we have postponed the effective date of the final rule until January 1, 2001.

Comment: Regarding § 428.11, your assertion that parties potentially affected by the regulations need merely make "other farming arrangements" before January 1, 2000, to avoid paying full-cost for water is unrealistic. There are many long-term contracts that cannot be easily terminated, and the result of terminating these contracts will significantly affect perfectly legitimate (from an RRA perspective) business relationships.

Response: As we stated above, the excess land provision is narrowly focused and will only affect land that is now held in trust or by a legal entity and was formerly owned as excess land by the current farm operator of that land. Nevertheless, we have changed the effective date for the rule to January 1, 2001.

Comment: You should have a phase-in period for the forms collection. We suggest that you do not apply full-cost or shut off water during the first year if any farm operator fails to file a form. You will not be harmed by the year delay in imposing penalties, and this would make it more fair for landholders and farm operators.

Response: Instead of having a phase-in period, we have changed the effective date to January 1, 2001, rather than 2000. It should be noted that we no longer apply the compensation rate (full-cost) when we find instances of RRA forms requirements being violated.

Comment: We suggest a 3-year implementation period, which would allow land owners, farmers, custom harvesters and farm operators time to sort out contractual matters, cropping questions and long-term financing.

Response: We believe that a 3-year implementation period is too long. However, we have changed the effective date for the rule to January 1, 2001.

Comment: You issued a memorandum to water districts dated February 1, 1999. The memorandum blurs the risk-based distinction between lessees and custom operators that has been the primary basis for determining who is a lessee since the adoption of the 1987 regulations. The terms defined in the memorandum as "custom farming service," "contract operator," and "principal operator" are not in the current regulations. The proposed rule defines the terms "custom operator" and "farm operator" similarly to the definitions in the memorandum. It appears you have begun to prematurely implement some of the new concepts and definitions contained in the proposed rule before the comment period closed and before the Commissioner has reviewed the comments, responded to them, and made a determination on the rule. We believe this conflicts with the Administrative Procedure Act and that it is improper for you to administratively direct water districts to use those terms until the rulemaking is complete. You should withdraw the memorandum.

Response: Clearly, the commenter misunderstands the purpose of the February 1, 1999 memorandum. The policy memorandum, dated February 1, 1999, was the most recent clarification of how Reclamation applies the acreage limitation provisions to sharecropping arrangements. Previously, we issued internal policy memoranda applying the criteria on what constitutes a lease under the RRA, as set forth in 43 CFR 426.6, to farming arrangements, including sharecropping. See Lease and Farm Operating Agreement Review Guidelines (April 1990); Applicability of the Reclamation Reform Act of 1982 to Sharecropping Arrangements (Sept. 28, 1993); Sharecropping and Custom Farming Services (Dec. 17, 1997). These memoranda do not address the same issues as those contained in the final rule.

Through data gathering, the final rule will assist us in identifying those farming operations that may constitute leases under the RRA. Neither the final rule nor the memoranda change the analysis for determining what is a lease. They make no change to the economic risk plus use or possession test currently set forth in 43 CFR 426.6.

While it is true that some of the definitions used in the prior memoranda are also used in the final rule, principal operator, farm operator, and custom operator are not new concepts or terms. We used similar definitions, where possible, to provide consistency and avoid confusion for those implementing

the RRA. However, to the extent that any definitions in the policy memoranda conflict with those promulgated in the final rule, the rule controls. Accordingly, there is no reason to withdraw the February 1, 1999 memorandum because it deals with whether sharecropping arrangements constitute leases under the acreage limitation provisions. The final rule does not affect those criteria or determinations.

Comment: A few commenters addressed the substance of the February 1, 1999 memorandum, asserting that the memo defined principal operator but did not provide any implications of being so identified, that the risk-based test was being abandoned, and that the determination of reasonable and ordinary crop shares to pay for services fluctuated and depended on political changes or the amount of pressure being exerted by opponents of the Reclamation program.

Response: As discussed above, the February 1, 1999 memorandum addresses issues distinct from the final rule. It is beyond the scope of this rulemaking to address the substance of the February 1, 1999 memorandum. Any substantive concerns should be addressed in another forum.

IV. Procedural Matters

National Environmental Policy Act

We have analyzed this regulation in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and Departmental Manual 516 DM. In the proposed rule, we stated that the regulation was categorically excluded from NEPA review under 40 CFR 1508.4, Departmental Manual 516 DM 2, Appendix 1, paragraph 1.6, and 516 DM 6, Appendix 9, paragraph 9.4A.1. However, we received comments that suggested we needed further environmental review. In order to be responsive to public comments, we have therefore prepared an Environmental Assessment (EA) and have found that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under Section 102(2)(C) of NEPA [42 U.S.C. 4332(2)(C)]. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in the Administrative Record for this rulemaking. We invite you to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. Executive Order 12866 defines a "significant regulatory action" as a regulatory action meeting any 1 of 4 criteria specified in the E.O. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. We have therefore submitted the regulation to OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We provide some 140,000 western farmers with irrigation water. We estimate that out of this number, fewer than 200 entities, not necessarily small entities, could be affected by the regulation. The effect on most of these entities starting on January 1, 2001, would be limited to the annual completion of RRA forms. The annual costs of completing such forms is estimated to total $4,200. The costs to the districts will be limited to distributing the RRA forms which is a nominal additional cost, if any, since districts are required to distribute RRA forms to all landholders anyway. In addition, some districts would collect a few additional forms and place information concerning farm operators on a new tabulation sheet. Considering that there are very few farm operators Westwide providing services to more than 960 acres held in trusts and by legal entities, such costs to most districts will be zero and Reclamation estimates that no district will incur more than $1,000 in additional costs due to the expansion of the information collection requirements.

For some of these entities, the farm operator was also the owner of the land in question when the land was ineligible excess land or under a recordable contract. In cases where such a farm operating arrangement is still in place on January 1, 2001, or is implemented on or after that date, the full-cost rate will apply to all deliveries of Reclamation irrigation water to such land. However, the landholder in question can avoid paying the full-cost rate by hiring a different farm operator who did not formerly own the land in question as excess. We believe it is extremely likely that trusts and legal entities will take action to have any formerly-excess land in their possession farmed by farm operators who did not own such land as ineligible excess or under recordable contract. In such cases, the trustees of trusts and the owners of legal entities may incur two types of opportunity costs: (1) Additional costs if economies of scale cannot be realized because the trustee or owner cannot select a certain farm operator to provide services to their land without incurring the full-cost rate for Reclamation irrigation water and (2) additional costs because the trustee or owner was not able to hire the farm operator with the most knowledge of the land in question without incurring the full-cost rate for Reclamation irrigation water.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This regulation:

(1) Will not have an annual effect on the economy of $100 million or more. The regulation could affect up to an estimated 200 farms, but the effects would not approach $100 million or more. For the 1996 water year, Reclamation collected nearly $6.5 million in full-cost charges westwide. These collections were from many more landholders with more associated acreage than would be affected by the final regulations. However, these regulations will not result in any immediate application of the full-cost rate, unless a farm operator is determined to actually be a lessee for acreage limitation purposes or the farm operator also was the former owner of the land when it was excess. In the case of a determination that the farm operating arrangement is a lease for acreage limitation purposes, that determination would be made with or without this rule. Nevertheless, the intent of this rulemaking is to provide a more efficient and effective way to find farm operators that should be audited. Consequently, it is likely that we will find more farm operating arrangements that are leases for acreage limitation purposes and, therefore, subject to application of the nonfull-cost entitlement than we would without this rule. But without the information collection, we simply do not know how many that may be and how much additional full-cost will be collected. Therefore, the initial economic effect is

estimated at approximately $7,000; the cost of the expanded information collection requirements and these costs include additional costs to Reclamation for the design and distribution of the new forms.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There could be an economic effect on less than an estimated 200 farms, but we do not anticipate that this will cause any increase in costs or prices.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. At most the regulation will only affect a small sector of the farming industry, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This regulation requires a new information collection from 10 or more parties, and thus a submission under the Paperwork Reduction Act was required. On July 14, 1999, OMB approved the new Declaration of Farm Operator Information (Form 7–21FARMOP) as part of the RRA forms package for landholders, under control number 1006–0005. On the same date, OMB approved new tabulation forms called Tabulation G [1. District Summary of Certification and Declaration Forms, Tabulation G of "Declaration of Farm Operator Information" Forms (Form 7–21FARMOP) and 2. District Summary of Reporting and Declaration Forms, Tabulation G of "Declaration of Farm Operator Information" Forms (Form 7–21FARMOP)] as part of the RRA forms package for districts, under control number 1006–0006. Both clearances expire on December 31, 2001.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The rule would not affect the roles, rights, and responsibilities of States in any way. The rule would not result in the Federal Government taking control of traditional State responsibilities, nor would it interfere with the ability of States to formulate their own policies. The rule would not affect the distribution of power, the responsibilities among the various levels of government, nor preempt State law. The rule modifies existing provisions for administering the RRA by requiring a new collection of information and extending the excess land provisions to certain farm operators.

Executive Order 12630, Takings

In accordance with E.O. 12630, the regulation does not have significant takings implications. Thus, a takings implication assessment is not required. This final rule will not result in imposition of undue additional fiscal burdens on the public. The regulation will not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, the regulation will not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law.

Unfunded Mandates Reform Act of 1995

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The regulation does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The regulation will require certain farm operators, which are not small governments, to submit RRA forms. The excess land provisions of the regulation will not affect small governments. The potential effects of this final rule will not amount to costs of more than $100 million per year.

Executive Order 12988, Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this regulation does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O.

List of Subjects in 43 CFR Part 428

Agriculture, Irrigation, Reclamation, Reporting and recordkeeping requirements, Water resources.

Dated: January 18, 2000.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation adds a new part 428 to title 43 of the Code of Federal Regulations as follows:

PART 428—INFORMATION REQUIREMENTS FOR CERTAIN FARM OPERATIONS IN EXCESS OF 960 ACRES AND THE ELIGIBILITY OF CERTAIN FORMERLY EXCESS LAND

Sec.

428.1 Purpose of this part.
428.2 Applicability of this part.
428.3 Definitions used in this part.
428.4 Who must submit forms under this part.
428.5 Required information.
428.6 Where to submit required forms and information.
428.7 What happens if a farm operator does not submit required forms.
428.8 What can happen if a farm operator makes false statements on the required forms.
428.9 Farm operators who are former owners of excess land.
428.10 Districts' responsibilities concerning certain formerly excess land.
428.11 Effective date.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; 32 Stat. 388, as amended.

§ 428.1 Purpose of this part.

This part addresses Reclamation Reform Act of 1982 (RRA) forms requirements for certain farm operators and the eligibility of formerly excess land that is operated by a farm operator who was the landowner of that land when it was excess.

§ 428.2 Applicability of this part.

(a) This part applies to farm operators who provide services to:

(1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or

(2) The holdings of any combination of trusts and legal entities that exceed 960 acres.

(b) This part also applies to farm operators who provide services to formerly excess land held in trusts or by legal entities if the farm operator previously owned that land when the land was ineligible excess or under recordable contract.

(c) This part supplements the regulations in part 426 of this chapter.

§ 428.3 Definitions used in this part.

Custom service provider means an individual or legal entity that provides one specialized, farm-related service that a farm owner, lessee, sublessee, or farm operator employs for agreed-upon payments. This includes, for example, crop dusters, custom harvesters, grain haulers, and any other such services.

Farm operator means an individual or legal entity other than the owner, lessee, or sublessee that performs any portion of the farming operation. This includes farm managers, but does not include

spouses, minor children, employees for whom the employer pays social security taxes, or custom service providers.

We or *us* means the Bureau of Reclamation.

You means a farm operator.

§ 428.4. Who must submit forms under this part.

(a) You must submit RRA forms to districts annually as specified in § 428.6 if:

(1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; or

(2) You are the ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries that provide services in total to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities.

(b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually, if any of the land to which services are being provided by that legal entity is land that the part owner formerly owned as excess land and sold or transferred at an approved price.

(c) If you must submit RRA forms due to the requirements of this section, then you may not use a verification form for your annual submittal as provided for in § 426.18(l) of this chapter to meet the requirements of this section.

(d) If you must submit RRA forms solely due to the requirements of this section, then once you have met the requirement found in paragraph (a) of this section you need not submit another RRA form during the current water year, even if you experience a change to your farm operating arrangements. Specifically, the requirements of § 426.18(k)(1) of this chapter are not applicable.

§ 428.5 Required information.

(a) We will determine which forms you must use to submit the information required by this section.

(b) You must declare all nonexempt land to which you provide services westwide.

(c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:

(1) Identifier information, such as your name, address, telephone number;

(2) If you are a legal entity, information concerning your organizational structure and part owners;

(3) Information about the land to which you provide services, such as a legal description, and the number of acres;

(4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;

(5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;

(6) If you provide different services to different land parcels, a list of services that you provide to each parcel;

(7) Whether you can use your agreement with a landholder as collateral in any loan;

(8) Whether you can sue or be sued in the name of the landholding; and

(9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

(a) If you do not submit required RRA form(s) in any water year, then:

(1) The district must not deliver irrigation water before you submit the required RRA form(s); and

(2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).

(b) After you submit all required RRA forms to the district, we will restore eligibility.

(c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e) of this chapter. We will determine these costs in the same manner used to determine costs for landholders under §§ 426.20(a)(1) through (3) of this chapter.

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

(a) Land held in trust or by a legal entity may not receive irrigation water if:

(1) You owned the land when the land was excess, whether or not under recordable contract;

(2) You sold or transferred the land at a price approved by Reclamation; and

(3) You are the direct or indirect farm operator of that land.

(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) The full-cost rate is paid for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

(a) All provisions of this part apply on January 1, 2001, except:

(1) For those districts whose 2001 water year commences prior to January 1, 2001, the applicability date of §§ 428.1 through 428.8 is October 1, 2000.

(b) On January 1, 2001, this part applies to all farm operating arrangements between farm operators and trusts or legal entities that:

(1) Are then in effect; or

(2) Are initiated on, or after, January 1, 2001.

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Deferred Research and Development Costs; Proposed Rule

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 1999–013]

RIN 9000–AI62

Federal Acquisition Regulation; Deferred Research and Development Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify and simplify the "Deferred research and development costs" cost principle.

DATES: Interested parties should submit comments in writing on or before March 27, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.1999–013@gsa.gov Please submit comments only and cite FAR case 1999–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–013.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the cost principle at FAR 31.205–48, Deferred research and development costs, to clarify and simplify its contents. The Councils propose to—

(a) Delete the second sentence addressing precontract costs, as these types of costs are adequately addressed at FAR 31.205–32, Precontract costs;

(b) Revise the last sentence to more clearly indicate that incurred costs in excess of the contract price or grant amount for research and development (R&D) effort are unallowable and accordingly, not reimbursable by the Government; and

(c) Make several editorial revisions.

The Councils initiated this rule to consider whether the cost principle was duplicative of FAR 31.205–32, Precontract costs, and FAR 31.205–23, Losses on other contracts, and therefore, should be deleted in its entirety from the FAR. They concluded that the second sentence could be deleted since precontract costs are already addressed in FAR 31.205–32. However, they also concluded that the last sentence, disallowing the reimbursement of R&D costs in excess of the contract price and grant amount, was not duplicative of FAR 31.205–23, and should be retained at FAR 31.205–48, Deferred research and development costs.

A historical review of certain court rulings has disclosed that the Court of Claims and the Armed Services Board of Contract Appeals (ASBCA) tend to regard the excess of costs incurred over the contract price in R&D contracts, not necessarily as a loss but as an amount that, under certain circumstances, may be capitalized and amortized over future benefitting contracts. This view was held in a decision of the Court of Claims (*Bell Aircraft* v. *U.S.* 120 Ct. Cl. 398 (1951)) and in ASBCA decisions in the cases of *Kellett Aircraft Corp.* ASBCA No. 5658, 60–1 BCA ¶2584, *Sperry Rand Corp., Ford Instrument Co. Division* ASBCA 8689, 66–1 BCA ¶5403, and *G.C. Dewey* ASBCA 13221, 69–1 BCA ¶7732. Since the courts had ruled that the excess costs did not represent a "loss," these types of costs were considered outside the purview of Armed Services Procurement Regulation (ASPR) 15–205.19, Losses on Other Contracts (currently known as FAR 31.205–23, Losses on other contracts.) Therefore, Defense Procurement Circular #95 dated 29 November 1971, added ASPR 15.205–49, Deferred Research and Development Costs, to the ASPR to explicitly make these types of deferred R&D costs unallowable. The third sentence of FAR 31.205–48 currently reflects this policy. Based on this historical review, the Councils concluded that elimination of this sentence could permit contractors to recover costs in excess of the contract price or grant amount for R&D effort under certain conditions in which the courts have ruled that the "excess" does not represent a "loss". Therefore, this cost principle should remain in the FAR.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subpart 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.205–48 to read as follows:

31.205–48 Deferred research and development costs.

Research and development, as used in this subsection, means the type of technical effort described in 31.205–18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort,

such excess is unallowable under any other Government contract.

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January 26, 2000

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440
Weatherization Assistance Program for Low-Income Persons; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

RIN 1904–AB05

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) proposes to amend the regulations for the Weatherization Assistance Program for Low-Income Persons. DOE is proposing changes based on a series of open forum discussions with numerous State and local stakeholders as well as through program experience gained since issuance of the final rule on June 5, 1995. These proposed changes add clarifying language, delete obsolete language, and propose certain regulatory changes to improve the overall operation of the Program to assist State and local agencies in administering the Program. Further, these proposed changes will give States and local agencies additional flexibility in addressing the particular weatherization needs of their low-income citizens while achieving better program results with less paperwork.

DATES: To ensure your comments are considered, we must receive three copies of your comments on or before March 27, 2000. You may present oral views, data, and arguments at the public hearing which will be held in Washington, DC, on March 3, 2000. If you would like to speak at this hearing, contact Mr. Greg Reamy at (202) 586–4074. Each oral presentation is limited to 10 minutes. The hearing will last as long as there are persons requesting an opportunity to speak.

ADDRESSES: Send written comments to Greg Reamy, Weatherization Assistance Program Division, US Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, We will hold a public hearing at the following address: U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC. Please bring three copies of the prepared oral statement to the hearing. You may read and copy written comments received, a copy of the public hearing transcript, and any other docket material received as a result of this notice at the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9:00 a.m.–4:00 p.m., Monday through Friday except Federal holidays. For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking (Opportunities for Public Comment).

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4074.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Amendments to the Weatherization Assistance Program
III. Other
IV. Opportunities for Public Comment
V. Procedural Requirements
VI. Other Federal Agencies
VII. The Catalog of Federal Domestic Assistance

I. Introduction

The Department of Energy (DOE or Department) proposes amendments to revise the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP). This Program is authorized by title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561 *et seq*. The proposed changes are necessitated by the evolution of the program since the last publication of the rule on June 5, 1995 (60 FR 29470). These changes would help States by clarifying sections to the rule, thereby enhancing the interpretation and application of the program requirements. Some of the definitions in § 440.3 would be clarified and, where needed, new definitions would be added to provide a clearer and more concise meaning to States and local agencies who must interpret these regulations. Other sections applying to energy audits and allowable expenditures would be clarified to enhance their meanings; and certain obsolete items would be deleted. Other regulatory changes proposed in today's rulemaking would: add new and eliminate obsolete terms in the Program definitions; add "household with a high energy burden" and "high residential energy user" as new categories for those receiving priority service; create a separate cost category for health and safety expenditures and the purchase of vehicles by local agencies; reduce the eligibility criteria for certain large multi-family buildings to 50 percent; establish new minimum energy audit criteria for the Program; and revise the date for reweatherization from 1985 to 1993.

Prior to developing and issuing this proposed rulemaking, DOE consulted with its primary stakeholders, representatives of both State and local agencies, to listen to their concerns about what issues they wanted DOE to consider. The Program has evolved from a relatively simplified approach of providing service to low-income homes with unskilled labor, installing low-cost/no cost retrofits, to a program that conducts advanced diagnostics and installs cost-effective energy conservation materials. The increased demand to maintain highly-trained crews has placed added strain on State and local agencies efforts to sustain a quality level of service to its low-income clients. Many of the changes proposed today would help lessen the administrative burden and provide flexibility for State and local agencies to incorporate the ever-changing technical enhancements as they become available. These proposed rule changes would also make State and local agencies better-suited to attract non-Federal leveraged resources into their programs. This proposed rule attempts to address as many of those concerns as possible. Many of the concerns that the stakeholders raised to DOE were not of a regulatory nature and were addressed administratively through program guidance documents. Other concerns were statutory in nature and formed the basis of the legislative initiative proposed to the Congress.

In addition to the proposed regulatory changes, the Department proposed on September 20, 1999 several statutory changes developed during discussions with State and local stakeholders. These suggested changes are part of the Department's legislative initiative and are currently under consideration by the Congress. These proposed statutory changes are: eliminate the requirement that 40 percent of the funds used to weatherize a home be spent for materials; restructure the method by which States compute their average cost per home and eliminate the separate per dwelling unit average for capital intensive improvements; and increase the average cost per home to $2500 beginning in 2000 to include the cost of making capital intensive improvements.

II. Amendments to the Weatherization Assistance Program

Section 440.1 Purpose and Scope

DOE proposes to delete the first sentence in the Scope and Purpose since this information is duplicative of what is stated elsewhere in the proposed rule.

DOE proposes to amend the Purpose and Scope to add to the priority categories the terms "high residential energy user" and "household with a high energy burden." By adding these two categories, States would be better able to prioritize their low-income clients by targeting those experiencing high energy costs and burden, thereby addressing those units with the greatest potential for energy savings. Additionally, by including these two categories, State and local agencies would be better able to coordinate services with other Federal programs and leveraging opportunities. The current priority categories of elderly, persons with disabilities, and families with children would continue and remain unchanged. Definitions for these two terms are discussed in § 440.3.

Section 440.3 Definitions

DOE proposes to add the term "balance point temperature" to describe the outdoor temperature below which the furnace of a dwelling must operate to maintain comfort during the winter, and above which the air conditioner must operate during the summer. The balance point temperature is used to calculate heating and cooling degree day weather data as described in more detail in § 440.21.

DOE proposes a definition for "electric base-load measures" to describe energy use outside of the traditional weatherization approach to heating and cooling and building envelope measures. As the Program evolves over the next several years into a whole house approach, DOE believes that electric base-load measures, which account for more than half the energy used in a typical household, are important when considering total residential energy use. Limited lighting measures are currently permitted in the Program and in the near future DOE may consider including other electric base-load measures such as the replacement of certain appliances.

DOE proposes to add the term "high residential energy user" which means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State. The proposed definition for this category would permit State and local agencies to better coordinate their activities and resources with many utility programs.

DOE also proposes to add the term "household with a high energy burden" which means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State. The proposed definition for this category would give States and local agencies greater flexibility in determining priority service for those households that may not have traditional priority individuals such as the elderly, persons with disabilities, or families with children, but are experiencing a particular hardship due to their high energy costs.

DOE proposes to substitute the term "persons with disabilities" for the term "handicapped" to reflect the current accepted reference. The definition remains unchanged.

DOE considered both State and local agency concerns over the definition of "low-income" and the difficulties in effectively administering, coordinating, and leveraging between various Federal low-income programs using different definitions. However, in a review of the statute and the legislative history of the Program, DOE chose not to amend the existing definition. The DOE Weatherization Assistance Program was established to serve the neediest Americans. To expand the eligibility requirements to facilitate coordination with other Federal programs either through increasing the poverty level to 80 percent, permitting census tracking of neighborhoods, or allowing area average median income levels would change the scope and purpose of the Program. More importantly, expanding the eligibility criteria would substantially increase the number of households eligible for assistance which already stands at over 29 million. DOE addresses this issue in detail in program guidance.

Section 440.14 State Plans

DOE proposes to reorganize and revise § 440.14 to eliminate unnecessary and duplicative information. DOE agrees with the States that these requirements are no longer needed and will reduce paperwork and time in the production of the annual State plan. In reorganizing this section, DOE proposes grouping items together relating to the public hearing. Items specific to the development of the State plan would also be placed together. The information for the production schedule is proposed to be projected annually instead of quarterly and include the number of previously weatherized homes expected to be weatherized.

DOE proposes to eliminate § 440.14(b)(2), (6), (7), and (b)(8)(iii). This information requirement resulted in the States providing little more than meaningless estimates to DOE. States will continue to report to DOE the number of persons served in each of these groups.

DOE proposes to retain the requirement for information on the number of dwelling units expected to be weatherized for each area, but eliminate the expected number of previously weatherized units for each area. States have no idea how many previously weatherized homes can be expected to be weatherized for each area of the State.

In § 440.14(b)(6)(xi) DOE proposes to retain the requirement that States identify and describe the type of audit that meets the criteria outlined in § 440.21 and that DOE has approved. However, the reference to Project Retro-Tech or another DOE-approved audit is proposed to be eliminated in this section as well as in § 440.21.

Section 440.15 Subgrantees

DOE proposes to amend § 440.15(a)(3)(iv) to eliminate the reference to "JTPA" and replace it with "other Federal or State training programs." The JTPA Federal program is repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.16 Minimum Program Requirements

DOE proposes to amend § 440.16(d) to eliminate the reference to "JTPA" and replace it with "other Federal or State training programs." The JTPA Federal program is repealed effective July 1, 2000 pursuant to Pub. L. 105–220. States should describe any "other Federal or State training program" they will be using in their annual State plans as sources of labor.

DOE proposes to add clarifying language to § 440.16(b) to allow States to include "high residential energy user" and "household with a high energy burden" as priority groups among those receiving weatherization services. The use of the two new priority categories is not mandatory. By adding these two categories, DOE is providing State and local agencies with expanded flexibility to choose the categories for priority which best serve their respective programs.

Section 440.17 Policy Advisory Council

DOE proposes to amend § 440.17(a) to include the language "or a State commission or council" which meets the criteria in § 440.17(a)(1), (2) and (3). Many State agencies which operate the DOE Weatherization Assistance Program have existing commissions or councils which review and approve policies and plans for many other Federal programs. By utilizing these existing bodies, States

would eliminate the need to establish a separate Weatherization Policy Advisory Council which would essentially perform the same function. States which opt to utilize an existing commission or council would have to certify to DOE, as a part of the annual application, the council or commission as an independent reviewer of activities for the Program. Therefore, any person(s) employed in any State Weatherization Program can also be a member of an existing commission or council but would have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

Section 440.18 Allowable Expenditures

DOE proposes to delete from § 440.18(b) and (b)(2)(i) references to (c)(15), the cost of eliminating health and safety hazards from the amount of funds used to determine the average cost per home. State and local agencies have indicated to DOE that including the cost of health and safety into the amount of funds that can be spent on a home severely restricts their flexibility to operate effectively their programs. In providing for this flexibility, DOE agrees that excluding these costs from the average cost per home would afford States and local agencies the opportunity to fund advanced technology practices into their weatherization programs while reducing their administrative burden.

DOE proposes to revise § 440.18(c)(6) to read "Purchase or annual lease of tools, equipment, and the annual lease of vehicles." DOE proposes to add a new (c)(16) as a separate line item for the cost of purchasing vehicles. In doing so, DOE would remove the cost of purchasing vehicles from the amount of funds used to determine the average cost per home. State and local agencies argue that having the cost of these vehicles included in the average cost per home calculation placed an undue burden on them. For some local agencies, purchasing vehicles force them to seek low cost weatherization candidate homes in order to maintain operation while ignoring potentially higher energy savings homes.

The proposed rule would require States to include in their calculations of average per unit costs the costs of leased vehicles, but would now permit States to exclude the cost of purchased vehicles from such calculations. This proposal is being made at the urging of States and local agencies that expressed concerns about the distortionary effects that the purchase price of new vehicles had on average per unit costs. For small agencies, the purchase of a new vehicle could represent a substantial fraction of the average cost of weatherizing units in the year the vehicle is purchased, which sometimes means that the amount of weatherization performed on any unit would have to be arbitrarily limited in order to stay under the Federally-specified cap on the average cost per unit. DOE is concerned, however, that provisions permitting the exclusion of certain vehicle costs, but not others, would unnecessarily distort the decisionmaking of States and local agencies.

One possible alternative to this approach would be to permit States to exclude from their average per unit cost calculations that portion of the value of any large capital assets that remained at the end of the funding year. This would permit States to include in their average cost calculations only that fraction of the cost of a new vehicle which was actually "used" during the current year. This approach might also permit states to exclude part or most of the purchase price of other large capital investments that have many years of useful life. Such an approach would not affect the ability of States or local agencies to use current funds to pay for the full purchase cost of such investments. DOE solicits comments on its proposal to exclude the cost of purchased vehicles, as well as on this alternative.

DOE proposes to amend § 440.18(e)(2)(iii) by extending the date by which homes can be reweatherized from 1985 to 1993. Previously, DOE extended this date from 1975 to 1985 based on the evolution of the Program. Between 1975 and 1979, the Program addressed primarily building envelope measures. In 1985, the Program expanded to place more emphasis on mechanical measures, including furnace efficiency modifications. Since the last rulemaking which introduced new criteria for advanced energy audits, virtually all States have improved their energy auditing techniques. DOE acknowledges this overall program improvement by the States and is confident that by extending the date to 1993, those homes weatherized between 1985 and 1993 would provide an even greater opportunity to achieve increased energy efficiency. DOE also reminds States that homes which become candidates for reweatherization would have a new energy audit performed and that audit would take into consideration any previous weatherization improvements done on the home.

Section 440.19 Labor

DOE revises § 440.19 by deleting references to JTPA and replacing it with "other Federal or State training programs." The JTPA Federal program is repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.21 Standards and Techniques for Weatherization

DOE is proposing to rename, reorganize, and revise this entire section. The proposed name change more accurately reflects the subject matter of § 440.21. The other major changes eliminate the base audit criteria and make the waiver audit criteria the minimum criteria for an energy audit used in the Program. In its final rule published on March 4, 1993 (58 FR 12525), DOE provided for a waiver of the 40-percent material cost requirement described in § 440.18(a) for those States that adopted advanced energy audit procedures. Today, virtually all of the States have incorporated an approved waiver audit and received a waiver of this requirement from DOE. Within the next year, all States will be using an approved waiver audit. DOE is proposing to make the existing waiver energy audit requirements the new minimum standard for all energy audit procedures. The 40 percent material cost requirement and the waiver provisions have become unnecessary and their suggested elimination from the statute is discussed later in this proposed rule. States and local agencies have made great strides in improving the energy auditing techniques used in their programs during this decade. Investments in time and resources have paid dividends in the form of greater energy efficiency and savings on the types of materials and the installation techniques used in the Program.

To implement this change, DOE proposes to delete all references to Project Retro-Tech audit procedures and the simplified cost-effectiveness tests used with Project Retro-Tech. DOE is proposing that all energy audits require calculation of a savings-to-investment ratio for weatherization measures, and assignment of priorities based on the resulting figures consistent with the life-cycle cost methodology developed by DOE's Federal Energy Management Program and the National Institute of Standards and Technology (NIST). DOE is also proposing that all energy audit procedures require a similar calculation to determine the overall cost effectiveness of the "total conservation investment" including incidental repairs. As in the current rule, the effect of explicitly including incidental repairs is that the extent of such repair costs would be limited by the extent of offsetting cost savings.

The procedures and required assumptions for the life-cycle cost methodology are described in the "Life-Cycle Costing Manual for the Federal Energy Management Program," which is published by NIST. "The Annual Supplement of NIST Handbook 135 and SP 709, Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis" is updated annually to provide an adjusted discount rate based on an average of recent U.S. Treasury bonds of various maturities (less inflation as estimated by the President's Council of Economic Advisers), as well as adjusted, regional, energy cost escalation rates.

The NIST handbook was revised in 1995 to incorporate several changes reflecting the eight years of experience since the 1987 revision. DOE proposes to replace the existing references in § 440.21 to U.S. Treasury bonds, the Economic Report of the President's Council of Economic Advisers, and the DOE Energy Information Administration with citation of the NIST life-cycle costing manual and its annual supplement as a convenient source of discount and fuel cost escalation rates for States. DOE proposes to maintain the States' discretion to choose a reasonable discount rate higher than the one provided in the annual supplement.

In its 1993 Notice of Proposed Rulemaking, DOE allowed States to disregard the energy cost escalation rates if they thought that local energy costs would not rise faster than the rate of general price inflation over the long term. At the time, fuel costs were projected to increase, and giving this discretion allowed States to require of their subgrantees cost-effectiveness standards that were more stringent than the Federal standards. With the cost of some major fuel types now projected to decrease over time, disregarding fuel cost adjustment rates could over-estimate the cost-effectiveness of energy conservation measures. For this reason, DOE is proposing to require States to use the fuel cost escalation rates/indices in the NIST annual supplement.

DOE is proposing to include in paragraph (d), the sentence, "The lifetime of materials must not exceed the remaining useful life of the dwelling," to acknowledge that the low-income housing stock served by some programs is in poor condition. A weatherization measure may have a savings-to-investment ratio exceeding one assuming an economic life of twenty years for that material, but a savings-to-investment ratio of less than one in light of a remaining useful dwelling life of, for example, ten years.

DOE is proposing to include in § 440.21(f)(1) the phrase "using generally accepted engineering methods" to remind States to use reasonable energy-estimating methods and assumptions to account for the interaction among weatherization measures.

Paragraph (h) describes the proposed requirements for energy audit procedures that do not pertain to life-cycle costing methods. In paragraph (h)(1), DOE is proposing to substitute the phrase "climatic data" for the existing "number of heating or cooling degree days" to acknowledge that other types of weather data besides heating and cooling degree days can be used in the estimation of fuel cost savings.

DOE is also proposing to include language in paragraph (h)(1) to encourage States to set the balance point temperature(s) used in conjunction with heating and cooling degree data to more reasonably reflect the outside temperatures which require operation of heating or cooling equipment to maintain comfort. Heating degree days are computed by subtracting the average daily temperature from a balance point temperature, which has traditionally been 65° F. The traditional heating degree day balance point temperature assumes that the furnace needs to run at outside temperatures less than 65° F. In reality, the furnace is typically not needed until the outside temperature drops below around 60° F due to the heat generated by lights and people. Similarly, air conditioning is not usually required until outside temperatures exceed traditional cooling degree day balance points by about 5 to 10° F. Encouraging States to set balance points to more reasonably reflect their housing stock and climate would reduce the overestimation of energy savings for most measures, which would more accurately model their true cost-effectiveness.

The State Energy Efficiency Programs Improvement Act of 1990, which amended 42 U.S.C. 6861 *et seq.*, stated that energy audit procedures should "establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency." DOE interprets this language, in part, to mean that advanced energy audit procedures should consider energy efficiency as well as total energy savings. For example, replacing an existing space heater being used to heat a single room, with a more energy efficient central furnace, capable of heating the whole house, would probably increase energy use even as it improved energy efficiency. The occupants would also be better able to use the entire dwelling unit. Unless undertaken for health and safety reasons, this measure is to be cost justified by the audit. Addressing energy efficiency in this case would require a cost justification that compares the energy usage of the central unit to the energy usage of heating the entire home with space heaters.

The existing rule language addressing this issue states that energy audit procedures must "consider the rate of energy use," which does not clearly describe the need to look at both energy efficiency and total energy savings. To more directly address situations similar to the space heater example, DOE is proposing instead to include in paragraph (h)(2) the phrase "and energy requirements." This proposed change combines the requirement to determine the existing energy use with the need to determine existing energy requirements from actual energy bills or by generally accepted engineering calculations. As in the space heater example, the energy requirements of a dwelling unit may exceed its existing energy use.

Proposed paragraph (h)(7) reminds States that DOE would have to approve an energy audit for each major dwelling type covered by the State's weatherization program in light of the different energy audit requirements of single-family dwellings, multi-family buildings, and mobile homes.

In paragraph (i), DOE is proposing language that clarifies the type of information DOE requires to approve State priority lists for similar dwelling units. When States submit to DOE their request for priority list approval, they often do not provide sufficient details. For example, inadequate information is provided to explain how dwellings covered by the priority list were established. They also do not tell how the subset of similar dwellings used to develop the priority list was determined, or adequately describe the circumstances that will require a site-specific audit in lieu of the priority list. The increased energy savings resulting from advanced energy audit procedures could be compromised by priority lists that are not based on truly typical housing stock or used without comprehensive guidelines that tell an auditor when atypical circumstances require a site-specific audit.

In § 440.21(k), to make the revalidation of priority lists more straightforward, DOE is proposing to require States to submit to DOE for approval every five years their complete energy audit procedures including priority lists and lists of general heat waste reduction materials. To revalidate their priority lists, States would have to

re-run their energy audit on a subset of the similar dwellings that the priority list covers. States have made the logical argument that their housing stock and typical housing types have not changed in five years. However, technologies, relative costs, and auditing tools do change. Revalidating priority lists every five years is meaningless if States merely resubmit their original list and indicate that nothing has changed. DOE encourages the continual improvement of audit tools as evidenced by new versions of the National Energy Audit (NEAT) over the years. The best and most current audit software should be used in developing priority lists. Since the latest version of a State's audit software may not have specific DOE approval, it makes sense for the DOE approval process to update the energy audit, priority lists, and lists of general heat waste reduction measures every five years.

Furthermore, DOE is proposing that new versions of energy audit software or manual methods released after a State-specific DOE approval, other than the NEAT and the Mobile Home Energy Audit (MHEA) developed by DOE, be re-approved by DOE before a State adopts a new version. Since DOE controls the content of NEAT and MHEA, new versions of these two software packages are designed to comply with the requirements of § 440.21; thus no pre-approval would be needed. However, DOE has no such control over the content of new versions of other energy audit software. To ensure that States' energy audit procedures continue to comply with § 440.21, language is proposed that would require States to get DOE approval for any and all specific versions of energy audit software and manual methods before a State adopts the energy audit.

While not a part of this proposed rule, DOE may propose in the future to require States to include overhead charges (such as costs for supervisory personnel, tools, vehicles, etc.) in the savings to investment ratio calculations for individual weatherization measures. Such costs are a significant fraction of the total costs of weatherizing individual homes and should, therefore, be considered in the assessment of the relative costs and benefits of measures. States are now permitted, but not required, to include such overhead costs in their saving to investment ratio calculations. These costs might be incorporated in these calculations through the use of a standard percentage to adjust the material and labor costs currently used or States and local agencies might develop more sophisticated approaches to including overhead costs. DOE urges States to consider such overhead costs now. In developing any future proposal to require the inclusion of overhead costs, DOE intends to solicit the views of States or local agencies that have already attempted to incorporate such costs, as well as the views of other stakeholders. DOE is particularly interested in receiving information that indicates how the consideration of such overhead costs affects the overall cost-effectiveness of State and local weatherization efforts. DOE would welcome comments on this issue as a part of this proposed rule.

Section 440.22 Eligible Dwelling Units

DOE proposes to amend § 440.22(b)(2) to add certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units are to be occupied by income-eligible households. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before weatherization. This exception would apply only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies would be better-suited to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions.

III. Other

A. Legislative Initiative

On September 20, 1999, the Department proposed a legislative initiative for consideration by the Congress to make certain statutory changes to the Program based on discussions held with State and local stakeholders. The suggested statutory changes are: (1) Eliminate the requirement in § 440.18 that 40 percent of the funds used to weatherize a home be spent for materials; (2) restructure the method in § 440.18 by which States compute their average cost per home by increasing the average cost per home to $2500 beginning in 2000; and (3) eliminate the separate per dwelling unit average in § 440.18 for capital intensive improvements and include capital intensive costs as a part of the average costs. If this legislative proposal is enacted, DOE will publish implementing regulatory amendments for public comment.

B. Inclusion of Preamble Language From Previous Rulemakings

DOE plans to include in the preamble of the final rule clarifying language on several areas of the program regulations where no actual changes were made. This action will provide States and local agencies the benefit of explanatory language used in the preambles of previous rulemakings which are still applicable today. This is necessary since many State and local staffs have changed several times over the years and much institutional knowledge has been lost. A comprehensive final rule will provide Federal, State, and local agency staff a central document for program regulatory information. This will also help in providing uniform interpretation of the regulations at all levels of the Program.

IV. Opportunities for Public Comment

A. Participation in Rulemaking

The Department encourages public participation in this rulemaking. The Department has established a period of 60 days following publication of this notice for persons to comment on this notice of proposed rulemaking. You may review all public comments and other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice of proposed rulemaking.

B. Written Comment Procedures

Interested persons and organizations are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rulemaking. Please provide three copies of your comments to the address indicated in the **ADDRESSES** section of this notice of proposed rulemaking. DOE will consider all timely-submitted comments and other relevant information before issuing a final rule.

C, Public Hearing

1. Request To Speak Procedures

The time and place of the public hearing are indicated in the **DATES** and **ADDRESSES** sections of this notice. The Department invites any person or organization having an interest in the proposed rulemaking to request to make an oral presentation. Your request should be directed to DOE at the address indicated in the **ADDRESSES** section of this notice of proposed rulemaking. You should bring three copies of your statement to the hearing.

2. Conduct of the Hearing

DOE will designate an official to preside at the hearing. This will not be

an evidentiary or judicial-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those conducting the hearing may ask questions. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations.

DOE will prepare a transcript of the hearing. DOE will retain the transcript and other records of this rulemaking and make them available for public inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice of proposed rulemaking. Any person may purchase a copy of the transcript from the transcribing reporter.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

V. Procedural Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rulemaking would amend 10 CFR part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of low-income citizens and to make other changes designed to streamline and update DOE's weatherization assistance program. The proposed rule was developed following extensive consultation with State and local stakeholders, and DOE does not think the proposed rule would have any adverse economic impact on any small governments, organizations or businesses. Accordingly, DOE certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

This proposed rulemaking has been reviewed according to the requirements of the Department's regulations (10 CFR Part 1021) implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* This rulemaking would amend 10 CFR Part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of their low-income citizens and to make other changes designed to streamline and update DOE's weatherization assistance program. The Department has determined that this proposed rulemaking is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR Part 1021 (rulemaking interpreting or amending an existing regulation, no change in environmental effect.) Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The proposed rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations

Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

VI. Other Federal Agencies

DOE provided draft copies of the proposed rule to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmers Home Administration. We have received no comments. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to § 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has made no comments.

VII. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-Energy, Grant programs-Housing and community development, Persons with disabilities, Housing standards, Indians, Reporting and recordkeeping requirements, weatherization.

Issued in Washington, DC, on January 18, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend Part 440 of Title 10, Code of Federal Regulations, as set forth below.

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

Authority: Title IV, Energy Conservation and Production Act, (42 U.S.C. 6861 *et seq.*), as amended; Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*).

2. Section 440.1 is revised to read as follows:

§ 440.1 Purpose and scope.

This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reducing their total residential expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

3. In § 440.3, remove the definition for "JTPA" and "Handicapped Person" and add the following definitions in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

Balance point temperature means the outdoor temperature below which the furnace of a dwelling must operate to maintain comfort during the winter, or above which the air conditioner must operate during the summer.

* * * * *

Electric base-load measures means measures which address the energy efficiency and energy usage of lighting and appliances.

* * * * *

High residential energy user means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State.

Household with a high energy burden means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State.

* * * * *

Persons With Disabilities means any individual—

(1) Who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973,

(2) Who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or

(3) Who is receiving benefits under chapter 11 or 15 of title 38, U.S.C.

* * * * *

4. Section 440.14 is revised to read as follows:

§ 440.14 State plans.

(a) Before submitting to DOE an application, a State must provide at least 10 days notice of a hearing to inform prospective subgrantees, and must conduct one or more public hearings to receive comments on a proposed State plan. The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them. The State must prepare a transcript of the hearings and accept written submission of views and data for the record.

(b) The proposed State plan must:

(1) Identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount each will receive;

(2) Address the other items contained in paragraph (c) of this section; and

(3) Be made available throughout the State prior to the hearing.

(c) After the hearing, the State must prepare a final State plan that identifies and describes:

(1) The production schedule for the State indicating projected expenditures and the number of dwelling units, including previously weatherized units which are expected to be weatherized annually during the program year;

(2) The climatic conditions within the State;

(3) The type of weatherization work to be done;

(4) An estimate of the amount of energy to be conserved;

(5) Each area to be served by a weatherization project within the State, and must include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the program year; and

(iii) Sources of labor.

(6) How the State plan is to be implemented, including:

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;

(ii) An explanation of the method used to select each area served by a weatherization project;

(iii) The extent to which priority will be given to the weatherization of single-family or other high energy-consuming dwelling units;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;

(viii) The average amount of the DOE funds specified in § 440.18(c)(1) through (9) to be applied to any dwelling unit;

(ix) The average amount of DOE funds applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d);

(xi) Procedures for determining the most cost-effective measures in a dwelling unit;

(xii) The definition of "low-income" which the State has chosen for determining eligibility for use statewide in accordance with § 440.22(a);

(xiii) The definition of "children" which the State has chosen consistent with § 440.3; and

(xiv) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

5. Section 440.15 is amended by revising paragraph (a)(3)(iv) as follows:

§ 440.15 Subgrantees.

(a) * * *

(3) * * *

(iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.

* * * * *

6. Section 440.16 is amended by revising paragraphs (b) and (d) to read as follows:

§ 440.16 Minimum program requirements.

* * * * *

(b) Priority is given to identifying and providing weatherization assistance to:

(1) Elderly persons;

(2) Persons with disabilities;

(3) Families with children;

(4) High residential energy users; and

(5) Households with a high energy burden.

* * * * *

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, other Federal or State training program workers, to work under the supervision of qualified supervisors and foremen;

* * * * *

7. In § 440.17 paragraph (a) introductory text is revised and paragraphs (b) and (c) are added to read as follows:

§ 440.17 Policy Advisory Council.

(a) Prior to the expenditure of any grant funds, a State policy advisory council, or a State commission or council which serves the same functions as a State policy advisory council, must be established by a State or by the Support Office Director if a State does not participate in the Program which:

* * * * *

(b) Any person employed in any State Weatherization Program may also be a member of an existing commission or council, but must abstain from reviewing and approving activities associated with the DOE Weatherization Assistance Program.

(c) States which opt to utilize an existing commission or council must certify to DOE, as a part of the annual application, of the council's or commission's independence in reviewing and approving activities associated with the DOE Weatherization Assistance Program.

8. Section 440.18 is amended by revising paragraph (a), removing the phrase "and (c)(15)" in the introductory text to paragraph (b) and in paragraph (b)(2)(i); revising paragraph (c)(6); adding paragraph (c)(16); and revising "September 30, 1985" to read "September 30, 1993" in paragraph (e)(2)(iii) to read as follows:

§ 440.18 Allowable expenditures.

(a) States must spend an average of at least 40 percent of the funds provided them for weatherization materials, labor and related matters listed in paragraphs (c)(1) through (9) of this section. DOE may approve a State's application to waive the 40 percent requirement under § 440.21.

* * * * *

(c) * * *

(6) Purchase or annual lease of tools and equipment and the annual lease of vehicles;

* * * * *

(16) The cost of purchasing vehicles, except that any purchase of vehicles must be referred to DOE for prior approval in every instance.

* * * * *

9. Section 440.19 is revised to read as follows:

§ 440.19 Labor.

Payments for labor costs under § 440.18(c)(2) must consist of:

(a) Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and

(b) Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which perform weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other Federal or State training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

10. Section 440.21 is revised to read as follows:

§ 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) through (g) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (h) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (i) and (j) of this section describe the use of priority lists and lists of presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraphs (k) and (l) of this section explain that a State's energy audit procedures, priority lists, and lists of general heat waste reduction materials must be re-approved by DOE every 5 years.

(b) State and local agencies may only purchase weatherization materials which meet or exceed standards prescribed and listed in Appendix A to this part with funds provided under this part. However, States may submit to DOE an unlisted material for review and approval.

(c) Except for materials to eliminate health and safety hazards allowable under § 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective by meeting a savings-to-investment ratio that is greater than or equal to one. The savings-to-investment ratio of an individual weatherization material or package of weatherization materials is the net fuel cost savings over the lifetime of the material(s), discounted to present value, divided by the material, installation, and related costs as defined in paragraphs (e) and (g) of this section.

(d) The net fuel cost savings over the lifetime of an individual weatherization material or package of weatherization materials must be discounted using the DOE discount rate from the Annual Supplement to NIST Handbook 135,

Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis (NISTIR 85–3273–14). The discount rate and regional fuel cost adjustment rates/indices provided in the annual supplement must be used in accordance with the procedures in NIST Handbook 135, Life-Cycle Costing Manual for the Federal Energy Management Program. The lifetime of materials must not exceed the remaining useful life of the dwelling. In their computation of savings-to-investment ratios, States:

(1) May keep the discount rate constant up to 5 years and may use a reasonably higher real discount rate subject to a ceiling of 10 percent and a floor of 3 percent;

(2) May keep the fuel cost adjustment rates/indices constant up to 5 years; and

(3) Must use figures for the lifetime of the materials and for the cost of materials and cost of the installation of the materials that are generally accepted in the relevant trade.

(e) In calculating the savings-to-investment ratio of an individual weatherization material, the denominator must include the costs for materials, labor, and on-site supervisory personnel to be claimed as allowable under § 440.18(c)(1), (2), and (7), and any other significant, related cost that a State requires to be included.

(f) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their savings-to-investment ratios according to paragraphs (c) through (e) of this section after:

(1) Adjusting those savings-to-investment ratios for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and

(2) Eliminating any weatherization material if its savings-to-investment ratio, as adjusted under paragraph (f)(1) of this section, is less than one.

(g) In calculating the savings-to-investment ratio of a package of weatherization materials to be installed in an eligible dwelling unit, the denominator must include the costs for materials, labor, on-site supervisory personnel, and incidental repairs to be claimed as allowable under § 440.18(c)(1), (2), (7), and (9), and any other significant, related cost that a State requires to be included. To ensure that the total conservation investment in a dwelling unit has a positive rate of return, the numerator of the overall savings-to-investment ratio must include the cumulative net fuel cost savings of all weatherization materials installed in the dwelling unit, discounted to present value according to paragraphs (c) and (d) of this section and adjusted for interaction among energy efficiency measures, if any, according to paragraph (f) of this section.

(h) The energy audit procedures also must—

(1) Compute the cost of fuel saved per year by taking into account the climatic data of the area of where the dwelling unit is located, where the balance point temperature(s) of the dwelling unit represents conditions when operation of heating or cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;

(2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;

(3) Address significant heating and cooling needs;

(4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;

(5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under § 440.16(h);

(6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and

(7) Be specifically approved by DOE for use on each major dwelling type covered by the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

(i) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (h) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.

(j) Subject to DOE approval, a State may use as a part of an energy audit a list of presumptively cost-effective general heat waste reduction weatherization materials. States must show these materials are cost-effective in typical dwelling units for major dwelling unit types in the State based on documentation of analytic reports, published articles, sample energy calculations, or a representative number of site-specific energy audits. States must also describe the circumstances under which such materials may be presumed cost-effective without need for further site-specific audit justification.

(k) States must resubmit their energy audit procedures to DOE for approval every 5 years including the current version of the energy audit software or manual methods used by the State. New versions of energy audit software or manual methods released after State-specific DOE approval, other than the National Energy Audit (NEAT) and the Mobile Home Energy Audit (MHEA) developed by DOE, must be re-approved by DOE before adoption by a State.

(l) Priority lists and lists of general heat waste reduction materials developed in accordance with paragraphs (i) and (j) of this section, if applicable, must also be resubmitted to DOE for approval every 5 years. Priority lists and lists of general heat waste reduction materials must be revalidated by conducting a representative sample of site-specific energy audits with the version of energy audit software or manual methods that the State submits for DOE approval in accordance with paragraph (k) of this section.

11. Section 440.22 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 440.22 Eligible dwelling units.

* * * * *

(b) * * *

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building:

* * * * *

[FR Doc. 00–1721 Filed 1–25–00; 8:45 am]

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Federal Register

Wednesday,
January 26, 2000

Part V

Department of Education

Even Start Statewide Family Literacy Initiative Grants; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.314B]

Even Start Statewide Family Literacy Initiative Grants

AGENCY: Department of Education.

ACTION: Notice of deadline for third stage of applications for assistance under the Even Start Statewide Family Literacy Initiative grant authority for fiscal year 1999, and information regarding certain cost issues for those grants.

SUMMARY: The Secretary of Education announces a third stage, and deadline for that third stage, for States to apply for a fiscal year (FY) 1999 new award under the Even Start Statewide Family Literacy Initiative grant authority. The Secretary also provides information about the authorization of certain pre-award costs for grant recipients, and the applicability of the waiver authority under section 14401 of the Elementary and Secondary Education Act (ESEA) to the requirement that only non-Federal funds be used as matching resources for the grant.

Eligible Applicants: One State office or agency from each State, the District of Columbia, and Puerto Rico, provided that the applicant jurisdiction did not receive an award of funds in the second stage of this FY 1999 competition.

Deadline for Transmittal of Applications in Third Stage of Competition: The deadline for State offices and agencies to submit their Even Start Statewide Family Literacy Initiative applications for the third stage of this grant competition is March 31, 2000.

Available Funds: The Secretary estimates that there will be $2,039,499 available for awards in the third stage of this FY 1999 competition.

Matching and Use of Fund Requirements: A State receiving a grant for an Even Start Statewide Family Literacy Initiative must make available non-Federal contributions (cash or in-kind) in an amount at least equal to the Federal funds awarded under the grant. These non-Federal contributions may be from State or local resources, or both. Grantees may not use grant funds for indirect costs, either as a direct charge or as part of the matching requirement.

Estimated Number of Awards During Second and Third Stages of Competition: second stage—28; third stage—6–10. (No States qualified for awards during the first stage of this competition.)

Note: The Department is not bound by any estimates in this notice. The Secretary originally estimated a total of between 40–52 awards, with an estimated average size for an award of $186,000 in Federal funds. No states qualified for awards during the first stage of the competition. The Secretary anticipates awarding funds to 28 recipients during the second stage of competition. Based upon these awards, the Secretary revises the estimate of the number of total awards to 34–38 awards for FY 1999, with an estimated 6–10 awards during the third stage of the competition.

Project Period: 24 months (comprised of two one-year budget periods).

Application, Absolute Priority, and Selection Criteria: The Department will use the same application (including the absolute priority and selection criteria) that it used for the first two stages of this competition. That application, entitled "Notice inviting State applications for new awards for fiscal year (FY) 1999 funds for Even Start Statewide Family Literacy Initiative grants," was published in the **Federal Register** on February 24, 1999, at 64 FR 9229. In addition, the Notice of Final Priority for Fiscal Year 1999, published in the **Federal Register** on February 24, 1999, at 64 FR 9228, will apply to this third stage. You may obtain a copy of that application and Notice of Final Priority for Fiscal Year 1999 from the contact person listed below. The application and notice of final priority also are available in the Department's on-line library at http://www.ed.gov/GrantApps/#84.314B.

FOR FURTHER INFORMATION CONTACT: To obtain further information, or a copy of the application and Notice of Final Priority, contact Tanielle Johnson, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6132; telephone (202) 205–9588; or Email *tanielle—johnson@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Department published the FY 1999 notice inviting applications for Even Start Statewide Family Literacy Initiative competitive grants in the **Federal Register** on February 24, 1999 (64 FR 9229), and published a Notice of Final Priority for those grants at the same time (64 FR 9228). The notice inviting applications established two opportunities for States to submit their applications—a first stage deadline of February 24, 1999, and a second stage deadline of August 20, 1999, which was extended to October 15, 1999, in the **Federal Register** on June 25, 1999 (64 FR 34225) to give States additional time to prepare their applications. This notice establishes a third opportunity for States that have not received a grant in this competition to submit applications. The third stage deadline is March 31, 2000.

The Department recognizes that it takes States a significant amount of time to form the required consortium of State-level programs and build the strong working collaborations that they need to plan a high-quality statewide family literacy initiative that realistically addresses a State's unique educational needs. Some States have advised the Department that they have convened their consortia, are developing those collaborations, and have been actively planning their initiatives for a number of months, but that they were not able to prepare their applications completely by the deadline for the second round. Other States applied for funds in the second stage of this competition, but did not receive an average score of 70, which the Department established as the minimum score.

The Secretary believes that States may benefit from additional technical assistance on developing strong proposals to strengthen and expand family literacy services in their States. In addition, these States will be able to benefit from technical assistance on meeting the absolute priority in the application, under which applicants must address the new statutory requirement in the Even Start law to develop performance indicators to measure adult and child outcomes. Development of these performance indicators is not only required by the Even Start law, but is an important part of a State's family literacy accountability system.

Sufficient funds will remain after awards are made in the second stage of this competition for a small number of additional States with high-quality applications to receive awards. These grants can be an important catalyst and resource in helping States strengthen and expand family literacy services, and develop a coordinated system of performance indicators for adults and children receiving family literacy services. Therefore, the Department announces a third opportunity for States to submit their applications under this competition for FY 1999 funds. The Secretary encourages States that have

not yet received a grant in this competition to apply for these collaboration funds to strengthen and expand family literacy services in their States.

Technical assistance

The Department provided a variety of technical assistance opportunities to all States following the first stage of this competition. That technical assistance, in which many States participated, included: application preparation workshops, distribution of detailed written application preparation guidance, on-site assistance, individual telephone consultations with contractors, and review and comment by contractors on draft applications. The Department offered these types of technical assistance to all States, and informed those States that the provision of this assistance did not ensure the applicant of funding nor bind the Department to funding any draft proposal. The Department advised applicants that the actual funding of their proposals would be based upon the evaluation of those proposals by a panel of experts based on the selection criteria and procedures published in the original notice inviting grant applications. The Department intends to provide technical assistance opportunities to all States that wish to apply in the third stage of this competition.

Cost issues

On June 25, 1999, the Department published a notice in the **Federal Register**, 64 FR 34225, that included the following information about cost issues for these grants.

Pre-award costs

The Department's regulations already authorize grant recipients to incur allowable pre-award costs up to 90 calendar days before the grant award (34 CFR 75.263 and 74.25(e)(1)). In addition, for this competition, the Secretary will authorize grant recipients to use grant funds to pay certain pre-award costs incurred more than 90 days before the date of the grant award but no earlier than the date of the initial notice inviting grant applications (February 24, 1999). Those authorized pre-award costs are the necessary and reasonable costs to establish, convene, and facilitate the required consortium's work in creating the plan for the proposed statewide family literacy initiative. States incur all pre-award costs at their own risk, in that the Secretary is under no obligation to reimburse these costs if for any reason the State does not receive an award or receives an award that is less than anticipated and inadequate to cover these costs.

Waiver applicability

A State that receives a grant for an Even Start Statewide Family Literacy Initiative must contribute an amount from non-Federal sources, in cash or in kind, at least equal to the Federal funds awarded under the grant. Drawing on non-Federal contributions is important to building successful collaborative statewide efforts to strengthen and expand family literacy services. However, identifying sufficient resources to meet this requirement may be difficult in some instances. In those cases, if the State educational agency (SEA) is the applicant State office or agency, the SEA may request from the Secretary a waiver under section 14401 of the ESEA of the requirement that only non-Federal funds may be used to match the Federal award. Such a waiver, if approved, would allow that State to use Federal resources (such as Head Start, Title I, Adult Education Act, Individuals with Disabilities Education Act, and State grants under the Reading Excellence Act), in addition to non-Federal resources, to meet the matching requirement.

Any waiver request must meet the required criteria in section 14401 by, among other things, identifying how the waiver would contribute to improvements in teaching and learning. Applicants seeking a waiver of the requirement for non-Federal matching resources should include their waiver request with their application. To receive assistance concerning a waiver request, potential waiver applicants may call the Department's Waiver Assistance Line at (202) 401–7801 or 1–800–USA–LEARN, or the program contact above. Waiver guidance, including information about preparing a request, is also available in the Department's on-line library at http://www.ed.gov/flexibility.

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Program Authority: 20 U.S.C. 6362(c).

Dated: January 20, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–1742 Filed 1–25–00; 8:45 am]

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VOL

65

ISS

17

JA

26

000

UMI

Federal Register

Wednesday,
January 26, 2000

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1 and 52
Federal Acquisition Regulation; FAR Drafting Principles; Proposed Rule

Department of Defense

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 52

[FAR Case 1999-610]

RIN 9000-AI66

Federal Acquisition Regulation; FAR Drafting Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR). The proposed rule adds FAR drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users.

DATES: Interested parties should submit comments in writing on or before March 27, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1999-610@gsa.gov.

Please submit comments only and cite FAR case 1999-610 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAR case 1999-610.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Parts 1 and 52 are amended to enhance a common understanding of how the Federal Acquisition Regulation is drafted. The proposed rule adds drafting principles in section 1.108 and amends FAR 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule only addresses drafting principles and does not impose any additional requirements on Government offerors or contractors. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 1999-610), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1 and 52

Government procurement.

Dated: January 21, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 1 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 1 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.105-2 by revising paragraphs (a) and (b)(2) to read as follows:

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) * * *

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumerics using the following sequence: (a)(1)(i)(A)(*1*)(*i*).

3. Add section 1.108 to read as follows:

1.108 FAR conventions.

The following conventions provide guidance for interpreting this FAR regulation:

(a) *Words and terms.* Definitions in part 2 apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see 1.102-4(b)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the published change; and

(2) Contracting officers may, at their discretion, include the changes in any existing solicitation, and, with appropriate consideration, any contract.

(e) *Statutory citations.* Statutory citations in this regulation include all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action unless another party is expressly cited.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.101 in paragraph (a) by revising the definition "Substantially as follows"; and by revising paragraph (d) to read as follows:

52.101 Using part 52.

(a) * * *

Substantially as follows or *substantially the same as*, when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition. Any variation must include the salient features of the FAR provision or clause, and must be consistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

* * * * *

(d) *Introductory text.* Within subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

* * * * *

5. Amend section 52.104 by revising paragraph (a) to read as follows:

52.104 Procedures for modifying and completing provisions and clauses.

(a) The Contracting Officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) "The Contracting Officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause"; or

(2) "The contracting officer may substitute the words 'task order' for the word 'Schedule' wherever that word appears in the clause."

* * * * *

6. Amend section 52.105 by revising paragraph (a) to read as follows:

52.105 Procedures for using alternates.

(a) The FAR accommodates a major variation in a provision or clause by use of an alternate. The FAR prescribes alternates to a given provision or clause in the FAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled "Alternate I," "Alternate II," "Alternate III," etc.

* * * * *

7. Revise section 52.200 to read as follows:

52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)), and gives a cross-reference to the location in the FAR that prescribes its use.

[FR Doc. 00–1853 Filed 1–25–00; 8:45 am]

BILLING CODE 6820–EP–U

VOL
65
ISS
17
JA
26
000
UMI

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Federal Register

Vol. 65, No. 17

Wednesday, January 26, 2000

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200	3
201–344	4
345–688	5
689–1050	6
1051–1296	7
1297–1528	10
1529–1754	11
1755–2016	12
2017–2280	13
2281–2520	14
2521–2834	18
2835–3118	19
3119–3374	20
3375–3582	21
3583–3780	24
3781–4094	25
4095–4348	26

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

1660 (See Proc. 7266)	2831
1704 (See Proc. 7266)	2831
1948 (See Proc. 7266)	2831
2050 (See Proc. 7266)	2831
2528 (See Proc. 7266)	2831
7263	2817
7264	2821
7265	2825
7266	2831
7267	2835
7268	2837
7269	3779

Executive Orders:

April 17, 1926 (Revoked in part by PLO 7428)	3733
5593 (Revoked in part by PLO 7428)	3733
12543 (See Notice of December 29, 1999)	199
12544 (See Notice of December 29, 1999)	199
12947 (See Notice of January 19, 2000)	3581
13099 (See Notice of January 19, 2000)	3581

Administrative Orders:

Presidential Determinations:

No. 2000–9 of December 23, 1999	689

Notices:

December 29, 1999	199
January 19, 2000	3581

Memorandums:

January 5, 2000	2279, 3119

5 CFR

831	2281, 2521
842	2281, 2521

7 CFR

6	1297
201	1704
246	3375
371	1298
400	3781
457	3782
932	2839
959	2526
966	2281
982	2841
984	1755
997	1302
998	1302
999	1302
1220	1, 2844

Proposed Rules:

54	3155
253	2358
800	75
868	78
930	672
979	1347
993	2908
1280	1825
1301	1825
1304	1825
1305	1825
1306	1825
1307	1825
1308	1825

9 CFR

93	345
94	1304, 1529
96	1304
303	201
304	2283
312	2283
327	2283
350	2283
381	201, 2283, 2284
424	2284, 3121

Proposed Rules:

98	4173
54	1074
79	1074
130	391

10 CFR

431	2227

Proposed Rules:

Ch. I	3615
2	3394
40	3394
50	1829, 3394
72	3397
430	2077
440	4332
490	1831
960	2361
963	2361

11 CFR

Proposed Rules:

100	1074
102	1074
103	1074
104	1074
106	1074
107	1074
109	1074
110	1074
114	1074
116	1074

12 CFR

225.....3785
269a.....2529
935.....202
960.....203
Proposed Rules:
Ch. I.....4176
5.....3157
650.....1676
900.....324
910.....324
917.....81
941.....324

13 CFR

305.....2017
308.....2530
314.....2530
400.....1757
500.....1758
Proposed Rules:
120.....1349
121.....4176

14 CFR

21.....3540
23.....1758
27.....3540
29.....3540
39...1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540, 1761, 1762, 1763, 1765, 1767, 1769, 1771, 2017, 2019, 2285, 2287, 2289, 2844, 2861, 2862, 2864, 3379, 3583, 3794, 3796, 3798, 3799, 3802, 4095
61.....2022
67.....2022
71.....348, 349, 699, 700, 1308, 1309, 1774, 2537, 2538, 2539, 3381, 3382, 4102
91.....3540
95.....2291
97.....350, 2023, 2025
121.....2295
125.....2295
141.....2022
142.....2022
382.....352
1204.....2865
Proposed Rules:
39.....250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353, 1831, 1833, 1836, 1838, 1840, 2362, 2555, 3165, 3617, 3619, 3621, 4192
71.....402, 4192
91.....2077
108.....560
109.....560
111.....560
121.....2079
129.....560, 2079
191.....560

15 CFR

734.....2492
740.....2493
742.....2492
770.....2492
772.....2492
774.....2492
902.....30
Proposed Rules:
280.....1572
303.....731

16 CFR

256.....2867
1615.....1435
1700.....93
Proposed Rules:
250.....2912
310.....2912

17 CFR

232.....3123
Proposed Rules:
Ch. II.....3399
1.....3623

18 CFR

35.....810
Proposed Rules:
125.....1484
225.....1484
356.....1484

19 CFR

4.....2868
162.....3803
171.....3803
191.....3803
Proposed Rules:
134.....4193

20 CFR

Proposed Rules:
604.....2080

21 CFR

101.....1000
173.....1776
177.....3384
201.....7, 4103
314.....1776
341.....7
369.....7
556.....4111
558.....4111
801.....3584
803.....4112
804.....4112
862.....2296
864.....2296
866.....2296
868.....2296
870.....2296
872.....2296
874.....2296
876.....2296
878.....2296
880.....2296
882.....2296
884.....2296
886.....2296
888.....2296
890.....2296
892.....2296
1308.....3124
Proposed Rules:
216.....256
314.....3623
801.....3627
870.....2364
890.....2364

22 CFR

514.....352

23 CFR

655.....9

24 CFR

35.....3386
902.....1712
968.....3386
1000.....3386

25 CFR

1.....2026
301.....2030
602.....2030
Proposed Rules:
1.....2081, 2084

26 CFR

1.....701, 1236, 1310, 2026, 2323, 3586, 3589, 3813, 3814, 3817, 3821, 3844, 4121
7.....3589
49.....1056
301.....215, 263, 1059, 2030, 3844
602.....1056, 1236, 1310, 2030, 2323, 3586, 3589, 3821, 3844, 4112
Proposed Rules:
1.....258, 1572, 2081, 2084, 3401, 3629, 3903, 4203
40.....1076

27 CFR

270.....1676

29 CFR

2550.....614
4044.....2329

30 CFR

202.....1542
203.....2874
206.....1542
250.....217, 2874, 3126
251.....2874, 3856
253.....2874
254.....2874, 3856
256.....2874
282.....3856
904.....2331
914.....1059
946.....1063
Proposed Rules:
206.....1580, 2557, 3167
944.....2364

31 CFR

1.....2333
317.....2034
375.....3113

32 CFR

Proposed Rules:
199.....2085
323.....3167
326.....2912
813.....419

33 CFR

110.....2876
117.....353, 710, 1543, 1543, 2035, 2036, 2038, 2539, 2541
154.....710
155.....710
165.....1065
207.....4124
Proposed Rules:
100.....2095
110.....1581, 2095
117.....1077
157.....2812
165.....1079, 2095

34 CFR

611.....1780
Proposed Rules:
Ch. VI.....1582

36 CFR

Proposed Rules:
5.....2920
13.....2920

37 CFR

4.....3127
Proposed Rules:
201.....3404

38 CFR

Ch. 1.....1544
3.....3388
17.....762
51.....762
58.....762

39 CFR

111.....1318, 3609
265.....3857
Proposed Rules:
111.....264
206.....403

40 CFR

9.....1950
49.....1322
52.....14, 16, 1068, 1545, 1787, 2039, 2042, 2046, 2048, 2052, 2334, 2674, 2877, 2880, 2883, 3130, 4207
60.....1323, 2336
63.....3276
70.....1787, 3130
81.....2883
82.....716
97.....2674
136.....3007
141.....1950
142.....1950
147.....2899
180.....1790, 1796, 1802, 1809, 3860
247.....2889
257.....1842
258.....1842
261.....2337
271.....2897
300.....19, 1070, 2903, 2905
445.....3007
712.....1548
716.....1554
721.....354
Proposed Rules:
52...104, 421, 732, 1080, 1583, 1841, 2367, 2557, 2560, 2920, 2921, 2924, 3168, 3630, 4207
63.....3169, 3642, 3907
70.....1841, 3168

81.....2924, 3630
180.....425
257.....1814
258.....1814
260.....3188
271.....2925
300.....1081, 2925, 2926
503.....1676

41 CFR

Ch. 301.....3392
301-10.....1268
301-11.....1326
301-51.....2541, 3054
301-52.....3054
301-54.....3054
301-70.....3054
301-71.....3054
301-74.....1326
301-76.....3054

Proposed Rules:

101-6.....2504
102-3.....2504

42 CFR

121.....1435
412.....1817, 3136
413.....1817
483.....1817
485.....1817

Proposed Rules:

405.....1081

43 CFR

428.....4303

44 CFR

64.....1554, 1555

Proposed Rules:

67.....1435

45 CFR

1355.....4020
1356.....4020
1357.....4020

Proposed Rules:

160.....427
164.....427

46 CFR

Proposed Rules:

356.....646

47 CFR

0.....374
21.....4136
25.....3814
27.....3139
51.....1331, 2542
68.....4137
73.....219, 220, 1823, 1824, 3150, 3151, 3152
74.....4136
76.....375

Proposed Rules:

1.....2097
22.....2097
51.....2367
73.....270, 1843, 3188, 3406, 3407, 4211
74.....3188
101.....2097

48 CFR

205.....2056
209.....2056
235.....2057
241.....2058
243.....2056
252.....2056
253.....2055
1806.....3153
1813.....3153
1815.....3153
1835.....3153
1852.....3153
1872.....3153
2401.....3572
2402.....3572
2403.....3572, 3576
2409.....3572, 3576
2413.....3572
2414.....3572
2415.....3572
2416.....3572
2419.....3572
2424.....3572
2425.....3572
2426.....3572
2428.....3572
2432.....3572
2433.....3572
2436.....3572, 3576
2437.....3576
2439.....3572, 3576
2442.....3572, 3576
2446.....3572
2451.....3572
2452.....3572, 3576
2453.....3572, 3576

Proposed Rules:

1.....1438, 4328, 4345
2.....1438
4.....1438
7.....1438
8.....1438
11.....2272
15.....1438
16.....1438
17.....1438
22.....1438, 2272
27.....1438
28.....1438
31.....1438, 4327
32.....1438
35.....1438
36.....2272
37.....1438
42.....1438
43.....1438, 3762
44.....1438
45.....1438
49.....1438, 2272
51.....1438
52.....1438, 2272, 3762, 4345
53.....1438
212.....2104
242.....2104, 2109
247.....2104
252.....2104
253.....2109
1804.....429
1852.....429

49 CFR

1.....220
268.....2342
572.....2059

Proposed Rules:

40.....2573
209.....1844
222.....2230
229.....2230
1244.....732

50 CFR

17.....20, 2348, 3096, 3867, 3876, 4140
216.....30
226.....1584
300.....59
600.....221, 4169
622.....4172
635.....2075
648.....377, 1557, 1568
660.....221, 3890, 4169
679.....60, 65, 74, 380, 3892

Proposed Rules:

17.....1082, 1583, 1845, 3096, 3648
18.....109
23.....4217
86.....3332
216.....270, 1083
222.....270
223.....105
224.....1082
226.....105, 1584
300.....272
622.....4221
635.....3199
648.....275, 431
660.....2926

REMINDERS

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RULES GOING INTO EFFECT JANUARY 26, 2000

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Child and adult care food program—
Meal pattern requirements; overclaim authority and technical changes; published 12-27-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Foreign fishing; transshipment permits; published 1-26-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Ractopamine hydrochloride; published 1-26-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
HUD-owned properties:
Up-front grants and loans in disposition of multifamily projects; published 12-27-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Organization and operations—
Low-income designated credit unions; secondary capital accounts; published 12-27-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class D airspace; published 1-26-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Business expenses; substantiation; published 1-26-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 2-4-00; published 1-5-00
Sheep and lamb promotion and research; comments due by 2-1-00; published 1-12-00
Tobacco inspection:
Burley tobacco; moisture testing; comments due by 1-31-00; published 12-2-99

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 2-3-00; published 12-16-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspections:
Inspection services—
Retail operations exemption from requirements; comments due by 2-3-00; published 1-4-00

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; implementation; comments due by 1-31-00; published 12-30-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass; comments due by 2-2-00; published 1-3-00
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 2-4-00; published 12-21-99
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; annual specifications and management measures; comments due by 2-3-00; published 1-4-00
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 2-4-00; published 1-5-00
Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs; fishing quotas; comments due by 2-3-00; published 1-4-00
Ocean and coastal resource management:
Marine sanctuaries—
Gray's Reef National Marine Sanctuary, GA; management plan/ regulations review; comments due by 2-1-00; published 11-19-99
Gray's Reef National Marine Sanctuary, GA; management plan/ regulations review; scoping meetings; comments due by 2-1-00; published 12-27-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
AmeriCorps education awards; comments due by 1-31-00; published 12-1-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Retiree Dental Program; expansion of dependent eligibility; comments due by 1-31-00; published 12-1-99
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99
Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Perchloroethylene emissions from dry cleaning facilities—
Florida; comments due by 1-31-00; published 12-28-99
Air pollution; standards of performance for new stationary sources:
Commercial and industrial solid waste incineration units; comments due by 1-31-00; published 11-30-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-2-00; published 1-18-00
Illinois; comments due by 2-2-00; published 1-3-00
Montana; comments due by 2-2-00; published 1-3-00
New York; comments due by 2-4-00; published 1-5-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-acyl sarcosines and sodium N-acyl sarcosinates; comments due by 2-4-00; published 12-6-99
Tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3(1H-1,2,4-triazol-1-yl) propyl 1,1,2,2-tetrafluoroethyl ether]; comments due by 2-4-00; published 12-6-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 1-31-00; published 12-30-99
National priorities list update; comments due by 1-31-00; published 12-30-99
Toxic substances:
Significant new uses—
Halogenated benzyl ester acrylate, etc.; comments due by 2-4-00; published 1-5-00
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection; comments due by 2-4-00; published 12-21-99

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Indiana; comments due by 1-31-00; published 12-17-99
Radio frequency devices:
Radio services operating below 30 MHz; conducted

emission limits; comments due by 1-31-00; published 11-16-99

Radio stations; table of assignments:

Arizona; comments due by 1-31-00; published 12-30-99

California; comments due by 1-31-00; published 12-30-99

Louisiana; comments due by 1-31-00; published 12-30-99

Virginia and Maryland; comments due by 1-31-00; published 12-17-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99

Veterans' employment; comments due by 2-1-00; published 12-3-99

Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:

Temporary Assistance for Needy Families Program—

High performance bonus rewards to States; comments due by 2-4-00; published 12-6-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Freedom of Information Act; implementation; comments due by 2-2-00; published 11-4-99

Human drugs:

Prescription drug marketing; comments due by 2-1-00; published 12-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Managed care organizations; external quality review; comments due by 1-31-00; published 12-1-99

Medicare and Medicaid programs:

Religious nonmedical health care institutions and advance directives; comments due by 1-31-00; published 11-30-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Spalding's catchfly; comments due by 2-1-00; published 12-3-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Oil value for royalty due on Federal leases; establishment; comments due by 1-31-00; published 12-30-99

JUSTICE DEPARTMENT

Drug Enforcement Administration

List I chemical manufacturers, distributors, importers, and exporters; registration:

Registration and reregistration fees; comments due by 1-31-00; published 12-1-99

Correction; comments due by 1-31-00; published 12-16-99

LABOR DEPARTMENT

Employment and Training Administration

Birth and adoption unemployment compensation; comments due by 2-2-00; published 1-13-00

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:

Ergonomics program; comments due by 2-1-00; published 11-23-99

LABOR DEPARTMENT

Wage and Hour Division

Child labor; civil money penalties; inflation adjustment; comments due by 1-31-00; published 11-30-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99

Veterans' employment; comments due by 2-1-00; published 12-3-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:

Agency records centers; storage standards update; comments due by 1-31-00; published 12-2-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Share insurance and appendix; update and clarification; comments due by 1-31-00; published 11-30-99

POSTAL SERVICE

Domestic Mail Manual:

Palletized standard mail and bound printed matter, etc.; preparation changes; comments due by 2-3-00; published 1-4-00

RAILROAD RETIREMENT BOARD

Railroad Unemployment Insurance Act:

Sickness and unemployment benefits; waiting period shortened, etc.; comments due by 2-1-00; published 12-3-99

SECURITIES AND EXCHANGE COMMISSION

Public utility holding companies:

Acquisition of U.S. utilities by foreign companies; internationalization; comments due by 2-4-00; published 12-21-99

Securities:

Unlisted trading privileges; comments due by 1-31-00; published 12-15-99

SMALL BUSINESS ADMINISTRATION

Business loans:

Certified development companies; areas of operations; comments due by 1-31-00; published 12-1-99

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Tariff-rate quota implementation for imports of sugar-containing products; comments due by 1-31-00; published 12-1-99

TRANSPORTATION DEPARTMENT

Coast Guard

American Society for Testing and Materials (ASTM); standards incorporated by reference; update; comments due by 1-31-00; published 12-1-99

Regattas and marine parades:

Port of Miami, FL; OPSAIL 2000; comments due by 1-31-00; published 12-17-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-31-00; published 12-30-99

Alexander Schleicher Segelflugzeugbau; comments due by 1-31-00; published 12-28-99

Boeing; comments due by 1-31-00; published 11-30-99

Constucciones Aeronauticas, S.A.; comments due by 2-4-00; published 1-5-00

Eurocopter Deutschland GmbH; comments due by 1-31-00; published 12-2-99

Eurocopter France; comments due by 1-31-00; published 11-30-99

Fokker; comments due by 2-3-00; published 1-4-00

Hartzell Propeller, Inc.; comments due by 2-1-00; published 12-3-99

Rolls Royce, plc; comments due by 2-1-00; published 12-3-99

Saab; comments due by 2-4-00; published 1-5-00

Turbomeca Arrius; comments due by 1-31-00; published 12-1-99

Class D airspace; comments due by 2-4-00; published 1-5-00

Class E airspace; comments due by 1-31-00; published 12-17-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Treasury securities, reopening; original issue discount; comments due by 2-3-00; published 11-5-99

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Well-grounded claims; comments due by 1-31-00; published 12-2-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been

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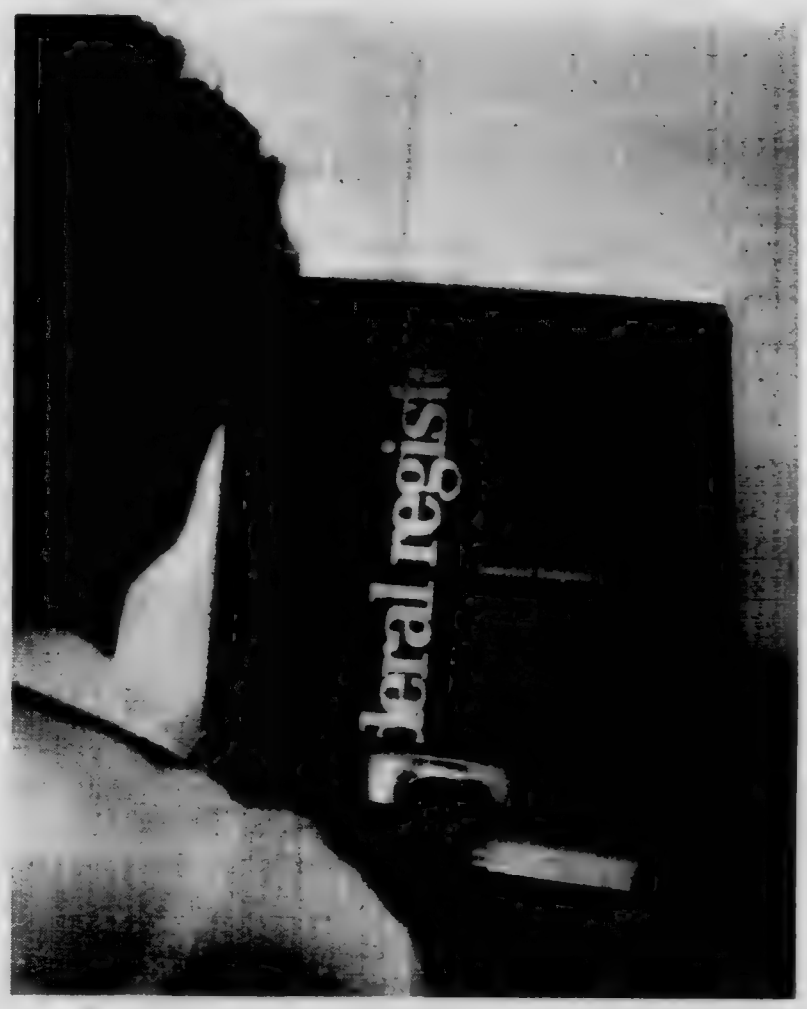

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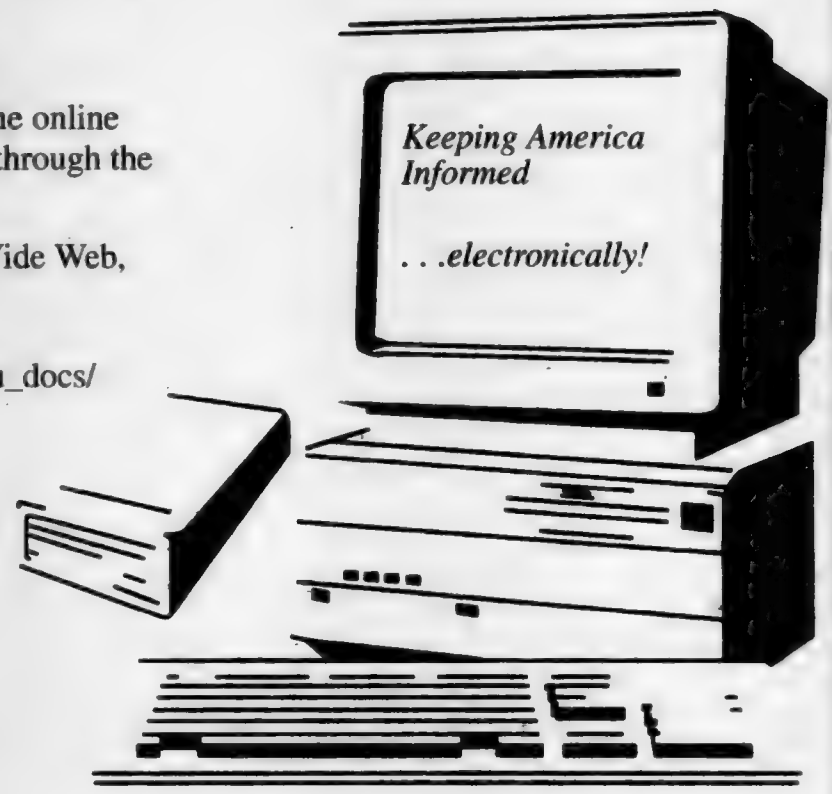

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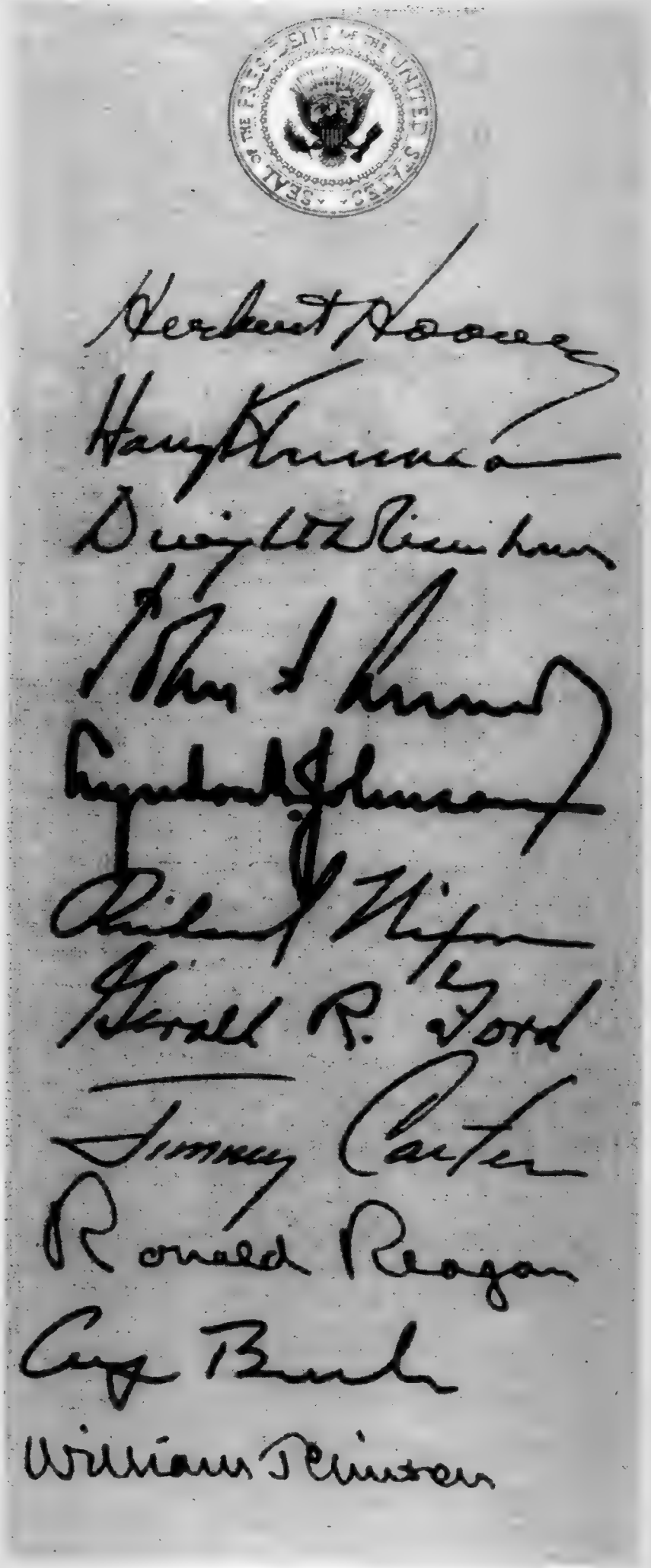

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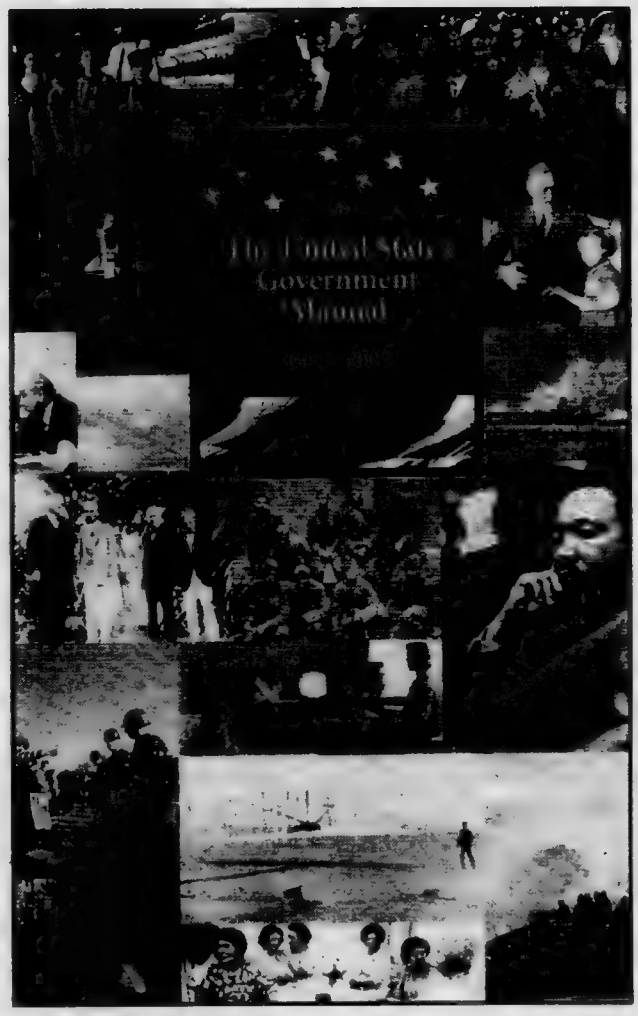

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Contents

Federal Register

Vol. 65, No. 18

Thursday, January 27, 2000

Agriculture Department
See Food and Nutrition Service
See Forest Service

Air Force Department
NOTICES
Environmental statements; notice of intent:
Cape Cod Air Station, MA., et al., 4406
Inventions, Government-owned; availability for licensing, 4406–4407

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4403–4403

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Field initiated child care research projects, etc., 4495–4516

Commerce Department
See Census Bureau
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4405–4406

Defense Department
See Air Force Department
NOTICES
Meetings:
Defense Science Board, 4406

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4407

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 4357–4359
Water pollution; effluent guidelines for point source categories:
Waste combusters, 4360–4385
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Idaho, 4466–4493
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4421–4424
Air pollution control:
Acid rain program—
Nitrogen oxides compliance plans, 4424
Meetings:
Northeast United States Ozone Transport Commission, 4424–4425

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 4356–4357
Bombardier, 4354–4356
British Aerospace, 4349–4350
Cessna, 4351–4352
Dornier, 4353–4354
PROPOSED RULES
Airworthiness directives:
Airbus, 4386–4388

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Massachusetts, 4491
Oklahoma, 4400–4401
Texas, 4401–4402
NOTICES
Television broadcasting:
Cable television systems—
Video programming delivery; market competition status; annual assement, 4425–4426

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Consolidated Edison Energy, Inc., et al., 4409–4412
EMI Dartmouth, Inc., et al., 4412–4415
Environmental statements; availability, etc.:
Northern Border Pipeline Co., 4415–4416
Environmental statements; notice of intent:
Petal Gas Storage Co., 4416–4418
Hydroelectric applications, 4418–4421
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 4407
FPL Energy Maine Hydro, 4407
Natural Gas Pipeline Co. of America, 4407–4408
Northern Natural Gas Co., 4408
Southern Natural Gas Co., 4408
Williston Basin Interstate Pipeline Co., 4408–4409

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 4426–4427
Formations, acquisitions, and mergers, 4427

Food and Drug Administration
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
Arava, 4429–4430
Azopt, 4435–4436
GlucaGen, 4435–4436
Maxalt, 4428–4429
Plavix, 4430
Refludan, 4431
Sentinel Model 2000/2010, 4433–4434
Vitravene, 4434
Ziagen, 4431–4432
Meetings:
Oncologic Drugs Advisory Committee, 4436
Reports and guidance documents; availability, etc.:
Abbreviated new drug application, archival copy; electronic submission; guidance, 4436–4437

Food and Nutrition Service
NOTICES
Reports and guidance documents; availability, etc.:
Food Buying Guide for Child Nutrition Programs; proposed yields revision
Correction, 1968

Forest Service
NOTICES
Meetings:
Klamath Provincial Advisory Committee, 4403
Olympic Provincial Interagency Executive Committee, 4403

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 4427

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4427–4428
Meetings:
Vital and Health Statistics National Committee, 4428

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4437–4438
Submission for OMB review; comment request, 4438

Internal Revenue Service
PROPOSED RULES
Employment taxes and collection of income taxes at source:
Electronically filed information returns; installation agreements due date extension, 4396–4400
Income taxes:
Qualified transportation fringe benefits, 4388–4396
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4459–4463

Justice Department
NOTICES
Pollution control; consent judgments:
Cuyahoga Equipment Corp. et al., 4438–4439
General Electric Co., 4439
Koch Industries, Inc., et al., 4439–4440
Las Vegas Paving Corp., 4440
Los Angeles and Burbank, CA, et al., 4440
Sparton Technology, Inc., 4440–4441
Privacy Act:
Computer matching programs, 4441–4442

Labor Department
See Pension and Welfare Benefits Administration

Management and Budget Office
NOTICES
Reports and guidance documents; availability, etc.:
Costs and benefits of Federal regulations; report to Congress, 4447

National Aeronautics and Space Administration
NOTICES
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Safeguards International, Inc., 4443
Patent licenses; non-exclusive, exclusive, or partially exclusive:
BARCO, Inc. Display Sytems, 4443
Phoenix Systems International, Inc., 4443
Strategic Planning Group, Inc., 4443–4444
VisiCom, 4444

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 4444–4446

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
Universal designed environments, 4446

National Oceanic and Atmospheric Administration
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Burlington Resources and Seneca Resources, 4405

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 4447
Applications, hearings, determinations, etc.:
Public Service Electric & Gas Co., 4446–4447

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4442

Public Health Service
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
First American Investment Funds, Inc., et al., 4449–4451
Toronto-Dominion Bank, et al., 4447–4449
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 4451–4455
Cincinnati Stock Exchange, 4455–4457
National Association of Securities Dealers, Inc., 4457–4458

Small Business Administration
NOTICES
Disaster loan areas:
Kentucky, 4459
New York, 4458
North Carolina, 4459
Privacy Act:
Systems of records, 4459

Transportation Department
See Federal Aviation Administration

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 4465–4493

Part III
Department of Health and Human Services, Aministration for Children and Families, 4495–4516

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 (5 documents) 4349, 4351, 4353, 4354, 4356
Proposed Rules:
39 4386

20 CFR
Proposed Rules:
1 (2 documents) 4388, 4396
31 4396
301 4396

40 CFR
52 4357
444 4360
Proposed Rules:
52 4466

47 CFR
Proposed Rules:
73 (3 documents) 4400, 4401

Rules and Regulations

Federal Register
Vol. 65, No. 18
Thursday, January 27, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–306–AD; Amendment 39–11524; AD 2000–02–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that currently requires repetitive detailed visual inspections to detect cracking or other damage of certain diaphragm support structures of the forward equipment compartment; and repair, if necessary. This amendment continues to require repetitive inspections, but also requires replacement of cracked or damaged diaphragm support structures with improved parts, which terminates the requirement for repetitive inspections. This amendment also adds airplanes to the applicability of the AD. This amendment is prompted by the development of improved diaphragms. The actions specified by this AD are intended to prevent failure of the two diaphragms that support the upper structure of the forward equipment compartment, which could accelerate fatigue damage in adjacent structure and result in reduced structural integrity of the airframe.

DATES: Effective March 2, 2000.

The incorporation by reference of Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of March 2, 2000.

The incorporation by reference of Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 23, 1998 (63 FR 63975, November 18, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–24–01, amendment 39–10888 (63 FR 63975, November 18, 1998), which is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, was published in the **Federal Register** on November 26, 1999 (64 FR 66424). The action proposed to continue to require repetitive detailed visual inspections to detect cracking or other damage of certain diaphragm support structures of the forward equipment compartment; and repair, if necessary. The action also proposed to require replacement of cracked or damaged diaphragm support structures with improved parts, which would terminate the requirement for repetitive inspections. Additionally, the action also proposed to add airplanes to the applicability of the proposed AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 59 airplanes of U.S. registry that will be affected by this AD.

The inspection that is currently required by AD 98–24–01, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection requirement of this AD on U.S. operators is estimated to be $3,540, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10888 (63 FR 63975, November 18, 1998), and by adding a new airworthiness directive (AD), amendment 39–11524, to read as follows:

2000–02–05 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11524. Docket 99–NM–306–AD. Supersedes AD 98–24–01, Amendment 39–10888.

Applicability: Jetstream Model 4101 airplanes, on which British Aerospace Modification JM41384 has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the two diaphragms that support the upper structure of the forward equipment compartment, which could accelerate fatigue damage in adjacent structure and result in reduced structural integrity of the airframe, accomplish the following:

Restatement of Certain Requirements of AD 98–24–01

(a) For airplanes having constructors numbers 41004 through 41098 inclusive: Prior to the accumulation of 4,500 total landings, or within 300 landings after December 23, 1998 (the effective date of AD 98–24–01, amendment 39–10888), whichever occurs later: Perform a detailed visual inspection to detect cracking or other damage of the diaphragms installed between station 4 and station 8 of the forward fuselage, in accordance with Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996, or Revision 1, dated July 30, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking or other damage is detected, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(2) If any cracking or other damage is detected, prior to further flight, accomplish the actions required by either paragraph (a)(2)(i) or (a)(2)(ii). After the effective date of this AD, only replacement of the diaphragms in accordance with paragraph (a)(2)(ii) of this AD is acceptable for compliance with the repair requirements of this paragraph.

(i) Repair the diaphragm in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 3,000 landings.

(ii) Replace both diaphragms with new, improved diaphragms, in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999. Such replacement constitutes terminating action for the repetitive inspections required by this AD.

New Repetitive Inspections and Corrective Actions Required by This AD

(b) For airplanes other than those listed in paragraph (a) of this AD: Prior to the accumulation of 4,500 total landings, or within 300 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking or other damage of the diaphragms installed between station 4 and station 8 of the forward fuselage, in accordance with Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999.

(1) If no cracking or other damage is detected, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(2) If any cracking or other damage is detected, prior to further flight, replace both diaphragms with new, improved diaphragms, in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999. Such replacement constitutes terminating action for the repetitive inspections required by this AD.

(c) Replacement of diaphragms with new, improved diaphragms, in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(2)(i) of this AD, the actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996, or Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999.

(1) The incorporation by reference of Jetstream Alert Service Bulletin J41–A53–023, Revision 1, dated July 30, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996, was approved previously by the Director of the Federal Register as of December 23, 1998 (63 FR 63975, November 18, 1998).

(3) Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 2, 2000.

Issued in Renton, Washington, on January 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1713 Filed 1–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–125–AD; Amendment 39–11532; AD 2000–02–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 182S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–13–10, which currently requires repetitively inspecting all engine exhaust muffler end plates (four total) for cracks on all Cessna Aircraft Company (Cessna) Model 182S airplanes, and replacing any muffler where an end plate is found cracked. AD 98–13–10 also requires fabricating and installing a placard that specifies immediate inspection of all engine exhaust muffler end plates any time the engine backfires upon start-up. This AD is the result of Cessna developing an improved design exhaust system for the Model 182S airplanes. This AD retains the actions of AD 98–13–10 on all affected airplanes, and requires replacing the exhaust system with an improved design exhaust system within a certain period of time, as terminating action for those requirements retained from AD 98–13–10. This AD also limits the effectivity to exclude those airplanes manufactured with the improved design exhaust system. The actions specified by this AD are intended to detect and correct damage to the engine exhaust mufflers caused by cracking and the high stresses imposed on the attachment of the exhaust system at the area the firewall, which could result in exhaust gases entering the airplane cabin with consequent crew and passenger injury.

DATES: Effective March 17, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–125–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Model 182S airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 26, 1999 (64 FR 20221). The NPRM proposed to supersede AD 98–13–10, Amendment 39–10598. AD 98–13–10 currently requires repetitively inspecting all engine exhaust muffler end plates (four total) for cracks; replacing any muffler where an end plate is found cracked; and fabricating and installing a placard that specifies an inspection of all engine exhaust muffler end plates any time the engine backfires upon start-up. The NPRM proposed to retain the actions of AD 98–13–10 on all affected airplanes, and would require replacing the exhaust system with an improved design exhaust system within a certain period of time, as terminating action for the actions retained from AD 98–13–10. The NPRM also proposed to limit the effectivity to exclude those airplanes manufactured with the improved design exhaust system. Accomplishment of the proposed replacement as specified in the NPRM would be required in accordance with Cessna Service Bulletin SB98–78–03, dated December 14, 1998.

The NPRM was the result of Cessna developing an improved design exhaust system for the Model 182S airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 150 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $9,000, or $60 per airplane. These figures only take into account the cost of the initial inspection and do not take into account the costs of any repetitive inspections or replacements needed if cracks were found.

The inspection cost of this AD is the same as that presented in AD 98–13–10. Therefore, this AD imposes no inspection cost impact on U.S. operators of the affected airplanes over that already required in AD 98–13–10.

The FAA estimates that it will take approximately 4 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $463 per muffler assembly (2 required) per airplane. Based on these figures, the total cost impact of the replacement on U.S. operators is estimated to be $174,900, or $1,166 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–13–10, Amendment 39–10598, and by adding a new AD to read as follows:

2000–02–14 Cessna Aircraft Company: Amendment 39–11532; Docket No. 98–CE–125–AD; Supersedes AD 98–13–10, Amendment 39–10598.

Applicability: Model 182S airplanes, serial numbers 18280001 through 18280286, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct damage to the engine exhaust mufflers caused by cracking and the high stresses imposed on the attachment of the exhaust system at the area the firewall, which could result in exhaust gases entering the airplane cabin with consequent crew and passenger injury, accomplish the following:

(a) Within 5 days after the effective date of this AD, unless already accomplished (compliance with AD 98–13–10), accomplish the following:

(1) Fabricate a placard that specifies immediately inspecting all engine exhaust muffler end plates when the engine backfires upon start-up, and install this placard on the instrument panel within the pilot's clear view. The placard should utilize letters of at least 0.10-inch in height and contain the following words:

"If the engine backfires upon start-up, prior to further flight, inspect and replace (as necessary) all engine exhaust muffler end plates."

(2) Insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).

(b) Within 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 98–13–10), and thereafter at intervals not to exceed 25 hours TIS after each inspection (including any inspection accomplished after an engine backfire) until the replacements required by paragraphs (b)(1) and (d) of this AD are accomplished, inspect all engine exhaust muffler end plates (four total) for cracks on the forward (upstream) or aft (downstream) end of each muffler can.

(1) Prior to further flight, replace any engine exhaust muffler where an end plate is found cracked with one of improved design, part number (P/N) 1254017–19 or P/N 9954200–9 (or FAA-approved equivalent part number). Accomplish these replacements in accordance with Cessna Service Bulletin SB98–78–03, dated December 14, 1998.

(2) This replacement terminates the repetitive inspection required by this AD for that particular engine exhaust muffler. The repetitive inspections would still be required for any other engine exhaust muffler not replaced with the improved design parts.

(3) The placard requirements of this AD are still required until all engine exhaust system mufflers are replaced with the improved design parts.

Note 2: Cessna Service Bulletin SB98–78–02, Issued: June 6, 1998, depicts the area to be inspected. The actions of this service bulletin are different from those required by this AD. This AD takes precedence over the actions specified in this service bulletin. Accomplishment of Cessna Service Bulletin SB98–78–02, Issued: June 6, 1998, is not considered an alternative method of compliance to the actions of this AD.

(c) Fabricating and installing the placard and inserting this AD into the Limitations Section of the AFM, as required by paragraph (a) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Within 12 calendar months after the effective date of this AD, replace the engine exhaust mufflers with ones of improved design, part number (P/N) 1254017–19 or P/N 9954200–9 (or FAA-approved equivalent part number). Accomplish these replacements in accordance with Cessna Service Bulletin SB98–78–03, dated December 14, 1998.

(1) These replacements terminate the repetitive inspection and placard requirements of this AD, as specified in paragraphs (a) and (b), including all subparagraphs, of this AD.

(2) The replacements may be accomplished prior to 12 calendar months after the effective date of this AD, as terminating action for the repetitive inspection and placard requirements of this AD.

(e) As of the effective date of this AD, no person may install, on any affected airplane, an engine exhaust muffler that is not of improved design, P/N 1254017–19 or P/N 9954200–9 (or FAA-approved equivalent part number).

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–13–10 are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(h) The replacements required by this AD shall be done in accordance with Cessna Service Bulletin SB98–78–03, dated December 14, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes AD 98–13–10, Amendment 39–10598.

(j) This amendment becomes effective on March 17, 2000.

Issued in Kansas City, Missouri, on January 18, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1771 Filed 1–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–219–AD; Amendment 39–11527; AD 2000–02–08]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, equipped with ground spoiler actuators having part number 1059A0000–02, that requires removal of the gland attachment bolts of the ground spoiler actuator and replacement with new bolts installed with higher torque. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent hydraulic fluid leakage due to loose or broken gland attachment bolts, and consequent loss of the main hydraulic system.

DATES: Effective March 2, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Dornier Model 328–100 series airplanes, equipped with ground spoiler actuators having part number 1059A0000–02, was published in the **Federal Register** on November 26, 1999 (64 FR 66422). That action proposed to require removal of the gland attachment bolts of the ground spoiler actuator and replacement with new bolts installed with higher torque.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,440, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–08 DORNIER LUFTFAHRT GMBH: Amendment 39–11527. Docket 99–NM–219–AD.

Applicability: Model 328–100 series airplanes, equipped with ground spoiler actuators having part number 1059A0000–02, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic fluid leakage due to loose or broken gland attachment bolts, and consequent loss of the main hydraulic system, accomplish the following:

Replacement

(a) Prior to the accumulation of 3,300 total flight hours, or within 330 flight hours after the effective date of this AD, whichever occurs later, remove the four gland attachment bolts of the ground spoiler actuator and replace with new bolts installed at a higher torque, in accordance with Dornier Service Bulletin SB–328–27–289, dated March 3, 1999.

Note 2: Dornier Service Bulletin SB–328–27–289, dated March 3, 1999, refers to Liebherr Service Bulletin 1059A–27–01, dated March 5, 1999, as an additional source of service information for accomplishment of the replacement.

Spares

(b) As of the effective date of this AD, no person shall install, on any airplane, a ground spoiler actuator having part number 1059A0000–02, unless it has been modified in accordance with Dornier Service Bulletin SB–328–27–289, dated March 3, 1999.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Dornier Service Bulletin SB–328–27–289, dated March 3, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 1999–175, dated June 3, 1999.

(f) This amendment becomes effective on March 2, 2000.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1768 Filed 1–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–107–AD; Amendment 39–11526; AD 2000–02–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–7–100 series airplanes, that requires repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed visual inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, this amendment also provides a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight.

DATES: Effective March 2, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model DHC–7–100 series airplanes was published in the **Federal Register** on November 22, 1999 (64 FR 63760). That action proposed to require repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed visual inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, that action also proposed to provide a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,760, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and

that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–07 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11526. Docket 99–NM–107–AD.

Applicability: All Model DHC–7–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight, accomplish the following:

Repetitive Inspections

(a) At the latest of the times specified in paragraphs (a)(1) and (a)(2) of this AD, perform a high frequency eddy current inspection to detect fatigue cracks of the locking pin fittings of the baggage door and locking pin housings of the fuselage; and a detailed visual inspection to detect fatigue cracks of the inner door structure on all four locking attachment fittings of the baggage door; in accordance with de Havilland Temporary Revision (TR) 5–100, dated December 23, 1998, for Supplementary Inspection Task 52–1 to the de Havilland Dash 7 Maintenance Manual PSM 1–7–2. Thereafter, repeat the inspections at intervals not to exceed 1,000 flight cycles.

(1) Inspect prior to the accumulation of 12,000 total flight cycles.

(2) Inspect within 600 flight cycles or 3 months after the effective date of this AD, whichever occurs later.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, as applicable, except as provided in paragraph (c) of this AD. For operators that elect to accomplish the actions specified in paragraph (c) of this AD: After accomplishment of the replacement required by paragraph (b)(1) or (b)(2) of this AD, the AFM revision and placard required by paragraph (c) of this AD may be removed.

(1) If a crack is detected in a baggage door locking pin fitting or fuselage locking pin housing: Replace the fitting or housing with a new fitting or housing, as applicable, in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2.

(2) If a crack is detected in the inner baggage door structure at the locking attachment fittings: Replace the structure with a new support structure in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2, or repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, or the Transport Canada Civil Aviation (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(c) For airplanes on which only one baggage door stop fitting or its support structure is found cracked at one location, and on which the pressurization system "Dump" function is operational: Prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD. Within 1,000 flight cycles after accomplishment of the requirements of paragraphs (c)(1) and (c)(2) of this AD, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) Revise the Limitations Section of the FAA-approved DHC–7 Airplane Flight Manual (AFM), PSM 1–71A–1A, to include the following statement. This AFM revision may be accomplished by inserting a copy of this AD into the AFM.

"Flight is restricted to unpressurized flight below 10,000 feet mean sea level (MSL). The airplane must be operated in accordance with DHC–7 AFM, PSM 1–71A–1A, Supplement 20."

(2) Install a placard on the cabin pressure control panel or in a prominent location that states the following:

"DO NOT PRESSURIZE THE AIRCRAFT UNPRESSURIZED FLIGHT PERMITTED ONLY IN ACCORDANCE WITH DHC–7 AFM PSM 1–71A–1A, SUPPLEMENT 20 FLIGHT ALTITUDE LIMITED TO 10,000 FEET MSL OR LESS."

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the, New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections shall be done in accordance with de Havilland Temporary Revision 5–100, dated December 23, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained

from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–03, dated February 22, 1999.

(g) This amendment becomes effective on March 2, 2000.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1767 Filed 1–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–374–AD; Amendment 39–11530; AD 2000–02–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires the application of sealant to the upper surface on the wing center section to ensure the integrity of the secondary fuel barrier. This amendment is prompted by reports from the airplane manufacturer that the sealant was inadvertently not applied to portions of the wing center section on certain Boeing Model 777–200 series airplanes. The actions specified by this AD are intended to prevent fuel or fuel vapors from entering the cargo and passenger compartments in the event of a failure of the primary seal or development of a crack in the wing center section structure. Leakage of fuel or fuel vapors into the cargo and passenger compartments could be hazardous to personnel, and could cause a fire in those compartments.

DATES: Effective March 2, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle Washington, 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38382). That action proposed to require the application of sealant to the front spar and upper surface of the wing center section to ensure the integrity of the secondary fuel barrier.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

One commenter states that it is not affected by the proposed rule.

Request to Revise Applicability

One commenter, the manufacturer, requests that the applicability of the proposed AD be limited to Boeing Model 777–200IGW aircraft as listed in the effectivity section of Boeing Service Bulletin 777–57–0033. (The applicability of the proposed rule reads in part, "* * * Model 777–200 series airplanes, line numbers 41 through 91 inclusive * * *." As written, the proposed rule does not specifically reference Boeing Model 777–200IGW aircraft.) In support of its request, the commenter states that only the Boeing Model 777–200IGW aircraft has a fuel tank in the wing center section, and that the basic Boeing Model 777–200 aircraft, by design, has a dry wing center section.

The FAA concurs with the commenter's request to revise the applicability of the proposed AD since the effectivity of the referenced service bulletin only specifies Model 777–200 airplanes with a fuel tank in the wing center section. Therefore, the FAA has revised the applicability of the final rule to specify that it applies to Boeing Model 777–200 series airplanes, as listed in the service bulletin.

Request to Clarify Requirements

One commenter, the airplane manufacturer, indicates that only the upper surface on the wing center section under the overwing stub beam on the left and right sides is affected by this proposed AD; the forward spar does not require any rework.

The FAA infers the commenter requests that the FAA clarify the location of the rework. The FAA finds that the commenter's description of the affected area is accurate, and the final rule has been revised accordingly.

Explanation of Additional Service Information

In the proposed AD, the FAA inadvertently omitted referencing Appendix A, dated March 26, 1998, of the Boeing Service Bulletin 777–57–0033. Therefore, the FAA has revised the final rule throughout to reference Appendix A.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $1,760, or $220 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–11 Boeing: Amendment 39–11530. Docket 98–NM–374–AD.

Applicability: Model 777–200 series airplanes, as listed in Boeing Service Bulletin 777–57–0033, including Appendix A, both dated March 26, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel or fuel vapors from entering the passenger and cargo compartments of the airplane in the event of a failure of the primary seal or development of a crack in the wing center section structure, accomplish the following:

Corrective Actions

(a) Within 24 months after the effective date of this AD, apply sealant to the upper surface on the wing center section under the overwing stub beams on the left and right sides of the airplane, in accordance with Boeing Service Bulletin 777–57–0033, dated March 26, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 777–57–0033, dated March 26, 1998, including Appendix A, dated March 26, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle Washington, 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 2, 2000.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1766 Filed 1–26–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0215; FRL–6529–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of revisions to the California State Implementation Plan (SIP). EPA proposed disapproval of these revisions in the **Federal Register** on November 24, 1999 and December 10, 1999. The revisions pertain to startup and shutdown exemption provisions and to visible emission limits in the South Coast Air Quality Management District (SCAQMD). EPA is finalizing disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions are not consistent with applicable CAA requirements.

EFFECTIVE DATE: This action is effective on February 28, 2000.

ADDRESSES: Copies of the submitted rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

EPA is disapproving SCAQMD Rule 429, Startup and Shutdown Exemption Provisions for Oxides of Nitrogen, as adopted on December 21, 1990 and SCAQMD Rule 401, Visible Emissions, as adopted on September 11, 1998. These rules were submitted by the California Air Resources Board to EPA on January 28, 1992 and January 12, 1999, respectively.

II. Background

On November 24, 1999 in 64 FR 66143, EPA proposed disapproval of SCAQMD Rule 429. On December 10, 1999 in 64 FR 69211, EPA proposed disapproval of SCAQMD Rule 401. These rules were submitted as revisions to the California SIP. A detailed discussion of the background for each rule is provided in the proposed rules (PRs) cited above.

EPA has evaluated the submitted rules for consistency with the requirements of the CAA and EPA regulations and with EPA's interpretation of these requirements as expressed in the EPA policy and guidance. EPA is finalizing the disapproval of SCAQMD Rule 429, Startup and Shutdown Exemption Provisions for Oxides of Nitrogen, as submitted on January 28, 1992 because the rule is inconsistent with the requirements of CAA sections 110(l), 172(c)(1), and 110(a)(2)(A). EPA is finalizing the disapproval of SCAQMD Rule 401, Visible Emissions, as submitted on January 12, 1999 because the rule is inconsistent with the requirements of CAA sections 193, 110(l), and 189. Detailed discussion of each submitted rule and EPA's evaluation of each rule has been provided in the PRs and in technical support documents (TSDs) available at EPA's Region IX office.

III. Response to Public Comments

A 15-day public comment period on EPA's proposed disapproval of SCAQMD Rule 429 was provided in 64 FR 66143. EPA did not receive comments on the PR.

A 15-day public comment period on EPA's proposed disapproval of SCAQMD Rule 401 was provided in 64 FR 69211. EPA did not receive comments on the PR.

IV. EPA Action

EPA is finalizing disapproval of the above-referenced rules because they do not meet applicable CAA requirements. The effect of this action is that the federal enforceable California SIP remains unchanged.[1] Because this action maintains the stringency of the current SIP, EPA's disapproval of the submitted rules does not trigger sanctions or FIP clocks under section 179 of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, Federalism, and E.O. 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in E.O. 13132 to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of E.O. 13132 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the

[1] The current SIP does not contain any version of SCAQMD Rule 429, Startup and Shutdown Exemption Provisions for Oxides of Nitrogen, but does contain an earlier version of SCAQMD Rule 401, Visible Emissions. On January 29, 1985, EPA approved into the federally enforceable SIP the version of SCAQMD Rule 401 adopted on March 2, 1984. This version of Rule 401 remains in the SIP.

communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because disapprovals of SIP revisions under section 110 and subchapter I, part D of the Clean Air Act do not affect any existing requirements applicable to small entities. Any existing Federal requirements will remain in place. Federal disapproval of the State SIP submittal will not affect State-enforceability. Moreover, EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this disapproval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The disapproval will not change existing requirements and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Dated: January 18, 2000.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.271 is amended by revising the section title and by adding paragraph (c) to read as follows:

§ 52.271 Malfunction, startup, and shutdown regulations.

* * * * *

(c) The following regulations are disapproved because they exempt sources from applicable emissions limitations during malfunctions and/or fail to sufficiently limit startup and shutdown exemptions to those periods where it is technically infeasible to meet emissions limitations.

(1) South Coast Air Quality Management District.

(i) Rule 429, submitted on January 28, 1992.

3. Section 52.275 is amended by adding paragraph (c) to read as follows:

§ 52.275 Particulate matter control.

* * * * *

(c) The following regulations are disapproved because they relax the control on visible emissions without any accompanying analyses demonstrating that these relaxations will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards or any other applicable requirement of the Clean Air Act.

(1) South Coast Air Quality Management District.

(i) Rule 401, submitted on January 12, 1999.

[FR Doc. 00–1840 Filed 1–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 444

[FRL–6503–6]

RIN 2040–AC23

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Commercial Hazardous Waste Combustor Subcategory of the Waste Combustors Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule represents the Agency's first effort to develop Clean Water Act (CWA) effluent limitations guidelines and standards for wastewater discharges from the commercial hazardous waste combustor (CHWC) segment of the waste combustion industry. This rule generally applies to hazardous waste combustion facilities, except cement kilns, regulated as "incinerators" or "boilers and industrial furnaces" under the Resource Conservation and Recovery Act (RCRA) under certain conditions.

This regulation limits the discharge of pollutants into navigable waters of the United States and the introduction of pollutants into publicly-owned treatment works (POTWs) by existing and new stand-alone CHWCs that incinerate waste received from offsite.

EPA estimates that compliance with this final regulation will reduce the discharge of pollutants by at least 170,000 pounds per year at an estimated annualized cost of $2 million. EPA predicts that the rule will improve water quality for both aquatic life and human health in five streams. EPA also projects that today's rule will reduce sewage sludge contamination associated with discharges from CHWC facilities at POTWs.

DATES: This regulation shall become effective February 28, 2000. The incorporation by reference of test methods listed in § 444.12 is approved by the Director of the Federal Register as of February 28, 2000. In accordance with 40 CFR 23.2, for purposes of judicial review, this rule will be considered promulgated at 1:00 p.m. Eastern time on February 10, 2000.

ADDRESSES: For additional technical information write to: Ms. Samantha Lewis, US EPA, (4303), 401 M Street SW, Washington, DC 20460 or send E-mail to: Lewis.Samantha@epa.gov or call at (202) 260–7149. For additional economic information contact Mr. William Anderson at the address above or send E-mail to: Anderson.William@epa.gov or call at (202) 260–5131.

The complete public record is available for review in the EPA Water Docket, 401 M Street SW, Washington, DC 20460. EPA has assigned the record for this rulemaking docket number W–97–08. The record includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Ms. Samantha Lewis at (202) 260–7149. For additional economic information contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Incinerators that discharge directly to or indirectly through publicly owned treatment works to waters of the U.S. and that burn RCRA hazardous wastes received from off-site for a fee or other remuneration (regulated under RCRA, 40 CFR part 264, subpart O or part 265, subpart O (i.e. rotary kiln incinerators, liquid injection incinerators)). Boilers and industrial furnaces (BIFs) that discharge directly to or indirectly through publicly owned treatment works to waters of the U.S. and that burn RCRA hazardous wastes received from off-site for a fee or other remuneration (regulated under RCRA, 40 CFR part 266, subpart H (i.e. boilers, industrial furnaces)).
Federal Govt.	Incinerators that discharge directly to or indirectly through publicly owned treatment works to waters of the U.S. and that burn RCRA hazardous wastes received from off-site for a fee or other remuneration (regulated under RCRA, 40 CFR part 264, subpart O or part 265, subpart O (i.e. rotary kiln incinerators, liquid injection incinerators)). Boilers and industrial furnaces (BIFs) that discharge directly to or indirectly through publicly owned treatment works to waters of the U.S. and that burn RCRA hazardous wastes received from off-site for a fee or other remuneration (regulated under RCRA, 40 CFR part 266, Subpart H (i.e. boilers, industrial furnaces)).[1]

[1] EPA identified no Federal agencies that operate commercial hazardous combustion facilities subject to this regulation. However, Federal agencies that burn RCRA hazardous wastes received from off-site for a fee or other remuneration would be covered by the final regulation.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 444.10 of the final rule and the definitions in § 444.11 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Compliance Dates

Existing direct dischargers must comply with limitations based on the best practicable technology currently available, the best conventional pollutant control technology, and the best available technology economically achievable as soon as their National Pollutant Discharge Elimination System (NDPES) permit includes such limitations. Existing indirect dischargers subject to today's regulations must comply with the pretreatment standards for existing sources no later than January 27, 2003. New direct and indirect discharging sources must comply with applicable limitations and standards on the date the new sources begin operations.

Supporting Documentation

The final regulations are supported by several major documents:

1. "Development Document for Final Effluent Limitations Guidelines and Standards for Commercial Hazardous Waste Combustors" (EPA 821–R–99–020). This Technical Development Document (TDD) presents the technical information that formed the basis for EPA's decisions concerning the final

rule. In it, EPA describes, among other things, the data collection activities following the proposal, the wastewater treatment technology options considered, what pollutants are found in CHWC wastewater and the estimation of costs to the industry to comply with final limitations and standards.

2. "Economic Analysis of Final Effluent Limitations Guidelines and Standards for Commercial Hazardous Waste Combustors" (EPA 821–B–99–008).

3. "Statistical Support Document for Final Effluent Limitations Guidelines and Standards for Commercial Hazardous Waste Combustors" (EPA 821–B–99–010).

4. "Environmental Assessment of Final Effluent Limitations Guidelines and Standards for Commercial Hazardous Waste Combustors" (EPA 821–B–99–009).

How to Obtain Supporting Documents

The Technical Development Document and Economic Analysis will be posted on the Internet, at www.EPA.gov/OST/guide. The documents are also available from the Office of Water Resource Center, MC–4100, U.S. EPA, 401 M Street SW, Washington, DC 20460; telephone (202) 260–7786 for the voice mail publication request.

Organization of This Document

Legal Authority

I. Statutory Background for Effluent Regulations
- A. Overview of the Clean Water Act
- B. Statutory Requirements of Regulation
- 1. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA
- 2. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA
- 3. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA
- 4. New Source Performance Standards (NSPS)—Sec. 306 of the CWA
- 5. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA
- 6. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA
- C. CWA Section 304(m) Requirements

II. Background of the Industry and Prior Regulations
- A. Updated Profile of the Industry
- B. Proposed Rule
- 1. Proposal
- 2. Notice of Data Availability
- C. Related Regulations—Hazardous Waste Combustion Regulation Promulgated September 30, 1999

III. Summary of Significant Changes Since Proposal
- A. EPA Limited the Scope of the Final Guidelines to Waste Combustors that Burn Hazardous Waste
- B. The Final Guidelines Do Not Apply to Hazardous Waste Combustors Exempt from RCRA
- C. The Final Guidelines Do Not Apply to the Burning of Waste that Is Received From Off Site for No Fee or Other Remuneration
- D. EPA Has Excluded Cement Kilns From the Scope of the Guidelines
- E. EPA Used Additional Data to Calculate the Final Limitations and Standards
- F. Change in Technology Basis of Limitations and Standards Due to Expanded Data Set
- G. Change in Regulation Name
- H. RCRA Permit Modification Costs Removed

IV. The Final Commercial Hazardous Waste Combustor Regulation
- A. Scope of the Final Rule
- B. BPT/BCT/BAT/PSES
- C. New Source Performance Standards (NSPS)
- D. Pretreatment Standards for New Sources (PSNS)

V. Costs and Impacts for the Final Commercial Hazardous Waste Combustor Regulations
- A. Contents of Economic Analysis
- B. Summary of Results
- 1. Overview of Methodology
- 2. Summary of Costs
- 3. Summary of Economic Impacts for Existing Dischargers
- 4. Cost Reasonableness of Final BPT Option
- 5. Economic Impacts of New Sources
- 6. Firm-Level Impacts
- 7. Community Impacts
- 8. Foreign Trade Impacts

VI. Water Quality Analysis and Other Environmental Benefits
- A. Characterization of Pollutants
- B. Facilities Modeled
- C. POTWs

VII. Non-Water Quality Environmental Impacts
- A. Air Pollution
- B. Waste Treatment Residuals
- C. Energy Requirements

VIII. Regulatory Implementation
- A. Implementation of the Limitations and Standards
- B. Upset and Bypass Provisions
- C. Variances and Modifications
- 1. Fundamentally Different Factors Variances
- 2. Water Quality Variances
- 3. Permit Modifications
- 4. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements
- D. Analytical Methods

IX. Regulatory Requirements
- A. Executive Order 12866
- B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
- C. Submission to Congress and the General Accounting Office
- D. Paperwork Reduction Act
- E. Unfunded Mandates Reform Act
- F. Executive Order 13132: Federalism
- G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
- H. National Technology Transfer and Advancement Act
- I. Executive Order 13045 and Protecting Children's Health

X. Summary of Public Participation
- A. Summary of Proposal Comments and Responses
- B. Summary of Notice of Availability Comments and Responses

Appendix 1—Definitions, Acronyms, and Abbreviations

Legal Authority

EPA is promulgating these regulations under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

I. Statutory Background for Effluent Regulations

A. Overview of the Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act attacks the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Direct dischargers must comply with effluent limitations and new source performance standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology. Permits authorizing discharges issued under the National Pollutant Discharge Elimination System must require compliance with these limitations and standards (CWA sections 301(b), 304(b), 306, 307(b)–(d), 33 U.S.C. 1311(b), 1314(b), 1316, and 1317(b)–(d)). In the absence of national effluent limitations and new source performance standards, EPA must establish "best professional judgement" limitations and standards on a case-by-case basis before it may issue an NPDES discharge permit.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards (for new and existing sources) which restrict pollutant discharges for those who

discharge wastewater indirectly though sewers flowing to publicly-owned treatment works (POTWs) (section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

B. Statutory Requirements of Regulation

The CWA requires EPA to establish effluent limitations guidelines, pretreatment standards for new and existing sources, and new source performance standards.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the guidelines for an industry category, EPA defines the BPT effluent limitations for conventional, priority, and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reductions obtained. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, however, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practicably applied.

2. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA require EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources beyond the effluent reductions achieved under BPT. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

3. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated treatment technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (*i.e.*, conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

The CWA requires EPA to establish pretreatment standards to prevent pollutants passing through POTWs or interfering with POTW operations. EPA determines whether a pollutant passes through a POTW by comparing BAT removals of the pollutants at direct discharging facilities. The preamble to the proposal explains this. See 63 FR at 6405–06. As explained above, EPA develops BAT limitations by considering a number of factors, including the availability and feasibility of use of the treatment technology, pollutant removals, and its cost to dischargers. Section 304(b)(2) of the CWA. EPA evaluates the same factors in establishing pretreatment standards as it considers when it develops BAT limitations (A Legislative History of the Clean Water Act Amendments of 1977, H.R. Rep. No. 830, 95th Cong. 1st Sess., 271 (1978)). Pretreatment standards are technology-based and analogous to BAT effluent limitations. Pretreatment standards also must be economically achievable on a national basis to the industry category.

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs, including interfering with sludge disposal methods.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. Those regulations require POTWs to establish pretreatment standards to address local passthrough and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Section 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

C. CWA Section 304(m) Requirements

Section 304(m) of the Act (33 U.S.C. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitation guidelines and standards ("effluent guidelines"), and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), that included schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for

which the Agency established a schedule was the "Hazardous Waste Treatment, Phase II" Category. EPA subsequently changed the category name "Hazardous Waste Treatment, Phase II" to "Landfills and Incinerators."

The Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc. challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia (*NRDC et al* v. *Reilly*, Civ. No. 89–2980). Under the terms of the consent decree, EPA agreed, among other things, to propose effluent guidelines for the "Landfills and Incinerators" category by November 1997 and to take final action by November 1999. Although "Landfills and Incinerators" is listed as a single entry in the Consent Decree schedule, EPA proposed two separate rulemaking actions in the **Federal Register**, both on February 6, 1998. In order to reflect the fact that the effluent limitations guidelines and standards to be proposed would apply only to a segment of the waste combustion industry, EPA changed the name of the proposed regulation from "Incinerators" to "Industrial Waste Combustor" regulations prior to the proposal. In order to reflect accurately the segment of the combustion industry being regulated today, EPA has now changed the name for this final regulation to "Commercial Hazardous Waste Combustor" regulations.

II. Background on the Industry and Prior Regulations

A. Updated Profile of the Industry

The universe of incineration facilities currently in operation in the United States is broad. These include municipal waste combustors that burn household and other municipal trash and incinerators that burn hazardous wastes. Among other types of incinerators burning waste material are those that burn medical wastes exclusively and sewage sludge incinerators that burn residual solids from wastewater treatment at POTWs. In addition, some boilers and industrial furnaces may also burn waste materials for fuel.

While many industries began incinerating some of their wastes as early as the late 1950's, the current market for waste combustion (particularly combustion of hazardous wastes) is essentially a creature of the Resource Conservation and Recovery Act (RCRA) and EPA's resulting regulation of hazardous waste disposal. For more information on the development of the industry, see the preamble to the proposed guideline at 63 FR 6392, 6395 (February 6, 1998).

Today's rule establishes national effluent limitations and pretreatment standards for a segment of the waste combustion industry—"commercial hazardous waste combustors." The segment of the universe of incineration units for which EPA has adopted regulations includes units which operate commercially and which use controlled flame combustion in the treatment or recovery of energy values from hazardous industrial waste. For example, industrial boilers, industrial furnaces, rotary kiln incinerators and liquid-injection incinerators are all types of units included in the Commercial Hazardous Waste Combustors Subcategory.

Thermal treatment or recovery operations at these facilities generate the following types of wastewater: Air pollution control wastewater, flue gas quench wastewater, truck/equipment wash water, container wash waster, laboratory drain wastewater, and floor washings from process areas. Section 4 of the TDD describes these more fully. Typical non-wastewater by-products of thermal treatment or recovery operations may include: Slag or ash developed in the thermal unit itself, and emission particles collected using air pollution control systems. There are many different types of air pollution control systems in use by thermal units. The types employed by thermal units include, but are not limited to, the following: Packed towers (which use a caustic scrubbing solution for the removal of acid gases), baghouses (which remove particles and do not use any water), wet electrostatic precipitators (which remove particles using water but do not generate a wastewater stream), and venturi scrubbers (which remove particles using water and generate a wastewater stream). Thus, the amount of wastewater and types of wastewater generated by a thermal unit are directly dependent upon the types of air pollution control systems employed by the thermal unit.

The Agency estimates that there are approximately 55 Commercial Hazardous Waste Combustor facilities that are potentially subject to the rule. These include rotary kiln incinerators, liquid injection incinerators, fluidized-bed incinerators, multiple-hearth incinerators, fixed-hearth incinerators, industrial boilers, industrial furnaces, and other types of thermal units. These do not include cement kilns, since EPA specifically exempts cement kilns from this final rule. Of these 55 facilities, approximately 33 facilities do not generate any wastewater that EPA is regulating under this final rule. Twelve of these facilities generate CHWC wastewater but do not discharge the wastewater to a receiving stream or POTW. These "zero or alternative" dischargers use a variety of methods to dispose of their wastewater. At these facilities, (1) wastewater is sent off-site for treatment or disposal (four facilities); (2) wastewater is burned or evaporated on site (four facilities); (3) wastewater is sent to a surface impoundment on site (three facilities); and (4) wastewater is injected underground on site (one facility).

For the final rule, EPA identified only 10 facilities that were discharging CHWC wastewater to a receiving stream or introducing wastewater to a POTW. Of these 10 facilities, two facilities have, since 1992, either stopped accepting waste from off site for combustion or have closed their combustion operations.

B. Proposed Rule

1. Proposal

On February 6, 1998 (63 FR 6391), EPA proposed limitations and standards for the Commercial Hazardous Waste Combustor Industry. The proposal applied to existing and new stand-alone industrial waste combustors that burned hazardous and non-hazardous wastes received from offsite. The proposed guidelines and standards would not have applied to wastewater discharges from industrial waste combustors that only burned wastes generated on-site at the industrial facility or generated at facilities under common corporate ownership. The principal source of regulated wastewater under the proposal was air pollution control wastewater. The comment period for the proposal closed on May 7, 1998. EPA received comments from 39 interested stakeholders.

2. Notice of Data Availability

On May 17, 1999 (64 FR 26714), EPA published a Notice of Data Availability related to the proposed limitations and standards for the Commercial Hazardous Waste Combustor industry. This notice solicited comments on new wastewater treatment system performance data from three Commercial Hazardous Waste Combustor facilities. EPA received this new performance data in early 1998, subsequent to the close of the comment period for the proposal.

Three CHWCs submitted influent and effluent wastewater treatment system performance data and related information on the operation of their

treatment systems. Each facility submitted daily measurements for chlorides, total dissolved solids, total suspended solids, sulfate, pH, and 15 metals (aluminum, antimony, arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, selenium, silver, tin, titanium and zinc). One facility provided 11 days of sampling data, and the two other facilities provided 30 days of sampling data each. The comment period for the notice closed on June 16, 1999. EPA received comments from 4 interested stakeholders.

C. Related Regulations—Hazardous Waste Combustion Regulation Promulgated September 30, 1999

The preamble to the proposal discusses a number of EPA regulatory efforts affecting the waste combustion industry, including a proposal to establish standards for hazardous waste combustion. 63 FR at 6395–96. Recently, under the joint authority of the Clean Air Act (CAA) and the Resource Conservation Recovery Act (RCRA), EPA promulgated the Hazardous Waste Combustion (HWC) MACT (64 FR 52828, September 30, 1999). These final regulations apply to the following types of combustors:

- RCRA Incinerators (as defined in 40 CFR 260.10).
- RCRA Cement Kilns and RCRA Lightweight Aggregate Kilns (as defined in 40 CFR 260.10 under the Industrial Furnace definition).

These regulations do not apply to:

- RCRA Boilers and Industrial Furnaces (other than Cement Kilns and Lightweight Aggregate Kilns, as defined in 40 CFR 260.10).

The HWC regulations establish stack emission limits for several hazardous air pollutants (HAPs). Under the Clean Air Act, these limits must require the maximum achievable degree of emission reductions of HAPs, taking into account the cost of achieving such reductions and non-air quality health and environmental impacts and energy requirements—so-called Maximum Achievable Control Technologies (MACT) standards. The HWC regulation does not set limits on the water effluents from the air pollution control systems (APCS) (like wet scrubbers, quench systems). As a result of promulgation of these standards, it is likely that some facilities using dry air pollution control, not presently generating wastewater, may switch to using wet APCS.

III. Summary of Significant Changes Since Proposal

This section describes the most significant changes to the rule since proposal. Many of these changes result from EPA consideration of the comments submitted on the proposal. Section X below discusses the most significant of these. EPA's responses to all the comments provides more detailed explanations for changes. The record for the final rule includes these responses.

A. EPA Limited the Scope of the Final Guidelines to Waste Combustors that Burn Hazardous Waste

Today's final rule does not apply to industrial waste combustors that do not burn hazardous waste. EPA had proposed to regulate both hazardous and non-hazardous waste combustors. EPA received comments questioning whether its data collection effort was complete enough to allow EPA to characterize non-hazardous industrial waste combustor facilities and develop limitations and standards for such facilities. Examples of non-hazardous industrial waste burned by waste combustors include: tire-derived fuels, alternative fuels, recycled manufactured products and reclaimed materials.

The data examined by EPA as well as information supplied by commenters supports the conclusion that the pollutant profile of scrubber water for non-hazardous industrial waste combustors burning alternative fuels will exhibit significant variation depending on the type of fuels burned. The variation will range from scrubber water containing few, if any, pollutants of potential concern to facilities whose scrubber water may more closely resemble that of hazardous waste combustion practices. EPA determined that, in order to develop appropriate limitations and standards, EPA would need to consider multiple subcategories, based on the different fuels burned before it could regulate these facilities. This effort would require information that the Agency currently lacks.

At this time, EPA's Office of Air and Radiation is exploring the development of MACT CAA standards for industrial commercial waste incineration. They have identified four potential subcategories for regulation: wood and other biomass waste incinerators, pathological waste incinerators, drum and parts reclaimer incinerators, miscellaneous industrial and commercial waste incinerators. EPA may consider taking a second look at these facilities for wastewater regulation, following development of the MACT standards.

The CHWC regulation focuses on RCRA combustor units and includes units that burn both RCRA and non-RCRA wastes. If a combustor does not burn any RCRA hazardous waste, it is not subject to the rule. The regulation will apply to the CHWC wastewater produced by burning non-hazardous industrial wastes in conjunction with RCRA hazardous waste.

B. The Final Guidelines Do Not Apply to Hazardous Waste Combustors Exempt From RCRA

In today's final rule, EPA is clarifying the proposal regarding incinerators and BIFs regulated under RCRA. EPA proposed to regulate only "commercially-operating hazardous waste combustor facilities regulated as 'incinerators' or 'boilers and industrial furnaces' under RCRA." EPA based its decision to limit the scope of the guidelines, in part, on its determination that wastewater from these exempt facilities would be qualitatively different from the regulated wastewater. However, EPA failed to make it clear that it was not proposing to regulate facilities that are granted exemptions from 40 CFR part 264, subpart O; part 265, subpart O; or part 266, subpart H. The applicability provisions of the final guideline make it clear that the rule does not apply to those exempted facilities. One example of a facility of this type is a facility that is conditionally exempt from regulation as a RCRA BIF under 40 CFR 266.100(c).

C. The Final Guidelines Do Not Apply to the Burning of Waste that Is Received From Off Site for No Fee or Other Remuneration

In today's final rule, EPA is not regulating hazardous waste combustors (HWCs) that only take waste from off-site (from facilities not under the same corporate structure) for no fee or other remuneration. At proposal, EPA had included waste burned from off-site for a fee or other remuneration in the scope of the rule. Examples of "not-for-fee" activities include wastes burned as a public service and product stewardship activities.

As explained in greater detail below, EPA decided it would not include captive or intra-company HWCs within this guideline so long as the combustors did not burn off-site wastes generated at a facility not under the same corporate structure or subject to the same ownership. A captive or intra-company HWC would still not be subject to the guideline if it burned off-site waste generated at a facility not under the same ownership so long as the wastes are similar to the wastes being generated on-site. EPA's review of data on captive facilities showed that permit writers regulated captive scrubber water either through specific guideline limitations or by developing BPJ limitations that

generally paralleled the limitations for the associated industrial process wastewater. The apparent reason for this is that if the incinerator is burning on-site industrial waste or similar waste, then the pollutant profile of its scrubber water would include many of the same pollutants seen in wastewater from its industrial operations. Given the small quantity of scrubber water and commingled treatment, applying the same requirements to scrubber water would be appropriate.

EPA concluded that the quantity of wastes burned on a "not-for-fee" basis was unlikely to be great for such captive and intra-company facilities. In those circumstances, the burning of such waste was not likely to change the character of the scrubber water for these combustors significantly. In these circumstances, the same reasoning that supported not including these combustors in this guideline would still apply.

D. EPA Has Excluded Cement Kilns From the Scope of the Guidelines

EPA is not including cement kilns within the scope of the CHWC guidelines for several reasons. Although EPA proposed to include cement kilns in the scope of this rule, EPA's survey identified no cement kilns that are currently discharging scrubber water or other wastewater that is potentially subject to the CHWC guidelines. In the absence of detailed information on the wastes burned in these kilns, wastewater characterizations, and treatment effectiveness, EPA is not applying the final limitations and standards to cement kilns.

EPA learned, as part of its analysis for the final rule, that there may be a cement kiln considering the installation of wet scrubbers in order to comply with the Hazardous Waste Combustor MACT. (See discussion on this MACT final rule above at Section II.C.) In the event that a cement kiln burning hazardous waste switched from a dry to wet scrubber, EPA would expect it to produce scrubber water with a pollutant profile very similar to those wastestreams regulated here as CHWC wastewater. In those circumstances, NPDES permit writers should consider whether they will need to establish BPJ limitations or local control authorities may need to establish local limits to control discharges of toxic pollutants in the scrubber water. Permit writers should compare cement kiln scrubber wastewater with the information provided in the TDD concerning the characteristics of CHWC wastewater to determine whether similar discharge limitations should be established.

In EPA's view, thermal operations burning hazardous wastes that use wet emissions control equipment will generally result in wastewater with similar pollutant profiles. This conclusion is supported by the data EPA has collected. Thus, EPA's wastewater data included data from wet emission control equipment at thermal operations burning hazardous waste exclusively as well as operations that burned hazardous waste as a fuel for other industrial operations such as acid regeneration. As EPA expected, the wastewater included extremely low levels of organic pollutants which are largely destroyed in the combustion process. EPA did find present a number of metals at treatable levels. Permit writers and local control authorities should carefully examine cement kiln emission control wastewater to see if it also contains metal pollutants when the permit writer establishes case-by-case limitations under NPDES regulations at 40 CFR 125.(3) or the control authority establishes local limits under the General Pretreatment Regulations at 40 CFR 403.5.

EPA has established limitations and standards for cement manufacturers at 40 CFR part 411. Among these limitations and standards are discharge limits for cement kilns which use water in wet scrubbers to control kiln stack emissions. While the part 411 regulations include BPT/BAT limitations, they only limit conventional pollutants and temperature. There are no pretreatment standards for indirect dischargers and no BAT limitations to control the discharge of toxic pollutants from these facilities. Consequently, the permit writer or local control authority must include technology-based limits for any toxic pollutant which is or may be discharged at a level greater than the level which can be achieved by treatment requirements appropriate to the permittee or which may pass through or interfere with POTW operations (40 CFR 122.44(e), 125.3. *See also* 40 CFR 403.5(c) which requires the establishment of local limits in a POTW pretreatment program for any pollutant which may cause pass through or interference). The presence of metal pollutants in scrubber water would likely trigger these requirements.

E. EPA Used Additional Data To Calculate the Final Limitations and Standards

As described in the Notice of Availability on May 17, 1999 (64 FR 26714), EPA received influent and effluent data from three CHWC facilities following proposal of the regulation. Commenters supported the use of this data in the development of the final CHWC limitations and standards. Following an evaluation of the three facilities, EPA determined that two of the three facilities employed effective treatment. EPA used data from these two facilities as follows. The concentrations of pollutants in the treated effluent from these two additional facilities are higher for some pollutants and lower for others, as compared to the facility used to develop limitations and standards for the proposal. EPA used the new pollutant concentration data for the final rule. EPA did not rely on data from the two additional facilities to calculate variability factors. For both facilities, the average variability of the effluent concentrations was lower than the average variability of the effluent concentrations used to calculate the proposed limitations and standards. EPA used only the variability factors calculated from the facility it used at proposal to calculate the final limitations and standards. The variability factors calculated using the proposal data better reflect the variability seen in waste receipts at CHWCs.

F. Change in Technology Basis of Limitations and Standards Due to Expanded Data Set

Based on the new data received and analyzed by EPA following proposal, EPA has changed the technology basis for PSES and BPT/BAT (noted this way because the BPT and BAT limitations are equivalent). For the final rule, PSES and BPT/BAT are based on chromium reduction (as necessary) followed by two stages of chemical precipitation with (or without) sand filtration. EPA developed the final limitations and standards using sampling data from facilities both with and without a final sand filtration step. The data show that filtration may or may not be necessary to meet the final limitations, depending upon the level of treatment provided in the initial two stages of chemical precipitation. EPA costed the limitations and standards with sand filtration, however, to ensure its economic achievability.

G. Change in Regulation Name

EPA changed the name of this regulation from "Industrial Waste Combustors" to "Commercial Hazardous Waste Combustors." This change reflects the changes made in the scope of the project from proposal to promulgation. Specifically, EPA is regulating only hazardous, rather than all industrial, waste combustors for the final regulation (see Section IV.A.

above). Also, EPA is regulating only facilities which receive waste for a fee or other remuneration, rather than all facilities that take waste from off-site from facilities not under their same corporate structure, regardless of whether a fee is charged (see Section IV.C above).

H. RCRA Permit Modification Costs Removed

In the proposed regulation, EPA included RCRA permit modification capital costs as one component of the total proposed capital costs. This was an error. The wastewater treatment unit exemption at 40 CFR 264.1(g)(6) and 40 CFR 265.1(c)(10) and 40 CFR 270.1(c)(2)(v) exempts, from certain RCRA requirements, wastewater treatment units at facilities that are subject to the NPDES or pretreatment requirements under the Clean Water Act. Thus, CHWC facilities would not need to modify their RCRA permits as a result of this rule and would not incur these RCRA permit modification costs. The final rule does not include these RCRA permit modification costs.

IV. The Final Commercial Hazardous Waste Combustor Regulation

This section discusses the scope of the final rule, the treatment options that EPA considered for development of the final limitations and standards and the rationale for the Agency's selected options for BPT, BCT, BAT, PSES, PSNS, and NSPS.

A. Scope of the Final Rule

Today's final effluent limitations guidelines and pretreatment standards cover pollutants only in discharges of specified wastewater from new and existing Commercial Hazardous Waste Combustor facilities. Based on its consideration of comments, EPA has narrowed the scope of the final rule to commercial hazardous waste combustors, rather than industrial waste combustors, as proposed.

As explained in Section III.G, EPA now defines the regulated facilities as Commercial Hazardous Waste Combustors (CHWCs). A CHWC is any thermal unit, except a cement kiln, that is subject to either to 40 CFR part 264, subpart O; part 265, subpart O; or part 266, subpart H if the thermal unit burns RCRA hazardous wastes received from off-site for a fee or other remuneration in the following circumstances. The thermal unit is a commercial hazardous waste combustor if the off-site wastes are generated at a facility not under the same corporate structure or subject to the same ownership as the thermal unit and (1) the thermal unit is burning wastes that are not of a similar nature to wastes being burned from industrial processes on site, or (2) there are no wastes being burned from industrial processes on site. Examples of wastes of a "similar nature" may include the following: wastes generated in industrial operations whose wastewaters are subject to the same provisions in 40 CFR Subchapter N (Part 400 to 471) or wastes burned as part of a product stewardship activity.

The term "commercial hazardous waste combustor" includes the following facilities: a facility that burns exclusively waste received from off-site; and, a facility that burns both wastes generated on-site and wastes received from off-site. Facilities that may be commercial hazardous waste combustors include hazardous waste incinerators, rotary kiln incinerators, lime kilns, lightweight aggregate kilns, and boilers.

A facility not otherwise a commercial hazardous waste combustor is not a commercial hazardous waste combustor if it burns RCRA hazardous waste for charitable organizations, as a community service or as an accommodation to local, state or government agencies so long as the waste is burned for no fee or other remuneration. Thermal units that only burn non-hazardous industrial waste are no longer in the scope of this guideline, based on EPA's assessment of public comments.

The scope of wastewater regulated for the final rule remains the same as proposed. CHWC wastewater means water used in air pollution control systems or water used to quench flue gas or slag generated as a result of commercial hazardous waste combustion operations. Most of the wastewater generated by Commercial Hazardous Waste Combustor operations result from these three sources.

As proposed, EPA is not including within the scope of the rule those hazardous waste combustors that burn only wastes received from off-site facilities within the same corporate ownership (intracompany wastes) or hazardous waste combustors that only burn wastes generated on-site. Thus, facilities which only burn waste from off-site facilities under the same corporate structure (an intracompany facility) and/or only burn waste generated on-site (captive facility) are not regulated under these guidelines.

EPA received comments that claim that the Agency's proposal not to apply the guidelines to intracompany facilities would mean that as many as several thousand on-site and intracompany facilities would not be subject to the rule, without assurances other comparable categorical standards would apply to the wastewaters discharged by such facilities. EPA also received comments that the universe of commercial waste combustors covered by the rule is narrow considering the magnitude of the total pollutant loadings from the whole IWC industry. The comments state that EPA is ignoring the majority of pollutants discharged from combustion sources by excluding captive and intracompany sources.

EPA has concluded that its decision to limit the scope of this regulation to a narrow universe of combustion operations is well-supported by the record. From the information developed by the Agency for this rulemaking and confirmed by comments on the proposal, EPA has concluded that the combustor wastewater generated by captive and intra-company hazardous waste combustors operated in conjunction with, and receiving the bulk of their waste from, associated industrial or commercial operations are currently subject to effluent guideline limitations for other point source categories either explicitly through the guideline or through permit writer-developed BPJ limitations. In some cases, EPA specifically considered scrubber water as a wastewater source in developing guidelines and thus scrubber water is a specifically regulated stream. In other cases, industrial operations with associated combustors commingle scrubber water with other industrial wastewater for treatment. In these circumstances, permit writers are applying the applicable industrial guideline to the scrubber water through BPJ limitations because of the small volumes of scrubber water and the similarity of the metals profile of the scrubber water to that of other wastewater being treated.

The record shows the great bulk of wastewater discharges from captive and intracompany combustion operations are in fact being regulated under industry-specific guidelines. EPA has based those guidelines on data that are specific to the particular industrial processes being conducted on-site. Those guidelines regulate the appropriate range of pollutants associated with the on-site industrial processes. As a consequence, these pollutants are likely constituents of the waste being burned. In fact, many existing effluent guidelines specify air pollution control wastewaters (APC) as an "in-scope" wastewater (e.g., Organic Chemicals, Plastics and Synthetic Fibers category and Pharmaceutical Manufacturing category). The preamble to the proposal provided detailed

information on 156 captive and intracompany facilities receiving EPA's screener survey that are covered by existing categorical standards. (63 FR 6392 at 6415). EPA has updated this information. Rather than 107 facilities as reported at proposal, EPA has now determined that 140 out of the 156 facilities are subject to existing categorical standards. There are 97 facilities subject to the Organic Chemicals, Plastics, and Synthetic fibers category (40 CFR part 414), 17 facilities subject to the Pharmaceutical category (40 CFR part 439), 16 facilities subject to the Steam Electric Power Generating category (40 CFR part 423), 3 facilities subject to the Pesticide Manufacturing category (40 CFR part 455), and 7 subject to other categories. EPA could not identify an effluent guidelines category for 16 of these 156 facilities (five of these are federal facilities). Moreover, in the case of the small number—less than 10 percent—for which EPA could not identify a specific guideline that would apply, the permit writer has ample authority to obtain any necessary data to write facility-specific BPJ limitations or standards.

In addition, EPA looked at the pollutant data for commercial and non-commercial hazardous facilities and concluded that their scrubber water is qualitatively different. EPA evaluated the grab samples of untreated scrubber water it collected from eight non-commercial facilities to determine if there was a difference in wastewater characteristics at non-commercial versus commercial facilities. For each regulated pollutant, the average untreated IWC wastewater concentration is less for the eight non-commercial facilities than for the three commercial facilities used to determine the final limitations. EPA concluded this results from the fact that non-commercial facilities do not take the large variety of different wastes that commercial facilities do. Additionally, two of the nine regulated metal pollutants (mercury and silver) were not at treatable levels for any of the eight non-commercial facilities. Two more of the nine regulated metal pollutants (arsenic and cadmium) were at treatable levels at only one of the eight non-commercial facilities. Further, only one of the nine regulated metal pollutants (zinc) was at treatable levels at more than half of the eight non-commercial facilities. In contrast, seven of the nine regulated metal pollutants (arsenic, cadmium copper, lead, mercury, titanium and zinc) were found at treatable levels at all three of the commercial facilities used to determine the final limitations. Further, the remaining two metal pollutants (chromium and silver) were found at treatable levels at two of these three commercial facilities. These circumstances further support EPA's decision not to subject non-commercial, captive hazardous incinerators to the limitations and standards developed here.

There may be instances when a combustor is operated in conjunction with on-site industrial activities and the combustor wastewater is treated and discharged separately from the treatment of industrial wastewater (or treated separately and mixed before discharge). Permit writers should consider this guideline as one source of information when developing limitations and standards for these situations.

Therefore, EPA determined that it has appropriately balanced coverage of the guidelines without imposing limitations on thermal units already adequately regulated under existing guidelines. Given the circumstances reviewed above, EPA concluded that there is not likely to be any significant regulatory gap in the treatment of combustor wastewater.

B. BPT/BCT/BAT/PSES

a. Summary of Technology Basis

For this final rule, EPA is promulgating BPT, BCT, BAT, and PSES (BPT/BCT/BAT/PSES) limitations and standards based on the same wastewater treatment technology. EPA proposed BPT limitations for nine priority and non-conventional metal pollutants, TSS, and pH when discharged from Commercial Hazardous Waste Combustor facilities. EPA proposed BCT limitations equivalent to BPT because it did not identify any more stringent technology for the control of conventional pollutants. EPA proposed BAT limitations equivalent to BPT because it did not identify any more stringent technology option that it considered would represent BAT levels of control. EPA proposed PSES for nine priority and non-conventional metal pollutants. EPA proposed BPT/BCT/BAT based on two stages of chemical precipitation followed by sand filtration. EPA proposed PSES based on two stages of chemical precipitation, with no sand filtration as the final step.

EPA has based the final BPT/BCT/BAT/PSES limitations and standards on the same treatment technologies it had considered at proposal with one modification. The technology forming the basis of the final limitations and standards is two-stage chemical precipitation with and without sand filtration as a final step. See 63 FR at 6404.

b. Rationale for BPT/BCT/BAT/PSES Limitations and Standards

Based on a thorough analysis of the sampling data and public comments, EPA considered only one option for the final BPT/BCT/BAT/PSES limitations. EPA concluded that a two-stage precipitation process with or without a sand filtration polishing step provided the greatest overall pollutant removals at a cost that is economically achievable at most commercial hazardous waste combustion facilities. Consequently, EPA has based the final limitations on this treatment technology (Option 1), consisting of chromium reduction (as necessary), primary precipitation, solid-liquid separation, secondary precipitation, and solid-liquid separation with (or without) sand filtration.

EPA has based BPT/BCT/BAT/PSES limitations upon two stages of chemical precipitation, each followed by some form of separation and sludge dewatering. The pH levels used for chemical precipitation vary to promote optimal removal of metals because different metals are preferentially removed at different pH levels. In addition, chromium reduction precedes the first stage of chemical precipitation, when necessary. In some cases, BPT/BCT/BAT/PSES limitations would require the current treatment technologies in place to be improved by use of increased quantities of treatment chemicals and additional chemical precipitation/sludge dewatering systems. Sand filtration is employed at the end of the treatment train, if necessary.

In response to the proposal, EPA received comments claiming that carbon and other adsorptive media, including filtration technologies, would be more appropriate than sand filtration for treating waste streams likely to contain mercury. EPA did not include sand filtration system in the model treatment technology specifically to remove mercury, but, rather as a polishing step to help remove TSS and metals associated with fine precipitate particles. In addition, EPA finds that sand filtration is effective in removing mercury. EPA did investigate the use of Lancy filtration and carbon adsorption during the sampling conducted at one facility. EPA found that the removals for mercury at that facility were lower (88.6 percent) than those at the model plant (99.1 percent) whose data formed the basis for the BPT limitations. Although the influent mercury concentration was

an order of magnitude greater at the model facility (21.4 µg/l) compared to the facility using Lancy filtration (3.3 µg/l), the final effluent concentration was lower (non-detect, 0.2 µg/l detection limit) than it was at the second plant (0.4 µg/l). EPA has found that the treatment performance of activated carbon is sometimes unreliable due to the competitive adsorption and desorption of different pollutants that have different affinities for adsorption on activated carbon. Also, pH changes of the wastewater going through the carbon system may cause stable metal complexes to dissolve and thus cause an increase in some metals concentrations through the carbon system. The sampling data for the facility using Lancy filtration shows this. There, the concentration of several metallic pollutants increased across the activated carbon treatment system (see Table 6–4 of the TDD; specifically selenium, antimony, and boron as examples). Thus, the final technology basis includes sand filtration.

The Agency has concluded that this treatment system represented the best practicable technology currently available and should be the basis for the BPT limitations for the following reasons. First, the demonstrated effluent reductions attainable through this control technology represent performance that may be achieved through the application of demonstrated treatment measures currently in operation in this industry. Three facilities containing the identified BPT technology were used in the database to calculate the effluent limitations. This database reflects technology and removals readily applicable to all facilities. Second, the adoption of this level of control would represent a significant reduction in pollutants discharged into the environment (approximately 94,000 pounds of TSS and metals). Third, the Agency assessed the total cost of water pollution controls likely to be incurred, in relation to the effluent reduction benefits and found those costs were reasonable.

Although EPA is not changing the technology basis significantly, EPA is revising all BPT/BCT/BAT/PSES limitations and standards. EPA has based the final BPT/BCT/BAT/PSES effluent limitations and standards on data from the CHWC facility used in the development of the proposed IWC limitations as well as data from two other CHWC facilities that submitted sampling data to EPA (See 64 FR 26714, May 17, 1999) following proposal of the IWC rule. See Section III.E above.

As previously noted, EPA proposed BAT equal to BPT for all non-conventional and priority pollutants for which it had proposed BPT limitations. EPA did consider and reject zero discharge as a possible BAT technology at proposal. EPA concluded that it should not promulgate zero discharge requirements for the following reasons.

EPA determined that combustors have two main options for achieving zero discharge—off-site disposal or on-site incineration. Facilities will likely choose off-site disposal where the cost of on-site incineration is greater than the cost of off-site disposal. But off-site disposal ultimately results in some pollutant discharge to surface waters which will exceed the level achieved by BPT unless the limitations and standards applicable to the off-site treater are equivalent to today's guideline. EPA is concerned that adopting a BAT zero discharge requirement may, in actuality, result in fewer effluent reductions than expected from today's limitations and standards. The second option for zero discharge is on-site. In this case, a facility must either incinerate its scrubber water or replace its wet scrubbing system with a dry scrubber. EPA has determined that on-site incineration would be more expensive than off-site disposal and therefore result in off-site treatment. Similarly, EPA believes, but cannot confirm, that the cost of changing air pollution control systems is probably so high that a combustor would send its scrubber water off-site for treatment. Moreover, even if the cost is not greater, EPA found that replacement of wet scrubbing systems with dry scrubbers may result in an unstable solid (as opposed to the stable solids generated in wastewater treatment systems) that must be disposed of in a landfill, with potentially adverse, non-water quality effects. Consequently, EPA determined that zero discharge is not, in fact, the best available technology. EPA is promulgating BAT limitations equal to the BPT limitations for the non-conventional and priority pollutants covered under BPT.

EPA proposed BCT equal to BPT for all conventional pollutants covered under BPT. The Agency indicated that it had not identified technologies that achieve greater removals of conventional pollutants other that those associated with the proposed BPT limits. EPA has not received any comments concerning its proposed BCT technology basis. Because EPA did not identify any incremental conventional pollutant removal technology options that pass the BCT cost reasonableness test, EPA is promulgating BCT limitations equal to the BPT limitations for conventional pollutants covered under BPT.

As explained above, EPA based the proposed pretreatment standard on two stages of chemical precipitation, with no sand filtration as the final step. EPA received comments that it should include the additional filtration step used in calculating its BPT/BCT/BAT standards for the proposal to calculate PSES standards, and adopt pretreatment standards based on the same level of treatment as its BPT/BAT standards. EPA also received comments that it should promulgate PSES standards as proposed.

Based on new data received and analyzed by EPA following proposal of the IWC rule, EPA has decided to base PSES and BPT/BCT/BAT on the same treatment technology. The standards based on this technology allow a facility to either use or not use sand filtration as the last treatment step, depending on what is necessary to meet the pretreatment standards. EPA costed the PSES technology standards with sand filtration to ensure its economic achievability.

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for pollutants that are not susceptible to treatment by POTWs or which would interfere with the operation of POTWs. EPA looks at a number of factors in deciding whether a pollutant was not susceptible to treatment at a POTW or would interfere with POTW operations—the predicate to establishment of pretreatment standards. First, EPA assesses the pollutant removals achieved at POTWs relative to those achieved by directly discharging systems using BAT treatment. Second, EPA estimates the quantity of pollutants likely to be discharged to receiving waters after POTW removals. Third, EPA studies whether any of the pollutants introduced to POTWs by combustors interfered with or are otherwise incompatible with POTW operations.

EPA is establishing PSES for this industry to prevent pass-through of the same pollutants controlled by BPT/BCT/BAT from POTWs to waters of the U.S. EPA has determined that all of the pollutants that "passed through" at proposal would "pass through" and has consequently developed pretreatment standards for these pollutants. Today's pretreatment standards represent a national baseline for CHWCs. Local authorities are free to establish stricter limitations (based on site-specific water quality concerns) if they deem it necessary.

For this rule, EPA has looked at the combined economic impacts of the final

regulatory option for both direct and indirect dischargers. EPA has combined these because it concluded, that in the case of CHWCs, there are no economic differences between direct and indirect dischargers that would support separate evaluation of the economic achievability of the selected technology. Both direct and indirect dischargers face the same capital requirement for treatment technology upgrades. Furthermore, the costs of the selected treatment technology are essentially the same for both direct and indirect dischargers because the technology is designed to remove metal pollutants not susceptible to POTW treatment. There are not additional biological controls for direct dischargers because the thermal operations are expected to destroy any organic pollutants in the incinerated wastes so that only traces remain in the scrubber water. In these circumstances, both direct and indirect dischargers also share similar profiles with respect to the characteristics of wastewater generated. In order to determine the cost of compliance with the BPT/BCT/BAT/PSES limitations and standards, EPA included the cost of installation of sand filtration at all CHWC facilities as a conservative approach because, as explained above, not all facilities will require one to meet the limitations and standards. EPA concluded the cost of installation of the selected control technology is economically achievable. See discussion of economic impacts in Section V below.

C. New Source Performance Standards (NSPS)

EPA proposed to establish NSPS equal to BPT/BCT/BAT for all conventional, non-conventional and priority pollutants covered under BPT. EPA has decided that it should not promulgate NSPS based on any more stringent technology. EPA considered basing NSPS on zero discharge but has rejected this technology. As explained above, EPA has concluded that zero discharge may not ultimately result in any reduction in effluent discharges relative to BPT/BCT/BAT levels or it may have unacceptable non-water quality effects.

EPA received a comment stating that EPA's discussion of recycling scrubber water as a potential component of NSPS was insufficient. The commenter explained that it understood why EPA might be hesitant in recommending such a system as a basis for BAT, but argued that incorporating a system to recycle scrubber water would pose a lesser financial burden on new sources. EPA agrees that such a system would pose a lesser financial burden on new sources, but does not agree that it should require all new sources to be zero dischargers as explained previously. EPA bases its decision on the fact that the HWC final MACT rule standards for new incinerators permit use of both wet and dry scrubbing systems. EPA bases the emission standards for dioxins and furans, for example, on an activated carbon injection system used at Waste Treatment Industries (WTI) Incinerator in Liverpool, Ohio. However, EPA bases the emission standards for mercury on wet scrubbing and hazardous waste feedrate control of mercury. EPA concluded that it could not establish that all systems using wet scrubbers, as allowed under the HWC final MACT rule, could recycle all of their scrubber water discharges.

EPA is promulgating NSPS that would control the same conventional, priority, and non-conventional pollutants as the BPT effluent limitations. The technologies used to control pollutants at existing facilities are fully applicable to new facilities. Therefore, EPA is promulgating NSPS limitations that are identical to BPT/BCT/BAT/PSES.

EPA considered the cost of the NSPS technology for new facilities. EPA concluded that such costs are not so great as to present a barrier to entry, as demonstrated by the fact that currently operating facilities are using these technologies. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected NSPS.

D. Pretreatment Standards for New Sources (PSNS)

EPA proposed PSNS for nine priority and non-conventional metal pollutants. EPA based the proposed standards on two stages of chemical precipitation, with no sand filtration as the final step. The proposed pretreatment standards for new sources were identical to the proposed PSES. EPA received comments that it should adopt PSNS based on two stages of chemical precipitation followed by sand filtration, given the increased removals that would be achieved by the addition of sand filtration. The final PSNS essentially does this. EPA has decided to base PSNS on the same technology as it used for BPT/BCT/BAT/PSES—chromium reduction (as necessary) and two-stage precipitation with or without sand filtration. EPA concluded that sand filtration was not necessary in all cases to achieve BAT metals removals. The data showed that the facilities with and without filtration were achieving high, BAT removals. Filtration may be used as a polishing step depending on the level of treatment provided in the initial two stages of precipitation. The final BAT limitations and PSES were based on data from facilities with and without filtration.

The Agency is establishing PSNS for the same priority and non-conventional pollutants as for PSES.

EPA considered the cost of the PSNS technology for new facilities. EPA concluded that such costs are not so great as to present a barrier to entry, as demonstrated by the fact that currently operating facilities are using these technologies. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected PSNS.

V. Costs and Impacts for the Final Commercial Hazardous Waste Combustor Regulations

A. Contents of Economic Analysis

The economic analysis for the final Commercial Hazardous Waste Combustor effluent limitations guidelines and pretreatment standards assesses the costs and impacts of these guidelines. The record for the final rule contains results of this analysis. The "Economic Analysis of Final Effluent Limitations Guidelines and Standards for Commercial Hazardous Waste Combustors" (EPA 821–B–99–008) (hereafter "EA") summarizes these results. This document looks at (1) the annualized cost of the rule (2) the impacts of the rule on Commercial Hazardous Waste Combustor facilities and firms (3) the impacts of the rule on employment and communities; and, (4) other secondary impacts on trade, inflation, POTWs, environmental justice, and distributional equity. The preamble to the proposal also discusses EPA's approach to costing this rule (63 FR 6407). EPA has used the same methodology for estimating the cost of compliance with the final rule as it used for the proposal except for the RCRA permit costing issue discussed under Section III.H above.

B. Summary of Results

1. Overview of Methodology

The EA evaluates the economic effect on the industry of compliance with the regulation by two measures of impact: facility closures (severe impacts) and adverse financial effects short of closure (moderate impacts). For this rule, EPA has looked at the combined economic impacts of the final regulatory option for both direct and indirect dischargers. EPA has combined these because there are no differences between direct and

indirect discharges with respect to the characteristics of wastewater generated or the model process technologies considered to develop the final limitations and standards, as well as to prevent the disclosure of confidential business information. The report also includes an analysis of the effects of the regulation on new Commercial Hazardous Waste Combustor facilities and impacts on small businesses and other small entities. EPA made no substantive changes to the economic impact methodology since proposal. The preamble to the proposed rule summarizes the methodology (63 FR at 6409). Chapter 4 of the EA contains a complete description of the methodology.

2. Summary of Costs

Table V.C–1 shows the total costs for the final limitations and standards. EPA estimates the final rule will have a total post-tax annualized cost of $2.01 million.

TABLE V.C–1 TOTAL COSTS OF FINAL LIMITATIONS AND STANDARDS

Final limitations and standards	Total capital costs (million 1998$)	Total O&M costs (million 1998$)	Total post-tax annualized costs (million 1998$)
BPT/BAT/PSES	8.19	1.97	2.01

3. Summary of Economic Impacts for Existing Dischargers

EPA evaluates the impacts associated with compliance costs for all the facilities affected by the regulation. EPA projects one facility will discontinue its waste burning operations. The facility as a whole, however, will continue to operate. The waste burning operations at this facility represent significantly less than 10 percent of total facility revenue. EPA estimates that the cessation of waste burning operations will cause 27 job losses on a full-time equivalent basis (FTE). EPA estimates that no other facilities will experience either severe or moderate impacts.

4. Cost Reasonableness of Final BPT Option

EPA evaluated the cost of the BPT option in relation to effluent reduction benefits by first calculating pre-tax total annualized costs and total pollutant removals in pounds. EPA then compared the ratio of costs to removals for the option to the range of ratios in previous regulations to gauge its impact. EPA calculates that BPT costs $27 per pound of TSS and metal pollutants removed. EPA found this cost to reduction comparison to be reasonable.

5. Economic Impacts of New Sources

EPA is establishing NSPS and PSNS equivalent to the limitations that are established for BPT/BCT/BAT and PSES. In general, EPA concluded that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. As a result, given EPA's finding of economic achievability for BPT/BCT/BAT and PSES , EPA also finds that the NSPS and PSNS will be economically achievable and will not constitute a barrier to entry for new sources.

6. Firm-Level Impacts

A firm is a business entity or company and may be composed of a number of facilities. The firm level analysis evaluates the effects of regulatory compliance on firms owning one or more affected CHWC facilities. It also serves to identify impacts not captured in the facility level analysis. For example, some companies might be too weak financially to undertake the investment in the required effluent treatment, even though the investment might seem financially feasible at the facility level. Companies owning more than one facility subject to regulation may experience this effect.

The firm-level analysis assesses the impacts of compliance costs at all facilities owned by the firm. EPA uses ratio analysis for this assessment. This analysis employs two indicators of financial viability: the rate of return on assets (ROA) and the interest coverage ratio (ICR). ROA is a measure of the profitability of a company's capital assets. It is computed as the earnings before interest and taxes minus taxes divided by total assets. ICR is a measure of the financial leverage of a company. It is computed as the earnings before interest and taxes divided by interest expense.

Two firms each own three CHWC facilities that would be subject to the guidelines. EPA evaluated the effect on the firms as described above. First, EPA calculated the baseline ROA and ICR for each company absent the final regulation. Then EPA calculated the ratios after the projected investment in wastewater treatment equipment and the associated compliance costs. One firm experiences no measurable effect as the result of compliance with the final regulation. In its case, neither the ROA nor the ICR changes between the baseline and postcompliance analysis. The second firm experiences an insignificant decline in ROA and a minor decline in ICR. The decline in ICR, while significant in percentage terms, is an artifact of the firm's extremely low level of debt. As a result, EPA concluded that the guidelines will not significantly affect the two firms.

7. Community Impacts

EPA assesses community impacts by estimating the expected change in employment in communities with CHWCs subject to the guidelines. Possible community employment effects include the employment losses in the facilities that are expected to close because of the regulation and the related employment losses in other businesses in the affected community. In addition to these estimated employment losses, employment may increase as a result of facilities' operation of treatment systems for regulatory compliance. It should be noted that job gains will mitigate community employment losses only if they occur in the same communities in which facility closures occur.

EPA estimates the final regulation will result in the postcompliance closure of the waste burning operations of one facility. The postcompliance closure results in the direct loss of 27 Full-Time Equivalent (FTE) positions. EPA estimates secondary employment effects based on multipliers that relate the change in employment in a directly affected industry to aggregate employment effects in linked industries and consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries. The application of the national average multiplier of 4.049 to the 27 direct FTE losses leads to an estimated community impact of 110

total FTE losses as the result of the final rule. The county in which EPA projects one closure has a current employment of approximately 170,000 FTEs dispersed among 9,900 establishments. The direct and secondary job losses represent 0.06 percent of current employment in the affected county.

Job gains associated with the operation of control equipment mitigate the FTE losses. EPA estimates the gains at 10 FTEs nationally. EPA estimates the secondary and indirect effects at the national level by using the average multiplier of 4.049. This results in an estimate of 40 total FTE gains associated with the pollution control equipment. EPA concludes the projected impacts are small and do not change EPA's finding of economic achievability.

8. Foreign Trade Impacts

The EA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. Because most of the affected CHWC facilities treat waste that is considered hazardous under RCRA, international trade in CHWC services for treatment of hazardous wastes is virtually nonexistent.

VI. Water Quality Analysis and Other Environmental Benefits

A. Characterization of Pollutants

EPA evaluated the environmental benefits of controlling the discharges to surface waters and POTWs from CHWCs of the 9 priority and nonconventional pollutants regulated by today's rule as well as the incidental removals of 6 other priority and nonconventional pollutants (aluminum, antimony, iron, molybdenum, selenium and tin). Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and drinking water. Furthermore, these pollutants may also interfere with POTW operations by inhibiting activated sludge or biological treatment or by contaminating sewage sludges, thereby limiting how it may be disposed and thereby raising its costs.

All of these pollutants have at least one identified toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). EPA reviewed additional information on toxicity since the proposal, and updated the toxicity values for nine of the 15 pollutants modeled in the water quality analysis. Toxicity values for three pollutants increased, while toxicity values for six pollutants decreased. In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency did not evaluate the effects of the discharges of any conventional pollutant because its analysis focused on priority and nonconventional pollutants. However, the discharge of a conventional pollutant such as total suspended solids (TSS) can have adverse effects on human health and the environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of sludge particles that alter benthic spawning grounds and feeding habitats.

B. Facilities Modeled

EPA evaluated the potential effect on aquatic life and human health of wastewater discharges to receiving waters at current levels of treatment and at levels achieved by BPT/BAT/PSES treatment for direct and indirect discharges. EPA predicted steady-state instream pollutant concentrations assuming immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria guidance or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. (In performing this analysis, EPA used its published guidance documents that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, EPA used the nationwide criteria guidance as the most representative value.)

In addition, EPA assessed the potential benefits to human health by estimating the risks (carcinogenic and systemic effects) associated with reducing pollutant levels in fish tissue and drinking water from current to BPT/BAT treatment levels for direct dischargers, and from current to pretreatment levels for indirect dischargers. EPA estimated risks for recreational and subsistence anglers and their families, as well as the general population.

EPA performed these analyses for the eight CHWC facilities currently in operation. Achievement of BPT/BAT and pretreatment standards will reduce current pollutant loadings (in pounds) of the 15 priority and nonconventional pollutants modeled by 88 percent.

EPA projected instream concentrations for five pollutants will exceed acute or chronic aquatic life criteria or toxic effect levels in three of the eight receiving streams. Compliance with the guidelines will eliminate excursions of the acute criteria by two pollutants and the excursions of chronic criteria by one pollutant.

Current instream concentrations exceed human health criteria or toxic effect levels in five of the receiving streams. Compliance with the guidelines eliminates excursions in one stream completely and reduces the remaining excursions to a limited extent by eliminating the excursions of one pollutant. Estimates of the increase in value of recreational fishing to anglers as a result of this improvement range from $93,300 to $334,000 annually (1998 dollars). In addition, the estimate of the nonuse (intrinsic) benefits to the general public, as a result of the same improvements in water quality, ranges from $46,700 to $167,000 (1998 dollars).

Compliance with the guidelines will reduce total excess annual cancer cases by an estimated 6.6E–3 excess cases. The monetary value of benefits to society from these avoided cancer cases is $17,700 to $92,700 (1998 dollars). (EPA did not assign a monetary value to this benefit at proposal.) EPA does not project systemic toxicant effects (non-carcinogenic adverse human health effects including reproductive toxicity) for any of the receiving streams at current discharge levels.

C. POTWs

EPA also evaluated the potential adverse impacts from CHWC discharges on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the POTW. The Agency estimates inhibition by comparing predicted POTW influent concentrations to available inhibition levels. For this evaluation, EPA used the inhibition values in an EPA document, *Guidance Manual for Preventing Interference at POTWs* (U.S. EPA, 1987) and *CERCLA Site Discharges to POTWs: Guidance Manual* (U.S. EPA, 1990). EPA estimated potential contamination of sewage sludge by comparing projected pollutant concentrations in POTW sewage sludge to available EPA criteria. EPA has established CWA standards for sewage sludge use and disposal at 40 CFR part 503. These regulations limit the concentrations of pollutants in sewage sludge that is used or disposed. For the purpose of this analysis, EPA considered the sewage

sludge contaminated if the concentration of a pollutant in sewage sludge exceeds the limits presented in 40 CFR part 503 for land application of the sludge or surface disposal.

EPA evaluated 10 pollutants for potential POTW operation inhibition and seven pollutants for potential sewage sludge contamination. At current discharge levels, EPA projects no inhibition problems at POTWs receiving wastewater but does project sewage sludge contamination. EPA projects that compliance with the pretreatment standards will eliminate contamination problems. EPA estimates that POTWs will accrue a modest benefit through reduced recordkeeping requirements and exemption from certain sewage sludge management practices. EPA did not assign a monetary value to this improvement in sewage sludge quality.

The POTW inhibition values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Therefore, EPA has not based these pretreatment standards on the fact that some pollutants may impair POTW treatment effectiveness. Of course, as explained above, EPA did find that certain pollutants would pass through as a basis for establishing pretreatment standards. Still, the values used in this analysis help indicate the potential benefits for POTW operations that may result from the compliance with pretreatment discharge levels.

VII. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act call for EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, waste treatment residual generation, and energy consumption.

A. Air Pollution

Commercial Hazardous Waste Combustor facilities treat wastewater streams which contain very low concentrations of volatile organic compounds (VOCs). Typically, concentrations of VOCs are below treatable levels in CHWC wastewater streams.

Because there are only low concentrations of VOCs in CHWC wastewater, EPA estimates that there will be no significant air emissions associated with treatment systems installed to comply with the guidelines. Thus, EPA does not expect adverse air quality impacts due to the final regulations.

B. Waste Treatment Residuals

Use of metals precipitation and sand filtration to comply with the guidelines will generate waste treatment residuals. EPA assessed the cost of off-site disposal in subtitles C and D landfills for these residuals. These costs were included in the economic evaluation of the technologies.

EPA estimates that the 8 facilities will generate an additional 1 million pounds of sludge per year from metals precipitation and sand filtration operations. The disposal of this filter cake will not have an adverse effect on the environment or result in the release of pollutants in the filter cake to other media. The reason EPA has concluded this will be true is that the disposal of these wastes into controlled subtitles C or D landfills are strictly regulated by the RCRA program.

C. Energy Requirements

EPA estimates that the attainment of BPT, BCT, BAT, NSPS, PSES, and PSNS will increase energy consumption by a small increment over present industry use. Overall, compliance with the guidelines will result in an increase of 1,672 thousand kilowatt hours per year, which equates to 937 barrels of oil per year. The United States consumed 19 million barrels of oil per day in 1994.

VIII. Regulatory Implementation

The purpose of this section is to provide assistance and direction to permit writers and control authorities to aid in their implementation of this regulation. This section also discusses the relationship of upset and bypass provisions, variances and modifications, and analytical methods to the final limitations and standards.

A. Implementation of the Limitations and Standards

As previously explained, new and reissued Federal and State NPDES permits to direct dischargers must include the effluent limitations promulgated today. Existing indirect dischargers must comply with today's pretreatment standards no later than January 27, 2003. New direct and indirect discharging sources must comply with applicable limitations and standards on the date the new sources begin operations.

Permit writers and pretreatment authorities should also closely explore special circumstances which might merit BPJ limitations similar to the limitations promulgated here. If an intracompany incinerator burns waste from off site from a facility under the same corporate structure and operations generating the off-site waste is neither subject to the same provisions in 40 CFR subchapter N nor is the waste of a similar nature to the wastes being burned from industrial processes on site, it would not be a CHWC. However, permit writers and pretreatment authorities should consider whether limitations similar to the guidelines should apply to this intracompany facility. Also, if a facility burns dissimilar wastes for no fee or other remuneration, it would not be a CHWC. In this case, permit writers and pretreatment authorities should also consider whether limitations similar to the guidelines should apply to this facility.

As explained above, EPA has decided that these guidelines do not apply to cement kilns for the reasons discussed above at section III.D. However, there may be circumstances where permit writers should consider whether they will need to establish BPJ limitations or local control authorities may need to establish local limits to control discharges of toxic pollutants in the scrubber water. Permit writers should compare cement kiln scrubber wastewater with the information provided in the TDD concerning the characteristics of CHWC wastewater to determine whether similar discharge limitations should be established.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n) and 40 CFR 403.16 and 403.17.

C. Variances and Modifications

Upon the promulgation of these regulations, all new and reissued Federal and State NPDES permits issued to direct dischargers in the CHWC Industry must include the effluent limitations. In addition, the indirect dischargers must comply with the pretreatment standards within 3 years of issuance.

1. Fundamentally Different Factors Variances

The CWA requires application of the effluent limitations established pursuant to section 301 or the pretreatment standards of section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitations or standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect discharger at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants due to localized environmental factors. These pollutants include ammonia, chlorine, color, iron, and total phenols.

3. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request that a permit modification be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

4. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by the EPA or authorized States under section 402 of the Act.

The Agency has developed the limitations and standards for today's rule to cover the discharge of pollutants for this industrial subcategory. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

For determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or

subcategory. Where a facility treats an Commercial Hazardous Waste Combustor waste stream and process wastewater from other industrial operations, the effluent guidelines would be applied by using a flow-weighted combination of the BPT/BAT limitations for the Commercial Hazardous Waste Combustor and the other industrial operations to derive the appropriate limitations. However, as stated above, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations regardless of the limitations derived using the flow-weighted combinations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to assure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to the extent consistent with EPA's regulations.

D. Analytical Methods

Section 304(h) of the Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. EPA uses these methods to determine the presence and concentration of pollutants in wastewater. NPDES permitting authorities use these methods for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25. Pretreatment control authorities also use these for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some nonconventional pollutants. EPA's CWA regulations list five conventional pollutants at 40 CFR 401.16. Table I–B at 40 CFR Part 136 lists the analytical methods approved for the conventional pollutants. EPA's CWA regulations list 65 toxic metals and organic pollutants and classes of pollutants at 40 CFR 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 "Priority Pollutants," shown, for example, at 40 CFR part 423, appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants. The table of approved inorganic test procedures at 40 CFR 136.3, Table I–B includes the currently approved methods for metals. Discharger permits must include the test methods promulgated at 40 CFR 136.3 or incorporated by reference in the tables, when available, to monitor pollutant discharges from commercial hazardous waste combustors for the pollutants specified in today's effluent limitations guidelines.

As a part of today's final rule, EPA is promulgating an additional test method for some of the metal pollutants to be regulated under part 444. This test method is EPA Method 200.8, "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry." EPA first proposed this analytical method with others in 1995 (60 FR 53988, October 18, 1995). EPA plans to promulgate the other proposed methods in the near future. In the meantime, EPA has decided to promulgate EPA Method 200.8 in today's rulemaking because EPA used this test method to analyze samples during development of this rule. EPA included testing results using this method in the administrative record at the time of proposal. EPA also has incorporated this method into the approved methods for its Safe Drinking Water Act national primary drinking water regulations at 40 CFR 141.23.

In addition, EPA is allowing use of an applicable Inductively Coupled Plasma-Mass Spectrometry method from the Annual Book of ASTM Standards, ASTM D 5673–96, for monitoring of the regulated pollutants. The final rule allows for use of these two additional test methods for several reasons: First, it allows greater flexibility in monitoring; Second, it conforms use of methods in EPA's drinking water and wastewater programs; Third, it moves toward a performance-based measurement system; Finally, it allows use of technical standards as contemplated by the National Technology Transfer and Advancement Act of 1995 (NTTAA; see Section IX). EPA is promulgating these methods today using direct final rulemaking.

With the allowed use of the test methods included above, in addition to those already approved in Table IIB at 40 CFR 136.3 and incorporated by reference into this regulation, EPA will provide dischargers with greater flexibility in selection of a method for monitoring the pollutants being regulated in today's final rule.

IX. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that has annual revenues less than $6 million (i.e., the definition for SIC 4953, Refuse Systems); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's final rule establishes requirements applicable only to Commercial Hazardous Waste Combustors. The facilities subject to this rule are all owned by large entities with firm revenues in excess of $230 million each per year. Consequently, there are no small businesses affected by the rule.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 28, 2000.

D. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, it is not subject to the Paperwork Reduction Act of 1995.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the final rule as $2.01 million (1998$, post-tax). Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projected no incremental requirements for small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. The rule establishes effluent limitations and pretreatment standards imposing requirements that apply to CHWCs when they discharge wastewater or introduce wastewater to a POTW. The rule does not apply directly to States and localities and will only affect State and local governments when they are administering CWA permitting programs. The final rule, at most, imposes minimal administrative costs on States and local governments if the States have an authorized NPDES programs and local governments administering approved pretreatment programs. (These States and localities must incorporate the new limitations and standards in new and reissued NPDES permits or local pretreatment orders or permits). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns,

and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's Rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA has not identified any facilities covered by today's rule that are owned and operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. EPA's search revealed that there is one new consensus standard for some metals included in today's rule. Even prior to enactment of the NTTAA, EPA has traditionally included any applicable test methods in its regulations. EPA promulgates this voluntary consensus standard (ASTM Method D 5673–96) as part of this rulemaking. Today's rule also promulgates a number of voluntary consensus standards for the regulated pollutants. These standards were previously promulgated at 40 CFR part 136.

I. Executive Order 13045 and Protecting Children's Health

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not "economically significant" as defined under Executive Order 12866.

X. Summary of Public Participation

The following sections describe the major comments on the proposed rule and the NOA, and EPA's responses. The public record contains the full comment summary and response document for this rulemaking.

A. Summary of Proposal Comments and Responses

Thirty-nine commenters provided detailed comments on the February 6, 1998 proposal. In all, the comments dealt with 51 separate aspects of the proposal. This summary addresses only the major comments.

Comment: Several commenters asked EPA to redefine "IWC facility" so that a waste combustor burning off-site wastes without charge would not automatically fall within the scope of the rule. The commenters suggested adopting the definition of intracompany waste combustors found in the 1992 survey of the IWC industry.

Response: EPA has decided to limit the applicability of the guidelines to certain commercial hazardous waste combustors. The revised scope of the rule for CHWCs (formerly IWCs) will alleviate the concerns expressed and will allow a facility to burn wastes if received for no fee or other remuneration without subjecting the associated wastewaters to the CHWC guidelines.

Comment: The commenter supports the inclusion of a de minimis exclusion for wastes associated with product stewardship, public service, and sub-contractor activities off-site.

Response: Under the revised definition, a facility would not be a CHWC merely because it accepted product stewardship wastes if these wastes are either of a similar nature or are subject to the same provisions in 40 CFR Subchapter N as the operations generating the wastes being burned from industrial processes on-site. Further, for example, a facility would not be a CHWC if it burns household hazardous wastes for the community. Household hazardous wastes are exempt from RCRA hazardous waste regulations. CHWC facilities, however, that burn dissimilar RCRA hazardous wastes will be covered by the final CHWC rule.

EPA has no information on which to establish a de minimis level for dissimilar wastes burned from off-site for a fee or other remuneration. EPA believes that the majority of waste burned as product stewardship activity and waste received from subcontractor activities from off-site will be exempt from the CHWC rule due to its similar nature. EPA also believes that public service activities will generally be exempt because the waste received is either not hazardous under RCRA or exempt from RCRA hazardous waste regulations (e.g., exempt household hazardous waste, non-hazardous waste from public agencies, and wastes from small quantity generators).

Comment: One commenter suggests that the HWC maximum achievable control technology (MACT) rule will cause higher loadings in the scrubber water than there currently are.

Response: EPA promulgated the MACT rule for hazardous waste combustors (HWC) this summer at (64 FR 52828, July 30, 1999).

Using detailed emissions data collected under the HWC MACT rule, EPA estimates that, overall, there is a possibility of a 100 percent increase in particulate matter loadings at a CHWC facility. EPA used this estimate to determine the potential effect the MACT standards would have on CHWC facilities. (The commenter submitted no data that would allow EPA to determine how much its own loadings will change.) Specifically, EPA has performed an economic sensitivity analysis to estimate the effects on costs of a 100 percent increase in loadings in the scrubber water for CHWC facilities. EPA compared BPT/BAT baseline costs to costs for an increase of 100 percent in concentration for metals and total suspended solids. For direct discharge facilities, the total annualized compliance costs ($1992) would increase 3 percent and for indirect discharge facilities, the total annualized compliance costs would increase 13 percent. However, no facilities would experience severe impacts (closure) or moderate impacts (compliance costs greater than 5 percent of revenue) as a result of the increased compliance costs. Thus, the sensitivity analysis indicates that a potential increase in loadings of 100 percent would not affect the

economic achievability determination for the selected technology option.

Comment: EPA should not regulate high temperature metals recovery facilities under the IWC guideline if they are exempt from regulation under 40 CFR 266.100(c) as a RCRA BIF.

Response: The guidelines do not apply to facilities (like high temperature metals recovery facilities) that are not subject either to 40 CFR part 264, subpart O; part 265, subpart O; or part 266, subpart H. EPA based its decision to limit the scope of the guidelines, in part, on its determination that wastewater from these exempt facilities would be qualitatively different from the regulated wastewater. The data from a high temperature metals recovery facility confirms this. These data show that wastewater from a high temperature metals recovery facility has higher metals concentrations than typically observed for the regulated facilities.

Comment: Commenter is unsure of the types of IWC wastewater subject to the proposed regulation and thinks it is important to make precisely clear exactly how the regulation of "other" IWC wastestreams should be addressed by a permit writer.

Response: Sections 444.1 and 444.2 of the final regulation clearly state the types of wastewater a CHWC (formerly IWC) may generate that are subject to the final regulation. In addition, this preamble to the final rule further explains the regulated wastewaters.

EPA does not agree with this commenter that it is important to make clear exactly how the regulation of "other" waste streams should be addressed by a permit writer. EPA did not collect data on these streams. The permitting authority will use BPJ authority to develop limitations that reflect the characteristics of the particular waste streams. However, EPA does agree with the commenter that the "other" waste streams should not be subject to CHWC guidelines unless the characteristics of the waste streams are similar to the CHWC streams (e.g. a waste stream that comes into contact with the waste after it is burned would have characteristics similar to regulated CHWC streams.)

Comment: None of the facilities sampled by EPA employed state-of-the-art dioxin air emission controls that will be required for at least some of the facilties covered by the proposed rule. None of the commercial facilities from which EPA obtained its wastewater data employed activated carbon injection (ACI), recently proposed beyond-the-floor MACT by EPA.

Response: EPA did not base the promulgated MACT dioxin emission standards on activated carbon injection (ACI) for approximately 85 percent of the hazardous waste incinerators identified by the HWC final rule. The standards are instead based on rapid quench of the flue gas prior to the particulate matter control device. Although EPA did not sample ACI, as the commenter mentioned, it did sample CHWC facilities with rapid flue gas quench prior to the particulate matter control device. For the 15 percent of hazardous waste incinerators identified by the HWC final rule that have waste heat boilers, EPA promulgated the emission standard based on activated carbon injection.

The commenter is concerned that the low dioxin concentrations found by EPA in the CHWC wastewater sampling program are a result of weak dioxin emission controls. As stated above, EPA sampled facilities with the promulgated HWC control for 85% of hazardous waste incinerators. For the 15% of hazardous waste incinerators that have waste heat boilers, EPA does not anticipate that the addition of ACI will increase the dioxin concentrations found in the wastewater because the ACI control devices specified in the final HWC rule are all "dry" carbon systems—either a carbon bed or a fabric filter with dry carbon injection. That is, the dioxin that is removed via the carbon injection will not be added to the wastewater—it will stay with the carbon.

Based on the data available and its resulting decision not to establish limitations and standards for dioxins, EPA cannot justify the imposition of a monitoring program for dioxins. While EPA recognizes that the promulgation of the MACT dioxin emission standards may result in some changes in the volume and character of air pollution control wastewater generated, EPA does not believe that the changes will result in a media transfer for dioxins that would change its decision that it should not establish dioxin limitations and standards. The promulgated MACT standards for 85% of the hazardous waste incinerators in the final HWC rule are based on changes in air pollution control device process conditions to minimize generation of dioxins and furans. Various studies have shown that a significant source of dioxin in waste incinerators is the formation of dioxin in the flue gas as it is cooled to around 400 degrees C. The longer the flue gas is held at this temperature the greater the formation of dioxin. One useful control measure is the rapid cooling of flue gas to levels below this temperature range to minimize this dioxin production window. EPA has concluded that the largest portion of the reduction in dioxin emissions will be through reductions in the amount generated rather than a media transfer.

Comment: Commenter questioned whether EPA conducted the type of data collection analysis necessary to characterize adequately the non-hazardous industry sector that falls within the scope of the proposal.

Response: At the onset of this project, EPA decided to limit the scope of its examination of the combustion industry. Thus EPA's initial planning did not include consideration of limitations and standards for medical waste incinerator or sewage sludge incinerators. Neither did the Agency undertake to revisit some of its existing guidelines for industrial categories which included allowances for wastewater discharges associated with air pollution control equipment for on-site incinerators. As a result of these decisions, EPA tailored its initial data collection to address its perceived needs for this guideline. As a result, EPA agrees that there may be gaps in the data which limit the Agency's ability to adequately characterize wastewater from certain combustion units at such facilities. This is particularly true with respect to non-hazardous combustion operations. As a result, EPA decided that the CHWC guideline would not extend to these facilities as explained earlier. EPA's 1992 data collection efforts for the CHWC Industry identified only one facility generating CHWC wastewater that burned only non-hazardous industrial waste and operated commercially, and this facility regenerated activated carbon.

The CHWC regulation focuses on RCRA combustor units, and includes uni*t*s that burn both RCRA and non-RCRA wastes. The above definition makes it clear that if a combustor does not burn any RCRA hazardous waste, it is not subject to the rule. The regulation, however, will apply to the CHWC wastewater produced by burning non-hazardous industrial wastes in conjunction with RCRA hazardous waste.

Comment: It is difficult to understand how the Agency could assume that treatment performance data from a single facility could be representative of BPT/BAT performance for this point source category.

Response: Subsequent to the close of the comment period, EPA received wastewater treatment data from three additional CHWC facilities. Each of the three CHWCs submitted influent and effluent wastewater treatment system performance data and related information on the operation of the

treatment systems (referred to as Episodes 6181, 6182, and 6183). Each facility submitted daily measurements for chlorides, total dissolved solids, total suspended solids, sulfate, pH, and 15 metals (aluminum, antimony, arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, selenium, silver, tin, titanium, and zinc).

EPA has reviewed this data and incorporated it into the data base for determining the CHWC limitations. Inclusion of the submitted data followed a careful check to ensure its accuracy, quality, and that it was collected using procedures consistent with EPA sampling and collection standards. EPA has used this information in the calculation of BPT/BAT effluent limitations for the final rule. EPA concluded that two of the three new facilities represented the "average of the best" technology for the industry. The remaining facility (Episode 6182) provided insufficient treatment for the profile of metals detected in its wastewaters. Incorporation of the post-proposal data into EPA's database had the effect of increasing the effluent long-term averages for some of the regulated pollutants and decreasing others.

Comment: EPA's proposed MACT standards for Hazardous Waste Combustors overlooked a preferred component of establishing emissions control—reductions in metal feed rates to combustors (pollution prevention)—because combustion of metals is not an appropriate form of treatment for these pollutants.

Response: Combustion of wastes is an appropriate management, treatment, and recovery practice for a wide variety of wastes, including those with trace quantities of metals. EPA rulemaking efforts under the CWA, CAA, and RCRA usually consider multi-media water, air, and solid waste impacts. EPA expects that well-designed, well-operated combustors will reduce the organic components of feed material to near-elemental compounds (carbon dioxide, water, and inorganic salts). However, since the metal components of the feed material are immutable (neither destroyed nor reduced to other elemental compounds), any effort to control or reduce metal pollutants in one medium must recognize the potential ancillary impact on the volumes and pollutant concentrations of the other media.

Further, the commenter's suggestion that EPA's proposed MACT air emission standards for Hazardous Waste Combustors (HWCs) should have considered reductions in metal feed rates as a control technique to limit emissions of metals is outside the scope of this rulemaking. The Agency received many public comments, including substantial comment on the issue of feedrate control of metals and chlorine in the hazardous waste, in response to the HWC MACT proposal and subsequent notices (61 FR 17358 and 62 FR 24212) . These comments were considered in developing the final air emissions standards for HWCs that were promulgated on September 30, 1999 (64 FR 52828). The Agency's comment response document supporting the final rule responds to all comments regarding feedrate control of metals and chlorine in the hazardous waste as MACT control. See *Final Response to Comments to the Proposed HWC MACT Standards, Volume I: Standards,* July 1999, available in docket F–1999–RC2F–FFFFF.

Comment: Some state regulations are more stringent than EPA's proposed regulations for mercury and cadmium. Systems in use have achieved lower mercury levels than EPA has proposed.

Response: The limitations and standards established by EPA in the CHWC regulation are national minimum technology-based standards based on data from CHWCs. States, of course, under the CWA, remain free to establish more stringent discharge limits. In addition, the permit writer or control authority may establish more stringent permit requirements in order, for example, to comply with water quality standards as necessary.

Based on new data received from CHWC facilities, EPA has decided to promulgate standards for PSES identical to the BAT/BPT standards. This technology basis is two stages of chemical precipitation with or without a final sand filtration step. The promulgated mercury and cadmium limits for direct dischargers and indirect dischargers are lower than the proposed mercury and cadmium limits.

B. Summary of Notice of Availability Comments and Responses

Comment: Two commenters want EPA to use the noticed data to set final limitations and standards for the final IWC rule. One commenter also argues that the data submitted illustrates the variability of influent and effluent concentrations for most metals and TSS *between* IWC facilities.

Response: EPA used the submitted data from the CHWC (formerly IWC) facilities that operate BPT/BAT/PSES treatment in development of the final effluent limitations guidelines and standards. EPA only used additional data from two facilities of the three facilities that submitted data in calculating the final limitations and standards. EPA concluded that only these two facilities were operating BPT/BAT/PSES treatment systems. The third facility was operating only one (rather than two) stages of chemical precipitation at the time of its sampling. Inclusion of these data has lead to higher effluent limits for some pollutants and lower effluent limits for others than at proposal.

Additionally, while the Agency recognizes that different facilities will accept variable ranges of hazardous and solid wastes for incineration, the Agency has concluded that the final limitations and standards do not need to take these differences into account. The statistical methods used by the Agency to calculate final limitations and standards do not result in limits that require a discharger to meet a single long-term average value for a particular pollutant. Instead, EPA has designed the final pollutant limits so that any facility employing good engineering practice and an appropriately designed treatment system will perform at least as well, or better than, the average observed performance and variability of the systems whose data were used to develop the limitations. Rather than allowing for between-facility variation, EPA uses the performance of the mean treatment system as a standard to establish limits that a well-operated system should be capable of achieving. However, this standard is not itself a limit. In developing daily maximum and monthly average limits, EPA provides an allowance for average within-facility variation about the average facility's average effluent concentration. Thus, a treatment system designed and operated to achieve the BPT/BAT model long-term average on a consistent basis should have no problem in complying with the limitations. See the comment response document for details.

Comment: One commenter thinks it is important to simulate the level of metals that could be encountered in the course of taking a broad variety of wastes into an Industrial Waste Combustor.

Response: The Agency has taken feed concentrations of metals into account in establishing effluent limits for CHWCs (formerly IWCs). EPA calculates the regulatory limits based on data from multiple facilities which experienced different feed rates over time. EPA does not accept the commenter's conclusion that the spiking simulation validly describes routine CHWC performance. The commenter introduced the spiked metal solutions to the treatment system downstream of the influent sampling point. Without knowing the resulting metal concentrations and without

knowing whether these concentrations are representative of potential loadings, EPA can not use the spiked data in its calculations for the final limitations and standards.

EPA is aware of the RCRA trial burn procedures and understands the techniques regarding waste "spiking" for thermal treatment. However, EPA's Office of Water has never used such techniques in developing its technology-based effluent limitations guidelines and standards and does not believe these techniques are appropriate for wastewater treatment technologies. The variability factors calculated by EPA will accommodate any unusual "spikes" in metal concentrations experienced by a CHWC facility.

Appendix 1 to the Preamble—Definitions, Acronyms, and Abbreviations

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, as described in section 304(b)(2) of the CWA.

BCT—The best conventional pollutant control technology, as described in section 304(b)(4) of the CWA.

Boiler—means an enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in 40 CFR 260.32.

BPT—The best practicable control technology currently available, as described in section 304(b)(1) of the CWA.

Captive—Used to describe a facility that only accepts waste generated on site and/or by the owner operator at the facility.

Clean Water Act (CWA)—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended, *inter alia,* by the Clean Water Act of 1977 (Pub. L. 95–217) and the Water Quality Act of 1987 (Pub. L. 100–4).

Closed—A facility or portion thereof that is currently not receiving or accepting wastes and has undergone final closure.

Combustion Unit—A device for waste treatment which uses elevated temperatures as the primary means to change the chemical, physical, biological character or composition of the waste. Examples of combustion units are incinerators, boilers, industrial furnaces, and kilns.

Commercial Hazardous Waste Combustor means any thermal unit, except a cement kiln, that is subject to either to 40 CFR part 264, subpart O; part 265, subpart O; or part 266, subpart H if the thermal unit burns RCRA hazardous wastes received from off-site for a fee or other remuneration in the following circumstances. The thermal unit is a commercial hazardous waste combustor.

Commercial hazardous waste combustor means any thermal unit, except a cement kiln, that is subject to either to 40 CFR Part 264, Subpart O; Part 265, Subpart O; or Part 266, Subpart H if the thermal unit burns RCRA hazardous wastes received from off-site for a fee or other remuneration in the following circumstances. The thermal unit is a commercial hazardous waste combustor if the off-site wastes are generated at a facility not under the same corporate structure or subject to the same ownership as the thermal unit and

(1) The thermal unit is burning wastes that are not of a similar nature to wastes being burned from industrial processes on site or

(2) There are no wastes being burned from industrial processes on site.

Examples of wastes of a "similar nature" may include the following: wastes generated in industrial operations whose wastewaters are subject to the same provisions in 40 CFR Subchapter N or wasters burned as part of a product stewardship activity.

The term commercial hazardous waste combustor includes the following facilities: a facility that burns exclusively waste received from off-site; and, a facility that burns both wastes generated on-site and wastes received from off-site. Facilities that may be commercial hazardous waste combustors include hazardous waste incinerators, rotary kiln incinerators, lime kilns, lightweight aggregate kilns, and boilers.

A facility not otherwise a commercial hazardous waste combustor is not a commercial hazardous waste combustor if it burns RCRA hazardous waste for charitable organizations, as a community service or as an accommodation to local, state or government agencies so long as the waste is burned for no fee or other remuneration.

Commercial hazardous waste combustor wastewater means wastewater attributable to commercial hazardous waste combustion operations, but includes only wastewater from air pollution control systems and water used to quench flue gas or slag generated as a result of commercial hazardous waste combustor operations.

Conventional pollutants—The pollutants identified in section 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, fecal coliform, and pH).

Direct discharger—A facility that discharges or may discharge treated or untreated pollutants into waters of the United States.

Disposal—Intentional placement of waste or waste treatment residual into or on any land where the material will remain after closure. Waste or residual placed into any water is not defined as disposal, but as discharge.

Effluent—Wastewater discharges.

Effluent limitation—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into

navigable waters, the waters of the contiguous zone, or the ocean. (CWA sections 301(b) and 304(b).)

EA—Economic Analysis.

EPA—The U.S. Environmental Protection Agency.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person. The contiguous property may be divided by public or private right-of-way.

Hazardous Waste—Any waste, including wastewaters defined as hazardous under RCRA or Toxic Substances Control Act (TSCA).

Incinerator—means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly-owned treatment works (POTW).

Industrial Furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns.
(2) Lime kilns.
(3) Aggregate kilns.
(4) Phosphate kilns.
(5) Coke ovens.
(6) Blast furnaces.
(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces).
(8) Titanium dioxide chloride process oxidation reactors.
(9) Methane reforming furnaces.
(10) Pulping liquor recovery furnaces.
(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.
(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3 percent, the acid product is used in a manufacturing process, and except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20 percent as generated.
(13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and,

(vi) Other factors, as appropriate.

Intracompany—A facility that treats, disposes, or recycles/recovers wastes generated by off-site facilities under the same corporate ownership. The facility may also treat on-site generated wastes. If any waste from other facilities not under the same corporate ownership is accepted for a fee or other remunerations, the facility is considered commercial.

Long-term average (LTA)—For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's final regulation.

Minimum level—The level at which an analytical system gives recognizable signals and an acceptable calibration point.

Municipal Facility—A facility which is owned or operated by a municipal, county, or regional government.

New Source—"New source" is defined at 40 CFR 122.2 and 122.29 for direct discharging facilities and at 40 CFR 403.3 for facilities discharging to a POTW.

Non-commercial facility—A facility that accepts waste from off-site for treatment only from facilities under the same ownership.

Non-conventional pollutants—Pollutants that are neither conventional pollutants listed at 40 CFR 401.16 nor the 126 priority pollutants listed in Appendix A of 40 CFR part 423.

Non-detect value—A concentration-based measurement reported below the sample-specific minimum level that can reliably be measured by the analytical method for the pollutant.

Non-hazardous waste—All waste not defined as hazardous under RCRA regulations.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters.

NPDES—The National Pollutant Discharge Elimination System authorized under section 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards.

OCPSF—Organic Chemicals, Plastics, and Synthetic Fibers industry or Effluent Guideline (40 CFR part 414).

Off-site—"Off-site" means outside the boundaries of a facility.

On-site—"On-site" means within the boundaries of a facility.

Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters or POTWs.

Point source category—A category of sources of water pollutants.

Pollutant (to water)—Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, certain radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

POTW or POTWs—Publicly-owned treatment works, as defined at 40 CFR 403.3(o).

Pretreatment standard—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW. (CWA section 307(b).)

Priority pollutants—The pollutants designated by EPA as priority in 40 CFR part 423 Appendix A.

Process wastewater—"Process wastewater" is defined at 40 CFR 122.2.

PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under section 307 (b) and (c) of the CWA.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94–580) of 1976, as amended.

Residuals—The material remaining after a natural or technological process has taken place, e.g., the sludge remaining after initial wastewater treatment.

Sewage Sludge—Sludge generated by a sewage treatment plant or POTW.

Sludge—The accumulated solids separated from liquids during processing.

Solids—For the purpose of this notice, a waste that has a very low moisture content, is not free-flowing, and does not release free liquids. This definition deals with the physical state of the waste, not the RCRA definition.

SIC—Standard Industrial Classification (SIC). A numerical

categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

Small business—Businesses with annual sales revenues less than $6 million. This is the Small Business Administration definition of small business for SIC code 4953, Refuse Systems (13 CFR Ch. I, § 121.601).

Treatment—Any activity designed to change the character or composition of any waste so as to prepare it for transportation, storage, or disposal; render it amenable for recycling or recovery; or reduce it in volume.

TSS—Total Suspended Solids. A measure of the amount of particulate matter that is suspended in a water sample. The measure is obtained by filtering a water sample of known volume. The particulate material retained on the filter is then dried and weighed.

Waste Receipt—Wastes received for treatment or recovery.

Waters of the United States—See 40 CFR 122.2.

Wastewater treatment system—A facility, including contiguous land and structures, used to receive and treat wastewater. The discharge of a pollutant from such a facility is subject to regulation under the Clean Water Act.

Zero discharge—No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are "alternative" discharges of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

List of Subjects in 40 CFR Part 444

Environmental protection, Hazardous waste, Incineration, Incorporation by reference, Waste treatment and disposal, Water pollution control.

Dated: November 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding part 444 to read as follows:

PART 444—WASTE COMBUSTORS POINT SOURCE CATEGORY

Subpart A—Commercial Hazardous Waste Combustor Subcategory

Sec.

444.10 Applicability.
444.11 Definitions.
444.12 Monitoring requirements.
444.13 Effluent limitations attainable by the application of the best practical control technology currently available (BPT).
444.14 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).
444.15 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).
444.16 Pretreatment standards for existing sources (PSES).
444.17 New source performance standards (NSPS).
444.18 Pretreatment standards for new sources (PSNS).

Authority: Secs. 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended; 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

Subpart A—Commercial Hazardous Waste Combustor Subcategory

§ 444.10 Applicability.

(a) The provisions of this part apply only to that portion of wastewater discharges that are associated with Commercial Hazardous Waste Combustor (CHWC) wastewater.

(b) The discharge from a CHWC of wastewater that is not CHWC wastewater, may be subject to other applicable provisions of EPA's CWA effluent guidelines and standards regulations at Subchapter N of Title 40 of the Code of Federal Regulations.

§ 444.11 Definitions.

As used in this part the general definitions and abbreviations in 40 CFR part 401 shall apply.

Commercial hazardous waste combustor means any thermal unit, except a cement kiln, that is subject either to 40 CFR part 264, subpart O; 40 CFR part 265, subpart O; or 40 CFR part 266, subpart H if the thermal unit burns RCRA hazardous wastes received from off-site for a fee or other remuneration in the following circumstances. The thermal unit is a commercial hazardous waste combustor if the off-site wastes are generated at a facility not under the same corporate structure or subject to the same ownership as the thermal unit and

(1) The thermal unit is burning wastes that are not of a similar nature to wastes being burned from industrial processes on site or

(2) There are no wastes being burned from industrial processes on site. Examples of wastes of a "similar nature" may include the following: Wastes generated in industrial operations whose wastewaters are subject to the same provisions in 40 CFR Subchapter N or wastes burned as part of a product stewardship activity. The term commercial hazardous waste combustor includes the following facilities: a facility that burns exclusively waste received from off-site; and, a facility that burns both wastes generated on-site and wastes received from off-site. Facilities that may be commercial hazardous waste combustors include hazardous waste incinerators, rotary kiln incinerators, lime kilns, lightweight aggregate kilns, and boilers. A facility not otherwise a commercial hazardous waste combustor is not a commercial hazardous waste combustor if it burns RCRA hazardous waste for charitable organizations, as a community service or as an accommodation to local, state or government agencies so long as the waste is burned for no fee or other remuneration.

Commercial hazardous waste combustor wastewater means wastewater attributable to commercial waste combustion operations, but includes only wastewater from air pollution control systems and water used to quench flue gas or slag generated as a result of commercial hazardous waste combustor operations.

Off-site means outside the boundaries of a facility.

On-site means within the boundaries of a facility.

Parameters are defined as Parameters at 40 CFR 136.2 in Table 1B, which also cites the approved methods of analysis.

(1) *Arsenic* means total arsenic, Parameter 6.

(2) *Cadmium* means total cadmium, Parameter 12.

(3) *Chromium* means total chromium, Parameter 19.

(4) *Copper* means total copper, Parameter 22.

(5) *Lead* means total lead, Parameter 32.

(6) *Mercury* means total mercury, Parameter 35.

(7) *pH* means hydrogen ion, Parameter 28.

(8) *Silver* means total silver, Parameter 62.

(9) *Titanium* means total titanium, Parameter 72.

(10) *TSS* means total suspended solids, Parameter 55.

(11) *Zinc* means total zinc, Parameter 75.

POTW means a publicly owned treatment works.

§ 444.12 Monitoring Requirements

(a) Both direct and indirect discharges must monitor to establish compliance with their limitations and standards. Thus, all the permits of all direct

dischargers must include requirements to monitor, according to EPA-approved test procedures, each pollutant limited in the permit, the volume of effluent discharged from each outfall, and other appropriate measurements subject to notification requirements. See 40 CFR 122.44(i). EPA's pretreatment regulations similarly require indirect dischargers to monitor to demonstrate compliance with pretreatment standards. See 40 CFR 403.12(g).

(b) Incorporation by reference:

(1) Compliance with the monitoring requirements may be accomplished using approved test procedures listed in the table to this paragraph. Most of these test procedures have previously been incorporated by reference at 40 CFR 136.3(a), Table IB. The test procedures for the regulated pollutants (arsenic, cadmium, chromium (total), copper, pH, lead, mercury, TSS, silver, titanium, and zinc) listed in the table to this paragraph are also incorporated by reference into this regulation. The full texts of the test procedures listed in this paragraph are available from the sources indicated in paragraph (b)(2) of this section.

(2) In addition to those test procedures incorporated by reference at 40 CFR 136.3(a), Table IB, you may also use EPA Method 200.8, "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," from "Methods for Determination of Metals in Environmental Samples—Supplement I," EPA–600/R–94–111, May 1994, and ASTM Method D 5673–96, "Standard Test Method for Elements in Water by Inductively Coupled Plasma—Mass Spectrometry," from 1999 Annual Book of ASTM Standards, for determination of arsenic, cadmium, chromium (total), copper, lead, silver, and zinc. The full texts of these methods are incorporated by reference into this regulation and may be obtained from the sources identified in paragraph (b)(2) of this section.

LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1 16]	Standard Methods [18th Edition] [6]	ASTM	USGS [2]	Other
1. Arsenic—Total,[4] mg/L:					
Digestion [4] followed by	206.5				
AA gaseous hydride	206.3	3114B 4.d	D2972–93(B)	I–3062–85	
AA furnace	206.2	3113B	D2972–93(C)		
ICP/AES [15]	[5] 200.7	3120 B			
Colorimetric (SDDC), or	206.4	3500–As C	2972–93(A)	I–3060–85	
ICP/MS	[7] 200.8		D5673–96 [17]		
2. Cadmium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [15]	213.1	3111 B or C	D3557–90(A or B)	I–3135–85 or I–3136–85	974.27,[3] p. 37.
AA furnace	213.2	3113 B			
ICP/AES [15]	[5] 200.7	3120 B	D3557–90(D)		
DCP [15]				I–1472–85	([14])
Voltametry [9]			D4190–82(88)		
Colorimetric (Dithizone), or		3500–Cd D	D3557–90(C)		
ICP/MS	[7] 200.8		D5673–96 [17]		
3. Chromium-Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [15]	218.1	3111 B	D1687–92(B)	I–3236–85	974.27.[3]
AA chelation-extraction	218.3	3111 C			
AA furnace	218.2	3113 B	D1687–92(C)		
ICP/AES [15]	[5] 200.7	3120 B			
DCP [15]			D4190–82(88)		([14])
Colorimetric (Diphenylcarbazide), or.		3500–Cr D			
ICP/MS	[7] 200.8		D5673–96 [17]		
4. Copper—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [15]	220.1	3111 B or C	D1688–90(A or B)	I–3270–85 or I–3271–85	974.27 [3] p. 37.[8]
AA furnace	220.2	3113 B	D1688–90(C)		
ICP/AES [15]	[5] 200.7	3120 B			
DCP [15] or			D4190–82(88)		([14])
Colorimetric (Neocuproine) or		3500–Cu D			
(Bicinchoninate), or		or E			([10])
ICP/MS	[7] 200.8		D5673–96 [17]		
5. Hydrogen ion (pH), pH units:					
Electrometric measurement	150.1	4500–H+B	D1293–84 (90)(A or B)	I–1586–85	973.41.
Automated electrode					([11])
6. Lead—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [15]	239.1	3111 B or C	D3559–90(A or B)	I–3399–85	974.27.[3]
AA furnace	239.2	3113 B	D3559–90(D)		
ICP/AES [15]	[5] 200.7	3120 B			
DCP [15]			D4190–82(88)		([14])
Voltametry [9]			D3559–90(C)		
Colorimetric (Dithizone), or		3500–Pb D			
ICP/MS	[7] 200.8		D5673–96 [17]		

LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1 16]	Standard Methods [18th Edition] [6]	ASTM	USGS [2]	Other
7. Mercury—Total,[4] mg/L:					
Cold vapor, manual or	245.1	3112 B	D3223–91	I–3462–85	977.22.[3]
Automated	245.1				
8. Residue—nonfilterable (TSS), mg/L:					
Gravimetric, 103–105– post washing of residue.	160.2	2540 D		I–3765–85	
9. Silver—Total,[4] mg/L: Digestion [4,12] followed by:					
AA direct aspiration	272.1	3111 B or C		I–3720–85	974.27 [3] p. 37. [8]
AA furnace	272.2	3113 B			
ICP/AES	[5] 200.7	3120 B			
DCP, or					(14)
ICP/MS	[7] 200.8		D5673–96 [17]		
10. Titanium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	283.1	3111 D			
AA furnace, or	283.2				
DCP					(14)
11. Zinc—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [15]	289.1	3111 B or C	D1691–90(A) or B)	I–3900–85	974.27,[3] p. 37.[8]
AA furnace	289.2				
ICP/AES [15]	[5] 200.7	3120 B			
DCP [15]					(14)
Colorimetric (Dithizone) or		3500–Zn E	D4190–82(88)		
(Zincon), or		3500–Zn F			(13)
ICP/MS	[7] 200.8		D5673–96 [17]		

Table Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al. "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983". One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions. NOTE.—If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. Has a low COD (<20)

b. Is visibly transparent with a turbidity measurement of 1 NTU or less

c. Is colorless with no perceptible odor, and

d. Is of one liquid phase and free of particulate or suspended matter following acidification.

[5] EPA Method 200.7, "Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," from "Methods for Determination of Metals in Environmental Samples—Supplement I," EPA–600/R–94–111, May 1994.

[6] "Standard Methods for the Examination of Water and Wastewater," 18th Edition (1992).

[7] EPA Method 200.8, "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," from "Methods for Determination of Metals in Environmental Samples—Supplement I," EPA–600/R–94–111, May 1994.

[8] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[9] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[10] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[11] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378—75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[12] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[13] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[14] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkway, Franklin, MA 02038.

[15] "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals," CEM Corporation, PO. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[16] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of 40 CFR Part 136 and titled, "Precision and Recovery Statements for Methods for Measuring Metals."

[17] This method does not include the digestion for solids given in Method 200.8. Not using the solids digestion procedure could affect the determined concentrations. Therefore, this method may not be used for analysis of aqueous samples with suspended solids greater than 1%.

(2) The full texts of the methods from the following references which are cited in the table in paragraph (b)(1) of this section are incorporated by reference into this regulation and may be obtained from the sources identified. All costs cited are subject to change and must be verified from the indicated sources. The full texts of all the test procedures cited are available for inspection at the Analytical Methods Staff, Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 North Capital Street, NW., Suite 700, Washington DC.

Appendix to § 444.12(b)—References, Sources, Costs, and Table Citations:

(1) "Methods for Chemical Analysis of Water and Wastes," U.S. Environmental Protection Agency, EPA–600/4–79–020, Revised March 1983 and 1979 where applicable. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. [Note 1]

(2) "Standard Methods for the Examination of Water and Wastewater." Joint Editorial Board, American Public Health Association, American Water Works Association, and Water Environment Federation, 18th Edition, 1992. Available from: American Public Health Association, 1015 15th Street NW, Washington, DC 20005. [Note 6]

(3) "Annual Book of ASTM Standards—Water and Environmental Technology," Section 11, Volumes 11.01 (Water I) and 11.02 (Water II), 1994. [1996 for D5673–96; see Note 17]. American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(4) "Methods for the Determination of Metals in Environmental Samples—Supplement I", National Exposure Risk Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268, EPA 600 R–94/111, May 1994. [Notes 5 and 7]

(5) "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," by M.J. Fishman and Linda C. Friedman, Techniques of Water Resources Investigations of the U.S. Geological Survey, Book 5 Chapter A1 (1989). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $108.75 (subject to change). [Note 2]

(6) "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals," CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106–0200, April 16, 1992. Available from the CEM Corporation. [Note 15]

(7) "Official Methods of Analysis of AOAC—International, 15th Edition," 1990. Price: $359.00. Available from: AOAC—International, 1970 Chain Bridge Rd., Dept. 0742, McLean, VA 22109–0742. [Note 3]

(8) "American National Standard on Photographic Processing Effluents," April 2, 1975. Available from: American National Standards Institute, 11 West 42nd Street, New York, New York 10036. [Note 8]

(9) Bicinchoninate Method for Copper. Method 8506, Hach Handbook of Water Analysis, 1979, Method and price available from Hach Chemical Company, P.O. Box 300, Loveland, Colorado 80537. [Note 10]

(10) Hydrogen Ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA. October 1976. Bran & Luebbe (Technicon) Auto Analyzer II. Method and price available from Bran & Luebbe Analyzing Technologies, Inc. Elmsford, N.Y. 10523. [Note 11]

(11) Zincon Method for Zinc, Method 8009. Hach Handbook for Water Analysis, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. [Note 13]

(12) "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes," Method AES 0029, 1986 Revised 1991, Thermo Jarrell Ash Corporation (508–520–1880), 27 Forge Parkway, Franklin, MA 02038. [Note 14]

§ 444.13 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

EFFLUENT LIMITATIONS [1]

Regulated parameter	Maximum daily	Maximum monthly avg.
TSS	113,000	34,800
Arsenic	84	72
Cadmium	71	26
Chromium	25	14
Copper	23	14
Lead	57	32
Mercury	2.3	1.3
Silver	13	8
Titanium	60	22
Zinc	82	54
pH	(2)	(2)

[1] Micrograms per liter (ppb)
[2] Within the range 6 to 9.

§ 444.14 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for TSS and pH are the same as the corresponding limitation specified in § 444.13.

§ 444.15 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: Limitations for arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium and zinc are the same as the corresponding limitation specified in § 444.13.

§ 444.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any source that introduces wastewater pollutants into a POTW must comply with part 403 and achieve the following pretreatment standards:

PRETREATMENT STANDARDS [1]

Regulated parameter	Maximum daily	Maximum monthly avg.
Arsenic	84	72
Cadmium	71	26
Chromium	25	14
Copper	23	14
Lead	57	32

PRETREATMENT STANDARDS [1]—Continued

Regulated parameter	Maximum daily	Maximum monthly avg.
Mercury	2.3	1.3
Silver	13	8
Titanium	60	22
Zinc	82	54

[1] Micrograms per liter (ppb)

§ 444.17 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following performance standards: Standards for TSS, arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium, zinc and pH are the same as the corresponding limitation specified in § 444.13.

§ 444.18 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any source that introduces wastewater pollutants into a POTW must comply with 40 CFR part 403 and achieve the following pretreatment standards: Standards for arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium and zinc are the same as the corresponding limitation specified in § 444.16.

[FR Doc. 00–2019 Filed 1–26–00; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 65, No. 18
Thursday, January 27, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. This proposal would require modification of wing center box angle fittings at frame 47. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing center box angle fittings at frame 47 due to fatigue cracking.

DATES: Comments must be received by February 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–205–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes. The DGAC advises that a high incidence of cracking at the wing center box angle fittings at frame 47 has been reported by A300 operators when conducting the inspections required by the Model A300 Supplementary Structural Inspection Program (SSIP). [This inspection program is currently mandated in 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).] Because of the high incidence of cracking, there is an increased risk, on older airplanes, that not all cracks may be detected by the SSIP. This condition, if not corrected, could result in reduced structural integrity of the wing center box angle fittings at frame 47 due to fatigue cracking.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998, which describes procedures for modification of the wing center box angle fittings at frame 47. The modification involves removing certain sealant and fasteners, performing rotating probe inspections to detect cracking, cold working certain fastener holes, and installing new fasteners and sealant. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–076–267(B), dated February 24, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Foreign Airworthiness Directive

The proposed AD would specify a different grace period from that specified by the parallel French airworthiness directive. The "instructions" referred to in the French airworthiness directive constitute a rather complicated method of determining a grace period for airplanes that have exceeded, or are approaching, the applicable mandatory threshold. The FAA has determined that it would be difficult to enforce the DGAC method for determining the grace period. In addition, the FAA has determined that the grace period defined in the service bulletin instructions is excessive in certain cases. Therefore, the FAA has established a single grace period, equal to the shortest grace period allowed by the French AD for all affected airplanes. In developing an appropriate grace period for this AD, the FAA considered not only the DGAC's method for determining the grace period, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, the FAA finds a 6,500-flight-cycle grace period for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for repair instructions for certain damage conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 430 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8,840 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,316,320, or $34,640 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–205–AD.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998; certificated in any category; except those on which Airbus Service Bulletin A300–53–0282 or Airbus Service Bulletin A300–53–0291 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing center box angle fittings at frame (FR) 47, accomplish the following:

(a) Prior to the accumulation of the applicable threslfold specified in the "MANDATORY TH" column of the table in paragraph 1.B.(4) of the service bulletin, or within 6,500 flight cycles after the effective date of this AD, whichever occurs later: Except as required by paragraph (b) of this AD, modify the wing center box angle fittings at FR 47 (including removing certain sealant and fasteners, performing rotating probe inspections to detect cracking, cold working certain fastener holes, installing new fasteners and sealant, and repairing damage), in accordance with Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998.

Note 2: Operators should note that the area required to be modified by paragraph (a) of this AD remains subject to the requirements of AD 96–13–11, amendment 39–9679, after modification.

(b) Where Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998, specifies that Airbus be contacted for repair instructions for certain damage conditions, this AD requires that such damage conditions be repaired prior to further flight in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–076–267, dated February 24, 1999.

Issued in Renton, Washington, on January 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1957 Filed 1–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113572–99]

RIN 1545–AX33

Qualified Transportation Fringe Benefits

AGENCY: Internal Revenue Service.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to qualified transportation fringe benefits. These proposed regulations reflect changes to the law made by the Energy Policy Act of 1992, the Taxpayer Relief Act of 1997, and the Transportation Equity Act for the 21st Century. These proposed regulations affect employers that offer qualified transportation fringes and employees who receive these benefits. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 26, 2000. Outlines of topics to be discussed at the public hearing scheduled for June 1, 2000 at 10 a.m. must be received by May 10, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–113572–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–113572–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/reglist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Richards of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), (202) 622–6040; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 27, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in 26 CFR 1.132–9(b). This information is required by the Internal Revenue Service to implement section 132(f). This information will be used to verify compliance with section 132(f). Section 132(f)(3) provides that qualified transportation fringes can include cash reimbursement for qualified transportation fringes. The proposed regulations require that employers keep records of substantiation provided by employees in order to receive cash reimbursement for qualified transportation fringes. Section 132(f)(4) provides that an employee may choose between cash compensation and any qualified transportation fringe. The proposed regulations require that employers keep records, in a verifiable form, such as written or electronic, of employee elections to reduce compensation. The value of qualified transportation fringes provided for a month exceeding the applicable statutory monthly limit must be reported on the employee's Form W–2. The burden for this requirement is reflected in the burden for Form W–2. The likely recordkeepers are employers. The likely respondents are employees.

Estimated total annual recordkeeping burden: 7,020,000 hours.

Estimated average annual recordkeeping burden per recordkeeper: The average annual recordkeeping burden will vary depending on the size of the employer. The estimated average annual recordkeeping burden per recordkeeper is 26.5 hours.

Estimated number of recordkeepers: 265,343.

Estimated total annual reporting burden: 5,948,728 hours.

Estimated average annual reporting burden per respondent: .8 hours.

Estimated number of respondents: 7,264,970.

Estimated annual frequency of responses: Monthly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains a proposed amendment to the Income Tax Regulations (26 CFR part 1) under section 132(f). Congress amended section 132 as part of the Energy Policy Act of 1992, Public Law No. 102–486, section 1911 (106 Stat. 3012), effective after December 31, 1992. This provision excludes from gross income the value of any qualified transportation fringe provided by an employer to an employee to the extent it does not exceed the applicable statutory monthly limit.

This 1992 amendment to section 132 resulted in three changes to the tax treatment of employer-provided transportation benefits. First, Congress added an exclusion for transportation provided by an employer to an employee in a commuter highway vehicle. Second, mass transit passes provided by an employer to an employee became excludable as a qualified transportation fringe and not as a *de minimis fringe*. The exclusions for transportation provided by an employer to an employee in a commuter highway vehicle and mass transit passes were made subject to an aggregate $60 per month limit (adjusted for cost of living). Third, Congress eliminated the working condition fringe for commuter parking, imposed a $150 per month limit (adjusted for cost of living) for the exclusion for qualified parking, and provided that employer-provided parking is excludable from gross income only as a qualified transportation fringe. The 1992 amendment provided that qualified transportation fringes could not be provided in lieu of salary.

Section 1072 of the Taxpayer Relief Act of 1997 (TRA '97), Pub. L. No. 105–34 (111 Stat. 948), amended section 132(f), effective for tax years beginning after December 31, 1997, to permit qualified parking to be provided to employees in lieu of salary. Section 9010 of the Transportation Equity Act for the 21st Century (TEA 21), Pub. L. No. 105–178 (112 Stat. 507), amended section 132(f) to increase the monthly dollar limits to $65 for transportation in a commuter highway vehicle and mass transit passes [1] and $175 for qualified parking and to provide that, effective after December 31, 1997, any qualified transportation fringe may be provided to employees in lieu of salary.

Explanation of Provisions

This document contains proposed regulations under section 132. The proposed regulations provide guidance, in question and answer form, to employers that provide qualified transportation fringes to employees. Qualified transportation fringes consist of transportation in a commuter highway vehicle, any transit pass, and qualified parking provided by an employer to an employee.

Notice 94–3, 1994–1 C.B. 327, provided guidance on qualified transportation fringes in the form of questions and answers. The proposed regulations reflect statutory changes in section 132(f) since 1994, including the revised monthly dollar limits and the use of bona fide salary reduction arrangements, as permitted under TRA '97 and TEA 21, and generally conform with the guidance in Notice 94–3. In response to public comments, the proposed regulations also provided additional guidance concerning the standards for determining when the section 132(f) exclusion applies to cash reimbursement of transit pass expenses.

Section 132(f) limits the value of qualified transportation fringes that may be excluded from an employee's gross income. The proposed regulations explain that there are two categories of qualified transportation fringes for purposes of determining the amount that is excludable from gross income. The first category is transportation in a commuter highway vehicle and transit passes. The second category is qualified parking. There is a statutory monthly limit on the value of the benefits from each category that is excludable from gross income. For 1999 and 2000, the statutory monthly limit is $65 for transportation in a commuter highway vehicle and mass transit passes and $175 for qualified parking. An employee may receive benefits from each category provided the applicable statutory monthly limit for that category is not exceeded. The amount by which the value of qualified transportation fringes provided by an employer to an employee exceeds the applicable statutory monthly limit is included in the employee's wages for income and employment tax purposes.

The proposed regulations provide that, for purposes of valuing qualified parking, the valuation rules under section 1.61–21(b) generally apply. With respect to employer-provided van pool benefits, the regulations provide that an employer may use the special valuation rules provided under section 1.61–21(c), (d), (e), and (f) in valuing these benefits. An example in the proposed regulations illustrates that in determining the value of a transit pass sold at a discount for purposes of section 132(f), the purchase price rather than the face amount of the transit pass controls.

The proposed regulations reflect that qualified transportation fringes include cash reimbursement by an employer to an employee for expenses incurred by the employee for transportation in a commuter highway vehicle and qualified parking. Section 132(f)(3) provides that qualified transportation fringes include cash reimbursement for a transit pass only if a voucher or similar item that is exchangeable for a transit pass is not readily available for direct distribution by the employer to the employee. In defining "readily available," the regulations reflect the general standards set forth in Notice 94–3, under which an amount is readily available if an employer can obtain it on terms no less favorable than those available to an individual employee and without incurring a significant administrative cost.

In addition, the proposed regulations clarify the meaning of "significant administrative costs." The proposed regulations provide that the determination of whether obtaining a voucher would result in a significant administrative cost is made with respect to each transit system voucher. A transit system voucher is a voucher that is accepted by one or more mass transit operators (*e.g.*, train, subway, and bus) in an area as fare media (or in exchange for fare media). The proposed regulations provide a safe harbor under which administrative costs are treated as significant if the average monthly administrative costs incurred by the employer for a voucher (disregarding delivery charges imposed by the fare media provider to the extent not in excess of $15 per order) are more than 1 percent of the average monthly value of the vouchers for a system. These standards are intended to provide clear guidance so that employers can determine when qualified transportation fringes include cash reimbursement for transit passes.

The proposed regulations provide that reimbursements may be made only pursuant to a bona fide reimbursement arrangement. Thus, an employee must provide substantiation that an expense has been incurred for qualified transportation fringes in order to receive a reimbursement. The regulations recognize that the substantiation requirements vary depending upon the payment method used to purchase transportation in a commuter highway vehicle, mass transit passes, and qualified parking. The regulations provide examples of what constitutes reasonable reimbursement procedures in certain circumstances. For example,

[1] The dollar limit for transportation in a commuter highway vehicle and transit passes was further increased to $100 effective January 1, 2002.

if an employee uses metered parking, the substantiation requirement may be satisfied if the employee certifies that the expense was incurred and the employer has no reason to believe the employee did not actually incur the expense.

The proposed regulations provide that there are no substantiation requirements with respect to mass transit passes provided directly by an employer to its employees. Of course, an employer may impose its own substantiation requirements in addition to those required under the regulations.

The proposed regulations follow the approach taken in Notice 94–3 with respect to taxing the value of employer-provided parking benefits provided to members of car and van pools. The regulations provide that the "prime member" bears the tax consequences with respect to the parking space.[2] The prime member is the employee to whom the parking space is assigned.

The proposed regulations reflect that qualified transportation fringes may be provided under a compensation reduction arrangement which permits an employee to make a compensation reduction election. A compensation reduction election is an election in which the employee chooses between a fixed amount of compensation to be received at a specified future date and a fixed amount of qualified transportation fringes to be provided with respect to a specified future period (such as a calendar month). The proposed regulations provide that the compensation reduction election for any month in a year may not exceed the aggregate statutory monthly maximum for that year (*e.g.*, $240 for 1999 and 2000 ($65 plus $175)). The election must be made before the employee is able currently to receive the taxable compensation. Under the proposed regulations, the determination of whether the employee is able currently to receive the taxable compensation does not depend on whether the compensation has been constructively received for purposes of section 451.

The proposed regulations require that an election be irrevocable after the beginning of the period for which the qualified transportation fringes will be provided. However, unused amounts can be carried over to any subsequent months, including months in subsequent years, but cannot be used for any purpose other than qualified transportation fringes under section 132(f).

The proposed regulations provide that the exclusion for qualified transportation fringes applies only to employees. Partners, 2-percent S-corporation shareholders, and independent contractors are not considered to be employees for purposes of qualified transportation fringes. However, amounts may be excludable pursuant to the working condition fringe rules and the *de minimis* fringe rules that apply to partners, 2-percent S-corporation shareholders, and independent contractors under section 132(d) and (e).

The proposed regulations provide that qualified transportation fringes not exceeding the applicable statutory monthly limit are not subject to employment taxes. However, qualified transportation fringes exceeding the applicable statutory monthly limit are includible in the employee's wages for income and employment tax purposes. If the value of noncash qualified transportation fringes provided to an employee exceeds the applicable statutory monthly limit, the employer may follow the reporting and withholding guidelines provided in Announcement 85–113, 1985–31 I.R.B. 31. Announcement 85–113 provides that employers may elect, for purposes of the FICA, the FUTA, and federal income tax withholding, to treat noncash fringe benefits as paid on a pay period, quarterly, semi-annual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually. Announcement 85–113 also provides a special accounting rule for noncash fringes provided during the last two months of a calendar year.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

An Initial Regulatory Flexibility Analysis has been prepared as required for the collection of information in this notice of proposed rulemaking under 5 U.S.C. § 603. The analysis follows:

Initial Regulatory Flexibility Analysis

This proposed rule may have an impact on small organizations that provide qualified transportation fringes in the form of cash reimbursement or that offer qualified transportation fringes in lieu of salary. Section 132(f)(3) provides that qualified transportation fringes may be provided in the form of cash reimbursement. The legislative history indicates that cash reimbursements must be made pursuant to a *bona fide* reimbursement arrangement. Thus, this proposed rule provides that employers must receive substantiation from employees as a condition to providing cash reimbursement for qualified transportation fringes. Section 132(f)(4) provides that an employee may choose between cash compensation and qualified transportation fringes. This proposed rule provides that employers must keep records with respect to employee compensation reduction elections. Thus, the requirements under this proposed rule create a collection of information requirement for employers.

The objectives of this proposed rule with respect to employee substantiation of qualified transportation fringes is to carry out the legislative intent that cash reimbursement be provided by an employer only under a bona fide reimbursement arrangement. The objective of the recordkeeping requirement with respect to employee compensation reduction elections is to ensure against recharacterization of taxable compensation after it has been paid to an employee. The legal basis for this proposed rule is section 132(f)(3) and (4).

All classes of employers will likely offer qualified transportation fringes and therefore will be affected by this proposed rule. Approximately 265,000 small entities may be affected by this proposed rule. There are no professional skills necessary for the recordkeeping required under this proposed rule.

The IRS is not aware of any other relevant federal rules which may duplicate, overlap, or conflict with this proposed rule.

A less burdensome alternative for small organizations would be to exempt those entities from the recordkeeping requirements under this proposed rule. However, it would be inconsistent with the statutory provisions and the legislative history to exempt those entities from the recordkeeping requirements imposed under this rule. This proposed rule provides several options which avoid more burdensome recordkeeping requirements for small entities. This proposed rule provides that (1) There are no substantiation requirements if the employer distributes transit passes in kind; (2) a compensation reduction election can be made electronically; (3) an election to reduce compensation can be automatically renewed; and (4) an employer can provide for deemed compensation reduction elections under its qualified transportation fringe benefit plan.

[2] Other pool members may choose to reimburse the costs of the prime member, in which event, under Rev. Rul. 55–555, 1955–2 C.B. 20, the reimbursements will not be includible in the prime member's gross income. See also Rev. Rul. 80–99, 1980–1 C.B. 10.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand, and on the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 1, 2000, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601 (a) (3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 10, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information: The principal author of these proposed regulations is John Richards, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority section for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.132–0 is amended by adding entries for § 1.132–9 to read as follows:

§ 1.132–0 Outline of regulations under section 132.

* * * * *

§ 1.132–9(a) Table of contents.

§ 1.132–9(b) Questions and answers.

* * * * *

Par. 3 Section 1.132–9 is added to read as follows:

§ 1.132–9 Qualified transportation fringes.

(a) *Table of contents.* This section contains a list of the questions and answers in § 1.132–9.

Q–1. What is a qualified transportation fringe?
Q–2. What is transportation in a commuter highway vehicle?
Q–3. What are transit passes?
Q–4. What is qualified parking?
Q–5. To which workers may qualified transportation fringes be provided?
Q–6. Must a qualified transportation fringe benefit plan be in writing?
Q–7. Is there a limit on the value of qualified transportation fringes that may be excluded from an employee's gross income?
Q–8. What amount is includible in an employee's wages for income and employment tax purposes if the value of the qualified transportation fringe exceeds the applicable statutory monthly limit?
Q–9. Are excludable qualified transportation fringes calculated on a monthly basis?
Q–10. May an employee receive qualified transportation fringes from more than one employer?
Q–11. May qualified transportation fringes be provided to employees pursuant to a compensation reduction agreement?
Q–12. What is a compensation reduction election for purposes of section 132(f)?
Q–13. Is there a limit to the amount of the compensation reduction?
Q–14. When must the employee have made a compensation reduction election and under what circumstances can the amount be paid in cash to the employee?
Q–15. May an employee whose qualified transportation fringe costs are less than the employee's compensation reduction carry over this excess amount to subsequent periods?
Q–16. How does section 132(f) apply to expense reimbursements?
Q–17. May an employer provide nontaxable cash reimbursement under section 132(f) for periods longer than one month?
Q–18. What are the substantiation requirements if an employer distributes transit passes?
Q–19. May an employer choose to impose substantiation requirements in addition to those described in this regulation?
Q–20. How is the value of parking determined?
Q–21. How do the qualified transportation fringe rules apply to van pools?
Q–22. What are the reporting and employment tax requirements for qualified transportation fringes?
Q–23. How does section 132(f) interact with other fringe benefit rules?
Q–24. May qualified transportation fringes be provided to individuals who are partners, 2-percent shareholders of S-corporations, or independent contractors?

(b) *Questions and answers.*

Q–1. What is a qualified transportation fringe?

A–1. (a) The following benefits are "qualified transportation fringe" benefits:

(1) Transportation in a commuter highway vehicle.

(2) Transit passes.

(3) Qualified parking.

(b) An employer may simultaneously provide an employee with any one or more of these three benefits.

Q–2. What is transportation in a commuter highway vehicle?

A–2. Transportation in a commuter highway vehicle is transportation provided by an employer to an employee in connection with travel between the employee's residence and place of employment. A "commuter highway vehicle" is a highway vehicle with a seating capacity of at least 6 adults (excluding the driver) and with respect to which at least 80 percent of the vehicle's mileage is reasonably expected to be—

(a) For transporting employees in connection with travel between their residences and their place of employment; and

(b) On trips during which the number of employees transported for commuting is at least one-half of the adult seating capacity of the vehicle (excluding the driver).

Q–3. What are transit passes?

A–3. A "transit pass" is any pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to transportation—

(a) On mass transit facilities (whether or not publicly owned); or

(b) Provided by any person in the business of transporting persons for compensation or hire in a highway vehicle with a seating capacity of at least six adults (excluding the driver).

Q–4. What is qualified parking?

A–4. (a) "Qualified parking" is parking provided to an employee by an employer—

(1) On or near the employer's business premises; or

(2) At a location from which the employee commutes to work by carpool, commuter highway vehicle, mass transit facilities, transportation provided by any person in the business of transporting persons for compensation or hire or by any other means.

(b) However, parking on or near property used by the employee for residential purposes is not qualified parking.

(c) Parking is provided by an employer if—

(1) The employer pays for the parking;

(2) The employer reimburses the employee for parking expenses; or

(3) The parking is on property that the employer owns or leases. See Q/A–16 of this section for rules relating to cash reimbursements.

Q–5. To which workers may qualified transportation fringes be provided?

A–5. Qualified transportation fringes may be provided only by employers to employees. The term "employee" for purposes of qualified transportation fringes is defined in § 1.132–1(b)(2)(i). This term includes only common law employees and other statutory employees, such as officers of corporations. See Q/A–24 of this section for rules regarding partners, 2-percent shareholders, and independent contractors.

Q–6. Must a qualified transportation fringe benefit plan be in writing?

A–6. No. Section 132(f) does not require that a qualified transportation fringe benefit plan be in writing.

Q–7. Is there a limit on the value of qualified transportation fringes that may be excluded from an employee's gross income?

A–7. (a) *Transportation in a commuter highway vehicle and transit passes.* Before January 1, 2002, up to $65 is excludable from the gross income of an employee for transportation in a commuter highway vehicle and transit passes provided by an employer for a month. On January 1, 2002, this amount is increased to $100 per month.

(b) *Parking.* Up to $175 is excludable from the gross income of an employee for qualified parking in a month.

(c) *Combination.* An employer may provide qualified parking benefits in addition to transportation in a commuter highway vehicle and transit passes.

(d) *Cost-of-living adjustments.* The amounts in paragraphs (a) and (b) of this Q/A 7 are adjusted annually, beginning with 2000, to reflect cost-of-living. The adjusted figures are announced by the Service before the beginning of the year.

Q–8. What amount is includible in an employee's wages for income and employment tax purposes if the value of the qualified transportation fringe exceeds the applicable statutory monthly limit?

A–8. Generally, an employee must include in gross income the amount by which the fair market value of the benefit exceeds the sum of the amount, if any, paid by the employee and any amount excluded from gross income under section 132(a)(5). Thus, assuming no other statutory exclusion applies, if an employer provides an employee with a qualified transportation fringe that exceeds the applicable statutory monthly limit and the employee does not make any payment, the value of the benefits provided in excess of the applicable statutory monthly limit is included in the employee's wages for income and employment tax purposes. See § 1.61–21(b)(1). The following examples illustrate the principles of this Q/A–8:

Example 1. (i) For each month in 2000, Employer M provides a transit pass valued at $75 to Employee D, who does not pay any amount to Employer M for the transit pass.

(ii) In this example, because the value of the monthly transit pass exceeds the statutory monthly limit by $10, $120 ($75—$65, times 12 months) must be included in D's wages for income and employment tax purposes for 2000 with respect to the transit passes.

Example 2. (i) For each month in 2000, Employer M provides qualified parking valued at $195 to Employee E, who does not pay any amount to M for the parking.

(ii) In this example, because the fair market value of the qualified parking exceeds the statutory monthly limit by $20, $240 ($195—$175, times 12 months) must be included in Employee E's wages for income and employment tax purposes for 2000 with respect to the qualified parking.

Example 3. (i) For each month in 2000, Employer P provides qualified parking with a fair market value of $220 per month to its employees, but charges each employee $45 per month.

(ii) In this example, because the sum of the amount paid by an employee ($45) plus the amount excludable for qualified parking ($175) is not less than the fair market value of the monthly benefit, no amount is includible in the employee's wages for income and employment tax purposes with respect to the qualified parking.

Q–9. Are excludable qualified transportation fringes calculated on a monthly basis?

A–9. Yes. The value of transportation in a commuter highway vehicle, transit passes, and qualified parking is calculated on a monthly basis to determine whether the value of the benefit has exceeded the applicable statutory monthly limit on qualified transportation fringes. Except in the case of a transit pass, the applicable statutory monthly limit applies to qualified transportation fringes used by the employee in a month. In the case of a transit pass, the applicable statutory monthly limit applies to the transit passes provided by the employer to the employee in a month for that month or for any previous month in the calendar year. Monthly exclusion amounts are not combined to provide a qualified transportation fringe in any month exceeding the statutory limit. A "month" is a calendar month or a substantially equivalent period applied consistently. The following examples illustrate the principles of this Q/A–9:

Example 1. (i) Employee E incurs $150 for qualified parking used during the month of June, 2000, for which E is reimbursed $150 by Employer R. E incurs $180 in expenses for qualified parking used during the month of July, 2000, for which E is reimbursed $180 by R.

(ii) In this example, because monthly exclusion amounts may not be combined to provide a benefit in any month greater than the applicable statutory limit, the amount by which the amount reimbursed for July exceeds the applicable statutory monthly limit ($180 minus $175 equals $5) is includible in E's wages for income and employment tax purposes.

Example 2. (i). Employee F receives transit passes from Employer G with a value of $195 in the month of March (when the applicable statutory monthly limit is $65). F was hired during January and has not received any transit passes from G.

(ii). In this example, the value of the transit passes (three months times $65 equals $195) is excludable from F's wages for income and employment tax purposes. However, if F was not hired until March, only $65 would be excludable from F's wages for income and employment tax purposes.

Example 3. (i). Each month during 2000, Employer R distributes transit passes with a face amount of $70 to each of its employees. Transit passes with a face amount of $70 can be purchased from the transit system by any individual for $65.

(ii). In this example, because the value of the transit passes distributed by R does not exceed the applicable statutory monthly limit ($65), no portion of the transit passes is included as wages for income and employment tax purposes.

Q–10. May an employee receive qualified transportation fringes from more than one employer?

A–10. Yes. The statutory monthly limits described in Q/A–7 of this section apply to benefits provided by an

employer to its employees. For this purpose, all employees treated as employed by a single employer under section 414(b), (c), (m), or (o) are treated as employed by a single employer. See § 1.132–1(c). Thus, qualified transportation fringes paid by entities under common control under section 414(b), (c), (m), or (o) are combined for purposes of applying the applicable statutory limit. In addition, an individual who is treated as an employee of the employer under section 414(n) is treated as an employee of the employer for purposes of section 132. See § 414(t). The following examples illustrate the principles of this Q/A–10:

Example 1. (i) During 2000, Employee E works for Employers M and N, who are unrelated and not treated as a single employer under section 414(b), (c), (m), or (o). Each month, M and N each provide qualified parking benefits to E with a value of $100.

(ii) In this example, because M and N are unrelated employers, and the value of the monthly parking benefit provided by each is not more than the applicable statutory monthly limit, the parking benefits provided by each employer are excludable as qualified transportation fringes assuming that the other requirements of this section are satisfied.

Example 2. (i) Same facts as in Example 1, except that M and N are treated as a single employer under section 414(b).

(ii) In this example, because M and N are treated as a single employer, the value of the monthly parking benefit provided by M and N must be combined for purposes of determining whether the applicable statutory monthly limit has been exceeded. Thus, the amount by which the value of the parking benefit exceeds the monthly limit ($200 minus $175 equals $25) for each month in 2000 is includible in E's wages for income and employment tax purposes.

Q–11. May qualified transportation fringes be provided pursuant to a compensation reduction agreement?

A–11. Yes. An employer may offer employees a choice between cash compensation and any qualified transportation fringe. An employee who is offered this choice and who elects qualified transportation fringes is not required to include the cash compensation in income if—

(a) The election is pursuant to an arrangement described in Q/A–12 of this section;

(b) The amount of the reduction in cash compensation does not exceed the limitation in Q/A–13 of this section;

(c) The arrangement satisfies the timing and reimbursement rules in Q/A–14 and 16 of this section; and

(d) The related fringe benefit arrangement otherwise satisfies the requirements set forth elsewhere in this section.

Q–12. What is a compensation reduction election for purposes of section 132(f)?

A–12. (a) *Election requirements generally.* A compensation reduction arrangement is an arrangement under which the employer provides the employee with the right to elect whether the employee will receive either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified transportation fringes to be provided for a specified future period (such as qualified parking to be used during a future calendar month). The employee's election must be in writing or another form, such as electronic, that includes, in a permanent and verifiable form, the information required to be in the election. The election must contain the date of the election, the amount of the compensation to be reduced, and the period for which the benefit will be provided. The election must relate to a fixed dollar amount or fixed percentage of compensation reduction. An election to reduce compensation for a period by a set amount for such period may be automatically renewed for subsequent periods.

(b) *Negative election permitted.* An employer may provide under its qualified transportation fringe benefit plan that a compensation reduction election will be deemed to have been made if the employee does not elect to receive cash compensation in lieu of the qualified transportation fringe provided that the employee receives adequate notice that a compensation reduction will be made and is given adequate opportunity to choose to receive the cash compensation instead of the qualified transportation fringe.

Q–13. Is there a limit to the amount of the compensation reduction?

A–13. Yes. Each month, the amount of the compensation reduction may not exceed the combined applicable statutory monthly limits for transportation in a commuter highway vehicle, transit passes, and qualified parking. For example, for 2000, an employee could elect to reduce compensation for any month by no more than $240 ($65 for transportation in a commuter highway vehicle and transit passes, plus $175 for qualified parking) with respect to qualified transportation fringes. If an employee were to elect to reduce compensation by $250 for a month, the excess $10 ($250 minus $240) would be includible in the employee's wages for income and employment tax purposes.

Q–14. When must the employee have made a compensation reduction election and under what circumstances can the amount be paid in cash to the employee?

A–14. The compensation reduction election must satisfy the following requirements.

(a) *Timing of election.* The compensation reduction election must be made before the employee is able currently to receive the cash or other taxable amount at the employee's discretion. The determination of whether the employee is able currently to receive the cash does not depend on whether it has been constructively received for purposes of section 451. The election must specify that the period (such as a calendar month) for which the qualified transportation fringe will be provided must not begin before the election is made. For this purpose, the date a qualified transportation fringe is provided is—

(1) The date the employee receives a voucher or similar item; or

(2) In any other case, the date the employee uses the qualified transportation fringe.

(b) Thus, a compensation reduction election must relate to qualified transportation fringes to be provided after the election.

(c) *Revocability of elections.* The employee may not revoke a compensation reduction election after the employee is able currently to receive the cash or other taxable amount at the employee's discretion. In addition, the election may not be revoked after the beginning of the period for which the qualified transportation fringe will be provided.

(d) *Compensation reduction amounts not refundable.* Unless an election is revoked in a manner consistent with paragraph (a)(3) of this Q/A–14, an employee may not subsequently receive the compensation (in cash or any form other than by payment of a qualified transportation fringe under the employer's plan). Thus, an employer's qualified transportation fringe benefit plan may not provide that an employee who ceases to participate in the employer's qualified transportation fringe benefit plan is entitled to receive a refund of the amounts by which the employee's compensation reduction exceeds the actual qualified transportation fringes provided to the employee by the employer.

(e) *Examples.* The following examples illustrate the principles of this Q/A–14:

Example 1. (i) Employer P maintains a qualified transportation fringe benefit arrangement. Employees of P are paid twice per month, with the payroll dates being the first and the fifteenth day of the month. Under P's arrangement, an employee is permitted to elect at any time before the first

day of a month to reduce his or her compensation payable during that month in an amount up to the applicable statutory monthly limit (*i.e.*, for 2000, $65 if the employee elects coverage for transportation in a commuter highway vehicle or a mass transit pass, or $175 if the employee chooses qualified parking) in return for the right to receive qualified transportation fringes up to the amount of the election. If such an election is made, P will provide a mass transit pass for that month with a value not exceeding the compensation reduction amount elected by the employee or will reimburse the cost of other qualified transportation fringes used by the employee on or after the first day of that month up to the compensation reduction amount elected by the employee. Any compensation reduction amount elected by the employee for the month that is not used for qualified transportation fringes is not refunded to the employee at any future date.

(ii) In this example, the arrangement satisfies the requirements of this Q/A–14 because the election is made before the employee is able currently to receive the cash and the election specifies the future period for which the qualified transportation fringes will be provided. The arrangement would also satisfy the requirements of this Q/A–14 and Q/A–13 of this section if employees were allowed to elect to reduce compensation up to $240 (for 2000) per month.

(iii) The arrangement would also satisfy the requirements of this Q/A–14 (and Q/A–13 of this section) if employees were allowed to make an election at any time before the first or the fifteenth day of the month to reduce their compensation payable on that payroll date by an amount not in excess of one-half of the applicable statutory monthly limit (depending on the type of qualified transportation fringe elected by the employee) and P provides a mass transit pass on or after the applicable payroll date for the compensation reduction amount elected by the employee for the payroll date or reimburses the cost of other qualified transportation fringes used by the employee on or after the payroll date up to the compensation reduction amount elected by the employee for that payroll date.

Example 2. (i) Employee Q elects to reduce his compensation payable on March 1 of a year (when the statutory monthly limit for transportation in a commuter highway vehicle and transit passes is $65) by $195 in exchange for a mass transit voucher to be provided in March. The election is made on the preceding February 27. Employee Q was hired in January of the year. On March 10 of the year, the employer of Employee Q delivers to Employee Q a mass transit voucher worth $195.

(ii) In this example, $130 is included in Employee Q's wages for income and employment tax purposes because the compensation reduction election fails to satisfy the requirement in this Q/A–14 and Q/A–12 of this section that the election relate to qualified transportation fringes to be provided for a future period to the extent the election relates to $65 worth of transit passes for each of January and February of the year. No amount would be included in Employee Q's wages as a result of the election if $195 worth of mass transit passes were instead delivered to Employee Q in May of the year (because the compensation reduction would relate solely to fringes to be provided for a future period and the amount provided does not exceed the aggregate limit for the period, *i.e.*, the sum of $65 for each of March, April, and May)

Q–15. May an employee whose qualified transportation fringe costs are less than the employee's compensation reduction carry over this excess amount to subsequent periods?

A–15. Yes. An employee may carry over unused compensation reduction amounts to subsequent periods under the plan of the employee's employer. The following example illustrates the principles of this Q/A–15:

Example. (i) By an election made before November 1, 1999, Employee E elects to reduce compensation in the amount of $65 for the month of November, 1999. E incurs $50 in employee-operated commuter highway vehicle expenses during November for which E is reimbursed $50 by Employer R. By an election made before December 1, 1999, E elects to reduce compensation by $65 for the month of December. E incurs $65 in employee-operated commuter highway vehicle expenses during December for which E is reimbursed $65 by R. Before January 1, 2000, E elects to reduce compensation by $50 for the month of January. E incurs $65 in employee-operated commuter highway vehicle expenses during January for which E is reimbursed $65 by R because R allows E to carry over to January, 2000, the $15 amount by which the compensation reductions for November and December exceeded the employee-operated commuter highway vehicle expenses incurred during those months.

(ii) In this example, because E is reimbursed in an amount not exceeding the applicable statutory monthly limit, and the reimbursement does not exceed the amount of employee-operated commuter highway vehicle expenses incurred during the month of January, the amount reimbursed ($65) is excludable from E's wages for income and employment tax purposes.

Q–16. How does section 132(f) apply to expense reimbursements?

A–16. (a) *In general.* The term "qualified transportation fringe" includes cash reimbursement by an employer to an employee for expenses incurred or paid by an employee for transportation in a commuter highway vehicle or qualified parking. The reimbursement must be made under a bona fide reimbursement arrangement which meets the rules of paragraph (d) of this Q/A–16. The term "cash reimbursement" does not include cash advances.

(b) *Special rule for transit passes.* The term "qualified transportation fringe" includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if no voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. For this purpose, a voucher or similar item is "readily available" if an employer can obtain it—

(1) On terms no less favorable than those available to an individual employee; and

(2) Without incurring a significant administrative cost.

(c) *Significant administrative cost.* Administrative costs relate only to fees paid to fare media providers. The determination of whether obtaining a voucher would result in a significant administrative cost is made with respect to each transit system voucher. A transit system voucher is a voucher that is accepted by one or more mass transit operators (*e.g.*, train, subway, and bus) in an area as fare media (or in exchange for fare media). Administrative costs are treated as significant if the average monthly administrative costs incurred by the employer for a voucher (disregarding delivery charges imposed by the fare media provider to the extent not in excess of $15 per order) are more than 1 percent of the average monthly value of the vouchers for a system. Thus, whether a voucher is readily available without incurring a significant administrative cost is determined with respect to the transit system in each area for which the voucher may be used. The following example illustrates the principles of this Q/A–16:

Example. (i) Company C in City X sells mass transit vouchers to employers in the metropolitan area of X worth $65 each. Several different bus, rail, van pool, and ferry operators service X, and a number of the operators accept the vouchers either as fare media or in exchange for fare media. Employers can readily obtain vouchers for distribution to their employees. To cover its operating expenses, C imposes on each voucher a 50 cents charge, plus a $15 charge for delivery. Employer M disburses vouchers purchased from C to its employees who use operators that accept the vouchers.

(ii) In this example, because the cost of a voucher disbursed to M's employees is not more than 1 percent of the value of the voucher (50 cents divided by $65 equals 0.77 percent) and the delivery charges are disregarded because they are not more than $15, vouchers for X are readily available. Thus, the vouchers disbursed to M's employees are qualified transportation fringes and any reimbursement of mass transportation costs in X would not be a qualified transportation fringe.

(d) *Substantiation requirements.* Employers that make cash reimbursements must establish a bona

fide reimbursement arrangement to establish that their employees have, in fact, incurred expenses for transportation in a commuter highway vehicle, transit passes, or qualified parking. For purposes of section 132(f), what constitutes a bona fide reimbursement arrangement may vary depending on the facts and circumstances, including the method or methods of payment utilized within the mass transit system. The employer must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for transportation in a commuter highway vehicle, transit passes, or qualified parking. The following are examples of reasonable reimbursement procedures for purposes of this Q/A–16:

(1) An employee presents to the employer a parking expense receipt for parking on or near the employer's business premises and certifies that the parking was used by the employee and the employer has no reason to doubt the employee's certification.

(2) An employee submits a used transit pass to the employer at the end of the month and certifies both that he or she purchased it, and that he or she used it during the month, or presents a transit pass to the employer at the beginning of the month and certifies that it will be used it during the month. In both cases, the employer has no reason to doubt the employee's certification.

(3) If a receipt is not provided in the ordinary course of business (e.g., if the employee uses metered parking or if used transit passes cannot be returned to the user), the employee certifies to the employer the type and the amount of expenses incurred and the employer has no reason to doubt the employee's certification.

Q–17. May an employer provide nontaxable cash reimbursement under section 132(f) for periods longer than one month?

A–17. Yes. Qualified transportation fringes include reimbursement to employees for costs incurred for transportation in more than one month, provided the reimbursement for each month is calculated separately and does not exceed the applicable statutory monthly limit for any month. See Q/A–8 and 9 of this section if the limit for a month is exceeded. The following example illustrates the principles of this Q/A–17:

Example. (i) Employee R pays $100 per month for qualified parking used during the period from April 1, 2000 through June 30, 2000. After receiving adequate substantiation from R, R's employer reimburses R $300 in cash on June 30, 2000.

(ii) In this example, because the value of the reimbursed expenses for each month did not exceed the applicable statutory monthly limit, the $300 reimbursement is excludable from R's wages for income and employment tax purposes as a qualified transportation fringe.

Q–18. What are the substantiation requirements if an employer distributes transit passes?

A–18. There are no substantiation requirements if the employer distributes transit passes. Thus, an employer may distribute a transit pass for each month with a value not more than the statutory monthly limit without requiring any certification from the employee regarding the use of the transit pass.

Q–19. May an employer choose to impose substantiation requirements in addition to those described in this regulation?

A—19. Yes.

Q–20. How is the value of parking determined?

A–20. Section 1.61–21(b)(2) applies for purposes of determining the value of parking.

Q–21. How do the qualified transportation fringe rules apply to van pools?

A–21. (a) *Van pools generally.* Employer-and employee-operated van pools, as well as private or public transit-operated van pools, may qualify as qualified transportation fringes. The value of van pool benefits which are qualified transportation fringes may be excluded up to the applicable statutory monthly limit for transportation in a commuter highway vehicle and transit passes, less the value of any transit passes provided by the employer for the month.

(b) *Employer-operated van pools.* The value of van pool transportation provided by or for an employer to its employees is excludable as a qualified transportation fringe, provided the van qualifies as a "commuter highway vehicle" as defined in section 132(f)(5)(B) and Q/A 2– of this section. A van pool is operated by or for the employer if the employer purchases or leases vans to enable employees to commute together or the employer contracts with and pays a third party to provide the vans and some or all of the costs of operating the vans, including maintenance, liability insurance and other operating expenses.

(c) *Employee-operated van pools.* Cash reimbursement by an employer to employees for expenses incurred for transportation in a van pool operated by employees independent of their employer are excludable as qualified transportation fringes provided that the van qualifies as a "commuter highway vehicle" as defined in section 132(f)(5)(B) and Q/A–2 of this section. See Q/A–16 of this section for the rules governing cash reimbursements.

(d) *Private or public transit-operated van pool transit passes.* The qualified transportation fringe exclusion for transit passes is available for travel in van pools owned and operated either by public transit authorities or by any person in the business of transporting persons for compensation or hire. In accordance with paragraph (b) of Q/A–3 of this section, the van must seat at least six adults (excluding the driver). See Q/A–16(b) and (c) of this section for a special rule for cash reimbursement for transit passes.

(e) *Value of van pool transportation benefits.* Section 1.61–21(b)(2) provides that the fair market value of a fringe benefit is based on all the facts and circumstances. Alternatively, transportation in an employer-provided commuter highway vehicle may be valued under the automobile lease valuation rule in § 1.61–21(d), the vehicle cents-per-mile rule in § 1.61–21(e), or the commuting valuation rule in § 1.61–21(f). If one of these special valuation rules is used, the employer must use the same valuation rule to value the use of the commuter highway vehicle by each employee who share the use. See § 1.61–21(c).

(f) *Qualified parking prime member.* If an employee obtains a qualified parking space as a result of membership in a car or van pool, the applicable statutory monthly limit for qualified parking applies to the individual to whom the parking space is assigned. This individual is the "prime member." In determining the tax consequences to the prime member, the statutory monthly limit amounts of each car pool member may not be combined. If the employer provides access to the space and the space is not assigned to a particular individual, then the employer must designate one of its employees as the prime member who will bear the tax consequences. The employer may not designate more than one prime member for a car or van pool during a month. The employer of the prime member is responsible for including the value of the qualified parking in excess of the statutory monthly limit in the prime member's wages for income and employment tax purposes.

Q–22. What are the reporting and employment tax requirements for qualified transportation fringes?

A–22. (a) *Employment tax treatment generally.* Qualified transportation fringes not exceeding the applicable statutory monthly limit described in Q/A–7 of this section are not wages for

purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding. Any amount by which an employee elects to reduce compensation as provided in Q/A–11 of this section is not subject to the FICA, the FUTA, and federal income tax withholding. Qualified transportation fringes exceeding the applicable statutory monthly limit described in Q/A–7 of this section are wages for purposes of the FICA, the FUTA, and federal income tax withholding and are reported on the employee's Form W–2, Wage and Tax Statement.

(b) *Employment tax treatment of cash reimbursement exceeding monthly limits.* Cash reimbursement to employees (for example, cash reimbursement for qualified parking) in excess of the applicable statutory monthly limit under section 132(f) are treated as paid for employment tax purposes when actually or constructively paid. See §§ 31.3121(a)–2(a), 31.3301–1, 31.3402(a)–1(b) of this chapter. Employers must report and deposit the amounts withheld in addition to reporting and depositing other employment taxes. See Q/A–16 of this section for rules governing cash reimbursements.

(c) *Noncash fringe benefits exceeding monthly limits.* If the value of noncash qualified transportation fringes exceeds the applicable statutory monthly limit, the employer may elect, for purposes of the FICA, the FUTA, and federal income tax withholding, to treat the noncash taxable fringe benefits as paid on a pay period, quarterly, semi-annual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually.

Q–23. How does section 132(f) interact with other fringe benefit rules?

A–23. For purposes of section 132, the terms "working condition fringe" and "de minimis fringe" do not include any qualified transportation fringe under section 132(f). If, however, an employer provides local transportation other than transit passes, the value of the benefit may be excludable, either totally or partially, under fringe benefit rules other than the qualified transportation fringe rules under section 132(f). See §§ 1.132–6(d)(2)(i) (occasional local transportation fare), 1.132–6(d)(2)(iii) (transportation provided under unusual circumstances), and 1.61–21(k) (valuation of local transportation provided to qualified employees).

Q–24. May qualified transportation fringes be provided to individuals who are partners, 2-percent shareholders of S-corporations, or independent contractors?

A–24. (a) *General rule.* Section 132(f)(5)(E) states that self-employed individuals who are employees within the meaning of section 401(c)(1) are not employees for purposes of section 132(f). Therefore, individuals who are partners, sole proprietors, or other independent contractors are not employees for purposes of section 132(f). In addition, under section 1372(a), 2-percent shareholders of S corporations are treated as partners for fringe benefit purposes. Thus, an individual who is both a 2-percent shareholder of an S corporation and a common law employee of that S corporation is not considered an employee for purposes of section 132(f). However, while section 132(f) does not apply to individuals who are partners, 2-percent shareholders of S corporations, or independent contractors, other exclusions for working condition and de minimis fringes may be available as described in paragraphs (b) and (c) of this Q/A–24. See §§ 1.132–1(b)(2) and 1.132–1(b)(4).

(b) *Transit passes.* The working condition and de minimis fringe exclusions under section 132(a)(3) and (4) are available for transit passes provided to individuals who are partners, 2-percent shareholders, and independent contractors. For example, tokens or farecards provided by a partnership to an individual who is a partner that enable the partner to commute on a public transit system (not including privately-operated van pools) are excludable from the partner's gross income if the value of the tokens and farecards in any month does not exceed the dollar amount specified in § 1.132–6(d)(1). However, if the value of a pass provided in a month exceeds the dollar amount specified in § 1.132–6(d)(1), the full value of the benefit provided (not merely the amount in excess of the dollar amount specified in § 1.132–6(d)(1)) is includible in gross income.

(c) *Parking.* The working condition fringe rules under section 132(d) do not apply to commuter parking. See § 1.132–5(a)(1). However, the de minimis fringe rules under section 132(e) are available for parking provided to individuals who are partners, 2-percent shareholders, or independent contractors that qualifies under the de minimis rules. See § 1.132–6(a) and (b). The following example illustrates the principles of this Q/A–24:

Example. (i) Individual G is a partner in partnership P. Individual G commutes to and from G's office every day and parks free of charge in P's lot.

(ii) In this example, the value of the parking is not excluded under section 132(f), but may be excluded under section 132(e) if the parking is a de minimis fringe under § 1.132–6.

Robert E. Wenzel,

Commissioner of Internal Revenue.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[REG–105279–99]

RIN 1545–AX31

Extension of Due Date for Electronically Filed Information Returns; Limitation of Failure To Pay Penalty for Individuals During Period of Installment Agreement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 6071(b) relating to the extension of the due date for certain electronically filed information returns. The regulations also provide rules under section 6651(h) relating to a penalty reduction for certain individuals who have agreed with the IRS to make installment payments in satisfaction of their tax liability. The regulations relating to extension of filing dates affect payors required to file information returns after December 31, 1999. The regulations relating to penalty reduction affect individual taxpayers with installment agreements in effect during months beginning after December 31, 1999.

DATES: Written or electronic comments and requests for a public hearing must be received by April 26, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105279–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105279–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations relating to

the extension of due dates, Marilyn E. Brookens, (202) 622–4920; concerning the regulations relating to penalty reductions, Robert B. Taylor, (202) 622–4940; concerning submissions of comments, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations, Employment Tax Regulations, and Procedure and Administration Regulations (26 CFR Parts 1, 31, and 301), and implements sections 6071(b) and 6651(h), which were added to the Internal Revenue Code (Code) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 724 (1998 Act)). Section 6071(b) was added to the Code by section 2002 of the 1998 Act and extends the due date for information returns required by chapter 61, subchapter A, part III, subparts B and C (sections 6041 through 6053) that are filed electronically. Under section 6071(b) such information returns are due on or before March 31 of the year following the calendar year to which the returns relate. Section 6071(b) applies to information returns required to be filed with the IRS or the Social Security Administration after December 31, 1999.

Section 6651(h) was added to the Code by section 3303 of the 1998 Act and provides that, for individuals, the failure to pay penalty is reduced from 0.5 percent per month to 0.25 percent per month during the period an installment agreement under section 6159 is in effect with regard to a timely filed return. Section 6651(h) applies to any Federal tax liability of an individual (including a liability under subtitle C) and is effective for determining the addition to tax for months beginning after December 31, 1999.

1. Proposed Regulations Implementing Section 6071(b)

Sections 6041 through 6053 of the Code require the filing of information returns that report income, payments, or gross proceeds resulting from certain transactions. Under current law, these returns are generally due to the IRS or the Social Security Administration by (1) February 28 of the year following the calendar year to which the returns relate or (2) the last day of February following the calendar year to which the returns relate. Certain returns, however, such as those required by section 6050I (relating to cash receipts of more than $10,000) are due on a date other than February 28 or the last day of February. The due date for filing information returns is the same whether the returns are filed on paper, electronically, or by other forms of magnetic media (such as magnetic tape, cartridges, and diskettes).

As an incentive to filers of information returns to use electronic filing, section 6071(b) extends by 1 month the due date for certain information returns required by sections 6041 through 6053 if the return is filed electronically. H.R. Conf. Rep. No. 599, 105th Cong., 2nd Sess. 235. Accordingly, beginning on January 1, 2000, information returns currently required by sections 6041 through 6053 to be filed by February 28, or the last day of February, of the year following the calendar year to which the returns relate may be filed electronically as late as March 31 of the year following the calendar year to which the returns relate. The information returns affected by the proposed regulations include the Form W–2 series, Form W–2G, the Form 1098 series, the Form 1099 series, and Form 8027. Section 6071(b) does not affect information returns required to be filed on or before a date other than February 28 or the last day of February. Section 6071(b) also does not affect information returns filed on paper or by means of magnetic media (such as magnetic tape, cartridges or diskettes) other than electronic filing.

The proposed regulations affect only information returns for which a due date is currently prescribed by regulation. Section 6071(b) also applies to other information returns required under sections 6041 through 6053 and extends the due date for electronic filing of those returns in cases in which a due date of February 28 or the last day of February is prescribed by form or other nonregulatory guidance.

The proposed regulations also remove references to two obsolete forms (Form 1099F and Form 1099L) and make ministerial changes to the phrasing and forms of citation used in various provisions.

2. Proposed Regulations Implementing Section 6651(h)

Section 6651(a)(2) imposes a penalty for failure to pay the amount shown as tax on a return on or before the due date prescribed for payment of such tax (with regard to extensions), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the penalty is 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 6651(a)(3) imposes a penalty for failure to pay any amount in respect of any tax required to be shown on a return, which is not so shown, within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the penalty is 0.5 percent of the amount of tax stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 6651(h), added to the Code by section 3303 of the 1998 Act, provides that for an individual who enters into an installment agreement under section 6159 with regard to a timely filed return, the failure to pay penalties will be reduced from 0.5 percent to 0.25 percent during the period of the installment agreement. This provision was added to the Code because Congress believed that it was "inappropriate to apply the full penalty for failure to pay taxes to taxpayers who are in fact paying their taxes through an installment agreement." H.R. Rep. No. 364, 105th Cong., 1st Sess. 81; S. Rep. No. 174, 105th Cong., 2nd Sess. 63. This provision is effective for purposes of determining additions to tax for months beginning after December 31, 1999.

Accordingly, for an individual who enters into an installment agreement under section 6159 with regard to a timely filed return, the proposed regulations provide that the failure to pay penalties under section 6651(a)(2) and (3) will be reduced from 0.5 percent per month to 0.25 percent per month during the period of the installment agreement.

Proposed Effective Date

The provisions of these regulations under section 6071(b) are proposed to be applicable for returns required to be filed after December 31, 1999. The provisions of these regulations under section 6651(h) are proposed to be applicable for determining the addition to tax for months beginning after December 31, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It

has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations relating to the extension of due dates under section 6071(b) is Marilyn E. Brookens, Office of Assistant Chief Counsel (Income Tax & Accounting). The principal author of the regulations relating to the reduction in the penalty under section 6651(h) is Robert B. Taylor, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are proposed to be amended as follows:

PART 1—NCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.6041–2, paragraph (a)(3)(ii) is revised to read as follows:

§ 1.6041–2 Return of information as to payments to employees.

(a) * * *

(3) * * *

(ii) *Exception.* In a case where an employer is not required to file Forms W–3 and W–2 under § 31.6011(a)–4 or 31.6011(a)–5 of this chapter, returns on Forms W–3 and W–2 required under this paragraph for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

* * * * *

Par. 3. In § 1.6041–6, the first sentence is revised to read as follows:

§ 1.6041–6 Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing.

Returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. * * *

Par. 4. In § 1.6042–2, the first sentence of paragraph (c) is revised to read as follows:

§ 1.6042–2 Returns of information as to dividends paid in calendar years after 1962.

* * * * *

(c) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.* * *

* * * * *

Par. 5. In § 1.6043–2, paragraph (a) is revised to read as follows:

§ 1.6043–2 Return of information respecting distributions in liquidation.

(a) Unless the distribution is one in respect of which information is required to be filed pursuant to § 1.332–6(b), § 1.368–3(a), or 1.1081–11, every corporation making any distribution of $600 or more during a calendar year to any shareholder in liquidation of the whole or any part of its capital stock shall file a return of information on Forms 1096 and 1099, giving all the information required by such form and by the regulations in this part. A separate Form 1099 must be prepared for each shareholder to whom such distribution was made, showing the name and address of such shareholder, the number and class of shares owned by him in liquidation of which such distribution was made, and the total amount distributed to him on each class of stock. If the amount distributed to such shareholder on any class of stock consisted in whole or in part of property other than money, the return on such form shall in addition show the amount of money distributed, if any, and shall list separately each class of property other than money distributed, giving a description of the property in each such class and a statement of its fair market value at the time of the distribution. Such forms, accompanied by transmittal Form 1096 showing the number of Forms 1099 filed therewith, shall be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which such distribution was made with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

* * * * *

Par. 6. In § 1.6044–2, the first sentence of paragraph (d) is revised to read as follows:

§ 1.6044–2 Returns of information as to payments of patronage dividends with respect to patronage occurring in taxable years beginning after 1962.

* * * * *

(d) *Time and place for filing.* The return required under this section on Forms 1096 and 1099 for any calendar year shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 (March 31 if filed electronically) of the following year, with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. * * *

* * * * *

Par. 7. Section § 1.6045–1 is amended by adding paragraph (r) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(r) *Electronic filing.* Notwithstanding the time prescribed for filing in paragraph (j) of this section, Forms 1096 and 1099 required under this section for reporting periods ending during a calendar year shall, if filed electronically, be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before March 31 of the following calendar year.

Par. 8. In § 1.6045–2, paragraph (g)(3) is revised to read as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(g) * * *

(3) *Time and place of filing.* The returns required under this paragraph (g) for any calendar year shall be filed after September 30 of such year, but not before the final substitute payment for the year is received by the broker, and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

* * * * *

Par. 9. In § 1.6045–4, the first sentence of paragraph (j) is revised to read as follows:

§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(j) *Time and place for filing.* A reporting person shall file the information returns required by this section with respect to a real estate transaction after December 31 of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section) and on or before February 28 (March 31 if filed electronically) of the following calendar year. * * *

* * * * *

Par. 10. In § 1.6047–1, the first sentence of paragraph (a)(6) is revised to read as follows:

§ 1.6047–1 Information to be furnished with regard to employee retirement plan covering an owner-employee.

(a) * * *

(6) *Time and place for filing.* The return required under this section for any calendar year shall be filed after the close of that year and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. * * *

* * * * *

Par. 11. Section 1.6049–4 is amended by:

1. Revising the first sentence of paragraph (g)(1).

2. Revising the first sentence of paragraph (g)(2).

The revisions read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(g) * * * (1) *Annual return.* Except as provided in paragraph (g)(2) of this section, the returns required under this section for any calendar year for the payment of interest shall be filed after September 30 of such year, but not before the payor's final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. * * *

(2) *Transactional return.* In the case of a return under paragraph (e) of this section, relating to returns on a transactional basis, such return shall be filed at any time but in no event later than February 28 (March 31 if filed electronically) of the year following the calendar year in which the interest was paid. * * *

* * * * *

Par. 12. In § 1.6049–7, the first sentence of paragraph (b)(2)(iv) is revised to read as follows:

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(b) * * *

(2) * * *

(iv) *Time and place for filing a return with respect to amounts includible as interest.* The returns required under paragraph (b)(2) of this section for any calendar year must be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. * * *

* * * * *

Par. 13. In § 1.6050A–1, paragraph (b) is revised to read as follows:

§ 1.6050A–1 Reporting requirements of certain fishing boat operators.

* * * * *

(b) *Time and place for filing.* Returns required to be made under this section on Form 1099-MISC shall be filed with the Internal Revenue Service Center, designated in the instructions for Form 1099-MISC, on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the relevant services were performed.

* * * * *

Par. 14. In § 1.6050D–1, paragraph (b) is revised to read as follows:

§ 1.6050D–1 Information returns relating to energy grants and financing.

* * * * *

(b) *Time and place for filing.* Returns required to be made under this section shall be filed with the Internal Revenue Service Center designated in the instructions for Form 6497 or 1099-G on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which the return is made.

Par. 15. In § 1.6050E–1, the first sentence of paragraph (h) is revised to read as follows:

§ 1.6050E–1 Reporting of State and local income tax refunds.

* * * * *

(h) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of that calendar year, but not before the refund officer's final payment (or allowance of credit or offset) for the year, and on or before February 28 (March 31 if filed electronically) of the following year. * * *

* * * * *

Par. 16. In § 1.6050H–2, the first and second sentences of paragraph (a)(4) are revised to read as follows:

§ 1.6050H–2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) * * *

(4) *Time and place for filing return.* An interest recipient must file a return required by paragraph (a) of this section on or before February 28 (March 31 if filed electronically) of the year following the calendar year for which it receives the mortgage interest. If no interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then a return required by paragraph (a) of this section must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reimbursement was made. * * *

* * * * *

Par. 17. In § 1.6050J–1T, A–33 is revised to read as follows:

§ 1.6050J–1T Questions and answers concerning information returns relating to foreclosures and abandonments of security (temporary).

* * * * *

A–33: The return or returns must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

* * * * *

Par. 18. In § 1.6050P–1, paragraph (a)(4)(i) is revised to read as follows:

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain financial entities.

(a) * * *

(4) * * * (i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 1099–C on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the identifiable event occurs.

* * * * *

Par. 19. In § 1.6052–1, paragraph (b)(1)(ii) is revised to read as follows:

§ 1.6052–1 Information returns regarding payment of wages in the form of group-term life insurance.

* * * * *

(b) * * * (1) * * *

(ii) *Exception.* In a case where an employer is not required to file Forms W–3 and W–2 under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter, returns on Forms W–3 and W–2 required under paragraph (a) of this section for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

* * * * *

PART 31—EMPLOYMENT TAXES

Par. 20. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 21. In § 31.3402(q)–1, the first sentence of paragraph (f)(1) is revised to read as follows:

§ 31.3402(q)–1 Extension of withholding to certain gambling winnings.

* * * * *

(f) * * * (1) *In general.* Every person making payment of winnings for which a statement is required under paragraph (e) of this section shall file a return on Form W–2G with the Internal Revenue Service Center serving the district in which is located the principal place of business of the person making the return on or before February 28 (March 31 if filed electronically) of the calendar year following the calendar year in which the payment of winnings is made. * * *

* * * * *

Par. 22. In § 31.6053–3, the first sentence of paragraph (a)(4) is revised to read as follows:

§ 31.6053–3 Reporting by certain large food or beverage establishments with respect to tips.

(a) * * *

(4) *Time and place for filing.* The information return required by this paragraph shall be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which the return is made with the Internal Revenue Service Center specified by the Form 8027 or its instructions. * * *

* * * * *

Par. 23. In § 31.6071(a)–1, paragraph (a)(3)(i) is revised to read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(3) * * * (i) *General rule.* Each information return in respect of wages as defined in the Federal Insurance Contributions Act or of income tax withheld from wages which is required to be made under § 31.6051–2 shall be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which it is made, except that, if a tax return under § 31.6011(a)–5(a) is filed as a final return for a period ending prior to December 31, the information statement shall be filed on or before the last day of the second calendar month following the period for which the tax return is filed.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 24. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 25. Section 301.6651–1 is amended by:

1. Revising the last sentence in paragraph (a)(2).

2. Revising the second sentence in paragraph (a)(3).

3. Adding paragraph (a)(4).

The revisions and additions read as follows:

§ 301.6651–1 Failure to file tax return or to pay tax.

(a) * * *

(2) * * * Except as provided in paragraph (a)(4) of this section, the amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) * * * Except as provided in paragraph (a)(4) of this section, the amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. * * *

(4) *Reduction of failure to pay penalty during the period an installment agreement is in effect*—(i) *In general.* In the case of a return filed by an individual on or before the due date for the return (including extensions)—

(A) The amount added to tax for a month or fraction thereof is determined by substituting 0.25 percent for 0.5 percent under paragraph (a)(2) of this section if at any time during the month an installment agreement under section 6159 is in effect for the payment of such tax; and

(B) The amount added to tax for a month or fraction thereof is determined by substituting 0.25 percent for 0.5 percent under paragraph (a)(3) of this section if at any time during the month an installment agreement under section 6159 is in effect for the payment of such tax.

(ii) *Effective date.* This paragraph (a)(4) applies for purposes of determining additions to tax for months beginning after December 31, 1999.

* * * * *

Robert E. Wenzel,

Deputy Commissioner Internal Revenue.

[FR Doc. 00–1898 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–67, MM Docket No. 00–7, RM–9799]

Radio Broadcasting Services; Alva, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wing-&-a-Prayer Broadcasting Company seeking the allotment of Channel 296C3 to Alva, OK, as the community's fourth

local FM service. Channel 296C3 can be allotted to Alva in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–48–06 North Latitude and 98–40–00 West Longitude.

DATES: Comments must be filed on or before March 6, 2000, and reply comments on or before March 21, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bryce S. Kennedy, One Grand Center, Mezzanine Suite, Enid, OK 73701 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–7, adopted January 5, 2000, and released January 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–1929 Filed 1–26–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION.

47 CFR Part 73

[DA 00–68;MM Docket No. 00–8; RM–9788)

Radio Broadcasting Services; Spencer and Webster, MA.

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed on behalf of Montachusett Broadcasting, Inc., licensee of Station WORC-FM, Channel 255A, Spencer, Massachusetts, proposing the reallotment of Channel 255A from Spencer to Webster, Massachusetts, and the modification of the Station WORC-FM license to specify Webster as the community of license. Coordinates for this proposal are 42–02–10 and 71–59-23.

DATES: Comments must be filed on or before March 8, 2000, and reply comments on or before March 23, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows:

Erwin G. Krasnow, c/o Verner, Liipert, Bernhard, McPherson and Hand 901, 15th Street, NW, Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 00–8 , adopted January 5, 2000, and released January 14, 2000. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this action may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, Washington, D.C. 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–1928 Filed 1–26–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–79, MM Docket No. 00–9, RM–9526]

Radio Broadcasting Services; Beaumont and Dayton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KXTJ License, Inc. requesting the reallotment of Channel 300C from Beaumont, Texas, to Dayton, Texas, and modification of the license for Station KXTJ(FM) to specify Dayton, Texas, as the community of license. The coordinates for Channel 300C at Dayton are 30–00–56 and 94–31–37. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 300C at Dayton.

DATES: Comments must be filed on or before March 6, 2000, and reply comments on or before March 21, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence Roberts, Mary L. Plantamura, Davis Wright Tremaine LLP, 1500 K Street, N.W., Suite 450, Washington, DC. 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–9, adopted January 12, 2000, and released January 14, 2000. The full text of this Commission decision is available for inspection and copying during

normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–1927 Filed 1–26–00; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 65, No. 18

Thursday, January 27, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Public Notice of Comment Period for Proposed Yields for Revision of the "Food Buying Guide for Child Nutrition Programs"; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; correction.

SUMMARY: This document corrects dates in the Notice published in the **Federal Register** January 5, 2000, regarding Comment Period for Proposed Yields for Revision of the "Food Buying Guide for Child Nutrition Programs". This correction revises an incorrect comment date.

DATES: Comments must be received on or before April 15, 2000 to be assured of consideration.

ADDRESSES: Address comments on proposed yields or yield research on specific items to Lori French, Chief, Nutrition Promotion and Training Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, Virginia 22302

FOR FURTHER INFORMATION CONTACT: Janice Fabina, 703–305–2621.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a Notice in the **Federal Register** (65 FR 436) on January 5, 2000. This Notice contains an incorrect date. This correction revises that date.

Correction

In the Notice FR document 00–204, beginning on page 436, in the issue of Wednesday, January 5, 2000, make the following corrections: On page 436 in the first column, under the **DATES** heading the statement is corrected to read "Comments must be received on or before April 15, 2000 to be assured of consideration." On page 437, in the second column, the fourth full sentence is corrected of read "Written comments should be sent to FNS at the address in the **ADDRESSES** section of this Notice by April 15, 2000."

Dated: January 14, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–1968 Filed 1–26–00; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on February 3, 2000, at the Shasta-Trinity National Forest Conference Room, 2400 Washington Avenue, Redding, California. The meeting will start at 8:00 A.M. and will adjourn at 5:00 P.M. Agenda items for the meeting include: (1) Provincial Advisory Committee and Provincial Interagency Executive Committee Effectiveness, with discussions on roles/responsibilities, issue development, decisionmaking, and interaction processes; and (2) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 11263 N. Hwy 3, Fort Jones, California 96032; telephone 530–468–1281 (voice), TDD 530–468–2783.

Dated: January 21, 2000.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 00–1921 Filed 1–26–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service,

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on February 18, 2000. The meeting will be held at the Jamestown S'Klallam Tribal Center's conference room, 1033 Oly Blyn Highway, Sequim, Washington. The meeting will begin at 10:00 AM and end at approximately 3:00 PM. Agenda topics are: (1) Road Management Strategy for the Olympic National Forest (a proposed strategy for review and advice); (2) Northwest Forest Plan Implementation Monitoring Report; (3) Open forum; and (4) Public comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd. Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: January 19, 2000.

Luis Santoyo,

Acting Forest Supervisor, Olympic National Forest.

[FR Doc. 00–1975 Filed 1–26–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Census 2000 Test Program Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 27, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington,

DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Keith Bennett, Bureau of the Census, Room BH114–2, Washington, DC 20233; (301) 457–4173.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to test several methodologies, techniques, and strategies during Census 2000. It is important to examine innovative ideas in the environment for which they are intended to accurately measure effectiveness and feasibility. The Census Bureau received Office of Management and Budget (OMB) approval to conduct four separate tests which are collectively referred to as The Census 2000 Test Program. They are the Alternative Questionnaire Experiment in 2000 (AQE2000), the Administrative Records Census Experiment in 2000 (AREX2000), the Social Security Number [SSN], Privacy Attitudes, and Notification (SPAN) experiment, and the Response Mode and Incentive Experiment (RMIE). We plan to add supplemental collections to two of these tests.

RMIE Internet Usage Survey

The RMIE will determine what effect the availability of different response modes combined with an incentive have on a sample of Census 2000 short form respondents. Sample households will receive an invitation in their census short-form mail package inviting them to respond by one of three experimental response modes rather than by mail, including a computer assisted telephone interview (CATI) with a live operator, an interactive voice response system where a respondent is prompted through the short form by machine, and the census Internet questionnaire. Of those households that receive an invitation, some will be given a calling card worth 30 minutes of long distance service as incentive.

We plan to conduct phone interviews with a sub sample of the RMIE households invited to respond via the Internet, but who chose to respond by mail. For those who received no incentive, we will ask whether they had access to the Internet. If they did have access, we will ask why they did not use the Internet and ascertain whether an incentive would have elicited a response. If they did not have access to the Internet, we will ask if they would have responded if they had access. For those who received the incentive, we will ask whether they had access to the Internet. If they had no access they too will be asked whether they would have responded if they had access. If they had access, we will ask why they did not use the Internet. In addition, this panel will be asked a subset of questions about the incentive calling card they received. The interview will determine whether the respondents were aware of the incentive. We will ask those who were aware of the incentive why they did not take the offer, whether a larger incentive might have elicited a response, and whether they realized that the incentive was made operative only with the Internet response.

AQE2000 Residence Rules Reinterview

The AQE2000 will test effectiveness of an alternative presentation format of residence rules in the decennial census. An accurate and complete count in Census 2000 requires that all people should be enumerated once and only once and in the correct location. Respondents make the determination of who is counted as residing within their homes and include these people on their census form. The appropriateness of these assignments is associated with the effectiveness and clarity of the census residence instructions that provide the respondent with guidelines about who should be included on the census form and who should be excluded.

We plan to reinterview a sub sample of the AQE2000 sample households that returned the experimental (alternate version of the presentation format) and control (current versions of the presentation format) short-forms and provided telephone contact information. The reinterview will be conducted by telephone with the person in the household who signed the census form. The purpose of this reinterview is to test the effectiveness of the different presentation formats identified in the AQE2000. Topics addressed in the reinterview include listing of all household members (including potentially omitted persons), other locations where household members may reside, and the estimates of time spent in each of these locations. Other issues to be explored include complex living arrangements, respondents' ability to comprehend the residence rules, and possible sources of misconceptions stemming from experimental or control versions of the presentation formats.

II. Method of Collection

For the RMIE Internet Usage Survey, data will be collected by means of a computer assisted telephone interview. For the AQE2000 Residence Rules Reinterview, the reinterview will be conducted by telephone and recorded on paper.

III. Data

OMB Number: 0607–0862.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: Internet Usage Survey—2,160; Residence Rules Interview—3,000.

Estimated Time Per Response: Internet Usage Survey—5 minutes; Residence Rules Reinterview—20 min.

Estimated Total Annual Burden Hours: Internet Usage Survey—180 hours; Residence Rules Reinterview—1,000 hours; Total = 1,180 hours.

Estimated Total Annual Cost: None.

Respondent's Obligation: Both are voluntary data collections.

IV. Request for Comments:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 21, 2000,

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–1915 Filed 1–26–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011000E]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on July 2, 1999, to Burlington Resources, and Seneca Resources, both from Houston, TX, and Ocean Energy from Lafayette, Louisiana; on October 4, 1999, to PennzEnergy from Houston, TX; on December 16, 1999, to Forest Oil Corp. from Denver, CO; and on December 23, 1999, to Range Resources Corp. from Houston, TX.

ADDRESSES: The application and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (727) 570–5517.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: January 21, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–1974 Filed 1–26–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

RIN 3038-ZA03

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension of Collection, OMB Control Number 3038-0024, Regulations and Forms Pertaining to the Financial Integrity of the Marketplace

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to financial and related reporting and recordkeeping requirements.

DATES: Comments must be submitted on or before March 27, 2000.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, (202) 418-5439; FAX: (202) 418-5536; email: *lpatent@cftc.gov.*

SUPPLEMENTAL INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Regulations and Forms Pertaining to the Financial Integrity of the Marketplace Extension, OMB Control Number 3038–0024.

Commission Rules 1.10(a) and (b), 1.12, 1.14, 1.15(a)(1) and (2), 1.16(e) and (f), 1.17(h)(3)(vi), 1.18(b), 1.20(a) and (b), 1.23, 1.25, 1.27, 1.43, 1.36(a) and (b), 1.37 and 1.65 relate to the financial reporting and recordkeeping

requirements for futures commission merchants and independent introducing brokers.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.10(a) and (b), 1.12, 1.14, 1.15(a)(1) and (2). 1.16(e) and (f), 1.17(h)(3)(vi), 1.18(b), 1.20(a) and (b),1.23, 1.25, 1.27, 1.43, 1.36(a) and (b), 1.37 and 1.65.	3,028	Monthly, Annually, Quarterly, Semi-Annually, On Occasion.	4,468	5.0	20,859

There are not capital costs or operating and maintenance costs associated with this collection.

Dated: January 21, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–1986 Filed 1–26–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Information Warfare—Defense will meet in closed session on January 18–19, 2000; February 22–23, 2000; March 28–29, 2000; April 19–20, 2000; May 25–26, 2000; and June 13–14, 2000, at Booze-Allen Hamilton McLean Campus, 8282 Greensboro Drive, McLean, VA 22182.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review the progress made since the 1996 Defense Science Board report on Information Warfare—Defense and determine the adequacy of the Department's process in providing information assurance to carry out Joint Vision 2010 in the face of information warfare attacks.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public. However, due to critical mission requirements, the Task Force is unable to provide timely notice of its first meeting on January 18–19, 2000.

Dated: January 11, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–1862 Filed 1–23–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Actions To Sustain Operability of Air Force Space Command PAVE PAWS Radar Sites at Cape Cod Air Station (AS), Massachusetts (MA); Beale Air Force Base (AFB), California (CA); and Clear Air Station (AS), Alaska (AK)

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), The Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), Air Force Space Command (AFSPC) intends to prepare an EIS for the Service Life Extension Program (SLEP) actions to modernize the facilities at the PAVE PAWS (Phased Array Warning System) radar sites located at Cape Cod AS, MA; Beale AFB, CA; and Clear AS, AK.

The current proposal includes replacements of electronic equipment and computer software in the PAVE PAWS Early-Warning Radar facilities. The EIS will assess all impacts as they relate to these replacements, including emission of radio-frequency energy. AFSPC will be the lead agency for the EIS. The Ballistic Missile Defense Organization has been invited to be a cooperating agency. AFSPC is planning to conduct public scoping meetings to determine the issues and concerns that should be addressed in the EIS. Notice of time and location of the scoping meetings will be made to public officials, agencies and announced in the news media in areas where the meetings will be held. For further information concerning the proposed replacements of electronic equipment and computer software in the PAVE PAWS Early-Warning Radar facilities at Cape Cod AS,.MA; Beale AFB, CA; and Clear AS, AK, contact Mr. George Gauger, HQ AFCEE/ECA, 3207 North Road, Brooks AFB, TX 78235–5363.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–1976 Filed 1–26–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Federally-Owned Inventions

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces the availability of certain Air Force-owned inventions. The following patent applications Apparatus and Method to Detect Corrosion in Metal Junctions (Patent Application No. 09/450,959) and Apparatus and Method for Detecting Conduit Chafing (Patent Application No. 09/334,122) are available for Nonexclusive or Exclusive Licensing from the Air Force Research Laboratory (AFRL/IF) at Rome, New York. Additional information concerning the inventions is available upon request.

All communications concerning this Notice should be sent to Dr. Harold L. Burstyn, Patent Attorney, 26 Electronic Parkway, Rome, NY 13441–4514, (315) 330–2087, e-mail:

Harold.Burstyn@rl.af.mil, or fax to (315) 330–7583.

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 00–1977 Filed 1–26–00; 8:45 am]
BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Correction notice.

SUMMARY: On January 21, 2000, a 30-day notice inviting comment from the public was published for the Reference and Reporting Guide for Preparing State and Institutional Report on Teacher Quality and Preparation in the **Federal Register** (Volume 65, Number 14) dated January 21, 2000. The Leader, Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995. The sentence, "Annual reports from institutions are due to states, beginning April 7, 2000" should read, "Annual reports from institutions are due to states, beginning April 7, 2001".

DATES: Interested persons are invited to submit comments on or before February 22, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV*.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address OCIO__IMB__Issues@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266.

Dated: January 21, 2000.

William E. Burrow,
Leader, Information Management Group, Office of the Chief Information Officer.
[FR Doc. 00–1916 Filed 1–26–00; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–166–000 and RP00–74–002]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 21, 2000.

Take notice that on January 14, 2000, CNG Transmission Corporation (CNG), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of February 1, 2000:

Twenty-Seventh Revised Sheet No. 31
Fourth Revised Sheet No. 190
Fourth Revised Sheet No. 191
Fourth Revised Sheet No. 192
Fourth Revised Sheet No. 193
Fifth Revised Sheet No. 194
Sixth Revised Sheet No. 195
Fourth Revised Sheet No. 196
Fourth Revised Sheet No. 197
Second Revised Sheet No. 467

CNG states that the purpose of this filing is two-fold: (1) to place into effect revised tariff sheets that would allow CNG to charge a new rate for Title Transfer Tracking Service consistent with the Commission's December 16, 1999 Letter Order, and (2) to respond to the concerns of the parties as required by the Letter Order.

CNG states that copies of its filing are being served upon the parties listed on the Official Service List of the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–1955 Filed 1–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2612–005]

FPL Energy Maine Hydro; Notice of Telephone Conference

January 21, 2000.

The Commission staff, Maine Department of Environmental Protection, and FPL Energy Maine Hydro (FPL) will conduct a telephone conference at 10:00 a.m. Eastern Standard Time (EST), on February 8, 2000, to update staff on the status of FPL's pending application for Water Quality Certification and how this issue may affect FPL's application for a new license in this proceeding.

Parties in the new license application proceeding wishing to take part in the conference call may do so by calling (800) 545–4387 on February 8, 2000 and informing the operator that they want to be part of the Flagstaff Storage Project conference call and giving the operator the conference call identification number M–12047. The operator will start accepting requests to be a part of the conference call at 9:45 a.m. EST prior to the 10:00 a.m. EST meeting. If you have any questions regarding this notice, please contact Ms. Amy Chang at (202) 208–1199 or send an e-mail to *amy.chang@ferc.fed.us*.

David P. Boergers,
Secretary.
[FR Doc. 00–1948 Filed 1–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–18–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

January 21, 2000.

Take notice that on January 14, 2000, National Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 224J.02, to be effective November 4, 1999.

Natural states that its filed the above tariff sheet in compliance with the Office of Pipeline Regulation letter order issued January 5, 2000 in Docket No. RP00–18–001.

Natural requested any waivers which may be required to permit Second Revised Sheet No. 224J.02 to become effective November 4, 1999, consistent with the Federal Energy Regulatory Commission's "Order on Complaint" issued November 4, 1999 in Docket No. RP00–18–000.

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the official service lists in Docket Nos. RP99–176 and RP00–18.

Any person desiring to protest in this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission"s Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1952 Field 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–164–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 21, 2000.

FOR FURTHER INFORMATION CONTACT:

Take notice that on January 14, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to become effective on February 14, 2000:

2. Third Revised Sheet No. 146

Northern states that the above-referenced tariff sheet is filed to revise the termination provisions of Northern's Interruptible Deferred Delivery (IDD) service under Rate Schedule IDD.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1953 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–496–000 and RP99–496–001]

Southern Natural Gas Company; Notice of Informal Settlement Conference

January 21, 2000.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 11 a.m. on Thursday, January 27, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–0583, Joel M. Cockrell at (202) 208–1184 or Theresa J. Burns at (202) 208–2160.

David P. Boergers,

Secretary.

[FR Doc. 00–1951 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–165–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

January 21, 2000.

Take notice that on January 18, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, to become effective February 1, 2000.

Williston Basin states that the revised tariff sheets are being filed pursuant to Order Nos. 636, *et seq.* and Subsection 39.3.4 of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, to implement the recovery of $2,996,250 of Gas Supply Realignment Transition costs (GSR Costs).

Williston Basin further states that it is proposing to recover 93.40 percent of the costs through a new reservation charge surcharge of 43.714 cents per equivalent dekatherm of Maximum Daily Delivery Quantity applicable to firm transportation service and 6.60 percent through a new GSR unit rate of 0.441 cents per dekatherm applicable to Rate Schedule IT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1954 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–44–000, et al.]

Consolidated Edison Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 19, 2000.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Energy, Inc. and Consolidated Edison Energy Massachusetts, Inc.

[Docket No. EC00–44–000]

Take notice that on December 23, 1999, Consolidated Edison Energy, Inc. (CEEI) and Consolidated Edison Energy Massachusetts, Inc. (CEEMI) filed an application for an order authorizing the proposed transfer of CEEI's 100% equity interest in CEEMI to Consolidated Edison Development, Inc.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison, Inc., Northeast Utilities

[Docket No. EC00–49–000]

Take notice that on January 14, 2000, Consolidated Edison, Inc. (CEI) and Northeast Utilities (NU), on behalf of their respective wholly-owned jurisdictional utility subsidiaries, tendered for filing an application pursuant to section 203 of the Federal Power Act and part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission) for an order authorizing and approving CEI's acquisition of NU (the Merger).

Pursuant to the terms of the Agreement and Plan of Merger dated as of October 13, 1999, CEI, an exempt public utility holding company, will acquire all of the outstanding common stock of NU. The Merger Agreement provides for the combination to occur through two simultaneous mergers—the merger of CEI into New CEI, and the merger of an indirect wholly-owned subsidiary of CEI with NU. Upon completion, New CEI will own all of the assets of CEI, and NU will be a wholly-owned subsidiary of New CEI.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. AES Londonderry, LLC

[Docket No. EG00–78–000]

Take notice that on January 13, 2000, AES Londonderry, LLC (AES Londonderry) tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for the sale to wholesale purchasers at market-based rates of the output of an electric power generation facility under development by AES Londonderry in Londonderry, Rockingham County, New Hampshire (the Facility).

AES Londonderry requests that the Commission promptly accept the rate schedule for filing, without suspension, investigation or refund liability, and make the rate schedule effective as of the date that service commences at the Facility.

A copy of the filing was served upon the New Hampshire Public Utilities Commission.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission's will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Southwestern Electric Power Company

[Docket No. ER00–1083–000]

Take notice that on January 13, 2000, Southwestern Electric Power Company (SWEPCO) filed a revised Exhibit E to the Power Supply Agreement (PSA), as amended, between SWEPCO and East Texas Electric Cooperative, Inc. (ETEC). Revised Exhibit E updates various information concerning points of delivery under the PSA.

SWEPCO requests an effective date of January 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on ETEC and the Public Utility Commission of Texas.

Comment date: February 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1093–000]

Take notice that on January 14, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 68 to add British Columbia Power Exchange Corporation to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is January 13, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER00–1094–000]

Take notice that on January 14, 2000, The Dayton Power and Light Company (Dayton) submitted service agreements establishing TXU Energy Trading Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon TXU Energy Trading Company and the Public Utilities Commission of Ohio.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. The Dayton Power and Light Company

[Docket No. ER00–1095–000]

Take notice that on January 14, 2000, The Dayton Power and Light Company (Dayton) submitted service agreements establishing with TXU Energy Trading Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–1096–000]

Take notice that on January 14, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreement between Virginia Electric and Power Company and The Legacy Energy Group, LLC. Under the Service Agreement, Virginia Power will provide services to The Legacy Energy Group, LLC under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of January 14, 2000.

Copies of the filing were served upon The Legacy Energy Group, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company

[Docket No. ER00–1099–000]

Take notice that on January 14, 2000, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) service agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

The details of the service agreement are as follows: Umbrella Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Reliant Energy Services, Inc. dated as of January 5, 2000. Service under this agreement has not yet commenced.

Service Agreement for Non-Firm Point-to-Point Transmission Service with Reliant Energy Services, Inc. dated as of January 5, 2000. Service under this agreement has not yet commenced.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER00–1100–000]

Take notice that on January 14, 2000, Ameren Services Company (Ameren) tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren and NorAm Energy Services, Inc., now Reliant Energy Services, Inc. Ameren asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER98–3886–000 with an executed Agreement.

Ameren requests that the Service Agreement become effective June 23, 1998.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Oklahoma

[Docket No. ER00–1101–000]

Take notice that on January 14, 2000, Public Service Company of Oklahoma (PSO) filed four service agreements under its Coordination Sales and Reassignment of Transmission Rights Tariff.

PSO seeks waiver of the Commission's notice requirements to permit effective dates of October 9, 1999, for the service agreement with Cargill-Alliant, LLC (Cargill), November 12, 1999 for the service agreement with TXU Energy Trading Company (TXU Trading), December 1, 1999 for the service agreement with Southern Company Energy Marketing (Southern Marketing), and December 3, 1999 for the service agreement with Constellation Power Source (CPS).

PSO has mailed a copy of the filing to Cargill, TXU Trading, Southern Marketing, CPS and the Oklahoma Corporation Commission.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Alliant Energy Corporate Services Inc.

[Docket No. ER00–1103–000]

Take notice that on January 14, 2000, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Western Resources Inc. (WR).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of January 13, 2000.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER00–1104–000]

Take notice that on January 14, 2000, PacifiCorp tendered for filing, in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Part 35), a Notice of Filing Mutual Netting/Closeout Agreements (Netting Agreements) between PacifiCorp and (1) Colorado Springs Utilities (CSU), (2) Coral Power LLC (Coral), and (3) Northern California Power Agency (NCPA).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER00–1105–000]

Take notice that on January 14, 2000, PacifiCorp tendered for filing, in accordance with Part 35 of the Commission's Rules and Regulations (18 CFR Part 35), a fully executed umbrella service agreement with Citizens Power Sales (Citizens).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. The Montana Power Company

[Docket No. ER00–1106–000]

Take notice that on January 14, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Part 35 of the Commission's Regulations (18 CFR Part 35), an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Big Horn County Electric Cooperative, Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Big Horn County Electric Cooperative, Inc.

Montana requests that the Service Agreement become effective December 15, 1999.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER00–1107–000]

Take notice that on January 14, 2000, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated January 13, 2000 with Illinois Municipal Electric Agency (IMEA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 13, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Illinois Municipal Electric Agency and to the

Pennsylvania Public Utility Commission.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. CP Power Sales Four, L.L.C.

[Docket No. ER00–1108–000]

Take notice that on December 20, 1999, CL Power Sales Five, L.L.C., tendered for filing Notice of Succession on behalf of CL Power Sales Four, L.L.C., effective December 1, 1999, CL Power Sales Four, L.L.C., changed its name to CP Power Sales Four, L.L.C.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Dynegy Power Marketing, Inc.

[Docket No. ER00–1109–000]

Take notice that on January 14, 2000, Dynegy Power Marketing, Inc. (Dynegy), tendered for filing pursuant to Rule 205, 18 CFR 385.205, revisions to its rate schedule related to resales of firm transmission rights in compliance with the Commission's order in California Independent System Operator Corp., 89 FERC ¶ 61,153 (1999).

Dynegy requests waiver of the Commission's 60-day prior notice requirement in order to permit their respective revisions to become effective on January 15, 2000.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER00–1110–000]

Take notice that on January 14, 2000, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with PECO Energy Company. The agreement was pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and Detroit Edison Company (Detroit Edison) and has an effective date of January 1, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and PECO Energy Company.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Illinova Power Marketing, Inc.

[Docket no. ER00–1111–000]

Take notice that on January 14, 2000, Illinova Power Marketing, Inc. (IPMI), tendered for filing Electric Power Transaction Service Agreements under which certain customers will take service pursuant to IPMI's power sales tariff, Rate Schedule FERC No. 1.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Energy Merchants, L.L.C.

[Docket No. ER00–1112–000]

Take notice that on January 14, 2000, Duke Energy Merchants, L.L.C. (DEM), tendered for filing pursuant to Section 205 of the Federal Power Act a revised Rate Schedule FERC No. 1 in compliance with the Commission's November 10, 1999 order, California Indep. System Operator Corp., 89 ¶ 61,153 (1999) and pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, providing for the resale of firm transmission rights issued by the California Independent System Operator Corporation.

DEM is a power marketer authorized by the Commission to sell electric energy and capacity at market-based rates. DEM requests waiver of the prior notice requirement of the Commission's regulations and seeks an effective date of February 1, 2000 for its revised Rate Schedule FERC No. 1.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Energy Trading And Marketing, L.L.C.

[Docket No. ER00–1113–000]

Take notice that on January 14, 2000, Duke Energy Trading and Marketing, L.L.C. (DETM), tendered for filing pursuant to Section 205 of the Federal Power Act a revised Rate Schedule FERC No. 1 in compliance with the Commission's November 10, 1999 order, California Indep. System Operator Corp., 89 FERC ¶ 61,153 (1999) and pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, providing for the resale of firm transmission rights issued by the California Independent System Operator Corporation.

DETM is a power marketer authorized by the Commission to sell electric energy and capacity at market-based rates. DETM requests waiver of the prior notice requirement of the Commission's regulations and seeks an effective date of February 1, 2000 for its revised Rate Schedule FERC No. 1.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. West Texas Utilities Company

[Docket No. ER00–1114–000]

Take notice that on January 14, 2000, West Texas Utilities Company (WTU), tendered for filing ten (10) individual letter agreements, dated March 19, 1998 (Letter Agreements) with the following customers: Coleman County Electric Cooperative, Inc.; Concho Valley Electric Cooperative, Inc.; Golden Spread Electric Cooperative, Inc.; Kimble Electric Cooperative, Inc.; Lighthouse Electric Cooperative, Inc.; Midwest Electric Cooperative, Inc. (Midwest); Rio Grande Electric Cooperative, Inc.; Stamford Electric Cooperative, Inc. (Stamford); Southwest Texas Electric Cooperative, Inc.; and Taylor Electric Cooperative, Inc., (collectively, the Mid-Tex Group). The Letter Agreements are supplements to WTU's Wholesale Power Choice Tariff (WPC Tariff), WTU FERC Tariff No. 9.

WTU seeks an effective date of January 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on all members of the Mid-Tex Group and the Public Utility Commission of Texas.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Calpine Construction Finance Company, L.P.

[Docket No. ER00–1115–000]

Take notice that on January 14, 2000, Calpine Construction Finance Company, L.P. (CCFC), tendered for filing, under Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a petition for order accepting initial rate schedule for the sale of energy, capacity, replacement reserves at market-based rates, and for the waiver of certain Commission regulations and blanket authorization of others. CCFC also requests authority, and its proposed rate schedule provides for it, to sell certain ancillary services into the California markets administered by the California Independent System Operator, the New York Power Pool markets administered by the New York Independent System Operator, the Pennsylvania-New Jersey-Maryland Interchange Energy Market, and the New England Power Pool markets administered by ISO New England, Inc. CCFC is an indirect wholly owned subsidiary of Calpine Corporation.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1908 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–50–000, et al.]

EMI Dartmouth, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 21, 2000.

Take notice that the following filings have been made with the Commission:

1. EMI Dartmouth, Inc., El Paso Energy Corporation, El Paso Power Holding Company, Dartmouth Power Holding Company, L.L.C., Dartmouth Power Generation, L.L.C., Mesquite Investors, L.L.C.

[Docket No. EC00–50–000]

Take notice that on January 18, 2000, pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1998) and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 33 *et seq.*, EMI Dartmouth, Inc. on behalf of itself and the limited partners of Dartmouth Power Associates Limited Partnership, El Paso Energy Corporation (EP Holding), El Paso Power Holding Company, Dartmouth Power Holding Company, L.L.C. (DPH), Dartmouth Power Generation, L.L.C., (DPG) and Mesquite Investors, L.L.C. (Mesquite) (collectively, Applicants) filed an application requesting that the Commission approve the sale and transfer by EMI of 100% of the ownership interest in Dartmouth Power Associates Limited Partnership (Dartmouth), a Massachusetts limited partnership that owns an electric generating facility and makes sales of capacity and associated electricity from the facility pursuant to two rate schedules on file with the Commission, to DPH and DPG. At present DPH and DPG are wholly-owned subsidiaries of EP Holding. Subsequent to the acquisition of the interests in Dartmouth by DPH and DPG, EP Holding will transfer all of its ownership interest in DPH and DPG to Mesquite and DPH and DPG will become subsidiaries of Mesquite.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Columbia Energy Power Marketing Corporation

[Docket No. EC00–51–000]

Take notice that on January 18, 2000, Columbia Energy Power Marketing Corporation filed an application for an order authorizing the proposed transfer of Applicant's wholesale power sales agreements to Enron Power Marketing, Inc.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. AmerGen Energy Company, L.L.C.

[Docket No. EG00–27–000]

Take notice that on January 13, 2000, AmerGen Energy Company, L.L.C., submitted a supplement to its application for exempt wholesale generator status.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

4. Platte-Clay Electric Cooperative, Inc.

[Docket No. EL00–35–000]

Take notice that on January 12, 2000, Platte-Clay Electric Cooperative, Inc. (Platte-Clay) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. Platte-Clay's filing is available for public inspection at its offices in Kearney, Missouri.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. AC Power Corporation, Lambda Energy Marketing Company, TransCanada Power Marketing Ltd., Symmetry Devise Research, Inc., Spokane Energy, L.L.C., Southern Energy California, L.L.C.

[Docket No. ER97–2867–010, ER94–1672–020, ER98–564–006, ER96–2524–008, ER98–4336–006, ER99–1841–002]

Take notice that on January 14, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. DukeSolutions, Unicom Power Marketing, Inc., Alliance Power Marketing, Inc., First Power, L.L.C., First Power, L.L.C., Illinova Energy Partners, Inc., Koch Energy Trading, Inc., Cargill-Alliant, LLC

[Docket No. ER98–3813–006, ER97–3954–011, ER96–1818–016, ER97–3580–008, ER97–3580–009, ER94–1475–019, ER95–218–020, ER97–4273–010]

Take notice that on January 18, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

7. Alliant Energy Industrial Services, Inc.

[Docket No. ER99–1775–002]

Take notice that on January 12, 2000, Alliant Energy Industrial Services, Inc. filed their quarterly reports for the third and fourth quarters for information only.

8. Foote Creek II, LLC, Foote Creek III, LLC

[Docket No. ER00–1119–000]

Take notice that on January 14, 2000, Foote Creek II, LLC and Foote Creek III, LLC filed their quarterly report for the quarter ending December 31, 2000.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Bangor Hydro-Electric Company, Westchester RESCO Company, L.P., Murphy Oil USA, Inc.

[Docket No. ER00–1124–000, ER00–1128–000, ER00–1129–000]

Take notice that on January 18, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Electric Power Company, Inc.

[Docket No. ES00–14–000]

Take notice that on January 13, 2000, Maine Electric Power Company, Inc. submitted an application pursuant to Section 204 of the Federal Power Act, seeking authority to issue and renew on or before December 31, 2002, bank loans maturing one year or less after the date of issuance in an aggregate face amount not to exceed $9,500,000 at any time.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. John C. Barpoulis, David N. Bassett, Mark V. Carney, John R. Cooper, F. Joseph Feyder, George J. Grunbeck, Sanford L. Hartman, J. W. Maitland Horner, P. Chrisman Iribe, Nancy A. Manning, Peter E. Meier, William F. Quinn, Suzanne Rich, M. Richard Smith, Steven A. Wolfgram

Docket Nos. ID–3447–000, ID–3134–004, ID–3429–001, ID–3132–006, ID–3448–000, ID–3235–002, ID–3275–002, ID–3276–001, ID–3131–007, ID–3425–001, ID–3237–003, ID–3449–000, ID–3278–001, ID–3277–003, ID–3238–002]

Take notice that on January 10, 2000, the above named individuals filed with the Federal Energy Regulatory Commission, an application for authority to hold interlocking positions in Athens Generating Company, L.P. and Mantua Generating Company, L.P., both with their principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket No. ER00–605–000]

Take notice that on January 14, 2000, Central Maine Power Company (CMP or Central Maine), provided unredacted copies of an Hydro Quebec Entitlement Agreement (Entitlement Agreement) between CMP and Select Energy, Inc. (Select), in compliance with the Commission's January 11, 2000 Order Denying A Request for Confidential Treatment.

CMP reiterates its request for a final non-appealable order on or before February 22, 2000.

CMP states that copies of the filing have been sent to Select and the Maine Department of Public Utilities Commission.

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power Corporation

[Docket No. ER00–1116–000]

Take notice that on January 18, 2000, Florida Power Corporation (Florida Power), tendered for filing a Short Term Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on January 19, 2000.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1118–000]

Take notice that on January 18, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy), tendered for filing executed Service Agreement for short-term firm point-to-point transmission service, establishing Reliant Energy Services, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of December 20, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. MidAmerican Energy Company

[Docket No. ER00–1117–000]

Take notice that on January 18, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Alliant Energy Corporation (Alliant), dated December 21, 1999, MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 1, 2000 for the Agreement and seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Alliant, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER00–1125–000]

Take notice that on January 17, 2000, Commonwealth Edison Company (ComEd) tendered for filing a Service Agreement for Network Integration Service (Service Agreement) and a Network Operating Agreement (Operating Agreement) between ComEd and Peoples Energy Services Corporation (PESC). These agreements will govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 27, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PESC.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Southwestern Public Service Company

[Docket No. ER00–1126–000]

Take notice that on January 18, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with El Paso Electric Company (EPE). This umbrella service agreement provides for Southwestern's sale and EPE's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Energy Service Corporation on behalf of West Penn Power Company

[Docket No. ER00–1127–000]

Take notice that on January 18, 2000, Allegheny Energy Service Corporation, on behalf of West Penn Power Company (WP), tendered for filing a Power Service Agreement under which WP will provide full requirements service to the Letterkenny Industrial Development Authority.

The parties request a May 3, 1999 effective date.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Southwestern Public Service Company

[Docket No. ER00–1120–000]

Take notice that on January 18, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Reliant Energy Services, Inc., (Reliant). This umbrella service agreement provides for Southwestern's sale and Reliant's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER00–1121–000]

Take notice that on January 18, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Texas-New Mexico Power Company (TNP). This umbrella service agreement provides for Southwestern's sale and TNP's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Southwestern Public Service Company

[Docket No. ER00–1122–000]

Take notice that on January 18, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with UtiliCorp United, Inc., (UtiliCorp). This umbrella service agreement provides for Southwestern's sale and UilitiCorp's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Electric Power Company

[Docket No. ER00–1123–000]

Take notice that on January 18, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a notification indicating a name change for an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests effective December 31, 1999, service Agreement No. 102 with El Paso Power Services Company, is changed to El Paso Merchant Energy, L.P. (EPME).

Wisconsin Electric requests waiver of any applicable regulation to allow for the effective dates as requested above.

Copies of the filing have been served on EPME, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Pool

[Docket No. ER00–934–000]

Take notice that on January 18, 2000, the New England Power Pool Participants Committee tendered for filing a correction to its December 29, 1999, filing in the above-referenced docket. Additionally, NEPOOL has requested a waiver of the Commission's notice requirements to permit the corrected filing to become effective as of March 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Great Bay Power Corporation

[Docket No. ER00–1138–000]

Take notice that on January 18, 2000, Great Bay Power Corporation (Great Bay), tendered for filing service agreements between Consolidated Edison Energy, Inc. and Great Bay and between Consolidated Edison Solutions, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreements are proposed to be effective January 1, 2000.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Consumers Energy Company

[Docket No. ER00–1137–000]

Take notice that on January 18, 2000, Consumers Energy Company (Consumers), tendered for filing Amendment No. 1 to its Service Agreement with Edison Sault Electric Company for Network Integration Transmission Service (designated Service Agreement No. 1 under Consumers Energy Company FERC Electric Tariff No. 6). The Amendment changes Exhibit A to the Service Agreement, which lists network loads and resources.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Consumers Energy Company

[Docket No. ER00–1136–000]

Take notice that on January 18, 2000, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for unbundled wholesale power service with Edison Sault Electric Company pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customer under the respective service agreement.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Commonwealth Edison Company

[Docket No. ER00–1134–000]

Take notice that on January 18, 2000, Commonwealth Edison Company (ComEd), tendered for filing a revised executed Service Agreement for Network Integration Transmission Service between ComEd and the Illinois Municipal Electric Agency (IMEA) under the terms of ComEd's Open Access Transmission Tariff. This agreement modifies and supersedes a Network Integration Transmission Service Agreement currently on file between ComEd and IMEA.

Copies of the filing were served on IMEA and the Illinois Commerce Commission.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Southwest Power Pool, Inc.

[Docket No. ER00–1133–000]

Take notice that on January 18, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing four executed service agreements for Loss Compensation Service with ConAgra Energy Services, Inc., Oklahoma Gas & Electric Company, Sempra Energy Trading Corporation, and TransAlta Energy Marketing (U.S.) Inc.

SPP requests an effective date of January 1, 2000, for each of these agreements.

Copies of this filing were served upon all signatories.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Kansas City Power & Light Company

[Docket No. ER00–1132–000]

Take notice that on January 18, 2000, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 12, 2000, between KCPL Transmission Services and KCPL Power Services. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. American Electric Power Service Corporation

[Docket No. ER00–1131–000]

Take notice that on January 18, 2000, the American Electric Power Service Corporation (AEPSC), on behalf of Indiana Michigan Power Company (I&M), tendered for filing with the Commission Facilities, Operations and Maintenance Agreement dated December 17, 1999, between I&M and Hoosier Energy Electric Cooperative.

AEPSC requests an effective date of January 1, 2000 for the agreement.

A copy of the filing was served upon Hoosier Energy Electric Cooperative and the Indiana Utility Regulatory Commission.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Edison Company

[Docket No. ER00–1130–000]

Take notice that on January 18, 2000, Commonwealth Edison Company (ComEd), tendered for filing an executed service agreement establishing Northern States Power Company (NSP), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales. ComEd requests that the Commission substitute the Service Agreement for the unexecuted agreement with NSP previously filed under the MBR, and requests that the Commission establish the same effective date as was established in the original filing for the unexecuted agreement for which this agreement is being substituted.

Copies of the filing were served on NSP.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Consumers Energy Company

[Docket No. ER00–1135–000]

Take notice that on January 18, 2000, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Firm and Non-Firm Point-to-Point Transmission Service with both DTE Energy Trading, Inc. and Nordic Electric LLC (Customers). All of the agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The DTE Energy Trading, Inc., Agreements have effective dates of January 1, 2000. The Nordic Electric, LLC Agreements have effective dates of January 7, 2000.

Copies of the filing were served upon the Michigan Public Service Commission, Detroit Edison, and the Customers.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power Corporation

[Docket No. ER00–1116–000]

Take notice that on January 18, 2000, Florida Power Corporation (Florida Power), tendered for filing a Short Term Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on January 19, 2000.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–1942 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–00]

Northern Border Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Project 2000

January 21, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Border Pipeline Company (Northern Border) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed project including:

- About 34.4 miles of 30-inch-diameter pipeline from Manhattan, Illinois to North Hayden, Indiana;
- Uprate the existing compressor unit at Compressor Station 14 (Grundy County, Iowa) from 6,500 horsepower (hp) to 13,000 hp;
- Uprate the existing compressor unit at Compressor Station 17 (Scott County, Iowa) from 12,000 hp to 15,000 hp;
- Install a 13,000 hp compressor unit at proposed Compressor Station 18 (Bureau County, Illinois);
- Construct a new meter station in Lake County, Indiana (North Hayden Meter Station);
- Install a regulator at the existing Harper Meter Station in Iowa; and
- Install appurtenant facilities, including six mainline valves, four

remote blow downs, anode bed, tee and side valve.

The purpose of the proposed facilities would be to transport up to 544.0 million cubic feet per day (MMcfd) of gas for Northern Indiana Public Service Company.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 2087–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2
- Reference Docket No. CP99–21–000; and

Mail your comments so that they will be received in Washington, DC on or before February 22, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CLIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–1943 Filed 1–26–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–000]

Petal Gas Storage Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Petal Pipeline Project, and Request for Comments on Environmental Issues

January 21, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Petal Pipeline Project, involving the construction and operation of facilities by Petal Gas Storage Company (Petal) in Forest, Jones, Jasper, and Clark Counties, Mississippi.[1] These facilities would consist of about 64.2 miles of pipeline and 35,590 horsepower (hp) of compression. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner on Petal's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typical asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners crossed by Petal's proposed route; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Petal's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

Petal proposes to build new pipeline and compression facilities to transport up to 700 million cubic feet per day of natural gas from its storage field to new interconnections with Transcontinental Gas Pipe Line Company (Transco), Southern Natural Gas Company (Southern), and Destin Pipeline Company (Destin). Petal requests Commission authorization to construct, own, operate, and maintain the following facilities.

- About 55 miles of 36-inch-diameter loop[2] of Petal's existing storage header at its storage field in Forrest County, near Petal, Mississippi;

[1] Petal's application was filed with the Commission on December 28, 1999, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

• About 58.7 miles of 36-inch-diameter pipeline extending from the existing Tennessee Gas Pipeline Company (Tennessee) Meter Station near the town of Petal, Mississippi north through portions of Forrest, Jones, Jasper, and Clarke Counties, to the existing Destin Meter Station near Enterprise, Mississippi. The new pipeline would be built adjacent to existing Tennessee, Southern, and Destin pipelines;

• A new compressor station with four electric-driven units totaling 20,000 hp adjacent to Petal's existing compressor station in Forrest County, Mississippi;

• A new compressor station with four gas-driven units totaling 15,590 hp near Heidelburg, in Jasper County, Mississippi;

• Three new meter stations at interconnections with Transco in Jasper county, Mississippi, and with Southern and Destin in Clarke County, Mississippi; and

• Associated pipeline facilities, including pig traps at the Petal storage field and the new Destin Meter Station, and a total eight new block valves along the loop and main pipeline.

The general location of Petal's proposed facilities is shown on the map attached as appendix 1.[3]

Land Requirements for Construction

Construction of the proposed facilities would affect about 682 acres of land. Following construction, about 251 acres would be retained as permanent right-of-way. The remaining 431 acres of temporary work space would be restored and allowed to revert to its former use.

Petal proposes to use a typical pipeline construction right-of-way width of 75 feet, consisting of 30 feet of permanent right-of-way and 45 feet of temporary extra work space. There also would be about 92 acres used as additional temporary extra work spaces at stream, utility, and road crossings. The new compressor station near Petal, Mississippi would occupy about 4 acres and the new compression station near Heidelburg would use about 10 acres. Construction of the Transco Meter Station would use 2 acres, of which 1 acre would become the permanent site. The new meter stations at the interconnections with Southern and Destin would be built and operated within a single 2 acre parcel.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Petal. This preliminary list of issues may be changed based on your comments and our analysis.

• Geology and Soils
—Potential impacts related to crossing karst terrain.
—Impacts on about 21 miles of prime farmland soils.
—Crossing about 16 miles of erosion prone soils.

• Water Resources and Wetlands
—Crossing 10 perennial streams.
—Crossing one stream classified as an impaired waterbody with limited water quality.
—Crossing 104 areas classified as "waters of the United States," the majority of which are wetlands.

• Biological Resources
—Impacts on about 440 acres of forest or woodlands.
—Impacts on a single population of Silky Camellia, a state listed sensitive species.
—Impacts on the Gopher Tortoise, a federally listed threatened species.

• Cultural Resources
—Impacts on prehistoric and historic sites.
—Native American concerns.

• Land Use
—Impacts on crop production.
—Impacts on residential areas.
—Visual effect of the aboveground facilities on surrounding areas.
—Impacts on one rural residence within 50 feet of the proposed pipeline.

• Air and Noise Quality
—Impacts on local air quality and noise environment as a result of the operation of new compressor stations.

• Alternatives
—Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;

• Reference Docket No. CP00–59–000; and

• Mail your comments so that they will be received in Washington, DC on or before February 28, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.]

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] "Us," "we," and "our" refer to the environment staff of the FERC's Office of Pipeline Regulation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–1944 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File for New License

January 21, 2000.

a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 1413.

c. *Date Filed:* October 1, 1999.

d. *Applicants:* Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Ponds Lodge Hydroelectric Project.

f. *Location:* On the Buffalo River, a tributary to the Henry's Fork of the Snake River, in Fremont County, Idaho.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Contact:* Dee M. Reynolds, General Manager, Fall River Rural Electric Cooperative, Inc., 714 Main Street, P.O. 830, Ashton, Idaho 83420, (208) 652–7431.

i. *Expiration date of original license:* October 31, 2004.

j. *The project consists of:* (1) a 12-foot-high, 142-foot-long rock-fill dam; (2) a short penstock; (3) a powerhouse containing a turbine generator unit with an installed capacity of 250 kilowatts; (4) a short tailrace; (5) a 12.5 kV, 3,500-foot-long underground transmission line; and (6) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available contacting John Gourley at Pacific Gas and Electric Company, 245 Market Street, Room 1137, San Francisco, CA 94105, (415) 972–5772.

l. *FERC contact:* Hector M. Perez, (202) 219–2843.

m. *Locations of the filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2002.

David P. Boergers,

Secretary.

[FR Doc. 00–1945 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

January 21, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 1981–010.

c. *Date Filed:* February 25, 1998.

d. *Applicant:* Oconto Electric Cooperative.

e. *Name of Project:* Stiles Project.

f. *Location:* On the Oconto River, near the City of Oconto Falls, Oconto County, Wisconsin. The project would not utilize Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tony Anderson, General Manager, Oconto Electric Cooperative, 7479 REA Road, P.O. Box 168, Oconto Falls, WI 54154–0168, (920) 846–2816.

i. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767, or E-mail at *patricia.lepperslack@ferc.fed.us.*

j. *Deadline for filing comments, recommendations, terms and conditions and prescriptions:* 60 days from the issuance of this notice.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis.

l. *Brief Description of the Project:* The existing project consists of: (1) A 20-foot-high earthen embankment and 463-acre impoundment; (2) a 66-foot-long powerhouse, containing tow generating units with a total capacity of 1,000 kilowatts; (3) a substation; and (4) appurtenant facilities.

m. *Available Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and

reproduction at the address shown in item h.

Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533, issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. As additional copy must be sent to Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–1946 Filed 1–26–00; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

January 21, 2000.

a. *Application Type:* Application to Amend License for the Yadkin Project.

b. *Project No:* 2197–038.

c. *Date Filed:* December 3, 1999.

d. *Applicant:* Yadkin, Inc.

e. *Name of Project:* Yadkin Project.

f. *Location:* The Project is located on lower Yadkin stretch of the Yadkin-Pee Dee River in Stanly, Montgomery, Davidson, and Rowan Counties, North Carolina. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* B. Julian Polk, Yadkin, Inc., P.O. Box 576, Highway 740, Building 4, Badin, NC 28009–0576. Tel: (704) 422–5617.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula, Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 30 days from the issuance date of this notice.

Please include the project number (2197–038) on any comments or motions filed.

k. *Description of Filing:* Yadkin, Inc. proposes to perform upgrades of the hydroelectric generation units at three of the project developments. The proposed activities consist of replacing the existing turbine runners and rewinding of the generators. The proposed upgrades would increase the net project capacity from 209.52 MW to 216.38 MW, and the net hydraulic capacity of the project would increase from 40,095 cfs to 41,085 cfs.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–1947 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions to Intervene, and Protests

January 21, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Continued Temporary Variance.

b. *Project No:* 2584–027.

c. *Date field:* January 10, 2000.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 26 Project.

f. *Location:* On the Genesee River, in the City of Rochester, Monroe County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Hugh J. Ives, Rochester Gas and Electric, 89 East Ave., Rochester, NY 14649–0001, (716) 724–8209.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for filing comments, motions to intervene and protest:* 20 days from the issuance date of this notice. Please include the project number (2584–027) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, 20426.

k. *Description of Application:* The New York State Canal Corporation (NYSCC), which operates the Court Street Dam at the Station 26 Project as well as the canal system of which the dam is an integral part, intends to perform maintenance on the river floodwall approximately one-quarter mile upstream from the dam for a three to four month period. The NYSCC will repair some 1,500 feet of concrete floodwall, recreational enhancements, and public assess improvements. The work is to be completed by April 15, 2000. The NYSCC has determined that the most effective way to repair the floodwall is to maintain the impoundment at 510.6 feet continuously. The NYSCC has requested the licensee hold the reservoir elevation at the 510.6 foot elevation using the project turbine, when possible, in lieu of the Court Street Dam spillgates.

Article 401 of the project license requires the licensee, in part, to maintain the impoundment level during the non-navigation season such that no more than half of each day shall such level be below 511.6 feet and at no time shall it be below 510.6 feet. Accordingly, the licensee requests a variance to article 401 through April 15, 2000, to allow it to expand, from 12 hours per day to 24 hours per day, its ability to hold the impoundment level at 510.6 feet to facilitate the work being done by the NYSCC. The licensee continues to consult with the NYSCC, the New York State Department of Environmental Conservation, and the U.S. Fish and Wildlife Service.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–1949 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions to Intervene, and Protests

January 21, 2000.

Take notice that the folloiwng application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

b. *Project No.:* 9401–051.

c. *Date Filed:* December 15, 1999.

d. *Applicant:* Mt. Hope Water Power Project, LLP.

e. *Pursuant to:* Public Law 106–121 (1999).

f. *Applicant Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037, (202) 783–4141.

g. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us

h. *Deadline for filing comments and or motions:*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project numbers (9401–051) on any comments or motions filed.

i. *Description of the Request:* The licensee has requested that the deadline for commencement of construction of the Mt. Hope Pumped Storage Hydroelectric Project be extended for two additional years. The deadline to commence project construction for FERC Project No. 9401 would be extended to August 3, 2003. The deadline for completion of construction

for FERC Project No. 9401 would be extended to August 3, 2009.

j. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http:www.ferc.fed.us/online/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

k. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–1950 Filed 1–26–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6530–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources (NSPS) Secondary Lead Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for New Stationary Sources (NSPS) Secondary Lead Smelters, 40 CFR part 60, subpart L; OMB No. 2060–0080; EPA No. 1128.06; expiration date is March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 28, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1128.06. For technical questions about the ICR, please contact Deborah Thomas at 202–564–5041.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Secondary Lead Smelters, Part 60, Subpart L; OMB Control No. 2060–0080; EPA ICR No.1128.06, expiration date March 31, 2000. This is a request for extension of a currently approved collection.

Abstract: New Source Performance Standards for Secondary Lead Smelters were developed to ensure that air emissions from these facilities do not cause ambient concentrations of lead and non-lead particulate matter to exceed levels that may reasonably be anticipated to endanger public health and the environment. Owners or operators of secondary lead smelters subject to NSPS must notify EPA of construction, reconstruction, modification, anticipated and actual startup dates, and results of performance tests. These facilities must also maintain records of performance test results, startups, shutdowns, and malfunctions. The control of emissions of particulate matter from secondary lead smelters requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of lead and non-lead particulate matter from secondary lead smelters are the result of operation of pot furnaces, blast furnaces, and reverberatory furnaces.

These standards rely on the capture and collection of particulate matter by particulate emission control devices such as an electrostatic precipitator or scrubber. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Reporting and recordkeeping requirements on the part of the respondent are mandatory under section 114 of the Clean Air Act as amended and 40 CFR part 60.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B-Confidentiality of Business Information (See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter

15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 16,1999 (64 FR 44518); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of Secondary Lead Smelters

Estimated Number of Respondents: 23.

Frequency of Response: 1/yr/respondent.

Estimated Total Annual Hour Burden: 35.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1128.06 and OMB No. 2060–0080 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–1962 Filed 1–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6530–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NSPS Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, and NSPS Natural Gas Processing: SO_2 Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS, 40 CFR part 60, subpart KKK, Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, and NSPS, 40 CFR part 60, subpart LLL, Standards of Performance for Natural Gas Processing: SO_2 Emissions. The OMB Control Number is 2060–0120 and expiration date 03/31/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 28, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1086.06. For technical questions about the ICR, contact Dan Chadwick at (202) 564–7054.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart KKK Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, and NSPS Subpart LLL Standards of Performance for Natural Gas Processing: SO_2 Emissions. (OMB Control No. 2060–0120; EPA ICR No. 1086.06) expiring 03/31/00. This is a request for extension of a currently approved collection.

Abstract: Owners/operators of Onshore Natural Gas Processing Plants subject to subparts KKK and LLL must notify EPA of construction, modifications, startups, shutdowns, malfunctions, and initial performance tests dates and results. Owners/operators subject to these standards must make one-time-only reports of notification of the date of construction or reconstruction and notification of the anticipated and actual startup dates. Owner/operators subject to these standards must also report on the notification of any physical or operational change that may cause emission increases and are also required to maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of an affected facility, or any period in which the monitoring system is inoperable.

Facilities subject to subpart KKK must provide information on leaks, including the date when the leak was detected, the repair method used and other pertinent details. Facilities subject to subpart LLL must submit information on excess SO_2 emissions. Large facilities subject to subpart LLL must install, calibrate, maintain and operate SO_2 Continuous Emission Monitors. These facilities would also have to submit the results of initial performance tests. Owners/operators of all affected facilities must report semiannually on the operating information contained in the records. This information is collected and used to ensure that the standards for VOC and SO_2 emissions are being met.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 08/16/99 (64 FR 44518) and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 102 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of natural gas processing plants (KKK) and Owners/operators for Onshore Natural Gas Processing (LLL).

Estimated Number of Respondents: 558.

Frequency of Response: Semiannually or as needed.

Estimated Total Annual Hour Burden: 114,036 hours.

Estimated Total Annualized Capital, OM Cost Burden: $74,100.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1086.06 and OMB Control No. 2060–0120 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–1963 Filed 1–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6530–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: "Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products," EPA No. 1764.02, OMB No. 2060–0348, expires March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1764.02. For technical questions about the ICR contact Bruce Moore at 919–541–5460.

SUPPLEMENTARY INFORMATION:

Title: National Volatile Organic Compound Emission Standards for Consumer Products, OMB No. 2060–0348, EPA No. 1764.02, expires March 31, 2000. This is a request for an extension of a currently approved collection.

Abstract: The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C—National Volatile Organic Compound Emission Standards for Consumer Products. The EPA is required under section 183(e) of the Clean Air Act (Act) to regulate VOC emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation on March 23, 1995 (60 FR 15264). Consumer products were included in Group I of the list, and standards were promulgated on September 11, 1998.

In the Administrator's judgment, VOC emissions from the use of consumer products contribute to ground-level ozone formation in ozone non-attainment areas.The reports and recordkeeping activities required under the rule enable the EPA to determine whether or not consumer products manufactured or imported for use in the U.S. meet the VOC content limits. Minimal reporting is required. Initial reporting consists of information needed by EPA to (1) identify the universe of manufacturers and importers subject to the rule; (2) determine the date of manufacture of products; (3) ascertain the location of formulation and batch records for purposes of compliance assurance; and (4) have on record a responsible company official as a primary contact. Notification of the use of revised date codes enables EPA to have access to the most current codes. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR, chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 18, 1999 (64 FR 32856); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 79 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, distributors, and importers of consumer products.

Estimated Number of Respondents: 375.

Frequency of Response: Initial notification and on occasion.

Estimated Total Annual Hour Burden: 29,695 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any

suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1764.02 and OMB Control No. 2060–0348 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–1964 Filed 1–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6530–1]

Acid Rain Program; Notice of the Filing of Petitions for Administrative Review and Notice of Final Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the filing of petitions for administrative review and notice of final action.

SUMMARY: The purpose of this document is to announce the filing, with EPA's Environmental Appeals Board (EAB), of two petitions for review by UtiliCorp United, Inc. (UCU) of two decisions issued by EPA's Office of Air and Radiation, Acid Rain Division, and to announce the final agency action regarding one of these decisions. These decisions and petitions for review concern a request submitted by UCU for approval of a method for apportionment of the nitrogen oxide (NO_X) emissions from a common stack at UCU's Sibley, Missouri facility.

DATES: The EAB issued its Order Consolidating Petitions For Review, Denying Request For Interim Relief, And Denying Review Of Petition No. 99–3 on December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-Advisor, Clean Air Markets Division (formerly called "Acid Rain Division") (6204J), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at (202) 564–9151.

SUPPLEMENTARY INFORMATION: On November 16, 1999, UCU filed, with the EAB, a petition for review (CAA Appeal No. 99–2) of a decision by EPA's Office of Air and Radiation, Acid Rain Division, dated October 15, 1999, disapproving UCU's petition for approval of a method for apportionment of (NO_X emissions from a common stack at UCU's facility located at Sibley, Missouri. The appeal raises issues regarding the requirement of 40 CFR 75.17(a)(2)(iii). On December 17, 1999, UCU filed, with the EAB, another petition for review (CAA Appeal No. 99–3) of a second decision issued by EPA's Office of Air and Radiation, Acid Rain Division, dated November 19, 1999, denying UCU's November 10, 1999 request for a stay of 40 CFR 75.17(a)(3)(iii) with respect to Unit 3 at UCU's Sibley, Missouri, facility. Both of these appeals were filed under 40 CFR part 78 of the Acid Rain regulations, and both petitions for review requested evidentiary hearings. On December 29, 1999, the EAB issued an order consolidating the two petitions for review, denying UCU's request for interim relief in CAA Appeal No. 99–2, and denying review of CAA Appeal No. 99–3. Motions for leave to intervene in the remaining administrative proceeding regarding CAA Appeal No. 99–2 under 40 CFR 78.11 must be filed by February 11, 2000 with the EAB.

Pursuant to 40 CFR 78.1(a)(2), for purposes of judicial review, final agency action occurs when a decision appealable under part 78 is issued and the procedure for appealing the decision are exhausted. This notice, being published today in the **Federal Register**, constitutes notice of the final agency action denying UCU's request for interim relief and review of CAA Appeal No. 93–3. If available, judicial review of this decision under section 307(b)(1) of the Clean Air Act (Act) may be brought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which today's notice is published in the **Federal Register**. Under section 307(b)(2) of the Act, this decision shall not be subject to later judicial review in any civil or criminal proceeding for enforcement.

Dated: January 20, 2000.

Brian J. McLean,

Director, Clean Air Markets Division.

[FR Doc. 00–1961 Filed 1–26–00 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–9]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting; change of previously announced meeting times.

SUMMARY: The United States Environmental Protection Agency is announcing a change in the starting and ending times for the 2000 Winter Meeting of the Ozone Transport Commission. This meeting is for the Ozone Transport Commission to deal with appropriate matters within the Ozone Transport Region in the Northeast and Mid-Atlantic States, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on January 27, 2000 from 8:30 a.m. to noon. The times are a revision to those announced previously.

ADDRESSES: The meeting will be held at the Hilton Washington & Towers, 1919 Connecticut Avenue NW, Washington, DC; (202) 483–3000.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2900.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Bruce S. Carhart, Ozone Transport Commission, 444 North Capitol Street N.W., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: ozone@sso.org; website: http://www.sso.org/otc.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Ozone Transport Commission is to deal with ground level ozone formation, transport, and control within the OTR.

The purpose of this notice is to announce again that this Commission will meet on January 27, 2000. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda are available from Lisa Sims of the OTC office (202) 508–3840 (by e-mail: ozone@sso.org or via our website at http://www.sso.org/otc). The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under sections 110 and 126 of the Clean Air Act, to evaluate the potential for additional emission reductions through new motor vehicle emission standards, and to discuss market-based programs to reduce pollutants that cause ozone.

Dated: January 20, 2000.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 00–1960 Filed 1–26–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNCIATIONS COMMISSION

[CS Docket No. 99–230, FCC 99–418]

Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is in compliance with the Communications Act of 1934, as amended, which requires the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming. On December 30, 1999, the Commission adopted its sixth annual report ("*1999 Report*"). The *1999 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's prior reports.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or Nancy Stevenson, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *1999 Report* in CS Docket No. 99–230, FCC 99–418, adopted December 30, 1999, and released January 14, 2000. The complete text of the *1999 Report* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. In addition, the complete text of the *1999 Report* is available on the Internet at http://www.fcc.gov/csb/csrptpg.html.

Synopsis of the 1999 Report

1. The Commission's *1999 Report* to Congress provides information about the cable television industry and other multichannel video programming distributors ("MVPDs"), including direct broadcast satellite ("DBS") service, home satellite dishes ("HSDs"), wireless cable systems using frequencies in the multichannel multipoint distribution service ("MMDS") and instructional television fixed service ("ITFS"), private cable or satellite master antenna television (SMATV") systems, as well as broadcast television service. The Commission also considers several other existing and potential distributors of and distribution technologies for video programming, including the Internet, home video sales and rentals, local exchange telephone carriers ("LECs"), and electric and gas utilities.

2. The Commission further examines the market structure and issues affecting competition, including horizontal concentration, vertical integration, and technical advances. The *1999 Report* addresses competitors serving multiple dwelling unit buildings (MDUs") and evidence of competitive responses by industry players that face competition from other MVPDs. The *1999 Report* is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a *Notice of Inquiry* (64 FR 36013) in this docket.

3. In the *1999 Report*, the Commission concludes that competitive alternatives and consumer choices continue to develop. Cable television still is the dominant technology for the delivery of video programming to consumers in the MVPD marketplace, although its share continues to decline. As of June 1999, 82% of all MVPD subscribers received their video programming from a local franchised cable operator, compared to 85% a year earlier. There has been an increase in the total number of subscribers to noncable MVPDs, most of which is attributable to the continued growth of DBS. However, there have been declines in the number of subscribers and market shares of MVPDs using other distribution technologies. Significant competition from local telephone companies has not generally developed even though the Telecommunications Act of 1996 ("1996 Act") removed some barriers to LEC entry into the video marketplace.

4. *Key Findings*:

• *Industry Growth*: A total of 80.9 million households subscribed to multichannel video programming services as of June 1999, up 5.5% over the 76.6 million households subscribing to MVPDs in June 1998. This subscriber growth accompanied a 3.2 percentage point increase in multichannel video programming distributors' penetration of television households to 81.4% as of June 1999. The number of cable subscribers continued to grow, reaching 66.7 million as of June 1999, up almost 2% over the 65.4 million cable subscribers in June 1998. The total number of noncable MVPD households grew from 11.2 million as of June 1998 to 14.2 million homes as of June 1999, an increase of 26%. Noncable's share of total MVPD subscribers continued to grow, constituting 18% of all multichannel video subscribers as of June 1999, up from the 15% reported last year. The greatest growth of noncable MVPD subscribers was to DBS service. Between June 1998 to June 1999, the number of DBS subscribers grew from 7.2 million households to 10.1 million households. DBS subscribers now represent 12.5% of all MVPD subscribers, up from 9.4% a year earlier.

• *Convergence of Cable and Other Services*: The 1996 Act removed barriers to LEC entry into the video marketplace in order to facilitate competition between incumbent cable operators and telephone companies. It was expected that local exchange telephone carriers would begin to compete in video delivery markets, and cable operators would begin to provide local telephone exchange service. Since the *1998 Report*, there has been an increase in the amount of video programming provided to consumers by telephone companies, although the expected technological convergence that would permit use of telephone facilities for video service has not yet occurred. In addition, only a limited number of cable operators have begun to offer telephone service, and such service uses traditional telephone

switching equipment rather than cable facilities. However, cable operators are beginning to develop and test Internet Protocol ("IP") telephony. Since the *1998 Report*, the most significant convergence of service offerings has been the pairing of Internet service with other service offerings. There is evidence that a wide variety of companies throughout the communications industries are attempting to become providers of multiple services, including video, voice, and data services. When compared with other communications industry segments that currently provide, or plan to provide, such combinations of services, we find that the cable television industry holds a relatively small market share. For example, in 1998, the total revenue for these segments of the communications industry (i.e., cable television, MMDS, DBS, television broadcasting, long distance telephone, and local telephone) was $334 billion. Of this total, cable operators represented 12.3% of the communications industry's revenues.

- *Promotion of Entry and Competition*: Noncable MVPDs continue to report that regulatory and other barriers to entry limit their ability to compete with incumbent cable operators and to thereby provide consumers with additional choices. Noncable MVPDs continue to experience some difficulties in obtaining programming from both vertically integrated cable programmers and unaffiliated programmers who continue to make exclusive agreements with cable operators. In MDUs, potential entry may be discouraged or limited because an incumbent video programming distributor has a long-term and/or exclusive contract. Other issues also remain with respect to how, and under what circumstances, existing inside wiring in MDUs may be made available to alternative video service providers. In addition, consumers have historically reported that the primary disadvantage of DBS service is its lack of local broadcast signals. On November 29, 1999, a revised Satellite Home Viewer Act ("SHVA") was signed into law, permitting satellite providers to distribute local broadcast signals within their local television markets. The Commission hopes that the revised SHVA will have a significant and positive effect on MVPD competition, and we plan to aggressively implement the new SHVA in order to facilitate consumer choice in the MVPD marketplace.
- *Horizontal Concentration*: Consolidations within the cable industry continue as cable operators acquire and trade systems. The seven largest operators now serve almost 90% of all U.S. cable subscribers. However, in terms of one traditional economic measure, the Herfindahl-Hirschman Index or HHI, national concentration among the top MVPDs has declined since last year. DBS operators DirecTV and EchoStar rank among the ten largest MVPDs in terms of nationwide subscribership along with eight cable multiple system operators ("MSOs"). As a result of acquisitions and trades, cable MSOs have continued to increase the extent to which their systems form regional clusters. Currently, 40.4 million of the nation's cable subscribers are served by systems that are included in regional clusters. By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony.
- *Vertical Integration*: The number of satellite-delivered programming networks has increased from 245 in 1998 to 278 in 1999. Vertical integration of national programming services between cable operators and programmers, measured in terms of the total number of services in operation, declined from last year's total of 39% to 36% this year, continuing a five year trend. However, in 1999, one or more of the top six cable MSOs held an ownership interest in each of 101 vertically integrated national programming services. The *1999 Report* also identifies 75 regional networks, of which 30 are regional or local news networks and 26 are sports channels, many owned at least in part by MSOs
- *Technological Advances*: Technological advances that will permit MVPDs to increase both quantity of service (i.e., an increased number of channels using the same amount of bandwidth or spectrum space) and types of offerings (e.g., interactive services) continue. In particular, cable operators and other MVPDs continue to develop and deploy advanced technologies, especially digital compression, in order to deliver additional video options and other services (e.g., data access, telephony) to their customers. To access these wide ranging services, consumers use "navigation devices." The cable industry reports that it is making steady progress towards the development of specifications to separate out security and non-security functions for the interoperability of digital set-top boxes by July 1, 2000, as required by the Commission's rules. Interface requirements and a certification process for the high-speed cable modems needed to access data services have also been developed. When these processes are complete, additional competition in the market for equipment used by subscribers should be possible.

Ordering Clauses

5. This *1999 Report* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

6. The Office of Legislative and Intergovernmental Affairs shall send copies of the *1999 Report* to the appropriate committees and subcommittees of the United States House of Representatives and United States Senate.

7. The proceeding in CS Docket No. 99–230 is terminated.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1861 Filed 1–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. David William Flemming, Litchfield, Illinois; to retain voting shares of LBT Bancshares, Inc., Litchfield, Illinois, and thereby indirectly retain voting shares of The First National Bank of Mount Auburn, Mount Auburn, Illinois, and Bank and Trust Company, Litchfield, Illinois.

Board of Governors of the Federal Reserve System, January 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1917 Filed 1–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Ohio Legacy Corp., Wooster, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Ohio Legacy Bank, National Association, Wooster, Ohio.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. The Leaders Group, Inc., Oak Brook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Leaders Bank (in organization), Oak Brook, Illinois.

2. Woodland Financial Group L.L.C., Oak Brook, Illinois; to become a bank holding company by acquiring 40 percent of the voting shares of The Leaders Group, Inc., Oak Brook, Illinois, and thereby indirectly acquire The Leaders Bank (in organization), Oak Brook, Illinois.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Scottsdale Bancorp, Woodbury, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Scottsdale Community Bank (in organization), Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, January 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1918 Filed 1–26–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting on February 10–11, 2000.

Board Meeting Summary: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a meeting on Thursday, February 10, and Friday, February 11, from 9:00 to 4:30 P.M. room 7C13, the Elmer Staats Briefing Room, of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss:

- The process for developing Technical Bulletins.
- National Defense PP&E.
- Major Acquisition Programs.
- Amendments to Direct Loans and Loan Guarantee Accounting.
- Other topics as needed.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 6814, Washington, D.C. 20548, or call (202) 512–0730.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: January 24, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–1981 Filed 1–26–00; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency information collection activities; proposed collections; comment request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. HHS Acquisition Regulations—HHSAR Subpart 315 Solicitations and Receipt of Proposals and Quotations—0990–0139—Extension with no change—Subpart 315.4 is needed to ensure consistency in all Departmental solicitations and to ensure that all solicitations describe all of the information which an offeror would need to submit an acceptable proposal. Respondents: State and local government, Businesses or other for-profit organizations, non-profit institutions, small businesses; Total Number of Respondents: 6,645; Frequency of Response: one time; Average Burden per Response: 2 hours; Estimated Annual Burden 13,290 hours.

Send comments to Cynthia Agnes Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW.,

Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: January 18, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–1884 Filed 1–26–00 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

NAME: National Committee on Vital and Health Statistics (NCVHS).

TIME AND DATE: 1:30–3:30 EST, February 2, 2000.

PLACE: Conference Call, Participants Dial-in Number: 1–888–422–7105, Participants Code: 348362.

STATUS: Open.

PURPOSE: During this conference call, the Committee will discuss the Notice of Proposed Rule Making (NPRM) issued by HHS on Standards for Privacy of Individually Identifiable Health Information and review draft comments on the NPRM developed by the Subcommittee on Privacy.

NOTICE: This conference call is open to the public using the participants' dial-in telephone number and participants' code, but access may be limited by the number of available telephone lines.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Gail Horlick, M.S.W., J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Program Analyst, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E–62, Atlanta, Georgia 30333, telephone (404)–639–8345; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where further information will be posted when available.

Dated: January 19, 2000.

James Scanlon,

Director, Division of Data Policy Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–1885 Filed 1–26–00; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0852]

Determination of Regulatory Review Period for Purposes of Patent Extension; Maxalt®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Maxalt® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Maxalt® (rizatriptan benzoate). Maxalt® is indicated for the acute treatment of migraine attacks, with or without aura in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Maxalt® (U.S. Patent No. 5,298,520) from Merck & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Maxalt® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Maxalt® is 2,099 days. Of this time, 1,734 days occurred during the testing phase of the regulatory review period, while 365 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* October 1, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 1, 1992.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* June 30, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for Maxalt® (NDA 20–864) was initially submitted on June 30, 1997.

3. *The date the application was approved:* June 29, 1998. FDA has

verified the applicant's claim that NDA 20–864 was approved on June 29, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 153 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1865 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0118]

Determination of Regulatory Review Period for Purposes of Patent Extension; Arava®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Arava® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Arava® (leflunomide). Arava® is indicated in adults for the treatment of active rheumatoid arthritis to reduce signs and symptoms and to retard structural damage as evidenced by X-ray erosions and joint space narrowing. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Arava® (U.S. Patent No. 4,284,786) from Hoechst Aktiengesellschaft, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 17, 1999, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Arava® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Arava® is 2,032 days. Of this time, 1,908 days occurred during the testing phase of the regulatory review period, while 124 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* February 18, 1993. The applicant claims February 14, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 18, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* May 10, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Arava® (NDA 20–905) was initially submitted on May 10, 1998.

3. *The date the application was approved:* September 10, 1998. FDA has verified the applicant's claim that NDA 20–905 was approved on September 10, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,110 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition

must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1867 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0860]

Determination of Regulatory Review Period for Purposes of Patent Extension; Plavix®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Plavix® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Plavix® (clopidogrel bisulfate). Plavix® is indicated for the reduction of atherosclerotic events (myocardial infarction, stroke, and vascular death) in patients with atherosclerosis documented by recent stroke, recent myocardial infarction, or established peripheral arterial disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Plavix® (U.S. Patent No. 4,847,265) from Sanofi Pharmaceuticals, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 16, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Plavix® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Plavix® is 2,755 days. Of this time, 2,551 days occurred during the testing phase of the regulatory review period, while 204 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* May 5, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 5, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* April 28, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for Plavix® (NDA 20–839) was initially submitted on April 28, 1997.

3. *The date the application was approved:* November 17, 1997. FDA has verified the applicant's claim that NDA 20–839 was approved on November 17, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,374 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1868 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0782]

Determination of Regulatory Review Period for Purposes of Patent Extension; Refludan®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Refludan® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Refludan® (lepirudin). Refludan® is indicated for anticoagulation in patients with heparin-induced thrombocytopenia and associated thromboembolic disease in order to prevent further thromboembolic complications. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Refludan® (U.S. Patent No. 5,180,668) from Hoechst AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Refludan® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Refludan® is 1,149 days. Of this time, 718 days occurred during the testing phase of the regulatory review period, while 431 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: January 14, 1995. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 14, 1995.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: December 31, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Refludan® (NDA 20–807) was initially submitted on December 31, 1996.

3. The date the application was approved: March 6, 1998. FDA has verified the applicant's claim that NDA 20–807 was approved on March 6, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 777 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1870 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–1114]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ziagen™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ziagen™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food

and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ziagen™ (abacavir). Ziagen™ is indicated for the treatment of HIV–1 infection. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ziagen™ (U.S. Patent No. 5,034,394) from Glaxo Wellcome, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 10, 1999, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Ziagen™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ziagen™ is 1,632 days. Of this time, 1,455 days occurred during the testing phase of the regulatory review period, while 177 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* July 1, 1994. The applicant claims June 28, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 1, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* June 24, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Ziagen™ (NDA 20–977) was initially submitted on June 24, 1998.

3. *The date the application was approved:* December 17, 1998. FDA has verified the applicant's claim that NDA 20–977 was approved on December 17, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 906 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 25, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1871 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0853]

Determination of Regulatory Review Period for Purposes of Patent Extension; GlucaGen®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GlucaGen® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug

products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GlucaGen® (glucagon (rDNA origin)). GlucaGen® is indicated for the treatment of hypoglycemia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GlucaGen® (U.S. Patent No. 4,826,763) from Novo Nordisk A/S, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 27, 1999, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GlucaGen® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GlucaGen® is 2,569 days. Of this time, 2,296 days occurred during the testing phase of the regulatory review period, while 273 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* June 12, 1991. The applicant claims June 13, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 12, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* September 23, 1997. The applicant claims September 18, 1997, as the date the new drug application (NDA) for GlucaGen® (NDA 20–918) was initially submitted. However, FDA records indicate that NDA 20–918 was submitted on September 23, 1997.

3. *The date the application was approved:* June 22, 1998. FDA has verified the applicant's claim that NDA 20–918 was approved on June 22, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,423 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 21, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1872 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0119]

Determination of Regulatory Review Period for Purposes of Patent Extension; Sentinel Model 2000/2010®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Sentinel Model 2000/2010® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Sentinel Model 2000/2010®. Sentinel Model 2000/2010® is indicated for use in patients with documented ventricular fibrillation and/or ventricular tachycardia, or in

patients who are at high risk of sudden cardiac death. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Sentinel Model 2000/2010® (U.S. Patent No. 5,405,363) from Angieon Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 9, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Sentinel Model 2000/2010® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Sentinel Model 2000/2010® is 1,030 days. Of this time, 603 days occurred during the testing phase of the regulatory review period, while 427 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* October 26, 1995. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective on September 28, 1995. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on October 26, 1995, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* June 19, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for Sentinel Model 2000/2010® (PMA P970024) was initially submitted June 19, 1997.

3. *The date the application was approved:* August 19, 1998. FDA has verified the applicant's claim that PMA P970024 was approved on August 19, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 132 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1873 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–1222]

Determination of Regulatory Review Period for Purposes of Patent Extension; Vitravene™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Vitravene™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Vitravene™ (fomivirsen sodium). Vitravene™ is indicated for the local treatment of cytomegalovirus (CMV) retinitis in patients with acquired immunodeficiency syndrome who are intolerant or have a contraindication to other treatments for CMV retinitis or who were insufficiently responsive to previous treatment(s) for CMV retinitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Vitravene™ (U.S. Patent No. 4,689,320) from Isis Pharmaceuticals, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 17, 1999, FDA advised the Patent and

Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Vitravene™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Vitravene™ is 1,738 days. Of this time, 1,598 days occurred during the testing phase of the regulatory review period, while 140 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* November 24, 1993. The applicant claims October 25, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 24, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* April 9, 1998. The applicant claims April 6, 1998, as the date the new drug application (NDA) for Vitravene™ (NDA 30–961) was initially submitted. However, FDA records indicate that NDA 30–961 was submitted on April 9, 1998.

3. *The date the application was approved:* August 26, 1998. FDA has verified the applicant's claim that NDA 30–961 was approved on August 26, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 954 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1874 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0837]

Determination of Regulatory Review Period for Purposes of Patent Extension; Azopt™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Azopt™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Azopt™ (brinzolamide). Azopt™ is indicated for the treatment of elevated intraocular pressure in patients with ocular hypertension or open-angle glaucoma. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Azopt™ (U.S. Patent No. 5,378,703) from Alcon Laboratories, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Azopt™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Azopt™ is 2,049 days. Of this time, 1,620 days occurred during the testing phase of the regulatory review period, while 429 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* August 23, 1992. The applicant claims July 24, 1992, as the date the investigational new drug

application (IND) became effective. However, FDA records indicate that the IND effective date was August 23, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* January 28, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for Azopt™ (NDA 20–816) was initially submitted on January 28, 1997.

3. *The date the application was approved:* April 1, 1998. FDA has verified the applicant's claim that NDA 20–816 was approved on April 1, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 579 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 27, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 25, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–1175 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Quality of Life Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Quality of Life Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 10, 2000, 8 a.m. to 4 p.m.

Location: Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Quality of Life Subcommittee of the Oncologic Drugs Advisory Committee will discuss issues related to the study of quality of life for patients enrolled in cancer trials. Specific potential areas for discussion include definition of patient centered outcomes, clinical significance and interpretation of study results, and approaches to the statistical analysis of data.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 3, 2000. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and between approximately 12:45 p.m. and 1:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 3, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by February 3, 2000, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–1866 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5333]

Plans to Develop Guidance on Submitting an Archival Copy of an ANDA in Electronic Format; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Office of Generic Drugs (OGD), within its Center for Drug Evaluation and Research, is announcing plans to develop guidance on submitting an archival copy of a complete abbreviated new drug application (ANDA) in electronic format. OGD has encouraged the electronic submission of some types of data on a voluntary basis since 1997. However, these submissions are not archivable and are made in addition to a complete paper submission. OGD plans to expand its electronic data submission program to include all parts of the ANDA, so that the archivable electronic submission can replace the paper submission as the ANDA of record. OGD is soliciting comments from the public on its current program so it can consider these comments as it develops guidance for industry on the submission of complete, archivable ANDA's in electronic format. A draft guidance will be developed and made available for public comment. The ANDA electronic submission guidance will be one in a series of guidances the agency is developing to enable sponsors to submit archivable regulatory submissions in electronic format.

DATES: Submit written comments by March 27, 2000. General comments are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the guidance describing OGD's current program entitled "Preparing Data for Electronic Submission of ANDA's" are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Additional information can be found on the Internet at http://www.fda.gov/cder/OGD.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Cook, Center for Drug Evaluation and Research (HFA–358), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5683.

SUPPLEMENTARY INFORMATION: As part of the Prescription Drug User Fee Act, as amended by the Food and Drug Administration Modernization Act of 1997, the agency stated its plans to develop and update its information management capabilities to allow electronic submissions by 2002. In the **Federal Register** of January 28, 1999 (63 FR 4433 and 4432), the agency announced the availability of two guidances for industry entitled "Providing Regulatory Submissions in Electronic Format—General Considerations" and "Providing Regulatory Submissions in Electronic Format—NDA's." These guidances are the first in a series of guidances for industry on submitting archivable regulatory submissions in electronic format. In the 1999 guidance on general considerations, the agency stated that guidance would be forthcoming on other submission types, including investigational new drug applications, ANDA's, and product licensing applications. As part of that effort, OGD is announcing plans to develop guidance on submitting an archival copy of an ANDA in electronic format. As soon as a draft guidance has been developed, it will be made available for public comment.

OGD has accepted submission of some types of electronic data in ANDA's since 1997. During 1998, OGD received 32 electronic submissions for bioequivalence data and 44 electronic submissions for chemistry, manufacturing, and control data representing 58 distinct ANDA's from 24 different companies. The OGD program has been voluntary with the paper submission serving as the archivable regulatory basis for review decisions. OGD plans to expand its electronic data submission program to include all parts of the ANDA, so that the archivable electronic submission can replace the paper submission as the ANDA of record.

Submission of an ANDA in electronic format is expected to yield many benefits to industry and FDA, including a more consistent submission, a more consistent and rapid review, and, in the future, reduction in archiving and storage space.

Electronic data files described in existing agency guidance and in more detail on the OGD program's Internet site will form the basis for paperless ANDA submissions. ANDA information not contained in the structured data submission (*e.g.*, narratives and graphics) will be submitted in Portable Document Format (PDF), consistent with agency policy recommendations about filing PDF text and other files explained in the 1999 general considerations guidance.

Pending completion of OGD's guidance on submitting archivable ANDA's in electronic format and in the absence of archiving capability, a complete paper ANDA submission is still required.

FDA is seeking input from interested parties on its current program for submitting electronic data to OGD. The agency would like to consider the public's comments as it develops guidance for industry on electronic submission of archivable ANDA's. A guidance for industry entitled "Preparing Data for Electronic Submission of ANDA's" describes OGD's current program.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the agency's current program and plans to develop guidance for industry on submitting complete, archivable ANDA's in electronic format. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997), which provides for early public participation in the guidance development process.

Dated: January 11, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1869 Filed 1–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–841–853]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Regulations in 42 CFR, Section 407.18 and 410.1;

Form No.: HCFA–841–853 (OMB# 0938–0679);

Use: A Certificate of Medical Necessity is a standardized format used to communicate information provided by an attending physician and a supplier of medical equipment and supplies. The information is used by carriers to determine the medical necessity of an item or service covered by the Medicare program and being used for the treatment of the Medicare beneficiary's condition. The CMNs being submitted for OMB review are necessary in order for HCFA to

determine the medical necessity of the item or service. The information needed to make this determination requires application of medical judgement that can only be provided by a physician or other clinician who is familiar with the condition of the beneficiary;

Frequency: On occasion;

Affected Public: Business or other for-profit, and Federal Government;

Number of Respondents: 140,000;

Total Annual Responses: 6.8 million;

Total Annual Hours: 1.13 to 1.7 million.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 16, 2000

John Parmigiani,

Manager,

HCFA Office of Information Services Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–1978 Filed 1–26–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–96]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, Section 424.123;

Form No.: HCFA–R–0096 (OMB# 0938–0484);

Use: Payment may be made for certain Part A inpatient hospital services and Part B outpatient hospital services provided in a nonparticipating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. In these situations, the threat to the life or health of the individual necessitates the use of the most accessible hospital available and equipped to furnish such services. Section 3698.4, requires a beneficiary statement indication that after a medical emergency occurred, the beneficiary was traveling between Alaska and another State through Canada by the most direct route without unreasonable delay to acquire medical care;

Frequency: On occasion;

Affected Public: Individuals or Households;

Number of Respondents: 1,100;

Total Annual Responses: 1,100;

Total Annual Hours: 275.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 3, 2000.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–1979 Filed 1–26–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF JUSTICE

Notice of lodging of consent decree pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in *In re: Cuyahoga Equipment Corporation, et al.*, Case Nos. 86–12206, *et al.* (PCB) (Jointly Administered) (Bkcy. S.D.N.Y.), was lodged on January 11, 2000, with the United States Bankruptcy Court for the Southern District of New York. The proposed consent decree would settle a claim asserted in this Chapter 11 bankruptcy proceeding by the United States on behalf of the United States Environmental Protection Agency ("EPA") for reimbursement of post-petition administrative expenses in the nature of environmental response costs incurred with respect to the Publicker Industries, Inc. Superfund Site in Philadelphia, Pennsylvania (the "Publicker Site"). The United States, on behalf of EPA, alleged in a separate federal court action that Cuyahoga Wrecking Corporation and Overland Corporation, two of the debtors involved in the bankruptcy proceeding, were liable as owners and/or operators of the Publicker Site under Section 107(a)(1) and (2) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a)(1), (2) for, *inter alia*, reimbursement of the United States' response costs incurred in connection with the Publicker Site. *United States and Commonwealth of Pennsylvania* v. *Publicker Industries, Inc., et al.*, Civ. No. 90–7984 (E.D. Pa.). Through that litigation and other cost recovery efforts, the United States previously recovered and expects to recover $16.85 million of the $21.4 million in costs it incurred at the Site, leaving unreimbursed costs, exclusive of prejudgment interest, of approximately $4.55 million.

Under the terms of the proposed consent decree, the United States will recover from the Chapter 11 bankruptcy trustee for the debtors' estate the sum of $1 million, to be paid to the EPA Hazardous Substances Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re: Cuyahoga Equipment Corporation, et al.*, DOJ Ref. No. 90–11–3–442. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 100 Church Street, 19th Floor, New York, New York 10007; the Region III Office of the Environmental Protection Agency, located at 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed consent order may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1880 Filed 1–26–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 C.F.C. § 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), on October 26 1999 (64 Fed. Reg. 576), notice was given that a proposed consent decree in *United States* v. *General Electric Company*, Civil Action No. 99–30225–MAP, was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree resolves certain claims against General Electric Company ("GE") under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607; Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973; and Section 309 of the Clean Water Act, 33 U.S.C. § 1319, regarding the disposal, release and/or threat of release of hazardous substances and/or wastes from the GE facility in Pittsfield, Massachusetts and related areas.

Pursuant to requests from interested persons, the Department of Justice extended the period for comments relating to the proposed consent decree to January 25, 2000. 64 Fed. Reg. 68374 (December 7, 1999). The Department of Justice is extending the comment period on final time to and including February 23, 2000. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company*, Civil Action No. 99–30225–MAP, D.J. Ref. 90–11–3–1479, and 90–11–3–1479z.

The proposed consent decree may be examined at either of the following locations: (1) The Springfield Office of the United States Attorney, District of Massachusetts, 1550 Main Street, Suite 310, Springfield, Massachusetts, 01103; or (2) Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203. A copy of the consent decree can be obtained by mail (without attachments) from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the consent decree (without attachments), please enclose a check in the amount of $102.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1878 Filed 1–26–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Koch Industries, Inc. et al.*, Civil Action No. H 95–1118 (S.D. Tx.), and *United States* v. *Koch Industries, Inc. et al.*, Civil Action No. 97 CV 687 B(E) (N.D.Ok.), was lodged with the United States District Court for the Southern District of Texas on January 13, 2000. The proposed Consent Decree settles the civil claims of the United States on behalf of the United States Environmental Protection Agency and United States Coast Guard, and the State of Texas, against Koch Industries, Inc. and a number of subsidiaries ("Koch"), in both of these actions.

In these actions, the United States alleged that, on numerous occasions, Koch violated Section 311(b) and (c) of the Clean Water Act, 33 U.S.C. § 1321(b) and (d), through the discharge of oil and related petroleum products in numerous spills from Koch oil and refined petroleum product pipelines and related pipeline facilities. The State of Texas intervened as co-plaintiff against Koch in both actions.

The proposed Consent Decree requires Koch Industries Inc. to pay $30,000,000 million in civil penalties, $15 million to the United States and $15 million to the State of Texas. The proposed Consent Decree also requires Koch to perform injunctive relief consisting of enhancements to its leak prevention programs on pipelines that are still operated by Koch. Koch will also expend at least $5 million to perform a number of environmental projects under the proposed Consent Decree in Oklahoma, Texas and Kansas, the States most affected by the subject discharges. These environmental projects include: a pipeline safety study; acquisition and preservation of wildlife habitat; other wetlands and water quality enhancement projects; and an emergency planning and response project.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Koch Industries, Inc. et al.*, D.J. Ref. #90–5–1–1–4109.

The Consent Decree may be examined at the following offices: United States Attorney's Office, Southern District of Texas, 910 Travis, Suite 1500, Houston, Texas 770208; United States Attorney's Office, Northern District of Oklahoma, 3900 U.S. Courthouse, 333 W. 4th Street, Tulsa, Oklahoma 74103; United States Environmental Projection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 750202–2733; United States Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, D.C. 20044. In requesting a complete copy with all Attachments, please enclose a check in the amount of $11.75 (25 cents per page reproduction

cost) payable to the Consent Decree Library. In requesting a copy of the Consent Decree without Attachments, please enclose a check in the amount of $10.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 00–1881 Filed 1–26–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in the case of *United States* v. *Las Vegas Paving Corp.*, Civil Action No. CVS–00–0049–DWH–LRL (D. Nevada), was lodged with the United States District Court for the District of Nevada on January 10, 2000.

The proposed consent decree resolves claims that the United States asserted against Las Vegas Paving Corp. (LVPC) in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that LVPC installed and operated five internal combustion engines at its Lone Mountain facility in Clark County, Nevada, in violation of permitting requirements of the Nevada State Implementation Plan for Clark County, and that LVPC installed and operated affected facilities at its Apex facility in Clark County, Nevada, and failed to comply with notification and performance test requirements of the New Source Performance Standards of 40 C.F.R. Part 60 Subparts A, I, and OOO.

The proposed consent decree requires defendant to pay a civil penalty of $82,500. In addition, defendant is required to apply timing retardation to one engine and conduct a source test on that engine, apply for permits for two engines, and cease the operation of three engines unless it applies for permits.

The Department of Justice will accept comments relating to this consent decree for a period of thirty (30) days from the date of this publication. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to the Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Your comments should refer to *United States* v. *Las Vegas Paving Corp.*, Civil Action No. CVS–00–0049–DWH–LRL (D. Nevada), and DOJ No. 90–5–2–1–2220.

You may examine the proposed consent decree at the office of the United States Attorney, District of Nevada, 701 East Bridger Avenue, Suite 600, Las Vegas, Nevada 89101. You may also obtain a copy of the consent decree by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Your request for a copy of the consent decree should refer to *United States* v. *Las Vegas Paving Corp.*, Civil Action No. CVS–00–0049–DWH–LRL (D. Nevada), and DOJ No. 90–5–2–1–2220, and must include a check for $4.25 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1877 Filed 1–26–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Clean Water Act

Notice is hereby given that proposed consent decrees embodying settlements in *United States and State of California* v. *City of Los Angeles and City of Burbank, et al.*, Civ No. 77–3047–HP were lodged on December 30, 1999, with the United States District Court for the Central District of California.

The Third Amended and Supplemental Complaint filed jointly by the United States and the State of California alleged, among other things, that the cities of Los Angeles and Burbank had violated the pretreatment requirements established under section 307(b) of the Clean Water Act, 33 U.S.C. § 1317(b). Specifically, the complaint alleged that the cities failed to adequately implement their required pretreatment programs, in that they failed to ensure that industrial dischargers to the cities' treatment works complied with the discharge and monitoring requirements of the pretreatment regulations. The State pled parallel claims under the California Water Code. The complaint sought civil penalties and injunctive relief against the cities.

The proposed consent decree resolves the liability of the cities for the violations alleged in the complaint. Under the decree, Los Angeles will pay a civil penalty of $236,000 and perform Supplemental Environmental Projects (water reclamation and low-flow storm discharge diversion) projected to cost at least $15 million. Burbank will pay a civil penalty of $137,000 and perform a Supplemental Environmental Project (advanced secondary treatment upgrades) estimated to cost at least $2.1 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States and State of California* v. *City of Los Angeles and City of Burbank, et al.*, DOJ Ref. No. 90–5–1–1–809B.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012; and at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of the Consent Decree may be also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 for the Los Angeles decree and $6.00 for the Burbank decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1879 Filed 1–26–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Resources Conservation and Recovery Act Sections 3008 and 7003 and Safe Drinking Water Act Section 1431

Notice is hereby given that on January 18, 2000, the United States lodged a proposed Consent Decree with the United States District Court for the District of New Mexico in the civil actions consolidated as *Albuquerque* v. *Sparton Technology, Inc.*, No. CV 97 0206. The proposed Consent Decree resolves civil claims in the consolidated actions including the action filed by the United States, *United States* v. *Sparton Technology, Inc.*, No. CV 97 0210 (D.N.M.), related to soil and groundwater contamination emanating from the Sparton Technology, Inc.

("Sparton") manufacturing facility on Coors Road in Albuquerque, NM ("the Facility"). In this action, the United States alleged claims pursuant to Resource Conservation and Recovery Act ("RCRA") Sections 3008 and 7003, 42 U.S.C. §§ 6928 and 6973, and Safe Drinking Water Act ("SDWA") Section 1431, 42 U.S.C. § 300i. Under the proposed Consent Decree, Sparton will perform comprehensive corrective action to address groundwater and soil affected by contamination emanating from the Facility. Sparton will also pay a total of $1.675 million consisting of a civil penalty of $475,000 to be shared by the United States and the New Mexico Environment Department, a payment of natural resources damages of $1 million to the State of New Mexico, and $200,000 to the City of Albuquerque, the New Mexico Environment Department, and the New Mexico Attorney General's Office for litigation costs. The proposed Consent Decree also dismisses with prejudice *Sparton Technology, Inc.* v. *Environmental Protection Agency,* No. CV 97 0981 (D.N.M.)—one of the consolidated actions—and provides the United States a full release with respect to the agency actions challenged by Sparton in that case.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *Albuquerque* v. *Sparton Technology, Inc.,* No. CV 97 0206 (D.N.M.), DOJ No. 90–7–1–875. The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of New Mexico, 200 3rd Street, NW., Ste 900, Albuquerque, New Mexico 87102 and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please enclose a check for reproduction costs for the Consent Decree (at 25 cents per page) in the amount of $153.75, payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–1876 Filed 1–26–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF OF JUSTICE

[AAG/A Order No. 190–2000]

Privacy Act of 1974 as Amended by The Computer Matching and Privacy Protection Act of 1988; Computer Matching Programs

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (Public Law 100–503) (5 U.S.C. 552a(e)(12)). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in computer matching programs with the District of Columbia and seven State agencies (all designated as recipient agencies). These matching activities will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance under the "Systematic Alien Verification for Entitlements (SAVE)" program as required by the Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99–603).[1]

Specifically, the matching activities will permit the following eligibility determinations:

(1) The District of Columbia Department of Employment Services, the New York State Department of Labor, the New Jersey Department of Labor, the Texas Workforce Commission and the Massachusetts Department of Employment and Training will be able to determine eligibility for unemployment compensation;

(2) The California Department of Social Services will be able to determine eligibility status for the TANF program and the Food Stamps program;

(3) The California Department of Health Services will be able to determine eligibility status for the Medicaid program;

The Colorado Department of Human Services [2] will be able to determine the eligibility status for the Medicaid, TANF, and Food Stamps programs.

Section 121(c) of the Immigration Reform and Control Act (IRCA) of 1986 amends Section 1137 of the Social Security and other statutes to require agencies which administer the Federal entitlement benefits programs designated within IRCA as amended, to use the INS verifications system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the database of an INS system of records entitled "Alien Status Verification Index, Justice/INS–009". From its automated records system, any agency (named above) participating in these matching programs may enter electronically into the INS database the alien registration number of the applicant or recipient. This action will initiate a search of the INS database for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS database the following data upon which to determine eligibility; alien registration number, last name, first name, data of birth, country of birth (not nationality), social security number (if available), date of entry, immigration status data, and employment eligibility data. In accordance with 5 U.S.C. 552(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The original effective date of the matching programs (with the exception of the matching agreement with Massachusetts Department of Employment and Training) was January 29, 1990, for which notice was published in the **Federal Register** on December 28, 1989 (54 FR 53382). The original effective date of the Massachusetts matching program was February 28, 1990, for which notice was published in the **Federal Register** on January 29, 1990 (55 FR 2890). The programs have continued to date under the authority of a series of new approvals as required by the CMPPA. The CMPPA provides that based upon approval by agency Data Integrity Boards of a new computer matching agreement, computer matching activities may be conducted for 18 months and, contingent upon specific conditions, may be similarly extended by the Board for an additional year without the necessity of a new agreement. The most recent one-year extension for those

[1] Effective July 1, 1997, IRCA was amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. 104–193, 110 Stat. 2168 (1996). The PRWORA amend IRCA by replacing the reference to "Aid to Families with Dependent Children" (AFDC), with a reference to its successor program, "Temporary Assistance for Needy Families" (TANF). As was the case with AFDC, states and the District of Columbia are required to verify through SAVE that an applicant or recipient is in an eligible alien status for TANF benefits. In addition, Section 840 of the PRWORA makes verification for eligibility under the Food Stamps Program voluntary on the part of the State/District of Columbia agency rather than mandatory.

[2] Identified in previous computer matching notices as the Colorado Department of Social Services.

programs listed in items (1) through (4) above will expire on March 1, 2000, except that the agreement with the Massachusetts Department of Employment and Training will expire on March 12, 2000. The Department's Data Integrity Board has approved new agreements to permit the above-named computer matching programs to continue for another 18 month period from the expiration data or after the notification period (described below) is satisfied, whichever is later.

Matching activities under the new agreements will be effective 30 days after publication of this computer matching notice in the **Federal Register**, or 40 days after a report concerning the computer matching program has been transmitted to the Office of Management and Budget (OMB), and transmitted to Congress along with a copy of the agreements, whichever is later.

The agreements (and matching activities) will continue for a period of 18 months from the effective date, unless, within 3 month prior to the expiration of the agreement, the Data Integrity Board approves a one-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report is being provided to the OMB, and to the Congress together with a copy of the agreements.

Inquiries may be addressed to Kay Brinkmeyer, Program Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: January 21, 2000.

Janis A. Sposato,

Deputy Assistant Attorney General, Law and Policy.

[FR Doc. 00–1987; 1–26–00; 8:45 am]

BILLING CODE 4410-CJ-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 91–38

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of the Prohibited Transaction Class Exemption 91–38. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office or Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 91–38 provides an exemption from the prohibited transaction provisions of ERISA for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund. In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that compliance with the exemption's conditions are taking place, the Department has required that records regarding the exempted transaction be maintained six years.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This existing collection of information should be continued because without the exemption, individuals or entities which are parties in interest of a plan that invests in a bank collective investment fund would not be able to engage in transactions with the collective investment fund, thus creating potential financial hardships for those affected. For the Department to grant an exemption, however, it must ensure that the beneficiaries are protected. It, therefore, included certain conditions in the exemption, and required that records be kept for six years from the date of the transaction so that it can be determined whether these conditions have been met. Without such records, the Department and other interested parties, such as participants, would be unable to effectively enforce the terms of the exemption and ensure user compliance.

Type of Review: Extension of a currently approved collections of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Prohibited Transaction Class Exemption 91–38.

OMB Number: 1210–0082.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated total burden hours: 90.

Respondents: 1,074.

Frequency of Response: On occasion.

Responses: 1,074.

Estimated Total Burden Hours: 5 minutes.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: January 21, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–1973 Filed 1–26–00; 8:45 am]

BILLING CODE 4510-29

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–008)]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective copyright license.

SUMMARY: NASA hereby gives notice that Micro Timer & Controls, Inc., of Gainesville, Florida, has applied for an exclusive copyright license in the United States, Mexico and Colombia in NASA Software entitled "RD–40 Fire Inspection Scheduling and Reporting," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Melanie R. Chan, Licensing & Dual Use Manager, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Licensing and Dual Use Manager, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: January 19, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–1887 Filed 1–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–009)]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective copyright license.

SUMMARY: NASA hereby gives notice that Safeguards International, Inc. of Yonkers, NY, has applied for an exclusive copyright license in the United States, Canada, and Mexico in NASA Software entitled "RD–40 Fire Inspection Scheduling and Reporting," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Melanie R. Chan, Licensing & Dual Use Manager, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Licensing and Dual Use Manager, John F. Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: January 19, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–1888 Filed 1–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–013]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that BARCO, Inc. Display Systems, of Duluth, Georgia, has applied for a coexclusive license to practice the invention disclosed in NASA Case No. MFS–31243–1 entitled "Video Image Stabilization and Registration (VISAR)" which has been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The license will be limited to the field of use of developing and selling electronic hardware products that execute the VISAR algorithm in real-time, or approach real-time execution of VISAR, or are at least on order of magnitude faster in execution of the VISAR algorithm than any VISAR commercial software products. Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812.

DATE: Responses to this notice must be received by March 27, 2000.

FOR FURTHER INFORMATON CONTACT: Mr. Sammy Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

January 20, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–1938 Filed 1–26–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–010]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Phoenix Systems International, Inc. of McDonald, OH, has applied for an exclusive patent license in the United States and Asia to practice the invention disclosed in NASA Case No. KSC–11884 entitled "Process and Equipment for Nitrogen Oxide Waste Conversion to Fertilizer," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Melanie R. Chan, Licensing & Dual Use Manager, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Licensing and Dual Use Manager, John F. Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: January 19, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–1889 Filed 1–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–011]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Strategic Planning Group, Inc. of Castle Rock Colorado, has applied for an exclusive license to practice the inventions disclosed in NASA Case No. MSC–23089–1, "Improved Circularly Polarized Microstrip Antenna," for which a U.S. Patent Application was filed and U.S. Patent No. 5,661,494 entitled, "High Performance Circularly Polarized Microstrip Antenna," NASA Case No. MSC–21982–1, both of which are assigned to the United States of

America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the proposed grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code: HA, Houston, Texas 77058–3696, telephone (281) 483–1003.

Dated: January 20, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–1890 Filed 1–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–012]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that VisiCom, of San Diego, California, has applied for a coexclusive license to practice the invention disclosed in NASA Case No. MFS–31243–1 entitled "Video Image Stabilization and Registration (VISAR)" which has been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The license will be limited to the field of use of developing and selling electronic hardware products that execute the VISAR algorithm in real-time, or approach real-time execution of VISAR, or are at least on order of magnitude faster in execution of the VISAR algorithm than any VISAR commercial software products. Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812.

DATE: Responses to this notice must be received by March 27, 2000.

FOR FURTHER INFORMATON CONTACT: Mr. Sammy Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

January 20, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–1939 Filed 1–26–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 13, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, National Institutes of Health (N1–443–00–2, 2 items, 2 temporary items). Background and general information relating to the Loan Repayment and Scholarship Program, including electronic copies of documents created using electronic mail and word processing. The records include routine program announcements, procedures, instructions to evaluators, lists of evaluators, and compilations of application ratings. This schedule reduces the retention period for recordkeeping copies of these files, which were previously approved for disposal.

2. Department of Labor, Office of Inspector General (N1–174–99–1, 8 items, 8 temporary items). Records relating to audits. Included are audit case files dealing with internal audits of agency programs, grantees, and contractors. Also included is the Audit Information Reporting System that is used to track cases and produce periodic reports as well as electronic copies of documents created using electronic mail and word processing.

3. Environmental Protection Agency, Office of Air and Radiation (N1–412–99–5, 3 items, 3 temporary items). Software programs, electronic data, and supporting documentation associated with the Ann Arbor In-Use Test Data System (IUTD). IUTD is an electronic information system that organizes and stores a variety of mobile source emission test and associated data, primarily on passenger cars and trucks. Input documents and outputs were previously scheduled.

4. Environmental Protection Agency, Office of Air and Radiation (N1–412–99–6, 3 items, 3 temporary items). Software programs, electronic data, and supporting documentation associated with the Trends Report System. This electronic system compiles data from the Aerometric Information Retrieval System (AIRS) to provide data for the annual National Air Quality and Trends Report. Input documents and outputs were previously scheduled. Electronic data from AIRS was previously approved for permanent retention.

5. Environmental Protection Agency, Agency-wide (N1–412–99–17, 2 items, 2 temporary items). Records relating to research and development programs involving multilateral organizations such as the United Nations Environmental Program and the World Health Organization. Files include correspondence, meeting minutes, conference documentation, and electronic copies of records created using electronic mail and word processing.

6. Environmental Protection Agency, Agency-wide (N1–412–99–18, 2 items, 2 temporary items). Records relating to reviews of contracts and grants and to audits. Records include correspondence, reports, and electronic copies of documents created using electronic mail and word processing.

7. Environmental Protection Agency, Agency-wide (N1–412–99–19, 2 items, 2 temporary items). Records relating to strategies and plans for announcing and disseminating agency issuances. The file for each issuance includes the communication/ distribution plan with comments, background documents, transmittal memoranda and letters, press releases, and **Federal Register** reprints. Also included are electronic copies of records created using electronic mail and word processing.

8. Environmental Protection Agency, Superfund Program (N1–412–99–23, 5 items, 2 temporary items). Paper copies of records relating to activities conducted at remedial sites that have been microfilmed. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are microfilm copies of records and paper copies of records that have not been microfilmed.

9. Environmental Protection Agency, Agency-wide (N1–412–99–24, 9 items, 9 temporary items). Criminal investigation case files and criminal enforcement counsel case files including electronic copies of documents created using electronic mail and word processing. Criminal investigation case files include search warrants, interview reports, lab analyses, indictments, plea agreements, and related records. Criminal enforcement counsel case files contain agency legal advice on specific environmental and related criminal cases managed by the agency or the Department of Justice as well as legal advice regarding the development and application of environmental criminal laws, regulations, and policies in general, including the management and functions of the agency's Office of Criminal Enforcement, Forensics, and Training.

10. United States Agency for International Development, Bureau for Administrative Services (N1–286–00–1, 4 items, 4 temporary items). System data, input documents, and documentation for an electronic system used to provide intranet access to agency notices for agency personnel. Also included are electronic copies of input documents created using electronic mail and word processing.

11. United States Agency for International Development, Bureau for Humanitarian Response (N1–286–00–2, 1 item, 1 temporary item). An electronic system used to provide intranet and internet access to current information on registered Private Voluntary Organizations eligible to compete for economic assistance administered by the agency.

12. National Aeronautics and Space Administration, Agency-wide (N1–255–00–1, 18 items, 13 temporary items). Real property records including construction files, work authorization packages, inventory reports, duplicate copies of installation master plans, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are such records as construction files relating to unique facilities, maps and drawings, and installation master plans.

13. National Credit Union Administration, Office of the Inspector General (N1–413–00–1, 7 items, 5 temporary items). Investigations of fraud, abuse, and violations of laws or regulations, external and internal agency audits, and records relating to allegations and complaints. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of case files of significant value and final audit reports are proposed for permanent retention.

14. Federal Energy Regulatory Commission, Agency-wide (N1–138–00–1, 2 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing relating to formal investigations into violations of the Natural Gas Act. Included are electronic copies of such records as orders instituting investigations, responses to orders, motions to dismiss or terminate investigations, applications for rehearing, and petitions to quash subpoenas. Paper copies of these documents were previously approved for disposal.

15. Federal Energy Regulatory Commission, Agency-wide (N1–138–00–2, 2 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing relating to formal investigations. Included are electronic copies of such records as orders instituting investigations, responses to orders, motions to dismiss or terminate investigations, applications for rehearing, petitions to quash subpoenas, and reports on fuel and energy purchase

practices. Paper copies of these documents were previously approved for disposal.

16. Federal Energy Regulatory Commission, Office of Electric Power Regulation (N1–138–00–3, 3 items, 3 temporary items). Electronically filed copies of monthly reports submitted by electric utilities containing information on origin, cost, and quality of fuel received at generating plants. Paper copies of these documents were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

17. Federal Energy Regulatory Commission, Office of Electric Power Regulation (N1–138–00–4, 3 items, 3 temporary items). Electronically filed copies of annual power system reports submitted by electric utilities containing information on generating capacity, transmission facilities, loads, and related information. Paper copies of these documents were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

18. Federal Energy Regulatory Commission, Office of the Secretary (N1–138–99–8, 5 items, 5 temporary items). Records containing names of participants to Commission proceedings who must be provided with copies of documents filed in dockets. Included are an electronic database, outputs, systems documentation, and electronic copies of documents created using electronic mail and word processing.

19. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards (N1–431–00–13, 114 items, 80 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Nuclear Material Safety and Safeguards, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of documents related to funding methods for financial assurance for decommissioning and files documenting the management and implementation of NRC's internal radiation protection program are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic record-keeping copies of case files (excluding decommissioning) and independent spent fuel storage installation docket files that are not selected for permanent retention, program correspondence accumulated below the Office director level, routine program correspondence files accumulated at all organizational levels, licensee mismanagement files, personnel exposure files, process operator license files, and case files covering licensees where licensing jurisdiction is transferred to a State. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of such files as docket files for the disposal of high-level radioactive wastes in geologic repositories, docket files for the land disposal of radioactive wastes, uranium recovery docket files, and selected independent spent fuel storage installation docket files. This schedule also proposes minor changes in the disposition instructions for paper copies of such files as allegation case files, committee and conference records, special nuclear material docket files, international safeguards program office files, Part 71 safety evaluation reports and quality assurance files, personal dosimetry processing reports, regulatory history files for proposed and final rulemaking, and sealed source and device review files. These records were previously scheduled.

20. Nuclear Regulatory Commission, Office of Congressional Affairs and International Programs (N1–431–00–14, 8 items, 8 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Congressional Affairs and International Programs, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of congressional hearing testimony and transcript files and representation fund files are proposed for disposal as are paper files that pre-date ADAMS.

Dated: January 14, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–1886 Filed 1–26–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement to Create Greater Public Awareness of Universal Design

AGENCY: National Endowment for the Arts.

ACTION: Notification of Availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for a project with the goal of creating greater public awareness of and demand for universal designed environments. The successful proposal should include educational efforts targeted to designers, consumers, and decision makers, and involve collaboration with the targeted audiences, as well as the use of innovative strategies to bring the benefits of universal design into the mainstream. Endowment funding is limited to $75,000. A one-to-one match is required. Those interested in receiving the solicitation package should reference Program Solicitation PS 00–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.endow.gov.

DATES: Program Solicitation PS 00–02 is scheduled for release approximately February 14, 2000 with proposals due on March 27, 2000.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants, Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202/682–5482),

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 00–1980 Filed 1–26–00; 8:45 am]

BILLING CODE 7536–01–M

U.S. NUCLEAR REGULATORY COMMISSION

[Public Service Electric & Gas Company Atlantic City Electric Company Docket No. 50–354]

Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its May 17, 1999, application as supplemented November 16, 1999, for proposed amendment to Facility Operating License No. NPF–57

for the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would have modified the facility technical specifications associated with the enabling of the Oscillation Power Range Monitor (OPRM) reactor protection system (RPS) trip function. The OPRM is designed to detect the onset of reactor core power oscillations resulting from thermal-hydraulic instability and suppresses them by initiating a reactor scram via the RPS trip logic. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 16, 1999 (64 FR 32289). However, by letter dated January 7, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 17, 1999, as supplemented November 16, 1999, and the licensee's letter dated January 7, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 19th day of January 2000.

For The Nuclear Regulatory Commission.

Richard B. Ennis,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1940 Filed 1–26–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the Subcommittee on Plant License Renewal Revised

The ACRS Subcommittee meeting on Plant License Renewal scheduled for February 24, 2000, 8:00 a.m. until 1:00 p.m. at the Madren Conference Center at Clemson University, Room III & IV, 100 Madren Center Drive, Clemson, South Carolina, has been extended to include a closed session scheduled for February 23, 2000, 2:00 p.m., in Room 1075 of the Oconee Complex, Seneca, South Carolina. This session will be closed pursuant to 5 U.S.C. 552b(c)(4) to review proprietary information pertinent to the Oconee license renewal application. Notice of this meeting was published in the **Federal Register** on Thursday, January 13, 2000 (64 FR 2204). All other items pertaining to this meeting remain the same as previously published.

FOR FURTHER INFORMATION CONTACT: Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone: 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: January 21, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–1941 Filed 1–26–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of extension of public comment period.

SUMMARY: On January 7, 2000, OMB published a notice of availability of the Draft Report to Congress on the Costs and Benefits of Federal Regulations. The comment period was scheduled to end on January 21, 2000. This notice extends the public comment period on the draft report to February 22, 2000.

DATES: *Comment Due Date:* February 22, 2000.

ADDRESSES: Comments on this draft report should be addressed to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW, Washington, DC 20503.

You may submit comments by regular mail, by facsimile to (202) 395–6974, or by electronic mail to *jmorrall@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can review the Report on the Internet at: "*http://www.whitehouse.gov/omb/inforeg/index.html*". You may also request a copy from John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW, Washington, DC 20503. Telephone: (202) 395–7316. E-mail: jmorrall@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On January 7, 2000, OMB published in the **Federal Register** (65 FR 1296) a notice of availability of the Draft Report to Congress on the Costs and Benefits of Federal Regulations. The comment period on the draft report was scheduled to end January 21, 2000. Members of the public and Congress have asked for additional time to allow the public a better opportunity to participate in the comment process. Accordingly, OMB has decided to extend the public comment period on the draft report to February 22, 2000.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 00–1860 Filed 1–26–00 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24258; International Series Release No. 1212; 812–11306]

The Toronto-Dominion Bank, et al.; Notice of Application

January 20, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain finance subsidiaries of The Toronto-Dominion Bank ("TD") to sell certain debt securities and use the proceeds to finance the business activities of their parent company, TD, and certain of its subsidiaries. The requested order would supersede an existing order.

APPLICANTS: TD, Toronto-Dominion Holdings (U.S.C.), Inc. ("TD Holdings"), and TD Capital Funding L.P. ("TD Capital").

FILING DATES: The application was filed on September 16, 1998 and amended on November 18, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 14, 2000, and

should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Attention: Marc L. Baum, 31 West 52nd Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

APPLICANTS' REPRESENTATIONS:

1. TD is a chartered bank governed by the Bank Act of Canada and offers a range of financial services to individuals, corporate and commercial enterprises, financial institutions and governments in Canada. In the United States, TD offers a range of services to corporations, financial institutions and governments, as well as discount brokerage services through a wholly-owned subsidiary. TD also conducts operations outside North America.

2. TD Holdings, a Delaware corporation, is wholly owned by TD and acts as a holding company for most of TD's United States subsidiaries. TD Holdings is also a finance subsidiary and engages in funding activities for TD and certain of its subsidiaries in reliance on a previously-granted Commission order ("Prior Order").[1] The requested order would supersede the Prior Order.

3. TD Capital is a Delaware limited partnership. TD Capital's general partner is TD Capital Group Limited ("TDCG"), a corporation organized under the laws of Canada, which holds a one percent general partnership interest in TD Capital. TD is the sole limited partner of TD Capital and holds a 99% limited partnership interest in TD Capital.[2] TD also owns 100% of the outstanding common stock of TDCG. TDCG has no outstanding securities other than the common stock owned by TD. TDCG relies on the exclusion from the definition of investment company in sections 3(c)(1) and 3(c)(7) of the Act.

4. Applicants also request relief for finance subsidiaries that may be created by TD in the future ("Other Finance Subsidiaries," and together with TD Holdings and TD Capital, the "Finance Subsidiaries"). The Finance Subsidiaries are or will be organized to issue debt securities and lend the proceeds to or invest the proceeds in TD and other companies that, after giving effect to the requested order, will be companies controlled by TD within the meaning of paragraph (b) of rule 3a–5 under the Act as discussed below (each a "Controlled Company," and collectively, "Controlled

6. Pursuant to the requested order, TD Capital would be able to invest the net proceeds of its offerings in its wholly-owned subsidiary, TD (Nova Scotia) Company, a Nova Scotia corporation ("TD Nova Scotia"). TD Nova Scotia is a special purpose vehicle relying on section 3(e)(7) of the Act and engages in no activities other than making equity investments in Controlled Companies. Applicants state that this conduit structure exists to clarify Canadian tax treatment of distributions to TD Capital. TD Nova Scotia would meet the definition of a "finance subsidiary" under rule 3a-5 but for the fact that (i) its securities are wholly-owned by TD Capital, which does not meet the definition of a "parent company" or a "company controlled by its parent company," because it would be exempted from the Act by the requested order and (ii) TD Nova Scotia makes loans to and investments in entities that do not meet the definition of "company controlled by the parent company" solely because they rely on section 3(c) of the Act. If the requested order is granted, TD Nova Scotia will use all of the moneys it receives from TD Capital to make investments or loans within six months after TD Capital receives the proceeds from its financing activities.

Applicants' Legal Analysis

1. Applicants request an order under section 6(e) of the Act for an exemption from all provisions of the Act, Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). TD Capital and Other Finance Subsidiaries may not meet the definitions of a finance subsidiary under the rule.

3. TDCG does not meet the definition of a company controlled by the parent company under rule 3a–5(b)(3)(i) because it is excluded from the definition of investment company by either section 3(c)(1) or 3(c)(7) of the Act. Since TDCG holds a one percent general partnership interest in TD Capital, applicants state that not all of the outstanding securities of TD Capital are owned by its parent company or a company controlled by the parent company as required by rule 3a–5(b)(3)(i). Applicants state that this ownership structure does not raise the concerns that the requirement in rule 3a–5(b)(3)(i) was designed to address.

4. To the extent a Finance Subsidiary invests in or makes loans to a direct or indirect subsidiary of TD that relies on the exclusion from the definition of investment company under section 3(c) of the Act, that Finance Subsidiary would not meet the definition of a finance subsidiary under the rule because it is financing an entity that does not meet the definition of a company controlled by the parent company in rule 3a–5(b)(3)(i) because it is excluded from the definition of investment company by section 3(c) of the Act. Applicants state that neither TD, the Controlled Companies nor the Finance Subsidiaries engage primarily in investment company activities.

5. Pursuant to the requested order, a Finance Subsidiary may also invest in equity securities of unaffiliated companies in an amount that does not exceed four percent of the Finance Subsidiary's assets. Applicants state that ownership of such shares by a Finance Subsidiary prevents the imposition of withholding taxes on the dividends received on such shares, as the ability of a U.S. subsidiary of a non-U.S. entity to hold equity securities free of U.S. withholding taxes is well-established as a matter of tax law. Applicants further state that these holdings will be immaterial to the Finance Subsidiary.

6. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from

[1] Investment Company Act Release Nos. 22934 (Dec. 10, 1999) (Notice) and 22993 (Jan. 6, 1998) (Order).

[2] Applicants state that TD Capital was structured as a limited partnership because this structure would result in a lower after-tax cost of funds.

any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the requested relief meets the standards set out in section 6(c) of the Act.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all of the provisions of rule 3a–5 under the Act, except:

(1) a one percent general partnership interest in a Finance Subsidiary may be owned by a wholly-owned subsidiary of TD that does not meet the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because it is excluded from the definition of investment company by section 3(c) of the Act;

(2) a Finance Subsidiary may invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by section 3(c)(1), (2), (3), (4), (5), (6) or (7) of the Act, provided that any such entity that relies on the exclusion from the definition of investment company;

(a) under section 3(c)(1) or section 3(c)(7) will be either:

(i) engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act, or

(ii) a special purpose vehicle directly or indirectly wholly owned by TD that complies with the requirements of rule 3a–5 for finance subsidiaries to the same extent as permitted by the order for TD Capital;

(b) under section 3(c)(5) of the Act will fall within section 3(c)(5)(A) or 3(c)(5)(B) solely by reason of its holding of accounts receivable of either its own customers or of the customers of other TD subsidiaries, or by reason of loans made by it to such subsidiaries or customers; and

(c) under section 3(c)(6) of the Act will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in (b) above); and

(3) a Finance Subsidiary may be invest in, reinvest in, own, hold or trade in equity securities of unaffiliated companies with an aggregate purchase price not in excess of four percent of the Finance Subsidiary's assets.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1909 Filed 1–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24259; 812–11856

First American Investment Funds, Inc. and U.S. Bank National Association; Notice of Application

January 21, 2000.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets, subject to the liabilities, of certain other series of the investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: First American Investment Funds, Inc. ("FAIF") and U.S. Bank National Association ("U.S. Bank").

FILING DATES: The application was filed on November 17, 1999 and amended on January 20, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 15, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants: c/o Thomas A. Berreman, Esq., U.S. Bank National Association, U.S. Bank Place, MPFP 2016, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

APPLICANTS' REPRESENTATIONS:

1. FAIF, a Maryland corporation, is registered under the Act as an open-end management investment company and is currently comprised of 30 series, including Intermediate Government Bond Fund, Adjustable Rate Mortgage Securities Fund, Regional Equity Fund, and Micro Cap Value Fund (the "Acquired Funds"), and Intermediate Term Income Fund, Limited Term Income Fund, and Small Cap Value Fund (the "Acquiring Funds" and together with the Acquired Funds, the "Funds").[1]

2. U.S. Bank is the investment adviser for the Funds. U.S. Bank is a national banking association and currently is exempt from registration as an investment adviser under the Investment Advisers Act of 1940. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp, a bank holding company. U.S. Bank Trust National Association ("U.S. Bank Trust" and together with U.S. Bank and their affiliates, "U.S. Bancorp Affiliates") is also a wholly-owned subsidiary of U.S. Bancorp. U.S. Bancorp Affiliates, directly or through a nominee, are record holders of more than 5% of the outstanding shares of each Acquiring Fund and certain Acquired Funds, and they hold or share voting discretion with respect to a portion of these Fund shares, or have a funding obligation to defined benefit plans which own 5% or more of the outstanding shares. The Fund shares held of record by U.S. Bancorp Affiliates are held for the benefit of others in a

[1] Acquired Funds and their corresponding Acquiring Funds are: Intermediate Government Bond Fund and Intermediate Term Income Fund; Adjustable Rate Mortgage Securities Fund and Limited Term Income Fund; Regional Equity Fund and Small Cap Value Fund; and Micro Cap Value Fund and Small Cap Value Fund.

trust, agency, custodial or other fiduciary capacity.

3. On September 8, 1999, the board of directors of FAIF (the "Board"), including all of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Directors"), unanimously approved the proposed reorganizations of the respective Acquired Funds with and into the corresponding Acquiring Funds (the "Reorganization Agreements" and the transactions, the "Reorganizations"). The Reorganizations are expected to occur on or about February 25, 2000. The Reorganization Agreements provide for: (a) the transfer of all of the assets and liabilities of each of the Acquired Funds to the corresponding Acquiring Fund in exchange for shares of designated classes of the corresponding Acquiring Fund; and (b) the distribution of these Acquiring Fund shares to the shareholders of each of the Acquired Funds in liquidation of the Acquired Funds. In each Reorganization, Acquired Fund shareholders will receive Acquiring Fund shares of the class which corresponds to that of their class of Acquired Fund shares, and which have an aggregate net asset value equal, at the effective time of the Reorganization (the "Effective Time"), to the aggregate net asset value of their Acquired Fund shares. The value of the assets of the Funds will be determined in the manner set forth in the Funds' then current prospectuses and statements of additional information.

4. Applicants state that the investment objectives of each Acquired Fund and its corresponding Acquiring Fund are similar. Class A shares of the Acquiring Funds are subject to a front-end sales charge of 2.5% for Limited Term Income Fund and Intermediate Term Income Fund, and 5.25% for the Small Cap Value Fund for purchases of $50,000 or less. Class A shares redeemed within 18 months also may be subject to a contingent deferred sales charge ("CDSC") of 1.00%. Class A shares are subject to a .25% service fee adopted under a rule 12b–1 distribution plan. Class B shares of the Small Cap Value Fund are sold without a front-end sales charge. Class B shares are subject to a rule 12b–1 fee of 1.00%. If Class B shares are redeemed within six years after purchase, they are subject to a CDSC declining from 5.00% in the first year to zero after six years. Class B shares automatically convert into Class A shares approximately eight years after purchase. Class Y shares of the Funds are sold without any front-end sales charge or CDSC. For purposes of calculating CDSCs on Class A and Class B shares, shareholders of Class A and Class B shares of the Acquired Funds will be deemed to have held Class A and Class B shares of the Acquiring Funds since the date the shareholders initially purchased the shares of the Acquired Funds. Shareholders of the Acquired Funds will not incur any sales charges in connection with the Reorganization. U.S. Bank will pay the expenses of the Reorganizations.

5. The Board, on behalf of each Acquired Fund, found that the Reorganization is in the best interests of each Acquired Fund, and that the interests of existing shareholders of each Acquired Fund will not be diluted as a result of the Reorganization. The Board considered, among other things: (a) the advantages which may be realized by the Funds, economies of scale resulting from Fund growth, and facilitation of portfolio management; (b) the tax-free nature of the Reorganizations; (c) the terms and conditions of the Reorganization Agreements; and (d) the agreement of U.S. Bank to bear the costs associated with the Reorganizations.

6. Each Reorganization is subject to a number of conditions, including: (a) Approval of the Reorganization Agreement by the shareholders of the Acquired Fund; (b) the receipt of an opinion of counsel with respect to the tax-free nature of the Reorganization; (c) the applicants will have received exemptive relief from the Commission; and (d) the parties' performance in all material respects of their respective agreements and undertaking in the Reorganization Agreement. Each Reorganization Agreement provides that the Reorganization may be abandoned at any time prior to the Effective Time upon the mutual consent of the respective Acquired Fund and Acquiring Fund, or if determined by the Board that proceeding with the Reorganization is inadvisable. Applicants agree not to make any material changes to the Reorganization Agreements without prior approval of the Commission.

7. Registration statements on Form N–14, each containing a combined prospectus/proxy statement, were filed with the Commission on October 20, 1999 and were mailed to shareholders of the respective Acquired Funds on December 1, 1999 in connection with the solicitation of their proxies for the shareholders meeting scheduled for January 14, 2000.

APPLICANTS' LEGAL ANALYSIS:

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person: (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. U.S. Bancorp Affiliates hold of record 5% or more of the outstanding shares of certain Acquiring and Acquired Funds, and hold or share voting power and/or investment discretion with respect to a portion of these Fund shares, or have a funding obligation to defined benefit plans which own 5% or more of the outstanding shares of certain Funds.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state

that the Board has found that participation in the Reorganizations is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. In addition, applicants state that the exchange of Acquired Funds' shares for Acquiring Funds' shares will be based on net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1910 Filed 1–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42347; File No. SR–BSE–99–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Listing Standards for Trust Issued Receipts

January 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt listing standards for trust issued receipts. Once these listing standards have been approved, the Exchange intends to trade Internet Holding Company Depository Receipts ("Internet HOLDRs"), a trust issued receipt, pursuant to unlisted trading privilege ("UTP"). The text of the proposed rule change is available at the Office of the Secretary, BSE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add a new rule to Chapter XXIV–A *et seq.*, of the Exchange's rules to adopt new listing standards to allow the Exchange to list trust issued receipts, and to trade Internet HOLDRs, a type of trust issued receipt, pursuant to UTP.

a. Trust Issued Receipts Generally

Description. Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold securities investments from a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents their beneficial ownership in the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. Holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts; will receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders; and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

Creation of a Trust. Trust issued receipts will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts.

b. Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing standards for "Hybrid Securities," currently found in Article XXVII of the Exchange Rules, as well as the trust issued receipt listing criteria currently used by the American Stock Exchange ("Amex").[3]

Initial Listing. If trust issued receipts are to be listed on Exchange, the Exchange will establish a minimum number of receipts that must be outstanding at the time trading commences on the Exchange, and such minimum number will be included in any required submission to the Commission.

Continued Listing. In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, a trust upon which a series of trust issued receipts is based when any of the following circumstances arise: (1) If the trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of all receipts issued and outstanding is less than $1 million; or (4) if such other event occurs or conditions exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. These flexible criteria allow the Exchange to avoid delisting trust issued receipts (leading to a possible termination of the trust) because of relatively brief fluctuations in market conditions that may cause the number of holders to vary.

The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one

[3] The Amex listing criteria were approved by the Commission on September 21, 1999. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999)

year after the initial listing of such trust issued receipts for trading on the Exchange. In addition, if the number of companies represented by the deposited securities drops to less than nine, and each time thereafter the number of companies is reduced, the Exchange will consult with the Commission to confirm the appropriateness of continued listing of the trust issued receipts.

c. Exchange Rules Applicable to the Trading of Trust Issued Receipts

Trust issued receipts are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of Chapter XXXI, Section 4, Trade-Throughs and Locked Markets, which prohibit Exchange members from initiating trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[4] Exchange equity margin rules will apply.

Trust issued receipts are currently traded on the Amex at a minimum variation of 1/16th of $1.00 for trust issued receipts selling at or above $.25, and 1/32nd of $1.00 for those selling below $.25. Thus, the Exchange is proposing the same minimum fractional increments for the trading of trust issued receipts on the Exchange, until such time as decimal increments are approved. It is anticipated that some time after July, 2000, the industry minimum-price variations will be converted from fractions to decimals.

The Exchange's surveillance procedure for trust issued receipts will be similar to the procedures used for portfolio depository receipts and will incorporate and rely upon existing BSE surveillance systems.

Prior to the commencement of trading in trust issued receipts, the Exchange will issue a circular to members highlighting the characteristics of trust issued receipts including that trust issued receipts are not individually redeemable. In addition, the circular will inform members of Exchange policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in BSE Chapter II, Section 34 B have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in an underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

d. Disclosure to Customers

The Exchange will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipts.

e. Trading of Internet HOLDRs

As mentioned above, upon approval of the BSE's listing standards for trust issued receipts, the Exchange intends to begin trading a particular series of trust issued receipts, Internet HOLDRs pursuant to UTP privileges. The following section of this submission contains information about Internet HOLDRs. This information is based on upon descriptions included in the Internet HOLDRs prospectus, the Amex submissions relating to its trust issued receipt listing proposal, and the Commission's order approving the Amex proposal.[5]

Creation of Internet HOLDRs. The Internet HOLDRs are being issued by the Internet HOLDRs trust, which was created pursuant to a depository trust agreement dated September 2, 1999, among The Bank of New York, as trustee, Merrill Lynch Pierce Fenner & Smith Incorporated, other depositors and the owners of the Internet HOLDRs. As of September 22, 1999, the date of the prospectus, 3,766,700 Internet HOLDRs were sold by the Trust.

As of September 22, 1999, the deposited securities underlying Internet HOLDRs were: American Online (AOL), Yahoo Inc. (YAHOO), Amazon.com Inc. (AMZN), EBay Inc. (EBAY), At Home Corp. (ATHM), Priceline.Com.Inc (PCLN), CMGI Inc. (CMGI), Inktomi Corporation (INKT), RealNetworks, Inc. (RNWK), Exodus Corporation, Inc. (EXDS), E*TRADE Group Inc. (EGRP), DoubleClick Inc. (DCLK), Ameritrade Holding Corp. (AMTD), Lycos Inc. (LCOS), CNET, Inc. (CNET), PSINet Inc. (PSIX), Network Associates, Inc. (NETA), Earthlink Network, Inc. (ELNK), MindSpring Enterprises, Inc. (MSPG), and Go2Net, Inc. (GNET).

The twenty companies represented by the securities in the portfolio underlying the Internet HOLDRs trust were required to meet the following minimum criteria when they were selected on August 31, 1999: (1) The companies' common stock must have been registered under Section 12 of the Exchange Act; (2) the minimum public float of each company included in the portfolio must have been at least $150 million; (3) each security was either listed on a national securities exchange or traded through the facilities of Nasdaq and be a reported national market system security; (4) the average daily trading volume for each security was at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period was at least $1 million. The initial weighting of each security in the portfolio was based on its market capitalization; however, if on the date such weighting was determined, a security represented more than 20% of the overall value of the receipt, then the amount of such security was to be reduced to no more than 20% of the receipt value. The Exchange anticipates that 150,000 trust issued receipts will be issued in connection with the initial distribution of the Internet HOLDRs.

In addition, each of the companies whose common stock is included in the Internet HOLDRs also met the following criteria: (1) The market capitalization for each company was equal to or greater than $1 billion; (2) the average daily trading volume for each security was at least 1.2 million shares over the.60 trading days prior to August 31, 1999; (3) the average daily dollar volume of the shares traded for each company during the sixty-day trading period prior to August 31, 1999 was at least $60 million; and (4) each company was traded on a national securities exchange or Nasdaq/National Market for at least ninety days prior to August 31, 1999.

Trading Issues. A round-lot of 100 trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of deposited securities for each round-lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Trust issued receipts may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot will be rejected, while orders for greater than a round-lot, but not a round-lot multiple, will be executed to the extent of the largest

[4] There are two possible exceptions to this general rule. First, if trust issued receipts are traded only in round lots (or round-lot multiples), the Exchange's rules relating to odd-lot executions will not apply. Additionally, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a-1 under the Act, for transactions in Internet HOLDRs. 17 CFR 240. 10a-1. The Exchange will issue a notice to its members detailing the terms of the exemption.

[5] *See supra*, note 3.

round-lot multiple, rejecting the remaining odd-lot.[6]

The Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The exchange represents that the arbitrage process—which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.*, the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts—should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the trust issued receipt at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Maintenance of the Internet HOLDRs Portfolio. Except when a reconstitution event occurs, as described below, the securities represented by a trust issued receipt will not change.[7] According to the Internet HOLDRs prospectus, under no circumstances will a new company be added to the group of issuers of the underlying securities and weightings of component securities will not be adjusted after they are initially set.

Reconstitution Events. As described in the Internet HOLDRs prospectus, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances:

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act, then its securities will no longer be an underlying security and the trustee will distribute the securities of that company to the owners of the trust issued receipts;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the acquiring company's securities are already included in the trust issued receipt as deposited securities, in which case such additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted [8] from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.

As described in the prospectus, if a reconstitution event occurs, the trustee will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of Internet HOLDRs. The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, Internet HOLDRs only in a round-lot of 100 trust issued receipts and round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by either purchasing them on an exchange or by delivering to the trustee the underlying securities evidencing a round lot of trust issued receipts. The trustee will charge an issuance fee of up to $10.00 per 100 trust issued receipts. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round-lot multiple of the trust issued receipts to the trustee, during normal business hours. The trustee will charge a cancellation fee of up to $10.00 per 100 trust issued receipts. Lower charges may be assigned for bulk issuances and cancellations. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

Termination of the Trust. The trust shall terminate upon the earlier of: (1) the removal of the receipts from amex listing if they are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the receipts are delisted; (2) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (3) 75% of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) [9] of the Act in that is it designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and

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[6] For example, an order for 50 trust issued receipts will be rejected, while an order for 1,050 trust issued receipts, will be executed in part (1,000) and rejected in part (50).

[7] Even if a reconstitution event does not occur, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

[8] This provision is designed for the purpose of permitting a deposited security to move its listing between, *e.g.*, the Amex and Nasdaq, without requiring the automatic distribution of the deposited security to beneficial owners of the receipts. Should deposited securities be moved to a market other than a national securities exchange or Nasdaq, (*e.g.*, the OTC Bulletin Board) such securities will be automatically distributed to the beneficial owners of the receipts.

[9] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–99–15 and should be submitted by February 17, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [10] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the Amex and CHX orders approving the listing and trading of trust issued receipts and Internet HOLDRs,[11] that the proposal establishing listing standards for trust issued receipts and to trade Internet HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[12]

As noted in the Amex approval order, the Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust issued receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[13] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues.

B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the BSE's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP. Trust issued receipts are equity securities that will be subject to the full panoply of BSE rules governing the trading of equity securities on the BSE, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[14]

In addition, the BSE has developed specific listing and delisting criteria for trust issued receipts that will help to ensure that a minimum level of liquidity will exist for trust issued receipts to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the BSE to consider the suspension of trading and the delisting of a trust issued receipt if an event occurred that made further dealings in such securities inadvisable. This will give the BSE flexibility to delist trust issued receipts if circumstances warrant such action. BSE's proposal also provides procedures to halt trading in trust issued receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's belief that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade trust issued receipts in minimum fractional increments of 1/16th of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the BSE will apply surveillance procedures for trust issued receipts that will be similar to the procedures used for portfolio depositary receipts and will incorporate and rely upon existing BSE surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing

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[10] 15 U.S.C. 78f(b)(5)

[11] *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the Amex) and Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the CHX pursuant to UTP).

[12] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission has concerns about continued trading of the trust issued receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may no longer adequately reflect a cross section of the selected industry. Accordingly, the BSE has agreed to consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[14] Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

and trading trust issued receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of a particular trust issued receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all BSE member firms who purchase trust issued receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in trust issued receipts. The circular also will inform members of Exchange policies regarding trading halts in trust issued receipts.

D. Accelerated Approval

BSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to trade trust issued receipts, and specifically Internet HOLDRs pursuant to UTP privileges, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Internet HOLDRs, as an investment tool, the BSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes, however, that notwithstanding approval of the listing standards for trust issued receipts, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed by the Exchange prior to contacting Division staff. In addition, the BSE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

As noted above, the Commission has approved the listing and trading of trust issued receipts, including Internet HOLDRs, at the Amex, under rules that are substantially similar to BSE Chapter XXIV–A. The trading requirements of trust issued receipts at the BSE will be substantially similar to the trading requirements of trust issued receipts at the Amex and the CHX. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act[15] The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filing. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–BSE–99–15), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1972 Filed 1–26–00; 8:45 am]

BILLING CODE 8010–01–M

[15] *See supra,* note 11.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42352; File No. SR–CSE–99–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange Enabling Members to Trade NASDAQ/NM Securities

January 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 10, 1999, the Cincinnati Stock Exchange, Inc, ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to enable members to trade NASDAQ National Market ("NASDAQ/NM") securities on the Exchange pursuant to unlisted trading privileges ("UTP") under Section 12(f) of the Act. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A. B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the CSE Rules to permit members to trade NASDAQ/NM

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

securities on an UTP basis. This filing is made in conjunction with the Exchange joining the Unlisted Trading Privileges Plan ("UTP Plan") governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NM securities.[3] The majority of the proposed rule change relates to amendments to CSE Rules to accommodate the trading of NASDAQ securities, however, certain rule changes are housekeeping in nature.

The following is a list of the substantive rule changes to Chapter XI, "Trading Rules," along with a statement of the purpose for the proposed change:

1. Rule 11.1, "Hours of Trading" The changes to Rule 11.1 convert the hours of trading on the Exchange from Cincinnati local time to Chicago local time and provide in subparagraphs (b) and (c) for the inclusion of securities traded on a national securities association in the determination of trading hours for dually or multiply-traded securities.

2. Rule 11.2, "Unit of Trading" The changes to Rule 11.2 reflect the inclusion of securities trading on a national securities association in determining the appropriate unit of trading.

3. Rule 11.3, "Price Variations" The changes amend the stated minimum variation to reflect the current primary market practice, *i.e.*, 1/16 of $1.00 per share in stocks trading at or above $.50 per share and 1/32 of $1.00 per share in stocks trading below $.50 per share. These variations will be revisited in any proposed rule changes to accommodate decimal pricing. The changes also include securities traded on a national securities association in determining the appropriate variation.

4. Rule 11.4, "Trading Ex-Dividend, Etc." The changes include securities traded on a national securities association in the exception language of the rule.

5. Rule 11.5, "Orders to be Reduced and Increased on Ex-Date" The changes include securities traded on a national securities association in the exception language of the rule.

6. Rule 11.7, "Cabinet Trading" The change amends the rule to reflect that the facilities are now located in Chicago, Illinois.

7. Rule 11.9, "National Securities Trading System" ("System")

(a) The amendments to this subparagraph define the terms "NASDAQ/NM Security," "NASDAQ System," and "NASDAQ System BBO" and include the term "national securities association" in the definition of "Approved Dealer."

(c) The changes to this subparagraph add the term "NASDAQ System BBO" to the definition of marketable limit order, except NASDAQ/NM securities from the opening guarantee of 1099 shares, and implement a NASDAQ/NM opening guarantee up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed NASDAQ System BBO.

(e) The changes to this subparagraph add specialists or market makers on other national securities associations to the entities that may submit bids or offers to the System.

(h) The changes to this subparagraph ensure that the System displays the NASDAQ System BBO and permits NASDAQ System market makers telephonic, or other such access to the System as may be established between the Exchange and the NASDAQ System, and conversely, permits Designated Dealers to send orders from the Exchange via telephone, or by other such access as may be established between the Exchange and the NASDAQ System, to NASDAQ market makers.

(j) This subparagraph is amended to include the NASDAQ System and the NASDAQ System BBO in the prohibition of executing a limit order only after a regular way transaction occurs in another market at a price equal or inferior to the limit price of the order.

(n) The amendment to this subparagraph clarify that the public agency guarantee for 1099 shares at the opening price applies to securities other than NASDAQ/NM securities. However, the public agency guarantee applies to those market and marketable limit orders priced better than the first unlocked/uncrossed NASDAQ System BBO. In addition, the amendments add the NASDAQ System BBO to the obligations to execute on the basis of the ITS BBO. Finally, the amendments to this subparagraph clarify that the execution guarantees and requirements of CSE Rule 12.6, Customer Priority, apply only during the hours of trading on the Exchange (8:30 a.m. to 3:05 p.m. local Chicago time) during normal business days.

Interpretations and Policies

.01 The amendment to the Market Order Exposure Requirement clarifies that the obligations of the interpretation apply to securities other than NASDAQ/NM securities.

.02 The amendment to the Limit Order Protection Requirement clarifies that obligations of the interpretation apply to securities other than NASDAQ/NM securities.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[3] *See* Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

[4] 15 U.S.C. 78f(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–99–05 and should be submitted by February 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1971 Filed 1–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42351; File No. SR–NASD–99–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Rules for the Listing of Additional Shares

January 20, 2000.

I. Introduction and Background

On October 19, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change modifies the procedures employed by the NASD in assessing fees against issuers listing additional shares on either the Nasdaq National Market ("NNM") or Nasdaq SmallCap Market ("NSCM").

Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 1999.[3] The Commission received no comments on the proposal.

II. Description of the Proposal

The Commission recently approved a rule change filed by the NASD to modify the fee rate structures and notification requirements applicable to issuers listing additional shares on the NNM and NSCM.[4] The rule change harmonizes the fee structures applicable to issuers of additional shares of NNM and NSCM securities, and allows issuers to file notifications of several issuances on a single form.

To further simplify the administration of the Listing of Additional Shares ("LAS") Program, the NASD is modifying notification procedures applicable to issuers of additional shares, and Nasdaq's monitoring and assessment of fees on the listing of such additional shares.

Nasdaq staff employ the LAS Program to monitor compliance by issuers with Nasdaq listing rules governing shareholder approval, public interest concerns, reverse mergers, and voting rights. Since 1992, all Nasdaq issuers have been required to file a notification form upon the creation of a stock option, employee stock purchase, or other stock remuneration plan, or upon the issuance of additional shares of any class of securities included in Nasdaq.[5]

The NASD believes that the current LAS Program is difficult and unduly time-consuming to administer. Specifically, the NASD believes that, under the current LAS Program, it is difficult for an issuer to calculate the number of shares to be reported for LAS purposes: an issuer must track the number of shares approved by Nasdaq according to current LAS criteria (a number not otherwise monitored by issuers and which has often proved difficult for Nasdaq staff and issuers to reconcile) instead of the total number of shares outstanding reported in periodic reports required to be filed with the Commission. Furthermore, the timing of the notifications required by the current LAS Program varies depending on the nature of the action undertaken by an issuer and, as a result, has proved confusing to issuers and their counsel. This in turn has led to delays in filing or failures to comply with LAS Program notification and fee requirements.

To remedy these deficiencies, the NASD proposal makes the following changes to the current LAS Program:

1. In order to address the problem of monitoring the number of fee-assessable shares, the billing aspect of the LAS Program will be separated from required compliance reviews. Issuers will be billed each quarter for any increase in their total shares outstanding ("TSO") as reported in publicly available periodic reports required to be filed with the Commission.[6] This modification will ensure that the LAS Program is administered based on a publicly disclosed TSO number rather than on the number of approved shares currently calculated by Nasdaq according to existing LAS criteria. This modification will thereby eliminate the current procedure of establishing a baseline number of shares upon an issuer's initial listing as well as the resultant confusion surrounding when transactions resulting in new shares being issued must be reported to Nasdaq. This modification will also permit Nasdaq staff to rely on the publicly reported TSO when performing reconciliations.

2. To address the uncertainty which has surrounded issuers' LAS notification requirements, the process of reporting to Nasdaq will be streamlined by confining issuers' notification requirements to those transactions implicated by the Nasdaq's corporate governance compliance requirements.[7] Consequently, notification will not be required, unless:

(a) a stock option plan, purchase plan or other arrangement is established without shareholder approval; or

(b) the issuer enters into a transaction that may result in a change of control; or

(c) the issuer issues common stock or a security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has an interest of 5% or more (or if a group of such persons collectively holds an interest of 10% or more) in the company to be acquired or in the consideration to be paid; or

(d) the issuer enters into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) representing more than 10% of either the total shares outstanding or voting power outstanding on a pre-transaction basis.

Under the proposed rule change, all LAS notifications will be required to be filed 15 calendar days prior to issuance (except for stock splits and dividends

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42214 (Dec. 9, 1999), 64 FR 70309.

[4] Securities Exchange Act Release No. 42300 (Dec. 30, 1999), 65 FR 1210 (Jan. 7, 2000) (SR–NASD–99–40).

[5] *See* NASD Rules 4310(c)(17) and 4320(e)(15). The Commission granted permanent approval to the LAS Program in 1993. *See* Securities Exchange Act Release No. 31859 (February 16, 1993), 58 FR 9584 (Feb. 22, 1993) (SR–NASD–92–27).

[6] Billing for all issuers will be conducted on a calendar year basis and LAS fees will then be assessed on any increase in the TSO number set forth in an issuer's most recent periodic report filed with the Commission pursuant to Section 13 or 15(d) of the Act. Telephone conversation between Arnold Golub, Senior Attorney, Office of the General Counsel, Nasdaq, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, on December 6, 1999.

[7] *See* NASD Rules 4310(c)(25) and 4320(e)(21).

which are required to be filed 10 calendar days prior to the record date pursuant to Rule 10b–17 under the Act [8]). This requirement eliminates the numerous timing requirements under the current LAS Program and enables Nasdaq staff to consider the most current information when evaluating such transactions.

The NASD believes that these changes will improve Nasdaq's administration of the LAS Program by focusing on the TSO reported publicly in periodic reports required to be filed with the Commission instead of relying on a calculated number of approved shares. In addition, the NASD believes that the changes will streamline the filing requirements imposed on issuers by reducing the filing burden to the extent that no filings will be required for issuances that do not raise corporate governance concerns, while simultaneously streamlining the notification filing time frame. Finally, the NASD believes that the changes will allow Nasdaq staff to focus on larger and more complex transactions in its review of issuers' compliance with corporate governance rules and other continued listing standards by eliminating the requirement that issuers file information about issuances that do not raise corporate governance concerns.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission finds that the rule change is consistent with the provisions of Sections 15A(b)(5) and (6) of the Act.[9] Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system which the NASD operates or controls. Section 15A(b)(6) requires in pertinent part that the rules of the NASD be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that the amended rules, which affect the notification and billing processes associated with the LAS Program, are consistent with the Act because they are designed to simplify the procedures applicable to Nasdaq issuers listing additional shares on the NNM and NSCM, as well as those of Nasdaq staff monitoring such issuers. This in turn will increase the issuers' levels of compliance and the staff's surveillance effectiveness.

IV. Conclusion

The Commission finds that the rule change is consistent with the Act, in general, and in particular with Sections 15A(b)(5) and (6) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD 99–61) be, and hereby is, approved.[11]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1970 Filed 1–26–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 240.10b–17.

[9] 15 U.S.C. 78o–3(b)(5) and (6).

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3232]

State of Kentucky (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated January 15, 2000, the above-numbered Declaration is hereby amended to include Hopkins County, Kentucky as a disaster area due to damages caused by tornadoes, severe storms, torrential rains, and flash flooding that occurred on January 3–4, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Christian and Muhlenberg in the State of Kentucky may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 10, 2000 and for economic injury the deadline is October 10, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 20, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–1983 Filed 1–26–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3233]

State of New York (And Contiguous Counties in New Jersey & Connecticut)

Westchester County and the contiguous Counties of Bronx, Orange, Putnam, and Rockland in New York, Bergen County, New Jersey and Fairfield County, Connecticut constitute a disaster area as a result of damages caused by a fire that occurred on December 29, 1999 in the Village of Ossining. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 20, 2000 and for economic injury until the close of business on Oct. 19, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:.	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.500
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.750
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:.	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned for physical damages are 323305 for New York, 323405 for New Jersey, and 323505 for Connecticut. For economic injury the numbers are 9G5100 for New York, 9G5200 for New Jersey, and 9G5300 for Connecticut.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 19, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–1984 Filed 1–26–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3212]

State of North Carolina (Amendment #5)

In accordance with information received from the Federal Emergency Management Agency dated January 18, 2000, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster from January 18, 2000 to February 17, 2000.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: 1–20–2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–1982 Filed 1–26–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Revision of Privacy Act System of Records

AGENCY: U.S. Small Business Administration.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: SBA is correcting the document published on January 10, 2000 on page 1422 to include HUD as a system location.

DATES: *Effective Date:* This correction is effective February 9, 2000.

SUPPLEMENTARY INFORMATION: The System Location for Loan Case Files—SBA 075 is corrected to read as follows:

SYSTEM LOCATION:

Area Disaster Office Managers, District Directors, Branch Managers, Loan Service Center Directors (see Appendix A for addresses) and HUD.

Dated: January 13, 2000.

Mona Koppel Mitnick,

Senior Privacy Act Official.

[FR Doc. 00–1985 Filed 1–26–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 4419

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4419, Application for Filing Information Returns Magnetically/Electronically.

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Filing Information Returns Magnetically/ Electronically.

OMB Number: 1545–0387.

Form Number: 4419.

Abstract: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically or electronically. Payers required to file on magnetic media or electronically must complete Form 4419 to receive authorization to file.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, non-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 26 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1900 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 4255

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4255, Recapture of Investment Credit.

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Recapture of Investment Credit.

OMB Number: 1545–0166.

Form Number: 4255.

Abstract: Internal Revenue Code section 50(a) requires that a taxpayer's income tax be increased by the investment credit recapture tax if the taxpayer disposes of investment credit property before the close of the recapture period used in figuring the original investment credit. Form 4255 provides for the computation of the recapture tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 9 hours, 49 minutes.

Estimated Total Annual Burden Hours: 196,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1901 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time To File Corporation Income Tax Return.

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File Corporation Income Tax Return.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 1,097,748.

Estimated Time Per Respondent: 9 hours, 50 minutes.

Estimated Total Annual Burden Hours: 10,790,863.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1902 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–54–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–54–93 (TD 8554), Clear Reflection of Income in the Case of Hedging Transactions (§ 1.146–4(d)).

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Clear Reflection of Income in the Case of Hedging Transactions.

OMB Number: 1545–1412.

Regulation Project Number: FI–54–93.

Abstract: This regulation provides guidance to taxpayers regarding when gain or loss from common business hedging transactions is recognized for tax purposes and requires that the books and records maintained by a taxpayer disclose the method or methods used to account for different types of hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 22,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1903 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–26–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–26–96 (TD 8825), Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups (§ 1.382–8).

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96.

Abstract: Internal Revenue Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change in a loss corporation. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups of corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 875.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1904 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–1 and Revenue Procedure 2000–3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–1 and Revenue Procedure 2000–3, 26 CFR 601.201—Rulings and Determination Letters.

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.201—Rulings and Determination Letters.

OMB Number: 1545–1522.

Revenue Procedure Number: Revenue Procedure 2000–1 and Revenue Procedure 2000–3.

Abstract: The information requested in Revenue Procedure 2000–1 and Revenue Procedure 2000–3 is required to enable the Internal Revenue Service to give advice on filing letter rulings and determination letter requests and to process such requests.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 3,800.

Estimated Time Per Respondent: 80 hours, 19 minutes

Estimated Total Annual Burden Hours: 305,230.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1905 Filed 1–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–4, Revenue Procedure 2000–5, Revenue Procedure 2000–6, and Revenue Procedure 2000–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–4 (Letter Rulings), Revenue Procedure 2000–5 (Technical Advice), Revenue Procedure 2000–6 (Determination Letters), and Revenue Procedure 2000–8 (User Fees).

DATES: Written comments should be received on or before March 27, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2000–4 (Letter Rulings), Revenue Procedure 2000–5 (Technical Advice), Revenue Procedure 2000–6 (Determination Letters), and Revenue Procedure 2000–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 2000–4, Revenue Procedure 2000–5, Revenue Procedure 2000–6, and Revenue Procedure 2000–8.

Abstract: The information requested in these revenue procedures is required to enable the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time Per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,986.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–1906 Filed 1–26–00; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 52
Federal Rulemaking for the FMC Facility in the Fort Hall PM–10 Nonattainment Area; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket 24–7004; FRL–6527–1]

RIN 2060–AF84

Federal Rulemaking for the FMC Facility in the Fort Hall PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 12, 1999, the Environmental Protection Agency (EPA or we) published a proposed Federal Implementation Plan (February 1999 FIP proposal) to control particulate emissions from an elemental phosphorus facility owned by FMC Corporation (FMC) in southeastern Idaho (FMC facility). The FMC facility is located on the Fort Hall Indian Reservation and in the Fort Hall PM–10 nonattainment area. The purpose of the February 1999 FIP proposal was to propose a control strategy for particulate matter emissions from the FMC facility consisting of emission limits and work practice requirements that constitute reasonably available control technology (RACT) which would, in light of this area's longstanding nonattainment problem, ensure expeditious progress towards improving air quality and attaining the particulate matter standards in order to protect the public health.

EPA believes that comments and additional technical information received during the public comment period require reconsideration of several of the emission limitations and work practice requirements in the February 1999 FIP proposal. EPA is therefore issuing this supplemental proposal to revise certain limited aspects of the February 1999 FIP proposal.

DATES: Written comments, identified by the docket control number ID 24–7004, must be received by EPA on or before February 28, 2000.

ADDRESSES: Comments should be submitted (in triplicate if possible) to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality (OAQ–107), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
A. How Can I Get Additional Information or Copies of Support Documents?
B. How and to Whom Do I Submit Comments?
C. Will There Be a Public Hearing on This Supplemental Proposal?
II. Background
III. How Is This Supplemental Proposal Affected by Changes to the Air Quality Standards?
IV. How Does This Supplemental Proposal Change the February 1999 FIP Proposal?
A. Emission Limitations and Work Practice Requirements
1. Mass Emission Limits for Sources Currently at RACT
2. Calciner Scrubbers (Source 9)
a. Emissions Estimate
b. Evaluation of Alternative Control Technology
c. Emission Limit and Control Efficiency Requirements
3. Calciner Cooler Vents (Source 10)
4. Phosphorous Loading Dock (Phos Dock) Scrubber (Source 21a)
5. Excess CO Burner (Source 26b)
a. Emissions Estimate
b. Mass Emission Limit and Control Efficiency Requirements
i. Mass Emission Limit
ii. Control Efficiency Requirement
iii. Reference Test Methods
c. Opacity Limit
d. Flare on Excess CO Burner
6. Opacity Limits
7. Sources Not Identified in Table 1
a. Insignificant Sources
b. New Sources
B. Reference Test Methods
C. Monitoring, Recordkeeping, and Reporting Requirements
1. Periodic Source Testing
2. Pressure Relief Vents
3. Weekly Visible Emission Observations
4. Moisture Content Requirements
5. Future Revisions to Montitoring, Work Practice, Recordkeeping, and Reporting Requirements
D. Definitions
1. Excursion
2. Road
3. Slag Pit Area
V. What is the Impact of this Supplemental Proposal on Air Quality in the Area?
A. Emission Inventory
B. Source Apportionment Study
C. Recent Air Quality Data
D. Effectiveness of the Control Strategy
VI. How Do I Comment on This Action?
VII. Do Any of the Regulatory Assessment Requirements Apply to This Action?
A. Executive Order 12866
B. Regulatory Flexibility Act (RFA)
C. Unfunded Mandates Reform Act (UMRA)
D. Paperwork Reduction Act
E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
F. Executive Order 13132: Federalism
G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

I. General Information

A. How Can I Get Additional Information or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document and the February 12, 1999 FIP proposal from the internet at the following address: http://www.epa.gov/r10earth/. Once there, click on "Events." You can also go directly to the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

2. In person or by phone. If you have any questions or need additional information about this action, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. In addition, the official record for this document, which is called the "docket," has been established under docket control number ID 24–7004. The docket is available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday, at EPA's Central Docket Section, Office of Air and Radiation, Room 1500 (M–6102), 401 M Street, SW., Washington, D.C. 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time, at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the docket is also available for review at the Shoshone-Bannock Tribes, Office of Air Quality Program, Land Use Commission, Fort Hall Government Center, Agency and Bannock Roads, Fort Hall, Idaho 83203; the Shoshone-Bannock Library, Pima and Bannock, Fort Hall, Idaho, 83203; and the Idaho State University Library, Government Documents Dept., 850 South 9th Avenue, Pocatello, Idaho. A reasonable fee may be charged for copies.

B. How and to Whom Do I Submit Comments?

You may submit comments on this supplemental proposal through the mail or in person. Be sure to identify the appropriate docket control number (*i.e.*, "ID–24–7004") in your correspondence.

1. By mail. Submit written comments to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

2. In person or by courier. Deliver written comments to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Comments on the February 1999 FIP proposal are discussed in this supplemental proposal only to the extent a particular comment is relevant

to this supplemental proposal. All comments received on the February 1999 FIP proposal and on this supplemental proposal will be addressed when EPA takes final action on the Federal Implemental Plan (FIP).

C. Will There Be a Public Hearing on This Supplemental Proposal?

Very few members of the public attended the public hearing on the February 1999 FIP proposal held on March 18, 1999. Only three members of the public provided comments at the hearing and the comments were provided after extensions of time by the hearing officer. In addition, EPA hopes to expedite the issuance of the final FIP. Therefore, no public hearing will be held to discuss this supplemental proposal unless a member of the public requests in writing that a hearing be held and provides a sufficient reason for holding a hearing. If you wish to request a public hearing, you must submit a written request to Montel Livingston on or before February 11, 2000 at the address given above. If a public hearing is held, it will take place on February 28, 2000, the last day of the public comment period. If you wish to attend the hearing, if one is held, please call Steven Body at (206) 553–0782 to determine if a hearing will be held and to obtain the time and location.

II. Background

FMC produces elemental phosphorus at its facility located on the Fort Hall Indian Reservation in southeastern Idaho near Pocatello (FMC facility). The FMC facility emits over 1400 tons of particulate matter into the atmosphere each year. Numerous exceedances of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM–10), in effect as of July 1, 1987, have been and continue to be recorded at monitoring stations located in the Fort Hall PM–10 nonattainment area in the vicinity of the FMC facility (Tribal monitors).

On February 12, 1999, we published a proposed rule containing air pollution emission limitations, work practice requirements, and related monitoring, recordkeeping and reporting requirements designed to control PM–10 emissions from the FMC facility. 64 FR 7308 (February 12, 1999).[1] We held a public workshop on the Fort Hall Indian Reservation on March 4, 1999, to explain the February 1999 FIP proposal and to answer questions on the proposal. On March 18, 1999, we held a public hearing on the February 1999 FIP proposal on the Fort Hall Indian Reservation. Three members of the Shoshone-Bannock Tribes provided oral testimony at the hearing. A copy of the transcript from the public hearing is located in the docket. EPA accepted written comments on the February 1999 FIP proposal until May 13, 1999, and received written comments from six commenters, including FMC and the Shoshone-Bannock Tribes (Tribes). Copies of all written comments are in the docket.

After carefully reviewing the public comments, including additional technical and source test information provided by FMC, we have reconsidered several of the emission limits and work practice requirements in the February 1999 FIP proposal. We are therefore issuing this supplemental proposal to revise certain limited aspects of the original February 1999 FIP proposal, including revisions to mass emission limits and opacity for certain sources and minor changes to monitoring, recordkeeping, and reporting requirements.

Please note that comments on the February 1999 FIP proposal are discussed in this supplemental proposal only to the extent a particular comment is relevant to this supplemental proposal. All comments received on the February 1999 FIP proposal and on this supplemental proposal will be addressed when EPA takes final action on the FIP.

III. How is This Supplemental Proposal Affected by Changes to the Air Quality Standards

The Fort Hall PM–10 nonattainment area was designated as a nonattainment area under the 24-hour and annual PM–10 standards that were adopted on July 1, 1987 (52 FR 24672). On July 18, 1997, we published revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). See 62 FR 38651. These standards became effective on September 16, 1997. When EPA adopted the revised 1997 particulate matter standards, we provided that the pre-existing 1987 standards for PM–10 would remain in effect until certain conditions specified in 40 CFR § 50.6(d) had occurred. See 62 FR at 38701. Although the pre-existing 1987 PM–10 standards were therefore still in effect at the time of the February 1999 FIP proposal, EPA was in transition towards implementation of the revised particulate matter standards and, thus, anticipated that the 1987 PM–10 standards would likely be phased out and no longer be applicable by the time we took final action on the FIP proposal. Therefore, the control strategy proposed by EPA in the February 1999 FIP proposal was designed to ensure that progress towards maintenance of air quality that protected public health continued during the transition to the implementation of the revised 1997 PM–10 standards and also to assist in bringing the Fort Hall PM–10 nonattainment area into attainment with the revised particulate matter standards as quickly as possible. See 64 FR at 7308, 7310. In the February 1999 FIP proposal, EPA demonstrated that the Fort Hall PM–10 nonattainment area violates the pre-existing 1987 24-hour PM–10 standard. 64 FR at 7317. We also showed that there was a strong likelihood that the area was in violation of the pre-existing 1987 annual PM–10 standard, as well as the less-stringent, revised 1997 24-hour and annual PM–10 standards, although the Tribal monitors had not collected sufficient data at that time to make a definitive determination in that regard. 64 FR at 7317–18. EPA also demonstrated in the February 1999 FIP proposal that implementation of the proposed control strategy was expected to result in attainment of the pre-existing 1987 and revised 1997 24-hour and annual PM–10 standards. 64 FR at 7341–7342.

On May 14, 1999, the U.S. Court of Appeals for the D.C. Circuit issued an opinion in *American Trucking Associations, Inc.* v. *EPA*, 175 F.3d 1027 ("ATA"), which, among other things, vacated the revised PM–10 standards that were published on July 18, 1997 and became effective September 16, 1997. The pre-existing 1987 PM–10 standards were not at issue in this litigation, however, and the Court's decision does not affect the applicability of those pre-existing 1987 PM–10 standards. Those standards continue to be codified at 40 CFR 50.6 and remain in effect for the Fort Hall PM–10 nonattainment area.[2]

[1] EPA published a **Federal Register** notice with minor corrections to the February 1999 FIP proposal on April 13, 1999. 64 FR 17990.

[2] In its decision in *ATA* the Court requested supplemental briefing which, among other things, "should address the possibility that the previous particulate matter standard will spring back to life in response to our decision", *Id.* at 1057 n.8. EPA then explained to the Court that the 1987 PM–10 standards remained in effect even after promulgation of the new standards. The Court issued an Order (June 18, 1999), in which it declined to vacate the new PM–2.5 NAAQS, but was silent regarding EPA's explanation of the continued applicability of the 1987 PM–10 NAAQS. EPA believes this is an indication that the Court

Continued

IV. How Does This Supplemental Proposal Change the February 1999 FIP Proposal?

A. Emission Limitations and Work Practice Requirements

1. Mass Emission Limits for Sources Currently at RACT

As stated in the preamble to the February 1999 FIP proposal, we believe that many of the sources at FMC currently employ RACT-level controls. See 64 FR at 7311 and 7325. These include the following point sources: source 5a (east shale baghouse); source 6a (middle shale baghouse); source 7a (west shale baghouse); source 10 (calciner cooler vents); sources 12a and 12b (north and south nodule discharge baghouses); source 15a and 15b (east and west nodule discharge baghouses); source 16a (nodule reclaim baghouse); 17a (dust silo baghouse); sources 18a and 18b (furnace building east and west baghouses); source 18d, 18e, 18f, and 18g (furnace building Medussa Andersen stacks); and source 20a (coke handling baghouse). For these point sources, EPA intended to propose mass emission limits designed to keep PM–10 emissions at current levels and not to require additional controls in order to meet the FIP limits. See 64 FR at 7311 and 7325.

Based on information provided by FMC during the public comment period, we believe that the mass emission limits proposed for the above identified sources were not consistent with current emission levels. In its comments, FMC noted that the proposed mass emission limits were derived from the 1996 emission inventory, which was compiled on the basis of source tests conducted using EPA Method 5, 40 CFR part 60, appendix A (Method 5). Method 5 does not distinguish between PM–10 and total particulate matter and also does not measure condensible particulate matter. Condensible particulate is material that is in the vapor state at elevated stack sampling temperature but, at lower or ambient temperature, condenses to either liquid droplets or solid particulate. Although condensible particulate is not measured using Method 5, it can condense to particulate and be measured at air quality monitoring sites. In the February 1999 FIP proposal, we proposed EPA Methods 201/201A and 202, 40 CFR part 51 appendix M (Methods 201/201A and 202), as the reference test methods for determining compliance with the proposed mass emission limits. Method 201/201A measures all PM–10 except condensible PM–10 and Method 202 measures condensible PM–10. Thus, FMC asserted, the proposed reference test method requires the inclusion of more particulate matter (condensible PM–10) than originally considered when developing the 1996 emission inventory and establishing the proposed emission limits.

To support its contention that it cannot comply with the proposed mass emission limits for the sources identified above without installing additional controls, FMC submitted the results of source tests conducted after publication of the February 1999 FIP proposal. These source test results show that, using Methods 201/201A and 202, FMC would be in violation of many of the proposed emission limits in the February 1999 FIP proposal because of the difference in the test method used to establish the emission limits (Method 5) and the reference test method proposed in the FIP (Methods 201/201A and Method 202). This is clearly contrary to EPA's intent in proposing the mass emission limits for these sources. To address this issue, FMC requested that the reference test method be only Method 201/201A and that Method 202 be performed on each source for informational purposes only. FMC also requested that the definition of PM–10 or PM–10 emissions be revised to expressly state that it does not include condensible particulate matter, unless otherwise specified in the FIP.

Because the mass emission limits for the sources identified above were derived from an emission inventory that did not include condensible PM–10, we believe it is appropriate that the proposed mass emission limits not apply to condensible PM–10 and that the reference test method for these mass emission limits be consistent with the method used to derive the emission limits. In this supplemental proposal, we are therefore proposing to include only Method 201/201A as the reference test method for the sources identified above. We have considered the alternative approach of establishing mass emission limits for these sources that includes condensible PM–10. We have decided not to pursue this option for the reasons presented below.

The only information we have on condensible PM–10 emissions from the FMC facility is from the limited source test data recently conducted by FMC and submitted with FMC's response to comments. This information includes one stack test using Methods 201/201A and 202 consisting of three runs each for each of these sources. The test results are puzzling in some respects. We would generally expect condensible particulate to be present in emissions from hot or heated emission sources, such as combustion or furnace emission releases, but would not expect condensible particulate to be present in sources which are at ambient temperature. The source test results provided by FMC show condensible PM–10 emissions were high for most sources at FMC, including material handling of dry cold aggregate (shale, briquettes, coke, and nodules) from which no condensible particulate emissions would normally be expected because the material is already at ambient temperature. In addition, the range of reported condensible PM–10 varied considerably over the three test runs conducted for each source. EPA believes that attempting to establish emission limits that include condensible PM–10 emissions based on this limited set of data could result in less stringent limits. Because the intent of the FIP for these sources is to maintain emissions at current levels, we would need to set emission limits that would account for the wide variation in condensible emissions from these sources and set the limits at the high range of the test results.

We recognize that by establishing emission limits that do not apply to condensible PM–10 emissions, condensible PM–10 from these sources would not be directly regulated by the FIP. We nonetheless believe that this approach will not interfere with the effectiveness of the control strategy for attaining the PM–10 standard for several reasons. First, it is very unlikely that fugitive emissions from shale, briquette, coke, or nodule handling, where the material is stored at ambient temperature, contain significant condensible PM–10 because there is no further cooling process that would condense additional particulate. Second, it is not possible for FMC to change the ratio of non-condensible to condensible particulate for these sources. Therefore, establishing an emission limit that limits the amount of non-condensible PM–10 emissions from a given source to current emission levels should likewise limit condensible PM–10 emissions from that source at current levels.

We therefore believe that the more prudent course at this time is to modify the mass emission limits for these sources to exclude condensible PM–10 and to modify the reference test method so that it includes only non-condensible PM–10. In order to ensure the continued collection of information on condensible PM–10 emissions from point sources at the FMC facility and to

was unwilling to disturb that aspect of the Agency's July 18, 1997 rule.

allow for the further analysis of this data, we are proposing to require FMC to conduct Method 202 concurrently with Methods 201/201A for informational purposes. This will allow better evaluation of the extent to which condensible PM–10 is emitted from the FMC facility and whether limitations that include condensible emissions are necessary and appropriate. If we later determine that the control strategy in this FIP proposal is not sufficient to attain the PM–10 NAAQS, we will consider the extent to which condensible PM–10 emissions from the FMC facility contribute to the nonattainment problem and, if necessary and appropriate, propose additional control measures.

As stated above, FMC also commented that, for purposes of this FIP, EPA should define PM–10 emissions to include only non-condensible PM–10. FMC presumably urges this change to make absolutely clear that condensible PM–10 will not be included in determining compliance with mass emission limits for these sources. We agree with the end result sought to be accomplished by FMC, but do not agree that a change to the definition of "PM–10" or "PM–10 emissions" is appropriate because those terms are used in other contexts where condensible PM–10 emissions should be considered. To account for FMC's concern, we instead propose to revise Table 1 to make clear that the mass emission limitations for these sources do not apply to condensible particulate matter.

The source test results provided by FMC in response to the February 1999 FIP proposal also show that for some of the sources identified above, the 1996 emission inventory on which the February 1999 FIP proposal was based overestimates emissions of non-condensible PM–10. Because the emission limits for these sources in the February 1999 FIP proposal were derived from the 1996 emission inventory, the proposed emissions limits are therefore well above what the recent source tests show to be representative of actual worst case emissions of non-condensible PM–10 from these sources. As stated above, for those sources that we currently believe employ RACT-level controls, EPA intends to propose mass emission limits designed to keep PM–10 emissions at current levels. Based on the recent sources test data provided by FMC, we are therefore proposing to reduce the mass emission limits for the following sources from the levels identified in the February 1999 FIP proposal as shown below:

Source	Limit in 2/99 proposal (lbs/hr)	Proposed limit (lbs/hr)
Middle shale BH (source 6b)	0.6	0.30
N. discharge BH (source 12a)	2.7	0.20
S. discharge BH (source 12b)	2.7	0.20
E. nodule BH (source 15a)	2.0	0.50
W. nodule BH (source 15b)	1.6	0.50
Nodule reclaim BH (source 16a)	0.9	0.20
Dust silo BH (source 17a)	3.3	0.15
E. BH (furnace bldg) (source 18a)	1.5	0.75
W. BH (furnace bldg) (source 18b)	1.2	0.75
Furnace #1 MA (source 18d)	4.8	2.0
Furnace #1 MA (source 18d)	4.8	2.0
Furnace #2 MA (source 18e)	4.8	2.0
Furnace #3 MA (source 18f)	4.8	2.0
Furnace #4 MA (source 18g)	4.8	2.0

2. Calciner Scrubbers (Source 9)

The February 1999 FIP proposal proposed a mass concentration limit for the calciner scrubbers (source 9) of 0.005 grains per dry standard cubic foot (gr/dscf). During the public comment period on the February 1999 FIP proposal, FMC argued that the proposed emission limit was not achievable because the February 1999 FIP proposal underestimated existing emissions from the calciner scrubbers and underestimated the control efficiency of the existing control system. The end result, according to FMC, is an emission limit that is not achievable by FMC even after the installation of RACT-level controls and is inconsistent with the performance criteria for the calciner scrubbers agreed to by EPA and FMC in the consent decree that was lodged in the United States District Court for the District of Idaho on October 16, 1998, regarding alleged violations of the Resource Conservation and Recovery Act at the FMC facility (RCRA Consent Decree).[3] After careful consideration of the issues, we believe that the proposed emission limit for the calciner scrubbers of 0.005 gr/dscf must be revised.

[3] The RCRA Consent Decree was entered by the Court on July 14, 1999. A copy of the RCRA Consent Decree and the order of entry is in the docket.

a. Emissions Estimate

The 1996 emission inventory estimated existing emissions from the calciner scrubbers at 1204 pounds per day or 6.27 pounds per hour from each of the eight calciner scrubbing stacks.[4] This estimate was based on a grain loading of 0.013 gr/dscf from each calciner scrubber stack at a flow rate of 58,000 dscfm. This grain loading and flow rate underestimate current PM–10 emissions from the calciner scrubbers.

During the public comment period on the 1996 FIP proposal, FMC submitted information from 219 source tests of the outlet from the calciner scrubbers conducted from April 1992 to June 1998 using EPA Method 5. As discussed above, this test method does not measure condensible particulate matter. The scrubber outlet grain loading during these tests ranged from 0.009 to 0.034 gr/dscf, with an average of 0.019 gr/dscf. The flow rate ranged from 24,400 to 40,800 dscfm, with an average of 34,200 dscfm. FMC also submitted the results of 18 source tests of the inlet to the scrubbers using, EPA Method 201/201A and Method 202, and 11 tests of the outlet from the scrubbers conducted during 1998 and 1999 using EPA Method 5 and Method 202.[5] The 1998–1999 test results of the outlet from the calciner scrubbers using Method 5 only ranged from 0.014 to 0.021 gr/dscf, with an average of 0.017 gr/dscf. These results are generally consistent with the results of the source tests conducted with Method 5 from April 1992 to June 1998 (an average of 0.017 gr/dscf compared to an average of 0.019 gr/dscf), although the range of the recent tests is narrower. This narrower range is likely due to the fact that the data set of the more recent tests is smaller than for the earlier tests. The 0.013 gr/dscf used for compiling the 1996 emission inventory for the calciner scrubbers does not appear to be representative of reasonable worst case emissions from this source and in fact is not even representative of average emissions from this source.[6] Instead, it significantly underestimated reasonable worst case emissions from this source.

The flow rate of 58,000 dscfm relied on in compiling the 1996 emission inventory also was in error, which

[4] There are two calciners at FMC, each of which has two high energy John Zink scrubbers, and there are two stacks on each scrubber, adding up to eight stacks on the calciners.

[5] Method 5 is used in lieu of Method 201/201A for measuring emissions from the outlet from the calciner scrubbers because of the presence of entrained water drops. See 64 FR 7327.

[6] EPA is unable to reconstruct at this time how the 0.013 gr/dscf was settled on as the basis for the 1996 emission inventory.

appears to have resulted from an error in calculating the total number of calciner scrubber stacks and an oversight by FMC in its review of the emission inventory for accuracy. The error in the estimate of flow rate would overestimate current worst case emissions from this source. The combined effect of these errors is that the 1996 emission inventory underestimated reasonable worst case PM–10 emissions from the calciner scrubbers (excluding condensible PM–10).

Another factor that led to the underestimation of total PM–10 emissions from the calciner scrubbers in the 1996 emission inventory is that the emission estimate was based on source test data that did not measure condensible PM–10 emissions. As discussed above, the 1996 emission inventory was based on source tests conducted with EPA Method 5, which does not measure condensible PM–10 emissions. The more than 200 source tests on the calciner scrubbers conducted by FMC from April 1992 to June 1998 were also conducted with Method 5 and did not include condensible particulate matter. The more recent source tests conducted during 1998–1999 used EPA Method 202, as well as Method 5. Method 202 does measure condensible particulate matter. The test results of the outlet from the calciner scrubbers using Method 202, which for the first time measured condensible PM–10 emissions from this source, ranged from 0.006 to 0.028 gr/dscf, with an average of .012 gr/dscf. Total PM–10 emissions ranged from 0.021 to 0.043 gr/dscf, with an average of 0.029 gr/dscf. Thus, it appears that condensible PM–10 emissions account on average for approximately 40% of the total PM–10 mass from the calciner scrubbers.

After consideration of all information regarding emissions from the calciner scrubbers, including the information before EPA at the time the 1996 emission inventory was developed, the historical source test data collected by FMC from April 1992 to June 1998 using EPA Method 5, and the recent source tests conducted by FMC in 1998–1999 using EPA Method 5and Method 202, EPA believes that a more accurate estimate of current reasonable worst case of PM–10 emissions from the calciner scrubbers is 12.6 pounds per hour from each calciner scrubber, including condensible PM–10 emissions. This estimate is based on an average gas flow rate of 34,200 dscfm and on a reasonable worst case scrubber outlet grain loading of 0.043 gr/dscf using Method 5 and Method 202. This results in emissions from all eight calciner stacks of 2419 pounds per day or 200 tons per year.

b. Evaluation of Alternative Control Technology

In the February 1999 FIP proposal, EPA evaluated three alternative control technologies for increasing emission reductions from the calciner scrubbers: steam injection with high energy wet scrubbers, spray tower with hydrosonic scrubbers, and replacement of the existing scrubbing system with a baghouse. Replacement of the existing scrubbing control system with a baghouse was expected to have the highest emission reduction of any of the alternatives considered. 64 FR 7332. EPA was concerned, however, about the safety of using a baghouse on the calciner scrubbers because polonium-210 (Po–210) would be captured in the baghouse dust and retained on the baghouse walls, hoppers, and bags, creating a health and safety risk for workers. 64 FR 7332. In addition, the costs of installing baghouses was estimated to be $1.7 million with annual operating costs of up to $1.28 million, which resulted in a very high cost effectiveness. EPA continues to believe that replacement of the existing scrubbing system with a baghouse is not technologically or economically feasible and therefore does not represent RACT-level control for this source.

Of the other alternatives considered by EPA and discussed in the February 1999 FIP proposal, EPA estimated that steam injection would result in emission reductions of approximately 23% over current emissions, achieving a grain loading standard of 0.01 gr/dscf, and that a spray tower would result in emission reductions of approximately 62%, [7] achieving a grain loading standard of 0.005 gr/dscf. As discussed above, the 1996 emission inventory underestimated emissions from the calciner scrubbers. This underestimation of emissions prior to implementation of additional controls would similarly underestimate the grain loading standard that each alternative control system (steam injection or spray towers) could be expected to achieve. There is no reason to expect that steam injection would perform better than spray towers now that emissions from the calciner scrubbers are higher than originally estimated. In other words, EPA continues to believe that spray towers will be able to achieve a higher percentage of emission reductions than steam injection.[8] Therefore, EPA continues to believe that modification of the existing calciner scrubbers by installation of a spray tower represents RACT-level control for this source.

c. Emission Limit and Control Efficiency Requirements

In the February 1999 FIP proposal, EPA determined RACT-level controls (installation of spray towers in front of the hydrosonics) could achieve a grain loading of 0.005 gr/dscf at the design flow rate, estimated to be 58,000 dscfm, and proposed this emission limit as RACT for the calciner scrubbers. As discussed above, because reasonable worst case emissions from the calciner scrubbers were estimated at 0.013 gr/dscf in the 1996 emission inventory, achieving a grain loading of 0.005 gr/dscf was estimated to result in an emission reduction of 62%. In the February 1999 FIP proposal, EPA estimated the control efficiency of the current configuration of the scrubbing control system at 60%. Given that the modifications representing RACT were expected to result in a 62% reduction in emissions, the overall control efficiency of RACT-level controls was predicted to be approximately 85% (60% control efficiency of existing control system plus 62% additional reductions of the remaining 40% of emissions). As discussed in the February 1999 FIP proposal, in the RCRA Consent Decree, FMC agreed to spend $2.5 million for the purchase, installation, modification, testing, and operation of the necessary equipment for enhancing the performance of the existing scrubbing system on the calciners to achieve an overall control efficiency of 90%, with Methods 201/201A and 202 as the reference test methods. 64 FR 7332. EPA therefore determined that FMC's commitment under the RCRA Consent Decree for the calciner scrubbers would be equivalent to RACT-level controls. We continue to believe that enhancing the scrubber control system to achieve

[7] The February 1999 FIP proposal estimated the emission reductions from the addition of a spray tower at 75%. This number appears to have resulted from a calculation error. A reduction in emissions from 0.013 gr/dscf to 0.005 gr/dscf results in emission reductions of 62% over current levels.

[8] Two other alternative technologies considered by EPA and discussed in the docket, but not discussed in the February 1999 FIP proposal are lime injection and installation of waste evaporators. Lime injection has performance characteristics similar to steam injection with respect to PM–10, but has the added benefit of reducing sulfur dioxide emissions. The costs for lime injection, however, are almost three times higher than steam injection per ton of particulate removed. Installing water evaporators on the recirculated scrubber water to reduce solids content also is expected to reduce PM–10 emissions to the same extent as steam injection. As stated above, EPA believes spray towers can achieve greater emission reductions at a lower cost.

a control efficiency of at least 90% constitutes RACT-level controls.

We also believe, however, that the emission limit for the calciner scrubbers must be revised because the emission limit of 0.005 gr/dscf was based on an underestimation of current reasonable worst case PM–10 emissions from the calciner scrubbers, both because the previous estimate was based on a grain loading standard that was not representative of reasonable worst case conditions and because the estimate did not include condensible particulate matter in the exhaust. Because the performance requirement in the RCRA Consent Decree applies to all PM–10, including condensible PM–10 emissions, and because this is a high temperature combustion source, EPA believes it is appropriate that the emission limit for the calciner scrubbers apply to all PM–10, including condensibles.

In the February 1999 FIP proposal, we estimated that the current configuration of the calciner scrubbers resulted in a control efficiency of 50 to 60% based on information previously provided by FMC. Because no source tests had ever been conducted on the inlet to the calciner scrubbing system, the estimate of 50% to 60% control efficiency of the existing control system was based on best engineering judgement (of both FMC engineers and EPA), and not on actual source test data. As discussed above, the source tests conducted by FMC in 1998 and 1999 measured PM–10 emissions at both the inlet to and outlet from the calciner scrubbing system. This source test data indicates that the current scrubbing control system achieves a control efficiency of approximately 80%, much higher than previously understood. [9]

Increasing the control efficiency of the calciner scrubbing system from 80% to 90% results in an emission reduction of 50%. In proposing an emission limit for the calciner scrubbers that represents RACT, EPA believes it is appropriate that the reasonable worst case grain loading standard be reduced by 50%. The highest outlet grain loading of all PM–10, including condensibles, is 0.043 gr/dscf. A reduction of 50% would result in a grain loading of 0.022 gr/dscf. EPA therefore proposes that the calciner scrubbing system be required to achieve a grain loading standard of 0.022 gr/dscf, effective December 1, 1999, using Method 5 (with all particulate matter collected counted as PM–10) and Method 202 as the reference test methods. EPA is also proposing to establish a flow rate that is never to be exceeded based on the highest flow rate measured by FMC between 1992 and 1998 of 40,800 dscfm. These limits will are expected to achieve a reduction in emissions from the calciner scrubbers of 50% over current levels.

As discussed above and in the February 1999 FIP proposal, FMC agreed in the RCRA Consent Decree to achieve a control efficiency from the modified calciner scrubbing system of at least 90% under all operating conditions. To ensure that the modified scrubbing control system is being properly operated and maintained at all times, EPA also proposes to require that the pollution control equipment on the calciner stacks achieve a 90% control efficiency under all operating conditions, regardless of inlet loadings, production, and other variations in operations. The requirement to achieve a 90% overall control efficiency would be based on a reference test method that requires simultaneously measuring emissions at the inlet and outlet of the air pollution control equipment. The requirement for simultaneous testing is designed to reduce errors that could occur due to variability in emissions among the five test points (as stated above, there are two John Zink high energy scrubbers on each of the two calciners and two stacks per scrubber, resulting in one inlet test point and four outlet test points for each calciner). EPA proposes Methods 201 and 202 for the inlet to the calciner scrubbing system and Method 5 (with all particulate counted as PM–10) and Method 202 for the outlet from the system.

During the public comment period on the February 1999 FIP proposal, the Tribes commented that they supported the emission limitation of 0.005 gr/dscf for the outlet of the calciner scrubbing system in the February 1999 FIP proposal. The Tribes have expressed concern that, because the proposed FIP controls are based on the emission inventory, if the emission inventory has underestimated emissions by not including condensible particulate matter, revised emission limits might be inadequate to attain the particulate matter standards. For the reasons discussed above, we believe the emission limit for the calciner scrubbers of 0.005 gr/dscf proposed in the February 1999 FIP proposal is in error and must be revised. We also believe that the requirement to meet the revised limit of 90% control efficiency, but at no time to exceed 0.022 gr/dscf, represents RACT for this source. Moreover, EPA does not believe that the error in the estimation of emissions from the calciner scrubbers in the February 1999 FIP proposal and the increase in the emissions limit for the calciner scrubbers that would occur with this supplemental proposal will interfere with or delay attainment of the particulate matter standards. Rather, as discussed in more detail in section V.C. below, EPA believes that implementation of the emission limits in the February 1999 FIP proposal, as revised by this notice, will result in attainment of the PM–10 standards as expeditiously as practicable.

3. Calciner Cooler Vents (Source 10)

In the February 1999 FIP proposal, EPA stated that the calciner cooler vents currently employed RACT-level controls. We therefore proposed an emission limit for this source that we believed would keep emissions from the calciner cooler vents at current levels. 64 FR at 7324. As stated above, the emission inventory from which the proposed emission limits were derived was, for most sources, based on source tests using Method 5. Method 5 measures total suspended particulate, not just PM–10, and does not include condensible particulate matter. To determine the PM–10 emissions from the Method 5 data for a particular source for the 1996 emission inventory, EPA estimated, based on information provided by FMC, the percentage of total particulate matter from the source that was less than ten micrometers in diameter (PM–10).[10] Based on information provided by FMC, we estimated that 10% of the total particulate matter emitted from the calciner cooler vents was PM–10.[11] From this information, EPA determined that the current hourly emission rate of PM–10 from each calciner cooler vent was 2.0 pounds per hour (lb/hr) of PM–10. 64 FR at 7354 (proposed Table 1 to 40 CFR 52.676 (source 10)). EPA therefore proposed this emission rate as the emission limit for this source.

In its comments on the February 1999 FIP proposal, FMC asserted that, by estimating that only 10% of the total particulate matter from the calciner cooler vents was PM–10 in the 1996 emission inventory, EPA significantly

[9] As discussed above, EPA believes that the 1998–1999 source test results provided by FMC are reliable because the Method 5 results (excluding the condensible fraction) are consistent with the results of the 219 source tests conducted from April 1992 to June 1998, which also excluded the condensible fraction.

[10] As stated above, neither the Method 5 data, nor EPA's estimation of PM–10 emissions from the Method 5 data included condensible particulate matter.

[11] FMC had advised EPA at the time the 1996 emission inventory was prepared that only 7.5% of total particulate emissions from this source was PM–10. EPA assumed 10% to provide for a margin of error.

underestimated PM–10 emissions from this source. Based on the source tests conducted by FMC after the February 1999 FIP proposal, it appears that on average 38% of total particulate matter from the calciner cooler vents is comprised of PM–10, and that 59% of the PM–10 is condensible particulate matter. The average emission rate across the four calciner cooler vents is 2.9 lb/hr of PM–10 (excluding condensible PM–10), with a range of 2.0 to 4.0 lb/hr, depending on the stack. FMC commented that the mass emission limit for the calciner cooler stacks (source 10) must be revised because current source tests show that FMC cannot comply with the proposed emission limit for this source even when condensible PM–10 is excluded from the limit. FMC noted that EPA stated in the February 1999 FIP proposal that the calciner cooler vents currently employ RACT-level controls and that the intent of the proposed mass emission limit was to keep emissions at current levels.

After reviewing the information provided by FMC in its comments on the February 1999 FIP proposal, EPA believes that the emission limits for the calciner cooler stacks should be revised to account for this new source test data. EPA is therefore proposing an emission limit for each calciner cooler stack of 4.4 lb/hr of PM–10 (which is the maximum emission rate reported by FMC plus a margin for error), excluding condensible PM–10. Method 201/201A is proposed as the reference test method.

4. Phosphorous Loading Dock (Phos Dock) Scrubber (Source 21a)

We proposed a 0.007 gr/dscf emission limit in the February 1999 FIP proposal for the phos dock scrubber. This limit was designed to keep emissions at the levels in the 1996 emission inventory. As stated in the February 1999 FIP proposal, the additional controls FMC has agreed to undertake for the phos dock area are designed to reduce emissions due to "upset" conditions. Emissions from "upset" conditions were not included in the 1996 emission inventory as discussed in our earlier proposal. 64 FR at 7341. During the public comment period on the February 1999 FIP proposal, FMC requested that the emission limit for the phos dock scrubber exclude condensible PM–10 emissions because, as discussed above in section IV.A.1., the emission estimate for this source in the 1996 emission inventory was based on source tests conducted with Method 5. For the reasons discussed above in section IV.A.1., we agree that the emission limit for the phos dock scrubber should exclude condensible PM–10 emissions and that the reference test method for this source should be Method 201/201A. Method 202 would be required to be conducted for informational purposes.

The new source test data for the phos dock scrubbers submitted by FMC in response to comments on the February 1999 FIP proposal indicated that the worst case daily PM–10 emissions (excluding condensibles) from the phos dock scrubber were 0.003 gr/dscf. This emission rate is less than what is presented in the 1996 emission inventory. Accordingly, as also discussed above in section IV.A.1., EPA proposes that the emission limit for the phos dock scrubber be reduced from 0.007 gr/dscf to 0.004 gr/dscf with Method 201/201A as the reference test method.

5. Excess CO Burner (Source 26b)

In the RCRA Consent Decree, FMC committed to replacing the existing elevated secondary condenser flare (elevated flare) and ground flare with new technology, which is referred to as the excess CO burner. The excess CO burner will burn the phosphorus in the excess carbon monoxide (CO) gas stream in an enclosed combustion chamber and duct exhaust gasses to a scrubber to remove phosphorus pentoxide. FMC committed to achieving a 95% control efficiency for PM–10 in the RCRA Consent Decree. In the February 1999 FIP proposal, EPA stated that it believed this system constituted RACT for this source. 64 FR 7332–7333. During the summer of 1999, FMC built, operated, and tested a pilot excess CO burner demonstration project. This project is approximately 1/80 scale of the excess CO burner FMC intends to build to satisfy its obligations under the RCRA Consent Decree. Based on operating and testing of the excess CO burner pilot project, on November 1, 1999, FMC provided EPA with summary information on current emissions, problems with reference test methods, PM–10 removal efficiencies, and other performance and durability information. A summary of the discussions with FMC at the November 1, 1999, meeting, as well as a copy of the information provided by FMC to EPA at the meeting, is in the docket.

a. Emissions From the Existing Elevated Flare and Ground Flare

The existing elevated flare and ground flare, to which excess CO at the FMC facility is currently directed, emit combustible gas mixtures. There is no EPA approved test method for measuring emissions from this source and, because of the nature of the emissions, it has not previously been possible to directly measure emissions from this source. The difficulty in accurately measuring emissions from this source has been compounded by the fact that emissions from this source vary tremendously (by orders of magnitude) throughout a 24-hour period and from week to week based on plant operating conditions. The emission estimate of 3109 pounds per day (2281 from the ground flare and 828 from the elevated flare) contained in the 1996 emission inventory that served as a basis for the February 1999 FIP proposal was derived from theoretical chemical reaction calculations and assumptions of worst case operating conditions. Those calculations also accounted for the oxidation of phosphorus to phosphorus pentoxide (P205) and reported mass emissions as P2O5.

In its comments on the February 1999 FIP proposal, FMC asserted that emissions from the existing elevated flare and ground flare are far greater than estimated in the 1996 emission inventory—as much as four times higher. FMC did not provide any documentation along with its comments, however, to justify its claim that the estimate for these sources in the 1996 emission inventory was in error.

The construction of the excess CO burner pilot plant has allowed FMC for the first time to conduct actual source tests on PM–10 emissions generated from the excess CO at the facility. FMC used the results of their source testing of the inlet to the excess CO burner to estimate emission from the current elevated secondary condenser flare and CO ground flare. This recent source testing has provided more accurate information on the levels of particulate emissions from this source and shows that previous emission estimates underestimated PM–10 emissions from the excess CO because of the chemical composition of the emission stream.

Particulate in the excess CO exhaust gas consists primarily of oxidized phosphorus compounds, including phosphorus pentoxide and phosphoric acid. Phosphorus pentoxide will rapidly hydrolyze to phosphoric acid in the presence of water vapor. Phosphoric acid is a strong desiccant and its mass continues to increase when exposed to water vapor. FMC contends that this phenomenon was highlighted when they tried to equilibrate source test filters in the desiccator and weigh to a constant weight. The mass of the filter from a reference test method source test continues to increase as water is absorbed from the atmosphere, even in the desiccator and it cannot be driven off by heating the filters to 220 degrees Fahrenheit. This same phenomenon

occurs in exhaust gas streams and in the atmosphere.

Emissions in the elevated flare and ground flare while in the stack are mostly pure phosphorus. The phosphorus burns immediately upon contact with air to form P2O5 and further chemical reactions continue to occur in the atmosphere to form more complex phosphorus compounds These compounds end up on the ambient sampler filter media and are measured for determining ambient PM–10 levels. The excess CO burner takes the same phosphorus laden gas stream, burns it to P2O5, hydrolyzes to phosphoric acid, possibly undergoes other reactions, and emits a complex mixture of phosphoric acid and other compounds. Essentially the excess CO burner will contain the chemical reactions that now occur in the atmosphere and scrub them in the Andersen filter system.

Based on the information provided by FMC at the November 1, 1999, meeting, it appears that previous estimates of PM–10 emissions generated by the excess CO burned in the elevated flare and ground flare did not account for increased mass due to absorption of water vapor in the atmosphere as emissions were transported from FMC to the monitoring sites. FMC presented a chart of phosphorus and the mass conversion factor after exposure to water vapor. One pound of phosphorus can result in particulate that is 4.3 times greater in mass, or 4.3 pounds. EPA's previous estimates of emissions calculated the mass of P2O5 emitted from the elevated flare and ground flare and did not account for an increase in mass due to absorption of the water vapor.

Based on the source test data from the pilot project provided by FMC, FMC estimates worst case daily emissions from the elevated secondary condenser flare and CO ground flare of 10,543 pounds per day. This is more than three times as high as the estimate of 3109 pounds per day that EPA relied on the February 1999 FIP proposal. Both methods used the same operating conditions for calculating 24-hour worst case emissions (one calciner down and two hours of hot flush in a 24 hour period). EPA believes these new results are far superior to the original emission estimates made by EPA and presented in the February 1999 FIP proposal, because FMC's revised estimates account for some water vapor that is in the combustion air. It is important to emphasize that the revision of the emission estimate for this source does not reflect an increase in emissions from this source since 1996, but instead, reflects a more accurate estimate of what has been and is currently being emitted from the elevated flare and ground flare.

b. Mass Emission Limit and Control Efficiency Requirements

We proposed a mass emission limit for the excess CO burner of 6.5 lbs/hour in the February 1999 FIP proposal. During the public comment period on the proposal, FMC commented that the proposed limit is inconsistent with, and much more stringent than the performance criteria FMC agreed to meet for the excess CO burner in the RCRA Consent Decree. FMC contended that this inconsistency was due in part to the fact that the emission limit was derived using an incorrect baseline emission inventory which greatly underestimated current emissions from the elevated flare and ground flare that the excess CO burner will replace. The error in the estimation of emissions was compounded, according to FMC's comments on the February 1999 FIP proposal, by applying an oversimplified mathematical calculation and requiring compliance testing during worst case conditions. The end result, according to FMC, is an emission limit that is technologically infeasible. In support of this position, FMC submitted a letter from Andersen 2000, Inc, (Andersen) the manufacturer of the Andersen CHEAF scrubber, the control equipment for the excess CO burner under consideration by FMC. Andersen's May 7, 1999, letter to FMC stated that the Andersen CHEAF scrubber cannot achieve the proposed emission limit of 6.5 lbs/hour from an emission source with oxidized phosphorus present, such as the excess CO burner.

In commenting on the February 1999 FIP proposal, FMC also noted that the excess CO burner involves novel applications of existing technology and is still in the research and development stage. Because of the difficulty of estimating current emissions from the existing elevated secondary condenser flare and the existing CO ground flare and because of the difficulty of forecasting actual emissions from the excess CO burner upon completion, FMC urged EPA in its comments to establish a control efficiency requirement rather than a mass emission limit for the excess CO burner or to defer establishing any requirements for the excess CO burner until the source is constructed and tested.

In the RCRA Consent Decree, FMC committed to achieving a 95% control efficiency for PM–10 for the excess CO burner. As stated in the preamble to the February 1999 FIP proposal, we intended that the mass emission limit in the February 1999 FIP proposal for the excess CO burner be consistent with the performance measures agreed to by the United States and EPA in the RCRA Consent Decree. 64 FR at 7332–33.

Based on the information provided during the public comment period and in consultation with others at Region 10, EPA circulated a letter to all those who commented on the February 1999 FIP proposal. The letter was dated June 8, 1999, and was addressed "To whom it may concern." A copy of the letter is in the docket. In the letter, EPA stated that based on our preliminary review of the public comments received with respect to two sources at the FMC facility, EPA was considering changes to the mass emission limits for the calciner scrubbers and the excess CO burner. With respect to the excess CO burner, the letter stated that EPA was considering establishing an emission limit for the excess CO burner that required FMC to achieve a control efficiency of 95% at all times, consistent with the RCRA Consent Decree. EPA further stated that it believed it was essential to establish an upper limit on emissions from the excess CO burner to ensure that an increase in production does not result in an increase in emissions that could interfere with attainment of the PM–10 NAAQS. Although the letter from Andersen stated that the excess CO burner could not achieve an emission limit of 6.5 pounds per hour, Andersen did state that it would guarantee an emission limit of 15.81 pounds per hour of PM–10 (including condensible PM–10 emissions) from the excess CO burner using Methods 201/201A and 202, based on the design parameters provided by FMC. Based on the Andersen letter, the June 8, 1999 "To whom it may concern" letter stated that EPA was also considering a requirement that the emissions from the excess CO burner also not exceed 15.81 pounds per hour.

As stated above, FMC conducted numerous source tests on the excess CO burn pilot plant over the course of the summer of 1999. During the November 1, 1999, meeting, FMC presented a summary of the source test results and expressed a concern that the excess CO burner would not be able to comply with a mass emission limit of 15.81 pounds per hour and might not be able to achieve a control efficiency of 95% at all times, as outlined in the June 8, 1999 "To whom it may concern" letter from EPA.

i. Mass Emission Limit

With respect to the mass emission limit, FMC stated that as a result of the recent source tests conducted on the inlet to the excess CO burner, current

emissions from the secondary elevated flare and CO ground flare are significantly higher than previously estimated. This issue is discussed in more detail above. The guarantee in the Andersen letter of 15.81 pounds per hour most likely did not completely anticipate the water vapor issue. Based on the data provided by FMC in the November 1, 1999, meeting it appears that the maximum emission rate from the excess CO burner will occur during a hot flush and will result in a mass loading at the inlet of the scrubber of 472 pound per hour. This calculation is based on excess CO burner design capacity, a grain loading during a hot flush of 2.0 gr/dscf. With a 95% control efficiency, the resulting maximum hourly emission rate would be 24 pounds per hour. Because the hot flush generally occurs for no more than two hours and the source test consists of three one hour runs, generally separated by a period of time necessary to set up for the next run, EPA believes that a maximum emission limitation of 24 pounds per hour, as measured by the reference test methods, along with a control efficiency requirement of 95%, represents RACT for the excess CO burner. The control efficiency requirement, discussed below, will assure that emissions are minimized on a continuous basis during normal operation of four furnaces and two calciners.

ii. Control Efficiency Requirement

With respect to the control efficiency requirement, FMC presented a table of scrubber inlet loadings comprised of 29 individual tests. FMC also presented a graph showing the test run number and the overall system PM–10 removal efficiency (%) for each run. The early runs show performance of less than 95% but are characterized by wide variability. These results are unreliable because of a problem with the test method used, which is discussed in more detail below. The last four runs presented on the graph show control efficiencies of between 90 to 95%, but the corresponding inlet and outlet loading results are not presented on this graph. The manner in which FMC conducted the source testing on the pilot plant appears to have underestimated the removal efficiency of the control device on the excess CO burner pilot project. The excess CO burner pilot project burns the CO gas in an enclosed burner with excess air. Burner exhaust passes through ducts to a water quench to cool the gas stream and which saturates the gas stream with water vapor prior to entering the Andersen scrubber. The sampling protocol has two problems. Most significantly, the sampling ports for the inlet to the scrubber are upstream of the water quench. And secondly, but of less significance, the combustion air contains water vapor and the inlet sampling ports are upstream of rather long ducting before reaching the scrubber, thus allowing residence time for any water vapor to react with the P2O5 before being sampled at the outlet. There appears to be more than 20 feet (perhaps as much as 40 feet) of ducting before the water quench and the control device. If the inlet to the control device had been sampled after the water quench, EPA believes the control efficiency would have achieved 95%. The true performance of the control device on the excess CO burner appears to have been significantly underestimated because of where FMC measured the inlet to the control system.

iii. Reference Test Methods

The information provide by FMC at the November 1, 1999, meeting also identified an apparent problem with Method 201/201A and Method 5, the reference test methods proposed in the February 1999 FIP proposal and the June 8, 1999 "To whom it may concern" letter for the excess CO burner. According to FMC, because of the chemical composition of the emission stream, conducting performance tests with these EPA reference test methods, without modification, are unreliable and overestimate PM–10 emissions. FMC contends that some modifications to the proposed reference test methods (Methods 201/201A and 5) are needed for the excess CO burner. As discussed above, particulate in the excess CO exhaust gas consists primarily of oxidized phosphorus compounds, including phosphorus pentoxide and phosphoric acid. Phosphorus pentoxide will rapidly hydrolyze to phosphoric acid in the presence of water vapor. Phosphoric acid is a strong desiccant and its mass continues to increase when exposed to water vapor.

Reference Method 5 and Method 201/201A provide filter handling procedures after sample collection. See 40 CFR Part 60, Appendix A, Method 5 , section 4.3, and 40 CFR Part 51, Appendix M, Method 201, section 4.2.1. This procedure requires storing filters in an enclosure with silica gel desiccant (desiccator), conditioning of filters for 24 hours before weighing, and weighing to a constant weight. It provides an alternative procedure that calls for heating the filter to 220 degrees Fahrenheit for two to three hours, cooling in the desiccator, and weighing until the weight stabilizes with no less than six hours between weighings. The particulate catch from the excess CO burner is primarily phosphorus pentoxide, which appears to be a strong desiccant and renders the silica gel ineffective in preserving the filter catch from water vapor contamination. Filter weight continues to grow in this environment. Heating filters to 220 degrees Fahrenheit and cooling in the desiccator likewise allows filter mass to increase and a constant weight cannot be achieved. It appears that filters, immediately after sampling, should be transported, stored and weighed in a water vapor free environment. In the later test runs conducted by FMC, FMC chose to use inert gas for this purpose.

These improvements in filter handling and storage in inert gas environments implemented by FMC in response to the initial problems with the source test methods would require a modification to the EPA reference test methods proposed in the February 1999 FIP proposal. As discussed in more detail in section IV.B. below, EPA is including in this supplemental proposal a provision that would allow FMC to use an alternative reference test method or a deviation from the reference test method provided certain showings are made upon the written request of FMC and the written approval of the Regional Administrator. This provision should accommodate FMC's need to modify the proposed test method for this source.

c. Opacity Limit

In the February 1999 FIP proposal, we proposed an opacity limit of 5% for the scrubber on the excess CO burner. In commenting on the February 1999 FIP proposal, FMC submitted a letter from Andersen 2000, Inc., to FMC dated May 7, 1999. In the letter, Andersen stated that at the upper range of the emissions from this source, there are trace visible emissions that could exceed 5% opacity. The letter further stated that the control equipment could not achieve 5% opacity on this source on a continuous basis, but that Andersen would guarantee an opacity limit of 10% under all operating conditions. EPA does not believe there is a more efficient control technology than the Andersen scrubber for controlling PM–10 emissions from the excess CO burner, which is dominated by phosphorus pentoxide a very small particulate that is difficult to control.

At the November 1, 1999 meeting, FMC submitted a summary of results of opacity readings conducted on the excess CO burner pilot plant conducted over the summer of 1999. Opacity was measured at the outlet of the Andersen

scrubber on the pilot plant. FMC did not submit individual data sheets for each observation; therefore independent analysis of the results presented is not possible.

The summary of results presented by FMC demonstrates that when the burner and scrubber were operating at "design condition," normal opacity was zero percent. Some readings were less than or equal to 10% opacity and one reading taken during a "heavy" hot flush was reported at less than or equal to 20% opacity. In the oral presentation of this information by FMC at the November 1, 1999 meeting, the project manager made a statement that he believed that the completed full size project might actually perform better than the demonstration project. It appears the opacity readings were taken during the same time frame that source tests were being conducted. Unfortunately, correlation of opacity with scrubber inlet loadings was not conducted to provide information why any elevated opacity readings were observed.

Based on the information provided by FMC in response to the February 1999 FIP proposal, the information provided to EPA by FMC at the November 1, 1999 meeting, and the other information in the docket, EPA believes that the excess CO burner is capable of meeting an opacity limit of 10% and that 5% is an appropriate opacity action level. Based on the information provided by FMC at the November 1, 1999, meeting, during normal operation of the pilot project, there were no visible emissions.

d. Flare on Excess CO Burner

In its comments on the February 1999 FIP proposal, FMC asked for clarification that the requirements of proposed 40 CFR 52.676(c)(5), which prohibits the burning of furnace gas in the elevated secondary condenser flare and the ground flare, apply to the *existing* flares at the FMC facility. The design of the excess CO burner is nearing completion and the new system will require an emergency flare to prevent the possibility of explosions. We have requested information on this new source from FMC, but have yet to receive it. EPA therefore proposes that this new source be addressed by the new section of this proposal pertaining to EPA notification of the construction of new sources of PM–10 emissions at the FMC facility, as discussed in section IV.A.7.b. below . Because the excess CO burner will not be operational until January 1, 2001, there should be sufficient time to promulgate emission limits for this source once EPA is provided appropriate documentation from FMC.

6. Opacity Limits

In the February 1999 FIP proposal, we proposed limits on visible emissions from all sources except for the calciner scrubbers. The proposed opacity limits ranged from a limit of no visible emissions from certain piles and processes to 10% opacity on fugitive emissions not captured by baghouses. See 64 FR at 7325–7326. EPA did not rely on a direct correlation between opacity levels and mass emissions in supporting the opacity limits proposed in the FIP. Instead, as stated in the proposal, the control strategy is premised on ensuring that, for those sources that we believe currently employ RACT-level controls, emissions from those sources remain at current levels in the emission inventory. 64 FR at 7325. The emissions rates in the 1996 emission inventory were premised on the fact that the process and control equipment that affect a particular source are properly operated and maintained at all times. The opacity limits proposed by EPA were therefore intended to ensure that the process and control equipment are being properly operated and maintained at all times.

In commenting on the February 1999 FIP proposal, FMC contended that the opacity limits proposed in the FIP are overly stringent and not supported by the record, although FMC did concede that some enforceable limits on visible emissions should be required in the FIP. As an alternative approach, FMC suggested that the FIP should establish a facility-wide opacity limit of 20% and then establish action levels for each source below 20% that would trigger a requirement for FMC to commence an investigation and take corrective action. A source that exceeded the action level would not, however, be in violation of the opacity limit under FMC's suggested approach so long as emissions do not exceed the 20% opacity limit.

EPA does not believe that an opacity limit of 20% achieves EPA's objective of ensuring that, for those sources that we believe currently employ RACT-level controls, emissions from those sources remain at current levels in the emission inventory by ensuring that the process and control equipment are being properly operated and maintained at all times. Based on the visible emission surveys of the FMC facility conducted in December 1995–January 1996, October–November 1998, and a recent survey conducted in September 1999, an opacity limit of 20% is far above typical opacity levels for the sources at FMC and would be indicative of a source that was not being properly operated or maintained. On further reflection, however, EPA is proposing an alternative approach toward opacity that EPA believes will be easier to implement and enforce than EPA's February 1999 FIP proposal, and yet will still achieve EPA's objective of ensuring that process and control equipment is being properly operated and maintained at all times.

With a few exceptions, all of the opacity limits in the February 1999 FIP proposal were 10% or less. For the reasons discussed in the February 1999 FIP proposal and the docket accompanying the proposal, EPA continues to believe that, with the few exceptions discussed below, the identified point and fugitive sources should be able to achieve an opacity limit of 10% on a continuous basis if the process and control equipment is properly operated and maintained. EPA is therefore proposing an opacity limit of 10% for most sources. To ensure that emissions from these sources are minimized at all times, however, EPA is also proposing an opacity action level for each source. For those sources for which EPA proposed an opacity limit of no visible emissions in the February 1999 FIP proposal, such as some piles and buildings, EPA is proposing an opacity action level of "any visible emissions." If visible emissions are observed from a source with an opacity action level of "any visible emissions," FMC would be required to take prompt corrective action to minimize visible emissions, but would not be in violation of the opacity limit so long as the opacity level from such a source does not exceed 10%. For those sources with a proposed numerical opacity limit of 5, 7, or 10% in the February 1999 FIP proposal, such as baghouses, scrubbers, and some piles, EPA is proposing an opacity action level of 5%. For these sources, FMC would be required to take prompt corrective action to minimize visible emissions if opacity exceeded 5%, but would not be in violation of the opacity limit so long as opacity did not exceed 10%.

One commenter commented that properly operating baghouses are expected to have no visible emissions and that the baghouses at FMC should therefore be subject to a limit of no visible emissions. EPA agrees that a properly operating baghouse will generally have no visible emissions. Indeed, FMC also noted in its comments that "Typically, baghouse stacks have zero percent opacity." However, most baghouse systems, including the baghouses at FMC have a self-cleaning mode in which the bags are

automatically cleaned through a pneumatic pulse where the collected dust falls into the baghouse hopper and is conveyed to the dust silo. During these cleaning episodes, one can observe occasional wisps of visible emissions. EPA therefore believes that an emission limitation of no visible emissions from the baghouse is not consistent with current operations and procedures.

In the February 1999 FIP proposal, EPA proposed an opacity limit of 20% for the furnace building until April 1, 2002, the date by which additional controls must be installed on the furnace and in the furnace building. After further consideration, EPA believes that an opacity limit of 20%, with a corrective action level of 10%, is also appropriate for certain open (*i.e.*, uncaptured) fugitive dust sources, such as certain piles and roads. These sources include the nodule pile (source 11), the nodule fines pile (source 13), the screened shale fines pile (source 14), and all roads (source 22). For these sources, EPA believes that meteorological conditions, such as high winds during dry conditions, could cause emissions in excess of 10% and therefore believes on further reflection that an opacity limit of 20% is appropriate for these sources. Under this proposal, if opacity exceeded 10% for these sources, FMC would be required to take appropriate additional work practice measures, such as additional application of dust suppressants or clean-up of spillage to reduce emissions to 10% opacity or below. Exceedances of the opacity action level would not constitute a violation, however, so long as the opacity level for such a source remains below 20% and FMC takes prompt appropriate corrective action.

EPA believes that having two opacity limits—10% or 20%—for all identified sources, with lower corrective action levels of "any visible emissions," 5% or 10% will make it easier for FMC to implement the FIP requirements, and will also make it easier for regulators and citizens to monitor FMC's compliance with the FIP. The simplification of the opacity limits will also result in more streamlined procedures for the weekly inspection of sources for opacity, as discussed in section IV.C.3. below. Increasing the opacity limits for some sources should also help to allay FMC's concerns that short term increases in opacity could result in violation of the opacity limit. Including a specific requirement that FMC initiate corrective action if opacity exceeds the opacity action level will at the same time ensure that emissions are minimized.

To implement this proposal, EPA proposes to include a provision stating that exceeding an opacity action level shall require prompt corrective action to minimize emissions, as well as a definition of "opacity action level." EPA also proposes to revise the operation and maintenance requirements to specifically require the operation and maintenance plan to specify, for each source, corrective measures to be taken when the source exceeds the opacity action level.

7. Sources Not Identified in Table 1

a. Insignificant Sources

The February 1999 FIP proposal contained a prohibition on visible emissions from any location at the FMC facility at any time except as otherwise specifically provided in the rule. See 64 FR at 7347 (proposed 40 CFR 676(c)(1)). The intent of this provision was to ensure that sources inadvertently omitted from the emissions inventory do not go unregulated. 64 FR at 7325. During the public comment period on the February 1999 FIP proposal, FMC expressed concern because there are numerous small sources of PM–10 at the FMC facility, which are not included in Table 1 to the rule, which FMC asserts could not reasonably be expected to have a measurable impact on the PM–10 loadings on the Tribal monitors but could not meet the requirement of no visible emissions. As examples, FMC identified welding operations, grinding, sand blasting and cleaning operations, housekeeping activities, construction activities, street sweeping operations, maintenance activities, pond piping discharges, small elemental phosphorous fires from spills or releases, landfill activities, and laboratory stack vents. FMC expressed concern because such activities do, at times, have intermittent visible emissions and would be in violation of the prohibition of no visible emissions. FMC proposed that these activities be exempt from all opacity requirements and that the specific list of the exempted insignificant activities be included in FMC's title V permit application and title V permit. FMC did acknowledge that it would implement reasonable precautions to minimize visible emissions from these activities.

After further consideration, EPA is proposing to exempt from the prohibition on visible emissions certain identified sources and activities that could not reasonably be expected to have a measurable impact on the PM–10 loadings on the Tribal monitors, but that could be expected to have visible emissions on an intermittent basis. EPA does not believe, however, it is appropriate to exempt these sources and activities from all limitations on opacity. Most state implementation plans have a generally-applicable opacity limit that applies to all sources of emissions, even sources and activities that would not be expected to have a measurable impact on air quality in the area. See WAC 173–400–040(1); IDAPA 16.01.01.625. EPA is therefore proposing that these smaller sources would be exempted from the prohibition on no visible emissions, but would be subject to an opacity limit of 20% over a six minute average, with Method 9 as the reference test method.

In determining the categories of smaller sources of PM–10 at the FMC facility that have not been included in the emission inventory and that would not be expected to have a measurable impact on the PM–10 loadings at the Tribal monitors, EPA considered the list proposed by FMC and also categories of sources that have been determined by states to be "insignificant emission units" for purposes of the title V operating permit program. These are categories of sources that are subject only to generally applicable emission limits and that generally need not be described in the title V permit application. Based on that review, EPA proposes that the following categories of sources be exempt from the general prohibition on visible emissions and instead be subject to a general opacity limitation of 20%.

a. Brazing, welding, and welding equipment and oxygen-hydrogen cutting torches;

b. Plant upkeep, including routine housekeeping, preparation for and painting of structures;

c. Grinding, sandblasting, and cleaning operations that are not part of a routine operation or a process at FMC;

d. Cleaning and sweeping of streets and paved surfaces;

e. Lawn and landscaping activities;

f. Repair and maintenance activities;

g. Landfill operations;

h. Laboratory vent stacks; and

i. Pond piping discharges.

Under this supplemental proposal, FMC would also be required to address these sources in its operation and maintenance plan.

FMC also included in its suggested list of insignificant sources construction activities and small elemental phosphorous fires (phos fires) from spills or releases. We do not agree that such sources can be characterized as insignificant with respect to their potential emissions of PM–10.

Construction activities can involve considerable emissions of PM–10 depending on the extent of the activity. Likewise, phos fires can generate considerable emissions depending on the amount of phosphorus that is burned. The fuming (burning) of the FMC Pond 9E a few years ago is one good example of a elemental phosphorus fire that was of large extent and that continued for several weeks. Preventing spillage of elemental phosphorus should be a matter of good housekeeping and would prevent phosphorus fires.

b. New Sources

A related concern raised by FMC is that the prohibition on visible emissions from any source except as specifically authorized in Table 1 to proposed 40 CFR 52.676 presents two problems. First, it effectively prohibits the construction of new sources if the new source would have visible emissions. Second, to the extent a source of PM–10 could be constructed that would have no visible emissions, there would be no additional requirements on that source. To address this issue, FMC suggested in its comments on the February 1999 FIP proposal that the FIP include a provision requiring FMC to notify EPA if it plans to construct a new source or modify an existing source in a manner that would increase emissions of PM–10. FMC suggested that this notice be provided 10 days prior to construction or modification.

EPA, in a rulemaking process separate from this FIP for FMC, is developing a rule that would apply to the construction or modification of new minor sources in Indian Country and extending to Indian Reservations the permitting requirements of sections 172(b)(6) and 173 of the Clean Air Act and 40 CFR 51.165 for major stationary sources and also major modifications in nonattainment areas (referred to as "Part D NSR"). The Shoshone-Bannock Tribes also have the authority to seek EPA approval of a program for reviewing the construction and modification of new sources under the Tribal Authority Rule, 40 CFR Part 49. Until such a time as EPA or the Tribes, with EPA approval, adopt a new source review program for minor sources and major sources and modifications in nonattainment areas, we are proposing to require that FMC notify EPA prior to beginning construction of any new source of PM–10 or modification of an existing source that results in an increase of PM–10 emissions. "Begin actual construction," "construction," and "modification" are based on the definitions in the regulations for state Part D NSR programs, 40 CFR 51.165(a)(1)(v), (xv), and (xviii) and the New Source Performance Standards, 40 CFR 60.2 and 40 CFR 60.14. The notice of construction or modification would be required to include a description of the source, an estimate of potential PM–10 emissions from the source, and an evaluation of any control technology considered by FMC. EPA would intend to promulgate emission limitations for the source, as necessary and appropriate, in another rulemaking. In order to provide EPA time to evaluate the new source, EPA proposes that FMC must notify EPA at least 90 days prior to the construction or modification of such a source. After 90 days, FMC would be authorized to construct the source, but the source would be subject to an opacity limit of 10%, unless EPA establishes alternative or additional emission limitations or work practice requirements for the source. FMC would also be required to address the new source in its operation and maintenance plan. The 90 day period is intended to allow EPA time to consider if additional requirements should be established for the source.

B. Reference Test Methods

As discussed above, for many of the mass emission limits identified in Table 1, EPA is proposing that only Method 201/201A be the reference test method. For these sources, FMC would still be required to conduct Method 202 concurrently with Method 201/201A but the results would be for informational purposes only.

The February 1999 FIP proposal required the reference test for the Medusa Andersen stacks on the furnace building (sources 18d, 18e, 18f, and 18g) be conducted during slag tapping. See 64 FR at 7347 (proposed 40 CFR 676(d)(2)(viii)). In its comments on the February 1999 FIP proposal, FMC noted that each furnace has two slag tap holes and two metal tap holes and that, during normal operation, slag is tapped from a given furnace one side at a time for 20 minutes on each side during any given hour. A metal tap is conducted from one side of each furnace once each shift. Because each of the three required test runs lasts for at least 60 minutes, FMC points out that any given stack test will include a slag tap or metal tap, but that tapping will not be continuous throughout the source test. FMC therefore requested that the language be revised to state that the source tests on the furnace stacks be conducted during periods that include slag tapping or metal tapping, but not exclusively during tapping. EPA is proposing to revise the source testing requirements to include this language.

The February 1999 FIP proposal required the performance test for the excess CO burner (source 26b) be conducted during either a mini-flush or hot-flush. See 64 FR at 7347 (proposed 40 CFR 676(d)(2)(ix)). In its comments on the February 1999 FIP proposal, FMC noted mini-flushes typically last 21 minutes, with a recent maximum of 1.5 hours. Because each of the three required test runs lasts for at least 60 minutes, FMC points out that a mini-flush might have to be extended if the entire test were to be conducted during a mini-flush. FMC also commented that requiring sampling during a mini-flush or a hot-flush would greatly overestimate hourly emissions because such events last at most four hours in a given day and the PM–10 NAAQS includes a 24-hour standard. FMC therefore requested that the language be revised to provide that at least one of the three test runs must be conducted during a mini-flush or a hot-flush.

Devising the appropriate source testing conditions for the excess CO burner is difficult because this source is subject to intermittent processes that can significantly increase emissions for short periods of time. EPA agrees that requiring source testing to be conducted only under these conditions would overestimate emissions on a 24-hour basis. After further consideration of this issue, EPA believes it is appropriate to require that only one of the source test runs be conducted during a mini-flush or a hot-flush but that the mini-flush or hot flush last for at least thirty minutes of the one hour run. EPA arrived at this number by assuming that maximum 24-hour emissions would occur on a day on which a hot flush lasted for approximately four hours, or one-sixth of the day. One half hour equates to one sixth of three one hour source tests.

The February 1999 FIP proposal provided for some minor adjustments to reference test methods with EPA approval, such as using Method 5 in place of Method 201 or 201A for a particular point source. *See, e.g.*, 64 FR at 7347 (proposed 40 CFR 52.676(d)(3)). During its comments on the February 1999 FIP proposal, FMC requested that the FIP be revised to include additional flexibility with respect to reference test methods. Specifically, FMC requested that the FIP include a provision specifically allowing FMC to request EPA to approve alternative test methods or to deviate from the prescribed test method. 40 CFR 51.212(c)(2), which sets forth the requirements for testing for state implementation plans, authorizes the use of alternative test methods

following the review and approval of EPA. EPA believes it is appropriate to provide FMC this same flexibility in this FIP and has therefore included language authorizing the use of alternative methods approved by the Regional Administrator. EPA has used the procedure for requesting alternative test methods under 40 CFR part 63 as a guide in determining appropriate procedures for requesting an alternative test method under the FIP. *See* 40 CFR 63.7(f).

C. Monitoring, Recordkeeping, and Reporting Requirements

1. Periodic Source Testing

The FIP proposed that FMC be required to conduct annual source tests on each point source, requiring the first annual test for each source to be conducted within 12 months of the effective date of the FIP and that subsequent annual tests be completed within 12 months of the most recent previous test. See 64 FR at 7347 (proposed 40 CFR 52.676(e)(1)(i)). For the sources with emission limits that become effective after the effective date of the FIP, the February 1999 FIP proposal proposed that the first annual test be conducted 60 days after the effective date of the emission limit. In FMC's comments on the February 1999 FIP proposal, FMC requested that it be allowed 15 months in which to conduct the first annual tests and that subsequent tests be conducted thereafter within 15 months of the most recent previous test. For sources with later effective dates, FMC requested 180 days, rather than 60 days, in which to conduct the initial source test.

EPA agrees that, for the first annual tests, additional time may be needed to complete the tests on all sources, because of the number of requirements that become effective within the first year of the effective date of the FIP. EPA therefore proposes to allow 15 months within which to conduct the first annual source tests for sources with limits that become effective within 60 days of the effective date of the FIP. For the calciner scrubbers, the phos dock Anderson scrubber and the excess CO burner, EPA believes some additional time is necessary for conducting the first annual test, but does not believe the 180 days recommended by FMC is appropriate. For these sources, EPA is proposing that the first annual test be required within 90 days after the effective date of the emission limit for these sources. EPA continues to believe that subsequent annual tests should be conducted within 12 months of the previous test, but proposes to include a provision allowing FMC to request an extension of up to 90 days for any source test for good cause. The extension request must be submitted to EPA at least 30 days before the source test is otherwise required to be conducted under the rules. EPA also proposes to include a provision allowing source tests to be conducted for a particular source every other year, instead of every year if, after two consecutive years, the emissions from that source are less than 80% of the emission limit. The frequency of source testing for a particular source would revert to every year if the emissions are at any time found to be greater than or equal to 80% of the applicable emission limit. Such "tiered" monitoring provisions have been used with increasing frequency in rules and title V permits, and EPA believes it is appropriate to provide FMC with similar flexibility. Finally, EPA proposes to include a provision relieving FMC from the requirement to submit a proposed test plan if the plan is unchanged from the plan submitted to EPA in connection with the immediately preceding source test.

2. Pressure Relief Vents

In the February 1999 FIP proposal, EPA proposed that the pressure relief vents be subject to an opacity limit of no visible emissions except during a "pressure release." *See* 64 FR at 7355 (proposed Table 1 to 40 CFR 52.676 (source 24)). We also proposed to require FMC to install monitoring devices to continuously measure and continuously record the temperature of the gases in the pressure relief vent downstream of the pressure relief valve. A "pressure release" was defined as an excursion of the temperature above the approved temperature range. EPA also proposed to require that the release point on each pressure relief vent be maintained at 18 inches of water. After the occurrence of each pressure release, we proposed to require that FMC inspect the valve to ensure it was properly sealed, to inspect the water level, and to then conduct a visible emissions observation to ensure there were no visible emissions. *See* 64 FR at 7348–7349 (proposed 40 CFR 52.676(e)(6)).

During the public comment period on the February 1999 FIP proposal, FMC commented that a limit of no visible emissions, except during a pressure release, is not attainable because there are minor phosphorus pentoxide emissions that can occur even when the pressure relief vents are not releasing and the valves are properly operated and maintained. FMC also noted that it had recently installed new pressure relief valves with a new design, including devices that monitor not only temperature, but also water level and pressure. FMC stated that it was currently monitoring temperature, water level, and pressure and was evaluating the data to determine the most reliable operating parameters. Because of the new monitoring devices, FMC commented that the requirement to conduct a visible emissions observation following each pressure release was not necessary to ensure proper operation.

In light of the new pressure relief valves and related monitoring devices installed by FMC, we believe revisions to the proposed requirements for the pressure relief vents are appropriate. We first propose to require that FMC install, calibrate, maintain, and operate devices to continuously measure and continuously record the pressure and water level, in addition to temperature. Similarly, we now propose that a "pressure release" be defined in terms of an excursion outside of the approved parameter ranges for pressure and water level, in addition to temperature. EPA also proposes that, in light of the additional monitoring devices and the new valves, FMC not be required to conduct a visible emissions observation following each pressure release, but instead be required to only inspect the valve to ensure it is properly sealed and verify that all operating parameters are within their approved range.

3. Weekly Visible Emission Observations

The February 1999 FIP proposal proposed to require that FMC conduct weekly visible emission observations of all sources subject to opacity limits once each week during a regularly scheduled time. 64 FR at 7349–7350 (proposed 40 CFR 52.676(e)(8) and (9)). During the public comment period, FMC objected to the requirement that the observations occur at "a regularly scheduled time," stating that random checks once each week would be more indicative of actual operation and would give FMC more flexibility for scheduling. After further consideration, we believe that, because of the number of sources FMC is required to observe for visible emissions each week, requiring the observations to be conducted at a regularly scheduled time is too burdensome for FMC. We therefore now propose to delete the requirement that the weekly observations be conducted at a "regularly scheduled time."

EPA has also revised the proposed procedure for the weekly inspections to reflect the changes to the opacity limits and the addition of opacity action

levels. Under this proposal, FMC would be required to conduct a visual observation of each source each week for the presence of visible emissions. If visible emissions are detected during the observation period, FMC would be required to conduct prompt corrective action to minimize emissions. The corrective action would include, but would not be limited to, the corrective action identified in the operation and maintenance plan for the source. After completing the corrective action, FMC would be required to conduct another reading of the source using the reference test method identified for the applicable opacity action level. Additional corrective action would be required if emissions exceeded the opacity action level. In lieu of this procedure, FMC could instead conduct the initial weekly reading using the reference test method identified for the applicable opacity action level, in which case corrective action would be required only if opacity exceeded the opacity action level.

4. Moisture Content Requirement

In the February 1999 FIP proposal, EPA proposed to require that FMC maintain the moisture content of the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) at 11% and that FMC monitor for this requirement once each week by taking a representative sample. See 64 FR at 7350 and 7353 (proposed Table 1 to 40 CFR 52.676 (sources 2 and 3) and proposed 40 CFR 52.676(e)(10)). During the public comment period on the February 1999 FIP proposal, FMC commented that the control of the shale moisture content is not currently possible or practicable because it is affected by the moisture content of the shale as it is extracted from the earth and by meteorological conditions. FMC further stated that application of water to the shale to meet the 11% moisture content requirement would reduce the effectiveness of the application of the latex to the piles, which is also required as a control and work practice measure. After further consideration of the technical information provided by FMC, we believe it is appropriate to delete the requirement that FMC maintain the moisture content of the shale at 11% as well as the related monitoring requirements. The requirement to apply latex to these sources, along with the additional work practice requirements that will be contained in the operation and maintenance plan, should adequately ensure that PM–10 emissions from the main shale pile and the emergency/contingency raw ore shale pile are minimized.

5. Future Revisions to Monitoring, Recordkeeping, and Reporting Requirements

In its comments on the February 1999 FIP proposal, FMC expressed concern that including extensive monitoring, recordkeeping, and reporting requirements in the FIP would unnecessarily complicate the process of making appropriate revisions and modifications to these requirements in the future. To make any such changes, FMC continued, both the FIP and FMC's title V permit would need to be revised. For many other sources, FMC commented, monitoring, recordkeeping, and reporting requirements are not included as part of the applicable emission limits and work practice requirements but are instead established only in the title V permit. FMC continued that including the monitoring, recordkeeping, and reporting requirements in the FIP gives FMC less flexibility than provided to facilities that can change monitoring, recordkeeping, and reporting requirements by simply revising the facility's title V permit.

Monitoring, recordkeeping, and reporting may be established in title V permits under the authority of the periodic monitoring rule at 40 CFR 70.6(a)(3)(i)(B) and 40 CFR 70.6(a)(3)(i)(B). Such periodic monitoring is a necessary addition to title V permits where an existing applicable requirements's monitoring, recordkeeping, and reporting fail to assure compliance with those requirements, by failing to provide monitoring, recordkeeping, and reporting sufficient to yield reliable data from the relevant time period that are representative of the facility's compliance. Newly created applicable requirements, however, should establish adequate monitoring, recordkeeping, and reporting that will assure compliance with emission limits and work practice requirements.

In this regard, EPA notes that New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants promulgated by EPA since 1990 have included extensive monitoring, recordkeeping, and reporting requirements that also serve as enhanced monitoring under the Clean Air Act and are presumed to be sufficient for title V periodic monitoring. *See generally* 62 FR 54900, 54918 (Oct. 22, 1997); 40 CFR 64.2(b)(1)(i) (1998). EPA expects that other new applicable requirements, such as SIP requirements or SIP preconstruction permit conditions, should also establish adequate monitoring, recordkeeping, and reporting upon the creation of the applicable requirement.

EPA does not believe it is appropriate to establish new applicable requirements—in the form of FIP requirements, here—that are purposely lacking and deficient with respect to compliance-assuring monitoring, recordkeeping, and reporting, with the express aim of correcting such deficiencies through the title V permit process. EPA continues to believe that it is appropriate to establish monitoring, recordkeeping, and reporting requirements in this source-specific FIP rule.

Nonetheless, EPA recognizes that revisions to the proposed monitoring, recordkeeping, and reporting requirements may prove to be necessary once the FIP is in place and over time. Several of the sources and processes at the FMC facility are unique to the elemental phosphorous industry (which consists of FMC and one other source) and FMC will be required to install new process and control equipment in response to the FIP. EPA believes it can establish monitoring, recordkeeping, and reporting requirements in the FIP proposal and at the same time, accommodate FMC's request to streamline the procedures for revising the monitoring, recordkeeping, and reporting requirements in the FIP and the public's right to notice and an opportunity to comment on any changes to the FIP requirements.

In providing guidance to states on the implementation of the title V operating permits program, EPA provided guidance on how states could revise their state implementation plans to provide for the establishment of equally stringent alternative requirements in title V permits. See *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*, Attachment B (March 5, 1996) (White Paper 2). Consistent with that guidance, EPA proposes to include in the FIP a provision authorizing revisions to the requirements of 40 CFR 52.676(e)[monitoring], (f) [recordkeeping], and (g)[reporting] to be accomplished through issuance, renewal, or significant permit modification of a title V operating permit to the FMC facility, provided that certain substantive and procedural requirements are met.

First, any alternative monitoring, recordkeeping, or reporting requirements that revise pre-existing FIP requirements must be sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the

requirements of 40 CFR 52.676(c) [emission limits and work practice requirements] and must provide no less compliance assurance than the pre-existing requirements of 40 CFR 52.676(e), (f), or (g) that the alternative requirements would replace. Second, FMC's permit application must include the proposed alternative monitoring, recordkeeping, or reporting terms, identify the specific provisions of 40 CFR 52.676(e), (f), or (g) being revised, and include the supporting documentation to establish that the alternative terms meet the substantive criteria for alternative monitoring, recordkeeping, and reporting terms. These documents all become part of the administrative record for EPA's approval of the alternative requirements. Third, the draft and final title V operating permit or permit modification would identify the specific provisions of 40 CFR 52.676(e), (f), or (g) being revised. Fourth, in the event a revision to 40 CFR 52.676(e), (f), or (g) is accomplished through a permit modification to FMC's title V operating permit or in the event the alternative title V permit terms are later revised, the permit modification must be accomplished using the significant permit modification or revision procedures of the part 71 program. This is essential because each such title V permit action is in effect a rulemaking that revises the FIP. There must therefore be a full opportunity for public review and challenge of the title V permit terms that will substitute for the pre-existing requirements regarding whether they meet the substantive criteria for establishing the alternative monitoring, recordkeeping, and reporting requirements. This is consistent with the White Paper 2 as well as the current regulations governing revisions to title V permits, which require that any change to a case-by-case determination of a standard be processed as a significant modification with full EPA and public review. See 40 CFR 71.7(e)(1)(i)(A)(3). Finally, the FIP would specifically state that, upon issuance or renewal of FMC's title V permit or a modification thereto that revises a requirement of 40 CFR 52.676(e), (f), or (g), the revision shall remain in effect as a requirement of the FIP notwithstanding expiration, termination, or revocation of FMC's title V operating permit.

Because this FIP is a federal requirement promulgated by EPA, EPA believes it is appropriate to allow revisions to the monitoring, recordkeeping, and reporting requirements of the FIP to be accomplished through FMC's title V permit only where EPA is the permit issuing authority under 40 CFR part 71. If the Shoshone-Bannock Tribes later apply for and receive approval of a title V operating permit program under 40 CFR part 70 and a PM–10 nonattainment Tribal Implementation Plan for FMC that corresponds to the proposed FIP, the Tribal Implementation Plan could include a comparable provision authorizing revisions to monitoring, recordkeeping, and reporting in the Tribal Implementation Plan to be implemented through FMC's title V permit issued by the Tribes under 40 CFR part 70.

D. Definitions

Several proposed changes to definitions or newly-proposed definitions have already been discussed above. In addition, EPA is proposing the following revisions to definitions.

1. Excursion

EPA proposes to revise this definition to be consistent with the definition of "excursion" in the Compliance Assurance Monitoring (CAM) rule, 40 CFR 64.1, by adding the phrase "consistent with any averaging period specified for averaging the results of monitoring."

2. Road

EPA proposed to define "road" to include any portion of the FMC facility on which a motorized vehicle has reasonable access for movement or for which there is visible evidence of previous vehicle access. See 64 FR at 7345 (proposed 40 CFR 52.676(b)). During the public comment period on the proposal, FMC expressed concern that the definition was too broad and could include almost the entire FMC facility. FMC suggested an alternative definition that included all roads or established vehicle paths that are in any way used or maintained for vehicle movement. EPA proposes to use FMC's suggested definition of "road" because it appears to be sufficiently broad to include all sources that should be considered roads.

3. Slag Pit Area

In the February 1999 FIP proposal, EPA proposed to define the "slag pit area" as the area within 100 yards of the furnace building at the FMC facility. See 64 FR at 7345 (proposed 40 CFR 52.676(b)). This is the area to which the prohibition on the discharge of molten slag and the digging of slag would apply after November 1, 2000. In its comments on the February 1999 FIP proposal, FMC asked that the slag pit area be defined with reference to its current location, which is limited to the south side of the furnace building. EPA is proposing to revise the definition of "slag pit area" as the area of the FMC facility immediately bordering the south side of the furnace building extending out 100 yards.

V. What Is the Impact of This Supplemental Proposal on Air Quality in the Area?

A. Emission Inventory

As discussed above, in commenting on the February 1999 FIP proposal, FMC submitted additional source test results for most point sources at the FMC facility in May 1999 and submitted additional source test data and other technical information for the excess CO burner in November 1999. Although the results of these recent source tests are consistent with the emission estimates in the 1996 base-year emissions inventory for some sources, for other sources the recent source test results indicate that emissions are higher or lower than presented in the 1996 base-year emission inventory relied on in the February 1999 FIP proposal. After reviewing the recent source test reports submitted by FMC, EPA is proposing revising the 1996 base-year emission inventory. The additional FMC source test data provides emissions in pounds per hour. For these new emission estimates, EPA proposes to use the new hourly emission rates provided by FMC and multiply the hourly emissions rate by 24 hours to estimate a daily emissions rate. Annual emissions for each source are calculated by taking the ratio of "daily emissions to annual emissions" in Table 4 of the February 1999 FIP proposal and applying that ratio to the new daily emissions estimate for the source. This approach accounts for processes that do not operate daily throughout the year.

The most significant changes in the emission inventory relate to the estimate of current emissions from the calciners and the elevated flare and ground flare. As discussed in section IV.A.2.a. above, FMC provided additional source test information for the calciner scrubbers which includes condensible particulate as measured by Method 202. EPA has used this additional information to revise the estimate of current emissions from the calciner scrubbers and believes it more accurately reflects current reasonable worst case emissions from the calciners. As discussed above, the revised emission estimate is based on a grain loading of 0.043 gr/dscf and a flow rate of 34,200 dscfm. As a result, emissions from the calciners are increased from 1204 pounds per day to

2419 pounds per day and from 100 tons per year to 200 tons per year.

As discussed in section IV.A.5.a. above, FMC also provided new emission information based on source tests conducted over the summer of 1999 on the excess CO burner pilot project. We believe that this new emission information more accurately reflects the mass emission rates from the existing flares for two reasons. First, the results are based on actual source tests instead of theoretical calculations of furnace gas composition and phosphorus removal rates in the condensers. Secondly, the testing to a limited extent accounts for the increase in mass due to water vapor in the atmosphere. The same operating assumptions were used to calculate the revised emission estimate for the elevated and ground flare as were used in the February 1999 FIP proposal: four furnaces operating, one calciner down for repair and therefore not available for consumption of excess CO and scrubbing in the calciner scrubber, and two hours of mini-flush. The revised combined emissions from the elevated secondary flare and CO ground flare are 10,543 pounds per day of PM–10. This estimate is based on 22 hours at normal operations (i.e., when no mini-flush is occurring), emissions at a grain loading of 1.106 gr/dscf and flow rate of 44,470 dscfm (421.6 pounds per hour), and two hours of mini-flush at an elevated emission rate of 633.9 pounds per hour. These emissions make the elevated condenser and ground flare the largest sources of PM–10 at FMC. This conclusion is consistent with the Source Apportionment Study, discussed in section V.B. below. Daily emissions after control, assuming a 95% reduction in emissions from the excess CO burner of 506 pounds per day (421.6 x 24 hours x 0.05) and one CO flare event when a calciner goes down of 13.4 pounds per event (FMC estimate of flare event), are 519 pounds per day.

Based on the additional data provided by FMC, EPA has also revised the emission estimates for the baghouses, reducing baghouse emissions from 446 pounds per day to 106 pounds per day and from 49 tons per year to 12 tons per year. Emissions from the four furnace building Medusa Andersen scrubbers are reduced from 269 pounds per day to 69 pounds per day and from 43 tons per year to 11 tons per year. Emissions from the calciner coolers are increased from 188 pounds per day to 278 pounds per day and from 27 tons per year to 39 tons per year.

Table I below shows the difference between the emissions inventory estimates in the February 1999 FIP proposal and how EPA proposes to revise the 1996 base-year emission inventory based on the additional source test data.

TABLE I.—REVISED FMC CURRENT WORST CASE DAILY AND ANNUAL PM–10 EMISSIONS SUMMARY

Source name	Old (lb/day)	New (lb/day)	Old ton/yr	New ton/yr
Point Sources:				
Ground Flare and Elevated CO Flare	3109	10543	259	903
Calciners	1204	2419	100	200
All Other Baghouses	446	106	49	12
Medusa Anderson	269	69	43	11
Calciner Coolers Vents	188	278	27	39
Pressure Relief Vents	99	99	1	1
Cooling Tower	96	96	18	18
Phos Dock	34	34	6	6
Boilers	13	13	2	2
Emergency CO Flares	12	12	0	0
Subtotal Point Sources	5470	13689	505	1192
Process and Other Fugitives:				
Slag Handling	1045	1045	165	165
All Roads	190	190	25	25
All Piles	163	163	23	23
Dry Fines Recycle	33	33	6	6
Nod Fines Truck Load	12	12	2	2
Nod Fines Pile	7	7	1	1
Fugitive Subtotal	1450	1450	222	222
Grand Total	5920	15119	727	1414

B. Source Apportionment Study

EPA, Region 10 sponsored the EPA, Office of Research and Development (ORD), National Exposure Research Laboratory, to conduct a source apportionment study of particulate matter collected on the filters of the three Tribal monitors (Source Apportionment Study). The study covered data collected from October 1996 through November 1998, with short term intensive sampling conducted during the overall study time frame. Significant additional sampling, monitoring, and filter analysis were conducted for the duration of this study. A complete report of the study protocol and results can be found in the docket to this action. The conclusions from the Source Apportionment Study support the control strategy proposed in the February 1999 FIP proposal and this supplemental proposal and show that the proposed control measures are necessary, yet adequate, to bring about attainment of the particulate standards. Those findings include the following:

1. PM–10 data, wind data, and dichotomus sampler (dichot) chemistry all indicate that the PM–10 exceedances recorded on the Tribal monitors are local in nature and point conclusively to FMC as the source of the exceedances.

2. The PM–10 collected on the filters during exceedances appears to be dominated by fine mode (*i.e.*, particluate matter of less than 2.5 micrometers in diameter) aerosol during exceedances, with a fine to coarse mass ratio of approximately three to two. However, both fine and coarse (*i.e.*, particulate matter with diameter of between 2.5 and 10 micrometers) mode contributions are needed to cause an

exceedance. PM–10 mass during exceedances is split approximately evenly between fine phosphate (P_2O_5 to PO_4) and coarse calcium (Ca) and silicon (Si) rich dust, with 22–32% of the PM–10 mass that cannot be attributed to any specific source.

3. Fine phosphate accounts for 30 to 40% of the PM–10 mass during exceedances. Preliminary wind direction analyses and scanning electron microscope (SCM) analyses suggest the most likely sources of the fine phosphate are the elevated flare and ground flare, with some additional contribution from the calciner stacks and furnace tapping operations. Mini-flushes were the most concentrated source of fine phosphorus but are believed to have minor impact on PM–10 exceedances because of their infrequency and short duration. Significant quantities of water may be bound to the phosphorus rich particles, which is consistent with the recent source tests conducted by FMC on the excess CO burner pilot project. Calciner stack emissions and furnace tapping emissions are each estimated to contribute less than 9% of the average fine mass during exceedances.

4. The coarse fraction aerosol is highly enriched in calcium compared to the earths crustal composition, characteristic of the slag produced as a byproduct at FMC, and point to slag handling as the source of the coarse fraction aerosol. Calcium and silicon together with their associated oxygen account for about 50% of the coarse mass during exceedances.

This report supports the conclusion that there is no one source at FMC, that when controlled, would bring about attainment of the PM–10 NAAQS. Rather, controls on a number of sources are necessary to achieve the standards. The sources emitting fine-mode particles that must be controlled to attain the standard include the elevated flare, the ground flare, the calciner scrubbers, and furnace tapping fumes. The sources emitting coarse-mode particles that must be controlled to attain the standard include slag handling and fugitive dust.

C. Recent Air Quality Data

We continue to receive additional ambient particulate matter air quality data from the continued operation of the Tribal monitors.[12] As indicated in Table II below, the Tribal monitors continued to record exceedances of the 24-hour PM–10 standard during 1998 and 1999 (with data reported through the second quarter of 1999), demonstrating the need for a comprehensive control strategy for FMC.

Because the annual PM–10 NAAQS is based on a three calendar year average, there is still insufficient monitoring data from the Tribal monitors at this time to determine whether a violation of the pre-existing 1987 annual PM–10 NAAQS has occurred. The air quality data, however, strongly suggest that the Fort Hall PM–10 nonattainment area is also in violation of the annual standard.

TABLE II.—FORT HALL PM–10 MONITORING DATA—JANUARY 1994 THROUGH JUNE 1999

Site	Year	Number of exceedances	Expected exceedances	3 year average
Primary	1994	No data	Assume 0	Assume 0
	1995	No data	Assume 0	Assume 0
	1996	18	20.96	7.0
	1997	19	20.1	13.69
	1998	9	18.9	19.99
	1999	10*	20.86*	19.95*
Sho-Ban	1994	No data	Assume 0	Assume 0
	1995	No data	Assume 0	Assume 0
	1996	9	11.34	3.78
	1997	12	14	8.4
	1998	5	10.59	11.98
	1999	1*	6.92*	10.5*
Background Site	1994	No data	Assume 0	Assume 0
	1995	No data	Assume 0	Assume 0
	1996	0	0.00	0.00
	1997	1	1.05	0.35
	1998	0	0.00	0.35*
	1999	0	0.00	0.35*

* Data/calculations through June 30, 1999.

D. Effectivess of the Control Strategy

EPA believes that the emission limitations and work practice requirements in the February 1999 FIP proposal, as modified by this supplemental proposal, will result in attainment of the PM–10 NAAQS as expeditiously as practicable, notwithstanding the revisions to the emission inventory and the changes to the proposed emission limits in this supplemental proposal

As discussed in the February 1999 FIP proposal, measured ambient air quality serves as the basis for determining the level of control necessary to attain the PM–10 standards. 64 FR at 7341. Attainment of the pre-existing 24-hour standard requires that the expected number of exceedances of the NAAQS be less than or equal to one per year. Attainment of the annual standard requires that the expected annual PM–10 concentration be less than or equal to the level of the annual NAAQS. As stated in the February 1999 FIP proposal, in order for the Fort Hall PM–10 nonattainment area to attain the 24-hour standard, daily PM–10 emissions from the FMC facility must be reduced by approximately 65%. Annual PM–10 emissions must be reduced by approximately 25%. 64 FR 7342.

Table III below sets forth a revised analysis of the effectiveness of the control strategy for attaining the 24-hour

[12] Beginning April 1998, the sampling frequency of the Tribal monitors was reduced from daily sampling to once every six days because it had already been established that the area was in violation of the PM–10 standards, and because of the costs associated with daily sampling and analysis. Because of the reduction in sampling frequency, each exceedance recorded at the Tribal monitors is counted as six exceedances, in accordance with 40 CFR part 50, appendix K.

PM–10 NAAQS. Table IV below sets forth the revised analysis of the effectiveness of the control strategy for attaining the annual PM–10 NAAQS.

TABLE III.—ATTAINMENT DEMONSTRATION 24-HOUR PM–10 STANDARD FMC 1996 ACTUAL WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Pounds/day]

Source name	PM–10 emissions before control	PM–10 emissions after control
Point Sources:		
Ground Flare & Elevated CO Flare	10,543	527
Calciners	2,419	1,210
All Other Baghouses	106	106
Medusa Andersens	89	89
Calciner Coolers	276	276
Pressure Relief Vents	99	99
Cooling Tower	96	96
Phos Dock	34	34
Boilers	13	13
Emergency Flares	12	12
Subtotal Point Sources	13,669	2,444
Fugitive Sources:		
Slag Handling	1,045	146
All Roads	190	190
All Piles	163	163
Dry Fines Recycle Material	33	33
Nodule Fines Truck Loading	12	12
Nodule Fines Stockpile	7	7
Subtotal Fugitives	1,450	551
Grand total	15,119	2,995

TABLE IV.—ATTAINMENT DEMONSTRATION ANNUAL PM–10 STANDARD FMC 1996 ACTUAL WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Tons/year]

Source name	PM–10 emissions before control	PM–10 emissions after control
Point Sources:		
Ground Flare & Elevated CO flare	909	45
Calciners	200	100
All Other Baghouses	12	12
Medusa Andersens	11	11
Calciner Coolers	39	39
Pressure Relief Vents	1	1
Cooling Tower	18	18
Phos Dock	6	6
Boilers	2	2
Emergency Flares	0	0
Subtotal Point Sources	1,192	234
Fugitive Sources:		
Slag Handling	165	23
All Roads	25	25
All Piles	23	23
Dry Fines Recycle Material	6	6
Nodule Fines Truck Loading	2	2
Nodule Fines Stockpile	1	1
Subtotal Fugitives	222	80
Grand Total	1,414	314

With the exception of the excess CO burner, emissions "after control" for all sources represent the allowable emission limitations for those sources. As discussed above, for the excess CO burner, EPA has proposed emission limits of 95% control efficiency at all times, but not to exceed 24 pounds per hour. As discussed above in section IV.A.5., EPA has calculated emissions "after control" based on an assumption of 95% control efficiency. EPA does not believe it is appropriate to use the pounds-per-hour emission limit to estimate emissions from the excess CO burner (after implementation of controls) on a 24-hour or annual basis, because the hourly emissions rate is a peak emissions design rate that would be expected to occur for the duration of a mini-flush or a hot flush, but would not be expected to be maintained over a 24-hour period.

As discussed in section V.A. above, the emissions estimates for all baghouses, the four furnaces (Medusa Andersen), and the calciner coolers have been revised based on the additional source test data provided by FMC. Because the control strategy for these sources is designed to keep emissions from these sources at current levels, however, there is no change in the emissions estimates for these sources before and after implementation of the control strategy.

Estimated emissions following full implementation of the control strategy has been revised for the calciner scrubbers. As discussed in section IV.A.2., the February 1999 FIP proposal over-estimated the reduction in emissions from the calciner scrubbers following implementation of the controls. EPA now expects a 50% reduction in emissions from the calciner scrubbers.

EPA believes the control strategy proposed in the February 1999 FIP proposal, as modified by this supplemental proposal, will result in a 80% reduction of daily worst-case PM–10 emissions from FMC on a facility-wide basis, a reduction of 12,124 pounds per day. The sources for which EPA believes emissions reductions will be necessary to meet the proposed emissions limitations—slag handling, the calciner scrubbers, the furnace building, the phos dock, and the elevated secondary condenser and ground flares—are not seasonal in nature. Emissions from these sources remain relatively constant throughout the year. Thus, EPA expects that the emissions reductions will occur throughout the year and will produce sufficient reductions in annual emissions to achieve the annual standard. EPA anticipates a 78% reduction in annual PM–10 emissions after full implementation of the control strategy, a reduction of 1100 tons per year. As discussed above, so long as the proposed control strategy achieves overall emission reductions from the FMC facility of 65%, we believe the proposed control strategy should result in attainment of the pre-existing 24-hour and annual PM–10 standards.

VI. How Do I Comment on This Action?

We are soliciting public comment on all aspects of this supplemental proposal only. The period of comment has closed for the February 12, 1999 FIP proposal. Thus, at this time, we will consider comments only on those portions of the February 12, 1999 proposal that would be affected if EPA were to take action approving this supplemental proposal. Comments on the February 1999 FIP proposal are discussed in this supplemental proposal only to the extent a particular comment is relevant to this supplemental proposal. All comments received on the February 1999 FIP proposal and on this supplemental proposal will be addressed when EPA takes final action on the Federal Implemental Plan (FIP).

To comment on today's supplemental proposal, you should submit comments by mail or in person (in triplicate if possible) to the address listed in the front of this notice. Be sure to identify the appropriate docket control number (*i.e.*, "ID–24–7004") in your correspondence. Your comments must be postmarked by February 28, 2000 to be considered in the final action taken by EPA.

You may also comment on this supplemental proposal by attending the public hearing if one is held and providing oral comments. If EPA determines that a hearing should be held, the time and date will be announced in local papers. You may also call Steven Body at (206) 553–0782 to determine if a hearing will be held and to obtain the time and location.

VII. Do Any of the Regulatory Assessment Requirements Apply to This Action?

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget review and the requirements of the Executive Order. As discussed in the February 1999 FIP proposal, the proposed FIP, including this supplemental proposal, is not a rule of general applicability and therefore is not a "regulatory action" under Executive Order 12866. See 64 FR at 7342–7343.

B. Regulatory Flexibility Act (RFA)

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, EPA generally must prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. Secs. 603, 604 and 605(b). As discussed in the February 1999 FIP proposal, because FMC has more than 1,000 employees, it is not a small entity under the RFA. Therefore, pursuant to 5 U.S.C. section 605(b), I certify that the proposed FIP, including this supplemental proposal, will not have a significant economic impact on a substantial number of small entities. See 64 FR at 7343.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. For the reasons discussed in the February 1999 FIP proposal, the proposed FIP, including this supplemental proposal, does not impose any enforceable duties or contain any unfunded mandate on state, local or tribal governments, or impose any significant or unique impact on small governments as described in UMRA. Moreover, the proposed FIP, including this supplemental proposal, is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Therefore, the requirements of UMRA do not apply. See 64 FR at 7343.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons.* * * *" 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) Is determined to be "economically significant" as that term

is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. A rule is economically significant if it is likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. As discussed in the February 1999 FIP proposal, the costs to FMC of complying with the FIP are expected to be less than $50 million dollars. 64 FR at 7343. In addition, EPA does not believe the FIP will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Accordingly, EPA has determined that the FIP proposal, including this supplemental proposal, is not economically significant and thus not subject to Executive Order 13045.

F. Executive Orders 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless EPA consults with state and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with state and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Neither the February 1999 FIP proposal nor this supplemental proposal will have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule only prescribes standards appropriate for one facility on an Indian Reservation, and thus does not directly affect any state. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Nonetheless, as discussed in the February 1999 FIP proposal, EPA worked closely with representatives of the Tribes during the development of the proposed FIP. See 64 FR at 7312. EPA has continued to work with the Tribes in developing this supplemental proposal.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This Executive Order is discussed in more detail in the February 1999 FIP proposal. See 64 FR at 7312.

The proposed FIP, including this supplemental proposal, imposes obligations only on the owner or operator of FMC, and does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. As discussed in the February 1999 FIP proposal, EPA worked closely with representatives of the Shoshone-Bannock Tribes during the development of the FIP proposal. See 64 FR at 7312. EPA has continued to work with the Tribes in developing this supplemental proposal.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of NTTAA, Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary standards.

The supplemental proposal does not propose any new reference test methods for the emissions limitations and work practice requirements in the FIP proposal. Therefore, EPA is relying on the analysis of potentially applicable voluntary consensus standards contained in the February 1999 FIP proposal. See 64 FR at 7344.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

Carol M Browner,

Administrator.

40 CFR part 52 is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N—Idaho

2. Section 52.676, which was proposed to be added to subpart N on February 12, 1999 (64 FR 7308) is proposed to be amended as follows:

a. In paragraph (b), by revising the definitions of "Excursion," "Road," and "Slag Pit Area" and adding definitions of "Begin Actual Construction," "Construction," "Modification," and "Opacity Action Level" in alphabetical order;

b. In paragraph (c), by revising paragraphs (c)(1), (c)(5)(i), and (c)(6) and adding new paragraphs (c)(10) and (c)(11);

c. In paragraph (d), by revising paragraphs (d)(1), (d)(2) introductory text, (d)(2)(ii), (d)(2)(vii), (d)(2)(viii), (d)(2)(ix), and (d)(5); redesignating paragraph (d)(6) as (d)(7); and adding a new paragraph (d)(6);

d. In paragraph (e), by revising paragraphs (e)(1)(i) and (e)(1)(ii); adding a new paragraph (e)(1)(vi); revising paragraphs (e)(6) introductory text, (e)(6)(ii), and (e)(6)(iv); removing paragraph (e)(6)(v); revising paragraph (e)(7) introductory text; adding a new paragraph (e)(7)(iii)(I); revising paragraph (e)(8); removing paragraphs (e)(9) and (e)(10); and redesignating paragraphs (e)(11) through (e)(13) as paragraphs (e)(9) through (e)(11);

e. In paragraph (f), by revising paragraph (f)(10);

f. In paragraph (h), by redesignating the existing text as paragraph (h)(1) and adding a new paragraph (h)(2);

g. Revising Table 1 to this section; and

h. Adding a new Table 2 to this section.

§ 52.676 Control Strategy: Fort Hall PM–10 Nonattainment Area, Fort Hall Indian Reservation, Idaho.

* * * * *

(b) * * *

Begin Actual Construction means, in general, initiation of physical on-site construction activities on a source which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

* * * * *

Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of a source) which would result in a change in actual emissions.

* * * * *

Excursion means a departure from a parameter range approved under paragraphs (e)(3) or (g)(1) of this section, consistent with any averaging period specified for averaging the results of monitoring.

* * * * *

Modification means any physical change in or a change in the method of operation of, an existing source which increases the amount of particulate matter emitted by that source. The activities described in 40 CFR 60.14(e) shall not, by themselves, be considered modifications.

* * * * *

Opacity Action Level means the level of opacity of emissions from a source requiring the owner or operator of the FMC facility to take prompt corrective action to minimize emissions, including without limitation those actions described in the approved operation and maintenance plan.

* * * * *

Road means access and haul roads, driveways or established vehicle paths, permanent or temporary, which are graded, constructed, used, reconstructed, improved, or maintained for use in vehicle movement throughout the FMC facility.

* * * * *

Slag Pit Area means the area of the FMC facility immediately bordering the south side of the furnace building extending out 100 yards.

(c) * * *

(1)(i) Except as otherwise provided in paragraphs (c)(1)(ii), (c)(1)(iii); and (c)(2) of this section, there shall be no visible emissions from any location at the FMC facility at any time, as determined by a visual observation.

(ii) Emissions from the following equipment, activities, processes, or sources shall not exceed 20% opacity over a six minute average. Method 9 is the reference test method for this requirement.

(A) Brazing, welding, and welding equipment and oxygen-hydrogen cutting torches;

(B) Plant upkeep, including routine housekeeping, preparation for and painting of structures;

(C) Grinding, sandblasting, and cleaning operations that are not part of a routine operation or a process at the FMC facility;

(D) Cleaning and sweeping of streets and paved surfaces;

(E) Lawn and landscaping activities;

(F) Repair and maintenance activities;

(G) Landfill operations;

(H) Laboratory vent stacks; and

(I) Pond piping discharges.

(iii) Except as otherwise provided in paragraph (c)(1)(ii) of this section, emissions from equipment, activities, processes, or sources not identified in Table 1 to this section shall not exceed 10% opacity over a six minute average provided that FMC has complied with the requirements of paragraph (c)(11) of this section and provided further that a more stringent opacity limit has not been established for the source in this section. Method 9 is the reference test method for this requirement.

* * * * *

(5)(i) Beginning January 1, 2001, no furnace gas shall be burned in the existing elevated secondary condenser flare or the existing ground flare (source 26a).

* * * * *

(6) At all times, including periods of startup, shutdown, malfunction, or emergency, the owner or operator of the FMC facility shall, to the extent practicable, maintain and operate each source of PM–10 at the FMC facility, including without limitation those sources identified in Column II of Table 1 to this section and associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

* * * * *

(10) For each source identified in Column II of Table 2 to this section, the owner or operator of the FMC facility shall take appropriate actions to reduce visible emissions from the source if opacity exceeds the opacity action level for that source identified in Column III of Table 2. Such actions shall be commenced as soon as possible but not to exceed 24 hours after an exceedance of the opacity action level is first identified and shall be completed as soon as possible. Such actions shall include, but not be limited to those actions identified in the operation and maintenance plan for the source. Exceedance of an opacity action level does not constitute a violation of this section, but failure to take appropriate corrective action as identified in this paragraph (c)(10) does constitute a violation of this section.

(11) The owner or operator of the FMC facility shall notify EPA prior to the construction of a new source of PM–10 at the FMC facility or the modification of an existing source at the FMC facility in a manner that increases emissions of PM–10 as follows:

(i) Such notification shall be submitted to EPA at least 90 days prior to commencement of the construction or modification.

(ii) Such notification shall include the following information:

(A) A description of the source and any modification thereto;

(B) An estimate of potential PM–10 emissions from source on a 24-hour basis, both with and without any proposed air pollution control equipment;

(C) The expected daily hours of operation of the source or emission release from the source, including any seasonal variation; and

(D) A description of any PM–10 control technology to be implemented at the source along with an analysis of alternative control technologies considered but rejected.

(iii) Any source identified in this section shall continue to be subject to the requirements of this section notwithstanding the modification of the source.

(iv) The requirement of this paragraph (e)(11) is in addition to any other requirement to obtain a permit pursuant to 40 CFR parts 49 or 52.

(v) This paragraph (e)(11) shall cease to apply if either of the following events occur:

(A) EPA promulgates a new source review program for PM–10 that applies to the FMC facility; or

(B) The Tribes promulgate a new source review program for PM–10 that applies to the FMC facility and EPA approves the Tribes' program under 40 CFR part 49.

(d) * * *

(1) For each source identified in Column II of Table 1 to this section, the reference test method for the corresponding emission limitation in Column III of Table 1 to this section for that source is identified in Column IV of Table 1 to this section. For each source identified in Column II of Table 2 to this section, the reference test method for the corresponding opacity action level in Column III of Table 2 to this section for that source is identified in Column IV of Table 2 to this section.

(2) When Method 201/201A or Methods 201/201A and 202 are specified as the reference test methods, the testing shall be conducted in accordance with the identified test methods and the following additional requirements:

* * * * *

(ii) Method 202 shall be run concurrently with Method 201 or Method 201A. Unless Method 202 is specifically designated as part of the reference test method, Method 202 shall be performed on each source for informational purposes only and the results from the Method 202 test shall not be included in determining compliance with the mass emission limit for the source.

* * * * *

(vii) The mass emission rate of PM–10 shall be determined as follows: (A)(1) Where Method 201/201A is identified as the reference test method, the mass emission rate of PM–10 shall be determined by taking the results of the Method 201/201A test and then multiplying by the average hourly volumetric flow rate for the run.

(*2*) Where Methods 201/201A and 202 are identified as the reference test methods, the mass emission rate of PM–10 shall be determined by first adding the PM–10 concentrations from Methods 201/201A and 202, and then multiplying by the average hourly volumetric flow rate for the run.

(B) The average of the three required runs shall be compared to the emission standard for purposes of determining compliance.

(viii) Source testing of the Medusa Andersen stacks on the furnace building (sources 18d, 18e, 18f, and 18g) shall be conducted during periods which include slag tapping or metal tapping.

(ix) At least one of the three runs from a source test of the excess CO burner (source 26b) shall be conducted during either a mini-flush or hot-flush that lasts for at least 30 minutes.

* * * * *

(5) Where Method 202 is identified as part of the reference test method for a particular source, Method 202 shall not be required for that source provided that:

(i) The owner or operator of the FMC facility submits a written request to the Regional Administrator which demonstrates that the contribution of condensible particulate matter to total PM–10 emissions is insignificant for such source; and

(ii) The Regional Administrator approves the request in writing.

(6)(i)An alternative reference test method or a deviation from a reference test method identified in this section may be approved as follows:

(A) The owner or operator of the FMC facility must submit a written request to the Regional Administrator at least 60 days before the performance test is scheduled to begin which includes the reasons why the alternative or deviation is needed and the rationale and data to demonstrate that the alternative test method or deviation from the reference test method:

(*1*) Provides equal or improved accuracy and precision as compared to the specified reference test method; and

(*2*) Does not decrease the stringency of the standard as compared to the specified reference test method.

(B) If requested by EPA, the demonstration referred to in paragraph (d)(6)(i)(A) of this section must use Method 301 in 40 CFR part 63, Appendix A to validate the alternative test method or deviation.

(C) The Regional Administrator must approve the request in writing.

(ii) Until the Regional Administrator has given written approval to use an alternative test method or to deviate from the reference test method, the owner or operator of the FMC facility is required to use the reference test method when conducting a performance test pursuant to paragraph (e)(1) of this section.

(e) * * *

(1) * * *

* * * * *

(i) The first annual test for each source shall be completed within 15 months of the effective date of this section, except that the first annual test for the calciner scrubbers (source 9), the phos dock Andersen scrubber (source 21a), and the excess CO burner (source 26b) shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to those sources. Subsequent annual tests shall be completed within 12 months of the most recent previous test. The time period for conducting any annual source test may be extended by a period of up to 90 days provided that:

(A) The owner or operator of the FMC facility submits a written request to the Regional Administrator which demonstrates the need for the extension; and

(B) The Regional Administrator approves the request in writing.

(ii) The owner or operator of the FMC facility shall provide the Regional Administrator a proposed test plan at least 30 days in advance of each scheduled source test. If the proposed test plan is unchanged for the next scheduled source test on the source, the owner or operator of the FMC facility shall not be required to resubmit a source test plan. FMC shall submit a new source test plan to EPA in accordance with this paragraph (d)(1)(ii)

if the proposed test plan will be different than the immediately preceding source test plan that had been submitted to EPA.

* * * * *

(vi) If, after conducting annual source tests for a particular source for two consecutive years, the emissions from that source are less than 80% of the applicable emission limit, then the frequency of source testing for that source may be reduced to every other year. The frequency of source testing shall revert to annual if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

* * * * *

(6) For each of the pressure relief vents on the furnaces (source 24), FMC shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, devices to continuously measure and continuously record the temperature and pressure of gases in the relief vent downstream of the pressure relief valve and the water level of the pressure relief valve.

* * * * *

(ii) A "pressure release" is defined as an excursion of the temperature, pressure, or water level outside of the parameters approved in accordance with paragraph (g)(1) of this section. Until EPA approval of the acceptable range of parameters for the pressure release vents, a "pressure release" is defined as an excursion of the temperature, pressure, or water level outside of the parameters proposed by the owner or operator of the FMC facility for the pressure relief vents, as provided in paragraph (g)(1) of this section.

* * * * *

(iv) When a pressure release through a pressure relief vent is detected, the owner or operator of the FMC facility shall, within 30 minutes of the beginning of the pressure release, inspect the pressure relief valve to ensure that it has properly sealed and verify that at least 18 inches of water seal pressure is maintained.

(7) The owner or operator of the FMC facility shall develop and implement a written operations and maintenance (O&M) plan covering all sources of PM–10 at the FMC facility, including without limitation, each source identified in Column II of Table 1 to this section and uncaptured fugitive and general fugitive emissions of PM–10 from each source.

* * * * *

(iii) * * * (I) For each source identified in Column II of Table 2 to this section, additional control measures or other actions to be taken if the emissions from the source exceed the opacity action level identified in Column III of Table 2 to this section.

(8) For each source identified in Column II of Table 1 to this section, the owner or operator of the FMC facility shall conduct a visual observation of each source at least once during each calendar week.

(i) If visible emissions are observed for any period of time during the observation period, the owner or operator of the FMC facility shall immediately, but no later than within 24 hours of discovery, take corrective action to minimize visible emissions from the source. Such actions shall include, but not be limited to, those actions identified in the operation and maintenance plan for the source. Immediately upon completion of the corrective action, a certified observer shall conduct a visible emissions observation of the source using the reference test method for the opacity action level with an observation duration of at least six minutes. If opacity exceeds the opacity action level, the owner or operator of the FMC facility shall take prompt corrective action. This process shall be repeated until opacity returns to below the opacity action level.

(ii) In lieu of the periodic visual observation under this paragraph (e)(8), the owner or operator of the FMC facility may conduct a visible emission observation of any source subject to the requirements of this paragraph (e)(8) using the reference test method for the opacity action level, in which case corrective action must be taken only if opacity exceeds the opacity action level.

(iii) Should, for good cause, the visible emissions reading not be conducted on schedule, the owner or operator of the FMC facility shall record the reason observations were not conducted. Visible emissions observations shall be conducted immediately upon the return of conditions suitable for visible emissions observations.

(iv) If, after conducting weekly visible emissions observations for a given source for more than one year and detecting no visible emissions from that source for 52 consecutive weeks, the frequency of observations may be reduced to monthly. The frequency of observations for such source shall revert to weekly if visible emissions are detected from that source during any monthly observation or at any other time.

(f) * * *

* * * * *

(10) The owner or operator of the FMC facility shall keep the following records with respect to the main shale pile (source 2) and emergency/contingency raw ore shale pile (source 3):

(i) The date and time of each reforming of the pile or portion of the pile.

(ii) The date, time, and quantity of latex applied.

* * * * *

(h) *Title V permit.* (1) * * *

(2) (i) A requirement of paragraph (e), (f), or (g) of this section may be revised through issuance or renewal of a title V operating permit by EPA to the FMC facility under 40 CFR part 71 or through a significant permit modification thereto, provided that:

(A) Any alternative monitoring, recordkeeping, or reporting requirements that revise requirements of paragraphs (e), (f), or (g) of this section:

(*1*) Are sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the requirements of paragraph (c) of this section; and

(*2*) Provide no less compliance assurance than the requirements of paragraphs (e), (f), or (g) of this section that the alternative requirements would replace.

(B) In the event the alternative monitoring, recordkeeping, or reporting requirements are requested by the owner or operator of the FMC facility, FMC's application for its title V operating permit or significant permit modification must include:

(*1*) The proposed alternative monitoring, recordkeeping, or reporting permit terms or conditions;

(*2*) The specific provisions of paragraphs (e), (f), or (g) of this section the owner or operator of the FMC facility is seeking to revise; and

(*3*) The supporting documentation to establish that the alternative permit terms or conditions meet the requirements of paragraph (h)(2)(i)(A) of this section.

(C) The draft and final title V operating permit or significant permit modification identifies the specific provisions of paragraphs (e), (f), or (g) of this section being revised;

(D) In the event a revision to paragraphs (e), (f), or (g) of this section is accomplished through a significant modification to FMC's title V operating permit, it is accomplished using the significant permit modification procedures of 40 CFR part 71; and

(ii) Upon issuance or renewal of FMC's title V permit or a significant permit modification thereto that revises

a requirement of paragraphs (e), (f), or (g) of this section, the revision shall remain in effect as a requirement of this section not withstanding expiration, termination, or revocation of FMC's title V operating permit.

* * * * *

TABLE 1 TO § 52.676

I. Source No.	II. Source description	III. Emission limitations and work practice requirements	IV. Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	Opacity shall not exceed 10% over a 6 minute average.. Latex shall be applied after each reforming of pile or portion of pile.	Method 9.
3	Emergency/contingency raw ore shale pile.	Opacity shall not exceed 10% over a 6 minute average.. Latex shall be applied after each reforming of pile or portion of pile.	Method 9.
4	Stacker and reclaimer	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
5a	East shale baghouse	a. Emissions shall not exceed 0.10 lb. PM–10/hr (excluding condensible PM–10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
5b	East shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
6a	Middle shale baghouse	a Emissions shall not exceed 0.30 lb. PM–10/hr (excluding condensible PM–10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
6b	Middle shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
6c	Middle shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
7a	West shale baghouse	a. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10). Opacity shall not exceed 10% over a 6 minute average.	a. Methods 201/201A. Method 9.
7b	West shale baghouse building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	b. Method 9.
7c	West shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limitations. Effective November 1, 2000, opacity of emissions in the slag pit area and from pot rooms shall not exceed 10% over a 6 minute average. Exemption: Fuming of molten slag in transport pots during transport are exempt provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased. *See also* 40 CFR 52.676(c)(4).	a. Method 9.
8b	b. Recycle material pile	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
8c	c. Dump to slag pile	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limitations.	
9	Calciner scrubbers	Effective December 1, 2000, the calciner scrubbing chain (air pollution control equipment) shall achieve an overall control efficiency* of at least 90% for PM–10 (including condensible PM–10) under all operating conditions.	Method 5 (all particulate collected shall be counted as PM–10) and Method 202 at the scrubber outlet. Method 201A and Method 202 at the inlet to the scrubber systems.
		Emissions from any one calciner scrubber exhaust stack shall not exceed 0.022 grains per dry standard cubic foot PM–10 (including condensible PM–10).	Method 5 (all particulate collected shall be counted as PM–10) and Method 202 at the scrubber outlet.
		Total gas flow rate through any one outlet stack shall not exceed 40,800 dry standard cubic feet per minute.	Method 2.
		The calciner scrubbers shall be exempt from opacity limitations.	

TABLE 1 TO § 52.676—Continued

I. Source No.	II. Source description	III. Emission limitations and work practice requirements	IV. Reference test method
10	Calciner cooler vents	Emissions from any one calciner cooler vent shall not exceed 4.4 lb. PM–10/hr (excluding condensible PM–10).	Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
11	Nodule pile	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
12a	North nodule discharge baghouse	a. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
12b	South nodule discharge baghouse	b. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10).	b. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
12c	North and south nodule discharge baghouse outside caputure hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
13	Nodule fines pile	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
14	Screened shale fines pile adjacent to the West shale building.	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
15a	Proportioning building—a. East nodule baghouse.	a. Emissions shall not exceed 0.50 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
15b	b. West nodule baghouse	b. Emissions shall not exceed 0.50 lb. PM–10/hr (excluding condensible PM–10).	b. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
15c	c. Proportioning building—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	c. Method 9.
16a	Nodule reclaim baghouse	a. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
16b	Nodule reclaim baghouse outside caputrue hood—fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
17a	Dust silo baghouse	a. Emissions shall not exceed 0.15 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the dust silo or pneumatic dust handling system.	b. Method 9.
18a	Furnace building— a. East baghouse.	a. Emissions shall not exceed .75 lb. PM–10/hr (excluding condensible PM–10).	a. Methods 201/201A.
18b	b. West baghouse	b. Emissions shall not exceed .75 lb. PM–10/hr (excluding condensible PM–10).	b. Methods 201/201A.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	c. Until April 1, 2002, opacity shall not exceed 20% over a 6 minute average.	c. Method 9.
		Effective April 1, 2002, opacity shall not exceed 10% over a 6 minute average.	Method 9.
18d	d. Furnace #1 Medusa Andersen	d,e,f,g: PM–10 emissions from any one Medusa Andersen shall not exceed 2.0 lb/hr (excluding condensible PM–10).	d,e,f,g: Methods 201/201A.
18e	e. Furnance #2 Medusa Andersen.		
18f	f. Furnace #3 Medusa Andersen	Opacity from any one Medusa Andersen shall not exceed 10% over a 6 minute average.	Method 9.
18g	g. Furnace #4 Medusa Andersen	.....	
19	Briquetting building	Opacity shall not exceed 10% over a 6 minute average from any portion of the building.	Method 9.
20a	a. Coke handling baghouse	a. Emissions shall not exceed 1.7 lb. PM–10/hr. (excluding condensible PM–10).	a. Methods 201/201A.

TABLE 1 TO § 52.676—Continued

I. Source No.	II. Source description	III. Emission limitations and work practice requirements	IV. Reference test method
		Opacity shall not exceed 10% over a 6 minute average.	Method 9.
20b	b. Coke unloading building	b. Opacity shall not exceed 10% over a 6 minute average from any portion of the coke unloading building.	b. Method 9.
21a	a. Phosphorous loading dock (phos dock), Andersen Scrubber.	a. Effective November 1, 1999, emissions shall not exceed 0.004 grains per dry standard cubic foot PM–10 (excluding condensible PM–10).	a. Methods 201/201A.
		Effective November 1, 1999, flow rate (throughput to the control device) shall not exceed manufacturer's design specification.	Method 2.
		Effective November 1, 1999, opacity shall not exceed 10% over a 6 minute average.	Method 9.
21b	b. Phosphorous loading dock—fugitive emissions.	b. Effective November 1, 1999, opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
22	All roads	Opacity shall not exceed 20% over a 6 minute average.	Method 9.
23	Boilers	Emissions from any one boiler shall not exceed 0.09 lb. PM–10/hr (excluding condensible PM–10).	Methods 201/201A.
		Opacity from any one boiler shall not exceed 10% over a 6 minute average.	Method 9.
24	Pressure relief vents	Opacity shall not exceed 10% over a 6 minute average except during a pressure release, as defined in 40 CFR 52.676(e)(6)(ii).	Method 9.
		Pressure release point shall be maintained at 18 inches of water pressure at all times. Emissions during a pressure release, as defined in 40 CFR 52.676(e)(6)(ii) are exempt from opacity limitations.	Inspection of pressure release vent and monitoring device.
25	Furnace CO emergency flares	Except during an emergency flaring caused by an emergency as defined in 40 CFR 52.626(b), opacity shall not exceed 10% over a six minute average. Emissions during an emergency flaring caused by an emergency are exempt from opacity limitations.	Method 9.
26a	a. Existing elevated secondary condenser flare and ground flare.	a. *See* 40 CFR 52.676(c)(5)	
26b	b. Excess CO burner (to be built to replace the existing elevated secondary consenser flare and ground flare).	b. Effective January 1, 2001, i. The control efficiency* of the air pollution control equipment shall achieve an overall control efficiency of at least 95% for PM–10 (including condensible PM–10) under all operating conditions.	i. Methods 201/201A and Method 202 for the inlet (sampling locations to be determined). Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet.
		ii. The total excess CO burner particulate emission loadings (including condensible PM–10) shall not exceed 24 lb. PM–10/hr.	ii. Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet.
		Effective January 1, 2001, opacity shall not exceed 10% over a 6 minute average.	Method 9.

*The control efficiency (as a percentage) of the air pollution control equipment shall be determined by the following equation:
CE (%) = 100 {1-([Fho + Bho] / [Fhi + Bhi])}
Where CE = Control efficiency.
Fhi is the front half emissions for the inlet.
Bhi is the back half emissions for the inlet.
Fho is the sum of the front half emissions from each stack for the outlet.
Bho is the sum of the back half emissions from each stack for the outlet.
Inlet and all outlet stacks to be sampled simultaneously for required testing.

TABLE 2 TO § 52.676

I. Source No.	II. Source description	III. Opacity action level	IV. Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	Any visible emissions	Visual observation.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	Any visible emissions	Visual observation.
3	Emergency/contingency raw ore shale pile.	Any visible emissions	Visual observation.

TABLE 2 TO § 52.676—Continued

I. Source No.	II. Source description	III. Opacity action level	IV. Reference test method
4	Stacker and reclaimer	Any visible emissions	Visual observation.
5a	East shale baghouse	a. 5% over a 6 minute average	a. Method 9.
5b	East shale baghouse building	b. Any visible emissions	b. Visual observation.
6a	Middle shale baghouse	a. 5% over a 6 minute average	a. Method 9.
6b	Middle shale baghouse building	b. Any visible emissions	b. Visual observation.
6c	Middle shale baghouse outside capture hood—fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
7a	West shale baghouse	a. 5% over a 6 minute average	a. Method 9.
7b	West shale baghouse building	b. Any visible emissions	b. Visual observation.
7c	West shale baghouse outside capture hood fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limitations. Effective November 1, 2000, the opacity action level for this source shall 5% over a 6 minute average. *Exemption:* Fuming of molten slag in transport pots during transport are exempt from opacity action levels and opacity limits provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased. *See also* 40 CFR 52.676(c)(4).	Method 9.
8b	b. Recycle material pile	b. Any visible emissions	b. Visual observation.
8c	c. Dump to slag pile.	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity action levels.	
9	Calciner scrubbers	The calciner scrubbers shall be exempt from opacity action levels and opacity limits.	
10	Calciner cooler vents	5% over a 6 minute average	Method 9.
11	Nodule pile	10% over a 6 minute average	Method 9.
12a	North nodule discharge baghouse.	a. 5% over a 6 minute average	a. Method 9.
12b	South nodule discharge baghouse.	b. 5% over a 6 minute average	b. Method 9.
12c	North and south nodule discharge baghouse outside capture hood fugitive emissions.	c. 5% over a 6 minute average	c. Method 9.
13	Nodule fines pile	10% over a 6 minute average	Method 9.
14	Screened shale fines pile adjacent to the West shale building.	10% over a 6 minute average	Method 9.
15a	Proportioning building a. East nodule baghouse.	a. 5% over a 6 minute average	a. Method 9.
15b	b. West nodule baghouse	b. 5% over a 6 minute average	b. Method 9.
15c	c. Proportioning building—fugitive emissions.	c. Any visible emissions	c. Visual observation.
16a	Nodule reclaim baghouse	a. 5% over a 6 minute average	a. Method 9.
16b	Nodule reclaim baghouse outside capture hood—dash; fugitive emissions.	b. 5% over a 6 minute average	b. Method 9.
17a	Dust silo baghouse	a. 5% over a 6 minute average	a. Method 9.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	b. Any visible emissions	b. Visual observation.
18a	Furnace building a. East baghouse.	a. 5% over a 6 minute average	a. Method 9.
18b	b. West baghouse	b. 5% over a 6 minute average	b. Method 9.
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	c. Until April 1, 2002, 10% over a 6 minute average. Effective April 1, 2002, 5% over a 6 minute average.	c. Method 9.
18d	d. Furnace #1 Medusa Andersen	d,e,f,g: 5% over a 6 minute average	d,e,f,g: Method 9.
18e	e. Furnace #2 Medusa Andersen.		
18f	f. Furnace #3 Medusa Andersen.		
18g	g. Furnace #4 Medusa Anderson.		
19	Briquetting building	Any visible emissions	Visual observation.
20a	a. Coke handling baghouse	a. 5% over a 6 minute average	a. Method 9.
20b	b. Coke unloading building	b. Any visible emissions	b. Visual observation.
21a	a. Phosphorous loading dock (phos dock), Andersen Scrubber.	a. Effective November 1, 1999, 5% over a 6 minute average.	a. Method 9.

TABLE 2 TO § 52.676—Continued

I. Source No.	II. Source description	III. Opacity action level	IV. Reference test method
21b	b. Phosphorous loading dock—fugitive emissions.	b. Effective November 1, 1999, 5% over a 6 minute average.	b. Method 9.
22	All roads	10% over a 6 minute average	Method 9.
23	Boilers	5% over a 6 minute average	Method 9.
24	Pressure relief vents	5% over a 6 minute average	Method 9.
25	Furnace CO emergency flares	Any visible emissions except during an emergency flaring caused by an emergency as defined in 40 CFR 52.626(b). Emissions during an emergency flaring caused by an emergency are exempt from opacity action level.	Visual observation.
26a	a. Existing elevated secondary condenser flare and ground flare.	a. Exempt from opacity limitations and opacity action level.	
26b	b. Excess CO burner (to be built to replace the elevated secondary condenser flare and ground flare).	5% opacity over a 6 minute average	Method 9.

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Part III

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 2000 Discretionary Announcement of the availability of funds and request for applications for Field Initiated Child Care Research Projects, Child Care Policy Research Partnerships, Child Care Research Scholars, and the Child Care Research Fellowship Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CC–2000–01]

Fiscal Year 2000 Discretionary Announcement of the availability of funds and request for applications for Field Initiated Child Care Research Projects, Child Care Policy Research Partnerships, Child Care Research Scholars, and the Child Care Research Fellowship Program.

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

SUMMARY: The fiscal year (FY) 1999 Omnibus Consolidated and Emergency Supplemental Appropriation Act (P.L. 105–277) provides $10 million in FY 2000 funds for child care research, demonstration, and evaluation activities to be used directly or through grants or contracts. This first-ever appropriation for child care research occurred at the request of President Clinton and reflects Congressional recognition of the importance of child care issues. In this notice, ACF announces the availability of these funds and requests child care research applications. It is anticipated that approximately $4.3 million will be distributed through this Announcement. Universities and colleges, public agencies, non-profit organizations, and for-profit organizations agreeing to waive their fees are invited to submit applications for Field Initiated Child Care Research Projects, Child Care Policy Research Partnerships, and implementation of the Child Care Research Fellowship Program. Accredited universities and colleges may submit a Child Care Research Scholar application on behalf of a doctoral candidate who has a dissertation proposal approved by their doctoral committee.

This solicitation announces competition for funding in four priority areas: (1) Field Initiated Child Care Research Projects; (2) Child Care Policy Research Partnerships; (3) Child Care Research Scholars; and (4) the Child Care Research Fellowship Program. Projects funded under each of these priority areas are expected to address critical questions with implications for children and families, especially low-income working families and families transitioning off welfare. In addition, projects will contribute to a comprehensive research agenda designed to increase the capacity for child care research at the national, State, and local levels and promote better linkages among research, policy, practice, and outcomes for children and families.

The Child Care Bureau's research agenda is designed to help answer five key questions:

(1) What does child care look like today? What are the variations in child care by type, quality, number and ages of children in care, cost, availability of subsidies, early childhood workforce, family-work issues, and community supports? How do child care demand and supply interact? How do the major variations relate to quality and outcomes for children and families? How are Federal subsidy and quality funds being used?

(2) How do the variations in child care including quality, cost, types of care, administrative strategies, and characteristics of the child care workforce influence children's development and well-being, including school readiness?

(3) How do the variations in child care including types of care, cost, quality, availability of subsidies, and flexibility relate to the ability of parents to provide for their families and successfully manage family and work responsibilities? Do difficulties in paying for child care affect family well-being in other areas such as housing, health care, and employment stability?

(4) How do the answers to these broad questions translate into specific child care policies and program choices at national, State and local levels? What is the interaction between subsidy utilization rates and policies related to eligibility, rates, and co-payments? What effects do policy innovations involving provider compensation, training, and incentives for quality (such as tiered reimbursement rates and licensing) have on improving the quality and availability of care for children and families?

(5) How do the answers to all of these questions differ for key sub-groups of children and families? Current research suggests that certain sub-groups of families (for instance, low-income, non-English speaking, and those that include an infant or a child with special needs) may have differing child care preferences or face extraordinary challenges as compared to other families. What are these variations and challenges and how do they affect children and families? What are the policy and programmatic implications?

FOR FURTHER INFORMATION: For questions regarding application requirements of this program announcement, please contact the ACYF Operations Center Technical Assistance Team at 1–800–351–2293 or send an Email to *ccb@lcg.com*. For programmatic questions, please contact Dr. Patricia L. Divine, Program Specialist, Child Care Bureau at 202–690–6705 or Karen Tvedt, Policy Division Director, Child Care Bureau at 202–401–5130, or send an Email to *pdivine@acf.dhhs.gov*.

SUPPLEMENTARY INFORMATION: This Announcement includes the instructions needed to apply for: (1) Field Initiated Child Care Research Projects; (2) Child Care Policy Research Partnerships; (3) Child Care Research Scholars; or (4) the Child Care Research Fellowship Program. The Standard Federal Forms that must be included in applications can be downloaded from the Internet *http://www.acf.dhhs.gov/programs/ofs/form.htm*. For each priority area, the required Standard Federal Forms are identified under "Project Description and Application Requirements."

This Announcement includes five parts. Part I provides information about the Child Care Bureau, its research agenda and strategies, priority areas to be funded under this Announcement, and instructions for submitting an application. Part II describes key research questions in the Child Care Bureau's broad research agenda. Part III provides background information, instructions for completing applications, evaluation criteria, and funding procedures for Field Initiated Child Care Research Projects (Priority Area 1) and Child Care Policy Research Partnerships (Priority Area 2). Part IV provides background information, instructions for completing applications, and evaluation criteria and funding procedures for Child Care Research Scholars (Priority Area 3). Part V provides background information, instructions for completing applications, and evaluation criteria and funding procedures for implementation of the Child Care Research Fellowship Program (Priority Area 4). The contents are outlined below:

Table of Contents

Part I. General Information

A. Purpose
B. Context
C. The Child Care Bureau
D. Need for Child Care Research
E. Research Agenda
F. Research Goals
G. Research Activities
H. Priority Areas to be Funded under this Announcement
I. Submission of Applications
J. Citations
K. Number of Awards, Duration, and Funding Levels

Part II. Research Questions and Priorities

Part III. Field Initiated Child Care Research Projects and Child Care Policy Research Partnerships

Priority Area 1. Field Initiated Research Projects
A. Purpose
B. Priorities
C. Number of Awards
D. Project Duration, Funding Levels, and Budget Periods
E. Federal Share
F. Eligible Applicants
G. Data Ownership
Priority Area 2. Child Care Policy Research Partnerships
A. Purpose
B. Priorities
C. Number of Awards
D. Project Duration, Funding Levels, and Budget Periods
E. Federal Share
F. Eligible Applicants
G. Data Ownership
Project Description and Application Requirements
A. Contents and Format of the Application
B. Project Narrative Statement
Evaluation and Selection
A. Screening and Panel Review
B. Evaluation Criteria
C. The Selection Process
D. Funding Date

Part IV. Priority Area 3: Child Care Research Scholars

A. Purpose
B. Number of Awards
C. Project Period
D. Funding Levels
E. Matching Requirements and Non-Federal Share
F. Maximum Federal Share
G. Eligible Applicants
H. Additional Requirements
I. Project Description and Application Requirements
A. Evaluation and Selection
B. Evaluation Criteria
C. The Selection Process
D. Funding Date

Part V. Priority Area 4: Child Care Research Fellowship Program

A. Purpose
B. Priorities
C. Number of Awards
D. Project Period
E. Funding Levels
F. Matching Requirements and Non-Federal Share
G. Maximum Federal Share
H. Eligible Applicants
I. Project Description and Application Requirements
J. Evaluation and Selection
K. Evaluation Criteria
L. The Selection Process
M. Funding Date

Part I. General Information

A. Purpose

The child care research grants to be funded under this Announcement will increase the capacity for child care research at national, State, and local levels while simultaneously answering critical questions with implications for children and families, particularly low-income working families and families transitioning off welfare.

B. Context

These child care research grants are being funded at a time when more than half of infants, toddlers, and preschool children are in child care and only 14 percent of children stay at home full time with their primary caregivers during their first three years (NICHD). In 1998, 96 percent of fathers and 65 percent of mothers with children under the age of six worked. During this same period, nearly 78 percent of mothers with children between the ages of six and 17 were in the paid labor force full or part-time. Welfare reform and the consistently strong and growing economy have contributed to dramatic increases in the number of low-income mothers in the paid labor market. The percentage of single mothers with incomes under 200 percent of the Federal Poverty Level who are employed rose from 44 percent in 1992 to 57 percent in 1999 (U.S. Bureau of the Census). As increasing numbers of parents work and children experience non-parental care at younger and younger ages, questions about the availability, quality, and cost of child care and their effects on child care family outcomes take on new urgency.

The projects to be funded under this Announcement build on significant child care research already in progress with support from the Department of Health and Human Services (DHHS), the Administration for Children and Families (ACF), and other funding agencies. "A National Study of Child Care for Low-Income Families," being conducted by Abt Associates in cooperation with the National Center for Children in Poverty at Columbia University is but one example of important studies now in progress. This study will provide information about the employment and child care decisions of low-income families, the characteristics and functioning of family child care, the experiences children and families have with family child care, and the effects of policies and programs on the child care market. The Child Care Bureau's Child Care Policy Research Consortium, comprised of five currently-funded Child Care Policy Research Partnerships and ten states, is actively engaged in research, much of which involves analysis of administrative data. These studies are designed to address issues such as unmet need, subsidies, TANF, the working poor, waiting lists, and quality of care. Information about these and other studies is available at *http://www.aspe.hhs.gov/hsp/cyp/ccresinv.htm*.

Additional studies being conducted with ACF participation include "The Role of Child Care in Low Income Families' Labor Force Participation," the "Study of Infant Care under Welfare Reform" (both being conducted by Mathematica Policy Research), the "Early Childhood Longitudinal Study—Birth Cohort (ECLS–B)," and the National Institute of Child Health and Human Development's "Study of Early Child Care." In addition, DHHS is supporting efforts by States to monitor the well-being of children in the context of welfare reform, child care, and other policy changes. In the "Project on State-Level Child Outcomes," ACF and the DHHS Office of the Assistant Secretary for Planning and Evaluation (ASPE) are supporting efforts in five States to improve the measurement of family and child health and well-being in State welfare evaluations. Technical assistance to States in conducting these evaluations is being provided through Child Trends, Inc. In addition to the child impact projects, ACF and ASPE have funded a separate, complementary project in 13 states called, "Advancing States' Child Indicator Initiatives," which supports the development and use of indicators for children's health and well-being in areas such as child care and school readiness. For a description of these State projects, visit *http://www.aspe.hhs.gov/hsp/cyp/cindicators.htm*.

While important child care research has been conducted over the past two decades and important research is now in progress, some studies need to be updated and new studies are required to examine the emerging child care landscape. Welfare reform and increased federal child care funding provide further urgency to building the child care research infrastructure and being able to answer important questions about child care and its impact on children and families. For example, information is limited with regard to unregulated care, quality and quality incentives, and child care and its relationship to specific sub-groups of families such as non-English-speaking families and families which include a child with special needs.

C. The Child Care Bureau

The Child Care Bureau was established by ACF in 1994 to provide leadership to efforts to enhance the quality, affordability, and supply of child care available for all families. The

Child Care Bureau administers the Child Care and Development Fund (CCDF), a $3.5 billion child care program which includes funding for child care subsidies and activities to improve the quality and availability of child care. (CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care.) The Bureau works closely with ACF Regions, States, Territories, and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

D. Need for Child Care Research

Child care research and evaluation are critical to understanding child care and its implications for children and families. Under Federal legislation governing welfare and child care, States have the opportunity to craft programs directly suited to their citizens; however, they are also faced with unprecedented challenges in meeting the needs of low-income, under-served, and other vulnerable populations. Public agencies are under enormous pressure to use their child care dollars as effectively as possible. Yet, research and administrative data need to be expanded to address additional policy and planning issues. For example, there is a need for a more detailed understanding of how the child care market operates within the context of changing policies and population dynamics, or what outcomes for children and families can be achieved under new policy opportunities and constraints. There is, therefore, a growing consensus about the critical need for more timely and broadly representative knowledge to guide child care services, inform policy debates, and assist in developing solutions to complex child care issues.

E. Research Agenda

The fiscal year (FY) 1999 Omnibus Consolidated and Emergency Supplemental Appropriation Act (P. L. 105–277) provides $10 million in FY 2000 funds for child care research, demonstration, and evaluation activities. This appropriation is particularly significant as the first federal funding specifically designated for child care research. These funds provide the catalyst for the research agenda that frames the goals and priorities contained in this Announcement. Developed by the Child Care Bureau, the Office of Planning, Research and Evaluation (OPRE), and other offices within ACF, this agenda is the result of a collaborative planning process which includes other Federal partners, State and local agencies, researchers, professional organizations, and other stakeholders.

Instrumental to the development of the research agenda was a two-day Child Care Research Leadership Forum in which researchers, policy-makers and practitioners considered what is currently known and what needs to be learned about critical child care issues. Forum participants identified an urgent need for immediate short-term answers to policy questions, intermediate-term research on the complexities of child care in different kinds of markets, and longitudinal studies to determine macro trends and long-range outcomes for children, families and communities.

Following the Child Care Research Forum, the Child Care Bureau and OPRE jointly sent letters to more than 700 individuals and organizations to further identify critical information gaps and policy research needs. Responses were received from 21 universities, colleges, and research organizations as well as many child care and human service agencies, national professional organizations, child care resource and referral agencies, and individuals. Among those commenting, 58 percent noted the need to better understand the dynamics of child care quality, cost, and availability. Forty-nine percent argued for strengthening the research infrastructure, and 37 percent mentioned the importance of developing an improved understanding of the interrelationships among child care, employment, and self-sufficiency.

This process affirmed the need for better descriptions of local child care populations, services, and outcomes; development of interactive models to understand complex causal relationships; updated national profiles of child care supply and demand; and greater attention to specific policy questions in the arena of State child care regulations, subsidy programs, and welfare reform. ACF was urged to fund projects that will contribute to an increased national capacity for research and help build a sound infrastructure for emerging knowledge. At the same time, we were encouraged to fund studies that will provide short-term answers to pressing questions and yield timely, useful information for policy makers.

F. Research Goals

The Child Care Bureau's research agenda is characterized by two major goals. These goals reflect the need to be able to answer critical questions while simultaneously developing a sound research infrastructure for new knowledge. All research funded in FY 2000 will support both goals. Several of these efforts will be carried out through projects described in this Announcement. Others will be funded through separate contracts, grants, interagency agreements, or other appropriate funding mechanisms.

Goal 1. Answering Critical Questions

Our first goal for child care research is to address immediate information needs. Organizations and individual scholars will conduct research activities to provide timely answers to critical questions, improve the quality of knowledge within the child care field, and promote a more integrated understanding of the interrelationships among research, policy, practice, and outcomes for children and families. Research initiatives to be undertaken as part of the Child Care Bureau?s research agenda are designed to address the five key questions outlined in the Summary and detailed in Part II of this Announcement.

Goal 2. Capacity Building

Our goal for capacity building includes a broad range of objectives to be addressed at national, state, and local levels. In particular we hope to:

(1) Increase the comparability of administrative data and expand the analysis of policy variables (e.g., types of care, quality of care, number of families and children using care, family payments for care, subsidy amounts and duration, and characteristics of the child care workforce).

(2) Ensure that researchers have easy access to data for a wide variety of analyses.

(3) Stimulate growth in the field, including the recruitment and training of additional researchers.

(4) Develop the partnerships among researchers, practitioners, and

academics that are critical to success in this research.

(5) Ensure that the research infrastructure supports national, state, and local studies.

G. Research Activities

The Child Care Bureau plans to undertake an array of activities to achieve its research goals including the initiatives covered by this Announcement and other activities to be funded through separate procurement processes. The priorities covered under this Announcement include Field Initiated Child Care Research Projects, Child Care Policy Research Partnerships, Child Care Research Scholars, and the Child Care Research Fellowship Program. In addition, ACF anticipates funding additional activities toward building the research infrastructure as well as other Federal early childhood research projects. Activities likely to be funded separately from this Announcement include:

• Provide Additional Support to Developing the Research Infrastructure

The Bureau intends to promote access to data, provide technical assistance, perform special analyses, and track Federally-and non Federally-funded child care research. This initiative will create a national child care data archive, assist researchers with secondary analyses of completed data sets, contribute to research dissemination, and coordinate sharing of research information among Child Care Bureau grantees.

• Support Other Federal Early Childhood Research

Some FY 2000 child care research funds will be used for interagency agreements to support other Federal research related to child care and early childhood issues. Partnerships are being explored with the Department of Education, National Center for Educational Statistics and the DHHS National Institute for Child Health and Human Development.

H. Priority Areas to be Funded Under This Announcement

Projects funded under each priority area will contribute to the Child Care Bureau's research goals, provide timely answers to critical questions, and expand research capacity. The four priority areas identified for this Announcement include:

(1) *Field Initiated Child Care Research Projects* are being funded to stimulate research that is responsive to the consultation we received through the leadership forum and comment process, including the need to support studies that examine interrelationships within child care systems. Projects will support the Bureau's research agenda and provide timely and relevant data on issues faced by policy makers, practitioners, parents, and the general public. While projects may involve analysis of national or State data sets, we expect that most of these studies will address community issues. Since child care markets are local, there is a need to understand market dynamics, how child care demand and supply interact, how child care arrangements intersect with family, work, school, and other institutions in the community and how these factors relate to outcomes.

The following are issues of special priority for Field Initiated Child Care Research Projects: culturally and ethnically diverse populations and cultural influences on child care; child care for infants and toddlers; child care for children with disabilities, chronic illnesses, and other special needs; issues related to children's out-of-school time; informal care provided by relatives, friends, neighbors, and other community caregivers operating outside the formal system; issues related to health, safety, and quality of care; children's development and well-being in care; and, social and emotional supports needed for a healthy child care environment. Applications dealing with other important issues are also invited.

(2) *Child Care Policy Research Partnerships* expand on a strategy that has proven successful in facilitating cross-state research and providing rapid responses to State child care administrators' questions. The Child Care Bureau has funded two waves of Child Care Research Partnerships which operate as a Child Care Policy Research Consortium. New partnerships will be funded to build collaboration and systemic links among researchers, policy makers and practitioners toward addressing complex problems concerning child care quality, outcomes, and unmet needs. Other areas of special priority for new Child Care Policy Research Partnerships are subsidies, waiting lists, duration of care, quality initiatives, low-income families, and families transitioning off welfare, and partnerships among child care, Head Start, and State pre-kindergarten programs toward providing full-day, full-year services. The new partnerships will participate with earlier partnerships in the activities of the Child Care Policy Research Consortium.

(3) *Child Care Research Scholars* will provide support for doctoral candidates in conducting dissertation research on child care issues under the auspices of the Child Care Bureau and the educational institution in which the student is enrolled. Dissertation applications must have been approved by the student's doctoral committee by the time the scholarship is awarded and the dissertation expected to be completed within the two year scholarship period. Issues of special priority for Child Care Research Scholarships include those listed for Field Initiated Child Care Research Projects and Child Care Policy Research Partnerships.

(4) *The Child Care Fellowship Program* will bring early-to-mid career professionals in the fields of child care, early childhood education, and research to the Child Care Bureau. Through this Announcement, we intend to select an organization to work in partnership with the Child Care Bureau to design and implement the Child Care Fellowship Program. This program will promote integrated leadership in child care research and policy through intensive involvement with Child Care Bureau and Senior ACF officials, State-level policy makers, members of Federally-funded research projects, and others with a role in national issues for child care research. Fellows will work on assignments designed to further their potential as researchers in the areas of child care, child development, child care policy, and administration of subsidy programs.

I. Submission of Applications

(1) *Number of Applications:* Only one priority area may be included in each application. Applicants, depending on eligibility requirements for the specific priority area, may apply for more than one priority area with separate applications. However, applicants submitting more than one priority area will be eligible for only one award. The cover letter for each application must state all priority areas in which applications are being submitted.

(2) *Notice of Intent to Submit an Application:* In order to anticipate workload, including the number of outside reviewers required, ACF would appreciate an early estimate of the number of applications to be expected. If you intend to submit an application, please notify the ACYF Operations Center eight weeks prior to the submission deadline. (This information will also be used to update mailing lists for future announcements.) In the notification, please include the following information:

(a) Announcement Number, Title and Priority Area

(b) Primary Contact Person (Project Director or Principal investigator)
(c) Organization
(d) Street address
(e) Mailing address
(f) E-mail address
(g) Phone number
(h) Fax number

If the primary contact person is difficult to reach, please include an alternate contact. Your notification may be through e-mail at *CCB@LCGNET.COM*, telephone (1–800–351–2293), or postcard to the ACYF Operations Center, Laurel Consulting Group, 1825 Fort Myer Drive, Suite 300, Arlington, Virginia 22209: Attention Child Care Research.

(3) *Deadline:* The closing time and date for *receipt* of applications is 4:30 p.m. (Eastern Standard Time) on *March 31, 2000.*

(4) *Late Applications:* If your application is received by the ACYF Operations Center after the deadline, it will be classified as late and eliminated from the competition. Applicants whose packages arrive late will be notified.

(5) *Extension of Deadlines:* ACF may extend the deadline for all applicants because of acts of God such as floods or hurricanes or when there is wide disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not extend the deadline for any applicant.

(6) *Address for Submission:* All applications must be delivered to the following address: ACYF Operations Center, Laurel Consulting Group, 1825 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, Attention: Child Care Research, Priority Area, Phone: 1–800–351–2293.

(7) *Method of Submission:* (a) Mailed Submissions: Applications sent first class or priority mail should be sent well in advance to ensure that applications are *received* by the ACYF Operations Center on or before the deadline. When mailed applications are received after the closing date, *date of postmark will not be considered as meeting the deadline.*

(b) Hand Delivered Submissions: Applications hand carried by applicants, their representatives, couriers, or overnight mail services must be received on or before the deadline by the ACYF Operations Center. Applications will be accepted between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday (excluding Federal Holidays). Applicants are cautioned that overnight and express mail services do not always deliver as promised. Failure of a delivery service to meet the deadline will cause an application to be classified as late and eliminated from competition.

(c) Electronic Submissions: ACYF cannot accommodate transmission of applications by fax, e-mail attachment, or other electronic media. Therefore, applications transmitted electronically will not be accepted, regardless of date or time of submission and receipt.

(8) *Notification of Receipt:* Applicants will be notified automatically about the receipt and status of their application. Applications that are received on or before the deadline will be assigned a four-digit identification number. This number and the priority area must be included in all subsequent communication concerning the application. If you do not receive acknowledgment of your application within eight weeks after the deadline date, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

J. Citations

(1) *Statutory Authority:* Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1999 (Pub. L. 105–277).

(2) *Catalog of Federal Domestic Assistance:* The Catalog of Federal Domestic Assistance number for all priority areas is 93.647.

(3) *State Single Point of Contact:* This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 5, 1999 the following jurisdictions have elected NOT to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

Applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a, and submit a copy of the letter along with its application to OCS.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official state process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/ACYF, 330 C Street SW., Washington, DC 20447.

A list of Single Points of Contact for each State and Territory can be found at: *http://www.hhs.gov/progorg/grantsnet/laws-reg/spoc999.htm.*

(4) *Paperwork Reduction Act of 1995 (Pub. L. 104–13):* Public reporting burden for this collection of information is estimated to average 15 hours per response for the Field Initiated Child Care Research Projects, 20 hours per response for the Child Care Policy Research Partnerships, 5 hours per response for the Child Care Research Scholars, and 10 hours per response for the Child Care Research Fellowship Program. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The project description is approved under OMB Control Number 0970–0213. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. Number of Awards, Duration, and Funding Levels

Approximately 19–23 grants, for all priority areas, will be awarded in Fiscal Year 2000 (ending September 30, 2000), subject to results of the competitive review process and availability of funds. Continuation of grants beyond the initial budget period will depend strongly on the specific reauthorization of child care research funds for FY 2001. Should additional funds be available in FY 2001, ACF also reserves the right to

fund additional projects from among the applications received through this announcement.

(1) *Priority Area 1, Field Initiated Child Care Research Projects.* This priority area is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

Significant findings by the end of the first budget period will be necessary to demonstrate satisfactory progress on the part of the grantee. Approximately 8 to 10 grants will be awarded for an initial budget period of twelve months. Funding for Field Initiated Child Care Research Projects will range between $150,000 and $300,000 for the first budget period and up to $200,000 per year (12 months) in subsequent periods.

(2) *Priority Area 2, Child Care Policy Research Partnership Projects.* This priority area is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government. Significant findings by the end of the first budget period will be necessary to demonstrate satisfactory progress on the part of the grantee. Approximately 4 to 6 grants will be awarded for an initial budget period of twelve months. Funding for Child Care Policy Research Partnership Projects will be up to $300,000 for the first budget period and up to $200,000 per year (12 months) in subsequent periods.

(3) *Priority Area 3, Child Care Research Scholars.* This priority area is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the two year project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government. Significant findings by the end of the first budget period will be necessary to demonstrate satisfactory progress on the part of the grantee. Approximately six grants will be awarded to institutions of higher learning for an initial budget period of twelve months. Funding for Child Care Policy Research Partnership Projects will be up to $40,000 for the first budget period with the possibility of up to $30,000 for one additional year (12 months).

(4) *Priority Area 4, Child Care Research Fellowship Program.* Through a cooperative agreement, ACF anticipates funding an organization to work in partnership with the Child Care Bureau to design and implement the Child Care Research Fellowship Program. This program will enable mid-career professionals to participate in research fellowships with the Child Care Bureau. During the first budget period, an anticipated three to five fellows will be chosen to participate. This priority area is soliciting applications for a project period up to three years. Award, on a competitive basis, will be for a one-year budget period, although the project period may be for three years. Application for a continuation grant funded under this award beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government. One grant will be awarded for an initial budget period of twelve months. Funding for the cooperative agreement will be up to $500,000 for the first budget period with the possibility of up to $375,000 per year for two subsequent years.

Part II. Research Questions and Priorities

As a result of major social change, shifting cultural patterns, and new legislation, child care has changed dramatically over the past decade. It is now apparent that child care markets are local, but influenced by State and national policies and trends. In addition, child care now touches many different aspects of contemporary life with implications for children, parents, educators, employers, communities, and society as a whole. Nonetheless, current knowledge in this area remains largely fragmented and piecemeal; there is little integration of information emerging from the various academic disciplines and child care sectors.

In our consultations with experts in the field, we were told that it is crucial to understand the interplay between child care supply and demand in different communities, population groups, and policy contexts. As more knowledge is gained about child development and well-being in contemporary environments, there is a need for better understanding of how child care affects the growing child. As more is known about the growing diversity in family values, child rearing strategies, preferences, and needs, questions arise as to how child care policies and programs affect the ability of parents to make wise decisions for their children. Better understanding of child care is also critical to employment goals for adults, particularly in the arena of welfare reform and economic self-reliance. In addition, there is a need for better information about how child care can help parents manage the difficulties of balancing work and family life, especially when resources are scarce.

This section describes five broad research questions that the Child Care Bureau's research agenda seeks to address. These questions are designed to provide descriptive profiles of child care supply and demand, examine major variations and their outcomes, explore the interrelationships among child care market forces, policies and programs, and determine how these factors play out among different populations of children and families.

1. What does child care look like today?
2. How do the variations in child care affect children?
3. How do the variations in child care affect parents?
4. How do the answers to these broad questions translate into specific policy and program choices at the state and local levels?
5. How do the answers to all the questions above differ for sub-groups of children and families?

These five questions and their sub-questions were developed from the comments and suggestions of researchers, policy makers, and practitioners during the development of the research agenda. We are particularly interested in these questions as they relate to low-income families, including those who are transitioning from welfare to work, working families who were formerly on welfare, and working families who have not been a part of the

welfare system. We are also concerned with the many issues of unmet need, quality of care, policy relevance, and outcomes as these themes play out in different social, cultural, and linguistic contexts.

Each question contains several illustrative sub-questions. No individual research project will address all of these questions; a project may focus on a particular, essential issue or explore a more complex set. However, each project should contribute to the larger context of interrelated child care issues.

Question 1. What Does Child Care Look Like Today?

The first research question is intended to broadly describe child care today. What types of care do families use? What quality of care do children receive? What does child care cost and how much do parents pay? Who are the providers of child care and what are their characteristics? The answers to these descriptive questions will form the basis for more detailed exploration of interrelationships among child care market forces, social and cultural influences, policies, programs, and outcomes.

Types of Care

- How many families rely exclusively on their own members for the care of children at different ages? How many parents provide all of the care for their children? How may rely on other adult relatives including grandparents? How many allow children to care for themselves or their younger siblings? How many families rely largely on care in the community? How many use some combination of care within the family and the community? Are there common usage patterns or transitions between family and community care?
- How is the community supply of care distributed across different types of care: child care centers and other early childhood programs, group child care homes, family child care homes, and arrangements in the child's own home (nannies or sitters)?
- Within the formal child care sector, how is the supply of care distributed across regulated family child care homes and center-based programs? To what extent do family child care homes operate as part of networks? Within the informal care sector, how is the supply distributed among relatives (kin), individuals within close social networks (kith), legally operating non-regulated care offered in the community, and "underground" or illegally operating services?

Quality of Care

- What are the elements of quality in the care of infants, toddlers, and preschoolers? What constitutes quality in programs serving six-to-twelve year old children during their out-of-school time? How do child care professionals and informal providers define high-quality and low-quality care? How do parents define quality? What do school-age children have to say about their own needs and preferences in the use of out-of-school time? How do the same or similar dimensions of quality change when applied to children in different developmental stages?
- What are the key indicators of high quality in different types of environments? Of low quality? How does structural quality (*e.g.*, caregiver-to-child ratios, group size, professional qualifications, continuity of care and provider retention) relate to process quality (what happens in the child care environment) and quality as measured by interviews with parents, providers or other professionals?
- What is the range of quality within a given type of care according to a variety of approaches and measures? What aspects of quality appear to be most prevalent or lacking in center-based settings and home-based environments? In formal care programs and informal arrangements? What practices best support the cognitive, social and emotional development of children?
- How do variables related to the distribution of child care relate to families and their experiences? For example, how many and what types of care do children experience throughout the day? How many arrangements do they have over the course of a year? How do elements of care stability, continuity, and transition affect the quality of their care in different types of settings?

Costs of Care and Subsidies

- What are the costs of care provided in different types of settings? What does care actually cost to provide? What do providers charge? How much do parents pay?
- To what extent are subsidies available and accessible to eligible families and children? To what extent are subsidies used? Which eligible families use subsidies and which do not? What do eligible families do when subsidies are not available?
- How do child care subsidies affect the price of care purchased by low-income parents? Do parents who receive child care subsidies make different choices than low-income parents without subsidies? What is the quality of care purchased by families with the help of subsidies?
- How does the utilization of subsidized child care shift during the transition from welfare-to-work? How does use of subsidies vary among current TANF recipients, former TANF recipients, and other working poor families? What are the interrelationships among welfare status, employment, child care subsidy, price of care, and family income?
- Do subsidies affect the likelihood of working, the number of hours worked, the types of jobs obtained, or the level of earnings? Do subsidies affect the stability and progression of employment and earnings?
- What are the interrelationships among child care cost, subsidy, and quality? Do subsidies affect the quality, safety, and stability of care that children receive?

Characteristics of the Child Care Workforce

- Who is caring for children? How do characteristics of the child care workforce vary by type of care, regulatory status, demographic characteristics of the population, type of neighborhood, and other important variables?
- What are the demographic characteristics, professional characteristics, and motivations of individuals who work in child care and early education programs? What is the current salary and benefit structure for child care center staff, preschool teachers and other early childhood professionals? How do provider education, training, experience affect salaries and benefits?
- What factors make a difference for staff turnover, continuity of care, and the quality of services provided? What are the challenges to retention of qualified staff? What is the effectiveness of approaches to improve retention? How do quality enhancements such as accreditation affect the quality of services received? Do accredited programs maintain higher levels of quality over time?
- What are the demographic characteristics, background, training, skills, and motivations of licensed family child care providers, license-exempt caregivers, and other unregulated providers in the community? What types of supports are available and used by caregivers who are part of a formal system and those who operate informally?

Question 2. How do the major variations in child care affect children?

- This set of questions examines how children develop in different care environments, how various features of child care affect children, and how child care relates to other important factors such as school readiness and achievement.
- What components of healthy development are most affected by child care? How do emotional, cognitive, and social variables interact in the developing child? How do early experiences in child care help to shape development? What are the implications of different aspects and levels of child care quality for growth and development throughout childhood?
- How do structural variables of quality (regulatory status, staff/child ratio, group size, caregiver training, etc.) relate to caregiver behaviors and outcomes for children? For example, do informal caregivers provide safety, stability, continuity, and developmentally appropriate experiences?
- How do other features of child care environments, such as type of care, cost, administrative strategies, and characteristics of the child care workforce affect outcomes in children?
- What are the interrelationships among types of setting, quality of child care and school readiness? What are the linkages between child care, children's development, school readiness, and later school performance? How do programs serving older children during out-of-school time influence their academic performance and developmental well-being?
- How many children are in high-quality care environments that promote their healthy development? How many are in poor quality settings that threaten to impair their development? What are the most important factors?
- Are there important interrelationships between child care quality and the quality of children's other environments? For example, does the availability of high child care quality mitigate against violence in the home and community? Does a generally low level of child care quality care increase the risk? In what ways?

Question 3. How do the major variations in child care affect parents?

- This set of questions examines the interrelationships among market forces, workplace factors, child care policies and programs, community supports, and outcomes for parents.
- What is the relationship between parents' perceptions of quality care, their goals around child literacy, and the child care decisions they make? Do they choose care that is consistent with their values and expectations?
- Do families with more choices receive better quality? Do those with fewer choices receive care of lower quality? What is the impact on parents when they can't find or afford high quality care for their children?
- What do parents know about the availability of child care options, subsidies and other resources in their community? Are there groups of parents who are better informed than others? How do resource and referral services or other community supports influence the choices and quality of care experienced by families. How does information influence decision-making?
- Is there an unmet need for subsidies? Which factors appear to influence subsidy use when subsidies are available? What happens to eligible families when child care subsidies are not available? What are the cultural, social, economic and institutional constraints on the demand for child care subsidies?
- To what extent do child care problems and instability affect workplace productivity, absenteeism, tardiness, and turnover? How are employers dealing with these problems? To what extent do employers provide assistance for child care through on- or near-site programs, dependent care plans, purchase of slots? What is the impact of Federal and State efforts aimed at encouraging employers to support child care?
- To what extent do workplace policies and personnel practices affect parents' ability to successfully work and care for their children? How do parents deal with tensions and conflict between child care and work demands?
- How do variations in type of care, quality, cost, use of subsidy, characteristics of the child care workforce, and other important features affect the ability of families to meet basic needs? What are the effects on employment, earnings, family income and career progression?
- How do policies and practices concerning flexibility of child care interact with workplace policies concerning flexibility for workers and flexibility within the family? How do particular patterns of flexibility and rigidity enhance or limit the ability of parents to successfully manage family and work responsibilities? Where do parents find the flexibility they need?
- How affordable is child care for low-income parents? What proportion of family income goes for child care in various types of families?
- What trade-offs do parents make among child care cost, quality and flexibility or convenience? How do they make these decisions? What are the most important elements in formulating complex choices?

Question 4. How do the answers to these broad questions translate into specific policy and program choices at State and local levels?

This set of questions explores interrelationships among market forces, policies, and programs carried out by states and local communities, along with the outcomes of these factors for children and families.

- How are the roles of local stakeholders (advocates, providers, parents, schools, businesses, etc.) in child care changing? Are the stakeholders changing? If so, how? How do changing roles affect the overall child care system?
- What roles do resource and referral programs play? Does the presence of resource and referral services influence the supply of care? In areas where no such program is available, how do providers and parents learn about resources such as training, subsidies, and the community supply of care?
- What roles do employers play? To what extent do employers participate in the community infrastructure for support of the child care industry through resource and referral, training or technical assistance for providers, parent education and consumer information, or transportation for children?
- How do child care regulations, subsidies and other policies affect the availability of care in low-income neighborhoods? What is the relationship between the overall supply of care in a community and the care used by subsidized families?
- What are the interrelationships among local market rates, child care subsidies, and what parents pay? How do child care subsidies and co-payment rates affect the cost of care in local markets? How do required co-payments and additional fees charged by providers affect subsidy utilization and choices made by parents? Does participation in other Federal programs (e.g., Child and Adult Care Food Program) reduce costs to parents?
- What are the interrelationships among parents' judgments, providers' judgments, professional observations of care environments, and children's experiences? Are there innovative methods that States and communities can use to identify need, improve responsiveness to families, leverage

resources, and improve the quality of services?

• Within the specific types of care, what aspects need improvement? How can States assess and improve the quality of care within each type?

• How do public and private child care programs, Head Start, kindergarten and pre-kindergarten programs, before- and after-school programs, and other child development programs fit into the community-level infrastructure? To what extent do community child care centers, Head Start programs, State pre-kindergarten programs and other early childhood programs collaborate? What are the challenges to collaboration? Are there successful models of statewide or local collaboration? Are there specific policies that make a difference?

• How do States and localities fund child care and other early childhood education programs? What innovations are being explored? What are the funding barriers to a seamless system? How are funds being blended at the State and local levels? How do various financing strategies affect the availability and access to high quality care in different communities?

• How do State and local regulations affect quality in various child care settings? How is this process mediated by institutional and community factors? How have States used their quality improvement funds? What are the results of these initiatives? Have they made a difference for children and families?

• How do State and local policy variations affect the utilization of subsidized care? Why don't some eligible families apply for subsidies? What happens to eligible families who apply for but do not receive subsidized care?

• How do child care policies affect welfare families, those moving off welfare, and the working poor who are not part of the welfare system? How are working class and middle-income families affected by child care policies?

• How do child care subsidy policies affect the availability and quality of care? For example how do eligibility requirements, co-payment requirements and reimbursement rates interact to affect supply of care in local markets? Are market rate surveys useful in assessing the cost of care and the appropriate levels of reimbursement? To what extent do market rate surveys reward the more affluent urban providers while penalizing providers in poorer counties? Do differences in how subsidies and licensing are administered influence child care supply and demand and the use of subsidies?

Question 5. How do the answers to all the questions above differ for sub-groups of children and families?

This set of questions examines how different groups of children and families are being affected by the major variations in child care market structures, policies and programs in the light of social and cultural trends.

Family Structure and Characteristics of Children

• What are the variations in services and outcomes when viewed through the lens of family structure and child characteristics?

• Do different types of providers serve different child populations? What services are available and utilized for the care for infants, toddlers, and preschoolers, young school-age children and those in the upper elementary grades? For children with disabilities or chronic illness? Abused and neglected children?

• Do single parents, two parent families and extended families make different arrangements for the care of their children?

Demographic and Cultural Factors

• What demographic, cultural and linguistic factors influence the availability, utilization, cost, and quality of care? How are population demographics changing in local communities, and how does increasing ethnic and linguistic diversity affect child care services?

• How do demographic, cultural and linguistic factors affect parental selection and utilization patterns? What are the determinants of parental choice in different cultural and ethnic groups? What family- and community-level factors shape the type and quality of care selected by low-income parents in different cultural and linguistic contexts?

• Do parents with different personal characteristics, family structures, financial resources, and employment patterns make different child care choices? Do some families have more or better options? Are some families able to make better use of their perceived options? How do geographic, community or cultural factors affect parent's decisions, utilization patterns and outcomes?

• What is the availability, accessibility, cost and quality of care for children from various ethnic groups, especially Native American children, recent immigrants, and non-English speaking children? Are there shortages of care for children in some age groups, ethnic groups, or special circumstances? What are the outcomes for these different groups of children?

Community and Neighborhood Factors

• What are the major variations when viewed through the lens of community and neighborhood? How does the availability of care vary in different types of communities and neighborhoods? Is the distribution of care different in neighborhoods with large welfare populations, neighborhoods with large numbers of low-income working families, and more affluent neighborhoods?

• What community factors are important? How do child care market forces, policies, programs and outcomes vary in different kinds of communities, including rural areas, inner cities, small towns, and economically distressed neighborhoods?

Policy Variations in the Social and Cultural Context

• How do State and local child care policies and programs affect the choices parents make and are able to sustain?

• How do state and local policies affect child care availability, accessibility, affordability, utilization and outcomes for current TANF recipients, former TANF recipients, low-income families who are not part of the welfare system?

• How do policies and programs affect teen parents, recent immigrants, families who work non-standard hours, single parents, parents with significant health problems and others for whom child care can make a critical difference?

• What are the outcomes for different groups of parents in terms of education, employment, wage progression and job stability? What are their outcomes in terms of family variables?

Part III. Field Initiated Child Care Research Projects and Child Care Policy Research Partnerships

Part III includes descriptions and requirements for Field Initiated Child Care Research Projects (Priority Area 1) and Child Care Policy Research Partnerships (Priority Area 2). Instructions for completing applications are included, as are evaluation criteria and funding procedures.

Priority Area I. Field Initiated Research Projects

A. Purpose

The purpose of this priority area is to stimulate child care research that helps States, communities, and the Child Care Bureau respond to emerging issues and questions in a timely and direct manner. Projects funded under this priority area

must contribute significantly to the overall research agenda, help build the research infrastructure, and lay the foundation for informed policy and practices. Grantees will be expected to produce significant findings by the end of the first budget period.

B. Priorities

Field Initiated Child Care Research Projects are expected to focus on one or more of the questions included in Part II. These questions were developed from input received from researchers, policy makers and practitioners during the research planning process described in Part I.

There is the particular need to study important issues faced by local communities in order to understand the characteristics of child care today. Child care markets operate at the local level. We want to better understand market dynamics, how child care demand and supply interact, and how child care intersects with family, work, school, and other community institutions.

Field Initiated Child Care Research Projects will focus largely on local-level issues in order to understand the intricacies of child care demand, supply, quality and unmet need in different types of communities, cultural contexts, policy contexts, and populations. Projects may be stand-alone studies or may link with other studies to add sites, expand samples, add study components, add populations, or conduct special analyses. In addition, Field Initiated Child Care Research Projects may involve secondary analyses of completed data sets, including those from state or national studies when appropriate. Partnerships are not required for projects in this category but are encouraged if the resulting research will be more significant or complete than could be accomplished by a single organization. Projects will also be encouraged to take advantage of "natural experiments" to better understand how changes in state and local child care policy (such as devolution of responsibility for subsidy programs to local offices) may be affecting child care patterns and outcomes in different policy contexts.

The Child Care Bureau is especially interested in funding projects that address local issues of national significance where information is particularly lacking. For example, there is very limited information about informal care provided by relatives, friends, neighbors, and other community caregivers operating outside the formal system. Very little is known about the characteristics of providers in all types of facilities, how they view their work, or the nature of children's care experiences. Additionally, some populations of children and families are underrepresented in existing research.

The following are issues of special priority for Field Initiated Child Care Research Projects: culturally and linguistically diverse populations and cultural influences on child care; child care for infants and toddlers; child care for children with disabilities, chronic illnesses, and other special needs; issues related to children's out-of-school time; informal care provided by relatives, friends, neighbors, and other community caregivers operating outside the formal system; issues related to health, safety, and quality of care; children's development and well-being in care; social and emotional supports needed for a healthy child care environment; and, the impact of Federal and State efforts to improve the quality of care. Applications dealing with other important issues are also invited.

C. Number of Awards

Approximately 8–10 Field Initiated Research Projects will be funded in Fiscal Year 2000, subject to the availability of funds and results of the evaluation process.

D. Project Duration, Funding Levels and Budget Periods

Field Initiated Child Care Research Projects will be awarded for project periods of up to three years. The Child Care Bureau expects to invest an average of $225,000 per project for the initial 12-month budget period, with a range of approximately $150,000—$300,000 for each project. Non-competitive applications for continuation of Field Initiated Child Care Research Projects will be considered in fiscal years 2002 and 2003 with up to $200,000 per project being available for a twelve-month period. Applications for continuation grants funded beyond the 12-month budget period, but within the 36-month project period, will be entertained in the subsequent year on a noncompetitive basis, subject to the availability of funds from future appropriations, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government.

E. Federal Share

To maximize the Federal investment in Field Initiated Child Care Research Projects and in the interest of project sustainability, a financial commitment by the applicant organization (or other participating entities) is required. The Federal share may comprise no more than 80 percent of total project costs. Grantee contributions may be in cash or in-kind contributions of staff time, employee benefits, facilities, utilities, equipment, materials, supplies or other forms of project support.

F. Eligible Applicants

Eligible applicants include public agencies, non-profit organizations, and for-profit entities that agree to waive their fees.

(1) Public agencies include state or local child care agencies; education agencies, welfare or other human services agencies, public schools, colleges and universities; and other public agencies with an interest in child care.

(2) Non-profit agencies include, but are not limited to, community child care and early childhood programs, child care resource and referral programs, professional organizations, schools, colleges and universities, civic and community groups, and foundations.

(3) For-profit entities include, but are not limited to, child care businesses, private research corporations, and other profit-making organizations. These entities are only eligible to receive a grant directly if they agree to waive their fees. However, they may participate in projects as partners without such a waiver.

G. Data Ownership

Raw data are the property of the agency or organization where the data reside (for instance, the State agency or resource and referral entity.) Working data files constructed for research belong to the grantee carrying-out the research, but analyses of those data cannot be released without the approval of the agency that owns the original data. Once a study has been completed and released, clean, documented public use files must be prepared and archived according to specifications supplied by the Child Care Bureau. These public use data files will be the property of the Federal government and will remain in the public domain for secondary analysis by other researchers.

Priority Area 2. Child Care Policy Research Partnerships

A. Purpose

The Child Care Policy Research Partnerships expand upon a strategy that has proven successful in stimulating collaboration among researchers, policy makers and practitioners, facilitating interdisciplinary approaches and cross-state research on critical issues, and providing rapid responses to State child care administrators' questions.

The Child Care Bureau has funded two waves of Child Care Research Partnerships which collectively operate as the Child Care Policy Research Consortium. The purpose of the Consortium is to increase and strengthen the capacity for cross-cutting research on critical child care issues. Partners are working to better understand issues concerning: (1) The child care needs, utilization patterns, and outcomes for low-income families, including welfare recipients, those moving from welfare to work, and the working poor; (2) the child care opportunities and constraints which affect low-income families and children under new welfare policies, changing State and local child care systems, and emerging market conditions; and (3) the availability, cost, quality, and other critical features of subsidized child care services. Information about the Consortium, including project descriptions and publications, can be found on the Child Care Bureau's web page at *http://www.acf.dhhs.gov/programs/ccb*.

The new Child Care Policy Research Partnerships will expand the Child Care Policy Research Consortium and contribute to ongoing activities. This approach is intended to help the Child Care Bureau build a sound research infrastructure, identify and respond to critical issues from a variety of professional perspectives, and develop cross-cutting strategies for research. Partnerships funded under this priority area must also contribute significantly to the broader research agenda and help lay the foundation for informed policy and practice. Grantees will be expected to produce significant findings by the end of their first 12-month budget period.

B. Priorities

The Child Care Bureau is particularly interested in partnerships that can help address important policy issues faced by State administrators who must make immediate decisions regarding the allocation of child care resources, achieve employment-related goals for parents, and meet growing needs. Applicants are referred to the key questions in Part II and asked to develop their applications around statewide or cross-state issues such as unmet need or quality.

The second goal for the new partnerships is to stimulate greater collaboration and interdisciplinary research on critical issues for child care policies, programs and outcomes affecting children and families. For example, two or more states might produce comparable analyses to better understand child care in inner cities, rural areas, or selected populations, or to address some other cross-cutting theme. A third goal is to develop longitudinal data sets from child care subsidy programs, regulatory information systems, resource and referral data systems, and other administrative systems. It is hoped that these new partnerships will also help increase the comparability of information made available through different data systems and improve methods for linkage and secondary analysis of completed data sets.

Ongoing studies might also be replicated, expanded, linked, or otherwise utilized in the development of a comprehensive and cohesive research strategy. Among the existing partnerships, for example, a Florida study looked at where parents receiving child care assistance work (Griesinger, Chipty and Witte and Lee, Ohlandt & Witte). This study led to the creation of a program in Florida in which funds were appropriated to match employer child care contributions. Alabama, California, Massachusetts, Oregon, and Washington, D.C. have replicated this study. Other studies being carried out within the consortium are exploring child care availability, quality, and unmet need in different States and communities. References and project descriptions are contained in the Child Care Policy Research Consortium Executive Summary on the Child Care Bureau's web page.

New partnerships may also take on new data collection activities and efforts to improve research methods and measures. Other areas of special priority for new Child Care Policy Research Partnerships are subsidies, waiting lists, duration of care, quality initiatives, low-income families, and families transitioning off welfare, and partnerships among child care, Head Start, and State pre-kindergarten programs toward providing full-day, full-year services.

C. Number of Awards

Four-to-six Child Care Policy Research Projects will be funded in Fiscal Year 2000, subject to the availability of funds and results of the evaluation process.

D. Project Duration, Funding Levels and Budget Periods

Child Care Policy Research Projects will be awarded for project periods of up to three years. The Child Care Bureau expects to invest up to $300,000 during the initial 12-month funding period for each project. Initial grant awards will be for a 12-month budget period. Non-competitive applications for continuation of Child Care Policy Research Projects will be considered for in fiscal years 2002 and 2003 with up to $200,000 per project being available for a 12-month period. Applications for continuation grants funded beyond the 12-month budget period, but within the 36-month project period, will be entertained in the subsequent year on a noncompetitive basis, subject to the availability of funds from future appropriations, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government.

E. Federal Share

To maximize the Federal investment in Child Care Policy Research Partnership Projects and in the interest of project sustainability, a financial commitment by the applicant organization (or other participating entities) is required. The Federal share may comprise no more than 80 percent of total project costs. Grantee contributions may be in cash or in-kind contributions of staff time, employee benefits, facilities, utilities, equipment, materials, supplies or other forms of project support.

F. Eligible Applicants

Eligible applicants include public agencies, non-profit organizations, and for-profit entities that agree to waive their fees. The State agency that administers the Child Care and Development Fund must be included in the partnership. Additionally, at least one member must be a research group affiliated with an accredited university or four-year college. Broadly-based partnerships are encouraged. For example, the following entities may be included: (1) Child care regulatory agencies and agencies that administer child care programs for low-income children and families; (2) resource and referral organizations which collect and maintain an ongoing data base of local or statewide information on child care demand and supply; (3) planning councils, commissions, advisory groups, and other organizations that participate in child care planning and policy making; (4) non-academic research organizations that conduct studies on child care markets, populations, services, policies or other relevant aspects of child care; (5) Tribal, county or local agencies that administer child care subsidy programs; (6) early childhood programs such as public or private child care centers or Head Start; (7) family child care providers or networks of family child care homes; (8) professional organizations and

associations; (9) providers or supportive services such as provider training, technical assistance, or consumer education; (10) civic groups and community organizations; (11) foundations and charitable organizations; and (12) other appropriate organizations and individuals.

G. Data Ownership

Raw data are the property of the agency or organization where the data reside (for instance, the State agency or resource and referral entity.) Working data files constructed for research belong to the grantee that is carrying-out the research, but analyses of those data may not be released without the approval of the agency that owns the original data. Once a study has been completed and released, clean, documented public use files must be prepared and archived according to specifications supplied by the Child Care Bureau. These public use data files will be the property of the Federal government and will remain in the public domain for secondary analysis by other researchers.

Project Description and Application Requirements

This section contains requirements for both Field Initiated Research Projects (Priority Area 1) and Child Care Policy Research Partnerships (Priority Area 2). Applicants in each of these priority areas should follow the same set of formatting instructions, but tailor their Project Narrative Statements to the specific priority area in which they are submitting an application.

A. Contents and Format of the Application

Applicants are cautioned to include all required forms and materials, organized according to the required format. The application packet must include the following items in order:

A cover letter that includes the announcement number, priority area and contact information.

(1) Standard Federal Forms

(a) Standard Application for Federal Assistance (SF 424 face sheet and SF 424A) must be included with the application.

(b) Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

(c) Certifications Regarding Lobbying. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

(d) Disclosure of Lobbying Activities. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

(e) Certification Regarding Drug-Free Workplace Requirements. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(f) Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(g) Protection of Human Subjects: Assurance, Identification, Certification, and Declaration.

(h) Certification Regarding Environmental Tobacco Smoke. Applicants must make the appropriate certification of their compliance. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(2) For-profit entities wishing to receive a grant directly must provide a letter indicating their willingness to waive their fees. Non-profit organizations must submit proof of non-profit status in the application at the time of submission. The applicant can demonstrate proof of non-profit status in any one of three ways:

(a) By providing a copy of the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c3) of the IRS code;

(b) By providing a copy of the currently valid IRS tax exemption certificate; or

(c) By providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

(3) Executive Order 12372—Single Point of Contact. Where appropriate, include a competed SPOC certification with the date of SPOC contact entered on page 1, line 16 of the SF424 face sheet.

(4) Table of Contents

(5) Project Abstract (not to exceed one page) for use in official briefings, decision packages, and public announcement of awards

(6) Project Narrative Statement

(a) Issues, Objectives and Significance
(b) Research Design and Methodology
(c) Management Plan
(d) Staff Qualifications and Commitment
(e) Organizational Capability
(f) Fiscal Resources and Project Budget

(7) Appendices: All supporting materials and documents should be organized into appropriate appendices and securely bound in to the application package. Applicants are reminded that the total page limitation applies to both narrative text and supporting materials.

(a) Contact Information for all Key Staff
(b) Resumes
(c) Letters of Support, if appropriate
(d) Other

(8) Number of Copies and Binding: An original and two copies of the complete application packet must be submitted. Each copy of the application should be securely stapled in the upper left-hand corner, clipped, or enclosed in a quick-release binder. Because each application will be duplicated for the review panel, do not use non-removable binders. Do not include tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied.

B. Project Narrative Statement

The Project Narrative Statement contains most of the information on which applications will be competitively reviewed. The Project Narrative should be carefully developed in accordance with the research goals and expectations described for the priority area in which the applicant is submitting a proposal, the requirements described in this section, and the evaluation criteria and selection factors described below.

The Project Narrative sets forth the technical proposal and describes how it will be carried out. This statement should be organized as follows: (1) Issues, Objectives, and Significance; (2) Research Design and Methodology; (3) Management Plan; (4) Staff Qualifications and Commitment; (5) Organizational Capability; and (6) Fiscal Resources and Project Budget.

Clarity and conciseness are of utmost importance. ACYF strongly encourages applicants to limit their applications to 200 pages, double-spaced, with standard one-inch margins and 12 point fonts. This includes the entire Project

Narrative Statement including text, tables, charts, graphs, resumes, corporate statements and appendices.

(1) Issues, Objectives, and Significance

In this section, applicants demonstrate their understanding of the relevant literature on critical issues and existing knowledge, describe their objectives, and demonstrate the significance of their proposal.

Applicants are expected to show how their proposal will address the Child Care Bureau's research agenda, answer key questions, and contribute to the child care research infrastructure. Specifically, applicants are expected to demonstrate a command of the policy and research literature in child care, as well as emerging issues. The proposal is expected to demonstrate understanding of current policies and programs, to show how the proposed research would further understanding, and to suggest practical applications which might be derived from the findings.

Applications should clearly show how the research would build on the current knowledge base and contribute to policy, practice and future research. Applicants are asked to consider the significance, reliability, and validity of existing data pertaining to key questions. In addition, applicants should identify important gaps in the literature and areas in which findings are contradictory or ambiguous. It will also be important to consider what demographic, economic, and social data are available as a context for the proposed child care research. A bibliography of relevant literature must be supplied.

(2) Research Design and Methodology

This section of the Project Narrative Statement requires that the applicant describe the technical approach for addressing issues and achieving objectives described in the previous section (B.1). In this section the applicant should clearly demonstrate their ability to produce significant and usable results within the first 12-month budget period in the event that Federal funding is not available for subsequent periods. How these early findings would influence decisions about subsequent stages of the research and contribute to an ongoing project should be addressed.

The methodological discussion must include technical details of the proposed research design, including (as relevant): (a) Conceptual framework for the research; (b) research questions, hypotheses, and variables; (c) data sources and sampling plan; (d) new data on human subjects; (e) administrative data; (f) secondary analysis of existing data sets; (g) linkages with other research; (h) data collection; (i) data processing and statistical analysis; and, (j) product development and information dissemination. Qualitative studies with well-defined methodology are invited as well as those that use quantitative methodology. As part of the design section, applicants should discuss the strengths and limitations of all proposed approaches and techniques. Applicants are also asked to provide a flow chart or table showing interrelationships among the proposed research issues, questions, variables, and data elements.

(a) Conceptual Framework for the Research

Based on the issues and objectives described in B.1, present the conceptual framework for the proposed research, including the approach to be taken and why this approach was chosen.

(b) Research Questions, Hypotheses and Variables

Based on the conceptual framework for the research, present: (a) Areas of inquiry to be explored; (b) specific research questions and hypotheses; and (c) research variables and constructs. This discussion should relate back to the earlier discussion of Issues, Objectives and Significance (B.1) and lead into the design elements that follow.

(c) Data Sources and Sampling Plan

This section should include a detailed plan for identifying data sources and obtaining an appropriate sample to achieve objectives of the proposed research.

(d) New Data on Human Subjects

If new data are to be collected on human subjects, either independently or in conjunction with another ongoing study (e.g., by adding a new sample or an additional measure), describe the characteristics of the target population and provide a rationale for any sample stratification based on personal characteristics of individuals (such as ethnicity, income, marital status, or age of child.)

(e) Administrative Data

If data would be compiled from service delivery records of State or local agencies, from resource and referral files, from records maintained by child care facilities, or from other primary data sources, describe the nature of the data and how they would be accessed, characteristics of the sample and how it would be constructed, and how confidentiality of individual records would be maintained.

(f) Secondary Analysis of Existing Data Sets

If secondary analyses would be conducted on completed data sets, describe the original research, its appropriateness and limitations for this study. Describe the nature, scope and representativeness of the original sample and characteristics of the data (including data quality). Applicants who propose to conduct secondary analyses on large data sets, such as those from the Census Bureau, Bureau of Labor Statistics, and other statistical organizations are expected to discuss how their analyses could be used to help profile national, regional or state-level child care market parameters and trends. If data sets from completed child care studies are to be analyzed, applicants are asked to suggest ways in which such data could be used by others to amplify or extend the proposed research.

(g) Linkages With Other Research

If the proposed project would involve linkage with ongoing research, describe the ongoing research design and status, how the proposed study would benefit from and contribute to it, how the technical aspects of the linkage would be structured and carried out, and how the linked studies would address the goals of this announcement. Describe how the proposed research will make a distinct contribution while building on ongoing research. Include a letter of cooperation from the individual/organization conducting the research which details the status of the data collection, procedures to ensure data quality, timeliness of data availability and applicant access.

(h) Data Collection

Describe data collection procedures and safeguards for data quality. Discuss procedures to protect human subjects, to maintain confidentiality of data, and to obtain consent for participation (if applicable).

(i) Data Processing and Statistical Analysis

Include a detailed plan for processing and analyzing data from all sources which illustrates how the analyses will meet the goals of this research. Discuss the procedures which would be used to clean data, ensure data quality, and prepare data tapes. Discuss plans for the analysis of data, including units of analysis, analytic techniques to be used with various types of data, statistical considerations including, but not

limited to power analysis, attrition, response rates, etc., and the linkage of data sets, where appropriate. Describe documentation of the final data set and preparation of data for archiving by the Child Care Bureau.

(j) Product Development and Information Dissemination

Include a product development schedule and information dissemination plan which describes the products to be generated during the course of this research (such as technical papers or reports, summaries, briefings, conference presentations, doctoral dissertations, journal articles, internet applications, software and public use data tapes, and the final report). Describe the audiences for various products and the dissemination strategies that will be employed. Discuss which products might be collaboratively developed or disseminated to intended audiences.

(3) Management Plan

(a) The Management Plan is expected to describe a sound and workable plan of action for how the proposed project will be carried out. This section should detail how the project will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. Applicants should discuss their management of the project as a whole, and the management and coordinating roles of any partners.

(b) Provide a diagram showing the organizational structure of the project and the functional relationships among components.

(c) If the project is a partnership, describe how the project will be managed by the lead organization to ensure that members of the partnership operate as a cohesive research team and that cross-cutting goals of the project are carried out efficiently and cost-effectively.

(d) Describe the make-up and role of any steering or management committees, technical work groups, advisory panels, and other coordinating bodies.

(e) Produce a project management chart that lays out sequence and timing of the major tasks and subtasks, responsibilities and time commitments of staff, important milestones, reports, and completion dates.

(f) Discuss potential problems or difficulties with the proposed management approach, including factors which may affect the quality of the research or its outcomes, may undermine the ability of partners to collaborate effectively, and may hinder the early sharing, review and dissemination of information.

(4) Staff Qualifications and Commitment

In this section, applicants must provide evidence that project staff have the experience, expertise and commitment of sufficient time to carry out the proposed project on time, within budget, and with a high degree of quality.

(a) Identify all key staff positions for this project, the professional requirements for each, the proportion of time staff holding these positions will be committed to the project, the period of time they will be employed, and whether their continued employment will be dependent solely on the funds to be awarded under this announcement.

(b) Provide evidence that individuals proposed for key positions have the necessary technical skill and experience to successfully carry out their assigned roles.

(c) Where key positions are currently vacant, include a position description outlining the qualifications necessary to carry out the duties and responsibilities of each. Include letters of commitment from any key individuals who have been selected but not yet hired.

(d) If a data collection team must be assembled, describe the makeup of the team, what expertise will be represented, and how individuals will be selected.

(e) Identify all proposed consultants or advisors, document their expertise, and describe how their services will be utilized. Include letters of commitment or intent if possible.

(f) Identify the authors of the proposal and describe their continuing role in the project if funded.

(5) Organizational Capacity and Fiscal Resources

In this section, the applicant must demonstrate that the official grantee has the organizational capacity and fiscal resources to successfully carry-out the project on time and to a high standard of quality, including the capacity to resolve a wide variety of technical and management problems that may occur.

(a) Provide evidence of sufficient organizational resources to ensure successful project management, compliance with terms and conditions of the grant, and oversight of the proper use of Federal funds.

(b) If the project is a partnership, provide evidence that all partners have the ability, willingness and flexibility to collaborate effectively with one another in carrying out the proposed project, and that the partnership as a whole could effectively participate in a larger research consortium. Include examples of past or current partnerships that demonstrate the ability to carry out collaborative research. Describe how each partner was included in the planning of the project. Include letters of specific commitment or support from each partner. Describe all cooperative agreements, subcontracts and other formal relationships within the partnership. Partners who will provide access to data or records must provide a letter stipulating the terms of their agreement with the researchers. Describe the future commitment each partner will make to ensure success of the collaboration as it evolves.

(c) Include a separate two-page organizational capability statement for each participating organization which documents the partner's ability to carry out its assigned roles and functions.

(d) Describe the relationship between this project and other relevant work planned, anticipated or underway by the applicant or its partners. Include funding sources for work in progress.

(e) Provide a list of research and financial partners including the name and address of each organization, the names of its director and primary contact for this proposal, and the telephone, fax and internet numbers of each.

(6) Fiscal Resources and Project Budget

(a) Describe the nature and extent of financial participation from all sources.

(b) Present a detailed budget to demonstrate that the project will have adequate resources to carry out the work on time and with a high degree of quality.

(c) Include a detailed budget narrative which describes and justifies line item expenses within the budget categories listed on the Standard Form 424 and 424A. (Line item allocations and justification are required for both Federal and non-Federal funds.) If project funds will be subcontracted, a detailed budget for the use of those funds must be also included. The budget should include funds to allow key representatives from Field Initiated Child Care Research Projects and Child Care Policy Research Partnerships to participate in an annual meeting of the Child Care Policy Research Consortium in Washington, D.C.

(d) Describe the extent to which funds, staff time, in-kind services, and other resources have been committed to the research effort during the planning period.

(e) Describe what other resources are expected to help support the proposed research, including existing

commitments and negotiations in progress. Describe anticipated efforts to obtain other funding partners throughout the project.

Evaluation and Selection

A. Screening and Panel Review

Each application will be screened to determine whether the applicant organization is eligible as specified in each of the priority areas. Applications from ineligible organizations will be excluded from the review.

(1) The review will be conducted in Washington, D.C. Expert reviewers will include researchers, Federal or State staff, child care administrators and other individuals experienced in the study of child care demand and supply, child care delivery systems, welfare and supportive services, early child development and education, parental choice and involvement, and other relevant areas.

(2) A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research goals and expectations for the priority area under consideration, requirements for the Project Narrative Statement, and the evaluation criteria listed below.

(3) Panelists will provide written comments and assign numerical scores for each application. The indicated point value for each criterion is the maximum numerical score for that criterion. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

(4) In addition to the panel review, the Bureau may solicit comments from other Federal offices and agencies, from the states, from relevant non-governmental organizations, and from individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. Their comments, along with those of the panelists, will be considered by the Bureau in making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet overall research goals.

B. Evaluation Criteria

Eligible applications will be scored competitively against the published evaluation criteria described below. These criteria will be used in conjunction with other expectations, priorities and requirements set forth throughout this announcement to evaluate how well each proposal addresses the goals and priorities for funding.

(1) Significance, Issues and Objectives (maximum of 10 points)

(a) The extent to which the application reflects a solid understanding of critical issues, information needs, and research goals.

(b) The extent to which the proposed project framework is appropriate, feasible, and would significantly contribute to the importance, comprehensiveness, and quality of the proposed research.

(c) The effectiveness with which the discussion articulates the current state of knowledge relative to issues being addressed, including: (1) critical child care issues and the complex interrelationships among major variables; (2) the significance of these issues and variables for child care policies and programs; (3) how current knowledge would be brought to bear on the proposed research; and (4) how the research would benefit various audiences.

(d) The importance of research priorities identified for the first budget period, the degree to which early findings would be useful for policy and practice, and the significance of these data for the ongoing research goals if the project is continued beyond the first 12-month period.

(2) Research Design and Methodology (maximum of 40 points)

The extent to which the applicant's proposed Research Design:

(a) Appropriately links critical research issues, questions, variables, data sources, samples, and analyses;

(b) Employs technically sound and appropriate approaches, design elements and procedures;

(c) Reflects sensitivity to technical, logistical, cultural and ethical issues that may arise;

(d) Includes realistic strategies for the resolution of difficulties;

(e) Adequately protects human subjects; confidentiality of data, and consent procedures, as appropriate;

(f) Includes an effective plan for the dissemination and utilization of information by researchers, policy-makers, and practitioners in the field; and

(g) Effectively utilizes collaborative strategies, as appropriate to the project goals and design.

(3) Management Plan (maximum of 10 points)

The extent to which the Management Plan:

(a) Presents a sound, workable and cohesive plan of action demonstrating how the work would be carried out on time, within budget and with a high degree of quality;

(b) Includes a reasonable schedule of target dates and accomplishments;

(c) Presents a sound administrative framework for maintaining quality control over the implementation and ongoing operations of the study;

(d) Presents a sound plan for coordination of activities carried out by partners and demonstrates an effective approach to team-building among project staff, consultants and advisors, and partnering organizations; and

(e) Demonstrates the ability to gain access to necessary organizations, subjects, and data.

(4) Staff Qualifications and Commitment (maximum of 20 points)

(a) The extent to which key staff, consultants, data collectors and other necessary personnel demonstrate competence in areas addressed by the proposed research, including relevant background, experience, training and work on related research or similar projects.

(b) The extent to which staffing is adequate for research design, sampling, field work, data processing, statistical analysis, reporting, collaboration with other researchers, and information dissemination.

(5) Organizational Capacity (maximum of 10 points)

(a) The extent to which (1) the applicant's facilities and organizational experience are adequate to carry out the tasks of the proposed project; (2) the applicant can effectively and efficiently administer a project of the proposed size, complexity and scope; (3) the applicant has the capacity to coordinate activities with other organizations for the successful accomplishment of project objectives; and (4) the applicant has the capacity to carry out all proposed functions and roles.

(b) If the project is a partnership, the extent to which; (1) the partnership is well structured, with important and relevant roles for participating organizations; (2) partners are appropriate and significantly committed to research goals; (3) partners have the ability to carry out collaborative research, both within the proposed Partnership and as a member of the larger Consortium; (4) the partners will contribute adequate organizational resources; and (5) the partnership has significant fiscal commitment and support.

(6) Fiscal Resources and Project Budget (maximum of 10 points)

(a) The extent to which proposed project costs are reasonable, the funds are appropriately allocated across component areas, and the budget is sufficient to accomplish the objectives.

(b) The extent to which the applicant has sufficient fiscal capacity within the organization to ensure that unanticipated problems can be resolved and that the project will be completed on time and with a high degree of quality.

(c) The extent to which the applicant will contribute to the project cost and to which the project can be sustained in the event that future funding is not available through ACF.

C. The Selection Process

The Associate Commissioner, Child Care Bureau, Administration on Children, Youth and Families, will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) the rank order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects which best meets the Bureau's research objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the cooperative agreement, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

D. Funding Date

It is anticipated that successful applications for Field Initiated Child Care Research Projects and Child Care Policy Research Partnerships will be awarded by June 1, 2000.

Part IV. Priority Area 3: Child Care Research Scholars

A. Purpose

This priority is intended to strengthen the child care research infrastructure by supporting the development of researchers with a grasp of child care research and its implications to policies and programs. Under this priority area, support will be provided to doctoral candidates in conducting dissertation research on child care issues under the auspices of the Child Care Bureau and the educational institution in which the student is enrolled. Dissertation research under this priority must support the Bureau's research agenda including addressing important questions about child care that have implications to families and children. The student is expected to gain experience and expertise in theories and methods related to child care, child development, early childhood education, child care program administration, or child care policy.

B. Number of Awards

Up to six scholarships will be awarded. No individual educational institution will be funded for more than one candidate unless six applications from different universities or colleges do not qualify for support.

C. Project Period

Competitive awards will be for a 12-month budget period although project periods may be for up to 24 months. Subsequent year awards (12 months) will be considered on a non-competitive basis subject to the availability of funds from future appropriations, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government. Significant findings by the end of the first budget period will be necessary to demonstrate satisfactory progress on the part of the grantee. A subsequent year award will not be approved if the student has graduated by the end of the first year.

D. Funding Levels

Up to $40,000 will be awarded to each successful applicant for a 12-month budget period. If the applicant expects to receive a doctorate by the end of the first one-year budget period, the application should request funding for a single grant period.

E. Matching Requirements and Non-Federal Share

There are no matching requirements.

F. Maximum Federal Share

(1) The maximum federal share is $40,000 for the first 12-month budget period and $30,000 for one subsequent 12-month period, subject to the availability of funds from future appropriations.

(2) All monies must be used for the dissertation research including required personnel costs, travel, and other expenses directly related to the research.

G. Eligible Applicants

(1) Eligible applicants include universities or colleges on behalf of doctoral candidates who have a dissertation proposal approved by their doctoral committee and who anticipate completing a child care-related dissertation within the two-year scholarship period.

(2) To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education. Although the faculty advisor will be listed as the Principal Investigator, this grant is intended for dissertation work being conducted by a doctoral candidate. Information about both the graduate student and the student's faculty advisor is required as part of this application. *Any resultant grant award is not transferable to another student.*

H. Additional Requirements

(1) Research projects may include independent studies conducted by the doctoral candidate or well-defined portions of a larger study being conducted by a principal investigator holding a faculty position or senior research position and for which the graduate student will have primary responsibility.

(2) The student must be the author of the proposal.

(3) Research projects must use sound quantitative or qualitative research methodologies or some combination of the two.

(4) Given the size of these grants, sponsoring universities and colleges are encouraged to waive their customary indirect charges.

I. Project Description and Application Requirements

Applicants are cautioned to include all required forms and materials, organized according to the required format. The application packet must include the following items in order:

(1) A cover letter that includes the Announcement number, priority area, and contact information.

(2) Standard Federal Forms.

(a) Standard Application for Federal Assistance (SF 424 face sheet and SF 424A) must be included with the application.

(b) Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

(c) Certification Regarding Lobbying. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

(d) Disclosure of Lobbying Activities. Applicants must disclose lobbying

activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

(e) Certification Regarding Drug-Free Workplace Requirements. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(f) Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(g) Protection of Human Subjects: Assurance, Identification, Certification, and Declaration

(h) Certification Regarding Environmental Tobacco Smoke. Applicants must make the appropriate certification of their compliance. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(3) Table of Contents.

(4) Project abstract (not to exceed one page) for use in official briefings, decision packages, and public announcement of awards.

(5) The student's approved dissertation proposal, demonstrating an understanding of current child care issues, presenting a conceptual framework for the proposed research, and detailing the research design and implementation plan, will serve as the basic project description for purposes of the application.

(6) A project summary that includes an overview of the proposed research and a management plan detailing how the work will be accomplished. The management plan will include quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. The project summary should include a statement of how the proposed research will relate to the research agenda, goals, and priorities of the Child Care Bureau, the significant results to be achieved within the first budget period, and how research findings will be disseminated to colleagues and the public. This section should be no more than twenty double-spaced pages with one-inch margins and 12-point font.

(7) Staff and Position Data. A curriculum vitae should be provided for both the student and faculty advisor. An official transcript should be included for the student that reflects courses completed at the Masters and Ph.D levels.

(8) Faculty advisor letter. The application must include a letter from the faculty advisor stating that he or she has reviewed and approved the proposal, certifying the status of the student as a doctoral candidate with an approved dissertation proposal, the project as dissertation research, and describing how the advisor will monitor the student's work.

An original and two copies of the full application packet must be submitted. All supporting materials and documents should be organized into appropriate appendices and securely bound in the application package. Each copy of the application should be securely stapled in the upper left-hand corner, clipped, or enclosed in a quick-release binder. Because each application will be duplicated for the review panel, do not use non-removable binders. Do not include tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied.

J. Evaluation and Selection

(1) Each application will be screened to determine whether the applicant organization is eligible as specified in Part IV, Section G, above. Applications from ineligible organizations will be excluded from the review.

(2) Panel Review.

(a) The review will be conducted in Washington, D.C. Expert reviewers will include researchers, Federal or State staff, child care administrators and/or other individuals experienced in the study of child care demand and supply, child care delivery systems, welfare and supportive services, early child development and education, parental choice and involvement, and other relevant areas.

(b) A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research agenda, application requirements, and evaluation criteria listed in this section.

(c) Panelists will provide written comments and assign numerical scores for each application. The indicated point value for each criterion is the maximum numerical score for that criterion. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

(3) In addition to the panel review, the Bureau may solicit comments from other Federal offices and agencies, from the States, from relevant non-governmental organizations, and from individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. Their comments, along with those of the panelists, will be considered by the Bureau in making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet overall research goals.

K. Evaluation Criteria

Eligible applications will be scored competitively against the published evaluation criteria described below. These criteria will be used in conjunction with the other expectations, priorities and requirements set forth in this Announcement to evaluate how well each proposal addresses the Bureau's research agenda and the goals.

(1) Significance, Issues and Objectives (maximum of 20 points)

(a) The extent to which the application reflects a solid understanding of critical issues, information needs, and research goals.

(b) The extent to which the conceptual model, research issues, objectives and hypotheses are significant, well formulated and appropriately linked, reflect the Child Care Bureau's research agenda, and will contribute new knowledge and understanding.

(c) The extent to which the proposed project framework is appropriate, feasible, and would significantly contribute to the importance, comprehensiveness, and quality of the proposed research.

(d) The effectiveness with which the proposal articulates the current state of knowledge relative to issues being addressed, including: critical child care issues and the complex interrelationships among major variables; the significance of these issues and variables for child care policies and programs; how current knowledge would be brought to bear on the proposed research; and how the research would benefit various audiences.

(e) The importance of research priorities identified for the first budget period, the degree to which early findings would be useful for policy and practice, and the significance of these data for the ongoing research goals if the

project is continued beyond the first 12-month period.

(2) Technical Approach (maximum of 40 points)

The extent to which the applicant's proposed Research Design:

(a) Appropriately links critical research issues, questions, variables, data sources, samples, and analyses;

(b) Employs technically sound and appropriate approaches, design elements and procedures;

(c) Reflects sensitivity to technical, logistical, cultural and ethical issues that may arise;

(d) Includes realistic strategies for the resolution of difficulties;

(e) Adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate;

(f) Includes an effective plan for the dissemination and utilization of information by researchers, policy-makers, and practitioners in the field; and,

(g) Effectively utilizes collaborative strategies, as appropriate to the project goals and design.

(3) Management Plan (maximum of 20 points)

The extent to which the project summary provides a management plan that:

(a) Presents a sound, workable and cohesive plan of action demonstrating how the work would be carried out on time, within budget and with a high degree of quality;

(b) Includes a reasonable schedule of target dates and accomplishments;

(c) Presents a sound administrative framework for maintaining quality control over the implementation and ongoing operations of the study; and,

(d) Demonstrates the ability to gain access to necessary organizations, subjects, and data.

(4) Applicant Qualifications and Commitment (maximum of 10 points)

The extent to which the applicant:

(1) Demonstrates competence in areas addressed by the proposed research, including relevant background, experience, training and work on related research or similar projects; and

(2) Demonstrates necessary expertise in research design, sampling, field work, data processing, statistical analysis, reporting and information dissemination.

(5) Budget (maximum of 10 points)

The extent to which proposed project costs are reasonable, the funds are appropriately allocated across component areas, and the budget is sufficient to accomplish the objectives.

L. The Selection Process

The Associate Commissioner, Child Care Bureau, Administration on Children, Youth and Families, will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) the rank order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects which best meets the Bureau's research objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the cooperative agreement, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

M. Funding Date

Anticipated date of funding is prior to June 1, 2000.

Part V. Priority Area 4: Child Care Research Fellowship Program

A. Purpose

The purpose of this priority area is to provide funding, through a cooperative agreement, to a partner organization that will work cooperatively with the Child Care Bureau to design and implement the Child Care Research Fellowship Program. We are seeking applications from organizations with experience in child care and research issues.

The primary purpose of the Fellowship Program is to strengthen the child care research infrastructure by supporting the development of researchers toward a thorough understanding of child care research and its implications to policies and programs including the Child Care and Development Fund. Individuals chosen to serve as Fellows will work with Child Care Bureau and Senior ACF officials, State-level policy-makers, members of federally-funded research projects, and others involved in child care research. In addition to a significant policy-related research assignment within the Child Care Bureau, Fellows will take part in educational and leadership development programs.

B. Priorities

The project under this priority area will be funded as a cooperative agreement in which substantial Federal participation is anticipated. The partner organization will work closely with Federal staff. The specific responsibilities of the Federal staff and the awardee will be negotiated prior to award of the cooperative agreement.

The development of the Fellowship Program will require an initial planning period in order to create an effective program that meets the goals of the Child Care Bureau. We anticipate that approximately three to five Fellows will be involved in the program each year (subject to the availability of funds from future appropriations), with each Fellowship lasting up to two years. Fellows should possess paid experience in some aspect of the child care or early childhood field, an interest and aptitude in research and research methods, and the desire to develop their knowledge and skills in the area of child care research and policy. Desirable qualifications include a degree with relevance to child care and early childhood services and five years of progressively responsible work experience related to child care or early childhood programs.

The partner organization will work collaboratively with the Child Care Bureau on, among other things:

(1) Conceptualization of the Fellowship Program and development of the overall project plan for implementation;

(2) Development of policies and procedures to govern the Fellowship Program;

(3) Establishment of recruitment strategies, screening, selection, and compensation/logistical support criteria;

(4) Management of the application and rating processes and recommendations for selection of individual Fellows; and

(5) Design and implementation of an orientation program and other group learning and developmental activities for the Fellows. These activities will include support to Fellows in determining a policy-related research project and in designing and carrying-out this project.

C. Number of Awards

The Bureau anticipates selecting one organization.

D. Project Period

The project period will be up to three years. The Child Care Bureau expects to invest up to $500,000 for an initial 12-month funding period. A non-competitive application for continuation will be considered in fiscal years 2002 and 2003 with up to $375,000 being available for a 12-month period. Applications for continuation grants funded beyond the 12-month budget period, but within the 36-month project period, will be entertained in the

subsequent years on a noncompetitive basis, subject to the availability of funds from future appropriations, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government.

E. Funding Levels

The expected funding level is $500,000 for the first 12-month funding period and $375,000 for subsequent 12-month periods (subject to the availability of funds from future appropriations).

F. Matching Requirements and Non-Federal Share

There is no matching requirement.

G. Maximum Federal Share

The maximum Federal share is not to exceed $500,000 for the first 12-month budget period.

H. Eligible Applicants

Universities and colleges, public agencies, non-profit organizations, and for-profit organizations agreeing to waive their fees.

I. Project Description and Application Requirements

In order to successfully compete under this priority area, applicants are cautioned to include all required materials, organized according to the required format. The application must include the following items in order:

(1) A cover letter that includes the Announcement number, priority area, and contact information.

(2) Standard Federal Forms.

(a) Standard Application for Federal Assistance (SF 424 face sheet and 424A); must be included with the application.

(b) Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

(c) Certification Regarding Lobbying. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

(d) Disclosure of Lobbying Activities. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

(e) Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(f) Certification Regarding Environmental Tobacco Smoke. Applicants must make the appropriate certification of their compliance. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

(3) For-profit entities wishing to receive a grant directly must provide a letter indicating their willingness to waive their fees. Non-profit organizations must submit proof of non-profit status in the application at the time of submission. The applicant can demonstrate proof of non-profit status in any one of three ways: by providing a copy of the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c3) of the IRS code; by providing a copy of the currently valid IRS tax exemption certificate; or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

(4) Executive Order 12372—Single Point of Contact. Where appropriate, a competed SPOC certification should be completed with the date of SPOC contact entered on page 1, line 16 of the SF424 face sheet.

(5) Table of Contents.

(6) Project abstract (not to exceed one page) for use in official briefings, decision packages, and public announcement of awards.

(7) Project Narrative Statement. The Project Narrative Statement contains most of the information on which Applications will be competitively reviewed. The Project Narrative should be carefully developed in accordance with the research goals and expectations, the requirements described in this section, and the evaluation criteria and selection factors described below. The Project Narrative should be organized as follows:

(a) Issues, Objectives and Significance. In this section, applicants demonstrate their understanding of current child care and child care research issues, describe their objectives, and demonstrate the significance of their proposal. Include a description of the applicant's understanding of the goals and purposes for the Fellowship Program.

(b) Approach. This section should include a sound and workable plan of action for how the proposed project will be carried out. Include a description of the approach and strategies that would be taken to design the program, to recruit potential participants, to support the implementation and maintenance of the Fellowship Program, and to evaluate the program's effectiveness.

(c) Management Plan. This section should detail how the project will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. Applicants should discuss their management of the project as a whole, and the management and coordinating roles of any partners.

(d) Staff Qualifications and Commitment. In this section, applicants must provide evidence that project staff have the experience, expertise and commitment of sufficient time to carry out the proposed project on time, within budget, and with a high degree of quality. Identify all key staff positions for this project, the professional requirements for each, the proportion of time staff holding these positions will be committed to the project, the period of time they will be employed, and whether their continued employment will be dependent solely on the funds to be awarded under this announcement. Provide evidence that individuals proposed for key positions have the necessary technical skill and experience to successfully carry out their assigned roles. Where key positions are currently vacant, include a position description outlining the qualifications necessary to carry out the duties and responsibilities of each. Identify the authors of the proposal and describe their continuing role in the project if funded. Include a staffing plan and assurances that the Project Director or another appropriate staff member will attend four meetings annually in Washington, DC to meet with Federal staff to discuss issues related to Fellowship Program implementation.

(e) Organizational Capability. In this section, the applicant must demonstrate that the official grantee has the organizational capacity and fiscal resources to successfully carry out the project on time and to a high standard of quality, including the capacity to resolve a wide variety of technical and management problems that may occur. Include a description of the applicant's experience that relates to programs of the kind envisioned in this announcement. Also describe the

mission of the applicant's organization as it relates to the fields of child care and research, and how the Fellowship Program fits within that mission. Provide evidence of sufficient organizational resources to ensure successful project management, compliance with terms and conditions of the grant, and oversight of the proper use of Federal funds. Describe the relationship between this project and other relevant work planned, anticipated or underway by the applicant. Include funding sources for work in progress.

(f) Fiscal Resources and Project Budget. Present a detailed budget to demonstrate that the project will have adequate resources to carry out the work on time and with a high degree of quality. Include a detailed budget narrative which describes and justifies line item expenses within the budget categories listed on the Standard Form 424. (Line item allocations and justification are required for both Federal and non-Federal funds.) If project funds will be subcontracted, a detailed budget for the use of those funds must be also included. The budget should delineate between project administration costs as opposed to direct support to the Fellows individually and as a group. The budget should include stipends to Fellows. The stipend should be tiered to accommodate a range of education and experience and would parallel the Federal GS 12–14 range. Stipends should include funds to support fringe benefits. The average stipend and total amount of the budget which will be used for stipends for the Fellows should be delineated. It is anticipated that the major portion of the budget would be used for stipends and direct costs of the Fellows. The other expenses to support participation of the Fellows should also be described and budgeted within the budget.

(8) Appendices: All supporting materials and documents should be organized into appropriate appendices and securely bound in to the application package. Included should be contact information for all key staff, resumes', and letters of support.

(9) Other: An original and two copies of the complete application packet must be submitted. Each copy of the application should be securely stapled in the upper left-hand corner, clipped, or enclosed in a quick-release binder. Because each application will be duplicated for the review panel, do not use non-removable binders. Do not include tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied.

J. Evaluation and Selection

(1) Screening. Applications will be screened to ensure that applicants meet eligibility requirements and that application packets are complete. Incomplete application packets and applications from ineligible applicants will be eliminated from further consideration.

(2) Panel Review. The review will be conducted in Washington, D.C. Expert reviewers will include researchers, federal or state staff, child care administrators and/or other individuals with expertise in child care and early childhood services. A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal based on the Bureau's research agenda and goals as well as the application requirements and the evaluation criteria listed herein. Panelists will provide written comments and assign numerical scores for each application. The indicated point value for each criterion is the maximum numerical score for that criterion. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

(3) In addition to the panel review, the Bureau may solicit comments from other federal offices and agencies, from the States, from relevant non-governmental organizations, and from individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. Their comments, along with those of the panelists, will be considered by the Bureau in making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet overall research goals.

K. Evaluation Criteria

Eligible applications will be scored competitively against the published evaluation criteria described below.

(1) Objectives and Understanding (maximum of 20 points)

(a) The extent to which the application clearly states the principal and subordinate objectives for the project.

(b) The extent to which the application reflects a solid understanding of critical child care and early childhood education issues and information needs, as well as the goals and purposes of the Fellowship Program.

(2) Approach (maximum of 40 points)

The extent to which the applicant outlines an appropriate, feasible plan of action pertaining to the scope of the project and details how the proposed work will be accomplished and lists each organization, consultant, and other key individuals who will work on the project. The approach should plan for resolution of logistical issues and other challenges that may arise.

(3) Staff Background and Organization's Experience (maximum of 20 points)

The extent to which the qualifications of the organization and staff are sufficient to administer the project. The application must identify the background of the project director and key project staff (including name, address, training, most relevant educational background and other qualifying experiences along with resumes and a short description of their responsibilities or contribution to the applicant's work plan), the experience of the applicant in administering a project like the one proposed, the applicant's knowledge of child care issues, and the applicant's ability to effectively and efficiently administer the project.

(4) Budget Appropriateness and Reasonableness (maximum of 20 points)

The extent to which the project's costs are reasonable in view of the activities to be carried out, and the budget is sufficient to accomplish the objectives. The extent to which the applicant has sufficient fiscal capacity within the organization to ensure that unanticipated problems can be resolved and that the project will be completed on time and with a high degree of quality.

L. The Selection Process

The Associate Commissioner, Child Care Bureau, Administration on Children, Youth and Families, will make the final selection of the applicant to be funded. Applications will be funded depending on: (1) the rank order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects which best meets the Bureau's research objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the cooperative agreement, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

M. Funding Date

It is anticipated that the successful applications will be funded by June 1, 2000.

Dated: January 19, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

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Reader Aids

Federal Register

Vol. 65, No. 18

Thursday, January 27, 2000

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Federal Register/Code of Federal Regulations	
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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200	3
201–344	4
345–688	5
689–1050	6
1051–1296	7
1297–1528	10
1529–1754	11
1755–2016	12
2017–2280	13
2281–2520	14
2521–2834	18
2835–3118	19
3119–3374	20
3375–3582	21
3583–3780	24
3781–4094	25
4095–4348	26
4349–4516	27

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

1660 (See Proc. 7266)	2831
1704 (See Proc. 7266)	2831
1948 (See Proc. 7266)	2831
2050 (See Proc. 7266)	2831
2528 (See Proc. 7266)	2831
7263	2817
7264	2821
7265	2825
7266	2831
7267	2835
7268	2837
7269	3779

Executive Orders:

April 17, 1926 (Revoked in part by PLO 7428)	3733
5593 (Revoked in part by PLO 7428)	3733
12543 (See Notice of December 29, 1999)	199
12544 (See Notice of December 29, 1999)	199
12947 (See Notice of January 19, 2000)	3581
13099 (See Notice of January 19, 2000)	3581

Administrative Orders:

Presidential Determinations:

No. 2000–9 of December 23, 1999	689

Notices:

December 29, 1999	199
January 19, 2000	3581

Memorandums:

January 5, 2000	2279, 3119

5 CFR

831	2281, 2521
842	2281, 2521

7 CFR

6	1297
201	1704
246	3375
371	1298
400	3781
457	3782
932	2839
959	2526
966	2281
982	2841
984	1755
997	1302
998	1302
999	1302
1220	1, 2844

Proposed Rules:

54	3155
253	2358
800	75
868	78
930	672
979	1347
993	2908
1280	1825
1301	1825
1304	1825
1305	1825
1306	1825
1307	1825
1308	1825

9 CFR

93	345
94	1304, 1529
96	1304
303	201
304	2283
312	2283
327	2283
350	2283
381	201, 2283, 2284
424	2284, 3121

Proposed Rules:

98	4173
54	1074
79	1074
130	391

10 CFR

431	2227

Proposed Rules:

Ch. I	3615
2	3394
40	3394
50	1829, 3394
72	3397
430	2077
440	4332
490	1831
960	2361
963	2361

11 CFR

Proposed Rules:

100	1074
102	1074
103	1074
104	1074
106	1074
107	1074
109	1074
110	1074
114	1074
116	1074

12 CFR

225 3785
269a 2529
935 202
960 203
Proposed Rules:
Ch. I 4176
5 3157
650 1676
900 324
910 324
917 81
941 324

13 CFR

305 2017
308 2530
314 2530
400 1757
500 1758
Proposed Rules:
120 1349
121 4176

14 CFR

21 3540
23 1758
27 3540
29 3540
39 ..... 1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540, 1761, 1762, 1763, 1765, 1767, 1769, 1771, 2017, 2019, 2285, 2287, 2289, 2844, 2861, 2862, 2864, 3379, 3583, 3794, 3796, 3798, 3799, 3802, 4095, 4349, 4351, 4353, 4354, 4356
61 2022
67 2022
71 ..... 348, 349, 699, 700, 1308, 1309, 1774, 2537, 2538, 2539, 3381, 3382, 4102
91 3540
95 2291
97 ..... 350, 2023, 2025
121 2295
125 2295
141 2022
142 2022
382 352
1204 2865
Proposed Rules:
39 ..... 250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353, 1831, 1833, 1836, 1838, 1840, 2362, 2555, 3165, 3617, 3619, 3621, 4192, 4386
71 ..... 402, 4192
91 2077
108 560
109 560
111 560
121 2079
129 ..... 560, 2079
191 560

15 CFR

734 2492
740 2493
742 2492
770 2492
772 2492
774 2492
902 30
Proposed Rules:
280 1572
303 731

16 CFR

256 2867
1615 1435
1700 93
Proposed Rules:
250 2912
310 2912

17 CFR

232 3123
Proposed Rules:
Ch. II 3399
1 3623

18 CFR

35 810
Proposed Rules:
125 1484
225 1484
356 1484

19 CFR

4 2868
162 3803
171 3803
191 3803
Proposed Rules:
134 4193

20 CFR

Proposed Rules:
604 2080

21 CFR

101 1000
173 1776
177 3384
201 ..... 7, 4103
314 1776
341 7
369 7
556 4111
558 4111
801 3584
803 4112
804 4112
862 2296
864 2296
866 2296
868 2296
870 2296
872 2296
874 2296
876 2296
878 2296
880 2296
882 2296
884 2296
886 2296
888 2296
890 2296
892 2296
1308 3124
Proposed Rules:
216 256
314 3623
801 3627
870 2364
890 2364

22 CFR

514 352

23 CFR

655 9

24 CFR

35 3386
902 1712
968 3386
1000 3386

25 CFR

1 2026
301 2030
602 2030
Proposed Rules:
1 ..... 2081, 2084

26 CFR

1 ..... 701, 1236, 1310, 2026, 2323, 3586, 3589, 3813, 3814, 3817, 3821, 3844, 4121
7 3589
49 1056
301 ..... 215, 263, 1059, 2030, 3844
602 ..... 1056, 1236, 1310, 2030, 2323, 3586, 3589, 3821, 3844, 4112
Proposed Rules:
1 ..... 258, 1572, 2081, 2084, 3401, 3629, 3903, 4203, 4388, 4396
31 4396
40 1076
301 4396

27 CFR

270 1676

29 CFR

2550 614
4044 2329

30 CFR

202 1542
203 2874
206 1542
250 ..... 217, 2874, 3126
251 ..... 2874, 3856
253 2874
254 ..... 2874, 3856
256 2874
282 3856
904 2331
914 1059
946 1063
Proposed Rules:
206 ..... 1580, 2557, 3167
944 2364

31 CFR

1 2333
317 2034
375 3113

32 CFR

Proposed Rules:
199 2085
323 3167
326 2912
813 419

33 CFR

110 2876
117 ..... 353, 710, 1543, 1543, 2035, 2036, 2038, 2539, 2541
154 710
155 710
165 1065
207 4124
Proposed Rules:
100 2095
110 ..... 1581, 2095
117 1077
157 2812
165 ..... 1079, 2095

34 CFR

611 1780
Proposed Rules:
Ch. VI 1582

36 CFR

Proposed Rules:
5 2920
13 2920

37 CFR

4 3127
Proposed Rules:
201 3404

38 CFR

Ch. 1 1544
3 3388
17 762
51 762
58 762

39 CFR

111 ..... 1318, 3609
265 3857
Proposed Rules:
111 264
206 403

40 CFR

9 1950
49 1322
52 ..... 14, 16, 1068, 1545, 1787, 2039, 2042, 2046, 2048, 2052, 2334, 2674, 2877, 2880, 2883, 3130, 4207, 4357
60 ..... 1323, 2336
63 3276
70 ..... 1787, 3130
81 2883
82 716
97 2674
136 3007
141 1950
142 1950
147 2899
180 ..... 1790, 1796, 1802, 1809, 3860
247 2889
257 1842
258 1842
261 2337
271 2897
300 ..... 19, 1070, 2903, 2905
444 4360
445 3007

712.....1548
716.....1554
721.....354

Proposed Rules:

52...104, 421, 732, 1080, 1583, 1841, 2367, 2557, 2560, 2920, 2921, 2924, 3168, 3630, 4207, 4466
63.....3169, 3642, 3907
70.....1841, 3168
81.....2924, 3630
180.....425
257.....1814
258.....1814
260.....3188
271.....2925
300.....1081, 2925, 2926
503.....1676

41 CFR

Ch. 301.....3392
301-10.....1268
301-11.....1326
301-51.....2541, 3054
301-52.....3054
301-54.....3054
301-70.....3054
301-71.....3054
301-74.....1326
301-76.....3054

Proposed Rules:

101-6.....2504
102-3.....2504

42 CFR

121.....1435
412.....1817, 3136
413.....1817
483.....1817
485.....1817

Proposed Rules:

405.....1081

43 CFR

428.....4303

44 CFR

64.....1554, 1555

Proposed Rules:

67.....1435

45 CFR

1355.....4020
1356.....4020
1357.....4020

Proposed Rules:

160.....427
164.....427

46 CFR

Proposed Rules:

356.....646

47 CFR

0.....374
21.....4136
25.....3814
27.....3139
51.....1331, 2542
68.....4137
73.....219, 220, 1823, 1824, 3150, 3151, 3152
74.....4136
76.....375

Proposed Rules:

1.....2097
22.....2097
51.....2367
73.....270, 1843, 3188, 3406, 3407, 4211, 4400, 4401
74.....3188
101.....2097

48 CFR

205.....2056
209.....2056
235.....2057
241.....2058
243.....2056
252.....2056
253.....2055
1806.....3153
1813.....3153
1815.....3153
1835.....3153
1852.....3153
1872.....3153

2401.....3572
2402.....3572
2403.....3572, 3576
2409.....3572, 3576
2413.....3572
2414.....3572
2415.....3572
2416.....3572
2419.....3572
2424.....3572
2425.....3572
2426.....3572
2428.....3572
2432.....3572
2433.....3572
2436.....3572, 3576
2437.....3576
2439.....3572, 3576
2442.....3572, 3576
2446.....3572
2451.....3572
2452.....3572, 3576
2453.....3572, 3576

Proposed Rules:

1.....1438, 4328, 4345
2.....1438
4.....1438
7.....1438
8.....1438
11.....2272
15.....1438
16.....1438
17.....1438
22.....1438, 2272
27.....1438
28.....1438
31.....1438, 4327
32.....1438
35.....1438
36.....2272
37.....1438
42.....1438
43.....1438, 3762
44.....1438
45.....1438
49.....1438, 2272
51.....1438
52.....1438, 2272, 3762, 4345
53.....1438

212.....2104
242.....2104, 2109
247.....2104
252.....2104
253.....2109
1804.....429
1852.....429

49 CFR

1.....220
268.....2342
572.....2059

Proposed Rules:

40.....2573
209.....1844
222.....2230
229.....2230
1244.....732

50 CFR

17.....20, 2348, 3096, 3867, 3876, 4140
216.....30
226.....1584
300.....59
600.....221, 4169
622.....4172
635.....2075
648.....377, 1557, 1568
660.....221, 3890, 4169
679.....60, 65, 74, 380, 3892

Proposed Rules:

17.....1082, 1583, 1845, 3096, 3648
18.....109
23.....4217
86.....3332
216.....270, 1083
222.....270
223.....105
224.....1082
226.....105, 1584
300.....272
622.....4221
635.....3199
648.....275, 431
660.....2926

REMINDERS

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RULES GOING INTO EFFECT JANUARY 27, 2000

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
- National school lunch program, etc.—
  - State agency-school food authority/child care institution agreements and direct certification; published 12-28-99
- Summer food service program—
  - Legislative reform implementation; published 12-28-99

EDUCATION DEPARTMENT
Post secondary education:
- Preparing Tomorrow's Teachers to Use Technology Program; published 12-28-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
- Rate schedules filing—
  - Section 205 filings; intervention and protesting time frame; published 12-28-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Fair housing:
- Fair Housing Act violations; civil penalties; published 12-28-99

Mortgage and loan insurance programs:
- Single family mortgage insurance—
  - Appraiser roster; placement and removal procedures; published 12-28-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Practice and procedure:
- Hearings on record; published 12-28-99

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
- Postlease operations safety; update and clarification; published 12-28-99
- Postlease operations safety; update and clarification; correction; published 1-20-00

PERSONNEL MANAGEMENT OFFICE
Group life insurance; Federal employees:
- Life insurance improvements; published 12-28-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
- Eagle Harbor, Bainbridge Island, WA; regulated navigation area; published 12-28-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Bombardier; published 1-12-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
- Michigan et al.; comments due by 2-4-00; published 1-5-00

Sheep and lamb promotion and research; comments due by 2-1-00; published 1-12-00

Tobacco inspection:
- Burley tobacco; moisture testing; comments due by 1-31-00; published 12-2-99

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 2-3-00; published 12-16-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspections:
- Inspection services—
  - Retail operations exemption from requirements; comments due by 2-3-00; published 1-4-00

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; implementation; comments due by 1-31-00; published 12-30-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
- Critical habitat designation—
  - Johnson's seagrass; comments due by 2-2-00; published 1-3-00

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands groundfish; comments due by 2-4-00; published 12-21-99
- Magnuson-Stevens Act provisions—
  - Pacific Coast groundfish; annual specifications and management measures; comments due by 2-3-00; published 1-4-00
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 2-4-00; published 1-5-00
  - Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs; fishing quotas; comments due by 2-3-00; published 1-4-00

Ocean and coastal resource management:
- Marine sanctuaries—
  - Gray's Reef National Marine Sanctuary, GA; management plan/ regulations review; comments due by 2-1-00; published 11-19-99
  - Gray's Reef National Marine Sanctuary, GA; management plan/ regulations review; scoping meetings; comments due by 2-1-00; published 12-27-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
AmeriCorps education awards; comments due by 1-31-00; published 12-1-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - Retiree Dental Program; expansion of dependent eligibility; comments due by 1-31-00; published 12-1-99

Federal Acquisition Regulation (FAR):
- Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
- Veterans' employment; comments due by 2-1-00; published 12-3-99
- Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
- Perchloroethylene emissions from dry cleaning facilities—
  - Florida; comments due by 1-31-00; published 12-28-99

Air pollution; standards of performance for new stationary sources:
- Commercial and industrial solid waste incineration units; comments due by 1-31-00; published 11-30-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 2-2-00; published 1-18-00
- Illinois; comments due by 2-2-00; published 1-3-00
- Montana; comments due by 2-2-00; published 1-3-00
- New York; comments due by 2-4-00; published 1-5-00

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- N-acyl sarcosines and sodium N-acyl sarcosinates; comments due by 2-4-00; published 12-6-99
- Tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3(1H-1,2,4-triazol-1-yl) propyl 1,1,2,2-tetrafluoroethyl ether]; comments due by 2-4-00; published 12-6-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 1-31-00; published 12-30-99
  - National priorities list update; comments due

by 1-31-00; published 12-30-99

Toxic substances:

Significant new uses—

Halogenated benzyl ester acrylate, etc.; comments due by 2-4-00; published 1-5-00

Water supply:

National primary drinking water regulations—

Radon-222; maximum contaminant level goal; public health protection; comments due by 2-4-00; published 12-21-99

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Indiana; comments due by 1-31-00; published 12-17-99

Radio frequency devices:

Radio services operating below 30 MHz; conducted emission limits; comments due by 1-31-00; published 11-16-99

Radio stations; table of assignments:

Arizona; comments due by 1-31-00; published 12-30-99

California; comments due by 1-31-00; published 12-30-99

Louisiana; comments due by 1-31-00; published 12-30-99

Virginia and Maryland; comments due by 1-31-00; published 12-17-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99

Veterans' employment; comments due by 2-1-00; published 12-3-99

Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:

Temporary Assistance for Needy Families Program—

High performance bonus rewards to States; comments due by 2-4-00; published 12-6-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Freedom of Information Act; implementation; comments due by 2-2-00; published 11-4-99

Human drugs:

Prescription drug marketing; comments due by 2-1-00; published 12-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Managed care organizations; external quality review; comments due by 1-31-00; published 12-1-99

Medicare and Medicaid programs:

Religious nonmedical health care institutions and advance directives; comments due by 1-31-00; published 11-30-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Spalding's catchfly; comments due by 2-1-00; published 12-3-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Oil value for royalty due on Federal leases; establishment; comments due by 1-31-00; published 12-30-99

JUSTICE DEPARTMENT

Drug Enforcement Administration

List I chemical manufacturers, distributors, importers, and exporters; registration:

Registration and reregistration fees; comments due by 1-31-00; published 12-1-99

Correction; comments due by 1-31-00; published 12-16-99

LABOR DEPARTMENT

Employment and Training Administration

Birth and adoption unemployment compensation; comments due by 2-2-00; published 1-13-00

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:

Ergonomics program; comments due by 2-1-00; published 11-23-99

LABOR DEPARTMENT

Wage and Hour Division

Child labor; civil money penalties; inflation adjustment; comments due by 1-31-00; published 11-30-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99

Veterans' employment; comments due by 2-1-00; published 12-3-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:

Agency records centers; storage standards update; comments due by 1-31-00; published 12-2-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Share insurance and appendix; update and clarification; comments due by 1-31-00; published 11-30-99

POSTAL SERVICE

Domestic Mail Manual:

Palletized standard mail and bound printed matter, etc.; preparation changes; comments due by 2-3-00; published 1-4-00

RAILROAD RETIREMENT BOARD

Railroad Unemployment Insurance Act:

Sickness and unemployment benefits; waiting period shortened, etc.; comments due by 2-1-00; published 12-3-99

SECURITIES AND EXCHANGE COMMISSION

Public utility holding companies:

Acquisition of U.S. utilities by foreign companies; internationalization; comments due by 2-4-00; published 12-21-99

Securities:

Unlisted trading privileges; comments due by 1-31-00; published 12-15-99

SMALL BUSINESS ADMINISTRATION

Business loans:

Certified development companies; areas of operations; comments due by 1-31-00; published 12-1-99

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Tariff-rate quota implementation for imports of sugar-containing products; comments due by 1-31-00; published 12-1-99

TRANSPORTATION DEPARTMENT

Coast Guard

American Society for Testing and Materials (ASTM); standards incorporated by reference; update; comments due by 1-31-00; published 12-1-99

Regattas and marine parades:

Port of Miami, FL; OPSAIL 2000; comments due by 1-31-00; published 12-17-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-31-00; published 12-30-99

Alexander Schleicher Segelflugzeugbau; comments due by 1-31-00; published 12-28-99

Boeing; comments due by 1-31-00; published 11-30-99

Constucciones Aeronauticas, S.A.; comments due by 2-4-00; published 1-5-00

Eurocopter Deutschland GmbH; comments due by 1-31-00; published 12-2-99

Eurocopter France; comments due by 1-31-00; published 11-30-99

Fokker; comments due by 2-3-00; published 1-4-00

Hartzell Propeller, Inc.; comments due by 2-1-00; published 12-3-99

Rolls Royce, plc; comments due by 2-1-00; published 12-3-99

Saab; comments due by 2-4-00; published 1-5-00

Turbomeca Arrius; comments due by 1-31-00; published 12-1-99

Class D airspace; comments due by 2-4-00; published 1-5-00

Class E airspace; comments due by 1-31-00; published 12-17-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Treasury securities, reopening; original issue discount; comments due by 2-3-00; published 11-5-99

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Well-grounded claims; comments due by 1-31-00; published 12-2-99

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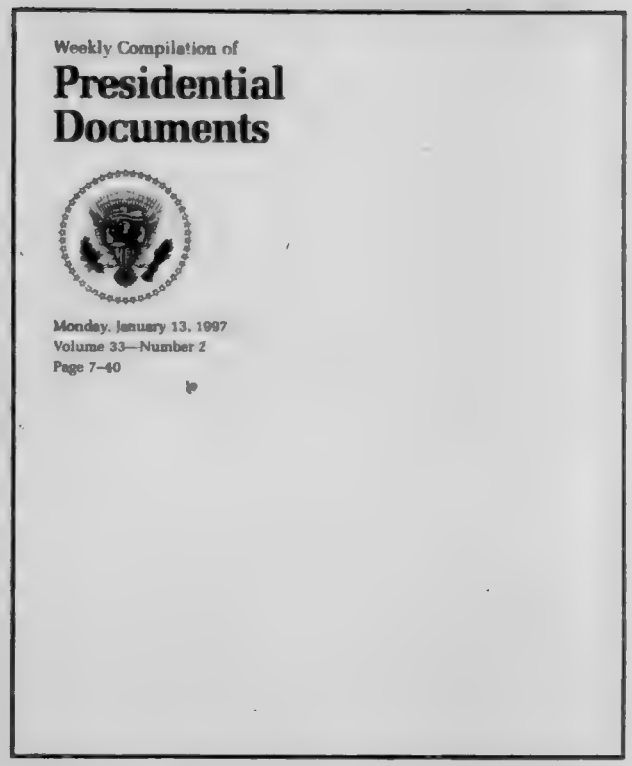

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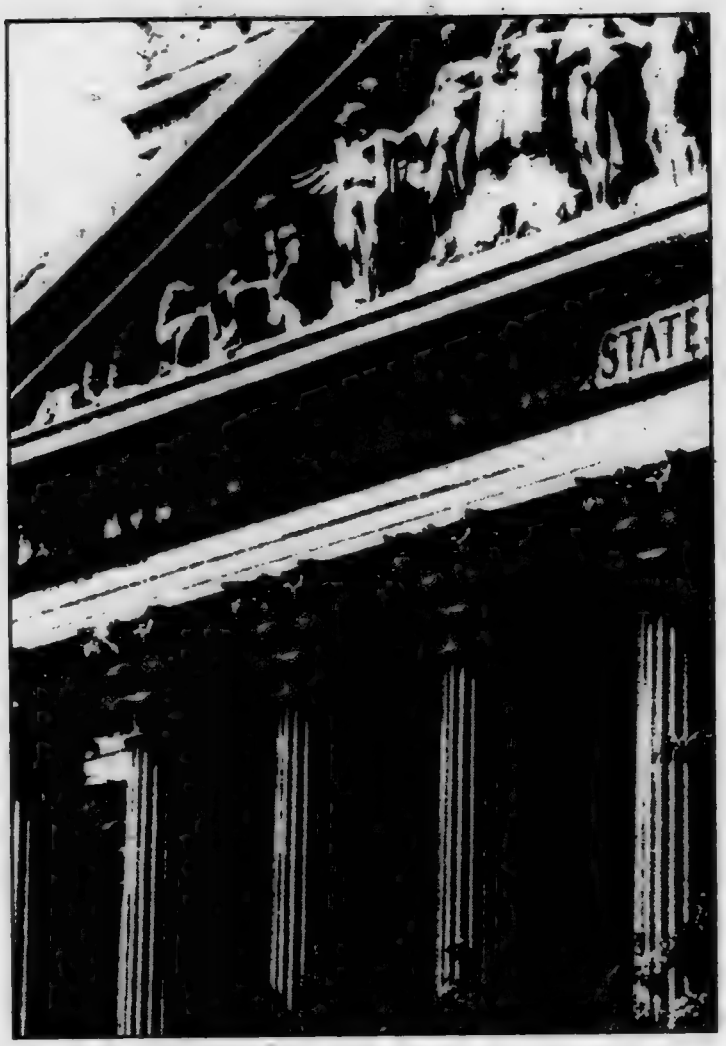

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106th Congress, 2nd Session, 1999

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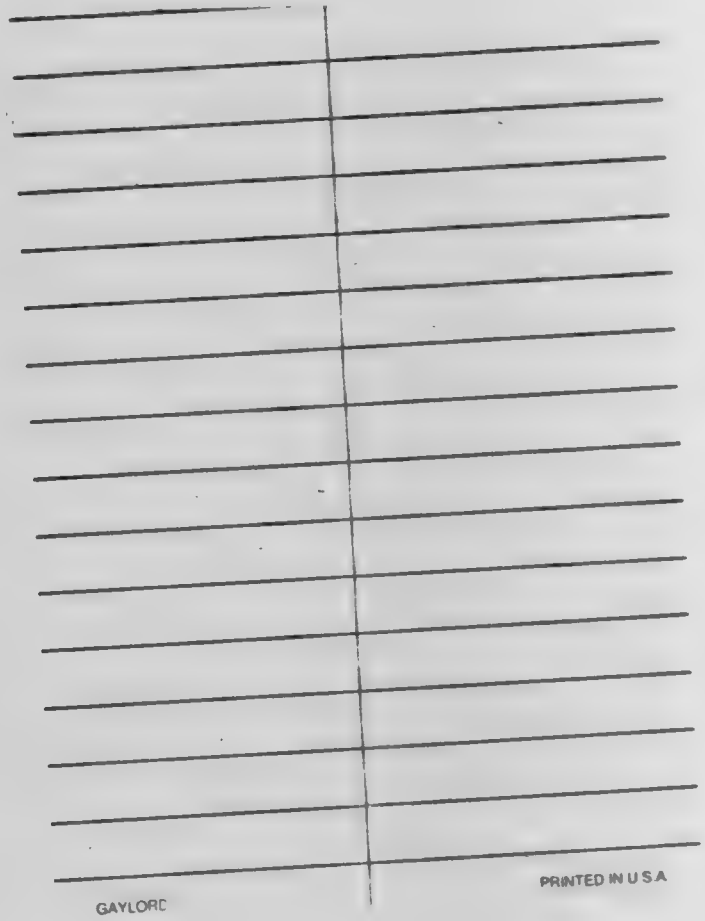

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Contents

Federal Register
Vol. 65, No. 19
Friday, January 28, 2000

Agriculture Department
See Cooperative State Research, Education, and Extension Service
See Rural Housing Service

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4560–4561

Commerce Department
See Census Bureau
See National Oceanic and Atmospheric Administration

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
1890 Institution teaching and research capacity building program, 4556–4560

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 4566–4567

Environmental Protection Agency
NOTICES
Meetings:
Phosmet, revised pesticide risk assessment, 4561–4562

Health and Human Services Department
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
PROPOSED RULES
Medicare:
Ambulance Fee Schedule Negotiated Rulemaking Committee—
Meetings, 4545–4546

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 4566

Interior Department
See Land Management Bureau

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Motor vehicle use restrictions:
Montana, 4566

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4562–4563
Inventions, Government-owned; availability for licensing, 4563
Meetings:
National Cancer Institute, 4563–4564
National Eye Institute, 4564
National Heart, Lung, and Blood Institute, 4564
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 4564–4565
National Institute on Drug Abuse, 4565–4566

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
American Fisheries Act; emergency implementation, 4520–4544
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Scup, 4546–4547
Summer flounder, scup, and Black Sea bass, 4547–4555

National Science Foundation
NOTICES
Meetings:
Biological Sciences Special Emphasis Panel, 4567
Electrical and Communications Systems Special Emphasis Panel, 4567–4568
Mathematical and Physical Sciences Advisory Committee, 4568

Postal Service
RULES
Domestic Mail Manual:
Experimental nonletter-size business reply mail categories and fees; termination, 4517–4520

Presidential Documents
ADMINISTRATIVE ORDERS
Middle East peace process, continuation of emergency regarding terrorists who threaten to disrupt (Notice of January 19, 2000), 3579-3581 *Editorial Note:* In the *Federal Register* issue of January 21, 2000, the page number for the Notice of January 19, 2000, was inadvertently omitted and should have appeared as "3581"

Public Health Service
See National Institutes of Health

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Section 515 Rural Rental Housing Program
Correction, 4560

Surface Transportation Board
NOTICES
Rail carriers:
Cost recovery procedures—
Productivity adjustments, 4568
Railroad operation, acquisition, construction, etc.:
North American railroad industry; major railroad consolidations; comment request, 4568–4570
Railroad services abandonment:
Union Pacific Railroad Co., 4570–4571

Transportation Department
See Surface Transportation Board

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

39 CFR
111.....4517

42 CFR

Proposed Rules:
405.....4545

50 CFR
679.....4520

Proposed Rules:
648 (2 documents) 4546, 4547

OL

65

SS

19

JA

28

000

MI

Rules and Regulations

Federal Register
Vol. 65, No. 19
Friday, January 28, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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POSTAL SERVICE

39 CFR Part 111

Nonletter-Size Business Reply Mail Categories and Fees—Final Rule

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is terminating the experimental nonletter-size business reply mail categories and fees effective February 5, 2000, and will implement a permanent classification and fees for weight-averaged nonletter-size business reply mail on February 6, 2000. This is in accordance with the Decision of the Governors of the Postal Service on the Recommended Decision of the Postal Rate Commission on Establishment of Permanent Classification and Fees for Nonletter-Size Business Reply Mail, Docket No. MC99–2; Board of Governors Resolution 99–12 (November 1, 1999). The Postal Service was authorized to conduct the experiment until as late as February 29, 2000. The extension was granted in order for the experiment to be extended beyond its original expiration date of June 7, 1999, to allow the Postal Service additional time to resolve certain administrative and technical issues which could not be resolved before the original June 7, 1999, experiment expiration date. These issues have been resolved and it is possible to proceed with permanent implementation. The permanent fees for bulk weight averaging are the same as those placed into effect when the experiment was extended on June 8, 1999. The extension was approved pursuant to the Decision of the Governors of the Postal Service on the Recommended Decision of the Postal Rate Commission on the Classification and Fees for Nonletter-Size Business Reply Mail, Docket No. MC99–1; Board of Governors Resolution 99–6 (May 26, 1999). See 64 FR 31325–31326. This final rule also sets forth the Domestic Mail Manual (DMM) standards adopted for permanent implementation.

EFFECTIVE DATE: February 6, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261; or Michael T. Tidwell, (202) 268–2998.

SUPPLEMENTARY INFORMATION: The Postal Service is terminating the experimental classification and fees for nonletter-size business reply mail (BRM) and establishing permanent classification and fees because appropriate levels of management oversight and sufficient technical resources are now available to ensure that revenue protection standards can be met. Earlier, the experimental period was extended beyond the two-year period that was to end on June 7, 1999, in order to give the Postal Service additional time to eliminate technical and administrative obstacles to permanent implementation.

The weight-averaging experiment will end at midnight on February 5, 2000, and the permanent classification and fees will become effective on February 6, 2000. The limitations that were in effect during the experiment with respect to the number of participants, mail volumes, geographic locations, and abilities to implement and maintain quality control procedures for accounting and documentation have been eliminated.

The per piece accounting fee for bulk weight-averaged nonletter-size BRM pieces will be 1 cent, plus the appropriate First-Class Mail or Priority Mail postage. Mailers will be required to pay an annual business reply mail permit fee and an annual business reply mail advance deposit accounting fee, which are currently $100.00 and $300.00, respectively. In addition, a monthly audit and maintenance fee of $600.00 will be assessed for each BRM account at a postal facility where the weight-averaging accounting method is employed.

Mailers who want to take advantage of the lower per piece fees for qualifying nonletter-size BRM pieces must submit a letter of application to the postmaster at the post office where their BRM will be received. Those who receive approval for the bulk weight-averaging method will be required to enter into a service agreement with the Postal Service.

Background

As a consequence of Postal Rate Commission Docket No. MC97–1, the United States Postal Service engaged in an experiment that started on June 8, 1997. It was designed to test the feasibility of two alternative methods of accounting for nonletter-size business reply mail: the reverse manifesting method and the bulk weight-averaging method. A maximum of 20 participants could participate in the experiment, with no more than 10 participants allowed for each of the two accounting methods. Separate set-up/qualification, monthly auditing or sampling, and per piece fees were established for each method.

All experimental classifications and fees were originally scheduled to expire on June 7, 1999. However, on March 14, 1999, the Postal Service requested the Postal Rate Commission to approve an extension of the experiment until as late as February 29, 2000, or sooner if circumstances permitted. The request was made to allow the Postal Service additional time for the resolution of administrative and technical issues that stood in the way of implementing weight averaging on a permanent basis. The Postal Service also asked that the experimental reverse manifesting classification and fees be allowed to expire as originally scheduled, because the operational feasibility of the method was unproven. At the same time, the Postal Service requested the establishment of a permanent classification and fees for weight-averaged nonletter-size Business Reply Mail.

The proceedings for consideration of these requests were designated by the Postal Rate Commission as Docket No. MC99–1 and Docket No. MC99–2, respectively. On May 19, 1999, pursuant to 39 U.S.C. 3624, the Commission recommended the extension of the nonletter-size BRM experiment until February 29, 2000, or until the Postal Service implemented permanent fees, whichever came first. The Commission also recommended the experimental weight-averaging classification and fees that were proposed in a Joint Stipulation and Agreement by the parties in Docket No. MC99–1.

After reviewing the Commission's Recommended Decision and its consequences for the Postal Service and postal customers, the Governors of the

Postal Service, pursuant to 39 U.S.C 3625, acted on the Commission's recommendations on May 26, 1999. (Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal of Experimental Classification and Fees for Nonletter-Size Business Reply Mail Categories and Fees, Docket No. MC99–1.) The Governors approved the Commission's recommendations and established June 8, 1999, as the date on which the experimental classification and fees were to take effect. Accordingly, on June 8, 1999, the following fees were implemented for weight-averaged nonletter-size BRM:

1. A $600 monthly maintenance fee.
2. A $0.01 per piece accounting fee.

The one-time set-up/qualification fee that was assessed when the experiment began was also eliminated at this time.

Four customers participated in the original weight-averaging experiment at four sites, enabling the Postal Service to develop sufficient data to support the filing with the Postal Rate Commission of the Docket No. MC99–2 request for establishment of a permanent classification and fees for the bulk weight-averaging method. After the experiment was extended beyond the original June 7, 1999, expiration date, three other bulk weight-averaging sites were added, at the request of one of the original customer participants, bringing the total number of experimental sites to seven.

Weight-Averaging Method

Weight averaging is a method of counting, rating, and billing non-letter size BRM in bulk based on mathematical statistics, instead of individually rating each piece. The use of weight averaging as an alternative to slower, less efficient manual weighing and rating of each piece is not new. A few mailers and local postal officials devised various forms of bulk weight averaging years ago when faced with counting and rating large volumes of incoming mail.

The bulk weight-averaging methodology that is now being adopted for nonletter-size BRM has significant advantages over other methods that have been used. The new methodology relies on a personal computer with statistical sampling software linked with an electronic scale that provides individual piece weights. The system allows a post office to collect and store statistically valid sample data on incoming BRM, to calculate average pieces per pound and average postage per pound factors, and to use the calculated factors as the basis for determining postage due for the entire volume of incoming BRM. As a result, the postage and fees that postal customers pay will be determined with a high degree of precision, while the Postal Service improves the efficiency of its operations and promotes customer satisfaction.

Bulk weight averaging requires periodic sampling and monitoring of a postal customer's nonletter-size BRM to ensure that any changes in the characteristics of incoming pieces are reflected in the postage due calculations. The administrative overhead required to manage the method generates postal costs that are not covered by the current $100.00 annual BRM permit fee and $300.00 annual BRM advance deposit accounting fee. For this reason a monthly maintenance fee is being assessed.

Implementation

On June 1, 1999, the Commission issued the Recommended Decision of the Postal Rate Commission on the Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail, 1999, Docket No. MC99–2. The Governors approved the Commission's recommendations on November 1, 1999, and set an implementation date of February 6, 2000, to make the classification and fees permanent.

This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Governors' Decision. Many of the DMM provisions placed into effect during the experimental phase are being continued, with the exception of such restrictions as the number of participants, geographic location, annual volume of nonletter-size BRM pieces, and the time frame and duration of participation. The Postal Service is continuing to limit the use of the nonletter-size BRM bulk weight-averaging method to those pieces that are outside the parameters of current automation-compatible letter-size BRM. Reply mail letters that cannot qualify for qualified business reply mail (QBRM) because they weigh too much also are eligible for the weight-averaging method. Any piece accounted for under the weight-averaging method may not exceed 5 pounds.

The Postal Service finds no need to solicit comments on the final rule setting forth the DMM standards for nonletter-size BRM because of the multiple filings with the Postal Rate Commission as well as the limited purposes of the experiment that was conducted for a period over two years in length.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[REVISED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. § 552(a); 39 U.S.C 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follows:

G General Information

* * * * *

G090 Experimental Classifications and Rates

* * * * *

[Remove G092.]

G092 Nonletter-Size Business Reply Mail

* * * * *

PR RATES AND FEES

* * * * *

R900 SERVICES

* * * * *

2.0 BUSINESS REPLY MAIL (BRM)

* * * * *

2.2 Per Piece Charges

[Amend 2.2 to add the nonletter-size BRM fee to read as follows:]

Each piece is charged the applicable First-Class Mail or Priority Mail postage plus a per piece fee upon return to the permit holder:

Type	Postage (per piece)	Fee with BRM advance deposit account (in addition to postage)	Fee without BRM advance deposit account (in addition to postage)
Regular BRM	$0.33 first ounce or fraction $0.22 each additional ounce or fraction. Postcards: $0.20	*$0.08	$0.30

Type	Postage (per piece)	Fee with BRM advance deposit account (in addition to postage)	Fee without BRM advance deposit account (in addition to postage)
Qualified BRM	$0.30 first ounce or fraction $0.22 second ounce or fraction ..... Postcards: $0.18	*$0.05	N/A
Nonletter-size BRM (Weight-averaged in accordance with S922.7.0).	$0.33 first ounce or fraction $0.22 each additional ounce or fraction.	*$.01	N/A

*BRM accounting fee required.

[Add new 2.3 to read as follows:]

2.3 Monthly Maintenance Fee

A maintenance fee must be paid for each month, or part of a month, in which the postage and fees charged to an account are determined using the bulk weight-averaging method for nonletter-size BRM described in S922.

* * * * *

S Special Services

* * * * *

S900 Special Postal Services

* * * * *

S920 Convenience

* * * * *

S922 Business Reply Mail (BRM)

* * * * *

3.0 POSTAGE AND FEES

* * * * *

[Add new section 3.4 to read as follows:]

3.4 Nonletter-Size BRM Fees

A mailer must pay the annual BRM permit fee and the annual BRM advance deposit account fee. In addition, a maintenance fee must be paid monthly for each account to which postage and fees are charged for nonletter-size BRM on the basis of the bulk weight-averaging method described in 7.0. Payment is due on the first day that postage and fees are determined using the bulk weight-averaging method and each succeeding monthly payment is due on the anniversary date of the initial payment or previous fee payment, whichever is later.

[Redesignate 3.4 through 3.10 as 3.5 through 3.11; amend redesignated 3.5b to read as follows:]

3.5 Charges

Charges are as follows:

* * * * *

b. Fee Per Piece. The applicable BRM fee must be collected for each returned piece of BRM in addition to the applicable single-piece First-Class Mail or Priority Mail postage. Lower per piece fees apply to mail paid through a BRM advance deposit account, QBRM pieces (R900), and nonletter-size BRM pieces that are rated by means of the approved bulk weight-averaging method described in 7.0.

* * * * *

[Add new section 7.0 to read as follows:]

7.0 BULK WEIGHT-AVERAGING METHOD

7.1 Description

Bulk weight averaging (WA) is a method of counting, rating, and billing eligible incoming nonletter-size business reply mail (BRM) based on principles of mathematical statistics. Probability sampling techniques are used to measure the characteristics of the total BRM volume by examining a fraction of the volume. Statistically valid samples that are drawn from the incoming BRM volume each postal accounting period are used by post offices to compute average postage due per pound and average piece count per pound factors. The net bulk weight of mail received is multiplied by these conversion factors to get the estimated volume received and postage and fee amounts. Only eligible BRM pieces rated by means of the approved WA method may qualify for the nonletter-size BRM per piece rate.

7.2 Eligibility

Only eligible BRM pieces rated by means of the approved WA method may qualify for the nonletter-size BRM per piece rate. BRM pieces rated by the bulk weight-averaging accounting method must:

a. Be mailed as First-Class Mail or Priority Mail.

b. Meet the applicable physical standards for nonletter-size mail in C050 (*i.e.*, flat-size mail, machinable parcels, irregular parcels, or outside parcels) and C100 for First-Class Mail, except any BRM piece accounted for under the weight-averaging method may not exceed 5 pounds.

c. Meet the basic standards for BRM in S922 other than those specified for letter-size pieces or pieces processed as QBRM.

d. Meet the addressing standards in A010 and bear a delivery address with the correct ZIP+4 code and barcodes assigned to the BRM permit holder by the USPS.

e. Comply with current or future USPS marking standards.

f. Be received at the post office that serves the permit holder.

7.3 Fees

Bulk weight-averaged nonletter-size BRM is subject to a per piece fee (R900) in addition to single-piece rate First-Class Mail or Priority Mail postage. Payment of a monthly maintenance fee is required in addition to the annual business reply mail permit fee and annual advance deposit accounting fee.

7.4 Application Procedures

A mailer who wants to have nonletter-size BRM rated by bulk weight averaging (WA) as described in 7.0 must submit a written request to the postmaster of the office where the BRM permit is held and where the BRM will be received. The postmaster will forward this information to the Manager, Operations Systems, USPS Headquarters, who will confirm the BRM pieces meet the requirements of 7.2 and WA is capable of producing the required level of precision in determining postage due amounts. The postmaster will be notified if these requirements are met and will receive instructions on how statistical sampling of the BRM is to be performed. A mailer's request must include the following information:

a. Mailer name and address.

b. Name and location of the post office at which BRM will be received, post office box number to be used, and a centralized automated payment system account number (CAPS), if available.

c. A description of the incoming BRM piece weight distribution (in nearest ounces or pounds) over a 24-hour period, *e.g.*, total piece volume consists of *x* number of 3-ounce pieces, Y number of 4-ounce pieces, and Z number of 5-ounce pieces.

d. Piece volume information that includes the estimated average volume and postage for nonletter-size BRM received over a 24-hour period and monthly.

e. A statement indicating whether the piece volume is subject to seasonal variation and, if applicable, estimates of monthly volumes for a 12-month period.

7.5 Authorization

After a mailer's request for bulk weight averaging has been reviewed and approved by the Manager, Operations Systems, USPS Headquarters, the post office that received the original request provides an authorization letter and has the mailer sign a service agreement for bulk weight averaging of nonletter-size BRM for a specified post office box. If the mailer does not appear to meet the requirements for bulk weight averaging, the post office sends the applicant a written notice advising of the reasons for denial. The applicant has 15 days following receipt of the notice to file a written appeal of the decision with the postmaster and to furnish further information explaining why the application should be approved. If the postmaster still finds that the application should be denied, the postmaster forwards the file to the Manager, Operations Systems, USPS Headquarters, who issues a final written decision to the mailer.

7.6 Action

[Reserved.]

7.7 Reasons

A postmaster may terminate a mailer's authorization to have nonletter-size BRM bulk weight-averaged at any time if:

a. The mailer provided incorrect or incomplete information when applying for the bulk weight-averaging method.

b. The mailer's BRM pieces no longer meet the eligibility requirements of 7.2.

c. USPS finds that bulk weight averaging no longer provides adequate revenue protection.

d. The mailer no longer desires to have bulk weight averaging used.

7.8 Notice and Appeal

A termination takes effect 15 days from the mailer's receipt of the notice unless the mailer files a written appeal within that period with the postmaster stating why use of the weight-averaging method should not be suspended or terminated. The mailer may continue to have the bulk weight-averaging method used pending a final decision on the appeal. If the postmaster does not uphold an appeal of a suspension or termination, the postmaster forwards the mailer's appeal together with all pertinent information to the Manager, Operations Systems, USPS Headquarters, who issues a final agency decision to the mailer.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. As provided by 39 CFR 111.3, notice of issuance will be published in the **Federal Register**.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–2020 Filed 1–27–00; 8:45 am]

BILLING CODE 7710–12–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 011100D]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule To Implement Major Provisions of the American Fisheries Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; revisions to 2000 harvest specifications; sideboard directed fishing closures; request for comments.

SUMMARY: NMFS issues emergency interim regulations implementing major provisions of the American Fisheries Act (AFA). The elements of this emergency interim rule include: A new formula to allocate the Bering Sea and Aleutian Islands Management Area (BSAI) pollock total allowable catch (TAC) among the Western Alaska Community Development Quota (CDQ) program and the inshore, catcher/processor, and mothership industry sectors; new recordkeeping and reporting requirements for the BSAI pollock fishery and for processors that receive groundfish from AFA catcher vessels; new observer coverage and scale requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors; new regulations to govern BSAI pollock fishery cooperatives formed under the AFA; harvesting restrictions on AFA catcher vessels and AFA catcher/processors to limit effort by such vessels in other groundfish and crab fisheries; crab processing restrictions on AFA motherships and AFA inshore processors that receive pollock harvested by a cooperative in a BSAI directed pollock fishery, an excessive share harvesting cap that prohibits any single entity from harvesting more than 17.5 percent of the BSAI pollock TAC, and revised interim groundfish harvest specifications for the BSAI and GOA.

This emergency action also establishes interim 2000 harvest sideboard amounts for AFA catcher/processors and AFA catcher vessels, and issues sideboard directed fishing closures for AFA catcher/processor and AFA catcher vessels in various fisheries. This emergency action is necessary to provide inshore pollock cooperatives with allocations of pollock for the 2000 fishing year as required by the AFA. This emergency action also is necessary to implement sideboard restrictions to protect participants in other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

DATES: Effective January 21, 2000 through July 20, 2000, except for § 679.5, paragraphs (a)(4)(iv), (f)(3), (i)(l)(iii), and (o) and § 679.60(d), which, upon approval under the Paperwork Reduction Act of the information collections in these provisions will be made effective through separate notification in the **Federal Register**. Comments on this emergency interim rule must be received by February 28, 2000.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments will not be accepted if sent by e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, 907–271–2809. Send comments on collection-of-information requirements to the Alaska Region, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the

BSAI and GOA under the fishery management plans (FMPs) for groundfish in the respective areas. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries in the BSAI and the commercial scallop fishery off Alaska under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

American Fisheries Act—Background Information

The AFA, Div. C, Title II, Subtitle II, Pub. L. No. 105–277, 112 Stat. 2681 (1998), made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the GOA and crab fisheries of the BSAI. With respect to the groundfish and crab fisheries off Alaska, the AFA—

- Established a new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the CDQ Program, and after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships;
- Provided for the buyout of nine pollock catcher/processors and the subsequent scrapping of eight of these vessels through a combination of $20 million in Federal appropriations and $75 million in direct loan obligations;
- Required a fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the $75 million direct loan obligation;
- Listed by name and/or provided qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery;
- Increased observer coverage and scale requirements for AFA catcher/processors;
- Established limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors;
- Required that NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to deliver the bulk of their catch to that processor;
- Required harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and
- Established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 1999 fishing year, NMFS implemented the new AFA pollock allocations and harvest restrictions on catcher/processors through the interim and final BSAI harvest specifications (64 FR 50, January 4, 1999; and 64 FR 12103, March 11, 1999). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). The increase in observer coverage levels for pollock catcher/processors and regulatory authority to manage AFA catcher/processor sideboard limits through directed fishing closures were implemented through a separate emergency interim rule (64 FR 3435, January 22, 1999; corrected at 64 FR 7814, February 17, 1999; and extended at 64 FR 33425, June 6, 1999). In December 1998, NMFS administered the buyout of the nine catcher/processors declared ineligible under the AFA, and is currently overseeing the scrapping of the eight vessels scheduled for scrapping under the AFA. The inshore fee system mandated by the AFA will be implemented in early 2000. A proposed rule to implement the inshore fee program was published on December 21, 1999 (64 FR 71396).

Since the passage of the AFA, the Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The Council began consideration of the implications of the AFA during a special meeting in November 1998, during which it discussed AFA-related actions that were required for the 1999 fishing year. At its December 1998 meeting, the Council voted to recommend approval of the two emergency interim rules cited earlier, recommended AFA-related provisions to the 1999 BSAI harvest specifications for groundfish, and began an analysis of a suite of AFA-related management measures that subsequently became known as Amendments 61/61/13/8. The Council conducted an initial review of Amendments 61/61/13/8 and related AFA measures at its April 1999 meeting, and took final action on these amendments at its June 1999 meeting.

In addition, the Council formed an industry advisory committee to assist NMFS in the development of specific measures to govern the development and management of inshore pollock cooperatives. This Council-appointed committee met with NMFS at a public meeting May 17–18, 1999, in Seattle, WA to develop recommendations for the implementation and management of inshore pollock cooperatives. These recommendations were presented to the Council at its June 1999 meeting, and were incorporated into the Council's recommended approach for implementing the inshore pollock cooperative provisions of the AFA.

The Council formed a second industry committee to make recommendations on the development and implementation of crab and groundfish processing limits on AFA pollock processors. This second committee met August 9–10, 1999, in Seattle, WA, and presented its recommendations to the Council at its October 1999 Council meeting.

At its December 1999 meeting, the Council reviewed the status of Amendments 61/61/13/8 and recommended that NMFS proceed immediately with an emergency interim rule to implement the Council's June 1999 recommendations so that AFA regulations could be in place prior to the start of the 2000 fisheries while Amendments 61/61/13/8 and the proposed rule to implement the amendments are under review by NMFS. The suite of management measures contained in this emergency interim rule gives effect to the Council's December 1999 motion and contains all AFA-related management measures necessary to implement the provisions of the AFA for the 2000 fishing year except for the inshore fee program, which is being implemented through separate rulemaking. NMFS previously published a separate emergency interim rule (65 FR 380, January 5, 2000) to give immediate effect to all AFA-related permit requirements so that the fishing industry has the opportunity to apply for and receive AFA-related fishing permits prior to the start of the 2000 pollock fishery.

NMFS is issuing this emergency interim rule to give immediate effect to all AFA-mandated management measures. This emergency action is necessary to provide inshore pollock cooperatives with allocations of pollock for the 2000 fishing year as required by the AFA. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that will be implemented prior to the start of the 2000 pollock fisheries. Without this emergency interim rule, the inshore sector of the BSAI pollock industry would be unable to operate under cooperatives for the 2000 fishing year in the manner provided for in the AFA, and consequently, would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures.

In addition, this emergency action is necessary to implement paragraph 211(c)(1) of the AFA, which mandates sideboard restrictions to prevent AFA catcher vessels from exceeding "in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the [Council] as a result of fishery cooperatives in the directed pollock fishery, [and] protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA or fishery cooperatives in the directed pollock fishery." Such sideboard protections must be implemented by January 20, 2000, to prevent adverse economic impacts on the participants of other groundfish and crab fisheries that open on January 20, 2000. Without sideboard measures in place, AFA catcher vessels and catcher/processors could greatly increase their levels of participation in other groundfish and crab fisheries throughout Alaska due to the flexibility provided by cooperatives in the BSAI pollock fishery. Such a result could severely impact fishermen and communities throughout Alaska that are economically dependent on non-pollock groundfish and crab fisheries.

This emergency interim rule would be superseded by the final rule to implement Amendments 61/61/13/8 if approved by NMFS. The primary elements of this emergency interim rule are summarized here.

Recordkeeping and Reporting Requirements

To implement the provisions of the AFA, NMFS is revising existing procedures and establishing new procedures for inseason management of directed fisheries to monitor catch and bycatch taken by various AFA-qualified entities, including fishery cooperatives, and to manage catch limits by AFA-qualified vessels in other fisheries. These include:

Shoreside Processor Electronic Logbook Report

To implement the provisions of the AFA, NMFS must monitor daily pollock harvests and sideboard species harvests on a vessel-by-vessel basis in order to make timely management decisions on pollock closures and sideboard species closures. To collect this vessel-by-vessel delivery information, shoreside processors and stationary floating processors receiving deliveries of groundfish from AFA catcher vessels are required to submit information about those deliveries daily in electronic form.

Shoreside processor electronic logbook software to record and submit this information may be obtained free of charge from the Alaska Region, NMFS (see **ADDRESSES** or http://www.fakr.noaa.gov). The minimum hardware and operating system requirements for the NMFS electronic reporting shoreside logbook system are a personal computer (PC) with Pentium or equivalent processor, Windows 95, 98, or NT operating system (or equivalent), at least 16 megabytes of RAM (Windows 95) or 32 megabytes of RAM (Windows 95, NT), at least 75 megabytes of free hard disk storage, and telephone modem or internet connection.

As an alternative to the NMFS-provided shoreside processor electronic logbook software, processors may use privately developed software approved by NMFS that conforms to NMFS electronic logbook software specifications. These software specifications are available from the Alaska Region, NMFS, upon request.

The shoreside processor electronic logbook report is designed to provide NMFS with the detailed information needed to manage inshore fisheries under the AFA while reducing the recordkeeping and reporting burden on industry. Shoreside processors and stationary floating processors that are required to use the shoreside processor electronic logbook report are not required to maintain the paper daily cumulative production logbook (DCPL), submit weekly production reports (WPRs), and if the processor is processing CDQ fish, submit CDQ delivery reports. In addition, the processor is not required to submit quarterly DCPL logsheets to NMFS, although the processor is required to generate and retain printed output of the shoreside processor electronic logbook report at the processing plant for use by NMFS Enforcement and groundfish observers.

This emergency interim rule also allows shoreside processors and stationary floating processors that do not receive groundfish from AFA catcher vessels to voluntarily use NMFS-approved shoreside processor electronic logbook software in lieu of existing DCPLs, and WPRs.

Catcher Vessel Cooperative Pollock Catch Report

The designated representative or cooperative manager of each inshore catcher vessel cooperative is required to submit catch reports detailing each delivery of pollock harvested under the allocation made to that cooperative within 1 week of the date of delivery. This information is necessary so that NMFS may monitor cooperative fishing activity and enforce pollock allocations. Two options are available to cooperatives for submittal of the catch report: (1) an electronic data file in a NMFS-approved format, or (2) by FAX.

Changes to the Annual Specifications Process

Under this emergency interim rule, the procedures for allocating pollock TAC among industry sectors and apportioning each sector's TAC between seasons are revised to incorporate the changes contained in the AFA. Section 206 of the AFA sets out the allocation formulas for BSAI pollock, which are included in this emergency interim rule. Under this emergency interim rule, 10 percent of the pollock TAC specified for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea is allocated to the CDQ program. The remaining TAC for each subarea, after establishment of an incidental catch allowance for pollock harvested as incidental catch in other groundfish fisheries, is allocated 50 percent to AFA catcher vessels harvesting pollock for processing by AFA inshore processors; 40 percent to AFA catcher/processors and AFA catcher vessels harvesting pollock for processing by AFA catcher/processors, with not less than 8.5 percent of this allocation made available to AFA catcher vessels delivering to catcher/processors; and 10 percent to AFA catcher vessels harvesting pollock for processing by AFA motherships. Under this emergency interim rule, the inshore pollock TAC is further subdivided into two allocations; one allocation to vessels participating in inshore fishery cooperatives, and one allocation to vessels not participating in a cooperative fishery. The annual allocation to inshore cooperatives is

equal to the aggregate annual allocations made to each inshore cooperative formed under the provisions of this emergency interim rule. The allocation to vessels that are not in a cooperative fishery is equal to the remaining inshore allocation after subtraction of the allocation to fishery cooperatives.

Each sector's annual BS subarea allocation of pollock is further apportioned among fishing seasons. In a separate action, NMFS is implementing management measures to temporally and spatially disperse the BSAI pollock fishery to implement reasonable and prudent alternatives (RPAs) to protect endangered Steller sea lions.

Observer Coverage Requirements and Scales

This emergency interim rule changes observer coverage and scale requirements for AFA catcher/processors and AFA motherships, and changes observer coverage requirements for AFA inshore processors. However, no changes are made to observer coverage requirements for AFA catcher vessels. These changes are described here.

Unrestricted AFA Catcher/Processors and AFA Motherships

Subparagraph 211(b)(6)(A) of the AFA requires that unrestricted AFA catcher/processors have two observers on board at any time the vessel is fishing for groundfish in the BSAI. Under this emergency interim rule, this statutory requirement is set out in regulation and is extended to AFA motherships because AFA motherships receive unsorted pollock codends and operate in a similar manner to AFA catcher/processors, the only difference being that AFA motherships do not actually harvest the pollock themselves. Under this emergency interim rule, an unrestricted AFA catcher/processor or AFA mothership is required to have aboard two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. In addition, this emergency interim rule extends the CDQ program observer workload limits to AFA catcher/processor and AFA motherships. Consequently, more than two observers might be required to allow each haul brought on board the vessel to be sampled by an observer. This situation may occur for some AFA motherships, depending on how many deliveries they receive from catcher vessels in a day. Finally, at least one of the observers must be certified as a lead CDQ observer.

Observers are an increasingly important element of NMFS' monitoring program for AFA catcher/processor and AFA mothership sector pollock harvests. Prior to the AFA, NMFS monitored offshore pollock harvests using a blend of observer data and vessel WPRs. However, under the AFA with its statutory requirement that AFA catcher/processors carry two observers at all times and weigh their catch using NMFS-approved scales, NMFS is now relying only on observers and scale weights to provide inseason harvest data for the AFA catcher/processor sector and is no longer using vessel production data for quota management purposes. In addition, NMFS is reliant on observers to monitor catcher/processor groundfish sideboards as well as catcher vessel sideboards for catcher vessels delivering to catcher/processors and AFA motherships. Given this increased reliance on observers and scales, NMFS believes that the lead CDQ observer requirement is necessary to ensure that at least one of the observers aboard each AFA catcher/processor and AFA mothership has prior experience sampling on a trawl catcher/processor or mothership, is trained and experienced in the use of on-board scales, and is available to monitor the use and calibration of such scales. In addition, NMFS believes that the requirement for at least one lead CDQ observer is necessary to ensure that the compliance monitoring role of the observers aboard AFA catcher/processors can be successfully accomplished.

In order to monitor and enforce the newly imposed harvest limitations for unrestricted AFA catcher/processors and AFA motherships, observers with more experience and training must be aboard. NMFS-certified CDQ observers have that experience and training. CDQ observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by CDQ observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for unrestricted AFA catcher/processors have been reached. In consideration of the potential observer shortage that these new CDQ observer training requirements may cause for 2000, NMFS is phasing in the observer training requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors. NMFS believes that at least one observer aboard every unrestricted AFA catcher/processor and AFA mothership must be a lead CDQ observer, and is making this requirement effective beginning January 20, 2000. NMFS anticipates implementing separate rulemaking that would require that the second observer on AFA catcher/processors and AFA motherships be a CDQ observer beginning in 2001. The reason for this delay in implementation is to provide observer contractors adequate time to train and deploy these additional CDQ observers.

A detailed discussion on the justification for additional observer training and certification criteria for individual vessel monitoring programs was provided both in the preamble to the proposed rule (62 FR 43866, August 15, 1997) and in the preamble to the final rule (63 FR 30381, June 4, 1998) implementing the Multispecies CDQ program.

In addition, under this emergency interim rule, the CDQ catcher/processor scale requirements and observer sampling station requirements are extended to unrestricted AFA catcher/processors and AFA motherships at all times such vessels are fishing for groundfish in the BSAI or processing groundfish harvested in the BSAI. Subparagraph 210(b)(6)(B) of the AFA requires that unrestricted AFA catcher/processors weigh their catch on an on-board scale approved by NMFS while harvesting groundfish in the BSAI. This emergency interim rule sets out these AFA scale requirements in regulation and extends them to AFA motherships because AFA motherships receive and process unsorted groundfish codends in a manner similar to AFA catcher/processors and thus, generate the same monitoring demands as unrestricted AFA catcher/processors. As a result, scale requirements and observer sampling station requirements for CDQ and unrestricted AFA catcher/processors and AFA motherships are now identical under this emergency interim rule.

Restricted AFA Catcher/Processors

Under this emergency interim rule, vessels receiving restricted AFA catcher/processor permits under paragraph 208(e)(21) of the AFA are required to meet the observer coverage, scale, and sampling station requirements outlined above during any fishing trip in which the vessel engages in directed fishing for BSAI pollock or receives deliveries of pollock from AFA catcher vessels engaged in directed fishing for BSAI pollock. This

requirement is necessary because NMFS must monitor the 0.5 percent pollock harvest limit on restricted AFA catcher/processors and cannot adequately do so without scales and an observer present at all times. Because the AFA catcher/processor sideboard limits in other groundfish fisheries do not apply to restricted AFA catcher/processors, NMFS is not increasing the observer coverage requirements for restricted AFA catcher/processors when such vessels are engaged in directed fishing for groundfish other than pollock.

AFA Inshore Processors. Under this emergency interim rule, an AFA inshore processor is required to have a NMFS-certified observer for each consecutive 12-hour period in which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in directed fishing for BSAI pollock. An AFA inshore processor that takes delivery of or processes pollock during more than 12 consecutive hours in any calendar day is required to have two NMFS-certified observers available during that calendar day. Furthermore, under this emergency interim rule, observers working at AFA inshore processors may not be assigned to cover more than one processing plant during a calendar day. These new observer coverage requirements are necessary so that NMFS can adequately monitor cooperative pollock allocations at each AFA inshore processor. Prior to the AFA, the inshore pollock fishery was managed in the aggregate across the entire sector with NMFS issuing a single closure for the entire inshore sector upon the attainment of a seasonal allocation of pollock TAC. Under the inshore cooperative system set out in this emergency interim rule, each inshore processor and its affiliated cooperative will be operating on its own proprietary pollock allocation. Because NMFS will no longer manage the inshore sector in the aggregate, increased monitoring is required at each individual processor to ensure that cooperative allocations are not exceeded.

Due to potential shortages in CDQ observers during 2000, NMFS is proposing to phase in increased training and experience requirements for AFA inshore processor observers beginning in 2001. In subsequent rulemaking, NMFS intends to propose that all observers deployed at AFA inshore processors be required to be CDQ observers beginning January 1, 2001, to ensure that such observers are adequately trained in the use and monitoring of scales used to monitor pollock landings in AFA inshore processors. However, NMFS is delaying this requirement until 2001 to provide adequate opportunity for observer contractors to recruit and train sufficient numbers of CDQ observers for deployment in both AFA and CDQ fisheries.

AFA Catcher Vessels

This emergency interim rule makes no changes to existing observer coverage levels for AFA catcher vessels.

Catcher/Processor and Mothership Cooperative Restrictions

Subsection 210(a) of the AFA sets out public notice requirements for all BSAI pollock fishery cooperatives. To incorporate these requirements, this emergency interim rule stipulates that any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for pollock for harvest by the catcher/processor or mothership sectors, and any material modifications to any such contract, must be filed with the Council and with the Administrator, Alaska Region, NMFS (Regional Administrator) not less than 30 days prior to the start of fishing under the contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request.

In addition, the contracts of all catcher vessel cooperatives delivering to catcher/processors or AFA motherships must include at a minimum: (1) A list of parties to the contract, (2) a list of all vessels and processors that will harvest and process pollock harvested under the cooperative, (3) the amount or percentage of pollock allocated to each party to the contract, and (4) penalties to prevent member vessels from exceeding in the aggregate, a harvest of any other BSAI or GOA groundfish species or species group that is equal to the percentage of each sideboard species that NMFS has attributed to the non-exempt vessels in the cooperative in the calculation of the sideboard amount, unless an inter-cooperative agreement provides for a different distribution of sideboard harvests between AFA catcher vessels. This penalty requirement was recommended by the Council at the request of catcher vessel owners so that the catcher vessel fleet has a mechanism to prevent an uncontrolled catcher vessel race for fish for sideboard species.

In addition, any pollock fishery cooperative governed by this emergency interim rule must submit annual preliminary and final written reports on fishing activity to the Council for public distribution. The preliminary report covering activities through November 1 must be submitted by December 1 of each year and the final report must be submitted by January 31 of the following year. The preliminary and final written reports must contain, at a minimum: (1) The cooperative's allocated amounts of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis; (2) the cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis; (3) a description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and (4) a description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

Inshore Cooperative Restrictions

Under the AFA, a fundamental difference exists between the fishery cooperatives authorized to operate in the AFA catcher/processor and AFA mothership sectors, and the fishery cooperatives authorized to operate in the inshore sector. AFA catcher/processor and AFA mothership cooperatives operate at the sector level and do not require separate allocations of pollock from NMFS in order to operate. Inseason management of the AFA catcher/processor and AFA mothership sectors will continue to occur at the sector level regardless of the presence or absence of fishery cooperatives because the formation of cooperatives does not require NMFS to sub-allocate TAC.

However, the inshore catcher vessel cooperatives authorized by the AFA require an entirely different management structure. Subsection 210(b) of the AFA requires that NMFS make separate TAC allocations to inshore catcher vessel cooperatives that form around an AFA inshore processor and that meet certain restrictions. For this reason, inshore cooperatives require substantially greater regulatory and management infrastructure than AFA catcher/processor and AFA mothership sector cooperatives. This emergency interim rule implements the following inshore cooperative management measures under subsection 210(b) of the AFA.

Filing of Inshore Cooperative Contracts

Any inshore catcher vessel cooperative wishing to receive an allocation of pollock for an upcoming fishery year must apply for an AFA

inshore cooperative fishing permit as detailed in the previous emergency interim rule to implement AFA permit requirements (65 FR 380, January 5, 2000). Inshore cooperatives also must comply with the contract requirements for AFA catcher/processor and AFA mothership sector cooperatives outlined here. In addition to applying for an inshore cooperative fishing permit, all inshore sector cooperatives must file their contract with the Council and with the Regional Administrator as detailed above.

Inshore cooperatives wishing to receive an allocation of pollock have several additional contract requirements. An inshore cooperative contract eligible for a pollock allocation must be signed by the owners of at least 80 percent of the qualified catcher vessels. In addition, inshore cooperative contracts must specify that the cooperative will deliver at least 90 percent of the pollock harvested in the directed pollock fishery to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock.

Qualified Catcher Vessels

Paragraph 210(b)(3) of the AFA defines a qualified catcher vessel as follows: "[A] catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative * * * than to any other shoreside processor." This paragraph of the AFA requires that a vessel wishing to join an inshore cooperative must have delivered more pollock to the cooperative's designated inshore processor than to any other inshore processor during the year prior to the year in which the cooperative fishing permit will be in effect. Consequently, catcher vessels wishing to join cooperatives must have made at least one delivery of pollock during the year prior to the year in which the cooperative fishing permit will be in effect.

For the purpose of this emergency interim rule, a catcher vessel is a qualified catcher vessel if: (1) It delivered more pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; and (2) the owner(s) of the catcher vessel in question has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999, and is not subsequently disapproved.

These two additional measures to the qualified catcher vessel definition in the statute are necessary to implement the inshore cooperative program in this emergency interim rule. The first additional measure, that qualifying harvests must be in the BSAI directed pollock fishery is necessary to prevent a vessel's incidental bycatch of pollock in other fisheries from inadvertently affecting its cooperative qualification. Counting pollock bycatch could create the unintended effect of restricting the ability of catcher vessels to deliver non-pollock groundfish to other markets. Because pollock is a common bycatch species in the Pacific cod fishery and other groundfish fisheries, AFA catcher vessels fishing for Pacific cod may land significant amounts of pollock as incidental bycatch that will be counted against the pollock incidental catch allowance and not the vessel's cooperative quota. The AFA makes no restrictions on either the delivery or processing of non-pollock groundfish species in the BSAI. Consequently, AFA catcher vessels fishing for Pacific cod are free to deliver their Pacific cod and associated incidental catch of pollock to any processor, not just to one of the eight AFA processors that are authorized to receive pollock harvested in the BSAI directed pollock fishery.

If an AFA vessel's cooperative qualification is based on all catch of pollock and not just pollock harvested in the directed fishery, then an AFA catcher vessel fishing for Pacific cod and delivering to a processor other than its AFA pollock processor could inadvertently disqualify itself from its cooperative of choice due to incidental pollock harvests in other fisheries. In fact, because Pacific cod processors other than the eight AFA inshore pollock processors also operate in the BSAI, an active AFA catcher vessel delivering Pacific cod to a non-AFA processor could inadvertently find itself ineligible to join any inshore cooperative because the processor to which it delivered more pollock than any other processor may be a non-AFA processor, absent this clarification that only pollock harvests in the BSAI directed pollock fishery count towards qualifying landings.

The second additional measure, that a "qualified catcher vessel" is a vessel for which the owner(s) has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999, and is not subsequently disapproved, is necessary for timing reasons. NMFS will not have a final official list of eligible catcher vessels until all owners of potentially eligible vessels have submitted applications to NMFS that have been subsequently approved or denied. Consequently, it is impossible for a cooperative to know by the inshore pollock cooperative fishing permit application deadline if it is composed of at least 80 percent of the eligible catcher vessels. For this reason, and for the purpose of this definition of "qualified catcher vessel" this emergency interim rule considers a vessel qualified if it has submitted a completed application to the Regional Administrator by the December 31 deadline for inshore pollock cooperative fishing permit applications.

Under this emergency interim rule, a vessel that did not engage in directed fishing for BSAI pollock during a fishing year will be ineligible to join any inshore cooperative for the subsequent fishing year. In addition, a catcher vessel that is a member of one cooperative during a fishing year will be unable, under most circumstances, to join a different cooperative for the subsequent fishing year. To change cooperatives, a catcher vessel must qualify to fish for the new cooperative, which could require that the vessel spend a year fishing in the "open access" fishery, unless the catcher vessel is able to deliver more pollock harvested in the BSAI directed pollock fishery to the new cooperative's designated processor than to the designated processor of the vessel's current cooperative. Because cooperative contracts formed under the AFA may provide for the delivery of up to 10 percent of a cooperative's allocation to processors other than the cooperative's designated processor, a vessel could change cooperatives from 1 year to the next if the vessel made use of this 10-percent provision to deliver more pollock to the designated processor of the new cooperative than to the designated processor of the vessel's existing cooperative.

Inshore Cooperative TAC Allocations. Under this emergency interim rule, an inshore pollock cooperative that applies for and receives an AFA inshore cooperative fishing permit will receive a sub-allocation of the annual inshore pollock TAC allocation. Subsection 210(b) of the AFA establishes an explicit formula for allocating pollock TAC to inshore cooperatives based on the percentage of inshore pollock harvested by member vessels during 1995, 1996,

and 1997. However, the Council has recommended an alternative formula for allocating pollock TAC to inshore cooperatives that is contained in this emergency interim rule.

Paragraph 213(c)(3) of the AFA provides the Council with the authority to recommend for approval by the Secretary of Commerce (Secretary), an alternative formula for allocating BSAI pollock to inshore cooperatives. Paragraph 213(c)(3) states that "the Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act * * * that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph." After analysis and based on the recommendations of its Advisory Panel, the Council elected to recommend two changes to the inshore cooperative allocation formula set out in the AFA.

The first change recommended by the Council allows catcher vessels with inshore sector endorsements to receive inshore catch history credit for landings made to catcher/processors when the vessel made more than 499 mt of landings to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which specifies that: "Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel."

The Council chose the 499 mt threshold based on the recommendation of its Advisory Panel that vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in the EA/RIR, which indicated that 499 mt provided a good break point between vessels with significant history of delivering to catcher/processors and vessels that only had incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended that only deliveries to catcher/processors be considered for "compensation" and not deliveries made to the three motherships listed in subsection 208(d) of the AFA during the qualifying period, because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period will earn an endorsement to deliver pollock to AFA motherships under the AFA and therefore, has not "lost" any fishing privileges as a result of the AFA.

The second change recommended by the Council modifies the allocation formula so that the share of the BSAI pollock TAC that each catcher vessel brings into a cooperative would be based on average annual pollock landings in its best 2 out of 3 years from 1995 through 1997. These changes to the allocation formula were unanimously endorsed by industry representatives during public testimony at the June 1999 Council meeting and were seen as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to unavoidable circumstances such as vessel breakdowns or lack of markets.

Under this emergency interim rule, NMFS will use the allocation formula recommended by the Council to make annual allocations of pollock to each inshore cooperative for each subarea of the BSAI; the BS subarea and the AI subarea. These two subareas are treated as separate pollock stocks under the FMP and receive separate TACs during the annual specification process. Because the AI subarea is currently closed to directed fishing for pollock, cooperative allocations of AI subarea pollock will not be made under this emergency interim rule. Each cooperative will receive an annual allocation of BS subarea pollock only.

Inshore Cooperative Fishing Restrictions

This emergency interim rule imposes a variety of requirements and management standards on inshore fishery cooperatives. First, only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation. Second, all BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded. Third, each inshore pollock cooperative is responsible for reporting to NMFS its BSAI pollock harvest on a daily basis according to the recordkeeping and reporting requirements described above. Fourth, each inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock, and the owners and operators of all vessels listed on the cooperative fishing permit would be held jointly and severally liable for overages of the cooperative's annual allocation.

Inshore Cooperative Designated Representative

Each inshore catcher vessel cooperative is required to appoint a designated representative. The designated representative will act as the point of contact for all matters related to the cooperative's participation in the AFA fishery, and will be responsible for completing and submitting the catcher vessel cooperative pollock catch report. The owners of the member catcher vessels are jointly and severably responsible for compliance and insuring that the designated representative complies with the recordkeeping and reporting requirements contained in this emergency interim rule.

Inshore Cooperative Agent for Service of Process

Each inshore catcher vessel cooperative is required to appoint an agent to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent. If at any time the cooperative's appointed agent for service of process becomes unable to accept service, then the cooperative members are required to notify the Regional Administrator of a substitute appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

NMFS may, at its option, attempt to serve every member of the cooperative individually in addition to service on the cooperative's appointed agent. However, failure to achieve service on the individual member will not affect the validity of constructive notice if service is accomplished on the inshore pollock cooperative's appointed agent for service of process.

Inseason Management of Inshore Cooperative Fishing

Under this emergency interim rule, NMFS will manage the allocations to inshore cooperative and vessels not participating in a cooperative as two separate inshore fisheries. The various inshore cooperatives will be managed as a group for the purpose of making TAC apportionments by season and area and for the purpose of issuing directed

fishing closures. NMFS will continue to announce directed fishing closures for each inshore fishery when the Regional Administrator determines that the TAC allocated to that fishery for a particular season and area has been reached. Under this system, fishing by inshore cooperatives will be unaffected by fishing by inshore catcher vessels that are not participating in a cooperative. However, the aggregate harvests by all inshore cooperatives will determine the inshore cooperative directed fishing closures for each season and area.

Due to the complexities of implementing this management program within the short time frame required by the AFA, NMFS is not implementing a system under which each individual inshore cooperative would receive allocations of pollock subdivided by each management area and season. Under this emergency interim rule, each inshore cooperative is given the opportunity to harvest its entire annual allocation of BS subarea pollock, but will not receive a specific guarantee of harvest levels for any particular season or management area within the BS subarea. NMFS encourages cooperatives wishing to further rationalize their annual operations to work with each other to prevent the activities of one cooperative from preempting the harvest plans of another cooperative within a specific season or area.

Inshore catcher vessel cooperatives also are required to complete and submit annual preliminary and final reports of fishing activity to the Council. The submission deadlines and required content are the same as the report requirements for AFA catcher/processor and AFA mothership sector cooperatives as described earlier.

Catcher/Processor Groundfish Sideboards

The AFA establishes harvest restrictions or "sideboards" on the participation of unrestricted AFA catcher/processors in other BSAI groundfish fisheries and completely prohibits AFA catcher/processors fishing in the GOA. These harvest limits apply only to unrestricted AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and are not extended to restricted AFA catcher/processors that qualify to fish for pollock under paragraph 208(e)(21) of the AFA. The language establishing catcher/processor harvest limits is set out in paragraphs 211(b)(1) and (2) of the AFA as follows:

(b) Catcher/Processor Restrictions.—

(1) General.—The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) Bering Sea Fishing.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) Exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) Exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997; and

(C) Fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery—

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

For the 1999 fishing year, NMFS implemented these provisions by publishing the harvest limits in the 1999 BSAI harvest specifications and prohibiting unrestricted AFA catcher/processors from engaging in directed fishing for a groundfish species or species group when NMFS determined that the sideboard limit was likely to be met or exceeded.

At its June 1999 meeting, the Council recommended that catcher/processor harvest limits for BSAI groundfish other than Atka mackerel be based on the 1995 through 1997 retained catch of such groundfish species by the 20 unrestricted AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which would be based on 1997 retained catch only. The Council recommended that only 1997 catch history be used to determine Pacific cod harvest limits because 1997 was the first year in which the BSAI Pacific cod trawl gear allocation was split between catcher/processors and catcher vessels. Prior to 1997 the BSAI Pacific cod TAC was not allocated between catcher/processors and catcher vessels, meaning that pre-1997 Pacific cod TACs and harvest percentages by AFA catcher/processors are not directly comparable to present day Pacific cod allocations. The Council also recommended that only the years 1996 and 1997 be used to calculate Pacific ocean perch (POP) sideboard amounts because 1996 was the first year in which the POP TAC was divided between the BS subarea and AI subarea.

However, since the Council made this recommendation in June 1999, NMFS has received comments from the public suggesting that the public was not provided adequate notice or opportunity to comment on this recommendation prior to the Council's June, 1999, vote on this issue, and that NMFS would benefit from a more deliberative rulemaking process that allowed for public review and comment on the Council's recommended approach. Adequate opportunity for public review and comment is especially important given that the Council's June discussion and action on catcher/processor sideboards was based on an alterative not addressed in the draft analysis available to the public prior to Council action. For this reason, NMFS has decided to calculate catcher/processor groundfish sideboards amounts for 2000 under this emergency interim rule in the same manner those sideboards were calculated in 1999.

As a consequence, all catcher/processor harvest sideboards other than Atka mackerel will be based on the total catch of each groundfish species by the 20 unrestricted AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA when such vessels were engaged in groundfish fisheries other than pollock. In the future proposed rule to implement the AFA under Amendments 61/61/13/8, NMFS intends to incorporate the Council's recommendation to base these amounts on historical retained catch only, so that the public has opportunity to review and comment on these recommendations before they are approved or disapproved by NMFS as part of the FMP amendment review process.

Under this emergency interim rule, the Atka mackerel sideboard percentages laid out in subparagraph 211(b)(1)(C) of the AFA are carried forward unchanged. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the BS subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central

Aleutians annual TAC, and 20 percent of the Western Aleutians annual TAC.

The Council did not recommend any changes to the formula for establishing prohibited species catch (PSC) bycatch limits set out in subparagraph 211(b)(2)(B) of the AFA. However, the Council recommended that NMFS not implement catcher/processor sideboards for salmon and herring because extensive management measures are already in place to limit bycatch of those PSC species in the BSAI pollock fishery and incidental bycatch of salmon or herring is primarily a concern in the pollock fishery and not in the directed fisheries for other groundfish species.

Management of Catcher/Processor Sideboards

This emergency interim rule amends the BSAI interim groundfish harvest specifications to establish catcher/processor sideboard limits for groundfish and PSC species. These sideboard limits will be managed through directed fishing closures. Under the procedures established in this emergency interim rule, NMFS will evaluate each groundfish harvest limit specified according to the formula outlined previously and will authorize directed fishing by unrestricted AFA catcher/processors only for those BSAI groundfish species for which the harvest limit is large enough to support a directed fishery by unrestricted AFA catcher/processors. Groundfish species for which the catcher/processor harvest limit is too small to support a directed fishery will be closed to directed fishing by unrestricted AFA catcher/processors at the beginning of the fishing year. Using this approach, NMFS will assure that unrestricted AFA catcher/processors will not participate in other directed fisheries at levels that would exceed their level of participation from 1995 through 1997.

Catcher Vessel Sideboards

In addition to catcher/processor harvest restrictions, this emergency interim rule establishes catcher vessel harvest limits for BSAI crab, BSAI and GOA groundfish, and the Alaska scallop fishery. Paragraph 211(c)(1)(A) of the AFA states: "By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to * * * prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery." The Council met this requirement by taking final action on a comprehensive suite of catcher vessel sideboard measures at its June 1999 meeting and forwarding those recommendations to NMFS.

Because the BSAI king and Tanner crab fisheries and the Alaska scallop fishery are managed by the State under Federal oversight, the Council recommended that crab and scallop catcher vessel sideboards be implemented jointly through State and Federal actions. Under Amendment 4 to the scallop FMP, the Council has developed a license limitation program for the Alaska scallop fishery under which only one AFA catcher vessel would be eligible to receive a scallop license. Amendment 4 is currently under review by NMFS and, if approved, would take effect for the 2000 scallop season. In addition, under Amendment 8 to the FMP for the scallop fishery off Alaska, the Council has recommended that the State implement an AFA catcher vessel scallop sideboard limit equal to the percentage of the scallop guideline harvest level that was harvested by AFA catcher vessels in 1997. Therefore, NMFS has determined that additional scallop sideboard measures are not required in this emergency interim rule.

With respect to BSAI crab fisheries, NMFS is limiting participation by AFA catcher vessels through AFA catcher vessel permit endorsements. Only AFA catcher vessels with a demonstrated history in a particular crab fishery may continue participating in that fishery. A catcher vessel that lacks the appropriate crab sideboard endorsements is prohibited from retaining BSAI king and Tanner crab. These crab sideboard endorsements have been implemented under the emergency interim rule to implement AFA permit requirements (65 FR 380, January 5, 2000). In addition to entry restrictions, the Council also recommended that the State implement AFA catcher vessel harvest limits for the Bristol Bay red king crab and Bairdi Tanner crab fisheries under Amendment 14 to the FMP for the BSAI king and Tanner crab fisheries. With respect to Bristol Bay red king crab fishery, the Council recommended an AFA catcher vessel sideboard limit equal to the percentage of Bristol Bay red king crab harvested by AFA catcher vessels from 1991 through 1997, excluding 1994 and 1995 when the fishery was closed. For the Bairdi Tanner crab fishery, the Council recommended that AFA catcher vessels be excluded from the fishery until the Council's Bairdi rebuilding goal is reached, and then be limited to their historic catch percentage from 1995–1996. The State intends to implement these recommended crab sideboard limits through State regulations.

With respect to BSAI and GOA groundfish fisheries, the Council recommended that AFA catcher vessel sideboards be established based on landed catch and be managed through directed fishing closures in the same manner as AFA catcher/processor sideboards. A significant difference between catcher/processor and catcher vessel groundfish sideboards is that the Council recommended that certain AFA catcher vessels be exempt from some BSAI and GOA groundfish sideboards while no exemptions were recommended for unrestricted AFA catcher/processors. This emergency interim rule contains the Council's recommended BSAI and GOA groundfish and PSC sideboards for AFA catcher vessels, which are summarized here

Groundfish Sideboards in the BSAI

Under this emergency interim rule, groundfish sideboards will be established for all BSAI groundfish species using a formula based on the retained catch of AFA catcher vessels of each sideboard species from 1995 through 1997 (1997 only for BSAI Pacific cod) divided by the available TAC for that species over the same period. AFA catcher vessel sideboards will apply to all AFA catcher vessels regardless of sector and regardless of participation in a cooperative except that catcher vessels less than 125 ft (38.1 meters (m)) LOA whose annual BSAI pollock landings averaged less than 1700 mt from 1995 through 1997 (*i.e.,* landed less than 5,100 mt of pollock over the 3-year period) and that made 30 or more landings of BSAI Pacific cod during that time period are exempt from sideboard closures for BSAI Pacific cod and their historic catch is not counted towards the sideboard. In addition, AFA catcher vessels with mothership endorsements are exempt from Pacific cod sideboard closures after March 1 of each year.

In recommending these exemptions for BSAI Pacific cod, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted Pacific cod rather than pollock during the January through March BSAI Pacific cod fishery. The Council believed that restricting such vessels in the Pacific cod fishery would be inequitable given their disproportionate history of participation in the Pacific cod fishery and because their historic dedication to

Pacific cod fishing in the winter months accounts for their lower catch histories of BSAI pollock during the AFA qualifying years. With respect to the March 1 exemption for AFA catcher vessels with mothership endorsements, the Council made this recommendation for several reasons. In most years, the BSAI Pacific cod fishery is largely concluded by March 1 and fishing is often less productive in terms of catch per unit effort after that date. Given that as few as two non-AFA catcher vessels have fished for BSAI Pacific cod in recent years, the Council believed that some additional vessels might be needed after this date to completely harvest the TAC so that processors are not faced with a slow trickle of Pacific cod deliveries that are uneconomical to process. The Council recommended that AFA catcher vessels with mothership endorsements be allowed to re-enter the BSAI Pacific cod fishery after March 1 because the mothership sector received a relatively smaller pollock quota under the AFA and mothership catcher vessels are more likely to be finished with their pollock operations by that date.

Catcher vessel PSC sideboards for BSAI groundfish fisheries will be managed in the same manner as catcher/processor PSC sideboards, however the sideboard amounts would be calculated differently. Because individual vessel PSC catch histories are not available for AFA catcher vessels, PSC sideboard amounts will be pro-rated based on percentage of groundfish catch in each BSAI groundfish fishery.

Groundfish Sideboards in the GOA

Catcher vessel sideboards for GOA groundfish fisheries will be established and managed in the same manner as the catcher vessel sideboards in the BSAI groundfish fisheries except that catcher vessels less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings averaged less than 1700 mt from 1995 through 1997 (*i.e.*, landed less than 5,100 mt of pollock over the 3-year period) and that made 40 or more GOA groundfish landings over the same period are exempt from sideboard closures for GOA groundfish fisheries. The catch histories of the exempt vessels would not be counted towards the sideboard amounts for non-exempt vessels. As with the BSAI Pacific cod fishery, the Council noted that many AFA catcher vessels with relatively low catch histories in BSAI pollock have traditionally participated in GOA groundfish fisheries. Indeed, many of these vessels are based in Kodiak and other GOA ports and have historically concentrated their fishing effort in GOA fisheries. The Council believed that it would be inequitable to limit such vessels from participating in GOA fisheries when they have historically fished in the GOA and may have relatively low pollock catch histories in the BSAI during the AFA qualifying years due to their history of fishing primarily in the GOA.

The Council specifically limited both the BSAI Pacific cod and GOA groundfish sideboard exemptions to vessels with a significant history of participation in those fisheries and indicated that it believed such exemptions were consistent with the catcher vessel sideboard provisions at paragraph 211(c)(1) of the AFA, which require that:

> * * * By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—
>
> (A) Prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery
> * * *

The EA/RIR prepared for this action estimates the potential number of exempt vessels to be 10 catcher vessels in the BSAI and 20 catcher vessels in the GOA. The Council noted that because these exempt vessels traditionally have participated at high levels in the BSAI Pacific cod and GOA groundfish fisheries, such exemptions were not likely to cause the aggregate harvest levels of all AFA catcher vessels to exceed traditional levels in these fisheries. However, the Council noted that even if fishing in the BSAI Pacific cod and GOA groundfish fisheries by exempt vessels does cause the aggregate harvest of all AFA catcher vessels to exceed historic levels in other groundfish fisheries, the exemptions are warranted and within the authority of the Council to recommend under paragraph 213(c)(1) of the AFA, which states:

> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—
>
> (1) That supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery.

The Council believed that these two exemptions are indeed warranted to mitigate adverse economic effects as described above on owners of fewer than three vessels in the directed pollock fishery given that the exempt vessels are primarily owned by independent fishermen who own fewer than three vessels in the directed pollock fishery.

AFA Inshore Processor and AFA Mothership Crab Processing Sideboards

Subparagraph 211(c)(2)(A) of the AFA establishes limits on crab processing for AFA inshore processors and AFA motherships that receive pollock harvested by a fishery cooperative:

> Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/ processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

At its October 1999 meeting, the Council recommended that NMFS implement these crab processing sideboards through processing caps that would be managed in the aggregate through inseason crab processing closures for AFA entities. However, NMFS does not currently have a crab monitoring or management program in place that would provide crab processing data on a sufficiently timely basis to issue inseason crab processing closures to AFA entities. Under the BSAI king and Tanner crab FMP, the primary inseason management responsibility for crab fisheries is delegated to the State and NMFS is not involved with day-to-day management of BSAI crab fisheries. NMFS intends to work closely with the Alaska Department of Fish and Game to develop a management program that could implement the aggregate crab processing sideboards recommended by the Council. However, due to the complexities of developing such an inseason management program, NMFS believes that such a program will not likely be implemented prior to mid-2000 at the earliest.

To meet the January 2000 deadline for crab processing sideboards that is set out in subparagraph 211(c)(2)(A) of the AFA, NMFS is implementing a crab processing sideboard management program on an entity-by-entity basis in this emergency interim rule. Under the interim program set out in this emergency interim rule, all of the individuals, corporations, or other entities that directly or indirectly own or control a 10-percent or greater interest in the AFA mothership or inshore processor will be considered a single AFA inshore or mothership entity and will have crab processing caps issued to the entity based on its collective 1995 through 1997 crab processing activity. To implement this interim program, NMFS is requiring that the owners of an AFA mothership or AFA inshore processor wishing to process pollock harvested by a cooperative identify on their permit applications all individuals, corporations, or other entities that directly or indirectly own or control a 10-percent or greater interest in the AFA mothership and/or inshore processor (collectively the AFA inshore or mothership entity), and any other crab processors in which such entities have a 10-percent or greater interest (the associated AFA crab facilities). For each BSAI king and Tanner crab fishery, NMFS will calculate the average percentage of the total crab harvest processed by the associated AFA crab facilities and issue entity-wide crab processing caps for each crab fishery to each AFA inshore or mothership entity on its AFA mothership or AFA inshore processor permit. Each individual, corporation, or other entity comprising an AFA inshore or mothership entity will be responsible for insuring that the AFA crab processing facilities associated with the AFA inshore or mothership entity do not exceed the entity's caps. The individuals, corporations and other entities comprising the AFA inshore or mothership entity will be held jointly and severably liable for any overage.

These crab processing caps will apply to all crab processed by the associated AFA crab processing facilities including any "custom processing" activity. Custom processing refers to a contractual relationship in which one processing facility processes crab on behalf of another processor. Under this emergency interim rule, custom processing of crab is not prohibited, but any custom processing of crab done under contract with an AFA crab processor will be counted against the associated AFA inshore or mothership entity's crab processing cap.

Excessive Shares Harvesting Limit

Paragraph 210(e)(1) of the AFA establishes an excessive harvesting share cap of 17.5 percent of the directed pollock fishery as follows:

> Harvesting.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

To implement this provision of the AFA, this emergency interim rule requires that NMFS publish in the proposed, interim, and final specifications, the tonnage amount that equates to 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

Revised 2000 Interim Harvest Specifications

The 2000 interim harvest specifications for BSAI groundfish published on January 3, 2000 (65 FR 60), must be revised to incorporate the new inshore pollock allocations and sideboards implemented by this emergency interim rule. Therefore, in accordance with the provisions of this emergency interim rule, the following additions are made to the 2000 interim specifications for groundfish in the BSAI and GOA. These additional interim specifications are based on the Council's final 2000 TAC recommendations. If NMFS approves these recommendations, the interim pollock allocation and sideboards implemented by this emergency interim rule will be effective for the duration of this action and will not be superseded by the final 2000 harvest specifications. Final 2000 AFA pollock allocations and sideboard limits will be made in conjunction with the final rulemaking that will extend or supersede this emergency interim rule.

BS Subarea Inshore Pollock Allocations

Under § 679.20(a)(5)(i)(D) of this emergency interim rule, NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (*i.e.*, the open access sector). In addition, under § 679.22(a)(11)(iv) NMFS must establish harvest limits inside the Steller sea lion conservation area (SCA) and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A/B season. Accordingly, the 2000 BSAI interim specifications for groundfish (65 FR 60, January 3, 2000) are amended by Table 1, which subdivides the BS subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 1.

TABLE 1.—INTERIM A/B SEASON BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY. AMOUNTS ARE EXPRESSED IN METRIC TONS

	A/B season TAC	A season inside SCA [1]	B season inside SCA
Cooperative sector:			
Vessels > 99 ft	n/a	66,581	22,194
Vessels <99 ft	n/a	10,195	3,398
Total	182,801	76,776	25,592
Open access sector	11,968	[2] 5,027	1,676
Total inshore	194,769	81,803	27,268

[1] Steller sea lion conservation area established at § 679.22(a)(11)(iv).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(iv)(C)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock to vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

Under the emergency interim rule to establish AFA permit requirements (65 FR 380, January 5, 2000), NMFS set out procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives by the application deadline of December 31, 1999. Table 2 amends the 2000 BSAI interim specifications for groundfish (65 FR 60, January 3, 2000) by making BS subarea interim allocations to the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS for the 2000 fishing year. Final 2000 allocations of pollock TAC to each cooperative will be made in rulemaking that supersedes this emergency interim rule. Interim allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock under the emergency interim rule to implement Steller sea lion RPAs.

TABLE 2.—BERING SEA SUBAREA INTERIM [1] INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [2]	Percentage of inshore sector allocation (percent)	Interim annual co-op allocation
Akutan Catcher Vessel Association: ALDEBARAN, ARCTIC I, ARCTIC VI, ARCTURUS, BLUE FOX, COLUMBIA, DOMINATOR, DONA LILIANA, DONA MARTITA, DONA PAULITA, EXODUS, FLYING CLOUD, GOLDEN DAWN, MAJESTY, PACIFIC VIKING, VIKING EXPLORER, GOLDEN PISCES, LESLIE LEE, MARCY J, MISS BERDIE, PEGASUS, PEGGIE JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER	258,508	28.257	55,036
Arctic Enterprise Association: ARCTIC III, ARCTIC IV, OCEAN ENTERPRISE, PACIFIC ENTERPRISE	50,008	5.466	10,646
Northern Victor Fleet Cooperative: NORDIC FURY, PACIFIC FURY, GOLDRUSH, EXCALIBUR II, HALF MOON BAY, SUNSET BAY, COMMODORE, STORM PETREL, POSEIDON, ROYAL ATLANTIC	62,545	6.837	13,316
Peter Pan Fleet Cooperative: AMBER DAWN, AMERICAN BEAUTY, OCEANIC, OCEAN LEADER, WALTER N	6,584	0.720	1,402
Unalaska Cooperative: ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,714	11.665	22,719
UniSea Fleet Cooperative: ALSEA, AMERICAN EAGLE, ARCTIC WIND, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD	220,361	24.087	46,914
Westward Fleet Cooperative: A.J., ALASKAN COMMAND, ALYESKA, CAITLIN ANN, CHELSEA K, HICKORY WIND, FIERCE ALLEGIANCE, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD 1	153,917	16.824	32,768
Open access AFA vessels:	56,215	6.145	11,968
Total inshore A/B season allocation:	914,851	100	194,769

[1] Interim specifications of pollock are equal to the first seasonal allowance of pollock allocated to the inshore sector based on 2000 BS subarea TAC recommendations by the Council at its December 1999 meeting.
[2] Under 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Interim 2000 Unrestricted AFA Catcher/Processor Sideboards

Paragraph 679.63(a) of this emergency interim rule establishes a formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish and PSC in the BSAI. The basis for these sideboard amounts are described in the preceding preamble text. The 2000 interim catcher/processor sideboards are set out in Table 3 below.

All non-pollock groundfish that is harvested by unrestricted AFA catcher/processors, whether as targeted catch or bycatch, will be deducted from the harvest limits in Table 3. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the 2000 harvest limits for the listed catcher/processors.

TABLE 3.—2000 INTERIM UNRESTRICTED AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS

Target species	Area	1995–1997			2000 ITAC available to trawl C/Ps	200 C/P sideboard amount
		Total catch	Available TAC	Ratio		
Pacific cod trawl	BSAI	13,547	51,450	0.263	41,953	11,034
Sablefish trawl	BS	8	1,736	0.005	624	3
	AI	1	1,135	0.001	516	1
Atka mackerel	Western AI	n/a	n/a	0.200	27,472	2,747
A season [1]	CH limit [2]					1,566
	Central AI	n/a	n/a	0.115	22,847	1,314
	CH limit					880
B season	CH limit					1,566
	Central AI	n/a	n/a	0.115	22,847	1,314
	CH limit					880

TABLE 3.—2000 INTERIM UNRESTRICTED AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS—Continued

Target species	Area	1995–1997			2000 ITAC available to trawl C/Ps	200 C/P sideboard amount
		Total catch	Available TAC	Ratio		
Yellowfin sole	BSAI	123,003	527,000	0.233	104,773	24,412
Rock sole	BSAI	14,753	202,107	0.073	114,546	8,362
Greenland turbot	BSAI	168	16,911	0.010	5,764	58
	AI	31	6,839	0.005	2,839	14
Arrowtooth flounder	BSAI	788	36,873	0.021	111,350	2,338
Flathead sole	BSAI	3,030	87,975	0.034	44,755	1,522
Other flatfish	BSAI	12,145	92,428	0.131	71,242	9,333
Pacific ocean perch	BS	58	5,760	0.010	2,210	22
	Western AI	356	12,440	0.029	5,245	152
	Central AI	95	6,195	0.015	3,247	49
	Eastern AI	112	6,265	0.018	2,886	52
Other red rockfish	BS	75	3,034	0.025	165	4
Sharpchin/northern	AI	1,034	13,254	0.078	4,764	372
Shortraker/rougheye	AI	88	2,827	0.024	573	14
Other rockfish	BS	39	1,026	0.038	314	12
	AI	95	1,924	0.049	583	29
Squid	BSAI	7	3,670	0.002	1,675	3
Other species	BSAI	3,551	65,925	0.054	26,656	1,439

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to harvesting no more than 20 and 11.5 percent of the available TAC in the Western and Central AI subareas respectively. Unrestricted AFA catcher/processors are prohibited from harvesting Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea (paragraph 211(b)(2)(C)).

[2] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (Table 1, Table 2, and Figure 4 of 50 CFR 226). In 2000, the percentage of TAC available for fishing inside critical habitat area is 57 percent in the Western AI and 67 percent in the Central AI. When these critical habitat allowances are reached, critical habitat areas will be closed to trawling until NMFS closes Atka mackerel to directed fishing within the same district.

Paragraph 679.63(a)(2) of this emergency interim rule establishes a formula for PSC sideboards for unrestricted AFA catcher/processors. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995, through 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 4. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, which was then used to determine the prohibited species harvest limits for unrestricted AFA catcher/processors in the 2000 non-pollock groundfish fisheries.

PSC that is caught by unrestricted AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 3 shall accrue against the 2000 PSC limits for the listed catcher/processors. Paragraph 679.21(e)(3)(v) of this emergency interim rule provides authority to close directed fishing for non-pollock groundfish for unrestricted AFA catcher/processors once a 2000 PSC limitation listed in Table 5 is reached.

Crab or halibut PSC that is caught by unrestricted AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under § 679.21(e).

TABLE 4.—2000 INTERIM UNRESTRICTED AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD AMOUNTS

PSC species	1995–1997			2000 PSC available to trawl vessels	2000 C/P limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	3,400	286 mt.
Red king crab	3,098	473,750	0.007	89,725	628 crab.
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634 crab.
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	767,750	107,485 crab.
Zone 2	406,860	8,100,000	0.050	2,331,000	116,550 crab.

Interim 2000 AFA Catcher Vessel Sideboards

Paragraph 679.63(b) of this emergency interim rule establishes a formula for setting AFA catcher vessel groundfish and PSC sideboard amounts for the BSAI and GOA. The bases for these sideboard amounts are described in the preceding preamble text. The 2000 interim AFA catcher vessel sideboards amounts are shown in Tables 5 and 6.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits listed in Tables 5 and 6.

TABLE 5.—INTERIM 2000 BSAI AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 Initial TAC	2000 catcher vessel sideboard
Pacific cod	BSAI jig	0.0000	3,571	0

TABLE 5.—INTERIM 2000 BSAI AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS—Continued

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 Initial TAC	2000 catcher vessel sideboard
	Fixed gear:			
	Jan 1–Apr 30	0.0006	65,000	39
	May 1–Aug 31	0.0006	0	0
	Sept 1–Dec 31	0.0006	26,048	16
	Trawl gear:			
	catcher vessel	0.7291	41,953	30,588
	catcher/processor	0.0000	41,953	0
Sablefish	BS trawl gear	0.0006	624	0
	AI trawl gear	0.0608	515	31
Atka mackerel	*Eastern AI/BS*			
	Jig gear	0.0031	152	0
	Other gear			
	Jan 1–Apr 15	0.0031	7,509	23
	Sept 1–Nov 1	0.0031	7,509	23
	Central AI			
	Jan–Apr 15	0.0001	11,424	1
	Inside CH	0.0001	7,654	1
	Sept 1–Nov 1	0.0001	11,424	1
	Inside CH	0.0001	7,654	1
	Western AI			
	Jan–Apr 15	0.0000	13,736	0
	Inside CH	0.0000	7,829	0
	Sept 1–Nov 1	0.0000	13,726	0
	Inside CH	0.0000	7,829	0
Yellowfin sole	BSAI	0.0712	104,773	7,460
Rock sole	BSAI	0.0255	114,546	2,921
Greenland Turbot	BS	0.0405	5,764	233
	AI	0.0021	2,839	
Arrowtooth flounder	BSAI	0.0583	111,350	6,492
Other flatfish	BSAI	0.0558	71,242	3,975
POP	BS	0.1018	2,210	225
	Eastern AI	0.0048	2,886	14
	Central AI	0.0011	3,247	4
	Western AI	0.0000	5,245	0
Other red rockfish	BS	0.0280	165	5
Sharpchin/northern	AI	0.0015	4,764	7
Shortraker/rougheye	AI	0.0011	819	1
Other rockfish	BS	0.0379	314	12
	AI	0.0031	583	2
Squid	BSAI	0.3885	1,675	651
Other species	BSAI	0.0283	26,656	754

TABLE 6.—INTERIM 2000 GOA AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 TAC	2000 catcher vessel sideboard
Pollock [1]	*A Season (W/C areas only):*			
	Shelikof Strait	0.1672	14,366	2,402
	Shumagin (610)	0.6238	5,465	3,409
	Chirikof (620) (outside Shelikof)	0.1262	3,352	410
	Kodiak (630) (outside Shelikof)	0.1984	4,278	849
	B Season (W/C areas only):			
	Shelikof Strait	0.1672	7,183	1,201
	Shumagin (610)	0.6238	2,732	1,704
	Chirikof (620) (outside Shelikof)	0.1262	1,626	205
	Kodiak (630) (outside Shelikof)	0.1984	2,139	424
	C Season (W/C areas only):			
	Shumagin (610)	0.6238	11,506	7,177
	Chirikof (620)	0.1262	6,847	864
	Kodiak (630)	0.1984	9,008	1,787
	D Season (W/C areas only):			
	Shumagin (610)	0.6238	9,588	5,981
	Chirikof (620)	0.1262	5,706	720
	Kodiak (630)	0.1984	7,506	1,489
	Annual: E. GOA	0.3642	8,800	3,205

TABLE 6.—INTERIM 2000 GOA AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS—Continued

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 TAC	2000 catcher vessel sideboard
Pacific cod[2]	W inshore	0.1310	14,850	1,945
	offshore	0.1026	1,650	169
	C inshore	0.0542	24,538	1,330
	offshore	0.0721	2,726	197
	E inshore	0.0000	2,887	0
	offshore	0.0078	321	3
Flatfish deep-water	W	0.0000	280	0
	C	0.0620	2,710	168
	E	0.0021	2,310	5
Rex sole	W	0.0043	1,230	5
	C	0.0117	5,660	66
	E	0.0026	2,550	7
Flathead sole	W	0.0129	2,000	26
	C	0.0097	5,000	49
	E	0.0008	2,060	2
Flatfish shallow-water	W	0.0260	4,500	117
	C	0.0420	12,950	544
	E	0.0106	1,950	21
Arrowtooth flounder	W	0.0047	5,000	24
	C	0.0206	25,000	515
	E	0.0016	5,000	8
Sablefish	W trawl gear	0.0023	368	1
	C trawl gear	0.0384	1,146	44
	E trawl gear	0.0236	288	7
Pacific Ocean perch	W	0.0051	1,240	6
	C	0.0692	9,240	639
	E	0.0225	2,540	57
Shortraker/Rougheye	W	0.0000	210	0
	C	0.0145	930	13
	E	0.0105	590	6
Other rockfish	W	0.0000	20	0
	C	0.0410	740	3
	E	0.0000	4,140	0
Northern rockfish	W	0.0005	630	0
	C	0.0307	4,490	138
Pelagic shelf rockfish	W	0.0004	550	0
	C	0.0000	4,480	0
	E	0.0066	1,350	9
Demersal shelf rockfish.	SEO	0.0000	340	0
Thornyhead	Gulfwide	0.0118	2,360	28
Atka mackerel	Gulfwide	0.0443	600	27
Other species	Gulfwide	0.0067	14,215	95

[1] Pollock sideboard limits are based on pollock harvest restrictions implemented under the emergency interim rule published concurrently with this action that implements Steller sea lion RPA measures for the BSAI and GOA pollock fisheries.
[2] Sideboard harvest limits for Pacific cod are based on the initial TAC.

Paragraph 679.63(b) of this emergency interim rule establishes a formula for PSC sideboards for AFA catcher vessels. The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established is a percentage of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are listed in Tables 7 and 8.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Tables 5 or 6 will accrue against the 2000 PSC limits for the AFA catcher vessels. Paragraphs 679.21(d)(8) and (e)(3)(v) of this emergency interim rule provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a 2000 PSC limitation listed in Table 7 for the GOA or Table 8 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 7.—INTERIM 2000 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS FOR THE GOA

PSC species	Target fishery and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2000 PSC Limit	2000 AFA catcher vessel PSC sideboard
Halibut (mortality in mt).	Trawl 1st seasonal allowance:			
	Shallow water targets	0.3400	500	170
	Deep water targets	0.0700	100	7
	Trawl 2nd seasonal allowance:			
	Shallow water targets	0.3400	100	34
	Deep water targets	0.0700	300	21
	Trawl 3rd seasonal allowance:			
	Shallow water targets	0.3400	200	68
	Deep water targets	0.0700	400	28
	Trawl 4th seasonal allowance:			
	All targets	0.2050	400	82

TABLE 8—INTERIM 2000 AFA CATCHER VESSEL (CV) PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS [1] FOR THE BSAI

PSC species	Target fishery category [2] and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2000 PSC Limit	2000 AFA catcher vessel PSC sideboard
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod fixed	0.0022	748	2
	Yellowfin sole:			
	Jan. 20–Mar. 31	0.1144	262	30
	Apr. 1–May 20	0.1144	195	22
	May 21–July 3	0.1144	49	6
	July 4–Dec. 31	0.1144	380	43
	Rock sole/Flathead sole/Oth. flat:			
	Jan. 20–Mar. 31	0.2841	448	127
	Apr. 1–July 3	0.2841	163	46
	July 4–Dec. 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish	0.0245	70	2
	Pollock/Atka mackerel/Other sp.	0.0227	232	5
Red King Crab	Pacific cod	0.6183	11,655	7,207
Zone 1	Yellowfin sole	0.1144	11,655	1,333
	Rock sole/Flathead sole/Oth. flat	0.2841	42,090	11,958
	Pollock/Atka mackerel/Other sp.	0.0227	1,711	39
C. opilio	Pacific cod	0.6183	123,530	76,383
COBLZ [3,4]	Yellowfin sole	0.1144	2,876,578	329,067
	Rock sole/Flathead sole/Oth. flat	0.2841	869,934	247,154
	Pollock/Atka mackerel/Other sp.	0.0227	71,622	1,626
	Rockfish [5]	0.0245	41,043	1,006
	Turbot/Arrowtooth/Sablefish	0.2327	41,043	9,552
C. bairdi	Pacific cod	0.6183	158,547	98,035
Zone 1	Yellowfin sole	0.1144	288,750	33,032
	Rock sole/Flathead sole/Oth. flat	0.2841	309,326	87,882
	Pollock/Atka mackerel/Other sp.	0.0227	14,818	336
C. bairdi	Pacific cod	0.6183	279,041	172,540
Zone 2	Yellowfin sole	0.1144	1,514,683	173,272
	Rock sole/Flathead sole/Oth. flat	0.2841	504,894	143,444
	Pollock/Atka mackerel/Other sp.	0227	25,641	582

TABLE 8—INTERIM 2000 AFA CATCHER VESSEL (CV) PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS [1] FOR THE BSAI—Continued

	PSC species	Target fishery category [2] and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2000 PSC Limit	2000 AFA catcher vessel PSC sideboard
		Rockfish	0.0245	10,024	246

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21 (e)(7)(iv)(B).
[4] The Council at its December 1999 meeting limited red king crab for trawl fisheries within the RKCSS to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).
[5] The Council at its December 1999 meeting apportioned the rockfish PSC amounts from July 4–December 31, to prevent fishing for rockfish before July 4, 2000.

2000 Sideboard Directed Fishing Closures

Catcher/Processor Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor sideboard amounts listed in Table 3 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2000 fishing year. In accordance with § 679.20(d)(1)(iv) of this emergency interim rule, the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by unrestricted AFA catcher/processors for the species in the specified areas set out in Table 9.

TABLE 9.—AFA UNRESTRICTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES.[1]

[These Closures Take Effect 1200 Hrs A.L.T., January 20, 2000 and Remain in Effect Through 2400 Hrs, A.L.T., December 31, 2000.]

Species	Area	Gear types
Sablefish trawl	BSAI	All.
Greenland turbot	BSAI	All.
Arrowtooth flounder.	BSAI	All.
Flathead sole	BSAI	All.
Pacific ocean perch.	BSAI	All.
Other red rockfish	BS	All.
Sharpchin/Northern rockfish.	AI	All.
Shortraker/ Rougheye rockfish.	AI	All.
Other rockfish	BSAI	All.
Squid	BSAI	All.
Other species	BSAI	All.

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

AFA Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher vessel sideboard amounts listed in Table 5 and 6 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2000 fishing year. In accordance with § 679.20(d)(1)(iv) of this emergency interim rule, the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 10.

TABLE 10.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

[These Closures Take Effect 12 Noon A.L.T., January 20, 2000 Except for Pollock in Area 610 and in the Shelikof Strait Conservation Zone Which Closes 12 Noon A.L.T., January 21, 2000. These Closures will Remain in Effect Through 2400 Hrs, A.L.T., December 31, 2000.]

Species	Area	Gear
Pacific cod	BSAI	Fixed, jig.
Sablefish	BSAI	Trawl.
Atka mackerel	BSAI	All.
Greenland Turbot	BSAI	All.
Arrowtooth flounder.	BSAI	All.
Pacific ocean perch.	BSAI	All.
Other red rockfish	BSAI	All.
Sharpchin/northern rockfish.	AI	All.
Shortraker/ rougheye rockfish.	AI	All.
Other rockfish	BSAI	All.
Squid	BSAI	All.
Other species	BSAI	All.
Pollock	[3]	All.
Pollock [2]	[4]	All.
Pacific cod	GOA	All.
Deep water flatfish.	GOA	All.
Flathead sole	GOA	All.
Shallow water flatfish.	GOA	All.
Arrowtooth flounder.	GOA	All.
Sablefish	GOA	Trawl.
Pacific ocean perch.	GOA	All.

TABLE 10.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]—Continued

[These Closures Take Effect 12 Noon A.L.T., January 20, 2000 Except for Pollock in Area 610 and in the Shelikof Strait Conservation Zone Which Closes 12 Noon A.L.T., January 21, 2000. These Closures will Remain in Effect Through 2400 Hrs, A.L.T., December 31, 2000.]

Species	Area	Gear
Shortraker/ rougheye rockfish.	GOA	All.
Other rockfish	GOA	All.
Northern rockfish	GOA	All.
Demersal shelf rockfish.	GOA	All.
Thornyhead rockfish.	GOA	All.
Other species	GOA	All.

[1] Maximum retainable percentages may be found in Tables 10 and 11 to 50 CFR part 679.
[2] Closures take effect 12 noon A.l.t., January 21, 2000.
[3] 620, 630 outside Shelikof Strait
[4] 610, Shelikof Strait

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act, AFA, and other applicable laws.

Pursuant to the National Environmental Policy Act an EA/RIR was developed for this action. It was determined that this action would not have a significant impact on the human environment. The EA/RIR may be obtained in hard copy from the Alaska Regional Office (see **ADDRESSES**) or via

the internet at www.fakr.noaa.gov. NMFS is specifically requesting comments on the EA/RIR. NMFS will respond to those comments in the proposed rule to implement Amendments 61/61/13/8.

This emergency interim rule has been determined to be significant for the purposes of Executive Order 12866.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such provisions would be contrary to the public interest. This emergency action is necessary to meet the AFA requirement to provide inshore pollock cooperatives with allocations of pollock for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that became effective January 20, 2000, and published January 25, 2000. As such, if this rule is not made effective on January 20, 2000, or soon thereafter, the inshore sector of the BSAI pollock industry will be denied the opportunity to fish under cooperatives during the 2000 fishing year. Therefore, this sector of the industry would lose an economically valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures. Likewise, pursuant to authority set forth at 5 U.S.C. 553(d)(3), the need to ensure that this rule is in place as soon as possible because the pollock fishing season began on January 20, 2000, constitutes good cause to waive the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d).

Because rule prior notice and opportunity for public comment are not required for this emergency interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inappropriate.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These regulations have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows: For a manager to complete the shoreside processor electronic logbook and print reports is 30 minutes; for a manager to electronically submit the shoreside processor electronic logbook report is 5 minutes; for an operator to complete the at-sea scale inspection request is 2 minutes; for an operator to retain the at-sea scale inspection request is 1 minute; for an operator to complete the at-sea scale test report is 45 minutes; for an operator to print the record of haul weight is 3 minutes; for an operator to retain a scale audit trail print-out is 3 minutes; for an operator to complete the observer sampling station inspection request is 2 minutes; for a cooperative representative to complete a catcher vessel cooperative pollock catch report is 5 minutes; for a cooperative representative to submit a copy of the cooperative contract is 5 minutes; for a cooperative representative to complete an annual written preliminary report from each AFA cooperative is 8 hours; and for a cooperative representative to complete a annual written report from each AFA cooperative is 8 hours. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought: Regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and the clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques, or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language when communicating with the public, through regulations or otherwise. Therefore, NMFS seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 21, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, definitions of "Appointed agent for service of process," and "Designated cooperative representative" are added in alphabetical order, and a new paragraph (4) is added to the existing definition of "Directed fishing" to read as follows:

§ 679.2 Definitions.

* * * * *

Appointed agent for service of process (applicable through July 20, 2000) means an agent appointed by the members of an inshore catcher vessel cooperative to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent. If at any time the cooperative's appointed agent for service of process becomes unable to accept service, then the cooperative members are required to notify the Regional Administrator of a substitute appointed agent.

* * * * *

Designated cooperative representative (applicable through July 20, 2000) means an individual who is designated by the members of an inshore pollock cooperative to fulfill requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports.

* * * * *

Directed fishing means * * *

(4) (applicable through July 20, 2000) With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

* * * * *

3. In § 679.5, paragraphs (a)(4)(iv), (f)(3), (f)(4), (i)(1)(iii), and (o) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(4) * * *

(iv) *Shoreside processor electronic logbook report* (applicable through July 20, 2000). The manager of a shoreside processor or stationary floating processor receiving groundfish from AFA catcher vessels must use NMFS-approved software to report catcher vessel deliveries to NMFS as required under this section, and maintain the shoreside processor electronic logbook report describe at paragraph (f)(3), and printed reports required under this section to record the information described at paragraph (f)(4) of this section. The owner of a shoreside processor or stationary floating processor is responsible for compliance and must ensure that the operator, manager, or representative complies with the requirements of this paragraph described at paragraph (f)(3).

* * * * *

(f) *Shoreside processor DCPL.* * * *

(3) *Shoreside processor electronic logbook report* (applicable through July 20, 2000).

(i) *Requirement.* The manager of a shoreside processor or stationary floating processor that receives deliveries of groundfish from one or more AFA catcher vessels must record in and submit a shoreside processor electronic logbook report for each catcher vessel delivery and must print and retain reports required under this section for the duration of the fishing year.

(ii) *Applicability.* (A) Processors that use the shoreside processor electronic logbook to record all deliveries and that receive from NMFS an electronic return receipt for each delivery report are exempt from the requirement to maintain shoreside processor DCPLs as described at paragraph (f)(1) and (2) of this section and are exempt from the requirement to submit quarterly DCPL logsheets to NMFS Enforcement as described at paragraph (a)(14)(iii)(A) of this section.

(B) Processors that submit the shoreside processor electronic logbook report and that receive from NMFS an electronic return receipt for each delivery report are exempt from the requirement to maintain and submit WPRs to the Regional Administrator as described at paragraph (i) of this section.

(C) Processors that submit the shoreside processor electronic logbook report, receive from NMFS a return receipt for each delivery report, and that are receiving deliveries of fish under a CDQ program are exempt from the requirement to submit CDQ delivery reports to the Regional Administrator as described at paragraph (n)(1) of this section.

(iii) *Time limit and submittal.* (A) The shoreside processor electronic logbook report must be submitted daily to NMFS as an electronic file. A dated return-receipt will be generated and sent by NMFS to the processor confirming receipt and acceptance of the report. Processors must retain the return receipt as proof of report submission. If a processor does not receive a return receipt from NMFS, the processor must contact NMFS within 24 hours for further instruction on submission of electronic logbook reports.

(B) Information entered daily and described at § 679.5(f)(3)(iv)(B) must be entered each day on the day they occur.

(C) Information for each delivery described at § 679.5(f)(3)(iv)(C) must be submitted to NMFS by noon of the following day for each delivery of groundfish.

(iv) *Information required.* The manager must enter the following information into the shoreside processor electronic logbook:

(A) *Information entered once (at software installation) or whenever it changes:*

(*1*) Shoreside processor name, ADF&G processor code, Federal processor permit number, and processor e-mail address;

(*2*) State port code;

(*3*) Name, telephone and FAX numbers of representative.

(B) *Information entered daily:*

(*1*) Indicate if no deliveries or no production;

(*2*) Number of observers on site;

(*3*) Whether harvested in BSAI or GOA;

(*4*) Product by species code, product code, and whether primary, ancillary, or reprocessed/rehandled;

(*5*) Product weight (in lb or mt).

(C) *Information entered for each delivery:*

(*1*) Date fishing began and delivery date;

(*2*) Vessel name (optional) and ADF&G number;

(*3*) Whether delivery is from a buying station;

(*4*) If received from a buying station:

(*i*) Type: vessel, vehicle, or other.

(*ii*) Name of buying station and date received by buying station.

(*iii*) If a vessel, ADF&G number.

(*iv*) If a vehicle, license plate number.

(*v*) If other, description;

(*5*) Whether a discard DFL was received from catcher vessel; if discard DFL not received, reason given;

(*6*) ADF&G fish ticket number of delivery;

(*7*) Management program name and identifying number (whether CDQ, research program, experimental fishery, IFQ, or AFA coop);

(*8*) Gear type of harvester;

(*9*) Landed species by species code, product code, and weight (in pounds or mt) for each species of each delivery;

(*10*) Discard or disposition species by species code, product code, and weight (in pounds or mt) of groundfish or PSC herring;

(*11*) Discard or disposition species by species code, product code, and count (in numbers of animals) of PSC halibut, salmon, or crab;

(*12*) If a CDQ delivery, discard or disposition species by species code, product code, weight (in pounds or mt) and count of PSQ halibut;

(*13*) ADF&G statistical area(s) where fishing occurred; and estimated percentage of total delivered weight corresponding to each area.

(4) *Shoreside processor electronic logbook printed reports.*

(i) The manager must output at the processing plant daily reports of the shoreside processor electronic logbook in two formats generated by the required software onto paper consisting of a Shoreside Logbook Daily Production Report and a Delivery Worksheet. The processor must maintain copies of both of these printouts throughout the fishing year and must make them available to observers, NMFS personnel, and authorized officers upon request.

(ii) *Information required*—(A) *Delivery worksheet.* Name of processor; ADF&G fish ticket number; management program name (whether CDQ, research program, experimental fishery, IFQ, or cooperative) and identifying number; catcher vessel name (optional) and ADF&G vessel number; date fishing began; delivery date; gear type by harvester; landed species by species code and product code and weight (in lb) for each species of each delivery; ADF&G statistical area and percentage of total delivered weight in each area, Federal reporting area; discard or disposition by species code and product code; weight of each discard or disposition species (in lb), number of each discard or disposition species (in lb) (if groundfish or herring); number of each species discard or disposition species if PSC halibut, salmon or crab.

(B) *Shoreside logbook daily production.* Processor name; Federal processor number; ADF&G processor code; date; number of observers on site;

indicate if no production and/or no deliveries; last sent date; last modified date; product by species code and product code whether primary, ancillary, or reprocessed/rehandled; and product weight in lb.

* * * * *

(i) *Weekly production report (WPR).* * * *

(1) * * *

(iii) (applicable through July 20, 2000) If a shoreside processor or stationary floating processor and if using software approved by the Regional Administrator as described in § 679.5(f)(3), the shoreside processor or stationary floating processor is exempt from the requirements to submit a WPR.

* * * * *

(o) *Catcher vessel cooperative pollock catch report* (applicable through July 20, 2000).

(1) *Applicability.* The designated representative of each AFA inshore processor catcher vessel cooperative must submit to the Regional Administrator a catcher vessel cooperative pollock catch report detailing each delivery of pollock harvested under the allocation made to that cooperative. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with the applicable recordkeeping and reporting requirements of this section.

(2) *Time limits and submittal.* (i) The cooperative pollock catch report must be submitted by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By fax.

(ii) The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours, A.l.t. 1 week after the date of completion of delivery.

(3) *Information required.* The cooperative pollock catch report must contain the following information: Cooperative account number; catcher vessel ADF&G number; inshore processor Federal processor permit number; delivery date; amount of pollock (in lb) delivered plus weight of at-sea pollock discards; ADF&G fish ticket number.

* * * * *

4. In § 679.7, a new paragraph (k) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) *Prohibitions specific to the AFA.* It is unlawful for any person to do any of the following:

(1) *Catcher/processors.*

(i) *Permit requirement.* Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA.* Use an unrestricted AFA catcher/processor to fish for any species of fish in the GOA.

(iii) *Processing BSAI crab.* Use an unrestricted AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish.* Use an unrestricted AFA catcher/processor to process any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure.* Use an unrestricted AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Unrestricted AFA catcher/processors.* Use an unrestricted AFA catcher processor to process any groundfish that was not weighed on a NMFS-certified scale.

(B) *Restricted AFA catcher processors.* Use a restricted AFA catcher processor to process any pollock harvested in the BSAI directed pollock fishery that was not weighed on a NMFS-certified scale.

(2) *Motherships.*

(i) *Permit requirement.* Use a mothership to process pollock harvested by an AFA catcher vessel with an inshore or mothership sector endorsement in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the vessel.

(ii) *Cooperative processing endorsement.* Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under § 679.60 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing requirement.* Use an AFA mothership to process groundfish harvested in the BSAI or GOA that was not weighed on a NMFS-certified scale.

(3) *Shoreside processors and stationary floating processors.*

(i) *Permit requirement.* Use a shoreside processor or stationary floating processor to process groundfish harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or vessel.

(ii) *Cooperative processing endorsement.* Use a shoreside processor or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under § 679.61 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors.* Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one year.

(iv) *Single geographic location requirement.* Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing requirement.* Use an AFA inshore processor to process groundfish harvested in the BSAI or GOA that was not weighed on a scale certified by the State of Alaska.

(4) *Catcher vessels*—(i) Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv), § 679.21(d)(8) or § 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(5) *AFA inshore fishery cooperatives*—(i) *Quota overages.* Use an AFA catcher vessel listed on an AFA

inshore cooperative fishing permit to harvest non-CDQ pollock in excess of the cooperative's annual allocation of pollock specified under § 679.61.

(ii) *Liability.* An inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC. The owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. The owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violation of these regulations committed by a member vessel of a cooperative.

(6) *Crab processing limits.* It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.64. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severably liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

5. In § 679.20, paragraphs (a)(5)(i)(D) and (d)(1)(iv) are added to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(i) * * *

(D) *AFA sectoral allocations* (applicable through July 20, 2000). The pollock TAC apportioned to each BSAI subarea or district, after subtraction of the 10 percent CDQ reserve under § 679.31 (a), will be allocated as follows:

(*1*) *Incidental catch allowance.* The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the **Federal Register** that reallocates pollock to/from the directed pollock fisheries to/from the incidental catch allowance according to the proportions established under § 679.20(a)(5)(i)(D)(*2*).

(*2*) *Directed fishing allocations.* The remaining pollock TAC apportioned to each BSAI subarea or district will be allocated for directed fishing as follows:

(*i*) 50 percent to vessels harvesting pollock for processing by AFA inshore processors,

(*ii*) 40 percent to vessels harvesting pollock for processing by catcher/processors, with not less than 8.5 percent of this allocation made available for harvest by AFA catcher vessels and not more than 0.5 percent of this allocation made available for harvest by restricted AFA catcher/processors, and

(*iii*) 10 percent to vessels harvesting pollock for processing by AFA motherships.

(*3*) *Allocations for fishing by inshore cooperatives and vessels not participating in cooperatives.* The TAC allocated to vessels harvesting pollock for processing by AFA inshore processors will be divided into separate allocations for cooperatives and vessels not participating in cooperatives. The TAC allocation for cooperative fishing will be equal to the aggregate annual allocations of all inshore cooperatives that receive pollock allocations under § 679.61(e). The TAC allocation for fishing for vessels not participating in cooperatives will be equal to the allocation made to vessels harvesting pollock for processing by AFA inshore processors minus the TAC allocation for cooperative fishing.

(*4*) *Excessive harvesting share.* NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the allocations made under § 679.20(a)(5)(i)(D)(*2*). The excessive share limit will be published in the proposed, interim, and final specifications.

* * * * *

(d) * * *

(1) * * *

(iv) *AFA sideboard limitations* (applicable through July 20, 2000)—(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.63 has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator shall consider the amount of the harvest limitation established for a group of AFA vessels under § 679.63 that will be taken as incidental catch by those vessels in directed fishing for other species.

* * * * *

6. In § 679.21, paragraphs (d)(8) and (e)(3)(v) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

(d) * * *

(8) *AFA halibut bycatch limitations* (applicable through July 20, 2000). Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.63 (b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

* * * * *

(e) * * *

(3) * * *

(v) *AFA prohibited species catch limitations* (applicable through July 20, 2000). Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.63 (a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

* * * * *

7. In § 679.50, paragraphs (c)(5) and (d)(5) are added to read as follows:

§ 679.50 Groundfish Observer Program * * *

(c) * * *

(5) *AFA catcher/processors and motherships* (applicable through July 20, 2000)—(i) *Coverage requirement.*

(A) *Unrestricted AFA catcher/processors and AFA motherships.* The owner or operator of an unrestricted AFA catcher/processor or AFA mothership must provide at least two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.62(a)(1).

(B) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must provide at least two NMFS certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. When a restricted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at § 679.50(c)(1)(iv) apply.

(ii) *Certification level.* At least one of the observers required under paragraphs (c)(5)(i)(A) and (B) of section must be

certified as a lead CDQ observer as specified in paragraph (h)(1)(i)(E)(*1*) of this section.

(iii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and, the observer may not sample more than 9 hours in each 24-hour period.

* * * * *

(d) *Observer requirements for shoreside processors.* * * *

(5) *AFA inshore processors* (applicable through July 20, 2000)—(i) *Coverage level.* An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. A processor that takes delivery of or processes pollock for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

* * * * *

8. In 50 CFR part 679, a new Subpart F—American Fisheries Act Management Measures (applicable through July 20, 2000) is added to read as follows:

Subpart F—American Fisheries Act Management Measures (Applicable Through July 20, 2000)

Sec.

679.59 Authority and related regulations.
679.60 Catcher/processor and mothership pollock cooperatives.
679.61 Inshore pollock cooperatives.
679.62 Requirements for vessels and processors.
679.63 Harvest limitations in other fisheries.
679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

Subpart F—[Amended]

§ 679.59 Authority and related regulations.

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Public Law No. 105–277, 112 Stat. 2681 (1998)]. Additional regulations that implement specific provisions of the AFA are set out at § 679.2 *Definitions*, § 679.4 *Permits*, § 679.5 *Recordkeeping and reporting*, § 679.7 *Prohibitions*, § 679.20 *General limitations*, § 679.21 *Prohibited species bycatch management*, § 679.28 *Equipment and operational requirements for Catch Weight Measurement*, § 679.31 *CDQ reserves*, and § 679.50 *Groundfish Observer Program applicable through December 31, 2000.*

§ 679.60 Catcher/processor and mothership pollock cooperatives.

(a) *Applicability.* Any fishery cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by catcher/processors or motherships must comply with the provisions of this section.

(b) *Filing of fishery cooperative contracts.* Any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by catcher/processors or motherships, and any material modifications to any such contract must be filed not less than 30 days prior to the start of fishing under the contract with the Council and with the Regional Administrator, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Any fishery cooperative intending to deliver pollock to an AFA mothership also must notify the owners of the AFA mothership not less than 30 days prior to the start of fishing under the contract.

(c) *Required elements.* Any cooperative contract filed under paragraph (b) of this section must contain the following information:

(1) A list of parties to the contract,

(2) A list of all vessels and processors that will harvest and process pollock harvested under the cooperative,

(3) The amount or percentage of pollock allocated to each party to the contract, and

(4) For a cooperative that includes catcher vessels delivering pollock to motherships or catcher/processors, penalties to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.63(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.63(b) and as announced to NMFS by the Regional Administrator.

(d) *Annual report.* Any fishery cooperative governed by this section must submit annual preliminary and final written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, for public distribution. The preliminary report covering activities through November 1 must be submitted by December 1 of each year and the final report must be submitted by January 31 of each year.

(1) *Required contents.* The preliminary and final written reports must contain, at a minimum:

(i) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(ii) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on a area-by-area and vessel-by-vessel basis;

(iii) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(iv) A description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

§ 679.61 Inshore pollock cooperatives.

(a) *Applicability.* Any fishery cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor must comply with the provisions of this section.

(b) *Filing of fishery cooperative contracts.* Any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor, any material

modifications to any such contract, and a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request, must be filed with the Council and with the Regional Administrator no later than 30 days prior to the start of fishing under the contract.

(c) *Required elements.* Any cooperative contract filed under paragraph (b) of this section must contain the following:

(1) A list of parties to the contract,

(2) A list of all vessels and processors that will harvest and process pollock harvested under the cooperative,

(3) The amount or percentage of pollock allocated to each party to the contract, and

(4) Penalties to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA groundfish sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.63(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish amount as calculated by NMFS under § 679.63(b) and as announced to NMFS by the Regional Administrator.

(d) *Responsible parties*—(1) *Designated representative.* Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with all applicable regulations in this part.

(2) *Agent for service of process.*

(i) Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels listed on the cooperative fishing permit. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent on the application for an inshore cooperative fishing permit. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(ii) The owners and operators of all member vessels of an inshore pollock cooperative are responsible for ensuring that the agent is capable of accepting service on behalf of the cooperative for at least 5 years from the expiration day of the AFA permit. The owners and operators of all member vessels of a cooperative are also responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute representative in the event the previously designated representative is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5-year period.

(e) *Cooperative pollock allocations.* An inshore pollock cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual inshore pollock allocation that is determined according to the following procedure:

(1) *Calculation of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every catcher vessel that made a landing of inshore pollock in the Bering Sea Subarea and/or Aleutian Islands Subarea during 1995, 1996, or 1997 according to the following steps:

(i) *Determination of annual landings.* For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total inshore landings; from the Bering Sea Subarea and Aleutian Islands Subarea separately.

(ii) *Offshore compensation.* If a catcher vessel made a total of 500 or more mt of landings of Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3-year period from 1995 through 1997, then all offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(iii) *Best two out of three years.* After steps (i) and (ii) are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(2) *Calculation of cooperative quota share.* Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all catcher vessels that made BSAI inshore pollock landings from that subarea in 1995, 1996, or 1997. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share to annual TAC allocation.* Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(f) *Cooperative fishing restrictions.* AFA inshore pollock cooperatives must comply with the following fishing restrictions.

(1) *Eligible vessels.* Only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation.

(2) *Quota management.* All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded.

(3) *Reporting of cooperative catch.* Each inshore pollock cooperative must report to the Regional Administrator its BSAI pollock harvest on an daily basis according to the recordkeeping and

reporting requirements set out at § 679.5(o).

(g) *Annual report.* Any fishery cooperative governed by this section must submit annual preliminary and final written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, for public distribution. The preliminary and final reports must contain the same elements and must be submitted according to the same deadlines as the preliminary and final reports required under § 679.60(d).

§ 679.62 Requirements for vessels and processors.

(a) *AFA catcher/processors and AFA motherships*—(1) *Unrestricted AFA catcher/processors and AFA motherships.*

(i) *Catch weighing.* All groundfish landed by unrestricted AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of an unrestricted AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch takes place prior to weighing.

(ii) *Observer sampling station.* The owner and operator of an unrestricted AFA catcher/processor or AFA mothership must provide an observer sampling station as described at § 679.28(d) and must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times that the vessel harvests groundfish or receives deliveries of groundfish harvested in the BSAI or GOA.

(2) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a)(1) of this section at all times the vessel is engaged in directed fishing for pollock in the BSAI.

(b) *AFA inshore processors*—(1) *Catch Weighing.* All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BSAI must be sorted and weighed on a scale approved by the State of Alaska under § 679.28(c) and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher vessel and be on site the entire time the delivery is being weighed or sorted.

§ 679.63 Harvest limitations in other fisheries.

(a) *AFA catcher/processor sideboards.* The Regional Administrator will establish restrictions on the ability of unrestricted AFA catcher/processors to engage in directed fishing for BSAI groundfish species other than pollock. Such limits will be established and managed as follows:

(1) *Calculation of groundfish harvest limits.* For each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI, the Regional Administrator will establish annual AFA catcher/processor harvest limits as follows:

(i) *Pacific cod.* The Pacific cod harvest limit will be equal to the 1997 aggregate catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the Pacific cod TAC available to catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) *Aleutian Islands Pacific ocean perch.* The Aleutian Islands Pacific ocean perch harvest limit will be equal to the aggregate 1996 through 1997 catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch TACs available to catcher/processors in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(iii) *Atka mackerel.* The Atka mackerel harvest limit for each area and season will be equal to:

(A) Bering Sea subarea and Eastern Aleutian Islands, zero;

(B) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(C) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(iv) *Remaining groundfish species.* Except as provided for in paragraphs (a)(2)(1)(i) through (a)(2)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the aggregate 1995 through 1997 catch of that species by catcher/processors listed in listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the TACs of that species or species group available to catcher/processors in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(2) *Calculation of halibut and crab PSC bycatch limits.* For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual unrestricted AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(3) *Management of AFA catcher/processor sideboard limits.* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors in accordance with the procedures set out in § 679.20(d)(1)(iv), and § 679.21(e)(3)(v).

(b) *AFA catcher vessel sideboards.* The Regional Administrator will establish restrictions on the ability of AFA catcher vessels to engage in directed fishing for other groundfish species in the GOA and BSAI. Such restrictions will be established and managed as follows:

(1) *Calculation of groundfish and PSC sideboards.* For each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI; and for each halibut and crab PSC limit, the Regional Administrator will establish annual AFA catcher vessel groundfish harvest limits and PSC bycatch limits as follows:

(i) *Affected vessels.* Catcher vessel harvest limits and PSC bycatch limits will apply to all AFA catcher vessels in all GOA and non-pollock BSAI groundfish fisheries except:

(A) *BSAI Pacific cod*—(*1*) AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested a combined total of less than 5,100 mt of BSAI pollock, and to have made 30 or more legal landings of Pacific cod in the BSAI directed fishery

for Pacific cod from 1995 through 1997 will be exempt from sideboard closures for BSAI Pacific cod.

(*2*) AFA catcher vessels with mothership endorsements will be exempt from BSAI Pacific cod catcher vessel sideboard directed fishing closures after March 1 of each fishing year.

(B) *GOA groundfish.* AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 will be exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(ii) *Calculation of BSAI and GOA groundfish harvest limits*—(A) *BSAI Groundfish other than BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(A)(*1*); divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(B) *BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(A)(*1*) divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(C) *GOA groundfish.* The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(B); divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *Calculation of BSAI and GOA PSC bycatch limits.* The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

(iv) *Management of AFA catcher vessel sideboard limits.* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures and PSC closures according to the procedures set out at § 679.20(d)(1)(iv), § 679.21(d)(8), and § 679.21(e)(3)(v).

§ 679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

(a) *Applicability.* The crab processing limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.60 or § 679.61.

(b) *Calculation of crab processing sideboard limits.* Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, and 1997.

(c) *Notification of crab processing sideboard percentage limits.* An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(d) *Conversion of crab processing sideboard percentages and notification of crab processing sideboard poundage caps.* Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G. The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor and by publishing the crab processing poundage caps on the NMFS-Alaska Region world wide web home page (http://www.fakr.noaa.gov).

(e) *Overages.* In the event that the actual harvest of a BSAI crab species exceeds the pre-season Guideline harvest level (GHL) announced for that species, an AFA inshore or mothership entity may exceed its crab processing cap without penalty up to an amount equal to the AFA inshore or mothership entity's crab processing percentage multiplied by the final official harvest amount of that crab species as determined by ADF&G and announced by NMFS on the NMFS-Alaska Region world wide web home page (http://www.fakr.noaa.gov).

[FR Doc. 00–1832 Filed 1–21–00; 4:52 pm]
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Proposed Rules

Federal Register
Vol. 65, No. 19
Friday, January 28, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1002–N3]

Medicare Program; Meeting of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the date and location for the final meeting of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule. This meeting is open to the public.

The purpose of this committee is to develop a proposed rule that would establish a fee schedule for the payment of ambulance services under the Medicare program through negotiated rulemaking, as mandated by section 4531(b) of the Balanced Budget Act of 1997 (BBA).

DATES: The final meeting is scheduled for Monday, February 14, 2000 from 8:30 a.m. until 6:00 p.m., e.s.t.

ADDRESSES: The meeting will be held at the Health Care Financing Administration, Grand Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244; (410) 786–1000.

FOR FURTHER INFORMATION CONTACT: In order to gain access to the building if you are interested in attending this final meeting, it is important that you notify the agency contact listed below by February 10, 2000. If you fail to notify the agency contact by February 10, 2000 of your intent to attend the meeting, you may be delayed in entering the building. The agency contact is Margot Blige ((410) 786–4642 or E-mail: MBlige@hcfa.gov).

Inquiries regarding this meeting should be addressed to Bob Niemann ((410) 786–4569) or Margot Blige ((410) 786–4642) for general issues related to ambulance services, or to Lynn Sylvester ((202) 606–9140) or Elayne Tempel ((207) 780–3408), facilitators.

SUPPLEMENTARY INFORMATION: Section 4531(b)(2) of the BBA added a new section 1834(l) to the Social Security Act (the Act) that mandates by January 1, 2000, that we implement a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) of the BBA also provides that, in establishing the fee schedule, we will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

The Negotiated Rulemaking Committee on the Ambulance Fee Schedule has been established to provide advice and make recommendations to us with respect to the text and content of a proposed rule that would establish a fee schedule for the payment of ambulance services under Medicare Part B.

The Committee's first and second meetings were for organizational purposes solely. No significant decisions were made in these two meetings.

The Committee's third meeting was held on May 24 and May 25, 1999. At that meeting, the Committee heard presentations from our staff, including a data presentation. The Committee requested another presentation by our Office of the Actuary (OACT) to obtain clarification about its calculation of the fee schedule payment cap. Additionally, a Medical Issues workgroup was formed.

The Committee's fourth meeting was held on June 28 and June 29, 1999. At that meeting, a staff member from OACT made a presentation clarifying that budget neutrality will be evaluated by using all ambulance claims for the most current year and comparing the results of the proposed models with those paid claims. Our staff presented more historical Medicare hospital and supplier ambulance billing data. Consensus was reached on one possible basic structure for the fee schedule. We indicated that the fee schedule must be effective as soon as operationally possible after January 1, 2000. Subcommittees were formed to produce proposals by July 19, 1999 for—

(1) a rural/urban adjustment; and

(2) a fee schedule model based on the structure agreed to at the June meeting, combined with relative values. These proposals, along with the results of the medical issues workgroup, were to serve as the basis for the Committee's next meeting.

The Committee's fifth meeting was held on August 2 and August 3, 1999. At that meeting the Committee heard presentations from our staff on the Medicare Physician Fee Schedule's Geographic Practice Cost Index (GPCI) and the hospital wage index. The Committee is considering the GPCI and hospital wage index for possible use as a geographic cost adjuster for the ambulance fee schedule. The second presenter, a member of the our negotiated rulemaking team, presented additional historical Medicare hospital and ambulance supplier billing data. The Committee was advised in a letter signed by our Deputy Administrator, Michael M. Hash, that it has until February 15, 2000 to conclude its business. The Committee reached consensus on the definitions for Basic Life Support, Advanced Life Support (ALS) Level–1, ALS Level–2, and the criteria that the service must meet for the emergency response modifier amount to be paid.

During the October meeting, the Committee worked on defining the geographic and rural modifiers and establishing the relative values of the different levels of service.

The Committee's seventh meeting was held December 6 through December 8, 1999. The Committee reached consensus on the relative values to be used for the different levels of ambulance service to be modeled for evaluation purposes. The physicians' fee schedule GPCI (practice expense component) will be used as the ambulance fee schedule geographic adjuster. An additional payment will be made for ambulance services if the point of pickup is in a rural area. Rural is

defined as a location in a non-Metropolitan Statistical Area (with Goldsmith modification, if possible). An additional payment for an emergency response will be paid if the condition as presented was an emergency condition and the supplier responded "immediately."

The Committee's eighth meeting is scheduled for January 24 through January 26, 2000. It is expected that this meeting will focus on evaluating the results of the rural modifier and preparing the Committee's official report. The Committee is expected to conclude its work by February 14, 2000.

The purpose of this final meeting is to allow Committee members to officially conclude the business of the Committee by signing and finalizing the Committee's official report. No other agenda has been established.

In accordance with Federal Advisory Committee Act requirements, this meeting is open to the public with advanced registration preferred. Public attendance at the meeting may be limited to space available. Mail written statements to the following address: Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester.

A summary of all proceedings will be available for public inspection in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), and can be accessed through the HCFA Internet site at http://www.hcfa.gov/medicare/ambmain.htm. Additional information related to the Committee will also be available on the web site.

Authority: Section 1834(l) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 24, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–2042 Filed 1–27–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 092799B]

Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Seasonal Area Closures, Bycatch Quotas, and Related Measures to Reduce Scup Bycatch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding on petition for rulemaking.

SUMMARY: NMFS announces its decision not to undertake the rulemaking requested in a petition submitted by the Natural Resources Defense Council, the Environmental Defense Fund, the Center for Marine Conservation, the National Audubon Society, and the American Oceans Campaign (Petitioners). The Petitioners had petitioned NMFS and the Mid-Atlantic Fishery Management Council (Council) to implement emergency or other interim measures to reduce scup bycatch through seasonal area closures and a bycatch quota; monitor the *Loligo* squid fishery through a vessel monitoring system (VMS) and observers; and develop new gear designs. The Petitioners requested that these measures be put in place, beginning November 1999, to reduce the amount of scup caught incidentally in the *Loligo* squid fishery. The decision to deny the petition is based on the inclusion of similar provisions in the proposed 2000 specifications for summer flounder, scup, and black sea bass, which are published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin, Domestic Fisheries Division, NMFS, (301) 713–2341.

SUPPLEMENTARY INFORMATION: On October 14, 1999 (64 FR 55688), NMFS published a notice requesting public comments on an amended petition for rulemaking submitted by the Petitioners. The amended petition requested that NMFS implement, through emergency or other interim action, fishing restrictions in specified areas in 1999, with additional measures to be implemented in 2000 and beyond. The Petitioners requested measures to reduce the bycatch and associated mortality of juvenile scup caught in the small mesh *Loligo* squid fishery. For 1999, the Petitioners requested (1) a closure of the *Loligo* fishery in NMFS Northeast Statistical Area (area) 613 for the Winter II (November–December) season, (2) the imposition of a scup bycatch quota throughout the *Loligo* management unit for the Winter II season, or (3) both options (1) and (2). The Petitioners also requested the immediate implementation of the Council's Summer Flounder Monitoring Committee's recommendation to establish areas closed to the *Loligo* squid fishery in areas 537 and 539 during the Winter II season, and in areas 616 and 622 during the Winter I (January–April) season.

In addition, the Petitioners requested that NMFS establish adequate enforcement mechanisms and observer coverage for these bycatch-reduction measures. For instance, if area 613 were closed, the Petitioners suggested that NMFS require a VMS in the *Loligo* fleet. If a bycatch quota were implemented, the Petitioners suggested observer coverage be required at levels sufficient to ensure observations of a statistically significant percentage of *Loligo* catch. Finally, the Petitioners requested that, for 2001, NMFS and the Council oversee the development, testing, and implementation of appropriately modified gear as an effective and equitable means of reducing scup bycatch.

At about the same time the Petitioners were raising their concerns, the Council was developing annual specifications for the scup fishery. The Council's Monitoring Committee recommended extensive area restrictions similar to the areas recommended by the Petitioners. While the Council accepted the Committee's recommendation for restrictions beginning in the year 2000, they created a Scup Working Group comprised of some members of the Council, Atlantic States Marine Fisheries Commission, and industry to develop sub-areas within the larger restricted areas. The Council intended that these sub-areas would be restricted to reduce scup bycatch while minimizing the impacts on other fisheries. In addition to specifying an annual commercial quota, the sub-areas recommended by the Scup Working Group were submitted by the Council as part of the proposed 2000 specifications.

With the development of these restricted areas, the Council considered ways to reduce mortality on juvenile scup due to bycatch in small-mesh fisheries, including the *Loligo* fishery. In addition to restrictions in the *Loligo* squid fishery, the recommendation would restrict fishing in other fisheries utilizing small mesh, defined as less

than the scup minimum mesh size (4.5–in (11.4–cm) diamond mesh in the codend). Those other fisheries target herring, Atlantic mackerel, black sea bass, and whiting. The Council also recommended allowing the continuation of fisheries that do not exceed a 10–percent scup bycatch. Further discussion on the development of the Council alternatives is provided to the public through the proposed rule to implement 2000 specifications for the summer flounder, scup, and black sea bass fisheries, published elsewhere in this issue of the **Federal Register**.

Given the fact that similar measures for scup are in the proposed 2000 specifications, NMFS is denying this petition for rulemaking. Implementing these controversial measures through emergency or other interim Secretarial action would not afford an opportunity for public comment prior to implementation. NMFS prefers that they undergo full public review and comment, within the context of the annual specifications process for scup.

In the proposed specifications, NMFS is not proposing the selected restricted mesh areas recommended by the Council because NMFS considers them to be inadequate in size and duration to reduce bycatch and be enforceable. However, NMFS is proposing one of the Council's non-selected alternatives. The areas in the proposed alternative are more extensive in both size and time than the Council's recommended areas and, thus, more enforceable. The areas are not as extensive, however, as those recommended by the Petitioners or the Monitoring Committee. The large areas recommended by the Petitioners and Monitoring Committee included areas of few scup discards and did not include some areas of high scup discards. Additional discussion of the rationale for the proposed restricted mesh areas can be found in the proposed specifications for the scup fishery published elsewhere in this issue of the **Federal Register**.

In addition, NMFS believes the implementation of "adequate enforcement mechanisms," such as a VMS requirement or a bycatch quota monitored by at-sea observers, as requested by the Petitioners, would be better handled through the fishery management plan amendment process. Further, the Petitioners' request that, for 2001, NMFS and the Council oversee the development, testing, and implementation of appropriately modified gear as an effective and equitable means of reducing scup bycatch is already possible under the Experimental Fishery Permit process and therefore does not require additional rulemaking. (See also response to Comment 2.)

The proposed 2000 specifications for scup, summer flounder, and black sea bass are being published concurrently in the **Federal Register** with this notice of finding on the petition to enable the Petitioners and the public to observe the relationship between these two actions. In addition, the public will now have an opportunity to review the proposed measures and submit comments that will be considered in the establishment of the final specifications.

Comments and Responses

Five comment letters, including four from commercial fishing industry groups and one from the Commonwealth of Massachusetts, Division of Marine Fisheries, were received during the comment period for this action, which ended on November 15, 1999. All five letters supported the petition. Several of the letters contained comments or suggestions for management actions that were not within the scope of the petition. Only comments relevant to the proposed petition for rulemaking that were received by NMFS prior to the close of business on November 15, 1999, were considered for this action.

Comment 1: While supporting adoption of the regulated areas in concept, several of the commenters supported alternative areas not considered within the petition. In addition, the commenters supported complete, seasonal closures (to all gear types) if the seasonal gear restrictions were found to be not feasible in terms of enforcement and compliance.

Response: NMFS notes the support for action to reduce the discards of scup. NMFS also notes that seasonal closures of specific areas to all gear types would be a management alternative beyond the scope of this petition.

Comment 2: Four of the commenters supported gear modifications to minimize bycatch as well as impacts on fishermen and industry infrastructure. The commenters also supported the use of sea samplers (observers) to monitor experimental small-mesh fisheries, the *Loligo* squid fishery, and bycatch quotas.

Response: NMFS agrees that sea sampling is important, although it notes that funding is currently inadequate to support all of the sea sampling needs identified. NMFS agrees that gear modifications to minimize bycatch, as developed through experimental fisheries, could offer another alternative to area restrictions. The Council is working with industry members who have volunteered to identify modifications that could reduce catch of scup in small-mesh fisheries for squid. In addition, the Council is considering a proposal that would allow vessels with experimental exempted fishing permits to conduct experiments to assess the efficacy of trawl gear modifications to reduce discards. This proposal would rely on NMFS-certified sea samplers to collect valid data on scup discards in these fisheries.

Comment 3: Several commenters supported the idea of bycatch quotas of scup and experimental fisheries, provided they receive rigorous review, as have other experimental fisheries.

Response: NMFS believes this is an appropriate approach. At its August 1999 meeting, the Council voted to initiate a framework action to consider quota set-asides for scientific research in the scup and other fisheries. Since NMFS has decided not to implement a bycatch quota by way of interim action through this petition, the Council would need to adopt an appropriate framework as a mechanism to provide a bycatch quota for NMFS approval and implementation.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0014–01; I.D. No. 112399C]

RIN 0648–AM48

Fishers of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2000 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2000 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming

fishing year for each fishery and to provide an opportunity for public comment. The intent of these measures is to address overfishing of the summer flounder, scup, and black sea bass resources.

DATE: Public comments must be received, at the appropriate address or fax number (see **ADDRESSES**), not later than 5 p.m. eastern standard time on February 28, 2000.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IREA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, "Comments—2000 Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281–9221, fax (978) 281–9135, e-mail *regina.1.spallone@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP outlined the process for specifying annually the catch limits for the commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, season, and area restrictions) for these fisheries. These measures are intended to achieve the annual targets (either a fishing mortality rate (F) or an exploitation rate) set forth for each species in the FMP.

A Monitoring Committee for each species, made up of members from NMFS, the Atlantic States Marine Fisheries Commission (Commission), and both the Mid-Atlantic and New England Fishery Management Councils, is required to review available information and to recommend catch limits and other management measures necessary to achieve the target F or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Mid-Atlantic Fishery Management Council (Council) and Board made their annual recommendations at a joint meeting held August 9–12, 1999.

This rulemaking contains proposed gear restricted areas for the protection of scup. NMFS received a petition for rulemaking requesting implementation of gear restricted areas and other measures (see 64 FR 55688, October 14, 1999). A separate "notice of finding" denying the petition, including responses to comments received concerning the petition, is published in this issue of the **Federal Register** in the Final Rules section.

Summer Flounder

The FMP specifies a target F for 2000 of F_{MAX}—that is, the level of fishing that produces maximum yield per recruit. Best available data indicate that F_{MAX} is currently equal to 0.26. The FMP allocates the total allowable landing (TAL) associated with the target F 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial allocation is further allocated to the coastal states based on percentage shares specified in the FMP.

A summer flounder stock assessment was completed by the Northeast Fisheries Science Center's (NEFSC) Southern Demersal Working Group in the Spring of 1999 and reviewed by the Council's Scientific and Statistical (S&S) Committee in July 1999. The reviewed assessment, including the recommendations of the S&S Committee, was made available to the Summer Flounder Monitoring Committee. This assessment is summarized in the EA/RIR/IRFA.

The Summer Flounder Monitoring Committee reviewed the stock status and projections based on these data and made recommendations to achieve the target F. The Monitoring Committee recommended a TAL limit of 16.815 million lb (7.627 million kg), which would be divided 10.089 million lb (4.576 million kg) to the commercial sector and 6.726 million lb (3.051 million kg) to the recreational sector.

The Council and Board (hereinafter, referred to as "the Council") reviewed this recommendation and did not adopt it. Instead, the Council recommended a 2000 TAL level of 18.518 million lb (8.4 million kg). At this level 11,111,298 lb (5,040,000 kg) would be allocated to the commercial fishery and 7,407,532 lb (3,360,000 kg) to the recreational fishery. The FMP requires state commercial quota allocations for the year 2000 to be adjusted downward if there are landings in excess of the states' 1999 allocations.

Based on stochastic projection results, the recommended TAL of 18.518 million lb has a 25-percent probability of achieving the target F of 0.26 in 2000. The Council believes that this level of probability is reasonable as it believes that the stock size projected for 2000 based on the current assessment is underestimated. The Council notes that analyses of previous assessment results indicate a retrospective pattern in which estimates of stock size were underestimated and the fishing mortality rate overestimated. The Council believes that this is the case for the 1998 estimates of stock size and F. A greater stock size estimate for 1998 would increase the projected stock size in 2000 and increase the probability that a TAL of 18.518 million lb would achieve the target F in 2000.

In addition, the Council noted that the projections were very dependent on the recruitment level estimated for 1997 and 1998. Although virtual population analysis results indicate that recruitment for 1997 and 1998 may be poor (23 and 26 million fish compared with an average of 40 million fish), these estimates are the most uncertain in the series. It is possible that the size of the year class is underestimated. For example, previous assessment results indicated that the 1996 year class was poor (23 million fish). The latest assessment indicates that the size of the 1996 year class was 40 million fish. Such an underestimation may be the case for the 1997 and 1998 year classes. A larger year class size would allow for a larger stock size and a greater likelihood that the target F would be achieved in 2000.

Currently, the Commission has measures in place to decrease discards of sublegal fish in the commercial fishery as well as reduce regulatory discards that occur as the result of landing limits in the states. Specifically, the Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has

closed. The object of this incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery is closed, while also trying to ensure that the state's overall quota is not exceeded.

NMFS proposes to implement the Council recommendations for summer flounder, although NMFS does not necessarily ascribe the same confidence to the elements of the Council's rationale. Specifically, while the Council's rationale may likely be valid, NMFS does not necessarily presume that estimates of recruitment are low or that the retrospective pattern has necessarily repeated to the extent that the Council asserts these events will result in the attainment of the F target. In addition, NMFS notes that both the Summer Flounder Monitoring Committee and the Council made their recommendations without considering the Commission's state incidental catch set-aside in terms of total mortality reduction. NMFS does believe that a decrease in the amount of discards would decrease overall mortality, and, thus, increase the likelihood of achieving the target F in 2000.

The commercial quotas by state for 2000 are presented in Table 1. Although NMFS has no authority to establish an incidental catch allocation, for the convenience of the reader Table 1 presents the total allocation broken down into both directed and incidental catch fisheries. These quotas are preliminary and subject to downward adjustment if there are overages in a state's 1999 harvest.

TABLE 1.—2000 SUMMER FLOUNDER STATE COMMERCIAL QUOTES

State	Percent share	Directed		15 Percent as incidental catch		Total	
		Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
ME	0.04756	4,492	2,037	793	360	5,284	2,397
NH	0.00046	43	20	8	3	51	23
MA	6.82046	644,159	292,186	113,675	51,562	757,834	343,748
RI	15.68298	1,481,181	671,852	261,385	118,562	1,742,566	79,041
CT	2.25708	213,170	96,692	37,618	17,063	250,788	113,756
NY	7.64699	722,221	327,594	127,451	57,811	849,672	385,405
NJ	16.72499	1,579,594	716,492	278,752	126,440	1,858,346	842,931
DE	0.01779	1,680	762	297	134	1,977	897
MD	2.03910	192,583	87,354	33,985	15,514	226,568	102,770
VA	21.31676	2,013,264	913,201	355,282	161,153	2,368,546	1,074,354
NC	27.44584	2,592,126	1,175,768	457,434	207,489	3,049,560	1,383,257
Total	100.00000	9,444,512	4,283,959	1,666,679	755,993	11,111,191	5,039,951

[1] Subject to rounding error.

Scup

The FMP established a target exploitation rate for scup in 2000 of 33 percent. The total allowable catch (TAC) associated with that rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Discard estimates are deducted from both TACs to establish TALs for both sectors. The commercial TAL is allocated to three different periods.

Scup was most recently assessed at the 27th Northeast Regional Stock Assessment Workshop in June 1998 (SAW 27). This assessment indicates that scup are overexploited and at a record low biomass level. SAW 27 concluded that spawning stock biomass is less than one-tenth of the biomass threshold—the maximum NEFSC indices of spawning stock biomass observed, or 2.77 kg/tow during 1977–1979. The assessment is summarized in the EA/RIR/IRFA.

These proposed scup specifications for fishing year 2000 are based on an exploitation rate used in the rebuilding schedule that was approved when the species was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, the Council resubmitted that rebuilding plan for scup as part of Amendment 12. Amendment 12 was intended to bring the FMP into compliance with the provisions of the SFA. On April 28, 1999, NMFS disapproved the rebuilding plan for scup because it did not comply with the SFA. Although the exploitation rate portion of the overfishing definition (converted to a fishing mortality rate), by itself, was conceptually sound, albeit somewhat risk-prone, NMFS determined that the combination of that exploitation rate and the general decline of the stock made the risk that the rebuilding plan would not achieve stock rebuilding goals in the long term unacceptable. The scup specifications for fishing year 2000 are based on the exploitation rate found to be conceptually sound. NMFS believes that the annual specifications do not necessarily result in long-term risks to the stock associated with the disapproved rebuilding plan. The specifications are annual measures that will be reviewed, and modified as appropriate, by the Council and NMFS for fishing year 2001. Furthermore, setting the scup specifications using the 2000 exploitation rate is a more cautious approach to managing this overfished resource than a failure to set any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that meets the SFA requirements.

The Monitoring Committee reviewed available data and projected that the 1999 exploitation target of 47 percent would be achieved. The Monitoring Committee recommended that the TAC be reduced in proportion to the reduction in exploitation rates from 1999 to 2000, i.e., a 30-percent reduction, outlined in the rebuilding plan. As such, the Monitoring Committee recommended a TAC for 2000 of 4.15 million lb (1.88 million kg) resulting in a 3.243 million-lb (1.47 million-kg) commercial TAC, and a 0.915 million-lb (0.415 million-kg) recreational TAC.

The Council reviewed data indicating that, based on the average biomass estimates for 1998 and 1999, the 1999 exploitation rate could be well below its target of 47 percent. Specifically, the Council concluded that the data suggested it is possible that exploitation in 1999 was as low as 30 percent, provided certain assumptions were met regarding biomass estimates. A 30-percent exploitation rate is equal to the rebuilding plan's target for 2000. Thus,

the Council recommended, and NMFS proposes, to maintain the TAC for 2000 at the 1999 level, namely, 5.922 million lb (2.686 million kg).

Allocating the 5.922 million lb (2.686 million kg) TAC between the commercial and recreational sectors based on a 78 and 22 percent division, respectively, results in a commercial TAC of 4,619,160 lb (2,095,215 kg) and a recreational TAC of 1,302,840 lb (590,958 kg). Assuming the same proportion of discards to catch in 2000 as 1997 (45.1 percent), the commercial discards would be 2,085 million lb (0.946 million kg), and the quota would be 2.534 million lb (1.149 million kg). Based on the proportion of recreational discards to catch in 1997 (4.96 percent), the recreational discards would be 0.065 million lb (0.029 million kg) and the harvest limit would be 1.238 million lb (0.562 million kg). The proposed commercial allocation is shown in Table 2. As with summer flounder, these allocations are preliminary and are subject to a downward adjustment for any overages in a period's harvest in 1999. Preliminary data indicate that the Winter I and Summer period allocations have been exceeded in 1999, which would require a corresponding reduction in those periods in 2000. Since the data collection for all periods in 1999 has not yet been finalized, this table shows the allocations prior to any deductions.

TABLE 2.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC [1]	Discards [2]	Quota allocation		Landing limits	
				Lb	Kg [3]	Lb	Kg
Winter I	45.11	2,083,703 (945,168)	940,543 (426,630)	1,143,160	518,529	[4] 10,000	4,536
Summer	38.95	1,799,163 (816,100)	812,108 (368,372)	987,055	447,721	* n/a	
Winter II	15.94	736,294 (333,983)	332,349 (150,754)	403,945	183,226	4,000	1,814
Total [5]	100.00	4,619,160 (2,095,215)	2,085,000 (945,740)	2,534,160	1,149,476	.....	.....

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Subject to rounding error.
[4] The Winter I landing limit will drop to 1,000 pounds (454 kg) upon attainment of 85 percent of the seasonal allocation.
[5] Totals subject to rounding error.
* n/a—Not applicable.

To achieve the commercial quotas, the Council recommended, and NMFS proposes, a landing limit of 10,000 lb (4,536 kg), with a reduction to 1,000 lb (454 kg) when 85 percent of the quota allocation is harvested for Winter I (January–April). A 4,000-lb (1,814–kg) landing limit also would be in place for the entire Winter II (November–December) period.

Gear Restricted Areas

The Monitoring Committee noted the need to reduce discards in the commercial scup fishery. Specifically, SAW 27 noted that F should be reduced "substantially and immediately" and that, while estimates are uncertain, most mortality in recent years was "clearly attributable to discards, particularly when incoming recruitment is strong." The report noted that reductions "in discards from small-mesh fisheries" would be particularly effective for this stock. Thus, the Monitoring Committee recommended that the Council implement regulations to close areas to fishing by trawl gear with codend mesh sizes less than 4.5 in (11.43 cm) to reduce discards of scup.

The Council noted NMFS' disapproval of the scup bycatch provision and rebuilding schedule in Amendment 12 to the FMP and heeded the advice of the Monitoring Committee and SAW 27 that scup discards must be decreased. To reduce discards of small scup, the Council voted to recommend seasonal gear restricted areas in which commercial vessels would be prohibited from fishing with trawl or midwater trawl gear with codend nets of mesh size less than 4.5 in (11.4 cm), unless they were participating in an exempted fishery (a fisher that has been identified by the Council to have less than a 10-percent bycatch of scup). The Council recommended areas that were identified by an *ad hoc* advisory panel consisting of Council and Board members, industry advisors, and the public. The gear restricted areas, each lasting approximately 2 weeks, would be located within parts of statistical areas 537, 539, 613, 615, 616, 621, 622, and 623.

NMFS believes that the adoption of gear restricted areas is a critical measure to assure the attainment of the target exploitation rate and to provide sorely needed reductions in discards for this fishery. However, NMFS does not support the areas and times identified in the Council's recommendation. The Council's recommended areas and times are extremely small and short in duration. An analysis of the Vessel Trip Report (VTR) and sea sample data used to help identify these areas shows that it is unlikely that the small, 2-week restricted gear areas identified in the Council's recommendation would coincide with the seasonal migration of scup.

Generally, scup are present inshore off southern New England during the summer spawning months, and migrate to more southern offshore waters in the fall. However, scup migration is dependent on water temperature and can vary from one year to the next. The small areas recommended by the Council would present a considerable enforcement burden with limited conservation benefits. It is likely that harvesters would easily shift fishing operations to nearby unrestricted areas where high discard rates are likely. The Council's recommended gear restricted areas and associated time periods do not necessarily correspond to the areas and time periods with the highest scup discards (areas with discards greater than 10 percent by weight of the scup retained, based on sea sample data) for each statistical area during the time periods recommended. Consequently, NMFS does not propose these particular areas and times for gear restrictions.

Instead, NMFS proposes an alternative analyzed by the Council that would establish larger gear restricted

areas that would remain closed to small-mesh fisheries for longer periods of time (see Alternative 6, as described in the EA/RIR/IRFA). This proposed rule would restrict fishing in two areas, a Southern Gear Restricted Area and a Northern Gear Restricted Area. In the Southern Gear Restricted Area, comprised of parts of statistical areas 533, 537, 615, 616, 621, 622, and 623 in Federal waters off New Jersey and Delaware, vessels could not fish with codend mesh smaller than 4.5 in (11.4 cm) from January 1 through April 30. In the Northern Gear Restricted Area, comprised of parts of statistical areas 537, 539, and 613 in Federal waters off Massachusetts, Rhode Island, and New York, vessels could not fish with codend mesh smaller than 4.5 in (11.4 cm) from November 1 through December 31. Both of these areas incorporate the areas recommended by the *ad hoc* advisory panel.

During the time periods previously mentioned, vessels with midwater trawl or other trawl nets or netting that have less than a 4.5-in (11.4-cm) diamond mesh in the codend would be prohibited from fishing for or possessing black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake when in the Southern Gear restricted area. Vessels with midwater trawl or other trawl nets or netting that have less than 4.5 in (11.4 cm) diamond mesh in the codend would be prohibited from fishing for or possessing black sea bass, Atlantic herring, *Loligo* squid, Atlantic mackerel, and silver hake when in the Northern Gear restricted area. Copies of a chart depicting these areas are available in the EA/RIR/IRFA and from the Regional Administrator upon request (see **ADDRESSES**.

Analyses indicate that the proposed gear restricted areas would achieve a substantial reduction of scup discards in the small-mesh fisheries (58 percent), as compared with the Council's preferred alternative (34 percent). Such a significant reduction is needed because, while data are imprecise, SAW 27 notes that the majority of the scup fishing mortality is "clearly attributable to discards" and that discards of age 0 to 3 fish in both the directed and non-directed fisheries "are a significant component of the current estimates of catch at age." SAW 27 estimates that discards may be several times higher than the Council's estimates. For instance, the 1997 TAC estimated discards at 1.1 million 1b (0.5 million kg), whereas SAW 27 estimated discards at 4.0 million lb (1.8 million kg), approximately 3.6 times the Council's estimate. Thus, in order not to exceed the Council's 2000 estimate of discards of 2 million lb (0.4 million kg), discards must be significantly reduced. Therefore, the proposed reduction is consistent with the SAW 27 advice indicating that F should be reduced "substantially and immediately" and "that reducing discards (especially in small mesh fisheries) would have the most impact in that regard." Further, because the areas NMFS proposes are larger and restricted for a longer period of time, this option is likely to be much more enforceable and effective when compared with the Council's recommendation.

The small size and short duration of the gear restricted areas in the Council's recommendation overestimate the conservation benefits of the measure, because fishermen could easily continue to fish in adjacent areas with high concentrations of scup and, therefore, potentially discard large amounts of sublegal scup. The larger areas of the proposed alternative incorporate identified "hot spots" to a greater extent than the Council's preferred alternative, and would allow fishing with small-mesh nets only in areas with potentially lower scup discards.

The data that identify with a high level of certainty the primary areas with high levels of discards are limited. The *ad hoc* advisory panel raised concerns about these data limitations and questioned the extent of the discard problem. In light of the SAW 27 advice, however, the precautionary approach to developing measures to reduce discards consistent with the requirements of the Magnuson-Stevens Act requires that action be taken on this severely overfished stock.

To the extent practicable, the proposed restrictions seek to balance needed reductions in scup discards while maintaining viable fishing opportunities for other species. The proposed areas allow vessels to fish in areas in which scup discards are not expected to be a problem. The Council's recommended measure would allow vessels to fish in areas in which scup discards are expected to be a problem. Sea sample data indicate incidents of high discards within sub-areas of the Northeast statistical areas that are adjacent to the Council's recommended gear restricted areas.

Lastly, vessels with exempted experimental fishing permits would be allowed to conduct exempted fishing activities with small-mesh gear in the gear restricted areas. The Council is working with industry members to identify gear modifications that would reduce catch of scup in small-mesh fisheries for squid. Once this experimental work is completed and an effective gear design is identified, the Council could authorize its use in the gear restricted areas.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 2000, equivalent to F=0.73. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) fisheries. The commercial quota is specified on coastwide basis by quarter.

The most recent assessment on black sea bass, SAW 27, indicates that black sea bass are over-exploited and at a low biomass level. Although data limitations make this estimate uncertain, fishing mortality in 1998 may have been equal to, or even less than, the target (48-percent exploitation). The NEFSC spring survey results for 1998 and 1999 indicate that there may have been a significant increase in black sea bass biomass in 1999 (although the 1999 index is high mainly because of a single tow). This assessment is summarized in the EA/RIR/IRFA.

The Black Seas Bass Monitoring Committee reviewed this information and recommended that the 2000 TAL remain the same as 1999, that is, 6.17 million lb (2.80 million kg). That TAL would result in allocations of 3.02 million lb (1.37 million kg) to the commercial quota and of 3.15 million lb (1.43 million kg) to the recreational harvest limit. Because of the uncertainty of the data, the Monitoring Committee recommended that the threshold level triggering the minimum mesh requirement should be reduced from 1,000 lb (454 kg) to 100 lb (45.4 kg). Further, as a means to allow the fishery to stay open longer during each quarter, the Monitoring Committee also recommended that the trip limits for each quarter be reduced.

Upon review of the recommendations, the Council agreed to maintain the black sea bass TAL at the 1999 level and to reduce the quarterly trip limits, as recommended by the Black Sea Bass Monitoring Committee. The Council recommended that trip limits be reduced in an attempt to prevent overages in each of the quarters from recurring. Preliminary data indicate that, in 1999, the quotas for Quarters II and III were exceeded, which requires a corresponding reduction in those quarters in 2000. Status quo was retained on other related management measures, such as minimum fish size and possession limits. NMFS proposes to implement the Council recommendations. The proposed commercial quota and corresponding

trip limits are shown in Table 3. Since the data collection for all quarters in 1999 has not yet been finalized, this table shows the allocations prior to any deductions.

TABLE 3.—2000 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY TRIP LIMITS

Quarter	Percent	Lb	Kg[1]	Trip limits	
				Lb	Kg[1]
1 (Jan-Mar)	38.64	1,168,760	530,141	9,000	4,082
2 (Apr-Jun)	29.26	885,040	401,447	3,000	1,361
3 (Jul-Sep)	12.33	372,951	169,168	2,000	907
4 (Oct-Dec)	19.77	597,991	271,244	3,000	1,361
Total[1]	100.00	3,024,742	1,372,000	.....	.....

[1]Subject to rounding error.

Classification

This action is authorized by 50 CFR part 648.

These proposed specifications have been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. The request for an experimental fishing exemption has been approved by OMB under Control Number 0648–0309. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining this data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

The Council prepared an IRFA in section 3.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY section of the preamble. A description of the recordkeeping and reporting requirements of this proposed rule is provided in the PRA discussion of this section. A summary of the analysis follows:

The categories of small entities likely to be affected by this action are commercial vessel owners with vessels permitted to harvest summer flounder, scup, or black sea bass. The IRFA estimates that the proposed 2000 quotas are expected to affect 1,899 vessels with a summer flounder, scup, and/or black sea bass permit. Of these, 1,056 vessels are actively participating (i.e., landed catch in 1998) in the fisheries. In addition, the IRFA estimates that 172 of these vessels would be affected by the proposed gear restricted areas.

The IRFA examines four scenarios: Scenario I analyzes the cumulative impacts of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass on vessels that are permitted to catch any of these three species. Scenario II differs from Scenario I in that its analysis of cumulative impacts includes the summer flounder harvest limits proposed by the Monitoring Committee. Scenario III analyzes the cumulative impacts of the least restrictive possible harvest limits—those that would result in the smallest reductions (or greatest increases) in landings (relative to 1998) for all species. These harvest limits resulted in the highest possible landings for 2000, regardless of their probability of achieving the biological targets. Scenario IV analyzes the cumulative impacts of the most restrictive possible harvest limits—those that would result in the greatest reductions in landings (relative to 1998) for all species.

An analysis of the proposed harvest limits indicates that these limits will result in revenue loss of 5 percent or greater to 115 of the 1,056 commercial vessels subject to this rule. Those experiencing such reductions varied from 2 vessels landing only scup to 35 vessels landing only black sea bass. No change in revenue would be experienced by 264 vessels, while 677 vessels would experience losses of less than 5 percent. Of the 115 vessels with revenue losses of 5 percent or greater, 46 vessels would experience a 5 to 9 percent revenue loss, 67 vessels would experience 10 to 29 percent revenue loss, and 2 vessels would experience a 30 to 39 percent revenue loss.

An analysis of the Monitoring Committees' recommendations (Scenario II) indicates that these limits would result in a revenue loss of 5 percent or greater to 231 of the commercial vessels subject to this rule. Vessels with reductions in revenue of 5 percent or greater varied from 2 vessels landing only scup to 93 vessels landing all three species. No change in revenue would be experienced by 54 vessels, while 771 vessels would have revenue losses less than 5 percent. An analysis of the least restrictive harvest limits (Scenario III) indicates that none of the vessels would suffer revenue losses of 5 percent or greater, and all would receive increases in revenue. An analysis of the most restrictive harvest limits (Scenario IV) indites that these limits would result in revenue loss of 5 percent or greater for 510 commercial vessels, with 546 vessels having revenue loss less than 5 percent. Vessels with reductions in revenue of 5 percent or greater would be felt by anywhere from 3 vessels landing only scup to 278 vessels landing all three species.

The IRFA also examined six gear restricted areas to reduce the discards of small scup: The first alternative includes the Council's preferred alternative, as recommended by the *ad*

hoc advisory panel, of small areas within statistical areas 537, 539, 613, 615, 616, 621, 622, and 623. The second alternative includes those same sub-areas, but with the northern areas closed from November 1 through December 31 and the southern areas closed from January 1 through April 30 (the times recommended by the Scup Monitoring Committee with the areas recommended by the *ad hoc* advisory panel). The third alternative includes restrictions in statistical areas 537, 539, and 613 from November 1 through December 31, and statistical areas 616 and 622 from January 1 through April 30 (the Scup Monitoring Committee's recommendation). The fourth alternative includes the areas described in the third alternative and a series of approximately 2-week rolling restrictions from November 1 through April 30 (the areas recommended by Scup Monitoring Committee and time periods recommended by the *ad hoc* advisory panel). The fifth alternative includes a series of small 10-minute square sub-areas within statistical areas 537, 539, 613, 616, and 622 that correspond to the 10-minute squares of the highest scup discards (areas with discards greater than 10 percent of the total scup discards for the area) for each statistical area and the November 1 through December 31 and January 1 through April 30 time periods recommended by the Scup Monitoring Committee. The sixth alternative (NMFS' proposed alternative) analyzes areas that intersect statistical areas 537, 539, and 613, from November 1 through December 31, and statistical areas 533, 537, 615, 616, 621, 622, and 623, from January 1 through April 30. These areas both overlap the areas described in the first alternative (the Council's preferred alternative) and include the 10-minute squares identified by Council staff as having high scup discards (the fifth alternative), using January 1989 through April 1999 sea sample data.

All alternatives considered in the analysis would reduce landings and revenue of Atlantic herring, Atlantic mackerel, black sea bass, whiting, and *Loligo*. According to 1998 VTR data, it is estimated that approximately 172 vessels would be affected by any of the gear restriction alternatives. These vessels are identified as those vessels that fished with otter trawl gear with codend mesh less than 4.5 in (11.4 cm) in gear restricted mesh areas, specifically, those specified under Alternatives 3 and 4 since those areas incorporate full statistical areas. Since VTR data specify neither the 10-minute square level nor the complete longitude and latitude information, it is not possible to identify the number of vessels that would be affected by the remaining alternatives. However, Alternatives 3 and 4 represent the most restrictive temporal-spatial limitations of all the alternatives evaluated. Thus, it is possible that these alternatives represent the upper limit of the number of affected vessels under any specific alternative.

The reductions in landings would cause decreases in ex-vessel revenues as follows: $1.96 million for Alternative 1, $4.5 million for Alternative 2, $12.1 million for Alternative 3, $9.8 million for Alternative 4, $2.2 million for Alternative 5, and $13.0 million for Alternative 6. However, the loss of revenues form the various alternatives are likely to be overestimated because closing an area for a specific time would not necessarily prevent trawling effort, rather it would often redirect it to other open areas. The larger areas of NMFS' proposed alternative incorporate identified "hot spots" to a greater extent than the Council's preferred alternative, and would, thus, move participating vessels into areas with potentially lower scup discards. Any economic impacts of a reduction in landings inside the gear restricted areas would be moderated by an increase in landings outside the gear restricted area. Meanwhile, discards outside the gear restricted area for the proposed alternative are expected to be less than the amount that would have occurred inside the gear restricted area. However, other impacts to profitability are possible; for instance, costs, due to vessel operation could increase due to displacing effort.

Item of Particular Concern

Based on guidance from the Council, NMFS proposes to prohibit the use of any trawl gear with a codend mech of less than 4.5 in (11.4 cm) in the gear restricted areas during the specified times. Such a prohibition would include restrictions on otter trawls, Scottish seines, midwater trawls, and any other trawl gear as defined in § 648.2 of the regulations. This prohibition would be consistent with similar measures found in the Northeast multispecies regulations addressing regulated mesh areas and restrictions on gear and methods of fishing at § 648.80 and with recommendations regarding enforceability. However, this clarification to the restriction came after the Council had completed the initial regulatory flexibility analysis (IRFA), which specifically notes the impacts relative to "otter trawl" vessels only.

NMFS is confident that the universe of impacted entities analyzed in the IRFA is still appropriate, because vessels using midwater and other trawls generally also use otter trawls, and would thus have been captured in the identification of vessels in the IRFA. Otter trawls were used on approximately 99 percent of all identified trips in the database. NMFS is interested, however, in making sure that the analysis adequately describes the economic impacts of the gear restricted areas on vessels conducting individual trips using trawl gear other than otter trawls. The economic impacts on these vessels may be slightly underestimated by the IRFA. However, preliminary analysis indicates that vessels conducting trips during the gear restriction time frames using different types of trawl gears is very small; only five vessels have been identified as fishing both with an otter trawl and another type of trawl during the proposed restricted periods.

NMFS is seeking public comment on potential impacts of the proposed restrictions on trawl vessels, other than those using otter trawls exclusively, that would be impacted by these regulations. NMFS will consider these comments, as well as the results of further analyses of the existing database, in making the final decision whether or not to adopt the proposed gear restricted areas.

Regarding sec. 603(b)(3) of the Regulatory Flexibility Act, this proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see ADDRESSES) or via the Internet at http://www.nero.nmfs.gov/ro/doc/nr.htm.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 21, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(121) and (a)(122) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(121) Fish for, possess or land *Loligo* squid, silver hake, black sea bass or

Atlantic mackerel in or from the area, and during the time period, described in § 648.122(a) while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(122) Fish for, possess or land *Loligo* squid, silver hake, black sea bass, Atlantic herring or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(b), while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

* * * * *

3. Section 648.122 is revised to read as follows:

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, must fish with nets that have a minimum mesh size of 4.5 in (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	38°00′	74°20′
SGA2	38°00′	74°00′
SGA3	40°00′	72°30′
SGA4	40°00′	71°20′
SGA5	38°00′	73°30′
SGA6	38°00′	74°20′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (c) of this section, the restrictions specified in paragraph (a)(1) of this section apply to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(b) *Northern Gear Restricted Area.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum mesh size of 4.5 in (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
NGA1	40°00′	72°50′
NGA2	41°10′	72°40.8′ [1]
NGA3	(2)	
NGA4	41°10′	71°28.6′ [3]
NGA5	41°15′	71°00′
NGA6	41°15′	70°00′
NGA7	41°00′	70°00′
NGA8	41°00′	70°40′
NGA9	40°00′	71°30′
NGA10	40°00′	72°50′

[1] The intersection of the latitude point at the 3 nautical mile line west of Block Island, RI.

[2] Thence southerly, thence easterly thence northerly along the southern diameter of the 3 nautical mile line surrounding Block Island, RI.

[3] The intersection of the latitude point at the 3 nautical mile line east of Block Island, RI.

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (c) of this section, the restrictions specified in paragraph (b)(1) of this section apply to vessels in the Northern Gear Restricted Area that are fishing for, or in possession of, the following non-exempt species: Atlantic herring, black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) *Exempted Experimental Fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restricted area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and 9b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Southern or Northern Gear Restricted Area specified in paragraphs (a) or (b) of this section, respectively, must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless the Regional Administrator determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

4. In § 648.123, the first sentence of paragraph (a)(3), paragraph (a)(4), and the first sentence of paragraph (a)(5) are revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. * * *

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.122 and in subparagraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or existing the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 4,000 lb or more (1,814 kg or more) of scup and subject to the minimum mesh requirement in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum mesh requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. * * *

* * * * *

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service 1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year 2000; Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the 1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year (FY) 2000. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of Capacity Building Grant awards. CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998.

DATES: Proposals must be received on or before March 13, 2000. Proposals received after the closing date will not be considered for funding.

User comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before March 13, 2000, at the following address: 1890 Institution Capacity Building Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before March 13, 2000. Proposals submitted through the U.S. mail should be sent to the following address: 1890 Institution Capacity Building Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. Form CSREES–711, "Intent to Submit a Proposal," is not requested nor required for the 1890 Institution Capacity Building Grants Program.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

FOR FURTHER INFORMATION CONTACT: Richard M. Hood, Higher Education Programs; Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2251, 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2251; Telephone: (202) 720–2186; E-mail: rhood@reeusda.gov. Dr. McKinley Mayes, 1890 College Program Coordinator, CSREES, USDA is also available to assist you. He may be reached at (202) 720–3511; or via the Internet: mmayes@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Administrative Provisions and Legislative Authority
B. Program Description
C. Evaluation Criteria
D. How To Obtain Application Materials
E. What To Submit
F. Catalog of Federal Domestic Assistance
G. Stakeholder Input

A. Administrative Provisions and Legislature Authority

This program is subject to the provisions found at 7 CFR part 3406. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

This program is authorized by section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(4)).

B. Program Description

Proposals may be submitted by any of the sixteen historically black 1890 Land-Grant Institutions and Tuskegee University. The eligible 1890 Land-Grant Institutions are identified in the Program Announcement in the FY 2000 Application Kit. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 Land-Grant Institution or Tuskegee University. Grants will be made to the historically black 1890 Land-Grant Institutions and Tuskegee University to strengthen their teaching and research programs in the food and agricultural sciences. The purpose of this grant program is to build the institutional capacities of the eligible colleges and universities through cooperative initiatives with Federal and non-Federal entities.

This program addresses the need to (1) attract more students from under represented groups in the food and agricultural sciences, (2) expand the linkages among the 1890 Institutions and with other colleges and universities, and (3) strengthen the teaching and research capacity of the 1890 Institutions to more firmly establish them as full partners in the food and agricultural science and education system.

For FY 2000, $9.2 million was appropriated for this program. CSREES anticipates that approximately $8.6 million will be available for project grants for this program in FY 2000. Of this amount, approximately $4.35 million will be used to support teaching projects, and $4.25 million will be used to support research projects. Awards will be based upon merit review and the recommendations of peer review panels;

however, up to ten percent of the funds allocated for teaching and up to ten percent of the funds allocated for research may be used to support projects in either area based upon administrative decision by CSREES.

Regular, complementary, or joint projects may be for 18–36 months duration. Awards may be up to $200,000 for a teaching grant and up to $300,000 for a research grant. These maximums are for the total duration of the project, not per year. Matching is strongly encouraged, but not required. However, the amount of matching funds will be used as the primary criterion to break any ties in cases when proposals are equally rated in merit as a result of the peer review process.

The targeted need areas to be supported by capacity building grants in FY 2000 are:

For teaching project grants—curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

For research project grants—studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the nation's food and agricultural research system.

In FY 2000, eligible institutions may propose projects in any discipline(s) of the food and agricultural sciences as defined in section 1404 of NARETPA (7 U.S.C. 3103). There are no limits on the specific subject matter/emphasis areas to be supported.

In FY 2000, proposals may be directed to the undergraduate or graduate level of study leading to a baccalaureate or higher degree in the food and agricultural sciences.

In FY 2000, there is no limit on the number of proposals an eligible institution may submit. However, funding limitations in FY 2000 will affect the number of awards eligible institutions may receive. Therefore, institutions are encouraged to establish on-campus quality control panels to ensure that only high quality proposals having the greatest potential for improving academic and research programs are submitted for consideration. Eligible institutions may submit grant applications for either category of grants (teaching or research); however, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

In FY 2000, the following two limitations will apply to the institutional maximum: (1) No institution may receive more than four grants, and (2) no institution may receive more than 10 percent (approximately $860,000) of the total funds available for grant awards.

For a Joint Project Proposal (submitted by an eligible institution and involving two or more other colleges or universities assuming major roles in the conduct of the project), only that portion of the award to be retained by the grantee will be counted against the grantee's institutional maximum. Those funds to be transferred to the other colleges and universities participating in the joint project will not be applied toward the maximum funds allowed the grantee institution. However, if any of the other colleges and universities participating in the joint project are 1890 Institutions or Tuskegee University, the amount transferred from the grantee institution to such institutions will be counted toward their institutional maximums. For Complementary Project Proposals, only those funds to be retained by the grantee institution will be counted against the grantee's institutional maximum.

In FY 2000, the maximum number of new awards listing the same individual as Project Director or Principal Investigator is two grants. This restriction does not apply to joint projects.

In FY 2000, the maximum number of new awards listing the same individual as Project Director or Principal Investigator in any one targeted need area that focuses on a single subject matter area or discipline is one grant. This restriction does not apply to proposals that address multiple targeted need areas and/or multiple subject matter areas.

For both teaching and research project grants—CSREES is prohibited from paying indirect costs exceeding 19 per centum of the total Federal funds provided under each award (7 U.S.C. 3310). An alternative method to calculate this limit is to multiply total direct costs by 23.456 percent.

The award of any grants under the provisions of this program is subject to the availability of appropriations.

C. Evaluation Criteria

NARETPA requires that certain priorities be given for teaching enhancement projects in awarding grants under section 1417(b). CSREES considers all applications received in response to this solicitation as teaching enhancement project applications. To implement these priorities for proposals submitted for the fiscal year (FY) 2000 competition, the evaluation criteria used to evaluate proposals, as stated in the Administrative Provisions (7 CFR 3406.15), have been modified to include new criteria or extra points for proposals demonstrating enhanced coordination among eligible institutions and focusing on innovative, multidisciplinary education programs, material, or curricula. The following evaluation criteria and weights will be used to evaluate proposals submitted for funding to the FY 2000 competition:

Evaluation criteria for teaching proposals	Weight (points)
(a) Potential for advancing the quality of education:	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	.....
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a significant State, regional, multistate, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15
(2) Innovative and multidisciplinary focus—Does the project focus on innovative, multidisciplinary education programs, material, or curricula? Is the project based on a non-traditional approach toward solving a higher education problem in the food and agricultural sciences? Is the project relevant to multiple fields in the food and agricultural sciences? Will the project expand partnership ventures among disciplines at a university?	15
(3) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base?	10

Evaluation criteria for teaching proposals	Weight (points)
(4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10
(b) Overall approach and cooperative linkages: This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5
(4) Collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)?	10
(5) Coordination and partnerships—Does the project demonstrate enhanced coordination between the applicant institution and other colleges and universities with food and agricultural science programs eligible to receive grants under this program? Will the project lead to long-term relationships or cooperative partnerships, including those with the private sector, that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	5
(c) Institutional capacity building: This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	10
(e) Budget and cost-effectiveness: This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5

Evaluation criteria for research proposals	Weight (points)
(1) Significance of the problem: This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a significant State, regional, multistate, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period?	15

Evaluation criteria for research proposals	Weight (points)
(2) Innovative and multidisciplinary focus—Is the project based on a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study? Does the project focus on innovative, multidisciplinary education programs, material, or curricula? Is the project relevant to multiple fields in the food and agricultural sciences? Will the project expand partnership ventures among disciples at a university?	15
(3) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base?	10
(4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	15
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5
(4) Collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)?	10
(5) Coordination and partnerships—Does the project demonstrate enhanced coordination between the applicant institution and other colleges and universities with food and agricultural science programs eligible to receive grants under this program? Will the project lead to long-term relationships or cooperative partnerships, including those with the private sector, that are likely to enhance research quality or supplement available resources?	5
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from under-represented groups?	15
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15
(d) Personnel Resources:	
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	10
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)?	5

D. How To Obtain Application Materials

An Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the FY 2000 1890 Institution Capacity Building Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 2000 1890 Institution Capacity Building Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

E. What To Submit

An original and seven (7) copies of a proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½" x 11" white paper, double spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. Do not use reduced type or increase the density of the lines. Applicants are cautioned to comply with the 20-page limitation for the Narrative section of a teaching or research proposal. Reviewers will not be required to read beyond the 20-page limit for the Proposal Narrative section in evaluating a proposal. All copies of the proposal must be submitted in one package. Each copy of the proposal must be stapled securely in the upper left-hand corner (DO NOT BIND).

F. Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.216, 1890 Institution Capacity Building Grants Program.

G. Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). Written comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA-CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding. Submission of comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Done at Washington, DC, this 20th day of January 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–1911 Filed 1–27–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Housing service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for Fiscal Year 2000; Correction

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Correction.

SUMMARY: The Rural Housing service corrects a notice published December 21, 1999 (64 FR 71604). This action is taken to correct the point score for 0–4 percent leveraged assistance.

Accordingly, the notice published December 21, 1999 (64 FR 71604) is corrected as follows:

On page 71606, paragraph C. 1. (a), in the "Points" column, the point score "5" for "0–4" percentage of leveraging should read "0". The corrected table reads as follows:

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	0

Dated: January 18, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–1912 Filed 1–27–00; 8:45 am]

BILLING CODE 310–XV–U

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS) Fertility Supplement

ACTION: Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 28, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michelle Schwab, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting clearance for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June 2000 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 1998, and have been asked periodically since 1971.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

II. Method of Collection

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0610.
Form Number: None. All interviews conducted using computers.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 30,000.
Estimated Time Per Response: 1 minute.
Estimated Total Annual Burden Hours: 500.
Estimated Total Annual Cost: None.
Respondents' Obligation: Voluntary.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 21, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–1914 Filed 1–27–00; 8:45 am]
BILLING CODE 3510–07–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34173A; FRL–6490–4]

Phosmet, Revised Pesticide Risk Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessments for one organophosphate pesticide, phosmet, to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for phosmet. In addition, representatives of the Department of Agriculture (USDA) will also provide ideas on possible risk management for phosmet.

DATES: The technical briefing will be held on February 10, 2000, from 9 a.m. to 12:30 p.m.

ADDRESSES: The technical briefing will be held at the Doubletree Hotel, 2525 North 20th Ave., Pasco, Washington, 99301; telephone number: (509) 547–0701.

FOR FURTHER INFORMATION CONTACT: By mail: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphate pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/. In addition, a brief summary of the phosmet revised risk assessment is now available at http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2.

2. *In person.* The Agency has established an official record under docket control number OPP–34173A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action Is the Agency Taking?

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, phosmet. The Agency is presenting the revised risk assessments for phosmet to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management.

The technical briefing is part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

The Agency will issue a **Federal Register** notice to provide an opportunity for public viewing of the phosmet revised risk assessments and related documents in the Public Information and Records Integrity Branch and on the OPP Internet web site that are described in Unit I.B.1, and to provide an opportunity for a 60-day public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: January 21, 2000.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–2017 Filed 1–28–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Request for Generic Clearance To Conduct Voluntary Customer/Partner Surveys

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 21, 1999, in Volume 64, No. 182, page 51132 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Library of Medicine may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Voluntary Customer Satisfaction Surveys. Type of Information Collection Request: New. Need and Use of Information Collection: Executive Order 12962 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a "Federal Reinvention Laboratory" with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service. Frequency of Response: Annually or biennially. Affected Public: Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations. Type of Respondents: Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. Annual reporting burden is as follows:

Title of survey	Type of survey	Number of respondents	Estimated response time	Burden hours
Evaluation of Clinical Studies Database	Web-based	1,000	.167	167
Visible Human Project—Image Processing Tools	Electronic Mail	1,000	.25	250
PubMed	Web-based	5,000	.0835	418
Entrez	Web-based	2,000	.0835	167
GeneMap	Web-based	2,000	.0835	167
NCBI Web Site	Web-based	2,000	.0835	167
NLM Service Desk Survey	Interactive Voice Response telephone.	400	.0835	33
NLM Onsite Reading Room Use	Exit Interview	500	.167	84

Title of survey	Type of survey	Number of respondents	Estimated response time	Burden hours
NLM Electronic Mail Customer Survey	Electronic Mail	1,000	.0835	84
MEDLINEplus User Survey	Web-based	500	.0835	59
Survey of Unified Medical Language System (UMLS) Use	Mail Survey	1,000	.5	500
NLM Services Satisfaction Survey	Web-based	2,000	.0835	167
Total				2,263

The annualized cost to respondents is estimated at $30,256. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed collection of information contact: Ronald F. Stewart, National Library of Medicine, Building 38, Room 2N07, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number (301) 496–6491. You may also e-mail your request to: ron__stewart@nlm.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received by February 28, 2000.

Dated: January 20, 2000.

Donald C. Poppke,

Associate Director for Administrative Management, National Library of Medicine.

[FR Doc. 00–1937 Filed 1–27–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting Elaine Gese at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7056 ext. 282; Fax: 301/402–0220; E-mail: eg46t@nih.gov. A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

Variants of Humanized Anti-Carcinoma Monoclonal Antibody CC49

Syed V. Kashmiri (NCI), Eduardo A. Padlan (NIDDK), Jeffrey Schlom (NCI)

U.S. Provisional Patent Applications 60/106,534 filed 31 Oct 1998 and 60/106,757 filed 02 Nov 1998

The invention embodied in these two patent applications describes the humanization of a murine anti-carcinoma antibody which has been shown to react with Tumor Associated Glycoprotein 72 (TAG–72), an antigen which is expressed on human breast, colorectal, and other carcinomas. The humanization process, which renders the antibody minimally immunogenic to humans, has been accomplished by a method different from the current procedure for the humanization of a rodent antibody which is based on grafting all the Complementarity Determining Residues (CDRs) of a rodent antibody onto a human antibody framework. This new humanization protocol involves identifying the Specificity Determining Residues (SDRs), the amino acid residues in the hypervariable regions of an antibody that are most critical for antigen binding activity. The CDRs, which are found not to contain SDRs and hence are dispensable for antigen binding activity, are not grafted onto the human antibody frameworks. Rather, only the SDRs of the essential CDRs are transferred to the human antibody molecule. The resulting molecule is believed to elicit an immune response in humans which is significantly less than that elicited through administration of other humanized antibodies.

Embodied in the current invention are methods of identifying the SDRs, and of rendering any antibody minimally immunogenic in humans by transferring the SDRs of the antibody to a human antibody framework. The resulting humanized antibodies, including CDR variants therof (including a CH2 deleted version), are also embodied in the invention, as are methods of using the antibodies for therapeutic and diagnostic purposes.

Dated: January 20, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–1931 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the pubic as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(6) and 552b(c)(9), Title 5 U.S.C., as amended. The discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the review of applications, and information concerning NCI and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: National Cancer Advisory Board.

Dates: February 15–16, 2000.

Open: February 15, 9:00 a.m. to 3:45 p.m., February, 16, 9:00 a.m. to 12:00 p.m.

Agenda: Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/ Advisory Board and Groups, *http://deainfo.nci.nih.gov/ADVISORY/boards, htm* Tentative Agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

Closed: February 15, 2000, 4 p.m. to Recess.

Agenda: Review of Grant Applications.

Place: Building 31, C, Wing, 6 Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8022, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Cancer Centers.

Open: February 15, 12 p.m. to 1 p.m.

Agenda: Annual Guideline Update.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Brian Kimes, Executive Secretary, Office of Centers, Training, and Resources, National Cancer Institute, National Institutes of Health, Executive Plaza North—Suite 502, 6130 Executive Boulevard, Bethesda, MD 20892–8327, (301) 496–8537.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; or 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 83.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1936 Filed 1–27–00 8:45am]

BILLING CODE 7555–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: January 26, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 350, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Andrew P. Mariani, Chief, Scientific Review Branch, 6120 Executive Blvd., Suite 350, Rockville, MD 10892, 301/ 496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

January 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1932 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: February 27–28, 2000.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joyce A. Hunter, NHLBI/ DEA/Review Branch, Rockledge Building II, Room 7192, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0287.

(Catalog of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 98.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1933 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 21, 2000.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tommy L. Broadwater, Chief, Grants Review Branch, NIAMS, NIH, 45 Center Drive, Rm. 5AS25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1930 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Centers Review Committee.

Date: February 28, 2000.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects.

Date: February 29, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: February 29, 2000.

Time: 830 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Road, NW., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marina L. Volkov, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: February 29–March 1, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Road, NW., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Kesinee Nimit, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: March 1–2, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 29089–2954, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Special Emphasis Panel for Treatment Research Subcommittee.

Date: March 1, 2000.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, at the Chevy Chase Pavilion, 4300 Military Road, NW., Wisconsin Ave. and Western Ave., Washington, DC 20015.

Contact Person: Susan L. Coyle, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 7–9, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Mark Swieter, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1934 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Antibodies for Neuroscience Research".

Date: January 25, 2000.

Time: 9:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279 Drug Abuse Research Programs, National Institutes of Health HHS)

Dated: January 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1935 Filed 1–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–04]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 21, 2000.

Joseph A. D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–1913 Filed 1–27–00; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–00–1020–PA]

Supplementary Rule Regarding Operation of Motorized Vehicles in Developed Recreation Sites on Public Lands in Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a Supplementary Rule establishing guidelines for the operation of off-road vehicles within developed recreational sites on public lands administered by the BLM Butte Field Office in the state of Montana.

SUMMARY: Off-road vehicle use in developed recreation sites has resulted in conflicts between vehicle operators and other public land site visitors. Safety hazards occur with unlimited vehicle use in congested, developed recreation sites. Vehicle operation off roadways in developed campgrounds and picnic areas has caused considerable damage to natural resources and public property resulting in increased operational and maintenance costs. The developed recreation sites listed below shall be closed to the use and operation of off-road vehicles from April 15 thru October 15. Off-road vehicle operation outside these dates shall be limited to existing roads, parking lots and campsite pull-ins. Sites administered by the Butte Field Office affected by this restriction notice include:

Yellowstone River—Carbella.
Big Hole River—East Bank, Dickie Bridge, Bryant Creek, Jerry Creek, Upper and Lower Divide.
Missouri River—Upper and Lower Toston, Devils Elbow, Holter Dam, Holter Lake, Log Gulch and Departure Point.

This Supplementary Rule is issued under authority of 43 CFR 8365.1–6.

Penalties: As prescribed under the Federal Land Policy and Management Act, 43 USC Section 1733(a). Violation is punishable by fines and/or imprisonment under 43 CFR 8360.0–7.

EFFECTIVE DATE: To comply with the Administrative Procedures Act, this Supplementary Rule will go into effect 30 days after publication in the **Federal Register** if no substantive negative comments are received and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Steve Hartmann, Acting Field Manager, P.O. Box 3388, Butte, Montana 59702, 406–494–5059.

Dated: January 12, 2000.

Steve Hartmann,

Acting Field Manager.

[FR Doc. 00–1673 Filed 1–27–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statues, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the

specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 21st day of January 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–1882 Filed 1–27–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date/Time: February 9–10, 2000, 8:30a.m.—5:00p.m.; February 11, 2000, 8:30a.m.—Adjourn.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Carter Kimsey, Program Coordinator, Postdoctoral Research Fellowships in Microbial Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Biological Informatics proposals submitted in response to the program announcement (NSF 99–142).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1992 Filed 1–27–00 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in the Division of Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the foliowing meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date/time: February 3–4, 2000, 8:30 a.m. to 5 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Marija Ilic, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard,

Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted in response to the program announcement (NSF 99–2).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c). (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1994 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation annouces the following meeting:

Name: Special Emphasis panel in Electrical and Communications System (1196).

Date and Time: February 7–8, 2000—8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 365, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Kishan Baheti, Program Director, Control, Networks, and Computational Intelligence (CNCI), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230 Telephone: (703) 306–1339.

Purpose: To provide advice and recommendation concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the CNCI program as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1995 Filed 1–27–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 9463, as amended), the National Science Foundation announces the following meeting:

Name: Committee of Visitors for the Division of Physics, Subcommittee of the Advisory Committee for Mathematical and Physical Sciences

Date and Time:

Wednesday, February 9, 2000, 8:30 a.m.–6 p.m.

Thursday, February 10, 2000, 8:30 a.m.–5 p.m.

Friday, February 11, 2000, 8:30 a.m.–3 p.m.

Place: Room 1235, NSF, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. Joseph L. Dehmer, Director, Division of Physics, National Science Foundation, 4201 Wilson Boulevard, Room 1015.37, Arlington, VA 22230

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: February 9, 10, and 11 from 8:30—6:00 each day—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Division of Physics programs.

Open: February 11 from 10:30—11:30—To assess the results of NSF program investments in the Division of Physics. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the COV will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. Such deliberations are exempt under 5 U.S.C. 552B9c)(4) and (6) of the Government in the Sunshine Act.

Karen York,

Committee Management Officer.

[FR Doc. 00–1996 Filed 1–27–00;8:45am]

BILLING CODE 7555–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.035 (3.5%) as the measure of average growth in railroad productivity for the 1994–1998 (5-year) period. The current value of 5.7% was developed for the 1993 to 1997 period.

DATES: Comments are due by February 11, 2000.

EFFECTIVE DATE: The proposed productivity adjustment is effective 30 days after the date of service.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DA•TO•DA OFFICE SOLUTIONS, Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 21, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–1998 Filed 1–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 582]

Public Views on Major Rail Consolidations

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing and Request for Comments.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing beginning on Wednesday, March 8, 2000, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of major railroad consolidations and the present and future structure of the North American railroad industry.

DATES: The public hearing will begin on Wednesday, March 8, 2000, and, if necessary, will continue on Thursday, March 9, 2000. Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, and must indicate therein a requested time allotment, by February 8, 2000. A schedule for the hearing, which will include a list of speakers and their allotted times, will be issued by the Board by February 18, 2000. Each speaker or commenter must file with the Board the text of his/her anticipated written statement, and/or a summary thereof, by February 29, 2000.

ADDRESSES: An original and 10 copies of all notices of intent to participate and all written comments and/or summaries must refer to STB Ex Parte No. 582, and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Ex Parte No. 582, 1925 K Street, N.W., Washington, DC 20423–0001. In addition to submitting an original and 10 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, WordPerfect 7.0 format), an electronic copy of each such paper document.[1]

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) has decided, on its own motion, to hold a public hearing beginning at 10:00 a.m. on Wednesday, March 8, 2000, at its offices in Washington, DC, to provide a forum for the expression of views by interested persons, including railroads, rail shippers and other users, rail employees, and other elements of the rail sector, on major rail consolidations and the present and future structure of the North American railroad industry.

Issues. This public hearing is prompted in part by the initiation of, but will be conducted separate and apart from, the "BNSF/CN" control proceeding in STB Finance Docket No. 33842, which was initiated on December 20, 1999, with the filing by Burlington Northern Santa Fe Corporation and The Burlington Northern and Santa Fe Railway Company (referred to collectively as BNSF) and Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, and Illinois Central Railroad Company (referred to collectively as CN) of a notice indicating their intent to file an application seeking Board authorization under 49 U.S.C. 11323–25 and 49 CFR part 1180 for a transaction (referred to as the BNSF/CN transaction) under which BNSF and CN would be brought under common control.[2] We are aware that, in the wake of the filing of the BNSF/CN notice of intent, there has been a great deal of speculation that the strategic responses of the remaining North American rail carriers to the proposed BNSF/CN transaction will lead to a new round of major railroad consolidations, ultimately resulting in the formation of two North American transcontinental railroad systems.

We are also aware that this speculation has caused concern given that the structure of the North American railroad industry has already changed dramatically in the past half decade. There remain two major western railroads and two major eastern railroads in the United States. And, although there have been no major changes in the structure of the Canadian rail network following the privatization of CN, the "CN/IC" transaction represents a significant tightening of the bonds between the Canadian and American components of the overall North American rail network. Recognizing the restructuring that has occurred and the speculation about future restructuring, by joint letter dated January 14, 2000, Chairman Bud Shuster and Ranking Democratic Member James L. Oberstar of the House Committee on Transportation and Infrastructure have urged the Board "to promptly explore all options to ensure an early and vigorous debate" on whether the "downstream" effects of the proposed BNSF/CN transaction are in the public interest. Given this letter and the concerns that have been voiced publicly, there appears to be strong sentiment for a public review at this time of what the evolving structure of the North American railroad industry is and should be.

In scheduling a hearing now, we intend no prejudgment of the yet-to-be-filed BNSF/CN application. Rather, we are providing a forum for the discussion of broader matters that have been raised since the announcement of the proposed BNSF/CN transaction. In this regard, there are several issues upon which we seek specific comments, and any other relevant comments, as always, are welcome.

In particular, we note that a majority of the large railroads have recently stated that now is the time to concentrate on existing opportunities to improve service rather than on further consolidation. And, other parties have expressed concern about more restructuring while the industry is still recovering from service difficulties and other disruptions associated with implementation of the last round of major rail consolidations.[3] Accordingly, we especially wish to explore public and, in particular, rail shipper and other user views on the timing of any proposed large railroad consolidation.

In addition, we have made reference earlier in this notice to the concern publicly expressed that the strategic responses engendered by another large railroad consolidation would lead to significant additional consolidation, and possibly other changes in the structure of the rail industry or in the way in which the industry is regulated. The views of all interested persons are invited on these matters, as well as on the question of whether or not these eventualities would be a good thing for large and small railroads, and for their customers and employees, and, more broadly, whether it would be in the public interest.

Views are sought also on fundamental questions related to the effects of railroad consolidations on the financial condition of the railroad industry and the industry's ability to provide responsive service at reasonable prices. In this regard, we seek comments on whether the railroad industry has and will have the necessary infrastructure, capacity and configuration to meet expected demand for freight service now and in the future.

[1] Any party may seek a waiver from the electronic submission requirement.

[2] *See Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Northern Santa Fe Corporation, and The Burlington Northern and Santa Fe Railway Company "Common Control,* STB Finance Docket No. 33842, Decision Nos. 1 & 1A (STB served Dec. 28, 1999) (published in the **Federal Register** on January 4, 2000, at 65 FR 318).

[3] In this regard, while we would expect commenters to reference implementation and other issues that have arisen in the wake of mergers that have already been approved, we remind parties that we have other proceedings more specifically focused in oversight of individual mergers and thus would not expect the use of this proceeding to litigate or relitigate issues specifically related to those transactions.

The public hearing that will be held beginning on March 8, 2000, will allow all interested persons, including railroads, rail shippers and other users, rail employees, and other elements of the rail sector, to voice their views on rail consolidation in general, and on the present and future structure of the North American railroad industry, and will give us a better sense of the current thinking of those most directly affected by our regulation. The hearing is scheduled for that date both because the letter from Chairman Shuster and Ranking Democratic Member Oberstar has urged prompt action on our part and because the application in the BNSF/CN control proceeding could conceivably be filed as early as March 20, 2000.

It should be emphasized that the comments made at this hearing will not be regarded as "evidence" in the BNSF/CN control proceeding. That application, if and when it is filed, will be judged on its merits, on the basis of the record compiled in STB Finance Docket No. 33842, in accordance with the evidentiary directives already issued by the Board in its decision notifying the public of the future BNSF/CN filing, and subject to any other future rulings of the Board regarding that filing.

Date(s) Of Hearing. The hearing will begin on Wednesday, March 8, 2000, at 10:00 a.m., in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will be conducted as other Board hearings have been conducted in recent years: there will be only short breaks during the hearing; the hearing can be expected to continue into the evening hours; and, if necessary, the hearing will resume on Thursday, March 9, 2000, and continue until every person scheduled to speak has been heard.

Notice Of Intent To Participate. Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, and must indicate therein a requested time allotment, by February 8, 2000.

Schedule. A schedule for the hearing, which will include a list of speakers and their allotted times, will be issued by the Board by February 18, 2000.

Statement and/or Summary. Each speaker or commenter must file with the Board the text of his/her anticipated written statement, and/or a summary thereof, by February 29, 2000.

Paper Copies; Electronic Copies. Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (these must be submitted by February 8, 2000). Each person intending to speak or to submit written comments must submit his/her written comments and/or a written summary thereof (these must be submitted by February 29, 2000). Each such person should also submit, in addition to an original and 10 copies of all paper documents filed with the Board, an electronic copy of each such paper document. The electronic copy should be on a 3.5-inch IBM-compatible floppy diskette, and should be in, or convertible by and into, WordPerfect 7.0. Any person may seek a waiver from the electronic submission requirement.

Coordination Encouraged. We encourage interested persons to coordinate the presentation of their views by selecting a single individual to appear at the hearing on behalf of their common interests. Because of the importance of shipper views on the subject matter, however, we encourage individual shippers to appear and express their positions.

Post-Hearing Action. We will take such action, if any, as necessary to respond in an appropriate fashion to the views expressed at the hearing.

Federal Register Publication. Notice of the March 8, 2000 hearing will be published in the **Federal Register**.

Board Releases Available Via The Internet. Decisions and notices of the Board, including this notice, are available on the Board's website at "www.stb.dot.gov."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 21, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–1999 Filed 1–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 146X)]

Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—In Dallas County, TX

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon 2,367 feet of railroad over the Oakland Avenue Spur from station 186+62 at Malcolm X Boulevard to the end of the track at Station 210+29.2 in the city of Dallas, Dallas County, TX. The line traverses United States Postal Service Zip Code 75215.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 23, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 3, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 28, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by January 24, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–1230 Filed 1–27–00; 8:45 am]

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65

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19

JA

28

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MI

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Federal Register

Vol. 65, No. 19

Friday, January 28, 2000

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200	3
201–344	4
345–688	5
689–1050	6
1051–1296	7
1297–1528	10
1529–1754	11
1755–2016	12
2017–2280	13
2281–2520	14
2521–2834	18
2835–3118	19
3119–3374	20
3375–3582	21
3583–3780	24
3781–4094	25
4095–4348	26
4349–4516	27
4517–4572	28

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

1660 (See Proc. 7266)	2831
1704 (See Proc. 7266)	2831
1948 (See Proc. 7266)	2831
2050 (See Proc. 7266)	2831
2528 (See Proc. 7266)	2831
7263	2817
7264	2821
7265	2825
7266	2831
7267	2835
7268	2837
7269	3779

Executive Orders:

April 17, 1926 (Revoked in part by PLO 7428)	3733
5593 (Revoked by PLO 7428)	3733
12543 (See Notice of December 29, 1999)	199
12544 (See Notice of December 29, 1999)	199
12947 (See Notice of January 19, 2000)	3581
13099 (See Notice of January 19, 2000)	3581

Administrative Orders:

Presidential Determinations:

No. 2000–9 of December 23, 1999	689

Notices:

December 29, 1999	199
January 19, 2000	3581

Memorandums:

January 5, 2000	2279, 3119

5 CFR

831	2281, 2521
842	2281, 2521

7 CFR

6	1297
201	1704
246	3375
371	1298
400	3781
457	3782
932	2839
959	2526
966	2281
982	2841
984	1755
997	1302
998	1302
999	1302
1220	1, 2844

Proposed Rules:

54	3155
253	2358
800	75
868	78
930	672
979	1347
993	2908
1280	1825
1301	1825
1304	1825
1305	1825
1306	1825
1307	1825
1308	1825

9 CFR

93	345
94	1304, 1529
96	1304
303	201
304	2283
312	2283
327	2283
350	2283
381	201, 2283, 2284
424	2284, 3121

Proposed Rules:

98	4173
54	1074
79	1074
130	391

10 CFR

431	2227

Proposed Rules:

Ch. I	3615
2	3394
40	3394
50	1829, 3394
72	3397
430	2077
440	4332
490	1831
960	2361
963	2361

11 CFR

Proposed Rules:

100	1074
102	1074
103	1074
104	1074
106	1074
107	1074
109	1074
110	1074
114	1074
116	1074

12 CFR

225.....3785
269a.....2529
935.....202
960.....203
Proposed Rules:
Ch. I.....4176
5.....3157
650.....1676
900.....324
910.....324
917.....81
941.....324

13 CFR

305.....2017
308.....2530
314.....2530
400.....1757
500.....1758
Proposed Rules:
120.....1349
121.....4176

14 CFR

21.....3540
23.....1758
27.....3540
29.....3540
39...1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540, 1761, 1762, 1763, 1765, 1767, 1769, 1771, 2017, 2019, 2285, 2287, 2289, 2844, 2861, 2862, 2864, 3379, 3583, 3794, 3796, 3798, 3799, 3802, 4095, 4349, 4351, 4353, 4354, 4356
61.....2022
67.....2022
71.....348, 349, 699, 700, 1308, 1309, 1774, 2537, 2538, 2539, 3381, 3382, 4102
91.....3540
95.....2291
97.....350, 2023, 2025
121.....2295
125.....2295
141.....2022
142.....2022
382.....352
1204.....2865
Proposed Rules:
39.....250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353, 1831, 1833, 1836, 1838, 1840, 2362, 2555, 3165, 3617, 3619, 3621, 4192, 4385
71.....402, 4192
91.....2077
108.....560
109.....560
111.....560
121.....2079
129.....560, 2079
191.....560

15 CFR

734.....2492
740.....2493
742.....2492
770.....2492
772.....2492
774.....2492
902.....30
Proposed Rules:
280.....1572
303.....731

16 CFR

256.....2867
1615.....1435
1700.....93
Proposed Rules:
250.....2912
310.....2912

17 CFR

232.....3123
Proposed Rules:
Ch. II.....3399
1.....3623

18 CFR

35.....810
Proposed Rules:
125.....1484
225.....1484
356.....1484

19 CFR

4.....2868
162.....3803
171.....3803
191.....3803
Proposed Rules:
134.....4193

20 CFR

Proposed Rules:
604.....2080

21 CFR

101.....1000
173.....1776
177.....3384
201.....7, 4103
314.....1776
341.....7
369.....7
556.....4111
558.....4111
801.....3584
803.....4112
804.....4112
862.....2296
864.....2296
866.....2296
868.....2296
870.....2296
872.....2296
874.....2296
876.....2296
878.....2296
880.....2296
882.....2296
884.....2296
886.....2296
888.....2296
890.....2296
892.....2296
1308.....3124
Proposed Rules:
216.....256
314.....3623
801.....3627
870.....2364
890.....2364

22 CFR

514.....352

23 CFR

655.....9

24 CFR

35.....3386
902.....1712
968.....3386
1000.....3386

25 CFR

1.....2026
301.....2030
602.....2030
Proposed Rules:
1.....2081, 2084

26 CFR

1.....701, 1236, 1310, 2026, 2323, 3586, 3589, 3813, 3814, 3817, 3821, 3844, 4121
7.....3589
49.....1056
301.....215, 263, 1059, 2030, 3844
602.....1056, 1236, 1310, 2030, 2323, 3586, 3589, 3821, 3844, 4112
Proposed Rules:
1.....258, 1572, 2081, 2084, 3401, 3629, 3903, 4203, 4388, 4396
31.....4396
40.....1076
301.....4396

27 CFR

270.....1676

29 CFR

2550.....614
4044.....2329

30 CFR

202.....1542
203.....2874
206.....1542
250.....217, 2874, 3126
251.....2874, 3856
253.....2874
254.....2874, 3856
256.....2874
282.....3856
904.....2331
914.....1059
946.....1063
Proposed Rules:
206.....1580, 2557, 3167
944.....2364

31 CFR

1.....2333
317.....2034
375.....3113

32 CFR

Proposed Rules:
199.....2085
323.....3167
326.....2912
813.....419

33 CFR

110.....2876
117.....353, 710, 1543, 1543, 2035, 2036, 2038, 2539, 2541
154.....710
155.....710
165.....1065
207.....4124
Proposed Rules:
100.....2095
110.....1581, 2095
117.....1077
157.....2812
165.....1079, 2095

34 CFR

611.....1780
Proposed Rules:
Ch. VI.....1582

36 CFR

Proposed Rules:
5.....2920
13.....2920

37 CFR

4.....3127
Proposed Rules:
201.....3404

38 CFR

Ch. 1.....1544
3.....3388
17.....762
51.....762
58.....762

39 CFR

111.....1318, 3609, 4517
265.....3857
Proposed Rules:
111.....264
206.....403

40 CFR

9.....1950
49.....1322
52.....14, 16, 1068, 1545, 1787, 2039, 2042, 2046, 2048, 2052, 2334, 2674, 2877, 2880, 2883, 3130, 4207, 4357
60.....1323, 2336
63.....3276
70.....1787, 3130
81.....2883
82.....716
97.....2674
136.....3007
141.....1950
142.....1950
147.....2899
180.....1790, 1796, 1802, 1809, 3860
247.....2889
257.....1842
258.....1842
261.....2337
271.....2897
300.....19, 1070, 2903, 2905
444.....4360
445.....3007

712.....1548
716.....1554
721.....354
Proposed Rules:
52...104, 421, 732, 1080, 1583, 1841, 2367, 2557, 2560, 2920, 2921, 2924, 3168, 3630, 4207, 4466
63.....3169, 3642, 3907
70.....1841, 3168
81.....2924, 3630
180.....425
257.....1814
258.....1814
260.....3188
271.....2925
300.....1081, 2925, 2926
503.....1676

41 CFR

Ch. 301.....3392
301-10.....1268
301-11.....1326
301-51.....2541, 3054
301-52.....3054
301-54.....3054
301-70.....3054
301-71.....3054
301-74.....1326
301-76.....3054
Proposed Rules:
101-6.....2504
102-3.....2504

42 CFR

121.....1435
412.....1817, 3136
413.....1817
483.....1817
485.....1817
Proposed Rules:
405.....1081, 4545

43 CFR

428.....4303

44 CFR

64.....1554, 1555
Proposed Rules:
67.....1435

45 CFR

1355.....4020
1356.....4020
1357.....4020
Proposed Rules:
160.....427
164.....427

46 CFR

Proposed Rules:
356.....646

47 CFR

0.....374
21.....4136
25.....3814
27.....3139
51.....1331, 2542
68.....4137
73.....219, 220, 1823, 1824, 3150, 3151, 3152
74.....4136
76.....375
Proposed Rules:
1.....2097
22.....2097
51.....2367
73.....270, 1843, 3188, 3406, 3407, 4211, 4400, 4401
74.....3188
101.....2097

48 CFR

205.....2056
209.....2056
235.....2057
241.....2058
243.....2056
252.....2056
253.....2055
1806.....3153
1813.....3153
1815.....3153
1835.....3153
1852.....3153
1872.....3153
2401.....3572
2402.....3572
2403.....3572, 3576
2409.....3572, 3576
2413.....3572
2414.....3572
2415.....3572
2416.....3572
2419.....3572
2424.....3572
2425.....3572
2426.....3572
2428.....3572
2432.....3572
2433.....3572
2436.....3572, 3576
2437.....3576
2439.....3572, 3576
2442.....3572, 3576
2446.....3572
2451.....3572
2452.....3572, 3576
2453.....3572, 3576
Proposed Rules:
1.....1438, 4328, 4345
2.....1438
4.....1438
7.....1438
8.....1438
11.....2272
15.....1438
16.....1438
17.....1438
22.....1438, 2272
27.....1438
28.....1438
31.....1438, 4327
32.....1438
35.....1438
36.....2272
37.....1438
42.....1438
43.....1438, 3762
44.....1438
45.....1438
49.....1438, 2272
51.....1438
52.....1438, 2272, 3762, 4345
53.....1438
212.....2104
242.....2104, 2109
247.....2104
252.....2104
253.....2109
1804.....429
1852.....429

49 CFR

1.....220
268.....2342
572.....2059
Proposed Rules:
40.....2573
209.....1844
222.....2230
229.....2230
1244.....732

50 CFR

17.....20, 2348, 3096, 3867, 3876, 4140
216.....30
226.....1584
300.....59
600.....221, 4169
622.....4172
635.....2075
648.....377, 1557, 1568
660.....221, 3890, 4169
679.....60, 65, 74, 380, 3892, 4520
Proposed Rules:
17.....1082, 1583, 1845, 3096, 3648
18.....109
23.....4217
86.....3332
216.....270, 1083
222.....270
223.....105
224.....1082
226.....105, 1584
300.....272
622.....4221
635.....3199
648.....275, 431, 4546, 4547
660.....2926

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 28, 2000

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Summer food service program—
Program meal service during school year, paperwork reduction, and targeted State monitoring; published 12-29-99

COMMERCE DEPARTMENT
Patent and Trademark Office
Inventors' Rights Act; implementation:
Invention promoters; complaints; published 1-20-00

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Compression-ignition marine engines at or above 37 kilowatts; published 12-29-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Ex Parte presentation in commission proceedings; published 12-28-99
Telecommunications Act of 1996; implementation—
Telecommunications services, equipment, and customer premises equipment; access by persons with disabilities; published 11-19-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Mammography quality standards; published 10-1-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; published 1-21-00
Eurocopter Deutschland GMBH; published 1-13-00
General Electric Co.; published 11-29-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 2-4-00; published 1-5-00
Sheep and lamb promotion and research; comments due by 2-1-00; published 1-12-00
Tobacco inspection:
Burley tobacco; moisture testing; comments due by 1-31-00; published 12-2-99

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 2-3-00; published 12-16-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspections:
Inspection services—
Retail operations exemption from requirements; comments due by 2-3-00; published 1-4-00

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; implementation; comments due by 1-31-00; published 12-30-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass; comments due by 2-2-00; published 1-3-00
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 2-4-00; published 12-21-99
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; annual specifications and management measures; comments due by 2-3-00; published 1-4-00
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 2-4-00; published 1-5-00
Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs; fishing quotas; comments due by 2-3-00; published 1-4-00
Ocean and coastal resource management:
Marine sanctuaries—
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; comments due by 2-1-00; published 11-19-99
Gray's Reef National Marine Sanctuary, GA; management plan/regulations review; scoping meetings; comments due by 2-1-00; published 12-27-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
AmeriCorps education awards; comments due by 1-31-00; published 12-1-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Retiree Dental Program; expansion of dependent eligibility; comments due by 1-31-00; published 12-1-99
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99
Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Perchloroethylene emissions from dry cleaning facilities—
Florida; comments due by 1-31-00; published 12-28-99
Air pollution; standards of performance for new stationary sources:
Commercial and industrial solid waste incineration units; comments due by 1-31-00; published 11-30-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-2-00; published 1-18-00
Illinois; comments due by 2-2-00; published 1-3-00
Montana; comments due by 2-2-00; published 1-3-00
New York; comments due by 2-4-00; published 1-5-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-acyl sarcosines and sodium N-acyl sarcosinates; comments due by 2-4-00; published 12-6-99
Tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3(1H-1,2,4-triazol-1-yl) propyl 1,1,2,2-tetrafluoroethyl ether]; comments due by 2-4-00; published 12-6-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 1-31-00; published 12-30-99
National priorities list update; comments due by 1-31-00; published 12-30-99
Toxic substances:
Significant new uses—
Halogenated benzyl ester acrylate, etc.; comments due by 2-4-00; published 1-5-00
Water supply:
National primary drinking water regulations—
Radon-222; maximum contaminant level goal; public health protection; comments due by 2-4-00; published 12-21-99

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Indiana; comments due by 1-31-00; published 12-17-99

Radio frequency devices:
Radio services operating below 30 MHz; conducted emission limits; comments due by 1-31-00; published 11-16-99
Radio stations; table of assignments:
Arizona; comments due by 1-31-00; published 12-30-99
California; comments due by 1-31-00; published 12-30-99
Louisiana; comments due by 1-31-00; published 12-30-99
Virginia and Maryland; comments due by 1-31-00; published 12-17-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99
Yugoslavia and Afghanistan; acquisition restrictions; comments due by 1-31-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Temporary Assistance for Needy Families Program—
High performance bonus rewards to States; comments due by 2-4-00; published 12-6-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Freedom of Information Act; implementation; comments due by 2-2-00; published 11-4-99
Human drugs:
Prescription drug marketing; comments due by 2-1-00; published 12-3-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicaid:
Managed care organizations; external quality review; comments due by 1-31-00; published 12-1-99
Medicare and Medicaid programs:
Religious nonmedical health care institutions and advance directives; comments due by 1-31-00; published 11-30-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Spalding's catchfly; comments due by 2-1-00; published 12-3-99

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Oil value for royalty due on Federal leases; establishment; comments due by 1-31-00; published 12-30-99

JUSTICE DEPARTMENT
Drug Enforcement Administration
List I chemical manufacturers, distributors, importers, and exporters; registration:
Registration and reregistration fees; comments due by 1-31-00; published 12-1-99
Correction; comments due by 1-31-00; published 12-16-99

LABOR DEPARTMENT
Employment and Training Administration
Birth and adoption unemployment compensation; comments due by 2-2-00; published 1-13-00

LABOR DEPARTMENT
Occupational Safety and Health Administration
Occupational safety and health standards:
Ergonomics program; comments due by 2-1-00; published 11-23-99

LABOR DEPARTMENT
Wage and Hour Division
Child labor; civil money penalties; inflation adjustment; comments due by 1-31-00; published 11-30-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Davis-Bacon Act; construction contract wage determination options; comments due by 2-1-00; published 12-3-99
Veterans' employment; comments due by 2-1-00; published 12-3-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Records management:
Agency records centers; storage standards update; comments due by 1-31-00; published 12-2-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Share insurance and appendix; update and clarification; comments due by 1-31-00; published 11-30-99

POSTAL SERVICE
Domestic Mail Manual:
Palletized standard mail and bound printed matter, etc.; preparation changes; comments due by 2-3-00; published 1-4-00

RAILROAD RETIREMENT BOARD
Railroad Unemployment Insurance Act:
Sickness and unemployment benefits; waiting period shortened, etc.; comments due by 2-1-00; published 12-3-99

SECURITIES AND EXCHANGE COMMISSION
Public utility holding companies:
Acquisition of U.S. utilities by foreign companies; internationalization; comments due by 2-4-00; published 12-21-99
Securities:
Unlisted trading privileges; comments due by 1-31-00; published 12-15-99

SMALL BUSINESS ADMINISTRATION
Business loans:
Certified development companies; areas of operations; comments due by 1-31-00; published 12-1-99

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Tariff-rate quota implementation for imports of sugar-containing products; comments due by 1-31-00; published 12-1-99

TRANSPORTATION DEPARTMENT
Coast Guard
American Society for Testing and Materials (ASTM); standards incorporated by reference; update; comments due by 1-31-00; published 12-1-99
Regattas and marine parades:
Port of Miami, FL; OPSAIL 2000; comments due by 1-31-00; published 12-17-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 1-31-00; published 12-30-99
Alexander Schleicher Segelflugzeugbau; comments due by 1-31-00; published 12-28-99
Boeing; comments due by 1-31-00; published 11-30-99
Constucciones Aeronauticas, S.A.; comments due by 2-4-00; published 1-5-00
Eurocopter Deutschland GmbH; comments due by 1-31-00; published 12-2-99
Eurocopter France; comments due by 1-31-00; published 11-30-99
Fokker; comments due by 2-3-00; published 1-4-00
Hartzell Propeller, Inc.; comments due by 2-1-00; published 12-3-99
Rolls Royce, plc; comments due by 2-1-00; published 12-3-99
Saab; comments due by 2-4-00; published 1-5-00
Turbomeca Arrius; comments due by 1-31-00; published 12-1-99
Class D airspace; comments due by 2-4-00; published 1-5-00
Class E airspace; comments due by 1-31-00; published 12-17-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Treasury securities, reopening; original issue discount; comments due by 2-3-00; published 11-5-99

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Well-grounded claims; comments due by 1-31-00; published 12-2-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

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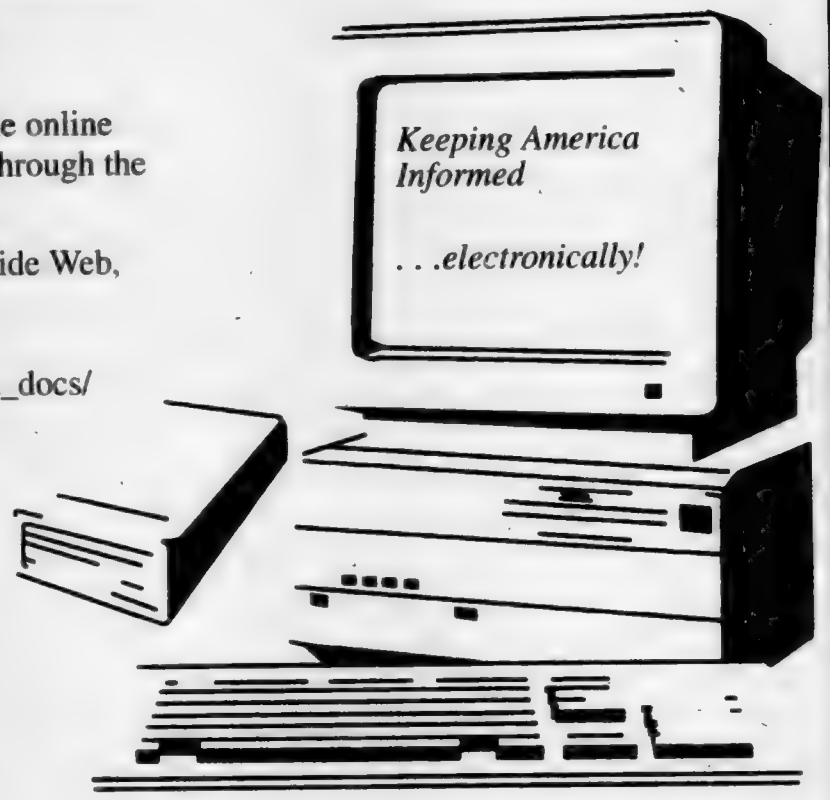

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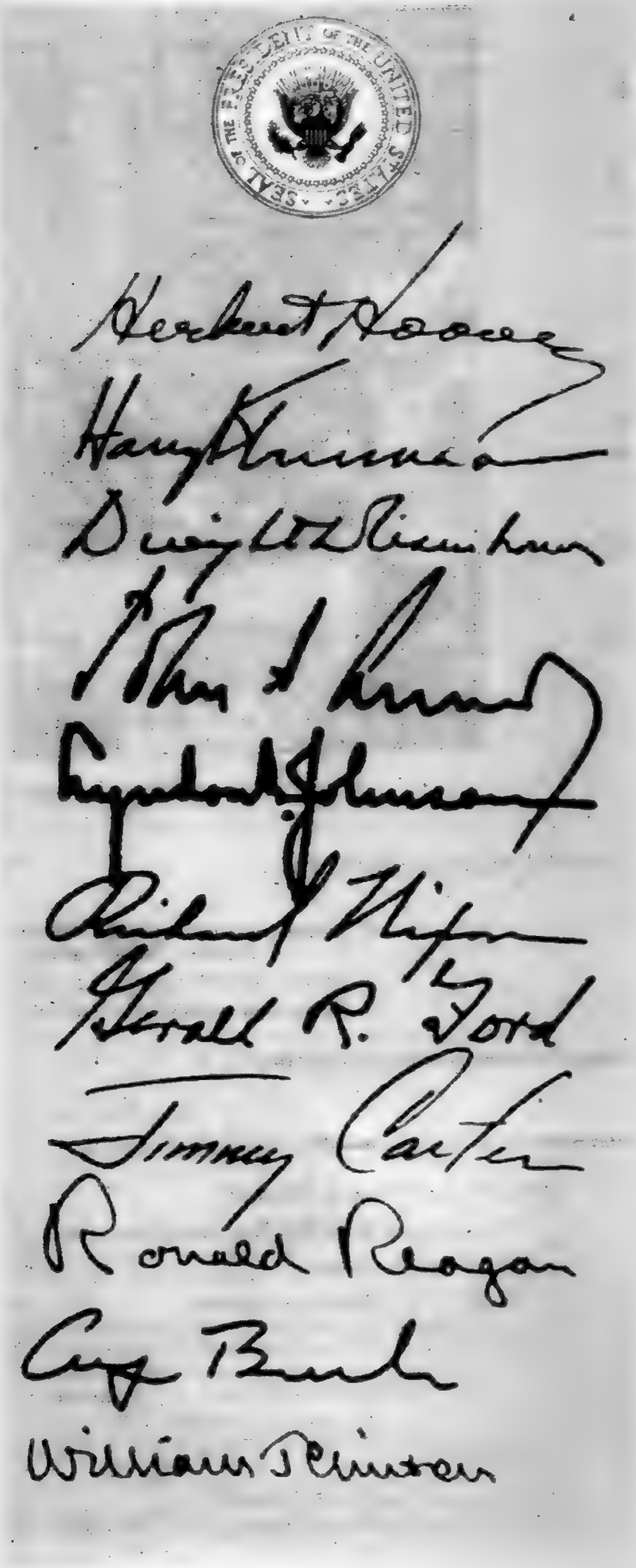

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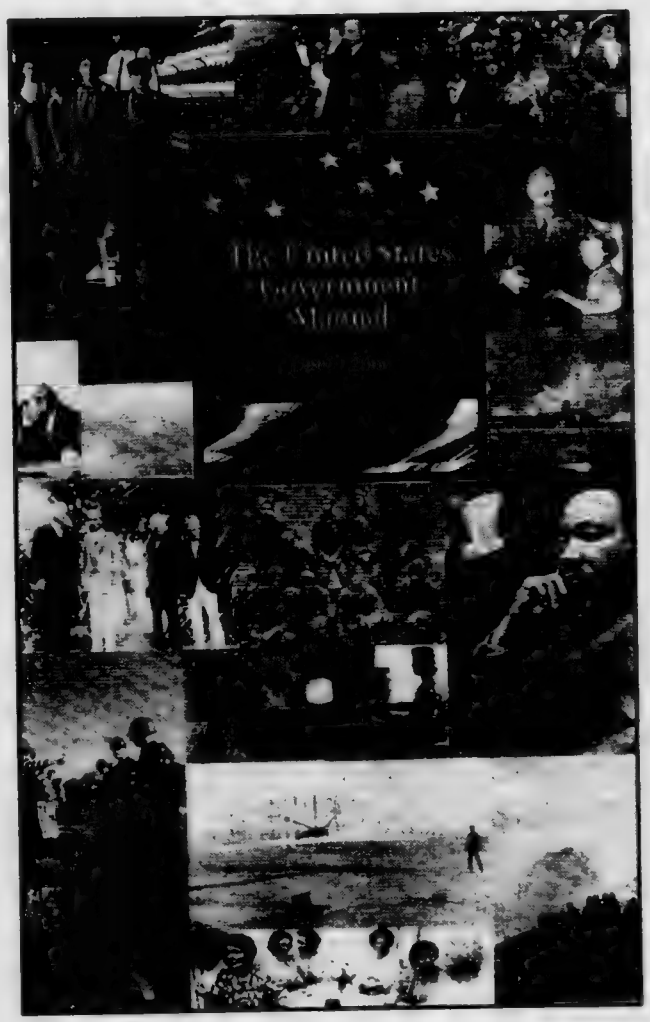

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Contents

Federal Register

Vol. 65, No. 20

Monday, January 31, 2000

Agricultural Marketing Service
RULES
Olives grown in—
California, 4583–4585
PROPOSED RULES
Raisins produced from grapes grown in—
California, 4573–4576

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Asian longhorned beetle control program, 4594–4595

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
HIV infection and other important health problems prevention among youth and coordinated school health programs; national programs, 4610–4613
Meetings:
Energy-Related Epidemiologic Research Advisory Committee, 4613
Immunization Practices Advisory Committee, 4613–4614
Tuberculosis Elimination Advisory Council, 4614

Coast Guard
RULES
Drawbridge operations:
New York, 4576

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Engineers Corps
RULES
Federal Acquisition Regulation (FAR):
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council issuances; introduction; correction, 4633
Foreign acquisition; policies and procedures; correction, 4633
SBA's 8(a) Business Development Program; correction, 4633

Education Department
NOTICES
Meetings:
Web-Based Education Commission; correction, 4633

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Madison, IL; Madison Site Feasibility Study; radiological contamination cleanup, 4604–4605

Environmental Protection Agency
RULES
Pesticide programs:
Foreign pesticide producing establishments; submission of reports; address change, 4576–4577
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 4606
Weekly receipts, 4605–4606
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 4606–4607

Federal Communications Commission
RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Contributions based on prior year revenues, 4577–4579
Frequency allocations and radio treaty matters:
Table of Frequency Allocations; revision, 4635–4752
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4607–4608

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 4608

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 4605

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 4608–4609
Formations, acquisitions, and mergers, 4609
Meetings; Sunshine Act, 4609

Federal Transit Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4629–4631

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 4620
Environmental statements; availability, etc.:
Incidental take permits—
Balcones Canyonlands Preserve, TX, et al., 4623
King County, WA; gray wolf, bald eagle, etc., 4602–4603
Riverside County, CA; coastal California gnatcatcher, 4622–4623

San Diego County, CA; coastal California gnatcatcher, 4620–4622

Food and Drug Administration
NOTICES
Biological products:
Patent extension; regulatory review period determinations—
Certiva, 4614–4615
Human drugs:
Patent extension; regulatory review period determinations—
Teslascan, 4615–4616
Medical devices:
Patent extension; regulatory review period determinations—
Lumbar I/F Cage, 4616–4617

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council issuances; introduction; correction, 4633
Foreign acquisition; policies and procedures; correction, 4633
SBA's 8(a) Business Development Program; correction, 4633

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Meetings:
Medicare Education Advisory Panel, 4617

Health Resources and Services Administration
NOTICES
Meetings:
Health Professions and Nurse Education Special Emphasis Panels, 4617

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Youthbuild Program, 4617–4619
Organization, functions, and authority delegations:
Federal Tort Claims Act and Military Personnel and Civilian Employees' Act of 1964; Assistant General Counsel for New England, 4619–4620

Indian Affairs Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Education Facilities Replacement Construction Priority List, 4623–4624

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Stainless steel butt-weld pipe fittings from—
Various countries, 4595–4600
Uranium from—
Uzbekistan, 4600–4601
Committees; establishment, renewal, termination, etc.:
Environmental Technologies Trade Advisory Committee, 4601
Meetings:
Environmental Technologies Trade Advisory Committee, 4601

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Utah, 4624–4625

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Civilian Agency Acquisition Council and Defense Acquisition Regulations Council issuances; introduction; correction, 4633
Foreign acquisition; policies and procedures; correction, 4633
SBA's 8(a) Business Development Program; correction, 4633
NOTICES
Meetings:
Procurement policies, practices, and initiatives; open forum, 4627

National Archives and Records Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4627–4628

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Roof crush resistance test procedures; rounded or raised roofs; suitability, 4579–4582

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
King County, WA; gray wolf, bald eagle, etc., 4602–4603
Meetings:
Gulf of Mexico Fishery Management Council, 4604

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Mount Rainier National Park, WA, 4625
Environmental statements; availability, etc.:
Joshua Tree National Park, CA; backcountry and wilderness management plan, 4625
Environmental statements; notice of intent:
Cane River Creole National Historical Park, LA, 4625–4626
Meetings:
Lake Clark National Park Subsistence Resource Commission, 4626–4627

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S. National Assessment Synthesis Team (No. 5219), 4629
Meetings:
Biological Sciences Special Emphasis Panel, 4628
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 4628
Geosciences Special Emphasis Panel, 4628–4629

Postal Service
NOTICES
Meetings; Sunshine Act, 4629

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Rural Utilities Service
NOTICES
Environmental statements; notice of intent:
National Power Cooperative, Inc., 4595

Securities and Exchange Commission
PROPOSED RULES
Securities:
Supplementary financial information, 4585–4593
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc.; correction, 4633

State Department
NOTICES
Meetings:
International Telecommunication Advisory Committee, 4629

Transportation Department
See Coast Guard
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4631–4632

United States Institute of Peace
NOTICES
Grants and cooperative agreements; availability, etc.:
Unsolicited grants—
Spring competition program, 4632

Separate Parts In This Issue

Part II
Federal Communications Commission, 4635–4752

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
932.....4573
Proposed Rules:
989.....4583

17 CFR
Proposed Rules:
210.....4585
229.....4585
249.....4585

33 CFR
117.....4576

40 CFR
167.....4576

47 CFR
2.....00000
54.....4577

48 CFR
Ch. 1.....4633
12.....4633
19.....4633
25.....4633
52 (2 documents).....4633,

49 CFR
571.....4579

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–3 FR]

Olives Grown in California; Revisions to Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the handling requirements under the California olive marketing order. The olive marketing order regulates the handling of olives grown in California, and is administered locally by the California Olive Committee (committee). This rule establishes exemption, safeguard, and reporting requirements for handlers desiring to ship a small portion of their olives as new packaged olive products for test marketing and market development projects. This rule will help provide uniform procedures under the order and improve overall program administration.

EFFECTIVE DATE: This final rule becomes effective February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the handling requirements under the order for olives grown in California. The revision implements procedures and reporting requirements for handlers desiring to use a small portion of their olives to test market and initiate market development projects for new packaged olive products. The procedures include completion and submission of a new form, the COC Form 155, and approval by committee staff.

Sections 932.51 and 932.52 of the olive marketing order authorize regulatory requirements regarding the handling of California packaged olives. Such requirements include incoming and outgoing handling requirements with regard to quality, size, and style of olives. Certain of these requirements are implemented under § 932.149. Styles of olives include whole, pitted, sliced, segmented (wedged), halved, chopped, and broken pitted. Handlers will be permitted to use other styles of olives and to add other ingredients to the finished product, such as flavorings, pieces of garlic, or jalapeno peppers.

Section 932.55 of the order provides authority for regulatory exemptions for olives which are used for specified purposes, including shipments of olives used to facilitate the conduct of marketing research and development projects. Section 932.55 of the order also provides authority for the committee to recommend rules, regulations, and safeguards necessary to ensure that olives exempted under the provisions of this section are handled only as authorized.

Section 932.155 of the order's rules and regulations provides specific safeguards for certain special purpose shipments of packaged olives. However, these regulations do not include requirements and procedures related to shipping packaged olives for test marketing and market development. In the past, the committee has, on occasion, approved such marketing projects. This rule revises § 932.155 for the purpose of clarifying the language and to include an exemption and safeguards in the rules and regulations for shipments of new packaged olive products for test marketing and market development. The revision clarifies existing practices in the regulations, and establishes uniform procedures for all handlers to ensure that the handling of new product packaged olives exempted under the provisions of § 932.55 will be handled only as authorized. Such new products could include packaged olives of different styles containing various ingredients or flavorings, such as pieces of garlic, or jalapeno peppers.

The rule specifies information requested on a new form, the COC 155. Prior to engaging in test marketing and initiating market development projects

for a new product, a handler will be required to file the COC 155 with the committee. The form includes: (1) The name and address of requesting handler; (2) the quantity of olives to be utilized (limited to not more than five percent of the applicant handler's crop year acquisitions); (3) specific market outlet; (4) flavorings or other ingredients added to the olives; (5) style of olives used; (6) type of olives used, either black or green ripe; (7) container sizes; (8) varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.; (9) sizes of olives utilized; (10) approximate dates on which the new product will be packaged; (11) place of inspection; (12) certification that all assessments and reporting requirements in effect under the marketing order will be met prior to shipment; (13) certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service; (14) purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; (15) an estimate of the amount of time required to complete the test. The committee shall promptly approve or deny the application, and may add limitations to any such approval.

Any product remaining at the end of the test-market period shall be disposed of according to paragraph (a) of § 932.155, which specifies procedures for disposing of packaged olives in the production of olive oil, donating to a charitable organization, or by dumping.

On December 10, 1998, the committee met to discuss the recommendation. Additional discussion occurred at various subcommittee meetings prior to the December 10, 1998, committee meeting.

According to the committee, demand for packaged olives has remained relatively stagnant in recent years. The committee believes that to improve returns to producers and handlers, handlers must have the flexibility to respond to shifting trends in the marketplace by test marketing new products. Handlers must be allowed the opportunity to try marketing innovative new products free from certain marketing order obligations, such as style and flavor requirements which appear to be too restrictive for these new products. Such shipments will, therefore, be exempt from the requirements of § 932.149. Because it appears that such shipments can be made in compliance with all other order requirements, they will remain applicable. This rule will allow handlers to respond to marketing opportunities and requests from buyers, which could result in increased olive sales. In addition, since handlers have large amounts of capital invested in their processing plants, any increase in the amount of olives processed yields a reduction of per unit processing costs, which is a benefit to handlers and producers.

It has been the industry's experience that the ability to ship new products for test marketing and market development helps to encourage handlers to develop new product lines. The committee believes that this option should continue to be available, allowing handlers to take advantage of additional marketing opportunities to expand the market for processed olives. Adding procedures to the rules and regulations will clarify the existing practice, and will provide uniform requirements for handlers.

Therefore, when the committee met in December, it unanimously recommended modifying the rules and regulations to specify procedures and reporting requirements to permit handlers to ship a small portion of their olives for new packaged olive products for test marketing and market development projects. In addition, the committee recommended development of a new form, the COC Form 155, that handlers interested in test marketing and market development projects for new olive products must complete and file with the committee.

The information supplied by the applicant handler will provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the Inspection Service is aware of the product.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 2 handlers subject to regulation under the order and approximately 1,200 producers of olives in the regulated area. In the initial regulatory flexibility analysis, we estimated that there were three handlers subject to regulation under the order. Since publication of the proposed rule, more current information indicates that there are two handlers subject to regulation. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Neither of the olive handlers may be classified as small entities. The majority of producers may be classified as small entities.

A review of historical and preliminary information pertaining to the 1999–2000 crop year (August 1 through July 31) indicates that total grower revenue for the 1999 crop will approximate $39,500,000, and the average grower revenue will be approximately $33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This final rule revises § 932.155 to include requirements for handlers desiring to ship olives to test markets and initiate market development projects for small quantities of new olive products. This rule also reformats § 932.155 for the purposes of clarity.

An alternative to this action would be to maintain the status quo, whereby the regulations would not address the needs of handlers desiring to ship new products for test marketing and market development. However, the committee and the Department believe that regulations should be modified to address these needs. This will ensure that uniform guidelines and procedures are followed by handlers desiring to test market and initiate market development projects. Such activities could ultimately result in increasing sales of processed olives.

Under this rule, the committee will review written requests from handlers interested in test marketing and market development of new product lines. Such requests will be made on a new form, the COC 155, which requires uniform information from all applicant handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This new form is anticipated to be utilized when handlers have developed new product lines which they desire to test market.

The change in handling regulations will provide increased flexibility to handlers to respond to shifting trends in the marketplace.

The reporting and recordkeeping burden has changed from the burden in the proposed rule because the number of handlers subject to regulation under the order has dropped from three to two. Accordingly, this action imposes an additional reporting or recordkeeping requirement on two olive handlers by requiring them to complete COC Form 155 prior to the test marketing of a new canned olive product. The new form will be filed annually and will take about 20 minutes to complete. Therefore, the additional burden created by the use of this form by the two handlers is estimated to be 40 minutes. However, the committee believes that the burden of such a requirement will be outweighed by the opportunities for handlers to test market new products.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0142 for documents required under the olive marketing order. As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the committee's meeting was widely publicized throughout the olive industry and all interested persons were encouraged to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were encouraged to express views on this issue. The committee is comprised of 16 members, of which 8 are producers and 8 are handlers. Each of the two handler entities is presently represented on the committee.

A proposed rule concerning this action was published in the **Federal Register** on October 26, 1999 (64 FR 57597). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the order. Copies of the proposal were provided to the two affected handlers on October 26, 1999. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period, ending December 27, 1999, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because shipments of olives occur all year-round, and, therefore, the safeguard procedures on test marketing new products should be in effect as soon as possible. Handlers are aware of this action which was unanimously recommended by the committee at a public meeting. Finally, a 60-day comment period was provided to allow interested persons to respond to this proposal, and no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 932.155, paragraphs (a) and (b) are revised to read as follows:

§ 932.155 Special purpose shipments.

(a) The disposition of packaged olives covered by § 932.152(d) which are not reprocessed, and new packaged olive products covered under paragraph (b) of this section which have not been disposed of by the end of the test market period, shall be handled in conformity with the applicable provisions of this paragraph.

(1) Under the supervision of the Inspection Service, such packaged olives may be disposed of for use in the production of olive oil or dumped.

(2) Such packaged olives may be disposed of to a charitable organization for use by such organization, provided the following conditions are met:

(i) Any handler who wishes to so dispose of olives shall first file a written application with, and obtain written approval thereof, from the committee. Each such application shall contain at least:

(A) The name and address of the handler and the charitable organization;

(B) The physical location of the charitable organization's facilities;

(C) The quantity, in cases, the variety, size, can size, and can code of the packaged olives; and

(D) A certification from the charitable organization that such olives will be used by the organization and will not be sold.

(ii) Prior to approval, the committee shall perform such verification of the accuracy of the information on the application as it deems necessary. The committee may deny any application if it finds that the required information is incomplete or incorrect, or has reason to believe that the intended receiver is not a charitable organization, or that the handler or the organization has disposed of packaged olives contrary to a previously approved application. The committee shall notify the applicant and the organization in writing of its approval, or denial, of the application. Any such approval shall continue in effect so long as the packaged olives covered thereby are disposed of consistent with this section. The committee shall notify the handler and the organization of each such termination of approval. The handler shall furnish the committee, upon demand, such evidence of disposition of the packaged olives covered by an approved application as may be satisfactory to the committee.

(b) In accordance with the provisions of § 932.55(b), packaged olives to be used in marketing development projects may be handled without regard to § 932.149 provided the following conditions are met. Such olives must be identified to the satisfaction of the Inspection Service and kept separate from other packaged olives. The handler shall submit to the committee for its approval "COC Form 155" at least 10 working days prior to the shipment of such packaged olives to test markets, and report progress or changes to the committee, as requested. The applicant handler shall provide the following information on COC Form 155:

(1) The quantity of olives to be utilized (limited to not more than five percent of the handler's crop year acquisitions);

(2) Specific market outlet;

(3) Flavorings or other ingredients added to the olives;

(4) Style of olives used;

(5) Type of olives used, either black or green ripe;

(6) Container sizes;
(7) Varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.;
(8) Sizes of olives utilized;
(9) Approximate dates when the new product will be packaged;
(10) Name and address of requesting handler;
(11) Place of inspection;
(12) Certification that all assessment and reporting requirements in effect under the marketing order will be met prior to shipment;
(13) Certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service;
(14) Purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and
(15) An estimate of the amount of time required to complete the test. The committee shall promptly approve or deny the application, and may add limitations to any such approval. Upon approval, the applicant handler shall notify the Inspection Service. Packaged olives so identified and remaining unused at the end of the approved test-market period shall be disposed of according to paragraph (a) of this section.

* * * * *

Dated: January 24, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2039 Filed 1–28–00; 8:45 am]

BILLING CODE 3410–02–

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–002]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Greenpoint Avenue Bridge, mile 1.3, across the Newtown Creek in New York City. This deviation allows the bridge owner to keep the bridge in the closed position from 6 a.m. to 6:30 p.m., on January 23, 2000, and January 30, 2000. This action is necessary to facilitate necessary repairs to the bridge lift motors.

DATES: This deviation is effective on January 23, 2000, and January 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Greenpoint Avenue Bridge, mile 1.3, across the Newtown Creek, has a vertical clearance of 26 feet at mean high water, and 31 feet at mean low water in the closed position. The existing operating regulations in 33 CFR 117.801(a)(4) require the bridge to open on signal at all times.

The bridge owner, the New York City Department of Transportation, notified the Coast Guard on December 10, 1999, that the bridge lift motors may fail to operate if immediate repairs were not implemented. The approval to proceed with the repairs was delayed because of the potential New York City Transit strike which was expected to occur on December 15, 1999. The New York City Transit work stoppage was avoided and as a result, the bridge owner has again requested a two-day closure to repair the bridge lift motors. The repairs are scheduled to be performed on two consecutive Sundays in late January. This decision was made because most of the commercial operators that use this waterway usually do not operate on Sundays resulting in few requests to open the bridge during that time period.

This deviation to the operating regulations allows the bridge owner to keep the Greenpoint Avenue Bridge in the closed position from 6 a.m. to 6:30 p.m., on January 23, 2000, and January 30, 2000.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 19, 2000.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–2023 Filed 1–28–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 167

[FRL–6530–5]

Change of Address for Submission of Certain Reports; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document announces a technical amendment revising the address foreign pesticide producing establishments are to use to obtain and submit forms to the Agency .

DATES: This document is effective January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Foreign pesticide producing establishments should contact: FIFRA Foreign Establishment Registration Contact, Agriculture and Ecosystems Division (2225A), Office of Compliance, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, (202) 564–5008; Fax: (202) 564–0085.

SUPPLEMENTARY INFORMATION: Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that pesticides subject to the Act be produced only in establishments registered with the EPA, and requires that registered establishments file annual reports with the Agency. The Agency has established regulations at 40 CFR part 167 to implement the requirement of section 7 of FIFRA. Section 167.90 of these regulations directs that applications for registration of establishments and annual reports be sent to the appropriate EPA regional office (if a registered establishment is located in the United States) or to a specified address at EPA headquarters (if a registered establishment is located in any other country). The Agency is, by this document, amending 40 CFR 167.90(b) by revising the address to be used by foreign establishments when submitting applications or annual reports to the Agency. This technical amendment to the regulations will become effective upon publication of this document in the **Federal Register**.

List of Subjects in Part 167

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 18, 2000.

Michael M. Stahl,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

Therefore, 40 CFR Part 167 is amended as follows:

PART 167—[AMENDED]

1. The authority citation for Part 167 continues to read as follows:

Authority: 7 U.S.C. 136(e) and (w)

2. In § 167.90(b), the address at the end of the paragraph is revised to read:

§ 167.90 Where to obtain and submit forms.

* * * * *

(b) * * *

U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Agriculture and Ecosystems Division (2225A), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, ATTN: FIFRA Foreign Establishment Registration Contact.

[FR Doc. 00–1965 Filed 1–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 99–280]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service addresses several petitioners asking for reconsideration or waiver of the Commission's contribution rules. The Commission requires carriers to contribute on the basis of prior year revenues, and the petitioners wanted to use current year revenues instead. The Commission denies the petitions.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order and Seventh Order on Reconsideration, CC Docket No. 96–45; FCC 99–280, released on October 13, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC, 20554.

I. Introduction

1. Affinity Corporation, Hotel Communications, Inc., LDC Telecommunications, Inc. (LDC), MobileTel, Inc., National Telephone & Communications, Inc. (MobileTel), Network Operator Services, Inc. (NOS), Operator Communications, Inc. (OCI), and U.S. Network, Inc. (collectively, Petitioners) have filed petitions for waiver or, alternatively, reconsideration of § 54.706, § 54.709, and/or § 54.711 of the Commission's rules. Specifically, Petitioners seek waiver or reconsideration of the requirement that their contributions to the universal service support mechanisms be calculated on the basis of their prior year revenues. For the reasons that follow, we deny the petitions.

II. Discussion

A. Reconsideration of the Method for Calculating Contributions

1. Timeliness of Petitions

2. NOS and LDC have petitioned the Commission to reconsider its decision to assess contributions on prior year revenues instead of current year revenues, and OCI has asked the Commission to consider assessing contributions on estimated future revenues with periodic reconciliations. As NOS recognizes, however, a petition for reconsideration in a rulemaking proceeding must be filed within 30 days after public notice of the Commission action. The Commission's rules provide that public notice in a rulemaking proceeding occurs upon publication of the document, or a summary thereof, in the **Federal Register**. Even if we assume that NOS, LDC, and OCI seek reconsideration of the *Universal Service Second Order on Reconsideration*, 62 FR 41294 (August 1, 1997), our last decision concerning this issue, that decision was published in the **Federal Register** on August 1, 1997. Thus, petitions for reconsideration of the *Universal Service Second Order on Reconsideration* were due on or before September 1, 1997. OCI, NOS, and LDC filed their petitions for reconsideration on July 14, 1998, August 28, 1998, and October 22, 1998, respectively, and they are therefore untimely. Recognizing this untimeliness, NOS urges the Commission to reconsider the issue of prior year revenues on our own motion. For the reasons discussed, however, we decline to reconsider on our own motion our decision to assess universal service contributions on prior year revenues.

3. Although the petitions for reconsideration are untimely, we wish to take this opportunity to address NOS's claim that "it is not clear * * * [whether] the Commission followed the [notice] requirements of the Administrative Procedure Act (APA)" in establishing the universal service assessment methodology, and the Commission should therefore reconsider its decision. Section 553(b) of the APA requires an agency to provide published notice of its proposed rulemaking in the **Federal Register**. The notice must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved."

4. Here, the Commission sought comment in the *Universal Service NPRM*, 61 FR 10499 (March 14, 1996), on how universal service contributions should be assessed. The Commission described three potential contribution bases: gross interstate revenues; gross interstate revenues net of payments to other carriers; and per-line or per-minute units. The Commission also specifically asked for comment on the approach used for the TRS fund, *i.e.*, gross interstate revenues for the prior calendar year, and provided a citation to the *TRS Third Report and Order*, 58 FR 39671 (July 26, 1993).

5. Given that the Commission sought comment on two revenue-based contribution methods in the *Universal Service NPRM*, it necessarily follows that, if the Commission adopted a revenue-based method, it would also need to select some period for which revenues would be measured. Moreover, the Commission specifically directed commenters to consider the TRS approach, which was established in 1993 and assesses contributions based on prior calendar year revenues. Indeed, in response to the *Universal Service NPRM*, commenters stated that the industry was already familiar with the TRS approach. Considering the Commission's expressed interest in a revenue-based contribution method and its reference to the TRS approach, we believe that the question of what period's revenues to use was necessarily raised for comment. Accordingly, we find that the Commission's *Universal Service NPRM* satisfies the Administrative Procedure Act's notice requirement.

2. Substantive Proposals for Alternative Calculation Methodologies

6. Although we deny the petitions for reconsideration as untimely, we also take this opportunity to explain why we believe that the calculation methodologies proposed by Petitioners do not present viable alternatives to the

methodology the Commission adopted in the *Universal Service Second Order on Reconsideration*. Consistent with the directives of section 254, the Commission adopted a contribution methodology that is equitable, nondiscriminatory, and competitively neutral. Pursuant to the Act and our rules, all entities that provide interstate telecommunications are required to contribute to the universal service support mechanisms. The contribution methodology does not discriminate against one class of carrier or favor one market segment over another. Contributions are calculated using a contribution factor, which is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues. Thus, contributors pay only an equitable, *pro rata* share of the total projected quarterly expenses. The fact that some carriers may have difficulty recovering their contributions from a declining customer base is the product of a competitive marketplace, not an inequitable, discriminatory, or competitively-biased Commission rule. We emphasize that using prior year revenues to calculate contributions to the universal service support mechanisms is consistent with Congress's directive that all providers of interstate telecommunications services shall contribute to the preservation and advancement of universal service on an equitable and nondiscriminatory basis.

7. Contrary to the methodology the Commission adopted, however, NOS proposes allowing carriers to make a one-time election to base their universal service contributions on current year revenues, instead of prior year revenues. Under this plan, the Commission would estimate total industry revenues, which, according to NOS, will remain relatively constant from year to year. We find that NOS's proposal does not fulfill congressional objectives as well as the methodology the Commission adopted.

8. For example, under NOS's proposal, the Commission would have to forecast total end-user telecommunications revenues when calculating contribution factors for the universal service support mechanisms. Contrary to NOS's claim, we do not believe that such revenues are likely to remain relatively constant. Our most recent assessment of the telecommunications industry shows that, from 1992 to 1998, gross telecommunications revenues increased by approximately $93 billion. Annual increases have ranged from approximately $10 billion to $22 billion since 1992. Moreover, although the Commission has used forecasts of gross industry revenues in calculating contribution factors for the TRS fund, the universal service support mechanisms are significantly larger than the TRS fund. Thus, errors in forecasting total industry revenues will have a much greater effect on the universal service support mechanisms than on the TRS fund. Consequently, the use of forecasting increases the likelihood that universal service contributors will be overbilled in some periods and underbilled in other periods, resulting in funding surpluses or shortfalls in the universal service support mechanisms. Such a result is contrary to Congress's directive that the universal service support mechanisms be specific, predictable, and sufficient.

9. In addition, NOS's proposal allowing carriers to make a one-time election to base their contributions on current year revenues or prior year revenues would impose significant administrative burdens on USAC. Instead of a single procedure for handling contributor reporting and assessment, USAC would need to have two sets of procedures running concurrently, one for prior year contributors and one for current year contributors. Thus, we conclude that the potential for forecasting errors and the increased administrative burdens make NOS's plan less likely than the Commission's current methodology to satisfy the congressional directive that universal service support mechanisms should be specific, predictable, and sufficient.

10. We find similar problems with the proposal set forth by OCI. OCI claims that the current contribution method places a heavier burden on carriers with declining revenues, and therefore it is neither equitable, nondiscriminatory, nor competitively neutral. OCI proposes that carriers estimate their revenues for the upcoming six months and USAC calculate carriers' contributions based on those estimates. To prevent carriers from intentionally underestimating their revenues, carriers would also report their actual revenues from prior periods. USAC could then annually compare carriers' estimated revenues with their subsequently reported actual revenues and reconcile any differences between estimated revenues and actual revenues.

11. Whereas NOS's plan requires one entity (the Commission) to estimate total industry end-user telecommunications revenues, OCI's plan requires *each carrier* to submit an estimate of its end-user telecommunications revenues for the upcoming six months. We believe that some carriers will overestimate revenues and others will underestimate revenues. As discussed, such forecasting errors are likely to result in universal service support mechanisms that are neither specific, predictable, nor sufficient. Such a result also is contrary to the congressional mandate that carriers make equitable and nondiscriminatory contributions.

12. Moreover, OCI's plan would increase the administrative burden on both carriers and USAC. In addition to reporting actual prior year revenues, carriers would have to semi-annually prepare and submit revenue estimates for the upcoming six months. After entering, verifying, and potentially auditing the actual prior year revenue data, USAC also would have to process the carriers' six month revenue estimates. Furthermore, the reconciliation procedure suggested by OCI would complicate the billing process for USAC because bills would be based on data from multiple periods. Because of the potential negative effects of forecasting errors and the increased administrative burdens, we decline to adopt OCI's plan.

B. Requests for Waiver

13. Section 1.3 of the Commission's rules governs petitions for waiver and provides that waiver may be granted upon "good cause shown." Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden. The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy. Although the Commission must give meaningful consideration to waiver petitions, it should not tolerate evisceration of a rule by waivers.

14. For various reasons, each Petitioner alleges that it has experienced a decline in revenues. Each Petitioner asks for a waiver of the contribution requirements and seeks either to exclude a portion of its prior year revenues from its revenue base or to apply the contribution factor to its decreased present year revenues. Most Petitioners claim that, absent such waivers, they will have difficulty recovering their contributions from their shrinking subscriber bases.

15. We are not persuaded that Petitioners' alleged inability to recover contributions is a special circumstance warranting waiver of the prior year revenue contribution requirement. The Commission does not require carriers to recover their universal service

contributions from end users. Rather, the Commission has given carriers the flexibility to decide whether and how they should recover their contributions as markets become increasingly competitive. Although the Commission permits carriers to pass through all or part of their universal service contributions to their end users, the requirement to contribute is not dependent upon a carrier's ability to successfully pass though such contributions. We agree with AT&T and BellSouth that annual revenue variations are an inherent part of the competitive environment in the telecommunications industry. Even OCI recognizes that "carriers with declining revenues are not unique and that there may be various circumstances which cause carriers to experience such revenue declines from year to year." Thus, we conclude that a decline in revenues, without more, is an insufficient basis for a waiver of the requirement that universal service contributions be based on prior year revenues. Moreover, now that carriers are familiar with the contribution process, they have the ability to ameliorate the effects of declining revenues and/or subscribers by reserving a portion of their current revenues to meet the contribution obligations that arise from those current revenues in the following year.

16. NTC, OCI, and MobileTel have attempted to explain the circumstances underlying their revenue declines, which include, respectively, regulatory action to correct improper marketing practices, increased competition, and an adverse Commission licensing decision. We are not persuaded that any of these circumstances rise to the level of the special circumstances necessary to warrant a waiver. It is not unusual for a state to take corrective action against a company that improperly markets its services, or competitors to compete for subscribers and marketshare. Furthermore, although the Commission rescinded MobileTel's Louisiana 8 and 9 RSA cellular B block licenses in 1996, the Commission granted MobileTel interim authority to continue operating until qualified applicants were licensed and ready to begin service. The grant of interim authority, while limited, allowed MobileTel to generate significant, additional revenues that it otherwise would have foregone absent such interim authority. By accepting the interim authority, however, MobileTel subjected itself to the obligations and responsibilities associated with being a provider of interstate telecommunications services in the Louisiana 8 and 9 Rural Service Areas. The fact that those obligations and responsibilities subsequently included a requirement to contribute to universal service using a methodology based on prior year revenues—a requirement applicable to all providers of interstate telecommunications services—does not constitute a special circumstance warranting waiver of our contribution rules. Accordingly, we deny Petitioners' requests for waiver.

III. Ordering Clauses

17. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, § 1.429 of the Commission's rules, the Memorandum Opinion and Order and Seventh Order on Reconsideration is adopted.

18. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration are denied.

19. The authority contained in section 4(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, the petitions for waiver are denied.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2040 Filed 1–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 2000–6798]

RIN 2127–AH74

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, partial response to petitions for reconsideration; technical amendment.

SUMMARY: On April 27, 1999, NHTSA published a final rule which revised the test procedure in Standard No. 216, *Roof Crush Resistance*, to make it more suitable to testing motor vehicles with raised roofs. The final rule provided that the new test procedure would be used for vehicles manufactured on or after October 25, 1999.

The Recreation Vehicle Industry Association (RVIA) petitioned for reconsideration of the rule, stating that some manufacturers of conversion vans with raised roofs must cease production of their vehicles because they are unable to demonstrate compliance with the new test procedure. Ford Motor Company (Ford) also petitioned for reconsideration of the test procedure used to test vehicles with raised roofs.

We are issuing this final rule in partial response to those petitions. The effect of this document is to stay, until October 25, 2000, the provision specifying the new test procedure as the sole test procedure. This document amends Standard No. 216 so that, for vehicles manufactured during the stay, vehicle manufacturers have an option of using either the new test procedure or the test procedure that was specified in Standard No. 216 immediately prior to October 25, 1999 ("former test procedure"). For vehicles manufactured after the stay, i.e., on or after October 25, 2000, the new test procedure will apply (unless the standard is further amended in a subsequent final rule). This stay will provide us additional time to complete our analysis of the petitions for reconsideration and decide whether the new test procedure should be amended. The agency is also amending the definition of "windshield trim" in the manner announced in the preamble, but not reflected in the regulatory text, of the April 1999 final rule.

DATES: This rule is effective Janaury 31, 2000. *Petitions for Reconsideration*: You may submit a petition for reconsideration of this rule. We will consider petitions received no later than March 16, 2000. Petitions received after that date will be treated as petitions for rulemaking.

ADDRESSES: In preparing a petition for reconsideration, you should refer to the docket and notice number of this final rule. You should submit the petition to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For *technical issues*, you may contact Maurice Hicks, Office of Crashworthiness Standards, at telephone (202) 366–6345.

For *legal issues*, you may contact Deirdre Fujita, Attorney, Office of the Chief Counsel, at telephone (202) 366–2992.

You may send mail to both of these officials at National Highway Traffic

Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

On April 27, 1999, NHTSA published a final rule relating to the test procedure in Standard No. 216, *Roof Crush Resistance* (64 FR 22567). The procedure tests the strength of the roof over the front seat occupants by placing a large flat steel test plate on the roof, simulating contact with the ground in rollover crashes, and pressing downward. Prior to the amendments made by the final rule, following the procedure in testing certain vehicles with rounded roofs (*e.g.*, the Ford Taurus) resulted in positioning the test plate too far back. In this position, the plate did not test the roof over the front occupants. In addition, this position created the potential for contact between the front edge of the test plate and the roof, allowing the plate to penetrate the roof along the leading edge of the plate. Similarly, in following this procedure for vehicles with raised, irregularly-shaped roofs (such as some vans with roof conversions), the initial contact point on the roof may not be above the front occupants, but on the raised rear portion of the roof, behind those occupants. In both of these cases, the positioning of the plate relative to the initial contact point on the roof, instead of relative to a fixed location on the roof, resulted in too much variability in the plate positioning and reduced test repeatability.

The final rule addressed the problem of rounded roofs by specifying a new test procedure for all vehicles except those with certain modified roof configurations. Under the new procedure, the test plate is to be positioned so that the front edge of the plate is 254 mm (10 inches) in front of the forwardmost point of the roof. Positioned in this way, the front edge of the plate will always project slightly forward of the roof instead of contacting it. The rule addressed the problem for vehicles with raised or modified roofs by specifying that if following the new test procedure results in an initial point of contact that is rearward of the front seats, the plate is repositioned so that its rear edge is within 10 mm of the rear of those seats.

The agency received two petitions for reconsideration: one from the Recreation Vehicle Industry Association (RVIA) and another from Ford Motor Company (Ford). Both petitions suggested that the new test procedure creates problems for manufacturers of conversion vans with raised or altered roofs.

RVIA stated that following the new test procedure causes the rear edge of the test plate to significantly load the roof over the front seat areas. RVIA believed that as a consequence, this testing "will not realistically load the roof over the front seat area as intended." RVIA suggested several approaches that petitioner believed would avoid edge loading, including two ways of repositioning the test plate. The first was by moving the plate 700 mm (about 27 inches) more rearward than that specified in the April 1999 final rule. The second was by increasing the longitudinal angle of the test device from 5 degrees up to 30 degrees following repositioning of the test device. RVIA also requested that one additional year of leadtime be provided, regardless of whether we grant or deny its petition.

By letter dated November 12, 1999, RVIA informed NHTSA that some of its members have been forced to cease production of conversion vans with raised roofs because they are unable to demonstrate compliance with Standard No. 216 using the new test procedure. Petitioner reiterated its view that the new test procedure can result in the rear edge of the test plate slicing through a raised roof. The petitioner stated that the former procedure did not normally result in such cutting by edge contact. Petitioner asked that until we answer its petition for reconsideration, we should extend the effective date of the April 1999 final rule and should allow manufacturers of conversion vehicles with raised roofs to use the former test procedure.

Ford also indicated that it believes the new test procedure can result in rear edge loading, particularly for raised or altered roof vehicles. Ford stated that "the influence of rear edge loading will have an increasingly dramatic affect on the test results as the steepness of the sloped transition between the raised roof and the lower roof is increased." Ford also believes that the procedure is not objective. This is because the procedure uses the position of the test plate's initial contact point to the roof to determine whether to reposition the plate. Ford believes that a procedure that depends on a determination of the initial contact point is subject to variability and reproducibility problems.

The petition from Ford also asked that the definition of "windshield trim" be consistent with that used in Standard No. 201.

Agency Response

We are reviewing and analyzing the petitions for reconsideration from RVIA and Ford. We expect to complete our analysis of the issues in the near future. However, the new test procedure has become effective and has reportedly caused some manufacturers of altered or raised roof vehicles to cease producing vehicles, pending our resolution of the issues raised in the RVIA petition. Many of these manufacturers are small businesses. We agree with RVIA that we should allow optional use of the former test procedure for an interim period, pending our decision on the petitions. Accordingly, we are republishing (with new section numbers and a redesignated figure number) the original language of the former test procedure. We are permitting the use of the former test procedure or the new test procedure for multipurpose passenger vehicles, trucks and buses with raised or altered roofs manufactured on or after October 25, 1999 and before October 25, 2000. This will permit us to complete our analysis of and take action on the petitions prior to a date on which the former test procedure ceases to be available.[1]

With regard to the requested change to the definition of "windshield trim," we acknowledge that the April 1999 final rule did not change the regulatory text to reflect the decision announced in the final rule preamble that the same definition used in Standard No. 201 would be incorporated into Standard No. 216.[2] NHTSA is amending that definition to implement that decision.

NHTSA finds for good cause that it is in the public interest for this rule to become effective upon publication. RVIA states that some manufacturers, primarily small businesses, of vehicles with raised or altered roofs are unable to certify the compliance of their vehicles to Standard No. 216 using the test procedure adopted in the April 1999 final rule. That procedure was adopted because the agency believed to be more suitable for testing vehicles with raised or altered roofs. The agency did not intend to cause vehicles that formerly met Standard No. 216 when tested using the former test procedures to no longer meet the standard when

[1] We note RVIA stated in its November 1999 letter that, "by accepting the June 11, 1999 RVIA Petition for Reconsideration, NHTSA acknowledged that the petition has some merit." Our acceptance of a petition indicates simply that the petition meets the applicable requirements regarding timeliness and contents. In no way does our acceptance, by itself, imply that the agency has made any judgment whether a petition has merit.

[2] In the April 1999 final rule, the agency stated:

NHTSA agrees with Ford that the term "trim" in S7.2(e) describing the proposed orientation of the test device, should be revised to say "windshield trim" because it is more specific. NHTSA also agrees that the term "windshield trim" should be defined consistently with the definition in Standard No. 201. Therefore, the same definition used in Standard No. 201 has been incorporated in this final rule.

tested using the new procedures. The effective date of this rule will ensure that the manufacturers of these vehicles can immediately commence producing their vehicles while NHTSA considers the petitions.

Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document was not reviewed under Executive Order 12866, *Regulatory Planning and Review*. NHTSA has analyzed the impact of this rulemaking action and has determined that it is not "significant" under DOT's regulatory policies and procedures. The effect of this rule is to stay a mandatory effective date until October 25, 2000 and to provide a choice between two alternative test procedures during that time. This rule will not require any design changes and will not cause any increase in compliance costs. The impacts of the rule are so minor that a full regulatory evaluation is not required.

b. Regulatory Flexibility Act

NHTSA has also considered the impacts of this document under the Regulatory Flexibility Act (beginning at 5 U.S.C. § 601). I certify that this rule will not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. § 605(b)). This final rule primarily affects manufacturers of truck, buses and multipurpose passenger vehicles with raised or altered roofs. It applies to a substantial number of van conversion shops, which we presume are small businesses. This rule will not have a significant economic impact. Conversion shops are already responsible for certifying compliance with Standard No. 216 if they make conversions affecting the roof structure. The rule does not impose any new requirements, but instead permits manufacturers to continue to test their vehicles as they had been testing prior to the effective date of the April 1999 rule. This rule will not have any effect on the price of new vehicles purchased by small entities.

c. Paperwork Reduction Act

NHTSA has analyzed this rule in accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511). There are no requirements for information collection associated with this rule.

d. Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132, and has determined that this rule will not establish policies with federalism implications.

e. Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

f. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children.

g. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This final rule does not meet the definition of Federal mandate because this rule simply adds a compliance alternative for one year. In no case will annual expenditures exceed the $100 million threshold.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.216 is amended as follows:

a. by revising the definition of "windshield trim" in S4 and revising S5; and,

b. by adding S5.1, S8 through S8.4, and Figure 2 at the end of the section.

The revisions and additions read as follows:

§ 571.216 Standard No. 216; roof crush resistance

* * * * *

S4. Definitions.

* * * * *

Windshield trim means molding of any material between the windshield glazing and the exterior roof surface, including material that covers a part of either the windshield glazing or exterior roof surface.

* * * * *

S5. *Requirements.* Subject to S5.1, when the test device described in S6 is used to apply a force to either side of the forward edge of a vehicle's roof in accordance with the procedures of S7, the lower surface of the test device must not move more than 127 millimeters. The applied force in Newtons is equal to 1.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8, but does not exceed 22,240 Newtons for passenger cars. Both the left and right front portions of the vehicle's roof structure must be capable of meeting the requirements. A particular vehicle need not meet further requirements after being tested at one location.

S5.1 For multipurpose passenger vehicles, trucks and buses that have a raised roof or altered roof, manufacturers have the option of using the test procedures of S8 instead of the procedures of S7 until October 25, 2000. The option of using the test procedures of S8 ceases to be available on that date.

* * * * *

S8 *Alternate test procedure for multipurpose passenger vehicles, trucks and buses that have a raised roof or altered roof manufactured until October 25, 2000 (see S5.1).* Each vehicle shall

be capable of meeting the requirements of S5 when tested in accordance with the following procedure.

S8.1 Place the sills or the chassis frame of the vehicle on a rigid horizontal surface, fix the vehicle rigidly in position, close all windows, close and lock all doors, and secure any convertible top or removable roof structure in place over the passenger compartment.

S8.2 Orient the test device as shown in Figure 2, so that—

(a) Its longitudinal axis is at a forward angle (side view) of 5° below the horizontal, and is parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its lateral axis is at a lateral outboard angle, in the front view projection, of 25° below the horizontal;

(c) Its lower surface is tangent to the surface of the vehicle; and

(d) The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the lower surface of the test device and 254 millimeters from the forwardmost point of that centerline.

S8.3 Apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching a force in Newtons of 1 ½ times the unloaded vehicle weight of the tested vehicle, measured in kilograms and multiplied by 9.8. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S8.2(a) through S8.2(d).

S8.4 Measure the distance that the test device moves, *i.e.*, the distance between the original location of the lower surface of the test device and its location as the force level specified in S8.3 is reached.

* * * * *

Figure 2 to § 571.216

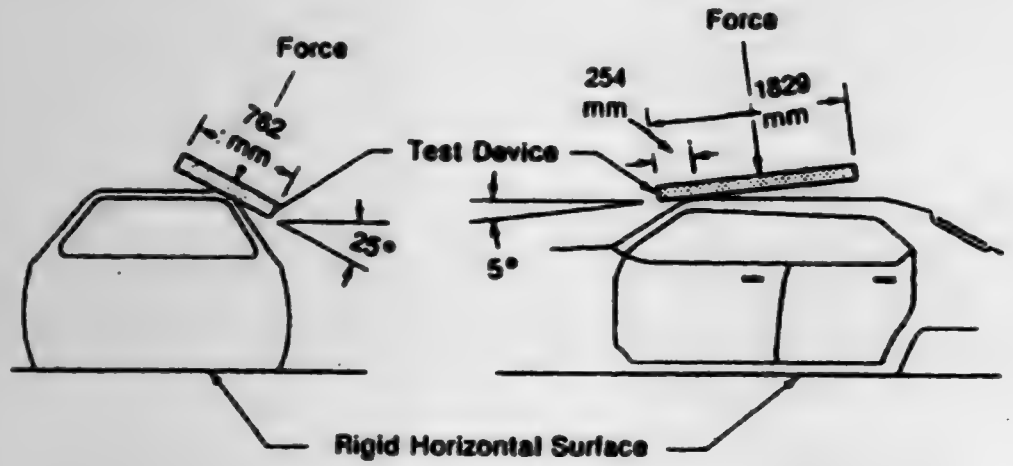

Figure 2.- Test Device Location And Application To The Roof

BILLING CODE 4910–59–C

Issued on: January 21, 2000.

Rosalyn G. Millman,

Acting Administrator.

BILLING CODE 4910–59–P

[FR Doc. 00–1959 Filed 1–28–00; 8:45 am]

Proposed Rules

Federal Register
Vol. 65, No. 20
Monday, January 31, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–3 PR]

Raisins Produced From Grapes Grown in California; Increase in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on increasing the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This action would ultimately make more raisins available to handlers, especially for immediate use early in the season, and would allow desirable carryout to more accurately reflect actual carryout inventory.

DATES: Comments must be received by March 31, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on increasing the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule would increase the desirable carryout from 2½ months (August, September, and one-half of October) of prior year's shipments to a rolling average of 3 months (August, September, and October) of shipments over the past 5 years, dropping the high and low figures. This action was recommended by the Committee at a meeting on November 10, 1999.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade

demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons.

The Committee would like to continue to bring the desirable carryout in line with handlers' actual inventory at the end of a crop year. Desirable carryout has averaged 63,364 tons at 2 months, 71,203 tons at 2¼ months, and 80,248 tons at 2½ months. For the past 5 years, an average of 102,452 tons has been held in inventory by all handlers at the end of a crop year. Increasing the desirable carryout would also bring this factor more in line with early-season shipments while providing some raisins for market expansion. For the past 5 years, an average of 94,147 tons of raisins has been shipped during the first 3 months of the crop year (August, September, and October).

Thus, the Committee met on November 10, 1999, and recommended increasing the desirable carryout to a rolling average of 3 months of shipments (August, September, and October) over the past 5 years, dropping the high and low figures. If this formula would have been used for the current crop year (1999–2000), the desirable carryout would have equaled 94,083 tons as compared to the current 73,809 tons. The 94,083-ton figure would have thus been much closer to the actual inventory of 102,452 tons, and closer to the 5-year average level of shipments for August, September, and October of 94,147 tons. The following table illustrates this computation.

TABLE 1.—COMPUTATION OF PROPOSED NEW DESIRABLE CARRYOUT

	Crop Years				
	A 1998–99	B 1997–98	C 1996–97	D 1995–96	E 1994–95
Total of free tonnage shipments during August, September, and October (Natural condition tons)	91,015	89,756	98,731	96,109	95,125
Total of 3-months of shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by 3 (Natural condition tons) [1]	94,083				

[1] (Columns A+D+E)/3.

Finally, as with the 1998–99 increase in the formula, this action would result in a higher free tonnage percentage which would make more raisins available to handlers, especially for immediate use early in the season when supplies can be tight. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

Much of the discussion at the Committee's meeting concerned the desirable carryout of Natural (sun-dried) Seedless raisins (Naturals). Naturals are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for Naturals for the past several seasons. However, the Committee also believes that the increase in desirable carryout should apply to the other varietal types of raisins covered under the order.

The Committee's vote on this action was 24 in favor and 13 opposed. The no votes were primarily from members who favored a higher desirable carryout.

After much deliberation, the majority of Committee members supported basing desirable carryout on a rolling average of 3 months of shipments over the past 5 years, dropping the high and low figures. Thus, paragraph (a) in § 989.154 is proposed to be modified accordingly.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less

than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This proposal would increase the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are available for shipment. This rule would increase the desirable carryout specified in paragraph (a) of § 989.154 from 2½ months (August, September, and one-half of October) of prior year's shipments to a rolling average of 3 months (August, September, and October) of shipments for the past 5 years, dropping the high and low figures.

The proposed desirable carryout level would apply uniformly to all handlers in the industry, whether small or large, and there would be no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout would increase the trade demand and free tonnage percentage which would make more raisins available to handlers early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

The Committee considered a number of alternatives to the 3-month rolling shipment average in the desirable carryout level. The Committee has an appointed subcommittee which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on November 9, 1999, and discussed desirable carryout. All of the subcommittee members agreed with increasing the desirable carryout and considered a number of alternatives. Options considered include: Basing desirable carryout on a 5-year rolling average of actual carryout inventory; an average of 3 months of prior year's shipments; or a rolling average of 3 months of shipments over the past 5 years, dropping the high and low figures. The subcommittee ultimately recommended to the full Committee that desirable carryout be based on a 5-year rolling average of actual carryout inventory.

At the Committee meeting on November 10, 1999, these options were again reviewed. After much discussion, the majority of Committee members agreed that desirable carryout should be based on shipments, not actual carryout inventory. Most Committee members concurred that basing desirable carryout on actual carryout inventory could create problems if handlers carried out large inventories. In addition, most members believed that shipments are driven by market demand, and should thus continue to be the basis for desirable carryout. The Committee ultimately recommended that the desirable carryout be based on a rolling average of 3 months of shipments for the past 5 years, dropping the high and low figures.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on November 9, 1999, and the Committee meeting on November 10, 1999, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.154 is amended by revising paragraph (a) to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage during August, September, and October for each of the past 5 crop years, for each varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

* * * * *

Dated: January 24, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2039 Filed 1–28–00; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, and 249

[Release Nos. 33–7793; 34–42354; File No. S7–03–00]

RIN 3235–AH86

Supplementary Financial Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to reposition certain schedule information currently required under Rule 12–09 of Regulation S–X within a new Item 302(c) of Regulation S–K to specify the disclosures to be provided by registrants concerning changes in valuation and loss accrual accounts. The Commission also is proposing to add another new Item 302(d) of Regulation S–K to elicit certain information concerning tangible and intangible long-lived assets and related accumulated depreciation, depletion, and amortization. A new Item 8C also would be added to the recently revised Form 20–F. The rule proposals are intended to provide investors with more transparent, better detailed disclosures

concerning changes in valuation and loss accrual accounts and in the underlying accounting assumptions and more detailed information to assess the effects of useful lives assigned to long-lived assets.

DATES: Comments should be received by April 17, 2000.

ADDRESSES: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Interested persons also may submit comments electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–03–00; please include this file number in the subject line if you use e-mail. Anyone can inspect and copy the comment letters in our Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549–0609. We will post electronically submitted comment letters on the Commission's Internet Web Site (*www.sec.gov*).

FOR FURTHER INFORMATION CONTACT: John W. Albert, Associate Chief Accountant, or Richard L. Rodgers, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 942–4400, or Louise M. Dorsey, Assistant Chief Accountant, Division of Corporation Finance, at (202) 942–2960, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

SUPPLEMENTARY INFORMATION: The Commission is proposing to reposition certain schedule information currently required under Rule 12–09 of Regulation S–X[1] within a new Item 302(c) of Regulation S–K[2] to specify the disclosures concerning valuation and loss accrual accounts to be provided by registrants. The Commission also is proposing to add another new Item 302(d) of Regulation S–K[3] to elicit additional information concerning tangible and intangible long-lived assets and related accumulated depreciation, depletion, and amortization. The proposed addition of Item 302(c) is intended to provide investors with more transparent, better detailed disclosures concerning changes in valuation and loss accrual accounts and in the underlying accounting assumptions. Similarly, the proposed addition of Item 302(d) is intended to provide investors with more detailed information concerning the financial reporting effects of useful lives assigned to long-lived assets. Because of the repositioning of valuation and loss accrual account disclosure within proposed Item 302(c), Schedule II of Rule 5–04 (Applicable to Commercial and Industrial Companies)[4] and Schedule V of Rule 7–03 (Applicable to Insurance Companies)[5] would be eliminated. Also due to the proposed repositioning, a new Item 8C of Form 20–F[6] would be added to require presentation of supplementary financial information.

[1] 17 CFR 210.12–09.
[2] 17 CFR 229.302(c).
[3] 17 CFR 229.302(d).

I. Background

Many participants in and observers of the financial reporting process, including the Commission, have noted an apparent increase in abusive "earnings management" by public companies.[7] While it is recognized that management may properly determine the timing of earnings recognition from certain arms-length transactions (such as the sale of an appreciated asset) or deferral of expense recognition (by delaying expenditures for advertising or maintenance), examples of abusive "earnings management" have been occurring with increased frequency. Some observers contend that the apparent increased incidence of "earnings management" is in response to an increased pressure to meet earnings estimates in today's markets. With current price-earnings ratios at an all-time high, failure to meet analysts' expectations by even small amounts can have a significant negative effect on market capitalization, which in turn can affect management's ability to retain key employees and grow and operate the business. In response to such factors, the Commission has initiated a series of coordinated actions to address issues related to earnings management. A key element of this action plan addresses the problems caused by a lack of transparency in some aspects of financial reporting.

Problems attributable to lack a transparency noted by observers of the financial reporting process include, but are not limited to:

- Failure to comply with the disclosure requirements for changes in accrued liabilities for certain costs to exit an activity during periods subsequent to the initial charge;
- Grouping dissimilar items into an aggregated classification;
- Recurring "nonrecurring" charges;
- Inadequate disclosure of changes in estimates and in underlying assumptions during the period of change;
- Inconsistent application of SEC required disclosures of valuation and loss accruals, and
- Insufficient information about expected useful lives, changes in useful lives, and salvage values of long-lived assets.

[4] 17 CFR 210.5–04.
[5] 17 CFR 210.7–03.
[6] 17 CFR 249.220f. Form 20–F was revised significantly as explained in Release No. 33–7745 (September 28, 1999). These amendments will be effective as of September 30, 2000. The proposed amendments would be incorporated into the revised Form 20–F, Item 8C.
[7] *See* Remarks by SEC Chairman Arthur Levitt, "The Numbers Game," to the NYU Center for Law and Business, New York, NY, September 28, 1998.

II. Proposed Rule Changes

The proposed amendments would create a new Item 302(c) of Regulation S–K to clarify and expand the supplemental disclosure requirements concerning activity involving valuation and loss accrual accounts so as to improve the transparency of financial reporting by registrants. The proposed requirements are patterned after Rule 12–09 of Regulation S–X which currently requires schedule disclosure of activity in an entity's valuation and qualifying accounts and reserves. The schedule (Schedule II) is structured to show beginning and ending account balances as well as activity, including any adjustments, during the year for individually significant valuation and qualifying accounts and reserves. However, compliance with the schedule requirements appears to be mixed, possibly due to a lack of general agreement as to what constitutes a valuation or reserve account. Also, diversity in practice has resulted from varying approaches to combining individually insignificant account balances.

The Financial Accounting Standards Board's Concepts Statements define a valuation account as a separate item that reduces or increases the carrying amount of an asset or liability. Examples cited include an estimate of uncollectible amounts that reduces receivables to the amount expected to be collected, or a premium on a bond receivable that increases the receivable to its amortized cost or present value. Valuation accounts are part of the asset or liability to which they relate and are neither assets nor liabilities in their own right.[8]

In addition to detailed disclosures concerning valuation and qualifying accounts, Schedule II also currently requires disclosure of activity concerning balances in "reserve" accounts. Because the term "reserve" is

[8] Paragraph 34 of Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements*.

not defined in the authoritative accounting literature, its references within the Commission's rules may have confused certain preparers and contributed to diverse reporting practices. As a result of this confusion, reporting by registrants about activity involving these accounts has been mixed, with certain registrants providing more complete disclosures than others in similar circumstances. To avoid future confusion, the Commission proposes to revise the supplemental disclosure requirements to refer to the term "loss accrual" thereby appropriately focusing on accruals for loss contingencies.

To reduce the existing diversity in practice and provide a more "level playing field," proposed Item 302(c) sets forth a list of commonly reported loss accrual and/or valuation accounts that the Commission would expect registrants to present within that Item. The list, which was extracted from the SEC reporting guidelines of certain major accounting firms, is suggestive rather than all-inclusive and includes the following accounts:

- Allowance for doubtful accounts and notes receivable
- Allowance for sales returns, discounts, and contractual allowances
- Unamortized premium or discount
- Excess of estimated costs over revenues on contracts (loss contracts)
- Inventory valuation allowance [9]
- Valuation allowance for deferred tax assets
- Liabilities for exit and employee termination costs, including costs related to a restructuring (assuming that the criteria set forth in EITF Issue 94–3 have been met) [10] or to an acquired business (assuming that the criteria under EITF Issue 95–3 have been met) [11]
- Liabilities for costs of discontinued operations
- Liabilities for environmental remediation costs
- Contingent income and franchise tax liabilities recorded pursuant to FASB Statement 5
- Product warranty liabilities
- Probable losses from pending litigation

Consistent with existing Rule 12–09 of Regulation S–X, the information called for under proposed Item 302(c) must be provided for each period for which an audited income statement is required. Consistent with the Item's income-statement focus, registrants must focus on income statement measures, such as effects on the individual line item, operating income (loss), net earnings (loss), and earnings trends, in making assessments of materiality of particular valuation and loss accrual accounts for purposes of presenting the relevant data.[12] As pointed out by observers of "earnings management" abuses, changes in valuation and loss accrual accounts often have a significant impact on income statement results and earnings trends.

Certain detailed disclosures about activity in a specific valuation and loss accrual account are required under existing generally accepted accounting principles (GAAP). For example, disclosure of the net change in the valuation allowance recognized for deferred tax assets is required by Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes*. To avoid redundancy, detailed information about activity in valuation and loss accrual accounts may be omitted if the same information is provided in the notes to financial statements.

The proposed rules would reposition the required disclosures about activity in a registrant's valuation and loss accrual accounts currently furnished in a schedule to a separate item within the section of Regulation S–K captioned, *Supplementary Financial Information*. The proposed repositioning of disclosures about valuation and loss accrual account activity is intended to encourage registrants to focus on the need to provide a detailed narrative discussion about the assumptions underlying the recognition of a valuation or loss accrual account along with the nature of any changes in those assumptions requiring adjustment to the account balance. Experience has shown that the more free-writing style permitted to comply with Regulation S-K may be more conducive to detailed narrative explanation that better communicates the financial reporting effects of changes in facts and assumptions.

Although the proposed repositioning of the valuation and loss accrual account activity disclosures would remove these disclosures from explicit coverage in the auditors' report, a registrant's auditors would continue to have certain professional responsibilities resulting from association with these disclosures. Statement on Auditing Standards No. (SAS) 8, "Other Information in Documents Containing Audited Financial Statements," requires the auditor to read other information, such as the supplementary financial information about valuation and loan loss account activity, in a document containing audited financial statements and consider whether such information is materially inconsistent with information appearing in the financial statements. In the event that the auditor discovers a material inconsistency, compliance with SAS 8 would require that the auditor determine whether the financial statements, the auditor's report, or both should be revised.

The Commission also is proposing to add a new Item 302(d) to provide information concerning property, plant, and equipment and related accumulated depreciation, depletion, and amortization. The proposed disclosure would be similar to the schedule information previously required under Rules 12–06 and 12–07 of Regulation S–X. Prior to 1995, registrants were required to provide detailed schedules of property, plant, and equipment and related accumulated depreciation, depletion, and amortization in cases where the property, plant, and equipment account exceeded 25 percent of total assets. Activity disclosed through the schedules included additions, retirements, and other changes in each major fixed asset account. These schedule requirements were rescinded through the Commission's issuance of Financial Reporting Release 44.[13] In announcing rescission of the schedule requirements, the amending release cited the views of the majority of commentators that the schedules generally were redundant to information already required in the financial statements.

[9] Use of an inventory valuation allowance to reflect a writedown of inventory to the lower of cost or market at the close of a fiscal period establishes a new cost basis that cannot be marked up based on subsequent changes in market. See Accounting Research Bulletin No. 43, Chapter 4, Statement 5.

[10] The FASB's Emerging Issues Task Force reached a consensus at its January 19, 1995 meeting on the criteria that must be met for an employer to recognize a liability for the costs of employee termination benefits provided to involuntarily terminated-employees and other costs to exit an activity. EITF Issue 94–3, "Liability Recognition For Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)."

[11] Similar to the resolution concerning restructuring-related costs, the EITF reached a consensus at its meetings of July 20–21, 1995 on the conditions under which the costs of a plan to (1) exit an activity of an acquired company, (2) involuntarily terminate employees of an acquired company, or (3) relocate employees of an acquired company should be recognized as liabilities. EITF Issue 95–3, "Recognition of Liabilities in Connection with a Purchase Business Combination."

[12] Staff Accounting Bulletin 99, "Materiality" (August 12, 1999), provides guidelines for assessing materiality thresholds. It emphasizes that the exclusive use of numerical or percentage tests to make materiality determinations is not acceptable. 64 FR 45150 (August 19, 1999).

[13] Release 33–7118, *Financial Statements of Significant Foreign Equity Investees and Acquired Foreign Businesses of Domestic Issuers and Financial Schedules* (December 13, 1994) [59 FR 65632].

Since the issuance of Financial Reporting Release 44, financial analysts have advised the Commission staff that the rescission of the schedule requirements has resulted in a loss of useful information about depreciation methods, useful lives, and salvage values of long-lived assets. Analysts contend that this loss of information has hindered their ability to evaluate management's capital allocation decisions and to estimate future depreciation charges.[14]

In eliminating these schedule requirements, Financial Reporting Release 44 noted the existence of certain overlapping requirements under GAAP, principally Accounting Principles Board Opinion No. 12, calling for certain disclosures about major components of fixed assets and related accumulated depreciation and amortization account balances.[15] However, since the requirements imposed under GAAP may be satisfied by general descriptions rather than the specific data required under the rescinded schedules, the net effect has been the loss of some key analytical data. For example, APB Opinion 12 requires a general description of the method or the methods used in computing depreciation of major classes of fixed assets. APB Opinion 12 also permits accumulated depreciation balances to be shown in the aggregate. No disclosure is required of estimated salvage values.

Financial statement users have expressed frustration due to an inability to recreate the detailed information about activity in specific fixed asset accounts that formerly was provided under Rules 12–06 and 12–07 of Regulation S–X. Experience has shown that compliance with the more general requirements imposed under APB Opinion 12 may not provide all detailed disclosures pertinent to an analysis of changes in fixed assets, and may have contributed to some lack of transparency in financial statements of public companies. Accordingly, the Commission is proposing to reinstate the informational requirements formerly called for under Rules 12–06 and 12–07 and to add disclosures about salvage values. The proposed disclosures would be required to support the account balances of any long-lived asset separately captioned on the balance sheet.

The Commission staff has noted a similar lack of specificity in the requirements under GAAP for disclosures concerning intangible assets. APB Opinion No. 17, *Intangible Assets*, requires disclosure of the method and period of amortization of an entity's intangible assets.[16] However, where the aggregate balance in an intangible asset account has many components (such as goodwill resulting from a number of individual purchase business combinations), the required disclosures may be provided in terms of ranges of amortization periods. Without additional data, users of financial information are unable to evaluate the impact on reported earnings of estimated useful lives assigned to intangible assets resulting from specific acquisitions.[17]

Therefore, to provide additional analytical data necessary to evaluate the effects of varying amortization periods for intangible assets, the Commission also is proposing to include activity involving intangible assets in new Item 302(d). Furthermore, in order to provide more useful analytical data, the proposed Item would require disclosure about the registrant's goodwill account. In circumstances where the account balance results from different business acquisitions with varying useful lives, the disclosure would need to show the amount of goodwill in the aggregate as well as the account balance of each component assigned a different estimated useful life. However, consistent with the proposed treatment of valuation and loss accrual account activity, detailed information about activity in a particular property, plant, equipment, and intangible asset and related accumulated depreciation, depletion, and amortization account may be omitted if the same information is provided to investors within the notes to financial statements.

In summary, the Commission is proposing amendments to Regulation S–K to specify disclosures of valuation and loss accrual accounts and long-lived assets and related accumulated depreciation, depletion, and amortization in response to problems attributable to a lack of transparency in financial reporting. The proposed disclosures are intended to provide sufficient analytical information so that changes in the amounts and activity in these accounts are transparent to investors.

The Commission is proposing to amend Form 20–F to include the substance of proposed Items 302(c) and (d). Foreign private issuers, therefore, would be required to provide these disclosures.

III. General Request for Comment

The Commission is proposing these amendments to clarify and expand certain disclosures to be provided as supplementary financial information. If you would like to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, we encourage you to do so. Besides the specific questions being asked in this release, we also solicit comments on the usefulness of the proposals to security holders, issuers, and the marketplace at large. We would like comments from the point of view of both bidders and targets, as well as security holders and market professionals involved in the mergers and acquisitions area. We also solicit comments specifically addressing whether these proposed changes adequately provide information that is useful to the analysis of financial statements. We also seek comments about whether other amendments are appropriate for that purpose.

The proposed amendments are based on the assumption that the information to be provided is readily available from each registrant's books and records. The Commission understands that some of the information called for under the proposed rules must be collected for the preparation and audit of a registrant's balance sheet and statement of cash flows. Consequently, we are interested in commentators' views as to whether they agree that the information to be provided under the proposed disclosure requirements already is collected as part of the financial statements preparation and related independent audit process.

The staff also seeks specific comments on the following elements of this rule proposal:

1. Are there other specific loss accrual or valuation accounts that should be added to the list of accounts identified within proposed Item 302(c)?

2. Should specific percentage tests be used to trigger specific account disclosures within the proposed rules? For example, should disclosure of loss accrual account activity be required only when the balance sheet item and change during the period exceeds a certain pre-established numerical

[14] Letter to Lynn Turner, Chief Accountant, Securities and Exchange Commission from the Financial Accounting Policy Committee of the Association for Investment Management and Research dated October 19, 1998.

[15] Accounting Principles Board Opinion No. 12, *Omnibus Opinion—1967* addresses, among other topics, Disclosure of Depreciable Assets and Depreciation (see paragraphs 4 and 5).

[16] See paragraph 30 of APB Opinion No. 17.

[17] For example, disclosure may be provided that an entity's amortization of goodwill attributable to various business acquisitions ranges from five to forty years. Analysis of the impact of the selection of specific useful lives would be improved if details were provided as to which specific goodwill allocations fell on which end of the range.

threshold (for example, 5% of total assets or 3% of pretax income)? If so, what is an appropriate threshold?

3. Should the placement of the proposed data be moved within MD&A or to some other section of the filing to enhance the prominence of the disclosures?

4. Should presentation of the proposed data be limited to the Form 10–K?

5. Should the disclosure requirements be restricted to those registrants that exceed a certain size or meet some other threshold? If so, what would be the appropriate threshold?

6. Are there circumstances where registrants may appropriately exclude disclosure about loss accruals related to litigation because of concerns about confidentiality while still conforming with GAAP? If so, please describe such circumstances in detail.

7. Should the disclosures concerning valuation and loss accrual account activity be required when interim financial statements are presented?

8. Should the disclosures concerning changes in property, plant, equipment, and intangible assets and related accumulated depreciation, depletion, and amortization be required when interim financial statements are presented?

Please send three copies of your comment letter to Jonathan G. Katz, Secretary, US Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Interested persons also may submit comments electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–03–00; please include this file number in the subject line if you use e-mail. Anyone can inspect and copy the comment letters in our public reference room at 450 Fifth Street, NW, Washington, DC 20549. We will post electronically submitted comment letters on our Internet Web Site (www.sec.gov).

IV. Paperwork Reduction Act

The proposals contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA). Our staff has submitted the proposals for review to the Office of Management and Budget (OMB) in accordance with the PRA. The title of the affected information collection is "Supplementary Financial Information." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The proposals would revise a current collection of information, Regulation S–K, which currently is assigned OMB Control Number 3235–0071.

The proposals are designed to elicit improved disclosures about (1) Registrants' property, plant, equipment and intangible assets, (2) Allowances for accumulated depreciation, depletion, and amortization of property, plant, equipment, and intangible assets, and (3) Valuation and loss accrual accounts. The purpose of these disclosures is to improve investors' understanding of how these items impact the numbers in the financial statements and to reduce the potential for abuse from establishing inappropriate amounts of valuation and loss accrual accounts and similar items. The information needed for preparation of these disclosures should be readily available from the registrant's books and records. Also, as discussed elsewhere in this release, small business issuers would not be impacted by the proposals.

The likely respondents to the collection of information request include those currently filing Forms 10–K, 10, 20–F, and F–1. Registrants not eligible for incorporation by reference filing under Forms S–4 and F–4 are required to present schedule information. The information typically would be collected once a year in the Form 10–K and then incorporated by reference into other forms as appropriate. Based on a sample of Forms 10–K filed by registrants currently presenting valuation and qualifying account and reserve disclosures under Schedule II, it is estimated that approximately 2,900 respondents would be required to include the disclosures proposed under Item 302(c) in their Form 10–K filings.

The staff has received input from a diversified, multi-divisional registrant estimating that the average burden hours to begin collecting the appropriate records and report the proposed disclosures about valuation and loss accrual account activity each year would be 247 hours per registrant but that the annual, recurring burden would be only 17 hours per registrant. The cost estimates were based on the company's previous experience in complying with the requirements of Schedule II. Extending the cost burden estimates to the approximately 2,900 registrants currently estimated to be filing valuation and qualifying account schedule data after initial start up burdens results in an estimated total recurring, annual burden of 49,300 hours.

The same diversified, multi-divisional registrant also provided input concerning the estimated burden hours involved in beginning to comply with proposed Item 302(d) concerning changes in long-lived assets and related accumulated depreciation, depletion, and amortization. It is estimated that 133 burden hours per registrant would be required initially to comply with the proposed requirements under Item 302(d) but that the annual recurring burden would be approximately only 35 hours per registrant. Assuming that approximately the same number of SEC registrants required to furnish valuation and loss accrual account activity also would be impacted by the proposed long-lived asset disclosures (approximately 2,900), the total recurring annual burden would approximate 101,500 hours.

Preparing and disclosing the Supplementary Financial Information will be mandatory to the extent a registrant must file with the Commission audited annual financial statements in accordance with Regulation S–X, 17 CFR 210, and the registrant has had significant activity involving the information required by the proposed new items in Regulation S–K. The supplementary data will be public information.

Pursuant to 44 U.S.C. § 3506(c)(2)(B), the Commission solicits comments on (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) The accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) Whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) Whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, US Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–03–00. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication. Requests for materials submitted to OMB by the

Commission with regard to this collection of information should be in writing, refer to File No. S7–03–00 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

V. Cost-Benefit Analysis

The new proposals are intended to benefit investors by providing a clearer picture of how registrants may be using valuation and loss accrual accounts and estimates of the useful lives and salvage values assigned to assets to impact the amounts reported in their financial statements. Analysts have suggested, and we agree, that shedding more sunlight on these areas will assist investors in analyzing these items and discourage inappropriate "earnings management," thus enhancing the protection of investors. We are unable to quantify this benefit.

The new disclosures will require registrants to prepare two new disclosure items, one of which calls for information that essentially is being provided in an existing schedule. Registrants will face increased costs associated with the preparation and printing of these disclosures; however, because the information should be readily available from each registrant's books and records, we do not believe these costs would be significant. In addition, small business issuers under Regulation S–B and small issuers qualifying for the exemption under Regulation A are not required currently to provide this information and would not be impacted by the proposals. For the purposes of the PRA, we estimate that, after initial start up costs, the annual average hourly burden to comply with proposed Items 302(c) and (d) would be 52 hours. Assuming costs of $125 per hour and 2,900 registrants, we estimate the average annual paperwork burden as $18,850,000. We request comment on the reasonableness of these assumptions. We solicit comment on these estimates.

The Commission requests data to quantify the costs and the value of the benefits identified. The Commission also solicits estimates and views regarding the costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of the proposed rules. In particular, we request data and analysis on whether the new proposal would result in a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, investment, productivity, innovation, or small business. Specifically:

1. What are the expected increases in costs for:

a. Internal financial reporting costs for the necessary data accumulation and preparation?

b. Printing costs?

c. Other costs? (please explain)

2. What would be the expected impact on costs in response to 1. above if disclosure of valuation and loss accrual account activity was required on a quarterly basis?

3. What are the expected cost savings from no longer requiring schedule disclosure of valuation and loss accrual account activity subject to audit?

The Commission also is interested in the views of users of financial information as to any other costs or benefits that would result from adoption of the proposed disclosures.

Commentators are requested to provide empirical data to support their views.

VI. Consideration of impact on the Economy, Burden on Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[18] the Commission also is requesting information regarding the potential impact of the proposed rule on an annual basis. Commentators should provide empirical data to support their views.

Section 23(a)(2) of the Securities Exchange Act of 1934 requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of any rule it adopts.[19] We request comment on whether the proposed revision, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Section 2(b) of the Securities Act of 1933[20] and Section 3(f) of the Securities Exchange Act of 1934[21] require the Commission, when engaged in rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Therefore, we solicit comment on what effect the proposed changes, if adopted, may have on efficiency, competition and capital formation.

VII. Summary of Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[22] Arthur Levitt, Chairman of the Commission, certified that the amendments proposed in this release would not, if adopted, have significant impact on a substantial number of small entities. The reason for this certification is that the supplementary information is not filed by small business issuers. In addition, the proposed amendments would require registrants to present supplementary data that should be easily retrievable from their books and records. We include the Certification in this release as Attachment A and encourage written comments relating to it. Commentators should describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Codification Update

The Commission proposes to amend the "Codification of Financial Reporting Policies" announced in the Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] to:

1. Delete Section 209, Property, Plant, and Equipment Disclosure Requirements.

2. Add new Section 217, Valuation and Loss Accrual Accounts to include the fourth and fifth paragraphs under Section II of this release captioned, Proposed Rule Changes.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

IX. Statutory Basis

The Commission proposes the rule changes explained in this release pursuant to Sections 6,7,8,10 and 19(a) of the Securities Act and Sections 3,10A,12,13,14,15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 210, 229, and 249

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Proposals

Accordingly, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

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[18] Pub. L. No. 104–121, 110 Stat. 857 (1996) (codification in various sections of 5 U.S.C. and 15 U.S.C. and a note to 5 U.S.C. 601).

[19] 15 U.S.C. 78 w(a)(2).

[20] 15 U.S.C. 77(b).

[21] 15 U.S.C. 78c(f).

[22] 5 U.S.C. 605(b).

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By amending § 210.5–04 as follows:

a. By revising paragraph (a)(1);

b. Removing paragraph (a)(2);

c. Redesignating paragraph (a)(3) as (a)(2); and

d. Removing and reserving Schedule II to read as follows:

§ 210.5–04 What schedules are to be filed.

(a) * * *

(l) The schedule specified in this section as Schedule III shall be filed as of the date of the most recent audited balance sheet for each person or group.

* * * * *

3. By amending § 210.7–05 as follows:

a. By revising paragraphs (a)(2) and (a)(3); and

b. Removing and reserving Schedule V to read as follows:

§ 210.7–05 What schedules are to be filed.

(a) * * *

(1) * * *

(2) Schedule IV specified in this section shall be filed for each period for which an audited income statement is required to be filed.

(3) Schedules II and III in this section shall be filed as of the date and for the periods specified in the schedule.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

5. By amending § 229.302 by adding paragraphs(c) and (d) to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

* * * * *

(c) Information about changes in valuation and loss accrual accounts. Registrants shall provide the following information concerning changes in each major class of valuation or loss accrual account (estimated liabilities) for each period for which an audited income statement is required. Major classes of valuation or loss accrual accounts shall include, but not necessarily be limited to, allowance for doubtful accounts or notes receivables; allowance for sales returns, discounts and contractual allowances; unamortized discount or premium; excess of estimated costs over revenues on contracts (loss contracts); inventory valuation allowance; valuation allowance for deferred tax assets; liabilities for exit and employee termination costs related to a restructuring or a business combination; liabilities for costs of discontinued operations; liabilities for environmental costs; contingent income and franchise tax liabilities recorded pursuant to FASB Statement 5; product warranty liabilities; and probable losses from pending litigation.

Balance—beginning of period	Additions charged to expense	Deductions/ other additions	Balance—end of period
(1)(3)(5)	(4)	(2)(4)	(6)

Instructions to paragraph (c). 1. List separately each major class of valuation and loss accrual account by descriptive title. All loss contingencies recorded pursuant to the requirements of FASB Statement 5 should be reported.

2. Describe the nature of any deductions or additions other than those charged to expense.

3. To the extent that a major class of valuation or loss accrual account is composed of varying elements (*e.g.*, the various elements comprising a registrant's liability for exit and employee termination costs), each significant element should be disclosed.

4. Describe the nature of any changes in the assumptions used in estimating the amount of a valuation or loss accrual account that has a material effect on the change in the valuation or loss accrual account.

5. Registrants are reminded that if no accrual is made for a loss contingency because all of the conditions specified in FASB Statement 5 have not been met, or if an exposure to loss exists in excess of the recorded amounts, paragraph 10 of that standard requires that disclosure be provided in the financial statements when there is at least a reasonable possibility that a loss or additional loss has been incurred.

6. Use of an inventory valuation allowance to reflect a writedown of inventory to the lower of cost or market at the close of a fiscal period creates a new cost basis that cannot be marked up based on subsequent changes in market.

(d) *Information about changes in long-lived asset and corresponding accumulated depreciation, depletion, and amortization accounts.* Registrants shall provide the following information concerning changes in each major long-lived asset and corresponding accumulated depreciation, depletion, and amortization (allowance) account. Major long-lived asset classifications are those assets for which separate presentation is made on the balance sheet and include land, buildings, equipment, leaseholds, brand names, non-compete agreements, customer lists, goodwill, and other major tangible or intangible long-lived assets. Information also should be provided as to each allowance account that corresponds with the major asset classification.

Balance—beginning of period	Additions	Deductions	Balance—end of period
(1)(2)	(3)(4)(6)	(5)(6)	.....

Instructions to paragraph (d). 1. List separately balances in major long-lived asset accounts and corresponding accumulated depreciation, depletion, and amortization accounts. Information concerning changes in each asset and allowance account shall be presented for each period in which an audited income statement is required.

2. Disclose the method of depreciation, depletion, or amortization,

estimated useful lives, and salvage values for each long-lived asset account. Separately present goodwill and corresponding accumulated amortization account balances for each significantly different useful life group. Disclosure of estimated useful lives may be provided in a range or weighted average if there is significant variance within the asset group.

3. Provide an explanation as to the nature of any additions to long-lived asset accounts that are other than at cost.

4. Provide an explanation if additions to accumulated depreciation, depletion, and amortization accounts are charged against accounts other than expenses in the income statement.

5. Provide an explanation if the deduction from the asset and related allowance accounts related to assets sold or retired during the period is at an amount other than cost.

6. Provide an explanation for any significant and unusual asset additions, abandonments, retirements, or other adjustments (*e.g.*, foreign currency translation) or any significant and unusual changes in the general character and location of principal plants and units that occurred during the period

PART 249—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1934

6. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

7. By amending Form 20–F (referenced in § 249.220f) as effective September 30, 2000, by adding Item 8C in Part I and removing the reference "§ 210.12–09," in paragraph (a) of Item 17, Part IV to read as follows:

[**Note:** The text of Form 20–F does not, and the amendment will not, appear in the Code of Federal Regulations.]

Form 20–F

Registration Statement Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934

or

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part I

Item 8C. Supplementary Financial Information

(a) *Information about changes in valuation and loss accrual accounts.* Registrants shall provide the following information concerning changes in each major class of valuation or loss accrual account (estimated liabilities) for each period for which an audited income statement is required. Major classes of valuation or loss accrual accounts shall include, but not necessarily be limited to, allowance for doubtful accounts or notes receivables; allowance for sales returns, discounts and contractual allowances; unamortized discount or premium; excess of estimated costs over revenues on contracts (loss contracts); inventory valuation allowance; valuation allowance for deferred tax assets; liabilities for exit and employee termination costs related to a restructuring or a business combination; liabilities for costs of discontinued operations; liabilities for environmental costs; contingent income and franchise tax liabilities recorded pursuant to FASB Statement 5; product warranty liabilities; and probable losses from pending litigation.

Balance—beginning of period	Additions charged to expense	Deductions/ other additions	Balance—end of period
(1)(3)	(4)	(2)(4)	.....

Instructions to Paragraph (a). 1. List separately each major class of valuation and loss accrual account by descriptive title. All recorded loss contingencies should be reported.

2. Describe the nature of any deductions or additions other than those charged to expense.

3. To the extent that a major class of valuation or loss accrual account is composed of varying elements (*e.g.*, the various elements comprising a registrant's liability for exit and employee termination costs), each significant element should be disclosed.

4. Describe the nature of any changes in the assumptions used in estimating the amount of a valuation or loss accrual account that has a material effect on the change in the valuation or loss accrual account.

(b) *Information about changes in long-lived asset and corresponding accumulated depreciation, depletion, and amortization accounts.* Registrants shall provide the following information concerning changes in each major long-lived asset and corresponding accumulated depreciation, depletion, and amortization (allowance) account. Major long-lived asset classifications are those assets for which separate presentation is made on the balance sheet and include land, buildings, equipment, leaseholds, brand names, non-compete agreements, customer lists, goodwill, and other major tangible or intangible long-lived assets. Information also should be provided as to each allowance account that corresponds with the major asset classification.

Balance—beginning of period	Additions	Deductions	Balance—end of period
(1)(2)	(3)(4)(6)	(5)(6)	.....

Instructions to paragraph (b). 1. List separately balances in major long-lived asset accounts and corresponding accumulated depreciation, depletion, and amortization accounts. Information concerning changes in each asset or allowance account shall be presented for each period in which an audited income statement is required.

2. Disclose the method of depreciation, depletion, or amortization, estimated useful lives, and salvage values for each long-lived asset account. Disclosure of estimated useful lives may be provided in a range or weighted average if there is significant variance within the asset group. Separately present goodwill and corresponding accumulated amortization account balances for each significantly different useful life group.

3. Provide an explanation as to the nature of any additions to long-lived

asset accounts that are other than at cost.

4. Provide an explanation if additions to accumulated depreciation, depletion, and amortization accounts are charged against accounts other than expenses in the income statement.

5. Provided an explanation if the deduction from the asset and related allowance accounts related to assets sold or retired during the period is at an amount other than cost.

6. Provide an explanation for any significant and unusual asset additions, abandonments, retirements, or other adjustments (*e.g.*, foreign currency translation) or any significant and unusual changes in the general character and location of principal plants and units that occurred during the period.

* * * * *

Dated: January 21, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Attachment A:

[**Note:** Attachment A to the preamble will not appear in the Code of Federal Regulations.]

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendments to rules contained in Securities Act Release No. 7793, if adopted, will not have significant economic impact on a substantial number of small entities. The proposals will not be applicable to small business issues under Regulation S–B or to small issuers using Regulation A. In addition, information to be included in the proposed disclosures should be readily available from registrants' books and records. Accordingly, the proposed schedules and amendments to rules would not have a significant impact on a substantial number of small entities.

Dated: January 21, 2000.

Arthur Levitt,

Chairman.

[FR Doc. 00–1969 Filed 1–28–00; 8:45 am]

BILLING CODE 8010–01–U

Notices

Federal Register
Vol. 65, No. 20
Monday, January 31, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–093–1]

Asian Longhorned Beetle; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to a proposed field test program for the control of the Asian longhorned beetle, Anoplophora glabripennis (Motschulsky). The environmental assessment documents our review and analysis of environmental impacts associated with the proposed field test program. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive by March 31, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–093–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–093–1.

You may read any comments that we receive on this environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Milberg, Operations Officer, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle, *Anoplophora glabripennis* (Motschulsky), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, Rose of Sharon, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing it. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and overwinter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately 3/8-inch diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of Asian longhorned beetle is produced each year. If this pest moves into the hardwood forests of the United States, the nursery and forest products industries could experience severe economic losses.

The Asian longhorned beetle regulations (7 CFR 301.51–1 through 301.51.9) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of Asian longhorned beetle to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York and portions of the city of Chicago, Du Page County, and the village of Summit in the State of Illinois are already designated as quarantined areas.

APHIS' current Asian longhorned beetle eradication activities are limited to the removal and destruction of trees that are determined to be infested with Asian longhorned beetle. Because the removal of host trees is time consuming and expensive, APHIS is investigating the use of prophylactic methods to prevent new infestations of healthy trees in the vicinity of infected areas.

APHIS has completed an environmental assessment that considers various methods of prophylactic protection for trees against the harmful effects of the Asian longhorned beetle. Based on our findings, we believe that the most effective prophylactic treatment available for trees appears to be the use of a soil-injected insecticide. Therefore, we are planning to conduct field tests on this method in the spring of 2000 to determine whether it can be a successful and efficient deterrent to the spread of the Asian longhorned beetle.

APHIS' review and analysis of the potential environmental impacts associated with these proposed field tests are documented in detail in an environmental assessment entitled "Asian Longhorned Beetle Field Trial" (October 1999). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive by the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Internet at http://www.aphis.usda.gov/ppq/ead/alb/html. You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for

implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 14th day of January 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–1493 Filed 1–27–00; 11:53 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

National Power Cooperative; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public meeting and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794) proposes to prepare an Environmental Assessment for possible financing assistance to National Power Cooperative, Inc. (NPC) to construct a 510 megawatt, natural gas fired combustion turbine electric generation plant in northwest Ohio.

MEETING INFORMATION: RUS will conduct a public meeting in an open house forum on Wednesday, February 16, 2000, from 6:30 p.m. until 8:30 p.m., at Delphos Jefferson Senior High School on Route 66 in Delphos, Ohio. All interested parties are invited to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, at (202) 720–0468. Bob's E-mail address is: bquigel@rus.usda.gov. You can also contact Keith A. Crabtree of NPC at (614) 846–5757. Keith's email address is: kac@buckeyepower.com.

SUPPLEMENTARY INFORMATION: NPC, a wholly owned subsidiary of the Ohio Rural Electric Cooperatives, proposes to construct the natural gas fired electric generation plant at one of two potential sites. One site is located in Van Wert County near Convoy, just southwest of the intersection of Mentzer Road and Shaner Road. The other site is located in Allen County, east of Cairo, north of the Lincoln Highway between Stewart Road and Slabtown Road.

The proposed project will be composed of three gas fired turbine generation units with an output of 170 megawatts each. The entire plant will require approximately 30 acres. No major natural gas pipeline or electric transmission line improvements will be needed at either site beyond the proposed site boundaries. Specific details of the plant will be available at the scoping meeting.

Alternatives to be considered by RUS to constructing the generation facility proposed include: (a) No action, (b) Load management, (c) Purchased power, and (d) An alternative site location.

To be presented at the public scoping meeting will be a siting study and alternative evaluation study prepared by AEP Resources and Dames & Moore for NPC. The siting study and alternative evaluation study are available for public review at RUS in Room 2242, 1400 Independence Avenue, SW, Washington, DC, and at the NPC headquarters located at 6677 Busch Boulevard, Columbus, Ohio. This document will also be available at the Lima Public Library, 650 W. Market St., Lima, Ohio (419–228–5113) and it's Cairo Branch, 519 Wall St., Cairo, Ohio (419–641–7744) and at the Brumback Library, 215 W. Main St. in Van Wert, Ohio (419–238–2168) and it's Convoy Branch, 116 E. Tully St., Convoy, Ohio (419–749–4000).

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives of RUS and NPC will be available at the scoping meeting to discuss RUS' environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting.

From information provided in the siting study and alternative evaluation study, input that may be provided by government agencies, private organizations, and the public, NPC will prepare an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the project and may adopt it as its environmental assessment of the project. RUS' environmental assessment of the project would be available for review and comment for 30 days.

Should RUS determine, based on the environmental assessment of the project, that the impacts of the construction and operation of the plant would not be significant, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact would be published in the **Federal Register** and in newspapers with a circulation in the project area.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: January 24, 2000.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–2014 Filed 1–28–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–827, A–475–828, A–557–809, A–565–801]

Initiation of Antidumping Duty Investigations: Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia and the Philippines

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: For Germany: Carrie Blozy or Rick Johnson at (202) 482–0165 and (202) 482–3818, respectively; for Italy, Helen Kramer or Linda Ludwig at (202) 482–0405 and (202) 482–3833, respectively; for Malaysia, Becky Hagen or Rick Johnson at (202) 482–3362 and (202) 482–3818, respectively; for the Philippines, Fred Baker or Robert James at (202) 482–2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1999).

The Petition

On December 29, 1999, the Department of Commerce ("the Department") received a petition on stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines filed in proper form by Alloy Piping Products, Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge ("petitioners"). On January 6, 2000, the Department requested clarification of certain areas of the petition and received a response on January 10, 2000.

In accordance with section 732(b) of the Act, petitioners allege that imports of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigations they are requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

Scope of Investigations

For purposes of these investigations, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings (pipe fittings) are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (e.g., DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to these investigations are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to insure that the scope in the petition accurately reflects the product for which they are seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by February 1, 2000. Comments should be addressed to Import Administration's Central Record Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as "the producers of a domestic like product." Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. [1]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigations" section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. No comments were received regarding this issue. The Department has, therefore, adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition and supplemental information to the petition contain adequate evidence of sufficient industry support; therefore, polling was not necessary. (See Attachment to the Initiation Checklist Re: Industry Support, January 18, 2000.) To the best of the Department's knowledge, producers supporting the petition with respect to each of the four countries represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A), (C), (D), (E) or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry

[1] See *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642-44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

within the meaning of section 732(b)(1) of the Act.

Export Price, Constructed Export Price, and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations.

Petitioners relied upon price data (and in the case of Germany, also cost data) contained in confidential market research reports on Germany, Italy, Malaysia and the Philippines. At our request, petitioners arranged for the Department to contact the authors of the reports to verify the accuracy of the data, the methodologies used to collect the data, and the credentials of those gathering the market research. The Department's discussions with the authors of the market research reports are summarized in the following Memoranda to the File on file in the individual country case files in the Central Records Unit, Room B–099 of the Department:

- January 7, 2000, Telephone Call to Market Research Firm Regarding the AD Petition for Antidumping Investigation of Stainless Steel Butt-weld Pipe Fittings from Germany;
- January 7, 2000, Telephone Call to Market Research Firm Regarding the AD Petition for Antidumping Investigation of Stainless Steel Pipe Fittings from Italy;
- January 12, 2000, Telephone Call to Market Research Firm Regarding the AD Petition for Antidumping Investigation of Stainless Steel Pipe Fittings from Malaysia; and
- January 12, 2000, Telephone Call to Market Research Firm Regarding the AD Petition for Antidumping Investigation of Stainless Steel Pipe Fittings from the Philippines.

The Department has checked the methodologies employed by petitioners in calculating export price, constructed export price, normal value, cost and constructed value, and has not found any discrepancies between petitioners' methodologies and the Department's normal practice.

Germany

Petitioners identified Buttings Edelstahlrohre GMBH, Hage Fittings GMBH ("Hage"), Kremo-Werke Hermanns GMBH ("Kremo"), Nirobo Metal Verarbeitungs GMBH ("Nirobo"), Uhlig-Rohrbogen GMBH ("Uhlig"), and Wilh. Schulz ("Schulz") as the known producers and exporters of subject merchandise from Germany to the United States. With respect to home market viability, credible information provided by the foreign market researcher showed that home market sales were over 64 times the volume of exports to the United States in 1998 in the aggregate, and that domestic sales by each of the producers/exporters far exceeded exports to the United States. Therefore, the Department concluded that home market sales were sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(ii)(II) of the Act.

Petitioners obtained home market prices for Schulz, Hage, Kremo, and Nirobo from foreign market research, contemporaneous with the pricing information used as the basis for constructed export price ("CEP"). However, due to the differences in German and U.S. specifications for subject merchandise, petitioners were unable to obtain any products offered for sale to customers in Germany which are either identical or similar to those sold to the United States. Additionally, as further explained below in the "Initiation of Cost Investigation" section, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of pipe fittings sold in the home market were made at prices below the fully absorbed cost of production ("COP"), within the meaning of section 773(b) of the Act.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"), selling, general, and administrative expenses ("SG&A"), including financial expense, and packing costs. To calculate COP, petitioners based COM on their own production experience, adjusted for known differences between costs incurred to produce stainless steel butt-weld pipe fittings in the United States and in Germany using publicly available data (*e.g.*, company brochures, published industry standards, published industry statistics, trade journals, etc.) and foreign market research. The foreign market research provided information on the cost of raw materials in the home market. To calculate the SG&A components of COP, petitioners relied upon the information contained in the financial statements of a German stainless steel butt-weld pipe fittings producer. Petitioners excluded packing from the calculation because they lacked the information to calculate an amount. We found this omission reasonable and conservative. After review, we relied on the cost data contained in the petition.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (see Initiation of Cost Investigation, below). Therefore, petitioners based NV on the constructed value ("CV"), pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit of the merchandise. To calculate the COM, SG&A expenses, and packing costs for CV, petitioners followed the same methodology used to determine COP. We confirmed that this methodology was consistent with the statute. Petitioners also added to CV an amount for profit, pursuant to section 773(e)(2) of the Act. Profit was based upon the aforementioned German producer's financial statements.

Petitioners based CEP on six contemporaneous U.S. sales by Schulz to an unaffiliated purchaser. The terms of sale were f.o.b. Schulz U.S.A.'s (Schulz's subsidiary) warehouse. Petitioners calculated a net U.S. price for each sale by subtracting estimated costs for shipment from the factory in Germany to the port of export in Germany. Also, petitioners subtracted ocean freight and insurance, an amount for import duties based on the 1999 import duty rate of five percent of dutiable value, amounts for the U.S. harbor maintenance fee of 0.125 percent of dutiable value and the U.S. merchandise processing fee of 0.21 percent of dutiable value,[2] and U.S. inland freight costs from the port to Schulz U.S.A.'s warehouse. Finally, petitioners deducted U.S. indirect selling expenses incurred by Schulz U.S.A., Schulz's subsidiary in Houston, Texas, based on a petitioning firm's expenses.

Petitioners estimated dumping margins ranging from 8.35 percent to 76.24 percent. Should the need arise to use as facts available under section 776 of the Act any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, petitioners provided specific factual information demonstrating reasonable grounds to believe or suspect that sales in the German home market were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation for Germany. The Statement of Administrative Action accompanying the URAA, H.R. Doc.

[2] See supplement to petition dated January 10, 2000, Exhibit G–8b.

103–412 ("SAA"), at 833, states that an allegation of sales below COP need not be specific to individual exporters or producers. According to the SAA, "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that:

> new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.

Id. Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production as discussed above, we find the existence of "reasonable grounds to believe or suspect" that sales of the foreign like product in Germany were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation. (See country-specific section above and cost attachment to the initiation checklist.)

Italy

Petitioners identified Bassi Luigi & Co., Coprosider S.p.A, Curvinox, Gam Raccordi S.p.A., Nuova Steelcom S.r.L., Rivit S.p.A., and Vignatti Fitting S.r.L. as the known producers and exporters of the subject merchandise to the United States. Petitioners based NV on Italian home market prices. The foreign market researcher provided prices for sales by Coprosider S.p.A. to unaffiliated customers in Italy contemporaneous with the U.S. sales. With respect to home market viability, credible information provided by the foreign market researcher showed that home market sales were over 46 times the volume of exports to the United States in 1998 in the aggregate, and that domestic sales by each of the producers/exporters far exceeded exports to the United States. Therefore, the Department concluded that home market sales were sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(ii)(II) of the Act.

Petitioners calculated net prices for sales in Italy by subtracting from the reported gross prices imputed credit expenses, based on the average payment period of 60 days reported by the foreign market researcher and the average lending rate in Italy during the period of investigation ("POI") of six percent, calculated from rates published in International Financial Statistics. Given that the foreign market researcher reported that the prices did not include delivery, petitioners did not deduct inland freight rates from the reported home market gross prices. In addition, they did not adjust the reported prices for differences in packing costs, adopting the conservative position that packing costs were the same for home market and U.S. sales. [3]

Petitioners converted home market prices quoted in lira per piece to U.S. dollars per piece by using the Euro/U.S. dollar exchange rate in effect multiplied by a fixed conversion rate for Italian lira/Euro during the period in which the U.S. sale occurred. The source for the exchange rates was the Federal Reserve Bulletin.

Petitioners based export price ("EP") on U.S. price quotes for pipe fittings manufactured by Coprosider offered for sale to an unaffiliated U.S. purchaser during the POI, prior to the date of importation. This information was obtained from a confidential source, attested to by an affidavit. Petitioners selected pipe fittings with specifications commonly exported to the United States. The terms of sale were CIF New Jersey, import duty paid. Petitioners subtracted estimated costs incurred to transport the subject merchandise from the factory to the port of export, as provided by the foreign market researcher. In addition, petitioners deducted a sales discount granted by the importer.

Petitioners estimated the cost of international freight based upon the difference between the CIF and U.S. Customs values reported in the official import statistics for January-September 1999. In addition, petitioners subtracted an amount for import duties based on the 1999 import duty rate of five percent of dutiable value, and amounts for the U.S. harbor maintenance fee of 0.125 percent of dutiable value and the U.S. merchandise processing fee of 0.21 percent of dutiable value. See supplement to petition, dated January 11, 2000.

Petitioners estimated dumping margins ranging from 61.41 percent to 86.88 percent. See supplement to petition dated January 11, 2000. Should the need arise to use, as facts available under section 776 of the Act, any of this information in our preliminary or final determination, we may re-examine the information and revise the margin calculations, if appropriate.

Malaysia

Petitioners identified Amalgamated Industrial Stainless Steel, Schulz Malaysia, and Kanzen Tetsu as the known producers and exporters of the subject merchandise to the United States. Petitioners based NV on Malaysian home market prices. With respect to home market viability, petitioners concluded, based on information provided by the foreign market researcher and attested to by an affidavit, that each of the three companies had home market sales of pipe fittings greater than five percent of each company's respective exports to the United States and, therefore, the volume of home market sales was sufficient to form a basis for NV pursuant to section 773(a)(1)(B)(ii)(II) of the Act. See Declaration of (Foreign Market Researcher) Regarding Sales in Malaysia of Stainless Steel Butt-Weld Pipe Fittings, Exhibit 1 of petitioners' January 3, 2000 submission.

The foreign market researcher provided prices for sales to unaffiliated customers in Malaysia. Petitioners calculated net prices for sales in Malaysia by subtracting from the reported gross prices average freight costs and imputed credit expenses, the latter being based on the average payment period of 30 days reported by the foreign market researcher and the average lending rate in Malaysia during the POI of 7.64 percent, calculated from rates published in International Financial Statistics. Because the home market prices were obtained from end users, petitioners also subtracted a distributor mark-up of four percent from the normal value, which was based on foreign market research. Petitioners did not adjust the reported prices for differences in packing costs. See footnote 3, above. Finally, petitioners converted the home market prices from Malaysian Ringgits to U.S. dollars based on the average exchange rate of the month in which the U.S. sale took place, as published in the Federal Reserve Bulletin.

Petitioners based U.S. price (in this case, EP) on sales to an unaffiliated U.S. purchaser by Kanzen Tetsu during the first and second quarters of 1999 prior to the date of importation, as obtained from a confidential source, attested to by an affidavit. The petitioners selected pipe fittings with specifications commonly exported to the United States. The terms of sale were delivered, duty paid, to the U.S. customers. Petitioners subtracted estimated costs

[3] Export packing for steel products is normally more expensive than the packing required for domestic transportation.

incurred to transport the subject merchandise from the factory to the port of export, as provided by the foreign market researcher.

Petitioners estimated the cost of international freight based upon the difference between the CIF and U.S. Customs values reported in the official import statistics for January-September 1999. In addition, petitioners subtracted an amount for import duties based on the 1999 import duty rate of five percent of dutiable value, and amounts for the U.S. harbor maintenance fee of 0.125 percent of dutiable value and the U.S. merchandise processing fee of 0.21 percent of dutiable value. See supplement to petition dated January 10, 2000. Finally, petitioners subtracted a markup included in the reported price, as obtained from a confidential source, attested to by an affidavit.

Petitioners estimated dumping margins ranging from 39.6 to 60.1 percent. Should the need arise to use, as facts available under section 776 of the Act, any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

The Philippines

Petitioners identified two Philippine exporters and producers of stainless steel butt-weld pipe fittings: Enlin Steel Corporation ("Enlin") and Tung Fong Industrial Co., Inc. ("Tung Fong"). Petitioners noted that, to the best of their knowledge, these two companies accounted for one hundred percent of the exports of subject merchandise from the Philippines. Petitioners obtained price quotes from Enlin and Tung Fong for stainless steel butt-weld pipe fittings offered for sale to customers in the Philippines which were similar to those sold to the United States. Petitioners adjusted these prices for estimated freight costs and a distributor markup of five percent, since the sales prices were obtained from end-users. Petitioners did not calculate an imputed credit expense for the home market sales because the terms of payment were payment before delivery or cash on delivery. In addition, petitioners did not adjust the reported prices for differences in packing costs. See footnote 3, above. Finally, petitioners converted the home market prices from Philippine pesos to U.S. dollars based on the average exchange rate of the month in which the U.S. sale took place, as published in International Financial Statistics.

With respect to home market viability, petitioners determined, based on information provided by a foreign market researcher, that the volume of Philippine home market sales was sufficient to form a basis for NV pursuant to section 773(a)(1)(B)(ii)(II) of the Act.

Petitioners based EP for Tung Fong on either duty-paid, CIF price quotes made by Tung Fong to unaffiliated U.S. distributors or on ex-work sales. Petitioners based EP for Enlin on duty-paid CIF price quotes. For the U.S. sales whose terms were CIF duty paid, the petitioners made deductions for foreign inland freight, international freight and insurance, U.S. import duties, and imputed credit. For the ex-works sales, petitioners made adjustments for imputed credit. For sales made through distributors, petitioners made a deduction for the U.S. distributor's markup.

Petitioners estimated foreign inland freight based on freight rate and distance information provided by a foreign market researcher. They estimated international freight and insurance by calculating the difference between the CIF and U.S. Customs values reported in the official import statistics for January through September, 1999. They calculated the import duties based on the 1999 import duty rate of five percent of dutiable value. In addition, petitioners subtracted amounts for the U.S. harbor maintenance fee of 0.125 percent of dutiable value and the U.S. merchandise processing fee of 0.21 percent of dutiable value. See supplement to petition dated January 10, 2000, Exhibit P–1.

Petitioners calculated imputed credit expenses based on the average payment period of 90 days for sales made by Tung Fong and 30 days for sales made by Enlin, and the average lending rate in the United States of 7.88 percent for the POI as published in International Financial Statistics. They calculated the distributor's percentage markup based on the domestic industry's knowledge of the channels of distribution in the United States.

Petitioners estimated dumping margins ranging from 18.24 percent to 60.17 percent. Should the need arise to use as facts available under section 776 of the Act any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in (1) U.S. market share, (2) average unit sales values, (3) share of domestic consumption, (4) operating income, (5) employment, (6) output, (7) sales, and (8) capacity utilization.

The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Attachments to Initiation Checklist, Re: Material Injury, January 18, 2000).

Initiation of Antidumping Investigations

Based upon our examination of the petition on pipe fittings from Germany, Italy, Malaysia and the Philippines, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of pipe fittings from Germany, Italy, Malaysia and the Philippines are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of Germany, Italy, Malaysia and the Philippines. We will attempt to provide a copy of the public versions of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by no later than February 14, 2000, whether there is a reasonable indication that imports of pipe fittings from Germany, Italy, Malaysia and the Philippines are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in these investigations being terminated; otherwise, these

investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2015 Filed 1–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–844–802]

Amendment to Agreement Suspending the Antidumping Investigation on Uranium From Uzbekistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Republic of Uzbekistan Suspending the Antidumping Investigation on Uranium from Uzbekistan.

SUMMARY: On October 28, 1999, the Department of Commerce (the Department) and the Republic of Uzbekistan (Uzbekistan) signed an Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan. This Amendment doubles the amount of Uzbek-origin uranium that may be imported into the United States for further processing prior to re-exportation. In addition, it lengthens the period of time uranium may remain in the United States for such processing to up to three years.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: James Doyle or Sally Gannon, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and Uzbekistan signed the Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan (Agreement). On October 30, 1992, the Agreement was published in the **Federal Register** (57 FR 49220, 49255). On September 30, 1994, the Department and Uzbekistan initialed an amendment to modify the Appendix A price-tied quota contained in the original Agreement. The amendment was then released to interested parties for comment. The Department considered these comments and held further consultations with Uzbekistan. On July 21, 1995, the Department and Uzbekistan initialed an amendment similar to the previous amendment except that this amendment contained clauses which redefined Uzbek-origin uranium to include uranium mined in Uzbekistan and enriched in a third country. This amendment was also released to interested parties for comment, which were again considered by the Department. Subsequently, the Department and Uzbekistan negotiated an amendment based upon a different concept than the two amendments previously initialed. This amendment replaced the reference price calculation, and authorized, during the first and second years of the amendment, direct or indirect deliveries of up to 940,000 pounds U3O8 equivalent per year of Uzbek-origin natural uranium from Uzbekistan to the United States, provided that the latest price calculated pursuant to Section IV.C.1 was at or above $12.00 per pound equivalent. Commencing with the third year (October 13, 1997), this amendment authorized Uzbekistan to make annual deliveries of uranium up to, but not exceeding, the levels in accordance with the production-tied quota table set forth in Appendix A. The amendment retained the provision redefining Uzbek-origin uranium to include uranium mined in Uzbekistan and enriched in a third country. On October 13, 1995, the Department and Uzbekistan signed a final Amendment to the Agreement which took effect immediately (60 FR 55005 (October 27, 1995)). On August 5, 1999, the Department released to interested parties for comment an additional amendment which the Department and Uzbekistan had initialed regarding the re-export provision of the Agreement. The amendment extended the 12-month limitation to up to 36 months and increased the amount of Uzbek uranium which could enter the United States for further processing from three million pounds U3O8 to six million pounds U3O8. The Department subsequently released the proposed amendment to interested parties for comment. No comments were received. The Department and Uzbekistan then signed the final amendment in its initialed form effective October 28, 1999. The text of this amendment follows in the Annex to this notice.

Dated: January 21, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

ANNEX Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From Uzbekistan

Consistent with the requirement of Section 734(l) of the U.S. Tariff Act of 1930, as amended, to prevent the suppression or undercutting of price levels of domestic products in the United States, Section IV of the Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan, as amended on October 13, 1995, (the Agreement) is amended as set forth below. All other provisions of the Agreement, particularly Section VII, remain in force and apply to this Amendment.

1. The following paragraphs replace Section IV.H:

For purposes of permitting processing in the United States of uranium products from Uzbekistan, the Government of Uzbekistan may issue re-export certificates for import into the United States of Uzbek uranium products ("Uzbek Uranium") only where such imports to the United States are not for sale or ultimate consumption in the United States and where re-exports will take place within 12 months or within 36 months of the original entry into the United States as indicated by the importer of record at the time of entry. The date of original entry for Uzbek uranium shall be the date the Uzbek uranium is released by U.S. Customs for entry into the United States.

In no event shall an export certificate be endorsed by Uzbekistan for uranium products previously imported into the United States under such re-export certificate. Such re-export certificates will in no event be issued in amounts greater than one million pounds U3O8 equivalent per re-export certificate.

The importer of record must specify at the time of entry whether it will re-export the entered material under the 12-month limitation or under the 36-month limitation (which requires additional certifications as noted below).

Re-export certificates issued under the 12-month limitation shall not exceed three million pounds U3O8 equivalent at any one time.

Additional re-export certificates may be issued under the 36-month limitation as long as the total amount of uranium products entered pursuant to re-export certificates issued (under both the 12-month and 36-month limitations) does not exceed six million pound U3O8 equivalent at any one time.

For re-exports entered under the 36-month limitation, the importer of record must provide the Department with the following at the time of entry: (1) Certification that it will ensure re-exportation within 36 months of entry into the United States; (2) certification from the end-user that the uranium products will not be sold, loaned, swapped, used as loan repayments, or utilized other than for re-export in accordance with Section IV.H of the suspension agreement; and (3) certification from the U.S. convertor and/or enricher and/

or fabricator, as applicable, that the uranium products will not be sold, loaned, swapped, used as loan repayments, or utilized other than for re-export in accordance with Section IV.H of the suspension agreement while held at the respective entity's facility. Liquidation will be suspended for all such entries of uranium products which are covered by the 36-month re-export certificates. Suspension of liquidation will be continued for each such entry until all uranium products covered by the respective entries are re-exported and the Department of Commerce has notified Customs that the relevant entries may be liquidated.

If uranium products from Uzbekistan are: (A) If subject to the 12-month limitation, not re-exported within 12 months; (B) if subject to the 36-month limitation, not re-exported within 36 months, or (C) if subject to the 36-month limitation, sold, loaned, swapped, used as loan repayments, or utilized other than for re-export in accordance with Section IV.H of the Agreement, the Department will refer the matter to Customs or the Department of Justice for further action and the United States will promptly notify the Government of Uzbekistan and the two governments shall enter into consultations. If the uranium products are not re-exported within 3 months of the referral to Customs or the Department of Justice and the problem has not been resolved to the mutual satisfaction of both the United States and the Government of Uzbekistan, the volume of the uranium products entered pursuant to the re-export certificate may be counted against the export limit in effect at such time, or, if there is insufficient quota, the first available quota. This volume may be restored to the export limit if the product is subsequently re-exported.

The Parties agree that this Amendment constitutes an integral part of the Agreement. The English language version of this Amendment shall be controlling.

Signed on this 28th day of October, 1999.

For the Government of Uzbekistan:

Nicholay Kuchersky,

General Director, Navoi Mining and Metallurgical Combinat.

For the United States Department of Commerce:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2016 Filed 1–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (EETAC)

AGENCY: International Trade Administration, US Department of Commerce.

ACTION: Notice of Recruitment for Additional Members for ETTAC.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) was established by Charter pursuant to the Jobs Through Trade Expansion Act of 1994 (22 U.S.C. 2151). The ETTAC is administered by the U.S. Department of Commerce under the provisions of the Federal Advisory Committee Act (FACA). The ETTAC was established on May 31, 1994; it was rechartered on June 4, 1996, and on July 15, 1998, for two years.

The ETTAC advises the Environmental Trade Working Group of the Trade Promotion Coordination Committee (TPCC) through the Secretary of Commerce. A Recommendations Report was presented to the Secretary of Commerce in October, 1996; in March 1999, a white paper on Impediments to Environmental Trade was presented to the TPCC. Additional reports will be presented regularly.

The Department of Commerce is seeking additional candidates from medium and large sized business from the following subsectors of the environmental industry:

(1) Analytic Services
(2) Trade Associations focused on international markets
(3) Air Pollution Control/ Monitoring Equipment
(4) Process and Prevention Technologies
(5) Environmental Energy Sources
(6) Solid and Hazardous Waste Equipment and Management

Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector. We are seeking CEO, President, Executive Vice President and International Management level candidates.

Please send a fact sheet on your company that details your company's activity in the subsector listed above, as well as a short biographical sketch on the executive who wishes to become a candidate. Materials can be faxed to the number listed below.

Deadline: This request will be open for three weeks from the date of publication of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, US Department of Commerce, 14th and Constitution, NW, Washington, DC 20230; Phone 202–482–5225.

Materials may be faxed to 202–482–5665, attention Sage Chandler

Dated: January 20, 2000.

E. Sage Chandler,

Office of Environmental Technologies Exports.

[FR Doc. 00– 2047 Filed 1–28–00; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting from 9:30 AM to 3:00 PM on February 17, 2000. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

DATE AND PLACE: February 17, 2000. The meeting will take place in Room 6800 of the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The plenary meeting will include an update of the WTO ATL process, a full committee strategy session and review the objectives and agendas of its subcommittee working groups: Market Access, Trade Impediments, Government Resources, Finance, Water, and Energy.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Office of Environmental Technologies Exports. Phone: 202–482–5225

Dated: January 20, 2000.

E. Sage Chandler,

Office of Environmental Technologies Exports.

[FR Doc. 00–2046 Filed 1–28–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 011300C]

Availability of a Draft Environmental Impact Statement and Receipt of an Application for Incidental Take Permits for the Tacoma Water Department, Green River Watershed, Habitat Conservation Plan, King County, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that the City of Tacoma, Public Utilities, Water Division (Tacoma Water), has submitted an application to NMFS and FWS (the Services) for incidental take permits (Permits) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). As required by section 10(a)(2)(B) of the Act, Tacoma Water has also prepared a habitat conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is related to water storage and withdrawal from the Green River, and forest management activities in the Green River Watershed, located in south King County, Washington. The proposed Permits would authorize the take of the following endangered or threatened species incidental to otherwise lawful management activities: gray wolf (*Canis lupus*); bald eagle (*Haliaeetus leucocephalus*); marbled murrelet (*Brachyramphus marmoratus marmoratus*); northern spotted owl (*Strix occidentalis*); grizzly bear (*Ursus arctos*); bull trout (*Salvelinus confluentus*); and, Puget Sound chinook salmon (*Oncorhynchus tshawytscha*). Tacoma Water is also seeking coverage for 25 currently unlisted species (including anadromous and resident fish) under specific provisions of the Permits, should these species be listed in the future. The duration of the proposed Permits and Plan is 50 years.

The Permit application includes the proposed Plan and a proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (EIS) for the Permit application.

This notice is provided pursuant to section 10(a) of the Act, and National Environmental Policy Act (NEPA) regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments on the Permit application, Draft EIS, Plan, and Implementing Agreement must be received from interested parties no later than March 14, 2000.

ADDRESSES: Requests for documents on CD ROM should be made by calling the Fish and Wildlife Service at 360/534–9330. Hardbound copies are also available for viewing, and partial or complete duplication, at the following libraries: Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, 360/352–0595; Tacoma Main Public Library, 1102 Tacoma Avenue South, Tacoma, WA, 253/591–5666; Enumclaw City Library, 1700 1st Street, Enumclaw, WA, 360/825–2938; Auburn Public Library, 808 9th Street SE, Auburn, WA, (253)931–3918; and Seattle Public Library, Government Publications Desk, 1000 4th Avenue, Seattle, WA, 206/386–4636. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

Comments and requests for information should be directed to Tim Romanski, Project Biologist, Fish and Wildlife Service, 510 Desmond Drive, SE., Suite 102, Lacey, WA, 98503–1273, (telephone: 360/753–5823; facsimile: 360/534–9331), or Mike Grady, Project Biologist, National Marine Fisheries Service, 510 Desmond Drive, SE., Suite 103, Lacey, WA, 98503–1273 (telephone: 360/753–6052; facsimile: 360/753–9517). Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling 360/534–9330.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. FWS defines harm to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS defines harm to include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering (64 FR 60727, November 8, 1999).

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. FWS regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Tacoma Water owns and conducts management activities in the Green River Watershed, in King County, Washington. These activities are as follows: (1) a water diversion dam and associated facilities (Headworks) on the Green River; (2) approximately 14,888 acres of land upstream of the diversion dam on both sides of the River; and, (3) a well field (North Fork Well Field) located approximately 8 kilometers (5 miles) upstream of the Headworks. Tacoma Water operates and manages the Headworks, watershed lands, and the North Fork Well Field as the principal source of municipal and industrial water for the City of Tacoma and portions of Pierce and King Counties. Howard Hanson Dam (Dam) and Howard Hanson Reservoir (Reservoir), owned and operated by the Army Corps of Engineers (Corps), are also located on the Green River, upstream of the Headworks. City lands in the watershed are adjacent to the Dam and Reservoir on all sides.

Current trends in population growth within the Puget Sound region create a need for Tacoma Water to explore possibilities for increasing its water supply capabilities. To meet forecasted demands, Tacoma Water has developed two separate but related proposals. The first of these, the Second Supply Project, involves improvements at the Headworks and the construction of a 33.5–mile long pipeline from the Headworks to the City of Tacoma. Upstream fish passage around the Headworks and the Dam will be provided by the City of Tacoma as partial mitigation for the Second Supply Project. This project is the subject of a State Environmental Policy Act review in the document entitled "Final

Supplemental Environmental Impact Statement for the Second Supply Project, October 18, 1994," prepared by Tacoma Water. The second related proposal was developed in conjunction with the Corps, and in cooperation with the Services, the Washington Department of Fish and Wildlife, Washington Department of Ecology, and the Muckleshoot Indian Tribe, to increase the volume of water stored behind the Dam during non-flood control periods (*i.e.* late spring, summer and early fall). Known as the Additional Water Storage Project (AWSP), this plan incorporates restoration and mitigation measures (including downstream fish passage) to alleviate the historical barrier to migrating salmon created by the Corps' Dam. The size of the Dam will not change as a result of the AWSP. This AWSP is the subject of a NEPA review in the document entitled "Additional Water Storage Project, Final Feasibility Study Report and Final Environmental Impact Statement, Howard Hanson Dam, Green River, Washington, August, 1998," prepared by the Seattle District of the Corps.

Tacoma Water's activities associated with water withdrawl and water supply, and forest management and timber harvest have the potential to impact species subject to protection under the Act. Section 10 of the Act contains provisions for the issuance of incidental take permits to non-Federal landowners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval a habitat conservation plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the habitat conservation plan will be provided.

Tacoma Water has developed a Plan with technical assistance from the Services, to obtain Permits for their activities in the Green River Watershed. Activities proposed for coverage under the Permits include the following.

(1) Water withdrawal at the Headworks for Municipal and Industrial Water Supply, which will reduce flows and have concomitant habitat effects downstream and include the bypass of fish at the Headworks intake, and inundate the small impoundment area.

(2) Water withdrawal from the North Fork Well Field for Municipal and Industrial Water Supply, which will potentially reduce flows in the North Fork Green River above the Howard Hanson Reservoir.

(3) Construction of Headworks improvements (anticipated to occur during a 2 year period). Such construction will cause: (a) bypassing of fish at the Headworks intake during construction; (b) raising the existing diversion dam by approximately 6.5, feet which will extend the inundation pool to about 2,570 feet upstream of the Headworks diversion; (c) realigning and enlarging the existing intake and adding upgraded fish screens and bypass facilities for downstream passage; (d) reshaping the Green River channel downstream of the existing diversion to accommodate the installation of an efficient trap-and-haul facility for upstream fish passage; (e) installation of a new trap-and-haul facility for upstream fish passage; and, (f) installation, monitoring and maintenance of the instream structures in the impoundment for the Headworks dam raise fisheries mitigation.

(4) Operation of a downstream fish bypass facility at the Headworks.

(5) Watershed forest management activities, consisting of: (a) watershed patrol and inspection; (b) forest road construction, maintenance, and use; (c) forest road culvert removal, replacement, and maintenance; (d) timber harvest and hauling; and, (e) silvicultural activities (e.g., planting, thinning, and inventorying trees).

(6) Monitoring of downstream fish passage through a proposed fish passage facility at the Howard Hanson Dam, associated with the AWSP.

(7) Monitoring and maintenance of AWSP fish habitat restoration projects and AWSP fish and wildlife habitat mitigation projects.

(8) Potential restoration of anadromous fish above the Howard Hanson Dam by trapping and hauling of adults returning to the Headworks, and possible planting of hatchery juveniles if found to be beneficial to restoration.

The Services formally initiated an environmental review of the project through a **Federal Register** notice on August 21, 1998 (63 FR 44918), which announced a 30-day public scoping period. A second **Federal Register** notice was published following the scoping period on January 20, 1999 (64 FR 3066), announcing the decision to prepare an EIS. Following this announcement a draft EIS was prepared.

The analyses in the draft EIS are done in two parts; one covering the alternatives for water withdrawal activities, and the other covering alternatives for land management activities in the upper watershed. Three water withdrawal alternatives are analyzed in detail, including: (1) the no action alternative; (2) the proposed Plan alternative; and, (3) an alternative involving the construction of a new water withdrawal facility approximately 30 miles downstream of the existing Tacoma Water's Headworks. Four additional water withdrawal options were identified during scoping, but they are not analyzed in detail as alternatives to the proposed action because they would not accomplish Tacoma Water's objective of meeting current and future water demands, and/or because highly speculative information would be required to adequately analyze impacts.

Three alternatives are analyzed for Tacoma Water's watershed land management, including: (1) the no action alternative; (2) the proposed Habitat Conservation Plan alternative; and, (3) a no commercial timber harvest alternative. One additional watershed management option was identified during public scoping, but it was not analyzed in detail as an alternative to the proposed action because it would not accomplish Tacoma Water's objective of managing its watershed lands to protect water quality.

This notice is provided pursuant to section 10(a) of the Act, and NEPA regulations. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and NEPA. If it is determined that the requirements are met, Permits will be issued for the incidental take of all covered species. The final Permit decisions will be made no sooner than 60 days from the date of this notice.

Dated: January 3, 2000.

Thomas Dwyer,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: January 24, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2011 Filed 1–28–00; 8:45 am]

BILLING CODES 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011200A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scoping meetings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will conduct scoping meetings to receive comments on a Draft Options Paper for Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Shrimp Amendment 10).

DATES: Written comments will be accepted until 5 p.m. on March 6, 2000. The scoping meetings will be held from February 2 through February 10, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: (813) 228–2815. Copies of the Draft Options Paper are also available from the Council.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The scoping meetings will be convened to receive comments on the need for additional bycatch reduction requirements for the shrimp fishery in the exclusive economic zone (EEZ) south and east of 85°30' W. long. Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), approved by the National Marine Fisheries Service (NMFS) on July 30, 1997, and implemented by final rule on May 14, 1998 (April 14, 1998; 63 FR 18139), required the use of a NMFS-certified bycatch reduction device (BRD) in shrimp trawls used in the EEZ from Cape San Blas, Florida (85°30' W. long.) to the Texas/Mexico border and provided for the certification of the Fisheye BRD in the 30 mesh position. The purpose of this action was to reduce the bycatch mortality of juvenile red snapper by 44 percent from the average mortality for the years 1984–89. Amendment 9 to the FMP exempted shrimp trawls fishing for royal red shrimp outside of 100 fathoms, as well as groundfish and butterfish trawls. It also excluded small try nets and no more than two ridged frame roller trawls that do not exceed 16 feet (4.9 m). Amendment 9 to the FMP did not require BRDs south and east of 85°30' West long. because few juvenile red snapper were found as bycatch in this area. Because of the Magnuson-Stevens Fishery Conservation and Management Act's requirement to reduce bycatch to the extent practicable, the Council is considering the need for additional measures to reduce bycatch.

Scoping meetings for the Draft Options Paper on Shrimp Amendment 10 will begin at 7:00 p.m. and end at 10:00 p.m. at all of the following locations:

1. Wednesday, February 2, 2000—Harbormaster's Office, 1407 Main Street, Palacios, TX 77465;

2. Thursday, February 3, 2000—Port Isabel Community Center, 213 Yturria, Port Isabel, TX 78578;

3. Monday, February 7, 2000—Holiday Inn La Concha Hotel, 430 Duval Street, Key West, FL 33040;

4. Tuesday, February 8, 2000—Edison Community College, Hendry Hall—K143—Parking Lot 8—Lee County Campus, 8099 College Parkway, Fort Myers, FL 33919;

5. Wednesday, February 9, City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL 33708; and

6. Thursday, February 10, 2000—Apalachicola Reserve Visitors Center, 261 7th Street, Apalachicola, FL 32320.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**).

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2113 Filed 1–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Release of Remedial Investigation (RI), Feasibility Study (FS), and Proposed Plan (PP) for Cleanup of Radiological Contamination at the Madison Site for Public Review

AGENCY: U.S. Army Corps of Engineers, St. Louis District, DOD.

ACTION: Notice of availability.

SUMMARY: The St. Louis District, U.S. Army Corps of Engineers (USACE), in consultation with the U.S. Environmental Protection Agency (EPA), propose to clean up contaminants resulting from the extrusion of uranium metal at the Madison Site. This site is one of several being addressed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Alternatives, which identify the range of cleanup options, have been developed and evaluated in the Madison Site Feasibility Study (FS). USACE has identified Alternative 4 as the preferred remediation alternative described in the Proposed Plan (PP) based on the information available at this time. The final decision on the remedy to be implemented will be documented in a Record Decision (ROD) only after consideration of all comments received and any new information presented.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Madison RI/FS/PP may be directed to Mr. Lou Dell'Orco, U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134, by phone (314) 524–4083, or by e-mail at *Louis.A.Dellorco@mvs02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The U.S. Army Corps of Engineers (USACE), St. Louis District, is issuing the Remedial Investigation (RI), Feasibility Study (FS), and Proposed Plan (PP) for public comment. The site became contaminated as a result of activities in support of the nation's early atomic energy program. During the late 1950s and early 1960s, the site was used to perform extrusions of uranium metal and straightening of extruded uranium rods for the U.S. Atomic Energy Commission (AEC). The cleanup of this site is being managed by the Corps of Engineers under the Formerly Utilized Sites Remedial Action Program

(FUSRAP). The alternatives evaluated in the Feasibility Study are summarized in the Proposed Plan.

2. Project Alternatives

a. Alternative 1—No Action

Mandated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), periodic environmental monitoring would be conducted, but no remedial action would be conducted.

b. Alternative 2—Institutional Controls

Institutional controls would be implemented to prevent unacceptable exposures to site contamination.

c. Alternative 3—Containment

Alternative 3 incorporates containment, institutional controls, and environmental monitoring to prevent contaminants from becoming mobilized and reduce the potential for direct exposure. Under this alternative, accessible contamination at the 25-foot and 36-foot levels and the beams in the high bay that are accessible from the windows would be fixed in place. When use of the building is discontinued, radiological controls would be provided for decontamination prior to demolition.

d. Alternative 4—Decontamination of Accessible Surfaces and Release of Building

This alternative includes decontamination of accessible contamination at the 25-foot and 36-foot levels and the beams is the high bay that are accessible from the window. Inaccessible areas are defined as those surfaces that cannot be accessed either from the high-bay crane or through windows. Inaccessible areas include the high bay areas above the 36-foot level and select other areas around live power lines.

3. Scoping Process

Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and alternatives to be addressed. The U.S. Army Corps of Engineers will hold a public meeting to receive oral and written comments at the Madison City Hall at 615 Madison Avenue in Madison, Illinois on Thursday, February 17th, from 5 to 9 p.m. In addition, written comments will be accepted during the 30-day period following the Remedial Investigation (RI) and FS/PP release by Ms. Sharon R. Cotner, U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134. Please call (314) 524–4083 for further information.

4. Availability of the RI/FS/PP

Copies of the RI/FS/PP are available for review starting on or about January 28, 2000 until February 28, 2000 during business hours at the following locations: U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134; or the Madison Public Library, 1700 5th Street, Madison, Illinois 62060, (618) 876–8448.

Written comments will be accepted during the 30-day period following FS/PP release at FUSRAP Project Office at the above address. Oral comments may be provided at the Public Meeting on Thursday, February 17th, from 5 to 9 p.m. at the Madison City Hall at 615 Madison Avenue in Madison, Illinois. Please contact the Corps of Engineers, St. Louis District, FUSRAP Project Office for more information at (314) 524–4083.

Availability of RI/FS/PP.

Louis A. Dell'Orco,

FUSRAP Project Manager.

[FR Doc. 00–2037 Filed 1–28–00; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice of Change in Commission Meeting

January 27, 2000.

Take notice that, pursuant to Section 3(e)(2) of the Government in the Sunshine Act, 5 U.S.C. 552b(e)(2), and Section 375.204(a)(3) of the Commission's Regulations 18 CFR 375.204(a)(3), Commission meeting previously scheduled for Wednesday, January 26, 2000, at 10 a.m., Room 2C, 888 First Street, NE, Washington, DC 20426, has been rescheduled for 11 a.m. on Thursday, January 27, 2000, due to the closure of all Federal Government Offices in Washington, DC on January 25 and 26, 2000.

David P. Boergers

Secretary,

[FR Doc. 00–2058 Filed 1–27–00; 11:37 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6250–5]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa. Weekly receipt of Environmental Impact Statements filed January 17, 2000 through January 21, 2000 pursuant to 40 CFR 1506.9.

Due to inclement weather in the Metropolitan Area (DC, MD and VA) the Federal Government was shutdown. The Federal Register (FR) Report which should have appeared in the January 28, 2000 FR was not published. The 45-day comment period and the 30-day wait period are still calculated from January 28, 2000.

EIS No. 200011, FINAL EIS, COE, NY, NJ, New York and New Jersey Harbor Navigation Study, Identify, Screen and Select Navigation Channel Improvements, NY and NJ, Due: February 28, 2000, Contact: Jenine Gallo (212) 264–0912.

EIS No. 200012, DRAFT EIS, FHW, WV, King Coal Highway Project Construction, from the vicinity of Williamson to the vicinity of Bluefield, COE Section 404 Permit, Mingo, McDowell Mercer, and Wyoming Counties, WV, Due: March 31, 2000, Contact: Thomas J. Smith. (304) 347–5928.

EIS No. 200013, DRAFT EIS, FHW, MO, US 65 Improvements, from County Road 65–122 South to Route EE Intersection south of Buffalo, COE Section 404 Permit, Dallas County, MO, Due: March 13, 2000, Contact: Don Neumann (573) 636–7104.

EIS No. 200014, FINAL SUPPLEMENT, FTA, PR, Tren Urbano Transit Project, Updated Information for the Minillas Extension, Construction and Operation, San Juan Metropolitan Area, Funding, NPDES Permit, US Coast Guard Permit and COE Section 10 and 404 Permits, PR, Due: February 28, 2000, Contact: Mr. Alex Mc Neil (404) 562–3511.

EIS No. 200015, FINAL EIS, BLM, NM, New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management, Implementation, NM, Due: February 28, 2000, Contact: J. W. Whitney (505) 438–7438.

EIS No. 200016, DRAFT EIS, AFS, ID, Whiskey Campo Resource Management Project, Implementation, Elmore County, ID, Due: March 13, 2000, Contact: Dave Rittenhouse (208) 373–4100.

EIS No. 200017, FINAL EIS, FHW, WA, WA–16/Union Avenue Vicinity to WA–302 Vicinity of Tacoma Improvements, Construction, Funding, Coast Guard Permit, COE Section 10 and 404 Permits, Pierce County, WA, Due: February 28, 2000, Contact: James Leonard (360) 753–9408.

EIS No. 200018, DRAFT EIS, IBR, CA, Salton Sea Restoration Project, Implementation, COE Section 404 Permit, Riverside and Imperial Counties, CA, Due: April 26, 2000, Contact: Bill Steele (702) 293–8129.

EIS No. 200019, DRAFT EIS, AFS, AK, Emerald Bay Timber Sale, Implementation, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, U.S. Cost Guard Bridge Permit, NPDES Permit, and COE Section 10 and 404 Permits, Cleveland Peninsula, AK, Due: April 15, 2000, Contact: Jerry Ingersoll (907) 228–4100.

Dated: January 27, 2000.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 00–2110 Filed 1–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6250–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 10, 2000 Through January 14, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65333–OR Rating EC2, Five Rivers Watershed Landscape Management Project, To Restore Terrestrial and Aquatic Habitat, Special-Use-Permit, Siuslaw National Forest, Waldport Ranger District, Lincoln and Lane Counties, OR.

Summary: EPA expressed concerns regarding potential water quality impacts from roads, increased logging, and entry into riparian buffers. EPA requested the Forest Service discuss these concerns in the FEIS.

ERP No. D–BLM–G65071–NM Rating LO, Albuquerque Field Office Riparian and Aquatic Habitats Management, To Restore and Protect, Rio Puerco Resource Management Plan Amendment (RMPA), Cibola, Sandoval, McKinley, Rio Arriba, Bernalillo, Valencia and Santa Fe Counties, NM.

Summary: Because the EIS is programmatic in content and the alternatives considered promote environmental enhancement, EPA has limited its review to insure that the DEIS meets the minimal administrative and procedural requirements established by the NEPA and CEQ Regulations and finds the DEIS to satisfy these requirements and takes no position on the preferred action or the alternatives.

ERP No. D–BLM–G65073–NM Rating LO, Farmington Field Office Riparian and Aquatic Habitat Management, To Restore and Protect, Farmington Riparian and Aquatic Habitat Management Plan, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM.

Summary: Since the EIS is programmatic in content and the alternatives considered promote environmental enhancement, EPA Region 6 has limited its review to ensure that the DEIS meets the minimal administrative and procedural requirements established by NEPA and CEQ Regulations. EPA's limited review finds the DEIS to satisfy these requirements and takes no position on the preferred action or the alternatives.

ERP No. D–FRC–F03007–00 Rating EO2, TriState Pipeline Project, Construction and Operation of Natural Gas Pipeline Facilities, Docket Nos.: CP99–61–000, CP99–62–000, CP99–63–000 and CP99–64–000, Presidential Permit, IL, IN and MI.

Summary: EPA expressed environmental objections with the project. The issues raised include alternatives evaluation, waterbody crossings, sole source aquifer, wetland and woodland impacts and mitigation.

ERP No. D–FRC–J05079–00 Rating EC2, Cabinet Gorge (No. 2058–014) and Noxon Rapids (No. 2075–014) Hydroelectric Project, Relicensing, MT and ID.

Summary: EPA expressed environmental concerns regarding continuation of potential adverse impacts to bull trout, and bank and shoreline erosion and aquatic habitat degradation that results from project operations. EPA also believes further information is needed to explain why a minimum flow release from Noxon Rapids Dam was not recommended. EPA believes the USFWS recommended terms and conditions to protect the bull trout should be included as license conditions, and that corrective actions need to be developed to address bank and shoreline erosion problems.

ERP No. D–NPS–H65007–KS Rating LO, Tallgrass Prairie National Preserve General Management Plan, Implementation, Flint Hills Region, Chase County, KS.

Summary: EPA had a lack of objections to the proposed project.

Final EISs

ERP No. F–FHW–C40142–NY US–20/ Broadway (Transit Road to Lancaster East Village Line) Reconstruction, Funding, COE Section 10 and 404 Permit, in the Villages of Depew and Lancaster, Erie County, NY.

Summary: EPA has no further issues with the project.

ERP No. F–FHW–F40365–WI US 151 Highway Project, from Dickeyville to to Belmont, Improvements, Funding and COE Section 404 Permit, Grant and Lafayette Counties, WI.

Summary: The FEIS addressed EPA's previous comments on wetlands, floodplains and other resources.

Dated: January 27, 2000.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 00–2111 Filed 1–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44653; FRL–6489–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on N-methylpyrrolidone (NMP) (CAS No. 872–50–4). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460 telephone numbers: (202) 554–1404 and TDD:

(202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Robert Jones, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; fax number: (202) 401–3672; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–44653. The official record consists of the documents specifically referenced in this action, any public comments received during an appplicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to enforceable consent agreements/orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for N-methylpyrrolidone (NMP) were submitted by the NMP Producers Group on behalf of the member companies: Lyondell Chemical Company (formerly ARCO Chemical Company), BASF Corporation, and ISP Management Company, Inc. These data were submitted pursuant to a TSCA section 4 enforceable consent agreement/order and were received by EPA on November 23, 1999. The submission includes a final report entitled "*N*-Methylpyrrolidone - Carcinogenicity study in B6C3F1 mice; Administration in the diet for 18 months." NMP is an inert, stable, polar solvent that is used in a wide variety of processes. Its commercial uses result from its strong and frequently selective solvent power. One of the major uses of NMP is the extraction of aromatics from lubricating oils. It is also used as a medium for polymerization and as a solvent for finished polymers. It is the preferred solvent in a variety of chemical reactions and the manufacture of numerous chemical intermediates and products such as plastics, surface coatings, and pesticides. An important use of this chemical is as a substitute for methylene chloride in paint strippers. NMP is also used in the recovery and purification of acetylenes, olefins, and diolefins, in the removal of sulfur compounds from natural and refinery gasses, and in the dehydration of natural gas.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: January 19, 2000.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–2018 Filed 1–28–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 21, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 31, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0551.

Title: Specific Unfair Practices Prohibited—Sections 76.1002 and 76.1004.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents: 52 (26 petitions and 26 oppositions).

Estimated Time Per Response: 1–25 hours. We estimate the total burden in undergoing all aspects of the proceeding to be 25 hours. We estimate that 50% of entities will use outside counsel and will undergo a burden of 1 hour to coordinate information with outside counsel.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 676 hours. (26 respondents with outside counsel × 1 hour = 26 hours. 26 respondents without outside counsel × 25 hours = 650 hours.).

Total Annual Costs: $97,500. 26 respondents using outside counsel at $150 per hour = 26 × 25 hours × $150 = $97,500.

Needs and Uses: The information will be used by Commission staff to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of Section 9 of the 1992 Cable Act and Section 628 of the Communications Act of 1934, as amended.

OMB Control Number: 3060–0307.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3700.

Estimated Time per Response: 1.5 hours.

Frequency of Responses: On occasion, reporting requirements.

Total Annual Burden: 5550 hours.

Total Annual Costs: 0.00.

Needs and Uses: In the 800 MHz Second Report and Order, the Commission established a flexible regulatory scheme for the 800 MHz Specialized Mobile Radio (SMR) service to promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The rules adopted in the 800 MHz Second Report and Order also implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services (CMRS) as described in Sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n), 332 (Communications Act), as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993. In the Second Report and Order, the Commission also adopted rules regarding competitive bidding for the remaining 800 MHz SMR spectrum based on Section 309(j) of the Communications Act, 47 U.S.C. 309(j), which authorizes the Commission to use auctions to select among mutually exclusive initial applications in certain services, including the 800 MHz SMR service. The actions taken in this Memorandum Opinion and Order on Reconsideration are in response to petitions for reconsideration or clarification of the 800 MHz Second Report and Order. Throughout this proceeding, we have sought to promote Congress' goal of regulatory parity for all commercial mobile radio services, and to encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, we have sought to establish rules for the SMR services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2041 Filed 1–28–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, January 25, 2000, 10:00 a.m., meeting closed to the public. This meeting was changed to: Thursday, January 27, 2000, after the open meeting.

DATE AND TIME: Tuesday, February 1, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 3, 2000, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Legislative Recommendations, 2000.

Express Advocacy Rule (11 CFR 100.22).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–2055 Filed 1–27–00; 11:40 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. W. David Sweatt; Roswell, Georgia; to retain voting shares of CNB Holdings, Inc., Alpharetta, Georgia, and thereby indirectly retain voting shares of Chattahoochee National Bank, Alpharetta, Georgia.

Board of Governors of the Federal Reserve System, January 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2022 Filed 1–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB–T Corporation, Winston-Salem, North Carolina; to merge with First Banking Company of Southeast Georgia, Statesboro, Georgia, and thereby indirectly acquire Wayne National Bank, Jesup, Georgia; First National Bank of Effingham, Springfield, Georgia; Metter Banking Company, Metter, Georgia; and First Bulloch Bank & Trust Company, Statesboro, Georgia.

In connection with this proposal, BB–T Corporation requests permission to exercise an option to acquire up to 19.9 percent of the voting securities of First Banking Company of Southeast Georgia under certain circumstances.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Napa National Bancorp, Napa, California, and thereby indirectly acquire Napa National Bank, Napa, California.

Board of Governors of the Federal Reserve System, January 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2021 Filed 1–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Thursday, February 3, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Publication for comment of proposed new Regulation P (Privacy of Consumer Financial Information) to implement the provisions of the Gramm-Leach-Bliley Act that govern the protection and disclosure by financial institutions of nonpublic personal information about consumers.

2. Any items carried forward from a previously announced meeting. Note: This meeting will be recorded for the benefit of those unable to attend.

Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Contact Person for More Information: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: January 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2108 Filed 1–27–00; 2:25 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 12:15 a.m., Thursday, February 3, 2000, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2109 Filed 1–27–00; 2:25 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00026]

Cooperative Agreement for National Programs To Prevent HIV Infection and Other Important Health Problems Among Youth and To Strengthen Coordinated School Health Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for cooperative agreements to national organizations that can become a part of a national strategy to prevent and reduce sexual behaviors that result in HIV infection, other Sexually Transmitted Diseases (STDs), and unintended pregnancy.

These national organizations will work to strengthen the capacity of national, state, and/or local agencies to help schools and other societal institutions to prevent behaviors that place all young people, and particularly those from communities of color, at risk for HIV infection, other STDs, and unintended pregnancy.

This program addresses the "Healthy People 2000" priority area of Education and Community-Based Programs; and, the draft "Healthy People 2010" priority area of Education and Community-Based Programs; HIV; and STDs.

The purpose of this program announcement is to provide support for these national organizations to work exclusively on helping young people, particularly in communities of color, to not engage in sexual intercourse and engage a range of organizations to prevent and reduce the risk behaviors described above.

B. Eligible Applicants

Assistance will be provided to only national health, education, and social service organizations that are nonprofit, professional, or voluntary. Proof of nonprofit status must be provided prior to receipt of an award (AR–15 included in the application package.

To meet the CDC definition of a national organization, eligible applicants must have affiliates in a minimum of 10 states and territories. Eligible organizations must also have experience strengthening the capacity of national, state, and/or local agencies to help schools and other societal institutions to prevent behaviors that place all young people at risk for HIV infection, other STDs, and unintended pregnancy with the exclusive focus of their efforts in this area being on helping young people to not engage in sexual intercourse. Eligible organizations must also have experience and established relationships with other organizations and individuals that have this same focus. Applicants must provide proof that any activity that is designed to prevent behaviors that put youth at risk for HIV, other STDs, and unintended pregnancy have the exclusive focus on helping youth to not engage in sexual intercourse. This proof shall include a statement that the organization's purpose in conducting any activity that is designed to prevent behaviors that put youth at risk for HIV, other STDs, and unintended pregnancy is to help youth not engage in intercourse.

C. Availability of Funds

Approximately $400,000 is available in FY 2000 to fund up to approximately three awards. It is expected that the average award will be $140,000, ranging from $120,000 to $160,000. It is expected that the awards will begin on or about June 1, 2000 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory performance as evidenced by required reports and on the availability of funds.

Use of Funds

Funds must be used exclusively for activities that help young people not engage in sexual intercourse. Applicants must not identify any activities that would constitute research. Activities funded under this announcement are intended to build the capacity of national organizations to promote the prevention of HIV, other STDs, and unintended pregnancy among youth and should not include any formal or informal research.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under 1. Recipient Activities, and CDC will be responsible for activities under 2. CDC Activities, below:

1. Recipient Activities

a. Work with interested CDC-funded and other national, state and local organizations to develop credible strategies to prevent sexual behaviors that result in HIV infection, other STDs, and unintended pregnancy by helping young people not engage in sexual intercourse. This work should focus on building partnerships among these different organizations at the state and local level to provide a comprehensive set of strategies to prevent behaviors that place all young people at risk for HIV infection, other STDs, and unintended pregnancy.

b. Establish and implement specific and measurable goals and objectives.

c. Evaluate the effectiveness of the program and use evaluation results for programmatic improvement and long-range planning.

d. Participate in the Centers for Disease Control and Prevention, Division of Adolescent and School Health's (DASH) national conferences and at least one training workshop during the budget period.

e. Share credible project-related information and materials with other interested State Education Agencies (SEAs), Local Education Agencies (LEAs), Post-secondary Institutions (PSIs), and national organizations through awareness sessions, training events, electronic communications, state and national conferences and CDC-sponsored training workshops and conferences.

f. Implement an operational plan that may include, but is not limited to, one or more of the following activities:

(1) Help interested State and local education agencies, CDC-funded and other national agencies to integrate credible strategies to help young people to not engage in sexual intercourse.

(2) Collaborate with interested CDC-funded and other national organizations to establish and maintain credible initiatives to help young people to not engage in sexual intercourse and prevent behaviors that place school-through college-aged young people at risk for HIV infection, other STDs, and unintended pregnancy.

(3) Educate and enable interested managers, who are members of CDC-funded and other national organizations, to support credible, locally determined programs designed to encourage youth not to engage in sexual intercourse.

(4) Provide technical assistance on helping young people to not engage in sexual intercourse to interested CDC-funded and other organizations, including State and local education agencies, and national organizations.

(5) Support efforts by interested State and local education agencies, health departments, and social service agencies to help young people to not engage in sexual intercourse as part of a comprehensive HIV, other STDs, and unintended pregnancy prevention effort.

2. CDC Activities

a. Provide and periodically update programmatic information.

b. Coordinate with national, state, and local education, health and social service agencies, as well as other relevant organizations, in planning and conducting national strategies designed to strengthen programs for preventing HIV infection, other STDs, and unintended pregnancy among young people.

c. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

d. Plan and carry out meetings of national, state, and local education agencies and other appropriate organizations and individuals to address issues and program activities related to improving coordinated school health programs and strengthening the capacity of post-secondary institutions and agencies that serve young people to prevent HIV infection, other STDs, and unintended pregnancy among young people.

e. Assist in the evaluation of program activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than [40] double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Executive Summary. The applicant should provide a concise, two to three page, summary that clearly describes:

a. Eligibility, including:

(1) Status as a national organization to include the number and geographic location of affiliates representing at least 10 states and territories,

(2) Experience and capacity to work exclusively on helping young people to not engage in sexual intercourse and engage a range of organizations to prevent and reduce the risk behaviors that place all young people at risk for HIV infection, other STDs, unintended pregnancy, and other serious health problems.

(3) Proof that the activities designed to prevent sexual risk behaviors (those behaviors that put youth at risk for HIV, STDs, unintended pregnancy and other serious health problems) focus only on helping youth to not engage in sexual intercourse. This proof shall include a statement that the organization's sole purpose in conducting any activity that is designed to prevent behaviors that put youth at risk for HIV, other STDs, and unintended pregnancy is to help youth not engage in intercourse.

(4) Documentation that supports eligibility should be submitted as an attachment to the Executive Summary. Specifically, the applicant must submit a valid tax exempt status under Section 501(c)(3) as evidenced by an Internal Revenue Service determination letter.

b. The major proposed goals, objectives, and activities for implementation of the program, as well as the total requested amount of Federal funding.

c. Applicant's capability to implement the program.

2. Background (not more than 4 pages): Applicant should describe the Organization's background and experience in addressing the needs related to the purpose of this announcement.

3. Capacity (not more than 8 pages).

a. Describe ability to address the identified needs.

b. Describe affiliates as follows:

(1) Types of affiliates.

(2) Number of affiliates.

(3) Location of affiliates.

(4) How the affiliates can work with or influence the population identified in the purpose of the announcement.

c. Describe efforts and relevant experience at the national, state, and local levels that support the purpose of the announcement, including such factors as:

(1) Current and previous experience related to the proposed program activities.

(2) Activities related to building partnerships with diverse organizations.

(3) Current and previous coordination and collaboration with national, non-governmental agencies that have an interest in helping young people to not engage in sexual intercourse.

d. Submit a copy of the organizational chart, describe the organizational structure, and describe how that structure supports health promotion and education activities.

4. Operational Plan (not more than 15 pages).

a. Goals. List goals that specifically relate to program requirements that indicate what the program will have accomplished at the end of the projected 5-year project period. The goals should relate directly to the recipient activities and project objectives.

b. Objectives. List objectives that are specific, measurable, and feasible to be accomplished during the projected 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

c. Describe in narrative form and display on a 12-month timetable, specific activities that are related to each objective. Indicate when each activity will occur as well as when preparations for activities will occur. Also, indicate who will be responsible for each activity and identify staff who will work on each activity.

5. Project Management and Staffing Plan (8 pages).

a. Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions.

b. Submit curriculum vitae (limited to 2 pages per person) for each professional staff member named in the proposal.

c. Submit job descriptions illustrating the level of organizational responsibility for professional staff who will be assigned to the project.

d. If other organizations will participate in proposed activities, provide the name(s) of the organization(s), as well as the applicant's staff person who will coordinate the activity and/or supervise the other staff. For each organization listed, provide a letter from that organization identifying the specific activity and the capacity of the assisting organization or subcontractor, and their role in carrying out the proposed activities.

6. Sharing experiences (1 page). Describe how materials that are developed or activities that are successful will be shared with others. Examples of such activities include, but are not limited to:

a. Sharing project related materials through newsletters, clearinghouses, workshops, and conferences.

b. Disseminating materials upon request to affiliates and CDC-funded and other national, state, and local organizations.

c. Disseminating information and materials to interested organizations within a state that employ a wide range of strategies to prevent sexual behaviors that result in HIV infection, other STDs, and unintended pregnancy.

7. Collaborating (1 page). Describe the types of proposed collaboration and the agencies and organizations with whom collaboration will be conducted. Examples of such activities include, but are not limited to:

a. Planning and implementing joint training programs or workshops.

b. Planning and convening joint conferences.

c. Participating in conferences or workshops with other recipients.

d. Identifying measures of progress.

8. Evaluation (4 pages). Describe a plan that evaluates the program's effectiveness in meeting its objectives. For each of the types of evaluation listed below, specify the evaluation question to be answered, data to be obtained, the type of analysis, to whom it will be reported, and how data will be used to improve the program. Indicate in the plan the projected staff and time lines to be used.

a. Process evaluation. Evaluate the program's progress in meeting objectives and conducting activities during the budget period.

b. Outcome evaluation. Assess the effectiveness of proposed activities, including training sessions and documents developed in attaining goal(s) at the completion of each 1-year budget period and the 5-year project period.

9. Budget and Accompanying Justification. Provide a detailed budget and line-item justification of all operating expenses for the 1-year budget period. The budget should be consistent with the stated objectives and planned activities of the project. The budget should include the cost of a 4-day trip to Atlanta for two individuals.

10. Typing and Mailing. Application pages must be numbered clearly, and a complete table of contents of the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All materials must be typewritten, single-spaced, using an unreduced font not less than 12 point (10 characters per inch) on 8½″ × 11″ paper, with at least a 1″ margin, including headers and footers, and printed on one side only.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before March 15, 2000, submit the application to: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 00026, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date or,

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service.

Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually according to the following criteria by an independent review group appointed by CDC.

1. Background (10 points). The extent to which the applicant documents their organization's experience in addressing the purpose of the program announcement, and the rationale for the proposed activities.

2. Capacity (30 points). The extent to which the applicant demonstrates the capacity and ability of their organization to carry out the required recipient activities (page 4–7) to work exclusively on helping young people to not engage in sexual intercourse, and engage a range of CDC-funded and other organizations that work to prevent the risk behaviors that place all young people, and particularly those from communities of color, at risk for HIV infection, other STDs, and unintended pregnancy.

3. Operational Plan (25 points). The extent to which the applicant:

a. Identifies Goals. The extent to which the applicant has submitted goals that are specific and feasible for the projected 5-year project period and are consistent with program requirements.

b. Identifies Objectives. The extent to which the applicant has submitted objectives for the 1-year budget period that are specific, measurable, and feasible and are related directly to the program's goals.

c. Proposes activities that are likely to achieve each objective for the budget period.

d. Addresses each recipient activity.

e. Provides a reasonable time line for conducting those activities.

4. Project Management and Staffing (15 points). The extent to which the applicant identifies staff members that have experience in activities that increase the number of young people who do not engage in sexual intercourse and that have the responsibility, capability, and authority to carry out each activity, as evidenced by job descriptions, curriculum vitae, organizational charts, and letters of support from collaborating agencies.

5. Sharing Experiences and Resources (5 points). The extent to which the applicant indicates how it will share credible materials and activities regarding strategies to help young people to not engage in sexual intercourse in an effort to prevent HIV infection, STDs, and unintended pregnancy.

6. Collaborating (5 points). The extent to which the applicant describes how they will collaborate with CDC-funded State and local education agencies, postsecondary institutions, and/or other national organizations.

7. Evaluation (10 points). The extent and method to which the applicant proposes to measure progress in meeting objectives and program effectiveness, and presents a reasonable plan for obtaining data, reporting the results, and using the results for programmatic decisions.

8. Budget (Not Scored). The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives, planned activities and goals of the project.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to:

Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 311(b)and (c), and 317(k)(2) of the Public Health Service Act [42 U.S.C. section 241(a), 243(b) and (c), and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.938.

J. Where to Obtain Additional Information

Please refer to Program Announcement 00026 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 00026, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone: (404) 488–2746, E-mail address: rnh2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact Mary Vernon-Smiley, Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–31, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, Georgia 30341–3717, E-mail address mev0@cdc.gov; phone (770) 488–3253.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

Dated: January 21, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 00–1924 Filed 1–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research, Subcommittee for Management Review of the Chernobyl Studies: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies (SMRCS).

Time and Date: 8:30 a.m.–3:30 p.m., February 24, 2000.

Place: Omni Shoreman Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008, telephone 202/234–0700, fax 202/265–5333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 30 people.

Purpose: This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute Chernobyl studies.

Matters To Be Discussed: Agenda items will include: a briefing to and receiving input from public interest groups; a report on the progress review; and a discussion of the upcoming site visit to the Ukraine and Belarus.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Acting Deputy Director, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7002, fax 770/488–7015.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–1926 Filed 1–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–6 p.m., February 16, 2000. 8 a.m.–5 p.m., February 17, 2000.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include a discussion on the revision of the ACIP recommendations for the pneumococcal conjugate vaccine; cost benefit analysis of the pneumococcal conjugate vaccine; update on the revision of the general recommendations; update on the adult immunization recommendations; update on the standing orders for adult immunization, adverse events after use of yellow fever vaccine; prevention of pneumococcal disease and vaccination in persons 50–64 years of age; use of DTaP as the fifth dose following four doses of DTaP; 2000–2001 control and prevention of influenza recommendations; update of 1999–2000 influenza season and vaccine strain selection process; lyme disease vaccine update: trials in children, alternate dosing, boosters, VAERS data; effect of changes in hepatitis B immunization recommendations due to concerns about thimerosal; 2-dose adolescent hepatitis B vaccination; Vaccines for Children vote on FDA approved schedule for 2-dose adolescent hepatitis B vaccination, inactivated polio virus vaccine, pneumococcal vaccine, and rotavirus vaccine; high-speed needle-free jet injectors and mass vaccination for pandemic influenza or bioterrorism; update on the bioterrorism and anthrax work group; an update from the Food and Drug Administration; update from the National Center for Infectious Diseases; update from the National Immunization Program; update from the Vaccine Injury Compensation Program; update from the National Vaccine Program; review of immunogenicity of Pentacel® and update on the Infanrix® vaccine. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services office has been delegated the authority to sign FEDERAL REGISTER

notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–1919 Filed 1–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., February 9, 2000; 8:30 a.m.–12 p.m., February 10, 2000.

Place: Marriott Atlanta Century Center, 2000 Century Boulevard NE., Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include issues pertaining to the Epidemiology of Tuberculosis in Low Incidences counties, Tuberculosis Laboratory issues, and an update on the Occupational Risk of Tuberculosis Transmission.

CONTACT PERSON FOR MORE INFORMATION: Paulette Ford, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 21, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–1925 Filed 1–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–1223]

Determination of Regulatory Review Period for Purposes of Patent Extension; Certiva™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Certiva™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product Certiva™ (acellular purified pertussis toxoid). Certiva™ is indicated for immunization of infants and children except as a fifth dose in children who have previously received four doses of DTaP. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Certiva™ (U.S. Patent No. 4,762,710) from Amvax, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 9, 1999, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of Certiva™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Certiva™ is 2,578 days. Of this time, 1,542 days occurred during the testing phase of the regulatory review period, while 1,036 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 10, 1991. The applicant claims February 14, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 10, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section*

351 of the Public Health Service Act: September 28, 1995. FDA has verified the applicant's claim that the product license application (PLA) for Certiva™ (PLA 95–1529) was initially submitted on September 28, 1995.

3. *The date the application was approved:* July 29, 1998. FDA has verified the applicant's claim that PLA 95–1529 was approved on July 29, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 31, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 31, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–2031 Filed 1–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0479]

Determination of Regulatory Review Period for Purposes of Patent Extension; Teslascan

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Teslascan and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Teslascan (magnafodipir trisodium). Teslascan is indicated for intravenous administration as an adjunct to magnetic resonance imaging (MRI) in patients to enhance the $T1_1$-weighted images used in the detection, localization, characterization, and evaluation of lesions of the liver. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Teslascan (U.S. Patent No. 4,933,456) from Nycomed Salutar, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 25, 1999, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Teslascan represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Teslascan is 3,129 days. Of this time, 2,325 days occurred during the testing phase of the regulatory review period, while 804 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* May 5, 1989. The applicant claims May 10, 1989, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 5, 1989, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* September 15, 1995. The applicant claims November 7, 1995, as the date the new drug application (NDA) for Teslascan (NDA 20–652) was initially submitted. However, FDA records indicate that NDA 20–652 was submitted on September 15, 1995.

3. *The date the application was approved:* November 26, 1997. FDA has verified the applicant's claim that NDA 20–652 was approved on November 26, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 1,628 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 31, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 31, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–2030 Filed 1–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–1115]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lumbar I/F Cage®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Lumbar I/F Cage® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Lumbar I/F Cage®. Lumbar I/F Cage® is indicated for an open posterior approach using autogenous bone graft in patients with degenerative disc disease at one or two spinal levels from L2–S1 whose condition requires the use of interbody fusion combined with posterolateral fusion and posterior pedicle screw fixation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Lumbar I/F Cage® (U.S. Patent No. 4,834,757) from DePuy AcroMed, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 10, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Lumbar I/F Cage® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Lumbar I/F Cage® is 2,631 days. Of this time, 1,708 days occurred during the testing phase of the regulatory review period, while 923 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* November 22, 1991. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective November 22, 1991.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* July 25, 1996. FDA has verified the applicant's claim that the premarket approval application (PMA) for Lumbar I/F Cage® (PMA P960025) was initially submitted July 25, 1996.

3. *The date the application was approved:* February 2, 1999. FDA has verified the applicant's claim that PMA P960025 was approved on February 2, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,776 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 31, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 31, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies

(except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–2032 Filed 1–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

HCFA–4012–N

Medicare Program; Meeting of the Advisory Panel on Medicare Education—February 15, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Panel on Medicare Education. This Committee advises and makes recommendations regarding our National Medicare Education Program as well as other programs. These programs help Medicare beneficiaries understand the expanded range of Medicare options available with the passage of the Medicare+Choice program. This meeting is open to the public, but attendance is limited to space available.

DATES: The meeting is scheduled for Tuesday, February 15, 2000, from 10 a.m. until 5:00 p.m., e.s.t. This session is open to the public in accordance with the Federal Advisory Committee Act. There will be an additional executive session from 8 a.m. to 10 a.m., not open to the public, for the processing and swearing in of the members.

ADDRESSES: The meeting will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001, (202) 628–2100.

FOR FURTHER INFORMATION CONTACT: Susana Perry, Executive Director, Health Care Financing Administration, Center for Beneficiary Services, Partnership Development Group, 7500 Security Boulevard, S1–08–07, Baltimore, MD 21244–1850, (410) 786–1076.

SUPPLEMENTARY INFORMATION: The Advisory Panel on Medicare Education (the Panel) advises us on opportunities to enhance the effectiveness of consumer education materials serving the Medicare program. The goals of the Panel are as follows:

- Developing and implementing a national Medicare education program that describes the expanding options for selecting a health plan under Medicare.
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities; in the context of a national Medicare education program.
- Assembling an information base of "best practices" for helping consumers evaluate health plan options and building a community infrastructure for information, counseling and assistance.

The agenda is as follows:

- Appointments Process and Procedural Details (closed session).
- Introductory Remarks.
- Summary of HCFA Activities in Beneficiary Education: The National Medicare Education Program and the materials, assessments, evaluations, and research efforts that support it.
- Committee Discussion.
- Committee Work Plan and Next Steps.
- Public Comment.

AUTHORITY: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 27, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–2076 Filed 1–28–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Health Professions and Nurse Education Special Emphasis Panel; Notice of Meeting Cancellation

In **Federal Register** Document 99–23335 appearing on pages 48844–48846 in the issue for Wednesday, September 8, 1999, the March 6–9, 2000, meeting of the "Public Health Special Projects Review Group" will be cancelled.

Dated: January 20, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–2033 Filed 1–28–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–FA–11]

Announcement of Funding Awards for the Youthbuild Program, Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Youthbuild Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mr. Donner Buchet, Director, Community and Economic Development Services, Office of Community Planning and Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–2290 (this is not a toll-free number). Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Website at http://www.hud.gov.

SUPPLEMENTARY INFORMATION: The Youthbuild Program was enacted in 1992 and is authorized under Subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing (the Act), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3723, 42 U.S.C. 12899. The competition was announced in the SuperNOFA published in the **Federal Register** on February 26, 1999. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.243.

The Youthbuild Program is designed to provide disadvantaged young adults with education, employment, and leadership skills. Youthbuild provides funding to local private and public non-profit agencies, State or local housing agencies or authorities, State or local units of general local government, or any entity eligible to provide education and employment training under other Federal employment training programs, as further defined in HUD regulation 24 CFR 585.4. With HUD and other private and public funds, eligible agencies and organizations assist disadvantaged young adults between the ages of 16–24 years in completing their high school education, and provide them with construction and leadership skills to further their opportunities for gainful employment.

A total of $39,789,726 was awarded to 88 projects nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: January 18, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

Appendix A—FY 1999 Youthbuild Competitive Grants

State and city	Grant	Applicant
Alabama:		
Birmingham	300,000	Birmingham Health Care for the Homeless.
Mobile	300,000	Mobile Housing Board.
Arizona: West Memphis	350,000	Mid-South Community College.
Arizona:		
Guadalupe	399,950	Town of Guadalupe.
Phoenix	650,000	City of Phoenix.
California:		
Fresno	400,000	Fresno County Economic Opportunities Commission.
Gardena	650,000	Century Center for Economic Opportunity (CCEO).
Los Angeles	650,000	Youth Employment Systems, Inc.
Los Angeles	650,000	Pacific Asian Consortium In Employment.
Menlo Park	299,990	Opportunities Industrialization Center West, Inc.
Richmond	400,000	City of Richmond.
Riverside	300,000	Ujima (People Helping People) Inc.
Sacramento	650,000	Sacramento Housing and Redevelopment Agency.
San Francisco	300,000	Asian Neighborhood Design, Inc.
San Francisco	400,000	San Francisco Conservation Corps.
Santa Rosa	400,000	Sonoma County People for Economic Opportunity.
Sun Valley	650,000	Community Partnership Development Corporation.
Venice	400,000	Venice Community Housing Corporation.
Colorado: Ignacio	336,285	Southern Ute Community Action Programs, Inc.
Connecticut:		
Hartford	650,000	Co-Opportunity, Inc.
New Britain	400,000	New Britain.
District Columbia:		
Washington	399,890	Latin American Youth Center.
Washington	400,000	Sasha Bruce Youthwork, Inc.
Washington	650,000	ARCH Training Center, Inc.
Florida:		
Clearwater	400,000	Career Options of Pinellas, Inc.
Gainesville	400,000	Gainesville Housing Authority.
Miami	300,000	YWCA of Greater Miami & Dade Co.
Georgia: Marietta	299,985	Cobb Housing, Inc.
Hawaii: Honolulu	350,000	City & County of Honolulu.
Idaho: Nampa	193,756	Nampa Community Based Development Organization.
Illinois:		
Bloomington	400,000	YouthBuild McLean County.
East Saint Louis	300,000	Emerson Park Development Corporation.
Rockford	650,000	Comprehensive Community Solutions, Inc.
Indiana: Gary	400,000	Tree of Life Community Development Corp. & Care Cent.
Kentucky: Lexington	300,000	Comm. Action Council for Lexington-Fayette, Bourbon.
Louisiana: Houma	650,000	Terrebonne Parish Consolidated Government.
Massachusetts:		
Brockton	400,000	Old Colony Y Services Corporation.
Cambridge	395,485	Just A Start Corporation.
New Bedford	400,000	People Acting in Community Endeavors, Inc.
Roxbury	650,000	Youthbuild Boston, Inc.
Worcester	399,794	Mass. Job Training, Inc.
Maryland:		
Baltimore	400,000	The Housing Authority of Baltimore City.
Baltimore	650,000	Community Building In Partnership, Inc.
Maine: Portland	400,000	Portland West Neighborhood Planning Council.
Michigan:		
Ann Arbor	400,000	Wastenaw County, Michigan.
Detroit	646,083	Young Detroit Builders.
Minnesota: Chaska	300,000	Carver-Scott Educational Cooperative.
Missouri: Saint Louis	400,000	Housing Authority of St. Louis County.

State and city	Grant	Applicant
Mississippi: Moorhead	650,000	Mississippi Delta Community College.
North Carolina: Greensboro	300,000	University of North Carolina at Greensboro.
New Mexico:		
Albuquerque	400,000	Youthbuild New Mexico Coalition, Inc.
Taos	400,000	Taos County.
New York:		
Albany	650,000	City of Albany.
Bronx	399,964	South Bronx Overall Economic Development Corp.
Bronx	400,000	Corporation for Youth Energy Corps. Inc.
Bronx	360,000	Banana Kelly Community Improvement Assoc.
Brooklyn	299,851	Urban Strategies, Inc.
New York	400,000	YMCA of Greater New York.
New York	400,000	Episcopal Social Services, Inc.
New York	650,000	Youth Action Programs & Homes, Inc.
Rochester	350,000	The Urban League of Rochester, N.Y. Inc.
Troy	650,000	Commission on Economic Opportunity for Renss. County.
Utica	400,000	Utica Community Action, Inc.
Ohio:		
Dayton	400,000	Improved Solutions for Urban Systems.
McArthur	300,000	Vinton Community Commissioners.
Oklahoma:		
Oklahoma City	400,000	City of Oklahoma City.
Tulsa	650,000	Housing Authority of the City of Tulsa.
Oregon:		
Corvallis	395,724	Community Services Consortium.
Portland	650,000	City of Portland, Oregon.
Pennsylvania:		
Greensburg	650,000	Private Industry Council of Westmoreland/Fayette, Inc.
Philadelphia	399,085	Impact Services Corporation.
Philadelphia	650,000	Phila. Youth for Change Charter School.
Pittsburgh	650,000	Youthbuild Pittsburgh, Inc.
York	650,000	Crispus Attucks Community Development Corp.
Rhode Island: Providence	400,000	Providence Plan.
Tennessee: Memphis	399,945	Tennessee Technology Center at Memphis.
Texas:		
Brownsville	400,000	Community Development Corp. of Brownsville.
Crosbyton	300,000	Caprock Community Action Association, Inc.
Harlingen	400,000	Harlingen Community Development Corporation.
Houston	650,000	Houston Community College System.
New Waverly	398,522	Gulf Coast Trades Center.
San Antonio	400,000	George Gervin Youth Center, Inc.
Virginia: Waynesboro	525,417	Waynesboro Redevelopment and Housing Authority.
Vermont: Burlington	400,000	King Street Youth Center
Washington: Tacoma	300,000	Tacoma-Pierce County Employment & Training Consortium.
West Virginia:		
Charleston	590,000	Multi-County Community Action Against Poverty, Inc.
Kincaid	650,000	Southern Appalachian Labor School.
Morgantown	400,000	Human Resource Development & Employment, Inc.

[FR Doc. 00–2044 Filed 1–28–00; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–01]

Revocation and Redelegation of Authority Concerning the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Act of 1964

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: In this Notice, the General Counsel revokes and redelegates authority to dispose of claims arising under the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act.

EFFECTIVE DATE: January 4, 2000.

FOR FURTHER INFORMATION CONTACT: Miniard Culpepper, Assistant General Counsel for New England, Department of Housing and Urban Development, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 378, Boston, MA 02222, phone: 617–565–5126. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD is implementing a major agency-wide improvement effort. The details of this reform effort are set forth in the HUD 2020 Management Reform Plan, which was published in the **Federal Register** on August 12, 1997 (62 FR 43204). The reforms are directed toward: (1) Empowering people and communities to improve themselves; and (2) restoring the public trust in the Department's programs and operations. As part of the HUD 2020 Management Reform Plan, there has been a reorganization of the Office of General Counsel and HUD's Field structure in order to provide the best service possible to HUD program and administrative offices, members of the public, and program beneficiaries relying on HUD's legal services.

Previously, by Notice of Redelegation of Authority published in the **Federal Register** on October 20, 1994 at 59 FR 52986, the General Counsel had

redelegated to the Associate General Counsel for Human Resources Law and to the Field Assistant General Counsel, the authority to handle claims relating to the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act. This Notice revokes that portion of 59 FR 52986 that had redelegated authority to the Field Assistant General Counsel.

Under the HUD 2020 Management Reform Plan, all claims relating to the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act will be the responsibility of HUD's Federal Tort Claims Center. This Notice redelegates to the Assistant General Counsel for New England, within HUD's Federal Tort Claims Center, the authority to adjust, determine, compromise and settle claims under the Federal Tort Claims Act, 28 U.S.C. 2871, and the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721.

Accordingly, the General Counsel revokes and redelegates authority as follows:

Section A. Authority Revoked

This Notice revokes Section A.2. of the Notice of Redelegation of Authority published in the **Federal Register** on October 20, 1994 at 59 FR 52986, which redelegated authority to consider, ascertain, adjust, determine, compromise, allow, deny or otherwise dispose of claims under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act of 1964, from the General Counsel to the Field Assistant General Counsel.

Section B. Authority Redelegated

The General counsel redelegates to the Assistant General Counsel for New England, within HUD's Federal Tort Claims Center, the power and authority to consider, ascertain, adjust, determine, compromise, allow, deny or otherwise dispose of claims under the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act of 1964.

Section C. Authority to Further Redelegate

The authority redelegated under Section B., above, may not be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); 24 CFR 17.7 and 17.47.

Dated: January 4, 2000.

Gail Laster,

General Counsel, Department of Housing and Urban Development.

[FR Doc. 00–2043 Filed 1–28–00; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Fort Worth Zoological Park, Fort Worth Texas PRT–021647.

The applicant requests a permit to import 4.1 captive born cheetah (*Acinonyx jubatas*) from the Hoedspruit Research And Breeding Facility, Republic of South Africa, for public display and breeding purposes to enhance the survival of the species.

Applicant: Kay Rosaire=Mowrey, Sarasota, FL, PRT–696911.

The applicant requests a permit to export, re-export and re-import tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–823832.

The applicant requests a permit to re-export and re-import captive-born Bengal tigers (*Panthera tigris tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Robert C. Webster, Linville, NC, PRT–21989.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*). Culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Daniel Anderson, University of California, Davis, CA, PRT–766567.

The applicant requests renewal of his permit to import biological samples including feathers, eggs, bones, and blood of the California brown pelican (*Pelecanus occidentalis*) for contaminant analysis in the Gulf of California for the purpose of enhancement of the survival of the Species. This notification covers activities conducted by the applicant for a period of five years.

Applicant: Gladys Porter Zoo, Brownsville, TX, PRT–018992.

The applicant requests a permit to export one male and two female Philippine crocodile (*Crocodylus mindorensis*) to the Crocodile Farming Institute, Puerto Princesa, Philippines, for the purpose of a cooperative global effort to maintain genetic diversity in the captive population.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: January 24, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–2045 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Endangered Species Act Permit To Allow Incidental Take of the Coastal California Gnatcatcher by Evergreen Nursery, Oceanside, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Evergreen Nursery has applied for an incidental take permit from the Fish and Wildlife Service pursuant to section 10(a)(1)(B) of the

Endangered Species Act of 1973, as amended. The proposed 15-year permit would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica; gnatcatcher*) incidental to construction and operation of an 80.15-acre nursery in the City of Oceanside, San Diego County, California.

The permit application includes a Habitat Conservation Plan and Implementation Agreement, both of which are available for public review and comment. The Environmental Assessment for proposed issuance of the permit also is available for review and comment. All comments on the permit application and Environmental Assessment will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before March 1, 2000.

ADDRESSES: Comments should be addressed to Mr. Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone 760–431–9618.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Elvin, Fish and Wildlife Biologist, at the above address or telephone 760–431–9440.

SUPPLEMENTARY INFORMATION:

Document Availability

If you would like copies of the documents for review, please contact the office listed above immediately. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Under Section 9 of the Endangered Species Act and its implementing regulations, taking of threatened and endangered wildlife species is prohibited. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found at 50 CFR 17.22 and 17.32.

Evergreen Nursery is seeking an incidental take permit from the Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The permit would authorize incidental take of the federally threatened coastal California gnatcatcher for the proposed project. The site is also occupied by the endangered least Bells vireo (*Vireo bellii pusillus*); however, Evergreen Nursery has incorporated measures into its Habitat Conservation Plan to avoid take of this species. Therefore the permit would not authorize take of the vireo.

The proposed project is located in the City of Oceanside immediately south of Oceanside Boulevard, east of El Camino Real, and west of Rancho del Oro. The proposed project consists of: (1) The construction and operation of a plant nursery on 80.15 acres; and (2) implementation of a Habitat Conservation Plan over a 15-year period. The Plan would establish and provide for management of a 29.66-acre conservation area on the project site, consisting of 24.0 acres of coastal sage scrub for the gnatcatcher and 5.66 acres of riparian habitat for the least Bells vireo. Evergreen Nursery would re-vegetate or enhance approximately 7 acres of coastal sage scrub habitat within the conservation area.

Project features include two primary nursery areas where plants would be grown and sold, a sales and administration building, a maintenance building, a facility building, a compost production area, and a water collection pond. To access the south side of the site an approximately 100 foot-long bridge would be constructed over Loma Alta Creek (at the location of an existing road crossing) and over active railroad tracks. Existing flat and disturbed areas south of the railroad tracks would be used for plant growing and storage in containers. Existing dirt roads would be used for access.

The Habitat Conservation Plan and the Environmental Assessment consider three alternatives to the proposed commercial development project: the no project alternative, the alternate location alternative, and the alternate plan designs alternative. Under the proposed project alternative, a permit would be issued for incidental take of the gnatcatcher. This alternative would result in the permanent loss of 4.11 acres of habitat that currently supports 3 gnatcatchers (one breeding pair, plus an unpaired male) within the 80.15-acre project site. This alternative would permanently preserve 29.66 acres of habitat for the gnatcatcher.

Under the no project alternative, Evergreen Nursery would not apply for an incidental take permit, would not construct the proposed nursery on the site, and would not establish and manage a preserve for the threatened coastal California gnatcatcher. Present disturbance of the project area would continue in the form of trespassing in gnatcatcher-occupied habitat, illegal dumping, erosion, and periodic fire. Considering the area is zoned for commercial use, it is likely that the area would eventually be developed for another commercial use.

Under the alternate location alternative, Evergreen Nursery sought alternative sites for the proposed nursery within the county limits of San Diego County. The environmental consequences of developing some of these sites were not analyzed since none of the sites met the requirements that would allow for sale of nursery stock. The sites that did not meet the project goals would not have required a permit. One property that did meet the needs of the project was eliminated from consideration due to environmental concerns. Approximately 90 acres of the parcel lies in the San Luis Rey River basin. The remainder of the property is coastal sage scrub habitat on steep slopes. This site would have had greater impacts to sensitive and listed species than the proposed project and would have required the issuance of a permit.

Evergreen Nursery also considered alternate plan designs to its project. This alternative would have resulted in greater impacts to sensitive and listed species than the proposed project. The open space preserve would have been smaller and the benefit to the gnatcatcher and vireo would have been less than the proposed project.

This notice is provided pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the gnatcatcher. Our final decision will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period.

Dated: January 19, 2000.

Daniel S. Walsworth,

Acting Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–1922 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Railroad Canyon-Lake Elsinore Partnership Tract 20704 in the City of Lake Elsinore, Riverside County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The partnership of Railroad Canyon-Lake Elsinore (the Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the coastal California gnatcatcher (*Polioptila californica californica*) incidental to otherwise lawful activities in the City of Lake Elsinore, Riverside County, California. The proposed permit duration is 10 years.

The application includes: (1) The proposed Habitat Conservation Plan (Plan), which fully describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate anticipated take of the California gnatcatcher, as required in Section 10(a)(2)(B) of the Act; and (2) the proposed Implementing Agreement. Activities covered by the requested Permit and addressed by the proposed Plan include the development of 120 undeveloped lots with Riversidian coastal sage scrub for residential use. This project would permanently eliminate 9.2 acres of suitable habitat for the California gnatcatcher. The Service also announces the availability of an Environmental Assessment for the permit application.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). The Plan, Implementing Agreement, and the Environmental Assessment are available for review and comment by other agencies and the public. All comments received, including names and addresses, will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments must be received no later than March 1, 2000.

ADDRESSES: Written comments should be addressed to Mr. Jim Bartel, Assistant Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may also be sent by facsimile to (760) 431–5902.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Cleary-Rose, Fish and Wildlife Biologist, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of these documents by contacting the Carlsbad Fish and Wildlife Office at the above address and telephone number. Documents also will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office and at the Lake Elsinore City Library located at 600 W Graham Street, Lake Elsinore.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

The Applicant has proposed one tract for development within the Canyon Creek Specific Plan Area. The project site is located between Interstate 15 and Canyon Lake, at the mouth of Railroad Canyon in the City of Lake Elsinore, Riverside County, California. Typical land uses in the area surrounding the project site include several residential developments, one commercial center, and undeveloped coastal sage scrub areas. The San Jacinto River is south of the project site and a 40-acre Bureau of Land Management parcel is adjacent to the north side of the project site. The Applicant proposes residential development of 120 homes on the project site.

Biologists surveyed the project site for special-status plants and wildlife in 1998. Based on these surveys and previous knowledge of the area, the Service concluded that the project may result in the take of one federally listed species, the threatened California gnatcatcher.

The Applicant proposes to implement the following measures to minimize and mitigate take of the California gnatcatcher: (1) Constructing a masonry wall between the proposed residential lots and adjacent Bureau of Land Management property with an additional barrier placed between the edge of the subdivision and the main road to minimize effects to adjacent California gnatcatcher populations; (2) placing restrictions pertaining to pets and lighting in the lot titles and using signs to educate the public and encourage protection of the adjacent biological resources; (3) attaching an information packet describing the biological values of adjacent coastal sage scrub areas as part of the recorded deed for the proposed homes; (4) revegetating 5.79 acres onsite; and (5) mitigating the loss of 9.2 acres of successional Riversidian coastal sage scrub habitat by purchasing 13.8 acres of good quality Riversidian coastal sage scrub in the Sedco Hills Mitigation Bank within the Lake Mathews/Lake Skinner gnatcatcher corridor in western Riverside County. The Applicant would endow the management of the off-site mitigation area at a cost of $2,500/acre. The mitigation site would be managed by The Environmental Trust.

The Environmental Assessment considers the environmental consequences of two alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the California gnatcatcher. Under the Reduced Project Alternative, 18 lots would be dedicated as open space to form a buffer between the subdivision and the Bureau of Land Management parcel. As there would no longer be a potential for take by excluding these lots from development, no mitigation or minimization measures would be necessary. Under the No Action Alternative, the Service would not issue a permit and the project area would continue to remain as slowly recovering Riversidian coastal sage scrub habitat fragmented by intrusions of existing paved streets. The two alternatives would result in less habitat value for the California gnatcatcher than the off-site

mitigation proposed under the Proposed Project Alternative.

This notice is provided pursuant to section 10(a) of the Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued to the Applicant for the incidental take of the California gnatcatcher. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: January 19, 2000.

Daniel S. Walsworth,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–1923 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Six Permits for Incidental Take of Threatened and Endangered Species

SUMMARY: Between April 1, 1999, and September 30, 1999, Region 2 of the Fish and Wildlife Service issued six permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. Of the six permits issued, four are associated with the Balcones Canyonlands Preserve and two are associated with other areas. The other two permits issued are outside of The City of Austin and Travis County, but are within the Southwest Region of the U.S. Fish and Wildlife Service. Copies of the six permits and associated decision documents are available upon request.

ADDRESSES: If you would like copies of any of the above documents, please contact the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Leslie Dierauf, Regional Habitat Conservation Plan Coordinator, at the above address, 505–248–6651.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal Regulation prohibits the "take" of wildlife species listed as threatened or endangered species. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize incidental take, *i.e.*, that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

Permittee	Permit No.	Date of issuance
Four Incidental Take Permits Issued Associated With the Balcones Canyonlands Preserve		
Tomen Park/Grandview Hills (TX)	PRT–815447	08/27/99
Balfour Tract (TX)	TE–003593–0	01/31/99
John C. Hunt (TX)	TE–010556–0	07/21/99
John M. Caster (TX)	TE–012423–0	09/24/99
Four Incidental Take Permits Issued in Other Areas of Region Permittee		
Lumbermans Investment Corp. (TX)	PRT–836384	09/30/99
Fred P. Stein (TX)	TE–007891–0	06/03/99

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2050 Filed 1–28–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Education Facilities Replacement Construction Priorities List as of FY 2000

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is publishing the Education Facilities Replacement Construction Priority List as of FY 2000 in the **Federal Register** as required by statute. Construction funding is not yet currently available for all projects on the list. The Bureau will use this list to determine the order in which Congressional appropriations are requested for funding education facilities replacement construction projects.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Education Facilities Construction Priority List may be addressed to Dr. Kenneth G. Ross, Assistant Director, Office of Indian Education Programs, 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102, (505) 346–6544/5/6, Fax (505) 346–6553.

SUPPLEMENTARY INFORMATION: Publication of the Education Facilities Replacement Construction Priority List (Priority List) in the **Federal Register** is required by 25 U.S.C. 2005(c) at the time any budget request for school construction is presented. In a Senate Report accompanying an early version of the FY 2000 Interior and Related Agencies Appropriations Act, S. Rept. No. 106–99, p. 55 (1999), the Committee on Appropriations stated that it anticipates the release of a new replacement list during the FY 2001 appropriations process. In 1998, the Bureau of Indian Affairs (BIA or Bureau) had begun preparations for developing a new Priority List, including the acceptance of applications from tribes who wished to have schools placed on the Priority List.

Schools placed on the "Education Facilities Construction Priority List as of FY 1993" that are not yet fully funded for construction, project Nos. 13, 15 and 16, did not have to submit applications for ranking on the new Priority List and are retained, in order, at the top of the FY 2000 list as project Nos. 1 through 3. The FY 1993 Priority List was published in the **Federal Register** on January 6, 1993 (58 FR 579). Education Facilities Replacement Construction projects will be funded for construction in the order in which they are ranked as appropriations become available, unless a school is not ready for the next phase of funding. In accordance with Congressional directives, the projects do not provide for new school starts nor grade level expansions.

The Conference Report for the FY 1992 Interior Related Agencies Appropriations Act, H. Conf. Rept. No. 102–256, p. 46 (1991), indicated that Congress wanted the Department to revise the priority ranking process for new school construction. The Bureau revised the process and developed draft revised instructions and criteria, complying with the 1991 Conference Report requirements that the BIA should emphasize tribal consultation and improve the objectivity of the ranking process, provide continuity to the priority ranking list, and provide procedures for handling emergency needs.

The Bureau published a Notice in the **Federal Register** on November 17, 1998 (63 FR 63942), requesting comments on the draft revised instructions and criteria, entitled "Instructions and Application for Replacement School Construction, 1999." The new instructions governed the priority ranking process for construction of replacement education facilities and the criteria used in ranking applications. Comments were received relating to administrative requirements and responsibilities; definitions of ranking criteria; evaluation of applications; and cost-sharing. The comments were reviewed and incorporated into the final instructions and criteria as appropriate by a team comprised of tribal representatives and BIA employees from the Office of Indian Education Programs and the Office of Facilities Management and Construction. The Bureau proceeded with using the final revised application instructions and criteria on February 26, 1999.

Copies of the final revised instructions and criteria were sent to all BIA schools and schools that receive BIA funds under contract or grant (Catalog of Federal Domestic Assistance Program Number: 15.062 "Replacement and Repair of Indian Schools"), and the Bureau held tribal consultation meetings on the revised process. BIA's Office of Indian Education Programs Education Line Officers offered training to applicants at all schools under their administrative jurisdiction on how to complete applications using the revised instructions and ranking criteria. Tribes and BIA-funded school boards received advance, written notice of training session dates, times and locations for tribes and schools under their respective jurisdictions. The Bureau published another Notice in the **Federal Register** on March 29, 1999 (64 FR 14936), calling for applications based on the revised instructions and ranking criteria. The Bureau accepted applications beginning June 28, 1999 and used the criteria in the revised instructions to review and evaluate all applications that were received on or before the deadline of July 16, 1999. These applications were ranked according to the new criteria and 10 schools were placed on the FY 2000 Priority List.

The Committee on Appropriations also recommended that the BIA establish a demonstration project to allow tribes with schools on the replacement list to apply for Federal funding with the guarantee of a cost share from the tribe, S. Rept. No. 106–99, p. 54 (1999). Accordingly, in the priority ranking process for the Education Facilities Replacement Construction Priority List as of FY 2000, applicants indicated whether they would cost share. Congress further stated that tribes may share the cost of construction of their school, identify non-Bureau funding to match or supplement Bureau funding, or pay future operations costs in exchange for the full funding of school construction costs earlier than they might hope to receive it under the Priority List.

Use of the term "cost share" after the name of an education facility replacement construction project on the FY 2000 Priority List means that a tribe has submitted a tribal council resolution supporting a long-term commitment to cost sharing, and has specified the exact nature of its monetary commitment or contribution by completing Section II of the application form, which commits the tribe to share in the costs of school facility replacement in order to expedite construction.

This notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8.

Education Facilities Replacement Construction Priority List as of FY 2000

1. Tuba City Boarding School
2. Second Mesa Day School
3. Zia Day School
4. Baca/Thoreau (Dlo'ay Azhi) Consolidated Community School
5. Lummi Tribal School
6. Wingate Elementary School
7. Polacca Day School
8. Holbrook Dormitory
9. Santa Fe Indian School (Cost Share *)
10. Ojibwa Indian School
11. Conehatta Elementary School (Cost Share*)
12. Paschal Sherman Indian School
13. Kayenta Boarding School

* Tribe or tribal organization commits to cost share.

Dated: January 24, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–2035 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 78566]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 170 acres of National Forest System lands, for a period of 50 years, for protection, operation and maintenance of the Washington and Lost Lake Dams in the Upper Provo River component of the Bonneville Unit of the Central Utah Project. This notice segregates the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a meeting must be received on or before May 1, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Bureau of Reclamation, Area Manager, Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317.

FOR FURTHER INFORMATION CONTACT: David Krueger, Provo Area Office, 801–379–1083.

SUPPLEMENTARY INFORMATION: On December 1, 1999, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Salt Lake Meridian

Wasatch National Forest

T. 2 S., R. 9 E.,
Sec. 4, SW¼NW¼SW¼ and NW¼SW¼SW¼;
Sec. 5, SE¼SW¼NE¼, SW¼SE¼NE¼, W½NE¼SE¼, SE¼NE¼SE¼, E½NW¼SE¼, and N½SE¼SE¼;
Sec. 6, SW¼NE¼ and N½NW¼SE¼.

The areas described aggregate 170 acres in Summit County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed

withdrawal may present their views in writing, by the date specified above, to the Bureau of Reclamation, Provo Area Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Bureau of Reclamation, Provo Area Office, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: January 21, 2000.

Roger Zortman,

Deputy State Director, Division of Operations.

[FR Doc. 00–1920 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Mount Rainier National Park

AGENCY: National Park Service, DOI.

SUMMARY: This notice announces the revision of the boundary of Mount Rainier National Park to include one additional tract of land, effective upon this publication.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Land Resources Program Center, Columbia Cascades Support Office, 909 First Avenue, Seattle, WA 98104–1060, (206) 220–4065.

SUPPLEMENTARY INFORMATION: Public Law 104–333, authorizes minor boundary revisions of areas within the National Park System. Such boundary revisions may be made after advising the appropriate congressional committees and upon publication in the **Federal Register**.

Approximately 12.5 acres of unimproved land and underlying separate mineral interests in Pierce County, Washington are being acquired by donation.

This boundary revision accommodates and includes the property donations, which are now a part of Mount Rainer National Park, identified as Tract 01–108.

The official map depicting the boundary adjustment and the property donation(s) is "Mount Rainier National Park, Drawing No. 105–92,002, Segment 01, dated March 1990". The map is available for inspection at the aforementioned Land Resources Program Center—Columbia Cascades Support Office.

Dated: December 21, 1999.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 00–2025 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement, General Management Plan Amendment, Wilderness and Backcountry Management Plan, Josua Tree National Park, Riverside and San Bernardino Counties, California; Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement Wilderness and Backcountry Management Plan for Joshua Tree National Park. The no action period was initiated November 5, 1999, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (FEIS).

Decision: The National Park Service will implement wilderness stewardship actions, monitoring, research, and other elements of a comprehensive program described as the New Proposed Action (Alternative E), as soon as practical. This course of action and four alternatives were identified and analyzed in the Final and Supplemental Environmental Impacts Statements (latter issued November 2, 1998). The Draft Environmental Impact Statement was distributed on November 21, 1997.

COPIES: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Joshua Tree National Park, 74485 National Park Dr., Twentynine Palms, California 92277–3597; or via telephone request at (760) 367–5502.

Dated: January 14, 2000.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 00–2027 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the General Management Plan for Cane River Creole National Historical Park, Louisiana.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act, the National Park Service will prepare an Environmental Impact Statement to assess the potential impacts of future development and management options in conjunction with the General Management Plan (GMP) for Cane River Creole National Historical Park, Louisiana.

Preparation of a draft GMP began in 1996 and included preparation of a draft Environmental Assessment. Scoping for the plan has included interdisciplinary team meetings with the Cane River National Heritage Area Commission, interested agencies, organizations, and individuals. Meetings with the general public were conducted in January and February, 1996, March and April 1997, and March and April 1998. The scoping process has indicated that the proposals being considered may constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an EIS in conjunction with the plan is appropriate.

The General Management Plan and EIS will investigate alternatives ranging from no action to a variety of development and management proposals designed to guide visitor use, resource protection, and partnership relationships. Federal, state, and local agencies, and other individuals and organizations who may be interested in, or affected by, the future development of Cane River Creole National Historical Park are further invited to participate in refining or identifying issues.

Preparation of the plan and EIS is expected to take about 11 months. The draft plan and EIS should be available for public review by early spring, 2000 with the final plan and EIS and Record of Decision expected to be completed by

early fall, 2000. Schedules for public meetings to solicit comments on the draft plan/EIS will be announced in the local press at the time of plan completion.

ADDRESSES: Written comments concerning preparation of the EIS or requests for information or to be added to the project mailing list, should be sent to: Superintendent, Cane River Creole National Historical Park, 4386 Highway 494, Natchez, Louisiana 71456. Telephone: 318–352–0383. E-mail: laura__squlliere@nps.gov.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cane River Creole National Historical Park, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: Cane River Creole National Historical Park was designated November 2, 1994. Congress established the park to: (1) Assist in the preservation and interpretation of, and education concerning, the Creole culture and diverse history of the Natchitoches region, and (2) to provide technical assistance to landowners and preservation organizations. The park includes a total of 63 acres of historic plantation properties located at two distinct sites along the Cane River in northwestern Louisiana near the city of Natchitoches: (1) 44 acres of Oakland Plantation and (2) 19 acres of Magnolia Plantation. The plantations were owned and continuously operated by the same French Creole families for eight generations. They retain an extensive number of outbuildings and have retained the appearance and integrity of modest family plantations. Most of the structures are classic Creole architecture with roots in African and early French architecture. Oakland Plantation includes the remaining core plantation infrastructure of 26 buildings, ranging from the main house and 1835 bottle garden, to numerous outbuildings, including the plantation store, pigeonniers, a large seed house, workshops, and two quarters. The Magnolia Plantation unit is comprised of 17 outbuildings and dependencies, including the slave hospital/overseer's house, a unique complex of eight brick quarters clustered in two rows, the plantation store, a blacksmith shop, and a large gin barn that houses a rare cotton press and two types of cotton gins.

The 1994 legislation also created the Cane River National Heritage Area and Commission. This national heritage area was created to complement the park and provide a culturally sensitive approach to preserving the heritage of the Cane River region through local partnerships, thereby minimizing the need for federal land acquisition or management. The Commission is advisory to the National Park Service in the preparation of the general management plan.

In accordance with NPS park planning policy, the GMP/EIS will ensure the park has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with the public and based on adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law.

There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The environmental review of the GMP/EIS for the park will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulation (40 CFR 1500–1508), other pertinent Federal regulations, and National Park Service procedures and policies.

Dated: January 19, 2000.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 00–2024 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: The Superintendent of Lake Clark National Park and Preserve and the Chair of the Lake Clark Subsistence Resource Commission announce a forthcoming meeting of the Subsistence Resource Commission for Lake Clark National Park.

The following agenda items will be discussed:

(1) Call to order.

(2) Roll call—Confirm Quorum.

(3) Introductions.

(4) Superintendent's Welcome.

(5) Additions, corrections and agenda approval.

(6) Approval of SRC meeting minutes.

(7) SRC Purpose and Role.

(8) Status of Membership.

(9) Park Subsistence Coordinator's Report.

(10) Report on October 1999 Chair Workshop.

(11) Old Business.

(a) Status of Lake Clark Subsistence Management Plan.

(b) 1999 Federal Subsistence Board Action—Proposal #35 Unit 9B Moose.

(12) New Business.

(a) Update on 2000–2001Federal Subsistence Board Proposals.

(i) Proposal #31—Unit 9B Brown Bear.

(ii) Proposal #32—Unit 9B Black Bear/ Brown Bears.

(iii) Proposal #39—Unit 9B Beaver.

(13) Federal Subsistence Fisheries Management Report.

(14) Agency Reports and Public Comments.

(15) Election of Officers.

(a) Chair.

(b) Vice Chair.

(16) SRC Work Session—Prepare correspondence/recommendations.

(17) Set time and place of next meeting.

(18) Adjournment.

DATES: The meeting will begin at 10 am on Thursday, February 3, 2000 and conclude around 4:30 pm.

LOCATION: The meeting will be held at the Nondalton Community Hall, Nondalton, Alaska. Phone (907) 294–2288.

FOR FURTHER INFORMATION CONTACT: Lee Fink, Chief of Operations, 4230 University Drive, Suite 311, Anchorage, Alaska 99508, Phone (907) 271–3751; or Karen Stickman, Subsistence Coordinator, 1 Park Place, Port Alsworth, Alaska 99653, Phone (907) 781–2218.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act. Note that under the Freedom of Information Act (FOIA), transcripts of any person giving public

comments may be made available under a FOIA request.

Paul Anderson,

Deputy Regional Director.

[FR Doc. 00–2026 Filed 1–28–00; 8:45 am]

BILLING CODE 4310–70–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA's Procurement Policies, Practices, and Iniatives; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies, practices, and initiatives. The purpose of the meeting is to hold an open discussion between NASA's Associate Administrator for Procurement, industry, and the public. Note: This is not a meeting about doing business with NASA for new firms, nor does it focus particularly on small businesses or specific contracting opportunities.

DATES: Wednesday, March 8, 2000, from 1:00 to 2:45 p.m.

ADDRESSES: The meeting will be held at the NASA Johnson Space Center, Building 30A Auditorium/Room 1093, 2101 NASA Road 1, Houston, TX 77058. A map of the area is available at http://inspection.jsc.nasa.gov/map.html.

FOR FURTHER INFORMATION CONTACT: NASA Johnson Space Center Industry Assistance Office, Code BD35, 2101 NASA Road 1, Houston, TX 77058, (281) 483–4511.

SUPPLEMENTARY INFORMATION:

Format

There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed, including NASA's newest initiatives used in the award and administration of contracts. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Admittance

Doors to the auditorium will open at 12:30 p.m. All attendees must be U.S. citizens or have resident alien status. Attendees who do not currently hold a Johnson Space Center badge will be required to clear through the Center's Security Office in Building 110 for badging and car passes. Sufficient time should be allowed to accommodate this process. No reservations will be accepted. Seating capacity is limited to 135 persons; therefore, a maximum of two representatives per firm is requested. Admittance will be on a first-come, first-served basis.

Initiatives

In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing procurement initiatives, some of which include, but are not limited to, the following:

Risk-Based Acquisition Management

This initiative seeks to integrate the principles of risk management throughout the acquisition process by purposefully considering the various aspects of risk when developing the acquisition strategy, selecting sources, choosing contract type, structuring fee incentives, and conducting contractor surveillance.

Consolidated Contracting Initiative (CCI)

The CCI initiative emphasizes developing, using, and sharing contracts to meet Agency objectives.

Performance Based Contracting

This initiative is focused on structuring an acquisition around the purpose of the work to be performed rather than using broad, imprecise statements or prescribing how the work is to be performed.

Profit/Fee Initiative

This initiative will assess the effectiveness of the Agency's profit/fee practices as a means for motivating and rewarding contractor performance. In addition, it will investigate other, non-traditional ways to motivate contractor performance.

Tom Luedtke,

Associate Administrator for Procurement.

[FR Doc. 00–2012 Filed 1–28–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 1, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on November 16, 1999 (64 FR 62222 and 62223). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* National Archives and Records Administration Class Evaluation Forms.

OMB number: 3095–0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 6,400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 533 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training. NARA distributes the approved form to the course coordinators on diskette for customization of selected elements, shown as shaded areas on the form submitted for clearance.

2. *Title:* National Archives Order for Land Claim Records

OMB number: 3095–0033.

Agency form number: NATF 84.

Type of review: Regular.

Affected public: Individuals who wish to order copies of land claim records in the National Archives of the United States.

Estimated number of respondents: 10,000.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent wishes to search for or order copies of land claim records).

Estimated total annual burden hours: 1,667 (rounded off number).

Abstract: The NATF form 84 is used by researchers to request that NARA search for and make copies of pages from Federal land entry case files (land claim records) in the custody of the National Archives. These records generally date from 1800 to approximately 1965. Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 10,000 per year) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and to expedite mailing of the copies. NARA is working on a system to accept electronic submission of requests.

Dated: January 24, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 00–2034 Filed 1–28–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management official having responsibility for the U.S. National Assessment Synthesis Team (#5219) has determined that renewing for an additional eight months is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on September 30, 2000, unless renewed. For more information, please contact Karen York, NSF, at (703) 306–1182.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1997 Filed 1–28–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meetingin accordance with the Federal Advisory Committee Act (Pub. L. 9–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date/Time: Thursday, February 17, 2000, 8:30 a.m.–5:00 p.m.; Friday, February 18, 2000, 8:30 a.m.–Adjourn.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Carter Kimsey, Program Coordinator, Minority Postdoctoral Research Fellowships in Biological Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Biological Informatics proposals submitted in response to the program announcement (NSF 94–133).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1993 Filed 1–28–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

Date/Time: February 22 and 23, 2000, 8:00am-5:30pm (date change from 1/20–21).

Place: Rooms 365 and 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence Seiford, Program Director, Operations Research and Production Systems Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide and recommendations concerning proposals Submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part ot the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1991 Filed 1–28–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date/Time: April 3–4, 2000; 8:00 a.m.–5:00 p.m.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contract Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230. (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the POWRE Panel, as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1990 Filed 1–28–00; 8:45 am]

BILLING CODE 7555–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, February 7, 2000; 8:30 a.m., Tuesday, February 8, 2000.

PLACE: Coral Gables, Florida, at the Biltmore Hotel, 1200 Anastasia Avenue, in the Country Club Ballroom.

STATUS: February 7 (Closed); February 8 (Open).

MATTERS TO BE CONSIDERED:

Monday, February 7—1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC00–1, Experimental Ride-Along Periodicals Classification Change.
2. Annual Performance Report 1999.
3. Preliminary Annual Performance Plan Targets.
4. Financial Performance.
5. Eproof Service.
6. Personnel Matters.
7. Compensation Issues.

Tuesday, February 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 10–11, 2000.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Appointment of Members to Board Committees.
4. Preliminary Annual Performance Plan.
5. Fiscal Year 1999 Comprehensive Statement on Postal Operations.
6. Quarterly Report on Service Performance.
7. Quarterly Report on Financial Results.
8. Capital Investment.
   a. Business Customer Support Systems (BCSS).
9. Report on the South Florida District.
10. Tentative Agenda for the March 6–7, 2000, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 00–2136 Filed 1–27–00; 3:10 pm]

BILLING CODE 7710–12–M

DEPARTMENT OF STATE

[Public Notice No. 3208]

United States International Telecommunication Advisory Committee for Radiocommunication (ITAC–R) and Joint Meeting of ITAC–R and ITAC–T Telecommunication Standardization Sector Notice of Meetings;

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee for Radiocommunication (ITAC–R) and a joint meeting of the ITAC–R and ITAC–T the International Telecommunication Advisory Committee—Telecommunication Standardization. The purpose of the committee is to advise the Department and provide strategic planning recommendations on telecommunication and information policy matters related to the United States participation in the work of International Telecommunications Treaty Organizations. The ITAC–R will meet from 9:30 to noon on February 3, 2000 in room 5951 at the Department of State to Prepare for the ITU Radiocommunication Assembly, May 1–5, 2000. A joint meeting of ITAC–R and ITAC–T will meet from 2 PM to 4:30 PM on February 3, 2000 in room 5951 to prepare for international study group meetings of the ITU–R and ITU–T that deal with related issues concerning broadcasting and telecommunications matters, and IMT–2000 coordination between ITAC–R and ITAC–T.

Members of the general public may attend these meetings and join in the discussions, subject to the Instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend any of these meetings should send a fax to 202–647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting, (ITAC–R or Joint ITAC–R and ITAC–T) and date of the meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admittance: US driver's license, US passport, and US Government identification card. Enter From the "C" Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not later than 15 minutes before the meeting begins.

Dated: January 27, 2000.

John T. Gilsenan,

Deputy Director of Multilateral Affairs, U.S. Department of State.

[FR Doc. 00–2118 Filed 1–28–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2000–6823]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

(1) Nondiscrimination as it Applies to FTA Grant Programs

(2) Title VI as it Applies to FTA Grant Programs

(3) Reporting of Technical Activities by FTA Grant Recipients

(4) Bus Testing Program

DATES: Comments must be submitted before March 31, 2000.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of

comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT:

Nondiscrimination as it Applies to FTA Grant Programs and Title VI as it Applies to FTA Grant Programs—Mr. Akira Sano, Office of Civil Rights, (202) 366–4018.

Reporting of Technical Activities by FTA Grant Recipients—Ms. Candace Noonan, Office of Planning, (202) 366–1648.

Bus Testing Program—Mr. Tim Johnson, Office of Research, Demonstration and Innovation, (202) 366–0212.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Nondiscrimination as it Applies to FTA Grant Programs (*OMB Number: 2132–0542*).

Background: All entities receiving Federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. To ensure that FTA's equal employment opportunity (EEO) procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that the formulating, submitting, and implementing of EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 30 hours for each the 150 EEO submissions.

Estimated Total Annual Burden: 4,500 hours.

Frequency: On occasion, every 3 years, annually.

Title: Title VI as it Applies to FTA Grant Programs (*OMB Number: 2132–0542*).

Background: Section 601 of Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR part 42, subpart F (§ 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving Federal financial assistance. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients.

FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 23.4 hours for each of the 200 Title VI programs.

Estimated Total Annual Burden: 4,680 hours.

Frequency: Annual.

Title: Reporting of Technical Activities by FTA Grant Recipients (*OMB Number: 2132–0549*).

Background: 49 U.S.C. Sections 5303 and 5313(a) and (b) authorize the use of Federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas and nonurbanized areas throughout the nation. As part of this effort, MPOs are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as planning certification reviews and other related activities.

The information collected by these forms is used to report annually to Congress, the Secretary, and to the Federal Transit Administrator on how grantees are responding to national emphasis areas and congressional direction, and allows FTA to track grantees' use of Federal planning and research funds.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 3 hours for each of the 50 respondents.

Estimated Total Annual Burden: 150 hours.

Frequency: Annual.

Title: Bus Testing Program (OMB Number: 2132–0550).

Background: 49 U.S.C. 5323(c) provides that no Federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), has entered into a cooperative agreement with FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Respondents: Bus manufacturers.

Estimated Annual Burden on Respondents: 3 hours for each of the 20 bus manufacturers.

Estimated Total Annual Burden: 60 hours.

Frequency: Annual.

Issued: January 24, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–2013 Filed 1–28–00; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 10, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 1, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0666.

Form Number: IRS Form 673.

Type of Review: Extension.

Title: Statement For Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

Description: Form 673 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.

Respondents: Business or other for-profit, Individuals or households, Farms, Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–2028 Filed 1–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 21, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 1, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: IRS Form A.

Type of Review: New collection.

Title: Qualifications Availability Form.

Description: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.

Respondents: Individuals or households.

Estimated Number of Respondents: 90,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 45,000 hours.

OMB Number: 1545–0143.

Form Number: IRS Form 2290.

Type of Review: Extension.

Title: Heavy Highway Vehicle Use Tax Return.

Description: Form 2290 is used to compute and report the tax imposed by section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500,625.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	39 hr., 28 min.
Learning about the law or the form.	18 min.
Preparing, copying, and sending the form to the IRS.	57 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 19,223,213 hours.

OMB Number: 1545–1221.

Regulation Project Number: EE–147–87 Final.

Type of Review: Extension.

Title: Qualified Separate Lines of Business.

Description: The affected public includes employers who maintain qualified employee retirement plans. Where applicable, the employer must furnish notice to the IRS that the employer treats itself as operating qualified separate lines of business and some may request an IRS determination that such lines satisfy administrative scrutiny.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 253.

Estimated Burden Hours Per Respondent/Recordkeeper: 3 hrs., 27 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 899 hours.

OMB Number: 1545–1530.

Form Number: None.

Type of Review: Extension.

Title: Tip Rate Determination Agreement (Gaming Industry).

Description: Information is required by the Internal Revenue Service in its

Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeeping: 100.

Estimated Burden Hours Per Respondent/Recordkeeper: 4 hr., 40 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 4,367 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–2029 Filed 1–28–00; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Spring Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Spring Unsolicited Grant Deadline, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

Deadline: March 1, 2000.

DATES: Application Material Available on Request. Receipt Date for Return of Application: March 1, 2000. Notification of Awards: June 2000.

ADDRESSES: For Application Package: United States Institute of Peace Grant Program—Unsolicited Grants, 1200 17th Street, NW, Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–429–6063 (fax), (202) 457–1719 (TTY), Email: grant__program@usip.org

Applications also available on-line at our web site: www.usip.org

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842.

Dated: January 20, 2000.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 00–2036 Filed 1–28–00; 8:45 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 65, No. 20

Monday, January 31, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97-15; Introduction

Correction

In rule document 99–33429 beginning on page 72414 in the issue of Monday, December 27, 1999, make the following correction:

On page 72414, in the table, in the first column labeled "Item", the second Roman numeral "I" should read "II", in sequence.

[FR Doc. C9–33429 Filed 1–28–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 19, and 52

[FAC 97-15; FAR Case 98-011; Item VII]

RIN 9000-AI33

Federal Acquisition Regulation; SBA's 8(a) Business Development Program

Correction

In rule document 99–33436 appearing on page 72447 in the issue of Monday, December 27, 1999, make the following corrections:

On page 72447, in the first column, under the heading **DATES:**, under *"Applicability Date:"*, "December 21, 1999" should read "December 27, 1999".

[FR Doc. C9–33436 Filed 1–28–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 97–15; FAR Case 97–024; Item II]

RIN 9000–AH30

Foreign Acquisition Regulation; Foreign Acquisition (Part 25 Rewrite)

Correction

In rule document 99–33431 beginning on page 72416, in the issue of Monday, December 27, 1999, make the following corrections:

25.100 [Corrected]

1. On page 72422, in the first column, in section 25.100, in the fifth line, in the introductory text, after "United States", add "including supplies acquired under contracts set aside for small business concerns, if—

(a)The supply contract exceeds the micro-purchase threshold; or".

25.504–4 [Corrected]

2. On page 72428, in section 25.504–4(a), in the table at the bottom of the page, in the last line entry, "NEL=10,600" should read "*NEL=10,600"

52.225–2 [Corrected]

3. On page 72434, in section 52.225–2(a), in the second column, in the ninth line, "and" should read "end".

52.225–4 [Corrected]

4. On page 72435, in section 52.225–4, in the third column, in the eighth line, "List as necessary)" should read "(List as necessary)".

52.225–9 [Corrected]

5. On page 72437, in section 52.225–9(b)(2), in the third column, in the fourth line, "[Contracting Officer to list applicable excepted materials or indicate "none"]" should read *"[Contracting Officer to list applicable excepted materials or indicate "none"]"*.

52.225–11 [Corrected]

6. On page 72439, in section 52.225–11(b)(3), in the second column, in the fifth line, "[Contracting Officer to list applicable excepted materials or indicate "none"]" should read *"[Contracting Officer to list applicable excepted materials or indicate "none"]"*.

[FR Doc. C9–33431 Filed 1–28–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Web-based Education Commission; Hearing and Meeting

Correction

In notice document 00–1455, beginning on page 3431, in the issue of Friday, January 21, 2000, in the third column, in the **FOR FURTHER INFORMATION CONTACT:** section in the last line *"david__XByer@ed.gov"* should read *"david__Byer@ed.gov"*.

[FR Doc. C0–1455 Filed 1–28–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42317; File No. SR–Phlx–99–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

Correction

In notice document 00–780 beginning on page 2215 in the issue of Thursday, January 13, 2000, in the third column, at the end of the first paragraph under **III. Solication of Comments**, "[insert 21 days from date of publication]." should read "February 3, 2000.".

[FR Doc. C0–780 Filed 1–28–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
January 31, 2000

Part II

Federal Communications Commission

47 CFR Part 2

Non-Substantive Revisions to the Table of Frequency Allocations; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[DA 99–2743]

Non-Substantive Revisions to the Table of Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Table of Frequency Allocations ("Table"). This action is necessary in order to more clearly display the Table and to assist the **Federal Register** staff by making easier for them to maintain the Table in the Code of Federal Regulations. The intended effect of this action is to present the Table in a clearer manner, thereby assisting the public in making decisions about the radio spectrum.

DATES: Effective January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, DA 99–2743, adopted December 16, 1999, and released December 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room TW–A257), 445 12th Street, S.W., Washington, D.C., and is available on the FCC's Internet site at www.fcc.gov/Bureaus/Engineering_Technology_Orders/1999. The document also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Order

1. By this action, the Commission's Office of Engineering and Technology and Office of Managing Director amends the Table and supporting sections of the Commission's rules in order to more clearly display the Table and to assist the **Federal Register** staff by making it easier for them to maintain the Table in the Code of Federal Regulations. We take this action with the concurrence of the National Telecommunications and Information Administration. We also take this opportunity to make the following types of non-substantive amendments:

- The International Table in the Commission's rules is updated to reflect the [International] Table of Frequency Allocations as it is found in the 1998 International Telecommunication Union *Radio Regulations*;
- International footnotes in the United States Table that have not been substantively revised are re-numbered;
- Expired footnotes or portions of footnotes are removed from the United States Table;
- The special-use frequencies column of the Table is removed; and
- Various typographical errors and omissions are corrected.

As a by-product of this action, we will now be able to place the Table on the Commission's web site and to update the on-line Table shortly after any amendments to the Table have been released.[1] This ministerial action does not make any substantive change to any licensee's legal rights and responsibilities.

2. Part 2 of the Commission's rules, IS AMENDED as set forth, effective upon publication in the **Federal Register**. This action is taken pursuant to authority found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and in §§ 0.31, 0.231(b) and 0.241 of the Commission's rules, 47 CFR 0.31, 0.231(b) and 0.241.

List of Subjects in 47 CFR Part 2

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, 336 and 337, unless otherwise noted.

2. Paragraph 2.100 is revised to read as follows:

§ 2.100 International regulations in force.

The provisions of the *Radio Regulations* (Geneva, 1998) apply provisionally as from January 1, 1999, unless an earlier date is specified in Article S59.

[1] The on-line Table may be found at http://www.fcc.gov/oet/spectrum/. We caution users of the on-line Table that the Table as published by **Federal Register** remains the legal source document.

3. Section 2.104 is revised to read as follows:

§ 2.104 International Table of Frequency Allocations.

(a) The International Table of Frequency Allocations is subdivided into the Region 1 Table (column 1 of § 2.106), the Region 2 Table (column 2 of § 2.106), and the Region 3 Table (column 3 of § 2.106). The International Table is included for informational purposes only.

(b) *Regions.* For the allocation of frequencies the International Telecommunication Union (ITU) has divided the world into three Regions [1] as shown in Figure 1 of this section and described as follows:

(1) *Region 1.* Region 1 includes the area limited on the east by line A (lines A, B and C are defined below) and on the west by line B, excluding any of the territory of the Islamic Republic of Iran which lies between these limits. It also includes the whole of the territory of Armenia, Azerbaijan, Russian Federation, Georgia, Kazakstan, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Turkey and Ukraine and the area to the north of Russian Federation which lies between lines A and C.

(2) *Region 2.* Region 2 includes the area limited on the east by line B and on the west by line C.

(3) *Region 3.* Region 3 includes the area limited on the east by line C and on the west by line A, except any of the territory of Armenia, Azerbaijan, Russian Federation, Georgia, Kazakstan, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Turkey and Ukraine and the area to the north of Russian Federation. It also includes that part of the territory of the Islamic Republic of Iran lying outside of those limits.

(4) The lines A, B and C are defined as follows:

(i) *Line A.* Line A extends from the North Pole along meridian 40° East of Greenwich to parallel 40° North; thence by great circle arc to the intersection of meridian 60° East and the Tropic of Cancer; thence along the meridian 60° East to the South Pole.

(ii) *Line B.* Line B extends from the North Pole along meridian 10° West of Greenwich to its intersection with parallel 72° North; thence by great circle arc to the intersection of meridian 50° West and parallel 40° North; thence by great circle arc to the intersection of meridian 20° West and parallel 10°

[1] It should be noted that where the words "regions" or "regional" are without a capital "R," they do not relate to the three Regions here defined for purposes of frequency allocation.

South; thence along meridian 20° West to the South Pole.

(iii) *Line C.* Line C extends from the North Pole by great circle arc to the intersection of parallel 65° 30′ North with the international boundary in Bering Strait; thence by great circle arc to the intersection of meridian 165° East of Greenwich and parallel 50° North; thence by great circle arc to the intersection of meridian 170° West and parallel 10° North; thence along parallel 10° North to its intersection with meridian 120° West; thence along meridian 120° West to the South Pole.

(c) *Areas.* To further assist in the international allocation of the radio spectrum, the ITU has established five special geographical areas and they are defined as follows:

(1) The term "African Broadcasting Area" means:

(i) African countries, parts of countries, territories and groups of territories situated between the parallels 40° South and 30° North;

(ii) Islands in the Indian Ocean west of meridian 60° East of Greenwich, situated between the parallel 40° South and the great circle arc joining the points 45° East, 11° 30′ North and 60° East, 15° North; and

(iii) Islands in the Atlantic Ocean east of line B, situated between the parallels 40° South and 30° North.

(2) The "European Broadcasting Area" is bounded on the west by the western boundary of Region 1, on the east by the meridian 40° East of Greenwich and on the south by the parallel 30° North so as to include the northern part of Saudi Arabia and that part of those countries bordering the Mediterranean within these limits. In addition, Iraq, Jordan and that part of the territory of Syria, Turkey and Ukraine lying outside the above limits are included in the European Broadcasting Area.

(3) The "European Maritime Area" is bounded to the north by a line extending along parallel 72° North from its intersection with meridian 55° East of Greenwich to its intersection with meridian 5° West, then along meridian 5° West to its intersection with parallel 67° North, thence along parallel 67° North to its intersection with meridian 32° West; to the west by a line extending along meridian 32° West to its intersection with parallel 30° North; to the south by a line extending along parallel 30° North to its intersection with meridian 43° East; to the east by a line extending along meridian 43° East to its intersection with parallel 60° North, thence along parallel 60° North to its intersection with meridian 55° East and thence along meridian 55° East to its intersection with parallel 72° North.

(4) The "Tropical Zone" (see Figure 1 of this section) is defined as:

(i) The whole of that area in Region 2 between the Tropics of Cancer and Capricorn.

(ii) The whole of that area in Regions 1 and 3 contained between the parallels 30° North and 35° South with the addition of:

(A) The area contained between the meridians 40° East and 80° East of Greenwich and the parallels 30° North and 40° North; and

(B) That part of Libya north of parallel 30° North.

(iii) In Region 2, the Tropical Zone may be extended to parallel 33° North, subject to special agreements between the countries concerned in that Region.

(5) A sub-Region is an area consisting of two or more countries in the same Region.

(d) *Categories of services and allocations.* (1) Primary and secondary services. Where, in a box of the International Table in § 2.106, a band is indicated as allocated to more than one service, either on a worldwide or Regional basis, such services are listed in the following order:

(i) Services the names of which are printed in "capitals" (example: FIXED); these are called "primary" services; and

(ii) Services the names of which are printed in "normal characters" (example: Mobile); these are called "secondary" services (see paragraph (d)(3) of this section).

(2) Additional remarks shall be printed in normal characters (example: MOBILE except aeronautical mobile).

(3) Stations of a secondary service:

(i) Shall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at a later date;

(ii) Cannot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date; and

(iii) Can claim protection, however, from harmful interference from stations of the same or other secondary service(s) to which frequencies may be assigned at a later date.

(4) Where a band is indicated in a footnote of the International Table as allocated to a service "on a secondary basis" in an area smaller than a Region, or in a particular country, this is a secondary service (see paragraph (d)(3) of this section).

(5) Where a band is indicated in a footnote of the International Table as allocated to a service "on a primary basis", in an area smaller than a Region, or in a particular country, this is a primary service only in that area or country.

(e) *Additional allocations.* (1) Where a band is indicated in a footnote of the International Table as "also allocated" to a service in an area smaller than a Region, or in a particular country, this is an "additional" allocation, *i.e.* an allocation which is added in this area or in this country to the service or services which are indicated in the International Table.

(2) If the footnote does not include any restriction on the service or services concerned apart from the restriction to operate only in a particular area or country, stations of this service or these services shall have equality of right to operate with stations of the other primary service or services indicated in the International Table.

(3) If restrictions are imposed on an additional allocation in addition to the restriction to operate only in a particular area or country, this is indicated in the footnote of the International Table.

(f) *Alternative allocations.* (1) Where a band is indicated in a footnote of the International Table as "allocated" to one or more services in an area smaller than a Region, or in a particular country, this is an "alternative" allocation, *i.e.* an allocation which replaces, in this area or in this country, the allocation indicated in the Table.

(2) If the footnote does not include any restriction on stations of the service or services concerned, apart from the restriction to operate only in a particular area or country, these stations of such a service or services shall have an equality of right to operate with stations of the primary service or services, indicated in the International Table, to which the band is allocated in other areas or countries.

(3) If restrictions are imposed on stations of a service to which an alternative allocation is made, in addition to the restriction to operate only in a particular country or area, this is indicated in the footnote.

(g) *Miscellaneous provisions.* (1) Where it is indicated that a service may operate in a specific frequency band subject to not causing harmful interference, this means also that this service cannot claim protection from harmful interference caused by other services to which the band is allocated under Chapter SII of the international *Radio Regulations.*

(2) Except if otherwise specified in a footnote, the term "fixed service", where appearing in the International

Table, does not include systems using ionospheric scatter propagation.

(h) *Description of the International Table of Frequency Allocations.* (1) The heading of the International Table includes three columns, each of which corresponds to one of the Regions (see paragraph (b) of this section). Where an allocation occupies the whole of the width of the Table or only one or two of the three columns, this is a worldwide allocation or a Regional allocation, respectively.

(2) The frequency band referred to in each allocation is indicated in the left-hand top corner of the part of the Table concerned.

(3) Within each of the categories specified in paragraph (d)(1) of this section, services are listed in alphabetical order according to the French language. The order of listing does not indicate relative priority within each category.

(4) In the case where there is a parenthetical addition to an allocation in the International Table, that service allocation is restricted to the type of operation so indicated.

(5) The footnote references which appear in the International Table below the allocated service or services apply to the whole of the allocation concerned.

(6) The footnote references which appear to the right of the name of a service are applicable only to that particular service.

(7) In certain cases, the names of countries appearing in the footnotes have been simplified in order to shorten the text.

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Figure 1 to § 2.104—Map

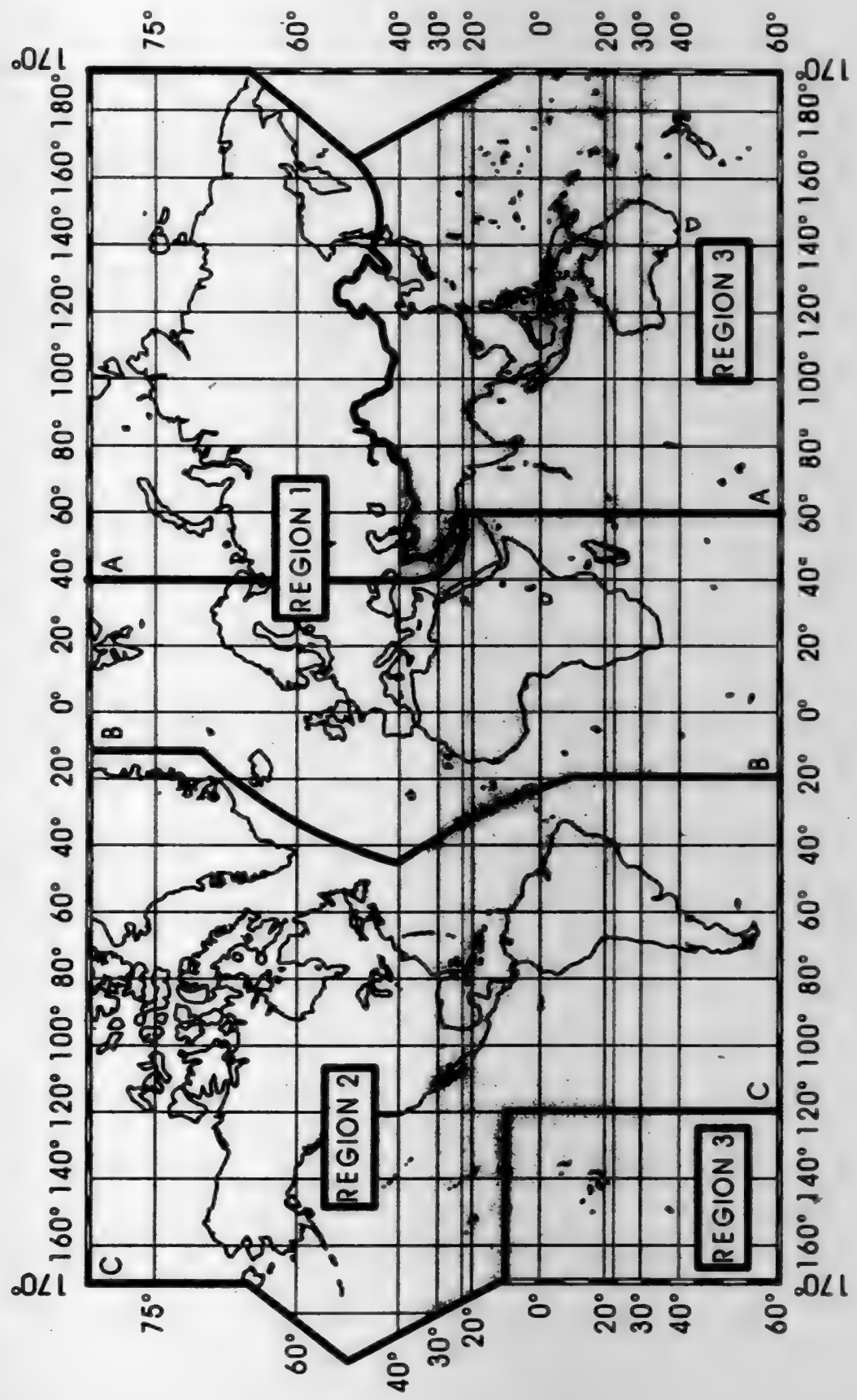

Figure 1: Map identifying Region 1, Region 2, and Region 3, as defined in paragraph 2.104(b), and the Tropical Zone (shaded area), as defined in paragraph 2.104(c)(4).

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4. Section 2.105 is revised to read as follows.

§ 2.105 United States Table of Frequency Allocations.

(a) The United States Table of Frequency Allocations (United States Table) is subdivided into the Federal Government Table of Frequency Allocations (Federal Government Table, column 4 of § 2.106) and the Non-Federal Government Table of Frequency Allocations (Non-Federal Government Table, column 5 of § 2.106). The United States Table is based on the Region 2 Table because the relevant area of jurisdiction is located primarily in Region 2 [1] (*i.e.*, the 50 States, the District of Columbia, the Caribbean insular areas [2] and some of the Pacific insular areas).[3] [4] The Federal Government Table is administered by the National Telecommunications and Information Administration (NTIA) [5], whereas the Non-Federal Government Table is administered by the Federal Communications Commission (FCC).[6]

(b) In the United States, radio spectrum may be allocated to either Federal government or non-Federal government use exclusively, or for shared use. In the case of shared use, the type of service(s) permitted need not be the same [*e.g.*, Federal government FIXED, non-Federal government MOBILE]. The terms used to designate categories of services and allocations [7] in columns 4 and 5 of § 2.106 correspond to the terms employed by the International Telecommunication Union (ITU) in the international *Radio Regulations*.

(c) *Category of services.* (1) Any segment of the radio spectrum may be allocated to the Federal government and/or non-Federal government sectors either on an exclusive or shared basis for use by one or more radio services. In the case where an allocation has been made to more than one service, such services are listed in the following order:

(i) Services, the names of which are printed in "capitals" [example: FIXED]; these are called "primary" services;

(ii) Services, the names of which are printed in "normal characters" [example: Mobile]; these are called "secondary" services.

(2) Stations of a secondary service:

(i) Shall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at a later date;

(ii) Cannot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date; and

(iii) Can claim protection, however, from harmful interference from stations of the same or other secondary service(s) to which frequencies may be assigned at a later date.

(d) *Format of the United States Table and the Rule Part Cross Reference Column.* (1) The frequency band referred to in each allocation, column 4 for Federal government and column 5 for non-Federal government, is indicated in the left-hand top corner of the column. If there is no service or footnote indicated for a band of frequencies in either column 4 or 5, then the Federal government or the non-Federal government sector, respectively, has no access to that band except as provided for by § 2.102.

(2) When the Federal Government and Non-Federal Government Tables are exactly the same for a shared band, the line between columns 4 and 5 is deleted and the allocations are shown once.

(3) The Federal Government Table, given in column 4, is included for informational purposes only.

(4) In the case where there is a parenthetical addition to an allocation in the United States Table [example: FIXED-SATELLITE (space-to-earth)], that service allocation is restricted to the type of operation so indicated.

(5) The following symbols are used to designate footnotes in the United States Table:

(i) Any footnote consisting of "S5." followed by one or more digits, *e.g.*, S5.53, or any footnote not prefixed by a letter, *e.g.*, 459, denotes an international footnote. Where an international footnote is applicable, without modification, to the United States Table, the footnote appears in the United States Table (columns 4 and 5) and denotes a stipulation affecting both the Federal Government Table and the Non-Federal Government Table. If, however, an international footnote pertains to a service allocated only for Federal government or non-Federal government use, the international footnote will be placed only in the affected Table. For example, "AMATEUR S5.142" shall be shown only in the Non-Federal Government Table.

(ii) Any footnote consisting of the letters US followed by one or more digits, *e.g.*, US7, denotes a stipulation affecting both the Federal Government Table and the Non-Federal Government Table.

(iii) Any footnote consisting of the letters NG followed by one or more digits, *e.g.*, NG2, denotes a stipulation applicable only to the Non-Federal Government Table (column 5).

(iv) Any footnote consisting of the letter G following by one or more digits, *e.g.*, G2, denotes a stipulation applicable only to the Federal Government Table (column 4).

(6) If a frequency or frequency band has been allocated to a radiocommunication service in the Non-Federal Government Table, then a cross reference may be added for the pertinent FCC Rule part (column 6 of § 2.106). For example, the 849–851 MHz band is allocated to the non-Federal government aeronautical mobile service, rules for the use of the 849–851 MHz band have been added to Part 22—Public Mobile Services (47 CFR part 22), and a cross reference, Public Mobile (22), has been added in Column 6 of the Table. The exact use that can be made of any given frequency or frequency band (*e.g.*, channelling plans, allowable emissions, *etc.*) is given in the FCC Rule part(s) so indicated. The FCC Rule parts in this column are not allocations and are provided for informational purposes only. This column also may contain explanatory notes for informational purposes only.

5. Section 2.106 is amended as follows:

a. The Table proceeding the international footnotes is revised and shall begin on a left-hand page.

b. The international footnotes section is revised.

c. United States footnotes US7, US78, US221, US256, US257, US296, US303, US311, US319, and US322 are revised.

d. United States footnotes US272, US284, US326, and US341 are removed.

e. The heading to the list of "Non-Government (NG) Footnotes" is revised and in the parenthetical following the

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[1] See § 2.104(a)(1) for definition of Region 2.

[2] The Caribbean insular areas are: The Commonwealth of Puerto Rico; the unincorporated territory of the United States Virgin Islands; and Navassa Island.

[3] The Pacific insular areas located in Region 2 are: Johnston Atoll and Midway Atoll.

[4] The operation of stations in the Pacific insular areas located in Region 3 are generally governed by the International plan for Region 3 (i.e., column 3 of § 2.106). The Pacific insular areas located in Region 3 are: the Commonwealth of the Northern Mariana Islands; the unincorporated territory of American Samoa; the unincorporated territory of Guam; and Baker Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island and Wake Island.

[5] Section 305(a) of the Communications Act of 1934, as amended. *See* Pub. Law 102–538, 106 Stat. 3533 (1992).

[6] The Communications Act of 1934, as amended.

[7] Definitions of the various radio services used are contained in § 2.1

heading revise "non-Government" to read "non-Federal Government".

f. Non-Federal government footnotes NG47, NG102, NG120, NG124, NG128, and NG147 are revised.

g. Non-Federal government footnotes NG133, NG139, NG140, and NG154 are removed.

h. The heading to the list of "Government (G) Footnotes" is revised and in the parenthetical following the heading revise "Government" to read "Federal Government".

i. Federal government footnotes G101 and G119 are removed.

j. Federal government footnote G106 is revised.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

BILLING CODE 6712-01-P

0-130 kHz (VLF/LF) Page 1

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
Below 9 (Not Allocated) S5.53 S5.54			Below 9 (Not Allocated) S5.53 S5.54		
9-14 RADIONAVIGATION			9-14 RADIONAVIGATION US18 US294		
14-19.95 FIXED MARITIME MOBILE S5.57 S5.55 S5.56			14-19.95 FIXED MARITIME MOBILE S5.57 US294	14-19.95 Fixed US294	International Fixed (23)
19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz)			19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz) US294		
20.05-70 FIXED MARITIME MOBILE S5.57			20.05-59 FIXED MARITIME MOBILE S5.57 US294	20.05-59 FIXED US294	International Fixed (23)
			59-61 STANDARD FREQUENCY AND TIME SIGNAL (60 kHz) US294		
			61-70 FIXED MARITIME MOBILE S5.57 US294	61-70 FIXED US294	International Fixed (23)
S5.56 S5.58					
70-72 RADIONAVIGATION S5.60 S5.56	70-90 FIXED MARITIME MOBILE S5.57 MARITIME RADIO- NAVIGATION S5.60 Radiolocation	70-72 RADIONAVIGATION S5.60 Fixed Maritime mobile S5.57 S5.59	70-90 FIXED MARITIME MOBILE S5.57 Radiolocation	70-90 FIXED Radiolocation	International Fixed (23) Private Land Mobile (90)
72-84 FIXED MARITIME MOBILE S5.57 RADIONAVIGATION S5.60 S5.56		72-84 FIXED MARITIME MOBILE S5.57 RADIONAVIGATION S5.60			

84-86 RADIONAVIGATION S5.60		84-86 RADIONAVIGATION S5.60 Fixed Maritime mobile S5.57 S5.59			
86-90 FIXED MARITIME MOBILE S5.57 RADIONAVIGATION S5.56	S5.61	86-90 FIXED MARITIME MOBILE S5.57 RADIONAVIGATION S5.60	S5.60 US294	S5.60 US294	
90-110 RADIONAVIGATION S5.62 Fixed S5.64			90-110 RADIONAVIGATION S5.62 US18 US104 US294		Private Land Mobile (90)
110-112 FIXED MARITIME MOBILE RADIONAVIGATION S5.64	110-130 FIXED MARITIME MOBILE MARITIME RADIO- NAVIGATION S5.60 Radiolocation	110-112 FIXED MARITIME MOBILE RADIONAVIGATION S5.60 S5.64	110-130 FIXED MARITIME MOBILE Radiolocation		International Fixed (23) Maritime (80) Private Land Mobile (90)
112-115 RADIONAVIGATION S5.60		112-117.6 RADIONAVIGATION S5.60 Fixed Maritime mobile			
115-117.6 RADIONAVIGATION S5.60 Fixed Maritime mobile S5.64 S5.66		S5.64 S5.65			
117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION S5.60 S5.64		117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION S5.60 S5.64			
126-129 RADIONAVIGATION S5.60		126-129 RADIONAVIGATION S5.60 Fixed Maritime mobile S5.64 S5.65			
See next page for 129-130	S5.61 S5.64	See next page for 129-130	S5.60 S5.64 US294		

130-505 kHz (LF/MF) Page 3

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
129-130 FIXED MARITIME MOBILE RADIONAVIGATION S5.60 S5.64	See previous page for 110-130 kHz	129-130 FIXED MARITIME MOBILE RADIONAVIGATION S5.60 S5.64	See previous page for 110-130 kHz		See previous page for 110-130 kHz
130-148.5 FIXED MARITIME MOBILE S5.64 S5.67	130-160 FIXED MARITIME MOBILE S5.64	130-160 FIXED MARITIME MOBILE RADIONAVIGATION S5.64	130-160 FIXED MARITIME MOBILE S5.64 US294		International Fixed (23) Maritime (80)
148.5-255 BROADCASTING	160-190 FIXED	160-190 FIXED Aeronautical radionavigation	160-190 FIXED MARITIME MOBILE 459 US294	160-190 FIXED 459 US294	International Fixed (23)
	190-200 AERONAUTICAL RADIONAVIGATION		190-200 AERONAUTICAL RADIONAVIGATION US18 US226 US294		Aviation (87)
S5.68 S5.69 S5.70	200-275 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	200-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	200-275 AERONAUTICAL RADIONAVIGATION Aeronautical mobile US18 US294		
255-283.5 BROADCASTING AERONAUTICAL RADIONAVIGATION S5.70 S5.71	275-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)		275-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons) US18 US294		
283.5-315 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) S5.73 S5.72 S5.74	285-315 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) S5.73		285-325 MARITIME RADIONAVIGATION (radiobeacons) S5.73 Aeronautical radionavigation (radiobeacons)		

315-325 AERONAUTICAL RADIONAVIGATION Maritime radionavigation (radiobeacons) S5.73 S5.72 S5.75	315-325 MARITIME RADIONAVIGATION (radiobeacons) S5.73 Aeronautical radionavigation	315-325 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) S5.73	US18 US294	
325-405 AERONAUTICAL RADIONAVIGATION S5.72	325-335 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)	325-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	325-335 AERONAUTICAL RADIONAVIGATION (radiobeacons) Aeronautical mobile Maritime radionavigation (radiobeacons) US18 US294	
	335-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile		335-405 AERONAUTICAL RADIONAVIGATION (radiobeacons) Aeronautical mobile US18 US294	
405-415 RADIONAVIGATION S5.76 S5.72	405-415 RADIONAVIGATION S5.76 Aeronautical mobile		405-415 RADIONAVIGATION S5.76 Aeronautical mobile US18 US294	Maritime (80) Aviation (87)
415-435 MARITIME MOBILE S5.79 AERONAUTICAL RADIONAVIGATION S5.72	415-495 MARITIME MOBILE S5.79 S5.79A Aeronautical radionavigation S5.80		415-435 MARITIME MOBILE S5.79 AERONAUTICAL RADIONAVIGATION S5.80 US294	
435-495 MARITIME MOBILE S5.79 S5.79A Aeronautical radionavigation S5.72 S5.81 S5.82	S5.77 S5.78 S5.81 S5.82		435-495 MARITIME MOBILE S5.79 Aeronautical radionavigation 471 472A US231 US294	435-495 MARITIME MOBILE S5.79 471 472A US231 US294	Maritime (80)
495-505 MOBILE (distress and calling) S5.83			495-505 MOBILE (distress and calling) 472	

505-2107 kHz (MF) Page 5

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
505-526.5 MARITIME MOBILE S5.79 S5.79A S5.84 AERONAUTICAL RADIONAVIGATION S5.72 S5.81	505-510 MARITIME MOBILE S5.79 S5.81	505-526.5 MARITIME MOBILE S5.79 S5.79A S5.84 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Land mobile S5.81	505-510 MARITIME MOBILE S5.79 471		Maritime (80)
	510-525 MOBILE S5.79A S5.84 AERONAUTICAL RADIONAVIGATION		510-525 MARITIME MOBILE (ships only) 474 AERONAUTICAL RADIONAVIGATION (radiobeacons) US14 US16 US225		Maritime (80) Aviation (87)
526.5-1606.5 BROADCASTING S5.87 S5.87A	525-535 BROADCASTING S5.86 AERONAUTICAL RADIONAVIGATION	526.5-535 BROADCASTING Mobile S5.88	525-535 MOBILE US221 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 US239		Aviation (87) Private Land Mobile (90)
	535-1605 BROADCASTING	535-1606.5 BROADCASTING	535-1605	535-1605 BROADCASTING US321	Radio Broadcasting (AM) (73) Auxiliary Broadcasting (74) Alaska Fixed (80) Private Land Mobile (90)
	1605-1625 BROADCASTING S5.89		1605-1615 MOBILE US221 US238	1605-1705 BROADCASTING 480	
1606.5-1625 FIXED MARITIME MOBILE S5.90 LAND MOBILE S5.92	S5.90	1606.5-1800 FIXED MOBILE RADIOLOCATION RADIONAVIGATION	1615-1625 US238 US299		
1625-1635 RADIOLOCATION S5.93	1625-1705 FIXED MOBILE BROADCASTING S5.89 Radiolocation		1625-1705 Radiolocation US238 US299	US238 US299 US321 NG128	
1635-1800 FIXED MARITIME MOBILE S5.90 LAND MOBILE	S5.90				

S5.92 S5.96	1705-1800 FIXED MOBILE RADIOLOCATION AERONAUTICAL RADIONAVIGATION	S5.91	1705-1800 FIXED MOBILE RADIOLOCATION US240		International Fixed (23) Maritime (80) Private Land Mobile (90)
1800-1810 RADIOLOCATION S5.93	1800-1850 AMATEUR	1800-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIONAVIGATION Radiolocation	1800-1900	1800-1900 AMATEUR	Amateur (97)
1810-1850 AMATEUR S5.98 S5.99 S5.100 S5.101					
1850-2000 FIXED MOBILE except aeronautical mobile S5.92 S5.96 S5.103	1850-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIOLOCATION RADIONAVIGATION S5.102	S5.97	1900-2000 RADIOLOCATION US290		Private Land Mobile (90) Amateur (97)
2000-2025 FIXED MOBILE except aeronautical mobile (R) S5.92 S5.103	2000-2065 FIXED MOBILE		2000-2065 FIXED MOBILE US340	2000-2065 MARITIME MOBILE NG19 US340	Maritime (80)
2025-2045 FIXED MOBILE except aeronautical mobile (R) Meteorological aids S5.104 S5.92 S5.103					
2045-2160 FIXED MARITIME MOBILE LAND MOBILE S5.92	2065-2107 MARITIME MOBILE S5.105 S5.106		2065-2107 MARITIME MOBILE S5.105 US296 US340		
	See next page for 2107-2170 kHz		See next page for 2107-2170 kHz		See next page for 2107-2170 kHz

2107-3230 kHz (MF/HF) Page 7

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2045-2160 kHz	2107-2170 FIXED MOBILE		2107-2170 FIXED MOBILE	2107-2170 FIXED LAND MOBILE MARITIME MOBILE NG19	International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
2160-2170 RADIOLOCATION S5.93 S5.107			US340	US340	
2170-2173.5 MARITIME MOBILE			2170-2173.5 MARITIME MOBILE (telephony) US340	2170-2173.5 MARITIME MOBILE US340	Maritime (80)
2173.5-2190.5 MOBILE (distress and calling) S5.108 S5.109 S5.110 S5.111			2173.5-2190.5 MOBILE (distress and calling) S5.108 S5.109 S5.110 S5.111 US279 US340		Maritime (80) Aviation (87)
2190.5-2194 MARITIME MOBILE			2190.5-2194 MARITIME MOBILE (telephony) US340	2190.5-2194 MARITIME MOBILE US340	Maritime (80)
2194-2300 FIXED MOBILE except aeronautical mobile (R) S5.92 S5.103 S5.112	2194-2300 FIXED MOBILE S5.112		2194-2495 FIXED MOBILE US340	2194-2495 FIXED LAND MOBILE MARITIME MOBILE NG19 US340	International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
2300-2498 FIXED MOBILE except aeronautical mobile (R) BROADCASTING S5.113 S5.103	2300-2495 FIXED MOBILE BROADCASTING S5.113				
2498-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz)	2495-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz)		2495-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz) US340		

2501-2502 STANDARD FREQUENCY AND TIME SIGNAL Space research		2501-2502 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	2501-2502 STANDARD FREQUENCY AND TIME SIGNAL US340	
2502-2625 FIXED MOBILE except aeronautical mobile (R) S5.92 S5.103 S5.114	2502-2505 STANDARD FREQUENCY AND TIME SIGNAL	2502-2505 STANDARD FREQUENCY AND TIME SIGNAL US340		
2625-2650 MARITIME MOBILE MARITIME RADIONAVIGATION S5.92	2505-2850 FIXED MOBILE	2505-2850 FIXED MOBILE	2505-2850 FIXED LAND MOBILE MARITIME MOBILE	International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
2650-2850 FIXED MOBILE except aeronautical mobile (R) S5.92 S5.103		US285 US340	US285 US340	
2850-3025 AERONAUTICAL MOBILE (R) S5.111 S5.115		2850-3025 AERONAUTICAL MOBILE (R) S5.111 S5.115 US283 US340		Aviation (87)
3025-3155 AERONAUTICAL MOBILE (OR)		3025-3155 AERONAUTICAL MOBILE (OR) US340		
3155-3200 FIXED MOBILE except aeronautical mobile (R) S5.116 S5.117		3155-3230 FIXED MOBILE except aeronautical mobile (R)		International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
3200-3230 FIXED MOBILE except aeronautical mobile (R) BROADCASTING S5.113 S5.116		US340		

3230-5060 kHz (HF) Page 9

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
3230-3400 FIXED MOBILE except aeronautical mobile BROADCASTING S5.113 S5.116 S5.118			3230-3400 FIXED MOBILE except aeronautical mobile Radiolocation US340		International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
3400-3500 AERONAUTICAL MOBILE (R)			3400-3500 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
3500-3800 AMATEUR S5.120 FIXED MOBILE except aeronautical mobile S5.92	3500-3750 AMATEUR S5.120 S5.119	3500-3900 AMATEUR S5.120 FIXED MOBILE	3500-4000	3500-4000 AMATEUR S5.120	Amateur (97)
3800-3900 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	3750-4000 AMATEUR S5.120 FIXED MOBILE except aeronautical mobile (R)				
3900-3950 AERONAUTICAL MOBILE (OR) S5.123		3900-3950 AERONAUTICAL MOBILE BROADCASTING			
3950-4000 FIXED BROADCASTING		3950-4000 FIXED BROADCASTING S5.126	US340	US340	
	S5.122 S5.124 S5.125				
4000-4063 FIXED MARITIME MOBILE S5.127 S5.126			4000-4063 MARITIME MOBILE US236 US340		International Fixed (23) Maritime (80)
4063-4438 MARITIME MOBILE S5.79A S5.109 S5.110 S5.130 S5.131 S5.132 S5.128 S5.129			4063-4438 MARITIME MOBILE S5.109 S5.110 S5.130 S5.132 US82 US296 US340		

4438-4650 FIXED MOBILE except aeronautical mobile (R)		4438-4650 FIXED MOBILE except aeronautical mobile	4438-4650 FIXED MOBILE except aeronautical mobile (R) US340	International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
4650-4700 AERONAUTICAL MOBILE (R)			4650-4700 AERONAUTICAL MOBILE (R) US282 US283 US340	Aviation (87)
4700-4750 AERONAUTICAL MOBILE (OR)			4700-4750 AERONAUTICAL MOBILE (OR) US340	
4750-4850 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING S5.113	4750-4850 FIXED MOBILE except aeronautical mobile (R) BROADCASTING S5.113	4750-4850 FIXED BROADCASTING S5.113 Land mobile	4750-4850 FIXED MOBILE except aeronautical mobile (R) US340	International Fixed (23) Maritime (80) Aviation (87)
4850-4995 FIXED LAND MOBILE BROADCASTING S5.113			4850-4995 FIXED MOBILE US340	4850-4995 FIXED US340
4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz)			4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz) US340	
5003-5005 STANDARD FREQUENCY AND TIME SIGNAL Space research			5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340
5005-5060 FIXED BROADCASTING S5.113			5005-5060 FIXED US340	International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)

5060-9040 kHz (HF) Page 11

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5060-5250 FIXED Mobile except aeronautical mobile S5.133			5060-5450 FIXED Mobile except aeronautical mobile		International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
5250-5450 FIXED MOBILE except aeronautical mobile			US212 US340		
5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R)	5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
5480-5680 AERONAUTICAL MOBILE (R) S5.111 S5.115			5480-5680 AERONAUTICAL MOBILE (R) S5.111 S5.115 US283 US340		
5680-5730 AERONAUTICAL MOBILE (OR) S5.111 S5.115			5680-5730 AERONAUTICAL MOBILE (OR) S5.111 S5.115 US340		
5730-5900 FIXED LAND MOBILE	5730-5900 FIXED MOBILE except aeronautical mobile (R)	5730-5900 FIXED Mobile except aeronautical mobile (R)	5730-5950 FIXED MOBILE except aeronautical mobile (R)		International Fixed (23) Maritime (80) Aviation (87)
5900-5950 BROADCASTING S5.134 S5.136			US340		
5950-6200 BROADCASTING			5950-6200 BROADCASTING US340		Radio Broadcast (HF) (73)
6200-6525 MARITIME MOBILE S5.109 S5.110 S5.130 S5.132 S5.137			6200-6525 MARITIME MOBILE S5.109 S5.110 S5.130 S5.132 US82 US296 US340		Maritime (80)
6525-6685 AERONAUTICAL MOBILE (R)			6525-6685 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)

6585-6765 AERONAUTICAL MOBILE (OR)			6685-6765 AERONAUTICAL MOBILE (OR) US340		
6765-7000 FIXED Land mobile S5.139 S5.138			6765-7000 FIXED Mobile S5.138 US340		ISM Equipment (18) International Fixed (23) Aviation (87)
7000-7100 AMATEUR S5.120 AMATEUR-SATELLITE S5.140 S5.141			7000-7100 US340	7000-7100 AMATEUR S5.120 AMATEUR-SATELLITE US340	Amateur (97)
7100-7300 BROADCASTING	7100-7300 AMATEUR S5.120 S5.142	7100-7300 BROADCASTING	7100-7300 US340	7100-7300 AMATEUR S5.120 S5.142 US340	
7300-7350 BROADCASTING S5.134 S5.143			7300-8100 FIXED Mobile US340		International Fixed (23) Maritime (80) Aviation (87) Private Land Mobile (90)
7350-8100 FIXED Land mobile S5.144					
8100-8195 FIXED MARITIME MOBILE			8100-8195 MARITIME MOBILE US236 US340		Maritime (80)
8195-8815 MARITIME MOBILE S5.109 S5.110 S5.132 S5.145 S5.111			8195-8815 MARITIME MOBILE S5.109 S5.110 S5.132 S5.145 S5.111 US82 US296 US340		
8815-8965 AERONAUTICAL MOBILE (R)			8815-8965 AERONAUTICAL MOBILE (R) US340		Aviation (87)
8965-9040 AERONAUTICAL MOBILE (OR)			8965-9040 AERONAUTICAL MOBILE (OR) US340		

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
9040-9400 FIXED			9040-9500 FIXED		International Fixed (23) Maritime (80) Aviation (87)
9400-9500 BROADCASTING S5.134 S5.146			US340		
9500-9900 BROADCASTING S5.147			9500-9900 BROADCASTING S5.147 S5.148 US235 US340		International Fixed (23) Radio Broadcast (HF) (73)
9900-9995 FIXED			9900-9995 FIXED US340		International Fixed (23) Aviation (87)
9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) S5.111			9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) S5.111 US340		
10003-10005 STANDARD FREQUENCY AND TIME SIGNAL Space research S5.111			10003-10005 STANDARD FREQUENCY AND TIME SIGNAL S5.111 US340 G106	10003-10005 STANDARD FREQUENCY AND TIME SIGNAL S5.111 US340	
10005-10100 AERONAUTICAL MOBILE (R) S5.111			10005-10100 AERONAUTICAL MOBILE (R) S5.111 US283 US340		Aviation (87)
10100-10150 FIXED Amateur S5.120			10100-10150 US247 US340	10100-10150 AMATEUR S5.120 US247 US340	Amateur (97)
10150-11175 FIXED Mobile except aeronautical mobile (R)			10150-11175 FIXED Mobile except aeronautical mobile (R) US340		International Fixed (23) Aviation (87)
11175-11275 AERONAUTICAL MOBILE (OR)			11175-11275 AERONAUTICAL MOBILE (OR) US340		

11275-11400 AERONAUTICAL MOBILE (R)	11275-11400 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
11400-11600 FIXED	11400-11650 FIXED		International Fixed (23) Aviation (87)
11600-11650 BROADCASTING S5.134 S5.146	 US340		
11650-12050 BROADCASTING S5.147	11650-12050 BROADCASTING US235 US340		International Fixed (23) Radio Broadcast (HF) (73)
12050-12100 BROADCASTING S5.134 S5.146	12050-12230 FIXED US340		International Fixed (23) Aviation (87)
12100-12230 FIXED			
12230-13200 MARITIME MOBILE S5.109 S5.110 S5.132 S5.145	12230-13200 MARITIME MOBILE S5.109 S5.110 S5.132 S5.145 US82 US296 US340		International Fixed (23) Maritime (80)
13200-13260 AERONAUTICAL MOBILE (OR)	13200-13260 AERONAUTICAL MOBILE (OR) US340		
13260-13360 AERONAUTICAL MOBILE (R)	13260-13360 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
13360-13410 FIXED RADIO ASTRONOMY S5.149	13360-13410 RADIO ASTRONOMY S5.149 G115	13360-13410 RADIO ASTRONOMY S5.149	

13410-17900 kHz (HF) Page 15

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
13410-13570 FIXED Mobile except aeronautical mobile (R) S5.150			13410-13570 FIXED Mobile except aeronautical mobile (R) S5.150 US340	13410-13570 FIXED S5.150 US340	ISM Equipment (18) International Fixed (23) Aviation (87)
13570-13600 BROADCASTING S5.134 S5.151			13570-13600 FIXED Mobile except aeronautical mobile (R) US340	13570-13600 FIXED US340	International Fixed (23) Aviation (87)
13600-13800 BROADCASTING			13600-13800 BROADCASTING S5.148 US340		International Fixed (23) Radio Broadcast (HF) (73)
13800-13870 BROADCASTING S5.134 S5.151			13800-14000 FIXED Mobile except aeronautical mobile (R) US340	13800-14000 FIXED US340	International Fixed (23) Aviation (87)
13870-14000 FIXED Mobile except aeronautical mobile (R)					
14000-14250 AMATEUR S5.120 AMATEUR-SATELLITE			14000-14350	14000-14250 AMATEUR S5.120 AMATEUR-SATELLITE US340	Amateur (97)
14250-14350 AMATEUR S5.120 S5.152			US340	14250-14350 AMATEUR S5.120 US340	
14350-14990 FIXED Mobile except aeronautical mobile (R)			14350-14990 FIXED Mobile except aeronautical mobile (R) US340	14350-14990 FIXED US340	International Fixed (23) Aviation (87)

14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) S5.111	14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) S5.111 US340		
15005-15010 STANDARD FREQUENCY AND TIME SIGNAL Space research	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340	
15010-15100 AERONAUTICAL MOBILE (OR)	15010-15100 AERONAUTICAL MOBILE (OR) US340		
15100-15600 BROADCASTING	15100-15600 BROADCASTING S5.148 US340		International Fixed (23) Radio Broadcast (HF) (73)
15600-15800 BROADCASTING S5.134 S5.146	15600-15360 FIXED US340		International Fixed (23) Aviation (87)
15800-15360 FIXED S5.153			
16360-17410 MARITIME MOBILE S5.109 S5.110 S5.132 S5.145	16360-17410 MARITIME MOBILE S5.109 S5.110 S5.132 S5.145 US82 US296 US340		Maritime (80)
17410-17480 FIXED	17410-17550 FIXED US340		International Fixed (23) Aviation (87)
17480-17550 BROADCASTING S5.134 S5.146			
17550-17900 BROADCASTING	17550-17900 BROADCASTING S5.148 US340		International Fixed (23) Radio Broadcast (HF) (73)

17900-22855 kHz (HF) Page 17

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
17900-17970 AERONAUTICAL MOBILE (R)			17900-17970 AERONAUTICAL MOBILE (R) US263 US340		Aviation (87)
17970-18030 AERONAUTICAL MOBILE (OR)			17970-18030 AERONAUTICAL MOBILE (OR) US340		
18030-18052 FIXED			18030-18068 FIXED US340		International Fixed (23) Maritime (80)
18052-18068 FIXED Space research					
18068-18168 AMATEUR S5.120 AMATEUR-SATELLITE S5.154			18068-18168 US340	18068-18168 AMATEUR S5.120 AMATEUR-SATELLITE US340	International Fixed (23) Amateur (97)
18168-18780 FIXED Mobile except aeronautical mobile			18168-18780 FIXED Mobile US340		International Fixed (23) Maritime (80) Aviation (87)
18780-18900 MARITIME MOBILE			18780-18900 MARITIME MOBILE US82 US296 US340		International Fixed (23) Maritime (80)
18900-19020 BROADCASTING S5.134 S5.146			18900-19680 FIXED US340		International Fixed (23) Aviation (87)
19020-19680 FIXED					
19680-19800 MARITIME MOBILE S5.132			19680-19800 MARITIME MOBILE S5.132 US340		Maritime (80)
19800-19990 FIXED			19800-19990 FIXED US340		International Fixed (23) Aviation (87)

19990-19995 STANDARD FREQUENCY AND TIME SIGNAL Space research S5.111	19990-19995 STANDARD FREQUENCY AND TIME SIGNAL Space research G106 S5.111 US340	19990-19995 STANDARD FREQUENCY AND TIME SIGNAL Space research S5.111 US340	
19995-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz) S5.111	19995-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz) S5.111 US340 G106	19995-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz) S5.111 US340	
20010-21000 FIXED Mobile	20010-21000 FIXED Mobile US340	20010-21000 FIXED US340	
21000-21450 AMATEUR S5.120 AMATEUR-SATELLITE	21000-21450 US340	21000-21450 AMATEUR S5.120 AMATEUR-SATELLITE US340	Amateur (97)
21450-21850 BROADCASTING	21450-21850 BROADCASTING S5.148 US340		International Fixed (23) Radio Broadcast (HF) (73)
21850-21870 FIXED S5.155A S5.155	21850-21924 FIXED		International Fixed (23) Aviation (87)
21870-21924 FIXED S5.155B	US340		
21924-22000 AERONAUTICAL MOBILE (R)	21924-22000 AERONAUTICAL MOBILE (R) US340		Aviation (87)
22000-22855 MARITIME MOBILE S5.132 S5.156	22000-22855 MARITIME MOBILE S5.132 US82 US296 US340		International Fixed (23) Maritime (80)

22855-26175 kHz (HF) Page 19

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22855-23000 FIXED S5.156			22855-23000 FIXED US340		International Fixed (23) Aviation (87)
23000-23200 FIXED Mobile except aeronautical mobile (R) S5.156			23000-23200 FIXED Mobile except aeronautical mobile (R) US340	23000-23200 FIXED US340	
23200-23350 FIXED S5.156A AERONAUTICAL MOBILE (OR)			23200-23350 AERONAUTICAL MOBILE (OR) US340		
23350-24000 FIXED MOBILE except aeronautical mobile S5.157			23350-24890 FIXED MOBILE except aeronautical mobile US340	23350-24890 FIXED US340	International Fixed (23) Aviation (87)
24000-24890 FIXED LAND MOBILE					
24890-24990 AMATEUR S5.120 AMATEUR-SATELLITE S5.156			24890-24990 US340	24890-24990 AMATEUR S5.120 AMATEUR-SATELLITE US340	Amateur (97)
24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz)			24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz) US340		
25005-25010 STANDARD FREQUENCY AND TIME SIGNAL Space research			25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340	
25010-25070 FIXED MOBILE except aeronautical mobile			25010-25070 US340	25010-25070 LAND MOBILE US340 NG112	Private Land Mobile (90)

25070-25210 MARITIME MOBILE	25070-25210 MARITIME MOBILE US82 US281 US296 US340	25070-25210 MARITIME MOBILE US82 US281 US296 US340 NG112	Maritime (80) Private Land Mobile (90)
25210-25550 FIXED MOBILE except aeronautical mobile	25210-25330 US340	25210-25330 LAND MOBILE US340	Private Land Mobile (90)
	25330-25550 FIXED MOBILE except aeronautical mobile US340	25330-25550 US340	
25550-25670 RADIO ASTRONOMY S5.149	25550-25670 RADIO ASTRONOMY US74 S5.149		
25670-26100 BROADCASTING	25670-26100 BROADCASTING US25 US340		Radio Broadcast (HF) (73) Remote Pickup (74D)
26100-26175 MARITIME MOBILE S5.132	26100-26175 MARITIME MOBILE S5.132 US340		Auxiliary Broadcasting (74) Maritime (80)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
26175-27500 FIXED MOBILE except aeronautical mobile			26175-26480 US340	26175-26480 LAND MOBILE US340	Auxiliary Broadcasting (74)
			26480-26950 FIXED MOBILE except aeronautical mobile US10 US340	26480-26950 US10 US340	
			26950-27410	26950-26960 FIXED S5.150 US340	ISM Equipment (18) International Fixed (23)
				26960-27230 MOBILE except aeronautical mobile S5.150 US340	ISM Equipment (18) Personal Radio (95)
				27230-27410 FIXED MOBILE except aeronautical mobile S5.150 US340	ISM Equipment (18) Private Land Mobile (90) Personal Radio (95)
S5.150			27410-27540 US340	27410-27540 FIXED LAND MOBILE US340	Private Land Mobile (90)
27500-28000 METEOROLOGICAL AIDS FIXED MOBILE			27540-28000 FIXED MOBILE US298 US340	27540-28000 US298 US340	

28-33 MHz (HF/VHF) Page 22

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
28-29.7 AMATEUR AMATEUR-SATELLITE			28-29.89 US340	28-29.7 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
29.7-30.005 FIXED MOBILE				29.7-29.8 LAND MOBILE US340	Private Land Mobile (90)
				29.8-29.89 FIXED US340	International Fixed (23) Aviation (87)
			29.89-29.91 FIXED MOBILE US340	29.89-29.91 US340	
			29.91-30 US340	29.91-30 FIXED US340	International Fixed (23) Aviation (87)
30.005-30.01 SPACE OPERATION (satellite identification) FIXED MOBILE SPACE RESEARCH			30-30.56 FIXED MOBILE	30-30.56	
30.01-37.5 FIXED MOBILE			30.56-32	30.56-32 FIXED LAND MOBILE NG124	Private Land Mobile (90)
			32-33 FIXED MOBILE	32-33	
			See next page for 33-37.5 MHz		See next page for 33-37.5 MHz

33-50 MHz (VHF) Page 23

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 30.01-37.5 MHz			33-34	33-34 FIXED LAND MOBILE NG124	Private Land Mobile (90)
			34-35 FIXED MOBILE	34-35	
			35-36	35-36 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
			36-37 FIXED MOBILE US220	36-37 US220	
			37-37.5	37-37.5 LAND MOBILE NG124	Private Land Mobile (90)
37.5-38.25 FIXED MOBILE Radio astronomy S5.149			37.5-38 Radio astronomy S5.149	37.5-38 LAND MOBILE Radio astronomy S5.149 NG59 NG124	
			38-38.25 FIXED MOBILE RADIO ASTRONOMY S5.149 US81	38-38.25 RADIO ASTRONOMY S5.149 US81	
38.25-39.986 FIXED MOBILE			38.25-39 FIXED MOBILE	38.25-39	
			39-40	39-40 LAND MOBILE NG124	Private Land Mobile (90)
39.986-40.02 FIXED MOBILE Space research			40-42 FIXED MOBILE	40-40.98	ISM Equipment (18)

40.02-40.98 FIXED MOBILE S5.150				S5.150 US210	
40.98-41.015 FIXED MOBILE Space research S5.160 S5.161				40.98-42	
41.015-44 FIXED MOBILE S5.160 S5.161			S5.150 US210 US220	US220	
			42-46.6	42-43.69 FIXED LAND MOBILE NG124 NG141	Public Mobile (22) Private Land Mobile (90)
				43.69-46.6 LAND MOBILE NG124 NG141	Private Land Mobile (90)
44-47 FIXED MOBILE S5.162 S5.162A			46.6-47 FIXED MOBILE	46.6-47	
47-68 BROADCASTING S5.162A S5.163 S5.164 S5.165 S5.169 S5.171	47-50 FIXED MOBILE See next page for 50-68 MHz	47-50 FIXED MOBILE BROADCASTING	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
			49.6-50 FIXED MOBILE	49.6-50	
			See next page for 50-73 MHz	See next page for 50-72 MHz	See next page for 50-72 MHz

50-123.5875 (VHF) Page 25

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 47-68 MHz	50-54 AMATEUR S5.166 S5.167 S5.168 S5.170		50-73	50-54 AMATEUR	Amateur (97)
See previous page for 47-68 MHz	54-68 BROADCASTING Fixed Mobile S5.172	54-68 FIXED MOBILE BROADCASTING		54-72 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
68-74.8 FIXED MOBILE except aeronautical mobile	68-72 BROADCASTING Fixed Mobile S5.173	68-74.8 FIXED MOBILE			
	72-73 FIXED MOBILE			72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	73-74.6 RADIO ASTRONOMY S5.178		73-74.6 RADIO ASTRONOMY US74		
S5.149 S5.174 S5.175 S5.177 S5.179	74.6-74.8 FIXED MOBILE	S5.149 S5.176 S5.179	74.6-74.8 FIXED MOBILE US273		Private Land Mobile (90)
74.8-75.2 AERONAUTICAL RADIONAVIGATION S5.180 S5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION S5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE S5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)

	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile	S5.149 S5.182 S5.183 S5.188		76-88 BROADCASTING	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
S5.175 S5.179 S5.184 S5.187	S5.185	87-100 FIXED MOBILE BROADCASTING		NG128 NG129 NG149	
87.5-100 BROADCASTING S5.190	88-100 BROADCASTING		88-108	88-108 BROADCASTING	Broadcast Radio (FM) (73) Auxiliary Broadcasting (74)
100-108 BROADCASTING S5.192 S5.194			US93	US93 NG2 NG128 NG129	
108-117.975 AERONAUTICAL RADIONAVIGATION S5.197			108-117.975 AERONAUTICAL RADIONAVIGATION US93		Note: The *NTIA Manual* (footnote G126) states that differential GPS stations may be authorized in the 108-117.975 MHz band, but the FCC has not yet addressed this footnote.
117.975-137 AERONAUTICAL MOBILE (R) S5.111 S5.198 S5.199 S5.200 S5.201 S5.202 S5.203 S5.203A S5.203B			117.975-121.9375 AERONAUTICAL MOBILE (R) S5.111 S5.199 S5.200 591 US26 US28		Aviation (87)
			121.9375-123.0875 591 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE 591 US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE S5.200 591 US32 US33 US112		
			See next page for 123.5875-137 MHz		See next page for 123.5875-137 MHz

123.5875-148 MHz (VHF) — Page 27

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 117.975-137 MHz			123.5875-128.8125 AERONAUTICAL MOBILE (R) 591 US26		Aviation (87)
			128.8125-132.0125 591	128.8125-132.0125 AERONAUTICAL MOBILE (R) 591	
			132.0125-136.00 AERONAUTICAL MOBILE (R) 591 US26		
			136-137 591 US244	136-137 AERONAUTICAL MOBILE (R) 591 US244	Satellite Communications (25) Aviation (87)
137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.208A S5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) S5.204 S5.205 S5.206 S5.207 S5.208			137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 599B US318 US319 US320 SPACE RESEARCH (space-to-Earth) 599A		Satellite Communications (25)
137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) S5.208A S5.209 Mobile except aeronautical mobile (R) S5.204 S5.205 S5.206 S5.207 S5.208			137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-earth) Mobile-satellite (space-to-Earth) 599B US318 US319 US320 599A		
137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.208A S5.209 SPACE RESEARCH (space-to-Earth) Fixed			137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 599B US318 US319 US320 SPACE RESEARCH (space-to-Earth)		

Mobile except aeronautical mobile (R) S5.204 S5.205 S5.206 S5.207 S5.208			599A		
137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) S5.208A S5.209 Mobile except aeronautical mobile (R) S5.204 S5.205 S5.206 S5.207 S5.208			137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) 599B US318 US319 US320 599A		
138-143.6 AERONAUTICAL MOBILE (OR) S5.210 S5.211 S5.212 S5.214	138-143.6 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	138-143.6 FIXED MOBILE Space research (space-to-Earth) S5.207 S5.213	138-144 FIXED MOBILE	138-144	
143.6-143.65 AERONAUTICAL MOBILE (OR) SPACE RESEARCH (space-to-Earth) S5.211 S5.212 S5.214	143.6-143.65 FIXED MOBILE RADIOLOCATION SPACE RESEARCH (space-to-Earth)	143.6-143.65 FIXED MOBILE SPACE RESEARCH (space-to-Earth) S5.207 S5.213			
143.65-144 AERONAUTICAL MOBILE (OR) S5.210 S5.211 S5.212 S5.214	143.65-144 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	143.65-144 FIXED MOBILE Space research (space-to-Earth) S5.207 S5.213	US10 G30	US10	
144-146 AMATEUR S5.120 AMATEUR-SATELLITE S5.216			144-148	144-146 AMATEUR 510 AMATEUR-SATELLITE	Amateur (97)
146-148 FIXED MOBILE except aeronautical mobile (R)	146-148 AMATEUR S5.217	146-148 AMATEUR FIXED MOBILE S5.217		146-148 AMATEUR	

148-162.0125 MHz (VHF) Page 29

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) S5.209 S5.218 S5.219 S5.221	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.209 S5.218 S5.219 S5.221		148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 599B US319 US320 US323 US325 S5.218 608A US10 G30	148-149.9 MOBILE-SATELLITE (Earth-to-space) 599B US319 US320 US323 US325 S5.218 608A US10	Satellite Communications (25)
149.9-150.05 MOBILE-SATELLITE (Earth-to-space) S5.209 S5.224A RADIONAVIGATION-SATELLITE S5.224B S5.220 S5.222 S5.223			149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 599B US319 US322 RADIONAVIGATION-SATELLITE S5.223 608B		
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY S5.149	150.05-156.7625 FIXED MOBILE		150.05-150.8 FIXED MOBILE US216 G30	150.05-150.8 US216	
			150.8-152.855 US216	150.8-152.855 FIXED LAND MOBILE US216 NG4 NG51 NG112 NG124	Public Mobile (22) Private Land Mobile (90)
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids			152.855-154	152.855-154 LAND MOBILE NG4 NG124	Auxiliary Broadcasting (74) Private Land Mobile (90)
154-156.7625 FIXED MOBILE except aeronautical mobile (R) S5.226 S5.227		S5.225 S5.226 S5.227	154-156.2475 S5.226	154-156.2475 FIXED LAND MOBILE S5.226 NG112 NG117 NG124 NG148	Maritime (80) Private Land Mobile (90)
			156.2475-157.0375	156.2475-157.0375 MARITIME MOBILE	

156.7625-156.8375 MARITIME MOBILE (distress and calling) S5.111 S5.226				
156.8375-174 FIXED MOBILE except aeronautical mobile	156.8375-174 FIXED MOBILE	S5.226 S5.227 US77 US106 US107 US266	S5.226 S5.227 US77 US106 US107 US266 NG117	
		157.0375-157.1875 MARITIME MOBILE S5.226 US214 US266 G109	157.0375-157.1875 S5.226 US214 US266	Private Land Mobile (90)
		157.1875-157.45 S5.226 US223 US266	157.1875-157.45 LAND MOBILE MARITIME MOBILE S5.226 US223 US266 NG111	Maritime (80) Private Land Mobile (90)
		157.45-161.575 S5.226 US266	157.45-161.575 FIXED LAND MOBILE S5.226 US266 NG6 NG28 NG70 NG111 NG112 NG124 NG148 NG155	Public Mobile (22) Maritime (80) Private Land Mobile (90)
		161.575-161.625 S5.226 US77	161.575-161.625 MARITIME MOBILE S5.226 US77 NG6 NG17	Public Mobile (22) Maritime (80)
		161.625-161.775 S5.226	161.625-161.775 LAND MOBILE S5.226 NG6	Public Mobile (22) Auxiliary Broadcasting (74)
		161.775-162.0125 S5.226 US266	161.775-162.0125 LAND MOBILE MARITIME MOBILE S5.226 US266 NG6	Public Mobile (22) Maritime (80) Private Land Mobile (90)
S5.226 S5.229	S5.226 S5.230 S5.231 S5.232	See next page for 162.0125-174 MHz		See next page for 162.0125-174 MHz

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 156.8375-174 MHz			162.0125-173.2 FIXED MOBILE S5.226 US8 US11 US13 US216 US223 US300 US312 G5	162.0125-173.2 S5.226 US8 US11 US13 US216 US223 US300 US312	Auxiliary Broadcasting (74) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	
174-223 BROADCASTING

223-230 BROADCASTING Fixed Mobile S5.243 S5.246 S5.247	225-235 FIXED MOBILE	223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation S5.250	225-235 FIXED MOBILE	225-235	
230-235 FIXED MOBILE S5.247 S5.251 S5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION S5.250	G27		
235-267 FIXED MOBILE S5.111 S5.199 S5.252 S5.254 S5.256			235-267 FIXED MOBILE S5.111 S5.199 S5.256 G27 G100	235-267 S5.111 S5.199 S5.256	
267-272 FIXED MOBILE Space operation (space-to-Earth) S5.254 S5.257			267-322 FIXED MOBILE	267-322	
272-273 SPACE OPERATION (space-to-Earth) FIXED MOBILE S5.254					
273-312 FIXED MOBILE S5.254					
312-315 FIXED MOBILE Mobile-satellite (Earth-to-space) S5.254 S5.255					
See next page for 315-322 MHz			G27 G100		

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
315-322 FIXED MOBILE S5.254			See previous page for 267-322 MHz		See previous page for 267-322 MHz
322-328.6 FIXED MOBILE RADIO ASTRONOMY S5.149			322-328.6 FIXED MOBILE S5.149 G27	322-328.6 S5.149	
328.6-335.4 AERONAUTICAL RADIONAVIGATION S5.258 S5.259			328.6-335.4 AERONAUTICAL RADIONAVIGATION S5.258		
335.4-387 FIXED MOBILE S5.254			335.4-399.9 FIXED MOBILE G27 G100	335.4-399.9	
387-390 FIXED MOBILE Mobile-satellite (space-to-Earth) S5.208A S5.254 S5.255					
390-399.9 FIXED MOBILE S5.254					
399.9-400.05 MOBILE-SATELLITE (Earth-to-space) S5.209 A5.224A RADIONAVIGATION-SATELLITE S5.222 S5.224B S5.260 S5.220			399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US322 RADIONAVIGATION-SATELLITE S5.260		
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) S5.261 S5.262			400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) S5.261		

400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.208A S5.209 SPACE RESEARCH (space-to-Earth) S5.263 Space operation (space-to-Earth) S5.262 S5.264	400.15-401 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 599B US319 US320 US324 SPACE RESEARCH (space-to-Earth) S5.263 Space operation (space-to-Earth) 647B US70	400.15-401 METEOROLOGICAL AIDS (radiosonde) MOBILE-SATELLITE (space-to-Earth) 599B US319 US320 US324 SPACE RESEARCH (space-to-Earth) S5.263 Space operation (space-to-Earth) 647B US70	Satellite Communications (25)
401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	401-402 METEOROLOGICAL AIDS (radiosonde) SPACE OPERATION (space-to-Earth) Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US70		
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402-403 METEOROLOGICAL AIDS (radiosonde) US70 Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US345		Personal Radio (95)
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345 G6	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345	
406-406.1 MOBILE-SATELLITE (Earth-to-space) S5.266 S5.267	406-406.1 MOBILE-SATELLITE (Earth-to-space) S5.266 S5.267		
406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY S5.149	406.1-410 FIXED MOBILE RADIO ASTRONOMY US74 US13 US117 G5 G6	406.1-410 RADIO ASTRONOMY US74 US13 US117	

410-470 MHz (UHF) Page 35

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) S5.268			410-420 FIXED MOBILE US13 G5	410-420 US13	
420-430 FIXED MOBILE except aeronautical mobile Radiolocation S5.269 S5.270 S5.271			420-450 RADIOLOCATION G2	420-450 Amateur	Private Land Mobile (90) Amateur (97)
430-440 AMATEUR RADIOLOCATION S5.138 S5.271 S5.272 S5.273 S5.274 S5.275 S5.276 S5.277 S5.280 S5.281 S5.282 S5.283	430-440 RADIOLOCATION Amateur S5.271 S5.276 S5.277 S5.278 S5.279 S5.281 S5.282				
440-450 FIXED MOBILE except aeronautical mobile Radiolocation S5.269 S5.270 S5.271 S5.284 S5.285 S5.286			S5.286 US7 US87 US217 US228 US230 G8	S5.282 S5.286 US7 US87 US217 US228 US230 NG135	
450-455 FIXED MOBILE S5.209 S5.271 S5.286 S5.286A S5.286B S5.286C S5.286D S5.286E			450-454 S5.286 US87	450-454 LAND MOBILE S5.286 US87 NG112 NG124	Auxiliary Broadcasting (74) Private Land Mobile (90)
			454-456	454-455 FIXED LAND MOBILE NG12 NG112 NG148	Public Mobile (22) Maritime (80)
455-456 FIXED MOBILE S5.209 S5.271 S5.286A S5.286B S5.286C S5.286E	455-456 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.286A S5.286B S5.286C S5.209 S5.271	455-456 FIXED MOBILE S5.209 S5.271 S5.286A S5.286B S5.286C S5.286E		455-456 LAND MOBILE	Auxiliary Broadcasting (74)

456-459 FIXED MOBILE S5.271 S5.287 S5.288			456-460 S5.288 669	456-460 FIXED LAND MOBILE S5.288 669 NG112 NG124 NG148	Public Mobile (22) Maritime (80) Private Land Mobile (90)
459-460 FIXED MOBILE S5.209 S5.271 S5.286A S5.286B S5.286C S5.286E	459-460 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.286A S5.286B S5.286C S5.209 S5.271	459-460 FIXED MOBILE S5.209 S5.271 S5.286A S5.286B S5.286C S5.286E			
460-470 FIXED MOBILE Meteorological-satellite (space-to-Earth)			460-470 Meteorological-satellite (space-to-Earth)	460-462.5375 FIXED LAND MOBILE S5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE S5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE S5.289 669 US201 US209 US216 NG124	Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE S5.289 669 US201	Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE S5.288 S5.289 US201 US216 NG124	Private Land Mobile (90)
S5.287 S5.288 S5.289 S5.290			S5.288 S5.289 669 US201 US209 US216		

Page

470-849 MHz (UHF) Page 37

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 FIXED BROADCASTING LAND MOBILE NG66 NG114 NG127 NG128 NG149	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	S5.149 S5.305 S5.306 S5.307	608-614 RADIO ASTRONOMY US74 US246		
		610-890 FIXED MOBILE BROADCASTING			
	614-806 BROADCASTING Fixed Mobile		614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74)
				698-746 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Note: Band to be reallocated and auctioned by Sept. 30, 2002.

		746-764 FIXED MOBILE BROADCASTING NG128 NG159
		764-776 FIXED MOBILE NG128 NG158 NG159
		776-794 FIXED MOBILE BROADCASTING NG128 NG159
		794-806 FIXED MOBILE NG128 NG158 NG159
		806-821 FIXED LAND MOBILE NG30 NG31 NG43 NG63
		821-824 LAND MOBILE NG30 NG43 NG63
		824-849 FIXED LAND MOBILE NG30 NG43 NG63 NG151
		See next page for 849-894 MHz

		Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
		Auxiliary Broadcasting (74) Private Land Mobile (90)
		Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
		Auxiliary Broadcasting (74) Private Land Mobile (90)
		Public Mobile (22) Private Land Mobile (90)
		Private Land Mobile (90)
		Public Mobile (22)
		See next page for 866-896 MHz

S5.149 S5.291A S5.294 S5.296 S5.300 S5.302 S5.304 S5.306 S5.311 S5.312		
790-862 FIXED BROADCASTING		
	S5.293 S5.309 S5.311	
	806-890 FIXED MOBILE BROADCASTING	
S5.312 S5.314 S5.315 S5.316 S5.319 S5.321		
See next page for 862-890 MHz	S5.317 S5.318	S5.149 S5.305 S5.306 S5.307 S5.311 S5.320

849-941 MHz (UHF) Page 39

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous pages for 470-862 MHz	See previous pages for 614-890 MHz	See previous pages for 585-890 MHz	See previous pages for 614-890 MHz	See previous pages for 614-849 MHz	See previous pages for 614-849 MHz
				849-851 AERONAUTICAL MOBILE NG30 NG63	Public Mobile (22)
				851-866 FIXED LAND MOBILE NG30 NG31 NG63	Public Mobile (22) Private Land Mobile (90)
862-890 FIXED MOBILE except aeronautical mobile BROADCASTING S5.322 S5.319 S5.323				866-869 LAND MOBILE NG30 NG63	Private Land Mobile (90)
				869-894 FIXED LAND MOBILE US116 US268 NG30 NG63 NG151	Public Mobile (22)
				894-896 AERONAUTICAL MOBILE US116 US268	
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
890-942 FIXED MOBILE except aeronautical mobile BROADCASTING S5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile Radiolocation S5.318 S5.325	890-942 FIXED MOBILE BROADCASTING Radiolocation	890-902 US116 US268 G2	901-902 FIXED MOBILE US116 US268	Personal Communications (24)

	902-928 FIXED Amateur Mobile except aeronautical mobile Radiolocation S5.150 S5.325 S5.326		902-928 RADIOLOCATION G59 S5.150 US215 US218 US267 US275 G11	902-928 S5.150 US215 US218 US267 US275	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
	928-942 FIXED MOBILE except aeronautical mobile Radiolocation		928-932	928-929 FIXED US116 US215 US268 NG120	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)
				929-930 FIXED LAND MOBILE US116 US215 US268	Private Land Mobile (90)
				930-931 FIXED MOBILE US116 US215 US268	Personal Communications (24)
				931-932 FIXED LAND MOBILE US116 US215 US268 G2	Public Mobile (22)
			932-935 FIXED US215 US268 G2	932-935 FIXED US215 US268 NG120	Public Mobile (22) Fixed Microwave (101)
			935-940 US116 US215 US268 G2	935-940 FIXED LAND MOBILE US116 US215 US268	Private Land Mobile (90)
			940-941 US116 US268 G2	940-941 FIXED MOBILE US116 US268	Personal Communications (24)
S5.323	S5.325	S5.327	See next page for 941-944 MHz		See next page for 941-944 MHz

941-1429 MHz (UHF) Page 41

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 890-942 MHz	See previous page for 928-942 MHz	See previous page for 890-942 MHz	941-944 FIXED US268 US301 US302 G2	941-944 FIXED US268 US301 US302 NG120	Public Mobile (22) Fixed Microwave (101)
942-960 FIXED MOBILE except aeronautical mobile BROADCASTING S5.322 S5.323	942-960 FIXED MOBILE	942-960 FIXED MOBILE BROADCASTING S5.320	944-960	944-960 FIXED NG120	Public Mobile (22) International Fixed (23) Auxiliary Broadcast. (74) Fixed Microwave (101)
960-1215 AERONAUTICAL RADIONAVIGATION S5.328			960-1215 AERONAUTICAL RADIONAVIGATION S5.328 US224		Aviation (87)
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.329 SPACE RESEARCH (active) S5.330 S5.331 S5.332			1215-1240 RADIOLOCATION S5.333 G56 RADIONAVIGATION-SATELLITE (space-to-Earth)	1215-1240 S5.333	
1240-1260 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.329, SPACE RESEARCH (active) Amateur S5.330 S5.331 S5.332 S5.334 S5.335			1240-1300 RADIOLOCATION S5.333 G56 S5.334	1240-1300 Amateur S5.282 S5.333 S5.334	Amateur (97)
1260-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Amateur S5.282 S5.330 S5.331 S5.332 S5.334 S5.335					

1300-1350 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.149		1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 Radiolocation G2 S5.149	1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 S5.149	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION S5.149 S5.338 S5.339	1350-1400 RADIOLOCATION S5.149 S5.334 S5.339	1350-1390 RADIOLOCATION G2 Fixed Mobile S5.149 S5.334 S5.339 US311 G27 G114	1350-1390 S5.149 S5.334 S5.339	
		1390-1400 RADIOLOCATION G2 Fixed Mobile S5.149 US311 S5.339 G27 G114	1390-1400 S5.149 S5.339	Note: 1390-1400 MHz became non-Federal government exclusive spectrum in January 1999
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246		
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile S5.341		1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile S5.341 G30	1427-1429 SPACE OPERATION (Earth-to-space) Fixed (telemetry) Land mobile (telemetry and telecommand) S5.341	Satellite Communications (25) Private Land Mobile (90) Note: 1427-1429 MHz became non-Federal government exclusive spectrum in January 1999

1429-1610 MHz (UHF) Page 43

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1429-1452 FIXED MOBILE except aeronautical mobile S5.341 S5.342	1429-1452 FIXED MOBILE S5.343 S5.341		1429-1435 FIXED MOBILE S5.341 G30	1429-1435 Fixed (telemetry) Land mobile (telemetry and telecommand) S5.341	Private Land Mobile (90) Note: In January 1999, 1429-1432 MHz became non-Federal government exclusive spectrum and 1432-1435 MHz became mixed-use spectrum
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347 S5.341 S5.342	1452-1492 FIXED MOBILE S5.343 BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347 S5.341 S5.344		1435-1525 MOBILE (aeronautical telemetry) S5.341 US78		Aviation (87)
1492-1525 FIXED MOBILE except aeronautical mobile S5.341 S5.342	1492-1525 FIXED MOBILE S5.343 MOBILE-SATELLITE (space-to-Earth) S5.348A S5.341 S5.344 S5.348	1492-1525 FIXED MOBILE S5.341 S5.348A			
1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile except aeronautical mobile S5.349 S5.341 S5.342 S5.350 S5.351 S5.352A S5.354	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Fixed Mobile S5.343 S5.341 S5.351 S5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile S5.349 S5.341 S5.351 S5.352A S5.354	1525-1530 MOBILE-SATELLITE (space-to-Earth) Mobile (aeronautical telemetry) S5.341 S5.351 US78		Satellite Communications (25) Aviation (87)
1530-1535 SPACE OPERATION (space-to-Earth)	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.353A		1530-1535 MOBILE-SATELLITE (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth)		

MOBILE-SATELLITE (space-to-Earth) S5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile S5.341 S5.342 S5.351 S5.354	Earth exploration-satellite Fixed Mobile S5.343 S5.341 S5.351 S5.354	Mobile (aeronautical telemetry) S5.341 S5.351 US78 US315	
1535-1559 MOBILE-SATELLITE (space-to-Earth) S5.341 S5.351 S5.353A S5.354 S5.355 S5.356 S5.357 S5.357A S5.359 S5.362A		1535-1544 MOBILE-SATELLITE (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) S5.341 S5.351 US315	Satellite Communications (25) Maritime (80)
		1544-1545 MOBILE-SATELLITE (space-to-Earth) S5.341 S5.356	
		1545-1549.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) Mobile-satellite (space-to-Earth) S5.341 S5.351 US308 US309	Aviation (87)
		1549.5-1558.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.341 S5.351 US308 US309	
		1558.5-1559 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) S5.341 S5.351 US308 US309	
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.341 S5.355 S5.359 S5.363		1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.341 US208 US260	Note: The *NTIA Manual* (footnote G126) states that differential GPS stations may be authorized in the 1559-1610 MHz band, but the FCC has not yet addressed this footnote.

1610-1670 MHz (UHF) Page 45

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION S5.341 S5.355 S5.359 S5.363 S5.364 S5.366 S5.367 S5.368 S5.369 S5.371 S5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) S5.341 S5.364 S5.366 S5.367 S5.368 S5.370 S5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION Radiodetermination-Satellite (Earth-to-space) S5.341 S5.355 S5.359 S5.364 S5.366 S5.367 S5.368 S5.369 S5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) S5.341 S5.364 S5.366 S5.367 S5.368 S5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION S5.149 S5.341 S5.355 S5.359 S5.363 S5.364 S5.366 S5.367 S5.368 S5.369 S5.371 S5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) S5.149 S5.341 S5.364 S5.366 S5.367 S5.368 S5.370 S5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) S5.149 S5.341 S5.355 S5.359 S5.364 S5.366 S5.367 S5.368 S5.369 S5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) S5.341 S5.364 S5.366 S5.367 S5.368 S5.372 US208		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) S5.341 S5.355 S5.359 S5.363 S5.364 S5.365 S5.366 S5.367 S5.368 S5.369 S5.371 S5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) S5.341 S5.364 S5.365 S5.366 S5.367 S5.368 S5.370 S5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) S5.341 S5.355 S5.359 S5.364 S5.365 S5.366 S5.367 S5.368 S5.369 S5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) S5.341 S5.364 S5.365 S5.366 S5.367 S5.368 S5.372 US208		

1626.5-1660 MOBILE-SATELLITE (Earth-to-space) S5.341 S5.351 S5.353A S5.354 S5.355 S5.357A S5.359 S5.362A S5.374 S5.375 S5.376	1626.5-1645.5 MOBILE-SATELLITE (Earth-to-space) MARITIME MOBILE-SATELLITE (Earth-to-space) S5.341 S5.351 US315	Satellite Communications (25) Maritime (80)
	1645.5-1646.5 MOBILE-SATELLITE (Earth-to-space) S5.341 S5.375	
	1646.5-1651 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) Mobile-satellite (Earth-to-space) S5.341 S5.351 US308 US309	Aviation (87)
	1651-1660 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) S5.341 S5.351 US308 US309	
1660-1660.5 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY S5.149 S5.341 S5.351 S5.354 S5.362A S5.376A	1660-1660.5 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) RADIO ASTRONOMY S5.149 S5.341 S5.351 US308 US309	
1660.5-1668.4 RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile S5.149 S5.341 S5.379 S5.379A	1660.5-1668.4 RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246	
1668.4-1670 METEOROLOGICAL AIDS FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY S5.149 S5.341	1668.4-1670 METEOROLOGICAL AIDS (radiosonde) RADIO ASTRONOMY US74 S5.149 S5.341 US99	

1670-2110 MHz (UHF) Page 47

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE S5.380 S5.341			1670-1675 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth) S5.341 US211		Note: 1670-1675 MHz became mixed-use spectrum in January 1999
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.341	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) S5.341 S5.377	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.341	1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth)		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile S5.289 S5.341 S5.382	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space) S5.289 S5.341 S5.377 S5.381	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) S5.289 S5.341 S5.381	S5.289 S5.341 US211		
1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space- to-Earth) MOBILE except aeronautical mobile S5.289 S5.341	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) S5.289 S5.341 S5.377	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.289 S5.341 S5.384	1700-1710 FIXED G118 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) S5.289 S5.341	1700-1710 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed S5.289 S5.341	
1710-1930 FIXED MOBILE S5.380			1710-1755 FIXED MOBILE S5.341 US256	1710-1755 S5.341 US256	Note: Proceeds from the auction of the 1710-1755 MHz mixed-use band are to be deposited not later than September 30, 2002.

S5.149 S5.341 S5.385 S5.386 S5.387 S5.388		
1930-1970 FIXED MOBILE S5.388	1930-1970 FIXED MOBILE Mobile-satellite (Earth-to-space) S5.388	1930-1970 FIXED MOBILE S5.388
1970-1980 FIXED MOBILE S5.388		
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.388 S5.389A S5.389B S5.389F		
2010-2025 FIXED MOBILE S5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.388 S5.389C S5.389D S5.389E S5.390	2010-2025 FIXED MOBILE S5.388
2025–2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE S5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) S5.392		

1755-1850 FIXED MOBILE G42	1755-1850	
1850-1990	1850-1990 FIXED MOBILE	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1990-2025 US111	1990-2025 MOBILE-SATELLITE (Earth-to-space) US111	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78)
2025-2110 US90 US111 US219 US222	2025-2110 FIXED MOBILE US90 US111 US219 US222 NG23 NG118	Auxiliary Broadcasting (74) Cable TV Relay (78)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE SPACE RESEARCH (deep space) (Earth-to-space) S5.388			2110-2130	2110-2130 FIXED MOBILE	Public Mobile (22) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101) Note: 2110-2150 MHz must be auctioned by September 30, 2002.
2120-2160 FIXED MOBILE S5.388	2120-2160 FIXED MOBILE Mobile-satellite (space-to-Earth) S5.388	2120-2160 FIXED MOBILE S5.388	US111 US252	US111 US252 NG23 NG118	
2160-2170 FIXED MOBILE S5.388 S5.392A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.388 S5.389C S5.389D S5.389E S5.390	2160-2170 FIXED MOBILE S5.388	2130-2200	2130-2150 FIXED MOBILE NG23 NG153	Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.388 S5.389A S5.389F S5.392A				2150-2160 FIXED NG23	Domestic Public Fixed (21) Fixed Microwave (101)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE S5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)				2160-2165 FIXED MOBILE NG23 NG153	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
				2165-2200 MOBILE-SATELLITE (space-to-Earth) NG23	Public Mobile (22) Satellite Communications (25) Fixed Microwave (101)
			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

		MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) SPACE RESEARCH (space-to-Earth) (space-to-space)		
S5.392		S5.392 US303	US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur	2300-2305 G123	2300-2305 Amateur	Amateur (97) Note: 2300-2305 MHz became non-Federal government exclusive spectrum in August 1995
		2305-2310 US338 G123	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur (97)
		2310-2360 Fixed Mobile US339 Radiolocation G2	2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 S5.396 US338	Wireless Communications (27)
			2320-2345 BROADCASTING-SATELLITE US327 Mobile US276 US328 S5.396	
		S5.396 US327 US328 G120	See next page	See next page
S5.150 S5.282 S5.395	S5.150 S5.282 S5.393 S5.394 S5.396	See next page		

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			See previous page for 2310-2360 MHz	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 S5.396	Wireless Communications (27)
			2360-2385 MOBILE US276 RADIOLOCATION G2 Fixed G120	2360-2385 MOBILE US276	
			2385-2390 MOBILE US276 RADIOLOCATION G2 Fixed G120	2385-2390 MOBILE US276	Note: 2385-2390 MHz will become non-Federal government exclusive spectrum in January 2005
			2390-2400 G122	2390-2400 AMATEUR	RF Devices (15) Amateur (97)
			2400-2402 S5.150 G123	2400-2402 Amateur S5.150 S5.282	ISM Equipment (18) Amateur (97)
			2402-2417 S5.150 G122	2402-2417 AMATEUR S5.150 S5.282	RF Devices (15) ISM Equipment (18) Amateur (97)
			2417-2450 Radiolocation G2 S5.150 G124	2417-2450 Amateur S5.150 S5.282	ISM Equipment (18) Amateur (97)
2450-2483.5 FIXED MOBILE Radiolocation S5.150 S5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION S5.150 S5.394		2450-2483.5 S5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation S5.150 US41	ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101)

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) Radiolocation S5.150 S5.371 S5.397 S5.398 S5.399 S5.400 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) RADIOLOCATION Radiodetermination-satellite (space-to-Earth) S5.398 S5.150 S5.400 S5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 753F US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 753F US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) S5.403 S5.405 S5.407 S5.408 S5.412 S5.414	2500-2520 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) S5.403 S5.404 S5.407 S5.414 S5.415A		2500-2655	2500-2655 FIXED S5.409 S5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 BROADCASTING-SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403 S5.405 S5.408 S5.412 S5.417 S5.418	2520-2655 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403	2520-2535 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 S5.403 S5.415A 2535-2655 FIXED S5.409 S5.411 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.418	S5.339 US205 US269	S5.339 US269	

2655-3700 MHz (UHF/SHF) — Page 53

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.412 S5.417 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2690 FIXED US205 NG47 FIXED-SATELLITE (Earth-to-space) NG102 BROADCASTING-SATELLITE NG101 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	
2670-2690 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420 S5.420A	US205 US269	US269	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.421 S5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.423 S5.424			2700-2900 AERONAUTICAL RADIO-NAVIGATION S5.337 METEOROLOGICAL AIDS Radiolocation G2 S5.423 US18 G15	2700-2900 S5.423 US18	

2900-3100 RADIONAVIGATION S5.426 Radiolocation S5.425 S5.427			2900-3100 MARITIME RADIONAVIGATION Radiolocation G56 S5.427 US44 US316	2900-3100 MARITIME RADIONAVIGATION Radiolocation S5.5427 US44 US316	Maritime (80)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) S5.149 S5.428			3100-3300 RADIOLOCATION S5.333 US110 G59 S5.149	3100-3300 Radiolocation S5.333 US110 S5.149	
3300-3400 RADIOLOCATION S5.149 S5.429 S5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile S5.149 S5.430	3300-3400 RADIOLOCATION Amateur S5.149 S5.429	3300-3500 RADIOLOCATION US108 G31	3300-3500 Amateur Radiolocation US108	Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation S5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation S5.433 S5.282 S5.432		S5.149	S5.149 S5.282	
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation S5.433 S5.435		3500-3650 RADIOLOCATION US110 G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3500-3600 Radiolocation US110	
				3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation US110	
			3650-3700 RADIOLOCATION US110 G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3650-3700 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation US110	Note: 3650-3700 MHz became mixed-use spectrum in January 1999
	See next page for 3700-4200 MHz		See next page for 3700-4200 MHz		

3700-5650 MHz (SHF) Page 55

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 3600-4200 MHz	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION S5.438 S5.437 S5.439 S5.440			4200-4400 AERONAUTICAL RADIONAVIGATION S5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) S5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 792A US245	
4800-4990 FIXED MOBILE S5.442 Radio astronomy S5.149 S5.339 S5.443			4800-4940 FIXED MOBILE S5.149 US203	4800-4940 S5.149 US203	
			4940-4990 FIXED MOBILE S5.149 S5.339 US257	4940-4990 S5.149 S5.339 US257	Note: 4940-4990 MHz became non-Federal government exclusive spectrum in March 1999
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) S5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		
5000-5150 AERONAUTICAL RADIONAVIGATION S5.367 S5.444 S5.444A			5000-5250 AERONAUTICAL RADIONAVIGATION US260		Satellite Communications (25) Aviation (87)

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) S5.447A S5.446 S5.447 S5.447B S5.447C	S5.446 733 796 797 US211 US307		Note: The *NTIA Manual* (footnote G126) states that differential GPS stations may be authorized in the 5000-5150 MHz segment, but the FCC has not yet addressed this footnote.
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH S5.447D S5.448 S5.448A	5250-5350 RADIOLOCATION S5.333 US110 G59	5250-5350 Radiolocation S5.333 US110	
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.448 S5.448A			
5350-5460 EARTH EXPLORATION-SATELLITE (active) S5.448B AERONAUTICAL RADIONAVIGATION S5.449 Radiolocation	5350-5460 AERONAUTICAL RADIO- NAVIGATION S5.449 RADIOLOCATION G56 US48	5350-5460 AERONAUTICAL RADIO- NAVIGATION S5.449 Radiolocation US48	Aviation (87)
5460-5470 RADIONAVIGATION S5.449 Radiolocation	5460-5470 RADIONAVIGATION S5.449 Radiolocation G56 US49 US65	5460-5470 RADIONAVIGATION S5.449 Radiolocation US49 US65	
5470-5650 MARITIME RADIONAVIGATION Radiolocation	5470-5600 MARITIME RADIONAVIGATION Radiolocation G56 US50 US65	5470-5600 MARITIME RADIONAVIGATION Radiolocation US50 US65	Maritime (80)
	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51 G56	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51	
S5.450 S5.451 S5.452	S5.452 US65	S5.452 US65	

5650-7250 MHz (SHF) Page 57

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5650-5725 RADIOLOCATION Amateur Space research (deep space) S5.282 S5.451 S5.453 S5.454 S5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur	ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur S5.150 S5.451 S5.453 S5.455 S5.456	5725-5830 RADIOLOCATION Amateur S5.150 S5.453 S5.455			S5.150 S5.282	
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) S5.150 S5.451 S5.453 S5.455 S5.456	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) S5.150 S5.453 S5.455			5830-5850 Amateur Amateur-satellite (space-to-Earth) S5.150	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation S5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation S5.150	S5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur S5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)

6425-6525 S5.440 S5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE S5.440 S5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
6525-6875 S5.458	6525-6875 FIXED FIXED-SATELLITE (Earth-to-space) 792A S5.458	Satellite Communications (25) Fixed Microwave (101)
6875-7125 S5.458	6875-7075 FIXED FIXED-SATELLITE (Earth-to-space) 792A MOBILE S5.458 NG118 7075-7125 FIXED MOBILE S5.458 NG118	Auxiliary Broadcasting (74) Cable TV Relay (78)
7125-7190 FIXED S5.458 US252 G116	7125-7190 S5.458 US252	
7190-7235 FIXED SPACE RESEARCH (Earth-to-space) S5.458 7235-7250 FIXED S5.458	7190-7250 S5.458	

S5.149 S5.440 S5.458

6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.441 MOBILE

S5.458 S5.458A S5.458B S5.458C

7075-7250 FIXED MOBILE

S5.458 S5.459 S5.460

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE S5.461			7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed G117	7250-8025	
7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.461			7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.461A			7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G104 G117		
7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile			7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) S5.461B MOBILE except aeronautical mobile			7750-7900 FIXED		
7850-7900 FIXED MOBILE except aeronautical mobile					

7900-8025 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.461	7900-8025 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Fixed G117		
8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.463 S5.462A	8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8025-8175 US258	
8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) MOBILE S5.463 S5.462A	8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G104 G117	8175-8215	

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.463 S5.462A			8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8215-8400 US258	
8400-8500 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) S5.465 S5.466 S5.467			8400-8450 FIXED SPACE RESEARCH (space-to-Earth) (deep space only) 8450-8500 FIXED SPACE RESEARCH (space-to-Earth)	8400-88450 8450-8500 SPACE RESEARCH (space-to-Earth)	
8500-8550 RADIOLOCATION S5.468 S5.469			8500-9000 RADIOLOCATION S5.333 US110 G59	8500-9000 Radiolocation S5.333 US110	
8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.468 S5.469 S5.469A					
8650-8750 RADIOLOCATION S5.468 S5.469					
8750-8850 RADIOLOCATION AERONAUTICAL RADIONAVIGATION S5.470 S5.471					

8850-9000 RADIOLOCATION MARITIME RADIONAVIGATION S5.472 S5.473	US53	US53	
9000-9200 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.471	9000-9200 AERONAUTICAL RADIO-NAVIGATION S5.337 Radiolocation G2 US48 US54 G19	9000-9200 AERONAUTICAL RADIO-NAVIGATION S5.337 Radiolocation US48 US54	Aviation (87)
9200-9300 RADIOLOCATION MARITIME RADIONAVIGATION S5.472 S5.473 S5.474	9200-9300 MARITIME RADIO-NAVIGATION S5.472 Radiolocation US110 G59 S5.474	9200-9300 MARITIME RADIO-NAVIGATION S5.472 Radiolocation US110 S5.474	
9300-9500 RADIONAVIGATION S5.476 Radiolocation S5.427 S5.474 S5.475	9300-9500 RADIONAVIGATION S5.476 US66 Radiolocation US51 G56 Meteorological aids S5.427 S5.474 US67 US71	9300-9500 RADIONAVIGATION S5.476 US66 Radiolocation US51 Meteorological aids S5.427 S5.474 US67 US71	
9500-9800 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION SPACE RESEARCH (active) S5.476A	9500-10000 RADIOLOCATION S5.333 US110	9500-10000 Radiolocation S5.333 US110	
9800-10000 RADIOLOCATION Fixed S5.477 S5.478 S5.479	S5.479	S5.479	

10-12.7 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
10-10.45 FIXED MOBILE RADIOLOCATION Amateur S5.479	10-10.45 RADIOLOCATION Amateur S5.479 S5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur S5.479	10-10.45 RADIOLOCATION S5.479 US58 US108 G32	10-10.45 Radiolocation Amateur S5.479 US58 US108 NG42	Private Land Mobile (90) Amateur (97)
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite S5.481			10.45-10.5 RADIOLOCATION US58 US108 G32	10.45-10.5 Radiolocation Amateur Amateur-satellite US58 US108 NG42 NG134	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation S5.149 S5.482			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US265 US277	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED SPACE RESEARCH (passive) US265 US277	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		

10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) S5.441 S5.484A (Earth-to-space) S5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) S5.441 S5.484A MOBILE except aeronautical mobile		10.7-11.7 US211	10.7-11.7 FIXED NG41 FIXED-SATELLITE (space-to-Earth) S5.441 US211 NG104	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	11.7-12.1 FIXED S5.486 FIXED-SATELLITE (space-to-Earth) S5.484A Mobile except aeronautical mobile S5.485 S5.488	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	11.7-12.1 S5.486	11.7-12.2 FIXED-SATELLITE (space-to-Earth) NG143 NG145 Mobile except aeronautical mobile	Satellite Communications (25) Fixed Microwave (101)
	12.1-12.2 FIXED-SATELLITE (space-to-Earth) S5.484A S5.485 S5.488 S5.489	S5.487 S5.487A S5.492	12.1-12.2	.S5.486 S5.488	
S5.487 S5.487A S5.492	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	12.2-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING S5.484A S5.487 S5.491	12.2-12.7	12.2-12.7 FIXED BROADCASTING-SATELLITE	International Fixed (23) Direct Broadcast Satellite (100) Fixed Microwave (101)
12.5-12.75 FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space)		12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE S5.493			
	S5.487A S5.488 S5.490 S5.492		S5.490	S5.488 S5.490	
S5.494 S5.495 S5.496	See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz

12.7-14.5 GHz (SHF) Page 55

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 12.5-12.75 GHz	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	See previous page for 12.5-12.75 GHz	12.7-12.75	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE NG53 NG118	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.441 NG104 MOBILE US251 NG53 NG118	
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION S5.497 SPACE RESEARCH (active) S5.498A S5.499			13.25-13.4 AERONAUTICAL RADIONAVIGATION S5.497 Space research (Earth-to-space)		Aviation (87)
13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH S5.501A Standard frequency and time signal-satellite (Earth-to-space) S5.499 S5.500 S5.501 S5.501B			13.4-13.75 RADIOLOCATION S5.333 US110 G59 Space research Standard frequency and time signal-satellite (Earth-to-space)	13.4-13.75 Radiolocation S5.333 US110 Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.75-14 FIXED-SATELLITE (Earth-to-space) S5.484A RADIOLOCATION Standard frequency and time signal-satellite (Earth-to-space) Space research S5.499 S5.500 S5.501 S5.502 S5.503 S5.503A			13.75-14 RADIOLOCATION US110 G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 S5.502 S5.503 S5.503A	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Radiolocation US110 Standard frequency and time signal-satellite (Earth-to-space) Space research S5.502 S5.503 S5.503A	Satellite Communications (25) Private Land Mobile (90)

14-14.25 FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 RADIONAVIGATION S5.504 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research S5.505			14-14.2 RADIONAVIGATION US292 Space research	14-14.2 FIXED-SATELLITE (Earth-to-space) RADIONAVIGATION US292 Land mobile-satellite (Earth-to-space) Space research	Satellite Communications (25) Maritime (80) Aviation (87)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 RADIONAVIGATION S5.504 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research S5.505 S5.508 S5.509			14.2-14.4	14.2-14.4 FIXED-SATELLITE (Earth-to-space) Land mobile-satellite (Earth-to-space) Mobile except aeronautical mobile	Satellite Communications (25) Fixed Microwave (101)
14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radionavigation-satellite	14.3-14.4 FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radionavigation-satellite	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radionavigation-satellite			
14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research (space-to-Earth)			14.4-14.47 Fixed Mobile	14.4-14.47 FIXED-SATELLITE (Earth-to-space) Land mobile-satellite (Earth-to-space)	Satellite Communications (25)
14.47-14.5 FIXED FIXED-SATELLITE (Earth-to-space) S5.484A S5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radio astronomy S5.149			14.47-14.5 Fixed Mobile S5.149 US203	14.47-14.5 FIXED-SATELLITE (Earth-to-space) Land mobile-satellite (Earth-to-space) S5.149 US203	

14.5-18.6 GHz (SHF) Page 67

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) S5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-15.1365	
			14.7145-15.1365 MOBILE Fixed Space research	14.7145-15.1365	
14.8-15.35 FIXED MOBILE Space research			US310	US310	
			15.1365-15.35 FIXED Mobile Space research	15.1365-15.35	
S5.339			S5.339 US211	S5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)		
S5.340 S5.511			US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION			15.4-15.7 AERONAUTICAL RADIONAVIGATION US260		Aviation (87)
S5.511D					
15.43-15.63 FIXED SATELLITE (space-to-Earth) (Earth-to-space) S5.511A AERONAUTICAL RADIONAVIGATION					
S5.511C					
15.63-15.7 AERONAUTICAL RADIONAVIGATION					
S5.511D			733 797 US211		
15.7-16.6 RADIOLOCATION			15.7-16.6 RADIOLOCATION US110 G59	15.7-17.2 Radiolocation US110	Private Land Mobile (90)
S5.512 S5.513					

16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) S5.512 S5.513			16.6-17.1 RADIOLOCATION US110 G59 Space research (deep Space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION S5.512 S5.513			17.1-17.2 RADIOLOCATION US110 G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.512 S5.513 S5.513A			17.2-17.3 RADIOLOCATION US110 G59 Earth exploration-satellite (active) Space research (active)	17.2-17.3 Radiolocation US110 Earth exploration-satellite (active) Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) S5.516 Radiolocation S5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) S5.516 BROADCASTING-SATELLITE Radiolocation S5.514 S5.515 S5.517	17.3-17.7 FIXED-SATELLITE (Earth-to-space) S5.516 Radiolocation S5.514	17.3-17.7 Radiolocation US259 G59 US271	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 US259	
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) S5.516 BROADCASTING-SATELLITE Mobile S5.518 S5.515 S5.517	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.516 MOBILE	17.7-17.8 US271	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) US271 MOBILE NG144	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.516 MOBILE		17.8-18.6 S5.519 US334 G117	17.8-18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE S5.519 US334 NG144	Domestic Public Fixed (21) Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)

See next page for 18.1-18.6 GHz

18.6-22.5 GHz (SHF) Page 69

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.520 MOBILE S5.519 S5.521			See previous page for 17.8-18.6 GHz		See previous page for 17.8-19.7 GHz
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE					
18.6-18.8 FIXED FIXED-SATELLITE (space-to-Earth) S5.523 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Space research (passive) S5.522	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) S5.523 MOBILE except aeronautical mobile SPACE RESEARCH (passive) S5.522	18.6-18.8 FIXED FIXED-SATELLITE (space-to-Earth) S5.523 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Space research (passive) S5.522	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US254 US255 US334 G117	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile SPACE RESEARCH (passive) US254 US255 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) S5.523A MOBILE			18.8-20.2	18.8-19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) S5.523B S5.523C S5.523D S5.523E MOBILE					
19.7-20.1 FIXED-SATELLITE (space-to-Earth) S5.484A Mobile-satellite (space-to-Earth) S5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE-SATELLITE (space-to-Earth) S5.524 S5.525 S5.526 S5.527 S5.528 S5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) S5.484A Mobile-satellite (space-to-Earth) S5.524		19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.525 S5.526 S5.527 S5.528 S5.529 US334	

20.1-20.2 FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE-SATELLITE (space-to-Earth) S5.524 S5.525 S5.526 S5.527 S5.528			20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.525 S5.526 S5.527 S5.528 US334 US334 G117	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) S5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263	Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE S5.530	21.4-22 FIXED MOBILE	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE S5.530 S5.531	21.4-22 FIXED MOBILE	
22-22.21 FIXED MOBILE except aeronautical mobile S5.149			22-22.21 FIXED MOBILE except aeronautical mobile S5.149	
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) S5.149 S5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) S5.149 US263	

22.5-27.5 GHz (SHF) Page 71

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		See previous page for 22.21-22.55 GHz
22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149			22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149 US278		Satellite Communications (25) Fixed Microwave (101)
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE S5.150			24-24.05 S5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE S5.150 US211	ISM Equipment (18) Amateur (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) S5.150			24.05-24.25 RADIOLOCATION US110 G59 Earth exploration-satellite (active) S5.150	24.05-24.25 Radiolocation US110 Amateur Earth exploration-satellite (active) S5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 RADIONAVIGATION FIXED MOBILE	24.25-24.45	24.25-24.45 RADIONAVIGATION FIXED	Aviation (87) Fixed Microwave (101)

24.45-24.75 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION S5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION S5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION S5.533		Satellite Communications (25)
	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED INTER-SATELLITE MOBILE S5.533 S5.534	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED	24.75-25.25 FIXED-SATELLITE (Earth-to-space) S5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.535 MOBILE S5.534	24.75-25.05 RADIONAVIGATION		Aviation (87)
			25.05-25.25	25.05-25.25 RADIONAVIGATION FIXED	Aviation (87) Fixed Microwave (101)
25.25-25.5 FIXED INTER-SATELLITE S5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-27 Standard frequency and time signal-satellite (Earth-to-space) Earth exploration-satellite (space-to-space)	Note: In its *Manual*, NTIA has added primary inter-satellite service allocations to the bands comprising 25.25-27.5 GHz, limited the use of these allocations by adopting footnote S5.536, and has changed the directional indicator for the earth exploration-satellite service allocation in the 25.5-27 GHz band from space-to-space to space-to-Earth.
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) S5.536A S5.536B FIXED INTER-SATELLITE S5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.5-27 FIXED MOBILE Standard frequency and time signal-satellite (Earth-to-space) Earth exploration-satellite (space-to-space)		
27-27.5 FIXED INTER-SATELLITE S5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE S5.536 S5.537 MOBILE	27-27.5 FIXED MOBILE	27-27.5 Earth exploration-satellite (space-to-space)		

27.5-32 GHz (SHF/EHF) Page 73

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
27.5-28.5 FIXED FIXED-SATELLITE (Earth-to-space) S5.484A S5.539 MOBILE S5.538 S5.540			27.5-30	27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	Satellite Communications (25) Fixed Microwave (101)
28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) S5.484A S5.523A S5.539 MOBILE Earth exploration-satellite (Earth-to-space) S5.541 S5.540					
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) S5.523C S5.523E S5.535A S5.539 S5.541A MOBILE Earth exploration-satellite (Earth-to-space) S5.541 S5.540					
29.5-29.9 FIXED-SATELLITE (Earth-to-space) S5.484A S5.539 Earth exploration-satellite (Earth-to-space) S5.541 Mobile-satellite (Earth-to-space) S5.540 S5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) S5.484A S5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) S5.541 S5.525 S5.526 S5.527 S5.529 S5.540 S5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) S5.484A S5.539 Earth exploration-satellite (Earth-to-space) S5.541 Mobile-satellite (Earth-to-space) S5.540 S5.542		29.5-29.9 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) S5.525 S5.526 S5.527 S5.529	Satellite Communications (25)
29.9-30 FIXED-SATELLITE (Earth-to-space) S5.484A S5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) S5.541 S5.543 S5.525 S5.526 S5.527 S5.538 S5.540 S5.542				29.9-30 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) S5.525 S5.526 S5.527 S5.543	

30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) S5.542		30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) G117	30-31 Standard frequency and time signal-satellite (space-to-Earth)	
31-31.3 FIXED MOBILE Standard frequency and time signal-satellite (space-to-Earth) Space research S5.544 S5.545 S5.149		31-31.3 Standard frequency and time signal-satellite (space-to-Earth) S5.149 US211	31-31.3 FIXED MOBILE Standard frequency and time signal-satellite (space-to-Earth) S5.149 US211	Fixed Microwave (101)
31.3-31.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340			31.3-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	
31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile S5.149 S5.546	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile S5.149	US246	
31.8-32 FIXED S5.547A RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) S5.547 S5.547B S5.548			31.8-32 RADIONAVIGATION US69 US211 US262	

32-40 GHz (EHF) Page 75

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
32-32.3 FIXED S5.547A INTER-SATELLITE RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) S5.547 S5.547C S5.548			32-33 INTER-SATELLITE US278 RADIONAVIGATION US69		
32.3-33 FIXED S5.547A INTER-SATELLITE RADIONAVIGATION S5.547 S5.547D S5.548			S5.548 US262		
33-33.4 FIXED S5.547A RADIONAVIGATION S5.547 S5.547E			33-33.4 RADIONAVIGATION US69		
33.4-34.2 RADIOLOCATION S5.549			33.4-36 RADIOLOCATION US110 G34	33.4-36 Radiolocation US110	Private Land Mobile (90)
34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) S5.549					
34.7-35.2 RADIOLOCATION Space research S5.550 S5.549					
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION S5.549					

35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.549 S5.551A	S5.551 US252	S5.551 US252	
36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) S5.149	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263 US342		
37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-38 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-37.6 FIXED MOBILE	
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth)		37.6-38.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	Satellite Communications (25)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth)	38-38.6 FIXED MOBILE		
	38.6-39.5 US291	38.6-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE US291	Auxiliary Broadcasting (74) Fixed Microwave (101)
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth)	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US291 G117	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) US291	

40-50.2 GHz (EHF) Page 77

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)			40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth) G117	40-40.5 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)
40.5-42.5 FIXED BROADCASTING BROADCASTING-SATELLITE Mobile S5.551B S5.551D	40.5-42.5 FIXED FIXED-SATELLITE (space-to-Earth) S5.551B S5.551E BROADCASTING BROADCASTING-SATELLITE Mobile S5.551C S5.551F		40.5-42.5 US211	40.5-41 FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile Fixed US211	
				41-42.5 FIXED BROADCASTING BROADCASTING-SATELLITE MOBILE US211	
42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) S5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY S5.149			42.5-43.5 FIXED FIXED-SATELLITE (Earth- to-space) MOBILE except aeronautical mobile RADIO ASTRONOMY US342	42.5-43.5 RADIO ASTRONOMY US342	

43.5-47 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE	43.5-45.5 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) G117	43.5-45.5	
	45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE S5.554		RF Devices (15)
S5.554	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE S5.554	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE FIXED S5.554	
47-47.2 AMATEUR AMATEUR-SATELLITE	47-48.2	47-47.2 AMATEUR AMATEUR-SATELLITE	Amateur (97)
47.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) S5.552 MOBILE		47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264 S5.555	
S5.149 S5.340 S5.552A S5.555	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264 S5.555 US342		Satellite Communications (25)

50.2-65 GHz (EHF) Page 79

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) S5.340 S5.555A			50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Mobile-satellite (Earth-to-space)			50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	
51.4-52.6 FIXED MOBILE S5.547 S5.556			51.4-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) RADIO ASTRONOMY		
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) S5.340 S5.556			US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE S5.556A SPACE RESEARCH (passive) S5.556B			54.25-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE 909 SPACE RESEARCH (passive)		
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE S5.556A MOBILE S5.558 SPACE RESEARCH (passive) S5.547 S5.557					

56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE S5.555A MOBILE S5.558 SPACE RESEARCH (passive) S5.547 S5.557		
57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE S5.556A MOBILE S5.558 SPACE RESEARCH (passive) S5.547 S5.557	US263	
58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) S5.547 S5.556	58.2-59 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) RADIO ASTRONOMY US246	
59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE S5.556A MOBILE S5.558 RADIOLOCATION S5.559 SPACE RESEARCH (passive)	59-64 FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION	RF Devices (15) ISM Equipment (18)
59.3-64 FIXED INTER-SATELLITE MOBILE S5.558 RADIOLOCATION S5.559 S5.138	S5.138	
64-65 FIXED INTER-SATELLITE MOBILE except aeronautical mobile S5.547 S5.556	64-65 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246	

65-95 GHz (EHF) Page 81

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH S5.547			65-66 EARTH EXPLORATION-SATELLITE SPACE RESEARCH Fixed Mobile		
66-71 INTER-SATELLITE MOBILE S5.553 S5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE S5.554			66-71 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE S5.554		
71-74 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) S5.149 S5.556			71-74 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) US270		
74-75.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Space research (space-to-Earth)			74-75.5 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE		
75.5-76 AMATEUR AMATEUR-SATELLITE Space research (space-to-Earth)			75.5-76	75.5-76 AMATEUR AMATEUR-SATELLITE	Amateur (97)
76-81 RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth)			76-81 RADIOLOCATION	76-77 RADIOLOCATION Amateur	RF Devices (15)
				77-77.5 RADIOLOCATION Amateur Amateur-satellite	Amateur (97)

		77.5-78 RADIOLOCATION AMATEUR AMATEUR-SATELLITE	
		78-81 RADIOLOCATION Amateur Amateur-satellite	
S5.560	S5.560	S5.560	
81-84 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) Space research (space-to-Earth)	81-84 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)		
84-86 FIXED MOBILE BROADCASTING BROADCASTING-SATELLITE	84-86 FIXED MOBILE	84-86 FIXED MOBILE BROADCASTING BROADCASTING-SATELLITE	
S5.561	S5.561 US211	S5.561 US211	
86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340	86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
92-94 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION S5.149 S5.556	92-95 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION		
94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.562			
See next page for 94.1-95 GHz	S5.149		

95-150 GHz (EHF) — Page 83

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
94.1-95 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION			See previous page for 92-95 GHz		See previous page for 92-95 GHz
95-100 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE Radiolocation S5.149 S5.554 S5.555			95-100 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE Radiolocation S5.149 S5.554		
100-102 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) S5.341			100-102 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) S5.341 US246		
102-105 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE S5.341			102-105 FIXED FIXED-SATELLITE (space-to-Earth) S5.341 US211		
105-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.341			105-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246		
116-119.98 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) S5.341			116-119.98 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) S5.341 US211 US263		

119.98-120.02 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) Amateur S5.341	119.98-120.02 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) Amateur S5.341 US211 US263		
120.02-126 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) S5.138	120.02-126 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) S5.138 US211 US263		ISM Equipment (18)
126-134 FIXED INTER-SATELLITE MOBILE S5.558 RADIOLOCATION S5.559	126-134 FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION S5.559		
134-142 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE Radiolocation S5.149 S5.340 S5.554 S5.555	134-142 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE Radiolocation S5.149 S5.554 S5.555 917		
142-144 AMATEUR AMATEUR-SATELLITE	142-144	142-144 AMATEUR AMATEUR-SATELLITE	Amateur (97)
144-149 RADIOLOCATION Amateur Amateur-satellite S5.149 S5.555	144-149 RADIOLOCATION S5.149 S5.555	144-149 RADIOLOCATION Amateur Amateur-satellite S5.149 S5.555	
149-150 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	149-150 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE		

150-202 GHz (EHF)

Page 85

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
150-151 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (passive) S5.149 S5.385			150-151 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (passive) S5.149 S5.385 US263		
151-156 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE			151-164 FIXED FIXED-SATELLITE (space-to-Earth)		
156-158 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE					
158-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE			US211		
164-168 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)			164-168 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246		
168-170 FIXED MOBILE			168-170 FIXED MOBILE		
170-174.5 FIXED INTER-SATELLITE MOBILE S5.558 S5.149 S5.385			170-174.5 FIXED INTER-SATELLITE MOBILE 909 S5.149 S5.385		

174.5-176.5 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE S5.558 SPACE RESEARCH (passive) S5.149 S5.385	174.5-176.5 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE 909 SPACE RESEARCH (passive) S5.149 S5.385 US263	
176.5-182 FIXED INTER-SATELLITE MOBILE S5.558 S5.149 S5.385	176.5-182 FIXED INTER-SATELLITE MOBILE 909 S5.149 S5.385 US211	
182-185 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.563	182-185 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US248	
185-190 FIXED INTER-SATELLITE MOBILE S5.558 S5.149 S5.385	185-190 FIXED INTER-SATELLITE MOBILE 909 S5.149 S5.385 US211	
190-200 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE S5.341 S5.554	190-200 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE S5.341 S5.554	
200-202 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) S5.341	200-202 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) S5.341 US263	

202-400 GHz (EHF) Page 87

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
202-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.341			202-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.341		
217-231 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.341			217-231 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246		
231-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation			231-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation US211		
235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (passive)			235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (passive) US263		
238-241 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation			238-241 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation		
241-248 RADIOLOCATION Amateur Amateur-satellite S5.138			241-248 RADIOLOCATION S5.138	241-248 RADIOLOCATION Amateur Amateur-satellite S5.138	ISM Equipment (18) Amateur (97)
248-250 AMATEUR AMATEUR-SATELLITE			248-250	248-250 AMATEUR AMATEUR-SATELLITE	Amateur (97)

250-252 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) S5.149 S5.555	250-252 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) S5.149 S5.555	
252-265 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE S5.149 S5.385 S5.554 S5.555 S5.564	252-265 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE S5.149 S5.385 S5.554 S5.555 US211	
265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY S5.149	265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY S5.149	
275-400 (Not Allocated) S5.565	275-300 FIXED MOBILE S5.565	
	300-400 (Not allocated) S5.565	Amateur (97)

BILLING CODE 6712–01–C

International Footnotes

Note: The International Telecommunication Union has recently renumbered international footnotes using the "S" numbering scheme and has substantively revised the text of certain of these international footnotes. These international footnotes shall be listed immediately below this note in I. Until such time as the Commission has considered the substantively revised international footnotes that have previously been adopted domestically, the old international footnotes shall apply in the United States. These footnotes appear immediately after footnote S5.565 in II.

I. New "S" Numbering Scheme

S5.53 Administrations authorizing the use of frequencies below 9 kHz shall ensure that no harmful interference is caused thereby to the services to which the bands above 9 kHz are allocated.

S5.54 Administrations conducting scientific research using frequencies below 9 kHz are urged to advise other administrations that may be concerned in order that such research may be afforded all practicable protection from harmful interference.

S5.55 *Additional allocation:* in Armenia, Azerbaijan, Bulgaria, Russian Federation, Georgia, Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 14–17 kHz is also allocated to the radionavigation service on a primary basis.

S5.56 The stations of services to which the bands 14–19.95 kHz and 20.05–70 kHz and in Region 1 also the bands 72–84 kHz and 86–90 kHz are allocated may transmit standard frequency and time signals. Such stations shall be afforded protection from harmful interference. In Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Kazakstan, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the frequencies 25 kHz and 50 kHz will be used for this purpose under the same conditions.

S5.57 The use of the bands 14–19.95 kHz, 20.05–70 kHz and 70–90 kHz (72–84 kHz and 86–90 kHz in Region 1) by the maritime mobile service is limited to coast radiotelegraph stations (A1A and F1B only). Exceptionally, the use of class J2B or J7B emissions is authorized subject to the necessary bandwidth not exceeding that normally used for class A1A or F1B emissions in the band concerned.

S5.58 *Additional allocation:* in Armenia, Azerbaijan, Bulgaria, Georgia, Kazakstan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 67–70 kHz is also allocated to the radionavigation service on a primary basis.

S5.59 *Different category of service:* in Bangladesh, the Islamic Republic of Iran and Pakistan, the allocation of the bands 70–72 kHz and 84–86 kHz to the fixed and maritime mobile service is on a primary basis (see No. S5.33).

S5.60 In the bands 70–90 kHz (70–86 kHz in Region 1) and 110–130 kHz (112–130 kHz in Region 1), pulsed radionavigation systems may be used on condition that they do not cause harmful interference to other services to which these bands are allocated.

S5.61 In Region 2, the establishment and operation of stations in the maritime radionavigation service in the bands 70–90 kHz and 110–130 kHz shall be subject to agreement obtained under No. S9.21 with administrations whose services, operating in accordance with the Table, may be affected. However, stations of the fixed, maritime mobile and radiolocation services shall not cause harmful interference to stations in the maritime radionavigation service established under such agreements.

S5.62 Administrations which operate stations in the radionavigation service in the band 90–110 kHz are urged to coordinate technical and operating characteristics in such a way as to avoid harmful interference to the services provided by these stations.

S5.64 Only classes A1A or F1B, A2C, A3C, F1C or F3C emissions are authorized for stations of the fixed service in the bands allocated to this service between 90 kHz and 160 kHz (148.5 kHz in Region 1) and for stations of the maritime mobile service in the bands allocated to this service between 110 kHz and 160 kHz (148.5 kHz in Region 1). Exceptionally, class J2B or J7B emissions are also authorized in the bands between 110 kHz and 160 kHz (148.5 kHz in Region 1) for stations of the maritime mobile service.

S5.65 *Different category of service:* in Bangladesh, the Islamic Republic of Iran and Pakistan, the allocation of the bands 112–117.6 kHz and 126–129 kHz to the fixed and maritime mobile services is on a primary basis (see No. S5.33).

S5.66 *Different category of service:* in Germany, the allocation of the band 115–117.6 kHz to the fixed and maritime mobile services is on a primary basis (see No. S5.33) and to the radionavigation service on a secondary basis (see No. S5.32).

S5.67 *Additional allocation:* in Azerbaijan, Bulgaria, Mongolia, Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 130–148.5 kHz is also allocated to the radionavigation service on a secondary basis. Within and between these countries this service shall have an equal right to operate.

S5.68 *Alternative allocation:* in Angola, Botswana, Burundi, the Congo, Malawi, Dem. Rep. of the Congo, Rwanda and South Africa, the band 160–200 kHz is allocated to the fixed service on a primary basis.

S5.69 *Additional allocation:* in Somalia, the band 200–255 kHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.70 *Alternative allocation:* in Angola, Botswana, Burundi, Cameroon, the Central African Republic, the Congo, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Nigeria, Oman, Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland, Tanzania, Chad, Zambia and Zimbabwe, the band 200–283.5 kHz is allocated to the aeronautical radionavigation service on a primary basis.

S5.71 *Alternative allocation:* in Tunisia, the band 255–283.5 kHz is allocated to the broadcasting service on a primary basis.

S5.72 Norwegian stations of the fixed service situated in northern areas (north of 60° N) subject to auroral disturbances are allowed to continue operation on four frequencies in the bands 283.5–490 kHz and 510–526.5 kHz.

S5.73 The band 285–325 kHz (283.5–325 kHz in Region 1) in the maritime radionavigation service may be used to transmit supplementary navigational information using narrow-band techniques, on condition that no harmful interference is caused to radiobeacon stations operating in the radionavigation service.

S5.74 *Additional allocation:* in Region 1, the frequency band 285.3–285.7 kHz is also allocated to the maritime radionavigation service (other than radiobeacons) on a primary basis.

S5.75 *Different category of service:* in Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Moldova, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan, Ukraine and the Black Sea areas of Bulgaria and Romania, the allocation of the band 315–325 kHz to the maritime radionavigation service is on a primary basis under the condition that in the Baltic Sea area, the assignment of frequencies in this band to new stations in the maritime or aeronautical radionavigation services shall be subject to prior consultation between the administrations concerned.

S5.76 The frequency 410 kHz is designated for radio direction-finding in the maritime radionavigation service. The other radionavigation services to which the band 405–415 kHz is allocated shall not cause harmful interference to radio direction-finding in the band 406.5–413.5 kHz.

S5.77 *Different category of service:* in Australia, China, the French Overseas Territories of Region 3, India, Indonesia, the Islamic Republic of Iran, Japan, Pakistan, Papua New Guinea and Sri Lanka, the allocation of the band 415–495 kHz to the aeronautical radionavigation service is on a primary basis. Administrations in these countries shall take all practical steps necessary to ensure that aeronautical radionavigation stations in the band 435–495 kHz do not cause interference to reception by coast stations of ship stations transmitting on frequencies designated for ship stations on a worldwide basis (see No. S52.39).

S5.78 *Different category of service:* in Cuba, the United States of America and Mexico, the allocation of the band 415–435 kHz to the aeronautical radionavigation service is on a primary basis.

S5.79 The use of the bands 415–495 kHz and 505–526.5 kHz (505–510 kHz in Region 2) by the maritime mobile service is limited to radiotelegraphy.

S5.79A When establishing coast stations in the NAVTEX service on the frequencies 490 kHz, 518 kHz and 4209.5 kHz, administrations are strongly recommended to coordinate the operating characteristics in accordance with the procedures of the International Maritime Organization (IMO) (see Resolution 339 (Rev. WRC–97)).

S5.80 In Region 2, the use of the band 435–495 kHz by the aeronautical radionavigation service is limited to non-directional beacons not employing voice transmission.

S5.81 The bands 490–495 kHz and 505–510 kHz shall be subject to the provisions of Appendix S13, § 15 1), Part A2.

S5.82 In the maritime mobile service, the frequency 490 kHz is, from the date of full implementation of the GMDSS (see Resolution 331 (Rev. WRC–97)), to be used exclusively for the transmission by coast stations of navigational and meteorological warnings and urgent information to ships, by means of narrow-band direct-printing telegraphy. The conditions for use of the frequency 490 kHz are prescribed in Articles S31 and S52. In using the band 415–495 kHz for the aeronautical radionavigation service, administrations are requested to ensure that no harmful interference is caused to the frequency 490 kHz.

S5.83 The frequency 500 kHz is an international distress and calling frequency for Morse radiotelegraphy. The conditions for its use are prescribed in Articles S31 and S52, and in Appendix S13.

S5.84 The conditions for the use of the frequency 518 kHz by the maritime mobile service are prescribed in Articles S31 and S52 and in Appendix S13.

S5.86 In Region 2, in the band 525–535 kHz the carrier power of broadcasting stations shall not exceed 1 kW during the day and 250 W at night.

S5.87 *Additional allocation:* in Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe, the band 526.5–535 kHz is also allocated to the mobile service on a secondary basis.

S5.87A *Additional allocation:* in Uzbekistan, the band 526.5–1606.5 kHz is also allocated to the radionavigation service on a primary basis. Such use is subject to agreement obtained under No. S9.21 with administrations concerned and limited to ground-based radiobeacons in operation on 27 October 1997 until the end of their lifetime.

S5.88 *Additional allocation:* in China, the band 526.5–535 kHz is also allocated to the aeronautical radionavigation service on a secondary basis.

S5.89 In Region 2, the use of the band 1605–1705 kHz by stations of the broadcasting service is subject to the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

The examination of frequency assignments to stations of the fixed and mobile services in the band 1625–1705 kHz shall take account of the allotments appearing in the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

S5.90 In the band 1605–1705 kHz, in cases where a broadcasting station of Region 2 is concerned, the service area of the maritime mobile stations in Region 1 shall be limited to that provided by ground-wave propagation.

S5.91 *Additional allocation:* in the Philippines and Sri Lanka, the band 1606.5–1705 kHz is also allocated to the broadcasting service on a secondary basis.

S5.92 Some countries of Region 1 use radiodetermination systems in the bands 1606.5–1625 kHz, 1635–1800 kHz, 1850–2160 kHz, 2194–2300 kHz, 2502–2850 kHz and 3500–3800 kHz, subject to agreement obtained under No. S9.21. The radiated mean power of these stations shall not exceed 50 W.

S5.93 *Additional allocation:* in Angola, Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakstan, Latvia, Lithuania, Moldova, Mongolia, Nigeria, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Chad, Turkmenistan and Ukraine, the bands 1625–1635 kHz, 1800–1810 kHz and 2160–2170 kHz are also allocated to the fixed and land mobile services on a primary basis, subject to agreement obtained under No. S9.21.

S5.96 In Germany, Armenia, Azerbaijan, Belarus, Denmark, Estonia, Finland, Georgia, Hungary, Ireland, Israel, Jordan, Kazakstan, Latvia, Lithuania, Malta, Moldova, Norway, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, the United Kingdom, Russian Federation, Sweden, Tajikistan, Turkmenistan and Ukraine, administrations may allocate up to 200 kHz to their amateur service in the bands 1715–1800 kHz and 1850–2000 kHz. However, when allocating the bands within this range to their amateur service, administrations shall, after prior consultation with administrations of neighbouring countries, take such steps as may be necessary to prevent harmful interference from their amateur service to the fixed and mobile services of other countries. The mean power of any amateur station shall not exceed 10 W.

S5.97 In Region 3, the Loran system operates either on 1850 kHz or 1950 kHz, the bands occupied being 1825–1875 kHz and 1925–1975 kHz respectively. Other services to which the band 1800–2000 kHz is allocated may use any frequency therein on condition that no harmful interference is caused to the Loran system operating on 1850 kHz or 1950 kHz.

S5.98 *Alternative allocation:* in Angola, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Cameroon, the Congo, Denmark, Egypt, Eritrea, Spain, Ethiopia, Georgia, Greece, Italy, Kazakstan, Lebanon, Lithuania, Moldova, the Netherlands, Syria, Kyrgyzstan, Russian Federation, Somalia, Tajikistan, Tunisia, Turkmenistan, Turkey and Ukraine, the band 1810–1830 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.99 *Additional allocation:* in Saudi Arabia, Bosnia and Herzegovina, Iraq, Libya, Uzbekistan, Slovakia, the Czech Republic, Romania, Slovenia, Chad, Togo and Yugoslavia, the band 1810–1830 kHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.100 In Region 1, the authorization to use the band 1810–1830 kHz by the amateur service in countries situated totally or partially north of 40° N shall be given only after consultation with the countries mentioned in Nos. S5.98 and S5.99 to define the necessary steps to be taken to prevent harmful interference between amateur stations and stations of other services operating in accordance with Nos. S5.98 and S5.99.

S5.101 *Alternative allocation:* in Burundi and Lesotho, the band 1810–1850 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.102 *Alternative allocation:* in Argentina, Bolivia, Chile, Mexico, Paraguay, Peru, Uruguay and Venezuela, the band 1850–2000 kHz is allocated to the fixed, mobile except aeronautical mobile, radiolocation and radionavigation services on a primary basis.

S5.103 In Region 1, in making assignments to stations in the fixed and mobile services in the bands 1850–2045 kHz, 2194–2498 kHz, 2502–2625 kHz and 2650–2850 kHz, administrations should bear in mind the special requirements of the maritime mobile service.

S5.104 In Region 1, the use of the band 2025–2045 kHz by the meteorological aids service is limited to oceanographic buoy stations.

S5.105 In Region 2, except in Greenland, coast stations and ship stations using radiotelephony in the band 2065–2107 kHz shall be limited to class J3E emissions and to a peak envelope power not exceeding 1 kW. Preferably, the following carrier frequencies should be used: 2065.0 kHz, 2079.0 kHz, 2082.5 kHz, 2086.0 kHz, 2093.0 kHz, 2096.5 kHz, 2100.0 kHz and 2103.5 kHz. In Argentina and Uruguay, the carrier frequencies 2068.5 kHz and 2075.5 kHz are also used for this purpose, while the frequencies within the band 2072–2075.5 kHz are used as provided in No. S52.165.

S5.106 In Regions 2 and 3, provided no harmful interference is caused to the maritime mobile service, the frequencies between 2065 kHz and 2107 kHz may be used by stations of the fixed service communicating only within national borders and whose mean power does not exceed 50 W. In notifying the frequencies, the attention of the Bureau should be drawn to these provisions.

S5.107 Additional allocation: in Saudi Arabia, Botswana, Eritrea, Ethiopia, Iraq, Lesotho, Libya, Somalia, Swaziland and Zambia, the band 2160–2170 kHz is also allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis. The mean power of stations in these services shall not exceed 50 W.

S5.108 The carrier frequency 2182 kHz is an international distress and calling frequency for radiotelephony. The conditions for the use of the band 2173.5–2190.5 kHz are prescribed in Articles S31 and S52 and in Appendix S13.

S5.109 The frequencies 2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12,577 kHz and 16,804.5 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article S31.

S5.110 The frequencies 2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12,520 kHz and 16,695 kHz are international distress frequencies for narrow-band direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article S31.

S5.111 The carrier frequencies 2182 kHz, 3023 kHz, 5680 kHz, 8364 kHz and the frequencies 121.5 MHz, 156.8 MHz and 243 MHz may also be used, in accordance with the procedures in force for terrestrial radiocommunication services, for search and rescue operations concerning manned space vehicles. The conditions for the use of the frequencies are prescribed in Article S31 and in Appendix S13.

The same applies to the frequencies 10,003 kHz, 14,993 kHz and 19,993 kHz, but in each of these cases emissions must be confined in a band of ± 3 kHz about the frequency.

S5.112 *Alternative allocation:* in Bosnia and Herzegovina, Cyprus, Denmark, France, Greece, Iceland, Italy, Malta, Norway, Sri Lanka, Turkey and Yugoslavia, the band 2,194–2,300 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.113 For the conditions for the use of the bands 2300–2495 kHz (2498 kHz in Region 1), 3200–3400 kHz, 4750–4995 kHz and 5005–5060 kHz by the broadcasting

service, see Nos. S5.16 to S5.20, S5.21 and S23.3 to S23.10.

S5.114 *Alternative allocation:* in Bosnia and Herzegovina, Cyprus, Denmark, France, Greece, Iraq, Italy, Malta, Norway, Turkey and Yugoslavia, the band 2502–2625 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.115 The carrier (reference) frequencies 3023 kHz and 5680 kHz may also be used, in accordance with Article S31 and Appendix S13 by stations of the maritime mobile service engaged in coordinated search and rescue operations.

S5.116 Administrations are urged to authorize the use of the band 3155–3195 kHz to provide a common worldwide channel for low power wireless hearing aids. Additional channels for these devices may be assigned by administrations in the bands between 3155 kHz and 3400 kHz to suit local needs.

It should be noted that frequencies in the range 3000 kHz to 4000 kHz are suitable for hearing aid devices which are designed to operate over short distances within the induction field.

S5.117 *Alternative allocation:* in Bosnia and Herzegovina, Cyprus, Côte d'Ivoire, Denmark, Egypt, France, Greece, Iceland, Italy, Liberia, Malta, Norway, Sri Lanka, Togo, Turkey and Yugoslavia, the band 3155–3200 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.118 *Additional allocation:* in the United States, Japan, Mexico, Peru and Uruguay, the band 3230–3400 kHz is also allocated to the radiolocation service on a secondary basis.

S5.119 *Additional allocation:* in Honduras, Mexico, Peru and Venezuela, the band 3500–3750 kHz is also allocated to the fixed and mobile services on a primary basis.

S5.120 For the use of the bands allocated to the amateur service at 3.5 MHz, 7.0 MHz, 10.1 MHz, 14.0 MHz, 18.068 MHz, 21.0 MHz, 24.89 MHz and 144 MHz in the event of natural disasters, see Resolution 640. *

* This Resolution was abrogated by WRC–97.

S5.122 *Alternative allocation:* in Argentina, Bolivia, Chile, Ecuador, Paraguay, Peru and Uruguay, the band 3750–4000 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.123 *Additional allocation:* in Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe, the band 3900–3950 kHz is also allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. S9.21.

S5.124 *Additional allocation:* in Canada, the band 3950–4000 kHz is also allocated to the broadcasting service on a primary basis. The power of broadcasting stations operating in this band shall not exceed that necessary for a national service within the frontier of this country and shall not cause harmful interference to other services operating in accordance with the Table.

S5.125 *Additional allocation:* in Greenland, the band 3950–4000 kHz is also allocated to the broadcasting service on a primary basis. The power of the broadcasting stations operating in this band shall not exceed that necessary for a national service and shall in no case exceed 5 kW.

S5.126 In Region 3, the stations of those services to which the band 3995–4005 kHz is allocated may transmit standard frequency and time signals.

S5.127 The use of the band 4000–4063 kHz by the maritime mobile service is limited to ship stations using radiotelephony (see No. S52.220 and Appendix S17).

S5.128 In Afghanistan, Argentina, Armenia, Azerbaijan, Belarus, Botswana, Burkina Faso, Central African Republic, China, Georgia, India, Kazakstan, Mali, Niger, Kyrgyzstan, Russian Federation, Tajikistan, Chad, Turkmenistan and Ukraine, in the bands 4063–4123 kHz, 4130–4133 kHz and 4408–4438 kHz, stations of limited power in the fixed service which are situated at least 600 km from the coast may operate on condition that harmful interference is not caused to the maritime mobile service.

S5.129 On condition that harmful interference is not caused to the maritime mobile service, the frequencies in the bands 4063–4123 kHz and 4130–4438 kHz may be used exceptionally by stations in the fixed service communicating only within the boundary of the country in which they are located with a mean power not exceeding 50 W.

S5.130 The conditions for the use of the carrier frequencies 4125 kHz and 6215 kHz are prescribed in Articles S31 and S52 and in Appendix S13.

S5.131 The frequency 4209.5 kHz is used exclusively for the transmission by coast stations of meteorological and navigational warnings and urgent information to ships by means of narrow-band direct-printing techniques.

S5.132 The frequencies 4210 kHz, 6314 kHz, 8416.5 kHz, 12,579 kHz, 16,806.5 kHz, 19,680.5 kHz, 22,376 kHz and 26,100.5 kHz are the international frequencies for the transmission of maritime safety information (MSI) (see Appendix S17).

S5.133 *Different category of service:* in Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Latvia, Lithuania, Moldova, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 5130–5250 kHz to the mobile, except aeronautical mobile, service is on a primary basis (see No. S5.33).

S5.134 The use of the bands 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11,600–11,650 kHz, 12,050–12,100 kHz, 13,570–13,600 kHz, 13,800–13,870 kHz, 15,600–15,800 kHz, 17,480–17,550 kHz and 18,900–19,020 kHz by the broadcasting service is limited to single-sideband emissions with the characteristics specified in Appendix S11 or to any other spectrum-efficient modulation techniques recommended by ITU–R. Access to these bands shall be subject to the decisions of a competent conference.

S5.136 The band 5900–5950 kHz is allocated, until 1 April 2007, to the fixed service on a primary basis, as well as to the following services: in Region 1 to the land mobile service on a primary basis, in Region 2 to the mobile except aeronautical mobile (R) service on a primary basis, and in Region 3 to the mobile except aeronautical mobile (R) service on a secondary basis, subject to application of the procedure referred to in Resolution 21 (Rev. WRC–95). After 1 April 2007, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

S5.137 On condition that harmful interference is not caused to the maritime mobile service, the bands 6200–6213.5 kHz and 6220.5–6525 kHz may be used exceptionally by stations in the fixed service, communicating only within the boundary of the country in which they are located, with a mean power not exceeding 50 W. At the time of notification of these frequencies, the attention of the Bureau will be drawn to the above conditions.

S5.138 The following bands:

6765–6795 kHz (centre frequency 6780 kHz),
433.05–434.79 MHz (centre frequency 433.92 MHz) in Region 1 except in the countries mentioned in No. S5.280,
61–61.5 GHz (centre frequency 61.25 GHz),
122–123 GHz (centre frequency 122.5 GHz), and
244–246 GHz (centre frequency 245 GHz)

are designated for industrial, scientific and medical (ISM) applications. The use of these frequency bands for ISM applications shall be subject to special authorization by the administration concerned, in agreement with other administrations whose radiocommunication services might be affected. In applying this provision, administrations shall have due regard to the latest relevant ITU–R Recommendations.

S5.139 *Different category of service:* in Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 6765–7000 kHz to the land mobile service is on a primary basis (see No. S5.33).

S5.140 *Additional allocation:* in Angola, Iraq, Rwanda, Somalia and Togo, the band 7000–7050 kHz is also allocated to the fixed service on a primary basis.

S5.141 *Alternative allocation:* in Egypt, Eritrea, Ethiopia, Guinea, Libya and Madagascar, the band 7000–7050 kHz is allocated to the fixed service on a primary basis.

S5.142 The use of the band 7100–7300 kHz in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

S5.143 The band 7300–7350 kHz is allocated, until 1 April 2007, to the fixed service on a primary basis and to the land mobile service on a secondary basis, subject to application of the procedure referred to in Resolution 21 (Rev. WRC–95). After 1 April 2007, frequencies in this band may be used

by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

S5.144 In Region 3, the stations of those services to which the band 7995–8005 kHz is allocated may transmit standard frequency and time signals.

S5.145 The conditions for the use of the carrier frequencies 8291 kHz, 12,290 kHz and 16,420 kHz are prescribed in Articles S31 and S52 and in Appendix S13.

S5.146 The bands 9400–9500 kHz, 11,600–11,650 kHz, 12,050–12,100 kHz, 15,600–15,800 kHz, 17,480–17,550 kHz and 18,900–19,020 kHz are allocated to the fixed service on a primary basis until 1 April 2007, subject to application of the procedure referred to in Resolution 21 (Rev.WRC–95). After 1 April 2007, frequencies in these bands may be used by stations in the fixed service, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies in the fixed service, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

S5.147 On condition that harmful interference is not caused to the broadcasting service, frequencies in the bands 9775–9900 kHz, 11,650–11,700 kHz and 11,975–12,050 kHz may be used by stations in the fixed service communicating only within the boundary of the country in which they are located, each station using a total radiated power not exceeding 24 dBW.

S5.149 In making assignments to stations of other services to which the bands:

13,360–13,410 kHz, 25,550–25,670 kHz, 37.5–38.25 MHz, 73–74.6 MHz in Regions 1 and 3, 150.05–153 MHz in Region 1, 322–328.6 MHz*, 406.1–410 MHz, 608–614 MHz in Regions 1 and 3, 1330–1400 MHz*, 1610.6–1613.8 MHz*, 1660–1670 MHz, 1718.8–1722.2 MHz*, 2655–2690 MHz, 3260–3267 MHz*, 3332–3339 MHz*, 3345.8–3352.5 MHz*, 4825–4835 MHz*, 4950–4990 MHz, 4990–5000 MHz,6650–6675.2 MHz*, 10.6–10.68 GHz, 14.47–14.5 GHz*, 22.01–22.21 GHz*, 22.21–22.5 GHz, 22.81–22.86 GHz*, 23.07–23.12 GHz*, 31.2–31.3 GHz, 31.5–31.8 GHz in Regions 1 and 3, 36.43–36.5 GHz*, 42.5–43.5 GHz, 42.77–42.87 GHz*, 43.07–43.17 GHz*, 43.37–43.47 GHz*, 48.94–49.04 GHz*, 72.77–72.91 GHz*, 93.07–93.27 GHz*, 97.88–98.08 GHz*, 140.69–140.98 GHz*,144.68–144.98 GHz*, 145.45–145.75 GHz*, 146.82–147.12 GHz*, 150–151 GHz*, 174.42–175.02 GHz*, 177–177.4 GHz*, 178.2–178.6 GHz*, 181–181.46 GHz*, 186.2–186.6 GHz*, 250–251 GHz*, 257.5–258 GHz*, 261–265 GHz, 262.24–262.76 GHz*, 265–275 GHz, 265.64–266.16 GHz*, 267.34–267.86 GHz*, 271.74–272.26 GHz*

are allocated (* indicates radio astronomy use for spectral line observations), administrations are urged to take all practicable steps to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. S4.5 and S4.6 and Article S29).

S5.150 The following bands:

13,553–13,567 kHz (centre frequency 13,560 kHz), 26,957–27,283 kHz (centre frequency 27,120 kHz), 40.66–40.70 MHz (centre frequency 40.68 MHz), 902–928 MHz in Region 2 (centre frequency 915 MHz), 2400–2500 MHz (centre frequency 2450 MHz), 5725–5875 MHz (centre frequency 5800 MHz), and 24–24.25 GHz (centre frequency 24.125 GHz)

are also designated for industrial, scientific and medical (ISM) applications. Radiocommunication services operating within these bands must accept harmful interference which may be caused by these applications. ISM equipment operating in these bands is subject to the provisions of No. S15.13.

S5.151 The bands 13,570–13,600 kHz and 13,800–13,870 kHz are allocated, until 1 April 2007, to the fixed service on a primary basis and to the mobile except aeronautical mobile (R) service on a secondary basis, subject to application of the procedure referred to in Resolution 21 (Rev. WRC–95). After 1 April 2007, frequencies in these bands may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies in these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

S5.152 *Additional allocation:* in Armenia, Azerbaijan, China, Côte d'Ivoire, Georgia, the Islamic Republic of Iran, Kazakstan, Moldova, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 14,250–14,350 kHz is also allocated to the fixed service on a primary basis. Stations of the fixed service shall not use a radiated power exceeding 24 dBW.

S5.153 In Region 3, the stations of those services to which the band 15,995–16,005 kHz is allocated may transmit standard frequency and time signals.

S5.154 *Additional allocation:* in Armenia, Azerbaijan, Georgia, Kazakstan, Moldova, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 18,068–18,168 kHz is also allocated to the fixed service on a primary basis for use within their boundaries, with a peak envelope power not exceeding 1 kW.

S5.155 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 21,850–21,870 kHz is also allocated to the aeronautical mobile (R) services on a primary basis.

S5.155A In Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the use of the band 21,850–21,870 kHz by the fixed service is limited to provision of services related to aircraft flight safety.

S5.155B The band 21,870–21,924 kHz is used by the fixed service for provision of services related to aircraft flight safety.

S5.156 *Additional allocation:* in Nigeria, the band 22,720–23,200 kHz is also allocated to the meteorological aids service (radiosondes) on a primary basis.

S5.156A The use of the band 23,200–23,350 kHz by the fixed service is limited to provision of services related to aircraft flight safety.

S5.157 The use of the band 23,350–24,000 kHz by the maritime mobile service is limited to inter-ship radiotelegraphy.

S5.160 *Additional allocation:* in Botswana, Burundi, Lesotho, Malawi, Namibia, Dem. Rep. of the Congo, Rwanda and Swaziland, the band 41–44 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.161 *Additional allocation:* in the Islamic Republic of Iran and Japan, the band 41–44 MHz is also allocated to the radiolocation service on a secondary basis.

S5.162 *Additional allocation:* in Australia and New Zealand, the band 44–47 MHz is also allocated to the broadcasting service on a primary basis.

S5.162A *Additional allocation:* in Germany, Austria, Belgium, Bosnia and Herzegovina, China, Vatican, Denmark, Spain, Estonia, Finland, France, Ireland, Iceland, Italy, Latvia, The Former Yugoslav Republic of Macedonia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Norway, the Netherlands, Poland, Portugal, Slovakia, the Czech Republic, the United Kingdom, Russian Federation, Sweden, Switzerland and Turkey, the band 46–68 MHz is also allocated to the radiolocation service on a secondary basis. This use is limited to the operation of wind profiler radars in accordance with Resolution 217 (WRC–97).

S5.163 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Estonia, Georgia, Hungary, Kazakstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the bands 47–48.5 MHz and 56.5–58 MHz are also allocated to the fixed and land mobile services on a secondary basis.

S5.164 *Additional allocation:* in Albania, Germany, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Côte d'Ivoire, Denmark, Spain, Finland, France, Gabon, Greece, Ireland, Israel, Italy, Jordan, Lebanon, Libya, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Nigeria, Norway, the Netherlands, Poland, Syria, the United Kingdom, Senegal, Slovenia, Sweden, Switzerland, Swaziland, Togo, Tunisia,

Turkey and Yugoslavia the band 47–68 MHz, in Romania the band 47–58 MHz and in the Czech Republic the band 66–68 MHz, are also allocated to the land mobile service on a primary basis. However, stations of the land mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the band.

S5.165 *Additional allocation:* in Angola, Cameroon, the Congo, Madagascar, Mozambique, Somalia, Sudan, Tanzania and Chad, the band 47–68 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.166 *Alternative allocation:* in New Zealand, the band 50–51 MHz is allocated to the fixed, mobile and broadcasting services on a primary basis; the band 53–54 MHz is allocated to the fixed and mobile services on a primary basis.

S5.167 *Alternative allocation:* in Bangladesh, Brunei Darussalam, India, Indonesia, the Islamic Republic of Iran, Malaysia, Pakistan, Singapore and Thailand, the band 50–54 MHz is allocated to the fixed, mobile and broadcasting services on a primary basis.

S5.168 *Additional allocation:* in Australia, China and the Democratic People's Republic of Korea, the band 50–54 MHz is also allocated to the broadcasting service on a primary basis.

S5.169 *Alternative allocation:* in Botswana, Burundi, Lesotho, Malawi, Namibia, Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland, Zambia and Zimbabwe, the band 50–54 MHz is allocated to the amateur service on a primary basis.

S5.170 *Additional allocation:* in New Zealand, the band 51–53 MHz is also allocated to the fixed and mobile services on a primary basis.

S5.171 *Additional allocation:* in Botswana, Burundi, Lesotho, Malawi, Mali, Namibia, Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland and Zimbabwe, the band 54–68 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.172 *Different category of service:* in the French Overseas Departments in Region 2, Guyana, Jamaica and Mexico, the allocation of the band 54–68 MHz to the fixed and mobile services is on a primary basis (see No. S5.33).

S5.173 *Different category of service:* in the French Overseas Departments in Region 2, Guyana, Jamaica and Mexico, the allocation of the band 68–72 MHz to the fixed and mobile services is on a primary basis (see No. S5.33).

S5.174 *Alternative allocation:* in Bulgaria, Hungary, Poland and Romania, the band 68–73 MHz is allocated to the broadcasting service on a primary basis and used in accordance with the decisions in the Final Acts of the Special Regional Conference (Geneva, 1960).

S5.175 *Alternative allocation:* in Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the bands 68–73 MHz and 76–87.5 MHz are allocated to the broadcasting service on a primary basis. The services to which these bands are allocated in other countries and the broadcasting service in the countries listed above are subject to agreements with the neighbouring countries concerned.

S5.176 *Additional allocation:* in Australia, China, the Republic of Korea, the Philippines, the Democratic People's Republic of Korea and Western Samoa, the band 68–74 MHz is also allocated to the broadcasting service on a primary basis.

S5.177 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Estonia, Georgia, Kazakstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 73–74 MHz is also allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. S9.21.

S5.178 *Additional allocation:* in Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Guyana, Honduras and Nicaragua, the band 73–74.6 MHz is also allocated to the fixed and mobile services on a secondary basis.

S5.179 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, China, Georgia, Kazakstan, Latvia, Lithuania, Moldova, Mongolia, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the bands 74.6–74.8 MHz and 75.2–75.4 MHz are also allocated to the aeronautical radionavigation service, on a primary basis, for ground-based transmitters only.

S5.180 The frequency 75 MHz is assigned to marker beacons. Administrations shall refrain from assigning frequencies close to the limits of the guardband to stations of other services which, because of their power or geographical position, might cause harmful interference or otherwise place a constraint on marker beacons.

Every effort should be made to improve further the characteristics of airborne receivers and to limit the power of transmitting stations close to the limits 74.8 MHz and 75.2 MHz.

S5.181 *Additional allocation:* in Germany, Austria, Cyprus, Denmark, Egypt, France, Greece, Israel, Italy, Japan, Jordan, Lebanon, Malta, Morocco, Monaco, Norway, Syria, Sweden and Switzerland, the band 74.8–75.2 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. S9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedure invoked under No. S9.21.

S5.182 *Additional allocation:* in Western Samoa, the band 75.4–87 MHz is also allocated to the broadcasting service on a primary basis.

S5.183 *Additional allocation:* in China, the Republic of Korea, Japan, the Philippines and the Democratic People's Republic of Korea, the band 76–87 MHz is also allocated to the broadcasting service on a primary basis.

S5.184 *Additional allocation:* in Bulgaria and Romania, the band 76–87.5 MHz is also allocated to the broadcasting service on a primary basis and used in accordance with the decisions contained in the Final Acts of the Special Regional Conference (Geneva, 1960).

S5.185 *Different category of service:* in the United States, the French Overseas Departments in Region 2, Guyana, Jamaica, Mexico and Paraguay the allocation of the band 76–88 MHz to the fixed and mobile services is on a primary basis (see No. S5.33).

S5.187 *Alternative allocation:* in Albania, the band 81–87.5 MHz is allocated to the broadcasting service on a primary basis and used in accordance with the decisions contained in the Final Acts of the Special Regional Conference (Geneva, 1960).

S5.188 *Additional allocation:* in Australia, the band 85–87 MHz is also allocated to the broadcasting service on a primary basis. The introduction of the broadcasting service in Australia is subject to special agreements between the administrations concerned.

S5.190 *Additional allocation:* in Monaco, the band 87.5–88 MHz is also allocated to the land mobile service on a primary basis, subject to agreement obtained under No. S9.21.

S5.192 *Additional allocation:* in China and the Republic of Korea, the band 100–108 MHz is also allocated to the fixed and mobile services on a primary basis.

S5.194 *Additional allocation:* in Azerbaijan, Lebanon, Syria, Kyrgyzstan, Somalia and Turkmenistan, the band 104–108 MHz is also allocated to the mobile, except aeronautical mobile (R), service on a secondary basis.

S5.197 *Additional allocation:* in Germany, Austria, Cyprus, Denmark, Egypt, France, Italy, Japan, Jordan, Lebanon, Malta, Morocco, Monaco, Norway, Pakistan, Syria, and Sweden, the band 108–111.975 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. S9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedures invoked under No. S9.21.

S5.198 *Additional allocation:* the band 117.975–136 MHz is also allocated to the aeronautical mobile-satellite (R) service on a secondary basis, subject to agreement obtained under No. S9.21.

S5.199 The bands 121.45–121.55 MHz and 242.95–243.05 MHz are also allocated to the mobile-satellite service for the reception on board satellites of emissions from emergency position-indicating radiobeacons transmitting at 121.5 MHz and 243 MHz (see Appendix S13).

S5.200 In the band 117.975–136 MHz, the frequency 121.5 MHz is the aeronautical

emergency frequency and, where required, the frequency 123.1 MHz is the aeronautical frequency auxiliary to 121.5 MHz. Mobile stations of the maritime mobile service may communicate on these frequencies under the conditions laid down in Article S31 and Appendix S13 for distress and safety purposes with stations of the aeronautical mobile service.

S5.201 *Additional allocation:* in Angola, Armenia, Azerbaijan, Belarus, Bulgaria, Estonia, Georgia, Hungary, the Islamic Republic of Iran, Iraq, Japan, Kazakstan, Latvia, Moldova, Mongolia, Mozambique, Uzbekistan, Papua New Guinea, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 132–136 MHz is also allocated to the aeronautical mobile (OR) service on a primary basis. In assigning frequencies to stations of the aeronautical mobile (OR) service, the administration shall take account of the frequencies assigned to stations in the aeronautical mobile (R) service.

S5.202 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Belarus, Bulgaria, United Arab Emirates, Georgia, the Islamic Republic of Iran, Jordan, Kazakstan, Latvia, Moldova, Oman, Uzbekistan, Poland, Syria, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan, Turkey and Ukraine, the band 136–137 MHz is also allocated to the aeronautical mobile (OR) service on a primary basis. In assigning frequencies to stations of the aeronautical mobile (OR) service, the administration shall take account of the frequencies assigned to stations in the aeronautical mobile (R) service.

S5.203 In the band 136–137 MHz, existing operational meteorological satellites may continue to operate, under the conditions defined in No. S4.4 with respect to the aeronautical mobile service, until 1 January 2002. Administrations shall not authorize new frequency assignments in this band to stations in the meteorological-satellite service.

S5.203A *Additional allocation:* in Israel, Mauritania, Qatar and Zimbabwe, the band 136–137 MHz is also allocated to the fixed and mobile, except aeronautical mobile (R), services on a secondary basis until 1 January 2005.

S5.203B *Additional allocation:* in Saudi Arabia, United Arab Emirates, Jordan, Oman and Syria, the band 136–137 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis until 1 January 2005.

S5.204 *Different category of service:* in Afghanistan, Saudi Arabia, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, China, Cuba, the United Arab Emirates, India, Indonesia, the Islamic Republic of Iran, Iraq, Malaysia, Oman, Pakistan, Philippines, Qatar, Singapore, Sri Lanka, Thailand, Yemen and Yugoslavia, the band 137–138 MHz is allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis (see No. S5.33).

S5.205 *Different category of service:* in Israel and Jordan, the allocation of the band 137–138 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. S5.33).

S5.206 *Different category of service:* in Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Finland, France, Georgia, Greece, Hungary, Kazakstan, Lebanon, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Syria, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 137–138 MHz to the aeronautical mobile (OR) service is on a primary basis (see No. S5.33).

S5.207 *Additional allocation:* in Australia, the band 137–144 MHz is also allocated to the broadcasting service on a primary basis until that service can be accommodated within regional broadcasting allocations.

S5.208 The use of the band 137–138 MHz by the mobile-satellite service is subject to coordination under No. S9.11A.

S5.208A In making assignments to space stations in the mobile-satellite service in the bands 137–138 MHz, 387–390 MHz and 400.15–401 MHz, administrations shall take all practicable steps to protect the radio astronomy service in the bands 150.05–153 MHz, 322–328.6 MHz, 406.1–410 MHz and 608–614 MHz from harmful interference from unwanted emissions. The threshold levels of interference detrimental to the radio astronomy service are shown in Table 1 of Recommendation ITU–R RA.769–1.

S5.209 The use of the bands 137–138 MHz, 148–150.05 MHz, 399.9–400.05 MHz, 400.15–401 MHz, 454–456 MHz and 459–460 MHz by the mobile-satellite service is limited to non-geostationary-satellite systems.

S5.210 *Additional allocation:* in Austria, France, Italy, Liechtenstein, Slovakia, the Czech Republic, the United Kingdom and Switzerland, the bands 138–143.6 MHz and 143.65–144 MHz are also allocated to the space research service (space-to-Earth) on a secondary basis.

S5.211 *Additional allocation:* in Germany, Saudi Arabia, Austria, Bahrain, Belgium, Bosnia and Herzegovina, Denmark, the United Arab Emirates, Spain, Finland, Greece, Ireland, Israel, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Liechtenstein, Luxembourg, Mali, Malta, Norway, the Netherlands, Qatar, the United Kingdom, Slovenia, Somalia, Sweden, Switzerland, Tanzania, Tunisia, Turkey and Yugoslavia, the band 138–144 MHz is also allocated to the maritime mobile and land mobile services on a primary basis.

S5.212 *Alternative allocation:* in Angola, Botswana, Burundi, Cameroon, the Central African Republic, the Congo, Gabon, Gambia, Ghana, Guinea, Iraq, Jordan, Lesotho, Liberia, Libya, Malawi, Mozambique, Namibia, Nigeria, Oman, Dem. Rep. of the Congo, Rwanda, Sierra Leone, South Africa, Swaziland, Chad, Togo, Zaire, Zambia and Zimbabwe, the band 138–144 MHz is allocated to the fixed and mobile services on a primary basis.

S5.213 *Additional allocation:* in China, the band 138–144 MHz is also allocated to the radiolocation service on a primary basis.

S5.214 *Additional allocation:* in Bosnia and Herzegovina, Croatia, Eritrea, Ethiopia, Kenya, The Former Yugoslav Republic of Macedonia, Malta, Slovenia, Somalia, Sudan, Tanzania and Yugoslavia, the band 138–144 MHz is also allocated to the fixed service on a primary basis

S5.216 *Additional allocation:* in China, the band 144–146 MHz is also allocated to the aeronautical mobile (OR) service on a secondary basis.

S5.217 *Alternative allocation:* in Afghanistan, Bangladesh, Cuba, Guyana and India, the band 146–148 MHz is allocated to the fixed and mobile services on a primary basis.

S5.218 *Additional allocation:* the band 148–149.9 MHz is also allocated to the space operation service (Earth-to-space) on a primary basis, subject to agreement obtained under No. S9.21. The bandwidth of any individual transmission shall not exceed ±25 kHz.

S5.219 The use of the band 148–149.9 MHz by the mobile-satellite service is subject to coordination under No. S9.11A. The mobile-satellite service shall not constrain the development and use of the fixed, mobile and space operation services in the band 148–149.9 MHz.

S5.220 The use of the bands 149.9–150.05 MHz and 399.9–400.05 MHz by the mobile-satellite service is subject to coordination under No. S9.11A. The mobile-satellite service shall not constrain the development and use of the radionavigation-satellite service in the bands 149.9–150.05 MHz and 399.9–400.05 MHz.

S5.221 Stations of the mobile-satellite service in the band 148–149.9 MHz shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations in the following countries: Albania, Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brunei Darussalam, Bulgaria, Cameroon, China, Cyprus, Congo, the Republic of Korea, Croatia, Cuba, Denmark, Egypt, the United Arab Emirates, Eritrea, Spain, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guinea, Guinea Bissau, Hungary, India, the Islamic Republic of Iran, Ireland, Iceland, Israel, Italy, Jamaica, Japan, Jordan, Kazakstan, Kenya, Kuwait, Latvia, The Former Yugoslav Republic of Macedonia, Lebanon, Libya, Liechtenstein, Luxembourg, Malaysia, Mali, Malta, Mauritania, Moldova, Mongolia, Mozambique, Namibia, Norway, New Zealand, Oman, Uganda, Uzbekistan, Pakistan, Panama, Papua New Guinea, Paraguay, the Netherlands, Philippines, Poland, Portugal, Qatar, Syria, Kyrgyzstan, Slovakia, Romania, the United Kingdom, Russian Federation, Senegal, Sierra Leone, Singapore, Slovenia, Sri Lanka, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Viet Nam, Yemen, Yugoslavia, Zambia, and Zimbabwe.

S5.222 Emissions of the radionavigation-satellite service in the bands 149.9–150.05 MHz and 399.9–400.05 MHz may also be used by receiving earth stations of the space research service.

S5.223 Recognizing that the use of the band 149.9–150.05 MHz by the fixed and

mobile services may cause harmful interference to the radionavigation-satellite service, administrations are urged not to authorize such use in application of No. S4.4.

S5.224A The use of the bands 149.9–150.05 MHz and 399.9–400.05 MHz by the mobile-satellite service (Earth-to-space) is limited to the land mobile-satellite service (Earth-to-space) until 1 January 2015.

S5.224B The allocation of the bands 149.9–150.05 MHz and 399.9–400.05 MHz to the radionavigation-satellite service shall be effective until 1 January 2015.

S5.225 *Additional allocation:* in Australia and India, the band 150.05–153 MHz is also allocated to the radio astronomy service on a primary basis.

S5.226 The frequency 156.8 MHz is the international distress, safety and calling frequency for the maritime mobile VHF radiotelephone service. The conditions for the use of this frequency are contained in Article S31 and Appendix S13.

In the bands 156–156.7625 MHz, 156.8375–157.45 MHz, 160.6–160.975 MHz and 161.475–162.05 MHz, each administration shall give priority to the maritime mobile service on only such frequencies as are assigned to stations of the maritime mobile service by the administration (see Articles S31 and S52, and Appendix S13).

Any use of frequencies in these bands by stations of other services to which they are allocated should be avoided in areas where such use might cause harmful interference to the maritime mobile VHF radiocommunication service.

However, the frequency 156.8 MHz and the frequency bands in which priority is given to the maritime mobile service may be used for radiocommunications on inland waterways subject to agreement between interested and affected administrations and taking into account current frequency usage and existing agreements.

S5.227 In the maritime mobile VHF service the frequency 156.525 MHz is to be used exclusively for digital selective calling for distress, safety and calling. The conditions for the use of this frequency are prescribed in Articles S31 and S52, and Appendices S13 and S18.

S5.229 *Alternative allocation:* in Morocco, the band 162–174 MHz is allocated to the broadcasting service on a primary basis. The use of this band shall be subject to agreement with administrations having services, operating or planned, in accordance with the Table which are likely to be affected. Stations in existence on 1 January 1981, with their technical characteristics as of that date, are not affected by such agreement.

S5.230 *Additional allocation:* in China, the band 163–167 MHz is also allocated to the space operation service (space-to-Earth) on a primary basis, subject to agreement obtained under No. S9.21.

S5.231 *Additional allocation:* in Afghanistan, China and Pakistan, the band 167–174 MHz is also allocated to the broadcasting service on a primary basis. The introduction of the broadcasting service into this band shall be subject to agreement with the neighbouring countries in Region 3 whose services are likely to be affected.

S5.232 *Additional allocation:* in Japan, the band 170–174 MHz is also allocated to the broadcasting service on a primary basis.

S5.233 *Additional allocation:* in China, the band 174–184 MHz is also allocated to the space research (space-to-Earth) and the space operation (space-to-Earth) services on a primary basis, subject to agreement obtained under No. S9.21. These services shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations.

S5.234 *Different category of service:* in Mexico, the allocation of the band 174–216 MHz to the fixed and mobile services is on a primary basis (see No. S5.33).

S5.235 *Additional allocation:* in Germany, Austria, Belgium, Denmark, Spain, Finland, France, Israel, Italy, Liechtenstein, Malta, Monaco, Norway, the Netherlands, the United Kingdom, Sweden and Switzerland, the band 174–223 MHz is also allocated to the land mobile service on a primary basis. However, the stations of the land mobile service shall not cause harmful interference to, or claim protection from, broadcasting stations, existing or planned, in countries other than those listed in this footnote.

S5.237 *Additional allocation:* in the Congo, Eritrea, Ethiopia, Gambia, Guinea, Libya, Malawi, Mali, Senegal, Sierra Leone, Somalia, Tanzania and Zimbabwe, the band 174–223 MHz is also allocated to the fixed and mobile services on a secondary basis.

S5.238 *Additional allocation:* in Bangladesh, India, Pakistan and the Philippines, the band 200–216 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.240 *Additional allocation:* in China and India, the band 216–223 MHz is also allocated to the aeronautical radionavigation service on a primary basis and to the radiolocation service on a secondary basis.

S5.241 In Region 2, no new stations in the radiolocation service may be authorized in the band 216–225 MHz. Stations authorized prior to 1 January 1990 may continue to operate on a secondary basis.

S5.242 *Additional allocation:* in Canada, the band 216–220 MHz is also allocated to the land mobile service on a primary basis.

S5.243 *Additional allocation:* in Somalia, the band 216–225 MHz is also allocated to the aeronautical radionavigation service on a primary basis, subject to not causing harmful interference to existing or planned broadcasting services in other countries.

S5.245 *Additional allocation:* in Japan, the band 222–223 MHz is also allocated to the aeronautical radionavigation service on a primary basis and to the radiolocation service on a secondary basis.

S5.246 *Alternative allocation:* in Spain, France, Israel and Monaco, the band 223–230 MHz is allocated to the broadcasting and land mobile services on a primary basis (see No. S5.33) on the basis that, in the preparation of frequency plans, the broadcasting service shall have prior choice of frequencies; and allocated to the fixed and mobile, except land mobile, services on a secondary basis. However, the stations of the land mobile service shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations in Morocco and Algeria.

S5.247 *Additional allocation:* in Saudi Arabia, Bahrain, the United Arab Emirates, Jordan, Oman, Qatar and Syria, the band 223–235 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.250 *Additional allocation:* in China, the band 225–235 MHz is also allocated to the radio astronomy service on a secondary basis.

S5.251 *Additional allocation:* in Nigeria, the band 230–235 MHz is also allocated to the aeronautical radionavigation service on a primary basis, subject to agreement obtained under No. S9.21.

S5.252 *Alternative allocation:* in Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe, the bands 230–238 MHz and 246–254 MHz are allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. S9.21.

S5.254 The bands 235–322 MHz and 335.4–399.9 MHz may be used by the mobile-satellite service, subject to agreement obtained under No. S9.21, on condition that stations in this service do not cause harmful interference to those of other services operating or planned to be operated in accordance with the Table of Frequency Allocations.

S5.255 The bands 312–315 MHz (Earth-to-space) and 387–390 MHz (space-to-Earth) in the mobile-satellite service may also be used by non-geostationary-satellite systems. Such use is subject to coordination under No. S9.11A.

S5.256 The frequency 243 MHz is the frequency in this band for use by survival craft stations and equipment used for survival purposes (see Appendix S13).

S5.257 The band 267–272 MHz may be used by administrations for space telemetry in their countries on a primary basis, subject to agreement obtained under No. S9.21.

S5.258 The use of the band 328.6–335.4 MHz by the aeronautical radionavigation service is limited to Instrument Landing Systems (glide path).

S5.259 *Additional allocation:* in Germany, Austria, Cyprus, the Republic of Korea, Denmark, Egypt, Spain, France, Greece, Israel, Italy, Japan, Jordan, Malta, Morocco, Monaco, Norway, the Netherlands, Syria and Sweden, the band 328.6–335.4 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. S9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedure invoked under No. S9.21.

S5.260 Recognizing that the use of the band 399.9–400.05 MHz by the fixed and mobile services may cause harmful interference to the radionavigation satellite service, administrations are urged not to authorize such use in application of No. S4.4.

S5.261 Emissions shall be confined in a band of ± 25 kHz about the standard frequency 400.1 MHz.

S5.262 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Bulgaria, Colombia, Costa Rica, Cuba, Egypt, the United Arab Emirates, Ecuador, Estonia, Georgia, Hungary, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Jordan, Kazakstan, Kuwait, Liberia, Malaysia, Moldova, Nigeria, Uzbekistan, Pakistan, the Philippines, Qatar, Syria, Kyrgyzstan, Slovakia, Romania, Russian Federation, Singapore, Somalia, Sri Lanka, Tajikistan, Turkmenistan, Ukraine and Yugoslavia, the band 400.05–401 MHz is also allocated to the fixed and mobile services on a primary basis.

S5.263 The band 400.15–401 MHz is also allocated to the space research service in the space-to-space direction for communications with manned space vehicles. In this application, the space research service will not be regarded as a safety service.

S5.264 The use of the band 400.15–401 MHz by the mobile-satellite service is subject to coordination under No. S9.11A. The power flux-density limit indicated in Annex 1 of Appendix S5 shall apply until such time as a competent world radiocommunication conference revises it.

S5.266 The use of the band 406–406.1 MHz by the mobile-satellite service is limited to low power satellite emergency position-indicating radiobeacons (see also Article S31 and Appendix S13).

S5.267 Any emission capable of causing harmful interference to the authorized uses of the band 406–406.1 MHz is prohibited.

S5.268 Use of the band 410–420 MHz by the space research service is limited to communications within 5 km of an orbiting, manned space vehicle. The power flux-density at the surface of the Earth produced by emissions from extra-vehicular activities shall not exceed -153 dB(W/m^2) for $0° \leq \delta \leq 5°$, $-153 + 0.077\ (\delta - 5)$ dB(W/m^2) for $5° \leq \delta \leq 70°$ and -148 dB(W/m^2) for $70° \leq \delta \leq 90°$, where δ is the angle of arrival of the radio-frequency wave and the reference bandwidth is 4 kHz. No. S4.10 does not apply to extra-vehicular activities. In this frequency band the space research (space-to-space) service shall not claim protection from, nor constrain the use and development of, stations of the fixed and mobile services.

S5.269 *Different category of service:* in Australia, the United States, India, Japan and the United Kingdom, the allocation of the bands 420–430 MHz and 440–450 MHz to the radiolocation service is on a primary basis (see No. S5.33).

S5.270 *Additional allocation:* in Australia, the United States, Jamaica and the Philippines, the bands 420–430 MHz and 440–450 MHz are also allocated to the amateur service on a secondary basis.

S5.271 *Additional allocation:* in Azerbaijan, Belarus, China, Estonia, India, Latvia, Lithuania, Kyrgyzstan, Turkmenistan and Ukraine, the band 420–460 MHz is also allocated to the aeronautical radionavigation service (radio altimeters) on a secondary basis.

S5.272 *Different category of service:* in France, the allocation of the band 430–434 MHz to the amateur service is on a secondary basis (see No. S5.32).

S5.273 *Different category of service:* in Denmark, Libya and Norway, the allocation of the bands 430–432 MHz and 438–440 MHz to the radiolocation service is on a secondary basis (see No. S5.32).

S5.274 *Alternative allocation:* in Denmark, Norway and Sweden, the bands 430–432 MHz and 438–440 MHz are allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.275 *Additional allocation:* in Bosnia and Herzegovina, Croatia, Estonia, Finland, Latvia, The Former Yugoslav Republic of Macedonia, Libya, Slovenia and Yugoslavia, the bands 430–432 MHz and 438–440 MHz are also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.276 *Additional allocation:* in Afghanistan, Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burkina Faso, Burundi, Egypt, the United Arab Emirates, Ecuador, Eritrea, Ethiopia, Greece, Guinea, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Italy, Jordan, Kenya, Kuwait, Lebanon, Libya, Liechtenstein, Malaysia, Malta, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syria, Democratic People's Republic of Korea, Singapore, Somalia, Switzerland, Tanzania, Thailand, Togo, Turkey and Yemen, the band 430–440 MHz is also allocated to the fixed service on a primary basis and the bands 430–435 MHz and 438–440 MHz are also allocated to the mobile, except aeronautical mobile, service on a primary basis.

S5.277 *Additional allocation:* in Angola, Armenia, Azerbaijan, Belarus, Cameroon, the Congo, Djibouti, Gabon, Georgia, Hungary, Kazakstan, Latvia, Mali, Moldova, Mongolia, Uzbekistan, Pakistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Rwanda, Tajikistan, Chad, Turkmenistan and Ukraine, the band 430–440 MHz is also allocated to the fixed service on a primary basis.

S5.278 *Different category of service:* in Argentina, Colombia, Costa Rica, Cuba, Guyana, Honduras, Panama and Venezuela, the allocation of the band 430–440 MHz to the amateur service is on a primary basis (see No. S5.33).

S5.279 *Additional allocation:* in Mexico, the bands 430–435 MHz and 438–440 MHz are also allocated on a primary basis to the land mobile service, subject to agreement obtained under No. S9.21.

S5.280 In Germany, Austria, Bosnia and Herzegovina, Croatia, The Former Yugoslav Republic of Macedonia, Liechtenstein, Portugal, Slovenia, Switzerland and Yugoslavia, the band 433.05–434.79 MHz (centre frequency 433.92 MHz) is designated for industrial, scientific and medical (ISM) applications. Radiocommunication services of these countries operating within this band must accept harmful interference which may be caused by these applications. ISM equipment operating in this band is subject to the provisions of No. S15.13.

S5.281 *Additional allocation:* in the French Overseas Departments in Region 2 and India, the band 433.75–434.25 MHz is also allocated to the space operation service (Earth-to-space) on a primary basis. In France and in Brazil, the band is allocated to the same service on a secondary basis.

S5.282 In the bands 435–438 MHz, 1260–1270 MHz, 2400–2450 MHz, 3400–3410 MHz (in Regions 2 and 3 only) and 5650–5670 MHz, the amateur-satellite service may operate subject to not causing harmful interference to other services operating in accordance with the Table (see No. S5.43). Administrations authorizing such use shall ensure that any harmful interference caused by emissions from a station in the amateur-satellite service is immediately eliminated in accordance with the provisions of No. S25.11. The use of the bands 1260–1270 MHz and 5650–5670 MHz by the amateur-satellite service is limited to the Earth-to-space direction.

S5.283 *Additional allocation:* in Austria, the band 438–440 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.284 *Additional allocation:* in Canada, the band 440–450 MHz is also allocated to the amateur service on a secondary basis.

S5.285 *Different category of service:* in Canada, the allocation of the band 440–450 MHz to the radiolocation service is on a primary basis (see No. S5.33).

S5.286 The band 449.75–450.25 MHz may be used for the space operation service (Earth-to-space) and the space research service (Earth-to-space), subject to agreement obtained under No. S9.21.

S5.286A The use of the bands 454–456 MHz and 459–460 MHz by the mobile-satellite service is subject to coordination under No. S9.11A.

S5.286B The use of the band 454–455 MHz in the countries listed in No. S5.286D, 455–456 MHz and 459–460 MHz in Region 2, and 454–456 MHz and 459–460 MHz in the countries listed in No. S5.286E, by stations in the mobile-satellite service, shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations.

S5.286C The use of the band 454–455 MHz in the countries listed in No. S5.286D, 455–456 MHz and 459–460 MHz in Region 2, and 454–456 MHz and 459–460 MHz in the countries listed in No. S5.286E, by stations in the mobile-satellite service, shall not constrain the development and use of the fixed and mobile services operating in accordance with the Table of Frequency Allocations.

S5.286D *Additional allocation:* in Canada, the United States, Mexico and Panama, the band 454–455 MHz is also allocated to the mobile-satellite service (Earth-to-space) on a primary basis.

S5.286E *Additional allocation:* in Cape Verde, Indonesia, Nepal, Nigeria and Papua New Guinea, the bands 454–456 MHz and 459–460 MHz are also allocated to the mobile-satellite (Earth-to-space) service on a primary basis.

S5.287 In the maritime mobile service, the frequencies 457.525 MHz, 457.550 MHz, 457.575 MHz, 467.525 MHz, 467.550 MHz and 467.575 MHz may be used by on-board communication stations. Where needed, equipment designed for 12.5 kHz channel spacing using also the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz and 467.5625 MHz may be introduced

for on-board communications. The use of these frequencies in territorial waters may be subject to the national regulations of the administration concerned. The characteristics of the equipment used shall conform to those specified in Recommendation ITU–R M.1174 (see Resolution 341 (WRC–97)).

S5.288 In the territorial waters of the United States and the Philippines, the preferred frequencies for use by on-board communication stations shall be 457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. The characteristics of the equipment used shall conform to those specified in Recommendation ITU–R M.1174.

S5.289 Earth exploration-satellite service applications, other than the meteorological-satellite service, may also be used in the bands 460–470 MHz and 1690–1710 MHz for space-to-Earth transmissions subject to not causing harmful interference to stations operating in accordance with the Table.

S5.290 *Different category of service:* in Afghanistan, Armenia, Azerbaijan, Belarus, China, Japan, Kazakstan, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Republic, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 460–470 MHz to the meteorological-satellite service (space-to-Earth) is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

S5.291 *Additional allocation:* in China, the band 470–485 MHz is also allocated to the space research (space-to-Earth) and the space operation (space-to-Earth) services on a primary basis subject to agreement obtained under No. S9.21 and subject to not causing harmful interference to existing and planned broadcasting stations.

S5.291A *Additional allocation:* in Germany, Austria, Denmark, Estonia, Finland, Liechtenstein, Norway, Netherlands, the Czech Republic and Switzerland, the band 470–494 MHz is also allocated to the radiolocation service on a secondary basis. This use is limited to the operation of wind profiler radars in accordance with Resolution 217 (WRC–97).

S5.292 *Different category of service:* in Mexico and Venezuela, the allocation of the band 470–512 MHz to the fixed and mobile services, and in Argentina and Uruguay to the mobile service, is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

S5.293 *Different category of service:* in Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

S5.294 *Additional allocation:* in Burundi, Cameroon, the Congo, Ethiopia, Israel, Kenya, Lebanon, Libya, Malawi, Senegal, Sudan, Syria, and Yemen, the band 470–582 MHz is also allocated to the fixed service on a secondary basis.

S5.296 *Additional allocation:* in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.297 *Additional allocation:* in Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana, Honduras, Jamaica, Mexico and Venezuela, the band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. S9.21.

S5.298 *Additional allocation:* in India, the band 549.75–550.25 MHz is also allocated to the space operation service (space-to-Earth) on a secondary basis.

S5.300 *Additional allocation:* in Israel, Libya, Syria and Sudan, the band 582–790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

S5.302 *Additional allocation:* in the United Kingdom, the band 590–598 MHz is also allocated to the aeronautical radionavigation service on a primary basis. All new assignments to stations in the aeronautical radionavigation service, including those transferred from the adjacent bands, shall be subject to coordination with the Administrations of the following countries: Germany, Belgium, Denmark, Spain, France, Ireland, Luxembourg, Morocco, Norway and the Netherlands.

S5.304 *Additional allocation:* in the African Broadcasting Area (see Nos. S5.10 to S5.13), the band 606–614 MHz is also allocated to the radio astronomy service on a primary basis.

S5.305 *Additional allocation:* in China, the band 606–614 MHz is also allocated to the radio astronomy service on a primary basis.

S5.306 *Additional allocation*: in Region 1, except in the African Broadcasting Area (see Nos. S5.10 to S5.13), and in Region 3, the band 608–614 MHz is also allocated to the radio astronomy service on a secondary basis.

S5.307 *Additional allocation*: in India, the band 608–614 MHz is also allocated to the radio astronomy service on a primary basis.

S5.309 *Different category of service*: in Costa Rica, El Salvador and Honduras, the allocation of the band 614–806 MHz to the fixed service is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

S5.311 Within the frequency band 620–790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 (Rev. WRC–97) and 507). Such stations shall not produce a power flux-density in excess of the value—129 dB(W/m2) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries.

S5.312 *Additional allocation*: in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakstan, Latvia, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 645–862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.314 *Additional allocation*: in Austria, Italy, Uzbekistan, the United Kingdom and Swaziland, the band 790–862 MHz is also allocated to the land mobile service on a secondary basis.

S5.315 *Alternative allocation*: in Greece, Italy, Morocco and Tunisia, the band 790–838 MHz is allocated to the broadcasting service on a primary basis

S5.316 *Additional allocation*: in Germany, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Israel, Kenya, the Former Yugoslav Republic of Macedonia, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Syria, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Gabon and Malta, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

S5.317 *Additional allocation*: in Region 2 (except Brazil and the United States), the band 806–890 MHz is also allocated to the mobile-satellite service on a primary basis, subject to agreement obtained under No. S9.21. The use of this service is intended for operation within national boundaries.

S5.318 *Additional allocation*: in Canada, the United States and Mexico, the bands 849–851 MHz and 894–896 MHz are also allocated to the aeronautical mobile service on a primary basis, for public correspondence with aircraft. The use of the band 849–851 MHz is limited to transmissions from aeronautical stations and the use of the band 894–896 MHz is limited to transmissions from aircraft stations.

S5.319 *Additional allocation*: in Belarus, Russian Federation and Ukraine, the bands 806–840 MHz (Earth-to-space) and 856–890 MHz (space-to-Earth) are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R), service. The use of these bands by this service shall not cause harmful interference to, or claim protection from, services in other countries operating in accordance with the Table of Frequency Allocations and is subject to special agreements between the administrations concerned.

S5.320 *Additional allocation:* in Region 3, the bands 806–890 MHz and 942–960 MHz

are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R), service on a primary basis, subject to agreement obtained under No. S9.21. The use of this service is limited to operation within national boundaries. In seeking such agreement, appropriate protection shall be afforded to services operating in accordance with the Table, to ensure that no harmful interference is caused to such services.

S5.321 *Alternative allocation:* in Italy, the band 838–854 MHz is allocated to the broadcasting service on a primary basis as from 1 January 1995.

S5.322 In Region 1, in the band 862–960 MHz, stations of the broadcasting service shall be operated only in the African Broadcasting Area (see Nos. S5.10 to S5.13) excluding Algeria, Egypt, Spain, Libya, Morocco, Nigeria, South Africa, Tanzania and Zimbabwe, subject to agreement obtained under No. S9.21.

S5.323 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Hungary, Kazakstan, Latvia, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 862–960 MHz is also allocated to the aeronautical radionavigation service on a primary basis. Such use is subject to agreement obtained under No. S9.21 with administrations concerned and limited to ground-based radiobeacons in operation on 27 October 1997 until the end of their lifetime.

S5.325 *Different category of service:* in the United States, the allocation of the band 890–942 MHz to the radiolocation service is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

S5.326 *Different category of service:* in Chile, the band 903–905 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis, subject to agreement obtained under No. S9.21.

S5.327 *Different category of service:* in Australia, the allocation of the band 915–928 MHz to the radiolocation service is on a primary basis (see No. S5.33).

S5.328 The band 960–1215 MHz is reserved on a worldwide basis for the use and development of airborne electronic aids to air navigation and any directly associated ground-based facilities.

S5.329 Use of the radionavigation-satellite service in the band 1215–1260 MHz shall be subject to the condition that no harmful interference is caused to the radionavigation service authorized under No. S5.331.

S5.330 *Additional allocation:* in Angola, Saudi Arabia, Bahrain, Bangladesh, Cameroon, China, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Libya, Morocco, Mozambique, Nepal, Nigeria, Pakistan, the Philippines, Qatar, Syria, Somalia, Sudan, Sri Lanka, Chad, Togo and Yemen, the band 1215–1300 MHz is also allocated to the fixed and mobile services on a primary basis.

S5.331 *Additional allocation:* in Algeria, Germany, Austria, Bahrain, Belgium, Benin, Bosnia and Herzegovina, Burundi, Cameroon, China, Croatia, Denmark, the United Arab Emirates, France, Greece, India, the Islamic Republic of Iran, Iraq, Kenya, The Former Yugoslav Republic of Macedonia, Liechtenstein, Luxembourg, Mali, Mauritania, Norway, Oman, Pakistan, the Netherlands, Portugal, Qatar, Senegal, Slovenia, Somalia, Sudan, Sri Lanka, Sweden, Switzerland, Turkey and Yugoslavia, the band 1215–1300 MHz is also allocated to the radionavigation service on a primary basis.

S5.332 In the band 1215–1300 MHz, active spaceborne sensors in the earth exploration-satellite and space research services shall not cause harmful interference to, claim protection from, or otherwise impose constraints on operation or development of the radiolocation service, the radionavigation-satellite service and other services allocated on a primary basis.

S5.333 In the bands 1215–1300 MHz, 3100–3300 MHz, 5250–5350 MHz, 8550–8650 MHz, 9500–9800 MHz and 13.4–14.0 GHz, radiolocation stations installed on spacecraft may also be employed for the earth exploration-satellite and space research services on a secondary basis. (SUP—WRC–97)

S5.334 *Additional allocation:* in Canada and the United States, the bands 1240–1300 MHz and 1350–1370 MHz are also allocated to the aeronautical radionavigation service on a primary basis.

S5.335 In Canada and the United States in the band 1240–1300 MHz, active spaceborne sensors in the earth exploration-satellite and space research services shall not cause interference to, claim protection from, or otherwise impose constraints on operation or development of the aeronautical radionavigation service.

S5.337 The use of the bands 1300–1350 MHz, 2700–2900 MHz and 9000–9200 MHz by the aeronautical radionavigation service is restricted to ground-based radars and to associated airborne transponders which transmit only on frequencies in these bands and only when actuated by radars operating in the same band.

S5.338 In Azerbaijan, Bulgaria, Mongolia, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Turkmenistan and Ukraine, existing installations of the radionavigation service may continue to operate in the band 1350–1400 MHz.

S5.339 The bands 1370–1400 MHz, 2640–2655 MHz, 4950–4990 MHz and 15.20–15.35 GHz are also allocated to the space research (passive) and earth exploration-satellite (passive) services on a secondary basis.

S5.340 All emissions are prohibited in the following bands:

1400–1427 MHz, 2690–2700 MHz, except those provided for by Nos. S5.421 and S5.422, 10.68–10.7 GHz, except those provided for by No. S5.483, 15.35–15.4 GHz, except those provided for by No. S5.511, 23.6–24 GHz, 31.3–31.5 GHz, 31.5–31.8 GHz, in Region 2, 48.94–49.04 GHz, from airborne stations, 50.2–50.4 GHz [2], except those provided for by No. S5.555A, 52.6–54.25 GHz, 86–92 GHz, 105–116 GHz, 140.69–140.98 GHz, from airborne stations and from space stations in the space-to-Earth direction, 182–185 GHz, except those provided for by No. S5.563, 217–231 GHz.

S5.341 In the bands 1400–1727 MHz, 101–120 GHz and 197–220 GHz, passive research is being conducted by some countries in a programme for the search for intentional emissions of extraterrestrial origin.

S5.342 *Additional allocation*: in Belarus, Russian Federation and Ukraine, the band 1429–1535 MHz is also allocated to the aeronautical mobile service on a primary basis exclusively for the purposes of aeronautical telemetry within the national territory. As of 1 April 2007, the use of the band 1452–1492 MHz is subject to agreement between the administrations concerned.

S5.343 In Region 2, the use of the band 1435–1535 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

S5.344 *Alternative allocation*: in the United States, the band 1452–1525 MHz is allocated to the fixed and mobile services on a primary basis (see also No. S5.343).

S5.345 Use of the band 1452–1492 MHz by the broadcasting-satellite service, and by the broadcasting service, is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (WARC–92).

S5.347 *Different category of service*: in Bangladesh, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cuba, Denmark, Egypt, Greece, Ireland, Italy, Jordan, Kenya, Mozambique, Portugal, Sri Lanka, Swaziland, Yemen, Yugoslavia and Zimbabwe, the allocation of the band 1452–1492 MHz to the broadcasting-satellite service and the broadcasting service is on a secondary basis until 1 April 2007.

S5.348 The use of the band 1 492–1 525 MHz by the mobile-satellite service is subject to coordination under No. S9.11A. However, no coordination threshold in Article S21 for space stations of the mobile-satellite service with respect to terrestrial services shall apply to the situation referred to in No. S5.343. With respect to the situation referred to in No. S5.343, the requirement for coordination in the band 1492–1525 MHz will be determined by band overlap.

S5.348A In the band 1 492–1 525 MHz, the coordination threshold in terms of the power flux-density levels at the surface of the Earth in application of No. S.9.11A for space stations in the mobile-satellite (space-to-Earth) service, with respect to the land mobile service use for specialized mobile radios or used in conjunction with public switched telecommunication networks (PSTN) operating within the territory of Japan, shall be—150 dB(W/m^2) in any 4 kHz band for all angles of arrival, instead of those given in Table S5–2 of Appendix S5. The above threshold level of the power flux-density shall apply until it is changed by a competent world radiocommunication conference.

S5.349 *Different category of service*: in Saudi Arabia, Azerbaijan, Bahrain, Bosnia

[2] The allocation to the earth exploration-satellite service (passive) and the space research service (passive) in the band 50.2–50.4 GHz should not impose undue constraints on the use of the adjacent bands by the primary allocated services in those bands.

and Herzegovina, Cameroon, Egypt, the United Arab Emirates, France, the Islamic Republic of Iran, Iraq, Israel, Kazakstan, Kuwait, The Former Yugoslav Republic of Macedonia, Lebanon, Morocco, Mongolia, Oman, Qatar, Syria, Kyrgyzstan, Romania, Turkmenistan, Ukraine, Yemen and Yugoslavia, the allocation of the band 1525–1530 MHz to the mobile, except aeronautical mobile, service is on a primary basis (see No. S5.33).

S5.350 *Additional allocation:* in Azerbaijan, Kyrgyzstan, Turkmenistan and Ukraine, the band 1525–1530 MHz is also allocated to the aeronautical mobile service on a primary basis.

S5.351 The bands 1525–1544 MHz, 1545–1559 MHz, 1626.5–1645.5 MHz and 1646.5–1660.5 MHz shall not be used for feeder links of any service. In exceptional circumstances, however, an earth station at a specified fixed point in any of the mobile-satellite services may be authorized by an administration to communicate via space stations using these bands.

S5.352A In the band 1525–1530 MHz, stations in the mobile-satellite service, except stations in the maritime mobile-satellite service, shall not cause harmful interference to, or claim protection from, stations of the fixed service in France and French overseas territories in Region 3, Algeria, Saudi Arabia, Egypt, Guinea, India, Israel, Italy, Jordan, Kuwait, Mali, Malta, Morocco, Mauritania, Nigeria, Oman, Pakistan, Philippines, Qatar, Syria, Tanzania, Viet Nam and Yemen notified prior to 1 April 1998.

S5.353A In applying the procedures of No. S9.11A to the mobile-satellite service in the bands 1530–1544 MHz and 1626.5–1645.5 MHz, priority shall be given to accommodating the spectrum requirements for distress, urgency and safety communications of the Global Maritime Distress and Safety System (GMDSS). Maritime mobile-satellite distress, urgency and safety communications shall have priority access and immediate availability over all other mobile satellite communications operating within a network. Mobile-satellite systems shall not cause unacceptable interference to, or claim protection from, distress, urgency and safety communications of the GMDSS. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services. (See Resolution 218 (WRC–97).)

S5.354 The use of the bands 1525–1559 MHz and 1626.5–1660.5 MHz by the mobile-satellite services is subject to coordination under No. S9.11A.

S5.355 *Additional allocation:* in Bahrain, Bangladesh, the Congo, Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Islamic Republic of Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Malta, Morocco, Oman, Qatar, Syria, Somalia, Sudan, Sri Lanka, Chad, Togo, Yemen and Zambia, the bands 1540–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a secondary basis.

S5.356 The use of the band 1544–1545 MHz by the mobile-satellite service (space-to-Earth) is limited to distress and safety communications (see Article S31).

S5.357 Transmissions in the band 1545–1555 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

S5.357A In applying the procedures of No. S9.11A to the mobile-satellite service in the bands 1545–1555 MHz and 1646.5–1656.5 MHz, priority shall be given to accommodating the spectrum requirements of the aeronautical mobile-satellite (R) service providing transmission of messages with priority 1 to 6 in Article S44. Aeronautical mobile-satellite (R) service communications with priority 1 to 6 in Article S44 shall have priority access and immediate availability, by pre-emption if necessary, over all other mobile-satellite communications operating within a network. Mobile-satellite systems shall not cause unacceptable interference to, or claim protection from, aeronautical mobile-satellite (R) service communications with priority 1 to 6 in Article S44. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services. (See Resolution 218 (WRC–97).)

S5.359 *Additional allocation:* in Germany, Saudi Arabia, Armenia, Austria, Azerbaijan, Belarus, Benin, Bulgaria, Cameroon, Spain, France, Gabon, Georgia, Greece, Guinea, Guinea-Bissau, Hungary, Jordan, Kazakstan, Kuwait, Latvia, Libya, Mali, Mauritania, Moldova, Mongolia, Nigeria, Uganda, Uzbekistan, Pakistan, Poland, Syria, Kyrgyzstan, the Democratic People's Republic of Korea, Romania, Russian Federation, Senegal, Swaziland, Tajikistan, Tanzania, Turkmenistan, Ukraine, Zambia and Zimbabwe the bands 1550–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a primary basis. Administrations are urged to make all practicable efforts to avoid the implementation of new fixed-service stations in the bands 1550–1555 MHz, 1610–1645.5 MHz and 1646.5–1660 MHz.

S5.362A In the United States, in the bands 1555–1559 MHz and 1656.5–1660.5 MHz, the aeronautical mobile-satellite (R) service shall have priority access and immediate availability, by pre-emption if necessary, over all other mobile-satellite communications operating within a network. Mobile-satellite systems shall not cause unacceptable interference to, or claim protection from, aeronautical mobile-satellite (R) service communications with priority 1 to 6 in Article S44. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services.

S5.363 *Alternative allocation:* in Sweden, the band 1590–1626.5 MHz is allocated to the aeronautical radionavigation service on a primary basis.

S5.364 The use of the band 1610–1626.5 MHz by the mobile-satellite service (Earth-to-space) and by the radiodetermination-satellite service (Earth-to-space) is subject to coordination under No. S9.11A. A mobile earth station operating in either of the services in this band shall not produce a peak e.i.r.p. density in excess of −15 dB(W/4 kHz) in the part of the band used by systems operating in accordance with the provisions of No. S5.366 (to which No. S4.10 applies), unless otherwise agreed by the affected administrations. In the part of the band where such systems are not operating, the mean e.i.r.p. density of a mobile earth station shall not exceed −3 dB(W/4 kHz). Stations of the mobile-satellite service shall not claim protection from stations in the aeronautical radionavigation service, stations operating in accordance with the provisions of No. S5.366 and stations in the fixed service operating in accordance with the provisions of No. S5.359. Administrations responsible for the coordination of mobile-satellite networks shall make all practicable efforts to ensure protection of stations operating in accordance with the provisions of No. S5.366.

S5.365 The use of the band 1613.8–1626.5 MHz by the mobile-satellite service (space-to-Earth) is subject to coordination under No. S9.11A.

S5.366 The band 1610–1626.5 MHz is reserved on a worldwide basis for the use and development of airborne electronic aids to air navigation and any directly associated ground-based or satellite-borne facilities. Such satellite use is subject to agreement obtained under No. S9.21.

S5.367 *Additional allocation:* The bands 1610–1626.5 MHz and 5000–5150 MHz are also allocated to the aeronautical mobile-satellite (R) service on a primary basis, subject to agreement obtained under No. S9.21.

S5.368 With respect to the radiodetermination-satellite and mobile-satellite services the provisions of No. S4.10 do not apply in the band 1610–1626.5 MHz, with the exception of the aeronautical radionavigation-satellite service.

S5.369 *Different category of service:* in Angola, Australia, Burundi, China, Côte d'Ivoire, Eritrea, Ethiopia, India, the Islamic Republic of Iran, Israel, Jordan, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Dem. Rep. of the Congo, Syria, Senegal, Sudan, Swaziland, Togo and Zambia, the allocation of the band 1610–1626.5 MHz to the radiodetermination-satellite service (Earth-to-space) is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21 from countries not listed in this provision.

S5.370 *Different category of service:* in Venezuela, the allocation to the radiodetermination-satellite service in the band 1610–1626.5 MHz (Earth-to-space) is on a secondary basis.

S5.371 *Additional allocation:* in Region 1, the bands 1610–1626.5 MHz (Earth-to-space) and 2483.5–2500 MHz (space-to-Earth) are also allocated to the radiodetermination-satellite service on a secondary basis, subject to agreement obtained under No. S9.21.

S5.372 Harmful interference shall not be caused to stations of the radio astronomy service using the band 1610.6–1613.8 MHz by stations of the radiodetermination-satellite and mobile-satellite services (No. S29.13 applies).

S5.374 Mobile earth stations in the mobile-satellite service operating in the bands 1631.5–1634.5 MHz and 1656.5–1660 MHz shall not cause harmful interference to stations in the fixed service operating in the countries listed in No. S5.359.

S5.375 The use of the band 1645.5–1646.5 MHz by the mobile-satellite service

(Earth-to-space) and for inter-satellite links is limited to distress and safety communications (see Article S31).

S5.376 Transmissions in the band 1646.5–1656.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

S5.376A Mobile earth stations operating in the band 1660–1660.5 MHz shall not cause harmful interference to stations in the radio astronomy service.

S5.377 In the band 1675–1710 MHz, stations in the mobile-satellite service shall not cause harmful interference to, nor constrain the development of, the meteorological-satellite and meteorological aids services (see Resolution 213 (Rev. WRC–95)) and the use of this band shall be subject to coordination under No. S9.11A.

S5.379 *Additional allocation:* in Bangladesh, India, Indonesia, Nigeria and Pakistan, the band 1660.5–1668.4 MHz is also allocated to the meteorological aids service on a secondary basis.

S5.379A Administrations are urged to give all practicable protection in the band 1660.5–1668.4 MHz for future research in radio astronomy, particularly by eliminating air-to-ground transmissions in the meteorological aids service in the band 1664.4–1668.4 MHz as soon as practicable.

S5.380 The bands 1670–1675 MHz and 1800–1805 MHz are intended for use, on a worldwide basis, by administrations wishing to implement aeronautical public correspondence. The use of the band 1670–1675 MHz by stations in the systems for public correspondence with aircraft is limited to transmissions from aeronautical stations and the use of the band 1800–1805 MHz is limited to transmissions from aircraft stations.

S5.381 *Additional allocation:* in Afghanistan, Costa Rica, Cuba, India, the Islamic Republic of Iran, Malaysia, Pakistan and Sri Lanka, the band 1690–1700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.382 *Different category of service:* in Saudi Arabia, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Bulgaria, the Congo, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guinea, Hungary, Iraq, Israel, Jordan, Kazakstan, Kuwait, the Former Yugoslav Republic of Macedonia, Lebanon, Mauritania, Moldova, Mongolia, Oman, Uzbekistan, Poland, Qatar, Syria, Kyrgyzstan, Romania, Russian Federation, Somalia, Tajikistan, Tanzania, Turkmenistan, Ukraine, Yemen and Yugoslavia, the allocation of the band 1690–1700 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. S5.33), and in the Democratic People's Republic of Korea, the allocation of the band 1690–1700 MHz to the fixed service is on a primary basis (see No. S5.33) and to the mobile, except aeronautical mobile, service on a secondary basis.

S5.384 *Additional allocation:* in India, Indonesia and Japan, the band 1700–1710 MHz is also allocated to the space research service (space-to-Earth) on a primary basis.

S5.385 *Additional allocation:* the bands 1718.8–1722.2 MHz, 150–151 GHz, 174.42–175.02 GHz, 177–177.4 GHz, 178.2–178.6 GHz, 181–181.46 GHz, 186.2–186.6 GHz and 257.5–258 GHz are also allocated to the radio astronomy service on a secondary basis for spectral line observations.

S5.386 *Additional allocation:* the band 1750–1850 MHz is also allocated to the space operation (Earth-to-space) and space research (Earth-to-space) services in Region 2, in Australia, India, Indonesia and Japan on a primary basis, subject to agreement obtained under No. S9.21, having particular regard to troposcatter systems.

S5.387 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Mali, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 1770–1790 MHz is also allocated to the meteorological-satellite service on a primary basis, subject to agreement obtained under No. S9.21.

S5.388 The bands 1885–2025 MHz and 2110–2200 MHz are intended for use, on a worldwide basis, by administrations wishing to implement International Mobile Telecommunications-2000 (IMT–2000). Such use does not preclude the use of these bands by other services to which they are allocated. The bands should be made available for IMT–2000 in accordance with Resolution 212 (Rev. WRC–97).

S5.389A The use of the bands 1980–2010 MHz and 2170–2200 MHz by the mobile-satellite service is subject to coordination under No. S9.11A and to the provisions of Resolution 716 (WRC–95). The use of these bands shall not commence before 1 January 2000; however the use of the band 1980–1990 MHz in Region 2 shall not commence before 1 January 2005.

S5.389B The use of the band 1980–1990 MHz by the mobile-satellite service shall not cause harmful interference to or constrain the development of the fixed and mobile services in Argentina, Brazil, Canada, Chile, Ecuador, the United States, Honduras, Jamaica, Mexico, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

S5.389C The use of the bands 2010–2025 MHz and 2160–2170 MHz in Region 2 by the mobile-satellite service shall not commence before 1 January 2002 and is subject to coordination under No. S9.11A and to the provisions of Resolution 716 (WRC–95).

S5.389D In Canada and the United States the use of the bands 2010–2025 MHz and 2160–2170 MHz by the mobile-satellite service shall not commence before 1 January 2000.

S5.389E The use of the bands 2010–2025 MHz and 2160–2170 MHz by the mobile-satellite service in Region 2 shall not cause harmful interference to or constrain the development of the fixed and mobile services in Regions 1 and 3.

S5.389F In Algeria, Benin, Cape Verde, Egypt, Mali, Syria and Tunisia, the use of the bands 1980–2010 MHz and 2170–2200 MHz by the mobile-satellite service shall neither cause harmful interference to the fixed and mobile services, nor hamper the development of those services prior to 1 January 2005, nor shall the former service request protection from the latter services.

S5.390 In Argentina, Brazil, Chile, Colombia, Cuba, Ecuador and Suriname, the use of the bands 2010–2025 MHz and 2160–2170 MHz by the mobile-satellite services shall not cause harmful interference to stations in the fixed and mobile services before 1 January 2005. After this date, the use of these bands is subject to coordination under No. S9.11A and to the provisions of Resolution 716 (WRC–95).

S5.391 In making assignments to the mobile service in the bands 2025–2110 MHz and 2200–2290 MHz, administrations shall not introduce high-density mobile systems, as described in Recommendation ITU–R SA.1154, and shall take that Recommendation into account for the introduction of any other type of mobile system.

S5.392 Administrations are urged to take all practicable measures to ensure that space-to-space transmissions between two or more non-geostationary satellites, in the space research, space operations and Earth exploration-satellite services in the bands 2025–2110 MHz and 2200–2290 MHz, shall not impose any constraints on Earth-to-space, space-to-Earth and other space-to-space transmissions of those services and in those bands between geostationary and non-geostationary satellites.

S5.392A *Additional allocation:* in Russian Federation, the band 2160–2200 MHz is also allocated to the space research service (space-to-Earth) on a primary basis until 1 January 2005. Stations in the space research service shall not cause harmful interference to, or claim protection from, stations in the fixed and mobile services operating in this frequency band.

S5.393 *Additional allocation:* in the United States, India and Mexico, the band 2310–2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (WARC–92).

S5.394 In the United States, the use of the band 2300–2390 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services. In Canada, the use of the band 2300–2483.5 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services.

S5.395 In France, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

S5.396 Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. S5.393 that may affect the services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33 (Rev. WRC–97). Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighbouring countries prior to their bringing into use.

S5.397 *Different category of service:* in France, the band 2450–2500 MHz is allocated

on a primary basis to the radiolocation service (see No. S5.33). Such use is subject to agreement with administrations having services operating or planned to operate in accordance with the Table of Frequency Allocations which may be affected.

S5.398 In respect of the radiodetermination-satellite service in the band 2483.5–2500 MHz, the provisions of No. S4.10 do not apply.

S5.399 In Region 1, in countries other than those listed in No. S5.400, harmful interference shall not be caused to, or protection shall not be claimed from, stations of the radiolocation service by stations of the radiodetermination satellite service.

S5.400 *Different category of service:* in Angola, Australia, Bangladesh, Burundi, China, Eritrea, Ethiopia, India, the Islamic Republic of Iran, Jordan, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Dem. Rep. of the Congo, Syria, Sudan, Swaziland, Togo and Zambia, the allocation of the band 2483.5–2500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21 from countries not listed in this provision.

S5.402 The use of the band 2483.5–2500 MHz by the mobile-satellite and the radiodetermination-satellite services is subject to the coordination under No. S9.11A. Administrations are urged to take all practicable steps to prevent harmful interference to the radio astronomy service from emissions in the 2483.5–2500 MHz band, especially those caused by second-harmonic radiation that would fall into the 4990–5000 MHz band allocated to the radio astronomy service worldwide.

S5.403 Subject to agreement obtained under No. S9.21, the band 2520–2535 MHz (until 1 January 2005 the band 2500–2535 MHz) may also be used for the mobile-satellite (space-to-Earth), except aeronautical mobile-satellite, service for operation limited to within national boundaries. The provisions of No. S9.11A apply.

S5.404 *Additional allocation:* in India and the Islamic Republic of Iran, the band 2500–2516.5 MHz may also be used for the radiodetermination-satellite service (space-to-Earth) for operation limited to within national boundaries, subject to agreement obtained under No. S9.21.

S5.405 *Additional allocation:* in France, the band 2500–2550 MHz is also allocated to the radiolocation service on a primary basis. Such use is subject to agreement with the administrations having services operating or planned to operate in accordance with the Table which may be affected.

S5.407 In the band 2500–2520 MHz, the power flux-density at the surface of the Earth from space stations operating in the mobile-satellite (space-to-Earth) service shall not exceed -152 dB(W/m²/4 kHz) in Argentina, unless otherwise agreed by the administrations concerned.

S5.408 *Additional allocation:* in the United Kingdom, the band 2500–2600 MHz is also allocated to the radiolocation service on a secondary basis.

S5.409 Administrations shall make all practicable efforts to avoid developing new tropospheric scatter systems in the band 2500–2690 MHz.

S5.410 The band 2500–2690 MHz may be used for tropospheric scatter systems in Region 1, subject to agreement obtained under No. S9.21.

S5.411 When planning new tropospheric scatter radio-relay links in the band 2500–2690 MHz, all possible measures shall be taken to avoid directing the antennae of these links towards the geostationary-satellite orbit.

S5.412 *Alternative allocation:* in Azerbaijan, Bulgaria, Kyrgyzstan, Turkmenistan and Ukraine, the band 2500–2690 MHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.413 In the design of systems in the broadcasting-satellite service in the bands between 2500 MHz and 2690 MHz, administrations are urged to take all necessary steps to protect the radio astronomy service in the band 2690–2700 MHz.

S5.414 The allocation of the frequency band 2500–2520 MHz to the mobile-satellite service (space-to-Earth) shall be effective on 1 January 2005 and is subject to coordination under No. S9.11A.

S5.415 The use of the bands 2500–2690 MHz in Region 2 and 2500–2535 MHz and 2655–2690 MHz in Region 3 by the fixed-satellite service is limited to national and regional systems, subject to agreement obtained under No. S9.21, giving particular attention to the broadcasting-satellite service in Region 1. In the direction space-to-Earth, the power flux-density at the Earth's surface shall not exceed the values given in Article S21, Table S21–4.

S5.415A *Additional allocation:* in Japan, subject to agreement obtained under No. S9.21, the band 2515–2535 MHz may also be used for the aeronautical mobile-satellite service (space-to-Earth) for operation limited to within its national boundary from 1 January 2000.

S5.416 The use of the band 2520–2670 MHz by the broadcasting-satellite service is limited to national and regional systems for community reception, subject to agreement obtained under No. S9.21. The power flux-density at the Earth's surface shall not exceed the values given in Article S21, Table S21–4.

S5.417 *Alternative allocation:* in Germany and Greece, the band 2520–2670 MHz is allocated to the fixed service on a primary basis.

S5.418 *Additional allocation:* in Bangladesh, Belarus, China, Rep. of Korea, India, Japan, Pakistan, Russian Federation, Singapore, Sri Lanka, Thailand and Ukraine the band 2535–2655 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to provisions of Resolution 528 (WARC–92). The provisions of No. S5.416 and Article S21, Table S21–4, do not apply to this additional allocation.

S5.419 The allocation of the frequency band 2670–2690 MHz to the mobile-satellite service shall be effective from 1 January 2005. When introducing systems of the mobile-satellite service in this band, administrations shall take all necessary steps to protect the satellite systems operating in this band prior to 3 March 1992. The coordination of mobile-satellite systems in the band shall be in accordance with No. S9.11A.

S5.420 The band 2655–2670 MHz (until 1 January 2005 the band 2655–2690 MHz) may also be used for the mobile-satellite (Earth-to-space), except aeronautical mobile-satellite, service for operation limited to within national boundaries, subject to agreement obtained under No. S9.21. The coordination under No. S9.11A applies.

S5.420A *Additional allocation:* in Japan, subject to agreement obtained under No. S9.21, the band 2670–2690 MHz may also be used for the aeronautical mobile-satellite service (Earth-to-space) for operation limited to within its national boundary from 1 January 2000.

S5.421 *Additional allocation:* in Germany and Austria, the band 2690–2695 MHz is also allocated to the fixed service on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

S5.422 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Brunei Darussalam, the Central African Republic, the Congo, Côte d'Ivoire, Cuba, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Georgia, Guinea, Guinea-Bissau, the Islamic Republic of Iran, Iraq, Israel, Jordan, Kazakstan, Lebanon, Malaysia, Mali, Morocco, Mauritania, Moldova, Mongolia, Nigeria, Oman, Uzbekistan, Pakistan, the Philippines, Qatar, Syria, Kyrgyzstan, Dem Rep. of the Congo, Romania, Russian Federation, Somalia, Tajikistan, Tunisia, Turkmenistan, Ukraine, Yemen, Yugoslavia and Zambia, the band 2690–2700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

S5.423 In the band 2700–2900 MHz, ground-based radars used for meteorological purposes are authorized to operate on a basis of equality with stations of the aeronautical radionavigation service.

S5.424 *Additional allocation:* in Canada, the band 2850–2900 MHz is also allocated to the maritime radionavigation service, on a primary basis, for use by shore-based radars.

S5.425 In the band 2900–3100 MHz, the use of the shipborne interrogator-transponder system (SIT) shall be confined to the sub-band 2930–2950 MHz.

S5.426 The use of the band 2900–3100 MHz by the aeronautical radionavigation service is limited to ground-based radars.

S5.427 In the bands 2900–3100 MHz and 9300–9500 MHz, the response from radar transponders shall not be capable of being confused with the response from radar beacons (racons) and shall not cause interference to ship or aeronautical radars in the radionavigation service, having regard, however, to No. S4.9.

S5.428 *Additional allocation:* in Azerbaijan, Bulgaria, Cuba, Kazakstan, Mongolia, Poland, Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 3100–3300 MHz is also allocated to the radionavigation service on a primary basis.

S5.429 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, China, the Congo, the Republic of Korea, the United Arab Emirates, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Libya, Malaysia, Oman, Pakistan, Qatar, Syria, Democratic People's Republic of Korea and Yemen, the band 3300–3400 MHz is also allocated to the fixed and mobile services on a primary basis. The countries bordering the Mediterranean shall not claim protection for their fixed and mobile services from the radiolocation service.

S5.430 *Additional allocation:* in Azerbaijan, Bulgaria, Cuba, Mongolia, Poland, Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 3300–3400 MHz is also allocated to the radionavigation service on a primary basis.

S5.431 *Additional allocation:* in Germany, Israel, Nigeria and the United Kingdom, the band 3400–3475 MHz is also allocated to the amateur service on a secondary basis.

S5.432 *Different category of service:* in the Republic of Korea, Indonesia, Japan and Pakistan, the allocation of the band 3400–3500 MHz to the mobile, except aeronautical mobile, service is on a primary basis (see No. S5.33).

S5.433 In Regions 2 and 3, in the band 3400–3600 MHz the radiolocation service is allocated on a primary basis. However, all administrations operating radiolocation systems in this band are urged to cease operations by 1985. Thereafter, administrations shall take all practicable steps to protect the fixed-satellite service and coordination requirements shall not be imposed on the fixed-satellite service.

S5.435 In Japan, in the band 3620–3700 MHz, the radiolocation service is excluded.

S5.437 *Additional allocation:* in Germany and Norway, the band 4200–4210 MHz is also allocated to the fixed service on a secondary basis.

S5.438 Use of the band 4200–4400 MHz by the aeronautical radionavigation service is reserved exclusively for radio altimeters installed on board aircraft and for the associated transponders on the ground. However, passive sensing in the earth exploration-satellite and space research services may be authorized in this band on a secondary basis (no protection is provided by the radio altimeters).

S5.439 *Additional allocation:* in China, the Islamic Republic of Iran and Libya, the band 4200–4400 MHz is also allocated to the fixed service on a secondary basis.

S5.440 The standard frequency and time signal-satellite service may be authorized to use the frequency 4202 MHz for space-to-Earth transmissions and the frequency 6427 MHz for Earth-to-space transmissions. Such transmissions shall be confined within the limits of ± 2 MHz of these frequencies, subject to agreement obtained under No. S9.21.

S5.441 The use of the bands 4500–4800 MHz (space-to-Earth), 6725–7025 MHz (Earth-to-space) by the fixed-satellite service shall be in accordance with the provisions of Appendix S30B. The use of the bands 10.7–10.95 GHz (space-to-Earth), 11.2–11.45 GHz (space-to-Earth) and 12.75–13.25 GHz (Earth-to-space) by geostationary-satellite systems in the fixed-satellite service shall be in accordance with the provisions of Appendix S30B. The use of the bands 10.7–10.95 GHz (space-to-Earth), 11.2–11.45 GHz (space-to-Earth) and 12.75–13.25 GHz (Earth-to-space) by non-geostationary-satellite systems in the fixed-satellite service shall be in accordance with the provisions of Resolution 130 (WRC–97).

S5.442 In the bands 4825–4835 MHz and 4950–4990 MHz, the allocation to the mobile service is restricted to the mobile, except aeronautical mobile, service.

S5.443 *Different category of service:* in Argentina, Australia and Canada, the allocation of the bands 4825–4835 MHz and 4950–4990 MHz to the radio astronomy service is on a primary basis (see No. S5.33).

S5.444 The band 5000–5150 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band. For the use of this band, No. S5.444A and Resolution 114 (WRC–95) apply.

S5.444A *Additional allocation:* the band 5091–5150 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis. This allocation is limited to feeder links of non-geostationary mobile-satellite systems and is subject to coordination under No. S9.11A.

In the band 5091–5150 MHz, the following conditions also apply:

—prior to 1 January 2010, the use of the band 5091–5150 MHz by feeder links of non-geostationary-satellite systems in the mobile-satellite service shall be made in accordance with Resolution 114 (WRC–95);

—prior to 1 January 2010, the requirements of existing and planned international standard systems for the aeronautical radionavigation service which cannot be met in the 5000–5091 MHz band, shall take precedence over other uses of this band;

—after 1 January 2008, no new assignments shall be made to stations providing feeder links of non-geostationary mobile-satellite systems;

—after 1 January 2010, the fixed-satellite service will become secondary to the aeronautical radionavigation service.

S5.446 *Additional allocation:* in the countries listed in Nos. S5.369 and S5.400, the band 5150–5216 MHz is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis, subject to agreement obtained under No. S9.21. In Region 2, the band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In Regions 1 and 3, except those countries listed in Nos. S5.369 and S5.400, the band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a secondary basis. The use by the radiodetermination-satellite service is limited to feeder links in conjunction with the radiodetermination-satellite service operating in the bands 1610–1626.5 MHz and/or 2483.5–2500 MHz. The total power flux-density at the Earth's surface shall in no case exceed −159 dBW/m² in any 4 kHz band for all angles of arrival.

S5.447 *Additional allocation:* in Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Israel, Italy, Japan, Jordan, Lebanon, Liechtenstein, Luxembourg, Malta, Morocco, Norway, Pakistan, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland and Tunisia, the band 5150–5250 MHz is also allocated to the mobile service, on a primary basis, subject to agreement obtained under No. S9.21.

S5.447A The allocation to the fixed-satellite service (Earth-to-space) is limited to feeder links of non-geostationary-satellite systems in the mobile-satellite service and is subject to coordination under No. S9.11A.

S5.447B *Additional allocation:* the band 5150–5216 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis. This allocation is limited to feeder links of non-geostationary-satellite systems in the mobile-satellite service and is subject to provisions of No. S9.11A. The power flux-density at the Earth's surface produced by space stations of the fixed-satellite service operating in the space-to-Earth direction in the band 5150–5216 MHz shall in no case exceed −164 dB(W/m²) in any 4 kHz band for all angles of arrival.

S5.447C Administrations responsible for fixed-satellite service networks in the band 5150–5250 MHz operated under Nos. S5.447A and S5.447B shall coordinate on an equal basis in accordance with No. S9.11A with administrations responsible for non-geostationary-satellite networks operated under No. S5.446 and brought into use prior to 17 November 1995. Satellite networks operated under No. S5.446 brought into use after 17 November 1995 shall not claim protection from, and shall not cause harmful interference to, stations of the fixed-satellite service operated under Nos. S5.447A and S5.447B.

S5.447D The allocation of the band 5250–5255 MHz to the space research service on a primary basis is limited to active spaceborne sensors. Other uses of the band by the space research service are on a secondary basis.

S5.448 *Additional allocation:* in Austria, Azerbaijan, Bulgaria, Libya, Mongolia, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Turkmenistan and Ukraine, the band 5250–5350 MHz is also allocated to the radionavigation service on a primary basis.

S5.448A The use of the frequency band 5250–5350 MHz by the earth exploration-satellite (active) and space research (active) services shall not constrain the future development and deployment of the radiolocation service.

S5.448B The earth exploration-satellite (active) service operating in the band 5350–5460 MHz shall not cause harmful interference to, or constrain the use and development of, the aeronautical radionavigation service.

S5.449 The use of the band 5350–5470 MHz by the aeronautical radionavigation service is limited to airborne radars and associated airborne beacons.

S5.450 *Additional allocation:* in Austria, Azerbaijan, Bulgaria, the Islamic Republic of Iran, Mongolia, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Turkmenistan and

Ukraine, the band 5470–5650 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.451 *Additional allocation:* in the United Kingdom, the band 5470–5850 MHz is also allocated to the land mobile service on a secondary basis. The power limits specified in Nos. S21.2, S21.3, S21.4 and S21.5 shall apply in the band 5725–5850 MHz.

S5.452 Between 5600 MHz and 5650 MHz, ground-based radars used for meteorological purposes are authorized to operate on a basis of equality with stations of the maritime radionavigation service.

S5.453 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, the Central African Republic, China, the Congo, the Republic of Korea, Egypt, the United Arab Emirates, Gabon, Guinea, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Libya, Madagascar, Malaysia, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syria, Democratic People's Republic of Korea, Singapore, Swaziland, Tanzania, Chad, and Yemen, the band 5650–5850 MHz is also allocated to the fixed and mobile services on a primary basis.

S5.454 *Different category of service:* in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Kazakstan, Mongolia, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 5670–5725 MHz to the space research service is on a primary basis (see No. S5.33).

S5.455 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Cuba, Georgia, Hungary, Kazakstan, Latvia, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 5670–5850 MHz is also allocated to the fixed service on a primary basis.

S5.456 *Additional allocation:* in Germany and in Cameroon, the band 5755–5850 MHz is also allocated to the fixed service on a primary basis.

S5.458 In the band 6425–7075 MHz, passive microwave sensor measurements are carried out over the oceans. In the band 7075–7250 MHz, passive microwave sensor measurements are carried out. Administrations should bear in mind the needs of the Earth exploration-satellite (passive) and space research (passive) services in their future planning of the bands 6425–7025 MHz and 7075–7250 MHz.

S5.458A In making assignments in the band 6700–7075 MHz to space stations of the fixed-satellite service, administrations are urged to take all practicable steps to protect spectral line observations of the radio astronomy service in the band 6650–6675.2 MHz from harmful interference from unwanted emissions.

S5.458B The space-to-Earth allocation to the fixed-satellite service in the band 6700–7075 MHz is limited to feeder links for non-geostationary satellite systems of the mobile-satellite service and is subject to coordination under No. S9.11A. The use of the band 6700–7075 MHz (space-to-Earth) by feeder links for non-geostationary satellite systems in the mobile-satellite service is not subject to No. S22.2.

S5.458C Administrations making submissions in the band 7025–7075 MHz (Earth-to-space) for geostationary-satellite systems in the fixed-satellite service after 17 November 1995 shall consult on the basis of relevant ITU-R Recommendations with the administrations that have notified and brought into use non-geostationary-satellite systems in this frequency band before 18 November 1995 upon request of the latter administrations. This consultation shall be with a view to facilitating shared operation of both geostationary-satellite systems in the fixed-satellite service and non-geostationary-satellite systems in this band.

S5.459 *Additional allocation:* in Russian Federation, the frequency bands 7100–7155 MHz and 7190–7235 MHz are also allocated to the space operation service (Earth-to-space) on a primary basis, subject to agreement obtained under No. S9.21.

S5.460 *Additional allocation:* the band 7145–7235 MHz is also allocated to the space research (Earth-to-space) service on a primary basis, subject to agreement obtained under No. S9.21. The use of the band 7145–7190 MHz is restricted to deep space; no emissions to deep space shall be effected in the band 7190–7235 MHz.

S5.461 *Additional allocation:* the bands 7250–7375 MHz (space-to-Earth) and 7900–8025 MHz (Earth-to-space) are also allocated to the mobile-satellite service on a primary basis, subject to agreement obtained under No. S9.21.

S5.461A The use of the band 7450–7550 MHz by the meteorological-satellite service (space-to-Earth) is limited to geostationary-satellite systems. Non-geostationary meteorological-satellite systems in this band notified before 30 November 1997 may continue to operate on a primary basis until the end of their lifetime.

S5.461B The use of the band 7750–7850 MHz by the meteorological-satellite service (space-to-Earth) is limited to non-geostationary satellite systems.

S5.462A In Regions 1 and 3 (except for Japan), in the band 8025–8400 MHz, the earth exploration-satellite service using geostationary satellites shall not produce a power flux-density in excess of the following provisional values for angles of arrival (θ), without the consent of the affected administration:

—174 dB(W/m²) in a 4 kHz band for $0° \leq \theta < 5°$

—174 + 0.5 (θ − 5) dB(W/m²) in a 4 kHz band for $5° \leq \theta < 25°$

—164 dB(W/m²) in a 4 kHz band for $25° \leq \theta \leq 90°$

These values are subject to study under Resolution 124 (WRC–97).

S5.463 Aircraft stations are not permitted to transmit in the band 8025–8400 MHz.

S5.465 In the space research service, the use of the band 8400–8450 MHz is limited to deep space.

S5.466 *Different category of service:* in Israel, Malaysia, Singapore and Sri Lanka, the allocation of the band 8400–8500 MHz to the space research service is on a secondary basis (see No. S5.32).

S5.467 *Alternative allocation:* in the United Kingdom, the band 8400–8500 MHz is allocated to the radiolocation and space research services on a primary basis.

S5.468 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burundi, Cameroon, China, the Congo, Costa Rica, Egypt, the United Arab Emirates, Gabon, Guyana, Indonesia, the Islamic Republic of Iran, Iraq, Jamaica, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, Qatar, Syria, Democratic People's Republic of Korea, Senegal, Singapore, Somalia, Swaziland, Tanzania, Chad, Togo, Tunisia and Yemen, the band 8500–8750 MHz is also allocated to the fixed and mobile services on a primary basis.

S5.469 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakstan, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the band 8500–8750 MHz is also allocated to the land mobile and radionavigation services on a primary basis.

S5.469A In the band 8550–8650 MHz, stations in the earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, or constrain the use and development of, stations of the radiolocation service.

S5.470 The use of the band 8750–8850 MHz by the aeronautical radionavigation service is limited to airborne Doppler navigation aids on a centre frequency of 8800 MHz.

S5.471 *Additional allocation:* in Algeria, Germany, Bahrain, Belgium, China, the United Arab Emirates, France, Greece, Indonesia, the Islamic Republic of Iran, Libya, the Netherlands, Qatar and Sudan, the bands 8825–8850 MHz and 9000–9200 MHz are also allocated to the maritime radionavigation service, on a primary basis, for use by shore-based radars only.

S5.472 In the bands 8850–9000 MHz and 9200–9225 MHz, the maritime radionavigation service is limited to shore-based radars.

S5.473 *Additional allocation:* in Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Cuba, Georgia, Hungary, Kazakstan, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan. Slovakia, the Czech Republic, Romania, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the bands 8850–9000 MHz and 9200–9300 MHz are also allocated to the radionavigation service on a primary basis.

S5.474 In the band 9200–9500 MHz, search and rescue transponders (SART) may be used, having due regard to the appropriate ITU–R Recommendation (see also Article S31).

S5.475 The use of the band 9300–9500 MHz by the aeronautical radionavigation service is limited to airborne weather radars and ground-based radars. In addition, ground-based radar beacons in the aeronautical radionavigation service are permitted in the band 9300–9320 MHz on condition that harmful interference is not caused to the maritime radionavigation service. In the band 9300–9500 MHz, ground-based radars used for meteorological purposes have priority over other radiolocation devices.

S5.476 In the band 9300–9320 MHz in the radionavigation service, the use of shipborne radars, other than those existing on 1 January 1976, is not permitted until 1 January 2001.

S5.476A In the band 9500–9800 MHz, stations in the earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, or constrain the use and development of, stations of the radionavigation and radiolocation services.

S5.477 *Different category of service:* in Algeria, Saudi Arabia, Austria, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, the Republic of Korea, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, the Islamic Republic of Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Liberia, Malaysia, Nigeria, Oman, Pakistan, Qatar, Democratic People's Republic of Korea, Singapore, Somalia, Sudan, Sweden, Trinidad and Tobago, and Yemen, the allocation of the band 9800–10,000 MHz to the fixed service is on a primary basis (see No. S5.33).

S5.478 *Additional allocation:* in Azerbaijan, Bulgaria, Kazakstan, Mongolia, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Turkmenistan and Ukraine, the band 9800–10,000 MHz is also allocated to the radionavigation service on a primary basis.

S5.479 The band 9975–10,025 MHz is also allocated to the meteorological-satellite service on a secondary basis for use by weather radars.

S5.480 *Additional allocation:* in Brazil, Costa Rica, Ecuador, Guatemala, Honduras and Mexico, the band 10–10.45 GHz is also allocated to the fixed and mobile services on a primary basis.

S5.481 *Additional allocation:* in Germany, Angola, China, Ecuador, Spain, Japan, Morocco, Nigeria, Oman, Democratic People's Republic of Korea, Sweden, Tanzania and Thailand, the band 10.45–10.5 GHz is also allocated to the fixed and mobile services on a primary basis.

S5.482 In the band 10.6–10.68 GHz, stations of the fixed and mobile, except aeronautical mobile, services shall be limited to a maximum equivalent isotropically radiated power of 40 dBW and the power delivered to the antenna shall not exceed −3 dBW. These limits may be exceeded subject to agreement obtained under No. S9.21. However, in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, China, the United Arab Emirates, Georgia, India, Indonesia, the Islamic Republic of Iran, Iraq, Japan, Kazakstan, Kuwait, Latvia, Lebanon, Moldova, Nigeria, Uzbekistan, Pakistan, the Philippines, Qatar, Syria, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the restrictions on the fixed and mobile, except aeronautical mobile, services are not applicable.

S5.483 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, China, Colombia, the Republic of Korea, Costa Rica, Egypt, the United Arab Emirates, Georgia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kazakstan, Kuwait, Latvia, Lebanon, Moldova, Mongolia, Uzbekistan, Pakistan, Qatar, Kyrgyzstan, Democratic People's Republic of Korea, Romania, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Yemen and Yugoslavia, the band 10.68–10.7 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

S5.484 In Region 1, the use of the band 10.7–11.7 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service.

S5.484A The use of the bands 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) in Region 2, 12.2–12.75 GHz (space-to-Earth) in Region 3, 12.5–12.75 GHz (space-to-Earth) in Region 1, 13.75–14.5 GHz (Earth-to-space), 17.8–18.6 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 27.5–28.6 GHz (Earth-to-space), 29.5–30 GHz (Earth-to-space) by non-geostationary- and geostationary-satellite systems in the fixed-satellite service is subject to the provisions of Resolution 130 (WRC–97). The use of the band 17.8–18.1 GHz (space-to-Earth) by non-geostationary fixed-satellite service systems is also subject to the provisions of Resolution 538 (WRC–97).

S5.485 In Region 2, in the band 11.7–12.2 GHz, transponders on space stations in the fixed-satellite service may be used additionally for transmissions in the broadcasting-satellite service, provided that such transmissions do not have a maximum e.i.r.p. greater than 53 dBW per television channel and do not cause greater interference or require more protection from interference than the coordinated fixed-satellite service frequency assignments. With respect to the space services, this band shall be used principally for the fixed-satellite service.

S5.486 *Different category of service:* in Mexico and the United States, the allocation of the band 11.7–12.1 GHz to the fixed service is on a secondary basis (see No. S5.32).

S5.487 In the band 11.7–12.5 GHz in Regions 1 and 3, the fixed, fixed-satellite, mobile, except aeronautical mobile, and broadcasting services, in accordance with their respective allocations, shall not cause harmful interference to broadcasting-satellite stations operating in accordance with the provisions of Appendix S30.

S5.487A *Additional allocation:* in Region 1, the band 11.7–12.5 GHz, in Region 2, the band 12.2–12.7 GHz and, in Region 3, the band 11.7–12.2 GHz, are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to non-geostationary systems and subject to the provisions of Resolution 538 (WRC–97).

S5.488 The use of the bands 11.7–12.2 GHz by the fixed-satellite service in Region 2 and 12.2–12.7 GHz by the broadcasting-satellite service in Region 2 is limited to national and subregional systems. The use of the band 11.7–12.2 GHz by the fixed-satellite service in Region 2 is subject to previous agreement between the administrations concerned and those having services, operating or planned to operate in accordance with the Table, which may be affected (see Articles S9 and S11). For the use of the band 12.2–12.7 GHz by the broadcasting-satellite service in Region 2, see Appendix S30.

S5.489 *Additional allocation:* in Peru, the band 12.1–12.2 GHz is also allocated to the fixed service on a primary basis.

S5.490 In Region 2, in the band 12.2–12.7 GHz, existing and future terrestrial radiocommunication services shall not cause harmful interference to the space services operating in conformity with the broadcasting-satellite Plan for Region 2 contained in Appendix S30.

S5.491 *Additional allocation:* in Region 3, the band 12.2–12.5 GHz is also allocated to the fixed-satellite (space-to-Earth) service on a primary basis, limited to national and sub-regional systems. The power flux-density limits in Article S21, Table S21–4 shall apply to this frequency band. The introduction of the service in relation to the broadcasting-satellite service in Region 1 shall follow the procedures specified in Article 7 of Appendix S30, with the applicable frequency band extended to cover 12.2–12.5 GHz.

S5.492 Assignments to stations of the broadcasting-satellite service in conformity with the appropriate regional Plan in Appendix S30 may also be used for transmissions in the fixed-satellite service (space-to-Earth), provided that such transmissions do not cause more interference or require more protection from interference than the broadcasting-satellite service transmissions operating in conformity with this Plan. With respect to the space services, this band shall be used principally for the broadcasting-satellite service.

S5.493 The broadcasting-satellite service in the band 12.5–12.75 GHz in Region 3 is limited to a power flux-density not exceeding −111 dB(W/m²)/27 MHz for all conditions and for all methods of modulation at the edge of the service area.

S5.494 *Additional allocation:* in Algeria, Angola, Saudi Arabia, Bahrain, Cameroon, the Central African Republic, the Congo, Côte d'Ivoire, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Madagascar, Mali, Morocco, Mongolia, Nigeria, Qatar, Dem. Rep. of the Congo, Syria, Senegal, Somalia, Sudan, Chad, Togo and Yemen, the band 12.5–12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

S5.495 *Additional allocation:* in Bosnia and Herzegovina, Croatia, Denmark, France, Greece, Liechtenstein, Monaco, Norway, Uganda, Portugal, Romania, Slovenia, Switzerland, Tanzania, Tunisia and Yugoslavia, the band 12.5–12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

S5.496 *Additional allocation:* in Austria, Azerbaijan, Kyrgyzstan, Turkmenistan and Ukraine, the band 12.5–12.75 GHz is also allocated to the fixed service and the mobile, except aeronautical mobile, service on a primary basis. However, stations in these services shall not cause harmful interference to fixed-satellite service earth stations of countries in Region 1 other than those listed in this footnote. Coordination of these earth

stations is not required with stations of the fixed and mobile services of the countries listed in this footnote. The power flux-density limit at the Earth's surface given in Article S21, Table S21–4, for the fixed-satellite service shall apply on the territory of the countries listed in this footnote.

S5.497 The use of the band 13.25–13.4 GHz by the aeronautical radionavigation service is limited to Doppler navigation aids.

S5.498A The Earth exploration-satellite (active) and space research (active) services operating in the band 13.25–13.4 GHz shall not cause harmful interference to, or constrain the use and development of, the aeronautical radionavigation service.

S5.499 *Additional allocation:* in Bangladesh, India and Pakistan, the band 13.25–14 GHz is also allocated to the fixed service on a primary basis.

S5.500 *Additional allocation:* in Algeria, Angola, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, the Republic of Korea, Egypt, the United Arab Emirates, Gabon, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Malaysia, Mali, Malta, Morocco, Mauritania, Nigeria, Pakistan, Qatar, Syria, Senegal, Singapore, Sudan, Chad and Tunisia, the band 13.4–14 GHz is also allocated to the fixed and mobile services on a primary basis.

S5.501 *Additional allocation:* in Austria, Azerbaijan, Bulgaria, Hungary, Japan, Mongolia, Kyrgyzstan, Romania, the United Kingdom, Turkmenistan and Ukraine, the band 13.4–14 GHz is also allocated to the radionavigation service on a primary basis.

S5.501A The allocation of the band 13.4–13.75 GHz to the space research service on a primary basis is limited to active spaceborne sensors. Other uses of the band by the space research service are on a secondary basis.

S5.501B In the band 13.4–13.75 GHz, the Earth exploration-satellite (active) and space research (active) services shall not cause harmful interference to, or constrain the use and development of, the radiolocation service.

S5.502 In the band 13.75–14 GHz, the e.i.r.p. of any emission from an earth station in the fixed-satellite service shall be at least 68 dBW, and should not exceed 85 dBW, with a minimum antenna diameter of 4.5 m. In addition the e.i.r.p., averaged over one second, radiated by a station in the radiolocation or radionavigation services towards the geostationary-satellite orbit shall not exceed 59 dBW.

S5.503 In the band 13.75–14 GHz, geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 shall operate on an equal basis with stations in the fixed-satellite service; after that date, new geostationary space stations in the space research service will operate on a secondary basis. The e.i.r.p. density of emissions from any earth station in the fixed-satellite service shall not exceed 71 dBW in any 6 MHz band in the frequency range 13.772–13.778 GHz until those geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 cease to operate in this band. Automatic power control may be used to increase the e.i.r.p. density above 71 dBW in any 6 MHz band in this frequency range to compensate for rain attenuation, to the extent that the power-flux density at the fixed-satellite service space station does not exceed the value resulting from use of an e.i.r.p. of 71 dBW in any 6 MHz band in clear sky conditions.

S5.503A Until 1 January 2000, stations in the fixed-satellite service shall not cause harmful interference to non-geostationary space stations in the space research and Earth exploration-satellite services. After that date, these non-geostationary space stations will operate on a secondary basis in relation to the fixed-satellite service. Additionally, when planning earth stations in the fixed-satellite service to be brought into service between 1 January 2000 and 1 January 2001, in order to accommodate the needs of spaceborne precipitation radars operating in the band 13.793–13.805 GHz, advantage should be taken of the consultation process and the information given in Recommendation ITU–R SA.1071.

S5.504 The use of the band 14–14.3 GHz by the radionavigation service shall be such as to provide sufficient protection to space stations of the fixed-satellite service.

S5.505 *Additional allocation:* in Algeria, Angola, Saudi Arabia, Australia, Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, the Congo, the Republic of Korea, Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lesotho, Lebanon, Malaysia, Mali, Morocco, Mauritania, Oman, Pakistan, the Philippines, Qatar, Syria, the Democratic People's Republic of Korea, Senegal, Singapore, Somalia, Sudan, Swaziland, Tanzania, Chad and Yemen, the band 14–14.3 GHz is also allocated to the fixed service on a primary basis.

S5.506 The band 14–14.5 GHz may be used, within the fixed-satellite service (Earth-to-space), for feeder links for the broadcasting-satellite service, subject to coordination with other networks in the fixed-satellite service. Such use of feeder links is reserved for countries outside Europe.

S5.508 *Additional allocation:* in Germany, Austria, Bosnia and Herzegovina, France, Greece, Ireland, Iceland, Italy, The Former Yugoslav Republic of Macedonia, Libya, Liechtenstein, Portugal, the United Kingdom, Slovenia, Switzerland, Turkey and Yugoslavia, the band 14.25–14.3 GHz is also allocated to the fixed service on a primary basis.

S5.509 *Additional allocation:* in Japan and Pakistan the band 14.25–14.3 GHz is also allocated to the mobile, except aeronautical mobile, service on a primary basis.

S5.510 The use of the band 14.5–14.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service. This use is reserved for countries outside Europe.

S5.511 *Additional allocation:* in Saudi Arabia, Bahrain, Bosnia and Herzegovina, Cameroon, Egypt, the United Arab Emirates, Guinea, the Islamic Republic of Iran, Iraq, Israel, Kuwait, Lebanon, Libya, Pakistan, Qatar, Syria, Slovenia, Somalia and Yugoslavia, the band 15.35–15.4 GHz is also allocated to the fixed and mobile services on a secondary basis.

S5.511A Use of the band 15.43–15.63 GHz by the fixed-satellite service (space-to-Earth (see Resolution 123 (WRC–97)) and Earth-to-space) is limited to feeder links of non-geostationary systems in the mobile-satellite service, subject to coordination under No. S9.11A. In the space-to-Earth direction, the minimum earth station elevation angle above and gain towards the local horizontal plane and the minimum coordination distances to protect an earth station from harmful interference shall be in accordance with Recommendation ITU–R S.1341. Also in the space-to-Earth direction, harmful interference shall not be caused to stations of the radio astronomy service using the band 15.35–15.4 GHz. The threshold levels of interference and associated power flux-density limits which are detrimental to the radio astronomy service are given in Recommendation ITU–R RA.769–1. Special measures will need to be employed to protect the radio astronomy service in the band 15.35–15.4 GHz.

S5.511C Stations operating in the aeronautical radionavigation service shall limit the effective e.i.r.p. in accordance with Recommendation ITU–R S.1340. The minimum coordination distance required to protect the aeronautical radionavigation stations (No. S4.10 applies) from harmful interference from feeder-link earth stations and the maximum e.i.r.p. transmitted towards the local horizontal plane by a feeder-link earth station shall be in accordance with Recommendation ITU–R S.1340.

S5.511D Fixed-satellite service systems for which complete information for advance publication has been received by the Bureau by 21 November 1997 may operate in the bands 15.4–15.43 GHz and 15.63–15.7 GHz in the space-to-Earth direction and 15.63–15.65 GHz in the Earth-to-space direction. In the bands 15.4–15.43 GHz and 15.65–15.7 GHz, emissions from a non-geostationary space station shall not exceed the power flux-density limits at the Earth's surface of −146 dB(W/m²/MHz) for any angle of arrival. In the band 15.63–15.65 GHz, where an administration plans emissions from a non-geostationary space station that exceed −146 dB(W/m²/MHz) for any angle of arrival, it shall coordinate under No. S9.11A with the affected administrations. Stations in the fixed-satellite service operating in the band 15.63–15.65 GHz in the Earth-to-space direction shall not cause harmful interference to stations in the aeronautical radionavigation service (No. S4.10 applies).

S5.512 *Additional allocation:* in Algeria, Angola, Saudi Arabia, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Cameroon, the Congo, Costa Rica, Egypt, El Salvador, the United Arab Emirates, Finland, Guatemala, India, Indonesia, the Islamic Republic of Iran, Jordan, Kuwait, Libya, Malaysia, Morocco, Mozambique, Nepal, Nicaragua, Oman, Pakistan, Qatar, Singapore, Slovenia, Somalia, Sudan, Swaziland, Tanzania, Chad,

Yemen and Yugoslavia, the band 15.7–17.3 GHz is also allocated to the fixed and mobile services on a primary basis.

S5.513 *Additional allocation:* in Israel, the band 15.7–17.3 GHz is also allocated to the fixed and mobile services on a primary basis. These services shall not claim protection from or cause harmful interference to services operating in accordance with the Table in countries other than those included in No. S5.512.

S5.513A Spaceborne active sensors operating in the band 17.2–17.3 GHz shall not cause harmful interference to, or constrain the development of, the radiolocation and other services allocated on a primary basis.

S5.514 *Additional allocation:* in Algeria, Germany, Angola, Saudi Arabia, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Cameroon, Costa Rica, El Salvador, the United Arab Emirates, Finland, Guatemala, Honduras, India, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Libya, Nepal, Nicaragua, Oman, Pakistan, Qatar, Slovenia, Sudan, Sweden and Yugoslavia, the band 17.3–17.7 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits given in Nos. S21.3 and S21.5 shall apply.

S5.515 In the band 17.3–17.8 GHz, sharing between the fixed-satellite service (Earth-to-space) and the broadcasting-satellite service shall also be in accordance with the provisions of § 1 of Annex 4 of Appendix S30A/30A.

S5.516 The use of the band 17.3–18.1 GHz by geostationary-satellite systems in the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service. For the use of the band 17.3–17.8 GHz in Region 2 by feeder links for the broadcasting-satellite service in the band 12.2–12.7 GHz, see Article S11. The use of the bands 17.3–18.1 GHz (Earth-to-space) in Regions 1 and 3 and 17.8–18.1 GHz (Earth-to-space) in Region 2 by non-geostationary-satellite systems in the fixed-satellite service is subject to the provisions of Resolution 538 (WRC–97).

S5.517 In Region 2, the allocation to the broadcasting-satellite service in the band 17.3–17.8 GHz shall come into effect on 1 April 2007. After that date, use of the fixed-satellite (space-to-Earth) service in the band 17.7–17.8 GHz shall not claim protection from and shall not cause harmful interference to operating systems in the broadcasting-satellite service.

S5.518 *Different category of service:* in Region 2, the allocation of the band 17.7–17.8 GHz to the mobile service is on a primary basis until 31 March 2007.

S5.519 *Additional allocation:* the band 18.1–18.3 GHz is also allocated to the meteorological-satellite service (space-to-Earth) on a primary basis. Its use is limited to geostationary satellites and shall be in accordance with the provisions of Article S21, Table S21–4.

S5.520 The use of the band 18.1–18.4 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service.

S5.521 *Alternative allocation:* in Germany, Denmark, the United Arab Emirates, Greece, Slovakia and the Czech Republic, the band 18.1–18.4 GHz is allocated to the fixed, fixed-satellite (space-to-Earth) and mobile services on a primary basis (see No. S5.33). The provisions of No. S5.519 also apply.

S5.522 In making assignments to stations in the fixed and mobile services, administrations are invited to take account of passive sensors in the Earth-exploration satellite and space research services operating in the band 18.6–18.8 GHz. In this band, administrations should endeavour to limit as far as possible both the power delivered by the transmitter to the antenna and the e.i.r.p. in order to reduce the risk of interference to passive sensors to the minimum.

S5.523 In assigning frequencies to stations in the fixed-satellite service in the direction space-to-Earth, administrations are requested to limit as far as practicable the power flux-density at the Earth's surface in the band 18.6–18.8 GHz, in order to reduce the risk of interference to passive sensors in the earth exploration-satellite and space research services.

S5.523A The use of the bands 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) by geostationary and non-geostationary fixed-satellite service networks is subject to the application of the provisions of No. S9.11A and No. S22.2 does not apply. Administrations having geostationary-satellite networks under coordination prior to 18 November 1995 shall cooperate to the maximum extent possible to coordinate pursuant to No. S9.11A with non-geostationary-satellite networks for which notification information has been received by the Bureau prior to that date, with a view to reaching results acceptable to all the parties concerned. Non-geostationary-satellite networks shall not cause unacceptable interference to geostationary fixed-satellite service networks for which complete Appendix S4 notification information is considered as having been received by the Bureau prior to 18 November 1995.

S5.523B The use of the band 19.3–19.6 GHz (Earth-to-space) by the fixed-satellite service is limited to feeder links for non-geostationary-satellite systems in the mobile-satellite service. Such use is subject to the application of the provisions of No. S9.11A, and No. S22.2 does not apply.

S5.523C No. S22.2 of the Radio Regulations shall continue to apply in the bands 19.3–19.6 GHz and 29.1–29.4 GHz, between feeder links of non-geostationary mobile-satellite service networks and those fixed-satellite service networks for which complete Appendix S4 coordination information, or notification information, is considered as having been received by the Bureau prior to 18 November 1995.

S5.523D The use of the band 19.3–19.7 GHz (space-to-Earth) by geostationary fixed-satellite service systems and by feeder links for non-geostationary-satellite systems in the mobile-satellite service is subject to the application of the provisions of No. S9.11A, but not subject to the provisions of No. S22.2. The use of this band for other non-geostationary fixed-satellite service systems, or for the cases indicated in Nos. S5.523C and S5.523E, is not subject to the provisions of No. S9.11A and shall continue to be subject to Articles S9 (except No. S9.11A) and S11 procedures, and to the provisions of No. S22.2.

S5.523E No. S22.2 of the Radio Regulations shall continue to apply in the bands 19.6–19.7 GHz and 29.4–29.5 GHz, between feeder links of non-geostationary mobile-satellite service networks and those fixed-satellite service networks for which complete Appendix S4 coordination information, or notification information, is considered as having been received by the Bureau by 21 November 1997.

S5.524 *Additional allocation:* in Afghanistan, Algeria, Angola, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, China, the Congo, the Republic of Korea, Costa Rica, Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, Dem. Rep. of the Congo, Syria, Democratic People's Republic of Korea, Singapore, Somalia, Sudan, Tanzania, Chad, Togo and Tunisia, the band 19.7–21.2 GHz is also allocated to the fixed and mobile services on a primary basis. This additional use shall not impose any limitation on the power flux-density of space stations in the fixed-satellite service in the band 19.7–21.2 GHz and of space stations in the mobile-satellite service in the band 19.7–20.2 GHz where the allocation to the mobile-satellite service is on a primary basis in the latter band.

S5.525 In order to facilitate interregional coordination between networks in the mobile-satellite and fixed-satellite services, carriers in the mobile-satellite service that are most susceptible to interference shall, to the extent practicable, be located in the higher parts of the bands 19.7–20.2 GHz and 29.5–30 GHz.

S5.526 In the bands 19.7–20.2 GHz and 29.5–30 GHz in Region 2, and in the bands 20.1–20.2 GHz and 29.9–30 GHz in Regions 1 and 3, networks which are both in the fixed-satellite service and in the mobile-satellite service may include links between earth stations at specified or unspecified points or while in motion, through one or more satellites for point-to-point and point-to-multipoint communications.

S5.527 In the bands 19.7–20.2 GHz and 29.5–30 GHz, the provisions of No. S4.10 do not apply with respect to the mobile-satellite service.

S5.528 The allocation to the mobile-satellite service is intended for use by networks which use narrow spot-beam antennas and other advanced technology at the space stations. Administrations operating systems in the mobile-satellite service in the band 19.7–20.1 GHz in Region 2 and in the band 20.1–20.2 GHz shall take all practicable steps to ensure the continued availability of these bands for administrations operating fixed and mobile systems in accordance with the provisions of No. S5.524.

S5.529 The use of the bands 19.7–20.1 GHz and 29.5–29.9 GHz by the mobile-satellite service in Region 2 is limited to satellite networks which are both in the

fixed-satellite service and in the mobile-satellite service as described in No. S5.526.

S5.530 In Regions 1 and 3, the allocation to the broadcasting-satellite service in the band 21.4–22 GHz shall come into effect on 1 April 2007. The use of this band by the broadcasting-satellite service after that date and on an interim basis prior to that date is subject to the provisions of Resolution 525 (WARC–92).

S5.531 *Additional allocation:* in Japan, the band 21.4–22 GHz is also allocated to the broadcasting service on a primary basis.

S5.532 The use of the band 22.21–22.5 GHz by the Earth exploration-satellite (passive) and space research (passive) services shall not impose constraints upon the fixed and mobile, except aeronautical mobile, services.

S5.533 The inter-satellite service shall not claim protection from harmful interference from airport surface detection equipment stations of the radionavigation service.

S5.534 *Additional allocation:* in Japan, the band 24.65–25.25 GHz is also allocated to the radionavigation service on a primary basis until 2008.

S5.535 In the band 24.75–25.25 GHz, feeder links to stations of the broadcasting-satellite service shall have priority over other uses in the fixed-satellite service (Earth-to-space). Such other uses shall protect and shall not claim protection from existing and future operating feeder-link networks to such broadcasting satellite stations.

S5.535A The use of the band 29.1–29.5 GHz (Earth-to-space) by the fixed-satellite service is limited to geostationary-satellite systems and feeder links to non-geostationary-satellite systems in the mobile-satellite service. Such use is subject to the application of the provisions of No. S9.11A, but not subject to the provisions of No. S22.2, except as indicated in Nos. S5.523C and S5.523E where such use is not subject to the provisions of No. S9.11A and shall continue to be subject to Articles S9 (except No. S9.11A) and S11 procedures, and to the provisions of No. S22.2.

S5.536 Use of the 25.25–27.5 GHz band by the inter-satellite service is limited to space research and Earth exploration-satellite applications, and also transmissions of data originating from industrial and medical activities in space.

S5.536A Administrations installing earth exploration-satellite earth stations cannot claim protection from fixed and mobile stations operated by neighbouring administrations. In addition, earth stations operating in the earth exploration-satellite service should take into account Recommendation ITU-R SA.1278.

S5.536B In Germany, Saudi Arabia, Austria, Belgium, Brazil, Bulgaria, China, the Republic of Korea, Denmark, Egypt, United Arab Emirates, Spain, Estonia, Finland, France, Hungary, India, Islamic Republic of Iran, Ireland, Israel, Italy, Jordan, Kenya, Kuwait, Lebanon, Libya, Liechtenstein, Lithuania, Moldova, Norway, Oman, Uganda, Pakistan, the Philippines, Poland, Portugal, Syria, Slovakia, Czech Republic, Romania, the United Kingdom, Singapore, Sweden, Switzerland, Tanzania, Turkey, Viet Nam and Zimbabwe, earth stations operating in the Earth exploration-satellite service in the band 25.5–GHz shall not claim protection from, or constrain the use and deployment of, stations of the fixed and mobile services.

S5.537 Space services using non-geostationary satellites operating in the inter-satellite service in the band 27–27.5 GHz are exempt from the provisions of No. S22.2.

S5.538 *Additional allocation:* the bands 27.500–27.501 GHz and 29.999–30.000 GHz are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis for the beacon transmissions intended for up-link power control. Such space-to-Earth transmissions shall not exceed an equivalent isotropically radiated power (e.i.r.p.) of +10 dBW in the direction of adjacent satellites on the geostationary-satellite orbit. In the band 27.500–27.501 GHz, such space to-Earth transmissions shall not produce a power flux-density in excess of the values specified in Article S21, Table S21–4 on the Earth's surface.

S5.539 The band 27.5–30 GHz may be used by the fixed-satellite service (Earth-to-space) for the provision of feeder links for the broadcasting-satellite service.

S5.540 *Additional allocation:* the band 27.501–29.999 GHz is also allocated to the fixed-satellite service (space-to-Earth) on a secondary basis for beacon transmissions intended for up-link power control.

S5.541 In the band 28.5–30 GHz, the earth exploration-satellite service is limited to the transfer of data between stations and not to the primary collection of information by means of active or passive sensors.

S5.541A Feeder links of non-geostationary networks in the mobile-satellite service and geostationary networks in the fixed-satellite service operating in the band 29.1–29.5 GHz (Earth-to-space) shall employ uplink adaptive power control or other methods of fade compensation, such that the earth station transmissions shall be conducted at the power level required to meet the desired link performance while reducing the level of mutual interference between both networks. These methods shall apply to networks for which Appendix S4 coordination information is considered as having been received by the Bureau after 17 May 1996 and until they are changed by a future competent world radiocommunication conference. Administrations submitting Appendix S4 information for coordination before this date are encouraged to utilize these techniques to the extent practicable. These methods are also subject to review by ITU-R (see Resolution 121 (Rev.WRC–97)).

S5.542 *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, China, the Congo, the Republic of Korea, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guinea, India, the Islamic Republic of Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Pakistan, the Philippines, Qatar, Syria, Democratic People's Republic of Korea, Somalia, Sudan, Sri Lanka and Chad, the band 29.5–31 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits specified in Nos. S21.3 and S21.5 shall apply.

S5.543 The band 29.95–30 GHz may be used for space-to-space links in the Earth exploration-satellite service for telemetry, tracking, and control purposes, on a secondary basis.

S5.544 In the band 31–31.3 GHz the power flux-density limits specified in Article S21, Table S21–4 shall apply to the space research service.

S5.545 *Different category of service:* in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Kazakstan, Mongolia, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 31–31.3 GHz to the space research service is on a primary basis (see No. S5.33).

S5.546 *Different category of service:* in Saudi Arabia, Armenia, Azerbaijan, Belarus, Bulgaria, Egypt, United Arab Emirates, Spain, Estonia, Finland, Georgia, Hungary, the Islamic Republic of Iran, Israel, Jordan, Kazakstan, Latvia, Lebanon, Moldova, Mongolia, Uzbekistan, Poland, Syria, Kyrgyzstan, Romania, the United Kingdom, Russian Federation, Tajikistan, Turkmenistan, Turkey and Ukraine, the allocation of the band 31.5–31.8 GHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. S5.33).

S5.547 The bands 31.8–33.4 GHz, 51.4–52.6 GHz, 55.78–59 GHz and 64–66 GHz are available for high-density applications in the fixed service (see Resolution 726 (WRC–97)).

S5.547A Use of the band 31.8–33.4 GHz by the fixed service shall be in accordance with Resolution 126 (WRC–97).

S5.547B Alternative allocation: in the United States, the band 31.8–32 GHz is allocated to the radionavigation and space research (deep space) (space-to-Earth) services on a primary basis.

S5.547C *Alternative allocation:* in the United States, the band 32–32.3 GHz is allocated to the inter-satellite, radionavigation and space research (deep space) (space-to-Earth) services on a primary basis.

S5.547D *Alternative allocation:* in the United States, the band 32.3–33 GHz is allocated to the inter-satellite and radionavigation services on a primary basis.

S5.547E *Alternative allocation:* in the United States, the band 33–33.4 GHz is allocated to the radionavigation service on a primary basis.

S5.548 In designing systems for the inter-satellite and radionavigation services in the band 32–33 GHz, and for the space research service (deep space) in the band 31.8–32.3 GHz, administrations shall take all necessary measures to prevent harmful interference between these services, bearing in mind the safety aspects of the radionavigation service (see Recommendation 707).

S5.549 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Egypt, the United Arab Emirates, Gabon, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mali, Malta, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, Dem. Rep. of the Congo, Syria, Senegal, Singapore, Somalia, Sudan, Sri Lanka, Togo, Tunisia and Yemen, the band 33.4–36 GHz is also allocated to the fixed and mobile services on a primary basis.

S5.550 *Different category of service:* in Armenia, Azerbaijan, Belarus, Bulgaria,

Georgia, Kazakstan, Mongolia, Uzbekistan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 34.7–35.2 GHz to the space research service is on a primary basis (see No. S5.33).

S5.551 Radars located on spacecraft may be operated on a primary basis in the band 35.5–35.6 GHz. (SUP—WRC–97).

S5.551A In the band 35.5–36.0 GHz, active spaceborne sensors in the earth exploration-satellite and space research services shall not cause harmful interference to, claim protection from, or otherwise impose constraints on operation or development of the radiolocation service, the meteorological aids service and other services allocated on a primary basis.

S5.551B The use of the band 41.5–42.5 GHz by the fixed-satellite service (space-to-Earth) is subject to Resolution 128 (WRC–97).

S5.551C *Alternative allocation:* in the French overseas territories in Regions 2 and 3, the Republic of Korea and India, the band 40.5–42.5 GHz is allocated to the broadcasting, broadcasting-satellite and fixed services on a primary basis.

S5.551D *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Benin, Cameroon, Egypt, United Arab Emirates, Israel, Jordan, Kuwait, Lebanon, Libya, Mali, Morocco, Mauritania, Nigeria, Oman, Qatar, Syria, Tunisia and Yemen, the band 40.5–42.5 GHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis. The use of this band by the fixed-satellite service shall be in accordance with Resolution 134 (WRC–97).

S5.551E Use of the band 40.5–42.5 GHz by the fixed-satellite service shall be in accordance with Resolution 134 (WRC–97).

S5.551F *Different category of service:* in Japan, the allocation of the band 41.5–42.5 GHz to the mobile service is on a primary basis (see No. S5.33).

S5.552 The allocation of the spectrum for the fixed-satellite service in the bands 42.5–43.5 GHz and 47.2–50.2 GHz for Earth-to-space transmission is greater than that in the band 37.5–39.5 GHz for space-to-Earth transmission in order to accommodate feeder links to broadcasting satellites. Administrations are urged to take all practicable steps to reserve the band 47.2–49.2 GHz for feeder links for the broadcasting-satellite service operating in the band 40.5–42.5 GHz.

S5.552A The allocation to the fixed service in the bands 47.2–47.5 GHz and 47.9–48.2 GHz is designated for use by high altitude platform stations. The use of the bands 47.2–47.5 GHz and 47.9–48.2 GHz is subject to the provisions of Resolution 122 (WRC–97).

S5.553 In the bands 43.5–47 GHz, 66–71 GHz, 95–100 GHz, 134–142 GHz, 190–200 GHz and 252–265 GHz, stations in the land mobile service may be operated subject to not causing harmful interference to the space radiocommunication services to which these bands are allocated (see No. S5.43).

S5.554 In the bands 43.5–47 GHz, 66–71 GHz, 95–100 GHz, 134–142 GHz, 190–200 GHz and 252–265 GHz, satellite links connecting land stations at specified fixed points are also authorized when used in conjunction with the mobile-satellite service or the radionavigation-satellite service.

S5.555 *Additional allocation:* the bands 48.94–49.04 GHz, 97.88–98.08 GHz, 140.69–140.98 GHz, 144.68–144.98 GHz, 145.45–145.75 GHz, 146.82–147.12 GHz, 250–251 GHz and 262.24–262.76 GHz are also allocated to the radio astronomy service on a primary basis.

S5.555A The band 50.2–50.4 GHz is also allocated, on a primary basis, to the fixed and mobile services until 1 July 2000.

S5.556 In the bands 51.4–54.25 GHz, 58.2–59 GHz, 64–65 GHz, 72.77–72.91 GHz and 93.07–93.27 GHz, radio astronomy observations may be carried out under national arrangements.

S5.556A Use of the bands 54.25–56.9 GHz, 57–58.2 GHz and 59–59.3 GHz by the inter-satellite service is limited to satellites in the geostationary-satellite orbit. The single-entry power flux-density at all altitudes from 0 km to 1000 km above the Earth's surface produced by a station in the inter-satellite service, for all conditions and for all methods of modulation, shall not exceed −147 dB(W/m²/100 MHz) for all angles of arrival.

S5.556B *Additional allocation:* in Japan, the band 54.25–55.78 GHz is also allocated to the mobile service on a primary basis for low-density use.

S5.557 *Additional allocation:* in Japan, the band 55.78–58.2 GHz is also allocated to the radiolocation service on a primary basis.

S5.558 In the bands 55.78–58.2 GHz, 59–64 GHz, 66–71 GHz, 116–134 GHz, 170–182 GHz and 185–190 GHz, stations in the aeronautical mobile service may be operated subject to not causing harmful interference to the inter-satellite service (see No. S5.43).

S5.558A Use of the band 56.9–57 GHz by inter-satellite systems is limited to links between satellites in geostationary-satellite orbit and to transmissions from non-geostationary satellites in high-Earth orbit to those in low-Earth orbit. For links between satellites in the geostationary-satellite orbit, the single entry power flux-density at all altitudes from 0 km to 1000 km above the Earth's surface, for all conditions and for all methods of modulation, shall not exceed −147 dB(W/m²/100 MHz) for all angles of arrival.

S5.559 In the bands 59–64 GHz and 126–134 GHz, airborne radars in the radiolocation service may be operated subject to not causing harmful interference to the inter-satellite service (see No. S5.43).

S5.560 In the band 78–79 GHz radars located on space stations may be operated on a primary basis in the Earth exploration-satellite service and in the space research service.

S5.561 In the band 84–86 GHz, stations in the fixed, mobile and broadcasting services shall not cause harmful interference to broadcasting-satellite stations operating in accordance with the decisions of the appropriate frequency assignment planning conference for the broadcasting-satellite service.

S5.562 The use of the band 94–94.1 GHz by the Earth exploration-satellite (active) and space research (active) services is limited to spaceborne cloud radars.

S5.564 *Additional allocation:* in Germany, Argentina, Spain, Finland, France, India, Italy and the Netherlands, the band 261–265 GHz is also allocated to the radio astronomy service on a primary basis.

S5.565 The frequency band 275–400 GHz may be used by administrations for experimentation with, and development of, various active and passive services. In this band a need has been identified for the following spectral line measurements for passive services:

–radio astronomy service: 278–280 GHz and 343–348 GHz;

–Earth exploration-satellite service (passive) and space research service (passive): 275–277 GHz, 300–302 GHz, 324–326 GHz, 345–347 GHz, 363–365 GHz and 379–381 GHz.

Future research in this largely unexplored spectral region may yield additional spectral lines and continuum bands of interest to the passive services. Administrations are urged to take all practicable steps to protect these passive services from harmful interference until the next competent world radiocommunication conference.

II. Old Numbering Scheme

459 In the Region 2 polar areas (north of 60°N and south of 60°S), which are subject to auroral disturbances, the aeronautical fixed service is the primary service in the band 160–190 kHz.

471 The bands 490–495 kHz and 505–510 kHz shall be subject to the provisions of No. 3018 until the entry into force of the reduced guardband in accordance with Resolution 210 (Mob–87).

472 The frequency 500 kHz is the international distress and calling frequency for Morse radiotelegraphy. The conditions for its use are prescribed in Articles 37, 38, N 38 and 60.

472A In the maritime mobile service, the frequency 490 kHz is, from the date of full implementation of the GMDSS (see Resolution 331 (Mob–87)), to be used exclusively for the transmission by coast stations of navigational and meteorological warnings and urgent information to ships, by means of narrowband direct-printing telegraphy. The conditions for use of the frequency 490 kHz are prescribed in Articles N 38 and 60, and Resolution 329 (Mob–87). In using the band 415–495 kHz for the aeronautical radionavigation service, administrations are requested to ensure that no harmful interference is caused to the frequency 490 kHz.

474 The conditions for the use of frequency 518 kHz by the maritime mobile service are prescribed in Articles 38, N38 and 60 (see Resolution 324 (Mob–87) and Article 14A).

480 In Region 2, the use of the band 1605–1705 kHz by stations of the broadcasting service is subject to the plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988.)

In Region 2, in the band 1625–1705 kHz, the relationship between the broadcasting, fixed and mobile services is shown in No. 419. However, the examination of frequency assignments to stations of the fixed and mobile services in the band 1625–1705 kHz under No. 1241 shall take account of the allotments appearing in the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

591 Subject to agreement obtained under the procedure set forth in Article 14, the band 117.975–137 MHz is also allocated to the aeronautical mobile-satellite (R) service on a secondary basis and on the condition that harmful interference is not caused to the aeronautical mobile (R) service.

599A The use of the band 137–138 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in Resolution 46. However, coordination of a space station of the mobile-satellite service with respect to terrestrial services is required only if the power flux-density produced by the station exceeds—125 dB(W/m²2/4 kHz) at the Earth's surface. The above power flux-density limit shall apply until such time as a competent world administrative radio conference revises it. In making assignments to the space stations in the mobile-satellite service in the above band, administrations shall take all practicable steps to protect the radio astronomy service in the 150.05–153 MHz band from harmful interference from unwanted emissions.

599B The use of the bands 137–138 MHz, 148–149.9 MHz and 400.15–401 MHz by the mobile-satellite service and the band 149.9–150.05 MHz by the land mobile-satellite service is limited to non-geostationary-satellite systems.

608A The use of the band 148–149.9 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). The mobile-satellite service shall not constrain the development and use of fixed, mobile and space operation services in the band 148–149.9 MHz. Mobile earth stations in the mobile-satellite service shall not produce a power flux-density in excess of −150 dB(W/m²/4 kHz) outside national boundaries.

608B The use of the band 149.9–150.05 MHz by the land mobile-satellite service is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). The land mobile-satellite service shall not constrain the development and use of the radionavigation-satellite service in the band 149.9–150.05 MHz. Land mobile earth stations of the land mobile-satellite service shall not produce power flux-density in excess of −150 dB(W/m²/4 kHz) outside national boundaries.

647B The use of the band 400.15–401 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in Resolution 46. However, coordination of a space station of the mobile-satellite service with respect to terrestrial services is required only if the power flux-density produced by the station exceeds −125 dB(W/m²/4 kHz) at the Earth's surface. The above power flux-density limit shall apply until such time as a competent world administrative radio conference revises it. In making assignments to the space stations in the mobile-satellite service in the above band, administrations shall take all practicable steps to protect the radio astronomy service in the band 406.1–410 MHz from harmful interference from unwanted emissions.

669 In the maritime mobile service, the frequencies 457.525 MHz, 457.550 MHz, 457.575 MHz, 467.525 MHz, 467.550 MHz and 467.575 MHz may be used by onboard communication stations. The use of these frequencies in territorial waters may be subject to the national regulations of the administration concerned. The characteristics of the equipment used shall conform to those specified in Appendix 20.

733 The bands 1610–1626.5 MHz, 5000–5250 MHz and 15.4–15.7 GHz are also allocated to the aeronautical mobile-satellite (R) service on a primary basis. Such use is subject to agreement obtained under the procedure set forth in Article 14.

753F The use of the band 2483.5–2500 MHz by the mobile-satellite and the radiodetermination-satellite services is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). Coordination of space stations of the mobile-satellite and radiodetermination-satellite services with respect to terrestrial services is required only if the power flux-density produced at the Earth's surface exceeds the limits in No. 2566. In respect of assignments operating in this band, the provisions of Section II, paragraph 2.2 of Resolution 46 (WARC–92) shall also be applied to geostationary transmitting space stations with respect to terrestrial stations.

792A The use of the bands 4500–4800 MHz, 6725–7025 MHz, 10.7–10.95 GHz, 11.2–11.45 GHz and 12.75–13.25 GHz by the fixed-satellite service shall be in accordance with the provisions of Appendix 30B.

796 The band 5000–5250 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band.

797 The bands 5000–5250 MHz and 15.4–15.7 GHz are also allocated to the fixed-satellite service and the inter-satellite service, for connection between one or more earth stations at specified fixed points on the Earth and space stations, when these services are used in conjunction with the aeronautical radionavigation and/or aeronautical mobile (R) service. Such use shall be subject to agreement obtained under the procedure set forth in Article 14.

909 In the bands 54.25–58.2 GHz, 59–64 GHz, 116–134 GHz, 170–182 GHz and 185–190 GHz, stations in the aeronautical mobile service may be operated subject to not causing harmful interference to the inter-satellite service (see No. 435).

917 In the bands 140.69–140.98 GHz all emissions from airborne stations, and from space stations in the space-to-Earth direction, are prohibited.

United States (US) Footnotes

US7 In the band 420–450 MHz and within the following areas, the peak envelope power output of a transmitter employed in the amateur service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer in Charge at the applicable district office and the military area frequency coordinator at the applicable military base. For areas (e) through (j), the appropriate military coordinator is located at Peterson AFB, CO.

(a) Those portions of Texas and New Mexico bounded on the south by latitude 31° 45′ North, on the east by longitude 104° 00′ West, on the north by latitude 34°30′ North, and on the west by longitude 107° 30′ West;

(b) The entire State of Florida including the Key West area and the areas enclosed within a 322-kilometer (200-mile) radius of Patrick Air Force Base, Florida (latitude 28°21′ North, longitude 80° 43′ West), and within a 322-kilometer (200-mile) radius of Eglin Air Force Base, Florida (latitude 30° 30′ North, longitude 86° 30′ West);

(c) The entire State of Arizona;

(d) Those portions of California and Nevada south of latitude 37° 10′ North, and the areas enclosed within a 322-kilometer (200-mile) radius of the Pacific Missile Test Center, Point Mugu, California (latitude 34° 09′ North, longitude 119° 11′ West).

(e) In the State of Massachusetts within a 160-kilometer (100-mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41° 45′ North, longitude 70° 32′ West).

(f) In the State of California within a 240-kilometer (150-mile) radius around locations at Beale Air Force Base, California (latitude 39° 08′ North, longitude 121° 26′ West).

(g) In the State of Alaska within a 160-kilometer (100-mile) radius of Clear, Alaska (latitude 64° 17′ North, longitude 149° 10′ West).

(h) In the State of North Dakota within a 160-kilometer (100-mile) radius of Concrete, North Dakota (latitude 48° 43′ North, longitude 97° 54′ West).

(i) In the States of Alabama, Georgia and South Carolina within a 200-kilometer (124-mile) radius of Warner Robins Air Force Base, Georgia (latitude 32° 38′ North, longitude 83° 35′ West).

(j) In the State of Texas within a 200-kilometer (124-mile) radius of Goodfellow Air Force Base, Texas (latitude 31° 25′ North, longitude 100° 24′ West).

* * * * *

US78 In the mobile service, the frequencies between 1435 and 1535 MHz will be assigned for aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible usage includes telemetry associated with launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned objects undergoing flight tests. The following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz.

* * * * *

US221 Use of the mobile service in the bands 525–535 kHz and 1605–1615 kHz is limited to distribution of public service information from Travelers Information stations operating on 530 kHz and 1610 kHz.

* * * * *

US256 Radio astronomy observations may be made in the band 1718.8–1722.2 MHz on an unprotected basis. Agencies providing other services in this band in the geographic areas listed below should bear in mind that

their operations may affect those observations, and those agencies are encouraged to minimize potential interference to the observations insofar as it is practicable.

Hat Creek Observatory, Hat Creek, California	Rectangle between latitudes 40° 00′ N and 42° 00′ N and between latitudes 120° 15′ W and 122° 15′ W.
Owens Valley Radio Observatory, Big Pine, California	Two contiguous rectangles, one between 36° 00′ N and 37°00′ N and between longitudes 117° 40′ W and 118° 30′ W and the second between latitudes 37° 00′ N and 30° 00′ N and between longitudes 118° 00′ W and 118° 50′ W.
Haystack Radio Observatory, Tyngsboro, Massachusetts.	Rectangle between latitudes 41° 00′ N and 43° 00′ N and between longitudes 71° 00′ W and 73° 00′ W.
National Astronomy and Ionosphere Center, Arecibo, Puerto Rico.	Rectangle between latitudes 17° 30′ N and 19° 00′ N and between longitudes 65° 10′ W and 68° 00′ W.
National Radio Astronomy Observatory, Green Bank, West Virginia.	Rectangle between latitudes 37° 30′ N and 39° 15′ N and between longitudes 78° 30′ W and 80° 30′ W.

US257 Radio astronomy observations may be made in the band 4950–4990 MHz at certain Radio Astronomy Observatories indicated below:

National Astronomy and Ionosphere Center, Arecibo, Puerto Rico.	Rectangle between latitudes 17° 30′ N and 19° 00′ N and between latitudes 65° 10′ W and 68° 00′ W.
Haystack Radio Observatory, Tyngsboro, Massachusetts.	Rectangle between latitudes 41° 00′ N and 43° 00′ N and between longitudes 71° 00′ W and 73° 00′ W.
National Radio Astronomy Observatory, Green Bank, West Virginia.	Rectangle between latitudes 37° 00′ N and 39° 15′ N and between longitudes 78° 30′ N and 80° 30′ W.
National Radio Astronomy Observatory, Socorro, New Mexico.	Rectangle between latitudes 32° 30′ N and 35° 30′ N and between longitudes 106° 00′ W and 109° 00′ W.
Owens Valley Radio Observatory, Big Pine, California	Two contiguous rectangles, one between latitudes 36° 00′ N and 37° 00′ N and between longitudes 117° 40′ W and 118° 30′ W and the second between latitudes 37° 00′ N and 38° 00′ N and between longitudes 118° 00′ W and 118° 50′ W.
Hat Creek Observatory, Hat Creek, California	Rectangle between latitudes 40° 00′ N and 42° 00′ N and between longitudes 120° 15′ W and 122° 15′ W.

Every practicable effort will be made to avoid the assignment of frequencies in the band 4950–4990 MHz to stations in the fixed and mobile services within the geographic areas given above. In addition, every practicable effort will be made to avoid the assignment of frequencies in this band to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

* * * * *

US296 In the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Federal government stations on a shared basis with Federal government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4154.5, 4169.5, 6235.5, 6259.5, 8302.5, 8338.5, 12370.5, 12418.5, 16551.5, 16614.5, 18847.5, 18868.5, 22181.5, 22238.5, 25123.5, and 25159.5 kHz.

* * * * *

US303 In the band 2285–2290 MHz, non-Federal government space stations in the space research, space operations and earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal government stations. The power flux density at the Earth's surface from such non-Federal government stations shall not exceed −144 to −154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation S21.16.

* * * * *

US311 Radio astronomy observations may be made in the band 1350–1400 MHz on an unprotected basis at certain Radio Astronomy Observatories indicated below:

National Astronomy and Ionosphere Center, Arecibo, Puerto Rico.	Rectangle between latitudes 17° 30′ N and 19° 00′ N and between longitudes 65° 10′ W and 68° 00′ W.
National Radio Astronomy Observatory, Socorro, New Mexico.	Rectangle between latitudes 32° 30′ N and 35° 30′ N and between longitudes 106° 00′ W and 109° 00′ W.
National Radio Astronomy Observatory, Green Bank, West Virginia.	Rectangle between latitudes 37° 30′ N and 39° 15′ N and between longitudes 78° 30′ W and 80° 30′ W.

National Radio Astronomy Observatory, Very Long Baseline Array Stations	80 kilometers (50 mile) radius centered on:	
	Latitude (North)	Longitude (West)
Pie Town, NM	34° 18′	108° 07′
Kitt Peak, AZ	31° 57′	111° 37′
Los Alamos, NM	35° 47′	106° 15′
Fort Davis, TX	30° 38′	103° 57′
North Liberty, IA	41° 46′	91° 34′
Brewster, WA	48° 08′	119° 41′
Owens Valley, CA	37° 14′	118° 17′
Saint Croix, VI	17° 46′	64° 35′
Mauna Kea, HI	19° 48′	155° 27′
Hancock, NH	42° 56′	71° 59′

Every practicable effort will be made to avoid the assignment of frequencies in the band 1350–1400 MHz to stations in the fixed and mobile services which could interfere with radio astronomy observations within the geographic areas given above. In addition, every practicable effort will be made to avoid assignment of frequencies in this band to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

* * * * *

US319 In the bands 137–138 MHz, 148–149.9 MHz, 149.9–150.05 MHz, 399.9–400.05 MHz, 400.15–401 MHz, 1610–1626.5 MHz, and 2483.5–2500 MHz, Federal government stations in the mobile-satellite service shall be limited to earth stations operating with non-Federal government space stations.

* * * * *

US322 Use of the bands 149.9–150.5 MHz and 399.9–400.05 MHz by the mobile-satellite service (Earth-to-space) is limited to non-voice, non-geostationary satellite systems, including satellite links between land earth stations.

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Non-Federal Government (NG) Footnotes

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NG47 In Alaska, frequencies within the band 2655–2690 MHz are not available for assignment to terrestrial stations.

* * * * *

NG102 Use of the fixed-satellite service in the bands 2500–2655 MHz (space-to-Earth) and 2655–2690 MHz (Earth-to-space) is limited as follows:

(a) For common carrier use in Alaska, for intra-Alaska service only, and in the mid- and western-Pacific areas, including American Samoa, Guam, the Northern Mariana Islands, and Hawaii, and under the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands.

(b) For educational use in the contiguous United States, Alaska, and the mid- and western-Pacific areas, including American Samoa, Guam, the Northern Mariana Islands, and Hawaii.

Such use is subject to agreement with administrations having services operating in accordance with the Table, which may be affected. In the band 2500–2655 MHz, unless such agreement includes the use of higher values, the power flux density at the Earth's surface produced by emissions from a space station in this service shall not exceed the values set forth in Part 25 of the Rules for this frequency band.

* * * * *

NG120 Frequencies in the band 928–960 MHz may be assigned for multiple address systems and mobile operations on a primary basis as specified in 47 CFR part 101.

* * * * *

NG124 Within designated segments of the bands that comprise 30.85–47.41 MHz, 150.8–159.465 MHz, and 453.0125–467.9875 MHz, police licensees are authorized to operate low power radio transmitters on a secondary, non-interference basis in accordance with the provisions of 47 CFR 2.803 and 90.20(e)(5).

* * * * *

NG128 In the band 535–1705 kHz, AM broadcast licensees or permittees may use their AM carrier on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the band 88–108 MHz, FM broadcast licensees or permittees are permitted to use subcarriers on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the bands 54–72, 76–88, 174–216, 470–608 and 614–806 MHz, TV broadcast licensees or permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes.

* * * * *

NG147 Stations in the broadcast auxiliary service and private radio services licensed as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, may continue to operate on a primary basis with the mobile-satellite service and the radiodetermination satellite service.

* * * * *

Federal Government (G) Footnotes

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G106 The bands 2501–2502 kHz, 5003–5005 kHz, 10003–10005 kHz, 15005–15010 kHz, 19990–19995 kHz, 20005–20010 kHz and 25005–25010 kHz are also allocated, on a secondary basis, to the space research service. The space research transmissions are subject to immediate temporary or permanent shutdown in the event of interference to the reception of the standard frequency and time broadcasts.

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Federal Register

Vol. 65, No. 20

Monday, January 31, 2000

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200	3
201–344	4
345–688	5
689–1050	6
1051–1296	7
1297–1528	10
1529–1754	11
1755–2016	12
2017–2280	13
2281–2520	14
2521–2834	18
2835–3118	19
3119–3374	20
3375–3582	21
3583–3780	24
3781–4094	25
4095–4348	26
4349–4516	27
4517–4572	28
4573–4752	31

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

1660 (See Proc. 7266)	2831
1704 (See Proc. 7266)	2831
1948 (See Proc. 7266)	2831
2050 (See Proc. 7266)	2831
2528 (See Proc. 7266)	2831
7263	2817
7264	2821
7265	2825
7266	2831
7267	2835
7268	2837
7269	3779

Executive Orders:

April 17, 1926 (Revoked in part by PLO 7428)	3733
5593 (Revoked by PLO 7428)	3733
12543 (See Notice of December 29, 1999)	199
12544 (See Notice of December 29, 1999)	199
12947 (See Notice of January 19, 2000)	3581
13099 (See Notice of January 19, 2000)	3581

Administrative Orders:

Presidential Determinations:

No. 2000–9 of December 23, 1999	689

Notices:

December 29, 1999	199
January 19, 2000	3581

Memorandums:

January 5, 2000	2279, 3119

5 CFR

831	2281, 2521
842	2281, 2521

7 CFR

6	1297
201	1704
246	3375
371	1298
400	3781
457	3782
932	2839, 4573
959	2526
966	2281
982	2841
984	1755
997	1302
998	1302
999	1302
1220	1, 2844

Proposed Rules:

54	3155
253	2358
800	75
868	78
930	672
979	1347
989	4583
993	2908
1280	1825
1301	1825
1304	1825
1305	1825
1306	1825
1307	1825
1308	1825

8 CFR

93	345
94	1304, 1529
96	1304
303	201
304	2283
312	2283
327	2283
350	2283
381	201, 2283, 2284
424	2284, 3121

Proposed Rules:

98	4173
54	1074
79	1074
130	391

10 CFR

431	2227

Proposed Rules:

Ch. I	3615
2	3394
40	3394
50	1829, 3394
72	3397
430	2077
440	4332
490	1831
960	2361
963	2361

11 CFR

Proposed Rules:

100	1074
102	1074
103	1074
104	1074
106	1074
107	1074
109	1074
110	1074
114	1074

116.....1074

12 CFR

225.....3785
269a.....2529
935.....202
960.....203

Proposed Rules:

Ch. I.....4176
5.....3157
650.....1676
900.....324
910.....324
917.....81
941.....324

13 CFR

305.....2017
308.....2530
314.....2530
400.....1757
500.....1758

Proposed Rules:

120.....1349
121.....4176

14 CFR

21.....3540
23.....1758
27.....3540
29.....3540
39...1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540, 1761, 1762, 1763, 1765, 1767, 1769, 1771, 2017, 2019, 2285, 2287, 2289, 2844, 2861, 2862, 2864, 3379, 3583, 3794, 3796, 3798, 3799, 3802, 4095, 4349, 4351, 4353, 4354, 4356
61.....2022
67.....2022
71.....348, 349, 699, 700, 1308, 1309, 1774, 2537, 2538, 2539, 3381, 3382, 4102
91.....3540
95.....2291
97.....360, 2023, 2025
121.....2295
125.....2295
141.....2022
142.....2022
382.....352
1204.....2865

Proposed Rules:

39.....250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353, 1831, 1833, 1836, 1838, 1840, 2352, 2555, 3165, 3617, 3619, 3621, 4192, 4396
71.....402, 4192
91.....2077
108.....560
109.....560
111.....560
121.....2079
129.....560, 2079
191.....560

15 CFR

734.....2492
740.....2493
742.....2492
770.....2492
772.....2492
774.....2492
902.....30

Proposed Rules:

280.....1572
303.....731

16 CFR

256.....2867
1615.....1435
1700.....93

Proposed Rules:

250.....2912
310.....2912

17 CFR

232.....3123

Proposed Rules:

Ch. II.....3399
1.....3623
210.....4585
229.....4585
249.....4585

18 CFR

35.....810

Proposed Rules:

125.....1484
225.....1484
356.....1484

19 CFR

4.....2868
162.....3803
171.....3803
191.....3803

Proposed Rules:

134.....4193

20 CFR

Proposed Rules:

604.....2080

21 CFR

101.....1000
173.....1776
177.....3384
201.....7, 4103
314.....1776
341.....7
369.....7
556.....4111
558.....4111
801.....3584
803.....4112
804.....4112
862.....2296
864.....2296
866.....2296
868.....2296
870.....2296
872.....2296
874.....2296
876.....2296
878.....2296
880.....2296
882.....2296
884.....2296
886.....2296
888.....2296
890.....2296
892.....2296
1308.....3124

Proposed Rules:

216.....256
314.....3623
801.....3627
870.....2364
890.....2364

22 CFR

514.....352

23 CFR

655.....9

24 CFR

35.....3386
902.....1712
968.....3386
1000.....3386

25 CFR

1.....2026
301.....2030
602.....2030

Proposed Rules:

1.....2081, 2084

26 CFR

1.....701, 1236, 1310, 2026, 2323, 3586, 3589, 3813, 3814, 3817, 3821, 3844, 4121
7.....3589
49.....1056
301.....215, 263, 1059, 2030, 3844
602.....1056, 1236, 1310, 2030, 2323, 3586, 3589, 3821, 3844, 4112

Proposed Rules:

1.....258, 1572, 2081, 2084, 3401, 3629, 3903, 4203, 4388, 4396
31.....4396
40.....1076
301.....4396

27 CFR

270.....1676

29 CFR

2550.....614
4044.....2329

30 CFR

202.....1542
203.....2874
206.....1542
250.....217, 2874, 3126
251.....2874, 3856
253.....2874
254.....2874, 3856
256.....2874
282.....3856
904.....2331
914.....1059
946.....1063

Proposed Rules:

206.....1580, 2557, 3167
944.....2364

31 CFR

1.....2333
317.....2034
375.....3113

32 CFR

Proposed Rules:

199.....2085
323.....3167
326.....2912
813.....419

33 CFR

110.....2876
117.....353, 710, 1543, 1543, 2035, 2036, 2038, 2539, 2541, 4576
154.....710
155.....710
165.....1065
207.....4124

Proposed Rules:

100.....2095
110.....1581, 2095
117.....1077
157.....2812
165.....1079, 2095

34 CFR

611.....1780

Proposed Rules:

Ch. VI.....1582

36 CFR

Proposed Rules:

5.....2920
13.....2920

37 CFR

4.....3127

Proposed Rules:

201.....3404

38 CFR

Ch. 1.....1544
3.....3388
17.....762
51.....762
58.....762

39 CFR

111.....1318, 3609, 4517
265.....3857

Proposed Rules:

111.....264
206.....403

40 CFR

9.....1950
49.....1322
52.....14, 16, 1068, 1545, 1787, 2039, 2042, 2046, 2048, 2052, 2334, 2674, 2877, 2880, 2883, 3130, 4207, 4357
60.....1323, 2336
63.....3276
70.....1787, 3130
81.....2883
82.....716
97.....2674
136.....3007
141.....1950
142.....1950
147.....2899
167.....4576
180.....1790, 1796, 1802, 1809, 3860
247.....2889
257.....1842
258.....1842
261.....2337
271.....2897

300 .....19, 1070, 2903, 2905
444 4360
445 3007
712 1548
716 1554
721 354

Proposed Rules:
52 ...104, 421, 732, 1080, 1583, 1841, 2367, 2557, 2560, 2920, 2921, 2924, 3168, 3630, 4207, 4466
63 .....3169, 3642, 3907
70 .....1841, 3168
81 .....2924, 3630
180 425
257 1814
258 1814
260 3188
271 2925
300 .....1081, 2925, 2926
503 1676

41 CFR

Ch. 301 3392
301-10 1268
301-11 1326
301-51 .....2541, 3054
301-52 3054
301-54 3054
301-70 3054
301-71 3054
301-74 1326
301-76 3054

Proposed Rules:
101-6 2504
102-3 2504

42 CFR

121 1435
412 .....1817, 3136
413 1817
483 1817
485 1817

Proposed Rules:
405 .....1081, 4545

43 CFR

428 4303

44 CFR

64 .....1554, 1555

Proposed Rules:
67 1435

45 CFR

1355 4020
1356 4020
1357 4020

Proposed Rules:
160 427
164 427

46 CFR

Proposed Rules:
356 646

47 CFR

0 374
2 0000
21 4136
25 3814
27 3139
51 .....1331, 2542
54 4577
68 4137
73 .....219, 220, 1823, 1824, 3150, 3151, 3152
74 4136
76 375

Proposed Rules:
1 2097
22 2097
51 2367
73 .....270, 1843, 3188, 3406, 3407, 4211, 4400, 4401
74 3188
101 2097

48 CFR

Ch. 1 4633
12 4633
19 4633
25 4633
52 4633
205 2056
209 2056
235 2057
241 2058
243 2056
252 2056
253 2055
1806 3153
1813 3153
1815 3153
1835 3153
1852 3153
1872 3153
2401 3572
2402 3572
2403 .....3572, 3576
2409 .....3572, 3576
2413 3572
2414 3572
2415 3572
2416 3572
2419 3572
2424 3572
2425 3572
2426 3572
2428 3572
2432 3572
2433 3572
2436 .....3572, 3576
2437 3576
2439 .....3572, 3576
2442 .....3572, 3576
2446 3572
2451 3572
2452 .....3572, 3576
2453 .....3572, 3576

Proposed Rules:
1 .....1438, 4328, 4345
2 1438
4 1438
7 1438
8 1438
11 2272
15 1438
16 1438
17 1438
22 .....1438, 2272
27 1438
28 1438
31 .....1438, 4327
32 1438
35 1438
36 2272
37 1438
42 1438
43 .....1438, 3762
44 1438
45 1438
49 .....1438, 2272
51 1438
52 .....1438, 2272, 3762, 4345
53 1438
212 2104
242 .....2104, 2109
247 2104
252 2104
253 2109
1804 429
1852 429

49 CFR

1 220
268 2342
571 4579
572 2059

Proposed Rules:
40 2573
209 1844
222 2230
229 2230
1244 732

50 CFR

17 .....20, 2348, 3096, 3867, 3876, 4140
216 30
226 1584
300 59
600 .....221, 4169
622 4172
635 2075
648 .....377, 1557, 1568
660 .....221, 3890, 4169
679 .....60, 65, 74, 380, 3892, 4520

Proposed Rules:
17 .....1082, 1583, 1845, 3096, 3648
18 109
23 4217
86 3332
216 .....270, 1083
222 270
223 105
224 1082
226 .....105, 1584
300 272
622 4221
635 3199
648 .....275, 431, 4546, 4547
660 2926

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 31, 2000

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; published 1-5-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Organization, functions, and authority delegations:
Chief Accountant et al.; published 12-30-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Connecticut; published 12-1-99
Georgia; published 12-2-99
Rhode Island; published 12-2-99
Pesticide programs:
Pesticide registration; submission of reports; address change; published 1-31-00
Water programs:
Pollutants analysis test procedures; guidelines—
Available cyanide; measurement method; published 12-30-99

FEDERAL COMMUNICATIONS COMMISSION
Frequency allocations and radio treaty matters:
Table of frequency allocations; revision; published 1-31-00
Radio stations; table of assignments:
Wisconsin and Michigan; published 1-4-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid programs:
Religious nonmedical health care institutions and advance directives; published 11-30-99

LABOR DEPARTMENT
Ethical conduct standards for employees; published 12-30-99

SECURITIES AND EXCHANGE COMMISSION
Securities:
Audit committee disclosures; published 12-30-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 1-14-00
Fokker; published 1-14-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Passenger automobiles; low volume manufacturer exemptions; published 12-30-99
Motor vehicle safety standards:
Roof crush resistance test procedures; rounded or raised roofs; suitability; published 1-31-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
Florida; comments due by 2-11-00; published 12-13-99
Melons grown in—
Texas; comments due by 2-9-00; published 1-10-00
Raisins produced from grapes grown in—
California; comments due by 2-8-00; published 12-10-99

COMMERCE DEPARTMENT
International Trade Administration
Watches, watch movements, and jewelry:
Duty-exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-8-00; published 12-10-99
Atlantic highly migratory species—
Atlantic pelagic longline fishermen; time/area closures; hearings and Advisory Panel meetings; comments due by 2-11-00; published 12-28-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-10-00; published 1-26-00
West Coast States and Western Pacific fisheries—
Western Pacific Region pelagic; comments due by 2-10-00; published 12-27-99
Marine mammals:
Incidental taking—
San Francisco-Oakland Bay Bridge, CA; pile installation demonstration project; comments due by 2-7-00; published 1-7-00

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Advisors that provide advice by means of various media; registration exemption; comments due by 2-7-00; published 12-7-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Central air conditioners and heat pumps; energy conservation standards; comments due by 2-7-00; published 11-24-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances; allocation; comments due by 2-7-00; published 1-6-00
Air quality implementation plans; approval and promulgation; various States:
Kansas; comments due by 2-10-00; published 1-11-00
Missouri; comments due by 2-11-00; published 1-12-00
Tennessee; comments due by 2-7-00; published 1-7-00
Hazardous waste:
Identification and listing—
Exclusions; comments due by 2-7-00; published 12-9-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tebufenozide; comments due by 2-7-00; published 12-8-99
Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-7-00; published 1-7-00
National priorities list update; comments due by 2-7-00; published 1-7-00
Toxic chemical release reporting; community right-to-know—
Phosphoric acid; comments due by 2-7-00; published 12-7-99

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Illinois; comments due by 2-7-00; published 1-21-00
Kansas; comments due by 2-7-00; published 1-21-00
Michigan; comments due by 2-7-00; published 12-30-99
New York; comments due by 2-7-00; published 1-4-00
Texas; comments due by 2-7-00; published 12-30-99
Television broadcasting:
Class A television service; establishment; comments due by 2-10-00; published 1-20-00
Two way transmissions; mutlipoint distribution

service and instructional television fixed service licenses participation; comments due by 2-10-00; published 1-26-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs and biological products:

Postmarketing studies; status reports; comments due by 2-9-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Fellowships, internships, training:

National Institutes of Health Contraception and Infertility Research Loan Repayment Program; comments due by 2-8-00; published 12-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and State health care programs:

Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-8-00; published 12-10-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Alabama sturgeon; comments due by 2-10-00; published 1-11-00

INTERIOR DEPARTMENT

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf operations:

Minerals prospecting; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Extension of distance Mexican nationals may travel into U.S. without obtaining additional immigration documentation at selected Arizona ports-of-entry; comments due by 2-7-00; published 12-8-99

Organization, functions, and authority delegations:

Los Angeles and San Francisco Asylum Offices, CA; jurisdictional change; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:

United States Marshals Service; fees for services; comments due by 2-7-00; published 12-7-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Digital Millennium Copyright Act:

Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-10-00; published 11-24-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Attorney fees; reimbursement; comments due by 2-7-00; published 12-23-99

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Family relationships; inheritance rights; comments due by 2-7-00; published 12-8-99

SMALL BUSINESS ADMINISTRATION

Business loans:

Liquidation of collateral and sale of disaster assistance loans; comments due by 2-9-00; published 1-10-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 2-7-00; published 1-6-00

Bell; comments due by 2-7-00; published 12-8-99

Boeing; comments due by 2-7-00; published 12-8-99

Bombardier; comments due by 2-11-00; published 1-12-00

British Aerospace; comments due by 2-9-00; published 1-6-00

Eurocopter Deutschland GMBH; comments due by 2-8-00; published 12-10-99

Eurocopter France; comments due by 2-8-00; published 12-10-99

Fokker; comments due by 2-7-00; published 1-6-00

McDonnell Douglas; comments due by 2-7-00; published 12-22-99

MD Helicopters Inc.; comments due by 2-7-00; published 12-8-99

Pratt & Whitney; comments due by 2-7-00; published 12-8-99

Turbomeca; comments due by 2-7-00; published 12-8-99

Airworthiness standards:

Special conditions—

Ayres Corp. Model LM-200 Loadmaster airplane; comments due by 2-11-00; published 1-12-00

Class E airspace; comments due by 2-8-00; published 12-29-99

TREASURY DEPARTMENT

Balanced Budget Act of 1997; implementation:

District of Columbia retirement plans; Federal benefit payments; comments due by 2-11-00; published 12-13-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-038-00003-2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1-699	(869-038-00004-1)	37.00	Jan. 1, 1999
700-1199	(869-038-00005-9)	27.00	Jan. 1, 1999
1200-End, 6 (6 Reserved)	(869-038-00006-7)	44.00	Jan. 1, 1999
7 Parts:			
1-26	(869-038-00007-5)	25.00	Jan. 1, 1999
27-52	(869-038-00008-3)	32.00	Jan. 1, 1999
53-209	(869-038-00009-1)	20.00	Jan. 1, 1999
210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-038-00011-3)	25.00	Jan. 1, 1999
400-699	(869-038-00012-1)	37.00	Jan. 1, 1999
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000-1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950-1999	(869-038-00020-2)	41.00	Jan. 1, 1999
2000-End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-038-00022-9)	36.00	Jan. 1, 1999
9 Parts:			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-038-00024-5)	37.00	Jan. 1, 1999
10 Parts:			
1-50	(869-038-00025-3)	42.00	Jan. 1, 1999
51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
200-499	(869-038-00027-0)	33.00	Jan. 1, 1999
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-00029-6)	20.00	Jan. 1, 1999
12 Parts:			
1-199	(869-038-00030-0)	17.00	Jan. 1, 1999
200-219	(869-038-00031-8)	20.00	Jan. 1, 1999
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-038-00033-4)	25.00	Jan. 1, 1999
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-038-00035-1)	45.00	Jan. 1, 1999
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1-59	(869-038-00037-7)	50.00	Jan. 1, 1999
60-139	(869-038-00038-5)	42.00	Jan. 1, 1999
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
200-1199	(869-038-00040-7)	28.00	Jan. 1, 1999
1200-End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0-299	(869-038-00042-3)	25.00	Jan. 1, 1999
300-799	(869-038-00043-1)	36.00	Jan. 1, 1999
800-End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-038-00046-6)	37.00	Jan. 1, 1999
17 Parts:			
1-199	(869-038-00048-2)	29.00	Apr. 1, 1999
200-239	(869-038-00049-1)	34.00	Apr. 1, 1999
240-End	(869-038-00050-4)	44.00	Apr. 1, 1999
18 Parts:			
1-399	(869-038-00051-2)	48.00	Apr. 1, 1999
400-End	(869-038-00052-1)	14.00	Apr. 1, 1999
19 Parts:			
1-140	(869-038-00053-9)	37.00	Apr. 1, 1999
141-199	(869-038-00054-7)	36.00	Apr. 1, 1999
200-End	(869-038-00055-5)	18.00	Apr. 1, 1999
20 Parts:			
1-399	(869-038-00056-3)	30.00	Apr. 1, 1999
400-499	(869-038-00057-1)	51.00	Apr. 1, 1999
500-End	(869-038-00058-0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1-99	(869-038-00059-8)	24.00	Apr. 1, 1999
100-169	(869-038-00060-1)	28.00	Apr. 1, 1999
170-199	(869-038-00061-0)	29.00	Apr. 1, 1999
200-299	(869-038-00062-8)	11.00	Apr. 1, 1999
300-499	(869-038-00063-6)	50.00	Apr. 1, 1999
500-599	(869-038-00064-4)	28.00	Apr. 1, 1999
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-038-00066-1)	35.00	Apr. 1, 1999
1300-End	(869-038-00067-9)	14.00	Apr. 1, 1999
22 Parts:			
1-299	(869-038-00068-7)	44.00	Apr. 1, 1999
300-End	(869-038-00069-5)	32.00	Apr. 1, 1999
23	(869-038-00070-9)	27.00	Apr. 1, 1999
24 Parts:			
0-199	(869-038-00071-7)	34.00	Apr. 1, 1999
200-499	(869-038-00072-5)	32.00	Apr. 1, 1999
500-699	(869-038-00073-3)	18.00	Apr. 1, 1999
700-1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700-End	(869-038-00075-0)	18.00	Apr. 1, 1999
25	(869-038-00076-8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1-1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61-1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170-1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301-1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401-1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501-1.640	(869-038-00083-1)	27.00	[7] Apr. 1, 1999
§§ 1.641-1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851-1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908-1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001-1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401-End	(869-038-00088-1)	55.00	Apr. 1, 1999
2-29	(869-038-00089-0)	39.00	Apr. 1, 1999
30-39	(869-038-00090-3)	28.00	Apr. 1, 1999
40-49	(869-038-00091-1)	17.00	Apr. 1, 1999
50-299	(869-038-00092-0)	21.00	Apr. 1, 1999
300-499	(869-038-00093-8)	37.00	Apr. 1, 1999
500-599	(869-038-00094-6)	11.00	Apr. 1, 1999
600-End	(869-038-00095-4)	11.00	Apr. 1, 1999
27 Parts:			
1-199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0–42	(869–038–00098–9)	39.00	July 1, 1999
43–end	(869–038–00099–7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[6] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[8] July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87–135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–034–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–034–00170–5)	30.00	Oct. 1, 1999
*1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
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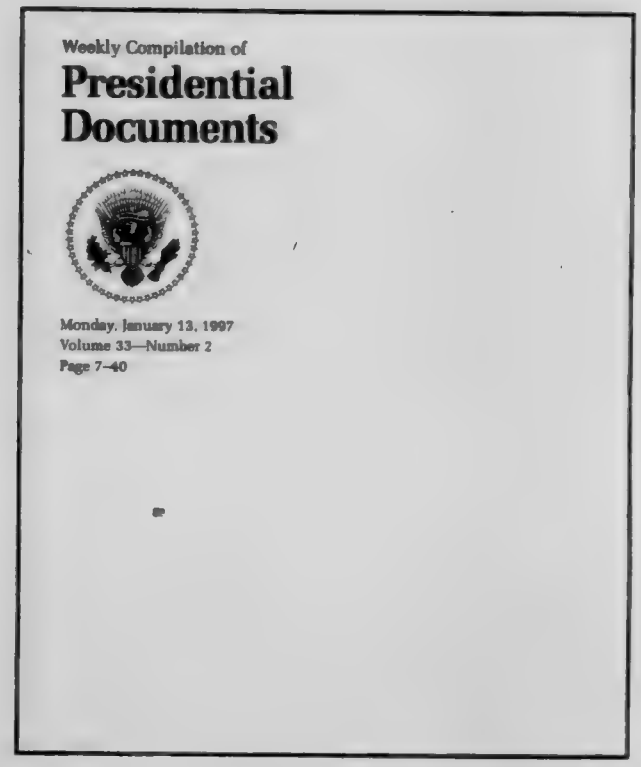

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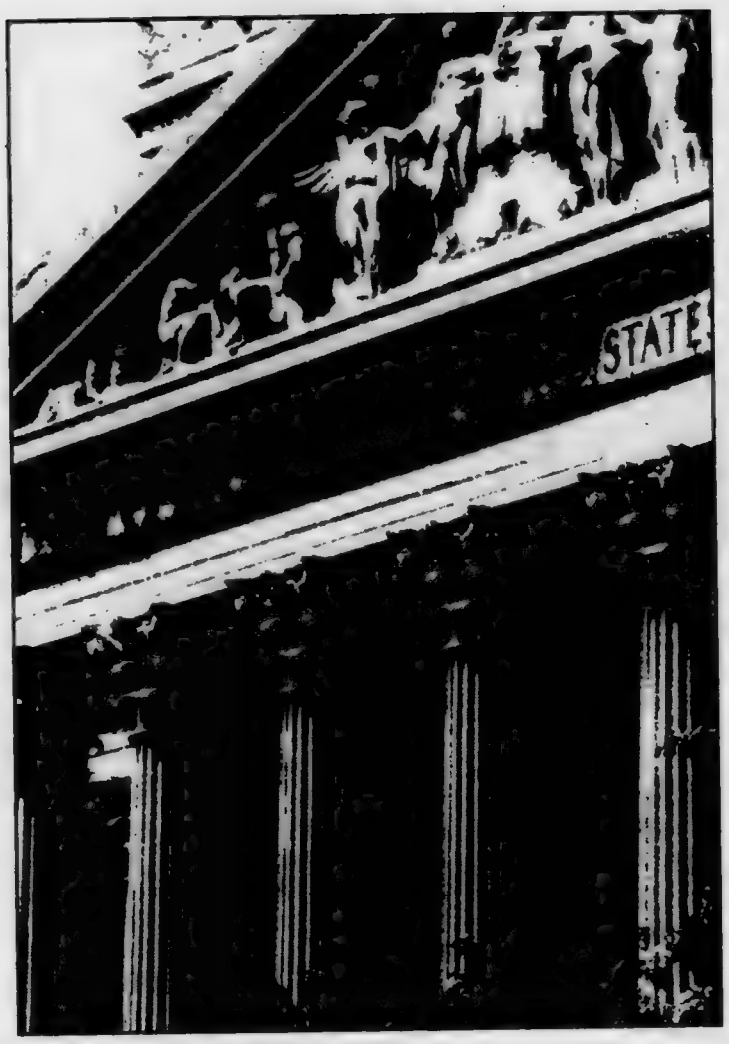

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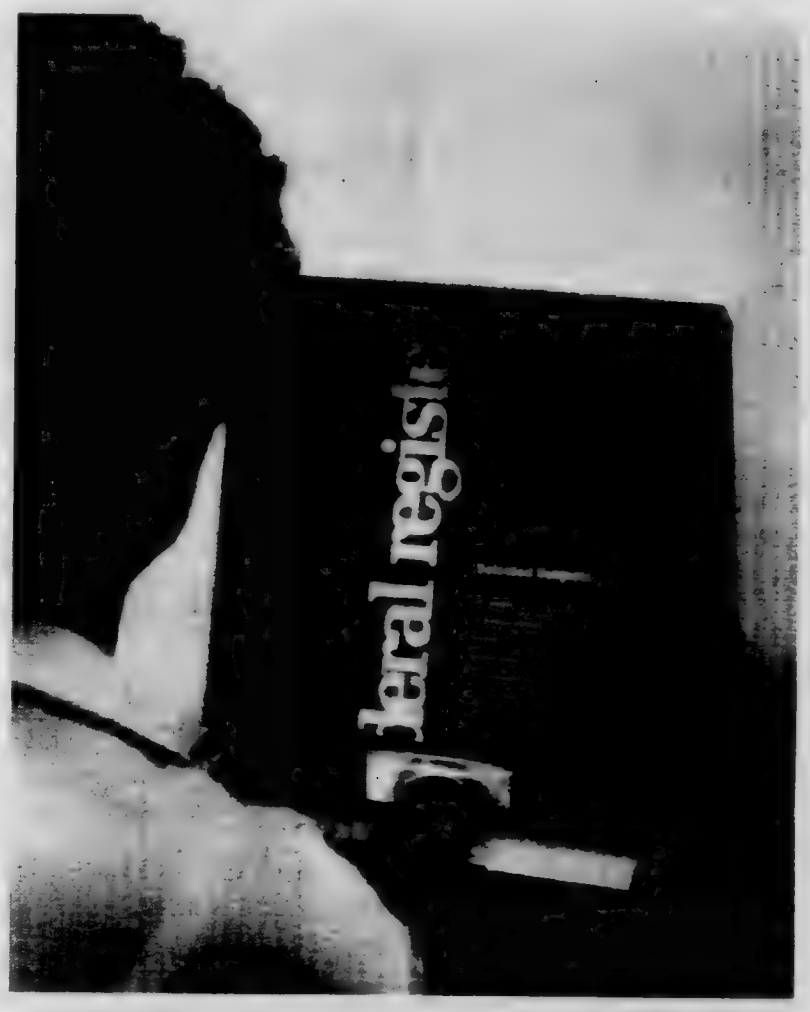

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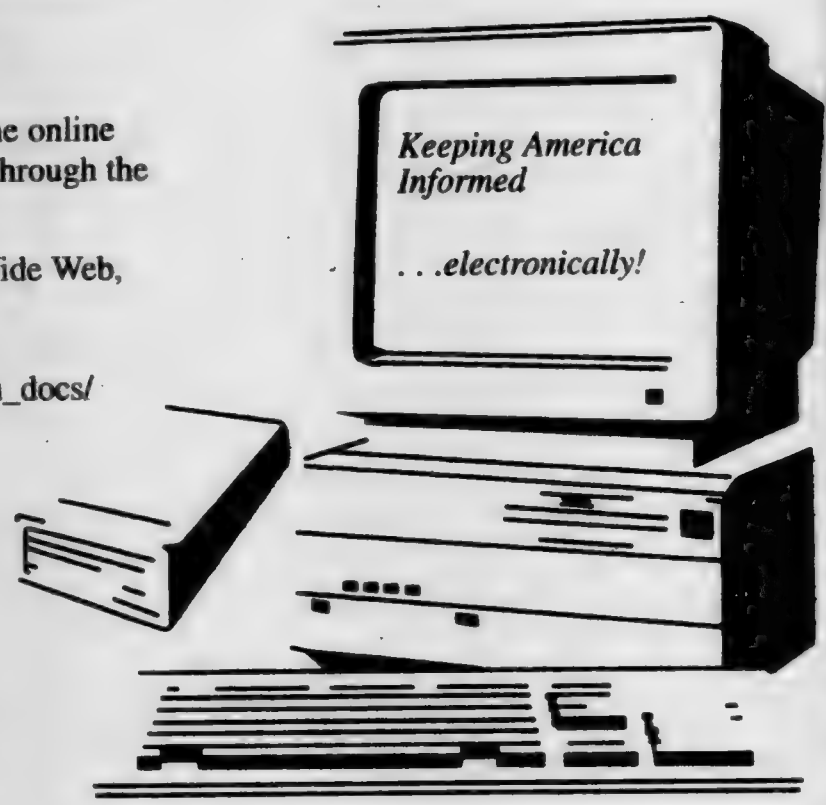

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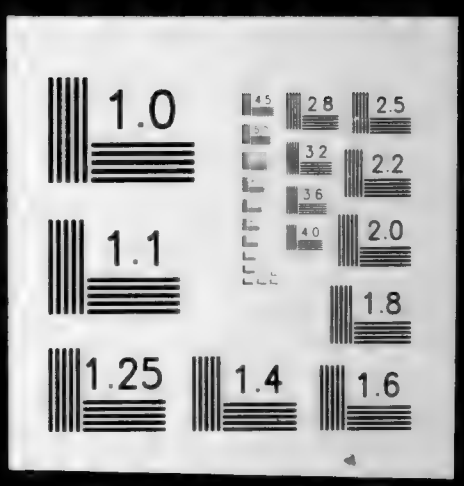
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Contents

Federal Register

Vol. 65, No. 21

Tuesday, Februrary 1, 2000

Agricultural Marketing Service
PROPOSED RULES
Meats, prepared meats, and meat products; grading, certification, and standards:
  Imported beef, lamb, veal, and calf carcasses; official grading, 4780

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Air Force Department
NOTICES
Privacy Act:
  Systems of records, 4809–4811

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
  Pan American Health Organization; post hurricane reconstruction of public healthcare system in Central America and Caribbean, 4822–4824

Children and Families Administration
RULES
Head Start Program:
  Grantees, administrative hearings on adverse actions against; timelines and appeals process, 4763–4770

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
  Louisiana, 4800
  New York, 4800

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Electronic commerce; laws or regulations posing barriers, 4801–4803

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
  Merchants' Exchange of St. Louis, L.L.C.—
    Illinois Waterway and St. Louis Harbor barge rates, 4807
Meetings; Sunshine Act, 4807
Reports and guidance documents; availability, etc.:
  Average price calculations by futures commission merchants, 4807–4808

Defense Department
See Air Force Department
See Defense Logistics Agency
RULES
Acquisition regulations:
  Debarment investigation and reports; correction, 4864

Defense Logistics Agency
NOTICES
Privacy Act:
  Systems of records, 4811–4812

Education Department
NOTICES
Postsecondary education:
  Federal Family Education Loan Program
    Voluntary flexible agreements; participation, 4812–4813

Employment and Training Administration
NOTICES
Unemployment compensation for ex-servicemembers:
  Remuneration schedules, 4842

Energy Department
NOTICES
Committees; establishment, renewal, termination, etc.:
  Environmental Management Advisory Board, 4813
Environmental statements; availability, etc.:
  Los Alamos National Laboratory, NM; conveyance and transfer of land tracts administered by DOE, 4814
Grants and cooperative agreements; availability, etc.:
  Glass industry; economic competitiveness enhancement, energy consumption reduction, and environmental impacts reduction, 4814–4815
Meetings:
  Environmental Management Site-Specific Advisory Board—
    Kirtland Area Office (Sandia), NM, 4816
    Nevada Test Site, NV, 4815–4816
    Paducah Gaseous Diffusion Plant, KY, 4816–4817
    Rocky Flats, CO, 4815
  Hydrogen Technical Advisory Panel, 4817

Environmental Protection Agency
NOTICES
Environmental statements; notice of intent:
  Lower Owens River Project, CA, 4817–4819
Superfund; response and remedial actions, proposed settlements, etc.:
  Peele-Dixie Wellfield Site, FL, 4819

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 4819

Federal Aviation Administration
RULES
Airworthiness directives:
  Boeing, 4757–4759
  Bombardier, 4753–4757
  Raytheon, 4754–4755
  Rolls-Royce plc, 4760–4761
  Short Brothers plc, 4761–4763
PROPOSED RULES
Airworthiness directives:
  McDonnell Douglas, 4781–4797

Federal Bureau of Investigation
NOTICES
Meetings:
DNA Advisory Board, 4841–4842

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Nebraska, 4798
New Mexico, 4798–4799
Tennessee, 4799
NOTICES
Applications, hearings, determinations, etc.:
MediaOne Group, Inc., et al., 4819

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4820–4821
Submission for OMB review; comment request, 4821
Disaster and emergency areas:
Kentucky, 4821–4822
North Carolina, 4822

Fish and Wildlife Service
RULES
Endangered and threatened species:
Blackburn's sphinx moth, 4770–4779
NOTICES
Environmental statements; availability, etc.:
Cat Island National Wildlife Refuge, LA; establishment, 4825–4826

Forest Service
NOTICES
Meetings:
Southwest Oregon Province Interagency Executive Committee Advisory Committee, 4800
Willamette Provincial Advisory Committee, 4800

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration
PROPOSED RULES
Medical care and examinations:
Indian health—
Indian Self-Determination Act; contracts, 4797–4798

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4824

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
NOTICES
Central Utah Water Conservancy District:
Bonneville Unit; municipal and industrial water; cost prepayment allocations, 4825

International Trade Administration
NOTICES
Antidumping:
Carbon steel wire rod from—
Argentina, 4803–4804
Elemental sulphur from—
Canada, 4804
Oil country tubular goods from—
Canada, 4804

International Trade Commission
NOTICES
Meetings; Sunshine Act, 4841

Justice Department
See Federal Bureau of Investigation

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Colorado, 4826
Committees; establishment, renewal, termination, etc.:
Northwest California Resource Advisory Council, 4827
Disclaimer of interest applications:
North Dakota, 4827
Environmental statements; availability, etc.:
Taos Field Office, NM, et al.; riparian and aquatic habitat management plans; correction, 4827
Environmental statements; notice of intent:
Walker River Basin, NV; water and/or water rights from willing sellers, 4827–4828
Management framework plans, etc.:
Utah, 4828
Meetings:
Arkansas; planning analysis for 12 tracts of public lands; comment request, 4828
Resource Advisory Councils—
Northwest Colorado, 4829
Utah, 4829
Realty actions; sales, leases, etc.:
Nevada, 4829–4840
Withdrawal and reservation of lands:
Colorado, 4840

Minerals Management Service
NOTICES
Oil and gas leases:
Wyoming; Federal and State crude oil bids, 4840–4841

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Space Science Advisory Committee, 4855

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 4855

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Leadership Initiatives Advisory Panel, 4855

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Kolcraft Enterprises, Inc., 4862–4863

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
South Atlantic Fishery Management Council, 4804–4805

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 4855–4856

Nuclear Regulatory Commission
NOTICES
Reports and guidance documents; availability, etc.:
Mixed oxide fuel fabrication facility; application review; standard review plan, 4856

Occupational Safety and Health Administration
PROPOSED RULES
Occupational safety and health standards:
Ergonomics program, 4795–4797
NOTICES
Meetings:
Maritime Advisory Committee for Occupational Safety and Health, 4842–4843
Occupational Safety and Health Federal Advisory Council, 4843

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Deutsche Bank AG et al., 4843–4852
South Central New York District Council of Carpenters et al., 4852–4855

Personnel Management Office
RULES
Pay administration:
Child support, alimony, and commercial garnishment of Federal employees' pay; processing, 4753

Postal Service
RULES
Domestic Mail Manual and International Mail Manual:
Special services labels; barcode requirements
Correction, 4864

Public Health Service
See Centers for Disease Control and Prevention
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
RULES
Pipeline safety:
Hazardous liquid transportation—
Breakout tanks; industry standards adoption; correction, 4770

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 4856–4857
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 4857–4859

State Department
NOTICES
Art objects; importation for exhibition:
Ancient Faces: Mummy Portraits from Roman Egypt, 4859–4860

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4824–4825

Trade Representative, Office of United States
NOTICES
Meetings:
Electronic Commerce Industry Functional Advisory Committee, 4860
Unfair practices, petitions, etc.:
Foreign country practices and foreign countries engaging in discriminatory government procurement practices; identification; comment request, 4860–4861
World Trade Organization:
Dispute settlement panel establishment requests—
Korea; stainless steel plate in coils and stainless steel sheet and strip in coils; antidumping duties, 4861–4862

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Veterans Affairs Department
NOTICES
Means test thresholds; cost-of-living adjustments, 4863

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
581 4753
582 4753

7 CFR
Proposed Rules:
54 4780

14 CFR
39 (5 documents) 4754, 4755, 4757, 4760, 4761
Proposed Rules:
39 (8 documents) 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793

29 CFR
Proposed Rules:
1910 4795

38 CFR
111 4864

42 CFR
Proposed Rules:
36 4797

45 CFR
1303 4764

47 CFR
Proposed Rules:
73 (3 documents) 4798, 4799

48 CFR
203 4864
209 4864
225 4864
249 4864

49 CFR
195 4770

50 CFR
17 4770

Rules and Regulations

Federal Register
Vol. 65, No. 21
Tuesday, February 1, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206–AI91

Processing Garnishment Orders for Child Support and/or Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending the list of designated agents to accept legal process for child support and alimony, and list of designated agents to accept commercial garnishment orders.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1700.

SUPPLEMENTARY INFORMATION: On October 22, 1998 (63 FR 56537), OPM corrected errors that appeared in the list of agents designated to accept legal process for child support and alimony (Appendix A to Part 581) that were published on March 26, 1998 (63 FR 14756). This document makes additional amendments to the designated agent listings in this appendix. In addition, at the request of the Defense Finance and Accounting Service, OPM is amending the list of designated agents in Appendix A to 5 CFR Part 582 to remove the listing for the Army Corps of Engineers.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. As provided under section 553(b)(3)(B), general notice may be waived where it is unnecessary as is the case where the lists of designated agents in the appendices to 5 CFR Parts 581 and 582 are revised.

Executive Order 12866, Regulatory Review

In accordance with Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to Federal employees and their creditors.

List of Subjects in 5 CFR Parts 581 and 582

Alimony, Child support, Claims, Government employees, and Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 581 and 582 of Title 5, Code of Federal Regulations, as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND ALIMONY

1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262). PART='581'≤

2. Appendix A to part 581 is amended as follows:

A. In I Departments under *Department of Agriculture*:

i. The listing for Food Safety is removed;

ii. The listing for Food Safety and Inspection Service is revised; PART='581'≤

iii. The note is removed; PART='581'≤

iv. The listing for Forest Service, Region 6, Oregon, Mt. Hood National Forest, is revised; PART='581'≤

B. In II. Agencies:

i. The listing for the Harry S. Truman Scholarship Foundation is added;

ii. The listing for the Presidio Trust is added. The additions and revisions to Appendix A read as follows.

Appendix A to Part 581—List of Agents Designated to Accept Legal Process

* * * * *

I. Departments

Department of Agriculture

* * * * *

Food Safety and Inspection Service

Chief, Employee Relations Branch, Labor and Employee Relations Division, Food Safety and Inspection Service, Room 3175 South Building, 14th & Independence Avenue, SW., Washington, DC 20250–3700, 1–800–217–1886

* * * * *

Mt. Hood—Forest Supervisor, 16400 Champion Way, Sandy, OR 97055, (503) 668–1613

II. Agencies

* * * * *

Harry S. Truman Scholarship Foundation

Chief, Payroll Operations Division, Attention: Mail Code 2640, National Business Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739

* * * * *

Presidio Trust

Chief, Payroll Operations Division, Attention: Mail Code 2640, National Business Center, Department of the Interior, P.O. Box 272030, Denver, CO, 80227–9030, (303) 969–7739

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

3. The authority citation for part 582 continues to read as follows:

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897.

Appendix A [Amended]

4. In appendix A, the listing for the *Army Corps of Engineers* is removed.

[FR Doc. 00–2115 Filed 1–31–00; 8:45 am]

BILLING CODE: 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–92–AD; Amendment 39–11533; AD 2000–02–15]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 65–90, 65–A90, B90, and C90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (Raytheon) Beech Models 65–90, 65-A90, B90, and C90 airplanes that incorporate a certain engine and propeller configuration. This AD prohibits you from operating any affected airplane with this engine and propeller configuration and prohibits its future installation. Results of an accident investigation involving one of the affected airplanes reveals installation discrepancies with the engine and propeller configuration. These discrepancies, if not corrected, could lead to engine failure and the inability to feather the propeller. The actions specified by this AD are intended to prevent an uncontained engine failure due to suspect engine and propeller installation, which could result in loss of control of the airplane.

DATES: Effective February 18, 2000.

The FAA must receive any comments on this rule on or before March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–92–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may examine information related to this AD at the FAA at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Bosak, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6094; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received two reports of engine power turbine failures on Raytheon Beech Model 65–A90 airplanes. Each of these airplanes had the original Pratt & Whitney PT6A–20 turboprop engines replaced with Motorlet, Walter M601E–11 turboprop engines (with Avia-Hamilton Standard VJ8–510 propellers). Supplemental Type Certificate (STC) SA01366AT contains the approval and procedures for this replacement. One of the engine failures was uncontained and one resulted in engine seizure on the opposite engine.

Investigation of the incidents is ongoing; however, the FAA has identified several installation discrepancies. Among these are:

—The engine control electronic limiters (governors) were not installed. This system lowers the fuel delivery and, thus protects the engine against over-temperature at startup and overspeed at BETA control and reverse rating. This could result in engine failure due to overspeed and/or turbine over-temperature conditions;

—The required propeller de-icing system was not installed;

—The propeller feathering pump was not installed, which could prevent feathering of the propeller in the event of an engine seizure; and

—The cabin supercharger was not installed in a manner to assure proper pressurization of the aircraft.

What Are the Consequences If the Condition Is Not Corrected?

These discrepancies, if not corrected, could lead to engine failure and the inability to feather the propeller. This could result in an uncontained engine failure with consequent loss of control of the airplane.

The FAA's Determination and an Explanation of the Provisions of the AD

What Has the FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—An unsafe condition exists or could develop on Raytheon Beech Models 65–90, 65–A90, B90, and C90 airplanes of the same type design (to the airplanes referenced above) that incorporate STC SA01366AT; and

—AD action should be taken in order to prevent an uncontained engine failure due to suspect engine and propeller installation, which could result in loss of control of the airplane.

What Does This AD Require?

This AD prohibits you from operating any affected airplane with STC SA01366AT incorporated and prohibits you from incorporating this STC in the future.

What Is the Compliance Time of This AD?

The compliance time of both the operations and installation prohibition is "as of the effective date of this AD."

Will This Compliance Time Inadvertently Ground Airplanes?

No. The only 2 airplanes that currently incorporate the configuration of the affected STC were involved in the referenced incidents. The engines of these airplanes will be replaced in accordance with the original type certificate data sheet (TCDS) or other FAA-approved STC. Basically, this AD prevents future installation of the configuration specified in STC SA01366AT.

Will the Public Have the Opportunity to Comment Prior to the Issuance of the Rule?

No. Since a situation exists (possible uncontained engine failure) that requires the immediate adoption of this regulation, the FAA has determined that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, the FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more

clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–92–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

='14' PART = '39'≤

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–15 Raytheon Aircraft Company (Type Certificate 3A20 previously held by the Beech Aircraft Corporation): Amendment 39–11533; Docket No. 99–CE–92–AD.

(a) *What airplanes are affected by this AD?* Any Model 65–90, 65–A90, B90, and C90 airplane (all serial numbers) that:

(1) Has at least one Motorlet, Walter M601E–11 turboprop engine (with an Avia-Hamilton Standard VJ8–510 propeller) installed, in accordance with Supplemental Type Certificate (STC) SA01366AT; and

(2) Is certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* The actions required by this AD will prevent engine failure and the inability to feather the propeller caused by discrepancies in the engine and propeller installation.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

(1) Do not operate any airplane that has a Motorlet, Walter M601E–11 turboprop engine (with an Avia-Hamilton Standard VJ8–510 propeller) installed, in accordance with STC SA01366AT.

(2) Do not install, on any affected airplane, any Motorlet, Walter M601E–11 turboprop engine (with an Avia-Hamilton Standard VJ8–510 propeller), in accordance with STC SA01366AT.

(e) *What is the compliance time of all actions of this AD?* As of the effective date of this AD.

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Robert Bosak, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6094; facsimile: (770) 703–6097.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA has determined that the nature of the unsafe condition does not warrant the issuance of a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD. The only 2 airplanes that currently incorporate the configuration of the affected STC were involved in the referenced incidents. The engines of these airplanes will be replaced in accordance with the original type certificate data sheet (TCDS) or other FAA-approved STC. Basically, this AD prevents future installation of the configuration specified in STC SA01366AT.

(i) *When does this amendment become effective?* This amendment becomes effective on February 18, 2000.

Issued in Kansas City, Missouri, on January 20, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2002 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–08–AD; Amendment 39–11525; AD 2000–02–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. This action requires a one-time visual inspection to determine the part numbers of the beta back-up test

switches of the propeller control system, and replacement of the switches, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent loss of the automatic overspeed protection of the propeller control system, which could result in a propeller overspeed condition and possible damage to the engine and propeller.

DATES: Effective February 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 16, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCCA advises that a certain beta back-up test switch is incorrectly identified as an allowable replacement in the wiring diagram manuals. This incorrect switch is used elsewhere on the aircraft and is physically interchangeable with the correct switch. However, the internal contacts of the incorrect switch are different. This difference prevents the beta back-up system of the propeller control system from functioning correctly if a mechanical failure of the propeller control system occurs. In the event of such an occurrence, the automatic overspeed protection could be lost. This condition, if not corrected, could result in a propeller overspeed condition and possible damage to the engine and propeller.

Explanation of Relevant Service Information

The manufacturer has issued de Havilland Alert Service Bulletin S.B. A8–61–30, Revision 'B,' dated December 6, 1999, which describes procedures for a one-time visual inspection to determine the part numbers of the beta back-up test switches of the propeller control system, and replacement of the switches with new switches, if necessary. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–99–30, dated December 9, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of the automatic overspeed protection of the propeller control system, which could result in a propeller overspeed condition and possible damage to the engine and propeller. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–08–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation

that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701. ='14' PART '39'≤

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–06 Bombardier, Inc.

(Formerly de Havilland, Inc.): Amendment 39–11525. Docket 2000–NM–08–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes; serial numbers 003 through 538 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the automatic overspeed protection of the propeller control system, which could result in a propeller overspeed condition and possible damage to the engine and propeller, accomplish the following:

(a) Within 50 flight hours after the effective date of this AD, perform a one-time visual inspection to determine the part numbers of the beta back-up test switches of the propeller control system, in accordance with de Havilland Alert Service Bulletin S.B. A8–61–30, Revision 'B,' dated December 6, 1999.

(1) If all switches have the correct part number (as specified by the alert service bulletin), no further action is required by this AD.

(2) If any switch does not have the correct part number (as specified by the alert service bulletin), prior to further flight, remove and replace the switch with a new switch having part number MS27407–6, in accordance with the alert service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with de Havilland Alert Service

Bulletin S.B. A8–61–30, Revision 'B,' dated December 6, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–99–30, dated December 9, 1999.

(e) This amendment becomes effective on February 16, 2000.

Issued in Renton, Washington, on January 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1956 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–282–AD; Amendment 39–11529; AD 2000–02–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect broken fasteners and cracking of the forward edge frame for main entry door number 3, and repair, if necessary. This amendment is prompted by reports of fatigue cracks at the inner chord and web of the body station 1265 edge frame between stringers 23 and 27. The actions specified by this AD are intended to detect and correct such cracking, which could result in rapid depressurization of the airplane.

DATES: Effective March 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–2771.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45466). That action proposed to require repetitive inspections to detect broken fasteners and cracking of the forward edge frame for main entry door number 3, and repair, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Clarify Inspection Requirements for Group 2 Airplanes

One commenter states that the proposed AD should clarify that previous accomplishment of the inspections required for Group 2 airplanes, in accordance with Boeing Alert Service Bulletin 747–53A2416, dated April 23, 1998, is adequate for meeting the inspection requirements of the proposed rule. (Group 2 airplanes are identified in Revision 1, dated May 6, 1999, of the alert service bulletin.) The commenter advises that all of its airplanes were included in the effectivity of the original release of the alert service bulletin and that the inspection requirements of the proposed AD, in accordance with the original release, have been accomplished. The commenter adds that no additional inspection requirements were added in Revision 1 of the alert service bulletin. For those reasons, the commenter requests changing the proposed AD to allow accomplishment of the flight safety inspections in accordance with the original release of the Boeing alert service bulletin instead of Revision 1 for Group 2 airplanes.

The FAA does not concur that it is necessary to change the proposed AD to cite the original release of the alert service bulletin rather than Revision 1 with regard to the inspections required for Group 2 airplanes. The FAA points out that the procedures in both of the alert service bulletins are identical for Group 2 airplanes. Therefore, the FAA agrees that inspections accomplished in accordance with the original release of the alert service bulletin meet the requirements of paragraph (a) of the proposed AD for Group 2 airplanes only. To clarify this, a note has been added to the final rule following paragraph (a).

Request To Clarify Certain Terminology in the Proposed Rule

One commenter requests minor editorial changes and clarification of certain terminology used in the proposed AD, as follows:

- In the second sentence of the "Explanation of Relevant Service Information," section and in Note 3 following paragraph (a) of the proposed AD, the commenter requests changing "inspection of certain fasteners" to "inspection of certain fastener holes." Although the "Explanation" section is not included in the final rule, the FAA concurs that such a change adds clarity to the inspection requirements, and has changed this phrase accordingly in Note 4 of the final rule. (Note 3 of the proposed rule is renumbered as Note 4 in the final rule.)
- In the first sentence of paragraph (c) of the proposed AD, the commenter requests changing "If any broken fastener or cracking" to "If any broken fasteners or cracking of structure." The FAA concurs with this request and has clarified this phrase accordingly in paragraphs (a), (b), and (c), and in Note 4, of the final rule.
- The commenter recommends that the heading preceding paragraph (c) of the proposed AD be called "Repair" or "Correction" rather than just "Repair." The commenter contends that "Correction" should be added to the heading because the statement of the unsafe condition specified that the action required is to detect and "correct" cracking. The FAA does not concur and considers that "Repair" is adequate for describing the action required to address the unsafe condition. For that reason, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,182 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the inspection of the frames at the floor intercostal, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,060, or $60 per airplane, per inspection cycle.

The FAA also estimates that the inspection of the frames at the top of the inner chord reinforcement strap is required to be accomplished on 103 U.S.-registered airplanes. It is estimated that it will take approximately 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,180, or $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701. PART='39'≤

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–10 Boeing:

Amendment 39–11529. Docket 98–NM–282–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999; certificated in any category.

Note 1: This AD also applies to airplanes that have been converted from a passenger configuration to a special freighter configuration.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the inner chord and web of the body station 1265 edge frame between stringers 23 and 27, which could result in rapid depressurization of the airplane, accomplish the following:

Inspections

(a) Accomplish the flight safety inspections of the frames at the floor intercostal to detect any broken fasteners and cracking of structure, in accordance with Figure 5 of Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

Note 3: Accomplishment of the flight safety inspections of the frames at the floor intercostal on Group 2 airplanes prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 747–53A2416, dated April 23, 1998, is considered acceptable for compliance with the actions required by paragraph (a) of this AD. However, Group 1 airplanes, as specified by paragraph (b) of this AD, that were inspected in accordance with the original release of the alert service bulletin are not exempt from the requirements of paragraph (b) of this AD.

Note 4: Figure 5 of the alert service bulletin includes a detailed visual inspection for broken fasteners, an open hole high frequency eddy current (HFEC) inspection of certain fastener holes in the frame inner chord to detect any cracking of structure, and a surface HFEC inspection of the frame web to detect any cracking.

Note 5: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 6: The alert service bulletin gives instructions to perform an open hole inspection, but does not give instructions to oversize the fastener hole after the inspection. This will keep sufficient material to oversize the hole at a later date when the modification work is accomplished.

(1) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated between 10,000 and 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 11,000 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated more than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 20,750 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(b) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, on which the extended chord reinforcement strap modification specified in Boeing Service Bulletin 747–53–2066, dated June 28, 1972, has not been accomplished or on which the extended chord reinforcement strap modification was accomplished after the accumulation of 10,000 total flight cycles: Accomplish the surface HFEC inspection and the open hole HFEC inspection, as applicable, of the frames at the top of the inner chord reinforcement strap to detect any cracking of structure, in accordance with Figure 6 of the alert service bulletin at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(1) For airplanes that have accumulated 20,000 total flight cycles or fewer as of the effective date of this AD: Inspect prior to the accumulation of 16,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 20,500 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever occurs later.

Repair

(c) If any broken fastener or cracking of structure is detected during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections shall be done in accordance with Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 7, 2000.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1765 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–60–AD; Amendment 39–11535; AD 2000–02–17]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 768–60, 772–60, and 772B–60 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB211 Trent 768–60, 772–60, and 772B–60 series turbofan engines. This action requires initial and repetitive visual inspections for flank wear on intermediate pressure turbine (IPT) shaft splines and intermediate pressure compressor (IPC) rear stub shaft splines. Components that show excessive flank wear must be replaced with serviceable parts. This amendment is prompted by reports of worn IPT shaft splines discovered at overhaul. The actions specified in this AD are intended to prevent IPT and IPC shaft spline flank wear, which could result in loss of drive between the IPT and IPC, leading to an IPT overspeed and possible disk burst, uncontained engine failure, and potential damage to the aircraft.

DATES: Effective February 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 16, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 3, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–60—AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (R–R) RB211 Trent 768–60, 772–60, and 772B–60 series turbofan engines. The CAA advises that it has received reports of excessive flank wear discovered on intermediate pressure turbine (IPT) shaft splines at overhaul. The investigation revealed that a lubrication problem, among other factors, may be causing the wear. This condition, if not corrected, could result in IPT and intermediate pressure compressor (IPC) shaft spline flank wear, which could result in loss of drive between the IPT and IPC, leading to an IPT overspeed and possible disk burst, uncontained engine failure, and potential damage to the aircraft.

Service Information

R–R has issued Mandatory Service Bulletin (SB) No. RB.211–72–C329, Revision 1, dated November 6, 1998, that specifies procedures and references for performing visual inspections for flank wear on IPT shaft splines and IPC rear stub shaft splines. The SB also provides references for determining if excessive flank wear requires replacing worn components with serviceable parts. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 004–04–98, dated November 6, 1998, in order to assure the airworthiness of these R–R engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the AD requires initial visual inspections prior to accumulating 4,200 cycles-since-new (CSN) and repetitive inspections at intervals not to exceed 4,200 cycles-in-service (CIS) since last inspection. Components that show excessive flank wear must be replaced with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

Immediate Adoption

There are currently no domestic operators of this engine model. Accordingly, a situation exists that allows the immediate adoption of this regulation. Notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–60–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under EO 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701. PART='39'≤

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–17 Rolls-Royce plc: Amendment 39–11535. Docket 99–NE–60–AD.

Applicability: Rolls-Royce plc (R–R) RB211 Trent Rolls-Royce plc (R–R) RB211 Trent 768–60, 772–60, and 772B–60 series turbofan engines, installed on but not limited to Airbus Industrie A330–341 and A330–342 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent intermediate pressure turbine (IPT) and intermediate pressure compressor (IPC) shaft spline flank wear, which could result in loss of drive between the IPT and IPC, leading to an IPT overspeed and possible disk burst, uncontained engine failure, and potential damage to the aircraft, accomplish the following:

Inspections

(a) Visually inspect for flank wear on IPT shaft splines and intermediate pressure compressor IPC rear stub shaft splines in accordance with Paragraph D, Action, of R–R Mandatory Service Bulletin (SB) No. RB.211–72–C329, Revision 1, dated November 6, 1998, as follows:

(1) Initially inspect prior to accumulating 4,200 cycles-since-new.

(2) Thereafter, inspect at intervals not to exceed 4,200 cycles-in-service since last inspection.

Replacement, If Necessary

(b) If spline wear depth exceeds the limits referred to in paragraph D (h)(vi) of R–R Mandatory SB No. RB.211–72–C329, Revision 1, dated November 6, 1998, prior to further flight remove from service worn components and replace with serviceable parts.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions required by this AD shall be performed in accordance with Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72-C329, Revision 1, dated November 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on February 16, 2000.

Issued in Burlington, Massachusetts, on January 21, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2000 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–99–AD; Amendment 39–11534; AD 2000–02–16]

RIN 2120–AA64

Airworthiness Directives; Short Brothers and Harland Ltd. Models SC–7 Series 2 and SC–7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Short Brothers and Harland Ltd. (Shorts) Models SC–7 Series 2 and SC–7 Series 3 airplanes. This AD requires you to repetitively inspect the wing attachment bushes in the fuselage front and rear spar frames for migration (gaps), and replace the bushes if a gap exists that is of a certain length or more. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this

AD are intended to detect and correct migration of the wing attachment bushes in the fuselage front and rear spar frames, which could result in structural damage to the wing spar/fuselage fitting with possible loss of control of the airplane.

DATES: Effective March 20, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 20, 2000.

ADDRESSES: You may get the service information referenced in this AD from Short Brothers plc, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. You may examine this information at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–99–AD, 901 Locust, Room 506, Kansas City, MO 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD? This AD is the result of reports of migration in the wing attachment bushes in the front and rear spar frames of Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes.

What is the potential impact if the FAA took no action? These actions are necessary to detect and correct migration of the wing attachment bushes in the fuselage front and rear spar frames. If we did not take action, this could result in structural damage to the wing spar/fuselage fitting with possible loss of control of the airplane.

Has the FAA taken any action to this point? Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 28, 1999 (64 FR 52263). The NPRM proposed to require repetitively inspecting the wing attachment bushes in the fuselage front and rear spar frames for migration (gaps), and replacing the bushes if a gap exists that is of a certain length or more. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Shorts Service Bulletin 53–68.

Was the public invited to comment? Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What is the FAA's Final Determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that 22 airplanes in the U.S. registry will be affected by the initial inspection.

What is the cost impact of the affected airplanes on the U.S. Register? We estimate that it will take approximately 10 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $13,200, or $600 per airplane.

These figures only take into account the cost of the initial inspections and do not account for the cost of repetitive inspections or the cost necessary to replace any bushings when gaps that exceed a certain length are found. The FAA has no way of determining the number of repetitive inspections or replacements each owner/operator will incur over the life of the affected airplanes.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–16 Short Brothers and Harland Ltd. Amendment 39–11534; Docket No. 97–CE–99–AD.

(a) *What airplanes are affected by this AD?* Models SC–7 Series 2 and SC–7 Series 3 airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* These actions are necessary to detect and correct migration of the wing attachment bushes in the fuselage front and rear spar frames. If we did not take action, this could result in structural damage to the wing spar/fuselage fitting with possible loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following, as applicable:

(1) Initial Requirements

(i) *What actions are required?* Inspect the wing attachment bushes in the fuselage front and rear spar frames for migration.

(ii) *When is the action required?* Within the next 100 hours time-in-service (TIS) after the effective date of this AD.

(2) Repetitive Requirements

(i) *What if no gaps are found at the bush areas during any inspection required by this AD?* Repeat the inspection specified in paragraph (d)(1)(i) of this AD at intervals not to exceed 500 hours TIS.

(ii) *What if any gap is found at the bush area that is less than 0.125 inches in length during any inspection required by this AD?* Repeat the inspection specified in paragraph (d)(1)(i) of this AD at intervals not to exceed 100 hours TIS provided the gaps do not increase to 0.125 inches or more in length. If the gap has not increased during 3 additional inspections and continue to not increase, then the inspection intervals may be increased to 500 hours TIS.

(iii) *What if any gap is found at the bush areas that is 0.125 inches or more in length during any inspection required by this AD?* Prior to further flight, replace the bushes with parts specified in the service information identified in this AD. Inspect the replacement bushes at intervals not to exceed 500 hours TIS in accordance with paragraph (d)(1)(i) of this AD.

(e) *What procedures must be used to accomplish all actions of this AD?* Shorts Service Bulletin No. 53–68, which incorporates the following pages:

Pages	Revision level	Date
6, 7, 8, 9, 10, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, and 25	Original Issue	January 10, 1996.
12	Revision No. 1	May 30, 1996.
3	Revision No. 2	September 1998.
1, 2, 4, 5, 11, 15, and 16	Revision No. 3	May 1999.

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Who should I contact if I have questions regarding the service information?* Direct all questions or technical information related to Shorts Service Bulletin 53–68, to Short Brothers plc, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. You may examine this service information at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Are any service bulletins incorporated into this AD by reference?* Yes. You must accomplish the actions required by this AD in accordance with Shorts Service Bulletin 53–68, which incorporates the following pages:

Pages	Revision level	Date
6, 7, 8, 9,10, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, and 25	Original Issue	January 10, 1996.
12	Revision No. 1	May 30, 1996.
3	Revision No. 2	September 1998.
1, 2, 4, 5, 11, 15, and 16	Revision No. 3	May 1999.

The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Short Brothers plc, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(k) *Has the airworthiness authority for the State of Design addressed this action?* Yes. The subject of this AD is addressed in British Airworthiness Directive 009–01–96, not dated.

(l) *When does this amendment become effective?* This amendment becomes effective on March 20, 2000.

Issued in Kansas City, Missouri, on January 20, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2001 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children and Families

45 CFR Part 1303

RIN 0970–AB87

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final Rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to implement timelines for conducting administrative hearings on adverse actions taken against Head Start grantees and to make additional changes to the regulations designed to expedite the appeals process.

EFFECTIVE DATES: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Washington, DC 20447; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Also, section 645A of the Head Start Act provides authority to fund programs for families with infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs. Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1998, Head Start served 823,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Summary of the Major Provisions of the Final Rule

The authority for this final rule is section 646 of the Head Start Act (42 U.S.C. 9841), as amended by Public Law 103–252, Title I of the Human Services Amendments of 1994.

ACF's changes to the regulations are designed to expedite the appeals process and as specifically required by section 646(c) to specify a timeline for administrative hearings on adverse actions taken against grantees, and a timeline for conducting the administrative hearing and issuing a decision. The final rule implements these requirements.

Overall, the final rule on timelines, including the conforming changes to other affected sections of the appeals requirements in part 1303, will save time and expenses while continuing to allow due process to grantees appealing a proposed termination or denial of refunding. In the past, a number of appeal proceedings have been protracted and costly, partly because of the absence of statutory or regulatory timelines for holding a hearing. Under the final rule on timelines, decisions can be rendered in a shorter period of time thus allowing quicker removal of a deficient grantee. This will help ensure that children and their families receive high quality Head Start services from a qualified provider.

III. Rulemaking History

On June 30, 1998, the Administration on Children, Youth and Families (ACYF) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (63 FR 35554) proposing: (1) Timelines for the conducting of administrative hearings on adverse actions taken against Head Start grantees; and (2) additional changes to the regulations designed to expedite the appeals process. Copies of the proposed rule were mailed to all Head Start grantees and delegate agencies. Interested parties were given 60 days in which to comment. ACYF received comments from three Head Start grantees and a private law firm interested in Head Start appeals.

IV. Section by Section Discussion of the Comments on the NPRM

Of the four parties commenting on the NPRM, one was a general expression of support for the proposed rule, while the other comments were directed at specific sections of the NPRM. Only those sections for which comments were made or to which technical changes were made are discussed below. The discussion of the sections follows the order of the NPRM table of contents and a notation is made wherever the section designations have been changed or deleted in the final rule.

Section 1303.14 Appeal by a Grantee From a Termination of Financial Assistance

Section 1303.14(c)

Comment: One commenter agreed that ACF should provide detailed notices of termination of refunding. However, the commenter believes that changes to the proposed rule would make it more equitable and would help to streamline the appeals process. The comment states that implicit in the Head Start Act's requirement for a full and fair hearing is a requirement that sanctions are available to the Departmental Appeals Board (The Board) for application to either party. Accordingly, the significant sanctions for various failures as detailed in the NPRM should be equally applicable to ACF. Without such uniformity, the commenter stated that the regulations would be in violation of the Head Start Act's requirement for a fair hearing process.

Response: Sanctions may be applied to both parties under the proposed regulations. It is unclear what additional sanctions the commenter wishes imposed on the public if the Federal agency should fail to comply with the requirements of the proposed provisions. What ACF has proposed are sanctions that would compel the issuance of clear statements of the findings and the factual and legal bases for them. We believe this is fair to grantees while permitting the removal of poor grantees from the program, both of which are within the statutory purposes of the program. For these reasons, we have made no changes based on this comment.

Section 1303.14 (c)(i) Notice of Termination

Comment: One commenter is concerned that the notice requirements being imposed upon ACF are not written with the same degree of specificity as § 1303.14(d)(1–7) pertaining to the requirements for Grantee Notices of Appeal. The commenter believes that ACF should be required to submit the termination in writing, submit the findings of fact, relevant citations for violations, and notice of right to appeal.

Response: The current regulations require specific statements about proposed actions. The proposed regulations would require specific findings of fact and citations of legal and policy provisions applicable to the

proposed action. We believe this is adequate. Moreover, if for any reason they are not adequate, the Departmental Appeals Board can require greater specificity. We note also that the proposed and existing regulations require that termination and denial of refunding letters give notice of appeal rights.

The proposed rule requires that the notice spell out in specific terms the legal basis for the termination. The object is to reduce the need for the grantee to supplement its initial notice with additional filings after the appeal is filed, which will streamline and expedite the appeals process. Therefore, for the foregoing reasons, we have not changed this section in the final rule.

Sections 1303.14(c)(6) and 1303.15(d)(4) Sanctions

Comment: Two commenters are concerned that these sections, though they provide sanctions to be levied against ACF, do not provide for a timeline upon which ACF is barred from reissuing the termination. The commenters state that this section does not offer the deterring effect as intended and that it imposes responsibilities upon ACF, but fails to provide the enforcement element. However, the sanctions provided in § 1303.14(e) against the grantee/delegate are much more punitive than those provided against ACF.

Response: For the reasons stated above in response to the previous comment, we believe that the sanctions proposed against ACF in the event that a notice of termination is deficient provide a fair remedy. Furthermore, it would be inappropriate to penalize the public due to an error by the Federal agency. Keeping an unqualified grantee in the program would do just that. Providing a corrected notice avoids that and gives the grantee all the notice due it. Therefore, we have not made any changes.

Section 1303.14(d)(1–5) Document Production

Comment: One commenter was particularly concerned that § 1303.14(d)(5), which requires the grantee to submit a detailed request and justification for the production of documents, is unduly burdensome and serves as an effort to impede its ability to address the many issues against it in the notice of termination. The commenter believes that it should be sufficient that the request for the production of documents is relevant to the issues at hand. The commenter states that § 1303.14(c)(i) sets forth the requirements for the notification of the termination of the grant. It also believes that if § 1303.14(c)(i) was specific it would provide the grantee sufficient notice and allow the grantee to be more specific in its appeal. The commenter believes that as the regulation is now written, it should be fair to assume that any request for documents is in support of an anticipated defense in the appeal. Therefore, the commenter believes it should follow that a grantee/delegate agency should be able to request documents that are relevant to the appeal. Furthermore, the commenter believes that grantees should not be required to lay out their arguments before they are allowed to answer the allegations. The commenter believes this regulation as it is now written essentially requires that.

Response: We do not believe these objections are meritorious. Current practice and the proposed regulations require specific notice. Also, requiring a showing of relevance and reasonable basis for believing a document exists is not equivalent to requiring a full explanation of a grantee's arguments. Even if it were, the parties have to lay out their arguments or positions at the outset anyway. We also note the fact that non-renewal and termination actions rarely arise overnight. Rather, grantees have been in contact with ACF over the specifics of non-compliance deficiencies. Considerable exchange of views and information is generally the case.

Generally, on-site reviews have been conducted and the findings shared with the grantee, including the bases for those findings. Morever, with respect to documentation, the vast majority of the documents are those obtained by ACF from the grantee itself. It has been ACF's experience that considerable time is wasted on so-called "fishing expeditions" when blanket requests are filed for documents without any objective reason to believe they exist. The purpose of the regulation is to avoid those situations.

There is no desire to deny a party the ability to request and obtain relevant documents. There is a desire to avoid unfounded and generalized requests that are not based on some reasonable basis to believe the documents exist.

ACF would also note that generally it files all documents in its possession that pertain to the case, except those that are privileged. It does this even when it does not expect to rely on a particular document. The purpose in doing this is to avoid haggling over production of documents and to expedite the process. This also helps ensure that the Board has the fullest possible picture of the grantee and the dispute, and that the documents are available should they become relevant to an issue during the course of the proceedings.

Section 1303.14(d)(1–7)

Comment: One commenter suggests that the rule be clarified to indicate whether the grantee's funding will be affected during the appeals process and whether the proposed change would supplement the existing section or act as a substitute to the current section.

Response: The NPRM proposes no changes in this regard and current regulations provide for continued funding to a grantee during the appeals process unless the grant has also been suspended.

Sections 1303.14(d)(e) and 1303.15(h) Appeal

Comment: We received two comments on this section. The first indicated that the increase in time for a grantee to file an appeal from 10 to 30 days is clearly warranted. Nevertheless, the commenter believes that the new requirements for the content of the appeal not only are unworkable but also are prejudicial to grantees because they will force grantees, even more than before, to do a dump of all documents in their possession remotely related to their appeal in order to ensure that all documents necessary to a grantee's case are available at the hearing. The commenter believes that an appropriate change to the proposed rule would be to provide for a process similar to that already informally employed by the Board— an initial submission of documents followed by a final submission after the conclusion of discovery and rulings on preliminary motions. Such a process is very common in judicial and administrative proceedings and provides the parties a real opportunity to respond to fully developed issues.

Second, the commenter suggests that the requirement that the grantee provide all documents that are relevant is also prejudicial in that any documents not immediately submitted will be excluded under the proposed rules. Thus, to mount an effective defense, a grantee will be forced to expend significant sums on attorney time and other costs in order to search files for any documents remotely related to the appeal and submit them. The commenter argues, therefore, that the result of this proposed rule will be to give grantees a Hobson's choice of either high costs to file an appeal (costs that are largely not covered by Head Start) or exclusion of potentially crucial documents.

Response: We have considered the comments objecting to the requirement that grantees submit all relevant documents with their original appeals. The crux of the objection is that this will force grantees to dump all documents that might conceivably be relevant, resulting in excessive search time and, presumably, an unduly cumbersome record, although the latter point was not raised. We believe there is some merit to this comment.

In response to this comment, we have changed § 1303.14(d) by adding a new paragraph (6) and renumbering proposed paragraphs (6) and (7) as (7) and (8), respectively. Also, for purposes of clarity, we have added a time-frame for ACF's response to the appeal. The new paragraph (6) reads as follows:

> Grantees may submit additional documents within 14 days of receipt of the documentation submitted by ACF in response to the grantee's appeal and submission of documents. The ACF response to the appeal and initial submittals of the grantee shall be filed no later than 30 days after ACF's receipt of the material. In response to such a submittal by the grantee, ACF may submit additional documents should it have any, or request discovery in connection with the new documents, or both, but must do so within 10 days of receipt of the additional filings.

ACF believes this substantially meets the concerns of the commenter, while still providing for expeditious conduct of the appeal. It also permits ACF to obtain more information on the new documents if it is unfamiliar with them. ACF does not believe any change to paragraph (e) of the regulation is necessary as a result of the change. The sanctions would apply if a grantee did not submit the documents at the outset, or within 14 days of receipt of the ACF initial filing, if the conditions for an exception do not exist. Of course, these provisions do not mean that all documents submitted by the parties are automatically entitled to be admitted into the record. The Board may exclude irrelevant documents, or those for which authenticity cannot be established, or for other appropriate reasons as the Board determines.

Section 1303.15(d)(4) Appeal by a Grantee From a Denial of Refunding

Comment: One commenter objects to 30 days for a grantee to initially appeal and suggested 60 days instead, with a possibility of one 30-day extension due to extreme unavoidable circumstances. In order to make the notice from ACF more useful, the commenter proposes that ACF be required to structure its notice of termination or denial of refunding in a manner similar to a complaint in Federal court with numbered paragraphs containing factual allegations. The commenter states that in this way, as in a court of law, a grantee can provide a specific response to each factual allegation and between the termination notice and the grantee's responses, it will be clear what facts, if any, are clearly in dispute.

The increase in time for a grantee to file an appeal from 10 to 30 days is clearly warranted. Nevertheless, the commenter believes that the new requirements for the content of the notice of appeal not only are unworkable but also are prejudicial to grantees.

Response: The proposed revision to paragraph (d) clarifies the existing rule by requiring ACF to state in specific details the legal basis of the decision to deny refunding to a grantee. As stated in the NPRM, the objective is to reduce the need for the grantee to supplement its initial appeal with additional filings and thereby streamline and expedite the appeals process.

The increase in the amount of time to appeal a termination from 10 to 30 days is being made to give grantees more time in which to develop their initial appeal submission, which will allow for quicker resolution of appeals. The comment presented by a public agency regarding this change states that it is fair and supports the proposed change. If more time is needed, it may be requested of the Departmental Appeals Board in advance of the due date in accordance with § 1303.8. Further, ACF does not believe that using court practice as a model is either necessary or desirable. Administrative proceedings are generally designed to be less formal and to be expeditious, goals not furthered by the suggestion. In view of the foregoing, we did not change the rule.

Section 1303.14(h) Right To Participate in Hearing

Comment: One commenter believes that the ability of a Head Start grantee to participate in the hearing process should not be impacted by the fact that they are a delegate agency. The commenter believes delegate agencies should be able to participate as a matter of right.

Response: We do not support this suggestion. First, the appeal right by statute is vested in a grantee and not in its delegate agencies. Secondly, a grantee may elicit evidence and testimony from delegate agencies and their personnel in support of its appeal, if such evidence and testimony is available, and present that as part of its own case. Thirdly, the proposed regulation does afford a delegate whose conduct is the source of grounds for non-renewal or termination the right to participate. ACF does not see the need to automatically expand the number of parties in a proceeding. Any other party may petition the Board to participate under the proposed regulations. It is ACF's intent that under those circumstances the Board will apply the tests under 45 CFR 16.16 in determining the right to participate. One of those conditions is that the intervention not cause undue delay. We would note that the costs of intervention by a delegate agency that is not appearing as a matter of right are not allowable costs under the grantee's grant.

Section 1303.15(d)(3) Appeal by a Grantee From Denial of Refunding

In reviewing the NPRM, we realized that we had inadvertently failed to revise this paragraph to conform it to the comparable provision on terminations. The termination provisions are in Section 1303.14(c). We have done so in the final rule. We believe it is clear that the intent with respect to termination and non-renewal actions was to have them be as identical as possible since they are, for all practical purposes, identical actions. They are separately provided for due to the Head Start Act's reference to them as separate actions. We have made the assumption that those who commented on the termination provisions would have the same comments about them in the denial of refunding section. Our responses to those comments are the same here.

Section 1303.16(d) Conduct of Hearing

Comment: One commenter said that ACF's justification for the use of written direct testimony is that it is more efficient and reduces the hearing time and expense. However, the commenter maintains that ACF and the agency/delegates still will have to provide written testimony, which can be more time consuming and expensive.

Further, the commenter maintains that written direct testimony does not allow for the many nuances that may arise with live direct testimony. Also, the commenter argues that the use of prepared direct testimony does not provide active participation by the presiding officer.

One commenter believes that prepared testimony is prejudicial to grantees.

Response: ACF does not believe that the comments warrant a change in the regulations as proposed. ACF has experience with the use of prepared direct testimony in these and similar cases.

That experience does not support the commenter's view that it impairs the Board's ability to assess credibility and the demeanor of witnesses. While there may be rareinstances when a key witness is not subject to cross-examination or questioning by the Board, in our view that would be a rare occurrence. As to the cost savings, by way of clarification not only is there a reduction in transcript costs, but there is also a reduction in travel costs for all the Federal personnel and Federal witnesses.

Moreover, as we noted in the preamble to the NPRM, the use of prepared direct testimony reduces the time of the hearing. A major public benefit of this is that Federal personnel are therefore away from their other duties for less time. This means there is less disruption in the conduct of Federal business. Since these personnel also have to provide services to other grantees, this is another major benefit of the use of prepared direct testimony.

As to the comment that use of prepared direct testimony will preclude a grantee from making its case to the Board, we know of no evidence to support that statement. Our experience is that a grantee can make its case to the Board using prepared direct testimony. ACF has the same view of the comment that the use of prepared direct testimony will cost grantees more money than live direct testimony. Even if true, however, we do not believe thatthose costs would be comparable to the added costs to taxpayers of having to pay added travel costs of keeping Federal personnel and witnesses on-site during a week or more of live direct testimony.

ACF does not believe that the use of prepared direct evidence favors or prejudices any party. The provision operates equally on all parties with respect to the presentation of evidence. Observing the demeanor of witnesses is a consideration that applies to all witnesses and that intrinsically does not work for or against one party over another. Therefore, ACF does not consider the comments as warranting any change to the proposed regulations.

We believe the comment that the proposal would limit a grantee's ability to advocate for itself and children and their families is not valid. First, as noted above, our experience is that grantees can advocate for themselves when the procedure of prepared direct testimony is used. Second, ACF is charged with advocating for children and their families as well. Therefore, they are not without advocacy on their behalf. Indeed, concern over thechildren and families is the motivating factor in the intense efforts ACF engages in to secure interim grantees to take over services after non-renewal or termination of a grant. Moreover, as the District Court recently noted in denying a preliminary injunction brought by a Head Start grantee whose grant was terminated, a grantee does not have standing to raise the concerns of children and their families in receiving Head Start services from a particular provider. *Mansfield-Richland-Morrow Total Operation Against Poverty* v. *Donna E. Shalala*, "Memorandum Opinion," p. 18, November 25, 1998.

Section 1303.17 Time for Hearing and Decision

Comment: Four commenters expressed concern regarding the amount of time for a hearing and decision. According to the commenters, the new timelines proposed by ACF have two defects.

First, the commenters believe that the rule is not clear concerning the 60-days for a decision; specifically,whether the 60-days begins to run after briefing and oral arguments or from some other point in time.

Second, with respect to the overall timelines, there was a concern that the timelines would drive up the cost of hearings to grantees. By requiring complex litigation to be concluded in approximately seven to nine months, it is stated that ACF will succeed in forcing grantees to utilize more attorneys to keep up with the demands of such litigation.

Response: We changed the regulation to clarify that the 60 days for a decision starts when the record for an appeal is closed. The record is closed when the last permissible submission is received by the Board.

In response to the first part of this comment we have changed the last sentence of § 1303.17(a) to provide that the 60 day period for the decision begins to run after the Board's receipt of the last permissible submittal. The submittal of unauthorized material will not stay or prolong the due date of the final decision.

There is no reason to believe that the total amount of attorney time devoted to an appeal will change because of the timelines. The fact it will be expended over a shorter period of time does not necessarily mean more attorney time will be required or that costs will be greater. The intent of Congress is to expedite these appeals and that is of prime importance.

V. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This final rule implements the statutory requirement for Head Start grantee appeals to be heard and decided within certain, defined time frames.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This final rule contains information collection in § 1303.14, (written grantee appeal) § 1303.15 (appeal of denial of refunding) and § 1303.16(d) (written direct testimony) which have been submitted to OMB for review and approval.

The respondents to the information collection requirements in the rule are Head Start grantees, which may be State or local nonprofit or for-profit agencies or organizations.

The Department needs to require the collection of certain information to conform to the administrative rules that provide for a hearing by grantees against which adverse action is contemplated.

The grantees that will be affected by these requirements will be those for which the Department is contemplating adverse action either by terminating financial assistance or by denying an application for funding.

Based upon our experience we estimate that adverse action would be contemplated against ten grantees in a given year. A written grantee appeal (addressed in § 1303.14) and an appeal of denial of refunding (addressed in § 1303.15) is a one time activity which

is preceded by one action which is to research the allegations by checking program records and preparing a written response. We previously estimated the time it would take to research records and prepare a letter at 16 hours per instance for a total burden of 160 hours, approved under OMB control number 0980–0242. There is no new additional burden anticipated in the final rule for these sections.

A new burden is estimated for written direct testimony (addressed in § 1301.16(d)). We estimate an additional burden of 10 hours for each grantee for a total new burden of 100 hours annually.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collections of information in:

Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Wendy Taylor.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 205 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review of Rulemaking

This rule is not a "major" rule as defined in Chapter 8 of 5 U.S.C.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule does not have federalism implications as defined in the Executive order.

The Family Impact Requirement

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires a family impact assessment affecting family well-being.

We have determined that this action will not affect the family. Therefore, no analysis or certification of the impact of this action was developed.

List of Subjects in 45 CFR Part 1303

Administrative Practice and Procedure, Education of the disadvantaged, Grant programs-social programs, Reporting and recordkeeping requirements.
PART='1303'≤

For the reasons set forth in the Preamble, 45 CFR part 1303 is amended to read as follows:

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

1. The authority citation for part 1303 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*.
'45' PART='1303'≤

2. Section 1303.14 is amended by republishing paragraph (c), introductory text, revising paragraphs (c)(1), (2) and (5); removing paragraph (e); redesignating paragraphs (d) and (f) through (j) as paragraphs (f) through (k); adding new paragraphs (c)(6), (d) and (e); and revising the newly redesignated paragraph (h), to read as follows:

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

* * * * *

(c) A notice of termination shall set forth:

(1) The legal basis for the termination under paragraph (b) of this section, the factual findings on which the termination is based or reference to specific findings in another document that form the basis for the termination (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations, or policy issuances on which ACF is relying for its determination.

(2) The fact that the termination may be appealed within 30 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeal shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee that requests a hearing shall be afforded one, as mandated by 42. U.S.C. 9841.

* * * * *

(5) That the grantee's appeal must meet the requirements set forth in paragraph (d) of this section.

(6) That a failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the termination action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(d) A grantee's appeal must:

(1) Be in writing;

(2) Specifically identify what factual findings are disputed;

(3) Identify any legal issues raised, including relevant citations;

(4) Include an original and two copies of each document the grantee believes is relevant and supportive of its position (unless the grantee has obtained permission from the Departmental Appeals Board to submit fewer copies);

(5) Include any request for specifically identified documents the grantee wishes to obtain from ACF and a statement of the relevance of the requested documents, and a statement that the grantee has attempted informally to

obtain the documents from ACF and was unable to do so;

(6) Grantees may submit additional documents within 14 days of receipt of the documentation submitted by ACF in response to the grantee's appeal and initial submittals. The ACF response to the appeal and initial submittals of the grantee shall be filed no later than 30 days after ACF's receipt of the material. In response to such a submittal, ACF may submit additional documents should it have any, or request discovery in connection with the new documents, or both, but must do so within 10 days of receipt of the additional filings;

(7) Include a statement on whether the grantee is requesting a hearing; and

(8) Be filed with the Departmental Appeals Board and be served on the responsible HHS official who issued the termination notice and on the Commissioner of ACYF. The grantee must also serve a copy of the appeal on any delegate agency that would be financially affected at the time the grantee files its appeal.

(e) The Departmental Appeals Board sanctions with respect to a grantee's failure to comply with the provisions of paragraph (d) of this section are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantee's failures are not substantial, but are confined to one or a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other "discovery" request not timely made.

(3) The sanctions set forth in paragraphs (e)(1) and (2) of this section shall not apply if the Departmental Appeals Board determines that the grantee has shown good cause for its failure to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

* * * * *

(h) If the responsible HHS official initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

* * * * *

3. Section 1303.15 is amended by revising paragraphs (b)(2), (d)(1) and (d)(3), and adding new paragraphs (d)(4), (f), (g) and (h) to read as follows:

§ 1303.15 Appeal by a grantee from a denial of refunding.

(b) * * *

(2) Any such appeals must be filed within 30 days after the grantee receives notice of the decision to deny refunding.

* * * * *

(d) * * *

(1) The legal basis for the denial of refunding under paragraph (c) of this section, the factual findings on which the denial of refunding is based or references to specific findings in another document that form the basis for the denial of refunding (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

* * * * *

(3) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, the delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

* * * * *

(4) A statement that failure of the notice of denial of refunding to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

* * * * *

(f) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(g) Paragraphs (i), (j), and (k) of 45 CFR 1303.14 shall apply to appeals of denials of refunding.

(h) The Departmental Appeals Board sanctions with respect to a grantee's appeal of denial of refunding are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantee's failure to comply is not substantial, but is confined to one or a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other "discovery" request not timely made.

(3) The sanctions set forth in paragraphs (h)(1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failure to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

PART='1303'≤

4. Section 1303.16 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h); adding a new paragraph (d); and revising newly redesignated paragraph (f) to read as follows:

§ 1303.16 Conduct of hearing.

* * * * *

(d) Prepared written direct testimony will be used in appeals under this part in lieu of oral direct testimony. When the parties submit prepared written direct testimony, witnesses must be available at the hearing for cross-examination and redirect examination. If a party can show substantial hardship in using prepared written direct testimony, the Departmental Appeals Board may exempt it from the requirement. However, such hardship must be more than difficulty in doing so, and it must be shown with respect to each witness.

* * * * *

(f) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the Departmental Appeals Board. This

application must be made within 30 days of the grantee's appeal in the case of the appeal of termination or denial of refunding, and as soon as possible after the notice of suspension has been received by the grantee. It must state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

5. Section 1303.17 is added to read as follows:

§ 1303.17 Time for hearing and decision.

(a) Any hearing on an appeal by a grantee from a notice of suspension, termination, or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the closing of the record, i.e., 60 days after the Board receives the final authorized submission in the case.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph(a) of this section may be extended if:

(1) The parties jointly request a stay to engage in settlement negotiations,

(2) Either party requests summary disposition; or

(3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for reasons beyond the control of either party or the Board.

Catalog of Domestic Assistance Program Number 93.600, Project Head Start)

Dated: June 16, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: October 5, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 00–2049 Filed 1–31–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2095; Amendment 195–66]

RIN 2137–AC 11

Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correcting amendments.

SUMMARY: This document corrects a final rule published April 2, 1999 (64 FR 15926). The final rule incorporates by reference consensus standards for aboveground steel storage tanks into the hazardous liquid pipeline safety regulations. This document makes two minor corrections to the final rule. First, it adds an industry publication, American Petroleum Institute (API) 1130 to the list of incorporated references. Second, it corrects the reference to the API Standard 653 to include Addendum 2.

DATES: Effective February 1, 2000. The incorporation by reference of the publication stated in the rule was approved by the Director of the Federal Register as of February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

When RSPA published the final rule in the **Federal Register**, it inadvertently omitted industry publication API 1130, Computational Pipeline Monitoring (1st Edition, 1995), from 49 CFR 195.3, Matter incorporated by reference. This document corrects this omission in the reference list by adding a reference to API 1130 in § 195.3 (c)(2)(ii) and by renumbering subsequent references. Also, in the final rule the preamble section listed API Standard 653 (Addenda 1 and 2), but the regulatory text section listed API Standard 653 (Addendum 1). This document corrects this discrepancy by specifying API Standard 653 (Addenda 1 & 2) in both places. We regret any confusion these omissions may have caused.

List of Subjects in 49 CFR Part 195

Incorporation by reference, Breakout tanks, Hazardous liquids and Petroleum, Carbon dioxide, Pipeline safety, Reporting and recordkeeping requirements.

RSPA amends Part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

Accordingly, 49 CFR Part 195 is corrected by making the following correcting amendments:

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53. PART='195'≤

2. In § 195.3, (c)(2) is amended by redesignating existing paragraphs (c)(2)(ii) through (c)(2)(xv) as (c)(2)(iii) through (c)(2)(xvi) respectively, by adding a new paragraph (c)(2)(ii) and by revising redesignated paragraph (c)(2)(xiv) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(2) * * *

(ii) API 1130 "Computational Pipeline Monitoring" (1st Edition, 1995).

* * * * *

(xiv) API Standard 653 "Tank Inspection, Repair, Alteration, and Reconstruction" (2nd edition, December 1995, including Addenda 1 & 2).

* * * * *

Issued in Washington, DC on October 27, 1999.

Kelley S. Coyner,

Administrator.

[FR Doc. 00–340 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE20

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Blackburn's Sphinx Moth from the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine *Manduca blackburni*, the Blackburn's sphinx moth, to be an endangered species under the Endangered Species Act of 1973, as amended (Act). Historically, this species occurred on the Hawaiian islands of Kauai, Oahu, Molokai, Maui, and Hawaii, but until

recently, was known only from one population on Maui. Researchers observed a second population on Maui in 1992, and populations are now known to also occur on the islands of Kahoolawe and Hawaii. This moth is currently threatened by one or more of the following: habitat fragmentation and destruction due to development and agricultural practices resulting in the loss of its host plants, habitat degradation due to the effects of introduced animals and plants, predation, parasitism, competition for food or space by alien insects, and overcollection by private and commercial collectors. Due to its restricted distribution, this species is also vulnerable to extinction from random, catastrophic events, such as drought or fire. This final rule implements the Federal protections provided by the Act for this moth.

EFFECTIVE DATE: March 2, 2000.

ADDRESSES: You may inspect the complete file for this rule, by appointment, during normal business hours at the Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Pacific Islands Manager, Ecological Services, Pacific Islands Ecoregion (see **ADDRESSES** section) (telephone: 808/541–2749; facsimile: 808/541-2756).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). Each island was formed sequentially from frequent, voluminous basaltic lava flows (Stearns 1985). The youngest island, Hawaii, is still volcanically active, and retains its form of coalesced, gently sloping, unweathered shield volcanoes (broadly rounded dome-shaped volcanoes formed by fluid and far-spreading lava flows). Vulcanism on the older islands has long since ceased, with subsequent erosion forming heavily weathered valleys with steep walls and well-developed streams and soils (Department of Geography 1983).

This range of topography creates a great diversity of climates. Windward (northeastern) slopes can receive up to 1,000 centimeters (cm) (400 inches (in)) of rain per year, while some leeward coasts that lie in the rain shadow of the high volcanoes are classified as deserts, receiving as little as 25 cm (10 in) of rain annually. This climate has given rise to a rich diversity of plant communities, including coastal, dryland, montane, subalpine, and alpine; dry, moderately moist, and wet; and herblands, grasslands, shrublands, forests, and mixed communities (Gagné and Cuddihy 1990). These habitats support one of the most unusual arthropod faunas in the world, with an estimated 10,000 native species (Howarth 1990). Unusual characters of Hawaii's native arthropod fauna include the absence of social insects, such as ants and termites, extremely small geographic ranges, novel ecological shifts (unusual behavior and/or habitat), flightlessness, and loss of certain antipredator behaviors (Howarth 1990; Simon *et al.* 1984; Zimmerman 1948, 1970).

Blackburn's sphinx moth (*Manduca blackburni*) is Hawaii's largest native insect, with a wingspan of up to 12 cm (5 in). Like other sphinx moths (family Sphingidae), it has long, narrow forewings and a thick, spindle-shaped body tapered at both ends. It is grayish brown in color, with black bands across the apical (top) margins of the hind wings and five orange spots along each side of the abdomen. The larva is a typical, large "hornworm" caterpillar, with a spinelike process on the dorsal (upper) surface of the eighth abdominal segment. Caterpillars occur in two color forms, a bright green or a grayish phase. Both color forms have scattered white speckles throughout the dorsum (back), with the lateral (side) margin of each segment bearing a horizontal white stripe, and segments four to seven bearing diagonal stripes on the lateral margins (Zimmerman 1958; Betsy Gagné, Hawaii Department of Land and Natural Resources, pers. comm. 1998).

Blackburn's sphinx moth is closely related to the tomato hornworm (*Manduca quinquemaculata*) and has been confused with this species. Blackburn's sphinx moth was described by Butler (1880) as *Protoparce blackburni*, and named in honor of the Reverend Thomas Blackburn, who collected the first specimens. It was believed to be the same as the tomato hornworm (*Sphinx celeus* Hubner=*Sphinx quinquemaculatus* Hawthorn) by Meyrick (1899), and then treated as a subspecies (Rothschild and Jordan 1903, as cited by Riotte 1986) and placed in the genus *Phlegethontius* (Zimmerman 1958). Riotte (1986) demonstrated that Blackburn's sphinx moth is a distinct taxon in the genus *Manduca*, native to the Hawaiian Islands, and reinstated it as a full species, *Manduca blackburni*. D'Abrera (1986) tentatively considered *Manduca blackburni* to be a synonym of *Manduca quinquemaculata*, but subsequent authors (Howarth and Mull 1992; Nishida 1992) have disagreed with this view, and the findings of Riotte (1986) are accepted here. Several different common names have also been used for this species, including the tomato hawk-moth (Swezey 1924b), the tobacco hornworm (Browne 1941; van Dine 1905), the Hawaiian tobacco worm (Swezey 1931; Timberlake *et al.* 1921), the Hawaiian tomato hornworm (Fullaway and Krauss 1945; Zimmerman 1958), the Blackburn hawk moth (Hawaiian Entomological Society (HES) 1990; Howarth and Mull 1992), and Blackburn's sphinx moth (Service 1984). The name Blackburn's sphinx moth is used here.

In Hawaii, Blackburn's sphinx moth can be confused with the related sweetpotato hornworm (*Herse cingulata*). In contrast to the sweetpotato hornworm, adult Blackburn's sphinx moths can be distinguished by orange rather than white dorsal abdominal spots, with black borders on both the front and back margins of each segment, and a broader, marginal black band on the hind wing. The larvae of Blackburn's sphinx moth differ from those of the tomato hornworm and tobacco hornworm by having two dark longitudinal stripes on the head capsule, although this is not always the case. While these stripes are usually apparent in the dark phase, they are not always apparent in the green phase (Ellen VanGelder, University of Hawaii, pers. comm. 1997). Adult Blackburn's sphinx moth can be distinguished from the North American tomato hornworm and tobacco hornworm (*Manduca sexnotata*) by the presence of crescent-shaped white markings along the inner border of the black bands on the forewing (B. Gagné, pers. comm. 1998).

Larvae of Blackburn's sphinx moth feed on plants in the nightshade family (Solanaceae). The natural host plants are native shrubs in the genus *Solanum* (popolo), and the native tree, *Nothocestrum latifolium* ('aiea) (Riotte 1986), on which the larvae consume leaves, stems, flowers, and buds (B. Gagné, pers. comm. 1994). However, many of the host plants recorded for this species are not native to the Hawaiian Islands, and include *Nicotiana tabacum* (commercial tobacco), *Nicotiana glauca* (tree tobacco), *Solanum melongena* (eggplant), *Lycopersicon esculentum* (tomato), and possibly *Datura stramonium* (Jimson weed) (Riotte 1986). Development from egg to adult

can take as little as 56 days (Williams 1947), but pupae may remain in a state of torpor (inactivity) in the soil up to a year (Williams 1931; B. Gagné, pers. comm. 1994). Adult moths can be found throughout the year (Riotte 1986).

Historically, Blackburn's sphinx moth has been recorded from the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, and collected from sea level to 760 meters (m) (2,500 feet (ft)) (Riotte 1986). Most historical records were from coastal, lowland, and dryland forest habitats in areas receiving less than 120 cm (50 in) annual rainfall. It appears that this moth was historically most common on Maui (Riotte 1986).

Very few specimens of this species have been seen since 1940, and after a concerted effort by staff at the B.P. Bishop Museum to relocate this species in the late 1970's, it was considered to be extinct (Gagné and Howarth 1985). In 1984, a single population was discovered on Maui (first Maui site or population) (Riotte 1986). The population is located on private and State lands, of which parts lie within a natural area reserve, part is used by the Hawaii National Guard for military training, and part is administered by the Department of Hawaiian Homelands. Between 1986 and 1991, a total of 6 specimens were taken in light traps 16 kilometers (km) (10 miles (mi)) from where the original population was discovered in 1984. These findings may indicate the presence of an additional population (Patrick Conant, Hawaii Department of Agriculture, pers. comm. 1994), although adult moths are strong fliers and these specimens could have originated at the known population. Identification of two larvae and signs of two additional larvae occurred in January 1997, although subsequent searches in September 1996 (Conant and VanGelder 1997) did not reveal any signs of eggs or larvae. Larvae are known to feed on 'aiea and tree tobacco (Frank Howarth, B.P. Bishop Museum, *in litt.* 1994), but the number of larvae and adults produced each year is unknown.

A second Maui site or population is known from one adult and one larvae observed in 1992 feeding on commercial tobacco in another location on private land near sea level (Fern Duvall, Division of Forestry and Wildlife (DOFAW), pers. comm. 1998), and from three larvae observed on tree tobacco on State land on Maui in January 1997, and again from the same number of larvae observed in February 1998 (F. Duvall, pers. comm. 1998). While researchers observed five to six eggs on tree tobacco in 1997, they found no eggs and no adults at the same site in 1998. There are no native host plants in this area (F. Duvall, pers. comm. 1998).

In December 1997, researchers discovered a population of Blackburn's sphinx moth on the State-owned island of Kahoolawe (Arthur Medeiros, U.S. Geological Survey (USGS)—Biological Resources Division (BRD), *in litt.* 1998). This finding is the first record of the species on this island, and thus represents an extension of the species known range. Subsequent surveys (February and March 1998) indicate a population exists on Kahoolawe, with egg and larval densities (114 eggs and 93 larvae on 57 percent of tree tobacco plants searched) comparable to those at the Maui site (A. Medeiros, *in litt.* 1998). In addition, a fourth population of an unknown number of individuals was recently discovered (April 1998) on State land on the island of Hawaii (A. Medeiros, *in litt.* 1998), and a single, adult individual was observed in April 1998 in a different location on the island of Hawaii (Steve L. Montgomery, Hawaii Conservation Council, pers. comm. 1998). There are no native *Nothocestrum* plants at this site, but both *Nicotiana* and *Solanum* are present in the area (S.L. Montgomery, pers. comm. 1998). On Kahoolawe, where the native host plant, 'aiea, is not found, eggs and larvae are known to occur on the non-native tree tobacco (A. Medeiros, *in litt.* 1998). Eggs and larvae of the Hawaii population of Blackburn's sphinx moth were found only on tree tobacco, although *Nothocestrum breviflorum* ('aiea) is also present in the area (A. Medeiros, *in litt.* 1998).

Previous Federal Action

An initial comprehensive Notice of Review for Invertebrate Animals was published in the **Federal Register** on May 22, 1984 (49 FR 21664). In this notice we identified Blackburn's sphinx moth as a category 3A taxon under the Act of 1973, as amended (16 U.S.C. 1533 *et seq.*). Category 3A taxa were those for which we had persuasive evidence of extinction. We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). Although Blackburn's sphinx moth had been rediscovered by 1985, in the 1989 Notice of Review, this taxon was again identified as category 3A. In the next Notice of Review on November 15, 1994 (59 FR 58982), this species was reclassified as a category 1 candidate for listing. Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. Beginning with our February 28, 1996, Notice of Review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only those taxa meeting the definition of former category 1 candidates are now considered candidates for listing purposes. In the February 28, 1996, Notice of Review, we identified Blackburn's sphinx moth as a candidate species (61 FR 7596). A proposed rule to list Blackburn's sphinx moth as endangered was published on April 2, 1997 (62 FR 15640). In the September 19, 1997, Notice of Review (62 FR 49398), this species was included as proposed for endangered status.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. Processing of this final rule is a Priority 2 action. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the April 2, 1997, proposed rule and associated notifications, we invited all interested parties to submit factual reports or information that might contribute to the development of the final rule. The public comment period ended June 2, 1997. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. We published newspaper notices inviting public comment in the *Maui News* on April 18, 1997, and in the *Honolulu Star-Bulletin* and *Honolulu Advertiser* on April 21, 1997.

During the public comment period, we received comments from five parties. All parties supported the listing of Blackburn's sphinx moth as endangered.

None of the comments included additional information on the numbers of individuals and populations of the moth species. One of the comments suggested that listing will assist in the recovery of this species; one comment indicated that listing may aid in promoting conservation measures (*e.g.*, fencing and weed control) that will assist the species; and one comment indicated that cooperative efforts between a variety of interested groups would be beneficial to the species. One commentor noted that he has been working closely with several groups, including us, to preserve the unique native habitat of dryland forest of Auwahi and Kanaio. The Hawaii Division of Forestry and Wildlife supported the listing of Blackburn's sphinx moth and at the same time expressed "reservations" about future listings of Hawaiian insects and the limited resources available for attainable recovery goals. One commentor noted that the listing would have little or no impact on the Hawaii Army National Guard's mission at Kanaio.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we also solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for this species. We received no responses.

During the public comment period we received two letters from Arthur C. Medeiros, USGS–BRD, that included information on the newly discovered populations of Blackburn's sphinx moth. Steve L. Montgomery, Hawaii Conservation Council, provided us information on a recent moth sighting on the island of Hawaii, and Dr. Fern Duvall, DOFAW, provided information on moth larvae and eggs observed in two additional areas of Maui. We have included this information in this final rule.

Summary of Factors Affecting This Species

Section 4 of the Endangered Species Act and the regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Blackburn's sphinx moth (*Manduca blackburni*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, agricultural development, and deliberate introductions of alien animals and plants (Cuddihy and Stone 1990; Wagner *et al.* 1985). One of the primary threats facing Blackburn's sphinx moth is destruction of its habitat by feral, (returned to an untamed state) animals. It is believed that the endemic plant, *Nothocestrum latifolium* ('aiea), which is important for the survival of Blackburn's sphinx moth, is directly or indirectly affected by feral animals. All four species of *Nothocestrum, N. latifolium, N. breviflorum, N. longifolium,* and *N. peltatum,* occur in dry to mesic (moderate moisture) forests, the habitat in which Blackburn's sphinx moth was most frequently recorded. Two species, *N. peltatum* on Kauai and *N. breviflorum* on Hawaii, are now federally endangered species (59 FR 3904, 59 FR 55770) due to severe degradation of dry forest habitats. *N. latifolium* occurs on Kauai, Oahu, Molokai, Lanai, and Maui. It is not presently a protected species, but it is declining and uncommon on all these islands (Hawaiian Heritage Program (HHP) 1993; Medeiros *et al.* 1993). The stand of trees at the first Maui site of Blackburn's sphinx moth may be the largest in the State (Medeiros *et al.* 1993) and plays an important role in supporting a population of this moth species (A. Medeiros, pers. comm. 1994).

Although *Nothocestrum latifolium* presently occurs at moderate densities at the first Maui site location of Blackburn's sphinx moth (HHP 1993), there is no seedling survival (Medeiros *et al.* 1993) and the stand is in a degraded condition as a result of the presence of feral goats (*Capra hircus*) (Medeiros *et al.* 1993; F. G. Howarth, pers. comm. 1994; S.L. Montgomery, pers. comm. 1994). Goats were introduced to the Hawaiian Islands in 1792 and are now abundant in dry forests on Kauai, Molokai, Maui, and Hawaii, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Stone 1985; van Riper and van Riper 1982). *Bocconia frutescens* (tree poppy) is one alien plant that is spreading due to the activity of goats at the Maui Blackburn's sphinx moth site. Tree poppy was first discovered in the Hawaiian Islands in 1920 and is now naturalized in dry forests on Maui and mesic forests on Hawaii (Medeiros *et al.* 1993; Symon 1990). On Maui, this fast-growing shrub is a serious threat to the native host plant of Blackburn's sphinx moth primarily through displacement and shading of immature plants (Medeiros *et al.* 1993; B. Gagné, pers. comm. 1994).

While the endangered *Nothocestrum breviflorum* is reported in the area of the Hawaii population of Blackburn's sphinx moth (Marie Bruegmann, Service, pers. comm. 1998), there are no recorded associations of either eggs, larvae, or adults with this species. These trees are primarily threatened by habitat conversion associated with development; competition from alien species such as *Schinus terebinthifolius* (Christmas berry), *Pennisetum setaceum* (fountain grass), *Lantana camara* (lantana), and *Leucaena leucocephala* (koa haole); browsing by cattle; fire; and random environmental events; and reduced reproductive vigor due to the small number of existing individuals (59 FR 10312).

Although *Nothocestrum* is not reported from Kahoolawe, there were very few surveys of this island prior to the intense ranching activities, that began in the middle of the last century, and the subsequent use of the island as a weapons range for the past 50 years. Prior to their removal, goats played a major role in the destruction of vegetation on Kahoolawe (Cuddihy and Stone 1990). It is likely that the reappearance of some vegetation as a result of the removal of the goats and the cessation of military bombing activities, has allowed Blackburn's sphinx moth to gain a foothold on the island. Although on the island of Kahoolawe the vegetation on which Blackburn's sphinx moth is currently dependent is alien and appears to adequately support production and growth of the sphinx moth, it is believed that the native host plant, 'aiea, is important to the survival of this species (A. Medeiros, pers. comm. 1998). Restoration of the native forests on Kahoolawe would benefit Blackburn's sphinx moth as well as other native plants and invertebrates on the island.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Rare butterflies and moths are highly prized by collectors, and an international trade exists for insect specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and

researchers (Morris *et al.* 1991; Williams 1996). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (US Department of Justice (USDJ) 1993). In general, the rarer the species, the more valuable it is, and prices may exceed US $2,000 for rare specimens (Morris *et al.* 1991). For example, during a 4-year investigation, special agents of the Service's Division of Law Enforcement executed warrants and seized over 30,000 endangered and/or protected butterflies and beetles with a wholesale commercial market value of about $90,000 in the United States. The defendant, who was convicted, sold these rare butterflies and beetles in malls and State fairs (USDJ 1995). In another case, special agents found at least 13 species protected under the Act, and another 130 species illegally taken from lands administered by the Department of the Interior (USDJ 1995). The three men involved were convicted of poaching and commercial trade of butterflies protected under the Act (US Fish and Wildlife Service 1995; Williams 1996).

Sphinx moths, in general, are sought by collectors, and, as early as the 1950's, there was a standing reward for specimens of another rare Hawaiian sphinx moth (*Tinostoma smargditis*) (Zimmerman 1958). Specimens of Blackburn's sphinx moth have already been secured and traded by collectors and institutions (Dave Preston, B.P. Bishop Museum, pers. comm. 1994). According to unconfirmed reports specimens of Blackburn's sphinx moth from the Maui site are appearing in the specialist trade (A. Medeiros, pers. comm. 1998). Listing the species as federally endangered will increase its attractiveness to collectors (USDJ 1993). Unrestricted collecting and handling for scientific purposes are known to impact populations of other species of rare Lepidoptera (Murphy 1988), and are considered significant threats to Blackburn's sphinx moth. Because of the high value accorded such rarities, field collectors often take all individuals available (Morris *et al.* 1991). Even limited collection from the small populations of Blackburn's sphinx moth can have deleterious effects on its reproductive or genetic viability and lead to the eventual extinction of this species.

C. Disease or Predation

The geographic isolation of the Hawaiian Islands restricted the number of original successful colonizing arthropods and resulted in the development of an unusual fauna. An unusually small number (15 percent) of the known families of insects are represented by native Hawaiian species (Howarth 1990). Some groups that often dominate continental arthropod faunas, such as social Hymenoptera (group nesting ants, bees, and wasps), are entirely absent from the native fauna. Commercial shipping and air cargo to Hawaii have now resulted in the establishment of over 2,500 species of alien arthropods (Howarth 1990; Howarth *et al.* 1994), with a continuing establishment rate of 10–20 new species per year (Beardsley 1962, 1979). In addition to the accidental establishment of alien species, private individuals and government agencies began importing and releasing alien predators and parasites for biological control of pests as early as 1865. These efforts resulted in the introduction of 243 alien species between 1890 and 1985, in some cases with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988; Lai 1988). Alien arthropods, whether purposefully or accidentally introduced, pose the most serious threat to Hawaii's native insects, through direct predation and parasitism, and competition for food or space (Howarth and Medeiros 1989; Howarth and Ramsay 1991).

Ants are not a natural component of Hawaii's arthropod fauna, and native species evolved in the absence of predation pressure from ants. Ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993). Because they are generalist feeders, ants may affect prey populations independently of prey density, and may locate and destroy isolated individuals and populations (Nafus 1993a). At least 36 species of ants are known to be established in the Hawaiian Islands, and 3 particularly aggressive species have severely affected the native insect fauna (Zimmerman 1948). The island of Kahoolawe has not been extensively surveyed at this time, but since ants have adult winged reproductives, once established in Hawaii in general, they are likely to colonize suitable habitats on all islands in time, and several species are already known to occur on Kahoolawe. By the late 1870's, the big-headed ant (*Pheidole megacephala*) was present in Hawaii, and its predation on native insects was noted by Perkins (1913) who stated, "It may be said that no native Hawaiian Coleoptera insect can resist this predator, and it is practically useless to attempt to collect where it is well established. Just on the limits of its range one may occasionally meet with a few native beetles, *e.g.*, species of *Plagithmysus*, often with these ants attached to their legs and bodies, but sooner or later they are quite exterminated from these localities."

With few exceptions, in areas where the big-headed ant is present, native insects, including most moths, are eliminated (Gagné; 1979; Gillespie and Reimer 1993; Perkins 1913). The big-headed ant generally does not occur at elevations higher than 600 m (2,000 ft), and is also restricted by rainfall, rarely being found in particularly dry (less than 35–50 cm (15–20 in) annually) or wet areas (more than 250 cm (100 in) annually) (Reimer *et al.* 1990). The big-headed ant is also known to be a predator of eggs and caterpillars of native Lepidoptera, and can completely exterminate populations (Illingworth 1915; Zimmerman 1958). This ant occurs at the first Blackburn's sphinx moth Maui site and is a direct threat to this population (Medeiros *et al.* 1993). Big-headed ants also occur on Kahoolawe and Hawaii (A. Medeiros, pers. comm. 1998).

The Argentine ant (*Iridomyrmex humilis*) was discovered on the island of Oahu in 1940 (Zimmerman 1941) and is now established on all the main islands. Unlike the big-headed ant, the Argentine ant is primarily confined to elevations higher than 500 m (1,600 ft) in areas of moderate rainfall (Reimer *et al.* 1990). This species can reduce populations or even eliminate native arthropods at high elevations in Haleakala National Park on Maui (Cole *et al.* 1992). On Maui, within 16 km (10 mi) of the Blackburn's sphinx moth population, Argentine ants are significant predators on pest fruit flies (Wong *et al.* 1984). Argentine ants have also been reported on the islands of Kahoolawe and Hawaii (Adam Asquith, Service, and A. Medeiros, pers. comm. 1998).

The long-legged ant (*Anoplolepis longipes*) appeared in Hawaii in 1952 and now occurs on Oahu, Maui, and Hawaii (Reimer *et al.* 1990). It inhabits elevations under 600 m (2,000 ft), in rocky areas with moderate annual rainfall of less than 250 cm (100 in) (Reimer *et al.* 1990). Direct observations indicate that Hawaiian arthropods are susceptible to predation by this species (Gillespie and Reimer 1993), and Hardy (1979) documented the disappearance of most native insects from Pua'alu'u in the Kipahulu District on Maui after the area was invaded by the long-legged ant.

At least two species of fire ants, *Solenopsis geminita* and *Solenopsis papuana*, are also important threats (Gillespie and Reimer 1993; Reagan 1986) and occur on all of the major islands (Reimer *et al.* 1990). Ants,

including the fire ant, *S. geminita*, are known to be the most important and consistent mortality factor on eggs, and probably larvae, of the butterfly *Hypolimnas bolina* in Guam, even where both predator and prey are native (Nafus 1993a, 1993c). *Solenopsis geminita* occurs at the Maui moth location (A. Medeiros, pers. comm. 1998). *Solenopsis geminita* is also known to be a significant predator on pest fruit flies in Hawaii (Wong and Wong 1988). *Solenopsis papuana* is the only abundant, aggressive ant that has invaded intact mesic forest above 600 m (2,000 ft) and is still expanding its range in Hawaii (Reimer 1993).

Ochetellus glaber (No Common Name (NCN)), a recently reported ant introduction, occurs in the same habitat utilized on Kahoolawe by Blackburn's sphinx moth (A. Medeiros, pers. comm. 1998). *Ochetellus glaber* was found in relatively high numbers foraging on shrubs of *Nicotiana* where eggs and larvae of the sphinx moth occur. In one instance, large numbers of *Ochetellus glaber* were observed emerging from a dead moth larvae they had either predated or scavenged (A. Medeiros, pers. comm. 1998).

On Kahoolawe, a large proportion of tagged Blackburn's sphinx moth eggs disappeared without hatching, potentially indicating high egg predation, likely by ants, but perhaps by birds, or dislodging by high winds (A. Medeiros, pers. comm. 1998).

Hawaii also has a limited fauna of native Hymenoptera wasp species, with only two native species in the family Braconidae (Beardsley 1961), neither of which attack Blackburn's sphinx moth. In contrast, species of Braconidae are common predators (parasitoids) on the larvae of the tobacco hornworm and the tomato hornworm in North America (Gilmore 1938). At least 74 alien species, in 41 genera, of braconid wasps are now established in Hawaii, of which at least 35 species were purposefully introduced as biological control agents (Nishida 1992). Most species of alien Braconidae and Ichneumonidae wasps parasitic on Lepidoptera are not host specific, but attack the caterpillars or pupae of a variety of moths (Funasaki *et al.* 1988; Zimmerman 1948, 1978) and have become the dominant larval parasitoids even in intact, high-elevation, native forest areas of Hawaii (Howarth *et al.* 1994; Zimmerman 1948). These wasps lay their eggs in the eggs or caterpillars of Lepidoptera. Upon hatching, the wasp larvae consume internal tissues, eventually destroying the host. At least one species established in Hawaii, *Hyposeter exiguae* (NCN), is known to attack the tobacco hornworm and the related tomato hornworm in North America (Carlson 1979). This wasp is recorded from all of the main islands except Lanai (Nishida 1992) and is a recorded parasitoid of the lawn armyworm (*Spodoptera maurita*) on tree tobacco on Maui, an alternate host of Blackburn's sphinx moth (Swezey 1927). No direct documentation exists of alien braconid and ichneumonid wasps parasitizing Blackburn's sphinx moth because of its rarity, but given the abundance and the breadth of available hosts of these wasps, they are considered significant threats to this species (Gagné and Howarth 1985; Howarth 1983; Howarth *et al.* 1994; F. G. Howarth, pers. comm. 1994).

Small wasps in the family Trichogrammatidae parasitize insect eggs, with numerous adults sometimes developing within a single host egg. The taxonomy of this group is confusing, and it is unclear if Hawaii has any native species (Nishida 1992, John Beardsley, University of Hawaii, pers. comm. 1994). Several alien species are established in Hawaii (Nishida 1992), including *Trichogramma minutum* (NCN), which is known to attack the sweet potato hornworm in Hawaii (Fullaway and Krauss 1945). In 1929, the wasp *Trichogramma chilonis* (NCN) was purposefully introduced into Hawaii as a biological control agent for the Asiatic rice borer (*Chilo suppressalis*) (Funasaki *et al.* 1988). This wasp parasitizes the eggs of a variety of Lepidoptera in Hawaii, including sphinx moths (Funasaki *et al.* 1988). Williams (1947) found 70 percent of the eggs of Blackburn's sphinx moth to be parasitized by a *Trichogramma* wasp that was probably this species. Over 80 percent of the eggs of the alien grasswebworm (*Herpetogramma licarsisalis*) in Hawaii are parasitized by these wasps (Davis 1969). In Guam, *Trichogramma chilonis* effectively limits populations of the sweetpotato hornworm (Nafus and Schreiner 1986), and the sweet potato hornworm is considered under complete biological control by this wasp in Hawaii (Lai 1988). While this wasp probably affects Blackburn's sphinx moth in a density-dependent manner (Nafus 1993a), and theoretically is unlikely to directly cause extinction of a population or the species, the availability of more abundant, alternate hosts (any other lepidopteran eggs) may allow for the extirpation of Blackburn's sphinx moth by this or other egg parasites as part of a broader host base (Howarth 1991; Nafus 1993b; Tothill *et al.* 1930).

Hawaii has no native parasitic flies in the family Tachinidae (Nishida 1992). Two species of tachinid flies, *Lespesia archippivora* (NCN) and *Chaetogaedia monticola* (NCN), were purposefully introduced to Hawaii for control of army worms (Funasaki *et al.* 1988; Nishida 1992). These flies lay their eggs externally on caterpillars, and upon hatching, the larvae burrow into the host, attach to the inside surface of the cuticle, and consume the soft tissues (Etchegaray and Nishida 1975b). In North America, *Chaetogaedia monticola* is known to attack at least 36 species of Lepidoptera in 8 families, including sphinx moths; *Lespesia archippivora* is known to attack over 60 species of Lepidoptera in 13 families, including sphinx moths (Arnaud 1978). These species are on record as parasites of a variety of Lepidoptera in Hawaii and are believed to depress populations of at least two native species of moths (Lai 1988). Over 40 percent of the caterpillars of the monarch butterfly (*Danaus plexippus*) on Oahu are parasitized by *Lespesia archippivora* (Etchegaray and Nishida 1975a), and the introduction of a related species to Fiji resulted in the extinction of a native moth there (Howarth 1991; Tothill *et al.* 1930). Both of these species occur on Maui and are direct threats to Blackburn's sphinx moth.

D. The Inadequacy of Existing Regulatory Mechanisms

Blackburn's sphinx moth occurs on State-owned and private lands. This species currently receives no formal protection on any of these lands.

Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the (Federal) Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

Alien predatory and parasitic insects are an important reason for the reduction in range and abundance of Blackburn's sphinx moth, and may be the most serious present threat to its continued existence. Some of these alien species were intentionally introduced by the State of Hawaii's Department of Agriculture or other agricultural agencies (Funasaki *et al.* 1988), and importations and augmentations of lepidopteran parasitoids continue. Federal regulations for the introductions of biocontrol agents have not adequately protected this species (Lockwood 1993). Presently, there are no Federal statutes that require biocontrol agents to be reviewed before they are introduced, and the limited Federal review process requires consideration of potential harm only to economically important species (Miller and Aplet 1993). Although the State of Hawaii requires that new introductions be reviewed before release (HRS Chapt. 150A), postrelease biology and host range cannot be predicted from laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992), and the purposeful release or augmentation of any lepidopteran predator or parasitoid is a potential threat to Blackburn's sphinx moth (Gagné; and Howarth 1985; Simberloff 1992).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small, restricted populations of Blackburn's sphinx moth increase the potential for extinction from random events. Sphinx moths are typically strong fliers and likely existed as a series of metapopulations on the various islands (Harrison *et al.* 1988). Considerable intra-island movement between populations and continued colonizations and extinctions in new localities probably occurred, accounting for the historical records in tobacco crops and gardens (Swezey 1924a, 1924b; Zimmerman 1958). The apparent extirpation of this moth at most lower elevations and in more mesic areas is thought to correlate with the presence of alien predators and parasitoids and the loss of its preferred host plants. Thus, if any of the known populations of the Blackburn's sphinx moth is severely reduced in size, little potential exists for recolonization or "rescue" (Brown and Kodric-Brown 1977) of the remaining population by immigrants (Arnold 1983). Research studies at the first Maui site suggest that during the recent drought period, proportionally more eggs and larvae occurred on 'aiea than on tree tobacco, in a general reversal of the trend during normal rainfall conditions (A. Medeiros, pers. comm. 1998). Tree tobacco is a quick-growing, pioneer shrub, while 'aiea is a slow-growing, drought-adapted, long-lived native tree that does well in drought periods when tree tobacco is dying or losing its foliage (A. Medeiros, pers. comm. 1998). This adaptation emphasizes the importance of the native host plant to the survival of Blackburn's sphinx moth.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. This species is threatened by habitat degradation by introduced animals and loss of its native host plant, overcollection, and predation by ants and alien parasitoid wasps. The small number of populations of this species also makes it susceptible to extinction from random events. Because this species is in danger of extinction throughout all of its range, it fits the definition of endangered as defined in the Act. Based on this evaluation, we find that the Blackburn's sphinx moth should be listed as endangered. Although we have considered all available alternatives to this action, such alternatives would not be in accordance with the Act. Listing the species as a threatened species would not accurately reflect the status of Blackburn's sphinx moth based on the information available.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

In the proposed rule, we indicated that designation of critical habitat was not prudent for Blackburn's sphinx moth because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could lead to incidents of vandalism and destruction of habitat, as well as take by insect collectors. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have re-examined the question of

whether critical habitat for Blackburn's sphinx moth would be prudent.

Due to the small number of populations, Blackburn's sphinx moth is vulnerable to unrestricted collection, vandalism, or other disturbance. Rare butterflies and moths are highly prized by collectors and an international, commercial trade exists for insect specimens which are sought for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Morris *et al.* 1991) (see Factor B). We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, consistent with recent case law, at this time, we believe there may be benefits of critical habitat designation in some areas that may outweigh the risks.

In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be a few instances where section 7 consultation would be triggered only if critical habitat is designated, such as occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, at least in areas where opportunity for public access is limited, we find that critical habitat is prudent for Blackburn's sphinx moth.

However, we cannot propose critical habitat designation for this species at this time. The Service's Hawaiian field office, which would have the lead for such a proposal, is in the process of complying with the court order in *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 97–00098 ACK (D. Haw. Mar. 9 and Aug. 10, 1998). In that case, the United States District Court for the District of Hawaii remanded to the Service its "not prudent" findings on critical habitat designation for 245 species of Hawaiian plants. The court ordered the Service not only to reconsider these findings, but also to designate critical habitat for any species for which we determine on remand that critical habitat designation is prudent. Proposed designations or non-designations for 100 species are to be published by November 30, 2000. Proposed designation or non-designations for the remaining 145 species are to be published by April 30, 2002. Final designations or non-designations are to be published within one year of each proposal. Compliance with this court order is a huge undertaking involving critical habitat determinations for over one-fifth of all species that have ever been listed under the ESA, and over one-third of all listed plant species. In addition, the Service has agreed to include in this effort critical habitat designations for an additional 10 plants that are subject of another lawsuit. See *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 HG. The Service cannot develop proposed critical habitat designation for this species without significant disruption of intensive efforts to comply with the *Conservation Council for Hawaii* v. *Babbitt* remand.

To attempt to do so could also affect the listing program Region-wide. Administratively, the Service is divided into seven geographic regions. This species is under the jurisdiction of Region 1, which includes California, Oregon, Washington, Idaho, Nevada, Hawaii and other Pacific Islands. About one-half of all listed species occur in Region 1. Region 1 receives, by far, the largest share of listing funds of any Service region because it has the heaviest listing workload. Region 1 must also expend its listing resources to comply with existing court orders or settlement agreements. In fact, in the last fiscal year, all of the Region's funding allocation for critical habitat actions were extended to comply with court orders. If the Service were to immediately prepare a proposed critical habitat designation for this species, notwithstanding the court order pertaining to 245 Hawaiian plant species, efforts to provide protection to many other species that are not yet listed would be delayed. While we believe there may be some benefits to designating critical habitat for this species, these benefits are significantly fewer in comparison to the benefits of listing a species under the ESA because, as discussed above, the primary regulatory effect of critical habitat is limited to the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat.

For these reasons, deferral of a proposal to designate critical habitat will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to provide the basic protections under the ESA for this species. We will develop a proposal to designate critical habitat for this species as soon as feasible.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Hawaii's Endangered Species Act states that, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter." (Hawaii Revised Statutes (HRS), sect. 195D–4(a)). Therefore, Federal listing automatically invokes listing under Hawaii State Law, which prohibits taking of listed wildlife in the State and encourages conservation by State agencies (HRS, sect. 195D–4 and 5). The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may require conference and/or consultation include military training of the Hawaii National Guard on State land near the first Maui site, and unexploded ordnance cleanup that is funded by the U.S. Navy near the Kahoolawe population on State land.

Federally supported activities that could affect Blackburn's sphinx moth and its habitat in the future include, but are not limited to, the following: release

or augmentation of biological control agents; road and firebreak construction; troop movements; removal of unexploded ordnance; and fire resulting from the use of live ammunition. Conservation of this moth is consistent with most ongoing operations at the occupied sites; however, listing of the species may entail consultation in regard to activities taking place on military lands, or insect pest control operations in Hawaii supported by Federal agencies.

The Act and its implementing regulations found at 50 CFR 17.21, 17.22, and 17.23 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. With respect to animal species listed as endangered, all trade prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, apply. These prohibitions, in part, make it illegal with respect to any endangered animal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect—or attempt any of these). Certain exceptions apply to our agents and State conservation agencies. The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We believe that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity of dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of this final rule;

(2) Activities authorized, funded, or carried out by Federal agencies when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act, and;

(3) Activities on private lands that do not result in the take of Blackburn's sphinx moth, and do not require Federal authorization and/or involve Federal funding.

Potential activities involving Blackburn's sphinx moth that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of this taxon for private possession, or deposition in an institutional collection without a proper permit;

(2) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) Use of pesticides/herbicides in violation of label restrictions resulting in take of Blackburn's sphinx moth;

(4) Unauthorized release of biological control agents that attack any life stage of this taxon, and;

(5) Removal or destruction of the native host plant, defined as any species in the genus *Nothocestrum*, within areas occupied by this taxon that results in harm to the Blackburn's sphinx moth. Regulations at 50 CFR 17.3 defines "harm" in the definition of take as an act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Manager (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone: 503/231–6241; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collection of information for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered and threatened wildlife, see 50 CFR 17.22 and 17.23.

References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the Pacific Islands Ecoregion Office (see **ADDRESSES** section).

Author

The primary authors of this final rule are Dr. Adam Asquith, U.S. Fish and Wildlife Service, Kauai National Wildlife Refuge Complex, P.O. Box 1128, Kilauea, Hawaii 96754, (808/828–1413), and Dr. Annie Marshall, Ecological Services, Pacific Islands Ecoregion Office (see **ADDRESSES** section) (808/541–3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–

625, 100 Stat. 3500, unless otherwise noted.
PART='17'≤

2. Amend section 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
INSECTS							
*	*	*	*	*	*	*	
Blackburn's sphinx moth.	Manduca blackburni	U.S.A. (HI)	NA	E	682	NA	NA
*	*	*	*	*	*	*	

Dated: January 20, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–2135 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 65, No. 21
Tuesday, February 1, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket Number LS–99–21]

Request for Public Comments on the Official Grading of Imported Beef, Lamb, Veal and Calf Carcasses Under the Authority of the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agricultural Marketing Service (AMS) invites comments from producers, importers, packers, processors, commercial users, and other interested persons on the official grading of imported beef, lamb, veal and calf carcasses. Written requests by producer groups to discontinue the grading of imported carcasses are currently under consideration by AMS. AMS Regulations promulgated under the Agricultural Marketing Act of 1946 permits the official grading of imported beef, lamb, veal and calf carcasses provided the carcasses are in compliance with all requirements of the applicable standards and are marked with the country of origin. However, the regulations do not require the retention of country of origin designations on the component meat cuts to the point of final purchase. In light of the producer proposals, AMS is considering several options. Among the options under consideration are: first, discontinue the official grading of imported carcasses; second, revise the grading regulations to require that the country of origin mark is retained on the component cuts after fabrication of an imported carcass that is federally graded; or, third, revise the grading regulations to eliminate the requirement that a country of origin mark be applied to imported carcasses. AMS requests that interested parties comment on these options and/or provide other options and information for consideration.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Send written comments to Larry R. Meadows, Chief; USDA, AMS, LS, MGC; STOP 0248, Room 2628–S; 1400 Independence Avenue, SW.; Washington, DC 20250–0248. Comments may be faxed to (202) 690–4119 or E-mailed to Larry.Meadows@usda.gov.

State that your comments refer to Docket No. LS–99–21, and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification (MGC) Branch, 202–720–1246.

SUPPLEMENTARY INFORMATION: In June 1999, the National Cattlemen's Beef Association (NCBA) requested that the Department of Agriculture (USDA) discontinue the official grading of imported beef carcasses. In October 1999, the American Sheep Industry Association (ASI) requested that USDA discontinue the official grading of imported lamb carcasses. By contrast, during the same timeframe, USDA received letters of support for the continued grading of imported carcasses from members of Congress, the American Meat Institute (AMI), the National Meat Association (NMA), and the Canadian Embassy.

Grading activities for all species are conducted under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, and the regulations set forth in Title 7, Part 54—Meats, Prepared Meats, and Meat Products. Under current regulations and procedures, imported beef, lamb, veal and calf carcasses are eligible for grading provided the carcasses are in compliance with all requirements of the applicable standards and are marked with the country of origin. Except for requiring that imported carcasses be branded with the country of origin prior to official grading, imported carcasses receive the same considerations and treatment as carcasses derived from livestock produced in the United States. However, the regulations do not specify that the country of origin must remain on the cuts after processing. Since the vast majority of beef and lamb is marketed as closely trimmed wholesale or retail cuts rather than carcasses, the country of origin marks are almost always removed during processing. The grading of imported carcasses has been permitted by the regulations since the early 1950's.

For calendar year 1999, slightly more than 50,000 imported beef carcasses and 81,000 imported lamb carcasses were officially graded in the United States. No imported veal and calf carcasses were graded. By contrast, in the same calendar year USDA graded over 27 million domestically produced beef carcasses and 3 million lamb carcasses.

AMS is considering the following options: (1) Discontinue the official grading of all imported beef, lamb, veal and calf carcasses, (2) Revise the grading regulations to require that the country of origin mark be retained on the component cuts after fabrication of an imported carcass that is Federally graded, or, (3) Revise the grading regulations to eliminate the requirement that a country of origin mark be applied to Federally graded imported carcasses.

Accordingly, AMS is issuing this advance notice of proposed rulemaking to assist in the development of policy and regulations for the official grading of imported beef, lamb, veal and calf carcasses. AMS is seeking comments, information, and data from all interested parties.

Specifically, AMS is Seeking

(1) Comments on the options currently under consideration by the Agency;

(2) Other options the Agency should consider;

(3) Suggestions of criteria to be used by AMS to develop a new or revised policy; and

(4) Any other comments, information, or data which would aid AMS in evaluating its current policy and deciding whether to develop a new or revised policy on the official grading of imported carcasses.

Authority: 7 U.S.C. 1621–1627.

Dated: January 27, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–2112 Filed 1–27–00; 2:58 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a one-time detailed visual inspection of a certain passenger seat wire assembly to detect chafed or damaged wires; repair, if necessary; and installation of protective sleeving. This proposal is prompted by a report of arcing emanating from a certain passenger seat wire assembly. The actions specified by the proposed AD are intended to prevent chafing of the passenger seat wire assembly against a bracket at the lower sidewall panel due to insufficient clearance between the bracket and seat wire assembly, which could result in arcing damage to the passenger seat wire assembly and consequent smoke and fire in the main cabin.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–263–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an instance in which a seat control circuit breaker tripped while a crew member was checking a problem with the controls of a first class passenger seat. The circuit breaker was reset and subsequently an arc was observed emanating from the passenger seat wire assembly at the base of the sidewall panel at fuselage station Y=675. This incident occurred on a McDonnell Douglas Model MD–11 series airplane. This arcing caused a foam material to ignite. Investigation revealed that the passenger seat wire assembly had been chafing on a bracket at the lower sidewall panel. This condition has been attributed to insufficient clearance between the bracket and seat wire assembly. This condition, if not corrected, could result in smoke and fire in the main cabin.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999, which describes procedures for a one-time detailed visual inspection of the passenger seat wire assembly to detect chafed or damaged wires; repair, if necessary; and installation of protective sleeving. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 128 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hour per airplane to accomplish the proposed inspection, at an average labor

rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,840, or $120 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed installation of protective sleeving, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $3,840, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–263–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the passenger seat wire assembly against a bracket at the lower sidewall panel due to insufficient clearance between the bracket and seat wire assembly, which could result in arcing damage to the passenger seat wire assembly and consequent smoke and fire in the main cabin, accomplish the following:

Inspection, Installation, and Repair, If Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the passenger seat wire assembly to detect chafed or damaged wires, and install protective sleeving, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00– 2003 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–264–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a one-time detailed visual inspection of the electrical connections to detect corrosion; repair, if necessary; and installation of new circuit breakers and associated wiring. This proposal is prompted by a report that the ratings of certain circuit breakers of a certain video entertainment system exceed the ratings of their associated electrical connector contacts. The actions specified by the proposed AD are intended to prevent a disparity between the ratings of certain circuit breakers and their associated electrical connector contacts, which could damage the electrical connector contacts and cause possible arcing and heat damage to the electrical connector.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114,

Attention: Rules Docket No. 99–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–264–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that the ratings of certain circuit breakers of a certain video entertainment system exceed the ratings of their associated electrical connector contacts on McDonnell Douglas Model MD–11 series airplanes. This discrepancy between the ratings of the circuit breakers and their associated electrical connector contacts can allow the contacts to be damaged before the circuit breakers trip. Investigation revealed that this condition is a result of a design oversight that allows the use of the subject circuit breakers. This condition, if not corrected, could result in damage to the electrical connector contacts and cause possible arcing and heat damage to the electrical connector.

This condition is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplanes. The cause of that accident is still under investigation.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–23–082, dated August 17, 1999, which describes procedures for a one-time detailed visual inspection of the electrical connections to detect corrosion, and repair, if necessary. The service bulletin also describes procedures for installation of new circuit breakers and associated electrical wiring (including modification of a certain nameplate). The modification involves marking the backside of the nameplate with breaker numbers and applying a label. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 12 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 30 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on this information the cost impact of the proposed AD on U.S. operators is estimated to be $21,600, or $1,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–264–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–23–082, dated August 17, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a disparity between the ratings of certain circuit breakers and their associated electrical connector contacts, which could damage the electrical connector contacts and possible arcing and heat damage to the electrical connector, accomplish the following:

Inspection, Installation, and Repair, If Necessary

(a) Within 1 year after the effective date of this AD, perform a detailed visual inspection of certain electrical connections to detect corrosion, and install new circuit breakers and associated electrical wiring (including modification of a certain nameplate), in accordance with McDonnell Douglas Service Bulletin MD11–23–082, dated August 17, 1999. If any corrosion is detected, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2004 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that currently requires modification of the external power feeder cable clamping installation. That AD was prompted by reports of damage to the external power feeder cables located under the forward cargo compartment floor, which was caused by excessive cable length and/or maintenance personnel stepping on the cables. This action would add a new requirement to accomplish a detailed visual inspection of the external power feeder cables to detect chafed or damaged wires; and repair, if necessary. The actions specified by the proposed AD are intended to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–265–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 23, 1994, the FAA issued AD 94–11–06, amendment 39–8922 (59 FR 27972, May 31, 1994), which is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. That AD requires modification of the external power feeder cable clamping installation. The requirements of that AD are intended to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–11–06, the FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999, which describes procedures for a detailed visual inspection of the external power feeder cables to detect chafed or damaged wires; and repair, if necessary. The service bulletin also describes procedures for the same modification of the external power feeder cable clamping installation that is described in McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994 (which was referenced in AD 94–11–06 as the appropriate source of service information).

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–11–06 to continue to require modification of the external power feeder cable clamping installation. The proposed AD also would require accomplishment of the actions specified in McDonnell Douglas Alert Service Bulletin MD11–24A078 described previously.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and MD–11F series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD.

The modification of the external power feeder cable clamping installation that is currently required by AD 94–11–06, and retained in this proposed AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $395 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $26,450, or $575 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8922 (59 FR 27972, May 31, 1994), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–265–AD. Supersedes AD 94–11–06, amendment 39–8922.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location, accomplish the following:

Restatement of Requirements of AD 94–11–06, Amendment 39–8922

Modification

(a) Within 90 days after June 15, 1994 (the effective date of AD 94–11–06, amendment 39–8922), modify the external power feeder cable clamping installation in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, or McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999.

New Requirements of This AD

Inspection

(b) Within 1 year after the effective date of this AD, perform a detailed visual inspection of the external power cables between stations Y=635.000 and Y=655.000 to detect chafed or damaged wires, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2005 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a general visual inspection to verify that the circuit breaker panel fully opens, follow-on inspections, and corrective actions, if necessary. This proposal is prompted by an incident of an operator not being able to fully open the observer's upper main circuit breaker panel due to a certain cable being too short. The actions specified by the proposed AD are intended to ensure that the upper main circuit breaker panel opens fully. If the panel does not open fully, maintenance activities may be hindered and cause damage to the circuit breaker panel and wiring, which could result in electrical arcing and consequent smoke and fire in the flight compartment.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–266–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an instance of an operator not being able to fully open the observer's upper main circuit breaker panel of a McDonnell Douglas Model MD–11 series airplane. Investigation revealed that a direct current (DC) power feeder bus cable was found to be too short, which prevented the panel from being fully opened. If the panel cannot be opened, maintenance activities may be hindered and cause damage to the circuit breaker panel and wiring. Such damage could result in electrical arcing and consequent smoke and fire in the flight compartment.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999, which describes procedures for a general visual inspection to verify that the circuit breaker panel fully opens, follow-on inspections, and corrective actions, if necessary. The follow-on inspections involve a detailed visual inspection of the wires between circuit breakers B1–213 and B1–300 to terminal strip S3–602 to detect chafing damage; and a detailed visual inspection of the route path of the subject area to detect chafing damage and to determine if the wire can be adjusted or if the wire must be replaced; as applicable. The corrective actions include adjusting the wire, replacing the wire with a new wire, and repairing chafing damage. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 161 airplanes of the affected design in the worldwide fleet. The FAA estimates that 66 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,960, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–266–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the upper main circuit breaker panel opens fully, accomplish the following:

Inspection and a Follow-On Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection to verify that the circuit breaker panel fully opens in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the circuit breaker panel fully opens, prior to further flight, perform a detailed visual inspection of the wires between circuit breakers B1–213 and B1–300 to terminal strip S3–602 to detect chafing damage, in accordance with the service bulletin.

(2) If the circuit breaker panel does not fully open, prior to further flight, perform a detailed visual inspection of the route path from circuit breakers B1–213 and B1–300 to terminal strip S3–602 to detect chafing damage and to determine if the wire can be adjusted or if the wire must be replaced, in accordance with the service bulletin.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any wire is found to need adjusting during the inspection required by paragraph (a)(2) of this AD, prior to further flight, adjust the wire in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

(c) If any wire is found to need replacing during the inspection required by paragraph (a)(2) of this AD, prior to further flight, replace the wire with a new wire in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

(d) If any chafing damage is found during the inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, repair in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2006 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This proposal would require a one-time detailed visual inspection of the generator power feeder wires to detect chafed or damage wires; repair, if necessary; and a modification of the generator power feeder wire installation. This proposal is prompted by reports of generator power feeder wire chafing on the closeout rib of the wing leading edge at a certain station due to insufficient clearance between the generator power feeder wires and the closeout rib. The actions specified by the proposed AD are intended to prevent chafed and burnt generator power feeder wires, which could result in arcing damage to a certain closeout rib of the wing leading edge and fire damage to the wing structure, and consequent reduced structural integrity of the wing.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–267–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of instances of the generator power feeder wires chafing on the closeout rib of the wing leading edge at station Xcw=130 on McDonnell Douglas Model MD–11 and MD–11F series airplanes. In one case, the wire was found burnt with burn residue on the leading edge closeout rib. In this instance, the opposite side of the wire installation was inspected and was also found to be chafing on the closeout rib. Investigation revealed that there is insufficient clearance between the power feeder wires and the closeout rib. This condition, if not corrected, could result in arcing damage to the closeout rib of the wing leading edge at station Xcw=130 and fire damage to the wing structure, and consequent reduced structural integrity of the wing.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and MD–11F series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A172, dated September 8, 1999, which describes procedures for a one-time detailed visual inspection of the generator power feeder wire installation to detect chafed or damage wires; repair, if necessary; and modification of the power feeder wire installation. The modification involves removal of existing power feeder clamps from the mounting bracket at station Xcw =130.6409 and reinstallation of clamps using a new spacer and attaching parts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 189 airplanes of the affected design in the worldwide fleet. The FAA estimates that 66 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,960, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–267–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A172, dated September 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafed and burnt generator power feeder wires, which could result in arcing damage to a certain closeout rib of the wing leading edge and fire damage to the wing structure, and consequent reduced structural integrity of the wing, accomplish the following:

Inspection; Repair, If Necessary; and Modification

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the generator power feeder wires to detect chafed or damaged wires, and modify the generator power feeder wire installation in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A172, dated September 8, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2007 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a detailed visual inspection of the external power feeder cables in the forward cargo compartment between certain stations to detect chafing or damage; repair, if necessary; and installation of spiral wrap. This proposal is prompted by reports of failure of the external power feeder cable due to being chafed during maintenance. The actions specified by the proposed AD are intended to prevent chafing and damage to external ground power feeder cables, which could result in electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–268–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of reports of failure of the external ground power feeder cable on McDonnell Douglas Model MD–11 series airplanes. Investigation revealed that the cables were chafed during removal of the sump panels of the cargo floor during prior maintenance visits. This condition, if not corrected, could result in chafing and damage to external ground power feeder cables, which could result in electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 01, dated December 2, 1999, which describes procedures for a detailed visual inspection of the external power feeder cables in the forward cargo compartment between stations

Y=879.000 and Y=1019.000 left of centerline to detect chafing or damage; repair, if necessary; and installation of spiral wrap. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes (3 airplanes identified as Group 1 and 11 airplanes identified as Group 2) of U.S. registry would be affected by this proposed AD.

For Group 1 airplanes, the FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and approximately 2 work hours per airplane to accomplish the proposed installation of spiral wrap, and that the average labor rate is $60 per work hour. Required parts would cost approximately $140 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Group 1 airplanes is estimated to be $960, or $320 per airplane.

For group 2 airplanes, the FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and approximately 3 work hours per airplane to accomplish the proposed installation of spiral wrap. Required parts would cost approximately $140 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Group 2 airplanes is estimated to be $4,840, or $440 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–268–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 01, dated December 2, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and damage to external ground power feeder cables, which could result in electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment, accomplish the following:

Inspection and Modification

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of the external ground power feeder cables in the forward cargo compartment between stations Y=879.000 and Y=1019.000 left of centerline to detect chafing or damage, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 01, dated December 2, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any chafing or damage is detected, prior to further flight, repair and install spiral wrap, in accordance with the service bulletin.

(2) If no chafing or damage is detected, prior to further flight, install spiral wrap in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2008 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require electrical resistance measurements of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding and of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding; and corrective actions, if necessary. This proposal is prompted by an incident of charred insulation blankets in the forward cargo compartment in the area of the external ground power receptacle and the galley external power circuit breakers, and another incident of a No. 2 "generator off" alert while the generator was still on line. The actions specified by the proposed AD are intended to prevent arcing and overheating of terminals and consequent smoke and fire in the forward cargo compartment due to improper bonding of ground studs in the forward cargo compartment and in the electrical power center and due to improper installation of circuit breaker terminations.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–269–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of one incident of charred insulation blankets in the forward cargo compartment in the area of the external ground power receptacle and the galley external power circuit breakers, and another incident of a No. 2 "generator off" alert while the generator was still on line. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes. Investigation revealed that, during production, the ground studs in the forward cargo compartment and electrical power center (EPC) were bonded improperly. Also, investigation revealed that three of the nine circuit breaker terminations of the galley were loose due to improper installation during production. These conditions, if not corrected, could result in arcing and overheating of circuit breaker terminals and consequent smoke and fire in the forward cargo compartment.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A040, Revision 01, dated October 11, 1999, which describes procedures an electrical resistance measurement of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding; and corrective actions, if necessary. The corrective actions include tightening the applicable fastener, if necessary, and electrically bonding the ground studs.

The service bulletin also describes procedures for an electrical resistance measurement of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding, and corrective actions, if

necessary. The corrective actions include tightening applicable attaching parts and electrically bonding the ground studs.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 31 airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hour per airplane to accomplish the proposed measurements, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the measurements proposed by this AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–269–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A040, Revision 01, dated October 11, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and overheating of terminals and consequent smoke and fire in the forward cargo compartment due to improper bonding of ground studs in the forward cargo compartment and in the electrical power center (EPC) and due to improper installation of circuit breaker terminations, accomplish the following:

Resistance Check and Corrective Actions

(a) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A040, Revision 01, dated October 11, 1999.

(1) Perform an electrical resistance measurement of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding, in accordance with the service bulletin.

(i) If all ground studs are electrically bonded properly, prior to further flight, tighten applicable fasteners, if necessary, in accordance with the service bulletin.

(ii) If any ground stud is not electrically bonded properly, prior to further flight, electrically bond the ground stud in accordance with the service bulletin.

(2) Perform an electrical resistance measurement of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding, in accordance with the service bulletin.

(i) If all ground studs are electrically bonded properly, prior to further flight, tighten applicable attaching parts in accordance with the service bulletin.

(ii) If any circuit breaker termination is found loose, tighten in accordance with the service bulletin.

(iii) If any ground stud is not electrically bonded properly, prior to further flight, electrically bond the ground stud in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2009 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–270–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a general visual inspection of wiring behind the control panel of the auxiliary power unit (APU) located in the cockpit to detect chafing; repair if necessary; and modification of the wiring. This proposal is prompted by an incident of chafing of wire bundles of the control module of the APU. The actions specified by the proposed AD are intended to prevent such chafing and resultant arcing due to insufficient clearance between the wire bundles and the airplane structure, which could result in smoke and fire in the flight deck.

DATES: Comments must be received by March 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–270–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of one instance of chafing of wire bundles of the control module of the auxiliary power unit (APU) located in the cockpit overhead panel. This incident occurred on a McDonnell Douglas Model MD–11 series airplane. The chafing has been attributed to insufficient clearance between the wire bundles and airplane structure. This condition, if not corrected, could result in arcing and consequent smoke and fire in the flight deck.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999, which describes procedures for a general visual inspection of wiring behind the control panel of the APU located in the cockpit to detect chafing; repair, if necessary; and modification of the wiring behind the control panel of the APU. The modification includes installation of sleeving and fiber tying tape over wires. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 164 airplanes of the affected design in the worldwide fleet. The FAA estimates that 61 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,660, or $60 per airplane.

The FAA also estimates that it would take approximately 1 work hour per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,660, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–270–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999; except for those airplanes on which the modification specified in McDonnell Douglas Service Bulletin MD11–24–116, dated May 14, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing of the control panel of the auxiliary power unit (APU) and resultant arcing due to insufficient clearance between the wire bundles and the airplane structure, which could result in smoke and fire in the flight deck, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a general visual inspection of wiring behind the control panel of the APU to detect chafing, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no chafing is found, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(2) If any chafing is found, prior to further flight, repair in accordance with the service bulletin and accomplish the requirements of paragraph (b) of this AD.

Modification

(b) Modify the wiring behind the APU control panel (i.e., install sleeving and fiber tying tape over wires) in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2010 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN 1218–AB36

Ergonomics Program

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule; extension of public comment period; rescheduling of informal public hearing; additional information and clarifications.

SUMMARY: OSHA is extending the public comment period for its proposed Ergonomics Program standard to provide the public an additional thirty (30) days to submit comments on the proposed standard. The Agency is also rescheduling the informal public hearing on the proposed rule and is extending the deadline for hearing participants to submit their hearing testimony and documentary evidence. OSHA is also using this document to provide the public with additional information and to clarify materials and data that were discussed in the preamble to the proposed standard as published in the **Federal Register** on November 23, 1999.

DATES: *Written Comments:* Written comments, including materials such as studies and journal articles, must be postmarked by March 2, 2000. If you submit comments by facsimile or electronically through OSHA's Internet site, you must transmit those comments by March 2, 2000.

Informal Public Hearing: The hearing in Washington, DC, will begin at 9:30 a.m., March 13, 2000, at the Francis Perkins Building, 200 Constitution Avenue, Washington, D.C. 20210. The hearing in Washington is scheduled to run for 4 weeks and to continue in Chicago, IL beginning April 11, 2000. We will provide dates, times, and locations for the continuation of the

hearing at another location in a supplemental **Federal Register** document.

Notice of Intention To Appear at the Informal Public Hearing: Notices of intention to appear at the informal public hearing were required to have been postmarked by January 24, 2000. If the rescheduling of the hearings makes it necessary for you to change your requested hearing location or to substitute a witness, you may do so by submitting an amendment to your notice of intention to appear, postmarked no later than February 14, 2000, to Ms. Veneta Chatmon at the address listed below.

Hearing Testimony and Documentary Evidence: If you will be requesting more than 10 minutes for your presentation, or if you will be submitting documentary evidence at the hearing, you must submit the full testimony and all documentary evidence you intend to present at the hearing, postmarked by March 2, 2000.

ADDRESSES: *Written Comments: Mail:* Submit duplicate copies of written comments to: OSHA Docket Office, Docket No. S–777, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–2625, Washington, DC 20210. Telephone: (202) 693–2350.

Facsimile: If your written comments are 10 pages or less, you may fax them to the OSHA Docket Office. The Docket Office fax number is (202) 693–1648.

Electronic: You may also submit comments electronically through OSHA's Homepage at *www.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit them separately in duplicate to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach them to your electronic comments.

Amended Notices of Intention To Appear: Mail: If the rescheduling of the hearings makes it necessary for you to change your requested hearing location or substitute a witness, you may do so by submitting an amendment to your notice of intention to appear at the informal public hearing. The amendment must be postmarked by February 14, 2000, and be sent to: Ms. Veneta Chatmon, OSHA Office of Public Affairs, Docket No. S–777, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–3647, Washington, DC 20210. Telephone: (202) 693–2119.

Facsimile: You may fax your amendment to your notice of intention to appear to Ms. Chatmon at (202) 693–1634, no later than February 14, 2000.

Electronic: You may also submit your amendment to your notice of intention to appear electronically through OSHA's Homepage at www.osha.gov. no later than February 14, 2000.

Hearing Testimony and Documentary Evidence: You must submit in quadruplicate your hearing testimony and the documentary evidence you intend to present at the informal public hearing to Ms. Chatmon at the address above. You may also submit your hearing testimony and documentary evidence on disk (3½ inch) in WordPerfect 5.1, 6.0, 6.1, or 8.0, or ASCII, provided that you also send the original hard copy at the same time.

Informal Public Hearing: The informal public hearing to be held in Washington, DC, will be located in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. The hearing will continue in Chicago, IL on April 11–21 and will subsequently continue at another location. Time and location for the regional hearings will be announced in a later **Federal Register**.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Background

OSHA published its proposed Ergonomics Program standard in the **Federal Register** on November 23, 1999 (64 FR 65768). In that notice of proposed rulemaking, we provided the public with 70 days to submit written comments, extending through February 1, 2000. We also scheduled an informal public hearing beginning in Washington, DC, on February 22, 2000, continuing in Portland, OR on March 21–31, 2000, and in Chicago, IL, from April 11–21, 2000. Notices of intention to appear at these hearings were due on January 24, 2000, and hearing testimony and documentary evidence were due on February 1, 2000. OSHA is only extending the comment period; notices of intention to appear may be amended only if the rescheduling of the hearings makes it necessary to change your requested hearing location or to substitute a witness.

Comment Period and Informal Public Hearing

Many interested persons have requested that we provide them with additional time to submit written comments and that we reschedule the hearings to allow additional time to submit documentary evidence and prepare testimony. OSHA believes that the time periods established in the notice of proposed rulemaking provided the public with adequate time to review the proposed standard and prepare comments, evidence, and testimony for the hearings. In light of the interest expressed by the public, however, we have decided to provide an additional thirty (30) days for these submittals. Accordingly, written comments, hearing testimony, and documentary evidence must now be submitted by March 2, 2000. The informal public hearing in Washington, DC is now scheduled to begin on March 13, 2000. Except for the change in dates, please refer to Section XV of the preamble to the proposed rule (Public Participation—Notice of Hearing) for information on how to participate in the public comment period and the informal public hearing (64 FR at 66064–66066). If the rescheduling of the hearing makes it necessary for you to substitute a witness or change the location at which you wish to testify, you may file an amendment of your notice of intention to appear indicating the necessary changes. Such amendment must be submitted by February 14, 2000.

Additional Information and Clarifications

In addition, we are taking this opportunity to clarify that OSHA is relying on the evidence and data in Section D of the Preliminary Risk Assessment, including the data shown in Appendix VI–B, for its estimates of the effectiveness of ergonomics program interventions. 64 FR 65943-65975. This evidence is relevant both to the risk assessment and the economic analysis. Accordingly, we are clarifying that a statement made in Section VIII of the preamble, Summary of the Preliminary Economic Analysis and Regulatory Flexibility Analysis (PEA/RFA) (64 FR 66002), is incorrect. That statement is "A review of 88 studies of ergonomics program interventions showed that they reduced MSDs by an average of 67 percent (the median effectiveness rate for these studies was 64 percent)." The correct statement is "A review of 80 studies of ergonomics program interventions showed that they reduced MSDs by an average of 73 percent (the median effectiveness rate for these studies was 76 percent)." The corrected statement reflects the same result reported in the Preliminary Risk Assessment at 64 FR 65948 and is based on data from the intervention studies presented in Appendix VI–B of the

preamble to the proposal (64 FR 65954–65975). We have placed in the docket a table identifying, by first author's name and exhibit number, the 80 studies in Table VI–B that were used to calculate the percentage reduction in total MSDs (Exhibit 26–1643). This table also identifies the studies used to derive other measures of program effectiveness, *i.e.*, the percent reduction in lost workday MSDs, the reduction in the number of workers' compensation claims, and the reduction in workers' compensation costs. In all, as noted in the Preliminary Risk Assessment, there are a total of 92 case studies providing quantitative evidence on one or more of these measures of the effectiveness of ergonomic program interventions in reducing MSDs. 64 FR 65948.

The reference to 88 studies at 64 FR 66002 and the associated information in Table IV–1 of the full economic analysis (Ex. 28–1) were included inadvertently as the result of an editorial error: the failure to update these references to reflect the final results reported in the Preliminary Risk Assessment. These references reflected an interim analysis of a contractor-provided database of case studies that had not yet undergone OSHA quality control reviews. Although OSHA is not relying on these materials in any way, in the event members of the public may be interested, OSHA is placing in the record two exhibits relevant to its interim analysis. Exhibit 26–1645 is the contractor-provided database of case studies on which OSHA based the interim analysis. Exhibit 26–1644 is a reconstruction, to the extent possible, of the interim analysis.

In sum, OSHA is providing this additional information to make clear that the Agency is relying on the evidence and data discussed in the Preliminary Risk Assessment, including Appendix VI–B, as the basis for its estimate of the effectiveness of ergonomic programs. This evidence is relevant both to the risk assessment and the economic analysis. OSHA is not relying on the statement referring to the 88 studies (64 FR 66002) or the information in Table IV–1 of the preliminary economic analysis (Exhibit 28–1, Chapter IV, pp. 747–748). OSHA notes that this clarification has no effect on OSHA's bottom line estimate that ergonomics programs similar to the one OSHA has proposed will achieve, on average, a 50 percent reduction in the incidence of musculoskeletal disorders. This estimate of effectiveness is substantially below the median and mean reductions projected by the Preliminary Risk Assessment (64 FR 65948) and by the statement on 64 FR 66002.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of January, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–2200 Filed 1–28–00; 10:01 am]

BILLING CODE 4510–25–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 36

Contracts under the Indian Self-Determination Act Removal of Regulations

AGENCY: Indian Health Service, HHS.

ACTION: Proposed Rule.

SUMMARY: The Indian Health Service (IHS) is proposing the elimination of 42 CFR part 36, subpart I, as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Comments may be sent to Betty J. Penn, Regulations Officer, Indian Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, Maryland 20852; e-mailed to bPenn@hqe.IHS.gov; faxed to 301/443–2316; or hand delivered to the above address. Comments will available for inspection at the above address from 9:00 a.m. through 4:00 p.m. Monday through Friday, beginning approximately 2 weeks after publication of this document in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Director, Division of Regulatory and Legal Affairs, at Suite 450, 12300 Twinbrook Parkway, Rockville, MD 20852, telephone: (301) 443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 24, 1996, the Department of Health and Human Services (HHS) and the Department of the Interior (DOI) issued joint regulations authorized by section 107 of the Indian Self-Determination and Education Assistance Act (ISDA), Public Law 93–638, as amended, 25 U.S.C. 450k. These joint regulations, published in the **Federal Register** on June 24, 1996, and codified at CFR part 900, replaced Department regulations codified at 42 CFR part 36, subpart I, "Contracts under the ISDA"; 48 CFR section 352.280–4, "Contracts awarded under the ISDA"; 48 CFR 352.380–4, "Contracts awarded under the ISDA; and 48 CFR subpart 380.4, "Contracts awarded under the ISDA;" because they are no longer necessary for the Administration of the IHS Programs.

Section 107(b) of the ISDA provides in pertinent part that "the secretary is authorized to repeal any regulation inconsistent with the provisions of this act." The HHS has proposed at 64 FR 1344 to revise 48 CFR, Chapter 3, to streamline and simplify its acquisition regulations (HHSRA) in accordance with the directions of the National Performance Review. In so doing, the sections of 48 CFR eliminated by the joint rule (25 CFR part 900) issued by the HHS and the DOI would be removed. Therefore, this document proposes to eliminate only subpart I of 42 CFR part 36.

Publication of this proposed rule by the HHS provides the public and opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding this proposed rule to the location identified in the addresses section of this document.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget. It proposes only to remove obsolete regulations.

Regulatory Flexibility Act

The HHS certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act since it only proposes to remove obsolete regulations.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-Tribal relations and will not interfere with the roles, rights, and responsibilities of States.

Paperwork Reduction Act of 1995

This regulation contains no information collection requirement that

would require notification of the Office of Management and Budget.

The authority to propose the elimination of these regulations is 42 U.S.C. 2003 and 25 U.S.C. 13.

List of Subjects in 42 CFR Part 36

American Indians, Alaska Natives, Government property, Health care, Indians—business and finance.

Dated: December 15, 1999.

Michael H. Trujillo,

Assistant Surgeon General Director, Indian Health Service.

Approved: January 20, 2000.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2003 and 25 U.S.C. 13, the Department proposes to remove subpart I of 42 CFR Part 36.

[FR Doc. 00–2048 Filed 1–31–00; 8:45 am]

BILLING CODE 4160–16–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–66, MM Docket No. 00–6, RM–9791]

Radio Broadcasting Services; McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by McCook Radio Group, LLC, requesting the allotment of Channel 271C1 to McCook, NE, as the community's fifth local FM service. Channel 271C1 can be allotted to McCook in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.6 kilometers (12.2 miles) west, at coordinates 40–12–00 NL; 100–51–25 WL, to avoid a short-spacing to Station KKQY, Channel 270C1, Hill City, KS, and the pending application of Station KRNY, Channel 272C1, Kearney, NE. The Commission also proposes to editorially amend the FM Table of Allotments by substituting Channel 253C1 for Channel 253C2 at McCook to reflect the action taken pursuant to the one-step application (BMPH–19990301IC) of McCook Media Association specifying the higher class channel.

DATES: Comments must be filed on or before March 6, 2000, and reply comments on or before March 21, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Stout, President, McCook Radio Group, LLC, 1811 West "O" Street, McCook, NE 69001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–6, adopted January 5, 2000, and released January 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–2094 Filed 1–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–65, MM Docket No. 00–5, RM–9752]

Radio Broadcasting Services; Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by BK Radio seeking the substitution of Channel 268C3 for Channel 268A at Las Vegas, NM, the reallotment of Channel 268C3 to Pecos, NM, as the community's first local aural service, and the modification of its construction permit to specify operation on the higher class channel and Pecos as its community of license. Channel 268C3 can be allotted to Pecos in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.7 miles) east, at coordinates 35–32–54 North Latitude; 105–35–18 West Longitude, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before March 6, 2000, and reply comments on or before March 21, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Shainis & Peltzman, Chartered, Suite 290, 1901 L Street, N.W., Washington, D.C. 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–5, adopted January 5, 2000, and released January 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–2093 Filed 1–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–25; MM Docket No. 93–28; RM–8172, RM–8299]

Radio Broadcasting Services; Colonial Heights, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial.

SUMMARY: The Commission denied a petition for reconsideration of the *Memorandum Opinion and Order* on reconsideration, 62 FR 664, published January 6, 1997, filed by Newport Publishing Co., licensee of Station WMXK(FM), Channel 240A (95.9 MHz), Morristown, Tennessee. The Commission rejected Newport's claim that the uncertainty as to when it should change the frequency of WMXK(FM) to accommodate the upgrade of Station WRZK(FM), Channel 290A (105.9 MHz), Colonial Heights, Tennessee, was unduly burdensome and, therefore, contrary to Commission policy.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order*, MM Docket 93–28, adopted January 6, 2000, and released January 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room CY–A257) at its headquarters, 445 12th Street, S.W., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–2095 Filed 1–31–00; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register
Vol. 65, No. 21
Tuesday, February 1, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on February 16, 2000, at the Jot's Resort, 94360 Wedderburn Loop Road, Gold Beach, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Overview of PAC recharter; (2) Implementation Monitoring update; (3) Survey and Manage EIS; and (4) Public Comment.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: January 24, 2000.

Roger J. Evenson,

Acting Designated Federal Official.

[FR Doc. 00–2068 Filed 1–31–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Action of Meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, February 17, 2000. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 3:00 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management, 1717 Fabry Road SE, Salem, Oregon, (503) 375–5646. The tentative agenda includes: (1) Presentation of recommendations by Waldo Basin Subcommittee, (2) Presentation of recommendations on Survey and Manage Draft EIS by Subcommittee, and (3) Roundtable information sharing by PAC members and federal agency representatives including status reports from PAC subcommittees. The Public Forum is tentatively scheduled to begin at 11:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the December 6 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: January 25, 2000.

Richard L. Sawaya,

Acting Forest Supervisor.

[FR Doc. 00–2069 Filed 1–31–00; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 6:00 p.m. on February 8, 2000, at the Four Points Hotel, 333 Poydras, New Orleans, Louisiana 70130. The purpose of the meeting is to plan a community forum on environmental justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 18, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–2096 Filed 1–31–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 6:30 p.m. on February 16, 2000, at the Radisson Hotel and Suites, 4243 Genesee Street, Buffalo, New York 14225. The Committee will release its report, *Equal Housing Opportunities in New York: An Evaluation of Section 8 Housing Programs in Buffalo, Rochester and Syracuse.* The Committee will also discuss plans for a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 18, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–2097 Filed 1–31–00; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce

AGENCY: Department of Commerce.

ACTION: Notice: Request for public comment on laws or regulations posing barriers to electronic commerce.

SUMMARY: The Department of Commerce, on behalf of the Subgroup on Legal Barriers to Electronic Commerce ("Legal Barriers Subgroup") of the U.S. Government Working Group on Electronic Commerce, requests public comments and suggestions concerning policies, laws or regulations that need to be adapted in order to eliminate barriers to and promote electronic commerce, electronic services, and electronic transactions.

DATES: Comments are requested by March 17, 2000.

ADDRESSES: Comments may be submitted via the Web at *http://www.ecommerce. gov/ebarriers/respond*. Alternatively, electronic submissions may be sent as documents attached to E-mail messages addressed to ebarriers@ita.doc.gov. Submissions made as E-mail attachments or submitted on floppy disks should be in WordPerfect, Microsoft Word or ASCII format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. Paper submissions may be mailed to the Subgroup on Legal Barriers to Electronic Commerce, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2815, Washington D.C. 20230. If possible, paper submissions should include floppy disks in WordPerfect, Microsoft Word or ASCII format. Except for floppy disks with paper submissions, duplicate copies should not be submitted.

FOR FURTHER INFORMATION CONTACT: Kenneth Clark, phone: 202–482–3843; E-mail kclark@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1999, President Clinton issued a Presidential Memorandum to the Heads of Executive Branch Departments and Agencies entitled "Facilitating the Growth of Electronic Commerce." The President noted that the rapid growth of the Internet and its increasing use throughout the world for electronic commerce holds great promise for American consumers and for the Nation. Consumers will have significantly greater choice and convenience and will benefit from enhanced competition for their business. To realize this promise, the President said, it is essential that government facilitate "not only retail activity, which has increased substantially, but also the movement to the online environment of other categories of transactions."

The President noted that laws and regulations developed before the advent of electronic commerce may significantly impede consumers and businesses in conducting various kinds of transactions electronically. These impediments can involve requirements that particular types of transactions be conducted on paper or in person, or that records be maintained or provided in written form. They may also include regulatory, statutory or licensing requirements, or technical standards and other policies, that hinder electronic commerce or otherwise require business or transactions to be conducted in a way that discriminates against the online environment.

Such requirements and policies must therefore be reviewed and, where appropriate, adapted to the new electronic environment. But the President noted that in making these adaptations, it is essential to ensure that electronic commerce is as safe for consumers as traditional forms of commerce.

To implement these objectives, the President mandated that the United States Government Working Group on Electronic Commerce: (1) Identify laws and regulations that impose barriers to the growth of electronic commerce, and (2) recommend how these laws and regulations should be revised to facilitate the development of electronic commerce, while ensuring that protection of the public interest (including consumer protection) is equivalent to that provided with respect to offline commerce. The President mandated that the Commerce Department lead a subgroup to implement this work, and the Subgroup on Legal Barriers to Electronic Commerce has been formed to carry out those responsibilities.

The President directed the Subgroup to invite the public to participate in this effort by identifying laws or regulations that may obstruct, hinder or discriminate against electronic commerce, including those that should be modified on a priority basis. The Subgroup was also charged with inviting public comment on how such laws and regulations could be adapted to the electronic environment while ensuring that public interest protections will be equivalent to those now provided in offline commerce. This Notice and Request for Comment implements those directives.

Scope of This Request

Areas of Focus for the Working Group

Electronic Transactions

These include business-to-business and consumer-to-business transfer of information, money, or other resources. (Note that transactions between government agencies and the public are excluded from this review because they are being addressed as to federal agencies pursuant to the Government Paperwork Elimination Act.)

Merchandise Sales

The Legal Barriers Subgroup is interested in all types of policy, legal and regulatory impediments to electronic commerce and invites comment on any that may be identified. Conducting business in the sale of goods on the Internet may involve a wide range of issues besides the actual transaction, from incorporation and notice requirements to warranty or liability policies. Respondents are invited to comment on such issues and to identify policies, laws or regulations that may impede the offering of goods for sale electronically. Comments are also requested concerning how such barriers could be removed while ensuring that equivalent consumer protections to those guaranteed in traditional commerce will apply to the sale of goods online.

Offering Services

Comment is also invited concerning the provision of professional or other services by electronic means. Such services differ from industry to industry, but may be dependent on certain statutory or regulatory frameworks. Respondents are invited to comment on whether these frameworks discriminate against the provision of services by electronic means or make electronic provision of services more difficult. Respondents are also invited to discuss how best to adapt these frameworks appropriately to the online environment.

Multiple Party Regulation

The Committee is especially interested in comments on regulations governing the relationship or exchange of information between different categories of private parties (*e.g.*, between banks and students or insurance companies and doctors). Respondents are invited to comment on regulatory provisions that address communication between parties, whether these provisions impede

electronic commerce due to requirements for written documentation or other actions that create a disincentive to electronic information transfer, and how such impediments could be removed while still protecting the public interest.

Independent Agencies Included Within the Scope of the Inquiry

This request invites comments concerning laws or regulations administered by any federal agency, as the President's Memorandum invites participation in the Working Group by independent agencies concerned with its work. Any comments concerning laws or regulations administered by independent agencies will be forwarded to those agencies for their consideration.

Areas of Law and Regulation Excluded

This request for comment focuses on domestic laws or regulations that may adversely affect electronic commerce (although the potential effects of such laws or regulations on cross-border commerce are relevant to this inquiry and may be included in any response). However, the Legal Barriers Subgroup will refrain from reviewing laws and regulations in areas where comprehensive activities are already underway to remove regulatory or legal barriers to electronic commerce. Areas excluded from this inquiry include the following:

(1) Treaties, international laws, conventions or agreements, or the laws of countries other than the United States.

(2) Tax laws or regulations.

(3) The following consumer protection regulations, which are subject to current rulemaking proceedings of the Board of Governors of the Federal Reserve: Regulation B, relating to the Equal Credit Opportunity Act; Regulation E, relating to the Electronic Fund Transfer Act; Regulation M, relating to the Consumer Leasing Act; Regulation Z, relating to the Truth in Lending Act; and Regulation DD, relating to the Truth in Savings Act.

(4) Issues being addressed pursuant to the Government Paperwork Elimination Act, which mandates steps to be taken by the Federal Government to remove barriers to electronic communications with and within the Federal government.

Note concerning State or local laws and regulations: Barriers to electronic commerce may arise simply from a lack of uniformity in policies, laws, standards or codes among different jurisdictions. Although we do not request comments about individual state or local laws or regulations, respondents may wish to identify general areas in which barriers to electronic commerce result from State or local policies, laws, or practices; or from differing State and federal policies, laws, licensing requirements, standards or other practices. Respondents also may wish to comment on whether increased coordination is needed between the Federal and State governments to avoid unnecessary impediments to electronic commerce.

Basic Questions for Public Comment

Comments on any issue within the scope of this inquiry are welcome. However, responses to the following specific questions would be most helpful to the Working Group.

1. Does any federal agency-administered law or regulation impose an impediment to the conduct by electronic means of commercial transactions between you or your firm, company or organization and any other non-government party or parties? (Be as specific as possible in citing or otherwise identifying the law or regulation.)

2. If so:

(a) What is the degree of the impediment? (For example, does it completely bar the transaction from occurring electronically, or does it make the transaction more difficult, expensive, or time-consuming without barring it altogether?)

(b) What is the nature of the impediment? (For example, is it a recordkeeping requirement, a "written notice" requirement, or some other type of requirement?)

(c) Can you provide information as to the costs that are associated with or result from the legal or regulatory impediment?

(d) What do you understand to be the reason for imposing the requirement that causes the impediment?

(e) Can you suggest alternative ways, other than through the requirement that causes the impediment, by which the agency could achieve the goal of the requirement? (Most helpful would be examples that work in other contexts.)

(f) Can you suggest ways in which the requirement can be modified to remove or reduce the impediment while continuing to provide consumer protections for electronic transactions that are equivalent to those that exist for offline transactions.

Additional Issues or Questions for Public Comment

3. Do federal laws or regulations in any particular field or area generally impose significant impediments to the conduct of commercial transactions by electronic means? If so, please indicate how they result in such impediments and provide any suggestions you may have to remove or reduce the impediments, while achieving the purposes of the laws or regulations and maintaining equivalent consumer protections.

4. Are there particular federal laws or regulations that should be modified on a priority basis because they currently inhibit electronic commerce that is otherwise ready to take place? In responding to this and other questions, you are urged to take into account cross-border transactions that are now likely to occur electronically.

5. Are there federal laws or regulations that should be clarified to facilitate electronic commerce by preserving important public interests in the area of online commerce such as consumer protection, civil rights or law enforcement?

6. Are there federal laws or regulations that constitute disproportionate or particular barriers to electronic commerce for small businesses? If so, are there changes or solutions you can suggest that would enable small businesses to engage more easily in electronic commerce?

7. To the extent that the adaption of laws or regulations to the electronic environment requires electronic notices or disclosures, can you offer specific suggestions as to formatting or other requirements for such notices or disclosures to ensure that they are conspicuous and will be received and understood?

8. From the standpoint of consumers, are there federal laws or regulations that have already been adapted to the electronic environment in a manner that has resulted in a lessening of consumer protections—including protections against fraud, or against over-reaching by unscrupulous or exploitative entities? If so, what is the degree of the harm involved, or the amount of cost imposed?

9. Are there federal laws or regulations that have already been adapted to the electronic environment in a manner that has resulted in a lessening of other public-interest protections, such as those involving health, safety or the environment?

10. Have you encountered areas in which barriers to electronic commerce result from: (a) Particular subject areas or types of State laws; (b) a lack of uniformity, or conflicts, among State laws; or (c) differing or conflicting State and federal laws?

11. Have you encountered impediments to electronic commerce that stem from licensing requirements, technical standards, codes, or other policies? If yes, what are they and how could they be removed?

12. Have you encountered impediments to electronic commerce that stem from a lack of uniformity in such requirements, standards, codes, or other policies among State or local governments or between them and the Federal Government?

Specificity of Responses and Comments

Comments and responses to the questions posed in this notice will be most helpful if they are specific in (1) identifying federal laws or regulations imposing impediments to electronic commerce, and (2) estimating costs associated with these impediments through reduced sales or business efficiency. The Working Group would appreciate receiving suggestions for modifying the law, regulation or policy to reduce or remove the impediments, or alternative ways (other than through the provision at issue) by which the agency could achieve the goal of the provision while maintaining consumer and public protections equivalent to those provided for transactions taking place by non-electronic means. Questions 1 and 2, above, provide an example of the degree of detail in responses that would be most helpful.

Publication

Comments will be published online at *http://www.ecommerce.gov/ebarriers/review*. Respondents should not submit materials that they do not desire to be made public.

Authority: Presidential Memorandum, "Facilitating the Growth of Electronic Commerce," dated November 29, 1999.

Dated: January 27, 2000.

Andrew J. Pincus,

General Counsel, Department of Commerce.

[FR Doc. 00–2198 Filed 1–31–00; 8:45 am]

BILLING CODE 3510–BW–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–007]

Carbon Steel Wire Rod From Argentina: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 19, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on carbon steel wire rod from Argentina (64 FR 63283). We preliminarily determined that sales of the subject merchandise were made below normal value. This review covers one manufacturer/exporter of the subject merchandise to the United States, Acindar Industria Argentina de Aceros S.A. ("Acindar") and the period November 1, 1997 through October 31, 1998.

We gave interested parties an opportunity to comment on the preliminary results. No comments were received. We have made no changes for the final results. We have determined that Acindar has made sales below normal value during the period of review. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0405 or 482–3833, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Trade and Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act of 1994 (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this review on November 19, 1999 (64 FR 63283). We received no comments from interested parties. The Department has now completed this review in accordance with section 751(a) of the Act. We made no changes in the calculation methodology from the preliminary results.

Scope of the Review

The product covered by this review is carbon steel wire rod. This merchandise is currently classifiable under HTS item numbers 7213.20.00, 7212.31.30, 72113.39.00, 721113.41.30, 7213.49.00, and 7213.50.00. These HTS subheadings are provided for convenience and U.S. Customs purposes. The written description of the scope of the proceeding is dispositive.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period November 1, 1997 through October 31, 1998:

Manufacturer/exporter	Margin (percent)
Acindar Industria Argentina de Aceros S.A	2.63

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appropriate appraisement instructions directly to the Customs Service. Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Acindar will be the rate established above in the "Final Results of Review" section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 119.11 percent, the "All Others" rate made effective by the LTFV determination. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to

administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306 of the Department's regulations. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: January 19, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2125 Filed 1–31–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of elemental sulphur from Canada. This review covers the period December 1, 1997 through November 30, 1998.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Rick Johnson at (202) 482–3818; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Postponement of Final Results

The Department has determined that it is not practicable to issue its final results of the administrative review within the current time limit of January 21, 2000. *See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration.* Therefore, the Department is extending the time limit for completion of the final results until February 29, 2000, in accordance with Section 751(a)(3)(A) of the Act.

Dated: January 21, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 00–2124 Filed 1–31–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Oil Country Tubular Goods From Canada: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Manning, at (202) 482–3936, or Nithya Nagarajan, at (202) 482–5253, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 24, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on oil country tubular goods from Canada, covering the period December 1, 1998 through May 30, 1999 (64 FR 47167). The preliminary results are currently due no later than February 29, 2000.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than June 30, 2000. *See* Decision Memorandum from Tom Futtner to Holly A. Kuga, dated January 21, 2000, which is on file in the Central Records Unit. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 21, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–2126 Filed 1–31–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012000A]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Dolphin Wahoo Committee with the Gulf of Mexico Council's Mackerel Committee, and the Caribbean Council's Dolphin Wahoo Committee.

DATES: The meeting will be held on February 15, 2000, from 1:30 p.m. to

5:00 p.m., and on February 16, 2000, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway (US 17), Charleston, SC; telephone: (843) 571–1000 or 1–800–334–6660.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The Committees will review and discuss maximum sustainable yield and overfishing definitions for the dolphin and wahoo species; review general management measures and regional management measures contained in the public hearing draft of the fishery management plan (FMP) for dolphin and wahoo; discuss proposed highly migratory species pelagic longline closures, and revise both the general and regional measures for the dolphin and wahoo FMP.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 11, 2000.

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2130 Filed 1–31–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012000B]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a meeting of the Council/Atlantic States Marine Fisheries Commission's Red Drum Stock Assessment Group (Group).

DATES: The meeting will be held on February 22, 2000, from 8:30 a.m. and will conclude by 5:00 p.m.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway (US 17), Charleston, SC; telephone: (843) 571–1000 or 1–800–334–6660.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to evaluate a stock assessment on the status of the red drum stocks in the Atlantic prepared by NMFS in cooperation with the South Atlantic states. The Group will consider available information, including but not limited to, commercial and recreational catches, natural and fishing mortality estimates, recruitment, fishery-dependent and fishery-independent data, and data needs. These analyses will be used to determine the condition of the stocks. Currently, it is illegal to harvest or possess red drum in Atlantic Federal waters.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 7, 2000.

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2131 Filed 1–31–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–ZA07

Application of the Merchants' Exchange of St. Louis, L.L.C. for Designation as a Contract Market in the Illinois Waterway and St. Louis Harbor Barge Rate Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Merchants' Exchange of St. Louis, L.L.C. ("MESL" or "Exchange") has applied for designation as a contract market for the automated trading of deliverable Illinois Waterway and St. Louis Harbor barge rate futures contracts on an electronic trading system ("MESL System").

The Exchange has not previously been approved by the Commodity Futures Trading Commission ("Commission") as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the two proposed futures contracts, MESL has submitted to the Commission a proposed trade-matching algorithm; proposed rules pertaining to MESL governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements; and various other materials to meet the requirements for a board of trade seeking initial designation as a contract market.

MESL has reached a preliminary agreement with, and is in the process of negotiating a definitive agreement with, the Board of Trade Clearing Corporation ("BOTCC") to provide all clearance and settlement functions. The National Futures Association ("NFA") would perform several of MESL's required regulatory functions.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Economic Analysis and the Division of Trading

and Markets have determined to publish the Exchange's proposal for public comment. The Divisions believe that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the Commodity Exchange Act. The Divisions seek comment regarding all aspects of MESL's application and addressing any issues commenters believe the Commission should consider.

DATES: Comments must be received on or before April 3, 2000.

FOR FURTHER INFORMATION CONTACT: With respect to questions about the terms and conditions of MESL's proposed futures contracts, please contact Frederick V. Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581: telephone number (202) 418–5273; facsimile number (202) 418–5527; or electronic mail: *flinse@cftc.gov*. With respect to MESL's other proposed rules, please contact Rachel F. Berdansky of the Division of Trading and Markets at the same address; telephone number: (202) 418–5429; facsimile number (202) 418–5536; or electronic mail: *rberdansky@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letter dated January 7, 2000, and received January 12, 2000, MESL, a Missouri for-profit limited liability company, has applied to the Commission for designation as a contract market for the automated trading of deliverable Illinois Waterway and St. Louis Harbor barge rate futures contracts. Since December 1998, MESL has been operating an inter-dealer exchange for barge freight in the cash market as the successor to the Merchants' Exchange of St. Louis, a not-for-profit entity.[1] Neither entity has previously been approved as a contract market in any commodity. Thus, in addition to the terms and conditions of the two proposed futures contracts, MESL has submitted, among other things, proposed trade-matching algorithm procedures and rules pertaining to MESL governance, disciplinary and arbitration procedures, trading standards, and recordkeeping requirements.

Pursuant to the Missouri Limited Liability Company Act, MESL is wholly-owned by its "members." Although MESL's members/owners ("Owners") hold all equity interest and voting rights, MESL System trading privileges would not convey with MESL membership.[2] Only persons approved by MESL would be granted trading privileges (collectively referred to as "Trading Privilege Holders" ("TPHs")). MESL's Owners would not be prohibited from obtaining trading privileges, but would be required to complete the standard TPH application and approval process.[3] MESL also would require that every TPH applicant either be a clearing member, have a clearing arrangement with a clearing member, or have an account with a firm that has a relationship with a clearing member.

The Exchange would be governed by a five-person Board of Managers ("Board"), which would include at least one public Manager, appointed jointly by a vote of MESL's Owners. The Owners also would elect one of the Managers to serve as Chairman. Among other things, the Board would elect MESL's officers and approve TPHs.[4] Day-to-day operations would be managed by an Executive Committee comprised of MESL's Chairman and President.

MESL proposes to trade each of its two contracts from 8:30 a.m. to 4 p.m., Central Time, on each business day. The contracts would trade over the MESL System, an automated trading system licensed by Exchange Cubed, LLC, a software and systems development company.[5] Under the proposal, TPHs would use their own computers to access the MESL System over a proprietary network. TPHs or their authorized employees would be required to input into the MESL System the price, quantity, commodity, contract month, and the account designation for each order.[6] If a customer order could not by its terms be immediately entered into the MESL System, the TPH or AT receiving the order would be required to prepare a written order ticket that included the time of receipt, date, account designation, and all other required information. The TPH or AT would be required to enter the order as soon as possible.

The MESL System would accept the entry of any market order, limit order, stop limit order or market-if-touched order and would permit contingencies such as day-trade orders and good-til-cancelled orders. These orders would be executed pursuant to a trade-matching algorithm that would match orders on the basis of price first and time second. Upon execution of a transaction, a digital confirmation would be provided to the submitting TPH. Within approximately thirty minutes of the execution of each trade, the Exchange represents that the MESL System would transmit matched trade data to the BOTCC. Trade data for each trade would be made immediately available to the appropriate clearing member for review. The clearing member would be required to accept or challenge the trade within thirty-minutes of receipt from MESL.

MESL also would permit transactions involving the exchange of futures for physicals ("EFP"). Specifically, MESL would allow a bona-fide EFP of any size to be entered into at a price mutually agreed upon by the two transacting parties at any time during a 24-hour trading day. EFPs would be cleared by the BOTCC in the regular manner and would be designated as a noncompetitive transaction in the relevant records.

MESL expects to contract with NFA to perform several of MESL's required regulatory services. These services would encompass reviewing TPH applications and conducting background checks, and operating MESL's arbitration program and portions of its disciplinary program.[7]

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[1] The Merchants' Exchange of St. Louis was organized in 1836 for the purpose of trading cash and futures products, including barge freight, but ceased trading futures contracts prior to the creation of the Commission.

[2] Each MESL Owner has executed the MESL Operating Agreement. A limited liability company's operating agreement is comparable to a partnership agreement for a limited partnership or the combination of by-laws and a shareholders' agreement of a corporation. All individuals or entities that become Owners in the future also would be required to sign the MESL Operating Agreement.

[3] The Exchange would define "person" to include a natural person, association, partnership, limited liability company, trust, or corporation. For purposes of the Exchange's application for contract market designation and its proposed rules, the term "members" constitutes any person (including Owners) approved as a TPH. In this regard, an Owner that is not a TPH would not be considered a member.

[4] The Board's other responsibilities would include setting compensation for officers and employees, setting transaction fees, and approving any amendments to MESL's Operating Agreement or rule revisions.

[5] MESL expects to collect a transaction fee for each trade executed on the MESL System.

[6] Those TPHs that are either a Futures Commission Merchant, Introducing Broker, or Commodity Trading Advisor, would be permitted to authorize employees to exercise their trading privileges. These employees are referred to as Authorized Traders ("ATs"). ATs would be required to sign an agreement consenting to be bound by MESL's rules.

[7] The Exchange's proposed disciplinary rules are substantially the same as NFA's disciplinary rules. The Exchange anticipates that its Business Conduct Committee ("BCC") and Hearing Committee would consist of NFA's BCC and Hearing Committee, respectively, plus one Exchange representative on each committee. Appeals would be heard by the Exchange's Executive Committee.

MESL also expects to contract with NFA to operate its trade practice surveillance program. This responsibility would entail conducting investigations and prosecuting the resulting disciplinary actions.

II. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate MESL should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. The Divisions seek comment on all aspects of MESL's application for designation as a new contract market. Reference should be made to MESL's application for designation as a contract market in Illinois Waterway and St. Louis Harbor barge rate futures contracts. Copies of each contract's proposed terms and conditions are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

Other materials submitted by MESL may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552), except to the extent that they are entitled to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests for copies of such materials should be made to the Freedom of Information, Privacy and Sunshine Act compliance staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on January 21, 2000.

Alan L. Seifert,

Deputy Director.

[FR Doc. 00–2116 Filed 1–31–00; 8:45 am]

BILLING CODE 6351–01–U

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, February 4, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: SURVEILLANCE MATTERS.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–2217 Filed 1–28–00; 1:23 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 11, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–2218 Filed 1–28–00 1:23 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 18, 2000.

PLACE: 1155 21st St., NW, Washington DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–2219 Filed 1–28–00; 1:23 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, February 25, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: SURVEILLANCE MATTERS.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–2220 Filed 1–28–00; 1:23 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–ZA08

Average Price Calculations by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing guidance concerning the circumstances in which a futures commission merchant ("FCM") may calculate for and confirm to its customers an average price when multiple prices are received on an order or series of orders. The Commission has determined that if prerequisite conditions specified in this advisory are met, an FCM may calculate an average price for its affected customers whether the contracts involved are traded on domestic or non-domestic exchanges.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: David Taylor, (202) 418–5488.

ADVISORY:

I. Introduction and Background

On September 15, 1999, the Commodity Futures Trading Commission ("CFTC" or "Commission") Division of Trading and Markets ("Division") received a written request from the Futures Industry Association ("FHA") Law and Compliance Division for guidance from the Commission regarding whether a futures commission merchant ("FCM") may calculate an average price for its customers in situations when multiple prices are received on an order or series of orders involving contracts traded on domestic as well as non-domestic exchanges.

The CFTC has permitted the use of average prices in the futures industry since 1992. On April 10, 1992, the

Division permitted the Chicago Mercantile Exchange ("CME") to make effective without Commission approval CME Rule 553, which enabled an FCM to confirm to its customers an average price calculated by the Exchange when multiple prices were received on an order or series of orders for the FCM's customers. On June 10, 1992, the Division permitted the Chicago Board of Trade ("CBT") to make effective without Commission approval a similar average price order provision (CBT Rule 421.03). Under these rules, a domestic exchange has been responsible for calculating the average prices for contracts executed on that exchange, and the FCM involved has confirmed these prices to the appropriate customers.

On May 26, 1995, the Division issued a non-action letter ("No-Action Letter") that permits an FCM to calculate and confirm average prices to its customers for trades executed on non-domestic exchanges (CFTC No-Action Letter No. 95–59, CCH Comm. Fut. L. Rep. ¶ 26,434, 1995 WL 389299 (C.F.T.C)). Where non-domestic exchanges are involved, the No-Action Letter permits the FCM itself, subject to certain conditions, to calculate the average price and then confirm it to its customers.

Certain FCMs have recently expressed an interest in having the flexibility to calculate average prices for contracts executed on both domestic and non-domestic exchanges. Although some FCMs will still prefer to use the exchange calculations, other FCMs have developed the necessary systems to support the average price calculations for contracts executed on non-domestic exchanges. These FCMs would prefer to apply their systems for all contracts for which average price calculations would be appropriate.[1] These firms have indicated that this flexibility would increase efficiencies by allowing them to apply a consistent operational function for average pricing on both domestic and non-domestic exchanges.

[1] As specified in current exchange rules regarding average pricing, an order or series of orders executed during a Regular Trading Hours Session or matched during an electronic trading session at more than one price may be averaged if each order is for the same account or group of accounts and for the same commodity and month for futures, or for the same commodity, month, put/call and strike price for options. APS treatment may apply to multiple accounts that are part of a managed account program or other common investment program, or to individual discretionary accounts. It may also be applied to individual non-discretionary accounts, but prices for one of these accounts may not be averaged with those of other non-discretionary accounts.

II. Prerequisite Conditions for FCM Calculation of Average Prices

The Commission believes that it would be acceptable to allow flexibility for FCMs to calculate and confirm average prices involving contracts traded on domestic as well as non-domestic exchanges, provided that certain prerequisite conditions were met. The applicable conditions would be as follows:

1. The customer has requested average price reporting.[2]

2. Average price reporting in accordance with this Advisory is permitted under the rules of the domestic exchange involved or not prohibited under the rules of the foreign exchange involved.

3. Each individual trade is submitted and cleared by the relevant clearing organization at the executed price.

4. The FCM calculates and confirms to its customers the weighted mathematical average price.[3]

5. The FCM possess the records to support the calculations and the allocations to customer accounts, maintains them in accounts, maintains them in accordance with Commission Regulation 1.31, and makes them available for inspection by affected customers on request.

6. The FCM identifies each trade to which an average price is assigned as having an average price on each confirmation statement and monthly statement on which the trade is reported to the customer pursuant to Commission Regulation 1.33.[4]

7. The FCM's proprietary trades are not averaged with customer trades subject to average price calculations.[5]

The Commission believes that these conditions provide reasonable safeguards that support permitting an FCM to perform average price calculations. The Commission further believes that these conditions should be applied consistently for the calculation of trades executed on both domestic and non-domestic exchanges.

[2] Under Commission Regulation 1.35(a–1) and Appendix C [¶ 2211C], it will continue to be impermissible to bunch an order of a customer who has not requested average pricing with other orders in a bunched order for which the specified allocation designator or allocation method is average pricing.

[3] As currently required for average price calculations made by exchanges, the weighted mathematical average price is to be computed by: (a) multiplying the number of contracts purchased or sold at each execution price by that price, (b) adding the results together, and (c) dividing by the total number of contracts. For a series of orders, the average price may be computed based on the average price of each order in that series. As in current practice, FCMs are permitted to confirm to customers either the actual average price or the average price rounded to the next price increment. In the latter case, the FCM must round the average price up to the next price increment for a buy order or down to the next price increment for a sell order, and pay any residual thus created to the customer, thus placing that customer in the same position as if the actual average price had been confirmed to him or her. APS calculations can produce prices that do not conform to whole cent increments, and in such cases amounts less than one cent may be retained by the FCM. Although disclosure to customers concerning how average prices are calculated was required when use of average prices was first permitted in 1992 as noted above, FIA has represented to the Commission that such disclosures are no longer needed because average pricing has become familiar to futures industry customers. Accordingly, the Commission will no longer require an FCM to provide such disclosures to its customers, but notes that an FCM should provide such information upon a customer's request.

III. Conclusion

Average prices have been in use for several years and in certain instances can be more informative and understandable to customers than providing different and multiple prices. Permitting FCMs to calculate and confirm average prices to customers effectively permits alternative operational procedures to achieve the same results. It also furthers the Commission's stated goal of reducing the regulatory burden on the domestic futures industry, in order to permit it to compete freely in the global futures marketplace, whenever this can be done without undermining the purposes of and the safeguards provided by the Commodity Exchange Act and the Commission's regulations.

Accordingly, the Commission has determined that where all of the prerequisite conditions specified above are met, FCMs may, if they choose, calculate average prices for and confirm average prices to their affected customers, whether the contracts involved are executed on domestic or non-domestic exchanges.

Issued in Washington, D.C., on January 20, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–1907 Filed 1–31–00; 8:45 am]

BILLING CODE 6351–01–M

[4] Where an FCM makes it own average price calculations as set forth above, the FCM will no longer be required to indicate average price treatment on order tickets or electronic trading system entries, since in that event the clearing house will no longer be involved, and since the simple arithmetic calculation of an average price does not implicate any on-floor or electronic trading system trade practice.

[5] In situations where the FCM participates on its own behalf in a collective vehicle such as a hedge fund, and trades of the collective vehicle are included in average pricing involving customers of the FCM, the Commission will not regard the FCM as having violated the prohibition on averaging proprietary trades with customer trades so long as the FCM owns less than 10% of the collective vehicle (see Commission Regulation 1.3(y)).

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete and amend records systems.

SUMMARY: The Department of the Air Force proposes to delete three and amend two systems of records notices from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on March 2, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/INC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rolling at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the records systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: January 21, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F034 AF SVA D

System name:

Air Force Educational Assistance Loans

Reason: Records have been destroyed.

F036 AF DP E

System name:

Civilian Pay-Personnel-Manpower (PAPERMAN)

Reason: Records were incorporated into F036 AF PC Q.

F031 AF SP B

System name:

Air Force Policy Statement-Firearms Safety and Use of Force

Reason: Records have been destroyed.

F032 AF CE E

System name:

Visiting Officer Quarters-Transient Airman Quarters Reservation *(June 11, 1997, 62 FR 31793).*

Changes:

System identifier:

Delete entry and replace with "F034 AF AFSVA A".

System name:

Delete entry and replace with "Lodging Reservations System."

System location:

Delete entry and replace with "All Air Force installations with lodging facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices."

* * * * *

Categories of records in the system:

Delete entry and replace with "Registration includes name, Social Security Number, credit card number, unit and/or home address, duty and/or home phone, purpose of visit, grade/rank, gender, point of contact name and number."

* * * * *

Purpose(s):

Delete entry and replace with "To register occupants and charge for lodging."

* * * * *

Safeguards:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

Retention and disposal:

Delete entry and replace with "Disposition pending (until NARA disposition is approved, treat as permanent)".

* * * * *

Record source categories:

Delete entry and replace with "From individual or point of contact making reservation."

* * * * *

F034 AF AFSVA A

System name:

Visiting Officer Quarters-Transient Airman Quarters Reservation.

System location:

All Air Force installations with Visiting Officer and/or Transient Airman Quarters. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Categories of individuals covered by the system:

Personnel registering to obtain a room for the duration of visit.

Categories of records in the system:

Registration of transient personnel into quarters.

Authority for maintenance of the system:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

Purpose(s):

To register occupants of base transient quarters and charge for billeting.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets and on computer and computer output products.

Retrievability:

Retrieved by name or Social Security Number.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official

duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

Retention and disposal:

Disposition pending (until NARA disposition is approved, treat as permanent).

System manager(s) and address:

Lodging Program Manager, Lodging Department, Headquarters Air Force Services Agency (HQ AFSVA/SVOHL), 10100 Reunion Place, Suite 501, San Antonio, TX 78216–4138.

Notification procedure:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the lodging manager on base, or the Lodging Program Manager, Lodging Department (HQ AFSVA/SVOHL), 10100 Reunion Place, Suite 501, San Antonio, TX 78216–4138.

Full name and Social Security Number are required for identification.

Record access procedures:

Individuals seeking to access records about themselves contained in this record system should address written requests to the lodging manager on base, or the Lodging Program Manager, Lodging Department (HQ AFSVA/SVOHL), 10100 Reunion Place, Suite 501, San Antonio, TX 78216–4138.

Full name and Social Security Number are required for access.

Contesting record procedures:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

Record source categories:

From individual or point of contact making reservation.

Exemptions claimed for the system:

None.

F034 AF SVA A

System name:

Non-Appropriated Fund (NAF) Civilian Personnel Records *(June 11, 1997, 62 FR 31793).*

Changes:

System identifier:

Delete entry and replace with "F034 AF AFSVA B".

System location:

Delete entry and replace with "Human resources offices. Official mailing addresses are published as an appendix to the Air Force" compilation of systems of records notices.

* * * * *

Categories of records in the system:

Delete entry and replace with "Life cycle personnel actions and documents related to employment, benefits, and pay of NAF employees."

* * * * *

Retention and disposal:

Delete entry and replace with "Transfer folder to National Personnel Records Center (NPRC), St. Louis, MO, 30 days after latest separation."

* * * * *

Record source categories:

Delete "financial institutions" and "police and investigating officers."

* * * * *

F034 AF AFSVA B

System name:

Non-Appropriated Fund (NAF) Civilian Personnel Records.

System location:

Human resources offices. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Categories of individuals covered by the system:

Air Force civilian employees paid from non-appropriated funds.

Categories of records in the system:

Life cycle personnel actions and documents related to employment, benefits, and pay of NAF employees.

Authority for maintenance of the system:

10 U.S.C. 8013, Secretary of the Air Force.

Purpose(s):

To document and record personnel action on individual employees and to determine pay and other benefit entitlements.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/ cabinets.

Retrievability:

Retrieved by name.

Safeguards:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know.

Retention and disposal:

Transfer folder to National Personnel Records Center (NPRC), St. Louis, MO, 30 days after latest separation.

System manager(s) and address:

Chief, Human Resources Division, Headquarters Air Force Services Agency (HQ AFSVA/SVXH), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138.

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the servicing human resources office. Identifying information is required to satisfy custodian of record. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Record access procedures:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the servicing human resources office maintaining record. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Contesting record procedures:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

Record source categories:

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, personnel documents requesting and appointing and paying individual, and from

documents related to designation of benefits and beneficiaries.

Exemptions claimed for the system:

None.

[FR Doc. 00–1863 Filed 1–31–00; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend records systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on March 2, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: January 21, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.30 DLA-M

System name:

Reserve Affairs *(February 22, 1993, 58 FR 10854).*

Changes

System Identifier:

Delete entry and replace with "S200.30 CAI".

* * * * *

Authority for maintenance of the system:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN)."

Purpose(s):

Delete entry and replace with "The files are maintained to provide background information on individuals assigned to DLA and to document their assignment. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions, scheduling, and verification of active duty and inactive duty training. The data is also used for management and statistical reports and studies."

* * * * *

Retrievability:

Delete entry and replace with "Retrieved by last name and Social Security Number."

Safeguards:

Records are maintained in area accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked officer, or locked cabinets during nonduty hours.

* * * * *

Record source categories:

Delete entry and replace with 'Data is provided by the Military Services and the individual.'

* * * * *

S200.30 DLA-M

System name:

Reserve Affairs.

System location:

Executive Director, Plans and Operations, Corporate Administration, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Categories of individuals covered by the system:

All Ready Reserve, Army, Air Force, Navy and Marine personnel assigned to DLA Individual Mobilization Augmentee (IMA) positions.

Categories of records in the system:

The files contain name, grade, Social Security Number, service, career specialty, position title, date of birth, commission date, promotion date, release date, security clearance, education, home address and civilian occupation of the individuals involved.

Authority for maintenance of the system:

10 U.S.C. Part II, Personnel; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN).

Purpose(s):

The files are maintained to provide background information on individuals assigned to DLA and to document their assignment. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions, scheduling, and verification of active duty and inactive duty training. The data is also used for management and statistical reports and studies.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records:

Storage:

Records are stored in paper and electronic form.

Retrievability:

Retrieved by last name and Social Security Number.

Safeguards:

Records are maintained in area accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in

locked or guarded buildings, locked officer, or locked cabinets during nonduty hours.

Retention and disposal:

Records are destroyed 2 years after separation or release from mobilization designation, or after supersession or obsolescence, or after 5 years, as appropriate.

System manager(s) and address:

Executive Director, Plans and Operations, Corporate Administration Military, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221 and the heads of the DLA PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Notification procedure:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an Appendix to DLA's compilation of systems of records notices.

Record access procedures:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Contesting record procedures:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Record source categories:

Data is provided by the Military Services and the individual.

Exemptions claimed for the system:

None.

[FR Doc. 00–1864 Filed 1–31–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Announcement of guaranty agencies selected to negotiate participation in a Voluntary Flexible Agreement.

SUMMARY: The Secretary announces the guaranty agencies that have been selected as possible participants in Voluntary Flexible Agreements under Section 428A of the Higher Education Act of 1965, as amended (the "HEA").

FOR FURTHER INFORMATION CONTACT: Mr. Cameron R. Ishaq, Department of Education, Student Financial Assistance, 7th and D Streets SW, Room 4616 Washington, DC 20202, (202) 260–5076.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On July 28, 1999, the Secretary published a Notice in the **Federal Register** (64 FR 40859) inviting guaranty agencies participating in the Federal Family Education Loan (FFEL) Program to apply to participate in the FFEL Program under a Voluntary Flexible Agreement (VFA) as authorized by Section 428A of the HEA. The Notice informed the guaranty agencies of the deadline for submission of the application, the information that needed to be included with the application and an outline of the evaluation and selection process that the Secretary planned to use.

Nine guaranty agencies submitted timely VFA applications. Eight of the agencies made oral presentations to the Secretary's representatives during September and October. The Secretary has evaluated the information provided by the nine agencies in their applications and oral presentations and has selected six agencies with which to try to negotiate a VFA. The selected agencies are identified in this notice.

The Secretary believes that each of the selected VFA applications includes specific proposals that could improve the FFEL Program. However, a number of the applications also include proposals that the Secretary believes are outside the appropriate scope of a VFA or are contrary to the Secretary's policies and goals.

In light of this situation, the Secretary has decided not to publish the selected VFA proposals at this time. The Secretary understands, however, that each of the selected guaranty agencies has made their proposal public. In the list of selected agencies below, the Secretary is also providing the guaranty agency's contact to obtain a copy of the proposal.

The agencies selected by the Secretary are:

1. American Student Assistance (ASA)

Proposal available from:
www.amsa.com

2. California Student Aid Commission/EdFund (CSAC)

Proposal available from:
www.csac.ca.gov

3. Colorado Student Loan Program (CSLP)

Proposal available from: www.cslp.org

4. Great Lakes Higher Education Assistance Corporation (GLHEAC)

Proposal available from: www.glhec.org

5. Pennsylvania Higher Education Assistance Authority (PHEAA)

Proposal available from: Peggy Shedden (717) 720–2660 or pshedden@pheaa.org

6. Texas Guaranteed Student Loan Corporation (TGSLC)

Proposal available from: www.tgslc.org

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1078–1.

Dated: January 20, 2000.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 00–2195 Filed 1–28–00; 11:11 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Advisory Board; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law No. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board has been renewed for a two-year period beginning on January 18, 2000. The Board will provide advice to the Assistant Secretary for Environmental Management.

The purpose of the Board is to provide the Assistant Secretary for Environmental Management with advice and recommendations on Environmental Management projects and issues, such as program budget, strategic planning, risk, technology development, the National Environmental Policy Act, long-term nuclear stewardship, science initiatives, worker health and safety, and program cost effectiveness, from the perspective of affected groups and State, Tribal, and local governments. Consensus recommendations to the Department of Energy from the Board on programmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Board may be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, D.C. on January 18, 2000 .

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–2061 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Availability of the Final Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Final Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico (CT EIS), DOE/EIS–0293. DOE prepared the CT EIS pursuant to Public Law 105–119. The CT EIS provides DOE and its stakeholders an analysis of the environmental impacts that could result from DOE's conveyance or transfer of up to approximately 4,800 acres of land located in north-central New Mexico to either the Incorporated County of Los Alamos or the Secretary of the Interior, in trust for the Pueblo of San Ildefonso. DOE distributed the CT EIS (which is dated October 1999) in January 2000, concurrent with a related Report to Congress (the Combined Data Report) that is also required by Public Law 105–119.

ADDRESSES: Written requests for copies of the CT EIS or requests for information about the proposed action should be directed to: Elizabeth Withers, CT EIS Document Manager, U.S. DOE, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544; by calling Ms. Withers at (505) 667–8690; fax (505) 665–4872; or electronic mail at cteis@doeal.gov. The CT EIS will be available under the NEPA Analysis Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave., SW, Washington, D.C. 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The CT EIS was prepared under the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*], the Council on Environmental Quality NEPA regulations [40 CFR Part 1500] and the DOE NEPA regulations [10 CFR Part 1021]. DOE held public hearings on the Draft CT EIS in Pojoaque and Los Alamos, New Mexico, during a 45-day public comment period that ended April 12, 1999. DOE considered all public comments received in preparing this Final CT EIS.

In accordance with Section 632 of Public Law 105–119, enacted on November 26, 1997, DOE proposes to convey or transfer certain land tracts located at Los Alamos National Laboratory that are not needed to support DOE's national security mission and that can be environmentally remediated or restored before November 26, 2007, by either conveyance to the Incorporated County of Los Alamos, or by transfer to the Secretary of the Interior, in trust for the Pueblo of San Ildefonso. Criteria established by Public Law 105–119 for determining if land is suitable for conveyance or transfer include the requirement that the land be suitable for use by the named recipients for the purposes of environmental, historic or cultural preservation, economic diversification purposes, or community self-sufficiency purposes.

The CT EIS analyzes two alternatives: (1) The No Action Alternative and (2) the Conveyance and Transfer of Each Tract Alternative (the Proposed Action). Under the No Action Alternative, DOE would continue its historical use of each of the land tracts identified as potentially being suitable for conveyance and transfer. Under the Conveyance and Transfer of Each Tract (Proposed Action) Alternative, the conveyance or transfer of each tract identified as suitable is considered, either in whole or in part, to either Los Alamos County or their designee, or the Secretary of the Interior in trust for the Pueblo of San Ildefonso. DOE's Preferred Alternative is a subset of the Proposed Action Alternative, namely to convey or transfer approximately 4,021 acres, including several of the tracts of land entirely and several tracts in part (portions without potential contamination issues or mission support questions). Environmental restoration activities would continue under current or future plans for the tracts that require such action and will include coordination with the State of New Mexico and public involvement.

The CT EIS compares the environmental impacts that could be

expected to occur from continuing to use the subject tracts of land as currently planned for the next 10 years with the direct consequences expected from conveying or transferring suitable tracts, in whole or in part, to the recipients named in Public Law 105–119, together with the indirect consequences expected from the subsequent development and use of the tracts by the receiving parties. Floodplain and wetlands assessments are included in an appendix to the CT EIS. In accordance with Public Law 105–119, DOE has also issued a separate Environmental Restoration Report for the land tracts being considered for conveyance or transfer. The Environmental Restoration Report describes the type and extent of environmental contamination, the regulatory status of the site contamination, potential waste generation associated with the environmental cleanup, and the estimated costs and duration of cleanups. The Environmental Restoration Report can be obtained by contacting Ms. Elizabeth Withers as indicated in the **ADDRESSES** section above.

In accordance with Public Law 105–119, DOE prepared and sent to Congress the Combined Data Report, which summarizes the CT EIS and the Environmental Restoration Report. DOE also has distributed copies of the CT EIS and the associated Environmental Restoration Report to the State of New Mexico, American Indian tribal and pueblo governments, local county governments, other Federal agencies, and other interested parties.

DOE intends to issue a Record of Decision in early 2000, and will consider the information in the Final CT EIS and the Environmental Restoration Report, and other factors such as economic and technical considerations, in deciding the action it will take regarding the conveyance and transfer of the subject tracts.

Issued in Washington, D.C., on January 21, 2000.

Henry Garson,

NEPA Compliance Officer, Defense Programs.

[FR Doc. 00–2066 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Office of Industrial Technologies (OIT); Notice of the Glass Industry of the Future Solicitation

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of Solicitation Availability.

SUMMARY: The U.S. Department of Energy announces its interest in receiving applications for federal assistance for cost shared research and development of technologies which will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts of the U.S. glass industry. The key objective of this solicitation and the resulting projects are improvement of the manufacture of glass in the U.S. focusing on production efficiency, energy efficiency, environmental protection and recycling, and innovative types and/or uses of glass. These objectives are intended to be achieved through several avenues, including the development of improved technologies and better application of existing technologies.

DATES: The complete solicitation document will be available on or about February 15, 2000 on the Internet by accessing the DOE Chicago Operations Office Acquisition and Assistance Group Home Page at *http://www.ch.doe.gov/business/ACQ.htm* under the heading "Current Solicitations", Solicitation No. DE–SC02–00CH11037. Applications are due on or about April 3, 2000. Awards are anticipated by August 1, 2000, pending availability of funding.

ADDRESSES: Completed applications must be submitted to: U.S. Department of Energy, Chicago Operations Office, Attn: David E. Ramirez, Bldg. 201, Communications Center, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899.

FOR FURTHER INFORMATION CONTACT: David Ramirez at (630) 252–2133; by mail at U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899; by facsimile at (630) 252–5045; or by electronic mail at david.ramirez@ch.doe.gov.

SUPPLEMENTARY INFORMATION:

Background

DOE through its Office of Industrial Technologies (OIT) supports industries in their efforts to increase energy efficiency, reduce waste and increase productivity. The goal of OIT is to accelerate the development and use of advanced energy efficiency, renewable and pollution prevention technologies that benefit industry, the environment, and U.S. energy security. OIT's core program is the Industries of the Future Program (IOF), which focuses on basic materials and processing industries such as the glass industry.

Solicitation Topics

In keeping with the IOF strategy, this solicitation will seek applications for financial assistance in projects that address the research needs identified in one or more of the topical areas listed below:

A. Production Efficiency

New ways of improving product quality and increasing volume using existing furnaces must be developed if each manufacturing sector is to maintain its revenue. Applications will be sought in the areas of advanced technologies that can cost-effectively enhance glass-manufacturing capabilities.

B. Energy Efficiency

The industry believes the development of more energy-efficient manufacturing technologies will achieve significant energy savings and help to strengthen the competitiveness of glass products both internationally and with other materials, especially in the event that energy prices rise significantly. Applications will be sought in the areas of advanced technologies to effectively reduce the energy use in glass manufacturing.

C. Environment

The glass industry would be much better equipped to reduce emissions if it had a stronger understanding of the formation and fate of emissions in current processes, as well as a better understanding of the fundamental process mechanisms and chemical reactions involved. Applications will be sought for technology and underlying fundamental knowledge in reduced emissions and increased recycling.

D. Innovative Uses of Glass

The industry needs to develop more cost-effective manufacturing techniques to compete against other materials in new and existing markets, and support business and technical research to create completely new, innovative glass-containing products and processes in markets which previously did not use glass products. Applications will be sought for processing techniques and underlying fundamental knowledge that will enable improved or innovative glass products.

All projects must contribute to enhancing the economic competitiveness of the glass industry through significant benefits in energy and environmental quality. Subtopics and specific details under the above topical areas will be available in the solicitation document.

Type and Number of Anticipated Awards

It is the Government's intent to award approximately seven (7) to ten (10) Cooperative Agreements under this solicitation with a maximum estimated DOE funding of $500,000 per year for each Cooperative Agreement up to a three (3) year period, subject to the availability of funds. Total estimated Government funding for the solicitation is approximately $10 million for the maximum three-year period.

Application Requirements

Teaming arrangements will be required. Applications, which do not propose a teaming arrangement of at least two glass industry companies, will not be evaluated. A "glass industry company" is defined as a private (profit or non-profit) organization that manufactures glass and allied products or provides products or services to such manufacturers. In addition, raw material suppliers, equipment and technology suppliers, architectural and engineering companies, software and consulting firms, trade and professional associations, and research institutes, that routinely conduct a minimum of 10% of their business with glass industry manufacturers are within the scope of the definition.

Teams may also include, but are not limited to, universities, trade associations, DOE National Laboratories, and small businesses which facilitate technology transfer to the private sector, promote commercialization, and enhance U.S. competitiveness. Any non-profit or for-profit organization, university or other institution of higher education, or non-federal agency or entity is eligible to apply unless otherwise restricted by the Simpson-Craig Amendment.

Applicants are required to cost share a minimum of 50% of the total project costs to be incurred under the proposed project to be eligible for award under this solicitation. The minimum cost share requirement of 50% must be met for each year, phase, or budget period, as appropriate, under the proposed project. Teaming arrangements with DOE National Laboratories must be such that the Laboratory participation may not exceed 50% of the total estimated cost of the project.

In addition to the foregoing, other evaluation and selection criteria will be developed in accordance with 10 CFR 600.10—Form and Content of Applications and 10 CFR 600.13—Merit Review.

Issued in Argonne, Illinois, on January 20, 2000.

John D. Greenwood,

Manager, Acquisition and Assistance Group.

[FR Doc. 00–2060 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 3, 2000: 6 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall,Lower Level Multipurpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation on budget/planning for the site closure activities
2. Update from the Stewardship Committee
3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on January 24, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2062 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an Environmental Management Prioritization Workshop of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday February 10, 2000: 4:30 p.m.–8:30 p.m.

ADDRESS: Desert Research Institute, 755 East Flamingo Road, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

4:30 p.m. Open House
5:30 p.m. Budget Prioritization Workshop—Introduction and Welcome, Welcome to Nye County, 'Environmental Management: An Overview" Video, Overview of the Federal Budget Process, State of Nevada Perspectives on DOE's Budget Prioritization, Overview of Workshop's "Investment Game"
6:30 p.m. Breakout Sessions
7:45 p.m. "Investment Game" Open Discussion, Results of "Investment Game"
8:30 p.m. Closing Remarks

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on January 25, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2063 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, February 16, 2000: 5:30 p.m.–9:00 p.m. (MST)

ADDRESSES: Cesar Chavez Community Center, 7505 Kathryn Avenue, SE, Albuquerque, NM 87108, (505) 768–3204.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30–5:45 p.m. Check-In/Agenda Approval/Minutes.
5:45–6:15 p.m. DOE Site Reports.
6:15–7:00 p.m. Recommendations on Class III Permit Modifications.
7:00–7:15 p.m. Public Comment.
7:15–7:30 p.m. Break.
7:30–8:00 p.m. Stewardship Presentation.
8:00–8:30 p.m. Mixed Waste Landfill Contractor.
8:30–8:40 p.m. Task Group Reports and Feedback for Chairs Conference.
8:40–8:45 p.m. Voting on New Members.
8:45–9:00 p.m. Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on January 25, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2064 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 17, 2000: 5:30 p.m.–8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Call to order/Discussion
6:00 p.m. Approve Meeting Minutes
6:05 p.m. Public Comments/Questions
6:30 p.m. Presentations
7:15 p.m. Sub Committee Reports
8:15 p.m. Administrative Issues
8:30 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to

conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on January 25, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2065 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Hydrogen Technical Advisory Panel. Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770, as amended), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 28, 2000, 8:30 a.m.–6 p.m.; Tuesday, February 29, 2000, 8:30 a.m.–12 p.m.

ADDRESSES: Sheraton Premiere Hotel, Tyson's Corner, Vienna, Virginia, 22182; Telephone: 703–448–1234.

FOR FURTHER INFORMATION CONTACT: Neil Rossmeissl, Designated Federal Officer, Hydrogen Program Manager, EE–15, Office of Power Technologies, Department of Energy, Washington, D.C. 20585; Telephone: 202–586–8668.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

—The major purpose of this meeting will be to present the HTAP Committee Reports and their proposed plans for the coming year, and the status of coordination of hydrogen activities within various government offices. These coordination activities will cover those ongoing within theDepartment of Energy, the Department of Transportation and NASA.

Tentative Agenda

Spring 2000

Monday, February 28, 2000

8:30 a.m. Introduction and Opening Comments—D. Nahmias
8:40 HTAP Committee Reports
—Coordination—H. Chum
—Scenario Planning—H. Wedaa
—Fuel Choice—R. Nichols
9:30 Office of Power Technologies-Strategic Overview—R. Dixon
10:00 EERE CrossCut Activities—R. Bradshaw
10:30 Break
10:50 Coordination Activities
—Overview—N. Rossmeissl
11:20 HTAP Discussion
12:00 p.m. Lunch
1:00 Coordination presentations by representatives from Department of Transportation, NASA and DOE including:
Office of Transportation Technologies
Office of Industrial Technologies
Office of Building Technologies
Office of Science
Office of Fossil Energy
3:30 Break
4:00 Public Comments (5 minutes maximum per speaker) Audience
5:00 HTAP Deliberations—Panel
6:00 Adjourn

Tuesday, February 29, 2000

8:30 a.m. DOE Program Report—FY01 Budget—S. Gronich
9:15 Broad Based Solicitation Results—N. Rossmeissl
10:00 Break
11:00 HTAP Discussion—Panel
12:00 p.m.—Adjourn

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mr. Neil Rossmeissl's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentations in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W. Washington, DC 20585 between 9:00 A.M. and 4:00 P.M., Monday through Friday, except Federal Holidays. Minutes will also be available by writing to Neil Rossmeissl, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, or by calling (202) 586–8668.

Issued at Washington, DC on January 21, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2067 Filed 1–31–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

Draft Environmental Impact Report/ Environmental Impact Statement, Lower Owens River Project; Inyo County, California

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Report/ Environmental Impact Statement.

SUMMARY: The Lower Owens River Project is proposed by the City of Los Angeles, Department of Water and Power (LADWP), and the County of Inyo, to restore various wetland and riparian habitats along approximately 60 miles of the Owens River. The project is a result of a settlement agreement among LADWP, County of Inyo, state agencies, and environmental groups to resolve issues related to the export of water from the Owens Valley by LADWP. The Environmental Protection Agency (EPA) will provide funding to assist in the implementation of the project. As lead agency under the National Environmental Policy Act (NEPA), EPA must prepare an Environmental Impact Statement (EIS). As lead agency under the California Environmental Quality Act (CEQA), LADWP must prepare an Environmental Impact Report (EIR). A joint state and federal environmental document (EIR/EIS) will be developed. The project is expected to result in an overall long-term enhancement of the aquatic, wetland, and riparian habitats of a major river, and provide significant opportunities for increased abundance and variety of fish and wildlife resources, including endangered species. The major environmental impacts to be addressed are short-term

water quality degradation due to the re-introduction of water to the river after 80 years, and the associated short-term adverse effects on native and sport fisheries, as well as potential adverse effects to archeological resources.

Public Scoping and EIR/EIS Schedule

A public scoping meeting to receive input on the scope of the EIR/EIS will be conducted on February 16, 2000 at 6:30 pm at Statham Hall, 138 North Jackson St., Lone Pine, California. A draft EIR/EIS is expected to be issued for public review by June 2000. A final EIR/EIS is planned to be issued the fall of 2000. A Record of Decision will be issued in late 2000.

FOR FURTHER INFORMATION CONTACT: Janet Parrish, U.S. EPA Region IX (WTR–2), 75 Hawthorne Street, San Francisco, CA 94105. Phone: 415–744–1940. Fax: 415–744–1078. E-mail: *parrish.janet@epa.gov*. Written comments on the scope of the EIS may also be submitted for consideration by EPA on or before February 21 at the above address, or at the scoping meeting. The Notice of Preparation (NOP), developped pursuant to CEQA, is available through LADWP and County of Inyo. Contact Clarence Martin, LADWP, 760–872–1104, or Leah Kirk, County of Inyo Water Department, 760–872–1168.

SUPPLEMENTARY INFORMATION:

Origin of the Project

In 1913, the City of Los Angeles completed an aqueduct from the Owens Valley to Los Angeles. The primary source of water was surface water diverted from the Owens Valley and, to a lesser extent (following completion of a tunnel in 1940), from the Mono Basin. In 1970, a second aqueduct was completed by the City of Los Angeles to be supplied from three sources: Increased surface water diversions from the Owens Valley, increased groundwater pumping from the valley, and increased surface water diversions from the Mono Basin.

In 1972, the County of Inyo (County) sued the City of Los Angeles in Inyo County Superior Court under the California Environmental Quality Act (CEQA) to require the Los Angeles Department of Water and Power (LADWP) to prepare an Environmental Impact Report (EIR) on its groundwater pumping to supply the second aqueduct. LADWP was ordered to prepare an EIR. LADWP issued EIRs in 1976 and 1979, but both were found to be legally inadequate by the 3rd District Court of Appeals in Sacramento.

In the 1980s, the County and LADWP conducted discussions to develop a cooperative water management plan. Various technical studies were conducted at that time concerning groundwater and vegetation in the Owens Valley. An interim agreement was executed in 1984 between the County and LADWP which called for more cooperative studies, certain environmental enhancement projects, and continued negotiations on a long-term agreement. A new EIR on the groundwater pumping, completed by LADWP and the County, was issued in August 1991. It addressed all water management practices and facilities associated with the second aqueduct, and projects and water management practices identified in the Inyo County/Los Angeles Long Term Water Agreement ("Agreement"). In October 1991, the County and LADWP approved the Agreement, which provides environmental protection of the Owens Valley from the effects of groundwater pumping and water exports. The Agreement committed LADWP and the County to implement the Lower Owens River Project (LORP). The Final EIR (August 1991) and the Agreement were submitted to the Court with a joint request to end litigation.

Shortly thereafter, concerns about the legal adequacy of the 1991 Final EIR were raised by state agencies and environmental groups. In 1994, the Court ordered the County and LADWP to respond to certain of these issues. After several years of settlement discussions among all parties, a Memorandum of Understanding (MOU) was executed that provides resolution over the concerns about the EIR, particularly related to the adequacy of mitigation described in the EIR for impacts due to historic pumping and diversion activities in the Owens Valley. In June 1997, the Court accepted the MOU as a final settlement, effectively ending all litigation and allowing the full provisions of the Agreement and the 1991 Final EIR mitigation to be implemented. Parties to the MOU include LADWP, Inyo County, California Department of Fish and Game, State Lands Commission, Sierra Club, and Owens Valley Committee.

The MOU includes provisions that expand the LORP. The project was identified in the 1991 Final EIR as compensatory mitigation for impacts related to groundwater pumping by LADWP from 1970 to 1990 that were difficult to quantify. The MOU specifies the goal of the LORP, time frame for development and implementation, and specific actions. It also provides certain minimum requirements for the LORP related to flows, locations of facilities, and habitat and species to be addressed. Finally, the MOU specifies that LADWP and Inyo County prepare an EIR for the LORP and issue a draft EIR within 36 months of execution of the MOU (i.e., June 2000), and that flows in the river begin within 72 months of the MOU execution (i.e., June 2003).

Goal of the LORP

The goal of the LORP, as stated in the MOU, is the establishment of a healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of healthy functioning ecosystems in the other elements of the LORP, for the benefit of biodiversity and threatened and endangered species, while providing for the continuation of sustainable uses including recreation, livestock grazing, agriculture, and other activities. Natural habitats will be created and enhanced consistent with the needs of certain habitat indicator species.

Four Primary Elements of the LORP

Riverine-Riparian Habitats

A continuous flow will be maintained from the intake structure to a pump system located near the river delta at Owens Lake, which will connect to a pipeline that will divert water to the Los Angeles Aqueduct or to the bed of Owens Lake for use in particulate control projects. Any water in the river that is above the amount specified in the MOU for release to the Owens River Delta can be recovered by the pump facility. The flow regime is as follows:

- A base flow of approximately 40 cfs from the intake to the pump system must be maintained year-round to support wetland and riparian habitat for indicator species, and to maintain recreational and native fisheries
- A riparian habitat flow must be seasonally released that would result in a total flow that would vary from 40 to 200 cfs in general proportion to the forecasted runoff each year. These flows are intended to: create a natural disturbance to establish and maintain native riparian vegetation and channel morphology.

The pump system will consist of a diversion in the river and a pump facility to convey water in a buried pipe to the Los Angeles Aqueduct. The general location of the pump system is specified in the MOU. LADWP is considering using some or all of the water from the pump system for dust control on Owens Lake.

Owens River Delta Habitat Area

This wetland and riparian habitat area is located below the pump facility. It will be enhanced and maintained by

flow and land management. An average annual flow of 6 to 9 cfs must be maintained below the pump system, for habitat enhancement purposes.

Blackrock Waterfowl Habitat Area

This 1,500-acre area contains extensive waterfowl habitat. It will be enhanced through flow and land management to increase diversity.

Off-River Lakes and Ponds

Off-river lakes and ponds near the Blackrock Waterfowl Habitat Area will be enhanced and maintained for fisheries, shorebirds, and other birds through flow and land management.

Other Elements of the LORP

Land Management Plan

The preparation of a land management plan was specified in the MOU. It will address grazing on leases within LORP planning area. Management plans will be prepared for individual leases with a focus on enhancing native habitat diversity while allowing for sustainable grazing. The plans will focus on upland and riparian areas, irrigated pastures, and areas with sensitive species or habitats.

Recreation Plan

The LORP will also include a plan to guide access to, and recreational uses of, the LORP area, consistent with current LADWP management guidelines for public uses of the land. The focus of the plan is to ensure compatible human uses of the LORP lands.

Monitoring and Reporting Plan

The LORP will include a long-term plan for collecting and analyzing data on the progress of the LORP. These data will be used in an adaptive management program in which management actions will be modified, as necessary, to ensure successful implementation of the LORP.

Dated: January 21, 2000.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 00–2133 Filed 1–31–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6528–3]

Peele-Dixie Wellfield Site/Broward County, Florida; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the City of Ft. Lauderdale entered into an Administrative Order on Consent (AOC) with the Environmental Protection Agency (EPA), whereby the City of Ft. Lauderdale agreed perform response activities at the Peele-Dixie Wellfield Site (Site) located in Broward County, Florida. Section VIII of the AOC provides for the reimbursement of EPA's oversight costs by the City of Ft. Lauderdale. Under the terms of the AOC, section VIII is subject to section 122(i) of CERCLA, which requires EPA to publish notice of the proposed settlement in the **Federal Register** for a thirty (30) day public comment period. EPA will consider public comments on section VIII of the AOC for thirty days. EPA may withhold consent to all or part of section VIII of the AOC if comments received disclose facts or considerations which indicate that section VIII of the AOC is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: December 30, 1999.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–1666 Filed 1–31–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the February 10, 2000 regular meeting of the Farm Credit Administration Board (Board) will not be held. The Board will hold a special meeting at 9:00 a.m. on Thursday, February 17, 2000. An agenda for that meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Dated: January 27, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–2302 Filed 1–28–00; 3:52 p.m.]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 99–251]

In the Matter of Applications for Consent to the Transfer of Control of Licenses; MediaOne Group, Inc., Transferor, to AT&T Corporation, Transferee

AGENCY: Federal Communications Commission, Cable Services Bureau.

ACTION: Notice of Public Forum by Cable Services Bureau.

SUMMARY: The Cable Services Bureau of the Federal Communications Commission will convene a Public Forum on the proposal of AT&T Corporation ("AT&T") and MediaOne Group, Inc. ("MediaOne") to transfer to AT&T the control of licenses and authorizations held by subsidiaries of MediaOne and entities controlled by MediaOne. The purpose of the Public Forum is to assist the Cable Services Bureau in its review of the AT&T–MediaOne proposal, to provide an opportunity for further discussion of issues raised in the proceeding, and to gather additional information that may be relevant. The Bureau has requested that AT&T and MediaOne and several interested parties and organizations make presentations at the Public Forum.

DATES: The Public Forum will be held on Friday, February 4, 2000 beginning at 9:30 a.m. and continuing until approximately 3:00 p.m.

ADDRESSES: The Public Forum will be held in the Federal Communications Commission's Meeting Room, 445 12th Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sunil Daluvoy, Cable Services Bureau, (202) 418–7200.

Federal Communications Commission.

Dated: January 27, 2000.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2137 Filed 1–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the proposed revision of the collection of Claims for National Flood Insurance Program.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Public Law (P.L.) 90–448 (1968) and expanded by P.L. 93–234 (1973) provides low-cost federally subsidized flood insurance for existing buildings exposed to flood risks. In return communities must enact and administer construction safeguards to ensure that new construction in the flood plain will be built to eliminate or minimize future flood damage. In accordance with P.L. 93–234, the purchase of flood insurance is mandatory when Federal or federally-related financial assistance is being provided for acquisition or construction of buildings located or to be located within FEMA-identified special flood hazard areas of communities which are participating in the program. In addition a proposed rule was published September 23, 1996 to amend the National Flood Insurance regulations by adding coverage under the Standard Flood Insurance Policy for increased cost, up to $15,000 to bring structures into compliance with State or community floodplain management laws or ordinances after flood losses. A final rule, National Flood Insurance Program; Standard Flood Insurance Policy published February 25, 1997, amended the National Flood Insurance Program (NFIP) regulations to add coverage under the standard Flood Insurance Policy to pay for the increase cost to rebuild or alter flood-damaged structures to conform, with State or local flood plain ordinances or laws consistent with the requirements of guidance of the NFIP. The Final rule required the agency to collect additional data which was approved by OMB under OMB control number 3067–0276, Increased Cost of Compliance which will now be merged with this collection of information.

Collection of Information

Title: Claims for National Flood Insurance Program (NFIP).

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0021.

Form Numbers: FEMA Forms 81–40, 81–41, 81–41A, 81–42, 81–42A, 81–43, 81–44, 81–57, 81–58, 81–59, 81–63, 81–98, and Mobile Home Worksheet.

Abstract: The forms included in this collection of information provide the information that is necessary for the continued proper performance of the Agency's functions related to indemnifying policyholders for flood damages to their properties. The forms are described below:

(1) FEMA Form 81–40, Worksheet-Contents-Personal Property— used by the insured to assess personal property damage. Estimated time per response—2.5 hours.

(2) FEMA 81–41, Worksheet-Building—used by the adjuster to determine the scope of damage to a building. Estimated time per response—2.5 hours.

(3) FEMA Form 81–41A, Worksheet-Building (Continued)— a continuation of FEMA form 81–41. Estimated time per response—1 hour.

(4) FEMA Form 81–42, Proof of Loss— used to establish a settlement on the amount the insured will receive. Estimated time per response—5 minutes.

(5) FEMA Form 81–42A, Increase Cost of Compliance Proof of Loss (ICC) will be used by the adjuster to identify whether or not the insured qualifies for coverage under ICC. Estimated time per response—1 hour.

(6) FEMA Form 81–43, Notice of Loss— used to gather loss information. Estimated time per response—4 minutes.

(7) FEMA Form 81–44, Statement as to Full Cost of Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of the Policy—used by the insured to determine if the structure can be repaired or qualify for replacement cost. Estimated time per response—6 minutes.

(8) FEMA Form 81–57, National Flood Insurance Program Preliminary Report—used to identify the insured and the address of risk. Estimated time per response—4 minutes.

(9) FEMA Form 81–58, National Flood Insurance Program Final Report—used to document and review overall damages to the property, and to provide a breakdown of the claim information. Estimated time per response—4 minutes.

(10) FEMA Form 81–59, National Flood Insurance Program Narrative Report—used to write a narrative report on the loss. Estimated time per response—5 minutes.

(11) FEMA Form 81–63, Cause of Loss and Subrogation Report—used to identify a potential subrogation loss. Estimated time per response—1 hour.

(12) FEMA Form 81–98, Increase Cost of Compliance Adjuster Report will be used by the insured and adjuster to establish a settlement on the amount the insured will receive.

Estimated time per response—2 hours.

Mobile Home Worksheet—to obtain data to specifically identify the manufacturer, year, size, model, and serial number of the mobile home; the individual the mobile home was purchased from; and the repair or salvage value of the mobile home. The claim adjuster also uses the information to determine whether a mobile home will be repaired, replaced, or salvaged. Estimated time per response—30 minutes.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, local or tribal governments.

Estimated Total Annual Burden Hours: 310,536.

Estimated Cost. $38 million.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency

Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625, Fax number (202) 646–3524, or email address: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Timothy P. Johnson, Federal Insurance Administration, at (202) 646–3418 for additional information. Contact Muriel B. Anderson at (202) 646–2625 for copies of the proposed collection information.

Dated: January 13, 2000.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–2106 Filed 1–31–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a new collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information be approved by January 24, 2000 for use through July 31, 2000.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Act Public Law 93–288, as amended authorizes training programs for emergency preparedness. The information obtained from the Emergency Management Institute (EMI) form will be used for independent study course enrollment and to provide course materials to applicants. Applicants can select as many courses as they want, but they will be actively enrolled in only one course at a time. When applicants complete each course with a passing score, new course material from the course menu selection will be sent to applicants.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Collection of Information

Title: EMI Independent Study Course Enrollment Application.

Type of Information Collection: New collection.

OMB Number: New.

Abstract: The purpose of this form is to collect information from individuals on what Independent Study courses they wish to enroll in. This form lists the courses available through FEMA's Independent Study Program and collects information from individuals so that these courses can be mailed to them.

FEMA Form: 95–23.

Affected Public: Individuals or households.

Our burden per respondent is estimated: 1 minute.

Estimated Total Annual Burden Hours: 1,167.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: David Rostker, FEMA Desk Officer, Room 10202, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524; e:mail address: muriel.anderson&fema.gov.

Thomas Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–2107 Filed 1–31–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1310–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1310–DR), dated January 10, 2000, and related determinations.

EFFECTIVE DATE: January 15, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 2000: Hopkins County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–2104 Filed 1–31–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1310–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1310–DR), dated January 10, 2000, and related determinations.

EFFECTIVE DATE: January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 2000:

Ballard, Breckinridge, Carlisle, Livingston and Spencer Counties for Public Assistance.

Hopkins and Webster Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 00–2105 Filed 1–31–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3146–EM]

North Carolina; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of North Carolina (FEMA–3146–EM), dated September 15, 1999, and related determinations.

EFFECTIVE DATE: January 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this emergency.

This action terminates my appointment of Glenn C. Woodard, Jr. as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–2102 Filed 1–31–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1292–DR]

North Carolina; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1292–DR), dated September 16, 1999, and related determinations.

EFFECTIVE DATE: January 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Glenn C. Woodard, Jr. as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–2103 Filed 1–31–00; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00021]

Cooperative Agreement to the Pan American Health Organization (PAHO) to Initiate the Post Hurricane Reconstruction of the Public Healthcare System in Central America and the Carribean; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of funds for Fiscal Year (FY) 2000 for a cooperative agreement with the Pan American Health Organization (PAHO). The purpose of this program is to provide support for coordination of organizational planning, networking of laboratory support services, and assistance to Ministries of Health for developing programs to prevent and control priority infectious diseases for the initiative to reconstruct sustainable health services in the sub-region affected by Hurricanes Georges and Mitch in September and October 1998, (including Honduras, Guatemala, El Salvador, Nicaragua, Dominican Republic, Haiti and Costa Rica).

This program addresses the Healthy People 2000 priority areas of

Educational and Community-Based Programs.

B. Eligible Applicant

Assistance will be provided only to the Pan American Health Organization for this project. No other applications are solicited. PAHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because of its longstanding relationships with Ministries of Health in the sub-region. Additionally:

1. PAHO has the lead responsibility among the United Nations organizations for implementing activities in the sub-region. PAHO is the only organization with a regional mandate for the control and prevention of diseases.

2. The proposed program is strongly supportive of and directly related to the achievement of PAHO and CDC/ Hurricane Reconstruction Project's objectives for the sustainable capacity for assessment of health status and the early detection and re-establishment of the effective response to outbreaks and changes in disease patterns.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2000 to support this cooperative agreement. It is expected the award will begin on April 1, 2000, for a 12-month budget period within a 2-year project period. The funding estimate is subject to change. Continuation award within the project period will be made on the basis of satisfactory progress and availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

(a) Coordinate disease control and prevention strategy development including analysis and dissemination of health information, sponsorship of meetings for any two or more countries and multi-country strategies and periodic technical meetings.

(b) Coordinate the planning for a regional laboratory network and develop reference centers and provide quality assurance and quality control training and manuals for involved countries.

(c) Provide assistance to Ministries of Health for developing programs to prevent and control priority infectious diseases. Examples of activities include urban malaria control, monitoring drug resistance, and the promotion of community based prevention strategies. Community participation and social mobilization for dengue control and/or water and sanitation.

(d) Coordinate with the Training Programs in Epidemiology and Public Health Interventions Network (TEPHINET) and others. Coordinate their activities with those of other partners working in the area. These include TEPHINET and United States Agency for International Development (USAID).

2. CDC Activities

(a) Overall program coordination between partners: PAHO, TEPHINET, and other collaborating agencies.

(b) Provide assistance to PAHO for communications and surveillance strategies.

E. Application Content

Use the information in the Program requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The applicant must provide long-term (two years) and short-term (one year) objectives, a narrative plan that indicates how these objectives will be met, a budget and budget justification consistent with the proposed activities, and any other information that supports the request for assistance. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/ . . . Forms, or in the application kit. On or before March 10, 2000 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The application shall be considered as meeting the deadline if it is either:

1. Received on or before the deadline date; or

2. Send on or before the deadline date and received in time for submission to the Review Panel. The applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmark shall not be acceptable as proof of timely mailing.

G. Evaluation Criteria

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Background and Need (25 points): The extent to which the applicant presents data justifying the need for the program in terms of the magnitude of damage attributable to Hurricanes Georges and Mitch. The extend to which a description of current and previous related experiences demonstrates a capacity to facilitate communications between countries in the project region.

2. Goals and Objectives (40 points): The extent to which the goals and objectives relate to the overall purpose of the Post-Hurricane Reconstruction Program, are specific, time-phases, measurable and feasible.

3. Methods (35 points): The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which position description, CV's and lines of command are appropriate to accomplishment of program goals and objectives and to which concurrence with the applicant's by all other involved parties is specific and documented.

4. Budget and Justification (not scored): The extent to which the budget request is clearly justified and consistent with the intended use of funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Quarterly Progress Reports, no more than 30 days after the end of the period;

2. Financial status report, no more than 30 days after the end of the budget period; and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

4. Conference Reports.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this

program. For a complete description of each, see Attachment 1 in the application kit.

AR–11—Healthy People 2000
AR–12—Lobbying Restrictions
AR–20—Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 307 of the Public Health Service Act, 42 U.S.C. section 241 and 242*l*, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b. The Catalog of Federal Domestic Assistance Number is 93.185.

J. Where to Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: 770–488–2733, Email address: vxm7@cdc.gov.

For program technical assistance, contact: Guillermo Herrera, Centers for Disease Control and Prevention, Epidemiology Program Office, Division of International Health, 4770 Buford Highway, MS K 72, Atlanta, GA 30341, Telephone number: 770–488–8322, E-mail gah9@cdc.gov.

For this and other open program announcement, see the CDC home page on the Internet: http://www.cdc.gov.

Dated: January 26, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–2070 Filed 1–31–00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–209]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Laboratory Personnel Report Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001.

Form No.: HCFA–0209 (OMB #0938–0151).

Use: CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of all laboratories.

Frequency: Biennially.

Affected Public: Business or other for profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 26,500.

Total Annual Responses: 13,250.

Total Annual Hours: 6,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm or E-mail your request—including your address, phone number, OMB number, and HCFA document identifier—to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 21, 2000.

John P. Burke, III,

Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–2098 Filed 1–31–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Core Measures for the Center for Substance Abuse Prevention—New

The mission of SAMHSA's Center for Substance Abuse Prevention (CSAP) is to decrease substance use and abuse and related problems among the American public by bridging the gap between research and practice. CSAP accomplishes this through field-testing scientifically defensible programs; disseminating comprehensive, culturally appropriate prevention strategies, policies, and systems; and

capacity building for states and community-based providers. Data are collected from CSAP grants and contracts where participant outcomes are assessed pre- and post-intervention. The analysis of these data help determine whether progress is being made in achieving CSAP's mission.

The primary purpose of the proposed data activity is to promote the use among CSAP grantees and contractors of measures recommended by CSAP as a result of extensive examination and recommendations, using consistent criteria, by panels of experts. The use of consistent measurement for specified constructs across CSAP funded projects will improve CSAP's ability to respond to the Government Performance and Results Act (GPRA) and address goals and objectives outlined in the Office of National Drug Control Policy's Performance Measures of Effectiveness.

It is important to emphasize that CSAP is not requiring the use of these measures if (1)the program does not already plan to target change in the specified construct(s) and/or (2) the measure is not valid for the program's targeted population. The Core Measures are only to be used if appropriate to the program's target population and consistent with the outcome(s) selected by the program. Consequently, no additional burden on the target population is estimated because the program is not being asked to collect data above and beyond what would already have been planned. The annual burden estimated is that for the grantees to extract the necessary data from their files and provide it to CSAP's data coordinating center. The table below summarizes the maximum estimated time, i.e., if all programs used all of the Core Measures—which is unlikely.

Program	No. of grantees	Responses per grantee	Hours per response	Total annual burden
Knowledge Development:				
Children of Substance Abusing Parents	14	1	3	42
Community Initiated	21	1	3	63
Family Strengthening	97	1	3	291
Parenting Adolescents and Welfare Reform	10	1	3	30
High Risk Youth/Youth Connect	18	1	3	54
Targeted Capacity Enhancement:				
HIV/Targeted Capacity	48	1	3	144
State Incentive Grants	21	1	3	63
Total	229			687

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 23, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–2071 Filed 1–31–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate a Contract Between the Central Utah Water Conservancy District and Department of the Interior for Prepayment of Costs Allocated to Municipal and Industrial Water From the Bonneville Unit of the Central Utah Project, Utah

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract between the Central Utah Water Conservancy District (CUWCD) and Department of the Interior (DOI) for prepayment of costs allocated to municipal and industrial water from the Bonneville Unit of the Central Utah Project, Utah.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Section 210, as amended through Public Law 104–286, stipulates that: "The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District." In accordance with the above referenced legislation CUWCD intends to prepay the costs obligated under repayment contract No. 14–06–400–4286, as supplemented. This contract will provide for the third installment in a series of prepayments. The terms of the prepayment are to be publicly negotiated between CUWCD and DOI.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Michael Hansen, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1194, E-Mail address: mhansen@uc.usbr.gov.

Dated: January 24, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–2082 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–RK–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Cat Island National Wildlife Refuge, West Feliciana Parish, LA

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft environmental assessment and land protection plan for the proposed establishment of Cat Island National

Wildlife Refuge in West Feliciana Parish, Louisiana.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a new national wildlife refuge in West Feliciana Parish, Louisiana. The purpose of the proposed refuge is to protect, enhance, and manage a valuable wetland area known as Cat Island for the benefit of resident and migratory waterfowl, neotropical migratory birds, and other native game and nongame wildlife. A Draft Environmental Assessment and Land Protection Plan for the establishment of the proposed refuge has been prepared by Service biologists in coordination with the Louisiana Department of Wildlife and Fisheries, The Nature Conservancy, the West Feliciana Parish Police Jury, and the City of St. Francisville. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge and evaluates four alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address given below.

DATES: Land acquisition planning for the project is currently underway. The draft environmental assessment and land protection plan will be available to the public for review and comment on January 28, 2000. Written comments must be received no later than February 28, 2000, in order to be considered for the preparation of the final environmental assessment.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail your comments to Mr. Charles R. Danner, Team Leader, Planning and Support Team, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345. You may hand-deliver your comments to Mr. Danner at the same address. Or you may submit your comments by telephone at 1–800–419–9582. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The proposal would establish a national wildlife refuge on up to 36,500 acres of wetlands and bottomlands hardwoods on Cat Island in West Feliciana Parish, Louisiana. Cat Island, also known as the Tunica Swamp, is not a true island but a peninsula of land located between the Mississippi River and the Tunica Hills, about 30 miles north of Baton Rouge. It is unique because it is one of the few natural areas along the Mississippi River that has never been leveed. It is subject to seasonal overflows from the river and its fish and wildlife values are tremendous.

The Service is proposing to establish the refuge through a combination of fee title purchases from willing sellers and cooperative agreements or conservation easements from willing landowners.

The goals of the proposed refuge are to provide (1) Quality hunting and sportfishing opportunities, (2) habitat for wintering waterfowl and woodcock, (3) habitat for the threatened Louisiana black bear, (4) nesting habitat for wood ducks, (5) habitat for a natural diversity of wildlife, (6) habitat for nongame neotropical migratory birds, and (7) opportunities for compatible environmental education, interpretation, and wildlife-oriented recreation.

Dated: January 21, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–2072 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–00–1320–EL; C–4275]

Colorado; Notice of Availability of the Record of Decision for Coal Preference Right Lease Application C–4275

ACTION: Pursuant to the regulations at 43 CFR 3430.5–1 and 40 CFR 1505.2, the Bureau of Land Management (BLM) has prepared a Record of Decision (decision) for coal preference right lease application (PRLA) C–4275. Copies of the decision are now available to the public.

SUMMARY: A Record of Decision for coal PRLA C–4275 has been prepared documenting BLM's decision to reject the application. BLM's decision is based on a determination that the Final Showing submitted by the applicants, Phillip A. Jensen and W.K. Miller failed to demonstrate that commercial quantities of coal were discovered on the PRLA within the terms of the prospecting permit. Persons or organizations wishing to obtain copies of the decision may contact the Bureau of Land Management at the address below.

DATES: Copies of the decision are available as of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the decision are available on request from the Colorado State Office (CO–933), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, or by calling Karen Purvis at 303–239–3795.

SUPPLEMENTARY INFORMATION: The lease application was originally filed on March 27, 1973. An Initial Showing for the application was accepted as complete on March 28, 1989. An environmental assessment was completed on the PRLA in 1982. As a result of BLM policies based on the amended court order in the case of *Natural Resources Defense Council* v. *Berklund*, BLM prepared an Environmental Impact Statement in cooperation with the Office of Surface Mining Reclamation and Enforcement. A Final Showing was requested of the applicant late in 1989 and filed in March of 1990. Additional information to update the Final Showing was requested in August, 1996, with a 90 day submittal period and an extension of 90 days was granted with no response. On August 20, 1999, BLM provided the applicant notice of intent to reject the PRLA and the opportunity to provide additional information. No response was received from the applicant. This decision reflects the results of BLM's analysis of the Final Showing.

Dated: January 18, 2000.

Karen Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 00–2100 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

[CA–330–1430–XQ]

Notice of Resource Advisory Council Vacancy

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Arcata, California.

ACTION: Notice of Vacancy.

SUMMARY: Pursuant to authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council is seeking nominations to fill a vacancy on the council. The person selected to fill the vacancy will complete an unexpired term that ends in September 2000. The designee will be eligible to compete for the full three-year term when the current term expires.

SUPPLEMENTARY INFORMATION: The council vacancy is in membership category two: persons representing national or regionally recognized environmental groups, dispersed recreational activities, archaeological or historical interests, or nationally or regionally recognized wild horse and burro interest groups. Advisory Council members are appointed by the Secretary of the Interior. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the northwest portion of California). Qualified applicants must have demonstrated a commitment to collaborate to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 257–5381; or email, jfontana@ca.blm.gov. Nominations must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officer, no later than Friday, March 10, 2000.

FOR FURTHER INFORMATION CONTACT: BLM Arcata Field Manager Lynda J. Roush at (707) 825–2300, or Public Affairs Officer Joseph J. Fontana at the above phone or email address.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–2074 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–5420–EU–E028; NDM 87620]

Application for Recordable Disclaimer of Interest; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States of America, pursuant to the provisions of Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745 (1994)), proposes to disclaim all interest in the following described land to River Woods West, Inc., the owner of record:

Tracts 1B and 1C of Section 8, T. 138 N., R. 80 W., Fifth Principal Meridian, Burleigh County, North Dakota, pursuant to the plat filed for record in the Office of the Register of Deeds of Burleigh County, North Dakota, as Document No. 407009; and all that part of lots 4, 5, and 6, Block 1, Southport Phase II to the City of Bismarck, Burleigh County, North Dakota, lying within Section 8, T. 138 N., R. 80 W., Fifth Principal Meridian, Burleigh County, North Dakota (this property in Southport Phase II formerly known as Tract 2B of Section 8, T. 138 N., R. 80 W., Fifth Principal Meridian, Burleigh County, North Dakota, is recorded under Document No. 407009 in the Office of the Register of Deeds of Burleigh County, North Dakota), containing 35.54 acres.

DATES: Comments or objections should be received by May 1, 2000.

ADDRESSES: Comments or objections should be sent to the State Director, Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Deborah Sorg, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5045.

SUPPLEMENTARY INFORMATION: The official records of the Bureau of Land Management (BLM) were reviewed and a determination made that the United States has no claim to or interest in the land described, and issuance of the proposed recordable disclaimer of interest would remove a cloud on the title to the land. If no objections are received, the disclaimer will be issued.

Dated: January 18, 2000.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 00–2099 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–00–1040–DE]

Correction to Notice of Extension of Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to notice of extension of public comment period for thirty (30) days.

SUMMARY: The Bureau of Land Management (BLM) announced the extension of the public comment on four Draft Riparian and Aquatic Habitat Management Plan Environmental Impact Statements (DEISs) and Possible Resource Management Plan Amendments (RMPAs). The four documents are for Taos Field Office, the Farmington Field Office, the Albuquerque Field Office and the Las Cruces Field Office.

The correction to that **Federal Register** Notice is as follows:

In the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** Notice dated January 21, 2000, delete the word "two" and replace it with the word "four".

Dated: January 24, 2000.

Richard A. Whitley,

Acting State Director.

[FR Doc. 00–2077 Filed 1–31–00; 8:45am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1920–00–4032]

Intent to Prepare an Environmental Impact Statement for Obtaining Water and/or Water Rights from Willing Sellers in the Walker River Basin and Public Scoping Meeting

Notice of intent to prepare an environmental impact statement for obtaining water and/or water rights from willing sellers in the Walker River Basin for the purposes of protecting the Walker Lake ecosystem from degradation resulting from increasing salinity (TDS) in the lake; possible use in a settlement of the United States' water rights claim in the Walker River Basin should a settlement be negotiated; and to assist in recovery of the threatened Lahontan cutthroat trout in the Walker River Basin.

AGENCY: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701.

ACTION: Notice of intent to prepare an environmental impact statement for obtaining water and/or water rights from willing sellers in the Walker River Basin, notice of scoping period and public meetings.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office, in cooperation with the Bureau of Indian Affairs (BIA), Phoenix Area Office, The Bureau of Reclamation (BOR), Lahontan Basin Area Office and the U.S. Fish and Wildlife Service (FWS), Nevada Fish and Wildlife Office, will direct preparation of an EIS to be produced by a third-party contractor analyzing the impacts (direct, indirect, and cumulative) of obtaining water and/or water rights from willing sellers on the human environment in the Walker River Basin.

EFFECTIVE DATES: Four public scoping meetings will be held in February and March, 2000 to allow the public an opportunity to identify issues and concerns to be addressed in the EIS. Representatives of the BLM, FOR, BIA, and FWS will be available to answer questions about the EIS process. Comments will be accepted until March 15, 2000. Scoping comments may be sent to: Field Manager, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701.

The scheduled public meetings are:

Lyon County Library, 20 Nevin Way, Yerington, NV 89447
February 16, 2000—7 p.m.
Mineral County Library, 110 1st Street, Hawthorne, NV 89415
February 17, 2000—7 p.m.
Memorial Hall, School Street, Bridgeport, CA 93517
February 23, 2000—7 p.m.
Carson City Field Office, BLM, 5665 Morgan Mill Road, Carson City, NV 89701
February 29, 2000—7 p.m.

A Draft EIS (DEIS) is expected to be completed by August 25, 2000 and made available for public review and comment. The comment period on the DEIS will be 60 days from the date the Notice of Availability (NOA) is published in the **Federal Register**.

FOR FURTHER INFORMATION: For additional information, write to the Field Manager of the Carson City Field Office at the address listed in the agency section of this notice, call or email Walt Devaurs (BLM Team Leader) at (775) 885–6150, wdevaurs&nv.blm.gov or Mike McQueen (BLM NEPA Coordinator) at (775) 885-6120, mmcqueen&nv.blm.gov.

SUPPLEMENTARY INFORMATION: The proposed EIS schedule is as follows:

Begin Public Comment Period: February 1, 2000
Issue Draft EIS: August 25, 2000
Issue Final EIS: March 1, 2001
Issue Record of Decision: June 5, 2001
End 30-day Appeal Period/ Implementation: July 5, 2001

Dated: January 26, 2000.

John O. Singlaub,

Field Manager.

[FR Doc. 00–2078 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–056–1430–DB–24–1A]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend Plan.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM), Richfield Field Office intends to consider a proposal which would require amending an existing planning document. The BLM is proposing to amend the Mountain Valley Management Framework Plan which includes public lands in Piute County, Utah. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The lands identified for direct sale comprise 23.09 acres described as follows: T. 30 S., R. 3 W., Section 21, Lots 2 and 5, Salt Lake Meridian, Utah.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before March 2, 2000.

ADDRESSES: Comments on the proposed plan amendment should be sent to Kay Erickson, 150 East 900 North, Richfield, Utah 84701.

Comments, including names and street addresses of respondents will be available for public review at the BLM Richfield Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jerry Goodman, Richfield Field Office Manager, 150 East 900 North, Richfield, Utah 84701 or telephone (801)896–1500. Existing planning documents and information are available at the above address.

SUPPLEMENTARY INFORMATION: The existing plan does not identify these lands for disposal. However, because of the resource values and public values and objectives involved, the public interest may well be served by sale of these lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Douglas M. Koza,

Acting State Director, Utah.

[FR Doc. 00–2073 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1610–DG]

Planning Analysis, Arkansas

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of rescheduled public meeting/request for public input.

SUMMARY: Notice of a public meeting, scheduled for January 27, 2000, was published in **Federal Register** on December 28, 1999. Due to a winter storm, the meeting is rescheduled. The purpose of the meeting is to receive additional public input for a Planning Analysis of public land in Arkansas.

DATES: The rescheduled public meeting will be held 6:30 to 9:30 p.m., February 24, 2000 at the Civic Center Gymnasium in Marshall Arkansas which is located in Searcy County.

FOR FURTHER INFORMATION CONTACT: Duane Winters or Judy Pace, BLM, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206, (601) 977-5400.

Dated: January 26, 2000.

Duane Winters,

Acting Field Manager, Jackson.

[FR Doc. 00–2081 Filed 1–31–00; 8:45am]

BILLING CODE 4310–CJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–00–1010-PG–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Friday March 17, 2000, at the Garfield County Courthouse in Glenwood Springs, Colorado.

DATE: Friday March 17, 2000.

ADDRESSES: For further information, contact Lynn Barclay, Bureau of Land Management (BLM), 455 Emerson Street, Craig, Colorado 81625; Telephone (970) 826–5096.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on Friday March 17, 2000, at the Garfield County Courthouse, Suite 302, 109 8th Street, Glenwood Springs, Colorado. The meeting will start at 9 a.m. and include discussions of Black Ridge/Ruby Canyon management options, a RAC Wildlife subcommittee, Wilderness RMP Amendments, Travel Management, and interfacing with the USFS.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements at the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained at the Bureau of Land Management Offices in Grand Junction and Craig, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 25, 2000.

Larry Porter,

Acting Center Manager, Northwest Center.

[FR Doc. 00–2075 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–00–0777–XQ]

Utah Statewide Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of one-day meeting of the Utah Resource Advisory Council.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council meeting will be held on February 15, 2000, in Provo, Utah. The purpose of this meeting is to begin developing guidelines for recreation management of BLM lands in Utah.

The meeting will be held at the Hampton Inn, (Sundance Room), 1511 South 40 East, Provo, Utah. It is scheduled to begin at 8 a.m. and conclude at 4:00 p.m. A public comment period, where members of the public may address the Council, is scheduled from 8:00–8:30 a.m. on February 15. All meetings of the BLM's Resource Advisory Council are open to the public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: January 21, 2000.

Sally Wisely,

Utah BLM State Director.

[FR Doc. 00–2079 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action; Competitive Sale of Public Lands in Clark County, Nevada

The following lands have been designated for disposal under Public Law 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), and will be sold competitively in accordance with Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value (FMV).

BILLING CODE 4310–HC–U

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EN01FE00.008
EN01FE00.009

Serial/ Parcel No.	Location/APN#	Gross Acreage
N–65880/00-01	T. 20 S., R. 59 E., sec. 1, E½SE¼SW¼NW¼, W½SW¼SE¼NW¼. 137-1-201-14	10.0
N–65881/00-02	T. 20 S., R. 59 E., sec. 12, E½NE¼NW¼NW¼. 137-12-101-3	5.0
N–65882/00-03	T. 20 S., R. 59 E., sec. 12, E½SW¼NE¼NW¼ 137-12-101-11	5.0
N–65883/00-04	T. 20 S., R. 59 E., sec. 12, W½NW¼NE¼SW¼. 137-12-301-5	5.0
N–65884/00-05	T. 20 S., R. 59 E., sec. 12, E½SE¼NW¼SW¼. 137-12-301-12	5.0

N–65885-B/S /00-06	T. 20 S., R. 60 E., sec. 7, Lot 24 138-07-301-001	5.47
N–65886/00-07	T. 21 S., R. 62 E., sec. 28, E½SW¼SE¼SW¼, W½SE¼SE¼SW¼. 161-28-04-008	10.0
N–65887/00-08	T. 22 S., R. 61 E., sec. 7, SW¼SW¼NE¼NW¼. 177-07-107-006	2.5
N–65888/00-09	T. 22 S., R. 61 E., sec. 7, Lot 13. 177-07-201-002	2.5
N–65889/00-10	T. 22 S., R. 61 E., sec. 7, NW¼NW¼SE¼NW¼. 177-07-203-008	2.5
N–65890/00-11	T. 22 S., R. 61 E., sec. 7, SW¼NW¼SE¼NW¼. 177-07-203-008	2.5
N–65891/00-12	T. 22 S., R. 61 E., sec. 7, NW¼SW¼SE¼NW¼. 177-07-203-008	2.5
N–65892/00-13	T. 22 S., R. 61 E., sec. 7, SE¼SW¼SE¼NW¼. 177-07-206-013	2.5
N–65893/00-14	T. 22 S., R. 61 E., sec. 10, lot 14 177-10-201-018	2.5
N–65894/00-15	T. 22 S., R. 61 E., sec. 10, lot 15 177-10-201-018	2.5
N–65895/00-16	T. 22 S., R. 61 E., sec. 10, lot 23 177-10-301-009	2.5

N–65896/00-17	T. 22 S., R. 61 E., sec. 11, N½NW¼SW¼SW¼, SW¼NW¼SW¼SW¼, SW¼SW¼SW¼. 177-11-401-002	17.5
N–65897/00-18	T. 22 S., R. 61 E., sec. 14, W½NW¼SE¼SE¼NE¼. 177-14-602-009	1.25
N–65898/00-19	T. 22 S., R. 61 E., sec. 14, E½SW¼SW¼SE¼NE¼, W½SE¼SW¼SE¼NE¼. 177-14-602-011	2.5
N–65899/00-20	T. 22 S., R. 61 E., sec. 14, NE¼SE¼SE¼NE¼. 177-14-602-022	2.5
N–65900/00-21	T. 22 S., R. 61 E., sec. 14, W½NW¼NW¼NW¼SE¼. 177-14-701-001	1.25
N–65901/00-22	T. 22 S., R. 61 E., sec. 14, E½NW¼NW¼NW¼SE¼. 177-14-701-001	1.25
N–65902/00-23	T. 22 S., R. 61 E., sec. 14, W½NE¼NW¼NW¼SE¼. 177-14-701-001	1.25
N–65903/00-24	T. 22 S., R. 61 E., sec. 14, NW¼NE¼NW¼SE¼. 177-14-701-001	2.5
N–65904/00-25	T. 22 S., R. 61 E., sec. 14, NE¼NE¼NW¼SE¼. 177-14-701-001	2.5
N–65905/00-26	T. 22 S., R. 61 E., sec. 14, NE¼NW¼NE¼SE¼. 177-14-701-001	2.5

N–65906/00-27	T. 22 S., R. 61 E., sec. 14, NE¼NE¼NE¼SE¼, W½NW¼NE¼NE¼SE¼, S½NE¼NE¼SE¼, NE¼SE¼NE¼SE¼ W½NW¼SE¼NE¼SE¼, S½SE¼NE¼SE¼. 177-14-701-001	17.5
N–65907/00-28	T. 22 S., R. 61 E., sec. 14, E½SW¼NW¼NW¼SE¼, W½SE¼NW¼NW¼SE¼. 177-14--701-001	2.5
N–65908/00-29	T. 22 S., R. 61 E., sec. 14, E½SW¼NE¼NW¼SE¼. 177-14-701-001	1.25
N–65909/00-30	T. 22 S., R. 61 E., sec. 14, SE¼NE¼NW¼SE¼. 177-14-701-001	2.5
N–65910/00-31	T. 22 S., R. 61 E., sec. 14, SW¼NW¼NE¼SE¼. 177-14-701-001	2.5
N–65911/00-32	T. 22 S., R. 61 E., sec. 14, SE¼NW¼NE¼SE¼. 177-14-701-001	2.5
N–65912/00-33	T. 22 S., R. 61 E., sec. 14, W½NE¼SW¼NW¼SE¼. 177-14-701-001	1.25
N–65913/00-34	T. 22 S., R. 61 E., sec. 14, E½NE¼SW¼NW¼SE¼, W½NW¼SE¼NW¼SE¼. 177-14-701-001	2.5
N–65914/00-35	T. 22 S., R. 61 E., sec. 14, NE¼SE¼NW¼SE¼. 177-14-701-001	2.5

N–65915/00-36	T. 22 S., R. 61 E., sec. 14, E½NW¼SW¼NE¼SE¼. 177-14-701-001	1.25
N–65916/00-37	T. 22 S., R. 61 E., sec. 14, E½NE¼SW¼NE¼SE¼. 177-14-701-001	1.25
N–65917/00-38	T. 22 S., R. 61 E., sec. 14, E½SE¼SW¼NW¼SE¼. 177-14-701-001	1.25
N–65918/00-39	T. 22 S., R. 61 E., sec. 14, SW¼SE¼NW¼SE¼. 177-14-701-001	2.5
N–65919/00-40	T. 22 S., R. 61 E., sec. 14, SE¼SE¼NW¼SE¼. 177-14-701-001	2.5
N–65920/00-41	T. 22 S., R. 61 E., sec. 14, E½SW¼SW¼NE¼SE¼. 177-14-701-001	1.25
N–65921/00-42	T. 22 S., R. 61 E., sec. 14, E½SE¼SW¼NE¼SE¼. 177-14-701-001	1.25
N–65922/00-43	T. 22 S., R. 61 E., sec 14, W½SW¼SW¼NW¼SE¼. 177-14-701-019	1.25
N–65923/00-44	T. 22 S., R. 61 E., sec. 14, W½NE¼NE¼SW¼SE¼. 177-14-801-003	1.25
N–65924/00-45	T. 22 S., R. 61 E., sec. 14, W½NE¼SE¼SW¼SE¼. 177-14-801-010	1.25
N–65925/00-46	T. 22 S., R. 61 E., sec. 14, W½SE¼SE¼SW¼SE¼. 177-14-801-010	1.25
N–65926/00-47	T. 22 S., R. 61 E., sec. 14, W½NW¼SW¼SE¼SE¼. 177-14-802-005	1.25

N–65927/00-48	T. 22 S., R. 61 E., sec. 14, E½SE¼SE¼SE¼SE¼. 177-14-802-013	1.25
N–65928/00-49	T. 22 S., R. 61 E., sec. 16, lot 167 177-16-701-034	2.5
N–65929/00-50	T. 22 S., R. 61 E., sec. 16, lot 198 177-16-701-046	2.5
N–65930/00-51	T. 22 S., R. 61 E., sec. 16, lot 199 177-16-802-009	2.5
N–65931/00-52	T. 22 S., R. 61 E., sec. 16, lot 228 177-16-802-017	2.5
N–65932/00-53	T. 22 S., R. 61 E., sec. 16, lot 237 177-16-802-021	2.5
N–65933/00-54	T. 22 S., R. 61 E., sec. 16, lot 233 177-16-802-029	2.5
N–65934/00-55	T. 22 S., R. 61 E., sec. 17, W½SE¼SW¼NW¼SE¼. 177-17-701-011	1.25
N–65935/00-56	T. 22 S., R. 61 E., sec. 17, W½SW¼SE¼NW¼SE¼. 177-17-701-013	1.25
N–65936/00-57	T. 22 S., R. 61 E., sec. 17, E½SE¼SE¼NW¼SE¼. 177-17-701-016	1.25

N–65937/00–58	T. 22 S., R. 61 E., sec. 17, N½NE¼SW¼SE¼, E½SW¼NE¼SW¼SE¼, W½SE¼NE¼SW¼SE¼, E½E½NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, W½NE¼SE¼SW¼SE¼, E½NW¼SE¼SW¼SE¼, SW¼SE¼SW¼SE¼. 177-17-801-002	17.5
N–65938/00–59	T. 22 S. R. 61 E., sec. 18, W½NE¼SE¼NW¼SW¼. 177-18-303-023	1.25
N–65939/00–60	T. 22 S., R. 61 E., sec. 18, lot 16, W½SW¼SW¼NE¼SW¼, S½SE¼NW¼SW¼. 177-18-303-023	7.5
N–65940/00–61	T. 22 S., R. 61 E., sec. 18, lot 14 177-18-303-027	1.41
N–65941/00–62	T. 22 S., R. 61 E., sec. 18, SE¼NW¼NE¼SW¼, NE¼SW¼NE¼SW¼, E½SE¼SW¼NE¼SW¼. 177-18-303-028	6.25
N–65942/00–63	T. 22 S., R. 61 E., sec. 18, SW¼NW¼NE¼SW¼. 177-18-303-028	2.5
N–65943/00–64	T. 22 S., R. 61 E., sec. 18, E½W½NE¼SW¼SW¼, W½SE¼NE¼SW¼SW¼. 177-18-401-012	3.75

N–65944/00-65	T. 22 S., R. 61 E., sec. 18, W½NE¼NW¼SE¼SW¼. 177-18-401-027	1.25
N–65945/00-66	T. 22 S., R. 61 E., sec. 18, E½NE¼SE¼SW¼SW¼, S½SE¼SW¼SW¼, W½NW¼NW¼SE¼SW¼, SW¼NW¼SE¼SW¼, W½SE¼NW¼SE¼SW¼, N½SW¼SE¼SW¼, E½SW¼SW¼SE¼SW¼, SE¼SW¼SE¼SW¼. 177-18-401-027	20.00
N–65946/00-67	T. 22 S., R. 61 E., sec. 24, SW¼SW¼NW¼. 177-24-201-005	10.0
N–65947/00-68	T. 22 S., R. 61 E., sec. 28, lots 10, 139. 177-28-101-006	2.45
N–65948/00-69	T. 22 S., R. 61 E., sec. 28, lot 48 177-28-201-013	2.5
N–65949/00-70	T. 22 S., R. 61 E., sec. 28, lot 55 177-28-201-013	2.5
N–65950/00-71	T. 22 S., R. 61 E., sec. 28, lot 65 177-28-201-013	2.5
N–65951/00-72	T. 22 S., R. 61 E., sec. 28, lot 66 177-28-201-013	2.5
N–65952/00-73	T. 22 S., R. 61 E., sec. 28, lot 37 177-28-201-020	2.5
N–65953/00-74	T. 22 S., R. 61 E., sec. 28, lot 50 177-28-203-004	2.5

N–65954/00–75	T. 22 S., R. 61 E., sec. 28, lot 99 177-28-302-008	2.5
N–65955/00–76	T. 22 S., R. 61 E., sec. 28, lot 106 177-28-302-008	2.5
N–65956/00–77	T. 22 S., R. 61 E., sec. 28, lot 102 177-28-302-012	2.5
N–65957/00–78	T. 22 S., R. 61 E., sec. 28, lot 72 177-28-302-014	2.5
N–65958/00–79	T. 22 S., R. 61 E., sec. 28, lot 71 177-28-302-014	2.5
N–65959/00–80	T. 22 S., R. 61 E., sec. 28, lot 70 177-28-302-014	2.5
N–65960/00–81	T. 22 S., R. 61 E., sec. 28, lot 69 177-28-302-014	2.5
N–65961/00–82	T. 22 S., R. 61 E., sec. 28, lot 85 177-28-302-014	2.5
N–65962/00–83	T. 22 S., R. 61 E., sec. 28, lot 84 177-28-302-014	2.5
N–65963/00–84	T. 22 S., R. 61 E., sec. 28, lot 88 177-28-302-014	2.5
N–65964/00–85	T. 22 S., R. 61 E., sec. 28, lot 87 177-28-302-014	2.5
N–65965/00–86	T. 22 S., R. 61 E., sec. 29, SW¼NE¼SW¼NE¼. 177-29-602-006	2.5

N–65966/00-87	T. 22 S., R. 61 E., sec. 29, NE¼NE¼NW¼SE¼. 177-29-701-029	2.5
N–65967/00-88	T. 22 S., R. 63 E., sec. 9, W½E½SE¼NE¼. 179-09-608-002	10.0
N–65968/00-89	T. 22 S., R. 63 E., sec. 9, E½SE¼SE¼SE¼. 179-09-806-002	5.0

BILLING CODE 4310–HC–C

Until the completion of the sale, the BLM is no longer accepting land use applications nor will consider as filed, to include, but not limited to, rights-of-way, permits, leases, and will return applications on such public lands.

The terms and conditions applicable to the sale are:

All Parcels Subject to the Following:

1. A reservation of all leaseable and saleable mineral deposits in the land so patented, and to it, its permittees, licensees and lessees, the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. Subject to all valid and existing rights. Encumbrances have been identified on parcels 00–02, 03, 06, 07, 13–15, 17–28, 33–52, 55, 58, 61–63, 65–68, 73, 75–82, 86–89, parcels without notation have no encumbrances of record. Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:15 p.m. Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

The parcels will be offered for competitive sale beginning at 9:00 a.m. PST, June 8 and 9, 2000, at the Clark County Commission Chambers, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada. Registration for oral bidding will begin at 8:00 a.m. each day of the sale and will continue throughout the auction. All bidders are required to register.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government.

Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the selected lands, and conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Each parcel will be offered by sealed bid and oral auction. All sealed bids must be received in the BLM's Las Vegas Field Office (LVFO), 4765 Vegas Drive, Las Vegas, NV 89108, by no later than 4:15 p.m. PST, June 6, 2000. Sealed bid envelopes must be marked on the front left corner with the parcel number and sale date. Bids must be for not less than the Fair Market Value (FMV) specified in the appraisal, with a separate bid submitted for each parcel. The appraisal reports will be available for public review at the BLM office on or before May 1, 2000. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The highest qualified sealed bid on each parcel will determine the starting monetary point for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV. The highest qualifying bid for any parcel, whether sealed or oral, shall be declared the highest bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price, whether sealed or oral, shall be paid within 180 calendar days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Unsold parcels will be withdrawn from sale, but may be offered again at a future date on the Internet or at future auctions.

Federal law requires that bidders must be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; and an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership papers, shall accompany the bid deposit.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by calling (702) 647–5114. Some of this information is also available on the Internet at http://www.nv.blm.gov. Click on Southern Nevada Public Land Management Act,

then you must click on Land Sale Information.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. Any comments received during this process as well as your name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment, will be made on a case-by-case basis. A commenter's request to have their name and/or address withheld from public release will be honored to the extent permissible by law. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: January 24, 2000.

Mark T. Morse,

Field Manager.

[FR Doc. 00–2080 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930; COC–63604]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 10,432 acres of National Forest System lands for 10 years to allow the Forest Service management alternatives in managing these lands. This notice closes these lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before May 1, 2000.

ADDRESSES: Comments should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On January 18, 2000, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2), subject to valid existing rights:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 76 W.,
- Sec. 20, lots 2, 3, 4, 15, 24 thru 29, inclusive, 32, 33, 34, 35, 43, and 47 thru 51, inclusive;
- Sec. 21, S½N½ and S½;
- Sec. 22, S½;
- Sec. 23, SW¼SW¼;
- Sec. 26, lots 2, 3, and 7, and NW¼NW¼;
- Sec. 27; Sec. 28;
- Sec. 29, E½ and E½E½W½;
- Sec. 32, E½, E½NE¼NW¼, SE¼NW¼, and E½SW¼;
- Sec. 33;
- Sec. 34, NW¼.

T. 5 S., R. 77 W.,
- Sec. 23, lots 11, 13, and 15, S½SE¼, and S½NW¼SE;
- Sec. 24, lot 11 and W½SW¼;
- Sec. 25, W½NW¼, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, SE¼SW¼SW¼, and SE¼SW¼;
- Sec. 26, NE¼NE¼NE¼, W½E½, E½W½, SW¼NE¼SE¼, and W½SE¼SE¼;
- Sec. 35, E½ and E½NW¼;
- Sec. 36, W½NE¼, SE¼NE¼, NE¼NW¼, SW¼NW¼NW¼, SW¼NW¼, NE¼SE¼NW¼, W½NE¼SW¼,S½SW¼, and NW¼SW¼.

T. 6 S., R. 76 W.,
- Sec. 4, lots 3, 4, 5, 6, 11, and 12, and SW¼;
- Sec. 5, lots 1 thru 12, inclusive;
- Sec. 6, lots 1, 8, and 9, and E½SE¼;
- Sec. 8, S½N½SW¼.

T. 6 S., R. 77 W.,
- Sec. 2, lots 1 thru 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
- Sec. 3, S½;
- Sec. 4, SE¼SE¼;
- Sec. 9, E½E½;
- Sec. 10;
- Sec. 11;
- Sec. 12, W½SW¼ and SE¼SW¼;
- Sec. 13, N½ and N½S½;
- Sec. 14, lots 1, 2, 4, and 5, N½, and N½SE¼;
- Sec. 15, lot 1, NE¼, E½NW¼ and NW¼NW¼
- Sec. 16, lot 1.P='02'≤

The areas described aggregate approximately 10,432 acres in Summit County. This application excludes any patented lands within the boundary of the proposed withdrawal.

The purpose of this withdrawal is to provide the Forest Service Management Alternatives in managing these lands.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. A public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the time and place of the meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above, unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 00–2101 Filed 1–31–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Invitation for Bids on Crude Oil From Federal Leases and State of Wyoming Properties in Wyoming

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Invitation for Bids on Federal and State of Wyoming crude oil in the State of Wyoming.

SUMMARY: The Minerals Management Service (MMS), in cooperation with the State of Wyoming (State), will post on MMS's Internet Home Page and make available in hard copy a public competitive offering of approximately 4,900 barrels per day (bpd) of crude oil, to be taken as royalty-in-kind (RIK) from a combination of Federal and State properties in Wyoming's Bighorn and Powder River Basins through an Invitation For Bids (IFB), Number 31053.

DATES: The IFB will be posted on MMS's Internet Home Page on or about February 1, 2000. Bids will be due to

MMS and the State, at the posted receipt location for both, on or about February 21, 2000. MMS and the State will notify successful bidders on or about February 25, 2000. The Federal Government and the State will begin actual taking of awarded royalty oil volumes for delivery to successful bidders for a 6-month period beginning April 1, 2000.

ADDRESSES: The IFB will be posted on MMS's Home page at http://www.mms.gov under the icon "What's New." The IFB may also be obtained by contacting Ms. Betty Estey at the address in the **FURTHER INFORMATION** section. Bids should be submitted to the address provided in the IFB.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the IFB document, terms, and process for Federal leases, contact Ms. Betty Estey, Minerals Management Service, MS 2510, 381 Elden Street, Herndon, VA 20170–4817; telephone number (703) 787–1352; fax (703) 787–1009; e-mail Betty.Estey@mms.gov. For additional information concerning the IFB document, terms, and process for State of Wyoming properties, contact Mr. Harold Kemp, Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 West 25th Street, Cheyenne, WY 82002–0600; telephone number (307) 777–6643; Fax: (307) 777–5400; Email: hkemp@missc.state.wy.us.

SUPPLEMENTARY INFORMATION: The offering in this IFB continues the ongoing RIK program in Wyoming. The State and MMS believe that taking oil royalties as a share of production (RIK) from the properties offered in the IFB is a viable alternative to the agencies' usual practice of collecting oil royalties as a share of the value received by the lessee for sale of the production. Both agencies will continue to monitor the effectiveness of the RIK approach to taking crude oil royalties in Wyoming.

This sale involves approximately 4,900 bpd of crude oil from 85 Federal and State properties located in Wyoming's Bighorn and Powder River Basins. The volume represents an increase of about 1,650 bpd compared to the most recent IFB, No. 31010, which offered 3,250 bpd of crude oil for delivery to purchasers for production months October 1999 through March 2000. Most production is pipeline-connected. In the few instances where there is also some trucked production on a property, Exhibit A to the IFB will detail those properties.

Purchasers may bid on specific pipeline subgroups and/or on the entire packages of Wyoming sweet crude oil, Wyoming general sour crude oil, or Wyoming asphaltic sour crude oil. Bids will be due as specified in the IFB on or about February 21, 2000 and successful bidders will be notified on or about February 25, 2000. MMS is considering allowing bidders to self-certify their current debt ratio for the purpose of pre-qualifying to bid without need for a letter of credit. Details will be available in the IFB.

The following are some of the additional details regarding the offerings that will be posted in the IFB on or about February 1, 2000:

- List of specific properties;
- For each property—tract allocations, royalty rate(s), average daily royalty volume, quality, current transporter, and operator;
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

The internet posting and availability of the IFB in hard copy are being announced in oil and gas trade journals as well as in this **Federal Register** notice.

Dated: January 27, 2000.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 00–2132 Filed 1–31–00; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Emergency Notice of Change of Date and Time of Commission Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL TIME AND DATE: January 28, 2000 at 11:00 a.m.

NEW DATE AND TIME: January 31, 2000 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Under 19 CFR § 201.35(d)(1), the Commission determined to change the date and time of the meeting originally scheduled for Friday, January 28, 2000 at 11:00 a.m. to Monday, January 31, 2000 at 2:30 p.m. The agenda for the meeting remains unchanged. Seven (7) days notice of this change was not possible.

By order of the Commission.

Issued: January 27, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2289 Filed 1–28–00; 3:20 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on February 23, 2000, from 9:00 am until 5:00 pm at The Flamingo Hilton Hotel, 255 North Sierra Street, Reno, Nevada 89501. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the November 17, 1999, meeting; review and discussion of the Audit Document for the Quality Assurance Standards, presentation and discussion on privacy issues, report from the Statistics Subcommittee and identification of issues for discussion at the next meeting.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meeting. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½" × 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Dwight E. Adams, Deputy Assistant Director, Laboratory Division—Room 3821, Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, DC 20535–0001, (202) 324–6071, FAX (202) 324–1462.

Dated: January 27, 2000.

Dwight E. Adams,

Deputy Assistant Director, Forensic Analysis Branch, Federal Bureau of Investigation.

[FR Doc. 00–2128 Filed 1–31–00; 8:45 am]

BILLING CODE 4410–02–U

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under Section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule pubished with this Notice reflects increases in military pay and allowances which were effective in January 2000.

Accordingly, the following new Schedule of Remunereation, issued pursuant to 20 CFR 614.12, applies to "First Class" for UCX which are effective beginning with the first day of the first week which begins after April 1, 2000.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0–10	$13,329
0–9	12,445
0–8	11,465
0–7	10,355
0–6	8,690
0–5	7,234
0–4	5,923
0–3	4,792
0–2	3,793
0–1	2,900
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0–3E	5,517
0–2E	4,653
0–1E	3,889
(3) Warrant Officers:	
W–5	6,384
W–4	5,478
W–3	4,550
W–2	3,919
W–1	3,345
(4) Enlised Personnel:	
E–9	5,020
E–8	4,224
E–7	3,697
E–6	3,254
E–5	2,747
E–4	2,288
E–3	2,044
E–2	1,972
E–1	1,744

The publicatin of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Dated: Signed at Washington, DC, on January 19, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 00–2114 Filed 1–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States, will meet in Houston, Texas.

DATES: The Committee will meet:

—On February 29, 2000, from 9 a.m. until approximately 5 p.m.; and

—On March 1, 2000, from 8:30 a.m. until approximately 5 p.m.

ADDRESSES: The Committee will meet at the Westin Galleria Hotel, 5060 West Alabama, Houston, Texas 77056; telephone (713) 960–8100. Mail comments, views, or statements in response to this notice to Chap Pierce, Director, Office of Fire Protection Engineering and Systems Safety Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210. Phone: (202) 693–2255; Fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Chap Pierce, Acting Director, Office of Maritime Standards, OSHA; Phone (202) 693–2086.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than February 18, 2000, to obtain appropriate accommodations.

Meeting Agenda

This meeting will include discussion of the following subjects: OSHA Standards update, OSHA Compliance update, Training initiatives, Committee rechartering, NIOSH update on Ergonomics and other significant research, and MACOSH workgroup reports.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Chap Pierce at the address listed above. Submissions received by February 18, 2000, will be provided to the members of the Committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chap Pierce by February 22, 2000. The request should state the amount of time desired, the capacity in which the person will appear, and a

brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC, this 25th day of January, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–2134 Filed 1–31–00 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1-5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279). FACOSH will meet on February 11, 2000 starting at 1:30 p.m., in Rooms 9 and 10 of the Bureau of Labor Statistics (BLS) Conference Center at the Postal Square Building at Two Massachusetts Avenue, NE, (First Street Entrance Only), Washington, DC 20212. The meeting will adjourn at approximately 3:30 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit a photo identification to security personnel.

Agenda items will include:

1. Call to Order
2. Federal Safety and Health Councils
3. Federal Safety and Health Conference Overview
4. OSHA Issues/Updates
5. Reports by Subcommittees
6. New Business
7. Adjournment

Written data, views or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs, at the address provided below. All such submissions, received by February 8, 2000, will be provided to the members of the Council and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by close of business February 8, 2000. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson of the Advisory Council. Individuals with disabilities who wish to attend the meeting should contact John E. Plummer at the address indicated below, if special accommodations are needed.

For additional information, please contact John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3112, 200 Constitution Avenue, NW, Washington, DC 20210, TEL: (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 27th day of January 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–2120 Filed 1–31–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10384, et al.]

Proposed Exemptions; Deutsche Bank AG, et al. (Deutsche Bank)

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, U.S.C. App. 1 (1996) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG, et al. (Deutsche Bank) Located in New York, NY

[Application No. D–10384]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the sale to employee benefit plans (the Plans) of a synthetic guaranteed investment contract (the Buy & Hold Synthetic GIC) offered by Deutsche Bank, which is or may become a party in interest with respect to the Plans; and (2) extensions of credit by Deutsche Bank to the Plans for the purpose of funding benefit withdrawals.

This proposed exemption is conditioned on the requirements set forth below in Section II.

Section II. General Conditions

(a) The decision to enter into a Buy & Hold Synthetic GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of Deutsche Bank.

(b) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to purchase Buy & Hold Synthetic GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has purchased a Buy & Hold Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a Buy & Hold Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million.

(c) Prior to the execution of a Buy & Hold Synthetic GIC, the independent Plan fiduciary receives a full and detailed written disclosure of all material features concerning the Buy & Hold Synthetic GIC, including—

(1) A copy of the contract (the Contract), underlying the Buy & Hold Synthetic GIC, which has been executed by Deutsche Bank and the Plan fiduciary, which stipulates the relevant provisions of such instrument, the interest rate that is credited (the Crediting Rate) to the book value account (the Book Value Account) of the Buy & Hold Synthetic GIC, the applicable fees and the rights and obligations of the parties;

(2) Information explaining in a manner calculated to be understood by a Plan fiduciary that if adverse market conditions occur, that the Crediting Rate to the Book Value Account of a Buy & Hold Synthetic GIC may be as low as 0 percent; and

(3) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Following the receipt of such disclosure, the Plan fiduciary approves, in writing, the execution of the Buy & Hold Synthetic GIC on behalf of the Plan.

(e) Upon entering into a Buy & Hold Synthetic GIC with a Plan fiduciary of a Plan that provides for participant investment selection (the Section 404(c) Plan), Deutsche Bank informs the Plan fiduciary that such fiduciary should provide each Plan participant with—

(1) A summary of the primary provisions of the Contract, including the applicable fees; and

(2) Information explaining that if adverse market conditions occur, the Book Value Account's Crediting Rate may be as low as 0 percent.

(f) Subsequent to a Plan's investment in a Buy & Hold Synthetic GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive a monthly report consisting of a statement of the Book Value Account, which specifies, among other things, the Book Value Account balance for the prior month, withdrawals from the Contract, any reduction in the balance of the Book Value Account on account of a security in the fixed portfolio (the Fixed Portfolio) becoming an impaired security, interest credited to the Book Value Account at the Crediting Rate, and the current month's ending balance for the Book Value Account. The report will also specify the Current Crediting Rate, the prior month's ending fair market value of the Fixed Portfolio, the proceeds of any securities liquidated, fees charged to the Plan, and the current month's ending fair market value of the Fixed Portfolio and rate of return.

(g) As to each Plan, the combined total of all fees and charges imposed under a Buy & Hold Synthetic GIC is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Each Buy & Hold Synthetic GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(i) Each Buy & Hold Synthetic GIC has a predefined maturity date selected by the Plan fiduciary and agreed to by Deutsche Bank.

(j) Neither Deutsche Bank nor its affiliates maintain custody of the assets underlying the Buy & Hold Synthetic GIC or commingle those assets with other funds under their management.

(k) The formulas for computing the Crediting Rate for the Buy & Hold Synthetic GIC and a charge for terminating the Buy & Hold Synthetic GIC within three years of its effective date (the Early Termination Charge) are objectively determined. Further, the Early Termination Charge compensates

Deutsche Bank for its direct costs incurred in connection with the Buy & Hold Synthetic GIC.

(l) Deutsche Bank maintains books and records of each Buy & Hold Synthetic GIC transaction for a period of six years in a manner that is accessible for audit and examination. Such books and records are subject to annual audit by independent, certified public accountants.

Summary of Facts and Representations

1. The parties involved in the proposed transactions are described as follows:

(a) *Deutsche Bank AG* is a German banking institution founded in 1870 and based in Frankfurt, Germany. It is the largest triple-A rated bank in the world. In terms of assets and deposits, Deutsche Bank AG is the largest bank in the European union and among the ten largest banks in the world. Through its affiliates, Deutsche Bank AG is engaged, on a global basis, in investment banking, market making, distributing debt and equity securities of both governmental and private issuers. In addition, Deutsche Bank AG has capabilities worldwide in the areas of corporate finance, financial advisory services, foreign exchange transactions, over-the-counter derivative transactions and asset securitization.

(b) *Deutsche Bank North America Holding Corp. (DBNA)*, a direct subsidiary of Deutsche Bank AG, was created on September 4, 1991 to coordinate the North American activities of the DBNA and Deutsche Bank AG branches and subsidiaries that offer commercial banking, investment banking, asset management and capital markets products and services to individuals and corporations in the United States, Canada and Mexico.

(c) *Deutsche Bank New York (DBNY)*, the New York branch of Deutsche Bank, is operated pursuant to a license issued by the Superintendent of Banks of the State of New York on July 14, 1978. DBNY derives its powers from the New York Banking Law and is subject to the supervision of the New York State Banking Department, the Board of Governors of the Federal Reserve System and the United States courts. DBNY serves private individuals, enterprises, public corporations and institutional investors and banks in the United States, as well as Deutsche Bank AG's German clients.

(d) *Deutsche Morgan Grenfell Financial Products (DMGFP)*, an indirect subsidiary of DBNA and an unincorporated business division of various Deutsche Bank AG branches and subsidiaries, markets investment banking products and services worldwide. Specifically, DMGFP's main activities include the marketing, arranging and hedging, in the name of various branches of Deutsche Bank AG, of certain of Deutsche Bank AG's fixed income activities which include Buy & Hold Synthetic GICs.

As of June 30, 1999, the aforementioned Deutsche Bank entities had total assets, on a consolidated basis, of $877.317 billion.

(e) *The Plans* involved herein will consist primarily of defined contribution plans that are subject to the Act as well as Plans that are subject to sections 401(a) and 403(b) of the Code. As also noted herein, a Plan may invest in a Buy & Hold Synthetic GIC through commingled investment entities.

2. The transactions for which prospective exemptive relief is requested would be entered into by Deutsche Bank AG, typically through DBNY. The investment product would be marketed and arranged primarily through DMGFP, a subsidiary established pursuant to section 4(c)(8) of the Bank Holding Company Act of 1955, as amended, and supervised by the Board of Governors of the Federal Reserve System. The Buy & Hold Synthetic GIC will only be marketed to Plans by entities that are Deutsche Bank affiliates located in the United States.

Accordingly, Deutsche Bank is requesting an exemption from the Department in order to sell its Buy & Hold Synthetic GIC product to Plans and to extend credit to such Plans for the purpose of funding benefit withdrawals from the Contract. The Buy & Hold Synthetic GIC is a variation of traditional guaranteed investment contracts (the GICs). The Buy & Hold Synthetic GIC will be offered to an indeterminate number of Plan investors and to commingled entities. Deutsche Bank will negotiate the terms of the Buy & Hold Synthetic GIC with the appropriate Plan fiduciary which is expected to be the Plan's named fiduciary.[1]

3. Deutsche Bank represents that the Buy & Hold Synthetic GIC will provide purchasers with the advantages of a traditional GIC along with enhanced security that is not offered under a traditional GIC. Under Deutsche Bank's Buy & Hold Synthetic GIC, each Plan will retain legal title to all of the assets underlying the arrangement and have the benefit of a contract pursuant to which all participant-initiated benefit payments and transfers will be paid based on the balance of the Book Value Account (see Representation 7.) For this purpose, participant-initiated benefit payments and transfers mean withdrawals necessary to accommodate any loans from the Plan to participants, in-service withdrawals requested by participants, distributions arising from termination of employment in the ordinary course and transfers, at the direction of participants, from the investment fund in which the Buy & Hold Synthetic GIC is held to another investment fund available under the Plan other than a "competing" investment fund (see Representation 11).

4. Like traditional GICs, Deutsche Bank's duties and obligations with respect to the Buy & Hold Synthetic GIC will be governed by the terms of a Contract which it will execute with the independent fiduciary of the affected Plan. The Contract, which will have no required minimum principal amount, will be issued pursuant to New York Banking Law and will be subject to the supervision of the New York State Banking Department and the Board of Governors of the Federal Reserve System. The terms and conditions of each Contract will be negotiated by the Plan fiduciary and Deutsche Bank. For example, the maturity date for the Buy & Hold Synthetic GIC will be agreed to by the Plan fiduciary and Deutsche Bank before the Contract is executed. Effectively, the Plan fiduciary will determine the maturity date of a Buy & Hold Synthetic GIC. However, in no event will the Buy & Hold Synthetic GIC have a stated maturity date exceeding seven years. Once the Contract is executed, Deutsche Bank will have no discretion over any of the terms of the Contract, which may be amended or modified only upon the mutual consent of the Plan fiduciary and Deutsche Bank.

5. Deutsche Bank represents that it will only market the Buy & Hold Synthetic GIC to Plans (or to collective investment funds established for the investment of assets of more than one Plan) that have at least $50 million in assets. In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity

[1] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. The Department notes that in order to act prudently in making investment decisions, plan fiduciaries must consider, among other factors, the availability, risks and potential return of alternative investments for the plan.

the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a Buy & Hold Synthetic GIC, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a Buy & Hold Synthetic GIC, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity will be required to have (a) full investment responsibility with respect to Plan assets invested therein; and (b) total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million.

6. Prior to the execution of a Buy & Hold Synthetic GIC, the independent Plan fiduciary will receive a full and detailed written disclosure of all material features concerning the Buy & Hold Synthetic GIC, including (a) the Contract underlying the Buy & Hold Synthetic GIC, which has been executed by Deutsche Bank and the Plan fiduciary, which stipulates the relevant provisions of such instrument, the applicable fees and the rights and obligations of the parties; (b) information, explaining in a manner calculated to be understood by the Plan fiduciary, that if adverse market conditions occur, the interest rate that is credited (i.e., the Crediting Rate) to the Book Value Account of a Buy & Hold Synthetic GIC may be as low as 0 percent; and (c) copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein. Following the receipt of such disclosure, the Plan fiduciary will approve, in writing, the execution of the Buy & Hold Synthetic GIC on behalf of the Plan.

Upon entering into a Buy & Hold Synthetic GIC with a Plan fiduciary of a Section 404(c) Plan, Deutsche Bank will inform the Plan fiduciary that such fiduciary should provide each Plan participant with (a) a summary of the primary provisions of the Contract; and (b) information explaining that, if adverse market conditions occur, the Book Value Account's Crediting Rate may be as low as 0 percent.

Subsequent to a Plan's investment in a Buy & Hold Synthetic GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, will receive a monthly report consisting of a statement of the Book Value Account, which specifies, among other things, the Book Value Account balance for the prior month, withdrawals from the Contract, any reduction in the balance of the Book Value Account on account of a security in the Fixed Portfolio becoming an impaired security, interest credited to the Book Value Account at the Crediting Rate, and the current month's ending balance for the Book Value Account. The report will also specify the Current Crediting Rate, the prior month's ending fair market value of the Fixed Portfolio, the proceeds of any securities liquidated, fees charged to the Plan, and the current month's ending fair market value of the Fixed Portfolio and rate of return.

7. Every Buy & Hold Synthetic GIC will consist of two components. One component will be the underlying securities or portfolio of assets (i.e., the Fixed Portfolio), title to which will remain with the Plan's trustee. The Fixed Portfolio will be comprised primarily of high grade, fixed income securities, which will be selected and managed by the Plan's trustee or another Plan fiduciary which is unaffiliated with Deutsche Bank. The Fixed Portfolio may consist of a single security or a fixed portfolio of securities that will be established at the inception of the Contract and is intended to be held until maturity. The value of the securities will be determined by objective standards (see Representation 16 below).

Although the Fixed Portfolio will not come under Deutsche Bank's administration or control, it affects the second component of each Contract, the Book Value Account, an accounting record established by Deutsche Bank to record the Plan's interest under the Buy & Hold Synthetic GIC. This is the amount that will be available to satisfy participant-initiated benefit payments and transfers.

At the inception of the Contract, the Book Value Account will be equal to the value of the Fixed Portfolio. Thereafter, the Book Value Account will be credited with a rate of interest (i.e., the Crediting Rate) that will be reset periodically (monthly, quarterly, semi-annually or annually) in accordance with the following formula which will be set forth in the Contract:

$$BV = \sum_{k=n}^{N} ((\text{net cashflow}_k)/(1+IRR^{k-n}))$$

Where BV=The balance of the Book Value Account (as determined under the Contract provisions) on the determination date;

net cash flow$_k$=(1) In the case where the Fixed Portfolio consists of one security, the expected cashflows from that security, or (2) in the case where the Fixed Portfolio consists of more than one security, the aggregate expected cashflows from the securities (in either case, excluding all fees and charges applicable under the Buy & Hold Synthetic GIC) at time k; [2]

IRR=The internal rate of return for the Fixed Portfolio;

n=The determination date (as determined under the Contract provisions); and

[2] For purposes of the formula, the expected cashflows from a security in the Fixed Portfolio and the total number of expected cashflows from the security will be determined under a three-part method in the following order of preference: (a) from widely-available published sources independent of Deutsche Bank and its affiliates (such as Bloomberg); (b) if such information is not provided by widely-available, independent, published sources, the Plan fiduciary will cause the lead underwriter of the security (if the underwriter is not an affiliate of Deutsche Bank) to determine and provide such information to Deutsche Bank; or (c) if such information is not available from the lead underwriter or if the lead underwriter is an affiliate of Deutsche Bank, the Plan fiduciary will cause the issuer of the security to provide such information to Deutsche Bank. Deutsche Bank believes that the vast majority of the securities that will be included in the Fixed Portfolio will be publicly-traded securities for which cashflow information may be obtained from widely-available, independent, published sources. However, where the Plan fiduciary has specifically requested, Deutsche Bank will enter into a Buy & Hold Synthetic GIC with respect to one or more securities that are not publicly-traded. Then, methods (b) or (c) above will be applied to determine cashflow information.

N=The time of final cashflow from the Fixed Portfolio.

The foregoing formula, which will be objectively determined by a Plan fiduciary that is independent of Deutsche Bank (see Representation 9), is intended to produce a Crediting Rate that will equal the projected "internal rate of return" of each security comprising the Fixed Portfolio, with a floor of 0 percent. In addition, as described in Representations 4 and 12, the Contract will mature on a stated maturity date.

8. The Buy & Hold Synthetic GIC will be supported by one or more specific fixed income securities that are bought in the primary or secondary market and are intended to be held until maturity. High quality mortgage-backed securities will be the primary type of security utilized, although other high quality securities may be used to support a Buy & Hold Synthetic GIC. All securities in the Fixed Portfolio will have predictable yield and cash flow characteristics. As principal, interest and other payments are made on the Fixed Portfolio, such amounts will be made available for investment outside of the Buy & Hold Synthetic GIC at the direction of a Plan fiduciary independent of Deutsche Bank. Generally, the Fixed Portfolio will be sold only upon termination of the Contract in order to provide amounts for benefit payments or for participant-directed transfers to other investment funds available under the Plan.

9. Deutsche Bank believes that one of the attractive features of the Buy & Hold Synthetic GIC to a Plan is that Deutsche Bank will assume certain obligations with respect to the availability of funds for benefit withdrawals and participant-directed transfers between investment funds and the return realized from the Fixed Portfolio. Mechanically, this is accomplished through the establishment of the Book Value Account.

The Book Value Account will reflect the value of the Fixed Portfolio at the inception of the Contract, as increased by the Crediting Rate determined pursuant to the formula set forth in the Contract and described above. The formula is intended to produce a Crediting Rate that will be equal to the projected internal rate of return [3] of the Fixed Portfolio, but the Crediting Rate is guaranteed never to be below 0 percent. The Crediting Rate will be reset periodically so that it will at all times reflect the projected internal rate of return of the Fixed Portfolio. Each component of this formula will be set forth in the Contract and explained to the Plan fiduciary who will decide whether to purchase the Buy & Hold Synthetic GIC on behalf of any Plan. At all times during the term of the Contract, the Crediting Rate will be determined pursuant to the formula.

10. Under the Contract, all participant-initiated benefit payments and transfers will be paid based on the balance of the Book Value Account. The Book Value Account will be reduced each month dollar-for-dollar for the amount of participant-initiated benefit payments and transfers made under the Plan and for the amount of principal payments, coupon interest and other payments received by the Plan from the Fixed Portfolio. Benefit payments or transfers resulting from an action of the Plan's sponsor may result in the Book Value Account being subject to an additional reduction due to the premature withdrawal of such assets depending on the relationship of the balance of the Book Value Account to the market value of the Fixed Portfolio at the time of the withdrawal.

11. Deutsche Bank's agreement to bear the economic effects of participant-initiated benefit payments and transfers through the use of the Book Value Account will be subject to certain conditions that are intended to assure that the factors under which Deutsche Bank has agreed to assume these effects do not change without its consent. If those conditions are not satisfied, Deutsche Bank will not be obligated to ensure the availability of the funds from the Fixed Portfolio to satisfy those benefit payments and transfers based on the balance of the Book Value Account, but rather withdrawals will be effected at the market value of the Fixed Portfolio. First, the Plan may not permit participant-directed transfers directly (or with less than a 90 day "equity wash") from the investment fund in which the Buy & Hold Synthetic GIC is held to another "competing" investment fund available under the Plan, i.e., to another investment fund that has an investment objective of providing a stable rate of return with limited risk of loss of principal. This condition is intended to assure that participants will not have an economic incentive to direct transfers from the Buy & Hold Synthetic GIC to obtain a temporary improvement in the return on their accounts without any material change in their risk profile.

Second, the Plan may not be amended without Deutsche Bank's consent in order to change the provisions of the Plan pertaining to participant-initiated benefit payments and transfers or otherwise in a manner which may affect Deutsche Bank's obligations in this regard. For example, if a Plan provides that amounts necessary to fund loans from the Plan to participants were to be withdrawn *pro rata* from all investment funds (e.g., equity, balanced and fixed income), the Plan could not be amended to require that the funds for all such loans be withdrawn solely from the investment fund in which the Buy & Hold Synthetic GIC is held unless Deutsche Bank consents to the amendment.

Third, if any withdrawal arises from an action of the Plan's sponsor that affects a significant number of employees (e.g., layoffs, plant closings, divestitures, mergers or consolidations, the complete or partial termination of the Plan and the implementation of an early retirement incentive program), the effect of such withdrawal on the Book Value Account will generally be comparable to that of a similar withdrawal under a traditional GIC, i.e., such withdrawal from the Contract will be effected at the market value of the Fixed Portfolio. A Plan fiduciary may negotiate with Deutsche Bank that the Contract shall provide that any such withdrawal will be effected at the market value of the Fixed Portfolio only after similar employer-initiated withdrawals over a specified period (e.g., the preceding 12 months or the term of the Contract) have exceeded a specified percentage of the Book Value Account.

12. The Contract will mature on the stated maturity date of the security in the Fixed Portfolio or, if there is more than one security in the Fixed Portfolio, the latest stated maturity date of any of the securities. The stated maturity date of a security is the date of the expected maturity of the security at the time of the purchase. If the principal of the security (or the securities) in the Fixed Portfolio is actually repaid faster or slower than expected, the Contract will not mature on the stated maturity of the security (or the latest maturity date), but instead will mature on the date the last principal payment is actually received by the Plan. In no event will the Contract mature later than the actual maturity date of the security.

Notwithstanding the foregoing, the Contract may also mature on a fixed date mutually agreed upon by the Plan fiduciary and Deutsche Bank.[4]

[3] The term "internal rate of return" means the rate of return on the Fixed Portfolio determined without regard to any return from the reinvestment of interest, dividends and other proceeds on the Fixed Portfolio. Those amounts will be reinvested outside the Buy & Hold Synthetic GIC by a Plan fiduciary independent of Deutsche Bank.

[4] As noted in Representation 4, no Buy & Sell Synthetic GIC described herein will have a stated maturity date exceeding seven years.

If, on the maturity date, the balance of the Book Value Account exceeds the fair market value of the Fixed Portfolio, Deutsche Bank will pay the Plan the difference (see Representation 15). Because the Book Value Account's Crediting Rate will be equal to the underlying Fixed Portfolio's projected internal rate of return, any difference between the balance of the Book Value Account and the fair market value of the Fixed Portfolio on the maturity date of the Contract should be insignificant. Thus, any payment Deutsche Bank will have to make to support the Book Value Account should be negligible.

13. A Plan fiduciary may also elect to terminate the Buy & Hold Synthetic GIC at any time on 30 days (or such shorter period as mutually agreed upon by the Plan fiduciary and Deutsche Bank) prior notice to Deutsche Bank. Deutsche Bank may also terminate the Buy & Hold Synthetic GIC on 30 days prior notice to the Plan fiduciary only under limited circumstances, e.g., (a) on account of regulatory restrictions, or (b) if the Plan has breached one of its obligations under the Contract or has taken actions that would constitute an event of default under the Contract. Specifically, the Contract may be terminated by Deutsche Bank if (a) any fee or charge payable to Deutsche Bank under the Contract has not been timely paid, (b) a representation upon which Deutsche Bank has relied upon in entering into the Contract was or becomes untrue, (c) if withdrawals are effected from the Contract other than as permitted, or (d) if there are material changes in the arrangement that may have a material adverse effect on Deutsche Bank's obligations under the Contract (including changes in the Plan or its administration).[5]

Although the decision to terminate the Contract under these circumstances will be made by Deutsche Bank, such action can only be taken after the Plan has breached one of its obligations under the Contract or unilaterally has taken other actions that could materially modify, in an adverse manner, Deutsche Bank's obligations under the Contract. Thus, the Plan can preclude Deutsche Bank from terminating the arrangement merely by satisfying its contractual obligations and by not acting in a manner that materially alters the underwriting assumptions relied upon by Deutsche Bank in entering into the arrangement.

[5] According to the applicant, a change in custodial bank would not be considered a material change warranting a termination of the Contract by Deutsche Bank.

14. If the Plan fiduciary voluntarily terminates the Contract or if Deutsche Bank terminates the Contract for one of the reasons specified in the Contract (such as the Plan's breach of a contractual obligation), the Plan fiduciary will have complete control over the Fixed Portfolio (i.e., the Portfolio may be invested without any contractual constraints) and will realize the fair market value of the Fixed Portfolio. Deutsche Bank will have no obligation with respect to the Book Value Account (see Representation 21). If the Contract is terminated by the Plan fiduciary voluntarily within three years after its effective date, an Early Termination Charge payable by the Plan may apply that will be determined under an objective formula set forth in the Contract, which is intended to enable Deutsche Bank to recoup its costs incurred (e.g., research and underwriting resources, internal and external legal and other professional charges, and operational and systems expenses) in connection with the Contract. The formula is set forth as follows:

[(F * BV)] * N,

Where

F = The expense charge payable to Deutsche Bank as agreed upon by Deutsche Bank and the Plan's independent fiduciary at the inception of the Contract, expressed as an annual percentage rate;

BV = The balance of the Book Value Account on the termination date; and

N = The number of days in the period from the termination date through the third anniversary date of the effective date of the Contract, divided by 365.

Under no circumstances will the Early Termination Charge be payable by the Plan if Deutsche Bank has breached any of its obligations under the Contract or has defaulted under the Contract.

15. Under the Buy & Hold Synthetic GIC, Deutsche Bank will assume the obligation for the availability of funds to satisfy participant-initiated benefit payments and transfers up to the amount of the balance of the Book Value Account as of any date. Deutsche Bank, the Plan, the Plan fiduciaries or other agents will not have any discretion over when a withdrawal may be made from the Contract. The Contract will not be accessed for withdrawals until other specified sources of funds (e.g., contributions to the Plan's investment fund under which the Buy & Hold Synthetic GIC is held, current investment income, maturing proceeds, cash equivalents, available cash attributable to the underlying Fixed Portfolio and other investment contracts which are to be accessed for withdrawals before the Contract under a "last-in-first-out" hierarchy) have been depleted. If a withdrawal is made from the Contract, such withdrawal will be made from cash realized on the sale of a portion of the Fixed Portfolio or, if an election is made by the Plan fiduciary and consented to by Deutsche Bank, such withdrawal amount will be paid to the Plan in cash by Deutsche Bank and the Plan will be obligated to repay such amount to Deutsche Bank as principal, interest and other amounts paid to the Plan on the Fixed Portfolio become available.[6]

16. If a withdrawal is to be satisfied by the sale of assets in the Fixed Portfolio, the Plan fiduciary will do so in a manner consistent with its fiduciary responsibilities under the Act. The Contract provides that the fair market value of the securities sold will be determined based upon the actual proceeds received by the Plan fiduciary in an arm's length transaction. Under the Contract, the fair market value of any security in the Fixed Portfolio will be determined by averaging three competitive bids for such security received from parties independent of, and mutually agreed upon by, Deutsche Bank and the Plan.

17. The portion of the Fixed Portfolio sold will also depend upon the type of Contract negotiated by the Plan fiduciary. In this regard, Deutsche Bank will offer Plans two types of Contracts (or a combination thereof). In the first type of Contract, as withdrawals occur during the term of such Contract, only the portion of the Fixed Portfolio necessary to satisfy the withdrawal having a fair market value equal to the amount of the withdrawal will be sold. Then, the Book Value Account will be correspondingly reduced by the amount of such payment. However, if the amount of the withdrawal is greater than the fair market value of the entire Fixed Portfolio (which could happen if the fair market value of the Fixed

[6] The election available to Deutsche Bank to pay the amount of the withdrawal instead of liquidating a portion of the Fixed Portfolio to satisfy the withdrawal is intended to create liquidity for the Plan in circumstances where the security that would otherwise be liquidated would be difficult to sell (e.g., where the principal amount of the security is small) rather than a situation where the value of the Fixed Portfolio falls below a minimum level. Deutsche Bank represents that the election would benefit the Plan by saving costs that would otherwise be incurred if the Plan was forced to sell the security on the open market. Deutsche Bank further represents that its election to pay the amount of a withdrawal will not affect its obligations to the Plan under the Buy & Hold Synthetic GIC.

Portfolio is less than the balance of the Book Value Account), Deutsche Bank will be required to sell the entire Fixed Portfolio to satisfy the withdrawal. In addition, Deutsche Bank will be required to pay the Plan the difference between the amount of the withdrawal and the fair market value of the Fixed Portfolio in cash. Conversely, if the value of the Fixed Portfolio exceeds the amount of the withdrawal, the Plan will not be required to pay the difference to Deutsche Bank.

When a withdrawal occurs under the second type of Contract, the portion of the Fixed Portfolio sold will be that portion having a fair market value equal to the amount of the withdrawal multiplied by a fraction, the numerator of which is the fair market value of the entire Fixed Portfolio and the denominator of which is the balance of the Book Value Account, and, if the sale proceeds are less than the amount of the withdrawal, Deutsche Bank will pay the Plan the amount of the deficiency in cash or, if the sale proceeds are greater than the amount of the withdrawal, the Plan will pay Deutsche Bank the amount of the excess in cash.[7]

18. To illustrate the method for making a withdrawal under the second type of Contract, assume that a withdrawal of $10,000 is needed and to effect the withdrawal the Plan sells a portion of the Fixed Portfolio having a book value of $10,000, but a then current market value of $9,500. The Book Value Account will be reduced by $10,000, the value of the Fixed Portfolio will be reduced by $9,500 and Deutsche Bank will make a cash payment to the Plan of $500 to make up the difference. If, however, the market value of the portion of the Fixed Portfolio sold were $10,500, the Book Value Account would still be reduced by $10,000, the Fixed Portfolio would be reduced by the full $10,500 and the Plan would pay Deutsche Bank an additional fee of $500.

19. Under the second type of Contract, if the proceeds realized on the sale of a portion of the Fixed Portfolio are greater than the amount of the withdrawal, the Plan fiduciary may exercise its right to terminate the Contract and take full control over the Fixed Portfolio and, thereby, avoid paying an additional fee to Deutsche Bank equal to the excess. The purpose of this additional fee is to protect Deutsche Bank from the additional risks that were not intended to be assumed by Deutsche Bank in the context of the Buy & Hold Synthetic GIC. When a Plan fiduciary enters into a Buy & Hold Synthetic GIC, both the fiduciary and Deutsche Bank intend that the Fixed Portfolio will be held to maturity. Participant-initiated benefit payments and transfers that would require selling a portion of the Fixed Portfolio are possible, but are not contemplated. If such a sale were required and, at such time, the overall market value of the Fixed Portfolio exceeded the balance of the Book Value Account, Deutsche Bank would expect that a Plan fiduciary might decide to exercise its option to terminate the arrangement and "cash-in" the benefit of the appreciation in the market value of the Fixed Portfolio.[8] This is because, as the Buy & Hold Synthetic GIC is designed, the value of the Book Value Account and the Fixed Portfolio are expected to be equal at maturity. If, at any given point in time, the market value of the Fixed Portfolio exceeds the balance of the Book Value Account, it would generally reflect an unanticipated increase in the market value of the underlying Fixed Portfolio, the benefit of which could likely be lost if the Fixed Portfolio were held to maturity. If, however, the market value of the Fixed Portfolio does not exceed the balance of the Book Value Account, but an asset in the Fixed Portfolio with a market value above its book value were sold to effect a withdrawal following the selection of such security by the Plan fiduciary, Deutsche Bank would be placed in the situation of having an obligation with respect to the performance of assets that, as a whole, are underperforming while an asset that exceeded projected performance was disposed of at a profit. To allow the Plan to reap the benefit of the profit on this asset would fail to reflect the "book loss" on the entire Fixed Portfolio, a loss which Deutsche Bank is contractually obligated to bear. Thus, the profit is payable to Deutsche Bank as an additional fee and reflects the fact that this "profit," if realized at maturity, would otherwise have offset or reduced the amount Deutsche Bank would ultimately have been required to pay in respect of the Book Value Account of the remaining underperforming assets.

Alternatively, if the Plan fiduciary does not wish to pay Deutsche Bank this additional fee, the fiduciary may elect to enter into the first type of Contract described above. The two types of Contracts offer different risk levels from which the fiduciary may choose the one appropriate for the Plan.

20. Under either type of Contract, a fiduciary of the Plan independent of Deutsche Bank will, in its sole discretion, determine which of the securities in the Fixed Portfolio will be sold. If any portion of the Fixed Portfolio has to be sold to effect any withdrawal, the Plan fiduciary will do so in a manner consistent with its fiduciary responsibilities under the Act. The Contract provides that the fair market value of the securities sold will be determined based upon the actual proceeds received by the Plan fiduciary in an arm's length transaction.

21. If at the time the Contract matures, the balance of the Book Value Account exceeds the fair market value of the Fixed Portfolio, Deutsche Bank will make a payment to the Plan equal to such excess (the Book Value Payment). If the fair market value of the Fixed Portfolio equals or exceeds the balance of the Book Value Account, no Book Value Payment will be made and such excess belongs exclusively to the Plan.

During the term of the Contract, the Plan fiduciary will reinvest the proceeds of the Fixed Portfolio as the fiduciary sees fit in other investments. Any principal, interest and other proceeds paid to the Plan with respect to the Fixed Portfolio will not become subject to the Contract but instead will be reinvested by the Plan fiduciary. Accordingly, the value of the Fixed Portfolio will decline over time as principal and interest payments are made on the underlying security or securities. The Book Value Account will be correspondingly reduced as amounts are distributed from the arrangement. By reason of these distributions, it is expected that the Book Value Account will decrease significantly from its initial value by the time the Contract matures. Given this reduction in the Book Value Account and the fact that the Book Value Account's Crediting Rate is calculated based on the expected rate of return on the fixed Portfolio, any

[7] The underlying principle of the second type of contract is that a withdrawal resulting from a participant-initiated benefit payment or transfer does not affect the rate of interest credited to the Book Value Account. The credited rate of interest is maintained principally by keeping the ratio of the balance of the Book Value Account to the fair market value of the Fixed Portolio the same before and after the withdrawal. This is illustrated in the following example where—

- Before the withdrawal, the balance of the Book Value Account is $100 and the market value of the Fixed Portfolio is $90. Assume a withdrawal of $10 occurs.
- After the withdrawal, the balance of the Book Value Account is reduced by $10 (amount of the withdrawal) to $90. The market value of the Fixed Portfolio is reduced by the product of $10 (amount of the withdrawal) and $90 (the market value of the Fixed Portfolio before the withdrawal), over $100 (balance of the Book Value Account before the withdrawal), an amount equal to $81. (In other words, $10 x $90/$100 = $9. $90-$9 = $81.)

[8] Under such circumstances, the Plan would not incur any costs unless the termination occurs prior to the third anniversary of the effective date of the contract (see Representation 14).

Book Value Payment made should be *de minimus*. [9]

22. Deutsche Bank believes that the Buy & Hold Synthetic GIC is superior to traditional GICs in that each Buy & Hold Synthetic GIC serves the dual functions of (a) affording a Plan substantially greater protection against the risks of loss of its principal investment and (b) providing the Plan with an opportunity for a greater rate of return than a traditional GIC. Under the Buy & Hold Synthetic GIC, Deutsche Bank will make payments to the Plan such that all participant-initiated benefit payments and transfers will be paid based on the balance of the Book Value Account. This means that, despite fluctuations in the market value of the Fixed Portfolio, each participant, in making participant-initiated benefit payments and transfers, will be protected against any loss of principal by Deutsche Bank's contractual commitment. In the ordinary course, the effect of this commitment will be to enable the Plan to account for the value of the assets of the Plan held pursuant to the Contract without regard to any interim fluctuation in the market value of such assets. However, this commitment will have a real economic effect for Plan participants in the event that withdrawals are made from the Buy & Hold Synthetic GIC.

23. To recap, the Fixed Portfolio to be held under the Contract will be determined at the inception of the Contract. Generally, the Fixed Portfolio will be disposed of only upon termination of the Contract (if determined by the Plan fiduciary) or upon the occurrence of certain events specified in the Contract (see Representation 15 above). A security will be removed from the Fixed Portfolio if it becomes an impaired security (i.e., generally a defaulted or accelerated security or a security that no longer satisfies specified credit-related criteria) as objectively determined under the provisions of the Contract.[10]

In addition, the Plan will hold legal title to the Fixed Portfolio. Subject to the Plan's obligation to pay Deutsche Bank's fees, any appreciation in the market value of the Fixed Portfolio, as well as current interest and principal payments, will belong to the Plan.

Thus, the only risk to the Fixed Portfolio posed by the financial condition of Deutsche Bank will relate to the amount representing the excess, if any, of the balance of the Book Value Account over the fair market value of the Fixed Portfolio. Therefore, Deutsche Bank represents that the Buy & Hold Synthetic GIC will provide greater security than a traditional GIC wherein a Plan places a substantial amount of its assets at risk based on the creditworthiness of the issuer of the GIC.

24. Deutsche Bank will maintain, for a period of six years following the execution of each Buy & Hold Synthetic GIC transaction full and complete records and books reflecting the various accounts established in accordance with the Buy & Hold Synthetic GIC. Such records will be kept in a manner that is accessible for audit and examination. Upon written request by a Plan representative, Deutsche Bank will make its records pertaining to the Buy & Hold Synthetic GIC available during normal business hours for audit by independent, certified public accountants hired by the Plan fiduciary.

25. Deutsche Bank and the Plan fiduciary will agree to an expense charge (determined at the inception of the Contract) payable to Deutsche Bank with respect to the Buy & Hold Synthetic GIC that will be stated as an annual fee equal to a fixed percentage of the balance of the Book Value Account and will accrue on a daily compound basis. This charge will cover four elements: (a) A benefit risk charge, (b) a maturity risk charge, (c) an expense charge, and (d) a profit charge. The benefit risk charge is a fee for assuming the risk of loss associated with participant-initiated benefit payments and transfers. It will be developed on a Plan-specific basis after a review of the Plan's benefit payment cashflow history and the structure of the Plan itself (i.e., the frequency at which withdrawals and investment transfers are permitted, and the structure of alternate investment opportunities). The maturity risk charge will be based on a review of the volatility of, and the guidelines for investment of, the Fixed Portfolio. The expense and profit charges will be assessed based on the expected expenses related to the arrangement and the payment to Deutsche Bank of a reasonable profit. Such negotiated charge would remain in effect throughout the term of the Contract.

Based on its review of competitive practices, Deutsche Bank represents that the aggregate charges with respect to the Buy & Hold Synthetic GICs offered by Deutsche Bank are, and are expected to continue to be, comparable to the charges made by other Buy & Hold Synthetic GIC providers.

26. In summary, it is represented that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The decision to enter into a Buy & Hold Synthetic GIC will be made on behalf of a Plan, in writing, by a fiduciary of the Plan which is independent of Deutsche Bank.

(b) Each Plan or commingled entity investing in a Buy & Hold Synthetic GIC will have at least $50 million in assets.

(c) Prior to and subsequent to the execution of a Buy & Hold Synthetic GIC, the Plan fiduciary, and if applicable, Plan participants, will receive full and detailed written disclosures of all material features of the Contract, including a description of all applicable fees and charges as well as ongoing disclosures with respect to such investment.

(d) As to each Plan, the combined total of all fees and charges under the Buy & Hold Synthetic GIC will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Each Buy & Hold Synthetic GIC will specifically provide an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

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[9] It is expected that, as of the maturity date of the Contract, there will be only a *de minimus* difference between the value of the Fixed Portfolio and the balance of the Book Value Account. However, during the term of the Contract, parity between Book Value and fair market value may not exist. For example, if a participant-initiated benefit payment or transfer occurs and such payment or transfer is made from cash realized on the sale of a portion of the Fixed Portfolio, the value of the Fixed Portfolio remaining after such sale and the Book Value Account after the reduction for the amount of such benefit payment may be quite different depending on the relationship of the Book Value of the portion of the Fixed Portfolio sold and the market value.

[10] In this regard, Deutsche Bank represents that it uses a standard, commercial definition of the term "impaired security" which is also used by many other issuers of synthetic GICs. Although this definition will appear in the template agreement provided by Deutsche Bank to a prospective customer for review, the specific definition of "impaired security," will be subject to negotiation by Deutsche Bank and the Plan fiduciary before the Contract is executed.

The standard definition of an "impaired security" is as follows: An "impaired security" means (a) a security with respect to which an event has occurred or exists which, under one or more agreements or instruments relating to such security, has resulted in the principal of, and/or interest on, such security becoming due and payable before any such amount would otherwise have been due or payable other than as a result of a call or other prepayment of a security made in accordance with its terms that does not constitute a default under such security; (b) a security with respect to which the issuer has failed to make one or more payments of principal or interest when due (giving effect to any applicable grace period); or (c) a security (1) with respect to which the specified rate of interest is not paid or distributed when due, (2) with respect to which interest is accruing on a principal balance that is less than the difference between the original par or face amount of such security and the amount of principal previously paid on such security, or (3) where the rate of interest thereon has been reset other than pursuant to the original terms thereof.

(f) Deutsche Bank will maintain, for a period of six years from the date of each Buy & Hold Synthetic GIC transaction, in a manner for audit and examination, books and records of all transactions which will be subject to annual audit by certified, public accountants selected by and responsible solely to the Plan.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Cullen Incorporated Profit Sharing Plan and Trust (the Profit Sharing Plan), Cullen Incorporated Employees Defined Contribution Pension Plan and Trust (the Money Purchase Plan) (Collectively the Plans) Located in Fredericksburg, Virginia

[Exemption Application No. D–10823 and D–10824]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[11] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of property located in Fredericksburg, Virginia (the Property) to Robert C. O'Neill (Mr. O'Neill), the trustee of the Plans, President and sole shareholder of the Plan Sponsor, and a party in interest with respect to the Plans, provided that the following conditions are satisfied: (a) the Sale was a one time transaction for a lump sum cash payment; (b) the purchase price was the fair market value of the Property as of the date of the Sale; (c) the Property has been appraised by a qualified, independent real estate appraiser; and (d) the Plans paid no commissions or other expenses relating to the Sale.

EFFECTIVE DATE OF EXEMPTION: The effective date of this exemption is November 6, 1998.

Summary of Facts and Representations

1. The applicant is Robert C. O'Neill (Mr. O'Neill). Mr. O'Neill is the trustee for the Plans. He is also the President and sole shareholder of Cullen Incorporated (Cullen Inc.), the Plans' sponsor. As of October 8, 1999, there were 14 participants in each Plan.

2. The Applicant understands that at the time of consummation of the Sale, the approximate fair market value of the total assets of the Profit Sharing Plan and Money Purchase Plan were $348,139 and $557,948, respectively and that approximately 11% and 12%, respectively, of the total assets for the 1997 Plan year were involved in the subject transaction.

The applicant represents that at the time of the Sale, Mr. O'Neill was the Plans' trustee. Cullen Inc., was the Plans' sponsor and a party in interest with respect to the Plans. Cullen Inc. is a property management company which manages various properties owned by the Cullen Land Corporation (Cullen Land).

3. The applicant states that the Property was owned by the Plans at the time of the Sale. The Property consisted of a building (the Kayo Building), a 850 square foot cinder block structure on 8,809 square feet located at 530 Princess Anne Street, Fredericksburg, Virginia 22401.

The applicant represents that on March 21, 1989 the Cullen Trust Limited Partnership, a Virginia Limited Partnership, was formed to purchase the Property from an unrelated third party. Cullen Land was the General Partner and the Plans were Limited Partners. The applicant further represents that the Property was purchased for $103,384 by the Plans on September 1, 1991. The Profit Sharing Plan was a 39.5% limited partner with a capital contribution of $38,933 and the Money Purchase Plan, a 59.5% limited partner with a capital contribution of $63,391. Cullen Land owned a 1% interest with a capital contribution of $1060.

The applicant represents that the Property was purchased to diversify the portfolios of the Plans. The site of the Property is one block from the terminus of the Virginia Railway Express, the commuter rail service to the Washington, D.C. area. The applicant states that it was anticipated that the commuter rail would have a major impact on property values.

In addition, the applicant represents that the Property was leased to various unrelated third party commercial tenants from 1989 to 1998. Cullen Inc. leased and managed the Property and received no commissions or fees.

4. The Applicant represents that the motivation for the Plans' 1998 Sale of the Property to Mr. O'Neill was solely to benefit Plans' interests. The Plans owned the Property for about ten years. The applicant states that by 1997 and 1998 the annual rental income[12] from leasing the Kayo building to third parties did not produce the annual return commensurate with other alternative investments and the forecast for appreciation in the value of the Property was not adequate to justify its continued retention.[13]

In addition, the applicant represents that the Property would have required improvements at considerable cost to the Plans to increase returns. Accordingly, the applicant represents that it would not have been prudent to have the Plans take on debt, invest additional capital in the Property, and subsequently find a tenant.

5. The applicant represents that the services of Lawrence J. Gorman (Mr. Gorman) of Retirement Plan Services, Inc., located in Fredericksburg, Virginia, were retained to provide administrative services to the Plans. In addition, the applicant states that Mr. Gorman was a pension trust officer with the National Bank of Fredericksburg, in Fredericksburg, Virginia. Thereafter, the applicant represents, Mr. Gorman established his own pension administration business in the Fredericksburg area and the Plans transferred their business to Mr. Gorman's company.

The applicant represents that Mr. Gorman prepared the Plans' tax returns and Department of Labor reports since

[11] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the exemption, references to section 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[12] In this regard, the applicant represents that from 1989 to 1998 the gross rent was $48,877 and the total expenses incurred to be $30,281. Accordingly, the Plans' total return on this investment amounted to approximately $18,596.

[13] The Department expresses no opinion as to whether the acquisition and holding of the Property by the Plans met the requirements of section 404 of the Act.

1989. The applicant further represents that he relied on the advice and counsel of Mr. Gorman prior to engaging in the Sale of the Property. The applicant states that Mr. Gorman was kept abreast of all developments relating to the transaction. The applicant further states that Mr. Gorman advised that the transaction as executed would be acceptable under applicable law as long as it would be documented by a qualified real estate appraiser that the price was at its fair market value.

6. The applicant retained the services of Mr. William R. Johnson (Mr. Johnson), MAI, an accredited appraiser with the Johnson Real Estate Services, Inc., located in Fredericksburg, Virginia. Mr. Johnson appraised the Property on April 25, 1998. Mr. Johnson represented that he is a certified general real estate appraiser, and represented that he and his firm were independent of the parties involved. After analyzing the Property, Mr. Johnson concluded that the fair market value of the Property, the "as is" market value of the fee simple interest in the Property, was $125,000. In reaching this conclusion as to the value of the Property, Mr. Johnson used the sales comparison approach. Last, Mr. Johnson indicated in his report that the exposure time for this value is about 10 months and the estimated marketing time to be between 9 and 12 months.

7. The applicant represents that on November 5, 1998, he purchased the limited partnership interests from the Plans for $125,000, the value of the Property as appraised by Mr. Johnson within the exposure time of 10 months.

Mr. O'Neill allocated $49,874 to the Profit Sharing Plan for its interest and $75,126 to the Money Purchase Plan for its interest. Mr. O'Neill determined to convert the Property into an office building for Cullen Inc. The cost of the conversion was $245,000. The applicant represents that Cullen Inc. currently leases the Property.

8. The applicant represents that in late 1998, Cullen Inc. learned that Mr. Gorman had sold his business and his company and left the area. O'Neill secured the services of Phipps, Buckholder, located in Fredericksburg, Virginia, to provide administrative services and tax return preparation for the Plans. Phipps, Buckholder discovered the prohibited transaction during the review of the records of the Plans. Shortly thereafter, the applicant voluntarily sought advice from counsel and accordingly, filed this exemption application with the Department.

9. The applicants represent that the exemption would be administratively feasible in that unwinding the transaction would likely cause losses to the Plans. It is in the interest of the Plans' participants and beneficiaries because the Plans' assets are now more liquid and investments can be more diversified. It is protective of their rights because the parties to the transaction obtained an independent appraisal prior to consummating the transaction and the purchase price of the Property was equal to its fair market value.

10. In summary, the Applicant represents that the requested retroactive individual exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) the Sale was a one time transaction for a lump sum cash payment; (b) the Plans received the fair market value of the Property at the time of the transaction; (c) the fair market value of the Property was determined by an independent, qualified real estate appraiser; and (d) the Plans paid no commissions or other expenses relating to the Sale.

FOR FURTHER INFORMATION CONTACT: J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 25th day of January, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–2122 Filed 1–31–00; 8:45 am]

BILLING CODE 4510–29–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–01; Exemption Application No. D–10755, et al.]

Grant of Individual Exemptions; South Central New York District Council of Carpenters Pension Fund (the Fund), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and

representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

South Central New York District Council of Carpenters Pension Fund (the Fund) Located in Johnson City, New York

[Prohibited Transaction Exemption 2000–01; Exemption Application No. D–10755]

Exemption

The restrictions of sections 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: the sale (the Sale) of improved real property (the Property) to the Fund by the Local 281 Carpenters Property Corporation (the Corporation), a party in interest with respect to the Fund, provided the following conditions are met:

(a) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(b) The Fund purchases the Property for cash from the Corporation for the lesser of $250,000 or the fair market value of the Property as of the date of the Sale;

(c) the Sale is monitored and approved by an independent fiduciary acting on behalf of the Fund;

(d) The Sale is a one-time transaction for cash; and

(e) The Fund pays no fees or commissions in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1999 at 64 FR 70740.

Written Comments

The Department received one comment from interested persons (the commentator) regarding the notice of proposed exemption (the Notice).

With respect to the comment received by the Department from the commentator, the letter expressed total opposition to the proposed transaction. The letter further stated that "the money was meant to be for pension purposes * * *" and that the commentator "will lose by this deal." The commentator lastly remarked that the "money could grow through [other] investments.

The applicant had the Fund's independent fiduciary, Mr. John P. Jeanneret, Ph.D. (Mr. Jeanneret) respond to the commentator * * *" In this regard, Mr. Jeanneret stated that the purchase of the Property constitutes a prudent investment and that the Fund will obtain the Property at a favorable price, which is 16% less than the equalized value of the property's tax assessment and equivalent to the fair market value of the property as if it was vacant land and ready for redevelopment. In addition, Mr. Jeanneret stated that the proposed transaction is an appropriate investment for the following reasons: it represents less than 1% of the Fund's assets, it would relieve the Fund of the continued obligation to pay rent, and it would provide additional income for the Fund in the form of rent from the Property's other tenants. Mr. Jeanneret, lastly, reminded the commentator that "the Fund is a defined benefit plan that must provide promised retirement benefits to its participants, regardless of investment downturns or depressed real estate values." Mr. Jeanneret continued by stating that given the ratio of plan assets this investment represents, 1%, "the impact of an investment downturn or depressed real estate value * * *" would not affect the security of * * *" guaranteed pension benefits."

The Department believes that the Fund's purchase of the Property is consistent with the Fund's investment objectives, in the interests of the participants, and is protective of the Fund and its participants. Accordingly, based on the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: J. Martin Jara of the Department, telephone (202) 219–8883 (this is not a toll free number).

S & S Partnership, Inc. Profit Sharing Plan (the Plan) Located in Stony Brook, New York

[Prohibited Transaction Exemption 2000–02; Exemption Application No. D–10807]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan (the Loan) totaling $200,000 by the Plan to Hiramco Realty Corporation (Hiramco), a disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The terms of Loan by the Plan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) the Loan does not exceed 20% of the assets of the Plan, throughout the duration of the Loan;

(c) the Loan is secured by a first mortgage on certain real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the principal amount of the Loan;

(d) the fair market value of the collateral remains at least equal to 150% of the outstanding principal balance plus accrued but not unpaid interest, throughout the duration of the Loan;

(e) Mr. Steven C. Fuchs and his wife, Margaret Fuchs (the Fuchs) are the only Plan participants to be affected by the Loan transaction; [1] and

(f) should any employee of the S & S Partnership, Inc., the Plan Sponsor, become eligible for plan participation, the new plan participant will be enrolled in another qualified retirement plan or Hiramco may elect to pay the entire balance on the Loan.

[1] Since the Fuchs are the sole owners of the Plan sponsor and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to notice of proposed exemption published on December 17, 1999 at 64 FR 70742.

For Further Information Contact: J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Les Olson Company, Inc. Money Purchase Plan (M/P Plan) and Les Olson Company, Inc. Profit Sharing Plan (P/S Plan, collectively; the Plans) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 2000–03; Exemption Application Nos. D–10810 and D–10811]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed series of loans (the Loans), originated within a five-year period, by the Plans to Les Olson Company, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions are met:

(1) The total amount of the outstanding Loans does not exceed 20 percent (20%) of the Plans' total assets at any time during the transactions and each of the Plan's allocable portion of such Loans does not exceed 20 percent (20%) of such Plan's total assets;

(2) Each Loan entered into by the Plans is made pursuant to the terms and conditions of the Loan Agreement (the Loan Agreement) executed by the parties and signed on behalf of the Plans by the Plans' duly appointed independent, qualified fiduciary (the Independent Fiduciary);

(3) All terms and conditions of the Loans are at least as favorable to the Plans as those the Plans could obtain in an arms-length transaction with an unrelated third party;

(4) Each Loan is: (i) For a maximum term of five years pursuant to terms and conditions of the Loan Agreement; (ii) fully amortized and payable in equal monthly installments of principal and interest; (iii) used exclusively by the Employer to purchase office equipment (the Equipment) which will be leased by the Employer in the ordinary course of its business to unrelated parties; and (iv) secured by duly perfected security interests in the new and used Equipment, and by certain leases of Equipment (Equipment Leases) where such Equipment Leases are assigned and pledged as collateral for the Loans, which is at all times equal to 200% of the outstanding principal balance of such Loan;

(5) New Equipment is valued for collateralization purposes at 80 percent (80%) of the invoice price paid by the Employer to purchase such Equipment less taxes and transportation expenses. Used Equipment and any Equipment Lease pledged as collateral for the Loans is valued by an independent qualified appraiser;

(6) Prior to the approval of each Loan, the Independent Fiduciary determines, on behalf of the Plans, that each Loan is prudent and in the best interests of the Plans, and protective of the Plans and its participants and beneficiaries;

(7) The Independent Fiduciary conducts a review of all terms and conditions of this exemption, and the Loans, including the applicable interest rate; the sufficiency of the collateral pledged for each Loan; the financial condition of the Employer; and the compliance with the 20% limitation for the Plans (and each Plan's) maximum total Loan amount prior to approving each disbursement under the Loan Agreement; and

(8) The Independent Fiduciary is authorized to take whatever action is necessary to protect the Plans' interests throughout the duration of the exemption, and throughout the duration of any Loan entered into under this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 24, 1999 at 64 FR 66208.

Temporary Nature of Exemption

The exemption will be temporary and will expire five (5) years from the date of publication in the **Federal Register** of this notice granting the exemption. Subsequent to the expiration of the exemption, the Plans may hold any Loans originating during this five-year period until the Loans are repaid or otherwise terminated.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883 (This is not a toll-free number).

TMI Systems Design Corporation 401(k) Profit Sharing Plan (the Plan) Located in Dickinson, North Dakota

[Prohibited Transaction Exemption 2000–04; Exemption Application No. D–10821]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for $185,316 in cash, provided the following conditions are satisfied: a) the sale is a one-time transaction for cash; b) no commissions are charged in connection with the transaction; c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 24, 1999 at 64 FR 66210.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and (3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and

accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 25th day of January, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–2123 Filed 1–31–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–014]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS); Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Tuesday, February 15, 2000, 8 a.m. to 5 p.m.; Wednesday, February 16, 2000, 8 a.m. to 5 p.m.; Thursday, February 17, 2000, 8 a.m. to 2 p.m.

ADDRESSES: Ames Research Center, Building 240, room 202, Moffett Field, California 94035–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Anne L. Kinney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0362.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Update of Office of Space Science
—Update on Origins
—Present Science Content
—Astrobiology (The Institute and the Program)
—Hubble Space Telescope Status

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 24, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–2052 Filed 1–31–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Thursday, February 3, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Proposed Rule: Part 702, NCUA's Rules and Regulations, Prompt Corrective Action—Definition of Complex Credit Union and Risk-Based Net Worth Standards.

2. Final Rule: Parts 702, 741 and 747, NCUA's Rules and Regulations, Prompt Corrective Action.

RECESS: 2:45 p.m.

TIME AND DATE: 3 p.m., Thursday, February 3, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Two (2) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

2. Administrative Action under Part 703 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

3. Two (2) Personnel Actions. Closed pursuant to exemptions (2), (5), (6), (7), and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Robert M. Fenner,

Acting Secretary of the Board.

[FR Doc. 00–2216 Filed 1–28–00; 11:39 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Visual Arts-Millennium Projects Section) to the National Council on the Arts will be held on February 22, 2000. The panel will meet from 2:00 to 2:30 p.m. via teleconference from room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines and Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: January 21, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–2056 Filed 1–31–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, February 8, 2000.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW, Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: "Presentation on the NTSB International Aviation Safety Program."

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs.

Barbara Bush at (202) 314–6220 by Monday, February 7, 2000.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: January 28, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–2208 Filed 1–28–00; 3:06 p.m.]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1718]

Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) issued a draft NUREG–1718 entitled "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility" for review and comment.

DATES: Submit comments by March 13, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays.

Draft NUREG–1718 is available for inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

A free single copy of draft NUREG–1718, to the extent of supply, may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001. Draft NUREG–1718 is available on the World Wide Web at http://www.nrc.gov/NRC/NUREG/indexnum.html. Comments may be submitted by selecting the "comments" link on the main page for the draft NUREG.

FOR FURTHER INFORMATION CONTACT: For further information regarding draft NUREG–1718 contact Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6522.

SUPPLEMENTARY INFORMATION: The NRC anticipates reviewing applications for licensing a mixed oxide (MOX) fuel fabrication facility under 10 CFR Part 70. The MOX fuel fabrication facility is a plutonium processing and fuel fabrication plant. Specifically, 10 CFR Part 70 requires that applicants for plutonium facilities obtain the NRC's approval prior to initiating construction and the NRC must later confirm that the facility is constructed in accordance with the license application. As a result, the NRC expects to receive two separate submittals: (1) an application for construction approval and (2) a license application.

The NRC prepared draft NUREG–1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," as a MOX specific standard review plan (SRP). In addition to addressing facility specific hazards, draft NUREG–1718 provides the staff with review guidance for the application for construction approval and the license application. Additionally, the NRC is currently considering revisions to 10 CFR Part 70 and the associated SRP, draft NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," (see http://techconf.llnl.gov/cgi-bin/topics). To the extent appropriate, revisions to finalize draft NUREG–1718 will reflect NRC program changes to 10 CFR Part 70 and the accompanying SRP.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of January, 2000.

Michael F. Weber,

Director, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 00–2057 Filed 1–31–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [65 FR 3986, January 25, 2000]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: January 25, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Tuesday, January 25, 2000 at 11:00 a.m., was cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

January 27, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–2160 Filed 1–27–00; 4:19 p.m]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 31, 2000.

A closed meeting will be held on Thursday, February 3, 2000, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, February 3, 2000, will be:

Institution of injunctive actions;

Institution and settlement of injunctive actions;

Institution of administrative proceedings of an enforcement nature; and

Institution and settlement of administration proceedings of an enforcement nature.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 27, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–2267 Filed 1–28–00; 2:39 p.m.]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42353; File No. SR–NASD–99–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to ECN/ATS Participation in the ITS/CAES System

January 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on December 27, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rules 5210, 5220 and 6320 of the Rules of the NASD, to permit ECNs and ATSs to register as market makers in listed securities through Nasdaq-provided quotation and trading facilities. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Rule 5210. Definitions

(a) through (d)—No changes.

(e) The term "ITS/CAES Market Maker shall mean a member of the Association that is registered as a market maker with the Association for the purposes of participation in ITS through CAES with respect to one or more ITS securities in which he is then actively registered. *The term "ITS/CAES Market Maker" shall also include a member of the Association that meets the definition of electronic communications of network ("ECN"), as defined in SEC Rule 11Ac–1–1(a)(8), or alternative trading system ("ATS"), subject to SEC Regulation ATS Rule 301(b), and has voluntarily chosen to register with Nasdaq and meets the terms of registration set forth in the Nasdaq-provided agreement linking ECNs and ATSs to the CAES system.* Registration as an ITS/CAES Market Maker is mandatory for all registered CQS market makers in securities eligible for inclusion in the ITS/CAES linkage.

* * * * *

Rule 5220. ITS/CAES Registration

In order to participate in ITS, a market maker *or ECN/ATS* must be registered with the Association as an ITS/CAES market maker in each security in which a market will be made in ITS. Such registration shall be conditioned on the ITS/CAES Market Maker's continuing compliance with the following requirements:

(a)–(g) No change.

(h) Election to participate in ITS/CAES through either automatic execution or order delivery. As a part of its contractual obligation required under subsection (i) below, Market Makers choosing order delivery status are required to satisfactorily demonstrate to Nasdaq the technical capacity to properly and timely respond to orders delivered through CAES.

(i) With respect to order delivery ITS/CAES Market Makers, execution of an addendum to the ITS/CAES Market Maker application agreement at least two business days prior to the requested date of operation.

* * * * *

Rule 6320. Registration as a CQS Market Maker

(a) No Change.

(b) An Association member, *including an operator of an ECN/ATS as defined in Rule 5210(e),* seeking registration as a CQS market maker shall file an application with the Association. The application shall certify the member's good standing with the Association and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a CQS market maker shall become effective upon receipt by the member of notice of approval of registration by the Association.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq operates a trading system known as the Computer Assisted Execution System ("CAES"), which allows NASD member firms to direct orders in Consolidated Quotation System ("CQS") securities to Market Makers for execution. Through CAES, NASD order-entry firms and Market Makers can participate in the "Third Market" [2] by entering market and limit orders in exchange-listed securities to be executed against other market makers quoting at the best bid or offer in those securities. CAES also serves as the NASD's interface with the Intermarket Trading System ("ITS").[3]

The Third Market allows traditional market makers to actively make markets in a large number of New York Stock Exchange and American Stock Exchange listed stocks. While this market is currently utilized by many NASD member firms, Nasdaq believes that certain enhancements to CAES could provide more significant benefits to all NASD members. The enhancements

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[1] 15 U.S.C. 78s(b)(1).

[2] Off-exchange trading of exchange-listed securities.

[3] ITS is a communication network designed to facilitate intermarket trading in exchange-listed securities by linking the NASD and the national securities exchanges. Operation of ITS is governed by a national market system plan known as the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("ITS Plan"). Under the current ITS Plan, NASD members participating as ITS market makers must confine their market making to "Rule 19c–3 securities" (*i.e.*, reported securities that were (1) not traded on a national securities exchange prior to April 26, 1979, or (2) traded on such an exchange on April 26, 1979, but which ceased to be traded on an exchange for any period of time thereafter. By Commission action on December 9, 1999, this limitation will be removed effective February 14, 2000. *See* Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

would allow CAES market makers to compete more effectively with any and all markets operating today by providing the best possible executions for investors, therein contributing to a greater national market system.

Over the past three years, NASD members acting as ECNs in The Nasdaq Stock Market have provided increasingly more significant benefits to investors in Nasdaq securities. ECNs have helped to contribute to narrower spreads and have enhanced the ability for investors to control the prices at which they obtain executions. While these benefits have accrued to Nasdaq securities, ECNs have not traded in great measure in securities listed on traditional exchanges.

The reason for this is, in part, that NASD Rules currently do not clearly provide that ECNs can register as CQS and CAES market makers. In addition, CAES functionality currently permits only automatic executions in accessing the market maker's quotation. ECNs, which, to date, have functioned only within order delivery systems (*i.e.*, SelectNet for Nasdaq securities), have been reluctant to participate in CAES due to this system feature.

Nasdaq is now proposing to modify the CAES rules and system to allow ECN/ATSs to register as market makers in listed securities through CAES. Nasdaq believes that ECN/ATS participation in CAES would have a positive impact upon this market by significantly increasing order flow, thereby contributing to a more active and liquid market to the benefit of all CAES users, and, ultimately, to investors. Furthermore, Nasdaq is unable to discern any reason why ECN/ATSs should be denied the opportunity to participate in the Third Market on an equal basis with other NASD members who choose to register as ITS/CAES Market Makers.

Accordingly, Nasdaq proposes to allow ECN/ATSs to choose to be deemed ITS/CAES Market Makers by amending NASD Rules 5210(e), 5220 and 6320, thereby including ECN/ATSs within the definition of "ITS/CAES Market Maker" and "CQS Market Maker," and requiring the execution of an ECN/ATS addendum to the ITS/CAES Market Maker application agreement. These changes would allow any ECN/ATS to compete on an equal basis with other Market Makers, yet also require such ECN/ATS to assume the additional obligations and restrictions imposed upon ITS/CAES Market Makers by the ITS Plan and NASD rules. An ECN/ATS that chooses to exercise this option of registration, consequently, would be required to post two-sided quotations, be firm for the price and size of those quotations, and participate in the CAES execution service on the same footing as other non-ECN/ATS ITS/CAES market makers.[4] This selection would also impose the additional compliance duties traditionally required of market makers participating in ITS/CAES, including, for example, the rules concerning pre-opening application, trade through, locked and crossed markets, and block transactions.[5] ECN/ATSs would assume the added responsibility for implementing any and all technological and programming modifications to their internal systems to demonstrate compliance with such requirements.

In registering ECN/ATSs as ITS/CAES Market Makers, ECN/ATS CAES Market Makers will be required to operate on terms that are the same as traditional CAES Market Makers. In particular, within the ITS/CAES market, there will be an absolute prohibition against quote access fees. Because ECN/ATSs would be registered as market makers, the Commission's interpretation of its firm quote rule which prohibits quote access fees by market makers would apply to ECN/ATS market makers as it does with traditional ITS/CAES market makers.[6] This prohibition will eliminate the inequitable position that currently exists within the Nasdaq market in which ECN/ATSs, unlike market makers, are permitted to charge quote access fees.[7] Furthermore, Nasdaq believes that, due to the CAES interface with ITS, the implementation of quote access fees would be entirely infeasible within CAES and would negatively affect the terms of the ITS plan.

In addition, as discussed above, modifications must be made to the operation of the CAES system itself to technologically accommodate ECN/ATS participation. In the current CAES environment, all orders are executed against market makers through an automatic execution process. That is, the system delivers a report of a completed execution at the market maker's quoted price and size when another CAES market participant or ITS Exchange chooses to access that market maker's quote. In an effort to conform to the stated necessity of ECN/ATSs wherein they would be unable to participate within the current automatic execution environment, Nasdaq would modify CAES to facilitate order delivery interaction for any ITS/CAES Market Maker that chooses to operate in an order delivery mode as long as the firm automates its response to the delivered orders. The change would make it clear that either an ECN/ATS or non-ECN/ATS Market Maker could receive the delivery of an order (as opposed to an execution report), and immediately accept or decline that delivery by automated means.[8] A decline would be permissible only if it were consistent with the SEC's and NASD's firm quote rules.

Nasdaq contends that this modification will allow market makers to operate effectively and rapidly in fast moving markets. Indeed, in comparing the proposed CAES order delivery system with the ITS configuration, Nasdaq anticipates CAES order delivery market makers to be capable of responding to CAES and ITS orders in approximately 2–5 seconds.[9]

Further, Nasdaq believes the CAES order delivery system to be entirely consistent with the ITS Plan, in that the ITS/CAES market will continue to require automated responses to all ITS commitments sent by other exchange participants to the Third Market. In fact, the only variation between the current and proposed CAES interface to ITS is that, in certain situations, the automated

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[4] With respect to the two-sided quotation obligation, ECN/ATS CAES Market Makers will be permitted to auto-quote in 100 share lots away from the national best bid and offer to the extent that a particular ECN or ATS does not have a customer order to represent. If an ECN/ATS CAES Market Maker quotation is accessed because such quotation becomes the national best bid or offer or is subject to another rule requiring its execution, the ECN/ATS CAES Market Maker will be required to assume a proprietary position in that security.

[5] NASD Rules 5240, 5262, 5263, and 5264, respectively.

[6] Specifically, the Commission has stated in response to a request for "no action relief" that SEC Rule 11Ac1–1(c)(2) ("SEC Firm Quote Rule") does not permit a market maker posting a quote to impose a fee on market participants that customarily trade with the market maker at its quote without a markup. *See* letter from Robert L.D. Colby, Deputy Director, SEC Division of Market Regulation, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc., dated May 5, 1998. ECN/ATSs, though not classified within the Nasdaq market as market makers (NASD Rule 4623), will be classified as market makers within the ITS/CAES market.

[7] *See, e.g.*, letter from Richard R. Lindsey, Director, SEC Division of Market Regulation, to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corporation, dated January 17, 1997, granting "no action relief" for ECNs that impose quote access fees upon non-customer broker-dealers.

[8] If order delivery is selected, the ITS/CAES market maker (ECN or non-ECN) would be required to demonstrate to Nasdaq its ability to conform to system specifications which would mandate an automated and immediate acceptance or rejection, consistent with SEC and NASD firm quote obligations.

[9] The ITS Plan does not have any requirement related to response times. In fact, in ITS, when one participant forwards a commitment to another, the commitment has a life of one minute or two minutes. The responding market is not required by system or rule to respond to that message, except in so far s the firm quote rule requires a response.

response to the ITS commitment will incorporate an automated response by the CAES participant to CAES, followed, in succession, by an automated response from CAES to ITS. This fully automated response procedure, as with all others contained in this proposal, will be in compliance with every aspect of the ITS Plan.

2. *Statutory Basis*

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 11A(a)(1)(C), 11A(a)(1)(D), 11A(a)(2) and 15A(b)(c) of the Act. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of air and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 11A(a)(1)(D) states that the linking of all markets for qualified securitis through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders and contribute to best execution of such order. Section 11A(a)(2) directs the Commission to facilitate the establishment of a national market system for qualified securities. Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed rule specifically promotes the objectives of these sections of the Act by encouraging participation in the National Market System for listed securities and providing fair and unburdened access for all NASD members, to the ultimate benefit of member firms and public customers alike.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine where the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, commenters are invited to address whether ATSs (in addition to ECNs) should be included in the proposal. The Commission also notes that the proposed rule change will have an effect on the operation of the ITS pre-opening application. Generally, under ITS rules, an exchange specialist is required to accept those pre-opening responses sent to the exchange by market makers from other participant markets prior to the opening of their markets for trading in the security. If, however, one or more market makers from other participant markets have already opened trading in a security, the exchange specialist is not required to (but may in his discretion) accept preopening responses from that other participant market for the purpose of including them in the opening transaction.[10] Because a pre-opening response from the ITS/CAES Third Market is sent in aggregate form—that is, pre-opening third market buy and sell interest from all third market makers is sent as one response, it is possible that an ECN/ATS CAES Market Maker trading a security before the opening will trigger the exception to the requirement that the exchange specialist accept a pre-opening response from the third market. The Commission requests that interested persons provide written comment on this aspect of the proposal.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–75 and should be submitted by February 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2117 Filed 1–31–00; 8:45 am]

BILLING CODE 8010–01–M

[10] The same procedure applies for re-openings following trading halts. *See* Exhibit A of the ITS Plan, "Pre-Opening Application Rule," Sec. (b)(iii)(B).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3209]

Amendment to Culturally Significant Objects Imported for Exhibition; Determinations: "Ancient Faces: Mummy Portraits from Roman Egypt"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: On January 7, 2000, Public Notice 3196 was published at page 1219 of the **Federal Register** (65 FR 1219) by the United States Department of State pursuant to Pub. L. 89–259 relating to the exhibit "Ancient Faces: Mummy Portraits from Roman Egypt." I hereby determine that an additional work of art

to be included in the exhibit and imported from abroad for the temporary exhibition without profit within the United States is of cultural significance. I also determine that the temporary exhibition of this work of art as part of the exhibit at The Metropolitan Museum of Art, New York City, from on or about February 14, to on or about May 7, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U. S. Department of State (telephone: 202–619–6981). The address is U.S. Department of State, SA–44, 301—4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: January 24, 2000.

William B. Bader,

Assistant Secretary For Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–2119 Filed 1–31–00; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of the Change in Meeting Date of the Industry Functional Advisory Committee on Electronic Commerce (IFAC–4)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Change in Meeting Date.

SUMMARY: A notice was published in the **Federal Register** dated January 14, 2000, Volume number 65, FR DOC. 98.00–984, page 2453–2454, announcing a meeting of the Industry Functional Advisory Committee on Electronic Commerce (IFAC–4) scheduled for February 3, 2000, from 9 a.m. to 3 p.m. The meeting was to be opened to the public from 9 a.m. to 12 noon and closed to the public from 12 noon to 3 p.m. However, due to scheduling conflicts the meeting has been rescheduled for February 4, 2000, from 8 a.m. to 5 p.m. The meeting will be opened to the public from 8 a.m. to 3 p.m. and closed to the public from 3 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ladan Manteghi, Office of the United States Trade Representative, (202) 395–6120.

Pate Felts,

Assistant U.S. Trade Representative.

[FR Doc. 00–2059 Filed 1–31–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Foreign Country Practices and Foreign Countries Engaging in Discriminatory Procurement Practices; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Executive Order 13116 of March 31, 1999 requires the United States Trade Representative (USTR) to conduct a review by April 30, 2000, of U.S. trade expansion priorities and to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports; and to identify foreign countries engaging in discriminatory government procurement practices. USTR is requesting written submissions from the public concerning practices that should be considered by the USTR for these purposes.

DATES: Submissions must be received by 12 noon on February 25, 2000.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Questions concerning the filing of submissions should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432; legal questions regarding Executive Order 13116 and Super 301 should be addressed to Demetrios Marantis, Assistant General Counsel, (202) 395–9626; and legal questions regarding Title VII should be addressed to Stephen Kho, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to Part I of Executive Order 13116 of March 31, 1999 (64 FR 1633), the USTR is required, no later than April 30, to review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. Part II of Executive Order 13116 requires the USTR, no later than April 30, to review and identify other countries' compliance with the Agreement on Government Procurement (GPA) and other government procurement agreement obligations, or otherwise maintain, in government procurement, a significant and persistent practice of discrimination against U.S. products or services which results in identifiable harm to United States businesses and whose products or services are acquired in significant amounts by the United States Government.

The USTR must submit to the congressional committees of jurisdiction a report on the priority foreign country practices identified under Part I of the Executive Order and a report on countries engaging in discriminatory government procurement practices, identified under Part II of the Executive Order and publish the reports in the **Federal Register**. The USTR also may describe in the report foreign country practices that may warrant identification in the future or that were not identified because they are being addressed by provisions under U.S. trade law, existing bilateral trade agreements, or in trade negotiations, and progress is being made toward their elimination.

Executive Order 13116 also requires the USTR to initiate investigations under section 302(b)(1) of the Trade Act of 1974 as amended (19 U.S.C. 2412 (b)(1)), no later than 90 days after submission of the reports, with respect to any of the identified practices that have not been satisfactorily resolved in the interim.

Requirements for Submissions

The USTR invites submissions on priority foreign country practices and countries engaging in discriminatory government procurement practices that should be considered for identification in accordance with the criteria established under Executive Order 13116. If the practice is also the subject of comments submitted in connection with the 2000 National Trade Estimate Report on Foreign Trade Barriers (2000 NTE Report), the present submission should identify the related comments in the NTE public docket and include any additional pertinent information, including information explaining why the practice rises to the level of a "priority foreign country practice" within the meaning of Executive Order 13116. If the practice was not the subject of comments submitted in connection with the 2000 NTE Report, the submission should: (1) Include information on the nature and significance of the practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the practice; and (3) provide any other information considered relevant. Such information may include information on the relevant trade and

government procurement agreements to which a foreign country is a party, its compliance with those agreements, and any other information related to the factors set forth in Parts I and II of Executive Order 13116 for identification of priority foreign country practices and countries that engage in discriminatory government procurement practices.

Interested persons must provide twenty copies of any submission, in English, to Sybia Harrison, Staff Assistant to Section 301 Committee, Office of the United States Trade Representative, by noon on February 25, 2000. Because submissions will be placed in a public file, open to public inspection at USTR, business-confidential information should not be submitted. Inspection is only by appointment with the staff of the USTR Public Reading Room and can be arranged by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–2121 Filed 1–31–00; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–179]

WTO Dispute Settlement Proceeding Regarding U.S. Antidumping Duties on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip in Coils From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the government of Korea has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine the imposition by the United States of antidumping duties on stainless steel plate in coils (SSPC) and on stainless steel sheet and strip in coils (SSSS) from Korea. Specifically, on March 31, 1999, the Department of Commerce made a final affirmative antidumping determination with respect to imports of SSPC from Korea. 64 FR 15444 (March 31, 1999). This determination resulted in issuance of an antidumping duty order on SSPC from Korea. 64 FR 27756 (May 21, 1999). Further, on June 8, 1999, the Department of Commerce made a final affirmative antidumping determination with respect to imports of SSPC from Korea. 64 FR 30664 (June 8, 1999). This determination resulted in issuance of an antidumping duty order on SSSS from Korea. 64 FR 30555 (July 27, 1999). These determinations raised identical methodological issues with respect to certain aspects of the calculation of the level of dumping by a Korean producer.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 1, 2000, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122 Attn: Korea Stainless Steel Dispute, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rhonda K. Schnare, Office of the General Counsel (202) 395–3582.

SUPPLEMENTARY INFORMATION: By letter dated October 14, 1999, the Government of Korea requested the establishment of a panel to examine the Department of Commerce's final affirmative determinations of dumping resulting in antidumping duty orders on SSPC and SSSS from Korea. At its meeting on November 19, 1999, the WTO Dispute Settlement Body (DSB) established such a panel. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Government of Korea and Legal Basis of Complaint

In its request for the establishment of a panel, the Government of Korea has identified as the measures at issue (1) the antidumping duty order concerning SSPC from Korea (64 FR 27756 (May 21, 1999)) and the underlying determination of sales at less than fair value; and (2) the antidumping duty order concerning SSPC from Korea (64 FR 30555 (July 27, 1999)) and the underlying determination of sales at less than fair value. The Government of Korea alleges that these measures are inconsistent with several provisions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement"), including the following specific allegations:

- Commerce's decision to treat as a bad debt expense certain sales of SSPC and SSSS to a customer who subsequently went bankrupt was inconsistent with Article 2.4 of the Anti-Dumping Agreement because the lack of payment did not constitute a "difference in the conditions and terms of sale," "demonstrated to affect price comparability." Thus, Commerce failed to make a "fair comparison" as required by article 2.4 of the Anti-Dumping Agreement;
- Sales for which payment was not received cannot be regarded as sales "in the ordinary course of trade" and thus Commerce's inclusion of such sales in its calculation was inconsistent with Article 2.1 of the Anti-Dumping Agreement;
- Commerce's use of the Korean won amount paid for merchandise sold to customers in Korea, rather than the U.S. dollar amount shown on the invoice, and the subsequent conversion of the won amount into U.S. dollars, distorted the basis of the price comparison in a manner inconsistent with the "fair comparison" requirement under Article 2.4 of the Anti-Dumping Agreement;
- Commerce's division of the period of investigation into two sub-periods, and calculation of separate weighted-average normal values and export prices for each sub-period was inconsistent with the requirement of a single weighted-average normal value and export price under Article 2.4.2 of the Anti-Dumping Agreement, and thus failed to result in a "fair comparison" as required by Article 2.4 of the Anti-Dumping Agreement;
- Commerce's division of the period of investigation into two sub-periods in the final determination, which it had not done in the preliminary determination, resulted in a failure to disclose an "essential fact" as required by Article 6.9 of the Anti-Dumping Agreement, and depriving the parties of "full" and "ample opportunity" to defend their interests as required by Articles 6.1 and 6.2 of the Anti-Dumping Agreement;
- Commerce's division of the period of investigation into two sub-periods was done in response to a devaluation in the Korean won, whereas Article 2.4.1 of the Anti-Dumping Agreement only permits alteration of the calculation methodology in response to an appreciation of a foreign currency against the U.S. dollar, and thus failed to result in a "fair comparison" as

required by Article 2.4 of the Anti-Dumping Agreement;

• The determinations with respect to SSPC and SSSS are inconsistent with past Commerce practice and decisions of U.S. courts in various respects, and thus failed to result in a "fair comparison" as required by Article 2.4 of the Anti-Dumping Agreement;

• The determinations with respect to SSPC and SSSS failed to set forth "in sufficient detail the findings and conclusions on all issues of fact and law" and to provide "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures" as required by Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement;

• For the above reasons, the measures are applied pursuant to investigations which were not conducted in accordance with the provisions of the Anti-Dumping Agreement as required by Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994;

• For the above reasons, Commerce did not administer the antidumping laws in a "uniform, impartial and reasonable manner," as required by Article X:3 of GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS 179 ("U.S.-Anti-Dumping Duties on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip in Coils from Korea") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–2051 Filed 1–31–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6729; Notice 1]

Kolcraft Enterprises, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that 27,624 child restraint systems fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Kolcraft has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

FMVSS No. 213, S5.5.2(j) requires each child restraint system equipped with an anchorage strap to include the following statement on a permanent label:

> Secure the top anchorage strap provided with this child restraint as specified in the manufacturer's instructions.

Kolcraft has determined that certain child restraints it manufactured have beeh shipped without the label required by S5.5.2(j). The child restraints containing the noncompliance are Performa and Automate model convertible child restraints equipped with tether straps that were both manufactured and shipped before November 19, 1999. Kolcraft has shipped 27,484 Performas and 140 Automates with tether straps and without the statement required by the standard. When Kolcraft discovered the noncompliance, it stopped shipment until the restraints in inventory could be labeled with the required statement. Thus, some restraints that were manufactured before November 19, 1999 are in compliance because they were labeled before shipment at the plant.

Kolcraft supports its application for inconsequential noncompliance with the following:

Kolcraft inadvertently overlooked this provision when it was redesigning its restraints to include anchorage straps, because Kolcraft relied on the changes made in the March 5, 1999 final rule regarding tether anchorage straps to identify the changed performance requirements. Since S5.5.2(j) was already in the standard, and not changed by the March 5, 1999 final rule, the labeling requirement was overlooked by Kolcraft until a routine compliance verification test identified the missing language.

Kolcraft did, however, permanently label the tether anchorage strap itself on all of the affected restraints with language warning of the safety risk of improper installation. The label reads: "Failure to properly adjust and secure tether to correctly installed tether anchor can result in serious injury or death. Only use with a vehicle tether anchor installed by dealer or factory." And, the instruction manual of each affected restraint includes full instructions for proper tether attachment.

Kolcraft believes that the noncompliance here should be found to be inconsequential because the safety goal of the labeling requirement has been satisfied by the language on the tether strap itself. Any person attempting to attach a tether strap to an anchorage will see the language emphasizing the need for proper installation, because the language is permanently labeled on the strap itself.

Kolcraft does not question the value of notifying consumers to check the instruction manual. Under these circumstances, however, where the substance of the notification requirement is achieved, located

on a place on the product where it is likely to be seen by the consumer, the noncompliance does not present a consequential risk to motor vehicle safety. Kolcraft respectfully requests that NHTSA grant its petition for exemption.

Interested persons are invited to submit written data, views, and arguments on the application of Kolcraft described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 2, 2000.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 27, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–2129 Filed 1–31–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Means Test Thresholds

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLA) for means test income limitations. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 1999.

DATES: These rates are effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Chief Policy and Operations, Health Administration Service, (10C3), Veterans Health Administration, VA, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8302. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 38, United States Code (U.S.C.) § 1722(c), requires that on January 1 of each year, the Secretary increase the means test threshold amounts by the same percentage the maximum rates of pension benefits were increased under section 5312(a) during the preceding calendar year. Under the provisions of 38 U.S.C. section 5312 and section 306 of Public Law 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' indemnity compensation (DIC) program by the same percentage, and effective the same date, as increases in the benefit amount payable under Title II of the Social Security Act.

On October 25, 1999, for the period beginning December 1, 1999, the Social Security Administration announced in volume 64, Number 205 of the **Federal Register**, a 2.4 percent cost-of-living increase in Social Security Benefits under Title II of the Social Security Act. The Veteran Benefits Administration has indicated Pension benefits will be increased by a 2.4 percent cost-of-living increase effective December 1, 1999. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following income limitations for the Means Test Thresholds will be effective January 1, 2000.

Table 1.—Means Test Thresholds

(1) Veterans with no dependents:
(a) Category A: $22,887
(b) Category C: $22,888
(2) Veterans with 1 dependent:
(a) Category A: $27,468
(b) Category C: $27,469
(3) Veterans with 2 dependents:
(a) Category A: $29,000
(b) Category C: $29,001
(4) Veterans with 3 dependents:
(a) Category A: $30,532
(b) Category C: $30,533
(5) Veterans with 4 dependents:
(a) Category A: $32,064
(b) Category C: $32,065
(6) Veterans with 5 dependents:
(a) Category A: $33,596
(b) Category C: $33,597
(7) Child Income Exclusion is: $7,200
(8) The Medicare deductible is $776
(9) Maximum annual Rate of Pension effective 12/1/1999 are:
(a) The base rate is $8,989
(b) The base rate with one dependent is $11,773
(c) Add $1,532 each additional dependent

Dated: January 20, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–2054 Filed 1–31–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 21

Tuesday, February 1, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 209, 225, and 249

[DFARS Case 99-D013]

Defense Federal Acquisition Regulation Supplement; Debarment Investigation and Reports

Correction

In rule document 99-29984 beginning on page 62984 in the issue of Thursday, November 18, 1999, make the following corrections:

203.104-10 [Corrected]

1.On page 62984, in the third column,"Violation" should read, "Violations".

209.406-3 [Corrected]

2.On page 62985, in the second column, in Section 209.406-3(a)(ii)(F)*(4)*, "claims" should read,"Claims".

206.406-3(b)(i)(B) [Corrected]

3.On the same page, in the third column, in Section 209.406-3(b)(i)(B), "spending" should read, "suspending".

209.407-3(d) [Corrected]

4.On page 62986, in the first column, under Section 209.407-3(d), in the first line, in the title heading "official's s" should read, "official's".

[FR Doc. C9–29984 Filed 1-31-00; 8:45 am]

BILLING CODE 5000-04-M

POSTAL SERVICE

39 CFR Part 111

Barcode Requirements for Special Services Labels

Correction

In rule document 00–1570 beginning on page 3609, in the issue of Monday, January 24, 2000, make the following correction:

PART 111 [CORRECTED]

On page 3610, in the third column, in section 3.4 of the Domestic Mail Manual (DMM), the illustration was inadvertently omitted. Exhibit 3.4, Label 200, is added below:

Exhibit 3.4 Label 200

[FR Doc. C0–1570 Filed 1–31–00; 8:45 am]

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 65, No. 21

Tuesday, February 1, 2000

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864..... 1

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 1, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in—
California; published 1-31-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Part B initial claim determinations; telephone and electronic review requests; published 9-30-99
PENSION BENEFIT GUARANTY CORPORATION
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits; published 1-14-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 12-28-99
Bombardier; published 12-28-99
British Aerospace; published 12-28-99
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid transportation—
Breakout tanks; industry standards adoption; correction; published 2-1-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
Florida; comments due by 2-11-00; published 12-13-99
Melons grown in—
Texas; comments due by 2-9-00; published 1-10-00
Raisins produced from grapes grown in—
California; comments due by 2-8-00; published 12-10-99
COMMERCE DEPARTMENT
International Trade Administration
Watches, watch movements, and jewelry:
Duty-exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-8-00; published 12-10-99
Atlantic highly migratory species—
Atlantic pelagic longline fishermen; time/area closures; hearings and Advisory Panel meetings; comments due by 2-11-00; published 12-28-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-10-00; published 1-26-00
West Coast States and Western Pacific fisheries—
Western Pacific Region pelagic; comments due by 2-10-00; published 12-27-99
Marine mammals:
Incidental taking—
San Francisco-Oakland Bay Bridge, CA; pile installation demonstration project; comments due by 2-7-00; published 1-7-00
COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Advisors that provide advice by means of various media; registration exemption; comments due by 2-7-00; published 12-7-99
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Central air conditioners and heat pumps; energy conservation standards; comments due by 2-7-00; published 11-24-99
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances; allocation; comments due by 2-7-00; published 1-6-00
Air quality implementation plans; approval and promulgation; various States:
Kansas; comments due by 2-10-00; published 1-11-00
Missouri; comments due by 2-11-00; published 1-12-00
Tennessee; comments due by 2-7-00; published 1-7-00
Hazardous waste:
Identification and listing—
Exclusions; comments due by 2-7-00; published 12-9-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tebufenozide; comments due by 2-7-00; published 12-8-99
Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-7-00; published 1-7-00
National priorities list update; comments due by 2-7-00; published 1-7-00
Toxic chemical release reporting; community right-to-know—
Phosphoric acid; comments due by 2-7-00; published 12-7-99
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Illinois; comments due by 2-7-00; published 1-21-00
Kansas; comments due by 2-7-00; published 1-21-00
Michigan; comments due by 2-7-00; published 12-30-99
New York; comments due by 2-7-00; published 1-4-00
Texas; comments due by 2-7-00; published 12-30-99
Satellite Home Viiewer Act; network nonduplication, syndicated exclusivity and sports blackout rules to satellite retransmissions; comments due by 2-7-00; published 2-2-00
Television broadcasting:
Class A television service; establishment; comments due by 2-10-00; published 1-20-00
Two way transmissions; mutlipoint distribution service and instructional television fixed service licenses participation; comments due by 2-10-00; published 1-26-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs and biological products:
Postmarketing studies; status reports; comments due by 2-9-00; published 12-1-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Fellowships, internships, training:
National Institutes of Health Contraception and Infertility Research Loan Repayment Program; comments due by 2-8-00; published 12-10-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and State health care programs:
Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-8-00; published 12-10-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Alabama sturgeon; comments due by 2-10-00; published 1-11-00

INTERIOR DEPARTMENT
Watches, watch movements, and jewelry:
Duty-exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf operations:
Minerals prospecting; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Extension of distance Mexican nationals may travel into U.S. without obtaining additional immigration documentation at selected Arizona ports-of-entry; comments due by 2-7-00; published 12-8-99
Organization, functions, and authority delegations:
Los Angeles and San Francisco Asylum Offices, CA; jurisdictional change; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT
Organization, functions, and authority delegations:
United States Marshals Service; fees for services; comments due by 2-7-00; published 12-7-99

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-10-00; published 11-24-99

MERIT SYSTEMS PROTECTION BOARD
Practice and procedure:
Attorney fees; reimbursement; comments due by 2-7-00; published 12-23-99

RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Family relationships; inheritance rights; comments due by 2-7-00; published 12-8-99

SMALL BUSINESS ADMINISTRATION
Business loans:
Liquidation of collateral and sale of disaster assistance loans; comments due by 2-9-00; published 1-10-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 2-7-00; published 1-6-00
Bell; comments due by 2-7-00; published 12-8-99
Boeing; comments due by 2-7-00; published 12-8-99
Bombardier; comments due by 2-11-00; published 1-12-00
British Aerospace; comments due by 2-9-00; published 1-6-00
Eurocopter Deutschland GMBH; comments due by 2-8-00; published 12-10-99
Eurocopter France; comments due by 2-8-00; published 12-10-99
Fokker; comments due by 2-7-00; published 1-6-00
McDonnell Douglas; comments due by 2-7-00; published 12-22-99
MD Helicopters Inc.; comments due by 2-7-00; published 12-8-99
Pratt & Whitney; comments due by 2-7-00; published 12-8-99
Turbomeca; comments due by 2-7-00; published 12-8-99
Airworthiness standards:
Special conditions—
Ayres Corp. Model LM-200 Loadmaster airplane; comments due by 2-11-00; published 1-12-00
Class E airspace; comments due by 2-8-00; published 12-29-99

TREASURY DEPARTMENT
Balanced Budget Act of 1997; implementation:
District of Columbia retirement plans; Federal benefit payments; comments due by 2-11-00; published 12-13-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 2000

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

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February 9	February 24	March 10	March 27	April 10	May 9
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February 11	February 28	March 13	March 27	April 11	May 11
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February 16	March 2	March 17	April 3	April 17	May 16
February 17	March 3	March 20	April 3	April 17	May 17
February 18	March 6	March 20	April 3	April 18	May 18
February 22	March 8	March 23	April 7	April 24	May 22
February 23	March 9	March 24	April 10	April 24	May 23
February 24	March 10	March 27	April 10	April 24	May 24
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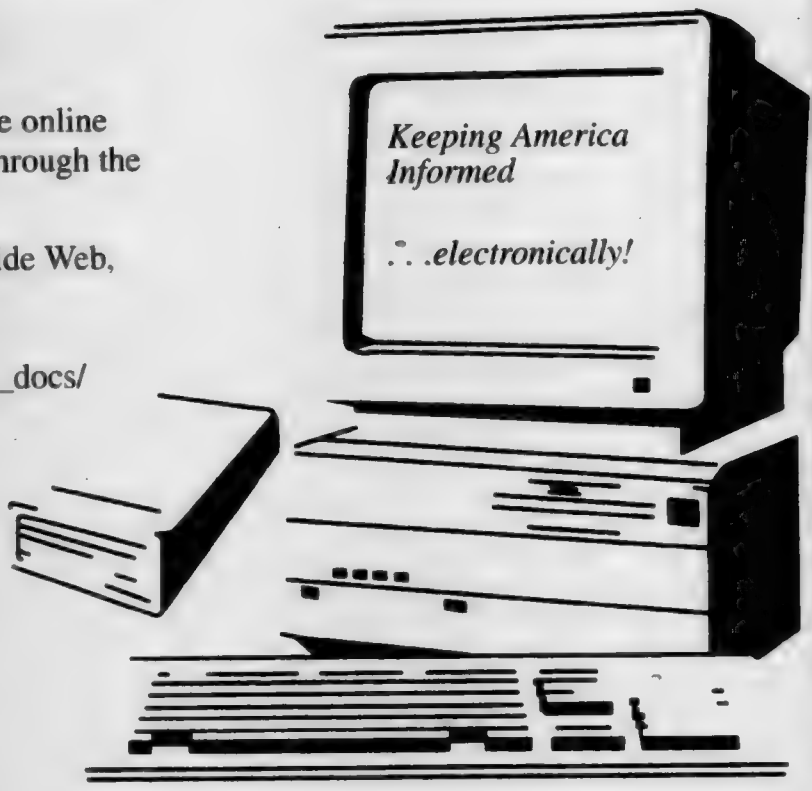

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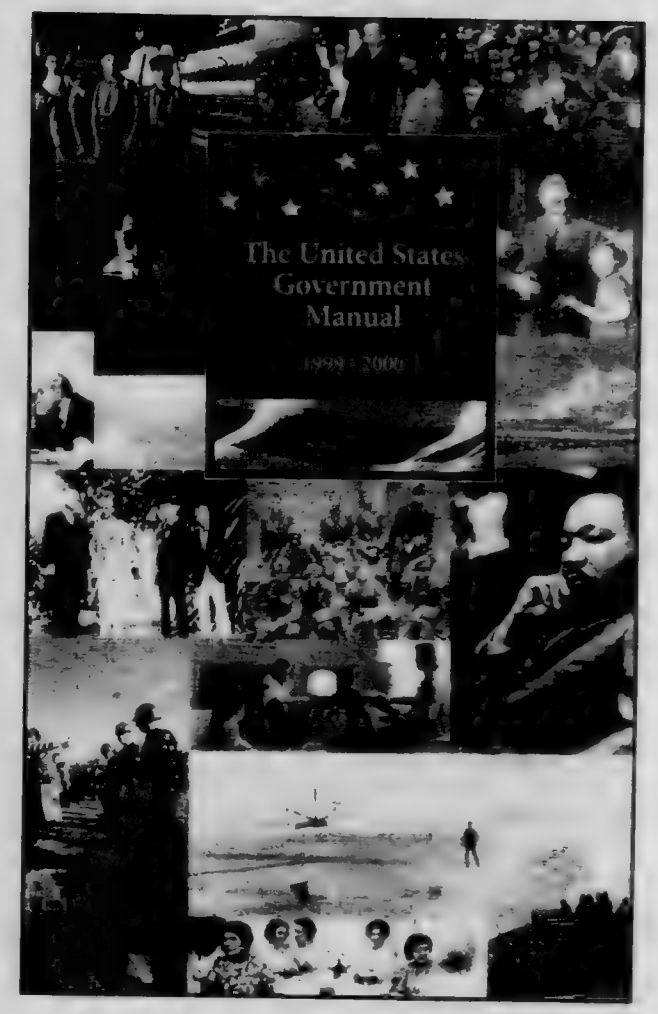

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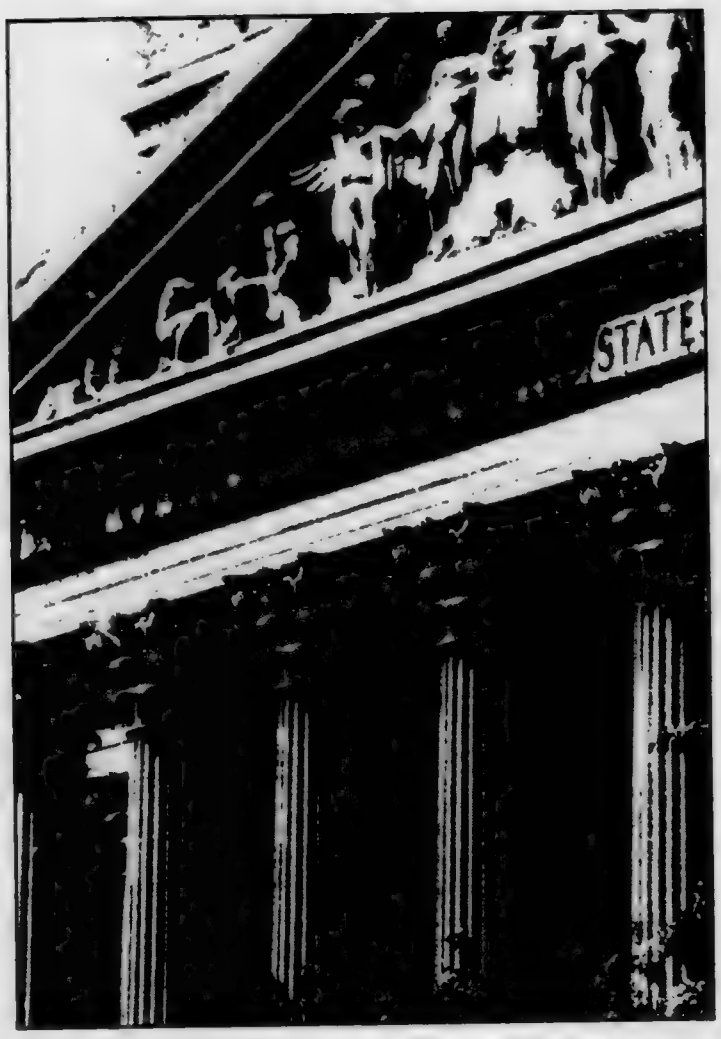

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Contents

Federal Register

Vol. 65, No. 22

Wednesday, February 2, 2000

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Senior Medicare patrol projects, 4976

Agricultural Marketing Service
RULES
Almonds grown in—
California, 4867–4870
NOTICES
Beef promotion and research:
Cattlemen's Beef Promotion and Research Board; certification and nomination, 4943–4944
Meetings:
Tobacco Inspection Services National Advisory Committee, 4944

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Housing Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Asian longhorned beetle, 4865–4866

Centers for Disease Control and Prevention
NOTICES
Organization, functions, and authority delegations:
Applied Research and Technology Division, 4976–4979

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 4945

Coast Guard
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
New criteria for approving courses, 4914–4918
NOTICES
Meetings:
Towing Safety Advisory Committee, 5011

Commerce Department
See National Oceanic and Atmospheric Administration
See Technology Administration

Comptroller of the Currency
PROPOSED RULES
Electronic banking; facilitation of national banks' use of new technologies; advance notice, 4895–4897

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 4946

Defense Department
PROPOSED RULES
Acquisition regulations:
Cost accounting practices; changes; meeting, 4940
Vocational rehabilitation and education:
Veterans education—
Educational assistance; new criteria for approving courses, 4914–4918
NOTICES
Meetings:
Overseas Dependents' Schools National Advisory Panel, 4946–4947
Privacy Act:
Systems of records, 4947–4948
Small disadvantaged businesses; price evaluation adjustment; one-year suspension, 4948–4949
Travel per diem rates, civilian personnel; changes, 4949–4954

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Exempt anabolic steroid products
Correction, 5024
PROPOSED RULES
Records, reports, and exports of listed chemicals:
Red phosphorus, 4913–4914
NOTICES
Applications, hearings, determinations, etc.:
ISP Freetown Fine Chemicals, Inc., 4998
Norac Company, Inc., 4999

Education Department
RULES
Postsecondary education:
Federal Supplemental Educational Opportunity Grant Program—
Relief from specific statutory and regulatory provisions, 4886–4887
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Foreign language assistance program; local educational agencies, 5170–5193
Foreign language assistance program; State educational agencies, 5146–5168

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Powerplant and industrial fuel use; new electric powerplant coal capability:
Southaven Power, LLC, 4954–4955
Applications, hearings, determinations, etc.:
Williams Energy Service Co., 4954

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 4887–4891

Water pollution control:
Underground injection control program—
Class V wells; requirements for motor vehicle waste and industrial waste disposal wells and cesspools in ground water-based areas; correction, 5024
PROPOSED RULES
Water programs:
Water quality planning—
Management regulation listing requirements, 4919–4923
NOTICES
Air pollution control; new motor vehicles and engines:
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification—
Engelhard Corp., 4959–4965
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
Nevada, 4965–4966
Meetings:
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); interim guidance, 4966
Science Advisory Board, 4966–4967
Scientific Counselors Board Executive Committee, 4967–4968
Toxicology testing initiative on styrene-acrylonitrile trimer; peer review workshop, 4968–4969
Pesticide registration, cancellation, etc.:
AgrEvo Environmental Health et al., 4969–4972
Water pollution control:
Virginia—
Continuing planning process; availability, 4972

Executive Office of the President
See Presidenttial Documents

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas; correction, 4870–4871
Class E airspace, 4871–4875
Standard instrument approach procedures, 4875–4881
PROPOSED RULES
Airworthiness directives:
Boeing, 4900–4902, 4904–4909
EMBRAER, 4897–4900
Empresa Brasilera de Aeronautica S.A., 4902–4903
Class E airspace, 4909–4912
Meetings:
Certification of Screening Companies, 4912–4913
Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirments; correction, 5024
NOTICES
Advisory circulars; availability, etc.:
(AC) 23-XX-32, Installation of Terrain Awareness and Warning Ststem (TAWS) approved under TSO-C151a for Part 23 airplanes, 5011–5012
Transport category airplanes—
Fuel tank ignition source prevention guidelines; fuel tank flammability minimization, 5012–5013
Exemption petitions; summary and disposition, 5013–5015
Meetings:
RTCA, Inc., 5015–5016
Passenger facility charges; applications, etc.:
Detroit Metropolitan Wayne County Airport, MI, 5016
Juneau International Airport, AK, 5016–5017
Orlando International Airport; FL, 5017
Rapid City Regional Airport, SD, 5018

Federal Communications Commission
RULES
Common carrier services:
Communications Act—
Apparent liability in subsequent proceedings; underlying facts, 4891
PROPOSED RULES
Radio services, special:
Personal locator beacons—
406.025 MHz authorizing use, 4935–4940
Satellite Home Viiewer Act; network nonduplication, syndicated exclusivity and sports blackout rules to satellite retransmissions, 4927–4935
Television broadcasting:
Improved model for predicting broadcast television field strength received at individual locations, 4923–4927
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4972–4973
Submission for OMB review; comment request, 4973–4974
Meetings:
Technological Advisory Council, 4974
Rulemaking proceedings; petitions filed, granted, denied, etc., 4974

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 4974–4975

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Bigelow, John, 4956
Koch Gateway Pipeline Co., 4956–4957
Hydroelectric applications, 4957–4959
Hydroelectric applications; correction, 5024
Applications, hearings, determinations, etc.:
ANR Pipeline Co.; correction, 5024
Columbia Gas Transmission Corp., 4955
Kern River Gas Transmission Co., 4955
Tuscarora Gas Transmission Co., 4955
Williams Gas Pipelines Central, Inc., 4956

Federal Railroad Administration
NOTICES
Emergency orders:
Oregon Pacific Railroad Co., 5018–5019

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 4975
Permissible nonbanking activities, 4975–4976
Meetings; Sunshine Act, 4976

Fish and Wildlife Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking, 5196–5213
Endangered and threatened species:
Cowhead Lake tui chub, 4940–4941
NOTICES
Endangered and threatened species permit applications, 4987–4989

Food and Drug Administration
RULES
Medical devices:
Gastroenterology-urology devices—
Penile rigidity implant; reclassification, 4881–4882
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4979–4981
Medical devices:
Metallic plasma sprayed coating on orthopedic implants; industry guidance, 4981–4982
Patent extension; regulatory review period determinations—
Bapten, 4982–4983
Rotashield, 4983–4984
Reports and guidance documents; availability, etc.:
Seafood HACCP transition guidance, 4984–4985
Use of single-use devices:risk categorization scheme, 4985–4986

Forest Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking, 5196–5213

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Federal claims; interest rates on overdue debts, 4976

Health Care Financing Administration
NOTICES
Meetings:
Medicare Coverage Advisory Committee Executive Committee, 4986–4987

Immigration and Naturalization Service
NOTICES
Environmental statements; notice of intent:
McAllen, TX; Operation Rio Grande; implementation, 4999

Indian Affairs Bureau
NOTICES
Judgement funds; plans for use and distribution:
Ramah Navajo Chapter vs. Bruce Babbitt, 4989–4996

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Employee Retirement Income Security Act:
Annual Return/Report of Employee Benefit Plan (1999 Form 5500); computer scannable versions; adoption, 5026–5143
Health Insurance Portability and Accountability Act of 1996; implementation:
Expatriation; individuals losing United States chitizenship; quarterly list, 5020–5021

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Alaska, 4997
Lower Snake River District, 4996–4997
Realty actions; sales, leases, etc.:
Alaska, 4997
Wild horse removal:
Wyoming, 4997–4998

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Noncorforming vehicles— 5019–5020

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 4893–4894
Pollock, 4891–4893
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Deep-sea red crab fishery, 4941–4942
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Beaufort Sea; ringed seals, 4945
Seabirds in longline fisheries; incidental catch reduction; national plan of action, 4945–4946

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 4998

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Amergen Energy Co. LLC, 5001–5002
Meetings:
Standard review plan, 5002
Meetings; Sunshine Act, 5002
Applications, hearings, determinations, etc.:
Vermont Yankee Nuclear Power Corp., 4999–5001

Pension and Welfare Benefits Administration
NOTICES
Employee Retirement Income Security Act:
Annual Return/Report of Employee Benefit Plan (1999 Form 5500); computer scannable versions; adoption, 5026–5143

Pension Benefit Guaranty Corporation
NOTICES
Employee Retirement Income Security Act:
Annual Return/Report of Employee Benefit Plan (1999 Form 5500); computer scannable versions; adoption, 5026–5143

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Commercial mail receiving agency; mail delivery, 4918–4919

Presidential

Presidental Documents
PROCLAMATIONS
Special observances
African American History Month, National (Proc. 7270), 5217–5218

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Section 538 Guaranteed Rural Rental Housing Program; correction, 4944

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5002–5003
Decimalization implementation plan; order to submit, 5003–5006
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 5006–5011

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5011

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4987

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 4882–4886

Technology Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
National Medal of Technology Nomination Evaluation Committee, 4946

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Vocational rehabilitation and education:
Veterans educations—
New criteria for approving courses, 4914–4918
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5021–5023
Meetings:
Scientific Review and Evaluation Board for Health Services Research and Development Service, 5023

Separate Parts in This Issue

Part II
Department of Labor, Pension and Welfare Benefits Administration; Department of Treasury, Internal Revenue Service, and Pension Benefit Guarantee Corporation, 5025–5143

Part III
Department of Education, 5145–5168

Part IV
Department of Education, 5169–5193

Part V
Department of Agriculture, Forest Service, 5195–5213

Part VI
The President, 5215–5218

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7270.....5217

7 CFR
301.....4865
981.....4867

12 CFR
Proposed Rules:
Ch. I.....4895

14 CFR
39.....4870
71 (5 documents).....4871, 4872, 4873, 4874
97 (3 documents).....4875, 4877, 4879
Proposed Rules:
39 (5 documents).....4897, 4900, 4902, 4904, 4906
71 (3 documents).....4909, 4910, 4911
108.....4912
109.....4912
111.....4912
129.....4912
191.....4912

21 CFR
876.....4881
Proposed Rules:
1310.....4913

30 CFR
938.....4882

34 CFR
676.....4886

36 CFR
Proposed Rules:
242.....5196

38 CFR
Proposed Rules:
21.....4914

39 CFR
Proposed Rules:
111.....4918

40 CFR
52.....4887
Proposed Rules:
130.....4919

47 CFR
1.....4891
Proposed Rules:
73.....4923
76.....4927
95.....4935

48 CFR
Proposed Rules:
30.....4940

50 CFR
679 (4 documents).....4891, 4892, 4893
Proposed Rules:
17.....4940
100.....5196
648.....4941

OL

65

SS

22

FE

2

000

MI

Rules and Regulations

Federal Register
Vol. 65, No. 22
Wednesday, February 2, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–004–1]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by expanding the quarantined area in the city of Chicago, IL, and adding two new areas in Cook County, IL. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule was effective January 27, 2000. We invite you to comment of this docket. We will consider all comments that we receive by April 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–004–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–004–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, Rose of Sharon, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing it. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately 3/8-inch diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery and forest products industries could experience severe economic losses.

The Asian longhorned beetle regulations (7 CFR 301.51–1 through 301.51–9, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York and portions of the city of Chicago, DuPage County, and the Village of Summit in the State of Illinois are already designated as quarantined areas.

Recent surveys conducted by inspectors of Illinois State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the quarantined areas in the State of Illinois. Specifically, infestations of ALB have occurred outside the quarantined areas in the city of Chicago and in Park Ridge. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Illinois are conducting an intensive survey and eradication program in the infested areas. The State of Illinois has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined areas to prevent the artificial spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB to other States and Canada.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending § 301.51–3(c) by expanding the quarantined area in the city of Chicago and by quarantining two new portions of Cook County, IL. The expanded and new quarantined

areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the ALB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that a Federal quarantine for ALB will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, by calling the Plant Protection and Quarantine fax service at (301) 734–3560 and requesting document number 0023, or by visiting the following Internet site: *http://www.aphis.usda.gov/ppd/ead/ppqdocs.html*.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.51–3, paragraph (c), the entry for the State of Illinois is amended as follows:

a. The entry for the City of Chicago is removed.

b. An entry for Cook County is added, in alphabetical order, to read as follows.

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

Cook County. That area in the Ravenswood community in the city of Chicago that is bounded as follows: Beginning at the intersection of North Central Avenue and West Bryn Mawr Avenue; then east along West Bryn Mawr Avenue to North Western Avenue; then east along an imaginary line through Rosehill Cemetery to the continuation of West Bryn Mawr Avenue; then east along West Bryn Mawr Avenue to Lakeshore Drive; then east along an imaginary line to the shoreline of Lake Michigan; then south along the shoreline of Lake Michigan to West Diversey Parkway; then west along West Diversey Parkway to West Diversey Avenue; then west along West Diversey Avenue to North Central Avenue; then north along North Central Avenue, along the east edge of the Bohemian National Cemetery and across Northeast Illinois University campus, to the point of beginning.

That area in the Kilbourn Park community in the city of Chicago that is bounded as follows: Beginning at the intersection of West Roscoe Street and North Knox Avenue; then north along North Knox Avenue to West Addison Street; then north along an imaginary line to West Patterson Avenue; then west along West Patterson Avenue to North Lamon Avenue; then south along North Lamon Avenue to West Addison Street; then south along an imaginary line to West Roscoe Street; then east along West Roscoe Street to the point of beginning.

That area in the city of Park Ridge that is bounded as follows: Beginning at the intersection of Devon Avenue and South Dee Road; then south along South Dee Road until it turns into North East River Road; then south along North East River Road to the Kennedy Expressway; then west along the Kennedy Expressway to the shoreline of the Des Plaines River; then north along the shoreline of the Des Plaines River to Devon Avenue; then east along Devon Avenue to the point of beginning.

* * * * *

Done in Washington, DC, this 27th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2273 Filed 2–1–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–4 FIR]

Almonds Grown in California; Revisions to Requirements Regarding Credit for Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule revising the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit toward their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. The changes also clarify existing regulations.

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect revisions to the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule continues in effect revisions to the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes also clarify existing regulations. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. This rule was unanimously recommended by the Board at a meeting on July 12, 1999, with additional justification approved via facsimile vote during the week of August 30, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 981.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441.

The Department implemented several Board-recommended changes to the regulations regarding the criteria that must be met for handlers to receive credit for their promotional activities in July 1999 (64 FR 41023; July 29, 1999). However, the Department did not implement one Board recommendation concerning credit for promoting almond products at that time because of concerns regarding the lack of specified criteria to be used in reviewing claims and concerns about the claims review process. The Board and its staff reconsidered the issue, further developed the concept, and submitted a revised recommendation addressing the Department's concerns. The Department issued an interim final rule published in the **Federal Register** on November 1, 1999, implementing the revised recommendation (64 FR 58763). This rule continues in effect the provisions of that interim final rule.

Prior to implementation of the interim final rule, regulations crediting handlers' promotion of almond products limited any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever was less. This limitation, previously specified in § 981.441(e)(iv), was included because it was believed that while promoting almond products was important, such activity might also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. This maximum level is specified in § 981.441(a).

The almond industry has historically been one of rapid growth. Recent years have been no exception, as almond acreage has increased substantially in the last decade. When coupled with increasing yields, production is expected to achieve record levels in coming years. The industry is faced with the prospect of selling these larger crops at a profitable return to producers. In order to achieve this, it is recognized that consumption and demand for almonds must be increased. Because a substantial portion of almonds are used as ingredients, an important method of increasing almond consumption is through increasing the consumption of almond products.

The previous regulations allowing only partial credit for promotion of all almond products were believed to have created a disincentive for handlers to develop, create and promote almond products. Therefore, the Board recommended and the Department implemented revised regulations to allow maximum credit-back to handlers for promoting almond products, under certain conditions. This rule continues in effect those revised regulations.

Since November 2, 1999, the effective date of the interim final rule implementing these changes, handlers have been able to receive credit against their assessment obligations in an amount not to exceed 66⅔ percent of their proven expenditures for qualified activities for promotion of almond products. To receive this level of credit, the product must be owned or distributed by the handler and such ownership or distributorship must be stated on the package. Handler ownership or distributorship is required to eliminate the possible occurrence of utilizing industry funds to promote businesses outside the almond industry.

In addition, the product must display the handler's brand, or the words "California Almonds" on the primary, face label. This requirement is intended to ensure that the clear intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the almond order.

Under the rule, maximum credit is not allowed for promotion of mixed nut products. In the case of mixed nuts, and for other promotional activities of almond products that do not meet the aforementioned criteria, the amount of credit allowed continues to be the lesser of 66⅔ percent of the handler's actual payment or that portion of the product weight represented by almonds. Mixed nuts do not qualify for the maximum credit because the thrust of eligible credit-back promotion activities is to promote the consumption and use of California almonds, not other nuts. Also, many almond handlers are involved in handling and marketing other nuts, and almond funds could possibly be used to promote other nut industries and other nuts. Therefore, mixed nuts continue to be subject to the reduced level of credit-back based on the portion of the product weight represented by almonds. Accordingly, appropriate changes made by the interim final rule to § 981.441(e)(4) continue in effect unchanged.

Finally, this rule continues in effect specific language in the introductory text of § 981.441(e)(4) clarifying that no promotion of almonds or almond products shall be eligible for credit-back if the promotion results in price discounting of the handler's product. An example of price discounting is as follows. A retail store routinely places advertisements in a local newspaper for various products in an attempt to attract customers. The advertisement includes a handler's almonds. The handler makes arrangements with the retailer to pay for the advertisement. In essence, this "discounts" the price of the product to the retailer. While these types of arrangements occur, it is not the intent of promotion under the almond order to subsidize such activities through the credit-back program. Price discounting has not been allowed under the program, and this rule adds specific language to the regulations for clarity.

The Board recommended that these changes be applied retroactively to August 1, 1999. This would allow the revised regulations to apply to all promotional activities conducted from the beginning of the 1999–2000 crop year forward. The crop year began August 1, 1999, and ends July 31, 2000. Section 981.441 specifies the procedures that the Board follows in granting credit and billing handlers. The effective date of the interim final rule was November 2, 1999, and the provisions of the revised regulation will continue to be in effect from that date forward. Handler activities were conducted under program parameters in effect prior to the effective date of the interim final rule. Therefore, those parameters for activities conducted prior to the rule's effective date should be followed. Accordingly, handlers promoting products containing almonds prior to November 2, 1999, will be eligible to receive Credit-Back based on the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For activities conducted on or after November 2, 1999, the activities must meet the revised criteria for handlers to be eligible to receive Credit-Back at the maximum of 66⅔ percent for promoting almond products. Submission of documentation should continue to be made in accordance with the provisions of the regulations as amended by the final rule that appeared in the July 29, 1999, **Federal Register** at 64 FR 41023.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule continues in effect the provisions of an interim final rule made effective on November 2, 1999, revising the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order, and clarifies the intent of one aspect of the existing regulations. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing

promotion activities, including paid advertising. This rule continues in effect revisions to the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The revisions also clarify existing regulations regarding disallowing promotional activities that result in price discounting. The changes are intended to encourage and support almond product development and thus increase the demand for almonds.

Prior to implementation of the interim final rule on November 2, 1999, regulations concerning crediting handlers' promotion of almond products limited any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation was included because it was believed that while promoting almond products was important, such activity may also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. It is now believed that the potential for increasing demand for almonds by providing incentive through allowing maximum credit alleviates the prior concerns regarding promoting other ingredients.

Regarding the impact of this rule on affected entities, the changes specified herein regarding credit for product development are designed to provide incentive to almond handlers to create, develop, and promote almond products. Almonds are widely used as ingredients in other products, thus an important method of increasing almond consumption and demand is through increasing sales of almond products. Handlers in the almond industry will be rewarded for their innovation in developing almond products, while the entire industry will benefit from the resulting increased demand. Thus, the impact on all growers and handlers in the almond industry is expected to be positive. This is an additional tool for the industry to use to increase demand for their product in the face of increasing supplies.

The changes regarding price discounting clarify that handlers can not receive credit-back for promotional activities that result in price discounting of product. This activity has not been allowed under the regulations as it does not meet the intent of the program; the changes merely clarify the existing regulations. Disallowing price discounting results in a more efficient and effective use of industry promotion funds.

Alternatives to the changes were considered. One alternative was to leave the regulations as they existed prior to implementation of the interim final rule. However, this did not address the issue of providing incentive and encouragement to handlers to promote almond products. Another alternative was to allow maximum credit only for new or unique products, with the Board to determine what products fit that description. This alternative was initially recommended by the Board but was not implemented by the Department because of concerns regarding the lack of specified criteria to be used in reviewing claims, and concerns about the claims review process. A third alternative considered was to allow maximum credit-back for all promotions concerning almond products. However, it was determined that certain criteria should be applied to product promotions to meet the intent of the program, for the following reasons. To receive maximum credit-back, the product must be owned or distributed by the handler, to ensure that credit is not granted for promoting products or businesses outside the almond industry. Packages must be labeled with the handler's name or the words "California Almonds" to help ensure the intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the order. Mixed nuts are subject to a reduced level of credit-back because handlers are and can be involved in handling and marketing other nuts, and if maximum credit were allowed, this could result in almond industry funds being used to promote other nut industries and other nuts. Moreover, the thrust of eligible credit-back promotion activities is to promote the consumption of California almonds, not other nuts, and it would not be appropriate to give mixed nut products the full 66⅔ credit.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the July 12, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998, and March 5, 1999. The Department subsequently implemented all of the Board's recommended changes, except for those relating to almond products. The Board again recommended the changes associated with almond products on July 12, 1999, and its Public Relations and Advertising Committee and staff developed further clarification and justification for those changes which were approved by a Board facsimile vote during the week of August 30, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on November 1, 1999. Copies of the rule were mailed to all Board members and almond handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended January 3, 2000. No comments were received.

A small business guide on complying with fruit, vegetable and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab/.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 58763, November 1, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 981 which was published at 64 FR 58763 on November 1, 1999, is adopted as a final rule without change.

Dated: January 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2193 Filed 2–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–262–AD; Amendment 39–11463; AD 99–26–03 C1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–11 series airplanes. That AD currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. This document revises the statement of the unsafe condition to correct the location of where potential smoke and fire may occur and to correct the description of the locations of the power feeder cables. This correction is necessary to ensure that operators have a clear understanding of the unsafe condition.

DATES: Effective: January 4, 2000.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 7, 1999, the Federal Aviation Administration (FAA) issued AD 99–26–03, amendment 39–11463 (64 FR 71001, December 20, 1999), which applies to certain McDonnell Douglas Model MD–11 series airplanes. That AD requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. That AD was prompted by an incident of no power to the aft galleys and two incidents of sparking sounds coming from the aft galleys due to damage of the No. 3 and 4 wire assembly terminal lugs and overheating of the power feeder cables on the G3 GLCU. The actions required by that AD are intended to prevent such damage due to the accumulated effects over time from overheating of the power feeder cables on the G3 GLCU, which could result in smoke and fire in the G3 galley.

Need for the Correction

Although the unsafe condition described in AD 99–26–03 specified that smoke and fire could occur in the G3 galley, the FAA recently has obtained information indicating that the correct location is in the Central Accessory Compartment (CAC). This action also revises the statement of the unsafe condition to specify the correct location of the power feeder cable. The unsafe condition described in AD 99–26–03 specified the "power feeder cable on the G3 galley load control unit (GLCU)." The correct locations of the power feeder cables are on the No. 3 and 4 GLCU. Therefore, the statement of the unsafe condition has been revised to read, "to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3. and 4 GLCU, which could result in smoke and fire in the CAC.

The FAA has determined that a correction to AD 99–26–03 is necessary. This action will provide operators with a clear understanding of the location where fire and smoke may occur if the specified unsafe condition is not prevented.

Correction of Publication

This document corrects the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains January 4, 2000.

Since this action only corrects the location of potential fire and smoke described in the description of the unsafe condition and revises certain associations with the power feeder wire assembly, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

99–26–03 C1 McDonnell Douglas: Amendment 39–11463. Docket 99–NM–262–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the wire assembly terminal lugs and power feeder cables due to the accumulated effects over time from overheating of the power feeder cables on the No. 3 and 4 galley load control unit (GLCU), which could result in smoke and fire in the central accessory compartment (CAC); accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center to detect damage (i.e., discoloration of affected parts or loose attachments) in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no damage is detected during any inspection required by this AD, repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

(2) If any damage is detected during any inspection required by this AD, prior to further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, in accordance with the service bulletin. Repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999. The incorporation by reference was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999). Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–0). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) The effective date of this amendment remains January 4, 2000.

Issued in Renton, Washington, on January 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2091 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–42]

Modification of Class E Airspace; Marquette, MI; Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On December 3, 1999, the FAA published a final rule modifying Class E airspace at Marquette, MI, and revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. An integral part of this airspace action is the decommissioning of the Marquette, MI, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) (MQT) and commissioning of the new Gwinn, MI, VOR/DME (GWI). In review of the delay in the commissioning, due to construction, of the new Gwinn VOR/DME, the effective date of this final rule is delayed until further notice.

EFFECTIVE DATE: The effective date of 0901 UTC, February 24, 2000 for the final rule published at 64 FR 67713 is delayed indefinitely. FAA will publish a document in the Federal Register establishing a new effective date.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION: On December 3, 1999, the FAA published a final rule modifying Class E airspace at Marquette, MI, and revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI (64 FR 67713). Due to a delay in construction, and subsequent commissioning, of the new Gwinn, MI, VOR/DME this airspace action cannot be implemented on the original effective date.

Accordingly, the effective date of the modification of the Class E airspace at Marquette, MI, and the revocation of the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI, is delayed until further notice. In consideration of the foregoing, the effective date of February 24, 2000, for the final rule modifying Class E airspace at Marquette, MI, and revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI (64 FR 67713, December 3, 1999) is delayed until further notice.

Dated: Issued in Des Plaines, Illinois on January 18, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–2251 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–51]

Establishment of Class E Airspace; Garrison, ND

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Garrison, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 13 and a GPS SIAP to Rwy 31 have been developed for Garrison Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action creates controlled airspace for Garrison Municipal Airport.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, November 3, 1999, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Garrison, ND (64 FR 59690). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. the Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Garrison, ND, to accommodate aircraft executing the proposed GPS Rwy 13 SIAP and the GPS Rwy 13 SIAP for Garrison Municipal Airport by creating controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air). Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999 is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

AGL ND E5 Garrison, ND [New]

Garrison Municipal Airport, ND
(Lat. 47°39′21″ N, long. 101°26′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Garrison Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–2255 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–53]

Modification of Class E Airspace; Bemidji, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Bemidji, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Bemidji-Beltrami County Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, November 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Bemidji, MN (64 FR 59687). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to proposal were received. Class E airspace designations for airspace areas extending upward from the surface are published in paragraph 6002 and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Bemidji, MN, to accommodate aircraft executing the proposed GPS Rwy 31 SIAP for Bemidji-Beltrami County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Com., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Bemidji, MN [Revised]

Bemidji-Beltrami County Airport, MN
(Lat. 47°30′34″ N., long. 094°56′01″ W.)

Within a 4.6-mile radius of the Bemidiji-Beltrami County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL MN E5 Bemidji, MN [Revised]

Bemidji-Beltrami County Airport, MN
(Lat. 47° 30′34″ N., long. 094°56′ 01″ W

That airspace extending upward from 700 fee above the surface within a 6.6-mile radius of Bemidiji-Beltrami County Airport.

* * * * *

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–2256 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–52]

Modification of Class E Airspace; Steubenville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Steubenville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 293° helicopter point in space approach, has been developed for Trinity West Hospital. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies the existing controlled airspace for Steubenville, OH, to the northeast in order to include the point in space approach serving Trinity West Hospital.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, November 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Steubenville, OH (63 FR 59689). The proposal was to modify controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Steubenville, OH, to accommodate aircraft executing the proposed GPS SIAP 293° helicopter point in space approach for Trinity West Hospital by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL OH E5 Steubenville, OH [Revised]

Steubenville, Jefferson County Airport, OH
(Lat. 40°21′34″ N., long. 080°42′00″ W.

Trinity West Hospital, OH

Point In Space Coordinates
(Lat. 40°22′00″ N., long. 080°39′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jefferson County Airport, and within a 6.0-mile radius of the point in space serving Trinity West Hospital, excluding the airspace within the Wheeling, WV, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–225 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–54]

Modification of Class E Airspace; Cooperstown, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Cooperstown, ND. A review of the controlled airspace within the State of North Dakota indicated a small portion of Class G uncontrolled airspace in the vicinity of Cooperstown, ND. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures into and out of Grand Forks International Airport. This small portion of uncontrolled airspace, in the southwest quadrant of Grand Forks Approach Control airspace, causes confusion for both pilots and controllers and does not allow for consistent application of instrument flight rules in a critical area servicing the Grand Forks International Airport. This action eliminates the Class G airspace approximately 15 nautical miles to the southeast of Cooperstown Airport.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, November 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Cooperstown, ND (64 FR 59689). The proposal was to modify controlled airspace extending upward from 1200 feet AGL to contain Instrument Flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Cooperstown, ND, to accommodate aircraft executing instrument flight procedures into and out of Grand Forks International Airport by modifying the existing controlled airspace. A small portion of uncontrolled airspace to the southeast of Cooperstown Airport will be eliminated. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

Adoption of the Amendment

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL ND E5 Cooperstown, ND [Revised]

Cooperstown Municipal Airport, ND
(Lat. 47°25′22″ N., long. 098°06′21″ W.)
Devils Lake VOR/DME
(Lat. 48°06′55″ N., long. 098°54′45″ W.)
Fargo, Hector International Airport, ND
(Lat. 46°55′10″ N., long. 096°48′54″ W.)
Grand Forks AFB, ND
(Lat. 47°57′40″ N., long. 097°24′04″ W.)
Jamestown VOR/DME

(Lat. 46°55′58″ N., long. 098°40′44″ W.)
Valley City, Barnes County Municipal Airport, ND
(Lat. 46°56′28″ N., long. 098°01′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cooperstown Municipal Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by V430; on the northeast by the 34.0-mile radius of Grand Forks AFB; on the southeast by the 40.0-mile radius of Fargo, Hector International Airport; on the south by V2–510 east of Valley City, ND, the 7.9-mile radius of Valley City, Barnes County Municipal Airport, and V2–510 west of Valley City, ND; on the southwest by the 16.5-mile radius of the Jamestown VOR/DME; on the west by V170; and on the northwest by the 22.0-mile radius of the Devils Lake VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–2258 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29908; Amdt. No. 1972]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and/or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non- precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

*** * * Effective February 24, 2000**

Anchorage, AK, Anchorage Intl, VOR or GPS RWY 6R, Amdt 12B, CANCELLED
Anchorage, AK, Anchorage Intl, VOR RWY 6R, Amdt 12B
Kingman, AZ, Kingman, VOR/DME or GPS RWY 21, Amdt 6A, CANCELLED
Kingman, AZ, Kingman, VOR/DME RWY 21, Amdt 6A
Georgetown, DE, Georgetown/Sussex County, VOR/DME RNAV or GPS RWY 22, Amdt 3A, CANCELLED
Georgetown, DE, Georgetown/Sussex County, VOR/DME RNAV RWY 22, Amdt 3A
Brunswick, GA, Brunswick/Glynco Jetport, NDB or GPS RWY 7, Amdt 10, CANCELLED
Brunswick, GA, Brunswick/Glynco Jetport, NDB, RWY 7, Amdt 10
Hutchinson, KS, Hutchinson Muni, VOR or GPS RWY 3, Amdt 18B, CANCELLED
Hutchinson, KS, Hutchinson Muni, VOR RWY 3, Amdt 18B
Hutchinson, KS, Hutchinson Muni, NDB or GPS RWY 13, Amdt 14B, CANCELLED
Hutchinson, KS, Hutchinson Muni, NDB RWY 13, Amdt 14B
Minden, LA, Minden-Webster, NDB or GPS RWY 1, Amdt 2, CANCELLED
Minden, LA, Minden-Webster, NDB RWY 1, Amdt 2
Minden, LA, Minden-Webster, NDB or GPS RWY 19, Amdt 2, CANCELLED
Minden, LA, Minden-Webster, NDB RWY 19, Amdt 2
Ava, MO, Ava Bill Martin Memorial, VOR/DME RNAV or GPS RWY 31, Amdt 1A, CANCELLED
Ava, MO, Ava Bill Martin Memorial, VOR/DME RNAV RWY 31, Amdt 1A
Grain Valley, MO, Grain Valley /East Kansas City, VOR/DME RNAV or GPS RWY 27, Amdt 1, CANCELLED
Grain Valley, MO, Grain Valley /East Kansas City, VOR/DME RNAV RWY 27, Amdt 1
Rolla/Vichy, MO, Rolla National, VOR/DME or GPS RWY 4, Amdt 2B, CANCELLED
Rolla/Vichy, MO, Rolla National, VOR/DME RWY 4, Amdt 2B
Gulfport, MS, Gulfport-Biloxi Regional, VOR/DME or TACAN or GPS RWY 14, Amdt 2a, CANCELLED
Gulfport, MS, Gulfport-Biloxi Regional, VOR/DME or TACAN RWY 14, Amdt 2a
Ahoskie, NC, Ahoskie/Tri-County, NDB or GPS RWY 1, Amdt 1D, CANCELLED
Ahoskie, NC, Ahoskie/Tri-County, NDB RWY 1, Amdt 1D
Hebron, NE, Hebron Muni, NDB or GPS RWY 12, Amdt 3A, CANCELLED
Hebron, NE, Hebron Muni, NDB RWY 12, Amdt 3A
Clovis, NM, Clovis Muni, NDB or GPS RWY 4, Amdt 3, CANCELLED
Clovis, NM, Clovis Muni, NDB RWY 4, Amdt 3
Clovis, NM, Clovis Muni, VOR or GPS RWY 22, Amdt 3, CANCELLED
Clovis, NM, Clovis Muni, VOR RWY 22, Amdt 3
Middletown, NY, Randall, VOR or GPS RWY 8, Amdt 5, CANCELLED
Middletown, NY, Randall, VOR RWY 8, Amdt 5
Newburgh, NY, Stewart Intl, VOR/DME RNAV or GPS RWY 16, Amdt 2A, CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV RWY 16, Amdt 2A
Newburgh, NY, Stewart Intl, VOR/DME RNAV or GPS RWY 27, Amdt 1A, CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV RWY 27, Amdt 1A
Elk City, OK, Elk City Muni, VOR/DME RNAV or GPS RWY 17, Amdt 2A, CANCELLED
Elk City, OK, Elk City Muni, VOR/DME RNAV RWY 17, Amdt 2A
Enid, OK, Enid Woodring Muni, VOR or GPS RWY 17, Amdt 12, CANCELLED
Enid, OK, Enid Woodring Muni, VOR RWY 17, Amdt 12
Tipton, OK, Tipton Muni, VOR/DME or GPS RWY 17, Orig, CANCELLED
Tipton, OK, Tipton Muni, VOR/DME RWY 17, Orig
Watonga, OK, Watonga, NDB or GPS RWY 17, CANCELLED
Watonga, OK, Watonga, NDB RWY 17
Woodward, OK, Woodward/West Woodward, NDB or GPS RWY 17, Amdt 3, CANCELLED
Woodward, OK, Woodward/West Woodward, NDB RWY 17, Amdt 3
Brookings, SD, Brookings Muni, VOR or GPS RWY 12, Amdt 11, CANCELLED
Brookings, SD, Brookings Muni, VOR RWY 12, Amdt 11
Brookings, SD, Brookings Muni, VOR or GPS RWY 30, Amdt 10, CANCELLED
Brookings, SD, Brookings Muni, VOR RWY 30, Amdt 10
Lewisburg, TN, Lewisburg/Ellington, VOR/DME RNAV or GPS RWY 20, Orig. CANCELLED
Lewisburg, TN, Lewisburg/Ellington, VOR/DME RNAV RWY 20, Orig
Angleton/Lake Jackson, TX, Angleton/Brazoria County, NDB or GPS RWY 17, Amdt 2, CANCELLED
Angleton/Lake Jackson, TX, Angleton/Brazoria County, NDB RWY 17, Amdt 2
Baytown, TX, Baytown/RWJ Airpark, VOR/DME or GPS RWY 32, Amdt 4, CANCELLED
Baytown, TX, Baytown/RWJ Airpark, VOR/DME RWY 32, Amdt 4
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, NDB or GPS RWY 12, Amdt 18, CANCELLED
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, NDB RWY 12, Amdt 18
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR OR GPS—A, Amdt 6, CANCELLED
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR—A, Amdt 6
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR or GPS—B, Amdt 6, CANCELLED
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR—B, Amdt 6
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR or GPS—C, Amdt 5, CANCELLED
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR—C, Amdt 5
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR/DME or GPS—D, Amdt 2, CANCELLED
Beaumont/Port Arthur, TX, Beaumont-Port Arthur/Southeast Texas Regional, VOR/DME—D, Amdt 2 College Station, TX, College Station/Easterwood Field, VOR/DME or GPS RWY 28, Amdt 12A, CANCELLED
College Station, TX, College Station/Easterwood field, VOR/DME, RWY 28, Amdt 12A
Georgetown, TX, Georgetown Muni, NDB or GPS RWY 18, Amdt 5, CANCELLED
Georgetown, TX, Georgetown Muni, NDB RWY 18, Amdt 5
Giddings, TX, Giddings-Lee County, NDB or GPS RWY 17, Amdt 2
Giddings, TX, Giddings-Lee County, NDB RWY 17
Giddings, TX, Giddings-Lee County, VOR/DME RNAV or GPS RWY 35, Amdt 1, CANCELLED
Giddings, TX, Giddings-Lee County, VOR/DME RNAV RWY 35, Amdt 1
Houston, TX, Houston-Southwest, VOR/DME RNAV or GPS RWY 9, Amdt 1B, CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV RWY 9, Amdt 1B

Houston, TX, Houston-Southwest, VOR/DME RNAV or GPS RWY 27, Amdt 2B, CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV RWY 27, Amdt 2B
Midland, TX, Midland Intl, NDB or GPS RWY 10, Amdt 10, CANCELLED
Midland, TX, Midland Intl, NDB RWY 10, Amdt 10
Waco, TX, Waco Regional, VOR or GPS RWY 14, Amdt 22, CANCELLED
Waco, TX, Waco Regional, VOR RWY 14, Amdt 22
Waco, TX, Waco Regional, NDB or GPS RWY 19, Amdt 18, CANCELLED
Waco, TX, Waco Regional, NDB RWY 19, Amdt 18
Waco, TX, Waco Regional, VOR/DME or GPS RWY 32, Amdt 14, CANCELLED
Waco, TX, Waco Regional, VOR/DME RWY 32, Amdt 14
Brigham City, UT, Brigham City, NDB or GPS RWY 34, Amdt 6A, CANCELLED
Brigham City, UT, Brigham City, NDB RWY 34, Amdt 6A
Ogden, UT, Ogden-Hinkley, VOR/DME RNAV or GPS RWY 3, Orig, CANCELLED
Ogden, UT, Ogden-Hinkley, VOR/DME RNAV RWY 3, Orig
Lyndonville, VT, Lyndonville/Caledonia County, NDB or GPS RWY 2, Amdt 3A, CANCELLED
Lyndonville, VT, Lyndonville/Caledonia County, NDB RWY 2, Amdt 3A
Guernsey, WY, Guernsey/Camp Guernsey, NDB or GPS RWY 32, Orig, CANCELLED
Guernsey, WY, Guernsey/Camp Guernsey, NDB RWY 32, Orig

[FR Doc. 00–2250 Filed 2–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29907; Amdt. No. 1971]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase: Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription: Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd, Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notice to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, navigation (air).

Issued in Washington, DC on January 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS,MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/03/00	MI	Pontiac	Oakland County Intl	0/0069	LOC BC Rwy 27L, Orig...corrects TL 00–03
01/05/00	TX	College Station	Easterwood Field	0/0132	VOR/DME or GPS Rwy 28, Amdt 12A...
01/05/00	TX	Harlingen	Valley Intl	0/0125	NDB or GPS Rwy 17R, Amdt 11...
01/05/00	TX	Harlingen	Valley Intl	0/0128	ILS Rwy 17R, Amdt 11A...
01/05/00	TX	Harlingen	Valley Intl	0/0129	LOC BC Rwy 35L, Amdt 12...
01/05/00	TX	Harlingen	Valley Intl	0/0130	NDB or GPS Rwy 17L, Amdt 5...
01/05/00	TX	Harlingen	Valley Intl	0/0131	VOR/DME or TACAN Rwy 31, Orig...
01/06/00	AK	King Salmon	King Salmon	0/0171	LOC/DME BC Rwy 29, Amdt 1A...
01/06/00	AR	Texarkana	Texarkana Regional—Webb Field.	0/0181	LOC BC Rwy 4, Amdt 12...
01/06/00	FL	Tampa	Vandenberg	0/0183	GPS Rwy 23, Orig–1A...
01/06/00	FL	Tampa	Vandenberg	0/0184	GPS Rwy 18, Amdt 1A...
01/06/00	MI	Lansing	Capital City	0/0169	VOR or GPS Rwy 6, Amdt 24...Replaces 01/0106
01/06/00	OH	New Philadelphia	Harry Clever Field	0/0164	VOR or GPS–A, Orig–A...
01/06/00	OH	New Philadelphia	Harry Clever Field	0/0165	VOR/DME or GPS–B, Amdt 2A...
01/06/00	OH	New Philadelphia	Harry Clever Field	0/0166	GPS Rwy 14, Orig...
01/06/00	TX	Waco	Waco Regional	0/0162	VOR/DME or GPS Rwy 32, Amdt 14...
01/07/00	AK	King Salmon	King Salmon	0/0197	VOR/DME or TACAN Rwy 29, Amdt 8...
01/07/00	MO	Butler	Butler Memorial	0/0194	GPS Rwy 18, Orig–A...
01/07/00	MO	Butler	Butler Memorial	0/0195	VOR–A, Amdt 4...
01/07/00	MO	St Louis	Lambert—St Louis Intl	0/0193	ILS Rwy 6, Orig–B...
01/07/00	NH	Lebanon	Lebanon Muni	0/0204	VOR or GPS Rwy 25, Orig–A...
01/07/00	NY	Westhampton Beach.	The Francis S. Gabreski	0/0222	NDB or GPS Rwy 24, Amdt 3A...
01/07/00	NY	Westhampton Beach.	The Francis S. Gabreski	0/0223	ILS Rwy 24, Amdt 8B...
01/07/00	OH	Dayton	Greene County—Lewis A. Jackson Regional.	0/0214	NDB Rwy 25, Orig...
01/07/00	OH	Dayton	Greene County—Lewis A. Jackson Regional.	0/0215	GPS Rwy 7, Orig...
01/07/00	OH	Portsmouth	Greater Portsmouth Regional	0/0217	GPS Rwy 36, Amdt 1A...
01/07/00	OH	Portsmouth	Greater Portsmouth Regional	0/0218	VOR/DME or GPS—, Amdt 5...
01/07/00	OK	Lawton	Lawton-Fort Sill Regional	0/0201	GPS Rwy 35, Orig...
01/07/00	OK	Lawton	Lawton-Fort Sill Regional	0/0202	VOR Rwy 35, Amdt 20...
01/10/00	AK	Homer	Homer	0/0246	LOC/DME Rwy 3, Amdt 9A...
01/10/00	AK	Homer	Homer	0/0247	GPS Rwy 3, Orig–A...
01/10/00	AK	Nome	Nome	0/0248	NDB/DME Rwy 2, Amdt 1...
01/10/00	GA	Marietta	Cobb County—McCollum Field.	0/0258	ILS Rwy 27, Orig–C...
01/10/00	GA	Marietta	Cobb County—McCollum Field.	0/0260	GPS Rwy 27, Orig–A...
01/10/00	GA	Marietta	Cobb County—McCollum Field.	0/0261	GPS Rwy 9, Orig...
01/10/00	IA	Jefferson	Jefferson Muni	0/0252	GPS Rwy 32, Orig...Replaces 0/0095
01/10/00	IA	Jefferson	Jefferson Muni	0/0253	GPS Rwy 14, Orig...Replaces 0/0096
01/10/00	IN	Gary	Gary/Chicago	0/0242	ILS Rwy 30, Amdt 4...
01/10/00	OH	Akron	Akron Fulton Intl	0/0269	NDB or GPS Rwy 25, Amdt 13...
01/10/00	OH	Akron	Akron Fulton Intl	0/0270	LOC Rwy 25, Amdt 13...
01/10/00	OH	Mansfield	Mansfield Lahm Muni	0/0264	NDB Rwy 32, Amdt 11A...
01/10/00	OH	Mansfield	Mansfield Lahm Muni	0/0265	VOR/DME RNAV or GPS Rwy 23, Amdt 6...

FDC date	State	City	Airport	FDC No.	SIAP
01/10/00	OH	Mansfield	Mansfield Lahm Muni	0/0266	ILS Rwy 32, Amdt 15A...
01/10/00	OH	Mansfield	Mansfield Lahm Muni	0/0267	VOR or GPS Rwy 32, Amdt 6...
01/10/00	OH	Mansfield	Mansfield Lahm Muni	0/0268	VOR or GPS Rwy 14, Amdt 13...
01/10/00	OH	Portsmouth	Greater Portsmouth Regional	0/0244	VOR/DME RNAV or GPS Rwy 18, Amdt 6A...
01/10/00	OK	Lawton	Lawton-Fort Sill Regional	0/0240	RADAR–1, Amdt 4...
01/11/00	MO	Springfield	Springfield-Branson Regional	0/0288	VOR or Tacan Rwy 20, Amdt 18...
01/11/00	TX	Brownsville	Brownsville/South Parde Island Intl.	0/0300	ILS Rwy 13R, Amdt 11A...
01/11/00	TX	Brownsville	Brownsville/South Parde Island Intl.	0/0301	LOC BC Rwy 31L, Amdt 11...
01/12/00	AK	Barrow	Wiley Post-Will Rogers Memorial.	0/0345	GPS Rwy 24, Orig...
01/12/00	MN	Thief River Falls	Thief River Falls Regional	0/0325	VOR/DME Rwy 31, Amdt 3A...
01/12/00	OH	Cincinnati	Cincinnati Muni—Lunken Field.	0/0326	NDB or GPS Rwy 25, Amdt 8...
01/12/00	OH	Columbus	Rickenbacker Intl	0/0343	ILS Rwy 23L, Orig–A...
01/12/00	OH	Waverly	Pike County	0/0335	GPS Rwy 25, Orig...
01/12/00	OH	Waverly	Pike County	0/0336	GPS Rwy 7, Orig...
01/12/00	OK	Guymon	Guymon Muni	0/0338	GPS Rwy 36, Orig...
01/12/00	TX	Brownsville	Brownsville/South Parde Island Intl.	0/0319	NDB or GPS Rwy 13R, Amdt 13...
01/13/00	AL	Tuscaloosa	Tuscaloosa Muni	0/0365	GPS Rwy 22 Orig...
01/13/00	AL	Tuscaloosa	Tuscaloosa Muni	0/0364	GPS Rwy 4 Orig–A...
01/13/00	OK	Guymon	Guymon Muni	0/0355	NDB Rwy 18, Amdt 5...
01/14/00	AK	Deadhorse	Deadhorse	0/0387	VOR/DME or Tacan Rwy 22, Amdt 2...
01/14/00	AK	Deadhorse	Deadhorse	0/0388	LOC/DME BC Rwy 22, Amdt 8...
01/14/00	AK	Sitka	Sitka Rocky Gutierrez	0/0375	LDA/DME Rwy 11, Amdt 13...
01/14/00	AK	Talkeetna	Talkeetna	0/0400	VOR/DME Rwy 36, Amdt 1A...
01/14/00	AK	Talkeetna	Talkeetna	0/0401	GPS Rwy 36, Orig...
01/14/00	AK	Talkeetna	Talkeetna	0/0404	NDB Rwy 36, Amdt 1A...
01/14/00	AK	Talkeetna	Talkeetna	0/0405	VOR–A Amdt 9A...
01/14/00	IN	South Bend	Michiana Regional Transportation Center.	0/0402	ILS Rwy 27L, Amdt 34A...
01/14/00	IN	South Bend	Michiana Regional Transportation Center.	0/0403	ILS Rwy 9R, Amdt 8A...
01/14/00	IN	South Bend	Michiana Regional Transportation Center.	0/0406	NDB or GPS Rwy 27L, Amdt 28A...
01/14/00	PA	Philadelphia	Northeast Philadelphia	0/0376	VOR or GPS Rwy 24, Amdt 18...
01/18/00	MN	Fairmont	Fairmont Muni	0/0444	VOR/DME Rwy 31, Amdt 1A...
01/18/00	MN	Fairmont	Fairmont Muni	0/0445	VOR/DME Rwy 31, Amdt 1A...
01/18/00	OH	Lima	Lima Allen County	0/0441	NDB or GPS Rwy 9, Amdt 2...
01/18/00	OH	Lima	Lima Allen County	0/0442	VOR or GPS Rwy 27, Amdt 14...
01/18/00	OH	Lima	Lima Allen County	0/0443	ILS Rwy 27, Amdt 2A...
01/18/00	TX	Brenham	Brenham Muni	0/0436	VOR/DME Rwy 16, Amdt 1A...
01/18/00	TX	Brenham	Brenham Muni	0/0438	GPS Rwy 34, Orig...
01/18/00	TX	Brenham	Brenham Muni	0/0439	NDB Rwy 16, Amdt 5A...
01/18/00	TX	Brownwood	Brownwood Regional	0/0447	LOC Rwy 17, Amdt 4...
01/18/00	TX	Brownwood	Brownwood Regional	0/0448	VOR or GPS Rwy 17, Amdt 11...
01/18/00	TX	Brownwood	Brownwood Regional	0/0449	VOR/DME or GPS Rwy 35, Amdt 1A...
01/18/00	WI	Appleton	Outagamie County Regional	0/0458	VOR/DME or GPS Rwy 21, Orig–A...

[FR Doc. 00–2249 Filed 2–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29906; Amdt. No. 1970]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 24, 2000

Rifle, CO, Garfield County Regional, LOC/DME–A, Amdt 6
Rifle, CO, Garfield County Regional, ILS RWY 26, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 9, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR RWY 18, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAY RWY 18, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR RWY 27, Amdt 7
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 27, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR RWY 36, Amdt 1
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 36, Orig
Marshall, MO, Marshall Meml Muni, NDB RWY 36, Amdt 1
Marshall, MO, Marshall Meml Muni, RNAV RWY 18, Orig
Marshall, MO, Marshall Meml Muni, RNAV RWY 36, Orig
Lebanon, OH, Lebanon-Warren County, NDB–A, Amdt 5
Lebanon, OH, Lebanon-Warren County, RNAV RWY 1, Orig
Lebanon, OH, Lebanon-Warren County, RNAV RWY 19, Orig
Lubbock, TX, Lubbock Intl, NDB RWY 8, Amdt 1, CANCELLED
Martinsville, VA, Blue Ridge, LOC RWY 30, Orig
Martinsville, VA, Blue Ridge, SDF RWY 30, Amdt 2A, CANCELLED

Effective March 23, 2000

Minneapolis, MN, Minneapolis-St. Paul Intl (Wold-Chamberlain), NDB OR GPS RWY 4, Amdt 20

Minneapolis, MN, Minneapolis-St. Paul Intl (Wold-Chamberlain), ILS RWY 4, Amdt 27
Minneapolis, MN, Minneapolis-St. Paul Intl (Wold-Chamberlain), COPTER ILS RWY 30R, Orig
Beaumont, TX Beaumont Muni, GPS RWY 13, Orig

Effective April 20, 2000

Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 5, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 14, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 23, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 32, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, VOR/DME RNAV RWY 5, Amdt 3B, CANCELLED
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, VOR/DME RNAV RWY 23, Amdt 3A, CANCELLED
Fulton, MS, Fulton-Itawamba County, VOR/DME OR GPS–A, Orig CANCELLED

The FAA published a notice in Docket No. 29863, Amdt No. 1964 to Part 97 of the Federal Aviation Regulations (Vol 64 FR No. 243 Page 71019 dated December 20, 1999) which is hereby amended as follows:

Marquette, MI, Sawyer Intl, GPS RWY 19, Orig is hereby rescinded.

[FR Doc. 00–2248 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 97N–0481]

Gastroenterology-Urology Devices: Reclassification of the Penile Rigidity Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the penile rigidity implant from class III to class II when intended to provide penile rigidity in men diagnosed as having erectile dysfunction. The special control is the FDA guidance document entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants." This action is taken on FDA's own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997.

DATES: This regulation is effective March 3, 2000.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (CDRH) (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 16, 1997 (62 FR 65770), FDA issued a proposed rule to reclassify the penile rigidity implant from class III to class II based on new information respecting such device. FDA identified the guidance document entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants" as the special control capable of providing reasonable assurance of safety and effectiveness for the device.

Interested persons were given until March 16, 1998, to comment on the proposed rule. FDA received no comments on the proposed rule.

II. FDA's Conclusions

Based on a review of a substantial number of published studies referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA identified the following risks to health presented by the device: (1) Infection; (2) erosion, migration, and extrusion; (3) mechanical malfunction; (4) patient dissatisfaction; (5) adverse tissue reaction; (6) prolonged or intractable pain; (7) urinary obstruction; (8) silicone particle migration; and (9) other infrequently reported complications.

In the preamble to the proposed rule, FDA also noted that there is reasonable knowledge of the benefits of the device. Specifically, placement of the penile rigidity implant in men with erectile dysfunction typically provides sufficient penile rigidity for sexual intercourse and satisfaction rates in excess of 90 percent have been reported among penile rigidity implant recipients.

Based on its review of the cited studies, FDA determined that the guidance document would address adequately the risks to health discussed above by: (1) Labeling that would provide information to physicians and patients for the proper implantation and care of the device; (2) biocompatibility testing that would control the risk of adverse tissue reaction; (3) mechanical testing that would help control the risks of erosion, migration, extrusion, mechanical malfunction, and prolonged or intractable pain; (4) clinical data requirements for 510(k)'s that would help determine whether the risks presented by the device are within the limits established by existing devices; and (5) sterilization procedures and labeling that would guard against the implantation of an unsterile device.

FDA has concluded that special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device and that the FDA guidance document entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants" is an adequate special control.

III. Electronic Access to Guidance Document

In order to receive the guidance entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (177) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the draft guidance entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant impact on any small entities and it may permit small potential competitors to enter the marketplace by lowering costs. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA has determined that this final rule does not contain any information collection requirements and, therefore, it is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.3630 is revised to read as follows:

§ 876.3630 Penile rigidity implant.

(a) *Identification.* A penile rigidity implant is a device that consists of a pair of semi-rigid rods implanted in the corpora cavernosa of the penis to provide rigidity. It is intended to be used in men diagnosed as having erectile dysfunction.

(b) *Classification.* Class II. The special control for this device is the FDA guidance entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants."

Dated: January 16, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–2148 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–123–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is approving, with one exception, a proposed amendment to the Pennsylvania permanent regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment responds to required amendments to the Pennsylvania program that are identified in OSM's approval of Pennsylvania's coal refuse disposal amendment on April 22, 1998 (63 FR 19802). The amendment is intended to revise the Pennsylvania program to be consistent with SMCRA and the Federal regulations.

EFFECTIVE DATE: February 2, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, Internet: bbiggi@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. You can find background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can find later actions on conditions of approval and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated September 14, 1995 (Administrative Record Number PA 837.01), Pennsylvania submitted an amendment to the Pennsylvania program. The amending language is contained in Pennsylvania House Bill 1075 and was enacted into Pennsylvania law as Act 1994–114. The amendments changed Pennsylvania's Coal Refuse Disposal Act (of September 24, 1968 (P.L. 1040, No. 318) and amended on October 10, 1980 (P.L. 807, No. 154)) to provide authorization for refuse disposal in areas previously affected by mining which contain pollutional discharges. We approved the amendments, with certain exceptions, on April 22, 1998 (63 FR 19802–19821). The April 22, 1998, notice contained seven required regulatory program amendments codified at 30 CFR 938.16 paragraphs (vvv) through (bbbb). On June 15, 1998 (63 FR 32615–32616), we corrected an inadvertent omission of a phrase at 30 CFR 938.16 paragraphs (vvv) through (bbbb), concerning the required Pennsylvania regulatory program amendments published in the

April 22, 1998, **Federal Register** notice at pages 19820–19821.

By letter dated May 22, 1998 (Administrative Record Number PA 837.72) Pennsylvania responded to the required regulatory program amendments codified at 30 CFR 938.16 (vvv) through (bbbb) by submitting three items: (1) Written clarifications relating to each of the required regulatory program amendments; (2) The draft text of a notice to be published in the *Pennsylvania Bulletin* intended to address one of the required amendments; and (3) A legal opinion from the Pennsylvania Department of Environmental Protection (PADEP) legal counsel confirming the PADEP's authority to implement the necessary change.

By letter dated July 15, 1998 (Administrative Record Number PA 837.74) we responded to PADEP's May 22, 1998, letter and stated that the clarifications can only be incorporated into the approved Pennsylvania program through formal rulemaking.

By letter dated August 17, 1998 (Administrative Record Number PA 837.80), the PADEP requested that we process the PADEP's May 22, 1998, letter as a program amendment. We opened the 30-day public comment period on August 28, 1998 (63 FR 45973). The comment period closed on September 28, 1998. No one asked to speak at a public hearing, so none was held.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the Pennsylvania amendments.

1. Required Amendment Codified at 30 CFR 938.16(vvv)

This required amendment provides that the State must clarify the meaning of the term "excess soil and related materials" as that term is used in the definition of "coal refuse activities" at section 3(2.1) of the State's Coal Refuse Disposal Act. In response to the required amendment, the State provided the following clarification.

> The meaning of the term "excess soil and related material" as used in the definition "coal refuse disposal activities" in Section 3 of the Coal Refuse Disposal Control Act (CRDCA) is clarified to mean the rock, clay or other materials located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil. This clarification will be incorporated in regulations as they are developed.

As explained above by the State, the term "excess soil and related material" is not inconsistent with the intent of the Federal definition of "underground development waste" found in the Federal regulations at 30 CFR 701.5. Therefore, we find that the use of the term "excess soil and related materials" does not render the Pennsylvania program less stringent and can be approved. We will remove the required program amendment when the clarification is incorporated in regulations and those regulations are approved by OSM.

2. Required Amendment Codified at 30 CFR 938.16(www)

This required amendment concerns the application of the "stream buffer zone rule" at 30 CFR 816/817.57. The State responded and provided its explanation concerning this required amendment. However, OSM is assessing the impact of the stream buffer zone rule. This effort may ultimately result in changes that may affect Pennsylvania's program amendment. Therefore, we have decided to defer our decision on the State's proposal until the reassessment of the existing rule is complete.

3. Required Amendments Codified at 30 CFR 938.16(xxx) and (yyy)

A. The required amendment at 30 CFR 938.16(xxx) says that the State shall amend the Pennsylvania program to clarify, in the regulations to be developed to implement the provisions of section 6.2 of the State's Coal Refuse Disposal Act (as is required by Section 3.2(b) of the Coal Refuse Disposal Act), that preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102.

In response to the required amendment at 30 CFR 938.16(xxx), the State provided the following clarification:

> The Department clarifies that preexisting discharges which are encoun-tered must be treated to the effluent standards of 25 Pa. Code § 90.102. This clarification will be incorporated in regulations governing Section 6.2 of the CRDCA as they are developed.

We find that the State's clarification, that under Section 6.2 of the Coal Refuse Disposal Act, preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102, is not inconsistent with SMCRA, and is consistent with the Federal regulations at 30 CFR 816/817.42. Therefore, we will remove the required program amendment at 30 CFR 938.16(xxx) when the clarification is incorporated in regulations and those regulations are approved by OSM.

B. The required amendment at 30 CFR 938.16(yyy) says that the State shall amend the Pennsylvania program to clarify that subsection 6.2(h) of the Coal Refuse Disposal Act pertains to preexisting discharges that are not encountered.

In the April 22, 1998 **Federal Register** notice, we said that subsection 6.2(h) could be misinterpreted. Specifically, the language in the first sentence of subsection 6.2(h) which states that "an operator required to treat preexisting discharges under subsection (g) will be allowed to discontinue treating * * *" is unclear. Subsection 6.2(g) pertains to both discharges that are encountered and those that are not encountered, and the treatment standards are different for each. We interpreted the language in the first sentence of section 6.2(h) to pertain only to subsection 6.2(g)(1)(ii), which governs discharges that are not encountered. Therefore, we approved section 6.2(h) to the extent that it provides that an operator may only discontinue treating preexisting discharges that are not encountered when the operator demonstrates that the "baseline" pollution load is no longer being exceeded. Preexisting discharges that are encountered must be treated to the State water quality standards at Chapter 90, subchapter D at 90.102 (63 FR 19810). We also established the required amendment at 30 CFR 938.16(yyy).

In response to the required amendment at 30 CFR 938.16(yyy), the State provided the following clarification:

> The Department clarifies that subsection 6.2(h) of the CRDCA pertains to preexisting discharges which are not encountered. This clarification will be incorporated in regulations as they are developed.

We find that the State's clarification, that subsection 6.2(h) of the CRDCA pertains to preexisting discharges which are not encountered, would be consistent with our interpretation of that provision as stated in the April 22, 1998, **Federal Register** notice.

Therefore, we will remove the required program amendment at 30 CFR 938.16(yyy) when the clarification is incorporated in regulations governing Section 6.2 of the CRDCA and those regulations are approved by OSM.

4. Required Amendment Codified at 30 CFR 938.16(zzz)

The required amendment at 30 CFR 938.16(zzz) says that the State must amend the Pennsylvania program to be no less effective than 30 CFR

816.116(b)(5), by limiting the application of the revegetation standards under subsection 6.2(k) of the CRDCA to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

In the April 22, 1998, finding on subsection 6.2(k), we said that the State provision lacks a requirement found in 30 CFR 816(b)(5). Specifically, subsection 6.2(k) lacks the requirement that, to qualify for the revegetation standards for areas that were previously disturbed by mining, the area that was previously disturbed by mining must not have been reclaimed to the State's permanent program performance standards. To be no less effective than 30 CFR 816.116(b)(5), the State needs to limit the application of the standards at subsection 6.2(k) to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards (63 FR 19811). In addition, we added the required amendment at 30 CFR 938.16(zzz).

In response to the required amendment at 30 CFR 938.16(zzz), the State provided the following clarification:

> The Department clarifies that the revegetation standards of subsection 6.2(k) of the CRDCA are limited to areas previously disturbed by mining and which were not reclaimed to Pennsylvania's reclamation standards. This clarification will be incorporated in regulations as they are developed.

We find that, if implemented as the State has indicated above, section 6.2(k) would be consistent with our approval of that provision as stated in the April 22, 1998, **Federal Register** notice. Therefore, we will remove the required program amendment at 30 CFR 938.16(zzz) when the clarification is incorporated in regulations governing Section 6.2(k) of the CRDCA and those regulations are approved by OSM.

5. Required Amendment Codified at 30 CFR 938.16(aaaa)

The required amendment at 30 CFR 938.16(aaaa) says that the State must amend the Pennsylvania program to clarify that under subsection 6.2(l) of the CRDCA, a special authorization for coal refuse disposal operations will not be granted when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeit.

Section 6.2(l) of the CRDCA says that forfeited funds in the Surface Mining Conservation and Reclamation fund (Fund) must be applied as a credit to the bond required for a special authorization. In the April 22, 1998, **Federal Register** notice, we said that if any forfeited Fund moneys for a particular site are sufficient to perform all outstanding reclamation obligations for the site, then the site should not be reclaimed to lesser reclamation standards under a special authorization. Therefore, we approved section 6.2(l) to the extent that the State will not approve a special authorization when the authorization would result in the site being reclaimed to lesser standards than could be achieved if the forfeited bond monies were used to reclaim the site to the standards approved in the original permit under which the bond monies were forfeited (63 FR 19811). We also established the required amendment at 30 CFR 938.16(aaaa).

In response to the required amendment at 30 CFR 938.16(aaaa), the State provided the following clarification:

> The Department clarifies that under subsection 6.2(l) of the CRDCA, a special authorization for coal refuse disposal operations will not be granted when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the monies paid into the Surface Mining Conservation and Reclamation Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond monies were forfeited. This clarification will be incorporated in regulations as they are developed.

We find that if implemented as the State has indicated above, section 6.2(l) would be consistent with our approval of that provision as stated in the April 22, 1998, **Federal Register** notice. Therefore, we will remove the required program amendment at 30 CFR 938.16(aaaa) when the clarification is incorporated in regulations governing Section 6.2(l) of the CRDCA and those regulations are approved by OSM.

6. Required Amendment Codified at 30 CFR 938.16(bbbb)

The required amendment at 30 CFR 938.16(bbbb) says that the State must amend the Pennsylvania program by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

In the April 22, 1998, **Federal Register**, we approved section 6.3 of the CRDCA concerning experimental practices. However, section 6.3 is silent concerning the requirement to obtain approval from the Secretary for each experimental practice, and does not clarify that such practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards (63 FR 19812). Therefore, we established the required amendment at 30 CFR 938.16(bbbb).

In response to the required amendment at 30 CFR 938.16(bbbb), the State provided the following clarification:

> The Department clarifies that the Department will implement Section 6.3 of the CRDCA in a manner no less effective than 30 CFR § 785.13 and no less stringent than Section 711 of the Surface Mining Control and Reclamation Act and clarifies that experimental practices will only be approved as part of the normal permit approval process and only for departure from the environmental protection performance standards, and that each experimental practice must receive the approval of the Secretary of the United States Department of Interior. This clarification will be incorporated in regulations as they are developed.

We find that if implemented as the State has indicated above, section 6.3 would be consistent with our approval of that provision as stated in the April 22, 1998, **Federal Register** notice. Therefore, we will remove the required program amendment at 30 CFR 938.16(bbbb) when the clarification is incorporated in regulations governing Section 6.3 of the CRDCA and those regulations are approved by OSM.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendment does not conflict with existing MSHA regulations.

The U.S. Department of Agriculture, Natural Resources Conservation Service, and the U.S. Fish and Wildlife Service responded and commented on the State's response to the required amendment codified at 30 CFR 938.16(www) concerning stream buffer

zones. As discussed above in Finding 2, we are deferring our decision on this provision. Therefore, we are not responding to these comments at this time. We will fully address the comments from these agencies when we render our final decision on this provision.

Public and State Agency Comments

The following comments were received in response to the public comment period that closed on September 28, 1998. Two commenters provided general comments in support of the amendments. In addition, the commenters recommended that OSM reconsider its finding that the term "significant" in the Pennsylvania provision at section 6.1(h)(5) of Act 114 is less effective than the Federal requirements (see Finding 2, above). As discussed above in Finding 2, we are deferring our decision on this provision. Therefore, we are not responding to the comments concerning the required amendment codified at 30 CFR 938.16(www) at this time. We will fully address the comments from these commenters when we render our final decision on this provision.

A commenter stated that OSM's requirement that the State clarify that preexisting discharges must be treated to effluent standards seems to contradict the advantage to the environment of utilizing previously impacted areas for refuse disposal. The Director disagrees with the commenter's assertion, because the CRDA does not limit the term "preexisting discharges" to discharges caused by mining which occurred prior to SMCRA's effective date of August 3, 1977. Preexisting discharges which began after this date, and which are encountered by the present mining operation, must be treated to the effluent standards contained in Chapter 90, subchapter B at 90.102. Therefore, the required amendment at 30 CFR 938.16(xxx) will remain in place until this clarification is incorporated in regulations and those regulations are approved by OSM.

One commenter submitted general comments on the Pennsylvania program but did not address the specific issues in this rulemaking. Therefore, those comments will not be addressed in this notice.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that EPA's concurrence is not required for this amendment, since changes to the State's regulations that relate to water quality standards must still be made before the required amendments at 30 CFR 938.16(www), (xxx) and (yyy) are satisfied. When the State submits these regulatory changes to OSM as a program amendment, OSM will seek EPA concurrence.

On August 20, 1998, OSM solicited EPA's comments on the proposed amendment (Administrative Record No. PA–837.81). The EPA did not provide any comments.

V. Director's Decision

Based on the above findings, the Director is approving, except as noted below, the proposed amendment as submitted by Pennsylvania on August 17, 1998.

We are deferring our decision on the State's response to the required amendment codified at 30 CFR 938.16(www).

The Federal regulations at 30 CFR Part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 23, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
August 17, 1998	February 2, 2000	Letter from Pennsylvania to OSM dated August 17, 1998 (PA–837.80), except a decision on the required amendment at 30 CFR 938.16(www) is deferred.

[FR Doc. 00–2269 Filed 2–1–00; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF EDUCATION

34 CFR Part 676

Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Notice of relief from specific statutory and regulatory provisions.

SUMMARY: We announce relief from specific statutory and regulatory provisions governing the Federal Supplemental Educational Opportunity Grant (FSEOG) Program for the 1999–2000 and 2000–2001 award years. This statutory and regulatory relief applies to additional emergency FSEOG funds provided under recently enacted provisions of the Consolidated Appropriations Act for Fiscal Year 2000. These emergency FSEOG funds can be used only to assist individuals who suffered financial harm from Hurricanes Dennis and Floyd, and the flooding associated with these hurricanes, that struck the eastern United States in August and September 1999.

EFFECTIVE DATE: Febraury 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy S. Gause, U.S. Department of Education, 400 Maryland Avenue, SW, Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Alternate Format Center at (202) 260–9895.

SUPPLEMENTARY INFORMATION: Many student financial aid applicants and recipients have been adversely affected by Hurricanes Dennis and Floyd, and the flooding associated with these hurricanes. The President signed the Consolidated Appropriations Act for Fiscal Year 2000 (Pub. L. 106–113) on November 29, 1999, that provides an additional emergency appropriation of $10 million for allocations to institutions of higher education for Federal Supplemental Educational Opportunity Grants (FSEOGs) made under Title IV, part A, subpart 3, of the Higher Education Act of 1965, as amended (HEA). The additional emergency FSEOG funds are being specifically provided for the purpose of assisting students who have suffered financial harm as a result of Hurricane Dennis or Hurricane Floyd, and are for use during award years 1999–2000 and 2000–2001. We informed institutions of the means to request these emergency FSEOG funds in an announcement dated January 7, 2000, that was issued on the Information for Financial Aid Professionals (IFAP) Web site (http://ifap.ed.gov).

To facilitate the use of these additional emergency FSEOG funds, the Consolidated Appropriations Act also grants the Secretary authority to waive or modify any statutory or regulatory provisions, applicable to the FSEOG Program, necessary to assist individuals who suffered financial harm resulting from these natural disasters.

We have already provided certain regulatory relief to lenders and guaranty agencies in the Federal Family Education Loan Program under section 432(a)(6) of the HEA and 34 CFR 682.406(b) and 682.413(f). The guaranty agency directors were informed of this relief in a letter dated August 5, 1999 as Disaster Letter 99–28. We have also provided guidance for helping Title IV participants affected by Hurricane Floyd in a Dear Partner letter published in September 1999 as GEN–99–27.

Covered Individuals

This notice is intended to assist individuals who suffered financial harm as a result of Hurricanes Dennis and Floyd in 1999. This notice will apply only to students who, at the time of the disaster, were residing in, employed in, or attending an institution of higher education located in an area designated as a Federally declared natural disaster area (or, in the case of an individual who is a dependent student, whose parent or stepparent suffered financial harm from that disaster, and who resided or was employed in such an area at that time).

A list of those areas designated as a Federally declared natural disaster due to these hurricanes is available by State on the Federal Emergency Management Agency's (FEMA) Web site (http://www.fema.gov/library/diz99.htm). The nine States that had areas designated as a Federally declared natural disaster due to these hurricanes are Delaware, Florida, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia.

This notice of statutory and regulatory relief will be applicable only for awards made under the FSEOG Program from the additional emergency appropriation of $10 million during the 1999–2000 and 2000–2001 award years (the periods from July 1, 1999 to June 30, 2000 and July 1, 2000 to June 30, 2001).

For the awarding of the additional emergency appropriation of $10 million in FSEOG funds allocated to institutions under the Consolidated Appropriations Act for Fiscal Year 2000, we provide the following waivers and modifications of specific statutory and regulatory provisions governing the FSEOG Program:

1. Section 413D of the HEA—Allocation of Funds and 34 CFR 673.4 Allocation and Reallocation of FSEOG Funds

To assist affected individuals, the Secretary has decided to modify the applicable statutory and regulatory

formula requirements for allocating FSEOG funds to institutions. During the 1999–2000 award year, the additional emergency FSEOG funds will be allocated for use during the 1999–2000 and 2000–2001 award years, to participating institutions from the designated States. An institution must submit a request, in the format and by the deadline required by the Secretary, for these funds to assist students enrolled at that institution who suffered financial harm as a result of Hurricane Dennis or Hurricane Floyd.

Also, to assist affected individuals, the Secretary has decided to waive the applicable statutory and regulatory penalty for unexpended FSEOG allocations. This penalty is being waived for these additional emergency FSEOG funds to best achieve the purpose of not having these funds impact future allocations. Therefore, the allocation from the additional emergency FSEOG funds will not be used in determining whether an institution returned more than 10 percent of its FSEOG allocation that would result in a reduction of its allocation for the second succeeding award year by the dollar amount unexpended. Upon the return of any of these funds to us, the institution must identify these funds as part of the additional amount of FSEOG funds awarded to institutions to assist individuals who suffered financial harm resulting from Hurricanes Dennis and Floyd and their aftermath.

2. Section 413C of the HEA Agreements With Institutions; Selection of Recipients and 34 CFR 676.10 Selection of Students for FSEOG Awards

To assist affected individuals, the Secretary has decided to waive the applicable statutory and regulatory priority order selection requirements for awarding FSEOG funds. The institution does not have to award these additional emergency FSEOG funds in lowest Expected Family Contribution order or give a priority to Federal Pell Grant recipients.

Also, to assist affected individuals, the Secretary has decided to waive the applicable statutory and regulatory requirements for offering a reasonable proportion of these emergency FSEOG funds to less-than-full-time and independent students. The institution may award these additional emergency FSEOG funds to an otherwise eligible student affected by Hurricane Dennis or Hurricane Floyd who demonstrates financial need.

The institution must document in the student's file that the funds awarded are part of these additional emergency FSEOG funds. The institution must also document in the student's file that the student, or the student's family, is from one of the designated areas and suffered financial harm as a result of Hurricane Dennis or Hurricane Floyd.

3. Section 413E of the HEA—Carryover and Carryback Authority and 34 CFR 676.18 Use of Funds

To assist affected individuals, the Secretary has decided to modify the applicable statutory and regulatory carry forward authority for the additional emergency FSEOG funds received for the 1999–2000 award year. The existing authority allows an institution to carry forward no more than 10 percent of its current award year FSEOG funds to spend in the next year. However, the institution may carry forward any amount of the emergency FSEOG funds necessary to be used in the 2000–2001 award year. Any of the additional emergency FSEOG funds that are not spent by the end of the 2000–2001 award year (June 30, 2001) must be returned to the Department.

4. Section 413C of the HEA—Agreements With Institutions; Selection of Recipients and 34 CFR 676.21 FSEOG Federal Share Limitations

To assist affected individuals, the Secretary has decided to waive the applicable statutory and regulatory requirement that the Federal share of FSEOG awards made by an institution may not exceed 75 percent. The Federal share for these additional emergency FSEOG funds may be 100 percent. The institution must document in its records that it used this waiver of the Federal share limitation requirement for these additional emergency FSEOG funds.

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(Catalog of Federal Domestic Assistance Number: 84.007)

(**Legal Authority:** Pub. L. 106–113 and 20 U.S.C. 1082)

Dated: January 27, 2000.

Richard W. Riley,

Secretary of Education.

[FR Doc. 00–2234 Filed 1–28–00; 1:33 pm]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA063–0214; FRL–6530–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing three actions proposed in the **Federal Register** on October 5, 1999 concerning rules from the El Dorado County Air Pollution Control District (EDCAPCD). This final action will incorporate Rules 501, 520, 524, and 525 into the Federally approved State Implementation Plan (SIP). Today's action also will rescind 36 rules from the SIP. The intended effect of approving these rules is to regulate permitting of stationary sources in accordance with the requirements of the Act, as amended in 1990. EPA is finalizing the approval of these revisions into the California SIP under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is also finalizing a limited approval and limited disapproval of Rule 523 under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval, EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will

be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on March 3, 2000.

ADDRESSES: Copies of the rule(s) and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule(s) are available for inspection at the following locations:

(1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105;
(2) California Air Resources Board, 2020 L Street, Sacramento, CA 95814;
(3) El Dorado County Air Pollution Control District, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667–4100.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), Air Division, US Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238, E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Rules Incorporated into EDCAPCD SIP
II. Background
III. Response to Public Comments
IV. EPA Action
V. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13132
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. Rules Incorporated into EDCAPCD SIP

The rules being approved into the California SIP include: EDCAPCD Rules 501 (General Permit Requirements), 520 (Enhanced Monitoring and Compliance Certification), 524 (Emission Reduction Credits), and 525 (Priority Reserve). EPA is also granting limited approval (and limited disapproval) to EDCAPCD Rule 523. These rules were submitted by the California Air Resources Board to EPA on May 24, 1994 (Rules 501, 523, 524, and 525) and October 13, 1995 (Rule 520).

II. Background

On October 5, 1999 in 64 FR 53973, EPA proposed to approve Rules 501, 520, 524, and 525 into the California SIP, and to rescind 36 rules from the SIP. EPA also proposed to grant limited approval (and limited disapproval) to Rule 523. A detailed discussion of the background for each of the above rules is provided in the proposed rule cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule cited above. EPA has found that the rules meet the applicable EPA requirements, with the exception of four deficiencies in Rule 523. A detailed discussion of the rule provisions and evaluations, including the Rule 523 deficiencies, has been provided in the proposed rule and in the technical support document (TSD), dated September 16, 1999, which is available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period, which ended on November 4, 1999, was provided in 64 FR 18858. EPA received one comment letter on the proposed rulemaking, from EDCAPCD. The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment: EDCAPCD agrees to change the offset ratio for emission reductions that occur at a source that is within a 15 mile radius and within the District to 1.3 to 1.0.

Response: EPA and EDCAPCD are in agreement on the necessity to revise Rule 523 to meet the offset ratio requirement of section 182(d)(2) of the CAA.

Comment: EDCAPCD contends that the offset requirements in Rule 523 are more stringent than CAA requirements. The District believes that by requiring a source to offset emission increases down to the trigger level once cumulative emission changes at the source exceed specific trigger levels, the rule achieves more emission reductions than the CAA and EPA regulations require. EDCAPCD submitted a hypothetical example to document this claim.

Response: The District and EPA use different methodologies to determine if offsets are required, and if so, how many. District Rule 523 establishes offset trigger levels and requires sources, once they have exceeded these levels, to offset all future increases in potential to emit down to the trigger level. The EPA method determines offset applicability on a per project basis by subtracting a source's pre-modification actual emissions from its post-modification potential to emit (while accounting for other creditable and contemporaneous emissions increases and decreases). If the resulting emission increase triggers offsets, the source must provide offsets for the entire amount of the emission increase. EPA agrees that in most cases, Rule 523 offset requirements are more stringent than CAA requirements. However, there is one scenario in which the rule is less stringent than the CAA: new major sources. An example of this would be a new 100 ton per year (tpy) NO_X source proposing to locate in the county. The CAA requires that such a source offset all emissions, *i.e.*, 100 tpy. However, according to the offset provisions of Rule 523, the new source would have to offset down to the trigger level of 7500 lb./quarter or 85 tpy, which is 15 tpy less than the federal requirement.

In order to address this limited approval issue, the District must revise Rule 523 to require that new major sources offset the total amount of their potential to emit, *i.e.*, down to zero.

Comment: The District's BACT definition is more stringent than EPA's because it does not require that a rule containing an emission limit or control technique be in a state implementation plan to qualify as BACT. The definition is more inclusive and thus more stringent than what EPA requires.

Response: The District BACT definition does not explicitly include the most stringent emissions limit contained in any SIP, which is part of the EPA definition of Lowest Achievable Emission Rate (California BACT). However, EDCAPCD has clarified in writing that the District interprets the BACT definition to include the SIP provision (see letters dated November 1, 1999 and November 29, 1999 from EDCAPCD to EPA, contained in the docket for this rulemaking). As a result, EPA agrees that this limited approval issue has been satisfied, and is not requiring the District to modify the BACT definition in Rule 523. Nevertheless, in order to clarify the definition, EPA encourages the District to revise the rule to make the SIP requirement an explicit part of the BACT definition.

Comment: The District cannot remove or change the offset exemption in Rule 523 because it is mandated by California Health and Safety Code 42301.2.

Response: EPA understands that EDCAPCD is in a difficult position because it appears that state law may conflict with the Clean Air Act with respect to this exemption. Nevertheless, EPA cannot approve a rule provision into the SIP that conflicts with the Act. EPA is willing to work with EDCAPCD and the State of California to help resolve this deficiency. However, the

deficiency must be addressed before EPA can grant full approval to Rule 523.

Comment: EDCAPCD questions EPA's authority to regulate interprecursor offset trading. Since there are no provisions addressing interprecursor offsets in the CAA or EPA regulations, EPA has no authority to regulate them. In addition, case-by-case EPA approval for trades would be a long, burdensome process.

Response: Section 173(c)(1) of the CAA requires that new or modified stationary sources offset emission increases of a given pollutant with reductions of the same pollutant. Since the CAA doesn't explicitly authorize interprecursor trading, a strict interpretation of the Act would prohibit air districts from allowing this practice at all in NSR rules.

Recent EPA policy has allowed interprecursor trading, particularly among ozone precursors in ozone nonattainment areas, if certain criteria are met. Consistent with this policy, the District has two possible ways to address this limited disapproval issue when it revises Rule 523. One way is to include rule language requiring written EPA concurrence for each proposed interprecursor trade. Alternatively, the District could produce a technical justification for various interprecursor offset ratios, and then revise Rule 523 to include those ratios. In this scenario, rule language requiring case-by-case EPA concurrence would not be necessary. Since the CAA does not explicitly authorize interprecursor trading, EPA's policy is to require Agency concurrence for such trades, either on a case-by-case or one time only basis if appropriate ratios are established by rule.

With respect to the amount of time required for EPA to concur on a specific trade in the case-by-case scenario, EPA would have to make its determination during the comment period provided for the draft permit. This would not delay the permit issuance process.

IV. EPA Action

EPA is finalizing this action to approve Rules 501, 520, 524, and 525 for inclusion into the California SIP, to rescind 36 rules from the SIP, and to amend 40 CFR 52.232 to delete an obsolete requirement. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and parts C and D of the CAA. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate stationary sources in accordance with the requirements of the CAA.

EPA is also finalizing a limited approval and a limited disapproval of Rule 523. The limited approval of this rule is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP. However, the rule does not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the proposed rulemaking. Thus, in order to strengthen the SIP, EPA is granting limited approval of Rule 523 under sections 110(k)(3) and 301(a) of the CAA. This action approves the rule into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of Rule 523 because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. As stated in the proposed rule, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this **Federal Register** has been adopted by EDCAPCD and is currently in effect in the District. EPA's limited disapproval action will not prevent EDCAPCD or EPA from enforcing the rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, — Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes

substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: January 14, 2000.

Nora L. McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(103)(xiii)(B), (c)(119)(i)(C), (c)(120)(i)(B), (c)(138)(ii)(D), (c)(197)(i)(E), and (c)(225)(i)(C)(*3*)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(103) * * *

(xiii) * * *

(B) Previously approved on May 27, 1982 and now deleted without replacement rule 501.

* * * * *

(119) * * *

(i) * * *

(C) Previously approved on May 27, 1982 and now deleted without replacement Rules 502 to 508, 510 to 513, 515, 517 to 519, and 521.

* * * * *

(120) * * *

(i) * * *

(B) Previously approved on July 7, 1982 and now deleted without replacement Rules 401 to 407, 410 to 411, 415 to 416, and 418 to 424.

* * * * *

(138) * * *

(ii) * * *

(D) Previously approved on November 18, 1983 and now deleted without replacement Rule 521.

* * * * *

(197) * * *

(i) * * *

(E) El Dorado County Air Pollution Control District.

(*1*) Rules 501, 523, 524, and 525 adopted on April 26, 1994.

* * * * *

(225) * * *

(i) * * *

(C) * * *

(*3*) Rule 520 adopted on June 27, 1995.

* * * * *

3. Section 52.232 is amended by removing and reserving paragraph (a)(15).

[FR Doc. 00–2177 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CI Docket 95–6; FCC 99–407]

Use of Notices of Apparent Liability and Facts Underlying Notices of Apparent Liability in Subsequent Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document provides further interpretation of section 504(c) of the Communications Act of 1934, as amended. The Federal Communications Commission reiterated that it would continue its policy of not using the mere issuance of or failure to pay a Notice of Apparent Liability to the prejudice of a party. The Commission concluded, however, that using the underlying facts of a prior violation that shows a pattern of non-compliant behavior against a licensee in a subsequent renewal, forfeiture, transfer, or other proceeding does not cause the prejudice that Congress sought to avoid in section 504(c). This document also reverses the Commission's prior statement that no statutory violation can be deemed to be minor for purposes of making downward adjustments to forfeiture amounts.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ellington, Enforcement Bureau, (202) 418–1160.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* denying reconsideration of *The Commission's Forfeiture Policy Statement and Amendment Of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket 95–6, adopted December 21, 1999 and released December 28, 1999.

The complete text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036; telephone (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2141 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223348–9348–01; I.D. 012700D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 outside the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2000 pollock total allowable catch (TAC) for Statistical Area 630 outside the Shelikof Strait conservation area established by the 2000 Interim Specifications and amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 2000, until 1200 hrs, A.l.t., March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2000 pollock TAC in Statistical Area 630 outside the Shelikof Strait conservation area as amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska (65 FR 3892, January 25, 2000) is 4,278 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in Statistical Area 630 outside the Shelikof Strait conservation area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,778 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 outside the Shelikof Strait conservation area in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 630 outside the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2166 Filed 1–27–00; 5:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991222334S–9348–01; I.D. 012700C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the interim 2000 total allowable catch (TAC) of pollock in the Western and Central Regulatory Areas of the Gulf of Alaska (W/C GOA). This action is necessary to adjust the harvest of pollock, that, based on the best available scientific information, has been found by NMFS to be incorrectly specified.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 2000, until 1200 hrs A.l.t. July 19, 2000. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 17, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments will not be accepted if submitted via e-mail or Internet. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2000 pollock TAC in the W/C GOA as amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska (65 FR 3892, January 25, 2000) are as follows: Western Regulatory Area (610) 5,465 metric tons (mt), Central Regulatory Area (620 outside Shelikof Strait) 3,252 mt, Central Regulatory Area (630 outside Shelikof Strait) 4,278 mt, and Shelikof Strait 14,366 mt.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), is adjusting the interim TAC for pollock in the W/C GOA based on the best available scientific information and a determination that the current interim TACs are incorrectly specified.

On January 20, 2000, NFMS stock assessment scientists developed a revised procedure for more accurately allocating the pollock interim TAC by time and area in the Western and Central Regulatory areas as authorized under the emergency interim rule implementing Steller sea lion protection measure. To allocate TAC in Shelikof Strait the revised procedure uses the most recent winter Shelikof Strait acoustic survey (1998) and updated 1998 estimates of GOA pollock biomass west of 140° W. long. For the three areas outside of Shelikof Strait (Statistical area 610, Statistical area 620 outside Shelikof Strait, and Statistical area 630 outside Shelikof Strait) the distribution of pollock biomass is averaged from the last four summer surveys. The method of using the average distribution from the last four summer trawl surveys for purposes of spatial allocation was advocated by the Gulf of Alaska Groundfish Plan Team, reflected in the annual Stock Assessment and Fishery Evaluation (SAFE) report dated November 1999, and accepted by the North Pacific Fishery Management Council's Scientific and Statistical Committee. However, the revised procedure distinguishes the management areas inside and outside Shelikof Strait more accurately than the previous method used to determine the allocation of TAC among areas of the W/C GOA under the interim harvest specification published with the emergency rule implementing Steller sea lion protection measures (65 FR 3892, January 25, 2000).

Based upon this information the Regional Administrator has determined that the current interim pollock TACs specified for the W/C GOA are incorrect. He is correcting the estimate of total GOA pollock biomass west of 140° W. long. from 933,000 mt to 958,000 mt as reflected in the most recent SAFE report, dated November 1999. After the interim harvest amount for the Shelikof Strait is calculated using the procedure set forth in the emergency rule implementing the Steller sea lion protection measures, the remainder of the combined W/C GOA pollock TAC is apportioned to those areas outside the Shelikof Strait as described above. This results in percentage apportionments of the remainder of the combined W/C GOA pollock TAC equal to 56.09 percent, 4.08 percent, and 39.83 percent to Statistical areas 610, 620 (outside Shelikof Strait), and 630 (outside Shelikof Strait), respectively. Table 5 in the emergency rule implementing Steller Sea lion protection measures specified interim pollock TACs for the W/C GOA and is accordingly corrected to read:

TABLE 5.—REVISED FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE WESTERN (W) AND CENTRAL (C) REGULATORY AREAS OF THE GULF OF ALASKA (GOA)

Area	A season interim TAC (mt)
Species: Pollock [1]	
W (610)	7,498
C (620 outside Shelikof Strait)	546
C (630 outside Shelikof Strait)	5,325
Shelikof Strait	13,991
Total	27,360

[1] The pollock catch limit for the Shelikof Strait conservation zone is determined by calculating the ratio of the most recent estimate of pollock biomass in Shelikof Strait (489,900 mt) divided by the most recent estimate of total pollock biomass in the GOA (958,000 mt). This ratio is then multiplied by the pollock TAC in the A season for the combined Western and Central areas of the GOA (27,360 mt). The remainder of the combined W/C TAC in the A Season is apportioned among Regulatory Areas 610, 620, and 630 outside the Shelikof Strait based on the distribution of pollock outside the Shelikof Strait; 56.09%, 4.08%, and 39.83% respectively.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the current interim seasonal allocation of pollock

TAC would promote an improper distribution of the fishery. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 17, 2000.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2165 Filed 1–27–00; 5:01 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 012700A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock by catcher vessels that are non-exempt under the American Fisheries Act (AFA) in Statistical Area 610 and the Shelikof Strait Conservation Area of the Gulf of Alaska (GOA). This action is necessary to allow non-exempt catcher vessels to participate in the pollock fishery in these areas consistent with regulations implementing the AFA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the interim 2000 GOA AFA catcher vessel sideboard in Statistical Area 610 and the Shelikof Strait Conservation Area was established by the Emergency Interim Rule to Implement Major Provisions of the American Fisheries Act (published January 28, 2000), as 3,409 metric tons (mt) and 2,402 mt respectively in accordance with § 679.20(c)(2)(i).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 3,209 mt, and set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries for this component of the fishery in Statistical Area 610. He also has established a directed fishing allowance of 2,202 mt, and set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries for this component of the fishery in Shelikof Strait Conservation Area. These areas of the GOA were closed to directed fishing for pollock by non-exempt AFA vessels effective on January 21, 2000.

NMFS has determined that as of January 24, 2000, 3,209 mt remain in the directed fishing allowance for Statistical Area 610 and 2,000 mt remain in the directed fishing allowance for the Shelikof Strait Conservation Area. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock by catcher vessels that are non-exempt under the AFA in Statistical Area 610 and the Shelikof Strait Conservation Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow participation of catcher vessels that are non-exempt under the AFA. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2164 Filed 1–27–00; 5:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 012700B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 interim total allowable catch (ITAC) of Atka mackerel in these areas.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 2000, until superseded by the Final 2000 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The Interim 2000 Harvest Specifications for Groundfish (65 FR 60, January 3, 2000) established the Atka mackerel ITAC for non-jig gear as 14,306 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea. See §§ 679.20(c)(2)(ii) and 679.20(a)(8)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the ITAC for non-jig gear Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,806 mt, and is setting aside the remaining 500

mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the ITAC limitations and other restrictions on the fisheries established in the Interim 2000 Harvest Specifications for Groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 2000 ITAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2163 Filed 1–27–00; 5:01 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 22
Wednesday, February 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket No. 00–02]

RIN 1557–AB76

Electronic Banking

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is undertaking a review of its regulations with a view toward identifying changes or additions to its rules that would facilitate national banks' use of new technologies. This advance notice of proposed rulemaking (ANPR) solicits comment on a wide range of issues arising from national bank involvement in electronic activities.

DATES: Comments must be received by April 3, 2000.

ADDRESSES: Please send your comments to: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 00–02. You may inspect and photocopy comments at the same location. In addition, you may fax your comments to (202) 874–5274 or electronic mail them to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Karl Betz, Attorney, Legislative and Regulatory Activities, at (202) 874–5090; James Gillespie, Assistant Chief Counsel, at (202) 874–5200; or Clifford Wilke, Director, Bank Technology, at (202) 874–5920.

SUPPLEMENTARY INFORMATION:

Background

Technological developments are dramatically altering the ways in which national banks conduct their business. Telecommunications advances offer banks faster and more efficient communication and data transmission. Improvements in computer hardware and software are opening up new banking applications. These rapid developments in new technologies are causing banks to reevaluate existing delivery channels and business practices and to develop new products and services in order to reach new customers, better serve existing customers, and take advantage of cost efficiencies.

The explosive growth of the Internet also is prompting banks to reconsider business strategies and adopt alternative distribution and marketing systems. The recent chartering of Internet-only banks that operate without a conventional brick and mortar physical presence and the use of the Internet by existing banks to establish transactional World Wide Web (Web) sites [1] present new opportunities and challenges for national banks.

The OCC has already taken a number of steps to facilitate national banks' use of developing technology, including the Internet. For example, in 1996, we revised our data processing regulation to reflect the fact that banks today use technology to engage in a range of electronic activities. 61 FR 4849 (Feb. 9, 1996). As revised, the regulation authorizes national banks to conduct through electronic means or facilities any activity that they are otherwise authorized to conduct and permits banks to sell excess electronic capacities acquired or developed in good faith for banking purposes. 12 CFR 7.1019.

The OCC has also recently issued a comprehensive handbook that addresses the risks presented by Internet banking activities. Comptroller's Handbook, Other Income Producing Activities, Internet Banking (Oct. 1999) (Handbook).[2] The Handbook describes procedures for examining Internet banking activities in national banks. It also provides guidance to national banks that are conducting, or considering, Internet banking activities by outlining business and technical issues associated with offering banking products and services through the Internet. The Handbook follows previous OCC guidance on electronic banking issues, including certification authority systems, technology risk management, retail personal computer banking, Web privacy statements, cyber-terrorism, reporting computer-related crime, and consumer compliance.[3]

In addition, on a case-by-case basis, the OCC reviews specific bank uses of technology. To date, we have approved a number of Internet applications, including transactional Web sites, commercial Web site hosting services, a virtual mall, an electronic marketplace for non-financial products, and Internet access services.[4] The OCC also has

[1] As of mid-September 1999, 541 national banks had transactional Web sites.

[2] This Handbook and others in the Comptroller's Handbook series are available on the OCC's Web site at www.occ.treas.gov.

[3] OCC Advisory Letter No. 97–9, "Reporting Computer-Related Crimes" (Nov. 19, 1997); OCC Advisory Letter No. 99–6, "Guidance to National Banks on Web Site Privacy Statements" (May 4, 1999); OCC Bulletin 98–3, "Technology Risk Management" (Feb. 4, 1998); OCC Bulletin 98–31, "Guidance on Electronic Financial Services and Consumer Compliance" (July 30, 1998); OCC Bulletin 98–38, "Technology Risk Management: PC Banking" (Aug. 24, 1998); OCC Bulletin 99–9, "Infrastructure Threats from Cyber-Terrorists" (Mar. 5, 1999); OCC Bulletin 99–20, "Certification Authority Systems" (May 6, 1999). All of these issuances are available on the OCC's Web site at *www.occ.treas.gov*.

[4] OCC Interpretive Letter No. 742, [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–106 (Aug. 19, 1996) (allowing a national bank to offer Internet banking services); OCC Conditional Approval No. 253 (Aug. 20, 1997) (chartering a national bank to deliver products and services to customers primarily through electronic means); Interpretive Letter No. 856, [1998–1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–313 (Mar. 5, 1999) (permitting a national bank to host commercially enabled Web sites for small retailers); Interpretive Letter No. 875 (Oct. 31, 1999) (to be published in the January 2000 issue of "Interpretations and Actions") (opining that a national bank may offer a bank-hosted set of Web pages with a collection of links to third party Web sites organized according to product type so that bank customers can shop for a range of financial and non-financial products and services via these links to third party vendors); OCC Corporate Decision No. 99–35 (Oct. 20, 1999) (permitting a national bank operating subsidiary to provide links to merchant processing-related third party vendors on its Internet site); OCC Corporate Decision No. 97–60 (July 1, 1997) (authorizing a national bank to operate a Web site providing consumers and dealers with detailed information on used cars offered by third party sellers that meet purchaser preferences); OCC Interpretive Letter No. 742, [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–106 (Aug. 19, 1996) (permitting a national bank to provide full Internet access service in connection with its Internet banking services and, incidental to that, the national bank may sell good faith excess capacity in access service to persons who are not Internet banking customers). In addition to being available through the Federal Banking Law Reporter (CCH), most of the OCC staff opinions and decisions cited in this ANPR are available on the OCC's Web

Continued

permitted national banks to engage in a number of electronic payment systems activities. For example, we have allowed national banks to provide electronic bill payment and presentment services, stored value systems, electronic data interchange (EDI) services, and to dispense prepaid alternate media (such as stamps and prepaid phone cards) from automated teller machines (ATMs).[5] Finally, the OCC has authorized national banks to offer additional technology-based services, such as digital certification authority services and electronic correspondent banking services.[6]

We periodically review and reevaluate our regulations to ensure that they encourage national banks' efficiency and competitiveness, consistent with safety and soundness. The purpose of this ANPR is to invite public comment on a wide range of issues involving national bank involvement in electronic banking to determine whether the OCC's regulations should be revised to remove regulatory impediments and unnecessary burdens, if any, to bank use of technology, or add new provisions that would facilitate national banks' use of new technologies. Based on the comments we receive, we may propose specific revisions to our rules for comment or issue additional supervisory guidance.[7]

Issues for Comment

The following discussion identifies some areas where modification of the OCC's regulations or supervisory policies may be useful to national banks that provide financial services electronically. Commenters are invited to respond to the questions presented and to offer comments or suggestions on any other issues related to electronic banking that are not specifically mentioned here, including whether OCC initiatives other than regulatory changes are appropriate.[8]

1. Electronic Banking in General: How Should the OCC Adapt its Regulations or Supervisory Policies To Facilitate National Banks' Use of Electronic Technology, Consistent With Safety and Soundness?

Recognizing the fluid, fast-evolving nature of bank use of technology, the OCC wants to ensure that its regulations are flexible enough to address emerging trends and new banking activities. To this end, we invite commenters to describe how national banks want to use new technologies and how these technologies will impact the ways in which national banks operate under the OCC's current regulations. For example, are there specific regulations that the OCC should modify because they impede the use of developing technology?

Technology also enables national banks to reach nationwide markets for the financial products and services they provide. Are there areas where conducting electronic banking activities could particularly benefit from a single set of standards that can be applied uniformly on a nationwide basis?

Electronic banking activities of all forms expose banks to new combinations of risks from different sources. Through the issuance of the Internet Banking Handbook and other supervisory guidance, the OCC is working to identify, and educate national banks about, the risks presented by electronic banking and to ensure that its regulations appropriately address these risks. We invite comment on whether existing OCC regulations adequately address the risks presented by current or future electronic banking activities. Are there areas where banks would benefit from additional clarification in our rules or in other guidance on the risks associated with electronic banking activities? For example, are banks experiencing problems related to the permissibility, validity, and enforceability of electronic transactions? What could the OCC do to provide greater legal certainty in these or other areas?

Electronic banking also provides consumers with more convenient access to a wider variety of financial services. Studies indicate that a significant percentage of households in the United States will do their banking online as a growing number of consumers conduct their banking and other financial transactions through automated teller machines and over the Internet. We invite comment on whether there are specific areas in which regulatory changes are needed to enhance consumer acceptance of, confidence in, or access to, electronic banking.

2. Adapting Existing Law to Electronic Banking: What Statutes That the OCC Administers Could Be Interpreted More Flexibly To Accommodate New Technologies?

Internet banking raises legal issues with respect to how the OCC should construe references in existing law to the "location" of a national bank. A number of statutes applicable to national banks refer to the state or place where the bank is "located" or use similar terms.[9] In some of these

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site. The OCC published redacted versions of these letters and decisions in its monthly publication "Interpretations and Actions." Beginning with the May 1996 issue, the OCC's Web site provides electronic access to issues of "Interpretations and Actions." *See www.occ.treas.gov.*

[5] OCC Conditional Approval No. 304 (Mar. 5, 1999) (stating that electronic bill presentment is part of the business of banking); OCC Conditional Approval No. 332 (Oct. 18, 1999) (allowing national bank subsidiaries to invest in an electronic interbank switch to support electronic bill presentment services over the internet); OCC Conditional Approval No. 220 (Dec. 2, 1996) (concluding that the creation, sale and redemption of electronic stored value in exchange for dollars is part of the business of banking); OCC Interpretive Letter No. 732, [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–049 (May 10, 1996) (opining that EDI services are "part of or incidental to business of banking"); OCC Interpretive Letter No. 718, [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–033 (Mar. 14, 1996) (finding that a national bank may dispense alternate media, such as prepaid phone cards, public transportation system tickets, and promotional and advertising materials, from ATM machines).

[6] OCC Conditional Approval No. 267 (Jan. 12, 1998) (allowing a national bank to act as a certification authority to enable subscribers to generate digital signatures that verify the identity of a sender of an electronic message); OCC Conditional Approval No. 339 (Nov. 16, 1999) (permitting national banks to invest in a multiple bank venture to establish an entity that will support a multiple bank certification authority system); OCC Interpretive Letter No. 754, [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81–118 (Nov. 6, 1996) (approving a national bank operating subsidiary that sells computer network services and related hardware to other financial institutions as a correspondent banking service).

[7] Section 729 of the Gramm-Leach-Bliley Act (GLBA) requires the OCC and the other Federal banking agencies to conduct a study of banking regulations pertaining to the delivery of financial services and make recommendations on adapting existing regulations to on-line banking and lending. A report to Congress detailing these recommendations is due by November 12, 2001. Public Law 106–102, section 729, 113 Stat. 1338 (Nov. 12, 1999). The OCC will not delay making changes to its rules or supervisory policies during the pendency of the § 729 study and report. Commenters' responses to this ANPR will, however, help the OCC formulate recommendations for legislative action or for actions that may appropriately be undertaken on an interagency basis.

We also note that on November 29, 1999, President Clinton issued a memorandum for the heads of executive departments and agencies announcing an initiative to update laws and regulations developed before the advent of the Internet that may have unintended negative effects on electronic commerce. The memorandum asks each Federal agency to identify any provision of law administered by such agency, or any regulation issued by such agency, that may impose a barrier to electronic transactions, and to recommend how such laws or regulations may be modified to allow electronic commerce to proceed while ensuring that consumers and the general public continue to enjoy the same degree of protection that they do under current law. Memorandum on Facilitating the Growth of Electronic Commerce, Nov. 29, 1999, 35 Weekly Comp. Pres. Doc. 2457–2458 (Dec. 6, 1999).

[8] Not within the scope of this ANPR are privacy issues, which are being addressed on an interagency basis pursuant to Title V of the GLBA, and issues concerning the Community Reinvestment Act.

[9] E.g., 12 U.S.C. 24 (Eighth) (charitable contributions), 29 (real estate holding period), 72 (directors' residency requirement), 75 (impact of

statutes, the activities and operations of a national bank depend on the laws of the state in which the bank is located.

Generally, for many of these statutes, banks have been considered located in a state where they have a main office or a branch. For some statutes, only the main office is considered. For others, a bank has been considered located in a state with a non-branch office, as well as the states of its main office and branches. Moreover, the determination of the bank's location focuses on the location of the bank's offices and activities, not the location of the bank's customers.

We invite comment on whether new developments in bank technology require the OCC to address how "location" applies in the context of activities conducted via the Internet. Specifically, is the determination of "location" for purposes of the statutes an impediment to national banks conducting all or part of their operations on the Internet? If so, should we further clarify our regulations on this issue? Is there a uniform approach to "location" that works for all the relevant statutes or should we address each statute separately?

3. Operational Issues: How Can the OCC Enhance the Operational Flexibility of Banks Engaging in Electronic Banking, Consistent With Safety and Soundness?

A. Marketing Access Arrangements

The rapid growth of electronic commerce has resulted in many marketing arrangements involving providing bank customers with access to providers of retail or financial services through hypertext links on the bank's Web site. Under some marketing arrangements, the bank is the dominant brand and refers its customers to non-bank third parties for additional products and services not provided by the bank directly. In other cases, the non-bank is the dominant brand and it uses a bank to provide its customers with access to bank services while minimizing the bank's brand.

It is well settled that a national bank may lease excess space on bank premises to other businesses and share space jointly with other businesses, subject to certain conditions. These conditions, which are currently set forth in the OCC's regulation governing the sharing of space and employees, are intended to minimize customer confusion about the nature of the products offered and promote the safe and sound operation of the bank. *See* 12 CFR 7.3001.

We invite comment on whether the OCC should issue a regulation similar to § 7.3001 that would apply to these types of electronic marketing arrangements. Commenters are specifically requested to address whether any or all of the supervisory conditions set forth in § 7.3001(c) are relevant in the electronic banking context and whether other conditions intended to minimize customer confusion should apply to these arrangements.

B. Branching

National banks may receive deposits and pay withdrawals in a variety of ways that are not subject to geographical restrictions or the need to apply for branch certification. For example, it is well settled that national banks may arrange to have their customers use ATMs established by third parties in order to undertake transactions with the bank. In 1996, Congress passed legislation permitting national banks to establish ATMs and remote service units (RSUs) without geographical limits or the need to seek approval to establish these types of facilities. [10]

Both Congress, through legislation, and the OCC, through interpretation, also permit national banks to arrange for their customers to undertake banking transactions with the national bank through offices of affiliated banks and thrifts without implicating branching restrictions. Additionally, the OCC has established guidelines to enable national banks and their customers to transact business with each other through messenger services without implicating branching restrictions. Of course, national banks and their customers can transact business electronically without raising branching concerns.

The OCC seeks comment on whether these forms of delivery systems are flexible enough to permit technology-based banks to serve the transaction-related needs of their retail, as well as their commercial, customers. Specifically, are existing regulations sufficient to permit customers of technology-based banks to make deposits in the bank by cash or check in an efficient and expeditious manner? Additionally, are there other types of transactions that banks are considering where geographical restrictions create impediments or that could benefit from the development of alternative delivery systems not within the scope of branching restrictions?

Dated: January 21, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–2199 Filed 2–1–00; 8:45 am]

BILLING CODE 4810–33–P

legal holiday on shareholders' meeting), 85 (allowable interest rate), 90 (pledging security for deposits of state funds), 92 (insurance sales), 92a (fiduciary powers), 95 (state-declared bank holidays), 182 (publication of notice of voluntary liquidation), 214a & 214c (national bank conversions and mergers into state banks) & 215a (national bank and state bank mergers into national banks); 28 U.S.C. 1348 (citizenship of state for federal court jurisdiction).

[10] The OCC recently defined an RSU as "an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money." The term RSU includes ATMs, automated loan machines, and automated devices for receiving deposits, and may be equipped with a telephone or televideo device that allows contact with bank personnel. 64 FR 60,092, 60,100 (Nov. 4, 1999) (adding 12 CFR 7.4003).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–203–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–145 series airplanes, that currently requires repetitive emergency extension (free-fall) functional tests of the nose landing gear (NLG), and lubrication of all NLG hinge points, to ensure that the NLG extends and locks down properly; and corrective action, if necessary. This action would require a terminating modification that includes replacement of the NLG door solenoid valve with an improved valve; replacement of the landing gear (LG) safety pins holder with an improved holder; and replacement of the NLG maneuvering actuator with an improved actuator. This proposed action would also limit the applicability of the existing AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the NLG to extend and lock down properly, which could result in damage to the airplane structure, and consequent

reduced controllability of the airplane upon landing.

DATES: Comments must be received by March 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–203–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 16, 1998, the FAA issued AD 98–13–34, amendment 39–10625 (63 FR 34274, June 24, 1998), applicable to all EMBRAER Model EMB–145 series airplanes, to require repetitive emergency extension (free-fall) functional tests of the nose landing gear (NLG), and lubrication of all NLG hinge points, to ensure that the NLG extends and locks down properly; and corrective action, if necessary. That action was prompted by a report indicating that the NLG on a Model EMB–145 series airplane failed to extend and lock down upon landing, even after accomplishment of procedures for abnormal emergency landing gear extension by the override switch and free-fall mechanism. The requirements of that AD are intended to prevent damage to the airplane structure, and consequent reduced controllability of the airplane upon landing.

Actions Since Issuance of Previous Rule

The actions required by AD 98–13–34 were defined as interim actions until a permanent modification could be developed. Since the issuance of that AD, EMBRAER has determined that the unsafe condition can be eliminated by replacement of the NLG door solenoid valve with a new valve; replacement of the landing gear (LG) safety pins holder with a new holder; and by replacement of the NLG maneuvering actuator with a new actuator. The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, issued Brazilian airworthiness directive 98–05–01R1, dated July 8, 1999, to require these replacements.

EMBRAER has advised the FAA that a new NLG door solenoid valve, safety pins, and safety pins holder have been installed during production on Model EMB–145 series airplanes having serial numbers (S/N) 145001 through 145003 inclusive, and 145088 and subsequent. EMBRAER has also advised the FAA that a new NLG maneuvering actuator has been installed during production for Model EMB–145 airplanes S/N 145001 through 145003 inclusive, 145104, and 145107 and subsequent. Therefore, only Model EMB–145 series airplanes; S/N 145004 through 145103 inclusive, 145105, and 145106 are subject to the unsafe condition.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–32–0036, dated February 1, 1999, which describes procedures for replacing the NLG door solenoid valve with a new valve; and replacement of the LG safety pins holder with a new holder.

EMBRAER also has issued Service Bulletin 145–32–0037, dated February 12, 1999, which describes procedures for replacing the NLG maneuvering actuator with a new actuator.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 98–05–01R1, dated July 8, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–13–34 to continue to require actions specified in that AD. This proposed AD would also require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 66 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 98–13–34, and continue to be required by this proposed AD, take approximately 4 work hours per

airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $15,840, or $240 per airplane, per inspection cycle.

The new replacements that are proposed in this AD action would take approximately 6 work hours (3 work hours per airplane for the solenoid/holder replacement) and 3 work hours per airplane for the actuator replacement, at an average labor rate of $60 per work hour. EMBRAER and Libherr Aerospace Linberg have previously committed to supplying the necessary parts free of charge. Based on these figures, the cost impact of the proposed replacements required by this AD on U.S. operators is estimated to be $23,760, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10625 (63 FR 34274, June 24, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–203–AD. Supersedes AD 98–13–34, Amendment 39–10625.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145103 inclusive, 145105, and 145106; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) to extend and lock down properly, which could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing, accomplish the following:

Restatement of Requirements of AD 98–13–34, Amendment 39–10625

Functional Test

(a) Within 50 flight hours after July 9, 1998 (the effective date of AD 98–13–34, amendment 39–10625), perform an emergency extension (free-fall) functional test of the NLG, to ensure that the mechanism extends and locks down properly, in accordance with EMBRAER Alert Service Bulletin 145–32-A029, dated April 15, 1998. Repeat the functional test and lubrication procedures thereafter at intervals not to exceed every "A" check, but no later than 400 flight cycles.

Note 2: The alert service bulletin references EMBRAER Aircraft Maintenance Manual (AMM), Chapter 32–34–00, as an additional source of service information for accomplishment of the emergency extension functional test.

(1) If the extension time of the landing gear is within 30 seconds, prior to further flight, lubricate all NLG hinge points in accordance with Figure 1 of the Accomplishment Instructions of the alert service bulletin.

(2) If the extension time of the landing gear exceeds 30 seconds, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Lubricate all NLG hinge points in accordance with Figure 1 of the Accomplishment Instructions of the alert service bulletin. And

(ii) Perform a normal system functional test of the NLG for five cycles, and repeat the emergency extension functional test specified by paragraph (a) of this AD. If the extension and locking time still exceeds 30 seconds, prior to further flight, repair in accordance with a method approved by either the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate, or the Departmento de Aviacao Civil (DAC) (or its delegated agent).

Note 3: The alert service bulletin references EMBRAER AMM, Chapter 32–30–00, as an additional source of service information for accomplishment of the normal system functional test.

(3) If any malfunction other than that specified in paragraph (a)(2) of this AD is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO, or the DAC (or its delegated agent).

New Requirements of this AD

Terminating Modification

(b) Within 2,000 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of paragraphs (b)(1) and (b)(2) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Replace the nose landing gear door solenoid valve, part number (P/N) 2225–0100–001, with a new valve, P/N 2225–0100–003; and replace the landing gear (LG) safety pins holder, P/N 145–27571–001, with a new holder, P/N 145–37912–001; in accordance with EMBRAER Service Bulletin 145–32–0036, dated February 1, 1999.

(2) Replace the nose landing gear maneuvering actuator, P/N 1300B0000–01, with a new actuator, P/N 1300B0000–02, in accordance with EMBRAER Service Bulletin 145–32–0037, dated February 12, 1999.

Spares

(c) As of the effective date of this AD, no person shall install a nose landing gear door solenoid valve, P/N 2225–0100–001, a landing gear safety pins holder, P/N 145–27571–001, or a nose landing gear maneuvering actuator P/N 1300B0000–01, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal

Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directives 98–05–01, dated May 12, 1998, and 98–05–01R1, dated July 8, 1999.

Issued in Renton, Washington, on January 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2092 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–330–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections of the aft pressure bulkhead to detect cracking, and repair, if necessary. This proposal is prompted by a report of fatigue cracking found in the upper half of the aft pressure bulkhead. The actions specified by the proposed AD are intended to detect and correct cracking in the aft pressure bulkhead, which could result in rapid decompression of the fuselage or overpressurization of the tail section.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–330–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a crack was found in the upper half of the aft pressure bulkhead on a Boeing Model 747 series airplane. The crack was located at the aft/inner fastener row, which attaches the web to the "Y" ring, and was 7.5 inches long. Analysis indicates that the crack was initiated and propagated by fatigue. Such cracking, if not detected and corrected, could result in rapid decompression of the fuselage or overpressurization of the tail section.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998, which describes procedures for repetitive inspections of the aft pressure bulkhead at the "Y"-ring-to-web lap splice to detect cracking, and repair, if necessary. The inspections to detect cracking include a detailed visual inspection of the upper half of the bulkhead and a high frequency eddy current (HFEC) inspection of the upper and lower halves of the bulkhead. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Other Relevant Rulemaking

The FAA has previously issued AD 98–20–20, Amendment 39–10786 (63 FR 50495, September 22, 1998). That AD requires repetitive inspections to detect damage and cracking of the aft pressure bulkhead on certain Boeing Model 747 series airplanes, line numbers 1 through 671 inclusive. The inspections required by that AD are similar to the ones described in this proposed AD, but this proposed AD would apply to Boeing Model 747 series airplanes having line numbers 672 and subsequent, as listed in Boeing Alert Service Bulletin 747–53A2425.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and Proposed Rule

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions,

this proposed AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The alert service bulletin also specifies that certain inspections and repairs required by this proposed AD may be accomplished in accordance with "an operator's equivalent procedure." However, this proposed AD requires that those actions be accomplished in accordance with the procedures specified in appropriate chapters of the Boeing 747 Maintenance Manual or the Boeing 747 Structural Repair Manual. An "operator's equivalent procedure" may be used only if approved as an alternative method of compliance in accordance with paragraph (g) of this AD.

Clarification of Proposed Requirement

The FAA has been advised that the intent of the manufacturer in the service bulletin is that accomplishment of an HFEC inspection implies concurrent accomplishment of a detailed visual inspection. Therefore, this proposed rule clarifies the manufacturer's intent, in that it proposes to require accomplishment of repetitive detailed visual inspections at intervals not to exceed 1,500 flight cycles, and repetitive HFEC inspections at intervals not to exceed 3,000 flight cycles.

Cost Impact

There are approximately 552 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hours per airplane to accomplish the proposed detailed visual inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed detailed visual inspection on U.S. operators is estimated to be $35,280, or $420 per airplane, per inspection cycle.

It would take approximately 7 work hours per airplane to accomplish the proposed HFEC inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed HFEC inspections on U.S. operators is estimated to be $35,280, or $420 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–330–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the aft pressure bulkhead, which could result in rapid decompression of the fuselage or overpressurization of the tail section, accomplish the following:

Initial and Repetitive Inspections

(a) Except as provided by paragraph (f) of this AD, prior to the accumulation of 20,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the upper half of the aft pressure bulkhead to detect cracking, in accordance with Figure 6 or 7, as applicable, of Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998. Repeat the detailed visual inspection thereafter at intervals not to exceed 1,500 flight cycles. For areas of the upper half of the aft pressure bulkhead that have been repaired previously, this detailed visual inspection may be deferred for up to 15,000 flight cycles after accomplishment of the repair, as described in the NOTE in paragraph 3.D. of the Accomplishment Instructions of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Except as provided by paragraph (f) of this AD, if no cracking is detected during the initial detailed visual inspection required by paragraph (a) of this AD: Within 1,500 flight cycles after accomplishment of that inspection, perform a high frequency eddy current (HFEC) inspection of the upper and lower halves of the aft pressure bulkhead to detect cracking, in accordance with Figure 8 of Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998. Repeat the HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

(c) Except as provided by paragraph (f) of this AD, if any cracking is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, perform an HFEC inspection of the upper and lower halves of the aft pressure bulkhead to detect cracking, in accordance with Figure 8 or 9, as applicable, of Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998. Repeat the HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

Repair

(d) Except as provided by paragraphs (e) and (f) of this AD, if any cracking is detected during any inspection required by paragraph (a), (b), or (c) of this AD: Prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998.

(e) If any cracking is detected during any inspection required by paragraph (a), (b), or (c) of this AD, and Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998, specifies to contact Boeing for repair instructions: Repair any cracking, prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Operator's "Equivalent Procedure"

(f) Where Boeing Alert Service Bulletin 747–53A2425, dated October 29, 1998, specifies that an inspection or a repair, as applicable, may be accomplished in accordance with an operator's "equivalent procedure": The inspection or repair, as applicable, must be accomplished in accordance with the applicable chapter of the Boeing 747 Maintenance Manual or the Boeing 747 Structural Repair Manual specified in the alert service bulletin.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington on January 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2090 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–83–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This proposal would require the installation of reinforcements in the lower portion of wing rib 15 on the left-hand and right-hand sides of the airplane. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing flap support structure.

DATES: Comments must be received by March 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–83–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that the damage tolerance for EMB–145 series airplanes indicates that reinforcements must be installed in the lower portion of the wing at rib 15 on the right-and left-hand sides of the airplane in order to maintain the validity of the current inspection interval of 2,000 flight cycles (prescribed in the maintenance instructions for the airplane). Such reinforcements will help to preserve the

structural integrity of the wing flap support structure.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–57–0008, Change No. 01, dated February 12, 1999, which describes procedures for installation of reinforcements in the lower portion of wing rib 15 on the left-hand and right-hand sides of the airplane. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 1999–01–02R1, dated March 15, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 33 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,124 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $142,692, or $4,324 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

EMBRAER: Docket 99–NM–83–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145058 inclusive, and 145060; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing flap support structure, accomplish the following:

(a) Prior to the accumulation of 8,000 total flight cycles, or within 45 days after the effective date of this AD, whichever occurs later, install reinforcements in the lower portion of rib 15 on the left-hand and right-hand sides of the airplane in accordance with Embraer Service Bulletin 145–57–0008, Change No. 1, dated February 12, 1999.

Note 2: Installation in accordance with Embraer Service Bulletin 145–57–0008, dated October 21, 1998, accomplished prior to the effective date of this AD, is also acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 1999–01–02R1, dated March 15, 1999.

Issued in Renton, Washington, on January 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2224 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require either an inspection to detect damage or chafing of the insulation or wires, modification of the cable assembly, and repairs, if necessary; or replacement of the cable assembly of the lower anti-collision light with a new cable assembly. This proposal is prompted by reports of electrical arcing on structure near the lower body anti-collision light due to chafing of the cable. The actions specified by the proposed AD are intended to prevent such chafing as a result of improper installation of the lower body anti-collision light assembly, which could result in electrical arcing or sparking in a flammable leakage zone of the airplane.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Flight Test Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of evidence of electrical arcing on structure near the lower body anti-collision light on Boeing Model 767–200 and –300 series airplanes. The lower body anti-collision light is installed below the center fuel tank in a flammable leakage zone. Results of an operator survey and a review of installation drawings revealed that it is possible to install the lower body anti-collision light assembly backwards with the aft edge forward. This incorrect orientation of the light assembly results in misalignment of the connector and cable with the opening of the web, which necessitates a sharp bend of the cable for routing through the web opening. A sharply bent cable loop against the structure causes chafing and eventual wire damage of the cable. This condition, if not corrected, could result in electrical arcing or sparking in a flammable leakage zone of the airplane.

The subject cable assembly of the lower anti-collision light on Boeing Model 767–300F series airplanes is identical to that of the affected Boeing Model 767–200 and –300 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999. The service bulletin describes procedures for repetitive general visual inspections to detect damage or chafing of the insulation or wires of the lower body anti-collision light, and repair, if necessary. In lieu of accomplishing the repetitive inspections, the service bulletin also describes procedures for either modification of the cable assembly, and repairs, if necessary; or replacement of the cable assembly of the lower anti-collision light with a new cable assembly. The modification involves removing the strain relief and bushing, installing a backshell extender with a new strain relief, and re-identifying the part number of the cable assembly.

Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999, refers to Grimes Service Bulletin 60–3414–33-SB01, dated December 8, 1998, as an additional source of service information for accomplishment of the modification described previously.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

The proposed AD would differ from the service bulletin in that it would mandate, within 1,800 flight hours after the effective date of this AD, either a one-time general visual inspection to detect damage or chafing of the insulation or wires, modification of the cable assembly of the lower body anti-collision cable assembly, and repairs, if necessary; or replacement of the cable

assembly of the lower anti-collision light with a new cable assembly. The service bulletin provides for the modification or replacement as optional.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification or replacement requirement is in consonance with these conditions.

Cost Impact

There are approximately 740 airplanes of the affected design in the worldwide fleet. The FAA estimates that 263 airplanes of U.S. registry would be affected by this proposed AD.

In lieu of accomplishing the replacement, it would take approximately 3 work hours (1 work hour per airplane for the inspection and 2 work hours per airplane for the modification) to accomplish the proposed inspection and modification. Required parts would cost approximately $157 per airplane. Based on these figures, the cost impact of the inspection and modification proposed by this AD on U.S. operators is estimated to be $337 per airplane.

In lieu of accomplishing the inspection and modification, it would take approximately 3 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,552 (for Group 1 airplanes) or $2,234 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $1,732 (for Group 1 airplanes) or $2,414 (for Group 2 airplanes) per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–54–AD.

Applicability: Model 767–200, –300, –300F series airplanes, line numbers 1 through 739 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing as a result of improper installation of the cable assembly of the lower body anti-collision light, which could result in electrical arcing or sparking in a flammable leakage zone of the airplane, accomplish the following:

Modification or Replacement

(a) Within 1,800 flight hours after the effective date of this AD, perform the actions in either paragraph (a)(1) or (a)(2) of this AD in accordance with Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999.

(1) Perform a one-time general visual inspection to detect damage or chafing of the insulation or wires, and modify the cable assembly of the lower body anti-collision cable assembly. If any damage or chafing is detected, prior to further flight, repair the damaged or chafed part.

Note 2: Boeing Service Bulletin 767–33A0075, Revision 1, May 27, 1999, refers to Grimes Service Bulletin 60–3414–33–SB01, dated December 8, 1998, as an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Replace the cable assembly of the lower body anti-collision cable assembly with a new cable assembly.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and

21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2225 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for damage or cracking of the aft pressure bulkhead, and repair, if necessary. That action also removes certain repetitive inspections for cracking of the bulkhead web to Y-ring lap joint area, but retains the initial inspection for cracking in that area. That action also adds a one-time detailed visual inspection from the forward side of the bulkhead to detect fatigue cracking of the upper segment of the bulkhead web, and follow-on corrective actions, if necessary. This action would require that the one-time inspection be accomplished repetitively, and would add additional repetitive inspections. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–285–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 14, 1998, the FAA issued AD 98–20–20, amendment 39–10786 (63 FR 50495, September 22, 1998), applicable to certain Boeing 747 series airplanes, to require certain repetitive inspections for damage or cracking of the aft pressure bulkhead, and repair, if necessary. In addition, that AD removes repetitive detailed visual inspections for cracking of the bulkhead web to Y-ring lap joint area, but retains the initial inspection for cracking in that area. That AD also adds a one-time detailed visual inspection from the forward side of the bulkhead to detect fatigue cracking of the upper segment of the bulkhead web, and follow-on corrective actions, if necessary. That action was prompted by reports indicating that the inspections required by AD 87–23–10, amendment 39–5758 (52 FR 41551, October 29, 1987), may not detect cracking of the bulkhead web in a timely manner. The requirements of AD 98–20–20 are intended to detect and correct fatigue cracking of the upper segment of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble of AD 98–20–20, the FAA specified that the actions required by that AD were considered to be interim action. The FAA indicated that it may consider further rulemaking action to require repetitive detailed visual inspections and surface probe high frequency eddy current (HFEC) inspections to detect cracking of the upper and lower segments of the aft pressure bulkhead web, and repair if necessary. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, which describes procedures for, among other things, repetitive inspections from the forward side of the bulkhead web at body station (BS) 2360 to detect cracking. The inspections to detect cracking include a detailed visual inspection of the upper half of the bulkhead and a surface probe HFEC inspection of the upper and lower segments of the bulkhead. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–20–20 to continue to require the actions specified in that AD. This action also would require that the one-time detailed visual inspection required by AD 98–20–20 be accomplished repetitively, and would add repetitive surface probe HFEC inspections, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain cracking conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Clarification of Proposed Requirement

The FAA has been advised that the manufacturer's intent of the surface probe HFEC inspection, as described in Figure 15 of the service bulletin, is that accomplishment of a surface probe HFEC inspection implies concurrent accomplishment of a detailed visual inspection, as described in Figure 14 of the service bulletin. This proposed rule clarifies the manufacturer's intent, in that it would explicitly require accomplishment of the repetitive detailed visual inspections at intervals not to exceed 1,500 flight cycles, and repetitive surface probe HFEC inspections at intervals not to exceed 3,000 flight cycles.

Cost Impact

There are approximately 671 airplanes of the affected design in the worldwide fleet. The FAA estimates that 149 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 98–20–20 and retained in this proposed AD, take approximately 360 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,218,400, or $21,600 per airplane, per inspection cycle.

The new repetitive detailed visual inspections that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $35,760, or $240 per airplane, per inspection cycle.

The new repetitive HFEC inspections that are proposed in this AD action would take approximately 48 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $429,120, or $2,880 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10786 (63 FR 50495, September 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–285–AD. Supersedes AD 98–20–20, Amendment 39–10786.

Applicability: Model 747 series airplanes, line positions 1 through 671 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Actions Required by AD 98–20–20, Amendment 39–10786

(a) Within 750 landings after December 10, 1987 (the effective date for AD 87–23–10, amendment 39–5758), unless accomplished within the last 1,250 landings [for airplanes subject to a 2,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], or unless accomplished within the last 250 landings [for airplanes subject to a 1,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], perform a detailed visual inspection; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998; of the aft side of the entire Body Station (BS) 2360 aft pressure bulkhead for damage such as dents, tears, nicks, gouges, or scratches; and cracks at splices and doublers, and around the Auxiliary Power Unit pressure pan cutout; and, for Group 4 airplanes only, inspect from the forward side, the area adjacent to the window cutout for damage or cracks.

Note 2: Notwithstanding provisions to the contrary in AD 87–23–10, and in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, and Revision 5, dated January 16, 1997: For Model 747SR airplanes operating at a cabin pressure differential lower than 8.6 pounds-per-square-inch (psi), an adjustment factor of 1.2 shall *not* be used after October 7, 1998 (the effective date for AD 98–20–20), as a multiplier for inspection thresholds and intervals specified in this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) After initial compliance with paragraph (a) of this AD, continue to inspect as follows:

(1) For Group 1 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 2,000 landings.

(2) For Groups 2 and 3 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 1,000 landings; or optionally, at the applicable time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) For Group 2 airplanes that operate the entire interval with aft lavatory complexes or galleys adjacent to bulkheads, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings.

(ii) For Groups 2 and 3 airplanes that operate the entire interval with an intact protective shield on the lower half of the forward side of the bulkhead, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings; and perform a detailed visual inspection of the protective shield for damage in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at intervals not to exceed 1,000 landings. If damage is found to the protective shield that exceeds the limits indicated in the service bulletin, prior to further flight, repeat the inspection required by paragraph (a) of this AD.

(3) For Group 4 airplanes, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

(c) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 3,250 landings; and at intervals thereafter not to exceed 4,000 landings; perform eddy current, ultrasonic, and X-ray inspections of the aft side of the BS 2360 aft pressure bulkhead for cracks; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(d) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 6,250 landings; and thereafter at intervals not to exceed 7,000 landings until the inspection required by paragraph (g) of this AD is accomplished: Perform a detailed visual inspection to detect cracking of the BS 2360 aft pressure bulkhead web to Y-ring lap joint area between radial stiffeners from the forward side of the bulkhead, in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(e) If any cracking or damage is found during any inspection required by paragraph (a), (b), (c), or (d) of this AD, repair prior to further flight in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(f) For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

(g) Perform a detailed visual inspection from the forward side of the bulkhead of the upper segment of the bulkhead web at BS 2360 to detect cracking, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD. Accomplishment of this inspection terminates the repetitive inspection requirement of paragraph (d) of this AD.

(1) Within 7,000 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(2) At the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Prior to the accumulation of 20,000 total landings.

(ii) Within 1,500 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(iii) Within 90 days after October 7, 1998 (the effective date of AD 98–20–20).

(h) If any cracking is detected during the detailed visual inspections required by paragraph (g) of this AD, prior to further flight, accomplish a surface probe high frequency eddy current (HFEC) inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web around the fasteners that attach the web to the outer chord of the Y-ring, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. Repair any cracking, prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

New Requirements of This AD

(i) If no cracking is detected during the detailed visual inspection required by paragraph (g) of this AD, within 1,500 flight cycles after accomplishment of that inspection or within 250 flight cycles after the effective date of this AD, whichever occurs later: Repeat the detailed visual inspection, as specified in paragraph (g); and perform a surface probe HFEC inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web, in accordance with Figure 15 of Boeing

Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 1,500 flight cycles; and repeat the surface probe HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, or a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–20–20, amendment 39–10786, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2226 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–59]

Proposed Modification of Class E Airspace; Coldwater, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Coldwater, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06 has been developed for Branch County Memorial Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 7, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–59, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–59." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Coldwater, MI, to accommodate aircraft executing the proposed GPS Rwy 06 SIAP at Branch County Memorial Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Coldwater, MI [Revised]

Coldwater, Branch County Memorial Airport, MI
(Lat. 41° 56′ 00″ N., (long. 85° 03′ 09′ W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Branch County Memorial Airport.

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–2252 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–60]

Proposed Modification of Class E Airspace; Watertown, SD, and Britton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Watertown, SD, and Britton, SD. A review of the controlled airspace within the States of North Dakota and South Dakota conducted after the cancellation of a portion of Federal Airway 220 (V–220), Airspace Docket No. 98–AGL–49, published September 7, 1999, has indicated several small portions of Class G uncontrolled airspace being created between Wahpeton, ND, and Brookings, SD. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures into and out of numerous airports in that area. These small portions of uncontrolled airspace cause confusion for both pilots and controllers and do not allow for consistent application of instrument flight rules in a critical area servicing these airports. This action proposes to eliminate these Class G portions of airspace between Wahpeton, ND, and Brookings, SD, by revising the Class E airspace for Watertown, SD. This revision causes a minor change to the airspace exclusions in the legal description for the Class E airspace for Britton, SD.

DATES: Comments must be received on or before March 7, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–60, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–60." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Watertown, SD, and Britton, SD, to accommodate aircraft executing instrument flight procedures into and out of numerous airports in southeastern North Dakota, northeastern South Dakota, and western Minnesota. Several small portions of uncontrolled airspace between Wahpeton, ND, and Brookings, SD, created as a result of the cancellation of a portion of Federal Airway 220 (V–220), Airspace Docket No. 98–AGL–49, published September 7, 1999 (64 FR 48527), would be eliminated. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that his proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Watertown, SD [Revised]

Watertown Municipal Airport, SD
(Lat. 44°54′51″N., long. 097°09′17″W.)
Watertown VORTAC
(Lat. 44°58′47″N., long. 097°08′30″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Watertown Municipal Airport and within 4.0 miles each side of the Watertown VORTAC 006° radial extending from the 6.8-mile radius to 10.6 miles north of the airport, and within 1.9 miles each side of the south localizer courses extending from the 6.8-mile radius to 11.7 miles south of the airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by lat. 46°30′00″N., on the east by the Minnesota/North Dakota and Minnesota/South Dakota borders, on the south by lat. 44°30′00″N, and on the west by long. 097°00′00″W, excluding that airspace within the Fargo, ND, 1,200 foot Class E airspace area and all Federal airways.

* * * * *

AGL SD E5 Britton, SD

Britton Municipal Airport, SD
(Lat. 45°48′57″N., long. 097°44′39″W.)

That airspace extedning upward from 700 feet above the surface within a 7.0-mile radius of the Britton Municipal Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the west by long. 98°30′00″W, on the north by lat. 46°30′00″N, on the east by long. 97° 00′ 00″W, and on the south by lat. 44°30′00″N, excluding the Fargo, ND, Huron, SD, and Aberdeen, SD 1,200 foot Class E airspace areas and all Federal airways.

* * * * *

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,
Manager, Air Traffic Division.

[FR Doc. 00–2253 Filed 2–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–58]

Proposed modification of Class E airspace; Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Saginaw, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Saginaw County H.W. Browne Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This act proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 7, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–58, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–58." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, office of the Assistant Chief Counsel, 2300 Eat Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Saginaw, MI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Saginaw County H.W. Browne Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority : 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Saginaw, MI [Revised]

MBS International Airport, MI
(Lat. 43°31′58″N., long. 84°04′47″W.)
Saginaw County H.W. Browne Airport, MI
(Lat. 43°26′00″N., long. 83°51′45″W.)
Bay City, James Clements Municipal Airport, MI
(Lat. 43°32′49″N., long. 83°53′44″W.)
Midland, Jack Barstow Airport, MI
(Lat. 43°39′46″N., long. 84°15′41″W.)
Saint Mary's Hospital, MI
Point in Space Coordinates
(Lat. 43° 24′ 54″N., long. 83° 56′ 27″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of MBS International Airport, within a 6.5-mile radius of Saginaw County H.W. Browne Airport, within a 6.4-mile radius of James Clements Municipal Airport, within a 6.3-mile radius of Jack Barstow Airport, and within a 6.0-mile radius of the Point in Space serving Saint Mary's Hospital.

* * * * *

Issued in Des Plaines, Illinois on January 7, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–2254 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108, 109, 111, 129, and 191

[Docket No. FAA–1999–6673; Notice No.]

RIN 2120–AG84

Certification of Screening Companies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA announces a public meeting to be held on the subject of "Certification of Screening Companies; Notice of Proposed Rulemaking" (65 FR 560, January 5, 2000). In that notice, the FAA proposes to require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. The proposal is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a Congressional mandate in the Federal Aviation Reauthorization Act of 1996. The proposal is intended to improve the screening of passengers, accessible property, checked baggage, and cargo; and to provide standards for consistent high performance and increased screening company accountability.

DATES: The public meeting will be on March 10, 2000, in Washington, DC. The

meeting will begin at 9 a.m. Persons unable to attend the meeting are invited to provide written comments, which must be received on or before April 4, 2000.

ADDRESSES: The public meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 in the 3rd floor auditorium. Persons unable to attend the meeting may mail their comments in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6673, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at anytime. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site. Comments may be filed and/or examined at the U.S. Department of Transportation Dockets, Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Judy Courbois, Federal Aviation Administration, Office of Rulemaking, ARM–102, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9783; fax (202) 267–5075. Questions concerning the subject matter of the meeting should be directed to Scott Cummings, Office of Civil Aviation Security Policy and Planning (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9468; fax (202) 267–5359.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued "Certification of Screening Companies, Notice of Proposed Rulemaking," on December 15, 1999, proposing procedures for certification of screening companies; and proposing other requirements to improve screening, such as performance measurements and new training and FAA testing requirements for screeners. The FAA is announcing this public meeting to give the public an additional opportunity to comment on the proposed rule.

Participation at the Meeting

The FAA should receive requests from persons who wish to present oral statements at the meeting no later than February 24, 2000. Such requests should be submitted to Judy Courbois, as listed above in the section titled **FOR FURTHER INFORMATION CONTACT**, and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. The FAA will prepare an agenda of speakers, which will be available at the meeting. The names of those individuals whose requests to present oral statements are received after the date specified above may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The FAA will use the following procedures to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are scheduled to present statements or who register between 8:30 a.m. and 9 a.m. on the day of the meeting. While the FAA will make every effort to accommodate all persons wishing to participate, admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

(5) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this proposal will be present.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the FAA representatives during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meeting.

(7) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the certification of screening companies may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide six copies of all materials to be presented for distribution to the FAA representatives; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by FAA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by an FAA representative is not intended to be, and should not be construed as, a position of the FAA.

(9) The meeting is designed to solicit public views and gather additional information on the certification of screening companies. Therefore, the meeting will be conducted in an informal and non-adversarial manner. No individual will be subject to cross-examination by any other participant; however, FAA representatives may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC on January 27, 2000.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 00–2246 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA Number 198]

Possible Control of Red Phosphorus as a Listed Chemical

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Advance notice of proposed rulemaking; Request for comments.

SUMMARY: The Controlled Substances Act (CSA), provides the Attorney General Authority to specify by regulation, additional precursor and essential chemicals as "listed chemicals" if they are used in the manufacture of controlled substances in violation of the CSA. This notice

provides advance notification that the United States Drug Enforcement Administration (DEA) is considering the possible control of red phosphorus as a listed chemical.

Red phosphorus has been identified as being an important chemical used in the illicit production of methamphetamine. DEA is considering whether CSA chemical regulatory controls (such as registration, recordkeeping, reporting, and import/export requirements) are necessary to prevent the diversion of red phosphorus to clandestine drug laboratories.

Prior to deciding whether to control red phosphorus as a listed chemical, the DEA is seeking information on red phosphorus trade so that diversion of red phosphorous may be prevented with minimal impact on legitimate trade. The DEA is soliciting information on the manufacturing, distribution, consumption, storage, disposal, and uses of red phosphorus.

DATES: Written comments must be received on or before April 3, 2000.

ADDRESSES: Comments should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

The Controlled Substances Act (CSA), specifically 21 U.S.C. sections 802(34) and (35); 21 CFR 1310.02(c), provides the Attorney General with the authority to specify, by regulation, additional precursor and essential chemicals as "listed chemicals" if they are used in the manufacture of controlled substances in violation of the CSA. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (Subpart R) Appendix Sec. 12.

This notice provides advance notification that the U.S. Drug Enforcement Administration is considering the control of red phosphorus as a listed chemical. Red phosphorus has been identified as being an important chemical used in the illicit production of methamphetamine. The public health consequences of the manufacture, trafficking, and abuse of methamphetamine are well known and documented.

What Regulatory Controls Currently exist on Red Phosphorus?

Since red phosphorus is a common chemical used in methamphetamine production, it has already been placed on the Attorney General's "special surveillance list" of "laboratory supplies". The Comprehensive Methamphetamine Control Act of 1996 (MCA) amended the CSA via the addition of 21 U.S.C. 842(a)(11), which makes it unlawful for any person to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, with reckless disregard for the illegal uses to which such laboratory supply will be put.

The MCA defines "laboratory supply" as a "listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." This special surveillance list was published by DEA on May 13, 1999 (64 FR 25910) and includes red phosphorus.

What Additional Action is DEA Considering?

Due to the continued use of red phosphorus in illicit methamphetamine synthesis, the DEA is considering whether to place additional controls on red phosphorus, by adding red phosphorus as a listed chemical. As such, red phosphorus would be subject to additional CSA regulatory controls such as registration, recordkeeping, reporting, and import/export requirements as specified in 21 CFR part 1300. DEA is considering whether these additional regulatory controls are needed to prevent the diversion of red phosphorus to clandestine laboratories.

Why Is DEA Seeking Information?

DEA is seeking information on red phosphorus trade so that diversion of red phosphorus may be prevented with minimal impact on legitimate trade. DEA is aware that the industrial uses of red phosphorus include the manufacture of pyrotechnics, safety matches, phosphoric acid and other phosphorus compounds, fertilizers, incendiary shells, smoke bombs, tracer bullets, and pesticides. DEA recognizes that regulation of red phosphorus may have some effect upon these, and other, industrial activities. However, DEA is not aware of the entire scope of use of red phosphorus by industry and consumers.

What Information Does This Notice Seek?

The DEA is soliciting input from the potentially affected parties regarding (1) the nature of the legitimate phosphorus industry, (2) the legitimate uses of red phosphorus at all levels of distribution (including industrial uses and use by individual end-users at the retail level of distribution), (3) the potential burden such regulatory controls may have on legitimate industry (particularly with respect to the impact on small businesses), (4) the potential number of individuals/firms which may be adversely affected by increased regulatory requirements, and (5) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of red phosphorus by industry and others. Both quantitative and qualitative data are sought.

Such information may be submitted to the Drug and Chemical Evaluation Section and is requested by April 3, 2000. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) (FOIA), is governed by section 310(c) of the CSA (21 U.S.C. 830(c) and the Department of Justice procedures set forth in 28 CFR 16.7.

Dated: January 11, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–2151 Filed 2–1–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE
DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900–AI67

New Criteria for Approving Courses for VA Educational Assistance Programs

AGENCIES: Department of Defense, Department of Transportation, Coast Guard, and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) educational assistance and educational benefit regulations by adding new criteria for VA to use in approving enrollments in courses under the educational programs VA administers. The intended effect of these proposed changes is to implement provisions of the Veterans' Benefits Improvements Act of 1996 and the Veterans' Benefits Act of 1997. This document also would amend the regulations to conform to statutory provisions and would make changes for the purpose of clarification.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI67." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document proposes to amend the VA educational assistance and educational benefit regulations in 38 CFR part 21, subparts D, K, and L to conform with the Veterans' Benefits Improvement Act of 1996 (Pub. L. 104–275).

The provisions of the 1996 Act, with certain exceptions noted below, mandate that VA cannot approve an enrollment for VA training in a course not leading to a standard college degree offered by a proprietary profit or proprietary nonprofit educational institution if (1) the institution has been operating for less than two years, (2) the institution offers the course at a branch or extension and the branch or extension has been operating for less than two years, or (3) the institution offering the course completely moved outside its original general locality or has changed ownership and, in either event, does not retain substantially the same faculty, student body, and courses as before the change in ownership or move, unless the institution has operated for two years following the change in ownership or move. However, if the course were offered under a contract with the Department of Defense (DOD) or the Department of Transportation (Coast Guard) and were given on or immediately adjacent to a military base, Coast Guard station, National Guard facility or facility of the Selected Reserve, these restrictions do not apply. The regulations would be amended to reflect these statutory changes.

VA proposes to define "proprietary educational institution" (including a proprietary profit or proprietary nonprofit educational institution) as an educational institution that: (1) Is not a public educational institution, (2) is in a State, and (3) is legally authorized to offer a program of education in the State where the educational institution is physically located. VA believes that this definition accords with the common understanding of "proprietary educational institution."

VA proposes to recognize that a proprietary educational institution has been "in operation" for at least two years if it has been offering courses for 24 consecutive months, inclusive of normal vacation periods or holidays or periods when the educational institution is closed due to a natural disaster. VA believes that this interpretation of the two-year operation requirement is in accordance with the common meaning of the term "in operation" as it relates to educational institutions, and, in our view, reflects the statutory intent.

VA proposes to provide that a move by a proprietary educational institution outside the same general locality is a move beyond normal commuting distance which VA regulations have long recognized as being more than 55 miles (see 38 CFR 21.4200). This seems to be an appropriate interpretation of the statutory language.

As noted above, VA cannot approve an enrollment for VA training in a course not leading to a standard college degree offered by a proprietary profit or nonprofit educational institution if the institution offering the course completely moved outside its original general locality or has changed ownership and, in either event, does not retain substantially the same faculty, student body, and courses as before the change in ownership or move, unless the institution has operated for two years following the change in ownership or move. In this regard, it is proposed to set forth provisions indicating what VA considers to constitute "change in ownership."

A "change in ownership" would occur when a person acquires, or ceases to have, operational management and/or control of the proprietary institution and its educational activities. "Control" is proposed to be defined as the possession, direct or indirect, by a "person" or "persons", of the power to direct or cause the direction of the management and policies of the institution whether through the ownership of voting securities, by contract or otherwise. "Person" is proposed to be defined as a legal person (corporation) or an individual or individuals. Transactions causing a change of ownership would include, but not be limited to, the following: (1) The sale of the educational institution; (2) the transfer of the controlling interest of stock of the educational institution or its parent corporation; (3) the merger of two or more educational institutions; or (4) the division of one educational institution into two or more educational institutions. A "change of ownership" would not include transfer of ownership or control of the institution, upon the retirement or death of the owner, (1) to the owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse or (2) to an individual with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer.

These provisions appear to reflect adequately the kinds of institutional changes that could constitute a "change in ownership."

As regards the requirement that the educational institution "retain substantially the same faculty, student body, and courses" following change in ownership or move outside the same general locality, it is proposed that VA will consider that a proprietary educational institution has "substantially the same faculty, student body, and courses" both before and after the move or ownership change when:

- Faculty members who teach a majority of the courses after the move or change in ownership were employed by the educational institution before the move or change in ownership.
- Faculty use the same instructional methods after the move or change in ownership as were used before the move or change in ownership,
- The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership, and
- Except for those who graduate, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution immediately after the move or change in ownership.

The preceding criteria appear to assure adequately the institutional

continuity contemplated by the statutory scheme.

It also is proposed to amend § 21.4233 by adding new paragraphs (d)(6), (d)(7), and (d)(8) to reflect statutory provisions set forth in 38 U.S.C. 3675(b)(3) regarding criteria for determining whether accredited courses should be approved for VA training.

Further, it it proposed to amend 38 CFR 21.4252 by adding new paragraph (m) to reflect amendments made by the Veterans' Benefits Act of 1997 (Pub. Law 105–114) and set forth in 38 U.S.C. 3680A(f) and (g) regarding approval of courses under contract.

Other nonsubstantive changes are made to conform the regulations to the statutory changes.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

Executive Order 12866

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause educational institutions to make changes in their activities and would have minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule will affect the Montgomery GI Bill—Selected Reserve which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Educational institutions, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: April 29, 1999.

Curtis B. Taylor,

Colonel, U.S. Army, Principal Director (Military Personnel Policy), Department of Defense.

Approved: October 18, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts D, K, and L) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4200, paragraph (z) is added to read as follows:

§ 21.4200 Definitions.

* * * * *

(z) *Proprietary educational institution.* The term *proprietary educational institution* (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

(1) Is not a public educational institution;

(2) Is in a State; and

(3) Is legally authorized to offer a program of education in the State where the educational institution is physically located.

(Authority: 38 U.S.C. 3680A(e))

3. Section 21.4251 is revised to read as follows:

§ 21.4251 Minimum period of operation requirement for educational institutions.

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term controlling) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* includes a legal person (corporation or partnership) or an individual.

(Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for two years.* Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than two years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than two years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution following such change or move has been in operation for at least two years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the two-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for two years.* VA will consider, for the purposes of paragraph (b) of this section, that a proprietary educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for two years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

(Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality.* A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, i.e., 55 miles or more from the original location.

(Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.* (1) A change of ownership of a proprietary educational institution occurs when—

(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or

(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

(i) The sale of the educational institution;

(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;

(iii) The merger of two or more educational institutions;

(iv) The division of one educational institution into two or more educational institutions;

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer.

(Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution immediately after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))

4. In § 21.4252, paragraph (m) is added to read as follows:

§ 21.4252 Courses precluded.

* * * * *

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§ 21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate.

(Authority: 38 U.S.C. 3680A(f) and (g))

5. In § 21.4253, paragraphs (d)(6), (d)(7), and (d)(8) are added to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) * * *

(6) The accredited courses, the curriculum of which they form a part, and the instruction connected with those courses are consistent in quality, content, and length with similar courses in public educational institutions and other private educational institutions in the State with recognized accepted standards.

(7) There is in the educational institution offering the course adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(8) The educational and experience qualifications of directors, and administrators of the educational institution offering the courses, and instructors teaching the courses for which approval is sought, are adequate.

(Authority: 38 U.S.C. 3675(b), 3676(c)(1), (2), (3))

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

6. The authority for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

7. Section 21.7122 is amended as follows:

a. Paragraph (e)(6) is amended by removing "school, or" and adding, in its place, "school;";

b. Paragraph (e)(7) is amended by removing "course." and adding, in its place, "course; or";

c. Paragraphs (e)(1) through (e)(5), and the authority citation for paragraph (e) are revised; and

d. Paragraph (e)(8) is added, to read as follows:

§ 21.7122 Courses precluded.

* * * * *

(e) *Other courses.* VA shall not pay educational assistance for—

(1) An enrollment in an audited course (see § 21.4252(i));

(2) An enrollment in a course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see § 21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in § 21.4252(l);

(5) Except as provided in § 21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

* * * * *

(8) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680A(g))

Subpart L—Educational Assistance for Members of the Selected Reserve

8. The authority for part 21, subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

9. Section 21.7622 is amended as follows:

a. Paragraph (f)(4)(v) is amended by removing "or";

b. Paragraph (f)(4)(vi) is amended by removing "course." and adding, in its place, "course; or";

c. The authority citation for paragraph (f) is revised; and

d. Paragraph (f)(4)(vii) is added, to read as follows:

§ 21.7622 Courses precluded.

* * * * *

(f) * * *

(4) * * *

(vii) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 10 U.S.C. 16131(c), 16136(b); 38 U.S.C. 3672(a), 3676, 3680(a), 3680A(f), 3680A(g); § 642, Public Law 101–189, 103 Stat. 1458)

[FR Doc. 00–2211 Filed 2–1–00; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this proposal is to clarify requirements for delivery of an addressee's mail to a commercial mail receiving agency (CMRA). The proposal provides for guidelines to distinguish when a corporate executive center (CEC) or a part of its operations is considered a commercial mail receiving agency for purposes of these standards.

DATES: Comments must be received on or before March 3, 2000.

ADDRESSES: Written comments should be mailed to Manager, Delivery, U.S. Postal Service, 475 L'Enfant Plaza SW Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: On March 25, 1999, the Postal Service published a final rule in the **Federal Register** adopting revised regulations governing the operation of commercial mail receiving agencies (CMRAs) with an effective date of April 26, 1999. (64 F.R. 14385). The final rule amended sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a CMRA. The rule provided procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and delivery of the mail to a CMRA. The rule was applicable to all businesses that provide agent mailing services to their customers; that is, receive delivery of mail for others from the Postal Service.

A corporate executive center (CEC) is a business that operates primarily to provide shared private office facilities and business support services to individuals or firms. These CEC customers may also receive mail at the CEC address. CECs also have customers that do not occupy space and use the CEC address primarily to receive mail.

Postal customers have asked the Postal Service to provide guidance when a CEC is considered a CMRA for purposes of postal standards; that is, when it and its customers must comply with rules governing the operation of CMRAs in sections D042.2.5 through D042.2.7 of the DMM. This proposal responds to that request and seeks to clarify and set forth guidelines when a CEC customer must comply with those standards. The proposal provides an objective test, based on the terms of the relationship between the CEC and its customer, to determine whether a customer is considered a "CMRA customer." The CEC must register as a CMRA and comply with all CMRA regulations if one or more customers receiving mail at its address are considered "CMRA customers." Each customer considered a "CMRA customer" must comply with the standards set forth in the DMM. Other customers, not considered to be "CMRA customers," need not comply with these standards. A CEC will receive single point delivery of mail regardless whether its customers are deemed to be receiving CEC or CMRA services.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001 3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section D042.2.0 of the Domestic Mail Manual is amended by adding subsection D042.2.8 to read as follows:

D Deposit, Collection, and Delivery

* * * * *

D040 Delivery of Mail

* * * * *

D042 Conditions of Delivery

* * * * *

2.0 DELIVERY TO ADDRESSEE'S AGENT

* * * * *

2.8 CEC DEFINITION

Use the following procedures to distinguish when a corporate executive center (CEC) or part of its operation is a commercial mail receiving agency (CMRA): a. A CEC is a business that operates primarily to provide shared private office facilities and business support services to individuals or firms (customers). CEC customers may also receive mail at the CEC address. These customers will be considered CEC customers if they meet the standards set forth below. Customers who do not meet these standards and who receive mail through the CEC address will be considered CMRA customers and must comply with the CMRA standards. The CEC must register as a CMRA and comply with all CMRA standards if one or more customers receiving mail through its address are considered CMRA customers. A CEC will receive single point delivery of mail regardless of whether its customers are deemed to be receiving CEC or CMRA services.

b. Except as provided in d, a customer receiving mail through the CEC address will be considered a CEC customer under these standards if:

(1) The CEC licenses the customer through a written agreement to use one or more of the offices or workstations within the CEC facility for full-time occupancy; or,

(2) The CEC licenses the customer through a written agreement to use one or more of the office or workstations within the CEC facility regularly each month for the term of the agreement (as defined in c) and the agreement also provides the customer:

(A) Full-time receptionist service during normal business hours,

(B) A listing in the office directory, if available, in the building in which the CEC is located, and

(C) Conference rooms and other business services on demand.

c. A customer shall be deemed to occupy space regularly each month for purposes of b(2) if, under the specific terms of the agreement, the person is charged at least $125 per month for the duration of the agreement for occupancy and related support services.

d. Notwithstanding any other standards, a customer whose agreement provides for mail services only or mail and telephone services only will not be considered a CEC customer (without regard for occupancy or other services that a CEC may provide and bill for on demand).

e. The Postal Service may request from the CEC copies of agreements or any other documents or information needed to determine compliance with these standards. Failure to provide requested documents or information may be a basis for suspending delivery service to the CEC under the procedures set forth in section D042.2.6.h through i for suspending delivery to a CMRA.

* * * * *

[An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the proposal is adopted.]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–2138 Filed 2–1–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 130

[FRL–6531–7]

Revision to the Water Quality Planning and Management Regulation Listing Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the Water Quality Planning and Management regulation to remove the requirement that States, Territories and authorized tribes submit to EPA for review by April 1, 2000, lists of impaired and threatened waterbodies. EPA's current regulations interpret the provision in section 303(d) of the Clean Water Act for submission of lists to EPA "from time to time" to require States, Territories and authorized tribes to submit lists on April 1 of every even-numbered year. For the reasons discussed below, EPA is proposing to remove the requirement that such lists be submitted in 2000. In this document, EPA is not proposing to change the existing regulatory requirement if a court order, consent decree, or settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to a State's year 2000 list. Also, EPA is not in this notice proposing to change the existing regulatory requirement that subsequent lists be submitted on April 1, 2002, and on April 1 of subsequent even numbered years.

DATES: Comments on this proposal must be submitted on or before March 3, 2000. Comments provided electronically will be considered timely if they are submitted by 11:59 P.M. (Eastern time) March 3, 2000.

ADDRESSES: Send written comments on the proposed rule to the Comment Clerk for the Year 2000 List Rule, Water Docket (W–99–25), Environmental Protection Agency, 401 M Street, SW; Washington, DC 20460. EPA requests that commenters submit any references cited in their comments. EPA also requests that commenters submit an original and three copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form on encryption. Electronic comments must be identified by the docket number (W–99–25), and may be filed online at many Federal depository Libraries. No confidential business information (CBI) should be sent via e-mail.

A copy of the comments received will be available for review at EPA's Water Docket; Room EB–57 (East Tower Basement), 401 M Street, SW, Washington, DC 20460. For access to docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. An electronic version of this proposal will be available via the Internet at: *http://www.epa.gov/OWOW/tmdl/index.html.*

FOR FURTHER INFORMATION CONTACT: Annette Widener, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 401 M. St., SW., Washington, D.C. 20640, (202) 401–4078.

SUPPLEMENTARY INFORMATION:

Authority: Clean Water Act Section 303.

I. Entities Potentially Regulated by the Proposed Rule

Category	NAIAS codes	SIC codes	Examples of potentially regulated entities
State, Local, Tribal Government	N/A	N/A	States, Territories, and authorized tribes

This table is not intended to be exhaustive, but rather provides a guider for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether you are regulated by this action, you should carefully examine the applicability criteria in part 130 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Summary of Proposed Rule

A. Existing Requirement

Section 303(d)(1) of the CWA requires States, Territories and authorized tribes to submit to EPA "from time to time" a list of waterbodies for which existing pollution controls are not stringent enough to attain and maintain State, Territorial and authorized Tribal water quality standards. The statute requires

EPA to review and approve or disapprove the lists within 30 days of the time they are submitted. If EPA disapproves a list, EPA must establish the list for the State, Territory or authorized Tribe.

In 1992, EPA revised the regulations implementing section 303(d)(1) to require States, Territories, and authorized tribes to submit lists of impaired and threatened waterbodies to EPA every two years, with the 1992 lists due to EPA no later than October 22, 1992, and subsequent lists due on April 1 of even-numbered years. The most recent listing deadline was April 1, 1998, and all States, Territories, and authorized tribes have now submitted 1998 section 303(d) lists to EPA. As of January 2000, EPA had approved the vast majority of the lists.

B. Proposed Rule

Today, EPA is proposing to revise the existing regulatory requirement that section 303(d) lists be submitted on April 1, 2000. Under the existing regulations, States, Territories and authorized tribes are required to submit the next section 303(d) list to EPA on April 1, 2000, and thereafter on April 1 of every even-numbered year. EPA is today proposing to remove only the April 1, 2000, listing requirement for the following reasons.

First, comprehensive revisions to the listing regulations were proposed in August 1999 in the Revisions to the Water Quality Planning and Management Regulation rule (also known as the TMDL Rule). See 64 FR 46012 (Aug. 23, 1999). The changes in the listing requirements proposed in August would, if adopted, result in significant changes to the list development and submission process. The proposed changes are intended to provide clearer direction to States, Territories and authorized tribes in how to develop their lists, result in a comprehensive public accounting of impaired and threatened waterbodies, promote consistency among States, Territories and authorized tribes in the listing process, and ensure public participation. EPA believes that these proposed changes will result in better section 303(d) lists than are being prepared under current rules, and believes that States should devote resources to prepare for the anticipated new listing requirements rather than develop year 2000 lists under the current requirements.

Second, EPA believes that establishing TMDLs is the crucial step in identifying actions needed to assure that waterbodies identified as impaired or threatened on the section 303(d) list attain and maintain water quality standards. Given the anticipated changes in listing requirements, EPA believes that until those new requirements are promulgated, States, Territories and authorized tribes should focus their resources on establishing TMDLs for waters already listed under section 303(d) and submitting them to EPA for review and approval, rather than developing a new list in the year 2000. It is important to note that, since EPA is proposing to remove the requirement for only the April 1, 2000, deadline, States, Territories and authorized tribes will be required to submit section 303(d) lists on April 1, 2002, under the current regulatory requirements. In addition, the date established for submission of the first 303(d) list in the promulgated TMDL Rule may be in advance of the existing April 2002 submittal requirement. In this case, less than four years would have elapsed between 1998 and when the first lists required by the revised regulations are submitted to EPA.

Third, since all States, Territories and authorized tribes submitted 1998 section 303(d) lists and EPA has approved the vast majority of these lists, there currently exists an extensive, complete, and public accounting of impaired and threatened waterbodies for the entire Nation. If, as EPA is proposing, there is no requirement for an April 1, 2000 list, EPA expects States, Territories, and authorized tribes to continue monitoring the quality of their waterbodies and to establish and implement TMDLs for the waterbodies on their 1998 section 303(d) lists. This will ensure continued progress towards attainment and maintenance of water quality standards Nationwide.

The proposed rule includes a limited exception which would require a State to submit a list in the year 2000 only if a court order, consent decree, or settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list. In recent years, litigation under section 303(d) has resulted in court orders, consent decrees, and settlement agreements in a number of States related to EPA obligations in implementing section 303(d). In order to avoid unsettling a commitment embodied in a court order, consent decree, or settlement agreement, today's proposed rule would not relieve such a State of the obligation to submit a year 2000 list if a court order, consent decree, or settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list. The Act grants EPA the discretionary authority to interpret the requirement that States submit lists "from time to time." In the exercise of its discretionary authority, EPA believes it is appropriate to continue to require a year 2000 list in those States in which the absence of a year 2000 list would unsettle an existing court order, consent decree or settlement agreement. EPA has reviewed the consent decrees, court orders, and settlement agreements in cases involving TMDL programs and believes the only order, consent decrees, or settlement agreement with a requirement for EPA to take an action expressly related to a year 2000 list is a consent decree for Georgia. EPA solicits public comment on whether there are any other such court orders, consent decrees, and settlement agreements. If there are, EPA will notify those States and will identify those States in the notice of final rulemaking as States in which a year 2000 list would be required. EPA solicits comment on whether to include this exception in the final rule.

In its August 1999 TMDL Rule proposal, EPA proposed to amend the existing regulations to change the April 1, 2000, deadline to October 1, 2000, for submission by the States, Territories, and authorized tribes of their lists of impaired waters. EPA made this proposal in recognition of the fact that it was unlikely that the comprehensive changes it announced in August 1999 would be finalized far enough in advance of April 2000 to inform the States' April 2000 lists (64 FR 46030). EPA proposed that States submit lists in October 2000 either using the new TMDL Rule (if finally promulgated "well in advance of October 1") or the current regulations (in the event the new regulations were delayed). Upon further consideration, EPA believes the best course is to eliminate the year 2000 list entirely. Today's proposal represents EPA's current thinking; however, the public may still submit comments on the August 23, 1999, TMDL Rule proposal to move the date of the year 2000 list from April 1 to October 1, 2000.

Even though EPA is proposing to eliminate the requirement that States, Territories, and authorized tribes submit lists of impaired waters in April 2000, EPA understands that some States may wish to submit such lists anyway. In the event that States submit such lists to EPA, EPA intends to review and either approve or disapprove them even if this proposal to eliminate the April 2000 list becomes final.

EPA intends to carefully review any proposed removal of a waterbody from a section 303(d) list to ensure there is

information specific to the waterbody to support the removal. Some examples of such information are when a State develops and EPA approves a TMDL for the waterbody/pollutant on the prior list, new information shows that the waterbody is achieving water quality standards for the pollutant at issue, or re-evaluation of the information supporting the initial listing shows that this information is incorrect. In particular, where a waterbody was previously listed based on certain data or information, and the State removes the waterbody without developing or obtaining any new information, EPA will carefully evaluate the State's re-evaluation of the available information, and would not approve such removals unless the State's submission describes in detail why it is appropriate to remove each affected waterbody. EPA has the authority to disapprove the list if EPA identifies existing and readily available information that was existing and readily available at the time the State submitted list showing that a waterbody does not achieve water quality standards or is water quality limited and is required by the regulations to be listed. In August, 1999, EPA proposed to establish specific criteria for removing a water from a Section 303(d) list, and is considering whether to promulgate that specific provision as part of final action on today's rule. *See* 64 FR 46049, 40 CFR 130.29. EPA also intends to exercise its authority to add appropriate waterbodies if a State submits a year 2000 list before EPA promulgates the comprehensive changes to the TMDL program that were proposed on August 23, 1999.

In developing today's proposal, EPA also considered retaining the existing regulatory requirement that States, Territories, and authorized tribes submit lists to EPA on April 1 of every even numbered year, including April 1, 2000. EPA rejected this option because, in light of EPA's pending effort to revise significantly the rules governing submission of lists and for the reasons discussed above, it does not promote effective and efficient use of government resources in identifying impaired waters as a first step toward restoring and maintaining the quality of the Nation's waters.

C. Comments Sought

EPA seeks comments on whether to eliminate the April 1, 2000, listing deadline in light of the comprehensive improvements and clarifications being proposed to the existing listing requirements. EPA also requests comments on whether to move the April 2000 list submission date to another date prior to April 2002. EPA also requests comment whether to include in the final rule the limited exception which would require a State to submit a list in the year 2000 only if a court order, consent decree, or settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list.

III. Regulatory Assessment Requirements

A. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rule's requirements.* See *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Electric Co-op., Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985); *Motor & Equipment Manufacturers Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. "[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.*" *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op., Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court). After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This proposed rule will not impose any requirements on small entities. It merely eliminates the current regulatory requirement which directs States, Territories and authorized tribes (and EPA, if it disapproves the State's, Territory's or authorized tribe's efforts) to establish lists of impaired waterbodies in the year 2000. The proposed rule applies only to those three categories of entities and does not impose requirements upon any small entities. Moreover, today's proposal would eliminate a requirement to submit a list of impaired waters in the year 2000, thereby saving States, Territories, and authorized tribes the economic impact of developing such lists.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. The proposal is deregulatory in nature in that it eliminates the current regulatory requirement that States, Territories, and authorized tribes submit lists of impaired waters in 2000. In addition, since today's proposal does not impose any requirements on the private sector, the private sector will incur no costs. Thus, today's proposal is not subject to the requirements of section 202 and 205 of UMRA.

For the same reasons as listed above, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This proposed rule does not contain any information collection, reporting, or record keeping requirements. Thus, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule would actually streamline and reduce existing OMB-approved requirements by 25,424 hours in the year 2000.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As discussed above, the proposed rule is deregulatory in nature and eliminates a current requirement that States, Territories, and authorized tribes submit lists of impaired waters in 2000. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. The proposal is deregulatory in nature in that it eliminates the current regulatory requirement that States, Territories, and authorized tribes submit lists of impaired waters in 2000. Currently, there are no tribes authorized to establish TMDLs or lists of impaired waters. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's proposal.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not "economically significant". As noted earlier, this rule is deregulatory in nature.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comment on this aspect of the proposal rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: January 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 130—[Amended]

1. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 130.7 is amended by adding a new sentence after the third sentence in paragraph (d)(1) to read as follows:

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

* * * * *

(d) * * * (1) * * * For the year 2000 submission, a State must only submit a list required under paragraph (b) of this section if a court order, consent decree, or settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list. * * *

* * * * *

[FR Doc. 00–2282 Filed 2–1–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 00–11; FCC 00–17]

Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a proposed prediction model for determining presumptively the ability of individual locations to receive over-the-air television signals broadcast by local television stations. The Commission believes this model will be a useful means for establishing the eligibility of individual households to receive the signals of television broadcast network stations through satellite carriers. The Commission is complying with new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999.

DATES: Comments must be received on or before February 22, 2000, and reply comments on or before March 7, 2000.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Eckert, Office of Engineering and Technology, (202–418–2433).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 00–11, FCC 00–17, adopted January 13, 2000, and released January 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Notice of Proposed Rule Making

1. In the Notice of Proposed Rule Making (NPRM), the Commission proposes rules prescribing a point-to-point predictive model for determining the ability of individual locations to receive an over-the-air television broadcast signal of a specific intensity through the use of a conventional, stationary, outdoor rooftop receiving antenna. Our goal in developing this model is to provide a means for reliably and presumptively determining whether the over-the-air signals of network affiliated television stations can be received at individual locations. Such determinations are used in establishing the eligibility of individual households to receive the signals of television broadcast network stations by satellite carriers. In issuing this proposal, we are complying with new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999 (SHVIA). The signal intensity for determining eligibility is the Grade B standard set forth in § 73.683(a) of the Commission's rules.

2. The SHVIA revises and extends statutory provisions established by Congress in the 1988 Satellite Home Viewer Act (SHVA). With regard to prediction of signal availability, the SHVIA adds a new section 339(c)(3) to the Communications Act of 1934, as amended, which requires that "[W]ithin 180 days after the date of enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall take all actions necessary, including any reconsideration, to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals in accordance with the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code." Section 339(c)(3) further provides that "[I]n prescribing such a model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201, and ensure that such model takes into account terrain, building structures, and other land cover variations. The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available." The SHVIA also requires that the courts rely on the Individual Location Longley Rice model established by the Commission for making presumptive determinations of whether a household is capable of receiving broadcast television signals of Grade B intensity.

3. In its Report and Order in CS Docket No. 98–201, 64 FR 7113 (February 12, 1999), (SHVA Report and Order), the Commission endorsed the use of a specific model for predicting signal strength at individual locations. This model, which the Commission termed "Individual Location Longley-Rice" or "ILLR," is a version of Longley-Rice 1.2.2. The Commission recommended that the ILLR model be used for determining a presumption of service or lack of service by local over-the-air television signals at individual locations for purposes of establishing a household's eligibility to receive network television programming by satellite carriers under the SHVA.

4. The Commission found that vegetation and buildings affect signal intensity at individual locations. However, it also found that at the time of the SHVA Report and Order, there was no standard means of including

such information in the ILLR that had been accepted by the technical and scientific community. The Commission therefore stated that land use and cover information will be included in the ILLR when an appropriate method for using such information in the context of determining the field strength of broadcast television signals at individual locations has been developed and accepted. In its Order on Reconsideration in CS Docket 98–201, 64 FR 73429 (December 30, 1999), the Commission denied DirecTV's petition for reconsideration, in part, on the basis that it failed to provide the information and details necessary to evaluate an application to consider land use and cover in the ILLR.

5. Subsequent to the SHVA Report and Order, the ILLR has been implemented by several commercial companies as a tool for determining whether particular households, identified by street address, are served or unserved for purposes of the SHVA. Providers of programming service by satellite carriers are screening potential customers for eligibility at the point-of-sale using the ILLR model.

6. Following the direction of Congress in the SHVIA, we are proposing to define an improved model for predicting the field strength produced by a television network affiliate broadcasting station at individual locations, using as a guide the ILLR model as described in the SHVA Report and Order. This model would be incorporated into our rules as the required method for making presumptive determinations of individual household's eligibility for satellite retransmission of distant network signals. The prediction model we are proposing takes into account terrain, building structures, and other land cover variations, some of which are yet to be evaluated and accepted by the scientific and technical community. We therefore are also outlining a process through which values can be developed for these parameters. This process provides for continued refinement of the model on the basis of reliable technical evidence, as it becomes available.

A. The Current ILLR Prediction Model

7. The current ILLR model is the version of Longley-Rice 1.2.2 that we endorsed in the SHVA Report and Order. It is similar to the point-to-point predictive model we established for digital television (DTV) coverage and interference prediction. The ILLR model does not replace the current Commission rules for field strength contours (§ 73.683) or prediction of coverage for non-SHVA purposes (§ 73.684). In fact, the ILLR model may identify unserved households lying within a station's Grade B contour and may, likewise, identify served households outside a Grade B contour.

8. In Appendix A, we specify the technical details that are to be used with Longley-Rice 1.2.2 to qualify the latter as the ILLR model required under the SHVIA. The SHVA Report and Order left some of these details to choice since it offered ILLR only as a means to make administration of the unserved household rule under SHVA easier and more cost-effective. Here, some of the Longley-Rice 1.2.2 input parameters have values different from those utilized for application of the model to DTV.

B. Improvements in the Model

9. We propose to improve the ILLR model by adding clutter loss parameters. The clutter loss includes the effects of both vegetation and buildings and is dependent upon the environment of the individual household reception point. Reception point environments are to be classified in terms of the codes used in the Land Use and Land Cover (LULC) database of the United States Geological Survey, and clutter loss values are to be added to the radio propagation loss predicted by basic Longley-Rice 1.2.2.

10. To simplify use of the database for ILLR purposes, we have reorganized the LULC categories in a way specifically relevant to radio propagation. After regrouping, we identify 10 environmental classes, almost all of which are combinations of several of the original LULC categories. Since many of the original LULC categories distinguish between environments in ways that are unimportant for propagation prediction, it is clear that simplification is in order. The particular simplification we are proposing for the ILLR is defined in Appendix A along with other details of the ILLR model. This simplification is the same as a classification system currently under consideration by an industry standardization committee.

11. In the improved ILLR model, it is contemplated that a clutter loss value (a reduction in available signal intensity) will be associated with each and every LULC classification in a way that is also dependent upon frequency. However, the available data for assigning values to these parameters is limited, and we believe it is reasonable to assign values only in situations for which measurement data have been analyzed and published, or for which we have some confidence in deriving such values. We are basing the ILLR table of clutter loss on the results published in a recent engineering journal by Thomas N. Rubinstein. Since the Rubinstein values of clutter loss are derived exclusively from measurements made at receiver sites with Fresnel clearance, the values should apply only to matching situations. For other situations, the clutter loss will have to remain equal to the default value of zero dB, the value it effectively has in the current ILLR model where LULC data is not used. We recognize that, under this approach, the number of situations in which clutter loss may be taken into account will be limited. We therefore request comment on whether other data are available that would allow us to expand the application of clutter loss considerations, and whether there are other approaches that are scientifically supported and could be integrated into the ILLR model to take into account losses due to vegetation and man-made structures.

12. It is particularly problematic that the Rubinstein table of losses does not cover low band VHF television, channels 2 through 5, so that no clutter loss can be assigned to reception on these channels without introducing an exception to our principle of not assigning values unless measurement data have been analyzed and published for matching situations. We are proposing to address this problem by using clutter loss values for low band channels that are derived by applying frequency trend data to the Rubinstein clutter loss values for high band VHF. The frequency trend we have applied is that found by Okumura. The low band values obtained in this way are tabulated in Appendix A. Comments are requested on the acceptability of this approach.

C. Procedures for Continued Refinement

13. Because of copyright law implications addressed by the SHVIA, we believe that formal rule making is appropriate to make changes in the future in the ILLR model that we adopt in this proceeding. We seek comment on this proposed procedure and any other suggestions for revising the ILLR in a timely fashion.

D. Designation of Neutral and Independent Entity for Signal Tests Purposes

14. In addition to requiring that the Commission conduct a rule making to improve the ILLR predictive model, section 339 prescribes procedures for selecting a qualified, independent person to test the signal at a household. In particular, section 339(c)(4)(B) provides:

> If the satellite carrier and the network station or stations asserting that the retransmission [of a signal of a distant

network station] is prohibited are unable to agree on such a person to conduct the test, the person shall be designated by an independent and neutral entity designated by the Commission by rule.

15. We seek comment on how to identify qualified entities as candidates to fulfill this legislative requirement. What types of qualifications should such an entity possess? Are there industry testing labs in existence that could fill this role? What characteristics will demonstrate the independence and neutrality contemplated by the statute? Should there be multiple designating entities across the country or one central clearinghouse?

16. We recognize the importance of completing the proceeding to determine the designated tester as quickly as possible and, therefore, include this issue in this expedited proceeding to revise the ILLR.

Appendix A—Technical Data

This appendix specifies technical details and input parameters that are to be used with Longley-Rice Version 1.2.2 to qualify the latter as the Individual Location Longley-Rice (ILLR) propagation prediction model per § 73.683(d) of the FCC rules. The method for including Land Use and Land Clutter (LULC) classifications of locations with attributed clutter loss values is defined here. This appendix will be republished as OET Bulletin No. 70 and included in FCC rules by reference.

Computer code for the Longley-Rice radio propagation prediction model is published in an appendix of NTIA Report 82–100, A Guide to the Use of the ITS Irregular Terrain Model in the Area Prediction Mode, authors G.A. Hufford, A.G. Longley and W.A. Kissick, U.S. Department of Commerce, April 1982. The report may be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia, by requesting Accession No. PB 82–217977. Some modifications to the code were described by G.A. Hufford in a memorandum to users of the model dated January 30, 1985. With these modifications, the code is referred to as Version 1.2.2 of the Longley-Rice model. It is available for downloading at the U.S. Department of Commerce Web site, <http://elbert.its.bldrdoc.gov/itm.html>.

When run under the conditions given in Table 1, the Longley-Rice model becomes the ILLR per § 73.683(d) of the FCC rules. Note especially the following unique features of the ILLR prediction procedure (they distinguish the ILLR model from, for instance, the use of Longley-Rice for digital television coverage and interference calculations as detailed in OET Bulletin No. 69):

- The time variability factor is 50% presuming that the ILLR field strength prediction is to be compared with a required field (the Grade B field intensity defined in § 73.683(d) of the FCC rules) that already includes an allowance for long term (daily and seasonal) time fading;
- The confidence variability factor is 50% indicating median situations;
- The model is run in individual mode;
- Terrain elevation is considered every 1/10 of a kilometer;
- Receiving antenna height is assumed to be 6 m (20 feet) above ground for one-story buildings and 9 m (30 feet) above ground for buildings taller than one-story;
- Where error codes indicate a severe error, the field strength is deemed inadequate for TV service;
- Land use and land cover (e.g., vegetation and buildings) considerations are included.

The field strength of a network TV station at an individual location is predicted as follows:

(1) Find engineering data for the network affiliate station of interest by, for example, consulting the FCC Web site at (http://www.fcc.gov/mmb/vsd/). Necessary data are station latitude and longitude, height above mean sea level of the radiation center, and the effective radiated power (ERP) in the direction of the individual location under study.

(2) Run Longley-Rice 1.2.2 in the point-to-point mode with the parameters specified in Table 1 to find the propagation path loss relative to free space propagation.

(3) Examine the path terrain profile and direct ray from the transmitter radiation center to the 6- or 9-meter receiving point to determine whether the ray clears by at least 0.6 of the radius of the first Fresnel zone. If not, the ILLR Clutter Loss is 0 dB and steps 4 and 5 should be omitted.

(4) Find the USGS Land Use and Land Cover classification of the individual location under study by consulting the LULC database, available from the USGS web page <http://edcwww.cr.usgs.gov/glis/hyper/guide/1_250_lulc>.

(5) Convert the USGS Land Use and Land Cover classification to the corresponding ILLR category using Table 2, and find the associated clutter loss from Table 3.

(6) Finally, calculate the ILLR field strength prediction from the formula

Field = (Free Space Field) − (Longley-Rice 1.2.2 Path Loss) − (ILLR Clutter Loss)

where the *Free Space Field* in $dB\mu = 106.92 + 10\log_{10}(ERP) - 20\log_{10}(distance)$, and *distance* is the path length in kilometers from transmitter to the individual location under study.

HG(1) in Table 1 is the height of the radiation center above ground. It is determined by subtracting the ground elevation above mean sea level (AMSL) at the transmitter location from the height of the radiation center AMSL. The latter may be found in the FCC's TV Engineering Data Base while the former is retrieved from the terrain elevation data base as a function of the transmitter site coordinates also found in the TV Engineering Data Base.

Terrain elevation data at uniformly spaced points between the transmitter and receiver must be provided. The ILLR computer program must be linked to a terrain elevation data base with values every 3 arc-seconds of latitude and longitude or closer. The program should retrieve elevations from this data base at regular intervals with a spacing increment of 0.1 kilometer (parameter XI in Table 1). The elevation of a point of interest is determined by linear interpolation of the values retrieved for the corners of the coordinate rectangle in which the point of interest lies.

TABLE 1.—PARAMETER VALUES FOR ILLR IMPLEMENTATION OF THE LONGLEY-RICE FORTRAN CODE

Parameter	Value	Meaning/comment
EPS	15.0	Relative permittivity of ground.
SGM	0.005	Ground conductivity, Siemens per meter.
ZSYS	0.0	Coordinated with setting of EN0. See page 72 of NTIA Report.
EN0	301.0	Surface refractivity in N-units (parts per million).
IPOL	0	Denotes horizontal polarization.
MDVAR	1	Code 1 sets individual mode of variability calculations.
KLIM	5	Climate code 5 for continental temperate.
XI	0.1 m	Distance between successive points along the radial from transmitter to individual reception point.
HG(1)	See text	Height of the radiation center above ground.
HG(2)	6m, or 9 m	Height of TV receiving antenna above ground. Use 6 m for one-story building; otherwise 9 m.
KWX	Numeric error marker	KWX is an output indicating the severity of a possible error due to parameters being out of range. Accept the field strength prediction when KWX equals 0 or 1, otherwise (KWX = 2, 3, or 4) presume the field is inadequate for TV reception.
LULC Category	1 to 10	This parameter is added to Longley-Rice for ILLR purposes. See Tables 2 and 3.

TABLE 2.—REGROUPING OF LULC CATEGORIES FOR ILLR APPLICATIONS

[The United States Geological Survey (USGS) maintains a database on land use and land cover indicating features such as vegetation and man-made structures. It is often called the LULC database and is available from the USGS web page at <http://edcwww.cr.usgs.gov/glis/hyper/guide/1; 250; lulc)

LULC classification number	LULC classification description	ILLR clutter category number	ILLR clutter category description
11	Residential	7	Residential.
12	Commercial and services	9	Commercial/industrial.
13	Industrial	9	Commercial/industrial.
14	Transportation, communications, & utilities	1	Open land.
15	Industrial and commercial complexes	9	Commercial/industrial.
16	Mixed urban and built-up lands	8	Mixed urban/buildings.
17	Other urban and built-up land	8	Mixed urban/buildings.
21	Cropland and pasture	2	Agricultural.
22	Orchards, groves, vineyards, nurseries, and horticultural	2	Agricultural.
23	Confined feeding operations	2	Agricultural.
24	Other agricultural land	2	Agricultural.
31	Herbaceous rangeland	3	Rangeland.
32	Shrub and brush rangeland	3	Rangeland.
33	Mixed rangeland	3	Rangeland.
41	Deciduous forest land	5	Forest land.
42	Evergreen forest land	5	Forest land.
43	Mixed forest land	5	Forest land.
51	Streams and canals	4	Water.
52	Lakes	4	Water.
53	Reservoirs	4	Water.
54	Bays and estuaries	4	Water.
61	Forested wetland	5	Forest land.
62	Non-forest wetland	6	Wetland.
71	Dry salt flats	1	Open land.
72	Beaches	1	Open land.
73	Sandy areas other than beaches	1	Open land.
74	Bare exposed rock	1	Open land.
75	Strip mines, quarries, and gravel pits	1	Open land.
76	Transitional areas	1	Open land.
77	Mixed barren land	1	Open land.
81	Shrub and brush tundra	1	Open land.
82	Herbaceous tundra	1	Open land.
83	Bare ground	1	Open land.
84	Wet tundra	1	Open land.
85	Mixed tundra	1	Open land.
91	Perennial snowfields	10	Snow & ice.
92	Glaciers	10	Snow & ice.

TABLE 3.—CLUTTER LOSS AS A FUNCTION OF ILLR LULC CLUTTER CATEGORY AND TV CHANNEL

[Clutter loss values in this table have been estimated based on the test data published by Thomas N. Rubinstein, "Clutter Losses and Environmental Noise Characteristics Associated with Various LULC Categories," IEEE Transactions on Broadcasting, Vol. 44, No. 3, September 1998. Values for low band VHF have been added by extrapolation from higher frequencies using frequency trends developed by Okumura, Yoshihisa et al, "Field Strength and its Variability in VHF and UHF Land Mobile Radio Service," Rev. Electrical Comm Lab, Vol. 16, Sept–Oct 1968, pp 825–873.]

ILLR clutter category number	ILLR clutter category description	Clutter Loss—dB to be added to Longley-Rice prediction of path loss provided the path profile shows 0.6 Fresnel clearance			
		Low band VHF, channels 2–5	High band VHF, channels 7–13	UHF band	
				Channels 14–36	Channels 38–69
1	Open Land	6	7	12	16
2	Agricultural	7	5	14	18
3	Rangeland	7	9	10	19
4	Water	0	0	0	0
5	Forest Land	7	8	16	25
6	Wetland	0	0	0	0
7	Residential	10	12	16	21
8	Mixed Urban/Buildings	10	15	17	18
9	Commercial/Industrial	10	15	15	17
10	Snow and Ice	0	0	0	0

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2143 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 00–4]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the act authorizes satellite carriers to add more local and national broadcast programming to their offerings and seeks to place satellite carriers on an equal footing with cable operators with respect to availability of broadcast programming. This document discusses specifically the implementation of regulations that would apply current cable rules for network nonduplication, syndicated program exclusivity and sports blackout to satellite carriers.

DATES: Comments due February 7, 2000; reply comments are due February 28, 2000. Written comments by the public on the proposed information collections are due March 3, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 3, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–7200 or via internet at via internet at *egore@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 00–4, adopted January 5, 2000; released January 7, 2000. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking ("*Notice*"), we seek comment on our implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), which was enacted on November 29, 1999. This act authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to some subscribers who previously have been prohibited from receiving broadcast programming via satellite. The legislation generally seeks to place satellite carriers on an equal footing with cable operators with respect to the availability of broadcast programming. By this Notice we seek comment on the adoption of implementing regulations that apply network nonduplication, syndicated program exclusivity, and sports blackout requirements to satellite carriers.

2. Section 1008 of the SHVIA creates a new section 339 of the Communications Act of 1934 ("Communications Act") entitled "Carriage of Distant Television Stations by Satellite Carriers." Section 339(b) directs the Commission to apply these three rules (*i.e.*, network nonduplication, syndicated exclusivity, and sports blackout), previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations to subscribers. The Commission must also apply the cable sports blackout rule to satellite carriers' retransmission of network stations to subscribers, but only "to the extent technically feasible and not economically prohibitive." This proceeding will consider how best to apply these rules to satellite carriers consistent with the statutory requirements and the Commission's goal of facilitating competition in the multichannel video programming distribution marketplace.

3. The complexity of both the statutory provisions and the existing cable rules that we are charged with applying in this new context requires that we include an explanation of the existing network nonduplication, syndicated exclusivity, and sports blackout rules as they apply to cable operators. We seek here to minimize the likelihood of confusion in the future by assuring that we begin with a common understanding of the rules and terminology. These rules have been in existence for 25 years, and the nuances attendant to enforcement and compliance require some explication to provide a solid foundation from which to build a new set of rules to apply to satellite carriers. This is particularly important given that Congress has asked us to implement these new rules so that they will be "as similar as possible" to the rules applicable to cable operators. Our goal throughout this proceeding is to develop regulations that will be as clear and easy to follow as possible. Our purpose in laying out the cable rules here is so that the newly covered satellite carriers and other parties will have an understanding of the existing rules for the preparation of their comments in this proceeding. Likewise, it is important to describe in some detail the interpretation of the statute upon which we will base our rulemaking. We seek comment on these explanations and interpretations.

II. Statutory Provisions and Interpretations

4. The first statutory provision discussed, section 339(b)(1)(A), requires application of three cable rules, network nonduplication, syndicated exclusivity, and sports blackout, to satellite retransmission of nationally distributed superstations. The second statutory provision, section 339(b)(1)(B), applies one of these cable rules, sports blackout, to satellite retransmission of network stations. As discussed, one important distinction between these provisions is that nationally distributed superstations may be retransmitted to both served and unserved households, but network stations may only be retransmitted to unserved households.

5. The Commission rules in question here, as applied in the cable context, generally protect exclusive contractual rights that have been negotiated between broadcasters and program providers or other rights holders. These exclusive contractual rights are potentially threatened by cable systems that are capable of retransmitting programming from distant sources beyond the control of the contracting parties. The Commission's network nonduplication, syndicated exclusivity and sports blackout rules provide that specific programs must be deleted from distant signals delivered to cable subscribers if the programs are subject to exclusive contracts to local stations or, in the context of sporting events, if carriage from distant stations would violate sports blackout arrangements to protect gate receipts in the local market. To determine how best to apply these cable rules in the satellite context, it is first necessary to understand the underlying statutory scheme. To that end, we first discuss the relevant provisions of the SHVIA statute and our interpretations of these provisions.

A. Section 339(b)(1)(A): Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout to Retransmission of Nationally Distributed Superstations

6. Section 339(b)(1)(A) of the Communications Act requires the Commission "to apply network nonduplication protection (§ 76.92), syndicated exclusivity protection (§ 76.151), and sports blackout protection (§ 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers." For these purposes, a "nationally distributed superstation" is a term that is defined as a television broadcast station, licensed by the Commission, that meets the following three criteria:

(A) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(B) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(C) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code.

It appears that the television broadcast stations that meet the foregoing criteria are limited to KTLA–TV (Los Angeles), WPIX–TV (New York), KWGN–TV (Denver), WSBK–TV (Boston), WWOR–TV (New York) and WGN–TV (Chicago). We do not believe that any other station could meet these criteria in the future due to the date-specific conditions set forth in the definition. We believe this is, therefore, a finite list of the nationally distributed superstations covered by the statute, but we invite comment on this issue. We also note that the statutory definitions of network station, television network, and television broadcast station generally contemplate entities within the United States. We seek comment on the relevance of this issue in this proceeding. Are stations based in foreign countries affected by the SHVIA provisions requiring application of the cable exclusivity and sports blackout rules to satellite retransmissions?

7. A nationally distributed superstation is a type of "superstation," which is defined in the Copyright Act of 1947, *as amended* ("Copyright Act"), as "a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier." By creating this special category known as nationally distributed superstations, Congress permits satellite carriers to retransmit these superstations to subscribers regardless of whether they are "served" or "unserved" pursuant to the Copyright Act. Congress achieved this result by amending the section 119 compulsory copyright license in the Copyright Act. The amended copyright provision provides that the retransmission of nationally distributed superstations to subscribers who do not reside in "unserved households" shall not violate the compulsory copyright license. While section 1005(b) of the SHVIA does not refer to nationally distributed superstations expressly, the criteria for its application are identical to those contained in the definition of a nationally distributed superstation. Thus, we believe that based on section 1005(b), there is no geographic restriction on the retransmission of "nationally distributed superstations" pursuant to the compulsory copyright license.

8. In addition to amending the Copyright Act, section 1009 of the SHVIA amends the retransmission consent section of the Communications Act, which generally prohibits multichannel video programming distributors from retransmitting the signals of a broadcaster absent the broadcaster's written authorization. The SHVIA exemption allows a satellite carrier to retransmit the signal of a superstation in the absence of written consent from the superstation if: (i) the station was a superstation on May 1, 1991, and (ii) the station was retransmitted by the satellite carrier as of July 1, 1998, provided the satellite carrier complies with the Commission's nonduplication, syndicated exclusivity, and sports black out rules. This provision differs slightly from the definition of a nationally distributed superstation in that it does not specify that the superstation must not be affiliated with a network that existed as such as of January 1, 1995. At this time, this distinction is without practical significance because the six television stations cited meet the relevant criteria of either definition, and there are no additional stations that are included or excluded by operation of this third criterion. Taking all these provisions together, we believe that, pursuant to these new statutory provisions in the Copyright Act and the Communications Act, satellite carriers are permitted to retransmit the signals of the nationally distributed superstations covered by section 339(b)(1)(A) to both served and unserved households without the station's consent and without geographic restriction.

9. We believe that Congress' purpose in applying the network nonduplication, syndicated exclusivity, and sports blackout rules to these satellite retransmissions reflects a balance between providing access to national programming carried by the superstation and a recognition that, in the absence of retransmission consent requirements, broadcasters and rights holders will have no opportunity to protect their contractual rights. We also believe Congress is seeking to create parity between the regulations covering satellite carriers and cable operators. We seek comment on this interpretation of the operation and underlying intent of the statutory requirements.

B. Section 339(b)(1)(B): Application of the Sports Blackout Rule to Retransmission of Network Stations

10. In addition to applying the existing cable rules to nationally distributed superstations, section 339(b)(1)(B) requires the Commission to "apply sports blackout protection (§ 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers" "to the extent technically feasible and not economically prohibitive." By its terms, section 339(b)(1)(B) applies only to "network stations," which are, generally, television broadcast stations owned or operated by, or affiliated with, one or more of the television networks. Affiliates of these networks are the only entities that meet the definition of a

television network station contained in the Copyright Act and are the only stations covered by section 339(b)(1)(B). We note that in the cable context, the Commission's sports blackout rule applies to any television broadcast station and is not limited to network stations. We seek comment on whether the cable rules are indeed broader in scope than section 339(b)(1)(B).

11. We also observe that the title of new section 339, "Carriage of Distant Television Stations by Satellite Carriers," suggests that this section is intended to apply to satellite retransmission of *distant* network stations, notwithstanding that the text of section 339(b)(1) does not specifically so state. We seek comment on this interpretation, which is relevant to determining which satellite retransmissions are covered by this section of the statute.

III. Implementation of the Statutory Requirement

12. In general, under the new statutory provisions, the network nonduplication, syndicated exclusivity, and sports blackout rules will apply when a satellite carrier retransmits a nationally distributed superstation to a household within a local broadcaster's zone of protection, and the nationally distributed superstation carries a program to which the local station has exclusive rights. In these cases, the television broadcast station holding exclusive rights may require the satellite carrier to blackout these particular programs for the satellite subscriber households within the protected zone. We seek comment generally on the appropriate manner in which to implement the provisions of section 339(b)(1) of the Communications Act. In particular, we seek comment on whether the amended provisions should be incorporated into existing §§ 76.67, 76.92, and 76.151 of the Commission's rules, or whether we should adopt new separate rules for satellite carriers.

A. Network Nonduplication Rule

13. The Commission's cable television network nonduplication rule allows a television broadcast station that has purchased exclusive rights to network programming within a specified area to protect its exclusivity on local cable systems. The rules allow a local television broadcast station to demand that a local cable system's duplicate carriage of the same program from an otherwise distant station be blacked out. A station may assert its exclusivity rights regardless of whether its signal is carried by the cable system in question. These rules are not statutorily mandated. They arose from the Commission's recognition in the 1970s and 1980s that protection of exclusive contractual rights is necessary both to protect local broadcasters from the importation of non-local stations by cable systems and to provide appropriate protections and incentives to program producers and distributors to provide the programming desired by viewers.

14. Under the network nonduplication rule, a television station is entitled to assert its exclusivity rights against a cable system serving any "cable community unit" within its "specified zone" that is carrying duplicative programming for which the local station has obtained exclusive distribution rights. The rule applies on a community unit basis by requiring the cable system for a particular community unit to black out a specific program based on the priorities established in the rule. The "specified zone" of a television broadcast station is the 35 mile area surrounding its community of license. The zone of exclusivity protection for television stations licensed to smaller television markets extends an additional 20 miles, for a total 55 miles surrounding a smaller television station's community of license. We seek comment on whether Congress intended to retain the same geographic zones for satellite carriers as those used in the cable context.

15. While the Commission's rules allow television stations to assert their nonduplication rights within the above territorial limits, a television station's rights within these areas are limited by the terms of the contractual agreement between the station and the holder of the rights to the program ("rights holder"). Thus, if the rights holder grants the television station a zone of protection of ten miles, then that station would be precluded from exercising its nonduplication rights against any cable system located more than ten miles from that station's city of license. In addition, for local programming to be protected, the local programming must be the same as the distant programming that is being imported into a local station's market.

16. In order to exercise nonduplication protection, a television broadcast station must notify cable operators of the rights they have obtained within 60 days of the signing of a contract affording exclusive rights. In adopting these rules, the Commission recognized that affected cable operators would need sufficient time to negotiate for the lifting of the requested protection or to arrange for alternative sources of programming to fill the void left when a station exercised its rights. In this regard, television stations have been required to disclose the exact contractual terms under which they have been granted exclusivity protection. We seek comment on how the notification process described in the network nonduplication rule can be applied to satellite carriers and on whether the 60 day period and the other notification periods used in the cable context are appropriate for satellite carriers.

17. There are several exceptions to application of the network nonduplication rule. First, the network nonduplication rule is inapplicable to any non-commercial educational ("NCE") station programming carried in fulfillment of a cable system's mandatory carriage rules. Second, because of the cost of the equipment necessary to carry out deletions, the Commission exempted cable systems having fewer than 1,000 subscribers.

18. The rule also does not apply if the distant station's signal is "significantly viewed" in a relevant cable system community. The concept of significant viewing is directly related to whether an otherwise distant station's broadcast signal is viewable over-the-air in a cable community unit. The significantly viewed exception to the exclusivity rules is meant to insure that any programming that is available terrestrially in a community from an over-the-air station will not be blacked out on a community's cable system. We seek comment on the relevance in the satellite context of the exception for significantly viewed stations. Are there situations in which a nationally distributed superstation from an adjacent market could be significantly viewed within the relevant specified zone based on terrestrial transmission? We believe a nationally distributed superstation could only qualify as significantly viewed based on terrestrial broadcast reception over-the-air in the areas surrounding its city of license, thus limiting the relevance of this exception to those circumstances in which the superstation is actually functioning as a local station, and therefore, arguably, not covered by the terms of section 339(b)(1)(A).

19. Under the cable network nonduplication rules, if the cable community unit is located in one or more overlapping specified zones, neither station can blackout the other station's duplicating programming because both stations have equal priorities. We do not believe a similar situation could occur in the satellite carrier context because superstations, as such, do not have specified zones outside of the markets from which they

originate, and, under the new statutory requirement, network nonduplication applies only to the retransmission of nationally distributed superstations and not to retransmission of network stations. We seek comment on this issue.

B. Syndicated Program Exclusivity Rule

20. The Commission's syndicated program exclusivity rule allows local stations to protect their exclusive distribution rights for syndicated programming on local cable systems in a local market. This rule is similar in operation to the network nonduplication rule, but it applies to exclusive contracts for syndicated programming, rather than for network programming. In this rule, too, a local television station is entitled to assert its exclusivity rights within a specified zone of 35 miles surrounding a television station's city of license. Unlike the network nonduplication rule, however, the maximum zone of protection allowed under the rules is 35 miles surrounding a television station's city of license in a non-hyphenated television market and 35 miles surrounding each named city in any size hyphenated market; the zone of protection is not greater in smaller markets.

21. As with network nonduplication, the syndicated exclusivity rule applies on a community unit basis by requiring the cable system for a particular community unit to black out a specific program based on the priorities established in the rule. In addition, the geographic limits for exclusivity under the Commission's rules are limited by the terms of the contractual agreement between the station and the holder of the rights to the program. Thus, if the rights holder grants the television station a zone of protection of ten miles, then that station would be precluded from exercising its exclusivity rights against any cable system located more than ten miles from that station's city of license. In addition, as with the network nonduplication rules, for syndicated programming to be protected, the programming covered by the contract must be the same as the distant programming.

22. To exercise syndicated exclusivity protection under the cable rule, a television broadcast station must notify cable operators of the rights they have obtained within 60 days of the signing of a contract affording exclusivity rights, and must disclose the exact contractual terms under which they have been granted exclusivity protection. In addition to the television broadcast station, distributors of syndicated programming are also allowed to seek protection for a period of one year from the initial licensing of such programming anywhere in the United States, except where the relevant programming has already been licensed. We seek comment on whether the rights holder should, in the satellite context, notify the satellite carrier directly. We also seek comment on whether the 60 day period and the other notification periods used in the cable context for both network nonduplication and syndicated exclusivity are appropriate for satellite carriers.

23. The exceptions to application of the syndicated program exclusivity rule are similar to those that apply to the network nonduplication rule. Cable systems with fewer than 1,000 subscribers are exempted, again because of the cost of the equipment necessary to carry out deletions. This rule also does not apply if the distant station's signal is "significantly viewed" in a relevant cable system community. In addition, the syndicated programming of an otherwise distant station need not be blacked out if that station's grade B signal encompasses the relevant cable community. There is no exception to the syndicated exclusivity rules for NCE station programming carried pursuant to mandatory carriage because the syndicated exclusivity rule applies only to commercial stations.

C. Sports Blackout Rule

24. The Commission's sports broadcasts rule ("sports blackout rule") is designed to allow the holder of the exclusive distribution rights to local programming, in this case sporting events, to control, through contractual agreements, the display of that event on local cable systems. Unlike the other cable rules we are required to apply to satellite carriers, only the sports blackout rule applies to retransmission of both nationally distributed superstations and network stations. The purpose of the sports blackout rule is to insure the continued general availability of sports programming to the public. The Commission adopted this rule based on a concern that sports teams would refuse to sell the rights to their local games to television stations serving distant markets due to their fear of losing gate receipts if the local cable system imported the local sporting event carried on the distant station. The Commission stated this would have the ultimate undesirable effect of making sporting events available to fewer viewers. When a subject sporting event will not be aired live by any local television station carried on a community unit cable system, the sports blackout rule allows the rights holder to the event to demand that the local cable system blackout the distant importation of the subject sporting event. Section 76.67(a) applies "if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(gg)(1) through 76.5(gg)(3) of this part." 47 CFR 76.5(a). The former § 76.5(gg) defined "basic cable service" for purposes of basic cable service rate regulation and incorporated the standard for mandatory carriage under the Commission's original 1972 must-carry rules. In summary, for purposes of rate regulation of the basic tier at that time, § 76.5(gg) provided that the basic tier for cable systems serving communities located outside all major and smaller television markets included television broadcast stations within whose Grade B contours the community of the community unit was located; for communities in smaller television markets, the basic tier included television broadcast stations within whose specified zone the community of the community unit is located, commercial television broadcast stations licensed to communities in other smaller television markets within whose Grade B contours the community of the community unit is located, and television broadcast stations licensed to communities that are generally considered to be part of the same smaller television market; and for communities in major television markets, the basic tier included television broadcast stations within whose specified zone the community of the community unit is located and television broadcast stations licensed to other designated communities of the same major television market; as well as, in all size markets, commercial television broadcast stations that were significantly viewed in the community of the community unit. The zone of protection afforded by the sports blackout rule is generally 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. As with the Commission's exclusivity rules, the sports blackout rule specifies notification procedures regarding the sports programming to be deleted. However, the time frame allowed for notification is significantly shorter in the case of the sports blackout rule, and can be as little as 24 hours in contrast to 60 days for the other rules. We seek comment on whether the same timing should apply for both cable operators and satellite carriers.

25. As with the network nonduplication and syndicated exclusivity rules, the sports blackout rule does not apply to cable systems with fewer than 1,000 subscribers. This exemption is based on the cost of the equipment needed to delete programming. We seek comment on whether there is an analogous situation for satellite carriers. Will there be situations in which there may be no more than 1,000 subscribers in an area subject to program blackout, and, if so, is there a significant cost to blacking out this limited number of subscribers? We seek specific information from satellite carriers on the likelihood of the occurrence of this situation. We seek comment on these questions with respect to the network nonduplication and syndicated exclusivity rules, as well as the sports blackout rule. We particularly seek specific information from satellite carriers on the comparative costs per subscriber of deleting programming where more than or less than 1,000 subscriber households are affected.

26. As noted, the sports blackout rule for cable systems applies only in a limited 35 mile geographic area surrounding the relevant broadcast station's community reference point and only when no local television station is carrying the event. Typically this area contains households that can receive a signal of Grade B intensity or better. Because the section 119 compulsory copyright license only allows the retransmission of distant network stations to unserved households, *i.e.* those that cannot receive a signal of Grade B intensity, and because the existing sports blackout zone is typically limited to an area containing only served households, we expect that there would be few occasions where a subscriber residing within a sports blackout zone would be eligible to receive protected programming *via* distant network retransmissions made pursuant to the section 119 compulsory copyright license. Thus, there may be very few occasions where, as a practical matter, the sports blackout rule could be invoked for a satellite retransmission of network stations. It may, however, present technical and economic challenges to the satellite carrier to take the actions necessary to blackout out the sports broadcast in these comparatively few situations. We seek comment on this issue.

27. The SHVIA's directive to apply the network nonduplication, syndicated exclusivity, and sports blackout rules to satellite retransmission of nationally distributed superstations appears to apply without any limitation based upon a satellite carrier's technical ability to comply. The SHVIA, however, limits application of the sports blackout rule to retransmission of network stations "to the extent technically feasible and not economically prohibitive." The legislative history suggests that a "very serious economic threat to the health of the carrier" is necessary to justify deviating from the cable rules. We seek comment concerning the circumstances in which the sports blackout rule should apply in the satellite context, on whether the 35 mile zone is appropriate in the satellite context, and, particularly, on the technical and economic consequences related to satellite carriers' compliance with the rule.

28. We note that satellite carriers routinely provide pay-per-view events and descramble programming by use of "conditional access" mechanisms. With regard to the question of technical and economic effects on the satellite carrier, we ask whether conditional access mechanisms can be used to blackout sports programming on network stations. If the satellite provider can identify the households required to be blacked out for a specific sporting event, would conditional access provide the means to initiate the blackout? How much lead time would a satellite carrier need if conditional access can meet this requirement? What would the cost be per subscriber to implement sports blackout, as compared to the other exclusivity rules, using conditional access? Commenters are asked to address consideration of both the economic and technical considerations facing satellite carriers.

29. Under the new section 122 of the Copyright Act, a satellite carrier may retransmit the signal of a network station to all subscribers within that station's local market, which is defined as its Designated Market Area ("DMA"). It is possible that in areas in which there are two affiliates of the same network within the same DMA, a "served" subscriber would be eligible to receive both network stations based on the satellite carrier's "local-into-local" license because the subscriber resides in the DMA of the second station. The geographic area for purposes of the sports blackout zone surrounding one of the affiliates is most often smaller than the DMA. If one of the affiliates is not carrying the event, the sports blackout rule can be triggered. If the second affiliate is carrying the event, then the satellite carrier might be required to blackout the event being transmitted by the second affiliate to subscribers within the 35 mile zone. Alternatively, this situation may never occur if, as a practical matter, the contractual arrangements allow the rights holder to prohibit both affiliates from broadcasting the event in question. We seek comment on whether the two-affiliates-in-one market scenario is likely to occur, and whether the rules should treat this situation differently from the retransmission of a distant network station.

IV. Additional Discussion and Request for Comment

30. We also seek comment, generally, on how to apply the terms of the three existing cable rules to satellite carriers. As discussed, the cable rules refer to "community units," which correspond to separate and discrete communities or municipal entities that comprise cable systems. In the cable context, all cable subscribers who are in a community unit that lies in whole or in part within the specified zone experience program deletions if the program is covered by one of these rules. There are, however, no boundaries for satellite service that readily and necessarily correspond to the cable community unit. Is it necessary to administer these rules in the satellite context using the same community unit concept that applies in the cable context? Or, is it more appropriate to consider each household served by the satellite carrier and determine if it is within a broadcaster's specified zone for protection under the rules? In either case, the satellite carrier must be able to determine the location of each subscriber in relation to the relevant zone of protection for each local broadcast television station. How can a satellite carrier accurately locate a subscriber whose address is a post office box or rural route number? Is it appropriate to use the subscriber's zip code for this purpose? We seek comment on which approach best serves the purposes of the statute while not unnecessarily depriving satellite subscribers who are beyond the specified zone—but within a community unit that lies partially within the specified zone—of programming. We also seek comment on how the use of DMA in the SHVIA to define the local market applies to determination of the specified zone for purposes of the nonduplication, syndicated exclusivity and sports blackout rules in the satellite context.

31. The syndicated exclusivity and sports blackout rules make specific provision for what type of programming a cable system may substitute for programming deleted pursuant to these rules. For example, when a program is blacked out based on syndicated rights, a cable operator may substitute a

program from any other television broadcast station and carry that program. We seek comment on what types of programming and methods of substitution are appropriate for satellite carriers. What role do retransmission consent requirements, as well as copyright licensing requirements, play in determination of substitute programming?

32. Congress apparently chose not to extend application of the network nonduplication and syndicated exclusivity rules to retransmission of television broadcast stations other than nationally distributed superstations. We believe that the statutory requirements, nevertheless, will protect all contractual arrangements because the satellite carrier either needs the retransmission consent of the independent station or voluntarily complies with the exclusivity and sports blackout rules. We believe, therefore, that the interests of rights holders and local broadcasters are protected, but we seek comment on this issue.

33. It has been suggested that the Commission consider certain additional issues concerning the distribution of sports programming that are related to, but not directly covered by, the SHVIA. The National Football League sells packages of programming to networks on a national basis, but different games are broadcast locally on a regional basis, often in two-game packages. To the extent that broadcasts of games are carried into local markets on distant broadcast signals via satellite, the network nonduplication and other rules involved in this proceeding appear to offer neither the stations nor the leagues involved any protection beyond the rights to the particular games that local stations are authorized to broadcast. In light of the SHVIA's restrictions on households that are eligible to receive distant network signals, it is not clear to what extent carriage of distant signals providing different games merits remedial action. We seek comment on the question of how the patterns of sports carriage involved are addressed by the new law, and whether they can and should be addressed in the regulations the Commission is required to adopt pursuant to it.

34. We note, too, that WPIX, KTLA, and KWGN are WB affiliates and WSBK and WWOR are UPN affiliates; thus all are both "network stations" as well as "nationally distributed superstations," pursuant to the definitions in the SHVIA. Should the exclusivity rules apply to blackout programming on a local station if that station is also a nationally distributed superstation or should the station be treated only as a local station within its local market, notwithstanding that it is a nationally distributed superstation outside its market? We note by way of analogy that, in the context of mandatory cable carriage, we have concluded that local commercial stations do not become superstations until such time as they are retransmitted via satellite outside their market, an activity unrelated to their status as local commercial broadcast stations within their market. We seek comment on the applicability of that conclusion in the satellite context.

35. In addition, if we decide that it is necessary for the satellite carrier rules for sports blackout protection for network stations to differ from sports blackout protection for nationally distributed superstations due to technical feasibility and economic prohibitions, we seek comment on whether the sports blackout protection for these stations should apply to them as superstations, rather than as network stations.

36. Section 339(b)(1) and the relevant part of the *Joint Explanatory Statement* are silent regarding application of the exclusivity and sports blackout rules to the retransmission of digital broadcast signals. In the pending proceeding considering cable mandatory carriage of digital signals, we requested comment on how these cable rules would function for cable carriage of digital signals. Similarly here, we question whether Congress intended to apply these rules to satellite retransmission of digital broadcast signals. We note that the SHVIA can be read as applying to both analog and digital broadcast signals. An alternative interpretation is that Congress was only concerned about the carriage of analog signals given that elsewhere in the statute Congress expressly mentioned digital signals and, presumably, could have done so in this context as well. We seek comment on whether and how the exclusivity rules could apply to satellite carriage of digital broadcast signals, and whether there is a meaningful distinction between analog and digital carriage issues for satellite carriers in this context.

37. As a final matter, we note that several sections of the existing cable rules contain outdated cross-references to other sections of the rules. We welcome comment on these and any other such corrections that are needed. For example, § 76.67 contains a reference to § 76.5(gg) for purposes of identifying the broadcast television stations that trigger the rule's application. Section 76.5(gg) has been eliminated. The Commission deleted § 76.5(gg) in its 1993 Order rescinding cable service rate regulation. We seek comment on whether we should reinstate a standard based upon the original criteria incorporated into § 76.5(gg) or adopt a new standard. In addition, we welcome comment on changes to the application of the rules in the cable context to the extent necessary or desirable for harmonizing the regulatory requirements among the affected parties. Also, existing § 76.5(ii) references § 76.5(o). The correct reference should be to § 76.5(m). Furthermore, the existing Note to § 76.92 references § 76.658(m) in the last sentence. The correct reference should be to § 73.658(m), as correctly stated in the second sentence of the Note.

38. In addition, § 76.51 lists the top 100 television markets in the United States. The "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif." market is listed at § 76.51(a)(2). In 1995, the Commission redesignated the "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.," market as the "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market. However, the published amendment to § 76.51(a) intended to effectuate the foregoing change inadvertently amended § 76.51(a)(28), rather than § 76.51(a)(2). As a result, the redesignated "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market is listed as § 76.51(a)(28) and the "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif." market still is listed as § 76.51(a)(2). The "Tampa-St. Petersburg-Clearwater, Florida" market, which was listed at § 76.51(28) at the time the Commission adopted the Los Angeles Redesignation Order, was deleted inadvertently from § 76.51(a)(28) and currently is not listed elsewhere in § 76.51. The correct reference in § 76.51(a)(2) should be to the "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market. The correct reference in § 76.51(a)(28) should be to the "Tampa-St. Petersburg-Clearwater, Florida" market.

V. Administrative Matters

A. Ex Parte Rules

39. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a

presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

B. Filing of Comments and Reply Comments

40. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 7, 2000 and reply comments on or before February 28, 2000. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

41. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The Cable Services Bureau contact for this proceeding is Eloise Gore at (202) 418–7200, TTY (202) 418–7172, or at egore@fcc.gov.

42. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Eloise Gore, Cable Services Bureau, 445 12th Street NW, Room 4–A802, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 00–2]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036. Written comments by the public on the proposed information collections are due March 3, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before April 3, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to *vhuth@omb.eop.gov*.

C. Paperwork Reduction Act Statement and Initial Regulatory Flexibility Act Statement

Paperwork Reduction Act: This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due April 3, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission.

Type of Review: New collection or revision of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: Satellite carriers—xxxx.

Estimated Time Per Response: xxxx hours.

Total Annual Burden: xxxx.

Cost to Respondents: xxxx.

Needs and Uses: Congress directed the Commission to adopt regulations that apply network nonduplication, syndicated program exclusivity, and sports blackout requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Initial Regulatory Flexibility Analysis

a. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the possible policies and rules that would result from this Notice of Proposed Rulemaking ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

b. *Need for, and Objectives of, the Proposed Rule Changes.* On November 29, 1999, the Satellite Home Viewer Improvement Act of 1999 was enacted ("SHVIA"). Section 1008 of the SHVIA creates a new section 339 of the Communications Act entitled "Carriage of Distant Television Stations by Satellite Carriers." The Notice discusses adoption of implementing regulations relating to the cable rules concerning network nonduplication, syndicated program exclusivity, and sports

broadcasts to satellite carriers. Section 339(b) directs the Commission to apply these three cable rules to satellite carriers' retransmission of nationally distributed superstations to subscribers. The Commission is also to apply the sports broadcasts rule to satellite carrier's retransmission of network stations to subscribers, but only to the extent technically feasible and not economically prohibitive.

c. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 339 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 339.

d. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we may adopt as a result of the Notice will affect television station licensees, satellite carriers and video program distributors and delivery services.

e. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998.

f. Thus, the proposed rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

g. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown. We invite comment as to such number.

h. *Small Multiple Video Program Distributors* ("MVPDs"): SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenues. We address services individually to provide a more precise estimate of small entities.

i. *Direct Broadcast Satellite* ("DBS"): There are four licenses of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

j. *Home Satellite Delivery* ("HSD"): The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

k. According to the most recently available information, there are approximately 30 program packages nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packages may be substantially smaller.

l. Entities which may be indirectly affected by the rules we may adopt as a result of the Notice are cable television systems.

m. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable systems operators that may be affected by the decisions and rules emanating out of the Notice.

n. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United

States and is not affiliate with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

o. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement Section 1008 of the Satellite Home Viewer Improvement Act of 1999, which creates a new Section 339 of the Communications Act, the Commission has proposed to add new rules and modify others, as the provisions at issue previously were applicable only to cable. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures. There are compliance requirements involving the nonduplication protection, syndicated exclusivity, and sports blackout rules. To exercise nonduplication protection and syndicated exclusivity protection, the rights holder to specific network or syndicated programming will have to notify and report to the satellite carrier, and do so within 60 days of the signing of a contract affording exclusivity rights. Such notification and reporting is required to take place within a shorter time period in the sports blackout context. In certain instances, staff may have to dedicate time and effort to monitoring and ensuring that notifications are properly given in a timely manner to satellite carriers.

p. There may be costs associated with hiring accounting or engineering personnel, as there may be instances where entities may have to provide detailed information relating to such aspects of their particular operations. Specifically, costs here may relate possibly to conducting engineering studies to accurately determine zones of protection. Further, there will likely be costs in equipment necessary to carry out deletions. The Commission recognized the significant costs involved in implementing deletions and exempted systems having 1,000 or fewer subscribers.

q. In terms of record keeping, entities may have to keep a record of the contractual terms and agreements and may be required to maintain such information within their business environment. At this time, small businesses might not be impacted differently in any of the above, but we seek comment on these matters.

r. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

s. As indicated, the provisions of Section 339 refer to superstations and network stations, in terms of television broadcast stations. This legislation, however, applies to small entities and large entities equally. The Commission acknowledges that consideration should be given to possible differences in size of entities, as evidenced by the fact that there are certain exemptions in the application of these rules. Overall, at this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

t. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

VI. Ordering Clauses

43. Pursuant to section 1008 of the Satellite Home Viewer Act of 1999, section 339(b)(1) of the Communications Act of 1934, as amended, notice is hereby given of the proposals described in this Notice of Proposed Rulemaking.

44. The Commission's Consumer Information Bureau, Reference Information Center shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2140 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 99–366; FCC 99–414]

Authorizing the Use of 406.025 MHz for Personal Locator Beacons (PLB)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to establish a new subpart H—Personal Locator Beacons under part 95 of the Commission's rules to permit the use of 406.025 MHz for PLBs. The action will provide individuals in remote areas a means to alert others of an emergency situation and help search and rescue (SAR) personnel locate those in distress.

DATES: Comments must be submitted on or before February 24, 2000 and reply comments are due on or before March 10, 2000. Written comments by the public on the proposed information collection are due on or before March 27, 2000. Written comments must be submitted to the Office of Management and Budget on proposed information collections on or before March 27, 2000.

FOR FURTHER INFORMATION CONTACT: James Shaffer, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Commission's *Notice of Proposed Rule Making* FCC 99–414, adopted on December 28, 1999, and released on date. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Summary of Notice of Proposed Rule Making

2. On June 3, 1993, the National Oceanic and Atmospheric

Administration of the United States Department of Commerce (NOAA) filed a petition for rulemaking requesting that the Commission amend its rules to authorize the use of the frequency 406.025 MHz for personal locator beacons (406 MHz PLBs). The NOAA seeks this change in the Commission's rules to provide individuals in remote areas a means to alert others of an emergency situation and help search and rescue (SAR) personnel locate those in distress. The Region 20 Public Safety Planning Committee (Region 20) and Orbital Communications Corporation (ORBCOMM) filed comments supporting the use of 406.025 MHz for PLBs. For the reasons discussed herein, we propose to establish a new subpart H—Personal Locator Beacons under part 95 of the Commission's rules to permit the use of 406.025 MHz for PLBs.

3. Emergency position indicating radiobeacon stations are used to send distress signals that alert SAR personnel. In the United States such beacons are named emergency locator transmitters (ELTs) when carried on aircraft and emergency position indicating radio beacons (EPIRBs) when carried on ships. ELTs and EPIRBs transmit distress signals on 121.500 MHz, 243.000 MHz and 406.025 MHz to the COSPAS/SARSAT satellite system. EPIRBs and ELTs designed to transmit distress signals on 121.500 MHz and 243.000 MHz transmit continuous signals that are amplitude modulated with an audio swept tone. These stations also provide distress alerting and guidance (homing) assistance in emergency situations. EPIRBs and ELTs designed to transmit distress signals on 406.025 MHz transmit short, digital signals to provide distress alerting in emergencies, and use 121.500 MHz to provide homing. The 406.025 MHz digital signal contains information on the type of emergency, the country and identification code of the beacon in distress, and other information to facilitate SAR operations. Further, 406 MHz distress signals can be stored on-board COSPAS/SARSAT satellites and then later retransmitted to a ground station thus eliminating the "blind spots" that exist with the older 121.500 MHz and 243.000 MHz EPIRBs and ELTs.

4. The State of Alaska has held a developmental license to use Canadian-approved PLBs in Alaska since 1995. In addition to the authorization from the Commission, the State of Alaska has a Memorandum of Understanding with the NOAA, the United States Air Force Rescue Coordination Center, the United States Coast Guard's North Pacific Rescue Coordination Center, and the Alaska State Troopers, all of which participate in the PLB program. State and Federal agencies, as well as private businesses and individuals utilize the developmental program. During the 1997 calendar year the developmental program resulted in 28 activations by PLB users, with only 2 "false" activations. It is believed that this developmental program has contributed to the efficient, timely and safe usage of SAR resources in Alaska. It is further believed that the statewide support of the PLB program has been a key to its success.

5. In response to NOAA's petition, the Interagency Committee on Search and Rescue (ICSAR) formed a PLB Working Group to develop recommendations for PLB use generally in the United States. On September 21, 1995, the Working Group concluded that the federal SAR community should support implementation of 406 MHz PLBs and invited the Radio Technical Commission for Maritime (RTCM) Services to finalize the technical standards. On February 10, 1997, the RTCM issued final 406 MHz PLB technical standards. Currently, there is no PLB equipment that is type accepted in the United States. On February 28, 1996, the ICSAR filed a letter supporting NOAA's petition and made several recommendations for implementation of 406 MHz PLBs.

6. In the 1983 Mobile World Administrative Radio Conference for the Mobile Services (MOB–83), the frequency 406.025 MHz was allocated for the exclusive use of low-power, earth-to-space emergency position indicating radiobeacons. On August 24, 1988, the Commission adopted rules authorizing the use of this frequency for EPIRBs in the Maritime Radio Services. On May 3, 1993, the Commission also adopted rules authorizing the use of this frequency for ELTs in the Aviation Radio Services. As an integral part of these rule amendments, the Commission adopted technical standards for such radiobeacons. The Commission's experience to date with EPIRBs and ELTs that operate on this frequency has been favorable. Further, NOAA and the United States Coast Guard (Coast Guard) believe, based on experience gained from the State of Alaska developmental program, that 406 MHz distress alerting would benefit individual users in remote areas. Accordingly, we propose to amend our rules to authorize the use of 406.025 MHz for PLBs.

7. *Rule part.* Currently, radio beacons authorized to operate on 406.025 MHz are regulated in the maritime radio service rules and the aviation radio services rules and under parts 80 and 87 of the Commission's rules, 47 CFR parts 80 and 87, respectively. In these services, radiobeacons are associated with particular ships or aircraft and may be used to alert SAR resources when the ship or aircraft is in distress, and for no other purpose.However, the proposed new service using 406 MHz PLBs is intended to satisfy the individual distress alerting needs of the general public. Region 20 recommends, that, to provide service to a broad range of users the Commission regulate the use of PLBs under the Personal Radio Service rules, part 95 of the Commission's rules, 47 CFR part 95. We agree and therefore we propose to establish a new subpart H—Personal Locator Beacons (PLB) under part 95 of the Commission rules.

8. *License Requirement.* The ICSAR recommends that access to 406 MHz PLBs should be restricted. It notes that there are individuals states, such as Alaska, which desire and are willing to accept responsibility by managing a 406 MHz PLB program. It therefore recommends that individual state authorities be allowed to choose to be authorized by the Commission as PLB program manager. Under such an approach, a state would manage the use of 406 MHz PLBs within its geographical boundaries and be responsible for designating a single point of contact for receiving and responding to 406 MHz PLB distress alerts relayed by NOAA. States and their points of contact for NOAA would enter into Memorandum of Understanding with NOAA, the United States Air Force Resource Coordination Center, and the appropriate United States Coast Guard's Rescue Coordination Center for coordinating response to the distress alert. For those choosing not to be authorized by the Commission or to designate of a single point of contact for NOAA, the ICSAR recommends that land-based distress alerts, including new 406 MHz PLB alerts, continue to be handled under current procedures. The current procedures for alerts replayed by NOAA are that with prior coordination and mutual agreement, land-based alerts are replayed by the Untied States Air Force Rescue Coordination Center to points of contract designated by the state. We seek comment on this approach.

9. Because of the proposed broad eligibility and operational provisions for PLBs, recognized that there are millions of potential users. We believe that individually licensing each one would be unnecessary burdensome on the Commission without concomitant public interest benefit. Notably, on October 18, 1996, the Commission decided to license EPIRBs and ELTs by

rule, which eliminated individual licenses. We note, however, that the current ELT/EPIRB system has been designed specifically to handle aircraft and ships in distress rather than to accommodate the general public. We are concerned that the addition of a large number of users, especially users unfamiliarly with the use of radio, could hamper the present system. For these reasons, we agree with the ICSAR that individual 406 MHz PLBs should be authorized by rule. We also agree with the ICSAR that a state-managed PLB program could provide for more effective, efficient and timely management of 406 MHz OLB alerts. Therefore, we seek comment on the following issues:

(a) Whether PLB management by individual states will foster sufficiently effective SAR service?

(b) Should individual states be granted an authorization, and if so, whether states have the policy and technical expertise to implement the ICSAR recommended state authorization Plan? We are particularly interested in comment from the individual states regarding this matter because no state has requested state licensing.

(c) If individual states are licensed, what should be the process and procedures by which such licenses are granted. Specifically, should the authorizations be granted to the Governor, or an agency/organization designated by the Governor? We also seek comment on whether any relevant differences in structures of various state governments would affect the licensing of states.

(d) Other flexible licensing approaches that might promote the efficient and controlled use of 406 MHz PLBs.

10. Currently, NOAA administers and maintains a database for 406 MHz EPIRBs and ELTs that contain more than 50,000 unique identification codes and registration information for these beacons. We note that registration by EPIRB and ELT beacon owners in this database currently is mandatory, as well as strongly encouraged through education programs by the Coast Guard and NOAA. Manufacturers are required, by rule, to program into each EPIRB or ELT a unique code and provide an equipment plate or label on each 406 MHz EPIRB or ELT displaying the unique NOAA identification code and registration instructions. Manufacturers must also include a pre-paid, pre-addressed post card soliciting the owner's name and address, telephone number, the type of ship or aircraft and the unique identification code for registration in NOAA's database. It is our understanding that when the distress signal is relayed to a rescue coordination center the registration information is available to SAR personnel. With respect to registration with NOAA, we propose to treat 406 MHz PLBs in the same manner that we treat 406 MHz EPIRBs or ELTs. We proposed to require manufacturers to program each 406 MHz PLB with a unique code and to provide on each 406 MHz PLB a plate or label containing the registration instructions. Additionally, we propose to require manufacturers to include with each marketed 406 MHz PLB a pre-addressed post card soliciting the name, address, telephone number, and identification code of the owner for registration in NOAA's database. We invite comment on these proposals and any alternatives thereto.

11. We propose that 406 MHz PLBs be required to comply with the technical standards in the Radio Technical Commission for Maritime (RTCM) Service document RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons (PLBs). Accordingly, we propose to incorporate the RTCM technical standards by reference in part 95 of our rules. We seek comment on this proposal. We also seek comment on the following issues:

(a) Are there applicable international requirements not covered in RTCM's technical standards?

(b) Should PLBs capable of operating on 406.025 MHz be certified as meeting COSPASS/SARSAT standards by an independent laboratory as is required for 406.025 MHz EPIRBs or is the Commission's certification process sufficient?

12. The 406 MHz PLB is primarily intended to provide a distress and alerting capacity for use by the general public in life threatening situations in a remote environment after all other means of notifying SAR responders (*e.g.*, telephone, radio) have been exhausted. Accordingly, we have proposed to establish a new Subpart H—Personal Locator Beacons (PLB) under part 95 of the Commission rules to permit the use of 406.025 MHz for personal locator beacons. Further, we have proposed to license individual 406 MHz PLBs by rule and require registration of 406 MHz PLB with NOAA. We believe that these proposals further the public interest because they are aimed at facilitating the use of radio spectrum to increase safety of the general public.

Procedural Matters

13. *Ex Parte Presentations.* This *Notice of Proposed Rule Making* is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules.

14. *Pleading Dates.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 3, 2000, and reply comments on or before March 3, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

15. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, <"get form your e-mail address>." A sample form and directions will be sent in reply.

16. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the captain of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filing must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

17. Parties who choose to file the paper should also submit their comments on diskette. These diskettes should be submitted to: Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only"

mode. The diskette should be clearly raveled with the commenter's name, proceeding (including the docket number in this case, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

18. *Paperwork Reduction Analysis.* The *Notice of Proposed Rule Making* contains proposed information collections and as part of its continuing effort to reduce paperwork burdens, the Commission invites the general public to take this opportunity to comment on the information collections as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and Agency comments on the information collections contained in the *Notice of Proposed Rule Making* are March 27, 2000. These comments should be submitted to Judy Boley, Federal Communications Commission, Room 1C804, 445 12th Street, SW., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov. Furthermore, a copy of any such comments should be submitted to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet at fain_t@al.eop.gov.

19. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible impact on small entities of the proposals suggested in the *Notice of Proposed Rule Making*. Written public comments are requested on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present, *Notice of Proposed Rule Making (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* as provided above in the Procedural Matters section of this *Notice of Proposed Rule Making*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* U.S.C. 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

I. Need for, and Objectives of, the Proposed Rules

1. In the *Notice* herein, we are proposing to authorize the use of the frequency 406.025 MHz for personal locator beacons (PLBs) to provide individuals in remote areas a means to alert others of an emergency situation and help search and rescue personnel locate those in distress.

II. Legal Basis

2. The proposed action is authorized under sections 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

3. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

4. The rules proposed in this *Notice* will affect small businesses that manufacturer, design, import, sell, or use radiobeacon equipment designed for distress alerting and location. PLBs will be used to provide a distress and alerting capacity for use by the general public in a life threatening condition in a remote environment after all other means of notifying search and rescue responders have been used. These beacons will be manufactured, designed, imported and sold by companies of all sizes operating in the U.S. We concluded that these small businesses are classified in Communications Equipment, N.E.C., (Standard Identification Code 3669) as entities employing less than 750 employees as defined in 13 CFR 121.201. The size data provided by the SBA shows that 469 firms out of 498 firms in the Communications Equipment, NEC classification have less than 750 employees but did not enable us to make a meaningful estimate of the number of potential manufacturers which are small businesses. Therefore, in this IRFA, we seek comment on the number of small businesses which could be impacted by the proposed rule changes.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

5. The *Notice* proposes a number of rules that will entail reporting, recordkeeping, and/or third party consultation. However, the commission believes that these requirements are the minimum needed. The *Notice* ask for comment whether to require mandatory registration of PLB radiobeacons and on alternative licensing methods for PLBs. The licensing methods under consideration in the Notice include the possibility of imposing recordkeeping and reporting requirements on applicants for PLB licenses. These entities will be required to submit applications for spectrum licenses on FCC Form 601.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

6. We have reduced economic burdens wherever possible. This item seeks comment on whether we should license the PLBs directly to each state or in some other manner to meet concerns for controlled use of the radiobeacons, and contains proposals for meeting technical standards. This approach will allow the states to help manage its terrestrial search and rescue resources and assure that these radiobeacons will operate properly thus enhancing protection of life and property.

7. To minimize any negative impact resulting from the implementation of licensing, we have offered the option of

utilizing the existing procedures which is, with prior coordination and mutual agreement, land-based alerts being relayed by the United States Air Force Rescue Coordination Center to a point of contact designated by the state.

8. We seek comments on these tentative conclusions.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

9. None.

Paperwork Reduction Act Analysis

This *Notice of Proposed Rulemaking* proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Notice of Proposed Rulemaking* as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are March 27, 2000. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX.

Title: 406 MHz Personal Locator Beacons (Proposed WT Docket No. 99–366).

Form No: Not applicable.

type of Review: New collection.

Respondents: State, local or tribal government.

Number of Respondents: 1050.

Estimated time per response: .5 hour.

Total annual burden: 525 hours.

Total annual cost: None.

Needs and Uses: The need for the proposed collection under consideration in the Notice of Proposed Rule Making is to require individuals register data with the National Oceanic and Atmospheric Administration and gather data for licensing entities. The registration information would be made available to search and rescue personnel to assist in locating a lost individual, and the licensing information would be used to determine whether the applicant is legally and technically qualified to be licensed.

Ordering Clauses

20. authority for issuance of this *Notice of Proposed Rulemaking* is contained in sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

21. Notice is hereby given and comments is sought on the proposed regulatory changes described in the *Notice of Proposed Rulemaking*.

22. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects 47 CFR Part 95

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 95 as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Part 95 is amended by adding subpart H to read as follows:

Subpart H—Personal Locator Beacons (PLB)

General Provisions

§ 95.1201 Basis and purpose.

§ 95.1203 Frequency.

§ 95.1205 Special requirements for 406.025 MHz PLBs

Subpart H—Personal Locator Beacons (PLB).

§ 95.1201 Basis and purpose.

The rules in this subpart are intended to provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel locate those in distress.

§ 95.1203 Frequency.

The frequency 406.025 MHz is an emergency and distress frequency available for use by Personal Locator Beacons (PLBs). Personal Locator Beacons that transmit on the frequency 406.025 MHz must use G1D emission. Use of this frequency must be limited to transmission of distress and safety communications.

§ 95.1205 Special requirements for 406.025 MHz PLBs.

(a) All 406.025 MHz PLBs must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime (RTCM) Service document "RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons (PLBs), Version 1.0, RTCM Paper 5–97/SC110–STD, dated February 10, 1997. This RTCM document is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission on Aeronautics, One McPherson Square, 1425 K Street NW., Washington, DC 20005. The document is available for inspection at Commission headquarters at 445 12th Street, Washington, DC 20554. Copies may also be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) The 406.025 MHz PLB must contain, as an integral part, a homing beacon operating only on 121.500 MHz that meets all the requirements described in the RTCM Recommended Standards document described in paragraph (a) of this section. The 121.500 MHz homing beacon must have a continuous duty cycle that may be interrupted only during the transmission of the 406.025 MHz signal.

(c) Before a 406.025 MHz PLB certification application is submitted to the Commission, the applicant must have obtained certification from a test facility, recognized by one of the COSPAS/SARSAT Partners, that the PLB satisfies the standards contained in the COSPAS/SARSAT document COSPAS/SARSAT 406 MHz Distress Beacon Type Approval Standard (C/S T.007).

(d) The procedures for obtaining a grant of notification of certification from the Commission are contained in subpart J of part 2 of this chapter.

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each PLB unit to establish a unique identification for each PLB station. With each marketable PLB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the PLB identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, alternate emergency contact and include the

following statement: "WARNING—failure to register this PLB with NOAA could result in a monetary forfeiture order being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz PLB be registered with NOAA and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.025 MHz PLB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz PLB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233." Owners shall advise NOAA in writing upon change of PLB ownership, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

(g) For 406.025 MHz PLBs with identification codes that can be changed after manufacture, the identification code shown on the plate or label must be easily replaceable using commonly available tools.

[FR Doc. 00–2139 Filed 2–1–00; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 30

Changes in Cost of Accounting Practices

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Office of the Director of Defense Procurement, in conjunction with the National Contract Management Association, is sponsoring additional public meetings to discuss alternatives to the Cost Accounting Standards Board's Supplemental Notice of Proposed Rulemaking (SNPRM–II) regarding "Changes in Cost Accounting Practices," published in the **Federal Register** at 64 FR 45700 on August 20, 1999. The Office of the Director of Defense Procurement would like to hear the views of interested parties on the current version of their recommended alternative to the approach proposed by the Cost Accounting Standards Board in SNPRM–II. The current version is available on the Internet Home Page of the Office of Cost, Pricing, and Finance at http://www.acq.osd.mil/dp/cpf.

The Office of the Director of Defense Procurement is particularly interested in obtaining comments concerning three areas of its recommended alternatives:

1. The definition of "similar functions" and "similar activities."

2. The proper treatment of pool combinations, pool split-outs, and functional transfers that occur between two viable operating segments or that involve different organizational levels within the company.

3. Whether an exemption is necessary, and if so, the criteria needed to implement such an exemption.

The Office of the Director of Defense Procurement will evaluate the input received and, if determined necessary, provide a revised or amended version of its alternative to the Chairman of the Cost Accounting Standards Board for the Board's consideration.

DATES: The next public meeting will be held on February 10, 2000, from 9 a.m. until 4 p.m. Based on the nature and extent of input received, additional public meetings may be held in the days and weeks following February 10. The dates and times of those meetings will be made available on http://www.acq.mil/dp/cpf, as soon as they are scheduled.

ADDRESSES: The meeting will be held at the National Contract Management Association, 1912 Woodford Drive, Vienna, VA 22182. Directions may be found on the Internet at http://www.acq.osd.mil/dp/cpf.

FOR FURTHER INFORMATION CONTACT: Mr. David Capitano, Office of Cost, Pricing, and Finance, by telephone at (703) 695–7249, by FAX at (703) 693–9616, or by e-mail at capitadj@acq.osd.mil; or Ms. Claudia Low, National Contract Management Association, by telephone at (703) 734–5440.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–2241 Filed 2–1–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on the Proposed Endangered Status of the Cowhead Lake tui chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the reopening of the comment period for the proposed endangered status for the Cowhead Lake tui chub (*Gila bicolor vaccaceps*). The comment period has been reopened by request from signatories of a conservation agreement for the Cowhead Lake tui chub, including private landowners, the California Department of Fish and Game (CDFG), and the U.S. Department of the Interior, Bureau of Land Management (BLM).

DATES: Comments from all interested parties must be received by February 16, 2000. All comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments, materials, data, and reports concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, W 2605, 2800 Cottage Way, Sacramento, California 95825. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Catherine Hibbard at the address above (telephone 916/414–6600, facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION

Background

The Cowhead Lake tui chub is a fish in the minnow family and can be primarily distinguished from other tui chubs by the number of bony projections in the gills. It is now found only in pump canals in the lakebed of Cowhead Lake and in Cowhead Slough in extreme northeastern Modoc County, California. Prior to hydrological modification of the Cowhead Lake watershed, including drainage of the lake for agricultural purposes, Cowhead Lake is thought to have contained the majority of the Cowhead Lake tui chub population, especially in wet years. The entire population now appears to occur only the 5.4 kilometers (3.4 miles) of Cowhead Slough and pump canals in the bed of Cowhead Lake. Habitat protection is required to conserve this subspecies, which is threatened throughout its range by a variety of impacts including loss of habitat from agricultural activities, risk of disease and contamination, loss of genetic variability, and naturally occurring random events.

On March 30, 1998, the Service published in the **Federal Register** a proposed rule to list the Cowhead Lake tui chub as endangered (63 FR 15152). The original comment period closed on May 29, 1998 but the comment period was reopened at the request of private citizens and organizations (63 FR 33033–33034). The second comment period closed on August 3, 1998 after which the Service, BLM, CDFG, and private landowners in the Cowhead Lake watershed signed a Conservation Agreement (C.A.) for the Cowhead Lake tui chub on October 22, 1999. The actions and goals committed to in the C.A. help to ensure the long-term survival of the subspecies by balancing current practices in the watershed with the long-term needs of the subspecies.

The Conservation Strategy of the C.A. includes two phases. Phase I, expected to be in effect for two years from signing, involves studies of the distribution, abundance, life history and habitat preferences of Cowhead Lake tui chubs and hydrology of the Cowhead Lake watershed. Phase II will build on what has been learned in Phase I to implement specific actions to improve the quality and availability of habitat for the subspecies. Phase II is estimated to be in effect for 10 years and includes monitoring to determine the effectiveness of conservation actions. The Conservation Strategy has an adaptive management approach; conservation actions will be modified when monitoring results indicate that such modification is necessary to conserve the Cowhead Lake tui chub.

The signatories of the C.A. have requested that the Service reopen the public comment period so the Service may also consider the conservation measures of the C.A. when making a final determination on the listing proposal of the Cowhead Lake tui chub. Written comments may be submitted until February 16, 2000 to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Catherine Hibbard, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Elizabeth H. Stevens,

Manager, California/Nevada Operations Office.

[FR Doc. 00–2222 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011900C]

Fisheries of the Northeastern United States; Deep-sea Red Crab Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare a Fishery Management Plan (FMP) for deep-sea red crab (*Chaceon quinquedens*) and to prepare an EIS, if necessary, to analyze the impacts of any proposed management measures. The FMP would be developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council also formally announces a public process to determine the scope of issues to be addressed in the environmental impact analyses. The purpose of this notification is to alert the interested public of the commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in February 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Written scoping comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before 5:00 p.m., local time, February 21, 2000.

ADDRESSES: The Council will discuss and take scoping comments at public meetings in New Hampshire and Massachusetts. See **SUPPLEMENTARY INFORMATION** for specific locations. Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, Telephone (978) 465–0492. Comments may also be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The deep-sea red crab (*Chaceon quinquedens*) is a deep-water benthic species that supports a small commercial fishery on the Atlantic coast in southern New England and on the southern slope of Georges Bank. Although not regulated, the commercial fishery appears to be limited to approximately six vessels, with some possible seasonal participation by offshore lobster vessels. There is no FMP for red crab.

Information is scarce for this resource, but recent annual landings appear to be close to estimates of maximum sustainable yield (MSY) (5.5 mil lb (2.5 mil kg)). Current capacity in this fishery is sufficient to harvest or exceed MSY; there is concern about excess harvesting capacity entering this fishery. The Council is considering development of a controlled access system in the red crab fishery to address the principle of matching capacity to sustainable harvest level. The limitation of entry into the fishery may be based on levels of participation or other criteria, such as domestic harvest capacity. The Council will consider other management measures (e.g., minimum size, quotas, trap limits and/or requirements, fishing seasons, etc.) as appropriate.

Scoping Process

All persons affected by or otherwise interested in red crab fishery management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or attending one of the scoping meetings. Scope consists of the range of actions, alternatives, and impacts to be considered. Alternatives include preparing an FMP that contains management measures such as the ones previously mentioned in this notice; preparing an FMP that does not contain management measures, but that has a framework procedure for the development of such measures in the future; not preparing an FMP at this time; or other reasonable courses of action. Impacts may be direct, indirect, individual, or cumulative. The scoping process also will identify and eliminate from detailed study issues that are not significant. If, after the scoping process is completed, the Council proceeds with the development of an FMP, the Council will prepare an EIS or Environmental Assessment, as appropriate, depending on the nature of the FMP to be developed. The Council will hold

public hearings to receive comments on the draft FMP and the analysis of its impacts on the human environment.

Public Meeting Schedule

The Council will discuss and take scoping comments at public meetings as follows:

February 11, 2000, 1:00 p.m., Urban Forestry Center, State of New Hampshire Division of Parks and Lands, 45 Elwyn Road, Portsmouth, NH 03801, (603) 431–6774 and

February 14, 2000, 1:00 p.m., Center for Marine Science and Technology (CMAST), University of Massachusetts, 706 South Rodney French Boulevard, New Bedford, MA, (508) 999–8193.

Additional scoping meetings may be scheduled as needed.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2275 Filed 2–1–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 22
Wednesday, February 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–00–02]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as beef importers, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business March 3, 2000.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch, LS, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act)(7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 103 cattle producers and 7 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2001:

State or unit	Number of vacancies	State or unit	Number of vacancies
Arizona	1	North Carolina	1
California	2	Oklahoma	1
Colorado	1	South Carolina	1
Iowa	2	South Dakota	2
Kansas	2	Tennessee	1
Louisiana	1	Texas 4.	
Michigan	1	Utah	1
Minnesota	1	Wisconsin	2
Mississippi	1	Wyoming	1
Missouri	1	Mid-Atlantic Unit	1
Nebraska	2	Northeast Unit	1
Nevada	1	Importer Unit	2
New Mexico	1		

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business March 3, 2000. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR § 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

(3) There must be a history of stability and permanency, and

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,

(3) The stability and permanency of the importer organization or association,

(4) The number of years in existence, and

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: January 27, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–2271 Filed 2–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–00–03]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: February 17, 2000.

Time: 9 a.m.

Place: United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To elect officers, review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and to discuss the level of tobacco inspection and related services. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 2000–2001 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456; (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by February 8, 2000 and inform us of your needs.

Dated: January 27, 2000.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 00–2272 Filed 2–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published December 21, 1999 (64 FR 71601). This action is taken to correct the closing date of the "early selection pool" of $40 million from 4:00 Eastern Standard Time on February 21, 2000 to 4:00 Eastern Standard Time on February 22, 2000. This action is being taken because there will be no mail delivery on February 21, 2000 due to the Federal Holiday.

Accordingly, the notice published December 21, 1999 (64 FR 71601), is corrected as follows:

On page 71601 in the second column, in the first sentence under the heading **DATES,** the text "4:00 PM Eastern Time on February 21, 2000" should read "4:00 PM Eastern Standard Time on February 22, 2000."

On page 71602 in the second column, Item III., in the first paragraph, the text "4 p.m. Eastern Standard Time, February 21, 2000" should read "4:00 PM Eastern Standard Time on February 22, 2000."

On page 71602 in the second column, Item III., in the second paragraph, the text "4:00 PM, Eastern Standard Time on February 21, 2000" should read "4:00 PM Eastern Standard Time on February 22, 2000."

Dated: January 20, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–2270 Filed 2–1–00; 8:45 am]

BILLING CODE 3410–XV–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting; Notice

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10:00 a.m. local time on January 10, 2000 at the Defense Nuclear Facilities Safety Board (3rd floor), 625 Indiana Avenue, NW, Washington, DC. Topics to be discussed at the meeting will include:

1. Resignation of the Board Chairperson.
2. Interim Board Governance.
3. Proposed Federal Regulations regarding CSB Quorum, Voting Procedures and compliance with the Government Under the Sunshine Act.
4. Review and Adoption of CSB Mission Statement.
5. Major CSB Initiatives for remainder of FY 2000.
6. Review and Discussion of FY 2001 Budget Proposal.

The meeting will be open to the public. The Defense Nuclear Facilities Safety Board is a secure federal building requiring photo identification for public admission. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202)–261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 00–2381 Filed 1–31–00; 11:57 am]

BILLING CODE 6350–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010600B]

Incidental Take of Marine Mammals; Taking of Ringed Seals Incidental to On-ice Seismic Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and with implementing regulations, notification is hereby given that letters of authorization to take ringed and bearded seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska was issued on January 28, 2000, to Western Geophysical and Kuupik/Fairweather Geophysical, both of Anchorage, AK.

DATES: These letters of authorization are effective from January 28, 2000, through May 31, 2000.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, ext 128 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed and bearded seals incidental to on-ice seismic surveys were published on February 2, 1998 (63 FR 5277), and remain in effect until December 31, 2002.

Summary of Request

NMFS received requests for letters of authorization on September 23, and October 14, 1999, from Western Geophysical, and on October 15, 1999 from Kuupik/Fairweather. These letters request a take by harassment of a small number of ringed seals incidental to conducting vibroseis surveys in the Beaufort Sea off Alaska.

Issuance of these letters of authorization are based on findings that the total takings by this activity will have a negligible impact on the ringed seal stocks of the Western Beaufort Sea and that the applicants have met the requirements contained in the implementing regulations, including monitoring and reporting requirements.

Dated: January 28, 2000.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2274 Filed 2–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120999G]

National Plan for the Reduction of Incidental Catch of Seabirds in Longline Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of public comment period.

SUMMARY: A draft National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds) was released for public comment on December 27, 1999, through a **Federal Register** notice. The public comment period listed in the previous notice expired on January 18, 2000. This notice extends this public comment period to February 7, 2000.

DATES: Written comments to the draft NPOA-Seabirds should be received no later than February 7, 2000.

ADDRESSES: Comments on the NPOA-Seabirds should be sent to David Kerstetter, NOAA - Fisheries/SF4, 1315 East-West Highway, Silver Spring, MD 20910, or by fax to 301–713–2313. Comments will not be accepted via e-mail or internet.

FOR FURTHER INFORMATION CONTACT: David Kerstetter, (301) 713-2276, ext. 107, or fax 301–713–2313.

SUPPLEMENTARY INFORMATION: The United States, through a collaborative effort with the U.S. Fish and Wildlife Service, is developing a NPOA-Seabirds pursuant to the endorsement of the International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries by the Food and Agriculture Organization of

the United Nations Committee on Fisheries (COFI) Meeting in February 1999. The United States has committed itself to completing the NPOA-Seabirds and reporting to COFI no later than 2001.

A previous **Federal Register** notice dated December 29, 1999 (64 FR 73017) provided notice of the availability of a draft NPOA-Seabirds and stated that public comment on this draft would be accepted until January 18, 2000. This notice extends the period of public comment to February 7, 2000.

Dated: January 27, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2194 Filed 2–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee (NMTNEC)

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice of Recruitment for Additional Members for NMTNEC.

SUMMARY: The Department of Commerce, Technology Administration (TA), requests nominations of individuals for appointment to the National Medal of Technology Nomination Evaluation Committee (NMTNEC). The Committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. Public Law 105-309; 15 U.S.C. 3711, Section 10, approved by the 105th Congress in 1998, added the National Technology Medal for Environmental Technology. The terms of several current members have expired and the period of nominations will identify their replacement.

DATES: Please submit nominations on or before February 17, 2000.

ADDRESSES: Submit nominations to the National Medal of Technology Program Office, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4226, Washington, DC 20230. Materials may be faxed to 202–501–8153.

FOR FURTHER INFORMATION CONTACT: Stanley Dapkunas, Acting Director, 202–482–5572.

SUPPLEMENTARY INFORMATION: The National Medal of Technology was rechartered on December 8, 1999 for a period of two years to provide advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The National Medal of Technology Nomination Evaluation Committee (NMTNEC) serves as an advisory body to the Under Secretary of Technology in his capacity as Chair of the Steering committee, which reports directory to the Secretary of Commerce. Members are responsible for reviewing nominations and making recommendations for the nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the NMTNEC have an understanding of, and experience in, developing and utilizing technological innovation and/or they are familiar with the education, training, employment and management of technological human resources.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following subsectors of the technology enterprise;

(1) Infrastructure & Transportation/Telecommunications;

(2) Biomedical/Pharmaceutical/Health;

(3) Human Resources/Education; and

(4) Other (including manufacturing, process, environmental technology, transportation).

Typically, committee members are present or former Chief Executive Officers or other senior leaders of corporations; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. They offer stature by virtue of their positions and also possess first-hand knowledge of the forces driving future directions for their industries or fields of expertise. The Committee as a whole is balanced in representing geographical, professional, and diversity interests. Nominees must be U.S. citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology, and must uphold the confidential nature of an independent peer review and competitive selection process.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse NMTNEC membership.

Dated: January 27, 2000.

Gary Bachula,

Acting Under Secretary of Commerce for Technology.

[FR Doc. 00–2127 Filed 2–1–00; 8:45 am]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 65, No. 13, Thursday, January 20, 2000, page 3208.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Wednesday, January, 26, 2000.

CHANGES IN MEETING: The closed Commission briefing on the Compliance Status Report was not held due to the agency closing because of a weather emergency. The meeting has been rescheduled for Thursday, February 3, 2000 at 10:00 a.m.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: January 31, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–2437 Filed 1–31–00; 3:03 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Conference Meeting of the Overseas Dependents' Schools National Advisory Panel (NAP) on the Education of Dependents with Disabilities

AGENCY: Department of Defense Education Activity.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the NAP is scheduled to be held April 18–20, 2000, from 8 am to 4 pm. The meeting will be open to the public and will be held at the Department of Defense Education Activity, 4040 North Fairfax Drive, Room 904, Arlington, Virginia 22203–1635. The purposes of the meeting are to: (1) Review the proposed revision of Department of Defense Instruction

1342.12, "Provision of Early Intervention and Special Education Services to Eligible DoD Dependents in Overseas Areas, dated March 13, 1996; (2) review activities and plans for the Comprehensive System of Personnel Development that encompasses activities that build the skills of personnel who work with children with special needs and their families; and (3) review the summer 1999, Austim Summit Report. Persons desiring to attend the meeting, to make oral presentations, or to submit written statements for consideration by the panel must contact Ms. Diana Patton by April 1 at (703) 696–4492, extension 1947, or at her email address, dpatton@hq.odedodea.edu.

January 25, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–2158 Filed 2–1–00;8:45am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The addition consolidates two existing systems of records (DHA 01, Medical Malpractice Claims Data File and DHA 02, Adverse Clinical Privilege Actions Data File) in to DHA 09, Medical Credentials/Risk Management Analysis System (CCQAS).

DATES: This proposed action will be effective without further notice on March 3, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 588–0159.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 5, 2000, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 27, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS
DHA 01

SYSTEM NAME:

Medical Malpractice Claims Data File *(February 22, 1993, 58 FR 10227).*

Reason: The records contained in this notice have moved to DHA 09, Medical Credentials/Risk Management Analysis System (CCQAS).

DHA 02

SYSTEM NAME:

Adverse Clinical Privilege Actions Data File *(February 22, 1993, 58 FR 10227).*

Reason: The records contained in this notice have moved to DHA 09, Medical Credentials/Risk Management Analysis System (CCQAS).

ADDITION
DHA 09

SYSTEM NAME:

Medical Credentials/Risk Management Analysis System (CCQAS).

SYSTEM LOCATION:

Armed Forces Institute of Pathology, Department of Legal Medicine, 8403 Colesville Road, Suite 860, Silver Spring, MD 20910–9813.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The credentials and privileges component of the Centralized Credentials Quality Assurance System (CCQAS) includes all DoD Medical Treatment Facility (MTF) health care providers. The medical malpractice risk management component includes those health care providers who have been involved with medical malpractice cases. The adverse privilege actions component includes DoD health care providers who have been the subject of adverse privilege actions with the military health system. Health care beneficiaries whose medical treatment is the basis for medical malpractice or adverse privileging action.

CATEGORIES OF RECORDS IN THE SYSTEM:

The credentials and privileges component of CCQAS consists of personal identifier information of all DoD health care providers. Additional provider information includes demographic data, licensure data, education and graduate medical education information, specialty information, certification information and medical readiness data. The malpractice component relates to medical malpractice claims recorded against the Department of Defense. Record fields consist of provider information, allegation-related information, diagnosis and procedure information, dates of incident, filing and closure, injury information, Social Security Numbers of military sponsors of malpractice claimants, and professional review assessments. Adverse privilege action fields include provider information, the type of reasons for actions, and relevant dates. Subject records are 'medical quality assurance records' if produced or compiled by the Department of Defense incident to an activity to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for greatly assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review and identification and prevention of medical or dental incidents and risks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 11131–11152 (Pub.L. 99–660, Health Care Quality Improvement Act of 1986); 10 U.S.C. 1102; DoD Directive 6025.14, DoD Participation in the National Practitioner Data Bank; and E.O. 9397 (SSN).

PURPOSE(S):

The system collects and manages malpractice and adverse privilege actions claims data provided by the military services.

Data are also used to manage credentials and privileges of health care providers in the Military Health System, and to conduct trend analysis on provider and malpractice data in keeping with DoD Medical Quality Assurance programs. Data from this system is use to report DoD adverse

privileging actions and malpractice data to the National Practitioner Data Bank and to the state licensing boards of the individual provider.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services for inclusion in the National Practitioner Data Bank and to state licensing authorities for the purpose of reporting DoD adverse privileging actions and malpractice data as provided in 42 U.S.C. 11131–11152.

If the records are 'medical quality assurance records,' they may be disclosed outside the DoD as a routine use only as follows:

To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to DoD health care facilities or to perform monitoring, required by law, of DoD health care facilities.

To an administrative or judicial proceeding commenced by a present or former DoD health care provider, concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the DoD.

To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the DoD and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality requests that such record or testimony be provided for a purpose authorized by law.

To officials of an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality to serve the defined purposes proposed for that proceeding.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices do not apply to medical quality assurance records maintained in this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and on a microcomputer system.

RETRIEVABILITY:

Hard copy is filed by the sponsor's Social Security Number. Electronic records may be accessed by search of the Social Security Number of the health care provider or in the case of a patient, by the Social Security Number of the military sponsor.

SAFEGUARDS:

Records are accessed by authorized personnel having an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Access to computer files is restricted to a user IDs and password system managed by the CCQAS system administrator.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Requests for information should contain the full name of the health care provider or military sponsor, the requesting individual's Social Security Number (or Social Security Number of a military sponsor, if inquiry is by a claimant), military department and medical facility and signature of the requester, and the time frame in which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Requests for access should contain the full name of the health care provider or military sponsor, the requesting individual's Social Security Number (or Social Security number of a military sponsor, if inquiry is by a claimant), military department and medical facility and signature of the requester, and the time frame in which the case record was developed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical facilities of the military departments, the National Practitioner Data Bank, and other health care practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–2159 Filed 2–1–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Suspension of the Price Evaluation Adjustment for Small Disadvantaged Businesses

AGENCY: Department of Defense.

ACTION: Notice of 1-year suspension of the price evaluation adjustment for small disadvantaged businesses.

SUMMARY: The Acting Director of Defense Procurement has suspended the use of the price evaluation adjustment for small disadvantaged businesses (SDBs) in DoD procurements as required by 10 U.S.C. 232(e)(3), as amended by Section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, because DoD exceeded its 5 percent contract goal for awards to SDBs in fiscal year 1999. The suspension will be in effect for 1 year and will be reevaluated based on the level of DoD contract awards to SDBs achieved in fiscal year 2000.

DATE: *Effective Date:* February 24, 2000.

Applicability Date:: This suspension applies to all solicitations issued during the period from February 24, 2000, to February 23, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, PDUSD (AT&L) DP (DAR), Defense Acquisition Regulations Council, 3062 Defense Pentagon, Washington, DC 20301–3062, telephone (703) 602–0326.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted to 10 U.S.C. 2323(e), DoD has previously granted SDBs a 10 percent price preference in certain acquisitions. This price preference is implemented in Subpart 19.11 of the Federal Acquisition Regulation. Section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 2000 (Public Law 105–261) amended 10 U.S.C. 2323(e)(3) to prohibit DoD from granting such a price preference for a 1-year period following a fiscal year in which DoD achieved the 5 percent goal for contract awards established in 10 U.S.C. 2323(a). Since, in fiscal year 1999, DoD exceeded this 5 percent goal, use of this price preference in DoD acquisitions must be suspended for a 1-year period, from February 24, 2000, to February 23, 2000. A similar suspension was required for the period from February 24, 1999, to February 23, 2000 (64 FR 4847, February 1, 1999).

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–2240 Filed 2–1–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 213. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 213 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: February 1, 2000.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 212. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–01–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGE IN CIVILIAN BULLETIN 213 UPDATES RATES FOR MIDWAY ISLANDS.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
BARROW	115		73		188	03/01/1999
BETHEL	92		65		157	01/01/2000
CLEAR AB	80		54		134	01/01/2000
COLD BAY	140		73		213	01/01/2000
COLDFOOT	135		71		206	10/01/1999
CORDOVA	85		62		147	03/01/1998
CRAIG						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
DEADHORSE	80		67		147	03/01/1999
DENALI NATIONAL PARK						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
DILLINGHAM	100		58		158	01/01/2000
DUTCH HARBOR-UNALASKA	110		71		181	03/01/1999
EARECKSON AIR STATION	80		54		134	01/01/2000
EIELSON AFB						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
ELMENDORF AFB						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FAIRBANKS						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
FT. RICHARDSON						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FT. WAINWRIGHT						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
GLENNALLEN	94		54		148	01/01/2000
HEALY						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
HOMER						
05/15 - 09/15	109		61		170	01/01/2000
09/16 - 05/14	76		58		134	01/01/2000
JUNEAU	95		66		161	01/01/2000
KAKTOVIK	165		75		240	01/01/2000
KAVIK CAMP	125		69		194	03/01/1999
KENAI-SOLDOTNA						
04/01 - 10/31	104		65		169	01/01/2000
11/01 - 03/31	67		61		128	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
KING SALMON				
05/01 - 10/01	160	88	248	01/01/2000
10/02 - 04/30	100	82	182	01/01/2000
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	90	68	158	01/01/2000
KOTZEBUE				
05/01 - 08/31	137	63	200	01/01/2000
09/01 - 04/30	95	54	149	01/01/2000
KULIS AGS				
05/01 - 09/15	161	68	229	01/01/2000
09/16 - 04/30	80	60	140	01/01/2000
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/01 - 09/15	149	62	211	01/01/2000
09/16 - 04/30	75	55	130	01/01/2000
NOME	85	58	143	01/01/2000
NUIQSUT	120	47	167	01/01/2000
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/30	122	65	187	03/01/1999
10/01 - 04/30	86	61	147	03/01/1999
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
SPRUCE CAPE	90	68	158	01/01/2000
TANANA	85	58	143	01/01/2000
UMIAT	107	33	140	03/01/1999
VALDEZ				
05/01 - 10/01	117	68	185	01/01/2000
10/02 - 04/30	99	66	165	01/01/2000
WAINWRIGHT	111	81	192	01/01/2000
WASILLA	95	60	155	01/01/2000
WRANGELL				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
YAKUTAT	110		68		178	03/01/1999
[OTHER]	80		54		134	01/01/2000
AMERICAN SAMOA						
AMERICAN SAMOA	73		53		126	03/01/1997
GUAM						
GUAM (INCL ALL MIL INSTAL)	135		79		214	01/01/2000
HAWAII						
CAMP H M SMITH	99		61		160	01/01/2000
EASTPAC NAVAL COMP TELE AREA	99		61		160	01/01/2000
FT. DERUSSEY	99		61		160	01/01/2000
FT. SHAFTER	99		61		160	01/01/2000
HICKAM AFB	99		61		160	01/01/2000
HONOLULU (INCL NAV & MC RES CTR)	99		61		160	01/01/2000
ISLE OF HAWAII: HILO	71		50		121	01/01/2000
ISLE OF HAWAII: OTHER	89		50		139	01/01/2000
ISLE OF KAUAI						
05/01 - 11/30	103		58		161	01/01/2000
12/01 - 04/30	131		61		192	01/01/2000
ISLE OF KURE	65		41		106	05/01/1999
ISLE OF MAUI	100		64		164	01/01/2000
ISLE OF OAHU	99		61		160	01/01/2000
KANEOHE BAY MC BASE	99		61		160	01/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC						
05/01 - 11/30	103		58		161	01/01/2000
12/01 - 04/30	131		61		192	01/01/2000
KILAUEA MILITARY CAMP	71		50		121	01/01/2000
LUALUALEI NAVAL MAGAZINE	99		61		160	01/01/2000
NAS BARBERS POINT	99		61		160	01/01/2000
PEARL HARBOR [INCL ALL MILITARY]	99		61		160	01/01/2000
SCHOFIELD BARRACKS	99		61		160	01/01/2000
WHEELER ARMY AIRFIELD	99		61		160	01/01/2000
[OTHER]	72		61		133	01/01/2000
JOHNSTON ATOLL						
JOHNSTON ATOLL	13		9		22	10/01/1998
MIDWAY ISLANDS						
MIDWAY ISLANDS [INCL ALL MILITAR	150		47		197	02/01/2000
NORTHERN MARIANA ISLANDS						
ROTA	88		69		157	01/01/2000
SAIPAN	140		87		227	01/01/2000
[OTHER]	55		62		117	01/01/2000
PUERTO RICO						
BAYAMON						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
CAROLINA						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82		54		136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,						
04/11 - 12/23	155		71		226	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

Dated: January 27, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2157 Filed 2–1–00; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–158–A]

Applications To Export Electric Energy; Williams Energy Marketing and Trading Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Williams Energy Marketing and Trading Company (Williams), formerly Williams Energy Service Company, has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 3, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On October 1, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–158 authorizing Williams to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities of Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power & Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power Company, and Vermont Electric Transmission Company. That two-year authorization expired on October 1, 1999.

On January 10, 2000, Williams filed an application with FE for renewal of its two-year authorization to export electricity to Canada and requested that the international transmission facilities of Long Sault, Inc. be added to the list of authorized export points.

Williams, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is a power marketer and does not own or control any facilities for the transmission or distribution of electricity, nor does it have a franchised service area. However, Williams is affiliated with entities that do own power generation facilities. Williams proposes to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Williams application to export electric energy to Canada should be clearly marked with Docket EA–158–A. Additional copies are to be filed directly with Charlene K. Stanford, Regulatory Analyst, Williams Energy Marketing & Trading Company, P.O. Box 2848, Tulsa, OK 74101, *AND* Hillary E. Cinocca, Esq., The Williams Companies, Inc., One Williams Center, Suite 4100, Tulsa, OK 74172.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–158. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–158 proceeding.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory", then "Electricity", then "Pending Proceedings" from the options menus.

Issued in Washington, DC on January 24, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00– 2277 Filed 2–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 00–01; Certification Notice—183]

Office of Fossil Energy; Notice of Filing of Coal Capability of Southaven Power, LLC Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On January 10, 2000, Southaven Power, LLC submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Southaven Power, LLC.

Operator: Indirect subsidiary of Cogentrix Energy, Inc.
Location: Southaven, MS.
Plant Configuration: Combined-cycle.
Capacity: 800 MW.
Fuel: Natural gas.
Purchasing Entities: A power marketer.
In-Service Date: June 1, 2002.

Issued in Washington, D.C., January 24, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 00–2278 Filed 2–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95-408-035]

Columbia Gas Transmission Corp.; Notice of Report

January 27, 2000.

Take notice that on January 20, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing a report on the flow back to customers on December 10, 1999, of $217,602 representing the time value of money associated with the deferred taxes applicable to the Kanawha Separation Plant sold to Columbia Natural Resources, Inc. pursuant to Stipulation II, Article III, Section G(2) of Columbia's approved settlement in Docket No. RP95–408, *et al.* Columbia credited its customers' invoices issued on December 10, 1999.

Columbia states that a copy of this report is being provided to all recipients of a share of the flowback and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of The Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2192 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–163–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

January 27, 2000.

Take notice that on January 20, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective January 13, 2000.

Tenth Revised Sheet No. 500–A
Tenth Revised Sheet No. 600–A
Tenth Revised Sheet No. 700–A
Ninth Revised Sheet No. 891

Kern River states that the purpose of this filing is to submit corrected tariff sheets in compliance with the Commission's Letter Order issued January 19, 2000.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2186 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–43–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

January 27, 2000.

Take notice that on January 18, 2000, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets effective February 17, 2000:

Third Revised Sheet No. 37B
Original Sheet No. 37C
First Revised Sheet No. 47

Tuscarora asserts that the purpose of this filing is to comply with the Commission's November 22, 1999 Order, in Docket No. RP00–43–000. Specifically, the November 22 Order requires that Tuscarora submit revised tariff sheets reflecting its proposal to net imbalances and calculate shipper imbalances. Tuscarora stated that copies of this filing were mailed to customers of Tuscarora and interested state regulatory agencies and all parties to Docket No. RP00–43–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2239 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–128–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 27, 2000.

Take notice that on January 18, 2000, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 6B, with the proposed effective date of January 1, 2000.

Williams states that on December 1, 1999, it made a filing pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages for the production and market areas and for storage. By order issued December 28, 1999 (order), the Commission accepted the filing to be effective January 1, 2000, subject to Williams filing within 20 days of the order, a revised tariff sheet and workpapers listing the revised fuel and loss reimbursement percentage for the production area that reflects the removal of the out-of-period adjustment of 219,080 Dth for fuel retained. This filing is being made to comply with the order. Williams reserves the right to modify this filing should the Commission modify its December 28, 1999 order.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2185 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11512-000 Oregon]

John Bigelow; Notice of Availability of Final Environmental Assessment

January 27, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing McKenzie Hydroelectric Project. The project is located on the McKenzie River, in Lane County, Oregon.

On July 10, 1998, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed by two entities and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street NE, Washington, DC 20426. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2190 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–284–000]

Koch Gateway Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Index 1 Pipeline and Laterals Abandonment Project

January 27, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the abandonment of the natural gas pipeline facilities proposed by Koch Gateway Pipeline Company (Koch) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed abandonment of the pipelines and appurtenant facilities including:

- Abandon in place about 72.4 miles of 10-, 16-, 18-, and 20-inch-diameter Index 1 Pipeline in Kaufman, Dallas, and Tarrant Counties, Texas;
- Abandon in place the following lateral pipeline totaling about 29.2 miles in Dallas and Tarrant Counties, Texas:
- 7.3 miles of 12-inch-diameter Index 1–31 pipeline;
- 0.9 mile of 18-inch-diameter Index 1–37 pipeline;
- 5.6 miles of 20-inch-diameter Index 1–37 pipeline;
- 10.6 miles of 16-inch-diameter Index 4 pipeline;
- 4.7 miles of 20-inch-diameter Index 6 pipeline; and
- 0.1 mile of 4-inch-diameter Index 808 pipeline.
- Construct and operate 39 "pig" launching and receiving facilities to clean out the pipelines proposed for abandonment; and
- Abandon by removal appurtenant facilities consisting of 6 meter stations, 39 blow-off assemblies, 12 by-pass valves, 15 block valves, 8 tap valves, 40 segments of pipeline of various diameters totaling about 429 feet, about 1,690 feet of pipeline of various diameters at four waterbody crossings, 1,648 feet of exposed pipeline, 62 farm taps, 5 industrial taps, and certain other minor facilities.

Koch seeks authority to abandon these facilities due to rising operating and

maintenance costs, the number of encroachments, and increasing number of requests to relocate portions of the pipeline.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP99–284–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 26, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You don't need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–2187 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2566–010.

c. *Date filed:* March 30, 1999.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Webber Hydroelectric Project.

f. *Location:* On the Grand River, in Lyons and Portland Townships, near the City of Portland, Ionia County, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* David Battige, Consumers Energy Company, Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (616) 779–5506.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us.* (202) 219–2778.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing is now ready for environmental analysis.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 32-foot-high, 1,200-foot-long dam comprising: (a) a 157-foot-long concrete powerhouse section, (b) a 313-foot-long concrete spillway with 10 Taintor gates and one hydraulic flap gate, and (c) two earth embankment sections having a combined total length of 730 feet; (2) a 7-mile-long reservoir having a 660-acre surface area at a normal pool elevation of 684.4 feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250 kW; and (4) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY

COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–2188 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

JANUARY 27, 2000. a. *Application Type:* Application to Amend License for the River Mountain Pumped Storage Project.

b. *Project No:* 10455–016.

c. *Date Filed:* December 7, 1999 and January 19, 2000.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* River Mountain Pumped Storage Project.

f. *Location:* The project will be located adjacent to Lake Dardanelle, on the Arkansas River in Logan County, Arkansas. Lake Dardanelle is a federally-owned reservoir managed by the U.S. Department of the Army, Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Arthur Hagood, Synergics Energy Services, LLC, Synergics Center, 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. *FERC Contact:* Any questions on this notice should be addressed to Paul Shannon at (202) 219–2866 or by e-mail at paul.shannon@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* March 7, 2000. Please include the project number (10455–016) on any comments or motions filed.

k. *Description of Filing:* JDJ Energy Company (JDJ) filed an application to revise the authorized configuration of several features. The project is authorized to pass water between Lake Dardanelle and a new reservoir at the summit of River Mountain for pumped storage generation. Under the licensed configuration, flows will travel through a concrete-lined water conduit, powerhouse, and tailrace tunnel, all located underground, between Lake Dardanelle and the new reservoir.

In the application, JDJ proposes to construct the powerhouse control room and service facilities at ground level and drill a vertical shaft to the position of the pumps/turbines, about 400 feet below grade. The powerhouse would be located about 2,500 feet closer to Lake Dardanelle then currently authorized. JDJ also proposes to slightly increase the capacity of the upper reservoir, allowing a maximum reservoir elevation of 1,010 feet instead of the authorized 1,007 feet.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room. located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary,

[FR Doc. 00–2189 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11616–000.

c. *Date Filed:* June 1, 1998.

d. *Application:* City of Portland, Michigan.

e. *Name of Project:* Portland Municipal Hydroelectric Project.

f. *Location:* On the Grand River, near the City of Portland, in Ionia County. Michigan. The project would not utilized federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Glen Hendrix, Earth Tech Inc., 555 Glenwood Hills

Pkwy, Grand Rapids, MI 495,88, (616) 940–4406.

i. *FERC Contact:* Tom Dean, Thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenors files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource, agency they must also serve a copy of the document on the resource agency.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 13-foot-high, 325-foot-long dam with a concrete spillway; (2) a reservoir with a surface area of 90 acres, and a storage area of 140 acre-feet; (3) a powerhouse with a forebay containing two generating units with a total installed capacity of 375 kW; and (4) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Pubic Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.20110.

David P. Boergers,

Secretary.

[FR Doc. 00–2191 Filed 2–1–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6531–4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment

AGENCY: Environmental protection agency (EPA).

ACTION: Notice of agency approval of an application for equipment certification.

SUMMARY: The Agency received a request to amend a notification of intent to certify urban bus retrofit/rebuild equipment for 4-stroke petroleum fueled diesel engines pursuant to 40 CFR part 85, subpart O from Engelhard Corporation (Engelhard). Engelhard requested to amend the original notification to include additional engine models. Pursuant to section 85.1407(a)(7), a November 30, 1998 **Federal Register** document summarized the amendment and announced that the amendment request and accompanying data would be available for public review and comment, and initiated a 45-day period during which comments could be submitted. In the document, the Agency stated it would review this request to amend the notification of intent to certify, as well as comments received, to determine whether the equipment should be certified for the additional models.

EPA has completed its review of this amendment request and the Director of the Certification and Compliance Division (CCD) has determined that the requirements for certification have been met. Accordingly, today's **Federal Register** document describes the certification of this equipment for the engine models listed in Table C of this document.

Testing documentation presented to the Agency demonstrates a reduction in particulate matter (PM) of at least 25% for the engines listed in Table C. Life cycle cost information was not submitted by Engelhard and this approval does not trigger requirements for the additional models. Certification of this equipment makes it available for operators complying with the 25% particulate matter reduction requirements of compliance program 1 and may also be used by operators utilizing program 2 to achieve target fleet emission levels.

DATES: Today's **Federal Register** document announces the Agency's decision to certify the CMX equipment for certain 4 stroke/cycle urban bus engines. The effective date of certification was established in a letter dated November 30, 1999 from the Director of the Certification & Compliance Division to Engelhard Corporation. A copy of this letter is in the public docket located at the address noted above. This equipment may be used immediately by urban bus operators.

ADDRESSES: The application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42 (Category XVII–A), entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance Programs Group, Certification & Compliance Division (6403J), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460. Telephone: (202) 564–9259. Email Address: *ERB.ANTHONY@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Program Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program 1 sets PM emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

Certification of retrofit/rebuild equipment is a key element of the retrofit/rebuild program. To demonstrate compliance under either of the compliance programs, operators of the affected buses must use equipment that has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of certified retrofit/rebuild equipment for each engine model. To be used for program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent to Certify

By a notification of intent to certify signed November 18, 1996, Engelhard applied for certification of equipment applicable to all Cummins L–10 engines that were originally manufactured prior to and including 1993. The notification of intent to certify stated that the candidate equipment would reduce PM emissions 25 percent or more on petroleum-fueled diesel engines that are rebuilt to Cummins specifications.

The candidate equipment consists of a "catalytic converter muffler" or CMX™, that is an exhaust noise muffler containing an oxidation catalyst. Life cycle cost information was submitted with the original notification, along with a guarantee that the equipment would be offered to all affected operators for less than the incremental life cycle cost ceiling. After completion of its review, EPA determined that the certification approval for the November 18 application was limited to the Cummins L–10 electronically controlled (EC) engines based on the testing data supplied. EPA certified this equipment as a trigger for the requirements for operators using compliance option 1, to reduce PM by 25% when rebuilding or replacing 1992–1993 Cummins L–10 EC models. A document was published in the **Federal Register** on March 30, 1998 (63 FR 13660) announcing this certification.

In a letter to EPA dated April 20, 1998, Engelhard requested that the March 30 certification be amended to include all pre-1994 Cummins L–10 models (including the non-electronically controlled models) and all other 4-stroke urban bus engines. On November 30, 1998 EPA published a document in the **Federal Register** requesting comment on the amendment request and on the appropriateness of the engines being considered for this certification and requested information on any additional engines for which this certification may be applicable. In response, the Detroit Diesel Corporation (DDC) commented that it had certified and produced the Series 50 engine for use in urban bus applications for which this certification might be applicable in the "all other 4-stroke" general category. Accordingly, EPA has included the Series 50 engine for consideration in the "all other 4-stroke" urban bus engine category in this document. Table A below provides a listing of the 4-stroke urban bus engines and the certification levels for which the candidate equipment was considered.

TABLE A.—AFFECTED MODELS AND PROPOSED ENGELHARD CMX CERTIFICATION LEVELS [1]

Cummins/other engine family	Cummins control parts list (CPL)	Manufacture dates	New Engine PM level	Retrofit PM level with CMX	Retrofit PM level with CMX and Cummins kit
343B	780	11/20/85 to 12/31/87	0.58	0.44	0.26
343B	0781	11/20/85 to 12/31/87	0.59	0.44	0.26
343C	0774	11/20/85 to 12/31/89	0.46	0.34	0.26
343C	0777	11/20/85 to 12/31/89	0.61	0.46	0.26
343C	0996	12/04/87 to 08/19/88	0.61	0.46	0.26
343C	1226	07/26/88 to 12/31/90	0.50	0.38	0.26
343F	1226	07/12/90 to 08/26/92	0.45	0.34	0.26
343F	1441	12/18/90 to 12/31/92	0.46	0.34	0.26
343F	1622	04/24/92 to 12/31/92	0.46	0.34	0.26
343F	1624	04/24/92 to 12/31/92	0.45	0.34	0.26
Other [2] 4-stroke engines	N/A	Pre-1988	0.50	0.38	N/A

TABLE A.—AFFECTED MODELS AND PROPOSED ENGELHARD CMX CERTIFICATION LEVELS [1]—Continued

Cummins/other engine family	Cummins control parts list (CPL)	Manufacture dates	New Engine PM level	Retrofit PM level with CMX	Retrofit PM level with CMX and Cummins kit
CAT					
GM					
IH/Navistar					
MAN					
Saab-Scania					
Volvo					
Other 4-stroke engines	N/A	1988 to 1993	(3)	(4)	N/A
CAT					
DDC/Series 50					
GM					
IH/Navistar					
MAN					
Saab-Scania					
Volvo					

[1] The new Engine PM certification levels for Cummins engines are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NO_X standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NO_X under the averaging, banking and trading program.

[2] Applicable to the following 4-stroke engines installed in applicable urban buses: Caterpillar 8 cylinder engines, General Motors 6 cylinder and 8 cylinder engines, International Harvester/Navistar 8 cylinder engines, MAN 6 and 8 cylinder engines, Saab-Scania 6 cylinder engines, and Volvo 6 cylinder engines.

[3] Certification level.

[4] 25% reduction from certification PM levels.

In today's **Federal Register** document, EPA is identifying the engines in the "all other 4-stroke" category as listed in Table A. In a letter to EPA dated March 16, 1998 Engelhard stated that the inclusion of "all other 4-stroke engines" in the Engine Control Systems certification dated January 29, 1998 (63 FR 4445) caused confusion in the marketplace because it was not clear which engines were included in the "all other 4-stroke engine" classification. Accordingly, the November 30 **Federal Register** document sought to clarify this matter by identifying the applicable engines. As stated, EPA's intent is that the list of engines apply to the candidate Engelhard certification discussed herein, the Engine Control Systems certification referenced above, and to future notifications of intent to certify equipment under the urban bus rebuild regulations that include engines in the "all other 4-stroke" classification.

The equipment to be applied to the engines is a "catalytic converter muffler" or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is standard diesel fuel with a maximum sulfur content of 0.05 weight percent sulfur.

Engelhard presented exhaust emission data from testing a 1987 240hp Cummins L–10 engine, control parts list number 0777 (CPL 0777) and on a Cummins L–10 engine built to CPL 0774 along with additional data to support this certification. Table B below provides a summary of the emissions test data. Under 40 CFR 85.1406(a), a test engine must represent the "worst case" with respect to particulate emissions of all those engine configurations for which the equipment is being certified. The worst case configuration is defined as the engine configuration having the highest engine-out PM level, prior to installation of the retrofit/rebuild equipment. In the case at hand, the Cummins L–10 test engine has a specified pre-rebuild PM emission level of 0.61 g/bhp-hr listed in the table at section 85.1403(c)(1)(iii)(A). The PM levels listed in the table at section 85.1403(c)(1)(iii)(A) for all other models and are less than the stated level for the L–10 test engine. Accordingly, the engine tested for this certification qualifies as a worst case configuration for the engine models listed in Table A herein. Section 85.1406 of the urban bus rebuild regulation allows the emission results to be extrapolated to engine types and model years known to have engine-out PM levels equal to or less than that of the test engine.

TABLE B.—EXHAUST EMISSIONS SUMMARY G/BHP–HR

Gaseous and particulate test	1987 L–10 baseline CPL# 0774	1987 L–10 baseline CPL# 0777	1987 L–10 w/CMX CPL# 0774 formula 1/formula 2	1987 L–10 w/CMX CPL# 0777
HC	2.29	2.29	1.07/0.68	1.07
CO	2.19	2.65	1.52/1.01	1.31
NO_X	5.50	5.89	5.23/5.09	5.41
PM	0.476	0.473	0.326/0.287	0.335
BSFC [1]	0.399	0.413	0.394/0.394	0.400
Smoke Test				
ACCEL	8.2%	11.7%	9.3%/11.0%	10.9%
LUG	1.5%	1.7%	1.8%/1.4%	2.0%
PEAK	14.8%	29.2%	15.7%/20.3%	24.8%

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp–hr.

Engelhard did not provide life-cycle cost data relative to this amendment request to include the additional models. Therefore, this equipment is not being considered in today's **Federal Register** document for certification in compliance with the life cycle cost requirements for the additional engines covered by the amendment. However, in a letter dated December 4, 1998, Engelhard requested that life cycle costs apply for this equipment for all applicable models. In the December 4 letter, Engelhard has submitted pricing information along with a guarantee that this equipment will be offered to affected operators for less than the incremental life cycle cost of $2,000 (in 1992 dollars). On July 30, 1999, a **Federal Register** document was published concerning this request to include life cycle costs (64 FR 41417). Comments have been received in response to the July 30 document and are currently being reviewed by EPA. If certified to comply with life cycle cost requirements, this equipment will trigger program requirements for the engines included in the general category of "all other 4-stroke engines." A separate document will be published in the **Federal Register** announcing EPA's decision on Engelhard's request to certify this equipment to include life cycle costs when the review is complete.

The engines to which the certification announced in today's **Federal Register** document applies are listed in Table C below. The equipment is certified to post-rebuild PM certification levels listed in Table C for each respective engine. Under program 1, all rebuilds or replacements of applicable engines for which a 25% or greater reduction of PM is required may utilize this certified Engelhard equipment (or other equipment certified to reduce PM by at least 25 percent). Urban bus operators who choose to comply with program 2 and use this equipment will use the appropriate PM emission value from Table C when calculating their average fleet PM level.

TABLE C.—ENGELHARD CMX CERTIFICATION LEVELS [1]

Cummins/other engine family	Cummins control parts list (CPL)	Manufacture dates	New Engine PM level	Retrofit PM Level with CMX	Retrofit PM Level with CMX Cummins kit
343B	780	11/20/85 to 12/31/87	0.58	0.44	0.26
343B	078	111/20/85 to 12/31/87	0.59	0.44	0.26
343C	0774	11/20/85 to 12/31/89	0.46	0.34	0.26
343C	0777	11/20/85 to 12/31/89	0.61	0.46	0.26
343C	0996	12/04/87 to 08/19/88	0.61	0.46	0.26
343C	1226	07/26/88 to 12/31/90	0.50	0.38	0.26
343F	1226	07/12/90 to 08/26/92	0.45	0.34	0.26
343F	1441	12/18/90 to 12/31/92	0.46	0.34	0.26
343F	1622	04/24/92 to 12/31/92	0.46	0.34	0.26
343F	1624	04/24/92 to 12/31/92	0.45	0.34	0.26
Other [1] 4-stroke engines	N/A	Pre-1988	0.50	0.38	N/A
CAT					
GM IH/Navistar					
MAN					
Saab-Scania					
Volvo					
Other 4-stroke engines		1988 to 1993	([3])	([4])	N/A
CAT					
GM					
IH/Navistar					
MAN					
Saab-Scania					
Volvo					

[1] The new Engine PM certification levels for Cummins engines are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NOX standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NOX under the averaging, banking and trading program.

[2] Applicable to the following 4-stroke engines installed in applicable urban buses: Caterpillar 8 cylinder engines, General Motors 6 cylinder and 8 cylinder engines, International Harvester/Navistar 8 cylinder engines, MAN 6 and 8 cylinder engines, Saab-Scania 6 cylinder engines, and Volvo 6 cylinder engines.

[3] Certification level.

[4] 25% reduction from certification PM levels.

III. Summary and Analysis of Comments

EPA received comments from three parties on the Engelhard application during the comment period: Detroit Diesel Corporation (DDC), Johnson Matthey Corporation (JMI), and Engine Control Systems (ECS). DDC is the original manufacturer of the Series 50 engine. JMI and ECS are both certifiers and suppliers of equipment under the urban bus rebuild program.

The Detroit Diesel Corporation (DDC) commented that the DDC Series 50 engine should not be included in the certification. DDC also commented on the reported hydrocarbon results for the baseline test. Regarding DDC's comments relative to the Series 50 engine, DDC stated that it had certified and produced 1992–1993 model year Series 50 engines for use in urban bus applications. DDC stated that the Series 50 is an electronically controlled engine with PM emissions in the range of 0.07 to 0.13 g/bhp-hr that was not equipped with an exhaust catalyst when certified. DDC stated that the Series 50 model engines were not cited in the November 30,1998 **Federal Register** document and should not be included in this certification among the additional engines in the general class of "all other 4-stroke engines" based on the test data presented in the document. DDC noted that the Engelhard certification tests were for a 1987 model year Cummins L–10 with baseline test results of 0.47 g/

bhp-hr PM and extremely high HC overall suggesting the engine may have a high soluble fraction. DDC stated that since catalysts are known to be most effective on the soluble fraction of particulate and relatively ineffective in reducing the dry soot, the overall catalyst effectiveness increases with the soluble fraction. DDC states that the Series 50 has low PM with a low soluble fraction. Because of the differences in the quantity and composition of particulate emissions from the two engines, it would not be appropriate to extrapolate the results of the Engelhard L–10 testing to conclude that the CMX will achieve the required 25% particulate reduction when applied to the Series 50 engines. Thus, DDC stated the Series 50 inclusion in this certification would not be justified.

In response to DDC's comment, Engelhard provided data from testing conducted on a 1995 275 hp DDC Series 50 engine. Engelhard conducted testing using CMX technology exploring the effects of fuel sulfur on particulate matter emissions. Fuel sulfur levels of 500 parts per million (ppm) and 315 ppm were run on the CMX catalyst. The report containing this data titled, "The Effect of Diesel Sulfur Content and Oxidation Catalysts on Transient Emissions at High Altitude from a 1995 Detroit Diesel Series 50 Urban Bus Engine" has been placed in the public docket listed above. After review of the above report and the comments received, EPA determined that additional information would be needed before it could be determined that Engelhard had demonstrated a 25% PM reduction for Series 50 engine. Upon EPA informing Engelhard of the need for additional data and evaluation relative to the Series 50 engine, Engelhard requested that the Series 50 be removed from consideration under this certification. Engelhard made this request so that certification approval for the remaining models would not be delayed due to time necessary to receive and evaluate additional information relative to the Series 50. Accordingly, EPA has removed the Series 50 model from consideration under this certification. However, as noted earlier the Series 50 was added to the general class of "all other 4-stroke engines" for consideration under the Urban Bus Rebuild Program.

DDC's second comment concerns the hydrocarbon (HC) level reported as 2.29 g/bhp-hr in the baseline Cummins L–10 engine test. DDC states that this HC level is indicative of an engine fault and questions the certification data. In response, Engelhard notes that while this engine does have high HC emissions, data from five tests conducted after it had rebuilt this engine to various configurations consistently show HC emissions that are around 2.0 g/bhp-hr on average with standard Cummins rebuild specifications. The HC result for the certification test of the CPL 0777 configuration provided by Engelhard in the amendment was 2.29 g/bhp-hr. EPA notes that based on the consistent HC results for this engine after rebuild, it is apparent that the HC results are inherent to this engine in a standard rebuild configuration. EPA notes that it has seen considerable variation in the test results for baseline engines for the applications that have been reviewed for certification. Consistent with 40 CFR 85.1406(a), the certification engine is not required to meet Federal emission standards before the retrofit/rebuild equipment is installed. The retrofit/rebuild regulation requires that the PM reduction must be shown to be incremental to a standard rebuild. Based on the fact that the baseline engine in this certification was rebuilt to a standard configuration with no obvious defects, EPA finds the results to be acceptable. It is noted that with the addition of the CMX technology the HC emissions are reduced to 1.07 g/bhp-hr during testing and are within specified standards in accordance with the regulations. After review of the data presented, EPA finds that the test engine and the emission results presented are acceptable.

Engine Control Systems, Ltd. (ECS) commented that this application should be reviewed in conjunction with the life cycle costs as submitted in Engelhard's December 4 letter, in order to solicit the full range of comments needed to justify triggering the 25% PM reduction requirements for the affected engines. ECS also commented on catalyst applicability, effectiveness, performance, PM reduction, backpressure, and the identification of the different catalyst formulations. ECS commented on testing it has performed and results of Engelhard testing on Cummins N14 engines and other data conveyed by Engelhard. ECS also commented that it should be clearly stated that this certification applies only to applicable urban bus engines.

With regard to the ECS comment that product performance and cost should be addressed together to solicit the full range of comments for those engines constituting the "all other 4-stroke" category, the urban bus retrofit/rebuild regulation allows for certification based on emission reduction without including cost data. In response, EPA believes that the urban bus retrofit/rebuild regulation clearly allows for certification based on emission reductions without cost data. In fact, prior to this certification review, EPA has reviewed and approved several certifications of equipment under this program without life cycle cost data.

Life cycle cost data is necessary to trigger retrofit/rebuild requirements under program 1. Since Engelhard had not provided cost information with this amendment request, this certification will not trigger new requirements for any of the affected engines and a review of cost data is not necessary for approval. However, Engelhard has more recently requested to include cost data and to certify this equipment within the specified life cycle cost requirements. A document was published in the **Federal Register** on July 30, 1999 (64 FR 41417) regarding this amendment request to include life cycle costs for this certification. Comments have been received and are currently under review. A separate document will be published in the **Federal Register** announcing EPA's decision after review is completed.

ECS has requested that Engelhard divulge its catalyst formulation and size publicly. Engelhard states that this information is proprietary and declines to provide this information in a public format. Customarily, EPA allows manufacturers to maintain catalyst specifications as confidential business information provided such information is presented for EPA review and is found to be acceptable. Engelhard has provided descriptions of the various catalysts and formulations used during testing and EPA finds the information presented to be acceptable under the urban bus program.

ECS commented that it is not clear which formulation is being proposed to cover the 4-stroke engines included in this certification. If different formulations are proposed which catalysts are meant to cover the various engines? What data shows the effectiveness of these formulations and how will they be identified in the marketplace to ensure appropriate use? Engelhard has responded that it will provide a specific CMX unit for a specific bus and engine combination using the certified catalyst. In the amendment request and subsequent information, Engelhard documented tests performed on a wide range of catalyst formulations on an engine designated to be the "worst case" and has also provided data based on other engine configurations. In the regulations, EPA stated it will allow results of emission tests for after treatment devices to be extrapolated to

engine types and model years known to have engine-out PM levels equal to or less than the test engine. In the application, Engelhard has presented data from Cummins engine with CPL 0777 which is considered to be the worst case configuration for the engines to be included in this certification. In addition, Engelhard has presented data from tests performed on Cummins CPL 0774 to support this amendment request. Engelhard has responded that in order to simplify certification, it will only utilize the catalyst formulation tested on the Cummins L–10 CPL 0777. EPA has reviewed the effectiveness of the formulation to be used with this equipment and designated for this certification and finds it to be acceptable. ECS commented that the emissions profile of Cummins L–10 engine (CPL 0777) that Engelhard tested was significantly different from the L–10 engine ECS tested for its certification. ECS commented that Engelhard testing of CPL 0774 showed very high insoluble carbon reductions and ECS questions on all the L–10 test data. The urban bus retrofit/rebuild rule does not specify the percentage reduction which must occur in either the soluble or insoluble PM fractions. In its March 30, 1998 submission, Engelhard provided data showing that the CMX technology reduces the total particulate matter by at least 25 percent based on the tests conducted on CPL 0774. While it is recognized that the insoluble portion of the PM appears relatively high, Engelhard has provided data showing the CMX technology reduces the soluble and the insoluble fraction of total particulate to meet the requirements of the bus regulation. Furthermore, Engelhard has provided test data for CPL 0777 demonstrating at least a 25% reduction in total PM. No data was provided by Engelhard regarding the soluble versus insoluble portion of the PM for CPL 0777. However, such data is not an explicit requirement of the regulation. Based on the total PM reduction shown in the test data, EPA finds that the test results demonstrate compliance with the standard of reducing PM by at least 25%.

ECS commented that the tests conducted by Engelhard were conducted in a very uniform and procedural fashion with a backpressure setting which is atypical from actual in-use applications. Further, ECS commented that additional support data should be required to determine whether claimed PM reductions will occur on actual in-use buses. The regulation clearly states that the emission test to be used is the Heavy-Duty Engine Federal Test Procedure set forth in 40 CFR Part 86 Subpart N or an approved alternative test procedure. EPA notes that the testing supplied by Engelhard for this certification was conducted according to the specified test procedure as put forth in 40 CFR and is accepted.

The urban bus retrofit/rebuild regulation does not require durability testing or in-use testing. However, it does require that the certifier supply a defect warranty over the initial 100,000 mile period of use of a certified system. Accordingly, the certifier is required to replace any defective part that is included in the certified kit during the 100,000 mile warranty period. As well, the certifier is required to warrant that the equipment, if properly installed and maintained, will meet the emission requirements for a period of 150,000 miles from when the equipment is installed.

ECS commented that both Engelhard and ECS are participating in Ottawa test programs. Specifically, Engelhard CMX technology has been retrofit on two buses equipped with Cummins N14 4 stroke/cycle engines. ECS asked if Engelhard will disclose the results of this testing to EPA and discuss the results. ECS believes that the data from the Ottawa program does not support a broad certification of the CMX for all 4 stroke/cycle engines for a 25% PM reduction. In response Engelhard has stated that this information is not relevant to this application because the catalyst used during that program was undersized compared to the catalyst which would be supplied under this certification. Engelhard asserts that a properly sized CMX catalyst will achieve the 25% reduction over the FTP on an N–14 engine.

ECS provided documentation which ECS stated was presented by Engelhard at a recent workshop in Hong Kong. ECS comments that the data presented shows that the expected PM emissions reductions with the CMX converter muffler for several engine families is below 25%. In response Engelhard states that the referenced data incorporates testing on undersized catalysts and that the data referenced by ECS was based on obsolete catalyst formulations. Engelhard will utilize only the high activity catalyst formulation used for testing the Cummins L–10 CPL 0777 in this application. A description of this catalyst was provided by Engelhard as confidential business information for EPA's review. EPA finds that Engelhard has demonstrated that this catalyst will provide for at least a 25% PM reduction on the applicable engines included in this certification. Engelhard states that it will size the catalyst according to the applicable engine size to achieve the specific PM reductions specified.

In the data provided with this amendment, Engelhard has documented test results utilizing a range of catalyst formulations on the worst case configuration. EPA finds that this data demonstrates that the Engelhard CMX will reduce PM by a minimum of 25 percent. The regulation allows that after treatment devices such as the CMX equipment may be applied to other engines based on testing performed on the worst case engine. Engelhard has complied with this requirement for this certification.

ECS requested that EPA specifically state, in granting of any 4-stroke engine certification based on emissions from data from a single engine, that such certifications only apply to specific urban bus engines. In this document, EPA has identified the specific urban bus engines to which it applies. ECS also requested that EPA state that this certification should not be used by state agencies in the assessment of non-urban bus retrofit programs. EPA does not believe this statement is appropriate in this document because it is outside of the purview of the urban bus rebuild program.

The Johnson Matthey Corporation (JMI) commented on the use of CPL 0777 as the worst case configuration. JMI also commented on the use of two different catalyst formulations during emission testing and questioned which was used during certification testing and how each formulation would be identified for use.

Johnson Matthey Corporation (JMI) commented that the worst case engine should be based on the highest exhaust flow rate rather than using the engine with the highest engine out PM. JMI commented that Engelhard should explain the reasoning for selecting CPL 0777. The regulations specify that the worst case engine configuration shall be the engine configuration having the highest engine-out particulate matter emission levels prior to installation of the retrofit/rebuild equipment. The Cummins engine CPL 0777 meets this criteria and qualifies as the worst case engine configuration for the engines included in this certification under the regulations.

JMI commented that Engelhard provides performance data for two different catalyst formulations on the engine configured to CPL 0744. JMI commented that only one catalyst formulation was tested on CPL 0777 and Engelhard should be required to identify which formulation was used for

certification testing. In addition, Engelhard should present conclusive information regarding the specific formulation tested. Further, if more than one formulation is being certified, the EPA should require Engelhard to clearly identify each formulation and where it may appropriately be used. Engelhard has responded that in order to simplify certification, it will only utilize the catalyst formulation tested on the Cummins L–10 CPL–0777. Engelhard has provided confidential business information on the catalyst formulation used in certification testing. EPA finds it to be acceptable.

IV. Certification Approval

The Agency has reviewed this application, along with comments received from interested parties, and finds that this equipment reduces particulate matter emissions without causing urban bus engines to fail to meet other applicable Federal emission requirements. Additionally, EPA finds that installation of this equipment will not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the engine manufacturer's emission related part. The application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 and 85.1415).

V. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either program 1 or program 2 and who have applicable engines. Currently, operators having certain of the applicable engines who have chosen to comply with program 1 must use equipment certified to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's **Federal Register** document certifies the above-described Engelhard equipment as meeting this PM reduction requirement for all engine models listed in Table C herein. Urban bus operators choosing to comply with program 1 must use the certified Engelhard equipment (or other equipment that is certified in the meantime to reduce PM by at least 25 percent) for any Cummins engine that is listed in Table C that undergo rebuild. The requirement to use certified equipment demonstration a 25 percent reduction in PM for the Cummins engines listed is based on an earlier certification by the Cummins Engine Company as published in a **Federal Register** document dated December 13,1995 (60 FR 64048). The requirement remain until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines. For the engines included in the general class of "all other 4-stroke engines" as listed in Table C the requirement to use 25 percent reduction equipment will be based on EPA decision on the December 4, 1998 amendment request from Engelhard referenced earlier. In the December 4 request Engelhard submitted pricing information along with a guarantee that this equipment will be offered to affected operators for less than the incremental life cycle cost of $2,000 (in 1992 dollars) for these engines. On July 30, 1999, a **Federal Register** document was published concerning this request to include life cycle costs (64 FR 41417). Comments have been received in response to the July 30 document and are currently being reviewed by EPA. If certified to comply with life cycle cost requirements, this equipment will trigger program requirements for the engines included in the general category of "all other 4-stroke engines" under program 1. Operators who choose to comply with program 2 and use the Engelhard equipment will use the appropriate PM emission level from Table C when calculating their fleet level attained (FLA).

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements, beginning January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: January 21, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–2180 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[NV–0038–0019; FRL–6530–7]

Adequacy Status of the Clark County, Nevada Submitted CO Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: In this document, EPA is notifying the public that we have found that the submitted Clark County (Las Vegas, NV) serious area carbon monoxide (CO) attainment plan is inadequate for transportation conformity purposes. As a result of our finding, the Regional Transportation Commission and the Federal Highway Administration cannot use the CO motor vehicle emissions budgets from the submitted plan for future conformity determinations.

DATES: This determination is effective February 17, 2000.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Karina O'Connor, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1247 or oconnor.karina@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

This document announces our finding that the *Carbon Monoxide Air Quality Implementation Plan for the Clark County Non-Attainment Area*, submitted by Nevada on October 6, 1999, is inadequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the Nevada Division of Environmental Protection on January 12, 2000. We are also announcing this finding on our conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criterion is that the plan provide for attainment of the relevant ambient air quality standard by the applicable Clean Air Act attainment date. We have

preliminarily determined that the Clark County CO plan does not provide for attainment of the CO standards and therefore, cannot be found adequate.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our inadequacy determination on the Clark County CO plan.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 18, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–2[illegible]1 Filed 2–1–00; 8:45 am]

BILLING CODE 5560–55–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6532–1]

Notice of Public Meeting and Extension of Time to Comment on the Interim Guidance on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public meeting to be held on February 24, 2000 in Washington, DC and is also announcing an extension of time to comment on the Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions.

ADDRESSES: Send comments to EPA, CERCLA Federally Permitted Release Definition, Docket Number EC–G–1999–029, Mail Code 2201–A, and mail to: 401 M Street, SW, Washington DC, 20460; or fax to: (202) 501–1011; or email to: docket.oeca@epa.gov. Commentors who want EPA to acknowledge receipt of their comments must mail a self-addressed, stamped envelope.

FOR FURTHER INFORMATION: For further information regarding the public meeting and extension of time, please contact Beth Burchard, Environmental Protection Agency (Mail Code 2245A), 401 M Street, SW, EPA Headquarters, Washington, DC 20460; (202) 564–4177.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

The Environmental Protection Agency announces a public meeting to be held on February 24, 2000 at 1:00 p.m. at the Ariel Rios, South Building, 1200 Pennsylvania Avenue, NW., Room 6226, Washington, DC. The subject of the meeting will be the December 21, 1999 Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions. The guidance discusses EPA's interpretation of the federally permitted release exemption as it applies to certain air emissions, responds to industry questions, and solicits public comment on the issues discussed in the interim guidance. The interim guidance was published in the **Federal Register** at 64 FR 71614 (Dec. 21, 1999).

The meeting in Washington, DC will include a brief overview of the interim guidance, followed by a question, answer and comment period. Those wishing to attend should call Beth Burchard at (202) 564–4177 no later than February 18, 1999 so that their names can be added to a security list. Attendees must bring a photo ID.

By publication of this notice the Environmental Protection Agency also announces an extension of time to submit comments on the interim guidance from February 22, 2000 to March 10, 2000.

Eric Schaeffer,

Director, Office of Regulatory Enforcement.

[FR Doc. 00–2281 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6531–5]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Executive Committee of the SAB

The Executive Committee of the SAB will conduct a brief meeting on February 16, 2000 between the hours of 2:00 and 4:00 EST. The meeting will be held in Room 6013 in the Ariel Rios Building (adjacent to the Federal Triangle Metro exit on 12th Street), 1200 Pennsylvania Avenue, NW, Washington, DC. At this meeting the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Executive Committee Subcommittee:* "Review of the Agency's Position on the Data from the Testing of Human Subjects."

(b) *Executive Committee Subcommittee:* "Review of the Agency's Application of the Cancer Risk Assessment Guidelines to Children."

(c) *Executive Committee Subcommittee:* "Review of the Application of the Draft Cancer Risk Assessment Guidelines to the Case of Chloroform."

(d) *Research Strategies Advisory Committee joint report view with the Board of Scientific Counselors of ORD:* "Review of the Agency's Science to Achieve Results (STAR) Program."

Drafts of the reports that will be reviewed at the meeting should available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on February 9, 2000.

Public Comments—Any member of the public wishing further information concerning the meeting or wishing to submit brief oral comments should contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee, in writing, no later than close of business Friday, February 11th at USEPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; phone (202) 564–4533, fax (202) 501–0323; or via e-mail at <barnes.don@epa.gov>. The oral comment period will be limited to 15 minutes total, with no more than three minutes per speaker or organization.

Pre-Registration for Attendance—Any member of the public who desires to attend the meeting must *pre-register* with Ms. Priscilla Tillery-Gadson no later than close of business on Friday, February 11th at (202) 564–4543 or via e-mail at <*tillery.priscilla@epa.gov*>. The site of the meeting (1200 Pennsylvania Avenue, NW) is a secure building and prior arrangements must be made for access by non-Federal employees.

2. Residual Risk Applications Subcommittee

The Residual Risk Applications Subcommittee (Subcommittee) of the Science Advisory Board (SAB) will meet on Wednesday and Thursday, March 1–2, 2000 in the Main Auditorium of the US EPA, Office of Research and Development, Environmental Research Center, 86 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711. The meeting will begin at 8:30 am and adjourn no later than 5:00 pm on each day.

Purpose of the Meeting—The purpose of meeting is to conduct a review of the methodology the Agency will use to conduct Residual Risk assessments. The Agency will present a case study risk assessment for the secondary lead smelters source category for review by the SAB.

In 1998, the SAB reviewed an Agency Report to Congress that described the approach that the Agency would use in assessing the "residual risk" in the context of the Clean Air Act. That document presented the Agency's response to the mandate found in Section 112(f)(1) of the Act and described a strategy for addressing the risks remaining from the emission of Hazardous Air Pollutants once Maximum Achievable Control Technology (MACT) standards have been implemented. Additional information and insight can be found on the SAB Website in the SAB's review of that Report to Congress: http://www.epa.gov/sab/ec9813.pdf.

Proposed Charge—The Proposed Charge to the SAB is as follows:

(a) Is the methodology that the Agency applied in this risk assessment consistent with the risk assessment approach and methodology presented in the Report to Congress (EPA–453/R–99–001)? Are the assumptions used in this risk assessment consistent with current methods and practices?

(b) Model Inputs—Are the methods used to estimate emission rates, and the method used to estimate species at the stack appropriate and clearly described?

(c) Models—Does the risk assessment use appropriate currently available dispersion models both at the screening level and at the more refined level of analysis? Are the models applied correctly? Given the state of the science, does the risk assessment use an appropriate multipathway model? The assessment uses the IEM–2M model, with some modifications. Is the IEM–2M model appropriate for use in this regulatory context? With regard to the modification and application of the model, did the EPA appropriately modify the model for use in this risk assessment, and did the Agency apply the model correctly? Is there another model or another approach, that is available at this time that EPA should consider?

(d) Choice of Receptors—The Agency identifies the home gardener as the appropriate receptor to estimate risks to the residential population and the farmer to embody high end risks. Are these receptors appropriate for this task?

(e) Ecological Risk Assessment—Given currently available methods, are the models used for the ecological assessment appropriate? Are they applied correctly? Are the ecological benchmarks appropriate?

(f) Uncertainty and variability assessment—Did the assessment use appropriate currently available methods to identify the variables and pathways to address in the uncertainty and variability assessment? Are the methods used to quantify variability and uncertainty acceptable? Are there other, more appropriate methods available for consideration?

(g) Results Presentation—Does the Agency's document clearly present and interpret the risk results? Does it provide the appropriate level of information? Do the figures and tables adequately present the data? Do the formats provide for a clear understanding of the material?

Availability of Review Materials—Copies of the draft document may be obtained from Ms. Kelly Rimer, Emissions Standards Division (ESD), Office of Air Quality Planning and Standards (OAQPS), MD–13, RTP, NC 27711, phone (919) 541–2962; or via e-mail at <rimer.kelly@epa.gov>.

A limited number of telephone lines will be available to the public for listening to the proceedings. For details on participating in the meeting in this fashion, call Kelly Rimer one week prior before the meeting.

Public Comments—Any member of the public wishing to provide brief oral comments at the meeting must contact Dr. Donald Barnes, Designated Federal Officer (DFO), *in writing* no later than noon Eastern Time on Monday, February 21 at: USEPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW, Washington DC 20460; fax (202) 501–0323; or via e-mail at: <barnes.don@epa.gov>. The request should identify the name of the individual who will make the presentation, the organization represented, and an outline of the issue(s) to be addressed.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes (unless otherwise noted). Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at either meeting, including wheelchair access, should contact Dr. Barnes at least five business days prior to the respective meeting so that appropriate arrangements can be made.

Dated: January 27, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–2179 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6531–8]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Cancellation of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), The Board of Scientific Counselors (BOSC), Executive Committee Meeting, scheduled for

February 9–10, 2000 is hereby canceled. This meeting announcement was published in the **Federal Register** on January 25, 2000 at 65 FR 3959.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, S.W., Washington, D.C. 20460, (202) 564–6853.

Dated: January 27, 2000.

Peter W. Preuss, Ph.D.,

Director, National Center for Environmental Research and Quality Assurance.

[FR Doc. 00–2279 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6531–6]

Technical Workshop to Peer Review Toxicology Testing Initiative on Styrene-Acrylonitrile Trimer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a workshop to be conducted by the Eastern Research Group, Inc. (ERG), an EPA contractor, for the external scientific peer review of the proposed toxicology testing initiative and associated experimental protocols for styrene-acrylonitrile (SAN_2) trimer, a contaminant at the Reich Farm Superfund site in Ocean County, New Jersey, which has migrated into the ground water. The peer review workshop is being organized to assist in conducting the most scientifically credible and relevant testing for carcinogenicity of the trimer, particularly during the perinatal period, and for chronic non-cancer health effects. The one-day workshop will be held in Toms River, New Jersey, on March 7, 2000, and will be open to members of the public as observers. It will be conducted in accordance with EPA's 1998 Peer Review Handbook. Stakeholders in the issue who have additional information which is relevant to the testing initiative are invited to submit written comments and/or make brief oral comments at the peer review workshop.

DATES: The workshop will be held on Tuesday, March 7, 2000, from 8:00 a.m. to 5:00 p.m. Members of the public may attend as observers. There will be a 30-minute session at the commencement of the workshop in which observers will have the opportunity to make brief comments relevant to the proposed testing initiative. Observers who wish to make such comments should register to do so with ERG by March 1, 2000. The time allotted for each comment will be limited based upon the number of persons requesting to make comments, but will be no more than five (5) minutes. Interested parties who wish to submit written comments for consideration by the peer reviewers should submit them so that ERG receives them on or before February 25, 2000.

ADDRESSES: The meeting will be held in the L. Manuel Hirshblond Meeting Room, at the Township of Dover Municipal Building, 33 Washington Street, Toms River, New Jersey 08753. Since seating capacity is limited, please contact Ms. Meg Vrablik of ERG, by telephone, at 781–674–7374; by facsimile, at 781–674–2906; or by E-mail, at mvrablik@erg.com, by March 1, 2000, to register to attend the workshop as an observer. Also please register with Ms. Vrablik to make brief comments at the workshop. Kindly send written comments to Ms. Vrablik at Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02421–3136, by February 25, 2000.

FOR FURTHER INFORMATION CONTACT: To register and for logistical inquires, contact Ms. Vrablik or Ms. Kate Schalk at Eastern Research Group at the above numbers. For information on documents cited in this notice, contact Dr. Dorothy Canter, US EPA, at 202–260-2230.

SUPPLEMENTARY INFORMATION:

Background

Spent process streams from the manufacture of styrene acrylonitrile polymer by Union Carbide Corporation (UCC) were disposed of at the Reich Farm property in Ocean County, New Jersey. The waste contains SAN_2 trimer, a chemical mixture which has migrated from the Reich Farm property into groundwater. Levels of SAN_2 trimer measured in water drawn from groundwater wells have been in the parts per billion and lower. The site is on the National Priorities List (NPL) of hazardous waste sites, and remedial activities are currently underway.

Increased incidences of certain forms of cancer in children, specifically certain types of leukemia, neuroblastoma, and brain and central nervous system cancers, have been observed in Ocean County, Dover Township and Toms River. To develop scientific data on the toxicologic and carcinogenic potential of the SAN_2 trimer and to address concerns of citizens in the area about the toxicity of this previously untested mixture, UCC undertook an initial round of toxicology experiments, which consisted of genotoxicity studies, an acute toxicity study in rats and a 14-day repeated dose study in rats. The results from these studies are now available.

The Interagency Workgroup for the Toxicity Testing of the SAN_2 Trimer was formed to provide guidance to UCC on the testing of the SAN_2 trimer. In late 1998, the National Toxicology Program (NTP) of the National Institute of Environmental Health Sciences joined the Workgroup based upon its commitment to perform rodent carcinogenicity studies which include perinatal exposures. The current governmental agencies represented on the Workgroup are the US Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, NTP, the New Jersey Department of Environmental Protection, and the New Jersey Department of Health and Senior Services. Representatives of UCC and the consultant representing the Ocean County Department of Health also participate in the Workgroup.

The Workgroup has met four times since November 1998, evaluating the results of the studies previously performed by UCC, and reviewing additional studies proposed to be performed by the NTP and UCC. The Workgroup has developed a consensus testing strategy with associated experimental protocols. A key step in the finalization of this testing strategy will be the external peer review workshop on March 7, 2000. The Workgroup also formed a subgroup which developed a group of pharmacokinetics studies that will be conducted concurrently with the range finding studies of the NTP toxicity testing initiative.

Twelve independent scientists with expertise in general toxicology, carcinogenesis, developmental toxicology, neurotoxicology, pharmacokinetics, genetic toxicology, biostatistics, veterinary pathology, and analytical chemistry were selected by ERG from among the experts nominated by stakeholders for possible service on the peer review panel. In making the selections, ERG determined that the panel members had no real or perceived conflicts of interest. The panel will evaluate only those issues which are relevant to the toxicologic potential of the SAN_2 trimer.

Following the peer review workshop, ERG will prepare a summary report on the workshop which will present the panel's recommendations. This report will be available to dinterested parties

and will be posted on EPA's website. The Interagency Workgroup will address the panel recommendations in finalizing the toxicology testing initiative for the SAN_2 trimer.

Dated: January 21, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–2178 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66275; FRL–6487–5]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations. The companies that hold the pesticide registrations of pesticide products containing bendiocarb (2,2-dimethyl-1,3-benzodioxol-4-yl methylcarbamate) have asked EPA to cancel their registrations for these products. EPA has identified certain potential risks associated with some of the current uses of bendiocarb as well as many data gaps. Following publication of this Notice and a 30–day public comment period, EPA intends to carry out cancellation in four steps over a period of 24-months, with the residential uses posing the greatest potential exposure to children being phased out earlier than uses that present less exposure. The proposed existing stocks provisions are outlined below.

DATES: Comments must be received on or before March 3, 2000. Following public comment, EPA intends to make the cancellations effective according to the following schedule: June 30, 2000 for bendiocarb technical; October 31, 2000 for end-use products labeled for use in and around homes; and December 31, 2001 for all other products containing bendiocarb.

FOR FURTHER INFORMATION CONTACT: By mail: Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–8154; e-mail address: isbell.diane@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. You may potentially be affected by this action if you manufacture, sell, distribute, or use pesticide products containing the active ingredient bendiocarb. Bendiocarb is the common name for an insecticide of the carbamate class; its trade names are Ficam and Turcam. The chemical name for bendiocarb is 2,2-dimethyl-1,3-benzodioxol-4-yl methylcarbamate. AgrEvo Environmental Health and AgrEvo USA Company are the sole technical manufacturers of bendiocarb. Bendiocarb is presently registered in the United States and is used to control household, turf and ornamental plant insects, mosquitoes and fire ants. Specific uses include: household or domestic dwellings (indoor and outdoor), residential and ornamental turf, outdoor recreation areas, nonagricultural buildings and structures, eating establishments, food-processing plants, hospitals, warehouses, greenhouses, ornamental plants, aircraft and buses. There are no current registered uses on food crops in the United States; however, there are tolerances for bendiocarb use on spot and/or crack and crevice treatment in food and feed handling establishments (40 CFR 180.530).

Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A copy of the bendiocarb reregistration Fact Sheet is available at http://www.epa.gov/oppsrrd1/REDs/factsheets/0409fact.pdf.

2. *Fax on Demand.* You may request to receive a faxed copy of this document and any available information by using a faxphone to call (202) 401–0527 and selecting item number [*insert item number*].

3. *In person.* The Agency has established an official record for this action under docket control number [OPP–66275]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number [OPP–66275] in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "opp-docket@epa.gov," or you can

submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number [OPP–66275]. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views/interests as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 23 pesticide products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1, below. The Agency will proceed with the cancellation of the bendiocarb products listed in Table 1, according to the scheduled dates unless the request for voluntary cancellation is withdrawn by AgrEvo Environmental Health and AgrEvo USA Company, a registration is transferred (under the conditions explained below), or substantive comments are received from the public which cause the Agency to reconsider its approach to canceling the AgrEvo bendiocarb registrations. Once an active ingredient is canceled, any person wishing to bring the pesticide back on the market would need to apply to EPA for a "new chemical" registration. Such a registration cannot be approved until all applicable data requirements are satisfied.

TABLE 1.—BENDIOCARB REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Intended Effective Date for Cancellation
10370–182	Bendiocarb 20% Wettable Powder	Immediately following comment period
10370–183	Bendiocarb 76% Wettable Powder	Immediately following comment period
10370–185	Bendiocarb Technical 95%	Immediately following comment period
10370–304	Turcam 2.5G Insect Control	Immediately following comment period
4816–703	Wasp and Hornet Killer No. 3	10/31/2000
4816–704	Pyrenone Bendiocarb; Roach & Ant Spray	10/31/2000
4816–711	Bendiocarb 2.4; Butacide 12.0 Manufacturing Concentrate	10/31/2000
45639–1	Ficam W	10/31/2000
45639–2	Bendiocarb Wettable Powder	10/31/2000
45639–3	Ficam D	10/31/2000
45639–6	Bendiocarb Technical	6/30/2000
45639–9	Bendiocarb 1% Dust	10/31/2000
45639–10	Bendiocarb 1% Homeowner Dust	10/31/2000
45639–59	Turcam Insecitcide	12/31/2001
45639–64	Bendiocarb 20% Homeowner Wettable Powder	10/31/2000
45639–66	Ficam Plus	10/31/2000
45639–100	Turcam 2½ G	12/31/2001
45639–102	Ficam ULV Solution	12/31/2001
45639–139	Bendiocarb 1½ G	10/31/2000
45639–148	Turcam Fertilizer	12/31/2001
45639–150	Ficam 2½ G	10/31/2000
45639–151	Turcam Fertilizer GC	12/31/2001
45639–152	Ficam Plus R/S	10/31/2000

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

TABLE 2.— REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
4816	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645
10370	AgrEvo Environmental Health, 95 Chestnut Ridge Road Montvale, NJ 07645
45639	AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808

The Agency is providing a 30–day comment period, during which the public may submit comments concerning this action. If any person notifies the Agency during the 30–day comment period of an agreement with AgrEvo to transfer one or more of AgrEvo's registrations, EPA will not issue the cancellation order for the affected product(s) provided that the following conditions are met. Within 30 days of notifying the Agency of its intention to transfer a registration, a request for transfer of registration must be submitted to the Agency in accordance with 40 CFR 152.135. If the Agency approves the transfer, the transferee will be regarded as the registrant for all purposes under FIFRA. The new registrant or transferee would be responsible for ensuring all data requirements are satisfied including all outstanding requirements consistent with established deadlines (some of which are approaching the required due date). It should be noted that completion of outstanding data does not in itself guarantee eligibility for reregistration. EPA must also make the relevant regulatory findings required by FIFRA.

III. What is the Agency's Authority for Taking This Action?

Section 6(f)(1)(A) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** .

Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In the case of minor agricultural uses, Section 6(f)(1)(C) of FIFRA provides for a 180-day comment period under certain circumstances. The registrants of bendiocarb have requested that EPA provide 30–day's comment on this request. Accordingly, pursuant to section 6(f)(1)(C)(ii) of FIFRA, EPA is waiving the 180-day comment period, to the extent it applies to this action, and will provide interested parties 30 days to comment on the action.

On August 18, 1999, AgrEvo Environmental Health transmitted a letter to the Agency requesting a phased cancellation of all their bendiocarb product registrations. This letter was in response to the Agency's work on the Reregistration Eligibility Decision for bendiocarb, during which the Agency examined potential risk concerns and identified additional data requirements. The registrant decided to voluntarily cancel bendiocarb products rather than generate the additional data that would be required to reregister their bendiocarb products. The registrant has agreed to limit the production of bendiocarb technical for the year 2000 (i.e., from January 1–June 30, 2000) to 95,000 pounds of active ingredient. This limit is based on the average annual production for the last 5 years.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before March 3, 2000. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation orders for the individual products subject to this action. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

AgrEvo has requested, and EPA intends to approve the following proposal for disposition of existing stocks of bendiocarb products unless the provisions of an earlier order apply:

1. Four product registrations will be canceled immediately following the comment period, because these products have not been marketed in several years. These are:

- Bendiocarb 20% Wettable Powder, EPA Reg. No. 10370–182;
- Bendiocarb 76% Wettable Powder, EPA Reg. No. 10370–183;
- Bendiocarb Technical 95%, EPA Reg. No. 10370–185
- Turcam 2.5G Insect Control, EPA Reg. No. 10370–304.

The registrants may not sell or distribute stocks of this product after the date specified.

2. Bendiocarb technical, EPA Reg. No. 45639–6, will be canceled on June 30, 2000. The registrants may not sell or distribute stocks of this product after the date specified.

3. Bendiocarb end-use products for homeowner and pest control operator use, labeled for indoor or outdoor residential uses (see Table 1) can be sold or distributed by the registrant until October 31, 2000. Pursuant to this proposal, after October 31, 2000, the registrants will not be permitted to sell any of these products.

4. All other bendiocarb end-use products, i.e., those with only non-residential uses (see Table 1), can be sold or distributed by the registrant until December 31, 2001. All bendiocarb products will be canceled as of December 31, 2001.

Persons other than the registrants may distribute, sell or use existing stocks of canceled products listed in paragraphs 1 through 4 above until stocks are depleted. All use of existing stocks of canceled pesticides must be consistent with all EPA-approved labeling for the product.

Under FIFRA section 6(a)(1), EPA may permit the continued sale and use of a canceled pesticide if such sale or use "is not inconsistent with the purposes of this Act." For bendiocarb, the Agency has concluded that the limited short-term continued use of this pesticide, as outlined in this notice, is the most efficient means of addressing both potential risk concerns and providing for the orderly disposition of existing stocks. The Agency's conclusion is based in part on the fact that AgrEvo has agreed to cancel the bendiocarb products used in and around the home (and thus posing the greatest

exposure to children) relatively soon, i.e. by October 31, 2000.

VI. Notification of Intent To Revoke Tolerances

This Notice also announces that the Agency intends to propose revocation of the related tolerances following the cancellation of the uses listed in this Notice unless there is a request to modify or maintain it as an import tolerance. There are no current registered uses for bendiocarb on food crops in the United States; however, there are non-numerical tolerances for its use on spot and/or crack and crevice treatment in food and feed handling establishments (40 CFR 180.530). EPA's reregistration eligibility assessment indicated that substantial additional data would be required to support continued use of bendiocarb on all types of food- and feed-handling establishments, except the food service category of food handling establishments—the only use supported by current data. Also, finite (numerical) tolerances would have to be proposed.

The Agency is willing to consider requests to modify or maintain a tolerance following the cancellation of the accompanying registration. Such request should be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT** above. If EPA receives a request to modify or maintain a tolerance in response to this Notice, the Agency will issue a notice under section 408(f) of FFDCA informing the public of the data required to support the tolerance and stating the time period for submitting the required data. Regardless of whether a tolerance applies solely to domestic food uses or solely to imported foods, the same technical chemistry and toxicology data are required to support tolerances under FFDCA section 408. For pesticide chemicals used in or on food, EPA requires residue chemistry data that are representative of growing conditions in exporting countries in the same manner that the EPA requires representative residue chemistry data from different U.S. regions to support domestic use of the pesticide and the tolerance. Persons supporting the maintenance or modification of tolerances to cover residues in or on imported food have the burden of demonstrating the relevance of any existing domestic data to foreign growing or usage conditions.

If EPA does not receive any indication of a need to retain a tolerance following the cancellation of the registered food use, the Agency will publish in the **Federal Register** a notice proposing to revoke the tolerance. That notice will again give interested parties the opportunity to come forward to support the maintenance of the tolerance.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: January 17, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–2283 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6531–3]

Virginia's Continuing Planning Process (CPP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment.

SUMMARY: The Environmental Protection Agency (EPA) is providing public notice of the availability of Virginia's Continuing Planning Process (CPP). The following processes, at a minimum, must be described in the CPP: the process for the development of effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306, and section 307 of the Clean Water Act ("CWA" or "Act"), and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of section 303 of the Act; the process for the incorporation of all elements of any applicable areawide waste management plans under section 208 of the Act, and applicable basins plans under section 209 of the Act; the process for developing total maximum daily loads for pollutants in accordance with subsection (d) of section 303 of the Clean Water Act; procedures for revision; the process for adequate authority of intergovernmental cooperation; adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of section 303 of the Act; the process for the controls over the disposition of all residual waste from any water treatment processing; the process for developing an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Clean Water Act.

The public comment period will be open until September 1, 2000. EPA intends to complete its preliminary review and submit comments on the CPP, to Virginia and others, including interested parties requesting a copy of such comments, by May 1, 2000. By November 1, 2000, EPA shall complete its review of Virginia's CPP to determine if it is consistent with the Clean Water Act and its implementing regulations. EPA will provide a summary of its review to Virginia and others, including interested parties requesting a copy of such summary.

DATES: Comments must be received on or before September 1, 2000.

ADDRESSES: Submit comments to Lenka Berlin (3WP13), Water Protection Division, USEPA Region III, 1650 Arch Street, Philadelphia, PA 19103..

FOR FURTHER INFORMATION CONTACT: For a copy of Virginia's Continuing Planning Process contact Lenka Berlin by phone (215–814–5259), fax (215–814–2301), or by email (berlin.lenka@epamail.epa.gov).

Dated: January 20, 2000.

Jon Capacasa,

Director, Water Protection Division, Region III.

[FR Doc. 00–2182 Filed 2–1–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

January 13, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's bufden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0157.

Title: Section 73.99 Presunrise Service Authorization (PSRA) and Postsunset Service. Authorization (PSSA).

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated time per response: 0.5 hours (0.25 hours respondent/0.25 hours attorney).

Total annual burden: 50.

Total annual costs: $10,000.

Needs and Uses: Section 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The letter is used by FCC staff to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2237 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

DATED: January 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0035.

Title: Application for Renewal of Auxiliary Broadcast License (Short Form).

Form Number: FCC 313 R.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities:

Number of Respondents: 50.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 25 hours.

Total Annual Costs: $2,250.

Needs and Uses: FCC Form 313 R is used by licensees of remote pickup and low power stations that are not broadcast licensees (*e.g.*, cable operators, network entities, international broadcast services, motion picture producers, and television producers) to renew their auxiliary broadcast license. Statutory authority for this information collection is contained in Section 307 of the Communications Act; it is also required by 47 CFR 73.3500 and 73.3539. The Commission intends to revise the application to include a place for the applicant to provide a fax number and to delete payment information and Taxpayer ID Number, since any feeable application must also file FCC Form 159 (Fee Remittance Advice) which provides this information too.

OMB Control Number: 3060–0107.

Title: Private Radio Application for Renewal, Reinstatement, and/or Notification of Change to License Information.

Form Number: FCC 405 A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 1,500.

Estimated Time Per Response: 20 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 495 hours.

Total Annual Cost: $80,000.

Needs and Uses: FCC rules require that radio station licensees renew their PMRS (Private Mobile Radio Service) radio station authorization every five years or their CMRS (Commercial Mobil Radio Service) radio station authorization every ten years. Data are used to update the existing database and make efficient use of the frequency spectrum. Data are also used by the Compliance Bureau staff in conjunction with field engineers for enforcement and interference resolutions. The data collected are required by the Communications Act of 1934, as amended, international treaties, and FCC Rules, 47 CFR 1.926, 90.119, 90.135, and 90.157. FCC Form 405 A has been revised to delete the payment information. This information is already required on FCC Form 159 (Fee

Remittance Advice), and applicants must file both forms when fees are due. The collection is also being revised to delete reference to General Mobile Radio Service use of the form. This radio service has been converted to ULS and will no longer use FCC Form 405 A.

OMB Control Number: 3060–0127.
Title: Assignment of Authorization.
Form Number: FCC 1046.
Type of Review: Revision of currently approved collection.
Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit Institutions; and State, Local, or Tribal Governments.
Number of Respondents: 3,000.
Estimated Time Per Response: 5 minutes.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 249 hours.
Total Annual Cost: None.
Needs and Uses: FCC Form 1046 is required by the Communications Act, international treaties, and FCC Rules, 47 CFR 1.922, 1.924, 80.19, 87.21, and 90.119. To assign authorization of radio station to another entity, the assignor must, in writing, assign all rights, title, and interest of the authorization to the other entity. The Commission uses the data to determine if assignment of authorization submitted with the application will meet the rule requirements for issuance of a station authorization. Form FCC 1046 is being revised to delete the reference to Microwave Radio Services use of the form, reducing the number of respondents from 6,000 to 3,000. Microwave Services have been converted to ULS and will use FCC Form 603 for assignment of authorization.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2142 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fourth meeting of the Technological Advisory Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, March 24, 2000, at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Contact David Farber at dfarber@fcc.gov or 202–418–2046.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry.

The purpose of the meeting will be to hear and discuss the progress of the three focus groups established by the Council to consider the issues the FCC presented to it at its April 30, 1999 meeting. These issues include: (1) The current state of the art for software defined radios, cognitive radios, and similar devices, future developments for these technologies, ways that the availability of such technologies might affect the FCC's traditional approaches to spectrum management, and the current state of knowledge of electromagnetic noise levels and the effects of such noise on the reliability of existing and future communications systems; (2) the current technical trends in telecommunications services, changes that might decrease, rather than increase, the accessibility of telecommunications services by persons with disabilities, and ways the FCC might best communicate to designers of emerging telecommunications network architectures the requirements for accessibility; and (3) the telecommunications common carrier network interconnection scenarios that are likely to develop, including the technical aspects of cross network (*i.e.*, end-to-end) interconnection, quality of service, network management, reliability, and operations issues, as well as the deployment of new technologies such as dense wave division multiplexing and high speed packet/cell switching. The three focus groups will also report on their progress in implementing the suggestions for continued investigation of these issues presented to them at the September 22, 1999 and December 13, 1999 meetings. The Council may also consider such other issues as come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to David Farber, the Council's Designated Federal Officer, before the meetings.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2238 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2384]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

January 24, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 17, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (CS Docket Nos. 98–82, 96–85), Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Review of the Commission's Cable Attribution Rules.
Number of Petitions Filed: 1.
Subject: Implementation of Section 11(C) of the Cable Television, (MM Docket No. 92–264), Consumer Protection and Competition Act of 1992, Horizontal Ownership Limits.
Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2145 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 3, 2000, 10:00 a.m., Meeting open to the public.

The following items were added to the agenda:

1996 Democratic National Convention Committee, Inc.—Administrative Review of Repayment Determination, Proposed Statement of Reasons (LRA#471).

1996 Republican National Convention Committee on Arrangements—Administrative Review of Repayment Determination, Proposed Statement of Reasons (LRA#472).

Express Advocacy Rule (11 CFR 100.22).

DATE AND TIME: Tuesday, February 8, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, February 9, 2000, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Advisory Opinion 1999–37: X–PAC, The Political Action Committee for Generation X, Michael J. Panetta, Executive Director.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–2435 Filed 1–31–00; 3:00 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision), 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Citizens, Incorporated, Butler, Pennsylvania; to acquire up to 10 percent of the voting shares of Bay National Corporation, Lutherville, Timonium, Maryland, and thereby indirectly acquire voting shares of Bay National Bank, Lutherville, Timonium, Maryland.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan; Sun Community Bancorp Limited, Phoenix, Arizona; and Sunrise Capital Corporation, Albuquerque, New Mexico; to acquire 51 percent of the voting shares of Sunrise Bank of Albuquerque (in organization), Albuquerque, New Mexico.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. NorthStar Bancshares, Inc., Riverside, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of NorthStar Bank, N.A., Kansas City, Missouri (a de novo bank).

Board of Governors of the Federal Reserve System, January 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2196 Filed 2–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies that Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. Canadian Imperial Bank of Commerce, The CIBC World Markets Corporation, and CIBC World Markets Inc., all of Toronto, Canada, and CIBC Delaware Holdings, Inc., New York, New York; to acquire St. Anthony Bank, F.S.B., Cicero, Illinois, and thereby engage in operating a federal savings bank, pursuant to § 225.28(b)(4) of Regulation Y. Comments regarding this application must be received not later than February 25, 2000.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision), 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to engage *de novo* through its

subsidiary, Fifth Third Capital Funding, LLC, Cincinnati, Ohio, in certain commercial lending activities, pursuant to § 225.28(b)(1) of Regulation Y; see NationsBank Corp., 80 Fed. Res. Bull. 154 (1994); and Wells Fargo & Company, 82 Fed. Res. Bull. 165 (1996).

Board of Governors of the Federal Reserve System, January 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2197 Filed 2–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 7, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2319 Filed 1–28–00; 4:35 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13½% for the quarter ended December 31, 1999. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 27, 2000.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 00–2236 Filed 2–1–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–00–01]

Fiscal Year 2000 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to carry out new cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in combating health care waste, fraud and abuse.

SUMMARY: The Administration on Aging (AoA) announces that under this program announcement it will hold a competition for new "Senior Medicare Patrol Projects" that demonstrate effective ways of utilizing retired persons as volunteer expert resources and educators in community efforts to combat health care waste, fraud and abuse. The deadline date for the submission of applications for new awards is March 31, 1999.

Public and/or nonprofit agencies, organizations, and institutions are eligible to apply under this program announcement. However, consistent with the terms of the Consolidated Appropriations Act for FY 2000 (Pub. L. 106–113), preference will be given in the making of new cooperative agreement awards to projects that will be carried out by consortia headed by community-based public or nonprofit agencies or organizations. In addition, the AoA plans to make continuation awards to "Senior Medicare Patrol Projects" in 26 jurisdictions—Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Idaho, Indiana, Maine, Massachusetts, Michigan, Montana, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Puerto Rico, Texas, Utah, Virginia, and Washington. No new awards will be made in these states under this Program Announcement. Rather, they are eligible for continuation funding.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Governmental Affairs and Elder Rights, 330 Independence Avenue, S.W., Room 4748, Washington, DC 20201, telephone: (202) 619–3775 or (202) 619–3951.

Dated: January 24, 2000.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 00–2235 Filed 2–1–00; 8:45 am]

BILLING CODE 4154–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 59774, dated November 3, 1999) is amended to reflect the establishment of the Division of Applied Research and Technology by merging the Division of Biomedical and Behavioral Science and the Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health (NIOSH).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the titles and functional statements for the *Division of Biomedical and Behavioral Science (CC7)* and the *Division of Physical Sciences and Engineering (CC8)* and insert the following:

Division of Applied Research and Technology (CC9). (1) Provides national and international leadership for the prevention of occupational injury and illness through applied research; (2) conducts laboratory research, field studies, and demonstrations to develop and/or evaluate engineering control technology for biological, chemical, physical, and ergonomic hazards; (3) conducts laboratory research, field studies, and demonstrations to develop and/or evaluate work organization or work redesign prevention strategies to eliminate or minimize workplace injury and illness and to facilitate the development of health workplaces; (4) conducts research and demonstration projects to evaluate and improve the effectiveness of occupational health services, and to determine the social and economic burden of occupational illnesses and injuries, and the benefits of interventions; (5) develops, evaluates, and utilizes methods for the measurement of exposures, worker sensitivity to occupational hazards, and detection of the precursors of, or presence of, disease or illness; (6) serves as a resource to researchers who may require division expertise in their field or laboratory research.

Monitoring Research and Statistics Activity (CC92). (1) Plans and conducts laboratory and worksite research to develop, evaluate, or improve aerosol science and its associated technology, and direct-reading instruments and monitoring devices for aerosols; (2) plans and conducts research in statistics as applied to sampling and analytical methods, work organization, intervention effectiveness, and control technologies; (3) develops and evaluates criteria for the recommendation of new or improved monitoring instruments and monitoring techniques; (4) provides statistics support for research projects within the Division; (5) provides technical assistance within NIOSH in the application of new and improved monitoring systems.

Biomonitoring and Health Assessment Branch (CC93). (1) Plans and conducts laboratory and worksite research on the assessment of workers' exposures or effects of exposures, through the analysis of various human tissues and fluids; (2) partners in intervention or prevention studies in which exposure or effect of exposure is assessed through biomonitoring; (3) evaluates worker sensitivity factors that may impact the result of a hazardous exposure; (4) provides technical assistance and consultation to the Institute, other governmental agencies, private industry, and organized labor regarding the toxicologic aspects of workers' response to the etiologic agents in the occupational setting; (5) provides bviomonitoring and health assessment consultation and analyses for health hazard evaluations, epidemiologic, intervention and prevention, environmental measurement and other investigations.

Biological Monitoring Laboratory Section (CC932). (1) Develops and applies new and existing biological monitoring analytical methods to assess worker exposure or body burden to toxic chemicals to evaluate the effectiveness of engineering controls or other exposure reduction/prevention measures; (2) provides analytical and biological monitoring consultation for field and experimental investigations; (3) plans and conducts laboratory research to develop immunochemical methods for determining early health effects arising from occupational exposure; (4) works in partnership with NIOSH partners and stakeholders in planning and conducting studies in specialized areas, such as biological monitoring.

Molecular and Genetic Monitoring Section (CC933). (1) Develops and employs sophisticated and sensitive molecular and biochemical techniques to assess exposure to occupational toxicants; (2) identifies, evaluates, and utilizes biomarkers of exposure and biomarkers of effect of exposure that can be utilized as early indicators of toxic response to aid in the prevention and control of occupational disease; (3) develops and utilizes methods to determine potential differences in workers' sensitivity in response to exposure to occupational toxicants; (4) works in partnership with NIOSH partners and stakeholders in planning and conducting studies in specialized areas, such as biomarker research.

Reproductive Health Assessment Section (CC934). (1) Develops, modifies, and employs laboratory and clinical measures of human health surveillance and field study investigations of workplace hazards; (2) plans and conducts the laboratory portion of health assessments with other NIOSH staff involved in health hazard evaluations and epidemiologic studies of reproductive health and endocrine function; (3) works in partnership with NIOSH partners and stakeholders in planning and conducting studies of reproductive health and endocrine function.

Chemical Exposure and Monitoring Branch (CC94). (1) Conducts research that develops, improves, and evaluates analytical methods for the determination of toxic materials, their products, and other significant hazards found in the workplace, in the physical environment, and in industrial and biologic materials; (2) provides industrial hygiene measurement consultation and specialty analyses to NIOSH research though in-house and contract laboratories; (3) provides expert consultation regarding science and analytical methods to assist in the development of occupational health documents and exposure standards; (4) conducts research to improve, evaluate, and establish performance requirements for direct reading instrumentation used in the evaluation and prevention of exposures to hazardous levels of chemical agents; (5) provides validation procedures for sampling and analytical methods; (6) provides special consultation to elements of NIOSH and other government agencies; (7) disseminates the information gained during research on sampling and analytical methods by publications in the peer reviewed literature and in the NIOSH Manual of Analytical Methods.

Analytical Chemistry Section (CC942). (1) Conducts research in response to requests from field researchers for the development of new sampling and analytical methods for the detection and quantitation of chemical substances found in the workplace; (2) conducts research to revise/update sampling and analytical methods contained in the NIOSH Manual of Analytical Methods; (3) provides expert consultation on industrial hygiene sampling and analytical chemistry to assist NIOSH investigators in planning field surveys as well as other government agencies and private industry; (4) provides chemical analyses for NIOSH researchers through laboratory contracts and specialty analyses through the in-house laboratories.

Analytical Methods Development Section (CC943). (1) Conducts research that develops, evaluates and improves sampling and analytical methods for the detection and determination of substances and their mixtures found in the workplace, in industrial processes and products, and in environmental samples; (2) conducts research to develop and evaluate instrumentation/techniques for field-portable analytical methods; (3) provides expert consultation in industrial hygiene sampling and analytical chemistry to

private industry, consensus standard setting organizations, other government agencies and to elements of NIOSH; (4) provides critical review of chemistry aspects of documents and standards, recommending appropriate sampling and analytical methods.

Qualitative Methods and Complex Mixtures Section (CC944). (1) Conducts research to develop, evaluate, and improve methods for quantitative and qualitative analysis of chemicals and complex mixtures found in the workplace, in industrial processes and products, and in environmental samples; (2) provides qualitative and quantitative analysis of industrial hygiene samples from NIOSH field studies by means of chromatographic/spectrometric analysis; (3) provides expert consultation in chemical analysis to other government agencies and to elements of NIOSH; (4) provides critical review of chemical aspects of criteria documents and standards, and recommends appropriate sampling and analytical methods.

Engineering and Physical Hazards Branch (CC95). (1) Plans and conducts worksite and laboratory research to identify, evaluate, develop and implement technology to prevent workers' exposures to chemical, biological, and physical agents and reduce risks for traumatic and repetitive injuries; (2) plans and conducts worksite and laboratory research to identify hazards and engineering controls related to emerging technologies and changing work environments, including the application of substitution, isolation, and ventilation technology to reduce hazardous exposures; (3) plans and conducts laboratory and worksite research to minimize occupational noise exposures and to develop strategies to prevent occupational hearing loss; (4) plans and conducts worksite and laboratory research on occupational health risks resulting from workers' exposures to physical, chemical, and biological agents; (5) develops or evaluates new or improved instruments and exposure assessment techniques, evaluates criteria for the recommendation of such instruments or techniques, and promotes the transfer of widespread application of effective engineering control measures for safeguarding workers' health; (6) provides expert consultation to elements of NIOSH, other agencies, and external partners, in the application of new and improved techniques for hazard prevention and engineering control for the formulation of effective and credible workplace standards.

Control Technology Section (CC952). (1) Conducts laboratory and worksite research to assess potential occupational health problems resulting from workers' exposures to chemical, biological, and ergonomic hazards; (2) conducts laboratory and worksite research in substitution, isolation, and ventilation technology; (3) conducts laboratory and worksite research for controlling potential hazards in emerging technologies and changing workplace environments; (4) provides engineering expertise in formulating effective and feasible workplace standards; (5) provides technical consultation to other elements of NIOSH and external partners in the application of new and improved techniques for hazard prevention.

Engineering Assessment Section (CC953). (1) Plans and conducts worksite research to assess, demonstrate, or develop engineering control techniques for hazardous materials, industries, or processes; (2) plans and conducts field research in partnership with other NIOSH divisions and industry; (3) promotes the transfer and widespread application of effective preventive engineering control measures for safeguarding worker health; (4) provides engineering expertise in formulating effective and feasible workplace standards; (5) provides technical consultation to other elements of NIOSH and external partners in the application of new and improved techniques for hazard prevention.

Hearing Loss Prevention Section (CC954). (1) Plans and conducts laboratory and worksite research in hearing loss prevention that encompasses the study of basic etiology, control technology, personal protective equipment, and intervention effectiveness; (2) collects and evaluates data fundamental to defining primary health risk criteria and specifying standards for preventing hearing loss from exposures to physical agents, such as noise, vibration, and heat, as well as from exposures to ototoxic chemical agents; (3) assesses impact of noise on communication and environmental awareness, which may create safety hazards, and develops ameliorative methods; (4) studies and develops methods pertinent to hearing-impaired workers for assessing communication handicap, for developing hearing protection strategies, for defining hearing critical jobs, and for remediating hearing loss with rehabilitation, including amplification; (5) evaluates, develops, and implements instrumentation, methodologies, and techniques for measurement, control, and programmatic intervention demanded by the research effort; (6) maintains liaison and cooperates with other organizational components of NIOSH, Federal, State, local, and international agencies on problems associated with potential health and other occupational hazards that result from exposure to noise and other ototoxic agents, and provides technical assistance as necessary.

Nonionizing Radiation Section (CC955). (1) Plans and conducts laboratory and worksite research on occupational health risks resulting from workers' exposures to nonionizing radiation, including those hazards produced by emerging technologies; (2) develops and evaluates techniques, instrumentation, and methodologies for measurement and evaluation of worker exposures to nonionizing radiation which present a potential health hazard; (3) develops occupational health and safety criteria and procedures for reducing nonionizing radiation exposures associated with risks of adverse health effects; (4) develops and evaluates controls, methodologies, and practices for minimizing exposures to nonionizing radiation; (5) provides expert consultation to other components of NIOSH, other agencies and external partners in dealing with problems associated with potential hazards resulting from nonionizing radiation exposures.

Engineering Development Section (CC956). (1) Plans and conducts worksite and laboratory research to assess, demonstrate, or develop engineering control techniques for hazardous materials, industries, or processes; (2) conducts computational fluid dynamics (CFD) for design and evaluation of workplace controls; (3) promotes the transfer and widespread application of effective preventive engineering control measures for safeguarding worker health; (4) provides engineering expertise in formulating effective and feasible workplace standards; (5) provides technical consultation to other elements of NIOSH and external partners in the application of new and improved techniques for hazard prevention; (6) provides maintenance and calibration of field and laboratory equipment.

Organizational Science and Human Factors Branch (CC96). (1) Conducts applied laboratory and worksite research on organizational and ergonomic interventions to prevent occupational illness and injury, including physical, neurobehavioral, and psychological disorders, and the economic, social, and organizational burdens associated with these outcomes. Organizational and

ergonomic topics of study include management, supervisory, and employment practices; worker demographics and special populations; job, tool, and environmental design; design of health and safety services; and the interaction of these conditions. The scope of research includes (a) etiologic and health effects studies to serve as the basis for intervention strategies; (b) design and testing of prototype interventions in laboratory and controlled environments, and collaboration with external partners and organizations to field test and validate, and disseminate intervention techniques; (c) methodological research to better characterize exposures, outcomes, and their relationships; (2) provides technical assistance to other NIOSH and governmental units and to private organizations in the investigation of organizational and ergonomic stressors in the workplace and in the design and testing of prevention measures; (3) develops and disseminates scientific and technical reports on organizational and physical risk factors at work, and intervention strategies.

Human Factors and Ergonomics Research Section (CC962). (1) Plans and conducts integrated laboratory and field studies to develop and evaluate ergonomic interventions for preventing musculoskeletal injuries, neurobehavioral illnesses, fatigue, and social, economic and other losses resulting from exposure to physical, environmental and organizational stressors at work; (2) plans and conducts etiologic studies to provide the foundation for the development of ergonomic interventions, including laboratory and worksite research to assess the individual and interactive effects of physical stressors (excessive force, posture, etc.) and organizational stressors (e.g., long work hours, time pressure) on occupational injury and illness risk: (3) plans and conducts research leading to improved methods for exposure assessment to physical stressors and characterizing dose-response relationships; (4) provides assistance to other organizational units of NIOSH and to other Federal agencies in the assessment and prevention of risk for occupational injury and illness.

Health Services Research Section (CC963). (1) Plans and conducts research to evaluate and improve the effectiveness of occupational health care services, including access to and utilization of health care services, availability of trained health professionals and providers, and efficacy and efficiency of care; (2) conducts intervention research (intervention development, demonstration, and effectiveness research) to evaluate occupational health services and occupational health delivery systems and programs, including the social, economic, and organizational benefits of these services and programs; (3) provides technical assistance and collaborates with external organizations, including academia, industry, labor, and health care provider organizations in the implementation, evaluation and promotion of innovative occupational health services and occupational safety and health programs; (4) conducts research to evaluate the economic and social outcomes of occupational illnesses and injuries, and the benefits of interventions.

Work Organization and Stress Research Section (CC964). (1) Plans and conducts laboratory and field studies to characterize organizational stressors in the workplace and worker demographic factors such as race, ethnicity, gender, culture, age, etc., to study the effects and interactive effects of these variables on stress, illness, injury, and disability, and on social, economic and family outcomes, and to develop and test intervention strategies; (2) conducts survey studies to identify emerging work organization risk factors and related developments (new organizational structures and process changing employment relationships such as contingent labor arrangements, increasing workforce diversity and changing worker demographics) and investigate their effects on worker health, injury and other outcomes; (3) collaborates with external organizations to develop field-test and disseminate work organization, workforce development, and related interventions that promote worker health, safety, and other desirable outcomes; (4) provides technical assistance inside and outside of NIOSH in the conduct of etiologic and intervention studies addressing work organization and related factors.

Dated: January 18, 2000.

Jeffrey P. Koplan,

Director.

[FR Doc. 00–2212 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4202]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use—Form FDA 356h

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by March 3, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use; Form FDA 356h (OMB Control Number 0910–0338)—Extension

FDA is the Federal agency charged with the responsibility for determining that drugs, including antibiotic drugs, and biologics are safe and effective. Manufacturers of a drug, or biologic for human use must file applications for FDA approval of the product prior to introducing it into interstate commerce. Statutory authority for the collection of this information is provided by section 505(a), (b), and (j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(a), (b), and (j)) and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). Manufacturers of new drugs for human use regulated under the act must submit

a new drug application (NDA) for review and approval to the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research (CDER) prior to marketing a drug in interstate commerce (§ 314.50 (21 CFR 314.50)). Manufacturers of generic drugs regulated under the act must submit an abbreviated new drug application (ANDA) for review and approval to CDER prior to marketing a generic drug in interstate commerce (§ 314.94 (21 CFR 314.94)). Manufacturers of biological products regulated under the PHS Act must submit an establishment license application (ELA) and a product license application (PLA) or biologics license application (BLA) for review and approval to CBER prior to marketing a biological product in interstate commerce (§ 601.2 (21 CFR 601.2)). Blood and blood components fall within the category of biological products. All establishments collecting and/or preparing blood and blood components for sale or distribution in interstate commerce are subject to the licensing application provisions of section 351 of the PHS Act. Applicants are required to report to FDA any transfer of ownership of an NDA (21 CFR 314.72). Applicants are required to report a change in ownership of an ANDA (21 CFR 314.99(a)). Manufacturers of a drug or biologic for human use are required to file supplemental applications for certain changes to applications previously approved (§§ 314.70, 314.71, 314.97, and 601.12 (21 CFR 314.70, 314.71, 314.97, and 601.12)). The form is also submitted with an amendment to an unapproved original application or supplemental application, and a presubmission or resubmission of information pertaining to an application. The information provided by manufacturers with the application form is necessary for FDA to carry out its mission of protecting the public health and helping to ensure that drugs and biologics for human use have been shown to be safe and effective. Form FDA 356h was developed initially as a checklist to assist manufacturers in filling out a drug application and has been previously used only by manufacturers of products regulated under the act. In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of the revised Form FDA 356h. The form was revised as a "Reinventing Government" initiative to harmonize application procedures between CBER and CDER. The application form serves primarily as a checklist for firms to gather and submit to the agency studies and data that have been completed. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to the agency for efficient handling and distribution to the appropriate staff for review. For biologics manufacturers, the form will replace a number of different ELA and PLA forms that were formerly used for these products. The information collection burden for various ELA and PLA forms is covered under OMB Control No. 0910–0124. There are an estimated 343 licensed biologics manufacturers. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The annual responses are based on submissions received by FDA in 1998. The time estimated to prepare an ELA, PLA, or BLA under § 601.2 for CBER approval to market a new product is based on information provided by industry. The time required for preparing an ELA, PLA, or BLA includes the estimate for filling out the form. The estimated average burden hours for the other submissions using Form 356h to CBER is based on past FDA experience and includes the time to fill out the form and collate the documentation. The average burden hours also include the time to prepare an amendment submitted to CBER. The estimated burden hours to prepare a supplement to CBER (§ 601.12) are reported under OMB Control No. 0910–0315.

In the **Federal Register** of October 21, 1999 (64 FR 56797), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS [1]

21 CFR Section/FDA form	No. of respondents	Total annual responses	Hours per response	Total hours
601.2	343	84	1,600	134,400
Form FDA 356h	343	4,947	16	79,152
Total				213,552

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

There are 483 drug applicants that submitted the form. The annual responses are based on submissions received by FDA in 1997 and 1998. The estimated average burden hours for the submissions using Form 356h to CDER is based on past FDA experience and includes the time to fill out the form and collate the documentation. The estimated burden hours to prepare an NDA (§ 314.50); an ANDA (§ 314.94); supplements (§§ 314.70, 314.71, and 314.97); and amendments (21 CFR 314.60 and 314.96) are approved under OMB Control No. 0910–0001.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

FDA form	No. of respondents	Total Annual responses	Hours per response	Total hours
Form FDA 356h	483	16,221	24	389,304
Total				389,304

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 24, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–2150 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0186]

Medical Devices; Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements." This guidance is final and is in effect at this time. Metallic plasma spray coatings, both porous and non-porous, and metallic sintered or diffusion bonded porous coatings are used to attach artificial joints to living bone. FDA's Center for Devices and Radiological Health (CDRH) is issuing this guidance to identify a set of testing methods that can be used to accurately evaluate the mechanical properties of the various types of coatings. CDRH will use such data to identify which coated hip devices should remain subject to postmarket surveillance requirements.

DATES: Submit written comments at any time.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on this guidance document to David L. Daly (address below).

FOR FURTHER INFORMATION CONTACT: David L. Daly, Center for Devices and Radiological Health (HFZ–510), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3674.

SUPPLEMENTARY INFORMATION:

I. Background

On February 21, 1992, FDA sent a letter order to petitioner, Richards Medical Co., reclassifying the hip joint, metal/polymer/metal, semi-constrained, porous-coated uncemented prosthesis from class III (Premarket Approval) into class II (Special Controls). The reclassification was published in the **Federal Register** of January 8, 1993 (58 FR 3227). The reclassification was effective February 21, 1992. On February 15, 1994, CDRH's Orthopedic and Rehabilitation Devices Branch (ORDB) determined that hip prostheses using plasma sprayed porous coatings for biological fixation can be substantially equivalent to the reclassified porous coated hip prosthesis. As part of the decision, CDRH, using the then existing authority of section 522(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act, required manufacturers of plasma spray porous coated hip prostheses to conduct postmarket surveillance of their devices. Postmarket surveillance was required because of CDRH's concern that reported differences between the mechanical properties, particularly abrasion resistance, of plasma sprayed coatings and sintered and diffusion bonded porous coatings could have an adverse effect on the long-term revision rate of the plasma sprayed devices. While CDRH has clinical data describing the long-term revision rate of sintered and diffusion bonded porous coated hip prostheses, CDRH does not have this type of data on the cementless use of plasma sprayed hip prostheses. The postmarket surveillance consisted of prospective, long-term, followup of a population of patients who have received cementless implantation of the manufacturer's plasma sprayed porous coated hip prosthesis. The objective of the patient followup was to determine the long-term revision rate for each plasma sprayed porous coated hip prosthesis.

At the time postmarket surveillance was required, CDRH believed that the term "plasma spray" was a single manufacturing technique that produced a single form of coating, having a single set of metallurgical and mechanical properties. CDRH now recognizes that plasma spray manufacturing methods are a subset of the larger "thermal spray" group of metallic coating production methods. CDRH has come to recognize that thermal spray coating methods can produce coatings with a wide range of metallurgical and mechanical properties. As an example, CDRH originally believed that, when used to apply metallic coatings to hip prostheses, plasma spray manufacturing techniques produced only porous coatings. CDRH now also recognizes that hip prostheses with non-porous metallic coatings can be manufactured by plasma spray and other thermal spray methods.

Several manufacturers, using a variety of thermal spray coating methods, have received substantial equivalence decisions for their coated hips. A number of these manufacturers have sought reconsideration of CDRH's decision to require postmarket surveillance of their products. Several of the requests for reconsideration are, in part, based on claims that manufacturing technology permits the production of plasma sprayed coatings with mechanical properties, particularly abrasion resistance, equal to or better than those of the sintered or diffusion bonded porous coatings upon which the reclassification was based. In response to the requests for reconsideration, CDRH, on February 22, 1999, reissued a draft guidance document describing testing methods that CDRH believed could measure the mechanical properties of plasma sprayed coatings. Several comments on the draft guidance document were received. CDRH has considered those comments and is now issuing this guidance as final guidance that is effective immediately.

Some comments on the draft guidance document included mechanical test data on different thermal spray coatings, both porous and non-porous. These data indicate that thermal spray coatings can have mechanical properties greater than, less than, or almost equal to those of sintered or diffusion bonded porous coatings. CDRH does not believe that postmarket surveillance is necessary for hip prostheses whose coatings have mechanical properties, particularly abrasion resistance, equal to or better than sintered or diffusion bonded porous coatings. As a result, CDRH is now inviting those manufacturers who have received postmarket surveillance orders to apply for reconsideration of those orders. CDRH will, on a case by case basis, reevaluate the need for manufacturers to conduct postmarket surveillance of their metallic thermal spray coated hip prostheses.

II. Significance of Guidance

This guidance document represents the agency's current thinking on what data are necessary to support reconsideration of the thermal spray coated hip prosthesis postmarket surveillance requirements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (946) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements" will be available at http://www.fda.gov/cdrh/postsurv/plasmaspry.pdf.

IV. Comments

Interested persons may, at any time submit to the contact person above written comments regarding this guidance. FDA will consider any comments to determine whether to revise or revoke the guidance.

Dated: January 16, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–2242 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0854]

Determination of Regulatory Review Period for Purposes of Patent Extension; Bapten®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Bapten® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Bapten® (beta-aminopropionitrile fumarate). Bapten® is indicated for the treatment of tendinitis of the superficial digital flexor tendon in the adult horse where there is sonographic evidence of fiber tearing. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Bapten® (U.S. Patent No. 4,485,088) from Alaco, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 29, 1999, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of Bapten® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Bapten® is 5,845 days. Of this time, 5,734 days occurred during the testing phase of the regulatory review period, while 111 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the act became effective:* June 11, 1982. The applicant claims May 27, 1982, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's letter assigning a number to the INAD was June 11, 1982, which

is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the act:* February 20, 1998. The applicant claims February 17, 1998, as the date the new animal drug application (NADA) for Bapten® (NADA 141–107) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgement letter assigning a number to NADA 141–107 was February 20, 1998, which is considered to be the initially submitted date for NADA 141–107.

3. *The date the application was approved:* June 10, 1998. FDA has verified the applicant's claim that NADA 141–107 was approved on June 10, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 3, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 31, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–2149 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0116]

Determination of Regulatory Review Period for Purposes of Patent Extension; Rotashield®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Rotashield® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product Rotashield®. Rotashield® is indicated for immunization of infants at 2, 4, and 6 months of age. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Rotashield® (U.S. Patent No. 4,704,275) from American Home Products Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 16, 1999, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of Rotashield® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Rotashield® is 3,804 days. Of this time, 3,226 days occurred during the testing phase of the regulatory review period, while 578 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* April 3, 1988. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 3, 1988.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act:* January 31, 1997. FDA has verified the applicant's claim that the product license application (PLA) for Rotashield® (PLA 97–0111) was initially submitted on January 31, 1997.

3. *The date the application was approved:* August 31, 1998. FDA has verified the applicant's claim that PLA 97–0111 was approved on August 31, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension.

However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 3, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 31, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–2243 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0392]

Seafood HACCP Transition Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Seafood HACCP Transition Guidance." This guidance sets forth the policies and procedures under which the agency may consider refraining from regulatory action under the seafood Hazard Analysis Critical Control Point (HACCP) regulations and the Federal Food, Drug, and Cosmetic Act (the act). This guidance provides for the submission to FDA of citizen petitions that describe scientific studies that petitioners are proposing to resolve issues relating to particular hazard analyses or controls for particular food safety hazards.

DATES: This notice is effective February 2, 2000.

FOR FURTHER INFORMATION CONTACT: Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 26, 1999 (64 FR 14736), FDA published for comment a notice containing a draft guidance setting forth policies and procedures under which the agency may take into account a planned or ongoing scientific study when deciding whether to pursue regulatory action under the seafood HACCP regulations and the act. Specifically, the draft guidance indicated that FDA might consider refraining from regulatory action against a seafood processor or processors to allow the conduct of a scientific study to resolve a dispute between FDA and the processor(s) over questions of fact. These questions would either relate to whether certain food safety hazards are reasonably likely to occur in specific situations or to the effectiveness or need for certain controls for those hazards. FDA would only consider refraining from regulatory action if the public would not be jeopardized by doing so.

The draft guidance requested that individuals desiring to propose a scientific study under these circumstances submit a petition to the agency in accordance with FDA's regulations for citizen's petitions at 21 CFR 10.30. The petition would describe the study and request that FDA consider exercising enforcement discretion on certain matters under the seafood HACCP regulations and the act pending their scientific resolution.

FDA further recommended that the petition be submitted as a request to revise or amend the agency's guidance document entitled "The Fish and Fishery Products Hazards and Controls Guide (the Guide)." The Guide contains FDA's compilation of what the agency believes to be the latest, science-based knowledge about when food safety hazards are reasonably likely to occur and what controls are appropriate for those hazards.

II. The Comments

Three comments were received on the draft of the Seafood HACCP Transition Guidance. Two of the comments were from trade associations, and one was from a professional association. All comments supported the general approach proposed by the agency to rely on scientific studies under circumstances described in the draft, but asked for specific modifications in order to expedite or otherwise improve the process.

1. One comment suggested that the petition process would be time consuming and would inhibit the agency's ability to respond quickly to requests for discretionary enforcement, especially considering that the agency allows itself up to 180 days to respond on petitions.

As noted by the comment, the 180-day period is the maximum permitted tentative response time. However, given the significance of the food safety issues that are likely to be submitted for review under the guidance and the desire of the agency to obtain new scientific information on issues having bearing on scientific questions related to HACCP implementation, FDA believes that it would be mutually advantageous for the agency to respond to the petitioner as expeditiously as possible. For this reason, the agency continues to encourage potential petitioners to engage in presubmission consultations with FDA on the merits. Familiarity with the issues presented in a petition would greatly facilitate the agency's ability to respond quickly. The agency anticipates that review of the scientific merits of any proposal will be a more likely cause of delay, than the mechanics of the petition process. Consequently, FDA does not agree that the citizen's petition process will cause the agency to significantly delay its response.

A related comment stated that the citizen's petition is a cumbersome mechanism, which could be overwhelming for those unaccustomed to FDA's administrative procedures. This comment recommended that the guidance policy clarify the applicability of certain provisions in part 10 (21 CFR part 10), particularly as they relate to the need for environmental and economic impact statements.

FDA does not anticipate that the contents of a citizen's petition would be notably different than the contents of a request to the agency under another format. The contents need only include information that enables FDA to make an informed decision on a petitioner's request. In that regard, the agency does not expect that either an environmental or economic impact statement will be relevant, especially since the research to be conducted is at the petitioner's initiative and would not ordinarily be

the subject of an extramural contract, grant, or other research agreement with the government.

2. One comment expressed concern for the need for confidentiality to protect proprietary information, in that the citizen petition process could result in the disclosure of trade secrets to competitors.

FDA's regulations (21 CFR 10.30 and 21 CFR 10.20(j)) provide that citizen petitions and supporting information are to go on public display (i.e., be made public). Under 21 CFR 10.20(j)(2), the only exception is for petitions that contain information the disclosure of which would be a clearly unwarranted invasion of personal privacy. Thus, FDA is not in a position to protect other information in a citizen petition from disclosure. If a person believes they have a situation that CFSAN should consider under this guidance, but would need to rely on trade secret on confidential commercial information to make their case, they should raise the matter with CFSAN to see if other approaches are appropriate

3. Two comments stated that FDA should consider other options to further advance the science needed to support HACCP implementation. One of these comments suggested that the agency should consider establishing an external scientific review process to evaluate the scientific merit of the research proposed in a citizen petition. The comment stated that an outside review would provide a wider range of scientific input and discussion than otherwise occur and may yield a stronger consensus among FDA, industry, and academia.

FDA agrees there may be cases when the agency will need the assistance of an expert review panel, particularly when there is a diversity of scientific opinion within the agency. However, two advisory committees, the National Food Advisory Committee and the National Advisory Committee on Microbiological Criteria for Foods, already exist for this purpose. FDA anticipates that the benefits of consulting with a panel of outside experts will be considered on a case-by-case basis.

4. One comment requested that the HACCP transition guidance outline the agency's expectation of the level of detail expected in studies, and the amount of time allowed for completion of scientific studies or literature searches, and that these factors should be influenced by the nature of the specific issue being addressed. The comment stated that, in many cases, the scientific detail need not be exhaustive, especially where the issue applies to a product that has been marketed safely for some time, or where the data supporting FDA's current policy are not exhaustive.

FDA intends to assess the adequacy of scientific detail on a case-by-case basis. The factors that the agency will generally take into consideration when determining the adequacy of a scientific study may include the severity of the hazard at issue in the petition and the extent and credibility of existing data.

5. One comment expressed the need for caution should the agency announce that it intends to exercise enforcement discretion, because State agencies may have compliance actions occurring on their own. To avoid inconsistent regulatory policies between FDA and the States, it was suggested that FDA establish an information sharing mechanism with the States on this subject.

FDA agrees with this concern and intends to take steps to prevent conflict between Federal and State actions. FDA expects to advise the public about petitions on its website. In addition, the agency intends to take appropriate steps to ensure that states are adequately apprised. These steps may include advising the Association of Food and Drug Officials (AFDO), a professional association of State, Federal, and local regulatory officials (with industry representatives participating as associate members) on the status of petitions and posting petition information in the State Action Information Letter (SAIL) at http://www.fda.gov/ora/fed_state/sail.htm.

III. Availability

This Seafood HACCP Transition Guidance is now available on the home page for FDA's Center for Food Safety and Applied Nutrition (CFSAN) at http:/vm.cfsan.fda.gov/dms/guidance.html. It may also be obtained through the Activities Staff, Office of Constituent Operations, CFSAN, phone 202–205–5251.

IV. Status of This Guidance

This guidance represents the agency's current thinking on the subject and does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

V. Paperwork Reduction Act

FDA concludes that this guidance would not impose a paperwork burden that has not already been estimated and approved by OMB under OMB Control No. 0910–0183 "Citizen Petition—21 CFR 10.30." This guidance provides information to the public to assist them in submitting petitions to obtain changes in the Guide under certain circumstances.

Dated: January 21, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2147 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0053]

Draft Guidance on Reprocessing and Reuse of Single-Use Devices: Risk Categorization Scheme; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Reprocessing and Reuse of Single-Use Devices: Risk Categorization Scheme." This draft guidance is not final nor is it in effect at this time. This document is intended to provide draft guidance for categorizing the risks posed by single-use devices (SUD's) that are reprocessed and/or reused. FDA may use this scheme to set enforcement priorities for regulation of reprocessed and/or reused SUD's.

DATES: Submit written comments concerning this draft guidance by March 3, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Reprocessing and Reuse of Single-Use Devices: Risk Categorization Scheme" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this draft guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Timothy A. Ulatowski, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION:

I. Background

Reuse of SUD's is the practice of cleaning, disinfecting, sterilizing, and reusing medical devices that are intended for only one use. Reuse has raised concerns regarding patient safety, informed consent, and equitable regulation of reuse under the Federal Food, Drug and Cosmetic Act. On May 5 and 6, 1999, FDA and the Association for the Advancement of Medical Instrumentation cosponsored a conference on reuse of single-use devices to help examine policy alternatives regarding the practice of reuse. As a result of that meeting, FDA made the draft guidance entitled "FDA's Proposed Strategy on Reuse of Single-Use Devices" available on November 3, 1999. Risk categorization of SUD's was one topic of discussion at an open meeting held by FDA on December 14, 1999. This document was the basis for the discussion at that meeting and is now being made more widely available for public comment. FDA expects to issue an updated draft of this guidance shortly and will also make that draft available for public comment.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the categorization of risk for SUD's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled "Reprocessing and Reuse of Single-Use Devices: Risk Categorization Scheme" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 1156 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes "Reprocessing and Reuse of Single-Use Devices: Risk Categorization Scheme," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Reprocessing and Reuse of Single-Use Devices: Risk Categorization Scheme" will be available at http://www.fda.gov/cdrh/Reuse.

IV. Comments

Interested persons may, on or before May 2, 2000, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–2244 Filed 2–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3031–N]

Medicare Program; Meeting of the Executive Committee of the Medicare Coverage Advisory Committee—March 1, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Executive Committee of the Medicare Coverage Advisory Committee (MCAC). The Committee provides advice and recommendations to us about clinical coverage issues. The Committee will hear reports from its subcommittee, and will discuss and consider the levels of evidence (including the types and presentation format of information) that it believes should be considered by the medical specialty panels of the MCAC at future public meetings. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* March 1, 2000, from 8 a.m. until 4 p.m., E.D.T.

Deadline for Presentation Submissions: February 10, 2000.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, must notify the Executive Secretary by February 15, 2000.

ADDRESSES: *The Meeting:* The meeting will be held at the Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244.

Presentations and Comments: Submit formal presentations and written comments to Sharon Lappalainen, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

FOR FURTHER INFORMATION CONTACT: Sharon Lappalainen, Executive Secretary, (410) 786–9262.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) describing the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical coverage issues. This notice announces the following public meeting of the MCAC:

Current Members of the Panel

Harold C. Sox, MD (Chairperson); Thomas V. Holohan, MD (FACP); Leslie P. Francis, JD, PhD; John H. Ferguson, MD; Robert L. Murray, PhD; Alan M. Garber, MD, PhD; Michael D. Maves, MD, MBA; David M. Eddy, MD, PhD; Frank J. Papatheofanis, MD, PhD; Ronald M. Davis, MD; Daisy Alford-Smith, PhD; Joe W. Johnson, DC; Robert H. Brook, MD, ScD; Linda A. Bergthold, PhD; Randel E. Richner, MPH.

Topic of the Meeting

The Committee will hear reports from its subcommittee, and will discuss and consider the levels of evidence (including the types and presentation

format of information) that it believes should be considered by the medical specialty panels of the MCAC at future public meetings.

Procedure and Agenda

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately one hour. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make a formal presentation, you must notify the For Further Information Contact, and submit the following by the Deadline for Presentations and Comments date listed in the DATES section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Committee. After our presentation, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. At the end of the Committee deliberations, the Committee will allow a 30-minute open public session for any attendee to address issues specific to the topic. After which, the members will vote and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: January 18, 2000.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 00–2313 Filed 2–1–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: State Prevention Needs Assessments: Alcohol and Other Drugs, Cohort V (New)—SAMHSA's Center for Substance Abuse Prevention (CSAP) has awarded contracts to several States (Cohort V) to collect data to assess the nature and extent of substance abuse prevention services needs. The data collection by these States will bring to 30 (Cohorts I–V) the number of States that have implemented a family of prevention needs assessment studies, and will constitute the third cohort to apply the core set of measures, instruments, and methodologies developed and standardized under prior State needs assessment State contracts.

Data will be collected in school surveys and community resource assessments (CRA). The information collected in this project will be combined with existing information from other sources; States may use multiple approaches to assess statewide and substate distributions of risk and protective factors for substance use, of prevention resources, and of prevention services needs. These needs assessment studies will permit cross-State comparison of risk and protection variables to assist State services planning and allocation of State Block Grant funds, and to assist Federal response to the Government Performance and Results Act (GPRA). The estimated annualized burden for the three-year project is shown below.

Respondents	Number of respondents	Responses per respondent	Average burden per response (hours)	Annualized burden hours
Students	137,500	1	0.75	103,125
Program Providers	1,410	1	1.00	1,410
Total	138,910			104,535
3-year Average	46,303			34,845

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–2213 Filed 2–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Endangered Species Permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "kenneth_graham@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written data or comments on these applications must be received, at the address given below, by March 3, 2000.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Ken Graham, Permit Biologist). Telephone: 404/679–7358; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Ken Graham, Telephone: 404/679–7358; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Frances C. James, Florida State University, Tallahassee, Florida, TE020826–0.

The applicant requests authorization to take (harass during nest monitoring, temporary nest occlusion research, and stomach flush/dietary analysis research) the endangered red-cockaded woodpecker, *Picoides borealis*, on the Apalachicola National Forest, in Leon, Liberty, and Wakulla Counties, Florida for the purpose of enhancement of survival of the species.

Applicant: Forest Supervisor, National Forests in North Carolina, Asheville, North Carolina, TE020891–0.

The applicant requests authorization to take (capture, band, and harass during nest monitoring and construction of artificial cavities) the endangered red-cockaded woodpecker, Picoides borealis, throughout the species range in North Carolina, for the purpose of enhancement of survival of the species.

Applicant: Forest Supervisor, National Forests in Mississippi, Jackson, Mississippi, TE020890–0.

The applicant requests authorization to take (capture, band, translocate, and harass during nest monitoring, construction of artificial cavities, placement of restrictor plates, and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Mississippi, for the purpose of enhancement of survival of the species.

Applicant: Stanley B. Rudzinski, Jr., Law Engineering and Environmental Consultants, Nashville, Tennessee, TE021030–0.

The applicant requests authorization to take (capture, identify, and relocate) the endangered Nashville Crayfish, *Orconectes shoupi*, throughout the species range in Tennessee, for the purpose of enhancement of survival of the species.

Applicant: Nancy E. Jordan, South Carolina Cooperative Fish and Wildlife Research Unit, Clemson University, Clemson, South Carolina, TE022019–0.

The applicant requests authorization to take (capture, band, monitor and collect unhatched eggs for hatching success research) the endangered red-cockaded woodpecker, *Picoides borealis*, in the Norfolk Southern Railroad Brosnan Forest, South Carolina, for the purpose of enhancement of survival of the species.

Applicant: Kimberly Morgan Hicks, Oxford, North Carolina, TE022046–0.

The applicant requests authorization to take (capture, identify, and release) five species of endangered freshwater molluscs throughout the species' ranges in North Carolina and South Carolina, for the purpose of enhancement of survival of the species.

Applicant: Peter G. David, South Florida Water Management District, Canal Point, Florida, TE020654–0.

The applicant requests authorization to take (capture, band, translocate, and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Florida for the purpose of enhancement of survival of the species.

Dated: January 26, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–2215 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. TE–021929

Applicant: The Native Plant Society, Sacramento Valley Chapter, Sacramento, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) throughout each species range in California, in conjunction with surveys, population monitoring, and education for the purpose of enhancing their survival.

Permit No. TE–702631

Applicant: Assistant Regional Director-Ecological Services, Region 1,

U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests an amendment to remove and reduce to possession specimens of the following plant species: *Sidalcea oregana var. calva* (Wenatchee Mountains checker-mallow) and *Fritillaria gentneri* (Gentner's Fritillary) (=Mission-bells). Authorization is also requested to take the following species: Kauai cave wolf spider (*Adelocosa anops*), Kauai cave amphipod (*Spelaeorchestia koloana*), and the Santa Barbara County distinct population segment of the California tiger salamander (*Ambystoma californiense*). Collection and take activities will be conducted throughout the species range in conjunction with recovery efforts for the purpose of enhancing their propagation and survival.

Permit No. TE–018909

Applicant: Kelly Rios, Brea, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–021544

Applicant: Salvatore Zimmitte, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–00750

Applicant: Julie Simonsen, Newport Beach, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*), El Segundo blue butterfly (*Euphilotes battoides allyni*), and Delhi Sands flower loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout each species range for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before March 3, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: January 26, 2000.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–2221 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

[No. CIV90–0957CH/WWD]

Notice of Distribution of Partial Settlement: Ramah Navajo Chapter v. Bruce Babbitt

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: A Notice of the Distribution of Partial Settlement and Hearing is contained in this announcement. The Notice describes procedures for the payment and distribution of the Common Fund, including eligibility for payment, necessary documentation and related information.

FOR FURTHER INFORMATION CONTACT: Michael P. Gross, Class Counsel, 460 St. Michael's Drive, #300, Santa Fe, New Mexico 87505; Telephone No. (505) 983–6686; Fax (505) 989–1096; E-mail address: mpgoss@santa-fe.net; or C. Bryant Rogers, Co-Class Counsel, Roth, VanAmberg, Rogers, Ortiz, Fairbanks & Yepa LLP, 347 East Palace Avenue, Post Office Box 1447, Santa Fe, New Mexico 87504–1447; Telephone No. (505) 988–8979; Fax (505) 983–7508; E-mail: rogers@trail.com.

SUPPLEMENTARY INFORMATION: The Class Distribution Notice in *Ramah Navajo Chapter* v. *Bruce Babbitt, Secretary of the Interior; Kevin Gover, Assistant Secretary of the Indian Affairs; Robert J. Williams, Acting Inspector General; U.S. Department of the Interior and the United States of America* (CIV No. 90–0957 LH/WWD), before the United States District Court for the District of New Mexico, reads as set forth below.

Class Distribution Notice Number 1

With this notice, Class Counsel are commencing distribution of the partial settlement paid by Defendants on September 8, 1999. The Net Common Fund to be distributed as of September 8, 1999, was $70,738,749.91, to be augmented by the remaining balance in the Reserve Account to which all interest accruals on the Net Common Fund and Reserve Account are deposited.

The proceeds of the partial settlement were deposited pursuant to Court Order in the Court Registry Investment System administered by the Clerk of the United States District Court for the Southern District of Texas (Houston). Since that time, the Class has engaged as the Independent CPA the Albuquerque firm of Rogoff Erickson Diamond & Walker, L.L.P. The purpose of this Notice is:

1. To publish a Provisional List of Class Members believed to be eligible for an allocation from the Net Common Fund.

2. To give notice to any tribe or tribal entity not on the Provisional List of procedures it must follow in order to challenge its omission from the list.

3. To give notice to all Class Members of the requirement to submit a timely Claim Form with requested documents and to submit a Certificate of Lack of Documentation if the "Schedule of Federal Financial Assistance" from its single agency audit cannot be located for any settlement year.

4. To give notice and an opportunity to object to a conditional agreement reached by Class Counsel and a group of tribes or tribal entities which negotiate indirect cost rates with the Division of Cost Allocation of the Department of Health and Human Services (DCA tribes) instead of with the Office of Inspector General of the Department of the Interior (OIG).

5. To give notice and an opportunity to opt out of the Class with respect to additional claims added to the Plaintiffs, complaint to enlarge the scope of damage claims for indirect cost shortfalls beyond those previously litigated in this action.

I. Who Will Qualify for A Share in the Settlement?

To qualify under the Partial Settlement Agreement (PSA) for a share in the current settlement, you must be an eligible Class Member; *i.e.:*

A. Have had a Public Law 93–638 contract or compact or school grant in any or part of any settlement year (FY

1989 through FY 1993 or CY 1989 through CY 1993);

B. Have had an indirect cost rate with the Office of Inspector General (OIG) of the Department of the Interior or a lump sum agreement for contract support from the Bureau of Indian Affairs (BIA) in any or part of any settlement year; and

C. Have received "other federal agency" funding as defined in the PSA in any or part of any settlement year.

Tribes and entities who negotiated indirect cost rates with the Division of Cost Allocation (DCA) of the Department of Health and Human Services will qualify for a share only if approved by the Court (see part IV. DCA Tribes).

II. Provisional List of Class Members and Procedure for Challenge

Attached to this notice is a list compiled by Class Counsel of tribes and tribal entities believed to be members of the Class which may be eligible for an allocation from the Net Common Fund.

The list is also published on the Class web site www.rncclassaction.santa-fe.net and linked to the settlement web site www.RNCsettlement.com. The web site contains important pleadings, other documents, and notices previously sent to the Class as well as the complete Partial Settlement Agreement including Appendix D.

A. If You Are on the List but Wish To Be Removed

If for some reason you do not wish to share in this settlement, and believe you were incorrectly *added* to the Provisional List, you may perfect a challenge by sworn affidavit delivered to Counsel for Plaintiffs and Counsel for Defendants within thirty (30) days of receipt of this Notice.

Opposing counsel may dispute the challenge before the Magistrate, whose decision shall be final as to matters of fact but not of law.

B. If You Are Not on the List but Wish To Be Included

Any tribal entity which does not appear on the Provisional List and which believes it is eligible to receive a share of the Net Common Fund must file a statement certifying under oath under penalty of perjury that: (1) It had a Public Law 93–638 contract, self-governance compact or tribally controlled school grant with the BIA during any year of the fiscal or calendar years 1989 through 1993; and (2) had an OIG-approved indirect cost rate *or* a BIA-approved lump sum agreement for indirect costs during any of the same years. The response must state that the said representations are true and correct to the best of the signatory's knowledge, information, and belief. The statement must also be accompanied by documentary proof (*e.g.*, contract award documents, IDC rate agreements, independent audits, etc.) showing these elements for each year the entity claims to have had such contracts, compacts, or school grants *and* indirect cost rate agreements or lump sum agreements during the settlement period. The statements and proofs must be received no later than sixty (60) days after the date of publication of this Notice and shall also be served on Defendants' counsel within the same period. Challenges to inclusion or exclusions from the Provisional List by other Class Members are not permitted.

Entities seeking to be added to the Provisional List must send the attached Claim Form with supporting documentation within the 60-day deadline to:

Rogoff Erickson Diamond & Walker, LLP, Ramah Navajo Chapter Class Action Settlement Administrator, 6401 Jefferson NE, Post Office Box 93659, Albuquerque, New Mexico 87199–3656; 1–888–726–9418

John W. Zavitz, Assistant United States Attorney, Post Office Box 607, Albuquerque, New Mexico 87103

C. Who Is Entitled To Share in the Allocation?

Only Class Members who actually received "other-federal-agency" funds as that term is used in the Partial Settlement Agreement during one or more of the settlement years (fiscal or calendar years 1989 through 1993) are eligible for an allocation from the Net Common Fund. The allocations will be made on the basis of each Class Member's level of "other-federal-agency" funding compared with that of the entire Class for each settlement year. The definition of "other-federal-agency" funds is set out at paragraph 3.a of the Partial Settlement Agreement which can be viewed on the Class website or the linked settlement website.

III. Need To Submit Timely Claim Form

To substantiate eligibility, each Class Member must submit to the Independent CPA sufficient financial information about its Federal funding for each of the settlement years. The preferred information is your 'Schedule of Federal Financial Assistance" from each year's single agency audit.

The Independent CPA will also accept copies of your final indirect cost agreements with attachments, or indirect cost rate proposals, other Federal agency contracts or grants, or proof of receipt of payments from other Federal agencies in a form acceptable to the Independent CPA.

If your entity cannot locate any 'Schedule of Federal Financial Assistance" you must send in the attached 'Lack of Documentation Certification." The Independent CPA may be contacted for more information about the documents needed. If Class Members cannot locate the documents, defendants will provide copies of the single agency audit—Schedule of Federal Financial Assistance or other documents (*e.g.*, indirect cost agreements or proposals), pursuant to paragraph 9(b) of Appendix D to the PSA if those documents can be located in government files. However, each Class Member is the best source for the information sought. It is therefore incumbent on each Class Member to make the best effort possible to locate the data and documents required.

You must return the completed Claim Form within sixty (60) days of the date of publication of this Notice. Audit data received from Class Members will be kept confidential pursuant to paragraph 9(c) of Appendix D. Entities for whom the required documents are not received may not receive an allocation.

If the Court, on petition, later finds that the methodology for distribution based on "other Federal agency funds" is unworkable, too costly, or not beneficial to the interests of the Class, some other method may be substituted after notice and an opportunity for hearing objections.

Following the expiration of the response periods set forth in this Notice, the Class Independent CPA will determine the Final List of Class Members who may be eligible for an allocation under the Partial Settlement Agreement.

Unless Class Members timely provide necessary documentation to the Settlement Administrator/Independent CPA they may not receive any share of the Net Common Fund attributable to the year or years for which there is insufficient data.

IV. DCA Tribes

The Partial Settlement Agreement approved by the Court recertified the Class to include only those Public Law 93–638 contractors, compactors, or school grantees which had negotiated indirect cost rates during the settlement years with OIG or a lump sum agreement for contract support with BIA. Class Counsel submitted the agreement to the Court for review and approval, several DCA tribes approached Class Counsel to register their belief that they should be included

in the Class for allocation purposes. This followed a settlement approved by the Court with one DCA tribe which had filed a timely objection to the settlement on this point. In order to facilitate approval of the overall settlement, Class Counsel entered into a conditional agreement with these tribes as follows: After notice to the Class, hearing by the Court, and Court approval, DCA tribes will be eligible for individual allocations from the Reserve Account established in paragraph 7.d of the Partial Settlement Agreement up to a collective capped amount of $900,000 based on the same criteria as apply to other Class Members. DCA tribes will not, however, become Class Members for any other purpose including eligibility for allocations from any future Class Common Fund in this case. The parties believe this arrangement will not impact the OIG tribes significantly in view of the fact that the Reserve Account of $1,000,000 is to be supplemented under paragraph 7.e of the Partial Settlement Agreement by interest earned on the Net Common Fund. To date the interest earned for the two and one-half months since receipt of the settlement proceeds has exceeded $900,000.00. Class Counsel and the CPA have estimated the costs of distribution of the Net Common Fund to be approximately $550,000.00. Thus, the full amount reasonably expected to be needed to pay for distribution plus the maximum capped allocations to the DCA tribes is already available or close to being available. Any remaining balance in the Reserve Account will be returned to the Net Common Fund for general distribution.

Any Class Member wishing to object to the conditional settlement agreement with DCA tribes may do so by filing a written objection stating its name, responsible officer, or attorney, address, telephone number, and reasons for objection with the Clerk of the District Court for the District of New Mexico, 333 Lomas NW, Albuquerque, New Mexico 87102, in a pleading using the caption above within thirty (30) days of the date of publication of this Notice. In addition, any such objection must be served on Class Counsel and Defendants' counsel within the same time period. Service shall be directed as follows:

Michael P. Gross, Class Counsel, 460 St. Michael's Drive, Bldg. 300; Santa Fe, New Mexico 87505

John W. Zavitz, Assistant U.S. Attorney, Post Office Box 607, Albuquerque, New Mexico 87103

V. Hearing

A hearing on objections to the proposed DCA settlement will be conducted by the Honorable C. LeRoy Hansen, U.S. District Judge, at the U.S. Courthouse, 333 Lomas NW, Albuquerque, New Mexico on March 15, 2000, at 9 a.m. Objectors must indicate in their written objections whether they intend to appear in person or through an attorney at the hearing. The date and time of the hearing may be changed without notice. Class Members are therefore advised to check with the Court prior to attending the hearing.

VI. New Claims

On September 30, 1999 (Docket #347), the Court approved motions for intervention and for amendment of the complaint to add an additional named Class representative and an additional claim for damages caused by shortfalls in payment of indirect costs. The new representative is the Oglala Sioux Tribe, which stated in its motion that it is, by information and belief, the only Class Member to have exhausted its administrative remedies for general shortfall claims back to FY 1992. The new claim asks for relief for shortfalls in indirect costs (contract support) based on BIA's failure to pay the amounts agreed in the annual indirect cost agreements with OIG. This claim augments the original claim litigated to date based on shortfalls created by incorrectly depressing indirect cost rates through improper inclusion of other federal agency funds in the direct cost base making up the indirect cost rate.

The new claim significantly expands the possible damages to which the Class will be eligible should it prevail. The new claim was among those reserved and not released in the Partial Settlement Agreement. The new claim involves the same legal issue as the remaining claim litigated to date. Any Class Member wishing to opt out of the Class (insofar only as the new claim is concerned) may do so by filing a statement with the Clerk of the Court within thirty (30) days of the date of publication of this Notice with service of upon Class Counsel and Defendants' Counsel within the same time period in the manner specified in part II. Provisional List Of Class Members And Procedure For Challenge.

Any questions regarding the Plan of Allocation for the Partial Settlement Agreement Common Fund should be directed to: Rogoff Erickson Diamond & Walker, L.L.P., Ramah Class Action Settlement CPA, Post Office Box 93659, Albuquerque, New Mexico 87199–3659; 1–888–726–9418 website: www.rncsettlement.com e-mail: *rncsettlement@redw.com*.

Any other questions regarding this Notice should be directed to Class Counsel below:

Class Counsel: Michael P. Gross, 460 St. Michael's Drive, #300, Santa Fe, New Mexico 87505; (505) 983–6686, (505) 989–1096 fax, e-mail: mpgross@santa-fe.net

Co-Class Counsel: C. Bryant Rogers, Roth, VanAmberg, Rogers, Ortiz, Fairbanks & Yepa, LLP, 347 East Palace Avenue, Post Office Box 1447, Santa Fe, New Mexico 87504–1447; (505) 988–8979, (505) 983–7508 fax, e-mail: rogers@ trail.com

Approved as to form (Telephonically Approved 12/14/99) by John W. Zavitz, Assistant United States Attorney, Defendant's Counsel.

Dated: January 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

Control# _____

United States District Court for the District of New Mexico

Ramah Navajo Chapter et al. *v.* Bruce Babbitt et al.

[CIV No. 90–00957 LH/WWD]

Claim Form

(Please type or print)

Note: This claim form must be postmarked no later than sixty (60) days after publication of this notice in the **Federal Register**.

Part I

Class member information required by partial settlement agreement, appendix D, art. III, 8.b.4.

_____

Name of federally-recognized tribe or tribal organization

Contact person _____

Mailing address _____

City _____

State _____

Zip Code _____

Area Code _____

Telephone Number _____

Area Code _____

Fax Number _____

E-mail address _____

Taxpayer Identification Number _____

_____Federally-Recognized Tribe

_____Tribal Organization

_____

Name of federally-recognized tribe or tribal organization

Attached in support of this claim are the following documents:

	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Schedule of Federal Financial Assistance for Single Agency Audit, OR					
Indirect Cost Agreement (final), OR					
Lump Sum Agreement Indirect Cost Proposal, OR					
Other					

If your entity cannot locate its Schedule of Federal Assistance for a specific settlement year but believe it is qualified to receive an allocation, you must submit the attached "Lack of Documentation Certification."

Part II

If you are not on the provisional list of class members and wish to be included, you must fill out part I above and this part II with supporting documentation and sign under penalty of perjury:

The above entity, _____
(name of federally-recognized tribe or tribal organization)

was incorrectly omitted from the Provisions List of Class Members because (1) it had a Public Law 93–638 contract, self-governance compact or tribally controlled school grant with the BIA during any year of the fiscal or calendar years 1989 through 1993, and (2) had an OIG-approved indirect cost rate *or* a BIA-approved lump sum agreement for indirect costs during any of the same years. True and accurate copies of documents showing the entity's entitlement to be added to the list are attached.

_____
Name of federally-recognized tribe or tribal organization

These representations are true and correct to the best of the undersigned signatory's knowledge, information, and belief.

_____
Signature of Responsible Official
Print Name _____
State of _____
Social Security _____
County of _____

The foregoing was duly sworn to and subscribed before me this day by _____ known to me to be that person whose name appears above, this _____ day of _____, 2000.
Notary Public (Seal) _____
My Commission Expires: _____
Control # _____

Ramah Navajo Chapter et al. v. Bruce Babbitt et al.

[90–00957 LH/WWD]

Lack of Documentation Certification

I, _____
(Name)
the _____
(Position)
of the _____
(Federally-Recognized Tribe or Tribal Organization)

To comply with the Allocation/Distribution Methodology Appendix D of the Partial Settlement Agreement dated August 31, 1998, I (we) hereby certify that our tribe/tribal organization does not have or is not able to retrieve its Schedule of Federal Assistance for the following settlement years: (please mark appropriate box(es))

1989 ____
1990 ____
1991 ____
1992 ____
1993 ____

We have _____ or have not _____ attached other documents to support our Claim Form.

Signature _____
Date _____
State of _____
ss.
County of _____

The foregoing was duly sworn to and subscribed before me this day by _____, known to me to be that person whose name appears above, this _____ day of _____, 2000.
Notary Public _____
(Seal)
My Commission Expires: _____

Accurate claims processing takes a significant amount of time. Thank you for your patience.

Reminder Checklist

- Please sign the above declaration.
- Remember to attach requested documentation that applies to your situation.
- Please sign and notarize the Lack of Documentation form if you lack required documents for any of the settlement years.
- Keep a copy of your claim forms for your records.
- If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
- Please notify us of any change in telephone or address.

If you have any questions, please direct them to the Settlement Administrator: Ramah Navajo Chapter Settlement Administrator, Rogoff Erickson Diamond & Walker, LLP, P.O. Box 93659, Albuquerque, NM 87199–3659; (888) 726–9418

Telephone Contacts: Sarah Lee, Susan Hansen; E-mail: rncsettlement@redw.com.

Ramah Navajo Chapter V. Babbitt

CIV No. 90–00957 LH/WWD

Provisional List

Absentee-Shawnee Executive Committee
Acoma Pueblo
Afognak Native Village
AGDAAGUX TRIBE OF KING COVE
Agua Caliente Band of Cahuilla Indians
AHFACHKEE DAY SCHOOL
AHMIUM EDUCATION INC
Ak Chin Indian Community
AK CHIN INDIAN COMMUNITY COUNCIL
Akhiok Village
Akiachak Native Community (IRA)
AKIAK NATIVE COMMUNITY (IRA)
Akutan Village
Alabama-Coushatta Tribal Council
Alabama-Quassarte Tribal Town
Alakanuk Village
ALAMO NAVAJO SCHOOL BOARD INC
Alamo-Navajo Indian Reservation
Alatna Village
Aleknagik Village
ALEUT COMMUNITY OF ST PAUL ISLAND
ALEUTIAN/PROBOLOF ISLAND ASSOCIATION INC
Algaaciq Village (Aka St Marys)
ALL INDIAN PUEBLO COUNCIL
Allakaket Village
Alturas Rancheria
Ambler Village
AMERICAN INDIAN CENTER OF CENTRAL CALIFORNIA
AMERICAN INDIAN CHILD RESOURCE CENTER
Anaktuvuk Pass Village
ANDREAFSKY VILLAGE
Aneth Chapter
Angoon Village (IRA)
Aniak Village
Anvik Village
Apache Tribe of Oklahoma
Arapaho Business Council
Arctic Slope Community
Arctic Village
Aroostook Band of Micmac Indians
Asa'Carsarmiut Tribe
Assiniboine and Sioux Tribes of Fort Peck
ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS INC
Atka Village (IRA)
Atmuathluak Village
Atqasuk Village
ATSA'BI'YAAZH COMMUNITY SCHOOL
AUBURN RANCHERIA
Augustine Band of Mission Indians
Baca/Haystack Chapter
Bad River Band of Lake Superior Chippewa Indians of Wisconsin
BAHWETING ANISHINABE SCHOOL
Barona—Capitan Grande Diegueno Tribe
Barrow Village
Battle Mountain Band Council
Bay Mills Indian Community
Beadsprings Chapter
Bear River Band of Rohnerville Rancheria
BEATRICE RAFFERTY SCHOOL
Beaver Village
Becenti Chapter
Beclabito Chapter
Belkofski Village
BENTON PAIUTE RESERVATION
Berry Creek Rancheria of Maidu Indians
Bethel Native Council
Big Lagoon Rancheria
Big Pine Band of the Owens Valley
Big Sandy Rancheria of Mono Indians
Big Valley Rancheria
Bill Moore's Slough
Birch Creek Village
Birdsprings Chapter
Bishop Indian Tribal Council
Black Mesa Chapter
BLACK MESA COMMUNITY SCHOOL
Blackfeet Tribe

Blue Lake Rancheria
BOARD OF DIRECTORS TRENTON INDIAN SERVICE AREA
Bodaway Chapter
Bois Forte Reservation Business Committee
BOQUE CHITTO ELEMENTARY SCHOOL
Brevig Mission Village
Bridgeport Paiute Indian Colony
Buckland Village (IRA)
Buena Vista Rancheria of Mewuk Indians
BUG-O-NAY-GE-SHIG SCHOOL
Burnham Chapter
Burns-Paiute General Council
BUTTE COUNTY OFFICE OF EDUCATION
Cabazon Band of Mission Indians
Cachil Dehe Band of Wintun Indians
Caddo Tribe of Oklahoma
Cahto Indian Tribe
Cahuilla Band of Indians
Cameron Chapter
Campo Band of Mission Indians
Canoncito Chapter
Cantwell Village
Capitan Grande Band of Mission Indians
CARSON COLONY COMMUNITY COUNCIL
Casamero Lake Chapter
Catawba Indian Nation
CATAWBA INDIAN TRIBE
Cayuga Nation
CEDARVILLE RANCHERIA
Cedarville Rancheria of Northern Paiute Indians
Tlingit and Haida Central Council
CENTRAL TRIBES OF THE SHAWNEE AREA INC
CENTRAL UNION ELEMENTARY SCHOOL DISTRICT
Chalkyitsik Village
CHAWANAKEE JOINT UNITED SCHOOL DISTRICT
Chefornak Village
CHEHALIS BUSINESS COUNCIL
Chemehuevi Tribal Council
Chenega Bay Village (IRA)
Cher-Ae Heights Indian Community
CHEROKEE BOY'S CLUB INC
CHEROKEE CENTRAL ELEMENTARY SCHOOL
Cherokee Nation of Oklahoma
Chevak Village
Cheyenne River Sioux Tribe
Cheyenne-Arapaho Tribe
Chichiltah Chapter
Chickaloon Village
Chickasaw Nation of Oklahoma
Chicken Ranch Band of Me-Wuk Indians
CHICO RANCHERIA
CHIEF LESCHI SCHOOL SYSTEM(PUYALLUP)
Chignik Lagoon Village
Chignik Lake Village
Chignik Village
Chilkat Indian Village (IRA)
Chilkoot Indian Assn (IRA)
Chinik Eskimo Community
Chinlchinbeto Chapter
Chinle Chapter
Chippewa-Cree Tribe
Chistochina Village
CHITIMACHA DAY SCHOOL
Chitimacha Tribe of Louisiana
Chitina Village
CHOCTAW CENTRAL MIDDLE SCHOOL
Choctaw Nation of Oklahoma
CHOTAW CENTRAL HIGH SCHOOL
CHOTAW FIELD OFFICE
Chuathbaluk Village
CHUGACH REGIONAL RESC COMMISSION
CHUGACHIUT INC
Chuloonawick Native Village
Church Rock Chapter
CIBECUE COMMUNITY SCHOOL
Circle Native Community (IRA)
CIRCLE OF LIFE SURVIVAL SCHOOL
CIRCLE OF NATIONS WAHPETON—INDIAN BOARDING SCHOOL
Citizen Band Potawatomi Tribe
Clarks Point Village
Cloverdale Rancheria of Pomo Indians
CLOVIS UNIFIED SCHOOL DISTRICT
Coalmine Mesa Chapter
Coast Indian Community (Resighini Rancheria)
Cochiti Pueblo
Cocopah Tribal Council
Coeur d'Alene Tribal Council
COEUR D'ALENE TRIBAL SCHOOL
Cold Springs Rancheria of Mono Indians
Colorado River Tribal Council
COLUSA COUNTY OFFICE OF EDUCATION
COLUSA RANCHERIA
COLVILLE BUSINESS COUNCIL
Comanche Tribe of Oklahoma
CONEHATTA ELEMENTARY SCHOOL
Confederated Salish & Kootenai Tribal Council
Confederated Tribes of Coos, Lower Umpqua, & Siuslaw Indians
Confederated Tribes of Siletz of Oregon
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Grand Ronde Tribal Council
Confederated Tribes of The Warm Springs Reservation
Confederated Tribes of Umatilla Indian Reservation
CONSORTIUM INC
COOK INLET TRIBAL COUNCIL
Copper Center Village
COPPER RIVER NATIVE ASSOCIATION INC
Coppermine
Coquille Indian Tribe
Cornfields Chapter
Cortina Indian Rancheria of Wintun Indians
Council Village
Counselor Chapter
COUNTY INDIAN HEALTH INC
Coushatta Tribe
Cove Chapter
Cow Creek Band of Umpqua Indians
Coyote Canyon
Coyote Valley Tribal Council
Craig Community Assn (IRA)
Crooked Creek Village
Crow Creek Sioux
CROW CREEK SIOUX TRIBAL HIGH SCHOOL
Crow Tribe of Indians of Montana
Crownpoint Chapter
Crystal Chapter
Cudeii Chapter
CURYUNG TRIBAL COUNCIL
Cuyapaipe Band of Mission Indians
Deering Village (IRA)
Delaware Tribe of Indians of East OK
Delaware Tribe of Western Oklahoma
DELAWARE TRUST BOARD
Dennehotso Chapter
Dilkon Chapter
Dillingham Village
Diomede Village (IRA)
Dot Lake Village
Douglas Indian Assn (IRA)
Dry Creek Rancheria
DUCK VALLEY SHOSHONE-PAIUTE TRIBES
DUCKWATER SHOSHONE ELEMENTARY SCHOOL
Duckwater Shoshone Tribal Council
Eagle Village (IRA)
Eastern Band Of Cherokee Indians
Eastern Shawnee Tribe Of Oklahoma
Eastern Shoshone Tribe
Eek Village
Egegik Village
EIGHT NORTHERN INDIAN PUEBLOS COUNCIL
Eklutna Village
Ekuk Village
Ekwok Village
Elem Indian Colony of Pomo Indians
Elim Village (IRA)
Elk Valley Rancheria
Elko Band Council
Ely Indian Colony of Western Shoshone
Emmonak Village
ENEMY SWIM DAY SCHOOL
Enterprise Rancheria of Estom Yumeka Maidu
Evansville Village
Eyak Village
FAIRBANKS NATIVE ASSOCIATION
Fallon Colony
False Pass Village
FLAGSTAFF DORMITORY
Flandreau Santee Sioux
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
FOND DU LAC OJIBWE SCHOOL
Fond du Lac Reservation Business Committee
Forest County Potawatomi Executive Council
Forest Lake Chapter
Fort Belknap Tribal Council
Fort Bidwell Indian Community of Paiute Indians
Fort Defiance Chapter
FORT HALL BUSINESS COUNCIL
Fort Independence Paiute Indian Community
Fort McDermitt Tribal Council
Fort McDowell Mohave-Apache Indian Community
Fort Mojave Indian Tribe
FORT PECK TRIBAL EXECUTIVE BOARD
Fort Sill Apache Tribe of Oklahoma
Fort Yukon Village (IRA)
Gakona Village
Galena Village
Gambell Village
Ganado Chapter
Georgetown Village
Gila River Pima-Maricopa Indian Community Council
Goodnews Bay Village
Confederated Tribes of the Goshute Reservation
Grand Portage Reservation Business Committee
Grand Traverse Band of Ottawa & Chippewa Indians
Grayling Village (IRA) (Holikachuk)
GREASEWOOD SPRINGS COMMUNITY SCHOOL INC
Greenville Rancheria of Maidu Indians
GREYHILLS ACADEMY HIGH SCHOOL
Grindstone Indian Rancheria of Wintun-Nomolaki

Fort Belknap Indian Community Gros Ventre & Assiniboine Tribes
Guidiville Band of Pomo Indians
Gulkana Village
Hamilton Village
HANNAHVILE INDIAN SCHOOL
Hannahville Indian Community Council
Hard Rock Chapter
HAVASUPAI SCHOOL
Havasupai Tribal Council
Healy Lake Village
Ho-Chunk Nation
Hogback Chapter
Hoh Tribe
Holy Cross Village
Hoonah Indian Assn (IRA)
Hoopa Valley Tribe
Hooper Bay Village
HOPI DAY SCHOOL
HOPI HIGH SCHOOL
Hopi Tribal Council
Hopland Band of Pomo Indians
HOTEVILLA BACAVI COMMUNITY SCHOOL
Houck Chapter
Houlton Band of Maliseet Indians
Hualapai Tribal Council
Huerfano Chapter
Hughes Village
HURON POTAWATOMI INC
Huslia Village
Hydaburg Cooperative Assn (IRA)
Igiugig Village
Iliamna Village
Inaja-Cosmit Band of Mission Indians
INDIAN CHILD & FAMILY SERVICES
INDIAN HEALTH COUNCIL INC
INDIAN ISLAND SCHOOL
INDIAN TOWNSHIP SCHOOL
INDIAN TOWNSHIP—PASSAMAQUODDY
Indian Wells Chapter
Inscription House Chapter
INTER–TRIBAL COUNCIL OF CA INC
INUPIAT COMMUNITY OF ARCTIC SLOPE (IRA)
Ione Band of Miwok Indians
Iowa Tribe Of Kansas–Nebraska
Iowa Tribe of Oklahoma
Iqurmuit Village (Russian Mission)
Isleta Pueblo
Ivanof Bay Village
Iyanbito Chapter
Jackson Band of Mi-Wuk Indians
JACKSON RANCHERIA
Jamestown S'Klallam Tribal Council
Jamul Indian Village
Jeddito Chapter
Jemez Pueblo
Jena Band of Choctaws
Jicarilla Apache Tribe
JICARILLA DORMITORY
JOINT TRIBAL COUNCIL
Kaguyak Village
Kaibab-Paiute Tribal Council
Kaibeto Chapter
Kake Village
Kaktovik Village
Kalispel Tribe
Kalskag Village
Kaltag Village
Kanatak Native Village
Karluk Village (IRA)
Karuk Tribe of California
Kasaan Village (IRA)
Kashia Band of Pomo Indians
Kasigluk Village
Kaw Nation of Oklahoma
KAWERAK INC
Kayenta Chapter
Kenai Village (IRA)
Ketchikan Indian Corporation (IRA)
Keweenaw Bay Indian Community
Kialegee Tribal Town
Kiana Village
KIAWOCK CORPORATIVE ASSN (IRA)
Kickapoo Traditional Tribe of Texas
Kickapoo Tribe of Kansas
Kickapoo Tribe of Oklahoma
King Cove Village
King Island Native Community (IRA)
KINGS CANYON UNIFIED SCHOOL DISTRICT
Kinlichee Chapter
Kiowa Tribe of Oklahoma
Kipnuk Village
Kivalina Village (IRA)
Klagetoh Chapter
Klamath General Council
Klawock Cooperative Assn (IRA)
Knik Village
Kobuk Village
KODIAK AREA NATIVE ASSOCIATION
KODIAK TRIBAL COUNCIL
Kokhanok Village
Koliganek Village
Kongiganak Village
Kootenai Tribal Council
Kotlik Village
Kotzebue Village (IRA)
Koyuk Village (IRA)
Koyukuk Village
KUIGPAGMIUT INC
KUSKOKWIM NATIVE ASSOCIATION
Kwethluk Village (IRA)
Kwigillingok Village (IRA)
Kwinhagak Village (IRA) (Aka Quinhagak)
La Jolla Band of Indians
La Posta Band of Mission Indians
Lac Courte Oreilles Indian Reservation
LAC COURTE OREILLES OJIBWA SCHOOL
Lac du Flambeau Tribal Council
Lac Vieux Desert Band of Lake Superior Chippewa
LAGUNA MIDDLE SCHOOL
Laguna Pueblo
Lake Valley Chapter
Larsen Bay Village
Las Vegas Tribal Council
LAYTONVILLE RANCHERIA
LeChee Chapter
Leech Lake Reservation Business Committee
Leisnoi Village (aka Woody Island)
Leupp Chapter
LEUPP SCHOOLS INC
Levelock Village
Lime Village
Little River Band of Ottawa Indians Inc
LITTLE SINGER COMMUNITY SCHOOL
Little Traverse Bay Bands of Odawa Indians
Little Water Chapter
LITTLE WOUND SCHOOL
LONE PINE RESERVATION
LONEMAN DAY SCHOOL
Los Coyotes Band of Mission Indians
LOUDEN TRIBAL COUNCIL
Lovelock Tribal Council
Low Mountain
LOWER BRULE DAY SCHOOL
Lower Brule Sioux
Lower Elwha Community Council
Lower Greasewood Chapter
Lower Kalskag Village
Lower Sioux Indian Community Council
LOWER SIOUX INDIAN COMMUNITY OF MINNESOTA
Lukachukai Chapter
Lummi Nation
LUMMI TRIBAL SCHOOL SYSTEM
Lupton Chpter
Lytton Band of Pomo Indians
MAINEINDIAN EDUCATION
Makah Tribal Council
MAKAH TRIBE
Manchester-Point Arena Band of Pomo Indians
MANDAREE DAY SCHOOL
MANIILAQ ASSOCIATION
Manley Hot Springs Village
Manokotak Village
Manuelito Chapter
Many Farms Chapter
Manzanita Band of Mission Indians
Mariano Lake Chapter
Marshall Village
MARTY INDIAN SCHOOL
MARYSVILLE JOINT UNION SCHOOL DISTRICT
Mashantucket Pequot Tribe
Mc Grath Native Village
Mechoopda Indian Tribe
Mekoryuk Village (IRA)
MENOMINEE FORESTRY CENTER
Menominee Indian Tribe of Wisconsin
MENOMINEE TRIBAL SCHOOL
Mentasta Lake Village
Mesa Grande Band of Mission Indians
MESCALERO APACHE SCHOOL
Mescalero Apache Tribe
Metlakatla Indian Community Council
Mexican Springs Chapter
Mexican Water Chapter
Miami Tribe of Oklahoma
MICCOSUKEE INDIAN SCHOOL
Miccosukee Tribe of Florida Indians
Middletown Rancheria of Pomo Indians
Mille Lacs Reservation Business Committee
Minnesota Chippewa Tribal Executive Committee
Minto Village (IRA)
Mississippi Band of Choctaw Indians
Moapa Business Council
Modoc Tribe of Oklahoma
MOHAVE-APACHE COMMUNITY COUNCIL
Mohegan Tribe of Indians of Connecticut
Mooretown Rancheria
Morongo Band of Mission Indians
Muckleshoot Tribal Council
MUCKLESHOOT TRIBAL SCHOOL
Muscogee (Creek) Nation of Oklahoma
Nageezi Chapter
Nahodishgish/Dalton Pass Chapter
Naknek Village
Nambe Pueblo
Nanwalek Village (IRA)
Napaimute Village
Napakiak Village (IRA)
Napaskiak Village
Narragansett Indian Tribe
Naschitti Chapter
NATIVE AMERICAN FAMILY SERVICES INC
Navajo Mountain
Navajo Nation
NAVAJO PREPARATORY SCHOOL
NAY–AH–SHING SCHOOL
Nazlini Chapter
Nelson Lagoon Village
Nenahnezah Chapter

Nenana Village
NETT LAKE RESERVATION (BOIS FORTE) TRIBE
NEW KOLIGANEK VILLAGE COUNCIL
New Lands (Nahathdzill) Chapter
New Stuyahok Village
Newcomb Chapter
Newhalen Village
Newtok Village
Nez Perce Tribe
Nightmute Village
Nikolai Village
Nikolski Village (IRA)
Ninilchik Village
Nisqually Indian Community Council
Noatak Village (IRA)
NOLI SCHOOL
NOME ESKIMO COMMUNITY
Nome Eskimo Community (IRA)
Nondalton Village
Nooksack Indian Tribal Council
Noorvik Village (IRA)
NOOTSACK INDIAN TRIBAL COUNCIL
North Fork Rancheria of Mono Indians
NORTHEN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION
NORTHERN CHEYENNE TRIBAL SCHOOLS
Northern Cheyenne Tribe
Northway Village
NORTHWEST INDIAN FISHERIES COMMISSION
Northwestern Band of Shoshoni Nation
Nottawaseppi Huron Potawatomi Band
Nuiqsut Village
Nulato Village
Nunapitchuk Village (IRA)
Oak/Pine Springs Chapter
Oglala Sioux Tribe
Ohogamiut Village
OJIBWA INDIAN SCHOOL
Ojo Encino Chapter
Old Harbor Village
Oljato Chapter
Omaha Tribe of Nebraska
Oneida Indian Nation Of New York
Oneida Tribal Council of Wisconsin
ONEIDA TRIBAL SCHOOL
Onondaga Nation
ORUTSARARMUIT NATIVE COUNCIL
Osage Tribe of Indians of Oklahoma
Oscarville Village
Otoe-Missouria Tribal Council
Ottawa Tribe of Oklahoma
Ouzinkie Village
OWENS VALLEY CAREER DEVELOP CENTER
OWENS VALLEY INDIAN WATER COMMISSION
Paimiut Village
Paiute Indian Tribe Of Utah
Paiute-Shoshone Indians of the Lone Pine Community
Pala Band of Mission Indians
PASCHAL SHERMAN INDIAN SCHOOL
Pascua Yaqui Tribal Council
Paskenpa Band of Nomelaki Indians
Passamaquoddy Tribe—Indian Township
Passamaquoddy Tribe—Pleasant Point
Pauloff Harbor Village
Pauma Band of Mission Indians
Pawnee Tribe of Oklahoma
Pechanga Band of Lusieno Mission Indians
Pedro Bay Village
Penobscot Nation
Peoria Indian Tribe of Oklahoma
Perryville Village (IRA)
Petersburg Indian Assn (IRA)
Picayune Rancheria of Chukchansi Indians
Picuris Pueblo
PIERRE INDIAN LEARNING CENTER
Pilot Point Village
Pilot Station Village
Pine Dale Chapter
PINE HILLS DAY SCHOOL
Pinoleville Band of Pomo Indians
Pinon Chapter
PINON COMMUNITY SCHOOL BOARD INC
Pit River Tribe of California
Pit River Tribe of California—Big Bend
Pit River Tribe of California—Likely
Pit River Tribe of California—Lookout
Pit River Tribe of California—Montgomery Creek
Pit River Tribe of California—Roaring Creek
Pit River Tribe of California—XL
Pitka's Point Village
Platinum Traditional Village
Poarch Band of Creek Indians
Point Hope Village (IRA)
Point Lay Village (IRA)
POINT NO POINT TREATY COUNCIL
Pojoaque Pueblo
Pokagon Band of Potawatomi Indians of Michigan
Ponca Tribe of Nebraska
Ponca Tribe of Oklahoma
PORCUPINE DAY SCHOOL
Port Gamble S'Klallam Tribe
Port Graham Village
Port Heiden Village
Port Lions Village
Portage Creek Village
Potter Valley Rancheria of Pomo Indians
Prairie Band Potawatomi Tribe of Kansas
Prairie Island Community Council
Pribilof Islands Aleut Communities
Pueblo Pintado
PUEBLO OF SANTA CLARA
Puyallup Tribal Council
PYRAMID LAKE HIGH SCHOOL
Pyramid Lake Paiute Tribal Council
Qagun Tayagungin Sand Point
Qawalangin Tribe (of Unalaska)
Quapaw Tribe of Oklahoma
Quartz Valley Indian Community
Quechan Tribal Council
Quileute Tribal Council
QUILEUTE TRIBAL SCHOOL
Quinault Indian Nation
RAMAH NAVAJO SCHOOL BOARD INC
Ramah-Navajo Chapter
RAMONA
Ramona Band of Mission Indians
Rampart Village
REAL RIVER ELEMENTARY SCHOOL
Red Cliff Tribal Council
Red Devil Village
Red Lake Band of Chippewa Indians
Red Lake Chapter
Red Mesa Chapter
Red Rock Chapter
Red Valley Chapter
RED WATER ELEMENTARY SCHOOL
Redding Rancheria
Redwood Valley Rancheria
Reno-Sparks Indian Colony
RESERVATION FIRE PROTECTION DISTRICT
RICHFIELD DORMITORY
Rincon San Luiseno Band of Mission Indians
ROBINSON RANCHERIA
Robinson Rancheria Business Council
Rock Point Chapter
ROCK POINT COMMUNITY SCHOOL
Rock Springs Chapter
ROSEBUD DORMITORIES
Rosebud Sioux Tribe
ROSELAND SCHOOL DISTRICT
Rough Rock Chapter
ROUGH ROCK COMMUNITY SCHOOL
Round Rock Chapter
Round Valley Tribes
ROUNDHOUSE COUNCIL
Ruby Village
Rumsey Indian Rancheria of Wintun Indians
SAC & FOX SETTLEMENT SCHOOL
Sac and Fox Nation of Oklahoma
Sac and Fox of Missouri Tribal Council
SAC AND FOX TRIBAL OF THE MISSISSIPPI IN IOWA
Sac and Fox Tribe of the Mississippi in Iowa
Saginaw Chippewa Tribal Council
Saint George Village
Saint Michael Village (IRA)
Saint Paul Village
Salamatof Village
Salt River Pima-Maricopa Indian Tribe
Samish Tribe of Indians
San Carlos Apache Tribal Council
San Felipe Pueblo
San Ildefonso Pueblo
San Juan Chapter
San Juan Pueblo
San Juan Southern Paiute Council
SAN LORENZO UNIFIED SCHOOL DISTRICT
San Manuel Band of Mission Indians
San Pasqual Band of Mission Indians
SAN XAVIER DISTRICT OF THE TOHONO O'ODHAM NATION
Sandia Pueblo
Sanostee Chapter
Santa Ana Pueblo
Santa Clara Pueblo
SANTA CLARA UNIFIED SCHOOL DISTRICT
SANTA FE INDIAN SCHOOL
Santa Rosa Band of Cahuilla Indians
Santa Rosa Indian Community
Santa Ynez Band of Mission Indians
SANTA YNEZ INDIAN HEALTH CLINIC
Santa Ysabel Band of Diegueno Indians
Santee Sioux Tribe of Nebraska
Santo Domingo Pueblo
Sauk-Suiattle Tribal Council
Sault Ste Marie Chippewa Tribal Council
Savoonga Village (IRA)
Sawmill Chapter
Saxman Village (IRA)
Scammon Bay Village
Scotts Valley Band of Pomo Indians
SECOND MESA DAY SCHOOL
Selawik Village (IRA)
Seldovia Village Tribe (IRA)
Seminole Nation of Oklahoma
Seminole Tribe of Florida
Seneca Nation of Indians
Seneca-Cayuga Tribe of Oklahoma
Shageluk Village (IRA)
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
Shakopee Sioux Business Council
Shaktoolik Village (IRA)
Sheep Ranch Band of Me-Wuk Indians
Sheepsprings Chapter
Sheldon Point Village
Sherwood Valley Rancheria
Shingle Springs Rancheria

Shiprock Chapter
SHIPROCK NORTHWEST HIGH SCHOOL
SHIPROCK RESERVATION DORMITORY
Shishmaref Village (IRA)
Shoalwater Bay Tribal Council
SHO-BAN SCHOOL DISTRICT NO 512
Shonto Chapter
SHONTO PREPARATORY SCHOOL
SHOSHONE BUSINESS COUNCIL
Shoshone Paiute Business Council
Shoshone-Bannock Tribe
Shungnak Village (IRA)
SINTE GLESKA COLLEGE
Sisseton-Wahpeton Sioux Tribe
Sitka Village (IRA)
Skagway Traditional Council
Skokomish Tribal Council
SKULL VALLEY BAND OF GOSHUTE INDIANS
Skull Valley General Council
Sleetmute Village
Smith Lake Chapter
Smith River Rancheria of California
Soboba Band of Mission Indians
SOBOBO BAND OF MISSION INDIANS
Sokaogon Chippewa Tribal Council
SOLOMON TRADITIONAL COUNCIL
Solomon Village
South Fork Band Council
South Naknek Village
SOUTHERN CALIFORNIA INDIAN CENTER
SOUTHERN CALIFORNIA TRIBAL CHAIRMAN'S ASSOCIATION INC
SOUTHERN INDIAN HEALTH COUNCIL INC
Southern Ute Tribe
Spirit Lake Sioux Tribe
Spokane Tribe
Squaxin Island Tribal Council
ST FRANCIS INDIAN SCHOOL
ST GEORGE ISLAND
ST STEPHENS INDIAN SCHOOL
St. Croix Council of Wisconsin
St. Micheals
St. Regis Mohawk Tribe
STANDING PINE ELEMENTARY SCHOOL
Standing Rock Chapter
Standing Rock Sioux Tribe
STAR ROUTE BOX 158
Steamboat
Stebbins Village (IRA)
Stevens Village (IRA)
STEWART COMMUNITY COUNCIL
STEWARTS POINT RANCHERIA
Stillaguamish Board of Directors
Stockbridge-Munsee Tribal Council
STOCKTON UNIFIED SCHOOL DISTRICT
Stoney River Village
SUMMERVILLE ELEMENTARY SCHOOL
Summit Lake Paiute Council
Suquamish Tribal Council
Susanville Indian Rancheria
Sweetwater Chapter
Swinomish Indian Tribal Community
Sycuan Band of Mission Indians
Table Bluff Reservation of Wiyot Indians
Table Mountain Rancheria
Tachee/Blue Gap Chapter
TAKINA SCHOOL
Takotna Village
Tanacross Village (IRA)
TANANA CHIEFS CONFERENCE INC
Tanana Village (IRA)
Taos Pueblo
TATE TOPA TRIBAL SCHOOL (FOUR WINDS)
Tatitlek Village (IRA)
Tazlina Village
TeecNosPos Chapter
Teesto Chapter
Telida Village
Teller Village
Te-Moak Tribe of Western Shoshone
Tesuque Pueblo
Tetlin Village (IRA)
THE HOPI CREDIT ASSOCIATION
THEODORE JAMERSON ELEMENTARY SCHOOL
THEODORE ROOSEVELT SCHOOL
Thlopthlocco Tribal Town
Thoreau Chapter
Three Affiliated Tribes
Timbisha Shoshone Band
TIOSPA ZINA TRIBAL SCHOOL
Togiak Village
Tohatchi Chapter
TOHONO O'ODHAM HOUSING AUTHORITY
Tohono O'Odham Tribal Council
TOIYABE INDIAN HEALTH PROJECT INC
Toksook Bay Village
Tolani Lake Chapter
Tonalea Chapter
Tonawanda Band of Senecas
Tonkawa Tribe of Oklahoma
Tonto Apache Tribal Council
Torreon/Star Lake Chapter
Torres-Martinez Band of Mission Indians
TRENTON SCHOOL
TRINIDAD RANCHERIA
Tsaile/Wheatfields Chapter
Tsayatoh Chapter
Tselani/Cottonwood Chapter
Tuba City Chapter
TUCKER ELEMENTARY SCHOOL
Tulalip Tribes of Washington
Tule River Indian Tribe
Tuluksak Village (IRA)
Tunica-Biloxi Indian Tribe Of Louisiana
Tuntutuliak Village
Tununak Village (IRA)
TUOLUMNE RANCHERIA
Turtle Mountain Band of Chippewa
TURTLE MOUNTAIN COMMUNITY COLLEGE
TURTLE MOUNTAIN HIGH SCHOOL
Tuscarora Nation
TUSCARORA NATION
Twenty-Nine Palms Band of Mission Indians
TWIN BUTTES DAY SCHOOL
Twin Hills Village
Twin Lakes Chapter
TWO EAGLE RIVER SCHOOL
Two Grey Hills Chapter
Tyonek Village (IRA)
U tu Utu Gwaitu Paiute Tribe
Ugashik Village
Uintah and Ouray Tribal Business Committee
UMKUMIUT NATIVE VILLAGE
Unalakleet Village (IRA)
UNGA TRIBAL COUNCIL
Unga Village
United Auburn Indian Community
UNITED CROW BAND INC
United Keetoowah Band in Oklahoma
UNITED SIOUX TRIBES
UNITED TRIBES TECHNICAL COLLEGE
UNITED VILLAGES INC
Upper Fruitland Chapter
Upper Lake Band of Pomo Indians
UPPER LAKE RANCHERIA
Upper Sioux Community
Upper Skagit Tribal Council
UTE INDIAN TRIBE
Ute Mountain Ute Tribe
VALDEZ NATIVE ASSOCIATION
Venetie Tribal Government
Venetie Village (IRA)
VIEJAS (BARON LONG)
Viejas Band of the Kumeyaay Nation
WA HE LUT INDIAN SCHOOL
Wainwright Village
Wales Village (IRA)
Walker River Paiute Tribal Council
Wampanoag Tribe of Gay Head (Aquinnah)
Washoe Tribe—Carson Colony Community Council
Washoe Tribe—Dresslerville Community Council
Washoe Tribe—Stewart Community Council
Washoe Tribe—Woodfords Colony
Washoe Tribe of Nevada and California
Wells Indian Colony Band Council
WESTERN APACHE CONSTRUCTION COMPANY
Whippoorwill
White Cone
White Earth Reservation Business Committee
White Mountain Apache Tribal Council
White Mountain Village (IRA)
White Rock Chapter
WHITE SHIELD SCHOOL
Whitehorse Lake
Wichita and Affiliated Tribes
WICHITA AND AFFILIATED TRIBES
Wide Ruins Chapter
Winnebago Tribe of Nebraska
Winnemucca Colony Indian Reservation
WOODFORDS COMMUNITY COUNCIL
WOUNDED KNEE DISTRICT SCHOOL
Wrangell Cooperative Assn (IRA)
Wyandotte Tribe of Oklahoma
Yakama Tribal Council
YAKAMA TRIBAL SCHOOL
Yakutat Village
Yankton Sioux Tribe
Yavapai-Apache Nation
Yavapai-Prescott Board of Directors
Yerington Paiute Tribal Council
Yomba Tribal Council
Ysleta Del Sur Pueblo
Yupiit of Andreafski
Yurok Tribe of California
Zia Pueblo
Zuni Pueblo

[FR Doc. 00–2205 Filed 2–1–00; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–0777–XQ]

Notice of Public Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Meeting notice.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise to discuss sage grouse habitat management, proposed land exchanges, grazing allotment assessments in the Jarbidge Resource Area, and other issues.

DATES: February 22, 2000. The meeting will begin at 9 am. Public comment periods will be held at 9:30 am and 4 pm.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office, 208–384–3393.

Dated: January 24, 2000.

Katherine Kitchell,

District Manager.

[FR Doc. 00–2202 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Thursday, February 24, 2000; from 10 a.m. until 4:30 p.m. and Friday, February 25, 2000, from 9 a.m. until 3 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the Campbell Creek Science Center, located at 68th Avenue and Abbott Loop Road in Anchorage.

Public comment will be taken from 1–2 p.m. Thursday, February 24. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: January 5, 2000.

Francis R. Cherry, Jr.,

State Director.

[FR Doc. 00–2204 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–00–1410–00; AA–64705]

Realty Action; FLPMA Section 302 Lease, Farewell Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease of Public Land.

SUMMARY: Phillip Esai and John Runkle (Applicants) have submitted an application to renew their Commercial Occupancy Lease of public land pursuant to section 302 of the Federal Land Policy and Management Act of 1976 and regulations at 43 CFR Part 2920. The leased land would be used to support the Applicant's commercial hunting operations and their personal traditional and customary subsistence activities.

The land is located approximately 60 miles southeast of McGrath along Khuchaynik Creek at the base of the Trimokish Hills and is more particularly described as follows:

Seward Meridian, Alaska

T. 27 N., R. 27 W., unsurveyed)
Section 35, NE¼SW¼NE¼, E½NE¼SW¼NE¼
Containing approximately 2.0 acres, more or less.

SUPPLEMENTARY INFORMATION: This is a Notice of a proposal to renew an existing lease. No new applications will be accepted.

This Notice of Realty Action proposes to renew a Commercial Occupancy Lease upon which the Applicants have constructed the following improvements on the land:

1 Bunk House
2 Cabins
1 Cook House
1 Log Steam Bath
1 Meat Rack
2 Outhouses
5 Tent Frames
1 Tool Shed
2 Wood Sheds

The Applicants have in their possession the following State and Federal authorizations:

Alaska Business License
Guide Outfitter License
Special Recreation Permit

The proposed lease renewal will be offered to the Applicants for a term of 20 years and will require rent to be paid to the United States at no less than fair market value.

DATES: Interested parties may submit comments for a period of 45 days from the publication of this Notice to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of a timely objection, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Shirley Rackley, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599; (907) 267–1289 or (800) 478–1263.

Dated: January 11, 2000.

Nick Douglas,

Field Manager.

[FR Doc. 00–2201 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–2000–1060–JJ]

Notice of Intent To Remove Stray Wild Horses (Modification of Previous Notice)

SUMMARY: The Rawlins Field Office of the Bureau of Land Management published a Notice of Intent to remove stray wild horses in Vol. 64, No. 249, page 73605 of the **Federal Register**, on December 31, 1999. That notice also made the detailed technical and National Environmental Policy Act (NEPA) documentation that supported the action available to the public, upon request. Subsequently, it was determined that the referenced NEPA documentation, WY–030–EA0–038, was partially based on the contents of another NEPA document, WY–030–EA0–037, which was subject to public review and comment until February 12, 2000. In order to provide the public with ample opportunity to review and comment on WY–030–EA0–037 and to maintain an ordered sequence of events, the comment period for WY–030–EA0–037 was extended until close-of-business, February 18, 2000. Concurrent with that action, the site-specific Gather Plan, which was part of the documentation referenced in the December 31 notice, was modified as follows: On page 5 in the first sentence of the section titled DATE(s), the date February 15 is changed to February 22. All other dates remain as stated originally and are unaffected by this modification. All parties to whom WY–030–EA0–037 was mailed for review and comment or who requested it or WY–030–EA0–038, were mailed a letter on January 21, 2000, notifying them of these changes.

FOR FURTHER INFORMATION CONTACT: For further information please contact the Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, WY 82301, (307) 328–4200.

Dated: January 25, 2000.

Kurt J. Kotter,

Field Manager.

[FR Doc. 00–2208 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 22, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 17, 2000.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Maricopa County

East Alvarado Historic District, (Residential Subdivisions and Architecture in Phoenix MPS) E. Alvarado Rd. bet. 3rd and 7th Sts., Phoenix, 00000102

Yavapai County

Ash Fork Maintenance Camp #1, Old Rte. 66-West end, Ash Fork, 00000103

Yuma County

Southern Pacific Railroad Passenger Coach Car—S.P. X7, 201 N. 4th Ave., Yuma, 00000101

ARKANSAS

White County

Titan II ICBM Launch Complex 373–5 Site, (Titan II ICBM Launch Complex Sites Associated with the 308th Strategic Missile Wing In Arkansas MPS) Approx. 0.5 mi. NE of AR 36, Center Hill, 00000100

COLORADO

Denver County

Wheeler House, 1917 W. 32nd Ave., Denver, 00000105

Jefferson County

Building 710, Defense Civil Preparedness Agency, Region 6 Operations Center, Denver Federal Center, Lakewood, 00000104

GEORGIA

Forsyth County

Cumming Public School—Cumming High School, 101 School St., Cumming, 00000107

McDuffie County

Hayes Line Historic District, Jct. of Twin Oaks Rd. and GA 233, Thomson, 00000106

KANSAS

Finney County

Bungalow Historic District, 1001, 1005, 1007, 1009, 1011 N. Fourth St., Garden City, 00000110

Wyandotte County

Castle Rock, 852 Washington Blvd., Kansas City, 00000109

Shafer, Theodore, House, 2418 N.10th St., Kansas City, 00000108

MASSACHUSETTS

Berkshire County

Coleman Bridge, Windsor Bush Rd. over Phelps Brook, Windsor, 00000112

Middlesex County

Hydrant No. 3 House, Washington St., Holliston, 00000113

Norfolk County

Railway Village Historic District, Roughly along Adams St., from Mechanic and Church Sts., and Washington St., Milton, 00000111

MICHIGAN

Wayne County

Antietam Street—Grand Trunk Railroad, (Highway Bridges of Michigan MPS), Antietam St. over Grand Trunk Railroad, Detroit, 00000114

Chestnut Street—Grand Trunk Railroad, (Highway Bridges of Michigan MPS), Chestnut St. over Grand Trunk Railroad, Detroit, 00000115

Ferry Street—Thorofare Canal Bridge, (Highway Bridges of Michigan MPS), Ferry St. over Thorofare Canal, Grosse Ile, 00000118

Fort Street—Pleasant Street and Norfolk & Western Railroad Viaduct, (Highway Bridges of Michigan MPS), Fort St. over Pleasant St. and N&W RR., Detroit, 00000116

South Pointe Drive—Frenchman's Creek Bridge, (Highway Bridges of Michigan MPS), South Pointe Dr. over Frenchman's Creek, Grosse Ile, 00000117

NORTH CAROLINA

Catawba County

Hickory Municipal Building, 30 Third St., SW, Hickory, 00000119

SOUTH DAKOTA

Butte County

South Dakota Dept. of Transportation Bridge No. 10–270–338, (Historic Bridges in South Dakota MPS), Local Rd. over Horse Creek, Newell vicinity, 00000124

Deuel County

East Highland Lutheran Church, Approx 6 mi. NE of Brandt, Brandt vicinity, 00000120

Lincoln County

Skartvedt House, 224 E. 2nd St., Canton, 00000121

Minnehaha County

Lund, Daniel, House, 628 West 20th, Sioux Falls, 00000123

Welch, Laura M, House, (Lustron Houses in South Dakota MPS), 1218 S. Willow Ave., Sioux Falls, 00000122

TENNESSEE

Monroe County

McCroskey, John, House, 3224 Sweetwater-Vonore Rd., Sweetwater vicinity, 00000125

[FR Doc. 00–2227 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 22, 1999, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture in bulk 2,5-dimethoxyamphetamine for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 3, 2000.

Dated: December 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2152 Filed 2–1–00 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 19, 1999, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk of manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

And other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 3, 2000.

Dated: December 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2153 Filed 2–1–00 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2033–99]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Implementation of Operation Rio Grande for the United States Border Patrol, McAllen, TX

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

In furtherance of its mission to gain and maintain control of the border, in August 1997, the Immigration and Naturalization Service (INS), U.S. Border Patrol, McAllen, Texas, implemented Operation Rio Grande to prevent illegal entry and drug trafficking along the Rio Grande corridor between the United States and Mexico. Operation Rio Grande involves five project actions within the Border Patrol Stations of Rio Grande City, McAllen, Mercedes, Harlingen, Brownsville, and Port Isabel. Specifically, the project will enhance the mission of the U.S. Border Patrol along the Rio Grande corridor fencing, lighting, boat ramps, road improvements, and remote video surveillance systems.

These actions are intended to reduce, detect, and deter the influx of illegal entry and drugs into the McAllen Sector, especially into nearby towns, as well as to increase apprehensions, increase community safety, and provide increased safety of operations for agents. Also, this initiative will help reduce the risk of drowning as undocumented aliens attempt to swim across the river and irrigation canals.

In February 1998, the INS began to conduct an Environmental Assessment (EA) regarding Operation Rio Grande and in October 1998, a Draft EA was released for public comment. Due to the public's concerns regarding Operation Rio Grande's impacts to the Lower Rio Grande Valley, the INS agreed to prepare an environmental Impact Statement.

Alternatives

In developing the DEIS, the options of no action and alternatives for Operation Rio Grande will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of the Lower Rio Grande Valley. The meeting will be well publicized and held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the INS with interested community leaders, officials, and citizens.

DEIS Preparation

Public notice will be given in the **Federal Register** concerning the availability of the DEIS for public review and comment.

FOR FURTHER INFORMATION CONTACT: Manny Rodriguez, Chief Policy and Planning, Immigration and Naturalization Service, Facilities and Engineering Division, 425 I Street, NW, Washington, DC 20536, Room 2060, Attn: Debra Hood, Telephone: 202–353–4386, or Eric Verwers, INS Architect and Engineering Resource Center, U.S. Army Corp of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas, 76102–0300, Telephone: 817–978–0202.

Dated: January 18, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–2233 Filed 02–01–00; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Vermont Yankee Nuclear Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–271]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee) for operation of the Vermont Yankee Nuclear Power Station located in Vernon, Vermont.

The proposed amendment would redefine the functional testing criteria for the noble gas activity monitor instrumentation in the Augmented Off-Gas (AOG) system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its

analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change standardizes requirements and establishes consistency with other current TS [technical specifications] provisions. Since reactor operation under the revised Specification is unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events or assumed mitigation of accident or transient events. The structural and functional integrity of plant systems is unaffected. Thus, there is no significant increase in the probability or consequences of accidents previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created. No safety-related equipment or safety functions are altered as a result of these changes. Because it does not involve any change to the plant or the manner in which it is operated, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not affect design margins or assumptions used in accident analyses, and has no effect on any initial condition. The capability of safety systems to function and limiting safety system settings are similarly unaffected as a result of this change. Thus, the margins of safety required for safety analyses are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 3, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David R. Lewis, Shaw, Pitttman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 20, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 27th day of January 2000.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2232 Filed 2–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[50–461]

Amergen Energy Company, LLC; Clinton Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to AmerGen Energy Company, LLC (the licensee), for operation of the Clinton Power Station, located in DeWitt County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve changes to the Updated Safety Analysis Report (USAR) concerning design requirements for physical protection from tornado missiles for safety-related equipment.

The proposed action is in accordance with the licensee's application for amendment dated March 1, 1999.

The Need for the Proposed Action

During reviews of safety-related targets susceptible to tornado missile damage, it was identified that some building penetrations, ventilation openings, doors, and piping connected to the reactor core isolation cooling storage tank are not protected from tornado missiles. An analysis was performed to demonstrate that the probability of damage due to tornado missiles striking safety-related equipment is acceptably low. Therefore, the proposed action is needed to avoid unnecessary construction of tornado missile protection.

Environmental Impacts of the Proposed Action

The Commission has evaluated the proposed action and concludes that there will be no physical change to the plant as-built; therefore, there will be no environmental impacts due to construction.

With regard to plant design, the proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Clinton Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on December 28, 1999, the staff consulted with the Illinois State official, Joseph Brittin, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 1, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 27th day of January 2000.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2231 Filed 2–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on 10 CFR Part 70 Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. During the meeting, the staff's proposed resolutions to comments received on the 10 CFR Part 70 draft Standard Review Plan. The staff's proposed resolutions to the comments received on the Standard Review Plan can be viewed on the internet at the following website: http://techconf.llnl.gov/cgi-bin/library?source = *&library = Part_70_lib&file=*

The meeting will provide an opportunity to discuss the staff's proposed resolutions to public comments received on the draft 10 CFR Part 70 Standard Review Plan.

DATES: The meeting is scheduled for Wednesday and Thursday, February 9–10, 2000, from 9:00 am to 4:00 pm. The meeting is open to the public.

ADDRESSES: NRC's Licensing Board Hearing Room at Two White Flint North, Room 3B45, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Theodore S. Sherr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7218, e-mail: *tss@nrc.gov*

Dated at Rockville, Maryland, this 27th Day of January, 2000.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

Agenda, Public Meeting, Part 70 Standard Review Plan Comment Resolution, February 9–10, 2000

- Opening remarks—NRC
- Introduction—NRC
- General remarks—NEI/other participants
- Discussion of SRP comments received
  - Overall introduction—NRC
  - On a chapter-by-chapter basis:

—Introduction—NRC
—Completeness of comment resolution table—NEI/other participants
—Discuss specific comment resolutions identified by NEI/other participants

- Comments by attendees other than NEI
- Closing remarks
  - NRC
  - Participants

[FR Doc. 00–2230 Filed 2–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting, Notice

DATE: Weeks of January 31, February 7, 14, and 21, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 31

There are no meetings scheduled for the Week of January 31.

Week of February 7—Tentative

Tuesday, February 8

9:30 a.m.
Discussion of Nuclear Issues in the Former Soviet Union (Closed—Ex. 1 & 9).

Wednesday, February 9

10:00 a.m
Briefing on Status of Research Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting). (Contact: Jocelyn Mitchell, 301–415–5289)

Thursday, February 10

9:25 a.m.
Affirmation Session (Public Meeting) (if needed).
9:30 a.m.
Briefing on Status of CFO Programs, Performance, and Plans (Public Meeting). (Contact: Lars Solander, 301–415–6080).

Friday, February 11

9:30 a.m.
Briefing on Status of NMSS Programs, Performance, and Plans (Public Meeting). (Contact: Claudia Seelig, 301–415–7243).

Week of February 14—Tentative

There are no meetings scheduled for the Week of February 14.

Week of February 21—Tentative

Tuesday, February 22

9:00 a.m.
Briefing on Threat Environment Assessment (Closed—Ex. 1).
11:00 a.m.
Briefing by the Executive Branch (Closed—Ex. 1).

Wednesday, February 23

8:55 a.m.
Affirmation Session (Public Meeting) (if needed).
9:00 a.m.
Briefing on Status of Spent Fuel Projects (Public Meeting).
10:45 a.m.
Discussion of Intragovernmental Issues (Closed—Ex. 9).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—301–415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary. Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nr.gov or dkw@nrc.gov.

Dated: January 28, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–2430 Filed 1–31–00; 2:50 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of the Filings and Information Services, Washington, DC 20549.

Extension: Form N–23C–1, SEC File No. 270–230, OMB Control No. 3235–0230.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 23(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–23(c)] ("Investment Company Act" or "Act") prohibits a registered closed-end investment company ("closed-end fund") from purchasing any security it

issues on a securities exchange, pursuant to tender offers, or under such other circumstances as the Commission may permit by rules or orders designed to ensure that purchases are made in a manner that does not unfairly discriminate against any holders of the securities to be purchased. Rule 23c–1 [17 CFR 270.23c1] under the Act permits a closed-end fund that meets certain requirements to repurchase its securities other than on an exchange or pursuant to a tender.

A registered closed-end fund that relies on rule 23c–1 may purchase its securities for cash if, among other conditions set forth in the rule, certain conditions are met:

- Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase;
- The purchase is made at a price not above the market value, if any, or the asset value of the security, whichever is lower, at the time of the purchase; and
- If the security is stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of the class by letter or report addressed to all the stockholders of the class.

In addition, the issuer must file with the Commission, on or before the tenth day of the month following the date in which the purchase occurs, two copies of Form N–23C–1. The form requires the issuer to report all purchases it has made during the month, together with a copy of any written solicitation to purchase securities under rule 23c–1 sent or given during the month by or on behalf of the issuer to ten or more persons.

The purpose of rule 23c–1 is to protect shareholders of closed-end funds from fraud in connection with the repurchase by funds of their own securities. The purpose of the rule's requirement that the fund file Form N–23C–1 with the Commission is to allow the Commission to monitor funds' repurchase of securities as well as any written solicitation used by the fund to effect those repurchases, and to make that information available to the public. Investors may seek this information when determining whether to invest in certain funds.

The requirement to file Form N–23C–1 applies to a closed-end fund only when the fund has repurchased its securities. If the information provided in the form were collected less frequently than a month after repurchases occur, the Commission and investing public would lack current information about closed-end funds that repurchase their own securities.

Commission staff estimates that each year approximately 19 closed-end funds use the repurchase procedures under rule 23c–1, and that these funds file a total of 115 forms each year.[1] The number of forms filed by each fund ranges from 1 to 12 depending on the number of months in which the fund repurchases its securities under rule 23c–1. Commission staff estimates that each response requires 1 burden hour to prepare and file Form N–23C–1 with a copy of any written solicitation to purchase securities under the rule (if necessary). Commission staff estimates each burden hour consists of 15 minutes of professional time and 45 minutes of support staff time.[2] Commission staff further estimates that each of the 19 funds expends between 1 and 12 hours annually in filing Form N–23C–1. The total number annual burden of the rule's paperwork requirements is estimated to be 115 hours.

These estimates represent an increase of 92 hours from the prior estimate of 23 hours. The increase results primarily from the increase in the number of funds relying on the rule to purchase their securities. At the time of the last submission the Commission estimated that 4 funds filed a total of 23 Form N–23C–1s annually with the Commission (with each fund filing between 1 and 12 forms during the year). In 1999, 19 funds filed 115 forms with the Commission.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

[1] These estimates are based on Form N–23C–1 filings for 1999.

[2] The burden hour estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: January 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2184 Filed 2–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42360/January 28, 2000; File No. 4–430]

Order Directing the Exchanges and the National Association of Securities Dealers, Inc. To Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

Notice is hereby given that, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act"),[1] the Securities and Exchange Commission ("Commission") orders the American Stock Exchange LLC ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (collectively the "Participants" and individually a "Participant") to act jointly in discussing, developing, and submitting to the Commission a plan to implement decimal pricing in the equities and options markets beginning no later than July 3, 2000 ("Decimals Implementation Plan"), and in implementing the Decimals Implementation Plan. The Participants should discuss the development and implementation of the Decimals Implementation Plan with interested market participants, including, but not limited to, the Securities Industry Association ("SIA") and its members, the International

[1] Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the establishment of a national market system, by rule or order, "to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof." 15 U.S.C. 78k–1(a)(3)(B).

Securities Exchange ("ISE"),[2] the National Securities Clearing Corporation ("NSCC"),[3] the Depository Trust Company ("DTC"),[4] the Options Clearing Corporation ("OCC"),[5] the Securities Industry Automation Corp. ("SIAC"),[6] the Intermarket Trading System Operating Committee ("ITSOC"),[7] the Options Price Reporting Authority ("OPRA"),[8] the Consolidated Tape Association ("CTA"),[9] and the Consolidated Quote Operating Committee ("CQOC") (collectively the "Interested Parties").[10] The Commission further directs the Participants to submit to the Commission a Decimals Implementation Plan no later than 45 days after the issuance of this Order. Finally, the Commission directs each Participant to submit for notice, comment and Commission consideration the rule changes necessary to implement the Decimals Implementation Plan no later than 60 days after the issuance of this Order.[11]

I. Background

The current convention of quoting stock prices in fractions dates back more than two hundred years.[12] The United States securities markets are the only major markets not to price securities in decimals.[13] For the past few years, market participants and the Commission have discussed the possibility and usefulness of moving to decimal pricing. In January 1994, Commission staff recognized the potential benefits of decimal pricing over the current fraction-based pricing scheme and indicated that a move to decimals was likely to be inevitable.[14] Throughout the mid and late 1990s, the Commission engaged the securities industry and the public in a discussion of the need for decimal pricing in the U.S. securities markets.

On March 13, 1997, this debate moved to the legislative arena when Congressman Oxley[15] introduced a bill in the U.S. House of Representatives that would have directed the Commission to adopt a rule requiring quotations in dollars and cents for transactions in equity securities.[16] Subsequently, the NYSE announced that it would implement decimal pricing by January 2000.[17] Other markets soon followed suit.[18] In light of this activity, the bill was not taken to full markup in the House Commerce Committee.

On May 8, 1998, the General Accounting Office ("GAO") determined that "[e]nsuring that securities industry systems are ready for the Year 2000 is too important to the continued functioning of the industry to risk failure by attempting to implement decimal trading before the Year 2000 effort is completed."[19] Chairman Levitt, in the Commission's response to the GAO report, concurred in this assessment.[20] Chairman Levitt noted the importance, however, of setting a date certain by which the markets must move to decimal pricing. He noted that the industry should strive to implement decimal pricing by June 30, 2000.[21] In light of what appears to be a successful resolution of the Year 2000 problem, the Commission believes that the industry's primary technological priority should be the implementation of decimal pricing.

On August 25, 1998, Commission staff requested that the Participants provide information regarding the status of rule and systems changes that would need to be adopted to implement decimal pricing.[22] The Participants' responses indicated that a range of rules and systems would require modification to accommodate decimal pricing.[23]

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[2] The ISE has filed an application with the Commission to register as a national securities exchange. *See* Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999).

[3] NSCC, a clearing agency registered with the Commission pursuant to Section 17A of the Act, clears and guarantees securities transactions and determines its members' net settlement obligations.

[4] DTC, a clearing agency registered with the Commission pursuant to Section 17A of the Act, is the depository for more than 90% of the securities held in the United States.

[5] OCC, a clearing agency registered with the Commission pursuant to Section 17A of the Act, issues and clears transactions in options on equities, currencies, indexes, and financial instruments, records participants' positions, and determines participants' daily options net settlement obligations.

[6] SIAC is a registered exclusive securities information processor and is owned by the AMEX and the NYSE. *See* Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372 (Jan. 29, 1976).

[7] The ITSOC consists of representatives from each Participant and is responsible for implementing the terms of the ITS plan

[8] OPRA is an association governed by a committee consisting of representatives of the four national securities exchanges authorized by the Commission to list options for trading (the AMEX, the CBOE, the PCX, and the PHLX) and of the NYSE (which no longer lists options for trading). In 1976, OPRA registered as a securities information processor. *See* Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372 (Jan. 29, 1976). OPRA was formed and operates pursuant to a plan approved by the Commission on March 18, 1981, as amended. *See* Securities Exchange Act Release No. 17638, as amended. *See, e.g.*, Securities Exchange Act Release No. 40767 (Dec. 9, 1998), 63 FR 69354 (Dec. 16, 1998).

[9] The CTA governs the consolidated transaction reporting system. It consists of representatives from each Participant.

[10] The CQOC oversees the development and implementation of a consolidated data stream for quotation information. *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978). It is a committee consisting of representatives from each of the exchanges and the NASD.

[11] Additional requirements are discussed at text accompanying note 34.

[12] Testimony of Lois Kazakoff, Business News Editor, The San Francisco Chronicle, before the Subcommittee on Finance and Hazardous Materials, Committee on Commerce, U.S. House of Representatives on April 10, 1997.

[13] Testimony of Steven M.H. Wallman, Commissioner, Commission, before the Subcommittee on Finance and Hazardous Materials, Committee on Commerce, U.S. House of Representatives on April 10, 1997 ("Wallman Testimony").

[14] Division of Market Regulation ("Division"), Commission, *Market 2000: An Examination of Current Equity Market Developments* (Jan. 1994).

[15] Congressman Oxley introduced the bill for himself and Congresspersons Markey, Bliley, Gillmor, Crapo, Furse, Largent, Ganske, Boucher

[16] H.R. 1053, 105th Cong. 1st Sess. (1997) (commonly referred to as the "Common Cents Stock Pricing Act of 1997").

[17] *See* Floyd Norris, *So Long, Fractions, But Maybe Not Till 2000*, N.Y. Times, June 6, 1997, at D1.

[18] See Letter from Arthur Levitt, Chairman, Commission, to the Honorable John D. Dingell and the Honorable Thomas J. Manton, U.S. House of Representatives, dated July 25, 1997. As the markets committed to move to decimal pricing, they took the interim step of quoting in narrow increments. See *e.g.*, Securities Exchange Act Release Nos. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (permitting all AMEX equity securities selling at or above $.25 to trade in sixteenths); 38744 (June 18, 1997), 62 FR 34334 (June 25, 1997) (order approving proposal to quote in sixteenths on the NYSE); 38779 (June 26, 1997), 62 FR 36328 (July 7, 1997), (order approving proposal to quote in sixteenths on the PHLX); and 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (changing the minimum quotation increment for certain Nasdaq securities to sixteenths).

[19] Testimony of Thomas J. McCool, Director, Financial Institutions and Markets Issues, GAO, before the Subcommittee on Finance and Hazardous Materials, Committee on Commerce, U.S. House of Representatives on May 8, 1998. The GAO also recommended that the Commission, in directing the securities industry's move to decimal pricing, assess: (1) The potential impact of decimal trading on the industry's processing and communication capacity; and (2) the impact on market regulations and exchange rules.

[20] While confirming the importance of moving to decimals expeditiously, he stated that "the industry's technological priority must be to prepare for Year 2000 readiness." *See* letter from Arthur Levitt, Chairman, Commission, to the Honorable Ted Stevens and the Honorable Fred Thompson, U.S. Senate, and to the Honorable Dan Burton and the Honorable Bob Livingston, U.S. House of Representatives, dated July 20, 1999.

[21] *Id.*

[22] *See* letter from Richard R. Lindsey, Director, Division, Commission, to the Participants, dated August 25, 1998.

[23] *See e.g.*, letters from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Richard R. Lindsey, Director, Division, Commission, dated September 24, 1998 (citing, in part, the need for possible amendments to the Intermarket Trading System Plan and exchange surveillance procedures); and Charles J. Henry, President and Chief Operating Officer, CBOE, to Richard R. Lindsey, Director, Division, Commission, dated September 16, 1998 (identifying, in part, the following rules that would have to be amended or reconsidered as a result of decimals: Retail Automatic Execution System operations, crossing orders, and priority rules). In

Because many of these rule and systems changes will have an impact on the securities industry as a whole, the Participants must develop a coordinated plan for converting to decimal pricing. To ensure a smooth conversion to decimal pricing, the Commission is therefore directing the Participants to develop a Decimals Implementation Plan and submit rule changes necessary to implement the plan to the Commission.[24]

II. Discussion

Section 11A(a)(2) of the Act[25] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system for securities. Section 11A(a)(3)(B) gives the Commission the ability to authorize or require by order the self-regulatory organizations "to act jointly * * * in planning, developing, operating, or regulating a national market system."[26] This authority enables the Commission to require joint activity that otherwise might be asserted to have an impact on competition, where the activity serves the public interest and the interests of investors.[27]

The Commission believes that decimal pricing could benefit investors by enhancing investor comprehension, facilitating globalization of our markets, and potentially reducing transactions costs, depending on the minimum price variant used.[28] These benefits in turn will further the national market system objectives of economically efficient execution of securities transactions and fair competition.

In light of the complex technical and legal issues raised by the industry-wide conversion to decimal pricing, a coordinated industry effort is necessary to ensure that the markets continue to operate in an efficient, orderly, and fair manner during the conversion process. In particular, the Participants will need to convert the systems governing the quotation, trading, reporting and surveillance of securities traded on their marketplaces. In addition, the Participants may need to discuss the market-wide impact of small minimum, price variations, such as one penny, on trading rules, such as priority and trade-through rules. Similarly, clearing agencies will need to modify their systems to clear and settle trades priced in decimals. Entities that operate systems that link the different markets or disseminate information, such as the Intermarket Trading System and CTA, also will need to allow for quotation and reporting in decimals. Because information is processed and shared among all of these entities, it is imperative that all market participants convert to decimals in a coordinated manner.

The Commission therefore finds that the public interest in maintaining fair and orderly markets is furthered by requiring the Participants to work jointly in discussing, developing, and implementing a Decimals Implementation Plan, and by discussing the plan with the Interested Parties. To ensure a smooth conversion to decimal pricing, the Commission is directing the Participants to develop a Decimals Implementation Plan and requiring each Participant to submit for notice, comment and Commission consideration the rule changes necessary to implement the plan.

III. Plan

While the Commission is not mandating the details of a Decimals Implementation Plan, the plan must provide that decimal pricing of at least some equities (and options on those equities) trading on the Participants' markets will begin no later than July 3, 2000, and decimal pricing of all equities and options on the Participants' markets will be completed within six months of that date.[29] If the Participants adopt a phase-in plan for implementing decimal pricing, rather than pricing all equities and options on the Participants' markets in decimals on July 3, 2000, the plan must provide specific dates by which each phase will be completed and identify which securities will be priced in decimals during each phase. The Decimals Implementation Plan may fix the minimum increment during the phase-in period, provided that the minimum increment is no greater than five cents for any equity priced in decimals. The Commission believes that it is appropriate for the Participants to establish a minimum increment during the phase-in period to allow the industry to make a smooth transition to decimal pricing and to determine the impact of decimal pricing on trading rules and inter-market systems capacity.[30]

The Commission also believes that the securities industry should study the impact of quoting and trading in increments smaller than a nickel on trading patterns and capacity. For example, there are concerns that OPRA may not have a sufficient capacity to handle increased quote traffic resulting from the conversion to decimal pricing and other market changes.[31] As a result, queuing and stale quotes may become an issue if quote traffic exceeds OPRA's capacity.[32] Therefore, in the event that the Participants adopt a phase-in plan using a minimum increment greater than a penny, the Participants should also concurrently establish a pilot program that provides for selected securities (equities and options on those equities) to be traded in penny increments. The pilot should allow the Participants and the Commission to evaluate the effect of smaller trading increments on capacity and trading behavior. The pilot should run concurrently with the phase-in period and should be considered part of the Decimals Implementation Plan.

Thirty days after the end of the phase-in period, the Participants must submit (1) a study to the Commission regarding the impact of decimal pricing on trading and capacity, including the impact of the pilot program, and (2) a recommendation regarding the need for uniform minimum increments, if any. The recommendation should discuss whether one uniformn minimum increment should be adopted or

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light of the potential impact of decimal pricing on the industry's processing and communication capacity, the SIA commissioned SRI Consulting to assess the impact on message traffic of trading equities and options in decimals. The study projected that in the listed equities markets, a nickel minimum price variation could increase daily quote volume by 3.5 percent, while a penny minimum price variation could increase quote volume by 139 percent. In addition, SRI projects that, by the end of 2001, options message traffic may increase by as much as 257 percent as a result of decimal pricing.

[24] By letter dated October 14, 1999, the AMEX, CBOE, NASD, PCX and PHLX asked the Commission to authorize expressly joint discussions and action by the exchanges regarding decimal pricing. *See* letter from Colleen P. Mahoney to Harvey J. Goldschmid, General Counsel, Commission, dated October 14, 1999.

[25] 15 U.S.C. 78k–1(a)(2).

[26] 15 U.S.C. 78k–1(a)(3)B).

[27] *See, e.g.*, Securities Exchange Act Release No. 41843 (Sept. 7, 1999), 64 FR 50126 (Sept. 15, 1999) (order directing options exchanges to develop strategies to mitigate quote message traffic); and Securities Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (Oct. 26, 1999) (order directing options exchanges to submit an intermarket linkage plan).

[28] As discussed above, the U.S. securities markets are the only major markets not using decimals. *See* Wallman Testimony, *supra* note 13.

[29] The Commission is not mandating that the phase-in period last six months. Instead, six months is the maximum time period for phasing in decimal pricing. After considering options capacity studies and after discussions with the industry, the Commission believes that six months provides adequate time for the Participants to make an orderly transition to decimal pricing while responding to changes in the markets that could result from the conversion from fractions to decimals.

[30] *See supra* note 23.

[31] *See* SIAC/SRI Consulting, *Mitigating Options Message Traffic Final Report* (Dec. 14, 1999).

[32] *Id.* at 1.

whether different minimum increments should be applied and the criteria by which the Participants would select securities to be traded in those various minimum increments. Thirty days after submitting their study and recommendation, and absent Commission action, the Participants individually must submit for notice, comment and Commission consideration proposed rule changes to implement their individual choice of minimum increments by which equities and options are quoted and traded on their respective markets.

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act, [33] that the Participants act jointly in discussing, developing and submitting to the Commission a Decimals Implementation Plan, as described above. The Participants are ordered to submit to the Commission a Decimals Implementation Plan for the equity and options markets no later than 45 days after the issuance of this Order. In addition, each Participant is ordered to submit for notice, comment and Commission consideration the rule changes necessary to implement the Decimals Implementation Plan no later than 60 days after the issuance of this Order. [34] The Participants are also directed to submit a study and recommendation, as described in this Order, 30 days after the phase-in period. In addition, absent Commission action, 30 days following the submission of the study, each Participant must submit rule changes implementing their individual choice of minimum pricing increments for their respective markets for notice, comment and Commission consideration.

This Order will be effective until such time as the implementation of decimal pricing is completed.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[33] 15 U.S.C. 78k–1(a)(3)(B).

[34] Although Commission staff may be consulted in discussing the proposed Decimals Implementation Plan, staff presence at joint discussions is not required by this Order. In issuing this Order, the Commission does not address: (a) any joint or other conduct that occurred prior to the issuance of this Order, and (b) any joint or other conduct occurring after the date of this Order that is not ordered or requested by this Order.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42348; File No. SR–CHX–99–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Listing of Trust Issued Receipts

January 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on December 2, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade a trust issued receipt based on the stocks of selected biotechnology companies, Biotech HOLDRs, pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at the Office of the Secretary, CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 1999, the Commission approved a new CHX rule, Article XXVIII, [3] Rule 27, which provides listing standards for trust issued receipts. At the same time, the Commission authorized the Exchange to list and trade Internet HOLDRs, a particular type of trust issued receipt.[4] As noted in that approval order, the Exchange must consult with the Commission prior to listing and trading other similarly structured products, including trust issued receipts based on other industries. The Exchange now proposes to list and trade a new type of trust issued receipt, Biotech HOLDRs, pursuant to unlisted trading privileges.

As noted in the CHX's earlier submission, trust issued receipts provide investors with a flexible, cost-effective way to purchase, hold and transfer the securities of one or more specified companies. Except for the individual securities that are deposited in the Biotech HOLDRs trust, this trust issued receipt is structurally identical to the Internet HOLDRs that the Commission has already approved for listing and trading on the Exchange.

i. Trust Issued Receipts Generally

Description. Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts allow investors to hold securities investments from a variety of companies in a single, exchange-traded instrument that represents their beneficial ownership of each of the deposited securities, evidenced by the receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

The initial offering price for a trust issued receipt will be established on the dates the receipts are priced for sale to the public. The amounts of deposited securities for each round lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references in this filing should be to Article XXVIII, not XXVII, pursuant to telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on December 21, 1999.

[4] Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999).

Beneficial owners of the receipts have the same rights and privileges as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. For example, holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts; will receive reports, proxies and other information distrusted by the issuers of the deposited securities to their security holders; and will receive dividends and other distributions if any are declared and paid by the issuers of the deposited securities to the trustee, net of any applicable taxes and fees.

Creation of a Trust. Trust issued receipts are issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts.

ii. *Creation of Biotech HOLDRs*[5]

The Biotech HOLDRS trust was formed under a depósitory trust agreement, dated November 18, 1999, among the Bank of New York, as trustee, Merrill Lynch, Pierce, Fenner & Smith Incorporated, other depositors and the owners of the trust issued receipts. The Biotech HOLDRs trust will hold shares of common stock issued by 20 specified companies that are generally considered to be involved in various segments of the biotechnology industry. The specific share amounts for each round-lot of 100 Biotech HOLDRs were determined as of October 27, 1999, as that the initial weightings of each underlying security approximated the relative market capitalization of the specified companies, subject to a maximum weight of 20%.

The deposited securities underlying the Biotech HOLDRs are: Amgen, Inc. (AMGN), Genentech, Inc. (DNA), Biogen, Inc. (BGEN), Immunex Corporation (IMNX), PE Corp.—PE Biosystems Group (PEB), MedImmune, Inc. (MEDI), Chiron Corporation (CHIR), Genzyme Corporation (GENZ), Gilead Sciences, Inc. (GILD), Sepracor Inc. (SEPR), IDEC Pharmaceuticals Corporation (IDPH), QLT Phote Therapeutics Inc. (QLTI), Millenium Pharmaceuticals, Inc. (MLNM), BioChem Pharma Inc. (BCHE), Affymetrix, Inc. (AFFX), Human Genome Sciences, Inc. (HGSI), ICOS Corporation (ICOS), Enzon, Inc. (ENZN), Celera Genomics (CRA) and Alkermes, Inc. (ALKS).

The twenty companies represented by the securities in the portfolio underlying the Biotech HOLDRs trust were required to meet the following minimum criteria: (1) each company's common stock must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each company included in the portfolio must be at least $150 million; (3) each security must be either listed on a national securities exchange or traded through the facilities of Nasdaq and must be a reported national market system security; (4) the average daily trading volume for each stock must be at least 100,000 shares during the preceding 60-day trading period; (5) the average daily dollar value of the shares traded during the preceding 60-day trading period must be at least $1 million; and (6) the initial weighting of each security in the portfolio must be based on market capitalization; however, any security that represents more than 20% of the receipt value on the date the weighting is determined, must be reduced to no more than 20% of the receipt value.

In addition, each of the companies whose common stock is included in Biotech HOLDRs also met the following criteria when they were selected on October 27, 1999: (1) the market capitalization for each company was equal to or greater than $840 million; (2) the average daily trading volume for each security was at least 200,000 shares over the 60 trading days prior to and including October 27, 1999; (3) the average daily dollar value of the shares traded for each company during the sixty-day trading period prior to and including October 27, 1999 was at least $7.5 million; and (4) each company was traded on a national securities exchange or Nasdaq/NM for at least ninety days prior to October 27, 1999.

iii. *Criteria for Initial and Continued Listing of Biotech HOLDRs*

Initial Listing. Under Article XXVIII, Rule 27, the Exchange must establish a minimum number of trust issued receipts that is required to be outstanding on the date trading begins on the Exchange. The Exchange anticipates that a minimum of 150,000 Biotech HOLDRs will be required to be outstanding when CHX trading begins. The Exchange understands that approximately 4.5 million Biotech HOLDRS were outstanding on November 24, 1999, the date the receipts were first traded on the Amex.

Continued Listing. Under applicable listing standards, the Exchange will consider the suspension of trading in, or removal from listing of, Biotech HOLDRs when any of the following circumstances arise: (1) if the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of the receipts issued and outstanding is less than $1,000,000; or (4) if any other event occurs, or any other condition exist, which, in the opinion of the Exchange, makes further trading on the Exchange inadvisable. These flexible criteria allow the Exchange to avoid delisting trust issued receipts (leading to a possible termination of the trust) because of relatively brief fluctuations in market conditions that may cause the number of holders to vary.

The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one year after the initial listing of those trust issued receipts for trading on the Exchange.

If the number of companies represented by the deposited securities drops to less than nine, and each time thereafter the number of companies is reduced, the Exchange will consult with the Commission to confirm the appropriateness of continued listing of the trust issued receipts.

iv. *Exchange Rules and Procedures Applicable to the Trading of Biotech HOLDRs*

Trust issued receipts, including Biotech HOLDRs, are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of Article XX, Rule 40 ("ITS 'Trade-Throughs' and 'Locked Markets' "), which prohibit CHX members from initiating trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[6] Exchange equity margin rules will apply.

[5] This section of the CHX's submission, as well as other sections, contains information about Biotech, HOLDRs. This information is based upon descriptions included in the Biotech HOLDRs prospectus, the American Stock Exchange ("Amex") submissions relating to its proposal to list and trade Biotech HOLDRs and the Commission's order approving the Amex proposal.

[6] There are two exceptions to this general principle. First, because trust issued receipts are traded only in round lots (or round-lot multiples), the Exchange's rules relating to odd-lot executions will not apply. Additionally, the Exchange understands that the Commission has provided an

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Biotech HOLDs will trade in the minimum fractional increments described in CHX Article XX, Rule 22. To the extent that Biotech HOLDRs are also traded on the Amex, those receipts will trade at a minimum variation of 1/16th of $1.00 trust issued receipts selling at or above $.25 and 1/32nd of $1.00 for for those selling below $.25. If the trust issued receipts are traded on any other exchange or are exclusively listed on the CHX, different minimum fractional increments may apply.

The Exchange's surveillance procedures for Biotech HOLDRs will be similar to the procedures used for portfolio depository receipts and will incorporate and rely upon existing CHX surveillance systems.

Prior to the commencement of trading of Biotech HOLDRs and any other trust issued receipt, the Exchange will distribute a circular to its members and member organizations alerting them to the unique characteristics of trust receipts, including the fact that trust issued receipts are not individually redeemable. The circular will also confirm that trust issued receipts are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (Article IX, Rule 10A) and that the underlying securities included in the trust are subject to the Exchange's rule which allows Exchange officials to halt trading in specific securities, under certain circumstances (Article IX, Rule 10(b)). The circular will advise members that, in exercising the discretion described in Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in an underlying security and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

v. *Disclosure to Customers*

As with Internet HOLDRs, the Exchange will require its members to provide all purchasers of newly issued Biotech HOLDRs and other trust issued receipts with a prospectus for that series of trust issued receipts. The Exchange also notes that, under federal securities laws, all investors in trust issued receipts who purchase in the initial offering are required to receive a prospectus and that any person purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) is also required to receive a prospectus.

vi. *Trading of Biotech HOLDRs*

General Information. Trust issued receipts are unleveraged instruments and therefore do not possess many of the attributes of stock index options. The Exchange believes that the level of risk involved in the purchase and sale of trust issued receipts is almost identical to the risk involved in the purchase or sale of the common stocks presented by the receipt.

The Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The Exchange represents that the arbitrage process—which provides the opportunity to profit differences in prices of the same or similar securities (*e.g.*, the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts—should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of trust issued receipts deviates enough from the portfolio of deposited securities to create a material discount or premium, and arbitrage opportunity is created allowing the arbitrageur to either buy trust issued receipts at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Issuance and Cancellation of Biotech HOLDRs. A round lot of 100 Biotech HOLDRs represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The trust will issue and cancel, and an investor may obtain, hold, trade and surrender, Biotech HOLDRs only in a round lot of 100 trust issued receipts and round-lot multiples.[7] Nevertheless, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by either purchasing them on an exchange or by delivering to the trustee, during normal business hours, the underlying securities evidencing a round lot of trust issued receipts. The trustee will charge investors an issuance fee of up to $10 for each round lot of 100 trust issued receipts. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round-lot multiple of the trust issued receipts to the trustee, during normal business hours. The trustee will charge investors a cancellation fee of up to $10 for each round lot of 100 trust issued receipts. Lower charges may be assigned based on the volume, frequency and size of issuances and cancellations. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

Maintenance of the Biotech HOLDRs Portfolio. Except when a reconstitution event occurs, as described below, the securities represented by a trust issued receipt will not change.[8] According to the Biotech HOLDRs prospectus, under no circumstances will a new company be added to the group of issuers of the underlying securities.

Reconstitution Events. As described in the Biotech HOLDRs prospectus, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances, called "reconstitution events":

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act, then its securities will no longer be an underlying security and the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

exemption from the short sale rule, Rule 10a–1 under the Act, for transactions in Internet HOLDRs. 17 CFR 240.10a–1. To the extent that this exemption also applies to Biotech HOLDRs, the Exchange will issue a notice to its members detailing the terms of the exemption.

[7] Because Internet HOLDRs may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts, orders for less than a round lot (but not around-lot multiple) will be filled to the extent of the largest round-lot multiple, rejecting the remaining odd lot. For example, an order 50 trust issued receipts will be rejected and an order for 1,050 trust issued receipts will be executed in part (1,000) and rejected in part (50).

[8] Even if a reconstitution event does not occur, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the merger, consolidation or other corporate combination is between companies whose securities are already included in the trust issued receipts as underlying securities and the consideration paid is additional underlying securities, in which case the additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the securities are delisted.

As described in the prospectus, if a reconstituion event occurs, the trustee will deliver the underlying security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Termination of the Trust. As described in the Biotech HOLDRs prospectus, the trust will terminate on the earliest of the following occurrences: (1) If the trust issued receipts are delisted from the Amex and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the receipts are delisted; (2) if the trustee resigns and no successor trustee is appointed by the initial depositor within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (3) if 75% of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–26 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [10] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the orders approving the listing and trading of trust issued receipts generally, and Internet HOLDRs and Biotech HOLDRs specifically,[11] that the proposal to list and trade Biotech HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of biotechnology stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. [12]

The Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust issued receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the Amex); Securities Exchange Act Release No. 42159 (November 19, 1999), 64 FR 66947 (November 30, 1999) (approving listing and trading of Biotech HOLDRs on the Amex); and Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the CHX pursuant to UTP).

[12] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

securities.[13] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues.

B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the CHX's proposal to trade Biotech HOLDRs meets all of the specific criteria and listing standards that were approved in the Amex order approving the listing and trading of Biotech HOLDRs, pursuant to UTP.[14] Biotech HOLDRs are equity securities that will be subject to the full panoply of CHX rules governing the trading of equity securities on the CHX, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[15]

In addition, the delisting criteria allows the CHX to consider the suspension of trading and the delisting of a trust issued receipt if an event occurred that made further dealings in such securities inadvisable. This will give the CHX flexibility to delist trust issued receipts if circumstances warrant such action. CHX's proposal also provides procedures to halt trading in trust issued receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's representation that Biotech HOLDRs will not trade at a material discount or premium in relation to the overall of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade trust issued receipts in minimum fractional increments of 1/16th of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the CHX has developed surveillance procedures for trust issued receipts that incorporate and rely upon existing CHX surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading of Biotech HOLDRs, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of Biotech HOLDRs, including a statement regarding their redeemability and method of creation. The Commission notes that all investors in Biotech HOLDRs who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing Biotech HOLDRs directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all CHX member firms who purchase Biotech HOLDRs from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also notes the Exchange members' prospectus delivery requirements, and highlights the characteristics of Biotech HOLDRs. The circular also will inform members of Exchange policies regarding trading halts in Biotech HOLDRs.

D. Accelerated Approval

CHX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register.** The Commission believes that the Exchange's proposal to trade Biotech HOLDRs pursuant to UTP privileges, will provide investors with a convenient and less expensive ways of participating in the securities markets. The Commission believes that the proposed rule change could produce added benefits to investors through the increased competition between other market centers trading the products. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Biotech HOLDRs, as an investment tool, the CHX's proposal should help provide investors with increased flexibility in satisfying their investment needs. This is achieved by allowing investors to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes, however, that, notwithstanding approval of the listing standards for Biotech HOLDRs, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Moreover, additional series cannot be listed by the Exchange prior to contacting Division staff. In addition, the CHX may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

As noted above, the Commission has approved the listing and trading of Biotech HOLDRs at the Amex, under rules that are substantially similar to CHX Article XXVIII, Rule 27. The trading requirements of trust issued receipts at the CHX are substantially similar to the trading requirements of trust issued receipts at the Amex. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[16] The Commission believes that the trading of this product raises no new regulatory issues and, except for the composition of securities deposited in trust, the Biotech HOLDRs are structurally the same as the Internet HOLDRs trust issued receipts previously approved by the Commission by listing and trading on the Amex and CHX. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the

[13] The Commission has concerns about continued trading of the trust issued receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may no longer adequately reflect a cross section of the selected industry. Accordingly, the CHX has agreed to consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[14] *See supra,* note 11.

[15] Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

[16] *See supra,* note 11.

[17] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–CHX–99–26), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2287 Filed 2–1–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before April 3, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Gregory Diercks, Y2K Loan Program Manager, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 8100.

FOR FURTHER INFORMATION CONTACT: Dorothy Davidson, Accountant, 202–205–7661 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Amendments to License Application".

Form No: 415C.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 1,200.

Annual Burden: 300.

Title: "Request for Information Concerning Portfolio Financing".

Form No: 857.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Title: "Request for Information Concerning Portfolio Financing".

Form No: 860.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 1,500.

Annual Burden: 750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–2268 Filed 2–1–00; 8:45 am]

BILLING CODE 8025–01–P

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6795]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Thursday, March 16, 2000 from 8 a.m. to 12:30 p.m. The working groups will meet on Wednesday, March 15, 2000, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 7, 2000. Requests to have a copy of your material distributed to each member of the committee or working groups should reach the Coast Guard on or before March 3, 2000.

ADDRESSES: TSAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The working groups will begin meeting in the same room and may move to separate spaces designated at that time.

Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

(1) Report of the Voyage Planning Work Group.

(2) Report of the Electronic Charting Work Group.

(3) Report from the Tug Assistance and Remote Anchor Release Work Group.

(4) Report of the Communications Work Group.

(5) Report of the Casualty Analysis Work Group.

(6) Status on Cargo Securing Practices.

(7) Project update on the Interim Rule (IR) "Licensing and Manning for Officers of Towing Vessels".

(8) Project update concerning Current Initiatives Regarding Crew Alertness.

(9) Project update on the Automated Information System (AIS).

(10) Project update on the International Maritime Information Safety System (IMISS).

(11) Discussion on (a) two task statements: Cargo Securing and Barge Structural Failure; and (b) unique features of the harbor services/ship assist sector.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than March 7, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than March 3, 2000. If you would like a copy of your material distributed to each member of the committee or working groups in advance of a meeting, please submit 25 copies to the Assistant Executive Director no later than February 28, 2000.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: January 24, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–2146 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23–XX–32, Installation of Terrain Awareness and Warning System (TAWS) Approved Under TSO–C151a for Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) AC 23–XX–32 and request for comments.

SUMMARY: This notice announces the availability of and requests comments

regarding proposed Advisory Circular (AC) 23–XX–32, Installation of Terrain Awareness and Warning System (TAWS) Approved Under TSO–C151a for Part 23 Airplanes. This AC establishes an acceptable means, but not the only means, of obtaining FAA airworthiness approval for the installation of a TAWS that has been approved under Technical Standard Order (TSO)–C151a, Terrain Awareness and Warning System, in a Part 23 airplane.

DATES: Comments must be received on or before March 20, 2000. There will be no extensions for late comments.

ADDRESSES: Send both a hard copy and an electronic copy of all comments on the proposed AC to the Federal Aviation Administration, Attention: Pat Nininger (pat.nininger@faa.gov), Regulations and Policy Branch, ACE–111, Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone number (816) 329–4129, or facsimile (816) 329–4090.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Regulations and Policy Branch, ACE–111, Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone number (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of the proposed AC by contacting the person named above under **ADDRESSES** or the AC should be available within a few days on the internet at http://www.faa.gov/avr/air/airhome.htm. We invite interested persons to comment on the proposed AC by submitting comments to the address specified above. The FAA will consider all comments received on or before the closing date before issuing the AC. Comments may be examined at the Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106, between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

On November 29, 1999, the FAA issued TSO–C151a. TSO–C151a prescribes the minimum design standards that a TAWS must meet to be identified with the TSO–C151a marking. For further in-depth information concerning the TAWS' capabilities, refer to TSO–C151a.

The FAA's TSO process is a means of obtaining FAA design and performance approval for an appliance, system, or product. However, the TSO does not provide procedures for installation approval or procedures for design or implementation of an installation. With future rulemaking and heightened interest by manufacturers and operators to equip Part 23 airplanes with TAWS systems that are compliant with TSO–C151a, the FAA has recognized the need to establish guidance material for the design and test requirements for the installation of such systems. This AC has been developed as the means for providing such guidance for Part 23 airplanes.

Issued in Kansas City, Missouri, on January 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate.

[FR Doc. 00–2247 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circulars (AC) 25.981–1X, Fuel Tank Ignition Source Prevention Guidelines; and AC 25.981–2X, Fuel Tank Flammability Minimization

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circulars.

SUMMARY: The Federal Aviation Administration invites public comment on draft advisory material that provides guidelines for demonstrating compliance with proposed certification requirements for preventing ignition sources within the fuel tanks of transport category airplanes, as well as minimizing the formation of flammable vapors in the fuel tanks of those airplanes.

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Send all comments on the proposed advisory circulars to the Federal Aviation Administration, Attention: Mike Dostert, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056. Comments may also be submitted electronically to the following address: mike.doster@faa.gov.

FOR FURTHER INFORMATION CONTACT: Mike Dostert at the above address, telephone (425) 227–2132; facsimile (425) 227–1320, or e-mail mike.dostert@faa.gov.

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circulars?

You may obtain an electronic copy of the advisory circulars identified in this notice at the following Internet address: www.faa.gov/avr/air/airhome. htm. If you do not have access to the Internet, you may request a copy by contacting Domonique Adams, Program Management Branch, ANM–114, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2111.

How Do I Submit Comments on the Advisory Circulars?

Interested persons are invited to comment on the proposed advisory material by submitting such written data, views, or arguments as they may desire. Comments must identify the title of the AC and be submitted in duplicate to the address specified above. The Transport Airplane Directorate will consider all comments received on or before the closing date for comments before issuing the final advisory material.

Discussion

In Notice of Proposed Rulemaking 99–18, published in the **Federal Register** on October 29, 1999 (64 FR 58656), the FAA requested public comment on a proposal to require design approval holders of certain turbine-powered transport category airplanes to submit substantiation to the FAA that the design of the fuel tank system of previously certificated airplanes precludes the existence of ignition sources within the airplane fuel tanks. The proposed rule would also require the affected design approval holders to develop specific fuel tank system maintenance and inspection instructions for any items in the fuel tank system that re determined to require repetitive inspections or maintenance, to assure the safety of the fuel tank system. In addition, the proposed rule would require certain operators of those airplanes to incorporate FAA-approved fuel tank system maintenance and inspection instructions into their current maintenance or inspection program.

In addition to the amendments proposed in Notice 99–18, the FAA announced the development of advisory material to supplement the proposals. This notice announces the availability of that advisory material for public comment.

The first advisory circular, AC 25.981–1X, Fuel Tank Ignition Source Prevention Guidelines, provides

guidance on how to substantiate that ignition sources will not be present in airplane fuel tank systems following failures or malfunctions of airplane components or systems. Also included is guidance for developing any limitations for the instructions for Continued Airworthiness that may be generated by the fuel tank system safety assessment identified in Notice 99–18.

The second advisory circular, AC 25.981–2X, Fuel Tank flammability Minimization, provides information and guidance concerning compliance with the standards proposed in Notice 99–18 pertaining to minimizing the formation of flammable vapors in the fuel tanks, or mitigation of any hazards if ignition does occur.

Issued in Renton, WA, on January 14, 2000.

Vi L. Lipski,

Acting manager, Transport Airplane Directorate Aircraft Certification Service, ANM–100.

[FR Doc. 00–2262 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–01]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 22, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____ 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 27, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29854.
Petitioner: LifePort, Inc.
Section of the FAR Affected: 14 CFR 25.785(b) and 25.562.
Description of Relief Sought: To permit installation of a medical stretcher for carriage of non-ambulatory persons on a Gulfstream GV airplane.

Docket No.: 29859.
Petitioner: Hawaiian Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.344(b)(3) and 121.226(b)(3).
Description of Relief Sought: To permit Hawaiian to operate nine McDonnell Douglas DC–9 airplanes after August 20, 2001, until their expected retirement dates, on or before December 31, 2001, without installing the required digital flight data recorder in each airplane.

Docket No.: 29791.
Petitioner: United Parcel Service, Inc.
Section of the FAR Affected: 14 CFR 61.77(a).
Description of Relief Sought: To permit UPS to obtain special purpose pilots authorizations for certain holders of foreign pilot certificates to ferry U.S.-registered Boeing 727 aircraft listed on the UPS Operations Specifications between non-U.S. airports.

Docket No.: 29626.
Petitioner: Glen G. Rowlinson.
Section of the FAR Affected: 14 CFR 65.91(c)(1).
Description of Relief Sought: To permit Glen G. Rowlinson to be eligible for an inspection authorization without holding a current mechanic certificate with airframe and powerplant ratings that have been in effect for a total of at least 3 years.

Docket No.: 29745.
Petitioner: C&S Aviation, Limited.
Section of the FAR Affected: 14 CFR 135.25(b) and (c).
Description of Relief Sought: To permit C&S to operate under part 135 without having exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized by C&S's operations specifications.

Dispositions of Petitions

Docket No.: 29531.
Petitioner: Dornier Luftfahrt GmbH.
Section of the FAR Affected: 14 CFR 25.841(a)(2) and (a)(3).
Description of Relief Sought/Disposition: To allow the Dornier Model 328–300 airplanes to operate up to a maximum altitude of 35,000 feet instead of 31,000 feet, which is the currently approved limitation.

Denial, 12/22/99, Exemption No. 7090

Docket No.: 29871.
Petitioner: Construcciones Aeronauticas, S.A.
Section of the FAR Affected: 14 CFR 25.723.
Description of Relief Sought/Disposition: To permit Construcciones Aeronauticas, S.A., have one additional year to demonstrate compliance with § 25.723 for the CASA Model C–295 landing gear system.

Partial Grant, 12/17/99, Exemption No. 7088

Docket: No.: 29687.
Petitioner: R&M Aviation.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit R&M to operate its Agusta A–109E helicopter (Registration No. N97CH; Serial No. 11012) under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 11/19/99, Exemption No. 7078

Docket No.: 29818.
Petitioner: Michael Hoeffler.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121
Description of Relief Sought/Disposition: To permit Michael Hoeffler to conduct a local sightseeing flight at the Minute Man Airfield in Stow, Massachusetts, for the Bolton Historical Society, for compensation or hire, without complying with certain anti-

drug and alcohol misuse prevention requirements of part 135.

Grant, 12/3/99, Exemption No. 7085

Docket No.: 23358.
Petitioner: Clarke Environmental Mosquito Management, Inc.
Section of the FAR Affected: 14 CFR 91.313(c).
Description of Relief Sought/ Disposition: To allow CEMM to carry passengers in its Bell 47G–4A and 47G–3B–1 helicopters and Piper PA23–250, certificated in the restricted category, while performing aerial-site survey flights.

Grant, 12/1/99, Exemption No. 6701A

Docket No.: 29862.
Petitioner: Fairbury Area Pilots.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121
Description of Relief Sought/ Disposition: To allow FAP to conduct local sightseeing flights at an airport in the vicinity of Fairbury, Nebraska for a charity fundraiser on two days in December, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 12/15/99, Exemption No. 7086

Docket No.: 29857.
Petitioner: Flying Conestoga's.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To allow Flying Conestoga's to conduct local sightseeing flights at an airport in the vicinity of Beatrice, Nebraska for a charity fundraiser on two days in December, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 12/15/99, Exemption No. 7087

Docket No.: 26101.
Petitioner: America West Airlines.
Section of the FAR Affected: 14 CFR 93.123.
Description of Relief Sought/ Disposition: To permit America West to operate three flights at Ronald Reagan Washington National Airport (DCA). The slots for these flights previously were granted to Braniff Airlines, Inc., under Exemption No. 3927.

Grant, 12/15/99, Exemption No. 5133I

Docket No.: 28470.
Petitioner: Compoende Aeronáutica Ltda.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Compoende to use the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 10/28/99, Exemption No. 6550B

Docket No.: 28924.
Petitioner: STUNTS Adventure Equipment, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit SAE to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). The exemption also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps.

Grant, 10/28/99, Exemption No. 6693A

Docket No.: 28708
Petitioner: Empire Airlines, Inc.
Section of the FAR Affected: 14 CFR 43.9 and 121.709(b)(3).
Description of Relief Sought/ Disposition: To permit empire to use electronic signatures in lieu of physical signatures to satisfy airworthiness release or aircraft log entry signature requirements of § 43.9 for operations conducted under 14 CFR part 135 and § 121.709(b)(3) for operations conducted under part 121.

Grant, 11/2/99, Exemption No. 6668B

Docket No.: 29810.
Petitioner: IHC Life Flight.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit IHC Life Flight to operate three Super King Air B200 aircraft (Registration Nos. N301HC, N401HC and N501HC; Serial Nos. BB–1219, BB–1294, and BB–1306, respectively) and two Agusta A 109K2 rotorcraft (Registration Nos. N109RX and N123RX; Serial Nos. 10016 and 10018, respectively) under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.

Grant, 11/19/99, Exemption No. 7079

Docket No.: 28732.
Petitioner: Vieques Air Link, Inc.
Section of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought/ Disposition: To allow Vieques to operate its Britten-Norman BN–2A Mark III Trislander aircraft without TCAS equipment installed.

Partial Grant, 11/8/99, Exemption No. 7067

Docket No.: 29776.
Petitioner: Pomona Valley Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To allow the PVPA to conduct local sightseeing flights at Brackett Airport for the first annual Air Fair on November 6 and 7, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/5/99, Exemption No. 7066

Docket No.: 29566.
Petitioner: ANA IHI Aero-engines Co., Ltd.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To allow AIA to substitute the calibration standards of the National Research Laboratory of Metrology (NRLM) and Electrotechnical Laboratory (ETL), Japan's national standards organizations, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment.

Grant, 11/22/99, Exemption No. 7071

Docket No.: 29727.
Petitioner: Trajen, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Trajen to operate its Mooney M20M aircraft (Registration No. N57TF, Serial No. 270257) under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/28/99 Exemption No. 7062

[FR Doc. 00–2259 Filed 2–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–02]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 22, 2000.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No.__, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on January 27, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28357.
Petitioner: United Airlines, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit United Airlines, Inc., to make available to all of its supervisory and inspection personnel one copy of its repair station inspection procedures manual, rather than giving a copy of the manual to each of these individuals.

Grant, 01/04/2000, Exemption No. 6393B

Docket No.: 28576.
Petitioner: Táxi Aéreo Marilia, S.A.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/Disposition: To permit Táxi Aéreo Marilia, S.A. to use the calibration standards of the Institute Nacional de Metrologia, Normalizacão e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 01/11/2000, Exemption No. 6855A

Docket No.: 29108.
Petitioner: Skydive Dallas, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/Disposition: To permit Skydive Dallas, Inc., to allow nonstudent foreign nationals to participate in Skydive Dallas-sponsored parachute jumping events without complying with the parachute equipment and packing requirements of § 105.43(a).

Grant, 01/04/2000, Exemption No. 6744A

Docket No.: 29468.
Petitioner: China Aircraft Services Limited.
Section of the FAR Affected: 14 CFR 145.37(b).
Description of Relief Sought/Disposition: To permit China Aircraft Services Limited to qualify for a part 145 repair station certificate without meeting the special housing and facility requirements of § 145.37(b).

Denial, 01/04/2000, Exemption No. 7095

Docket No.: 29509.
Petitioner: Michelin Aircraft Tire Corporation.
Section of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To allow the issuance of U.S. export airworthiness approvals for aircraft tires manufactured and located at Michelin Aircraft Tire Corporation's Nong Khae, Thailand, factory.

Grant, 01/14/2000, Exemption No. 7099

[FR Doc. 00–2260 Filed 02–01–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 159]

Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held February 14–18, 2000, starting at 9 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW, Washington, DC 20036.

The agenda will be as follows: Specific Working Group Sessions: February 14: 9 a.m.–12 p.m., Working Group 1, Third Civil Frequency; 1:30 p.m.–4:30 p.m., SC–159 Pseudolite Subgroup. February 15: Working Group 4, Precision Landing Guidance (GPS/LAAS). February 16: 9 a.m.–12 p.m., Working Group 4, Precision Landing Guidance (GPS/LAAS); Working Group 6, Interference, will begin a new activity for a detailed assessment of the radio frequency interference (RFI) environment relevant to GPS operation at the proposed new L5 frequency (176.45 MHz). This assessment is expected to be similar in scope to the one for L1 (1575.42 MHz) that was completed in 1996 and documented in RTCA DO–235. 1:30 p.m.–4:30 p.m., SC–159 Ad Hoc, Recommendation Support. February 17: Working Group 2, GPS/WAAS; Working Group 2C, GPS/Inertial; Working Group 4, Precision Landing Guidance (LAAS); Working Group 5, Airport Surface Surveillance.

February 18: Plenary Session: (1) Chairman's Introductory Remarks; (2) Approval of Summary of the Previous Meeting held October 7–8, 1999; (3) Review Working Group Progress and Identify Issues for Resolution: (a) GPS/3nd Civil Frequency (WG–1); (b) GPS/WAAS (WG–2); (c) GPS/GLONASS (WG–2A); (d) GPS/Inertial (WG–2C); (e) GPS/Precision Landing Guidance and

(WG–4); (f) GPS/Airport Surface Surveillance (WG–5); (g) GPS Interference (WG–6); (h) SC–159 Ad Hoc. (4) Review of EUROCAE Activities; (5) Future Work Plan for GNSS Application to Airport Surface Operations; (6) Assignment/Review of Future Work; (7) Other Business; (8) Date and Location of Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Mr. Harold Moses, RTCA Program Director, at (202) 833–9339 (phone), (202) 833–9434 (fax), or hmoses@rtca.org (electronic mail). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–2266 Filed 02–01–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Detroit Metropolitan Wayne County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATE: Comments must be received on or before March 3, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David M. Katz, Director of Airports of the Detroit Metropolitan Wayne County Airport at the following address: Wayne County Division of Airports, Detroit Metropolitan Wayne County Airport L.C. Smith Terminal-Mezzanine, Detroit, Michigan 48242.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charter County of Wayne, Michigan under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Conrad, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7295). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Detroit Metropolitan Wayne County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 7, 1999 the FAA determined that the application to impose and use the revenue from a PFC submitted by Charter County of Wayne, Michigan was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 16, 2000.

The following is a brief overview of the application

PFC Application No.: 00–04–C–00–DTW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 2029.

Proposed charge expiration date: October 1, 2031.

Total estimated PFC revenue: $203,207,000.00.

Brief description of proposed projects: Runway 21C/3C Keel Section Replacement, Runway 4/22 Design and Construction, Rebuild Outfall Structures at Ponds 3 and 4, 21 C Remote Primary Deicing Pad, Grade/Pave Taxiway "K" Islands. Class or classes of air carriers which the pubic agency has requested not be required to collect PFCs: The County has requested that all air carriers or foreign air carriers which enplane fewer than 500 passengers each year be exempt from collecting a PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Wayne County Division of Airports, Detroit Metropolitan Wayne County Airport L.C. Smith Terminal-Mezzanine, Detroit, Michigan.

Issued in Des Plaines, Illinois on January 13, 2000.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–2265 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Juneau International Airport, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 3, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ronnie V. Simpson, Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513–7587.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Allan A. Heese, Acting Airport Manager, at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Program Specialist, Alaskan Region Airports Division,

Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK, 99513, 907 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#00–02–C–00–JNU) to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 10, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 5, 2000.

The following is a brief overview of the application.

Application number: 00–02–C–00–JNU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: April 30, 2001.

Total estimated PFC revenue: $501,662.

Brief description of proposed projects: Acquire security access control equipment; Acquire snow removal equipment; Replace terminal carpeting; Upgrade access roads; Relocate ASOS; Acquire security vehicle.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air carriers while operating on essential air service (EAS) routes from Juneau that do not receive essential air service compensation; All current air carriers enplaning 1,000 or less passengers annually from Juneau as published in the most current Air Carrier Activity Information System (ACAIS) Database.

Note: All carriers receiving essential air service compensation on designated essential air service routes are exempt by section 158.9A of Part 158.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** located at the FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Issued in Anchorage, Alaska on January 18, 2000.

Ronnie V. Simpson,

Manager, Airports Division, Alaskan Region.

[FR Doc. 00–2261 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Orlando International Airport (MCO), Orlando, Florida and Use the Revenue From a PFC at MCO and Orlando Executive Airport (ORL), Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at MCO and use the revenue from a PFC at MCO and ORL under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATE: Comments must be received on or before March 3, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Egerton van den Berg, Executive Director of Greater Orlando Aviation Authority (GOAA) at the following address: Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827–4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to GOAA under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Pablo G. Auffant, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 30. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at MCO and use the revenue from a PFC at MCO and ORL under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by GOAA was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 19, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–07–C–00–MCO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2002.

Proposed charge expiration date: August 1, 2007.

Total estimated PFC revenue: $174,364,294

Brief description of proposed project(s): Mid-Crossfield Taxiway Bridge Extension—Construction (MCO); Heintzelman Boulevard—Construction (MCO); South Access Road Widening—Construction (MCO); South Terminal Complex (Phase 1), Site Grading and Drainage—Design and Construction (MCO); South Terminal Complex—Design (MCO); Fourth Runway (MCO); Taxiway System for the Fourth Runway (MCO); Drainage Improvements—Design & Construction (ORL); Runway 7/25 High Speed Exit Taxiway & Holding Bay 7—Construction (ORL); Taxiway Stubouts and Holding Bays 25 & 31—Design (ORL).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at GOAA.

Dated: Issued in Orlando, Florida on January 21, 2000.

Bart Vernace,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–2263 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rapid City Region Airport, Rapid City, South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rapid City Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 3, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administrator, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley A. Hagen, Executive Director, of the Rapid City Regional Airport at the following address: Rapid City Regional Airport, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57701–8706.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rapid City Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rapid City Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 6, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rapid City Regional Airport was substantially complete with the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 8, 2000.

The following is a brief overview of the application.

PFC application number.: 00–02–C–00–RAP.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2000.

Proposed charge expiration date: June 30, 2003.

Total estimated PFC revenue: $1,791,732.00.

Brief description of proposed project(s): (1) Friction Measuring Device; (2) Access Control Security System; (3) Extend Runway 14 Safety Area & Relocate Road C232; (4) Correct ILS Critical Area for Runway 32; (5) ARFF HVAC Improvements; (6) Airfield Regulators; (7) Snow Removal Equipment (SRE) Storage Facility; (8) Covered Passenger Boarding Walkway Acquisition; (9) Computerized Airfield Lighting Controls; (10) Air Carrier Terminal Building EPS/UPS; (11) General Aviation Taxiways Rehabilitation Project; (12) General Aviation Airport Entrance Road Rehabilitation Project; (13) Asphalt Paving Projects—Alpha and Alpha 3 Taxiways; (14) Airport Entrance Road Rehabilitation; (15) High Intensity Runway Lighting (16) Aircraft Rescue Fire Fighting (ARFF) Vehicle Acquisition; (17) Passenger Loading Bridge (Jetway) Acquisition; (18) Flight Information Display System (FIDS); (19) Snow Blower Acquisition; (20) Snow Removal Equipment (SRE) Acquisition—Plow/Truck/Spreader; (21) Snow Removal Equipment (SRE) Acquisition—Plow/Truck/Spreader; (22) Snow Removal Equipment (SRE) Acquisition—Loader with Ramp Bucket/Plow; (23); Runway 14/32 Rehabilitation Project; (24) Terminal Apron Rehabilitation; and (25) Runway 5/23 Rehabilitation. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rapid City Regional Airport.

Issued in Des Plaines, Illinois on January 13, 2000.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–2264 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 22, Notice No. 2]

Oregon Pacific Railroad; Notice of Relief From Emergency Order No. 22

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of Relief.

SUMMARY: This notice provides relief for the Oregon Pacific Railroad from the limitations of Federal Railroad Administration (FRA) Emergency Order No. 22, issued December 16, 1999. The relief allows the Oregon Pacific Railroad to recommence operation of trains and other railroad on-track equipment on a railroad bridge it owns spanning Johnson Creek (hereinafter designated as the "Johnson Creek Bridge") in the City of Milwaukie, Oregon.

Authority

FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. § 20104. These orders may impose such "restrictions and prohibitions * * * that may be necessary to abate the situation." *(Ibid.)* Likewise, FRA is authorized to grant relief from an emergency order when the agency deems that the unsafe condition or practice which gave rise to the emergency order no longer exists.

Background

The Oregon Pacific Railroad Company, a common carrier, is a part of the general railroad system of transportation and operates two principal segments of track. One of the segments crosses Johnson Creek in Milwaukie, Oregon, on a timber trestle bridge not identified by number and located approximately one-half mile upstream from the point where Johnson Creek empties into the Willamette River. In December, 1999, based on detailed inspections of the bridge, FRA determined that the Johnson Creek Bridge was in danger of imminent, catastrophic failure at any time that a railroad load passes over the bridge.

Failure of the bridge under load could have had very serious consequences. The bridge failure could have caused a train to fall into Johnson Creek, killing or injuring any railroad crew members operating rolling stock, killing or injuring any innocent bystanders using Johnson Creek or its banks, and possibly blocking the creek resulting in widespread flooding in the immediate area. Locomotive diesel fuel and/or fuel and contents of a mechanical refrigerator car could have caused severe environmental damage to Johnson Creek and the nearby Willamette River.

FRA therefore concluded that any railroad use of the Johnson Creek Bridge on the Oregon Pacific Railroad posed an imminent and unacceptable threat to public and employee safety involving a hazard of death or injury to persons. On December 16, 1999, the Federal Railroad Administrator issued Emergency Order No. 22 which prohibited all operations of trains and other railroad on-track equipment on the Johnson Creek Bridge until repairs were made and certified as sufficient by a licensed bridge engineer and approved by FRA.

Following the issuance of Emergency Order No. 22, the Oregon Pacific Railroad made repairs to the Johnson Creek Bridge under the guidance of a professional engineer licensed to practice in the State of Oregon. On January 17, 2000, FRA's professional bridge engineer inspected the Johnson Creek Bridge and found that the repairs made to the bridge since the issuance of Emergency Order No. 22 are sufficient to restore immediate safety to the bridge structure.

The termination of Emergency Order No. 22 does not indicate that FRA has made any determination regarding the capacity of the bridge in addition to the work performed by the professional engineer guiding the repairs on behalf of the Oregon Pacific Railroad. Relief from Emergency Order No. 22 simply means that FRA finds that the bridge no longer presents an imminent hazard of death or injury to persons. The Oregon Pacific Railroad continues to be fully responsible for the structural integrity and safe operation of the Johnson Creek Bridge. FRA strongly recommends that the Oregon Pacific Railroad follow a regular program of inspection and maintenance of all railroad bridges owned and operated by the railroad.

Relief

In light of the foregoing, I grant the Oregon Pacific Railroad relief from Emergency Order No. 22. The railroad may immediately recommence operation of trains and other railroad on-track equipment on the Johnson Creek Bridge in the City of Milwaukie, Oregon. The issuance of this Notice does not preclude imposition of another emergency order governing the condition of the bridge should that condition again deteriorate to the extent that I believe it poses an imminent and unacceptable threat to public safety.

Issued in Washington on January 20, 2000.

Jolene M. Molitoris,

Administrator.

[FR Doc. 00–2229 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6820]

Notice of Receipt of Petition for Decision That Nonconforming 1997–2000 Audi A8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997–2000 Audi A8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997–2000 Audi A8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 3, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1997–2000 Audi A8 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1997–2000 Audi A8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997–2000 Audi A8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1997–2000 Audi A8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997–2000 Audi A8 passenger cars are identical to their U.S. certified counterparts with respect to

compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer to show distance in miles and speed in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button at the front outboard seating positions, with combination lap and shoulder restraints that release by means of a single push button at the rear outboard seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 28, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–2276 Filed 2–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 1999.

ARMAJANI, JANET NURENE
ARPELS, MARIE THERESE, LOUISE
BELSER, LAWRENCE WALTER
BELSER, MARY JEAN
BERNARD, MARY CLAUDE
BOROSHOK, IRINA
BOROSHOK, ALEX
BOWLES-O'CONNELL DE GASPE
BEAUBIEN, NAN
BROWN, RICHARD N.
BUMSTEAD, ERIC L.
CASTRO, YVONNE MARIE
CHEUNG, YUN KUL
DE BUEIL, MARIE LAURE-SYBIL-MICHELE
DE SPOELBERCH, ERIC JACQUES
DE YOUNG, NINA
DOYLE, WILLIAM HENRY
FAULKNER, SHERYL ANN
FELSTINER, BARBARA JANE
FLEISCHAUER, MARTHA
FONG, DAVID MAN-HUNG
FRANKLIN, JOHN JOSEPH
FRANS, SUSAN ELLEN
FRIVALDO, JUAN GALLANOSA
FUSS, ALBERT
GAUM, KURT RUDOLF
GAUM-LANGEMANN, ROSA
GROSKING, YAEL REBECCA
HAUGHEY, STEPHEN EDWARD
HULTGRENF, RICHARD WESLEY
JEFFERIS, JENNIFER
JEFFERIS, JOHN
JENSEN; ALAN DALE
JEONG LEE, JAMES JAE
JOSPE, ROGER
JOSPE, CECIL
KALMAR, ERIK LESLIE
KIM, GRACE YOUNG
KIM, SUNG HEE
LABINE, GILE EMMANUEL
LEE, HYO SOP
LEE, CHONG REA
LIEM, JACQUELINE MICHELLE
LIVINGSTON JR., EDMUND PENDLETON
LOUDERMILK, JAN ERNEST
LUNT, MICHAEL CHARLES
MINOR, AIKO ISHII
MIYAMOTO, SHINGO
MOLLER, MAREN
MOSS, VERONICA INEZ
NOBLE, BUTLER
PARK, THOMAS
PARK, JONGSOO
PAYNE, ERIC FRANCIS
POSS, CHRISTINE CHERYL
RICHTER, SHERYL NANCY
RUTHLEDGE, KI SON CHO
SAGIE, ISAAC
SANDERS-GUNN, KATHERLEEN
SHAVER, HELEN
SHEPARD, CHIN HUI
SHERMAN, JOAN ELLEN

SHERMAN, JACKIE ROBERT
SHINN, HENRY JOO
SHORT IV, ELLIS
SJOGREN, BERTIL E.
SOMERVILLE, SUSAN
SPITS, HILLEGONDA CATHERINE-LOUISE
SUNDAHL, ANN INGRID
TAKSHASHI, YOKOF ANNE
TASHIRO, YASUHISA
THOMPSON, BUDD
TOWER, SHAWN JENNIFER
UNGER, LUCINDA JO
VENTURA (GRACE U YI), GRACE MEYOUNG
VON BUSKIRK, CARL
WASHINGTON, PHILLIP BRENT
WEINGARTEN, MICHAEL SHELDON
WRIGHT, PAMELA JOAN
YE, LEE KWI
ZAKUS, PAUL D.
ZAKUS, MARGUERITE D.

Approved: January 18, 2000.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 00–2155 Filed 2–1–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0016."

SUPPLEMENTARY INFORMATION:

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insurance activity to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 23, 1999, at page 51585.

Affected Public: Individuals or Households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0016" in any correspondence.

Dated: December 23, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–2207 Filed 2–1–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0101."

SUPPLEMENTARY INFORMATION:

Title: Eligibility Verification Reports (EVR) (Eleven of the EVRs are computer-generated forms which may be dispatched from VA's central computer. The remaining 11 forms (those with a "–1" suffix on the form number) are stocked forms).

a. Old Law Eligibility Verification Report (Surviving Spouse), VA Forms 21–0511S and 21–0551S–1.

b. Old Law Eligibility Verification Report (Veteran), VA Forms 21–0511V and 21–0511V–1.

c. Section 306 Eligibility Verification Report (Surviving Spouse), VA Forms 21–0512S and 21–0512S–1.

d. Section 306 Eligibility Verification Report (Veteran), VA Forms 21–0512V and 21–0512V–1.

e. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Forms 21–0513 and 21–0513–1.

f. DIC Parent's Eligibility Verification Report, VA Forms 21–0514 and 21–0514–1.

g. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21–0516 and 21–0516–1.

h. Improved Pension Eligibility Verification Report (Veteran With Children), VA Forms 21–0517 and 21–0517–1.

i. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21–0518 and 21–0518–1.

j. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21–0519C and 21–0519C–1.

k. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21–0519S and 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Eligibility Verification Reports are used to report changes in entitlement factors in VA's income-based benefit programs, pension and parents' Dependency and Indemnity Compensation (DIC). Any individual who has applied for or receives pension or parents' DIC must promptly notify VA in writing of any changes in entitlement factors. The reports are also

used to confirm that there have been no changes in entitlement factors.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 5, 1999 at page 54071.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,947 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 293,894.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0101" in any correspondence.

Dated: December 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–2208 Filed 2–1–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 3, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0119."

SUPPLEMENTAL INFORMATION:

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: This form letter is used to collect information from hospitals to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 23, 1999, at pages 51585–51586.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0119" in any correspondence.

Dated: December 23, 1999.

By direction of the Secretary:

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–2209 Filed 2–1–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0381]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0381."

SUPPLEMENTARY INFORMATION:

Title: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

OMB Control Number: 2900–0381 .

Type of Review: Extension of a currently approved collection.

Abstract: Section 3732 of Title 38, U.S.C., and 38 CFR 36.4320(a)(1), provides that if a minimum amount for credit to the borrower's indebtedness has been specified by VA in relation to the sale of the real property and the holder is the successful bidder at the sale for no more than the amount specified by the Secretary, the holder will credit the indebtedness with that amount. The holder may then retain the property, or not later than 15 days after the date of sale, advise the Secretary of its election to convey and transfer the property to the Secretary. VA Form 26–8903 serves four purposes: holder's election to convey; invoice for the purchase price of the property; VA's voucher for authorizing payment to the holder; and establishment of the VA's property records. The form provides the holder, who has elected to convey a property to the VA, with a convenient and uniform means of notification to the proper VA regional office. This form simplifies processing for lenders/holders who, in most instances, operate branch offices statewide and nationwide.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on

September 28, 1999, at pages 52371–52372.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Send comments and recommendations concerning any aspect of the information collected to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0381" in any corespondence.

Dated: December 28, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–2210 Filed 2–1–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Nursing Research Subcommittee of the Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Nursing Research Subcommittee of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Crowne Plaza Hotel, 14th and K Streets, NW, Washington, DC, April 11 through 12, 2000. On April 11, the meeting will convene from 8:00 a.m. until 5:00 p.m. and on April 12, from 8:00 a.m. until 5:00 p.m. The purpose of the meeting is to review nursing research applications that identify effective methods for improving, maintaining, and/or preventing decline in the functional status of patients; develop and test models that integrate patient care delivery and enhance health outcomes; and improve patient care. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the April 11 session for approximately one-half hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consult critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b (c)(6) and (9)(B).

Those who plan to attend the open session should contact the Assistant Director of Scientific Review, (124F), Health Research Services and Development Service, Department of Veterans Affairs, 1400 I Street, N.W., Suite 780, Washington, D.C., at least five days before the meeting. For further information, call (202) 408–3665.

Dated: January 20, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–2206 Filed 2–1–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 22

Tuesday, February 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-241-001]

ANR Pipeline Company; Notice of Application

Correction

In notice document 00-1177, beginning on page 2936 in the issue of Wednesday, January 19, 2000, make the following corrections:

1. The docket line should appear as set forth above.

2. On page 2936, the the second column, in the eighth line from the bottom, "CP-241-001" should read "CP99-241-001".

[FR Doc. C0-1177 Filed 2-1-00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

Correction

In notice document 00-1274 beginning on page 3228 in the issue of Thursday, January 20, 2000, in the third column, in paragraph b, "D100-000" should read "DI00-1-000".

[FR Doc. C0-1274 Filed 2-1-00; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 144

[FRL-6482-2]

RIN 2040-AB83

Revisions to the Underground Injection Control Regulations for Class V Injection Wells

Correction

In rule document 99-31048, beginning on page 68546, in the issue of Tuesday, December 7, 1999, make the following correction:

§ 144.89 [Corrected]

On page 68572, in the first column, in § 144.89(a)(1), in the first line, "Prior" should read "(1) Prior".

[FR Doc. C9-31048 Filed 2-1-00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 187I]

RIN 1117-AA51

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

Correction

In rule document 00-1347, beginning on page 3124, in the issue of Thursday, January 20, 2000, make the following corrections:

§ 1308.34 [Corrected]

1. On page 3126, in § 1308.34, in the table, in the sixth column, the heading "Quality" should read "Quantity".

2. On the same page, in § 1308.34, in the table, in the sixth column, the last entry "<0.6 w/v" should read "≤0.6% w/v".

[FR Doc. C0-1347 Filed 2-1-00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, 91, 121, 125 and 129

[Docket No. FAA-1999-6411; Notice No. 99-18]

RIN 2120-AG62

Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements

Correction

In proposed rule document 99-28348 beginning on page, 58644, in the issue of Friday, October 29, 1999, make the following the correction:

On page 58644, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C9-28348 Filed 2-1-00; 8:45 am]

BILLING CODE 1505-01-D

Federal Register

Wednesday,
February 2, 2000

Part II

Department of Labor

Pension and Welfare Benefits Administration

Department of the Treasury

Internal Revenue Service

Pension Benefit Guaranty Corporation

Revision of Annual Information Return/ Report; Notice of Adoption of Revised Forms

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

PENSION BENEFIT GUARANTY CORPORATION

RIN 1210–AA52

Revision of Annual Information Return/ Report

AGENCIES: Pension and Welfare Benefits Administration, Labor; Internal Revenue Service, Treasury; Pension Benefit Guaranty Corporation.

ACTION: Notice of adoption of revised forms.

SUMMARY: This document announces the adoption of the revised annual return/ report forms (the Form 5500 Series) filed for employee pension, welfare and fringe benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended, (the Code). The Form 5500 Series is the principal source of information and data concerning the operation, funding, assets and investments of pension, welfare and fringe benefit plans, and also serves as the primary means by which the operation of plans can be monitored by participants, beneficiaries and the general public. The form revisions are being adopted concurrent with the implementation of a new computerized ERISA Filing Acceptance System (EFAST) to improve the forms and simplify and expedite the receipt and processing of the Form 5500 Series by relying on computer scannable forms and electronic filing technologies. The revised forms affect the financial and other information required to be reported and disclosed by employee benefit plans. The Form 5500–EZ is not discussed in this notice.

DATES: *Effective Date*: This notice is effective on February 2, 2000.

Applicability Date: The revised forms apply for plan years beginning on or after January 1, 1999.

FOR FURTHER INFORMATION CONTACT: George M. Holmes, Jr. or Eric A. Raps, Pension and Welfare Benefits Administration (PWBA), U.S. Department of Labor, (202) 219–8515, for questions relating to the Form 5500 and Schedules A, C, D, G, H and I as well as the reporting requirements under Title I of ERISA; James Flannery, Internal Revenue Service (IRS), (202) 622–6214, for questions relating to Schedules B, E, F, P, R, T and SSA as well as questions relating to the reporting requirements under Title II of ERISA; James J. Bloch, Pension Benefit Guaranty Corporation (PBGC), (202) 326–4080 (x 3530) for questions relating to Schedule B and line 9 of Schedule R as well as questions relating to the reporting requirements under Title IV of ERISA. For further information on an item not mentioned above, contact Mr. Holmes. The telephone numbers referenced above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under part 1 of Title I of ERISA, Title IV of ERISA, and the Code, administrators of pension and welfare benefit plans subject to those provisions are required to file returns/reports annually concerning, among other things, the financial condition and operations of employee benefit plans. Employers sponsoring certain fringe benefit plans and other plans of deferred compensation that are not subject to Title I of ERISA are also required under the Code to file certain information annually with the IRS. These annual reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations.[1]

The Form 5500 Series is the principal source of information and data concerning the operation, funding, assets and investments of more than 800,000 pension and welfare benefit plans with assets estimated at $4.3 trillion. Accordingly, the Form 5500 Series information and data necessarily constitute an integral part of each agency's enforcement, research and policy development programs and are a source of information and data for use by other federal agencies, Congress and the private sector in assessing employee benefit, tax, and economic trends and policies. The returns/reports also serve as the primary means by which the operations of plans can be monitored by participants, beneficiaries and the general public.

On September 3, 1997, the Department of Labor (Department), IRS and the PBGC (collectively the Agencies) published in the **Federal Register** (62 FR 46556) a notice of proposed revisions to the Form 5500 Series. The Agencies' proposal replaced the Form 5500, Form 5500-C and Form 5500-R with one Form 5500 intended to streamline the report and the methods by which it is filed. Concurrent with the development of the new Form 5500, the Agencies also developed a new computerized system to process Form 5500 returns/reports (the ERISA Filing Acceptance System or "EFAST"). The new computerized processing system is designed to simplify and expedite the receipt and processing of the new Form 5500 by relying on computer scannable forms and electronic filing technologies. The development of the new forms in conjunction with the EFAST system is intended to streamline and improve the Form 5500 Series and lower the administrative burdens and costs incurred by employee benefit plans that file the Form 5500 Series each year.

A public hearing on the proposed forms revisions was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. The Agencies received oral testimony and over 60 written public comments from employer groups, employee representatives, financial institutions, service organizations and others on the form streamlining proposal. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year.

Public reaction to the September 3, 1997 Notice of Proposed Forms Revisions was generally supportive of the new streamlined structure of the Form 5500 Series. The Agencies decided to adopt the new forms largely as proposed, but, in response to public comments, made various adjustments to the proposed forms and instructions where consistent with the purposes of the Form 5500 and the objectives of the streamlining project. A revised version of the new Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA) and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. At the same time, the revised Form 5500 was made available on PWBA's internet site (http://www.dol.gov/dol/pwba) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its PRA review, OMB gave

[1] For purposes of Title I of ERISA, the filing of the Form 5500 Series, in accordance with its instructions and related regulations, by the administrator of a pension or welfare benefit plan constitutes compliance with the limited exemption and alternative method of compliance prescribed in 29 CFR part 2520, promulgated in accordance with the authority granted by the Secretary of Labor under sections 104(a) and 110 of ERISA.

conditional PRA approval to the new Form 5500 on August 26, 1998.[2]

The new Form 5500 Series replaces the Form 5500 and the Form 5500-C/R with a single new Form 5500 with basic identifying information for use by all filers and 13 schedules focused on particular subjects and/or filing requirements—five pension schedules, seven financial schedules, and one fringe benefit schedule. The pension schedules are: Schedule B (Actuarial Information); Schedule E (ESOP Annual Information); Schedule R (Retirement Plan Information); Schedule T (Qualified Pension Plan Coverage Information); and Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits). The financial schedules are: Schedule A (Insurance Information); Schedule C (Service Provider Information); Schedule D (DFE/Participating Plan Information); Schedule G (Financial Transaction Schedules); Schedule H (Financial Information); Schedule I (Financial Information-Small Plan); and Schedule P (Annual Return of Fiduciary of Employee Benefit Trust). The fringe benefit schedule is Schedule F (Fringe Benefit Plan Annual Information Return). The new schedules are Schedules D, H, I, R and T; the schedules that have been revised are Schedules A, C and G; and the schedules that have either not been revised or have undergone minimal changes are Schedules B, E, F, P and SSA.

The revisions being adopted to the Form 5500 annual return/report provide plans using simple tax qualification structures and financial operations with correspondingly streamlined annual reporting requirements and also target reporting requirements so that welfare plans generally complete fewer items than pension plans and small plans generally complete fewer items than large plans. The Agencies have developed a reference guide, which is included in the instructions for the new Form 5500, that is designed to provide general information and guidance on completing the revised Form 5500 and schedules entitled: "Quick Reference Chart Form 5500 Schedules and Attachments."

As part of the development of the revised Form 5500 Series, the Department also published in the **Federal Register** (63 FR 68370), on December 10, 1998, proposed amendments to the annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) to implement under Title I of ERISA certain of the proposed changes to the Form 5500 Series. A number of other technical amendments to the regulations were proposed in order to update certain of the reporting and disclosure regulations. In the December 10, 1998 Notice, the Department stated that the public comments submitted in response to the September 3, 1997 Notice of Proposed Forms Revisions would be treated as part of the public record for the Notice of Proposed Rulemaking, and, to the extent those comments included information relevant to the proposed regulatory amendments, the Department would treat those comments as comments on the Notice of Proposed Rulemaking to avoid the need to submit duplicate public comments. The Department received four comments in response to the December 10, 1998 Notice. A notice of final rulemaking regarding those regulatory amendments will be published separately by the Department in the **Federal Register**.

The Agencies also published a **Federal Register** notice, on June 28, 1999 (64 FR 34686) soliciting public comments on the draft computer scannable versions of the new forms developed by two vendors who were competing for the contract to design and build the EFAST system. Specifically, contracts were awarded to two national computer firms to competitively develop a computerized form processing system and related computer scannable versions of the new Form 5500 Series. The Agencies subsequently selected one as the vendor to operate EFAST and process the new Form 5500 returns/reports.

As noted above, EFAST has been designed to simplify and expedite the receipt and processing of the Form 5500 Series by relying on computer scannable forms and electronic filing technologies. In that regard, the 1999 Form 5500 is available in two different computer scannable formats; both have the same data elements but provide filers with a choice of formats for preparing the Form 5500. The first format is a "machine print" format under which the filer uses a computer and software to enter data and complete the form. Upon completion of the data entries under this format, the completed forms and any required attachments may be filed through electronic means (provided the EFAST electronic specifications are met and a copy with all required signatures is retained as part of the plan's records), or the filer may print a paper copy, and after the required signatures have been affixed, mail the return/report to the address specified in the Form 5500 instructions under the heading labeled "Where To File." The completed machine print Form 5500 return/report can be read by participants and beneficiaries, and the EFAST system will collect the data by scanning bar codes printed out at the bottom of each page. The second format is a "hand print" format under which the filer enters data by hand or typewriter on specially designed green drop-out ink forms and the EFAST system uses optical character recognition technology to scan the hand or typewritten data entries. The "hand print" format can be filed only by mail to the address specified in the Form 5500 instructions under the heading labeled "Where To File."

The Agencies are printing in this notice informational copies of the hand print 1999 Form 5500 and schedules, and the instruction package for the 1999 Form 5500 return/report. However, because of the new technologies being used by the Agencies for processing the revised Form 5500, **Federal Register** copies of the Form 5500 and schedules will not be acceptable for filing. Informational copies of the hand print forms, machine print forms and the instruction package will also be posted on the Department's web page at www.dol.gov/dol/pwba. The 1999 Form 5500 package (hand print green drop-out ink forms and instructions) will be distributed to employee benefit plan filers in the same manner as in prior years. Refer to the EFAST web page at www.efast.dol.gov beginning in late March 2000 for information on obtaining the machine print forms and related software.

II. Summary of Comments on Proposed Forms

In addition to a number of general comments relating to the statutory and regulatory annual reporting scheme, the Agencies received a number of comments relating to specific elements of the proposed revisions to the Form 5500. Upon consideration of all the

[2] The OMB conditions were described in the **Federal Register** on December 10, 1998 (63 FR 68370) in the preamble to the proposed amendments to the Department's reporting regulations. The conditions were: (i) consolidating the separate reporting of long-term and short-term corporate debt instruments into one line item for all corporate debt instruments on the Schedule H (Income and Expense Statement), (ii) adding a clarifying instructional statement to the text on line 5 of Schedule R, (iii) bolding instructional text on line 3 of Schedule T, (iv) adding a statement to the Schedule C instructions that trades and businesses (whether or not incorporated) are "persons" required to be reported as service providers, and (v) clarifying the instructions for line 3b(2) of Schedule H regarding the inapplicability of the "short plan year" provisions of 29 CFR 2520.104–50 to Direct Filing Entity (DFE) Form 5500s filed for group insurance arrangements and investment entities described in 29 CFR 2520.103–12 (103–12 IEs).

written comments and the record of the public hearing, as well as the Agencies' respective administrative, enforcement and informational requirements, the Agencies were unable to adopt all of the public suggestions and recommendations regarding revisions to the annual return/report. However, in an effort to facilitate both compliance with the annual reporting requirements and the processing of annual returns/reports, the Agencies have in response to public comments made certain changes to the forms and clarifications to the instructions accompanying the forms. The following is a summary of the major comments received by the Agencies which have been organized on a subject matter basis.

A. Annual Reporting Scheme

Some commentators recommended that Form 5500 return/report filers should not be required to report each year various information that was reported on the prior year's Form 5500 if the information remains unchanged. Other commentators recommended that certain information should not be required to be reported, but, instead, should be required to be maintained as part of the plan's records and provided to the Agencies only in response to a specific request for the information. The Agencies believe that adopting these recommendations would make it more difficult for the Agencies to carry out their enforcement, research and other responsibilities and would diminish the value of the Form 5500 as a disclosure document for plan participants and beneficiaries. The Agencies, therefore, have not adopted these recommendations. A few commentators recommended changes to the Form 5500 that would eliminate or modify reporting requirements or other features of the Form 5500 that, in the Agencies' view, are mandated by statute or regulations. The Agencies, accordingly did not adopt these changes.

B. Form 5500

1. *Restructuring of the Form 5500 and Elimination of the Form 5500–C/R.* In general, the comments were positive as to the restructuring of the Form 5500 Series, including the elimination of Form 5500-C/R. The Agencies, accordingly, have decided to adopt the new structure of the forms largely as proposed. However, several of the new schedules added as part of the proposal have been re-labeled to be consistent with the general practice in the current Form 5500 of using a single alphabetic identifier for schedules, i.e., Schedule FIN (Financial Information) is now Schedule H (Financial Information), Schedule FIN-SP (Financial Information-Small Plan) is now Schedule I (Financial Information-Small Plan), and Schedule PEN (Pension Plan Information) is now Schedule R (Retirement Plan Information). Further, the Schedule Q (Qualified Pension Plan Coverage Information) was re-labeled as Schedule T (Qualified Pension Plan Coverage Information) to avoid confusion with the Schedule Q introduced by the IRS for the Form 5300 Series.

2. *Financial Reporting for Large and Small Plans.* Several commentators requested that the Agencies require small plans (plans that previously were eligible to file the Form 5500–C/R) to report the same financial information that is required of large plans (plans that previously filed the Form 5500), or, in the alternative, require that small plans continue to report the financial information that is now contained in the current Form 5500-C. Other commentators suggested that the 100 participant threshold for determining whether a plan is "large" or "small" should be increased, for example, to 150 or 200 participants. With respect to the first comment, the Agencies concluded that significantly expanding the financial reporting for small plans would be inconsistent with a principal objective of this project which was to simplify and streamline the information collected on the Form 5500. Further, the Agencies believe that the financial reporting by small plans in the new Form 5500 contains much of the financial information on the Form 5500-C (lines 27 and 28) while providing improved disclosures over the current Form 5500-C. With respect to the second comment, the extension of the reporting threshold to a 200 participant threshold would expand the number of small plan filers by approximately 45,000 plans. In light of the fact that such a change may require legislation, and because the Agencies would need to more fully explore and consider the consequences of such an extension, the Agencies did not alter the current rules regarding the 100 participant threshold.

3. *Preparer Identification.* Several commentators indicated that it was not clear how filers would comply with the proposed requirement to identify the "preparer" of the Form 5500 because many persons may be involved in the collection and preparation of information reported on the Form 5500 return/report. The commentators asked for specific instructions regarding this requirement if it were to be maintained in the final form. In the alternative, a commentator asked that the "preparer" requirement be replaced with authorization for a party to be designated as an official contact to discuss filing errors. The Agencies agree that it may be difficult to identify a single preparer of the Form 5500 for many plans, and accordingly, have changed the item so that it is optional and allows a filer to designate the person or entity that the filer believes was principally responsible for the preparation of the annual return/report.

4. *Multiple Signature Requirements.* Several commentators questioned the need for multiple signatures on the Form 5500 return/report. In response, the Agencies have clarified the instructions for the Title I and II signature requirements for administrators and employers on the return/report and the IRS eliminated the employer signature requirement from the Schedule T. The other signatures required on the return/report (independent qualified public accountant's signature, enrolled actuary signature on Schedule B, trustee signature on Schedule P, and administrator signature on Schedule SSA) serve independent purposes such that it is not currently feasible to eliminate these signatures or consolidate them onto a single place on the form.

5. *Elimination of Certain Compliance and Disclosure Questions.* Several commentators suggested that the proposed elimination of certain compliance and disclosure questions may adversely affect plan participants. Specific areas identified included the following.

First, commentators questioned the proposed elimination of the reporting of the number of active participants who are fully vested, partially vested and nonvested. The Agencies did not reinstate these questions because the subgrouping of active participants by fully vested, partially vested and nonvested was not widely used by the Agencies, was a source of confusion for many filers, was duplicative of certain information reported on Schedule B, and was not required under the current or revised Form 5500 for the small plan filers which comprise the majority of all return/report filers. Further, to the extent individual participants want vesting information regarding their own benefits, they generally can obtain an individual benefit statement from their plan administrator.

Second, commentators questioned the proposed elimination of "yes/no" questions on plan amendments and distribution of summaries of material modifications (SMMs). Under Title I of ERISA, plan administrators must automatically furnish a notice to

participants and beneficiaries of material modifications to the plan or changes in the information required to be included in the summary plan description (SPD) that were adopted during the reporting year. These notices typically must be furnished to participants and beneficiaries before the plan's Form 5500 return/report would be filed and available to participants and beneficiaries. Accordingly, participants and beneficiaries should have received a notice regarding the plan amendment before they ordinarily would have access to the answers to these "yes/no" questions on the form. Also, the Department has developed an ERISA Compliance Quick Checklist (to be included in the Form 5500 instruction package but not required to be filed with the government) that makes specific reference to these SPD/SMM requirements. The Department, accordingly, has not reinstated these questions.

Third, commentators asked that the Agencies reinstate the question for small plan filers on whether 20% or more of plan assets are held in a single investment and the question for all filers on compliance with fidelity bonding requirements. The Agencies decided to reinstate questions on these subjects because they serve important enforcement and disclosure functions and provide important protections to participants and beneficiaries.

6. *Delay of Effective Date.* In response to comments, the Agencies postponed the implementation year for the new forms from the 1998 plan year until the 1999 plan year. Thus, the earliest filing due date for returns/reports using the new forms for plans with calendar year plan years is July 31, 2000. (See below for a discussion of the transitional rules and special filing due date rules for common or collective trusts (CCTs) and pooled separate accounts (PSAs) electing to file as direct filing entities (DFEs)).

7. *Uniform Method to Count Plan Participants.* Several commentators noted that numerical counts of plan participants were required on several different schedules using several different counting formulas. One commentator suggested that proposed Form 5500 (Line 4), Schedule B (Line 2b), Schedule PEN (Lines 1a, 1b, and 1c), and PBGC Form 1 (Line 13) be revised to permit a plan administrator to provide the same participant count for each item. Another commentator suggested that all the requested information be in one place on the form. In response, the Agencies note that the different participant counts are used for different purposes and thus are difficult to make consistent. In an effort to clarify and simplify these questions, however, the Agencies decided to consolidate most of the participant count questions onto the Form 5500 instead of the various schedules (with the exception of certain questions on the Schedule B which are certified to by the enrolled actuary and certain questions on Schedule T which are unique to the application of the qualified plan minimum coverage requirements), and to return, in general, to the format for participant count questions used currently on the Form 5500. The Agencies have also attempted to clarify the accompanying instructions.

C. Schedule A (Insurance Information) and Other Reporting on Insurance Products

1. *Policy Year vs. Plan Year Reporting.* Several commentators asked the Department not to adopt the proposed change to require Schedule A reporting of insurance contracts on a plan year basis. The present rule allows reporting on a contract or policy year basis as an alternative to a plan year basis. The commentators indicated that plan year reporting would require a substantial revision of existing recordkeeping systems while not providing better information on the insurance contracts being reported. Two commentators, however, stated that the proposed change could help in coordinating financial information on plan investments provided by banks and insurance companies. The Department proposed the change to enable better coordination of information on the Schedule A regarding individual contracts with aggregate investment and benefit payment information on the Form 5500 financial statements (which is reported on a plan year basis). In view of the complexities and costs attendant to the proposed change, the Department has decided to retain the option of contract or policy year reporting on the Schedule A.

2. *Insurance Company Noncompliance with Obligation to Provide Necessary Information to Plan Administrators.* Several commentators described difficulty obtaining information (particularly fee and commission-related) from insurance companies. They expressed concern about requiring any new information on the Schedule A (such as the new requirement to report insurance company employer identification numbers (EINs) and National Association of Insurance Commissioners (NAIC) codes) because they expected that the new requirements would exacerbate the current problem. It is the view of the Department that compliance with annual reporting requirements requires the filing of complete, accurate and timely annual returns/reports, which includes the information required to be reported on the Schedule A. Accordingly, plan administrators are obliged to take reasonable and prudent steps to secure the necessary Schedule A information. In this regard, it should be noted that, with respect to the obligation of insurance carriers to furnish Schedule A information, ERISA section 103(a)(2) specifically provides in pertinent part that, if some or all of the information necessary to enable the administrator to comply with the requirements of Title I of ERISA is maintained by an insurance carrier or other organization which provides some or all of the benefits under a plan or holds assets of the plan in a separate account, such carrier or other organization is required to transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year. The current instructions for the Schedule A state that if necessary information is missing because of an insurer's refusal to provide the information, the administrator should complete the Schedule A, to the extent possible, and file a timely return/report noting the refusal and any deficiencies in the Schedule A. The Department cautions administrators that annual return/report filings should not be delayed pending receipt of requested Schedule A information beyond the date on which the annual report is due (including any timely obtained extensions for filing), and that an amended return/report should be filed upon receipt of the deficient Schedule A information.

3. *Fair Market Value vs. Contract Value Reporting for Insurance Contracts.* Certain changes to the Schedule A and accompanying instructions were proposed by the Department in light of Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 110 (FAS 110) and No. 126 (FAS 126) and American Institute of Certified Public Accountants Statement of Position 94–4 (SOP 94–4), which generally require that financial statements presented in accordance with Generally Accepted Accounting Principles (GAAP) must disclose the fair value of investment contracts with insurance companies (except for certain investment contracts held by defined benefit pension plans and "fully benefit responsive" contracts held by defined contribution plans with assets of $100 million or less). Commentators

representing insurance companies indicated that determining whether a contract may be reported at "book value" or contract value under these accounting rules is a complex determination, and one that insurance companies generally will leave to the discretion of a plan's administrator and, if applicable, auditor. Therefore, the commentators asked the Agencies to permit contract value reporting for all applicable insurance and annuity contracts, or alternatively, confirm that an insurance company will satisfy its obligation under ERISA section 103(a)(2) by furnishing plan administrators with only contract value information. The Department did not adopt these recommendations. Section 103 of ERISA and the Department's regulations generally require reporting of plan assets valued at their "current value." As noted above, insurance companies are required under ERISA section 103(a)(2) to provide the information needed by the plan administrator to complete the plan's annual report, including both contract value and fair value information if needed. The Department continues to believe that conforming the Schedule A to the financial statement disclosure provisions in FAS 110, FAS 126 and SOP 94–4 will foster greater uniformity in the reporting of plan asset values without imposing significant costs on either plans or service providers.

The proposal also called for Schedule A reporting of the current value of "plan assets" in the insurance company general account. Some commentators expressed concern about this requirement and asked for its elimination or clarification. This proposed Schedule A change was intended to provide a line on which plans could comply with the above described requirement to report certain general account contracts at fair value. One commentator suggested that the question be rephrased to ask for the current value of the "plan's funds" in the general account. Accordingly, the new question has been re-worded; however, for consistency with the existing Schedule A question on current value of the "plan's interest" in insurance company separate accounts, the question asks for the current value of the "plan's interest" in the insurance company general account.

4. *Schedule A Reporting of Investment Contracts with Insurance Companies.* Several commentators noted that the current Schedule A instructions read "This schedule must be attached to Form 5500 * * * where any benefits under the plan are provided by an insurance company, insurance service, or other similar organization." The proposed instructions included the phrase "(or investments are managed) by an insurance company * * *." Commentators expressed confusion about whether the instruction was intended to clarify existing reporting obligations or impose new ones. The proposed instruction was not intended to impose any new Schedule A reporting requirements, but rather was intended to state the current requirement to report on the Schedule A contracts with insurance companies (including investment and annuity contracts) that are part of the plan's "funding arrangement" as well as those that are part of the plan's "benefit arrangement." Accordingly, the instruction has been revised to mirror the current Form 5500 instructions for line 14 of the Form 5500 and Line 14 of the Form 5500–C which explain Schedule A reporting is required for contracts with insurance companies that are part of the plan's "funding arrangement" as well as those that are part of the plan's "benefit arrangement."

5. *Reporting of Allocated Insurance Contracts.* The Department received several comments on the reporting of allocated insurance contracts referred to in 29 CFR 2520.104–44(b)(2). Section 2520.104–44(b)(2) provides pension plans "the benefits of which are provided exclusively through allocated insurance contracts or policies" with a limited exemption from and alternative method of compliance with the annual audit requirement and the requirement to report certain financial information on the annual report. Although the Notice of proposed forms revisions and the proposed amendments to the Department's annual reporting regulations did not propose to modify the reporting for allocated insurance contracts, the commentators urged that the term "allocated insurance contract" should be broadened to include: (i) Insurance products that "guarantee benefits" even if they do not provide upon receipt of the required premium a retirement benefit of a specified amount; (ii) insurance products that guarantee a fixed rate of return even if they do not provide upon receipt of the required premium a retirement benefit of a specified amount, and (iii) group annuity contracts held by defined contribution plans where each participant's interest in the contract is credited or "allocated" to the participant's individual account in the plan, but the value of each participant's interest in the insurance contract is adjusted for market value fluctuations.

The term "allocated" insurance contract has been consistently defined in the instructions to the Form 5500 Series. Under that definition, contracts are not "allocated" unless the insurance company or organization that issued the contract has unconditionally guaranteed, upon receipt of the required premium or consideration, to provide a retirement benefit of a specified amount to each covered participant without adjustment for fluctuations in the market value of the underlying assets of the company or organization, and each participant has a legal right to such benefits which is legally enforceable directly against the insurance company or organization. See the March 1, 1989 Notice of Adoption of Revised Forms (1989 Notice), 54 FR 8631, 8635.[3] The 1989 Notice included the following statements regarding the Department's longstanding view on this definition: "'allocated' contracts include only those contracts under which an insurance company immediately assumes upon receipt of contributions or premiums fixed dollar obligations to provide the retirement benefit specified in the plan * * *" and that the reporting exemption for allocated insurance contracts "is premised on the fact that under such contracts the plan has effectively transferred the risk for the payment of benefits accrued to that date * * * to the insurer and, accordingly, limited reporting is appropriate." The types of contracts identified by the commentators either did not possess these characteristics and/or failed to satisfy other components of the definition, or the commentators did not provide sufficient information about the characteristics of the contract to support a conclusion that the policies underlying 29 CFR 2520.104–44 apply such that the audit and financial reporting relief for allocated contracts should be broadened to include these other types of contracts. Accordingly, the Department has not adopted these comments and has retained unmodified the Form 5500 return/report instructions pertaining to "allocated" insurance contracts.

A commentator also asked for the Department to clarify whether the reporting relief for allocated contracts applies only to defined benefit pension

[3] Before the issuance of the 1988 Form 5500, the Form and the accompanying instructions were published in a notice in the **Federal Register**, 51 FR 33500 (September 19, 1986), with the public having the opportunity to furnish written comments and oral testimony to the Department. The definition of the term "allocated" insurance contract was incorporated into the 1988 Form 5500 instructions and has been included in the Form 5500 instructions for all subsequent plan years. Also see 43 FR at 10138 (March 10, 1978) for the discussion of allocated insurance contracts in the preamble to the final § 2520.104–44 regulations.

plans. Although the regulatory relief in 29 CFR 2520.104–44(b)(2) is limited to pension benefit plans the benefits of which are provided exclusively through allocated insurance contracts, neither the regulation nor the Form 5500 return/report instructions distinguish between defined contribution and defined benefit pension plans.

One commentator asked the Department to clarify the term "contracts with allocated funds" that is referred to on line 5 of Schedule A (Insurance Information). It is the Department's view that allocated funds referred to on line 5 represent the portion of an insurance contract that would otherwise meet all of the standards for an allocated insurance contract described above.

6. *Reporting of Synthetic GICs and Similar Contracts at Book Value.* Several commentators asked that the form or the instructions authorize "synthetic GICs," "separate account GICs," and insurance company "stable value funds" to be reported at contract or "book" value on the Schedule A, Schedule H and Schedule I because, according to the commentators, these contracts are designed to provide returns and investment features similar to insurance company general account investment contracts. Insufficient information was presented on the nature of these contracts, the implications of contract value reporting and the feasibility of reporting these various contracts on a single line item to enable the Agencies to adopt this recommendation. Thus, these contracts must continue to be reported in conformance with existing annual reporting requirements.

7. *Insurance Fee and Commission Reporting.* Several commentators noted that insurance fees and commissions must be individually reported on Schedule A, whereas fees and commissions on bank investment products, mutual funds, or other products are not individually reported on a separate schedule. These commentators suggested either eliminating the Schedule A requirement to report insurance fees and commissions or requiring broader fee/commission reporting from banks and other financial institutions. The Department did not adopt this recommendation because section 103(e) of ERISA specifically calls for the annual report to include information on fees and commissions paid by insurance companies, and the Department continues to believe that these Schedule A disclosures provide useful information. Also, the Department has been generally reviewing fee disclosure issues outside the context of this Form 5500 project.

Several commentators also questioned the proposed requirement to report fees and commissions paid to "other persons" noting that the current Schedule A requests this information only for "agents and brokers." Section 103(e) of ERISA includes "other persons" with agents and brokers in defining the requirement to report insurance contract fees and commissions. Further, the current Schedule A instructions provide that fees paid by insurance carriers to persons other than agents and brokers should be reported on the Schedule A as acquisition costs, administrative expenses, etc., as appropriate, and note that for large plan filers these fees paid to "other persons" are subject to separate reporting on the Schedule C. In light of the above, the requirement to report fees and commissions paid to "other persons" has been retained in the Schedule A because the Department believes it serves important enforcement targeting and disclosure purposes to require individual identification of all persons who are paid insurance fees and commissions.

D. Schedule C (Service Provider Information)

1. *Improve Reporting on Plan Fees and Expenses.* Several commentators suggested that the Agencies require both large and small plans to report all fees and expenses whether paid for by the plan or employer, including break-out reporting of both bundled fees and fees on investment products that are included in determining the net investment gain (or loss). Other commentators suggested increasing the Schedule C threshold so that only persons receiving compensation in excess of substantially increased thresholds (e.g., $10,000, $25,000, or $100,000) be reported and/or that only the top 20 highest paid service providers be included. The Agencies concluded that requiring Schedule C reporting by small plan filers would not be consistent with a principal objective of the project which is to streamline the Form 5500. Similarly, the Agencies concluded that raising the reporting thresholds may result in the disclosure of inadequate service provider information. Accordingly, the Agencies decided not to adopt these suggested changes. However, as noted above, the Department is reviewing general fee disclosure issues outside the context of this Form 5500 project.

2. *Reports on Trustee Identification and Service Provider Terminations.* The proposal eliminated from the Schedule C the requirement that large plans list plan trustees annually and restricted the requirement to report service provider terminations to terminations of accountants and enrolled actuaries. Several commentators expressed concern that restricting the reporting of terminated parties on the Schedule C to accountants and actuaries would limit the Agencies' ability to evaluate possible fiduciary problems, and suggested that the Agencies either retain current requirements or broaden the report to include all terminated service providers. Others suggested that the Agencies reinstate the requirement to identify terminated trustees and add terminations of independent third party appraisers. Other comments supported the change, contending that the reports on service provider terminations and the trustee list are not useful. It is the view of the Agencies that the currently required annual information on Schedule C regarding trustees and termination of various service providers is not widely used and to a large extent is duplicative of information otherwise available to participants either as part of the plan's SPD and SMMs or by comparing consecutive annual reports. In addition, the majority of annual report filers are small plan filers which are already exempt from these requirements because the Schedule C only applies to large plan filers.

3. *Clarify "Service Code" Entry.* Under current rules, Schedule C reporting is generally required when any person receives, directly or indirectly, $5,000 or more in compensation for services rendered to a plan. A commentator asked that the instructions clarify how the $5,000 threshold is applied when multiple services are provided. The current instructions already make it clear that the $5,000 threshold is calculated taking into account compensation for all services provided (regardless of whether the compensation for any single service among the multiple services is less than $5,000). For example, the current instructions state: "If more than one service was provided, enter only the code of the primary service." Nonetheless, to further clarify the instructions and to provide for more accurate disclosure of service fees, the Agencies have changed the service code rule to require the reporting of a service code for each service included in the total compensation figure.

4. *Allow Cash or Accrual Basis Reporting on Schedule C.* One commentator asked for clarification of whether the Schedule C permits use of either the cash or accrual basis method of accounting for reporting

compensation paid to service providers. The Department has clarified the instructions to the Schedule C to provide for the use of either the cash or accrual basis method for recognition of transactions on the Schedule C as long as one method is consistently used.

E. Schedule D (DFE /Participating Plan Information)

1. *Clarify DFE Requirements.* The proposal called for a comprehensive restructuring of the way Direct Filing Entity (DFE) information is reported by PSAs, CCTs, master trusts investment accounts (MTIAs), 103–12 investment entities (103–12 IEs), and group insurance arrangements (GIAs). Specifically, under the proposal, the Form 5500 would be established as the standardized reporting format for DFEs. Several commentators described the new DFE provisions as an improvement because the standardized reporting format for DFEs clarifies the reporting process for DFEs and provides more understandable information to participants and beneficiaries regarding their plans' participation in these pooled investment and insurance arrangements. A commentator also suggested that all PSAs, CCTs, MTIAs, other investment entities that hold plan assets, and GIAs be required to file directly, and suggested the proposal be expanded to broaden disclosure to participants about the DFE investments. Some commentators expressed concern about possible competitive disadvantages for PSAs that do not choose to file as DFEs, requested that the Department reconsider the standardized filing requirement for DFEs, and also stated that the DFE changes would increase the reporting requirements for PSAs and CCTs.

The Department believes that the changes to the reporting requirements for plans participating in CCTs, PSAs, MTIAs, 103–12 IEs, and GIAs is the best alternative for capturing the information needed to carry out its oversight responsibilities over the plan assets held by these entities and ensuring that there is adequate disclosure of plan investment and insurance information to plan participants and beneficiaries. Continuation of the current annual reporting rules would perpetuate the Department's current inability to correlate and effectively use the data regarding the approximately $2 trillion in plan assets invested by plans in DFEs, and, therefore, would be adverse to the interests of participants and beneficiaries since the DFE information is an integral part of the annual report of each participating plan. Moreover, with the exception of abbreviated income and expense statements for CCTs and PSAs being required as part of their Schedule H filing, in the Department's view, substantially all of the information that would be required to be reported by DFEs under the new Form 5500 currently must be reported. Further, direct reporting by CCTs, PSAs, 103–12 IEs and GIAs continues to be optional. Thus, the Department believes that the major change in reporting with respect to DFEs is that information must be reported in a standardized format using the Form 5500 and associated schedules.

Some commentators expressed concern about the proposed requirement that plans classify and report the underlying assets of CCTs and PSAs that do not elect to report as DFEs. The commentators stated that implementation of this rule will be costly because, under the proposal, such plans will have to classify each investment held by the entity and report their percentage interest as of the beginning and end of the plan year. The commentators suggested that CCTs and PSAs currently are only required to provide participating plans and the Department with a statement of assets and liabilities as of their fiscal year end, and argued that the proposed change would require these entities to prepare statements of assets and liabilities on a monthly or more frequent basis. Under existing annual reporting rules, however, plans must include the current value of their investment in CCTs and PSAs in their annual reports as of the beginning and end of the plan year. Further, these asset break-out rules do not apply to small plan filers and the Department does not envision that the required asset break-out reporting rules will impose a substantial additional burden on large plan filers inasmuch as there is only a limited number of general asset categories on the Schedule H (Financial Information) that could be used, e.g., interest bearing cash; U.S. government securities; corporate debt instruments; corporate stock; partnership/joint venture interests; real estate; loans; other assets; and employer securities. Further, the Department does not believe that the new DFE rules should result in material cost increases or administrative burdens for plans because of the information required to be transmitted by CCTs and PSAs to their participating plans.

2. *Notice of DFE Filing to Plans.* Several commentators noted that there was no explicit provision in the proposed Form 5500 instructions that required CCTs and PSAs to annually notify their participating plans whether the CCT or PSA will file a Form 5500 as a DFE with the Department. The Department clarified the notice requirements in the proposed regulatory amendments to 29 CFR 2520.103–5 in a separate Notice of Proposed Rulemaking that was published in the **Federal Register** on December 10, 1998 (63 FR 68370). A notice of final rulemaking on those regulatory amendments will be published separately in the **Federal Register**.

3. *Reconfigure Schedule D.* Several commentators noted that the multi-purpose Schedule D as proposed was confusing, and one suggested that it be divided into two parts, Part I to be filed by plans and Part II to be filed by DFEs. The Department has restructured the Schedule D into two parts. Part I must be completed by plans and DFEs to report information on their investments in MTIAs, CCTs, PSAs and 103–12 IEs. Part II must be completed by DFEs to report information regarding participating plans. Another commentator indicated that it is unlikely that the space on the Schedule D would be sufficient to list, in many cases, every plan that at some time during a year participated in a DFE (particularly CCTs and PSAs). The Schedule D was restructured to address that issue by using a continuation page approach.

One commentator noted that among other information that must be reported on the Schedule D by a PSA electing to file as a DFE is each participating plan's EIN and plan number (PN). The commentator stated that most insurers do not possess this information, and, therefore, suggested that the Department permit insurers to use their contract identification number in lieu of the EIN and PN on the Schedule D. The Department did not adopt this recommendation. Plan administrators already must furnish EIN and PN information to banks and insurance carriers filing statements of assets and liabilities for CCTs and PSAs under current direct filing rules. This requirement was originally included in 29 CFR 2520.103–9(b)(2), adopted as a final rule on March 10, 1978 (43 FR 14009). Also, EIN and PN information facilitates effective correlation of information filed by plans and DFEs. Another commentator asked that the Schedule D listing of plan sponsor names and assets should not be open to public inspection. The content of the annual report under Title I of ERISA generally is required to be public information. See, e.g., ERISA section 106. Accordingly, the Department did not adopt this recommendation.

4. *Filing Due Dates and Transitional Rules Regarding DFEs.* Some CCTs and

PSAs indicated an intent to file as DFEs but stated that substantial lead time would be needed to prepare for the new reporting requirements, and suggested making the filing optional for several years or otherwise delaying the implementation of the DFE rules. Some said no changes should be implemented until effective electronic filing options are available to DFEs.

As previously mentioned, implementation of the new Form 5500 has been delayed until 1999 plan year filings. To facilitate the transition to the new reporting rules for DFEs, the Department is also clarifying the due date for DFE Form 5500 filings and adopting a transitional reporting rule for plans and DFEs participating in CCTs and PSAs. First, as to the DFE Form 5500 due date, inasmuch as DFE filings continue to be considered an integral part of the annual report of each participating plan, each participating plan's Form 5500 return/report will be treated as incomplete unless the DFE information is filed within the prescribed time. The regulatory amendments clarify that, as with the current rule for statements of assets and liabilities, the DFE Form 5500 filing should pertain to the DFE fiscal year ending with or within the plan year. The regulatory amendments also establish the filing due date for all DFEs, other than GIAs, as no later than 9–1/2 months after the end of the DFE's fiscal year.[4] This structure is intended to provide a predictable filing deadline for DFEs while also ensuring that all DFE filings will be due on or before the latest annual report due date for any participating plan regardless of the plan's reporting year.

A transitional rule applies to plans and DFEs participating in CCTs or PSAs which do not elect to file as a DFE for their fiscal year ending in 1999. The transitional rule waives for the 1999 reporting year the requirement that large plan filers and DFEs break out, as dollar value entries in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information), their percentage interest in the underlying assets of CCTs and PSAs that do not file as DFEs. Rather, for the 1999 reporting year only, large plans and DFEs may report their interest on the aggregate CCT or PSA lines of the Schedule H asset and liability statement (i.e., lines 1c(9) and 1c(10) of Schedule H) as of the beginning and end of the plan year even if the CCT or PSA does not file a Form 5500 as a DFE. Plans participating in a CCT or PSA also are not required to attach the CCT's or PSA's statement of assets and liabilities to its 1999 filing.

F. Schedule H (Financial Information), Schedule I (Financial Information—Small Plan) and Schedule G (Financial Transaction Schedules)

1. *Employer Delinquent Transmission of Participant Contributions.* One commentator requested a change to the question on participant contributions to require reporting only when contributions are not transmitted by the employer within 15 business days after the end of the month in which the contributions are withheld or received by the employer in the case of pension plans, and 90 days after such receipt or withholding in the case of welfare plans. In comparison, the proposed question on Schedule H and Schedule I (referred to as Schedule FIN and FIN-SP in the September 3, 1997 proposal) asks whether participant contributions were transmitted by the earliest date on which such contributions could reasonable be segregated from the employer's general assets (which date cannot exceed 15 business days after the end of the month in which the contributions are withheld or received by the employer in the case of pension plans and 90 days after receipt or withholding in the case of welfare plans). The commentator's suggested change would undercut the purpose of the question which was designed to identify circumstances under which the Department's regulatory requirements for timely handling of participant contributions may have been violated. Accordingly, the comment has not been adopted.

2. *Direct Rollover Reporting.* The Agencies proposed to add to the Schedule H a requirement to separately report plan distributions in the form of "direct rollovers" to IRAs and other qualified plans. Several commentators stated that this information is currently reported to the IRS on Form 1099–R and suggested that additional recordkeeping burdens would result from this requirement. The Agencies decided to eliminate this question from the Schedule H.

3. *Schedule of Assets Held for Investment Purposes at End of Year, Schedule of Investment Assets Both Acquired and Disposed of Within the Plan Year, and Schedule of Reportable (5%) Transactions.* The Department received comments both supporting and opposing the proposal to eliminate these schedules from the annual report. Several commentators said that elimination of these schedules would deprive participants, the Department, and others of valuable plan information. Other commentators supported the change as reducing reporting burdens by eliminating unnecessary information from the annual report, but noted the proposal did not result in significant overall burden savings because all the information still had to be retained so that it could be made available to participants, beneficiaries, the Department and other authorized parties on request. In view of the potential importance of the scheduled information to participants and others, and the few additional burdens attendant to the filing of such information in light of the continued disclosure obligation, the Department decided to retain these schedules as part of the annual report for large plan filers. However, the Department decided to adopt the elements of the proposal that (1) eliminated the requirement to report participant or beneficiary directed transactions under an individual account plan on the schedule of reportable (5%) transactions, and (2) eliminated the requirement to report the historical cost for assets held as a result of such participant or beneficiary direction on the Schedule of Assets Held for Investment Purposes at End of Year and the Schedule of Investment Assets Both Acquired and Disposed of Within the PlanYear. Further, the instructions to the Form 5500 return/report state that, although these schedules must continue to be attached to the Form 5500 for large plan filers to report assets held for investment and reportable transactions, filers are not required to use computer scannable forms for these attachments.

One commentator also requested that the Department eliminate altogether the requirement to report cost information on the schedule of reportable transactions and the schedules of assets for "participation units" in insurer pooled accounts regardless of participant or beneficiary direction of the asset because, according to the commentator, some insurers do not maintain "cost" information on such participation units. The commentator stated that there is no "natural historical cost number" for these participation units and there is no taxable transaction associated with interfund transfers while funds are held within a tax qualified plan. Requirements regarding reporting of cost of plan assets have long

[4] The Department did not extend the filing due date for GIAs (i.e., due no later than the last day of the 7th month after the end of the GIA fiscal year) because the GIA filing is in lieu of the plan's filing rather than supplementing the plan's filing (as is the case with filings made by CCTs, PSAs, MTIAs and 103–12IEs). GIAs, however, are able to obtain the same filing extension that is available to plans (i.e., 2½ months by timely filing a Form 5558).

been part of the Title I annual reporting rules. Cost reporting in conjunction with current value reporting on these schedules for non-participant directed assets provides comparative information regarding the value of plan assets. The Department was unable to conclude, based on the limited information provided regarding the type of insurer accounts described by the commentator, that these accounts were not capable of being reported with a cost figure calculated on an acceptable accounting basis, and was unable to conclude that adopting this recommendation would be consistent with the purposes of Title I and would provide adequate disclosure to participants and beneficiaries and adequate reporting to the Department.

4. *Reporting Participant Loans in Default.* Several commentators asked for guidance on whether participant loans in default must continue to be reported on the Schedule G even after a "deemed distribution" has been reported to the IRS under the Code. Others asked that participant loans in default not be required to be reported if they are adequately secured by the participant's account balance in the plan. Under the proposal, participant loans in default could be reported as an aggregate figure rather than as individual loans on the Schedule G. In light of the above comments, several changes were made to the Schedule G as well as Schedule H and Schedule I to clarify the reporting requirements in a way that the Agencies believe will in the aggregate reduce administrative burdens and improve reporting regarding participant loans.

5. *Reporting Preferred and Common Stocks, Preferred and Other Corporate Debt, and Realized and Unrealized Gains/Losses.* Some commentators stated that the breakout of preferred versus common stock, preferred versus other bonds, and realized versus unrealized gains/losses is unnecessary and suggested that the Agencies consolidate those categories into stocks, bonds, and total gains/losses. Several commentators also stated that the recharacterization of corporate debt instruments from "preferred" and "other" to "long term" and "short term" would require reprogramming and questioned the value of this change. The Agencies have examined these breakouts and decided to retain them because they serve important enforcement and disclosure purposes, but, have decided to adopt the recommendation to retain the "preferred" and "other" categories for reporting corporate debt instruments.

6. *Reporting of Corrective Distributions*—Plans that fail either the actual deferral percentage or actual contribution percentage tests, or certain plans that have Code section 415 excess annual additions may make corrective distributions to satisfy these rules. A commentator asked the Agencies to clarify how such corrective distributions should be reported on the form. In response, a new line was added to the Income and Expense Statements on Schedule H and Schedule I to report corrective distributions.

G. Schedule R (Retirement Plan Information)

Schedule R (Retirement Plan Information), referred to as Schedule PEN in the September 3, 1997 proposal, was modified in response to public comments. As noted above, the questions on the number of participants were consolidated into the Form 5500. The questions on plan distributions and funding were continued, but the requirement to report distributions that were not paid as qualified joint and survivor annuities, which some commentators characterized as burdensome, was replaced, at a commentator's recommendation, with the requirement to report the number of single sum distributions. The Agencies, however, retained the reporting of distributions paid in property other than cash, annuity contracts or publicly traded securities and the EINs of the two principal payors of plan benefits because they serve as valuable tools for monitoring plans' compliance with the requirements and objectives of ERISA and the Code.

H. Schedule T (Qualified Plan Coverage Information)

Schedule T, referred to as Schedule Q in the September 3, 1997 proposal, requires the reporting of specific plan coverage data pertinent to a plan's compliance with the minimum coverage requirements of the Code and is being adopted largely as proposed. The Form 5500 and the Schedule T allow plans, in appropriate circumstances, to report coverage information as infrequently as every third year under the three year testing cycle rule. In response to a commentator's request, a space was added to the Form 5500 that allows a filer to indicate that a Schedule T is not being attached because the plan is relying on coverage testing information for a prior year. Further, in response to one comment, the instructions for the Schedule T have been modified to allow plans maintained by more than one employer to report which of their participating employers automatically meet the minimum coverage requirements, thus eliminating the separate Schedule T that would otherwise have to be filed for these employers.

I. Miscellaneous Technical Adjustments

Various commentators submitted technical suggestions on how to further improve and clarify various portions of the proposal. Many of the suggestions focused on technical corrections and improvements in the instructions as opposed to changes on the forms. The Agencies have reviewed the comments and made various technical corrections/clarifications in response to those comments.

III. Regulations Relating to the Final Form

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including the report of an independent qualified public accountant and any required statements, schedules and attachments) by plans with 100 or more participants constitutes compliance with the limited exemption and alternative method of compliance prescribed in paragraph (b) of 29 CFR 2520.103–1, promulgated in accordance with the authority granted the Secretary under sections 104(a)(3) and 110 of ERISA. The filing of a completed Form 5500, with the appropriate statements, schedules and attachments, also constitutes compliance with the simplified annual reporting requirements prescribed at 29 CFR 2520.104–41, adopted pursuant to the authority granted the Secretary under ERISA sections 104(a)(2)(A) and 104(a)(3). Also see 29 CFR 2520.103–1(c). In the supplementary information accompanying the 1997 proposed forms revisions (62 FR 46556), the Department noted that certain amendments to the annual reporting regulations would be necessary to accommodate certain proposed revisions to the forms. As stated previously, proposed amendments to the Department's annual reporting regulations were published in the **Federal Register** for public comment on December 10, 1998 (63 FR 68370). A final rule amending the Department's annual reporting regulations will be published separately by the Department in the **Federal Register**. The findings required under sections 104(a)(3) and 110 of ERISA relating to the use of the Form 5500, as revised, as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA will be contained in that final rule.

Paperwork Reduction Act

The Form 5500 Series contain information collection requirements.

They have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)). The Form 5500 Series has been assigned the following OMB Control Numbers: U.S. Department of Labor, Pension and Welfare Benefits Administration 1210–0110 and 1210–0089; U.S. Department of the Treasury, Internal Revenue Service 1545–1610; and Pension Benefit Guaranty Corporation 1212–0057. The OMB control numbers and estimates of the time required to complete the Form 5500 Series are presented in the Paperwork Reduction Act Notice contained in the instructions to the Form 5500 Series.

Statutory Authority

Accordingly, pursuant to the authority in sections 101, 103, 104, 109, 110 and 4065 of ERISA and sections 6039D and 6058 of the Code, the Form 5500 Series Annual Return/Report and the instructions thereto are adopted as set forth herein.

Signed at Washington, DC, this 20th day of January, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

Carol D. Gold,

Director, Employee Plans, Tax Exempt and Government Entities Division, Internal Revenue Service, Department of the Treasury.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

BILLING CODE 4510–29–P

Form **5500**

Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6039D, 6047(e), 6057(b), and 6058(a) of the Internal Revenue Code (the Code).

▶ Type or print all entries in accordance with the instructions to the Form 5500.

Official Use Only

OMB Nos. 1210-0110 / 1220-0089

1999

This Form is Open to Public Inspection.

Part I Annual Report Identification Information

For the calendar plan year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A This return/report is for:
(1) ☐ a multiemployer plan;
(2) ☐ a single-employer plan (other than a multiple-employer plan);
(3) ☐ a multiple-employer plan; or
(4) ☐ a DFE (specify) ..... ☐

B This return/report is:
(1) ☐ the first return/report filed for the plan;
(2) ☐ an amended return/report;
(3) ☐ the final return/report filed for the plan;
(4) ☐ a short plan year return/report (less than 12 months).

C If the plan is a collectively-bargained plan, check here ..... ▶ ☐

D If you filed for an extension of time to file, check the box and attach a copy of the extension application ..... ▶ ☐

Part II Basic Plan Information — enter all requested information.

1a Name of plan

1b Three-digit plan number (PN) ▶ ☐☐☐

1c Effective date of plan MM / DD / YYYY

Caution: *A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.*

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements, and attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of plan administrator ▶ _____ Date MM / DD / YYYY

Typed or printed name of individual signing as plan administrator

a

Signature of employer/plan sponsor/DFE ▶ _____ Date MM / DD / YYYY

Typed or printed name of individual signing as employer, plan sponsor or DFE, as applicable

b

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Form 5500 (1999) Page 2

Official Use Only

2a Plan sponsor's name and address (employer, if for single-employer plan) (Address should include room or suite no.)

1) Name

Name Continued

2) Doing Business As (DBA) Name

C / O Name

3) Mailing Street Address (or Foreign Street)

4) Location Address

Location Address Continued

5) Foreign Routing Code (Zip Code)

6) Foreign Mailing Country

7) City (or Foreign City)

8) State Zip Code

2b Employer Identification Number (EIN) –

2c Sponsor's telephone number – –

2d Business code (see instructions)

3a Plan administrator's name and address (If same as plan sponsor, enter "Same")

1) Name

Name Continued

C / O Name

2) Street Address (or Foreign Street)

3) Foreign Routing Code (Zip Code)

4) Foreign Mailing Country

5) City (or Foreign City)

6) State Zip Code

3b Administrator's EIN –

3c Administrator's telephone number – –

4 If the name and/or EIN of the plan sponsor has changed since the last return/report filed for this plan, enter the name, EIN and the plan number from the last return/report below:

a Sponsor's name

b EIN –

c PN

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5 Preparer information (optional)

a Name (including firm name, if applicable) and address

1) Name

Name Continued

2) Street Address (or Foreign Street)

3) Foreign Routing Code (Zip Code)

4) Foreign Mailing Country

5) City (or Foreign City)

6) State Zip Code

b EIN

c Telephone number

6 Total number of participants at the beginning of the plan year

7 Number of participants as of the end of the plan year (welfare plans complete only lines 7a, 7b, 7c, and 7d)

a Active participants

b Retired or separated participants receiving benefits

c Other retired or separated participants entitled to future benefits

d Subtotal. Add lines 7a, 7b, and 7c

e Deceased participants whose beneficiaries are receiving or are entitled to receive benefits

f Total. Add lines 7d and 7e

g Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item)

h Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested

i If any participant(s) separated from service with a deferred vested benefit, enter the number of separated participants required to be reported on a Schedule SSA (Form 5500)

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Official Use Only

8 Benefits provided under the plan (complete 8a through 8c, as applicable)

a ☐ Pension benefits (check this box if the plan provides pension benefits and enter the applicable pension feature codes from the List of Plan Characteristics Codes (printed in the instructions) below).

☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐

b ☐ Welfare benefits (check this box if the plan provides welfare benefits and enter the applicable welfare feature codes from the List of Plan Characteristics Codes (printed in the instructions) below).

☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐ ☐☐

c ☐ Fringe benefits (check this box if the plan provides fringe benefits)

9a Plan funding arrangement (check all that apply)

(1) ☐ Insurance
(2) ☐ Section 412(i) insurance contracts
(3) ☐ Trust
(4) ☐ General assets of the sponsor

9b Plan benefit arrangement (check all that apply)

(1) ☐ Insurance
(2) ☐ Section 412(i) insurance contracts
(3) ☐ Trust
(4) ☐ General assets of the sponsor

10 Schedules attached (Check all applicable boxes and, where indicated, enter the number attached. See instructions.)

a Pension Benefit Schedules

1) ☐ R (Retirement Plan Information)
2) ☐ ☐☐☐ T (Qualified Pension Plan Coverage Information)

If a Schedule T is not attached because the plan is relying on coverage testing information for a prior year, enter the year ..... ▶ Y Y Y Y

3) ☐ B (Actuarial Information)
4) ☐ E (ESOP Annual Information)
5) ☐ SSA (Separated Vested Participant Information)

b Financial Schedules

1) ☐ H (Financial Information)
2) ☐ I (Financial Information–Small Plan)
3) ☐ ☐☐☐ A (Insurance Information)
4) ☐ C (Service Provider Information)
5) ☐ D (DFE/Participating Plan Information)
6) ☐ G (Financial Transaction Schedules)
7) ☐ ☐☐☐ P (Trust Fiduciary Information)

c Fringe Benefit Schedule

☐ F (Fringe Benefit Plan Annual Information)

0 1 9 9 0 0 0 4 1 0

Official Use Only

SCHEDULE A (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

Insurance Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974

▶ File as an attachment to Form 5500.

▶ Insurance companies are required to provide this information pursuant to ERISA section 103(a)(2).

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Part I Information Concerning Insurance Contract Coverage, Fees, and Commissions

Provide information for each contract on a separate Schedule A. Individual contracts grouped as a unit in Parts II and III can be reported on a single Schedule A.

1 Coverage:

(a) Name of insurance carrier

(b) EIN

(c) NAIC code

(d) Contract or identification number

(e) Approximate number of persons covered at end of policy or contract year.

Policy or contract year (f) From MM / DD / YYYY (g) To MM / DD / YYYY

2 Insurance fees and commissions paid to agents, brokers, and other persons:

Totals	Amount of commissions paid	Fees paid / Amount
	.00	.00

0 5 9 9 0 0 0 1 1 P

Schedule A (Form 5500) 1999 Page 2

Official Use Only

(a) Name and address of the agents, brokers or other persons to whom commissions or fees were paid

Name

Street Address

City State Zip Code –

(b) Amount of commissions paid .00

(c) Fees paid / Amount .00

(e) Organization code

(d) Fees paid / Purpose

(a) Name and address of the agents, brokers or other persons to whom commissions or fees were paid

Name

Street Address

City State Zip Code –

(b) Amount of commissions paid .00

(c) Fees paid / Amount .00

(e) Organization code

(d) Fees paid / Purpose

(a) Name and address of the agents, brokers or other persons to whom commissions or fees were paid

Name

Street Address

City State Zip Code –

(b) Amount of commissions paid .00

(c) Fees paid / Amount .00

(e) Organization code

(d) Fees paid / Purpose

0 5 9 9 0 0 0 2 1 Q

Schedule A (Form 5500) 1999 Page 3

Official Use Only

Part II Investment and Annuity Contract Information
Where individual contracts are provided, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.

3 Current value of plan's interest under this contract in the general account at year end .00

4 Current value of plan's interest under this contract in separate accounts at year end .00

5 Contracts With Allocated Funds

a State the basis of premium rates

▶

b Premiums paid to carrier .00

c Premiums due but unpaid at the end of the year .00

d If the carrier, service, or other organization incurred any specific costs in connection with the acquisition or retention of the contract or policy, enter amount .00

Specify nature of costs

▶

e Type of contract (1) ☐ Individual policies (2) ☐ group deferred annuity

(3) ☐ other (specify below)

▶

f If contract purchased, in whole or in part, to distribute benefits from a terminating plan check here ▶ ☐

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Schedule A (Form 5500) 1999 Page 4

Official Use Only

6 Contracts With Unallocated Funds (Do not include portions of these contracts maintained in separate accounts)

a Type of contract

(1) ☐ deposit administration (2) ☐ immediate participation guarantee (3) ☐ guaranteed investment

(4) ☐ other (specify below)

▶

b Balance at the end of the previous year ..... .00

c Additions:

(1) Contributions deposited during the year ..... .00

(2) Dividends and credits ..... .00

(3) Interest credited during the year ..... .00

(4) Transferred from separate account ..... .00

(5) Other (specify below) ..... .00

▶

(6) Total additions ..... .00

d Total of balance and additions (add b and c(6)) ..... .00

e Deductions:

(1) Disbursed from fund to pay benefits or purchase annuities during year ..... .00

(2) Administration charge made by carrier ..... .00

(3) Transferred to separate account ..... .00

(4) Other (specify below) ..... .00

▶

(5) Total deductions ..... .00

f Balance at the end of the current year (subtract e(5) from d) ..... .00

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Schedule A (Form 5500) 1999 Page 5

Official Use Only

Part II Welfare Benefit Contract Information

If more than one contract covers the same group of employees of the same employer(s) or members of the same employee organization(s), the information may be combined for reporting purposes if such contracts are experience-rated as a unit. Where individual contracts are provided, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.

7 Benefit and contract type (check all applicable boxes)

(a) ☐	Health (other than dental or vision)	(b) ☐	Dental	(c) ☐	Vision	(d) ☐	Life insurance
(e) ☐	Temporary disability (accident and sickness)	(f) ☐	Long-term disability	(g) ☐	Supplemental unemployment	(h) ☐	Prescription drug
(i) ☐	Stop loss (large deductible)	(j) ☐	HMO contract	(k) ☐	PPO contract	(l) ☐	Indemnity contract
(m) ☐	Other (specify below)						

▶

8 Experience-rated contracts

a Premiums:

(1) Amount received ..... .00

(2) Increase (decrease) in amount due but unpaid ..... .00

(3) Increase (decrease) in unearned premium reserve ..... .00

(4) Earned *((1) + (2) - (3))* ..... .00

b Benefit charges:

(1) Claims paid ..... .00

(2) Increase (decrease) in claim reserves ..... .00

(3) Incurred claims (add *(1)* and *(2)*) ..... .00

(4) Claims charged ..... .00

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Schedule A (Form 5500) 1999 Page 6

Official Use Only

c Remainder of premium:

(1) Retention charges (on an accrual basis) –

(A) Commissions ..... .00

(B) Administrative service or other fees ..... .00

(C) Other specific acquisition costs ..... .00

(D) Other expenses ..... .00

(E) Taxes ..... .00

(F) Charges for risks or other contingencies .00

(G) Other retention charges ..... .00

(H) Total retention ..... .00

(2) Dividends or retroactive rate refunds.

(These amounts were 1) ☐ paid in cash, or 2) ☐ credited.) ... .00

d Status of policyholder reserves at end of year:

(1) Amount held to provide benefits after retirement ..... .00

(2) Claim reserves ..... .00

(3) Other reserves ..... .00

e Dividends or retroactive rate refunds due. (Do not include amount entered in c(2).) ..... .00

9 Nonexperience-rated contracts:

a Total premiums or subscription charges paid to carrier ..... .00

b If the carrier, service, or other organization incurred any specific costs in connection with the acquisition or retention of the contract or policy, other than reported in Part I, item 2 above, report amount ..... .00
Specify nature of costs below

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SCHEDULE B (Form 5500)
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

Actuarial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974, referred to as ERISA, except when attached to Form 5500-EZ and, in all cases, under section 6059(a) of the Internal Revenue Code, referred to as the Code.

▶ Attach to Form 5500 or 5500-EZ if applicable.
▶ See separate instructions.

Official Use Only
OMB No. 1210-0110

1999

This Form is Open to Public Inspection (except when attached to Form 5500-EZ).

For calendar plan year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

▶ If an item does not apply, enter "N/A." ▶ Round off amounts to nearest dollar.
▶ Caution: *A penalty of $1,000 will be assessed for late filing of this report unless reasonable cause is established.*

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500 or 5500-EZ

D Employer Identification Number

E Type of plan:
(1) ☐ Single-employer (2) ☐ Multiemployer (3) ☐ Multiple-employer

F ☐ 100 or fewer participants in prior plan year

Part I Basic Information (To be completed by all plans)

1a Enter the actuarial valuation date: MM / DD / YYYY

b Assets:
(1) Current value of assets ..... .00
(2) Actuarial value of assets for funding standard account ..... .00

Statement by Enrolled Actuary (see instructions before signing):

To the best of my knowledge, the information supplied in this schedule and on the accompanying schedules, statements, and attachments, if any, is complete and accurate, and in my opinion each assumption used in combination, represents my best estimate of anticipated experience under the plan. Furthermore, in the case of a plan other than a multiemployer plan, each assumption used (a) is reasonable (taking into account the experience of the plan and reasonable expectations) or (b) would, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption were reasonable; in the case of a multiemployer plan, the assumptions used, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations).

Signature of actuary _____ Date MM / DD / YYYY

Print or type

Name of actuary

Firm name

Address of the firm

City State Zip Code -

G Most recent enrollment number - Telephone number (including area code) - -

If the actuary has not fully reflected any regulation or ruling promulgated under the statute in completing this schedule, check the box and see instructions ..... ☐

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Schedule B (Form 5500) 1999 Page 2

Official Use Only

c (1) Accrued liability for plans using immediate gain methods ..... .00

(2) Information for plans using spread gain methods:

(a) Unfunded liability for methods with basis ..... .00

(b) Accrued liability under entry age normal method ..... .00

(c) Normal cost under entry age normal method ..... .00

d Information on current liabilities of the plan:

(1) Amount excluded from current liability attributable to pre-participation service (see instructions) ..... .00

(2) "RPA '94" information:

(a) Current liability ..... .00

(b) Expected increase in current liability due to benefits accruing during the plan year ..... .00

(c) Current liability computed at highest allowable interest rate (see instructions) ..... .00

(d) Expected release from "RPA '94" current liability for the plan year ..... .00

(3) "OBRA '87" information:

(a) Current liability ..... .00

(b) Expected increase in current liability due to benefits accruing during the plan year ..... .00

(c) Expected release from "OBRA '87" current liability for the plan year ..... .00

(4) Expected plan disbursements for the plan year ..... .00

2 Operational information as of beginning of this plan year:

a Current value of the assets (see instructions) ..... .00

b "RPA '94" current liability:

	(1) No. of Persons	(2) Vested Benefits	(3) Total Benefits
(1) For retired participants and beneficiaries receiving payments		.00	.00
(2) For terminated vested participants		.00	.00
(3) For active participants		.00	.00
(4) Total		.00	.00

c If the percentage resulting from dividing line 2a by line 2b(4), column (3), is less than 70%, enter such percentage ..... %

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Schedule B (Form 5500) 1999 Page 3

Official Use Only

3 Contributions made to the plan for the plan year by employer(s) and employees:

(a) Month-Day-Year	(b) Amount paid by employer	(c) Amount paid by employees
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
M M / D D / Y Y Y Y	.00	.00
3 Totals ▶	.00	.00

4 Quarterly contributions and liquidity shortfall(s):

a Plans other than multiemployer plans, enter funded current liability percentage for preceding year (see instructions) ..... %

b If line 4a is less than 100%, see instructions, and complete the following amount fields as applicable:

Liquidity shortfall as of end of Quarter of this plan year

(1) 1st .00 (3) 3rd .00

(2) 2nd .00 (4) 4th .00

5 Actuarial cost method used as the basis for this plan year's funding standard account computation:

(a) ☐ Attained age normal (b) ☐ Entry age normal (c) ☐ Accrued benefit (unit credit) (d) ☐ Aggregate

(e) ☐ Frozen initial liability (f) ☐ Individual level premium (g) ☐ Individual aggregate (h) ☐ Other (specify)

▶

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Schedule B (Form 5500) 1999 Page 4

Official Use Only

I Has a change been made in funding method for this plan year?	☐ Yes	☐ No
J If line I is "Yes," was the change made pursuant to Revenue Procedure 95-51 as modified by Revenue Procedure 98-10?	☐ Yes	☐ No
K If line I is "Yes," and line J is "No" enter the date of the ruling letter (individual or class) approving the change in funding method	MM / DD / YYYY	

6 Checklist of certain actuarial assumptions:

		N/A
a Interest rates for: (1) "RPA '94" current liability	%	☐
(2) "OBRA '87" current liability	%	☐
b Weighted average retirement age		☐

	Pre-retirement			Post-retirement		
c Rates specified in insurance or annuity contracts	☐ Yes	☐ No	☐ N/A	☐ Yes	☐ No	☐ N/A
d Mortality table code for valuation purposes: (1) Males						
(2) Females			N/A			N/A
e Valuation liability interest rate	%		☐	%		☐
f Expense loading	%		☐	%		☐

g Annual withdrawal rates:	Male		Female	
(1) Age 25	☐	%	☐	%
(2) Age 40	☐	%	☐	%
(3) Age 55	☐	% N/A	☐	% N/A
h Salary scale		% ☐		% ☐

I Estimated investment return on actuarial value of assets for the year ending on the valuation date ..... %

7 New amortization basis established in the current plan year:

(1) Type of Base	(2) Initial Balance	(3) Amortization Charge/Credit
☐	.00	.00
☐	.00	.00
☐	.00	.00
☐	.00	.00
☐	.00	.00
☐	.00	.00

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Schedule B (Form 5500) 1999 Page 5

Official Use Only

8 Miscellaneous Information:

a If a waiver of a funding deficiency or an extension of an amortization period has been approved for this plan year, enter the date of the ruling letter granting the approval ..... MM / DD / YYYY

b If one or more alternative methods or rules (as listed in the instructions) were used for this plan year, enter the appropriate code in accordance with the instructions ..... ▶

c Is the plan required to provide a Schedule of Active Participant Data? (see instructions) ..... ☐ Yes ☐ No

If "Yes," attach schedule.

9 Funding standard account statement for this plan year:

Charges to funding standard account:		
a Prior year funding deficiency, if any		.00
b Employer's normal cost for plan year as of valuation date		.00
c Amortization charges as of valuation date:	Outstanding Balance	
(1) All bases except funding waivers ▶	($ .00)	.00
(2) Funding waivers ▶	($ .00)	.00
d Interest as applicable on line 9a, 9b, and 9c		.00
e Additional interest charge due to late quarterly contributions, if applicable		.00
f Additional funding charge from Part II, line 12u, if applicable ..... N/A ☐		.00
g Total charges. Add lines 9a through 9f		.00
Credits to funding standard account:		
h Prior year credit balance, if any		.00
i Employer contributions. Total from column (b) of line 3		.00
	Outstanding Balance	
j Amortization credits as of valuation date ▶	($ .00)	.00
k Interest as applicable to end of plan year on lines 9h, 9i, and 9j		.00
l Full funding limitation (FFL) and credits		
(1) ERISA FFL (accrued liability FFL)	.00	
(2) "OBRA '87" FFL (155% current liability FFL)	.00	
(3) "RPA '94" override (90% current liability FFL)	.00	
(4) FFL credit before reflecting "OBRA '87" FFL		.00
(5) Additional credit due to "OBRA '87" FFL		.00
m (1) Waived funding deficiency		.00
(2) Other credits		.00
n Total credits. Add lines 9h through 9k, 9l(4), 9l(5), 9m(1), and 9m(2)		.00

0 7 9 9 0 0 0 5 1 V

Schedule B (Form 5500) 1999 Page 6

Official Use Only

o Credit balance: If line 9n is greater than line 9g, enter the difference ..... .00

p Funding deficiency: If line 9g is greater than line 9n, enter the difference ..... .00

Reconciliation account:

q Current year's accumulated reconciliation account:

(1) Due to additional funding charges as of the beginning of the plan year ..... .00

(2) Due to additional interest charges as of the beginning of the plan year ..... .00

(3) Due to waived funding deficiencies:

(a) Reconciliation outstanding balance as of valuation date ..... .00

(b) Reconciliation amount. Line 9c(2) balance minus line 9q(3)(a) ... .00

(4) Total as of valuation date ..... ▶ .00

10 Contribution necessary to avoid an accumulated funding deficiency. Enter the amount in line 9p or the amount required under the alternative funding standard account if applicable ..... .00

11 Has a change been made in the actuarial assumptions for the current plan year? If "Yes," see instructions. ☐ Yes ☐ No

Part II Additional Information for Certain Plans Other Than Multiemployer Plans

Please see Who Must File in the instructions to determine if you must complete Part II.

12 Additional required funding charge (see instructions):

a Enter "Gateway %." Divide line 1b(2) by line 1d(2)(c) and multiply by 100. If line 12a is at least 90%, go to line 12u and enter -0-. If line 12a is less than 80%, go to line 12b. If line 12a is at least 80% (but less than 90%), see instructions and, if applicable, go to line 12u and enter -0-. Otherwise, go to line 12b ..... %

b "RPA '94" current liability. Enter line 1d(2)(a) ..... .00

c Adjusted value of assets (see instructions) ..... .00

d Funded current liability percentage. Divide line 12c by 12b and multiply by 100 ..... %

e Unfunded current liability. Subtract line 12c from line 12b ..... .00

f Liability attributable to any unpredictable contingent event benefit ..... .00

g Outstanding balance of unfunded old liability ..... .00

h Unfunded new liability. Subtract the total of lines 12f and 12g from line 12e. Enter -0- if negative ..... .00

i Unfunded new liability amount (% of line 12h) ..... .00

j Unfunded old liability amount ..... .00

k Deficit reduction contribution. Add lines 12i, 12j, and 1d(2)(b) ..... .00

0 7 9 9 0 0 0 6 1 W

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l Net charges in funding standard account used to offset the deficit reduction contribution. Enter a negative number if less than zero ..... .00

m Unpredictable contingent event amount:

(1) Benefits paid during year attributable to unpredictable contingent event ..... .00

(2) Unfunded current liability percentage. Subtract the percentage on line 12d from 100% ..... %

(3) Transition percentage ..... 8000 %

(4) Enter the product of lines 12m(1), 12m(2), and 12m(3) ..... .00

(5) Amortization of all unpredictable contingent event liabilities ..... .00

(6) "RPA '94" additional amount (see instructions) .00

(7) Enter the greatest of lines 12m(4), 12m(5), or 12m(6) ..... .00

Preliminary Calculation

n Preliminary additional funding charge: Enter the excess of line 12k over line 12l (if any), plus line 12m(7), adjusted to end of year with interest ..... .00

o Contributions needed to increase current liability percentage to 100% (see instructions) ..... .00

p Enter the lesser of line 12n or 12o. Also, enter the result on line 12t If the employer did not elect for 1995 to use the Optional rule under Code section 412(l)(3)(E) and does not elect for 1999 to use the Transition rule under Code section 412(l)(11) ..... .00

Final Calculation (complete line 12q, 12r, or 12s, as applicable, and lines 12t and 12u)

q If the employer elects to use the Transition rule for 1999, but did not elect for 1995 to use the Optional rule, complete line 14 and enter the lesser of line 12p or 14e here and on line 12t ..... .00

r If the employer elected for 1995 to use the Optional rule, but does not elect for 1999 to use the Transition rule, complete line 13 and enter the greater of line 12p or 13q here and on line 12t ..... .00

s If the employer elected for 1995 to use the Optional rule and elects to use the Transition rule for 1999, enter the lesser of (1) the greater of line 12p or 13q, or (2) line 14e. Also, enter on line 12t ..... .00

t Additional funding charge prior to adjustment ..... .00

u Adjusted additional funding charge. (0 % of line 12t) ..... .00

13 Additional funding charge under prior law (see instructions):

a "OBRA '87" current liability. Enter line 1d(3)(a) ..... .00

b Adjusted value of assets (see instructions) ..... .00

c Funded current liability percentage. Divide line 13b by line 13a and multiply by 100 ..... %

d Unfunded current liability. Subtract line 13b from line 13a ..... .00

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Official Use Only

e Outstanding balance of unfunded old liability ..... .00

f Liability attributable to any unpredictable contingent event benefit ..... .00

g Unfunded new liability. Subtract the total of lines 13e and 13f from line 13d ..... .00

h Unfunded new liability amount (% of line 13g) ..... .00

i Unfunded old liability amount ..... .00

j Deficit reduction contribution. Add lines 13h and 13i ..... .00

k Net amortization charge for certain bases ..... .00

l Unpredictable contingent event amount:

(1) Benefits paid during year attributable to unpredictable contingent event ..... .00

(2) Unfunded current liability percentage. Subtract the percentage on line 13c from 100% ..... %

(3) Transition percentage ..... 8000 %

(4) Enter the product of lines 13l(1), 13l(2), and 13l(3) ..... .00

(5) Amortization of all unpredictable contingent event liabilities ..... .00

(6) Enter the greater of line 13l(4) or line 13l(5) ..... .00

m Additional funding charge (excess of line 13j over line 13k (if any), plus line 13l(6)) .00

n Assets needed to increase current liability percentage to 100% (line 13d) ..... .00

o Smaller of line 13m or line 13n ..... .00

p Interest adjustment ..... .00

q Additional funding charge. Add lines 13o and 13p ..... .00

14 Transition rule:

a Initial funded current liability percentage. Enter the percentage from line 12d of the 1995 Schedule B here ..... %

b Target percentage for transition rule (see instructions) ..... %

c Target amount (see instructions) ..... .00

d Enter the amount from line 13q here (additional funding charge under prior law) ... .00

e Additional funding charge under transition rule of Code section 412(l)(11): Enter the greater of line 14c or 14d ..... .00

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SCHEDULE C (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

Service Provider Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974.

▶ File as an attachment to Form 5500.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Part I Service Provider Information (see instructions)

1 Enter the total dollar amount of compensation paid by the plan to all persons, other than those listed below, who received compensation during the plan year:..... .00

2 On the first item below list the contract administrator, if any, as defined in the instructions. On the other items, list service providers in descending order of the compensation they received for the services rendered during the plan year. List only the top 40. 103-12 IEs should enter N/A in columns (c) and (d).

(a) Name

(b) Employer identification number (see instructions) -

(c) Official plan position: Contract administrator

(d) Relationship to employer, employee organization, or person known to be a party-in interest

(e) Gross salary or allowances paid by plan .00

(f) Fees and commissions paid by plan .00

(g) Nature of service code(s) (see instructions) 1 2

(a) Name

(b) Employer identification number (see instructions) -

(c) Official plan position

(d) Relationship to employer, employee organization, or person known to be a party-in interest

(e) Gross salary or allowances paid by plan .00

(f) Fees and commissions paid by plan .00

(g) Nature of service code(s) (see instructions)

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Schedule C (Form 5500) 1999 Page 2

Official Use Only

(a) Name

(b) Employer identification number (see instructions) –

(c) Official plan position

(d) Relationship to employer, employee organization, or person known to be a party-in interest

(e) Gross salary or allowances paid by plan .00

(f) Fees and commissions paid by plan .00

(g) Nature of service code(s) (see instructions)

(a) Name

(b) Employer identification number (see instructions) –

(c) Official plan position

(d) Relationship to employer, employee organization, or person known to be a party-in interest

(e) Gross salary or allowances paid by plan .00

(f) Fees and commissions paid by plan .00

(g) Nature of service code(s) (see instructions)

(a) Name

(b) Employer identification number (see instructions) –

(c) Official plan position

(d) Relationship to employer, employee organization, or person known to be a party-in interest

(e) Gross salary or allowances paid by plan .00

(f) Fees and commissions paid by plan .00

(g) Nature of service code(s) (see instructions)

(a) Name

(b) Employer identification number (see instructions) –

(c) Official plan position

(d) Relationship to employer, employee organization, or person known to be a party-in interest

(e) Gross salary or allowances paid by plan .00

(f) Fees and commissions paid by plan .00

(g) Nature of service code(s) (see instructions)

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Schedule C (Form 5500) 1999 Page 3

Official Use Only

Part II Termination Information on Accountants and Enrolled Actuaries (see instructions)

(a) Name

(b) EIN

(c) Position

(d) Address

Street Address

City State Zip Code

(e) Telephone No.

EXPLANATION

(a) Name

(b) EIN

(c) Position

(d) Address

Street Address

City State Zip Code

(e) Telephone No.

EXPLANATION

0 9 9 9 0 0 0 3 1 V

SCHEDULE D (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor Pension and Welfare Benefits Administration

DFE/Participating Plan Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).

▶ File as an attachment to Form 5500.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For calendar plan year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan or DFE

B Three-digit plan number ▶

C Plan or DFE sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Part I Information on Interests in MTIAs, CCTs, PSAs, and 103-12 IEs (to be completed by plans and DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE

(b) Name of sponsor of entity listed in (a)

(c) EIN PN (d) Entity code (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions)

(a) Name of MTIA, CCT, PSA, or 103-12IE

(b) Name of sponsor of entity listed in (a)

(c) EIN PN (d) Entity code (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions)

1 1 9 9 0 0 0 1 1 M

Schedule D (Form 5500) 1999 Page 2

Official Use Only

(a) Name of MTIA, CCT, PSA, or 103-12IE

(b) Name of sponsor of entity listed in (a)

(c) EIN – PN (d) Entity code (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) .00

(a) Name of MTIA, CCT, PSA, or 103-12IE

(b) Name of sponsor of entity listed in (a)

(c) EIN – PN (d) Entity code (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) .00

(a) Name of MTIA, CCT, PSA, or 103-12IE

(b) Name of sponsor of entity listed in (a)

(c) EIN – PN (d) Entity code (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) .00

(a) Name of MTIA, CCT, PSA, or 103-12IE

(b) Name of sponsor of entity listed in (a)

(c) EIN – PN (d) Entity code (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) .00

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Part II Information on Participating Plans (to be completed by DFEs)

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

Official Use Only

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

(a) Plan name

(b) Name of plan sponsor

(c) EIN – PN

SCHEDULE E (Form 5500)

Department of the Treasury
Internal Revenue Service

ESOP Annual Information

Under Section 6047(e) of the Internal Revenue Code

▶ File as an attachment to Form 5500 or 5500-EZ.

Official Use Only

OMB No. 1210-0110

1999

This Form is NOT Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500 or 5500-EZ

D Employer Identification Number

		Yes	No
1a	Did the employee stock ownership plan (ESOP) have an outstanding securities acquisition loan within the meaning of Code section 133 during the plan year?	☐	☐
b	Did the employer maintaining the ESOP pay dividends (deductible under section 404(k)) on the employer's stock held by the ESOP during the employer's tax year in which the plan year ends?	☐	☐

If both line 1a and line 1b are "No," DO NOT complete any other questions on this schedule.

Attach the schedule to the Form 5500 or 5500-EZ you file for your ESOP plan.

2 What is the total value of the ESOP assets? ▶ .00

3 If the ESOP holds preferred stock, under what formula is the preferred stock convertible into common stock of the employer corporation? ▶

4 If unallocated employer securities were released from a loan suspense account, indicate below the methods used:

a ☐ Principal and interest (Excise Tax Regulations section 54.4975-7(b)(8)(i));

b ☐ Principal only (Excise Tax Regulations section 54.4975-7(b)(8)(ii));

c ☐ Other (attach an explanation)

		Yes	No
5	Were unallocated securities or proceeds from the sale of unallocated securities used to repay any exempt loan (within the meaning of Code section 4975(d)(3))? If "Yes," attach a description of the transaction.	☐	☐

If the ESOP or the employer corporation has one or more outstanding securities acquisition loans intended to satisfy Code section 133, complete lines 6 through 11, otherwise skip to line 12.

6a	Was the ESOP loan part of a "back to back" loan? (See instructions for definition of "back to back" loan.)	☐	☐
b	If line 6a is "Yes," are the terms of the two loans substantially similar?	☐	☐
c	Do the two loans have the same amortization schedule? If "No," attach an explanation of how the amortization schedules differ	☐	☐
7	Is the loan an immediate allocation loan as defined in Code section 133(b)(1)(B)?	☐	☐

8a What was the date of the securities acquisition loan? ▶ MM / DD / YYYY

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Schedule E (Form 5500) 1999 Page 2

Official Use Only

		Yes	No
b	At all times after the acquisition of the employer securities with the loan proceeds, did the ESOP own more than 50% of: (i) each class of outstanding stock of the employer corporation, or (ii) the total value of all outstanding stock of the corporation?	☐	☐
c	If line 8b is "No," does the securities acquisition loan satisfy one of the transition rules of Act section 7301(f) of OBRA 1989 or satisfy the exception in Code section 133(b)(6)(B)(ii)? (See instructions for explanation of transition rules.)	☐	☐

d If line 8c is "No," enter the name and address of payees to whom interest with respect to securities acquisition loans was paid.

Name

Street

City State Zip Code –

9 What was the amount of interest paid on the securities acquisition loan? ▶ .00

		Yes	No
10a	Were any securities disposed of within 3 years after the plan acquired section 133 securities in a taxable event described in Code section 4978B(c)?	☐	☐
b	If line 10a is "Yes," does one or more of the exceptions provided in Code section 4978B(d) apply to all dispositions of employer securities?	☐	☐
11a	Were any of the ESOP's securities acquisition loans refinanced during this reporting period?	☐	☐
b	If line 11a is "Yes," does the refinancing meet the requirements of Act section 1602 of SBJPA 1996?	☐	☐

If the employer maintaining the ESOP deducted dividends under Code section 404(k), answer the questions on lines 12 through 14, otherwise skip to line 15.

12a	Did the amount of the dividends paid exceed the employer's current or accumulated earnings and profits within the meaning of Code section 316?	☐	☐
b	Is the amount paid a dividend under applicable state law?	☐	☐
13	If dividends deducted under Code section 404(k) were used to repay an exempt loan, were any dividends used to repay the loan generated by securities that were not acquired with the proceeds of the loan being repaid?	☐	☐
14	If the answer to line 13 is "Yes," were the dividends paid with respect to employer securities that satisfy the transition rules of Act section 7302(b)(2) of OBRA 1989?	☐	☐

15 Complete the following information for each class of stock owned by the ESOP:

(a) Class of stock	(b) Common stock (C) Preferred stock (P)	(c) Readily tradable* Yes (Y) No (N)
	☐	☐

(d) Dividend rate during plan year** %

(e) Dividends paid to participants*** .00

(f) Dividends used to repay exempt loan (1) allocated stock .00 (2) unallocated stock .00

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Schedule E (Form 5500) 1999 Page 3

Official Use Only

(a) Class of stock | (b) Common stock (C) Preferred stock (P) | (c) Readily tradable* Yes (Y) No (N)

(d) Dividend rate during plan year** ____ % | (e) Dividends paid to participants*** ____ .00

(f) Dividends used to repay exempt loan | (1) allocated stock ____ .00 | (2) unallocated stock ____ .00

(a) Class of stock | (b) Common stock (C) Preferred stock (P) | (c) Readily tradable* Yes (Y) No (N)

(d) Dividend rate during plan year** ____ % | (e) Dividends paid to participants*** ____ .00

(f) Dividends used to repay exempt loan | (1) allocated stock ____ .00 | (2) unallocated stock ____ .00

(a) Class of stock | (b) Common stock (C) Preferred stock (P) | (c) Readily tradable* Yes (Y) No (N)

(d) Dividend rate during plan year** ____ % | (e) Dividends paid to participants*** ____ .00

(f) Dividends used to repay exempt loan | (1) allocated stock ____ .00 | (2) unallocated stock ____ .00

Totals of dividends reported on Line 15(e) and (f) for all classes of stock. ▶ | (e) Dividends paid to participants*** ____ .00

(f) Dividends used to repay exempt loan | (1) allocated stock ____ .00 | (2) unallocated stock ____ .00

* If the stock is readily tradable on an established securities market within the meaning of Code section 409(l), enter "Y," otherwise enter "N."

** Dividend rate paid for each class of stock during the plan year.

*** Dividend paid directly to or distributed to participants.

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Official Use Only

OMB No. 1210-0110

SCHEDULE F (Form 5500)

Department of the Treasury
Internal Revenue Service

Fringe Benefit Plan Annual Information Return

Under Section 6039D of the Internal Revenue Code

▶ **File as an attachment to Form 5500.**

1999

This Form is NOT Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

1 Check the Internal Revenue Code section that describes this fringe benefit plan:

(a) ☐ 125 (Cafeteria plan) (b) ☐ 127 (Educational assistance program) (c) ☐ 137 (Adoption assistance program)

2 Enter the total number of employees of the employer .....

3 Enter the total number of employees eligible to participate in the plan .....

4 Enter the total number of employees participating in the plan. (See instructions.) .....

5 Enter the total cost of the fringe benefit plan for the plan year. (See instructions.) ... .00

6 Did the fringe benefit plan terminate in this plan year? (See instructions.) ..... ☐ Yes ☐ No

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SCHEDULE G (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Financial Transaction Schedules

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ File as an attachment to Form 5500.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , **and ending** MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Name of plan sponsor as shown on line 2a of Form 5500

D Employer Identification Number

Part I Schedule of Loans or Fixed Income Obligations in Default or Classified as Uncollectible

(a) Party-in-interest ☐

(b) Identity and address of obligor

Name

Street

City State Zip Code

(c) Original amount of loan .00

Amount received during reporting year

(d) Principal .00

(e) Interest .00

(f) Unpaid balance at end of year .00

(g) Detailed description of loan including dates of making and maturity, interest rate, the type and value of collateral, any renegotiation of the loan and the terms of the renegotiation, and other material items

Amt. overdue (h) Principal .00

Amt. overdue (i) Interest .00

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Schedule G (Form 5500) 1999 Page **2**

Official Use Only

(a) Party-in-interest ☐

(b) Identity and address of obligor

Name

Street

City State Zip Code –

(c) Original amount of loan .00

Amount received during reporting year (d) Principal .00

(e) Interest .00

(f) Unpaid balance at end of year .00

(g) Detailed description of loan including dates of making and maturity, interest rate, the type and value of collateral, any renegotiation of the loan and the terms of the renegotiation, and other material items

Amt. overdue (h) Principal .00

Amt. overdue (i) Interest .00

(a) Party-in-interest ☐

(b) Identity and address of obligor

Name

Street

City State Zip Code –

(c) Original amount of loan .00

Amount received during reporting year (d) Principal .00

(e) Interest .00

(f) Unpaid balance at end of year .00

(g) Detailed description of loan including dates of making and maturity, interest rate, the type and value of collateral, any renegotiation of the loan and the terms of the renegotiation, and other material items

Amt. overdue (h) Principal .00

Amt. overdue (i) Interest .00

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Schedule G (Form 5500) 1999 Page 3

Official Use Only

Part II Schedule of Leases in Default or Classified as Uncollectible

(a) Party-in-interest ☐

(b) Identity of lessor/lessee

(c) Relationship to plan, employer, employee organization or other party-in-interest

(d) Terms and description (type of property, location and date it was purchased, terms regarding rent, taxes, insurance, repairs, expenses, renewal options, date property was leased)

(e) Original cost .00

(f) Current value at time of lease .00

(g) Gross rental receipts during the plan year .00

(h) Expenses paid during the plan year .00

(i) Net receipts .00

(j) Amount in arrears .00

(a) Party-in-interest ☐

(b) Identity of lessor/lessee

(c) Relationship to plan, employer, employee organization or other party-in-interest

(d) Terms and description (type of property, location and date it was purchased, terms regarding rent, taxes, insurance, repairs, expenses, renewal options, date property was leased)

(e) Original cost .00

(f) Current value at time of lease .00

(g) Gross rental receipts during the plan year .00

(h) Expenses paid during the plan year .00

(i) Net receipts .00

(j) Amount in arrears .00

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Part II Nonexempt Transactions
If a nonexempt prohibited transaction occured with respect to a disqualified person, file Form 5330 with the IRS to pay the excise tax on the transaction.

(a) Identity of party involved

(b) Relationship to plan, employer, or other party-in-interest

(c) Description to transactions including maturity date, rate of interest, collateral, par or maturity value

(d) Purchase price .00

(e) Selling price .00

(f) Lease rental .00

(g) Expenses incurred in connection with transaction .00

(h) Cost of asset .00

(i) Current value of asset .00

(j) Net gain or (loss) on each transaction .00

(a) Identity of party involved

(b) Relationship to plan, employer, or other party-in-interest

(c) Description to transactions including maturity date, rate of interest, collateral, par or maturity value

(d) Purchase price .00

(e) Selling price .00

(f) Lease rental .00

(g) Expenses incurred in connection with transaction .00

(h) Cost of asset .00

(i) Current value of asset .00

(j) Net gain or (loss) on each transaction .00

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SCHEDULE H (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

Financial Information

This schedule is required to be filed under Section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ File as an attachment to Form 5500.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , **and ending** MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Part I Asset and Liability Statement

1 Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Report the value of the plan's interest in a commingled fund containing the assets of more than one plan on a line-by-line basis unless the value is reportable on lines c(9) through c(14). Do not enter the value of that portion of an insurance contract which guarantees, during this plan year, to pay a specific dollar benefit at a future date. Round off amounts to the nearest dollar. DFEs do not complete lines 1b(1), 1b(2), 1c(8), 1g, 1h, 1i, and, except for master trust investment accounts, also do not complete lines 1d and 1e. See instructions.

Assets	(a) Beginning of Year	(b) End of Year
a Total noninterest-bearing cash	.00	.00
b Receivables (less allowance for doubtful accounts):		
(1) Employer contributions	.00	.00
(2) Participant contributions	.00	.00
(3) Other	.00	.00
c General investments:		
(1) Interest-bearing cash (including money market accounts and certificates of deposit)	.00	.00
(2) U.S. Government securities	.00	.00
(3) Corporate debt instruments (other than employer securities):		
(A) Preferred	.00	.00
(B) All other	.00	.00
(4) Corporate stocks (other than employer securities):		
(A) Preferred	.00	.00
(B) Common	.00	.00
(5) Partnership/joint venture interests	.00	.00

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		(a) Beginning of Year	(b) End of Year
(6)	Real estate (other than employer real property)	.00	.00
(7)	Loans (other than to participants)	.00	.00
(8)	Participant loans	.00	.00
(9)	Value of interest in common/ collective trusts	.00	.00
(10)	Value of interest in pooled separate accounts	.00	.00
(11)	Value of interest in master trust investment accounts	.00	.00
(12)	Value of interest in 103-12 investment entities	.00	.00
(13)	Value of interest in registered investment companies (e.g., mutual funds)	.00	.00
(14)	Value of funds held in insurance company general account (unallocated contracts)	.00	.00
(15)	Other	.00	.00
d	Employer-related investments:		
(1)	Employer securities	.00	.00
(2)	Employer real property	.00	.00
e	Buildings and other property used in plan operation	.00	.00
f	Total assets (add all amounts in lines 1a through 1e)	.00	.00
	Liabilities		
g	Benefit claims payable	.00	.00
h	Operating payables	.00	.00
i	Acquisition indebtedness	.00	.00
j	Other liabilities	.00	.00
k	Total liabilities (add all amounts in lines 1g through 1j)	.00	.00
	Net Assets		
l	Net assets (subtract line 1k from line 1f)	.00	.00

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Schedule H (Form 5500) 1999 Page 3

Official Use Only

Part II Income and Expenses Statement

2 Plan income, expenses, and changes in net assets for the year. Include all income and expenses of the plan, including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar. DFEs do not complete lines 2a, 2b(1)(E), 2e, 2f, and 2g.

Income

	(a) Amount	(b) Total
a Contributions:		
(1) Received or receivable in cash from:		
(A) Employers	.00	
(B) Participants	.00	
(C) Others (including rollovers)	.00	
(2) Noncash contributions	.00	
(3) Total contributions. Add lines 2a(1)(A), (B), (C), and line 2a(2)		.00
b Earnings on investments: (1) Interest:		
(A) Interest-bearing cash (including money market accounts and certificates of deposit)	.00	
(B) U.S. Government securities	.00	
(C) Corporate debt instruments	.00	
(D) Loans (other than to participants)	.00	
(E) Participant loans	.00	
(F) Other	.00	
(G) Total interest. Add lines 2b(1)(A) through (F)		.00
(2) Dividends:		
(A) Preferred stock	.00	
(B) Common stock	.00	
(C) Total dividends. Add lines 2b(2)(A) and (B)		.00
(3) Rents		.00
(4) Net gain (loss) on sale of assets:		
(A) Aggregate proceeds	.00	
(B) Aggregate carrying amount (see instructions)	.00	
(C) Subtract line 2b(4)(B) from line 2b(4)(A) and enter result		.00

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		(a) Amount	(b) Total
(5)	Unrealized appreciation (depreciation) of assets:		
	(A) Real estate	.00	
	(B) Other	.00	
	(C) Total unrealized appreciation of assets. Add lines 2b(5)(A) and (B)		.00
(6)	Net investment gain (loss) from common/collective trusts		.00
(7)	Net investment gain (loss) from pooled separate accounts		.00
(8)	Net investment gain (loss) from master trust investment accounts		.00
(9)	Net investment gain (loss) from 103-12 investment entities		.00
(10)	Net investment gain (loss) from registered investment companies (e.g., mutual funds)		.00
c	Other income		.00
d	Total income. Add all income amounts in column (b) and enter total		.00
	Expenses		
e	Benefit payment and payments to provide benefits:		
(1)	Directly to participants or beneficiaries, including direct rollovers	.00	
(2)	To insurance carriers for the provision of benefits	.00	
(3)	Other	.00	
(4)	Total benefit payments. Add lines 2e(1) through (3)		.00
f	Corrective distributions (see instructions)		.00
g	Certain deemed distributions of participant loans (see instructions)		.00
h	Interest expense		.00
i	Administrative expenses:		
(1)	Professional fees	.00	
(2)	Contract administrator fees	.00	
(3)	Investment advisory and management fees	.00	
(4)	Other	.00	
(5)	Total administrative expenses. Add lines 2i(1) through (4)		.00
j	Total expenses. Add all expense amounts in column (b) and enter total		.00

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Schedule H (Form 5500) 1999 Page 5

Official Use Only

Net Income and Reconciliation

	(b) Total
2k Net income (loss) (subtract line 2j from line 2d)	.00
l Transfers of assets	
(1) To this plan	.00
(2) From this plan	.00

Part III Accountant's Opinion

3 The opinion of an independent qualified public accountant for this plan is (see instructions):

a Attached to this Form 5500 and the opinion is: (1) ☐ Unqualified (3) ☐ Disclaimer
(2) ☐ Qualified (4) ☐ Adverse

b Not attached because: (1) ☐ the Form 5500 is filed for a CCT, PSA, or MTIA.
(2) ☐ the opinion will be attached to the next Form 5500 pursuant to 29 CFR 2520.104-50.

c Check this box if the accountant performed a limited scope audit pursuant to 29 CFR 2520.103-8 and/or 2520.103-12(d) ☐

d If an accountant's opinion is attached, enter the name and EIN of the accountant (or accounting firm)

Name

▶

EIN –

Part IV Transactions During Plan Year

4 CCTs and PSAs do not complete Part IV. MTIAs, 103-12 IEs, and GIAs do not complete 4a, 4e, 4f, 4g, 4h, 4k, or 5. 103-12 IEs also do not complete 4j.

During the plan year:	Yes	No	Amount
a Did the employer fail to transmit to the plan any participant contributions within the maximum time period described in 29 CFR 2510.3-102? (see instructions)	☐	☐	.00
b Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by the participant's account balance. (Attach Schedule G (Form 5500) Part I if "Yes" is checked)	☐	☐	.00
c Were any leases to which the plan was a party in default or classified during the year as uncollectible? (Attach Schedule G (Form 5500) Part II if "Yes" is checked)	☐	☐	.00
d Did the plan engage in any nonexempt transaction with any party-in-interest? (Attach Schedule G (Form 5500) Part III if "Yes" is checked)	☐	☐	.00
e Was this plan covered by a fidelity bond?	☐	☐	.00

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	Yes	No	Amount
f Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty?	☐	☐	.00
g Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser?	☐	☐	.00
h Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser?	☐	☐	.00
i Did the plan have assets held for investment? (Attach schedule(s) of assets if "Yes" is checked, and see instructions for format requirements)	☐	☐	
j Were any plan transactions or series of transactions in excess of 5% of the current value of plan assets? (Attach schedule of transactions if "Yes" is checked and see instructions for format requirements)	☐	☐	
k Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC?	☐	☐	
5a Has a resolution to terminate the plan been adopted during the plan year or any prior plan year? If yes, enter the amount of any plan assets that reverted to the employer this year	☐	☐	.00

5b If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions).

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

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SCHEDULE I (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

Financial Information – Small Plan

This schedule is required to be filed under Section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ File as an attachment to Form 5500.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Complete Schedule I if the plan covered fewer than 100 participants as of the beginning of the plan year. You may also complete Schedule I if you are filing as a small plan under the 80-120 participant rule (see instructions). Complete Schedule H if reporting as a large plan or DFE.

Part I Small Plan Financial Information

Report below the current value of assets and liabilities, income, expenses, transfers and changes in net assets during the plan year. Combine the value of plan assets held in more than one trust. Do not enter the value of the portion of an insurance contract that guarantees during this plan year to pay a specific dollar benefit at a future date. Include all income and expenses of the plan including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar.

1 Plan Assets and Liabilities:	(a) Beginning of Year	(b) End of Year
a Total plan assets	.00	.00
b Total plan liabilities	.00	.00
c Net plan assets (subtract line 1b from line 1a)	.00	.00

2 Income, Expenses, and Transfers for this Plan Year:	(a) Amount
a Contributions received or receivable: (1) Employers	.00
(2) Participants	.00
(3) Others (including rollovers)	.00
b Noncash contributions	.00
c Other income	.00
	(b) Total
d Total income (add lines 2a(1), 2a(2), 2a(3), 2b, and 2c)	.00

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Schedule I (Form 5500) 1999 Page 2

Official Use Only

	(a) Amount	(b) Total
2e Benefits paid (including direct rollovers)	.00	
f Corrective distributions (see instructions)	.00	
g Certain deemed distributions of participant loans (see instructions)	.00	
h Other expenses	.00	
i Total expenses (add lines 2e, 2f, 2g, and 2h)		.00
j Net income (loss) (subtract line 2i from line 2d)		.00
k Net transfers		.00

3 **Specific Assets:** If the plan held any assets in one or more of the following specific categories, check yes and enter the current value as of the end of the plan year. Allocate the value of the plan's interest in a commingled trust containing the assets of more than one plan on a line-by-line basis unless the trust meets one of the specific exceptions described in the instructions.

	Yes	No	Amount
a Partnership/joint venture interests	☐	☐	.00
b Employer real property	☐	☐	.00
c Real estate (other than employer real property)	☐	☐	.00
d Employer securities	☐	☐	.00
e Participant loans	☐	☐	.00
f Loans (other than to participants)	☐	☐	.00
g Tangible personal property	☐	☐	.00

Part II Transactions During Plan Year

4 During the plan year:	Yes	No	Amount
a Did the employer fail to transmit to the plan any participant contributions within the maximum time period described in 29 CFR 2510.3-102? (See instructions)	☐	☐	.00
b Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by the participants' account balance	☐	☐	.00
c Were any leases to which the plan was a party in default or classified during the year as uncollectible?	☐	☐	.00

1 9 9 9 0 0 0 2 1 V

Schedule I (Form 5500) 1999 Page 3

Official Use Only

	Yes	No	Amount
d Did the plan engage in any nonexempt transaction with any party-in-interest?	☐	☐	.00
e Was the plan covered by a fidelity bond?	☐	☐	.00
f Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty?	☐	☐	.00
g Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser?	☐	☐	.00
h Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser?	☐	☐	.00
i Did the plan at any time hold 20% or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interest?	☐	☐	.00
j Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC?	☐	☐	

	Yes	No	Amount
5a Has a resolution to terminate the plan been adopted during the plan year or any prior plan year? If yes, enter the amount of any plan assets that reverted to the employer this year	☐	☐	.00

5b If during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

5b(1) Name of plan

5b(2) EIN – 5b(3) PN

1 9 9 9 0 0 0 3 1 W

SCHEDULE P (Form 5500)

Department of the Treasury
Internal Revenue Service

Annual Return of Fiduciary of Employee Benefit Trust

This schedule may be filed to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

Filing this form will start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) that is exempt from tax under section 501(a).

▶ File as an attachment to Form 5500 or 5500-EZ.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For trust calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

Please type or print

1a Name of trustee or custodian

b Number, street, and room or suite no. (If a P.O. box, see the instructions for Form 5500 or 5500-EZ.)

c City or town | State | ZIP code

2a Name of trust

b Trust's employer identification number –

3 Name of plan if different from the name of trust

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s)? ☐ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on Form 5500 or 5500-EZ ... ▶ –

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Signature of fiduciary

▶ _____ Date ▶ MM / DD / YYYY

2 5 9 9 0 0 0 1 1 R

SCHEDULE R (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

Retirement Plan Information

This schedule is required to be filed under sections 104 and 4065 of the Employee Retirement Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ File as an Attachment to Form 5500.

Official Use Only

OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Part I Distributions

All references to distributions relate only to payments of benefits during the plan year.

1 Total value of distributions paid in property other than in cash, annuity contracts, or publicly traded employer securities ..... .00

2 Enter the EIN(s) of payor(s) who paid benefits on behalf of the plan to participants or beneficiaries during the year (If more than two, enter EINs of the two payors who paid the greatest dollar amounts of benefits). } .....

Profit-sharing plans, ESOPs, and stock bonus plans, skip line 3.

3 Number of participants (living or deceased) whose benefits were distributed in a single sum, during the plan year .....

Part II Funding Information (If the plan is not subject to the minimum funding requirements of section 412 of the Internal Revenue Code or ERISA section 302, skip this Part)

4 Is the plan administrator making an election under Code section 412(c)(8) or ERISA section 302(c)(8)? ..... ☐ Yes ☐ No ☐ N/A

If the plan is a defined benefit plan, go to line 7.

5 If a waiver of the minimum funding standard for a prior year is being amortized in this plan year, see instructions, and enter the date of the ruling letter granting the waiver. ..... ▶ MM / DD / YYYY

If you completed line 5, complete lines 3, 9, and 10 of Schedule B and do not complete the remainder of this schedule.

6a Enter the minimum required contribution for this plan year ..... .00

b Enter the amount contributed by the employer to the plan for this plan year ..... .00

c Subtract the amount in line 6b from the amount in line 6a. Enter the result (enter a minus sign to the left of a negative amount.) ..... .00

If you completed line 6c, do not complete the remainder of this schedule.

2 1 9 9 0 0 0 1 1 N

Schedule R (Form 5500) 1999 Page 2

Official Use Only

7 If a change in actuarial cost method was made for this plan year pursuant to a revenue procedure providing automatic approval for the change, does the plan sponsor or plan administrator agree with the change? ☐ Yes ☐ No ☐ N/A

Do not complete line 8, if the plan is a multiemployer plan or a plan with 100 or fewer participants during the prior plan year (see instructions).

8 Is the employer electing to compute minimum funding for this plan year using the transitional rule provided in Code section 412(l)(11) and ERISA section 302(d)(11)? ☐ Yes ☐ No ☐ N/A

Part II Amendments

9 If this is a defined benefit pension plan, were any amendments adopted during this plan year that increased the value of benefits? (see instructions) ☐ Yes ☐ No

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SCHEDULE SSA (Form 5500)

Department of the Treasury
Internal Revenue Service

Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits

Under Section 6057(a) of the Internal Revenue Code

▶ File as an attachment to Form 5500.

▶ For Paperwork Reduction Act Notice, see page 1 of the instructions for Form 5500

Official Use Only

OMB No. 1210-0110

1999

This Form is NOT Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , and ending MM / DD / YYYY

A Name of plan

C Plan sponsor's name as shown on line 2a of Form 5500

B Three-digit plan number ▶

D Employer Identification Number –

1 ☐ Check here if additional participants are shown on attachments. All attachments must include the sponsor's name, EIN, name of plan, plan number, and column identification letter for each column completed for line 4.

☐ Check here if plan is a government, church or other plan that elects to voluntarily file Schedule SSA. If so, complete lines 2 through 3c, and the signature area. Otherwise, complete the signature area only.

2 Plan sponsor's address (number, street, and room or suite no.) (If a P.O. box, see the instructions for line 2.)

City or town State ZIP code –

3a Name of plan administrator (if other than sponsor)

3b Administrator's EIN –

3c Number, street, and room or suite no. (If a P.O. box, see the instructions for line 2.)

City or town State ZIP code –

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of plan administrator ▶ _____

Phone number of plan administrator ▶ – –

Date ▶ MM / DD / YYYY

2 9 9 9 0 0 0 1 1 V

Schedule SSA (Form 5500) 1999 Page 2

Official Use Only

4 Enter one of the following Entry Codes in column (a) for each separated participant with deferred vested benefits that:
Code A – has not previously been reported.
Code B – has previously been reported under the above plan number but requires revisions to the information previously reported.
Code C – has previously been reported under another plan number but will be receiving their benefits from the plan listed above instead.
Code D – has previously been reported under the above plan number but is no longer entitled to those deferred vested benefits.

Use with entry code "A", "B", "C", or "D"

(a) Entry code ☐ (b) Social security number ☐☐☐-☐☐-☐☐☐☐

(c) Name of participant

Use with entry code "A" or "B"

Enter code for nature and form of benefit		Amount of vested benefit			
(d) Type of annuity	(e) Payment frequency	(f) Defined benefit plan – periodic payment	Defined contribution plan (g) Units or shares	Share indicator	(h) Total value of account
☐	☐			☐	

Use with entry code "C" (i) Previous sponsor's employer identification number ☐☐-☐☐☐☐☐☐ (j) Previous plan number ☐☐☐

Use with entry code "A", "B", "C", or "D"

(a) Entry code ☐ (b) Social security number ☐☐☐-☐☐-☐☐☐☐

(c) Name of participant

Use with entry code "A" or "B"

Enter code for nature and form of benefit		Amount of vested benefit			
(d) Type of annuity	(e) Payment frequency	(f) Defined benefit plan – periodic payment	Defined contribution plan (g) Units or shares	Share indicator	(h) Total value of account
☐	☐			☐	

Use with entry code "C" (i) Previous sponsor's employer identification number ☐☐-☐☐☐☐☐☐ (j) Previous plan number ☐☐☐

2 9 9 9 0 0 0 2 1 W

SCHEDULE T (Form 5500)

Department of the Treasury
Internal Revenue Service

Qualified Pension Plan Coverage Information

This form is required to be filed under section 6058(a) of the Internal Revenue Code (the Code).

▶ File as an attachment to Form 5500.

Official Use Only
OMB No. 1210-0110

1999

This Form is Open to Public Inspection.

For the calendar year 1999 or fiscal plan year beginning MM / DD / YYYY , **and ending** MM / DD / YYYY

A Name of plan

B Three-digit plan number ▶

C Plan sponsor's name as shown on line 2a of Form 5500

D Employer Identification Number

Note: *If the plan is maintained by:*

- More than one employer and benefits employees who are not collectively-bargained employees, a separate Schedule T may be required for each employer (see the instruction for line 1).
- An employer that operates qualified separate lines of business (QSLOBs) under Code section 414(r), a separate Schedule T may be required for each QSLOB (see the instruction for line 2).

1 If this schedule is being filed to provide coverage information regarding the noncollectively bargained employees of an employer participating in a plan maintained by more than one employer, enter the name and EIN of the participating employer:

1a Name of participating employer

1b Employer identification number

2 If the employer maintaining the plan operates QSLOBs, enter the following information:

a The number of QSLOBs that the employer operates is .....

b The number of such QSLOBs that have employees benefiting under this plan is .....

c Does the employer apply the minimum coverage requirements to this plan on an employer-wide rather than a QSLOB basis? ..... ☐ Yes ☐ No

d If the entry on line 2b is two or more and line 2c is "No," identify the QSLOB to which the coverage information given on line 3 or 4 relates.

▶

3 Exceptions—Check the box before each statement that describes the plan or the employer.
If you check any box, do not complete the rest of this Schedule.

a ☐ The employer employs only highly compensated employees (HCEs).

b ☐ No HCEs benefited under the plan at anytime during the plan year.

c ☐ The plan benefits only collectively-bargained employees.

d ☐ The plan benefits all nonexcludable nonhighly compensated employees of the employer (as defined in Code sections 414(b), (c), and (m)), including leased employees and self-employed individuals.

e ☐ The plan is treated as satisfying the minimum coverage requirements under Code section 410(b)(6)(C).

2 7 9 9 0 0 0 1 1 T

Schedule T (Form 5500) 1999 Page 2

Official Use Only

4 Enter the date the plan year began for which coverage data is being submitted ..... MM / DD / YYYY

a Did any leased employees perform services for the employer at any time during the plan year? ..... ☐ Yes ☐ No

b In testing whether the plan satisfies the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4), does the employer aggregate plans? ..... ☐ Yes ☐ No

c Complete the following:

(1) Total number of employees of the employer (as defined in Code section 414(b), (c), and (m)), including leased employees and self-employed individuals .....

(2) Number of excludable employees as defined in IRS regulations (see instructions) .....

(3) Number of nonexcludable employees. (Subtract line 4c(2) from line 4c(1)) .....

(4) Number of nonexcludable employees (line 4c(3)) who are HCEs .....

(5) Number of nonexcludable employees (line 4c(3)) who benefit under the plan .....

(6) Number of benefiting nonexcludable employees (line 4c(5)) who are HCEs .....

d Enter the plan's ratio percentage and, if applicable, identify below the disaggregated part of the plan to which the information on lines 4c and 4d pertains (see instructions) ..... %

▶

e Identify any disaggregated part of the plan and enter its ratio percentage:

(1) Disaggregated part: Ratio Percentage: %

(2) Disaggregated part: Ratio Percentage: %

(3) Disaggregated part: Ratio Percentage: %

f This plan satisfies the coverage requirements on the basis of (check one):

(1) ☐ the ratio percentage test (2) ☐ average benefit test

2 7 9 9 0 0 0 2 1 U

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare
Benefits Administration

Pension Benefit
Guaranty Corporation

1999

Instructions for Form 5500

Annual Return/Report of Employee Benefit Plan

Code references are to the Internal Revenue Code.
ERISA refers to the Employee Retirement Income Security Act of 1974.

Changes To Note for 1999

- **New Streamlined Form 5500:**

This year's Form 5500 Series has been substantially revised and improved. We replaced the Form 5500, Form 5500-C, and Form 5500-R with *one* Form 5500 intended to streamline the report and the methods by which it is filed and processed. The revised form is patterned along the lines of tax returns familiar to individual and corporate taxpayers – a simple main form with basic identifying information and a checklist that guides each filer to more detailed schedules that are applicable to the filer's specific type of plan.

- **EFAST Processing System:**

There are several important changes that will benefit filers in particular. We developed a new computerized system to process Form 5500 return/reports called the ERISA Filing Acceptance System or "EFAST." For the first time you will file your Form 5500 with the U.S. Department of Labor's Pension and Welfare Benefits Administration **(PWBA)** rather than the Internal Revenue Service (see **Where To File** on page 5 for the new mailing and private delivery addresses).

You can choose a "machine print" format using computer software to complete the form. Machine print forms can be filed electronically or by mail (including certain private delivery services). We encourage filers to file machine print versions of the form and think most of you will find that to be the best option. For instance, the machine print forms can be easily printed out on computer printers and the computer software should help filers avoid common mistakes. Electronic filers will have to file a new EFAST form to get a digital signature and other codes needed to file an electronic return/report. Check the Department of Labor's Web Page at **www.efast.dol.gov** periodically, beginning in late March, 2000 for updates.

You can also use a "hand print" format that is completed by hand or typewriter. However, the hand print format can be filed only by mail (including certain private delivery services). The hand print version of the form is a "machine readable" form. As such, it must be printed using special paper, special green ink, and within precise specifications. Filers should not substitute a black and white or other reproduction of these hand print forms. A copy of the hand print forms is included in the **Package 5500**. You can get additional copies of the green ink forms 24 hours a day, 7 days a week, by calling **1-800-TAX-FORM** (1-800-829-3676).

- **Direct Filing Entities:**

All Direct Filing Entities (DFEs) must now use the Form 5500; however, a one-time **1999 Transition Rule** permits all DFEs with a fiscal year ending in 1999 to file on or before October 16, 2000 (see **When To File** on page 4).

Large plans participating in Common/Collective Trusts (CCTs) or Pooled Separate Accounts (PSAs) that are not DFEs (those that do not file a Form 5500) will have to allocate the underlying assets of such CCTs and PSAs and report the value on a line-by-line basis on the Schedule H (Form 5500) (see Schedule H, **Specific Instructions**). However, under a **1999 Transition Rule**, this requirement is deferred until plan years beginning in 2000.

About the Form 5500

The Annual Return/Report Form 5500 is used to report information concerning employee benefit plans, Direct Filing Entities (DFEs) and fringe benefit plans. See **Who Must File** on page 2, and **When To File** and **Where To File** on pages 4 and 5.

Any administrator or sponsor of an employee benefit plan subject to ERISA must file information about each plan every year (Code section 6058 and ERISA sections 104 and 4065). Every employer maintaining a specified fringe benefit plan as described in Code section 6039D (except Code sections 79, 105, 106, 120, and 129 plans) is also required to file each year.

The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) have consolidated their returns and report forms to minimize the filing burden for plan administrators and employers. The chart on pages 8 and 9 gives a brief guide to the annual return/report requirements for the 1999 Form 5500. Employers and administrators who comply with the instructions for the Form 5500 and schedules will generally satisfy the annual reporting requirements for the IRS and DOL. Plans covered by the PBGC have special additional requirements, including filing Annual Premium Payment (PBGC Form 1) and reporting certain transactions directly with that agency. See PBGC's Premium Package (Form 1).

Each Form 5500 must accurately reflect the characteristics and operations of the plan or arrangement being reported. The requirements for completing the Form 5500 vary according to the type of plan or arrangement. The section **Lines and Schedules To Complete** on page 6, summarizes what information must be reported for different types of plans and arrangements.

The Form 5500 and attachments are screened by a computer process for completeness. The filing may be rejected based upon this review. We urge all employers and plan administrators to provide complete and accurate information and otherwise comply fully with the filing requirements.

ERISA and the Code provide for the assessment or imposition of penalties for not submitting the required information when due. See **Penalties** on page 5.

Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the Department of Labor to the public pursuant to ERISA sections 104 and 106.

Table of Contents

Contents **Page**

Section 1: About the Form 5500

Who Must File 2
Pension Benefit Plan 2
Welfare Benefit Plan 3
Fringe Benefit Plan 3
Pension and Welfare Plans Excluded From Filing 3
Direct Filing Entity (DFE) 4

Contents

	Page
When To File	4
Private Delivery Service	4
Extension of Time to File	5
Where To File	5
Electronic Filing	5
Paper Filing	5
Penalties	5
Administrative Penalties	5
Other Penalties	5
Final Return/Report	6
Signature and Date	6
Change in Plan Year	6
Amended Return/Report	6
Section 2: Lines and Schedules To Complete	
Pension Benefit Plan	6
Limited Pension Plan Reporting	7
Welfare Benefit Plan	7
Fringe Benefit Plan	8
Welfare Benefit Plan and Fringe Benefit Plan Filing Together	8
Direct Filing Entity (DFE)	8
Quick Reference Chart of Form 5500, Schedules and Attachments	8 & 9
Section 3: Line-By-Line Instructions	
Part I – Annual Report Identification Information	10
Part II – Basic Plan Information	11
List of Plan Characteristics Codes for Lines 8a and 8b	13
Form 5500 Schedules	15
ERISA Compliance Quick Checklist	16
Codes for Principal Business Activity	17, 18 & 19
Instructions for the Individual Schedules	
Schedule A	20
Schedule B	22
Schedule C	30
Schedule D	32
Schedule E	34
Schedule F	35
Schedule G	36
Schedule H	38
Schedule I	45
Schedule P	49
Schedule R	50
Schedule SSA	52
Schedule T	54
Paperwork Reduction Act Notice	57
Index	58

Telephone Assistance

If you have questions and/or need help completing this form, please call **1-877-829-5500**. This line has been established by the IRS to assist filers with certain questions pertaining to retirement plans (e.g., pension and profit-sharing plans (including 401(k) plans)), including questions on Schedules B, E, F, H, I, P, R, SSA, and T. This toll-free telephone service is available Monday through Friday from 8:00 a.m. to 9:30 p.m. EST.

How To Get IRS Forms and Publications

Personal Computer

You can access the IRS's Internet Web-Site 24 hours a day, 7 days a week at **www.irs.gov** to:

- Download forms, instructions, and publications.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help by e-mail.
- Sign up to receive local and national tax news by e-mail.

You can also reach us using file transfer protocol at **ftp.irs.gov**

By phone and in person.

You can order forms and publications 24 hours a day, 7 days a week, by calling **1-800-TAX-FORM** (1-800-829-3676). You can also get most forms and publications at your local IRS office.

General Instructions

Section 1: Who Must File

A return/report must be filed every year for every pension benefit plan, welfare benefit plan, fringe benefit plan, and Direct Filing Entity described below. (Code sections 6058, 6039D, and ERISA sections 104 and 4065).

Pension Benefit Plan

All pension benefit plans covered by ERISA are required to file a Form 5500 except as provided in **Pension and Welfare Plans Excluded From Filing** on page 3. The return/report is due whether or not the plan is qualified and even if benefits no longer accrue, contributions were not made this plan year, or contributions are no longer made. Pension benefit plans required to file include both defined benefit plans and defined contribution plans.

The following are among the pension benefit plans for which a return/report must be filed:

1. Profit-sharing, stock bonus, money purchase, 401(k) plans, etc.

2. Annuity arrangements under Code section 403(b)(1).

3. Custodial accounts established under Code section 403(b)(7) for regulated investment company stock.

4. Individual retirement accounts (IRAs) established by an employer under Code section 408(c).

5. Pension benefit plans maintained outside the United States primarily for nonresident aliens if the employer who maintains the plan is:

- a domestic employer, or
- a foreign employer with income derived from sources within the United States (including foreign subsidiaries of domestic employers) if contributions to the plan are deducted on its U.S. income tax return. For this type of plan, enter 3A on Form 5500, Part II, line 8a.

6. Church pension plans electing coverage under Code section 410(d). Church plans that elect should enter 813000 as the business code on Form 5500, Part II, line 2d.

7. Pension benefit plans that cover residents of Puerto Rico, the U.S. Virgin Islands, Guam, Wake Island, or American Samoa. This includes a plan that elects to have the provisions of section 1022(i)(2) of ERISA apply.

8. Plans that satisfy the Actual Deferral Percentage requirements of Code section 401(k)(3)(A)(ii) by adopting the "SIMPLE" provisions of section 401(k)(11).

See **Lines and Schedules To Complete** on page 6 and **Pension and Welfare Plans Excluded From Filing** on page 3 for more information about what must be completed for pension and welfare plans.

Special Rules for Certain Plans of Partnerships and Wholly Owned Trades or Businesses

A plan that provides deferred compensation solely for (1) an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or (2) partners or the partners and the partners' spouses in a partnership may generally file **Form 5500-EZ,** Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan, rather than a Form 5500, provided that the plan:

1. Satisfies the minimum coverage requirements of Code section 410(b) without being combined with any other plan maintained by the employer;

2. Does not cover a business that is a member of a "controlled group"; or

3. Does not cover a business for which leased employees (as defined in Code section 414(n)(2)) perform services.

A plan that meets all of the above conditions is exempt from filing the Form 5500-EZ if the plan (and any other plans of the employer) had total assets of $100,000 or less at the end of every plan year beginning on or after 1/1/94.

For this purpose, a "controlled group" is a controlled group of corporations under Code section 414(b), a group of trades or businesses under common control under Code section 414(c), or an affiliated service group under Code section 414(m) that includes the business of the owner or partner covered by the plan.

Welfare Benefit Plan

All welfare benefit plans covered by ERISA are required to file a Form 5500 except as provided below in **Pension and Welfare Plans Excluded From Filing.** Welfare benefit plans provide benefits such as medical, dental, life insurance, apprenticeship and training, scholarship funds, severance pay, disability, etc.

See **Lines and Schedules To Complete** on page 6 for more information.

Reminder: *The administrator of an employee welfare benefit plan that provides benefits wholly or partially through a Multiple Employer Welfare Arrangement (MEWA) as defined in ERISA section 3(40) must file a Form 5500, unless otherwise exempt.*

Fringe Benefit Plan

Cafeteria plans described in Code section 125, educational assistance programs described in Code section 127, and adoption assistance programs described in Code section 137 are considered fringe benefit plans and are required to file the annual information specified by Code section 6039D. However, Code section 127 educational assistance programs that provide only job-related training which is deductible as an ordinary and necessary business expense under Code section 162 do not need to file Form 5500.

Note: *Fringe benefit plans often are associated with one or more welfare plans. A single Form 5500 may be filed for the fringe benefit plan and an associated welfare plan if all the required information is completed for both plans.*

See **Lines and Schedules To Complete** on page 6 for more information about what must be completed for fringe benefit plans.

Pension and Welfare Plans Excluded From Filing

Do Not File A Form 5500 For A Pension Benefit Plan That Is Any Of The Following:

- An unfunded excess benefit plan. See ERISA section 4(b)(5).
- An annuity or custodial account arrangement under Code section 403(b)(1) or (7) not established or maintained by an employer as described in 29 CFR 2510.3-2(f).
- A Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) that involves SIMPLE IRAs under Code section 408(p).
- A simplified employee pension (SEP) or a salary reduction SEP described in Code section 408(k) that conforms to the alternative method of compliance in 29 CFR 2520.104-48 or 2520.104-49.
- A church plan not electing coverage under Code section 410(d).
- A pension plan that is a qualified foreign plan within the meaning of Code section 404A(e) that does not qualify for the treatment provided in Code section 402(e)(5).
- An unfunded pension plan for a select group of management or highly compensated employees that meets the requirements of 29 CFR 2520.104-23, including timely filing of a registration statement with the DOL.
- An unfunded dues financed pension benefit plan that meets the alternative method of compliance provided by 29 CFR 2520.104-27.
- An individual retirement account or annuity not considered a pension plan under 29 CFR 2510.3-2(d).
- A governmental plan.

Do Not File A Form 5500 For A Welfare Benefit Plan That Is Any Of The Following:

CAUTION *The exemptions below do not apply to fringe benefit plans. A Form 5500 for a fringe benefit plan must be filed under Code section 6039D even if it is associated with a welfare benefit plan that is exempt from filing under one of the categories below.*

1. A welfare benefit plan that covered fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of insured and unfunded.

a. An *unfunded welfare benefit plan* has its benefits paid as needed directly from the general assets of the employer or employee organization that sponsors the plan.

Note: *Plans that are NOT unfunded include those plans that received employee (or former employee) contributions during the plan year and/or used a trust or separately maintained fund (including a Code section 501(c)(9) trust) to hold plan assets or act as a conduit for the transfer of plan assets during the year. However, a welfare plan with employee contributions that is associated with a fringe benefit plan under Code section 125 may be treated for annual reporting purposes as an unfunded welfare plan if it meets the requirements of DOL Technical Release 92-01, 57 Fed. Reg. 23272 (June 2, 1992).*

b. A *fully insured welfare benefit plan* has its benefits provided exclusively through insurance contracts or policies, the premiums of which must be paid directly to the insurance carrier by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members (which the employer or employee organization forwards within 3 months of receipt). The insurance contracts or policies discussed above must be issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) that is qualified to do business in any state.

c. A *combination unfunded/insured welfare plan* has its benefits provided partially as an unfunded plan and partially as a fully insured plan. An example of such a plan is a welfare benefit plan that provides medical benefits as in **a** above and life insurance benefits as in **b** above.

See 29 CFR 2520.104-20.

Note: *A "voluntary employees' beneficiary association," as used in Code section 501(c)(9) ("VEBA"), should not be confused with the employer or employee organization that sponsors the plan. See ERISA section 3(4).*

2. A welfare benefit plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens.

3. A governmental plan.

4. An unfunded or insured welfare plan for a select group of management or highly compensated employees which meets the requirements of 29 CFR 2520.104-24.

5. An employee benefit plan maintained only to comply with workers' compensation, unemployment compensation, or disability insurance laws.

6. A welfare benefit plan that participates in a group insurance arrangement that files a Form 5500 on behalf of the

welfare benefit plan as specified in 29 CFR 2520.103-2. See 29 CFR 2520.104-43.

7. An apprenticeship or training plan meeting all of the conditions specified in 29 CFR 2520.104-22.

8. An unfunded dues financed welfare benefit plan exempted by 29 CFR 2520.104-26.

9. A church plan under ERISA section 3(33).

10. A welfare benefit plan solely for (1) an individual or an individual and his or her spouse, who wholly owns a trade or business, whether incorporated or unincorporated; or (2) partners or the partners and the partners' spouses in a partnership. See 29 CFR 2510.3-3(b).

Direct Filing Entity (DFE)

Some plans participate in certain trusts, accounts, and other investment arrangements that may file a Form 5500 as Direct Filing Entities (DFEs). These trusts, accounts, and arrangements include master trust investment accounts (MTIAs), common or collective trusts (CCTs), pooled separate accounts (PSAs), 103-12 investment entities (103-12 IEs), and group insurance arrangements (GIAs). For reporting purposes, an MTIA, CCT, PSA, 103-12 IE, or GIA is considered a DFE only when a Form 5500 and all required attachments are filed for it in accordance with the DFE instructions. The filing requirements for DFEs are described in **Lines and Schedules to Complete** on page 6 and in the instructions to the Schedule D.

Note: *Special requirements also apply to Schedules D and H attached to the Form 5500 filed by plans participating in MTIAs, CCTs, PSAs, and 103-12 IEs. See the instructions for these schedules.*

Common/Collective Trust (CCT) and Pooled Separate Account (PSA): A Form 5500 is not required to be filed for a CCT or PSA.

For reporting purposes, "common/collective trust" and "pooled separate account" are, respectively: (1) a trust maintained by a bank, trust company, or similar institution or (2) an account maintained by an insurance carrier, which are regulated, supervised, and subject to periodic examination by a state or Federal agency in the case of a CCT, or by a state agency in the case of a PSA, for the collective investment and reinvestment of assets contributed thereto from employee benefit plans maintained by more than one employer or controlled group of corporations as that term is used in Code section 1563. See 29 CFR 2520.103-3, 103-4, 103-5, and 103-9.

Note: *For reporting purposes, a separate account that is not considered to be holding plan assets pursuant to 29 CFR 2510.3-101(h)(1)(iii) does not constitute a pooled separate account.*

Master Trust Investment Account (MTIA): The administrator filing a Form 5500 for an employee benefit plan is required to file or have a designee file a Form 5500 for each MTIA in which the plan participated at any time during the plan year. For reporting purposes, a "master trust" is a trust for which a regulated financial institution (as defined below) serves as trustee or custodian (regardless of whether such institution exercises discretionary authority or control with respect to the management of assets held in the trust), and in which assets of more than one plan sponsored by a single employer or by a group of employers under common control are held. A "regulated financial institution" means a bank, trust company, or similar financial institution that is regulated, supervised, and subject to periodic examination by a state or Federal agency. "Common control" is determined on the basis of all relevant facts and circumstances (whether or not such employers are incorporated). The assets of a master trust are considered for reporting purposes to be held in one or more "investment accounts." A "master trust investment account" may consist of a pool of assets or a single asset. Each pool of assets held in a master trust must be treated as a separate master trust investment account if each plan that has an interest in the pool has the same fractional interest in each asset in the pool as its fractional interest in the pool, and if each such plan may not dispose of its interest in any asset in the pool without disposing of its interest in the pool. A master trust may also contain assets that are not held in such a pool. Each such asset must be treated as a separate MTIA.

Note: *If a master trust investment account consists solely of one plan's asset(s) during the reporting period, the plan may report the asset(s) either as an investment account on a DFE Form 5500, or as a plan asset(s) that is not part of the master trust (and therefore subject to all instructions pertaining to assets not held in a master trust).*

103-12 Investment Entity (103-12 IE): DOL Regulation 2520.103-12 provides an alternative method of reporting for plans that invest in an entity (other than an MTIA, CCT, or PSA), whose underlying assets include "plan assets" within the meaning of 29 CFR 2510.3-101 of two or more plans that are not members of a "related group" of employee benefit plans. Such an entity for which a Form 5500 is filed constitutes a "103-12 IE." A Form 5500 is not required to be filed for such entities; however, the instructions for the Schedule H (Form 5500) provide reporting relief that is not available to plans and DFEs participating in entities that are eligible to but do not file a Form 5500 as a 103-12 IE. For this reporting purpose, a "related group" of employee benefit plans consists of each group of two or more employee benefit plans (1) each of which receives 10% or more of its aggregate contributions from the same employer or from a member of the same controlled group of corporations (as determined under Code section 1563(a), without regard to Code section 1563(a)(4) thereof); or (2) each of which is either maintained by, or maintained pursuant to a collective-bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization. See 29 CFR 2520.103-12.

Group Insurance Arrangement (GIA): Each welfare benefit plan that is part of a group insurance arrangement is exempted from the requirement to file a Form 5500 if a consolidated Form 5500 report for all the plans in the arrangement was filed in accordance with 29 CFR 2520.104-43. For reporting purposes, a "group insurance arrangement" provides benefits to the employees of two or more unaffiliated employers (not in connection with a multiemployer plan or a collectively-bargained multiple-employer plan), fully insures one or more welfare plans of each participating employer, uses a trust or other entity as the holder of the insurance contracts, and uses a trust as the conduit for payment of premiums to the insurance company.

When To File

Plans and GIAs. File 1999 return/reports for plan years that started in 1999. All required forms, schedules and attachments must be filed by the last day of the 7th calendar month after the end of the plan year (not to exceed 12 months in length) that began in 1999. If the plan year differs from the calendar year, fill in the fiscal year beginning and ending dates on the line provided at the top of the form.

DFEs other than GIAs. File 1999 return/reports no later than 9½ months after the end of the DFE year. A Form 5500 filed for a DFE must report information for the DFE year (not to exceed 12 months in length) that ends with or within the participating plan's year.

Short Years. For a short plan year, file the form and applicable schedules by the last day of the 7th month after the short plan year ends, and also check box B(4) in Part I. For purposes of this return/report, the short plan year ends on the date of the change in accounting period or upon the complete distribution of assets of the plan. Fill in the fiscal year beginning and ending dates on the line provided at the top of the form. Also see the instructions for **Final Return/Report** on page 6 to determine if box B(3) should be checked.

Special 1999 Transition Rule. The due date for a 1999 Form 5500 filed for a DFE with a fiscal year ending in 1999 is October 16, 2000.

Note: If the filing due date falls on a Saturday, Sunday, or Federal holiday, the return/report may be filed on the next day that is not a Saturday, Sunday, or Federal holiday.

Private Delivery Service

You can use certain private delivery services that have been designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The August, 1999 list of designated private delivery services published by the IRS includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M.

The private delivery service can tell you how to get written proof of the mailing date.

See **Where To File** below for the street address when using a private delivery service.

Extension of Time To File

Using Form 5558

A one-time extension of time to file Form 5500 (up to 2½ months) may be obtained by filing **Form 5558,** Application for Extension of Time To File Certain Employee Plan Returns, **before** the normal due date (not including any extensions) of the return. **You MUST file Form 5558 with the IRS.**

Approved copies of the Form 5558 will not be returned to the filer. However, a photocopy of the extension request that was filed must be attached to the Form 5500.

The addresses for where to file the Form 5558 are found in the instructions to the Form 5558.

Using Extension of Time To File Federal Income Tax Return

An automatic extension of time to file Form 5500 until the due date of the Federal income tax return of the employer will be granted if all of the following conditions are met: **(1)** the plan year and the employer's tax year are the same; **(2)** the employer has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500; and **(3)** a copy of the application for extension of time to file the Federal income tax return is attached to the Form 5500. An extension granted by using this automatic extension procedure CANNOT be extended further by filing a Form 5558.

Note: *An extension of time to file the Form 5500 described above does not operate as an extension of time to file a Form 5500 filed for a DFE or the PBGC Form 1.*

Where To File

File the Form 5500, with any required schedules, statements, and attachments, at the address indicated below.

by mail:

PWBA

P.O. Box 7043

Lawrence, KS 66044-7043

by private delivery service:

PWBA / NCS

Attn: EFAST

3833 Greenway Drive

Lawrence, KS 66046-1290

Electronic Filing

You may file Form 5500 using 4mm DAT, 8mm DAT, 3½ inch diskette, CD-ROM, 3490 Tape or 9-Track Tape at the above address or via modem. Electronic filers must obtain an electronic and, if filing by modem, a transmission encryption key. For more information regarding electronic filing and how to obtain electronic signatures and transmission encryption keys, check the EFAST Web Page at **www.efast.dol.gov**

Paper Filing

Completion by Computer. If Electronic Filing is not used, print out the machine print version of the forms on standard 8½ by 11 inch paper using EFAST approved computer software.

Completion by Hand. Enter on the hand print version of the forms one letter or number within each green box without any overlapping of characters. If entering a negative number, enter a minus sign "–" in a box to the left of the number.

Completion by Typewriter. Ignore the green vertical lines on the hand print version of the forms and type directly through the boxes. Do NOT type more characters than the number of boxes. Do NOT use commas. See example below. If entering a negative number, enter a minus sign "–" within the boxes to the left of the number.

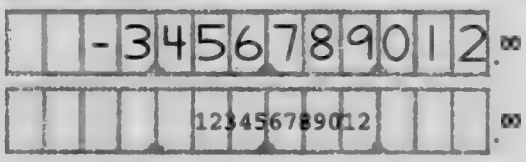

Call **1-800-TAX-FORM** (1-800-829-3676) to order forms to be used for completion by hand or typewriter since these forms use special paper, special green drop-out ink, and are printed within precise specifications. This number is available 24 hours a day, 7 days a week.

Penalties

ERISA and the Code provide for the assessment or imposition of penalties for not giving complete information and for not filing statements and returns/reports. Certain penalties are administrative (i.e., they may be imposed or assessed by one of the governmental agencies delegated to administer the collection of the Form 5500 data). Others require a legal conviction.

Administrative Penalties

Listed below are various penalties for not meeting the Form 5500 filing requirements. One or more of the following administrative penalties may be assessed or imposed in the event of incomplete filings or filings received after the due date unless it is determined that your explanation for failure to file properly is for reasonable cause:

1. A penalty of up to $1,100 a day for each day a plan administrator fails or refuses to file a complete report. See ERISA section 502(c)(2) and 29 CFR 2560.502c-2.

2. A penalty of $25 a day (up to $15,000) for not filing returns for certain plans of deferred compensation, trusts and annuities, and bond purchase plans by the due date(s). See Code section 6652(e). This penalty also applies to returns required to be filed under Code section 6039D.

3. A penalty of $1 a day (up to $5,000) for each participant for whom a registration statement (Schedule SSA (Form 5500)) is required but not filed. See Code section 6652(d)(1).

4. A penalty of $1,000 for not filing an actuarial statement. See Code section 6692.

Other Penalties

1. Any individual who willfully violates any provision of Part 1 of Title I of ERISA shall be fined not more than $5,000 or imprisoned not more than 1 year, or both. See ERISA section 501.

2. A penalty up to $10,000, 5 years imprisonment, or both, may be imposed for making any false statement or representation of fact, knowing it to be false, or for knowingly concealing or not disclosing any fact required by ERISA. See section 1027, Title 18, U.S. Code, as amended by section 111 of ERISA.

Final Return/Report

If all assets under the plan (including insurance/ annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to the control of another plan, and when all liabilities for which benefits may be paid under a welfare benefit plan have been satisfied, check the final return/report box (Part I, B(3)) at the top of the Form 5500. If a trustee is appointed for a terminated defined benefit plan pursuant to ERISA section 4042, the last plan year for which a return/report must be filed is the year in which the trustee is appointed.

Examples:

Mergers/Consolidations – A final return/report should be filed for the plan year (12 months or less) that ends when all plan assets were legally transferred to the control of another plan.

Master Trust Investment Account Final Report – A final report should be filed within 9½ months after the end of an MTIA year that ends when the account no longer holds the assets of more than one plan sponsored by a single employer or by a group of employers under common control.

Pension and Welfare Plans That Terminated Without Distributing All Assets – If the plan was terminated but all plan assets were not distributed, a return/report must be filed for each year the plan has assets. The return/report must be filed by the plan administrator, if designated, or by the person or persons who actually control the plan's assets/property.

Welfare Plans Still Liable To Pay Benefits – A welfare plan cannot file a final return/report if the plan is still liable to pay benefits for claims that were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

Signature and Date

The plan administrator must sign and date a Form 5500 filed for a pension or a welfare plan under ERISA sections 104 and/or 4065. Either the plan administrator or the employer may sign and date a Form 5500 filed for a pension plan under Code section 6058. Generally, a Form 5500 filed for a pension plan is filed under both ERISA section 104 and Code section 6058.

The employer must sign and date a Form 5500 filed for a fringe benefit plan under Code section 6039D.

When a joint employer-union board of trustees or committee is the plan sponsor or plan administrator, at least one employer representative and one union representative must sign and date the Form 5500.

Any representative authorized to sign on behalf of the DFE may sign the Form 5500 submitted for the DFE.

CAUTION *The administrator is required to maintain a copy of the annual report with all required signatures, as part of the plan's records, even if the annual report is filed electronically. See 29 CFR 2520.103-1.*

Change In Plan Year

Generally only defined benefit pension plans need to get approval for a change in plan year. (See Code section 412(c)(5).) However, under Rev. Proc. 87-27, 1987-1 C.B. 769, these pension plans may be eligible for automatic approval of a change in plan year. If a change in plan year for a pension or a welfare plan creates a short plan year, box B(4) in Part I must be checked and a Form 5500, with all required attachments, must be filed by the last day of the 7th calendar month after the end of the short plan year.

Amended Return/Report

To correct errors and/or omissions on a previously filed annual return/report for the 1999 plan year, submit a completed Form 5500 with an original signature and Part I, box B(2) checked. Attach and complete only those schedules and attachments being corrected. All amendments should be marked by circling the line numbers that have been changed since the prior submission. See the DOL Web Page at **www.efast.dol.gov** for information on electronic filing of amended return/reports. If you are filing a corrected annual return/report in response to correspondence received from the PWBA regarding processing of the annual return/report, do **not** check Part I, box B(2).

Section 2: Lines and Schedules To Complete

All lines on the Form 5500 must be completed unless otherwise specified. All applicable schedules and attachments must also be completed.

The Form 5500 reporting requirements vary depending on whether the Form 5500 is being filed for a "large plan," a "small plan," and/or a DFE, and on the particular type of plan or DFE involved (e.g., welfare plan, pension plan, fringe benefit plan, common/collective trust, pooled separate account, master trust investment account, 103-12 IE, or group insurance arrangement).

Generally, a return/report filed for a pension benefit plan or welfare benefit plan that covered fewer than 100 participants as of the beginning of the plan year should be completed following the requirements below for a **"small plan,"** and a return/report filed for a plan that covered 100 or more participants as of the beginning of the plan year should be completed following the requirements below for a **"large plan."**

Exceptions:

(1) 80-120 Participant Rule: *If the number of participants reported in Part II, line 6 is between 80 and 120, and a return/report was filed for the prior plan year, you may elect to complete the 1999 return/report in the same category ("large plan" or "small plan") as was filed for the prior return/report. Thus, if a Form 5500-C/R was filed for the 1998 plan year, and the number entered in Part II, line 6 of the 1999 Form 5500 is 100 to 120, you may elect to complete the 1999 Form 5500 and schedules in accordance with the instructions for a small plan.*

(2) Short Plan Year Rule: *If the plan had a short plan year of 7 months or less for either the prior plan year or, the plan year being reported on the 1999 Form 5500, an election can be made to defer filing the accountant's report in accordance with 29 CFR 2520.104-50. If such an election was made for the prior plan year, the 1999 Form 5500 must be completed following the requirements for a large plan, including the attachment of the Schedule H and the accountant's reports, regardless of the number of participants entered in Part II, line 6.*

Attachments

All attachments to the Form 5500 must be properly identified, and must include the name of the plan, plan sponsor's EIN, and plan number (PN) as found in lines 1a, 2b, and 1b, respectively. At the top of each attachment, indicate the schedule and line, if any (e.g., *Schedule H, Line 4i*) to which the attachment relates. When assembling the package for filing, you can place attachments to a schedule, either directly behind that schedule or at the end of the filing.

Pension Benefit Plan

Complete the Form 5500, including the signature block, and, except as provided in **Limited Pension Plan Reporting** on page 7, attach the following schedules and information:

SMALL PENSION PLAN

The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for a **Small Pension Plan**:

1. Schedule A (as many as needed), to report insurance, annuity, and investment contracts held by the plan.
2. Schedule B, to report actuarial information, if applicable.
3. Schedule D, Part I, to list any CCTs, PSAs, MTIAs and 103-12 IEs in which the plan participated at any time during the plan year.
4. Schedule E, to report ESOP annual information, if applicable.
5. Schedule I, to report small plan financial information.

6. Schedule P (as many as needed), to report trust fiduciary information, if applicable.

7. Schedule R, to report retirement plan information, if applicable.

8. Schedule SSA (as many as needed), to report separated vested participant information, if applicable.

9. Schedule T (as many as needed), to report tax qualified pension plan coverage information, if applicable.

LARGE PENSION PLAN

The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for a **Large Pension Plan**:

1. Schedule A (as many as needed), to report insurance, annuity, and investment contracts held by the plan.

2. Schedule B, to report actuarial information, if applicable.

3. Schedule C, to list the 40 most highly compensated service providers and, if applicable, any terminated accountants or actuaries.

4. Schedule D, Part I, to list any CCTs, PSAs, MTIAs and 103-12 IEs in which the plan invested at any time during the plan year.

5. Schedule E, to report ESOP annual information, if applicable.

6. Schedule G, to report loans or fixed income obligations in default or determined to be uncollectible as of the end of the plan year, leases in default or classified as uncollectible, and nonexempt transactions, i.e., file Schedule G if Schedule H (Form 5500) lines 4b, 4c, and/or 4d are checked "Yes."

7. Schedule H, to report financial information.

8. Schedule P (as many as needed), to report trust fiduciary information, if applicable.

9. Schedule R, to report retirement plan information, if applicable.

10. Schedule SSA, to report separated vested participant information, if applicable.

11. Schedule T (as many as needed), to report tax qualified pension plan coverage information, if applicable.

CAUTION *Attach the report of the independent qualified public accountant identified on Schedule H, line 3d, unless line 3b(2) is checked.*

Limited Pension Plan Reporting

The pension plans or arrangements described below are eligible for limited annual reporting:

1. **403(b) Arrangements:** A pension plan or arrangement using a tax deferred annuity arrangement under Code section 403(b)(1) and/or a custodial account for regulated investment company stock under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits need complete only Form 5500 Part I and Part II, lines 1 through 5, and 8 (enter pension feature code 2L, 2M, or both).

Note: *The administrator of an arrangement described above is not required to engage an independent qualified public accountant, attach an accountant's opinion to the Form 5500, or attach any schedules to the Form 5500.*

2. **IRA Plans:** A pension plan utilizing individual retirement accounts or annuities (as described in Code section 408) as the sole funding vehicle for providing pension benefits need complete only Form 5500 Part I and Part II, lines 1 through 5, and 8 (enter pension feature code 2N).

3. **Fully Insured Pension Plan:** A pension benefit plan providing benefits exclusively through an insurance contract or contracts that are fully guaranteed and that meet all of the conditions of 29 CFR 2520.104-44(b)(2) during the entire plan year must complete all requirements listed for a **Pension Benefit Plan** on page 6, except that such a plan is exempt from attaching Schedule H, Schedule I, and an accountant's opinion, and from the requirement to engage an independent qualified public accountant.

A pension benefit plan that has insurance contracts of the type described in 29 CFR 2520.104-44 as well as other assets must complete all requirements for a pension benefit plan, except that the value of the plan's allocated contracts (see below) should not be reported in Part I of Schedule H or I. All other assets should be reported on Schedule H or Schedule I, and any other required schedules. If Schedule H is filed, attach an accountant's report in accordance with the Schedule H instructions.

Note: *For purposes of the annual return/report and the alternative method of compliance set forth in 29 CFR 2520.104-44, a contract is considered to be "allocated" only if the insurance company or organization that issued the contract unconditionally guarantees, upon receipt of the required premium or consideration, to provide a retirement benefit of a specified amount. .This amount must be provided to each participant without adjustment for fluctuations in the market value of the underlying assets of the company or organization, and each participant must have a legal right to such benefits, which is legally enforceable directly against the insurance company or organization. For example, deposit administration, immediate participation guarantee, and guaranteed investment contracts are NOT allocated contracts for Form 5500 purposes.*

4. **Nonqualified pension benefit plans maintained outside the United States:** Nonqualified pension benefit plans maintained outside the United States primarily for nonresident aliens required to file a return/report (see **Who Must File** on page 2) must complete the Form 5500 (enter 3A in Part II, line 8a).

Welfare Benefit Plan

Complete the Form 5500, including the signature block, and attach the following schedules and information:

SMALL WELFARE PLANS

The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for a **Small Welfare Plan**:

1. Schedule A (as many as needed), to report insurance contracts held by the plan.

2. Schedule D, Part I, to list any CCTs, PSAs, MTIAs and 103-12 IEs in which the plan participated at any time during the plan year.

3. Schedule I, to report small plan financial information.

LARGE WELFARE PLAN

The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for a **Large Welfare Plan**:

1. Schedule A (as many as needed), to report insurance and investment contracts held by the plan.

2. Schedule C, if applicable, to list service providers and any terminated accountants or actuaries.

3. Schedule D, Part I, to list any CCTs, PSAs, MTIAs and 103-12 IEs in which the plan invested at any time during the plan year.

4. Schedule G, to report loans or fixed income obligations in default or determined to be uncollectible as of the end of the plan year, leases in default or classified as uncollectible, and nonexempt transactions, i.e., file Schedule G if Schedule H (Form 5500) lines 4b, 4c, and/or 4d are checked "Yes" or if a large welfare plan that is not required to file a Schedule H has nonexempt transactions.

5. Schedule H, to report financial information.

CAUTION *Attach the report of the independent qualified public accountant identified on Schedule H, line 3d, unless line 3b(2) is checked.*

Note: Neither Schedule H nor an accountant's opinion should be attached to a Form 5500 filed for an unfunded, fully insured or combination unfunded/insured welfare plan (as defined on page 3) that covered 100 or more participants as of the beginning of the plan year which meets the requirements of 29 CFR 2520.104-44 . However, Schedule G, Part III, must be attached to the Form 5500 to report any nonexempt

transactions. A welfare benefit plan that uses a "voluntary employees' beneficiary association" (VEBA) under Code section 501(c)(9) is generally not exempt from the requirement of engaging an independent qualified public accountant. See ERISA section 3(4).

Fringe Benefit Plan

Complete the Form 5500, including the signature block, and attach Schedule F to report fringe benefit plan annual information.

Note: *Do not complete lines 6, 7, and 9 of Part II of a Form 5500 filed only for a fringe benefit plan.*

Welfare Plan And Fringe Benefit Plan Filing Together

If one Form 5500 is filed for both, you must check lines 8c and 10c of Part II of the Form 5500, attach Schedule F for the fringe benefit plan and complete the information and schedules (listed above) for the welfare plan.

Direct Filing Entity (DFE)

The term DFE, as defined on page 4, includes common/collective trusts (CCTs), pooled separate accounts (PSAs), group insurance arrangements (GIAs), master trust investment accounts (MTIAs), and 103-12 investment entities (103-12 IEs) for which a Form 5500 is properly filed. Only one Form 5500 should be filed for each DFE year for all plans participating in the DFE; however, the DFE Form 5500, including all required schedules and attachments, must report information for the DFE year (not to exceed 12 months in length) that ends with or within the participating plan's year. The DFE Form 5500 filing is an integral part of the annual report of each participating plan and the plan administrator may be subject to penalties for failing to file a complete annual report unless both the DFE Form 5500 and the plan's Form 5500 are properly filed.

The information required for a Form 5500 filed for a DFE varies according to the type of DFE. The following paragraphs provide specific guidance for the reporting requirements for each type of DFE.

Requirements for a Form 5500 filed for a common/collective trust (CCT) or pooled separate account (PSA).

A CCT or PSA Form 5500 must comply with the Form 5500 instructions for a **Large Pension Plan**, unless otherwise specified in the forms and instructions. Complete the Form 5500 including the appropriate letter, C or P, on Part I, line A(4) and the signature block. Do **not** complete Part I, line C, and Part II, lines 1c, 2d, 6 through 9, and 10a. The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for a CCT or PSA:

1. Schedule D, Part I, to list all CCTs, PSAs, MTIAs and 103-12 IEs in which the CCT or PSA invested at any time during its year, and Part II, to list all plans that participated in the CCT or PSA during its year.

2. Schedule H to report financial information. Do **not** complete Part IV of Schedule H.

Note: *Special requirements also apply to Schedules D and H attached to the Form 5500 filed by plans participating in MTIAs, CCTs, PSAs, and 103-12 IEs. See the instructions for these schedules.*

Requirements for a Form 5500 filed for a master trust investment account (MTIA) or a 103-12 Investment Entity (103-12 IE).

An MTIA or 103-12 IE Form 5500 must comply with the Form 5500 instructions for a **Large Pension Plan**, unless otherwise specified in the forms and instructions. Complete the Form 5500 including the appropriate letter, M or E, on Part I, line A(4) and the signature block. Do **not** complete Part I, line C, and Part II, lines 1c, 2d, 6 through 9, and 10a. The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for an MTIA or 103-12 IE:

1. Schedule A (as many as needed), to report insurance, annuity and investment contracts held by the MTIA or 103-12 IE.

2. Schedule C, Parts I and II, to report service provider compensation information and any terminated accountants. Part II is not required if the Form 5500 is filed for an MTIA.

3. Schedule D, Part I, to list all CCTs, PSAs, MTIAs and 103-12 IEs in which the MTIA or 103-12 IE invested at any time during its year, and Part II, to list all plans that participated in the MTIA or 103-12 IE during its year.

Quick Reference Chart Form 5500 Schedules and Attachments[1]

	Large Pension Plan	Small Pension Plan	Large Welfare Plan	Small Welfare Plan	DFE	Fringe Benefit Plan
Schedule A (Insurance Information)	Must complete if plan has insurance contracts.	Must complete if plan has insurance contracts.	Must complete if plan has insurance contracts.	Must complete if plan has insurance contracts.	Must complete if MTIA, 103-12 IE or GIA has insurance contracts.	Not required.
Schedule B (Actuarial Information)	Must complete if defined benefit plan and subject to minimum funding standards.	Must complete if defined benefit plan and subject to minimum funding standards.	Not required.	Not required.	Not required.	Not required.
Schedule C (Service Provider Information)	Must complete if service provider was paid $5,000 or more and/or an accountant or actuary was terminated.	Not required.	Must complete if service provider was paid $5,000 or more and/or an accountant or actuary was terminated.	Not required.	MTIAs, GIAs and 103-12 IEs must complete Part I if service provider paid $5,000 or more. GIAs and 103-12 IEs must complete Part II if accountant was terminated.	Not required.
Schedule D (DFE/ Participating Plan Information)	Must complete Part I if plan participates in a CCT, PSA, MTIA, or 103-12 IE.	Must complete Part I if plan participates in a CCT, PSA, MTIA, or 103-12 IE.	Must complete Part I if plan participates in a CCT, PSA, MTIA, or 103-12 IE.	Must complete Part I if plan participates in a CCT, PSA, MTIA, or 103-12 IE.	All DFEs must complete Part II, and DFEs that invest in CCT, PSA, or 103-12 IE must also complete Part I.	Not required.

	Large Pension Plan	Small Pension Plan	Large Welfare Plan	Small Welfare Plan	DFE	Fringe Benefit Plan
Schedule E (ESOP Information)	Must complete if ESOP.	Must complete if ESOP.	Not required.	Not required.	Not required.	Not required.
Schedule F (Fringe Benefit Plan Information)	Not required.	Not required.	Not required.	Not required.	Not required.	Must complete.
Schedule G (Financial Schedules)	Must complete if Schedule H, lines 4b, 4c, or 4d are "Yes."[2]	Not required.	Must complete if Schedule H, lines 4b, 4c, or 4d are "Yes."[2, 3]	Not required.	MTIAs, GIAs and 103-12 IEs must complete if Schedule H, lines 4b, 4c, and 4d are "Yes."[2]	Not required.
Schedule H (Large Plan and DFE Financial Information)	Must complete.	Not required.	Must complete.[3]	Not required.	All DFEs must complete Parts I, II, and III. MTIAs, 103-12 IEs, and GIAs must also complete Part IV.	Not required.
Schedule I (Small Plan Financial Information)	Not required.	Must complete.	Not required.	Must complete.[3]	Not required.	Not required.
Schedule P (Annual Return of Fiduciary)	Must file to start running of statute of limitations under Code section 6501(a).	Must file to start running of statute of limitations under Code section 6501(a).	Not required.	Not required.	Not required.	Not required.
Schedule R (Retirement Plan Information)	Must complete unless plan is neither a defined benefit plan nor subject to Code section 412 or ERISA section 302 and no benefits were distributed during the plan year.	Must complete unless plan is neither a defined benefit plan nor subject to Code section 412 or ERISA section 302 and no benefits were distributed during the plan year.	Not required.	Not required.	Not required.	Not required.
Schedule SSA (Statement Identifying Separated Participants With Deferred Vested Benefits)	Must complete if plan had separated participants with deferred vested benefits to report.	Must complete if plan had separated participants with deferred vested benefits to report.	Not required.	Not required.	Not required.	Not required.
Schedule T (Qualified Pension Plan Information)	Must complete if qualified plan unless permitted to rely on coverage testing information for prior year.	Must complete if qualified plan unless permitted to rely on coverage testing information for prior year.	Not required.	Not required.	Not required.	Not required.
Accountant's Report	Must attach.	Not required.	Must attach.	Not required.	Must attach for a GIA or 103-12 IE.	Not required.

[1] This chart provides only general guidance. Not all rules and requirements are reflected. Refer to specific Form 5500 instructions for complete information on filing requirements (e.g., **Pension and Welfare Plans Excluded From Filing** on page 3 and **Lines and Schedules to Complete** on page 6).

[2] Schedules of assets and reportable (5%) transactions also must be filed with the Form 5500 if Schedule H, lines 4i or 4j are "Yes," but use of printed form not required.

[3] Unfunded, fully insured and combination unfunded/insured welfare plans covering fewer than 100 participants at the beginning of the plan year that meet the requirements of 29 CFR 2520.104-20 are exempt from filing an annual report. (See **Pension and Welfare Plans Excluded from Filing** on page 3.) Such a plan with 100 or more participants must file an annual report, but is exempt under 29 CFR 2520.104-44 from the accountant's report requirement and completing Schedule H, but MUST complete Schedule G, Part III, to report any nonexempt transactions. See **Lines and Schedules To Complete** on page 6.

4. Schedule G, to report loans or fixed income obligations in default or determined to be uncollectible as of the end of the MTIA or 103-12 IE year, leases in default or classified as uncollectible and nonexempt transactions, i.e., file Schedule G if Schedule H (Form 5500) lines 4b, 4c, and/or 4d are checked "Yes."

5. Schedule H, to report financial information.

Attach the report of the independent qualified public accountant identified on Schedule H, line 3d, unless line 3b(1) is checked.

Requirements for a Form 5500 filed for a group insurance arrangement (GIA).

A GIA Form 5500 must comply with the Form 5500 instructions for a **Large Welfare Plan,** unless otherwise specified in the forms and instructions. Complete the Form 5500 including the letter G on Part I, line A(4), and the signature block. Do **not** complete Part I, line C, and Part II, line 2d. The following schedules (including any additional information required by the instructions to the schedules) must be attached to a Form 5500 filed for a GIA:

1. Schedule A (as many as needed), to report insurance and investment contracts held by the GIA.

2. Schedule C, Parts I and II, to report service provider compensation information, and any terminated accountants.

3. Schedule D, Part I, to list all CCTs, PSAs, and 103-12 IEs in which the GIA invested at any time during its year, and Part II, to list all plans participating in the GIA at any time during its year.

4. Schedule G, to report loans or fixed income obligations in default or determined to be uncollectible as of the end of the plan year, leases in default or classified as uncollectible, and nonexempt transactions, i.e., file Schedule G if Schedule H (Form 5500) lines 4b, 4c, and/or 4d are checked "Yes."

5. Schedule H, to report financial information.

Attach the report of the independent qualified public accountant identified on Schedule H, line 3d.

Specific Instructions

Section 3: Form 5500 Line-by-Line Instructions

Answer all questions with respect to the plan or DFE year, unless otherwise explicitly stated in the line-by-line instructions or on the form itself. Therefore, responses usually apply to the year entered or printed at the top of the first page of the form.

"Yes" or "No" questions on the forms and schedules must be marked either "Yes" or "No," but not both. "N/A" cannot be used to respond to a "Yes" or "No" question unless specifically permitted by the forms, schedules or instructions.

Use black or blue ink. Check boxes should be filled in completely or clearly marked with an "X." If entering a negative number, enter a minus sign "–" in a box to the left of the number. Do not add dollar signs, commas, or use decimal points. Do not write on or near the barcode or in the upper right corner of the form as this will interfere with the processing of the forms.

The return/report must be completed in accordance with the following specific instructions.

Part I - Annual Report Identification Information

File Form 5500 with "1999" printed in the upper right hand corner for a plan year that began in 1999 or a DFE year that ended in 1999. If the plan year is not the 1999 calendar year, enter the dates in Part I. A form printed for a prior year may not be used to report for this plan year.

Kinds of Filers One Form 5500 is generally filed for each plan or entity described in the instructions to boxes A(1) through A(4) below.

Note: A separate Form 5500, with box A(2) checked, must be filed by each employer participating in a plan or program of benefits in which the funds attributable to each employer are available to pay benefits only for that employer's employees, even if the plan is maintained by a controlled group.

A "controlled group" is generally considered one employer for Form 5500 reporting purposes. A "controlled group" is a controlled group of corporations under Code section 414(b), a group of trades or businesses under common control under Code section 414(c), or an affiliated service group under Code section 414(m).

Box A(1). Multiemployer Plan. Check this box if the Form 5500 is filed for a multiemployer plan. A plan is a multiemployer plan if: **(1)** more than one employer is required to contribute, **(2)** the plan is maintained pursuant to one or more collective bargaining agreements, and **(3)** an election under Code section 414(f)(5) and ERISA section 3(37)(E) has not been made. Participating employers do not file individually for these plans. See 29 CFR 2510.3-37.

Box A(2). Single-Employer Plan. Check this box if the Form 5500 is filed for a single-employer plan. A single-employer plan is an employee benefit plan maintained by one employer or one employee organization.

Box A(3). Multiple-Employer Plan. Check this box if the Form 5500 is being filed for a multiple-employer plan. A multiple-employer plan is a plan that is maintained by more than one employer and is not one of the plans already described. Multiple-employer plans can be collectively bargained and collectively funded, but if covered by PBGC termination insurance, must have properly elected before September 27, 1981, not to be treated as a multiemployer plan under Code section 414(f)(5) or ERISA sections 3(37)(E) and 4001(a)(3). Participating employers do not file individually for these plans. *Do NOT check this box if the employers maintaining the plan are members of the same controlled group.*

Box A(4). Direct Filing Entity. Check this box and enter the correct letter from the chart below to indicate the type of entity in the space provided.

Type of entity ▼	Enter the letter ▼
Master Trust Investment account	M
Common/collective trust	C
Pooled separate account	P
103-12 Investment Entity	E
Group Insurance Arrangement	G

Box B(1). Check this box if an annual return/report has not been previously filed for this plan or DFE. For the purpose of completing box B(1), the Form 5500-EZ is not considered an annual return/report.

Box B(2). Check this box if this Form 5500 is being submitted to correct errors and/or omissions on a previously filed Form 5500 for the 1999 plan year.

Box B(3). Check this box if this Form 5500 is the last Form 5500 required to be submitted for this plan. (See **Final Return/Report** on page 6.)

Box B(4). Check this box if this Form 5500 is filed for a plan year of less than 12 months.

Note: *For purposes of completing boxes B(1) and B(3), check Form 5500, Part I, line B(3) and enter "4R" on Part II, line 8b, for a welfare plan that is not required to file a Form 5500 for the next plan year because the welfare plan has become eligible for an annual reporting exemption. For example, certain unfunded and insured welfare plans may be required to file the 1999 Form 5500 and be exempt from filing a Form 5500 for the plan year*

2000 if the number of participants covered as of the beginning of the 2000 plan year drops below 100. See ***Pension and Welfare Plans Excluded From Filing*** *on page 3. Should the number of participants covered by such a plan increase to 100 or more in a future year, the plan should check Form 5500, Part I, line B(1) on that year's Form 5500 and enter "4S" on Part II, line 8b. See 29 CFR 2520.104-20.*

Box C. Check box C when the contributions to the plan and/or the benefits paid by the plan are subject to the collective bargaining process (even if the plan is not established and administered by a joint board of trustees and even if only some of the employees covered by the plan are members of a collective bargaining unit that negotiates contributions and/or benefits). The contributions and/or benefits do not have to be identical for all employees under the plan.

Box D. Check this box if you filed for an extension of time to file this form. Attach a photocopy of either the completed and signed **Form 5558**, Application for Extension of Time To File Certain Employee Plan Returns you filed, or if you are using the automatic extension of time to file Form 5500 until the due date of the Federal income tax return of the employer, a copy of the employer's extension of time to file the income tax return. See **Extension of Time To File** on page 5.

Part II - Basic Plan Information

Line 1a. Enter the formal name of the plan or DFE or enough information to identify the plan or DFE. Abbreviate if necessary.

Line 1b. Enter the three-digit plan or entity number (PN) the employer or plan administrator assigned to the plan or DFE. This three digit number, in conjunction with the employer identification number (EIN) entered on line 2b, is used by the IRS, DOL, and PBGC as a unique 12 digit number to identify the plan or DFE.

Start at 001 for plans providing pension benefits or DFEs as illustrated in the table below. Start at 501 for welfare or fringe benefit plans and GIAs. Do not use 888 or 999.

Once you use a plan or DFE number, continue to use it for that plan or DFE on all future filings with the IRS, DOL and PBGC. Do not use it for any other plan or DFE, even if the first plan or DFE is terminated.

For each Form 5500 with the same EIN (line 2b), when ▼	Assign PN ▼
Part II, box 8a is checked, or Part I, A(4) is checked and an M, C, P, or E is entered	001 to the first plan or DFE. Consecutively number others as 002, 003. . .
Part II, box 8b and/or 8c is checked and 8a is not checked, or Part I, A(4) is checked and a G is entered	501 to the first plan or GIA. Consecutively number others as 502, 503. . .

Exception: *If Part II, box 8a is checked and 333 (or a higher number in a sequence beginning with 333) was previously assigned to the plan, that number may be entered on line 1b.*

Line 1c. Enter the date the plan first became effective.

Line 2a. Enter the name and address of the plan sponsor or, in the case of a Form 5500 filed for a DFE, the name and address of the insurance company, financial institution or other sponsor of the DFE (e.g., the trust or other entity that holds the insurance contract for a group insurance arrangement). If the plan covers only the employees of one employer, enter the employer's name. If the Post Office does not deliver mail to the street address and the sponsor has a P.O. box, enter the box number with the street address.

The term "plan sponsor" means:

- The employer, for an employee benefit plan that a single employer established or maintains, and for a fringe benefit plan;
- The employee organization in the case of a plan of an employee organization; or
- The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.

Include enough information on line 2a to describe the sponsor adequately, e.g., "Joint Board of Trustees of Local 187 Machinists" rather than just "Joint Board of Trustees." A plan of a controlled group of corporations should enter the name of only one of the sponsoring members.

Line 2b. Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor/employer/entity. For example, 00-1234567.

Employers and plan administrators who do not have an EIN should apply for one on Form SS-4, Application for Employer Identification Number as soon as possible. Form SS-4 can be obtained at most IRS or Social Security Administration (SSA) offices. The PWBA does NOT issue EINs.

A plan of a controlled group of corporations should use the EIN of one of the sponsoring members. The EIN must be used in all subsequent filings of the Form 5500 for the controlled group.

If the plan sponsor is a group of individuals, get a single EIN for the group. When you apply for a number, enter on line 1 of Form SS-4 the name of the group, such as "Joint Board of Trustees of the Local 187 Machinists' Retirement Plan." EINs may be obtained by filing Form SS-4 as explained above.

Note: *EINs for funds (trusts or custodial accounts) associated with plans are generally not required to be furnished on the Form 5500; the IRS will issue EINs for such funds for other reporting purposes. EINs may be obtained by filing Form SS-4 as explained above.*

Plan sponsors should use the trust EIN described in the **Note** above when opening a bank account or conducting other transactions for a trust that require an EIN.

Line 2d. Enter the six-digit business code that best describes the nature of the plan sponsor's business from the list of business codes on pages 17, 18, and 19. If more than one employer or employee organization is involved, enter the business code for the main business activity of the employers and/or employee organizations.

Line 3a. Enter the name and address of the plan administrator, unless **(a)** the administrator is the sponsor identified in item 2, or **(b)** Part I, box A(4) is checked because the Form 5500 is submitted as the report of a DFE. If (a) or (b) applies, the word "Same" should be entered on line 3a and lines 3b and 3c should be blank. Plan administrator means:

- The person or group of persons specified as the administrator by the instrument under which the plan is operated;
- The plan sponsor/employer if an administrator is not so designated; or
- Any other person prescribed by regulations if an administrator is not designated and a plan sponsor cannot be identified.

Line 3b. Enter the plan administrator's nine-digit EIN. A plan administrator must have an EIN for Form 5500 reporting purposes. If the plan administrator does not have an EIN, apply for one as explained in the instructions for line 2b. One EIN should be entered for a group of individuals who are, collectively, the plan administrator.

Note: *Employees of the plan sponsor who perform administrative functions for the plan are generally not the plan administrator unless specifically designated in the plan document. If an employee of the plan sponsor is designated as the plan administrator, that employee must get an EIN.*

Line 4. If the plan sponsor's name and EIN have changed since the last return/report was filed for this plan enter the plan sponsor's name, EIN, and the plan number as it appeared on the last return/report filed for this plan.

Line 5. *(Optional)* You may use this line to designate the person or entity that is principally responsible for the preparation of the annual return/report.

Lines 6 and 7. The description of "participant" in the instructions below is only for purposes of these lines.

For welfare plans, the number of participants should be determined by reference to 29 CFR 2510.3-3(d). Dependents are considered to be neither participants nor beneficiaries. A child who is an "alternate recipient" entitled to health benefits under a qualified medical child support order should not be counted as a participant for lines 6 and 7. For pension benefit plans, "alternate payees" entitled to benefits under a qualified domestic relations order are not to be counted as participants for these lines.

"Participant" means any individual who is included in one of the categories below.

1. Active participants include any individuals who are currently in employment covered by a plan and who are earning or retaining credited service under a plan. This category includes any individuals who are eligible to elect to have the employer make payments to a Code section 401(k) qualified cash or deferred arrangement. Active participants also include any nonvested individuals who are earning or retaining credited service under a plan. This category does not include **(a)** nonvested former employees who have incurred the break in service period specified in the plan or **(b)** former employees who have received a "cash-out" distribution or deemed distribution of their entire nonforfeitable accrued benefit.

2. Retired or separated participants receiving benefits are any individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan. This includes former employees who are receiving group health continuation coverage benefits pursuant to Part 6 of ERISA and who are covered by the employee welfare benefit plan. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

3. Other retired or separated participants entitled to future benefits are any individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

4. Deceased individuals who had one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

Line 7g. Enter the number of participants included on line 7f (total participants at the end of the plan year) who have account balances. For example, for a Code section 401(k) plan the number entered on line 7g should be the number of participants counted on line 7f who have made a contribution to the plan for this plan year or any prior plan year. Defined benefit plans should leave line 7g blank.

Line 7h. Include any individual who terminated employment during this plan year, whether or not he or she **(a)** incurred a break in service, **(b)** received an irrevocable commitment from an insurance company to pay all the benefits to which he or she is entitled under the plan, and/or **(c)** received a cash distribution or deemed cash distribution of his or her nonforfeitable accrued benefit. Multiemployer plans and multiple-employer plans that are collectively bargained do not have to complete line 7h.

Line 7i. If a number is entered on line 7i, you must file Schedule SSA (Form 5500) as an attachment to the Form 5500.

Code section 6057(e) provides that the plan administrator must give each participant a statement showing the same information reported on Schedule SSA for that participant.

Line 8 - Benefits Provided Under the Plan. Check 8a, 8b and/or 8c, as appropriate. In addition, enter in the boxes provided all applicable plan characteristic codes from the table on page 13 that describe the characteristics of the plan being reported.

Line 9 - Funding and Benefit Arrangements. Check all boxes that apply to indicate the funding and benefit arrangements used during the plan year. The "funding arrangement" is the method for the receipt, holding, investment, and transmittal of plan assets prior to the time the plan actually provides benefits. The "benefit arrangement" is the method by which benefits were actually provided to participants by the plan. For the purposes of line 9:

"Insurance" means the plan has an account, contract, or policy with an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization) during the plan or DFE year. (This includes investments with insurance companies such as guaranteed investment contracts (GICs).) Do not check "insurance" if the sole function of the insurance company was to provide administrative services.

"Code section 412(i) insurance contracts" are contracts that provide retirement benefits under a plan which are guaranteed by an insurance carrier. In general, such contracts must provide for level premium payments over the individual's period of participation in the plan (to retirement age), premiums must be timely paid as currently required under the contract, no rights under the contract may be subject to a security interest and no policy loans may be outstanding. If a plan is funded exclusively by the purchase of such contracts, the otherwise applicable minimum funding requirements of section 412 of the Code and section 302 of ERISA do not apply for the year and a Schedule B is not required to be filed.

"Trust" includes any fund or account that receives, holds, transmits, or invests plan assets other than an account or policy of an insurance company.

"General assets of the sponsor" means the plan either had no assets or some assets were commingled with the general assets of the plan sponsor prior to the time the plan actually provided the benefits promised.

Example: If the plan held all its assets invested in registered investment companies and other non-insurance company investments until it purchased annuities to pay out the benefits promised under the plan, box 9a(3) should be checked as the funding arrangement and box 9b(1) should be checked as the benefit arrangement.

Note: *An employee benefit plan that checks boxes 9a(1), 9a(2), 9b(1), and/or 9b(2) must attach a Schedule A (Form 5500), Insurance Information, to provide information pertaining to each contract year ending with or within the plan year. See the instructions to the Schedule A and enter the number of Schedules A on line 10b(3), if applicable.*

PLAN CHARACTERISTICS CODES FOR LINES 8a AND 8b

CODE	Defined Benefit Pension Features
1A	Benefits are primarily pay related
1B	Benefits are primarily flat dollar (includes dollars per year of service)
1C	Cash balance or similar plan - Plan has a "cash balance" formula. For this purpose, a "cash balance" formula is a benefit formula in a defined benefit plan by whatever name (e.g., personal account plan, pension equity plan, life cycle plan, cash account plan, etc.) that rather than, or in addition to, expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a defined contribution plan such as a single sum distribution amount (e.g., 10 percent of final average pay times years of service, or the amount of the employee's hypothetical account balance).
1D	Offset arrangement - Plan benefits are subject to offset for retirement benefits provided in another plan or arrangement of the employer.
1E	Code section 401(h) arrangement - Plan contains separate accounts under Code section 401(h) to provide employee health benefits.
1F	Code section 414(k) arrangement - Benefits are based partly on the balance of the separate account of the participant (also include appropriate defined contribution pension feature codes).
1G	Covered by PBGC - Plan is covered under the PBGC insurance program (see ERISA section 4021).
1H	Plan covered by PBGC that was terminated and closed out for PBGC purposes - Before the end of the plan year (or a prior plan year), (1) the plan terminated in a standard (or distress) termination and completed the distribution of plan assets in satisfaction of all benefit liabilities (or all ERISA Title IV benefits for distress termination); or (2) a trustee was appointed for a terminated plan pursuant to ERISA section 4042.

CODE	Defined Contribution Pension Features
2A	Allocations based upon age, service, or age and service
2B	Target benefit plan
2C	Money purchase (other than target benefit)
2D	Offset plan - Plan benefits are subject to offset for retirement benefits provided in another plan or arrangement of the employer.
2E	Profit-sharing
2F	ERISA section 404(c) Plan - This plan, or any part of it is intended to meet the conditions of 29 CFR 2550.404c-1.
2G	Total participant-directed account plan - Participants have the opportunity to direct the investment of all the assets allocated to their individual accounts, regardless of whether 29 CFR 2550.404c-1 is intended to be met.
2H	Partial participant-directed account plan - Participants have the opportunity to direct the investment of a portion of the assets allocated to their individual accounts, regardless of whether 29 CFR 2550.404c-1 is intended to be met.
2I	Stock bonus
2J	Code section 401(k) feature - A cash or deferred arrangement described in Code section 401(k) that is part of a qualified defined contribution plan that provides for an election by employees to defer part of their compensation or receive these amounts in cash.
2K	Code section 401(m) arrangment - Employee contributions are allocated to separate accounts under the plan or employer contributions are based, in whole or in part, on employee deferrals or contribtions to the plan. Not applicable if plan is 401(k) plan with only QNECs and/or QMACs. Also not applicable if Code section 403(b)(1), 403(b)(7) or 408 arrangements/accounts/annuities.
2L	Code section 403(b)(1) arrangement - See instructions for Code section 403(b)(1) arrangements for certain exempt organizations.
2M	Code section 403(b)(7) accounts - See instructions for Code section 403(b)(7) custodial accounts for regulated investment company stock for certain exempt organizations.
2N	Code section 408 accounts and annuities - See the instructions for pension plan utilizing indivdual Code section 408 retirement accounts or annuities as the funding vehicle for providing benefits.
2O	ESOP other than a leveraged ESOP - A completed Schedule E must be attached to a Form 5500 filed for an Employee Stock Ownership Plan (ESOP).
2P	Leveraged ESOP - An ESOP that acquires employer securities with borrowed money or other debt-financing techniques. A completed Schedule E must be attached to a Form 5500 filed for an ESOP.

CODE	Other Pension Benefit Features
3A	Non-U.S. plan - Pension plan maintained outside the United States primarily for nonresident aliens.
3B	Plan covering Self-Employed individuals.
3C	Plan not intended to be qualified - A plan not intended to be qualified under Code sections 401, 403, or 408.
3D	Master plan - A pension plan that is made available by a sponsoring organization for adoption by employers; that is the subject of a favorable opinion letter under Revenue Procedure 89-9, 1989-1 C.B. 780, as modified by Rev. Proc. 90-21, 1990-1 C.B. 499; and for which a single funding medium (for example, a trust or custodial account) is established for the joint use of all adopting employers.
3E	Prototype plan - A pension plan that is made available by a sponsoring organization for adoption by employers; that is the subject of a favorable opinion letter under Revenue Procedures 90-21, 1990-1 C.B. 780, as modified by Rev. Proc. 90-21, 1990-1 C.B. 499; and under which a separate funding medium (for example, a separate trust or custodial account) is established for each adopting employer. See the preceding paragraph regarding the meaning of "sponsoring organization."
3F	Regional prototype plan - A pension plan that is made available by a regional sponsor for adoption by employers and that is the subject of a favorable notification letter under Rev. Proc. 89-13, 1989-1 C.B. 801, as modified by Rev. Proc. 90-21, 1990-1 C.B. 499. For this purpose, regional sponsors include individuals and organizations, other than organizations that are permitted to sponsor master or prototype plans.
3G	One-participant plan - A plan without employees as defined in 29 CFR 2510.3-3(b).
3H	Plan sponsor(s) is (are) a member(s) of a controlled group (Code sections 414(b), (c), or (m)).

CODE	Welfare Benefit Features
4A	Health (other than dental or vision)
4B	Life insurance
4C	Supplemental unemployment
4D	Dental
4E	Vision
4F	Temporary disability (accident and sickness)
4G	Prepaid legal
4H	Long-term disability
4I	Severance pay
4J	Apprenticeship and training
4K	Scholarship (funded)
4L	Death benefits (include travel accident but not life insurance)
4P	Taft-Hartley Financial Assistance for Employee Housing Expenses
4Q	Other
4R	Unfunded, fully insured, or combination unfunded/insured welfare plan that will not file a Form 5500 for next plan year pursuant to 29 CFR 2520.104-20.
4S	Unfunded, fully insured, or combination unfunded/insured welfare plan that stopped filing Form 5500s in an earlier plan year pursuant to 29 CFR 2520.104-20.

Examples:

1. A Form 5500 filed for a qualified defined benefit pension plan covered by the PBGC which provides a benefit of 2% of average annual compensation per year of service with an offset arrangement should check box 8a and enter the codes "1A", "1D" and "1G" in the boxes under box 8a as illustrated below:

a [X] Pension benefits (check this box if the plan provides pension benefits and enter the applicable pension feature codes from the List of Plan Characteristics Codes (printed in the instructions) below).

1A	1D	1G								

2. A Form 5500 filed for a welfare plan providing health insurance, life insurance, dental insurance, and eye examinations should check box 8b and enter the codes "4A", "4B", "4D", and "4E" in the boxes under box 8b as illustrated below:

b [X] Welfare benefits (check this box if the plan provides welfare benefits and enter the applicable welfare feature codes from the List of Plan Characteristics Codes (printed in the instructions) below).

4A	4B	4D	4E							

3. A Form 5500 filed for a prototype profit-sharing plan with 401(k) features, providing participant direction with voluntary employee contributions and regular employer matching contributions which is intended to meet ERISA section 404(c), and which provides ancillary life insurance, should check boxes 8a and 8b and enter the codes "2E", "2F", "2J", "2K", "3E" and "4B" in the boxes under 8a and 8b as illustrated below:

a [X] Pension benefits (check this box if the plan provides pension benefits and enter the applicable pension feature codes from the List of Plan Characteristics Codes (printed in the instructions) below).

2E	2F	2J	2K	3E						

b [X] Welfare benefits (check this box if the plan provides welfare benefits and enter the applicable welfare feature codes from the List of Plan Characteristics Codes (printed in the instructions) below).

4B										

Form 5500 Schedules

Line 10. All attachments to the Form 5500, including schedules, must include both the EIN and the plan number entered on lines 2b and 1b of the Form 5500. Check the boxes on line 10 to indicate the schedules being filed and, where applicable, enter the number of schedules attached on the space provided. The schedules are described below.

Pension Benefit Schedules

Schedule R (Retirement Plan Information) must be completed if the Form 5500 is being filed for a pension benefit plan unless the plan is neither a defined benefit plan nor subject to Code section 412 or ERISA section 302 *and* no benefits were distributed during the plan year, or unless otherwise specified under **Limited Pension Plan Reporting** on page 7. For additional information, see the Schedule R instructions.

Schedule T (Qualified Pension Plan Coverage Information) generally must be completed for a pension benefit plan that is intended to be qualified under Code section 401(a) or section 403(a). However, Schedule T may not be required every year. For additional information, see the Schedule T instructions.

Schedule B (Actuarial Information) is required for most defined benefit pension plans and for defined contribution pension plans that currently amortize a waiver of the minimum funding specified the instructions for the Schedule B. For additional information, see the instructions for the Schedules B and R.

Schedule E (ESOP Annual Information) is required for all pension benefit plans with ESOP benefits. For additional information, see the Schedule E instructions.

Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits) may be needed to report separated participants. For additional information, see the Schedule SSA instructions.

Financial Schedules

Schedule H (Financial Information) must be attached to a Form 5500 filed for pension benefit plans and welfare benefit plans that covered 100 or more participants as of the beginning of the plan year, and to a Form 5500 filed for a MTIA, CCT, PSA, 103-12, or GIA. Employee benefit plans, 103-12 IEs, and GIAs filing the Schedule H are generally required to engage an independent qualified public accountant and attach a report of the accountant pursuant to ERISA section 103(a)(3)(A). These plans and DFEs are also generally required to attach to the Form 5500 a **"Schedule of Assets Held For Investment Purposes," "Schedule of Assets Acquired and Disposed of Within the Plan Year,"** and, if applicable, a **"Schedule of Reportable Transactions."** For additional information, see the Schedule H instructions for lines 4i and 4j and the Form 5500 instructions for **Direct Filing Entity (DFE)** on page 4.

Exceptions: *Insured, unfunded, or combination unfunded/insured welfare plans as described in 29 CFR 2520.104-44(b)(1), and fully insured pension plans as described in 29 CFR 2520.104-44(b)(2) and under* ***Limited Pension Plan Reporting*** *on page 7, are exempt from completing the Schedule H. Also, if a Form 5500-C/R was filed for the plan for the 1998 plan year and the plan covered fewer than 121 participants as of the beginning of the 1999 plan year, the Schedule I may be completed instead of the Schedule H.*

Schedule I (Financial Information - Small Plan) is required for all pension benefit plans and welfare benefit plans filing as "small plans," unless the plan is exempt as an insured, unfunded, or combination insured/unfunded welfare plan as described in 29 CFR 2520.104-20, or a fully insured pension plan as described in 29 CFR 2520.104-44(b)(2) and under **Limited Pension Plan Reporting** on page 7. For additional information, see the Schedule I instructions.

Schedule A (Insurance Information) is required if any benefits under an employee benefit plan are provided by an insurance company, insurance service or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization). (This includes investment contracts with insurance companies, such as guaranteed investment contracts and pooled separate accounts.) For additional information, see the Schedule A instructions.

Note: *Do not file Schedule A for Administrative Services Only (ASO) contracts. Do not file Schedule A if a Schedule A is filed for the contract as part of the Form 5500 filed directly by a master trust investment account or 103-12 IE. Do not file Schedule A if the plan covers only:* **(1)** *an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or* **(2)** *partners, or partners and one or more of the partner's spouses in a partnership.*

Schedule C (Service Provider Information) is required when the Form 5500 is filed for a large plan, MTIA, 103-12 IE, or GIA and **(1)** any service provider who rendered services to the plan or DFE during the plan or DFE year received $5,000 or more in compensation, directly or indirectly from the plan or DFE or **(2)** an accountant and/or actuary has been terminated. For additional information, see the Schedule C instructions.

Schedule D (DFE/Participating Plan Information). *Part I* is required when the Form 5500 is filed for a plan or DFE that invested or participated in any MTIAs, 103-12 IEs, CCTs, and/or PSAs to provide information about these entities. *Part II* is required when the Form 5500 is filed for a DFE to provide information about the investing or participating plans. For additional information, see the Schedule D instructions.

Schedule G. (Financial Transaction Schedules) is required when the Form 5500 is filed for a large plan, MTIA, 103-12 IE, or GIA and Schedule H (Financial Information) lines 4b, 4c, and/or 4d are checked "Yes." Part I of the Schedule G reports loans or fixed income obligations in default or classified as uncollectible. Part II of the Schedule G reports leases in default or classified as uncollectible. Part III of the Schedule G reports non-exempt transactions. For additional information, see the Schedule G instructions.

CAUTION *An unfunded, fully insured, or combination unfunded/insured welfare plan with 100 or more participants exempt under 29 CFR 2520.104-44 from Schedule H must still complete Schedule G, Part III, to report nonexempt transactions.*

Schedule P (Annual Return of Fiduciary of Employee Benefit Trust) may be filed to satisfy the requirements under Code section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a). Filing this form will start the statute of limitations under section 6501(a) for any trust described in section 401(a), which is exempt from tax under section 501(a).

Fringe Benefit Schedule

Schedule F (Fringe Benefit Plan Annual Information) must be attached to the Form 5500 for all fringe benefit plans. For additional information, see the Schedule F instructions.

ERISA COMPLIANCE QUICK CHECKLIST

Compliance with the Employee Retirement Income Security Act (ERISA) begins with knowing the rules. Plan administrators and other plan officials can use this checklist as a quick diagnostic tool for assessing a plan's compliance with certain important ERISA rules; it is not a complete description of all ERISA's rules and it is not a substitute for a comprehensive compliance review. Use of this checklist is voluntary, and it should not be filed with your Form 5500.

If you answer "No" to any of the questions below, you should review your plan's operations because you may not be in full compliance with ERISA's requirements.

1. Have you provided plan participants with a summary plan description, summaries of any material modifications of the plan, and annual summary financial reports?
2. Do you maintain copies of plan documents at the principal office of the plan administrator for examination by participants and beneficiaries?
3. Do you respond to written participant inquires for copies of plan documents and information within 30 days?
4. Does your plan include written procedures for making benefit claims and appealing denied claims, and are you complying with those procedures?
5. Is your plan covered by a fidelity bond against losses due to fraud or dishonesty?
6. Are the plan's investments diversified so as to minimize the risk of large losses?
7. If the plan permits participants to select the investments in their plan accounts, has the plan provided them with enough information to make informed decisions?
8. Has a plan official determined that the investments are prudent and solely in the interest of the plan's participants and beneficiaries, and evaluated the risks associated with plan investments before making the investments?
9. Did the employer or other plan sponsor send participant contributions to the plan on a timely basis?
10. Did the plan pay participant benefits on time and in the correct amounts?

If you answer "Yes" to any of the questions below, you should review your plan's operations because you may not be in full compliance with ERISA's requirements.

1. Has the plan engaged in any financial transactions with persons related to the plan or any plan official, for example, has the plan made a loan to or participated in an investment with the employer?
2. Has the plan official used the assets of the plan for his/her own interest?
3. Have plan assets been used to pay expenses that were not authorized in the plan document, were not necessary to the proper administration of the plan, or were more than reasonable in amount?

If you need help answering these questions or want additional guidance about ERISA requirements, a plan official should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with the plan's legal counsel or professional employee benefit advisor.

Forms 5500 and 5500-EZ

Codes for Principal Business Activity

This list of principal business activities and their associated codes is designed to classify an enterprise by type of activity in which it is engaged. These principal activity codes are based on the North American Industry Classification System.

Agriculture, Forestry, Fishing and Hunting

Code

Crop Production
- 111100 Oilseed & Grain Farming
- 111210 Vegetable & Melon Farming (including potatoes & yams)
- 111300 Fruit & Tree Nut Farming
- 111400 Greenhouse, Nursery, & Floriculture Production
- 111900 Other Crop Farming (including tobacco, cotton, sugarcane, hay, peanut, sugar beet & all other crop farming)

Animal Production
- 112111 Beef Cattle Ranching & Farming
- 112112 Cattle Feedlots
- 112120 Dairy Cattle & Milk Production
- 112210 Hog & Pig Farming
- 112300 Poultry & Egg Production
- 112400 Sheep & Goat Farming
- 112510 Animal Aquaculture (including shellfish & finfish farms & hatcheries)
- 112900 Other Animal Production

Forestry and Logging
- 113110 Timber Tract Operations
- 113210 Forest Nurseries & Gathering of Forest Products
- 113310 Logging

Fishing, Hunting and Trapping
- 114110 Fishing
- 114210 Hunting & Trapping

Support Activities for Agriculture and Forestry
- 115110 Support Activities for Crop Production (including cotton ginning, soil preparation, planting, & cultivating)
- 115210 Support Activities for Animal Production
- 115310 Support Activities For Forestry

Mining

- 211110 Oil & Gas Extraction
- 212110 Coal Mining
- 212200 Metal Ore Mining
- 212310 Stone Mining & Quarrying
- 212320 Sand, Gravel, Clay, & Ceramic & Refractory Minerals Mining & Quarrying
- 212390 Other Nonmetallic Mineral Mining & Quarrying
- 213110 Support Activities for Mining

Utilities

- 221100 Electric Power Generation, Transmission & Distribution
- 221210 Natural Gas Distribution
- 221300 Water, Sewage & Other Systems

Construction

Code

Building, Developing, and General Contracting
- 233110 Land Subdivision & Land Development
- 233200 Residential Building Construction
- 233300 Nonresidential Building Construction

Code

Heavy Construction
- 234100 Highway, Street, Bridge, & Tunnel Construction
- 234900 Other Heavy Construction

Special Trade Contractors
- 235110 Plumbing, Heating, & Air-Conditioning Contractors
- 235210 Painting & Wall Covering Contractors
- 235310 Electrical Contractors
- 235400 Masonry, Drywall, Insulation, & Tile Contractors
- 235500 Carpentry & Floor Contractors
- 235610 Roofing, Siding, & Sheet Metal Contractors
- 235710 Concrete Contractors
- 235810 Water Well Drilling Contractors
- 235900 Other Special Trade Contractors

Manufacturing

Food Manufacturing
- 311110 Animal Food Mfg
- 311200 Grain & Oilseed Milling
- 311300 Sugar & Confectionery Product Mfg
- 311400 Fruit & Vegetable Preserving & Specialty Food Mfg
- 311500 Dairy Product Mfg
- 311610 Animal Slaughtering and Processing
- 311710 Seafood Product Preparation & Packaging
- 311800 Bakeries & Tortilla Mfg
- 311900 Other Food Mfg (including coffee, tea, flavorings & seasonings)

Beverage and Tobacco Product Manufacturing
- 312110 Soft Drink & Ice Mfg
- 312120 Breweries
- 312130 Wineries
- 312140 Distilleries
- 312200 Tobacco Manufacturing

Textile Mills and Textile Product Mills
- 313000 Textile Mills
- 314000 Textile Product Mills

Apparel Manufacturing
- 315100 Apparel Knitting Mills
- 315210 Cut & Sew Apparel Contractors
- 315220 Men's & Boys' Cut & Sew Apparel Mfg
- 315230 Women's & Girls' Cut & Sew Apparel Mfg
- 315290 Other Cut & Sew Apparel Mfg
- 315990 Apparel Accessories & Other Apparel Mfg

Leather and Allied Product Manufacturing
- 316110 Leather & Hide Tanning & Finishing
- 316210 Footwear Mfg (including rubber & plastics)
- 316990 Other Leather & Allied Product Mfg

Wood Product Manufacturing
- 321110 Sawmills & Wood Preservation
- 321210 Veneer, Plywood, & Engineered Wood Product Mfg

Code
- 321900 Other Wood Product Mfg

Paper Manufacturing
- 322100 Pulp, Paper, & Paperboard Mills
- 322200 Converted Paper Product Mfg

Printing and Related Support Activities
- 323100 Printing & Related Support Activities

Petroleum and Coal Products Manufacturing
- 324110 Petroleum Refineries (including integrated)
- 324120 Asphalt Paving, Roofing, & Saturated Materials Mfg
- 324190 Other Petroleum & Coal Products Mfg

Chemical Manufacturing
- 325100 Basic Chemical Mfg
- 325200 Resin, Synthetic Rubber, & Artificial & Synthetic Fibers & Filaments Mfg
- 325300 Pesticide, Fertilizer, & Other Agricultural Chemical Mfg
- 325410 Pharmaceutical & Medicine Mfg
- 325500 Paint, Coating, & Adhesive Mfg
- 325600 Soap, Cleaning Compound, & Toilet Preparation Mfg
- 325900 Other Chemical Product & Preparation Mfg

Plastics and Rubber Products Manufacturing
- 326100 Plastics Product Mfg
- 326200 Rubber Product Mfg

Nonmetallic Mineral Product Manufacturing
- 327100 Clay Product & Refractory Mfg
- 327210 Glass & Glass Product Mfg
- 327300 Cement & Concrete Product Mfg
- 327400 Lime & Gypsum Product Mfg
- 327900 Other Nonmetallic Mineral Product Mfg

Primary Metal Manufacturing
- 331110 Iron & Steel Mills & Ferroalloy Mfg
- 331200 Steel Product Mfg from Purchased Steel
- 331310 Alumina & Aluminum Production & Processing
- 331400 Nonferrous Metal (except Aluminum) Production & Processing
- 331500 Foundries

Fabricated Metal Product Manufacturing
- 332110 Forging & Stamping
- 332210 Cutlery & Handtool Mfg
- 332300 Architectural & Structural Metals Mfg
- 332400 Boiler, Tank, & Shipping Container Mfg
- 332510 Hardware Mfg
- 332610 Spring & Wire Product Mfg
- 332700 Machine Shops; Turned Product; & Screw, Nut, & Bolt Mfg
- 332810 Coating, Engraving, Heat Treating, & Allied Activities
- 332900 Other Fabricated Metal Product Mfg

Machinery Manufacturing
- 333100 Agriculture, Construction, & Mining Machinery Mfg
- 333200 Industrial Machinery Mfg
- 333310 Commercial & Service Industry Machinery Mfg
- 333410 Ventilation, Heating, Air-Conditioning, & Commercial Refrigeration Equipment Mfg
- 333510 Metalworking Machinery Mfg
- 333610 Engine, Turbine & Power Transmission Equipment Mfg

Code
- 333900 Other General Purpose Machinery Mfg

Computer and Electronic Product Manufacturing
- 334110 Computer & Peripheral Equipment Mfg
- 334200 Communications Equipment Mfg
- 334310 Audio & Video Equipment Mfg
- 334410 Semiconductor & Other Electronic Component Mfg
- 334500 Navigational, Measuring, Electromedical, & Control Instruments Mfg
- 334610 Manufacturing & Reproducing Magnetic & Optical Media

Electrical Equipment, Appliance, and Component Manufacturing
- 335100 Electric Lighting Equipment Mfg
- 335200 Household Appliance Mfg
- 335310 Electrical Equipment Mfg
- 335900 Other Electrical Equipment & Component Mfg

Transportation Equipment Manufacturing
- 336100 Motor Vehicle Mfg
- 336210 Motor Vehicle Body & Trailer Mfg
- 336300 Motor Vehicle Parts Mfg
- 336410 Aerospace Product & Parts Mfg
- 336510 Railroad Rolling Stock Mfg
- 336610 Ship & Boat Building
- 336990 Other Transportation Equipment Mfg

Furniture and Related Product Manufacturing
- 337000 Furniture & Related Product Manufacturing

Miscellaneous Manufacturing
- 339110 Medical Equipment & Supplies Mfg
- 339900 Other Miscellaneous Manufacturing

Wholesale Trade

Wholesale Trade, Durable Goods
- 421100 Motor Vehicle & Motor Vehicle Parts & Supplies Wholesalers
- 421200 Furniture & Home Furnishing Wholesalers
- 421300 Lumber & Other Construction Materials Wholesalers
- 421400 Professional & Commercial Equipment & Supplies Wholesalers
- 421500 Metal & Mineral (except Petroleum) Wholesalers
- 421600 Electrical Goods Wholesalers
- 421700 Hardware, & Plumbing & Heating Equipment & Supplies Wholesalers
- 421800 Machinery, Equipment, & Supplies Wholesalers
- 421910 Sporting & Recreational Goods & Supplies Wholesalers
- 421920 Toy & Hobby Goods & Supplies Wholesalers
- 421930 Recyclable Material Wholesalers
- 421940 Jewelry, Watch, Precious Stone, & Precious Metal Wholesalers
- 421990 Other Miscellaneous Durable Goods Wholesalers

Code	
Wholesale Trade, Nondurable Goods	
422100	Paper & Paper Product Wholesalers
422210	Drugs & Druggists' Sundries Wholesalers
422300	Apparel, Piece Goods, & Notions Wholesalers
422400	Grocery & Related Product Wholesalers
422500	Farm Product Raw Material Wholesalers
422600	Chemical & Allied Products Wholesalers
422700	Petroleum & Petroleum Products Wholesalers
422800	Beer, Wine, & Distilled Alcoholic Beverage Wholesalers
422910	Farm Supplies Wholesalers
422920	Book, Periodical, & Newspaper Wholesalers
422930	Flower, Nursery Stock, & Florists' Supplies Wholesalers
422940	Tobacco & Tobacco Product Wholesalers
422950	Paint, Varnish, & Supplies Wholesalers
422990	Other Miscellaneous Nondurable Goods Wholesalers
Retail Trade	
Motor Vehicle and Parts Dealers	
441110	New Car Dealers
441120	Used Car Dealers
441210	Recreational Vehicle Dealers
441221	Motorcycle Dealers
441222	Boat Dealers
441229	All Other Motor Vehicle Dealers
441300	Automotive Parts, Accessories, & Tire Stores
Furniture and Home Furnishings Stores	
442110	Furniture Stores
442210	Floor Covering Stores
442291	Window Treatment Stores
442299	All Other Home Furnishings Stores
Electronics and Appliance Stores	
443111	Household Appliance Stores
443112	Radio, Television, & Other Electronics Stores
443120	Computer & Software Stores
443130	Camera & Photographic Supplies Stores
Building Material and Garden Equipment and Supplies Dealers	
444110	Home Centers
444120	Paint & Wallpaper Stores
444130	Hardware Stores
444190	Other Building Material Dealers
444200	Lawn & Garden Equipment & Supplies Stores
Food and Beverage Stores	
445110	Supermarkets and Other Grocery (except Convenience) Stores
445120	Convenience Stores
445210	Meat Markets
445220	Fish & Seafood Markets
445230	Fruit & Vegetable Markets
445291	Baked Goods Stores
445292	Confectionery & Nut Stores
445299	All Other Specialty Food Stores
445310	Beer, Wine, & Liquor Stores
Health and Personal Care Stores	
446110	Pharmacies & Drug Stores
446120	Cosmetics, Beauty Supplies, & Perfume Stores
446130	Optical Goods Stores
446190	Other Health & Personal Care Stores
Gasoline Stations	
447100	Gasoline Stations (including convenience stores with gas)

Code	
Clothing and Clothing Accessories Stores	
448110	Men's Clothing Stores
448120	Women's Clothing Stores
448130	Children's & Infants' Clothing Stores
448140	Family Clothing Stores
448150	Clothing Accessories Stores
448190	Other Clothing Stores
448210	Shoe Stores
448310	Jewelry Stores
448320	Luggage & Leather Goods Stores
Sporting Goods, Hobby, Book, and Music Stores	
451110	Sporting Goods Stores
451120	Hobby, Toy, & Game Stores
451130	Sewing, Needlework, & Piece Goods Stores
451140	Musical Instrument & Supplies Stores
451211	Book Stores
451212	News Dealers & Newsstands
451220	Prerecorded Tape, Compact Disc, & Record Stores
General Merchandise Stores	
452110	Department stores
452900	Other General Merchandise Stores
Miscellaneous Store Retailers	
453110	Florists
453210	Office Supplies & Stationery Stores
453220	Gift, Novelty, & Souvenir Stores
453310	Used Merchandise Stores
453910	Pet & Pet Supplies Stores
453920	Art Dealers
453930	Manufactured (Mobile) Home Dealers
453990	All Other Miscellaneous Store Retailers (including tobacco, candle, & trophy shops)
Nonstore Retailers	
454110	Electronic Shopping & Mail-Order Houses
454210	Vending Machine Operators
454311	Heating Oil Dealers
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers
454319	Other Fuel Dealers
454390	Other Direct Selling Establishments (including door-to-door retailing, frozen food plan providers, party plan merchandisers, & coffee-break service providers)
Transportation and Warehousing	
Air, Rail, and Water Transportation	
481000	Air Transportation
482110	Rail Transportation
483000	Water Transportation
Truck Transportation	
484110	General Freight Trucking, Local
484120	General Freight Trucking, Long-distance
484200	Specialized Freight Trucking
Transit and Ground Passenger Transportation	
485110	Urban Transit Systems
485210	Interurban & Rural Bus Transportation
485310	Taxi Service
485320	Limousine Service
485410	School & Employee Bus Transportation
485510	Charter Bus Industry
485990	Other Transit & Ground Passenger Transportation
Pipeline Transportation	
486000	Pipeline Transportation
Scenic & Sightseeing Transportation	
487000	Scenic & Sightseeing Transportation

Code	
Support Activities for Transportation	
488100	Support Activities for Air Transportation
488210	Support Activities for Rail Transportation
488300	Support Activities for Water Transportation
488410	Motor Vehicle Towing
488490	Other Support Activities for Road Transportation
488510	Freight Transportation Arrangement
488990	Other Support Activities for Transportation
Couriers and Messengers	
492110	Couriers
492210	Local Messengers & Local Delivery
Warehousing and Storage	
493100	Warehousing & Storage (except lessors of miniwarehouses & self-storage units)
Information	
Publishing Industries	
511110	Newspaper Publishers
511120	Periodical Publishers
511130	Book Publishers
511140	Database & Directory Publishers
511190	Other Publishers
511210	Software Publishers
Motion Picture and Sound Recording Industries	
512100	Motion Picture & Video Industries (except video rental)
512200	Sound Recording Industries
Broadcasting and Telecommunications	
513100	Radio & Television Broadcasting
513200	Cable Networks & Program Distribution
513300	Telecommunications (including paging, cellular, satellite, & other telecommunications)
Information Services and Data Processing Services	
514100	Information Services (including news syndicates, libranes, & on-line information services)
514210	Data Processing Services
Finance and Insurance	
Depository Credit Intermediation	
522110	Commercial Banking
522120	Savings Institutions
522130	Credit Unions
522190	Other Depository Credit Intermediation
Nondepository Credit Intermediation	
522210	Credit Card Issuing
522220	Sales Financing
522291	Consumer Lending
522292	Real Estate Credit (including mortgage bankers & onginators)
522293	International Trade Financing
522294	Secondary Market Financing
522298	All Other Nondepository Credit Intermediation
Activities Related to Credit Intermediation	
522300	Activities Related to Credit Intermediation (including loan brokers)
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	
523110	Investment Banking & Securities Dealing
523120	Securities Brokerage
523130	Commodity Contracts Dealing
523140	Commodity Contracts Brokerage

Code	
523210	Securities & Commodity Exchanges
523900	Other Financial Investment Activities (including portfolio management & investment advice)
Insurance Carriers and Related Activities	
524140	Direct Life, Health, & Medical Insurance & Reinsurance Carriers
524150	Direct Insurance & Reinsurance (except Life, Health & Medical) Carriers
524210	Insurance Agencies & Brokerages
524290	Other Insurance Related Activities
Funds, Trusts, and Other Financial Vehicles	
525100	Insurance & Employee Benefit Funds
525910	Open-End Investment Funds (Form 1120-RIC)
525920	Trusts, Estates, & Agency Accounts
525930	Real Estate Investment Trusts (Form 1120-REIT)
525990	Other Financial Vehicles
Real Estate and Rental and Leasing	
Real Estate	
531110	Lessors of Residential Buildings & Dwellings
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)
531130	Lessors of Miniwarehouses & Self-Storage Units
531190	Lessors of Other Real Estate Property
531210	Offices of Real Estate Agents & Brokers
531310	Real Estate Property Managers
531320	Offices of Real Estate Appraisers
531390	Other Activities Related to Real Estate
Rental and Leasing Services	
532100	Automotive Equipment Rental & Leasing
532210	Consumer Electronics & Appliances Rental
532220	Formal Wear & Costume Rental
532230	Video Tape & Disc Rental
532290	Other Consumer Goods Rental
532310	General Rental Centers
532400	Commercial & Industrial Machinery & Equipment Rental & Leasing
Lessors of Nonfinancial Intangible Assets (except copyrighted works)	
533110	Lessors of Nonfinancial Intangible Assets (except copyrighted works)
Professional, Scientific, and Technical Services	
Legal Services	
541110	Offices of Lawyers
541190	Other Legal Services
Accounting, Tax Preparation, Bookkeeping, and Payroll Services	
541211	Offices of Certified Public Accountants
541213	Tax Preparation Services
541214	Payroll Services
541219	Other Accounting Services
Architectural, Engineering, and Related Services	
541310	Architectural Services
541320	Landscape Architecture Services
541330	Engineering Services
541340	Drafting Services
541350	Building Inspection Services

Code	
541360	Geophysical Surveying & Mapping Services
541370	Surveying & Mapping (except Geophysical) Services
541380	Testing Laboratories
Specialized Design Services	
541400	Specialized Design Services (including interior, industrial, graphic, & fashion design)
Computer Systems Design and Related Services	
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
541513	Computer Facilities Management Services
541519	Other Computer Related Services
Other Professional, Scientific, and Technical Services	
541600	Management, Scientific, & Technical Consulting Services
541700	Scientific Research & Development Services
541800	Advertising & Related Services
541910	Marketing Research & Public Opinion Polling
541920	Photographic Services
541930	Translation & Interpretation Services
541940	Veterinary Services
541990	All Other Professional, Scientific, & Technical Services
Management of Companies (Holding Companies)	
551111	Offices of Bank Holding Companies
551112	Offices of Other Holding Companies
Administrative and Support and Waste Management and Remediation Services	
Administrative and Support Services	
561110	Office Administrative Services
561210	Facilities Support Services
561300	Employment Services
561410	Document Preparation Services
561420	Telephone Call Centers
561430	Business Service Centers (including private mail centers & copy shops)
561440	Collection Agencies
561450	Credit Bureaus
561490	Other Business Support Services (including repossession services, court reporting, & stenotype services)
561500	Travel Arrangement & Reservation Services
561600	Investigation & Security Services
561710	Exterminating & Pest Control Services
561720	Janitorial Services
561730	Landscaping Services
561740	Carpet & Upholstery Cleaning Services
561790	Other Services to Buildings & Dwellings
561900	Other Support Services (including packaging & labeling services, & convention & trade show organizers)
Waste Management and Remediation Services	
562000	Waste Management & Remediation Services
Educational Services	
611000	Educational Services (including schools, colleges, & universities)
Health Care and Social Assistance	
Offices of Physicians and Dentists	
621111	Offices of Physicians (except mental health specialists)
621112	Offices of Physicians, Mental Health Specialists
621210	Offices of Dentists
Offices of Other Health Practitioners	
621310	Offices of Chiropractors
621320	Offices of Optometrists
621330	Offices of Mental Health Practitioners (except Physicians)
621340	Offices of Physical, Occupational & Speech Therapists, & Audiologists
621391	Offices of Podiatrists
621399	Offices of All Other Miscellaneous Health Practitioners
Outpatient Care Centers	
621410	Family Planning Centers
621420	Outpatient Mental Health & Substance Abuse Centers
621491	HMO Medical Centers
621492	Kidney Dialysis Centers
621493	Freestanding Ambulatory Surgical & Emergency Centers
621498	All Other Outpatient Care Centers
Medical and Diagnostic Laboratories	
621510	Medical & Diagnostic Laboratories
Home Health Care Services	
621610	Home Health Care Services
Other Ambulatory Health Care Services	
621900	Other Ambulatory Health Care Services (including ambulance services & blood & organ banks)
Hospitals	
622000	Hospitals
Nursing and Residential Care Facilities	
623000	Nursing & Residential Care Facilities
Social Assistance	
624100	Individual & Family Services
624200	Community Food & Housing, & Emergency & Other Relief Services
624310	Vocational Rehabilitation Services
624410	Child Day Care Services
Arts, Entertainment, and Recreation	
Performing Arts, Spectator Sports, and Related Industries	
711100	Performing Arts Companies
711210	Spectator Sports (including sports clubs & racetracks)
711300	Promoters of Performing Arts, Sports, & Similar Events
711410	Agents & Managers for Artists, Athletes, Entertainers, & Other Public Figures
711510	Independent Artists, Writers, & Performers
Museums, Historical Sites, and Similar Institutions	
712100	Museums, Historical Sites, & Similar Institutions
Amusement, Gambling, and Recreation Industries	
713100	Amusement Parks & Arcades
713200	Gambling Industries
713900	Other Amusement & Recreation Industries (including golf courses, skiing facilities, marinas, fitness centers, & bowling centers)
Accommodation and Food Services	
Accommodation	
721110	Hotels (except casino hotels) & Motels
721120	Casino Hotels
721191	Bed & Breakfast Inns
721199	All Other Traveler Accommodation
721210	RV (Recreational Vehicle) Parks & Recreational Camps
721310	Rooming & Boarding Houses
Food Services and Drinking Places	
722110	Full-Service Restaurants
722210	Limited-Service Eating Places
722300	Special Food Services (including food service contractors & caterers)
722410	Drinking Places (Alcoholic Beverages)
Other Services	
Repair and Maintenance	
811110	Automotive Mechanical & Electrical Repair & Maintenance
811120	Automotive Body, Paint, Interior, & Glass Repair
811190	Other Automotive Repair & Maintenance (including oil change & lubrication shops & car washes)
811210	Electronic & Precision Equipment Repair & Maintenance
811310	Commercial & Industrial Machinery & Equipment (except Automotive & Electronic) Repair & Maintenance
811410	Home & Garden Equipment & Appliance Repair & Maintenance
811420	Reupholstery & Furniture Repair
811430	Footwear & Leather Goods Repair
811490	Other Personal & Household Goods Repair & Maintenance
Personal and Laundry Services	
812111	Barber Shops
812112	Beauty Salons
812113	Nail Salons
812190	Other Personal Care Services (including diet & weight reducing centers)
812210	Funeral Homes & Funeral Services
812220	Cemeteries & Crematories
812310	Coin-Operated Laundries & Drycleaners
812320	Drycleaning & Laundry Services (except Coin-Operated)
812330	Linen & Uniform Supply
812910	Pet Care (except Veterinary) Services
812920	Photofinishing
812930	Parking Lots & Garages
812990	All Other Personal Services
Religious, Grantmaking, Civic, Professional, and Similar Organizations	
813000	Religious, Grantmaking, Civic, Professional, & Similar Organizations

1999 – *Insurance Information* Instructions for Schedule A (Form 5500)

General Instructions

Who Must File

Schedule A, Insurance Information, must be attached to the Form 5500 filed for every defined benefit pension plan, defined contribution pension plan, and welfare benefit plan if any benefits under the plan are provided by an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization). (This includes investments with insurance companies such as guaranteed investment contracts (GICs).)

For example, if Form 5500 lines 9a(1), 9a(2), 9b(1), or 9b(2) is checked, indicating that either the plan funding arrangement or plan benefit arrangement includes an account, policy, or contract with an insurance company (or similar organization), at least one Schedule A (Form 5500) would be required to be attached to the Form 5500 filed for a pension or welfare plan to provide information concerning the contract year ending with or within the plan year.

In addition, Schedules A must be attached to a Form 5500 filed for GIAs, MTIAs, and 103-12 IEs for each insurance or annuity contract held in the MTIA, or 103-12 IE or by the GIA. See the Form 5500 instructions for specific requirements for GIAs, MTIAs, and 103-12 IEs.

Do not file Schedule A if: **(1)** the contract is an Administrative Services Only (ASO) contract; **(2)** the Form 5500 is being filed for a plan participating in an MTIA or 103-12 IE for which a Form 5500 is being filed that reports the contract on a Schedule A filed with the MTIA or 103-12 IE Form 5500; or **(3)** the Form 5500 is being filed for a plan that covers only: **(A)** an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or **(B)** partners, or partners and one or more of the partner's spouses in a partnership.

Check the Schedule A box on the Form 5500 (Part II, line 10b(3)), and enter the number attached in the space provided if one or more Schedules A are attached to the Form 5500.

Important Reminder: *The insurance company (or similar organization) is required to provide the plan administrator with the information needed to complete the return/report, pursuant to ERISA section 103(a)(2). If you do not receive this information in a timely manner, contact the insurance company (or similar organization). If information is missing on Schedule A (Form 5500) due to a refusal to provide this information, note this on the Schedule A.*

Specific Instructions

Information entered on Schedule A (Form 5500) should pertain to the insurance contract or policy year ending with or within the plan year (for reporting purposes, a year cannot exceed 12 months).

Example: If an insurance contract year begins on July 1 and ends on June 30, and the plan year begins on January 1, and ends on December 31, the information on the Schedule A attached to the 1999 Form 5500 should be for the insurance contract year ending on June 30,1999.

Exception: *If the insurance company maintains records on the basis of a plan year rather than a policy or contract year, the information entered on Schedule A (Form 5500) may pertain to the plan year instead of the policy or contract year.*

Include only the contracts issued to the plan, GIA, MTIA or 103-12 IE for which the Form 5500 is being filed.

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule A is attached.

Part I - Information Concerning Insurance Contract Coverage, Fees, and Commissions

Line 1(c). Enter the code number assigned by the National Association of Insurance Commissioners (NAIC) to the insurance company. If none has been assigned, enter zeros (-0-) in the spaces provided.

Line 1(d). If individual policies with the same carrier are grouped as a unit for purposes of this report, and the group does not have one identification number, you may use the contract or identification number of one of the individual contracts provided this number is used consistently to report these contracts as a group and the plan administrator maintains the records necessary to disclose all the individual contract numbers in the group upon request. Use separate Schedules A to report individual contracts that cannot be grouped as a unit.

Line 1(e). Since plan coverage may fluctuate during the year, the administrator should estimate the number of persons that were covered by the contract at the end of the policy or contract year. Where contracts covering individual employees are grouped, compute entries as of the end of the plan year.

Lines 1(f) and (g). Enter the beginning and ending dates of the policy year for the contract identified in 1(d). Enter "N/A" in 1(f) if separate contracts covering individual employees are grouped.

Line 2. Additional pages may be necessary to list all persons. You can get additional green ink copies by calling **1-800-TAX-FORM** (1-800-829-3676).

Totals. Enter the total of all commissions and fees paid to persons listed on line 2.

Complete a separate item (elements **(a)** through **(e)**) for each person. Enter the name and address of the person identified in element **(a)** and complete elements **(b)** through **(e)** for each person as specified below.

Element (b). Report all sales commissions regardless of the identity of the recipient. Do not report override commissions, salaries, bonuses, etc., paid to a general agent or manager for managing an agency, or for performing other administrative functions.

Element (c). Fees to be reported represent payments by insurance carriers to agents, brokers and other persons for items other than commissions (e.g., service fees, consulting fees, and finders fees). Fees paid by insurance carriers to persons other than agents and brokers should be reported here, **NOT** in Parts II and III on Schedule A as acquisition costs, administrative charges, etc. For plans, GIAs, MTIAs and 103-12 IEs required to file Part I of Schedule C, fees paid by employee benefit plans or these DFEs to agents, brokers, and other persons are also to be reported on Schedule C (Form 5500), unless the only compensation in relation to the plan or DFE consists of insurance fees and commissions listed on the Schedule A.

Note: *For purposes of line 2, commissions and fees include amounts paid by an insurance company on the basis of the aggregate value (e.g., policy amounts, premiums) of contracts or policies (or classes thereof) placed or retained. The amount (or pro rata share of the total) of such commissions or fees attributable to the contract or policy placed with or retained by the plan must be reported in element* ***(b)*** *or* ***(c)****, as appropriate.*

Element (e). Enter the most appropriate code

Code	Type of Organization
1	Banking, Savings & Loan Association, Credit Union or other similar financial institution
2	Trust Company
3	Insurance Agent or Broker
4	Agent or Broker other than insurance
5	Third party administrator
6	Investment Company/Mutual Fund
7	Investment Manager/Adviser
8	Labor Union
9	Foreign entity (e.g., an agent or broker, bank, insurance company, etc., not operating within the jurisdictional boundaries of the United States)
0	Other

Part II - Investment and Annuity Contract Information

Line 3. Enter the current value of the plan's interest at year end in the contract identified on line 6, e.g., deposit administration (DA), immediate participation guarantee (IPG), or guaranteed investment contracts (GIC).

Exception: *Contracts reported on line 6 need not be included on line 3 if* ***(1)*** *the Schedule A is filed for a defined benefit pension plan and the contract was entered into before March 20, 1992, or* ***(2)*** *the Schedule A is filed for a defined contribution pension plan and the contract is a fully benefit-responsive contract, i.e., it provides a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations, transfers, loans, or hardship withdrawals initiated by plan participants exercising their rights to withdraw, borrow, or transfer funds under the terms of a defined contribution plan that do not include substantial restrictions to participants' access to plan funds.*

Line 5a. The rate information called for here may be furnished by attaching the appropriate schedules of current rates filed with the appropriate state insurance department or by providing a statement regarding the basis of the rates. Enter "see attached" if appropriate.

Lines 6a through 6f. Report contracts with unallocated funds. Do not include portions of these contracts maintained in separate accounts. Show deposit fund amounts rather than experience credit records when both are maintained.

Part III - Welfare Benefit Contract Information

Line 7l. Report a stop-loss insurance policy that is an asset of the plan.

Note: *Employers sponsoring welfare plans may purchase a stop loss insurance policy with the employer as the insured to facilitate the employer in managing its risk associated with its liabilities under the plan. These employer contracts with premiums paid exclusively out of the employer's general assets without any employee contributions generally are not plan assets and are not reportable on Schedule A.*

1999 – *Actuarial Information*
Instructions for Schedule B (Form 5500)

General Instructions

Who Must File

The employer or plan administrator of a defined benefit plan that is subject to the minimum funding standards (see Code section 412 and Part 3 of Title I of ERISA) must file this schedule as an attachment to the Form 5500 or Form 5500-EZ. The Schedule B does not have to be filed if Form 5500-EZ is not required to be filed (in accordance with the instructions for Form 5500-EZ); however, the funding standard account for the plan must continue to be maintained, even if the Schedule B is not filed.

Check the Schedule B box on the Form 5500 (Part II, line 10a(3)) if a Schedule B is attached to the Form 5500.

Lines A through E and G (most recent enrollment number) **must** be completed for ALL plans. If the Schedule B is attached to a Form 5500, lines A, B, C and D should include the same information as reported in Part II of the Form 5500.

Check the box in line F if the plan has 100 or fewer participants in the prior plan year. A plan has 100 or fewer participants in the prior plan year only if there were 100 or fewer participants (both active and nonactive) on each day of the preceding plan year, taking into account participants in all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) who are also employees of that employer or member. Nonactive participants include vested terminated and retired employees.

All defined benefit plans, regardless of size or type, **must** complete and file Part I. Part II **must** be filed for all plans other than those specified in 1 and 2 below:

1. Part II should not be filed for multiemployer plans for which box 2 in line E is checked.

2. Part II should not be filed for plans that have 100 or fewer participants in the prior plan year as described above.

In addition, please note that "TRA '97" refers to the Taxpayer Relief Act of 1997, "RPA '94" refers to the Retirement Protection Act of 1994 and that "OBRA '87 " refers to the Omnibus Budget Reconciliation Act of 1987.

Note: *(1) For split-funded plans, the costs and contributions reported on Schedule B should include those relating to both trust funds and insurance carriers. (2) For plans with funding standard account amortization charges and credits see the instructions for lines 9c, 9j, 12j, and 13i, as applicable, regarding attachment.*

Statement by Enrolled Actuary

An enrolled actuary must sign Schedule B. The signature of the enrolled actuary may be qualified to state that it is subject to attached qualifications. See Income Tax Regulations section 301.6059-1(d) for permitted qualifications. If the actuary has not fully reflected any final or temporary regulation, revenue ruling or notice promulgated under the statute in completing the Schedule B, check the box on the last line of page 1. If this box is checked, indicate on an attachment whether an accumulated funding deficiency or a contribution that is not wholly deductible would result if the actuary had fully reflected such regulation, revenue ruling or notice. A stamped or machine produced signature is not acceptable. The most recent enrollment number must be entered in line G. In addition, the actuary may offer any other comments related to the information contained in Schedule B.

Attachments

All attachments to the Schedule B must be properly identified, and must include the name of the plan, plan sponsor's EIN, and plan number. Put "Schedule B" and the line item to which the schedule relates at the top of each attachment. When assembling the package for filing, you can place attachments for a schedule, either directly behind that schedule or at the end of the filing.

Specific Instructions for Part I

Line 1. All entries must be reported as of the valuation date.

Line 1a. Actuarial Valuation Date. The valuation for a plan year may be as of any date in the plan year, including the first- or last day of the plan year. Valuations must be performed within the period specified by ERISA section 103(d) and Section 412(c)(9).

Line 1b(1). Current Value of Assets. Enter the current value of assets as of the valuation date. The current value is the same as the fair market value. Do not adjust for items such as the existing credit balance or the outstanding balances of certain amortization bases. Contributions designated for 1999 should not be included in this amount. Note that this entry may be different than the entry in line 2a. Such a difference may result, for example, if the valuation date is not the first day of the plan year, or if insurance contracts are excluded from assets reported on line 1b(1) but not on line 2a.

Rollover amounts or other assets held in individual accounts that are not available to provide defined benefits under the plan should not be included on line 1(b)(1) regardless of whether they are reported on the 1999 Schedule H (Form 5500) (line 1l, column (a)) or Schedule I (Form 5500) (line 1c, column (a)), or, alternatively, the 1999 Form 5500-EZ (line 11a, column (a): total assets at the beginning of the year). Additionally, asset and liability amounts must be determined in a consistent manner. Therefore, if the value of any insurance contracts have been excluded from the amount reported on line 1b(1), liabilities satisfied by such contracts should also be excluded from the liability values reported on lines 1c(1), 1c(2), 1d(2), and 1d(3).

Line 1b(2). Actuarial Value of Assets. Enter the value of assets determined in accordance with Code section 412(c)(2) or ERISA section 302(c)(2). Do not adjust for items such as the existing credit balance or the outstanding balances of certain amortization bases, and do not include contributions designated for 1999 in this amount.

Line 1c(1). Accrued Liability for Immediate Gain Methods. Complete this line only if you use an immediate gain method (see Rev. Rul. 81-213, 1981-2 C.B. 101, for a definition of immediate gain method).

Lines 1c(2)(a), (b), and (c). Information for Plans Using Spread Gain Methods. Complete these lines only if you use a spread gain method (see Rev. Rul. 81-213 for a definition of spread gain method).

Line 1c(2)(a). Unfunded Liability for Methods with Bases. Complete this line only if you use the frozen initial liability or attained age normal cost method.

Lines 1c(2)(b) and (c). Entry Age Normal Accrued Liability and Normal Cost. For spread gain methods, the full funding limitation is calculated using the entry age normal method (see Rev. Rul. 81-13, 1981-1 C.B. 229).

Line 1d(1). Amount Excluded from Current Liability. In computing current liability for purposes of Code section 412(l) (but not for purposes of section 412(c)(7)), certain service is disregarded under Code section 412(l)(7)(D) and ERISA section 302(d)(7)(D). If the plan has participants to whom those provisions apply, only a percentage of the years of service before such individuals became participants in the plan is taken into account. Enter the amount excluded from "RPA '94" current liability. If an employer has made an election under section 412(l)(7)(D)(iv) not to disregard such service, enter zero. Note that such an election, once made, cannot be revoked without the consent of the Secretary of the Treasury.

Lines 1d(2)(a) and 1d(3)(a). "RPA '94" Current Liability and "OBRA '87" Current Liability. All plans regardless of the number of participants must provide the information indicated in accordance with these instructions. The interest rate used to compute the "RPA '94" current liability must be in accordance with guidelines issued by the IRS, using the 90% to 105% interest rate corridor of Code section 412(l)(7)(C)(i) for plan years beginning in 1999.

The "RPA '94" current liability must be computed using the 1983 G.A.M. mortality table for non-disabled lives published in Rev. Rul. 95-28, 1995-1 C.B. 74, and may be computed taking into account the mortality tables for disabled lives published in Rev. Rul. 96-7, 1996-1 C.B. 59. The "OBRA '87" current liability is the current liability as defined in Code section 412(l)(7), but computed without regard to the limitation on the interest rate and prescribed mortality tables provided in section 412(l)(7)(C) as enacted by "RPA '94." See Q&A-9(1) of Rev. Rul. 96-21, 1996-1 C.B. 64, for the specific circumstances under which the "OBRA '87" current liability interest rate may be different from the "RPA '94" current liability interest rate.

Each other actuarial assumption used in calculating the "RPA '94" and "OBRA '87" current liabilities must be the same assumptions used for calculating other costs for the funding standard account. See Notice 90-11, 1990-1 C.B. 319. The actuary must take into account rates of early retirement and the plan's early retirement and turnover provisions as they relate to benefits, where these would significantly affect the results. Regardless of the valuation date, "RPA '94" and "OBRA '87" current liabilities are computed taking into account only credited service through the end of the prior plan year. No salary scale projections should be used in these computations. Do not include the expected increase in current liability due to benefits accruing during the plan year reported in lines 1d(2)(b) and 1d(3)(b) in these computations.

Lines 1d(2)(b) and 1d(3)(b). Expected Increase in Current Liability. Enter the amounts by which the "RPA '94" and "OBRA '87" current liabilities are expected to increase due to benefits accruing during the plan year on account of credited service and/or salary changes for the current year. One year's salary scale may be reflected.

Line 1d(2)(c). Current Liability Computed at Highest Allowable Interest Rate. Enter the current liability computed using the highest allowable interest rate (105% of the weighted average interest rate for plan years beginning in 1999). All other assumptions used should be identical to those used for lines 1d(2)(a) and (b). It is not necessary to complete line 1d(2)(c) if the plan is a multiemployer plan or if the plan had 100 or fewer participants in the prior plan year. Whether or not a plan had 100 or fewer participants in the prior plan year is determined in accordance with the instructions under **Who Must File**. This line need not be completed if the actuarial value of assets (line 1b(2)) divided by the "RPA '94" current liability (line 1d(2)(a)) is greater than or equal to 90%. However, if this line is not completed, sufficient records should be retained so that the current liability amount that would otherwise have been entered on this line can be computed at a later time if required.

Lines 1d(2)(d) and 1d(3)(c). Do not complete these lines if Code section 412(l) does not apply to the plan for this plan year under Code sections 412(l)(1), 412(l)(6), or 412(l)(9).

Line 1d(2)(d). Expected Release from "RPA '94" Current Liability for the Plan Year. If applicable, enter the expected release from "RPA '94" current liability on account of disbursements (including single sum distributions) from the plan expected to be paid after the valuation date but prior to the end of the plan year (see also Q&A-7 of Rev. Rul. 96-21). This line is applicable if the employer has elected the Transition Rule of Code section 412(l)(11) for the plan year.

Line 1d(3)(c). Expected Release from "OBRA '87" Current Liability for the Plan Year. If applicable, enter the expected release from "OBRA '87" current liability on account of disbursements (including single sum distributions) from the plan expected to be paid after the valuation date but prior to the end of the plan year (see also Q&A-7 of Rev. Rul. 96-21).

Line 1d(4). Expected Plan Disbursements. Enter the amount of plan disbursements expected to be paid for the plan year (plans for which the Transition Rule of section 412(l)(11) is being elected, see also Q&A-8 of Rev. Rul. 96-21).

Line 2. All entries must be reported as of the beginning of the 1999 plan year. Lines 2a and 2b should include all assets and liabilities under the plan except for assets and liabilities attributable to: **(1)** rollover amounts or other amounts in individual accounts that are not available to provide defined benefits, or **(2)** benefits for which an insurer has made an irrevocable commitment as defined in 29 CFR 4001.2.

Line 2a. Current Value of Assets. Enter the current value of net assets as of the first day of the plan year. Except for plans with excluded assets as described above, this entry should be the same as reported on the 1999 Schedule H (Form 5500) (line 1l, column (a)) or Schedule I (Form 5500) (line 1c, column (a)), or, alternatively, the 1999 Form 5500-EZ (line 11a, column (a): total assets at the beginning of the year). Note that contributions designated for the 1999 plan year are not included on those lines.

Line 2b. "RPA '94" Current Liability (beginning of plan year). Enter the "RPA '94" current liability as of the first day of the plan year. Do not include the expected increase in current liability due to benefits accruing during the plan year. See the instructions for lines 1d(2)(a) and 1d(3)(a) for actuarial assumptions used in determining "RPA '94" current liability.

Column (1)—Enter the number of participants and beneficiaries as of the beginning of the plan year. If the current liability figures are derived from a valuation that follows the first day of the plan year, the participant and beneficiary count entries should be derived from the counts used in that valuation in a manner consistent with the derivation of the current liability reported in columns (2) and (3).

Column (2)—Include only the portion of the current liability attributable to vested benefits.

Column (3)—Include the current liability attributable to all benefits, both vested and nonvested.

Line 2c. This calculation is required under ERISA section 103(d)(11). Do not complete if line 2a divided by line 2b(4), column (3), is 70% or greater.

Line 3. Contributions Made to Plan. Show all employer and employee contributions for the plan year. Include employer contributions made not later than 2½ months (or the later date allowed under Code section 412(c)(10) and ERISA section 302(c)(10)) after the end of the plan year. Show only contributions actually made to the plan by the date Schedule B is signed. Certain employer contributions must be made in quarterly installments. See Code section 412(m). Note that contributions that are made to meet the liquidity requirement of Code section 412(m)(5) should be reported.

Add the amounts in both columns (b) and (c) and enter both results on the total line. All contributions must be credited toward a particular plan year.

Line 4a. Quarterly Contributions. In accordance with" RPA '94", only plans that have a funded current liability percentage (as provided in Rev. Rul. 95–31, 1995-1 C.B. 76) for the preceding plan year of less than 100 percent are subject to the quarterly contribution requirement of Code section 412(m) and ERISA section 302(e). For 1999, the funded current liability percentage for the preceding plan year is equal to line 1b(2) (actuarial value of assets) divided by line 1d(2)(a) (" RPA '94" current liability), both lines as reported on the 1998 Schedule B (Q&A-3, 4 and 5 of Rev. Rul. 95-31, also provide guidance on this computation).

Line 4b. Multiemployer plans, plans with funded current liability percentages (as provided in Code section 412(m)(1)) of 100 percent or more for the preceding plan year, and plans that on every day of the preceding plan year had 100 or fewer participants (as defined under **Who Must File**) are not subject to the liquidity requirement of Code section 412(m)(5) and ERISA section 302(e)(5) and should not complete this line. See Q&A's 7 through 17 of Rev. Rul. 95-31 for guidance on the liquidity requirement. Note that a certification by the enrolled actuary must be attached if the special rule for nonrecurring circumstances is used (see Code section 412(m)(5)(E)(ii)(II) and Q&A-13 of Rev. Rul. 95-31).

If the plan has a liquidity shortfall for any quarter of the plan year (see Q&A-10 of Rev. Rul. 95-31), enter the amount of the liquidity shortfall for each such quarter. If the plan was subject to the liquidity requirement, but did not have a liquidity shortfall, enter zero. File **Form 5330**, Return of Excise Taxes Related to Employee Benefit Plans, with the IRS to pay the 10% excise

tax(es) if there is a failure to pay the liquidity shortfall by the required due date, unless a waiver of the 10% tax under Code section 4971(f) has been granted.

Line 5. Actuarial Cost Method. Enter only the primary method used. If the plan uses one actuarial cost method in one year as the basis of establishing an accrued liability for use under the frozen initial liability method in subsequent years, answer as if the frozen initial liability method was used in all years. The projected unit credit method is included in the "Accrued benefit (unit credit)" category of line 5c. If a method other than a method listed in lines 5a through 5g is used, check the box for line 5h and specify the method. For example, if a modified individual level premium method for which actuarial gains and losses are spread as a part of future normal cost is used, check the box for 5h and describe the cost method. For the shortfall method, check the appropriate box for the underlying actuarial cost method used to determine the annual computation charge.

Changes in funding methods include changes in actuarial cost method, changes in asset valuation method, and changes in the valuation date of plan costs and liabilities or of plan assets. Changes in the funding method of a plan include not only changes to the overall funding method used by the plan but also changes to each specific method of computation used in applying the overall method. Generally, these changes require IRS approval. If the change was made pursuant to Rev. Proc. 95-51, 1995-2 C.B. 430 (as modified by Rev. Proc. 98-10, 1998-2 I.R.B. 35 and Rev. Proc. 99-45, 1999-49 I.R.B. 603), check "yes" in line 5j. If approval was granted by either an individual ruling letter or a class ruling letter for this plan, enter the date of the applicable ruling letter in line 5k. Note that the plan sponsor's agreement to a change in funding method (made pursuant to Rev. Proc. 95-51 or a class ruling letter) should be reported on line 7 of Schedule R (Form 5500).

Line 6. Actuarial Assumptions. If gender-based assumptions are used in developing plan costs, enter those rates where appropriate in line 6. Note that requests for gender-based cost information do not suggest that gender-based benefits are legal. If unisex tables are used, enter the values in both "Male" and "Female" lines. Complete all blanks. Check "N/A" if not applicable.

Attach a statement of actuarial assumptions (if not fully described by line 6), and actuarial methods used to calculate the figures shown in lines 1 and 9 (if not fully described by line 5).

Also attach a summary of the principal eligibility and benefit provisions on which the valuation was based, an identification of benefits not included in the valuation, a description of any significant events that occurred during the year, a summary of any changes in principal eligibility or benefit provisions since the last valuation, a description (or reasonably representative sample) of plan early retirement factors, and any change in actuarial assumptions or cost methods and justifications for any such change (see section 103(d) of ERISA).

Also, include any other information needed to fully and fairly disclose the actuarial position of the plan.

Line 6a(1). "RPA '94" Current Liability Interest Rate. Enter the interest rate used to determine "RPA '94" current liability. For plan years beginning in 1999, the interest rate used must not fall outside the corridor of 90% to 105% of the weighted average interest rate (See Code section 412(l)(7)(C)(i)). The rate used must be in accordance with the guidelines issued by the IRS. See Notice 90-11 and Rev. Rul. 96-21. Enter rate to the nearest .01 percent.

Line 6a(2). "OBRA '87" Current Liability Interest Rate. Enter the interest rate used to determine "OBRA '87" current liability. The interest rate used must not fall outside the corridor of 90% to 110% of the weighted average interest rate. The rate used must be in accordance with the guidelines issued by the IRS. See Notice 90-11 and Rev. Rul. 96-21. Enter rate to the nearest .01 percent.

Line 6b. Weighted Average Retirement Age. If each participant is assumed to retire at his/her normal retirement age, enter the age specified in the plan as normal retirement age. If the normal retirement age differs for individual participants, enter the age that is the weighted average normal retirement age; do not enter "NRA." Otherwise, enter the assumed retirement age. If the valuation uses rates of retirement at various ages, enter the nearest whole age that is the weighted average retirement age. On an attachment to Schedule B, list the rate of retirement at each age and describe the methodology used to compute the weighted average retirement age, including a description of the weight applied at each potential retirement age.

Line 6c. Check "Yes," if the rates in the contract were used (e.g., purchase rates at retirement).

Line 6d. Mortality Table. The 1983 G.A.M. mortality table published in Rev. Rul. 95-28 must be used in the calculation of "RPA '94 " current liability for non-disabled lives. The mortality tables published in Rev. Rul. 96-7 may be used in the calculation of "RPA '94" current liability for disabled lives. Enter the mortality table code for non-disabled lives used for "OBRA '87" current liability (see instructions for lines 1d(2)(a) and 1d(3)(a)) and for valuation purposes as follows:

Mortality Table	Code
1951 Group Annuity	1
1971 Group Annuity Mortality (G.A.M.)	2
1971 Individual Annuity Mortality (I.A.M.)	3
UP-1984	4
1983 I.A.M.	5
1983 G.A.M.	6
1983 G.A.M. (solely per Rev. Rul. 95-28)	7
UP-1994	8
Other	9
None	0

Code 6 includes all sex-distinct versions of the 1983 G.A.M. table other than the table published in Rev. Rul. 95-28. Thus, for example, Code 6 also would include the 1983 G.A.M. male-only table used for males, where the 1983 G.A.M. male-only table with a 6-year setback is used for females. Code 9 includes mortality tables other than those listed in Codes 1 through 8, including any unisex version of the 1983 G.A.M. table including the table published by the Service in Rev. Rul. 95-6, 1995-1 C.B. 80.

Where an indicated table consists of separate tables for males and females, add F to the female table (e.g., 1F). When a projection is used with a table, follow the code with "P" and the year of projection (omit the year if the projection is unrelated to a single calendar year); the identity of the projection scale should be omitted. When an age setback or set forward is used, indicate with "-" or "+" and the number of years. For example, if for females the 1951 Group Annuity Table with Projection C to 1971 is used with a 5-year setback, enter "1P71-5." If the table is not one of those listed, enter "9" with no further notation. If the valuation assumes a maturity value to provide the post-retirement income without separately identifying the mortality, interest and expense elements, under "post-retirement," enter on line 6d the value of $1.00 of monthly pension beginning at the age shown on line 6b, assuming the normal form of annuity for an unmarried person; in this case check "N/A" on lines 6e and 6f.

Line 6e. Valuation Liability Interest Rate. Enter the assumption as to the expected interest rate (investment return) used to determine all the calculated values with the exception of current liability and liabilities determined under the alternative funding standard account (see instructions for line 8b). If the assumed rate varies with the year, enter the weighted average of the assumed rate for 20 years following the valuation date. Enter rates to the nearest .01 percent.

Line 6f. Expense Loading. If there is no expense loading, enter -0-. For instance, there would be no expense loading attributable to investments if the rate of investment return on assets is adjusted to take investment expenses into account. If there is a single expense loading not separately identified as pre-retirement or post-retirement, enter it under pre-retirement and check "N/A" under post-retirement. Where expenses are assumed other than as a percentage of plan costs or liabilities, enter the assumed pre-retirement expense as a percentage of

the plan's normal cost, and enter the post-retirement expense as a percentage of plan liabilities. If the normal cost of the plan is zero, enter the assumed pre-retirement expense as a percentage of the sum of the lines 9c(1) and 9c(2), minus line 9j. Enter rates to the nearest .1 percent.

Line 6g. Annual Withdrawal Rates. Enter rates to the nearest .01 percent. Enter the rate assumed for a new entrant to the plan at the age shown. Enter "S" before the rate if that rate is different for participants with the same age but longer service. Enter "U" before the rate if all participants of that age are assumed to experience the same withdrawal rates, regardless of service. Enter "C" before the rate if criteria other than service apply to the rates used.

Line 6h. Salary Scale. If a uniform level annual rate of salary increase is used, enter that annual rate. Otherwise, enter the level annual rate of salary increase that is equivalent to the rate(s) of salary increase used. Enter the annual rate as a percentage to the nearest .01 percent, used for a participant from age 25 to assumed retirement age. If the plan's benefit formula is not related to compensation, check "N/A".

Line 6i. Estimated Investment Return. Enter the estimated rate of return on the actuarial value of plan assets for the 1-year period ending on the valuation date. For this purpose, the rate of return is determined by using the formula 2I/(A + B - I), where I is the dollar amount of the investment return under the asset valuation method used for the plan, A is the actuarial value of the assets one year ago, and B is the actuarial value of the assets on the current valuation date. Enter rates to the nearest .1 percent. If entering a negative number, enter a minus sign "–" to the left of the number.

Note: *Use the above formula even if the actuary feels that the result of using the formula does not represent the true estimated rate of return on the actuarial value of plan assets for the 1-year period ending on the valuation date. The actuary may attach a statement showing both the actuary's estimate of the rate of return and the actuary's calculations of that rate.*

Line 7. New Amortization Bases Established. List all new amortization bases established in the current plan year (prior to the combining of bases, if bases were combined). Use the following table to indicate the type of base established, and enter the appropriate code under "Type of Base." List amortization bases and charges and/or credits as of the valuation date. Bases that are considered fully amortized because there is a credit for the plan year on line 9l(4) should be listed. If entering a negative number, enter a minus sign "–" to the left of the number.

Code	Type of Amortization Base
1	Experience gain or loss
2	Shortfall gain or loss
3	Change in unfunded liability due to plan amendment
4	Change in unfunded liability due to change in actuarial assumptions
5	Change in unfunded liability due to change in actuarial cost method
6	Waiver of the minimum funding standard
7	Switchback from alternative funding standard account
8	Initial unfunded liability (for new plan)
9	155% current liability full funding limitation base

Line 8a. Funding Waivers or Extensions. If a funding waiver or extension request is approved after the Schedule B is filed, an amended Schedule B should be filed with Form 5500 to report the waiver or extension approval (also see instructions for line 9m(1)).

Line 8b. Alternative Methods or Rules. Enter the appropriate code from the table below if one or more of the alternative methods or rules were used for this plan year.

Code	Method or Rule
1	Shortfall method
2	Alternative funding standard account (AFSA)
3	Shortfall method used with AFSA
4	Plan is in reorganization status
5	Shortfall method used when in reorganization status

Shortfall Method: Only certain collectively bargained plans may elect the shortfall funding method (see regulations under Code section 412). Advance approval from the IRS for the election of the shortfall method of funding is NOT required if it is first adopted for the first plan year to which Code section 412 applies. However, advance approval from the IRS is required if the shortfall funding method is adopted at a later time, if a specific computation method is changed, or if the shortfall method is discontinued.

Alternative Minimum Funding Standard Account: A worksheet must be attached if the alternative minimum funding standard account is used. The worksheet should show:

1. The prior year alternate funding deficiency (if any).
2. Normal cost.
3. Excess, if any, of the value of accrued benefits over the market value of assets.
4. Interest on **1**, **2**, and **3** above.
5. Employer contributions (total from columns (b) of line 3 of Schedule B.
6. Interest on **5** above.
7. Funding deficiency: if the sum of **1** through **4** above is greater than the sum of **5** and **6** above, enter the difference.

If the entry age normal cost method was not used as the valuation method, the plan may not switch to the alternative minimum funding standard account for this year. Additionally, in line **3** of the worksheet, the value of accrued benefits should exclude benefits accrued for the current plan year. The market value of assets should be reduced by the amount of any contributions for the current plan year.

Reorganization Status: Attach an explanation of the basis for the determination that the plan is in reorganization for this plan year. Also, attach a worksheet showing for this plan year:

1. The amounts considered contributed by employers,
2. Any amount waived by the IRS,
3. The development of the minimum contribution requirement (taking into account the applicable overburden credit, cash-flow amount, contribution bases and limitation on required increases on the rate of employer contributions), and
4. The resulting accumulated funding deficiency, if any, which is to be reported on line 9p.

Line 8c. All multiemployer plans check "No". Plans other than multiemployer plans check "Yes" only if the plan is covered by Title IV of ERISA.

If line 8c is "Yes" attach a schedule of the active plan participant data used in the valuation for this plan year. Use the same size paper as the Schedule B and the format shown on the next page and label the schedule **"Schedule B, Line 8c–Schedule of Active Participant Data."**

Expand this schedule by adding columns after the "5 to 9" column and before the "40 & up" column for active participants with total years of credited service in the following ranges: 10 to 14; 15 to 19; 20 to 24; 25 to 29; 30 to 34; and 35 to 39. For each column, enter the number of active participants with the specified number of years of credited service divided according to age group. For participants with partial years of credited service, round the total number of years of credited service to the next lower whole number.

Plans reporting 1,000 or more active participants on line 2b(3) must also provide average compensation data. For each grouping, enter the average compensation of the active participants in that group. For this purpose, compensation is the compensation taken into account for each participant under the plan's benefit formula, limited to the amount defined under section 401(a)(17) of the Code. Years of credited service are the years credited under the plan's benefit formula. Do not enter the

Schedule B, Line 8c—Schedule of Active Participant Data

Attained Age	YEARS OF CREDITED SERVICE							
	Under 1		1 to 4		5 to 9		40 & up	
	No.	Avg. Comp.	No.	Avg. Comp.	No.	Avg. Comp.	No.	Avg. Comp.
Under 25								
25 to 29								
30 to 34								
35 to 39								
40 to 44								
45 to 49								
50 to 54								
55 to 59								
60 to 64								
65 to 69								
70 & up								

average compensation in any grouping that contains fewer than 20 participants.

If the plan is a multiple-employer plan, complete one or more schedules of active-participant data in a manner consistent with the computations for the funding requirements reported on line 9. See the specific instructions for **Lines 9a through 9q.** For example, if the funding requirements are computed as if each participating employer maintained a separate plan, attach a separate schedule for each participating employer in the multiple-employer plan.

Line 9. Shortfall Method. Under the shortfall method of funding, the normal cost in the funding standard account is the charge per unit of production (or per unit of service) multiplied by the actual number of units of production (or units of service) that occurred during the plan year. Each amortization installment in the funding standard account is similarly calculated.

Lines 9a through 9q. Multiple Employer Plans. If the plan is a multiple employer plan subject to the rules of Code section 413(c)(4)(A) for which minimum funding requirements are to be computed as if each employer were maintaining a separate plan, complete one Schedule B for the plan. Also submit an attachment completed in the same format as lines 9a through 9q showing, for this plan year, for each individual employer maintaining the plan, the development of the minimum contribution requirement (taking into account the applicable normal cost, amortization charges and credits, and all other applicable charges or credits to the funding standard account that would apply if the employer were maintaining a separate plan). Compute the entries on Schedule B, except for the entries on lines 9a, 9h, 9o, and 9p, as the sum of the appropriate individual amounts computed for each employer. Compute the entry on line 9a as the sum of the prior year's funding deficiency, if any, for each individual employer and the entry on line 9p as the sum of the separately computed funding deficiency, if any, for the current year for each employer. Credit balance amounts on lines 9h and line 9o are separately computed in the same manner. (Note that it is possible for the Schedule B to show both a funding deficiency and a credit balance for section 413(c) plans. This could not appear for other plans.)

Lines 9c and 9j. Amortization Charges and Credits. If there are any amortization charges or credits, attach a maintenance schedule of funding standard account bases. The attachment should clearly indicate the type of base (i.e., original unfunded liability, amendments, actuarial losses, etc.), the outstanding balance of each base, the number of years remaining in the amortization period, and the amortization amount. If bases were combined in the current year, the attachment should show information on bases both prior to and after the combining of bases.

The outstanding balance and amortization charges and credits must be calculated as of the valuation date for the plan year.

Line 9c(1). 155% Current Liability Full Funding Limitation Base. If a credit was entered on line 9l(5) on the prior year's Schedule B, establish a new base equal to the amount of the credit (increased with interest to the current valuation date at the valuation rate) and amortize the base over a 20-year period at the valuation rate.

Note: *For any such base remaining at the end of the 1998 plan year, the remaining amortization period is 20 years minus the number of years since the base was established.*

Line 9c(2). Amortization for funding waivers must be based on the interest rate provided in Section 412(d) ("mandated rate").

Line 9d. Interest as Applicable. Interest as applicable should be charged to the last day of the plan year. The mandated rates must be used when calculating interest on any amortization charges for funding waivers.

Line 9e. If the funded current liability percentage for the preceding year reported in line 4a is at least 100%, quarterly contributions are not required for the current plan year.

Interest is charged for the entire period of underpayment. Refer to IRS Notice 89-52, 1989-1 C.B. 692, for a description of how this amount is calculated.

Note: *Notice 89-52 was issued prior to the amendment of section 412(m)(1) by the Revenue Reconciliation Act of 1989. Rather than using the rate in the Notice, the applicable interest rate for this purpose is the greater of:*

1. *175% of the Federal mid-term rate at the beginning of the plan year, or*

2. *The rate used to determine the "RPA '94" current liability.*

All other descriptions of the additional interest charge contained in Notice 89-52 still apply.

Line 9f. Enter the required additional funding charge from line 12u. Enter "N/A" if line 12 is not applicable.

Line 9h. Note that the credit balance or funding deficiency at the end of "Year X" should be equal to the credit balance or funding deficiency at the beginning of "Year X+1." If such credit balances or funding deficiencies are not equal, attach an explanation. For example, if the difference is because contributions for a prior year which were not previously reported are received this plan year, attach a listing of the amounts and dates of such contributions.

Line 9l(1). ERISA Full Funding Limitation. Instructions for this line are reserved pending published guidance.

Line 9l(2). 155% Current Liability Full Funding Limitation. Instructions for this line are reserved pending published guidance.

Line 9l(3). "RPA '94" Override. Instructions for this line are reserved pending published guidance.

Line 9l(4). Full Funding Credit before reflecting "OBRA '87" Full Funding Limitation. Enter the excess of (1) the accumulated funding deficiency, disregarding the credit balance and contributions for the current year, if any, over (2) the greater of lines 9l(1) or 9l(3).

Line 9l(5). Additional Credit due to "OBRA '87 " Full Funding Limitation. Enter (1) the excess, if any, of the accumulated funding deficiency, disregarding the credit balance and contributions for the current plan year, over the greater of lines 9l(2) or 9l(3), minus (2) the amount in line 9l(4). If the result is negative, enter zero.

Line 9m(1). Waived Funding Deficiency Credit. Enter a credit for a waived funding deficiency for the current plan year (Code section 412(b)(3)(C)). If a waiver of a funding deficiency is pending, report a funding deficiency. If the waiver is granted after Form 5500 is filed, file Form 5500, page one only with an amended Schedule B to report the funding waiver.

Line 9m(2). Other Credits. Enter a credit in the case of a plan for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard.

Line 9q. Reconciliation Account. The reconciliation account is made up of those components that upset the balance equation of Income Tax Regulations section 1.412(c)(3)-1(b). Valuation assets should not be adjusted by the reconciliation account balance when computing the required minimum funding.

Line 9q(1). The accumulation of additional funding charges for prior plan years must be included. Enter the sum of line 9q(1) (increased with interest at the valuation rate to the first day of the current plan year) and line 9f, both from the prior year's Schedule B (Form 5500).

Line 9q(2). The accumulation of additional interest charges due to late or unpaid quarterly installments for prior plan years must be included. Enter the sum of line 9q(2) (increased with interest at the valuation rate to the first day of the current plan year) and line 9e, both from the prior year's Schedule B (Form 5500).

Line 9q(3)(a). If a waived funding deficiency is being amortized at an interest rate that differs from the valuation rate, enter the prior year's "reconciliation waiver outstanding balance" increased with interest at the valuation rate to the current valuation date and decreased by the year end amortization amount based on the mandated interest rate. Enter the amounts as of the valuation date.

Line 9q(4). Enter the sum of lines 9q(1), 9q(2), and 9q(3)(b) (each adjusted with interest at the valuation rate to the current valuation date, if necessary).

Note: *The net outstanding balance of amortization charges and credits minus the prior year's credit balance minus the amount on line 9q(4) (each adjusted with interest at the valuation rate, if necessary) must equal the unfunded liability.*

Line 10. Contribution Necessary to Avoid Deficiency. Enter the amount from line 9p. However, if the alternative funding standard account is elected and the accumulated funding deficiency under that method is smaller than line 9p, enter such amount (also see instructions for line 8b). For multiemployer plans in reorganization, see the instructions for line 8b. File Form 5330 with the IRS to pay the 10% excise tax (5% in the case of a multiemployer plan) on the funding deficiency.

Line 11. In accordance with ERISA section 103(d)(3), attach a justification for any change in actuarial assumptions for the current plan year. The preceding sentence applies for all plans.

The following instructions are applicable only to changes in current liability assumptions for plans (other than multiemployer plans) subject to Title IV of ERISA which resulted in a decrease in the unfunded current liability (UCL). If the current liability assumptions (other than a change in the assumptions required under Code section 412(l)(7)(C)) were changed for the current plan year and such change resulted in a decrease in UCL, approval for such a change may be required. However, if one of the following three conditions is satisfied with respect to a change in assumptions for a plan year, then the plan sponsor is not required to obtain approval from the IRS for such change(s):

Condition 1: Aggregate Unfunded Vested Benefits

The aggregate unfunded vested benefits as of the close of the plan year preceding the year in which assumptions were changed (as determined under section 4006(a)(3)(E)(iii) of ERISA) for the plan, and all other plans maintained by contributing sponsors (as defined in section 4001(a)(13) of ERISA) and members of such sponsor's controlled group (as defined in section 4001(a)(14) of ERISA) which are covered by Title IV of ERISA (disregarding plans with no unfunded vested benefits) is less than or equal to $50 million.

Condition 2: Amount of Decrease in UCL

The change in assumptions (other than a change required under Code section 412(l)(7)(C)) resulted in a decrease in the UCL of the plan for the plan year in which the assumptions were changed of less than or equal to $5 million.

Condition 3: Amount of Decrease in UCL, and CL Before Change in Assumptions

Although the change in assumptions (other than a change required under Code section 412(l)(7)(C)) resulted in a decrease in the UCL of the plan for the plan year in which the assumptions were changed which was greater than $5 million and less than or equal to $50 million, the decrease was less than five percent of the current liability of the plan before such change.

If the current liability assumptions for the plan have been changed, and such change requires approval of the Service, enter on an attachment the date(s) of the ruling letter(s) granting approval.

If the current liability assumptions for the plan have been changed, and such change would have required approval in the absence of satisfaction of one of the conditions outlined above, enter on an attachment the number of the applicable condition and the plan year for which it applies. If condition 1 or 2 applies, also enter the amount of the decrease in UCL. Note that only one of the conditions needs to be entered.

Specific Instructions for Part II

Line 12. Additional Required Funding Charge. There is no additional funding charge for plans that have 100 or fewer participants in the prior plan year (as defined under **Who Must File**). Do not complete Part II for such plans.

Line 12a. A plan's "Gateway %" is equal to the actuarial value of assets (line 1b(2), unreduced by any credit balance) divided by the current liability computed with the highest allowable interest rate (line 1d(2)(c)). If line 1d(2)(c) is not completed in accordance with instructions for that line, use "RPA '94" current liability reported on line 1d(2)(a). There is no additional funding charge for plan years beginning in 1999 if the "Gateway %" is at least 90%. In such cases, enter -0- on line 12u. There is no additional funding charge for plan years beginning in 1999 if (a) the "Gateway %" (for 1999) is at least 80% but less than 90%, and (b) the "Gateway %" for the plan years beginning in 1998 and 1997 were at least 90%, or, the "Gateway %" for the plan years beginning in 1997 and 1996 were at least 90% (in such case, enter -0- on line 12u)

Note: *Section 1508 of TRA '97 provided transition rules for certain plans sponsored by companies engaged primarily in the interurban or interstate passenger bus service that have "Gateway" percentages that are greater than certain prescribed minimum percentages. These transition rules are effective for such plans for any plan year beginning after 1996 and before 2010. If one of these transition rules is used, line 12a should be completed, and, if appropriate, a zero should be entered in line 12u. Attach a demonstration of the use of this transition rule to the Schedule B.*

Line 12c. Enter the actuarial value of assets (line 1b(2)), reduced by the prior year's credit balance (line 9h). If line 9h was determined at a date other than the valuation date, adjust the credit balance for interest at the valuation rate to the current valuation date before subtracting. Do not add a prior year's funding deficiency to the assets.

Line 12d. Current Liability Percentage. Enter the actuarial value of the assets expressed as a percentage of "RPA '94" current liability. Enter the result to the nearest .01% (e.g., 28.72%).

Line 12f. Enter the liability for any unpredictable contingent event (other than events that occurred before the first plan year beginning after 1988) that was included in line 12b, whether or not such unpredictable contingent event has occurred.

Line 12g. Enter the outstanding balance of the unfunded old liability as of the valuation date. This is line 12(g) of the 1998 Schedule B reduced by the prior year's amortization amount, and adjusted for interest at the prior year's current liability interest rate from the prior year's valuation date to the current valuation date. The unfunded old liability (and therefore all its components) will be considered fully amortized in accordance with Q&A-7 of Rev. Rul. 96-20, 1996-1 C.B. 62.

Note: *In the case of a collectively bargained plan, this amount must be increased by the unamortized portion of any "unfunded existing benefit increase liability" in accordance with Code section 412(l)(3)(C).*

Line 12h. This amount is the unfunded new liability. It is recomputed each year. If a negative result is obtained, enter zero.

Line 12i. If the unfunded new liability is zero, enter zero for the unfunded new liability amount. If the unfunded new liability is greater than zero, first calculate the amortization percentage as follows:

1. If the funded current liability percentage (line 12d) is less than or equal to 60%, the amortization percentage is 30%.

2. If the current liability percentage exceeds 60%, the amortization percentage is determined by reducing 30% by the product of 40% and the amount of such excess. Enter the resulting amortization percentage to the nearest 0.01 percent.

The unfunded new liability amount is equal to the above-calculated percentage of the unfunded new liability.

Line 12j. Enter the amortization amount for line 12g based on the "RPA '94" current liability interest rate (line 6a(1)) in effect for the plan year and the following amortization period:

In general: For the 1999 plan year, the remaining amortization period is 8 years.

Special rule: In the case of a collectively bargained plan, the amortization amount must be increased by the amortization of any "unfunded existing benefit increase liability" in accordance with Code section 412(l)(3)(C)(ii). For any such amortization, the amortization period is equal to the remainder of the original 18-year period that applied when the amortization began.

Base maintenance: On a separate attachment, show the initial amount of each DRC amortization base (as defined in Rev. Rul. 96-20) being amortized under the general or special rule, the outstanding balance of each DRC amortization base, the number of years remaining in the amortization period, and the amortization amount (with the valuation date as the due date of the amortization amount). It is not necessary to separately list the unfunded old liability base and the additional unfunded old liability base. Do not enter base maintenance required for line 13 here. See instructions for line 13(i) only if applicable.

Line 12l. Enter the result determined by subtracting the amortization credits (line 9j) from the sum of the normal cost and the amortization charges (lines 9b, 9c(1) and 9c(2)). Use the valuation date as the due date for the amortization amounts. If entering a negative number, enter a minus sign "–" to the left of the number.

Note: *Any amortization installments established under Code section 412(b) for plan years beginning after December 31, 1987, and before January 1, 1993, by reason of nonelective changes under the frozen initial liability method shall not be included in the calculation of the offset for the first 5 plan years beginning after December 31, 1994.*

Line 12m. Unpredictable Contingent Event Amount. Line 12m does not apply to the unpredictable contingent event benefits (and related liabilities) for an event that occurred before the first plan year beginning after December 31, 1988.

Line 12m(1). Enter the total of all benefits paid during the plan year that were paid solely because an unpredictable event occurred.

Line 12m(5). Amortization of All Unpredictable Contingent Event Liabilities. Amortization should be based on the "RPA '94" current liability interest rate (line 6a(1)), using the valuation date as the due date. The initial amortization period for each base established in a plan year is generally 7 years, however see Code section 412(l)(5) for special rules.

Note: *An alternative calculation of an unpredictable contingent amount is available for the first year of amortization. Refer to Code section 412(l)(5)(D) for a description. If this alternative calculation is used, include an attachment describing the calculation.*

Line 12m(6). "RPA '94" Additional Amount. Subtract line 12g from line 12e. If the result is zero or less than zero, enter -0-. If the result is a positive number, multiply the result by the percentage used to calculate line 12i. Enter the excess, if any, of this amount over the amount on line 12i.

Line 12n. Preliminary charge. Adjust with interest using the "RPA '94" current liability interest rate.

Line 12o. Contributions needed to increase current liability percentage to 100%. This amount is calculated in the same manner as the "target amount " except that 100 percent is substituted for the "target percentage" (see Announcement 96-18, 1996-15 I.R.B. 15). Instructions for computing the target amount are provided at line 14c.

Lines 12q, 12r, and 12s. Complete only the one applicable line.

Line 12u. If the plan had 150 or more participants on each day of the preceding plan year, enter 100%. If the plan had less than 150 participants but more than 100 participants on each day of the preceding plan year, enter the applicable percentage. The same participant aggregation rule described in the instructions for line 12 applies. The applicable percentage is calculated as follows: **(1)** Determine the greatest number of participants on any day during the preceding plan year in excess of 100. **(2)** The applicable percentage is 2% times the number of such participants in excess of 100. The percentage should not exceed 100%. The amount on line 12u is also the amount entered on line 9f.

Line 13. Additional Funding Charge under Prior Law (for Use with the Optional and/or Transition Rules). The line is completed if the plan sponsor elected in 1995 to use the Optional rule under Code section 412(l)(3)(E) or is using the Transition rule under Code section 412(l)(11) in 1999. Do not complete line 13 for plans that are not subject to section 412(l) in 1999 (i.e., plans that entered zero on line 12u immediately after completing the Gateway % in line 12a). All calculations in line 13 must be done using the law pertaining to the additional funding charge as it existed prior to "RPA '94" (see Q&A-9 of Rev. Rul. 96-21).

Line 13a. Enter the "OBRA '87" current liability as of the valuation date.

Line 13b. Enter the actuarial value of assets (line 1b(2)), reduced by the prior year's credit balance (line 9h). If line 9h was determined at a date other than the valuation date, adjust the credit balance for interest at the valuation rate to the current valuation date before subtracting. Do not add a prior year's funding deficiency to the assets.

Line 13c. Enter the adjusted actuarial value of assets expressed as a percentage of current liability. Round off to two decimal places (e.g., 59.41%).

Line 13e. Enter the outstanding balance of the unfunded old liability as of the valuation date. To compute the outstanding balance, lines 13e and 13i from the 1998 Schedule B should be used.

Line 13f. Enter the liability for any unpredictable contingent event benefit that was included on line 13a, whether or not such event has occurred.

Computation of Target Percentage (line 14b)

If line 14a is...	Then enter on line 14b:
line 14a ≤ 63%	line 14a + 15%
63% < line 14a ≤ 66%	90% × line 14a + 21.3%
66% < line 14a ≤ 69%	81% × line 14a + 27.24%
69% < line 14a ≤ 72%	72.9% × line 14a + 32.83%
72% < line 14a ≤ 74.55%	65.61% × line 14a + 38.08%
74.55% < line 14a ≤ 75%	72.9% × line 14a + 32.64%
75% < line 14a ≤ 77.56%	65.61% × line 14a + 38.11%
77.56% < line 14a ≤ 80.30%	72.9% × line 14a + 32.46%
80.30% < line 14a ≤ 82.77%	81% × line 14a + 25.95%
82.77% < line 14a < 85%	90% × line 14a + 18.5%
85% ≤ line 14a	line 14a + 10%

Line 13g. This amount is the unfunded new liability. It will be recalculated each year. If the result is negative, enter -0-.

Line 13h. If the unfunded new liability is zero, enter -0- for the unfunded new liability amount. If the unfunded new liability is greater than zero, first calculate the amortization percentage as follows:

1. If the funded current liability percentage (line 13c) is less than or equal to 35%, the amortization percentage is 30%.

2. If the funded current liability percentage exceeds 35%, the amortization percentage is determined by reducing 30% by the product of 25% and the amount of such excess. Enter the resulting amortization percentage to the nearest 0.01 percent.

The unfunded new liability amount is equal to the above-calculated percentage of the unfunded new liability.

Line 13i. Enter the amortization of the outstanding balance of the unfunded old liability as of the valuation date (line 13e). In the case of a collectively bargained plan, the unfunded old liability amount to enter on line 13i must include the amortization of any unfunded existing benefit increase liability calculated in accordance with Code section 412(l)(3)(C)(ii). On a separate attachment, show the breakdown of the various liabilities being amortized, the outstanding balance of each liability, the number of years remaining in the amortization period, and the amortization amount.

Any such amortization amount must be determined based on:

1. The "OBRA '87" current liability interest rate in effect at the beginning of the plan year, and

2. The valuation date as the due date of the amortization payment.

The amortization period must be the remainder of the original 18-year period that applied when the amortization began.

Any such amortization amount must be redetermined each year based on the outstanding balance (line 13e). If the plan becomes fully funded on a current liability basis, the unfunded old liability (including any liability arising from collectively bargained plans) will be considered fully amortized (see Q&A-7 of Rev. Rul. 96-20).

Line 13j. Deficit Reduction Contribution. Enter the sum of lines 13h and 13i. This amount is the deficit reduction contribution at the valuation date.

Line 13k. When entering the net amortization amounts for certain bases include only charges (included on line 9c) and credits (included on line 9j) attributable to original unfunded liability, amendments, funding waivers, and charges resulting from a "switchback" from the alternative minimum account to the funding standard account.

If a base resulted from combining and/or offsetting pre-existing bases among which were bases not designated in the preceding paragraph, and such base was not uncombined in 1989 in accordance with Announcement 90-87, 1990-30 I.R.B. 23, then such resulting base may not be included in this line 13k.

Line 13l. Line 13l does not apply to the unpredictable contingent event benefits (and the attributable liabilities) for an event that occurred before the first plan year beginning after December 31, 1988.

Line 13l(1). Enter the total of all benefits paid during the plan year that were paid solely because the unpredictable contingent event occurred.

Line 13l(5). Amortization should be based on the "OBRA '87" current liability interest rate and should assume beginning of the year payments for a 7-year period.

Note: *Alternative calculation of an unpredictable contingent event amount is available for the first year of amortization. Refer to Code section 412(l)(5)(D) for a description. If this alternative calculation is used, include an attachment describing the calculation.*

Line 13p. Enter the applicable amount of interest, based on the "OBRA '87" current liability interest rate, to bring the additional funding charge (line 13o) to the end of the plan year.

Line 14. Transition Rule. The transition rule of Code section 412(l)(11) provides an alternative method of computing the additional required funding charge. The rule may be elected by the employer as part of Schedule R (Form 5500), line 8, in any year up to the year 2001. The charge for a year is the amount necessary to increase the funded current liability percentage to the target percentage preset for that year, with adjustments to meet the two following conditions: **(1)** the charge must not be less than the additional funding charge under the law as it existed prior to "RPA '94", and **(2)** in any event, the charge under the Transition rule must not be greater than the charge under present law (ignoring the effect of the Transition rule).

The transition rule of Code section 412(l)(11) may only be elected by the employer sponsoring an "eligible plan" (see Q&A-2 of Rev. Rul. 96-21).

Note: *In accordance with Q&A-2 of Rev. Rul. 96-21, a plan that was not in existence in 1995 is not eligible to use the Transition rule.*

Line 14b. Transition Rule Target Percentage. To compute the target percentage, refer to the table above and enter the appropriate percentage on line 14b.

Line 14c. Target Amount. The target amount is the additional amount necessary to increase the funded current liability percentage to the "target percentage" of line 14b . The target amount is equal to the excess, if any, of the product of line 14b and the "adjusted current liability", over the "adjusted assets." The adjusted current liability is computed in accordance with Q&A-7 of Rev. Rul. 96-21, and is equal to the excess of (1) the sum of lines 1d(2)(a) and 1d(2)(b), over (2) line 1d(2)(d), each adjusted to the end of the plan year using the "RPA '94" current liability interest rate. The adjusted assets are computed in accordance with Q&A-8 of Rev. Rul. 96-21.

1999 – *Service Provider Information* Instructions for Schedule C (Form 5500)

General Instructions

Who Must File

The Schedule C (Form 5500) must be attached to a Form 5500 filed for a large pension or welfare benefit plan and to a Form 5500 filed for a MTIA, 103-12, or GIA to report information concerning service providers. See the instructions to the Form 5500 for **Form 5500 Schedules** and **Direct Filing Entity (DFE).**

Check the Schedule C box on the Form 5500 (Part II, line 10b(4)) if a Schedule C is attached to the Form 5500. Multiple Schedule C pages must be attached to the Form 5500 if necessary to report the required information.

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule C is attached.

Line 1 of Part I Line 1 must be completed if line 2 of Part I is required to be completed as specified below.

Line 2 of Part I Line 2 of Part I must be completed to report contract administrators and persons receiving, directly or indirectly, $5,000 or more in compensation for all services rendered to the plan or DFE during the plan or DFE year except:

1. Employees of the plan whose only compensation in relation to the plan was less than $1,000 for each month of employment during the plan year;

2. Employees of the plan sponsor who did not receive direct or indirect compensation from the plan;

3. Employees of a business entity (e.g., corporation, partnership, etc.), other than the plan sponsor, who provided services to the plan; or

4. Persons whose only compensation in relation to the plan consists of insurance fees and commissions listed in a Schedule A attached to the Form 5500 filed for this plan.

Generally, indirect compensation would not include compensation that would have been received had the service not been rendered and that cannot be reasonably allocated to the services performed. Indirect compensation includes, among other things, payment of "finder's fees" or other fees and commissions by a service provider to an independent agent or employee for a transaction or service involving the plan.

Notes:

- *Either the cash or accrual basis may be used for the recognition of transactions reported on the Schedule C as long as you use one method consistently.*
- *The compensation listed should only reflect the amount of compensation received by the service provider from the plan or DFE filing the Form 5500, not the aggregate amount received for providing services to several plans or DFEs.*
- *The term "persons" on the Schedule C instructions includes individuals, trades and businesses (whether incorporated or unincorporated). See ERISA section 3(9).*

Specific Instructions

Part I - Service Provider Information

Line 1. Enter the total dollar amount of compensation received by all persons who provided services to the plan who are not listed in line 2 (except for those persons described in 2, 3, or 4 in the General Instructions).

Example: *A plan had service providers, A, B, C, and D, who received $12,000, $6,000, $4,500, and $430, respectively, from the plan. Service providers A and B must be identified separately in line 2 by name, EIN, official plan position, etc. As service providers C and D each received less than $5,000, the amount they received must be combined and $4,930 entered in line 1.*

Line 2. List up to 40 service providers, including the contract administrator, as specified below.

First, list the contract administrator, if any, on the first item (complete elements **(a)** through **(g)**) on line 2 where indicated. A contract administrator is any individual, trade or business (whether incorporated or unincorporated) responsible for managing the clerical operations of the plan on a contractual basis (e.g., handling membership rosters, claims payment, maintaining books and records), except for salaried staff or employees of the plan or banks or insurance carriers.

Next, complete a separate item for each person required to be reported in line 2 in the order of compensation received. Start with the most highly compensated and end with the lowest compensated. Enter in element **(a)** the person's name and complete elements **(b)** through **(g)** as specified below. Additional pages may be necessary to list all service providers. You can get additional green ink copies by calling **1-800-TAX-FORM** (1-800-829-3676).

Element (b). An EIN must be entered. If the name of an individual is entered in element **(a)**, the EIN to be entered in element **(b)** should be the EIN of the individual's employer.

Element (c). Enter, for example, employee, trustee, accountant, attorney, etc.

Element (d). Enter, for example, employee, vice-president, union president, etc.

Elements (e) and (f).

Plan Filers. Include the plan's share of compensation for services paid during the year to an MTIA or 103-12 IE trustee and to persons providing services to the MTIA or 103-12 IE, if such compensation is **not** subtracted from the total income in determining the net income (loss) reported on the MTIA or 103-12 IE's Schedule H, line 2k.

Include brokerage commissions or fees only if the broker is granted some discretion (see 29 CFR 2510.3-21 paragraph (d), regarding "discretion"). Include all other commissions and fees on investments, whether or not the they are capitalized as investment costs.

MTIA and 103-12 IEs. Include compensation for services paid by the MTIA or 103-12 IE during its fiscal year to persons providing services to the MTIA or 103-12 IE if such compensation is subtracted from the total income in determining the net income (loss) reported by the MTIA or 103-12 IE on Schedule H, line 2k.

Element (g). Select and enter all codes that describe the nature of services provided from the list below. If more than one service was provided, list the code for the primary service first. If necessary, use a properly identified attachment to list all applicable service codes.

Note: *Do not list PBGC or IRS as a service provider on Part I of Schedule C.*

Code	Service
10	Accounting (including auditing)
11	Actuarial
12	Contract Administrator
13	Administration
14	Brokerage (real estate)
15	Brokerage (stocks, bonds, commodities)
16	Computing, tabulating, ADP, etc.
17	Consulting (general)
18	Custodial (securities)
19	Insurance agents and brokers
20	Investment advisory
21	Investment management
22	Legal
23	Printing and duplicating
24	Recordkeeping
25	Trustee (individual)
26	Trustee (corporate)
27	Pension insurance advisor
28	Valuation services (appraisals, asset valuations, etc.)
29	Investment evaluations
30	Medical
31	Legal services to participants
99	Other (specify)

Part II - Termination Information on Accountants and Enrolled Actuaries

Complete Part II if there was a termination in the appointment of an accountant or enrolled actuary. In case the service provider is not an individual (i.e., when the service provider is a legal entity such as a corporation, partnership, etc.), report when the service provider (not the individual) has been terminated.

Provide an explanation of the reasons for the termination of an accountant or enrolled actuary. Include a description of any material disputes or matters of disagreement concerning the termination, even if resolved prior to the termination. If an individual is listed, the EIN to be entered should be the EIN of the individual's employer. The plan administrator must also provide the terminated accountant or enrolled actuary with a copy of the explanation for the termination provided in Part II of the Schedule C, with a completed copy of the notice below.

Notice To Terminated Accountant Or Enrolled Actuary

I, as plan administrator, verify that the explanation that is reproduced below or attached to this notice is the explanation concerning your termination reported on the Schedule C (Form 5500) attached to the 1999 Annual Return/Report Form 5500 for the _____ (enter name of plan). This Form 5500 is identified in line 2b by the nine-digit EIN ___-_____ (enter sponsor's EIN), and in line 1b by the three-digit PN _____ (enter plan number).

You have the opportunity to comment to the Department of Labor concerning any aspect of this explanation. Comments should include the name, EIN, and PN of the plan and be submitted to: Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed
Dated

1999 – *DFE/Participating Plan Information* Instructions for Schedule D (Form 5500)

General Instructions

Who Must File

Employee Benefit Plans: Schedule D must be attached to a Form 5500 filed for an employee benefit plan that participated or invested in one or more common/collective trusts (CCTs), pooled separate accounts (PSAs), master trust investment accounts (MTIAs), or 103-12 Investment Entities (103-12 IEs) at any time during the plan year.

Direct Filing Entities: Schedule D must be attached to a Form 5500 filed for a CCT, PSA, MTIA, 103-12 IE or Group Insurance Arrangement (GIA), as a Direct Filing Entity (i.e., when Form 5500 Part I, line A(4) is checked). For more information, see instructions for **Direct Filing Entity (DFE)** on pages 4 and 8 of the instructions for the Form 5500.

Check the Schedule D box on the Form 5500 (Part II, line 10b(5)) if a Schedule D is attached to the Form 5500. Multiple Schedule D pages must be attached to the Form 5500 if necessary to report the required information. You can get additional green ink copies by calling **1-800-TAX-FORM** (1-800-829-3676).

Purpose of Schedule

When the Form 5500 is filed for a plan or DFE that invested or participated in any MTIAs, 103-12 IEs, CCTs and/or PSAs, Part I provides information about these entities. When the Form 5500 is filed for a DFE, Part II provides information about plans participating in the DFE.

Lines A, B, C, and D. The information entered on these lines should be the same as the information entered on the Form 5500 to which this Schedule D is attached (Part II, lines 1a, 1b, 2a, and 2b, respectively).

Specific Instructions For Part I

Use as many pages as necessary to enter the information specified below for all MTIAs, CCTs, PSAs, and 103-12 IEs in which the plan or DFE filing the Form 5500 participated at any time during the plan or DFE year.

Complete a separate item (elements **(a)** through **(e)** for each MTIA, CCT, PSA, or 103-12 IE.

Element (a). Enter the name of the MTIA, CCT, PSA, or 103-12 IE in which the plan or DFE filing the Form 5500 participated at any time during the plan or DFE year.

Element (b). Enter the sponsoring organization (financial institution, insurance company, etc.) of the MTIA, CCT, PSA, or 103-12 IE named in (a).

Element (c). Enter the nine-digit employer identification number (EIN) and three-digit plan/entity number (PN) for each MTIA, CCT, PSA, or 103-12 IE named in (a). This **must** be the same EIN/PN as reported on lines 2b and 1b of the Form 5500 filed for the DFE. If a Form 5500 **was not** filed for a CCT or PSA named in element **(a)**, enter the EIN for the CCT or PSA and enter 000 for the PN.

Element (d). Enter an M, C, P, or E, as appropriate, (see table below) to identify the type of entity (MTIA, CCT, PSA, or 103-12 IE).

Type of entity ▼	Enter in (d) ▼
MTIA	M
CCT	C
PSA	P
103-12 IE	E

Element (e). Enter the value of the plan's or DFE's interest as of the end of the year. If the plan or DFE for which this Schedule D is filed had no interest in the MTIA, CCT, PSA, or 103-12 IE listed at the end of the year, enter "0".

Example for Part I: If a plan participates in an MTIA, the MTIA is named in element **(a)**; the MTIA's sponsoring financial institution is named in element **(b)**; the MTIA's EIN and PN is entered in element **(c)** (such as: 12-3456789-001); an "M" is entered in element **(d)**; and the dollar value of the plan's interest in the MTIA as of the end of the plan year is entered in element **(e)**. If the plan also participates in a CCT for which a Form 5500 was **not** filed, the CCT is named in another element **(a)**; the name of the CCT sponsor is named in element **(b)**, the nine-digit number EIN for the CCT, followed by 000 is entered in element **(c)** (such as: 99-8765432-000); a "C" is entered in element **(d)**; and the dollar value of the plan's interest in the CCT is entered in element **(e)**. If the plan also participates in a PSA for which a Form 5500 **was** filed, the PSA is named in a third element **(a)**; the name of the PSA sponsor is named in element **(b)**, the PSA's EIN and PN is entered in element **(c)** (such as: 98-7655555-001); a "C" is entered in element **(d)**; and the dollar value of the plan's interest in the CCT is entered in element **(e)**.

See the filled-in example for Part I on the following page.

Specific Instructions For Part II

Use as many pages as necessary to enter the information specified below for all plans that invested or participated in the DFE at any time during the DFE year.

Complete a separate item (elements **(a)** through **(c)**) for each plan.

Element (a). Enter the name of each plan that invested or participated in the DFE at any time during the DFE year. GIAs need not complete element **(a)**.

Element (b). Enter the sponsor of each investing or participating plan.

Element (c). Enter the nine-digit EIN and three-digit PN for each plan named in element **(a)**. This is the EIN and PN entered on lines 2b and 1b of the plan's Form 5500. GIAs should enter the EIN of the sponsor listed in element **(b)**.

See the filled-in example for Part II on the following page.

Filled-in Example for Part I

(a) Name of MTIA, CCT, PSA, or 103-12 IE	(b) Name of Sponsor	(c) EIN/PN of entity listed in (a)	(d) Entity Code	(e) Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year
Master Trust For Plans of XYZ Corporation	Trustee Bank for Master Trust	12-3456789-001	M	1,250,000
AAA Bank CCT	AAA Bank of North America	99-8765432-000	C	250,000
BBB Insurance Company PSA	BBB Insurance Company	98-7655555-001	P	275,000

Filled-in Example for Part II

Examples for Part II: A Schedule D filed for a DFE (other than a GIA) should be completed as in the following example ▼

(a) Plan Name	(b) Name of Plan Sponsor	(c) EIN/PN of plan named in (a)
ABC Widget Profit Sharing Plan	ABC Widget Company	12-3456789-001
ABC Widget Pension Plan	ABC Widget Company	12-3456789-002
ABC Sister Company Profit Sharing Plan	ABC Sister Company	12-3456799-001
ABC Sister Company Pension Plan	ABC Sister Company	12-3456799-002

A Schedule D filed for a GIA may be completed as above or as in the following example ▼

(a) Plan Name	(b) Name of Plan Sponsor	(c) EIN/PN of plan
	ABC Widget Company	12-3456789
	AAA Shoe Company	98-7654321
	XYZ Corporation	98-7712342

1999 – *ESOP Annual Information*
Instructions for Schedule E (Form 5500)

General Instructions

Purpose of Form

Use this schedule to satisfy the requirements under Code section 6047(e) for an annual information return for an employee stock ownership plan (ESOP).

Who Must File

Every employer or plan administrator of a pension benefit plan that contains ESOP benefits must file a Schedule E (Form 5500).

How To File

File Schedule E (Form 5500) annually as an attachment to Form 5500 or 5500-EZ. If more than one securities acquisition loan (see specific instructions for lines 6 through 11) is outstanding, you must file one Schedule E (Form 5500) and an attachment for each additional securities acquisition loan. Each attachment must provide answers to questions 6 through 11, be in a similar format to, and on the same size paper as the Schedule E.

Check the Schedule E box on the Form 5500 (Part II, line 10a(4)) if a Schedule E is attached to the Form 5500.

Note: *The Small Business Job Protection Act repealed the partial interest exclusion of Code section 133 effective, in general, with respect to loans made after August 20, 1996. However, Schedule E (Form 5500) must be filed for securities acquisition loans made to ESOPs before August 21, 1996, loans made pursuant to a written binding contract in effect before June 10, 1996, and at all times thereafter before the loan was made, and certain loans made after August 20, 1996, to refinance a securities acquisition loan originally made on or before August 20, 1996.*

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule E is attached.

Line 3. If the schedule does not provide enough space, enter "ATTACHED" and provide the required formula as an attachment to Schedule E.

Lines 6 through 11. A "securities acquisition loan" is an exempt loan to an ESOP to the extent that the proceeds are used to acquire employer securities for the plan.

Line 6. A "back to back loan" is a securities acquisition loan from a lender to an employer corporation followed by a loan from the corporation to the ESOP maintained by the employer corporation. A "back to back loan" constitutes a "securities acquisition loan" under Code section 133 if the following requirements are satisfied:

1. The loan from the employer corporation to the ESOP qualifies as an exempt loan under Excise Tax Regulations sections 54.4975-7 and 54.4975-11;

2. The repayment terms of the loan from the corporation to the ESOP are "substantially similar" (as defined in Temporary Income Tax Regulations section 1.133-1T) to the repayment terms of the loan from the corporation to the lender; and

3. If the loan from the corporation to the ESOP provides for more rapid repayment of principal and interest, the allocations under the ESOP attributable to such repayments do not discriminate in favor of highly compensated employees (within the meaning of Code section 414(q)).

Line 7. An immediate allocation loan is any loan to an employer corporation to the extent that, within 30 days, employer securities are transferred to the ESOP maintained by the corporation in an amount equal to the proceeds of the loan and the securities are allocable to the accounts of plan participants within one year of the date of the loan. (See Code section 133(b)(1)(B).)

Line 8c. The transition rules of Act section 7301(f)(2) through (6) of the Omnibus Budget Reconciliation Act of 1989 (OBRA), P.L. 101-239, provide that the amendments made to Code section 133 by OBRA will not apply to certain loans that satisfy the requirements of those paragraphs. In general, the amendments made by OBRA will not apply to:

1. Loans made pursuant to a binding written commitment in effect on June 6, 1989, and at all times thereafter before the loan was made, or pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission (SEC)) in effect on June 6, 1989, and at all times thereafter before such securities were acquired.

2. If subparagraph 1 does not apply, loans made pursuant to a binding written commitment in effect on July 10, 1989, and at all times thereafter before the loan was made, but only to the extent that the proceeds were used to acquire employer securities pursuant to a certain binding written contract (or tender offer registered with the SEC) in effect on July 10, 1989, and at all times thereafter before the securities are acquired.

3. Any loan made on or before July 10, 1992, pursuant to a written agreement entered into before July 10, 1989, if the agreement evidences the intent of the borrower to enter, on a periodic basis, into securities acquisition loans described in Code section 133(b)(1)(B) (as in effect before December 19, 1989). This rule applies only if one or more securities acquisition loans were made to the borrower on or before July 10, 1989.

See Act section 7301(f)(2) to determine the specific requirements of the transition rules described above. See Act section 7301(f)(3) through (6) for additional transition rules on refinancings, collective-bargaining agreements, filings with the United States, and the 30% test for certain loans.

Line 9. If the loan is a back to back loan or an immediate allocation loan, enter the amount of interest paid by the employer corporation to the lender(s) during the plan year.

Line 11b. The repeal of Code section 133 by Act section 1602 of SBJPA 1996 does not apply to a refinancing of an ESOP securities acquisition loan made after August 20, 1996 or pursuant to a binding contract in effect before June 10, 1996, if:

1. The refinancing loan meets the requirements of Code section 133 in effect on August 20, 1996,

2. The outstanding principal amount of the loan is not increased, and

3. The term of the original loan is not extended.

Line 15(d). In determining the dividend rate for a class of common stock, use the percentage of the average dividends paid on the class of common stock during the plan year over the average value of the class of common stock during the plan year.

In determining the dividend rate for a class of preferred stock, use the dividend rate stated in the terms of the stock, or if a dividend rate is not stated, use the percentage of the average dividends paid on the class of preferred stock during the plan year over the par value of the class of preferred stock.

1999 – *Fringe Benefit Plan Annual Information Return* Instructions for Schedule F (Form 5500)

General Instructions

Purpose of Schedule

Schedule F must be attached to the Form 5500 filed for every fringe benefit plan required to file under Code section 6039D. This includes:

- A cafeteria plan described in Code section 125,
- An educational assistance program described in Code section 127, and
- An adoption assistance program described in Code section 137.

Note: *If an employer offers an adoption assistance program as a benefit under a cafeteria plan, file one Schedule F for the cafeteria plan. If one Schedule F is filed for both a Code section 125 plan and a Code section 137 plan, check both the 125 box and the 137 box. Do not file Schedule F for an educational assistance program that provides only job-related training, which is deductible as an ordinary and necessary business expense under Code section 162.*

Check the Schedule F box on the Form 5500 (Part II, line 10c if a Schedule F is attached to the Form 5500.

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule F is attached.

Fringe benefit plans filing only to satisfy the requirements of Code section 6039D(a) must complete the following items on Form 5500: Boxes A, B, D, and lines 1 through 5, 8c, and 10c. The completed Form 5500 and the attached Schedule F are filed as the plan's information return.

Line 4. For reporting purposes under Code section 6039D, the term "employees participating in the plan" means any employee who, for a plan year, has had at least $1 excluded from gross income by reason of Code section 125, 127, or 137.

Line 5. The total cost of the fringe benefit plan includes:

- For a Code section 125 cafeteria plan, the amount employees elect to have an employer contribute to provide for the benefits under the plan.
- Administrative expenses including any legal, accounting, or consulting fees attributable to the plan, whether paid directly by the employer or through the plan. Overhead expenses such as utilities and photocopying costs are not to be included for this reporting purpose.

Note: *For a Code section 125 cafeteria plan, enter the amount of the salary reductions and other employer contributions. Other employer contributions include nonelective contributions and flexible credits. Nonelective contributions and flexible credits are the employer's portion of the cost or premium contributed as employer-provided coverage under a cafeteria plan arrangement. Do not subtract benefits paid out from the plan and amounts forfeited.*

Line 6. Do not complete this line if the return/report is being filed for both a welfare benefit plan and a fringe benefit plan and both have terminated during this plan year and are filing a final return/report. Enter the termination information in Form 5500, Part I, line B(3) and lines 4k and 5a of the Schedule H or lines 4j and 5a of the Schedule I, as applicable.

1999 – *Financial Transaction Schedules*
Instructions for Schedule G (Form 5500)

General Instructions

Who Must File

The Schedule G (Form 5500) must be attached to a Form 5500 filed for a plan, MTIA, 103-12 IE, or GIA to report loans or fixed income obligations in default or determined to be uncollectible as of the end of the plan year, leases in default or classified as uncollectible, and nonexempt transactions. See Schedule H (Form 5500) lines 4b, 4c, and/or 4d.

Check the Schedule G box on the Form 5500 (Part II, line 10b(6)) if a Schedule G is attached to the Form 5500. Multiple Schedule G pages must be attached to the Form 5500 if necessary to report the required information. You can get additional green ink copies by calling **1-800-TAX-FORM** (1-800-829-3676).

The Schedule G consists of three parts. Part I of the Schedule G reports any loans or fixed income obligations in default or determined to be uncollectible as of the end of the plan year. Part II of the Schedule G reports any leases in default or classified as uncollectible. Part III of the Schedule G reports nonexempt transactions.

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule G is attached.

Part I - LOANS OR FIXED INCOME OBLIGATIONS IN DEFAULT OR CLASSIFIED AS UNCOLLECTIBLE

List all loans by the plan or fixed income obligations in default or determined to be uncollectible as of the end of the plan year, or the fiscal year of the GIA, MTIA, or 103-12 IE. Include:

- Obligations where the required payments have not been made by the due date;
- Fixed income obligations that have matured, but have not been paid, for which it has been determined that payment will not be made; and
- Loans by the plan that were in default even if renegotiated later during the plan year.

Identify in (a) each obligator known to be a party-in-interest to the plan.

Provide, on a separate attachment, an explanation of what steps have been taken or will be taken to collect overdue amounts for each loan listed.

The due date, payment amount and conditions for determining default in the case of a note or loan are usually contained in the documents establishing the note or loan. A loan by the plan is in default when the borrower is unable to pay the obligation upon maturity. Obligations that require periodic repayment can default at any time. Generally loans and fixed income obligations are considered uncollectible when payment has not been made and there is little probability that payment will be made. A fixed income obligation has a fixed maturity date at a specified interest rate.

Do not report in Part I participant loans under an individual account plan with investment experience segregated for each account, that are made in accordance with 29 CFR 2550.408b-1, and that are secured solely by a portion of the participant's vested accrued benefit. Report all other participant loans in default or classified as uncollectible on Part I, and list each such loan individually.

Part II - LEASES IN DEFAULT OR CLASSIFIED AS UNCOLLECTIBLE

List any leases in default or classified as uncollectible. A lease is an agreement conveying the right to use property, plant or equipment for a stated period. A lease is in default when the required payment(s) has not been made. An uncollectible lease is one where the required payments have not been made and for which uncollectible lease is one where the required payments have not been made and for which there is little probability that payment will be made. Provide, on a separate attachment, an explanation of what steps have been taken or will be taken to collect overdue amounts for each lease listed.

Part III - NONEXEMPT TRANSACTIONS

All nonexempt party-in-interest transactions must be reported, regardless of whether disclosed in the accountant's report, unless the nonexempt transaction is:

1. Statutorily exempt under Part 4 of Title I of ERISA;
2. Administratively exempt under ERISA; section 408(a);
3. Exempt under Code sections 4975(c) or 4975(d);
4. The holding of participant contributions for a welfare plan that meets the conditions of ERISA Technical Release 92-01; or
5. A transaction of a 103-12 IE with parties other than the plan.

Nonexempt transactions with a party-in-interest include any direct or indirect:

A. Sale or exchange, or lease, of any property between the plan and a party-in-interest.

B. Lending of money or other extension of credit between the plan and a party-in-interest.

C. Furnishing of goods, services, or facilities between the plan and a party-in-interest.

D. Transfer to, or use by or for the benefit of, a party-in-interest, of any income or assets of the plan.

E. Acquisition, on behalf of the plan, of any employer security or employer real property in violation of Code section 407(a).

F. Dealing with the assets of the plan for a fiduciary's own interest or own account.

G. Acting in a fiduciary's individual or any other capacity in any transaction involving the plan on be half of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

H. Receipt of any consideration for his or her own personal account by a party-in-interest who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Note: *Amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan are participant contributions that become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets (see 29 CFR 2510.3-102). An employer holding these assets after that date commingled with its general assets, will have engaged in a prohibited use of plan assets for purposes of the nonexempt transactions described above (see ERISA section 406). See above for reporting by welfare plans that meet the conditions of ERISA Technical Release 92-01.*

If you are unsure as to whether a transaction is exempt or not, you should consult with either the plan's independent qualified public accountant or legal counsel or both.

You may indicate that an application for an administrative exemption is pending.

If the plan is a qualified pension plan and a nonexempt prohibited transaction occurred with respect to a disqualified person, a **Form 5330,** Return of Excise Taxes Related to Employee Benefit Plans, should be filed with IRS to pay the excise tax on the transaction.

For purposes of this form, party-in-interest is deemed to include a disqualified person see Code section 4975(e)(2). The term "party-in-interest" means, as to an employee benefit plan:

A. Any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel, or employee of the plan;

B. A person providing services to the plan;

C. An employer, any of whose employees are covered by the plan;

D. An employee organization, any of whose members are covered by the plan;

E. An owner, direct or indirect, of 50% or more of: **(1)** the combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation, **(2)** the capital interest or the profits interest of a partnership, or **(3)** the beneficial interest of a trust or unincorporated enterprise that is an employer or an employee organization described in C or D;

F. A relative of any individual described in A , B, C, or E;

G. A corporation, partnership, or trust or estate of which (or in which) 50% or more of: **(1)** the combined voting power of all classes of stock of such corporation, **(2)** the capital interest or profits interest of such partnership, or **(3)** the beneficial interest of such trust or estate is owned directly or indirectly, or held by, persons described in A, B, C, D, or E;

H. An employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder, directly or indirectly, of a person described in B, C, D, E, or G, or of the employee benefit plan; or

I. A 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in B, C, D, E, or G.

1999 – *Financial Information*
Instructions for Schedule H (Form 5500)

General Instructions

Who Must File

The Schedule H (Form 5500) must be attached to a Form 5500 filed for a pension benefit plan or a welfare benefit plan that covered 100 or more participants as of the beginning of the plan year and a Form 5500 filed for a MTIA, CCT, PSA, 103-12 IE, or GIA. See the instructions to the Form 5500 for **Direct Filing Entity (DFE).**

Exceptions: **(1)** Insured, unfunded, or a combination of unfunded/insured welfare plans and fully insured pension plans that meet the requirements of 29 CFR 2520.104-44 are exempt from completing the Schedule H. **(2)** If a Form 5500-C/R was filed for the plan for the 1998 plan year and the plan covered fewer than 121 participants as of the beginning of the 1999 plan year, the Schedule I may be completed instead of a Schedule H. See page 6 of the Form 5500 instructions for **Lines and Schedules To Complete.**

Check the Schedule H box on the Form 5500 (Part II, line 10b(1)) if a Schedule H is attached to the Form 5500. Do not attach both a Schedule H and a Schedule I to the same Form 5500.

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule H is attached.

Note: *Do not mark through the printed line descriptions on the Schedule H and insert your own description as this may cause additional correspondence due to a computerized review of the Schedule H.*

The cash, modified cash, or accrual basis may be used for recognition of transactions in Parts I and II, as long as you use one method consistently. Round off all amounts reported on the Schedule H to the nearest dollar. Any other amounts are subject to rejection. Check all subtotals and totals carefully.

If the assets of two or more plans are maintained in a fund that is not a DFE, a registered investment company, or the general account of an insurance company under an unallocated contract, complete by entering the plan's allocable part of each line item in Parts I and II of the Schedule H. (See the instructions for lines 1c(9) through 1c(14), including the **1999 Transition Rule** for CCTs and PSAs.)

Exception: When completing the Schedule H for a plan or DFE that participates in a CCT or PSA for which a Form 5500 has not been filed, do not allocate the income of the CCT or PSA and expenses that were subtracted from the gross income of the CCT or PSA in determining their net investment gain (loss). Instead, enter the CCT or PSA net gain (loss) on line 2b(6) or (7) in accordance with the instructions for these lines.

If assets of one plan are maintained in two or more trust funds, report the combined financial information in Parts I and II.

Current value means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. See ERISA section 3(26).

Part I - ASSET AND LIABILITY STATEMENT

Columns (a) and (b). Enter the current value on each line as of the beginning and end of the plan year.

Note: *Amounts reported in column (a) must be the same as reported for the end of the plan year for corresponding line items on the 1998 return/report for the plan. Do not include contributions designated for the 1999 plan year in column (a).*

Line 1a. Total noninterest bearing cash includes, among other things, cash on hand or cash in a noninterest bearing checking account.

Line 1b(1). Noncash basis filers should include contributions due the plan by the employer but not yet paid. Do not include other amounts due from the employer such as the reimbursement of an expense or the repayment of a loan.

Line 1b(2). Noncash basis filers should include contributions withheld by the employer from participants and amounts due directly from participants that have not yet been received by the plan. Do not include the repayment of participant loans.

Line 1b(3). Noncash basis filers should include amounts due to the plan which are not includable in lines 1b(1) or 1b(2). These amounts may include investment income earned but not yet received by the plan and other amounts due to the plan such as amounts due from the employer or another plan for expense reimbursement or from a participant for the repayment of an overpayment of benefits.

Line 1c(1). Include all assets that earn interest in a financial institution account such as interest bearing checking accounts, passbook savings accounts, or in money market accounts.

Line 1c(2). Include securities issued or guaranteed by the U.S. Government or its designated agencies such as U.S. Savings Bonds, Treasury bonds, Treasury bills, FNMA, and GNMA.

Line 1c(3). Include investment securities (other than employer securities defined in 1d(1) below) issued by a corporate entity at a stated interest rate repayable on a particular future date such as most bonds, debentures, convertible debentures, commercial paper and zero coupon bonds. Do not include debt securities of governmental units that should be reported on line 1c(2) or 1c(15).

"Preferred" means any of the above securities that are publicly traded on a recognized securities exchange and the securities have a rating of "A" or above. If the securities are not "Preferred" they are listed as "Other."

Line 1c(4)(A). Include stock issued by corporations (other than employer securities defined in 1d(1) below) which is accompanied by preferential rights such as the right to share in distributions of earnings at a higher rate or which has general priority over the common stock of the same entity. Include the value of warrants convertible into preferred stock.

Line 1c(4)(B). Include any stock (other than employer securities defined in 1d(1) below) that represents regular ownership of the corporation and is not accompanied by preferential rights. Include the value of warrants convertible into common stock.

Line 1c(5). Include the value of the plan's participation in a partnership or joint venture if the underlying assets of the partnership or joint venture are not considered to be plan assets under 29 CFR 2510.3-101. Do not include the value of a plan's interest in a partnership or joint venture that is a 103-12 IE. Include the value of a 103-12 IE in 1c(12).

Line 1c(6). Include the current value of both income and non-income producing real property owned by the plan. Do not include the value of property that is employer real property or property used in plan operations which should be reported on lines 1d and 1e, respectively.

Line 1c(7). Enter the current value of all loans made by the plan, except participant loans reportable on line 1c(8). Include the sum of the value of loans for construction, securities loans, commercial and/or residential mortgage loans that are not subject to Code section 72(p) (either by making or participating in the loans directly or by purchasing loans originated by a third party), and other miscellaneous loans.

Line 1c(8). Enter the current value of all loans to participants including residential mortgage loans that are subject to Code section 72(p). Include the sum of the value of the unpaid principal balances, plus accrued but unpaid interest, if any, for participant loans made under an individual account plan with investment experience segregated for each account, that are made in accordance with 29 CFR 2550.408b-1 and secured solely by a portion of the participant's vested accrued benefit. When applicable, combine this amount with the current value of any other participant loans. Do not include in column (b) a participant loan that has been deemed distributed during the plan year or any prior plan year under the provisions of Code

section 72(p) and proposed IRS regulation section 1.72(p)-1, if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and

2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If the deemed distributed participant loan is included in column (a) and both of these circumstances apply, report the loan as a deemed distribution on line 2g. However, if either of these circumstances does not apply, the current value of the participant loan (including interest accruing thereon after the deemed distribution) should be included in column (b) without regard to the occurrence of a deemed distribution.

Note: *For a Form 5500 that is filed for any plan year after the 1999 plan year, the entry on line 1c(8), column (b), of Schedule H (participant loans - end of year) or on line 1a, column (b), of Schedule I (plan assets - end of year) must include the current value of any participant loan that was reported as a deemed distribution on line 2g for any earlier year if, the participant resumes repayment under the loan during the plan year. In addition, the amount to be entered on line 2g must be reduced by the amount of the participant loan that was reported as a deemed distribution on line 2g for the earlier year.*

After a participant loan that has been deemed distributed is reported on line 2g, it is no longer to be reported as an asset on Schedule H or Schedule I unless, in a later year, the participant resumes repayment under the loan. However, such a loan (including interest accruing thereon after the deemed distribution) that has not been repaid is still considered outstanding for purposes of applying Code section 72(p)(2)(A) to determine the maximum amount of subsequent loans. The loan is also considered outstanding for other purposes, such as the qualification requirements of Code section 401, including, for example, the determination of top-heavy status under Code section 416. See Q & As 12 and 19 of proposed IRS regulation section 1.72(p)-1.

Lines 1c(9), (10), (11), and (12). Enter the total current value of the plan's interest in DFEs on the appropriate lines as of the beginning and end of the plan year. The value of the plan's interest in each DFE at the end of the plan year must be reported on the Schedule D (Form 5500).

For plan and DFE years beginning on or after January 1, 2000, the plan's or DFE's interest in CCTs and PSAs for which a Form 5500 has not been filed may ***not*** *be included on lines 1c(9) or 1c(10). The plan's or DFE's interest in the underlying assets of such CCTs and PSAs* ***must*** *be allocated and reported in the appropriate categories on a line-by-line basis on Part I of the Schedule H.*

1999 Transition Rule *- When completing the 1999 Schedule H for a plan or DFE that participates in a CCT or PSA for which a Form 5500 has not been filed, you may enter the current value of the plan's interest in all CCTs and PSAs on line 1c(9) or (10), as appropriate.*

Note: *For reporting purposes, a separate account that is not considered to be holding plan assets pursuant to 29 CFR 2510.3-101(h)(1)(iii) does not constitute a pooled separate account.*

Line 1c(14). Use the same method for determining the value of the insurance contracts reported here as you used for line 3 of Schedule A (Form 5500), or, if line 3 is not required, line 6.

Line 1c(15). Include all other investments not includable in lines 1c(1) through (14), such as options, index futures, repurchase agreements, state and municipal securities, collectibles, and other personal property.

Line 1d(1). An employer security is any security issued by an employer (including affiliates) of employees covered by the plan. These may include common stocks, preferred stocks, bonds, zero coupon bonds, debentures, convertible debentures, notes and commercial paper.

Line 1d(2). The term "employer real property" means real property (and related personal property) that is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this line, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

Line 1e. Include the current (not book) value of the buildings and other property used in the operation of the plan. Buildings or other property held as plan investments should be reported in 1c(6) and 1d(2).

Do not include the value of future pension payments on lines 1g, h, i, j or k.

Line 1g. Noncash basis plans should include the total amount of benefit claims that have been processed and approved for payment by the plan. Welfare plans should also include "incurred but not reported" benefit claims.

Line 1h. Noncash basis plans should include the total amount of obligations owed by the plan which were incurred in the normal operations of the plan and have been approved for payment by the plan but have not been paid.

Line 1i. "Acquisition indebtedness", for debt-financed property other than real property, means the outstanding amount of the principal debt incurred:

1. By the organization in acquiring or improving the property;

2. Before the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property; or

3. After the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property and was reasonably foreseeable at the time of such acquisition or improvement. For further explanation, see Code section 514(c).

Line 1j. Noncash basis plans should include amounts owed for any liabilities that would not be classified as benefit claims payable, operating payables, or acquisition indebtedness.

Line 1l. The entry in column (b) must equal the sum of the entry in column (a) plus lines 2k, 2l(1), and 2l(2).

Part II - INCOME AND EXPENSE STATEMENT

Line 2a. Include the total cash contributions received and/or (for accrual basis plans) due to be received.

Note: *Plans using the accrual basis of accounting should not include contributions designated for years before the 1999 plan year on line 2a.*

Line 2a(1)(B). For welfare plans, report all employee contributions, including all elective contributions under a cafeteria plan (Code section 125). For pension plans, participant contributions, for purposes of this item, also include elective contributions under a qualified cash or deferred arrangement (Code section 401(k)).

Line 2a(2). Use the current value, at date contributed, of securities or other noncash property.

Line 2b(1)(A). Enter interest earned on interest-bearing cash, including earnings from sweep accounts, STIF accounts, money market accounts, certificates of deposit, etc. This is the interest earned on the investments that are reported on line 1c(1).

Line 2b(1)(B). Enter interest earned on U.S. Government Securities. This is the interest earned on the investments that are reported on line 1c(2).

Line 2b(1)(C). Generally, this is the interest earned on securities that are reported on lines 1(c)(3)(A) and (B) and 1d(1).

Line 2b(2). Generally, the dividends are for investments reported on line 1c(4)(A) and (B) and 1d(1). For accrual basis plans, include any dividends declared for stock held on the date of record, but not yet received as of the end of the plan year.

Line 2b(3). Generally, rents represent the income earned on the real property that is reported in items 1c(6) and 1d(2). Rents should be entered as a "Net" figure. Net rents are determined by taking the total rent received and subtracting all expenses directly associated with the property. If the real property is jointly used as income producing property and for the operation of the plan, that portion of the expenses attributable to the income producing portion of the property should be netted against the total rents received.

Line 2b(4). Enter in column (b), the total of net gain (loss) on sale of assets. This equals the sum of the net realized gain (or loss) on each asset held at the beginning of the plan year which was sold or exchanged during the plan year, and on each asset that was both acquired and disposed of within the plan year.

Note: *As current value reporting is required for the Form 5500, assets are revalued to current value at the end of the plan year. For purposes of this form, the increase or decrease in the value of assets since the beginning of the plan year (if held on the first day of the plan year) or their acquisition date (if purchased during the plan year) is reported in line 2b(5) below, with two exceptions: (1) the realized gain (or loss) on each asset that was disposed of during the plan year is reported in 2b(4) (NOT on line 2b(5)), and (2) the net investment gain (or loss) from CCTs, PSAs, MTIAs, 103-12 IEs, and registered investment companies is reported in lines 2b(6) through (10).*

The sum of the realized gain (or loss) of assets sold or exchanged during the plan year is to be calculated as follows:

1. Enter in 2b(4)(A), column (a), the sum of the amount received for these former assets;

2. Enter in 2b(4)(B), column (a), the sum of the current value of these former assets as of the beginning of the plan year and the purchase price for assets both acquired and disposed of during the plan year; and

3. Enter in 2b(4)(C), column (b), the result obtained when 2b(4)(B) is subtracted from 2b(4)(A). If entering a negative number, enter a minus sign "–" to the left of the number.

Note: *Bond write-offs should be reported as realized losses.*

Line 2b(5). Subtract the current value of assets at the beginning of the year plus the cost of any assets acquired during the plan year from the current value of assets at the end of the year to obtain this figure. If entering a negative number, enter a minus sign "–" to the left of the number. Do not include the value of assets reportable in lines 2b(4) and 2b(6) through 2b(10).

Lines 2b(6), (7), (8), and (9). Report all earnings, expenses, gains or losses, and unrealized appreciation or depreciation that were included in computing the net investment gain (or loss) from all CCTs, PSAs, MTIAs, and 103-12 IEs here. If some plan funds are held in any of these entities and other plan funds are held in other funding media, complete all applicable subitems of line 2 to report plan earnings and expenses relating to the other funding media. The net investment gain (or loss) allocated to the plan for the plan year from the plan's investment in these entities is equal to:

1. The sum of the current value of the plan's interest in each entity at the end of the plan year,

2. Minus the current value of the plan's interest in each entity at the beginning of the plan year,

3. Plus any amounts transferred out of each entity by the plan during the plan year, and

4. Minus any amounts transferred into each entity by the plan during the plan year.

Enter the net gain as a positive number or the net loss as a negative number.

Note: *Enter the combined net investment gain or loss from all CCTs and PSAs, regardless of whether a DFE Form 5500 was filed for the CCTs and PSAs.*

Line 2b(10). Enter net investment gain (loss) from registered investment companies here. Compute in the same manner as discussed above for lines 2b(6) through (9).

Line 2c. Include all other plan income earned that is not included in 2a or 2b. Do not include transfers from other plans that should be reported in line 2l.

Line 2e(1). Include the current value of all cash, securities, or other property at the date of distribution. Include all eligible rollover distributions as defined in Code section 401(a)(31)(C) that have been paid at the participant's election to an eligible retirement plan (including an IRA within the meaning of section 401(a)(31)(D)).

Line 2e(2). Include payments to insurance companies and similar organizations such as Blue Cross, Blue Shield, and health maintenance organizations for the provision of plan benefits (e.g., paid-up annuities, accident insurance, health insurance, vision care, dental coverage, stop-loss insurance whose claims are paid to the plan (or which is otherwise an asset of the plan)), etc.

Line 2e(3). Include all payments made to other organizations or individuals providing benefits. Generally, these are individual providers of welfare benefits such as legal services, day care services, training and apprenticeship services.

Line 2f. Include on this line all distributions paid during the plan year of excess deferrals under Code section 402(g)(2)(A)(ii), excess contributions under section 401(k)(8), and excess aggregate contributions under section 401(m)(6). Include allocable income distributed. Also include on this line any elective deferrals and employee contributions that were distributed or returned to employees during the plan year in accordance with section 1.415-6(b)(6)(iv) of the Income Tax Regulations, as well as any attributable gains that were also distributed.

Line 2g. Report on line 2g a participant loan that is included in line 1c(8), column (a) (participant loans - beginning of year) and that has been deemed distributed during the plan year or any prior plan year under the provisions of Code section 72(p) and proposed IRS regulation section 1.72(p)-1 only if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and

2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If either of these circumstances does not apply, a deemed distribution of a participant loan should not be reported on line 2g. Instead, the current value of the participant loan (including interest accruing thereon after the deemed distribution) should be included on line 1c(8), column (b) (participant loans - end of year), without regard to the occurrence of a deemed distribution.

Note: *For a Form 5500 that is filed for any plan year after the 1999 plan year, the amount to be reported on line 2g of Schedule H or Schedule I must be reduced if, during the plan year, a participant resumes repayment under a participant loan that was reported as a deemed distribution on line 2g for any earlier year. The amount of the required reduction is the amount of the participant loan that was reported as a deemed distribution on line 2g for the earlier year. If entering a negative number, enter a minus sign "–" to the left of the number. The current value of the participant loan must then be included in line 1c(8), column (b), of Schedule H (participant loans - end of year) or in line 1a, column (b), of Schedule I (plan assets - end of year).*

Although certain participant loans that are deemed distributed are to be reported on line 2g of the Schedule H or Schedule I, and are not to be reported on the Schedule H or Schedule I as an asset thereafter (unless the participant resumes repayment under the loan in a later year), they are still considered outstanding loans and are not treated as actual distributions for certain purposes. See Q&As 12 and 19 of proposed IRS regulation section 1.72(p)-1.

Line 2h. Interest expense is a monetary charge for the use of money borrowed by the plan. This amount should include the total of interest paid or to be paid (for accrual basis plans) during the plan year.

Line 2i. Report all administrative expenses (by specified category) paid by or charged to the plan, including those that were not subtracted from the gross income of CCTs, PSAs, MTIAs, and 103-12 IEs in determining their net investment gain(s) or loss(es). Expenses incurred in the general operations of the plan are classified as administrative expenses.

Line 2i(1). Include the total fees paid (or in the case of accrual basis plans costs incurred during the plan year but not paid as of the end of the plan year) by the plan for outside accounting, actuarial, legal, and valuation/appraisal services. Include fees for the annual audit of the plan by an independent qualified public accountant; for payroll audits; for accounting/bookkeeping services; for actuarial services rendered to the plan, and to a lawyer for rendering legal opinions, litigation, and advice (but not for providing legal services as a benefit to plan participants).

Include the fee(s) for valuations or appraisals to determine the cost, quality, or value of an item such as real property, personal property (gemstones, coins, etc.), and for valuations of closely held securities for which there is no ready market. Do not include amounts paid to plan employees to perform bookkeeping/accounting functions which should be included in 2i(4).

Line 2i(2). Enter the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) to a contract administrator for performing administrative services for the plan. For purposes of the return/report, a contract administrator is any individual, partnership or corporation, responsible for managing the clerical operations (e.g., handling membership rosters, claims payments, maintaining books and records) of the plan on a contractual basis. Do not include salaried staff or employees of the plan or banks or insurance carriers.

Line 2i(3). Enter the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) to an individual, partnership or corporation (or other person) for advice to the plan relating to its investment portfolio. These may include fees paid to manage the plan's investments, fees for specific advice on a particular investment, and fees for the evaluation of the plan's investment performance.

Line 2i(4). Other expenses are those that cannot be included in 2i(1) through 2i(3). These may include plan expenditures such as salaries and other compensation and allowances (e.g., payment of premiums to provide health insurance benefits to plan employees), expenses for office supplies and equipment, cars, telephone, postage, rent, expenses associated with the ownership of a building used in the operation of the plan, all miscellaneous expenses and trustees' fees and reimbursement of expenses associated with trustees such as lost time, seminars, travel, meetings, etc.

Line 2l. Include in these reconciliation figures the value of all transfers of assets or liabilities into or out of the plan resulting from, among other things, mergers and consolidations. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. A transfer is not a shifting of one plan's assets or liabilities from one investment to another. A transfer is not a distribution of all or part of an individual participant's account balance that is reportable on Form 1099-R (see the instructions for line 2e). Transfers out at the end of the year should be reported as occurring during the plan year.

Note: *If this Schedule H is filed for a DFE, report the value of all asset transfers to the DFE, including those resulting from contributions to participating plans on line 2l(1), and report the total value of all assets transferred out of the DFE, including assets withdrawn for disbursement as benefit payments by participating plans, on line 2l(2). Contributions and benefit payments are considered to be made to/by the plan (not to/by a DFE).*

Part III - ACCOUNTANT'S OPINION

Line 3. The administrator of an employee benefit plan who files a Schedule H (Form 5500) generally must engage an independent qualified public accountant pursuant to ERISA 103(a)(3)(A) and 29 CFR 2520.103-1(b). This requirement also applies to a Form 5500 filed for a 103-12 IE and for a GIA (see 29 CFR 2520.103-12 and 29 CFR 2520.103-2). The accountant's report must be attached to the Form 5500 when a Schedule H (Form 5500) is attached unless line 3b(1) or 3b(2) on the Schedule H is checked.

29 CFR 2520.103-1(b) requires that any separate financial statements prepared in order for the independent qualified public accountant to form the opinion and notes to these financial statements must be attached to the Form 5500. Any separate statements must include the information required to be disclosed in Parts I and II of the Schedule H; however, they may be aggregated into categories in a manner other than that used on the Schedule H. The separate statements should be either typewritten or printed and consist of reproductions of Parts I and II or statements incorporating by references Parts I and II. See ERISA section 103(a)(3)(A), and the DOL regulations 29 CFR 2520.103-1(a)(2) and (b), 2520.103-2, and 2520.104-50.

If the required accountant's report is not attached to the Form 5500, the filing is subject to rejection as incomplete and penalties may be assessed.

Plans that are NOT unfunded include those plans that received employee (or former employee) contributions during the plan year and/or used a trust or separately maintained fund (including a Code section 501(c)(9) trust) to hold plan assets or act as a conduit for the transfer of plan assets during the plan year. See page 6 of the Form 5500 instructions under ***Lines and Schedules To Complete.***

Lines 3a(1) through 3a(4). These boxes identify the type of opinion offered by the accountant. Enter the name and EIN of the accountant (or accounting firm) in the space provided on line 3d.

Line 3a(1). Check if an unqualified opinion was issued. Generally, an unqualified opinion is issued when the independent qualified public accountant concludes that the plan's financial statements present fairly, in all material respects, the financial status of the plan as of the end of the period audited and the changes in its financial status for the period under audit in conformity with generally accepted accounting principles.

Line 3a(2). Check if a qualified opinion was issued. Generally a qualified opinion is issued by an independent qualified public accountant when the plan's financial statements present fairly, in all material respects, the financial status of the plan as of the end of the audit period and the changes in its financial status for the period under audit in conformity with generally accepted accounting principles, except for the effects of one or more matters that are described in the opinion.

Line 3a(3). Check if a disclaimer of opinion was issued. A disclaimer of opinion is issued when the independent qualified public accountant does not express an opinion on the financial statements because he or she has not performed an audit sufficient in scope to enable him or her to form an opinion on the financial statements.

Line 3a(4). Check if the plan received an adverse accountant's opinion. Generally an adverse opinion is issued by an independent qualified public accountant when the plan's financial statements do not present fairly, in all material respects, the financial status of the plan as of the end of the audit period and the changes in its financial status for the period under audit in conformity with generally accepted accounting principles.

Line 3b(1). Check this box only if the Schedule H is being filed for a CCT, PSA, or MTIA.

Line 3b(2). Check this box if the plan has elected to defer attaching the accountant's opinion for the first of 2 consecutive plan years, one of which is a short plan year of 7 months or less. The Form 5500 for the first of the 2 years must be complete and accurate, with all attachments except for the accountant's report; and the Form 5500 for the second year must include: **(a)** financial schedules and statements for both plan years; **(b)** a report of an independent qualified public accountant with respect to the financial schedules and statements for each of the 2 plan years (regardless of the number of participants covered at the beginning of each plan year); and **(c)** a statement identifying any material differences between the unaudited financial information submitted with the first Form 5500 and the audited financial information submitted with the second Form 5500. See 29 CFR 2520.104-50.

Note: *Do not check the box on line 3a(2) if the Form 5500 is filed for a 103-12 IE or a GIA. A deferral of the accountant's opinion is not permitted for a 103-12 IE or a GIA. If an E or G is entered on Form 5500, Part I, line A(4), an accountant's opinion must be attached to the Form 5500 and the type of opinion must be reported on Schedule H line 3a.*

Line 3c. Check this box only if the scope of the plan's audit was limited pursuant to DOL regulations 29 CFR 2520.103-8 and 2520.103-12(d) because the examination and report of an independent qualified accountant did not extend to: **(a)** information prepared and certified to by a bank or similar

institution or by an insurance carrier which is regulated and supervised and subject to periodic examination by a state or Federal agency, or (b) information included with the Form 5500 filed for a 103-12 IE. See 29 CFR 2520.103-8 and 2520.103-12(d).

Note: *These regulations do not exempt the plan administrator from engaging an accountant or from attaching the accountant's report to the Form 5500.*

Part IV - TRANSACTIONS DURING PLAN YEAR

Plans with assets held in a CCT, PSA, MTIA, or 103-12 IE should complete Part IV and report their investment in these entities, but not the investments made by these entities. Plans with all of their funds held in a master trust should check "No" on Schedule H, lines 4b, c, i , and j. CCTs and PSAs filing as DFEs are not required to complete Part IV, or any schedules required by Part IV.

Line 4a. Amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan are participant contributions that become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets (see 29 CFR 2510.3-102). An employer holding these assets after that date commingled with its general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). If such a nonexempt prohibited transaction occurred with respect to a disqualified person (see Code section 4975(e)(2)), file Form 5330 with the IRS to pay any applicable excise tax on the transaction. If no participant contributions were received or withheld by the employer during the plan year, answer "No."

Line 4b. Plans that check "Yes" must enter the amount and complete Part I of Schedule G. The due date, payment amount and conditions for determining default in the case of a note or loan are usually contained in the documents establishing the note or loan. A loan by the plan is in default when the borrower is unable to pay the obligation upon maturity. Obligations that require periodic repayment can default at any time. Generally loans and fixed income obligations are considered uncollectible when payment has not been made and there is little probability that payment will be made. A fixed income obligation has a fixed maturity date at a specified interest rate. Do not include participant loans made under an individual account plan with investment experience segregated for each account that were made in accordance with 29 CFR 2550.408b-1 and secured solely by a portion of the participant's vested accrued benefit.

Line 4c. Plans that check "Yes" must enter the amount and complete Part II of Schedule G. A lease is an agreement conveying the right to use property, plant or equipment for a stated period. A lease is in default when the required payment(s) has not been made. An uncollectible lease is one where the required payments have not been made and for which there is little probability that payment will be made.

Line 4d. Plans that check "Yes" must enter the amount and complete Part III of Schedule G. Check "Yes" if any nonexempt transaction with a party-in-interest occurred regardless of whether the transaction is disclosed in the accountant's report, unless the transaction is: (1) statutorily exempt under Part 4 of Title I of ERISA; (2) administratively exempt under ERISA section 408(a) or exempt under Code sections 4975(c) and 4975(d); (3) a transaction of a 103-12 IE with parties other than the plan; or (4) the holding of participant contributions in the employer's general assets for a welfare plan that meets the conditions of ERISA Technical Release 92-01.

Note: *See the instructions for Part III of the Schedule G (Form 5500) concerning non-exempt transactions and party-in-interest.*

You may indicate that an application for an administrative exemption is pending. If you are unsure as to whether a transaction is exempt or not, you should consult with either the plan's independent qualified public accountant or legal counsel or both.

Line 4e. Plans that check "Yes" must enter the aggregate amount of coverage for all claims. Check "Yes" only if the plan itself (as opposed to the plan sponsor or administrator) is a named insured under a fidelity bond covering plan officials and if the plan is protected as described in 29 CFR 2580.412-18.

Generally, every plan official of an employee benefit plan who "handles" funds or other property of such plan must be bonded. Generally, a person shall be deemed to be "handling" funds or other property of a plan, so as to require bonding, whenever his or her other duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Section 412 of ERISA and DOL regulations 29 CFR 2580 provide the bonding requirements, including the definition of "handling" (29 CFR 2580.412-6), the permissible forms of bonds (29 CFR 2580.412-10), the amount of the bond (29 CFR 2580, subpart C), and certain exemptions such as the exemption for unfunded plans, certain banks and insurance companies (ERISA section 412), and the exemption allowing plan officials to purchase bonds from surety companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds (29 CFR 2580.412-23).

Note: *Plans are permitted under certain conditions to purchase fiduciary liability insurance. These policies do not protect the plan from dishonest acts and are not bonds which should be reported in line 4e.*

Line 4f. Check "Yes," if the plan had suffered or discovered any loss as a result of any dishonest or fraudulent act(s) even if the loss was reimbursed by the plan's fidelity bond or from any other source. If "Yes" is checked enter the full amount of the loss. If the full amount of the loss has not yet been determined, provide and disclose that the figure is an estimate, such as "@ $1000."

Note: *Willful failure to report is a criminal offense. See ERISA section 501.*

Lines 4g and 4h. *Current value* means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. See ERISA section 3(26).

An accurate assessment of fair market value is essential to a pension plan's ability to comply with the requirements set forth in the Code (e.g., the exclusive benefit rule of Code section 401(a)(2), the limitations on benefits and contributions under Code section 415, and the minimum funding requirements under Code section 412) and must be determined annually.

Examples of assets that may not have a readily determinable value on an established market (e.g., NYSE, AMEX, over the counter, etc.) include real estate, nonpublicly traded securities, shares in a limited partnership, and collectibles. Do not check "Yes" on line 4g if the plan is a defined contribution plan and the only assets the plan holds, that do not have a readily determinable value on an established market, are: (1) participant loans not in default, or (2) assets over which the participant exercises control within the meaning of section 404(c) of ERISA.

Although the current value of plan assets must be determined each year, there is no requirement that the assets (other than certain nonpublicly traded employer securities held in ESOPs) be valued every year by independent third-party appraisers.

Enter in the amount column the fair market value of the assets referred to on line 4g whose value was not readily determinable on an established market and which were not valued by an independent third-party appraiser in the plan year. Generally, as it relates to these questions, an appraisal by an independent third party is an evaluation of the value of an asset prepared by an individual or firm who knows how to judge the value of such assets and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisals.

Line 4i. Check "Yes" if the plan had any assets held for investment purposes, and attach a schedule of assets held for investment purposes at end of year, a schedule of assets held for investment purposes that were both acquired and disposed of within the plan year, or both, as applicable. The schedules must use the format set forth below or a similar format and the same size paper as the Form 5500. See 29 CFR 2520.103-11.

Assets held for investment purposes shall include:

- Any investment asset held by the plan on the last day of the plan year; and

The following schedule must be clearly labeled **"Schedule of Assets Held for Investment Purposes At End of Year."**

(a)	(b) Identity of issue, borrower, lessor, or similar party	(c) Description of investment including maturity date, rate of interest, collateral, par, or maturity value	(d) Cost	(e) Current value

• Any investment asset purchased during the plan year and sold before the end of the plan year except:

1. Debt obligations of the U.S. or any U.S. agency.

2. Interests issued by a company registered under the Investment Company Act of 1940 (e.g., a mutual fund).

3. Bank certificates of deposit with a maturity of one year or less.

4. Commercial paper with a maturity of 9 months or less if it is valued in the highest rating category by at least two nationally recognized statistical rating services and is issued by a company required to file reports with the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934.

5. Participations in a bank common or collective trust.

6. Participations in an insurance company pooled separate account.

7. Securities purchased from a broker-dealer registered under the Securities Exchange Act of 1934 and either: (1) listed on a national securities exchange and registered under section 6 of the Securities Exchange Act of 1934, or (2) quoted on NASDAQ.

Assets held for investment purposes shall not include any investment that was not held by the plan on the last day of the plan year if that investment is reported in the annual report for that plan year in any of the following:

1. The schedule of loans or fixed income obligations in default required by Schedule G, Part I;

2. The schedule of leases in default or classified as uncollectible required by Schedule G, Part II;

3. The schedule of non-exempt transactions required by Schedule G, Part III; and

4. The schedule of reportable transactions required by Schedule H, line 4j.

The first schedule required to be attached to the Form 5500 is a schedule of all assets held for investment purposes at the end of the plan year, aggregated and identified by issue, maturity date, rate of interest, collateral, par or maturity value, cost and current value, and, in the case of a loan, the payment schedule. The schedule must use the format shown above (or similar format) and the same size paper as the Form 5500. The schedule must be clearly labeled **"Schedule of Assets Held for Investment Purposes At End of Year."**

Note: *In column (a), place an asterisk (*) on the line of each identified person known to be a party-in-interest to the plan. In column (c), include any restriction on transferability of corporate securities. (Include lending of securities permitted under Prohibited Transactions Exemption 81-6.)*

Special rule for the following two schedules of assets for certain participant-directed transactions. *Column (d) cost information may be omitted when reporting transactions of an individual account plan that a participant or beneficiary directed with respect to assets allocated to his or her account (including a negative election authorized under the terms of the plan).*

The second schedule required to be attached to the Form 5500 is a schedule of investment assets that were both acquired and disposed of within the plan year. This schedule must be clearly labeled **"Schedule of Investment Assets Both Acquired and Disposed of Within the Plan Year."**

Note: *Participant loans under an individual account plan with investment experience segregated for each account, that are made in accordance with 29 CFR 2550.408b-1 and that are secured solely by a portion of the participant's vested accrued benefit, may be aggregated for reporting purposes in item 4i. Under identity of borrower enter "Participant loans," under rate of interest enter the lowest rate and the highest rate charged during the plan year (e.g., 8%-10%), under the cost and proceeds columns enter zero, and under current value enter the total amount of these loans.*

Line 4j. Check "Yes" and attach to the Form 5500 the following schedule if the plan had any reportable transactions (see 29 CFR 2520.103-6 and the examples provided in the regulation). The schedule must use the format set forth below or a similar format and the same size paper as the Form 5500. See 29 CFR 2520.103-11.

A *reportable transaction* includes:

1. A single transaction within the plan year in excess of 5% of the current value of the plan assets;

2. Any series of transactions with or in conjunction with the same person, involving other property other than securities, which amount in the aggregate within the plan year (regardless of the category of asset and the gain or loss on any transaction) to more than 5% of the current value of plan assets;

3. Any transaction within the plan year involving securities of the same issue if within the plan year any series of transactions with respect to such securities amount in the aggregate to more than 5% of the current value of the plan assets; and

4. Any transaction within the plan year with respect to securities with, or in conjunction with, a person if any prior or subsequent single transaction within the plan year with such person, with respect to securities, exceeds 5% of the current value of plan assets.

The 5% figure is determined by comparing the current value of the transaction at the transaction date with the current value of the plan assets at the beginning of the plan year.

If the assets of two or more plans are maintained in one trust, the plan's allocable portion of the transactions of the trust shall be combined with the other transactions of the plan, if any, to determine which transactions (or series of transactions) are reportable (5%) transactions.

This does not apply to investments in common/collective trusts, pooled separate accounts, master trust investment accounts, 103-12 IEs and registered investment companies, whose current value was reported in lines 1c(9) through 1c(13). Instead, for investments in these entities, determine the 5% figure by the comparing the transaction date value of the acquisition and/or disposition of units of participation or shares in the entity with the current value of the plan assets at the beginning of the plan year. If the Schedule H is attached to a

The following schedule must be clearly labeled **"Schedule of Investment Assets Both Acquired and Disposed of Within the Plan Year."**

(a) Identity of issue, borrower, lessor, or similar party	(b) Description of investment including maturity date, rate of interest, collateral, par, or maturity value	(c) Costs of acquisitions	(d) Proceeds of dispositions

The schedule must be clearly labeled **"Schedule of Reportable Transactions."**

(a) Identity of party involved	(b) Description of asset (include interest rate and maturity in case of a loan)	(c) Purchase price	(d) Selling price	(e) Lease rental	(f) Expense incurred with transaction	(g) Cost of asset	(h) Current value of asset on transaction date	(i) Net gain or (loss)

Form 5500 filed for a plan with all plan funds held in a master trust, check "No" on line 4j. Plans with assets in a master trust which have other transactions should determine the 5% figure by subtracting the current value of plan assets held in the master trust from the current value of all plan assets at the beginning of the plan year and check "Yes" or "No," as appropriate. Do not include individual transactions of investment arrangements reported in items 1c(9) through 1c(13).

In the case of a purchase or sale of a security on the market, do not identify the person from whom purchased or to whom sold.

Special rule for certain participant-directed transactions. *Transactions under an individual account plan that a participant or beneficiary directed with respect to assets allocated to his or her account (including a negative election authorized under the terms of the plan) should not be taken into account for purposes of preparing the Schedule of Reportable Transactions. The current value of all assets of the plan, including these transactions, should be included in determining the 5% figure for all other transactions.*

The schedule must be clearly labeled **"Schedule of Reportable Transactions."**

Line 4k. Check "Yes" if all the plan assets (including insurance/annuity contracts) were distributed to the participants and beneficiaries, legally transferred to the control of another plan, or brought under the control of the PBGC.

Check "No" for a welfare benefit plan that is still liable to pay benefits for claims that were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

Note: *If "Yes" was checked on line 4k because all plan assets were distributed to participants and/or beneficiaries, you are encouraged to complete Schedule SSA (Form 5500), listing each participant reported on a previous Schedule SSA (Form 5500) who has received all of his/her plan benefits, and therefore, is no longer entitled to receive deferred vested benefits. This will ensure that SSA's records are correct, and help eliminate confusion for participants and plan administrators in the future. See the instructions to the Schedule SSA (Form 5500) for greater detail.*

Line 5a. Check "Yes" if a resolution to terminate the plan was adopted during this or any prior plan year, unless the termination was revoked and no assets reverted to the employer. If "Yes" is checked, enter the amount of plan assets that reverted to the employer during the plan year in connection with the implementation of such termination. Enter "-0-" if no reversion occurred during the current plan year.

Caution: *A Form 5500 must be filed for each year the plan has assets, and, in the case of a welfare benefit plan, if the plan is still liable to pay benefits for claims that were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).*

Line 5b. Enter information concerning assets and/or liabilities transferred from this plan to another plan(s) (including spin-offs) during the plan year. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Enter the name, PN, and EIN of the other plan(s) involved on lines 5b(1), (2) and (3).

Note: *A distribution of all or part of an individual participant's account balance that is reportable on **Form 1099-R** should not be included on line 5b.*

Caution: ***Form 5310-A**, Notice of Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, must be filed at least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. There is a penalty for not filing Form 5310-A on time. In addition, a transfer of benefit liabilities involving a plan covered by PBGC insurance may be reportable to the PBGC (see PBGC Form 10 and Form 10-Advance).*

1999 – *Financial Information – Small Plan* Instructions for Schedule I (Form 5500)

General Instructions

Who Must File

The Schedule I (Form 5500) must be attached to a Form 5500 filed for pension benefit plans and welfare benefit plans that covered fewer than 100 participants as of the beginning of the plan year.

Exception: If a Form 5500-C/R was filed for the plan for the 1998 plan year **and** the plan covered fewer than 121 participants as of the beginning of the 1999 plan year, the Schedule I may be completed instead of a Schedule H.

Note: *Certain insured, unfunded or combination unfunded/insured welfare plans are exempt from filing the Form 5500 and the Schedule I. In addition, certain fully insured pension plans are exempt from completing the Schedule I. See the Form 5500 instructions for* ***Pension and Welfare Plans Excluded From Filing*** *on page 3 and* ***Limited Pension Plan Reporting*** *on page 7 for more information.*

Check the Schedule I box on the Form 5500 (Part II, line 10b(2)) if a Schedule I is attached to the Form 5500. Do not attach both a Schedule I and a Schedule H to the same Form 5500.

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule I is attached.

Note: *Do not mark through the printed line descriptions on the Schedule I and insert your own description as this may cause additional correspondence due to a computerized review of the Schedule I.*

Use either the cash, modified cash, or accrual basis for recognition of transactions, as long as you use one method consistently. Round off all amounts reported on the Schedule I to the nearest dollar. Any other amounts are subject to rejection. Check all subtotals and totals carefully.

If the assets of two or more plans are maintained in one fund, such as when an employer has two plans that are funded through a single trust (except a DFE), complete Parts I and II by entering the plan's allocable part of each line item.

If assets of one plan are maintained in two or more trust funds, report the combined financial information in Part I.

Current value means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. See ERISA section 3(26).

Part I - Small Plan Financial Information

Total plan assets at the beginning of the plan year plus the net income (loss) and any net transfers for the plan year must equal the total plan assets at the end of the plan year.

PLAN ASSETS AND LIABILITIES

Amounts reported on line 1a, 1b, and 1c for the beginning of the plan year must be the same as reported for the end of the plan year for corresponding lines on the 1998 return/report.

Do not include contributions designated for the 1999 plan year in column (a).

Line 1a. A plan with assets held in common/collective trusts, pooled separate accounts, master trust investment accounts, and/or 103-12 IEs must also attach Schedule D (Form 5500).

Use the same method for determining the value of the plan's interest in an insurance company general account (unallocated contracts) which you used for line 3 of Schedule A (Form 5500), or, if line 3 is not required, line 6.

Note: *Do not include in column (b) a participant loan that has been deemed distributed during the plan year or any prior plan year under the provisions of Code section 72(p) and proposed IRS regulation section 1.72(p)-1, if both of the following circumstances apply:*

1. *Under the plan, the participant loan is treated as a direct investment solely of the participant's individual account; and*

2. *As of the end of the plan year, the participant is not continuing repayment under the loan.*

If the deemed distributed participant loan is included in column **(a)** *and both of these circumstances apply, report the loan as a deemed distribution on line 2g. However, if either of these circumstances does not apply, the current value of the participant loan (including interest accruing thereon after the deemed distribution) should be included in column* **(b)** *without regard to the occurrence of a deemed distribution.*

For a Form 5500 that is filed for any plan year after the 1999 plan year, the entry on line 1a, column (b), of Schedule I (plan assets - end of year) or on line 1c(8), column (b), of Schedule H (participant loans - end of year) must include the current value of any participant loan that was reported as a deemed distribution on line 2g for any earlier year if, during the plan year, the participant resumes repayment under the loan. In addition, the amount to be entered on line 2g must be reduced by the amount of the participant loan that was reported as a deemed distribution on line 2g for the earlier year.

After a participant loan that has been deemed distributed is reported on line 2g, it is no longer to be reported as an asset on Schedule H or Schedule I unless, in a later year, the participant resumes repayment under the loan. However, such a loan (including interest accruing thereon after the deemed distribution) that has not been repaid is still considered outstanding for purposes of applying Code section 72(p)(2)(A) to determine the maximum amount of subsequent loans. The loan is also considered outstanding for other purposes, such as the qualification requirements of Code section 401, including, for example, the determination of top-heavy status under Code section 416. See Q&As 12 and 19 of proposed IRS regulation section 1.72(p)-1.

Line 1b. Enter the total liabilities at the beginning and end of the plan year. Liabilities to be entered here do not include the value of future pension payments to plan participants; however, the amount to be entered in line 1b for accrual basis filers includes, among other things:

1. Benefit claims that have been processed and approved for payment by the plan but have not been paid (including all incurred but not reported welfare benefit claims);

2. Accounts payable obligations owed by the plan that were incurred in the normal operations of the plan but have not been paid; and

3. Other liabilities such as acquisition indebtedness and any other amount owed by the plan.

Line 1c. Enter the net assets as of the beginning and end of the plan year. (Subtract line 1b from 1a.)

INCOME, EXPENSES, AND TRANSFERS FOR THIS PLAN YEAR

Line 2a. Include the total cash contributions received and/or (for accrual basis plans) due to be received.

Line 2a(1). Plans using the accrual basis of accounting should not include contributions designated for years before the 1999 plan year on line 2a(1).

Line 2a(2). For welfare plans, report all employee contributions, including all elective contributions under a cafeteria plan (Code section 125). For pension plans, participant contributions, for purposes of this item, also include elective contributions under a qualified cash or deferred arrangement (Code section 401(k)).

Line 2b. Use the current value, at date contributed, of securities or other noncash property.

Line 2d. Enter the total of all cash contributions (line 2a(1) through (3)), noncash contributions (line 2b), and other plan income during the plan year. If entering a negative number, enter a minus sign "–" to the left of the number. Plan income received and/or receivable may include, among other things:

1. Interest on investments (including money market accounts, sweep accounts, STIF accounts, etc.).

2. Dividends. (Accrual basis plans should include dividends declared for all stock held by the plan even if the dividends have not been received as of the end of the plan year.)

3. Rents from income-producing property owned by the plan.

4. Royalties.

5. Net gain or loss from the sale of assets.

6. Other income such as unrealized appreciation (depreciation) in plan assets. To compute this amount subtract the current value of all assets at the beginning of the year plus the cost of any assets acquired during the plan year from the current value of all assets at the end of the year minus assets disposed of during the plan year.

Line 2b. Include: **(1)** payments made (and for accrual basis filers payments due) to or on behalf of participants or beneficiaries in cash, securities, or other property (including rollovers of an individual's accrued benefit or account balance). Include all eligible rollover distributions as defined in Code section 401(a)(31)(C) that have been paid at the participant's election to an eligible retirement plan (including an IRA within the meaning of section 401(a)(31)(D)).; **(2)** payments to insurance companies and similar organizations such as Blue Cross, Blue Shield, and health maintenance organizations for the provision of plan benefits (e.g., paid-up annuities, accident insurance, health insurance, vision care, dental coverage, etc.); and **(3)** payments made to other organizations or individuals providing benefits. Generally, these payments discussed in (3) are made to individual providers of welfare benefits such as legal services, day care services, and training and apprenticeship services. If securities or other property are distributed to plan participants or beneficiaries, include the current value on the date of distribution.

Line 2f. Include all distributions paid during the plan year of excess deferrals under Code section 402(g)(2)(A)(ii), excess contributions under section 401(k)(8), and excess aggregate contributions under section 401(m)(6), allocable income distributed, and any elective deferrals and employee contributions that were distributed or returned to employees during the plan year in accordance with section 1.415-6(b)(6)(iv) of the Income Tax Regulations, as well as any attributable gains that were also distributed.

Line 2g. Report on line 2g a participant loan that is included in line 1a, column (a) (participant loans - beginning of year) and that has been deemed distributed during the plan year or any prior plan year under the provisions of Code section 72(p) and proposed IRS regulation section 1.72(p)-1 only if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and

2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If either of these circumstances does not apply, a deemed distribution of a participant loan should not be reported on line 2g. Instead, the current value of the participant loan (including interest accruing thereon after the deemed distribution) should be included on line 1a, column (b) plan assets - end of year), without regard to the occurrence of a deemed distribution.

Note: *For a Form 5500 that is filed for any plan year after the 1999 plan year, the amount to be reported on line 2g of Schedule H or Schedule I must be reduced if, during the plan year, a participant resumes repayment under a participant loan that was reported as a deemed distribution on line 2g for any earlier year. The amount of the required reduction is the amount of the participant loan that was reported as a deemed distribution on line 2g for the earlier year. If entering a negative number, enter a minus sign "–" to the left of the number. The current value of the participant loan must then be included in line 1c(8), column (b), of Schedule H (participant loans - end of year) or in line 1a, column (b), of Schedule I (plan assets - end of year).*

Although certain participant loans that are deemed distributed are to be reported on line 2g of the Schedule H or Schedule I, and are not to be reported on the Schedule H or Schedule I as an asset thereafter (unless the participant resumes repayment under the loan in a later year), they are still considered outstanding loans and are not treated as actual distributions for certain purposes. See Q&As 12 and 19 of proposed IRS regulation section 1.72(p)-1.

Line 2h. Other expenses (paid and/or payable) may include, among others:

1. Salaries to employees of the plan;

2. Expenses for accounting, actuarial, legal, and investment services.

3. Fees and expenses for trustees including reimbursement for travel, seminars, and meeting expenses;

4. Fees paid for valuations and appraisals, and

5. Other administrative and miscellaneous expenses paid by or charged to the plan, including those that were not subtracted from the gross income of master trust investment accounts and 103-12IEs in determining their net investment gain(s) or loss(es).

Line 2i. Enter the total of all benefits paid or due as reported on lines 2e, 2f, and 2g and all other plan expenses (line 2h) during the year.

Line 2k. Enter the net value of all assets transferred to and from the plan during the plan year including those resulting from mergers and spin-offs. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Transfers out at the end of the year should be reported as occurring during the plan year.

Note: *A distribution of all or part of an individual participant's account balance that is reportable on Form 1099-R should not be included on line 2k but must be included in benefit payments reported on line 2e.*

SPECIFIC ASSETS

Lines 3a through 3g. Check "Yes" and enter the amount or "No" as specified below. Do not include the plan's interest in CCTs, PSAs, MTIAs, and 103-12 IEs. (See instructions for **Direct Filing Entity (DFE)** on page 4 of the instructions for the Form 5500.)

Line 3a. Enter the value of the plan's participation in a partnership or joint venture, unless the partnership or joint venture is a 103-12 IE.

Line 3b. The term "employer real property" means real property (and related personal property) that is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this line, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

Line 3d. An employer security is any security issued by an employer (including affiliates) of employees covered by the plan. These may include common stocks, preferred stocks, bonds, zero coupon bonds, debentures, convertible debentures, notes and commercial paper.

Line 3e. Enter the current value of all loans to participants including residential mortgage loans that are subject to Code section 72(p). Include the sum of the value of the unpaid principal balances, plus accrued but unpaid interest, if any, for participant loans made under an individual account plan with investment experience segregated for each account, that are made in accordance with 29 CFR 2550.408b-1 and secured solely by a portion of the participant's vested accrued benefit. When applicable, combine this amount with the current value of any other participant loans. Do not include any amount of a participant loan that has been deemed distributed during this or any prior plan year under the provisions of Code section 72(p) and proposed IRS regulation section 1.72(p)-1.

Note: *After participant loans have been deemed distributed and reported on line 2g of the Schedule I or H, they are no longer required to be reported as assets on the Schedule I or H.*

However, such loans (including interest accruing thereon after the deemed distribution) that have not been repaid are still considered outstanding for purposes of applying Code section 72(p)(2)(A) to determine the maximum amount of subsequent loans.

Line 3f. Enter the current value of all loans made by the plan, except participant loans reportable on line 3e. Include the sum of the value of loans for construction, securities loans, commercial and/or residential mortgage loans that are not subject to Code section 72(p) (either by making or participating in the loans directly or by purchasing loans originated by a third party), and other miscellaneous loans.

Line 3g. Include all property that has concrete existence and is capable of being processed, such as goods, wares, merchandise, furniture, machines, equipment, animals, automobiles, etc. This includes collectibles, such as works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages, musical instruments, and historical objects (documents, clothes, etc.). Do not include the value of a plan's interest in property reported on lines 3a through 3f, or intangible property, such as patents, copyrights, goodwill, franchises, notes, mortgages, stocks, claims, interests, or other property that embodies intellectual or legal rights.

Part II - Transactions During Plan Year

Plans with assets held in a CCT, PSA, MTIA, or 103-12 IE should complete Part I and report their investment in these entities, but not the investments made by these entities. Plans with all of their funds held in a master trust should check "No" on Schedule I, lines 4b, c, and i.

Line 4a. Amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan are participant contributions that become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets (see 29 CFR 2510.3-102). An employer holding these assets after that date commingled with its general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). If such a nonexempt prohibited transaction occurred with respect to a disqualified person (see Code section 4975(e)(2)), file Form 5330 with the IRS to pay any applicable excise tax on the transaction. If no participant contributions were received or withheld by the employer during the plan year, answer "No."

Line 4b. Plans that check "Yes" must enter the amount. The due date, payment amount and conditions for determining default in the case of a note or loan are usually contained in the documents establishing the note or loan. A loan by the plan is in **default** when the borrower is unable to pay the obligation upon maturity. Obligations that require periodic repayment can default at any time. Generally, loans and fixed income obligations are considered **uncollectible** when payment has not been made and there is little probability that payment will be made. A fixed income obligation has a fixed maturity date at a specified interest rate. Do not include participant loans made under an individual account plan with investment experience segregated for each account that were made in accordance with 29 CFR 2550.408b-1 and secured solely by a portion of the participant's vested accrued benefit.

Line 4c. Plans that check "Yes" must enter the amount. A lease is an agreement conveying the right to use property, plant or equipment for a stated period. A lease is in default when the required payment(s) has not been made. An uncollectible lease is one where the required payments have not been made and for which there is little probability that payment will be made.

Line 4d. Plans that check "Yes" must enter the amount. Check "Yes" if any non exempt transaction with a party-in-interest occurred, unless the transaction is: **(1)** statutorily exempt under Part 4 of Title I of ERISA, **(2)** administratively exempt under ERISA section 408(a) or exempt under Code sections 4975(c) and 4975(d), **(3)** a transaction of a 103-12 IE with parties other than the plan; or **(4)** the holding of participant contributions for a welfare plan that meets the conditions of ERISA Technical Release 92-01. You may indicate that an application for an administrative exemption is pending. If you are unsure as to whether a transaction is exempt or not, you should consult with either a qualified public accountant, legal counsel or both. If the plan is a qualified pension plan and a nonexempt prohibited transaction occurred with respect to a disqualified person, a Form 5330 should be filed with IRS to pay the excise tax on the transaction.

Party-in-Interest. For purposes of this form, party-in-interest is deemed to include a disqualified person see Code section 4975(e)(2). The term "party-in-interest" means, as to an employee benefit plan:

A. Any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel, or employee of the plan;

B. A person providing services to the plan;

C. An employer, any of whose employees are covered by the plan;

D. An employee organization, any of whose members are covered by the plan;

E. An owner, director indirect, of 50% or more of the combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation, (2) the capital interest or the profits interest of a partnership, or (3) the beneficial interest of a trust or unincorporated enterprise that is an employer or an employee organization described in C or D;

F. A relative of any individual described in A, B, C, or E;

G. A corporation, partnership, or trust or estate of which (or in which) 50% or more of: (1) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (2) the capital interest or profits interest of such

H. An employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder, directly or indirectly, of a person described in B, C, D, E, or G, or of the employee benefit plan; or

I. A 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in B, C, D, E, or G.

Nonexempt transactions with a party-in-interest include any direct or indirect:

A. Sale or exchange, or lease, of any property between the plan and a party-in-interest.

B. Lending of money or other extension of credit between the plan and a party-in-interest.

C. Furnishing of goods, services, or facilities between the plan and a party-in-interest.

D. Transfer to, or use by or for the benefit of, a party-in-interest, of any income or assets of the plan.

E. Acquisition, on behalf of the plan, of any employer security or employer real property in violation of Code section 407(a).

F. Dealing with the assets of the plan for a fiduciary's own interest or own account.

G. Acting in a fiduciary's individual or any other capacity in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

H. Receipt of any consideration for his or her own personal account by a party-in-interest who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Note: *Amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan are participant contributions that become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets (see 29 CFR 2510.3-102). An employer holding these assets after that date commingled with its general assets will have engaged in a prohibited use of plan assets for purposes of the nonexempt transactions described above (see ERISA section 406).*

Line 4e. Plans that check "Yes" must enter the aggregate amount of coverage for all claims. Check "Yes" only if the plan itself (as opposed to the plan sponsor or administrator) is a named insured under a fidelity bond covering plan officials and if the plan is protected as described in 29 CFR 2580.412-18. Generally, every plan official of an employee benefit plan who "handles" funds or other property of such plan must be bonded. Generally, a person shall be deemed to be "handling" funds or other property of a plan, so as to require bonding, whenever his or her other duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Section 412 of ERISA and DOL regulations 29 CFR 2580 provide the bonding requirements, including the definition of "handling" (29 CFR 2580.412-6), the permissible forms of bonds (29 CFR 2580.412-10), the amount of the bond (29 CFR 2580, subpart C), and certain exemptions such as the exemption for unfunded plans, certain banks and insurance companies (ERISA section 412), and the exemption allowing plan officials to purchase bonds from surety companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds (29 CFR 2580.412-23).

Note: *Plans are permitted under certain conditions to purchase fiduciary liability insurance. These policies do not protect the plan from dishonest acts and are not bonds which should be reported in line 4e*

Line 4f. Check "Yes," if the plan had suffered or discovered any loss as a result of any dishonest or fraudulent act(s) even if the loss was reimbursed by the plan's fidelity bond or from any other source. If "Yes" is checked enter the full amount of the loss. If the full amount of the loss has not yet been determined, provide and disclose that the figure is an estimate, such as "● $1000."

Note: *Willful failure to report is a criminal offense. See ERISA section 501.*

Lines 4g and 4h. *Current value* means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. See ERISA section 3(26).

An accurate assessment of fair market value is essential to a pension plan's ability to comply with the requirements set forth in the Code (e.g., the exclusive benefit rule of Code section 401(a)(2), the limitations on benefits and contributions under Code section 415, and the minimum funding requirements under Code section 412) and must be determined annually.

Examples of assets that may not have a readily determinable value on an established market (e.g., NYSE, AMEX, over the counter, etc.) include real estate, nonpublicly traded securities, shares in a limited partnership, and collectibles. Do not check "Yes" on line 4g if the plan is a defined contribution plan and the only assets the plan holds, that do not have a readily determinable value on an established market, are: (1) participant loans not in default, or (2) assets over which the participant exercises control within the meaning of section 404(c) of ERISA.

Although the current value of plan assets must be determined each year, there is no requirement that the assets (other than certain nonpublicly traded employer securities held in ESOPs) be valued every year by independent third-party appraisers.

Enter in the amount column the fair market value of the assets referred to on line 4g whose value was not readily determinable on an established market and which were not valued by an independent third-party appraiser in the plan year. Generally, as it relates to these questions, an appraisal by an independent third party is an evaluation of the value of an asset prepared by an individual or firm who knows how to judge the value of such assets and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisals.

Line 4i. Include as a single security all securities of the same issue. An example of a single issue is a certificate of deposit issued by the XYZ Bank on July 1, 1998, which matures on June 30, 1999, and yields 5.5%. For the purposes of line 4i, do not check "Yes" for securities issued by the U.S. Government or its agencies.

Line 4j. Check "Yes" if all the plan assets (including insurance/annuity contracts) were distributed to the participants and beneficiaries, legally transferred to the control of another plan, or brought under the control of the PBGC.

Check "No" for a welfare benefit plan that is still liable to pay benefits for claims that were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

Note: *If "Yes" was checked on line 4k because all plan assets were distributed to participants and/or beneficiaries, you are encouraged to complete Schedule SSA (Form 5500), listing each participant reported on a previous Schedule SSA (Form 5500) who has received all of his/her plan benefits, and therefore, is no longer entitled to receive deferred vested benefits. This will ensure that SSA's records are correct, and help eliminate confusion for participants and plan administrators in the future. See the instructions to the Schedule SSA (Form 5500) for greater detail.*

Line 5a. Check "Yes" if a resolution to terminate the plan was adopted during this or any prior plan year, unless the termination was revoked and no assets reverted to the employer. If "Yes" is checked, enter the amount of plan assets that reverted to the employer during the plan year in connection with the implementation of such termination. Enter "-0-" if no reversion occurred during the current plan year.

Caution: *A Form 5500 must be filed for each year the plan has assets, and, in the case of a welfare benefit plan, if the plan is still liable to pay benefits for claims that were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).*

Line 5b. Enter information concerning assets and/or liabilities transferred from this plan to another plan(s) (including spin-offs) during the plan year. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Enter the name, PN, and EIN of the other plan(s) involved on lines 5b(1), 5b(2) and 5b(3).

Note: *A distribution of all or part of an individual participant's account balance that is reportable on* **Form 1099-R** *should not be included on line 5b.*

Caution: ***Form 5310-A,*** *Notice of Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, must be filed at least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. There is a penalty for not filing Form 5310- A on time. In addition, a transfer of benefit liabilities involving a plan covered by PBGC insurance may be reportable to the PBGC (see PBGC Form 10 and Form 10-Advance).*

1999 – *Annual Return of Fiduciary of Employee Benefit Trust* Instructions for Schedule P (Form 5500)

General Instructions

Purpose of Form

You may use this schedule to satisfy the requirements under Code section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a). The statute of limitations under section 6501(a) for any trust described in section 401(a), which is exempt from tax under section 501(a), will not start to run until you file this schedule.

Who May File

Every trustee of a trust created as part of an employee benefit plan as described in Code section 401(a), and every custodian of a custodial account described in Code section 401(f).

How To File

File Schedule P for the trust year ending with or within any participating plan's plan year. Attach it to the Form 5500 or 5500-EZ filed by the plan for that plan year. A separately filed Schedule P will not be accepted. If the trust or custodial account is used by more than one plan, file one Schedule P. If a plan uses more than one trust or custodial account for its funds, file one Schedule P for each trust or custodial account.

Check the Schedule P box on the Form 5500 (Part II, line 10b(7)), and enter the number attached in the space provided if one or more Schedules P are attached to the Form 5500.

Trust's Employer Identification Number

Enter the trust employer identification number (EIN) assigned to the employee benefit trust or custodial account, if one has been issued to you. The trust EIN should be used for transactions conducted for the trust. If you do not have a trust EIN, enter the EIN you would use on **Form 1099-R**, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to report distributions from employee benefit plans and on **Form 945**, Annual Return of Withheld Federal Income Tax, to report withheld amounts of income tax from those payments.

Note: *Trustees who do not have an EIN may apply for one on **Form SS-4**, Application for Employer Identification Number. You must be consistent and use the same EIN for all trust reporting purposes.*

Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, the fiduciary authorized by the others may sign.

Other Returns and Forms That May Be Required

Form 990-T. For trusts described in Code section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report this income and tax on **Form 990-T**, Exempt Organization Business Income Tax Return. (See Code sections 511 through 514 and the related regulations.)

Form 1099-R. If you made payments or distributions to individual beneficiaries of a plan, report those payments on Form 1099-R. (See the Instructions for Forms 1099, 1098, 5498, and W-2G.)

Form 945. If you made payments or distributions to individual beneficiaries of a plan, you may be required to withhold income tax from those payments. Use Form 945 to report taxes withheld from nonpayroll items. (See **Circular E**, Employer's Tax Guide (Pub. 15), for more information.)

1999 – *Retirement Plan Information*
Instructions for Schedule R (Form 5500)

General Instructions

Purpose of Schedule

The Schedule R reports certain information on plan distributions, and funding, and the adoption of amendments increasing the value of benefits in a defined benefit pension plan.

Who Must File

The Schedule R (Form 5500) must be attached to a Form 5500 filed for both tax qualified and nonqualified pension benefit plans. The parts of the Schedule R that must be completed depend on whether the plan is subject to the minimum funding standards of Code section 412 or ERISA section 302.

Exceptions: (1) The Schedule R should not be completed when the Form 5500 is filed for a pension plan that uses, as the sole funding vehicle for providing benefits, a tax deferred annuity arrangement under Code section 403(b)(1), a custodial account for regulated investment company stock under Code section 403(b)(7), and/or individual retirement accounts or annuities (as described in Code section 408). See the Form 5500 instructions for **Limited Pension Plan Reporting** on page 7 for more information.

(2) The Schedule R also should not be completed if the plan is not a defined benefit plan or otherwise subject to the minimum funding standards of Code section 412 or ERISA section 302 *and* no plan benefits were distributed during the plan year.

Check the Schedule R box on the Form 5500 (Part II, line 10a(1)) if a Schedule R is attached to the Form 5500.

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule R is attached.

Part I - Distributions

"Distribution" includes only payments of benefits during the plan year, in cash, in kind, or by purchase for the distributee of an annuity contract from an insurance company. It does not include corrective distributions of excess deferrals, excess contributions, or excess aggregate contributions. It does not include a loan treated as a distribution under Code section 72(p).

"Participant" means any present or former employee who at any time during the plan year had an accrued benefit (account balance in a defined contribution plan) in the plan.

Line 1. Enter the total value of all distributions made during the year (regardless of when the distribution began) in any form other than cash, annuity contracts issued by an insurance company, or publicly traded employer securities.

Line 2. Enter the EIN(s) of any payor(s) who paid benefits on behalf of the plan to participants or beneficiaries during the plan year. If more than two payors made such payments during the year, enter the EINs of the two payors who paid the greatest dollar amounts during the year. For purposes of this line 2, include all payments made in cash, regardless of when the payments began. Include payments from an insurance company under an annuity only in the year the contract was purchased. Do not include distributions in kind reported on line 1.

Line 3. Enter the number of living or deceased participants whose benefits under the plan were distributed during the plan year in the form of a single sum distribution. For this purpose, a distribution of a participant's benefits will not fail to be a single sum distribution merely because, after the date of the distribution, the plan makes a supplemental distribution as a result of earnings or other adjustments made after the date of the single sum distribution. Also include any participants whose benefits were distributed in the form of a direct rollover to the trustee or custodian of a qualified plan or individual retirement account.

Part II - Funding Information

Complete Part II if the plan is subject to the minimum funding requirements of Code section 412 or ERISA section 302.

All qualified defined benefit and defined contribution plans are subject to the minimum funding requirements of Code section 412 unless they are described in the exceptions listed under section 412(h). These exceptions include profit- sharing or stock bonus plans, insurance contract plans described in section 412(i), and certain plans to which no employer contributions are made.

Nonqualified employee pension benefit plans are subject to the minimum funding requirements of ERISA section 302 unless specifically exempted under ERISA sections 4(a) or 301(a).

The employer or plan administrator of a defined benefit plan that is subject to the minimum funding requirements must file Schedule B as an attachment to Form 5500. Schedule B is not required to be filed for a money purchase defined contribution plan that is subject to the minimum funding requirements unless the plan is currently amortizing a waiver of the minimum funding requirements.

Line 4. Check "yes" if, for purposes of computing the minimum funding requirements for the plan year, the plan administrator is making an election intended to satisfy the requirements of Code section 412(c)(8) or ERISA section 302(c)(8). Under Code section 412(c)(8) and ERISA section 302(c)(8), a plan administrator may elect to have any amendment that is adopted after the beginning of the plan year for which it applies treated as having been made on the first day of the plan year if all of the following requirements are met:

1. The amendment is adopted no later than two and one-half months after the close of such plan year (two years for a multiemployer plan);

2. The amendment does not reduce the accrued benefit of any participant determined as of the beginning of such plan year; and

3. The amendment does not reduce the accrued benefit of any participant determined as of the adoption of the amendment unless the plan administrator notified the Secretary of the Treasury of the amendment and the Secretary either approved the amendment or failed to disapprove the amendment within 90 days after the date the notice was filed.

Line 5. If a money purchase defined contribution plan has received a waiver of the minimum funding standard, and the waiver is currently being amortized, lines 3, 9, and 10 of Schedule B must be completed. The Schedule B must be attached to Form 5500 but it need not be signed by an enrolled actuary.

Line 6a. The minimum required contribution for a money purchase defined contribution plan for a plan year is the amount required to be contributed for the year under the formula set forth in the plan document. If there is an accumulated funding deficiency for a prior year that has not been waived, that amount should also be included as part of the contribution required for the current year.

Line 6b. Include all contributions for the plan year that are made not later than 8½ months after the end of the plan year. Show only contributions actually made to the plan by the date the form is filed, i.e., do not include receivable contributions for this purpose.

Line 6c. If this amount is greater than zero there is an accumulated funding deficiency for the plan year and Form 5330 should be filed with the IRS to pay the excise tax on the deficiency. There is a penalty for not filing Form 5330 on time.

Line 7. A revenue procedure providing for automatic approval for a change in funding method for a plan year generally does not apply unless the plan administrator or an authorized representative of the plan sponsor explicitly agrees to the change. If a change in funding method that is made pursuant to such a revenue procedure (or a class ruling letter) is to be applicable for the current plan year, this line generally must be checked "Yes." In certain situations, however, the requirement that the plan administrator or an authorized representative of the

plan sponsor agree to the change in funding method will be satisfied if the plan administrator or an authorized representative of the plan sponsor is made aware of the change. In these situations, this line must be checked "N/A." See Section 4.02 of Rev. Proc. 99-45, 1999-49 I.R.B. 603.

Line 8. The transition rule of Code section 412(l)(11) and ERISA section 302(d)(11) provides an alternative method of computing the additional required funding charge. For such an election to apply for the current plan year check "yes" for this line.

Part III - Amendments

Line 9. Check "Yes" if an amendment was adopted during the plan year that increased the value of benefits in any way. This includes an amendment providing for an increase in the amount of benefits or rate of accrual, more generous lump sum factors, cost of living adjustments, more rapid vesting, additional payment forms, and earlier eligibility for some benefits.

1999 – *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*
Instructions for Schedule SSA (Form 5500)

General Instructions

Purpose of Form

Use Schedule SSA to report all participants with deferred vested benefit rights who separated from your company during the plan year. Also use Schedule SSA to correct information previously reported concerning participants with deferred vested benefits. The information reported on this schedule is given to the Social Security Administration which in turn provides it to participants when they file for Social Security benefits. Check the Schedule SSA box on the Form 5500 (Part II, line 10a(5)) if a Schedule SSA is attached to the Form 5500.

Who Must File

The plan administrator is responsible for filing Schedule SSA. Plans that cover only owners and their spouses do not have to file this schedule.

Note: *Government, church, or other plans that elect to voluntarily file the Schedule SSA* ***must*** *check the appropriate box on the schedule* ***and*** *complete lines 2 through 3c.*

What To File

File this schedule and complete all line items. All attachments to Schedule SSA should have entries only on the front of the page. If you need more space, use either: (1) additional copies of Schedule SSA, or (2) additional sheets the same size as the schedule containing all the information requested on the schedule. The information required in line 4 boxes (a) through (j) should be listed in the same format as line 4 on Schedule SSA.

You may send a machine-generated computer listing showing the information required on line 4 instead of completing line 4 on the schedule. Use the same format as line 4 on Schedule SSA. Complete A through D on Schedule SSA and enter on line 4 a statement that a list is attached. On each page of the computer listing, enter all the information from A through D.

When to Report a Separated Participant

In general, ***for a plan to which only one employer contributes,*** a participant must be reported on Schedule SSA if:

1. The participant separates from service covered by the plan in a plan year, and
2. The participant is entitled to a deferred vested benefit under the plan.

The separated participant must be reported no later than on the Schedule SSA filed for the plan year following the plan year in which separation occurred. However, you can report the separation in the plan year in which it occurs, if you want to report earlier. Do not report a participant more than once unless you wish to revise or update a prior Schedule SSA (see instructions for line 4, box (a), under codes B, C, or D).

In general, ***for a plan to which more than one employer contributes,*** a participant must be reported on Schedule SSA if:

1. The participant incurs two successive 1-year breaks in service (as defined in the plan for vesting purposes), and
2. The participant is (or may be) entitled to a deferred vested benefit under the plan.

The participant must be reported no later than on the Schedule SSA filed for the plan year in which the participant completed the second of the two consecutive 1-year breaks in service. The participant may be reported earlier (i.e., on the Schedule SSA filed for the plan year in which he or she separated from service or completed the first 1-year break in service).

When NOT to Report a Participant

A participant is not required to be reported on Schedule SSA if, before the date the Schedule SSA is required to be filed (including any extension of time for filing), the participant:

1. Is paid some or all of the deferred vested retirement benefit (see the **Caution** below), or
2. Returns to service covered by the plan and/or accrues additional retirement benefits under the plan, or
3. Forfeits all the deferred vested retirement benefit.

Caution: *If payment of the deferred vested retirement benefit ceases before* ***ALL*** *of the benefit to which the participant is entitled is paid to the participant, information relating to the deferred vested retirement benefit to which the participant remains entitled shall be filed on the Schedule SSA filed for the year* ***following*** *the last plan year within which a portion of the benefit is paid to the participant.*

Separation of a Re-Employed Employee

If the deferred vested benefit of a separated employee is different from that previously reported, you may use code B (see below) to report that employee's total vested benefit.

Revising Prior Report

You may use Schedule SSA to report revisions to pension information for a participant you reported on a previous Schedule SSA. This will ensure that SSA's records are correct. This is important since SSA provides Schedule SSA information that it has on file to participants when they file for Social Security benefits. If this information is not up-to-date, the participant may contact the plan administrator to resolve the difference.

You are encouraged to report changes or corrections to previously reported information (such as plan number), as this allows the Social Security Administration to provide accurate information to participants or their beneficiaries. You do not need to report changes in the value of the employees' accounts, since that is likely to change. However, you may report these changes if you want.

Split Plan Mergers

There are conditions where some employees covered by an existing plan are transferred to a different plan, or all of the employees of an existing plan are split between two or more different plans. The new administrator for each group of employees should complete a code C entry (see below) for each employee previously reported on a Schedule SSA for the other plan.

Where and How to File

File as an attachment to Form 5500.

Caution: *A penalty may be assessed if Schedule SSA (Form 5500) is not timely filed.*

Specific Instructions

Line D. Enter the sponsor's employer identification number (EIN) shown on Form 5500, line 2b.

Line 2. If the Post Office does not deliver mail to the street address and you have a P.O. box, enter the box number instead of the street address.

Line 4, box (a). From the following list, select the code that applies and enter that code in line 4, box (a).

Code A — Use this code for a participant not previously reported. Also complete boxes (b) through (h).

Code B — Use this code for a participant previously reported under the plan number shown on this schedule to modify some of the previously reported information. Enter all the current information for boxes (b) through (h).

Code C — Use this code for a participant previously reported under another plan number who will now be receiving his/her future benefit from the plan reported on this schedule. Also complete boxes (b), (c), (i), and (j).

Code D — Use this code for a participant previously reported under the plan number shown on this schedule who is no longer entitled to those deferred vested benefits. Also complete boxes (b) and (c). If you wish, you may also use this code to report those participants who are already receiving benefits as previously reported.

Line 4, box (b). Enter the exact social security number (SSN) of each participant listed. If the participant is a foreign national employed outside the United States who does not have an SSN, enter the word "FOREIGN."

Line 4, box (c). Enter each participant's name exactly as it appears on the participant's social security card.

Line 4, box (d). From the following list, select the code that describes the type of annuity that will be provided for the participant. Enter the code that describes the type of annuity that normally accrues under the plan at the time of the participant's separation from service covered by the plan (or for a plan to which more than one employer contributes at the time the participant incurs the second consecutive 1-year break in service under the plan).

Type of Annuity Code

A A single sum
B Annuity payable over fixed number of years
C Life annuity
D Life annuity with period certain
E Cash refund life annuity
F Modified cash refund life annuity
G Joint and last survivor life annuity
M Other

Line 4, box (e). From the following list, select the code that describes the benefit payment frequency during a 12-month period.

Type of Payment Code

A Lump sum
B Annually
C Semiannually
D Quarterly
E Monthly
M Other

Line 4, box (f). For a defined benefit plan, enter the amount of the periodic payment that a participant is entitled to receive under line 4, box (f).

For a plan to which more than one employer contributes, if the amount of the periodic payment cannot be accurately determined because the plan administrator does not maintain complete records of covered service, enter an estimated amount.

Line 4, box (g). For a defined contribution plan, if the plan states that a participant's share of the fund will be determined on the basis of units, enter the number of units credited to the participant.

If, under the plan, participation is determined on the basis of shares of stock of the employer, enter the number of shares and add the letters "SH" to indicate shares. A number without the "SH" will be interpreted to mean units.

Line 4, box (h). For defined contribution plans, enter the value of the participant's account at the time of separation.

Line 4, boxes (i) and (j). Show the EIN and plan number of the plan under which the participant was previously reported.

Signature. This form must be signed by the plan administrator. If more than one Schedule SSA is filed for one plan, only page one should be signed.

1999 – *Qualified Pension Plan Coverage Information*
Instructions for Schedule T (Form 5500)

General Instructions

Purpose of Schedule

Schedule T (Form 5500) is used by certain qualified pension benefit plans to provide information concerning the plan's compliance with the minimum coverage requirements of Code section 410(b).

Substantiation Guidelines

Revenue Procedure 93-42, 1993-2 C.B. 540, provides guidelines designed to reduce the burdens of substantiating compliance with the coverage and nondiscrimination requirements that apply to qualified pension benefit plans. Generally, Rev. Proc. 93-42 sets forth guidelines for: (1) the quality of data used in substantiating compliance with the coverage and nondiscrimination rules, (2) the timing of coverage and nondiscrimination testing, (3) the testing cycle of a plan, and (4) the qualified separate lines of business (QSLOB) rules. The substantiation guidelines may be used in completing Schedule T, if applicable.

Who Must File

The Schedule T (Form 5500) must generally be attached to the Form 5500 to report coverage information for a pension benefit plan (including profit-sharing and stock bonus plans) that is intended to be qualified under Code section 401(a) or 403(a). More than one Schedule T may be required. See the specific instructions for lines 1 and 2.

Schedule T may not be required every year. Check the Schedule T box on the Form 5500 (Part II, line 10a(2)), and enter the number attached in the space provided, **ONLY** if one or more Schedules T are attached to the Form 5500. If a Schedule T is not attached to the Form 5500 because the employer is using the three-year testing cycle rule in Revenue Procedure 93-42, and relying on the fact that the plan satisfied coverage in an earlier year, do not check the Schedule T box on Form 5500. Instead, enter in the space provided on Form 5500 line 10a(2) the year on which the employer is relying. See the instructions under **When to File** below. If the plan benefits the employees of more than one employer or if the employer operates QSLOBs, also see the instructions for lines 1 and 2.

When to File

Employers using the three-year testing cycle rule in Revenue Procedure 93-42 must file Schedule T for the first year in the plan's testing cycle. Schedule T need not be filed for the second or third year in the cycle if the employer is permitted to rely on the earlier year's testing. If the employer does not or cannot use the three-year testing rule, the Schedule T must be filed annually.

Specific Instructions

Lines A, B, C, and D. This information should be the same as reported in Part II of the Form 5500 to which this Schedule T is attached.

Note: *For purposes of the Schedule T (Form 5500), all employers that are members of the same controlled group (that is, they are aggregated under Code section 414(b), (c), or (m)) are treated as a single employer. For purposes of the Schedule T (Form 5500), "employee" includes any self-employed individual, common-law employee, or leased employee (within the meaning of Code section 414(n)) of any member of the controlled group.*

Line 1. If a plan benefits the employees of more than one employer and all the employers are members of the same controlled group, file only one Schedule T, treating all the employers as a single employer. However, if a plan benefits the employees of more than one employer and any of the employers are not members of the same controlled group, file as follows. File separate Schedules T for each controlled group and each other employer that have noncollectively bargained employees benefiting under the plan, as if the portions of the plan benefiting each controlled group's employees and each other employer's employees constituted separate plans. For this purpose, none of the employees benefiting under a plan are considered collectively bargained employees if more than 2% of the employees covered by the plan are professional employees. (See Regulations section 1.410(b)-6(d)(2) for the definition of collectively bargained employee and Regulations section 1.410(b)-9 for the definition of professional employee.) Schedule T need not be filed, however, for any controlled group or other employer that is permitted to rely on an earlier year's testing, as explained under **When to File** above. Instead, attach a list showing each controlled group and other employer that is relying on prior year testing, including name, employer identification number, and the testing year being relied on.

For purposes of Schedule T, each controlled group and each other employer that have employees benefiting under a plan that benefits the employees of more than one employer are referred to as "participating employers" in a plan "maintained by more than one employer." If applicable, enter on lines 1a and 1b the name and employer identification number of the participating employer to which the coverage information in lines 3 and 4 relates. Otherwise, leave lines 1a and 1b blank.

Alternatively, where two or more participating employers meet any of the exceptions in line 3, attach a list of such participating employers, including each participating employer's name and employer identification numbers and the line (3a, 3b, 3d, or 3e) that describes the exception that applies to that participating employer. This list may be combined with the list of participating employers that are relying on prior year testing, if applicable. Under this alternative, file separate Schedules T only for those participating employers that do not satisfy any of the exceptions in line 3 and are not relying on prior year testing.

Line 2. See Income Tax Regulations section 1.414(r). Do not complete lines 2a through 2d unless the employer maintaining the plan operates QSLOBs.

Line 2c. See Regulations sections 1.414(r)-1(c) and 1.414(r)-8.

Line 2d. If the plan benefits the employees of more than one QSLOB, and the employer applies the minimum coverage requirements on a QSLOB basis, file a separate Schedule T for each QSLOB that has employees benefiting under the plan for which the Form 5500 is being filed, as if each portion of the plan that benefits the employees of a particular QSLOB constituted a separate plan. Identify on line 2d the particular QSLOB to which the coverage information in lines 3 and 4 relates. Otherwise, leave line 2d blank. (Schedule T need not be filed, however, for any QSLOB that is permitted to rely on a prior year's testing, as explained under **When To File** above. Instead, attach a list showing each QSLOB relying on prior year testing and the testing year being relied on.)

Line 3. Check box 3a, 3b, 3c, or 3d to indicate if you meet any of the exceptions they describe. If box 3a, 3b, 3c, or 3d is checked, skip line 4.

Box 3a. Check this box if, during the plan year, the employer employed only highly compensated employees (within the meaning of Code section 414(q)), excluding employees who were collectively bargained employees (within the meaning of Regulations section 1.410(b)-6(d)(2)).

Box 3b. Check this box if, during the plan year, the plan benefited no highly compensated employees (within the meaning of Code section 414(q)), excluding employees who were collectively bargained employees (within the meaning of Regulations section 1.410(b)-6(d)(2)). See the instructions for line 4c(5) for the definition of "benefiting." This line should also be checked if no employee received an allocation or accrued a benefit under the plan for the plan year.

Box 3c. Check this box if, during the plan year, the plan benefited only collectively bargained employees (within the meaning of Regulations section 1.410(b)-6(d)(2)). However, do not check this box if more than 2% of the employees covered

by the plan were professional employees (within the meaning of Regulations section 1.410(b)-9).

Box 3d. Check this box if, during the plan year, the plan benefited 100% of the nonexcludable nonhighly compensated employees of the employer. The nonhighly compensated employees of the employer include all the self-employed individuals, common-law employees, and leased employees (within the meaning of Code section 414(n)) employed by the employer or any entity aggregated with the employer under Code section 414(b), (c) or (m) at any time during the plan year, excluding highly compensated employees (within the meaning of Code section 414(q)). Any such employee is a nonexcludable employee unless the employee is in one of the following categories:

1. Employees who have not attained the minimum age and service requirements of the plan.

2. Collectively bargained employees within the meaning of Regulations section 1.410(b)-6(d)(2).

3. Nonresident aliens who receive no U.S. source income.

4. Employees who fail to accrue a benefit solely because they: **(a)** fail to satisfy a minimum hour of service or a last day requirement under the plan; **(b)** do not have more than 500 hours of service for the plan year; and **(c)** are not employed on the last day of the plan year.

5. Employees of QSLOBs other than the one with respect to which this Schedule T is being filed.

Box 3e. Check this box if, for the plan year, the plan is treated as satisfying the minimum coverage requirements of Code section 410(b) under the "acquisition or disposition" rule in Code section 410(b)(6)(C).

Line 4. In general, a plan must satisfy the coverage requirements under one of three testing options. Under the daily testing option, the plan must satisfy the coverage requirements on each day of the plan year taking into account only employees who are employees on that day. A plan will satisfy the coverage requirements under the quarterly testing option if it satisfies them on at least one day in each quarter, taking into account only employees who are employees on that day, provided the quarterly testing dates reasonably represent the coverage of the plan over the entire plan year. Finally, a plan will satisfy the coverage requirements under the annual testing option if it satisfies them as of the last day of the plan year, taking into account all employees who were employees on any day during the plan year.

Rev. Proc. 93-42 also allows an employer to substantiate that a plan satisfies the coverage requirements on the basis of the employer's workforce on a single day during a plan year, taking into account only employees who are employees on that day, if that day is reasonably representative of the employer's workforce and the plan's coverage throughout the year. This is referred to as "snapshot" testing.

If a plan satisfies the coverage and nondiscrimination requirements for a plan year, the employer may generally rely on this for the two succeeding plan years and will not have to test the plan in those years, provided there have not been significant changes.

If the employer is using single day, "snapshot" testing, the data given on lines 4a through 4f should be for the most recent snapshot day.

Enter on line 4 the beginning date of the plan year with respect to which the data on lines 4a through 4f was gathered.

Line 4a. The definition of leased employee is in Code section 414(n).

Line 4b. Employers can satisfy coverage by aggregating generally any qualified plans that are not mandatorily disaggregated. See the instructions for lines 4c and 4e regarding mandatory disaggregation. The aggregated plans must also satisfy the nondiscrimination requirements of Code section 401(a)(4) on an aggregated basis. If the employer aggregates this plan with any other plan(s) for the coverage and nondiscrimination requirements, enter the information requested and complete the rest of line 4 for the plans, as aggregated.

Line 4c. Certain single plans must be disaggregated into two or more separate parts. Each of the disaggregated parts of the plan must then satisfy the coverage and nondiscrimination requirements as if it were a separate plan. Under the regulations, the following plans must be disaggregated:

1. A plan that includes a Code section 401(k) arrangement (a qualified cash or deferred arrangement) and a portion that is not a section 401(k) arrangement.

2. A plan that includes a Code section 401(m) feature (employee and matching contributions) and a portion that is not a Code section 401(m) feature.

3. A plan that includes an ESOP and a portion that is not an ESOP.

4. A plan that benefits both collectively bargained employees and noncollectively bargained employees. None of the employees benefiting under a plan are considered collectively bargained employees if more than 2% of the employees covered by the plan are professional employees. (See Regulations section 1.410(b)-6(d)(2) for the definition of collectively bargained employee and Regulations section 1.410(b)-9 for the definition of professional employee.)

If the plan is disaggregated solely because it benefits both collectively bargained employees and noncollectively bargained employees, complete lines 4c and 4d for the part of the plan that benefits noncollectively bargained employees. Do not complete line 4e. No information is required with respect to the part of the plan that benefits collectively bargained employees. If the plan is disaggregated for other reasons, complete lines 4c and 4d for one disaggregated part of the plan. Complete line 4e to report the ratio percentage(s) for the other disaggregated part(s) of the plan, regardless if identical to the entry on line 4d. For example, if the plan is a profit sharing plan that provides nonelective contributions, Code section 401(k) contributions, and Code section 401(m) contributions, you may complete lines 4c and 4d for the nonelective part of the plan and enter on line 4e the ratio percentages for the 401(k) and 401(m) parts of the plan.

Line 4c(1). Enter the total number of employees of the employer.

Line 4c(2). Enter the total number of excludable employees in the following categories:

1. Employees who have not attained the minimum age and service requirements of the plan.

2. Collectively bargained employees within the meaning of Regulations section 1.410(b)-6(d)(2).

3. Nonresident aliens who receive no U.S. source income.

4. Employees who fail to accrue a benefit solely because they: (a) fail to satisfy a minimum hour of service or a last day requirement under the plan; (b) do not have more than 500 hours of service for the plan year; and (c) are not employed on the last day of the plan year. See Regulations section 1.410(b)-6.

5. Employees of QSLOBs other than the one with respect to which this Schedule T is being filed.

Line 4c(4). The definition of highly compensated employee is contained in Code section 414(q) and its related regulations.

Line 4c(5). In general, an employee is "benefiting" if the employee receives an allocation of contributions or forfeitures, or accrues a benefit under the plan for the plan year. Certain other employees are treated as benefiting even if they fail to receive an allocation of contributions or forfeitures or to accrue a benefit solely because the employee is subject to plan provisions that limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, or limits designed to satisfy Code section 415. An employee is treated as benefiting under a plan (or portion of a plan) that provides for elective contributions under Code section 401(k) if the employee is eligible to make elective contributions to the Code section 401(k) arrangement even if he or she does not actually make elective contributions. Similarly, an employee is treated as benefiting under a plan (or portion of a plan) that provides for after-tax employee contributions or matching contributions under Code section 401(m) if the employee is eligible to make after-tax employee contributions or receive

allocations of matching contributions even if none are actually made or received.

Line 4d. In general, to compute the ratio percentage, divide the number of nonexcludable employees who benefit under the plan and are not highly compensated by the total number of nonexcludable nonhighly compensated employees; put this result in the numerator (top of the fraction). Divide the number of nonexcludable employees who benefit under the plan and who are highly compensated by the total number of nonexcludable highly compensated employees; put this result in the denominator (bottom of the fraction). Divide the numerator by the denominator, multiply by 100, and enter the result in line 4d. Enter to the nearest 0.1%.

If the information on lines 4c and 4d pertains to one part of a disaggregated plan, identify, in the space provided, the disaggregated part of the plan to which the information on lines 4c and 4d pertains as follows: "nonelective," "401(k)," "401(m)," "ESOP," "non-ESOP."

Line 4e. See the instructions for line 4c. Calculate the ratio percentage for the other disaggregated part(s) of the plan as described above and enter on line 4e. If entering information on line 4e, identify the disaggregated part(s) of the plan as follows: "401(k)," "401(m)," "nonelective," "ESOP," "non-ESOP."

If there are more than three other disaggregated parts of the plan, provide their ratio percentages on an attachment in the same format as line 4(e).

Line 4f. If the ratio percentage for the plan, or any disaggregated part of the plan, entered on line 4d or line 4e is less than 70%, the plan does not satisfy the ratio percentage test. An employer that is using single day "snapshot" testing may, in certain circumstances, need to adjust the 70% figure to compensate for the fact that the substantiation quality data or snapshot population does not reflect employee turnover and may oversate the plan's coverage. See section 3 of Rev. Proc. 93-42. If the plan, or any disaggregated part of the plan, does not satisfy the ratio percentage test, the plan will satisfy the minimum coverage requirements of the Code only if it satisfies the average benefit test.

A plan satisfies the average benefit test if it satisfies both the nondiscriminatory classification test and the average benefit percentage test. A plan satisfies the nondiscriminatory classification test if the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees. Under Regulations section 1.410(b)-4, a classification will be deemed nondiscriminatory if the ratio percentage for the plan is equal to or greater than the safe harbor percentage. The safe harbor percentage is 50%, reduced by ¾ of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60%. The nonhighly compensated employee concentration percentage is the percentage of all the employees of the employer who are not highly compensated employees.

In general, a plan satisfies the average benefit percentage test if the actual benefit percentage for nonhighly compensated employees is at least 70% of the actual benefit percentage for highly compensated employees. See Regulations section 1.410(b)-5. All qualified plans of the employer, including ESOPs, Code section 401(k) plans, and plans with employee or matching contributions (Code section 401(m) plans) are aggregated in determining the actual benefit percentages. Do not aggregate plans that may not be aggregated for purposes of satisfying the ratio percentage test, other than ESOPs and Code section 401(k) and 401(m) plans. In addition, all nonexcludable employees, including those with no benefit under any qualified plan of the employer, are included in determining the actual benefit percentages.

OMB Control Numbers

Agency	OMB Number	Agency	OMB Number
Pension and Welfare Benefits Administration	1210-0110 1210-0089	Pension Benefit Guaranty Corporation	1212-0057
Internal Revenue Service	1545-1610	Social Security Administration	0960-0606

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA and Code sections 6039D, 6047(e), 6057(b), and 6058(a). You are required to give us the information. We need it to determine whether the plan is operating according to the law.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records relating to a form or its instructions must be retained as long as their contents may become material in the administration of the Internal Revenue Code or are required to be maintained pursuant to Title I or IV or ERISA. Generally, the Form 5500 return/reports are open to public inspection. However, Schedules E, F, and SSA (Form 5500) are confidential, as required by Code section 6103.

The time needed to complete and file the forms listed below reflects the combined requirements of the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation, and the Social Security Administration. These times will vary depending on individual circumstances. The estimated average times are:

	Pension Plans		Welfare Plans	
	Large	Small	Large	Small
Form 5500	1 hr., 44 min.	1 hr., 6 min.	1 hr., 38 min.	1 hr., 5 min.
Schedule A	1 hr., 41 min.	53 min.	8 hr., 10 min.	2 hr., 11 min.
Schedule B	6 hr., 38 min.	31 min.		
Schedule C	1 hr., 17 min.		52 min.	
Schedule D	10 hr.	10 hr.		
Schedule E	3 hr., 18 min.	3 hr., 18 min.		
Schedule F			45 min.	26 min.
Schedule G	11 hr., 58 min.		6 hr., 28 min.	
Schedule H	7 hr., 56 min.		3 hr., 22 min.	
Schedule I		1 hr., 28 min.		1 hr., 28 min.
Schedule P	13 min.	2 min.		
Schedule R	1 hr.	30 min.		
Schedule SSA	6 hr., 10 min.	1 hr., 42 min.		
Schedule T	4 hr., 40 min.	37 min.		

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send any of these forms or schedules to this address. Instead, see **Where To File** on page 5.

Index

0
80-120 Participant Rule 6
103-12 Investment Entity (103-12 IE) 4

A
About the Form 5500 1
Accountant's Opinion 41
Amended Return/Report 6
Amendments 51
Asset and Liability Statement 38
Attachments 6

C
Change In Plan Year 6
Changes To Note for 1999 1
Combination unfunded/insured welfare plan 3
Common/Collective Trust (CCT) 4, 8

D
Direct Filing Entity (DFE) 8
Direct Filing Entity (DFE) - Who Must File 4
Distribution 50

E
Electronic Filing 5
Extensions - Using Form 5558 5

F
Final Return/Report 6
  Master Trust Investment Account Final Report 6
  Mergers/Consolidations 6
  Pension and Welfare Plans That Terminated Without Distributing All Assets 6
  Welfare Plans Still Liable To Pay Benefits 6
Financial Schedules 15
Form 5500 Schedules 15
  Financial Schedules 15
  Fringe Benefit Schedule 15
  Pension Benefit Schedules 15
Fringe Benefit Plan - Who Must File 3
Fringe Benefit Schedule 15
Fully insured welfare benefit plan 3
Funding Information 50

G
Group Insurance Arrangement (GIA) 4

H
How To Get IRS Forms and Publications 2
  By Telephone 2
  In Person 2
  Personal Computer 2

I
Income and Expense Statement 39
Information Concerning Insurance Contract Coverage, Fees, and Commissions 20
Instructions for Schedule A 20
  Who Must File 20
Instructions for Schedule B 22
  Statement by Enrolled Actuary 22
  Who Must File 22
Instructions for Schedule C 30
  Who Must File 30
Instructions for Schedule D 32
  Who Must File 32
Instructions for Schedule E 34
  Who Must File 34
Instructions for Schedule F 35
  Who Must File 35
Instructions for Schedule G 36
  Who Must File 36
Instructions for Schedule H 38
  Who Must File 38
Instructions for Schedule I 45
  Who Must File 45
Instructions for Schedule P 49
  Who May File 49
Instructions for Schedule R 50
  Who Must File 50
Instructions for Schedule SSA 52
  Revising a Prior Report 52
  What To File 52
  When NOT to Report a Separated Participant 52
  When to Report a Separated Participant 52
  Who Must File 52
Instructions for Schedule T 54
  Who Must File 54
Investment and Annuity Contract Information 21

K
Kinds of Filers 10

L
Leases in Default or Classified as Uncollectible 36
Limited Pension Plan Reporting 7
Lines and Schedules to Complete - Fringe Benefit Plan 8
Lines and Schedules to Complete - Pension Plan 6
Lines and Schedules to Complete - Welfare Plan 7
Loans or Fixed Income Obligations in Default or Classified as Uncollectible 36

M
Master Trust Investment Account (MTIA) 4

N
Nonexempt Transactions 36, 47

P
Paper Filing 5
Party-in-Interest 47
Penalties 5
  Administrative 5
  Other 5
Pension Benefit Plan - Who Must File 2
Pension Benefit Schedules 15
Plan sponsor 11
Plans Excluded From Filing 3
Pooled Separate Account (PSA) 4, 8

R
Reportable transaction 43

S
Schedule of Assets Held for Investment Purposes At End of Year 43
Schedule of Investment Assets Both Acquired and Disposed of Within the Plan Year 43
Schedule of Reportable Transactions 44
Securities acquisition loan 34
Service Provider Information 30
Short Plan Year Rule 6
Signature and Date 6
Small Plan Financial Information 45
Income, Expenses, and Transfers for this Plan Year 45
Plan Assets and Liabilities 45
Snapshot testing 55
Special 1999 Transition Rule 4
Special rule for certain participant-directed transactions 44
Special Rules for Certain Plans of Partnerships and Wholly Owned Trades or Businesses 3
Statement by Enrolled Actuary 22
Substantiation Guidelines 54

T
Termination Information on Accountants and Enrolled Actuaries 31
Transactions During Plan Year 42, 47
Trust's Employer Identification Number 49

U
Unfunded welfare benefit plan 3

W
Welfare Benefit Contract Information 21
Welfare Benefit Plan - Who Must File 3
Welfare Plan And Fringe Benefit Plan Filing Together 8
When To File 4
DFEs other than GIAs 4
Extensions 4
Plans and GIAs 4
Short Years 4
Special 1999 Transition Rule 4
When to Report a Separated Participant 52
Where To File 5
Who Must File 2

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Federal Register

Wednesday,
February 2, 2000

Part III

Department of Education

Foreign Language Assistance Grants (State Educational Agencies); New Awards for FY 2000; Notice Inviting Applications

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293C]

Foreign Language Assistance Grants (State Educational Agencies) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

Purpose of Program: This program provides grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

In awarding grants under this program, the Secretary supports projects that promote systemic approaches to improving foreign language learning in the State.

Eligible Applicants: State educational agencies.

Applications Available: February 2, 2000.

Deadline for Transmittal of Applications: March 20, 2000.

Deadline for Intergovernmental Review: May 22, 2000.

Available Funds: $ 500,000.

Estimated Range of Awards: $30,000–$70,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85 and 86.

(b) 34 CFR Part 299.

Description of Program

Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act), authorizes the Foreign Language Assistance Grants program. Appropriations for this program are authorized by section 7206 of the Act. Applicants should note that section 7203 (c)(1) provides that the *Federal share* of the cost of activities assisted under this part for each fiscal year shall be *50 percent*. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in elementary grades. The Secretary does not fund projects that propose Native American languages.

Priority

Under 34 CFR 75.105(b)(2)(iv) and (c)(2)(i) and section 7204(b) of the Act (20 U.S.C. 7514(b)), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards three points depending on how well an application meets this competitive priority. These points would be in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority—Special Considerations (3 points)

Priority

Projects that propose to carry out one or more of the following activities: (1) intensive summer foreign language programs for professional development; (2) linking non-native English speakers in the community with the schools in order to promote two-way language learning; or (3) promoting the sequential study of a foreign language, beginning in elementary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and section 7203 of the Act to evaluate applications for the new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Need for the project.* (10 points) The Secretary considers the need for the project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210(a) (ii) and (v))

(2) *Significance.* (20 points) The Secretary reviews each application to determine how well the proposed project will implement foreign language instructional programs that promote systemic approaches to improving foreign language learning in the State.

(Authority: 20 U.S.C. 7513(b)(1))

(3) *Quality of project design.* (25 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(Authority: 34 CFR 75.210(c)(i), (xiii) and (xviii))

(4) *Quality of project services.* (20 points)(i) The Secretary considers the quality of services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or the beneficiaries of those services.

(B) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210(d)(1)–(3) (i), (iii) and (vii))

(5) *Quality of project personnel.* (10 points)(i) The Secretary considers the quality of the key personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for

employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience , of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3) (i) and (ii))

(6) *Adequacy of resources.* (4 points) The Secretary considers the adequacy of resources for the project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 34 CFR 75.210(f)(1) and (2)(iii)–(iv))

(7) *Quality of the management plan.* (5 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(Authority: 34 CFR 75.210 (g)(1) and (2)(i) and (iv))

(8) **Quality of project evaluation plan.** (6 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(Authority: 34 CFR 75.210 (h)(i) and (vi)–(vii))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963) or; you may view the latest SPOC list on the OMB Web site at the following address: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293C, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW, Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education
Application Control Center
Attention: (CFDA# 84.293C)
Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to:

U.S. Department of Education
Application Control Center
Attention: (CFDA# 84.293C)
Room #3633
Regional Office Building #3
7th and D Streets, SW
Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting

burden, guidance on addressing the EDGAR selection criteria, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

ADDITIONAL MATERIALS:

a. Estimated Public Reporting Burden.

b. Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act).

c. Program Questions and Answers.

d. Group Application Certification.

e. State Educational Agency Data Form.

f. Project Documentation Form, including: Section I—Documentation of consultation with nonprofit private school officials; Section II—Appropriate box checked.

g. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

k. Notice to All Applicants concerning a new provision in the Department of Education's General Education Provisions Act (GEPA).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as original or copy. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Harpreet Sandhu, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5617, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7511–7514.

Dated: January 27, 2000.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ City _____ State _____ County _____ ZIP Code + 4 _____-_____

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 2 9 3 C → Title: ~~Foreign Language Assistance Grant~~

5. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4 _____-_____

Tel. #: ( )_____-_____ Fax #: ( )_____-_____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( )_____-_____ Fax #: ( )_____-_____

d. E-Mail Address:

e. Signature of Authorized Representative Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completinga D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking **"Yes"** the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check **"Yes"** or **"No"**. If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control Number *Draft* Expiration Date: *Pending OMB Clearance*
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-P

Application Narrative Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Additional Guidance

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Table of Contents

The application should include a table of contents listing the parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Final Application Preparation

Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0544 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 80 hour per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Language Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5603, Switzer Building, Washington, DC 20202–6510.

FOREIGN LANGUAGE ASSISTANCE PROGRAM

GRANTS TO STATE EDUCATIONAL AGENCIES

(Program Questions and Answers)

Q. How can State educational agencies support programs that promote systemic approaches to improving foreign language learning in the States?

A. Activities may include staff development, curriculum development, development of State standards and appropriate assessment strategies, and use of instructional technology to improve foreign language learning in the State.

Q. How will the Secretary comply with the statutory requirement, set out in section 7204(b) of the Elementary and Secondary Education Act, to give special consideration to applications that describe programs that (1) include intensive summer foreign language programs for professional development; (2) link non-native English speakers in the community; or (3) promote the sequential study of a foreign language for students, beginning in elementary schools.

A. The Secretary has established a competitive priority to comply with this statutory requirement. Under that priority, the Secretary awards three additional points to applications that propose to carry out one or more of the activities specified in Section 7204(b) of the Act in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Q. How can an applicant promote two-way language learning?

A. Two-way language learning is promoted through encouraging interaction between non-native English speakers and foreign language learners in an instructional setting for purposes of facilitating foreign language acquisition. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a project that utilizes two-way language learning, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance program should not be used to fund English language instruction.

Q. What is the definition of "elementary school" or "secondary school"?

A. The definitions of these two terms are set out in 34 CFR 77.1(c). The term "elementary school" means: "a day or residential school that provides elementary education, as determined under State law." The term "secondary school" means: "a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade."

Q. What is the State or LEA's share of costs for the Foreign language Assistance program for each fiscal year?

A. The State or LEA's share is 50 percent. However, a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities. (Section 7203(c), 20 U.S.C. 7513(c)). The Education Department General Administrative Regulations, at 34 CFR 80.24, also addresses Federal Cost sharing requirements.

Q. What is the ultimate goal of effective foreign language education programs?

A. The ultimate goal of effective foreign language education programs is to develop communicative competency in a foreign language. The Secretary interprets "communicative competency" to mean the ability to communicate in meaningful and effective ways in a foreign language.

BILLING CODE 4000–01–U

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

FOREIGN LANGUAGE DATA		
Name of State Educational Agency		
NOTE: This section must be completed by State educational agencies applying under the following program: • Foreign Language Assistance Grants		
1. Total number of local educational agencies (LEAs) in the State		
2. Total number of LEAs in the State providing foreign language programs		
3. Foreign languages taught		
	Elementary	Secondary

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs:

FOREIGN LANGUAGE ASSISTANCE GRANT

Section I

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103–382 and 34 CFR 75.119, 76.652, and 76.656 below.) Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the programs is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

Section 75.119 Information Needed if Private Schools Participate

If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656. (Approved by the Office of Management and Budget under control number 1880–0513)

(Authority: 20 U.S.C. 1221e–3 (a)(1))

Section 76–652 Consultation With Representatives of Private School Students

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e–3(a)(1))

76.656 Information in an Application for a Subgrant

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e–3(a)(1))

BILLING CODE 4000–01–U

SECTION II

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper acoounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-.

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____

4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District, if known:**
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 00–2161 Filed 2–1–00; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday,
February 2, 2000

Part IV

Department of Education

Foreign Language Assistance Grants (Local Educational Agencies); New Awards for FY 2000; Notice Inviting Applications

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293B]

Foreign Language Assistance Grants (Local Educational Agencies) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

PURPOSE OF PROGRAM: This program provides grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

In awarding grants under this program, the Secretary supports projects that—

(A) show the promise of being continued beyond their project period;

(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

(C) may include a professional development component.

ELIGIBLE APPLICANTS: Local educational agencies.

APPLICATIONS AVAILABLE: February 2, 2000.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: March 20, 2000.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: May 22, 2000.

AVAILABLE FUNDS: $1,420,000.

ESTIMATED RANGE OF AWARDS: $50,000–$175,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $112,500.

ESTIMATED NUMBER OF AWARDS: 12.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86.

(b) 34 CFR part 299.

Description of Program

Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act), authorizes the Foreign Language Assistance Grants program. Appropriations for this program are authorized by section 7206 of the Act. Applicants should note that section 7203 (c)(1) provides that the Federal share of the cost of activities assisted under this part for each fiscal year is 50 percent. The Secretary may waive this requirement for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 must be used for the expansion of foreign language learning in elementary grades. The Secretary does not fund projects that propose Native American languages.

Priority

Under 34 CFR 75.105 (b)(2)(iv) and (c)(2)(i) and section 7204(b) of the Act (20 U.S.C. 7514(b)), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards three points depending on how well an application meets this competitive priority. These points would be in addition to any points the application earns under the selection criteria for the program.

Competitive Preference Priority—Special Considerations (3 points)

Projects that propose to carry out one or more of the following activities: (1) Intensive summer foreign language programs for professional development; (2) linking non-native English speakers in the community with the schools in order to promote two-way language learning; or (3) promoting the sequential study of a foreign language, beginning in elementary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.209 and 75.210 and section 7203 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Need for the project.* (10 points)

The Secretary considers the need for the project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance.* (20 points)

The Secretary reviews each application to determine how well the proposed project will implement foreign language instructional programs that will:

(i) Show the promise of being continued beyond the grant period; and

(ii) Demonstrate approaches that can be disseminated and duplicated in other local educational agencies.

(3) *Quality of the project design.* (25 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) *Quality of Project Services* (20 points)

(i) The Secretary considers the quality of services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the

achievement of students as measured against rigorous academic standards.

(5) *Quality of Project Personnel.* (10 points)

(i) The Secretary considers the quality of the key personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources.* (4 points)

The Secretary considers the adequacy of resources for the project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the management plan.* (5 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(8) *Quality of project evaluation plan.* (6 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963) or; you may view the latest SPOC list on the OMB Web site at the following address: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293B, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW, Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293B), Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293B), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden, guidance on addressing the EDGAR selection criteria, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted

application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (ED 424) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.

b. Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act).

c. Program Questions and Answers.

d. Group Application Certification.

e. Student Data.

f. Project Documentation Form, including: Section I—Documentation of consultation with nonprofit private school officials; Section II—Appropriate box checked.

g. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** at (61 FR 1413) by the Office of Management and Budget on January 19, 1996).

k. Notice to All Applicants concerning a new provision in the Department of Education's General Education Provisions Act (GEPA).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5616, Switzer Building, Washington, DC 20202–6510. Telephone (202) 205–9717. Margarita Ackley, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5611, Switzer Building, Washington DC 20202–6510. Telephone: (202) 205–0506. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7511–7514.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4001–01–P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____ City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 2 9 3 B → Title: Foreign Language Assistance Grant (Local educational agencies)

5. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*
- ☐ Program is not covered by E.O. 12372.
- ☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gow humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number *Draft*

Expiration Date: *Pending OMB Clearance*

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Application Narrative Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers ini evaluating the application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than standards specified in this notice, your application will not be considered for funding.

Additional Guidance

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Table of Contents

The application should include a table of contents listing the parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Final Application Preparation

Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0540 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

If yo uhave comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5603, Switzer Building, Washington, DC 20202–6510.

Foreign Language Assistance Program

Grants of Local Educational Agencies

(Program Questions and Answers)

Q. How will the Secretary comply with the statutory requirement, set out in Section 7204(b) of the Elementary and Secondary Education Act, to give special consideration to applications that describe programs that (1) include intensive summer foreign language programs for professional development; (2) link non-native English speakers in the community; or (3) promote the sequential study of a foreign language for students, beginning in elementary schools?

A. The Secretary has established a competitive priority to comply with this statutory requirement. Under that priority, the Secretary awards three additional points to applications that propose to carry out or more of the activities specified in Section 7204(b) of the Act in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Q. How can an applicant promote two-way language learning?

A. Two-way language learning is promoted through encouraging intersaction between non-native English speakers and foreign language learners in an instructional setting for purposes of facilitating foreign language acquisition. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a project that utilizes two-way language learning, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance program should not be used to fund English language instruction.

Q. What is the definition of "elementary school" or "secondary school"?

A. The definitions of these two terms are set out in 34 CFR 77.1(c). The term "elementary school" means: "a day or residential school that provides elementary education, as determined under State law." The term "secondary school" means: "a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade."

Q. What is the State or LEA's share of costs for the Foreign Language Assistance program for each fiscal year?

A. The State or LEA's share is 50 percent. However, a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities. (Section 7203(c), 20 U.S.C. 7513(c)). The Education Department General Administrative Regulations, at 34 CFR 80.24, also addresses Federal Cost sharing requirements.

Q. How does an LEA apply for a waiver of the non-Federal share of costs?

A. The Secretary suggests that local educational agencies—wishing to do so—request a waiver from the requirements of Section 7203(c) of the Act as a part of their grant application. This waiver request should include information that will assist the Secretary in determining whether the local educational agency seeking a waiver "does not have adequate resources to pay the non-Federal share of the costs of the activities assisted under [the Foreign Language Assistance program]." (Section 7203(b) of the Act, 20 U.S.C. 7513(c)(2)).

Q. Under this program, may an applicant propose to hire foreign language teachers?

A. Yes, program funds may be used to hire foreign language teachers.

Q. May two districts apply together if they are already working together in an elementary school foreign language program?

A. Yes, the statute does not prohibit school districts from applying together. The requirements on group applications are in 34 CFR 75.127–75.129.

Q. How can an LEA ensure that their proposed program design will lead to an enhanced and effective foreign language program?

A. An LEA may consider the National and State foreign language content standards when designing their program.

BILLING CODE 4000-01-P

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

FOREIGN LANGUAGE DATA

Name of Local Educational Agency

NOTE: This section must be completed by local educational agencies applying under the following program:

- **Foreign Language Assistance Grants**

1. Total number of students in the school district	
2. Total number of students in the district enrolled in a foreign language program	

3. Foreign languages taught in the school district

Elementary	Secondary

4. Name of project school	Language(s) to be taught	Grade(s) to be served	Number of students to be served

Project Documentation

Note: Submit the appropriate documents and information as specified below for the following programs:

Foreign Language Assistance Grant

Section I

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103–382 and 34 CFR 75.119, 76.652, and 76.656 below.) Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the programs is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

Section 75.119 Information Needed if Private Schools Pargicipate

If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656. (Approved by the Office of Management and Budget under control number 1880–0513.)

(Authority: 20 U.S.C. 1221e–3(a)(1))

Section 76–652 Consultation With Representatives of Private School Students

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e–3(a)(1))

76.656 Information in an Application for a Subgrant

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e–3(a)(1))

BILLING CODE 4000–01–P

SECTION II

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and; (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application ____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 00–2162 Filed 2–1–00; 8:45 am]
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Federal Register

Wednesday,
February 2, 2000

Part V

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242

50 CFR Part 100

Subsistent Management Regulations for Public Lands in Alaska and Subsistence Taking of Fish and Wildlife Regulations; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AF91

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2001 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking will replace the fish and shellfish regulations (Subpart D, Sections____.26 and .27) included in the "Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority, Final Rule" which expire on February 28, 2001. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section__.24 of Subpart C).

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 27, 2000. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change regulations contained in this proposed rule from February 15–March 27, 2000, at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on meetings.

ADDRESSES: You may submit written comments and proposals to the Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503. See **SUPPLEMENTARY INFORMATION** for meeting locations.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION:

Meeting Locations and Written Comment Procedures

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

North Slope Regional Council, Barrow: February 17, 2000.
Eastern Interior Regional Council, Fairbanks: February 21, 2000.
Western Interior Regional Council, Fairbanks: February 21, 2000.
Seward Peninsula Regional Council, Unalakleet: February 22, 2000.
Northwest Arctic Regional Council, Kotzebue: February 29, 2000.
Southcentral Regional Council, Kenai: March 1, 2000.
Southeast Regional Council, Douglas: March 13, 2000.
Kodiak/Aleutians Regional Council, Anchorage: March 21, 2000.
Yukon-Kuskokwim Delta Regional Council, Nunapitchuk: March 21, 2000.
Bristol Bay Regional Council, Dillingham: March 24, 2000.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings. We will compile and distribute for additional public review during April 2000 the written proposals to change Subpart D fish and shellfish regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period. You may present comments on published proposals to change fish and shellfish and customary and traditional use determination regulations relative to fish and shellfish to the Regional Councils at their fall meetings; locations, dates, and times to be announced. The Board will deliberate and take final action on proposals received that request changes to this proposed rule at a public meeting to be held in Anchorage during December 2000.

Providing the following information will facilitate the Board's review of your comments and proposals: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; and (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, Subpart C, and §§ __.26 and __.27, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council staff members and on the basis of least harm to the subsistence user. Proposals should be specific to customary and traditional use determinations or to subsistence fish and shellfish seasons, harvest limits, and/or methods and means.

Public Review Process—Regulation Comments, Proposals, and Public Meetings

This proposed rule will also be available for review through the Office of Subsistence Management's home page at http://www.r7.fws.gov/asm/home.html. You may submit written comments or proposed regulation changes in writing to the address identified at the beginning of this rulemaking by March 27, 2000. You may also present comments or proposals at Regional Council meetings to be held February 17–March 24, 2000. Proposals may also be submitted electronically to Bill__Knauer@fws.gov.

Following public distribution of proposals for changes to the 2001 proposed regulations, we will provide a comment period to allow public review of those proposals that will be considered by the Board. We will also hold a second series of Regional Council meetings in September and October 2000 to assist the Regional Councils in developing recommendations to the Board. You may submit written comments on those proposals to the U.S. Fish and Wildlife Service before conclusion of the comment period, which is presently scheduled to end on May 31, 2000. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, December 2000. You may provide additional oral testimony on specific proposals before the Board at that time.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service.

The "Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register** (57 FR 22940–22964) on May 29, 1992. In a lawsuit consolidated with *Alaska* v. *Babbitt*, plaintiff Katie John challenged these rules, arguing that navigable waters are properly included within the definition of "public lands" set out in ANILCA. The United States Court of Appeals for the Ninth Circuit subsequently held: "[T]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska* v. *Babbitt*, 72 F.3d at 703–704. In the course of its decision, the Ninth Circuit also directed: "[T]he Federal agencies that administer the subsistence priority are responsible for identifying those waters." Id. at 704. As a result, following publication of a proposed rule (62 FR 66126) on December 17, 1997, we published a final rule (Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority, Final Rule, 64 FR 1276) on January 8, 1999, that conformed the Federal subsistence management regulations to the Ninth Circuit's ruling.

Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Applicable Waters

We published regulations in the **Federal Register** January 8, 1999, (64 FR 1276) that identified those waters where a Federal reserved water right exists. These regulations would not change those areas of applicability.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100 (1999), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2000.

Proposed Changes From 2000 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. The text of the 2000 Subparts C and D Final Rule served as the foundation for the 2001 Subparts C and D proposed rule. The regulations contained in this proposed rule will take effect on March 1, 2001, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the

Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

We prepared an environmental assessment on the expansion of Federal jurisdiction over fisheries that is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly affecting the human environment and signed a Finding of No Significant Impact. Accordingly, an amended final rule for Subsistence Management Regulations for Public Lands in Alaska (64 FR 1276, published January 8, 1999) expanded the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. We completed Section 810 analyses as part of the FEIS and the environmental assessment processes. They concluded that the Federal Subsistence Management Program, with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA section 810(a) for any subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires 5/31/2000. The information requirements described below will be submitted to OMB for approval beyond that date. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

The collection of information under this rule will be achieved through the use of a Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application, which would be the same form as currently approved and used for the hunting program. This information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish or shellfish populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 1,000, yielding a total annual reporting and recordkeeping burden of 250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, [§ __.24 Customary and traditional determinations.]) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand. Send a copy of any comments that concern how we could make this rule easier to understand to: USFWS, Office of Subsistence Management, Thomas H. Boyd, 1011 E. Tudor Road, Anchorage, Alaska 99503. You may also e-mail the comments to this address: Bill__Knauer@fws.gov.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, fishing tackle, boat, motor, and gasoline dealers. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of

salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million in food value State-wide.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Act. This rule will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish or wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

We emphasize that these regulations would apply only to Federal lands and waters where there is a Federal interest. Individuals who do not meet the requirements under these regulations may still harvest fish and shellfish on Federal lands and waters in accordance with other State fishing and hunting regulations, except in those instances where Federal lands or waters have been specifically closed to non-Federally qualified subsistence users.

Drafting Information. These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Curt Wilson, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments propose to amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 would continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. We propose to amend subpart C of 36 CFR part 242 and 50 CFR part 100, by revising § ___.24(a)(2) and (a)(3) to read as follows:

§ ___.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.*

Area	Species	Determination
Kotzebue area	All fish	Residents of the Kotzebue Area.
Norton Sound—Port Clarence Area	All fish	Residents of the Norton Sound-Port Clarence Area.
Yukon—Northern area—Yukon River drainage	Salmon, other than Yukon River Fall Chum salmon.	Residents of the Yukon Area, including the community of Stebbins.
Yukon River drainage	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish species (other than salmon), including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon-Northern Area.
Remainder	All fish	Residents of the Northern Area, except for those domiciled in Unit 26–B.
Kuskokwim area	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.

Area	Species	Determination
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area.
Waters around Nunivak Island.	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
Bristol Bay area—Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder	All fish	Residents of the Bristol Bay Area.
Aleutian Islands area	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
Alaska Peninsula area	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area	Residents of the Alaska Peninsula Area.
Chignik area	Halibut, salmon and fish other than steelhead and rainbow trout.	Residents of the Chignik Area.
Kodiak area—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak area	Fish other than steelhead and rainbow trout and salmon.	Residents of the Kodiak Area.
Cook Inlet area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
Prince William Sound area—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Glennallen Subdistrict of the Upper Copper River District and the waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek.	Salmon	Residents of the Prince William Sound Area.
Copper River District—remainder	Salmon	Residents of the Prince William Sound Area.
Yakutat area—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Southeastern Alaska area—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.

Area	Species	Determination
District 2—North of the latitude of the northernmost tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20′ W. long. and east of 132° 25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western-shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Bering Sea area	All shellfish	Residents of the Bearing Sea Area.
Alaska Peninsula-Aleutian Islands area	Shrimp, Dungeness, King, and Tanner crab	Residents of the Alaska Peninsula-Aleutian Islands Area.
Kodiak area	Shrimp, Dungeness, and Tanner crab	Residents of the Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
Prince William Sound area	Shrimp, clams, Dungeness, King, and Tanner crab.	Residents of the Prince William Sound Area.

Area	Species	Determination
Southeastern Alaska-Yakutat Area—Section 1–E south of the latitude of Grant Island light.	Shellfish, except shrimp, King crab, and Tanner crab.	Residents of the Southeast Area.
Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, King crab, and Tanner crab.	Residents of the Southeast Area.
Section 3–A and 3–B	Shellfish, except shrimp, King crab, and Tanner crab.	Residents of the Southeast Area.
District 13	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	Residents of the Southeast Area.

Subpart D—Subsistence Taking of Fish and Wildlife

3. We propose to amend subpart D of 36 CFR part 242 and 50 CFR part 100, by revising §§ __.26 and __.27 to read as follows:

§ __.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § ____.27:

Abalone Iron means a flat device which is used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Cast net means a circular net with a mesh size of no more than one and one-half inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi;* all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment, a tethered, umbilical, surface-supplied, or snorkel.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked, anchored or otherwise fixed.

Fishwheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish which is driven by river current or other means.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish or *bottomfish* means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the fish are preserved. A fish, when landed and killed becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Household means a person or persons having the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hydraulic clam digger means a device using water or a combination of air and water to remove clams from their environment.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a

length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for traveling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than four feet, equipped with projecting prongs used to gather sea urchins.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under five-pound weight.

Subsistence fishing permit means a permit issued by the Alaska Department of Fish and Game, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit, you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A ring net;
(xi) A longline;
(xii) A fyke net;
(xiii) A lead;
(xiv) A herring pound;
(xv) A dip net;
(xvi) Jigging gear;
(xvii) A mechanical jigging machine;
(xviii) A handline;
(xix) A shovel;
(xx) A mechanical clam digger;
(xxi) A hydraulic clam digger;
(xxii) An abalone iron;
(xxiii) A scallop dredge;
(xxiv) A grappling hook;
(xxv) A sea urchin rake;
(xxvi) Diving gear;
(xxvii) A cast net;
(xxviii) A handline;
(xxix) A rod and reel; and
(xxx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of six inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within six inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with (i) of this paragraph, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least six inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within six inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) You may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses. You may not obstruct more than one-half the width of any stream with any stationary fishing.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow trout or steelhead trout.

(15) You may not use as bait for commercial or sport fishing purposes fish taken for subsistence use or under subsistence regulations.

(16) You may not accumulate harvest limits authorized in this section or §__.27 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possessions limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) If you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to-fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you

demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved].

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not subsistence fish for char from June 1 through September 20, in the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and in the Kelly River from its mouth to ¼ mile upstream.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, you may take fish at any time except as specified by emergency regulation.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(C) In Subdistricts 1–3, you may take salmon other than chum salmon by beach seine during periods established by emergency regulations.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You may take fish for subsistence purposes without a subsistence fishing permit except that a subsistence fishing permit is required in the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take salmon in the Yukon-Northern Area at any time.

(ii) In the following locations, you may take salmon only during the open weekly fishing periods of the commercial salmon fishing season and may not take them for 24 hours before the opening of the commercial salmon fishing season:

(A) District 4, excluding the Koyukuk River drainage;

(B) in Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the commercial salmon fishing season.

(vi) In Districts 1, 2, and 3:

(A) After the opening of the commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period.

(vii) In Subdistrict 4–A after the opening of the commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period; however, you may take king salmon during the commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(viii) In the upper Yukon River drainage, you may not subsistence fish in Birch Creek and waters within 500 feet of its mouth, except that you may take whitefish and suckers under the authority of a subsistence fishing permit.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point five miles downstream of the state highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks; and

(D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(x) You may not subsistence fish in the Delta River.

(xi) You may not subsistence fish in the following rivers and creeks and within 500 feet of their mouths: Big Salt River, Hess Creek, and Beaver Creek.

(xii) You may not subsistence fish in the Deadman, Jan, Fielding, and Two-Mile Lakes.

(xiii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiv) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xvi) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvii) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length; and

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately one mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point four miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(xviii) During the commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(xix) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xx) Except as provided in this section, you may take fish for subsistence purposes without a subsistence fishing permit.

(xxi) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) For whitefish and suckers in Birch Creek and within 500 feet of its mouth;

(D) For the Tanana River drainage above the mouth of the Wood River.

(xxii) Only one subsistence fishing permit will be issued to each household per year.

(xxiii) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxiv) If you are a commercial salmon fisherman who is registered for District 1, 2, or 3, you may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(4) *Kuskokwim Area:* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for six hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon for 16 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and six hours after each open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(ix) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak, subject to the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, rod and reel, or jigging through the ice;

(B) You may not use gillnets for taking rainbow trout from March 15—June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon as follows:

(A) By spear in the Togiak River excluding its tributaries;

(B) From August 30 through September 30, by spear, dip net, and gillnet along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by ADF&G regulatory markers;

(C) From August 15 through September 15, by spear, dip net, and gillnet at Johnny's Lake on the northwestern side of Naknek Lake;

(D) From October 1 through November 15, by spear, dip net, and gillnet at the mouth of Brooks River at Naknek Lake;

(E) At locations and times specified in paragraphs (i)(5)(vii) (B) through (D) of this section, gillnets may not exceed five fathoms in length and may not be anchored or tied to a stake or peg, and you must be present at the net while fishing the net.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik, River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit may be issued to each household per year.

(xvi) After August 20, you may not possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amilia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53° 52.64′ N. lat., 166° 32.30′ W. long. to a point on Amaknak Island at 53° 52.82′ N. lat., 166° 32.13′ W. long., and north of line from a point south of Agnes Beach at 53° 52.28′ N. lat., 166° 32.68′ W. long. to a point at 53° 52.35′ N. lat., 166° 32.95′ W. long. on Amaknak Island;

(B) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(C) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(D) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout and char only under the terms of a subsistence fishing permit, except that you do not require a permit in the Akutan, Umnak and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of the your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 20.22′ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow trout and steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 51.10′ N. lat.), west of 150° W. long., north of 55° 30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20.22′ W. long.).

(i) You may take fish, other than salmon, rainbow trout and steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) All waters closed to commercial salmon fishing in the Chiniak Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(B) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(C) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout,

and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must keep a record of the number of subsistence fish taken each year. You must record on the reverse side of the permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51′ 06″ N. lat.) and a line extending south from Cape Fairfield (148° 50′ 15″ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Cook Inlet Area. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may not take salmon, Dolly Varden, trout, grayling, char, and burbot for subsistence purposes.

(iii) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and two inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(iv) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Prince William Sound Area.

(ii) You may take salmon in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) You may not take salmon in the Chitina Subdistrict.

(iii) You may take salmon, other than chinook salmon, in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit issued by ADF&G and under the following conditions:

(A) You may take salmon only in those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels and dip nets on the Copper River and only dip nets and spears in Tanada Creek;

(C) You may take salmon only from June 1 through September 1 or until the season is closed by emergency regulation; fishing periods are to be established by emergency regulation and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(D) You must release chinook salmon to the water unharmed; you must equip your fish wheel with a livebox or monitor it at all times;

(E) You must return the permit no later than September 30.

(iv) You may take salmon for subsistence purposes with no bag or possession limits in those waters of the Southwestern District and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of four inches, or gillnets up to 150 fathoms in length, except that you may take pink salmon only in fresh water using dip nets;

(B) You may take salmon only from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(v) You may take salmon for subsistence purposes with no bag or possession limits in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of four inches, or gillnets up to 150 fathoms in length with a maximum mesh size of six and one-quarter inches, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until two days before the commercial opening of the Eastern District, seven days per week during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until October 31, seven days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(vi) If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(vii) You may take herring spawn on kelp for subsistence purposes from above water from March 15 through June 15 and underwater using dive gear only during open periods for the wild herring spawn-on-kelp commercial fishery.

(viii) You may not take salmon in the tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District.

(ix) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(x) You may take salmon only by the following types of gear:

(A) In the Glennallen Subdistrict by fish wheels, rod and reel, or dip nets; and

(B) In salt water by gillnets and seines.

(xi) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain. You must register your fish wheel with ADF&G. Your registration number and

name and address must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water; only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel. You must remove the fish wheel from the water at the end of the permit period. You may operate only one fish wheel at any one time. You may not set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets. A wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least one inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xii) You must personally operate the fish wheel or dip net. You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xiii) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xiv) You may take herring spawn on kelp only by a hand-held unpowered blade-cutting device. You must cut kelp plant blades at least four inches above the stipe (stem). The provisions of this paragraph do not apply to Fucus species.

(xv) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xvi) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

(xvii) Only one subsistence fishing permit will be issued to each household per year.

(xviii) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) You must return your permit no later than October 31, or you may be denied a permit for the following year;

(D) If your household has a Chitina Subdistrict personal use salmon fishing permit, you will not be issued a Copper River subsistence salmon fishing permit;

(E) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by this section and during fishing operations;

(F) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(G) A permit holder must record on ADF&G forms all salmon taken immediately after landing the salmon.

(xix) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) For a household with one person, 30 salmon, of which no more than 5 may be chinook salmon if taken by dip net;

(B) For a household with two persons, 60 salmon, of which no more than five may be chinook salmon if taken by dip net; plus 10 salmon for each additional person in a household over 2, except that the household's limit for chinook salmon taken by dip net does not increase;

(C) upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with one person, of which no more than 5 may be chinook salmon if taken by dip net; or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon if taken by dip net.

(xx) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xx):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the department when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization, are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xxi) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xxii) In locations open to commercial salmon fishing other than described for the Upper Copper River District, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons and 10 salmon for each additional person in a household;

(C) No more than five king salmon may be taken per permit.

(xxiii) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, steelhead trout in the Situk and Ahrnklin Rivers, other trout and char only under authority of a subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, in the Southeastern Alaska Area at any time.

(ii) You may take herring at any time, except that in the 72 hours before and 72 hours after an open commercial herring fishing period in the Southeastern Alaska Area, a vessel that, or crew member or permit holder who, participates in that commercial herring fishery opening may not take or possess herring in any district in the Southeastern Alaska Area.

(iii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iv) You must possess a subsistence fishing permit to take salmon, trout, or char.

(v) Permits will not be issued for the taking of chinook or coho salmon, but if you take chinook or coho salmon incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any chinook or coho salmon taken in this manner on your permit calendar.

(vi) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka

(viii) You shall immediately remove the pelvic fins of all salmon when taken.

(ix) You may not possess subsistence-taken and sport-taken salmon on the same day.

§ __.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § __.26 or this section.

(c) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section, you may use gear as specified in the definitions of § .26 for subsistence taking of shellfish.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § __.26.

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(d) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(e) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence shellfishing regulations this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designaté the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch and such other information as may be required for management or conservation purposes;

(6) Subsistence fishing reports must be completed and submitted at a time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fails to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the

mail, accident, sickness or other unavoidable circumstances.

(f) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(g) You may not take or possess shellfish smaller than the minimum legal size limits.

(h) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive or barter shellfish or their parts taken in violation of Federal or State regulations.

(i)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this chapter, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crew members of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(j) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters under jurisdiction for Federal subsistence management.

(2) *Prince William Sound Area.* No marine waters under jurisdiction for Federal subsistence management.

(3) *Cook Inlet Area.* You may not take shellfish for subsistence purposes.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crab per person; only male Dungeness crab with a shell width of six and one-half inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may not use more than five crab pots, each being no more than 75 cubic feet in capacity to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width five and one-half inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person; only crabs with a shell width of six and one-half inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crab per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crab.

Dated: December 16, 1999.

James A. Caplan,

Acting Regional Forester, USDA-Forest Service.

Dated: December 15, 1999.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 00–1719 Filed 2–1–00; 8:45 am]

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Federal Register

Wednesday,
February 2, 2000

Part VI

The President

Proclamation 7270—National African American History Month, 2000

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65

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22

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Federal Register
Vol. 65, No. 22
Wednesday, February 2, 2000

Presidential Documents

Title 3—

The President

Proclamation 7270 of January 31, 2000

National African American History Month, 2000

By the President of the United States of America

A Proclamation

Each year during National African American History Month, as we explore the history and culture of African Americans, we discover anew a treasure of stories about the triumph of the human spirit, inspiring accounts of everyday people rising above the indignities imposed by prejudice. These stories are not only an important part of African American history, but an essential part of American history.

We are awakened to such stories through the power, beauty, and unflinching witness of poets and writers like Maya Angelou, Gwendolyn Brooks, Paul Laurence Dunbar, Langston Hughes, James Weldon Johnson, Toni Morrison, and Alice Walker. We find them in the lives and voices of Frederick Douglass, Sojourner Truth, Booker T. Washington, and others who, rising above slavery, brutality, and bigotry, became great American champions of liberty, equality, and dignity. We see them written in the achievements of civil rights leaders like Daisy Bates, James Farmer, John Lewis, Martin Luther King, Jr., Thurgood Marshall, Mary Church Terrell, Roy Wilkins, and Whitney Young.

Forty years ago this month, a new chapter in African American history was written. On February 1, 1960, four courageous young men—freshmen at North Carolina Agricultural and Technical College in Greensboro—sat down at a segregated lunch counter in a local store and politely refused to leave until they were served. Their nonviolent action challenged a barrier that, symbolically and practically, had separated black and white Americans for decades and denied equal treatment to African American citizens. The extraordinary bravery and determination of Ezell Blair, Jr., Franklin McCain, Joseph McNeil, and David Richmond galvanized young men and women of conscience across America, setting in motion a series of student sit-ins in more than 50 cities and 9 States. Subjecting themselves to verbal abuse, physical violence, and unjust arrest, thousands of black and white students peacefully demonstrated to end segregation in restaurants, theaters, concert halls, and public transportation and called for equality in housing, health care, and education. Their story of conscience and conviction and their ultimate triumph continue to inspire us today.

The theme of this year's African American History Month is "Heritage and Horizons: The African American Legacy and the Challenges of the 21st Century." It is a reminder that the new century on which we have just embarked offers us a unique opportunity to write our own chapter in the history of African Americans and of our Nation. We can use this time of extraordinary prosperity and peace to widen the circle of opportunity in America, to recognize that our society's rich diversity is one of our greatest strengths, and to unite around the fundamental values that we all share as Americans. We can teach our children that America's story has been written by men and women of every race and creed and ethnic background. And we can ensure that our laws, our actions, and our words honor the rights and dignity of every human being.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 2000 as National

African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs that raise awareness and appreciation of African American history.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–2452
Filed 2–1–00; 10:57 am]
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Federal Register

Vol. 65, No. 22

Wednesday, February 2, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864 1
4865–5218 2

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217

5 CFR

581 4753
582 4753

7 CFR

301 4865
981 4867

Proposed Rules:
54 4780

12 CFR

Proposed Rules:
Ch. 1 4895

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870
71 ..... 4871, 4872, 4873, 4874
97 ..... 4875, 4877, 4879

Proposed Rules:
21 0000
25 0000
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906
71 ..... 4910, 4911
91 0000
108 4912
109 4912
111 4912
121 4912
125 0000
129 4912
191 4912

21 CFR

876 4881
1308 0000

Proposed Rules:
1310 4913

29 CFR

Proposed Rules:
1910 4795

30 CFR

938 4882

34 CFR

676 4886

35 CFR

Proposed Rules:
242 5196

38 CFR

Proposed Rules:
21 4914

39 CFR

111 4864

Proposed Rules:
111 4918

40 CFR

52 4887

Proposed Rules:
130 4919

42 CFR

Proposed Rules:
36 4797

45 CFR

1303 4764

47 CFR

1 4891

Proposed Rules:
73 ..... 4798, 4799, 4923
76 4927
95 4935

48 CFR

203 4864
209 4864
225 4864
249 4864

Proposed Rules:
30 4940

49 CFR

195 4770

50 CFR

17 4770
679 ..... 4891, 4892, 4893

Proposed Rules:
17 4940
100 5196
648 4941

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 2, 2000

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Incidental taking—
Eastern Tropical Pacific Ocean; tuna purse seine vessels; compliance with International Dolphin Conservation Program; published 1-3-00

EDUCATION DEPARTMENT
Postsecondary education:
Federal Supplemental Educational Opportunity Grant Program—
Relief from specific statutory and regulatory provisions; published 2-2-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; published 2-2-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Pratt & Whitney; published 12-29-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
Florida; comments due by 2-11-00; published 12-13-99
Melons grown in—
Texas; comments due by 2-9-00; published 1-10-00
Raisins produced from grapes grown in—
California; comments due by 2-8-00; published 12-10-99

COMMERCE DEPARTMENT
International Trade Administration
Watches, watch movements, and jewelry:
Duty-exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-8-00; published 12-10-99
Atlantic highly migratory species—
Atlantic pelagic longline fishermen; time/area closures; hearings and Advisory Panel meetings; comments due by 2-11-00; published 12-28-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-10-00; published 1-26-00
West Coast States and Western Pacific fisheries—
Western Pacific Region pelagic; comments due by 2-10-00; published 12-27-99
Marine mammals:
Incidental taking—
San Francisco-Oakland Bay Bridge, CA; pile installation demonstration project; comments due by 2-7-00; published 1-7-00

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Advisors that provide advice by means of various media; registration exemption; comments due by 2-7-00; published 12-7-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Central air conditioners and heat pumps; energy conservation standards; comments due by 2-7-00; published 11-24-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances; allocation; comments due by 2-7-00; published 1-6-00
Air quality implementation plans; approval and promulgation; various States:
Kansas; comments due by 2-10-00; published 1-11-00
Missouri; comments due by 2-11-00; published 1-12-00
Tennessee; comments due by 2-7-00; published 1-7-00
Hazardous waste:
Identification and listing—
Exclusions; comments due by 2-7-00; published 12-9-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tebufenozide; comments due by 2-7-00; published 12-8-99
Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-7-00; published 1-7-00
National priorities list update; comments due by 2-7-00; published 1-7-00
Toxic chemical release reporting; community right-to-know—
Phosphoric acid; comments due by 2-7-00; published 12-7-99

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Illinois; comments due by 2-7-00; published 1-21-00
Kansas; comments due by 2-7-00; published 1-21-00
Michigan; comments due by 2-7-00; published 12-30-99
New York; comments due by 2-7-00; published 1-4-00
Texas; comments due by 2-7-00; published 12-30-99
Satellite Home Viiewer Act; network nonduplication, syndicated exclusivity and sports blackout rules to satellite retransmissions; comments due by 2-7-00; published 2-2-00
Television broadcasting:
Class A television service; establishment; comments due by 2-10-00; published 1-20-00
Two way transmissions; mutlipoint distribution service and instructional television fixed service licenses participation; comments due by 2-10-00; published 1-26-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs and biological products:
Postmarketing studies; status reports; comments due by 2-9-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Fellowships, internships, training:
National Institutes of Health Contraception and Infertility Research Loan Repayment Program; comments due by 2-8-00; published 12-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and State health care programs:
Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-8-00; published 12-10-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Alabama sturgeon; comments due by 2-10-00; published 1-11-00

INTERIOR DEPARTMENT
Watches, watch movements, and jewelry:

Duty-exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf operations:
Minerals prospecting; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Extension of distance Mexican nationals may travel into U.S. without obtaining additional immigration documentation at selected Arizona ports-of-entry; comments due by 2-7-00; published 12-8-99

Organization, functions, and authority delegations:
Los Angeles and San Francisco Asylum Offices, CA; jurisdictional change; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:
United States Marshals Service; fees for services; comments due by 2-7-00; published 12-7-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-10-00; published 11-24-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Attorney fees; reimbursement; comments due by 2-7-00; published 12-23-99

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:
Family relationships; inheritance rights; comments due by 2-7-00; published 12-8-99

SMALL BUSINESS ADMINISTRATION

Business loans:
Liquidation of collateral and sale of disaster assistance loans; comments due by 2-9-00; published 1-10-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 2-7-00; published 1-6-00
Bell; comments due by 2-7-00; published 12-8-99
Boeing; comments due by 2-7-00; published 12-8-99
Bombardier; comments due by 2-11-00; published 1-12-00
British Aerospace; comments due by 2-9-00; published 1-6-00
Eurocopter Deutschland GMBH; comments due by 2-8-00; published 12-10-99
Eurocopter France; comments due by 2-8-00; published 12-10-99
Fokker; comments due by 2-7-00; published 1-6-00
McDonnell Douglas; comments due by 2-7-00; published 12-22-99
MD Helicopters Inc.; comments due by 2-7-00; published 12-8-99
Pratt & Whitney; comments due by 2-7-00; published 12-8-99
Turbomeca; comments due by 2-7-00; published 12-8-99

Airworthiness standards:
Special conditions—
Ayres Corp. Model LM-200 Loadmaster airplane; comments due by 2-11-00; published 1-12-00

Class E airspace; comments due by 2-8-00; published 12-29-99

TREASURY DEPARTMENT

Balanced Budget Act of 1997; implementation:
District of Columbia retirement plans; Federal benefit payments; comments due by 2-11-00; published 12-13-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.

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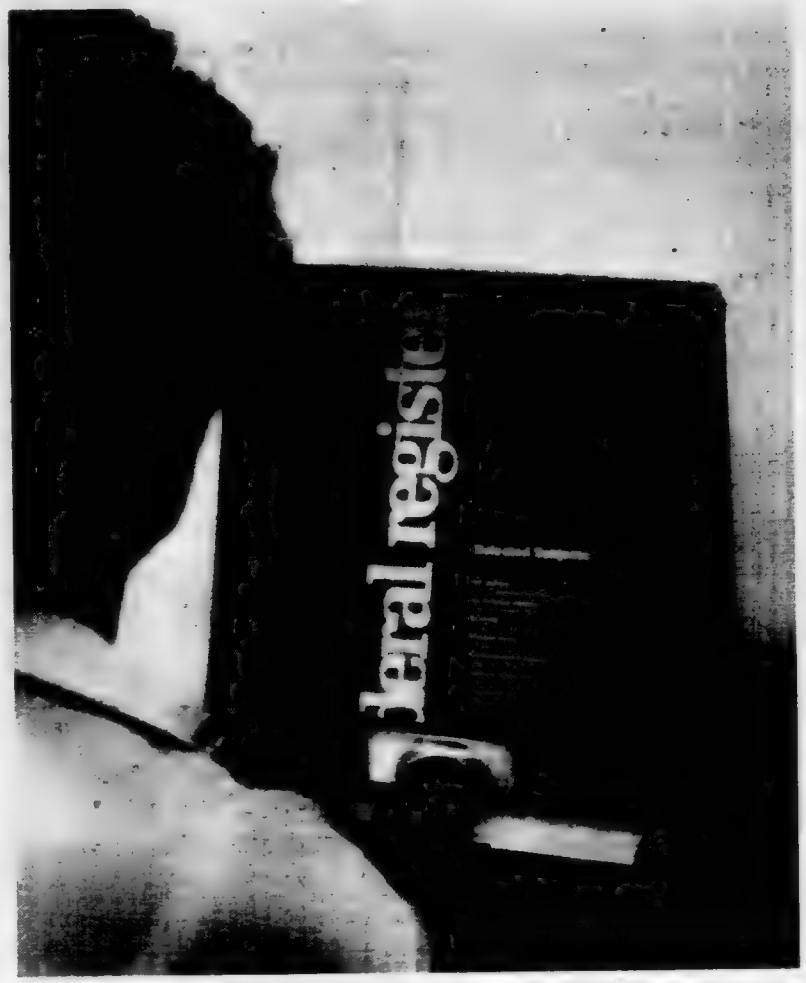

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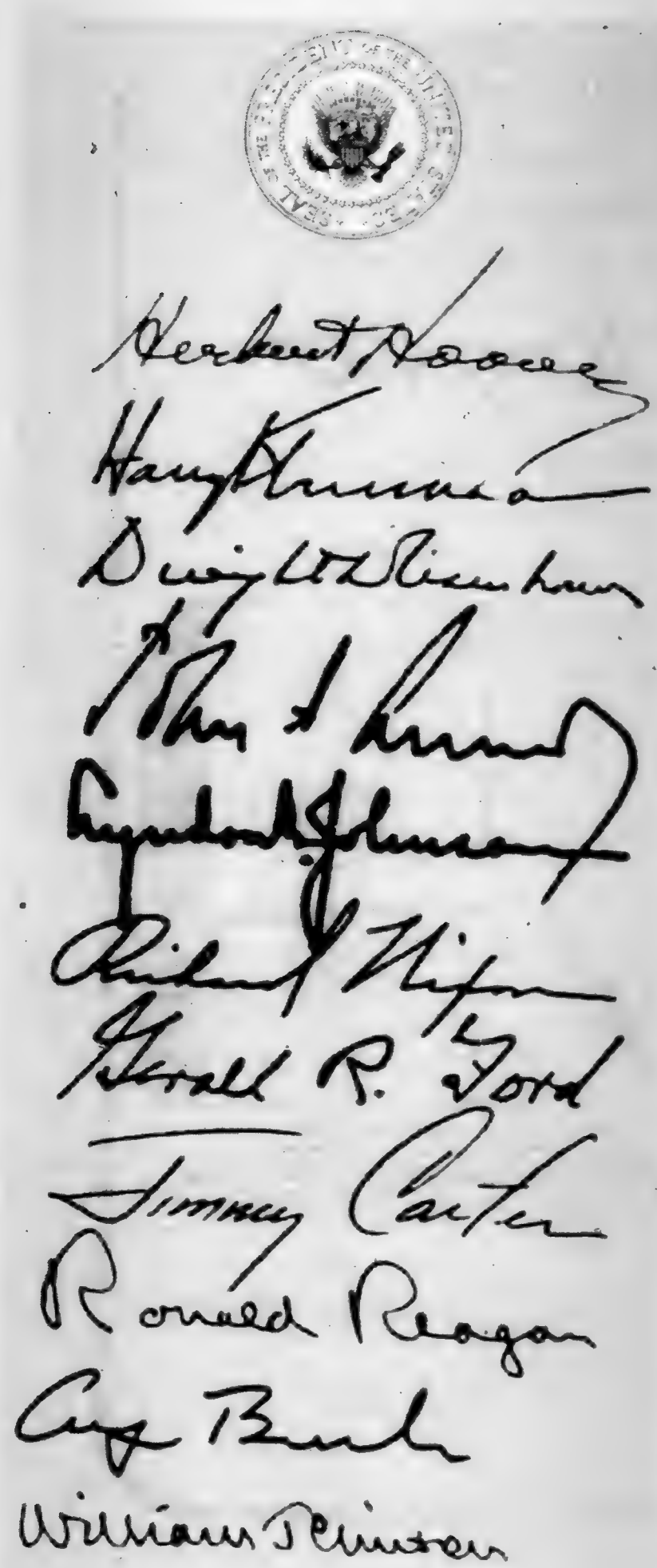

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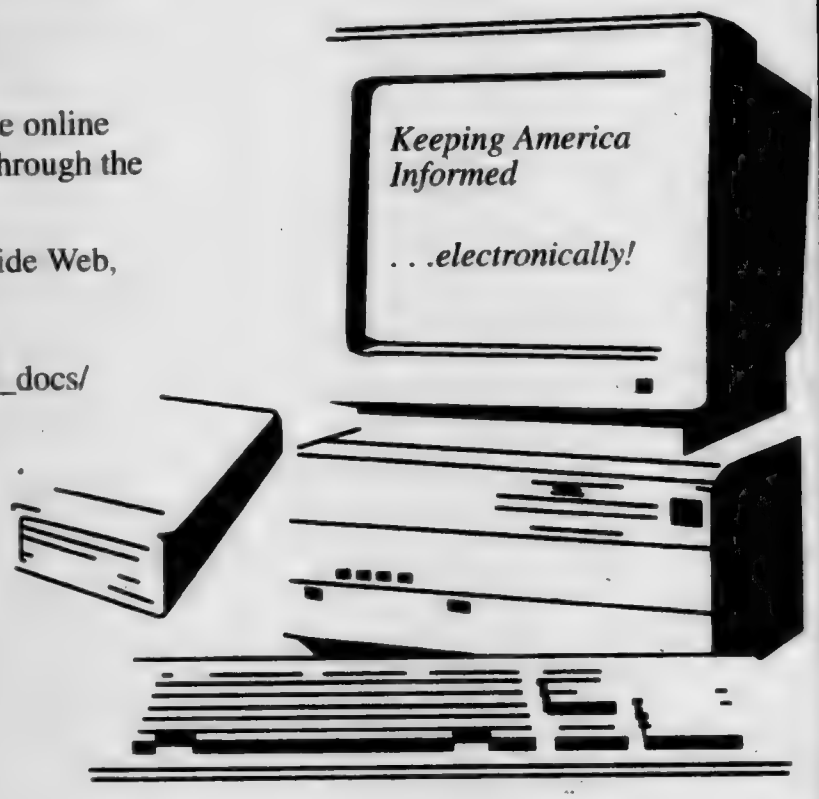

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Contents

Federal Register

Vol. 65, No. 23

Thursday, February 3, 2000

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service
See Natural Resources Conservation Service
See Rural Telephone Bank

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Fire ant, imported, 5221–5222
NOTICES
Animal welfare:
Farm animals used for nonagricultural purposes, 5301–5303
Meetings:
Exhibition animals; humane care and treatment, 5303–5305
Reports and guidance documents; availability, etc.:
Biotechnological/biological veterinary medicinal products; stability testing guideline, 5305–5306

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5352–5353

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Technology Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Coffee, Sugar & Cocoa Exchange—
Peruvian coffee; discount, delivery port, etc., 5325–5326

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5392–5393

Defense Department
See Navy Department
NOTICES
Meetings:
President's Information Technology Advisory Committee, 5326–5327
U.S. Strategic Command Strategic Advisory Group, 5327

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5327–5328
Submission for OMB review; comment request; correction, 5328
Grants and cooperative agreements; availability, etc.:
Indian education programs—
Strengthening Institutions Program et al.; correction, 5328–5329
Postsecondary education—
Gaining Early Awareness and Readiness for Undergraduate Programs, 5329–5331

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 5259–5264
Maryland, 5245–5258
South Dakota, 5264–5266
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Source specific plans--
Navajo Nation, AZ and NM; correction
[Editorial Note: This document, published at 65 FR 4244 in the Federal Register of January 26, 2000, was erroneously classified as a notice. It should have been classified as a proposed rule.]
Air quality implementation plans; approval and promulgation; various States:
California, 5297–5298
Maryland, 5296–5297
South Dakota, 5298
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Former Witter Co. Site, MO, 5340

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Organization—
Termination of FCS charter to become financial institution under another Federal or State chartering authority; exit fee calculation, 5286–5289

Farm Credit System Insurance Corporation
NOTICES
Reports and guidance documents; availability, etc.:
Secure base amount and allocated insurance reserve accounts; policy statement, 5340–5348

Farm Service Agency
NOTICES
Meetings:
National Drought Policy Commission; hearing on policy, report to the President and Congress, 5306

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ—
Special flight rules in vicinity (SFAR No. 50-2), 5395–5397
Airworthiness directives:
Airbus, 5243–5245
Boeing, 5222–5241
British Aerospace, 5228–5229
McDonnell Douglas, 5241–5243

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996: implementation—
Telemessaging, electronic publishing, and alarm monitoring services; clarification, etc., 5267–5268

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Public utilities; annual charges, 5289–5295
NOTICES
Electric rate and corporate regulation filings:
West Fork Land Development Co., L.L.C., et al., 5333–5336
Environmental statements; availability, etc.:
Florida Gas Transmission Co., 5336–5337
Hydroelectric applications, 5337–5340
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 5331
ARCO Products Co. et al., 5331–5332
Northwest Pipeline Corp., 5332
Tosco Corp., 5332
Ultramar Inc. et al., 5332–5333

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Clark County, NV, 5388

Federal Maritime Commission
NOTICES
Agreements filed, etc., 5348–5349
Complaints filed:
Inlet Fish Producers, Inc., 5349
Ocean transportation intermediary licenses:
First Express International Corp. et al., 5349

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5349–5350
Banks and bank holding companies:
Formations, acquisitions, and mergers, 5350–5351
Permissible nonbanking activities, 5351

Fish and Wildlife Service
RULES
Endangered and threatened species:
Yreka phlox, 5268–5275
Marine mammals:
Incidental taking; authorization letters, etc.—
Oil and gas industry activities; polar bears and Pacific walruses, 5275–5278
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Northern spotted owl, 5298–5300

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Skin irritation and sensitization testing of generic transdermal drug products; industry guidance, 5353–5354

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida
RP Scherer Corp.; gelatin capsule manufacturing facilities, 5308

Forest Service
NOTICES
Environmental statements; notice of intent:
Salmon-Challis National Forest, ID, 5307

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Minority Health Advisory Committee, 5351–5352

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5354–5355

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance; condominium associations; right of first refusal, 5405–5406
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5360–5365
Grants and cooperative agreements; availability, etc.:
Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative, 5399–5403

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Various countries, 5309–5310
Circular welded carbon steel pipes and tubes from—
Taiwan, 5310–5311
Porcelain-on-steel cookware from—
Mexico, 5311

Silicon metal from—
Argentina, 5311–5312
Sparklers from—
China, 5312–5315
Stainless steel wire rods from—
Brazil, 5319–5322
France, 5317–5319
India, 5315–5317
Antidumping and countervailing duties:
Five-year sunset reviews—
Initiation of reviews, 5308–5309
Applications, hearings, determinations, etc.:
University of—
Massachusetts, 5322

International Trade Commission
NOTICES
Import investigations:
Carbon steel wire rod from—
Argentina, 5368–5369
Compact ductile iron waterworks fittings from—
China, 5369
Cotton shop towels from—
Various countries, 5369
Creatine monohydrate from—
China, 5369–5370
Electric power services; recent reforms in selected foreign markets, 5370–5371
Excimer laser systems for vision correction surgery and components and methods for performing such surgery, 5371
Glycine from—
China, 5371–5373
Production sharing; use of U.S. components in foreign assembly operations (1995-1998), 5373–5374
Semiconductor memory devices and products containing same, 5374–5375
Meetings; Sunshine Act, 5375

Land Management Bureau
NOTICES
Survey plat filings:
Arizona, 5365

Management and Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-HolLings):
Sequestration update report; transmittal to President and Congress, 5378

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Space Science Advisory Committee, 5375

National Archives and Records Administration
PROPOSED RULES
Records management:
Computer tapes, rewind requirement; elimination, 5295–5296

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 5375

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5355–5357
Meetings:
Minority Health Research Advisory Committee, 5357
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 5358
National Institute of General Medical Sciences, 5357–5358
National Institute on Alcohol Abuse and Alcoholism, 5357
National Institute on Drug Abuse, 5358–5359
Reports and guidance documents; availability, etc.:
Human pluripotent stem cells; research guidelines, 5359

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 5284–5285
Pollock, 5278–5285
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic Fishery Management Council; hearings, 5300
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Oregon and Washington Fish and Wildlife Departments; salmonids, 5322–5323
Meetings:
New England Fishery Management Council, 5323–5324

National Park Service
NOTICES
Environmental statements; notice of intent:
Point Reyes National Seashore, CA, 5365–5366
Management and land protection plans; availability, etc.:
Point Reyes National Seashore, CA; fire management, 5366–5367
Meetings:
Denali National Park and Preserve Subsistence Resource Commission, 5367
Kenilworth Park, Washington, DC; clean up and planning for use of park, 5367
Wrangell-St. Elias National Park Subsistence Resource Commission, 5367–5368

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 5375–5376

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Indiana, 5307

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Thiokol Propulsion, 5327

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 5377
Solid materials control; staff working group, 5377–5378
Applications, hearings, determinations, etc.:
Vermont Yankee Nuclear Power Corp., 5376–5377

Office of Management and Budget
See Management and Budget Office

Presidential Documents
PROCLAMATIONS
Special observances:
Heart Month, American (Proc. 7271), 5219–5220

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Meetings:
CALFED Bay-Delta Program Policy Group, 5368

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 5388–5392

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 5307–5308

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5378–5380
Self-regulatory organizations; proposed rule changes:
Pacific Exchange, Inc., 5383–5384
Applications, hearings, determinations, etc.:
Lincoln National Life Insurance Co. et al., 5380–5383

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Language and Culture Enrichment Program, 5384–5386

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5359–5360

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Laidlaw Inc. et al., 5392

Technology Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Technology Administration Fellows Program, 5324–5325

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5386–5387
Aviation proceedings:
Agreements filed; weekly receipts, 5387
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 5387
Hearings, etc.—
Ameristar Air Cargo, Inc., 5387–5388
Atlantic Coast Jet, Inc., 5387

Treasury Department
See Comptroller of the Currency

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 5395–5397

Part III
Department of Housing and Urban Development, 5399–5403

Part IV
Department of Housing and Urban Development, 5405–5406

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7271 5219

7 CFR
301 5221

12 CFR
Proposed Rules:
611 5286

14 CFR
39 (7 documents) 5222, 5228, 5229, 5235, 5238, 5241, 5243
91 5396
93 5396
121 5396
135 5396

18 CFR
Proposed Rules:
382 5289

24 CFR
206 5406

36 CFR
Proposed Rules:
1234 5295

40 CFR
52 (5 documents) 5245, 5252, 5259, 5262, 5264
Proposed Rules:
52 (5 documents) ... 5296, 5297, 5298

47 CFR
Ch. I 5267

50 CFR
17 5268
18 5275
679 (5 documents) 5278, 5283, 5284, 5285
Proposed Rules:
17 5298
622 5299

OL

65

SS

23

FE

3

000

MI

Federal Register
Vol. 65, No. 23
Thursday, February 3, 2000

Presidential Documents

Title 3—

The President

Proclamation 7271 of February 1, 2000

American Heart Month, 2000

By the President of the United States of America

A Proclamation

In the past half century, our Nation has made enormous progress in the fight against heart disease. Through careful research, scientists and doctors have identified key factors—including smoking, high blood pressure, high blood cholesterol, diabetes, obesity, and physical inactivity—that increase the risk of heart disease. Working with dedication and determination, they have developed new treatments and procedures, such as cardiopulmonary resuscitation, defibrillation, clot-dissolving medicines, angioplasty, and cardiac imaging devices, that have saved many lives. As a result of these advances, the death rate from coronary heart disease has fallen dramatically in our Nation, with a nearly 60-percent reduction since its peak in the mid-1960s.

While these developments are significant, heart disease remains a serious health problem. Despite our knowledge of the importance of exercise and a proper diet to maintaining a healthy heart, studies indicate that both physical inactivity and obesity are on the rise throughout our country. Today, more than 58 million Americans have one or more types of cardiovascular disease (CVD), and each year nearly 1 million Americans die from CVD—more than from the next 7 leading causes of death combined. Furthermore, rates of coronary heart disease deaths and the prevalence of some risk factors remain disproportionately high in minority and low-income populations.

As we stand at the dawn of this new century, it is crucial that we build on the developments of the last century to reduce the incidence of CVD, to address the disparity among various segments of our population, and to make further progress in the fight against heart disease. To help meet this challenge, my Administration has launched the *Healthy People 2010* initiative, which addresses health problems that can be prevented through better care and increased public awareness. Among the initiative's ambitious goals are improving the prevention, detection, and treatment of heart disease risk factors, earlier identification and quicker response in the treatment of heart attacks, and prevention of recurrent cardiovascular events, such as second strokes.

The work of researchers at the National Human Genome Research Institute of the National Institutes of Health (NIH) also holds great promise for the fight against heart disease. With the completion of their monumental project of mapping and sequencing all human chromosomes, we will soon have the capability to identify at birth all those who are genetically predisposed to heart disease and provide them with the treatment and guidance they need through the years to live longer, healthier lives.

The Federal Government will continue to support research and public education to improve heart health through the National Heart, Lung, and Blood Institute, also at NIH. And all Americans should remain grateful that the American Heart Association, through its research and education programs and its vital network of dedicated volunteers, maintains a crucial role in bringing about much-needed advances in the prevention and treatment of heart disease.

In recognition of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 20, 1963 (77 Stat. 843; 36 U.S.C. 101b), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 2000 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and strokes.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–2538
Filed 2–2–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 23
Thursday, February 3, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–125–2]

Imported Fire Ant; Quarantined Areas and Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of three counties in California, two counties in Georgia, one county in New Mexico, four counties in North Carolina, and one county in Tennessee. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. The interim rule also amended the treatment provisions in the Appendix to the imported fire ant regulations by removing all references to the granular formulation of chlorpyrifos because it is no longer marketed for the treatment of grass sod or woody ornamentals.

EFFECTIVE DATE: The interim rule became effective on May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 21, 1999 (64 FR 27657–27660, Docket No. 98–125–1), we amended the imported fire ant (IFA) regulations in 7 CFR part 301 by designating as quarantined areas all or portions of three counties in California, two counties in Georgia, one county in New Mexico, four counties in North Carolina, and one county in Tennessee. We also amended the treatment provisions in the Appendix to the IFA regulations by removing all references to the granular formulation of chlorpyrifos.

Comments on the interim rule were required to be received on or before July 20, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the IFA regulations by designating all or portions of the following counties as quarantined areas: Los Angeles, Orange, and Riverside Counties in California; Habersham and White Counties in Georgia; Dona Ana County in New Mexico; Bertie, Chowan, Martin, and Perquimans Counties in North Carolina; and Madison County in Tennessee. The interim rule was necessary because surveys conducted by APHIS and State and county agencies revealed that IFA has spread to these areas. As a result, the interstate movement of regulated articles from these areas is restricted.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

There are approximately 3,227 agricultural entities in the newly regulated areas with annual sales totaling almost $3.8 billion. We have identified approximately 905 affected entities in the newly regulated areas, including nurseries, sod and hay growers, farm equipment dealers, landscaping companies, and construction companies. The majority of these entities would be considered small businesses. In 1997, the market value of crop sales for the affected entities was more than $467,262,000. We do not know how many of the affected entities move regulated articles interstate; however, the availability of various IFA treatments, which permit the interstate movement of regulated articles with only a small additional cost, minimizes any adverse economic effects due to the interim rule. The average cost for treating a 1 gallon container, which contains one nursery plant, is 2 cents. The average treatment cost for a standard shipment of 10,000 nursery plants, worth anywhere between $10,000 and $250,000, is $200. Entities that do not move regulated articles interstate remain unaffected by the interim rule.

The interim rule also amended the treatment provisions in the Appendix to the IFA regulations by removing all references to the granular formulation of chlorpyrifos because it is no longer marketed for the treatment of grass sod or woody ornamentals. Removing all references to granular chlorpyrifos in the Appendix to the IFA regulations will not have any economic effect on affected entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, and Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 27657–27660 on May 21, 1999.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 28th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspector Service.

[FR Doc. 00–2380 Filed 2–2–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–76–AD; Amendment 39–11540; AD 2000–02–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped with Rolls-Royce RB211–524G/H and RB211–524G–T/H–T Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. This action requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive operational checks of that installation to detect discrepancies, and repair, if necessary. This amendment is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions specified in this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Effective February 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of the Boeing Model 747 series airplane. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation indicated that, in the event of thrust reverser deployment during high-speed climb using high engine power, these airplanes also could experience control problems. This condition, if not corrected, could result in possible failure modes in the thrust reverser control system, inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following the 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA have been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions are acceptably low.

Other Relevant Rulemaking

This AD is related to AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), which is applicable to all Boeing Model 747–400 series airplanes, and requires various inspections and tests of the thrust reverser control and indication system, and correction of any discrepancy found. Accomplishment of the actions required by this AD would terminate certain inspections and tests required by AD 94–15–05.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

- 747–45–2016, Revision 1, dated May 2, 1996, and 747–45–2007, dated March 29, 1990, which describe procedures for modifications to the central maintenance computer system hardware and software.
- 747–73–2052, Revision 1, dated April 23, 1992, which describes procedures for modification of the fuel temperature indicating system. This service bulletin references Rolls-Royce Service Bulletin RB.211–71–9043, dated May 4, 1990, which describes additional procedures for modification of the fuel temperature indicating system. Accomplishment of Boeing Service Bulletin 747–73–2052, Revision 1, requires prior or concurrent accomplishment of Boeing Service Bulletin 747–45–2007; and Rolls-Royce Service Bulletin RB.211–71–9043.
- 747–31–2246, dated May 2, 1996, which describes procedures for modifications of the integrated display system software.
- 747–78–2157, Revision 2, dated November 26, 1997, and 747–78–2121, dated October 29, 1992, which describe procedures for the installation of provisional wiring for an additional thrust reverser locking device. These service bulletins reference the Boeing Standard Wiring Practices Manual, which describes wire installation and separation procedures.
- 747–78–2158, Revision 2, dated July 29, 1999, which describes

procedures for installation of an additional locking system on the thrust reversers. This service bulletin references the following Rolls-Royce Service Bulletins:

—RB.211–71–9600, Revision 8, dated May 24, 1996; and RB.211–71–9608, Revision 3, dated April 18, 1997, which describe procedures for the installation of provisions on the engines to accommodate the installation of an additional thrust reverser locking gearbox; and

—RB.211–78–9601, Revision 5, dated February 20, 1998, which describes additional procedures for installation of an additional locking system on the thrust reversers; and

—RB.211–78–B207, dated November 19, 1994, which describes procedures for installation of a thrust reverser translating cowl assembly seal support.

—Accomplishment of Boeing Service Bulletin 747–78–2158 requires prior or concurrent accomplishment of the following service bulletins:

1. Boeing Service Bulletin 747–45–2052, Revision 1;
2. Boeing Service Bulletin 747–78–2121;
3. Boeing Service Bulletin 747–45–2016, Revision 1;
4. Boeing Service Bulletin 747–31–2246;
5. Boeing Service Bulletin 747–78–2157, Revision 2;
6. Rolls-Royce Service Bulletin RB.211–71–9600, Revision 8; and
7. Rolls-Royce Service Bulletin RB.211–71–9608, Revision 3.

In addition, this service bulletin requires concurrent accomplishment of Rolls-Royce Service Bulletins RB.211–78–9601, and RB.211–78–B207.

The modification procedures described by Boeing Service Bulletin 747–78–2158 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletin 747–78–2158, Revision 1, and Revision 2, as well as the other service bulletins referenced in this AD, have been effectively validated; therefore the FAA requires that this modification be accomplished. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Accomplishment of the actions described in all service bulletins listed previously would eliminate the need for certain repetitive inspections and tests.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent possible failure modes that can result in inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane. This AD requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive operational checks of that installation to detect discrepancies, and repair, if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive operational checks to detect discrepancies of the gearbox locks and the air motor brake are required to be accomplished in accordance with procedure included in Appendix 1 (including Figure 1) of this AD. Correction of any discrepancy detected is required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual.

Differences Between Service Bulletin and This AD

Operators should note that, although Boeing Service Bulletin 747–78–2158, Revision 2, does not recommend a specific compliance time for accomplishment of the additional system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify operational checks of the actuation system lock installation following accomplishment of that installation, the FAA has determined that repetitive operational checks of the additional system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

None of the Model 747 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 397 work hours to accomplish the required modifications, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modifications required by this AD would be $23,820 per airplane.

It would require approximately 185 work hours to accomplish the required installation of the locking gearbox, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation of the locking gearbox required by this AD would be $11,000 per airplane.

It would require approximately 2 work hours to accomplish the required operational check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational check required by this AD would be $120 per airplane, per check.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number

and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–76–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–22 Boeing: Amendment 39–11540. Docket 99–NM–76–AD.

Applicability: Model 747–400 series airplanes equipped with Rolls-Royce RB211–524G/H engines, and RB211–524G–T/H–T engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Modifications

(a) Accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD at the times specified in those paragraphs. Accomplishment of these actions, or installation of an additional locking system during production in accordance with production equivalent PRR 81000–39, constitutes terminating action for the inspections and tests required by paragraph (c) of AD 94–15–05, amendment 39–8976.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2158, Revision 2, dated July 29, 1999.

Note 2: Modifications accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78–2158, Revision 1, dated January 22, 1998; are considered acceptable for compliance with the applicable action specified in this amendment.

(2) Concurrent with the installation required by paragraph (a)(1) of this AD, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Accomplish the additional procedures for installation of an additional locking system on each engine thrust reverser in accordance with Rolls-Royce Service Bulletin RB.211–78–9601, Revision 5, dated February 20, 1998.

(ii) Install a thrust reverser translating cowl assembly seal support in accordance with Rolls-Royce Service Bulletin RB.211–78–B207, dated November 19, 1994.

(3) Prior to or concurrent with the installation required by paragraph (a)(1) of this AD, accomplish the requirements of paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this AD:

(i) Modify the fuel temperature indicating system in accordance with Boeing Service Bulletin 747–73–2052, Revision 1, dated April 23, 1992; and Rolls-Royce Service Bulletin RB.211–71–9043, dated May 4, 1990. Prior to or concurrent with accomplishment of Boeing Service Bulletin 747–73–2052, Revision 1: Modify the central maintenance computer system (CMCS) hardware and software in accordance with Boeing Service Bulletin 747–45–2007, dated March 29, 1990; and Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996.

(ii) Install the provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletin 747–78–2121, dated October 29, 1992; and 747–78–2157, Revision 2, dated November 26, 1997.

(iii) Modify the integrated display system (IDS) software in accordance with Boeing Service Bulletin 747–31–2246, dated May 2, 1996.

(iv) Install engine provisions to accommodate the installation of an additional locking system on each engine thrust reverser in accordance with Rolls-Royce Service Bulletin RB.211–71–9600, Revision 8, dated May 24, 1996; and RB.211–71–9608, Revision 3, dated April 18, 1997.

Repetitive Operational Checks

(b) Within 3,000 flight hours after accomplishing the requirements of paragraph (a) of this AD, or within 1,000 flight hours after the effective date of this AD, whichever occurs later: Perform operational checks of the number 2 and number 3 gearbox locks and of the air motor brake, in accordance with the procedures described in Appendix 1 (including Figure 1) of this AD. Repeat the operational checks thereafter at intervals not to exceed 3,000 flight hours.

Corrective Actions

(c) If any operational check required by paragraph (b) of this AD cannot be successfully performed as specified in the procedures described in Appendix 1 (including Figure 1) of this AD, or if any discrepancy is detected during any operational check, prior to further flight, repair in accordance with the procedures specified in the Boeing 747 Airplane Maintenance Manual. Additionally, prior to further flight, any failed operational check required by paragraph (b) of this AD must be

repeated and successfully accomplished. Repeat the operational checks thereafter at intervals not to exceed 3,000 flight hours.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraphs (b), (c)(1), and (c)(2) of this AD, the actions shall be done in accordance with the applicable service bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
Boeing 747–78–2157, Revision 2, November 26, 1997	1–151	2	November 26, 1997.
Boeing 747–78–2158, Revision 2, July 29, 1999	1–344	2	July 29, 1999.
Boeing 747–73–2052, Revision 1, April 23, 1992	1, 3–5, 8, 10, 15–17	1	April 23, 1992.
	2, 6–7, 9, 11–14, 18–41	Original	June 7, 1990.
Boeing 747–31–2246, May 2, 1996	1–12	Original	May 2, 1996.
Boeing 747–45–2016, Revision 1, May 2, 1996	1–33	1	May 2, 1996.
Boeing 747–78–2121, October 29, 1992	1–20	Original	October 29, 1992.
Boeing 747–45–2007, March 29, 1990	1–13	Original	March 29, 1990.
Rolls-Royce RB.211–78–9601, Revision 5, February 20, 1998	1–4	5	February 20, 1998.
	5	2	October 20, 1995.
	6–21	Original	August 7, 1992.
	Supplement.		
	1–3	4	February 20, 1998.
Rolls-Royce RB.211–71–9600, Revision 8, May 24, 1996	1, 71–72, 72A	8	May 24, 1996.
	2, 5–16, 18–32, 34–67, 73–77, 87–88.	2	February 26, 1993.
	3	7	October 20, 1995.
	4	6	March 31, 1995.
	17, 33, 86	4	February 11, 1994.
	68–70, 78, 80–84	Original	August 7, 1992.
	79, 85, 90–95	3	December 17, 1993.
	89	5	August 19, 1994.
	Supplement.		
	1–5	3	March 31, 1995.
Rolls-Royce RB.211–78-B207, November 19, 1994	1–15	Original	November 19, 1994.
	Supplement.		
	1	Original	November 19, 1994.
Rolls-Royce RB.211–71–9608, Revision 3, April 18, 1997	1, 5	3	April 18, 1997.
	2–4, 6–18, 20–48	Original	August 7, 1992.
	19	2	July 5, 1996.
	Supplement.		
	1–3	2	April 18, 1997.
Rolls-Royce RB.211–71–9043, May 4, 1990	1–18	Original	May 4, 1990.
	Supplement.		
	1–2	Original	May 4, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 18, 2000.

Appendix 1

1. Gearbox Lock and Air Motor Brake Test

A. General

(1) To do the test of the gearbox locks and air motor brake, you must do the steps that follow:

(a) Do the deactivation procedure of the thrust reverser system.

(b) Do the test of the air motor brake.

(c) Do the test of the gearbox locks.

(d) Do the activation procedure of the thrust reverser system.

B. Equipment

(1) CP30784—INA Access Platform, Rolls-Royce

(2) CP30769—Protection Pads, Rolls-Royce

(3) CP30785—Access Stools, Rolls-Royce

(4) UT1293/1—Load Tool, Rolls-Royce (2 required)

C. Procedure (Fig. 1).

WARNING: DO THE DEACTIVATION PROCEDURE OF THE THRUST REVERSER SYSTEM, WHICH MUST INCLUDE THE INSTALLATION OF LOCK BARS (OR BLOCKERS), TO PREVENT THE ACCIDENTAL OPERATION OF THE THRUST REVERSER. THE ACCIDENTAL OPERATION OF THE THRUST REVERSER COULD CAUSE INJURY TO PERSONS AND DAMAGE TO EQUIPMENT.

(1) Do the deactivation procedure of the thrust reverser in the forward thrust position for ground maintenance.

(2) Use a 0.25 inch (6.4 mm) square drive to turn the manual lock release screw to release the No. 2 and No. 3 gearbox locks.

Note: It is not always easy to turn the manual lock release screws. This is because of a preload in the systems. To release the preload, lightly turn the manual cycle and lockout shafts in the stow direction.

(a) Make sure the lock indicators are extended at gearboxes No. 2 and No. 3.

(3) Do a test of the air motor brake:

(a) IF YOU USE THE LOAD TOOLS;

Try to move the translating cowl in the extend direction as follows:

(1) Remove the lock bars that you installed in the deactivation procedure.

(2) Install the load tools through the cutouts and into the No. 2 and No.3 gearboxes.

(3) Attach the torque wrenches to the load tools.

(4) Try to move the translating cowl in the extend direction.

(b) IF YOU DO NOT USE THE LOAD TOOLS;

Try to move the translating cowl in the extend direction as follows:

(1) Remove the lock bars that you installed in the deactivation procedure.

(2) Put the 0.25 inch (6.4 mm) square drive extensions into the manual cycle and lockout shaft at the No. 2 and No. 3 gearboxes.

(a) Attach the standard drive tools.

(3) Try to move the translating cowl in the extend direction.

(c) If the translating cowl moves, replace the air motor and shutoff valve.

(4) Do a test of the gear box locks:

Note: The steps that follow are for the No. 3 gearbox. Then, do these steps again for the No. 2 gearbox.

(a) Install the lock bars in the manual cycle and lockout shafts at the No. 2 and No. 3 gearboxes.

(b) Install the INA access platform in the exhaust mixer duct.

(c) Install the protection pads and the access stools.

(d) Release the air motor brake:

(1) Open the air motor access and pressure relief panel.

(2) Pull the air motor brake release handle forward and turn it counterclockwise to lock the handle in its position.

(e) Turn the manual lock release screw clockwise to engage the No. 3 gearbox lock.

(1) Make sure that the lock indicator is retracted (under the surface) at gearbox No. 3.

(f) Make sure No. 2 gearbox lock is released.

(1) Make sure the lock indicator is extended at gearbox No. 2.

(g) IF YOU USE THE LOAD TOOLS; Do a check of the lock dogs as follows:

(1) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(2) Install the load tool through the cutout and into the No. 3 gearbox.

(3) Attach the torque wrench to the load tool.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 30 POUND-INCHES (3.4 NEWTON-METERS) TO THE MANUAL CYCLE AND LOCK OUT SHAFT. A LARGER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(4) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the translating cowl does not move, the lock bar touched one of the two lock dogs.

(b) If the translating cowl moved, lock the thrust reverser until the No. 3 gearbox is replaced.

(5) Turn the manual lock release screw counterclockwise to release the gearbox lock.

(a) Make sure that the indication rod comes out of the No. 3 gearbox.

(6) Turn the manual cycle and lockout shaft counterclockwise a ¼ of a turn.

(7) Turn the manual lock release screw clockwise to engage the No. 3 gearbox lock.

(a) Make sure that the indication rod is fully retracted (under the surface).

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 30 POUND-INCHES (3.4 NEWTON-METERS) TO THE MANUAL CYCLE AND LOCKOUT SHAFT. A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(8) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the manual cycle and lockout shaft can not be turned more than approximately ¼ turn, the second lock dog is serviceable.

(b) If the manual cycle and lockout shaft can be turned more than approximately ¼ turn, the second lock dog is unserviceable. Lock the thrust reverser until the No. 3 gearbox is replaced.

Note: The two lock dogs are found ½ turn apart when you use the manual cycle and lockout shaft. If necessary, do the check again to make sure that the lock dogs are serviceable.

(9) Do the procedure given above for the No. 2 gearbox lock.

(h) IF YOU DO NOT USE THE LOAD TOOLS; Do a check of the lock dogs as follows:

(1) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(2) Put the 0.25 inch (6.4 mm) square drive extensions into the manual cycle and lockout shaft at the No. 2 and No. 3 gearboxes.

(a) Attach the standard drive tools.

CAUTION: DO NOT APPLY A TORQUE LOAD OR MORE THAN 30 POUND-INCHES (3.4 NEWTOWN-METERS) TO THE MANUAL CYCLE AND LOCKOUT SHAFT. A LARGER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(3) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the translating cowl does not move, the lock bar touched one of the two lock dogs.

(b) If the translating cowl moved, lock the thrust reverser until the No. 3 gearbox is replaced.

(4) Turn the manual lock release screw counterclockwise to release the gearbox lock.

(a) Make sure that the indication rod comes out of the No. 3 gearbox.

(5) Turn the manual cycle and lockout shaft counterclockwise a ¼ of a turn.

(6) Turn the manual lock release screw clockwise to engage the No. 3 gearbox lock.

(a) Make sure that the indication rod is fully retracted (under the surface).

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 30 POUND-INCHES (3.4 NEWTON-METERS) TO THE MANUAL CYCLE AND LOCKOUT SHAFT. A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(7) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the manual cycle and lockout shaft can not be turned more than approximately ¼ turn, the second lock dog is serviceable.

(b) If the manual cycle and lockout shaft can be turned more than approximately ¼ turn, the second lock dog is unserviceable. Lock the thrust reverser until the No. 3 gearbox is replaced.

Note: The two lock dogs are found ½ turn apart when you use the manual cycle and lockout shaft. If necessary, do the check again to make sure that the lock dogs are serviceable.

(8) Do the procedure given above for the No. 2 gearbox lock.

(5) Install the lock bars in the manual cycle and lockout shafts at the No. 2 and No. 3 gearboxes.

(6) Apply the air motor manual brake:

(a) Turn the air motor brake release handle clockwise and then release.

(b) Close the air motor access and pressure relief panel.

(7) Make sure the No. 2 and No. 3 gearbox locks are released.

(a) Makes sure the lock indicator rods are extended at the No.2 and No. 3 gearboxes.

(8) IF YOU USE THE LOAD TOOLS;

Try to move the translating cowl in the extend direction as follows:

(a) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(b) Install the load tools through the cutouts and into the No. 2 and No. 3 gearboxes.

(c) Attach the torque wrenches to the load tools.

(d) Try to move the translating cowl in the extend direction.

(9) IF YOU DO NOT USE THE LOAD TOOLS;

Try to move the translating cowl in the extend direction as follows:

(a) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(b) Put the 0.25 inch (6.4 mm) square drive extension into the manual cycle and lockout shaft at the No. 2 and No. 3 gearboxes.

(1) Attach the standard drive tools.

(c) Try to move the translating cowl in the extend direction.

(10) If the translating cowl moves, do the full test again.

(a) If the translating sleeve moves again, lock the thrust reverser until you can replace the two locking gearboxes and the air motor and shutoff valve.

(11) Remove the access stools and protection pads.

(12) Remove the INA access platform from the exhaust mixer duct.

(13) Do the activation procedure of the thrust reverser system.

(14) Do the functional test of the thrust reverser system.

BILLING CODE 4910–13–P

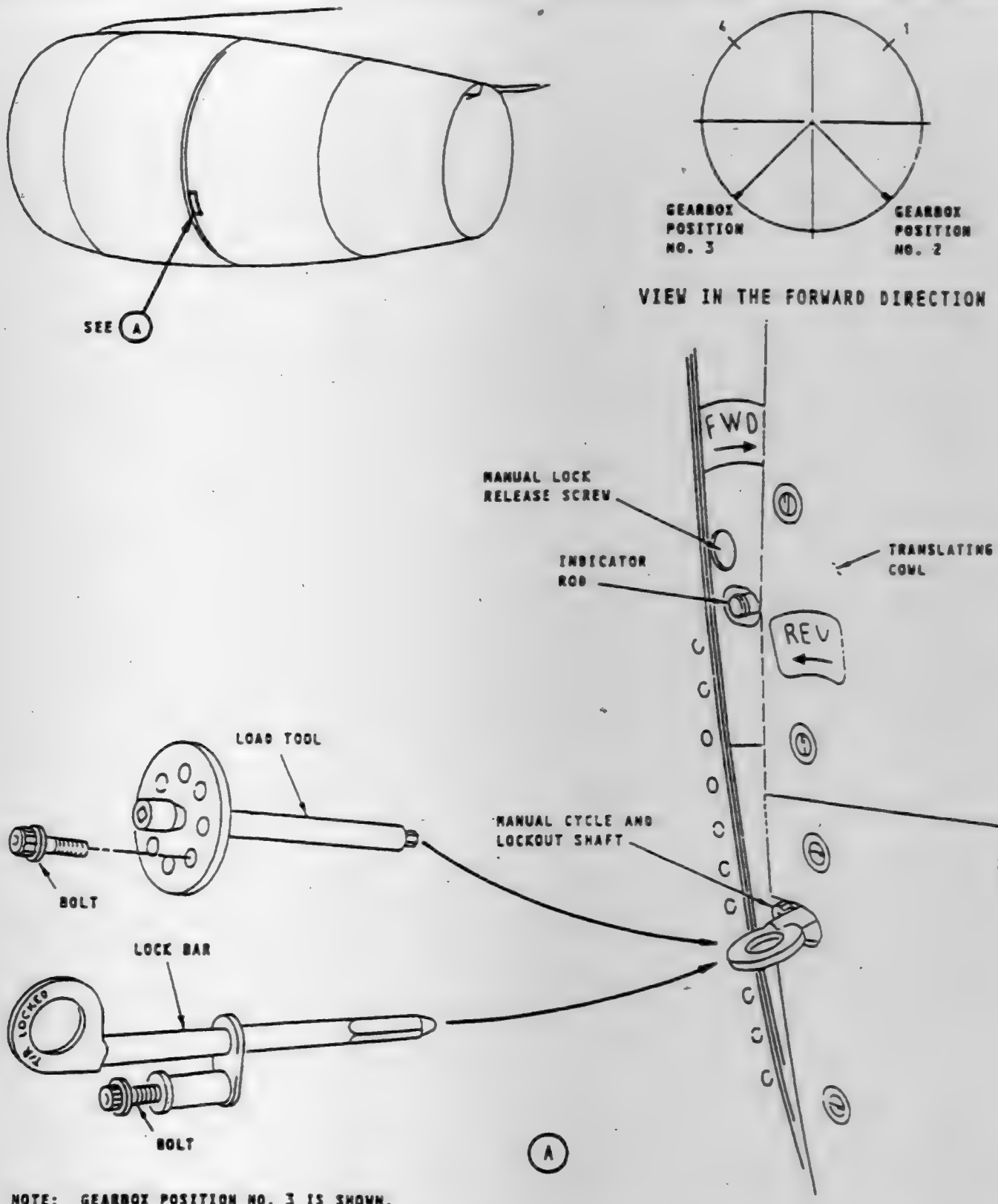

NOTE: GEARBOX POSITION NO. 3 IS SHOWN.
GEARBOX POSITION NO. 2 IS THE SAME.

Lock Bar/Load Tool Installation and Gearbox Manual Lock Release
Figure 1

Issued in Renton, Washington, on January 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2089 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–309–AD; Amendment 39–11539; AD 2000–02–21]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires manufacture and installation of a placard on the left-hand instrument panel in the cockpit to prohibit push-backs of the airplane while the engines are running. In lieu of accomplishing the placard installation, this amendment requires repetitive installation of a new tow bracket sub-assembly that has the serial number and date of installation vibro etched on it. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue failure of the towing bracket. Failure of the towing bracket could cause a towing vehicle to collide into the propeller while the airplane engines are running, and consequently, cause damage to the airplane, and injure ground personnel, flight crew, or passengers.

DATES: Effective March 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on November 24, 1999 (64 FR 66121). That action proposed to require manufacture and installation of a placard on the left-hand instrument panel in the cockpit to prohibit push-backs of the airplane while the engines are running. In lieu of accomplishing the placard installation, the action proposed to require repetitive installation of a new tow bracket sub-assembly that has the serial number and date of installation vibro etched on it.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Change Made to the Final Rule

Paragraph (b) of the final rule has been changed to correct the citation of Jetstream Service Bulletin J41–32–070, Revision 1, dated September 14, 1999. "Revision 1" was inadvertently omitted in the citation.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the placard installation required by this AD on U.S. operators is estimated to be $3,540, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional action that is provided by this AD action, it will take approximately 2 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts will be approximately $733 per airplane. Based on these figures, the cost impact of the optional action will be $853 per airplane, per replacement cycle.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–21 **British Aerospace Regional Aircraft** [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11539. Docket 99–NM–309–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the towing bracket, which could cause a towing vehicle to collide into the propeller while the airplane engines are running, and consequently, could cause damage to the airplane, and injure ground personnel, flight crew, or passengers, accomplish the following:

Placard Installation

(a) Prior to the accumulation of 12,000 total landings on the shock strut of the nose landing gear (NLG), or within 5 days after the effective date of this AD, whichever occurs later: Except as provided by paragraph (b) of this AD, manufacture and install a placard on the left-hand instrument panel in the cockpit to prohibit push-backs with engines running, in accordance with Jetstream Alert Service Bulletin J41–11–024, dated May 11, 1999.

Repetitive Action

(b) In lieu of accomplishing the actions specified in paragraph (a) of this AD, at the time specified in paragraph (a) of this AD, vibro etch the serial number and date of installation on a new tow bracket sub-assembly; and install the new tow bracket sub-assembly, in accordance with Jetstream Service Bulletin J41–32–070, Revision 1, dated September 14, 1999. Repeat the vibro etch process and installation of a new sub-assembly thereafter at intervals not to exceed 12,000 landings on the shock strut of the NLG.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–11–024, dated May 11, 1999; or Jetstream Service Bulletin J41–32–070, Revision 1, dated September 14, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–05–99.

(f) This amendment becomes effective on March 9, 2000.

Issued in Renton, Washington, on January 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2088 Filed 2–2–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–231–AD; Amendment 39–11538; AD 2000–02–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric Model CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires tests, inspections, and adjustments of the thrust reverser system. That AD also requires installation of a terminating modification, and repetitive follow-on actions. This amendment reduces the repetitive intervals for the follow-on actions. This amendment is prompted by reports indicating that several center drive units (CDU's) of the thrust reverser system were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective March 9, 2000.

The incorporation by reference of Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997, is approved by the Director of the Federal Register as of March 9, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 18, 1995 (60 FR 36976, July 19, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–13–12, amendment 39–9292 (60 FR 36976, July 19, 1995), as revised by AD 95–13–12 R1, amendment 39–9528 (61 FR 9092, March 7, 1996); which is applicable to certain Boeing Model 767 series airplanes; was published in the **Federal Register** on June 14, 1999 (64 FR 31764). That action proposed to supersede AD 95–13–12 R1 to continue to require tests, inspections, and adjustments of the thrust reverser system. That action also proposed to continue to require installation of a terminating

modification, and repetitive follow-on actions. In addition, that action proposed to reduce the repetitive intervals for the follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Credit for Modifications Installed in Production

One commenter, the airplane manufacturer, requests that paragraphs (c), (e), and (f) of the proposed AD [paragraphs (c), (f), and (h) of the final rule] be revised to provide credit for airplanes on which the third locking system was installed in production. The commenter states that Model 767 series airplanes having line numbers 475 and subsequent and equipped with General Electric Model CF6–80C2 series engines had a third locking system installed in production in accordance with Production Revision Record (PRR) B11481–70, and were not modified in accordance with Boeing Service Bulletin 767–78–0063, Revision 2, dated April 28, 1994, as specified in paragraph (c) of the proposed AD.

The FAA concurs that credit should be provided for airplanes that had a third locking system installed in production. This third locking system is equivalent to that described in Boeing Service Bulletin 767–78–0063, Revision 2. Therefore, paragraph (c) of the final rule has been revised to apply only to airplanes having line numbers 1 through 474 inclusive, and NOTE 2 has been added to identify airplanes modified in production. In addition, paragraphs (f) and (h) of the final rule have been revised to clarify the compliance time for airplanes modified in production.

Request for Credit for Functional Tests Accomplished During Production

One commenter, the airplane manufacturer, requests that paragraph (d) of the proposed AD [paragraphs (d) and (e) of the final rule] be revised to provide credit for airplanes on which the functional test of the cone brake of the center drive unit (CDU) was accomplished during production. The commenter states that a functional test is accomplished prior to delivery in accordance with procedures equivalent to those described in Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997. The commenter states that an initial functional test equivalent to that specified in paragraph (d) of the proposed AD is effectively accomplished on newly delivered airplanes at zero hours time-in-service, and, therefore, the next functional test should be required at 1,000 hours time-in-service.

The FAA concurs that credit should be provided for airplanes on which a functional test of the CDU cone brake was accomplished during production. The FAA agrees that the production functional test is equivalent to the functional test described in Boeing Service Bulletin 767–78A0081, Revision 1. Therefore, paragraphs (d) and (e) of the final rule have been revised accordingly.

Request to Extend Interval for Repetitive Tests and Checks

Three commenters request that the interval for the repetitive functional tests and operational checks specified in paragraphs (d) and (e) of the proposed AD be extended. Two of the commenters request that the interval be revised to "on the maintenance (letter) check nearest to the 1000-hour frequency." The third commenter requests that the interval be revised to 90 days or 1,500 hours time-in-service, whichever occurs first. The commenters state that their scheduled maintenance intervals do not coincide with the 1,000-hour interval specified in the proposed AD. Two of the commenters state that they are currently performing these tests and checks every 4,000 hours and have not had any adverse findings.

The FAA does not concur with the commenters' request to extend the interval for the repetitive functional tests and operational checks. The thrust reverser safety assessment developed by the airplane manufacturer for the Model 767 series airplane suggests a 650-hour interval for the functional test of the CDU cone brake. However, based on concerns about introducing errors through more frequent maintenance of the thrust reverser system, the FAA has determined that the 1,000-flight-hour interval for the functional tests of both the CDU cone brake and the electro-mechanical brake, as proposed, represents the maximum interval of time allowable to ensure the integrity of the fail safe features of the thrust reverser system for those airplanes that have incorporated a third locking system. In addition, this interval is consistent with recent rulemaking for similar installations on other Boeing airplane models. No change to the final rule is necessary in this regard.

Explanation of Other Changes to the Final Rule

The FAA's intent in paragraph (d) of the proposed rule was to require a functional test of the CDU cone brake within 1,000 hours time-in-service after the most recent test, or within 650 hours time-in-service after the effective date of this AD, whichever occurs later. The compliance time stated in the proposed rule was within 1,000 hours time-in-service after the most recent test of the cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first. This statement was in error, in that the tests required by paragraph (a) of this AD do not include a test of the CDU cone brake. In addition, the statement "whichever occurs first" would have unnecessarily grounded airplanes. Therefore, the compliance time stated in paragraph (d) of the proposed rule has been corrected in the final rule, and new paragraphs (d)(1) and (d)(2) have been added to the final rule. In addition, the repetitive intervals for the test of the CDU cone brake that were specified in paragraphs (d)(1) and (d)(2) of the proposed rule are included as a new paragraph (e) of the final rule, and subsequent paragraphs have been renumbered accordingly.

In addition, in the "Explanation of Requirements of Proposed Rule" section of the preamble of the NPRM, the FAA stated that this AD would continue to require "various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found." However, the FAA finds that the instructions for correcting discrepancies found during a functional test of the cone brake [as described in paragraph (d) of the proposed rule and paragraphs (d) and (e) of this final rule] or an operational check of the electro-mechanical brake [as described in paragraph (e) of the proposed rule and paragraph (f) of this final rule] were inadvertently omitted from the body of the proposed rule. Therefore, a new paragraph (g) has been added to the final rule to specify that, if a test or check specified in paragraph (d), (e), or (f) of this AD cannot be performed successfully, repairs must be accomplished and the test successfully performed prior to further flight. Subsequent paragraphs have been renumbered accordingly.

Also, operators should note that paragraph (d) of the proposed rule specified the compliance time for the actions required by that paragraph in terms of hours time-in-service. However, other paragraphs in the proposed rule specified compliance times in flight hours. Therefore, for consistency of terminology, the FAA has revised paragraphs (d) and (e) of this final rule to specify the compliance time

in flight hours for the actions required by those paragraphs.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 143 Boeing Model 767 series airplanes equipped with General Electric Model CF6–80C2 series engines in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD.

The tests, inspections, and adjustments that are currently required by AD 95–13–12 R1, and retained in this AD, take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the currently required tests, inspections, and adjustments that are retained in this AD is estimated to be $81,000, or $1,800 per airplane, per inspection cycle.

The terminating modification currently required by AD 95–13–12 R1, and retained in this AD, takes approximately 786 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the terminating modification required by this AD is estimated to be $2,122,200, or $47,160 per airplane.

The repetitive operational checks required by AD 95–13–12 R1, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the repetitive operational checks required by this AD is estimated to be $5,400, or $120 per airplane, per operational check cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that all U.S.-registered airplanes have accomplished the terminating modification in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators will not include those costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9528 (61 FR 9092, March 7, 1996), and by adding a new airworthiness directive (AD), amendment 39–11538, to read as follows:

2000–02–20 Boeing: Amendment 39–11538. Docket 98–NM–231–AD. Supersedes AD 95–13–12 R1, Amendment 39–9528.

Applicability: Model 767 series airplanes equipped with General Electric Model CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–13–12 R1

Repetitive Tests, Inspections, and Adjustments

(a) Within 30 days after August 18, 1995 (the effective date of AD 95–13–12 R1, amendment 39–9528), perform tests, inspections, and adjustments of the thrust reverser system in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994.

(1) Except as provided by paragraph (a)(2) of this AD, repeat all tests and inspections thereafter at intervals not to exceed 3,000 flight hours until the modification required by paragraph (c) of this AD is accomplished.

(2) Repeat the check of the grounding wire for the Directional Pilot Valve (DPV) of the thrust reverser in accordance with the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the DPV grounding circuit, until the modification required by paragraph (c) of this AD is accomplished.

Repair

(b) If any of the tests and/or inspections required by paragraph (a) of this AD cannot be successfully performed, or if those tests and/or inspections result in findings that are unacceptable in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994; accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with

Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991; or Revision 10, dated September 1, 1992. After August 18, 1995, this action shall be accomplished only in accordance with Revision 10 of the Boeing document. No more than one reverser on any airplane may be deactivated under the provisions of this paragraph.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994. Additionally, the tests and/or inspections required by paragraph (a) of this AD must be successfully accomplished; once this is accomplished, the thrust reverser must then be reactivated.

Modification

(c) For airplanes having line numbers 1 through 474 inclusive: Within 3 years after August 18, 1995, install a third locking system on the left- and right-hand engine thrust reversers in accordance with Boeing Service Bulletin 767–78–0063, Revision 2, dated April 28, 1994.

New Requirements of this AD

Note 2: Model 767 series airplanes equipped with General Electric Model CF6–80C2 series engines and having line numbers 475 and subsequent, on which Production Revision Record (PRR) B11481–70 (which installs a third locking system on the left- and right-hand engine thrust reversers) has been incorporated, need NOT be modified in accordance with Boeing Service Bulletin 767–78–0063, Revision 2.

Note 3: Boeing Service Bulletin 767–78–0063, references General Electric (GE) Service Bulletin 78–135 as an additional source of service information for accomplishment of the third locking system on the thrust reversers. However, the Boeing Service Bulletin does not specify the appropriate revision level, and the GE service bulletin has a new Lockheed Martin title for the same service bulletin: Lockheed Martin Service Bulletin 78–135, Revision 4, dated September 30, 1996. The appropriate revision level for the GE Service Bulletin is Revision 3, dated August 2, 1994. The GE and Lockheed Martin service bulletins are identical, and either may be used for accomplishment of the action described previously.

Note 4: The actions specified in Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; and Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; may be accomplished simultaneously in conjunction with Boeing Service Bulletin 767–78–0063 for accomplishment of the installation of the thrust reverser bracket and the thrust reverser lock. (Accomplishment of these two service bulletins together achieves the same results as Lockheed Martin Service Bulletin 78–135, Revision 4, and is acceptable for compliance with Boeing Service Bulletin 767–78–0063.)

Repetitive Tests and Checks

(d) Perform a functional test to detect discrepancies of the cone brake of the center drive unit (CDU) on each thrust reverser, in accordance with Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997, or Appendix 1 (including Figure 1), sections 1.A.(2), 2.A., 2.C., and 2.D of this AD. Accomplish the functional test at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the test required by paragraph (d) of AD 95–13–12 R1 has been accomplished prior to the effective date of this AD: Accomplish the functional test within 1,000 flight hours after the most recent test of the CDU cone brake performed in accordance with paragraph (d) of AD 95–13–12 R1, or within 650 flight hours after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the test required by paragraph (d) of AD 95–13–12 R1 has NOT been accomplished prior to the effective date of this AD: Accomplish the functional test within 1,000 flight hours since the date of manufacture, or within 650 flight hours after the effective date of this AD, whichever occurs later.

(e) Repeat the functional test of the CDU cone brake specified in paragraph (d) of this AD at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For Model 767 series airplanes, line numbers up to and including 474, equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 767–78–0063: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 650 flight hours.

(2) For Model 767 series airplanes, line numbers 475 and subsequent; and Model 767 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 767–78–0063: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 1,000 flight hours.

(f) Within 1,000 flight hours after accomplishing the modification required by paragraph (c) of this AD or after the equivalent modification (Production Revision Record B11481–70) is incorporated in production, or within 1,000 flight hours after the effective date of this AD, whichever occurs later: Perform operational checks of the electro-mechanical brake in accordance with Appendix 1 (including Figure 1), sections 1.A.(1), 2.A., 2.B., and 2.D of this AD. Repeat the operational checks thereafter at intervals not to exceed 1,000 flight hours.

Repair

(g) If any functional test or operational check required by paragraph (d), (e), or (f) of this AD cannot be successfully performed, prior to further flight, repair in accordance with Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997; or Appendix 1, section 2.B. and 2.C., of this AD; as applicable; and repeat the applicable test or check until successfully accomplished.

Terminating Action

(h) Accomplishment of the modification required by paragraph (c) or installation of an equivalent modification (Production Revision Record B11481–70) in production, and accomplishment of periodic operational checks required by paragraphs (d), (e), and (f) of this AD, constitutes terminating action for the tests, inspections, and adjustments required by paragraph (a) of this AD.

Alternative Methods of Compliance

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 95–13–12, amendment 39–9292, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Except as provided by paragraphs (b), (d), and (e) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994; Boeing Service Bulletin 767–78–0063, Revision 2, dated April 28, 1994; and Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994; and Boeing Service Bulletin 767–78–0063, Revision 2, dated April 28, 1994; was previously approved by the Director of the Federal Register, as of August 18, 1995 (60 FR 36976, July 19, 1995).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on March 9, 2000.

Appendix 1

Thrust Reverser Electro-Mechanical Brake and CDU Cone Brake Test

1. General

A. This procedure contains steps to do two checks:

(1) A check of the holding torque of the electro-mechanical brake.

(2) A check of the holding torque of the CDU cone brake.

2. Electro-Mechanical Brake and CDU Cone Brake Torque Check (Fig. 1)

A. Prepare to do the checks:

(1) Open the fan cowl panels.

B. Do a check of the torque of the electro-mechanical brake:

(1) Do a check of the running torque of the thrust reverser system:

(a) Manually extend the thrust reverser six inches and measure the running torque.

(1) Make sure the torque is less than 10 pound-inches.

(2) Do a check of the electro-mechanical brake holding torque:

(a) Make sure the thrust reverser translating cowl is extended at least one inch.

(b) Make sure the CDU lock handle is released.

(c) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip.

Note: This will lock the electro-mechanical brake.

(d) With the manual drive lockout cover removed from the CDU, install a ¼ inch extension tool and dial-type torque wrench into the drive pad.

Note: You will need a 24-inch extension to provide adequate clearance for the torque wrench.

(e) Apply 90 pound-inches of torque to the system.

(1) The electro-mechanical brake system is working correctly if the torque is reached before you turn the wrench 450 degrees (1¼ turns).

(2) If the flexshaft turns more than 450 degrees before you reach the specified torque, you must replace the long flexshaft between the CDU and the upper angle gearbox.

(3) If you do not get 90 pound-inches of torque, you must replace the electro-mechanical brake.

(f) Release the torque by turning the wrench in the opposite direction until you read zero pound-inches.

(1) If the wrench does not return to within 30 degrees of initial starting point, you must replace the long flexshaft between the CDU and upper angle gearbox.

(3) Fully retract the thrust reverser.

C. Do a check of the CDU cone brake:

(1) Pull up on the manual release handle to unlock the electro-mechanical brake.

(2) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(3) Return the manual brake release lever to the locked position to engage the cone brake.

(4) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(5) Install a ¼-inch drive and a dial type torque wrench into the CDU drive pad.

CAUTION: DO NOT USE MORE THAN 100 POUND-INCHES OF TORQUE WHEN YOU DO THIS CHECK. EXCESSIVE TORQUE WILL DAMAGE THE CDU.

(6) Turn the torque wrench to try to manually extend the translating cowl until you get at lease 15-pound inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(a) If the torque is less than 15-pound-inches, you must replace the CDU.

D. Return the airplane to its usual condition:

(1) Fully retract the thrust reverser (unless already accomplished).

(2) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(3) Close the fan cowl panels.

BILLING CODE 4910–13–P

To ensure the integrity of the fail-safe features of the thrust reverser system

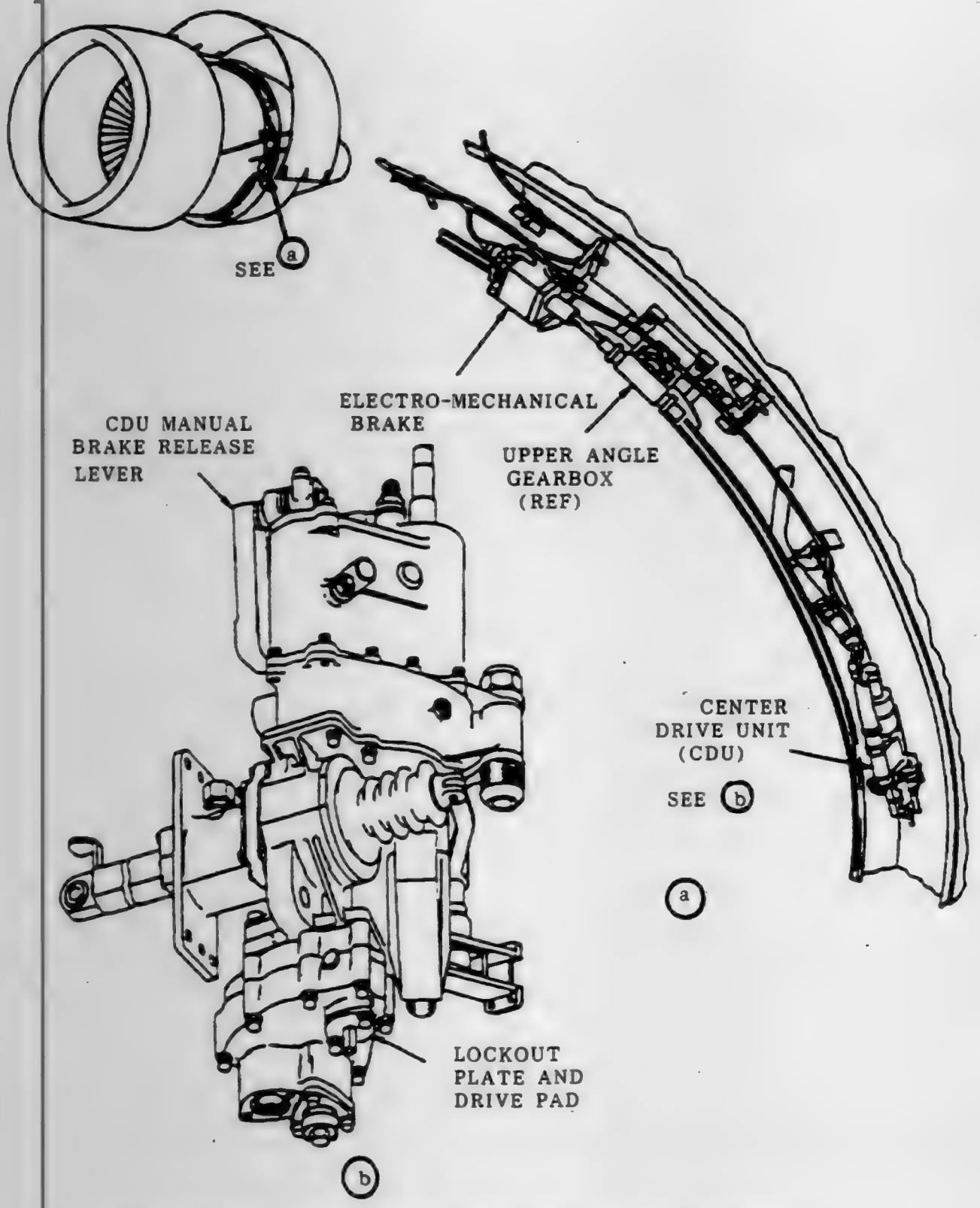

Electro-Mechanical Brake and CDU Cone Brake Torque Check
Figure 1

Issued in Renton, Washington, on January 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2087 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–323–AD; Amendment 39–11537; AD 2000–02–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires repetitive inspections of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. That amendment also provides for an optional terminating modification for the repetitive inspections. This amendment requires a new terminating modification for the repetitive inspections. For certain airplanes, this amendment also requires new repetitive inspections to detect discrepancies of the front spar web. This amendment is prompted by a report indicating that the optional terminating modification in the existing AD does not adequately address the identified unsafe condition. The actions specified by this AD are intended to prevent fatigue cracks in the front spar web, which could lead to fuel leakage into the air-conditioning distribution bay and/or depressurization of the cabin, and to prevent fuel fumes in the cabin of the airplane.

DATES: Effective March 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–02–16, amendment 39–6452 (55 FR 602, January 8, 1990), which is applicable to certain Boeing Model 727 series airplanes, was published in the **Federal Register** on August 10, 1999 (64 FR 43318). The action proposed to continue to require repetitive inspections of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. That action also proposed to require a new terminating modification for the repetitive inspections, and, for certain airplanes, new repetitive inspections to detect discrepancies of the front spar web.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request to Allow Alternative Inspection Method

One commenter, the manufacturer, requests that the proposed rule be revised to allow accomplishment of repetitive high frequency eddy current (HFEC) inspections to detect cracks in the front spar web, in lieu of the repetitive detailed visual inspections specified in paragraph (a) of the proposed rule. (In the proposed rule, the FAA stated that this AD would not provide for an HFEC inspection in lieu of the detailed visual inspection because Boeing Service Bulletin 727–57–0177, dated December 22, 1988, does not contain procedures for such an HFEC inspection, and, without such procedures, the FAA could not be sure that an HFEC inspection would detect cracks in a timely manner.) The commenter states that the option of an HFEC inspection would give operators more flexibility and reduce requests to the FAA for an alternative method of compliance. The commenter provides a reference for procedures for performing an HFEC inspection, and suggests a repetitive interval of 4,500 flight cycles. The commenter also states that it is revising Boeing Service Bulletin 727–57–0177 to incorporate procedures for an HFEC inspection and requests that the FAA delay issuance of the final rule until the release of Revision 4 of the service bulletin.

The FAA concurs with the commenter's requests. Since the issuance of the notice of proposed rulemaking (NPRM), the FAA has reviewed and approved Boeing Service Bulletin 727–57–0177, Revision 4, dated October 28, 1999. Revision 4 of the service bulletin is essentially similar to Revision 3 of the service bulletin, dated February 15, 1996. (Revision 3 of the service bulletin was cited in the NPRM as an appropriate source of service information for accomplishment of the proposed actions.) However, Revision 4 of the service bulletin also incorporates procedures for accomplishment of an HFEC inspection as an alternative to the close visual inspection. The FAA finds that the HFEC inspection described in the service bulletin would ensure that any cracks are detected in a timely manner. Therefore, paragraph (a) of this final rule has been revised to provide for accomplishment of repetitive HFEC inspections in lieu of the repetitive detailed visual inspection proposed in the NPRM. For clarity, paragraphs (a)(1) and (a)(2) have been added to specify appropriate sources of service information and repetitive inspection intervals for the two types of inspection. Also, the cost impact section of the final rule has been revised to provide an estimate of the cost for the HFEC inspection. In addition, paragraphs (b), (c), (d), and (e) of this final rule have been revised to allow accomplishment of the actions specified in those paragraphs in accordance with Revision 4 of the service bulletin.

Request to Correct Typographical Errors

One commenter requests that a reference to AD 90–02–15 in the "Alternative Method of Compliance" section of the NPRM be revised to refer to AD 90–02–16. The FAA concurs with the commenter's request and acknowledges that the correct reference should have been to AD 90–02–16. Paragraph (g)(2) of this AD has been revised accordingly.

The same commenter requests that a reference to Boeing Model 747 series airplanes in the "Other Relevant Rulemaking" section in the preamble of the NPRM be revised to refer instead to Boeing Model 727 series airplanes. The

FAA acknowledges that the correct reference should have been to Boeing Model 727 series airplanes; however, that section is not restated in the final rule and, therefore, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,524 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,098 airplanes of U.S. registry will be affected by this AD.

The detailed visual inspection that is currently required by AD 90–02–16, and retained in this AD as one option for compliance, and the HFEC inspection that may be accomplished in lieu of the detailed visual inspection, take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of either the currently required detailed visual or the HFEC inspection on U.S. operators is estimated to be $197,640, or $180 per airplane, per inspection cycle.

The modification that is required by this new AD will take approximately 360 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,430 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $25,286,940, or $23,030 per airplane.

The visual inspection that is required for certain airplanes in this new AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6452 (55 FR 602, January 8, 1990), and by adding a new airworthiness directive (AD), amendment 39–11537, to read as follows:

2000–02–19 Boeing: Amendment 39–11537. Docket 97–NM–323–AD. Supersedes AD 90–02–16, Amendment 39–6452.

Applicability: Model 727 series airplanes, as listed in Boeing Service Bulletin 727–57–0177, dated December 22, 1988; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks of the front spar web of the center section of the wings, which could lead to fuel leakage and/or depressurization of the cabin, or to prevent fuel fumes in the cabin of the airplane, accomplish the following:

Repetitive Inspections

(a) For areas on which the front spar web between the upper and lower seals of the center section of the wings has not been repaired or modified in accordance with Figure 2 or 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; or Revision 2, dated September 16, 1993: Prior to the accumulation of 40,000 total flight cycles, or within the next 2,300 flight cycles after February 12, 1990 (effective date of AD 90–02–16, amendment 39–6452), whichever occurs later, unless accomplished within the last 700 flight cycles, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a detailed visual inspection to detect cracks in the front spar web, in accordance with Figure 1 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999. Repeat the detailed visual inspection thereafter at intervals not to exceed 3,000 flight cycles, until accomplishment of the requirements specified in either paragraph (b) or (c) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the front spar web, in accordance with Boeing Service Bulletin 727–57–0177, Revision 4, dated October 28, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 4,500 flight cycles, until accomplishment of the requirements specified in either paragraph (b) or (c) of this AD.

Note 3: Accomplishment of the high frequency eddy current (HFEC) inspection required by AD 90–02–16, is considered acceptable for compliance with the initial detailed visual inspection required by paragraph (a) of this AD.

Repair of Cracks

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the repair constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for that repaired area.

(1) For airplanes equipped with integral fuel tanks in the center section of the wings: Repair in accordance with Figure 2 of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Repair in accordance with Figure 2 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988, Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999.

Note 4: Where there are differences between the referenced service bulletins and this AD, the AD prevails.

Modification

(c) Except as provided by paragraph (d) of this AD, prior to the accumulation of 60,000 total flight cycles, or within 48 months after the effective date of this AD, whichever occurs later, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(1) For airplanes equipped with integral fuel tanks in the center section of the wings: Modify the front spar web, between the upper and lower seals, of the center section of the wings, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Modify the front spar web, between the upper and lower seals, of the center section of the wings, in accordance with Boeing Service Bulletin 727–57–0177, dated December 22, 1988, Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999.

Repetitive Visual Inspections and Repair/Modification of the Front Spar Web

(d) For areas on which the front spar web between the upper and lower seals of the center section of the wings has been repaired or modified in accordance with Figure 2 or 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; or Revision 2, dated September 16, 1993: Accomplish the actions required by either paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes not equipped with integral fuel tanks in the center section of the wings: No further action is required by this AD for those areas repaired or modified.

(2) For airplanes equipped with integral fuel tanks in the center section of the wings: Accomplish the actions required by both paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Within 500 flight cycles after the effective date of this AD, perform a detailed visual inspection of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier; in accordance with Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight cycles, until accomplishment of the actions required by paragraph (d)(2)(ii) of this AD.

(ii) Prior to the accumulation of 14,000 flight cycles, or within 96 months after the effective date of this AD, whichever occurs later, repair/modify the front spar web in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(i) of this AD for that repaired/modified area.

Follow-On Corrective Action

(e) During any inspection required by paragraph (d)(2)(i) of this AD, if any fuel leakage or penetration in the secondary fuel barrier is detected, or if any secondary fuel barrier is verified as not being installed, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996; or Revision 4, dated October 28, 1999. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(i) of this AD for that repaired area.

Terminating Action for AD 94–05–04

(f) Accomplishment of the actions required by paragraph (b), (c), (d)(2)(ii), or (e) of this AD constitutes terminating action for the requirements specified in paragraph (a) of AD 94–05–04, amendment 39–8842 (59 FR 13442, March 22, 1994), with respect to the modification specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1988. This service bulletin is one of many service bulletins referenced in Boeing Document D6–54860, Revision G, Appendix A.3, dated March 5, 1993. All other service bulletins referenced in that document still apply.

Alternative Method of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Alternative methods of compliance, approved previously in accordance with AD 90–02–16, amendment 39–6452, are approved as alternative methods of compliance with this AD. For airplanes equipped with integral fuel tanks in the center section of the wings: Alternative methods of compliance, approved previously in accordance with AD 90–02–16, are NOT approved as alternative methods of compliance with this AD.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The actions shall be done in accordance with Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Boeing Service Bulletin 727–57–0177, Revision 1, dated November 21, 1991; Boeing Service Bulletin 727–57–0177, Revision 2, dated September 16, 1993; Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996; or Boeing Service Bulletin 727–57–0177, Revision 4, dated October 28, 1999; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 9, 2000.

Issued in Renton, Washington, on January 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2086 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–133–AD; Amendment 39–11536; AD 2000–02–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes; that currently requires an inspection of reworked aileron/elevator power control units (PCU's) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with cylinder bores that have been reworked using the oversize method or the steel sleeve method, if necessary. This amendment, among other items, expands the applicability of the existing AD to include airplanes equipped with certain rudder PCU's. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips; such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane.

DATES: Effective March 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–09–14, amendment 39–10010 (62 FR 24008, May 2, 1997); which is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 26, 1999 (64 FR 20226). The action proposed to continue to require an inspection of reworked aileron/elevator power control units (PCU) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method, if necessary. The action also proposed to require expanding the applicability of the existing AD to include airplanes equipped with certain rudder PCU's.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Supplemental NPRM

One commenter states that it supports the supplemental NPRM and will be able to meet the requirements as proposed.

Request To Revise Applicability Statement

One commenter recommends that the order of applicability should be reversed to "serial number less than xxx, except those with 'ss'," to minimize confusion.

The FAA concurs with the intent of the commenter's request. The FAA concurs that the applicability statement in the supplemental NPRM may be confusing to operators. However, the FAA finds that it would be more clear to state only what serial numbers are *excluded* from the applicability of the AD, rather than stating certain serial numbers that are included as well as certain serial numbers that are excluded from the applicability of this AD. Therefore, the applicability statement of this final rule has been revised to state that this AD applies to "Model 737–100, –200, –300, –400, and –500 series airplanes; * * * equipped with:

- A rudder power control unit (PCU), having part number (P/N) 65–44861–( ), P/N 65C37052–( ), or P/N 65C37053–( ), except those having a serial number of 1252A or greater or having a serial number that contains 'ss'; or
- An aileron or elevator PCU having P/N 65–44761–( ), except those having a serial number of 5360A or greater or having a serial number that contains 'ss.'"

In addition, paragraphs (a) and (d) of this final rule have been revised similarly.

Request To Clarify Acceptable Methods of Inspection

Two commenters request that the wording of paragraph (a) of the supplemental NPRM be revised to clarify the FAA's intent. The commenters point out that paragraph (a) of the supplemental NPRM reads, "Perform an inspection of reworked or overhauled aileron and elevator PCU's * * * in accordance with Boeing Service Letter 737–SL–27–30, dated April 1, 1985." The commenters state that Boeing Service Letter 737–SL–27–30 does not contain information on means of inspection of PCU cylinder bores that have been reworked or repaired using chrome plating. One of the commenters recommends that determination of whether cylinder bores have chrome plating should be based on either maintenance records or physical inspection of the PCU's. The other commenter recommends that, to prevent confusion, paragraph (a) be revised to read, "Perform an inspection of reworked or overhauled PCU's to determine if reworked manifold bores containing chrome plating as described in Boeing Service Letter 737–SL–27–30 are installed * * *." The commenters state that these recommendations are also applicable to paragraph (d).

The FAA concurs with the commenters' request. Paragraph (a) has been revised to clarify acceptable methods to determine whether the PCU cylinder bores have chrome plating. Paragraph (a)(1) has been added to the final rule to allow inspection of maintenance records to determine whether the PCU has a chrome-plate-repaired cylinder bore.

Paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) identify criteria that demonstrate that a PCU does not have a chrome-plated cylinder bore.

Paragraph (a)(2) has been added to specify a physical inspection of the PCU to detect vibroengraved text "737–SL–27–30", as evidence of prior inspection to verify that the PCU does not contain a cylinder bore repaired with chrome plating.

Paragraph (a)(3) has been added to specify performance of the PCU

Non-Destructive Test (NDT) as identified in Boeing Service Letter 737–SL–27–120, dated January 28, 1998.

Compliance times for performance of the requirements of AD 97–09–14, which were contained in paragraphs (a)(1) and (a)(2) of the supplemental NPRM, are unchanged, but have been incorporated within paragraph (a) of the final rule.

Paragraph (d) of the final rule has been revised to be similar to the revised paragraph (a) and to refer to paragraphs (a)(1), (a)(2), and (a)(3) for inspection instructions.

Request for Explicit Approval of NDT Inspection

One commenter requests that the NDT inspection noted in Boeing Service Letter 737–SL–27–120 be expressly approved as meeting the requirements of paragraphs (a) and (d) of the proposed AD. The commenter states that it believes that this is preferable to the wording of the supplemental NPRM, which states that alternative methods of compliance, approved previously in accordance with AD 97–09–14 are approved as alternative methods of compliance for this AD.

The FAA concurs with the intent of the commenter's request. As stated previously, paragraph (a)(3) has been added to list the NDT inspection method noted in Boeing Service Letter 737–SL–27–120 as an approved method to determine the presence of chrome plating. No additional change to the rule is necessary in this regard.

Request To Revise Means of Compliance

One commenter requests that paragraph (b) of the proposed rule be revised to allow replacement of the PCU in accordance with the operator's FAA-approved maintenance procedures for removal and installation of the affected aileron and elevator PCU's and rudder PCU's. The commenter states that reference to the Boeing Airplane Maintenance Manual as the means for removal and replacement of an affected PCU may result in difficulties for operators, because their approved means of airplane maintenance may not be the Boeing 737 Airplane Maintenance Manual. (An individual operator has the option to develop its own FAA-approved maintenance program.)

The FAA concurs with the commenter's request. Paragraphs (b) and (e) of this AD have been revised to add an option to perform the replacement of the PCU in accordance with procedures in the operator's FAA-approved maintenance program that are equivalent to the Boeing AMM procedures.

Request To Replace PCU Instead of Cylinder Bore

One commenter requests that paragraph (b)(1) be revised to require replacement of the PCU with a PCU that does not have a chrome-plate-repaired cylinder bore, instead of requiring replacement of the cylinder bore. The commenter cites no rationale for its request. Additionally, the commenter requests that the requirement be revised to allow use of any PCU that has been confirmed to not contain a chrome-plated cylinder bore. The commenter states that the request to revise paragraph (b)(1) is also applicable to paragraph (e)(1) of the AD.

The FAA concurs with the commenter's request. The FAA finds that it is not possible to remove the cylinder bore without removing the PCU from the airplane. Paragraphs (b)(1) and (e)(1) have been revised to require replacement of any PCU with a chrome-plate-repaired cylinder bore with a PCU that does not have a chrome-plate-repaired cylinder bore, instead of replacement of the chrome-plate-repaired cylinder bores.

Request To Correct Typographical Error

One commenter requests that the reference to "a PCU having serial number of 5306A or higher" in paragraph (b)(2) of the supplemental NPRM be revised to reflect the correct serial number, which is 5360A or higher. The FAA concurs, and has corrected paragraph (b)(2) to refer to serial number 5360A or higher.

Request To Revise Spares Paragraphs

One commenter requests that paragraphs (c) and (f) of the supplemental NPRM be revised to refer to units that are defined as acceptable for installation per paragraphs (b) and (e), respectively, of the AD. The commenter states that Boeing Service Letter 737–SL–27–30 does not define inspection criteria, and the definition of acceptable units is not complete in the supplemental NPRM.

The FAA concurs with the commenter's request. Paragraphs (c) and (f) have been revised to refer to units eligible as replacement PCU's per paragraphs (b) and (e), respectively.

Request To Allow PCU Disassembly and Inspection of Cylinder Bore

One commenter requests that the proposed AD be revised to allow an option to perform PCU disassembly and inspection of the cylinder bore for chrome plating as an alternative to the NDT of the PCU, which, as stated previously, is specified in paragraph (a)(3) of the final rule.

The FAA does not concur with the commenter's request. The manufacturer has not provided the FAA with any specific requirements or instructions to perform such an inspection. Therefore, the FAA cannot include such an option in the AD. However, operators that wish to perform PCU disassembly and inspection of the cylinder bore for chrome plating as an alternative to the NDT of the PCU specified in paragraph (a)(3) of this AD, may request approval of a method of and criteria for such disassembly and inspection as an alternative method of compliance, in accordance with paragraph (g)(1) of the AD.

Explanation of Additional Change From the Supplemental NPRM

Paragraphs (b) and (e) of the supplemental NPRM state that the actions specified in those paragraphs are to be accomplished in accordance with certain chapters of the Boeing Airplane Maintenance Manuals. The FAA finds that specific revisions of the airplane maintenance manuals are not required for accomplishment of the actions specified in those paragraphs. Therefore, paragraphs (b) and (e) of this AD have been revised to call for use of certain chapters of the Boeing Airplane Maintenance Manuals as guidance for procedures to replace the PCU's.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,675 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 97–09–14 take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $327,300, or $300 per airplane.

The new actions that are required by this new AD will take approximately 5

work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $327,300, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10010 (62 FR 24008, May 2, 1997), and by adding a new airworthiness directive (AD), amendment 39–11536, to read as follows:

2000–02–18 Boeing: Amendment 39–11536. Docket 97–NM–133–AD. Supersedes AD 97–09–14, Amendment 39–10010.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category; equipped with:

- A rudder power control unit (PCU), having part number (P/N) 65–44861–(D), P/N 65C37052–( ), or P/N 65C37053–( ), except those having a serial number of 1252A or greater or having a serial number that contains "ss"; or
- An aileron or elevator PCU having P/N 65–44761–( ), except those having a serial number of 5360A or greater or having a serial number that contains "ss."

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduced rate of movement of the elevator, aileron, or rudder, which, if not corrected, could result in reduced controllability of the airplane, accomplish the following:

Partial Restatement of Requirements of AD 97–09–14

(a) Within 5 years or 15,000 flight hours after June 6, 1997 (the effective date of AD 97–09–14, amendment 39–10010), or at the next time the PCU is sent to a repair facility, whichever occurs first: Perform an inspection of aileron and elevator PCU's having P/N 65–44761–( ), except those having a serial number of 5360A or greater or having a serial number that contains "ss"; and rudder PCU's having P/N 65–44861–( ), except those having a serial number of 1252A or greater or having a serial number that contains "ss"; to determine whether a PCU manifold has a reworked or repaired cylinder bore(s) containing chrome plating. Accomplish this inspection as specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Inspect the airplane maintenance records to determine whether a PCU with a chrome-plate-repaired cylinder bore is installed. If inspection of the maintenance records shows that the PCU meets one of the criteria specified in paragraph (a)(1)(i), (a)(1)(ii), (a)(1)(iii), or (a)(1)(iv) of this AD, no further action is required by this AD for that PCU.

(i) The PCU has never been reworked or repaired.

Note 2: Chrome plating of the cylinder bores was limited to repair and was not used for new manufacture of PCU's or replacement manifolds.

(ii) The PCU has been reworked or repaired, but chrome plating was not used as the means of PCU cylinder bore repair.

(iii) The PCU has been reworked or repaired, but a manifold manufactured after December 31, 1985, was used to replace the cylinder bore.

Note 3: No PCU manifold manufactured after December 31, 1985, was reworked or repaired using chrome plating.

(iv) The PCU has been reworked or repaired using chrome plating of the cylinder bore, but the cylinder bore has subsequently been reworked to remove the chrome plating using the cylinder bore oversize method or steel sleeve method specified in Boeing Service Letter 737–SL–27–30, "Aileron/Elevator and Rudder Power Control Unit Cylinder Bore Rework," dated April 1, 1985.

(2) Inspect the PCU to determine whether the PCU is marked with vibroengraved text "737–SL–27–30" as evidence of prior inspection, as specified in Boeing Service Letter 737–SL–27–120," Aileron, Elevator, and Rudder Power Control Unit Cylinder Bore Material Identification Method," dated January 28, 1998.

(3) Perform the PCU Non-Destructive Test (NDT) in accordance with Boeing Service Letter 737–SL–27–120, dated January 28, 1998, to determine whether chrome plating exists on the cylinder bore surface.

Replacement Required by AD 97–09–14

(b) If any reworked PCU manifold cylinder bores containing chrome plating are found to be installed during the inspection required by paragraph (a) of this AD: Prior to further flight, accomplish the actions specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, using as guidance the following procedures of the Boeing 737 Airplane Maintenance Manual, as applicable: Chapter 27–11–71 (for Model 737–100, –200, –300, –400, and –500 series airplanes), Chapter 27–31–101 (for Model 737–100 and –200 series airplanes), or Chapter 27–31–14 (for Model 737–300, –400, and –500 series

airplanes), or equivalent procedures in the operator's FAA-approved maintenance program.

(1) Replace the PCU with a PCU with cylinder bores that were manufactured after December 31, 1985, or with a PCU with cylinder bores that have been reworked using the oversize method or the steel sleeve method specified in Boeing Service Letter 737–SL–27–30, dated April 1, 1985.

(2) Replace the aileron or elevator PCU with a PCU containing the letters "ss" in its serial number or with a PCU having a serial number of 5360A or higher.

(3) Replace the rudder PCU with a PCU containing the letters "ss" in its serial number or with a PCU having a serial number of 1252A or higher.

(4) Replace the PCU with a PCU for which paragraph (a) of this AD specifies that no further action is required.

Spares

(c) As of June 6, 1997, no person shall install a manifold cylinder bore containing chrome plating, or an aileron or elevator PCU having P/N 65–44761–( ) that has a manifold cylinder bore containing chrome plating, or a rudder PCU having P/N 65–44861–( ) that has a manifold cylinder bore containing chrome plating, on any airplane, unless the PCU is eligible as a replacement PCU, as specified in paragraph (b) of this AD.

New Requirements of This AD

Inspection

(d) Within 5 years or 15,000 flight hours after the effective date of this AD, or at the next time the PCU is sent to a repair facility, whichever occurs first: Perform an inspection of any rudder PCU having P/N 65C37052–( ) or P/N 65C37053–( ), except those having a serial number of 1252A or greater or having a serial number that contains "ss," to determine if the PCU manifold has a reworked or overhauled cylinder bore(s) containing chrome plating. Perform the inspection in accordance with paragraph (a)(1), (a)(2), or (a)(3) of this AD.

Replacement

(e) If any reworked or overhauled PCU manifold cylinder bores containing chrome plating are found to be installed during the inspection required by paragraph (d) of this AD: Prior to further flight, accomplish the actions specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, using, as guidance, procedures specified in Chapter 27–21–91 Boeing 737 Airplane Maintenance Manual (for Model 737–100, –200, –300, –400, and –500 series airplanes), or equivalent procedures in the operator's FAA-approved maintenance program.

(1) Replace the PCU with a PCU with cylinder bores that were manufactured after December 31, 1985, or with a PCU with cylinder bores that have been reworked using the oversize method or the steel sleeve method specified in Boeing Service Letter 737–SL–27–30, dated April 1, 1985.

(2) Replace the rudder PCU with a PCU containing the letters "ss" in its serial number or with a PCU having a serial number of 1252A or higher.

(3) Replace the rudder PCU with a rudder PCU for which paragraph (a) of this AD specifies that no further action is required.

Spares

(f) As of the effective date of this AD, no person shall install a rudder PCU having P/N 65C37052–( ) or P/N 65C37053–( ) that has a manifold cylinder bore containing chrome plating, on any airplane, unless the PCU is eligible as a replacement PCU per paragraph (e) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously for AD 97–09–14, amendment 39–10010, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The PCU NDT shall be done in accordance with Boeing Service Letter 737–SL–27–120, dated January 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(j) This amendment becomes effective on March 9, 2000.

Issued in Renton, Washington, on January 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2085 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–381–AD; Amendment 39–11541; AD 2000–02–23]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that requires a one-time inspection to determine the type of engine ignition switch installed in the hinged forward overhead switch panel, and replacement of certain rotary ignition switches with new design rotary ignition switches. This amendment is prompted by reports of smoke in the flight compartment during engine ignition selection. The actions specified by this AD are intended to prevent an internal electrical short in the engine ignition switch, which could result in smoke in the flight compartment.

DATES: Effective March 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2000.

ADDRESSES: The service information referenced in this AD may be obtained

from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on July 14, 1999 (64 FR 37911). That action proposed to require a one-time inspection to determine the type of engine ignition switch installed in the hinged forward overhead switch panel, and replacement of certain rotary ignition switches with new design rotary ignition switches.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request for Clarification of Certain Requirements

One commenter request that the FAA clarify the requirements of paragraph (a) of the proposed AD. The commenter states that paragraph (a) of the proposed AD requires the visual inspection be accomplished in accordance with McDonnell Douglas Service Bulletin DC9–74–001, dated May 23, 1997, or McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998. The commenter notes that Service Bulletin DC9–74–001 addresses only the five position ignition switches, whereas Alert Service Bulletin DC9–74A001 addresses both the four and five position ignition switches. The commenter states that using Service Bulletin DC9–74–001 instead of Alert Service Bulletin DC9–74A001 could result in the suspect four position switches not being removed.

The FAA concurs with the commenter that clarification is necessary. Because only the alert service bulletin provides instructions to address both types of switches, it is the only service bulletin referenced in the final rule for that purpose. The FAA has added a new note to clarify that inspection of the five position switches prior to the effective date of the AD in accordance with McDonnell Douglas Service Bulletin DC9–74001, dated May 23, 1997, is considered acceptable for compliance with paragraph (a) of this AD.

Request To Include Additional Spares Affected

One commenter requests that the FAA clarify what spare parts are affected by paragraph (b) of the proposed AD. The commenter states that paragraphs (a)(2)(i) and (a)(2)(ii) require that both four position and five position "old" style rotary ignition switches be replaced in accordance with McDonnell Douglas Alert Service Bulletin DC9–74A001. However, the commenter points out that paragraph (b) of the proposed AD addresses only the four position ignition switches.

The FAA concurs with the commenter's request that clarification is necessary. The omission of the five position ignition switches was an error. The FAA has revised paragraph (b) of the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,000 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,000 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $60,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–23 McDonnell Douglas: Amendment 39–11541. Docket 98–NM–381–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83

(MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an internal electrical short in the engine ignition switch, which could result in smoke in the flight compartment, accomplish the following:

Inspection and Corrective Action

(a) Within 8 months after the effective date of this AD, visually inspect the engine ignition switch to determine what type of switch (rotary or toggle) is installed in the hinged forward overhead switch panel, in accordance with McDonnell Douglas Service Bulletin DC9–74–001, dated May 23, 1997, or McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998.

Note 2: Inspection of the five position ignition switches prior the effective date of the AD in accordance with McDonnell Douglas Service Bulletin DC9–74001, dated May 23, 1997, is considered acceptable for compliance with paragraph (a) of this AD.

(1) If the switch is a toggle type, no further action is required by this AD.

(2) If the switch is a rotary type, prior to further flight, determine the switch part number in accordance with the service bulletin.

(i) If the switch has part number 79–2318 (5D0423–2) or 79–2355, no further action is required by this AD.

(ii) If the switch has any part number other than that identified in paragraph (a)(2)(i) of this AD, prior to further flight, replace the engine ignition switch with a new design ignition switch in accordance with the service bulletin.

Spares Affected

(b) As of the effective date of this AD, no person shall install a four position rotary ignition type switch, part number (P/N) 79–2081, 69–1966, or 34064; or a five position rotary type ignition switch, P/N 79–2055 (5D0423–1), 69–1967, 53306–033, or 3600–3076; on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–74–001, dated May 23, 1997; or McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 9, 2000.

Issued in Renton, Washington, on January 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2084 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–247–AD; Amendment 39–11542; AD 2000–02–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that requires either replacement of the spring rod assemblies of the rudder servo controls with improved spring rod assemblies; or modification of the existing spring rod assemblies. For certain airplanes, this amendment requires a one-time visual inspection to determine whether certain parts of the spring rod assemblies of the rudder servo controls are installed; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent corrosion of the spring rod assemblies of the rudder servo controls, which could result in the jamming of the rudder servo controls and consequent reduced controllability of the airplane.

DATES: Effective March 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on November 4, 1999 (64 FR 60138). That action proposed to require either replacement of the spring rod assemblies of the rudder servo controls with improved spring rod assemblies; or modification of the existing spring rod assemblies. For certain airplanes, that action proposed to require a one-time visual inspection to determine whether certain parts of

the spring rod assemblies of the rudder servo controls are installed; and corrective actions, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

French Airworthiness Directive Revision

Since issuance of the proposed AD, the Direction Gónórale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has revised the corresponding French airworthiness directive. The DGAC issued 1999–240–288(B) R1, dated December 15, 1999, to provide operators with an exhaustive list of appropriate part numbers (P/N) for rudder servo control input spring rod assemblies. The FAA has reviewed this information and has determined that paragraphs (b)(1) and (b)(2) of the proposed AD should be revised to include an additional part number. These paragraphs specify acceptable spring rod assemblies as those having either P/N A2727086500400 or A2727086500600. However, P/N A2727114900000 also is acceptable for installation. Paragraphs (b)(1) and (b)(2) of the AD have been revised to include this P/N.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 156 airplanes of U.S. registry will be affected by this AD.

If an operator elects to replace the spring rod assemblies: It will take approximately 4 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,720 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $3,960 per airplane.

If an operator elects to modify the spring rod assemblies: It will take approximately 7 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $294 per airplane. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $714 per airplane.

If an operator is required to accomplish the one-time inspection: It will take approximately 1 work hour per airplane to accomplish that inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–24 Airbus Industrie: Amendment 39–11542. Docket 99–NM–247–AD.

Applicability: Model A300, A310, and A300–600 series airplanes; certificated in any category; except those airplanes on which Airbus Modification 10438 has been installed, or on which Airbus Service Bulletin A300–27–0182, Revision 2, A300–27–6023, Revision 2, or A300–27–2065, Revision 2, each dated June 30, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the spring rod assemblies of the rudder servo controls, which could result in the jamming of the rudder servo controls and consequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes on which the spring rod assemblies of the rudder servo controls have not been modified in accordance with Airbus Service Bulletin A300–27–182, dated March 16, 1995, or Revision 1, dated November 21, 1996 (for Model A300 series airplanes); A310–27–2065, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A310 series airplanes); or A300–27–6023, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A300–600 series airplanes); as applicable; as of the effective date of this AD: Within 1 year after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1) or (a)(2) in accordance with Airbus Service Bulletin A300–27–182, Revision 2 (for Model A300 series airplanes); or A310–27–2065, Revision 2 (for Model A310 series airplanes); or A300–27–6023, Revision 2 (for Model A300–600 series airplanes); each dated June 30, 1999; as applicable.

(1) Replace the spring rod assemblies with improved spring rod assemblies; or

(2) Modify the existing spring rod assemblies and re-identify all modified spring rod assemblies.

(b) For airplanes on which the spring rod assemblies of the rudder servo controls have been modified in accordance with Airbus Service Bulletin A300–27–182, dated March 16, 1995, or Revision 1, dated November 21, 1996 (for Model A300 series airplanes); or A310–27–2065, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A310 series airplanes); or A300–27–6023, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A300–600 series airplanes); as applicable; as of the effective date of this AD: Within 1 year after the effective date of this AD, perform a one-time visual inspection to verify that all spring rod assemblies of the rudder servo controls have the same part numbers, in accordance with Airbus Service Bulletin A300–27–182, Revision 2 (for Model A300 series airplanes); or A310–27–2065, Revision 2 (for Model A310 series airplanes); or A300–27–6023, Revision 2 (for Model A300–600 series airplanes); each dated June 30, 1999; as applicable.

(1) If all three spring rod assemblies have P/N A2727086500400, A2727086500600, or A2727114900000, no further action is required by this AD.

(2) If any spring rod assembly has a P/N other than P/N A2727086500400, A2727086500600, or A2727114900000, prior to further flight, re-identify all spring rod assemblies to the P/N specified in the applicable service bulletin, in accordance with the applicable service bulletin.

(c) As of the effective date of this AD, no person shall install on any airplane a spring rod assembly having P/N A2727086500200.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–27–182, Revision 2, dated June 30, 1999; Airbus Service Bulletin A310–27–2065, Revision 2, dated June 30, 1999; or Airbus Service Bulletin A300–27–6023, Revision 2, dated June 30, 1999; as applicable. Airbus Service Bulletin A300–27–6023, Revision 2, dated June 30, 1999, contains the following list of effective pages:

Revision level page No.	Date shown on page	Shown on page
1–6, 8–12, 17	2	June 30, 1999.
7, 13–16	Original	March 16, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–240–288(B), dated June 30, 1999, and 1999–240–288(B) R1, dated December 15, 1999.

(g) This amendment becomes effective on March 9, 2000.

Issued in Renton, Washington, on January 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2083 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD082–3048a; FRL–6531–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15 Percent Rate of Progress Plan for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert its conditional approval of a revision to the Maryland State Implementation Plan (SIP) to a full approval. The revision consists of the 15 percent rate of progress requirements for the Baltimore severe ozone nonattainment area. EPA is also taking direct final action to approve revisions to certain portions of the 1990 base year emissions inventory of volatile organic compound (VOC) and nitrogen oxide (NO_x) emissions for the Baltimore nonattainment area. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on March 20, 2000 without further notice, unless EPA receives adverse written comment by March 6, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092, or by e-mail at gaffney.kristeen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b) of Clean Air Act (the Act) requires states with ozone

nonattainment areas classified as moderate or higher to submit a plan demonstrating a 15 percent reduction in VOC emissions from 1990 baseline emission levels. These reductions were to be achieved by November 15, 1996. This requirement of the Act demonstrating "rate of progress" (or ROP) toward attainment is known commonly as the "15% Plan."

The Baltimore ozone nonattainment area consists of the City of Baltimore plus the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard, and is classified as severe. On July 12, 1995, Maryland submitted a 15% Plan SIP revision for the Baltimore nonattainment area. On October 9, 1997 (62 FR 52661), EPA conditionally approved the Maryland's July 12, 1995 SIP revision of the 15% Plan for the Baltimore nonattainment area because, while on its face, the 15% Plan achieved the required 15% VOC emission reduction to satisfy the requirements of the Act, the plan itself did not provide sufficient documentation on the measures included in the plan for EPA to take action on at that time. Instead, EPA granted conditional approval of the July 12, 1995 15% Plan and ruled that the State must supplement its submittal to demonstrate that it achieved the required emission reductions. EPA's October 9, 1997 rule established the following four conditions for full approval of the Baltimore 15% Plan:

1. Maryland's 15% Plan calculations must reflect the EPA approved 1990 base year emissions inventory (found at 61 FR 50715, September 27, 1996).

2. Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to remodel the vehicle inspection and maintenance (I/M) reductions using the following two EPA guidance memos: "Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation," memorandum from John Seitz and Margo Oge dated August 13, 1996, and "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance," memorandum from Gay MacGregor and Sally Shaver dated December 23, 1996.

3. Maryland must remodel to determine affirmatively the creditable reductions from reformulated gasoline (RFG) and federal Tier I vehicle emission standards in accordance with EPA guidance.

4. Maryland must submit a SIP revision amending the 15% Plan with a determination using appropriate documentation methodologies and credit calculations that the 64.2 tons per day (TPD) reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Baltimore area.

In a September 4, 1997 letter to EPA, the State committed to meet all the conditions listed in EPA's rulemaking within 12 months of final conditional approval. The State of Maryland submitted a revised 15% Plan for the Baltimore area addressing the conditions on October 7, 1998. Additionally, today's action will approve minor revisions to the SIP approved 1990 base year emissions inventory for NO_X and VOC emissions that is used as a basis for demonstrating rate of progress.

II. Summary of the SIP Revision

Maryland's October 7, 1998 submittal of the revised 15% Plan contains the following:

- Emissions projections or projected growth in emissions during the period 1990–1996.
- VOC emissions target level calculation for 1996.
- Description of control measures used to demonstrate the 15 required VOC reduction.
- Revisions to the 1990 base year inventory for VOC and NO_X emissions. The inventory was revised in part, in response to EPA's first condition of the October 9, 1997 conditional rulemaking.

III. Base Year Inventory Revisions

The 1990 base year inventory is an inventory of actual VOC, NO_X, and carbon monoxide emissions that occurred in Maryland in 1990. This inventory is the basis for calculating future years emissions growth and the required 15% emissions reduction to demonstrate rate of progress. EPA SIP approved Maryland's state-wide 1990 base year inventory on September 27, 1996 (61 FR 50715)..

The October 7, 1998 submittal of the revised 15% Plan for the Baltimore nonattainment area references revisions to the 1990 base year inventory submitted as a separate SIP revision to EPA on December 24, 1997. The December 24, 1997 SIP revision contained the Post-1996 Rate of Progress Plan for the Baltimore nonattainment area. As part of the Post-1996 ROP Plan SIP revision, Maryland revised the 1990 base year inventory for both VOC and NO_X emissions in the Baltimore nonattainment area. EPA has not yet taken rulemaking action on Maryland's December 24, 1997 Post-1996 ROP Plan submittal. However, because the inventory revisions submitted as part of Post-1996 ROP SIP are also the basis of calculation for the revised 15% Plan target level, EPA will be taking action in today's rulemaking on that portion of the December 24, 1997 SIP revision as it relates solely to the 1990 base year inventory revisions for NO_X and VOCs in the Baltimore nonattainment area.

Maryland made several modifications to the earlier emission estimates for VOCs and NOx for point, area and mobile sources. These changes are due to improvements in inventory estimation techniques, the availability of more accurate data, revised estimates of population and employment and other technical improvements. There are no changes to the biogenic VOC emissions portion of the inventory being requested at this time. EPA is approving the requested revisions to the 1990 base year inventories for the Baltimore ozone nonattainment area that were submitted as part of Maryland's December 24, 1997 SIP submittal. Table 1 illustrates the base year inventory revisions that will be approved into the Maryland SIP.

TABLE 1.—REVISED 1990 BASE YEAR INVENTORY FOR THE BALTIMORE NONATTAINMENT AREA

[Tons per day]

	VOC previously approved	VOC revised	Change	NO_X previously approved	NO_X revised	Change
Mobile sources	131.5	134.2	(+2.7)	161.2	159.5	(−1.7)
Point sources	40.3	42.0	(+1.7)	231.3	223.2	(−8.1)
Nonroad sources	45.2	44.7	(−.5)	71.58	71.5	(−.1)
Area sources	127.1	122.4	(−4.7)	10.6	13.7	(+3.1)
Biogenic sources	180.1	180.09	0	NA	NA	NA

TABLE 1.—REVISED 1990 BASE YEAR INVENTORY FOR THE BALTIMORE NONATTAINMENT AREA—Continued

[Tons per day]

	VOC previously approved	VOC revised	Change	NO_X previously approved	NO_X revised	Change
Total	524.2	523.4	(−.8)	474.7	467.9	(−6.8)

IV. Calculation of the 15% Reduction Target

Section 182(b) of the Act requires that the SIP achieve a reduction of 15% of the 1990 baseline VOC emissions accounting for any growth in emissions (i.e, growth occurring between 1990 and 1996). EPA issued guidance to the states to assist them in calculating emission reductions necessary for demonstrating ROP. To determine the amount of emissions reductions necessary to demonstrate the 15% ROP requirement, states must first calculate a target level of emissions for 1996. The 1996 target level facilitates planning for the 15% VOC reduction. Maryland has based the calculation of the 1996 target level of emissions on the revised 1990 base year inventory established in Table 1 above. The 15% emissions reduction target level for the Baltimore nonattainment area is calculated in Table 2 below. EPA believes that the VOC 1996 target level of 253.3 tons per day (TPD) for Baltimore has been properly calculated according to EPA guidance and is approveable.

TABLE 2.—CALCULATION OF 15% REDUCTION TARGET LEVEL FOR THE BALTIMORE NONATTAINMENT AREA

[Tons per day]

1990 Base Year Inventory	523.4
ROP Inventory (adjusted to remove biogenic emissions 180.1 TPD)	343.3
Non-Creditable Reductions from FMVCP and RVP	(39.7)
RACT "fix-ups" and I/M Corrections	0.0
1990 Adjusted Base Year Inventory (ROP base year—FMVCP/RVP)	303.6
15% Reduction Requirement (0.15 × adjusted base year inventory)	(45.5)
Emission reductions from FMVCP and RVP from 1996–1999 (delayed enhanced I/M program adjustment)	(4.8)
1996 Target Level of Emissions (Adjusted base year inventory—15% reduction—FMVCP/RVP 1996–1999)	253.3
Expected Emissions Growth 1990–1996	18.4
Total Emissions Reduction Needed (15% reduction + growth + non-creditable emissions from delayed I/M)	68.7

V. Growth Projections (1990–1996)

To meet the ROP requirements, reductions must occur to both achieve a 15% reduction in 1990 emission levels plus offset growth in emissions between 1990–1996. These estimates are made by projecting the 1990 base year VOC inventory out to 1996 considering only the current control strategy. The projected inventories must reflect expected growth in activity, as well as regulatory actions which will affect emission levels. EPA recommends that emission projections for point sources be based on information obtained directly from facilities and/or permit applications. Area and mobile source emission projections may be developed from information from local planning agencies. In the absence of source-specific data, credible growth factors must be developed from accurate forecasts of economic variables and the activities associated with the variables. Economic variables that may be used as indicators of activity growth are: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator. According to EPA guidance, economic data and models which provide acceptable growth factors for emission projections include the U.S. Department of Commerce Bureau of Economic Analysis forecasts for states and metropolitan statistical areas; the Economic Growth Analysis System, which models economic growth and estimates corresponding increases in emissions-producing activity; and the Emissions Preprocessor System for urban airshed modeling, which produces spatially and temporally resolved emission inventories for input into urban airshed models.

Maryland's revised 15% Plan submittal for the Baltimore nonattainment area discusses how Maryland projected growth from 1990 to 1996 for each emissions category. The growth projections are based on the revised 1990 base year inventory discussed earlier in this document. The State's methodology for selecting growth factors and applying them to the 1990 base year emissions inventory to estimate growth in emissions from 1990 to 1996 is acceptable for all source categories. Maryland predicts VOC emissions will grow by 18.4 TPD from 1990 to 1996. Maryland's total VOC emissions growth projections are shown in Table 3 below.

TABLE 3.—1996 PROJECTION YEAR VOC INVENTORY BY CATEGORY, BALTIMORE NONATTAINMENT AREA

Inventory component	1990 baseline (TPD)	1996 projection (TPD)
Point Source	42.0	44.6
Area Source	122.4	126.6
Mobile Source	134.2	142.0
Non-road Source	44.7	48.5
Total	343.3	361.7

VI. Evaluation of the State's 15% Plan Control Measures

The 15% Plan for the Baltimore area claims creditable reductions of 85.6 TPD from identified emission control programs. To be creditable, each control measure must meet the creditability requirements of EPA policy and of the Act. A measure is creditable if it is real, quantifiable, permanent, and enforceable. To be enforceable a reduction must meet any one of the following:

1. It must result from a rule in the approved State SIP, or

2. It must result from a rule promulgated by EPA, or

3. It must result from a reduction enforceable under a permit issued pursuant to Title V of the Act.

Emission reductions from rules adopted and implemented before 1990 are not creditable because the base year inventory reflects the effects of these rules. Below is a brief description of each of the control measures in the Baltimore 15% Plan.

A. Stationary Source Controls

1. Federal Air Toxics

This measure addresses sources required to comply with federal air toxics requirements that have or will achieve VOC reductions between 1990 and 1996. Two sources in the Baltimore nonattainment area were required to comply with a federal maximum available control technology (MACT) standard or national emissions standard for hazardous air pollutants (NESHAP) between 1990 and 1996. Maryland claimed 0.4 TPD from this control measure. Credit is allowable from MACTs and NESHAPs; thus, 0.4 TPD from federal air toxics is fully creditable toward the Baltimore 15% Plan.

2. Architectural and Industrial Maintenance Coatings

Under section 183(e) of the Act, EPA was required to study emissions from architectural and industrial maintenance (AIM) coatings operations, group them by order of significance, and establish a schedule to regulate the largest contributors. On September 11, 1998, EPA promulgated a national rule (63 FR 48848) for reducing VOC emissions from architectural coatings. Architectural coatings are commonly applied by consumers and contractors, and include exterior and interior paints, industrial maintenance coatings, wood and roof coatings, primers, and traffic paints. EPA's rule establishes a VOC content limit for 61 categories of architectural coatings. The requirements are based on product reformulation, a pollution prevention method. Manufacturers and importers were required to comply with rule by September 1999. EPA's final regulation is expected to reduce emissions of VOCs by 20%.

EPA has issued several memoranda allowing states to take credit in their 15% Plans from the AIM coatings rule, and also the federal Autobody Refinishing and Consumer/Commercial products rules. The promulgation dates and hence the compliance dates for these rules did not occur by the November 15, 1996 implementation date for the 15% Plan. It is EPA's intention to still allow credit from the federal rules in states 15% Plans for the reasons discussed below.

Disapproval of the 15% Plan because these federal measures were delayed and did not achieve the required reductions by November 15, 1996 would require the SIP to be revised to make up the shortfall. EPA would propose approval of such a remedial measure if the SIP would achieve the 15% level as soon after November 15, 1996 as practicable. EPA believes that Maryland had limited ability to effectuate the reductions from these (or any other measures achieving equivalent reductions) any more expeditiously than EPA was able to promulgate the federal rules.

In the policy memo, "Credit for the 15% Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," dated March 22, 1995, EPA provided guidance on the expected reductions from the national rule—allowing up to a 20% reduction from the 1990 baseline levels. The March 22, 1995 policy memo was subsequently updated on March 7, 1996 ("Update on the Credit for the 15% Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule") to state that states may still take a 20% emission reduction credit from the AIM coatings rule in their 15% Plans even though the rulemaking has been delayed beyond the November 15, 1996 implementation date specified in the Act for 15% Plan measures. In light of the significant delays EPA experienced in promulgating the AIM rule, EPA has continued to allow the AIM emission reduction credits to count in state 15% Plans. EPA believes that although the compliance date was pushed back to September 1999, the emission reductions from the national AIM rule are still creditable in state 15% Plans. For the purposes of the 15% ROP plan calculations then, EPA will allow Maryland to take credit for any of the federal measures even though the emission reductions from these measures did not occur until after November 15, 1996.

Following both EPA's published guidance and in concurrence with the final AIM rule, Maryland assumed a 20% reduction in VOCs from the AIM rule or a 5.4 TPD reduction. EPA has determined that the 5.4 TPD emission reduction from AIM coatings is creditable toward the 15% ROP Plan requirement for the Baltimore nonattainment area.

3. Consumer and Commercial Products National Rule

Section 183(e) of the Act also required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products.

On September 11, 1998, EPA issued a final rule (63 FR 48819) to reduce the VOC content of 24 categories of household consumer products by 20% from levels emitted in 1990. Manufacturers must meet the VOC content limits by December 11, 1998 for all products, except pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, which have one year to comply with applicable VOC content limits. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement.

For reasons discussed previously under "Architectural and Industrial Maintenance (AIM) Coatings," EPA will allow the states to take credit for this measure even though emission reductions from this measure did not occur until after November 15, 1996. Maryland claimed a 20% reduction or the equivalent reduction of 2.6 TPD from their 1996 projected uncontrolled consumer and commercial products emissions in the Baltimore nonattainment area. EPA believes this measure is creditable in Maryland's 15% Plan for the Baltimore nonattainment area.

4. Autobody Refinishing

Maryland has adopted an autobody refinishing regulation, COMAR 26.11.19.23, "Control of VOC Emissions from Vehicle Refinishing." VOC emissions emanate from the evaporation of solvents used in the coating, drying and clean-up process. Maryland's autobody refinishing regulation was approved into the SIP on August 4, 1997 (62 FR 41853). This state rule assumes a 45% reduction (5.3 TPD) from 1996 projected uncontrolled autobody emissions in the Baltimore area. These reductions are creditable toward the ROP requirement.

5. Lithographic Printing

This measure regulates emissions from formerly uncontrolled small lithographic printing operations, such as

heatset web, non-heatset web, non-heatset sheet-fed, and newspaper non-heatset web operations. VOCs are emitted from the inks, fountain solutions and solvents used to clean the printing presses. Maryland's rule to control VOC emissions from lithographic printing operations (COMAR 26.11.19.11) was approved into the SIP on September 2, 1997 (62 FR 46199). VOC emissions are controlled from lithographic printers by limiting the allowable amount of isopropyl alcohol in the fountain solution. The 0.5 TPD VOC emission reductions achieved through this measure are creditable.

6. Surface Cleaning and Degreasing

This measure controls VOC emissions from surface cleaning/degreasing operations that fall into the area source category. Maryland amended existing regulations for surface cleaning devices and operations to require more stringent emission control requirements and enlarge the field of applicable sources. Maryland's more stringent surface cleaning and degreasing regulation (COMAR 26.11.19.09) was approved into the SIP on August 4, 1997 (62 FR 41853). Surface cleaning/degreasing operations impacted include, gasoline stations, autobody paint shops and machine shops that fall into the area source category. VOC emissions are controlled by requiring the reformulation of cold degreasers to either aqueous solutions or low VOC formulations. Maryland estimates that this rule reduces VOC emissions by 70%. Maryland claims 7.3 TPD reduction in the 15% Plan for the Baltimore nonattainment area from surface cleaning and degreasing controls. These reductions are creditable toward the 15% ROP requirement.

7. Landfill Emission Controls

According to Maryland's revised 15% Plan for the Baltimore area, this control measure relies on a federal rule to regulate emissions from municipal landfills. The 15% Plan states that "the Department expects to promulgate a regulation requiring the use of a collection and control system or energy recovery system that would control VOC emissions at landfills by 98%." However, neither a state rule nor a federal rule was promulgated to control landfill emissions by November 15, 1996. Guidelines for the approvability of reductions credible for rate-of-progress plans dictate that the emission reductions be federally enforceable. Because there was no federal program nor any federally-approved state program to require controls on municipal landfills prior to November 15, 1996, the emission reductions claimed through this measure are not creditable toward the 15% ROP Plan. The 0.2 TPD VOC emission reductions claimed for the Baltimore nonattainment area in the revised 15% Plan are not approvable for the purposes of satisfying the 15% Plan requirements.

8. Enhanced Rule Compliance

This measure increases the effectiveness of existing regulations by enhancing rule compliance through increased or enhanced inspections and other enforcement activities. Maryland has targeted rule effectiveness (RE) improvement at tank truck unloading operations at gasoline dispensing facilities and at specified bulk terminals. Specific measures that Maryland used to enhance rule effectiveness at the targeted sources include increased administrative and civil penalties; enhanced monitoring; quarterly reporting requirements for sources; workshops; increased inspector training; increased source inspections and mandatory follow-up of violations. Maryland estimates that these enhancements improve rule effectiveness at the affected source categories to 92%, or 12% above EPA's default RE value of 80%. The increase in rule effectiveness results in an additional emission reduction benefit of 4.5 TPD in the Baltimore area. This program is enforceable under the State's Title V permit program. These reductions are creditable toward ROP in Baltimore.

9. State Air Toxics

This measure addresses facilities that are regulated under Maryland's air toxics program that have achieved VOC reductions above and beyond current federally enforceable limits. In general, Maryland's air toxics regulations cover any source required to obtain a permit to construct or an annually renewed state permit to operate. Maryland claimed 0.9 TPD from state air toxics. This measure is creditable and enforceable under the State's Title V permit program.

10. RACT Controls

According to the Act, states are required to adopt reasonably available control technology (RACT) for specific source categories covered by a control technique guideline that has been published by EPA or listed in the Act, and for all other major sources. RACT consists of a variety of control techniques that are generally available and cost effective. Maryland is claiming a total of 1.7 TPD from RACT controls implemented post-1990 on four source categories: expandable polystyrene operations, yeast production, bakeries, and screen printing operations. Maryland's RACT regulations for each of these categories have been approved into the SIP. EPA has determined the 1.7 TPD are creditable emission reductions in the 15% Plan for the Baltimore area.

11. Seasonal Open Burning Ban

Maryland has amended COMAR 26.11.07 to institute a ban on open burning during the peak ozone season in Maryland's severe and serious ozone nonattainment areas. Maryland considers the months of June, July, and August the peak ozone season, because that is when ambient levels of ozone in Maryland are usually the highest. During the peak ozone season, the practice of burning for the disposal of brush and yard waste as a method of land clearing will be banned reducing VOC emissions. During the remainder of the year (September 1—May 31), Maryland's existing open fire regulations apply. This ban was adopted on May 1, 1995, and effective on May 22, 1995. EPA approved the ban on open burning into the Maryland SIP on January 31, 1997. The State of Maryland estimates a 3.6 TPD reduction in VOCs emissions from the ban on open burning. These reductions are creditable in the 15% Plan.

B. Mobile Source Controls

Maryland used EPA's emissions model MOBILE5b to determine the amount of VOC emission reductions that will occur by 1996 from all mobile source control measures contained in the emissions model. These measures, each discussed briefly below, include Stage II vapor recovery systems, reformulated gasoline, the enhanced I/M program and federal Tier 1 emission standards. MOBILE5b generates a lump sum emission reduction total for all emission control programs. In the Baltimore nonattainment area, the combined VOC emission reduction in 1996 from all mobile source controls is 53.2 TPD. Maryland has adopted and implemented all the mobile source controls discussed below and where necessary, EPA has approved Maryland's regulations into the SIP. EPA has determined that Maryland has correctly estimated the emission reductions generated through mobile source control programs by using the MOBILE5b emissions model. The 53.2 TPD VOC reduction is creditable toward the 15% requirement.

1. Stage II Vapor Recovery

Section 182(b)(3) of the Act requires all owners and operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install and operate a system for gasoline vapor recovery (known as Stage II) of emissions from the fueling of motor vehicles. Stage II vapor recovery is a control measure which substantially reduces VOC emissions during the refueling of motor vehicles at gasoline service stations. The Stage II vapor recovery nozzles at gasoline pumps capture the gasoline-rich vapors displaced by liquid fuel during the refueling process. Maryland's Stage II regulation was approved into the SIP on June 9, 1994.

2. Reformulated Gasoline

Section 211(k) of the Act requires that only reformulated gasoline (RFG) be sold or dispensed in severe and above ozone nonattainment areas after January 1, 1995. Thus, RFG is required in the Baltimore severe ozone nonattainment area. This gasoline is reformulated to burn cleaner and produce fewer evaporative emissions. EPA enforces this program so the emission reductions are fully creditable. The benefits of RFG are also realized in off-road gasoline engines, such as lawn maintenance equipment and motor boats.

3. Enhanced Vehicle Inspection and Maintenance

Under section 182(c) of the Act, the Baltimore nonattainment area was required to adopt an enhanced vehicle inspection and maintenance program. Enhanced I/M programs reduce the emissions created by vehicles through periodic testing and, if needed, repair, of the vehicle's tailpipe emissions and evaporative systems.

Most of the 15% Plan SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties implementing the enhanced I/M program using their original enhanced I/M protocols, most states did not begin actually testing cars until after the Clean Air Act implementation date.

In September 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provided states with additional flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the NHSDA, to secure state legislative approval where necessary, and set up the infrastructure to perform the testing program precluded states that revised their enhanced I/M programs from obtaining emission reductions by November 15, 1996.

Given that many states, including Maryland, rely heavily upon enhanced I/M programs to help achieve the 15% VOC emissions reduction, and that the NHSDA and regulatory changes regarding enhanced I/M programs delayed their implementation, EPA believes that it was not possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA proposed to allow states that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% Plans, even though the emissions reductions from the I/M program will occur after November 15, 1996. The provisions for crediting reductions for enhanced I/M programs is contained in two EPA policy memoranda: "Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation," note from John Seitz and Margo Oge, dated August 13, 1996, and "Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance," memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996. For the purposes of 15% Plan calculations then, EPA will allow Maryland to take credit for the enhanced I/M program even though the emission reductions from this program did not occur until after November 15, 1996.

In the case of the Baltimore nonattainment area, Maryland's 15% Plan SIP takes credit for the amount of reductions achieved by I/M through November 1999. Maryland's enhanced I/M program is a biennial program that meets the performance standards attributable to a "high enhanced" program. Maryland began testing cars under the enhanced program in October 1997. But because Maryland's program is biennial it will take two years to complete one full cycle of testing. EPA guidance allows states to assume credit from the enhanced I/M program through 1999 in the 15% Plan SIPs (see "Modelling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance", memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.) EPA converted its conditional approval of Maryland's enhanced I/M program to a full approval on October 29, 1999 (64 FR 58340).

4. Tier I New Vehicle Standards

The Act required EPA to issue Federal Motor Vehicle Control Program (Tier I) standards for new motor vehicles. The Tier I standards include exhaust ("tailpipe") emission standards and better evaporative emission controls demonstrated through new federal evaporative test procedures. EPA promulgated the Tier I standards on June 5, 1991 (56 FR 25724). These Tier I standards were phased in beginning with model year 1994 vehicles and is a federally enforceable program. On average, Tier I cars will emit 0.077 fewer grams of VOCs per mile than older cars.

TABLE 4.—SUMMARY OF CONTROL MEASURES IN THE 15% PLAN FOR THE BALTIMORE OZONE NONATTAINMENT AREA

Control measure	VOC reductions (TPD)	SIP approved by EPA	Creditable for 15%
Graphic Arts	0.5	SIP approved September 2, 1997 [62 FR 46199]	Yes.
RACT—Polystyrene Products	0.1	SIP approved October 15, 1997 [62 FR 53544]	Yes.
RACT—Yeast Production	0.5	SIP approved October 15, 1997 [62 FR 53544]	Yes.
RACT—Bakeries	0.6	SIP approved October 15, 1997 [62 FR 53544]	Yes.
RACT—Screen Printing	0.5	SIP approved October 15, 1997 [62 FR 53544]	Yes.
Surface Cleaning/Degreasing	7.3	SIP approved August 4, 1997 [62 FR 41853]	Yes.
Autobody Refinishing	5.3	SIP approved August 4, 1997 [62 FR 41853]	Yes.
Landfill Controls	.....	.....	No.
Enhanced Rule Compliance	4.5	Implemented through Title V permits	Yes.

TABLE 4.—SUMMARY OF CONTROL MEASURES IN THE 15% PLAN FOR THE BALTIMORE OZONE NONATTAINMENT AREA—Continued

Control measure	VOC reductions (TPD)	SIP approved by EPA	Creditable for 15%
State Air Toxics	0.9	Implemented through Title V permits	Yes.
Open Burning Ban	3.6	SIP approved January 31, 1997	Yes.
AIM Coatings	5.4	Federal rule	Yes.
Consumer & Commercial Products	2.6	Federal rule	Yes.
Federal Air Toxics	0.4	Federal rules—MACT standards for Coke Ovens and Benzene NESHAP.	Yes.
Mobile Source Controls	53.2	RFG—Federal rule	Yes.
RFG		Enhanced I/M—SIP approved October 29, 1999 [64 58340]	Yes.
Enhanced I/M		Stage 2—SIP approved 6/9/94.	
Stage 2		Tier 1—Federal Rule.	
Tier 1 Tier 1 standards			
Total Creditable Emission Reductions	85.4		

VII. Remedying the Conditions for Full Approval

The conditions established for full approval of the Baltimore area 15% Plan were established in EPA's final conditional rulemaking on October 9, 1997 (62 FR 52661). Each of these conditions are discussed below. In response to the conditional rulemaking, Maryland submitted a revised 15% Plan for the Baltimore nonattainment area. All of the conditions have been satisfied in Maryland's revised submittal, and therefore, EPA is approving Maryland's October 7, 1998 15% Plan submittal for the Baltimore nonattainment area. Conditions of the October 9, 1997 rulemaking:

1. Maryland's 15% plan calculations must reflect the EPA approved 1990 base year emissions inventory.

Remedy: Maryland has revised the 1990 base year emissions inventory for the nonattainment area. The revised inventory is used as a basis for calculating the 15% target level according to EPA guidance. As part of today's rulemaking, EPA is also approving revisions to the base year inventory submitted by Maryland and therefore, this condition has been satisfied.

2. Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including remodeling the reductions associated with I/M following EPA guidance.

Remedy: Maryland met all the conditions of EPA's October 31, 1996 conditional rulemaking on Maryland's enhanced I/M program. EPA fully approved the enhanced I/M program into the Maryland SIP on October 29, 1999 (64 FR 58340). Additionally, Maryland has remodeled the creditable emission reductions following EPA guidance documents and using EPA's MOBILE5b emissions model. This condition has been satisfied.

3. Maryland must remodel to determine affirmatively the creditable reductions from RFG and Tier 1 in accordance with EPA guidance.

Remedy: Maryland has remodeled all mobile source emission control programs, including RFG and Tier 1 following EPA guidance documents and using EPA's MOBILE5b emissions model. This condition has been satisfied.

4. Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that satisfies Maryland's 15% ROP requirement.

Remedy: Maryland's revised 15% Plan submittal contains adequate documentation on VOC control measures to demonstrate the 15% reduction. All of the measures, except controls on landfills, have been adopted and implemented by the State and, where necessary, approved into the Maryland SIP. As documented in Table 2, "Calculation of 15% Reduction Target Level", to satisfy the 15% reduction target plus offset emissions growth during the period 1990–1996, Maryland must demonstrate a total reduction 68.7 TPD in VOC emissions. The control measures described in Maryland's 15% Plan produce 85.4 TPD in creditable VOC emission reductions, far more than the amount needed. Therefore, Maryland's plan satisfies the requirements of section 182(b)(1) of the Act and is approvable. This condition has also been satisfied.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 20, 2000 without further notice unless EPA receives adverse comment by March 6, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VIII. Final Action

EPA is converting its conditional approval of the 15% Plan for the Baltimore area to a full approval based upon Maryland's October 7, 1998 SIP revision of the 15% Plan for the Baltimore area. EPA is also approving revisions to the 1990 base year emissions inventory for the Baltimore nonattainment area submitted on December 24, 1997 as part of the Post-1996 Rate of Progress Plan for the Baltimore and Cecil County nonattainment areas.

IX. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This

action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to convert the conditional approval of the 15% ROP Plan for the Baltimore nonattainment area to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: January 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

§ 52.1072 [Amended]

2. In section 52.1072, paragraph (c) is reserved.

3. Section 52.1075 is amended by adding paragraph (g) to read as follows:

§ 52.1075 1990 base year emission inventory.

* * * * * *

(g) EPA approves revisions to the Maryland State Implementation Plan amending the 1990 base year emission inventories for the Baltimore ozone nonattainment area, submitted by the Secretary of Maryland Department of the Environment on December 24, 1997. This submittal consists of amendments to the 1990 base year point, area, highway mobile and non-road mobile source emission inventories for volatile organic compounds and nitrogen oxides in the Baltimore ozone nonattainment area.

4. Section 52.1076 is amended by adding paragraph (c) to read as follows:

§ 52.1076 Control strategies: ozone.

* * * * *

(c) EPA approves as a revision to the Maryland State Implementation Plan, the 15 Percent Rate of Progress Plan for the Baltimore ozone nonattainment area, submitted by the Secretary of Maryland Department of the Environment on October 7, 1998.

[FR Doc. 00–2175 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD059–3049a; FRL–6530–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland, Post-1996 Rate of Progress Plan for Cecil County and Revisions to the 1990 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the State of Maryland State Implementation Plan (SIP). This revision establishes the three percent per year emission reduction rate-of-progress requirement for the period from 1996 through 1999 for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, namely Cecil County, Maryland. EPA is also

approving revisions to the 1990 base year inventory of ozone precursor emissions submitted by the State of Maryland for Cecil County. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse written comment by March 6, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092. Or by e-mail at gaffney.kristeen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Cecil County, Maryland is part of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. The Clean Air Act requires states with severe ozone nonattainment areas to develop plans to reduce emissions of volatile organic compounds (VOCs) from a 1990 baseline by three percent per year averaged over each consecutive three year period through the area's attainment date. This is known as the rate-of-progress (ROP) requirement. The first round of required ROP reductions cover the period 1990–1996 and is commonly known as the 15% ROP plan. The second round of required VOC reductions is commonly known as the Post-1996 ROP plan because it covers the three year time period from 1996–1999. The Post-1996 ROP plan, was due by November 15, 1994 and the reductions were to be achieved by November 15, 1999. The Clean Air Act also allows for the substitution of emission reductions of nitrogen oxides (NOx) occurring after 1990 for the Post-1996 VOC rate-of-progress requirements. To qualify for SIP credit under rate of progress plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent, and enforceable emissions reductions.

On March 2, 1995, Assistant Administrator for Air and Radiation, Mary D. Nichols, issued a policy memorandum providing guidance to the states on an alternative approach for meeting the attainment demonstration and rate-of-progress requirements of the Clean Air Act. The policy memorandum established a phased approach for the submittal of the attainment demonstration. Under the first phase, states were to submit a plan with specific control measures, including a plan to show at least a 9% ROP reduction by 1999; interim assumptions or modeling about ozone transport; and enforceable commitments to: (1) Participate in a consultative process to address regional transport, (2) adopt additional control measures as necessary to attain the ozone national ambient air quality standard, and (3) identify any reductions that are needed from upwind areas for the area to meet the ozone standard.

On December 24, 1997, the Maryland Department of Environment (MDE) submitted a SIP for the Phase 1 attainment plans for the Baltimore nonattainment area and Cecil County. Maryland's Phase 1 attainment plan submittal contained the Post-1996 ROP requirements; revisions to the 1990 base year inventories for the Baltimore nonattainment area and Cecil County; revisions to the 15% ROP plans for Baltimore and Cecil County; and enforceable commitments to address the first phase of the attainment plan as discussed above. This rulemaking only addresses the Post-1996 ROP plan and 1990 base year inventory revisions for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, namely Cecil County, Maryland.

On August 17, 1998, MDE submitted additional information and revised mobile emissions modeling for the December 24, 1997 Post-1996 ROP submittal. The revised information was included in Maryland's Phase II attainment plan for the Baltimore nonattainment area and Cecil County. Specifically, the August 17, 1998 submittal requested that the chapter on conformity, including mobile source emission budgets, and Appendix E, including the target levels, emission estimates, projection year estimates and reduction credit estimates contained in the original Phase 1 plan be replaced by the information contained in the August 17, 1998 Phase 2 attainment plan submittal. For this rulemaking action, EPA has evaluated the portions of Maryland's August 17, 1998 submittal that relate to revisions to the Post-1996 ROP plan for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, namely Cecil County, Maryland.

II. Base Year Inventory Revisions

Maryland submitted the original 1990 base year emissions inventory for Cecil County as a SIP revision on March 21, 1994. EPA approved the base year inventory into the SIP on September 27, 1996 (61 FR 50715). As part of the Phase 1 attainment plan submittal of December 24, 1997, Maryland is revising certain portions of the 1990 base year inventory because of refinements, such as updated information on point source emissions, and to correct certain errors in the inventory found while auditing the inventory in preparation for the attainment demonstration modeling.

EPA is approving the revisions to the 1990 base year inventory for the Cecil County. Table 1 below illustrates the inventory revisions that will be approved into the Maryland SIP. A more detailed description of the changes to Maryland's base year inventories and EPA's evaluation are included in the technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

TABLE 1.—REVISED BASE YEAR INVENTORY FOR CECIL COUNTY IN TONS/DAY

	VOC previously approved	VOC revised	Change	NO_X previously approved	NO_X revised	Change
Mobile Sources	7.2	7.2	0	9.3	9.3	0
Point Sources	.55	.6	0	0	0	0
Non-road Sources	2.02	2.0	(+.02)	2.5	2.6	(+.1)
Area sources	9.23	8.7	(−.52)	1.1	1.8	(+.7)

TABLE 1.—REVISED BASE YEAR INVENTORY FOR CECIL COUNTY IN TONS/DAY—Continued

	VOC previously approved	VOC revised	Change	NO_X previously approved	NO_X revised	Change
Biogenic Sources	32.96	32.96	0	NA	NA	NA
Total	51.96	51.46	(−.5)	12.9	13.7	(+.8)

III. Post-1996 Rate-of-Progress Plan

A. Calculation of Needed Reductions

The first step in demonstrating ROP is to determine the target level of allowable emissions in the given target year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given target year, which in this case is 1999. The Clean Air Act allows states to substitute NO_X emission reductions that occur after 1990 for VOC emission reductions in the Post-1996 ROP plan. Rate-of-progress is demonstrated when the sum of all creditable VOC and NO_X emission reductions equal at least 3% per year averaged over the three year period 1996–1999, or for a total of 9%. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9% emission reduction in VOC and NO_X emissions must be developed for the year 1999. MDE has established 1999 target levels for both VOC and NO_X emissions for Cecil County. However, the rate-of-progress control scenario for Cecil County is based on a 9% VOC and a 0% NO_X reduction strategy. Because enough VOC emission reductions exist to demonstrate the full 9% reduction, Maryland assumed no NO_X emission reductions to demonstrate rate-of-progress. Any NO_X emission reductions associated with Maryland's control strategies are considered surplus for the purposes of demonstrating rate-of-progress for 1999.

To calculate the target level of emissions, the percentage of required emission reductions is subtracted from the previously established ROP target level, which in this case would be the 15% ROP plan. For VOCs, the 1999 rate-of-progress VOC target level is based on the 1996 VOC target level calculated in the 15% ROP plan. EPA approved the 1996 VOC target level for Cecil County (14.1 tons per day or TPD) when it approved the Cecil County 15% ROP plan on July 29, 1997 (62 FR 40457). For NO_X, there is no previously established ROP target level, so the 1999 target level is calculated from the 1990 base year inventory. The target level calculations for Cecil County for the year 1999 are taken from the August 17, 1998 Phase 2 attainment plan SIP submittal and are presented below.

	Tons	Day
VOC Target Level		
1990 Base Year Inventory	.....	51.5
(Minus biogenic emissions 33.0 TPD)	−33.0	
1990 Rate of Progress Base Year Inventory	.....	18.5
(Minus non-creditable FMVCP/RVP[1] 1990–1999)	−2.1	
1990 Adjusted Base Year Inventory	.....	16.4
9% Required Reduction (1996–1999)	*.09	
Rate of Progress Emission reduction requirement	.....	1.5
Fleet Turnover Calculation:		
1999 emissions	2.1	
1996 emissions	−2.1	
Fleet Turnover correction	0.0	
1996 Target Level	.....	14.1
Minus Emission Reduction Requirement	−1.5	
Minus Fleet Turnover Correction	−0.0	
1999 VOC Target Level	.....	12.6
NO_X Target Level		
1990 Base Year Inventory	.....	13.7
(Minus non-creditable FMVCP/RVP 1990–1999)	−1.7	
1990 Adjusted Base Year Inventory	.....	12.0
9% Required Reduction (1996–1999)	0.0	
Rate of Progress Emission reduction requirement	.....	0.0
Fleet Turnover Calculation:		
1999 emissions	1.7	
1996 emissions	−1.7	
Fleet Turnover correction	.....	0.0
1990 Adjusted Base Year Inventory	.....	12.0
Minus Emission Reduction Requirement	−0.0	
Minus Fleet Turnover Correction	−0.0	

	Tons	Day
1999 NO_X Target Level	.....	12.0

[1] The 1990 adjusted base year inventory excludes from the baseline the emissions that would be eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to enactment of the 1990 Clean Air Act amendments.

Maryland has correctly calculated the 1999 target level of emissions for Cecil County following EPA's guidance.

B. Growth Projections

In addition to achieving a 9% reduction in existing emissions, the state's control strategy must also offset any new emissions growth projected to occur between 1996 and 1999. Therefore, states must project their emission inventories to estimate emissions growth between 1996 and 1999 (the ROP year for the Post-1996 plan). The projected inventories must reflect expected growth in activity, as well as regulatory actions which will affect emission levels.

EPA guidance on projecting emissions growth suggests that emission projections for point sources can be based on information obtained directly from facilities and/or permit applications. Area and mobile source emission projections may be developed from information from local planning agencies. In the absence of source-specific data, credible growth factors must be developed from accurate forecasts of economic variables and the activities associated with the variables. Economic variables that may be used as indicators of activity growth are: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Economic data and models which provide acceptable growth factors for emission projections include the U.S. Department of Commerce Bureau of Economic Analysis (BEA) forecasts for states and metropolitan statistical areas; the Economic Growth Analysis System (E-GAS), which models economic growth and estimates corresponding increases in emissions-producing activity; and the Emissions Preprocessor System for urban airshed modeling, which produces spatially and temporally resolved emission inventories for input into urban airshed models.

1. Point Source Growth

Cecil County is rural in nature, lacks a base of heavy industry and has no existing major point sources of NO_X. Therefore, Maryland predicts no growth in either VOC or NO_X point source emissions between 1996 and 1999.

2. Area Source Growth

Growth factors from the BEA were used for area sources. Maryland chose BEA over E-GAS for area source growth estimates, because two area source categories, consumer and commercial products and new motor vehicle refinishing were projected by E-GAS to decrease over the next ten years due to a predicted population decrease. Because this directly contradicts industry projections and Maryland's expectations, E-GAS was not used for area source predictions. The use of BEA or E-GAS is acceptable.

3. Mobile Source Growth

Mobile source growth in Cecil County is based on vehicle miles traveled (VMT) trends from 1986–1991. The 1990 base year inventory for Cecil County was based on Highway Performance Monitoring System data because the county is not part of an urban transportation network. The Maryland Department of Transportation and the Wilmington Area Planning Council have developed a link-based transportation modeling technique to provide a detailed analysis of travel patterns in the Cecil County-Wilmington area. Mobile source emissions estimates and VOC target levels for 1999 were developed using the link-based travel estimates. This is an acceptable approach.

4. Non-Road Mobile Source Growth

Maryland used E-GAS growth factors for determining future emissions of non-road sources. These inventories were estimated as a product of equipment population, activity rates and emission factors. Population and value added were also used as surrogate indicators where appropriate. Emissions were projected by multiplying 1990 emissions by the E-GAS growth factor.

Maryland has used appropriate methodology to project emissions growth in all source categories. The growth estimates are approvable. The projection year inventories for 1999 for Cecil County are shown in Table 2 below. Total 1999 growth projections for VOCs are 2.9 TPD and 3.4 TPD for NO_X.

TABLE 2.—PROJECTION YEAR (UNCONTROLLED) INVENTORIES FOR CECIL COUNTY (TONS/DAY)

Source category	1990 VOC baseline	1999 VOC projected	1990 NO_X baseline	1999 NO_X projected
Point	0.6	0.6	0	0
Mobile	7.2	9.5	9.3	12.4
Non-road	2.0	2.3	2.6	2.8
Area	8.7	9.0	1.8	1.9
Total	18.5	21.4	13.7	17.1

C. Evaluation of Control Measures

The purpose of the Post-1996 ROP plan is to demonstrate how the State has reduced emissions 3% per year between the years 1996 and 1999, for a 9% total reduction. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and before November 15, 1999 and are real, permanent, quantifiable and federally enforceable. A short description of each of the control measures implemented by Maryland follows.

1. Stationary Source Controls

a. Seasonal Open Burning Ban. On May 1, 1995, Maryland instituted a ban on open burning during the peak ozone season in Maryland's severe and serious ozone nonattainment areas. Maryland considers the months of June, July, and August the peak ozone season, because that is when ambient levels of ozone in Maryland are usually the highest. During the peak ozone season, the practice of burning for the disposal of brush and yard waste as a method of land clearing has been banned. This ban on open burning reduces both VOC and NO_X emissions. EPA approved Maryland's open burning ban (COMAR

26.11.07) into the SIP on January 31, 1997. MDE estimates 4.4 TPD VOC and 0.9 TPD NO_x emission reductions from the open burning ban in Cecil County. These reductions are creditable in the Post-1996 Plan.

b. Consumer and Commercial Products National Rule. On September 11, 1998, EPA issued a final rule (63 FR 48819) to reduce the VOC content of 24 categories of household consumer and commercial products by 20% from levels emitted in 1990. The regulation applies to 24 types of household consumer products, such as cleaning products, personal care products, and a variety of insecticides. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement. Maryland claimed a 20% reduction from their 1999 projected uncontrolled consumer and commercial products emissions in the Post-1996 ROP plan in Cecil County. EPA has determined that 0.1 TPD VOCs in Cecil County are creditable emission reductions.

c. Stage I Vapor Recovery. Stage I vapor recovery systems control vapor emissions at gasoline dispensing facilities that result from unloading gasoline from a tank truck into a storage tank. The vapors displaced in the storage tank by the liquid gasoline are retrieved into the tank truck and transported back to the refinery. Stage 1 vapor recovery controls were implemented in Cecil County on April 26, 1992. EPA approved Maryland's Stage I vapor recovery regulation into the Maryland SIP (60 FR 2018). Maryland claimed 0.8 TPD VOCs emission reductions in 1999 for Cecil County, which are creditable toward the Post-1996 ROP plan.

d. Autobody Refinishing. Maryland adopted an autobody refinishing regulation, COMAR 26.11.19.23, to control VOC emissions emanating from the evaporation of solvents used in the coating, drying and clean-up process. Maryland's regulation was approved into the SIP on August 4, 1997 (62 FR 41853). From this regulation, Maryland claimed a reduction of 0.2 TPD VOC emissions in Cecil County, which are creditable toward the ROP requirement.

e. Architectural and Industrial Maintenance (AIM) Coatings Reformulation. On September 11, 1998, EPA promulgated a national rule (63 FR 48848) for reducing VOCs emissions from architectural and other industrial coatings. Architectural coatings are commonly applied by consumers and contractors, and include exterior and interior paints, industrial maintenance coatings, wood and roof coatings, primers, and traffic paints. Manufacturers and importers are required to comply with requirements by September 1999. States are allowed to assume a 20% reduction in VOCs from 1990 emission levels in their ROP plans. Maryland claimed a 20% reduction in VOC emissions in Cecil County or 0.2 TPD. These emission reductions are creditable in the Post-1996 ROP plan.

f. Surface Cleaning and Degreasing. This measure strengthens an existing Maryland regulation for surface cleaning (also called cold cleaning and degreasing) devices and operations to require more stringent emission control requirements and enlarges the field of applicable sources. This regulation controls VOC emissions from surface cleaning/degreasing operations, such as gasoline stations, autobody paint shops and machine shops that fall into the area source category. Maryland's surface cleaning and degreasing regulation (COMAR 26.11.19.09) was approved into the SIP on August 4, 1997 (62 FR 41853). In Cecil County, 0.2 TPD VOC emission reductions achieved through this measure are creditable.

2. Mobile Source Controls

a. Federal Motor Vehicle Control Program—Tier I. The Clean Air Act required EPA to issue federal emission standards for new motor vehicles. The Tier I motor vehicle standards were promulgated on June 5, 1991 (56 FR 25724) and include exhaust ("tailpipe") emission standards and better evaporative emission controls demonstrated through new federal evaporative test procedures. Both VOC and NO_x emissions from passenger vehicles and light-duty trucks are reduced as a result of these standards. Tier I standards were phased in beginning with model year 1994 vehicles. Emission reductions associated with Tier 1 standards can be determined through use of EPA's mobile emissions model, MOBILE5b. The following emission reductions from Tier 1 standards are creditable through 1999 in Cecil County: VOCs 0.2 TPD and NO_x 0.8 TPD.

b. Enhanced Inspection and Maintenance Program. Under section 182 of the Act, Maryland was required to adopt an enhanced inspection and maintenance (I/M) program. Enhanced I/M programs reduce the emissions created by vehicles through periodic testing and, if needed, repair of the vehicle's tailpipe emissions and evaporative systems. Maryland has adopted regulations and began implementing the enhanced I/M program in 1997. EPA approved Maryland's enhanced I/M program on October 29, 1999 (64 FR 58340). Emission reductions associated with enhanced I/M can be determined through use of EPA's mobile emissions model MOBILE5b. Maryland claimed creditable emission reductions of 1.8 TPD of VOCs and 1.4 TPD of NO_x in Cecil County from the enhanced I/M program.

c. Reformulated Gasoline Federal Rule—Phase 1. The Act requires, beginning January 1, 1995, that only reformulated gasoline (RFG) be sold or dispensed in ozone nonattainment areas classified as severe or worse. Gasoline for use in motor vehicles is reformulated to reduce VOC combustion by-products and to produce fewer evaporative VOC emissions. The Act requires a reduction in VOC and toxic emissions from gasoline of 15% over base year levels beginning in 1995 and a 25% requirement beginning in the year 2000 (Phase 2 RFG). The RFG program was implemented by EPA through a national rule (59 FR 7716). Cecil County is designated as a severe nonattainment area and, therefore, subject to RFG requirements. Emission reductions associated with RFG can be determined through use of EPA's mobile emissions model MOBILE5b. Maryland has claimed 0.3 TPD creditable VOC emission reductions associated with Phase 1 RFG in Cecil County.

d. Stage II Gasoline Vapor Recovery. The Act requires all owners and operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install and operate a system for gasoline vapor recovery (known as Stage II) of emissions from the fueling of motor vehicles. Stage II vapor recovery reduces the VOC emissions during the refueling of motor vehicles at gasoline service stations. The Stage II vapor recovery nozzles at gasoline pumps capture the gasoline-rich vapors displaced by liquid fuel during the refueling process. EPA approved Maryland's Stage II regulation, COMAR 26.11.24, on June 9, 1994. Stage II is a creditable measure in counties where these controls were not required before 1990. Emission reductions associated with Stage II Vapor Recovery and On Board Vapor Recovery systems can be determined through use of EPA's mobile emissions model MOBILE5b. In Cecil County, 0.3 TPD are creditable VOC reductions.

3. Non-Road Mobile Source Controls

a. Non-Road Small Gasoline Engines. In July 1995, EPA finalized the first federal regulations affecting small non-road spark-ignition (SI) engines at or below 19 kilowatts (kW), or 25

horsepower. The standards set allowable exhaust levels for hydrocarbons, carbon monoxide, and NO_X from small engines of 25 HP or less. The regulations took effect for most new handheld (chainsaws and leaf blowers, etc.) and non-handheld (lawn mowers, garden tractors, tillers, etc.) engines beginning in model year 1997 and are expected to result in a 32% reduction in hydrocarbon emissions from these engines. On November 24, 1994, EPA issued a guidance memorandum to states regarding calculation of the emission reduction benefit of various non-road engine standards for the purposes of rate-of-progress planning. See "Future Non-road Emission Reduction Credits for Court-Ordered Non-road Standards", from Philip A. Lorang, Director, Emission Planning and Strategies Division. This memorandum advised states to assume in 1999 a 22.9% reduction in VOCs for the non-road portion of the inventory affected by these standards. Maryland has claimed 0.4 TPD reduction in VOC emissions from this control measure.

b. Non-Road Heavy Duty Diesel Engines. EPA promulgated final regulations applicable to non-road compression-ignition engines at or above 37 kilowatts on June 17, 1994 (59 FR 31306). These emissions standards affect non-road engines over 50 horsepower (such as bulldozers) and are being phased-in from 1996 to 2000 based on engine power. According to the November 24, 1994 Philip Lorang memorandum, states should assume in 1999 a 7.8% reduction in NO_X for the non-road portion of the inventory affected by the non-road heavy duty diesel standards. Maryland has claimed 0.2 TPD reduction in NO_X emissions in 1999 from this control measure.

Table 3 below summarizes the emission reductions from the control measures used in the Cecil County Post-1996 ROP plan.

TABLE 3.—CECIL COUNTY POST-1996 ROP PLAN MEASURES

Measure	1999 VOC reduction (TPD)	1999 NO_X reduction (TPD)	Creditable
Architectural Coatings	0.2		Yes.
Consumer and Commercial Products	0.1		Yes.
Autobody Refinishing	0.2		Yes.
Surface Cleaning	0.2		Yes.
Stage 1 Vapor Recovery	0.8		Yes.
Tier 1 Federal Motor Vehicle Standards	0.2	0.8	Yes.
Enhanced I/M	1.8	1.4	Yes.
Reformulated Gasoline	0.2		Yes.
Stage 2 Vapor Recovery	0.3		Yes.
Non-road Heavy Duty Diesel Engine Standards		0.2	Yes.
Non-road Small Gas Engine Standards	0.4		Yes.
Open Burning	4.4	0.9	Yes.
Total	8.8	3.3	

D. Summary of Evaluation

Maryland's rate-of-progress requirements for Cecil County are summarized in Table 4.

TABLE 4

	VOC	NO_X
Projected 1999 Uncontrolled Emissions	22.2	17.4
Reductions From Creditable Measures (includes growth)	8.8	3.3
Reductions from FMVCP/RVP	3.7	2.7
Emissions Level Obtained in 1999	9.7	11.4
Projected 1999 Target Level	12.6	12.0
Surplus	2.9	0.6

EPA's review of Maryland's submittal indicates that the State has adopted and implemented adequate measures in the Cecil County to achieve the goal of a 9% reduction in ozone precursor emissions between 1996 and 1999. EPA is approving the Post-1996 ROP plan for the Cecil County portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. Additionally, EPA is approving revisions to the 1990 base year inventory for Cecil County. EPA has determined that the requested revisions to the inventory satisfy the relevant requirements of the Act and EPA guidance on inventory development.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the Post-1996 ROP Plan for Cecil County if adverse comments are filed. This rule will be effective on April 3, 2000 without further notice unless EPA receives adverse comment by March 6, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties

interested in commenting must do so at this time.

IV. Final Action

EPA is approving the Post-1996 ROP plan for the Cecil County portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, submitted by the State of Maryland on December 24, 1997, as modified on August 17, 1998. EPA is also approving revisions to 1990 base year VOC and NO_x emission inventories for Cecil County submitted by the State of Maryland on December 24, 1997.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve Maryland's Post-1996 ROP plan for Cecil County must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: January 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1075 is amended by adding paragraph (h) to read as follows:

§ 52.1075 1990 base year emission inventory.

* * * * *

(h) EPA approves revisions to the Maryland State Implementation Plan amending the 1990 base year emission inventories for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, submitted by the Secretary of Maryland Department of the Environment on December 24, 1997. This submittal consists of amendments to the 1990 base year point, area, highway mobile and non-road mobile source emission inventories for volatile organic compounds and nitrogen oxides in the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

3. Section 52.1076 is amended by adding paragraph (e) to read as follows:

§ 52.1076 Control strategies: ozone.

* * * * *

(e) EPA approves as a revision to the Maryland State Implementation Plan, the Post-1996 Rate of Progress Plan for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, submitted by the Secretary of Maryland Department of the Environment on December 24, 1997, and as modified on August 17, 1998.

[FR Doc. 00–2173 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA172–0209a; FRL–6529–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from fugitive emissions and the loading of organic liquids. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 M. Street, Suite 302, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: KCAPCD Rule 413, Organic Liquid Loading and KCAPCD Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and Chemical Plants. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 10, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. On March 20, 1991, the San Joaquin Valley Unified APCD (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus the Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Desert Air Basin portion of Kern County.

On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call).[2] On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area, and therefore, was not designated and classified upon enactment of the amended Act. Consequently, KCAPCD is not subject to the section 182(a)(2)(A) RACT fix-up requirement. The KCAPCD is subject to the requirements of EPA's SIP-Call, because the SIP-Call included all of Kern County. The Southeast Desert is classified as serious;[4] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 10, 1996, including the rules being acted on in this document. This document addresses EPA's direct-final action for KCAPCD Rule 413, Organic Liquid Loading and Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and Chemical Plants. KCAPCD adopted these rules on March 7, 1996. These submitted rules were found to be complete on July 19, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[5]

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[1] At that time, Kern County included portions of two air basins; the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] EPA's SIP-Call applied to all of the KCAPCD, including the Southeast Desert Air Basin portion of Kern County.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The Southeast Desert Air Basin portion of Kern County was designated nonattainment on November 6, 1991 (56 FR 56694).

[5] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

and is being finalized for approval into the SIP.

KCAPCD Rule 413 controls VOC emissions associated with the loading of organic liquids. KCAPCD Rule 414.1 applies to all valves, pressure relief valves, flanges, threaded connections and process drains at petroleum refineries and chemical plants that may be the source of fugitive VOC emissions. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of KCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to all of these rules are entitled: Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, (EPA–450/2–77–026); Control of Volatile Organic Emissions from Bulk Gasoline Plants, (EPA–450/2–77–035); Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, (EPA–450/2–78–051); and Control of Volatile Organic Compounds Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment, (EPA–450/3–83–006). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and chemical Plants has been revised to delete the definition of VOC and to reference District Rule 102, Definitions.

KCAPCD Rule 413, Organic Liquid Loading has been revised to delete the definition of VOC and to reference District Rule 102, Definitions. In addition, the Equipment section of Rule 413 was revised to clarify the pressure requirement for delivery trucks being loaded with organic liquids. The changes to Rule 414.1 and Rule 413 do not have a significant impact on air quality.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and chemical Plants, and Rule 413, Organic Liquid Loading are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing these rules without prior proposal because the Agency views this as noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. These rules will be effective April 3, 2000 without further notice unless the Agency receives adverse comments by March 6, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on these rules should do so at this time. If no such comments are received, the public is advised that this rule is effective on April 3, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is

determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(231)(i)(B)(7) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*7*) Rules 413 adopted on April 18, 1972 and Rule 414.1 adopted on January 9, 1979, both amended on March 7, 1996.

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[FR Doc. 00–2171 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 234–0187a; FRL–6529–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County, San Diego County, San Joaquin Valley Unified County Air Pollution Control Districts and South Coast Air Quality Management Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at Region IX office listed below. Copies of the rule, along with EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District Southeast Desert, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: KCAPCD Rule 102, Definitions; SDCAPCD Rule 2, Definitions; SJVUAPCD Rule 1020, Definitions; and SCAQMD Rule 102, Definitions Terms. In addition, SDCAPCD Rule 3, Standard Conditions, is being rescinded. The revisions were adopted by KCAPCD on July 1, 1999; SDCAPCD on June 30, 1999; SJVUAPCD on June 17, 1999; and SCAQMD on April 9, 1999. These rules were submitted by the California Air Resources Board to EPA on September 7, 1999.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD. 43 FR 8964, 40 CFR 81.305. In response to section 110 (a) of the Act and other requirements, KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD submitted many rules which EPA approved into the SIP.

On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On April 9, 1998 (63 FR 17331) EPA published a final rule excluding methyl acetate from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and, thus, were added to the Agency's list of Exempt Compounds.

This document addresses EPA's direct-final action for KCAPCD Rule 102, Definitions; SDCAPCD Rule 2, Definitions and Rule 3, Standard Conditions; SJVUAPCD Rule 1020, Definitions; and SCAQMD Rule 102. The revised rules were adopted by KCAPCD on July 1, 1999; SDCAPCD on June 30, 1999; SJVUAPCD on December 17, 1992, and SCAQMD on April 9, 1999. These rules were submitted by the California Air Resources Board to EPA on September 7, 1999. These rules were found to be complete on October 20, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being finalized for approval into the SIP.

The following are EPA's summary and final action for these rules:

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents. [2]

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[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register**

This action is necessary to make the VOC definition in KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD rules consistent with federal and state definitions of VOC. This action will result in more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedances of the ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

KCAPCD Rule 102, Definitions, has been revised to add methyl acetate and perchloroethylene to the definition of exempt Volatile Organic Compounds. In addition, this revision deletes the following definitions, which are no longer used: Alteration, Dusts, Institutional Facility, Loading Rack, and Section.

SDCAPCD Rule 2, Definitions, has been revised to add methyl acetate to the definition of exempt Volatile Organic Compounds. In addition, this revision adds the following new definitions: 12-Month Period, Facility, Military Tactical Support Equipment, PM–2.5, Permit to Operate, and Registration. This revision deletes the following definitions, which are no longer used: Process Weight and Process Weight Per Hour.

SDCAPCD Rule 3, Standard Conditions, is being rescinded because it contains a definition of Standard Conditions which is now included in Rule 2, Definitions.

SJVUAPCD Rule 1020, Definitions, has been revised to add methyl acetate to the definition of exempt Volatile Organic Compounds and to make clarification changes to the definition of "Clean Produced Water" in section 3.10.

SCAQMD Rule 102, Definition of Terms, has been revised to add methyl acetate to the definition of exempt Volatile Organic Compounds.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD Rule 102, Definitions, SDCAPCD Rule 2, Definitions and recision of Rule 3, Standard Conditions, SJVUAPCD Rule 1020, Definitions, and SCAQMD Rule 102, Definition of Terms, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 3, 2000 without further notice unless the Agency receives adverse comments by March 6, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on April 3, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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document" (Blue Book)(notice of availability was published in the **Federal Register** on May 25, 1988).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 —[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by revising paragraph (c)(41)(ii) introductory text, and by adding paragraph (c)(41)(ii)(E) and (c)(269) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(41) * * *

(ii) San Diego County Air Pollution Control District.

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(E) Previously approved on August 31, 1978 and now deleted without replacement Rule 3.

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(269) New and amended regulations for the following APCDs were submitted on September 7, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) Rule 102, adopted on April 18, 1972 and amended on July 1, 1999.

(B) San Diego County Air Pollution Control District.

(*1*) Rule 2, adopted on June 30, 1999.

(C) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 1020, adopted on June 18, 1992 and amended on June 17, 1999.

(D) South Coast Air Quality Management District.

(*1*) Rule 102, adopted on February 4, 1997 and amended on April 9, 1999.

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[FR Doc. 00–2169 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD–001–0007a & SD–001–0008a; FRL–6527–2]

Clean Air Act Approval and Promulgation of State Implementation Plan; South Dakota; Revisions to Performance Testing Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves revisions to the South Dakota State implementation plan (SIP) submitted on May 2, 1997 and May 6, 1999 regarding the testing of new fuels or raw materials. Specifically, the State adopted a new provision in Chapter 74:36:11, Performance Testing, of the Administrative Rules of South Dakota (ARSD) that allows permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before

requesting a permit amendment or modification. The State will grant approval for such testing of a new fuel or raw material if certain conditions in the State's regulation are met. The State's regulation provides, among other things, that the State will not approve a test if the test would cause or contribute to a violation of a national ambient air quality standard (NAAQS). EPA approves these revisions regarding testing of new fuels or raw materials because the revisions are consistent with the requirements of the Clean Air Act (Act) and applicable Federal regulations.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse comment by March 6, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA approves a provision in Chapter 74:36:11 of the ARSD, Performance Testing, that allows permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before requesting a permit amendment or modification. The State originally submitted this provision in section 74:36:11:04 of the ARSD on May 2, 1997. The State submitted revisions to this provision on May 6, 1999. EPA approves this provision, as revised, because it is consistent with applicable Federal regulations and the Act.

The State's May 2, 1997 and May 6, 1999 SIP submittals included revisions to other chapters of the ARSD. We acted on most of those revisions submitted on May 2, 1997 in an October 19, 1998 rulemaking (see 63 FR 55804–55807). In this document, we only act on the revisions to ARSD 74:36:11:04. We will act on the revisions to the other chapters of the ARSD included in these two submittals in separate rulemakings.

II. How Did South Dakota Revise Its SIP Regarding Testing of New Fuels or Raw Materials?

In South Dakota's May 2, 1997 SIP submittal, the State submitted revisions to its Performance Testing requirements in Chapter 74:36:11. Specifically, ARSD 74:36:11:04 allows a source to request permission from the State to test a new fuel or raw material to determine if it is compatible with existing equipment, before requesting a permit modification or permit amendment to use the new fuel or raw material. The version of ARSD 74:36:11:04 submitted on May 2, 1997 requires the State's approval prior to a source beginning to test a new fuel or raw material; the State's approval will specify the schedule for the testing and will outline requirements which may include performance testing, visible emissions evaluation, fuel analysis, dispersion modeling, and monitoring of raw material or fuel rates. If the State determines that the use of the new fuel or raw material will increase emissions, the State will give public notice of the proposed testing and take public comment for thirty days. The State will consider any comments received prior to making a final decision on whether to allow the source to test a new fuel or raw material.

EPA had some concerns with ARSD 74:36:11:04 as originally submitted. Specifically, we were concerned that this provision might allow a source testing a new fuel or raw material to violate the NAAQS. EPA cannot approve any provision in the SIP unless it will assure attainment and maintenance of the NAAQS. Further, we were concerned that there was no time limit specified in the rule to define how long a source could test a new fuel or raw material before obtaining a revision to its permit.

Consequently, the State revised ARSD 74:36:11:04 to address our concerns and submitted those revisions for approval as part of the SIP on May 6, 1999. Specifically, a provision was added that the State will not approve a test if the test would cause or contribute to a violation of a NAAQS. In addition, the State added a provision stating that, in most cases, the owner or operator will be allowed to test for a maximum of one week. Any request for a period longer than one week will require additional justification. In any case, the revised rule provides that a test period shall not exceed 180 days. The revised rule also clarifies that the purpose of the testing of the new fuel or raw material is to determine air emission rates, as well as to determine compatibility with existing equipment.

III. Why Is EPA Approving These SIP Revisions?

EPA finds that ARSD 74:36:11:04, as revised, is consistent with the applicable requirements of the Act and Federal regulations. The State's rule, as revised, will not allow testing of a new fuel or raw material if the test would cause or contribute to a violation of the NAAQS. The duration of time that a source is allowed to test a new fuel or material is generally limited to one week but, in any case, cannot exceed 180 days. EPA believes that these provisions ensure that this rule is consistent with section 110 of the Act and with the applicable permitting requirements at 40 CFR part 51, subpart I. Further, the public will have the chance to submit comments prior to the State determining whether to approve the test, if the use of the fuel or raw material will result in an increase of emissions of any pollutant.

We also believe that the State has met EPA's completeness criteria, including the public participation requirements of sections 110(a)(2) and 110(l) of the Clean Air Act, for the adoption of these revisions to ARSD 74:36:11:04. Specifically, the State of South Dakota held a public hearing on November 20, 1996, after providing notice to the public, for the revisions to ARSD 74:36:11:04 submitted to EPA on May 2, 1997. For the SIP revision submitted on May 6, 1999, the State held a public hearing on February 18, 1999 after providing notice to the public.

EPA would like to provide our interpretation of how ARSD 74:36:11:04 relates to the prevention of significant deterioration (PSD) permitting regulations (which South Dakota adopted by reference in ARSD 74:36:09). Specifically, in defining what constitutes a major modification subject to review under the PSD permitting regulations, EPA's regulations provide that the use of an alternative fuel or raw material that the source was capable of accommodating before January 6, 1975 is not considered to be a physical change or a change of method in operation, unless the use of such

alternative fuel would be prohibited under any Federally enforceable permit condition. See 40 CFR 52.21(b)(2)(iii)(e)(1). In order for such a change in fuel or material usage to be exempt from permitting, the source must have been designed and constructed to accommodate the alternative fuel or raw material prior to January 6, 1975, and the source must have been continuously capable of accommodating the alternative fuel or raw material since before January 6, 1975. Sources requesting to test a new fuel or raw material under ARSD 74:36:11:04 to determine compatibility with existing equipment would appear not to know whether the facility is capable of accommodating the new fuel or material. Thus, the testing of a new fuel or raw material pursuant to ARSD 74:36:11:04 would not likely qualify as exempt from consideration as a physical change or change in the method of operation under 40 CFR 52.21(b)(2)(iii)(e)(1). EPA has provided this clarification to ensure there is no confusion with respect to the relationship between ARSD 74:36:11:04 and this PSD provision.

IV. What Are the Administrative Requirements Associated With This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 3, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 6, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(19) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(19) On May 2, 1997 and on May 6, 1999, the designee of the Governor of South Dakota submitted provisions in Section 74:36:11:04 of the Administrative Rules of South Dakota. The provisions allow permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before requesting a permit amendment or modification if certain conditions are met.

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:11, Performance Testing, section 74:36:11:04, effective April 4, 1999.

[FR Doc. 00–2167 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–152, FCC 99–332]

Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition or reconsideration.

SUMMARY: This document declines to reconsider the Commission's Telemessaging and Electronic Publishing Order, declines to adopt rule pursuant to the Further Notice, and clarifies several points concerning telemessaging and electronic publishing. The intended effect is to promote the pro-competitive and deregulatory objectives of the Telecommunications Act of 1996.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order On Reconsideration adopted November 3, 1999, and released November 9, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc99–332.wp*, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Regulatory Flexibility Certification

No comments were submitted in response to the Commission's request for comment on its certification. In this present *Order on Reconsideration*, the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

Synopsis of Order on Reconsideration

1. In this Order, we address a petition for reconsideration or clarification of the Alarm Monitoring Order, CC Docket No. 96–152, FCC 99–241, 64 FR 52464 (09/29/99), filed by Southwestern Bell Telephone Company (SBC).

2. As part of its determination regarding the scope of the term "alarm monitoring service," the Commission enunciated the test it would use in assessing whether a BOC was "engaged in the provision of" alarm monitoring service in violation of section 275(a), which states that "No Bell Operating Company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. 275(a). As an initial matter, the Commission determined that the prohibition on the provision of alarm monitoring services did not "flatly prohibit BOCs from entering into arrangements to act as sales agents on behalf of alarm monitoring services providers." At the same time, however, the Commission recognized that there may be instances where a BOC is not directly providing alarm monitoring service, but the interests of the BOC and an alarm monitoring service provider are so intertwined that the BOC itself may be considered to be "engag[ed] in the provision" of alarm monitoring service. In making this assessment, the Commission concluded that it would "examine sales agency and marketing arrangements between a BOC and an alarm monitoring company on a case-by-case basis to determine whether they constitute the 'provision' of alarm monitoring service." In evaluating such arrangements, the Commission determined that it would take into account a variety of factors, including whether the terms and conditions of a sales agency or marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis and the manner in which the BOC is being compensated for its services.

3. SBC filed a petition for reconsideration or clarification of the Commission's Alarm Monitoring Order. SBC states that the Alarm Monitoring Order did not articulate how a regulatory commitment to make a sales agency or marketing arrangement available on a nondiscriminatory basis "was germane to the 'provision' analysis." SBC contends that, in assessing whether a BOC is providing alarm monitoring services in violation of section 275(a), the Commission need not, and should not, consider whether the terms and conditions of a BOC's sales agency or other marketing arrangement with a particular alarm monitoring service provider are available to other alarm monitoring service providers on a nondiscriminatory basis. SBC asserts, however, that if the Commission continues to find a BOC's relationship with other alarm monitoring service providers pertinent in determining whether a BOC is "engag[ed] in the provision" of alarm monitoring services, it should only consider whether the arrangement with a particular provider is non-exclusive, not whether it is available on a nondiscriminatory basis. According to SBC, "such non-exclusivity would ensure that both the BOC and the provider would remain free to do business with others," and thus "not 'intertwined' with one another * * *."

4. In the alternative, if the Commission retains nondiscrimination as a factor in its analysis, SBC argues that the Commission should clarify that nondiscrimination is not an absolute requirement for an acceptable sales agency relationship. Rather, says SBC, the Commission should expressly affirm that nondiscrimination is not an outcome-determinative factor, but rather is only one of a multitude of factors that the Commission will consider in reviewing sales agency and other marketing arrangements. In SBC's view a BOC should be free to demonstrate that based on factors other than nondiscrimination "it has a legitimate sales agency relationship with an alarm service provider without an undue 'intertwining' of interests."

5. The Alarm Industry Communications Committee (AICC) filed an opposition to SBC's petition, arguing that the statute's outright ban on the BOC's provision of alarm monitoring services for a period of five years require, as both a statutory and policy matter, that any sales or other marketing arrangement be made available on a nondiscriminatory basis in order to restrain adequately the BOC's incentive and ability to enter into arrangements that constitute the provision of alarm monitoring services. As for SBC's alternative request, AICC argues that SBC should be told, "clearly and simply," that it cannot discriminate among alarm monitoring providers in its provision of marketing or billing and collection services. AICC asserts that there are numerous legal and policy reasons to forbid discrimination and none in its favor.

6. As the Commission stated in the Alarm Monitoring Order, we must assess on a case-by-case basis whether a BOC's interests are so intertwined with an alarm monitoring service provider that the BOC itself may be considered to be "engag[ed] in the provision" of alarm monitoring service in violation of section 275(a). In making such an assessment, the Commission will consider a variety of factors to inform

our ultimate determination as to whether a BOC's sales agency or other marketing arrangement causes its interests to be so intertwined with the interests of a particular alarm monitoring service provider that the BOC itself may be considered to be "engag[ed] in the provision" of alarm monitoring service.

7. In this Order, we clarify our rationale for taking into account whether a BOC's sales agency or other marketing arrangement is available on a non-discriminatory basis in assessing whether the BOC is engaged in the "provision" of alarm monitoring service We strongly disagree with SBC that the availability of sales agency or other marketing arrangements on a nondiscriminatory basis has no relevance in determining whether a BOC is engaged in the provision of alarm monitoring services. While the Commission may consider a variety of other factors as well, the presence of sales agency or other marketing arrangements with multiple alarm monitoring service providers is an indication that the BOC's interests in such arrangements are limited only to the provision of the sales agency or marketing component of the service. Alternatively, to the extent that a BOC makes a sales agency or other marketing arrangement available to any alarm monitoring service provider on the same terms and conditions, such availability is evidence that the BOC's interests are independent of, and not intertwined with, a particular alarm monitoring service provider. Therefore, in the absence of actual sales agency or other marketing arrangements with multiple alarm monitoring service providers, a commitment to make such arrangements available on a nondiscriminatory basis would be evidence—to be considered along with other factors—that a BOC's interests are independent of, and distinct from, any particular alarm monitoring service provider. Accordingly, we do not disturb our previous finding that the availability of sales agency or other marketing arrangements on a nondiscriminatory basis is relevant to whether a BOC is engaged in the provision of alarm monitoring services.

I. Ordering Clauses

8. Pursuant to sections 1–4, 201–205, 214, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 275, 303(r), this Order on Reconsideration in CC Docket No. 96–152 is adopted.

9. The petition for reconsideration filed by Southwestern Bell Telephone Company is denied in its entirety, as described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2363 Filed 2–2–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE82

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Yreka Phlox from Siskiyou County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Phlox hirsuta* (Yreka phlox). This perennial plant species is known only from two locations in Siskiyou County, California. A third location, near Etna Mills, California, has been searched, but no plants or habitats have been found since 1930. The primary threats to *P. hirsuta* include urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to the small number of populations and limited range of the species. This rule implements the Federal protections and recovery provisions afforded by the Act for this plant.

DATES: Effective March 6, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W2605, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Jan Knight, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6645; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Phlox hirsuta (Yreka phlox) is endemic to Siskiyou County, California, where it grows on serpentine slopes in the vicinity of the City of Yreka (California Native Plant Society (CNPS) 1985). Serpentine soils are rocky mineral soils consisting mostly of ultramafic rocks (rocks with unusually large amounts of magnesium and iron); the large amount of magnesium in the soil gives it a green mottled color. Ultramafic rocks are found discontinuously throughout California, in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California, to British Columbia. Soils produced from ultramafic rocks have characteristic physical and chemical properties, such as high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus. Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

Elias Nelson (1899) described *Phlox hirsuta* based on a collection made by Edward L. Greene in 1876 near Yreka, Siskiyou County, California. Willis L. Jepson (1943) reduced the species to varietal status, treating the taxon as *Phlox stansburyi* var. *hirsuta*. Edgar Wherry (1955) in his monograph of the genus *Phlox* and most recently Patterson and Wilken (1993) recognize this taxon as *Phlox hirsuta* E. E. Nelson.

Phlox hirsuta is a perennial subshrub in the phlox family (Polemoniaceae). The species grows 5 to 15 centimeters (cm) (2 to 5.9 inches (in)) high from a stout, woody base and is hairy throughout. Narrowly lanceolate to ovate leaves with glandular margins are crowded on the stem. The leaves are 1.5 to 3 cm (0.6 to 1.2 in) long and 4 to 7 millimeters (mm) (0.2 to 0.3 in) wide. Pink to purple flowers appear from April to June. The corollas (petals) of the flowers are 12 to 15 mm (0.5 to 0.6 in) long and are smooth-margined at the apex (tip) (CNPS 1977, 1985). The 5 to 8 mm (0.2 to 0.3 in) style (female reproductive organ in a plant) is contained within the corolla tube (tube formed by the flower petals) (CNPS 1977, 1985; Pattersen and Wilken 1993). Several other phlox species may occur within the range of *P. hirsuta*. Of these, *P. speciosa* (showy phlox) has notched petals and grows to 15 to 40 cm (5.9 to 15.8 in), considerably taller than *P. hirsuta*. *Phlox adsurgens* (northern phlox) is also larger than *P. hirsuta* growing to 15 to 30 cm (5.9 to 11.8 in). In addition, *P. adsurgens* blooms later (from June to August) than *P. hirsuta* and is glabrous (lacking hairs and glands) rather than hairy. Prostrate (lying flat on the ground) to decumbent (mostly lying on the ground but with

tips curving up) stems and herbage lacking glands separate *P. diffusa* (spreading phlox) from *P. hirsuta* (CNPS 1977, 1985). Although found at the same latitudes, *P. stansburyi* (Stansbury's phlox) occurs 112 kilometers (km) (70 miles (mi)) farther to the east in Lassen and Modoc Counties (CNPS 1977). *Phlox cespitosa* is glandular-hairy, has a matted growth habit, and is one of several species of phlox that forms mats (Hickman 1993 third printing with corrections 1996), which is unlike the erect stem, open branch habit of *P. hirsuta*.

Phlox hirsuta is found on serpentine soils at elevations from 880 to 1,340 meters (2,800 to 4,400 feet) in association with *Pinus jeffreyi* (Jeffrey pine), *Calocedrus decurrens* (incense cedar), and *Juniperus* spp. (junipers) (CNPS 1985; California Department of Fish and Game (CDFG) 1986; California Natural Diversity Data Base (CNDDB) 1997). *Phlox hirsuta* is known from only two locations in the vicinity of Yreka, California. One occurrence is an open ridge in a juniper woodland within the city limits of Yreka (CNPS 1977, 1985; CNDDB 1997). Estimates of the area occupied by the occurrence range from approximately 15 hectares (ha) (37 acres (ac)) (Grant and Virginia Fletcher, *in litt.* 1995) to approximately 36 ha (90 ac) (Nancy Kang, Service, *in litt.* 1995a). Other extreme serpentine sites searched in the area do not support additional populations of *Phlox hirsuta* (Adams 1987). The second occurrence is about 8 to 10 km (5 to 6 mi) southwest of Yreka along California State Highway 3 in an open Jeffrey pine forest (CNPS 1977, 1985; CNDDB 1997) and includes approximately 65 ha (160 ac) of occupied habitat (Service maps on file). A third location, where the species was last reported in 1930, is in the vicinity of Mill Creek near Etna Mills. The area was searched, but no plants or appropriate habitats were identified (CNPS 1985), and the location may be incorrect (CDFG 1986; Adams 1987). Surveys have been conducted on 80 percent of the potential habitat (defined as the presence of suitable soils) on Klamath National Forest (Ken Fuller and Diane Elam, Service, *in litt.* 1997; Barbara Williams, Klamath National Forest, pers. comm. 1997) and Bureau of Land Management (Joe Molter, Bureau of Land Management, pers. comm. 1997) lands within the Redding Resource Area; no new populations of *P. hirsuta* have been discovered.

Land ownership of the two occurrences of *Phlox hirsuta* is a mixture of private, the City of Yreka, and the US Forest Service (CNDDB 1997). The City of Yreka occurrence of *P. hirsuta* is the more vigorous and dense of the two occurrences (Linda Barker, Klamath National Forest, *in litt.* 1985; Adams 1987; CNDDB 1997). Part of the *P. hirsuta* occurrence in the City of Yreka is owned by the City of Yreka; the remainder is privately owned (Larry Bacon, City of Yreka, pers. comm. 1997). The Highway 3 occurrence is partially on US Forest Service lands on the Klamath National Forest, partially within a State highway right-of-way, and partially privately owned (CDFG 1986; CNDDB 1997). Approximately 50 percent of occupied habitat at the Highway 3 occurrence and 25 percent of the occupied habitat of the species is on land administered by the Klamath National Forest (based on maps in Service files; B. Williams, pers. comm. 1997). *Phlox hirsuta* is threatened by urbanization at the City of Yreka location and by inadequate State regulatory mechanisms throughout its range. The small number of populations and small range of the species also make it vulnerable to decline or extirpation due to random events throughout its range.

Previous Federal Action

Federal action on *Phlox hirsuta* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *P. hirsuta* as an endangered species. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823), announcing our decision to treat the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3) of the Act) and our intention to review the status of *P. hirsuta*. On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa as endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa, which included *P. hirsuta*, was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

We published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), that identified those plants currently being considered for listing as endangered or threatened. We included *Phlox hirsuta* as a category 1 candidate species. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Our November 28, 1983, supplement to the Notice of Review (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526), included *P. hirsuta* as a category 2 candidate. Category 2 taxa were those for which data indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a listing proposal.

We revised the plant notice of review again on February 21, 1990 (55 FR 6184), and September 30, 1993 (50 FR 51143). In both notices, we included *Phlox hirsuta* as a category 1 candidate. In our February 28, 1996, Notice of Review (61 FR 7596), we ceased using the category designations and included *P. hirsuta* as a candidate species. Candidate species are those taxa for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. That provision of the Act applied to *Phlox hirsuta*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, we found that the petitioned listing of the species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1997.

On April 1, 1998, we published a proposed rule to list *Phlox hirsuta* as an endangered species in the **Federal Register** (63 FR 15820). The comment period was open until June 1, 1998. With publication of this final rule, we now determine that *P. hirsuta* is endangered.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and

imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule for *Phlox hirsuta* is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

We have updated this rule to reflect any changes in distribution, status, and threats since publishing the proposed rule and to incorporate information obtained through the public comment period. This additional information did not alter our decision to list these species.

Summary of Comments and Recommendations

In the proposed rule published April 1, 1998, in the **Federal Register** (63 FR 15820) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. We contacted and requested comments from appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties. We published an announcement of the proposed rule in the *Siskiyou Daily News* on April 3, 1998, which invited general public comment. The public comment period closed on June 1, 1998. We received no request for a public hearing.

During the public comment period, 22 individuals or agencies submitted comments. Four commenters supported the listing, 11 commenters opposed the listing, and 7 commenters were neutral. Supporting comments were received from the State and local chapter of the California Native Plant Society and two private citizens. Opposing comments were received from the Pacific Legal Foundation and 10 private citizens. Opposing comments and other comments questioning the proposed rule have been organized into specific issues. We summarized these issues and our response to each as follows:

Issue 1: One commenter opposed the listing of *Phlox hirsuta*, stating that the Federal Government lacks authority under the Commerce Clause of the Constitution to regulate this plant species.

Service Response: A recent decision in the United States Court of Appeals for the District of Columbia Circuit *National Association of Home Builders of the U.S.* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States* v. *Lopez*, 514 U.S. 549 (1995), that regulation of endangered species limited to one State under the Act is within Congress' Commerce Clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of this case (118 S. Ct. 2340 (1998)). Therefore, our application of the Act to *Phlox hirsuta* is constitutional.

Issue 2: Two commenters stated that existing State regulations, such as the California Environmental Quality Act (CEQA) regulatory mechanisms, were sufficient to protect *Phlox hirsuta*, and thought that federally listing *P. hirsuta* would be a duplication of effort.

Service Response: We believe that the existing State regulatory mechanisms are inadequate to protect *Phlox hirsuta*. Please see factor D in the "Summary of Factors Affecting the Species," section in this rule.

We do not believe that federally listing *Phlox hirsuta* would be a duplication of effort. Federal and State regulations complement each other. As discussed further in factor D in the "Summary of Factors Affecting the Species" section, the CEQA and California Endangered Species Act (CESA) apply to actions on private and State lands. As applied to plant species, the Federal Endangered Species Act primarily covers Federal land and Federal actions that may affect proposed and listed species.

Issue 3: Three commenters questioned the rarity of *Phlox hirsuta*. One of the commenters, in response to seeing an article in the *Siskiyou Daily News*, stated there is a lot of Yreka phlox growing in Siskiyou and Shasta Counties. Another commenter provided a long list of places to check. A third commenter provided photos of *Phlox* occurring in Scott Valley, noting that these plants appear to be very similar to the photo of *Phlox hirsuta* published in the *Siskiyou Daily News* on April 3, 1998.

Service Response: We maintain that *Phlox hirsuta* is a very rare plant. As discussed in the "Background" section of this rule, several other *Phlox* species, that are much more abundant, may occur within the range of *Phlox hirsuta*. We sent the photos of *Phlox* from Scott Valley to Barbara Williams, Forest Botanist for the Klamath National Forest, who identified the *Phlox* as *Phlox diffusa*.

Issue 4: One commenter stated that we should consider the economic effects of the listing on the local economies where the plant occurs.

Service Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available about whether a species meets the Act's definition of a threatened or endangered species. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions," H.R. Rep. NO. 97–835, 97th Cong., 2nd Sess. 19 (1982). As further stated in the legislative history, "applying economic criteria . . . to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word 'solely' in the legislation," H.R. Rep. NO. 97–835, 97th Cong. 2nd Sess. 19 (1982). Because we are precluded from considering economic impacts in a final decision on a proposed listing, we did not examine such impacts.

Issue 5: Three commenters were concerned the listing would violate private property rights under the Fifth Amendment to the US Constitution. A fourth commenter stated that public and private property owners should be adequately compensated for setting aside land for *Phlox hirsuta*.

Service Response: We disagree that the listing of *Phlox hirsuta* would constitute a taking of private property in violation of the Fifth Amendment to the Constitution. The regulatory protection afforded listed plant species under the Act is limited. In particular, section 9 of the Act does not prohibit the "take" of listed plant species on private lands. Generally, as applied to private property, only the removal, damage, or destruction of listed plant species in violation of a State law or regulation or in the course of a violation of a State criminal trespass law is a violation of the Act. Further, the mere issuance of a regulation, like the enactment of a statute, is rarely sufficient to establish that private property has been taken unless the regulation itself appears to deny the property owner economically viable use of personal property. In order to establish that their properties have been taken as a result of a regulatory action, such as the listing of a species, property owners must first initiate an attempt to utilize their property and

receive a determination regarding the level of use that is less than allowed prior to the listing. Property owners must ordinarily apply for all available permits and waivers before takings could potentially be established. The commenters have not provided any cogent legal basis for their assertions that listing *Phlox hirsuta* will result in a Fifth Amendment taking of private property.

Issue 6: Several commenters were concerned about how private landowners may be affected by the listing of *Phlox hirsuta*.

Service Response: Portions of the two *Phlox hirsuta* populations do grow on private land. As noted above, Federal listing does not restrict the damage or destruction of listed plants due to otherwise lawful private activities on private land beyond any level of protection that may be provided under State law. Federal listing of plants does not restrict any uses of privately owned land unless Federal funding or a Federal permit is involved. Listing *Phlox hirsuta* as endangered likely will not affect logging, farming, or ranching operations, including cattle grazing, on private land. Other activities that do not violate the taking prohibitions of section 9(a)(2) of the Act, as well as prohibited activities, are discussed further under the "Available Conservation Measures" section of this rule.

Issue 7: Four commenters questioned the prudence of saving endangered species.

Service Response: The Act directs us to conserve endangered and threatened species. The Act reflects the value Congress and the American people place upon the biological diversity of the United States. When a species goes extinct, part of our natural heritage has been lost and cannot be replaced. Additionally, every species is part of the biological network that supports all life. A species in decline is a sign that something may be wrong in the environment. By addressing the causes of a plant or animal's decline we are protecting the environment on which we all depend.

Issue 8: One commenter asked how the threats to *Phlox hirsuta* might be eliminated.

Service Response: Generally, recovery strategies for plants focus first on protection and management of known populations. This process would involve working with landowners to avoid adverse effects to the species. If use of private land does not involve Federal funding or permitting, or violate a State law, we do not have the authority to prevent any action that might affect federally listed plants. In these situations, the Service hopes that private landowners will work with us voluntarily to minimize the effects of their projects to listed species. When actions involve Federal land (as with U.S. Forest Service land) or Federal funding (as may be the case with California Department of Transportation (Caltrans) activities), we work with the Federal agency involved to minimize effects to listed species. When plant species consist of very few populations and/or very small ranges, like *Phlox hirsuta*, recovery strategies also include collection of seed for storage in botanic gardens. This action is designed to prevent extinction of the species due to catastrophic events (such as a flood) and to provide seeds for introduction to other sites, should we find that introductions are appropriate.

Issue 9: Three commenters wanted to know the difference between *Phlox hirsuta* and other phloxes such as "common phlox," *P. caespitosa* (tufted phlox), and *P. diffusa* (spreading phlox).

Service Response: The Jepson Manual, Higher Plants of California (Hickman 1993 third printing with corrections 1996), provides the technical description of differences in these species. We recognize The Jepson Manual as the most recently accepted taxonomic treatment of plants in California. The Jepson Manual is the most recent taxonomic identification key (or flora, *i.e.*, a treatise on the plants of an area) for plants of California, and the flora to which we refer for plant taxonomy. Earlier treatments of *P. caespitosa*, and its varieties, suggest it has smaller flowers than *P. hirsuta*. All of the treatments also describe *P. caespitosa*, and its varieties, as having a densely clumped (not open), tufted, or cushion-like growth form. In contrast, *P. hirsuta* is described as a subshrub (small shrub) having an erect stem and open branches. Please see the "Background" section of this rule for a discussion on how *P. hirsuta* differs from *P. diffusa* and other common phloxes.

Peer Review

In accordance with Interagency Cooperative Policy published on July 1, 1994 (59 FR 34270), we solicited formal scientific peer review and expert opinions of three independent and appropriate specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the proposed plant.

Only one of the three requested reviewers provided comments. This reviewer supported the listing of *Phlox hirsuta* and commented specifically on the rarity of *P. hirsuta*. The reviewer stated that a number of botanists and other professionals interested in *Phlox*, in addition to those mentioned in the proposed rule, have searched very carefully for *P. hirsuta* populations without success. The reviewer thought that finding additional sites for *P. hirsuta* is very unlikely.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Phlox hirsuta* E.E. Nelson (Yreka phlox) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The *Phlox hirsuta* population within the City of Yreka represents at least 18 percent, and possibly 45 percent, of occupied habitat for the species (calculated from Service records). This population is threatened by development, with the majority of the site already subdivided into lots for development (CNPS 1985; CDFG 1986). Eight of the subdivision lots support *P. hirsuta*; of these eight, seven have *P. hirsuta* on at least 75 percent of the lot (N. Kang, *in litt.* 1995a). Six of the eight lots are privately owned, and two are owned by the City of Yreka. Additionally, a smaller piece of land in the same area supports *P. hirsuta* and is also owned by the City (N. Kang, *in litt.* 1995a; L. Bacon, pers. comm. 1997). The *P. hirsuta* occurrence within the City of Yreka has been disturbed by road construction associated with the subdivision (CNPS 1985; CDFG 1986). An unmaintained roadway bisects the occurrence and likely represents permanent destruction of habitat at the site (N. Kang, *in litt.* 1995a). Additional disturbance resulted from grading for a house pad on one lot in 1994; *Phlox hirsuta* has not reinvaded the disturbed area (N. Kang, *in litt.* 1995a, 1995b). For most of the lots in the subdivision, "the likely ones to be developed currently provide *P. hirsuta* habitat" (N. Kang, *in litt.* 1995a, 1995b). Because *P. hirsuta* plants are fairly evenly distributed across the lots, strategic placement of development in occupied habitat would not necessarily minimize impacts to the species. Additionally, over the long-term, private landowners may not maintain their properties in a manner

consistent with protection of the plants and their habitat (N. Kang, *in litt.* 1995a). Formerly, some lots at the site were registered with The Nature Conservancy landowner contact program, but that program no longer exists (Lynn Lozier, The Nature Conservancy, pers. comm. 1997). While we are unaware of specific development plans on any lots at this time, a "for sale" sign was posted on the private property in May 1997 (K. Fuller and D. Elam, *in litt.* 1997).

The only other occurrence of *Phlox hirsuta*, located along California State Highway 3, has been disturbed in the past by logging and road construction. Although selective logging (CNPS 1985; Adams 1987) resulted in roads and bulldozer trails through the site (Adams 1987), logging is probably not a threat to *P. hirsuta* at this time (K. Fuller and D. Elam, *in litt.* 1997; B. Williams, pers. comm. 1997). Thirty years ago, the realignment of Highway 3 impacted part of this occurrence (Sharon Stacey, Caltrans, pers. comm. 1996). The area has since been designated by Caltrans as an Environmentally Sensitive Area (S. Stacey, pers. comm. 1998), which provides limited protection in that it requires acknowledgment of a sensitive species occurrence in project planning. Although road maintenance crews are to be made aware that no new ground is to be disturbed along this stretch of highway (Bob Sheffield, Caltrans, pers. comm. 1997), the portion of the occurrence within the Caltrans right-of-way could be disturbed by road maintenance (Charlotte Bowen, Caltrans, *in litt.* 1991). The area within the right-of-way consists of 5 small subpopulations with approximately 100 plants, occupying less than 0.8 hectare (2 ac) along 4 km (2.5 mi) of California State Highway 3. While encroaching development has been considered to be a potential threat to the plants occurring on private lands at the Highway 3 site (CNPS 1985; CDFG 1986), the threat from development at this site does not appear imminent.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat to *Phlox hirsuta*, although it has been suggested that the species may be of interest to rock garden enthusiasts (CNPS 1977).

C. *Disease or predation.* Disease presents no known threat to Phlox hirsuta. Parts of the Highway 3 site have been grazed in the past, perhaps by trespassing cattle (CNPS 1985; Adams 1987). However, grazing is probably not a threat to *P. hirsuta* at this time (K. Fuller and D. Elam, *in litt.* 1997; B. Williams, pers. comm. 1997).

D. *The inadequacy of existing regulatory mechanisms.* The State of California Fish and Game Commission (CFGC) listed *Phlox hirsuta* as an endangered species under the California Endangered Species Act (CESA) (Chapter 1.5 section 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Although the "take" of State-listed plants has long been prohibited under the California Native Plant Protection Act (CNPPA) (Chapter 10 § 1908) and CESA (Chapter 1.5 section 2080), in the past these statutes have not provided adequate protection for such plants from the impacts of habitat modification or land use change. For example, under the CNPPA, after the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, the statute requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (CNPPA, Chapter 10 § 1913). Under recent amendments to CESA, a permit under Section 2081(b) of the California Fish and Game Code is required to "take" State-listed species incidental to otherwise lawful activities. The amendments require that impacts to the species be fully mitigated. However, these requirements have not been tested with respect to State-listed plant species, and several years will be required to evaluate their effectiveness.

CEQA requires full disclosure of potential environmental impacts of proposed projects, including impacts on State-listed plant species. Therefore, before proceeding with development of private and City of Yreka lands where *Phlox hirsuta* grows, the City of Yreka would require CEQA review (L. Bacon, pers. comm. 1997). The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency may require mitigation for these effects through changes in the project or a mitigation plan. When mitigation plans are required, they often involve transplantation of the plant species to an existing or artificially created habitat, followed by destruction of the original site. Therefore, if the mitigation effort fails, the resource has already been lost. Furthermore, CEQA does not guarantee that such conservation efforts will be implemented. Finally mitigation is at the discretion of the lead agency, which may decide that overriding considerations make mitigation infeasible. In the latter case, projects that cause significant environmental damage, such as destruction of endangered species, may be approved. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

E. *Other natural or manmade factors affecting its continued existence. Phlox hirsuta* is known from only two small occurrences, which occupy fewer than 121 ha (300 ac) in a restricted habitat type (serpentine soils) over a very small range (approximately 65 square-km (25 square-mi)). The combination of only two populations, small range, and restricted habitat makes the species highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with *Phlox hirsuta*. Once the number of populations or the plant population size is reduced, the remnant populations, or portions of populations, have a higher probability of extinction from random events (Primack 1993).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Phlox hirsuta* in determining to finalize this rule. Urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to the small number of populations and small range of the species threaten *P. hirsuta*. The two occurrences of *P. hirsuta* total fewer than 121 ha (300 ac) of occupied habitat in the vicinity of the City of Yreka, Siskiyou County, California. The site within the City of Yreka is already subdivided, has been disturbed by activities associated with urbanization in the past, is situated in an area that is suitable for development, and is unprotected from this threat. In addition, both occurrences are at risk due to inadequate State regulatory mechanisms and due to potential extirpation of all or part of the occurrences due to random events. Therefore, the preferred action is to list *P. hirsuta* as endangered.

Alternatives to listing were considered before publication of this final rule. The other alternatives were

not preferred because they would not provide adequate protection and would not be consistent with the Act. Listing *Phlox hirsuta* as endangered would provide Federal protection for the species and result in additional protection as outlined under the "Available Conservation Measures" section.

Critical Habitat

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Phlox hirsuta* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat designation for *Phlox hirsuta* would be prudent.

Due to the small number of populations, *Phlox hirsuta* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *P. hirsuta* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome (because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species), in some instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat designation is prudent for *Phlox hirsuta*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to complete immediately all of the listing actions required by the Act. Deferral of the critical habitat designation for *Phlox hirsuta* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *P. hirsuta* without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for *Phlox hirsuta* as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Listing *Phlox hirsuta* would provide for development of a recovery plan for the species. The plan would bring together both State and Federal efforts for conservation of the species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan also would describe site-specific management actions necessary to achieve conservation and survival of *P. hirsuta*. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of the species.

Federal activities potentially affecting *Phlox hirsuta* include issuance of special use permits and rights-of-way. Approximately one-half of the Highway 3 occurrence of *Phlox hirsuta* occurs on lands managed by the U.S. Forest Service. The U.S. Forest Service would be required to consult with us if any

activities they authorize, fund, or carry out may affect *P. hirsuta*. For example, consultations with U.S. Forest Service may be required on road maintenance and right-of-way authorizations for projects that include adjacent or intermixed private land.

Other Federal agencies that may become involved if this rule is finalized include the Federal Highway Administration through funding provided to Caltrans. In addition, when we issue a permit under section 10 of the Act for a habitat conservation plan (HCP) prepared by a non-Federal party, we must prepare an intra-Service section 7 biological opinion regarding the effects of issuance of the section 10(a) permit on affected listed plant species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction any such plant. In addition, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species. Such permits are available for scientific purposes and to enhance the propagation and survival of the species. We anticipate that few trade permits would ever be sought or issued for this species because it is not common in cultivation or in the wild.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), it is our policy to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. One of the two occurrences of *Phlox hirsuta* is on U.S. Forest Service lands. We believe that, based upon the best available information, the following actions will not likely result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies, (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with any reasonable and prudent measures given by us in a consultation conducted under section 7 of the Act, and

(2) Activities on private lands that do not involve Federal agency funding or authorization on private lands, such as construction of fences, livestock-water ponds, and livestock grazing, unless such activities are carried out in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

We believe that the following could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands, and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered plant species, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references in this document is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are Diane Elam and Kirsten Tarp, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6645).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Phlox hirsuta	Yreka phlox	U.S.A. (CA)	Polemoniaceae	E	683		NA
*	*	*	*	*	*	*	

Dated: January 13, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–2310 Filed 2–2–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF87

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule reinstates our existing rule issued Thursday, January 28, 1999 (64 FR 4328), and codified at 50 CFR Part 18, Subpart J to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. This final rule authorizes incidental, unintentional take of small numbers of polar bears and Pacific walrus only for activities covered by our existing regulations at 50 CFR Part 18, Subpart J; incidental take resulting from any subsea pipeline activities located offshore in the Beaufort Sea is not authorized. This final rule reinstates regulations at 50 CFR Part 18, Subpart J effective through March 31, 2000.

DATES: This rule is effective February 3, 2000 through March 31, 2000.

ADDRESSES: Comments and materials received in response to this action are available for public inspection during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone (907) 786–3810 or 1–800–362–5148.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (We) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specific geographic region. We may grant permission for incidental takes for periods of up to 5 years. On January 28, 1999, we published in the **Federal Register** (64 FR 4328) regulations to allow such incidental takes in the Beaufort Sea and adjacent northern coast of Alaska for the period January 28, 1999, through January 30, 2000. These regulations were based on the findings for the 1-year period that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat and no unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives, if certain conditions were met.

Our present action reinstates the current regulations that expired on January 30, 2000, which are located at 50 CFR Part 18, Subpart J, effective through March 31, 2000. This rulemaking was intended to avoid a lapse in these regulations while we considered public comments on our proposed regulations published December 9, 1999 (64 FR 68973), the comment period for which closed on January 10, 2000. Those proposed regulations would allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus for a 3-year period during year-round oil and gas activities, including incidental takes resulting from the construction and operation of a subsea pipeline associated with the offshore Northstar facility.

We are reinstating our now expired regulations through March 31, 2000, to ensure that we have adequate time to thoroughly review and respond to public input on our December 9, 1999, proposed rule. We believe it is important to maintain the coverage and protection for polar bears and Pacific walrus provided by those regulations. Existing Letters of Authorization, which require monitoring and reporting of all polar bear interactions as well as site-specific mitigation measures, will be reissued.

Prior to issuing regulations at 50 CFR Part 18, Subpart J, we evaluated the level of industrial activities, their associated impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use. Based on the best scientific information available and the results of 6 years of monitoring data, we found that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat. We also found that the activities as described would have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives.

The regulations that we are reinstating include permissible methods of taking and other means to ensure the least adverse impact on the species and its habitat and on the availability of these species for subsistence uses along with other relevant sections. This includes requirements for monitoring and reporting. The geographic coverage is the same as the regulations we issued on January 28, 1999. All existing Letters of Authorization will be reissued.

Description of Activity

This rulemaking covers activities as described in the existing rule issued on January 28, 1999, that we expect to occur during the brief duration of this rule. These activities include exploration activities such as geological and geophysical surveys, which include geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. Development and production activities located on the North Slope along the shores of the Beaufort Sea are included. The activities are limited to those that occur during the winter. The level of activity expected is similar to that as occurred last winter under existing regulations that we issued on January 28, 1999. This region contains more than 11 separate oil fields. All of the fields lie within the range of polar bears.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Polar Bear

Winter oil and gas activities may affect polar bears. Polar bears that continue to move over the ice pack through the winter are likely to encounter Industry activities. Curious polar bears are likely to investigate artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for interactions between bears and industry. Offshore drill sites may modify habitat and attract polar bears to artificial open leads downwind from the activity. Polar bears attracted to these open water leads create the potential for Industry/polar bear encounters. Winter seismic activities have a potential of disturbing denning females, which are sensitive to noise disturbances. Prior to initiating surveys, industry consults with us through applications for Letters of Authorization. Specific terms of a Letter of Authorization require that industrial activities avoid known or observed dens by 1 mile through cooperative operating procedures. In addition, Letters of Authorization require development of polar bear interaction plans for each operation. Industry personnel participate in training programs while on site to minimize detrimental effects on personnel and polar bears. During the past 6 years, Letter of Authorization conditions have limited the time and location of Industry activities in known polar bear denning habitat. In addition to avoiding known den locations of radio collared polar bears, Industry has conducted aerial survey overflights of potential denning habitat using forward looking infrared thermal sensors to detect dens located beneath snow. A number of den locations have been identified prior to Industry activities, avoiding potential disturbance. Regarding polar bear/human interactions, Industry has taken proactive steps to minimize the aspect of scent attraction to sites through proper disposal of garbage and waste products. Yet a number of potentially dangerous encounters have occurred in recent years. These encounters have not resulted in injury to polar bears or humans. A degree of credit for this success rate is attributed to enhanced employee awareness and proper responses to polar bear encounters brought about through materials contained within polar bear interaction plans.

Pacific Walrus

Pacific walrus rarely use the geographical area during the preferred open water season and do not occur in the area during the winter including the February and March period of the final regulations. Consequently, no direct or cumulative effect of Industry activities to Pacific walrus are expected.

Subsistence Use

Polar bears

Polar bears may be hunted in February and March by residents of Barrow, Nuiqsut, and Kaktovik, although the numbers of bears taken in mid-winter months is typically less than during the spring or fall seasons. Hunter success varies from year to year and with seasonal variations within a year. As required in the existing regulations, Industry is required to work through plans of cooperation with potentially affected subsistence communities to minimize and mitigate for potential impact on the availability of polar bears for subsistence uses, where necessary. We do not expect conflicts between subsistence users and Industry during the February and March term of these regulations. Previously, we have not noted conflicts between subsistence users and Industry under the existing regulations.

Pacific Walrus

Pacific walrus are not present and thus are unavailable for harvest during the winter in this area. No direct or cumulative effect on their availability for take for subsistence use would occur from industrial activities.

Conclusions

Based on the previous discussion of direct, indirect, and cumulative effects, and 6 years of results of prior monitoring programs, we make the following findings regarding this final rulemaking. We find, based on the best scientific evidence available and the results of 6 years' monitoring data, that the effects of oil and gas exploration, development, and production activities for the period February 3, 2000 through March 31, 2000, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat, and that there will be no unmitigable adverse impacts on the availability of these species for take for subsistence uses by Alaska Natives if conditions contained within Letters of Authorization are met. Consistent with our regulations at 50 CFR Part 18, Subpart J, issued on January 28, 1999, our findings apply to exploration, development, and production related to oil and gas activities, excluding any construction and production activities associated with subsea pipelines at the Northstar facility.

Discussion of Comments on the Proposed Rule

The proposed rule and request for comments was published in the **Federal Register** (65 FR 105) on January 3, 2000. The closing date for comments was January 13, 2000. We received 2 comments in the same letter, as follows:

Comment: the public comment period was insufficient and should be extended 30 days.

Response: We acknowledge that 10 days is a brief comment period. Nonetheless, the short comment period was considered unavoidable give the timeframe for publishing a rule intended to extend existing regulations at 50 CFR part 18, subpart J by 61 days through March 31, 2000, thereby avoiding a lapse in polar bear and Pacific walrus protections. Reinstating the current regulations will provide sufficient time to evaluate public comments received on our proposed 3 years regulations (64 FR 68973) published on December 9, 1999, the comment period for which closed on January 10, 2000, for the incidental take of polar bears and Pacific walrus in the Beaufort Sea region. The primary benefit of maintaining regulations while we continue our review is to ensure that mitigation and monitoring requirements remain in place for the ongoing activities in the region. However, because existing regulations at 50 CFR part 18, subpart J expired before this

final rule could be published, this final rule now reinstates those regulations effective on date of publication through March 31, 2000.

Comment: The expected level of activity is much greater than in previous years and significant harassment could occur in 60 days.

Response: We do not anticipate a significant increase in activity in the region that would cause a greater than negligible effect on the polar bear and Pacific walrus populations, or an unmitigable adverse impact on the availability of these species for taking for subsistence uses by Alaska Natives. Monitoring of the activity associated with the Northstar Project during the previous year's construction season reported minimal interaction with polar bears. Based on polar bear distribution and movements during mid-winter (the period of the 2 month extension), we do not expect significant differences in the rate of encounters as compared to last year.

Required Determinations

Environmental documents prepared for our regulations at 50 CFR Part 18, Subject J concluded in a finding of no significant impact. These final regulations cover the same activities as analyzed under the current environmental assessment and are therefore consistent with those findings and the requirements of the National Environmental Policy Act.

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The final rule is not likely to result in an annual effect on the economy of $100 million or more. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and Letters of Authorization (LOA), monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 1997) and LOA requests probably does not exceed $500,000 per year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section, **FOR FURTHER INFORMATION CONTACT.**

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize the incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability.

This final rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. Coordination with appropriate Alaska State agencies has occurred, and necessary permits have been received to ensure State consistency. In addition, extensive coordination with the North Slope Borough and other Alaska Native organizations has occurred concerning this issue. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The information collection contained in 50 CFR part 18, subpart J has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. The OMB approval of our collection of this information will expire in October 2001. Section 18.129 contains the public notice information—including identification of the estimated burden and obligation to respond—required under the Paperwork Reduction Act. Information from our Marking, Tagging, and Reporting Program is cleared under OMB Number 1018–0066 pursuant to the Paperwork Reduction Act. For information on our Marking, Tagging, and Reporting Program, see 50 CFR 18.23(f)(12).

The Administrative Procedure Act, 5 U.S.C. 553(d), generally requires that the effective date of a final rule not be less than 30 days from publication date of the rule. Section 553(d)(1) provides that the 30 day period may be waived if the rule grants or recognizes an exemption or relieves a restriction. Since this rule relieves certain restrictions concerning take of marine mammals, and the previous exemption has expired, we have determined that this final rule should be made effective upon the date of publication.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, we amend Part 18,

Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise § 18.123 to read as follows:

§ 18.123 When is this rule effective?

Regulations in this subpart are effective February 3, 2000 through March 31, 2000, for oil and gas exploration, development, and production activities.

Dated: January 28, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–2443 Filed 2–1–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331–0017–02; I.D. 102899B]

RIN 0648–AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the American Fisheries Act (AFA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations implementing an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands directed fishing allowance under section 206(b)(1) of the AFA. The AFA authorized a $75 million loan to reduce fishing capacity for offshore component (OC) pollock and an inshore fee system as the means of repaying the loan. The proceeds of the loan partly paid the cost of removing nine OC catcher-processors from all commercial fishing in the U.S. exclusive economic zone (EEZ). The intent of this rule is to implement the inshore fee system.

DATES: This final rule is effective February 10, 2000.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Michael L. Grable, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Comments sent by e-mail or the Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

Background

The President signed the AFA into law on October 20, 1998, as part of the Omnibus Appropriations Bill for fiscal year 1999 (Pub. L. 105–277). The AFA required the Federal Government to pay, not later than December 31, 1998, $90 million to the owners of nine large catcher processors harvesting OC pollock. In return, eight of these vessels had to stop all commercial fishing in the EEZ immediately and be scrapped by December 31, 2000. Although the ninth vessel did not have to be scrapped, it also had to stop all commercial fishing in the EEZ immediately and the owner had to certify that neither the owner nor anyone who purchased the vessel from the owner intended to use the vessel outside the EEZ to harvest any fish that also occur within the EEZ.

On December 30, 1998, NMFS paid the required amount to the owners of these vessels. In accordance with the AFA, NMFS paid $15 million of this amount from an AFA appropriation and the remaining $75 million from the proceeds of a fishing capacity reduction loan under sections 1111 and 1112 of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and g) (Title XI). The AFA requires the loan to be repaid by fees under section 312(d)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(d)(2)(C)) (Magnuson-Stevens Act).

Upon payment of the $90 million, NMFS revoked all nine vessels' domestic fishing permits, one owner provided the certificate required for the ninth vessel, and the other owners began preparing for scrapping the remaining eight vessels. All eight vessels are presently undergoing scrapping. Scrapping is scheduled to be completed before December 31, 2000.

Under the AFA and section 312(d)(2)(C) of the Magnuson-Stevens Act, all vessel owners harvesting IC pollock (fish sellers) are required to pay the fee and all parties making the first ex-vessel purchase of IC pollock (fish buyers) are required to collect the fee and account for and forward the fee revenue to NMFS for the purpose of repaying the loan. The fish sellers pay, and the fish buyers collect, the fee when the fish buyers deduct the fee from the ex-vessel value of all IC pollock before paying the net ex-vessel value of the fish to the fish sellers.

The fee is six-tenths (0.6) of one cent for each pound, round-weight, of all IC pollock that fish sellers land. The AFA provides that fee payment and collection shall begin on or after January 1, 2000. Under this final rule, the fee must be paid and collected for all landed fish that were harvested after February 10, 2000.

Although the loan's scheduled maturity is 30 years, the AFA also provides that fee payment and collection "shall * * * continue without interruption until such loan is fully repaid * * *" (section 207(b)(2)). Whether the loan is repaid before, at, or after its scheduled maturity depends on when fee payment begins, the rate at which loan principal bears interest, annually determined total allowable pollock catches after December 31, 1999, and IC pollock allocations after December 31, 2004.

NMFS has determined the loan's principal will bear interest under the statutory formula at the rate of 7.09 percent per annum. Under the AFA, the loan's interest rate is 2 percent plus the percentage rate of interest that the U.S. Treasury charges NMFS for the $75 million that NMFS borrowed from the U.S. Treasury. The latter percentage rate is 5.09 percent.

The other variables controlling the time required to fully repay the loan are not presently determinable. Several assumptions are, consequently, necessary to project how long repayment will take. The first assumption involves the time at which fee payment begins. For projection purposes, NMFS assumes that the fee will be paid on all IC pollock harvested in calendar year 2000 and in each year thereafter until the loan is fully repaid. The second assumption involves the annual total allowable catch (TAC) of pollock after December 31, 1999, which

may vary from year to year. For projection purposes, NMFS assumes that the average annual TAC of pollock after December 31, 1999, will be the same as the average annual TAC of pollock over the 14-year period from the beginning of 1985 through end of 1998. This was 2.769 billion pounds, which equals 1.256 million metric tons. The third assumption involves IC pollock allocations after December 31, 2004. This depends on whether the North Pacific Fishery Management Council maintains IC pollock allocations after December 31, 2004, at the same level as IC pollock allocations under the AFA from January 1, 1999, to December 31, 2004. The AFA level is 42 percent of TAC. For the purposes of this projection, NMFS assumes that IC pollock allocations after December 31, 2004, will be at the same level as IC pollock allocations from January 1, 1999, to December 31, 2004.

Under these 3 assumptions, the loan will be repaid in 21 years. This is 9 years less than the loan's scheduled maturity. Actual conditions different than those NMFS assumes for the purpose of this projection may, however, cause loan repayment to occur sooner or later than here projected. Future TAC may be the biggest determinate of the time actually required to repay this loan.

Under this rule fee payment and collection begin on February 10, 2000 and continue without interruption until the loan is fully repaid, without regard to whether this is a period longer or shorter than the loan's scheduled maturity of 30 years.

On December 30, 1998, NMFS disbursed all $75 million of the loan's original principal amount. Interest at the rate of 7.09 percent per annum has been accruing since that date. NMFS will apply all fee receipts, first, to the payment of accrued interest and, second, to the reduction of loan principal.

Section 312(b)–(e) of the Magnuson-Stevens Act provides for fishing capacity reduction programs, which may be funded by loans under sections 1111 and 1112 of Title XI. Although the IC pollock loan is authorized by the AFA rather than by section 312(b)–(e) of the Magnuson-Stevens Act, the AFA specifies that the IC pollock loan is repayable under section 312(d)(2)(C) of the Magnuson-Stevens Act. NMFS has already proposed a framework rule for implementing section 312(b)–(e) of the Magnuson-Stevens Act (64 FR 6854, February 11, 1999). The proposed framework rule would establish detailed provisions for paying, collecting, disbursing, accounting for, and reporting about fees repaying fishing capacity reduction loans.

NMFS had hoped to implement the fishing capacity reduction framework rule before NMFS had to provide for payment and collection of the IC pollock fee. NMFS intended to provide for payment and collection of the IC pollock fee by making the loan subject to the framework rule provisions about fee payment and collection. Because NMFS has not yet adopted and promulgated the framework rule, however, NMFS must now separately provide for payment and collection of the IC pollock fee by adding a temporary subpart G to 50 CFR part 679 (subpart G). NMFS has drawn most of the procedural provisions of subpart G from the proposed framework rule. After a framework rule is adopted and promulgated, NMFS will revoke subpart G and concurrently provide, by a program implementation rule under the framework rule, for the continuing payment and collection of the IC pollock fee.

This action adds subpart G to 50 CFR part 679 establishing regulations to implement an inshore fee system for IC pollock. The proposed regulations which preceded this action were published on December 21, 1999 (64 FR 71396–71400), with a public comment period that ended on January 5, 2000.

NMFS received comments from 2 entities. The following summarizes the comments and gives NMFS' responses.

Comments and Responses

Comment 1: One comment questioned the necessity of setting up a separate account for the collected funds and suggested that fee payments be made from a regular corporate account.

Response: This is the first loan that will be repaid from fees generated by a fishery resource. We believe that it is important to the fish sellers who will repay this loan that we maintain the credibility of the collection process. Separate accounts are preferable because the fee receipts can be easily segregated from the fish buyer's normal cash flows. We also want to reduce the administrative costs of the loan collection process and separate accounts will make the audit process simpler and less expensive.

Comment 2: One comment asked if it would be possible for NMFS to be authorized to make regular wire transfer withdrawals from the separate account instead of the company sending in a check each month.

Response: We do not believe it is possible to set up a system whereby NMFS could make regular wire transfer withdrawals for several reasons. The amounts deposited in the accounts will differ from month to month. If the account was simply swept to zero, there would be no way to differentiate between funds deposited and interest earned. The contractual mechanism we set up with the bank would have to be turned on or off as the seasons begin and end. We would also encounter administrative difficulties in making separate contractual agreements with the different banks used by the companies. Finally, the rule requires the fish buyer to provide a settlement sheet tied to the amount of money transferred. This would not be possible if the account was periodically swept.

Comment 3: One comment questioned whether deposits into the separate account have to be made on a weekly basis or could be made biweekly or monthly.

Response: As we discussed in our first response, it was incumbent upon us to set up a credible system to assure the fish sellers that their payments were applied against the loan accurately and on a timely basis. One way of achieving this credibility was to set up a system that segregates the collected funds from the fish buyer's normal cash flow. Ideally, such a system should require daily deposits. We attempted to be sympathetic to operational problems daily deposits would create for the fish buyers by allowing weekly deposits.

Comment 4: One comment suggested a 5-day grace period before late payment penalties would be imposed.

Response: NMFS has amended § 679.64 of the final rule to allow a 5-day grace period before late charges will accrue.

Comment 5: One comment suggested a 2-week grace period for submission of the annual report.

Response: NMFS has amended section 679.63 of the final rule by making the due date January 15, thereby providing a 2-week grace period after year end.

Comment 6: One comment questioned the meaning of the term "business week" for fee collection purposes, since the fishing industry does not operate on a normal Monday to Friday "business week".

Response: NMFS has added a definition of "business week" in § 679.60 which designates Friday as the end of a business week.

Comment 7: One comment involved the effective date of the fee collection and suggested that fees should be paid for all inshore pollock harvested in 2000, regardless of when the fee system becomes effective.

Response: NMFS is not authorized to collect any fees until this rule is

finalized. Although we made our best effort to have the system in place before the FY 2000 season starts, we were unable to do so.

Comment 8: One comment sought the clarification of the rule to indicate that the fee and any future appropriations would be the exclusive source of loan repayment.

Response: The proposed rule states that the fee shall be the exclusive source of loan prepayment. Future appropriations could over ride this.

Comment 9: One comment suggested that any late charge or penalty should be the responsibility of the fish buyer.

Response: NMFS agrees that the fish seller should not be obligated for any late charges and has added language in section 679.64 to clarify this point.

Comment 10: One comment objected to the possibility that fish buyers may earn interest on fees paid by fish sellers.

Response: State law may or may not permit such accounts to earn interest. If the accounts can earn interest, the time limitations on transferring the funds to the Government's lock box will allow for minimal interest accrual. Nevertheless, the fish buyers collecting will incur administrative expenses in the process. Any interest earned by fish buyers would help defray the administrative costs incurred.

Summary of Revisions

The following sections of this final rule revise the proposed rule:

(1) *Section 679.60*. This section has been amended to include a definition of "business week" which designates Friday as the end of a business week.

(2) *Section 679.61*. This section is revised to state the loan's actual interest rate.

(3) *Section 600.63*. This section is revised to change the due date for the annual report from December 31 to January 15, thereby effectively providing a 2-week grace period for submission of the annual report.

(4) *Section 679.64*. This section is revised to provide for a 5-day grace period before late charges will accrue and to clarify that fish sellers should not be obligated for any late charges.

The final rule further revises the proposed rule to increase brevity, clarity, accuracy, and/or sufficiency.

Classification

The Assistant Administrator for Fisheries (AA), NMFS, determined that this final rule is consistent with the AFA, the Magnuson-Stevens Act, Title XI, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) describing the impact of the action on small entities. In summary, the FRFA states that the rule would apply to about 100 fish sellers and about eight fish buyers. All of the fish sellers are small entities; none of the fish buyers are. The FRFA indicates that the average annual fee expense for each fish seller would likely be about $60,000. Recordkeeping and reporting requirements would fall primarily on the fish buyers, who collect the fee. The estimated annual compliance cost to fish buyers is about $5,568 per fish buyer. Several minimal recordkeeping and reporting requirements also apply to fish sellers. A fish seller must, for example, report to NMFS if a fish buyer refuses to collect the fee. The estimated compliance cost of this requirement is about $25 per report. In specific and limited circumstances when a fish seller becomes a *de facto* fish buyer for recordkeeping and reporting requirements, the estimated compliance cost is the same as a fish buyer's compliance cost. The Paperwork Reduction Act (PRA) discussion further details these costs. This final rule does not duplicate or conflict with any other Federal rules of which NMFS is aware.

In the FRFA, NMFS considered two alternatives that might have lessened the economic impact on small entities. These alternatives were not collecting the fee and delaying fee collection. Not collecting the fee would both cost the Nation $75 million and violate the AFA. Delaying fee collection would increase the ultimate cost to fish sellers because interest would continue to accrue on an unreduced $75 million principal balance. It would also prolong the time required for fish sellers to repay the loan because the AFA requires that the fee system remain in effect until the loan is fully repaid. The FRFA further discusses these alternatives and their economic impact on IC pollock fish sellers and fish buyers. Although no comments on the IRFA were received, public comments led to changes from the proposed rule that we believe will benefit affected entities, e.g., grace periods for submission of late charges and the annual report.

The AA determined that there is good cause to waive the 30-day delay in effectiveness for this rule under 5 U.S.C. 553 (d)(3). While the AFA stipulates that an inshore pollock fee collection system be established by January 1, 2000, or thereafter, it is important to begin collecting the fee as early in the fishing season (which begins January 20, 2000) as possible, to avoid confusion, to treat all landings similarly, and to minimize the accumulation of interest on the $75 million loan. Therefore, the rule must be in effect as soon as practicable. NMFS believes that persons needing to comply with this rule should be afforded 7 calendar days to open accounts and otherwise prepare for the fee collection. The affected inshore fleet has been aware of the imposition of this fee in exchange for the buyout of certain factory trawlers for an allocation of catch since October 1998 when the AFA was enacted. Delaying this rule beyond 7 days after publication would be contrary to the public interest and unnecessary.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the PRA requirements unless that collection of information displays a currently valid OMB Control Number.

This final rule contains collection of information requirements subject to the PRA that have been approved by OMB under OMB Control Number 0648–0376. This PRA approval occurred in connection with proposal of the framework rule for implementing section 312(b)–(e) of the Magnuson-Stevens Act, including a collection of information burden for fee payment, collection, disbursement, accounting, and reporting under section 312(d)(2)(C) of the Magnuson-Stevens Act. The AFA provides that payment and collection of the IC pollock fee shall be in accordance with 312(d)(2)(C) of the Magnuson-Stevens Act.

The estimated response times for this collection of information are: 10 minutes per fishing trip to maintain records on transactions, 2 hours per fish buyer's monthly report, 4 hours per fish buyer's annual report, and 2 hours per fish buyer's or fish seller's report about fish sellers who refuse to pay, or fish buyers who refuse to collect, the fee.

These estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 28, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, a paragraph (k) is added to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(k) This part also governs payment and collection of the loan, under the American Fisheries Act (AFA), the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. A subpart G is added to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the AFA.

Sec.

679.60 Definitions.
679.61 Loan.
679.62 Fee payment and collection.
679.63 Fee collection deposits, disbursements, records, and reports.
679.64 Late charges.
679.65 Enforcement.
679.66 Prohibitions and penalties.

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the AFA.

Authority: Pub. L. 105–277, 16 U.S.C. 1801, *et seq.*

§ 679.60 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 679.1 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub.L. 105–277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

Business week means a 7-day period, Saturday through Friday.

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct at fish delivery from the delivery value of each pound of round weight fee fish.

Fee fish means all pollock harvested from the IC directed fishing allowance beginning on February 10, 2000 and ending at such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes delivery or possession of fee fish from a fish seller.

Fish seller means the harvester who catches and first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

§ 679.61 Loan.

(a) *Principal amount.* The loan's principal amount is $75,000,000 (seventy five million dollars).

(b) *Interest.* Interest shall, from December 30, 1998, when NMFS disbursed the loan, until the date the borrower fully repays the loan, accrue at a fixed rate of 7.09 percent. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(c) *Repayment.* The fee shall be the exclusive source of loan repayment. The fee shall be paid on all fee fish.

(d) *Application of fee receipts.* NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(e) *Obligation.* The borrower shall repay the loan in accordance with the AFA and this subpart.

§ 679.62 Fee payment and collection.

(a) *Payment and collection.* (1) The fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying or promising later to pay the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value or the fish buyer's promise later to pay the net delivery value rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2)(i) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer—and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller—each time that the fish seller sells fee fish to:

(A) Any fish buyer whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, or

(C) Any other fish buyer who the fish seller has good reason to believe is a fish buyer not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, recordkeeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(b) *Notification.* (1) NMFS will send an appropriate fee payment and collection commencement notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(2) When NMFS determines that the loan is fully repaid, NMFS will publish a **Federal Register** notification that the fee is no longer in effect and should no

longer be either paid or collected. NMFS will then also send an appropriate fee termination notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(c) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

§ 679.63 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to "NOAA Inshore Component Pollock Loan Subaccount." The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox and the manner and form of settlement sheet by means of the notification in § 679.62(b)(1).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The fish seller's identity,

(iii) The round weight of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the subaccount's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* By January 15, 2001, and by each January 15 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(1) Total round weight bought;

(2) Total delivery value paid;

(3) Total fee amount collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to the subaccount lockbox;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the financial records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart, unless otherwise required by law; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(i) *Refunds.* When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

§ 679.64 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed within 5 days of the date due. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 679.65 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 679.66 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for anyone to:

(1) Avoid, decrease, interfere with, hinder, or delay payment or collection of, or otherwise fail to fully and properly pay or collect, any fee due and payable under this subpart or convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(2) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(3) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(4) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(5) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(6) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(7) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(8) Otherwise materially interfere with the efficient and effective repayment of the loan.

(b) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

[FR Doc. 00–2284 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000119015–0015–01; I.D. 012700E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 outside the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2000 pollock total allowable catch (TAC) for Statistical Area 620 outside the Shelikof Strait conservation area established by the 2000 Interim Specifications and amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 28, 2000, until 1200 hrs, A.l.t., March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2000 pollock TAC in Statistical Area 620 outside the Shelikof Strait conservation area as amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska (65 FR 3892, January 25, 2000) is 3,252 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in Statistical Area 620 outside the Shelikof Strait conservation area will soon be reached. Therefore, the Regional Administrator is establishing a

directed fishing allowance of 2,752 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 outside the Shelikof Strait conservation area in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 620 outside the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2323 Filed 1–28–00; 5:02 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 012800D]

Fisheries of the Exclusive Economic Zone Off Alaska; Fishing Vessels Greater Than 99 feet LOA Catching Pollock for Processing by the Inshore Component Independently of a Cooperative in the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels greater than 99 ft length overall (LOA) catching pollock independently of a fishing cooperative for processing by the inshore component in the Steller sea lion conservation area (SCA) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the interim A season inside SCA allocation of pollock total allowable catch (TAC) specified for the vessels greater than 99 ft LOA within the SCA catching pollock independently of a fishing cooperative will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 30, 2000, until 1200 hrs, A.l.t., April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(C)(2), § 679.20 (a)(5)(i)(D)(*3*), and the revised interim 2000 TAC amounts for pollock in the Bering Sea subarea (65 FR 4520, January 28, 2000) the A season allocation of TAC specified to the sector of the inshore component fishing independently of a cooperative for harvest within the SCA is 5,027 metric tons (mt).

In accordance with § 679.22(a)(11)(iv)(A) and (D)(*2*) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allocation of pollock TAC specified to the inshore sector fishing for pollock independently of a cooperative for harvest within the SCA will be reached. The Regional Administrator has estimated that 1,000 mt is likely to be harvested by catcher vessels less than or equal to 99 ft LOA fishing independently of a cooperative during the remainder of the A season and is reserving that amount to accommodate fishing by such vessels after the closure of the SCA to vessels greater than 99 ft LOA fishing independently of a cooperative.

Consequently, NMFS is prohibiting directed fishing for pollock by vessels greater than 99 ft LOA fishing independently of a cooperative that are catching pollock for processing by the inshore component in the SCA, as defined at § 679.22(a)(11)(iv).

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the A season allocation of pollock TAC specified to the sector fishing independently of a cooperative for harvest within the SCA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in noncompliance with reasonable and prudent management measures implemented to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2322 Filed 1–31–00; 9:48 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 012800E]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is

necessary to prevent exceeding the 2000 interim total allowable catch (ITAC) of Atka mackerel in these areas.

DATES: Effective 1200 hrs, Alaska local time, January 29, 2000, until superseded by the notice of Final 2000 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the ITAC for non-jig gear Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,653 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the ITAC limitations and other restrictions on the fisheries established in the Interim 2000 Harvest Specifications for Groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 2000 ITAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2321 Filed 1–28–00; 5:02 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000119015–0015–01; I.D. 012800B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2000 pollock total allowable catch (TAC) for Statistical Area 610 established by the 2000 Interim Specifications and amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 31, 2000, until 1200 hrs, A.l.t., March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2000 pollock TAC in Statistical Area 610 as amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska (65 FR 3892, January 25, 2000) is 5,465 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,965 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 610. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2320 Filed 1–31–00; 9:48 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 23
Thursday, February 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB86

Organization; Termination of Farm Credit Status

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; supplemental and extension of comment period.

SUMMARY: We are publishing a sample exit fee calculation for a hypothetical Farm Credit System (FCS, Farm Credit or System) bank or association choosing to terminate its Farm Credit status. The purpose of this supplement is to guide FCS institutions through the exit fee calculation described in our proposed termination rule. We are also extending the comment period for the proposed termination rule.

DATES: Please send your comments to us on or before March 6, 2000. The comment period for the proposed rule (64 FR 60370, November 5, 1999) is extended to March 6, 2000.

ADDRESSES: We encourage you to send comments via electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our interactive website at "www.fca.gov." You may mail or deliver comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, 1501 Farm Credit Drive, McLean, VA, 22102–5090 or send by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, FCA.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The objectives of our supplemental information are:

- To ensure that the readers of our proposed termination rule understand the exit fee calculation for an institution terminating its Farm Credit status; and
- To extend the comment period on the proposed termination rule.

1. Sample Exit Fee Calculation

Our proposed termination regulation was published on November 5, 1999 (64 FR 60370). Section 611.1255(a) of our proposal prescribes the calculation of a terminating association's exit fee, and § 611.1255(b) prescribes the calculation of a terminating bank's exit fee. This supplemental information contains hypothetical examples of an association terminating alone and of that same association terminating along with its affiliated bank to illustrate how to apply the procedures described in § 611.1255(a) and (b). (The exit fee calculation for an association is the same whether it terminates alone or with its affiliated bank.) The exit fee calculation worksheet will not be part of the final termination regulations.

Our examples contain selected balance sheet items for a Farm Credit Bank and a direct lending association. The first part of our examples includes the balance sheet assumptions for each institution. We provide the average daily balances (ADBs) for those items where the proposed rule requires such calculations. We have included only those balance sheet items that are necessary for calculating the exit fees for the bank and the association. For your convenience, notes follow the worksheet and explain which provision of the termination regulations each worksheet line implements.

2. Extension of Comment Period

In our proposed rule, we provided for a 90-day comment period ending on February 3, 2000. In order to give the public ample time to study the sample exit fee calculation before submitting comments, we are extending the comment period on the proposed rule.

BILLING CODE 6705–01–P

Final Exit Fee Worksheet

($ in thousands)

Assumptions

	Bank	Association
Average daily balance (ADB) of assets	$6,000,000	$1,200,000
ADB of liabilities	$5,000,000	$1,000,000
Capital:		
- ADB of purchased and allocated equities	$600,000	$100,000
- ADB of unallocated equities	$400,000	$100,000
ADB of purchased and allocated investment in terminating Bank:	$0	$150,000
ADB of direct loan volume	$4,000,000	$1,000,000
Termination-related expenses:		
- ADB of expenses recorded during previous 12 months	$150	$50
- Expenses recorded more than 12 months before calculation	$50	$50
Financial Assistance Corporation (FAC) obligation due to termination	$1,000	$1,000
Taxes due to termination	$0	$100[1]
ADB of term preferred stock (a liability under generally accepted accounting principles that qualifies as regulatory capital)	$1,000	$100
Percent of equity owned by dissenting stockholders	0%	10%
ADB of direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination	$3,000,000	NA
ADB of equity investments held in terminating Bank by affiliated associations that it retired or transferred during the 12 months before termination	$750,000	NA

Final Exit Fee Calculation for Association

1	Enter the ADB of association assets		1	$ 1,200,000
2	Enter the ADB of expenses related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, payments of severance and special retirements, and application fees for the termination and reorganization		2	$ 50
3	**Add** line 1 and line 2		3	$ 1,200,050
4	Enter the dollar amount of your termination payment (to your affiliated Bank) related to FAC obligations	$ 1,000		
5	Enter the dollar amount of taxes you will have to pay due to the termination	$ 100		
6	Enter ADB of purchased and allocated equities to be paid to dissenting stockholders and FCS institutions	$ 10,000		
7	Enter ADB of unallocated equities to be paid to dissenting stockholders and FCS institutions	$ 10,000		
8	**Add** lines 4 through 7		8	$ 21,100
9	**Subtract** line 8 from line 3		9	$ 1,178,950
10	Enter the amount of any adjustments to assets the FCA requires		10	$ 50
11	Add or subtract line 10 from line 9, as applicable. This is the **Adjusted association assets**		11	$ 1,179,000
12	Enter the ADB of association liabilities		12	$ 1,000,000

[1] For this example, we are assuming that the taxes due from the association are the same whether it terminates alone or with its affiliated Bank.

13	Enter the ADB of liabilities treated as regulatory capital under the capital or collateral requirements	13	$ 100		
14	**Subtract** line 13 from line 12.			14	$ 999,900
15	Enter the amount of any adjustments to liabilities the FCA requires			15	$ 0
16	Add or subtract line 15 from line 14, as applicable. This is the **Adjusted association liabilities**			16	$ 999,900
17	**Subtract** line 16 from line 11. This is the **Total Capital** for the association for purposes of termination			17	$ 179,100
18	**Multiply** line 11 by 6% (.06)			18	$ 70,740
19	**Subtract** line 18 from line 17. This is the **Final Exit Fee of the association**			19	$ 108,360

Final Exit Fee Calculation for Bank

20	Enter ADB of Bank assets			20	$ 6,000,000
21	Enter the ADB of expenses related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, payments of severance and special retirements, and application fees for the termination and reorganization	21	$ 150		
22	Enter the dollar amount of the termination payments to the Bank by the terminating associations related to FAC obligations	22	$ 1,000		
23	**Add** lines 21 and 22			23	$ 1,150
24	**Add** line 20 and line 23			24	$ 6,001,150
25	Enter ADB of direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination	25	$ 3,000,000		
26	Enter ADB of equity investments held in the Bank by affiliated associations that it retired or transferred during the 12 months before termination. A non-terminating association's investment consists of purchased equities, allocated equities, and a pro rata share of the Bank's unallocated surplus	26	$ 750,000		
27	Enter the dollar amount of the Bank's termination payment to the FAC	27	$ 1,000		
28	Enter the dollar amount of taxes paid or accrued due to the termination	28	$ 0		
29	Enter ADB of purchased and allocated equities to be paid to dissenting stockholders and FCS institutions	29	$ 0		
30	Enter ADB of unallocated equities to be paid to dissenting stockholders and FCS institutions	30	$ 0		
31	**Add** lines 25 through 30			31	$ 3,751,000
32	**Subtract** line 31 from line 24.			32	$ 2,250,150
33	Enter the amount of any adjustments to assets the FCA requires			33	$ 50
34	Add or subtract line 33 from line 32, as applicable. This is the **Adjusted Bank assets**			34	$ 2,250,200
35	Enter the ADB of Bank liabilities			35	$ 5,000,000
36	Enter ADB of direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination	36	$ 3,000,000		
37	Enter the ADB of liabilities treated as regulatory capital under the capital or collateral requirements	37	$ 1,000		
38	**Add** line 36 and line 37.			38	$ 3,001,000
39	**Subtract** line 38 from line 35.			39	$ 1,999,000
40	Enter the amount of any adjustments to liabilities the FCA requires			40	$ 0
41	Add or subtract line 15 from line 14, as applicable. This is the **Adjusted Bank liabilities**			41	$ 1,999,000
42	Enter Adjusted association assets amount from line 11	42	$ 1,179,000		
43	Enter Adjusted Bank assets from line 34	43	$ 2,250,200		
44	**Add** line 42 and line 43	44	$ 3,429,200		
45	Enter ADB of inter-company eliminations (e.g. direct note and Bank stock)	45	$ 1,150,000		

46	**Subtract** line 45 from line 44. This is the **combined assets** of the association and Bank			46	$ 2,279,200
47	Enter the Adjusted association liabilities from line 16	47	$ 999,900		
48	Enter the Adjusted Bank liabilities from line 41	48	$ 1,999,000		
49	**Add** line 47 and line 48	49	$ 2,998,900		
50	Enter ADB of inter-company eliminations (e.g. direct loan)	50	$ 1,000,000		
51	**Subtract** line 50 from line 49. This is the **combined liabilities** of the association and Bank			51	$ 1,998,900
52	**Subtract** line 51 from line 46. This is the **combined Total Capital** of the association and Bank			52	$ 280,300
53	**Multiply** the combined assets on line 46 by 6% (.06)			53	$ 136,752
54	**Subtract** line 53 from line 52. This is the **combined Final Exit Fee** for the association and Bank			54	$ 143,548
55	Enter the Final Exit Fee of the association from line 19			55	$ 108,360
56	**Subtract** Line 55 from line 54. This is the **Final Exit Fee of the Bank**			56	$ 35,188

Notes to the Worksheet

All the references are to paragraphs of proposed § 611.1255.

Line 1. Paragraphs (a)(1), (a)(2), and (a)(3). Assume for this calculation that you have not paid or accrued the amounts described in lines 4–7.

Line 2. Paragraph (a)(4)(i). This item includes only the expenses incurred in the 12 months before termination.

Line 3. Paragraph (a)(4)(i).

Line 4. Paragraph (a)(4)(ii)(A).

Line 5. Paragraph (a)(4)(ii)(B).

Lines 6 and 7. Paragraph (a)(4)(ii)(C).

Lines 8 and 9. Paragraph (a)(4)(ii).

Lines 10 and 11. Paragraph (a)(4)(iv). This is an adjustment to assets we may require. In this example, we are requiring the terminating association to add back to its assets the termination expenses it paid or accrued more than 12 months before termination.

Line 12. Paragraphs (a)(1) and (a)(3). Assume for this calculation that you have not paid or accrued the amounts described in lines 4–7.

Lines 13 and 14. Paragraph (a)(4)(iii).

Lines 15 and 16. Paragraph (a)(4)(iv). This is an adjustment to liabilities we may require. In this example, we are not requiring the terminating association to make adjustments to its liabilities.

Line 17. Paragraph (a)(5).

Lines 18 and 19. Paragraph (a)(6)—association terminating alone, or (b)(1)—association terminating with its affiliated bank. The exit fee calculation ends here for an association terminating without its affiliated bank.

Line 20. Paragraphs (b)(2), (b)(3), and (b)(4). Assume for this calculation that you have not paid or accrued the amounts described in lines 27–30. We note that proposed paragraph (b)(4) incorrectly refers to "assets and total capital." It should say "assets and liabilities."

Line 21. Paragraph (b)(5)(i)(A).

Line 22. paragraph (b)(5)(i)(B).

Lines 23 and 24. Paragraph (b)(5)(i).

Line 25. Paragraph (b)(5)(ii).

Line 26. Paragraph (b)(5)(iii)(A).

Line 27. Paragraph (b)(5)(iii)(B).

Line 28. Paragraph (b)(5)(iii)(C).

Lines 29 and 30. Paragraph (b)(5)(iii)(D). In this example, we assume there are no dissenting stockholders.

Lines 31 and 32. Paragraph (b)(5)(iii).

Lines 33 and 34. Paragraph (b)(5)(v). This is an adjustment to assets we may require. In this example, we are requiring the terminating bank to add back to its assets the termination expenses it paid or accrued more than 12 months before termination.

Line 35. Paragraphs (b)(2), (b)(3), and (b)(4). We note that proposed paragraph (b)(4) incorrectly refers to "assets and total capital." It should say "assets and liabilities."

Line 36. Paragraph (b)(5)(ii).

Line 37. Paragraph (b)(5)(iv).

Lines 38 and 39. Paragraphs (b)(5)(ii) and (b)(5)(iv).

Lines 40 and 41. Paragraph (b)(5)(v). This is an adjustment to liabilities we may require. In this example, we are not requiring the terminating bank to make adjustments to its liabilities.

Lines 42–51. Paragraph (b)(6). These lines show how to combine the balance sheets of the terminating bank and terminating association.

Line 52. Paragraph (b)(7).

Lines 53–55. Paragraph (b)(8).

Line 56. Paragraph (b)(9).

Dated: January 27, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–2333 Filed 2–2–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM00–7–000]

Revision of Annual Charges Assessed to Public Utilities

January 28, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish a new methodology for the assessment of annual charges to public utilities. The Commission proposes that annual charges would be assessed to public utilities based on the volume of electricity transmitted by the public utilities.

DATES: Comments on the proposed rulemaking are due on or before April 3, 2000..

ADDRESSES: File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM00–7–000

FOR FURTHER INFORMATION CONTACT:

Herman Dalgetty (Technical Information), Chief, Accounts Receivable and Assessment Branch, Office of Finance, Accounting and Operations, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2918

Jennifer Lokenvitz Schwitzer (Legal Information), Office of the General Counsel, 888 First Street, N.E.,

Washington, D.C. 20426, (202) 219–4471

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://ferc.fed.us)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIRS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on IPS in ASCII and WordPerfect 8.0 format for viewing, printing and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS and the Website during normal business hours from our Help Line at (202) 208–2222 (E-mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (E-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS and the FERC Website are available. User assistance is also available.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish a new methodology for the assessment of annual charges to public utilities. The Commission proposes that annual charges would be assessed to public utilities based on the volume of electricity transmitted by the public utilities. [1]

II. Background

A. Commission Authority

The Commission is required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act) [2] to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year." [3] The annual charges must be computed based on methods which the Commission determines to be "fair and equitable." [4] The Conference Report accompanying the Budget Act provides the Commission with the following guidance as to this phrase's meaning:

> [A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) The type of Commission regulation which applies to such person such as a gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year; [5] (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year. [6]

The Commission may assess these charges by making estimates based upon data available to it at the time of the assessment. [7]

The annual charges do not enable the Commission to collect amounts in excess of its expenses, but merely serve as a vehicle to reimburse the United States Treasury for the Commission's expenses. [8]

B. Current Annual Charge Billing Procedure

As required by the Budget Act, the Commission's regulations provide for the payment of annual charges by public utilities. [9] The Commission intends that these electric annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating Federal Power Marketing Agencies and electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year, the Commission adjusts its annual charges up or down, as appropriate, both to eliminate any over-or under-recovery of the Commission's actual costs and to eliminate any over-or under-charging of any particular person. [10]

In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and subtracts all Federal Power Marketing Agency-related and electric filing fee collections to determine total collectible electric regulatory program costs. It then uses the data submitted under FERC Reporting Requirement No. 582 (FERC–582) to determine the total volumes of long-term firm sales and transmission, and short-term sales and transmission and exchanges for all assessable public utilities. The Commission divides those transaction volumes into its collectible electric regulatory program costs to determine the unit charge per megawatt-hour for each category of long-term and short-term transactions. Finally, the

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[1] On August 12, 1998, the Commission received a petition for rulemaking from Automated Power Exchange, Citizens Power, Coral Power, L.L.C., Electric Clearinghouse, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., NP Energy Inc., Sonat Power Marketing, L.P., and Williams Energy Services in Docket No. RM98–14–000. The parties petitioned the Commission to initiate a rulemaking to modify its methodology for assessing annual charges. The Commission notes that the instant rulemaking on annual charges moots the petition. Therefore, the Commission plans to terminate Docket No. RM98–14–000 in the final rule. Petitioners are free to file timely comments in response to the instant rulemaking and we will address them in the final rule.

[2] 42 U.S.C. 7178.

[3] This authority is in addition to that granted to the Commission in sections 10(e) and 30(e) of the Federal Power Act (FPA). 16 U.S.C. 803(e), 823a(e).

[4] 42 U.S.C. 7178(b).

[5] The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs. *See* H.R. Conf. Rep. No. 99–1012 at 238 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3868, 3883 (Conference Report); *see also*, S. Rep. No. 99–348 at 56, 66 and 68 (1986).

[6] *See* Conference Report at 238.

[7] 42 U.S.C. 7178(c).

[8] *Id.* at 7178(f). Congress approves the Commission's budget through annual and supplemental appropriations.

[9] 18 CFR Part 382; *see* Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, Order No. 472, 52 FR 21263 and 24153 (June 5 and 29, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,746 (1987), *clarified*, Order No. 472–A, 52 FR 23650 (June 24, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,750, *order on reh'g*, Order No. 472–B, 52 FR 36013 (Sept. 25, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,767 (1987), *order on reh'g*, Order No. 472–C, 53 FR 1728 (Jan. 22, 1988), 42 FERC ¶ 61,013 (1988).

[10] 18 CFR 382.201; *see* Order No. 472, 52 FR 21263 and 24153, FERC Stats. & Regs., Regulations Preambles 1986–1990 at 30,612–18; *accord* Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, Order No. 507, 53 FR 46445 (Nov. 17, 1985), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,839 at 31,263–64 (1988); Texas Utilities Electric Company, 45 FERC ¶ 61,007 at 61,027 (1988) (*Texas Utilities*).

Commission multiplies the transaction volume in each category for each public utility by the relevant unit charge per megawatt-hour to determine the annual charges for all assessable public utilities.[11]

Public utilities subject to these annual charges must submit FERC–582 to the Office of the Secretary by April 30 of each year.[12] The Commission issues bills for annual charges, and public utilities then must pay the charges within 45 days of the date on which the Commission issues the bills.[13]

C. Reasons for This Rule

Since the issuance of Order No. 472, the industry has undergone sweeping changes, including: The Commission's establishment of open access transmission as a foundation for competitive wholesale power markets;[14] a movement by many states to develop retail competition; the growing divestiture of generation assets by traditional public utilities; the entry of new market participants in the industry in the form of independent and affiliated power marketers and stand-alone merchant plant generators; and the establishment of Independent System Operators (ISOs), the expected establishment of transmission companies (transcos), and the establishment of power exchanges as managers of transmission systems and power markets, respectively.

As the landscape of the industry has changed and continues to change, the nature of the work of the Commission likewise has changed. The purpose of this rule is to change the way in which the Commission assesses annual charges to recover its electric regulatory program costs to reflect these changes, by assessing annual charges to public utilities based on the volumes of electric energy transmitted.

III. Discussion

In Order No. 472, to implement the Budget Act, the Commission formulated an annual charge billing procedure. To do this, the Commission had to determine: (1) The types of companies which the Commission should bill; (2) how to estimate and then allocate the Commission's costs among its different regulatory programs; and (3) how to allocate each program's costs among the companies under each program. After the annual charge billing procedure was formulated, the Commission then had to determine (1) how to adjust the annual charges at the end of a fiscal year "to eliminate any over-recovery or under-recovery of [the Commission's] total costs, and any overcharging or undercharging of any person" pursuant to section 3401(e) of the Budget Act; and (2) the standards for waiving all or part of an annual charge pursuant to section 3401(g) of the Budget Act.

We note at the outset that this proposed rule is only for the determination of annual charges to recover the costs of the Commission's electric regulatory program.

Therefore, how to apportion the costs among the Commission's different regulatory programs is not before the Commission.

Below, we will discuss the types of companies to be billed, the proposed apportionment of our electric regulatory program costs among such companies, and other matters related to the proposed changes to the Commission's regulation on annual charges.

A. The Types of Companies To Be Billed

The Commission's electric regulatory program includes administering the provisions of Parts II and III of the Federal Power Act (FPA)[15] as they apply to the activities of public utilities (traditionally, principally investor-owned utilities);[16] discharging its responsibilities under various statues involving the Federal Power Marketing Agencies (PMAs); and implementing various provisions of the Public Utility Regulatory Policies Act of 1987 (PURPA)[17] involving qualifying cogenerators and small power producers (QFs).

1. Public Utilities

Pursuant to section 205 of the FPA,[18] the Commission regulates the rates, terms and conditions of service of public utilities making sales for resale or transmitting electric energy in interstate commerce. All jurisdictional rates, terms and conditions must be on file with the Commission, and may be approved by the Commission only if they are just and reasonable and not unduly discriminatory or preferential. Under section 206 of the FPA,[19] the Commission may change any rates, terms or conditions that it finds to be unjust, unreasonable, or unduly discriminatory or preferential.

The Commission also regulates certain accounting and corporate activities of public utilities pursuant to the FPA. Examples include the following: Under section 203,[20] the Commission reviews applications filed by public utilities seeking to merge or to dispose of jurisdictional facilities. Pursuant to section 204,[21] the Commission reviews the proposed securities issuances of public utilities whose securities issuances are not regulated by a state commission within the meaning of section 204(f). Under sections 301 and 302,[22] the Commission has authority over a public utility's accounting and its depreciation.

2. PMA's

The Commission reviews the rates established by the Department of Energy for the federally-owned PMAs (Bonneville Power Administration (BPA), Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Power Administration). While regulation of public utility rates is guided by the FPA, regulation of the PMAs' rates is subject to the standards enumerated in a number of other statutes.[23] Essentially, the statutes require that the rates established by the PMAs must be devised with regard for the recovery of the cost of generation and transmission of electric energy, the encouragement of the most widespread use of the power, the provision of the lowest possible rates to customers consistent with sound business principles, and the protection of the interests of the United States in amortizing its investment in the projects within a reasonable period of time. The Commission is also authorized,

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[11] 18 CFR 382.201; *see* Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro Inc.), 81 FERC ¶ 61,308 at 62,424–25 (1997).

[12] 18 CFR 382.201(b)(4).

[13] *See Texas Utilities*, 45 FERC at 61,026.

[14] *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. § 31,036 (1996) (Order No. 888), *order on reh'g*, Order No. 888–A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs., § 31,048 (1997), *order on reh'g*, Order No. 888–B, 62 FR 64688 (March 14, 1997), 81 FERC § 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC § 61,046 (1998), *appeal docketed*, Transmission Access Policy Study Group, *et al.* v. FERC, No. 97–1715 *et al.* (D.C. Cir.).

[15] 16 U.S.C. 824–825r.

[16] Under sections 211, 212 and 213 of the FPA, 16 U.S.C. 824j–l, the Commission also has authority over transmitting utilities that are not public utilities. *Compare* 16 U.S.C. 796(23) *with* 16 U.S.C. 824(b), (e).

[17] 16 U.S.C. 2601–2645.

[18] 16 U.S.C. 824d(a).

[19] 16 U.S.C. 824e.

[20] 16 U.S.C. 824b.

[21] 16 U.S.C. 824c.

[22] 16 U.S.C. 825, 825a.

[23] Flood Control Act of 1944, 16 U.S.C. 825s; Federal Columbia River Transmission System Act, 16 U.S.C. 838g; Pacific Northwest Power Preference Act, 16 U.S.C. 837; Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839; the Bonneville Project Act, 16 U.S.C. 832f (Northwest Power Act); and the Reclamation Act of 1939, 43 U.S.C. 485h; the Department of Energy Organization Act, 42 U.S.C. 7101; see also DOE Delegation Order No. 0204–108, 48 FR 55664 (Dec. 14, 1983); 18 CFR Parts 300 and 301.

pursuant to the Northwest Power Act, to review the Average System Cost methodology used to determine rates for exchange sales by utilities to BPA.

3. QF's

Section 210 of PURPA [24] requires the Commission to prescribe rules to encourage cogeneration and small power production of electricity. In particular, the section directs the Commission to adopt rules requiring utilities to purchase power from and sell power to qualifying cogeneration and small power production facilities. The Commission reviews applications filed by cogenerators and small power producers requesting QF certification, and either grants or rejects such applications based on criteria set forth in the Commission's regulations.[25]

4. Discussion

The Commission proposes to assess annual charges to public utilities involved in the transmission of electric energy in interstate commerce. The Commission will continue unchanged its existing policy with regard to its assessment of annual charges to PMAs.[26]

The Commission also will continue to excuse qualifying cogenerators and small power producers from annual charges. For the most part, these entities do not provide interstate transmission of electric energy. The Commission believes that any amounts which might be assessed as annual charges to the few entities that may provide such transmission do not justify the risk of discouraging the fullest development of cogeneration and small power production by such entities. Therefore, the Commission will continue to not assess annual charges to these entities.[27]

The Commission proposes to continue its existing policy that municipals and rural electric cooperative utility systems that are financed by the Rural Utilities Service will not be required to pay annual charges. While these entities may be transmitting utilities subject to our authority under sections 211, 212 and 213 of the FPA, they are not public utilities under the FPA.[28]

The Commission proposes to continue its practice of not assessing annual charges to utilities operating in Alaska or Hawaii because they are not public utilities under the FPA, because they do not make wholesale sales or transmit electric energy in interstate commerce.

Lastly, the Commission proposes to not assess annual charges to foreign electric utilities to the extent that their transactions are in foreign commerce or wholly within another country.[29]

B. Proposed Apportionment

The Commission is proposing to change the way in which it apportions annual charges among the entities it regulates. As previously stated, the Commission first determines the total costs of its electric regulatory program and subtracts all Federal Power Marketing Agency-related costs and electric filing fee collections to determine the total collectible electric regulatory program costs. It then uses the data submitted under FERC–582 to determine the total volumes of long-term firm sales and transmission, and short-term sales and transmission [30] and exchanges for all assessable public utilities. The Commission divides those transaction volumes into its collectible electric regulatory program costs to determine the unit charge per megawatt-hour for each category of transactions. Finally, the Commission multiplies the transaction volume in each category for each public utility by the relevant unit charge per megawatt-hour to determine the annual charges for each assessable public utility.[31]

The Commission established two separate categories because:

Rates for long-term coordination and transmission sales usually require greater use of Commission resources than those for sales which have a duration of less than five years. Long-term sales contracts tend to be based upon fully distributed costs and require cost projections (test year data) which must be reasonable. Rates for short-term coordination or transmission sales, on the other hand, are not necessarily exclusively cost-based, but may be made for many non-cost reasons as well.[32]

This methodology for assessing annual charges worked well for the industry structure that existed at the time the rule was issued. However, because there has been such dramatic changes in the industry, this classification no longer serves its purpose.

With open-access transmission, functional unbundling and the rapid movement to market-based power sales rates brought about by, inter alia, Commission Order No. 888,[33] state retail unbundling efforts, and the recently issued Order No. 2000,[34] the time and effort of our electric regulatory program is now increasingly devoted to assuring open and equal access to public utilities' transmission systems. In contrast, the time and effort of our electric regulatory program that had been devoted to reviewing cost-based power sales rates has been decreasing, and with open access transmission, power sales rates are now increasingly being disciplined by competitive market forces and less by the Commission directly. As a consequence, we believe it appropriate to assess our electric regulatory program costs solely on the MWh of electric energy transmitted in interstate commerce by public utilities,[35] rather than, as in the past, on both jurisdictional power sales and transmission volumes. We further note that, as described below, sellers of electric energy typically must use public utility transmission systems to transmit their electric energy and therefore will, in fact, pay annual charges, albeit indirectly.

The Commission believes that this approach of directly charging only those public utilities that provide interstate transmission service is both fair and equitable because, in turn, all parties involved in the generation and sale of electric energy rely on the transmission system to move their product. Thus, the Commission believes that power sellers will, in fact, be contributing to the Commission's recovery of its electric regulatory program costs in that they will be using the transmission system and, in the cost-based rates that they will pay for transmission service, will pay, albeit indirectly, a fair and equitable share of the Commission's costs.

C. Conclusion

Specifically, therefore, the Commission is proposing to assess annual charges to public utilities based on their transmission of electric energy

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[24] 16 U.S.C. 824a–3(a).

[25] 18 CFR Part 292.

[26] *See* 18 CFR 382.201(c).

[27] 18 CFR 382.102(b); *see* Order No. 472, FERC Stats. & Regs., Regulations Preambles 1986–1990 at 30,637.

[28] 18 CFR 382.102(b); *see* 16 U.S.C. 284; South Carolina Public Service Authority, 75 FERC 61,209 at 61,696 (1996); Dairyland Power Corporation, 37 FPC 12, 15 (1967); *accord*, Salt River Project Agricultural Improvement and Power District v. FPC, 391 F.2d 470, 474 (D.C. Cir.), *cert.* denied, 393 U.S. 857 (1968).

[29] *E.g.*, British Columbia Power Exchange Corporation, 80 FERC 61,343 at 62,137, 62,141 (1997) (sales in foreign commerce or within another country are excluded from annual charges calculations).

[30] Long-term firm sales and transmission activities and short-term sales and transmission activities are defined in 18 CFR 382.102.

[31] The Commission also carries over any over-or under-charge from the prior year as a credit or debit on the current year's annual charge bill.

[32] Order 472–B at 30,830.

[33] *See* supra note 14.

[34] Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999).

[35] This approach is essentially the same as how annual charges are assessed against gas pipelines.

in interstate commerce, as measured by: (1) unbundled wholesale transmission, (2) unbundled retail transmission,[36] and (3) bundled wholesale power sales which, by definition, include a transmission component, where the transmission component is not separately reported as unbundled transmission.[37]

As to ISOs, and potential Regional Transmission Organizations (RTOs), that have members that retain ownership of transmission facilities, the Commission is concerned that the assessment of annual charges to them could result in a "double counting" of transactions " by counting a single transaction both to the transmission-owning public utility and to the ISO or RTO public utility. We believe that there are at least two ways to address this issue, and are inviting comments on these and any other solutions to this problem. One way would be not to charge the ISO or RTO itself, but instead charge each transmission-owning public utility based on the MWh of transmission service provided on their lines. The transmission-owning public utility would include the annual charges, as a cost element, in its revenue requirement, which, in turn, is recovered by the ISO or RTO through the ISO's or RTO's open access transmission tariff rates. Another way would be to allow the ISO or RTO to act as an agent for all of the individual transmission owners and have the ISO or RTO pay the annual charges rather than the individual transmission owners. Either of these approaches may be acceptable. The Commission is soliciting comments on these approaches, as well as any other approach that will allow the Commission to collect annual charges on these MWh of transmission service, in the most administratively efficient manner.

[36] The Commission is proposing that annual charges will be assessed based on all interstate transmission by public utilities, with no distinction made between so-called unbundled retail and unbundled wholesale transmission. This transmission would include MWh received in wheeling transactions and the MWh delivered in exchange transactions.

[37] If the bundled wholesale power sale involves only the use of non-affiliated, third-party transmission systems, the transmission component would be picked up through the non-affiliated, third-party transmission providers' reporting of the MWhs of transmission service they provided. Similarly, if the bundled wholesale power sale involves the use of the power seller's or its affiliate's transmission system, the transmission component may be separately reported as unbundled transmission. If, however, neither of these were the case, the MWhs would need to be reported as a bundled wholesale power sale.

D. Other Matters

1. Reporting Requirements

The Commission is proposing a change in its reporting requirements for annual charges. Currently, a public utility has to submit the total long-term firm sales for resale and transmission megawatt-hours and the total short-term sales, transmission, and exchange megawatt-hours. With the elimination of the distinction between long-term and short-term transactions, such distinctions in the reporting requirement are likewise no longer needed. The Commission proposes, therefore, that public utilities will report only total volumes of electric energy transmitted in interstate commerce (as defined above to include all unbundled transmission and all bundled wholesale power sales), in MWh, by April 30th of each year.

Finally, we note that any corrections to FERC–582 will need to be made by the end of the calendar year in which the FERC–582 was filed.

2. Standards for Waiving All or Part of an Annual Charge

The Commission is not proposing to change the standards applicable for waiving all or part of an annual charge. Thus, the Commission is proposing to continue to apply to annual charges the stringent standards for waiver currently applicable to filing fees, with a filing period for waiver petitions of 15 days after the issuance of the annual charges bill.

3. Effective Date

We anticipate that we will begin assessing annual charges under this new methodology starting with bills to be paid in calendar year 2002, based on data reported on FERC–582 in calendar year 2002 (for transactions that occurred in calendar year 2001, the first full year after adoption of changes in the regulation).[38]

Likewise we anticipate that we will make the change discussed above with respect to corrections to FERC–582 effective beginning with the data reported in FERC–582 in calendar year 2002 (for transactions that occurred in calendar year 2001); thus such corrections will need to be submitted on or before December 31, 2002.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[39] The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations amended raises no environmental considerations.[40] This proposed rule amends Part 382 of the Commission's regulations to establish a new methodology for the assessment of annual charges to public utilities and does not substantially change the effect of the underlying legislation or the regulations being revised. Accordingly, no environmental consideration is necessary.

[38] Our existing regulations will remain effective until these changes become effective.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

Overall, the Commission does not believe that this rule will have a significant direct impact on small entities. Specifically, most, if not all, public utilities that would be assessed annual charges under this rule do not fall within the RFA's definition of a small entity because most public utilities subject to this rule are too large to be considered "small entities."[41] Therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VI. Public Reporting Burden and Information Collection Statement

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. FERC identifies the information provided under Part 382 as FERC–582.

Comments are solicited on the Commission's need for this information, whether the information will have

[39] 18 CFR 380.4.

[40] 18 CFR 380.4(a)(2)(ii).

[41] 5 U.S.C. 601(6).

practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

The burden estimate for complying with this proposed rule is as follows:

Public Reporting Burden: Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FER–582	242	1	4	968

Total Annual Hours for Collection (reporting + recordkeeping, (if appropriate)) = 968.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be: Annualized Capital/Startup Costs + Annualized Costs (Operations & Maintenance) = $51,911 (968 hours ÷ 2080 hours per year × $111,545 = $51,911). The cost per respondent is equal to $215.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[42] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–582, Electric Fees and Annual Charges.

Action: Proposed Data Collection.

OMB Control No.: 1902–0132.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of Information: The proposed rule revises the requirements contained in 18 CFR Part 382 to revise the method for determining the assessment of annual charges.

The Commission is seeking to make its assessments for annual charges compatible with the current regulatory environment and the creation of competitive wholesale markets. The Commission has the authority under the Omnibus Budget Reconciliation of 1986 (42 U.S.C. 7178) to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year." The Act gives the Commission the flexibility to arrive at a reasonable approximation of its program costs. The costs are determined by a summation of all electric regulatory program costs and then subtracting all electric regulatory program filing fee collections in order to determine the total collectible costs for the electric regulatory program. Information submitted under FERC–582 is the basis for the calculation of annual charges, and presently includes total volumes of long-term firm sales and transmission and short-term sales and transmission plus exchanges for all public utilities, including power marketers. The proposed rule changes the basis for the calculation of annual charges to the total volumes of electricity transmitted by public utilities.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Finance, Accounting and Operations will use the data submitted under FERC–582 in order to serve as a billing determinant to recover costs for administering its electric regulatory program, including administering the provisions of Parts II and III of the Federal Power Act and the provisions of the Public Utility Regulatory Policies Act of 1987.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208–1415, Fax: (202) 208–2425, E-Mail: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, Phone: (202) 395–3087, Fax: (202) 395–7285].

VII. Public Comment Procedures

Prior to taking final action on this proposed rulemaking, we are inviting interested persons to submit written comments on the changes to the regulations proposed in this notice to be adopted. All comments in response to this notice should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM00–7–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before April 3, 2000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments maybe filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–7–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM00–7–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at: 202–501–8145, E-Mail address: brooks.carter@ferc.fed.us.

Commenters should take notice that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours.

[42] 5 CFR 1320.11.

Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage, using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 382

Annual charges.

By direction of the Commission. Commissioner Bailey did not participate in this decision.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 382, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

PART 382—ANNUAL CHARGES

1. The authority citation for Part 382 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 382.102 [Amended]

2. In section 382.102 paragraphs (h), (i), (j) and (k) are removed and paragraphs (l), (m), (n), (o) and (p) are redesignated as (h), (i), (j), (k) and (l), respectively.

3. Section 382.201 is revised to read as follows:

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

(a) *Determination of costs to be assessed to public utilities.* The adjusted costs of administration of the electric regulatory program, excluding the costs of regulating the Power Marketing Agencies, will be assessed to public utilities.

(b) *Determination of annual charges to be assessed to public utilities.* The costs determined under paragraph (a) of this section will be assessed as annual charges to each public utility based on the proportion of the megawatt-hours of transmission of electric energy in interstate commerce of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the megawatt-hours of transmission of electric energy in interstate commerce in the immediately preceding reporting year of all public utilities being assessed annual charges.

(c) *Reporting requirement.* (1) For purposes of computing annual charges, as of January 1, 2002, a public utility, as defined in § 382.102(b), must submit under oath to the Office of the Secretary by April 30 of each year an original and conformed copies of the following information (designated as FERC Reporting Requirement No. 582 (FERC–582)): the total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges and for purposes of this reporting requirement, will be measured by the sum of the megawatt-hours of all unbundled transmission (including MWh received in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent the megawatt-hours were not separately reported as unbundled transmission). This information should be reported to 3 decimal places; *e.g.*, 3,105 KWh will be reported as 3.105 MWh.

(2) Corrections to the information reported on FERC–582, as of January 1, 2002, must be submitted under oath to the Office of the Secretary on or before the end of each calendar year in which the information was originally reported (*i.e.*, on or before the last day of the year that the Commission is open to accept such filings, *e.g.*, on or before December 31, 2002, etc.)

(d) *Determination of annual charges to be assessed to power marketing agencies.* The adjusted costs of administration of the electric regulatory program as it applies to Power Marketing Agencies will be assessed against each power marketing agency based on the proportion of the megawatt-hours of sales of each power marketing agency in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the power marketing agency to be charged) to the sum of the megawatt-hours of sales in the immediately preceding reporting year of all power marketing agencies being assessed annual charges.

[FR Doc. 00–2366 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AA94

Elimination of Requirement to Rewind Computer Tapes

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations to eliminate the requirement that Federal agencies rewind under controlled tension all computer tapes containing unscheduled or permanent records every 3½ years. This change would affect Federal agencies that store unscheduled or permanent records on computer open-reel tapes or tape cartridges.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to (301) 713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: This proposed rule eliminates the requirement for Federal agencies to rewind under controlled tension all tapes containing unscheduled or permanent electronic records every 3½ years which is contained in 36 CFR 1234.30(g)(3). This requirement was imposed to address the maintenance and storage of open-reel computer tapes. After tape cartridges became commonplace, computer centers generally did not periodically rewind cartridges. A study conducted by NIST in 1991 concluded that periodic retensioning of computer tape cartridges is unnecessary. In addition, recent electrical engineering studies have questioned whether open-reel tapes should be periodically rewound. Another 1991 NIST study found that the process of rewinding tapes may actually harm them, and would outweigh the benefits associated with storing tapes rewound under controlled tension.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because it applies to Federal agencies.

List of subjects in 36 CFR Part 1234

Archives and records, Computer technology.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend 36 CFR Part 1234 to read as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

1. The authority citation for part 1234 continues to read as follows:

Authority: 44 USC 2104a; 44 USC 2904c.

§ 1234.30 [Amended]

2. In § 1234.30, remove paragraph (g)(3) and redesignate paragraphs (g)(4) through (g)(7) as paragraphs (g)(3) through (g)(6) respectively.

Dated: January 27, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–2385 Filed 2–2–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD062–3028b; FRL–6531–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15 Percent Rate of Progress Plan for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to convert its conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland to a full approval. The revision consists of the 15 percent rate of progress requirements for the Baltimore severe ozone nonattainment area. EPA is also proposing to approve revisions to certain portions of the 1990 base year emissions inventory of volatile organic compound (VOC) and nitrogen oxide (NOx) emissions for the Baltimore nonattainment area. In the Final rules section of this **Federal Register**, EPA is converting its conditional approval of the Baltimore area's 15% Plan to a full approval and approving revisions to the 1990 base year emissions inventory as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 6, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092, at the EPA Region III address above, or by e-mail at gaffney.kristeen@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–2176 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD059–3049b; FRL–6530–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland, Post-1996 Rate of Progress Plan for Cecil County and Revisions to the 1990 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing the three percent per year emission reduction rate-of-progress requirement for the period 1996–1999 for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, namely Cecil County, Maryland. EPA is also approving revisions to the 1990 base year inventory of ozone precursor emissions submitted by the State of Maryland for Cecil County. EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 6, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092, at the EPA Region III address above, or by e-mail at gaffney.kristeen@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–2174 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA172–0209b; FRL–6529–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compounds (VOC) from the loading of organic liquids, and fugitive hydrocarbons.

The intended effect of this action is to regulate emissions of VOC in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 6, 2000.

ADDRESSES: Comments should be addressed to: Christine Vineyard, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, [AIR-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744–1197).

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District Rule 413, Organic Liquid Loading, and Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and Chemical Plants. Both rules were adopted on March 7, 1996 and were submitted to EPA on May 10, 1996 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: January 12, 2000.

Julia Barrow,

Acting Regional Administrator, Region IX.

[FR Doc. 00–2172 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 234–0187b; FRL–6529–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Kern County, San Diego County, San Joaquin Valley Unified Air Pollution Control Districts and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP). This action revises the definitions in the California State Implementation Plan regarding, Kern County Air Pollution Control District (KCAPCD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD).

The intended effect of this action is to incorporate these changes to various definitions and to update the Exempt Compound list in KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD rules to be consistent with the revised federal and state VOC definitions. EPA is proposing approval of these revisions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 6, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District Southeast Desert, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, [A–4], Air Division, U.S. Environmental Protection Agency,

Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District Rule 102, Definitions, San Diego County Air Pollution Control District Rule 2, Definitions and Rule 3, Standard Conditions, San Joaquin Valley Unified Air Pollution Control District Rule 1020, Definitions, and South Coast Air Quality Management District Rule 102, Definition of Terms, submitted on September 7, 1999, by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: January 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–2170 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD–001–0007b & SD–001–0008b; FRL–6527–3]

Clean Air Act Approval and Promulgation of State Implementation Plan; South Dakota; Revisions to Performance Testing Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action to approve revisions to the South Dakota State implementation plan (SIP) submitted on May 2, 1997 and May 6, 1999 regarding the testing of new fuels or raw materials. Specifically, the State adopted a new provision in Chapter 74:36:11, Performance Testing, of the Administrative Rules of South Dakota (ARSD) that allows permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before requesting a permit amendment or modification.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before March 6, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 6, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–2168 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Delist the Northern Spotted Owl From the List of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to delist the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended (Act). We find that the petitioner did not present substantial scientific or commercial information indicating that the delisting of the northern spotted owl may be warranted.

DATES: The finding announced in this document was made on January 18, 2000.

ADDRESSES: Data, information, comments or questions concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503. The petition finding, and comments and material received, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. L. Karolee Owens at the above address (telephone 360/753–4369; facsimile 360/753–4369).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act, requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is based upon all information submitted with and referenced in the petition and all other information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days following receipt of the petition, and promptly published in the **Federal Register**. If the finding is positive, section 4(b)(3)(B) of the Act requires us to promptly commence a review of the status of the species and to disclose our findings within 12 months.

The processing of this petition finding conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and

plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. The processing of this petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

We have made a 90-day finding on a petition to delist the northern spotted owl (*Strix occidentalis caurina*). The petition, dated January 18, 1999, was submitted by Dr. Richard A. Gierak of Yreka, California, and we received it on February 2, 1999.

The petition identified three subspecies of spotted owl, including the northern spotted owl (*Strix occidentalis caurina*), the California spotted owl (*Strix occidentalis occidentalis*), and the Mexican spotted owl (*Strix occidentalis lucida*). The petitioner asked that the "spotted owl" be removed from the "endangered list." The California spotted owl, however, is not a listed subspecies. The Mexican and northern spotted owls, subjects of separate listing actions, are both listed as threatened. The Mexican spotted owl was listed on March 16, 1993 (58 FR 14271), and critical habitat was designated for this subspecies on June 6, 1995 (60 FR 29914). The northern spotted owl was listed as threatened on June 26, 1990 (55 FR 26194), and critical habitat for the subspecies was designated on January 15, 1992 (57 FR 1796). Since the information presented in the petition refers only to northern spotted owls, this 90-day petition finding addresses only this subspecies. The petition is based on statements referring to the status and listing of the northern spotted owl from the National Center for Policy Analysis web site. There is no documentation of the source(s) of the information on the web site, and no scientific supporting documentation was included with the petition.

The petitioner asserts that the northern spotted owl should be delisted because the original data were in error. This assertion is based on an increased number of known northern spotted owl pairs, their use of forest areas that have been harvested and regrown, and the economic effects of the listing.

Documentation of greater numbers of northern spotted owls since the first population estimates results from expanded knowledge and increased survey efforts, and not from an increasing northern spotted owl population. Additionally, listing and any consideration of delisting of the northern spotted owl must be based on its status as reflected by the required analysis of the five factors specified under section 4 of the Act, and not solely on the basis of the number of pairs. To delist a species, the analysis must indicate that none of these five factors are affecting the species such that it is in danger of extinction, or likely to become endangered, within the foreseeable future. For the northern spotted owl, this will require stable or increasing and self-sustaining populations and conservation of adequate suitable habitat to allow the species to survive without protection of the Act.

Current data do not suggest that the decision to list the northern spotted owl was based on erroneous data, or that the species has recovered. Observations of banded northern spotted owls in 15 study areas in Washington, Oregon, and California were used for the recently released 1998 demographic analysis of northern spotted owls (Franklin *et al.* 1999). In this analysis, these observations were used to estimate survival and reproductive rates, and to determine if the population is increasing, decreasing, or stable. The results indicate there has been a range-wide northern spotted owl population decline of about 3.9 percent per year during the years 1985 to 1998. The analysis does not indicate, however, a range-wide decline in reproductive rates and female survival rates, which varied among years and among study areas. Reproductive rates and female survival rates can be relatively stable, but still be lower than necessary to support a stable population. The result is a declining population. Although these results indicate that the rate of the northern spotted owl population decline is slower than was evident in the 1993 analysis for the development of the Northwest Forest Plan (U.S. Department of Agriculture and U.S. Department of Interior 1994), uncertainty still exists regarding the range-wide health of the northern spotted owl population.

Northern spotted owls are known to use a wide variety of habitat types and forest stand conditions throughout their distribution (57 FR 1796). Northern spotted owls use a wide array of forest types for foraging, including open and fragmented habitat. Habitat that meets the species' needs for nesting and roosting also provides foraging habitat. Some habitat that supports foraging, however, may be inadequate for nesting and roosting. The presence of northern spotted owls, or even breeding pairs, in forest stands that have been harvested and regrown do not present sufficient evidence that these habitats are occupied by self-sustaining populations.

Economic analysis is not a factor in listing a species, but is used to evaluate the economic consequences of designating critical habitat in selected areas. We considered the economic and other relevant impacts prior to making a final decision on the size and scope of critical habitat for the northern spotted owl. Some areas were excluded due to economic and other relevant information, including information and comments received during the public comment period and public hearings following the publication of the proposed rule to designate critical habitat (56 FR 40001). Final critical habitat units for the northern spotted owl were designated only on Federal lands (57 FR 1796).

When evaluating petitions for delisting of species under the Act, our guidelines state that a "not-substantial information" finding be made when a petition to delist a species presents no new information indicating the original data for listing the species may be in error (U.S. Fish and Wildlife Service 1996). We have reviewed the petition and other available literature and information. This review of additional information includes the recently released 1998 demographic analysis, which indicates a continued range-wide decline of the northern spotted owl population. We find the petition does not present substantial information to indicate delisting the northern spotted owl may be warranted.

References Cited

Franklin, A.B., K.P. Burnham, G.C. White, R.J. Anthony, E.D. Forsman, C. Schwarz, J.D. Nichols, and J. Hines. 1999. Range-wide status and trends in northern spotted owl populations. Unpublished report. 71 pp.

U.S. Department of Agriculture and U.S. Department of the Interior. 1994. Final supplemental environmental impact statement on management of habitat for late-successional and old-growth forest related species within the range of the northern spotted owl. Portland, Oregon.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1996. Endangered species petition management guidance. 20 pp. and appendices.

Author: The primary author of this finding is Dr. L. Karolee Owens, Fish and Wildlife Service, Western Washington Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 18, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–2311 Filed 2–2–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 012100C]

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene two public hearings regarding draft options for Amendment 1 to the Golden Crab Fishery Management Plan (FMP). The amendment addresses gear restrictions, permitting processes, vessel size limits, crew safety and zoning/participation conflicts in the golden crab fishery.

DATES: The Council will accept written comments on the draft options paper through March 1, 2000. The public hearings will be held in February. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Copies of the draft options paper are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366. The public hearings will be held in Florida and South Carolina. See **SUPPLEMENTARY INFORMATION** for specific hearing locations.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; E-mail address: kim.iverson@safmc.noaa.gov.

SUPPLEMENTARY INFORMATION:

Time and Location for Public Hearings

Public hearings for the draft options paper for Amendment 1 to the Golden Crab Fishery Management Plan will be held at the following locations, dates, and times.

1. February 22, 2000, 6:00 p.m., Best Western Hotel, 111 South Crome Ave., Florida City, FL 33034; telephone: 305–451–0056.

2. February 23, 2000, 6:00 p.m., Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

Copies of the draft options paper can be obtained from the Council (see **ADDRESSES**).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by March 15, 2000.

Dated: January 24, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2404 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 23
Thursday, February 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–116–2]

Animal Welfare; Farm Animals Used for Nonagricultural Purposes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are adopting two guides: The "Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching," published by the Federation of Animal Science Societies, and the "Guide for the Care and Use of Laboratory Animals," published by the Institute of Laboratory Animal Resources. We are adopting these guides to assist regulated entities in meeting the standards in the regulations as they apply to the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes (primarily research and exhibition). The recommendations in these guides represent the most current thinking on appropriate practices for the handling, care, treatment, and transportation of farm animals for nonagricultural purposes.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Watkins, Animal Care, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–4981.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

APHIS is responsible for regulating the humane handling, care, treatment, and transportation of farm animals when they are used for nonagricultural purposes, such as for research or exhibition. APHIS inspects regulated entities that use farm animals under the regulations in 9 CFR part 3, subpart F.

On March 3, 1999, we published a notice in the **Federal Register** (64 FR 10268–10269, Docket No. 98–116–1) stating that we were considering adopting two guides: The "Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching" (the Ag Guide), published by the Federation of Animal Science Societies, and the "Guide for the Care and Use of Laboratory Animals" (the ILAR Guide), published by the Institute of Laboratory Animal Resources. We believed the guides would help regulated entities understand how to meet the standards in the regulations pertaining to the humane handling, care, treatment, and transportation of farm animals when they are used for nonagricultural purposes. We requested public comment on whether to adopt these two guides.

We solicited comments for 60 days ending May 3, 1999. We received 23 comments by that date. They were from veterinarians and veterinary associations, research facilities, animal welfare organizations, a biomedical research association, and a zoo and aquarium association.

Several commenters supported our adoption of these two guides. Three commenters specified that our adoption of these guides would help maximize the similarities between AWA standards and the Public Health Service Policy on the Humane Care and Use of Laboratory Animals. Several commenters had questions about how regulated entities would be expected to use the guides, and other commenters had criticisms about the content of the guides. The comments are discussed below by topic.

Several commenters wanted clarification on how APHIS would use the guides during inspections. One commenter asked if recommendations in the guides would become APHIS inspection standards that must be met. Another commenter asked how APHIS would decide which parts of the guide are to be followed and which are not.

We stated in the March 3 notice that our adoption of these guides would be intended only as guidance and that it would not create or confer any rights for or on any person and would not operate to bind APHIS or the public. In practical terms, this means that these guides will not replace the regulations in subpart F as the standards that regulated entities are expected to meet. During inspections, APHIS inspectors will review the care of farm animals for compliance with the regulations in subpart F. We will not require regulated entities to comply with recommendations in the guides.

However, we do believe that these guides represent the most current thinking on appropriate practices for the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes. Because the regulations in subpart F are not species specific, we believe that would be helpful for regulated entities to consult guidance in order to adequately meet the regulations. For example, the regulations require that animals be fed a diet sufficient to maintain the animals in good health, consistent with the age, species, condition, size, and type of animal in question. We expect that regulated entities would find it helpful to consult some guidance to determine what diet would be appropriate for sheep, for example, in order to meet this requirement. By adopting the Ag Guide and the ILAR Guide, we are giving notice that we consider the recommendations in these two guides to be authorities on the care of farm animals as they relate to the requirements in the regulations. If a regulated entity is seeking guidance on meeting the regulations, we would suggest they start with these two guides. If regulated entities prefer, they may use other guidance, as long as the practices they ultimately adopt meet the requirements of the regulations.

We stated in the March 3 notice that the ILAR Guide and the Ag Guide contain recommendations concerning

animals and areas that are not covered under the regulations and that those portions of the guides that do not relate to the regulations would not be used for our program purposes. For example, both guides contain recommendations on occupational safety and health programs for facility employees. Our regulations do not address these issues.

One commenter asked whether APHIS would provide notice when the guides are revised and allow comments on adopting the revisions.

Most recently, the guides have been updated approximately every 10 years. The current ILAR Guide was published in 1996, replacing the previous 1985 edition. The current Ag Guide was published in 1999, replacing the previous 1988 edition. When these guides are updated, we will review the changes and make a determination at that time.

We stated in the March 3 notice that the Ag Guide could be used when farm animals are maintained in a traditional agricultural setting and the ILAR Guide could be used when farm animals are maintained in a laboratory setting. One commenter said that, since the ILAR Guide does not specifically address farm animals, its adoption would result in no improvement for farm animals in laboratory settings. The commenter suggested that we adopt both guides for both agricultural and laboratory settings.

The ILAR Guide is not species-specific, in general. However, it does state that its recommendations are applicable to farm animals, and it provides species-specific recommendations for farm animals in a few instances. In most cases, we believe that when farm animals are kept in a laboratory setting, the ILAR Guide is the appropriate guide to consult. The Ag Guide is written to address farm animals kept in agricultural settings. However, there may be elements of the Ag Guide that would be helpful to facilities that house farm animals in laboratories, and facilities could consult both guides.

One commenter said that we should create our own guide on farm animals after review of the Ag Guide, the ILAR Guide, and other available guides. One commenter suggested two other guides that we should adopt. Several commenters said that we should promulgate standards specific to farm animals instead of adopting guidance.

We considered these options prior to choosing to adopt the Ag Guide and the ILAR Guide. We have chosen to adopt guidance at this time, instead of promulgating regulations. We have determined that these guides represent the most current and complete scientific information available on the humane care of farm animals used for nonagricultural purposes, and we do not believe that creating our own guides would be an improvement over what these two guides already offer. Adoption of these guides does not prevent us from promulgating standards specific to farm animals at a later date.

One commenter said that the Ag Guide and the ILAR Guide are dense documents, requiring significant time and effort to understand, and that students and nonscientist caretakers may find them difficult to apply for this reason. Another commenter said that some aspects of the Ag Guide are ambiguous, making them difficult to apply.

We do not intend that every employee of a regulated facility must regularly consult these guides. Regulated entities may use these guides at their own discretion, depending on their needs and resources. We anticipate that many facilities already use or will choose to use these guides in formulating operating procedures for their facilities. In this case, the guides themselves may not need to be consulted in depth by students and nonscientist caretakers.

In some sections, the Ag Guide uses language such as "may" and references other publications to support its statements. Understanding of the care and use of farm animals in research is constantly evolving. Nevertheless, we believe the Ag Guide presents the most complete and current information available.

One commenter said that neither guide provides appropriate guidance for the care of farm animals used in exhibition. Another commenter, who supported adoption of the guides, said that flexibility would be necessary in their use to address the needs of traveling exhibitors.

Both guides are specifically written as guidance for researchers. We believe elements of the Ag Guide, in particular, would also be useful for exhibitors. Even for traveling exhibitors, the Ag Guide offers recommendations on transportation of farm animals that we believe are appropriate. However, we recognize that exhibitors have special needs and different goals than researchers and would apply these guides only as appropriate.

One commenter questioned our use of the term "nonagricultural," and asserted that the application of biotechnology to traditional agricultural species does not automatically make the use of these animals nonagricultural.

We are unclear as to how the commenter is defining "nonagricultural." Our use of the term stems from the definition of "animal" in the AWA, which defines what animals we are authorized to regulate. The term "animal" means any live or dead warmblooded animal, but it excludes "horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber." We consider use of an animal for food or fiber, for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber to be agricultural, and we are not authorized to regulate these activities under the AWA.

The commenter also suggested that animals kept in an agricultural setting should not be subject to APHIS oversight, regardless of use. However, the AWA authorizes APHIS to regulate animals used or intended for use in research, testing, experimentation, or exhibition purposes or as a pet, regardless of whether the animal is maintained in a laboratory setting or a typical farm-type setting.

We received numerous comments critical of the Ag Guide in particular. Several commenters said that the Ag Guide is heavily influenced by standard agricultural commercial practices, endorses management practices designed for maximum agricultural production, and does not reflect the most current thinking on humane treatment of farm animals used for nonagricultural purposes. A few commenters further said that the Ag Guide would be unsuitable guidance for nonagricultural researchers because practices discussed in the guide would be stressful on the animals, resulting in unreliable research results.

We disagree with the commenters and continue to believe that the Ag Guide represents the most current and complete scientific information available on appropriate practices for the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes when they are maintained in an agricultural setting.

One commenter said there are discrepancies between our regulations and the recommendations in the Ag Guide. For example, the commenter said § 3.128 requires that enclosures provide sufficient space for each animal to make normal postural and social adjustments, but the Ag Guide includes recommendations on the use of farrowing crates for sows, which restrict the sows' movements.

Adoption of the Ag Guide will not reduce any of the requirements in the current regulations, nor will any recommendations in the guide supersede the requirements of the regulations. Regarding the example given above, there may be times when it is scientifically justified under a research protocol to restrict an animal's space. Such exceptions to the regulatory requirements can be made with approval by a research facility's Institutional Animal Care and Use Committee. In other cases, regulated entities will be expected to comply with the requirements of the regulations, regardless of any recommendations in the Ag Guide or any other reference material.

One commenter criticized the use of the phrase "professional judgment" throughout the Ag Guide and said the guide's use of the word "must" is too limited.

The Ag Guide is a guide, not a regulation. Our adoption of these guides is intended only to offer guidance to regulated entities.

One commenter said the Ag Guide's recommendations on feeding and watering during transportation are inadequate.

The regulations in § 3.139 contain food and water requirements for farm animals during transportation. The regulations require that animals be offered potable water within 4 hours prior to being transported and that they be provided with potable water at least every 12 hours after transportation is initiated. The regulations also require, with a few exceptions, that all animals be fed at least once in every 24-hour period. We find nothing in the Ag Guide in contradiction of these requirements. Nevertheless, the requirements of the regulations are the requirements that must be met by regulated entities, and nothing in the guide can be used to allow less stringent requirements than those in the regulations.

Several commenters were concerned with the Ag Guide's acceptance of certain practices that may cause discomfort or some pain; for example, beak trimming, comb trimming, dehorning, and tail docking.

The examples given by commenters are established standard animal husbandry practices. Employment of these practices is changing, and there is increased consideration among regulated entities regarding the use of local anesthetics and the development of methods that minimize discomfort for the animals. The Ag Guide encourages methods, including anesthesia and recommendations on optimum ages for these procedures, to minimize pain and discomfort in the animals.

One commenter was concerned that the public was never given an opportunity to provide comments on the current edition of the Ag Guide prior to its being finalized.

The Ag Guide is not published by APHIS and, therefore, we have no control over whether the public is able to comment on its content prior to it being finalized. We have, however, given the public opportunity to comment on our adoption of the content of the Ag Guide.

In our notice, we said that any institution that receives funding from the National Institutes of Health (NIH) or that is accredited by an organization such as the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) must use the Ag Guide and the ILAR Guide. One commenter said that this is incorrect. The commenter said that NIH and AAALAC International both mandate the use of the ILAR Guide, but that NIH does not mandate use of the Ag Guide, and AAALAC International uses the Ag Guide selectively.

The commenter is correct in pointing out that the Ag Guide is cited as a resource by both organizations, but its use is not mandated as a requirement for receiving funding. We wish to correct our inadvertent misstatement. We should note that AAALAC International referenced the previous version of the Ag Guide only selectively, but has adopted the revised (1999) version of the Ag Guide as a reference in its entirety.

One commenter said that APHIS should inspect AAALAC International-accredited research facilities between AAALAC International inspections in order to reduce the inspection frequency for such facilities. The commenter said the facilities could assure APHIS annually that they remain fully accredited and submit the date of the last AAALAC International inspection.

This comment is not relevant to the adoption of the ILAR Guide and the Ag Guide. Nevertheless, we offer the following response. AAALAC International conducts site visits of accredited facilities at approximately 3-year intervals. The AWA mandates that we inspect research facilities at least once each year. APHIS' inspections are unannounced to ensure we are able to view the facility as it is normally operated. At this time, we believe any effort to coordinate our inspections with the inspections of another institution may compromise our ability to conduct inspections unannounced.

Based on the rationale given in the March 3 notice and in this document, we are adopting the Ag Guide and the ILAR Guide to assist regulated entities in meeting the standards in the regulations as they apply to the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes.

Done in Washington, DC, this 27th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2382 Filed 2–2–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–069–1]

Public Meeting; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Animal and Plant Health Inspection Service plans to hold a public meeting to discuss issues related to the humane care and treatment of exhibition animals regulated under the Animal Welfare Act.

DATES: The public meeting will be held on Tuesday, March 7, 2000, beginning at 8:30 a.m. and ending at 5p.m. On-site registration and sign-in for preregistered participants will take place from 7 a.m. to 8:30 a.m.

ADDRESSES: The public meeting will be held at the USDA Conference Center, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) will hold a public meeting in Riverdale, MD, on March 7, 2000, to exchange information with the public about the humane care and treatment of exhibition animals regulated under the Animal Welfare Act. The meeting will include a general session followed by four workshops to run concurrently. The workshops will be offered twice, based on the public's response, to allow for increased participation. The tentative agenda for the public meeting is as follows:

8:30 a.m.–10 a.m.—General Session
10 a.m.–10:30 a.m.—Break
10:30 a.m.–12:30 p.m.—Workshops
Session I

12:30 p.m.–1:30 p.m.—Lunch Break
1:30 p.m.–3:30 p.m.—Workshops Session II
3:30 p.m.–4 p.m.—Break
4 p.m.–5 p.m.—General Session/Wrap-up

The morning general session will include updates by U.S. Department of Agriculture (USDA) officials on current Animal Welfare Act issues and program initiatives focusing on, but not limited to, exhibition animal issues. Time will be allotted during the morning general session for open dialogue between USDA and the public. We are tentatively scheduling the following workshop topics:

1. Zoos
2. Circuses
3. Dealers, Research, and Transportation
4. Training and Handling of Potentially Dangerous Animals

Animal Care personnel will present information on issues related to the workshop topics and allow for discussion with the public led by an APHIS facilitator.

Workshop Issues

You may submit issues that you want presented by Animal Care during the workshops. Please specify the issue and the related workshop topic and submit no later than February 15, 2000, to Animal Care, Attention: Public Meeting, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; or by fax at either (301) 734–4978 or (301) 734–4993.

Advance Registration

Advance registration is requested by February 29, 2000. Although advance registration is not required, attendance may be limited based on public response and conference center accommodations. There is no registration fee.

An advance registration form is printed below. Alternatively, an advance registration form is available via the Internet on Animal Care's home page at http://www.aphis.usda.gov/ac. Please fill out the form completely and submit it either by mail to Animal Care, Attention: Public Meeting, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; or by fax at either (301) 734–4978 or (301) 734–4993.

If you have any questions about registration, contact Sue Gallagher, Program Specialist, Animal Care, on (301) 734–8877.

To: _____
No. of pages: _____
Date: _____

Advance Registration Form

Animal Care Public Meeting

March 7, 2000; 8:30 a.m.–5:00 p.m., 4700 River Road, Riverdale, MD 20737

Advance registration requested by February 29, 2000 (no fee required)

Name: _____
Organization: _____
Address: _____
_____
Phone: _____
Fax: _____

Please indicate the workshop you plan to attend during each workshops session (topics are subject to change):

10:30 a.m.–12:30 p.m.

—Zoos
—Circuses
—Dealers, Research, and Transportation
—Training and Handling of Potentially Dangerous Animals

1:30 p.m.–3:30 p.m.

—Zoos
—Circuses
—Dealers, Research, and Transportation
—Training and Handling of Potentially Dangerous Animals

Please either:

- Fax completed registration form to (301) 734–4978 or (301) 734–4993, or
- Mail completed registration form to Animal Care, Attn: Public Meeting, 4700 River Road Unit 84, Riverdale, MD 20737–1234.

For questions concerning registration, contact Sue Gallagher at (301) 734–8877.

If you require special accommodations, such as a sign language interpreter, for the meeting, please indicate below:

_____
_____
_____

Travel Information

If traveling to the metro area by air, Baltimore-Washington International (BWI) and Ronald Reagan National Airports are each located within a 1-hour drive from the USDA Center. Dulles International Airport is located within a 1½-hour drive from the USDA Center. Airport shuttle services are available via independent contracted service fleets. Check with your hotel desk for additional shuttle or taxi information, or phone Super Shuttle (servicing BWI, Ronald Reagan National, and Dulles International Airports) at (800) 258–3826 or (410) 859–0803, or Airport Connection (servicing BWI Airport) at (800) 284–6066 or (301) 352–2400.

The USDA Center is located less than 1 mile from the College Park-University of Maryland metro rail station (Green Line toward Greenbelt). Bus service is provided between the College Park-University of Maryland station and the USDA Center by both metro bus (F6 and R12 bus lines) and certain University of Maryland shuttle buses. The fee for the metro bus is $1.10. The University of Maryland shuttle bus is free.

If traveling by car, please note that a fee of $2 is required to enter the parking lot at the USDA Center. The machine takes $1 bills or quarters.

Travel directions and information are available via the Internet at Animal Care's homepage at http://www.aphis.usda.gov/ac.

Security Procedures

Upon entering the building, visitors should inform security personnel that they are attending the Animal Care public meeting. Identification is required. Security personnel will direct visitors to the registration tables located outside the conference center on the first floor. Registration is necessary for all participants, including those registered in advance. Visitor badges must be worn throughout the day.

Lodging Information

We encourage out-of-town participants to make reservations as soon as possible due to potential peak volumes at local hotels at the time of the meeting. Rooms at all hotels are on a space available basis. The following hotels are located in the Riverdale area: Greenbelt Holiday Inn, 7200 Hanover Drive, Greenbelt, MD 20770, (800) 280–4188, (301) 982–7000.

A limited number of rooms have been reserved until February 21, 2000, at a rate of $84 plus tax at the Greenbelt Holiday Inn. You must identify yourself as a "USDA Animal Care" attendee when making reservations. Hotel shuttle service is available to and from the USDA Center. Make arrangements with the Holiday Inn front desk: College Park Holiday Inn, 10000 Baltimore Boulevard, College Park, MD 20740, (800) 465–4329, (301) 345–6700.

A limited number of rooms have been reserved until February 21, 2000, at a rate of $89 plus tax at the College Park Holiday Inn. You must identify yourself as an "Animal Care Public Meeting" or "ACP" attendee when making reservations. Hotel shuttle service is available to and from the USDA Center. Make arrangements with the Holiday Inn front desk: Greenbelt Courtyard-Marriott, 6301 Golden Triangle Drive, Greenbelt, MD 20770, (800) 321–2211, (301) 441–3311.

There are no special lodging rates offered at the Greenbelt Courtyard-Marriott, and no shuttle service is available to the USDA Center.

Please check with your travel agent for other hotel availability.

Authority: 7 U.S.C. 2131 *et seq.*

Done in Washington, DC, this 28th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2383 Filed 2–2–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–068–1]

Draft Guideline on Stability Testing of Biotechnological/Biological Veterinary Medicinal Products, VICH Topic GL17

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: A draft guideline titled "Stability Testing of Biotechnological/Biological Veterinary Medicinal Products" has been developed by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The guideline contains proposed international standards for the generation and submission of stability data for products such as cytokines (interferons, interleukins, colony-stimulating factors, tumor necrosis factors), monoclonal antibodies, and vaccines consisting of well-characterized proteins or polypeptides, including some conventional vaccines. Because the draft guidelines pertain to veterinary biological products regulated by the Animal and Plant Health Inspection Service under the Virus-Serum-Toxin Act, we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

DATES: We invite you to comment on the draft guidelines. We will consider all comments that we receive by April 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–068–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–068–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

You may request a copy of the draft "Stability Testing of Biotechnological/Biological Veterinary Medicinal Products" by writing to or calling the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, CVB-LPD, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245.

SUPPLEMENTARY INFORMATION: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is a unique project conducted under the auspices of the International Office of Epizootics (OIE, the Office International des Epizooties) that brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions. The purpose of VICH is to harmonize technical requirements for veterinary products (both drugs and biologics). Regulatory authorities and industry experts from Australia and New Zealand participate in an observer capacity. The World Federation of the Animal Health Industry (COMISA, the Confederation Mondiale de L'Industrie de la Sante Animale) provides the secretarial and administrative support for VICH activities.

The United States Government is represented in VICH by the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). The FDA provides expertise regarding veterinary drugs, while APHIS fills a corresponding role for veterinary biological products. As VICH members, APHIS and FDA participate in efforts to enhance harmonization and have expressed their commitment to seeking scientifically based harmonized technical requirements for the development of veterinary drugs and biological products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.

The draft document that is the subject of this notice, "Stability Testing of Biotechnological/Biological Veterinary Medicinal Products" (VICH Topic GL17), has been made available by the VICH Steering Committee for comments by interested parties. The guideline is intended to function as an international standard for the generation and submission of stability data for products such as cytokines (interferons, interleukins, colony-stimulating factors, and tumor necrosis factors), monoclonal antibodies, and vaccines consisting of well-characterized proteins or polypeptides. Because the guideline pertains to some veterinary biological products regulated by APHIS under the Virus-Serum-Toxin Act—particularly with regard to prelicensing stability studies—we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

The draft document pertains to the generation and submission of studies testing the stability of veterinary biological products that consist of well-characterized proteins and polypeptides, their derivatives, and products of which they are components. (The draft guideline refers to such studies as "stability studies.") In accordance with the VICH process, once a final draft of "Stability Testing of Biotechnological/Biological Veterinary Medicinal Products" has been approved, the guideline will be recommended for adoption by the regulatory bodies of the European Union, Japan, and the United States. As with all VICH documents, the final guideline will not create or confer any rights for or on any person and will not operate to bind APHIS or the public. Further, the VICH guidelines specifically provide for the use of alternative approaches if those approaches satisfy applicable regulatory requirements.

Ultimately, APHIS intends to consider the VICH Steering Committee's final guidance document for use by U.S. veterinary biologics licensees, permittees, and applicants. In addition, APHIS will consider its use as a basis for the approval of stability studies conducted to establish and extend expiration dates for applicable veterinary biological products under 9 CFR 114.13 and 114.14. APHIS may also use the final guidance document as the basis for proposed additions or amendments to its regulations in 9 CFR

chapter I, subchapter E (Viruses, Serums, Toxins, and Analogous Products; Organisms and Vectors). Because we anticipate that applicable provisions of the final version of "Stability Testing of Biotechnological/ Biological Veterinary Medicinal Products" may be introduced into APHIS' veterinary biologics regulatory program in the future, we encourage your comments on the draft version.

Authority: 21 U.S.C. 151 *et seq.*

Done in Washington, DC, this 28th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2379 Filed 2–2–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission public hearing.

SUMMARY: The National Drought Policy Commission (Commission) shall conduct a thorough study and submit a report to the President and Congress on national drought policy. This notice announces a public hearing to be held on February 17–18, 2000, in Billings, Montana, and seeks comments on issues that the Commission should address and recommendations that the Commission should consider as part of its report. The hearing is open to the public.

DATES: The Commission will conduct a public hearing on February 17, 2000, from 1:00 p.m. to 5:00 p.m. and February 18, 2000, from 9:00 a.m. to 12:00 p.m. at the Lincoln Center, Auditorium, 415 N 30th Street, Billings, Montana. All times are Mountain Standard Time.

Anyone wishing to make an oral presentation to the Commission at the public hearing, must contact the Executive Director, Leona Dittus, in writing (by letter, fax or internet) no later than COB, February 11, 2000, in order to be included on the agenda. Presenters will be approved on a first-come, first-served basis. The request should identify the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. Thirty-five copies of any written presentation material shall be given to the Executive Director by all presenters no later than the time of the presentation for distribution to the Commission and the interested public. Those wishing to testify, but who are unable to notify the Commission office by February 11, 2000, will be able to sign up as a presenter the day of the hearing, February 17, 2000, between 12:00 p.m. and 2:00 p.m. and February 18, 2000, between 8:00 a.m. and 10:00 a.m. All times are Mountain Standard Time. These presenters will testify on a first-come, first-served basis and comments will be limited based on the time available and the number of presenters. Written statements will be accepted at the public hearing, or may be mailed or faxed to the Commission office.

Persons with disabilities who require accommodations to attend or participate in this public hearing should contact Leona Dittus, on 202–720–3168, Federal Relay Service at 1–800–877–8339, or Internet: leona.dittus@usda.gov, by COB February 11, 2000.

COMMENTS: The public is invited to respond and/or to submit additional comments, concerns, and issues for consideration by the Commission by March 29, 2000.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, D.C. 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–9688; Internet: leona.dittus@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will (a) better integrate Federal laws and programs with ongoing State, local, and tribal programs, (b) improve public awareness of the need for drought mitigation, prevention, and response and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency.

Below is a draft vision statement and set of principles to guide the Commission. Draft Vision Statement: Our vision is of a well-informed, involved U. S. citizenry and its governments prepared for and capable of lessening the impacts of drought—consistently and timely—in the new millennium.

This vision is based on the following principles:

Consideration of all affected entities and related issues, including legal, economic, geographic, climate, religious, and cultural differences; fairness and equity; and environmental concerns;

Comprehensive, long-term strategies that emphasize drought planning and measures to reduce the impacts of drought;

Federal role focused on appropriate coordination, technical assistance, education, and incentives while at all times respecting the rights and responsibilities of

Federal, State, and local governments, and tribal sovereignty;

Self-reliance and self-determination;

Lessons learned from past drought experiences;

Shared drought-related expertise and knowledge across international borders.

In addition to your own views and thoughts regarding a national drought policy, as you review the draft vision and guiding principles, the Commission would be interested in your thoughts regarding the following questions:

1. What is the best means for informing the public of Federal assistance for drought planning and mitigation?

2. What type of information do you need for responding to the drought?

3. What needs do you or your organization presently have with respect to addressing drought conditions?

4. What do you see as the Federal role with respect to drought preparedness? Drought response? Should Federal emergency assistance be contingent on advance preparedness?

5. Are there any ways you feel that the Federal Government could better coordinate with State, regional, tribal, and local governments in mitigating or responding to droughts?

6. What lessons have you or your organization learned from past drought experiences that would be beneficial in the creation of a national drought policy?

Signed at Washington, D.C., on January 31, 2000.

George Arredondo,

Acting Administrator, Farm Service Agency.

[FR Doc. 00–2445 Filed 1–1–00; 5:03 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Statements; Notice of Intent: Salmon-Challis National Forest, ID

AGENCY: USDA-Forest Service, Intermountain Region, Salmon-Challis National Forest.

ACTION: Notice of Intent to extend the comment period on the Supplemental Draft Environmental Impact Statement (EIS) for the programmatic wilderness plan.

SUMMARY: The Forest Service will extend the comment period for the Supplemental Draft Environmental Impact Statement for the Frank Church—River Of No Return Wilderness management plan for one month. The comment period was set to expire on February 1, 2000. The comment period will be extended to March 1, 2000. The Notice of Intent to prepare a Draft Environmental Impact Statement for Frank-Church River Of No Return Wilderness was published in the **Federal Register** December 7, 1994. The Forest Service prepared a Draft Environmental Impact Statement for the Frank-Church River Of No Return Wilderness and released it for public comment in January 1998. Following a lengthy public comment period the Forest Service prepared a Supplemental Draft Environmental Impact Statement. The supplement was released in September 1999 with a comment period to end February 1, 2000. Because of requests from various interested parties and individuals the Forest Service will extend the comment period until March 1, 2000. Written comments will be used in developing the Final Environmental Impact Statement for the Frank Church—River Of No Return Wilderness management plan.

Written comments concerning this extension or the supplemental analysis described in this Notice should be received by March 1, 2000 to ensure timely consideration. Additional public meetings are not planned at this time.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Questions concerning the supplement and the Frank Church-River Of No Return Wilderness management plan should be directed to Ken Wotring, Wilderness Coordinator, Salmon-Challis National Forest, RR 2, Box 600, Salmon, Idaho 83467, telephone 208–756–5100.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from the Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the analysis and the area being analyzed. Information received will be used in preparation of the Final EIS. For the most effective use, comments should be submitted to the USDA-Forest Service by March 1, 2000. The Responsible Official is George Matejko, Forest Supervisor, Salmon-Challis National Forest. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in preparing their responses. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be submitted with or without name and address within 10 days.

George Matejko,

Forest Supervisor.

[FR Doc. 00–2317 Filed 2–2–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), DOA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a new conservation practice standard in Section IV of the FOTG. The new standard is Land Reconstruction of Brine Damaged Areas (Code 773). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before March 9, 2000.

ADDRESSES: Address all requests and comments to J. Chris Tippie, Acting State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: J. Chris Tippie, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: January 18, 2000.

J. Chris Tippie,

Acting State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–2344 Filed 2–2–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank, USDA

Staff Briefing for the Board of Directors

TIME AND DATE: 2:00 p.m., Thursday, February 10, 2000.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.

industry issues.

2. Status of PBO planning and recommendations to accelerate privatization of the Bank.

3. Procedure for issuing class C share certificates.

4. Procedure to replace lost share certificates.

5. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Friday, February 11, 2000.

PLACE: Room 104–A, The Williamsburg Room, Department of Agriculture, 12th & Jefferson Drive, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.

2. Action on Minutes of the November 9, 1999, board meeting.

3. Report on loans approved in the first quarter of FY 2000.

4. Review first quarter financial statements for FY 2000.

5. Privatization Committee report.

6. Discussion of Privatization Committees' recommendations to:

(a) Contract for a financial advisor to assist the Bank in its preparations for privatization.

(b) Transfer funds to be used for the financial advisor contract from the Bank's Liquidating Account at the U.S. Treasury to a private financial institution.

7. Consideration of resolution to change the procedure for issuing class C share certificates.

8. Consideration of resolution to modify the procedure for replacing lost share certificates.

9. Consideration of resolution to adopt a schedule for various actions concerning the November 2000 Board of Directors election.

10. Consideration of resolution to appoint Tellers for the November 2000 Board of Directors election.

11. Consideration of resolution to approve Kenneth M. Ackerman to serve as the Assistant Treasurer.

12. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: January 28, 2000.

Christopher McLean,

Acting Governor, Rural Telephone Bank.

[FR Doc. 00–2451 Filed 2–1–00; 10:30 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2000]

Foreign-Trade Zone 193–Pinellas County, FL; Application For Foreign-Trade Subzone Status; RP Scherer Corporation (Gelatin Capsules), Pinellas County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pinellas County Board of County Commissioners, grantee of FTZ 193, requesting special-purpose subzone status for the gelatin capsule manufacturing facilities of RP Scherer Corporation (RP Scherer), a subsidiary of Cardinal Health, Inc., located in the St. Petersburg/Clearwater area, Pinellas County, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 20, 2000.

The RP Scherer facilities (42.1 acres) are located at 4 sites in the St. Petersburg/Clearwater area (Pinellas County), Florida: *Site 1* (3 buildings, 348,093 mfg. sq. ft. on 32.2 acres)''—main manufacturing plant, located at 2725 Scherer, St. Petersburg; *Site 2* (1 building, 48,400 mfg. sq. ft. on 2.2 acres,)—manufacturing plant #2 (leased from Danielson, Ltd.), located at 11286 47th Street North, Clearwater; *Site 3* (1 building, 63,000 mfg. sq. ft. on 3.3 acres,)—manufacturing plant #3 (leased from First Group, Inc.), located at 11399 47th Street North, Clearwater, and *Site 4* (23,140 sq. ft.)—warehouse facility (leased from Ft. Lauderdale-Staples, L.L.C.), located at 10990 US 19, Clearwater. The facilities (754 employees) are used for the manufacture of soft gelatin capsules for pharmaceutical, nutritional, cosmetic, and recreational products. RP Scherer encapsulates the products in gelatin capsule form and returns them to client companies for packaging and distribution. The company purchases raw gelatin from abroad. At this time, the company is only requesting to use zone procedures for the encapsulation of pharmaceutical and nutritional products.

FTZ procedures would enable the company to choose the lower duty rate that applies to the finished pharmaceutical and nutritional products (HTSUS headings 3003, 3004, 3006—duty-free), instead of the duty rate that would otherwise apply to foreign gelatin (HTSUS 3503.00.55, duty rate—3.8% + 2.8¢/kg). The application indicates that the savings from zone procedures would help improve the international competitiveness of the RP Scherer plant and of the U.S. pharmaceutical plants that use this service.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 3, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 18, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, 1130 Cleveland St., Clearwater, Florida 34615

Dated: January 20, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2293 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year (''Sunset'') Review.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''sunset'') review of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* covering this same order.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, or Mark D. Young, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202)

482–1560 or (202) 482–6397, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Review

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating a sunset review of the following antidumping duty order:

DOC case No.	ITC case No.	Country	Product
A–570–836	A–718	China	Glycine.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in the *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1999). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1999)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews. [1] Please consult the Department's regulations at 19 CFR Part 351 (1999) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2422 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, AD/CVD

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1999), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4477.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. On June 30, 1999, the Department initiated these administrative reviews covering the period May 1, 1998, through April 30, 1999.

Due to the large number of respondents involved in these reviews and the Department's resource constraints, it is not practicable to complete the AFB reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, the Department is extending the due date for the preliminary results to March 30, 2000. The Department intends to issue the final results of reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 27, 2000.

Laurie Parkhill,

Acting Deputy Assistant Secretary for Import Administration

[FR Doc. 00–2291 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On December 13, 1999, the Department of Commerce (the Department) published the final results of review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (64 FR 69488). These amended final results cover the period August 1, 1987 through July 31, 1998, and four manufacturers, Yieh Hsing Enterprise Co. Ltd. (Yieh Hsing) and Kao Hsing Chang Iron & Steel Corporation (KHC), Yun Din Steel Co. Ltd. (Yun Din), and Yieh Loong Co. (Yieh Loong).

On December 15, 1999, pursuant to section 351.224 of the Departments's regulations, Yieh Hsing filed an allegation of ministerial errors in the calculation of its final margin. On January 10, 2000, the petitioners filed an allegation of ministerial errors in the calculation of the final margin for KHC. The Department is publishing these amended final results to correct the ministerial errors identified by Yieh Hsing, and one of those alleged by petitioners.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3019 or 482–0649, respectively.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 C.F.R. Part 351 (1999).

MINISTERIAL ERRORS IN THE FINAL RESULTS OF REVIEW: In its December 15, 1999 letter, Yieh Hsing alleges that the Department intended to compare U.S. sales to home market sales that occurred in the same month as, in the three months prior to, or in the two months following, the U.S. sale. Yieh Hsing further notes that where comparisons to sales of identical merchandise were not available, the Department intended to make comparisons to sales of the most physically similar home market merchandise.

Yieh Hsing contends that the final results computer program failed to successfully search for sales in months other than the month of the U.S. sale, and failed to search for home market sales of non-identical merchandise. We examined the computer program and agree with Yieh Hsing that these programming failures occurred and that they constitute clerical error within the meaning of 19 CFR 351.244(f). Therefore, for these amended final results, we have corrected the computer program, and have used all contemporaneous sales of identical or similar merchandise in our calculation of normal value.

Petitioners argue that in its calculation of the final margin for KHC, the Department incorrectly performed a foreign exchange conversion on an international freight expense, which had already been reported in U.S. dollars. We reviewed the data and agree that we intended to deduct the expense in question from the price without converting the currency, and for these amended final results, we have removed the incorrect conversion step.

Petitioners also allege that the Department's analysis program failed to effect comparisons of U.S. sales to home market sales with a "CNS" grade designation. We disagree that this model-matching methodology is a ministerial error. The Department intended to exclude CNS grades and to compare the U.S. merchandise to other, more similar home market models. *See* model match program at lines 911–918 (included in petitioners' January 10, 2000 allegation at Exhibit 6). Accordingly, we have not changed the product comparison methodology for these final results.

Non-Responding Companies

As stated in prior notices concerning this review, Yun Din and Yieh Loong did not respond to our requests for information and were assigned, as facts available, the highest rate in any segment of this proceeding; that rate changed as a result of these amended final results.

Amended Final Results of Review

As a result of the correction of the ministerial errors discussed above, the margins are:

Manufacturer/exporter	Period	Margin (%)
Yieh Hsing	5/1/97–4/30/98	1.35
KHC	5/1/97–4/30/98	24.80
Yun Din Steel Co. Ltd.	5/1/97–4/30/98	24.80
Yieh Loong Co.	5/1/97–4/30/98	24.80

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We also will direct Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing this determination and notice in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: January 19, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2292 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or David Goldberger at (202) 482–4136, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

POSTPONEMENT OF FINAL RESULTS OF ADMINISTRATIVE REVIEW: The Department of Commerce ("the Department") published the preliminary results of the twelfth administrative review of the antidumping duty order on Porcelain-on-Steel Cookware from Mexico on November 5, 1999 (64 FR 60417). The current deadline for the final results in this review is March 6, 2000. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended, the Department finds that it is not practicable to complete this administrative review within the original time frame due to the complex nature of certain issues in this review which require further consideration. Thus, the Department is extending the time limit for completion of the final results until May 3, 2000, which is 180 days after the date on which notice of the preliminary results was published in the **Federal Register**.

Dated: January 27, 2000.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–2416 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–804]

Silicon Metal From Argentina: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 12, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on silicon metal from Argentina. We preliminarily determined that sales of the subject merchandise were not made below normal value. This review covers one producer/exporter, Electrometalurgica Andina S.A.I.C. ("Andina") and the period September 1, 1997 through August 31, 1998.

We gave interested parties an opportunity to comment on the preliminary results. No comments were received. Therefore, we have made no changes for the final results. We have determined that Andina has not made sales below normal value during the period of review. Accordingly, we will instruct the U.S. Customs Service not to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0405 or 482–3833, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Trade and Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act of 1994 (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1991, the Department published an antidumping duty order on silicon metal from Argentina (56 FR 48779), which was amended on July 10, 1995, pursuant to court remand (60 FR 35551). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1997/1998 review period on September 11, 1998 (63 FR 49543). On September 30, 1998, the respondent, Electrometalurgica Andina S.A.I.C. ("Andina") filed a request for review. We published a notice of initiation of this review on October 29, 1998 (63 FR 58009). This review covers the period of September 1, 1997 through August 31, 1998. On October 30, 1998, the Department sent an antidumping questionnaire to Andina. The Department received questionnaire responses in November and December 1998, and responses to the Department's supplemental questionnaires in January and February 1999.

Due to the complexity of issues involved in this case, the Department extended the time limit for completion

of the preliminary results until September 30, 1999, in accordance with section 751(a)(3)(A) of the Act. On October 12, 1999, the preliminary results were published. See 64 FR 55249. The Department has now completed this review in accordance with section 751(a) of the Act. We made no changes in the calculation methodology from the preliminary results.

Scope of the Review

The product covered by this review is silicon metal. During the less-than-fair-value (LTFV) investigation, silicon metal was described as containing at least 96.00 percent, but less than 99.99 percent, silicon by weight. In response to a request by the petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China, the Department determined that material with a higher aluminum content containing between 89 and 96 percent silicon by weight is the same class or kind of merchandise as silicon metal described in the LTFV investigation. See Final Scope Rulings—Antidumping Duty Orders on Silicon Metal From the People's Republic of China, Brazil and Argentina (February 3, 1993). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this review. These HTS subheadings are provided for convenience and U.S. Customs purposes. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified sales and cost information provided by Andina at its headquarters in Buenos Aires and at its plant in San Juan, Argentina from May 17 through 28, 1999, using standard verification procedures, including inspection of the manufacturing facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. As a result of our findings at verification, we adjusted the costs of wood chips and electricity. See "Verification of Cost at Electrometalurgica Andina S.A.I.C., San Juan and Buenos Aires, Argentina, May 17–21, 1999," dated August 6, 1999, "Verification of Sales at Electrometalurgica Andina S.A.I.C., San Juan and Buenos Aires, Argentina, May 24–28, 1999," dated August 6, 1999, and "Analysis of Electrometalurgica Andina S.A.I.C. for the Preliminary Results of the Administrative Review of Silicon Metal from Argentina for the Period September 1, 1997 through August 31, 1998," dated September 10, 1999, on file in the Central Records Unit, Room B–099 of the Department.

Final Results of the Review

As a result of this review, we have determined that the following margin exists for the period September 1, 1997 through August 31, 1998:

Manufacturer/exporter	Period	Margin (percent)
Electrometalurgica Andina S.A.I.C.	9/1/97–8/31/98	0.00

In accordance with 19 CFR 351.106(c)(2), the Department will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Andina will be the rate established above in the "Final Results of Review" section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 17.87 percent, the all others rate established in the amended final determination of the LTFV investigation. *See Notice of Amendment to Final Determination and Antidumping Duty Order: Silicon Metal From Argentina*, 60 FR 35551 (July 10, 1995). The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: January 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2417 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–804]

Final Results of Expedited Sunset Review: Sparklers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Sparklers from the People's Republic of China.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on sparklers from the People's Republic of China (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The products covered by this order are sparklers from the People's Republic of China ("PRC"). Sparklers are fireworks each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classified under Harmonized Tariff Schedule ("HTS") of the United States subheading 3604.10.00. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

The Department determined that Fritz Companies, Inc.'s 14 inch Morning Glory's are outside the scope of the order. *See Notice of Scope Rulings*, 60 FR 36782 (July 18, 1995).

History of the Order

On May 6, 1991, the Department issued a final determination of sales at less than fair value on imports of sparklers from the PRC (56 FR 20588). In the final determination of sales at less than fair value the Department assigned the following dumping margins: Gaungxi Native Produce Import & Export Corporation ("Gaungxi")—1.64 percent, Hunan Provincial F&F Import & Export (Holding) Corporation ("Hunan")—93.54 percent, and Jiangxi Native Produce Import & Export Corporation ("Jiangxi")—65.78 percent, and "all others"—75.88 percent. The antidumping duty order on the subject merchandise was published in the **Federal Register** (56 FR 27946) on June 18, 1991. On July 29, 1993, the Department published the amendment to the final determination of sales at less than fair value and antidumping duty order in accordance with decision upon remand, in which the Department adjusted the margins for Guangxi—41.75 percent, Jiangxi—93.54 percent, and all others—93.54 percent (58 FR 40624).

There have been three administrative reviews of this order [1] and no investigations of duty absorption. The antidumping duty order remains in effect for all producers and exporters of sparklers from the PRC.

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on sparklers from the PRC pursuant to section 751(c) of the Act (64 FR 35588). On July 13, 1999 we received a Notice of Intent to Participate on behalf of Diamond Sparklers Company ("Diamond") within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Diamond on July 30, 1999, within the deadline specified in section 351.218(d)(3)(i) of the *Sunset Regulations*. Diamond claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. Diamond was a petitioner in the original investigation. We did not receive any response from respondent interested parties in this review. As a result, and in accordance with our regulations (19 CFR § 351.218(e)(1)(ii)(C)(2)) we determined to conduct an expedited sunset review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.* an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the antidumping duty order on sparklers from the PRC is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act (*see* 64 FR 62167).

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, Diamond's comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"),

[1] *See Sparklers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 60 FR 16605 (March 31, 1995), *Sparklers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 60 FR 54335 (October 23, 1995), and *Sparklers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 39630 (July 30, 1996).

H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See* section II.A.2 of the *Sunset Policy Bulletin* (April 16, 1998 (63 FR 18871). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Diamond argues that over the history of this order the Department has imposed a 93.54 percent dumping margin on all sparklers from the PRC. Dumping continued after the issuance of the order, and continues to the present day. Diamond therefore argues that under the Department's own standard, this order cannot be revoked. Citing to the Department's *Sunset Policy Bulletin*, Diamond maintains that if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.

With respect to import volumes of the subject merchandise, Diamond states that sparklers enter the U.S. under a single tariff code with other fireworks and, therefore, statistical data on sparklers alone is not available. However, Diamond provided data from the ITC's final determination (based on questionnaire responses) that illustrate a substantial increase of imports prior to the antidumping duty order. *See* Diamond's July 30, 1999, Substantive Response at 5.

Finally, Diamond concludes that because a dumping margin of 93.54 percent continues to exist, import volumes are increasing, and exporters and producers of the subject merchandise continue to undersell the subject merchandise in the United States, the Department should determine that there is likelihood of the continuation of dumping of sparklers from the PRC if the order were revoked. *See* Diamond's July 30, 1999, Substantive Response at 5).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is issued is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were revoked. After examining published findings with respect to the weighted-average dumping margins in previous administrative reviews,[2] we determined that Chinese manufacturers/exporters continued to dump the subject merchandise after the issuance of the order.

Based on information available from Customs in its annual reports to Congress on the administration of the antidumping and countervailing duty statutes (available on the Department's sunset web site) annual import values have fluctuated between fiscal years 1993 and 1998.

We agree with Diamond that dumping above *de minimis* rates continued to exist in this case. Given that dumping above *de minimis* continued, respondent interested parties waived their right to participate in the instant review, and absent argument and evidence to the contrary, the Department determines that dumping would likely continue or recur if the order on sparklers from the PRC were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

With respect to the magnitude of the margin likely to prevail if the order were revoked, Diamond urges the Department to reject the margins from the original investigation, and to select instead 93.54 percent the dumping margin from the administrative reviews. Diamond bases its argument on the respondents' failure to either request or participate in administrative reviews since the issuance of the order.

As noted above, consistent with the SAA and House Report, the Department normally will provide to the Commission the company-specific margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, we stated in the *Sunset Policy Bulletin* that where a company chooses to increase dumping in order to maintain or increase market share, an increasing margin may be more representative of a company's behavior in the absence of the order. In this case, however, Diamond has merely asserted that a more recent rate is appropriate based on respondents failure to request or participate in an administrative review. Therefore, we disagree with Diamond on selecting 93.54 percent for all producers and exporters as the margin likely to continue if the order is revoked.

Rather, consistent with the *Sunset Policy Bulletin* we find that the margins from the original investigation are probative of the behavior of exporters of sparklers without the discipline of the order and we will report to the Commission the margins contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

[2] See Footnote 1. In each administrative reviews the Department found dumping margins of 93.54 percent.

Manufacturer/exporter	Margin (percent)
Gaungxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch	41.75
Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation	93.54
Jiangxi Native Produce Import & Export Corporation Guangzhou Fireworks Company	93.54
All others	93.54

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 27, 2000.

Holly Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2294 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Final Results of Expedited Sunset Review: Stainless Steel Wire Rods From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Stainless steel wire rods from India.

SUMMARY: On July 1, 1999, the Department of Commerce (the "Department") initiated a sunset review of the antidumping duty order on stainless steel wire rods from India (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Result of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 3, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

Imports covered by this order are shipments of stainless steel wire rods ("SSWR") from India. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The HTSUS item numbers are provided for convenience and customs purposes only. The written product description of the scope of this order remains dispositive.

History of the Order

The antidumping duty order on SSWR from India was published in the **Federal Register** on December 1, 1993 (58 FR 63335). In that order, the Department determined that the weighted-average dumping margins for Mukand Ltd.("Mukand"), Sunstar Metals Ltd. ("Sunstar"), Grand Foundry, Ltd. ("Grand Foundry"), and all others were 48.80 percent.[1] Since that time, the Department has completed one administrative review and two new shipper reviews.[2] We note that the Department has not conducted any duty-absorption investigation with respect to the subject merchandise. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on SSWR from India (64 FR 35588) pursuant to section 751(c) of the Act. The Department received a joint Notice of Intent to Participate on behalf of AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Inc., Talley Metals Technology, Inc., and the United Steelworkers of America, AFL–CIO/CLC (hereinafter referred to as "domestic interested parties") on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. In their Notice of Intent to Participate, the domestic interested parties note that they are not related to foreign producers/exporters or to domestic importers of the subject merchandise, nor are they importers of the subject merchandise within the meaning of section 771(4)(B) of the Act.

We received a complete substantive response from the domestic interested parties on August 2, 1999, within the 30-day deadline specified in section 351.218(d)(3)(i) of the Sunset Regulations. The domestic interested

[1] See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India, 58 FR 63335 (December 1, 1993).

[2] See Certain Stainless Steel Wire Rod From India; Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 38976 (July 21, 1997); and Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews, 64 FR 856 (January 6, 1999).

parties claim interested party status under sections 771(9)(C) and 771(9)(D) of the Act as producers/manufacturers of a domestic like product and as a union representing workers engaged in the production of the like product in the United States, respectively. The domestic interested parties note that each of the domestic interested parties has been involved in these proceedings since the investigation and that, as a group, they are willing to participate fully in the instant review.

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, we determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the antidumping duty order on SSWR from India is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the comments of the domestic interested parties, with respect to continuation or recurrence of dumping and the magnitude of the margin, are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The domestic interested parties argue that the sales of the subject merchandise at less-than-fair value would continue or resume if the antidumping order on SSWR from India is revoked. In support of their argument, the domestic interested parties compare the import volumes of the subject merchandise for the period before and the period after the issuance of the order. The domestic interested parties note that the import volumes of the subject merchandise declined substantially after the discipline of the order was put into effect. Specifically, the domestic interested parties indicate that, during the three-year period (1990–1992) prior to the initiation of the investigation, the average import volume of the subject merchandise was 4.12 million pounds annually; whereas, during the three-year period (1994–1996) following the imposition of the order, the average annual import volume of the subject merchandise declined to 49,259 pounds—a 98.8 percent decline. (*See* August 2, 1999, substantive response of the domestic interested parties at 14–17 and 20–21.)

Although the domestic interested parties acknowledge that the Department determined that, in its new shipper review, Isibars, Viraj, and Panchmahal, and, in its administrative review, Mukand was not dumping during the respective review period,[4] the domestic interested parties urge that the Department should consider those zero dumping margins in conjunction with the fact that imports of the subject merchandise declined substantially since the issuance of the order. *Id.*

In conclusion, the domestic interested parties contend that, since Indian manufacturers/exporters have not been able to export SSWR to the Unites States with the discipline of the order in place, the Department should determine that Indian manufacturers/exporters cannot sell the subject merchandise without dumping; *i.e.*, dumping of the subject merchandise would be likely to resume or continue were the order revoked. *Id.*

The domestic interested parties' argument concerning the import volumes of the subject merchandise is supported by the data in the Commission's Interactive Tariff and Trade Data Web. In the year preceding the initiation of the investigation, 1992, the import volume of the subject merchandise was 3,941 metric tons. In the year following the order, 1994, the import volume fell to 19 metric tons—a decline of more than 99 percent. From 1994 to 1998, the average import volume of the subject merchandise was about 64 metric tons, which is less than 1 percent of the pre-order volume. Therefore, we determine that import of the subject merchandise declined substantially after the issuance of the order.

As indicated in section II.A.3 of the *Sunset Policy Bulletin* reflecting the SAA at 889–890, Senate Report at 52, and the House Report at 63–64, the Department considers whether dumping continued at any level above *de minimis*

[3] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

[4] *See* footnote 2, *supra*. The Department determined in its new shipper reviews that Isibars Limited ("Isibars"), Viraj Group ("Viraj"), and Panchmahal Steel Ltd. ("Panchmahal") have not sold the subject merchandise at less than normal value during the respective relevant period of review. Also, the Department determined in its lone administrative review that Mukand, Ltd. ("Mukand") did not dump during the review period (1996–1997).

after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. Additionally, if dumping was eliminated and import volumes declined significantly, the Department normally will determine that dumping is likely to continue or recur. Although the cash deposit rate for Viraj, Panchmahal, and Mukand is currently zero, the cash deposit rates for all other producers/exporters is above *de minimis*. Further, the volume of imports has declined significantly since the issuance of the order.

In conclusion, inasmuch as import volumes of the subject merchandise have declined significantly after the issuance of the order, cash deposit rate remains at a level above *de minimis* for some exporters, and the respondent interested parties waived their right to participate in this review, we determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the *all-others* rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its notice of the antidumping duty order on SSWR from India, established both company-specific and all-others weighted-average dumping margins.[5] We note that, to date, the Department has not issued any duty absorption findings in this case.

The domestic interested parties assert that the likely-to-prevail margins, if the order is revoked, should be those from the original investigation. (*See* the domestic interested parties' June 2, 1999, substantive response at 24–25.)

We agree with the domestic interested parties. Absent argument and evidence to the contrary, we determine that, were the order revoked, the margins calculated in the original investigation are indicative of the behavior of Indian manufacturers/exporters of the subject merchandise because the margins from the original investigation are the only ones that reflect Indian manufacturers/exporters' behavior absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all-others margins reported in the *Final Results of Review* section of this notice.

Final Results of Review

Based on the above analysis, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Mukand, Ltd	48.80
Sunstar Metals, Ltd	48.80
Grand Foundry, Ltd	48.80
All others	48.80

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 27, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2419 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* footnote 1, *supra*.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Final Results of Expedited Sunset Review: Stainless Steel Wire Rods From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Stainless steel wire rods from France.

SUMMARY: On July 1, 1999, the Department of Commerce (the "Department") initiated a sunset review of the antidumping duty order on stainless steel wire rods from France (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and a waiver of participation from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Result of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 3, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in the Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

Imports covered by this order are shipments of stainless steel wire rods ("SSWR") from France. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed

and pickled. The most common size is 5.5 millimeters in diameter. The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The HTSUS item numbers are provided for convenience and customs purposes only. The written product description of the scope of this order remains dispositive.

History of the Order

The antidumping duty order on SSWR from France was published in the **Federal Register** on January 28, 1994 (59 FR 4022). In that order, the Department determined that the weighted-average dumping margins for Imphy, S.A. ("Imphy"), Ugine-Savoie ("Ugine"), and all others are 24.51 percent.[1] Since that time, the Department has completed several administrative reviews.[2] We note that the Department has not conducted any duty-absorption investigation with respect to the subject merchandise. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on SSWR from France (64 FR 35588) pursuant to section 751(c) of the Act. The Department received a joint Notice of Intent to Participate on behalf of AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Inc., Talley Metals Technology, Inc., and the United Steelworkers of America, AFL–CIO/CLC (hereinafter referred to as "domestic interested parties") on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. In their Notice of Intent to Participate, the domestic interested parties note that they are not related to foreign producers/exporters or to domestic importers of the subject merchandise, nor are they importers of the subject merchandise within the meaning of section 771(4)(B) of the Act.

We received a complete substantive response from the domestic interested parties on August 2, 1999, within the 30-day deadline specified in section 351.218(d)(3)(i) of the Sunset Regulations. The domestic interested parties claim interest party status under sections 771(9)(C) and 771(9)(D) of the Act as producers/manufacturers of a domestic like product and as a union representing workers engaged in the production of the like product in the United States, respectively. The domestic interested parties note that each of the domestic interested parties has been involved in these proceedings since the investigation and that, as a group, they are willing to participate fully in the instant review.

We did not receive a substantive response from any respondent interested party to this proceeding. However, Ugine, Imphy, and their affiliated U.S. importers, Métalimphy Alloys Corp ("MAC") and Techalloy Company jointly submitted a waiver of participation in the instant review. (See the respondent interested parties' August 2, 1999, waiver of participation.) Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, we determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the antidumping duty order on SSWR from France is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the comments of the domestic interested parties, with respect to continuation or recurrence of dumping and the magnitude of the margin, are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead

[1] See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France, 59 FR 4022 (January 28, 1994).

[2] See Certain Stainless Steel Wire Rod From France; Final Results of Antidumping Duty Administrative Review, 61 FR 47874 (September 11, 1996), as amended, Certain Stainless Steel Wire Rod from France; Amended Final Results of Antidumping Duty Administrative Review, 61 FR 58523 (November 15, 1996); Certain Stainless Steel Wire Rod From France; Final Results of Antidumping Duty Administrative Review, 62 FR 7206 (February 18, 1997), as amended, Certain Stainless Steel Wire Rod from France; Amended Final Results of Antidumping Duty Administrative Review, 62 FR 25915 (May 12, 1997); Certain Stainless Steel Wire Rod From France; Final Results of Antidumping Duty Administrative Review, 63 FR 30185 (June 3, 1998), as amended, Certain Stainless Steel Wire Rod from France; Amended Final Results of Antidumping Duty Administrative Review, 63 FR 45993 (August 28, 1998); as amended, Certain Stainless Steel Wire Rod from France; Amended Final Results of Antidumping Duty Administrative Review, 64 FR 47169 (August 30, 1999).

[3] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the respondent interested parties submitted a waiver of participation.

The domestic interested parties contend that revocation of the order would be likely to lead to continued dumping by French manufacturers/exporters of the subject merchandise. In support of their argument, the domestic interested parties note that the Department found French manufacturers/exporters dumping in every administrative review of the order. Moreover, the domestic interested parties indicate that the order has had a significant effect on the import volumes of subject merchandise. Specifically, the domestic interested parties state that, prior to the initiation of the investigation, the average import volume for the three year (1990–1992) period was 14.16 million pounds but that, subsequent to the order, the average import volume for the three year (1994–1996) period was 8.7 million pounds—a 38.6 percent decline. (See August 2, 1999, substantive response of the domestic interested parties at 14–17 and 18–20.) Since the import volumes of the subject merchandise decreased substantially and since the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping, the domestic interested parties contend the Department should conclude that French manufacturers/exporters cannot export SSWR to the United States without dumping and, hence, that revocation of the order would be likely to lead to continued dumping. *Id.*

The domestic interested parties' argument concerning the import volumes of the subject merchandise is in accord with the data in the Commission's Interactive Tariff and Trade Data Web. In the year preceding the initiation of the investigation, 1992, the import volume of the subject merchandise was 10,103 metric tons. In the year following the order, 1994, the import volume decreased to 5,346 metric tons—a decline of about 47 percent. In addition, from 1994 to 1998, the average import volume of the subject merchandise was about 3,914 metric tons, which is about 39 percent of the pre-order volume. Therefore, we determine that import volumes of the subject merchandise declined substantially after the issuance of the order.

As indicated in section II.A.3 of the *Sunshine Policy Bulletin* reflecting the SAA at 889–890, Senate Report at 52, and the House Report at 63–64, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline of the order removed. After examining the published findings with respect to the weighted-average dumping margins in previous administrative reviews,[4] we determine that French manufacturers/exporters continued to dump the subject merchandise after the issuance of the order.

In conclusion, inasmuch as dumping continued after the issuance of the order, import volumes of the subject merchandise have declined significantly after the imposition of the order, and the respondent interested parties waived their right to participate in this review, we determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the *all-others* rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its notice of the antidumping duty order on SSWR from France, established both company-specific and all-others weighted-average dumping margins.[5] We note that, to date, the Department has not issued any duty absorption findings in this case.

The domestic interested parties assert that the likely-to-prevail margins, if the order is revoked, should be those from the original investigation. (See the domestic interested parties' June 2, 1999, substantive response at 24–25.)

We agree with the domestic interested parties. Absent argument and evidence to the contrary, we find that the margins calculated in the original investigation are probative of the behavior of French manufacturers/exporters of the subject merchandise were the order revoked because the margins from the original investigation are the only ones that reflect their behavior absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all-others margins reported in the Final Results of Review section of this notice.

Final Results of Review

Based on the above analysis, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Imphy	24.39
Ugine-Savoie	24.39
All others	24.39

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 27, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2420 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* footnote 2, *supra*. In its first administrative review of the order, as amended, the Department determined that French manufacturers/exporters of the subject merchandise were dumping the subject merchandise at the weighted-average margin of 14.15; in the second administrative review, as amended, 7.29; and in the third administrative review, as amended, 7.19.

[5] See footnote 1, *supra*.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–819]

Final Results of Expedited Sunset Review: Stainless Steel Wire Rods From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Stainless Steel Wire Rods From Brazil.

SUMMARY: On July 1, 1999, the Department of Commerce (the "Department") initiated a sunset review of the antidumping duty order on stainless steel wire rods from Brazil (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Result of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 3, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in the *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by this order are shipments of stainless steel wire rods ("SSWR") from Brazil. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The HTSUS item numbers are provided for convenience and customs purposes only. The written product description of the scope of this order remains dispositive.

History of the Order

The antidumping duty order on SSWR from Brazil was published in the **Federal Register** on January 28, 1994 (59 FR 4021). In that order, the Department determined that the weighted-average dumping margins for Eletrometal-Metal Especials S.A. ("Eletrometal"), Acos Finos Piratini S.A. ("Piratini"), Acos Villares S.A. ("Villares"), and all others are 24.63, 26.50, 26.50, and 25.88 percent *ad valorem*, respectively.[1] Since that time, the Department has not completed administrative review of the order. We note that the Department has not conducted any duty-absorption investigations with respect to the subject merchandise. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on SSWR from Brazil (64 FR 35588) pursuant to section 751(c) of the Act. The Department received a joint Notice of Intent to Participate on behalf of AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Inc., Talley Metals Technology, Inc., and the United Steelworkers of America, AFL–CIO/CLC (hereinafter referred to as "domestic interested parties") on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. In their Notice of Intent to Participate, the domestic interested parties note that they are not related to foreign manufacturers/exporters or to domestic importers of the subject merchandise, nor are they importers of the subject merchandise within the meaning of section 771(4)(B) of the Act.

We received a complete substantive response from the domestic interested parties on August 2, 1999, within the 30-day deadline specified in section 351.218(d)(3)(i) of the *Sunset Regulations*. The domestic interested parties claim interested party status under sections 771(9)(C) and 771(9)(D) of the Act as producers/manufacturers of a domestic like product and as a union representing workers engaged in the production of the like product in the United States, respectively. The domestic interested parties note that each of the domestic interested parties has been involved in these proceedings since the investigation and that, as a group, they are willing to participate fully in the instant review.

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, we determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the antidumping duty order on SSWR from Brazil is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade

[1] *See Antidumping Duty Order: Certain Stainless Steel Wire Rods from Brazil*, 59 FR 4021 (January 28, 1994).

[2] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the comments of the domestic interested parties, with respect to continuation or recurrence of dumping and the magnitude of the margin, are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The domestic interested parties argue that if the order is revoked, Brazilian manufacturer/exporters of the subject merchandise would be likely to continue or to resume selling SSWR at less than fair market value in the United States. The domestic interested parties indicate that, prior to the initiation of the antidumping duty order (1990–1992), Brazilian manufacturers/exporters exported, on the average, 4.73 million pounds of the subject merchandise per annum. The domestic interested parties further note that, subsequent to the issuance of the order (1994–1996), Brazilian manufacturers/exporters' annual average export of SSWR to the United States declined dramatically to 10,692 pounds per year: a 99.8 percent decline. In addition, during 1996–1998, no Brazilian SSWR was exported to the United States. The domestic interested parties urge that, based on the aforementioned cessation of imports of the subject merchandise, the Department should conclude that revocation of the order would be likely to lead to resumption of dumping of the subject merchandise in the United States. (See August 2, 1999, substantive response of the domestic interested parties at 14–18.)

In conclusion, the domestic interested parties contend that, since Brazilian manufacturers/exporters have not been able to export SSWR to the United States with the discipline of the order in place, the Department should determine that Brazilian manufacturers/exporters of the subject merchandise have to resume dumping if and when they reenter the U.S. market. *Id.*

According to the data in the Commission's Interactive Tariff and Trade Data Website, during 1992, the year prior to the initiation of the investigation, the import volume of the subject merchandise was about 1,275 metric tons. In the year following the order, 1994, the import volume decreased to about 7 metric tons—more than a 99 percent decline. Furthermore, from 1995 to 1998, imports of the subject merchandise completely stopped. Therefore, we determine that imports of the subject merchandise ceased after the issuance of the order.

As noted above, the Department normally will determine that the cessation of imports after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping if the order is to be revoked.

Furthermore, pursuant to section II.A.3 of the *Sunset Policy Bulletin* reflecting the SAA at 889–890, Senate Report at 52, and the House Report at 63–64, the Department considered whether dumping had continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. In the instant case, the cash deposit requirements for the subject merchandise entering the United States have been in effect since the imposition of the order.

In conclusion, inasmuch as imports of the subject merchandise ceased after the issuance of the order, the cash deposit rates continue to exist, and the respondent interested parties waived their right to participate in this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the *all-others* rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its notice of the antidumping duty order on SSWR from Brazil, established both company-specific and all-others weighted-average dumping margins.[3] We note that, to date, the Department has not issued any duty absorption findings in this case.

The domestic interested parties contend the Department should select the weighted-average margins from the original investigation when the Department determines the margins that are likely to prevail were the order to be revoked. (*See* the domestic interested parties' June 2, 1999, substantive response at 24–25.)

We agree with the domestic interested parties. Absent argument and evidence to the contrary, we determine that the margins calculated in the original investigation are representative of Brazilian manufacturers/exporters' behavior without the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all-others margins reported in the *Final Results of Review* section of this notice.

Final Results of Review

Based on the above analysis, the Department finds that revocation of the antidumping order would likely lead to

[3] See footnote 1, *supra*.

continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Eletrometal	24.63
Piratini	26.50
Villares	26.50
All others	25.88

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 27, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2421 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Massachusetts Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–030. *Applicant:* University of Massachusetts, Amherst, MA 01003–5810. *Instrument:* Electron Microscope, Model Tecnai 12. *Manufacturer:* FEU Company, The Netherlands. *Intended Use:* See notice at 64 FR 72649, December 28, 1999. *Order Date:* August 4, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–2418 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010600C]

Availability of a Draft Environmental Assessment/Finding of No Significant Impact and Receipt of an Application for an Incidental Take Permit (1232).

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). As required by section 10 (a)(2)(B) of the ESA, ODFW and WDFW have also prepared a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful sport and commercial fisheries on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest. The duration of the proposed Permit and Plan is one year. The Permit application includes the proposed Plan submitted by ODFW and WDFW. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number no later than 5:00pm Pacific standard time on March 6, 2000.

ADDRESSES: Written comments on the application, Plan, or draft EA should be sent to Robert Koch, Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the Permit application, Plan, and draft EA should be directed to the Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 503–230–5424.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are included in the Plan and Permit application:

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River (SnR) spring/summer, threatened SnR fall, endangered, naturally produced and artificially propagated upper Columbia River (UCR) spring, threatened lower Columbia River (LCR), threatened upper Willamette River (UWR).

Sockeye salmon (*O. nerka*): endangered SnR.

Steelhead (*O. mykiss*): threatened SnR, endangered naturally produced and artificially propagated UCR, threatened middle Columbia River (MCR), threatened LCR, threatened UWR.

To date, protective regulations for threatened LCR and UWR chinook

salmon, and threatened SnR, MCR, LCR, and UWR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of these species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened LCR and/or UWR chinook salmon, and/or threatened SnR, MCR, LCR, and/or UWR steelhead. The initiation of a 30-day public comment period on the application, including its proposed takes of threatened LCR and UWR chinook salmon, and threatened SnR, MCR, LCR, and UWR steelhead does not presuppose the contents of the eventual protective regulations.

Background

From 1996–1999, the ODFW and WDFW sport and commercial fisheries have been managed under the terms of the Columbia River Fishery Management Plan (CRFMP). Since NMFS was a signatory party to the CFRMP, and approval of the CRFMP was a federal action subject to section 7 consultation, incidental take associated with the ODFW and WDFW fisheries was authorized in biological opinions issued on the CFRMP. NMFS has advised the states that, with the expiration of the CRFMP, and absent any subsequent agreement among the parties to *U.S.* v. *Oregon*, there is no longer a federal action that provides a nexus for section 7 consultation. Because the immediate prospects for reaching an agreement were uncertain, ODFW and WDFW have applied for a one-year ESA section 10(a)(1)(B) permit for incidental takes of ESA-listed adult and juvenile salmonids associated with sport and commercial fisheries during 2000 on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest.

Conservation Plan

The Conservation Plan prepared by ODFW and WDFW describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed anadromous salmonids associated with some or all of the following fisheries which are expected to occur during 2000 with approximate dates as specified:

Winter commercial sturgeon fishery in the lower Columbia River: January thru February.

Winter commercial salmon fishery in the lower Columbia River: February 15 thru March 10.

Spring chinook salmon sport fishery in the lower Columbia River: January 1 thru March 11.

Spring chinook salmon sport fishery on returns from net-pen release programs in the lower Columbia River: entire year

Steelhead sport fishery in the lower Columbia River: May 16 thru December 31.

Spring chinook salmon commercial fishery at Youngs Bay, Tongue Point Basin, and Blind Slough in the lower Columbia River: mid-February thru mid-June.

Spring chinook salmon test fishery near the Reed Island area in the lower Columbia River: April

Spring chinook salmon test fishery in select areas of the lower Columbia River: February thru July.

Spring chinook salmon/steelhead fishery in the middle Columbia River near the outlet to Ringold Hatchery (Spring Creek): May 15 thru July 31 for chinook salmon, June 16 thru December 31 for steelhead.

Spring chinook salmon subsistence fishery in the middle Columbia River below Priest Rapids Dam for the Wanapum Tribe: May thru July.

Smelt commercial fishery/test fishery in the mainstem Columbia River and tributaries, smelt recreational fishery primarily in the tributaries of the Columbia River, and anchovy/herring commercial bait fishery in the Columbia River estuary: entire year.

Shad commercial fishery in the lower Columbia River: May and June.

Shad commercial fishery in the Washougal Reef area of the lower Columbia River: May and June.

Shad recreational fishery in the lower Columbia River: entire year; a sturgeon recreational fishery in the lower Columbia River: entire year.

Sturgeon tagging stock assessment project in the lower Columbia River: May thru July.

Warm water recreational fishery (primarily for spiny-rays) in the lower and middle Columbia River up to Priest Rapids Dam: entire year.

ESA-listed fish incidental mortalities associated with the ODFW and WDFW fishery programs are requested at levels specified in the Permit application. ODFW/WDFW are proposing to limit state in-river fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Six alternatives for the ODFW and WDFW fisheries were provided in the Plan, including: (1) The no action alternative; (2) the proposed conservation plan alternative (based on 1996–1999 Management Agreement Limits); (3) historic fishing levels; (4) CRFMP fishing levels; (5) levels based on the Willamette Subbasin Plan; and (6) 1996–99 Actual Harvest Rates.

Environmental Assessment/Finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Three Federal action alternatives have been analyzed in the EA, including: (1) The no action alternative; (2) issue a permit without conditions; and (3) issue a permit with conditions.

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the Federal Register.

Dated: January 28, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2290 Filed 1–28–00; 4:20 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012800C]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee and Groundfish Advisory Panel on February 16, 2000, to consider actions affecting New England fisheries in the exclusive

economic zone. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on February 16, 2000, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone 970–777–2500.

Council Address: New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950, telephone 978–465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Groundfish Oversight Committee and Groundfish Advisory Panel will hear a presentation by the Northeast Fisheries Science Center on current information regarding fish stock boundaries in the region. The Committee and Panel will review problems and issues identified during the scoping process of Amendment 13 to the Northeast Multispecies Fishery Management Plan and organize the amendment development strategy. This organization may include the formation of working groups consisting of advisory panel and committee members, and will include the initial tasking of work to be completed by the Council Staff and Plan Development Team.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2342 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012800A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering and Experimental Fisheries Committee in February, 2000. Recommendations from the Committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, February 16, 2000, at 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500.

Council Address: New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950, telephone 978–465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council 978–465–0492.

SUPPLEMENTARY INFORMATION: The Committee will finalize recommendations on regional research priorities and forward them to the NMFS Regional Administrator for consideration. The Committee also will discuss related issues, including a draft Request for Proposals concerning the expenditure of funds appropriated by Congress for the conduct of collaborative research involving the New England groundfish. Other issues to be approved relate to the Committee's role in the review of proposals submitted in response to the RFP. The Committee may also discuss how to disburse funds collected under 2000 Total Allowable Catch research set-aside proposed in Framework 13 to the Sea Scallop Fishery Management Plan.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2343 Filed 2–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Fellows Program

AGENCY: Technology Administration.

ACTION: Notice.

SUMMARY: The Technology Administration is seeking private sector organizations to sponsor individuals to participate in the Technology Administration Fellows Program. Sponsors will nominate individuals who, if accepted by the Technology Administration, will spend up to one year at the Technology Administration, conducting research studies involving public policy on technology matters.

DATE: Letters of interest will be accepted on a rolling basis.

ADDRESSES AND CONTACT INFORMATION: Applications should be submitted to, and for further information contact: Ms. Joyce Hasty, Office of the Under Secretary for Technology, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4823, Washington, D.C. 20230; telephone (202) 482–5804.

SUPPLEMENTARY INFORMATION:

Authority: This Program is authorized under 15 U.S.C. 272(c)(2).

Program Description/Objectives

Under the Technology Administration Fellows Program (Program), private sector organizations (Sponsors) nominate individuals to spend up to one year working at the Technology Administration (TA), within the Department of Commerce (Department). Initial agreements will be for six months, with the opportunity to extend that period for an additional six months.

During their tenure at the Technology Administration, Fellows will be involved in a variety of activities, including conducting research studies involving public policy on technology matters and attending meetings involving the full range of issues in which the TA is involved. In pursuing these activities, Fellows may draw on information resources, both within and outside the Department, relevant to their areas of research, including working with private sector organizations and their members who possess special expertise, including the Sponsor. Fellows will be required to make quarterly presentations to Technology Administration senior management.

The goals of the Program are: support the TA's efforts to promote U.S. leadership in technology; support the Under Secretary for Technology's goals for TA; provide TA with different perspectives on technology policy issues; and provide experience to industrial representatives in the development of public policy on technology matters.

Eligibility

Sponsors must be organizations that do not have institutional conflicts of interest with the TA. For example, any organization applying for Advanced Technology Program funding this year may not sponsor Fellows. Eligible Sponsors may nominate Fellows. Nominated Fellows should be individuals within the Sponsor's upper level management up to the vice president level.

Eligibility Criteria

Sponsors will be evaluated based on the compatibility of their interests with that of the TA.

Funding

Under the Program, the Sponsor or Fellow pays for the Fellow's salary; relocation costs; living expenses; medical insurance and all other personnel benefits, including Social Security; and the Fellow's personal travel and related expenditures. The Technology Administration provides the Fellow with office facilities; secretarial and other staff support, as appropriate; and travel approved by the Technology Administration.

Application

Applicant Sponsors should submit a letter of interest. Letters of interest should be submitted to: Ms. Joyce Hasty, Office of the Under Secretary for Technology, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4823, Washington, D.C. 20230.

Other Requirements

While participating in the Technology Administration Fellows Program, Fellows must understand and promote the position of the Department and TA on matters of public policy as set by the Secretary of Commerce and the Under Secretary for Technology, when representing TA. Fellows may not engage in any outside activity, including business activity, that is incompatible with the policies and interests of the Department.

Fellows must adhere to the Department's security and clearance requirements, including: security clearances specified in Department Administrative Order 207–3, "Security Requirements for Research Associates, Guest Workers, and Trainees;" and Department regulations on Employee Responsibilities and Conduct, 15 CFR Part 0.

Fellows may not; obligate the expenditure of Federal funds; supervise Federal employees; speak for the Department in a public setting; nor use the name of the Technology Administration or the Department on any product or service without prior approval of the Technology Administration.

Dated: January 27, 2000.

Cheryl L. Shavers,

Under Secretary of Commerce for Technology.

[FR Doc. 00–2295 Filed 2–2–00; 8:45am]

BILLING CODE 3510–GN–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange: Proposed Amendments to the coffee "C" Futures Contract Reducing the Discount Applicable to the Delivery of Peruvian Coffee, Deleting San Francisco as a Delivery Port, Changing the Requirements for Bags Containing Delivery Coffee, and Amending Coffee Sampling Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Coffee, Sugar & Cocoa Exchange (CSCE or Exchange) has proposed amendments to the Exchange's coffee "C" futures contract. The proposed amendments would: reduce the discount for Peruvian coffee delivered in satisfaction of coffee "C" futures contracts from 400 points to 100 points (from 4 cents per pound to 1 cent per pound); delete San Francisco, California as a delivery port; establish a minimum standard weight of 700 grams per bag for bags used in packaging deliverable coffee; permit new samples of coffee to be drawn for the purpose of appealing initial grading decisions regarding the coffee based on the first sample submitted; and change the method of transmitting completed and signed sampling orders to the Exchange. The proposed amendments were submitted under the Commission's 45-day Fast Track procedure which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on February 28, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 18, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the Coffee, Sugar & Cocoa Exchange coffee "C" futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Layfayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: The coffee "C" futures contract currently provides for the delivery of 19 growths of coffee, including coffee produced in Peru, at CSCE-licensed warehouses in Miami, New York, New Orleans, and San Francisco. Individual coffee growths are deliverable at par or at specified premiums or discounts, with coffee of the growth of Peru presently being deliverable at a discount of 400 points (4 cents per pound). The contract currently requires that the bags in which deliverable coffee is packed must be made of sisal, henequen, jute, burlap or

woven material having similar properties, with no requirements being specified regarding the minimum weight of such bags.

The futures contract also requires that coffee intended for delivery must be sampled and graded by CSCE-licensed individuals in accordance with specified procedures and be certified as meeting the contract's quality standards. Currently, samples of coffee intended for certification must be taken by Exchange-licensed master samplers. The contract requires that, after the samples have been taken, the master sampler must return a signed and completed copy of the sampling order to the Exchange, at the time the samples are delivered to the CSCE for grading. In addition, if the samples of a coffee lot initially are found to be not deliverable or to be of lower than expected quality, the contract provides that the party seeking to have coffee certified as deliverable may resubmit the coffee samples for re-grading.

The proposed amendments will reduce to 100 points (1 cent per pound) the discount for delivery of coffee of the growth of Peru and will delete San Francisco as a delivery point. The proposed amendments also will establish a new requirement that deliverable coffee must be packed in bags that have a minimum weight of 700 grams. In regard to the contract's sampling procedures, the proposed amendments will stipulate that the master sampler must put a copy of the signed and completed sampling order into the bag containing the sample and deliver the sample to the Exchange. In addition, the proposed amendments will provide that, in the case where the owner of a given lot of coffee appeals an initial grading decision, the owner of the coffee at its own expense may elect to have a new sample of the coffee drawn and evaluated for purposes of the appeal.

The CSCE intends to apply the proposed amendment reducing the discount for delivery of Peruvian coffee to existing contract months that have no open interest and to all newly listed contract months. The proposed amendments deleting San Francisco as a delivery point and modifying the contract's sampling procedures would be made effective within 30 days of the date of the Commission's approval of the amendments with respect to all existing and newly listed contract months. The proposed amendment requiring that deliverable coffee be packed in bags weighing at least 700 grams would be made applicable to coffee certified for delivery on and after March 1, 2000.

With regard to the proposal to reduce the discount currently applicable to Peruvian coffee, the Exchange said that "[T]he physical market currently values Peruvian coffee at par with the Coffee "C" contract or at a premium. * * * [H]ence the Peruvian discount * * * needed to be narrowed from its current 400 points to 100 points to reflect commercial reality." Concerning the proposal to delist San Francisco as a delivery port, the Exchange said that "[O]ver the past few years, there has been almost no interest on the part of the coffee trade to make or take delivery out of the Port of San Francisco. For some time, the Exchange has had no licensed warehouses in the Port."

In support of the proposed minimum 700-gram weight for bags used to package delivery coffee, the CSCE said that it has been made aware that Exchange coffee has been packaged in bags that easily disintegrate or breakdown and that the proposed standard would strengthen the integrity of the bags used. Regarding the proposal to permit new samples to be drawn on appeal of a coffee grading decision, the Exchange indicated that the existing rules permit appeals to be evaluated based on the original sample but do not provide for the submission of new samples of the same coffee, which may be particularly useful when the coffee has failed the contract's taste standard (sweet in the cup) or due to the presence of a few defective beans. Finally, concerning the change in sampling procedure, the Exchange said that requiring that master samplers label sample bags with a sequence number and insert the completed and signed sampling order in the sample bag would help to " * * * avoid the appearance of a conflict of interest."

The Commission is requesting comments on the proposed amendments. In particular, comments are requested regarding extent to which proposed 100-point discount for delivery of Peruvian coffee reflects cash market pricing relationships between the value of washed Peruvian coffee versus washed coffee of the par coffee growths (*i.e.*, coffee from Mexico, Salvador, Guatemala, Costa Rica, Nicaragua, Kenya, New Guinea, Tanzania, Uganda, and Panama). Comments also are requested regarding ordinary cash market requirements relative to the standards that bags used to package coffee must meet and the effect on the futures contract's delivery process of requiring a minimum weight per bag of 700 grams. In addition, comments are requested concerning the effect on deliverable supplies of the proposal to delete San Francisco as a delivery point and the effects, if any, on the delivery process of the proposed amendments to the contract's sampling procedures.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 27, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–2332 Filed 2–02–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Information Technology Advisory Committee (Formerly the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet)

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the President's Information Technology Advisory Committee. The meeting will be open to the public. Notice of this meeting is

required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: February 25, 2000.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The President's Information Technology Advisory Committee (PITAC) will meet in open session from approximately 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 4:30 p.m. on February 25, 2000. This meeting will include: (1) Updates on PITAC's next steps and panels on: learning, digital libraries; open source software; government; healthcare; the digital divide; and international issues. (2) The Federal Budget for information technology research and development in FY 2001. (3) Information technology strategies in Federal agencies.

FOR FURTHER INFORMATION: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: January 28, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2298 Filed 2–2–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Meeting

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on April 13 and 14, 2000. The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic war plans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matters listed in 5 USC 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: January 28, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–02297 Filed 2–2–00; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Thiokol Propulsion, a Division of Cordant Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Thiokol Propulsion, a Division of Cordant Technologies, Inc., a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned invention described in U.S. No. 5,693,794 entitled "Caged Polynitramine Compound."

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than April 3, 2000.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Associate Counsel Intellectual Property, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4004, e-mail wynnj@onr.navy.mil or fax (703) 696–6909.

(Authority: 35 U. S. C. 207, 37 CFR Part 404)

Dated: January 18, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U. S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–2426 Filed 2–2–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 28, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Supplemental Study of the Technology Literacy Challenge Fund (TLCF).

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 636.

Burden Hours: 970.

Abstract: This study will collect and analyze information about the implementation and outcomes of the Technology Literacy Challenge Fund at the state and local levels. Drawing upon sources such as the annual state TLCF performance reports, local technology plans, and survey work, this study will produce a national representative picture of TLCF's contributions to the availability and use of technology in schools and provide information on targeting, flexibility and other key aspects of the program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.1

[FR Doc. 00–2336 Filed 2–2–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On January 21, 2000, a 30-day notice inviting comment from the public was published for the Reference and Reporting Guide for Preparing State and Institutional Report on Teacher Quality and Preparation in the **Federal Register** (Volume 65, Number 14) dated January 21, 2000. The Leader, Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995. This correction notice extends the public comment period from February 22, 2000 to February 28, 2000.

DATES: Interested persons are invited to submit comments on or before February 28, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV*.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address OCIO__IMB__Issues@ed.gov, or should be faxed to 202–708–9346. Another available Web site is provided by the Office of Postsecondary Education at: http//www.ed.gov/offices/OPE/News/teacherprep/index.html.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266.

Dated: January 28, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

[FR Doc. 00–2337 Filed 2–2–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.031]

Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs; Correction

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for Fiscal Year 2000; Correction.

SUMMARY: On December 30, 1999, a notice was published in the **Federal Register** (64 FR 73525–73527) to invite applications for the 2000–2001 award year. This notice corrects the December 30 document.

Page 73526 is corrected as follows:

(1) Column two, line 30, "accessed at:" should be "accessed beginning February 1, 2000 at:".

(2) Column two, line 30, "http://gapsweb.ed.gov/." should be "http://e-grants.ed.gov".

(3) Column two, line 31, add "Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.".

FOR FURTHER INFORMATION CONTACT: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th floor, Washington, DC 20006–8513. Telephone: (202) 502–7777. Email: darlene__collins@ed.gov If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Dated: January 28, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–2355 Filed 2–2–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.334]

Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of Pre-Application Technical Assistance Workshops.

SUMMARY: The Department of Education, through the National Council for Community and Education Partnerships (NCCEP), has scheduled five regional technical assistance workshops between February 7, 2000 and February 22, 2000 to help prospective applicants better understand the Department's approach to implementing the competitive grant process to be held in spring 2000 under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Grant Program, authorized by Title IV, Part A, subpart 2, chapter 2 of the Higher Education Act of 1965, as amended.

Available Guidelines: You may download a draft of the application guidelines from the program web site at http://www.ed.gov/gearup/ or by contacting the GEAR UP Program Office at(202) 502–7676 or e-mail at gearup@ed.gov.

SUPPLEMENTARY INFORMATION: At these workshops, the public will learn more about the purposes and requirements of this program, how to apply for funds, program eligibility requirements, the application selection process, and considerations that might help them to improve the quality of their grant applications. In addition, the importance of making data collection and assessment as a part of their program practice will also be discussed. Persons with expertise on these and other issues related to the GEAR UP Program will be available to answer any questions on these topics.

Date of Technical Assistance Workshops: The workshops are scheduled to be held in:

1. *Phoenix, AZ:* February 7, 2000; Wyndham Garden Hotel, North Phoenix; 2641 W. Union Hills Drive; Phoenix, AZ 20001. Contact Person: James Davis, (202) 502–7676.

2. *Kansas City, MO:* February 9, 2000; Hyatt Regency Crown Center; 2345 McGee; Kansas City, MO 64108. Contact Person: Steve Silver, (202) 502–7676.

3. *Jackson, MS:* February 16, 2000; Ramada Inn Southwest Conference Center; 1525 Ellis Avenue; Jackson, MS 39204. Contact Person: Walter Howell, (202) 502–7676.

4. *Washington, DC:* February 18, 2000; Hyatt Regency on Capitol Hill; 400 New Jersey Ave., NW; Washington, DC 20001. Contact Person: Kelcey Klass, (202) 502–7676.

5. *Edinburg, TX:* February 22, 2000; Holiday Inn; 1806 South Closner Blvd.; Edinburg, TX 78539. Contact Person: Sylvia Ross, (202) 502–7676.

Any interested parties are invited to attend these workshops.

Assistance to Individuals With Disabilities at the Technical Assistance Workshops

The technical assistance workshop sites are accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled workshops. If you will need an auxiliary aid or service to participate in the workshop (*e.g.* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed for the workshop at least two weeks before the scheduled workshop date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

For Additional Workshop Information: You may contact the person mentioned as contact for each workshop site listed.

Participants should register for these workshops online at http://www.edpartnerships.org or by completing the copy of the registration form appended to this notice and faxing the completed form to the attention of Adella Santos at (202) 530–0809.

FOR FURTHER INFORMATION CONTACT: Gear up Program Office; Department of Education, Office of Postsecondary Education; 1990 K Street, NW; Washington, DC 20006. Inquiries may be sent by e-mail to gearup@ed.gov (please type in the subject line: PRE-APPLICATION WORKSHOP) or by fax to: (202) 502–7675.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm, http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: January 28, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–U

Pre-Application Technical Assistance Workshops
Registration Form

I am registering to attend the following workshop as one member of a _____
(Number of Persons)

person team representing _____
(Identify Institution Likely to Serve as the Fiscal Agent)

1. Workshop Dates (Please select one):

❒ February 7, 2000 – Phoenix, AZ
Registration Deadline: January 31, 2000

❒ February 9, 2000 – Kansas City, MO
Registration Deadline: January 31, 2000

❒ February 16, 2000 – Jackson, MS
Registration Deadline: January 31, 2000

❒ February 18, 2000 – Washington, DC
Registration Deadline: January 31, 2000

❒ February 22, 2000 – Edinburg, TX
Registration Deadline: January 31, 2000

2. Contact Information:

Internet e-mail address: _____
Note: Confirmation for your registration will be sent via e-mail.

First Name: _____ Last Name: _____
Title: _____
Institution: _____
Address: _____
_____
City: _____ State: _____ Zip Code: _____
Telephone: _____ Fax: _____

Please identify your personal communications preference: ❒ Regular Mail ❒ Fax ❒ E-Mail

Do you require special accommodations? ❒ No ❒ Yes (If yes, please state your needs below)

For more information or inquiries about the workshops please contact:

National Council for Community & Education Partnerships
One Dupont Circle, NW., Suite 118
Washington, DC 20036
Telephone: 202/939-9450
Fax: 202/530-0809
E-Mail: gearup@nccep.nche.edu
Website: www.edpartnerships.org

Travel and lodging related costs are to be incurred by the participant(s). For lodging reservations, please contact the hotel corresponding to the location that you selected. When making your reservation, identify yourself as part of the NCCEP group attending a GEAR-UP workshop in order to receive the special room rate.

February 7, 2000 Phoenix, AZ	February 9, 2000 Kansas City, MO	February 16, 2000 Jackson, MS	February 18, 2000 Washington, DC	February 22, 2000 Edinburg, TX
Hotel: Wyndham Garden Hotel North Phoenix **Address**: 2641 West Union Hills Drive, Phoenix, AZ 20001 **Tel**: 602/978-2222 **Fax**: 602/978-9139 **Rate**: $89.00* single/double *plus tax **Deadline**: 1/21/2000 Workshop to be held at Arizona State Univer-sity –West Campus. *20 miles from Sky Harbor International Airport.*	**Hotel**: Hyatt Regency Crown Center **Address**: 2345 McGee, Kansas City, MO 64108 **Tel**: 816/421-1234 **Fax**: 816/435-4190 **Rate**: $108.00* single - $133.00* double *plus tax **Deadline**: 1/21/2000 *RCI shuttle service to hotel – $20 roundtrip.*	**Hotel**: Ramada Inn South- West Conference Center **Address**: 1525 Ellis Avenue Jackson, MS 39204 **Tel**: 601/944-1150 **Fax**: 601/355-3602 **Rate**: $45.00* single/ double *plus tax **Deadline**: 1/14/2000 Workshop to be held at Jackson State University. *Ten miles from Jackson International Airport.*	**Hotel**: Hyatt Regency Washington DC on Capitol Hill **Address**: 400 New Jersey Ave. NW Washington, DC 20001 **Tel**: 202/737-1234 **Fax**: 202/393-7927 **Rate**: $139.00* single/double *plus tax **Deadline**: 1/17/2000 *Six miles from Reagan Washington National Airport.*	**Hotel**: Holiday Inn **Address**: 1806 South Closner Boulevard Edinburg, TX 78539 **Tel**: 956/383-8800 **Fax**: 956/383-1540 **Rate**: $60.00* single/double *plus tax **Deadline**: 1/21/2000 Workshop to be held at University of Texas – Pan American *20 miles from McAllen Airport.*

Reduced Airfare: American Airlines has been designated as the official airline for these workshops. They will offer attendees zone fares and/or special discounts off the lowest published American Airline round-trip fare. To obtain the discount rate, call 800/433-1790 and refer to STAR File #672OUU.

[FR Doc. 00–2354 Filed 2–2–00; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–30–000]

ANR Pipeline Company; Notice of Technical Conference

January 28, 2000.

Take notice that a technical conference will be held on Tuesday, February 8, 2000, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–2373 Filed 2–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR98–1–000, OR96–2–000, and OR06–10–000]

ARCO Products Company, a Division of Atlantic Richfield Company, Equilon Enterprises L.L.C., Mobil Oil Corporation, and Texaco Refining and Marketing, Inc., Complainants v. SFPP, L.P., Respondent; Notice of Second Amended Complaint, and Third Original Complaint Against SFPP, L.P.

January 28, 2000.

Take notice that on January 10, 2000, ARCO Products Company, a Division of Atlantic Richfield Company, Equilon Enterprises, LLC, a successor in interest to Texaco Refining and Marketing, Inc., and Mobile Oil Corporation (Complainants) tendered for filing a complaint alleging that there are reasonable grounds to believe that all of the rates of SFPP. LP. subject to the jurisdiction of the Commission and not just and reasonable. According to Complainants, the overcharges are 40% of the current cost of service and revenue requirements, or a minimum of $75,000.000 a year.

Complainants further allege that, to the extent any of the rates are subject to a threshold "changed circumstances standard" pursuant to the EP Act of 1992, this threshold is met.

Complainants allege they are aggrieved and damaged by the unlawful acts of SFPP, L.P. and seek relief in the form of reduced rates in the future and reparations for past and current overcharges, with interest.

This complaint incorporates, and constitutes, a second amendment to the Second Amended Compliant filed this same day in related dockets that the Commission has heretofore held in abeyance, the same being Docket Nos. OR98–1–000, OR96–2–000, and OR96–10–000.

SFPP's motion for a further extension of time filed on January 24, 2000 is denied.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www/ferc/fed.us/online/rims.htm (call 202–208–2222 for assistance).

Answers to this complaint shall be due on or before February 14, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–2368 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–168–000]

Northwest Pipeline Corporation v. El Paso Natural Gas Company; Notice of Complaint

January 28, 2000.

Take notice that on January 27, 2000, Northwest Pipeline Corporation (Northwest) filed a complaint against EL Paso Natural Gas Company (El Paso) pursuant to 18 CFR 206. Northwest asserts that El Paso is violating GISB standards 1.3.2 and 1.3.22 by failing to adhere to the confirmation deadlines and confirmation quantities set forth therein. Northwest claims that El Paso's failure results in scheduled quantity differences between the pipelines at the interconnect point. Northwest has been unsuccessful in trying to get EL Paso to comply and requests that the Commission order El Paso to adhere to, and to determine scheduled quantities for the period dating back to June 1, 1999 in accordance with, the GISB standards.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 16, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before Febuary 16, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–2374 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR98–13–000 and OR98–1–000]

Tosco Corporation, Complainant v. SFPP, L.P., Respondent, Notice of Amended Compliant

January 28, 2000.

Take notice that on January 10, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), the Procedural Rules Applicable to Oil Pipeline Proceedings (18 CFR 343.1(a)), and the Commission's Order Establishing Further Procedures issued in these dockets on January 13, 1999, Tosco Corporation (Tosco) hereby submits its amended complaint in this proceeding. This amended complaint modifies and supersedes the original complaint filed herein by Tosco on April 24, 1998.

Tosco respectfully requests that the Commission: (1) Examine the rates and charges collected by SFPP for its jurisdictional interstate service; (2) order refunds to Tosco, including appropriate interest thereon, for the applicable reparation period to the extent the Commission finds that such rates or charges were unlawful; (3) determine just, reasonable, and nondiscriminatory rates for SFPP's jurisdictional interstate service; (4) award Tosco reasonable attorney's fees and costs; and (5) order such relief as may be appropriate.

SFPP's motion for a further extension of time filed on January 24, 2000 is denied.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to this complaint shall be due on or before February 14, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–2369 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR96–15–000; OR98–1–000; OR98–2–000 (Consolidated)]

Ultramar Inc., Complainant v. SFPP, L.P. Respondent, ARCO Products Company, a Division of Atlantic Richfield Company; Texaco Refining and Marketing, Inc.; Mobil Oil Corporation, Complainants v. SFPP, L.P. and Ultramar Diamond Shamrock Corporation, Complainant v. SFPP, L.P. Respondent; Notice of Amended Complaint

January 28, 2000.

Take notice that on January 10, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), the Procedural Rules Applicable to Oil Pipeline Proceedings (18 CFR 343.1(a)), and the Commission's Order Establishing Further procedures issued in these dockets on January 13, 1999, Ultramar Diamond Shamrock Corporation and Ultramar Inc. (Ultramar) tendered for filing their amended complaint in the captioned proceedings. This amended complaint modifies and supplements the original complaints filed in these matters by Ultramar in Docket Nos. OR96–15–000 and OR98–2–000 on August 30, 1996 and November 21, 1997 respectively.

On August 30, 1996, Ultramar Inc. filed a complaint against SFPP, in Docket No. OR96–15, asserting that SFPP had violated the Interstate Commerce Act (ICA) by failing to file an interstate tariff for the Watson enhancement facilities (Drain Dry facilities) and that, generally, the rate for the same was and continues to be unjust and unreasonable and without basis.

Ultramar respectfully requests that the Commission: (1) Examine the challenged rates and charges collected by SFPP for its jurisdictional interstate service; (2) order refunds to Ultramar,

including appropriate interest thereon, for the applicable reparation periods to the extent the Commission finds that such rates or charges were unlawful; (3) determine just, reasonable, and nondiscriminatory rates for SFPP's jurisdictional interstate service; (4) award Ultramar reasonable attorney's fees and costs; and (5) order such other relief as may be appropriate.

SFPP's motion for a further extension of time file on January 24, 2000 is denied.

Any person desiring to be heard or to protest the amended complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to this amended complaint shall be due on or before February 14, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–2370 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR96–15–000 and OR97–2–000]

Ultramar Inc., Complainant v. SFPP, L.P., Respondent, and Ultramar Inc., Complainant v. SFPP, L.P., Respondent; Notice of Amended Complaint

January 28, 2000.

Take notice that on January 10, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), the Procedural Rules Applicable to Oil Pipeline Proceedings (18 CFR 343.1(a)), and the Commission's Order Establishing Further Procedures issued in these dockets on January 13, 1999, Ultramar Diamond Shamrock Corporation and Ultramar Inc. (Ultramar) tendered for filing their amended complaint in the captioned proceedings. This amended complaint modifies and supplements the original complaints filed in these matters by Ultramar in Docket Nos. OR96–15–000 and OR98–2–000 on August 30, 1996 and October 21, 1996 respectively.

On August 30, 1996, Ultramar Inc. filed a complaint against SFPP, in Docket No. OR96–15, asserting that SFPP had violated the Interstate Commerce Act (ICA) by failing to file an interstate tariff for the Watson enhancement facilities (Drain Dry facilities) and that, generally, the rate for the same was and continues to be unjust and unreasonable and without basis.

Ultramar respectfully requests that the Commission: (1) examine the challenged rates and charges collected by SFPP for its jurisdictional interstate service; (2) order refunds to Ultramar, including appropriate interest thereon, for the applicable reparation periods to the extent the Commission finds that such rates or charges were unlawful; (3) determine just, reasonable, and nondiscriminatory rates for SFPP's jurisdictional interstate service; (4) award Ultramar reasonable attorney's fees and costs; and (5) order such other relief as may be appropriate.

SFPP's motion for a further extension of time filed on January 24, 2000 is denied.

Any person desiring to be heard or protest the amended complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to this amended complaint shall be due on or before February 14, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–2371 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–79–000, et al.]

West Fork Land Development Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

January 24, 2000.

Take notice that the following filings have been made with the Commission:

1. West Fork Land Development Company, L.L.C.

[Docket No. EG00–79–000]

Take notice that on January 18, 2000, West Fork Land Development Company, L.L.C. (West Fork), tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

West Fork is a Delaware limited liability company and a wholly-owned subsidiary of Enron North America Corp. West Fork's facility will be a natural gas-fired, single cycle generating facility with a combined generating capacity of approximately 575 MW (winter rating). Commercial operations are expected to commence in May 2000.

West Fork further states that copies of the application were served upon the Securities and Exchange Commission and the Indiana Utility Regulatory Commission.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Des Plaines Green Land Development, L.L.C.

[Docket No. EG00–80–000]

Take notice that on January 18, 2000, Des Plaines Green Land Development, L.L.C. (Des Plaines Green Land), tendered for filing filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Des Plaines Green Land is a Delaware limited liability company and a wholly-owned subsidiary of Enron North America Corp. Des Plaines Green Land's facility will be a natural gas-fired, single cycle generating facility with a combined generating capacity of approximately 700 MW (winter rating). Commercial operations are expected to commence in June 2000.

Des Plaines Green Land further states that copies of the application were served upon the Securities and Exchange Commission and the Illinois Commerce Commission.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Gleason Power I, L.L.C.

[Docket No. EG00–81–000]

Take notice that on January 18, 2000, Gleason Power I, L.L.C. (Gleason Power), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Gleason Power is a Delaware limited liability company and a wholly-owned subsidiary of Enron North America Corp. Gleason Power's facility will be a natural gas-fired, single cycle generating facility with a combined generating capacity of approximately 585 MW (winter rating). Commercial operations are expected to commence in May 2000.

Gleason Power further states that copies of the application were served upon the Securities and Exchange Commission and the Tennessee Regulatory Authority.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Pan American Energy LLC

[Docket No. EG00–82–000]

Take notice that on January 19, 2000, Pan American Energy LLC, a Delaware limited liability company, with offices at Av. Leandro N. Alem 1180, Buenos Aires, 1001, Argentina, (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

The Applicant will be engaged indirectly, through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), in owning and operating eligible facilities constructed in Argentina: the 77 MW Central Termica Patagonia power plant located near Comodoro Rivadavia, Argentina, consisting of two General Electric Frame-6 simple cycle gas turbine-generator sets and associated equipment and real estate. The turbines are natural gas-fired only.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Pan American Energy LLC

[Docket No. EG00–83–000]

Take notice that on January 19, 2000, Pan American Energy LLC, a Delaware limited liability company, with offices at Av. Leandro N. Alem 1180, Buenos Aires, 1001, ARGENTINA (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

The Applicant will be engaged indirectly, through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), in owning and operating eligible facilities constructed in Argentina: the 774.5 MW Dock Sud power plant located near the Greater Buenos Aires Area, Argentina, consisting of two ABB GT–26 combined cycle combustion turbines, 2 Babcock Wilcox heat recovery boilers, and one ABB steam turbine sub-station, and associated equipment and real estate, all of which will be an eligible facility. The turbines will be natural gas-fired only.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Atlantic City Electric Company, Camden Cogen, L.P., et al.

[Docket No. EL00–36–000]

Take notice that on January 21, 2000, Atlantic City Electric Company, Camden Cogen, L.P., Delmarva Power & Light Company, Edison Mission Marketing & Trading, Inc., Electric Power Supply Association, FPL Energy, Inc., New Energy Inc., Old Dominion Electric Cooperative, PECO Energy Company, PG&E Energy Trading-Power, L.P., PG&E Generating Company, Sithe Power Marketing, L.P., Strategic Energy L.L.C., Virginia Electric and Power Company, Williams Energy Marketing and Trading Company, WPS Energy Services, Inc., (together, the Complainants), tendered for filing a complaint against PJM Interconnection, L.L.C. for attempting to eliminate certain payments for Operating Reserves without a FERC rate filing.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be due on or before January 31, 2000.

7. New England Power Pool

[Docket No. ER99–2335–000]

Take notice that on January 19, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing additional information to its December 30, 1999, filing identifying the status of its efforts to develop a Congestion Management System and Multi-Settlement System. This supplemental information provides an update.

The NEPOOL Participants Committee states that copies of these materials were sent to all entities on the service lists in the above-captioned docket, to the Participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company, and Baltimore Gas & Electric Company, et al.

[Docket No. ER00–638–000]

Take notice that on January 19, 2000, Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Metropolitan Edison Company, PP&L, Inc., PECO Energy Company, UGI Utilities, Inc., Potomac Electric Power Company and Public Service Electric and Gas Company (together, the Conemaugh Switching Station Owners), tendered for filing an amendment to their November 23, 1999 filing in this docket.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Electric Company

[Docket No. ER00–639–000]

Take notice that on January 19, 2000, Pennsylvania Electric Company (doing business as GPU Energy) tendered for filing an amendment to its November 23, 1999 filing in this docket.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Gleason Power I, L.L.C.

[Docket No. ER00–1139–000]

Take notice that on January 18, 2000, Gleason Power I, L.L.C. (Gleason Power), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Gleason Power's FERC Electric Rate Schedule No. 1 to be effective on March 15, 2000.

Gleason Power intends to engage in electric power and energy transactions

as a marketer and a broker. In transactions where Gleason Power sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Des Plaines Green Land Development, L.L.C.

[Docket No. ER00–1140–000]

Take notice that on January 18, 2000, Des Plaines Green Land Development, L.L.C. (Des Plaines Green Land), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Des Plaines Green Land's FERC Electric Rate Schedule No. 1 to be effective on March 15, 2000.

Des Plaines Green Land intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Des Plaines Green Land sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. West Fork Land Development Company, L.L.C.

[Docket No. ER00–1141–000]

Take notice that on January 18, 2000, West Fork Land Development Company, L.L.C. (West Fork), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting West Fork's FERC Electric Rate Schedule No. 1, to be effective on March 15, 2000.

West Fork intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where West Fork sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Services Company

[Docket No. ER00–1144–000]

Take notice that on January 19, 2000, Ameren Services Company (AMS) tendered for filing an Interconnection Agreement between AMS and Soyland Power Cooperative, Inc. (Soyland). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of Soyland, the point of interconnection and Irrevocable Letter of Credit.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Ameren Services Company

[Docket No. ER00–1145–000]

Take notice that on January 19, 2000, Ameren Services Company (AMS) tendered for filing an Interconnection Agreement between AMS and Southwestern Electric Cooperative, Inc. (Southwestern). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of Southwestern, the point of interconnection and Irrevocable Letter of Credit.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER00–1146–000]

Take notice that on January 19, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15, a Notice of Cancellation of inactive rate schedules between NYSEG and Central Maine Power Company (CMP), DuPont Power Marketing Inc. (DuPont), EnerZ Corporation (EnerZ), Ensearch Energy Service (New York) (Ensearch), Equitable Power Services Company (Equitable), MidCon Power Services Corp. (MidCon), New England Power Company (NEPCo), North American Energy Conservation, Inc. (NAEC), and Virginia Electric and Power Company (VEPCo). NYSEG requests that the Notice of Cancellation be deemed effective as of January 20, 2000. To the extent required to give effect to the Notice of Cancellation, NYSEG requests waiver of the notice requirements pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

NYSEG served copies of the filing upon the New York State Public Service Commission, CMP, DuPont, EnerZ, Ensearch, Equitable, MidCon, NEPCo, NAEC, and VEPCo.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. AES Londonderry, LLC

[Docket No. ER00–1147–000]

Take notice that on January 19, 2000, AES Londonderry, LLC (AES Londonderry), tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for the sale to wholesale purchasers at market-based rates of the output of an electric power generation facility under development by AES Londonderry in Londonderry, Rockingham County, New Hampshire (the Facility). AES Londonderry requests that the Commission promptly accept the rate schedule for filing, without suspension, investigation or refund liability, and make the rate schedule effective as of the date that service commences at the Facility.

A copy of the filing was served upon the New Hampshire Public Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER00–1148–000]

Take notice that on January 19, 2000, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and DTE Energy Trading, Inc., (DTE ET).

Cinergy and DTE ET are requesting an effective date of January 1, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, et. al.

[Docket No. ER00–1149–000]

Take notice that on January 19, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 69 to add Engage Energy US, L.P., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is January 18, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania

Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1150–000]

Take notice that on January 19, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 17 to add one (1) new Customer (Nicole Energy Services, Inc.) to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 29, 1999 to Nicole Energy Services, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company

[Docket Nos. ER95–1686–006, ER96–496–008, ER97–1359–000, OA97–300–000, ER98–4604–000]

Take notice that on January 14, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing revisions to the Northeast Utilities System Companies Open Access Transmission Service Tariff No. 9 and Supplements 1 and 2 to that tariff in compliance with the Commission's order in Northeast Utilities Service Company, 89 FERC ¶ 61,184 (1999).

Comment date: February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2335 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–94–000]

Florida Gas Transmission Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed FGT Phase IV Expansion Project

January 28, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Florida Gas Transmission Company (FGT) in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including system alternatives; major route alternatives; and route variations.

On December 1, 1998, FGT filed with FERC the original description of the proposed action for the FGT Phase IV Expansion Project. In May 1999, FGT filed modifications to the proposed route for several of the pipeline components.[1]

The proposed action and the environment analysis in the FEIS are based on the May 1999 filing as affected by the August 23, 1999 deletions.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

A. Pipeline facilities:

1. In Mississippi, FGT proposes to construct 9.3 miles of 36-inch-diameter pipeline in George and Greene Counties (Mainline Loop-Mississippi).

2. In Florida, FGT proposes to construct:

a. 6.1 miles of 30-inch-diameter pipeline in Bradford County (Mainline Loop-Florida);

b. 4.57 miles of 12-inch-diameter pipeline in Manatee County (Sarasota Lateral Loop);

c. 0.84 mile of 6-inch-diameter pipeline in Polk County (Lake Wales Lateral Loop Extension);

d. 5.73 miles of 4-inch-diameter pipeline in Hillsborough County (Tampa South Lateral Extension); and

e. 113.0 miles of 30- and 26-inch-diameter pipeline, consisting of 75.3 miles of 30-inch-diameter pipeline in Hillsborough, Polk, Hardee, and DeSoto Counties, and 37.7 miles of 26-inch-diameter pipeline in DeSoto, Charlotte, and Lee Counties (West Leg Extension).

B. Compressor facilities:

1. In Florida, FGT proposes to:

a. add 10,350 hp of compression to the existing CS 12A in Santa Rosa County;

b. add 10,350 hp of compression to the existing CS 14A in Gadsden County;

c. construct a new 10,350 hp CS 24 in Gilchrist County; and

d. add 7,170 hp of compression to the existing CS 26 in Citrus County.

C. Associated aboveground facilities:

1. In Mississippi, FGT proposes to construct one mainline valve and one tie-on the Mainline Loop in Greene County.

2. In Florida, FGT proposes to construct:

a. The National Gypsum Meter Station in Hillsborough County, and the Florida Power and Light Company (FPL) Fort Myers Meter Station in Lee County; and

b. Miscellaneous facilities, including two tie-ins in Bradford County; two tie-ins in Manatee County; two tie-ins on the Lake Wales Lateral Loop Extension in Polk County; one tie-in on the Tampa South Lateral Extension in Hillsborough County; and on the West Leg Extension, one tie-in in Hillsborough County, one crossover in Polk County, two interconnections in Polk County, one tap valve and tie-in in Lee County, and eight mainline valves in Hillsborough, Polk, Hardee, DeSoto, and Charlotte Counties.

The purpose of the proposed FGT Phase IV Expansion Project is to deliver natural gas largely for electric power

[1] The FEIS provides a complete listing of the facilities which FGT withdrew from its application on August 23, 1999, including for example the New Smyrna Beach Lateral and its associated Duke Energy Meter Station.

generation. The largest user, for which most of the proposed facilities would be constructed, is FPL for the existing Fort Myers Power Generating Station in Lee County, Florida. In addition, one natural gas local distribution company (LDC) and two industrial customers would be served with small quantities of natural gas.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary

[FR Doc. 00–2378 Filed 2–2–00; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 28, 2000.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–11730–000.

c. *Date Filed:* April 21, 1999.

d. *Applicant:* Black River Limited Partnership.

e. *Name of Project:* Alverno Hydroelectric Project.

f. *Location:* On the Black River in the Townships of Aloha, Benton, and Grant, in Cheboygan County, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact;* Frank O. Christie, President, Franklin Hydro, Inc., P.O. Box 967, Traverse City, MI 49685–0967, (231) 946–5797.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-mail address, john.costello@ferc.fed.us or telephone at (202) 219–2914.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notce.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The constructed project consists of a 360-foot-long earth filed dam with a power plant located on the right riverbank and a gated spillway near the left bank. The project impoundment extends approximately 2.5 miles upstream. The powerhouse contains 2 horizontal turbine/generator sets.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be view on the web at *www.ferc.fed.us.* Call (202) 208–2222. A copy is also available for inspection and reproduction at the Cheboygan Public Library, 107 South Ball Street, Cheboygan, Michigan.

Filing and Service of Responsive Documents

The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their

evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–2372 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 28, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major Relicense.

b. *Project No.:* P–2634–007.

c. *Date Filed:* April 28, 1998.

d. *Applicant:* Great Northern Paper, Inc.

e. *Name of Project:* Storage Project.

f. *Location:* On Ragged Stream, Caucomgomoc Stream, and West Branch and South Branch of the Penobscot River in the Counties of Somerset and Piscataquis, Maine. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Brain Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., One Katahdin Avenue, Millinocket, ME 04462–1398 (207) 723–2664.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-mail address, *john.costello@ferc.fed.us*, or telephone (202) 219–2914.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from this issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of Environmental Analysis:* The application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The constructed project consists of four dams and reservoirs on headwaters tributaries of the Penobscot River. The four developments are named Canada Falls Lake, Seboomook Lake, Caucomgomoc Lake, and Ragged Lake. There are no power generating facilities included in the project. The total storage capacity of the four reservoirs is about 9.224 billion cubic feet or about 212,000 acre-feet.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *www.ferc.fed.us.* Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at Great Northern Paper, Inc., One Katahdin Avenue, Millinocket, Maine 04462–1398; (207) 723–2664.

Filing and Service of Responsive Documents

The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", OR "PRESCRIPTIONS", (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boegers,

Secretary.

[FR Doc. 00–2375 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

January 28, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License

b. *Project No.:* 2853–058

c. *Date Filed:* November 16, 1999

d. *Applicant:* State of Montana—Department of Natural Resources and Conversation

e. *Name of Project:* Broadwater Power Project

f. *Location:* On the Missouri River, in Broadwater County, Montana

g. *Filed Pursuant to:* 18 CFR 4.200

h. *Applicant Contact:* Mr. Walt Anderson, 48 North Last Chance Gulch, P.O. Box 201601, Helena, MT 59620–1601, Telephone: (406) 444–6646.

i. *FERC Contact:* Any questions on this notice should be addressed to Jake Tung at hong.tung@ferc.fed.us or 202–219–2663.

j. *Deadline for filing comments and/or motions:* March 15, 2000

All documents (original and eight copies) should be filed by March 15, 2000, with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Please include the project number (2853–058) on any comments or motions filed.

k. *Description of Filing:* State of Montana—Department of Natural Resources and Conservation, licensee for the Broadwater Power project, proposes to construct a structural wall in the upstream reservoir between the turbine intake and the canal intake. The wall will begin at the upstream face of the dam and extend approximately 150 feet, with the centerline located about 50 feet from the right shoreline. The wall will be about 150 feet long, five-foot wide at top, and approximately 18 inches above the upstream normal reservoir operating level. The purpose of the wall structure is to separate the canal intake from the hydraulic influences of the turbine intake.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm, (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–2376 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 28, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2866–008.

c. *Date filed:* November 8, 1999.

d. *Applicant:* Metropolitan Water Reclamation District of Greater Chicago.

e. *Name of Project:* Lockport Hydroelectric Project.

f. *Location:* On the Chicago Sanitary and Ship Canal, in Will County, Illinois. The project utilizes facilities of the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Thomas K. O'connor, Chief of Maintenance and Operations, or Gregory D. Cargill, Assistant Chief Engineer, General Division, Metropolitan Water Reclamation District of Greater Chicago, 100 East Erie Street, Chicago, IL 60611–5102, Telephone (312) 751–5102.

i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202) 219–2843.

j. *Deadline for filing comments, terms, conditions, and prescriptions:* Sixty days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The project consists of the following existing facilities:* (1) A 385-foot-long powerhouse containing two generating units with a total installed capacity of 13.5 MW; (2) a concrete and masonry dam between the Federal Navigation Lock and the powerhouse including a 22-foot-wide abandoned lock, a 20-foot-wide sluice-gate section for passing debris and ice, and a 12-foot-wide non-overflow concrete section; (3) a fender wall approximately 530 feet long for debris skimming and ice protection; (4) a substation; (5) an access road approximately one mile long; and (6) appurtenant facilities.

The applicant does not propose any modifications to the project features or operation, and no additional capacity is proposed for this project under this new license.

m. A copy of the application is available for inspection and

reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents

The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing a good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–2377 Filed 2–2–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6531–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Eagle-Picher Industries, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 112(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(h), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Former Witter Company site in Asbury, Missouri with the following settling party: Eagle-Picher Industries, Inc. The settlement requires the settling party to pay $796,595.59 to the Hazardous Substance Superfund. Eagle-Picher Industries, Inc., the settling party filed for bankruptcy in 1991. Under a reorganization plan, allowed claims will be paid on a 33 cents per dollar basis, and it is on that basis that reimbursement will be made to the Hazardous Substance Superfund in the amount of $262,876.54. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is in appropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Web City Free Public Library, 101 S. Liberty Street, Webb City, Missouri, and Office of Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, KS 66101.

DATES: Comments must be submitted on or before March 6, 2000.

ADDRESSES: The proposed settlement and a fact sheet providing additional background information relating to the settlement are available for public inspection at Office of Regional Hearing Clerk, Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101. A copy of the proposed settlement may be obtained from Kathy Robinson, Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, KS 66101, telephone 913–551–7567. Comments should reference the Former Witter Company Site, Asbury, Missouri, Docket No. CERCLA–7–2000–0003 and should be addressed to Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: Kristina Gonzales, Assistant Regional Counsel, EPA, 901 N. 5th Street, Kansas City, KS 66101, telephone: 913–551–7245.

Dated: January 20, 2000.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 00–2280 Filed 2–2–00, 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT SYSTEM INSURANCE CORPORATION

Policy Statement on the Secure Base Amount and Allocated Insurance Reserve Accounts

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) is publishing in final a Policy Statement on the Secure Base Amount and Allocated Insurance Reserve Accounts (AIRAs). This Policy Statement establishes a framework for the periodic determination of the Farm Credit Insurance Fund's (Insurance Fund) secure base amount. It also implements the Corporation's authority to allocate excess Insurance Fund balances above the secure base amount into an account for each insured Farm Credit System Bank and one for the Farm Credit System Financial Assistance Corporation (FAC) stockholders. The policy statement was published for public comment in the **Federal Register** on October 5, 1998 (63 FR 53423).

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In 1987, Congress directed the Corporation to build and manage the Insurance Fund to achieve and maintain the secure base amount (SBA). For insurance premium purposes, the statute defines the SBA as 2 percent of the aggregate outstanding insured obligations of all insured banks (excluding a percentage of state and Federally guaranteed loans) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is "actuarially sound." (12 U.S.C. 2277a–4(c)).

The Corporation's Board of Directors (Board) reviews premiums at least semiannually to determine whether to adjust assessments in response to changing conditions. The statute specifies a limited form of risk-based premium assessments: 25 basis points for nonaccrual loans; 15 basis points for loans in accrual status (excluding certain state and Federally guaranteed loans); and a very modest premium for government-guaranteed loans. (12 U.S.C. 2277a–4(a)). This formula was designed as an incentive for the Farm Credit System to make quality loans and at the same time build the Insurance Fund to a level that Congress believed would make a default on System debt obligations less likely.

In the Farm Credit System Reform Act of 1996, Congress gave the Corporation the discretion to reduce premium assessments before reaching the SBA. (12 U.S.C. 2277a–4(a)). It also established a process for making partial distributions of excess funds in the Insurance Fund. (12 U.S.C. 2277a–4(e)).

I. Secure Base Amount Determination

The law sets out a formula for determining the SBA: "2 percent of the aggregate outstanding insured obligations of all insured System banks." (12 U.S.C. 2277a–4). It also allows the Corporation to choose another percentage, "as the Corporation in its sole discretion determines is actuarially sound to maintain in the Insurance Fund taking into account the risk of insuring outstanding insured obligations." *Id.* Thus far, the Corporation has used the statutory formula.

1. Accrued Interest

In the statute, an insured obligation is defined as "any note, bond, debenture, or other obligation" issued on behalf of an insured System bank under the appropriate subsection of section 4.2 of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2277a). The proposed Policy Statement included both principal and accrued interest in the definition of "insured obligation" because section 5.52 of the Act established the Corporation to ensure the timely payment of principal and *interest* to investors. *See* 63 FR 53423, Oct. 5, 1998. Also, it is commonly understood that an issuer of bonds or notes has an obligation to pay a debt, which includes interest, when due. Accordingly, to promote the safety and soundness of the System and add a safeguard for investors, the Board included "accrued interest" in the definition.

One commenter, commenting on behalf of System institutions, suggests that before including accrued interest in the definition, the Corporation should demonstrate that there is some actuarial reason for the secure base to be maintained at the higher level that will result from the inclusion of accrued interest. The Board disagrees with the commenter. The issue is a matter of statutory interpretation; it is not dependent upon an "actuarial" reason.

As noted, both principal and interest are insured. Thus, the "insured obligation" of FCSIC at a point in time is equal to both the principal and accrued interest at that point in time. The Policy Statement's inclusion of "accrued interest" in the definition of "insured obligation" for purposes of determining the SBA is consistent with the statute and its legislative history.

2. Maintaining the SBA

After calculating the insured obligations, the Corporation will apply the deductions specified in the statute for the government guaranteed portion of the System loans to determine the SBA. This calculation will be done at the end of each quarter. After the end of the calendar year, using the December 31 balances, the Corporation will decide whether the Insurance Fund exceeds the SBA. The Policy Statement uses the December 31 balances for this calculation because the statute, in the premium section, contemplates using a point in time method in this context (12 U.S.C. 2277a–4(c)).

A commenter noted that the proposed Policy Statement and its preamble state the Corporation's commitment "to attain and maintain" the Fund at the SBA. The commenter suggested that this was a marked departure from the Policy Statement Concerning Adjustments to the Insurance Premiums and inconsistent with the statute. This contention is incorrect. The preamble to the Policy Statement Concerning Adjustments to the Insurance Premiums provides that the Corporation will attain and maintain the Fund at the SBA. *See* 61 FR 39453, July 29, 1996. Thus, the new Policy Statement's requirement "to attain and maintain" the Fund is consistent with the earlier one on insurance premium adjustments.

More importantly, this Policy Statement is consistent with the law. Section 5.55(b) of the Act directs the Corporation to reduce the premiums if the aggregate amounts in the Insurance Fund exceed the SBA. However, this same provision requires the Corporation to temper reductions so that premiums continue to be "sufficient to ensure that the aggregate of amounts in the Farm Credit Insurance Fund after such premiums are paid is not less than the secure base amount at such time" (12 U.S.C. 2277a–4(b)). This provision directs the Corporation to maintain the SBA, even after it reduces premiums.

The House Report on H.R. 3030 (H. Rep. 100–295), which in large part was adopted by the Conference Committee in 1987 when the Corporation was created, supports this interpretation. It states at page 61: " The fund would be maintained at 2 percent of the value of all System loans outstanding or such other level deemed appropriate by the board" (emphasis added). While Congress amended section 5.55 of the Act in 1996, granting FCSIC the discretion to reduce premiums before reaching the SBA, it did not alter the original mandate to reach the secure base amount and then maintain it at 2 percent.

In fact, when it added the AIRA accounts in 1996, Congress gave the Corporation "sole discretion" to eliminate or reduce the AIRA disbursements. Section 5.55(e)(6)(B) of the Act provides for elimination or reduction of disbursements if circumstances "might require the use of the Farm Credit Insurance Fund" and "could cause the amount in the Farm Credit Insurance Fund during the calendar year to be less than the secure base amount" (12 U.S.C. 2277a–4(e)(6)(B)). This provision demonstrates continued congressional intent to have the Corporation manage the Insurance Fund, including the new AIRAs, by maintaining the integrity of the SBA.

II. Allocated Insurance Reserve Accounts

1. Determining Whether There Are Excess Funds To Allocate to the AIRAs

The Farm Credit System Reform Act of 1996 established a process for making partial distributions of the Insurance Fund's balance above the SBA. It established in the Insurance Fund an AIRA for the benefit of each insured System bank and one for the FAC stockholders. The AIRAs remain a part of the Insurance Fund and are available

to the Corporation. In fact, under the statute, section 5.55(e)(5) of the Act, the AIRAs were designed to absorb losses first, if necessary.

AIRA allocations would be made only at the end of any year in which the Insurance Fund, plus the accumulated excess balance after deducting expenses and insurance obligations for the next year, is greater than the 2 percent SBA. If the Insurance Fund exceeds the SBA at the end of any calendar year (using December 31 balances), the statute requires the Corporation to determine whether any excess funds exist for allocation to the AIRAs. *See* section 5.55 (e)(5) of the Act. In determining whether excess funds exist, the statute calls for the Corporation to first calculate "the average secure base amount for the calendar year (using average daily balances)."

a. AIRAs as Excess Reserves

The statute contemplates that the Insurance Fund be made up of two tiers (the SBA and the excess AIRA balances). This reading of the statute is supported by the House Report on H.R. 2029 (H. Rep. 104–421) at page 9. In explaining the purpose and need for the Farm Credit Reform Act of 1996, it states that the legislation is designed to "provide for the rebate of interest accruing on the secure base amount." At another point on the same page, it explains that the legislation provides "for the disbursement of money *above* the secure base amount of the insurance fund that has accrued from excess interest" (emphasis added). In fact, section 5.55(e) of the Act is entitled "Allocation to System Institutions of Excess Reserves." Clearly, Congress intended that the Insurance Fund would hold more funds than the SBA, with a partial disbursement of the excess after 2005, if no major losses occurred.

One commenter takes issue with this reading of the statute and suggests that the Corporation consider counting the AIRAs in the SBA, rather than as an excess reserve. The Board believes the Policy Statement accurately reflects the statute and the legislative history. It conforms to the 1996 Act by providing a mechanism to contain future growth above the SBA due to investment income. The statute provides that the AIRAs are the first source of funds for the Corporation if actual operating expenses or insurance obligations exceed projections. Thus, the first source is the excess above the 2 percent and the second source is the amount below it.

The impact of the commenter's suggestion, counting the AIRAs toward the SBA, is to effectively lower the SBA from the unallocated 2 percent, without the Board determining that such a reduction is "actuarially sound." Furthermore, if you take this suggestion to its logical conclusion under a low growth scenario, the bulk of the Fund could be allocated to reserve accounts, eventually including even the $260 million in Treasury money and its accumulated interest. The Board does not believe that Congress contemplated either result.

b. Recalculating AIRAs Each Year or Fixing Them At Yearend

The proposed Policy Statement called for the AIRAs to be recalculated each year at calendar yearend. The amounts credited to the AIRAs would replace—rather than be added to—the amounts allocated the previous year. Thus, the amounts in the AIRAs would fluctuate, depending upon the annual calculation of the SBA and any excess Insurance Fund balance. The advantage of this approach is any amounts in the AIRAs would be available to capitalize high growth in insured obligations. In other words, if growth during any year outstripped the ability of the Fund's investment earnings to capitalize it, then the AIRAs could be tapped to reach or maintain the 2-percent SBA. Using the AIRAs in this manner could reduce or eliminate the need to assess premiums. However, recalculating each year would also likely reduce the amount in the AIRAs during high growth years, limiting distributions and reducing the total amount of funds available in the event of insurance losses.

One commenter suggested that the Board treat the amounts in the AIRAs as fixed at yearend. Under this approach, any funds allocated to an AIRA account would be tapped in the following years only if an insurance loss occurs or to fund underestimated expenses. The commenter further suggested that the Fund could grow back to the SBA through investment earnings or if necessary by raising insurance premiums.

The approach taken in the proposed Policy Statement reflected the statutory language allocating excess funds at the end of the year if the Insurance Fund exceeds the SBA for that year. While the Board believes it is reasonable and consistent with the statute to recalculate the AIRAs each year concurrent with the SBA calculation, it agrees with the commenter that it is also reasonable to treat the amounts in the AIRAs as fixed at yearend. Fixing the AIRAs is consistent with the statutory language describing how the Corporation should use the funds in the AIRAs. In fact, there is a tension in the statute between this part and the part that describes how to allocate funds to the AIRAs. The Board believes it could resolve this tension by choosing either method because both are reasonable interpretations of the statute.

By agreeing with the commenter and fixing amounts placed into the AIRAs more money will be retained during high growth years. This clearly benefits the AIRA account holders. However, the System may have to pay insurance premiums after a year where high growth in insured obligations causes the Fund to fall below the SBA; but as the commenter pointed out, the Board has clear authority to assess premiums in this circumstance. Also, the commenter noted that premiums would be paid on the basis of risk and growth rather than at the expense of AIRA account holders. For investors in the Systemwide debt, the aggregate value of the Insurance Fund will be higher in high growth years when insurance premiums are collected. Thus, this method has some advantages that are not present in yearend recalculation described in the proposed Policy Statement. For these reasons, the Board has decided not to recalculate the AIRAs each year but instead to fix the amounts at year-end.

c. Authorized Deductions

If the Insurance Fund exceeds the SBA, the statute requires that the Insurance Fund balance be adjusted downward by an estimate for the next calendar year of the:

1. Corporation's operating costs; and
2. Insurance obligations.

The Corporation will deduct the operating expenses it expects to incur for the next calendar year. Estimated insurance obligations are defined in the Policy Statement to include all anticipated allowances for insurance losses, claims, and other potential statutory uses of the Insurance Fund.

The Corporation prepares its financial statements on an accrual basis using generally accepted accounting principles (GAAP). GAAP requires the Corporation to recognize in its financial statements any probable loss that can be reasonably estimated. Thus, the Board has concluded that the Corporation should deduct probable losses estimated for the next year, recognizing that such a deduction could mean that no excess funds would be available for allocation to the AIRAs in a given year.

The proposed Policy Statement defined insurance obligations to include an estimate of expected growth in insured debt for the prospective 12 months, using a 3-year average to determine the estimate. The statute

grants the FCSIC, in its sole discretion, the authority to determine the sum of its estimated operating expenses and insurance obligations for purposes of determining if an excess Fund balance exists for allocation to the AIRAs. Accordingly, it is reasonable for the Board to exercise this discretion to include an amount necessary to adjust the Fund for anticipated growth in the System's insured debt. Including an anticipated growth factor as an authorized deduction from the excess balance will diminish the amount available for allocation to the AIRAs. Investors, however, would have a greater cushion of insurance protection.

System institutions that commented did not favor this approach because they may not receive as much in AIRA allocations. One commenter stated that covering growth out of excess reserves causes those who are not growing to subsidize out of their AIRAs the insurance premiums of those that are growing. Also, the commenter argued that including a deduction for estimated growth is not what Congress intended.[1] The commenter suggested that estimated growth should be considered when the Board reviews insurance premiums, not in the AIRA formula. This commenter also suggested that if the Board decided to include estimated growth, it should also include estimated investment earnings as a compensating factor. The Board agrees that it is reasonable to calculate operating expenses as a "net" figure by including estimated earnings if it adjusts the Insurance Fund for estimated growth.

The Board also agrees that it can and should consider growth estimates when it reviews insurance premiums. Thus, the Board has decided not to include an estimated growth factor as an authorized deduction in determining if an excess Fund balance exists for allocation to the AIRAs. As a result, neither estimated growth nor estimated earnings will be included. Only estimated operating expenses and insurance obligations for the prospective 12 months will be deducted.

d. Allocation Formula When Excess Funds Are Available

The Policy Statement includes the statutory formula for allocation of any excess Insurance Fund balances to FAC stockholders (10 percent) and to the insured System banks (90 percent). It also includes the 3-year average loan balance formula the statute mandates when the Corporation adds balances to each AIRA. The commenters did not question this approach. Exhibit 1 is a hypothetical example of how the AIRA program will operate. It compares the approach used in the proposed Policy Statement to the final approach, including determining the amount of excess Insurance Fund balances and allocating the balances to individual AIRA holders.

e. Use of Allocated Amounts When Reductions Are Required

The Policy Statement also interprets the statutory language governing use of the AIRAs when insurance obligations exceed estimated amounts. When actual expenses and insurance obligations exceed estimates from the previous yearend, the law requires the Corporation to reduce the balances in the AIRAs by proportional amounts. The statute, however, doesn't prescribe how the proportional amounts are to be determined.

The Board concluded that the Corporation should use the same technique to calculate reductions to the AIRAs as the statute uses to calculate additions, *i.e.*, the 3-year average loan balance formula. This weighted average allocation formula ensures that any reductions to AIRA balances are accomplished in the same manner as the allocations. The commenters did not take issue with this approach.

2. AIRA Accumulation Cycle

The law authorizes payments of a portion of AIRA balances to the System banks and FAC stockholders "as soon as practicable during each calendar year beginning more than 8 years after the date on which the aggregate of the amounts" in the Insurance Fund exceeds the SBA. (12 U.S.C. 2277a–4). While this language could be subject to varying interpretations, the Insurance Fund first attained the SBA in the first quarter of 1998, and thus payments could begin 8 years later. The Board has concluded that it is reasonable to consider making the first payment as soon as practicable after the first quarter in 2006. The proposed Policy Statement adopted the earliest possible payout date: 8 calendar years after the quarter-end when the SBA was initially attained. The commenters supported this approach.

An important corollary issue is how to address an interruption in the 8-year period. For example, if after establishing the AIRAs, the Corporation has to use them for an insurance action, does the accumulation cycle begin anew? The Policy Statement: (1) Grants the Board the authority to restart the accumulation period if the Insurance Fund drops below the SBA at any subsequent quarter-end during the 8-year period; (2) allows the Board to select an accumulation period, to begin at the next quarter-end when the Insurance Fund again attains the SBA; and (3) enumerates the factors the Board will consider in selecting an alternative accumulation period.

The statute grants the Board discretionary authority to determine whether to make distributions at the end of the 8-year AIRA accumulation cycle. Given this broad authority and the overall statutory scheme, it is reasonable for the Board to interpret the statute to permit it to change or restart the AIRA cycle if, at any time during this period, the Insurance Fund drops below the SBA.

The Policy Statement leaves the issue of selecting an alternative accumulation period open to decision on a case-by-case basis. This approach preserves maximum flexibility to tailor any alternative accumulation period to best fit the causes of a future shortfall in the Insurance Fund. For example, the circumstances where a period of rapid growth causes a temporary (or small) decline in the Insurance Fund below the SBA for one or more quarters are far less serious than a decline in the Insurance Fund caused by losses as a result of increased risk at System banks and associations.

One commenter found the Board's approach to be "reasonable and sound." Another commenter did not take issue with the Board's discretionary authority to change or restart the 8-year AIRA cycle. It suggested, however, it would be inappropriate to delay the period when payouts begin if there is a temporary reduction below the SBA.[2] As noted above, the Board agrees this would be less serious than a substantial reduction due to insurance losses.

III. Issues for Later Consideration

The statute authorizes initial payment of any balances in the AIRAs beginning more than 8 years after attainment of the SBA, which could be as early as 2006. As this date approaches, the Corporation's Board will have to consider the Corporation's authority to reduce or eliminate AIRA payments,

[1] This commenter also took issue with a reference in the preamble that noted how a deduction for estimated growth might avoid the need for "supplemental insurance premiums." FCSIC recognizes that Congress did not embrace the concept of "supplemental premiums." A better choice of words would have been "might avoid the need to assess additional premiums to build back to the SBA."

[2] This same commenter took issue with the preamble's characterization of the 8-year accumulation period as established by Congress to "allow for the creation of a secondary insurance reserve." We have eliminated the reference.

and calculation of the initial AIRA payment components.

The Board believes that these issues can be better addressed after the Corporation obtains experience in administering the AIRA program over several years. Also, the likelihood of payment beginning in 2006 must be considered somewhat uncertain at this time. The uncertainty stems from factors that will determine whether and how much of any AIRA accumulations will occur. These factors are:

1. Future growth in the level of insured debt outstanding;

2. Possible insurance claims or losses; and the

3. Level of investment earnings.

Because the Corporation cannot predict any of these factors with certainty now, it seems prudent to gain more experience with excess Insurance Fund balances before making these decisions about future payments. The commenters did not disagree with this approach.

BILLING CODE 6210-01-P

Allocated Insurance Reserve Account Program

Exhibit 1

Hypothetical Example: Determination of Excess Insurance Fund Balance

($ Millions)		Initial Proposed	Final
Insurance Fund Balance at December 31, XXXX		$ 1,265.0	$ 1,265.0
Less: Est. FCSIC Operating Expenses for XXXY		$ (1.8)	$ (1.8)
Est. FAC Provision for XXXY		$ (9.7)	$ (9.7)
Est. Growth in Insured Debt Factor for XXXY	(3.5%)	$ (42.7)	$ -
Adjusted Insurance Fund Balance		**$ 1,210.8**	**$ 1,253.5**
Secure Base Amount Calculation (Using Average Daily Balances) :			
Insured Systemwide and Consolidated Debt Outstanding	Principal	$62,500.0	$ 62,500.0
	Accrued Interest Payable	$ 600.0	$ 600.0
Total		$63,100.0	$ 63,100.0
Less : 90% of guaranteed portions of Federal Government guaranteed loan principal		$ (3,500.0)	$ (3,500.0)
80% of guaranteed portions of State government guaranteed loan principal		$ (8.0)	$ (8.0)
Adjusted Insured Debt Outstanding		$59,592.0	$ 59,592.0
Secure Base Amount		**$ 1,191.8**	**$ 1,191.8**
Excess Insurance Fund Balance (Adjusted Ins. Fund Balance less Secure Base Amount)		**$ 19.0**	**$ 61.7**
Amount to be allocated to Banks and FAC AIRAs		$ 19.0	$ 61.7

BILLING CODE 8210-01-C

Hypothetical Example: Allocation Formula

	($ Millions)	Initial Proposed	Final
FAC Stockholders in aggregate (10% of Allocable Amount)		$ 1.9	$ 6.2
Banks (90%) based on prior three years average accrual loan principal outstanding			
	Average Daily Balances of Accrual Loan Principal		
	Prior Year / Prior Year -1 / Prior Year -2 / 3 Year Avg.		
Bank 1	$ 16,450 / $ 15,700 / $ 15,400 / $ 15,850	$ 4.8	$ 15.5
Bank 2	$ 15,500 / $ 15,600 / $ 15,000 / $ 15,367	$ 4.6	$ 15.0
Bank 3	$ 4,000 / $ 3,600 / $ 3,500 / $ 3,700	$ 1.1	$ 3.6
Bank 4	$ 4,400 / $ 3,950 / $ 3,800 / $ 4,050	$ 1.2	$ 4.0
Bank 5	$ 4,500 / $ 4,100 / $ 3,950 / $ 4,183	$ 1.3	$ 4.1
Bank 6	$ 6,450 / $ 6,100 / $ 5,700 / $ 6,083	$ 1.8	$ 5.9
Bank 7	$ 8,200 / $ 7,400 / $ 7,100 / $ 7,567	$ 2.3	$ 7.4
Totals	$ 59,500 / $ 56,450 / $ 54,450 / $ 56,800	$ 17.1	$ 55.5

Farm Credit System Insurance Corporation Policy Statement on the Secure Base Amount and Allocated Insurance Reserve Account Program

NV–99–05

Effective Date: Upon adoption.

Effect on Previous Action: None.

Source of Authority: Section 5.55 of the Farm Credit Act of 1971, as amended (the Act); 12 U.S.C. 2277a–4.

Whereas, section 5.52 of the Act established the Farm Credit System Insurance Corporation (Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit System obligations (12 U.S.C. 2277a–1); and

Whereas, section 5.55 of the Act mandates that the Corporation will build and manage the Farm Credit Insurance Fund (Insurance Fund) to attain and maintain a secure base amount (SBA), defined as 2 percent of the aggregate outstanding insured obligations of all insured System banks (excluding a percentage of State and federally guaranteed loans) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound; and

Whereas, the Farm Credit System Reform Act of 1996, Public Law 104–105, 110 Stat. 162 (Feb. 10, 1996), amended section 5.55 of the Act to: (1) Establish in the Insurance Fund an Allocated Insurance Reserve Account (AIRA) for the benefit of each insured System bank and one for the Farm Credit System Financial Assistance Corporation (FAC) stockholders; (2) allocate any excess balances above the SBA to these AIRAs; and (3) eventually make partial distributions of the excess funds in the AIRAs.

NOW, therefore, the Corporation's Board of Directors (Board) adopts the following Policy Statement to govern the calculation of the secure base amount, the determination of any excess above the SBA, the establishment of the AIRAs, and the method for allocating any excess to the AIRAs.

I. Secure Base Amount Determination

As stated in the Corporation's Policy Statement Concerning Adjustments to the Insurance Premiums (BM–11–JUL–96–02), the Board will review the premium assessments at least semiannually to determine whether to adjust premiums in response to changing conditions. The Board continued this review even after the Insurance Fund achieved the SBA because the law requires the Corporation to maintain the SBA. Thus, the Corporation must ensure that as the Farm Credit System's insured debt grows, or if the Insurance Fund suffers a significant loss, the Insurance Fund builds back to the SBA.

The Farm Credit Reform Act of 1996 established a process for making partial distributions of the Insurance Fund's balance above the SBA. If excess reserves accumulate, these distributions can begin at a point 8 years after the Insurance Fund reaches the SBA, but no sooner than 2005. The Insurance Fund first attained the SBA in 1998, and thus the payments could begin 8 years later. To begin the process the Corporation must define "the aggregate outstanding insured obligations" of all the System banks. Then it must follow the steps in the statute to determine the SBA. Finally, at the end of any calendar year in which the Insurance Fund attains the secure base amount, the Corporation must determine whether any excess funds exist for allocation to the AIRAs.

The principal calculation for determining whether the Insurance Fund is at the SBA amount will be 2 percent of the aggregate adjusted insured obligations defined as follows:

1. "Insured obligation" means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on or before January 5, 1989, on behalf of any System bank; and after such date which, when issued, is issued on behalf of any insured System bank and is outstanding at the quarter-end. The balance outstanding at the quarter-end shall include principal and accrued interest payable as reported by the banks in the call reports submitted to the Farm Credit Administration.

2. The balance of insured obligations determined in Number 1 shall be reduced by an amount equal to the sum of:

(a) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status at all System institutions; and

(b) 80 percent of the guaranteed portions of principal outstanding on State Government-guaranteed loans in accrual status at all System institutions.

At the end of any calendar year when the Insurance Fund balance exceeds the SBA, calculated using December 31, balances (point-in-time method), the Corporation will determine whether any excess funds exist for allocation to the AIRAs.

II. Allocated Insurance Reserve Accounts

1. Determination of Excess Insurance Fund Balances

An allocated insurance reserve account (AIRA) shall be established in the Insurance Fund for each insured System bank and for FAC stockholders. Amounts representing excess Insurance Fund balances would be allocated to the AIRAs. The AIRAs remain a part of the Insurance Fund and are available to the Corporation.

(a) Authorized Deductions

In determining whether there are any excess insurance reserves, the December 31 Insurance Fund balance will first be adjusted downward by:

(1) The Corporation's estimated operating expenses for the next 12 months; and

(2) The Corporation's estimated insurance obligations for the next 12 months.

The Corporation will budget for the next calendar year operating expenses and it will deduct the operating expenses it expects to incur. When determining estimated insurance obligations, the Corporation will include all anticipated allowances for insurance losses, claims, and other potential statutory uses of the Insurance Fund.

The adjusted aggregate yearend Insurance Fund balance will then be compared with the SBA. The Corporation will calculate the SBA using an average daily balance method for the previous calendar year. The statute requires use of an average daily balance method for calculating the SBA *only* for purposes of determining the amount of any excess Insurance Fund balances.

When the aggregate adjusted Insurance Fund balance exceeds the SBA calculated using the average daily balance method, the excess Fund balance shall be allocated to the accounts of each insured System bank and to the FAC stockholders. The AIRA balances will be fixed at yearend and any amounts to be credited in subsequent years will be added to amounts allocated the previous year.

(b) Allocation Formula When Excess Funds Are Available

(1) Ten percent of the excess Insurance Fund balance shall be credited to the AIRA for all holders, in the aggregate, of Financial Assistance Corporation stock. The total amount that may be allocated to this AIRA is limited to $56 million.

(2) The remaining amount of the excess Insurance Fund balance shall be credited to the AIRAs for each insured System bank. The basis for crediting the excess balance to each bank's AIRA shall be the ratio of its average daily accrual loan principal outstanding for the three prior years divided by the total average daily accrual loan principal outstanding for all System banks. System bank loan volume for making these allocations is defined in section 5.55(d) to include all retail loans made by direct lending associations, their insured System banks and other financing institutions (OFIs) being financed by insured System banks (12 U.S.C. 2277a–4(d)). The statute also requires that a reduction be made from each bank's ratio (numerator and denominator) for the guaranteed portions of government-guaranteed loans similarly on an average daily balance basis for the three-year period. An example of the allocation formula is shown in Exhibit 1.

(c) Use of Allocated Amounts When Reductions Are Required

When the Corporation's actual operating expenses and insurance obligations exceed the estimated amounts used to determine any year's AIRA balances, section 5.55(e)(5) requires AIRA balances to absorb such excess expenses before using other amounts in the Insurance Fund (12 U.S.C. 2277a–4(e)(5)). To the extent reductions are made in AIRA balances to absorb Corporation expenses and actual insurance obligations, each AIRA will be reduced by its proportional amount in accordance with the statute. The same formula used to make allocations of excess Insurance Fund balances shall be used to reduce AIRA balances when necessary. Ten percent of any necessary AIRA reduction will be applied to the FAC stockholder AIRA. The remaining 90 percent will be applied to the System insured banks' AIRAs on the basis of the ratio of each bank's average daily accrual loan principal outstanding for the three prior years divided by the total average daily accrual loan principal outstanding for all System banks.

2. AIRA Accumulation Cycle

Section 5.55(e)(6) permits the Insurance Corporation's Board at its discretion to make payments of AIRA balances to the account holders after a minimum time period (12 U.S.C. 2277a–4(e)(6)). The minimum time period specified is more than 8 years after the date on which the aggregate amount in the Insurance Fund exceeds the secure base amount calculated using quarter-end balances.

The initial starting point for the 8-year period shall be the first calendar quarter-end when the Insurance Fund has attained or exceeded its SBA. The initial attainment occurred during the first quarter of 1998. The first payment would be in the second quarter of 2006.

Should the Insurance Fund drop below the secure base amount at any subsequent quarter-end during the 8-year period, the Corporation's Board may restart the accumulation period. For example, the Insurance Fund might drop below the SBA as a result of rapid growth in insured System debt outstanding, or incurring insurance claims or losses. The Board in its discretion may select an accumulation period, to begin at the next quarter-end when the aggregate in the Insurance Fund again attains the secure base amount. Any alternative accumulation period however, cannot result in any payment before April 2006. The Board will consider the following factors in determining selection of an alternative accumulation period:

(a) The reason that the Insurance Fund dropped below the SBA (i.e. as a result of growth in insured debt vs. an insurance expense at a troubled institution). The current level of the Insurance Fund and the amount of money and time needed to attain the SBA;

(b) The likelihood and probable amount of any losses to the Insurance Fund;

(c) The overall condition of the Farm Credit System, including the level and quality of capital, earnings, asset growth, asset quality, loss allowance levels, asset liability management, as well as the collateral ratios of the insured banks;

(d) The health and prospects for the agricultural economy, including the potential impact of governmental farm policy and the effect of the globalization of agriculture on opportunities and competition for U.S. producers; and

(e) The risks in the financial environment that may cause a problem, even when there is no imminent threat, such as volatility in the level of interest rates, the use of sophisticated investment securities and derivative instruments, and increasing competition from non-System financial institutions.

III. Issues for Later Consideration

Because of multiple factors (including rapid growth and the amount of any insurance obligations) which could affect future AIRA balances and the uncertainty of future payments, the Corporation has deferred consideration of several issues to a date closer to the year 2006. The Board anticipates gaining experience in the administration of the AIRA program over the next few years and expects to have a better basis for determining these issues, which include:

1. Board discretionary authority to limit or restrict AIRA payments; and
2. Calculation of the initial AIRA payment components.

Adopted this 15th day of December, 1999 by order of the Board.

Dated: January 28, 2000.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 00–2334 Filed 2–2–00; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–000050–069
Title: United States/Australia New Zealand Association
Parties:
Columbus Line
PO Nedlloyd Limited
Australia New Zealand Direct Line
Synopsis: The proposed amendment would delete all Agreement authority except the authority to complete existing service contracts. The amendment would also terminate the Agreement on April 30, 2001, the date on which the last Agreement service contract expires. The amendment further provides that the parties will discontinue use of the Agreement and will operate under the provisions of the United States Australasia Agreement (FMC Agreement No. 202–011677) as of January 26, 2000.

Agreement No.: 203–011075–051
Title: Central America Discussion Agreement
Parties:
Concorde Shipping, Inc.
Global Reefer Carriers Ltd.
Dole Ocean Cargo Express
Crowley Liner Services Inc.
Seaboard Marine, Ltd.

A.P. Moller-Maersk Sealand
Trinity Shipping Line, S.A.
Ecuadorian Line
APL Co. Pte. Ltd.
Nordana Line
P&O Nedlloyd Limited
Lykes Lines Limited

Synopsis: The proposed modification would authorize the parties, by a vote of unanimous less one, to waive the security deposit requirement for new members. The modification also makes conforming and administrative changes.

Agreement No.: 217–011651–002
Title: A.P. Moller-Maersk Sealand/ Samskip Space Charter and Sailing Agreement
Parties:
A.P. Moller-Maersk Sealand
Samskip Incorporated

Synopsis: The proposed Amendment restates the basic Agreement; revises Article 5.1 to clarify the terms and conditions applicable to the chartering of space by the parties; adds a new Article 5.2 to state the rights and obligations of the parties in the event of change in vessel or port rotations; and adds a new Article 13 regarding Sea Carrier Initiative agreements.

Agreement No.: 217–011687
Title: CCNI/CMA CGM Space Charter Agreement
Parties:
Compania Chilena de Navegacion Interoceanica S.A. ("CCNI")
CMA CGM the French Line ("CMA CGM")

Synopsis: The proposed agreement authorizes CCNI to charter space to CMA CGM in the trade between ports in Hamburg, Rotterdam, Antwerp, Felexstowe, Bilbao, and inland and coastal points served by those ports, on the one hand, and Puerto Rico and inland and coastal points served via Puerto Rico on the other hand. The parties have requested expedited review.

By Order Of the Federal Maritime Commission.

Dated: January 28, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2308 Filed 2–2–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 00–03]

Inlet Fish Producers, Inc. v. Seal-Land Service, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Inlet Fish Producers, Inc. ("Complainant"), against Sea-Land Service, Inc. ("Respondent"). The complaint was served on January 28, 2000. Complainant alleges that Respondent violated sections 10(b)(2), (b)(4), (b)(6) and (b)(12) of the Shipping Act of 1984, 46 U.S.C. app. section 1709(b)(2), (b)(4), (b)(6) and (b)(12), by not allowing Complainant to subtract "tare weight" from the weight of seafood-product cargo for purposes of determining freight charges, while allowing similarly situated shippers to make such a subtraction.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 30, 2001, and the final decision of the Commission shall be issued by May 30, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2309 Filed 2–2–00; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

First Express International Corp., 148–36 Guy R. Brewer Blvd., Suite 200, Jamaica, NY 11434, Officer: James Lee, President (Qualifying Individual)

ANA Link, Ltd., 177–25 Rockaway Blvd., Suite 205, Jamaica, NY 11434, Officer: Tal Y. Yo, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Mavela Corp., 120 E 11th Street, Los Angeles, CA 90015, Officers: James Ortiz, President (Qualifying Individual), Teresa Ortiz, Secretary

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

McCollister's Transportation Systems, Inc., 1800 Route 130 North, Burlington, NJ 08016, Officers: John M. Roller, Vice President (Qualifying Individual), H. Daniel McCollister, President

Smith Logistics International, Inc., 12300 N.W. 32nd Avenue, Miami, FL 33167, Officers: Igort del Haya, President (Qualifying Individual), Lee Futernick, Vice President

Dated: January 28, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2307 Filed 2–2–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background*—On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collections of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collections of information instruments are placed into OMB's

public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 3, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. *Report title:* The Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

Agency form number: unnum Reg Z.

OMB control number: 7100–0199.

Frequency: Event-generated.

Reporters: State member banks.

Annual reporting hours: 1,863,754 hours.

Estimated average hours per response: Open-end credit: initial terms 2.5 minutes, change in terms 1 minute; Periodic statement 45 seconds; Error resolution 15 minutes; Credit and charge card accounts: Advance disclosures 10 seconds, renewal notice 5 seconds, insurance notice 15 seconds; Home equity plans: advance disclosure 2 minutes, change in terms 2 minutes; Closed-end credit disclosures 6.4 minutes; Advertising 30 minutes.

Number of respondents: 988. Small businesses are affected.

General description of report: Title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*) authorizes the Board to issue regulations to carry out the provisions of the Consumer Credit Protection Act (15 U.S.C. 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction-or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and consumer.

Abstract: Regulation Z (12 CFR Part 226) implements the Truth in Lending Act (15 USC 1601 *et seq.*). The act and regulation ensure adequate disclosure of the costs and terms of credit to consumers on an event-generated basis. For open-end credit (revolving credit accounts), creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of change in terms, and statements of rights concerning billing error procedures. The regulation also requires specific types of disclosures for credit and charge card accounts, and home equity plans. For closed-end loans (such as mortgage and installment loans) cost disclosures are required to be provided prior to consummation. Specific products trigger special disclosures, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above a specific amount. Regulation Z also contains rules concerning credit advertising. Creditors are required to retain records as evidence of compliance with Regulation Z for twenty-four months (subpart D, section 226.25).

Board of Governors of the Federal Reserve System, January 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–2341 Filed 2–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than February 28, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Charter Corporation, Concord, North Carolina; to merge with Carolina First BancShares, Inc., Lincolnton, North Carolina, and thereby indirectly acquire Community Bank and Trust Company, Rutherfordton, North Carolina; Cabarrus Bank of North Carolina, Concord, North Carolina; Lincoln Bank of North Carolina, Lincolnton, North Carolina. Applicant also will acquire shares of First Gaston Bank of North Carolina, Gastonia, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Branson Bancshares, Inc., Branson, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Branson Bank, Branson, Missouri (in organization).

2. Maries County Bancorp, Inc., Vienna, Missouri; to acquire 9.3 percent of the voting shares of Branson Bancshares, Inc., Branson, Missouri, and thereby indirectly acquire Branson Bank, Branson, Missouri a de novo bank).

Board of Governors of the Federal Reserve System, January 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2360 Filed 2–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Exchange Bankshares, Inc., Milledgeville, Georgia; to acquire Exchange Insurance Agency, Inc., Gray, Georgia, and thereby engage in insurance agency activities in a town of less than 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire through its subsidiary, TransPlatinum Service Corp., Nashville, Tennessee, Fleet One, L.L.C., Nashville, Tennessee, and thereby engage in data processing and data transmission activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2359 Filed 2–2–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request and Extension of Deadline for Nominations for the Secretary's Advisory Committee on Minority Health

AGENCY: Office of Public Health and Science, Office of Minority Health, HHS.

ACTION: Notice—Extension of Deadline.

Authority: Section 1707(c) of the Public Health Service Act, as amended (42 U.S.C. 300u–6(c)); Federal Advisory Committee Act (5 U.S.C. appendix 2).

SUMMARY: The Secretary, Department of Health and Human Services, signed the charter establishing the Committee on Minority Health on September 17, 1999. Unless renewed prior to its expiration, the Committee will terminate on September 22, 2001. It is the function of the Committee to advise and make recommendations to the Secretary on improving the health of racial and ethnic minority groups and development of goals and specific program activities. This notice requests and extends the deadline for submission of nominations for membership on the Committee.

DATES: Nominations for members must be received no later than 5:00 P.M. on March 6, 2000.

ADDRESSES: You may mail or deliver nominations to the following address: Monica Farrar, Division of Management Operations, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, MD 20852. Nominations will not be accepted by e-mail nor by facsimile.

A request for a copy of the Secretary's charter for the Advisory Committee should be submitted to: Joan Jacobs, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, MD 20852. The charter can also be downloaded from the Office of Minority Health Resource Center web site at http://www.omhrc.gov.

FOR FURTHER INFORMATION CONTACT: Joan Jacobs, (301) 443–9923.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 1707(c) of the Public Health Service Act directs the Secretary to establish the Advisory Committee on Minority Health. The Committee is also governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formulation and use of advisory committees.

The Advisory Committee shall advise the Secretary on improving the health of racial and ethnic minorities and developing goals and specific program activities. These activities include, but are not limited, to the following:

(1) Establishing short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research concerning such individuals.

(2) Entering into interagency agreements with other agencies of the Public Health Service.

(3) Supporting research, demonstrations, and evaluations to test new and innovative models.

(4) Increasing knowledge and understanding of health risk factors.

(5) Developing mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial and ethnic minority groups.

(6) Ensuring that the National Center for Health Statistics, Centers for Disease Control and Prevention, collects data on the health status of each minority group.

(7) With respect to individuals who lack proficiency in speaking the English language, entering into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of individuals to such services by developing and carrying out programs to provide bilingual or interpretive services.

(8) Supporting a national minority health resource center to carry out the following:

(A) Facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care;

(B) Facilitate access to information;

(C) Assist in the analysis of issues and problems relating to such matters;

(D) Provide technical assistance with respect to the exchange of such information (including facilitating the development of materials of such technical assistance).

(9) Carrying out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under the preceding sentence shall include developing and evaluating model projects.

II. Nominations

The Office of Minority Health (OMH) is requesting nominations for voting members to serve on the Advisory Committee. The Committee is to consist of 12 voting members appointed by the Secretary from among racial and ethnic minorities, defined as Black or African American, Hispanic/Latino, American Indian/Alaska Native, Asian American, and Native Hawaiian or Pacific Islander, who have expertise regarding issues of minority health. The racial and ethnic minority groups will be equally represented among the voting members. The membership will also be diverse in terms of gender, HIV status, disability, age, culture, sexual orientation, geography, and points of view. Employees or officers of the Federal Government may not serve as voting members, except that the Secretary may appoint employees of the DHHS to serve as ex-officio, non-voting members.

OMH is seeking nominations of persons from a wide-array of fields including but not limited to: public health and medicine, health administration and financing, behavioral and social sciences, immigration and rural health, health law and economics, cultural and linguistic competency, and biomedical ethics and human rights. Demonstrated expertise in minority health, in subject areas such as access to care, data collection and analysis, health professions development, cultural competency, and eliminating disparities in cancer, cardiovascular diseases, infant mortality, HIV infection/AIDS, child and adult immunization, diabetes, substance abuse, homicide, suicide, unintentional injuries, and other diseases and health conditions is also required.

Nominations must state that the nominee is willing to serve as a member of the Advisory Committee and appears to have no conflict of interest that would preclude membership. Candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Members are appointed for a term of four years except that the Secretary shall initially appoint a portion of members to one, two, and three year terms. The Chair, selected by the Secretary from among the voting members of the Committee, will serve a term of two years. Committee members will be compensated for the time spent in Committee meetings (including travel time) as well as per diem costs.

Any interested person may nominate one or more qualified persons. Self-nominations will also be accepted.

Nomination forms may be obtained from the Office of Minority Health Resource Center, P.O. Box 37337. Washington, D.C. 20013–7337, telephone 1–800–444–6472, TDD 301–230–7199, e-mail: *info@omhrc.gov*. Nomination forms may also be downloaded from the Office of Minority Health Resource Center web site, *http://www.omhrc.gov*. All nominations and curricula vitae for the Advisory Committee should be set to Monica Farrar at the address in this notice.

Dated: January 27, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–2312 Filed 2–2–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistance Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Implementation of data collection described in Evaluation Guidance for CDC Funded Health Department HIV Prevention Programs To Be Implemented From 2000 to 2003—New—The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP) proposes a collection of standardized HIV evaluation data from health department grantees to ensure delivery of the best possible HIV prevention services. The CDC needs standardized evaluation data from

health department grantees for the following reasons: (1) To determine the extent to which HIV prevention efforts have contributed to a reduction in HIV transmission, (2) to improve programs to better meet that goal (3) to help focus technical assistance and support and (4) to be accountable to stakeholders by informing them of progress made in HIV prevention nationwide.

CDC formed evaluation workgroups and panels consisting of expert evaluation consultants, health department representatives, representatives of the National Alliance of State and Territorial AIDS Directors, and CDC staff in order to assess and summarize existing health department evaluation data collections. An extensive review of published and unpublished evaluation data led to the conclusion that even though there is information suggesting a very large number of Americans who receive HIV prevention services, but there were no standardized and scientifically valid evaluation data on HIV prevention services. Based on these findings, the workgroups and panels have concluded that there is a need to monitor intervention plans, implementation, and outcomes on the national, state, and local levels for public health management purposes.

CDC and its prevention partners have specifically identified the types of standardized evaluation data they need to be accountable for the use of federal funds and to conduct systematic analysis of HIV prevention to improve policies and programs. Generally, evaluation data that are needed (but not yet available at the national level) include the types and quality of HIV prevention interventions provided by CDC health department grantees and their grantees, the characteristics of clients targeted and reached by the interventions, and the effects of interventions on client behavior and HIV transmission.

In 1998, the 5-year Cooperative Agreement with state and territorial health departments in CDC Program Announcement 99004 HIV Prevention Projects specified health department evaluation activities and referenced the proposed data collection. The announcement states that the Evaluation Guidance is designed to assist grantees in implementing evaluation activities listed in announcement 99004. Below is a listing of these evaluation activities. In addition, the proposed evaluation data collection forms are sub-categorized under each 99004 evaluation activity.

(1) Evaluating HIV Prevention Community Planning
—CPG Membership Survey
—Table of Estimated Expenditures Form

(2) Designing and Evaluating Intervention Plans
—Aggregate Intervention Plan Data Collection Form for the following types of interventions:
Individual-Level
Group-Level
Outreach
Prevention Case Management
Partner Counseling and Referral Services Health Communication/ Public Information Other Interventions

(3) Monitoring and Evaluating the Implementation of HIV Prevention Programs
—Aggregate Process Evaluation Data Collection Form for the following types of intervention:
Individual-Level
Group-Level
Outreach
Prevention Case Management
Partner Counseling and Referral Services Health Communication/ Public Information Other Interventions

(4) Evaluating Linkages between the Comprehensive HIV Prevention Plan, CDC funding application and resource allocation
—Data Collection From for Linkages between the CDC funding application and the Comprehensive HIV Prevention Plan
—Data Collection Form for Linkages between Resource Allocation and the Comprehensive HIV Prevention Plan

Ten health departments pilot tested the instruments. The following table was developed from that experience.

Respondents	Number of respondents	Number of responses/respondent	Average burden per response (in hours)	Total burden (in hours)
Health department grantees.	390	18 (total number of data collection forms).	1.0	7020
Total				7020

The CDC anticipates 2 persons per health department jurisdiction (total # of jurisdictions = 65) to prepare and submit Evaluation Guidance data collection forms annually for the next 3 years (65 × 2 = 130 respondents; 130 × 3 years = 390 total respondents.) Therefore, the total response burden is estimated at 7020 hours (309 × 18 forms.) The total cost to respondents is estimated at $140,400 assuming a working wage for assigned health department personnel of $20.00 over the 3-year period.

Dated: January 28, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–2384 Filed 2–2–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0236]

Guidance for Industry on Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products." This guidance provides assistance to sponsors of abbreviated new drug applications (ANDA's) by recommending study designs and scoring systems that can be used to test skin irritation and sensitization during development of transdermal products. Skin irritation and sensitization should be assessed because the condition of the skin may affect the absorption of a drug from a transdermal system, thus affecting the efficacy or safety of the product. This guidance does not address the actual bioequivalence studies

necessary for a particular transdermal product.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary M. Fanning, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products." Transdermal products have properties that may lead to skin irritation and/or sensitization. The delivery system, or the system in conjunction with the drug substance, may cause these reactions. Skin irritation and skin sensitization studies are designed to detect irritation and sensitization under conditions of maximal stress and may be used during the assessment of transdermal drug product for ANDA's.

A draft guidance entitled "Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products" was published in the **Federal Register** of February 26, 1999 (64 FR 9516). Eight comments were received between February and April of 1999, and this guidance has been revised after careful consideration of those comments.

This Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The guidance represents the agency's current thinking on skin irritation and sensitization testing of generic transdermal drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2299 Filed 2–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–1500]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Common Claims Forms and Supporting Regulations in 42 CFR 414.40, 424.32, and 424.44; *Form No.:* HCFA–1500, 1490U, and 1490S (OMB # 0938–0008); *Use:* This form is a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1, 321, 417; *Total Annual Responses:* 717,876,097; *Total Annual Hours:* 44,460,460.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 24, 2000.

John P. Burke,

Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–2425 Filed 2–2–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1957]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of

automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: SSO Report of State Buy In Problems and Supporting Regulations in 42 CFR 407.40;

Form No.: HCFA–1957 (0938–0035);

Use: The HCFA–1957 is issued to assist with communications between the Social Security District Offices, Medicaid State Agencies and HCFA Central Offices in the resolution of beneficiary complaints, regarding entitlement under state buy-ins. It is used when a problem arises which cannot be resolved thru normal data exchange.

Frequency: On occasion;

Affected Public: State, Local or Tribal Government, and Individuals or Households;

Number of Respondents: 2,000;

Total Annual Responses: 2,000;

Total Annual Hours: 716.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–2427 Filed 2–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Loan Repayment and Scholarship, Submission for OMB Review; Comment Request; National Institutes of Health Undergraduate Scholarship Program for Individuals From Disadvantaged Backgrounds

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Loan Repayment and Scholarship, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 26, 1999, and allowed 60 days for public comment. One request for a copy of the data collection instrument was received and fulfilled. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: National Institutes of Health Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds (UGSP). *Type of Information Collection Request:* Revision of a previously approved collection (OMB No. 0925–0438, expiration date February 29, 2000). *Form Numbers:* NIH 2762–1, NIH 2762–2, NIH 2762–3, and NIH 2762–4. *Need and Use of Information Collection:* The NIH makes available scholarship awards to students from disadvantaged backgrounds who are committed to careers in biomedical research. The scholarships pay for tuition and reasonable educational and living expenses up to $20,000 per academic year at an accredited undergraduate institution. In return, for each year of scholarship support, the recipient is obligated to serve as a full-time paid employee in an NIH research laboratory for 10 consecutive weeks during the months of June through August and for 1 year after graduation. If the recipient pursues a post-graduate degree (graduate, medical, dental, or veterinarian school), the post-graduation service obligation may be deferred with the approval of the Secretary, Department of Health and Human Services. The information proposed for collection will be used by the Office of Loan Repayment and Scholarship to determine an applicant's eligibility for participation in the UGSP. The UGSP is authorized by Section 487D of the Public Health Service (PHS) Act (42 USC 288–2), as amended by the NIH Revitalization Act of 1993 (Publ. L. 103–43). *Frequency of Response:* Initial application and annual renewal application. *Affected Public:* Applicants (high school or undergraduate students), recommenders, undergraduate institution financial aid staff. The annual reporting burden estimates are as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicant	250	1.0	3.167	791.75
Recommender	750	1.0	1.0	750.00
Financial Aid Staff	250	1.0	.5	125.00
Totals	1,250			1,666.75

The annualized cost to respondents is estimated at $29,263.81. There are no capital costs, operating costs, or maintenance costs to report.

Request for comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, Maryland 20892–9121. Mr. Horowitz can be contacted via e-mail at MHorowitz@nih.gov or by calling (301) 402–5666 (not a toll-free number).

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before March 6, 2000.

Dated: January 27, 2000.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 00–2351 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of the National Institute on Deafness and Other Communication Disorders Partnership Program

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The proposed information collection was previously published in the **Federal Register** on May 11, 1999 (64 FR 25360) and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond unless it displays a currently valid OMB control number.

Proposed Collection: Title: Evaluation of the NIDCD Partnership Program. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are under represented in the science and health professional field. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. This survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists. *Frequency of Response:* One. *Affected Public:* Individuals. *Type of Respondent:* Partnership Program Participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 76; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.5; and *Estimated Total Annual Burden Hours Requested:* 38. The annualized cost to respondents is estimated at: $380. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Note: The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Initial program participant survey	16	1	0.5	8
Follow up survey of participant	60	1	0.5	30
Total	76			38

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mrs. Kay C. Johnson-Graham, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 402–6415 or E-mail your request,

including your address to: <kay_johnson@ms.nidcd.nih.gov>.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before March 6, 2000.

Dated: January 28, 2000.

David Kerr,

Executive Officer, National Institute on Deafness and Other Communication Disorders

[FR Doc. 00–2352 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Minority Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Minority Health.

Date: February 11, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: Agenda items include: (1) a report by the Associate Director, ORMH; (2) FY'00 minority health initiatives; (3) report of the trans–NIH working group on domestic health disparities; and (4) other business of the Committee.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Jean L. Flagg-Newton, Special Assistant to the Associate Director, Office of Research on Minority Health, National Institutes of Health, Building 1, Room 256, 9000 Rockville Pike, Bethesda, MD 20892, (301) 402–2518.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2350 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Health Services Research Review Subcommittee.

Date: February 18, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2345 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MARC/MBRS Communication Technology.

Date: March 2, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Richard I. Martinez, Office of Review Activities, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MARC/MBRS Annual Symposium.

Date: March 3, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Richard I. Martinez, Office of Review Activities, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc.00–2346 Filed 2–2–00; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: March 7–8, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kenwood Country Club, 5601 River Road, Bethesda, MD 20816.

Contact Person: Aftab A. Ansari, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2347 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 26, 2000.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Bldg, 45 Center Drive, Room 5As.25u, Bethesda, MD 20893, (Telephone Conference Call).

Contact Person: Tommy L. Broadwater, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93–846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 24, 2000.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2348 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Kits for DNA Micro-array Technology".

Date: January 25, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Web-based Visualization and Analysis of DNA Micro-array Data".

Date: January 27, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Chemical Libraries for Drug Development".

Date: February 3, 2000.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547 (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist

Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2349 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

Extension of Public Comment Period on Draft National Institutes of Health Guidelines for Research Involving Human Pluripotent Stem Cells (December 1999)

The National Institutes of Health is extending the public comment period on the Draft National Institutes of Health Guidelines for Research Involving Human Pluripotent Stem Cells (December 1999) for three weeks. Written comments should be received by NIH on or before February 22, 2000. Comments should be addressed to: Stem Cell Guidelines, NIH Office of Science Policy, 1 Center Drive, Building 1, Room 218, Bethesda, MD 20892. Comments may also be sent by facsimile transmission to Stem Cell Guidelines at (301) 402–0280, or by e-mail to: *stemcell@mail.nih.gov*.

January 28, 2000.

Ruth Kirschstein,

Acting Director, NIH.

[FR Doc. 00–2353 Filed 2–2–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2000 Survey of Mental Health Organizations, General Hospital Mental Health Services, and Managed Care Organizations (SMHO)

The survey, to be conducted by SAMHSA's Center for Mental Health Services (CMHS), will be conducted in two phases. Phase I will be a brief two-three page inventory consisting of four forms: (1) A specialty mental health organization and general hospital with separate mental health services form; (2) A general hospital with integrated mental health services screener form; (3) A community residential organization screener form; and (4) A managed behavioral healthcare organization form. This short inventory will be sent to all known organizations to define the universe of valid mental health organizations to be sampled in Phase II. The inventory will collect basic information regarding the name and address of the organizations, their type and ownership, and the kinds of services provided.

Phase II will sample approximately 2,000 mental health organizations and utilize a more detailed survey instrument. Although the Sample Survey form will be more comprehensive, it will be very similar to surveys and inventories fielded in 1998, 1994, 1992 and earlier. The organizational data to be collected by the Sample Survey form include university affiliation, client/patient census by basic demographics, revenues, expenditures, and staffing.

The resulting database will be used to provide national estimates and will be the basis fo the National Directory of Mental Health Services. In addition, data derived from the survey will be published by CMHS in *Data Highlights*, in *Mental Health, United States*, and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry*. *Mental Health, United States* is used by the general public, state governments, the U.S. Congress, university researchers, and other health care professionals.

Questionnaire	Number of respondents	Responses/ respondent	Average hours/ response	Total burden
Phase I (Inventory)	12,634	1	0.25	3,158
Specialty Mental Health Organizations	(4,126)	(1)	(0.25)	(1,031)
General Hospitals with Separate Mental Health Services	(1,736)	(1)	(0.25)	(434)
General Hospitals with Integrated Mental Health Services	(3,617)	(1)	(0.25)	(904)
Community Residential Organizations	(1,415)	(1)	(0.25)	(354)
Managed Care Organizations	(1,740)	(1)	(0.25)	(435)
Phase II (Sample Survey)	2,000	1	3.00	6,000
Specialty Mental Health Organizations	(1,404)	(1)	(3.00)	(4,212)
General Hospitals with Separate Mental Health Services	(596)	(1)	(3.00)	(1,788)
Total	14,634	.....	.....	9,158

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 28, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–2398 Filed 2–2–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–01]

Notice of Proposed Information Collection for Public Comments for Section 8 Management Assessment Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information: Title of Proposal: Section 8 Management Assessment Program, OMB Control Number: 2577–0215.

Description of the need for the information and proposed use: The information is necessary to rate and assess public housing agency (PHA) management capabilities and deficiencies in key program areas, to improve HUD oversight of the Section 8 tenant-based program and to help HUD target monitoring and assistance to PHA programs that pose the greatest risk.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
SEMAP Certification	2,565	1	2,565	12	30,780	985.101
Corrective Action Plan	260	1	260	10	2,600	985.107(c)
Report on Correction of SEMAP Deficiency	670	1	670	2	1,340	985.106
Total annual burden					34,720	

Status of the proposed information collection: Revision and extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 27, 2000.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Section 8 Management Assessment Program (SEMAP) Certification

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0215 (exp. 1/31/2000)

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This collection of information is required by 24 CFR sec 985.101 which requires a Public Housing Agency (PHA) administering a Section 8 tenant-based assistance program to submit an annual SEMAP Certification within 60 days after the end of its fiscal year. The information from the PHA concerns the performance of the PHA and provides assurance that there is no evidence of seriously deficient performance. HUD uses the information and other data to assess PHA management capabilities and deficiencies, and to assign an overall performance rating to the PHA. Responses are mandatory and the information collected does not lend itself to confidentiality.

Instructions Respond to this certification form using the PHA's actual data for the fiscal year just ended.

PHA Name	For PHA FY Ending (mm/dd/yyyy)	Submission Date (mm/dd/yyyy)

Check here if the PHA expends less than $300,000 a year in Federal awards ☐
Indicators 1 - 7 will not be rated if the PHA expends less than $300,000 a year in Federal awards and its Section 8 programs are not audited for compliance with regulations by an independent auditor. A PHA that expends less than $300,000 in Federal awards in a year must still complete the certification for these indicators.

Performance Indicators

1. Selection from the Waiting List. (24 CFR 982.54(d)(1) and 982.204(a))
(a) The PHA has written policies in its administrative plan for selecting applicants from the waiting list.

PHA Response **Yes** ☐ **No** ☐

(b) The PHA's quality control samples of applicants reaching the top of the waiting list and of admissions show that at least 98% of the families in the samples were selected from the waiting list for admission in accordance with the PHA's policies and met the selection criteria that determined their places on the waiting list and their order of selection.

PHA Response **Yes** ☐ **No** ☐

2. Reasonable Rent. (24 CFR 982.4, 982.54(d)(15), 982.158(f)(7) and 982.507)
(a) The PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units (i) at the time of initial leasing, (ii) before any increase in the rent to owner, and (iii) at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. The PHA's method takes into consideration the location, size, type, quality, and age of the program unit and of similar unassisted units, and any amenities, housing services, maintenance or utilities provided by the owners.

PHA Response **Yes** ☐ **No** ☐

(b) The PHA's quality control sample of tenant files for which a determination of reasonable rent was required shows that the PHA followed its written method to determine reasonable rent and documented its determination that the rent to owner is reasonable as required for (check one):

PHA Response ☐ **At least 98% of units sampled** ☐ **80 to 97% of units sampled** ☐ **Less than 80% of units sampled**

3. Determination of Adjusted Income. (24 CFR part 5, subpart F and 24 CFR 982.516)
The PHA's quality control sample of tenant files shows that at the time of admission and reexamination, the PHA properly obtained third party verification of adjusted income or documented why third party verification was not available; used the verified information in determining adjusted income; properly attributed allowances for expenses; and, where the family is responsible for utilities under the lease, the PHA used the appropriate utility allowances for the unit leased in determining the gross rent for (check one):

PHA Response ☐ **At least 90% of files sampled** ☐ **80 to 89% of files sampled** ☐ **Less than 80% of files sampled**

4. Utility Allowance Schedule. (24 CFR 982.517)
The PHA maintains an up-to-date utility allowance schedule. The PHA reviewed utility rate data that it obtained within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10% or more in a utility rate since the last time the utility allowance schedule was revised.

PHA Response **Yes** ☐ **No** ☐

5. HQS Quality Control Inspections. (24 CFR 982.405(b))
A PHA supervisor (or other qualified person) reinspected a sample of units during the PHA fiscal year, which met the minimum sample size required by HUD (see 24 CFR 985.2), for quality control of HQS inspections. The PHA supervisor's reinspected sample was drawn from recently completed HQS inspections and represents a cross section of neighborhoods and the work of a cross section of inspectors.

PHA Response **Yes** ☐ **No** ☐

6. HQS Enforcement. (24 CFR 982.404)
The PHA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or, if HQS deficiencies were not corrected within the required time frame, the PHA stopped housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce the family obligations for (check one):

PHA Response ☐ **At least 98% of cases sampled** ☐ **Less than 98% of cases sampled**

7. Expanding Housing Opportunities. (24 CFR 982.54(d)(5), 982.153(b)(3) and (b)(4), 982.301(a) and 983.301(b)(4) and (b)(12)).
Applies only to PHAs with jurisdiction in metropolitan FMR areas.
Check here if not applicable ☐

(a) The PHA has a written policy to encourage participation by owners of units outside areas of poverty or minority concentration which clearly delineates areas in its jurisdiction that the PHA considers areas of poverty or minority concentration, and which includes actions the PHA will take to encourage owner participation.
PHA Response **Yes** ☐ **No** ☐

(b) The PHA has documentation that shows that it took actions indicated in its written policy to encourage participation by owners outside areas of poverty and minority concentration.
PHA Response **Yes** ☐ **No** ☐

(c) The PHA has prepared maps that show various areas, both within and neighboring its jurisdiction, with housing opportunities outside areas of poverty and minority concentration; the PHA has assembled information about job opportunities, schools and services in these areas; and the PHA uses the maps and related information when briefing voucher holders.
PHA Response **Yes** ☐ **No** ☐

(d) The PHA's information packet for voucher holders contains either a list of owners who are willing to lease, or properties available for lease, under the voucher program, or a list of other organizations that will help families find units and the list includes properties or organizations that operate outside areas of poverty or minority concentration.
PHA Response **Yes** ☐ **No** ☐

(e) The PHA's information packet includes an explanation of how portability works and includes a list of neighboring PHAs with the name, address and telephone number of a portability contact person at each.
PHA Response **Yes** ☐ **No** ☐

(f) The PHA has analyzed whether voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, where such difficulties were found, the PHA has considered whether it is appropriate to seek approval of exception payment standard amounts in any part of its jurisdiction and has sought HUD approval when necessary.
PHA Response **Yes** ☐ **No** ☐

8. Payment Standards. The PHA has adopted current payment standards for the voucher program by unit size for each FMR area in the PHA jurisdiction and, if applicable, for each PHA-designated part of an FMR area, which do not exceed 110 percent of the current applicable FMR and which are not less than 90 percent of the current FMR (unless a lower percent is approved by HUD). (24 CFR 982.503)

PHA Response **Yes** ☐ **No** ☐

Enter current FMRs and payment standards (PS)

0-BR FMR _____	1-BR FMR _____	2-BR FMR _____	3-BR FMR _____	4-BR FMR _____
PS _____	PS _____	PS _____	PS _____	PS _____

If the PHA has jurisdiction in more than one FMR area, and/or if the PHA has established separate payment standards for a PHA-designated part of an FMR area, attach similar FMR and payment standard comparisons for each FMR area and designated area.

9. Annual Reexaminations. The PHA completes a reexamination for each participating family at least every 12 months. (24 CFR 5.617)
PHA Response **Yes** ☐ **No** ☐

10. Correct Tenant Rent Calculations. The PHA correctly calculates tenant rent in the rental certificate program and the family rent to owner in the rental voucher program. (24 CFR 982, Subpart K)
PHA Response **Yes** ☐ **No** ☐

11. Precontract HQS Inspections. Each newly leased unit passed HQS inspection before the beginning date of the assisted lease and HAP contract. (24 CFR 982.305)
PHA Response **Yes** ☐ **No** ☐

12. Annual HQS Inspections. The PHA inspects each unit under contract at least annually. (24 CFR 982.405(a))
PHA Response **Yes** ☐ **No** ☐

13. Lease-Up. The PHA executes assistance contracts on behalf of eligible families for the number of units that has been under budget for at least one year.
PHA Response **Yes** ☐ **No** ☐

14a. Family Self-Sufficiency Enrollment. The PHA has enrolled families in FSS as required. (24 CFR 984.105)
Applies only to PHAs required to administer an FSS program.
Check here if not applicable ☐
PHA Response
a. Number of mandatory FSS slots (Count units funded under the FY 1992 FSS incentive awards and in FY 1993 and later through 10/20/1998. Exclude units funded in connection with Section 8 and Section 23 project-based contract terminations; public housing demolition, disposition and replacement; HUD multifamily property sales; prepaid or terminated mortgages under section 236 or section 221(d)(3); and Section 8 renewal funding. Subtract the number of families that successfully completed their contracts on or after 10/21/1998.) ☐

or, Number of mandatory FSS slots under HUD-approved exception ☐

b. Number of FSS families currently enrolled

c. Portability: If you are the **initial** PHA, enter the number of families currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

Percent of FSS slots filled (b + c divided by a)

14b. Percent of FSS Participants with Escrow Account Balances. The PHA has made progress in supporting family self-sufficiency as measured by the percent of currently enrolled FSS families with escrow account balances. (24 CFR 984.305)
Applies only to PHAs required to administer an FSS program.
Check here if not applicable ☐

PHA Response **Yes** ☐ **No** ☐

Portability: If you are the **initial** PHA, enter the number of families with FSS escrow accounts currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

Deconcentration Bonus Indicator (Optional and only for PHAs with jurisdiction in metropolitan FMR areas).

The PHA is submitting with this certification data which show that:

(1) Half or more of all Section 8 families with children assisted by the PHA in its principal operating area resided in low poverty census tracts at the end of the last PHA FY;

(2) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area during the last PHA FY is at least two percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the last PHA FY;

or

(3) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area over the last two PHA FYs is at least two percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last PHA FY.

PHA Response **Yes** ☐ **No** ☐ **If yes, attach completed deconcentration bonus indicator addendum.**

I hereby certify that, to the best of my knowledge, the above responses under the Section 8 Management Assessment Program (SEMAP) are true and accurate for the PHA fiscal year indicated above. I also certify that, to my present knowledge, there is not evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to administer Section 8 rental assistance in accordance with Federal law and regulations.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Executive Director, signature

Date (mm/dd/yyyy) _____

Chairperson, Board of Commissioners, signature

Date (mm/dd/yyyy) _____

The PHA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the PHA in providing its certification.

SEMAP Certification - Addendum for Reporting Data for Deconcentration Bonus Indicator

Date (mm/dd/yyyy) _____

PHA Name _____

Principal Operating Area of PHA _____
(The geographic entity for which the Census tabulates data)

Special instructions for State or regional PHAs. Complete a copy of this addendum for each metropolitan area or portion of a metropolitan area (i.e., principal operating areas) where the PHA has assisted 20 or more Section 8 families with children in the last completed PHA FY. HUD will rate the areas separately and the separate ratings will then be weighted by the number of assisted families with children in each area and averaged to determine bonus points.

1990 Census Poverty Rate of Principal Operating Area _____

Criteria to Obtain Deconcentration Indicator Bonus Points

To qualify for bonus points, a PHA must complete the requested information and answer yes for only one of the 3 criteria below. However, State and regional PHAs must always complete line 1) b for each metropolitan principal operating area.

1) _____ a. Number of Section 8 families with children assisted by the PHA in its principal operating area at the end of the last PHA FY who live in low poverty census tracts. A low poverty census tract is a tract with a poverty rate at or below the overall poverty rate for the principal operating area of the PHA, or at or below 10% whichever is greater.

_____ b. Total Section 8 families with children assisted by the PHA in its principal operating area at the end of the last PHA FY.

_____ c. Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the last PHA FY (line a divided by line b).

Is line c 50% or more? Yes ☐ No ☐

2) _____ a. Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the last completed PHA FY.

_____ b. Number of Section 8 families with children who moved to low poverty census tracts during the last completed PHA FY.

_____ c. Number of Section 8 families with children who moved during the last completed PHA FY.

_____ d. Percent of all Section 8 mover families with children who moved to low poverty census tracts during the last PHA fiscal year (line b divided by line c).

Is line d at least two percentage points higher than line a? Yes ☐ No ☐

3) _____ a. Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the second to last completed PHA FY.

_____ b. Number of Section 8 families with children who moved to low poverty census tracts during the last two completed PHA FYs.

_____ c. Number of Section 8 families with children who moved during the last two completed PHA FYs.

_____ d. Percent of all Section 8 mover families with children who moved to low poverty census tracts over the last two completed PHA FYs (line b divided by line c).

Is line d at least two percentage points higher than line a? Yes ☐ No ☐

If one of the 3 criteria above is met, the PHA may be eligible for 5 bonus points.

See instructions above concerning bonus points for State and regional PHAs.

Previous edition is obsolete

form **HUD-52648** (12/22/1999)
ref. 24 CFR Part 985

[FR Doc. 00–2315 Filed 2–2–00; 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–09–1420–00]

Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004; Arizona; Notice of Filing of Plats of Survey

January 18, 2000.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat, in four sheets, representing the dependent resurvey of a portion of the subdivisional lines, the metes-and-bounds survey of the Hopi and Navajo partition line, and the survey of a portion of the subdivisional lines, Township 31 North, Range 10 East of the Gila and Salt River Meridian, Arizona, accepted May 3, 1999 and officially filed May 14, 1999.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat in four sheets, representing the dependent resurvey of south, east, and west boundaries, the subdivisonal lines, and Tract 37, and the metes-and-bounds survey of the Hopi and Navajo partition line, Township 31 North, Range 11 East, of the Gila and Salt River Meridian, Arizona, accepted April 23, 1999 and officially filed April 30, 1999.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat in seven sheets, representing the dependent resurvey of a portion of the south and east boundaries, a portion of the subdivisional lines and Tracts 43 through 52, and the metes-and-bounds survey of the Hopi and Navajo portion line in Township 32 North, Range 11 East, of the Gila and Salt River Meridian, Arizona, accepted April 20, 1999 and officially filed April 30, 1999.

This plat was prepared a the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat in four sheets, representing the metes-and-bounds survey of the Hopi and Navajo partition line through unsurveyed Townships 30 North, Ranges 11 and 12 East, and Township 31 North, Range 12 East, and partially surveyed Township 32 North, Range 12 East, of the Gila and Salt River Meridian, Arizona, accepted May 3, 1999 and officially filed May 14, 1999.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat in three sheets, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines and the metes-and-bounds survey of the Hopi and Navajo partition line in Township 32 North, Range 12 East, of the Gila and Salt River Meridian, Arizona, accepted April 22, 1999 and officially filed April 30, 1999.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat in four sheets, representing the dependent resurvey of a portion of the Gila and Salt River Baseline (south boundary), a portion of the subdivisional lines and portions of certain mineral surveys, and the metes-and-bounds surveys in Township 1 North, Range 14 East, of the Gila and Salt River Meridian, Arizona, accepted May 11, 1999 and officially filed May 21, 1999.

This plat was prepared at the request of the Bureau of Land Management and Cyprus Mine of Miami, Arizona.

A plat representing the survey of the Fifth Guide Meridian East, (a portion of the west boundary), the east boundary, and a portion of the subdivisional lines, Township 36 North, Range 21 East, of the Gila and Salt River Meridian, Arizona, accepted July 23, 1999 and officially filed July 30, 1999.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the south, east, west and north boundaries, and the subdivisional lines, Township 35 North, Range 23 East, of the Gila and Salt River Meridian, Arizona, accepted December 1, 1999 and officially filed December 10, 1999.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the subdivision of section 6 and a metes-and-bounds survey in section 6, Township 8 North, Range 5 West, of the Gila and Salt River Meridian, Arizona, accepted November 30, 1999 and officially filed December 10, 1999.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Filed Office.

A plat representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Table Top Wilderness Area boundary, Township 7 South, Range 1 East, of the Gila and Salt River Meridian, Arizona, accepted December 3, 1999 and officially filed December 10, 1999.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat, in three sheets, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the metes-and-bounds survey of the Table Top Wilderness Area boundary, Township 8 South, Range 1 East, of the Gila and Salt River Meridian, Arizona, accepted January 3, 2000 and officially filed January 12, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat, in three sheets, representing the survey of a portion of the east boundary, the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines and the metes-and-bounds survey of the Table Top Wilderness Area boundary, Township 7 South, Range 2 East, of the Gila and Salt River Meridian, Arizona, accepted September 7, 1999 and officially filed September 17, 1999.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Table Top Wilderness Area boundary, Township 8 South, Range 2 East, of the Gila and Salt River Meridian, Arizona, accepted January 3, 2000 and officially filed January 12, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat, in four sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the metes-and-bounds survey of the Table Top Wilderness Area boundary, Township 7 South, Range 3 East, of the Gila and Salt River Meridian, Arizona, was accepted December 8, 1999, and officially filed December 17, 1999.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat, in four sheets, representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Table Top Wilderness Area boundary, Township 8 South, Range 3 East, of the Gila and Salt River Meridian, Arizona, was accepted January 4, 2000, and officially filed January 12, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat, in two sheets, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the survey of a portion of the subdivisional lines and the subdivision of sections, Township 20 South, Range 16 East, of the Gila and Salt River Meridian, Arizona, accepted July 14, 1999 and officially filed July 23, 1999.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquires relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar.,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 00–2424 Filed 2–2–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement/ General Management Plan Point Reyes National Seashore, Marin County, CA; Notice of Intent

SUMMARY: In accord with the National Environmental Policy Act of 1969 (Pub. L. 91–190) and pursuant to regulations of the President's Council on Environmental Quality (40 CFR 1501.7

and 1580.22), the National Park Service will prepare an Environmental Impact Statement and General Management Plan (EIS/GMP) for Point Reyes National Seashore. This notice supersedes previous Notices published on October 14, 1997 (V62; N198; P53336) and May 24, 1999 (V64; N99; P28008), and hereby extends the scoping process and comment period through March 14, 2000.

Background

The purpose of the EIS/GMP will be to state the management philosophy for Point Reyes National Seashore and provide strategies for addressing major issues. Two types of strategies will be identified and analyzed: (1) Those required to manage and preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the EIS/GMP will identify the programs, actions, support facilities, and appropriate mitigation measures needed for their implementation. The EIS/GMP will guide management of park lands over the subsequent 10–15 years.

It has been determined that lands in the northern district of Golden Gate National Recreation Area (but administered by Point Reyes National Seashore) will be addressed in this EIS/GMP. This includes approximately 15,000 acres of land in the Olema Valley, north of the Bolinas-Fairfax Road and east of Highway 1 as well as Tomales Bay lands. Scoping comments received to date regarding other issues will also continue to be addressed, and need not be resubmitted.

Comments

Persons wishing to express any new concerns about management issues and future land management direction are encouraged to address these to the Superintendent, Point Reyes National Seashore, Point Reyes, California 94956. Comments can also be emailed to "ann_nelson@nps.gov". All comments must be postmarked or transmitted no later than March 14, 2000. A public workshop to hear comments and suggestions will be conducted at park headquarters on Tuesday, February 29, 2000 from 5:00–7:00 p.m. Questions regarding the plan or scoping sessions should be addressed to the Superintendent either by mail to the above address, or by telephone at (415) 663–8522.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

The official responsible for the final decision is John J. Reynolds, Regional Director, Pacific West Region; the official responsible for implementation is Don Neubacher, Superintendent, Point Reyes National Seashore. At this time it is anticipated that the draft EIS/GMP will be available for public review in the summer of 2001, and the final EIS/GMP completed in the spring of 2002. Distribution of both documents will be duly noted in the **Federal Register** and announced via local and regional press. A Record of Decision would be prepared not sooner than 30 days following release of the final EIS/GMP.

Dated: January 21, 2000.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–2303 Filed 2–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Scoping for Fire Management Plan, Point Reyes National Seashore, Marin County, CA

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*) that public scoping has been initiated for a conservation planning and impact analysis process for updating the fire management plan for Point Reyes National Seashore, including Golden Gate National Recreation Area lands administered by Point Reyes National Seashore. The purpose of the scoping process is to elicit early public comment regarding issues and concerns, a suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts which should be addressed.

Background

Point Reyes National Seashore is a unit of the National Park System. Research has shown that fire is a significant natural process across a large portion of the 85,000 acres administered by the park. A fire management program was begun in 1976 and has continued to the present time. Three forms of wildland fire management—aggressive suppression of unwanted wildfires, prescribed burning, and mechanical fuel reduction—have been used to achieve natural and cultural resource management, hazard fuel reduction, and fire prevention goals.

The last revision of the fire management plan culminated in a Finding Of No Significant Impact, dated August 2, 1993. Since that time, a range of new issues, improved information, and unforeseeable constraints have emerged which have the potential to affect the future direction of the fire management program within the parks. Some of these issues include but are not limited to: A continued decline in ecosystem health due to fire suppression, increased hazards and costs associated with fire suppression, and more stringent air quality regulations.

Comments

As noted, the National Park Service will undertake an environmental analysis effort to address issues and alternatives for fire management on lands administered by Point Reyes National Seashore. At this time, it has not been determined whether an Environmental Assessment or Environmental Impact Statement will be prepared, however, this scoping process will aid in the preparation of either document. As the first step in this undertaking, a variety of public scoping and information activities will be conducted. An initial public meeting will be held under the auspices of the Point Reyes Citizen Advisory Commission, January 29, 2000, 10 a.m., at the Dance Palace in Point Reyes Station. A second public meeting will be held at park headquarters on March 9, 2000, 7 p.m.

For those unable to attend meetings, a scoping document will be available through the park. Main topics addressed in the scoping document and meetings are: Background information on the fire management program; review of relevant policy and law affecting fire management programs; assessment of current fire management needs; and identification of issues and options for fire management in the parks.

Interested individuals, organizations, and agencies are encouraged to provide comments or suggestions. Written comments regarding the fire management program must be

postmarked (or transmitted) no later than March 28, 2000. For the most up-to-date information on the scoping meetings, or to request a copy of the scoping background material and provide comments, please contact: Superintendent, Point Reyes National Seashore; Attn: Fire Management Plan; Point Reyes Station, California 94965; telephone (415) 663–8522 ext. 265 (or email ann_nelson@nps.gov.).

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondents identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

The official responsible for approval is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation will be the Superintendent, Point Reyes National Seashore. The draft fire management plan and environmental document are expected to be available for public review in the summer of 2000. At this time it is anticipated that the final plan and environmental document are to be completed in Fall/Winter 2000/2001.

Dated: January 21, 2000.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–2300 Filed 2–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Denali National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and Preserve and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Subsistence Resource Commission for Denali National Park and Preserve. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call—Confirm Quorum.
(3) Welcome and introductions.
(4) Approval of last meeting minutes.
(5) Additions and corrections to agenda.
(6) Business:
(a) Proposed Federal Subsistence Wildlife Regulations for 2000–2001.
(b) Proposed Federal Subsistence Fisheries Projects for 2000.
(c) SRC Chairs Workshop Report.
(7) Public and other agency comments.
(8) Set time and place of next SRC meeting.
(9) Adjournment.

DATES: The meeting will begin at 9 a.m. on Monday, February 14th, 2000 and conclude around 5 p.m.

LOCATION: The meeting will be held at the North Star Inn, Healy, Alaska.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence and Cultural Branch, P.O. Box 9, Denali Park, Alaska 99755, Phone (907) 683–9544 or (907) 456–0595.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act. Note that under the Freedom of Information Act (FOIA), transcripts of any person giving public comments may be made available under a FOIA request.

Paul Anderson,

Deputy Regional Director.

[FR Doc. 00–2301 Filed 2–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Rescheduled Second Public Scoping Meeting for Environmental Planning for Use of Kenilworth Park, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Rescheduled second public scoping meeting by the National park Service (NPS) pursuant to the National Environmental Policy Act (NEPA) and NPS Policy related to planning for the use of Kenilworth Park.

SUMMARY: The meeting originally scheduled for January 22, 2000, had to be postponed for reasons out of the control of NPS. On February 5, 2000, NPS is holding the rescheduled second public scoping meeting in furtherance of its NEPA responsibilities and NPS Policy, in order to elicit additional public input concerning the fufure use of Kenilwork Park in light of the NPS-directed clean-up and stabilization activities in the park.

Following a November 30, 1999 public scoping meeting, NPS has been preparing a Development Plan/Environmental Assessment (EA) for future uses of this park. At the February 5, 2000 meeting, NPS will discuss alternative conceptual schemes, along with any additional ideas for the future uses of the park. NPS will also inform the public of the current NPS activities at the park. When this EA is completed, it will be available for public review prior to the NPS decision on this EA pursuant to NEPA.

DATE: The meeting will take place on Saturday, February 5, 2000 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at Zion Baptist Church of Eastland Gardens, located at 1234 Kenilworth Avenue, NE, Washington, DC.

For more information, contact the National Capital Parks-East public information officer at (202) 690–5185.

Dated: January 28, 2000.

Karen Taylor Goodrich,

Superintendent, National Capital Parks-East.

[FR Doc. 00–2305 Filed 2–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the Subsistence Resource Commission announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call—Confirm Quorum.
(3) Introduction of Commission members, staff, and guests.
(4) Review Agenda.
(5) Review and approval of minutes from April 20–21, 1999 meeting.
(6) Superintendent's welcome and review of the Commission purpose.
(7) Commission membership status.

(8) Election of Chair and Vice Chair.
(9) Public and other agency comments.
(10) New Business:
a. Update on Federal Fish Management.
b. Federal Subsistence Program update.
(1) Review 2000–2001 Federal Subsistence Board Proposals for Units 5, 6, 11, 12, and 13.
(2) Review actions taken by Federal Subsistence Board during spring 1999 meeting on Federal Subsistence Program 1999–2000 proposed regulation changes.
(3) Review FSB final version of Individual C&T policy.
(4) Review request for delegating SRC hunting plan recommendation response to the Regional Director in Alaska.
(5) Review FSB response to George Midvag letter—re: Slana CT.
(11) Report on October 1999 Chairs Workshop.
(12) Superintendent's report.
a. Wrangell-St. Elias National Park and Preserve Superintendent and Yakutat District Ranger Positions.
(13) Wrangell-St. Elias National Park and Preserve staff reports.
a. Mentasta Herd Update.
(14) Old Business:
a. Status of EA/rulemaking to add Northway, Tetlin, Tanacross and Dot Lake as resident zone communities community.
b. Cordova Public Meeting.
c. Status of Malaspina Forelands ATV study project.
d. Possible restrictions of the harvest of ewe sheep.
e. Subsistence Hunting Program Recommendation 97–01: establish minimum residency requirement for resident zone communities.
f. SRC Chairs Customary Trade Concerns.
g. Status report on Hunting Plan Recommendation 96–1 and 96–2: migratory bird.
h. Tolsona resident zone request.
i. Status report on subsistence plan, hunt maps, and subsistence brochure for Wrangell-St. Elias National Park and Preserve.
(15) Public and other agency comments.
(16) Subsistence Resource Commission work session to develop proposals/finalize recommendations.
(17) Set time and place of next Subsistence Resource Commission meeting.
(18) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Tuesday, February 22, 2000, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, February 23, 2000, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting will be held at Tazlina Community Hall, Tazlina, Alaska.

FOR FURTHER INFORMATION CONTACT: Gary Candelaria, Superintendent, and Heather Yates, Subsistence Manager, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act. Note that under the Freedom of Information Act (FOIA), transcripts of any person giving public comments may be made available under a FOIA request.

Paul Anderson,
Deputy Regional Director.
[FR Doc. 00–2304 Filed 2–2–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program Policy Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The CALFED Bay-Delta Program Policy Group will meet on February 23, 2000. The agenda for the Policy Group meeting will include discussion of the CALFED Long-Term Water Management Strategy Evaluation Framework and the Preferred Program Alternative in the Final Programmatic EIS/R. This meeting is open to the public. Interested persons may make oral statements to the CALFED Bay-Delta Program Policy Group or may file written for consideration.

DATES: The CALFED Bay-Delta Program Policy Group meeting will be held from 9 a.m. to 4:30 p.m. on Wednesday, February 23, 2000.

ADDRESSES: This meeting will meet at The Sterling Hotel, 1300 H Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which address all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the direction of the CALFED Policy Group. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. The CALFED Policy Group provides general policy direction on all aspects of the CALFED Program.

Dated: January 28, 2000.

Lester A. Snow,
Regional Director.
[FR Doc. 00–2356 Filed 2–2–00; 8:45 am]
BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–A (Review) and 731–TA–157 (Review)]

Carbon Steel Wire Rod From Argentina

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that termination of the suspended countervailing duty investigation and revocation of the antidumping duty order on carbon steel wire rod from Argentina would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[1]

Background

The Commission instituted these reviews on November 2, 1998 (63 FR 58756) and determined effective February 14, 1999 (64 FR 8120, February 18, 1999) that it would conduct full reviews. Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 31, 1999 (64 FR 15375). The hearing was held in Washington, DC, on August 3, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 27, 2000. The views of the Commission are contained in USITC Publication 3270 (January 2000), entitled Carbon Steel Wire Rod from Argentina: Investigations Nos. 701–TA–A (Review and 731–TA–157 (Review).

Issued: January 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2327 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–621 (Review)]

Compact Ductile Iron Waterworks Fittings From China

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in November 1999 to determine whether revocation of the existing antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On January 24, 2000, the Department of Commerce published notice that it was revoking the order "because no domestic party responded to the sunset review notice of initiation by the applicable deadline" (65 FR 3660). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR § 207.69), the subject review is terminated.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

Issued: January 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2329 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–202 (Review) and 731–TA–103 and 514 (Review)]

Cotton Shop Towels From Bangladesh, China, and Pakistan

Determinations

On the Basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the existing antidumping duty orders on cotton shop towels from Bangladesh and China, and the existing countervailing duty order on cotton shop towels from Pakistan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on January 4, 1999 (64 FR 371) and determined on April 8, 1999, that it would conduct full reviews (64 FR 19195, April 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 28, 1999 (64 FR 34679). The hearing was held in Washington, DC, on November 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 21, 2000. The views of the Commission are contained in USITC Publication 3267 (January, 2000), entitled Cotton Shop Towels from Bangladesh, China, and Pakistan (Invs. Nos. 701–TA–202 (Review) and 731–TA–103 and 514 (Review).

By order of the Commission.

Issued: January 27, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2325 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–814 (Final)]

Creatine Monohydrate From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of creatine monohydrate, provided for in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Lynn M. Bragg dissenting. Commissioners Jennifer A. Hillman and Deanna Tanner Okun not participating.

[2] Commissioner Askey dissenting with regard to Bangladesh and Pakistan. Vice Chairman Marcia E. Miller and Commissioner Deanna Tanner Okun not participating.

subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2] The Commission made a negative determination concerning critical circumstances.

Background

The Commission instituted this investigation effective February 12, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Pfanstiehl Laboratories, Inc., Waukegan, IL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of creatine monohydrate from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 19, 1999 (64 FR 45275). The hearing was held in Washington, DC, on December 16, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 28, 2000. The views of the Commission are contained in USITC Publication 3272 (January, 2000), entitled Creatine Monohydrate from China (Investigation No. 731–TA–814 (Final)).

By order of the Commission.

Issued: January 28, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2331 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–411]

Electric Power Services: Recent Reforms in Selected Foreign Markets

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: January 24, 2000.

SUMMARY: Following receipt of a request on November 23, 1999, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–411, Electric Power Services: Recent Reforms in Selected Foreign Markets, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Mr. Christopher Melly, Project Leader (202–205–3461), Mr. Michael Nunes, Deputy Project Leader (202–205–3462), or Mr. Richard Brown, Chief, Services and Investment Division (202–205–3438), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

In her letter dated November 22, 1999, the USTR requested that the Commission, pursuant to section 332(g) of the Tariff Act of 1930, conduct an investigation of the electric power services markets in countries where significant market reform, privatization, and liberalization has occurred or is ongoing. The foreign markets to be examined are: Argentina, Australia, Brazil, Canada, Chile, the European Union, Japan, New Zealand, and Venezuela. As requested, in its report, the Commission will (1) discuss the nature and extent of market reform, privatization, and liberalization undertaken in foreign electricity markets; (2) examine current and evolving conditions of market access, investment, and regulation; and (3) provide, if possible, a listing of common regulatory practices insofar as these exist. For the purpose of this study, electric power services are broadly defined to include core areas such as generation, transmission, and distribution, as well as construction, engineering, consulting, and marketing services as they pertain to the provision of electricity.

The USTR asked that the Commission Furnish its report by November 22, 2000, and that the Commission make the report available to the public in its entirety.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 6, 2000. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., May 23, 2000. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 25, 2000; the deadline for filing post-hearing briefs or statements is 5:15 p.m., June 29, 2000. In the event that, as of the close of business on May 23, 2000, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after May 23, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on June 29, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the

[2] Commissioner Deanna Tanner Okun did not participate in this investigation.

Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

WTO, GATS, market access, electric power.

Issued: January 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2324 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by three (3) business days, or until February 2, 2000, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. ("VISX"), 64 FR 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 and 5,711,762 ("the' 762 patent"). An evidentiary hearing was held from August 18, 1999 to August 27, 1999.

On December 6, 1999, the presiding administrative law judge ("ALJ") issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)(2)).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Dated: Issued: January 28, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2330 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Review)]

Glycine From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on glycine from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the informaiton specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 22, 2000. Comments on the adequacy of responses may be filed with the Commission by April 17, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). The Rules may also be found on the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1995, the Department of Commerce issued an antidumping duty order on imports of glycine from China (60 FR 16116). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–052, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as all glycine, regardless of grade.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of all glycine, regardless of grade.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is March 29, 1995.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 17, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information.

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty

order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C.1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s'') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s'') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s'') operations on that product during calendar year 1999 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2423 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation 332–237]

Production Sharing: Use of U.S. Components in Foreign Assembly Operations, 1995–98

AGENCY: United States International Trade Commission.

ACTION: Termination of the report series and extended informal reporting of developments through existing publications.

EFFECTIVE DATE: January 14, 2000.

SUMMARY: The Commission is changing the method of providing continued reporting on production sharing and related topics, and has published the last in a formal series of annual reports on production sharing under Inv. No. 332–237, covering the period 1995–98, in December 1999. The report series has been discontinued because official U.S. statistics increasingly understate the magnitude of production-sharing activity. As a growing share of global trade becomes duty free, incentives are reduced for entering U.S. imports under the production-sharing tariff provisions. The Commission will continue to report informally on cross-border integration of manufacturing and related topics in other publications, as appropriate, and plans to report annual statistics on trade under the production-sharing provisions in its quarterly publication Industry Trade and Technology Review (ITTR), as well as provide expanded coverage for these data on the Commission's "Interactive Tariff and Trade DataWeb" (http://dataweb.usitc.gov).

BACKGROUND: The Commission has prepared and published annual reports on production-sharing operations since 1986 under this series; notice of initial institution was published in the **Federal Register** of September 4, 1986 (51 FR 31729). In this report series, the Commission has used data on imports under Harmonized Tariff Schedule (HTS) provisions 9802.00.60–.90 as a tool to assess the use of foreign assembly plants as a strategy by U.S. companies to reduce production costs and improve global competitiveness. Because tariffs on many of the products entered under these provisions have been either significantly reduced or eliminated under trade agreements and trade preference programs, many importers no longer enter goods assembled from U.S.-made components under the duty-reducing provisions of HTS chapter 98. Consequently, data on imports entered under these provisions now significantly understate the use of U.S. components in foreign assembly operations. These reporting limitations will become more pronounced for 1999 data since most apparel from Mexico became duty and quota free under NAFTA on January 1, 1999, and the customs user fee applicable to imports from Mexico under NAFTA was eliminated on July 1, 1999. These developments have led the Commission to discontinue the report series in subsequent years, while maintaining continued informal monitoring and reporting through other publications as appropriate.

Data reported under HTS provision 9802.00.60–.90 will continue to provide a meaningful measure of the use of U.S.-made components in imported articles that remain dutiable. For example, such data are an important tool in monitoring the use of U.S.-formed-and-cut fabric in Caribbean garment factories. The Commission plans to report annual data on imports under these production-sharing tariff provisions in its quarterly ITTR publication. Articles assessing developments in the cross-border integration of manufacturing and related topics will be published separately as staff issue papers or as articles for the ITTR report. Parties that are currently on the Commission's mailing list for the Production Sharing report will receive copies of ITTR publications and staff issue papers that cover production-sharing topics, such as cross-border integration of manufacturing, international manufacturing networks, the use of foreign assembly plants and foreign trade zones, and foreign direct investment in manufacturing sectors.

Information on imports under production-sharing provisions (HTS 9802.00.60–.90) is accessible to the public on the Commission's "Interactive Tariff and Trade DataWeb" (http://dataweb.usitc.gov). The "DataWeb" currently enables parties to access U.S. imports under these tariff provisions, providing total imports by country of origin and the top 20 products from each supplier. The DataWeb will be expanded by late spring to include more timely access for annual production-sharing data by HS Chapter, country, and region, as well as by commodity groups which correspond to appendix B statistical tables contained in the former annual report. Parties also can access a table (updated monthly) from the Commission's Web site (http://www.usitc.gov/miscell.htm) showing U.S.-Mexico trade from 1994 to year-to-date, including imports under NAFTA and HTS 9802.00.60–.90.

The final report in the Production Sharing series assesses (1) the use of foreign assembly operations as a means that companies use to reduce costs and gain improved access to foreign markets; (2) the integration of such operations in North America into international manufacturing networks in the apparel, motor vehicles and parts, and television receiver sectors; and (3) the implications of these developments for the competitiveness of these U.S. industries. The latest report covering 1998 data (USITC Publication 3265, December 1999) may be obtained at the ITC Web site (http://www.usitc.gov/332s/332index.htm). A printed report may be requested by contacting the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

FOR FURTHER INFORMATION CONTACT: Ralph Watkins (202) 205–3492; Minerals, Metals, Machinery, and Miscellaneous Manufactures Division; Office of Industries; U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: January 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2328 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by three (3) business days, or until February 1, 2000, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., 8000 South Federal Way, Boise, Idaho 83707–0006 ("complainant"). The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 FR 51372 (1998).

The presiding administrative law judge (ALJ) issued his final ID on November 29, 1999, concluding that there was no violation of section 337. He found that: (a) Complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42(h)(2) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42(h)(2)).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: January 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2326 Filed 2–2–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: February 9, 2000 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436 Telephone: (202) 205–2000

STATUS: Open to the public

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: none

2. Minutes

3. Ratification List

4. Inv. No. 731–TA–459 (Review)(Polyethylene Terephthalate (PET) Film from Korea)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 16, 2000.)

5. Inv. Nos. 731–TA–465–466 and 468 (Review)(Sodium Thiosulfate from China, Germany, and the United Kingdom)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 17, 2000.)

6. Inv. Nos. 731–TA–376 and 563–564 (Review)(Stainless Steel Butt-Weld Pipe Fittings from Japan, Korea, and Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 22, 2000.)

7. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 31, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–02489 Filed 2–1–00; 12:25 pm]

BILLING CODE 7020–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–015]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Tuesday, February 15, 2000, 8:30 a.m. to 5:00 p.m., and Wednesday, February 16, 2000, 8:30 a.m. 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room 7H46, 300 E Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Outer Planets Program Status
—Roadmap Status
—Lunar Survey Tapes
—Technology Readiness for Future Missions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 27, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–2318 Filed 2–2–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that t following meetings of the Hu anities Panel will be held at the Old st Office, 1100 Pennsylvania Ave e, N.W., Washington, DC 2(06.

FOR FURTHER INFOR ATION CONTACT: Laura S. Nelson, A isory Committee Management Offic National Endowment for the Humanities, Washington, DC 2(06; telephone (202) 606–8322. Hearing npaired individuals are advised that in: mation on this matter may be obta ed by contacting the Endowment's T D terminal on (202) 606–8282.

SUPPLEMENTARY INF RMATION: The proposed meetings e for the purpose of panel review, di ussion, evaluation and recommendati on applications for financial assista e under the National Foundati on the Arts and the Humanities Act of 65, as amended, including discussi of information given in confidenc o the agency by the grant applicants. B ause the proposed meetings will cons r information that is likely to disclose ade secrets and commercial or fina ial information obtained from a per n and privileged or confidential and r information of a personal nature the isclosure of which would constitute a early unwarranted invasion of persona privacy, pursuant to authority grante ne by the Chairman's Delegat n of Authority to Close Advisory Co nittee meetings, dated July 19, 1933 have determined that these meetings ill be closed to the public pursuant to bsections (c) (4), and (6) of section 5 b of Title 5, United States Code.

Date: February 14 2000.

Time: 9:00 a.m. t 5:30 p.m.

Room: 415.

Program: This m ing will review applications for Hu anities Projects in Media, submitted t he Division of Public Programs at e January 10, 2000 deadline.

Laura S. Nelson,

Advisory Committee M nagement Officer.

[FR Doc. 00–2358 File 2–2–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENC FOUNDATION

Notice of Permits Issued Under the Antarctic Conserva on Act of 1978

AGENCY: National Sc nce Foundation.

ACTION: Notice of pe nits issued under the Antarctic Conse ation of 1978, Public Law 95–541.

SUMMARY: The Natio al Science Foundation (NSF) is equired to publish notice of permits iss d under the

Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Joyce Jatko, Acting Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On December 23, 1999, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on January 21, 2000 to Mimi Wallace, Permit No. 2000–023. A permit was issued on January 22, 2000 to Christian H. Fritsen, Permit No. 2000–024.

Joyce Jatko,

Acting Permit Officer.

[FR Doc. 00–2357 Filed 2–2–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–27]1

Vermont Yankee Nuclear Power Corporation; Vermont Yankee Nuclear Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station (Vermont Yankee). The transfer would be to AmerGen Vermont, LLC (AmerGen Vermont). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. Vermont Yankee is located in Vernon, Vermont.

According to an application for approval of the transfer and a conforming license amendment filed by the AmerGen Vermont and Vermont Yankee Nuclear Power Corporation (VYNPC), the current license holder, AmerGen Vermont would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation maintenance and eventual decommissioning of Vermont Yankee. In addition, substantially all of VYNPC's employees located at Vermont Yankee involved in operation and maintenance will assume similar roles and responsibilities for AmerGen Vermont at Vermont Yankee. No physical changes to the Vermont Yankee facility or operational changes are being proposed in the application.

AmerGen Vermont is a Vermont limited liability company established by AmerGen Energy Company, LLC (AmerGen) to own and operate Vermont Yankee. AmerGen Vermont is a wholly owned substantially of AmerGen. AmerGen is a Delaware limited liability company formed to acquire and operate nuclear power plants in the United States. AmerGen is owned by PEPCO Energy Company and British Energy, Inc.

The proposed license amendment would remove references to VYNPC in the license, add references to AmerGen Vermont, and make other administrative changes of a similar nature to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 23, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for VYNPC, John Ritsher, at One International Place, Boston, Massachusetts, 02110 (tel: 617–951–7000; fax: 617–951–7050; e-mail: jritsher@ropesgray.com), and counsel for AmerGen Vermont, Kevin P. Gallen, at Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869 (tel: 202–467–7462; fax: 202–467–7176; e-mail: kpgallen@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings, and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 6, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington,

DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 6, 2000, submitted under cover of letter dated January 6, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site, http://www.nrc.gov.

Dated at Rockville, Maryland this 27th day of January 2000.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2429 Filed 2–2–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 117th meeting on February 23–25, 2000, Room 2D Large Conference, Arnold & Mabel Beckman Center of the National Academies, 100 Academy Drive, Irvine, California.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Wednesday, February 23, 2000—8:30 a.m. Until 5:00 p.m.

8:30 a.m.–12:00 Noon: Self-Assessment–The Committee will conduct a self assessment. The Committee will review the goals set in its 1999 Action Plan, and compare those goals to its accomplishments. The Committee will examine steps it can take to increase its operational efficiency.

1:30 p.m.–2:30 p.m.: Guest Speaker—The Committee will hear a lecture by Dr. Stan Kaplan on the use of probability.

2:45 p.m.–5:00 p.m.: Priorities—The Committee will begin to outline possible issues for consideration in 2000 and beyond.

Thursday, February 24, 2000–8:30 a.m. Until 4:00 p.m.

8:30 a.m.–9:30 a.m.: Review Mission, Vision, Desired Outcomes, Goals and Objectives.

9:30 a.m.–10:30 a.m.: First Tier Priorities—Select First Tier Priority issues for the year 2000 Action Plan.

10:45 a.m.–12:00 Noon: Second Tier Priorities—Select Second Tier Priority issues for the year 2000 Action Plan.

1:30 p.m.–2:30 p.m.: Guest Speaker—The Committee will hear a lecture on waste minimization.

2:45 p.m.–3:30 p.m.: Operational Issues—The Committee will focus on issues to increase operational effectiveness.

3:30 p.m.–4:00 p.m.: Succession Planning—The Committee will focus on succession planning for members and staff over the next five years.

Friday, February 25, 2000–8:30 a.m. Until 3:00 p.m.

8:30 a.m.–10:30 a.m.: ACNW Planning and Procedures—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee may also discuss ACNW-related activities of individual members.

10:45 a.m.–2:30 p.m.: Preparation of ACNW Reports—The Committee will discuss planned reports on the following topics: NRC's proposed high-level waste regulation, the Defense-in-Depth philosophy, the release of solid material (tentative), and the Department of Energy's Yucca Mountain specific siting guidelines (tentative).

2:30 p.m.–3:00 p.m.: Miscellaneous—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST. ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: January 28, 2000.

Annette Vietti-Cook,

Acting Advisory Committee Management Officer.

[FR Doc. 00–2386 Filed 2–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Working Group Meeting on Control of Solid Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff Working Group on control of solid materials will hold regular meetings to develop the Commission paper to be prepared for submittal to the Commission in March 2000. The meetings will be open for the public to observe the processes used for the development of the paper.

DATES: Wednesday, February 9, 2000, from 1 p.m. to 3 p.m., and alternate Wednesdays after that date.

ADDRESSES: Nuclear Regulatory Commission, Room T7–A1, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Frank Cardile; e-mail: *fpc@nrc.gov*, telephone: (301) 415–6185; or Anthony Huffert; e-mail: *amh1@nrc.gov*, Office of Nuclear Material Safety and Safeguards, USNRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC previously published an Issues Paper in a **Federal Register** notice (FRN) on June 30, 1999 (64 FR 35090), indicating that it is examining its current approach for

the control of solid materials. The Issues Paper discussed several issues and alternative approaches and invited written and electronic comment on the paper by November 15, 1999 (the date was subsequently extended to December 22, 1999). In addition, the NRC held four facilitated public meetings at different locations between September and December 1999. Currently, the NRC Staff is preparing a paper, and plans to brief the Commission, on stakeholder reactions and concerns with the Issues Paper expressed both at the public meetings and in written comment, on the status of the technical analyses, and on recommendations on whether to proceed with rulemaking or other staff actions regarding release of solid materials, and the schedule for future staff actions on this effort. The NRC Staff will hold regular meetings to develop the March Commission paper that are open to the public to better clarify for interested parties the development of the alternatives and issues to be included in the March Commission paper, and to allow observers to comment on the planned development of the paper. As space permits, all interested parties may attend as observers. Time will be allocated for brief statements from the public.

Information about current NRC efforts in this area can be found on a website dedicated to this effort at the following address: *http://www.nrc.gov/NMSS/IMNS/controlsolids.html*. The website includes the Issues Paper, discussion of opportunities for public comment, and summaries of comments at the public meetings held to date.

The public meetings will generally be held at the Nuclear Regulatory Commission offices in Rockville, Maryland, every other Wednesday, beginning February 9, 2000, from 1 p.m. to 3 p.m. in Room T7–A1, Two White Flint North, 11545 Rockville Pike. Those planning to attend the meetings should verify the status of the meeting by checking the NRC public meeting website at *http://www.nrc.gov/NRC/PUBLIC/meet.html*. Also, for planning purposes, observers from the public are requested to notify Roberta Gordon at (301) 415–7555 if they plan to attend.

Dated at Rockville, Maryland, this 28th day of January 2000.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Acting Chief, Regulations and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–2428 Filed 2–2–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Final Sequestration Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of Transmittal of Final Sequestration Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Ellen Balis, Budget Analysis Branch—202/395–4574.

Dated: January 27, 2000.

Robert L. Nabors,

Executive Secretary and Assistant Director for Administration.

[FR Doc. 00–2296 Filed 2–2–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

[Extension: Rule 2a–7, SEC File No. 270–258, OMB Control No. 3235–0268]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB"), a request for extension of approval for rule 2a–7 (17 CFR 270.21–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act").

Rule 2a–7 governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act and, subject to certain risk-limiting conditions, permits money market funds to use the "amortized cost method" of asset valuation or the "penny-rounding method" of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value ("NAV"). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to Securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities an asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–SAR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that 949 money market funds are subject to rule 2a–7 each year.[1] The staff estimates that each of these funds spends an average of 336 hours each year to document credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, and securities

[1] This estimate is based on information in the Visions98 database, compiled by IBC Financial Data, Inc. (Oct. 22, 1999).

subject to a demand feature or guarantee.[2] In addition, each year an estimated average of 10 money market funds each spends approximately 2.5 hours to record (in the board minutes) board determinations and actions in response to certain events of default or insolvency, and to notify the Commission of the event.[3] Finally, Commission staff estimates that in the first year of operation, the board of directors of an average of 10 new money market funds each spends 7 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser. Based on these estimates, Commission staff estimates the total burden of the rule's paperwork requirements for money market funds to be 319,211 hours.[4] This is an increase from the previous estimate of 196,371 hours. The increase is attributable to updated information from money market funds regarding hourly burdens, and to a more accurate calculation of the component parts of some information collection burdens.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records, as required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[5] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $2 million. Based on an average cost of $.0000052 per dollar of assets under management for small and medium-sized funds to $0.000039 per dollar of assets under management for large funds,[6] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $51.6 million.[7] Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.000068 per dollar of assets under management for large funds, the staff estimates that the total annualized capital/startup costs range from $0 for small funds to $88.4 million for all large funds. Commission staff further estimates, however, that even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($44.2 million) and for record preservation ($25.8 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 27, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–02387 Filed 2–2–00; 8:45 am]

BILLING CODE 8010–01–M

[2] This average is based on discussions with individuals at money market funds and their advisers. The amount of time may vary significantly for individual money market funds.

[3] This number may vary significantly from year to year.

[4] This estimate is based on the following calculation: ((949 × 336) + (10 × 2.5) + 46 × 7)) = 319,211.

[5] The amount of assets under management in money market funds ranges from approximately $100,000 to $60.9 billion.

[6] For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) small—money market funds with $50 million or less in assets under management; (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[7] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $204 billion under management in small and medium funds, and $1,292.6 billion under management in large funds, the total amount was estimated as follows: ($0.0000052 × $204 billion) + ($0.000039 × $1,292.6 billion) = $51.6 million.

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by the Office of Management and Budget

[Extension: Rule 15c1–7, SEC File No. 270–146, OMB control No. 3235–0134]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15c1–7 provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place. The Commission estimates that 500 respondents collect information annually under rule 15c1–7 and that approximately 33,333 hours would be required annually for these collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: January 24, 2000.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 00–2388 Filed 2–2–00; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24267; File No. 812–11802]

The Lincoln National Life Insurance Company, et al.

January 28, 2000.

AGENCY: U.S. Securities and Exchange Commission (the "Commission" or "SEC")

ACTION: Notice of application for an order of approval under Section 26(b) of the Investment Company Act of 1940 (the "1940 Act" or "Act").

SUMMARY OF APPLICATION: Applicants seek an order to permit The Lincoln National Life Insurance Company ("Lincoln Life"), on behalf of Lincoln National Variable Annuity Account C (the "Account"), to substitute securities issued by certain management investment companies and held by the Account to support the eAnnuity™ individual variable annuity contract (the "eAnnuity Contract" or the "Contract") issued by Lincoln Life.

APPLICANTS: The Lincoln National Life Insurance Company and Lincoln National Variable Annuity Account C (together, the "Applicants").

FILING DATE: The Application was filed on October 5, 1999.

HEARING OR NOTIFICATION OF HEARING: An Order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on February 23, 2000, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Applicants, Brian Burke, Esq., The Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46802. Copies to Kimberly J. Smith, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Lincoln Life, a stock life insurance company incorporated under the laws of the State of Indiana, is the depositor and sponsor of the Lincoln National Account C. Lincoln Life is wholly owned by Lincoln National Corporation, a publicly-held insurance holding company.

2. The Account is registered under the Act as a unit investment trust (File No. 811–3214). The assets of the Account support certain individual variable annuity contracts, including the eAnnuity Contract, and interests in the Account offered through such contracts have been registered under the Securities Act of 1933 ("1933 Act") on Form N–4 (Reg. File Nos. 333–50817). Twenty-one sub-accounts are currently available as investment options under the Contract.

3. Each of the twenty-one sub-accounts invests in a corresponding open-end management investment company that is registered on Form N–1A (each a "Fund") or a portfolio thereof. The twenty-one funds/portfolios are: Lincoln National Aggressive Growth Fund, Inc., Lincoln National Bond Fund, Inc., Lincoln National Capital Appreciation Fund, Inc., Lincoln National Equity-Income Fund, Inc., Lincoln National Global Asset Allocation Fund, Inc., Lincoln National Growth and Income Fund, Inc., Lincoln National International Fund, Inc., Lincoln National Managed Fund, Inc., Lincoln National Money Market Fund, Inc., Lincoln National Social Awareness Fund, Inc., Lincoln National Special Opportunities Fund, Inc., Delaware Group Premium Fund, Inc.—Growth and Income Series, Delaware Group Premium Fund, Inc.—Global Bond Series, Delaware Group Premium Fund, Inc.—Trend Series, BT Insurance Funds Trust—Equity 500 Index Fund, BT Insurance Funds Trust—Small Cap Index Fund, American Century Variable Portfolios, Inc.—VP International Fund, Baron Capital Funds Trust—Baron Capital Asset Fund, Neuberger Berman Advisors Management Trust—("AMT") Partners Portfolio, Neuberger Berman Advisors Management Trust—("AMT") Mid Cap Growth Portfolio, Janus Aspen Series—Worldwide Growth Portfolio.

4. The Contract reserves to Lincoln Life the right, subject to Commission approval, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account of the Account. The prospectus for the Contract discloses this right.

5. Currently, Contract owners may transfer cash value in unlimited amounts among and between the sub-accounts available as investment options under the Contract without the imposition of a transfer charge. The Contract reserves to Lincoln Life the right to restrict transfer privileges.

6. Applicants state that in 1999 they received notice from Putnam Investment Management, Inc. ("Putnam") that it no longer wished to serve as sub-adviser to any fund made available through the eAnnuity Contract. Putnam currently serves as sub-advisor to two such portfolios of the Fund: Lincoln National Aggressive Growth Fund (the "Aggressive Growth Fund") and Lincoln National Global Asset Allocation fund (the "Global Asset Allocation Fund"). Lincoln Investment Management, Inc., is the advisor to the fund. Applicants assert that this notice is consistent with Putnam's business plan to make Putnam-managed investments available through financial advisors, including brokers or other financial intermediaries, and not sold directly to investors. The eAnnuity Contract is sold directly to the public via the internet. Applicants state that Putnam further notified Lincoln Life that it would not continue as sub-advisor to the Aggressive Growth Fund and the Global Asset Allocation Fund if they continued to be available through the eAnnuity Contract. At present, Fund management does not seek to replace Putnam as sub-advisor to the two funds, which are available through a number of other Lincoln Life variable contracts that are sold through financial advisors. For this reason, Lincoln Life has determined that the Aggressive Growth Fund and the Global Asset Allocation Fund (the "Replaced Funds") are appropriate candidates for substitution within the eAnnuity Contract.

7. The Applicants propose to replace the portfolios with two comparable portfolios that are currently offered through the eAnnuity Contract. Applicants propose to replace shares of the Aggressive Growth Fund with shares of the AMT Mid Cap Growth Portfolio,

which is advised and sub-advised by Neuberger Berman Management, Inc. and Neuberger Berman, LLC, respectively, and shares of the Global Asset Allocation Fund with shares of the Lincoln National Managed Fund (the "Managed Fund", together with the AMT Mid Cap Growth Portfolio, the "Substitute Funds").

8. The investment objective of the Aggressive Growth Fund is to increase the value of its shares. The fund invests primarily in equity securities of companies comparable to those included in the Russell Mid-Cap Growth Index, but may also invest in convertible bonds, convertible preferred stock, and warrants to purchase common stock. The fund limits its investment in foreign securities to 15% of its assets.

9. The investment objective of the AMT Mid Cap Growth Portfolio is growth of capital. The AMT Mid Cap Growth Portfolio invests primarily in equity securities of mid-capitalization companies, but may also invest up to 35% of its net assets in debt securities, including commercial paper that has received the highest rating. The portfolio limits its investment in foreign currency denominated securities to 20% of its total assets.

10. The investment objective of the Global Asset Allocation Fund is long-term total return consistent with preservation of capital. The fund pursues its investment objective by buying and holding three categories of securities: Equity securities (conservative, growth, aggressive growth and international), fixed-income securities (U.S. fixed-income, international fixed-income and lower-rated fixed-income), and money market securities. The fund invests in securities of both U.S. and foreign issuers. Under normal circumstances, the fund will not invest more than 50% of its total assets in conservative stocks, more than 15% of its assets in Lower-Rated Fixed-Income debt obligations and more than 35% of its asset in any other category.

11. The investment objective of the Managed Fund is maximum long-term total return consistent with prudent investment strategy. The fund is a balanced fund that pursues its investment objective by buying and holding three categories of securities: equity securities of U.S. companies, high and medium grade fixed-income securities and money market securities. The fund may not invest more than 75% of its assets in either the stock or debt obligations categories.

12. The following chart shows the total returns for the Replaced Funds for the past three calendar years and for the six months ended June 30, 1999.

[Figures in percent]

Replaced funds	Six months ended 6/30/99	Calendar year 1998	Calendar year 1997	Calendar year 1996
Lincoln National Aggressive Growth Fund (inception date: February 3, 1994)	4.80	(6.20)	23.09	17.02
Lincoln National Global Asset Allocation Fund (inception date: August 3, 1987	3.49	13.50	19.47	15.04

13. The following chart shows the total returns for the Substitute Funds for the past three calendar years and for the six months ended June 30, 1999.

[Figures in percent]

Substitute funds	Six months ended 6/30/99	Calendar year 1998	Calendar year 1997	Calendar year 1996
AMT Mid Cap Growth Portfolio (inception date: February 3, 1997)	5.13	39.28	17.20 (from Nov. 3, 1997).	N/A
Lincoln National Managed Fund (inception date: April 27, 1983	3.65	12.72	21.82	12.05

14. The following chart shows the approximate size and expense ratios for each of the Replaced Funds.[1]

Replaced funds	Net assets at June 30, 1999 (in thousands)	Calendar year 1998 expense ratio (percent)
Lincoln National Aggressive Growth Fund, June 30, 1999 (inception date: February 3, 1994)	$318,400	0.81
Lincoln National Global Asset Allocation Fund, June 30, 1999 (inception date: August 3, 1987)	499,900	0.91

15. The following chart shows the approximate size and expense ratios for each of the Substitute Funds.[2]

[1] Expense ratios include management fees and operation expenses. Each fund currently pays a monthly management fee based on its average daily net assets at the following annual rates: Aggressive Growth Fund, 0.81% and Global Asset Allocation Fund, 0.91%.

[2] Expense ratios include management fees and operating expenses. Each Substitute Fund currently pays a monthly management fee based on its average daily net assets. The management fee for each Substitute Fund as of June 30, 1999, is as follows: AMT Mid Cap Growth, 1.00% and Managed Fund, 0.39%. Without the voluntary reimbursement of certain operating expenses by NBMI (the Advisor), total expenses for the year ended 12/31/98 for the fund would have been 1.43%

Substitute funds	Net assets at June 30, 1999 (in thousands)	Calendar year 1998 expense ration (percent)
AMT Mid Cap Growth Portfolio, (inception date: November 3, 1997)	$51,700	1.00
Lincoln National Managed Fund (inception date: April 27, 1983)	960,900	0.39

16. By a supplement to the prospectus for the Contract, all owners and perspective owners of the Contract have been notified of Lincoln Life's intention to take the necessary actions, including seeking the order requested by the Application, to substitute portfolios. The supplements advise owners and prospective owners that they will be unable to allocate net purchase payments to, or transfer cash values to, the sub-accounts of the Account corresponding to each of the Replaced Funds after May 1, 2000, and that on the date of the proposed substitution (on or about May 1, 2000, after the relief requested has been obtained and all necessary systems support changes have been made), the Substitute Funds will replace the Replaced Funds as they underlying investments for such sub-accounts. In addition, the supplements will inform owners and prospective owners that Lincoln Life will not exercise any rights reserved by it under the Contract to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

17. At least sixty days before the date of the proposed substitutions, affected owners will also be provided with a prospectus for each Substitute Fund which includes current information concerning the Substitute Funds.

18. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owners's cash value or death benefit or in the dollar value of his or her investment in either of the sub-accounts. Contract owners will not incur any additional fees or charges as a result of the proposed substitutions nor will their rights or Lincoln Life's obligations under the Contract be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Lincoln Life. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. Lincoln Life does not currently impose any restrictions or fees on transfers under the Contract, and will not exercise any right it may have under the Contract to impose restrictions on transfers under the Contract for a period of at lest thirty days following the proposed substitutions.

19. Within five days after the proposed substitutions any owner who was affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may transfer all cash value under a Contract invested in either or both of the affected sub-accounts to other available sub-account(s). The notice will also reiterate that Lincoln Life will not exercise any right reserved by it under the Contract to impose any restriction or fee on transfers until at least thirty days after the proposed substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specially, Section 26(b) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the proposed substitution of shares of the Substitute Portfolios for those of the Replaced Portfolios involves a substitution of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitutions.

3. The investment objective of the Aggressive Growth Fund and the AMT Mid Cap Growth Portfolio are substantially similar. While their specific investment policies differ somewhat, both portfolios seek growth or appreciation in value by investing in equity securities of medium-sized growth companies. Applicants assert that, although there are differences in the objectives and policies of the portfolios, their objectives and policies are sufficiently consistent to assure that, following the substitution, the achievement of the core investment goals of the affected owners in the Aggressive Growth Fund will continue to be pursued.

4. Applicants assert that the investment objectives of the Global Asset Allocation Fund and the Managed Fund are substantially similar. Although the Global Asset Allocation Fund invests globally while the Managed Fund only invests in domestic issuers, both portfolios invest in the same broad categories of securities: equity securities, fixed-income securities and money market instruments. Applicants assert that, although there are differences in the objectives and policies of the portfolios, their objectives and policies are sufficiently consistent to assure that following the substitution, the achievement of the core investment goals of the affected owners in the Global Asset Allocation Fund will continue to be pursued.

5. The AMT Mid Cap Growth Portfolio has performed substantially better than the Aggressive Growth Fund since its inception in 1998. The Global Asset Allocation Fund and the Managed Fund performed very similarly over the last three years. While past performance is not necessarily indicative of future performance, Applicants assert that the proposed substitutions are appropriate in light of the performance comparisons of the Replaced Funds and the Substitute Funds.

6. Applicants assert that although the AMT Mid Cap Growth Portfolio currently has a higher expense ratio than the Aggressive Growth Fund, as a newer fund, it has a good potential for further growth in assets and that its expense ratio may come down in the future due to increased assets under management and the potential to leverage the assets of the other nine portfolios offered within the Neuberger Berman Advisers Management Trust.

7. The Managed Fund has a much lower expense ratio and is larger than the Global Asset Allocation Fund.

8. Last year, Putnam informed Applicants that it would no longer serve as adviser to the Aggressive Growth

Fund and the Global Asset Allocation Fund if Lincoln Life continued to make the funds available through the Annuity Contract.

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2340 Filed 2–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42357; File No. SR–PCX–99–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Non-Agency Orders in P/COAST

January 27, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to allow non-agency orders to be executed in the P/COAST system.[3] The text of the proposed rule change is available at the Office of the Secretary, the PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] P/COAST, the "Pacific Computerized Order Access SysTem," is the Exchange's communication, order routing and execution system for equity securities. It operates on a dual processing system, with mainframe computers in San Francisco and Los Angeles. The system allows trading to be integrated from two separate trading floors. *See* PCX Rule 5.25.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, pursuant to PCX Rule 5.25(b)(1), only "agency" orders are permitted to be routed through and executed in the P/COAST system.[4] While the PCX Rules do not currently define the term "agency orders,"[5] the Exchange notes that, in general, all orders are either "agency" orders or "principal" orders, *i.e.*, orders for the principal account of a registered broker-dealer.[6] In any event, under the Exchange's proposal, the distinction will be abolished so the both agency and principal orders will be permitted to be executed through the P/COAST system.

The Exchange is proposing to eliminate Rule 5.25(b)(1) as a competitive measure. The Exchange believes that the rule change will help to attract new market participants to the PCX and will result in an increase in the amount of order flow currently sent to the Exchange.

The Exchange is not proposing to change its existing rules regarding the priority of bids and offers,[7] which do not currently distinguish between agency and principal orders.[8] Accordingly, agency and principal orders will, in general, be on a par with respect to their priority for execution in the P/COAST system.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of section 6(b)(5),[10] in particular, that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[4] *Cf.* Boston Stock Exchange ("BSE") Rules, ch. XXXIII, sec. 1(d); Cincinnati Stock Exchange ("CSE") Rules 11.8 and 11.9; Chicago Stock Exchange ("CHX") Rules, art. XX, Rule 37; and Philadelphia Stock Exchange ("Phlx") Rule 229.

[5] *Cf.* CSE Rule 11.8(b) ("For purposes of Rule 11.8, a public agency order shall mean any order for the account [of] a person other than a member, which order is represented, as agent, by a member"); CSE Rule 11.9(a)(7) ("The term 'public agency order' means any order for the account of a person other than a member, an Approved Dealer or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System, which order is presented, as agent, by a User"); CSE Rule 11.9(a)(8) ("The term 'professional agency order' means an order entered by a User as agent for the account of a broker-dealer, a futures commission merchant, or a member of a contract market"); NASD Manual—The Nasdaq Stock Market, Rule 4710(h) ("The term 'agency order' shall mean public customer orders which are executed by the SOES Order Entry Firm on an agency basis. It shall also include, for purposes of these rules, an order entered into SOES on a principal basis by a SOES Order Entry Firm that is not a market maker in the SOES security, in SOES or otherwise, where the SOES Order Entry Firm has contemporaneously received an order from a customer and executed the transaction on a riskless principal basis"); and Phlx Rule 229, Supp. Mat. .02 ("For purposes of the PACE System, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest"). *See also* New York Stock Exchange Information Memo No. 96–36 re New Audit Trail Identifiers (defining the term "As Agent for Other Member, Competing Market-Maker" as "a member or member organization trading as agent for another member's competing market-maker account" and also defining "Other Agency" as a member or member organization trading as agent for "any other customer (including institutions, non-member broker/dealers and managed accounts").

[6] *See supra* notes 2–3.

[7] *See, e.g.*, PCX Rule 5.8(c).

[8] However, the Exchange notes that the rule change will not alter the rule that orders for the proprietary accounts of PCX specialists and floor brokers must yield priority, parity and precedence to other orders (unless an exception applies). *See* SEC Rule 11a–1 *et seq.*

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–50 and should be submitted by February 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2389 Filed 2–02–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3210]

Language and Culture Enrichment Program; Bureau of Educational and Cultural Affairs; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for a Language and Culture Enrichment Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a four-week homestay-based, English language and cultural enrichment program in July 2000 for 40 students from the New Independent States (NIS) of the former Soviet Union selected for the Freedom Support Act (FSA) Future Leaders Exchange (FLEX) program. Approximately 15 of the participants will be students with physical disabilities who were specially recruited and selected. The remaining 25 students will be from more isolated regions of the NIS, where there is less opportunity for quality English instruction. The purpose of the program is to raise the English capability of these students to the level where they are able to attend regular classes when their academic program starts in fall. Additionally, this program will ease the acculturation process when students transit to their permanent families and communities. Funds requested for this project may not exceed $80,000.

Program Information

Objectives: To prepare a select group of students with special needs to attend school in the fall and perform at a level closer to that of those FSA FLEX students that make up the majority of the program finalists. To provide students with cultural tools and strategies that will foster a successful exchange experience.

Background: Academic year 2000/2001 will be the eighth year of the FSA/FLEX program, which now includes over 7000 alumni. This component of the NIS Secondary School Initiative was initially authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and Department of State appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; assist the successor generation of the NIS to develop the qualities it will need to lead in the transformation of those countries in the 21st century; and to promote democratic values and civic responsibility by giving NIS youth the opportunity to live in American society for an academic year.

During the program's early years, there was concern that students from the more remote regions of the NIS might be underrepresented because the lack of English competence in those regions could prevent applicants from meeting the rigorous English language requirements of the FLEX recruitment process, including attaining a reasonable score on the Secondary Level English Proficiency (SLEP) examination. To address this concern, a pre-academic year English language enrichment program was developed so that some students from the remote areas could be selected whose SLEP scores were slightly lower than average. In subsequent years, lack of English competence in the remote regions of the NIS has become less of a problem. However, the Bureau has added a component focusing on students with disabilities, who do have a need for some special training before initiating their academic year program. The enrichment program for which proposals are being solicited here are in support of both groups of students. The essential components of the enrichment program are:

- A four-week course of study in English, approximately 5.5 hours a day.
- Programming that builds on cultural issues that will have been introduced at the pre-departure orientation for all FSA FLEX students.
- Orientation programming that addresses the special needs of the students with disabilities and their unique adjustment issues.
- Lodging with volunteer host families.
- The students' transition to their permanent host families and communities.

Other Components: Two organizations have already been awarded grants to perform the following functions: recruitment and selection of students; targeted recruitment for students with disabilities; assistance in documentation and preparation of IAP–66 forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organizations, as needed; maintenance of a student database and provision of data to Department of State; and ongoing follow-up with alumni upon their return to the NIS.

Additionally, 16 organizations have been selected through a grants competition to place the 2000–2001 FSA FLEX students in schools and homestays for the academic year, to monitor their progress, and to conduct cultural enrichment activities. The organization selected for the Language and Culture Enrichment Program will be asked to interact with the organizations to ensure the students' smooth transition from the pre-academic training to their permanent placements.

[11] 15 U.S.C. 78ff(b)(5).

Guidelines: Applicants should consult the Project Objectives Goals and Implementation (POGI) guidelines for a detailed statement of work. The program must take place from mid-July to mid-August 2000. The venue for the program should be one with minor distractions to enable students to focus on the coursework and experience life in a typical American family and community. It should be conducive to a smooth transition to the students' permanent placements and have resources that can be drawn upon for cultural enrichment.

Participants will travel on J–1 visas issued by the Department of State using a government program number. The students will be covered by the health and accident insurance policies used by their placement organization. The grantee organization will acknowledge its responsibility to coordinate with the appropriate organization(s) any time treatment is needed for the duration of the students' participation in the enrichment program.

Applicants may assume that grant activity will begin by June 1, 2000. Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. One award will be made, not to exceed $80,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. See POGI for allowable costs for the program. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C/PY–00–37.

FOR FURTHER INFORMATION, CONTACT: Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, tel. (202) 619–6299, fax (202) 619–5311, e-mail daronson@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Diana Aronson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, February 28, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–00–37, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to Bureau officers for its review, with the goal of reducing the time it takes to get comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as other Bureau officers, where appropriate. Eligible proposals will be forwarded to panels of Department of State officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Integration of language and culture components should adhere to stated objectives of this project.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Refer to POGI regarding elements that should be included in a calendar of activities/timetable.

3. Ability to achieve program objectives: Objectives should be measurable, tangible and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of staff and speakers, program venue, host families) and program content (curriculum, orientation and wrap-up sessions, program meetings, and resource materials).

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Coordinator responsible for curriculum, materials development and instruction should demonstrate relevant ESL/U.S. culture teaching experience and qualifications.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful language/culture programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. A draft survey questionnaire, tests, or other techniques plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicant will be expected to submit a final report after project is concluded.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation appropriating funds annually for Department of State's exchange programs.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 27, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–2405 Filed 2–2–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Proposed Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This collection (2105–0517) is submitted to the **Federal Register**. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces one information collection request coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), the Department of Transportation is soliciting comments on specific aspects of the collection as described below. The ICR describes the nature of the information collection and its expected cost and burden. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

DATES: Comments must be submitted on or before April 3, 2000.

ADDRESSES: Submit written comments identified by the OMB Control Number 2105–0517, by email to charlotte.hackley@ost.dot.gov or by mail to: Charlotte Hackley, M–61, U.S. Department of Transportation, 400 Seventh Street SW., Room 7101, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Charlotte Hackley, (202) 366–4267, and refer to OMB Control Number, 2105–0517.

SUPPLEMENTARY INFORMATION:

Office of the Secretary (OST)

Title: Extension of information collection authority under Transportation Acquisition Regulation (TAR).

Form(s): DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.45, DOT F 4220.46, and Form DD 882.

OMB Control Number: 2105–0517.
Affected Public: Individuals or households and businesses or other for-profit organizations.
Abstract: The requested extension of the approved control number covers the information and collection requirements contained in (TAR) 48 CFR Chapter 12 including forms F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.45, DOT F 4220.46, and Form DD 882.
Annual Estimated Burden: The annual estimated burden is 30,885 hours.

Issued in Washington, DC, on January 27, 2000.

David J. Litman,

Senior Procurement Executive.

[FR Doc. 00–2407 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 21, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.
Docket Number: OST–2000–6802.
Date Filed: January 18, 2000.
Parties: Members of the International Air Transport Association.
*Subject:*P='02'≤
PTC23/PTC123 EUR–SEA 0087 dated 21 December 1999
Europe-South East Asia Resolutions r1–r29
PTC23 EUR–SEA 0089 dated 11 January 2000 Technical Correction
Minutes—PTC23 EUR–SEA 0090 dated 11 January 2000
Tables—PTC23 EUR–SEA FARES 0019 dated 11 January 2000
Intended effective date: 1 April 2000

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–2364 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 21, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.
Docket Number: OST–2000–6784.
Dated Filed: January 11, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 8, 2000.
Description: Application of Bellview Airlines Limited pursuant to 49 U.S.C. Section 41302, 14 CFR Part 211 and Subpart Q, applies for a Foreign Air Carrier Permit authorizing it to conduct foreign scheduled air transportation of persons, property and mail between Lagos, Nigeria and New York (JFK International Airport) in the United States, commencing February 2000.
Docket Number: OST–2000–6801.
Date Filed: January 18, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 15, 2000.
Description: Application of Spanair, S.A. pursuant to 49 U.S.C. 41301 and Subpart Q, applies for renewal and, to the extent necessary, amendment of its Foreign Air Carrier Permit to engage in scheduled foreign air transportation of persons, property and mail between Spain and Washington, D.C. (Dulles) and to conduct charters in accordance with Part 212 of the Department's Rules, for an indefinite period.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–2365 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2000–1–25; Docket OST–1999–6249]

Application of Atlantic Coast Jet, Inc. for Certificate Authority

AGENCY: Department of Transportation.
ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Atlantic Coast Jet, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 11, 2000.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–1999–6249 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Rm. PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–2340.

Dated: January 31, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–2408 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2000–1–27; Dockets OST–99–6221 and OST–99–6222]

Applications of Ameristar Air Cargo, Inc. for New Certificate Authority

AGENCY: Department of Transportation.
ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Ameristar Air Cargo, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than February 11, 2000.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–99–6221 and OST–99–6222 and addressed to the Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401),

U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: January 31, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–2409 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Clark County, NV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the cities of Boulder City and Henderson, Clark County, Nevada/

FOR FURTHER INFORMATION CONTACT: Ted L. Bendure, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220, Carson City, NV 89701, Telephone: 775–687–5322, E-mail:ted.bendure@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nevada Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 93 (US 93) in the cities of Boulder City and Henderson, Clark County, Nevada. The proposed project would involve improvements to the US 93 Corridor between the west terminus of the present US 93 highway through Henderson, Nevada (milepost 59±), on the west end and the east terminus of the project on US 93 (milepost 2.5±), a point about 7.6 kilometers (4.7 miles) east of downtown Boulder City which is coincidental with the planned terminus of the US 93 Hoover Dam Bypass project. The project covers a total distance of approximately 16.7 kilometers (10.4 miles) on the present route.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand and to correct existing high accident areas. Specifically, the project will evaluate mitigating congestion in the vicinity of Boulder City; replacing the at-grade railroad crossing near Railroad Pass; reducing the high accident rate at the signalized intersection of the Railroad Pass Casino entrance; upgrading the existing US 93/US 95 Interchange; and a tie-in with the US 93 Hoover Bypass Project. The EIS will consider the effects of the proposed project, the No Action alternative, and other alternatives to the proposed project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. A project scoping meeting will be held in Las Vegas, Nevada on February 22, 2000 with the appropriate agencies. In addition, public information meetings will be held throughout the duration of the project and a public hearing will be held for the draft EIS. Public notices will be given annnouncing the time and place of the public meetings and the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.P='04'≤

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 3, 2000.

John T. Price,

Division Administrator, Federal Highway Administration.

[FR Doc. 00–2306 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 18, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration U.S. Department of Transportation Washington, DC 20590

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 24, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Material, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
9847–M	.....	FIBA Technologies, Inc., Westboro, MA [1]	9847
10704–M	.....	Puritan-Bennett Medical Gases (Mallinckrodt, Inc.) Overland Park, KS [2]	10704
11296–M	.....	Heritage Transport, LLC, Indianapolis, IN [3]	11296
11344–M	.....	DuPont SHE Excellence Center, Wilmington, DE [4]	11344
11722–M	.....	CITERGAS, S.A., Civray, FR [5]	11722
11769–M	.....	Hydrite Chemical Company, Brookfield, WI [6]	11769
11777–M	.....	Audoliv ASP, Inc., Ogden, UT [7]	11777

[1] To modify the exemption to eliminate the requirement for an initial qualifying test; to allow for Division 2.3 materials; correct language in paragraphs 7a. thru e. of the exemption.

[2] To modify the exemption to allow for calibration and functional checks of medical analyzers or monitors; lower minimum burst pressure to 340 psig.

[3] To modify the exemption to authorize additional UN standard packaging at the Packing Group II performance level for use as overpacks for waste aerosol cans.

[4] To modify the exemption to allow for the transportation of an additional Class 8 material in tank cars.

[5] To modify the exemption to permit new construction of the non-DOT specification spherical pressure vessels and additions to the product list.

[6] To modify the exemption to allow for the discharge for an additional Class 8 material in UN Intermediate Bulk Containers (IBC) without removing the IBC from the motor vehicle.

[7] To modify the exemption to authorize a design change to allow for side wall attachment studs on a non-DOT specification pressure vessel.

Note: Correction to FR Vol. 64, No. 245, page 71847. "Modification of Exemptions" Footnote 8 for 12263–M (Orbital Sciences Corporation RSPA–1999–5597) should have read "To reissue the exemption originally issued on an emergency basis and modify it to include various version of the device and the scope of its operations" and Footnote 9 for 12376–M (BBI—Biotech Research Laboratories, Inc. RSPA–1999–6573) should have read 'To reissue the exemption originally issued on an emergency basis to move freezers containing specimen collections in novel drum and vaccine therapies." version of the device and the scope of its operations".

[FR Doc. 00–02361 Filed 2–2–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 6, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 28, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12396–N	RSPA–2000–6772	United States Alliance Houston, TX.	49 CFR 173.301(h), 173.302(a), 173.34(d).	To authorize the transportation in commerce of a non-DOT specification cylinder as part of a specifically designed device for space flight for use in transporting Nitrogen, Division 2.2. (modes 1, 4)
12397–N	RSPA–2000–6771	FMC Corporation, Philadelphia, PA.	49 CFR 172.203(a), 180.509(1)(2).	To authorize the use of an alternative requalification method for certain DOT specification 111A100W6 tank cars used to transport Class 8 hazardous materials. (mode 2)
12398–N	RSPA–2000–6770	Praxair, Danbury, CT	49 CFR 173.34(d)	To authorize the transportation in commerce of DOT 3A and 3AA cylinders equipped with alternative relief devices for use in transporting Division 2.2 material. (modes 1, 2)
12399–N	RSPA–2000–6769	BOC Gases, Murray Hill, NJ.	49 CFR 173.34(e)	To authorize the use of ultrasonic inspection as an alternative retest method for DOT Specification 3AL cylinders. (modes 1, 2, 3)
12400–N	RSPA–2000–6761	Delta Chemical Corporation, Baltimore, MD.	49 CFR 173.24(b), 173.31(b)(1), 173.31(b)(3), 179.300–12(b), 179.300–13, 179.300–14.	To authorize the transportation of defective multi-unit tank car tanks used for chlorine equipped with Chlorine Institute Emergency "B" Kits. (mode 1)
12401–N	RSPA–2000–6762	DG Supplies, Inc., Hamilton, NJ.	49 CFR 172.400, 172.402, 172.504, 173.150–154, 173.201–203, 173.211–213, 173.25, 175.3.	To authorize the manufacture, marking and sale of specially-designed combination packaging for use in transporting liquid and solid hazardous materials with relief from labeling and placarding requirements. (modes 1, 2, 4, 5)
12402–N	RSPA–2000–6763	Taylor-Wharton, Huntsville, AL.	49 CFR 172.301(c), 178.35(f)(2)(i), 178.39(e).	To authorize the manufacture, marking and sale of non-DOT specification cylinders (comparable to DOT Specification 3BN cylinders) equipped with an alternative bottom plug for use in transporting presently authorized hazardous materials. (modes 1, 2, 3, 4, 5)
12403–N	RSPA–2000–6764	Strainrite, Lewiston, ME.	49 CFR 178.517	To authorize the manufacture, marking and sale of a non-bulk container (comparable to a UN Standard 4H2 solid plastic box) for use in transporting hazardous materials or hazardous wastes as presently authorized. (modes 1, 2, 3)
12404–N	RSPA–2000–6765	CBS Corporation, Pittsburgh, PA.	49 CFR 173.403, 173.427.	To authorize the one-time transportation in commerce of a reactor tank for use in transporting radioactive waste. (modes 1, 2)
12405–N	RSPA–2000–6766	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2), 173.304(b).	To authorize an increase in filling density to the cylinder test pressure for the transportation of Division 2.1, 2.2 and 2.3 hazardous materials. (modes 1, 3, 4, 5)
12406–N	RSPA–2000–6767	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.242	To authorize the manufacture, marking and sale of a custom-designed non-DOT specification tank truck for use in transporting certain Division 5.1 material. (mode 1)
12407–N	RSPA–2000–6768	Qual-X, Inc., Powell, OH.	49 CFR 173.410, 173.412, 173.415, 173.465, 173.466.	To authorize the transportation in commerce of a specifically designed device containing Class 7 hazardous materials. (mode 1)
12411–N	RSPA–2000–6828	International Fuel Cells, South Windsor, CT.	49 CFR 173.212	To authorize the transportation in commerce of dry metal catalysts classified as, Self-heating, solid, inorganic, n.o.s., Division 4.2, in non-DOT specification packaging. (modes 1, 3, 4)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12412–N	RSPA–2000–6827	Great Western Chemical Company, Portland, OR.	49 CFR 172.203(a), 172.302(c), 177.834(h).	To consolidate the exemptions that currently authorize the discharge of hazardous materials in UN Intermediate Bulk Containers (IBC) without removing the IBC from the motor vehicle on which it is transported. (mode 1)

[FR Doc. 00–2362 Filed 2–2–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20959]

Laidlaw Inc., and Laidlaw Transportation, Inc.—Acquisition and Control—Hotard Coaches, Inc., and Coastliner, d/b/a Mississippi Coast Limousine, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: In an application filed under 49 U.S.C. 14303, Laidlaw Inc. (Laidlaw), a noncarrier, through its noncarrier subsidiary, Laidlaw Transportation, Inc. (Laidlaw Transportation) (collectively referred to as Laidlaw), seeks to purchase and acquire control of Hotard Coaches, Inc. (Hotard), and Hotard's subsidiary, Coastliner, d/b/a Mississippi Coast Limousine, Inc. (Coastliner), both motor passenger carriers. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by March 20, 2000. Applicant may file a reply by April 3, 2000. If no comments are filed by March 20, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20959 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Laidlaw seeks authority to acquire control of Hotard and Coastliner through the acquisition of all of Hotard's common stock which is being held in a voting trust.[1] Laidlaw states that Hotard will continue to be managed by its president, Ms. Eva Hotard, and will maintain its separate office in New Orleans.

Hotard has limited regular-route authority and holds federally issued authority in Docket No. MC–143881, which authorizes it to provide special and charter operations in Louisiana and Mississippi. Coastliner also provides special and charter operations in Louisiana and Mississippi pursuant to federally issued authority in Docket No. MC–133182.

Laidlaw currently controls motor passenger carriers whose operations, with the exception of those of Greyhound Lines, Inc. (Greyhound), are largely limited to charter and special operations in the United States. Greyhound holds federally issued operating authority in Docket No. MC–1515 and provides mainly nationwide, scheduled regular-route operations. Although Greyhound performs some special and charter operations, according to Laidlaw, Greyhound does not have the same contacts and relationships with patrons as Hotard and Coastliner, within their distinct regional market.[2] The other Laidlaw motor passenger carriers do not conduct operations in the regional markets served by Hotard and Coastliner. Laidlaw asserts that the addition of Hotard and Coastliner will contribute significantly to the breadth of services that Greyhound and the other Laidlaw affiliates are able to provide to the public.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at: "WWW.STB.DOT.GOV."

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition and control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on March 20, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carrier Safety—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: January 28, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–2285 Filed 2–2–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Laidlaw Transportation purchased all of the issued and outstanding shares of the common stock of Hotard and placed them in a voting trust, pursuant to the terms of a Voting Trust Agreement, dated December 21, 1999.

[2] Laidlaw states that Hotard and Coastliner have contacts with casino operators in Louisiana and Mississippi and established relationships with churches, schools, and other institutions in the area. In addition, Laidlaw states that Hotard provides sightseeing services in New Orleans.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Bank Activities and Operations—12 CFR 7. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by March 6, 2000.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0204, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557-0200), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Bank Activities and Operations—12 CFR 7.

OMB Number: 1557–0204.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

National banks need these collections of information to ensure that they conduct their operations in a safe and sound manner and in accordance with applicable federal banking statutes and regulations. The collections of information provide needed information for examiners and provide protections for national banks. The collections of information are necessary for regulatory and examination purposes and for national banks to ensure their compliance with federal law and regulations.

The information requirements in 12 CFR part 7 are located as follows:

12 CFR 7.1000(d)(1) (Lease financing of public facilities): The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

12 CFR 7.1014 (Sale of money orders at nonbanking outlets): The written agreement between a national bank and bonded agent to sell the bank's money orders at a nonbanking outlet should define the responsibilities of both parties, set forth their respective duties, and provide for remuneration of the agent.

12 CFR 7.2000(b) (Other sources of guidance for corporate governance procedures): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a national bank's honorary or advisory directors (who act in advisory capacities without voting power or the power of final decision in matters concerning bank business) must distinguish between them and the bank's board of directors, or indicate their advisory status.

12 CFR 7.2014(b) (Indemnification of institution-affiliated parties in administrative proceedings or civil actions not initiated by a federal banking agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments in administrative proceedings or civil actions not initiated by a federal banking agency.

National banks use the information to ensure their compliance with applicable federal banking law and regulations. Further, the collections of information evidence bank compliance with various regulatory requirements. This information assists bank management in the safe and sound operation of the bank. The OCC uses the information in the conduct of bank examinations and as an audit tool to verify bank compliance with law and regulations.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 1,600.

Total Annual Responses: 1,600.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 480 burden hours.

OCC Contact: Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0142, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0204, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

COMMENTS: Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Dated: January 28, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–2400 Filed 2–2–00; 8:45 am]

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Federal Register

Thursday,
February 3, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 et al.
Special Flight Rules in the Vicinity of Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Amendment Nos. 91–260, 93–79, 121–272, 135–74

RIN 2120–AG97

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: On December 31, 1996, the FAA published a final rule, Special Flight Rules in the Vicinity of Grand Canyon National Park. That final rule codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of the GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing air carriers operating in the SFRA; prohibited commercial sightseeing operations during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the SFRA. In February 1997 the FAA delayed the effective date for the new and modified flight-free zones, SFRA modification, and corridors portion of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not affect or delay the implementation of the curfew, aircraft limitations, reporting requirements, or other portions of the rule. That extension was subsequently extended until January 31, 2000. This action further delays the effective date for the flight-free zones, SFRA modification, and corridors portions of the December 31, 19996, final rule until January 31, 20001, and amends the expiration date of SFAR 50–2 until the FAA issues new regulations to substantially restore natural quite in GCNP.

EFFECTIVE DATE: The effective date of January 31, 2000, for 14 CFR 93.301, 93.305, and 93.307 is delayed until 0900 UTC January 31, 2001. Section 9 of SFAR No. 50–2 is amended effective January 31, 2000. Comments on this action must be received on or before March 6, 2000.

ADDRESSES: Comments on this final rule should be mailed in triplicate to: Department of Transportation Dockets, Docket No. [FAA 00–], 400 Seventh Street, SW., Washington, DC 2059. Comments may be filed or examined in the Plaza Room 401 on weekdays, except on Federal holidays, between 10:00 a.m. and 5:00 p.m. Comments also may be sent electronically to the Rules Docket by using the following Internet address: http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Manager, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited. This rule will become effective on the date specified in the **DATES** section. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking, and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69310). These actions were part of an overall strategy to reduce further the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law (Pub. L.) No 100–91 to substantially restore natural quiet in GCNP. The final rule amended part 93 of the Code of Federal Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP SFRA; established new and modified existing flight-free zones; established new and modified existing flight corridors; and established reporting requirements for commercial sightseeing air carriers operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni Point and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. These provisions originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, this action delayed the implementation date, until January 31, 1998, of those sections of the rule that address the SFRA, flight-free zones, and flight corridors, respectively sections 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated, and the expiration date was extended. This implementation date was again delayed until January 31, 1999 (62 FR 66248; December 17, 1997). The FAA further delayed the implementation date until January 31, 2000 (64 FR 5152; February 3, 1999).

In a continuing effort to assist the NPS in fulfilling the mandate of Pub. L. 100–91 in the substantial restoration of natural quiet in GCNP, the FAA issued two proposed rules in July 1999. One proposed airspace modifications that would accommodate a new route structure; the other proposed a limitation of commercial air tour operations in the SFRA. In addition, a notice of availability made available maps depicting the new route structure.

The FAA is now in the process of finalizing these regulations. However, these final rules will not be issued until after January 31, 2000. Under these conditions, the FAA finds that there is sufficient justification under 5 U.S.C. 553(b) to issue this rule without notice and prior opportunity for comment.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket No. 28537. That economic evaluation was later revised in a Notice of Clarification (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the extended FFZs will be cost relieving.

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it determines that this action (1) is not a significant action under Executive Order 12866; and (2) is not a significant action under Department of Transportation Regulatory Policy and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this action will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The FAA has analyzed this amendment under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that his section will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 121—[AMENDED]

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 135—[AMENDED]

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44915–44717, 44722.

SFAR No. 50–2 [Amended]

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Section 9. Termination date. Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 2001.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new Sections 93.301, 93.305, and 93.307 [1] to be added to 14 CFR Part 93 is delayed until 0901 UTC, January 31, 2001.

Issued in Washington, DC, on January 28, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–2406 Filed 1–31–00; 4:15pm]

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[1] Published at 61 FR 69330 (December 31, 1996), corrected at 62 FR 2445 (January 16, 1997), delayed at 62 FR 8862 (February 26, 1997) and 62 FR 66248 (December 17, 1997).

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Federal Register

Thursday,
February 3, 2000

Part III

Department of Housing and Urban Development

NOFA for Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative; Notice of Amendment and Republication; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4451–N–06]

NOFA for Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative; Notice of Amendment and Republication

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Amendment and Republication of Notice of Funding Availability (NOFA) for the Public Housing Drug Elimination Program (PHDEP) Gun Buyback Violence Reduction Initiative.

SUMMARY: The Department of Housing and Urban Development (HUD) is amending and republishing its Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative NOFA (PHDEP Gun Buyback NOFA), published in the **Federal Register** of November 3, 1999 (64 FR 60080). The PHDEP Gun Buyback NOFA invited public housing authorities (PHAs) to direct FY 1999 PHDEP funds for use in gun buyback programs and made PHDEP set aside matching funds available. This amendment makes clear that while HUD's matching funds are to be drawn only from the FY 1999 PHDEP set aside, PHAs' expenditures are not restricted to FY 1999, but may come from PHDEP grant funds regardless of fiscal year. PHAs that have already applied under the November 3, 1999 NOFA need not re-apply but may seek additional funding.

DATES: Applications may be submitted at any time after publication of this notice. The application period is open until all FY 1999 PHDEP set aside matching funds are awarded. Eligible applications that comply with the requirements of this notice as well as those of the PHDEP Gun Buyback NOFA will be funded on a first-come, first-served basis to the extent that funding remains available.

ADDRESSES: To participate in this initiative and apply for funding, a PHA must submit an application to the U.S. Department of Housing and Urban Development, Grants Management Center, 501 School Street, SW, Suite 800, Washington, DC 20024, Attention: Gun Buyback Initiative. Applications may simply consist of a letter of request as long as it contains the information required by the this notice.

FOR FURTHER INFORMATION CONTACT: Marvin Klepper, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4206, Washington, DC 20410, telephone (202) 708–1197 x 4229. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Also, please see HUD's website at http://www.hud.gov/pih/legis/titlev.html for additional PHDEP information.

SUPPLEMENTARY INFORMATION: On November 3, 1999, at 64 FR 60080, HUD published the PHDEP Gun Buyback NOFA, which affirmed gun buybacks to be eligible activities under PHDEP; announced that PHAs could direct PHDEP funds for use in gun buyback programs; and pledged approximately $43.00 in FY 1999 PHDEP matching funds for every $100.00 a PHA spent towards gun buybacks. The source of the matching funds was the 1999 HUD Appropriations Act, which set aside $10,000,000 for "grants, technical assistance, contracts and other assistance, training, and program assessment and execution." Approximately $4,500,000 of this $10,000,000 set aside amount was made available under the PHDEP Gun Buyback NOFA for the development, outreach, technical assistance, training, assessment and execution activities related to gun buyback violence reduction initiatives.

Now that HUD is issuing the formula allocation for FY 2000 PHDEP funding to local PHAs, the Department is hereby advising PHAs that they may devote a portion of these PHDEP grant funds to gun buyback violence reduction initiatives in cooperation with local law enforcement agencies, and that HUD will award a portion of the $4,500,000 in FY 1999 PHDEP set aside matching funds available for gun buyback violence reduction initiatives on a first-come, first-served basis until all these matching funds are awarded.

This notice amends the PHDEP Gun Buyback NOFA requirements to clarify that while HUD's matching funds are to be drawn only from the FY 1999 PHDEP set aside, PHAs may use PHDEP grant funds from any fiscal year (not merely FY 1999 or FY 1999) for gun buybacks. Applicants must still comply with all of the other application submission requirements as stated in the PHDEP Gun Buyback NOFA. For the convenience of applicants, the November 3, 1999 notice is republished below, amended consistent with the discussion above, and to reflect the new Executive Order on Federalism.

Amended PHDEP Gun Buyback NOFA

Accordingly, FR Doc. 99–28856, the Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative NOFA (PHDEP Gun Buyback NOFA) published in the **Federal Register** on November 3, 1999 (64 FR 60800), is amended and republished as follows:

I. Authority

The Public Housing Drug Elimination Program is authorized under the Public and Assisted Housing Drug Elimination Act (42 U.S.C. 11901 *et. seq*).

II. Amount Allocated

Public Law 105–276 (the FY 1999 HUD Appropriations Act) appropriated $310,000,000 for the Public and Assisted Housing Drug Elimination Program. Of the total $310,000,000 appropriated for the Public and Assisted Housing Drug Elimination Program, the FY 1999 HUD Appropriations Act also set aside $10,000,000 for "grants, technical assistance, contracts and other assistance, training, and program assessment and execution". Approximately $4,500,000 of this $10,000,000 set aside amount is being made available under this notice for the development, outreach, technical assistance, training, assessment and execution activities related to gun buyback violence reduction initiatives.

As discussed in this notice, HUD is encouraging PHAs to program FY 2000 funds or reprogram a portion of their PHDEP grant funds from previous fiscal years to implement and operate gun buyback violence reduction initiatives in cooperation with local law enforcement agencies. Under this notice, HUD will use the $4.5 million set aside amount described in the paragraph above to match up to $10.5 million of PHDEP grant funds that are programmed or reprogrammed to implement and operate gun buyback violence reduction initiatives. PHAs may request to use PHDEP funds for gun buyback violence reduction efforts until the available matching funds are exhausted. The Department will no longer approve PHA applications for further gun buyback violence reduction initiatives under this notice after the available matching funds have been awarded.

III. Background

With almost one gun for every man, woman and child, America is drowning today in a flood of guns and we're paying a heavy price for this proliferation, particularly in urban areas where much of public housing is located. In 1996, we lost more

Americans to gunfire than we lost in the entire Korean War. Currently, over 600 people die in gun-related incidents in the U.S. each week. That's over 30,000 every year. This includes over 1,000 accidental deaths and over 18,000 suicides. Another 100,000 are injured annually in non-fatal shootings.

Our children pay the highest price. The rate of accidental shooting deaths for children under fifteen in the United States is nine times higher than the other 25 industrialized countries *combined*. And the great increase in suicides among teenagers and young adults in the past four decades has been mostly due to an increase in gun related suicides. *Easy access to weapons is the single most overwhelming factor contributing to the high rate of gun deaths and injuries in this country.*

In an effort to curtail the hazards of accidental shootings, suicides, the tragedies of domestic violence, the dangers of gun violence, and the devastating effects that often accompany such acts, police agencies and local community organizations around the country have created various types of gun buyback initiatives. Gun reduction efforts operate on the premise that accidental shootings, unintentional injuries, suicides and violent crimes can be reduced in communities if there are fewer weapons available with which to commit such acts. PHAs have an important role to play in the reduction of the number of guns and incidents of gun-related violence in our communities.

HUD is sponsoring the initiative announced in this notice through its Public Housing Drug Elimination Program to promote the cooperation of PHAs and local law enforcement agencies in conducting gun buyback initiatives aimed at reducing accidental or unintentional shootings, suicides, domestic violence and other forms of gun violence. HUD is inviting PHAs who are recipients of PHDEP funding to program or reprogram a portion of their PHDEP funding to implement gun reduction initiatives in their localities. To encourage the participation of PHAs in this initiative, HUD will provide a participating PHA with additional funding to increase the amounts available for gun buybacks and maximize the number of guns taken out of circulation, and for the development, outreach, technical assistance, training, assessment and execution activities related to gun buyback violence reduction initiatives. Funding being made available for this purpose will be equal to approximately 43 percent of the amount of PHDEP funding the PHA devotes to the gun buyback violence reduction initiative.

In addition to reducing the number of accidental shootings, suicides, domestic and gun violence, gun reductions efforts have other positive aspects for housing and community residents such as:

- Raising public consciousness about community safety and soliciting neighborhood participation in crime control efforts
- Acting as a visible deterrent to criminal activity
- Increasing police presence in communities
- Establishing stronger bonds between the community and the police, which might aid in more cooperative crime prevention and crime resolutions
- Increasing trust in the police on the part of the community
- Affording the community an active role in the fight against accidental shootings, suicides, domestic violence, violent crimes and firearm related criminal activity
- Involving community businesses as cosponsors of these programs, which could bring about more resources and publicity in support of the gun reduction efforts.

While these factors and reports of the success of gun buyback initiatives have been sufficiently favorable to encourage HUD to undertake this effort, the total amount of HUD assistance being devoted to this effort under this notice is capped at a total of $10.5 million PHDEP program funding, plus the additional matching $4.5 million. HUD will sponsor an independent assessment of this initial effort to more accurately and objectively determine the effectiveness of such initiatives before expanding this effort further. PHAs and local law enforcement agencies participating in the initiative under this notice may be contacted to participate in this assessment.

IV. Application Procedures and Requirements

A. General Overview

PHDEP funds are made available to a PHA to be used in a manner consistent with the PHA's PHDEP plan to address drug-related, violent and criminal activity in and around public housing. Therefore, to participate in this initiative, a PHA must program or reprogram a portion of the funds in its PHDEP plan for gun buyback violence reduction activities. Before funds are awarded under this notice, a PHA will have to submit a reprogramming request for HUD approval, or include a gun buyback initiative as part of its PHDEP plan. A PHA that has not yet submitted a PHDEP plan for FY 2000 formula funding but that wishes to participate in this initiative using FY 2000 funds may submit a letter of intent (or a "programming request") that complies with the requirements of this notice. HUD will review each reprogramming request or letter of intent to program funds as it is received and upon approval of the request will authorize additional funding at a rate of approximately $43 for every $100 dollars of PHDEP funding that qualifies under this initiative. This represents an additional 43 percent of funding for the PHA's gun buyback violence reduction. HUD approval will consist of HUD signing off on the programming or reprogramming request and MOU (an executed agreement to carry out the gun buyback initiative) between the PHA and the local police, and, in the case of reprogramming, having HUD amend the PHDEP grant award to the PHA to support the gun reduction effort.

Because of the security issues involved, the gun buyback activities must be conducted by the local law enforcement agency. PHDEP funds for this gun reduction initiative fall under the categories of eligible PHDEP activities of "programs designed to reduce use of drugs in and around public or federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs", as provided in 42 U.S.C. 11903(a)(6) and, under appropriate circumstances, reimbursement of local law enforcement agencies for additional security and protective services, as provided in 42 U.S.C. 11903(a)(2). Funds for buyback activities may not be drawn until the grantee has executed an agreement or Memorandum of Understanding for the additional law enforcement services. The full amount of PHDEP funds that are programmed or reprogrammed should be used for the actual buyback costs. HUD also strongly recommends that the additional 43 percent of funding made available be used for gun buyback costs to maximize the number of guns taken out of circulation.

In addition to the use of PHDEP funds and the additional funding made available under this NOFA, PHAs may and are encouraged to use funding from other sources, such as contributions from local government or the private sector, for their gun buyback/violence reduction initiatives. PHAs may, for example, negotiate with businesses in the community that vouchers exchanged for guns under the initiative provide an additional discount or value increase when redeemed at that business. PHAs and local law enforcement agencies are

also strongly encouraged to seek out and obtain community cooperation and resources to leverage the costs of the development, outreach, technical assistance, training, assessment and execution activities related to the initiative, because a community-wide effort is likely to have the greatest positive impact.

B. Eligible Applicants

PHAs that are (1) recipients of PHDEP funding, (2) devoting a portion of that funding to gun buyback violence reduction initiatives, and (3) implementing their gun buyback initiatives in cooperation with local law enforcement agencies, as evidenced by letters of intent and executed agreement, may apply for a portion of the additional $4,500,000 matching funding under this notice.

C. Amount of Funding per Applicant

Consistent with this notice, HUD will permit a PHA to program or reprogram up to $500,000 of its PHDEP funding to gun buyback violence reduction initiatives. In addition to the amount programmed or reprogrammed, PHAs will receive an additional amount of funding equal to approximately 43 percent of the PHDEP dollars devoted to the gun buyback initiative.

D. Eligible Activities

Police conducting the buyback activity should accept for buyback firearms as defined under Federal, State or local law. The Federal law definition of a firearm is found at 18 U.S.C. 921(a)(3). In deference to local conditions and judgments, HUD will consider a wide range of gun buyback violence reduction activities, in accordance with the following:

1. *Form of buyback exchange.* HUD encourages these initiatives to offer gift certificates, food vouchers, certificates for merchandise such as toys, or other incentives of value to those who turn in guns, in addition to or in place of cash payments.

2. *Amount of value per exchange.* HUD suggests value equivalent to $50 of the HUD assistance provided to be offered for each gun exchanged. Additional value in the form of discounts or extra merchandise made available by businesses participating in the initiative may also be offered.

3. *Site of gun buyback activities.* While PHDEP activities must be planned to reduce drug-related, violent and criminal activity in or around the premises of public housing, perpetrators of gun violence are frequently non-resident predators of public housing. Gun buyback activities, therefore, do not need to be conducted on the PHA premises in order to be effective. However, it is anticipated that the gun reduction effort will have a noticeable impact on reducing the number of guns and the risk of unintentional shootings in the homes and communities of public housing residents.

4. *Disposal of guns.* Once the police collect the weapons from the buyback initiatives, the guns must be destroyed so as not to be put back into use or circulation, unless law enforcement needs call for another action, such as preservation of a gun as evidence or a determination of whether a gun was stolen or used in the commission of a crime. If a gun is determined to be stolen, it must be returned to its lawful owner. Guns may not be resold or exchanged for value, except in connection with their destruction and conversion to scrap; however, a gun determined to be a curio or relic under 27 CFR 178.11 may be donated to a State or Federal museum. Local law enforcement agencies will be required to include the following recovery, tracing and destruction procedures in their disposal of firearms obtained under this initiative:

(a) Certain firearms defined under the National Firearms Act (NFA), 26 U.S.C. 5845(a), *e.g.*, short-barreled shotguns, generally must be registered with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Local police will consult with the ATF where NFA firearms are surrendered in a buyback program.

(b) Local police will conduct a search of each surrendered firearm in the National Crime Information Center (NCIC).

(c) Where available, local police will test each surrendered firearm using an automated ballistics information system such as IBIS or DRUGFIRE.

(d) Where appropriate, certain surrendered firearms should be traced. For example, firearms possessed in violation of local law or ordinance, NFA firearms, firearms with an obliterated serial number, or firearms that are determined by local law enforcement to be associated with crime must be traced where possible.

E. Application Submission Requirements

Each application for funding under this notice must include the following:

1. A written statement briefly describing which activities in the PHA's PHDEP plan would be reprogrammed, and the resulting reprogrammed amount PHDEP funding to be used for the gun buyback reduction activities; or in the case of FY 2000 funding, the amount of FY 2000 funds to be programmed for a gun buyback initiative;

2. A brief description of the proposed gun buyback initiative, including the gun recovery, tracing, and destruction procedures that will be followed, in accordance with the requirements and guidelines of this notice;

3. *Letters of intent.* A letter of intent signed by the chief of the local law enforcement agency to conduct the gun buyback initiative in accordance with the description submitted, and a letter of intent from the chief executive officer (generally the mayor or county executive) of the unit of local government for the jurisdiction indicating the cooperation and support of the local jurisdiction.

F. Award Process

As HUD receives applications, it will log them in by date and time. HUD will notify each PHA applicant that it is eligible to reprogram or program its PHDEP funds in the amount indicated in the application until a total of $10.5 million of PHDEP funding has been designated eligible for this gun buyback initiative. Before additional funds are awarded, a PHA that is reprogramming activities will be required to submit its formal programming request describing which activities in the PHA's PHDEP plan are being reprogrammed, and the reprogrammed amount of PHDEP funding to be used for the gun buyback reduction activities. All PHAs must also submit an executed agreement with the local law enforcement agency to conduct the gun buyback initiative in accordance with the description in the programming or reprogramming request. Upon approval of a PHA's reprogramming request and executed agreement, HUD will award the additional 43 percent of funding through an amendment to the PHDEP grant agreement. Awards of the additional matching funds for FY 2000 applications will be made upon approval of the PHDEP plan and executed agreement. All grants to PHAs and their sub-grants to local law enforcement agencies are subject to the applicable administrative requirements for grants of 24 CFR part 85, including the monitoring and reporting program performance requirements of § 85.40 and the financial reporting requirements of § 85.41.

V. Certifications and Findings

Environmental Impact

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition,

disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Paperwork Reduction Act Statement

The information collection requirements for the Public Housing Drug Elimination Program were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0124. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Federalism, Executive Order 13132

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance number for the Public Housing Drug Elimination Program is 14.854.

Dated: January 28, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–2431 Filed 1–31–00; 4:50 pm]

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Federal Register

Thursday,
February 3, 2000

Part IV

Department of Housing and Urban Development

24 CFR Part 206

Home Equity Conversion Mortgage Insurance; Right of First Refusal Permitted for Condominium Associations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4267–F–02]

RIN 2502–AG93

Home Equity Conversion Mortgage Insurance; Right of First Refusal Permitted for Condominium Associations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD

ACTION: Final rule.

SUMMARY: This final rule removes, for the Home Equity Conversion Mortgage (HECM) insurance program only, the restriction on FHA mortgage insurance for a dwelling unit in a condominium project where the condominium association has a right of first refusal.

DATES: *Effective Date:* March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708–2700. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed by calling the Federal Information Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

HUD published an interim rule on April 9, 1998 (63 FR 17654) to permit a condominium unit owner to obtain an FHA-insured Home Equity Conversion Mortgage (HECM) when the condominium association holds a right of first refusal. The interim rule created an exception to the general policy for FHA single family programs which bars most rights of first refusal, including all rights of first refusal held by condominium associations. The interim rule does not permit condominium associations to exercise their rights of first refusal to engage in practices that violate the Fair Housing Act, and the Department stated in the preamble to the interim rule that all of its enforcement authority would be used if illegal discriminatory practices occur as a result of the exercise of a right of first refusal.

Public Comment

HUD received one public comment on the interim rule. It suggested that the exception created by the interim rule for condominiums be expanded to include planned unit developments (PUDs), to permit HUD to insure HECMs on property in PUDs where a homeowner association holds a right of first refusal. The Department will consider this suggestion in the future, and may go forward with further rulemaking if it is decided that PUDs should be included in the same exception as condominiums. At this time, however, the Department has not determined that such a change is needed. It is appropriate to conclude this rulemaking by adopting the interim rule as a final rule without change.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in doing so certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule removes the restriction on FHA mortgage insurance for a dwelling unit in a condominium project where the condominium association has a right of first refusal to purchase units that are offered for sale.

Environmental Finding

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street S.W., Washington, D.C. 20410.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has Federalism implications and either imposes substantial compliance costs on State and local governments or is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Domestic Federal Assistance

The Catalog of Federal Domestic Assistance number for the Home Equity Conversion Mortgage Program is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the interim rule published at 63 FR 17654, April 9, 1998, is adopted as final without change.

Dated: January 20, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–2316 Filed 2–2–00; 8:45 am]

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Federal Register

Vol. 65, No. 23

Thursday, February 3, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219

5 CFR

581 4753
582 4753

7 CFR

301 ..... 4865, 5221
981 4867

Proposed Rules:
54 4780

12 CFR

Proposed Rules:
Ch. I 4895
611 5286

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243
71 ..... 4871, 4872, 4873, 4874
91 5396
93 5396
97 ..... 4875, 4877, 4879
121 5396
135 5396

Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906
71 ..... 4910, 4911
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

18 CFR

Proposed Rules:
382 5289

21 CFR

876 4881
1308 5024

Proposed Rules:
1310 4913

24 CFR

206 5406

29 CFR

Proposed Rules:
1910 4795

30 CFR

938 4882

34 CFR

676 4886

36 CFR

Proposed Rules:
242 5196
1234 5295

38 CFR

Proposed Rules:
21 4914

39 CFR

111 4864

Proposed Rules:
111 4918

40 CFR

52 ..... 4887, 5245, 5252, 5259, 5262, 5264

Proposed Rules:
52 ..... 5296, 5297, 5298
130 4919

42 CFR

Proposed Rules:
36 4797

45 CFR

1303 4764

47 CFR

1 4891
Ch. I 5267

Proposed Rules:
73 ..... 4798, 4799, 4923
76 4927
95 4935

48 CFR

203 4864
209 4864
225 4864
249 4864

Proposed Rules:
30 4940

49 CFR

195 4770

50 CFR

17 ..... 4770, 52680
18 52750
679 ..... 4891, 4892, 4893, 5278, 5283, 5284, 5285

Proposed Rules:
17 ..... 4940, 5298
100 5196
622 5299
648 4941

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 3, 2000

INTERIOR DEPARTMENT
Fish and Wildlife Service
Marine mammals:
- Incidental taking; authorization letters, etc.—
  - Oil and gas industry activities; polar bears and Pacific walruses; published 2-3-00

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
- Documents incorporated by reference; update; published 1-4-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
- Florida; comments due by 2-11-00; published 12-13-99

Melons grown in—
- Texas; comments due by 2-9-00; published 1-10-00

Raisins produced from grapes grown in—
- California; comments due by 2-8-00; published 12-10-99

COMMERCE DEPARTMENT
International Trade Administration
Watches, watch movements, and jewelry:
- Duty-exemption allocations—
  - Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-5-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pollock; comments due by 2-8-00; published 12-10-99
- Atlantic highly migratory species—
  - Atlantic pelagic longline fishermen; time/area closures; hearings and Advisory Panel meetings; comments due by 2-11-00; published 12-28-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 2-10-00; published 1-26-00
- West Coast States and Western Pacific fisheries—
  - Western Pacific Region pelagic; comments due by 2-10-00; published 12-27-99

Marine mammals:
- Incidental taking—
  - San Francisco-Oakland Bay Bridge, CA; pile installation demonstration project; comments due by 2-7-00; published 1-7-00

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
- Advisors that provide advice by means of various media; registration exemption; comments due by 2-7-00; published 12-7-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
- Central air conditioners and heat pumps; energy conservation standards; comments due by 2-7-00; published 11-24-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
- Stratospheric ozone protection—
  - Essential-use allowances; allocation; comments due by 2-7-00; published 1-6-00

Air quality implementation plans; approval and promulgation; various States:
- Kansas; comments due by 2-10-00; published 1-11-00
- Missouri; comments due by 2-11-00; published 1-12-00
- Tennessee; comments due by 2-7-00; published 1-7-00

Hazardous waste:
- Identification and listing—
  - Exclusions; comments due by 2-7-00; published 12-9-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Tebufenozide; comments due by 2-7-00; published 12-8-99

Solid wastes:
- Municipal solid waste landfill permit programs; adequacy determinations—
  - Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
  - Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 2-7-00; published 1-7-00
  - National priorities list update; comments due by 2-7-00; published 1-7-00
- Toxic chemical release reporting; community right-to-know—
  - Phosphoric acid; comments due by 2-7-00; published 12-7-99

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
- Illinois; comments due by 2-7-00; published 1-21-00
- Kansas; comments due by 2-7-00; published 1-21-00
- Michigan; comments due by 2-7-00; published 12-30-99
- New York; comments due by 2-7-00; published 1-4-00
- Texas; comments due by 2-7-00; published 12-30-99

Satellite Home Viiewer Act; network nonduplication, syndicated exclusivity and sports blackout rules to satellite retransmissions; comments due by 2-7-00; published 2-2-00

Television broadcasting:
- Class A television service; establishment; comments due by 2-10-00; published 1-20-00
- Two way transmissions; mutlipoint distribution service and instructional television fixed service licenses participation; comments due by 2-10-00; published 1-26-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs and biological products:
- Postmarketing studies; status reports; comments due by 2-9-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Fellowships, internships, training:
- National Institutes of Health Contraception and Infertility Research Loan Repayment Program; comments due by 2-8-00; published 12-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and State health care programs:
- Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-8-00; published 12-10-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
- Alabama sturgeon; comments due by 2-10-00; published 1-11-00

INTERIOR DEPARTMENT
Watches, watch movements, and jewelry:
- Duty-exemption allocations—
  - Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf operations:
- Minerals prospecting; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:

Extension of distance Mexican nationals may travel into U.S. without obtaining additional immigration documentation at selected Arizona ports-of-entry; comments due by 2-7-00; published 12-8-99

Organization, functions, and authority delegations:
Los Angeles and San Francisco Asylum Offices, CA; jurisdictional change; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:
United States Marshals Service; fees for services; comments due by 2-7-00; published 12-7-99

LIBRARY OF CONGRESS
Copyright Office, Library of Congress

Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-10-00; published 11-24-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Attorney fees; reimbursement; comments due by 2-7-00; published 12-23-99

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:
Family relationships; inheritance rights; comments due by 2-7-00; published 12-8-99

SMALL BUSINESS ADMINISTRATION

Business loans:
Liquidation of collateral and sale of disaster assistance loans; comments due by 2-9-00; published 1-10-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 2-7-00; published 1-6-00
Bell; comments due by 2-7-00; published 12-8-99
Boeing; comments due by 2-7-00; published 12-8-99
Bombardier; comments due by 2-11-00; published 1-12-00
British Aerospace; comments due by 2-9-00; published 1-6-00
Eurocopter Deutschland GMBH; comments due by 2-8-00; published 12-10-99
Eurocopter France; comments due by 2-8-00; published 12-10-99
Fokker; comments due by 2-7-00; published 1-6-00
McDonnell Douglas; comments due by 2-7-00; published 12-22-99
MD Helicopters Inc.; comments due by 2-7-00; published 12-8-99
Pratt & Whitney; comments due by 2-7-00; published 12-8-99
Turbomeca; comments due by 2-7-00; published 12-8-99

Airworthiness standards:
Special conditions—
Ayres Corp. Model LM-200 Loadmaster airplane; comments due by 2-11-00; published 1-12-00

Class E airspace; comments due by 2-8-00; published 12-29-99

TREASURY DEPARTMENT

Balanced Budget Act of 1997; implementation:
District of Columbia retirement plans; Federal benefit payments; comments due by 2-11-00; published 12-13-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

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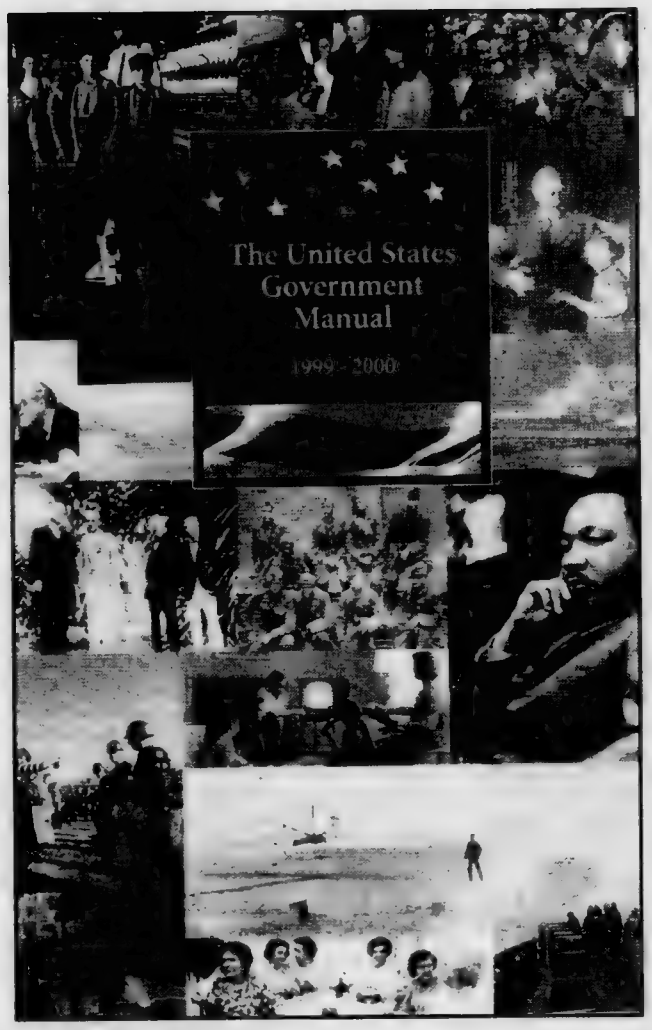

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Contents

Federal Register

Vol. 65, No. 24

Friday, February 4, 2000

Agricultural Research Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Biotechnology Advisory Committee, 5490–5492

Agriculture Department
See Agricultural Research Service
See Farm Service Agency
See Forest Service
RULES
Organization, functions, and authority delegations:
Agency Administrators, 5414–5418
NOTICES
Meetings:
National Agricultural Research, Extension, Education, and Economics Advisory Board, 5490

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 5494

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arizona, 5494
New Hampshire, 5494

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 5616

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 5492–5493
Procurement list; additions and deletions; correction, 5494

Consumer Product Safety Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5616–5617

Customs Service
RULES
Tariff-rate quotas:
Sugar-containing products; export certificates, 5430–5431

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5617–5618
Arms sales notification; transmittal letter, etc., 5618–5622
Grants and cooperative agreements; availability, etc.:
National Security Education Program; institutional grants, 5622

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Cavanagh, James Garvey, M.D., 5661
Dolin, Michael G., M.D., 5661–5662
Golden, Robert M., M.D., 5663–5665
Harline, Wesley G., M.D., 5665–5672
Henderson, Judy L., D.V.M., 5672–5675
Hutchinson, Archibald W., M.D., 5675–5676
Jones, Kenneth Leroy, M.D., 5676–5677
Leach, Richard Eaton, M.D., 5677–5678
Lusskin, Brett L., M.D., 5678
Marshall, Charles W., D.P.M., 5678–5679
Miller, Melvin John, M.D., 5679
Neujahr, Theodore A., D.V.M., 5680–5682
Patterson, Michael Alan, M.D., 5682–5686
Saxton, Paul W., D.O., 5686–5688
Van Nostrand-Perkins, C., M.D., 5689

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
Sunshine Cap Co. et al., 5494–5495

Employment and Training Administration
NOTICES
Adjustment assistance:
Burlen Corp., 5692
Chester County Sportswear, 5692
Foster Wheeler et al., 5692–5693
Fox Point Sportswear et al., 5693–5694
Guidant Intermedics, 5694
Motorola, Inc., et al., 5694–5695
Sony Magnetic Products Inc. of America, 5695
Whistler Corp. of Massachusetts, 5695
Adjustment assistance and NAFTA transitional adjustment assistance:
Barry Callebaut USA, Inc., 5690
Cooper Energy Service et al., 5690–5692
Alien temporary employment labor certification process:
Agriculture and logging; adverse effect wage rates, meal charges, and maximum travel subsistence reimbursement, 5696–5697
NAFTA transitional adjustment assistance:
Philips Electronics North America Corp., 5697–5698
Tultex Corp. et al., 5698–5699
Whistler Corp. of Massachusetts, 5699

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 5699–5700

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Secretary of Energy Advisory Board, 5624–5625

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Eastern Arkansas Region Comprehensive Study, AK, 5622–5623
Logan County, WV; Hobert Mining, Inc.'s mining activities, 5623–5624

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 5433–5435
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 5435–5442
Toxic substances:
Polychlorinated biphenyls (PCBs)—
Authorizations; CFR correction, 5442
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 5465–5468
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 5468–5474
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5633–5634
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 5634–5635
Weekly receipts, 5635
Meetings:
Environmental Laboratory Advisory Board, 5635–5636
FIFRA Scientific Advisory Panel, 5636–5637
Science Advisory Board, 5637–5639
Pesticide, food, and feed additive petitions:
Novartis Crop Protection, Inc., 5639–5643
Reports and guidance documents; availability, etc.:
QTRACER Program for tracer-breakthrough curve analysis for karst and fractured-rock aquifers; and lexicon of cave and karst terminology, 5643–5644
Superfund; response and remedial actions, proposed settlements, etc.:
Lakewood Battery Site, GA, 5644

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 5644

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5644

Farm Service Agency
PROPOSED RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Commodity programs; farm reconstitutions, 5444–5447

Federal Aviation Administration
RULES
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd., 5421–5422
Empresa Brasileira de Aeronautica S.A., 5425–5427
Harbin Aircraft Manufacturing Corp., 5419–5421
Mitsubishi, 5422–5424
Pilatus Aircraft Ltd, 5428–5429
SOCATA—Groupe AEROSPATIALE, 5427–5428
Twin Commander Aircraft Corp., 5424–5425
PROPOSED RULES
Airworthiness directives:
Boeing, 5455–5456, 5459–5465
Eurocopter Deutschland GMBH, 5453–5455
Fokker, 5456–5458
NOTICES
Airport noise compatibility program:
Noise exposure map—
Post Columbus International Airport, OH, 5718–5719
Passenger facility charges; applications, etc.:
McAllen International, TX, 5719
Technical standard orders:
Gas turbine auxiliary power units, 5720

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Panda Gila River, L.P., et al., 5625–5629
Wisconsin Electric Power Co. et al., 5629–5633
Meetings:
Regional transmission organizations; regional collaborative workshops, 5633
Applications, hearings, determinations, etc.:
Florida Gas Transmission Co., 5625
Natural Gas Pipeline Co. of America, 5625

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Washington and Benton Counties, AR, 5720

Federal Housing Finance Board
RULES
Affordable housing program operation:
Reporting and recordkeeping requirements, 5418–5419
PROPOSED RULES
Federal home loan bank system:
Appropriate present-value factors associated with payments made to Resolution Funding Corporation, 5447–5453

Federal Railroad Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5721–5723
Exemption petitions, etc.:
National Railroad Passenger Corp. (Amtrak), 5723

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 5644–5645
Permissible nonbanking activities, 5645
Meetings; Sunshine Act, 5645

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 5645

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Black-tailed prairie dog, 5476–5488
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Bastrop County, TX; Houston toad, 5653–5655
San Dieguito Lagoon Restoration Plan, CA, 5655–5656

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Investigational new drug meetings for human drugs and biologics; chemistry, manufacturing, and controls information; industry guidance, 5645–5646

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 5495–5496
Indiana
Alfa Laval Distribution, Inc.; separator and decanter centrifuge equipment/parts warehousing/ distribution facility, 5496
Puerto Rico
Mani Can Corp.; steel can processing facilities, 5496

Forest Service
PROPOSED RULES
National Forest System land and resource management planning, 5465

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration
PROPOSED RULES
Grants and cooperative agreements; availability, etc.:
Substance Abuse Prevention and Treatment (SAPT) block grant program—
Application deadline, 5474–5476

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5646–5647
Grants and cooperative agreements; availability, etc.:
Community Access Program, 5647–5649
Meetings:
Migrant Health National Advisory Council; correction, 5649–5650

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 5651–5653

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Income taxes:
Qualified retirement plans; remedial amendment period, 5432–5433

International Trade Administration
NOTICES
Antidumping:
Axes and adzes and picks and mattocks from—
China, 5497–5499
Cold-rolled flat-rolled carbon-quality steel products from—
Brazil, 5536–5583
Russian Federation, 5500-5520
South Africa, 5529–5536
Various countries, 5520–5529
Venezuela, 5499-5500
Creatine monohydrate from—
China, 5583–5584
Fresh and chilled Atlantic salmon from—
Norway, 5584–5587
Large diameter carbon and alloy seamless standard, line, and pressure pipe from—
Mexico, 5587–5591
Pasta from—
Italy and Turkey, 5591–5592
Polyethylene terephthalate film from—
Korea, 5592–5594
Small diameter carbon and alloy seamless standard, line, and pressure pipe from—
Czech Republic, 5599–5604
Romania, 5594–5599
Stainless steel butt-weld pipe and tube fittings from—
Various countries, 5604–5607
Welded stainless steel pipes from—
Korea and Taiwan, 5607–5611
Countervailing duties:
Iron-metal castings from—
India, 5611–5612
Export trade certificates of review, 5612–5613

International Trade Commission
NOTICES
Import investigations:
Bulk acetylsalicylic acid (aspirin) from—
China, 5659–5660
Internal combustion industrial forklift trucks from—
Japan, 5660–5661

Justice Department
See Drug Enforcement Administration
See National Institute of Corrections

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5689–5690

Land Management Bureau
NOTICES
Closure of public lands:
California, 5656–5657
Environmental statements; availability, etc.:
Naval Air Station Fallon, NV; Fallon Range Training Complex requirements, 5657
Motor vehicle use restrictions:
Oregon, 5657–5658
Oil and gas leases:
Wyoming, 5658
Realty actions; sales, leases, etc.:
Arizona, 5658
Nevada, 5658–5659

Merit Systems Protection Board
RULES
Practice and procedure:
Uniformed Services Employment and Reemployment Rights Act and Veterans Employment Opportunities Act; implementation—
Appeals, 5410–5414
Appeals; cross-references, 5409

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
CONSOL of Kentucky, Inc., et al., 5700–5702

National Institute of Corrections
NOTICES
Meetings:
Advisory Board, 5689

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; correction, 5442–5443
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop, 5488–5489
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5613–5615
Meetings:
Pacific Fishery Management Council, 5615–5616
National Weather Service; modernization and restructuring:
Weather Service offices—
Consolidation, automation, and closure certification, 5616

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Air Station Fallon, NV; Fallon Range Training Complex requirements, 5657

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Commonwealth Edison Co. et al., 5702–5703
IES Utilities Inc., 5703–5704
Rio Algom Mining Corp., 5704–5705
Wisconsin Electric Power Co., 5705–5706
Wisconsin Public Service Corp. et al., 5706–5707

Occupational Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 5707

Presidential Documents
ADMINISTRATIVE ORDERS
International entities; certification against withholding funds (Memorandum of January 31, 2000), 5407
Puerto Rico, range facilities on Vieques, community assistance (Directive of January 31, 2000), 5731
Puerto Rico, range facilities on Vieques, referendum (Directive of January 31, 2000), 5727–5730

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Meetings:
Actuarial Advisory Committee, 5707

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Deregistration applications—
Sefton Funds Trust et al., 5707–5709
Exemption applications—
HT Insight Funds, Inc., et al., 5709–5711
Salomon Smith Barney Inc. et al., 5711–5713
Meetings; Sunshine Act, 5714
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 5714–5715
National Association of Securities Dealers, Inc., 5715–5717

State Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5717
Meetings:
Private International Law Advisory Committee, 5717–5718

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 5650–5651

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Union Pacific Railroad Co., 5724

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5724–5725

Transportation Department
See Federal Aviation Administration

See Federal Highway Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office

Separate Parts In This Issue

Part II
The President, 5727–5731

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Directive of January 31, 2000 5727
Directive of January 31, 2000 5727
Presidential Determinations:
No. 2000-10 of January 31, 2000 5407

5 CFR
1201 5409
1208 5410

7 CFR
2 5414
Proposed Rules:
718 5444

12 CFR
960 5418
Proposed Rules:
951 5447
997 5447

14 CFR
39 (7 documents) 5419, 5421, 5422, 5424, 5425, 5427, 5428
Proposed Rules:
39 (4 documents) 5453, 5455, 5456, 5459

19 CFR
132 5430
163 5430

25 CFR
1 5432

36 CFR
Proposed Rules:
217 5462
219 5462

40 CFR
52 5433
300 5435
761 5442
Proposed Rules:
52 (2 documents) 5462, 5463
300 5465

45 CFR
Proposed Rules:
96 5471

50 CFR
679 5442
Proposed Rules:
17 5474
648 5486

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–10 of January 31, 2000

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as Contained in the Consolidated Appropriations Act for FY 2000 (Public Law 106–113)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as Contained in the Consolidated Appropriations Act for FY 2000 (Public Law 106–113), I hereby certify that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, January 31, 2000.

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Rules and Regulations

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to conform certain provisions to the new part 1208 of the Board's regulations that is being issued simultaneously with this amendment. The new part 1208 describes the Board's practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. This part is being amended to provide appropriate cross-references to the new part 1208 and to remove provisions that have been incorporated into the new part 1208.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is publishing separately a new part 1208 of its rules of practice and procedure to cover appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (Public Law 103–353), as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA) (Public Law 105–339). Because certain provisions regarding USERRA appeals have been included previously in part 1201 (interim rule at 62 FR 66813, December 22, 1997; final rule at 64 FR 54507, October 7, 1999), certain changes are necessary to conform that part to the new part 1208. Part 1201 is being amended to provide appropriate cross-references to the new part 1208 and to remove provisions that have been incorporated into the new part 1208.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees, Lawyers.

Accordingly, the Board amends 5 CFR part 1201 as follows:

1. The authority citation for part 1201 is revised to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Section 1201.3 is amended by adding "and" at the end of paragraph (a)(20), by removing "; and" at the end of paragraph (a)(21) and adding a period in its place, by removing paragraph (a)(22) in its entirety, by redesignating paragraph (b) as paragraph (b)(2), and by adding a new paragraph (b)(1) to read as follows:

§ 1201.3 Appellate jurisdiction.

(a) * * *

(b)(1) *Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act.* Appeals filed under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103–353), as amended, and the Veterans Employment Opportunities Act (Public Law 105–339) are governed by part 1208 of this title. The provisions of subparts A, B, C, and F of part 1201 apply to appeals governed by part 1208 unless other specific provisions are made in that part. The provisions of subpart H of this part regarding awards of attorney fees apply to appeals governed by part 1208 of this title.

(2) * * *

* * * * *

3. Section 1201.22 is amended by revising paragraph (b)(2) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

(a) * * *

(b) *Time of filing.* (1) * * *

(2) The time limit prescribed by paragraph (b)(1) for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103–353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Public Law 105–339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

§ 1201.31 [Amended]

4. Section 1201.31 is amended by removing paragraph (e) in its entirety.

§ 1201.121 [Amended]

5. Section 1201.121 is amended by revising the last sentence of paragraph (c) to read as follows: "Such appeals are governed by part 1208 of this title."

6. Section 1201.202 is amended by removing "and" at the end of paragraph (a)(6), by removing the period at the end of paragraph (a)(7) and adding in its place "; and", by adding a new paragraph (a)(8), and by revising paragraph (d)(1) to read as follows:

§ 1201.202 Authority for awards.

(a) * * *

(8) Attorney fees, expert witness fees, and other litigation expenses, as authorized by the Veterans Employment Opportunities Act; 5 U.S.C. 3330c(b).

* * * * *

(d)(1) A *proceeding on the merits* is a proceeding to decide an appeal of an agency action under 5 U.S.C. 1221 or 7701, an appeal under 38 U.S.C. 4324, an appeal under 5 U.S.C. 3330a, a request to review an arbitration decision under 5 U.S.C. 7121(d), a Special Counsel complaint under 5 U.S.C. 1214 or 1215, or an agency action against an administrative law judge under 5 U.S.C. 7521.

* * * * *

Dated: January 28, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–2338 Filed 2–3–00; 8:45 am]

BILLING CODE 7400–01–U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1208

Practices and Procedures for Appeals Under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is publishing a new part 1208 of its regulations to describe its practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. The Uniformed Services Employment and Reemployment Rights Act permits a person covered by that law to appeal to the Board if a Federal agency employer or the Office of Personnel Management fails or refuses to provide an employment or reemployment right or benefit to which the person is entitled after service in a uniformed service. The Veterans Employment Opportunities Act permits a person entitled to veterans' preference to appeal to the Board if a Federal agency violates the person's rights under any statute or regulation relating to veterans' preference. While both of these laws are intended to provide protections for veterans, and while there are similarities in the procedures and remedies under each of the laws, there are significant differences as well. The purpose of this new part is to provide guidance to parties and their representatives on how to proceed in cases filed under these laws.

The Board is simultaneously publishing an amendment to its rules at 5 CFR part 1201 to conform certain provisions in that part to the new part 1208.

DATES: Effective February 4, 2000. Submit written comments on or before April 4, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105–339, extend the jurisdiction of the Merit Systems Protection Board to include complaints filed by covered persons, principally veterans, under each of these laws.

The Board has previously issued regulations to implement provisions of USERRA in an amendment to its rules at 5 CFR part 1201 (interim rule at 62 FR 66813, December 22, 1997; final rule at 64 FR 54507, October 7, 1999). Various provisions of VEOA require or permit the Board to issue regulations to implement particular procedural requirements of that law (5 U.S.C. 3330a(d)(1), 5 U.S.C. 3330a(d)(2)(B), and 5 U.S.C. 3330b(c)).

The Board believes that persons who file appeals under USERRA or VEOA, their representatives, and the agency parties to such appeals will best be served by combining the regulations that apply *only* to USERRA and VEOA appeals in a single place in the Board's rules. Therefore, the Board is issuing a new 5 CFR part 1208, titled "Practices and Procedures for Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act." The Board is publishing simultaneouly a rule making conforming amendments to part 1201.

To the extent consistent with the statutory requirements of USERRA and VEOA, the Board is processing appeals under these laws in the same manner as it processes other appeals under the Board's appellate jurisdiction regulations, subparts B and C of 5 CFR part 1201. Therefore, the new part 1208 contains only provisions that are unique to USERRA and VEOA, and parties should refer to the appellate jurisdiction procedures of part 1201 for other applicable requirements.

The Board's approach in the new part 1208, generally, is to include only provisions that restate or implement specific statutory requirements of USERRA and VEOA. For both USERRA and VEOA appeals, the new part 1208 includes additional requirements for the content of an appeal to ensure that information the Board needs to determine whether it has jurisdiction over an appeal under USERRA or VEOA is provided when the appeal is filed.

USERRA and VEOA are similar in that both provide new redress mechanisms for the protection of certain veterans' rights. They are also similar in that an appeal under each law may be filed with the Board after an appellant has first asked the Department of Labor to try to resolve the matter. (In the Department of Labor, both USERRA and VEOA complaints are processed by the Veterans Employment and Training Service.) Despite these similarities, there are significant differences between USERRA and VEOA, as summarized below.

Violations Covered

USERRA: The provisions of USERRA (codified at chapter 43 of title 38, United States Code) covering Federal employees apply to claims that a Federal agency employer or the Office of Personnel Management has failed or refused to provide an employment or reemployment right or benefit to which a person is entitled after service in a uniformed service (other than claims relating to benefits under the Thrift Savings Plan for Federal employees). USERRA also applies to claims of discrimination based on uniformed service in connection with initial employment, reemployment, retention in employment, promotion, or any benefit of employment (38 U.S.C. 4311(a)) and claims of reprisal (38 U.S.C. 4311(b)).

VEOA: The redress mechanism established by VEOA (section 3 of the Act, codified at 5 U.S.C. 3330a through 3330c) applies to claims that a Federal agency has violated a preference eligible's rights under any statute or regulation relating to veterans' preference.

Persons Covered

USERRA: The reemployment provisions of USERRA apply to persons who have left their employment for service in a uniformed service, provided they satisfy the Act's requirements relating to such matters as advance notice to the employer, cumulative length of absence, character of service, and the time limits for reporting back to work.

The USERRA anti-discrimination provision is broader; it applies to anyone who has served, applied to serve, or has an obligation to serve in a uniformed service. (It applies *only* to such a person; there is no *derived* right for a parent or spouse to claim discrimination based on a person's uniformed service; see *Lourens* v. *MSPB,* Fed. Cir. No. 99–3153, October 13, 1999.) The prohibition against reprisal in USERRA applies to anyone who exercises a right under the Act, assists someone else to exercise such a right, or testifies in a proceeding under the Act, regardless of whether the person alleging reprisal has served in a uniformed service.

VEOA: The VEOA redress mechanism applies to preference eligibles. The requirements a veteran (and, in certain instances, a mother or spouse of a veteran) must satisfy for preference eligible status are set forth at 5 U.S.C. 2108.

Choice of Procedure and Exhaustion Requirements

USERRA: USERRA permits a covered person to initiate a proceeding under the Act *either* by filing with the Secretary of Labor or by filing directly with the Board. The Board has ruled that a person who files a formal complaint with the Secretary of Labor must exhaust the procedures of the Department of Labor before an appeal may be filed with the Board. *Petersen* v. *Department of the Interior,* 71 M.S.P.R. 227 (1996). If the person simply seeks assistance from the Department of Labor, however, and does not file a formal complaint, the exhaustion requirement does not apply.

VEOA: VEOA *requires* a preference eligible who alleges a violation of veterans' preference to file first with the Secretary of Labor. The Board has no jurisdiction over a VEOA appeal until the Department of Labor procedures have been exhausted.

Filing Time Limits

USERRA: USERRA contains no statutory time limit for filing a complaint either with the Secretary of Labor or with the Board. The Board has determined that it would be inconsistent with the Congressional intent in enacting USERRA and its predecessor laws for the Board to establish a filing time limit by regulation. Therefore, there is no time limit for filing a USERRA appeal.

VEOA: VEOA establishes statutory filing time limits for each stage of the redress procedure. Unless the Secretary of Labor has notified the appellant that the Department of Labor has been unable to resolve the appellant's VEOA complaint, a VEOA appeal may not be filed with the Board before the 61st day after the complaint was filed with the Secretary. If the Secretary notifies the appellant that the Department of Labor has been unable to resolve the complaint, any VEOA appeal to the Board must be filed within 15 days of the date of receipt of the Secretary's notice. VEOA does not provide for waiver of any of its statutory filing time limits for good cause.

Representation

USERRA: USERRA authorizes the Special Counsel to represent a person in a USERRA appeal before the Board. Such representation is available only where the person has filed a USERRA complaint with the Secretary of Labor, the Secretary has notified the person that the Department of Labor cannot resolve the complaint, and the person asks the Secretary to refer the complaint to the Special Counsel. There is no provision for representation by the Special Counsel where a person files a USERRA appeal directly with the Board. Regardless of whether a USERRA appellant files with the Board directly, after exhausting the procedures of the Department of Labor, or after the Special Counsel has declined to represent the appellant, he may choose a representative in accordance with the Board's regulations at 5 CFR 1201.31.

VEOA: VEOA contains no provisions regarding representation of a VEOA appellant. The appellant may choose a representative in accordance with the Board's regulations at 5 CFR 1201.31.

Termination of Proceeding

USERRA: There is no provision in USERRA for a person who has filed a USERRA appeal with the Board to terminate the Board proceeding before it has concluded with the issuance of a decision.

VEOA: VEOA permits a person who has filed a VEOA appeal to elect to terminate the Board proceeding and file a civil action in district court if the Board has not issued a judicially reviewable decision within 120 days after the appeal was filed. The Board proceeding must terminate immediately upon the Board's receipt of the appellant's election.

Remedies

USERRA and VEOA: Both laws provide that if the Board determines that the agency has committed a violation, the Board must order the agency to comply with the provision(s) violated and award compensation for any loss of wages or benefits suffered by the appellant because of the violation.

USERRA: USERRA provides that any compensation received by the appellant pursuant to the Board's order shall be in addition to any other right or benefit provided for by chapter 43 of title 38, United States Code, and shall not diminish any such right or benefit. USERRA also *permits* the Board, when it orders an agency to comply, to award reasonable attorney fees, expert witness fees, and other litigation expenses.

VEOA: VEOA provides that where the Board finds that the agency's violation was willful, it *must* award an amount equal to backpay as liquidated damages. VEOA also *requires* the Board, when it orders an agency to comply, to award reasonable attorney fees, expert witness fees, and other litigation expenses.

Judicial Review

USERRA: USERRA explicitly provides that a final Board decision on a USERRA appeal is subject to judicial review in accordance with 5 U.S.C. 7703, which provides for judicial review by the United States Court of Appeals for the Federal Circuit.

VEOA: VEOA does not include a judicial review provision comparable to that in USERRA. It does, however, implicitly acknowledge that a final Board decision on a VEOA appeal is subject to judicial review by referring to the Board's issuance of a "judicially reviewable decision." In the absence of an explicit judicial review provision, the Board relies on precedent construing the applicability of 5 U.S.C. 7703 to final Board decisions in cases other than those decided under chapter 77 of title 5, United States Code (See, e.g., *Frazier, et al.,* v. *MSPB,* 672 F.2d 150, 160 (D.C. Cir. 1982)). Therefore, the Board's decisions on VEOA appeals will provide notice that judicial review is available in the United States Court of Appeals for the Federal Circuit.

Appeals Under Another Law, Rule, or Regulation.

USERRA: Nothing in USERRA prevents an appellant who may appeal an agency action to the Board under any other law, rule, or regulation from raising a claim of a USERRA violation in that appeal. The Board has ruled that it will treat such a claim as an affirmative defense that the agency action was not in accordance with law. See *Morgan* v. *United States Postal Service,* 82 M.S.P.R. 1 (1999).

VEOA: VEOA provides that a preference eligible who may appeal directly to the Board from an agency action that is appealable under any other law, rule, or regulation, may do so *in lieu of administrative redress under VEOA* (emphasis added) (5 U.S.C. 3330a(e)(1)). Such an appellant, however, may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for the violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)). An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR § 1201.22(b)(1).

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h), 5 U.S.C. 3330a, 5 U.S.C. 3330b, and 38 U.S.C. 4331.

List of Subjects in 5 CFR Part 1208

Administrative practice and procedure, Government employees, Veterans.

Accordingly, the Board amends 5 CFR chapter II, subchapter A, by adding part 1208 reading as follows:

PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT

Subpart A—Jurisdiction and Definitions

Sec.

1208.1 Scope.
1208.2 Jurisdiction.
1208.3 Application of 5 CFR part 1201.
1208.4 Definitions.

Subpart B—USERRA Appeals

1208.11 Choice of procedure under USERRA; exhaustion requirement.
1208.12 Time of filing.
1208.13 Content of appeal; request for hearing.
1208.14 Representation by Special Counsel.
1208.15 Remedies.
1208.16 Appeals under another law, rule, or regulation.

Subpart C—VEOA Appeals

1208.21 VEOA exhaustion requirement.
1208.22 Time of filing.
1208.23 Content of appeal; request for hearing.
1208.24 Election to terminate MSPB proceeding.
1208.25 Remedies.
1208.26 Appeals under another law, rule, or regulation.

Authority: 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

Subpart A—Jurisdiction and Definitions

§ 1208.1 Scope.

This part governs appeals filed with the Board under the provisions of 38 U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, as amended, or under the provisions of 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105–339. With respect to USERRA appeals, this part applies to any appeal filed with the Board on or after October 13, 1994, without regard as to whether the alleged violation occurred before, on, or after October 13, 1994. With respect to VEOA appeals, this part applies to any appeal filed with the Board which alleges that a violation occurred on or after October 31, 1998.

§ 1208.2 Jurisdiction.

(a) *USERRA.* Under 38 U.S.C. 4324, a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with a provision of that chapter (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees). In general, the provisions of chapter 43 of title 38 that apply to Federal employees guarantee various reemployment rights following a period of service in a uniformed service, provided the employee satisfies the requirements for coverage under that chapter. In addition, chapter 43 of title 38 prohibits discrimination based on a person's service—or application or obligation for service—in a uniformed service (38 U.S.C. 4311). This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment.

(b) *VEOA.* Under 5 U.S.C. 3330a, a preference eligible who alleges that a Federal agency has violated his rights under any statute or regulation relating to veterans' preference may file an appeal with the Board, provided that he has satisfied the statutory requirements for first filing a complaint with the Secretary of Labor and allowing the Secretary at least 60 days to attempt to resolve the complaint.

§ 1208.3 Application of 5 CFR part 1201.

Except as expressly provided in this part, the Board will apply subparts A (Jurisdiction and Definitions), B (Procedures for Appellate Cases), C (Petitions for Review of Initial Decisions), and F (Enforcement of Final Decisions and Orders) of 5 CFR part 1201 to appeals governed by this part. The Board will apply the provisions of subpart H (Attorney Fees, and Litigation Expenses, Where Applicable), Consequential Damages, and Compensatory Damages) of 5 CFR part 1201 regarding awards of attorney fees to appeals governed by this part.

§ 1208.4 Definitions.

(a) *Appeal.* "Appeal" means a request for review of an agency action (the same meaning as in 5 CFR § 1201.4(f)) and includes a "complaint" or "action" as those terms are used in USERRA (38 U.S.C. 4324) and a "complaint" or "appeal" as those terms are used in VEOA (5 U.S.C. 3330a).

(b) *Preference eligible.* "Preference eligible" is defined in 5 U.S.C. 2108.

(c) *USERRA appeal.* "USERRA appeal" means an appeal filed under 38 U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103–353), as amended. The term includes an appeal that alleges a violation of a predecessor statutory provision of chapter 43 of title 38, United States Code.

(d) *VEOA appeal.* "VEOA appeal" means an appeal filed under 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (Public Law 105–339).

Subpart B—USERRA Appeals

§ 1208.11 Choice of procedure under USERRA; exhaustion requirement.

(a) *Choice of procedure.* An appellant may file a USERRA appeal directly with the Board under this subpart *or* may file a complaint with the Secretary of Labor under 38 U.S.C. 4322.

(b) *Exhaustion requirement.* If an appellant files a complaint with the Secretary of Labor under 38 U.S.C. 4322, the appellant may not file a USERRA appeal with the Board until the Secretary notifies the appellant in accordance with 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint. An appellant who seeks assistance from the Secretary of Labor under 38 U.S.C. 4321 but does not file a complaint with the Secretary under 38 U.S.C. 4322 is not subject to the exhaustion requirement of this paragraph.

(c) *Appeals after exhaustion of Department of Labor procedure.* When an appellant receives notice from the Secretary of Labor in accordance with 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint, the appellant may file a USERRA appeal directly with the Board or may ask the Secretary to refer the complaint to the Special Counsel. If the Special Counsel agrees to represent the appellant, the Special Counsel may file a USERRA appeal directly with the Board. If the Special Counsel does not agree to represent the appellant, the appellant may file a USERRA appeal directly with the Board.

§ 1208.12 Time of filing.

Under chapter 43 of title 38, United States Code, there is no time limit for filing a USERRA appeal with the Board. However, the Board encourages appellants to file a USERRA appeal as soon as possible after the date of the alleged violation or, if a complaint is filed with the Secretary of Labor, as soon as possible after receiving notice from the Secretary in accordance with

38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint, or, if the Secretary has referred the complaint to the Special Counsel and the Special Counsel does not agree to represent the appellant, as soon as possible after receiving the Special Counsel's notice.

§ 1208.13 Content of appeal; request for hearing.

(a) *Content.* A USERRA appeal may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1) through (a)(9);

(2) Evidence or argument that the appellant has performed service in a uniformed service, including the dates of such service (or, where applicable, has applied for or has an obligation to perform such service), and that the appellant otherwise satisfies the requirements for coverage under chapter 43 of title 38, United States Code;

(3) A statement identifying the provision of chapter 43 of title 38, United States Code, that was allegedly violated and an explanation of how the provision was violated;

(4) If the appellant filed a complaint with the Secretary of Labor under 38 U.S.C. 4322(a), evidence of notice under 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint (a copy of the Secretary's notice satisfies this requirement); and

(5) If the appellant's complaint was referred to the Special Counsel and the appellant has received notice that the Special Counsel will not represent the appellant before the Board, evidence of the Special Counsel's notice (a copy of the Special Counsel's notice satisfies this requirement).

(b) *Request for hearing.* An appellant must submit any request for a hearing with the USERRA appeal, or within any other time period the judge sets. A hearing may be provided to the appellant once the Board's jurisdiction over the appeal is established. The judge may also order a hearing if necessary to resolve issues of jurisdiction. The appellant has the burden of proof with respect to issues of jurisdiction (5 CFR 1201.56(a)(2)(i)).

§ 1208.14 Representation by Special Counsel.

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A copy of any written request by the appellant to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board will be accepted as the written designation of representative required by 5 CFR 1201.31(a).

§ 1208.15 Remedies.

(a) *Order for compliance.* If the Board determines that a Federal agency employer or the Office of Personnel Management has not complied with a provision or provisions of chapter 43 of title 38, United States Code (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees), the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the Federal agency employer or the Office of Personnel Management, as applicable, to comply with such provision(s) and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of such lack of compliance. Under 38 U.S.C. 4324(c)(3), any compensation received by the appellant pursuant to the Board's order shall be in addition to any other right or benefit provided for by chapter 43 of title 38, United States Code, and shall not diminish any such right or benefit.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board has discretion to order payment of reasonable attorney fees, expert witness fees, and other litigation expenses under 38 U.S.C. 4324(c)(4). The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

§ 1208.16 Appeals under another law, rule, or regulation.

Nothing in USERRA prevents an appellant who may appeal an agency action to the Board under any other law, rule, or regulation from raising a claim of a USERRA violation in that appeal. The Board will treat such a claim as an affirmative defense that the agency action was not in accordance with law (5 CFR 1201.56(b)(3)).

Subpart C—VEOA Appeals

§ 1208.21 VEOA exhaustion requirement.

Before an appellant may file a VEOA appeal with the Board, the appellant must first file a complaint under 5 U.S.C. 3330a(a) with the Secretary of Labor within 60 days after the date of the alleged violation and allow the Secretary at least 60 days from the date the complaint is filed to attempt to resolve the complaint.

§ 1208.22 Time of filing.

(a) Unless the Secretary of Labor has notified the appellant that the Secretary has been unable to resolve the appellant's VEOA complaint, a VEOA appeal may not be filed with the Board before the 61st day after the date on which the appellant filed the complaint under 5 U.S.C. 3330a(a) with the Secretary.

(b) If the Secretary of Labor notifies the appellant that the Secretary has been unable to resolve the appellant's VEOA complaint and the appellant elects to appeal to the Board under 5 U.S.C. 3330a(d), the appellant must file the VEOA appeal with the Board within 15 days after the date of receipt of the Secretary's notice. A copy of the Secretary's notice must be submitted with the appeal.

§ 1208.23 Content of appeal; request for hearing.

(a) *Content.* A VEOA appeal may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1) through (a)(9);

(2) Evidence or argument that the appellant is a preference eligible;

(3) A statement identifying the statute or regulation relating to veterans' preference that was allegedly violated, an explanation of how the provision was violated, and the date of the violation;

(4) Evidence that a complaint under 5 U.S.C. 3330a(a) was filed with the Secretary of Labor, including the date the complaint was filed; and

(5)(i) Evidence that the Secretary has notified the appellant in accordance with 5 U.S.C. 3330a(c)(2) that the Secretary has been unable to resolve the complaint (a copy of the Secretary's notice satisfies this requirement); or

(ii) Evidence that the appellant has provided written notice to the Secretary of the appellant's intent to appeal to the Board, as required by 5 U.S.C. 3330a(d)(2) (a copy of the appellant's written notice to the Secretary satisfies this requirement).

(b) *Request for hearing.* An appellant must submit any request for a hearing with the VEOA appeal, or within any other time period the judge sets. A hearing may be provided to the appellant once the Board's jurisdiction over the appeal is established and it has been determined that the appeal is timely. The judge may also order a hearing if necessary to resolve issues of jurisdiction or timeliness. The appellant has the burden of proof with respect to issues of jurisdiction and timeliness (5 CFR 1201.56(a)(2)(i) and (ii)).

§ 1208.24 Election to terminate MSPB proceeding.

(a) *Election to terminate.* At any time beginning on the 121st day after an appellant files a VEOA appeal with the Board, if a judicially reviewable Board decision on the appeal has not been issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed.

(b) *Termination order.* Following receipt by the Board of an appellant's written election to terminate the Board proceeding, a termination order will be issued to document the termination of the proceeding. The termination order will state that the proceeding was terminated as of the date of receipt of the appellant's written election. Such an order is neither an initial decision under 5 CFR 1201.111 nor a final Board decision and is not subject to a petition for review in accordance with subpart C of part 1201, a petition for enforcement in accordance with subpart F of part 1201, or a petition for judicial review.

§ 1208.25 Remedies.

(a) *Order for compliance.* If the Board determines that a Federal agency has violated the appellant's VEOA rights, the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the agency to comply with the statute or regulation violated and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of the violation. If the Board determines that the violation was willful, it will order the agency to pay the appellant an amount equal to back pay as liquidated damages.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board will order payment of reasonable attorney fees, expert witness fees, and other litigation expenses. The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

§ 1208.26 Appeals under another law, rule, or regulation.

(a) The VEOA provides that 5 U.S.C. 3330a shall not be construed to prohibit a preference eligible from appealing directly to the Board from any action that is appealable under any other law, rule, or regulation, in lieu of administrative redress under VEOA (5 U.S.C. 3330a(e)(1)). An appellant may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for such violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)).

(b) An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR 1201.22(b)(1).

Dated: January 24, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–2339 Filed 2–3–00; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department due to passage of the Agricultural Research, Extension, and Education Reform Act of 1998.

EFFECTIVE DATE: Effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Philip Schwab, Science Advisor and Legislative Affairs, Cooperative State Research, Education, and Extension Service, USDA, Room 305–A, Jamie L. Whitten Federal Bldg., Washington, DC 20250, telephone 202–720–4423.

SUPPLEMENTARY INFORMATION: On June 23, 1998, the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105–185, was signed into law. With the enactment of this new law many existing authorities were either modified or extended and some new ones added. It is necessary for these authorities to be delegated to Agency Administrators. This document also delegates authority for the Census of Agriculture as provided for in the Census of Agriculture Act of 1997, Pub. L. 105–113 (7 U.S.C. 2204g). This document lays out these delegations of authority as they have been modified and expanded. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and, thus, is exempt from their provisions.

List of Subjects in 7 CFR Part 2

Authority Delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Amend § 2.21 as follows:

a. Redesignate paragraphs (a)(1)(cxl) through (a)(1)(cxlix) as paragraphs (a)(1)(cxli) through (a)(1)(cl);

b. Add new paragraphs (a)(1)(cxl), and (a)(1)(cli) through (a)(1)(clxxi);

c. Remove and reserve paragraphs (a)(1)(lxxviii), (a)(1)(lxxxiii), (a)(1)(lxxxiv), (a)(1)(lxxxv), (a)(1)(lxxxvi), and (a)(1)(xc); and

d. Revise paragraphs (a)(1)(x), (a)(1)(xliv), (a)(1)(l), (a)(1)(liii), (a)(1)(lvii), (a)(1)(lix), (a)(1)(lxxix), and (b)(1)(i) and to add paragraphs (a)(1)(1iv), (a)(1)(lxxx), (a)(1)(lxxxi), and (a)(1)(lxxxvii) to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States; establish a task force on a 10-year strategic plan for agricultural research facilities; ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need; and review periodically

each operating agricultural research facility constructed in whole or in part with Federal funds, pursuant to criteria established, to ensure that a comprehensive research capacity is maintained (7 U.S.C. 390 *et seq.*).

* * * * *

(xx) Administer and direct a program of competitive grants for research, and special grants for research, education, or extension, to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, national laboratories (competitive grants only), private organizations or corporations, and individuals, and of facilities grants to State agricultural experiment stations and other designated colleges and universities, to promote research, extension, or education, in food, agriculture and related areas (7 U.S.C. 450i).

* * * * *

(xliv) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year post secondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities; maintain a national food and agricultural education information system (7 U.S.C. 3152).

* * * * *

(l) Support continuing agricultural and forestry extension and research, at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centers (7 U.S.C. 3221, 3222, 3222c, 3222d).

* * * * *

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; and provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291, 3292b).

* * * * *

(liv) Provide for an agricultural research and development program with the United States/Mexico Foundation for Science (7 U.S.C. 3292a).

* * * * *

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

* * * * *

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate Aquaculture development plans for the production and marketing of aquacultural species and products; and conducting a program of research, extension and demonstration at aquacultural demonstration centers (7 U.S.C. 3321–22).

* * * * *

(lxxviii) [Removed and reserved]

* * * * *

(lxxix) Conduct a research initiative known as the Agricultural Genome Initiative, and make grants or enter into cooperative agreements on a competitive basis to carry out the Initiative (7 U.S.C. 5924).

(lxxx) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925).

(lxxxi) Administer a program of competitive grants to support research and extension activities in Nutrient Management Research and Extension (7 U.S.C. 5925a).

* * * * *

(lxxxiii)—(lxxxvi) [Removed and reserved]

(lxxxvii) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

* * * * *

(xc) [Removed and reserved]

* * * * *

(cxl) Make competitive grants to 1994 Land-Grant Institutions to conduct agricultural research that addresses high priority concerns of tribal, national, or multistate significance (Section 536 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

* * * * *

(cli) Ensure that agricultural research conducted by the Agricultural Research Service, and agricultural research, extension, or education activities administered by the Cooperative State Research, Education, and Extension Service on a competitive basis address a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(clii) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education and, after consultation with appropriate subcabinet officials, establish priorities for agricultural research, extension, and education activities conducted or funded by the Department; promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions; and ensure that federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles (7 U.S.C. 7612).

(cliii) Establish procedures that provide for scientific peer review of each agricultural research grant administered on a competitive basis, and for merit review of each agricultural extension or education grant administered, on a competitive basis, by the Cooperative State Research, Education, and Extension Service (7 U.S.C. 7613(a)).

(cliv) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural

research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(clv) Establish, in consultation with appropriate subcabinet officials, procedures to ensure scientific peer review of all research activities conducted by the Department (7 U.S.C. 7613(d)).

(clvi) Require a procedure to be established by each 1862, 1890, and 1994 Institution, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(clvii) Administer an Initiative for Future Agriculture and Food Systems (except with respect to funds provided by the Secretary to the Alternative Agricultural Research and Commercialization Corporation) (7 U.S.C. 7621).

(clviii) Administer a program of competitive grants to eligible partnerships to coordinate and manage research and extension activities to enhance the quality of high-value agricultural products (7 U.S.C. 7622).

(clix) Administer a program of competitive grants to eligible entities to conduct research, education, or information dissemination projects for the development and advancement of precision agriculture (7 U.S.C. 7623).

(clx) Coordinate the resources of the Department to develop, commercialize, and promote the use of biobased products, and enter into cooperative agreements with private entities to operate pilot plants and other large-scale preparation facilities under which the facilities and technical expertise of the Agricultural Research Service may be made available (7 U.S.C. 7624).

(clxi) Administer the Thomas Jefferson Initiative for Crop Diversification program of competitive grants and contracts for the purpose of conducting research and development, in cooperation with other public and private entities, on the production and marketing of new and nontraditional crops needed to strengthen and diversify the agricultural production base of the United States (7 U.S.C. 7625).

(clxii) Administer competitive grants for integrated, multifunctional agricultural research, education, and extension activities (7 U.S.C. 7626).

(clxiii) Administer a coordinated program of research, extension, and education to improve the competitiveness, viability, and sustainability of small and medium size dairy, livestock, and poultry operations (7 U.S.C. 7627).

(clxiv) Administer a grant to a consortium of land-grant colleges and universities to enhance the ability of the consortium to carry out a multi-State research project aimed at understanding and combating diseases of wheat and barley caused by Fusarium graminearum and related fungi (7 U.S.C. 7628).

(clxv) Operate and administer the Food Animal Residue Avoidance Database through contracts, grants, or cooperative agreements with appropriate colleges or universities (7 U.S.C. 7642).

(clxvi) Update on a periodic basis, nutrient composition data and report to Congress the method that will be used to update the data and the timing of the update (7 U.S.C. 7651).

(clxvii) Establish and maintain a Food Safety Research Information Office at the National Agricultural Library to provide to the research community and the general public information on publicly and privately funded food safety research initiatives (7 U.S.C. 7654(a)).

(clxviii) Develop a national program of safe food handling education for adults and young people to reduce the risk of food-borne illness (7 U.S.C. 7655).

(clxix) Conduct a performance evaluation to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multistate significance, including through a contract with one or more entities to provide input and recommendations with respect to federally funded agricultural research, extension, and education programs (7 U.S.C. 7671).

(clxx) Request the National Academy of Sciences to conduct a study of the role and mission of federally funded agricultural research, extension, and education (7 U.S.C. 7672).

(clxxi) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Pub. L. No. 105–113 (7 U.S.C. 2204g).

(b) * * *

(1) * * *

(i) Withhold funds from States in accordance with section 1436 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3198).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

3. Amend § 2.65 to add new paragraphs (a)(28), (a)(99) through (a)(107), to remove and reserve paragraphs (a)(41), (a)(42), and (a)(43), and to revise paragraphs (a)(23), (a)(39), and (a)(71), to read as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *

(23) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

* * * * * *

(28) Provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291(d)(2)).

* * * * *

(39) Conduct a research initiative known as the Agricultural Genome Initiative, and make grants or enter into cooperative agreements on a competitive basis to carry out the Initiative (7 U.S.C. 5924).

* * * * *

(41)—(43) [Removed and reserved]

* * * * *

(71) Establish and maintain a Food Safety Research Information Office at the National Agricultural Library to provide to the research community and the general public information on publicly and privately funded food safety research initiatives (7 U.S.C. 7654(a)).

* * * * *

(99) Ensure that agricultural research conducted by the Agricultural Research Service (ARS) addresses a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(100) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education (7 U.S.C. 7612(b)).

(101) Consider the results of the annual review performed by the

Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(102) Establish procedures that ensure scientific peer review of all research activities conducted by the Agricultural Research Service (7 U.S.C. 7613(d)).

(103) Coordinate the resources of the Department to develop, commercialize, and promote the use of biobased products, and enter into cooperative agreements with private entities to operate pilot plants and other large-scale preparation facilities under which the facilities and technical expertise of the Agricultural Research Service may be made available (7 U.S.C. 7624).

(104) Administer a grant to a consortium of land-grant colleges and universities to enhance the ability of the consortium to carry out a multi-State research project aimed at understanding and combating diseases of wheat and barley caused by Fusarium graminearum and related fungi (7 U.S.C. 7628).

(105) Administer a program of fees to support the Patent Culture Collection maintained and operated by the Agricultural Research Service (7 U.S.C. 7641).

(106) Update on a periodic basis, nutrient composition data, and report to Congress the method that will be used to update the data and the timing of the update (7 U.S.C. 7651).

(107) Ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need (7 U.S.C. 390a(e)).

* * * * *

4. Amend § 2.66 to remove and reserve paragraphs (a)(27), (a)(38), (a)(41), (a)(47), and (a)(107), to revise paragraphs (a)(5), (a)(8), (a)(13), (a)(18), (a)(20), (a)(24), (a)(26), (a)(39), (a)(42), (a)(43), to redesignate paragraphs (a)(101) through (a)(117) as (a)(102) through (a)(118), and to add new paragraphs (a)(44), (a)(101) and (a)(119) through (a)(130), to read as follows:

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) * * *

(5) Administer an agricultural research facilities proposal review process for submission to Congress (7 U.S.C. 390, 390a(a)–(d)).

* * * * *

(8) Administer a program of special grants to carry out research, extension, or education activities to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research, extension, or education programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

* * * * *

(13) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year post-secondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities; and maintain a national food and agricultural education information system (7 U.S.C. 3152).

* * * * *

(18) Support continuing agricultural and forestry extension and research, at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, 3222c, 3222d).

* * * * *

(20) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, and teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development (7 U.S.C. 3291, 3292b).

* * * * *

(24) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

* * * * *

(26) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers (7 U.S.C. 3321–3322).

(27) [Removed and reserved]

* * * * *

(38) [Removed and reserved]

(39) Conduct a research initiative known as the Agricultural Genome Initiative; and make grants or enter into cooperative agreements on a competitive basis with individuals and organizations to carry out the Initiative (7 U.S.C. 5924).

* * * * *

(41) [Removed and reserved]

(42) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925).

(43) Administer a program of competitive grants to support research and extension activities in Nutrient Management Research and Extension (7 U.S.C. 5925a).

(44) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

* * * * *

(47) [Removed and reserved]

* * * * *

(101) Make competitive grants to 1994 Land-Grant Institutions to conduct agricultural research that addresses high priority concerns of tribal, national, or multistate significance (Section 536 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

* * * * *

(108) [Removed and reserved]

* * * * *

(119) Ensure that agricultural research, extension, or education activities administered, on a competitive basis, by the Cooperative State Research, Education, and

Extension Service address a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(120) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education; ensure that Federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles; and promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions (7 U.S.C. 7612 (b), (c)and (d)).

(121) Establish procedures that provide for scientific peer review of each agricultural research grant administered, on a competitive basis, and for merit review of each agricultural extension or education grant administered, on a competitive basis, by the Cooperative State Research, Education, and Extension Service (7 U.S.C. 7613(a)).

(122) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(123) Require a procedure to be established by each 1862, 1890, and 1994 Institution, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(124) Administer an Initiative for Future Agriculture and Food Systems (except with respect to funds provided by the Secretary to the Alternative Agricultural Research and Commercialization Corporation) (7 U.S.C. 7621).

(125) Administer a program of competitive grants to eligible partnerships to coordinate and manage research and extension activities to enhance the quality of high-value agricultural products (7 U.S.C. 7622).

(126) Administer a program of competitive grants to eligible entities to conduct research, education, or information dissemination projects for the development and advancement of precision agriculture (7 U.S.C. 7623).

(127) Administer the Thomas Jefferson Initiative for Crop Diversification program of competitive grants and contracts for the purpose of conducting research and development, in cooperation with other public and private entities, on the production and marketing of new and nontraditional crops needed to strengthen and diversify the agricultural production base of the United States (7 U.S.C. 7625).

(128) Administer competitive grants for integrated, multifunctional agricultural research, education, and extension activities (7 U.S.C. 7626).

(129) Operate and administer the Food Animal Residue Avoidance Database through contracts, grants, or cooperative agreements with appropriate colleges or universities (7 U.S.C. 7642).

(130) Develop a national program of safe food handling education for adults and young people to reduce the risk of food-borne illness (7 U.S.C. 7655).

* * * * *

5. Amend § 2.67 to add new paragraphs (a)(15), (a)(16), and (a)(17), to read as follows:

§ 2.67 Administrator, Economic Research Service.

(a) * * *

(15) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education (7 U.S.C. 7612(b)).

(16) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(17) Establish procedures that ensure scientific peer review of all research activities conducted by the Economic Research Service (7 U.S.C. 7613(d)).

* * * * *

6. Amend § 2.68 to add a new paragraph (a)(9), to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) * * *

(9) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Pub. L. 105–113 (7 U.S.C. 2204g).

* * * * *

Done at Washington, DC.

For subpart C:
Dated: January 20, 2000.

Dan Glickman,

Secretary of Agriculture.

For Subpart K:
Dated: January 21, 2000.

Eileen Kennedy,

Acting Under Secretary for Research, Education, and Economics.

[FR Doc. 00–2396 Filed 2–3–00; 8:45 am]

BILLING CODE 3410–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 2000–05]

RIN 3069–AA93

Information Collection Approval; Technical Amendment to the Affordable Housing Program Rule

AGENCY: Federal Housing Finance Board.

ACTION: Final Rule.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Act), the Office of Management and Budget (OMB) has approved a three-year extension of the information collection contained in the Federal Housing Finance Board (Finance Board) rule governing the Affordable Housing Program (AHP). The OMB control number approving the information collection now expires on January 31, 2003. In accordance with the requirements of the Act, the Finance Board is amending the AHP rule to reflect this new expiration date.

EFFECTIVE DATE: The final rule will become effective on February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Janet M. Fronckowiak, Acting Deputy Director, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2575 or by electronic mail at fronckowiakj@fhfb.gov, or Melissa L.

Allen, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2524 or by electronic mail at *allenm@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Background

In order to extend the expiration date of the OMB control number approving the information collection contained in its AHP regulation, the Finance Board published requests for public comments regarding the information collection in the **Federal Register** on June 30 and October 28, 1999. *See* 64 FR 35158 (June 30, 1999) and 64 FR 58063 (Oct. 28, 1999). The Finance Board also submitted an analysis of the information collection, entitled "Affordable Housing Program," to the OMB for review and approval. The OMB has approved a three-year extension of the information collection under OMB control number 3069–0006. The OMB control number now expires on January 31, 2003.

Under the Act and the OMB's implementing regulation, 44 U.S.C. 3507 and 5 CFR 1320.5, an agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless the regulation collecting the information displays a currently valid OMB control number. Accordingly, the Finance Board is amending the AHP rule to reflect the new expiration date of the OMB control number.

II. Notice and Public Participation

Because the effectiveness of the information collection contained in the AHP rule must be maintained, the Finance Board for good cause finds that the notice and public procedure requirements of the Administrative Procedures Act are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

III. Effective Date

For the reasons stated in part II above, the Finance Board for good cause finds that the final rule should become effective on February 4, 2000. *See* 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act do not apply since this technical amendment to the AHP rule does not require publication of a notice of proposed rulemaking. *See* 5 U.S.C. 601(2) and 603(a).

V. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 960 as follows:

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§§ 960.1, 960.3, 960.4, 960.6—960.11, 960.13, 960.15 [Amended]

2. Add a parenthetical statement immediately after §§ 960.1, 960.3, 960.4, 960.6 through 960.11, 960.13, and 960.15 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0006 with an expiration date of January 31, 2003.)

By the Board of Directors of the Federal Housing Finance Board.

Dated: January 27, 2000.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–2543 Filed 2–3–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–41–AD; Amendment 39–11544; AD 2000–02–26]

RIN 2120–AA64

Airworthiness Directives; Harbin Aircraft Manufacturing Corporation Model Y12 IV Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Harbin Aircraft Manufacturing Corporation (Harbin) Model Y12 IV airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 27, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact If the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Harbin Model Y12 IV airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54826). The NPRM proposed to require

revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and
—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

None of the Harbin Y12 IV airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry, and are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

What Is the Cost Impact If an Affected Airplane Is Imported and Placed on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–26 Harbin Aircraft Manufacturing Corporation: Amendment 39–11544; Docket No. 99–CE–41–AD.

(a) *What airplanes are affected by this AD?* Model Y12 IV airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, takeoff, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and
—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already approved alternative methods of*

compliance? Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2391 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–47–AD; Amendment 39–11546; AD 2000–02–28]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all AeroSpace Technologies of Australia Pty Ltd. (AeroSpace Technologies) Models N22B and N24A airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATE: Effective March 27, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact If the FAA Took no Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all AeroSpace Technologies Models N22B and N24A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55208). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 10 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–28 Aerospace Technologies of Australia PTY LTD.: Amendment 39–11546; Docket No. 99–CE–47–AD.

(a) *What airplanes are affected by this AD?* Models N22B and N24A airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2390 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–38–AD; Amendment 39–11543; AD 2000–02–25]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Model MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) Model MU–2B series airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATE: Effective March 24, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–38–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact If the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Mitsubishi Model MU–2B series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54822). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited to Comment?

Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and
—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 415 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–25 Mitsubishi Heavy Industries, LTD.: Amendment 39–11543; Docket No. 99–CE–38–AD.

(a) *What airplanes are affected by this AD?* The following Model MU–2B series airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

Models

MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, takeoff, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and
—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA

Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on March 24, 2000.

Issued in Kansas City, Missouri, on January 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2392 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–51–AD; Amendment 39–11548; AD 2000–0230]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Twin Commander Aircraft Corporation (Twin Commander) 600 series airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 24, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the Potential Impact if the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Twin Commander 600 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 55191). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 988 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–30 Twin Commander Aircraft Corporation: Amendment 39–11548; Docket No. 99–CE–51–AD.

(a) *What airplanes are affected by this AD?* The following Model 600 series airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

Models

680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 690, 685, 690A, 690B, 690C, 690D, 695, 695A, and 695B

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on March 24, 2000.

Issued in Kansas City, Missouri, on January 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2393 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–42–AD; Amendment 39–11545; 2000–02–27]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Empresa Brasileira de Aeronautica S.A. (Embraer) Models EMB–110P1 and EMB–110P2 airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 24, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact if the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Embraer Models EMB–110P1 and EMB–110P2 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54804). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 42 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–27 Empresa Brasileira de Aeronautica S.A.: Amendment 39–11545; Docket No. 99–CE–42–AD.

(a) *What airplanes are affected by this AD?* Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• "Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on March 24, 2000.

Issued in Kansas City, Missouri, on January 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2394 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–50–AD; Amendment 39–11547; AD 2000–02–29]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 27, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–50–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact if the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Model TBM 700 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55211). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 72 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000-02-29 Socata—Groupe Aerospatiale: Amendment 39–1547; Docket No. 99–CE–50–AD.

(a) *What airplanes are affected by this AD?* TBM 700 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

•Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2395 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–64–AD; Amendment 39–11549; AD 2000–02–31]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires replacing the stick pusher capstan and the stick pusher servo with parts of improved design. The AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent improper operation of the stick pusher system caused by the existing design configuration, which could result in loss of control of the airplane during a stall.

DATES: Effective March 27, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 23, 1999 (64 FR 65666). The NPRM proposed to require replacing the stick pusher capstan and the stick pusher servo with parts of improved design. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with the applicable maintenance manual, as specified in Pilatus Service Bulletin No. 22–003, dated June 24, 1999.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Pilatus will provide parts free of charge until March 2000. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $33,120, or $480 per airplane.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–02–31 Pilatus Aircraft Ltd.: Amendment 39–11549; Docket No. 99–CE–64–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, all manufacturer serial numbers (MSN) up to and including MSN 180, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent improper operation of the stick pusher system caused by the existing design configuration, which could result in the loss of control of the airplane during a stall, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, replace the stick pusher capstan and stick pusher servo with parts of improved design, in accordance with the applicable maintenance manual, as specified in Pilatus Service Bulletin No. 22–003, dated June 24, 1999. The new part numbers (P/N) are as follows:

(1) *Stick Pusher Capstan:* P/N 978.61.11.124 (or FAA-approved equivalent part number); and

(2) *Stick Pusher Servo:* P/N 978.61.11.103 (or FAA-approved equivalent part number).

(b) As of the effective date of this AD, no person may install, on any of the affected airplanes, a stick pusher capstan or stick pusher servo that is not of the part number specified in paragraphs (a)(1) and (a)(2) of this AD, respectively.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 22–003, dated June 24, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 99–406, dated August 16, 1999.

(f) This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2399 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 00–7]

RIN 1515–AC55

Export Certificates for Sugar-Containing Products Subject to Tariff-Rate Quota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain sugar-containing products subject to a tariff-rate quota, that are products of a participating country, as defined in an interim rule of the United States Trade Representative (USTR). The export certificate is necessary to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

DATES: Interim rule effective on February 4, 2000. The interim rule is applicable to products of a participating country as described in the USTR interim rule that are entered or withdrawn from warehouse for consumption on or after February 4, 2000. Comments must be received on or before April 4, 2000.

ADDRESS: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, (202–927–9704).

SUPPLEMENTARY INFORMATION:

Background

As a result of the Uruguay Round Agreements, approved by Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, established a tariff-rate quota for imported sugar-containing products.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

Under Presidential Proclamation No. 7235, dated October 7, 1999, the United States Trade Representative (USTR) was given authority under section 404(a) of the URAA to implement the tariff-rate quota for sugar-containing products to ensure that they do not disrupt the orderly marketing of such products in the United States. The USTR has already assigned Canada an in-quota allocation of the sugar-containing products (64 FR 54719; October 7, 1999).

As part of the implementation of this tariff-rate quota, the USTR has established an export-certificate program under which exporting countries that have an allocation of the in-quota quantity and that wish to participate in the program may use export certificates for their sugar-containing products that are exported to the United States. The USTR has issued an interim rule establishing regulations for this export-certificate program (15 CFR part 2015) (64 FR 67152; December 1, 1999). The USTR interim rule has an effective date of January 31, 2000.

An exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR interim regulations (15 CFR 2015.2(e)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their sugar-containing products exported to the United States. The USTR has stated that it intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country.

The particular sugar-containing products subject to a tariff-rate quota for which the USTR has established the export-certificate program are described in additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, unless excepted as provided in additional U.S. Note 3 to chapter 17, HTSUS, the imported sugar-containing products covered by the export-certificate program contain over 10 percent by dry weight of sugars derived from cane or sugar beets, whether or not mixed with other ingredients, and they are classified under one of the following HTSUS subheadings: 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95.

While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures the exporting country that only those exported sugar-containing products that it intends for the United States market are counted against its in-quota allocation. As already noted, this helps ensure that such products do not disrupt the orderly marketing of sugar-containing products in the United States.

On December 4, 1998, the Governments of the United States and Canada entered into a Record of Understanding regarding Areas of Agricultural Trade. In Annex 17 of this Record of Understanding, the United States agreed to require an export permit issued by the Government of Canada in order to enable an importer to claim the in-quota tariff rate for those sugar-containing products of Canadian origin described in additional U.S. Note 8 to chapter 17, HTSUS. Canada will thus be a participating country in this export-certificate program as of January 31, 2000, the effective date of the USTR interim rule, as indicated above.

In accordance with the interim rulemaking of the USTR, Customs is issuing this interim rule in order to set forth a new § 132.17, Customs Regulations (19 CFR 132.17), that prescribes the form and manner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption, whether filed in paper form or electronically. This will ensure that no imports of the specified sugar-containing products of a participating country are counted against the country's in-quota allocation unless the products are covered by a proper export certificate. The export certificate is necessary in this regard in order to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, is revised to add a reference to the requirement in new § 132.17 that an importer possess a valid export certificate for sugar-containing products that are subject to a tariff-rate quota and that are products of a participating country, in order for the importer to be

able to claim the applicable in-quota rate of duty.

Also, § 132.15, Customs Regulations (19 CFR 132.15), is revised to make provision for electronic entry filing in the case of beef subject to a tariff-rate quota, for which the importer must similarly possess a valid export certificate in order to claim the in-quota rate of duty.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington D.C.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Also, for the above reason, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Paperwork Reduction Act

The collections of information involved in this interim rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0214 (General recordkeeping and record production requirements). This rule does not propose any substantive changes to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

Accordingly, parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows, and the specific sectional authority under this part is revised to read as follows :

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§ 132.15 through 132.17 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; subchapter III of Chapter 99, HTSUS; and additional U.S. Note 8 to Chapter 17, HTSUS, respectively), 1484, 1508.

2. Section 132.15 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement.* * * * The importer must record the unique identifying number of the export certificate for the beef on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, Column 34), or its electronic equivalent.

* * * * *

3. Part 132 is amended by adding a new § 132.17 to subpart B to read as follows:

§ 132.17 Export certificate for sugar-containing products subject to tariff-rate quota.

(a) *Requirement.* For sugar-containing products described in additional U.S. Note 8 to chapter 17, HTSUS, that are classified in HTSUS subheading 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95, and that are products of a participating country, as defined in 15 CFR 2015.2(e), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the products at the time they are entered or withdrawn from warehouse for consumption. The importer must record the unique identifier of the export certificate for these products on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent.

(b) *Validity of export certificate.* To be valid, the export certificate must meet the requirements of 15 CFR 2015.3(b), and with respect to the requirement of 15 CFR 2015.3(b)(3) that the certificate have a distinct and uniquely identifiable number, this unique identifier must consist of 8 characters in any alpha/numeric combination.

(c) *Retention and production of certificate to Customs.* The export certificate is subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the certificate must be retained for a period of 5 years in accordance with § 163.4(a) of this chapter, and must be made available to Customs upon request in accordance with § 163.6(a) of this chapter.

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

Appendix to Part 163 [Amended]

2. In the Appendix to part 163, under heading "IV.", the list of documents/records or information required for entry of special categories of merchandise is amended by removing the listing, "§ 132.15, 132.16 Export certificates, respectively, for beef or lamb meat subject to tariff-rate quota", and by adding the following listing in its place:

"§§ 132.15 through 132.17 Export certificates, respectively, for beef, lamb meat, or sugar-containing products subject to tariff-rate quota".

Raymond W. Kelly,
Commissioner of Customs.

Approved: January 19, 2000.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–2518 Filed 2–1–00; 3:31 Pm]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8871]

RIN 1545–AV22

Remedial Amendment Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the remedial amendment period, during which a sponsor of a qualified retirement plan or an employer that maintains a qualified retirement plan can make retroactive amendments to the plan to eliminate certain qualification defects for the entire period. These final regulations clarify the scope of the Commissioner's authority to provide relief from plan disqualification under the regulations. These clarifications confirm the Commissioner's authority to provide appropriate relief for plan amendments relating to changes to the plan qualification rules made in recent legislation. These final regulations affect sponsors of qualified retirement plans, employers that maintain qualified retirement plans, and qualified retirement plan participants.

EFFECTIVE DATES: These regulations are effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Linda S.F. Marshall at (202) 622–6030 or Lisa A. Tavares at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 401(b). These regulations provide guidance to clarify the scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b) and the regulations. On August 1, 1997, temporary regulations (TD 8727) under section 401(b) were published in the **Federal Register** (62 FR 41272). A notice of proposed rulemaking (REG–106043–97), cross-referencing the temporary regulations, was published in the **Federal Register** (62 FR 41322) on the same day. The temporary regulations enabled the Commissioner to provide appropriate relief concerning the timing of plan amendments relating to changes to the plan qualification rules made in recent legislation, as well as for other plan amendments that may be needed as a result of future changes to the Internal Revenue Code (Code).

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. The proposed regulations under section 401(b) are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

Section 401(b) provides that a plan is considered to satisfy the qualification requirements of section 401(a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which any amendment that caused the plan to fail to satisfy those requirements was adopted or put into effect, and ending with the time prescribed by law for filing the employer's return for the taxable year in which that plan or amendment was adopted (including extensions) or such later time as the Secretary may designate, if all provisions of the plan needed to satisfy the qualification requirements are in effect by the end of the specified period and have been made effective for all purposes for the entire period.

Section 1.401(b)–1(b) lists the plan provisions that may be amended retroactively pursuant to the rules of section 401(b). These plan provisions, termed *disqualifying provisions*, include the plan provisions described in section 401(b), as well as plan provisions that result in failure of a plan to satisfy the qualification requirements of the Code by reason of a change in those requirements effected by the legislation listed in § 1.401(b)–1(b)(2)(i) and (ii). Under § 1.401(b)–1(b)(2)(ii), a disqualifying provision also includes a plan provision that is integral to a qualification requirement changed by specified legislation. As in effect prior to the previously issued final and temporary regulations, § 1.401(b)–1(b)(2)(iii) provided that a disqualifying provision includes a plan provision that results in failure of the plan to satisfy the Code's qualification requirements by reason of a change in those requirements effected by amendments to the Code, that is designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision.

Section 1.401(b)–1(d) provides rules for determining the period for which the relief provided under section 401(b) applies (the "remedial amendment period").

Section 1.401(b)–1(d)(1) defines the beginning of the remedial amendment period for the disqualifying provisions listed in §§ 1.401(b)–(1)(b)(1) and 1.401(b)–1(b)(2)(i) and (ii).

The final regulations retain the rules set forth in the temporary regulations to clarify the scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b). These changes are needed to clarify the rules relating to the plan provisions that may be designated by the Commissioner as disqualifying provisions based on amendments to the plan qualification requirements of the Internal Revenue Code. Section 1.401(b)–1(b)(3) retains the rule set forth in the temporary regulations to provide that a disqualifying provision includes a plan provision designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (2) is integral to a qualification requirement of the Code that has been changed. Section 1.401(b)–1(c)(2) retains the rule set forth in the temporary regulations to provide the Commissioner with explicit authority to impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions during the remedial amendment period. Section 1.401(b)–1(d)(1)(iv) and (v) provide conforming rules, as previously provided in the temporary regulations, regarding the beginning of the remedial amendment period for disqualifying provisions described in § 1.401(b)–1(b)(3).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal authors of these regulations are Linda S. F. Marshall and Lisa A. Tavares, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other

personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(b)–1 is amended by:

1. Revising paragraphs (b)(3), (c), and (d)(1)(iv).
2. Adding paragraph (d)(1)(v).

The addition and revisions read as follows:

§ 1.401(b)–1 Certain retroactive changes in plan.

* * * * *

(b) * * *

(3) A plan provision designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision that either—

(i) Results in the failure of the plan to satisfy the qualification requirements of the Internal Revenue Code by reason of a change in those requirements; or

(ii) Is integral to a qualification requirement of the Internal Revenue Code that has been changed.

(c) *Special rules applicable to disqualifying provisions*—(1) *Absence of plan provision.* For purposes of paragraphs (b)(2) and (3) of this section, a disqualifying provision includes the absence from a plan of a provision required by, or, if applicable, integral to the applicable change to the qualification requirements of the Internal Revenue Code, if the plan was in effect on the date the change became effective with respect to the plan.

(2) *Method of designating disqualifying provisions.* The Commissioner may designate a plan provision as a disqualifying provision pursuant to paragraph (b)(3) of this section only in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(3) *Authority to impose limitations.* In the case of a provision that has been designated as a disqualifying provision by the Commissioner pursuant to paragraph (b)(3) of this section, the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to that disqualifying provision during the remedial amendment period. The Commissioner may provide guidance in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(d) * * *

(1) * * *

(iv) In the case of a disqualifying provision described in paragraph (b)(3)(i) of this section, the date on which the change effected by an amendment to the Internal Revenue Code became effective with respect to the plan; or

(v) In the case of a disqualifying provision described in paragraph (b)(3)(ii) of this section, the first day on which the plan was operated in accordance with such provision, as amended, unless another time is specified by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

§ 1.401(b)–1T [Removed]

Par. 3. Section 1.401(b)–1T is removed.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: January 19, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1893 Filed 2–3–00; 8:45 am]

BILLING CODE 4830–01–4

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA236–0204; FRL–6528–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern Rule 207 (Review of New or Modified Sources) from the Monterey Bay Unified Air Pollution Control District (MBUAPCD), which is being revised to add an emission offsets exemption for pollution control projects that are mandated by District, state, or federal regulation. This approval action will incorporate the revised rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions from stationary sources of air pollution subject to District new source review (NSR) regulation in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 4, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Roger Kohn at the Region IX office listed below. Copies of the rule revision and EPA's Technical Support Document (TSD) with the Agency's evaluation of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238, E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is MBUAPCD Rule 207, Review of New or Modified Sources.

II. Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each

implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

The rule was adopted by the District Board of Directors on September 15, 1999. The rule was subsequently submitted to EPA by the California Air Resources Board to EPA as a proposed revision to the California SIP on October 29, 1999.

III. EPA Evaluation and Action

MBUAPCD submitted Rule 207 for adoption into the applicable SIP. This rule is intended to replace the existing SIP rule of the same number and title. MBUAPCD's most recent submittal of Rule 207 contains the following changes from the current SIP:

- A new provision has been added that provides an exemption from the offset provisions of the rule for projects in which an emission increase results from the installation of control equipment pursuant to District, state, or federal regulations.
- The rule has been modified to require an opportunity for public comment on projects using the new exemption.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. In correspondence with the District, EPA informed MBUAPCD that this rule change would be an acceptable SIP revision, provided that the District made a commitment to revise its Maintenance Plan if new air quality data indicates that the District has violated or may violate the National Ambient Air Quality Standard (NAAQS). This correspondence, along with the rule adoption resolution in which the MBUAPCD board of directors makes this commitment, can be found in the docket for this rulemaking. Therefore, MBUAPCD Rule 207 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and parts C and D.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: January 7, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (270)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(270) * * *

(i) * * *

(B) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 207, amended on September 15, 1999.

* * * * *

[FR Doc. 00–2183 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6532–7]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 10 new sites to the NPL; all to the General Superfund Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP March 6, 2000.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue NW; Washington, DC 20460, or the Superfund Hotline, phone (800)

424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What are CERCLA and SARA?
B. What is the NCP?
C. What is the National Priorities List (NPL)?
D. How are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. How are Site Boundaries Defined?
G. How are Sites Removed from the NPL?
H. Can Portions of Sites be Deleted from the NPL as They Are Cleaned Up?
I. What is the Construction Completion List (CCL)?
II. Availability of Information to the Public
A. Can I Review the Documents Relevant to this Final Rule?
B. What Documents are Available for Review at the Headquarters Docket?
C. What Documents are Available for Review at the Regional Docket?
D. How Do I Access the Documents?
E. How Can I Obtain a Current List of NPL Sites?
III. Contents of This Final Rule
A. Additions to the NPL
B. Status of NPL
C. What did EPA Do with the Public Comments It Received?
IV. Executive Order 12866
A. What is Executive Order 12866?
B. Is this Final Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Final Rule?
VI. Effects on Small Businesses
A. What is the Regulatory Flexibility Act?
B. Does the Regulatory Flexibility Act Apply to this Final Rule?
VII. Possible Changes to the Effective Date of the Rule
A. Has This Rule Been Submitted to Congress and the General Accounting Office?
B. Could the Effective Date of This Final Rule Change?
C. What Could Cause the Effective Date of This Rule to Change?
VIII. National Technology Transfer and Advancement Act
A. What is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to this Final Rule?
IX. Executive Order 12898
A. What is Executive Order 12898?
B. Does Executive Order 12898 Apply to This Final Rule?
X. Executive Order 13045
A. What is Executive Order 13045?
B. Does Executive Order 13045 Apply to This Final Rule?
XI. Paperwork Reduction Act
A. What is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to This Final Rule?
XII. Executive Orders on Federalism
What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?
XIII. Executive Order 13084
What is Executive Order 13084 and is it Applicable to this Final Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. § 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR § 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR § 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. § 9605(a)(8)(B)); (3) The third mechanism for listing,

included in the NCP at 40 CFR § 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 22, 1999 (64 FR 56966).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR § 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions ***." 42 U.S.C. § 9601(24).) However, under 40 CFR § 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR § 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR § 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of January 19, 2000, the Agency has deleted 206 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of January 19, 2000, EPA has deleted portions of 18 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 206 sites that have been deleted from the NPL, 197 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of January 19, 2000, there are a total of 676 sites on the CCL. This total includes the 197 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each proposed site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—January 2000."

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 10 sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the 10 sites in the General Superfund Section. Sites in the table are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
FL	Trans Circuit, Inc	Lake Park
LA	Marion Pressure Treating.	Marion
NY	Jackson Steel	Mineola/North Hempstead
NY	Lawrence Aviation Industries, Inc.	Port Jefferson Station
NY	Peter Cooper Corporation (Markhams).	Dayton
PA	Old Wilmington Road Ground Water Contamination.	Sadsburyville
PR	Scorpio Recycling, Inc.	Candelaria Ward
RI	Centredale Manor Restoration Project.	North Providence
SC	Macalloy Corporation.	North Charleston
UT	Jacobs Smelter	Stockton

Number of Sites Added to the General Superfund Section: 10.

B. Status of NPL

With the 10 new sites added to the NPL in today's final rule; the NPL now contains 1,226 final sites; 1,067 in the General Superfund Section and 159 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 8 new sites to the NPL, there are now 55 sites proposed and awaiting final agency action, 48 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,281. (These numbers reflect the status of sites as of January 19, 2000. Sites deletions may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The following sites were proposed on October 22, 1999 (64 FR 56992): Trans Circuit, Inc., Marion Pressure Treating, Jackson Steel, Lawrence Aviation Industries, Scorpio Recycling, Inc., Centredale Manor Restoration Project, and Macalloy Corporation. The Old Wilmington Road Ground Water Contamination site and the Jacobs Smelter site were proposed on July 22, 1999 (64 FR 39886). The Peter Cooper Corporation (Markhams)

site was proposed on April 23, 1999 (64 FR 19968).

For Trans Circuit, Inc., Marion Pressure Treating, Jackson Steel, Lawrence Aviation Industries, Scorpio Recycling, Inc., Centredale Manor Restoration Project, and Macalloy Corporation, EPA received no comments affecting the HRS scoring of these sites and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—January 2000."

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes

at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. § 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. § 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and

environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this rule.

XIII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 28, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR,

1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
*	*	*	*
FL	Trans Circuit, Inc.	Lake Park.	
*	*	*	*
LA	Marion Pressure Treating	Marion.	
*	*	*	*
NY	Jackson Steel	Mineola/North Hempstead.	
*	*	*	*
NY	Lawrence Aviation Industries, Inc.	Port Jefferson Station.	
*	*	*	*
NY	Peter Cooper Corporation (Markhams)	Winslow Township.	
*	*	*	*
PA	Old Wilmington Road Ground Water Contamination.	Sadsburyville.	
*	*	*	*
PR	Scorpio Recycling, Inc.	Candeleria Ward.	
*	*	*	*
RI	Centredale Manor Restoration Project	North Providence.	
*	*	*	
SC	Macalloy Corporation	North Charleston.	
*	*	*	*
UT	Jacobs Smelter	Stockton.	
*	*	*	*

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 00–2474 Filed 2–3–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 700 to 789, revised as of July 1, 1999, page 537, part 761, § 761.30 is corrected by reinstating paragraph (j)(4) to read as follows:

§ 761.30 Authorizations.

* * * * *

(j) * * *

(4) No person may manufacture, process, or distribute in commerce PCBs for research and development unless they have been granted an exemption to do so under TSCA section 6(e)(3)(B).

* * * * *

[FR Doc. 00–55501 Filed 2–3–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 122199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim Harvest Specifications for Groundfish; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: NMFS is correcting the Interim 2000 Harvest Specifications for groundfish of the Bering Sea and

Aleutian Islands management area (BSAI).

DATES: Effective 0001 hrs, Alaska local time, January 1, 2000, until the effective date of final 2000 harvest specifications for groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at subpart H of 50 CFR part 600 and CFR part 679.

Correction

In the rule, Interim 2000 Harvest Specifications for Groundfish of the BSAI, published on January 3, 2000 (65 FR 60) FR DOC 99–34030, page 62, under Table 1 INTERIM 2000 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA, 3rd column "Interim TAC," at the stub entry "Atka mackerel," (1) remove the figure "14,306" assigned to Other gear, and add the figure "7,153" in its place, and (2) under 3rd column "Interim TAC" at the stub entry "Total interim TAC," remove the figure "635,888" and add the figure "628,735" in its place.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2455 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

RIN 0560–AF36

Amendment to the Farm Reconstitution Regulations for Acreages, Allotments, and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule with requests for comments.

SUMMARY: This proposed rule would amend regulations that are used to determine whether separate tracts of land will be considered separate farms for certain commodity programs. The regulations also set generic terms and definitions for those programs. This rule, if adopted, would modify several definitions, change the effective date for certain farm reconstitutions, and add new provisions governing farm divisions. These changes are expected to improve the administration of farm programs.

DATES: Comments must be received on or before March 6, 2000 to be assured of consideration.

ADDRESSES: Submit comments to: Loretta Baxa, Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517, telephone (202) 720–7602, e-mail loretta__baxa@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Loretta Baxa at (202) 720–7602.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because FSA is not required by 5 U.S.C. 533 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information collected in this rule has been approved by OMB and assigned OMB Control Number 0560–0025. This rule does not contain any new collection information requirements.

Executive Order 12612

It has been determined that this rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Proposed Rule

A number of commodity programs are administered on a farm-by-farm basis. Rules in 7 CFR part 718 govern what is considered to be a "farm" for certain commodity programs and sets out other generic definitions and rules for those programs. This proposed rule would amend part 718 in several respects. First, a number of definitions found at § 718.2 would be amended. Among these, the "agricultural use" definition in that section would be revised in its entirety. Under the rules in part 718 in certain instances the division of a farm's "contract acreage" (acreage enrolled in the Production Flexibility Contract program administered under 7 CFR part 1412) will be made on the basis of each separate tract's agricultural use acreage. Currently, the § 718.2 "agricultural use" definition refers to certain specific crop, forage and conserving uses. To avoid being unduly restrictive, the definition would, by this rule, be modified to more generally provide that it includes any agricultural activity. Also, § 718.2 would be amended to add a definition for "common ownership unit". That term and concept is used in connection with tobacco farm divisions under 7 CFR part 723 in which production histories may be assigned to those units. The added definition follows that which already appears in part 723. Further, the "cropland" definition in § 718.2 is important for a number of program matters including the establishment of how much land on the farm can be enrolled in the Production Flexibility Contract program and the Conservation Reserve Program. This rule would clarify the definition to specify that: (1) newly broken out land will be considered "cropland" for part 718 purposes so long as the land is capable of, and is intended to be harvested using normal harvesting and production techniques and (2) land devoted to ponds, tanks, or trees will not generally be considered "cropland" for part 718 purposes. In addition, the "farm" definition contained in § 718.2 will be modified. Currently, that term is defined to mean a unit operated by one producer

with equipment, labor, accounting system and management separate from other production units. To comport more plainly with current practice and more clearly incorporate the other conditions that apply to the constitution of a farm under part 718, the "farm" definition would be clarified to specify that a farm must (in addition to meeting other requirements) consist of tracts that: (1) Have both the same owner and operator or (2) have the same operator but have multiple owners who have agreed in writing to have the tracts treated as one farm. Also, as indicated, in the current definition it is provided that the farm's equipment, labor, accounting system and management must be separate from that of other units. That provision would, in the proposed rule be moved to § 718.201. Further, the current "farmland" definition specifies that "farmland" includes cropland, forest, and other land on the farm. That which is "farmland" and which is not "farmland", can be important for some program determinations. In this rule, the part 718 "farmland" definition will be clarified to match other definition changes proposed in this rule. Finally, with respect to the definitions, the term "operator" is currently defined in § 718.2 to mean the person who is determinated by the local Farm Service Agency (FSA) county committee to be the person in charge of the farm for the current year. Since those determinations (of who is the "operator" on the farm) are sometimes on-going determinations rather than determinations that are made every year, the new definition would remove the reference to the "current year."

Also, this rule would amend provisions of § 710.201 relating to those instances in which the combination of farms is prohibited. Under the current regulations, a PFC farm and non-PFC farm cannot be combined because to do so could unduly expand the eligibility of the producer for certain commodity loans which are, by statute, intended to be limited to PFC farms only. However, that concern may not come into play when the non-PFC farm has potential PFC eligibility because of an existing CRP contract and the entirety of that farm is enrolled in the CRP. Accordingly, the rule would allow such combinations to occur in those limited circumstances despite the fact that one farm is a PFC farm and the other is not. The rule contemplates, however, that if on the termination of the CRP contract the new PFC eligibility is not exercised, the two farms would have to be divided back into separate farms. Further, the rule would also amend § 718.204. Specifically, that section would be revised to add a provision that specifies for farms in the PFC program that a requested farm reconstitution will become effective for the current year only if initiated before the earlier of June 1 of the fiscal year or the date on which PFC payments for the farm for that year are issued. This will help avoid having a change in farm organization that may raise a dispute over the proper distribution of current PFC monies. Also, under the current provisions of § 718.204, the county FSA committee, with the concurrence of the State FSA committee, can allow extension of the deadlines otherwise provided for in § 718.204 so long as the extension would not serve to foster a scheme to avoid substantive program requirements. In this rule that allowance would no longer apply to the special deadline that applies to PFC contracts. This change would be made to further assure that there is no interference and confusion over the making of current PFC payments and to assure uniformity. That section also contains a provision with a special rule for farms with tobacco or peanuts which provides that the farm reconstitutions for those farms will be effective for the current year only if the reconstitution is initiated before the crop is planted or would have been planted. To assure clarity in the application of the rules, § 718.204 would be amended to add an additional provision which addresses the situation where the reconstitution involves both: (1) a PFC and (2) tobacco or peanut farms. In such case, the earlier of the two deadlines (the one for PFC farms and the one for tobacco and peanut farms) would establish the last date by which a farm reconstitution could be effective for the current year. Finally, there would be one additional provision added to § 718.204(e) to specify that the division of or combination of farm acreage would also include the division or combination of any potential PFC eligibility that may be associated with a current CRP contract. That is, when the PFC was initiated, farms with certain preexisting "crop acreage bases" were given a one-time opportunity to enroll in the PFC. Eligible farms had to have a "crop acreage base" under a preexisting program. Producers had to enroll their acreage in the program by a set date in 1996, the only exception being that a later sign-up was allowed for farms that had a crop acreage base in suspension under a CRP contract. Those farms, on a one-time only basis, can enroll acreage into the PFC upon termination of the CRP contract, subject to certain conditions.

Amendments are also proposed for § 718.205. That section sets out, in an order of priority, the various calculation methods that are used to divide up or reconstitute a farm. To improve program performance, amendments are proposed here to § 718.205. The current priority list calls for using the following division and reconstitution methods in the following order or priority as applicable: (1) Estate method; (2) designation by owner method; (3) contribution method; (4) agricultural use method; (5) cropland method and (6) history method. This rule would add a new method which is to be called the "default method" and which will, as a matter of priority, be added between the "agricultural use" and "cropland" methods. Under the "default" method the tracts would be divided away from the parent farm based on the attributes of the individual tracts at the time of the division. Also, because of the addition of this new method, other technical revisions have been needed so as to reorganize § 718.205. In addition, § 718.205 has been further revised to specify that the agency can adjust the results of any reconstitution when it believes that to do so would be more equitable or would further the purposes of the program which are impacted by decisions made under part 718. Still further, a provision is added to § 718.205 to specify that where the division of the farm is going to be made using the landowner designation method, those persons with a security interest in the land itself must agree to the disposition. This is designed to insure fairness and thus, in addition, avoid having the reconstitution regulations serve as an impediment to the ability of farmers to obtain financing. Also, the provision in § 718.205 regarding the contribution method have been changed as they regard the current provisions which provide that this method will be used to separate farms only if the contribution took place within the last 6 years or if there are adequate records to allow the determination to be made. In the end, that provision merely establishes that which would be implied anyway; namely, that the contribution method will only be used to the extent that the contribution can actually be determined. Even with the 6 year period mentioned in the current rule, the contribution method could not be used effectively unless there were sufficient records available to allow the determination to be made. Hence, that provision, in this rule, would be eliminated.

Further, the provisions dealing with the "agricultural use" method would be amended. Currently the regulations call for, when using that method, dividing the tract based on land involved in "agricultural and related activity." Because of the expansive new definition of "agricultural use" which would be adopted in this rule, those references in this rule would be changed to references to land in "agricultural use." That change would not be expected to change in a material way the application of the agricultural use method of proration. In addition, this part of the regulations is modified to make another clarifying change in its text.

Finally, it is proposed that the authority citation for part 718 be amended to add references to 7 U.S.C. 1375, 1378, and 1379. These are generic provisions of the Agricultural Adjustment Act of 1938 which generally provide for the Secretary to issue regulations governing the making available of quotas and allotments under that Act and other matters relating to that Act. Also those provisions deal with the disposition of allotments when there is an exercise of eminent domain over a farm and, 7 U.S.C. 1379 specifically provides the Secretary with the authority to undertake farm reconstitutions. Further, this rule would add a section that would set out in part 718 the control numbers assigned by the Office of Management and Budget for Paperwork Reduction Act purposes.

Comments are requested on all of these matters.

List of Subjects in 7 CFR Part 718

Acreage allotments, marketing quotas.

Accordingly, 7 CFR part 718 is proposed to be amended as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. Revise the authority citation for part 718 to read as follows:

Authority: 7 U.S.C. 1373, 1374, 1375, 1378, 1379, and 7201 *et seq.*; 15 U.S.C. 714a *et seq;* and 21 U.S.C. 889.

2. Amend § 718.2 by:

a. Removing the definition of "Agricultural use";

b. Adding new definitions of "Agricultural use land" and "Common ownership unit" in alphabetical order;

c. Revising paragraphs (1)(v), (1)(vi) and (2)(v) and adding paragraph (1)(vii) in the definition of "Cropland"; and

d. Revising the definitions of "Farm", "Farmland" and "Operator".

The additions and revisions read as follows:

§ 718.2 Definitions.

* * * * *

Agricultural use land means land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1412 of this title and continues to be used for agricultural purposes or land that met the definition of cropland on or after April 4, 1996, and continues to be used for agricultural purposes but not for nonagricultural commercial or industrial use.

* * * * *

Common ownership unit means a distinguishable parcel of land, consisting of one or more tracts of land with the same owners, as determined by FSA.

* * * * *

Cropland. (1) * * *

(v) Is in sod waterways or filter strips planted to a perennial cover;

(vi) Is preserved as cropland in accordance with 1410 of this title; or

(vii) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(2) * * *

(v) Converted to ponds, tanks or trees (other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to parts 704 or 1410 of this title, or trees which are used in one- or two-row shelterbelt plantings, or are part of an orchard or vineyard).

* * * * *

Farm shall generally mean a tract, or tracts, of land which are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner, or, if not the same owner, all owners must agree to the treatment of the multiple tracts as one farm for these purposes.

* * * * *

Farmland means the sum of the agricultural use land, forest, acreage planted to an eligible crop acreage as specified in 7 CFR 1437.3 (noninsured crop disaster assistance program) and other land on the farm.

* * * * *

Operator means an individual, entity, or joint operation who is determined by the county committee, or considered by the county committee, to be in general control of the farming operations on the farm.

* * * * *

3. Amend § 718.201 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 718.201 Farm constitution.

(a) * * *

(1) After August 1, 1996, land subject, under 7 CFR part 1412, to a production flexibility contract with land not subject to a production flexibility contract unless the farm not subject to a production flexibility contract is a farm on which the entirety of the cropland is enrolled in the CRP and on which the cropland can, and will, become contract acreage for purposes of the production flexibility contract program upon the termination of the CRP contract;

(2) Land under separate ownership unless the owners agree in writing and the labor, equipment, accounting system, and management are operated in common by the operator but separate from that of any other tracts;

* * * * *

4. Amend § 718.204 by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

§ 718.204 Reconstitution of allotments, quotas, and acreage.

* * * * *

(b) Reconstitutions of farms subject to a production flexibility contract under part 1412 of this title will be effective for the current year only if initiated before the earlier of June 1 of the fiscal year or prior to the issuance of production flexibility contract payments for the farm or farms being reconstituted.

* * * * *

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes and regulations governing commodity programs impacted by this part. Further, however, in the event that a farm is subject to both paragraphs (b) and (c) then the farm reconstitution will be effective for the current year only if the conditions of both paragraphs are met.

(e) Throughout this subpart, when referring to combining or dividing acreage, such acreages will include production flexibility contract acres and any conditional production flexibility contract eligibility that may be held under an existing CRP contract.

5. Amend § 718.205 by:
a. Revising paragraph (a);
b. Revising paragraph (b)(1); to
c. Revising paragraphs (b)(4), (c)(2), and (c)(3);
d. Redesignating paragraph (c)(4)(ii) as paragraph (c)(4)(iii);
e. Adding a new paragraph (c)(4)(ii);
f. Revising newly redesignated paragraph (c)(4)(iii);
g. Revising paragraph (d)(1);
h. Revising paragraph (e);
i. Redesignating paragraphs (f) through (i) as paragraphs (g) through (j);
j. Adding a new paragraph (f);
k. Revising newly redesignated paragraph (i)(1) introductory text; and
l. Revising newly redesignated paragraph (i)(2).

The revisions and additions read as follows:

§ 718.205 Rules for determining farms, allotments, quotas, and acreage when reconstitution is made by division.

(a) The methods for dividing farms, allotments, quotas, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution, agricultural use, default, cropland, and history. The proper method shall be determined on a crop-by-crop basis.

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (h) of this section.

* * * * *

(4) If allotments, quotas, and acreages are not apportioned in accordance with the provisions of paragraph (b)(2) or (3) of this section, the allotments, quotas, and acreages shall be divided pursuant to paragraphs (d) through (h) of this section, as applicable.

(c)(1) * * *

(2) If the county committee determines that allotments, quotas, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, and acreages in accordance with paragraphs (d) through (h) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (h) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) * * *

(ii) Where the land of the parent farm is subject to deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the division of allotments, quotas, or acreage.

(iii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or sell allotments, quotas, or acreages. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments, quotas or acreages shall be assigned to that part of the farm in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas or acreages with respect to the part of the farm which has been owned for 3 years or more.

* * * * *

(d) (1) The contribution method is the proration of a parent farm's allotments or quotas to each tract as the tract contributed to the allotments or quotas at the time of combination. The contribution method may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

* * * * *

(e) The agricultural use method is the proration of the acreage to the resulting tracts in the same proportion that the agricultural use land for each resulting tract relates to the agricultural use land for the parent tract. This method of division shall be used if the provisions of paragraphs (b) and (c) of this section do not apply.

(f) The default method is the separation of tracts from a farm with each tract maintaining the acreage attributed to the tract when the reconstitution is initiated.

* * * * *

(i) (1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or acreage determined under such subsections for the parent farm if:

* * * * *

(2) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

* * * * *

6. Add a new § 718.210, to read as follows:

§ 718.210 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560–0025.

Signed at Washington, DC, on January 19, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–1967 Filed 2–3–00; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 951 and 997

[No. 2000–03]

RIN 3069–AA92

Determination of Appropriate Present-Value Factors Associated with Payments Made by the Federal Home Loan Banks to the Resolution Funding Corporation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations by adding a new part to implement provisions of the

Gramm-Leach-Bliley Act (Gramm-Leach-Bliley) related to the aggregate value of, and end date for, payments made by the Federal Home Loan Banks (Banks) to the Resolution Funding Corporation (REFCORP). These payments are used to pay a portion of the interest owed on bonds issued by REFCORP. Gramm-Leach-Bliley changed the method of assessing the Banks for mandated annual payments to REFCORP from a fixed payment of $300 million to a payment of 20 percent of the net earnings of the Banks. Gramm-Leach-Bliley also requires the Finance Board to adjust the final payment date for the Banks' obligation so that the value of the actual payments made under the new methodology will be equivalent to the value of a benchmark annuity, which corresponds to the payments that would have been made under the prior law. The relevant values are required to be discounted to reflect the time value of money, using appropriate present-value factors selected by the Finance Board in consultation with the Secretary of the Treasury.

The proposed rule establishes a method for making the required present value calculations and for adjusting the termination date for the Banks' payments to REFCORP. As described more completely in the Supplementary Information, when 20 percent of the Banks' quarterly net earnings exceeds or falls short of a specified benchmark annuity, the excess or shortage will be "used" to defease or to extend the Banks' future obligations by simulating the purchase or sale of zero-coupon Treasury securities. The Banks' REFCORP obligation would cease when their payments equal the value of the benchmark annuity.

DATES: The Finance Board will accept comments on the proposed rule in writing on or before March 6, 2000.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail to the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research, and Analysis, (202) 408–2845, *mckenziej@fhfb.gov;* Austin J. Kelly, Senior Financial Economist, Office of Policy, Research, and Analysis, (202) 408–2541, *kellya@fhfb.gov;* or Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, *josepht@fhfb.gov*. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunication device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

A. FIRREA

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989), established REFCORP to provide funds for the Resolution Trust Corporation (RTC). 12 U.S.C. 1441b. REFCORP was authorized to issue up to $30 billion in debt obligations; as of September 20, 1999, REFCORP had $29.9 billion in non-callable bonds outstanding with maturities ranging from October 15, 2019, to April 15, 2030. The RTC used the proceeds from the sale of these bonds to pay the costs of liquidating failed savings associations. FIRREA amended the Federal Home Loan Bank Act (Bank Act) to require the Banks to pay $300 million annually toward the interest on those bonds if REFCORP's income from other sources specified in the Bank Act was insufficient to pay the interest on the REFCORP bonds. Income from these other sources has always been insufficient to pay the interest on the REFCORP bonds, and the Banks have paid $300 million annually to REFCORP. To the extent amounts available from the other statutorily specified sources and the Banks' $300 million are insufficient to pay the interest on the REFCORP bonds, the Bank Act directs the United States Department of the Treasury (Treasury) to pay to REFCORP additional amounts that will be used by REFCORP to pay the interest. 12 U.S.C. 1441b(f)(2)(E).

It has been the practice of the Banks to make payments to REFCORP on a quarterly basis, typically on January 15, April 15, July 15, and October 15 of each year. These dates correspond to the dates on which REFCORP makes coupon payments on the outstanding bonds. The aggregate amount of the Banks' quarterly interest payments has been $75 million, which the Banks have accrued during the calendar-year quarter immediately preceding the payment. To date, the Banks have made all required REFCORP interest payments.[1] Prior to the enactment of Gramm-Leach-Bliley, Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999), the Banks' obligation to pay interest on the REFCORP bonds would have terminated upon payment of the $75 million due for the first quarter of 2030, which would have been paid on April 15, 2030, the final maturity date for the last REFCORP bond.

As previously noted, the Banks' REFCORP obligation prior to the enactment of Gramm-Leach-Bliley was a fixed dollar amount that bore no relationship to the net income of any Bank. As a result, in the years that the Banks experience reduced income, as occurred in the early 1990's, each Bank's REFCORP obligation, as a percent of its income, increases significantly. This historically has caused the Banks to seek ways to generate higher earnings to meet the statutorily mandated REFCORP and Affordable Housing Program[2] obligations and to continue to pay a dividend sufficient to retain members. The Banks' historical solution to the dilemma has been to amass large portfolios of investment securities and generate arbitrage earnings. While this strategy has been profitable and has posed no safety and soundness threat to the Bank System, the Finance Board, Congress, and the Treasury have noted and criticized the strategy because the investments do not advance the mission of the Banks, which are government sponsored enterprises with a public purpose. The fixed-dollar nature of the REFCORP obligation has been cited by critics as part of the cause of the problem.

B. Gramm-Leach-Bliley

Gramm-Leach-Bliley changed the Banks' REFCORP assessment from a fixed-dollar $300 million annual payment to an annual payment of 20 percent of each Bank's net earnings. *See* Public Law 106–102, sec. 607, 133 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)). Gramm-Leach-Bliley also contains provisions intended to assure that the change in the method of assessing the Banks' REFCORP obligation does not increase or decrease

[1] REFCORP was capitalized through statutorily mandated contributions from the Banks that are held in the REFCORP principal fund. *See* 12 U.S.C. 1441b(g)(2). Those contributions, which the Bank Act required to be subtracted from the Banks' gross annual REFCORP interest obligation, ended in January 1991, and were sufficiently large so as to offset through January 1991 the Banks' annual obligations to pay a portion of the interest on the REFCORP bonds. The first Bank payment used exclusively to cover interest on the REFCORP bonds was that made for the first quarter of 1991, which was made on April 15, 1991.

[2] The Bank Act also requires each Bank to establish an Affordable Housing Program (AHP). *See* 12 U.S.C. 1430(j). In 1995 and subsequent years, each Bank annually must contribute 10 percent of its preceding year's net earnings (*i.e.*, after REFCORP) to its AHP, subject to a Bank System-wide minimum contribution of $100 million. *Id.* The actual aggregate Bank-System AHP contribution in 1999 exceeded $190 million.

the burden of paying interest on the REFCORP bonds either for the Banks or the Treasury. To accomplish this goal, the Gramm-Leach-Bliley amendments require the value of payments actually made by the Banks to REFCORP to equal the value of a $300 million annual annuity that commences on the issuance date of the first REFCORP bond (October 15, 1989) and ends on the maturity date of the last REFCORP bond (April 15, 2030), where the relevant values are properly discounted to account for the time value of money. This annuity exactly mimics the amounts that had been due from the Banks for interest on REFCORP bonds under the prior law.

Gramm-Leach-Bliley specifically requires the Finance Board to make an annual determination of the extent to which the value of the aggregate amounts paid by the Banks exceeds or falls short of the value of an annuity of $300 million per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations and to select appropriate present-value factors for making such determinations, in consultation with the Secretary of the Treasury. *See* Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(ii)). The Finance Board also is required to shorten or extend the term of the Banks' REFCORP obligation as necessary to ensure that the value of all payments made by the Banks is equivalent to the value of the referenced annuity. *See id.* (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii)). The Finance Board may, if required, extend the term of the payment obligation beyond the final scheduled maturity date for the REFCORP bonds. *Id.* (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii) and (iv)).

II. Analysis of the Proposed Rule

A. Overview of the Proposed Present-Value Calculation

In order to implement the provisions of Gramm-Leach-Bliley discussed above, the Finance Board is proposing a methodology for adjusting the date of the final REFCORP payment due from the Banks. The methodology entails the simulated purchase or sale each quarter of zero-coupon Treasury bonds.[3] The effect of the simulated purchase or sale of the zero-coupon bonds will be to defease the most distant outstanding quarterly benchmark annuity payment or, in the case of a sale, to extend the benchmark annuity payment schedule in quarterly increments. When all quarterly annuity payments have actually been covered through payment or defeasance, the Banks' REFCORP obligation would cease. While this explanation discusses benchmark annuity "payments" and the "purchase" and "sale" of zero coupon bonds, we emphasize that these payments, purchases, and sales are simulated and do not actually occur. They are used as a device to equate the cash flows, on a present-value basis, of the amounts paid by the Banks under the Gramm-Leach-Bliley provisions with the payments that would have been made under the prior law.

In theory, when an assessment of 20 percent of the Banks' net earnings exceeds the benchmark annuity value of $75 million, the excess amount would be used to simulate the purchase of zero-coupon Treasury bonds, the maturity dates of which correspond to the payment dates for the most-distant, non-defeased quarterly benchmark annuity and the par amount of which corresponds to the benchmark annuity payment due in that specific quarter. Because the purchased bonds "mature" on the "payment" date for the benchmark annuity and have a par amount equal to the benchmark amount, the amount "received" upon maturity of the bonds can be used to "pay" the benchmark annuity payment. The simulated purchase of the zero-coupon bonds will defease the future benchmark annuity obligations. The estimates for the applicable interest rates on zero-coupon Treasury bonds maturing on specific dates in the future are available from, and will be provided to, the Finance Board by the Treasury's Office of Market Finance.

For example, assume that on April 15, 2000, the date of the first REFCORP payment under the Gramm-Leach-Bliley provisions, 20 percent of the Banks' quarterly net earnings equals $86.3 million. Of that $86.3 million, $75 million would be used to "cover" the quarterly benchmark annuity due on April 15, 2000 and the amount in excess of $75 million, or $11.3 million, would be used to simulate the purchase of a 30-year zero-coupon Treasury bond with a par amount of $75 million and a maturity date of April 15, 2030, the date of the final benchmark annuity payment. (The cost of the purchase of a zero-coupon bond can be found by taking the present value of the par amount of the bond, discounted at current interest rates.) At current interest rates, the (estimated) cost of a zero-coupon Treasury bond that matures on April 15, 2030, has a par amount of $75 million, and is purchased on April 15, 2000, would be approximately $11.3 million. The available excess, therefore, could completely defease the benchmark annuity payment of $75 million due on April 15, 2030.

If 20 percent of net earnings for the first quarter of 2000 were greater than $86.3 million, then all or part of the penultimate benchmark annuity payment of $75 million due on January 15, 2030 also could be defeased. In this case, the "cost' of the relevant 29-year, 9-month zero-coupon Treasury bond with a par amount of $75 million and maturity date of January 15, 2030 would be approximately $11.5 million. Thus, if 20 percent of net earnings for the first quarter of 2000 were $97.8 million, the $75 million payment due on January 15, 2030, could also be fully defeased. (A payment of $97.8 million on April 15, 2000 would be sufficient to cover the current $75 million quarterly benchmark annuity plus the $11.3 million required to defease the April 15, 2030 annuity payment plus the $11.5 million needed to defease the quarterly annuity payment for January 15, 2030.)

The reported net income for the Banks was $496 million in the second quarter of 1999 and $556 million in the third quarter of 1999. Twenty percent of these amounts would be $99.2 million and $111.2 million, respectively, which would have produced an available quarterly excess much larger than was used in the above examples if the new assessment methodology had been in effect in 1999.

The Finance Board is proposing that fractional parts of future payments can be defeased if the excess quarterly payment would defease less than a full payment. Using the previous example, if 20 percent of quarterly net income for the first quarter of 2000 were $80 million, only $5 million would be available to simulate the purchase of a zero-coupon Treasury bond. This excess would go towards defeasing about 44 percent of the April 15, 2030 payment (*i.e.*, $5.0 million divided by $11.3 million). Any "excess" above $75 million from the Banks REFCORP payment due on July 15, 2000, would then be put toward defeasing the remainder of the April 15, 2030, benchmark annuity payment. Specifically, the July excess payment would be first used to simulate the purchase of a 29-year and 9-month zero-coupon Treasury bond that matures on April 15, 2030.

[3] The use of zero-coupon Treasury bonds is consistent with Office of Management and Budget (OMB) Circular A–11, which implements the Federal Credit Reform Act of 1990 (FCRA). Under the FCRA, cash flows stemming from direct government loans and government loan guarantees are discounted by the interest rate nor zero-coupon Treasury securities with the same maturity as each quarter's projected cash flow. Thus, the recommended approach is consistent with the budgetary treatment of other government loan activities.

If 20 percent of quarterly net income were less than $75 million, the defeasance scheme would work in reverse. Instead of simulating the purchase of zero-coupon Treasury bonds, the calculation would simulate the sale of zero-coupon bonds with a maturity corresponding to the last non-defeased quarterly annuity payment or to the first quarter thereafter if the last non-defeased annuity payment already equaled $75 million. The interest rate would be the same as that for a zero-coupon Treasury bond with the same maturity date. In effect, the Banks are agreeing to pay back the deficit still owed on the quarterly benchmark annuity at a future date, and are being charged interest at the zero-coupon Treasury rate.

Because no quarterly benchmark annuity payment will be more than $75 million, if a payment deficit has a future value of more than $75 million (or raises the value of a partially defeased quarterly benchmark annuity payment to more than $75 million), another quarter will be added at the end of the annuity schedule and the amount in excess of $75 million will be owed in that newly added quarter. The interest rate for a zero-coupon Treasury maturing in the newly added quarter will be used to calculate the future value of such excess amount. The result of these calculations would be to lengthen the end date of the quarterly benchmark annuity payments and effectively extend the Banks' REFCORP obligation. To the extent that the Banks must make any payments beyond the final maturity date of the REFCORP bonds, those payments would be made to the Treasury.

The Finance Board believes the proposed methodology will be simple to implement. The only information needed to calculate the date of the Banks' last REFCORP payment is quarterly net income and the interest rate on zero-coupon Treasury bonds the maturities of which coincide with and bracket the date of the last non-defeased benchmark quarterly payment. The Treasury's Office of Market Finance has indicated that it will provide and certify these rates to the Finance Board, as it does for a number of other agencies. The Treasury uses information from market transactions when it estimates the interest rates on zero-coupon Treasury bonds.

The Finance Board solicits comments on all aspects of the proposed methodology.[1]

[1] Gramm-Leach-Bliley provides that the Finance Board shall select appropriate present-value factors for making the statutorily required determinations in "consultation with the Secretary of the Treasury." Pub. L. 106–102, sec. 607,113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(ii). Finance Board staff has met with staff from OMB and Treasury, and will provide a copy of the proposed rule to the Secretary of the Treasury for comment.

B. Definitions—Section 997.1.

Section 997.1 of the proposed rule sets forth the definitions for a number of terms used in new part 997.

The term "actual quarterly payment" is defined as the amounts that the Banks actually pay to REFCORP in accordance with a calendar-year quarterly assessment equal to 20 percent of each Bank's quarterly net earnings. The Finance Board understands from discussions with REFCORP that the Banks will continue to make quarterly payments to REFCORP as set forth in the now-existing payment schedule. Specifically, quarterly payments are proposed to be made, as they are now, on January 15, April 15, July 15, and October 15 of each year (or on the next business day if those dates fall on weekends or holidays).

The term "benchmark quarterly payment" is defined as $75 million, which equals one-quarter's payment on the benchmark annuity of $300 million per year prescribed in Gramm-Leach-Bliley, or such amounts that may result from adjustments required by the calculations made in accordance with part 997. The definition, therefore, recognizes that the value of certain benchmark quarterly payments will be adjusted in line with the calculations set forth in proposed §§ 997.2 and 997.3. Initially, the end date for all benchmark quarterly payments will be April 15, 2030, although that date will be adjusted by the calculations made under the proposed rule. The implicit assumption in the proposed rule is that the benchmark quarterly payments are due on the same date that the Banks' actual quarterly payments are due.

By dividing the annual annuity into quarterly payments, the annuity schedule exactly corresponds to the payment schedule of $75 million per quarter that existed prior to the enactment of Gramm-Leach-Bliley. Using a quarterly benchmark annuity payment, therefore, best assures that the Banks' RECORP payments made under Gramm-Leach-Bliley will be compared exactly to the payments that would have been made under the prior law.

The term "current benchmark quarterly payment" is defined in the proposed rule as the benchmark quarterly payment that corresponds to the actual quarterly payment. The current benchmark quarterly payment will almost always equal $75 million. The only exception may occur for the final remaining benchmark quarterly payment if that payment is less than $75 million because of adjustments made under § 997.2 or § 997.3.

The terms "excess quarterly payment" and "deficit quarterly payments" are defined in the proposed rule as the amounts by which the payments actually assessed and made by the Banks to REFCORP either exceed or fall short of the current quarterly benchmark annuity, respectively. These will be the amounts used to simulate the purchase of the zero-coupon Treasury bonds needed to defease future benchmark quarterly payments or used to simulate the sale of the zero-coupon bonds which will effectively extend the term of the Banks' REFCORP obligation.

The term "quarterly present value determination" is defined by the proposed rule to mean the calculation that will be performed under either § 997.2 or § 997.3. More importantly, the definition is designed to provide the method whereby the Finance Board can fulfill the requirement in Gramm-Leach-Bliley that "the [Finance] Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of [the benchmark] annuity." Public Law 106–102, sec. 607 113 Stat. 1456 (*amending* 12 U.S.C. 1441b(f)(2)(C)(ii)).

The proposed quarterly determination reflects the longstanding practice that the Banks pay REFCORP quarterly. More importantly, a calculation on other than a quarterly basis, for example on an annual basis, would not give the Banks credit for the time value of money associated with excess quarterly payments. Conversely, an annual calculation would not charge the Banks any interest during a year for a deficit quarterly payment. The Finance Board believes its proposal is consistent with the requirements of Gramm-Leach-Bliley. Further, the Finance Board believes that making its determination quarterly and at the same time when the Banks make their actual REFCORP payments will best serve Gramm-Leach-Bliley's goal of assuring that the change in the method of assessing the Banks' obligation will not increase or decrease the burden of paying interest on the REFCORP bonds either for the Banks or the Treasury. The Finance Board recognizes that, if the quarterly payment schedule for the Banks' REFCORP obligations changes, corresponding modifications to these rules may be necessary.

C. Reduction of the Payment Term—Section 997.2.

Section 997.2 sets forth the calculation that the Finance Board proposes to use to determine the amount by which the term of the Banks' REFCORP obligation will be reduced when the Banks actual quarterly payment results in an excess quarterly payment. Under § 997.2 of the proposed rule, the future value of any excess quarterly payment would be calculated using the interest rate on a zero-coupon Treasury bond rate that matures on the date of the last outstanding benchmark quarterly payment. The interest rate will be obtained from the Treasury and will be the spot interest rate for the relevant Treasury zero-coupon bond as of the day of the Banks' actual quarterly payment. The future value calculation set forth in § 997.2 of the proposed rule is the mathematical equivalent of the calculations discussed in the explanation in Part I above. Specifically, the calculation described in the proposed rule is equivalent to calculating the present value, or "cost," of a zero-coupon Treasury bond with a par amount and maturity date that are the same as the amount and due date for the last non-defeased benchmark quarterly payment.

The applicable interest rate would always be for a zero-coupon Treasury bond maturing on the due date of the benchmark quarterly payment that is affected by the defeasance calculation. Therefore, where an excess quarterly payment is sufficiently large so that more than one benchmark quarterly payment can be defeased, additional calculations would be made with respect to the future value amount remaining after the last outstanding benchmark quarterly payment has been defeased. First, the future value calculation for this residual amount would be reversed. Then, a new future value for the resulting residual excess quarterly payment would be calculated using the interest rate for a zero-coupon Treasury bond maturing in the quarter immediately prior to the one for which the benchmark quarterly payment had just been defeased.

Given the proposed calculation, an excess quarterly payment would always result in removing from the benchmark annuity schedule both the current benchmark quarterly payment and all or part of the most-distant, outstanding quarterly benchmark payment(s) still remaining on the schedule.

D. Extension of the Payment Term—Section 997.3

Section 997.3 of the proposed rules sets forth the calculation that the Finance Board proposes to use to determine the amount by which the term of the Banks' REFCORP obligation will be extended if the Banks actual quarterly payment results in a deficit quarterly payment. The future value calculation under this section is proposed to be the same as the one described for proposed § 997.2, except that the amount resulting from the calculation will be added to the last outstanding partial quarterly benchmark payment. Where the last outstanding quarterly benchmark payment is $75 million, the future value of the deficit quarterly payment would be applied to a new quarterly payment extending the annuity schedule. In no case would a benchmark quarterly payment exceed $75 million.

The zero-coupon interest rate used in the proposed calculation would always correspond to a zero-coupon Treasury bond maturing in the quarter for which a new benchmark quarterly payment is being adjusted upward or which is being added to the annuity schedule. Given the proposed calculation, a deficit quarterly payment would always result in removing from the benchmark annuity schedule the current benchmark quarterly payment but adding amounts to the last outstanding benchmark quarterly payment or adding new benchmark quarterly payments to the schedule. The proposed rule makes clear that the Finance Board would act on its authority to extend the Banks REFCORP payment obligation beyond April 15, 2030, if required to do so based upon the calculations made under this section. *See* Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii) and (iv)).

E. Calculation of the Quarterly Present-Value Determination—Section 997.4

Section 997.4 of the proposed rule is based upon the assumption that REFCORP will make the calculations required under §§ 997.2 and 997.3, and provide the results of the calculations to the Finance Board. The Finance Board understands that REFCORP is willing and able to perform this task. Moreover, the Finance Board believes that REFCORP is the best entity to calculate the quarterly present-value determination. A REFCORP model is currently used both to assess the Banks' actual quarterly payments and to calculate the Banks' required AHP payments. It would be relatively simple to adjust the existing REFCORP model to perform the calculations required under this part. Allowing REFCORP both to estimate the Banks' quarterly payment assessment and to calculate the quarterly present-value determination would also centralize the relevant calculations in one entity, and thus facilitate the supervision and auditing of the process set forth in this rule.

As proposed, § 997.4 requires the Finance Board to obtain from Treasury the zero-coupon Treasury bond interest rates needed to complete the calculations and provide those rates to REFCORP. REFCORP, itself, will know the value of the Banks' actual quarterly payments since REFCORP collects those payments from the Banks. The Finance Board would maintain the official record of the results of the calculations. Section 997.4 of the proposed rule also makes clear that the Finance Board will perform the calculations required under this part if the Banks' payment obligations extend beyond April 15, 2030 or if REFCORP is for any reason unable to perform the calculations or make the results known to the Finance Board. With respect to the date of April 15, 2030, REFCORP is to be dissolved "as soon as practicable, after the maturity and full payment of all obligations issued by [it]," 12 U.S.C. 1441b(j), which occurs on April 15, 2030, when the last REFCORP bond matures, and this contingency provision has been included in case the term of the Banks' payment obligation has been extended beyond that date.

F. Termination of the Obligation—Section 997.5.

Section 997.5 of the proposed rules establishes a method for determining when the Banks' obligation to pay REFCORP will terminate. Gramm-Leach-Bliley provides that the Finance Board must extend or shorten the Banks' payment obligation to REFCORP until such time as "the value of all payments made by the Banks is equivalent to the value of [the benchmark] annuity [described therein]." Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii)). This will occur when the actual quarterly payment, after performing any calculation required by proposed § 997.2, equals the last outstanding quarterly benchmark payment(s). It should be noted that if the sole remaining outstanding quarterly benchmark payment is less than $75 million because of adjustments made under proposed §§ 997.2 and 997.3, the Banks will terminate their obligation as long as 20 percent of net earnings at least equals that outstanding amount,

even if 20 percent of net earnings is less than $75 million.

Gramm-Leach-Bliley requires the Banks' REFCORP obligation to terminate when the aggregate value of their payments equals the value of the benchmark annuity. To ensure that these values are equal, the final actual quarterly payment (after making any calculation required by proposed § 997.2) made by the Banks must not be more than any outstanding benchmark quarterly payment(s). This would require the final actual quarterly payment to be reduced if 20 percent of the Banks' quarterly net earnings exceeds the amounts needed to cover the outstanding benchmark quarterly payment(s). In fact, Gramm-Leach-Bliley specifically directs the Finance Board to pro rate the final REFCORP payment to assure the equivalence in the value of the Banks' aggregate payments and the benchmark annuity, if the final payment occurs after April 15, 2030. *See* Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(iv)). However, if the Banks' final payment occurs before April 15, 2030, the authority to assess the Banks' quarterly payments will continue to rest with REFCORP, acting under the supervision of Treasury, *see* 12 U.S.C. 1441b and 12 CFR part 1510, and REFCORP would need to make any required adjustments.

The wording of § 997.5 also reflects the fact that Gramm-Leach-Bliley requires the Banks to make their payments to REFCORP until April 15, 2030 and directly to Treasury after that date. Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(i) and (iv)).

G. Technical Amendment—Section 951.1.

The Finance Board is also proposing to amend the definition of the term "net earnings of a Bank" as used in the Finance Board's Affordable Housing Program regulation and set forth in recently proposed redesignated 12 CFR 951.1 (formerly 12 CFR 960.1) (64 FR 52148, September 27, 1999). The amendment is technical in nature and reflects the fact that under the Gramm-Leach-Bliley amendments, each Bank will pay to REFCORP an amount equal to 20 percent of its net earnings rather than a pro rata amount of the Bank System's fixed annual contribution of $300 million, as required under the prior law. Accordingly, the Finance Board is proposing to delete the words "pro rata share of the" from the definition of "net earnings of a Bank" in § 951.1.

III. Regulatory Flexibility Act

The proposed rule applies only to the Finance Board and to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic effect on a substantial number of small entities.

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 951

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 997

Federal home loan banks, Resolution funding corporation.

For the reasons set forth in the preamble, the Finance Board proposes to amend 12 CFR chapter IX as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951, as proposed to be redesignated at 64 FR 52150, continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§ 951.1 [Amended]

2. Amend § 951.1, as proposed to be redesignated at 64 FR 52150, by removing the words "pro rata share of the" from the definition "Net earnings of a Bank".

3. Add part 997 to subchapter L, as proposed to be added at 64 FR 52150, to read as follows:

PART 997—RESOLUTION FUNDING CORPORATION OBLIGATIONS OF THE BANKS

Sec.
997.1 Definitions.
997.2 Reduction of the payment term.
997.3 Extension of the payment term.
997.4 Calculation of the quarterly present-value determination.
997.5 Termination of the obligation.

Authority: 12 U.S.C. 1422b(a) and 1441b(f).

§ 997.1 Definitions.

As used in this part:

Actual quarterly payment means the quarterly amount paid by the Banks to fulfill the Banks' obligation to pay toward interest owed on bonds issued by the REFCORP. The amount will equal 20 percent of the quarterly net earnings of the Banks, or such other amount assessed in accordance with the Act and the regulations adopted thereunder.

Benchmark quarterly payment means $75 million, or such amount that may result from adjustments required by calculations made in accordance with §§ 997.2 and 997.3.

Current benchmark quarterly payment means the benchmark quarterly payment that corresponds to the date of the actual quarterly payment.

Deficit quarterly payment means the amount by which the actual quarterly payment falls short of the current benchmark quarterly payment.

Excess quarterly payment means the amount by which the actual quarterly payment exceeds the current benchmark quarterly payment.

Quarterly present-value determination means the quarterly calculation that will determine the extent to which an excess quarterly payment or deficit quarterly payment alters the term of the Banks' obligation to the REFCORP. This determination will fulfill the requirements of 12 U.S.C 1441b(f)(2)(C)(ii), as amended by section 607, Public Law 106–102, 113 Stat. 1455–1456.

REFCORP means the Resolution Funding Corporation established in 12 U.S.C. 1441b.

§ 997.2 Reduction of the payment term.

(a) *Generally.* The Finance Board shall shorten the term of the obligation of the Banks to make payments toward the interest owed on bonds issued by the REFCORP each quarter in which there is an excess quarterly payment.

(b) *Excess quarterly payment.* Where there is an excess quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the excess quarterly payment shall be calculated using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond the maturity of which is the payment date of the last non-defeased benchmark quarterly payment.

(2) The future value calculated in paragraph (b)(1) of this section shall be subtracted from the amount of the last non-defeased quarterly benchmark payment.

(3) If the difference resulting from the calculation in paragraph (b)(2) of this

section is greater than zero, then the last non-defeased quarterly benchmark payment is reduced by the future value of the excess quarterly payment.

(4) If the difference resulting from the calculation in paragraph (b)(2) of this section is less than zero, then the last non-defeased quarterly benchmark payment shall be defeased and the payment term shall be shortened.

(5) The amount of the excess quarterly payment that is not already applied to defeasing the payment under paragraph (b)(4) of this section shall be applied toward defeasing the last non-defeased quarterly benchmark payment using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond the maturity of which is the date of the payment to be defeased.

§ 997.3 Extension of the payment term.

(a) *Generally.* The Finance Board will extend the term of the obligation of the Banks to make payments toward interest owed on bonds issued by the REFCORP each calendar quarter in which there is a deficit quarterly payment.

(b) *Deficit quarterly payment.* Where there is a deficit quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the deficit quarterly payment shall be calculated using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond the maturity of which is the payment date of the last non-defeased benchmark quarterly payment, or the first quarter thereafter if the last non-defeased benchmark quarterly payment already equals $75 million.

(2) The future value calculated in paragraph (b)(1) of this section shall be added to the amount of the last non-defeased quarterly benchmark payment if that sum is $75 million or less.

(3) If the sum calculated in paragraph (b)(2) of this section exceeds $75 million, the last non-defeased quarterly benchmark payment will become $75 million, and the quarterly benchmark payment term will be extended.

(4) The extended payment will equal the future value of the amount of the deficit quarterly payment that has not already been applied to raising the quarterly benchmark payment to $75 million under paragraph (b)(3) of this section, using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond whose maturity is the date of the extended payment.

(c) *Term beyond maturity.* The benchmark quarterly payment term may be extended beyond April 15, 2030, if such extension is necessary to ensure that the value of the aggregate amounts paid by the Banks exactly equals the present value of an annuity of $300 million per year that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

§ 997.4 Calculation of the quarterly present-value determination.

(a) *Applicable interest rates.* The Finance Board shall obtain from the Department of the Treasury the applicable estimated zero-coupon bond interest rates and provide those rates to the REFCORP so that the REFCORP can perform the calculations required under §§ 997.2 and 997.3.

(b) *Calculation by the Finance Board.* If § 997.3 requires that the term for the Banks' actual quarterly payments extend beyond April 15, 2030 or if, for any reason, the REFCORP is unable to perform the calculations or provide to the Finance Board the results of the calculations, the Finance Board shall make all calculations required under this part.

(c) *Records.* The Finance Board will maintain the official record of the results of all quarterly present-value determinations made under this part by either the REFCORP or the Finance Board.

§ 997.5 Termination of the obligation.

(a) *Generally.* The Banks' obligation to the REFCORP, or to the Department of the Treasury if the term of that obligation extends beyond April 15, 2030, will terminate when the aggregate actual quarterly payments made by the Banks exactly equal the present value of an annuity that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

(b) *Date of the final payment.* The aggregate actual quarterly payments made by the Banks exactly equal the present value of the annuity described in paragraph (a) of this section when the value of any remaining benchmark quarterly payment(s), after the benchmark quarterly payments have been adjusted as required by §§ 997.2 and 997.3, exactly equals the actual quarterly payment.

Dated: January 19, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–1852 Filed 2–3–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–73–AD]

Airworthiness Directives; Eurocopter Deutschland GMBH Model MBB-BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Eurocopter Deutschland GMBH (ECD) Model MBB-BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters. This proposal would require modifying the engine and transmission cowling doors (cowling doors). This proposal is prompted by an emergency landing of an ECD Model MBB-BK 117 helicopter after the No. 1 engine cowling opened, separated from the helicopter, and struck the main and tail rotor blades resulting in a tail rotor imbalance and subsequent departure of the tail rotor gear box from the helicopter. The actions specified by the proposed AD are intended to prevent the cowling doors opening during flight, separating from the helicopter and impacting the main or tail rotor blades, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 4, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard A. Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–73–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters. The LBA advises that the cowling doors should be modified to install a hook on each cowling door and install the respective hook retainers on the engine floor and on the transmission floor.

ECD has issued Service Bulletin No. MBB–BK 117–20–109, Revision 2, dated April 30, 1999 (SB), which specifies modifying the cowling doors by installing a hook on each cowling door and installing the respective hook retainers on the engine and transmission floor to prevent cowling doors opening fully during flight. The LBA has classified the ECD SB as mandatory and issued AD No. 1999–302, dated September 23, 1999, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

These helicopter models are manufactured in the Federal Republic of Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Federal Republic of Germany has kept the FAA informed of the situation described above. The FAA has examined the findings of the Federal Republic of Germany, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other ECD Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 of the same type designs registered in the United States, the proposed AD would require modifying the cowling doors to prevent the cowling doors from opening during flight. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 140 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 28 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1620 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $462,000.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter Deutschland GMBH: Docket No. 99–SW–73–AD.

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, serial numbers 7001 through 7253 and 7500 through 7523, with transmission door cowling, left hand, part number (P/N) 117–23206–51 or 117–233731, right hand, P/N 117–23206–52 or 117–233741, and engine door cowling left hand, P/N 117–23303–51 or 117–23303–53, right hand, P/N 117–23303–52 or 117–23303–54, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 6 calendar months, unless accomplished previously.

To prevent the engine and transmission cowling doors (cowling doors) opening during flight, separating from the helicopter and impacting the main or tail rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the cowling doors in accordance with paragraph 2.B., Work Procedure, and

2.C., Conclusions, of Eurocopter Deutschland GMBH Service Bulletin SB–MBB–BK 117–20–109, Revision 2, dated April 30, 1999 (SB).

Note 2: Adjustment and functional testing of the hook system in accordance with paragraph 2.B.8 of the SB is critical after installation.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (the Federal Republic of Germany) AD No. 1999–302, dated September 23, 1999.

Issued in Fort Worth, Texas, on January 26, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–2402 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–374–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the canted pressure deck drain system in the wheel well of the main landing gear (MLG). This proposal is prompted by reports of ice accumulation on the aileron control cables and on the MLG door and door seal, during flight, due to fluid entering the canted pressure deck area, leaking into the MLG wheel well, and freezing. The actions specified by the proposed AD are intended to prevent such ice accumulation, which could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–374–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating ice accumulation on the aileron control cables in the wheel well of the main landing gear (MLG) during flight on certain Model 767 series airplanes. The ice build-up was attributed to fluid from the sloping pressure deck leaking into the wheel well and freezing. One operator reported a large volume of fluid had leaked into the canted pressure deck area and ice had accumulated on the MLG door and door seal inside and outside the MLG wheel well. The ice caused the MLG door to jam and prevented extension of the MLG. Investigation revealed that fluid entered the canted pressure deck area through the sloping pressure deck seals and subsequently leaked into the wheel well and solidified. Such ice accumulation could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999, which describes procedures for modification of the canted pressure deck drain system in the wheel well of the MLG. The modification includes, among other things, installation of canisters on the outboard pressure activated drain lines, re-routing of the existing drain lines, and installation of larger diameter drain lines to drain the water out through the underwing fairing thermal panel into the hot air stream from the ram outlets.

Accomplishment of the actions specified in the service bulletin described previously is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same

type design, the proposed AD would require modification of the canted pressure deck drain system in the wheel well of the MLG. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and This Proposed AD

Operators should note that, although the service bulletin recommends accomplishment of the modification at the first available maintenance period as soon as parts, manpower, and facilities are available, the FAA has determined that a 24-month compliance time would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 24-month compliance time for completion of the proposed modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 716 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,623 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $2,091,394, or $7,523 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–374–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 723 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the aileron control cables and/or main landing gear (MLG) door and door seal during flight, which could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD: Modify the canted pressure deck drain system in the wheel well of the MLG in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999.

Note 2: Modification of the canted pressure deck drain system accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–51A0020, dated November 19, 1998, is considered acceptable for compliance with the modification specified in this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2414 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–369–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require installation of new, improved bonding jumpers on the horizontal stabilizer. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure adequate electrical bonding between the horizontal and vertical stabilizers. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing, and result in damage to the hydraulic lines and consequent failure of the hydraulic systems.

DATES: Comments must be received by March 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–369–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–369–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–369–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The RLD advises that in February 1988, during a routine scheduled flight, a Fokker Model F.28 Mark 0100 series airplane was struck by lightning. The report indicated that the No. 2 hydraulic system's "Low Quantity Warning" occurred; shortly thereafter, the same warning occurred on the No. 1 hydraulic system. Although only the hydraulic accumulator-driven systems remained available after the "Total Hydraulic Failure" procedure was accomplished, the flight crew was able to land the airplane safely. Investigation revealed that the lightning current penetrated the vertical stabilizer and bonding jumper of the horizontal stabilizer.

Bonding Jumper Design

At present, on Fokker Model F.28 Mark 0070 and 0100 series airplanes, only a single bonding jumper is installed between the vertical and horizontal stabilizer on the left-hand side. (Currently, no bonding jumper is installed on the right-hand side.) Reports indicate that a bonding jumper had melted, although it is unclear whether this was due to the lightning strike event preceding the hydraulic systems failure, or due to an earlier event. In either case, because the bonding jumper failed, the electrical arcing that resulted from the lightning strike damaged the hydraulic lines.

Further investigation revealed that the existing bonding jumper installation is not adequate to meet certain requirements, and the RLD advises that it is necessary to improve the electrical bonding of the horizontal stabilizer. Inadequate electrical bonding between the horizontal and vertical stabilizers, in the event of a lightning strike, could cause electrical arcing, and result in damage to the hydraulic lines and consequent failure of the hydraulic systems.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–23–032, dated September 22, 1999, which describes procedures for installing new, improved bonding jumpers on the horizontal stabilizer. On the left-hand side of the horizontal stabilizer, installation procedures include removing the existing bonding jumper of the horizontal stabilizer torsion box and replacing it with a new, improved bonding jumper; removing and discarding the existing fasteners; and ensuring that the fastener holes are in proper condition. On the right-hand side of the horizontal stabilizer, installation procedures include drilling new fastener holes in the horizontal stabilizer hinge fitting and in the lower skin of the horizontal stabilizer torsion box; deburring all drilled holes; and installing a new, improved bonding jumper. The Fokker service bulletin references Fokker 70/100 Aircraft Maintenance Manual (AMM), Chapter 20–13–05, as an additional source of service information to accomplish the installation of the new bonding jumpers.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–128(A), dated October 29, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary

for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the accomplishment of the actions specified in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends a compliance time of 24 months for accomplishment of the actions specified in the service bulletin, the RLD has mandated a compliance time of 18 months. The FAA concurs with the RLD and has determined that an 18-month compliance time would have a limited impact on the operators while ensuring the continued safety of the fleet. In determining the proposed compliance time, the FAA considered the safety implications, average utilization rate of the affected fleet, and availability of required modification parts. In light of this, the FAA considers that the proposed compliance time of 18 months is appropriate.

Cost Impact

The FAA estimates that 129 Fokker Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $69 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,381, or $189 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 99–NM–369–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure adequate electrical bonding between the horizontal and vertical stabilizers, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–23–032, dated September 22, 1999.

(1) On the left-hand side of the horizontal stabilizer, replace the existing bonding jumper on the horizontal stabilizer torsion box with a new, improved bonding jumper.

(2) On the right-hand side of the horizontal stabilizer, install a new, improved bonding jumper.

Note 2: Fokker Service Bulletin SBF100–23–032, dated September 22, 1999, references Fokker 70/100 Aircraft Maintenance Manual (AMM), Chapter 20–13–05, as an additional source of service information to accomplish the installation of the new bonding jumpers.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1999–128(A), dated October 29, 1999.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2470 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections, tests, and certain modifications of the thrust reverser control and indication system and wiring on each engine, and corrective action, if necessary.

This proposal also would require installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This proposal is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in significant reduction in airplane controllability. The actions specified by the proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of the Boeing Model 747 series airplane. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation indicated that, in the event of thrust reverser deployment during high-speed climb using high engine power, these airplanes also could experience control problems. This condition, if not corrected, could result in possible failure modes in the thrust reverser control system, inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following the 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

- 747–78A2159, dated May 18, 1995, which describes procedures for repetitive inspections and tests of the thrust reverser control and indication system to detect discrepancies, and corrective action, if necessary. The corrective action includes, among other things, repair or replacement of any discrepant parts with new parts.
- 747–78–2153, Revision 1, dated November 27, 1996, which describes procedures for installation of an additional locking system on the thrust reversers. This service bulletin references the following service bulletins:

1. Boeing Service Bulletin 747–78–2135, dated August 31, 1995, which describes procedures for the installation of provisional wiring for an additional thrust reverser locking device.

2. Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, and Revision 2, dated August 29, 1996, which describe procedures for inspection of the thrust reverser control system wiring to detect damaged wires; modification of certain wiring, and an operational test of the thrust reverser. This service bulletin references Boeing Standard Wiring Practices Manual, which describes procedures for repair or replacement of certain wire bundles, if necessary.

3. Rohr Service Bulletin TBC–CNS 78–33, Revision 1, dated August 20, 1996, which describes additional procedures for installation of an additional locking system on the thrust reversers.

Accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1, requires prior or concurrent accomplishment of Boeing Service Bulletins 747–78–2135 and 747–78A2149, Revision 1 or Revision 2; and concurrent accomplishment of Rohr Service Bulletin TBC–CNS 78–33, Revision 1. Accomplishment of these actions would eliminate the need for certain repetitive inspections and tests.

The FAA also has reviewed and approved Rohr Service Bulletin TBC–CNS 78–32, Revision 1, dated August 20, 1996, which describes procedures for modification of the thrust reverser control system wiring concurrent with accomplishment of Boeing Service Bulletin 747–78A2149, Revision 1 or Revision 2.

The modification procedures described by Boeing Service Bulletins 747–78–2153, and 747–78–2135 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletins 747–78–2153, Revision 1, and 747–78–2135, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and therefore proposes that this modification be required.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require inspection of the thrust reverser control and indication system and wiring on each engine, and corrective action, if necessary; and eventual modification of the wiring. This proposal also would require installation of a terminating modification and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive functional tests to detect discrepancies of the actuation system lock on each thrust reverser would be required to be accomplished in accordance with the procedure included in Appendix 1 of this AD. Correction of any discrepancy detected would be required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual.

Differences Between Service Bulletin and This Proposed AD

Operators should note that, although Boeing Service Bulletin 747–78–2153, Revision 1, does not recommend a specific compliance time for accomplishment of the actuation system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify repetitive functional testing of the actuation system lock installation following accomplishment of that installation, the FAA has determined that repetitive functional tests of the actuation system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 7 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 32 work hours (8 work hours per engine) per airplane, to accomplish the proposed thrust reverser inspection, modification, and test, described in 747–78A2149, Revision 1, or Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,520, or $1,920 per airplane.

It would take approximately 8 work hours (2 work hours per engine) per airplane, to accomplish the proposed 1,000-flight-hour inspections described in Boeing Service Bulletin 747–78A2159, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,880, or $480 per airplane, per inspection cycle.

It would take approximately 20 work hours (5 work hours per engine) per airplane, to accomplish the proposed 18-month thrust reverser system checks described in Boeing Service Bulletin 747–78A2159, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $7,200, or $1,200 per airplane, per test cycle.

It would take approximately 544 work hours per airplane, to accomplish the proposed provisional wiring, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $195,840, or $32,640 per airplane.

It would take approximately 593 work hours per airplane, to accomplish the proposed sync lock installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $213,480, or $35,580 per airplane.

It would take approximately 4 work hours per airplane, to accomplish the proposed functional test of the additional locking system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $1,680, or $240 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–65–AD.

Applicability: Model 747 series airplanes equipped with Pratt & Whitney JT9D–70 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Repair

(a) Within 200 flight hours or 50 flight cycles after the effective date of this AD, whichever occurs later: Inspect the thrust reverser wiring on each engine to detect discrepancies, in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2, dated August 29, 1996. Prior to further flight, repair any discrepancy, in accordance with the service bulletin.

Modification and Tests

(b) Within 5,000 flight hours or 500 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the thrust reverser wiring modification on each engine in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2 dated August 29, 1996.

(1) Concurrent with accomplishment of Boeing Service Bulletin 747–78A2149, Revision 1 or Revision 2: Accomplish the modification of the thrust reverser control system wiring specified in Rohr Service Bulletin TBC–CNS 78–32, Revision 1, dated August 20, 1996.

(2) Prior to further flight following accomplishment of the modification specified in paragraphs (b) and (b)(1): Perform an operational test of the thrust reverser wiring on each engine to detect discrepancies in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2 dated August 29, 1996. Prior to further flight, correct any discrepancy detected, in accordance with the service bulletin.

Repetitive Inspections and Tests

(c) Perform the inspections and tests of the thrust reverser control and indication system to detect discrepancies at the times specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995.

(1) Within 90 days after the effective date of this AD, inspect in accordance with Part III, "1,000 Flight Hour Inspections" of the Accomplishment Instructions of the alert service bulletin. Repeat at intervals not to exceed 1,000 flight hours until accomplishment of paragraph (f) of this AD.

(2) Within 1,500 flight hours or 4 months after the effective date of this AD, whichever occurs later, inspect and test in accordance with Part III, "18 Month Thrust Reverser System Checks" of the Accomplishment Instructions of the alert service bulletin. Repeat at intervals not to exceed 18 months until accomplishment of paragraph (e) of this AD.

Corrective Actions

(d) If any inspection or test required by paragraph (c) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any inspection or test, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995.

Additionally, prior to further flight, any failed inspection or test required by paragraph (c) of this AD must be repeated and successfully accomplished.

Terminating Action

(e) Accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the repetitive inspections and tests required by paragraph (c) of this AD.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2153, Revision 1, dated November 27, 1996.

(2) Prior to or concurrent with accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1: Accomplish the installation of provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletins 747–78–2135, dated August 31, 1995; and 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2, dated August 29, 1996. Additionally, concurrent with accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1, accomplish the installation of the provisional wiring described previously in accordance with Rohr Service Bulletin TBC–CNS 78–33, Revision 1, dated August 20, 1996.

Repetitive Functional Tests

(f) Within 4,000 hours time-in-service after accomplishment of paragraph (e) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser, in accordance with Appendix 1 (including Figures 1 and 2) of this AD. Prior to further flight, correct any discrepancy detected, in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1

Thrust Reverser Sync-Lock Integrity Test

1. General

A. Equipment and Materials

(1) Thrust reverser flex drive adapter—196K8004–1 or 196K8004–3; Rohr Industries, Inc., Chula Vista, California 92012.

2. Thrust Reverser Sync-Lock Integrity Test

B. Prepare for the Thrust Reverser Sync Lock Test

(1) Open applicable T/R CONT & BLEED SYS circuit breaker on P12 circuit breaker panel.
(2) Open fan cowl doors (Ref 71–11–02, Maintenance Practices).
(3) Check that forward and aft circumferential latches and all tension latches are engaged and locked.
(4) Depress drive unit latch operating arm and retain by engaging latch arm (detail C).
(5) Disengage stow latch hook on left and right thrust reversers (detail D).
(6) On either lower slave actuator (detail B), either remove coverplate from forward drive pad or remove locking plug from lower drive pad.
(7) Move left-hand sync-lock lever to the unlocked position.
(8) Using appropriate drive adapter (196K8004–1 at forward drive pad or 196K8004–3 at lower drive pad), attempt to manually deploy sleeves.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 75 POUND-INCHES TO THE ACTUATOR; A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(9) If sleeves move, replace the right-hand sync-lock.
(10) Move left-hand sync-lock lever to the locked position.
(11) Move right-hand sync-lock lever to the unlocked position.
(12) Repeat step (8) above.
(13) If sleeves move, replace the left-hand sync-lock.
(14) Move left-hand sync-lock lever to the unlocked position.
(15) Rotate actuator gearshaft to fully stow the sleeves.
(16) When translating sleeves reach stowed position, check that stow latch hooks have engaged fixed hooks on both sides (detail D).
(17) Depress latch operating arm and disengage latch arm (detail C); allow latch arm to raise.
(18) After releasing arm, verify latch engagement by attempting to rotate feedback gear on drive unit using 1/4-inch square drive; gear shall not rotate in excess of 0.1 of a turn.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 25 POUND-INCHES ON FEEDBACK GEAR; A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(19) As applicable, install locking plug (with square section facing away from drive pad) or coverplate on actuator drive pad. Secure plug or plate with bolts tightened to 50–70 pound-inches.
(20) Move both left-and right-hand sync-lock levers to the locked position.
(21) Close fan cowl doors (Ref 71–11–02, Maintenance Practices).
(22) Close T/R CONT & BLEED SYS circuit breaker.
(23) Repeat the sync-lock integrity test on all remaining thrust reversers.

BILLING CODE 4910–13–P

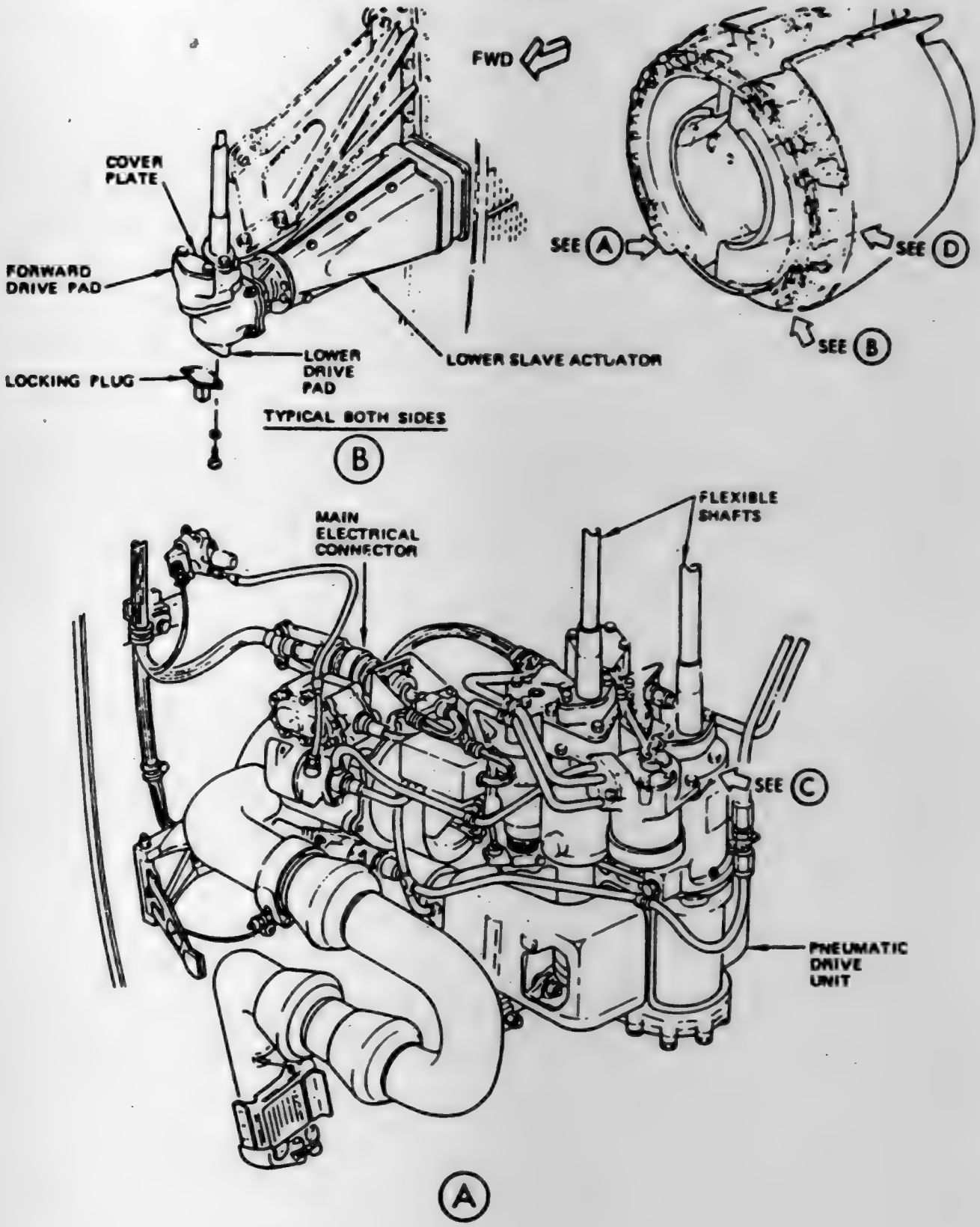
FWD
COVER PLATE
FORWARD DRIVE PAD
LOCKING PLUG
LOWER DRIVE PAD
LOWER SLAVE ACTUATOR
TYPICAL BOTH SIDES
B
SEE A
SEE D
SEE B
MAIN ELECTRICAL CONNECTOR
FLEXIBLE SHAFTS
SEE C
PNEUMATIC DRIVE UNIT
A

Figure 1

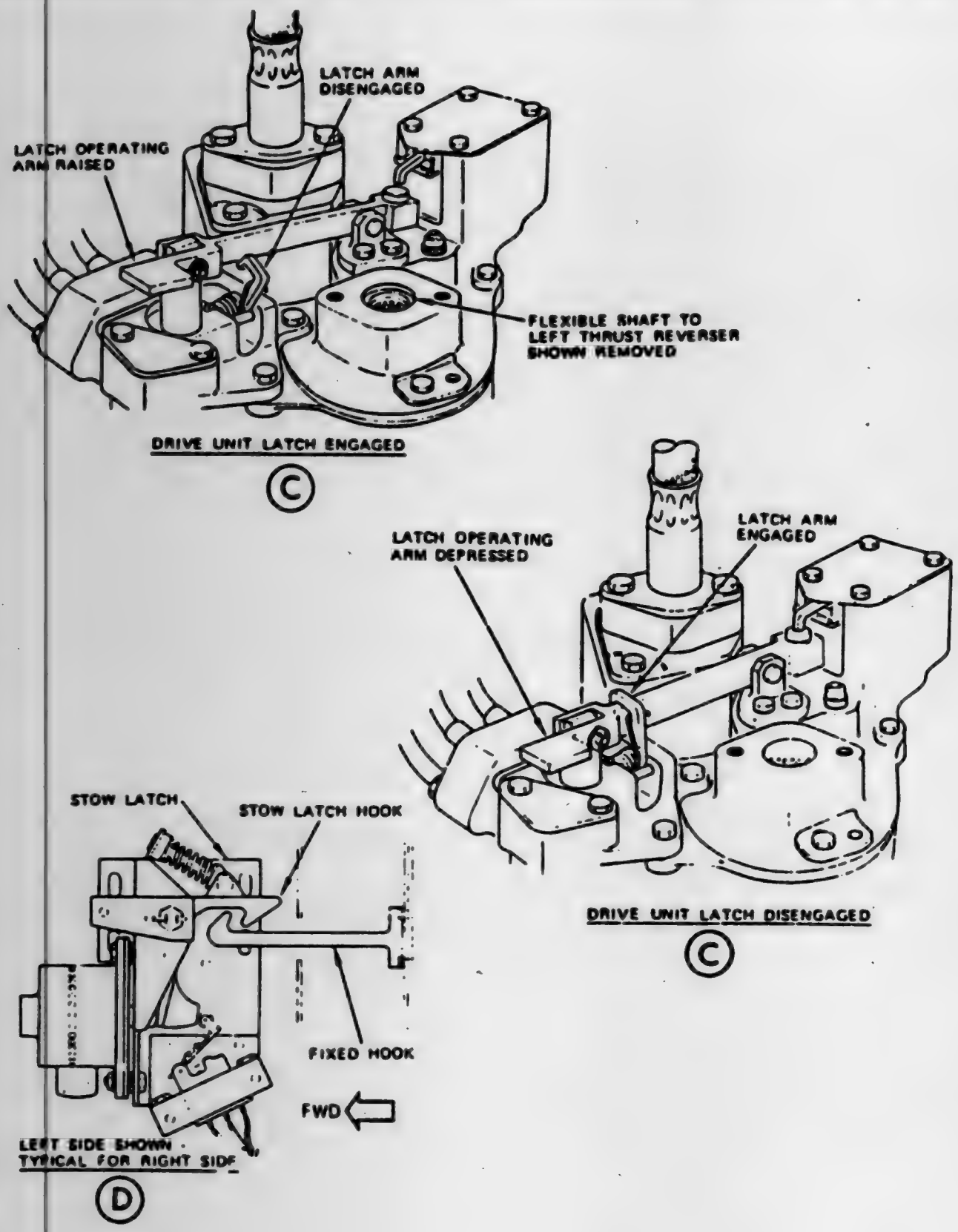
LATCH ARM DISENGAGED
LATCH OPERATING ARM RAISED
FLEXIBLE SHAFT TO LEFT THRUST REVERSER SHOWN REMOVED
DRIVE UNIT LATCH ENGAGED
©
LATCH OPERATING ARM DEPRESSED
LATCH ARM ENGAGED
DRIVE UNIT LATCH DISENGAGED
©
STOW LATCH
STOW LATCH HOOK
FIXED HOOK
FWD
LEFT SIDE SHOWN TYPICAL FOR RIGHT SIDE
Ⓓ

Figure 2

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2415 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On October 5, 1999, the Forest Service published a proposed rule to guide land and resource management planning on national forests and grasslands (64 FR 54074). The agency extended the public comment period for this proposed rule, which is scheduled to end on February 3, 2000 (64 FR 70204). In response to Congressional requests and the need to provide the public more time to review and evaluate the proposed regulations, the Forest Service is extending the public comment period until February 10, 2000.

DATES: Comments must be submitted in writing and must be received by February 10, 2000.

ADDRESSES: Send written comments on the proposed planning rule to the CAET-USDA Team, Attn. Planning Rule, Forest Service, USDA, 200 East Broadway, Room 103, Post Office Box 7669, Missoula, MT 59807; or via email to planreg/wo_caet@fs.fed.us; or via facsimile to (406) 329–3021.

Comments, including names and addresses when provided, are subject to public inspection and copying. The public may inspect comments received on this proposed rule in the Office of Deputy Chief, National Forest Systems, Third Floor, Southwest Wing, Yates Building, 14th and Independence Ave., SW, Washington, DC between the hours of 8:30 AM and 4:00 PM.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Ecosystem Management Coordination Staff, telephone: (202) 205–7820.

Dated: February 1, 2000.

Barbara C. Weber,

Acting Associate Chief for Natural Resources.

[FR Doc. 00–2597 Field 2–3–00; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA236–0204b; FRL–6533–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern an emission offsets exemption for pollution control projects that are mandated by District, state, or federal regulation.

The intended effect of this action is to regulate emissions from stationary sources of air pollution subject to District new source review (NSR) regulation in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 6, 2000.

ADDRESSES: Comments should be addressed to: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238).

SUPPLEMENTARY INFORMATION: This document concerns Monterey Bay Unified Air Pollution Control District Rule 207, Review of New or Modified Sources, submitted to EPA on October 29, 1999 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: January 21, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–2471 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–0201 FRL–6532–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO_X) for the Kern County Air Pollution Control District (KCAPCD). The revision concerns KCAPCD Rule 425.1 for the control of oxides of nitrogen (NO_X) emissions from hot mix asphalt paving plants. The intended effect of proposing approval of this rule is to regulate emissions of (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

DATES: Comments must be received on or before March 6, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 "M", Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 'L' Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Kern County Air Pollution Control District (KCAPCD) Rule 425.1, Hot Mix Asphalt Paving Plants (Oxides of Nitrogen). Rule 425.1 was submitted by the State of California to EPA on October 19, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182 (f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The NO_X Supplement should be referred to for further information on the NO_X requirements.

Section 182 (f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOCs), in moderate or above ozone nonattainment areas. KCAPCD is classified as serious;[1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rule covering NO_X sources and submitted as a SIP revision requires final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for Kern County Air Pollution Control District (KCAPCD) Rule 425.1, Hot Mix Asphalt Paving Plants (Oxides of Nitrogen), adopted by the KCAPCD on October 13, 1994. The State of California submitted Rule 425.1 to EPA October 19, 1994. Rule 425.1 was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[2]

NO_X emissions contribute to the production of ground level ozone and smog. KCAPCD Rule 425.1 specified exhaust emission standards for NO_X, and was originally adopted as part of KCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions. The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3]

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources for NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X.

In addition, the California Air Resources Board (CARB) is developing a guidance document entitled, "California Clean Air Act Guidance, Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters," July 18, 1991. EPA has used CARB's RACT Determination, dated July 18, 1991, in evaluating Rule 425.1 for consistency with the CAA's RACT requirements. In general, EPA uses the guidance documents cited above, as well as other relevant and applicable guidance documents, to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of Kern County Air Pollution Control District Rule 425.1, Hot Mix Asphalt Paving Plants (Oxides of Nitrogen), in the SIP. Submitted Rule 425 includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emmissions standards for oxides of nitrogen (NO_X).

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[1] KCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, Pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

• Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 425.1 strengthens the SIP through the addition of enforceable measures such as emissions limits, record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing rule in the SIP, the incorporation of Rule 425.1 into the SIP would decrease the NO_X emissions allowed by the SIP. A more detailed discussion of the sources controlled, the controls required, and justification for why these controls represent RACT can be found in the Technical Support Document (TSD), dated December 1, 1999, which is available from the U.S. EPA, Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, Kern County Air Pollution Control District Rule 425.1 is being proposed for approval under section 110(k)(3) of the CAA is meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies and matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (FRA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costss to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 21, 2000.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 00–02476 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6532–6]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 31

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 8 new sites to the NPL. Six of the sites are being proposed to the General Superfund Section of the NPL and 2 of the sites are being proposed to the Federal Facilities Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before April 4, 2000.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); Ariel Rios Building; 1200 Pennsylvania Avenue NW; Washington, DC 20460.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue NW; Washington, DC 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. What are CERCLA and SARA?
- B. What is the NCP?
- C. What is the National Priorities List (NPL)?
- D. How are Sites Listed on the NPL?
- E. What Happens to Sites on the NPL?
- F. How Are Site Boundaries Defined?
- G. How Are Sites Removed From the NPL?
- H. Can Portions of Sites Be Deleted from the NPL as They Are Cleaned Up?
- I. What is the Construction Completion List (CCL)?

II. Public Review/Public Comment
- A. Can I Review the Documents Relevant to This Proposed Rule?
- B. How do I Access the Documents?
- C. What Documents Are Available for Public Review at the Headquarters Docket?
- D. What Documents Are Available for Public Review at the Regional Dockets?
- E. How Do I Submit My Comments?
- F. What Happens to My Comments?
- G. What Should I Consider When Preparing My Comments?
- H. Can I Submit Comments After the Public Comment Period Is Over?
- I. Can I View Public Comments Submitted by Others?
- J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

III. Contents of This Proposed Rule
- A. Proposed Additions to the NPL
- B. Status of NPL

IV. Executive Order 12866
- A. What is Executive Order 12866?
- B. Is This Proposed Rule Subject to Executive Order 12866 Review?

V. Unfunded Mandates
- A. What is the Unfunded Mandates Reform Act (UMRA)?
- B. Does UMRA Apply to This Proposed Rule?

VI. Effect on Small Businesses
- A. What is the Regulatory Flexibility Act?
- B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

VII. National Technology Transfer and Advancement Act
- A. What is the National Technology Transfer and Advancement Act?
- B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

VIII. Executive Order 12898
- A. What is Executive Order 12898?
- B. Does Executive Order 12898 Apply to this Proposed Rule?

IX. Executive Order 13045
- A. What is Executive Order 13045?
- B. Does Executive Order 13045 Apply to this Proposed Rule?

X. Paperwork Reduction Act
- A. What is the Paperwork Reduction Act?
- B. Does the Paperwork Reduction Act Apply to this Proposed Rule?

XI. Executive Orders on Federalism
- What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

XII. Executive Order 13084
- What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. 99–499, 100 Stat. 1613 et seq.

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as an appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B));

(3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 22, 1999 (64 FR 56966).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and

identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of January 19, 2000, the Agency has deleted 206 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of January 19, 2000, EPA has deleted portions of 18 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 206 sites that have been deleted from the NPL, 197 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of January 19, 2000, there are a total of 676 sites on the CCL. This total includes the 197 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross

Avenue, Mailcode 6SF-RA, Dallas, TX 75202–2733; 214/665–7436.
Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.
David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR-SA, Denver, CO 80202–2466; 303/312–6757.
Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.
David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the "Addresses" section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 8 new sites to the NPL; 6 sites to the General Superfund Section of the NPL and 2 sites to the Federal Facilities Section. The sites are being proposed based on HRS scores of 28.50 or above. The sites being proposed in this rule are presented in Table 1 and Table 2 which both follow this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 10 sites to the NPL; resulting in an NPL of 1,226 final sites; 1,067 in the General Superfund Section and 159 in the Federal Facilities Section. With this proposal of 8 new sites, there are now 55 sites proposed and awaiting final agency action, 48 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,281. (These numbers reflect the status of sites as of January 19, 2000. Sites deletions may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice

Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This proposed rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this proposed rule.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 31, GENERAL SUPERFUND SECTION

State	Site name	City/county
AR	Ouachita Nevada Wood Treater	Reader.
FL	Alaric Area Ground Water Plume	Tampa.
FL	Callaway & Son Drum Service	Lake Alfred.
FL	Landia Chemical Company	Lakeland.
NY	Old Roosevelt Field Contaminated Ground Water Area	Garden City.
WV	Big John Salvage—Hoult Road	Fairmont.

Number of Sites Proposed to General Superfund Section: 6.

TABLE 2.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 31, FEDERAL FACILITIES SECTION

State	Site name	City/county
VA	St. Juliens Creek Annex (U.S. Navy)	Chesapeake.
VA	Naval Weapons Station Yorktown—Cheatham Annex	Williamsburg.

Number of Sites Proposed to Federal Facilities Section: 2.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: January 28, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–2475 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 96

RIN 0930–AA04

Application Deadline for SAPT Block Grant Program

AGENCY: HHS.

ACTION: Notice of proposed rule making.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly, the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA)) has permitted applicants for its Substance Abuse Prevention and Treatment (SAPT) Block Grant program to submit an application for a grant as late as March 31 of the fiscal year for which it is applying. Starting with the fiscal year 2001 applications, SAMHSA is proposing a new date for receipt of the applications for SAPT Block Grants of October 1 of the fiscal year for which Block Grant funding is being requested. However, the deadline for two application components required to be submitted by that due date may be extended for a limited period, not to extend beyond December 31 of the same fiscal year when good cause is demonstrated.

DATES: Written comments must be received on or before March 20, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Thomas M. Reynolds, Room 13C–20, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas M. Reynolds. (301) 443–0179.

SUPPLEMENTARY INFORMATION: When SAMHSA first implemented the SAPT Block Grant program, a primary concern was affording States sufficient time to develop the increased information required to apply for a grant under this program as compared to the generally less detailed application required under the predecessor ADMS Block Grant program administered by ADAMHA [1]. This was accomplished by affording States the opportunity to delay submitting their applications to as late as March 31, fully six months into the fiscal year for which funding is requested (See 45 CFR 96.122(d). This relatively late receipt date results in insufficient time to administer the SAPT Block Grant program in accordance with all the governing provisions of law. This is most noted under circumstances calling for the clarification of application data and, if necessary, the conduct of hearings related to certain adverse decisions needing resolution by the end of the fiscal year. A tentative adverse decision requires that the applicant be provided an opportunity for a hearing consistent with section 1945(e) of the Public Health Service (PHS) Act, and there remains, as a practical matter, insufficient time in the fiscal year to provide a hearing, reach a final decision, and possibly redistribute withheld funds to the remaining applicants as provided by law (see section 1944 of the PHS Act).

States are now fully aware of the application requirements and can reasonably be expected to respond to an earlier submission date. However, if a State determines that it will not be able to submit by October 1 either the report as required at 45 CFR 96.130(e) on Synar enforcement efforts and State success in reducing youth access to tobacco products during the preceding fiscal year, or the information on State expenditures during the preceding year as required at 45 CFR 96.134(d), the State may request an extension of the due date(s) for a limited period, not to extend past December 31 of the fiscal year for which application is made. The request for the extension must be signed by the official with the authority to apply for the grant or the Governor, and must be submitted no later than September 1 of the prior fiscal year. The extension request must state for which requirement the extension is requested; include an explanation of why the State is unable to comply with the due date of October 1; state the date of submission the State is requesting; and

[1] The ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992), established SAMHSA as a successor-in-interest to ADAMHA for the purpose, inter alia, of administering the services oriented functions previously the responsibility of ADAMHA and created two block grant programs including the SAPT program (now administered by SAMHSA) to replace the ADMS Block Grant program.

discuss whether there are steps the State can take to avoid requiring an extension in future years.

Due date extensions for these requirements shall be granted in writing by the SAMHSA official with delegated authority to grant the extension.

The Department considered several alternatives for addressing the issue of timely application submission including an inflexible deadline without provision for extension, and no change in the current due date in recognition of State indications that timely submission of these reports can be more difficult for some States than others. It is SAMHSA's intent to move the application date to October 1 as proposed by this notice unless comments provide compelling reasons to do otherwise. Therefore, States should be preparing to submit their applications by October 1, 2000 for fiscal year 2001 funding.

Economic Impact

This rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Federalism Impact

This regulation would require States to submit their applications for Substance Abuse Prevention and Treatment Block Grant funds by October 1 of the fiscal year for which they are seeking funds. States in the past have had until March 31 to submit the application. This late due date (March 31) does not give the agency sufficient time to carry out its responsibilities under the law.

SAMHSA consulted with the State organizations in the development of legislative proposals concerning the application due date and in the crafting of this NPRM. Most States indicated that they have become familiar with the application and that it would not be an undue hardship on them to meet this new requirement if there can be an extension until December 31 with regard to both maintenance of effort and Synar information. Since proposed Section 96.122(d) allows for such an extension with regard to these elements of the applications, we do not believe that there is a significant Federalism impact.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order and so has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA)(44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Application Deadline for SAPT Block Grant Program

Description: The Secretary is proposing to issue regulations to change the receipt date of SAPT Block Grant applications starting with the Federal Fiscal Year (FY) 2001 from March 31 to October 1. All elements of the application reporting requirements would be due October 1. However, States may request an extension of time for reporting State expenditures necessary to determine compliance with the Maintenance of Effort (MOE) requirement and/or to submit required Synar information for a period up to December 31. This change will allow HHS to review grant applications and make grant awards to all States earlier in the fiscal year. It will also provide additional time for sufficient planning in the event of any penalty actions that may be required, while recognizing the inability of some States to report the MOE and Synar data prior to December 31.

Description of Respondents: State and tribal governments.

Response burden estimate: Information collection language for the current rule is approved by OMB under control number 0930–0165 (Synar reporting requirements on youth access to tobacco) and control number 0930–0162 (for all other aspects of the annual application). The Substance Abuse Prevention and Treatment Block Grant uniform application format for FY 2000–FY 2002 is approved by OMB under control number 0930–0080. None of the specifics of these reporting requirements are being changed. Only the due date of the uniform application is impacted by this proposed rule.

At present, approximately half of all eligible block grant applicants routinely submit their uniform application for block grant funds on or before September 30 of the fiscal year preceding the fiscal year for which they are applying for funds. Approximately one half of all eligible applicants submit their uniform applications between October 1 and March 31 of the fiscal year for which block grant funds are being made available.

SAMHSA recognizes that the earlier receipt date will have an impact on the applicants, particularly those that have typically submitted their uniform application after September 30. Since the contents of the uniform application are not changing, it is difficult to estimate the additional response burden and associated costs for the first year of this change of receipt date (no additional burden is estimated for this change for future years). Therefore, a nominal response burden for each applicant of one hour is provided. In addition, it is conservatively assumed that all applicants will request an extension of the MOE and Synar reporting, and one hour is estimated for preparation of such a request.

Thus, for the first year of implementation, total response burden is estimated at 120 hours. For subsequent years, the burden estimate is 60 hours. Comments on these estimates are invited.

ANNUAL REPORTING BURDEN

45 CFR Citation and Purpose	No. of respondents	Responses per respondent	Hours per response	Total hours
96.122(d) Due date for annual report	60	1	1	60
96.122(d) Extension requests associated with MOE and Synar	60	1	1	60
Total	60			120

As required by section 3507(d) of the PRA, the Secretary has submitted a copy of this proposed rule to OMB for its review. Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of HHS functions, including whether the information will have practical utility; (2) evaluate the accuracy of the HHS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to HHS on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB. (address above).

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Grant programs—health, Health care.

Dated: January 31, 2000.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend Subpart L of Part 96 of Title 45 of the Code of Federal Regulations as follows:

PART 96—BLOCK GRANTS

Subpart L—Substance Abuse Prevention and Treatment Block Grant

1. The authority citation for Subpart L of Part 96 continues to read as follows:

Authority: 42 U.S.C. 300x–21 to 300x–35 and 300x–51 to 300x–64.

2. Section 96.122 (d) is revised to read as follows:

§ 96.122 Application content and procedure.

* * * * *

(d) The application (in substantial compliance with the statutory and regulatory provisions for the Block Grant) shall for fiscal years through fiscal year 2000, be submitted no later than March 31 of the fiscal year for which the State is applying. Beginning with the fiscal year 2001 application, all required components for a complete application must be submitted no later than October 1 of the fiscal year for which Block Grant funding is being requested. The submission date for the report required by § 96.130(e) to be submitted with the application and/or the information required by § 96.134(b) may be extended for good cause shown in a request signed by the official authorized to apply for the Block Grant funding on behalf of the State, or the Governor. The State should request an extension for only the amount of time necessary. In no event will an extension be granted past December 31 of the fiscal year for which application is made. All requests to extend the due date must be submitted no later than September 1 of the prior fiscal year and addressed to the same address as specified for the grant application. Extension requests must state for which requirement an extension is sought, the date of submission sought, why the State is unable to meet the October 1 due date, and discuss if there are steps the State will be able to take to avoid requiring an extension in future years, or if not, why not. Extension requests complying with these requirements will be acted upon no later than September 20 of the fiscal year prior to the year for which application is to be made. Due date extensions regarding the § 96.130(e) report and regarding the § 96.134(d) information shall only be granted in writing. In order for an applicant to have complied with the requirements of section 1932(a)(1) of the Public Health Service Act (42 U.S.C. 300x-32(a)(2)), it is necessary that the components of the application have been submitted by the date indicated or as extended pursuant to the above.

* * * * *

[FR Doc. 00–2444 Filed 2–1–00; 10:25 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Black-Tailed Prairie Dog as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service, announce a 12-month finding for a petition to list the black-tailed prairie dog (*Cynomys ludovicianus*) as threatened throughout its range under the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information, we have determined that listing this species is warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this notice of 12-month petition finding, the black-tailed prairie dog will be added to our candidate species list.

This decision is based on—the number, variety, and significance of threats affecting the species, especially sylvatic plague (an exotic disease to which the species has no resistance) and inadequate regulatory mechanisms (some areas mandate eradication); evidence of recent general population declines in a significant portion of the species' range; and cumulative rangewide population data indicating overall population declines since 1980.

DATES: The finding announced in this document was made on February 4, 2000.

ADDRESSES: You may submit data, information, comments, or questions concerning this finding to the Field Supervisor, U.S. Fish and Wildlife Service, 420 South Garfield, Suite 400, Pierre, South Dakota 57501. You may inspect the petition finding, supporting data, and comments by appointment during normal business hours at the above address. The petition finding also will be available at the Service's Region 6 website at <www.r6.fws.gov/btprairiedog>.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, South Dakota Field Office (see **ADDRESSES** section), telephone (605) 224–8693, extension 24, or facsimile (605) 224–9974.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1998, we received a petition dated July 30, 1998, from the National Wildlife Federation (National Wildlife Federation 1998). The Petitioner requested that we list the black-tailed prairie dog as threatened throughout its range. The Petitioner also requested that the species be afforded emergency listing. Section 4 of the Act and regulations at 50 CFR 424 do not provide for petitions to request the listing of species on an emergency basis. However, section (4)(b)(7) of the Act and the Service's Listing Priority Guidance (63 FR 25502) direct that all petitions are to be reviewed to determine if an emergency listing is appropriate. We determined and advised the Petitioner by letter dated August 27, 1998, that it would be inappropriate to list this species on an emergency basis given its then known status. On September 16, 1999, the Petitioner requested that we readdress this issue based on reports of increased control efforts (Graber, National Wildlife Federation, *in litt.* 1999). We have reevaluated information available regarding this subject and determined that emergency listing of the species is not appropriate at this time.

Section 4(b)(3)(A) of the Act requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific and commercial information that listing may be warranted, we make a positive 90-day finding and initiate a status review of the species. We published a notice of a positive 90-day finding on the subject petition in the **Federal Register** on March 25, 1999 (64 CFR 14425). Accordingly, the subject petition requires a 12-month administrative finding pursuant to section 4(b)(3)(B) on whether the petitioned action is—(I) not warranted, (ii) warranted, or (iii) warranted but precluded from immediate proposal by other higher priority efforts to revise the List of Threatened and Endangered Species. When we find a petition to list a species is warranted but precluded, the species is designated a candidate species.

We believe that sufficient information is currently available to support a finding that listing the black-tailed prairie dog as threatened is warranted, but that a proposed rule at this time is precluded by work on other higher priority listing actions. We will reevaluate the status of the species in 1 year. The information contained in this notice is a summary of the information in the 12-month finding.

The National Wildlife Federation petition presented extensive information regarding the biology of the black-tailed prairie dog. This information included a description of the species and its range, as well as comments related to its population biology and trend. The Petitioner noted that the species still occurs intermittently throughout most of its historic range, although much reduced in numbers and in the amount of habitat that it occupies. The Petitioner contrasted reports that the black-tailed prairie dog once occupied as much as 100–200 million acres (ac) (40–80 million hectares (ha)) of the western North American prairie with current estimates of occupied habitat and concluded that the species' habitat has been reduced by at least 99 percent. The Petitioner attributed reductions in occupied habitat to habitat loss and degradation related to the conversion of prairie grasslands to farmland, extensive control, disease, urban development, unregulated shooting, and other factors.

On August 26, 1998, we received another petition regarding the black-tailed prairie dog from the Biodiversity Legal Foundation, the Predator Project, and Jon C. Sharps (Biodiversity Legal Foundation *et al.* 1998). They requested that we list the black-tailed prairie dog as threatened throughout its known historic range in the contiguous United States. We accepted this second request as supplemental information to the National Wildlife Federation petition. The Biodiversity Legal Foundation *et al.* (1998) provided estimates of historic and current distribution of the black-tailed prairie dog, both regionally and by State. They noted that the species' populations are impacted by eradication programs, sylvatic plague, recreational shooting, land conversion, and natural predation. The Biodiversity Legal Foundation (1999) also developed and submitted a potential plan for black-tailed prairie dog conservation.

The notice of a 90-day finding that a petition to list the black-tailed prairie dog presented substantial information that appeared in the **Federal Register** on March 25, 1999 (64 FR 14424). In this notice, we requested that any additional scientific information relevant to a proposed 12-month administrative finding be submitted to us by May 24, 1999. We published a notice in the **Federal Register** on June 4, 1999 (64 FR 29983), that reopened this period for an additional 45 days, through July 19, 1999. On October 4, 1999, we again published a notice that we would accept additional information, especially pertaining to a draft black-tailed prairie dog Conservation Assessment and Strategy (Strategy) developed by various States and its effect on the status of the species (64 FR 53655). This information collection period closed November 3, 1999.

We received approximately 14,500 comment letters during the development of this finding. The following summarizes the sources and general content of information we received.

All State wildlife agencies within the historic range of the black-tailed prairie dog provided written comments on the petition. Two State agriculture departments (New Mexico and Wyoming) and two State Legislatures (North Dakota and Wyoming) also provided comments. In general, the States opposed listing the black-tailed prairie dog but supported the development of conservation measures for the species. Most information provided by the States focused on policy and jurisdictional concerns rather than on information related to the biological status of the species.

State wildlife agencies and other interested parties also developed a Strategy for conservation of the black-tailed prairie dog (Van Pelt in prep.). The actions identified in the current draft of this Strategy remain tentative and do not at this time confer any improved status for the species. Eight of the 11 participating State wildlife agencies have signed a Memorandum of Understanding for the purpose of implementing the States' Strategy for the black-tailed prairie dog. At this time, the strategy does not include participation by the States of New Mexico, North Dakota, and Colorado, other State (non-wildlife) agencies, Federal agencies, Tribal agencies, or any private interests. We recognize the significant effort that went into the development of this strategy, and we believe that the strategy is a positive step in addressing the conservation needs of the black-tailed prairie dog. At this early stage in development of the strategy, the document lacks commitments to specific immediate actions that would affect the status of the species. We will continue working with the States and other interested parties to support the coordinated conservation efforts of the States.

Three Tribes in South Dakota provided written comments on the petition—the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, and the Rosebud Sioux Tribe. Information was provided by these Tribes regarding distribution and abundance and existing regulatory mechanisms on and adjoining their respective Tribal lands.

Several Federal agencies provided written comments on the petition. The Bureau of Indian Affairs (BIA) supported conservation measures and

acknowledged a possible need to list the species. The U.S. Forest Service provided supplemental information regarding the current status of black-tailed prairie dogs on National Grasslands (Sidle, U.S. Forest Service, *in litt.* 1999). The National Park Service provided information on its control efforts and noted its preference for the development and implementation of cooperative management strategies among State, Tribal, and Federal agencies rather than a listing of the species. The Corps of Engineers Omaha District also reviewed information provided in the petition, but had no specific comments.

Twenty-three county agencies (county commissions and weed/pest councils) in Colorado, Montana, Nebraska, South Dakota, and Wyoming provided written comments on the petition. All county agencies were opposed to listing the species. Economic considerations were a common concern in these comment letters. Because the Act directs that only biological considerations are to be addressed in the listing process, we cannot address economic considerations in review of this petition.

One hundred forty-four organizations (wildlife/conservation or livestock/land management organizations) provided written comments on the petition. Forty-two wildlife/conservation organizations supported listing of the black-tailed prairie dogs. Eighty-seven livestock/land management organizations were opposed to listing the species. Fifteen organizations provided recommendations but did not indicate a position.

Over 14,300 individuals provided written comments on the petition. Approximately 90 percent of all individuals supported listing the black-tailed prairie dog as threatened. The issues most frequently noted in these letters were impacts from the loss of 99 percent of the species' habitat, recreational shooting, control, and disease. Individuals opposed to listing the species most frequently expressed the view that adequate numbers of the species exist, the species is able to reproduce rapidly in response to adverse impacts, sport shooting does not impact the species, and adverse economic impacts can occur if the species is not controlled.

We received approximately 9,000 letters during the third comment period (October 4 to November 3, 1999). Of these, 84 mentioned the States' Strategy, 25 of which opposed the States' Strategy, mostly due to a perceived lack of specific conservation measures and reliance on future, voluntary actions. Fifty-six letters supported the States' Strategy, most expressing the view that the proposed measures were sufficient to avoid listing and that State management was preferable to Federal management. The remaining 3 of the 84 commenters did not express a position.

Taxonomy

Five species of prairie dogs occur in North America. Prairie dogs are rodents within the squirrel family (*Sciuridae*) and include the black-tailed prairie dog, the white-tailed prairie dog (*Cynomys leucurus*), the Gunnison's prairie dog (*C. gunnisoni*), the Utah prairie dog (*C. parvidens*), and the Mexican prairie dog (*C. mexicanus*) (Pizzimenti 1975). The Utah and Mexican prairie dogs are currently listed as threatened (49 FR 22339) and endangered (35 FR 8495), respectively. Generally the black-tailed prairie dog occurs east and north of the other four species in less arid habitat.

Some scientific literature describes a subspecies (*Cynomys ludovicianus arizonensis*) of the black-tailed prairie dog. This subspecies, found in northeastern Mexico (Ceballos *et al.* 1993), is extirpated in Arizona (Alexander 1932; Bureau of Sport Fisheries and Wildlife 1961; Van Pelt, Arizona Game and Fish Department, *in litt.* 1998) and has a remnant population in southwestern New Mexico (Hall and Kelson 1959) and in the Trans-Pecos region of Texas (Davis 1974, Hall and Kelson 1959). A complex of this subspecies in Chihuahua, Mexico, comprises the largest remaining prairie dog complex of any prairie dog species (Ceballos and Pacheco 1997).

The remainder of the species is found in eastern Montana, eastern Wyoming, eastern Colorado, eastern New Mexico, southwestern North Dakota, western and central South Dakota, western and central Nebraska, western and central Kansas, western and central Oklahoma, northwestern Texas, and southwestern Canada. Although some literature describes a subspecies, the research that has focused on evolutionary divergence (genetic segregation and differentiation within a taxon) supports categorizing the black-tailed prairie dog as a monotypic species. Based on this research we do not consider this subspecies separation to be valid. We consider the species as being monotypic. For the remainder of this notice, the use of the common name "black-tailed prairie dog" includes both varieties discussed above.

Biology

Prairie dogs are small, stout ground squirrels. The total length of an adult black-tailed prairie dog is approximately 14–17 inches. The weight of an individual ranges from 1 to 3 pounds. Individual appearances within the species vary in mixed colors of brown, black, gray, and white. The black-tipped tail is characteristic (Hoogland 1995). Black-tailed prairie dogs are diurnal, burrowing animals and spend most of the day above ground. They do not hibernate as do white-tailed, Gunnison's, and Utah prairie dogs (Hoogland 1995, Tileston and Lechleitner 1966). The species is very social, living in population aggregations called colonies, towns, or villages (King 1955). Groups of colonies comprise a complex. Historically, they generally occurred in large colonies that contained thousands of individuals, covered hundreds of thousands of acres, and extended for miles (Bailey 1905). This description is no longer accurate for existing black-tailed prairie dog populations; most colonies are now much smaller.

The colonial behavior of prairie dogs, especially the black-tailed prairie dog, is a significant characteristic of the species. Colonial behavior offers an effective defense mechanism by aiding in the detection of predators and deterring predators through mobbing behavior. It increases reproductive success through cooperative rearing of juveniles and aids parasite removal via shared grooming. However, it also has been noted that this behavior promotes the transmission of disease, which can significantly suppress populations (Olsen 1981, Hoogland 1995).

Several biological factors determine the reproductive potential of the black-tailed prairie dog. Females usually do not breed until their second year and live 3–4 years (Hoogland 1995, King 1955, Knowles and Knowles 1994). Females of the species produce a single litter, usually 4–5 pups, annually (Hoogland 1995, Knowles and Knowles 1994). Prairie dog dispersal is usually limited to approximately 3 miles (5 kilometers) or less, and individuals dispersing from home colonies generally move into an established colony rather than attempting to initiate a new colony (Garrett and Franklin 1988, Hoogland 1995). These limitations could restrict recruitment of animals into small and declining isolated populations and favor the reestablishment of individuals in nearby, recently abandoned colonies over the establishment of new, more distantly located colonies.

Ecology

The extent to which the black-tailed prairie dog is affected by other species, particularly ungulates, is largely unknown. The black-footed ferret (*Mustela nigripes*), swift fox (*Vulpes*

velox), mountain plover (*Charadrius montanus*), ferruginous hawk (*Buteo regalis*), burrowing owl (*Athene cunicularia*), and numerous other species are dependent upon prairie dogs to varying degrees. Although reports vary as to those species that require prairie dogs for their survival, at least 9 species depend directly on prairie dogs or their activities to some extent, and another 137 species are associated opportunistically (Kotliar *et al.* 1999). The most obligatory species of this group is the endangered black-footed ferret. Probably no other species has a more clearly documented dependence on another species than does the black-footed ferret on the prairie dog (Anderson *et al.* 1986, Biggins *et al.* 1986, Clark 1989, Forrest *et al.* 1988, Henderson *et al.* 1974, Hillman 1968, Miller *et al.* 1996).

Rangewide Distribution

The historic range of the black-tailed prairie dog included portions of 11 States, Canada, and Mexico. Today it occurs from extreme southern Canada to northeastern Mexico and from approximately the 100th meridian west to the Rocky Mountains. The species is currently present in 10 States including Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. It has been extirpated in Arizona since as early as 1932 (Alexander 1932). We believe that significant range contractions have occurred in the southwestern portion of the species' historic range in Arizona, western New Mexico and western Texas, and in the eastern portion of the species' historic range in Kansas, Nebraska, Oklahoma, South Dakota, and Texas. These range contractions represent approximately 20 percent of the species' original range. Only a few individuals or none remain in these areas. Approximately 37 percent of the species' potential habitat in the United States has been converted to cropland (Black-footed Ferret Recovery Foundation, *in litt.* 1999). This habitat loss is essentially permanent and not considered a range contraction in the usual sense occurring at the periphery of a species' range. Although the species will occupy abandoned tilled ground, these lands are generally unavailable for use by the species because the land is continuously disturbed and thus the habitat is lost permanently.

Rangewide Abundance

Historically, black-tailed prairie dogs were one of the most conspicuous and characteristic residents of the short-grass and mixed-grass prairies of the United States. Seton (1953) estimated that, in the late 1800s, 5 billion black-tailed prairie dogs existed over their entire range of 600,000 square miles (384 million ac or 155.5 million ha). Miller *et al.* (1996) and Mulhern and Knowles (1995) provided a range for historic occupied habitat by all species of prairie dogs of 99 million-247 million ac (40 million-100 million ha). Anderson *et al.* (1986) noted that, as a conservative estimate for the early 1900s, 104 million ac (42 million ha) of rangeland may have been occupied by all species of prairie dogs. Black-tailed prairie dogs had the most extensive range of all the species of prairie dogs and probably occupied more area than all other species combined (Hoogland 1995). Estimates of historic black-tailed prairie dog occupied habitat of approximately 79 million ac (32 million ha) in the United States by the Black-footed Ferret Recovery Foundation (*in litt.* 1999) and of approximately 111 million ac (45 million ha) by Knowles (1998) provide a reasonable historic range for black-tailed prairie dog occupied habitat. It is apparent that regardless of which estimate is considered, tens of millions of acres of occupied habitat once existed in the United States.

At present, the black-tailed prairie dog may be found scattered in remnant populations throughout much of the range that it once occupied. A significant portion of existing occupied habitat rangewide occurs in a few large complexes. Approximately 36 percent of the remaining occupied habitat for the species in North America occurs in seven complexes, each larger than 10,000 ac (4,000 ha). We believe that approximately 768,000 ac (311,000 ha) of occupied habitat currently exists rangewide. This estimate is based on the sum of Service estimates from various States, from Canada, and from Mexico, as discussed under the "Statewide Distribution, Trends, and Abundance" section of this document.

Rangewide Trends

Most estimates of prairie dog population trends are not based on numbers of individuals, but on the amount of occupied habitat for the species. The actual number of animals present depends upon the density of animals in that locality. Estimates of black-tailed prairie dog density across the species' range vary seasonally, but range from 2 to 18 individuals per ac (5 to 45 individuals per ha) (Fagerstone and Ramey 1996, Hoogland 1995, King 1955, Koford 1958, Miller 1996). Most prairie dog surveys do not estimate density because of the high effort and cost involved. We believe that a review of various estimates of occupied habitat area provides the best available and most reasonable means of determining population trends for the species.

The U.S. Geological Survey estimated that the black-tailed prairie dog may occupy less than 0.5 percent of its original range and has experienced an estimated 98 percent decline in population abundance throughout North America (Mac *et al.* 1998). It notes that the amount of occupied habitat has declined from approximately 100 million ac (40.5 million ha) in the late 1800s to less than 1 million ac (0.4 million ha) at present; a decline of over 99 percent. Barko (1997), Fagerstone and Ramey (1996), Knowles (1998), Mulhern and Knowles (1995), and Wuerthner (1997) concluded that a reduction of approximately 94–99 percent in the amount of occupied habitat within this range has occurred since about 1900. State wildlife agencies generally confirm this decline, but some point out that disproportionately more occupied habitat remains in some areas than in others.

Some increases in the amount of occupied habitat in some areas occurred subsequent to the Executive Order banning the use of compound 1080 (a toxicant) in 1972. These increases appear to have been limited in later years by the use of other toxicants such as zinc phosphide, the continuing spread of sylvatic plague, and other factors (Knowles 1998). Moreover, the majority of these increases (approximately 85 percent) occurred in areas (Montana, South Dakota, and Wyoming) where significant impacts due to disease had not yet occurred.

Survey efforts in some areas have noted significant declines in the amount of black-tailed prairie dog occupied habitat over the last few decades. For example, the U.S. Forest Service has mapped black-tailed prairie dog colonies within the Northern Great Plains National Grasslands in North Dakota, South Dakota, Wyoming, and Nebraska. These grasslands, covering approximately 3.7 million ac (1.5 million ha), included a maximum of 86,220 ac (34,890 ha) of black-tailed prairie dog occupied habitat in the 1970s to the 1990s. In 1997, the U.S. Forest Service mapped 39,420 ac (15,965 ha) of occupied habitat in the same areas, indicating a 54 percent decline (U.S. Forest Service 1998). Data provided by the U.S. Forest Service in 1999 confirmed losses in occupied habitat for the National Grasslands with a 58 percent decline from the 1970s to the present (Sidle, U.S. Forest Service, *in litt.* 1999).

Lockhart (U.S. Fish and Wildlife Service, *in litt.* 1998) reported that the recovery program for the black-footed ferret has identified large prairie dog complexes potentially useful for reintroduction of the ferret. Both black-tailed and other prairie dog species are considered. One necessary criteria for these sites is that they contain approximately 10,000 ac (4,000 ha) of occupied habitat. In the late 1980s, the Black-footed Ferret Interstate Coordinating Committee identified dozens of potential sites that may have qualified as suitable for ferret recovery. Black-tailed prairie dog populations at these sites appear to have been reduced by as much as 90 percent within the last 15 years. By 1994 only 16 sites were identified, and by 1998 this number was reduced to 10 sites (7 being black-tailed prairie dog sites). Although the overall trend is a large-scale reduction, population increases have been observed at some locales. These declines have occurred largely in the western portion of the species' range and are generally attributed to sylvatic plague. These declines may be representative of the overall population dynamics of the species in many areas. However, populations in some other areas in the eastern portion of the species' range where plague is mostly absent have increased marginally or remained generally constant during the same period.

Approximately 66 percent, or 300 million ac (122 million ha), of the black-tailed prairie dog range in the United States is affected by sylvatic plague (Black-footed Ferret Recovery Foundation, *in litt.* 1999). This area includes the western portions of the species' range. Another important factor that has affected the species is the conversion of rangeland to cropland, especially in the eastern portion of the species' range. Conversion of native prairie to cropland has largely progressed across the species' range from east to west with more cropland occurring in the eastern portion of the species' range. In the plague-free portion of the species' range, less than 33 percent of the species' historic range is available to the species (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Therefore, only approximately 10 percent of the black-tailed prairie dog historic range is both plague-free and available (not cropland) to the species. The majority of plague-free, suitable range occurs in South Dakota.

Statewide Distribution, Abundance, and Trends

In some parts of the species' range, statewide population increases were noted after 1972. However, in most western States, populations have declined since the 1980s, most likely due to sylvatic plague. In the eastern part of the range, where plague has not yet occurred, similar declines have not been observed. These trends are discussed below by State. We have evaluated all historic and current data and information available on the species' abundance and trends. Several estimates of black-tailed prairie dog occupied habitat were available for each State. The dates, methodologies, and ultimately the reliability of these estimates varied. Generally, our estimate of current occupied habitat for each State is the most recently reported estimate with the most reliable methodology (Arizona, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Canada, and Mexico). For States where a range (Wyoming) or two reliable estimates were available (Kansas), we used the midpoint. For States where no recent estimate with adequate methodology was available (Colorado, New Mexico, and Texas), we extrapolated from older estimates. We rounded all our estimates to the nearest 1,000 ac.

In Arizona, black-tailed prairie dogs existed in the southeastern portion of the State prior to eradication efforts (Hall and Kelson 1959). The species is extirpated at present in the State. Approximately 2 percent of occupied habitat in the United States may have existed in Arizona historically. We believe that intensive grazing at the turn of the last century may have caused occupied habitat to expand in Arizona and that control may have been the principal factor that subsequently suppressed populations. Shrub invasion also may have limited recovery. The species largely disappeared from the State prior to the documented occurrence of sylvatic plague in the State (Shroufe, Arizona Game and Fish Department, *in litt.* 1999). However, plague is an additional factor that could affect the future viability of the species in Arizona.

In Colorado, black-tailed prairie dogs historically occurred on suitable habitat east of the Rocky Mountain foothills (Hall and Kelson 1959, Torres 1973). Presently, the species appears to be scattered in remnant populations throughout the same area. Statewide estimates of occupied habitat noted for Colorado range from 7 million ac (2.8 million ha) historically to 44,000 ac (18,000 ha) in 1998 (Knowles 1998).

We believe that occupied habitat in Colorado has declined significantly from historic estimates. There is a large disparity in recent statewide estimates of remnant occupied habitat. However, we believe that trends at specific locations within the State (a 50 percent decline in Denver Metropolitan Area from 1994 to 1998 (Seery, U.S. Fish and Wildlife Service, pers. comm. 1998), a 70 percent decline at Rocky Mountain Arsenal National Wildlife Refuge from 1988–1999 (Seery and Matiatos, in press), and a 90 percent decline at Comanche National Grasslands from 1995 to 1998 (Cully 1998), indicate that there has likely been a statewide decline in recent years (despite periodic limited recovery) and that these declines may continue. These declines have largely been attributed to sylvatic plague. We estimate that 93,000 ac (43,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

In Kansas, black-tailed prairie dogs historically occurred on suitable habitat throughout the western two-thirds of the State (Hall and Kelson 1959, Smith 1958). Presently, the species appears to be scattered throughout generally the same area, except that the eastern limit of the range appears to have shifted westward approximately 30–50 miles (50–80 kilometers) (Vanderhoof and Robel 1992). Statewide estimates of occupied habitat for Kansas range from 2.5 million ac (1 million ha) historically to 36,000 ac (15,000 ha) in 1998 (Knowles 1998). We estimate that 42,000 ac (17,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in Kansas has declined significantly from historic estimates, but has likely been stable to slightly declining in recent years. The most recent statewide survey is from 1992 (Vanderhoof and Robel 1992). However, in 1996 sylvatic plague was documented in Kansas on the Cimarron National Grasslands (Cully, U.S. Geological Survey, Biological Resources Division, pers. comm. 1998). Therefore, occupied habitat may decline if sylvatic plague impacts continue and/or spread to other areas of the State.

In Montana, black-tailed prairie dogs historically occurred on suitable habitat in the eastern two-thirds of the State (Flath and Clark 1986), with the exception of the northeastern corner of the State (Hall and Kelson 1959). One of the seven large remaining black-tailed prairie dog complexes occurs in Montana. Statewide estimates of occupied habitat for Montana range from 6 million ac (2.4 million ha) historically (Knowles 1998) to 28,286 ac (11,456 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The Montana Department of Fish, Wildlife, and Parks believes that historic estimates are inaccurate (Graham,

Montana Department of Fish, Wildlife, and Parks, in litt. 1998). The most recent estimate of occupied habitat is 66,000 ac (26,000 ha) (Montana Department of Fish, Wildlife and Parks in prep.). We estimate that 65,000 ac (26,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in Montana has declined significantly from historic estimates. Following a major reduction in occupied habitat from approximately 1900 to 1961, black-tailed prairie dog populations in the State apparently expanded from 1961 to 1986 and then experienced significant declines due to sylvatic plague. The Montana Department of Fish, Wildlife, and Parks (1998) noted that occupied habitat declined by approximately 50 percent from the estimates of the late 1980s, largely due to sylvatic plague.

In Nebraska, black-tailed prairie dogs historically occurred on suitable habitat throughout most of the State west of the 97th meridian (Hall and Kelson 1959, Knowles 1995). Presently, the species appears to be scattered throughout the same area, but at much reduced numbers, especially east of the 99th meridian. Statewide estimates of occupied habitat noted for Nebraska range from 6 million ac (2.4 million ha) historically (Knowles 1998) to 30,000 ac (12,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The most recent estimate of occupied habitat is 60,000 ac (24,000 ha) (Knowles 1998). We estimate that 60,000 ac (24,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in Nebraska has declined significantly from historic estimates and has likely been stable to slightly declining in recent years (Amack, Nebraska Game and Parks Commission, *in litt.* 1999). This stability may be due to the fact that sylvatic plague does not appear to be widespread in the State, although it has been documented in the northwestern portion of the State where it has impacted some black-tailed prairie dog populations (Virchow *et al.* 1992).

In New Mexico, black-tailed prairie dogs historically occurred on suitable habitat throughout the southern and eastern two-thirds of the State (Bailey 1932, Hall and Kelson 1959). Presently, the species appears to exist in remnant populations in scattered locations, generally east of the Pecos River (Findley *et al.* 1975). Statewide estimates of occupied habitat noted for New Mexico range from over 6,640,000 ac (2,690,000 ha) historically (Bailey 1932) to 15,000 ac (6,000 ha) in 1998 (Knowles 1998). We estimate that 39,000 ac (16,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in New Mexico has declined significantly from historic estimates. Following the toxicant ban in 1972, increases in occupied habitat appear to have occurred. However, declines in occupied habitat have likely occurred in more recent years (Maracchini, New Mexico Department of Game and Fish, *in litt.* 1998).

In North Dakota, black-tailed prairie dogs historically occurred on suitable habitat in the southwestern third of the State, west of the Missouri River (Hall and Kelson 1959). Presently, the species appears to be scattered throughout the same area. Statewide estimates of occupied habitat for North Dakota range from 2 million ac (810,000 ha) historically (Knowles 1998) to approximately 7,000 ac (2,800 ha) as a conservative estimate in 1973 (Grondahl 1973). The most recent estimate of occupied habitat is a preliminary estimate of approximately 25,000 ac (10,000 ha), based on aerial surveys (Sidle, U.S. Forest Service, pers. comm. 1999). We estimate that 25,000 ac (10,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in North Dakota has declined significantly from historic estimates, but has likely been fairly stable to increasing (McKenna, North Dakota Game and Fish Department, *in litt.* 1999) in recent years. The amount of occupied habitat in North Dakota is relatively small compared to other States in the northern Great Plains.

In Oklahoma, black-tailed prairie dogs historically occurred on suitable habitat in the western two-thirds of the State (Hall and Kelson 1959). Presently, the species is largely limited to the panhandle (Shaw *et al.* 1993, Tyler 1968, Wuerthner 1997), although scattered remnant populations occur in the western half of the State outside of the panhandle (Shackford *et al.* 1990). Statewide estimates of occupied habitat noted for Oklahoma range from 950,000 ac (385,000 ha) historically (Knowles 1998) to less than 8,600 ac (3,500 ha) in 1998 (Lomolino, University of Oklahoma, *in litt.* 1999). We estimate that 9,000 ac (3,600 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

Populations in the panhandle have experienced significant declines in the past 10 years, although with limited recovery (Lomolino, University of Oklahoma, *in litt.* 1999). These declines were likely due to plague. The amount of occupied habitat in the remainder of the State has experienced a slow, steady decline (Shackford *et al.* 1990). Statewide, populations have been reduced by 50 percent in the last 10 years (Lomolino, *in litt.* 1999).

In South Dakota, black-tailed prairie dogs historically were found throughout all but the eastern one-fourth of the State (Hall and Kelson 1959, Linder *et al.* 1972). Presently the species appears to be scattered throughout the same area, with the majority of occupied habitat on Tribal or Federal lands west of the Missouri River and small scattered populations elsewhere. Four of the seven remaining large black-tailed prairie dog complexes occur in South Dakota. Statewide estimates of occupied habitat for South Dakota range from more than 1,757,000 ac (712,000 ha) historically, following the initiation of intensive control efforts in 1918 (Linder *et al.* 1972), to 33,000 ac (13,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The most recent estimate of occupied habitat in the State is a preliminary estimate of 147,000 ac (60,000 ha), based on aerial surveys (Sidle, U.S. Forest Service, pers. comm. 1999). We estimate that 147,000 ac (60,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in South Dakota has declined significantly from historic estimates, with notable recovery from 1961–1980 (Bureau of Sport Fisheries and Wildlife 1961, Tschetter 1988). Thereafter, extensive control efforts at Pine Ridge Reservation and elsewhere in the 1980s resulted in a significant decline in occupied habitat. Subsequently, occupied habitat has remained fairly stable. More unoccupied, but available, habitat appears to remain in South Dakota than in other States.

In Texas, black-tailed prairie dogs historically occurred on suitable habitat throughout the northwestern one-third of the State (Bailey 1905, Hall and Kelson 1959). Presently, the species occurs largely in the western portion of the panhandle. Some scattered remnant populations exist in the Trans-Pecos Region of western Texas. Statewide estimates of occupied habitat range from 58 million ac (23 million ha) historically to 23,000 ac (9,000 ha) in 1998 (Knowles 1998). We estimate that 71,000 ac (29,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in Texas has declined significantly from historic estimates. However, based upon the limited amount of information available, we believe that occupied habitat increased following the toxicant

ban in 1972 and that populations may have remained fairly stable since the late 1970s (Cheatheam 1977, Lair and Mecham 1991).

In Wyoming, black-tailed prairie dogs historically occurred on suitable habitat east of the Rocky Mountain foothills (Clark 1973, Hall and Kelson 1959) below approximately 5,500 feet (1,676 meters) elevation (Van Pelt in prep.). Presently, the species appears to be scattered throughout the same area. One of the seven remaining large black-tailed prairie dog complexes occurs in Wyoming. Statewide estimates of occupied habitat for Wyoming range from 16 million ac (6.5 million ha) historically (Knowles 1998) to 49,000 ac (20,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The most recent estimate is 70,000–180,000 ac (28,000–73,000 ha) in 1998 (Knowles 1998). We estimate that 125,000 ac (51,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in Wyoming has declined significantly from historic estimates. Increases in occupied habitat occurred following the toxicant ban in 1972. However, we believe that recent declines, largely due to impacts from sylvatic plague, are likely to continue.

Canada Distribution, Abundance, and Trends

Historically, black-tailed prairie dogs occurred on suitable habitat in southernmost Saskatchewan (Hall and Kelson 1959). Presently the species is found in a small area along the Frenchman River Valley. Many of these colonies are in Canada's Grasslands National Park (Laing 1986). Canada represents a very small percentage (approximately 0.3 percent) of the rangewide population. Estimates of occupied habitat in Canada range from 1,244 ac (503 ha) in 1970 (Millson 1976) to 2,318 ac (938 ha) in 1996 (Fargey, Grasslands National Park, pers. comm. 1998). We estimate that 2,000 ac (800 ha) of black-tailed prairie dog occupied habitat currently exists in Canada.

We believe that occupied habitat in Canada has remained at approximately 2,000 ac (800 ha) and, in the absence of sylvatic plague, will likely remain stable.

Mexico Distribution, Abundance, and Trends

Historically, black-tailed prairie dogs occurred on suitable habitat throughout the northern portion of the Mexican States of Chihuahua and Sonora (Hall and Kelson 1959). Presently, most individuals appear to be limited to a small region in northern Chihuahua. The largest remaining black-tailed prairie dog complex occurs in Mexico. Estimates of occupied habitat in Mexico range from 1,384,000 ac (560,000 ha) historically (Mearns 1907 as cited in Ceballos *et al.* 1993) to 90,000 ac (36,000 ha) in 1996 (List *et al.* 1997). We believe that the List *et al.* (1997) estimate of 90,000 ac (36,000 ha) of currently existing black-tailed prairie dog occupied habitat in Mexico is accurate.

We believe that occupied habitat in Mexico has declined significantly from historic estimates and that this decline continues. Decline appears to be due primarily to cropland conversion. From 1988 to 1996, the geographic range of the species in Mexico contracted 80 percent and the amount of occupied habitat decreased by 34 percent (List *et al.* 1997). Colony fragmentation has occurred in previously surveyed black-tailed prairie dog colonies, reducing the size of towns and increasing their isolation.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the black-tailed prairie dog are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

We believe that habitat loss due to cropland conversion, urbanization, habitat modification, and fragmentation is a factor adversely affecting black-tailed prairie dog populations rangewide.

In the United States, approximately 37 percent of the suitable habitat within the range of the black-tailed prairie dog has been converted to cropland (Black-footed Ferret Recovery Foundation, *in litt.* 1999). This land use change resulted in significant destruction of black-tailed prairie dog habitat, particularly in eastern portions of the species' range where adequate precipitation favors farming. Cropland conversion continues, but the amount of occupied habitat converted annually is unknown. In some areas cropland conversion occurs due to continuing improvements in intensive agricultural techniques, for example, dryland wheat farming in Montana (Knowles *et al.* 1996, Lessica 1995) and irrigated croplands in Mexico (List *et al.* 1997). List *et al.* (1997) reported that occupied habitat in Mexico declined by 34 percent between 1988 and 1996, in part due to conversion to cropland.

Habitat loss also has occurred due to urbanization. One example of the present and threatened destruction of black-tailed prairie dog occupied habitat due to urban development is apparent along the Front Range of Colorado near Denver. In 1994, 42,500 ac (17,200 ha) of occupied habitat were mapped in the Denver/Boulder/Fort Collins metropolitan area (Skiba, Colorado Division of Wildlife, pers. comm. 1999). Knowles (1998) estimated that occupied habitat has declined by approximately 8,000 ac (3,200 ha) since the initial mapping effort, due to urbanization. An evaluation of the specific impact of urbanization is difficult because sylvatic plague also has significantly affected populations in this area in recent years (Weber, Colorado Division of Wildlife, pers. comm. 1998).

Habitat modification and loss due to the absence of black-tailed prairie dogs can be anticipated in the prairie ecosystem where populations have been extirpated or significantly reduced in number. Weltzin *et al.* (1997) determined that black-tailed prairie dogs, and the herbivores and granivores associated with their colonies, probably maintained grassland and savanna historically by preventing woody species such as mesquite from establishing or attaining dominance. List *et al.* (1997) reported that control of black-tailed prairie dogs in Mexico resulted in the invasion of mesquite shrubs that rendered the landscape unsuitable for reoccupation by the species. Davis (1974) also noted that the removal of the species from some sites in Texas resulted in the invasion of brush. The fragmented nature of remaining prairie dog colonies, barriers to immigration and emigration, and the lack of fire and native ungulate herds that historically denuded the landscape and provided opportunities for prairie dog colonies to expand (Miller *et al.* 1994) accentuate habitat loss due to vegetative succession. The degree to which this type of grassland change and other landscape alterations affect black-tailed prairie dog populations across their range is unknown. Nevertheless, these subtle habitat changes may be a major factor in precluding the utilization of habitat or recolonization of former habitat by the species.

North American grasslands have suffered among the most extensive fragmentation and transformation of any

biome on the continent (Groombridge 1992). More fragmented, more isolated, and less connected populations usually have higher extinction rates (Clark 1989, Gilpin and Soule 1986, MacArthur and Wilson 1967, Shaffer 1981, Wilcove *et al.* 1986, Wilcox and Murphy 1985). List *et al.* (1997) suggested that fragmented black-tailed prairie dog colonies in Mexico were prone to extirpation. Miller *et al.* (1996) described existing prairie dog populations as small, disjunct, and geographically isolated. Dispersal has been limited by barriers created by human development that preclude immigration or emigration. Fragmentation and extirpation of small, isolated colonies will result in the loss of additional genotypes, as occurred with the complete extirpation of the species in portions of the eastern and southwestern areas of its historic range. Lost genetic diversity will inherently be detrimental to the long-term survival of the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We believe that overutilization of the black-tailed prairie dog via the pet trade is not a significant factor affecting black-tailed prairie dog populations rangewide. Herron (Texas Parks and Wildlife Department, pers. comm. 1999) and others have reported that black-tailed prairie dogs are removed from the wild for sale as pets. Herron was aware of 3 commercial operators who collectively removed approximately 5,000 individuals from the Texas panhandle and other States annually in recent years. Miscellaneous reports indicate that this practice occurs elsewhere in the species' range, but the extent of removal of individuals from the wild for use as pets is unknown.

Recreational (sport or varmint) shooting is impacting black-tailed prairie dog populations in some local areas. At present, we do not believe that this factor is responsible for significant rangewide declines in the species' population; however, it may be important locally. The popularity of shooting has increased appreciably in recent years. Many States do not require hunting licenses and have no bag limits or seasonal restrictions for taking prairie dogs. Some areas administered by the Bureau of Land Management and the U. S. Forest Service have been closed to recreational shooting over the past two years, but recreational shooting is still allowed on other areas administered by these agencies. Recreational shooting is not allowed on on lands administered by the National Park Service or the Fish and Wildlife Service. Knowles (1988) reported that shooting on two black-tailed prairie dog colonies removed 69 percent of the adults. He thought that the reduction of prairie dog populations below a certain threshold number might have a further negative consequence because fewer prairie dogs were available to watch for predators and keep the vegetation clipped around burrows to improve detection of predators. Vosburgh (1996) reported that intensive shooting can have a statistically significant impact on the density of local black-tailed prairie dog colonies. He observed that during the summer, species density declined 33 percent on colonies with shooting and 15 percent on colonies without shooting. Prairie dogs also spent more time in alert postures and less time foraging on colonies where shooting occurred.

Large, healthy populations appear to be able to withstand considerable removal by shooting and remain viable (Bourland and Dupris, Cheyenne River Sioux Tribe, *in litt.* 1998; Finnegan *et al.*, Rosebud Sioux Tribe, *in litt.* 1998). Accordingly, the shooting of hundreds of thousands of individuals across the extensive range of the black-tailed prairie dog where millions of individuals occur will not likely adversely impact the overall population of a species where each female can produce an average of four young annually. Conversely, small local populations already depressed by disease and other adverse influences may suffer additive losses from shooting impacts. Shooting impacts also may contribute to population fragmentation and preclude or delay recovery of colonies reduced by other factors, such as sylvatic plague.

C. Disease or Predation

We believe that sylvatic plague is likely the most important factor in recent reductions of many black-tailed prairie dog populations throughout a significant portion of the range of the species. Approximately 66 percent of the species' range has been affected by plague (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Plague is an exotic disease foreign to the evolutionary history of North American species (Gage, Center for Disease Control, pers. comm. 1999). Plague was first observed in wild rodents in North America near San Francisco, California, in 1908 (Eskey and Haas 1940). It spread eastward across the continent in subsequent years and still appears to be expanding its range, although not as rapidly as in its early years. The first reported incidences of plague in black-tailed prairie dogs occurred in the 1940s (Gage, Center for Disease Control, pers. comm. 1999, Miles *et al.* 1952). Black-tailed prairie dogs show neither effective antibodies nor immunity to the disease. This disease is caused by the bacterium *Yersinia pestis*, which fleas acquire from biting infected rodents and other species and then transmit via a bite. Plague also can be transmitted directly between animals. Cully (1989) summarized plague reports in 76 species of 5 mammalian orders in the United States, although plague is primarily a rodent disease. It can seriously affect humans, although it responds well to modern treatment (Center for Disease Control 1997). Rodent species vary in their susceptibility to plague, with some species acting as hosts or carriers of the disease or infected fleas and showing little or no symptoms. Black-tailed and Gunnison's prairie dog populations demonstrate nearly 100 percent mortality when exposed to plague (Barnes 1993, Cully 1993) and cannot be considered carriers.

Plague, once established in an area, becomes persistent and periodically erupts, with the potential to extirpate local black-tailed prairie dog populations. After several epizootics (an eruption of the disease that attacks a large number of animals at the same time), black-tailed prairie dogs at the Rocky Mountain Arsenal National Wildlife Refuge have neared extirpation (Seery, U.S. Fish and Wildlife Service, pers. comm. 1998). This phenomenon may be occurring at other formerly large black-tailed prairie dog complexes across much of the western portion of the species' range. At Northern Cheyenne Reservation in southeastern Montana, a plague epizootic started in 1991 and continued through 1996 (Young 1997), removing 97 percent of the black-tailed prairie dog population (Fourstar, Bureau of Indian Affairs, pers. comm. 1998). The population has begun to recover and has increased from a low of 378 ac (153 ha) of occupied habitat to 963 ac (390 ha). However, Young (University of Arizona, pers. comm. 1998) does not believe that this complex will recover to its former status. The effects of plague on prairie dogs may be exacerbated in smaller, isolated colonies where populations are not buffered by large numbers (where some individuals may escape infection by chance) and where recovery may be hampered by limited immigration from other colonies.

We believe that predation is not likely a major factor affecting overall black-tailed prairie dog populations, but it may be important locally or contribute to the effects of other factors. Little

information is available to quantify the impact of predators on prairie dog populations.

D. The Inadequacy of Existing Regulatory Mechanisms

We believe that inadequate regulatory mechanisms are a contributing factor affecting overall black-tailed prairie dog populations. Many States, Tribes, and Federal agencies recognize the historic decline and ecological significance of the black-tailed prairie dog, but few use available regulatory mechanisms to conserve the species. At least one government entity in most States promotes their reduction. However, some limited regulatory mechanisms exist for conservation of the species.

States

In Arizona, the Game and Fish Department classifies all prairie dogs native to the State as nongame mammals. Although the species has been extirpated in Arizona, a hunting season was open until 1999, when it was closed (Shroufe, Arizona Game and Fish Department, *in litt.* 1999). Arizona does not require the eradication of prairie dogs for agricultural purposes or promote recreational shooting of prairie dogs (Shroufe, Arizona Game and Fish Department, *in litt.* 1998). The black-tailed prairie dog is listed as endangered on the Arizona Game and Fish Department "Threatened Native Wildlife" list (Arizona Game and Fish Department 1988).

In Colorado, the Division of Wildlife requires a resident or nonresident hunting license for prairie dog shooting unless the animals are on land owned by the shooter. The season is year-round, with no bag or possession limit. However, for hunt contests, no participant may take more than five prairie dogs during the contest. In 1999, the Colorado State Legislature passed a bill prohibiting the translocation of prairie dogs and other species into a county without the consent of the county's commissioners (Van Pelt in prep.).

The State of Kansas considers black-tailed prairie dogs as agricultural pests and mandates control if an adjoining landowner files a complaint (Knowles 1995). In recent years, some counties have invoked "Home Rule" to take over authority for prairie dog control from the townships and impose mandatory control requirements on landowners. The landowner is given the opportunity to control prairie dogs on his land and if he fails to do so it is done by the county at the landowner's expense (Van Pelt in prep.). Shooting of prairie dogs in Kansas is somewhat restricted since a resident or nonresident hunting license is required and established methods of take are listed (Williams, Kansas Department of Wildlife and Parks, *in litt.* 1998).

In Montana, the Department of Fish, Wildlife, and Parks requires no license to shoot prairie dogs, and no limits on take or season exist. Prairie dogs are protected on two State parks as important features of those parks (Graham, Montana Department of Fish, Wildlife and Parks, *in litt.* 1998). The Department of Fish, Wildlife, and Parks identifies the black-tailed prairie dog as a State "species of special concern" (Flath 1998). The Department of Fish, Wildlife, and Parks is developing a species conservation plan for black- and white-tailed prairie dogs in Montana (Montana Department of Fish, Wildlife and Parks in prep.). However, the Montana Department of Agriculture classifies prairie dogs as "rodents" and "vertebrate pests." The Montana Department of Agriculture assists landowners in control of prairie dogs if requested, but such assistance is not mandated (Sullins, Montana Department of Agriculture, pers. comm. 1999).

In Nebraska, the Game and Parks Commission currently considers the black-tailed prairie dog an unprotected nongame species that can be taken in any manner, without restrictions on shooting or control activities. Permits are not required for residents; nonresidents must have a small-game hunting permit. The Game and Parks Commission recognizes prairie dog shooting as an acceptable recreational activity, but suggests that shooting be avoided when prairie dogs have dependent young and that shooters take responsible measures to avoid disturbance of other wildlife species that use prairie dog colonies (Amack, Nebraska Game and Parks Commission, *in litt.* 1998).

In New Mexico, the Department of Game and Fish requires a license to shoot prairie dogs, but there are no bag limits or restrictions (Knowles 1998). The Petitioner reports that New Mexico considers the prairie dog as a "rodent pest" and mandates that landowners destroy prairie dogs on notice (National Wildlife Federation 1998).

In North Dakota, the Game and Fish Department classifies the black-tailed prairie dog as a nongame wildlife species. A resident is not required to purchase a hunting license to shoot prairie dogs; however, nonresidents are required to purchase one. The State sets no bag limits or seasons for prairie dogs. The North Dakota Game and Fish Department has published a guidebook to aid prairie dog shooters in finding colonies (North Dakota Game and Fish Department undated). The State of North Dakota considers the black-tailed prairie dog a pest, although the Game and Fish Department considers it a nongame species. The North Dakota Department of Agriculture and the county weed boards have regulatory authority over control efforts (Van Pelt in prep.).

In Oklahoma, the Department of Wildlife Conservation classifies the black-tailed prairie dog as a Category II Mammal Species of Special Concern. Prairie dog eradication is no longer mandatory in Oklahoma but is assisted by some State agencies and local governments. Control and recreational shooting of the species can occur on private land, but the Department of Wildlife Conservation does not promote either activity (Duffy, Oklahoma Department of Wildlife Conservation, *in litt.* 1998). A license for recreational shooting is required by residents and nonresidents. The Department of Wildlife Conservation requires that a permit be obtained prior to any control. Prairie dogs cannot be reduced in any county to fewer than 1,000 individuals, and control is not permitted on public lands (Van Pelt in prep.).

In South Dakota, the Department of Game, Fish, and Parks classifies the black-tailed prairie dog as a predator/varmint and requires that a resident or nonresident acquire a license to shoot prairie dogs. No seasons or bag limits have been established. The South Dakota Weed and Pest Control Statute designates the species as a statewide declared pest. Therefore, the existence of prairie dogs constitutes an infestation, giving the State authority to enter private land and exterminate the animals. If a county declares an infestation, landowners are responsible for the costs to control prairie dogs on their land whether they want control or not (Van Pelt in prep.).

In Texas, the Parks and Wildlife Department designates black-tailed prairie dogs as a nongame species and is prohibited by State statute from listing them as a State endangered species. A license is required to hunt prairie dogs, but no season or bag limits have been established. In 1999, the State established a regulation that requires a nongame collection or dealer's permit to possess more than 10 live prairie dogs or to sell prairie dogs (Van Pelt in prep.). This law does not regulate the killing of prairie dogs for recreational, agricultural, or nuisance purposes (Sansom, Texas Parks and Wildlife Department, *in litt.* 1998). The Texas Health and Safety Code authorizes

counties to control prairie dogs and gives the Texas Department of Agriculture responsibility for providing information regarding control to requesting counties (Van Pelt in prep.).

The Wyoming Game and Fish Department regards the black-tailed prairie dog as a nongame wildlife species and has listed it as a Species of Special Concern. No license is required to hunt prairie dogs, and no seasons, bag limits, or restrictions on method of take have been established (Van Pelt in prep.). The Game and Fish Department supports development of seasons and bag limits for the black-tailed prairie dog (Wichers, Wyoming Game and Fish Department, *in litt.* 1998). The Wyoming Department of Agriculture lists the species as a pest. The Wyoming Weed and Pest Control Act of 1973 authorizes counties to enter private property to control prairie dogs if damage has been documented to neighboring landowners (Knowles 1995).

Tribal

Mulhern and Knowles (1995) estimated that 30 percent of black-tailed prairie dog colonies occur on Tribal lands. Four of the seven remaining large complexes (those with 10,000 acres or more) (Cheyenne River, Fort Belknap, Pine Ridge, and Rosebud) occur on Tribal lands. Two Tribes (Cheyenne River Sioux Tribe in South Dakota and Fort Belknap in Montana) have prairie dog management plans in place (Knowles 1995). No extensive control of prairie dogs has occurred on Cheyenne River Sioux Tribe, Fort Belknap, or Rosebud Sioux Tribe (in South Dakota) in recent years due to concerns related to the conservation of black-footed ferrets. However, active recreational shooting programs on these and other Tribal lands exist. The Cheyenne River Sioux Tribe does not classify the prairie dog as a pest and does not require or encourage their eradication; however, shooting of black-tailed prairie dogs occurs year-round and without limits (Bourland and Dupris, Cheyenne River Sioux Tribe, *in litt.* 1998). Recreational shooting is also allowed on the Crow Creek Sioux Tribe in South Dakota, but chemical control is not allowed. The Tribe states that shooting appears to have no effect on black-tailed prairie dog numbers, and they report the species as abundant (Miller, Crow Creek Sioux Tribe, *in litt.* 1998). In 1998, the Rosebud Sioux Tribe Department of Natural Resources implemented a new licensing system for black-tailed prairie dogs in an attempt to reduce the number of shooters. License sales were reduced by approximately 50 percent from approximately 4,000 licenses in 1997 to 2,000 licenses in 1998 (Finnegan, Rosebud Sioux Tribe, pers. comm. 1999).

Federal Agencies

The BIA has a trust responsibility to oversee management of Tribal lands. The BIA's involvement in prairie dog control efforts has been principally through management of funding for prairie dog control programs on Tribal lands. In the northern Great Plains, from 1978–1992, BIA funding was responsible for the control of more prairie dog habitat than any other Federal agency in the country (Roemer and Forrest 1996).

The Bureau of Land Management (BLM) manages prairie dogs to meet multiple-use resource objectives including production of livestock forage and preventing prairie dog movement to adjacent State or private lands. Although BLM no longer actively conducts control, it still allows control to occur by other agencies on its lands and it still allows significant levels of unregulated sport shooting (Knowles 1995). In a memorandum dated June 23, 1999, and expiring September 30, 2000, the BLM instructed all of its State Directors within the range of the black-tailed prairie dog to "ensure that all actions authorized, funded or carried out by their respective field offices do not contribute to the need to list this species" (Colby, Bureau of Land Management, *in litt.* 1999). The BLM also anticipates implementing a mandatory restriction on prairie dog hunting in portions of south Phillips County, Montana, due to the lack of success of current voluntary closures in the area (October 18, 1999; 64 FR 56213).

We manage over 500 National Wildlife Refuges and their satellites, but only about 15 refuges, satellites, or Waterfowl Production Areas have black-tailed prairie dogs. Only two refuges have any significant amount of occupied habitat. On the Charles M. Russell and UL Bend National Wildlife Refuges in Montana, we manage 5,150 ac (2,090 ha) of black-tailed prairie dog occupied habitat. We have treated burrows with insecticide in an attempt to reduce fleas and disease transmission, and we have moved prairie dogs to recolonize vacant or low-density towns (Matchett 1997). The Rocky Mountain Arsenal National Wildlife Refuge in Colorado is attempting to recover its populations subsequent to repeated plague epizootics (U.S. Fish and Wildlife Service 1998). Shooting of prairie dogs is currently prohibited on all National Wildlife Refuges and satellites. Limited control has occurred on a few wildlife refuges, primarily as a measure to prevent the spread of prairie dogs onto adjacent private lands. At this time, all control efforts regarding the species have been suspended on Service lands (Clark, U.S. Fish and Wildlife Service, *in litt.* 1999).

The U.S. Forest Service manages approximately 3.7 million ac (1.5 million ha) of National Grasslands, which support approximately 42,460 ac (17,200 ha) of black-tailed prairie dog occupied habitat, approximately 1.1 percent of the National Grasslands (Sidle, U.S. Forest Service, *in litt.* 1999). In response to a request from the National Wildlife Federation and the positive 90-day finding, the U.S. Forest Service issued a moratorium on control of black-tailed prairie dogs during the current status review period on all lands administered by the U.S. Forest Service. The U.S. Forest Service also noted their intention to manage for larger prairie dog populations via new planning efforts subject to completion and approval (Manning, U.S. Forest Service, *in litt.* 1999).

The National Park Service is involved with prairie dog control programs through integrated pest management guidelines. During 1982–1992, four National Parks in the northern Great Plains were involved in prairie dog control—Badlands National Park, South Dakota; Wind Cave National Park, South Dakota; Theodore Roosevelt National Park, North Dakota; and Devils Tower National Monument, Wyoming (Roemer and Forrest 1996). In a memorandum dated January 14, 1999, the National Park Service instructed Superintendents of National Parks within the Midwest Region where prairie dogs occur (Badlands, Fort Larned, Scotts Bluff, Theodore Roosevelt, and Wind Cave units) to suspend further treatment of prairie dog colonies (with few exceptions) until a final determination is made on their status (Schenk, National Park Service, *in litt.* 1999).

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service-Wildlife Services influences prairie dog control programs through its grant-in-aid program to States, which provides technical assistance to other State, Tribal, and Federal agencies, and private landowners, and its distribution of prairie dog toxicants. Roemer (1997) reported that during 1990–1994, the Animal and Plant Health Inspection Service-Wildlife Services was involved in control of prairie dogs over 101,660 ac (41,140 ha). Additionally, they were involved in control programs in the early 1980s at the Pine Ridge Indian Reservation (Oglala Sioux Tribe), South

Dakota. The Animal and Plant Health Inspection Service-Wildlife Services has directed and conducted research related to the efficiency of prairie dog and other rodent control.

The Environmental Protection Agency deals indirectly with prairie dog control through pesticide labeling programs including restrictions to protect wildlife. Presently, labeling does not restrict prairie dog control, but does address concerns for the endangered black-footed ferret.

In Canada, the black-tailed prairie dog is designated as vulnerable by the Committee on the Status of Endangered Wildlife in Canada. Control is prohibited, and only private landowners are permitted to shoot prairie dogs (Fargey, Grasslands National Park, pers. comm. 1998).

In Mexico, the black-tailed prairie dog is listed as threatened by the Lista de las Especies Amerzadas, the official threatened and endangered species list of the Mexican Government (SEMARNAP 1994). List *et al.* (1997) reported that in Mexico, laws exist to stop control, but are often not enforced, and extensive control occurs. There are no protected areas for the black-tailed prairie dog in Mexico (Ceballos *et al. 1993).*

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Control Effort

We believe that control efforts have limited black-tailed prairie dog populations, especially large-scale, well-organized efforts conducted early in the century. These control programs were conducted in response to concerns regarding potential forage competition with domestic livestock. Current control efforts are limited compared to historic efforts, but still impact a significant portion of occupied habitat annually. A well-documented control effort has occurred over most of the range of the black-tailed prairie dog (Anderson *et al.* 1986, Bell 1921, Cain *et al.* 1972, Forrest and Proctor in prep., Hanson 1993, Hubbard and Schmitt 1983, Lantz 1903, Lewis and Hassien 1973, Linder *et al.* 1972, Merriam 1902, Roemer and Forrest 1996, Shriver 1965). Control efforts resulted in extirpation of the black-tailed prairie dog in Arizona (Alexander 1932). Similar control efforts in Texas resulted in the persistence of only remnant populations in areas where, historically, the largest known populations of the species occurred (Bureau of Sport Fisheries and Wildlife 1961, Cheatheam 1977, Cottam and Caroline 1965).

Prairie dog control occurred repeatedly in most areas, and figures cited for acreage controlled may include retreatment of the same areas in subsequent years. Therefore, annual estimates of lands treated do not always equate to total loss of habitat. However, control (usually in conjunction with other factors) has led to the complete loss of occupied habitat in many areas. Organized prairie dog control gained momentum from 1916 to 1920 when prairie dogs were controlled on tens of millions of acres of western rangeland (Bell 1921). Federal programs were responsible for much of this effort (Cain *et al.* 1972). From 1937 to 1968, 30,447,355 ac (12,331,178 ha) of prairie dog occupied habitat were controlled (Cain *et al.* 1972). In the 1960s, several States reached their lowest estimates of occupied habitat (Bureau of Sport Fisheries and Wildlife 1961). In 1972, Compound 1080, which was used extensively in prairie dog control efforts, was banned by Presidential Executive Order II 11643. Although prairie dog control continued via other toxicants, it was at a reduced rate.

The most extensive control efforts in recent years have been conducted in the Northern Great Plains (U.S. Forest Service 1998). Roemer and Forrest (1996) summarized recent Federal and State control efforts on approximately 1,045,524 ac (423,437 ha) in South Dakota, Montana, and Wyoming. From 1978 to 1992, an average of 69,701 ac (28,229 ha) were treated annually in these three States. These estimates did not include estimates for private control or control involving indirect State or Federal assistance. Forrest and Proctor (in prep.) estimated that in recent years control conducted at the local level probably affected "tens of thousands" of black-tailed prairie dog occupied habitat on an annual basis. The BIA administered the last large-scale control effort for black-tailed prairie dogs on the Pine Ridge Reservation in South Dakota in the early 1980s. This effort resulted in the eradication of most prairie dogs on approximately 458,618 ac (185,740 ha) from 1980 to 1984. From 1985 to 1986, 240,000 ac (97,000 ha) were retreated (Roemer and Forrest 1996). In 1987, after these efforts, 57,281 ac (23,199 ha) of occupied habitat remained (Tschetter 1988). Current estimates of occupied habitat range from 20,000 to 30,000 ac (8,000 to 12,000 ha) (Yellowhair, Pine Ridge Sioux Tribe, pers. comm. 1999). Following control efforts on Pine Ridge, three additional extensive control efforts targeted for the Cheyenne River and Rosebud Reservations in South Dakota and Fort Belknap Reservation in Montana were halted due to concerns regarding the lack of available black-footed ferret reintroduction sites.

Vulnerability of the Species in Perspective

Three major impacts have had a substantial influence on black-tailed prairie dog populations. The first major impact on the species was the initial conversion of prairie grasslands to cropland in the eastern portion of its range from approximately the 1880s–1920s. The conversion of native prairie to cropland likely reduced black-tailed prairie dog occupied habitat in the United States from about 80 million ac (32 million ha) to about 50 million ac (20 million ha) or less. The second major impact on the species was large-scale control efforts conducted from approximately 1918–1972 in efforts to reduce competition between prairie dogs and domestic livestock. Repeated control efforts likely reduced black-tailed prairie dog occupied habitat in the United States from about 50 million ac (20 million ha) to approximately 364,000 ac (147,000 ha) by 1961 (Bureau of Sport Fisheries and Wildlife 1961). Some limited recovery and subsequent declines have since occurred in these remnant populations. The third major impact on the species was the inadvertent introduction of an exotic disease from the Old World, sylvatic plague, into North American ecosystems in 1908, with the first recorded impacts on the black-tailed prairie dog in the 1940s. These three factors, as well as other additional factors impacting the species, are discussed below.

We believe that many factors, alone, in combination with each other, and synergistically, have influenced and continue to influence black-tailed prairie dog populations. Historically, large black-tailed prairie dog populations successfully coped with various depressant factors, except plague, on a different scale; populations were large and robust, while threats were few with only short-term effects. Presently, most populations are significantly reduced and must cope with many persistent influences that depress populations, both temporally and permanently. Based upon our review of the available information, we conclude that a general long-term, rangewide decline has occurred, in addition to more recent population declines in some areas.

The persistence of the black-tailed prairie dog as a species may appear secure to some observers because it is relatively abundant in absolute numbers when compared with many other

species with smaller populations that are not thought to be vulnerable. Many wildlife species in North America that have experienced significant population declines remain viable (e.g., various game species such as the pronghorn (*Antilocapra americana*)). However, the black-tailed prairie dog is a highly social species that, for the most part, responds to major factors causing population reductions (e.g., plague and control) on the basis of entire colonies rather than on an individual basis. Additionally, adequate regulatory mechanisms are not in place to protect or manage populations of the black-tailed prairie dog, as they are with most game species. Therefore, populations are likely not as viable as their absolute numbers might suggest.

A significant portion of existing black-tailed prairie dog occupied habitat rangewide occurs in a few large complexes. Approximately 36 percent of the remaining occupied habitat for the species in North America occurs in seven complexes, each larger than 10,000 ac (4,000 ha). These complexes include—Buffalo Gap National Grassland/Conata Basin, South Dakota; Cheyenne River Reservation, South Dakota; Fort Belknap Reservation, Montana; Janos Nuevo Casas Grandes, Mexico; Pine Ridge Reservation, South Dakota; Rosebud Reservation, South Dakota; and Thunder Basin National Grassland, Wyoming. These complexes are potentially vulnerable to control efforts or plague.

Extant populations of black-tailed prairie dogs may or may not be large enough to be resilient to ongoing or future environmental challenges and related potential declines. Quammen (1996) provided examples of species that were abundant, but suddenly became very rare. For example, he reported that the passenger pigeon (*Ectopistes migratorius*) numbered in the billions around 1810 and in the low millions by the 1880s, yet was extinct in the wild by 1900. Habitat destruction and over-harvesting depressed passenger pigeon numbers to a few million, a level too low for a highly social and colonial species to function (Halliday 1980). The black-tailed prairie dog numbered in the billions around 1900, exists as a few million at present, and appears to be declining in a significant portion of its range. The advantages of sociality (e.g., breeding, feeding, predator defense) may no longer offset its modern disadvantages (e.g., vulnerability to an exotic disease and control efforts). Accordingly, the vulnerability of the black-tailed prairie dog to population reductions is likely related less to its absolute numbers than to the number of colonies in which it exists, their size, their geospatial relationship, existing barriers to immigration and emigration, and ultimately the number and nature of the remaining direct threats to the species.

Finding

After a thorough review of the best available scientific and commercial information, we find that sufficient information is currently available to support a determination that listing the black-tailed prairie dog as threatened is warranted. This action is appropriate because of the number and variety of threats that act in concert to adversely affect the species. A significant recent decline in occupied habitat has occurred due to several factors, the most influential of which is the widespread occurrence of plague, an exotic and lethal disease to the species. In concert with plague, the loss of suitable habitat and inadequate regulatory mechanisms have adversely affected remnant fragmented populations. The available information indicates that the species is likely to become endangered throughout all or a significant portion of its range in the foreseeable future.

A major decline in historic black-tailed prairie dog occupied habitat has occurred (perhaps as much as 99 percent). Sixty percent of the species' remnant occupied habitat is vulnerable or very vulnerable to the effects of habitat loss or modification, disease, inadequate regulatory mechanisms, and other factors (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Based on our review of the available distribution data, we estimate that approximately 30 percent of the historic range no longer supports any appreciable number of black-tailed prairie dogs, and that these reductions occurred at the periphery of the historic range. However, reductions in occupied habitat have also occurred throughout the historic range; approximately 37 percent of the suitable habitat within the historic range in the United States has been fundamentally modified via conversion to cropland and is not available for use by the species (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Additionally, habitat in approximately 66 percent of the historic range of the species has been degraded by the occurrence of plague (Black-footed Ferret Recovery Foundation, *in litt.* 1999). These estimates are not additive inasmuch as several factors can affect any given portion of the range.

Recent, widely separated, site-specific declines across the area where 60 percent of the current occupied black-tailed prairie dog habitat now exists appear to be indicative of a general population decline. The overall decline may be similar to the specific decline observed across the State of Montana from 1986 to 1998 when approximately 50 percent of all occupied habitat was lost, largely due to plague (Montana Department of Fish, Wildlife, and Parks 1998). Plague has incrementally extended its range and impacts on black-tailed prairie dogs since it was first documented in the species. It may likely continue to expand into the eastern portions of the species' range in the immediate future, as evidenced by recent reports of predator species' exposure to plague in previously unaffected portions of the black-tailed prairie dog range. A decline of similar magnitude has occurred with populations in Mexico (12 percent of current occupied habitat); however, the decline in Mexico is due to cropland conversion, not plague.

At present, occupied habitat has decreased over the past century by two orders of magnitude (or 99 percent, from approximately 100 million ac to less than 1 million ac). If the magnitude of decline that we have observed due to plague or cropland conversion persists in western portions of the species' range, and manifests itself in eastern portions of the species' range, over the next 30 years existing occupied habitat could decline another order of magnitude to as low as approximately 10 percent of current estimates, or approximately 0.1 percent of historic estimates.

We have evaluated the magnitude and immediacy of threats to the black-tailed prairie dog. The following provides a summary of these evaluations.

Habitat loss and fragmentation are considered a threat of moderate magnitude. The species has lost an estimated 99 percent of its historic occupied habitat, much of it through cropland conversion, largely in the eastern portion of the species' range. However, a considerable amount of potential unoccupied habitat remains, especially in the western portion of the species' range. This unoccupied habitat could be utilized if other factors such as disease and control efforts were not present or were carefully managed via adequate regulatory mechanisms. This threat is considered imminent because habitat loss continues at present in various parts of the species' range from a variety of activities, including cropland conversion, urbanization, change in vegetative communities, and fragmentation.

Overutilization via commercial use of the species as a pet is not considered a threat because of the apparent low

number of individuals utilized. Overutilization via recreational shooting is considered a threat of low magnitude. Local populations may be impacted by shooting; however, significant rangewide population declines due to this factor are not likely. This threat is considered imminent because it is ongoing.

Disease is considered a threat of moderate magnitude. Plague has markedly reduced some populations, but has not affected all populations at once. Some population recovery may occur, largely via unaffected adjacent populations, before plague reoccurrence. Plague has impacted the species and its conspecifics throughout a significant portion of their ranges. Black-tailed prairie dog populations demonstrate nearly 100 percent mortality when exposed to plague. An epizootic may affect an entire complex similar to a pathogen affecting an individual animal. The spread of plague in black-tailed prairie dog populations underscores the likelihood that areas as yet unaffected may experience outbreaks in the future. This threat is considered imminent because it is ongoing. Predation is not considered a threat.

Existing regulatory mechanisms are inadequate and considered a threat of moderate magnitude. All States within the current range of the black-tailed prairie dog classify the species as a pest for agricultural purposes and either allow or require its eradication (Mulhern and Knowles 1995). Few regulatory mechanisms exist to aid in conserving the species. This threat is considered imminent because it is ongoing. State wildlife agencies and other interested parties are developing a conservation plan for the species. While we support the States' efforts and will cooperate in conservation actions for the black-tailed prairie dog, at this early stage of development, the conservation assessment and strategy document lacks commitments to specific immediate actions that would affect the status of the species.

Control programs conducted largely in response to concerns related to potential forage competition with domestic livestock are considered a threat of moderate magnitude. Control programs have had significant impacts on population levels in the past. Control efforts resulted in extirpation of the black-tailed prairie dog from Arizona and significant reductions in other States. Current control efforts may impact 10–20 percent of the species' overall population annually (Forrest and Proctor, in prep.). This threat is considered imminent because it is ongoing. Control efforts in some areas could likely be accommodated if adequate regulatory mechanisms were in place that balanced agricultural and wildlife conservation interests.

We conclude that the overall magnitude of threats to the black-tailed prairie dog throughout its range is moderate and the overall immediacy of these threats is imminent. The black-tailed prairie dog is considered a species without subspecies classification. Pursuant to the Service's Listing Priority Guidance (48 FR 43098), a species for which threats are moderate and imminent is assigned a Listing Priority Number of 8. Region 6 currently has nine Candidate species or subspecies that have lower Listing Priority Numbers and, therefore, are in more immediate need of protection. Region 6 also has four species proposed as endangered or threatened, and two species for which proposed rules are under review. Therefore, while we have concluded that the listing of the black-tailed prairie dog as threatened is warranted, an immediate proposal to list is precluded by other, higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants.

References Cited

A complete list of references cited in this notice is available upon request from the South Dakota Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Pete Gober (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1532 *et seq.*).

Dated: February 1, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–2593 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 012400B]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) to develop an area based management system that would, among other things, close areas with high concentrations of small scallops and open them later when the scallops are bigger. The Council also announces its intent to prepare an SEIS for the Atlantic Sea Scallop FMP in accordance with the National Environmental Policy Act of 1969 to analyze the impacts of any management alternatives. The Council will hold public scoping meetings in Fairhaven, MA; Virginia Beach, VA; and Cape May, NJ; to determine the scope of issues to be addressed and for identifying the significant issues related to the management alternatives.

DATES: Written comments on the intent to prepare the SEIS must be received on or before 5:00 p.m., local time, March 1, 2000. The meetings will held between Tuesday, February 15, 2000, and Thursday, February 18, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–0492. The meetings will be held in Fairhaven, MA; Virginia Beach, VA; and Cape May, NJ. See **SUPPLEMENTARY INFORMATION** for specific locations. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the Atlantic Sea Scallop FMP established a limited access program and a schedule of annual day-at-sea (DAS) allocations for full-time, part-time, and occasional vessels with limited access permits. Although Amendment 4 changed the restrictions on fishing gear and limited the number of crew aboard limited

access vessels, the primary management measure to control fishing mortality was the annual DAS allocation. The initial annual allocations in 1994 were 201 days for full-time vessels, 81 days for part-time vessels, and 17 days for occasional vessels. Amendment 4 furthermore established a schedule to reduce by 2000 the annual DAS allocations and fishing mortality. Overfishing was then defined to occur whenever fishing mortality exceeded 0.97. Amendment 4 also established the fishing year, when vessels receive new DAS allocations, as March 1 through February 28/29, and established the annual framework adjustment procedure.

Since 1994, NMFS has implemented several framework adjustments which, among other actions, reduced the crew limit from 9 to 7 persons and adjusted the annual DAS allocations. Closed Area I, Closed Area II, and the Nantucket Lightship Area were closed for scallop fishing through an action promulgated under the Northeast Multispecies FMP to protect groundfish and reduce groundfish bycatch.

Amendment 7 to the Atlantic Sea Scallop FMP changed the overfishing definition to comply with new mandates of the Sustainable Fisheries Act and extended the DAS reduction schedule through 2008 to achieve a 10-year biomass rebuilding objective. To comply with the new overfishing definition and implement the rebuilding schedule, Amendment 7 revised the DAS schedule beginning March 1, 1999. To allow time for industry adjustment to the new regulations, the initial DAS allocations in 1999 were 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels. According to Amendment 7, the DAS allocations in 2000 would be reduced to 51 days for full-time vessels, 20 days for part-time vessels, and 4 days for occasional vessels and would remain below these levels until 2007 when the FMP met the biomass rebuilding targets. The SEIS for Amendment 7 indicated that the 2000 DAS allocations would have negative impacts on the economic viability of the vessels and the scallop fleet. Amendment 7 also modified the framework adjustment process to allow the Council to consider closing and re-opening areas as well as closing two areas in the Mid-Atlantic to protect small scallops that were prevalent there and promote rebuilding.

The Council is considering development of Amendment 10 to develop an area based management system that would, among other things, close areas with high concentrations of small scallops and open them later when the scallops are bigger. The Council believes that shifting fishing effort in this manner could promote rebuilding, improve yield, and reduce the economic impacts of the low DAS allocations. Another purpose of Amendment 10 would be to change the fishing year to allow timelier use of the adjustment mechanism, taking into account when the results of the annual resource abundance survey and other data become available. Other management measures, including individual fishery quotas and transferability, could be considered during the development of Amendment 10 in place of or in addition to DAS allocations and area based management. More details of the issues and problems to be addressed by Amendment 10 are available in a document from the Council office. See **ADDRESSES** for details.

Public Meeting Schedule

Tuesday, *February 15, 2000*, at 7:30 p.m.

Location: Seaport Inn, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281.

Wednesday, *February 16, 2000*, at 7:30 p.m.

Location: Holiday Inn, Executive Center, 5655 Greenwich Road, Virginia Beach, VA 23462; telephone (757) 499–4400.

Thursday, *February 17, 2000*, at 7:30 p.m.

Location: Grand Hotel, 1045 Beach Drive, Cape May, NJ 08204; telephone (609) 884–5611.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2573 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, March 13–15, 2000.

On Monday, March 13, the Advisory Board will sponsor its 4th National Stakeholder Symposium, focusing on the Integrated Authority for Research, Education, and Extension, as announced in Press Release No. 7.99, Secretary of Agriculture, USDA. The Symposium will begin promptly at 9 a.m. and use a panel format as in previous years. Each panelist will be permitted to make a presentation, with time limits to be announced, and will receive questions from the Advisory Board members. If you wish to be considered as a panelist or would like to nominate a panelist, please forward speaker names, phone numbers, and a brief summary, outline, or similar indication of the intended remarks regarding the topic area to the contact person below for Board consideration. Names for panelists will be reviewed and selections will be made by the Advisory Board and its Executive Committee. The general Advisory Board meeting will begin at 9 a.m. on Tuesday, March 14, and continue until approximately noon on Wednesday, March 15. During this time, the Advisory Board will (1) incorporate input of stakeholders for use in recommendations for the FY 2002 priorities and the integrated authority; (2) hear a report on the progress of REE programs and projects with regard to relevance to research priorities and adequacy of funding; (3) hear progress reports on Advisory Board working group activities; (4) conduct a focus session on "Changing Pricing and Marketing Structures in the Food and Fiber System;" (5) discuss plans for a summer regional listening session; (6) and conduct other business as needed.

Dates: March 13—9:00 a.m. to 5:00 p.m. 4th National Stakeholder Symposium; March 14—9:00 a.m. to 5:00 p.m.; March—15 9:00 a.m. to Noon.

Place: Crown Plaza Hotel (Crystal City), Grand Ballroom, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC this 20th day of January 2000.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–2571 Filed 2–3–00; 8:45 am]
BILLING CODE 3410 22 P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Appointment of the Advisory Committee on Agricultural Biotechnology

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notification of Appointment of the Advisory Committee on Agricultural Biotechnology.

SUMMARY: The Office of the Under Secretary, Research, Education, and Economics of the Department of Agriculture, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, announces members appointed to the Advisory Committee on Agricultural Biotechnology. Thirty-eight members were appointed from nominations of more than 220 well-qualified individuals, representing the biotechnology industry, conventional, sustainable, and organic farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers as well as experts on consumer attitudes, bioethics, and legal issues. Equal opportunity practices were followed in appointing committee members. To assure that recommendations of the advisory committee take into account the needs of diverse groups served by the Department, membership includes, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The following appointments to the Advisory Committee on Agricultural Biotechnology have been made:

Dennis E. Eckart will serve as Chair of the Committee. He is an attorney at Baker and Hostetler, LLP, in Washington, DC, and a former member of Congress from Ohio;

Dale E. Bauman, Liberty Hyde Bailey Professor and Professor of Nutritional Biochemistry in the Department of Animal Science and the Division of Nutritional Sciences at Cornell University in Ithaca, New York;

Daniel R. Botkin, Research Professor, Department of Ecology, Evolution and Marine Biology, University of California, in Santa Barbara, California;

Carolyn Brickey, Executive Director, National Campaign for Pesticide Policy Reform, in San Francisco, California, and member, National Organic Standards Board;

R. Jeffrey Burkhardt, Professor of Food and Resource Economics, Food and Resource Economics Department, University of Florida in Gainesville, Florida, and member, US/EU Committee on Ethics and Food Biotechnology;

R. James Cook, R. James Cook Endowed Chair in Wheat Research, Department of Plant Pathology, Washington State University, in Pullman, Washington;

James F. Dodson, Farmer and seed sales representative for Pioneer Hi-Bred International, Inc., in Robstown, Texas and Chairman, Environmental Task Force, National Cotton Council;

Linda J. Fisher, Vice President for Government and Public Affairs, Monsanto Company, in Washington, DC;

Carol T. Foreman, Distinguished Fellow and Director, the Food Policy Institute, Consumer Federation of America, in Chevy Chase, Maryland, and member, USDA Meat and Poultry Inspection Advisory Committee;

David J. Frederickson, President, Minnesota Farmers Union, in St. Paul, Minnesota;

Rebecca J. Goldburg, Senior Scientist, Environmental Defense Fund, in New York, New York;

Michael K. Hansen, Research Associate, Consumer Policy Institute, Consumers Union, in Yonkers, New York;

Neil E. Harl, Professor of Economics and Charles F. Curtiss Distinguished Professor in Agriculture, Iowa State University, in Ames, Iowa;

Thomas J. Hoban, Professor, Department of Sociology and Anthropology, North Carolina State University, in Raleigh, North Carolina;

Marjorie A. Hoy, Eminent Scholar and Davies, Fischer, and Eckes Professor of Biological Control, Department of Entomology and Nematology, University of Florida, in Gainesville, Florida;

Charles S. Johnson, Chairman, President and Chief Executive Officer, Pioneer Hi-Bred International, Inc., and member, USDA-Foreign Agricultural Service Emerging Market Committee, in Des Moines, Iowa;

Anne R. Kapuscinski, Professor and Extension Specialist, Department of Fisheries and Wildlife, University of Minnesota, in St. Paul, Minnesota;

Edward L. Korwek, Attorney at Hogan and Hartson, LLP, in Washington, DC;

Sharan A. Lanini, Farmer and Sales/Marketing Manager for Growers Transplanting, Inc./Rocket Farms, and member, California Department of Food and Agriculture Organic Food Act Advisory Committee, in Salinas, California;

Mark Lipson, Organic Farmer and Policy Program Director, Organic Farming Research Foundation, in Davenport, California;

Marshall A. Martin, Professor, Department of Agricultural Economics, Purdue University, in West Lafayette, Indiana, and member, National Agricultural Biotechnology Council;

Mary-Howell Martens, Organic Farmer and Adjunct Biology Instructor, Finger Lakes Community College, in Penn Yan, New York;

J. Calman McCastlain, Attorney at Pender, McCastlain, and Ptak, P.A., Farmer and Grain Elevator Operator, and Director, Arkansas Wheat Promotion Board, in Little Rock, Arkansas;

E. Bruce McEvoy, Chief Executive Officer, Seald Sweet Growers, Inc., in Vero Beach, Florida;

Margaret G. Mellon, Director, Agriculture and Biotechnology Program, Union of Concerned Scientists, in Washington, DC;

Lorraine D. Nakai, Entomologist and Farmer, Navajo Agricultural Products Industry, in Farmington, New Mexico;

Philip T. Nelson, Farmer, Chairman, Livestock and Dairy GRITS Committee, Illinois Farm Bureau, and Chairman, American Farm Bureau Federation Swine Advisory Committee, in Seneca, Illinois;

Carol Nottenburg, Attorney and Director of Intellectual Property and Principal Scientist, Center for the Application of Molecular Biology to International Agriculture, in Red Hill, Australia;

Roger C. Pine, Farmer and President, National Corn Growers Association, in Lawrence, Kansas;

Channapatna S. Prakash, Professor of Plant Molecular Genetics, College of Agriculture, Tuskegee University, in Auburn, Alabama, and member of the U.S. Sweetpotato Crop Advisory Committee;

Frank L. Sims, President, North American Grain, Cargill, Inc., in Minnetonka, Minnesota, and member, Chicago Board of Trade;

J. Michael Sligh, Director for Sustainable Agriculture, Rural Advancement Foundation International—U.S.A., in Chapel Hill, North Carolina;

Jerome B. Slocum, Farmer and President, North Mississippi Grain Company, in Biloxi, Mississippi;

Austin P. Sullivan, Jr., Senior Vice President for Corporate Relations, General Mills, Inc., in Plymouth, Minnesota, and Chairman, Biotechnology Task Force, Grocery Manufacturers of America;

Virginia V. Weldon, Physician and Director, Center for the Study of American Business, Washington University, in St. Louis, Missouri, and member, President's Committee of Advisors on Science and Technology;

David M. Winkles, Jr., Farmer and President, South Carolina Farm Bureau, in Sumter, South Carolina, and member, United Soybean Board;

Margaret M. Wittenberg, Vice-President of Government and Public Affairs, Whole Foods Market, Inc., in Dripping Springs, Texas, and member, National Organic Standards Board;

Michael W. Yost, Farmer and President, American Soybean Association, in Murdock, Minnesota.

Committee members will serve two-year terms. In the event of a vacancy, the Secretary will appoint a new member as appropriate and subject to the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory. The Committee will advise the Secretary of Agriculture on a broad array of issues related to the expanding dimensions of agricultural biotechnology. These issues may include: effects of industry concentration and consolidation on farmers and consumers; effects of changing intellectual property right status of agricultural materials on farmers; ways to maximize or encourage potential benefits of biotechnology and minimize potential adverse effects in different sectors of the agricultural economy; guidance on priorities and resource allocations for research, and for other activities to help the functioning of the agricultural marketplace; recommendations for scientific studies that might be conducted by the new USDA-sponsored Standing Committee on Biotechnology at the National Research Council; ways to improve public understanding and input into USDA's regulatory process; and USDA's role in assuring that farmers have an array of choices for future agricultural technology and practices.

The Committee will advise the Secretary through an annual report and other means as necessary and appropriate.

The Committee will meet in Washington, DC, up to four (4) times per year.

Committee members will serve without pay. Reimbursement of travel expenses and per diem costs shall be made to Committee members who would be unable to attend Committee meetings without such reimbursement.

FOR FURTHER INFORMATION CONTACT: Questions should be e-mailed to michael.g.schechtman@usda.gov, faxed to 202–690–4265, or telephoned to Michael Schechtman, 202–720–3817; all mailed correspondence should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW, Washington, DC 20250.

Dated: January 21, 2000.

I. Miley Gonzalez,

Under Secretary, Reserach, Education, and Economics.

[FR Doc. 00–2570 Filed 2–3–00; 8:45 am]

BILLING CODE 3410–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 6, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Line, Multi-Loop
1670–01–062–6305
NPA: Industrial Opportunities, Inc., Marble, North Carolina

Thumbtacks, Maptacks and Pushpins
7510–00–272–6886 (Thumbtacks)
7510–00–272–6887 (Thumbtacks)
7510–00–272–3099 (Maptacks)
7510–00–285–5844 (Maptacks)
7510–00–940–0935 (Pushpins)
NPA: Delaware County Chapter, NYSARC, Walton, New York

Services

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, McConnell Air Force Base, Kansas
NPA: Envision, Inc.,Wichita, Kansas

Commissary Shelf Stocking, Custodial and Warehousing, Fort Hamilton Commissary, Brooklyn, New York
NPA: Goodwill Industries of Greater New York, Astoria, New York

Food Service Attendant, Air National Guard Base, 50 Sabre Street, Battle Creek, Michigan
NPA: Calhoun County Community Mental Health Services Board, Battle Creek, Michigan

Grounds Maintenance, U.S. Army Reserve Center, Worcester, Massachusetts
NPA: Seven Hills Occupational & Rehabilitation Services, Inc., Worcester, Massachusetts

Janitorial/Custodial, 126th Air Refueling Wing, Scott Air Force Base, Illinois
NPA: St. Clair Associated Vocational Enterprises, Inc., Belleville, Illinois

Janitorial/Custodial, U.S. Army Reserve Center, OMS, Kittanning, Kittanning, Pennsylvania
NPA: ICW Vocational Services, Inc., Indiana, Pennsylvania

Office Supply Store, Main Interior Building, 1849 C Street, NW, Washington, DC
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland

Operation of Individual Equipment Element Store, Eielson Air Force Base, Alaska
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina

Operation of Individual Equipment Element Store, Youngstown Air Reserve Station, 910th Air Lift Wing, Vienna, Ohio
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Telephone Switchboard Operations, Dyess Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Amplifier Subassembly
5831–00–087–3408

Kit, Shaving, Surgical Preparation
6530–00–676–7372

Specimen Kit, Urine
6530–00–075–6636

Pillowcase, Disposable
6532–01–125–3269

Aerosol Paint, Lacquer
8010–00–721–9483

Enamel, Lacquer
8010–00–852–9034
8010–00–616–9144
8010–00–878–5761
8010–00–764–8434
8010–00–782–9356

Enamel, Aerosol, Waterbase
8010–01–363–1632

Services

Commissary Shelf Stocking, Naval Training Center, San Diego, California

Commissary Shelf Stocking & Custodial, Oakland Army Base, Oakland, California
Food Service, McClellan Air Force Base, California
Grounds Maintenance, Oakland Fleet Industrial Supply Center, Oakland, California
Grounds Maintenance, Naval Station, Treasure Island, California
Grounds Maintenance, Mare Island Naval Complex and Roosevelt Terrence, (except the Combat Systems Technical School Command), Mare Island Naval Shipyard, Vallejo, California
Janitorial/Custodial, Naval Supply Center, for the following locations in Alameda, California: DRMO Bldgs 4 & 5 (Floor 1), Defense Subsistence Region Pacific, Warehouse 1, Building 6 (Floors 1 & 2), Building 7
Naval Regional Contracting Center, Building 6 (Floor 2)
Janitorial/Custodial, Naval Air Reserve, Moffett Field, California
Janitorial/Grounds Maintenance, U.S. Federal Building, 823 Marin Street, Vallejo, California
Painting Service, McClellan Air Force Base, California
Vehicle Maintenance, McClellan Air Force Base, California

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–2490 Filed 2–3–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and a service previously furnished by such agencies.

EFFECTIVE DATE: March 6, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 29, November 5, and December 10, 17, and 27, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 58378, 60407, 69225, 70694 and 72312) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center and Operation of Individual Equipment Element StoreLangley Air Force Base, Virginia
Grounds Maintenance, U.S. Dept. of the Interior, National Park Service, Golden Gate National Recreation Area, Fort Mason, San Francisco, California
Janitorial/Custodial, U.S. Coast Guard, Vessel Traffic Service San Francisco, Yerba Buena Island, Building 278, San Francisco, California
Janitorial/Custodial for the following locations in Washington, DC:U.S. Customs Service, 1301 Constitution Avenue, NW; Interstate Commerce Commission, 12th & Constitution Avenue, NW; Departmental Auditorium & Connecting Wing, 1201 Constitution Avenue, NW
Janitorial/Custodial, U.S. Merchant Marine Academy, Kings Point, New York
Mailing Services, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Atlanta, Georgia
Operation of Individual Equipment Element Store, Altus Air Force Base, Oklahoma
Operation of Individual Equipment Element Store, Goodfellow Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and service.

3. The action may result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are no longer suitable for procurement by the FederalGovernment under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and service are hereby deleted from the Procurement List:

Commodities

Penetrating Fluid 6850–00–985–7180
6850–00–508–0076
Water-Displacing Compound
6850–00–142–9389
6850–00–142–9409
Cleaning Compound, Rug and Upholstery
7930–01–393–6760
Detergent, General Purpose
7930–00–531–9715
7930–00–531–9716
Dishwashing Compound, Hand
7930–01–055–6136

Service

Base Supply Center, Fort McClellan, Alabama

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–2491 Filed 2–3–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Addition to Procurement List: Correction

In the document appearing on page 58379, FR document 99–28359, in the issue of October 29, 1999, in the first column, the listing for Food Service, Marine Corps, Mess Hall #569 and 1620, San Diego, California should have been listed as Food Service, Marine Corps, Mess Halls #569 and 620, San Diego, California.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–2492 Filed 2–3–00; 8:45 am]

BILLING CODE 6353–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10:00 a.m. local time on February 10, 2000, at the Defense Nuclear Facilities Safety Board (DNFSB), Suite 300, 625 Indiana Ave. NW, Washington, DC. This announcement replaces the incorrect announcement published on February 2, 2000 (65 FR 4945). Topics to be discussed at the meeting will include:

1. Resignation of the Board Chairperson.
2. Interim Board Governance.
3. Proposed Federal Regulations regarding CSB Quorum, Voting Procedures and compliance with the Government Under the Sunshine Act.
4. Review and Adoption of CSB Mission Statement.
5. Major CSB Initiatives for remainder of FY 2000.
6. Review and Discussion of FY 2001 Budget Proposal.

The meeting will be open to the public. The DNFSB office is a secure federal building and photo identification may be required for admission. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202)–261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 00–2681 Filed 2–2–00; 1:37 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Friday, February 18, 2000, at the Ramada Hotel, Meeting Room Maricopa C, 401 North First Street, Phoenix, Arizona 85004. The purpose of the meeting is to discuss current projects and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–2508 Filed 2–3–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:30 p.m. on February 24, 2000, at the Four Points Hotel Manchester, 55 John E. Divine Drive, Manchester, New Hampshire 03103. The Committee will discuss plans for their next briefing to be held in Manchester on the status of civil rights in New Hampshire as part of its project, A Biennial Report on the Status of Civil Rights in New Hampshire. The Committee will also be briefed on current civil rights issues by invited guests.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–2509 Filed 2–3–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/30/99–01/19/00

Firm name	Address	Date/Petition accepted	Product
Sunshine Cap Company	1142 W. Main Street, Lakeland, FL 33815.	12/01/99	Caps, visors, and hats of cotton.
Pinnacle Plastics, Inc	2301 West 21st St., Erie, PA 16506.	12/09/99	Plastic injection molds.
Craig Blanchard d.b.a., Biagaanas Jewelers.	4404 Menaul, Albuquerque, NM 87110.	12/09/99	Silver jewelry.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/30/99–01/19/00—Continued

Firm name	Address	Date/Petition accepted	Product
Fabricated Plastics, Inc., d.b.a., FPI Thermoplastic Technologies.	178 Hanover Avenue, Morristown, NJ 07962.	12/09/99	Plastic injection molds.
Felley, Inc	2400 Washington St. NE, Albuquerque, NM 87110.	12/10/99	Silver and gold jewelry.
Custom Tool & Die, LLC	240 Corporate Drive, Sibley, LA 71073.	12/10/99	Injection molds for rubber or plastic.
Contrax Technology, Inc	7509 Connelly Drive, Hanover, MD 21076.	12/13/99	Printed circuit boards.
Dexall Biomedical Labs., Inc	18904 Bonanza Way, Gaithersburg, MD 20879.	12/13/99	Diagnostic medical kits for human infectious diseases and autoimmune diseases.
Altek, Inc	22819 E. Appleway Ave., Liberty Lake, WA 99019.	12/15/99	Injection molded temperature sensor parts.
Mathews Wire, Inc	654 West Morrison St., Frankfort, IN 46041.	12/20/99	Metal candle holders.
Sturdy Oak Wood Crafts	213 S. Jefferson, Elk City, OK 73648.	12/20/99	Tableware and kitchenware of wood.
Kirks Folly, Inc	236 Chapman Street, Providence, RI 02905.	12/20/99	Theme oriented fashion jewelry, watches, and picture frames.
Robinson Foundry, Inc	505 Robinson Court, Alexander City, AL 35011.	12/21/99	Motors and generator housings of cast iron and tractor parts for agricultural use.
DSA Precision Machining, Inc	5845 Big Tree Road, Lakeville, NY 14480.	01/03/00	Metal gears for the transportation industry.
Best Carbide Cutting Tools, Inc	1454 West 135th Street, Gardena, CA 90249.	01/03/00	Carbide cutting tools for industrial machinery and semiconductor manufacturing equipment.
Model Die Casting, Inc	5070 Sigstrom Drive, Carson City, NV 89706.	01/03/00	Model trains.
Douglas Snyder d.b.a., Snyder Systems.	6006 Egret Court, Benicia, CA 94510.	01/03/00	Precision machined parts and metal stamped parts of semiconductor manufacturing equipment.
Tops Malibu, Inc	5555 West 11th Avenue, Eugene, OR 97402.	01/03/00	Candles and other gift items including soaps, games, and party favors.
OK Investment Casting Corp. d.b.a., N. American Precision Casting Co.	708 North 29th Street, Blackwell, OK 74631.	01/03/00	Couplings for hoses, and production tools and chemical static mixers.
Kelson Precision Machine, Inc	808 S. 8th Street, Broken Arrow, OK 74012.	01/05/00	Valve parts.
Dexter Research Center, Inc	7300 Huron River Drive, Dexter, MI 48130.	01/05/00	Metal thermal analysis detectors using optical radiation.
William Ellyn Douglas, L.L.C. d.b.a., Warren Industries, L.L.C.	6401 Falco Road, Rockford, IL 61109.	01/05/00	Thread rolling machinery.
BBC Industries, Inc	1526 Fenpark Drive, Fenton, MO 63026.	01/19/00	Industrial ovens, screen printing dryers, heaters, and shrink-wrap packaging equipment.
Ro-An Jewelry, Inc	1 Industrial Lane, Johnston, RI 01919.	01/19/00	Jewelry.
Micro Industries, Inc	200 West Second St., Rock Falls, IL 61071.	01/19/00	Die cast zinc components.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: January 21, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–2460 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1074]

Expansion of Foreign-Trade Zone 143, Sacramento, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, submitted an application to the Board for authority to expand FTZ 143 to include a new site, located at the Chico Municipal Airport, in Chico,

California, some 90 miles north of the San Francisco Consolidated Customs port of entry limits (FTZ Docket 37–99; filed July 16, 1999);

Whereas, Section 2422 of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub.L. 106–36) directs the Foreign-Trade Zones Board to approve the expansion of FTZ 143 to include the proposed site in Chico, California;

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 41374, July 30, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand FTZ 143 is approved, subject to the Act and the Board's regulations, including § 400.28 and further subject to the Board's standard 2,000 acre activation limit.

Signed at Washington, DC, this 18th day of January, 2000.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman; Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2589 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1072]

Grant of Authority for Subzone Status, Alfa Laval Distribution, Inc., (Separator and Decanter Centrifuge Equipment/ Parts), Indianapolis, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application to the Board for authority to establish special-purpose subzone status at the separator and decanter centrifuge equipment parts warehousing/distribution (non-manufacturing) facility of Alfa Laval Distribution, Inc., located in Indianapolis, Indiana (FTZ Docket 50–98, filed November 5, 1998);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 63451, November 13, 1998); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the separator and decanter centrifuge equipment parts warehousing/ distribution facility of Alfa Laval Distribution, Inc., located in Indianapolis, Indiana (Subzone 72N), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority does not include activity conducted under FTZ procedures that would result in a change in tariff classification.

Signed at Washington, DC, this 18th day of January 2000 .

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2587 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Order No. 1073]

Disapproval of Subzone Status, Mani Can Corp. (Steel Cans), Mayaguez, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "the establishment * * * of * * * foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Puerto Rico Industrial Development Company, grantee of Foreign-Trade Zone 7, has made application for authority to establish special-purpose subzone status at the steel can processing facilities of Mani Can Corporation (Inc.), located in Mayaguez, Puerto Rico (FTZ Docket 36–96, filed May 7, 1996);

Whereas, notice inviting public comment was given in the **Federal Register** (61 FR 24271, May 14, 1996); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations have not been satisfied, and that approval of the application is not in the public interest;

Now, therefore, the Board hereby disapproves the application for subzone status at the easy-open steel can processing facilities of Mani Can Corporation (Inc.), located in Mayaguez, Puerto Rico.

Signed at Washington, DC, this 18th day of January 2000.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2588 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803, A–570–803]

Final Results of Expedited Sunset Reviews: Axes and Adzes and Picks and Mattocks From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: Axes and adzes and picks and mattocks from the People's Republic of China.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on axes and adzes and on picks and mattocks from the People's Republic of China ("PRC") (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Although we provide the full scope language for the order on heavy forged hand tools ("HFHTs") below, this determination applies only to the types of HFHTs which fall under the orders (A–570–803) on axes and adzes and picks and mattocks from the PRC. HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wool splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule ("HTS") item numbers 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kilograms (3.33 pounds) in weight and under, and hoes and rakes, and bars 18 inches in length and under. The HTS item numbers are provided for convenience and customs purposes only. The written description of the scope remains dispositive.

There has been one scope ruling with respect to the order on HFHTs from the PRC in which the Forrest Tool Company's Max Multipurpose Tool was determined to be within the scope of the order (58 FR 59991; November 12, 1993).

These reviews cover imports from all manufacturers and exporters of axes and adzes and picks and mattocks from the PRC.

History of the Orders

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of HFHTs from the PRC on January 3, 1991 (56 FR 241). In this determination, the Department published four country-wide weighted-average dumping margins, one each for hammers/sledges, bars/wedges, picks/mattocks and axes/adzes. The Department subsequently issued the antidumping duty orders on HFHTs from the PRC on February 19, 1991 (56 FR 6622). Since the imposition of the orders, the Department has conducted several administrative reviews.[1] The orders remain in effect for all manufacturers and exporters of the subject merchandise from the PRC.

To date, the Department has not issued any duty absorption findings in these cases.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on axes and adzes and picks and mattocks from the PRC (64 FR 35588), pursuant to section 751(c) of the Act. For both of the reviews, the Department received notices of intent to participate on behalf of O. Ames Co. and its division, Woodings-Verona (collectively, "domestic interested parties") on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested

[1] *See Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 60 FR 49251 (September 22, 1995); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 15028 (April 4, 1996); as amended, *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review*, 61 FR 24285 (May 14, 1996); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 51269 (October 1, 1996); as amended, *Heavy Forged Hand Tools from the People's Republic of China; Notice of Amendment of Final Results of Antidumping Duty Administrative Review*, 62 FR 24416 (May 5, 1997); *Heavy Forged Hand Tools from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 11813 (March 13, 1997); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 16758 (April 6, 1998); as amended, *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand from the Court of International Trade: Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China*, 63 FR 55577 (October 16, 1998) and *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand from the Court of International Trade: Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China: Correction*, 64 FR 851 (January 6, 1999); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999).

party status as domestic manufacturers of the subject merchandise. The Department received complete substantive responses from the domestic interested parties on August 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In addition, we received substantive responses on behalf of Fujian Machinery and Equipment Import and Export Corp., Shandong Huarong General Group Corp., Shandong Machinery Import and Export Corp., and Tianjin Machinery Import and Export Corp. (collectively, "respondents"). The respondents claimed interested party status under section 771(9)(A) as exporters of the subject merchandise.

Using information on the value of exports submitted by the respondents and the value of imports as reported in U.S. Census Bureau IM146 Reports, the Department determined that respondents' exports to the United States accounted for significantly less than fifty percent of the total volume of subject merchandise to the U.S. over the five calendar years preceeding the initiation of these sunset reviews. Therefore, respondents provided inadequate response to the notice of initiation and, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day reviews of the orders.[2]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On November 16, 1999, the Department determined that the sunset reviews of the antidumping duty orders on axes/adzes and picks/mattocks from the PRC are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[3]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time-frame for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, domestic interested parties' and respondents' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In their substantive responses, the domestic interested parties argue that revocation of the orders would likely lead to continuation or recurrence of dumping. They base their conclusion on the combined facts that dumping has continued over the life of the orders at levels well above *de minimis* and that import volumes, in the case of axes/adzes, declined significantly after the issuance of the orders. The domestic interested parties maintain that imports of axes/adzes from the PRC declined significantly from approximately $1.9 million worth of subject merchandise in 1989 to approximately $1.5 million worth of merchandise in 1997 and to roughly $1.2 million in 1998. They argue that although import quantities are not publicly available, the decline in total value of imports indicates that volume also declined substantially. The domestic interested parties, however, do not discuss import volumes for picks/mattocks in their substantive response. They conclude that it is reasonable to assume that the PRC exporters could not sell in the United States without dumping and that, to reenter to U.S. market, they would have to increase or continue dumping (*see* August 2, 1999, substantive response of the domestic interested parties at 3–4).

The respondents argue that if the orders were revoked, shipments would likely continue at average levels as seen in 1996 through 1998. They maintain that there is greater competition from other supplying countries and that demand in the U.S. is fairly inelastic, indicating that even with lower prices (without dumping duties), demand for imports of the subject merchandise from the PRC is not likely to change much (*see* July 30, 1999, substantive response of the respondents at 2).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As pointed out above, dumping margins above de minimis continue to exist for shipments of the subject merchandise from China.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As mentioned before, the domestic interested parties maintain that imports of axes/adzes from the PRC declined significantly from approximately $1.9 million worth of subject merchandise in 1989 to approximately $1.5 million worth of merchandise in 1997 and roughly $1.2 million in 1998.

Using the Department's statistics, including IM146 reports, on imports of the subject merchandise from the PRC, the Department concludes that imports of axes/adzes and picks/mattocks from the PRC have fluctuated over the life of the orders, showing no overall trend.

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[2] *See* memoranda concerning adequacy of respondent response dated October 19, 1999.

[3] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise by at least one Chinese manufacturer/exporter. Therefore, given that dumping has continued over the life of the orders, the Department determines that dumping is likely to continue if the orders were revoked. Because we are basing our determination on the fact that dumping has continued throughout the life of the orders, it is not necessary to address respondent's arguments concerning demand.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) We note that, to date, the Department has not issued any duty absorption findings in either of these cases.

In their substantive responses, the domestic interested parties recommend that the Department deviate from its normal practice of using margins from the original investigation and instead use margins from a more recent administrative review. In the case of axes/adzes, the domestic interested parties recommend using the PRC-wide margin of 21.92 calculated in the fourth administrative review. For picks/mattocks, the domestic interested parties argue that the dumping margins likely to prevail if the orders were revoked would be 98.77 percent for Fujian Machinery & Equipment Import & Export Corp., as calculated in the fifth administrative review; 70.31 percent for Shandong Machinery Import & Export Corp., as calculated in the fourth administrative review; and 50.81 percent for Tianjin Machinery Import & Export Corp., Liaoning Machinery Import & Export Corp. and Shandong Huarong General Group Corp., as calculated in the original investigation. The domestic interested parties argue further that, in the case of picks/mattocks, while the dumping margins calculated by the Department have fluctuated, the margins have increased for most of the PRC producers.

The respondents argue that the dumping margin likely to prevail if the orders were revoked would be zero, but no higher than the average margin for the latest reviews.

The Department disagrees with both domestic and respondent interested parties. As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department may provide to the Commission a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order where that particular company increased dumping to maintain or increase market share. In these cases, the domestic interested parties do not provide any company-specific argument or evidence that any Chinese companies have increased dumping in order to maintain or gain market share or increase import volumes. Moreover, while it is true that dumping margins have increased for some Chinese companies, we have no company-specific information demonstrating that imports of the subject merchandise have increased over the life of the orders. Since we have no company-specific information correlating an increase in exports for one company with an increase in the dumping margin for that particular company, we cannot conclude that the use of more recently calculated margins is warranted in this case. Further, we do not agree with the respondents that a more recently calculated margin is appropriate, because we have no company-specific information demonstrating that the lower, more recent rates are associated with steady or increasing imports.

Therefore, consistent with the *Sunset Policy Bulletin*, the Department finds that the margins calculated in the original investigation are probative of the behavior of Chinese producers/exporters if the orders were revoked as they are the only margins which reflect their behavior absent the discipline of the orders. As such, the Department will report to the Commission the PRC-wide rates from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the margins listed below:

PRC-wide	Margin (percent)
Axes/adzes	15.02
Picks/mattocks	50.81

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2581 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–815]

Postponement of Final Determination of Antidumping Duty Investigation of Cold-Rolled Flat-Rolled Carbon-Quality Steel From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final determination of antidumping investigation of cold-rolled steel from Venezuela.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final determination of the antidumping investigation of cold-rolled flat-rolled carbon-quality steel from Venezuela.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0193 or (202) 482–3833, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1999).

Postponement of Final Determinations and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on January 6, 2000, Siderurgica del Orinoco, C.A. (Sidor) requested that the Department postpone the final determination in this case for the full sixty days permitted by the statute. Sidor's request meets the requirements of section 735(a)(2)(A) because Sidor is the only Venezuelan exporter of the subject merchandise to the United States, and the preliminary determination in this investigation was affirmative. Further, pursuant to section 733(d) and 19 CFR 351.210(e)(2), Sidor requested that the Department extend the period that provisional measures may remain in effect from four months to not more than six months (*i.e.*, suspension of liquidation). This notice serves to postpone this final determination for 60 days (*i.e.*, until no later than 135 days after the date of publication of the preliminary determination). Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1844 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–621–810

Suspension of Antidumping Duty Investigation: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has suspended the antidumping duty investigation involving cold-rolled flat-rolled carbon-quality steel products ("cold-rolled steel") from the Russian Federation ("Russia"). The basis for this action is an agreement between the Department and the Ministry of Trade of the Russian Federation ("MOT") accounting for substantially all imports of cold-rolled steel from Russia, wherein the MOT has agreed to restrict exports of cold-rolled steel from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed reference price.

EFFECTIVE DATE: January 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Maria Dybczak at (202) 482–4037 and (202) 482–5811, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1999, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 ("the Act"), as amended, to determine whether imports of cold-rolled steel from Russia are being, or are likely to be, sold in the United States at less than fair value (64 FR 34194). On July 16, 1999, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary finding of threat of material injury in this case (*see* ITC Investigation Nos. 701–TA–393–396 and 731–TA–829–840). On November 10, 1999, the Department published its preliminary determination that cold-rolled steel is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act (64 FR 61261).

The Department and MOT initialed a proposed agreement suspending this investigation on December 10, 1999, at which time we invited interested parties to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Gulf States Steel Inc., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., Steel Dynamics Inc., U.S. Steel Group (a Unit of USX Corp.), Weirton Steel Corporation, and Independent Steelworkers Union) on December 29, 1999. We have taken these comments into account in the final version of the suspension agreement.

The Department and MOT signed the final suspension agreement on January 13, 2000.

Scope of Investigation

For a complete description of the scope of the investigation, *see Agreement Suspending the Antidumping Investigation on Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* Appendix III, signed January 13, 2000, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation (*see Price Suppression Memorandum,* dated January 13, 2000), that the agreement is in the public interest, and that the agreement can be monitored effectively (*see Public Interest Memorandum,* dated January 13, 2000). We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed January 13, 2000, are set forth in Appendix 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cold-rolled steel from Russia entered, or withdrawn from warehouse, for consumption, as directed in our notice of *Preliminary Determination of Sales at Less than Fair Value: Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation* (64 FR 61261 (November 10, 1999)), is hereby terminated.

Any cash deposits on entries of cold-rolled steel from Russia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix 1—Agreement Suspending the Antidumping Investigation on Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

For the purpose of encouraging free and fair trade in certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products ("Cold-Rolled Steel") from the Russian Federation ("Russia"), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the like product in the United States, the United States Department of Commerce ("DOC") and the Ministry of Trade of the Russian Federation ("MOT") of Russia enter into this suspension agreement ("the Agreement").

MOT will restrict exports of Cold-Rolled Steel from all Russian producers and exporters to the United States, as provided below. DOC, pursuant to the U.S. antidumping law (see Appendix II), on the Effective Date of this Agreement, will suspend its antidumping investigation of Cold-Rolled Steel from Russia and instruct the U.S. Customs Service ("Customs") immediately to terminate the suspension of liquidation and release any cash deposit or bond posted for entries of Cold-Rolled Steel covered by this Agreement.

Accordingly, DOC and MOT agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. "Apparent U.S. Domestic Consumption" means apparent U.S. domestic consumption determined using official statistics of the U.S. Bureau of the Census regarding imports and exports, and data from the American Iron and Steel Institute regarding domestic shipments, based on the methodology described in Appendix IV of this Agreement.

B. "Date of Export" of Cold-Rolled Steel into the United States shall be the date on which MOT issued the Export License.

C. "Date of Sale" means the date on which price and quantity become firm, *e.g.*, the date the contract is signed or the specification date if the price and quantity become firm on that date, as reflected in Russian producers' records kept in the ordinary course of business.

D. "Effective Date" of this Agreement means [Signature Date].

E. "Export License" is the document issued by MOT that serves as both an export limit certificate and a certificate of origin.

F. "Cold-Rolled Steel" means the certain cold-rolled, flat-rolled, carbon quality steel products from Russia described in Appendix III.

G. "Indirect Exports" means exports of Cold-Rolled Steel from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin.

H. "Party to the Proceeding" means any producer, exporter, or importer of Cold-Rolled Steel, union of workers engaged in the production of Cold-Rolled Steel, association of such parties, or the government of any country from which such merchandise is exported, that actively participated in the antidumping investigation, through written submission of factual information or written argument, as described in more detail in Appendix II.

I. "Export Limit Period" means one of the following periods:

Initial Export Limit Period—The Initial Export Limit Period shall begin on January 1, 2000, and end on December 31, 2000.

Subsequent Export Limit Periods—The Subsequent Export Limit Periods shall consist of each subsequent one-year period, the first of which will begin the day after the Initial Export Limit Period ends and end one year later.

J. "Reference Price" means the floor price calculated by DOC for sales of Cold-Rolled Steel for export to the United States, as described in Article III.

K. "United States" means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

L. "U.S. Purchaser" means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

M. "Violation" means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Export Limits

A. No Cold-Rolled Steel covered by this Agreement, whether exported directly or indirectly from Russia, shall be entered into the United States unless, when cumulated with all prior entries of Cold-Rolled Steel exported from Russia during the Export Limit Period in which that Cold-Rolled Steel was exported, it does not exceed the export limits set forth below.

1. The export limit for the Initial Export Limit Period (January 1, 2000, to December 31, 2000) shall be 340,000 metric tons of Cold-Rolled Steel.

2. The export limit for each subsequent Export Limit Period will be adjusted by:

(a) First, the export limit for the previous Export Limit Period shall be increased by three per cent of that export limit;

(b) Second, the number obtained under paragraph (a) shall be increased or decreased by the result of multiplying the export limit for the previous Export Limit Period by the percent change (up to three percent) in apparent U.S. domestic consumption of Cold-Rolled Steel during the most recent 12 months for which data are available at the time the DOC makes this calculation, compared to the previous 12 months (as described in Appendix IV).

3. DOC shall determine export limits for each Subsequent Export Limit Period no later than 60 days prior to the beginning of that Export Limit Period.

B. When Cold-Rolled Steel is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, or further processed (but still covered by this Agreement) and re-exported, the amount re-exported shall be deducted from the amounts of exports that have been counted against the export limit for the Export Limit Period in which the re-export takes place. The deduction will be applied only after DOC has received, and has had the opportunity to verify, evidence demonstrating the original importation, any repackaging or further processing, and subsequent exportation.

C. MOT will not issue Export Licenses authorizing the exportation to the United States of Cold-Rolled Steel covered by this Agreement in any half of any Export Limit Period that exceeds 60 percent of the export limit for that Export Limit Period.

D. Notwithstanding any other provision of this Agreement, except Paragraph IV.B., up to 15 per cent of the export limit for any Export Limit Period may be carried over to the Subsequent Export Limit Period and up to 15 per cent of the export limit for any Export Limit Period may be carried back to the last 60 days of the previous Export Limit Period. Any carried over or carried back allowance shall be counted against the export limit for the previous or subsequent Export Limit Period, respectively.

E. If DOC receives information indicating that Cold-Rolled Steel from Russia may have entered into the United States in excess of the export limits established in Paragraph II.A or below the reference price established in Paragraph III.C, DOC shall notify MOT of those entries and provide to MOT all of the information concerning those entries that DOC is able to disclose consistent with U.S. law. MOT shall respond within 15 days. If the information continues to indicate that these entries were in excess of the export limits or below the reference price, DOC shall provide MOT with an opportunity for prompt consultations, which shall be completed within 60 days after DOC's initial notification. Once the consultations have been completed, unless DOC concludes that the entries were not in excess of the export limits or below the reference price, DOC shall count against the export limit for either the current or subsequent Export Limit Period, as appropriate, 125 percent of the volume of the entries in excess of the export limits or below the reference price. When a Russian producer or exporter was responsible for the entries in excess of the export limits or below the reference price, MOT shall deny that producer or exporter Export Licenses for six months following the last date of entry. When any other entity was involved with the entries in excess of the export limits or below the reference price, MOT shall, for one year after the last date of entry, deny Export Licenses for the distribution of any Cold-Rolled Steel involving that entity. The provisions of this section do not supercede the provisions of Article IX of this Agreement if DOC determines that the entries were in excess of the export limits or below the reference price.

III. Reference Price

A. MOT will ensure that Cold-Rolled Steel covered by this Agreement will not be sold

at a price below the reference price in effect on the Date of Sale.

B. DOC shall issue Reference Prices for each quarter of each calendar year 30 days before the beginning of that quarter.

C. The Reference Prices for the first quarter of the Initial Export Limit Period shall be as follows:

Grade(s)	Price per metric ton
A611 (full-hard material only) [1]	$340
A366, A691	345
A619, A620	352

[1] The Reference Price for A611 material is for Grade E full-hard carbon cold-rolled sheet meeting this specification. All other Cold-Rolled Steel meeting this specification may not be exported until such time as DOC and MOT agree, after consultations, upon a Reference Price for such material.

D. Until such time as DOC and MOT agree, after consultations, upon Reference Prices for other grades of Cold-Rolled Steel, only the above grades may be exported to the United States. Consultations regarding Reference Prices for other grades of Cold-Rolled Steel shall be held within 30 days of a request and shall be completed within 15 days.

E. Thirty days before the start of each quarter of each Export Limit Period (beginning with the second quarter of 2000) the Reference Price will be increased or decreased to reflect the change in the weighted-average unit import values for Cold-Rolled Steel from all countries not subject to antidumping duty orders or investigations over the most recent three months for which data is available, as compared to the previous three months. If the weighted-average unit import value for such Cold-Rolled Steel during the last of those three months has risen or fallen by more than six percent from the average of the first two of those months, the Reference Price will be adjusted on the basis of the last month, but that adjustment may not raise or lower the Reference Price by more than 10 percent. The source of the unit import values will be publicly available import statistics from the U.S. Bureau of the Census. DOC will provide MOT with the worksheets supporting its calculation of each quarterly Reference Price at the time it provides the Reference Price to MOT.

F. Reference Prices are F.O.B. port of export. If the sale for export is on terms other than F.O.B. port of export, MOT will ensure that the F.O.B. port of export price is not lower than the Reference Price.

IV. Implementation

A. The United States shall require presentation of an original stamped Export License as a condition for entry into the United States of Cold-Rolled Steel covered by this Agreement, except where there are multiple shipments under a single license. For multiple shipments at multiple ports or multiple entries at one port, the original license shall be presented with the first entry and the volume entered at that time will be noted on the original license. Customs will provide the importer with a certified copy for presentation to Customs with the importer's next entry under that license. Subsequent entries at that port can be made from copies of the original which reflect all of the deductions made from the original license.

B. Export Licenses must contain, for each grade of Cold-Rolled Steel covered by the license, the quantity in metric tons, dimensions (gauge, width, and length (in the case of coils, length, if appropriate)) unit price, and F.O.B. sales value. If necessary, additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. DOC will deduct the quantity listed on each Export License from the export limit for the Export Limit Period in which the Date of Export falls. However, if the bills of lading for all of the shipments under an Export License establish that the actual imports into the United States under that license were less than the total volume listed on the license, DOC will reflect the actual amount as having been deducted from the volume listed on the export license, but, notwithstanding the carry-over and carry-back limitations in Paragraph II.D, will authorize MOT to issue a new Export License in the same or Subsequent Export Licensing Period authorizing additional exports equal in volume to the volume of the undershipment. Exports under such additional licenses will be counted against the export limit for the Export Limit Period containing the Date of Export of the undershipment. Prior to utilizing any such undershipment, MOT shall notify DOC of the Export License(s) under which the undershipment occurred, the Date of Export recorded on the License(s), the amount of the undershipment, and provide DOC with no less than 30 days to confirm the undershipment volume. The United States will prohibit the entry of any Cold-Rolled Steel from Russia not accompanied by an original stamped Export License, except as provided in Paragraph IV.A.[2]

C. MOT will ensure compliance with all of the provisions of this Agreement. In order to ensure such compliance, MOT will take at least the following measures:

1. Ensure that no steel subject to this Agreement is exported from Russia for entry into the United States during any Export Limit Period that exceeds the export limit for that Export Limit Period or that is priced below the Reference Price in effect on the date of sale.

2. Establish an export limit licensing and enforcement program for all direct and indirect exports of Cold-Rolled Steel to the United States no later than 30 days after the Effective Date.

3. Require that applications for Export Licenses be accompanied by a report containing all of the information listed in part A of Appendix I (Exports to the United States).

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under this Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, endorsed against the export limit for the relevant Export Limit Period, and reference any notice of export limit allocation results for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for six months. DOC and MOT may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Issue Export Licenses in the English language and, at the discretion of MOT, also in the Russian language.

7. Issue Export Licenses no earlier than 90 days before the day on which the Cold-Rolled Steel is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export.

8. Collect all existing information from all Russian producers, exporters, brokers, if applicable, traders of Cold-Rolled Steel, and their relevant affiliated parties, as well as relevant trading companies/resellers utilized by Russian producers, on the sale of Cold-Rolled Steel, and report such information pursuant to Article VI of this Agreement.

9. Permit full verification of all information related to the administration of this Agreement on an annual basis or more frequently, as DOC deems necessary, to ensure that MOT is in full compliance with this Agreement and that all Russian producers and exporters are in compliance with the requirements that MOT has placed upon them under this Agreement. This requirement applies to both Russian State documents and non-State documents, such as sales contracts. In the course of verification, DOC will examine documents that record the description of products exported to the United States, including dimensions (gauge, width, and length) and heat numbers. Such verifications will take place in association with scheduled consultations whenever possible.

10. Ensure compliance with all procedures established in order to effectuate this Agreement by any official Russian institution, chamber, or other authorized Russian entity, and any Russian producer, exporter, broker, and trader of Cold-Rolled Steel, their relevant affiliated parties, and any relevant trading company or reseller utilized by a Russian producer to make sales to the United States.

11. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement, in the event that any Russian entity does not comply in full with the requirements established by MOT pursuant to this Agreement.

V. Anticircumvention

A. MOT will take all necessary measures to prevent circumvention of this Agreement, including at least the following:

1. Require that all Russian exporters of Cold-Rolled Steel agree, as a condition of being permitted to export any Cold-Rolled Steel, regardless of destination, not to engage in any of the following activities:

a. Exporting to the United States Cold-Rolled Steel subject to this Agreement that is not accompanied by an Export License issued pursuant to this Agreement.

b. Transshipping Cold-Rolled Steel that is subject to this Agreement to the United States

[2] The validity of an Export License will not be affected by a subsequent change of an HTS number.

through third countries unaccompanied by an Export License.

c. Arranging for processing of Cold-Rolled Steel subject to this Agreement either in Russia or in any third country for exportation to the United States not accompanied by an Export License, but only if such processing is covered by the definition of "indirect exports" in Paragraph I.G.

d. Exchanging ("swapping") Cold-Rolled Steel subject to this Agreement for non-subject Cold-Rolled Steel, so as to cause the non-subject steel to be entered into the United States in place of the subject Cold-Rolled Steel, thereby evading the export limits under this Agreement. "Swaps" include, but are not limited to:

i. Ownership swaps—involve the exchange of ownership of Cold-Rolled Steel without physical transfer. These may include exchange of ownership of Cold-Rolled Steel in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of Cold-Rolled Steel produced in different countries, so that the parties obtain ownership of products of different national origin.

ii. Flag swaps—involve the exchange of indicia of national origin of Cold-Rolled Steel, without any exchange of ownership.

iii. Displacement Swaps—involve the sale or delivery of Cold-Rolled Steel from Russia to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced cold-rolled steel, where the Russian exporter knew or had reason to know that the export sale would have that result.

2. Require that all Russian exporters of Cold-Rolled Steel agree, as a condition of being permitted to export any Cold-Rolled Steel, regardless of destination, to require all of their customers to agree, as part of the contract for sale:

a. Not to engage in any of the activities listed in Paragraph V.A.1 of this Agreement. This requirement does not apply to exports to the United States that are accompanied by a valid Export License.

b. To include that same requirement in any subsequent contracts for the sale or transfer of such steel, and to report to MOT subsequent arrangements entered into for the sale, transfer exchange, or loan to the United States of Cold-Rolled Steel covered by this Agreement.

3. When MOT has received an allegation that circumvention has occurred, including an allegation from DOC, MOT shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify DOC of the results of the inquiry within 15 days after the conclusion of the inquiry.

4. If MOT determines that a Russian entity has participated in a transaction circumventing this Agreement, MOT shall impose penalties upon such company including, but not limited to, denial of access to export certificates for Cold-Rolled Steel under this Agreement.

5. If MOT determines that a Russian entity has participated in the circumvention of this Agreement, MOT shall count against the export limit for the Export Limit Period in which the circumvention took place an amount of Cold-Rolled Steel equivalent to the amount involved in such circumvention and shall immediately notify DOC of the amount deducted. If sufficient tonnage is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

6. If MOT determines that a company from a third country has circumvented the Agreement and DOC and MOT agree that no Russian entity participated in or had knowledge of such activities, then the Parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the Parties are unable to reach mutual agreement within 45 days, then DOC may take appropriate measures, such as deducting the amount of Cold-Rolled Steel involved in such circumvention from the export limit for the then-current Export Limit Period or a subsequent Period. Before taking such measures, DOC will notify MOT of the facts and reasons constituting the basis for DOC's intended action and will afford MOT 15 days in which to comment.

B. DOC will direct the U.S. Customs Service to require all importers of Cold-Rolled Steel into the United States, regardless of the stated country of origin of those imports, to submit a written statement, on the last day of every quarter, listing all entries of such merchandise and certifying that the Cold-Rolled Steel imported during that quarter was not obtained under any arrangement in circumvention of this Agreement. Where DOC has reason to believe that such a certification has been made falsely, DOC will refer the matter to the U.S. Customs Service or U.S. Department of Justice for further action.

C. DOC will investigate any allegations of circumvention which are brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. MOT will respond to requests from DOC for information relating to the allegations under Paragraph VI.A.4. In distinguishing normal arrangements, swaps, or other exchanges in the Cold-Rolled Steel market from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement, DOC will take the following factors into account:

1. Existence of any verbal or written arrangement leading to circumvention of this Agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Cold-Rolled Steel delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

D. In the event that DOC determines that a Russian entity has participated in circumvention of this Agreement, DOC and MOT shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If DOC and MOT are unable to reach mutual agreement within 60 days, DOC may take appropriate measures, such as deducting the amount of Cold-Rolled Steel involved in such circumvention from the export limit for the current Export Limit Period (or, if necessary, the Subsequent Export Limit Period) or instructing the U.S. Customs Service to deny entry to any Russian Cold-Rolled Steel sold by the entity found to be circumventing the Agreement. Before taking such measures, DOC will notify MOT of the basis for DOC's intended action and will afford MOT 30 days in which to comment. DOC will enter its determinations regarding circumvention into the record of the Agreement. MOT may request an extension of up to15 days for any of the deadlines mentioned in this Article.

VI. Monitoring and Notifications

A. MOT will collect and provide to DOC such information as is necessary and appropriate to monitor the implementation of, and compliance with, this Agreement, including the following:

1. Thirty days following the allocation of export rights for any Export Limit Period, MOT shall notify DOC of each allocation recipient and the volume granted to each recipient. MOT also shall inform DOC of any changes in the volume allocated to individual quota recipients within 60 days of the date on which such changes become effective.

2. MOT shall collect and provide to DOC information on exports to the United States in the format in Appendix I to this Agreement, and on the aggregate quantity and value of exports of Cold-Rolled Steel to all other countries. In addition to this information, upon request by DOC, MOT will also provide a list of heat numbers for each shipment to the United States. This information will be subject to verification. This information will be based on semi-annual periods (January 1 through June 30 and July 1 through December 31), and will be provided no later than 90 days following the end of each half-year period, beginning on September 30, 2000.

3. Upon request by DOC, and subject to the provisions of Paragraph VII.A, MOT shall also collect and provide to DOC, within 45 days of the request, transaction-specific data for sales of Cold-Rolled Steel within the Russian home market or to any third country or countries, in the format provided in Appendix I.

4. Within 15 days of a request from DOC for information concerning alleged circumvention or other violation of this Agreement, MOT shall share with DOC all information received or collected by MOT regarding its inquiries, its analysis of such information, and the results of such inquiries.

5. MOT will inform DOC of any violations of any provisions of this Agreement that

come to its attention and of the measures taken with respect thereto.

6. MOT and DOC recognize that the effective monitoring of this Agreement may require that MOT provide information additional to that identified above. Accordingly, after consulting with MOT, DOC may establish additional reporting requirements consistent with the U.S. antidumping law, as appropriate, during the course of this Agreement. MOT shall also collect and provide to DOC, within 45 days of the request, any such additional information requested by DOC.

B. MOT may request an extension of up to 30 days of any deadline in this Article.

C. DOC may disregard any information submitted after the deadlines set forth in this Article or any information which it is unable to verify to its satisfaction.

D. DOC shall provide MOT with the following information relating to implementation and enforcement of this Agreement.

1. Semi-annual reports indicating the volume of U.S. imports of Cold-Rolled Steel subject to this Agreement, together with such additional information as is necessary and appropriate to monitor compliance with the export limits. Such reports and information shall be provided within 120 days after the end of the last semi-annual period.

2. Notice of any violations of any term of this Agreement.

E. DOC will also monitor the following information relevant to this Agreement, and provide such information that is public to MOT upon request.

1. Publicly available data as well as U.S. Customs entry summaries and other official import data from the U.S. Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

2. U.S. Bureau of the Census computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, DOC may request the U.S. Customs Service to provide such information. DOC may request other additional documentation from the U.S. Customs Service.

F. DOC may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of Cold-Rolled Steel during the period this Agreement is in effect.

VII. Disclosure and Comment

A. DOC shall make available to representatives of each Party to the Proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to DOC semi-annually or upon request pursuant to this Agreement, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure under Paragraph VII.A, the Parties to the Proceeding may submit written comments to DOC, not to exceed 30 pages.

C. At the end of each Export Limit Period, each Party to the Proceeding may request a hearing on issues raised during the preceding Export Limit Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

VIII. Consultations

A. If, in response to a request by MOT at any time, DOC determines that the Reference Price calculated under Article III prevents Russian producers from participating in the U.S. market, MOT and DOC will promptly enter into consultations in order to review the market situation and the appropriateness of the Reference Price level.

B. MOT and DOC shall hold consultations concerning the implementation, operation (including the calculation of Reference Prices) and enforcement of this Agreement each year during the anniversary month of this Agreement.

C. Additional consultations on any aspect of this Agreement shall be held as soon as possible, but no later than 30 days, after a request by either MOT or DOC.

D. If DOC receives information indicating that there has been a violation of this Agreement, DOC shall promptly request special consultations with MOT. Such consultations shall begin no later than 21 days after the day of DOC's request, and must be completed within 40 days after commencement. After completion of the consultations, DOC will provide MOT 20 days within which to provide comments.

E. Two years after the effective date of this Agreement, DOC and MOT shall enter into additional consultations to review the extent to which this Agreement is accomplishing the purposes set forth in the preamble and make any revisions consistent with U.S. law that are appropriate in light of their mutual conclusions.

IX. Violations

A. DOC will investigate any information relating to circumvention or other violations of this Agreement which is brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. Prior to making a determination that a violation has occurred, DOC will engage in consultations with MOT, pursuant to Paragraphs V.D or VIII.D. of this Agreement.

B. DOC will determine whether a violation has occurred within 30 days after the date for submission of comments by MOT upon the allegation under Paragraph VIII.D.

C. If DOC determines that this Agreement is being or has been violated, DOC will take such action as it determines is appropriate under U.S. law and regulations.

X. Duration

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. antidumping law.

B. DOC will, upon receiving a proper request made by MOT, conduct an administrative review of this Agreement under U.S. laws and regulations.

C. MOT or DOC may terminate this Agreement at any time upon written notice to the other party. Termination shall be effective 60 days after such notice is given. Upon termination of this Agreement, the provisions of U.S. antidumping law and regulations shall apply. In addition, DOC shall terminate this agreement if MOT withdraws from "The Agreement Concerning Trade In Certain Steel Products From The Russian Federation." Termination shall be effective 60 days after the written notice of MOT's withdrawal.

XI. Other Provisions

A. DOC finds that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic Cold-Rolled Steel products by imports of the Cold-Rolled Steel subject to this Agreement.

B. DOC does not consider any of the obligations concerning exports of Cold-Rolled Steel to the United States undertaken by MOT pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

C. The English and Russian language versions of this Agreement shall be authentic, with the English version being controlling for purposes of interpreting and implementing the terms and conditions of this Agreement.

D. All provisions of this Agreement, including the provisions of the Preamble, shall have equal force.

E. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

DOC: U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

MOT: Department for State Regulation of External Economic Activities, Ministry of Trade of the Russian Federation, 18/1 Ovchinnikovskaya naberezhnaya, Moscow, 1 13324, Russia

Signed on this 13th day of January, 2000.

For DOC:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For MOT:

Yuri V. Akhremenko,

Trade Representative of the Russian Federation to the United States,Minister-Counsellor Commercial.

Appendix I

In accordance with the established format, MOT shall collect and provide to DOC all information necessary to ensure compliance with this Agreement. This information will be provided to DOC on a semi-annual basis.

MOT will collect and maintain data on exports to the United States on a continuous basis. Sales data for the home market, and data for exports to countries other than the United States, will be reported upon request.

MOT will provide a narrative explanation to substantiate all data collected in accordance with the following formats:

A. Exports to the United States

MOT will provide all Export Licenses issued to Russian entities, which shall contain the following information with the exception that information requested in item #9, date of entry, item #10, importer of record, item #16, final destination, and item #17, other, may be omitted if unknown to MOT and the licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and or entry.
2. Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton and currency used.
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License/ Temporary Document is Issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Russian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Final Destination: The complete name and address of the U.S. purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/U.S. purchaser.

B. Exports Other Than to the United States

Pursuant to Paragraph VI.A, MOT will provide country-specific volume and value information for exports of Cold-Rolled Steel to third countries, upon request, regardless of whether MOT licenses exports of Cold-Rolled Steel to such country(ies). The following information shall be provided except that information requested in item #6, date of entry, #7, importer of record, and item #10, other, may be omitted if unknown to MOT and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and/or entry, if any.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date Export License/ Temporary Document is issued, if any.
6. Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
9. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
10. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

C. Home Market Sales

Pursuant to Paragraph VII.A, the MOT will provide home market volume and value information for sales of Cold-Rolled Steel, upon request. The following information shall be provided with the exception of item #6, other, if unknown to MOT and the Russian producer/exporter.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

Appendix II

Section 734 (1) of the Tariff Act of 1930 as amended, provides, in part, as follows:

(1) Special Rule for Non-Market Economy Countries.

(I) In General.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that

(A)—Such agreement satisfies the requirements of subsection (d), and

(B)—Will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of Agreements—If the administering authority determines that the agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

Section 771(9) of the Tariff Act of 1930, as amended, provides in part, as follows:

(9) Interested Party—The term "interested party" means—

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise under this title or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) The government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) A manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) An association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product.

Appendix III

For purposes of this Agreement, Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products are defined as the following:

Certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") " for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this Agreement, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or

1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this Agreement unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this Agreement:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
  (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or
  (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
  Thickness: 0.001 to 0.010 inches.
  Width: 15 to 32 inches.

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤1.0 mm
  Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight	0.90–1.05	0.15–0.35	0.30–0.50	≤ 0.03	≤ 0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm²
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤ 0.05%

Compressive Stress: 10 to 40 Kgf/mm²

Surface Roughness

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤ 0.100 mm ±7%
Width: 100 to 600 mm

Chemical Composition

Element	C	Mn	P	S	Al	Fe
Weight %	≤ 0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

Mechanical Properties

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm²

Physical Properties

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inches ± .0015 inches
Width: 33 to 45.5 inches

Chemical Composition

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

Mechanical Properties

Hardness	B 60–75 (AIM 65)

Physical Properties

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

Magnetic Properties

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

- Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	.5 (0.1)	0 (0)	7 (0.2)

Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;

Certain cold-rolled steel sheet, which meets the following characteristics:

Thickness (nominal): ≤ 0.019 inches

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight %	.....	0.010	0.012

Certain band saw steel, which meets the following characteristics:Thickness: ≤ 1.31 mmWidth: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:

Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤ 7 mm arc heightCross bow (per inch of width): 0.015 mm max.

The merchandise subject to this Agreement is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under this Agreement is dispositive.

Appendix IV

For purposes of this Agreement, Apparent U.S. Domestic Consumption will be estimated as follows, using data provided by the American Iron and Steel Institute and the U.S. Bureau of the Census in the following manner:

Apparent Consumption =

Domestic Shipments of Cold-Rolled Steel [3]
+ Imports of Cold-Rolled Steel [4]
− Exports of Cold-Rolled Steel [5]

The definition of shipments used here, while as close as practically possible, is not identical to the imports as defined in Paragraph I.F and Appendix III of this Agreement.

A–122–047
ARP: 12/01/97–11/30/98
Public Document
IA/III/IX: BF

Petrosul International, c/o Bill Turner, 3380 150 6th Avenue, S.W., Calgary, Alberta, Canada T2P 3Y7

Re: *Antidumping Duty Review of Elemental Sulphur from Canada*

Dear Mr. Turner: This concerns the antidumping review Elemental Sulphur from Canada and Petrosul International ("Petrosul"). We have reviewed Petrosul's March 10, 1999, response letter to the Department's original questionnaire, and have identified certain areas which require additional information (*see* enclosure). Enclosed is a supplemental questionnaire addressing certain deficiencies in your response letter (*See* Attachment I). Please submit your response to: The Department of Commerce, International Trade Administration, Central Records Room B–099, Washington, D.C. 20230, Attn: Brandon Farlander, AD/CVD Enforcement, Office 9.

In responding to this supplemental questionnaire, please follow the "Instructions for Filing the Response" and "Instructions for Preparing the Response" sections of the antidumping questionnaire.

Please submit your response no later than February 2, 2000. This investigation is on a schedule dictated by law. If you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings on the facts available. Upon receipt of a response that is incomplete or deficient to the extent the Department considers it non-responsive, the Department will not issue additional supplemental questionnaires, but will use facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department may use information that is adverse to your interest in conducting its analysis.

The information which you submit is subject to verification. Failure to allow verification of any item may affect the consideration which we will accord to that item or to any other material, whether or not we verify the latter.

If you have any questions on this matter, please contact Brandon Farlander at (202) 482–0182.

Sincerely,

Rick Johnson,

Program Manager, AD/CVD Enforcement, Office 9.

Enclosure.

Attachment I—Elemental Sulphur From Canada; Supplemental Questionnaire Petrosul International ("Petrosul")

In your March 10, 1999, letter response to the Department, you stated that Petrosul did not ship any sulphur to the United States during the period of review ("POR"). However, you stated that Petrosul did purchase sulphur from Husky Oil, Ltd. ("Husky"), which was resold to other parties in Canada, some of which was exported by other parties to the United States. Based on this information, please answer the following questions.

1. As noted above, you state that you purchased suplhur from Husky, some of which was eventually exported to the United States by other parties. Please provide your sulphur contract(s) with Husky in effect during the POR for these transactions, including an explanation of your shipment process. Also, please provide the name and address to whom you sold Husky-produced sulfur to and identify who had knowledge or should have had knowledge that the sulphur was exported to the United States. For the Husky-produced sulphur that you bought and then resold to other parties in Canada, please provide the U.S. customer name(s) and address(es).

2. Also, please state whether you purchased sulphur from other Canadian producers for which either you or another reseller had knowledge or should have had knowledge that it was exported to the United States. If yes, please provide the name(s), address(es), and the contract(s) in effect during the POR, for all parties involved (*i.e.*, Canadian sulphur producers, Canadian resellers, and U.S. customers). Please state whether, for each party you sold sulphur to for which you knew or should have known that this sulphur was destined for the United States, the party knew who produced the sulphur. Finally, please explain your sulphur selling activities, including the shipment process and the substance of your oral and written communications, with respect to these parties.

[FR Doc. 00–1845 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

[3] Cold-Rolled Steel = Black Plate (AISI Data) + Cold-Rolled Sheets (AISI Data) + Cold-Rolled Strip (AISI Data).

[4] Imports of Cold-Rolled Steel = Black Plates (AISI Data) + Cold-Rolled Sheets (AISI Data) + Cold-Rolled Strip (AISI Data) + Imports of HTS Numbers 7210.90.9000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.19.1000, and 7226.19.9000 (Data from the U.S. Bureau of the Census on Imports for Consumption, as reported by the International Trade Commission's Trade DataWeb).

[5] Exports of Cold-Rolled Steel = Black Plates (AISI Data) + Cold-Rolled Sheets (AISI Data) + Cold-Rolled Strip (AISI Data).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–810]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0172 and (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cold-rolled flat-rolled carbon-quality steel products ("cold-rolled steel products") from the Russian Federation ("Russia") are being, or are likely to be, sold in the United

States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Final LTFV Margin" section of this notice.

Case History

Petitioners in this investigation are Bethlehem Steel Corporation, Gulf States Steel, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation, Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, United Steelworkers of America, and the Independent Steelworkers Union (collectively "petitioners").

Respondents in this investigation are JSC Severstal ("Severstal") and Novolipetsk Iron & Steel Corporation ("NISCO").

The preliminary determination in this investigation was published on November 10, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 61261 (November 10, 1999) ("*Preliminary Determination*").

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini* ("*Scope Memorandum*"), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

On November 12 and December 1, 1999, respectively, respondents NISCO and Severstal submitted letters informing the Department of their withdrawal from further participation in the proceeding. On December 29, 1999, petitioners filed their case brief in this investigation. No further comments were received by any party. On November 29, 1999 petitioners requested a hearing. However, on January 5, 2000, petitioners withdrew their hearing request.

On January 13, 2000, the Department signed an agreement suspending this antidumping investigation ("the Suspension Agreement") with the Ministry of Trade of the Russian Federation. On December 22, 1999, we received a request from petitioners that, if we concluded a suspension agreement in this case, we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. If the United States International Trade Commission ("ITC") determines that material injury exists, the Suspension Agreement shall remain in force but the Department shall not issue an antidumping order so long as the Suspension Agreement remains in force, the Suspension Agreement continues to meet the requirements of subsections (d) and (l) of section 734 of the Act, and the parties to the Suspension Agreement carry out their obligations under the Suspension Agreement in accordance with its terms.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or

(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);

- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

• Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≧162 Kgf/mm²
Hardness	≧475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	less than 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≦0.04%
Oxide Inclusion	≦0.05%

Compressive Stress: 10 to 40 Kgf/mm².

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz0.5
0.209t less than 0.310	Rz≤0.6
0.310t less than 0.440	Rz≤0.7
0.440t less than 0.560	Rz≤0.8
0.560 less than	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≦ 0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	less than 3%
Tensile Strength	600 to 850 N/mm²

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	less than 3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	less than 0.01 mm greater than thickness
Coil Set (in 1.0 m)	less than 75.0 mm

- Certain silicon steel, which meets the following characteristics:
- Thickness: 0.024 inch ±.0015 inch
- Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	less than 0.01	0.004 to 0.007	less than 0.007

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	0.08	0.04	0.40	0.03	0.03	0.010—0.025	0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	+5 percent (aim ±4 percent)
Width Tolerance	−0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	>275N/mm_2
Elongation	>36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000—55,000 psi
Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Hardness	T2/HR 30T 50–60 aiming
Elongation	≥15%
Tensile Strength	51,000 psi ±4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)
Width	≤10 inches (+1/4 to 3/8 inch/−0)
Tensile strength	55,000 psi max.
Elongation	minimum of 15 percent in 2 inches

• Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:

Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max. Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤1.31 mm

Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight%	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	590
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

- Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000; 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is October 1, 1998 through March 31, 1999.

Nonmarket Economy Country Status

The Department has treated Russia as a nonmarket economy ("NME") country in all past antidumping duty investigations and administrative reviews (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 38626 (July 19, 1999) ("*Hot-Rolled Steel*"); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); and *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995)). A designation as an NME country remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). Therefore, for this final determination, the Department is continuing to treat Russia as an NME country.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). The Department may, however, consider requests for a separate rate from individual exporters.

Severstal and NISCO have each requested a separate, company-specific rate. However, because NISCO and Severstal withdrew from this proceeding, we were not able to verify information provided by these respondents and thus, as adverse facts available, we have not granted Severstal's or NISCO's request for a separate rate for this final determination. *See* "Application of Facts Available" below.

Russia-Wide Rate

After sending questionnaires to the nine companies identified as potential respondents in the petition, we received complete Section A responses from two producers—Severstal and NISCO. However, as noted above in the "Case History" section, these two companies (Severstal and NISCO) subsequently withdrew from the investigation. Accordingly, we are applying a single antidumping rate—the Russia-wide rate—to all exporters in Russia based on our presumption that those respondents who failed to respond to the initial questionnaire or withdrew from the investigation (*i.e.*, Severstal and NISCO) constitute a single enterprise under common control by the Russian government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996). As discussed below, the Russia-wide rate is based on adverse facts available, and applies to all entries of subject merchandise.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Russia-Wide Rate

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. Additionally, section 782(i)(1) of the Act provides that the Department must rely on verified information for making a final determination in an antidumping duty investigation. In this case, some exporters of the single enterprise failed to respond to the Department's request for information and Severstal and NISCO withdrew from the investigation prior to verification of their questionnaire responses. Thus, consistent with section 782(e)(2) of the Act, we have declined to consider information submitted by either Severstal or NISCO (including information regarding their eligibility for separate rates) because it could not be verified. As a result, pursuant to section 776(a) of the Act, in reaching our final determination, we have used total facts available for the Russia-wide rate because certain entities did not respond and we could not verify Severstal's and NISCO's questionnaire responses.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 ("SAA"). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

Because certain exporters in the single entity did not respond to our questionnaire and others (*i.e.*, Severstal and NISCO) withdrew from this proceeding, we consider the single entity to be uncooperative. In this regard, we note that while Severstal and NISCO did submit responses to the Department's information requests, their withdrawal from this investigation rendered the submitted information unverifiable and, hence, unusable in determining a final Russia-wide rate. Therefore, we also conclude that Severstal and NISCO (which, as noted above in the "Russia-wide Rate" section of this notice, are part of the single enterprise) have not cooperated to the best of their ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases in which a respondent has been uncooperative, as adverse facts available, we have applied a margin based on information in the petition (*see* Comment below and *Initiation Checklist: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China ("China"), Indonesia, Japan, the Russian Federation ("Russia"), Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Attachment: Revised NVs and Margins for Russia* (July 21, 1999) ("*Initiation Checklist*")).

Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used for corroboration may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see id.*).

In order to determine the probative value of the petition margins for use as adverse facts available for the purposes of this determination, we have examined evidence supporting the petition calculations. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value ("NV") calculations on which the petition margin was based. In corroborating U.S. price, we compared the data used in the petition and found that the price quote used in calculating the highest margin in the petition is within the range of the U.S. Customs' average unit value data for imports of cold-rolled steel from Russia. For NV information, we note that the surrogate value information used in the petition is public information, and therefore does not require further corroboration. With regard to the factor utilizations used in the petition, which were based on petitioner's own production experience (adjusted for known differences), the Department is aware of no other independent sources of information that would enable us to further corroborate this information. However, we note that the SAA (at 870) specifically states that

where "corroboration may not be practicable in a given circumstance," the Department may nonetheless apply an adverse inference. Therefore, based on this analysis, and mindful of the legislative history discussing facts available and corroboration, we consider the highest petition margin to be corroborated to the extent practicable and are assigning it to the single enterprise as adverse facts available. *See Facts Available Corroboration Memorandum*, dated January 18, 2000. The revised highest petition rate, which we have used as the Russia-wide rate, is 73.98 percent.

Interested Party Comment

Comment: Petitioners contend that, since both Severstal and NISCO have withdrawn their participation in this investigation, the Department is prevented from verifying their data. Petitioners argue that the statute provides for application of total facts available under such circumstances. Moreover, because respondents have not fully cooperated with the Department, petitioners assert that they should be assigned a margin based on an adverse inference, citing *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela*, 63 FR 8946, 8947 (February 23, 1998).

In selecting an adverse inference, petitioners argue that the Department's practice is to use the highest of: The highest margin in the petition (or initiation); the highest margin calculated for any other respondent; or the estimated margin found in the preliminary determination. Petitioners contend that respondents withdrew from further participation after realizing that the results of the investigation would be more favorable to them if based on something other than verification results. Therefore, petitioners argue, the Department should select the margin calculated for the *Preliminary Determination* to prevent respondents from benefitting from their own lack of cooperation.

Petitioners contend that the Department has the ability to use, as facts otherwise available, a margin based on respondent's data even though that data is unverified. Petitioners cite to *Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411 (October 2, 1996) ("*Foam*") and *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56738 (October 21, 1999) ("*Cattle*") as examples of the Department using a respondent's calculated margin from the preliminary determination as the basis for an adverse inference in selecting facts available when the respondent has withdrawn from participation in the investigation subsequent to the preliminary determination and the data is therefore unverified. Petitioners argue that in the instant case, as was the case in *Foam* and *Cattle*, the respondent Severstal voluntarily submitted data and certified to its accuracy, and there is no evidence on the record to suggest that the data is aberrational.

Department's Position: As discussed in the "Application of Facts Available" section, we agree that respondents should be assigned a margin based on adverse facts available. However, we disagree with petitioners that we should select the margin calculated for Severstal in the preliminary determination.

The Act and the SAA allow for wide latitude in choosing among the facts available. Moreover, we make the determination of the most appropriate facts available on a case-by-case basis. Here, we are following our recent practice as articulated in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 38626 (July 19, 1999) ("*Hot-Rolled Steel*"). In that case, as here, respondents withdrew from the investigation after the preliminary determination, precluding verification of their submitted data pursuant to section 782(i)(1) of the Act. We stated:

> Under section 782(i)(1) of the Act, the Department must rely on verified information for making a final determination in an antidumping duty investigation. MMK's and NISCO's withdrawal prior to verification of their questionnaire responses prevents the Department from using their information to calculate a weighted-average margin for our final determination.

Id. at 38630.

We acknowledge our decisions in *Foam* and in *Cattle* to use, as adverse facts available, information submitted by respondents that subsequently withdrew from the proceedings and refused to authorize on-site verification. However, the facts of *Cattle* differ from the present case to the extent that the information of the respondents who withdrew was found to be consistent with verified information otherwise on the record. Moreover, we disagree with petitioners that this indicates that our policy is to select unverified information for purposes of facts available simply because it is the highest rate on the record.

Finally, we disagree that Severstal will benefit from the Department's use of the highest petition rate as adverse facts available. While it is true that the highest petition margin is lower than the margin calculated for Severstal in the preliminary determination, we note that Severstal in fact submitted a revised database which the Department was not able to use in issuing its preliminary determination due to time constraints. Thus, it would be premature to conclude that Severstal benefitted through its withdrawal from this investigation, relative to what its final calculated margin may have been. As we stated in *Hot-Rolled Steel* at 38630, use of a company's "unverified information as the basis for the final margin could potentially benefit [it] by assigning a margin lower than what would have been calculated using verified information."

For these reasons, we find that it is appropriate to apply, as adverse facts available, the highest margin alleged in the petition.

Final LTFV Margin

As stated above, the Department entered into a Suspension Agreement in this case on January 13, 2000. Pursuant to that Suspension Agreement, we have instructed Customs to terminate the suspension of liquidation of all entries of cold-rolled steel from Russia. Any cash deposits of entries of cold-rolled steel from Russia shall be refunded and any bonds shall be released.

As noted above, we received a request from petitioners to continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margin:

Exporter/manufacturer	Margin percentage
Russia-Wide Rate	73.98

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the Agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but

the Department shall not issue an antidumping order so long as: (1) The Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of section 734 of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1846 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–811, A–588–849, A–549–814]

Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia at (202) 482–0498 or Gabriel Adler at (202) 482–1442, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce ('' the Department'') regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

Final Determinations

We determine that cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel products'') from Argentina, Japan and Thailand are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determinations in these investigations were issued on November 1, 1999. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 64 FR 60410 (November 5, 1999) (''*Preliminary Determinations*''). On December 23, the petitioners [1] submitted a case brief regarding the Thailand investigation in which they stated that they agreed fully with the Department's use of the highest margin from the petition as adverse facts available for that final determination. An analysis of the other comment made by the petitioners in their Thailand case brief is set forth in the *Interested Parties Comments* section below. NKK Corporation (''NKK'') filed a case brief with the Department regarding the Japan investigation on December 27, 1999. No case briefs were filed in the Argentina investigation, no rebuttal briefs were filed in any of the investigations, and no requests for a hearing in any of the investigations were received by the Department.

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') '' for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM

[1] The petitioners include Bethlehem Steel Corporation, Gulf States Steel, Inc., The Independent Steelworkers Union, Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, United Steelworkers of America, and Weirton Steel Corporation. National Steel Corporation is not a petitioner in the case regarding Japan.

specification (sample specifications: ASTM A506, A507);

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
- (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or
- (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch

Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≧162 Kgf/mm²
Hardness	≧475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04
Oxide Inclusion	≤0.05

Compressive Stress: 10 to 40 Kgf/mm²

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 7% Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch +.0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %						
Max. Weight %	0.004	0.4	0.09	0.009	0.65	0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-Metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	<0.08	<0.04	<0.40	<0.03	<0.03	0.010–0.025	<0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	+/−5 percent (aim +/−4 percent)
Width Tolerance:	−0/+7 mm
Hardness (Hv):	Hv 85–110
Annealing:	Annealed
Surface:	Matte
Tensile Strength:	>275N/mm^2
Elongation:	>36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness:	0.0061 inch (+/−10 percent of theoretical thickness)
Width:	31 inches
Tensile Strength:	45,000–55,000 psi
Elongation:	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-Metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness:	0.0058 inch +/−0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥ 15%
Tensile Strength	51,000 psi +/−4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (+/−0.0005 inch)
Width	≥ 10 inches (+ ¼ to ⅜ inch/−0)
Tensile strength	55,000 psi max.
Elongation	minimum of 15 percent in 2 inches

• Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≥ 0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics: Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.800–2.000
Min. Yield Point (MPa):	265

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Max Yield Point (MPa):	365
Min. Tensile Strength (MPa):	440

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %:	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≥1.31 mm

Width: ≥80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	1.000–2.300 (inclusive)
Min. Yield Point (MPa):	340
Max Yield Point (MPa):	520
Min. Tensile Strength (MPa):	590
Min. Elongation %:	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	1.200–2.300 (inclusive)
Min. Yield Point (MPa):	370
Max Yield Point (MPa):	570
Min. Tensile Strength (MPa):	780

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %:	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

• Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.600–0.800
Min. Yield Point (MPa):	185
Max Yield Point (MPa):	285
Min. Tensile Strength (MPa):	340
Min. Elongation %:	31 (ASTM standard 31% = JIS standard 35%)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.800–1.000
Min. Yield Point (MPa):	145
Max Yield Point (MPa):	245
Min. Tensile Strength (MPa):	295
Min. Elongation %:	31 (ASTM standard 31% = JIS standard 35%)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, -0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini ("Scope Memorandum")*, January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion

requests under consideration at the time of the preliminary determination in these investigations.

Period of Investigations

The period of the investigations ("POI") is April 1, 1998, through March 31, 1999.

Facts Available

In the preliminary determinations, the Department based the dumping margins for the mandatory respondents, Siderar Limited, in the Argentina investigation, Nippon Steel Corporation ("NSC"), Kawasaki Steel Corporation ("KSC"), Kobe Steel Ltd. ("Kobe"), and Nisshin Steel Co., Ltd. ("Nisshin"), in the Japan investigation, and Thai Cold Rolled Steel and Sheet Company ("TCRSSC"), an affiliate of Sahaviriya Steel Industries Public Co., Ltd., collectively "TCRSSC/Sahaviriya," in the Thailand investigation, on facts otherwise available pursuant to section 776(a)(2)(A) of the Act. The use of facts otherwise available is necessary because the record does not contain company-specific information due to the fact that each of these respondents failed to respond to the Department's questionnaire, nor did they provide any indication that they were unable to do so. Therefore, the Department found that they failed to cooperate by not acting to the best of their ability. As a result, pursuant to section 776(b), the Department used an adverse inference in selecting from the facts available. Specifically, the Department assigned to the Argentine and Thai mandatory respondents the highest margins alleged in the amendments to the respective petitions. Similarly, the Japanese mandatory respondents were assigned the highest margin alleged in the petition. We continue to find these margins corroborated, pursuant to section 776(c) of the Act, for the reasons discussed in the *Preliminary Determinations*. No interested parties have objected to the use of adverse facts available for the mandatory respondents in these investigations, nor to the Department's choice of facts available. Furthermore, no request for a hearing in any of these investigations was received by the Department. For its final determinations, the Department is continuing to use the highest margins alleged by the petitioners for all non-responding mandatory respondents in these proceedings. *See Preliminary Determinations*. In addition, the Department has left unchanged from the preliminary determinations the "All Others Rate" in each investigation. *See Comments 1 and 2.*

Critical Circumstances

No comments were received regarding the Department's preliminary critical circumstances determinations, and the Department has not made any changes to those determinations. For the reasons given in the preliminary determinations, the Department continues to find that critical circumstances exist with respect to cold-rolled steel products imported from NSC, KSC, Kobe, and Nisshin, in accordance with section 733(e)(1) of the Act.

As set forth in our preliminary determinations, because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than NSC, KSC, Kobe, and Nisshin, the Department continues to find, for the purposes of these final determinations, that critical circumstances do not exist for imports of cold-rolled steel products from Thailand imported from TCRSSC/Sahaviriya or for the "all others" category in both the Japan and Thailand investigations.

There was no allegation of critical circumstances in the Argentina case.

Interested Party Comments

Comment 1: Calculation of the "All Others" Antidumping Duty Margin in the Case of Thailand

The petitioners assert that the Department, in its simple average calculation of the "all others" antidumping duty margin, incorrectly included two figures that were themselves averages of the minimum and maximum dumping margins presented in the amended petition. The petitioners allege that using the simple average of the minimum and maximum margins presented in the amended petition should have yielded a margin of 69.17 percent.

DOC Position: We disagree with the petitioners. The dumping margin for the "all others" category assigned by the Department in our preliminary determination was based on the simple average of all five of the margins [2] presented in the amended petition. Contrary to the petitioners' allegation, we did not include any figures in our calculation that were averages of the minimum and maximum alleged dumping margins. Therefore, we have not changed the dumping margin for the "all others" category in the case of Thailand.

Comment 2: Calculation of the "All Others" Dumping Margin in the Case of Japan

NKK asserts that the Department effectively applied adverse facts available to the "all others" companies by calculating an "all others" rate based on the simple average of all of the dumping margins in the petition, including margins based on constructed value. NKK states that the Department's calculated margin of 39.28 percent was significantly more adverse than a margin calculated based on the simple average of only the price-to-price comparisons contained within the petition (28.09 percent). By basing the preliminary margin calculation applied to NKK's entries in part on the constructed value comparisons from the petition, NKK argues, the Department effectively assumed that NKK made home market sales of the subject merchandise at prices below cost of production. NKK argues that the Department had no basis to assume that its home market sales of the subject merchandise were made at prices below the cost of production, and that the Department needs specific evidence to justify a finding of below cost sales. NKK states that no such NKK-specific evidence exists and that the facts used to support the below cost allegation in the petition were not specific to NKK.

NKK also argues that the Department had no reason to apply adverse facts available to it, because NKK fully cooperated with all of the Department's requests for information. In support of this argument, NKK states that it is the Department's long-standing policy not to apply the same harsh adverse inferences it may have applied to mandatory respondents to other producers who did not respond. NKK argues that this practice is evident in the Department's decision to not adversely assume that NKK's shipments were massive, when making its preliminary critical circumstances determination for the "all others" group. Because the Department did not apply adverse inferences in regard to critical circumstances, NKK concludes that the Department should not apply adverse inferences when calculating the antidumping margin for NKK.

Finally, NKK asserts that, because the Department expressly excluded NKK from participating as a voluntary respondent, company specific prices and costs are not available on the record. As a result, the Department must operate under section 776(a)(1) of the Act and apply facts available in a

[2] Of the five margins presented in the amended petition and used in the Department's simple average calculation, three of the margins were based on a comparison of import average unit values ("AUV") to constructed value while the remaining two margins were based on comparisons of price quotes to constructed values.

manner that recognizes the fact that the nonparticipating parties have no culpability for the lack of company-specific information on the record. NKK concludes that the Department should exclude the constructed value margins set forth in the petition when deriving an antidumping duty rate for NKK. NKK further suggests that data in the *hot-rolled* steel investigation [3] is evidence that NKK did not sell *cold-rolled* steel below cost.

DOC Position: Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances: Elastic Rubber Tape From India*, 64 FR 19123 (April 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 21, 1999). The Department, in following its recent practice, did not assume that NKK made sales below cost and did not apply "adverse" facts available to NKK in calculating the "all others" rate in this case. In fact, lacking data for these companies, the Department made no assumptions with respect to whether individual companies within the "all others" group made sales below cost,[4] for this very reason it considered *both* price-to-price and constructed value margins from the petition. This methodology allows the Department to calculate a margin based on facts available. The use of constructed value in the petition was, in this case, an appropriate means of estimating normal value based on sales in the ordinary course of trade. There is no reason to assume that NKK's normal values—and margins—would be lower even if it did not sell the foreign like product at below-cost prices. In this respect, the "all-others" margin is a generic margin, not based on data specific to any of the companies to which it is applied. Moreover, with respect to NKK's argument that record evidence in the hot-rolled steel case supports the conclusion that NKK did not sell cold-rolled steel below cost in the home market, we note that the hot-rolled information is not on the record of this proceeding.

Furthermore, contrary to NKK's assertions, the fact that the Department declined to make the adverse assumption that the "all others" companies had "massive imports" for purposes of its critical circumstances determination does not require the Department to exclude the constructed value margins from the "all others" rate calculation. As explained above, the use of a simple average of *all* petition margins involves *no* assumptions (adverse or favorable) with respect to whether a given company or the "all others" group as a whole makes sales below cost. Thus there is no conflict between this position and the Department's decision not to make an adverse assumption with regard to massive imports. Had the Department wished to apply an adverse inference, it would have selected the highest margin in the petition, as it did for the uncooperative mandatory respondents. Instead, as stated previously, the Department used non-adverse facts available to determine the "all others" rate for all companies not fully investigated by calculating the margin based on a simple average of all of the margins contained within the petition.

The Department also disagrees with NKK's allegation that it expressly excluded NKK from participating as a voluntary respondent. In the Department's July 9, 1999, respondent selection memo, the Department stated that voluntary respondents would not be investigated unless mandatory respondents failed to cooperate or unless additional resources became available. The Department further noted that, should some mandatory respondents fail to respond, resources would be reallocated to voluntary respondents on a first-come, first-served basis. Thus, the Department expressly indicated that, although it was unable to accept voluntary respondents at that time, it would be willing to do so at a later date if, as happened in these cases, the voluntary respondents' company-specific data had already been placed on the record and some mandatory respondents did not respond to the questionnaires. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan*, 65 FR 1095 (January 7, 2000). NKK's company-specific data was not placed on the record. Nonetheless, the Department recognizes the fact that NKK did fully cooperate with its requests prior to the respondent selection in this investigation. As a result, we are not applying the adverse 53.04 percent rate to NKK's entries, but rather are applying the "all others" rate of 39.28 percent. The Department has acted in accordance with section 776(a)(1) of the Act by applying facts available in a manner that recognizes the fact that the nonparticipating parties have no culpability for the absence of their company-specific information on the record. Based on the above reasons, we have not changed the dumping margin for the "all others" category in the case of Japan.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel products exported from Japan by KSC, NSC, Kobe and Nisshin that are entered, or withdrawn from warehouse, for consumption on or after August 7, 1999 (90 days prior to the date of publication of the preliminary determinations in the **Federal Register**). In addition, we will direct the Customs Service to continue to suspend liquidation of cold-rolled steel products exported from Argentina, Japan (by companies other than those specifically mentioned above) and Thailand that are entered, or withdrawn from warehouse, for consumption on or after November 5, 1999, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash or bond deposit equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Argentina:	
Siderar Limited	24.53
All others	24.53
Japan:	
Nippon Steel Corporation	53.04
Kawasaki Steel Corporation	53.04
Kobe Steel, Ltd	53.04

[3] *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999)

[4] We note, in addition, that the Department does not use constructed value only when there are sales below cost. For example, constructed value margins are utilized whenever there are insufficient matches for price-to-price comparisons, for whatever reasons. Furthermore, the Department also routinely includes constructed value margins in the all-others rate when it uses margins calculated during an investigation for such purposes.

Manufacturer/exporter	Margin (percent)
Nisshin Steel Co., Ltd	53.04
All others	39.28
Thailand:	
TCRSSC/Sahaviriya	80.67
All others	67.97

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. As our final determinations are affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1847 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cold-rolled flat-rolled carbon-quality steel products ("cold-rolled steel products") from South Africa are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was published on November 10, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From South Africa*, 64 FR 61270 (November 10, 1999) ("*Preliminary Determination*"). No interested parties have provided comments on the *Preliminary Determination* and no request for a hearing has been received by the Department.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;

• Silico-manganese steel, as defined in the HTSUS;
• Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
• Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
• Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or
(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);
• Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

• Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm²
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm²

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.50
0.209 < t ≤0.310	Rz ≤ 0.6
0.310 < t ≤0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤ 0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤ 0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	< 3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤ 0.3 micron
Camber (in 2.0 m)	< 3.0 mm
Flatness (in 2.0 m)	≤ 0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ± .0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in five inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N

CHEMICAL COMPOSITION—Continued

Min. Weight %	0.02	0.20	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.03	0.02	0.08		0.003
Max. Weight %	0.06	0.40				0.08 (Aiming 0.05)				0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	less than 0.08	less than 0.04	less than 0.40	less than 0.03	less than 0.03	0.010–0.025	less than 0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	±5 percent (aim ±4 percent)
Width Tolerance	-0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	>275N/mm²
Elongation	> 36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (±10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %.	0.02	0.20				0.03				0.003
Max. Weight %.	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	—	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness:	0.0058 inch +/−0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥ 15%
Tensile Strength	51,000 psi +/−4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness:	0.0060 inch (+/−0.0005 inch).
Width:	≥10 inches (+¼ to ⅜ inch/−0).
Tensile strength:	55,000 psi max.
Elongation:	minimum of 15 percent in 2 inches.

• Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≥0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %	0.010	0.012	

• Certain cold-rolled steel, which meets the following characteristics:

Width:> 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.800–2.000
Min. Yield Point (MPa):	265
Max Yield Point (MPa):	365
Min. Tensile Strength (MPa):	440
Min. Elongation %:	26

• Certain band saw steel, which meets the following characteristics:
Thickness: ≥ 1.31 mm
Width: ≥ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≥ 0.03	≥ 0.007	0.3 to 0.5	≥ 0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≥ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %:	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range)24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range)20 (if 2.000–2.300 thickness range)

• Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800.
Min. Yield Point (MPa)	185.
Max Yield Point (MPa)	285.
Min. Tensile Strength (MPa)	340.
Min. Elongation %	31(ASTM standard 31% = JIS standard 35%).

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings:

7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000,

7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini ("Scope Memorandum")*, January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

Period of Investigation

The period of investigation is April 1, 1998 through March 31, 1999.

Facts Available

In the *Preliminary Determination*, the Department based the margin on facts otherwise available under sections 776(a)(2)(A) and (C) because Iscor Limited ("Iscor"), the only known South African exporter of subject merchandise, failed to respond to our questionnaire and significantly impeded the investigation, and because the relevant subsections of section 782 of the Act therefore do not apply.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA"). Based on Iscor's failure to respond to the Department's antidumping questionnaire, we have determined that Iscor has not acted to the best of its ability to comply with the Department's information requests. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department applied a margin of 16.65 percent, the only alleged margin in the petition. As discussed in the *Preliminary Determination*, the Department has, to the extent practicable, corroborated the information used as adverse facts available. Since then, no interested parties have provided comments on the *Preliminary Determination* and no request for a hearing has been received by the Department. Therefore, we are continuing to use as adverse facts available the rate alleged by petitioners.

The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including weight-averaging the facts available margins. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the statute and the SAA at 873, we are using an alternative method. In the *Preliminary Determination*, as an alternative, we based the all-others rate on the margin alleged in the petition. We received no comments on this issue, and therefore continue to use this basis for the final determination. As a result, the all-others rate is 16.65 percent.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from South Africa, that are entered, or withdrawn from warehouse, for consumption on or after November 10, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Margin percentage
Iscor	16.65
All Others	16.65

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1848 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–831]

Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Javier Barrientos, Office of CVD/AD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3208 and (202) 482–2243, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and/or exporters of certain cold-rolled flat-rolled carbon-quality steel products from Brazil. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation,

Gulf States Steel Inc., Ispat Inland, Inc., LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers of America and the United Steelworkers of America (collectively, "the petitioners").

Case History

Since the publication of our preliminary determination in this investigation on October 1, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 53332) (*Preliminary Determination*), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from October 21 through October 26, 1999. The final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 53334). On December 2, 1999, and December 7, 1999, the Department released its verification reports to all interested parties. Respondents submitted a case brief on December 15, 1999; petitioners submitted a rebuttal brief on December 21, 1999.

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: 1.0 mm
Width: 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	0.03	0.006

MECHANICAL PROPERTIES

Tensile Strength	162 Kgf/mm²
Hardness	475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm²

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm²

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ±.0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring Inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical.
	1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	<0.08	<0.04	<0.40	<0.03	<0.030.0	0.010–0.025	<0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance	±5 percent
Guaranteed inside of 15 mm from mill edges	(aim ±4 percent)
Width Tolerance	-0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	<275N/mm^2
Elongation	<36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S

CHEMICAL COMPOSITION—Continued

Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/−10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥15%
Tensile Strength	51,000.0 psi ±4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Width	≤10 inches (+ ¼ to ⅜ inch/-0)
Tensile strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches

• Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≦0.019 inch
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight %	.....	0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:
• Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤ 1.31 mm Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: Fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	590
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

- Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight%				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31%=JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %:≥	35

- Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini* ("*Scope Memorandum*"), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1999) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348)(CVD Regulations).

Injury Test

Because Brazil is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. On July 30, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Brazil of the subject merchandise (64 FR 41458). The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 19, 1999. The views of the Commission are contained in USITC Publication 3214 (July 1999), entitled Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701–TA–393–396 and 731–TA–829–840 (Preliminary).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is calendar year 1998.

Company Histories

USIMINAS was founded in 1956 as a venture between the Brazilian Government, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the Government of Brazil (GOB) decided to include its operating companies, including

USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia do Vale do Rio Doce (CVRD), a majority government-owned iron ore producer, acquired 15 percent of USIMINAS's common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

COSIPA was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.8 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management Ltd., the COSIPA Employee Investment Club, and COSIPA's Pension Fund (FEMCO).

CSN was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao S.A. (Docenave), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN is now owned by Docenave/CVRD and a consortium of private investors, including Uniao Comercio e Partipacoes Ltda., Textilia S.A., Previ, the CSN Employee Investment Club, and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization.

Attribution of Subsidies

There are three producers/exporters of the subject merchandise in this investigation: USIMINAS, COSIPA, and CSN. As discussed above, USIMINAS owns 49.8 percent of COSIPA. The CVD Regulations, at section 351.525(b)(6)(ii), provide guidance with respect to the attribution of subsidies between or among companies which have cross-ownership. Specifically, with respect to two or more corporations producing the subject merchandise which have cross-ownership, the regulations direct us to attribute the subsidies received by either or both corporations to the products produced by both corporations. Further, section 351.525(b)(6)(vi) defines cross-ownership as existing "between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations through common ownership of two (or more) corporations." The preamble to the CVD Regulations identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: "In certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership" (63 FR at 65401).

In this investigation, we preliminarily determined that USIMINAS's 49.8 percent ownership interest in COSIPA is sufficient to establish cross-ownership between the two companies because USIMINAS is capable of using or directing the individual assets of COSIPA in essentially the same ways it can use its own assets. We based this determination on the following: (1) USIMINAS has virtually a majority share in COSIPA; and (2) the remaining shareholdings are divided among numerous shareholders (more than ten), with no one shareholder controlling even one-quarter of the shares which USIMINAS controls. *See Preliminary Determination*, 64 FR 53332, 53334–35. We did not learn anything at verification which would lead us to change our preliminary determination nor did we receive any comments on this issue. Thus, for purposes of this final determination, we have continued to calculate one subsidy rate for USIMINAS/COSIPA, by adding together their countervailable subsidies during the POI and dividing that amount by the sum of the two companies' sales during the POI.

We have also examined the ownership of CSN. We note that during the POI, two entities, CVRD and Previ (the pension fund of the Bank of Brasil), had meaningful holdings in both USIMINAS and CSN. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could, notwithstanding the absence of direct cross-ownership between them, have cross-ownership such that their interests are merged, and one company could have the ability to use or direct the assets of the other through their common investors. CVRD holds 15.48 percent of USIMINAS and 10.3 percent of CSN (through Docenave); Previ holds 15 percent of the common shares of USIMINAS and 13 percent of CSN. Both USIMINAS and CSN are controlled through shareholders' agreements, which require that the participating shareholders (who together account for more than 50 percent of the shares of the company) pre-vote issues before the Board of Directors and vote as a block. While CVRD and Previ both participate in the CSN shareholders' agreement, and thus exercise considerable influence over the use of CSN's assets, neither CVRD nor Previ participates in the USIMINAS shareholders' agreement and neither CVRD nor Previ has any appreciable influence (beyond their respective 15.48 and 15 percent USIMINAS shareholdings) over the use of USIMINAS's assets. Therefore, CVRD's and Previ's shareholdings in both USIMINAS and CSN are not sufficient to establish cross-ownership between those two companies under our regulatory standard. This absence of common majority or significant minority shareholders led us to preliminarily determine that USIMINAS's and CSN's interests have not merged, *i.e.*, one company is not able to use or direct the individual assets of the other as though the assets were their own. Moreover, we found no other evidence such as golden shares or close supplier relationships to lead us to conclude that there is indirect cross-ownership. *See Preliminary Determination* at 53335. We did not learn anything at verification which would lead us to change our preliminary determination nor did we receive any comments on this issue. Thus, for the purposes of this final determination, we have calculated a separate countervailing duty rate for CSN.

Changes in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative*

Countervailing Duty Determination; Certain Steel Products from Austria, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization).

Under this methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. We compute this estimate by first dividing the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period, ending one year prior to the privatization. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, *i.e.*, net worth, of the company. Next, we multiply the purchase price of the company by this average ratio to derive the portion of the purchase price that we estimate to reflect the repayment of prior subsidies. Then, we reduce the benefit streams of the prior subsidies by the ratio of the repayment/reallocation amount to the net present value of all remaining benefits at the time of the change in ownership. For this final determination, we have conformed our net present value calculation with the methodology outlined in the *GIA*. *See GIA* 58 FR at 37263.

In the current investigation, we are analyzing the privatizations of USIMINAS, COSIPA and CSN, including the various partial privatizations. In conducting these analyses, to the extent that government-owned or controlled companies purchased shares, we have not applied our methodology to that percentage of the acquired shares equal to the percentage of government ownership in the partially government-owned purchaser (notwithstanding respondents' arguments on this issue which are discussed below in Comment 6). We have also adjusted certain figures included in the privatization calculations to account for inflationary accounting practices. Further, we accounted for CVRD's 1997 partial privatization by making the same adjustments to USIMINAS and CSN's calculations described in *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil (Brazil Hot-Rolled Final)* 64 FR 38742, 38745, 38752 (Department's Position on Comment 3).

In *Brazil Hot-Rolled Final*, we also noted the use of privatization currencies, *i.e.*, certain existing government bonds, privatization certificates and frozen currencies, and examined them in the context of our privatization methodology. We obtained information about the use and valuation of the privatization currencies that were used in the NPP, and we learned about how privatization currencies were valued in the context of the privatization auctions. Specifically, we found that the GOB accepted most of these currencies at their full redeemable value (face value discounted according to the time remaining until maturity). Additionally, foreign debt and restructuring bonds (MYDFAs) were accepted at 75 percent of their redeemable value. Many of the government bonds that were accepted as privatization currencies were routinely trading at a discount on secondary markets. However, no data or estimation of the applicable discounts was provided for the record in that investigation. *See Brazil Hot-Rolled Final* at 38745. Further, it was common knowledge that these bonds traded at a significant discount in these markets, and that investors actively traded to obtain the cheapest bonds in order to maximize their positions in the privatization auctions. The value of the bonds varied depending on the instrument's yield and length to maturity and traded within a range of 40 percent to 90 percent of the redeemable value, *i.e.*, with a discount ranging from 10 percent to 60 percent. Because various issues of bonds were accepted as privatization currencies, with different yields and terms, precise valuation data was not available. However, public information from the record of the hot-rolled investigation, subsequently placed on the record of this investigation, indicates that during the period 1991 through 1994 most bonds traded with discounts ranging from 40 to 60 percent on average. Privatization Certificates (CPs), which banks were forced to purchase and could only be used in the privatization auctions, traded at a discount of approximately 60 percent on average; MYDFAs traded at 30 percent of their face value, *i.e.*, at a discount of 70 percent. *See Brazil Hot-Rolled Final*, 64 FR at 38745.

In the hot-rolled investigation, we concluded that some adjustment to the purchase price of the companies was warranted because of the use of privatization currencies in the auctions. *See Brazil Hot-Rolled Final*, at 38745, 38752 (the Department's Position on Comment 3). Although this issue is discussed further in Comments 6 and 7 below, no further information has been provided in the record of this investigation which would enable us to refine or otherwise cause us to change the approach we developed in the hot-rolled investigation. Thus, we have followed the same approach and have applied a 30 percent discount to the MYDFAs. In addition, as we did in the hot-rolled investigation, we have applied a 60 percent discount to the CPs. *See Id.* For the remaining privatization currencies, in the *Brazil Hot-Rolled Final*, we applied a 50 percent discount as facts available, which reflected an average of the range of discounts estimated. Because no information has been provided in this investigation which accurately indicates the relevant secondary market discounts for these instruments, and in accordance with section 776(a) of the Act, we are again applying, as facts available, the 50 percent discount to the remaining privatization currencies.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, and for the purposes of this final determination, we are using the 15-year AUL as reported for the steel industry in the IRS tables to allocate the non-recurring subsidies under investigation.

Equityworthiness

In accordance with section 351.507 (a)(1) of the Department's CVD Regulations, a government-provided equity infusion confers a benefit to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including

the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See also* section 771(5)(E)(i) of the Act. In *Preliminary Determination,* we determined that there was no reason to change our findings from prior investigations, *i.e.,* that the respondent companies were unequityworthy (in the relevant years) as follows: (1) COSIPA was unequityworthy from 1977 through 1989, and 1992 through 1993; (2) USIMINAS was unequityworthy from 1980 through 1988; and (3) CSN was unequityworthy from 1977 through 1992. *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37297 (July 9, 1993) (*1993 Certain Steel Final; Brazil Hot-Rolled Final,* 64 FR at 38746. We note that because the Department determined that it is appropriate to use a 15-year allocation period for non-recurring subsidies, equity infusions provided prior to 1984 no longer provide benefits in the POI. None of the parties has submitted information or argument, nor is there evidence of changed circumstances which would cause us to reconsider these determinations.

Equity Methodology

Section 351.507(a)(3) of the Department's CVD Regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. The applicable methodology is described in section 351.507(a)(6) of the regulations, which provides that the Department will treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

To determine whether a company is uncreditworthy, the Department must examine whether the firm could have obtained long-term loans from conventional commercial sources based on information available at the time of the government-provided loan. *See* section 351.505(a)(4) of the CVD Regulations. In this context, the term "commercial" refers to loans taken out by the firm from a commercial lending institution or debt instruments issued by the firm in a commercial market. *See* section 351.505(a)(2)(ii) of the CVD Regulations.

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1984–1988; COSIPA, 1984–1989 and 1991–1993; and CSN 1984-1992. *See Certain Steel from Brazil,* 58 FR at 37297; *Brazil Hot-Rolled Final,* 64 FR at 38746–38747. The parties have not presented any new information or arguments that would lead us to reconsider these findings.

Discount Rates

From 1984 through 1994, Brazil experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the *Certain Steel Final* (58 FR at 37298) and the *Brazil Hot-Rolled Final* (64 FR 38745–38746), we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian discount rate, is to convert the non-recurring subsidies into U.S. dollars. If available, we applied the exchange rate applicable on the day the subsidies were received, or, if unavailable, the average exchange rate in the month the subsidies were received. Then we applied, as the discount rate, a long-term dollar lending rate. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with our practice in *Certain Steel Final* (58 FR at 37298); *Brazil Hot-Rolled Final* (64 FR at 38746); and, *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014, 55019, 55023 (October 21, 1997).

As discussed above, we have determined that USIMINAS, COSIPA, and CSN were uncreditworthy in the years in which they received equity infusions. Section 351.505 (a)(3)(iii) of the CVD Regulations directs us regarding the calculation of the benchmark interest rate for purposes of calculating the benefits for uncreditworthy companies: To calculate the appropriate rate for uncreditworthy companies, the Department must identify values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998).[1] *See* 19 CFR 351.505(a)(3)(iii). For the probability of default by a creditworthy company, we used the cumulative default rates for Investment Grade bonds as reported by Moody's. We established that this figure represents a weighted average of the cumulative default rates for Aaa to Baa-rated companies. *See* September 24, 1999, Memorandum to the File, "Conversations and correspondence regarding the weighted average default rates of corporate bond issuers as published by Moody's," on file in the Central Records Unit, Room B–099 of the main Commerce building (CRU). The use of the weighted average is appropriate because the data reported by Moody's for the Caa to C-rated companies are also weighted averages. *See Id.* For non-recurring subsidies, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on a 15-year term, since all of the non-recurring subsidies examined were allocated over a 15-year period.

I. Programs Determined To Be Countervailable

A. Pre-1992 Equity Infusions

The GOB, through SIDERBRAS, provided equity infusions to USIMINAS (1984 through 1988), COSIPA (198 through 1989 and 1991) and CSN (1984 through 1991) that have previously been investigated by the Department. *See Certain Steel from Brazil,* 58 FR at 37298; *Brazil Hot-Rolled Final,* 64 FR at 38747–38748.

For the reasons discussed above, we preliminarily determined that under section 771(5)(E)(i) of the Act, the equity infusions into USIMINAS, COSIPA and CSN were not consistent with the usual investment practices of private investors (*see* "Equityworthiness" section above). Thus, these infusions constitute financial contributions within the meaning of section 771(5)(D) of the Act and confer a benefit in the amount of each infusion. These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to each of the companies. Accordingly, we preliminarily determined that the pre-1992 equity infusions are countervailable subsidies within the

[1] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (at Exhibit 28).

meaning of section 771(5) of the Act. *See Preliminary Determination*, 64 FR at 53337. No parties have provided any new information or argument which would lead us to reconsider this determination.

As explained in the "Equity Methodology" section above, we treat equity infusions into unequityworthy companies as grants given in the year the infusion was received. These infusions are non-recurring subsidies in accordance with section 351.524(c)(1) of the CVD Regulations. Consistent with section 351.524(d)(3)(ii) of the CVD Regulations, because USIMINAS, COSIPA and CSN were uncreditworthy in the relevant years (the years the equity infusions were received), we applied a discount rate that takes into account the differences between the probabilities of default of creditworthy and uncreditworthy borrowers. From the time USIMINAS, COSIPA and CSN were privatized, we have been following the methodology outlined in the "Changes in Ownership" section above to determine the amount of each equity infusion attributable to the companies after privatization. We continue to rely on this methodology except for the selection of the discount rate as discussed above.

For CSN, we summed the benefits allocable to the POI from all equity infusions and divided by CSN's total sales during the POI. For USIMINAS/COSIPA, we summed the benefits allocable to the POI from all of the equity infusions and divided this amount by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 5.75 percent ad valorem for CSN and 6.16 percent ad valorem for USIMINAS/COSIPA.

B. GOB Debt-for-Equity Swaps Provided to COSIPA in 1992 and 1993

Prior to COSIPA's privatization, and on the recommendation of a consultant who examined COSIPA, the GOB made two debt-for-equity swaps in 1992 and 1993. We previously examined these swaps and determined that they were not consistent with the usual investment practices of private investors; constituted a financial contribution within the meaning of section 771(5)(D) of the Act; and, therefore conferred benefits on COSIPA in the amount of each conversion. *See Brazil Hot-Rolled Final*, 64 FR at 38747. These debt-for-equity swaps are specific within the meaning of section 771(5A)(D)(i) of the Act because they were limited to COSIPA. Accordingly, we preliminarily determined that the GOB debt-for-equity swaps provided to COSIPA in 1992 and 1993 are countervailable subsidies within the meaning of section 771(5) of the Act. *See Preliminary Determination*, 64 FR at 53337. No party has provided any new information or argument which would lead us to reconsider this determination.

Each debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated each debt-for-equity swap as a grant given in the year the swap was made in accordance with section 351.507(b) of the CVD Regulations. Further, these swaps, as equity infusions, are non-recurring in accordance with section 351.524(c)(1) of the CVD Regulations. Because COSIPA was uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the CVD Regulations as discussed in the "Discount Rates" section above. Since COSIPA has been privatized, we followed the methodology outlined in the "Changes in Ownership" section above to determine the amount of each debt-for-equity swap attributable to the company after privatization. We divided the benefit allocable to the POI from these debt-for-equity swaps by the combined total sales of USIMINAS/COSIPA. On this basis, we determine the net subsidy to be 4.44 percent ad valorem for USIMINAS/COSIPA.

C. GOB Debt-for-Equity Swaps Provided to CSN in 1992

Prior to CSN's privatization, and on the recommendation of a consultant who examined CSN, in 1992, the GOB converted some CSN debt into GOB equity in CSN. In this investigation, we initiated on this debt-for-equity swap as a straight equity infusion (*see Initiation Notice* 64 FR 34204), but subsequent to our initiation, in the *Brazil Hot-Rolled Final*, we determined that it constituted a debt-for-equity swap (64 FR at 38748). In the *Brazil Hot-Rolled Final* , we determined that this swap was not consistent with the usual investment practices of private investors and therefore conferred countervailable benefits on CSN in the amount of the swap. *See Id.* Thus, we preliminarily determined that, pursuant to sections 771(5)(D) and (E)(i) of the Act, this debt-for-equity swap constitutes a financial contribution which confers a benefit in the amount of the swap (*see* "Equityworthiness" section above). This debt-for-equity swap is specific within the meaning of section 771(5A)(D) of the Act because it is limited to CSN. Accordingly, we preliminarily determined that the GOB debt-for-equity swap provided to CSN in 1992 is a countervailable subsidy within the meaning of section 771(5) of the Act. *See Preliminary Determination*, 64 FR at 53337. No parties have provided any new information or argument which would lead us to reconsider this determination.

This debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated this debt-for-equity swap as a grant given in the year the swap was made in accordance with section 351.507(b) of the CVD Regulations. Further this swap, as an equity infusion, is non-recurring in accordance with section 351.524(c)(1) of the CVD Regulations. Because CSN was uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the CVD Regulations as discussed in the "Uncreditworthy Rate" section above. Since CSN has been privatized, we followed the methodology outlined in the "Changes in Ownership" section above to determine the amount of the debt-for-equity swap attributable to the company after privatization. We divided the benefit allocable to the POI from the equity infusion by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 1.39 percent ad valorem for CSN.

II. Program for Which the Investigation Was Rescinded

Negotiated Deferrals of Tax Liabilities

In *Preliminary Determination* (64 FR at 53338), we rescinded our investigation of tax deferrals negotiated by COSIPA and CSN which petitioners had alleged provided them with countervailable subsidies. Our rescission was based on the Department's then-recent final determination that this program is not countervailable. *See Brazil Hot-Rolled Final*, 64 FR at 38748–38749; Memorandum to the File, Countervailing Duty Investigation of Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, August 2, 1999, on file in CRU.

Interested Party Comments

Comment 1: Privatization

Respondents argue that 19 U.S.C. 1677(5)(B) and Article 1.1. of the WTO Agreement on Subsidies and Countervailing Measures (SCM) require the Department to find that there is a financial contribution which confers a benefit before concluding that there is a countervailable subsidy. Because, according to respondents, the statute plainly requires the Department to examine, on a continuing basis, the contribution, the benefit and the causal

connection between the two, respondents argue that it is insufficient to identify a financial contribution, made in the past, to a company owned by the government, and then presume irrebuttably that this contribution confers a benefit to the company after it has changed ownership. Rather, the Department must analyze all subsequent events (including changes in ownership, dividends received, and corporate restructurings) in order to determine how and whether prior financial contributions could benefit the companies and products under investigation.

Respondents cite the Department's practice of recognizing the cessation of subsidies when a countervailable grant is subsequently returned to the government or a countervailable loan is fully repaid, both "subsequent events" which extinguish the subsidy. Respondents characterize privatization as another such "subsequent event" which must be considered in examining whether a privatized company benefits from pre-privatization subsidies. Respondents argue that the preliminary determination itself, with its "payback" analysis, concedes that privatization disrupts the required causal connection between the financial contribution and the benefit. Furthermore, respondents claim that the Department cannot use the stated lack of an obligation to consider the effect of every subsidy in determining whether a countervailable benefit exists (*i.e.*, to conduct an "effects test") as an excuse for failing to consider the subsequent events in these circumstances. Respondents state that their position is not premised on requiring an analysis of the effects of all subsidies in all circumstances, but rather on a less burdensome reading of the statute and the SCM that requires consideration of whether a certain limited universe of "significant events" subsequent to a subsidy may eliminate the benefits of that subsidy (consistent with long-standing practice as discussed above). Any other reading of the statute, according to respondents, renders 19 U.S.C. 1677(5)(F) an unnecessary amendment of the law.

Respondents further argue that the proper consideration of a "subsequent event" in this case, the arm's-length privatization of the companies, would necessarily lead to the conclusion that pre-privatization subsides were eliminated. Without an analytical basis to believe or presume that subsidies have been passed through after an arm's length transaction, respondents believe the Department must conclude that the post-privatization owners do not benefit from pre-privatization subsidies.

Respondents rely on the example of Company A which purchases a machine with government assistance and then sells the machine to Company B at market price to illustrate that the benefit of the government assistance remains with Company A; there is no pass-through of advantage or benefit to Company B or the products it may produce with the machine. The same conclusion is necessary when Company B purchases all of the assets and liabilities of (government-owned) Company A. The new owner does not enjoy any advantage. Respondents purport that the owners of a company and their relationship with the assets of the company are critical to any analysis of whether a company has received any benefit from some past financial contribution; when the owners change in an arm's-length privatization, an important dynamic within the company is altered and the entire company changes. Because the Department has overlooked the relevance of the new post-privatization owners, respondents conclude that the analysis is necessarily incomplete.

Respondents further note the changes in ownership and control which resulted from the privatizations of all three companies, and argue that the manner in which the new controlling owners acquired their interests in the companies (arm's-length transactions) preclude the new owners from enjoying any benefit or unfair advantage. Respondents cite the preamble of the CVD Regulations which state that "where a firm does not pay less for its inputs than it would have to pay * * * as a result of a government financial contribution, it would be very difficult to contend that a benefit exists" (63 FR at 65361) and argue that because the new owners did not pay less when they acquired the companies, it is "difficult to contend that a benefit exists."

Finally, respondents note that the fact the GOB retained some residual or indirect interest in the privatized companies does not preserve prior subsidies or convey new subsidies to the respondent companies. Nor does it undermine respondents' conclusion that the new owners and companies did not enjoy any advantage or benefit from pre-privatization subsidies during the POI.

Petitioners note that respondents' arguments are identical to those respondents made, and the Department rejected, in the *Brazil Hot-Rolled Final*. According to petitioners, respondents have neither addressed the bases for the Department's previous rejection of these arguments nor provided any new argument or information which would warrant a change in the Department's response to these arguments.

Department's Position: We disagree with respondents. In accordance with the statute (sections 771(5)(B) and 771(5)(E) of the Act), the Department has found that COSIPA, CSN and USIMINAS continue to benefit from pre-privatization equity infusions. We have examined the facts of this case in light of the above-cited provisions and find that the methodology we follow is in accordance with the Act. As petitioners noted, the Departments' privatization/change-in-ownership methodology has been upheld by the Courts regardless of the amendments to the Act by the URAA. *See Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*); *Inland Steel Bar Co.* v. *United States*, 86 F.3d 1174 (Fed. Cir. 1996) (*Inland II*); and, *Delverde SrL* v. *United States*, 24 F. Supp. 2d 314 (Ct. Int'l Trade 1998) (*Delverde II*).

The Department has satisfied both 19 U.S.C. 1677(5)(B) (section 771(5)(B) of the Act) and Article 1.1. of the SCM in this investigation. We found that the GOB provided financial contributions to respondents, in the form of equity infusions and debt-for-equity conversions in the above-mentioned years which conferred countervailable benefits through the POI. In accordance with the Department's standard methodology, the benefits from these subsidies were allocated over time. Neither of the above-mentioned provisions requires the Department to revisit these determinations.

Under both the SCM and the Act, the Department has the discretion to determine the impact of a change in ownership on the countervailability of past subsidies. The Department has consistently applied its privatization/change-in-ownership methodology to determine the impact that a privatization/change in ownership has on pre-privatization subsidies. However, we have not done this by re-identifying or re-valuing the benefit of the subsidy based on events as of the time when the ownership of the subsidized company changed. The Department identifies and values the subsidy as of the time of the subsidy bestowal and does not revisit this determination. As petitioners correctly note, the Department is not required to examine the effects of subsidies, *i.e.*, trace how benefits are used by companies and whether they provide competitive advantages. Instead, the Department's methodology addresses the impact of the change in ownership on the allocation of pre-privatization subsidies. The Department's methodology accounts for the impact that the change in ownership

has on the measurement of the benefit from pre-privatization subsidies, by allocating, or apportioning, subsidies between the buyer and the seller, as reflected by the purchase price. As the Department said in *Stainless Steel Plate in Coils from Italy*, "[o]ur methodology recognizes that a change in ownership has some impact on the allocation of previously-bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the buyer." 64 FR at 15518. Thus, our methodology is wholly consistent with 19 U.S.C. 1677(5)(F) (section 771 (5)(F) of the Act) and, contrary to respondent's argument, provides the analytical basis for determining whether and to what extent subsidies have passed through to the privatized company or remain, in whole or in part, with the seller.

In addition, we remind respondents that section 701(a)(1) of the Act directs the Department to determine whether a countervailable subsidy is being provided "with respect to the manufacture, production, or export of a class or kind of merchandise." We note that the same terminology is also reflected in the SCM (Article 10, footnote 36). Given this focus on the manufacture, production, and/or exportation of merchandise, the focus of the inquiry here should not be on the new owners of the company and how they may or may not have benefitted from the privatization transaction. Instead, as provided for in section 701(a)(1) of the Act and in Article 10, footnote 36 of the SCM, we have focused on the activities of the company, rather than its ownership structure. Our privatization methodology has accounted for the change in the ownership of the company conducting these activities. Thus, we have measured the amount of the benefit that passes through this transaction as respondent companies continued to manufacture, produce and export subject merchandise.

In addition, respondents' reliance on the discussion of inputs in the preamble of the CVD Regulations is misplaced. Contrary to the suggestion in respondents' argument here, the regulations' discussion of inputs does not reflect any change in the Department's approach to the identification of a "benefit" under Section 771(5)(B). Rather, it simply reflects the Department's longstanding practice of identifying the "benefit" *as of the time of the subsidy bestowal*, which, in the input context, is when the input was provided by the government. It is true that the Department will look at whether the firm paid what the input was worth, but the more fundamental point is that this method of identifying the benefit is based solely on events as of the time of the subsidy bestowal. It is not based in any way on an analysis of post-subsidy bestowal events or how the market value of the subsidy may have changed in the years following the subsidy bestowal.

Finally, we note that we have properly analyzed the GOB's residual and indirect interests in companies during the POI in the context of our standard privatization methodology. We have not considered shares bought by government-owned companies in privatization auctions as privatizations; these transactions do not reflect the change in ownership of the shares from government to private ownership, but rather a transfer from one government holding to another. However, when such companies were themselves privatized, we have made adjustments to reflect the changes in ownership at that time.

Comment 2: Impact of WTO Panel Decision on Privatization

Respondents argue that U.S. law and international obligations require the Department to incorporate the holdings of the recent WTO panel report on privatization in all subsequent proceedings involving privatization issues. The WTO panel reviewing three recent administrative reviews of the countervailing duty order on hot-rolled lead and bismuth carbon steel products from the United Kingdom issued a preliminary report (which was not public) attacking the Department's determination that subsidies bestowed prior to the privatization of a government-owned company pass through to the privatized company. Essentially, according to respondents, the WTO panel concluded that all prior subsidies are extinguished by a privatization achieved through an arm's length transaction. Further, according to respondents, the panel decision indicates that the Department's long-standing approach to privatization is inconsistent with the principles and obligations of the SCM. Respondents cite the *Charming Betsy* doctrine (*see Murray Schooner* v. *Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804)), for the proposition that an act of Congress should not be construed to violate international obligations if any other possible construction remains. Respondents further note that under the WTO, a panel report is a "clarification" of the principles embodied in a WTO Agreement, and therefore, to the extent a WTO panel report identifies an inconsistency between the practice of a WTO Member and a WTO Agreement, the report informs the Member how it must adjust its practice to conform with its existing international obligations under the agreement. Respondents argue that to the extent the panel report identifies inconsistencies between U.S. practice and the SCM, the United States is obligated to address those inconsistencies in general; any Department decision subsequent to the panel report that does not reflect the panel's interpretations of the SCM will be inconsistent with U.S. obligations under the SCM. A failure to comport Department actions with the panel report, according to respondents, would certainly result in a remand by a reviewing court.

Respondents note that, in response to the adverse panel report, as an alternative to incorporating the principles of the report in its practice, the United States may, under WTO procedures, elect to compensate the European Union for the nullification and impairment of its rights under the SCM. However, respondents urge the Department not to take this course of action, arguing that the WTO panel's clarification of the rights and obligations of Members under the SCM will remain, *i.e.*, the U.S. will remain obligated to render its decisions under the countervailing duty law in accordance with the panel report. Should the Department continue to issue decisions that conflict with the panel report, respondents argue that the United States will remain vulnerable to a series of challenges that it has nullified and impaired the rights of WTO Members. Finally, respondents note that the failure to implement the WTO report will be directly contrary to the United States' strong position that the integrity of the WTO dispute resolution process can only be preserved by members' compliance with panel rulings, however adverse.

Petitioners argue that the Department should disregard respondents' arguments as they are predicated on an interim and confidential panel report. Petitioners cite the *Final Affirmative Countervailing Duty Determination; Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277 (December 29, 1999) and *Final Affirmative Countervailing Duty Determination; Certain Cut-to-Length Carbon-Quality Steel Plate from Italy*, 64 FR 73244 (December 29, 1999), wherein the Department stated "this was an interim (*i.e.*, preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it." *Id.* at 73271. Petitioners

further argue that even if the panel report were relevant to the current investigation, respondents' arguments about the legal significance of the report are mistaken. First, petitioners argue that it is premature to discuss any implementation of the panel report, which has not yet been circulated among WTO members (and which cannot be considered for adoption until 20 days thereafter). Furthermore, petitioners note that the United States has the right to request that the report be reviewed by the Appellate Body, and argue that the report itself may be riddled with errors and the Department should not implement erroneous findings that remain subject to reversal on appeal.

Second, petitioners note that U.S. law expressly prohibits the implementation of the panel report in the instant investigation. According to petitioners, the relevant statutory provision prohibits the amendment, rescission, or modification of regulations or practices found by a panel or Appellate Body to be inconsistent with any of the Uruguay Round Agreements unless and until the appropriate congressional committees have been consulted; the Trade Representative has sought advice from relevant private sector advisory committees; the agency or department head has provided an opportunity for public comment on a proposed modification through its publication in the **Federal Register**; the Trade Representative has submitted a report to the appropriate congressional committees regarding the proposed modification; the Trade Representative and the agency head have consulted with the appropriate congressional committees on the proposed contents of the final rule; and, the final rule or other modification had been published in the **Federal Register**. *See* 19 U.S.C. 3533(g)(1). Thus, petitioners conclude that it would be unlawful for the Department to change its practice with regard to privatization until the statutorily mandated actions have been fulfilled.

Finally, petitioners argue that the panel report has no binding effect in U.S. law, dismissing respondents' interpretation of the *Charming Betsy* doctrine. Petitioners state that respondents are mistaken in assuming the WTO panel report would provide the basis for the Court of International Trade (CIT) to overturn a final determination in this investigation that subsidies persist after privatization because case law shows that the Department may make its own determination regarding U.S. international obligations, and the CIT will give deference to those determinations, regardless of GATT or WTO panel reports to the contrary.

Department's Position: As a threshold matter, we disagree with respondents that our international obligations under the SCM require a change in our approach to privatization in the instant case. Although the panel report has now been circulated to all WTO Members and is no longer confidential, petitioners are correct in noting that unless and until the panel report is adopted by the membership, the United States has no obligation with respect to the report. As of now, the report has not been adopted. It is therefore premature to consider what obligations, if any, the report may impose on the United States.

Even if it were not premature for the Department to reconsider our approach to privatization in light of the adverse panel report, and it were otherwise appropriate to do so, we agree with petitioners that, under 19 U.S.C. 3533(g)(1), a "regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until" the very specific statutory obligations therein provided are fulfilled.

Thus, we continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company.

Comment 3: Valuation of Equity Infusion Benefits

Respondents argue that the Department's practice of treating equity infusions into unequityworthy companies like grants necessarily overstates the benefits of such infusions and, contrary to 19 U.S.C. 1671(a), results in the Department countervailing more than the net benefits actually received by the company. Respondents maintain that the Department's methodology fails to recognize the basic differences between equity investments and grants: Grants are unaccompanied by financial obligations; equity investments are accompanied by the obligations to generate a return (*i.e.*, to pay dividends) and to cede a claim on the company's assets to the investor. Respondents argue that, in examining government equity investments, the Department must measure the degree to which the firm is relieved of these two obligations. Respondents note that in examining other forms of subsidization, the Department recognizes the ability of a company to offset completely the benefits of the subsidy, for example, by adjusting the interest rate upward on a loan at a preferential interest rate until it reaches parity with market rates. Respondents concede that it may be reasonable to treat the equity infusions as grants in a case in which there were demonstrably no costs to the company receiving the equity, but argue that there is no basis in law or fact for the Department's irrebuttable presumption that unequityworthy companies incur absolutely no costs in connection with government investments.

If the Department persists in treating equity infusions like grants, respondents argue for a change in methodology in which the Department recognizes all post-equity infusion events, including privatization; increases in net worth; and, the payment of dividends to the investor prior to the end of the POI. Only by "netting out" these identifiable and related costs, respondents argue, can the Department comply with its statutory mandate not to countervail more than the net benefit.

Petitioners again note that respondents' arguments with respect to equity methodology are identical to those considered and rejected by the Department in the *Hot-Rolled Steel Final*. Petitioners maintain that respondents have ignored the Department's reasoning in the *Hot-Rolled Steel Final* and, thus, have presented no reason for the Department change that reasoning.

Department's Position: As they did in the *Hot-Rolled Steel Final*, respondents are once again basically arguing a return to the "rate of return shortfall" methodology (RORS), which the Department rejected in 1993 because it relied on an *ex post facto* analysis of events and represented a cost-to-government analysis of the benefit. The Department instead determined that the grant methodology was the most appropriate for analyzing the benefit from an equity infusion into an unequityworthy company. As the Department said in the *GIA*, 58 FR at 37239:

> [u]sing the grant methodology for equity infusions into unequityworthy companies is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information. Thus, neither the benefit nor the equityworthiness determination should be reexamined *post hoc* since such information could not have been known to the investor at the time of the investment. Therefore, the grant methodology, when used for equity infusions into unequityworthy companies * * * should not be adjusted based on subsequent events (*e.g.*, dividends, profits).

The Department has consistently applied the grant methodology to

measure the benefit from equity infusions into unequityworthy companies since 1993. *See, e.g., Certain Steel from Brazil; Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (March 18, 1994); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium*, 64 FR 15567, 15569 (March 31, 1999). This methodology has been upheld by the Court. *See British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*).

Respondents' argument that equity investments impose additional costs on companies is not relevant and has been rejected by the Court. We have found respondents to be unequityworthy as discussed in the "Equityworthiness" section above. This finding has not been disputed by respondents. Our finding of unequityworthiness is akin to saying that private investors would not have invested capital in the firm. Therefore, we have continued to use the grant methodology to measure the benefit of equity infusions (and debt-for-equity conversions), as discussed in the "Equity Methodology" section above.

Comment 4: Exchange Rate Issues

Respondents take issue with the exchange rates the Department used in the calculations for the preliminary determination. While the Department used official monthly average exchange rates from the Central Bank of Brazil to convert to dollars most of the equity infusions examined, the Department used daily exchange rates from the Dow Jones Business Information Service to convert to dollars four of the equity infusions examined. Respondents argue that the Department's use of the Dow Jones rates is both inaccurate and inconsistent and the Department should use the official Central Bank of Brazil exchange rates (which respondents have provided in their questionnaire responses) for all currency conversions. Respondents cite an example of a daily exchange rate for which the Dow Jones rate differs by nearly twenty percent from the Central Bank rate, resulting in overstating the dollar value of the relevant equity infusion. Furthermore, respondents note that an official Central Bank rate is intrinsically superior for the purposes of a countervailing duty proceeding, and is more consistent in that the Department is using Central Bank monthly average rates for most of the currency conversions in the calculations.

Petitioners argue that respondents have provided no reason for the Department to doubt the reliability of the Dow Jones data, and therefore no reason to change the interest rates used in the calculations.

Department's Position: For the calculations for the preliminary determination, we used the monthly average exchange rates provided in the questionnaire responses, published in the *Suma Economica*, and sourced from the Central Bank of Brazil. Where we used daily exchange rates, the data provided by respondents did not meet our needs: although it came from the same source, it was not clear whether the exchange rates provided were "buy" or "sell" rates, or an average of the two. Since the Department uses an average of the "buy" and "sell" rates, we sought and used another source for that data, the exchange rates maintained on Import Administration's web site. For this final determination, we have now identified and used another public source of the appropriate exchange rate data: the Central Bank of Brazil's web site. As indicated in the calculation memorandum for these final results (on file in CRU), daily exchange rate data is available from the Central Bank of Brazil back to 1985. We used this data to calculate the average of the "buy" and "sell" rates, and also to calculate the monthly average exchange rates we used. Exchange rate data for 1984 was unavailable from the Central Bank's web site; for 1984 we used the exchange rate data reported by respondents, which is published in the *Suma Economica* and sourced from the Central Bank of Brazil.

Comment 5: Repayment Calculations

Respondents argue that the gamma ratio used in the Department's privatization methodology does not properly reflect the proportion of the purchase price that represents repayment of prior subsidies; they maintain that an average of infusion values to net worth ratios over time does not provide a meaningful ratio. Respondents instead suggest comparing the present value of the unamortized pre-privatization infusions (at the time of the infusion) to the total net worth of the company at the time of privatization. They hold that this approach more properly accounts for the difference between a company that received an infusion ten years prior to subsidization from a company that receives the same infusion the year before privatization.

Once again, petitioners note that respondents have forwarded the same arguments considered and rejected by the Department in *Brazil Hot-Rolled Steel Final*. According to petitioners, respondents have not provided any reason for the Department to deviate from the position articulated at that time.

Department's Position: As we did in the *Brazil Hot-Rolled Steel Final* and for this final determination, we have continued to calculate gamma using historical subsidy and net worth data. The gamma calculation serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. This methodology has been upheld by the courts in *Saarstahl II*, *Delverde II*, and *British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996). Respondents' criticism of the Department's current methodology centers on their belief that the average of subsidies to net worth does not take into account the timing of the receipt of subsidies and the corresponding net present value of the subsidies. We note that while gamma itself does not factor in the net present value of the subsidies, the results of the gamma calculation are applied to the present value of the remaining benefit streams at the time of privatization. Thus, our current calculations, as a whole, do account for the present value of the remaining benefits at the time of privatization.

Comment 6: Adjustments to Purchase Prices in Privatizations

Respondents argue that the Department incorrectly adjusted the purchase prices downward to account for both the use of privatization currencies and the acquisition of shares by CVRD. Respondents argue that the relevant value of the currencies, in identifying the purchase price of the companies, is the present value of the currencies, the amount at which the currencies were accepted by the GOB. Respondents hold that this value is correct because it represents the value of the debt that the GOB retired through the sales. Further, the GOB had a real liability equal to the present value of the instrument and the value of this liability, retired through the transaction, must be used in the calculation as it attempts to identify the amount of subsidy "paid back" to the government in the privatization. Respondents state that the value of the privatization currencies to the purchasers of the shares is irrelevant. They provide examples of different currency exchange rates and different bond values to illustrate the point that the value to the GOB remains the same in each scenario. In short, respondents note that when measuring the value of subsidies, the Department focuses exclusively on the value of the subsidy to the recipient, at

the time the subsidy is received. Thus, respondents urge the Department to focus, in this instance, on the value received by the government, *i.e.*, the present value of the privatization currencies used to purchase privatized companies; it is the perspective of the recipient that is consistently relevant.

In addition, respondents note that in *Certain Steel from Brazil*, the Department examined the privatization of USIMINAS, was aware of the secondary market trading of the privatization currencies, and did not adjust USIMINAS's purchase price. Therefore, respondents argue, the hot-rolled steel investigation represented a departure from the Department's earlier approach, a departure which was not adequately explained and which does not now provide the basis for the adjustment to purchase price.

Finally, respondents disagree with the treatment of shares purchased by CVRD in the privatizations. Respondents state that CVRD's share purchases were made on commercial terms, a fact which is supported by the participation of other private investors in those privatization auctions, and thus the purchase price should not be discounted for CVRD's participation. Respondents note that the verification reports reinforce this conclusion and state they cannot be penalized for a GOB investment made on terms consistent with commercial considerations.

Petitioners support the Department's preliminary adjustments to account for the market value of privatization currencies. Petitioners state that record evidence demonstrates that the currencies traded at deep discounts from their face values on secondary markets. Petitioners state that the statute and practice reveal a strong preference for using market-determined prices to make valuation decisions. They hold that because the GOB could purchase the securities on the secondary market, just like any private investors, the value to the GOB was exactly the same as the market value.

Department's Position: As a threshold matter, respondents' arguments are identical to those considered and rejected by the Department in the *Brazil Hot-Rolled Final* (64 FR at 38751). With no new arguments to consider (and no new information developed in the course of this investigation), we continue to view respondents' arguments regarding the valuation of privatization currencies as flawed. Respondents are correct in noting that the GOB retired debts equal to the present value of the currencies accepted in exchange for shares. However, that fact is not relevant to our analysis of the purchase price in the privatization transaction; the proper value of the purchase price to use in the privatization calculation is the market selling price of the company. Since the purchase price was partially accounted for by privatization currencies and those currencies were discounted on secondary markets, the market selling price of the company is partially composed of the market value of the privatization currencies. As we stated in the *Brazil Hot-Rolled Final*, to use the present value of the currencies when determining the purchase price would be to overstate the cash, market value of the purchase price. As petitioners correctly point out, it is the Department's preference to use market values in calculations where possible. The discounted value accurately represents the market value of the currencies, and therefore the price paid by participants in the privatization auctions. That the GOB accepted those currencies at present value is irrelevant to our analysis of the purchase price. With respect to respondents' argument about our examination of the currencies in *Certain Steel from Brazil*, we reiterate the point articulated in the *Brazil Hot-Rolled Final* (64 FR at 38751). While the fact that privatization currencies were used to acquire USIMINAS shares was documented in the record of that case, the parties did not have the opportunity to comment on the final privatization methodology applied and the implications that various facts in evidence may have had on this methodology. Furthermore, in *Certain Steel from Brazil*, and the companion cases, the Department developed its privatization methodology, and applied it for the first time in the final determinations. We have gained experience with the methodology since that time. In this investigation, we have properly determined that privatization currencies were overvalued by the GOB and that the discounted, market value should be used in the privatization calculation as discussed above. We have used the discounted value best supported by record evidence.

Finally, we disagree with respondents with respect to the treatment of CVRD share purchases. Government purchases of government assets cannot be seen properly as a "privatization" or "change in ownership" that would give rise to a reallocation of subsidies between buyer and seller. Instead, these transactions represent a transfer of government funds from one account to another. Thus, we have continued to remove the CVRD purchases from the calculation as discussed above. In addition, we note that we have accounted for the 1997 partial privatization of CVRD in the calculations.

Comment 7: Not All Privatization Currencies Used in Privatizations Were Acquired at Discounted Prices

Respondents argue that the Department's valuation of the privatization currencies mistakenly assumes that all currencies were acquired by the users on the secondary market at a discount. They point to the Privatization Certificates (CPs), which banks were forced to purchase under the Collar Plan for 100 percent of their value, and SIDERBRAS debentures which SIDERBRAS creditors were given in lieu of receiving debt payment. Respondents state that many banks chose to use the CPs in privatization auctions, as holders of other privatization currencies also did, exchanging one-to-one for shares, rather than trade them on the secondary market. They maintain that if instruments used in privatization auctions were not actually acquired on the secondary market, a secondary market discount cannot be applied. Similarly, even if the instruments were trading in a secondary market at a premium, respondents argue, no adjustment for market value would be appropriate. Thus, respondents argue, there is no basis for the Department to assume that all currencies used in the privatization auctions were acquired at discounts on the secondary market and information in the record indicates that some of the currencies were either used by their original owners who had come by them as a result of the GOB's debt restructuring plan or borrowed on commercial terms from BNDES (the GOB development bank); to continue to adjust the purchase price for the secondary market discounts is to apply an adverse inference without justification.

Petitioners believe that to focus on the acquisition price of the privatization currencies is to focus on the wrong moment in time. The relevant question, according to petitioners, is not what price was paid in the past to acquire the currencies, but what were the currencies worth at the time they were used to make purchases in the GOB privatization auctions.

Department's Position: As discussed in the previous comment, the appropriate measure of the value of the privatization currencies is not their cost to their holders at the time of acquisition (be that at the time the original instruments were issued, when they were acquired on the secondary market, or when they were borrowed

from another holder), but their value in the secondary market at the same time they were used in privatization auctions. This represents the value that the holders could have realized, in the alternative, through a commercial transaction at the time of the privatization auctions. The secondary market provides the commercial "benchmark" for evaluating whether the value the GOB attributed to the currencies was appropriate, and whether the purchase price represents something with a comparable market value. The secondary market discounts which are supported on the record indicate that the GOB overvalued the currencies in the privatization auctions and that the purchase price is tainted by the GOB's overvaluation. We agree with petitioners that the statute expresses a preference for using market-determined prices when examining government actions, and we have appropriately examined the respondents' purchase prices through the lens of the discounted secondary market trading in privatization currencies.

Comment 8: Asymmetrical Comparisons in the Gamma Calculations

Respondents urge the Department to correct the gamma calculation to overcome the asymmetry inherent in ratios which mix the use of historical figures and figures corrected for inflation, *i.e.*, the numerators and denominators should be expressed in the same terms. They argue that the Department can correct this inaccuracy by ensuring that the ratios are expressed in the same terms, and recommend accomplishing this by converting to dollars the numerators and denominators.

Petitioners argue that the asymmetry results from respondents having reported unusable data. Petitioners note that respondents' proposed correction works entirely to respondents' advantage by resulting in a higher repayment ratio. Petitioners note that in accordance with CIT rulings, respondents are not entitled to benefit from their failure to satisfy the Department's requests for information; thus for any year in which the Department does not have the appropriate information, petitioners urge the Department to assume the ratio is zero.

Department's Position: We agree, in part, with respondents and petitioners. In calculating the gamma ratio, we would prefer to compare historical subsidies with historical net worth, or indexed subsidies with indexed net worth. For purposes of the preliminary determination, we used the same information that we used in the *Brazil Hot-rolled Final*. In that case, we had some years for which the data was symmetrical and some years for which we only had historical subsidies and indexed net worth. Since the preliminary determination, we have reexamined the financial statements on the record, and have found that for a number of additional years, the financial statements do provide an inflation-adjusted subsidies value. Therefore, we have been able to calculate a symmetrical comparison for the following years: for USIMINAS and COSIPA for the relevant years from 1988 (except 1992 for COSIPA) forward and for CSN from 1987 forward (except 1992). For all other years, we have continued to calculate the gamma ratios as we did in the preliminary determination. We agree with petitioners that respondents have not demonstrated that their proposed modification yields a more symmetrical or accurate comparison in the gamma ratios than the ratios we calculated for the preliminary determination. However, we disagree with petitioners that we should adversely assume that the ratio is zero since for all of the years, we have information on either historical or indexed subsidy values and net worth.

Comment 9: Corrections Made at Verification

Respondents contend that the Department's calculations for this final determination should include the corrected POI sales figures which were presented and verified at verification. The figures which were corrected were: the USIMINAS total sales value; the volume and value of COSIPA exports of subject merchandise to the United States; and, the volume and value of CSN total sales and the value of CSN exports of the subject merchandise to the United States.

Department's Position: We agree with respondents and have used the corrected figures in our calculations for this final determination. The Department normally accepts minor corrections to submitted information at verification, and the opportunity to make minor corrections was included in the verification outlines that were used to prepare for verification. The corrected figures were verified in accordance with our standard verification procedures; thus, we have used them in the calculations.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a combined ad valorem rate for USIMINAS and COSIPA and an individual rate for CSN. The total estimated net countervailable subsidy rates are stated below.

Company	Net subsidy rate
IMINAS/COSIPA	10.60% ad valorem.
CSN	7.14% ad valorem.
All Others	9.21% ad valorem.

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of cold-rolled flat-rolled carbon-quality steel products from Brazil which were entered, or withdrawn from warehouse, for consumption on or after October 1, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, which provides that suspension ordered after the preliminary determination may not remain in effect for more than four months, we will instruct the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 29, 2000 but to continue the suspension of liquidation of entries made between October 1, 1999 and January 29, 2000.

We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the

Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1849 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–830]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (Companhia Siderúrgica Nacional or CSN), Martin Odenyo (Usinas Siderúrgicas de Minas Gerais and Companhia Siderúrgica Paulista or USIMINAS/COSIPA), Nancy Decker, or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, DC 20230; telephone: (202) 482–1398, (202) 482–5254, (202) 482–0196 and (202) 482–5222, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1999).

Final Determination

We determine that certain cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

We published in the **Federal Register** the Preliminary Determination in this investigation on November 10, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 61249 (November 10, 1999) (Preliminary Determination). Since the publication of the PreliminaryDetermination the following events have occurred.

One of the respondents in this investigation, Companhia Siderúrgica Nacional (CSN) refused verification. The Department verified sections A–C of Usinas Siderúgicas de Minas Gerais (USIMINAS') responses from November 15 through November 19, 1999, at USIMINAS' administrative headquarters in Belo Horizonte, Brazil. The Department verified section D of USIMINAS' response from November 8 through November 12, 1999, at USIMINAS' production facility in Ipatinga, Brazil. See Memorandum For the File; "Sales Verification of Sections A–C Questionnaire Responses Submitted by Usinas Siderúrgicas de Minas Gerais, S.A., December 23, 1999 (USIMINAS' Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Data—USIMINAS," December 20, 1999 (USIMINAS' Cost Verification Report).

The Department verified sections A–C of Companhia Siderúrgica Paulista (COSIPA's) responses from November 8 through November 12, 1999, at COSIPA's production facility in Cubatao, Brazil. The Department verified section D of COSIPA's response from November 15 through November 20, 1999, at COSIPA's production facility in Cubatao, Brazil. See Memorandum For the File; "Sales Verification of Sections A–C Questionnaire Responses Submitted by Companhia Siderúrgica Paulista (COSIPA)," December 17, 1999 (COSIPA's Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Submissions of Companhia Siderúrgica Paulista," December 23, 1999 (COSIPA's Cost Verification Report).

The Department verified sections A (General Information) and B (Home Market Sales) responses of Rio Negro Industria e Comercio de Aco S.A. (Rio Negro) (an affiliated distributor of USIMINAS) on November 4 and November 5, 1999. The verification was performed at Rio Negro's sales branch and administrative headquarters in Guarulhos, Brazil. See Memorandum to the File; "Sales Verification Report of Rio Negro Industria e Comercio de Aco S.A.," December 27, 1999, (Rio Negro's Sales Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

On November 29, 1999, Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics, Inc.,U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (petitioners) requested a public hearing. On January 6, 1999, the petitioners withdrew requests for a hearing, and therefore, there was no hearing for this investigation. On December 30, 1999, petitioners and USIMINAS/COSIPA filed case briefs. We received rebuttal briefs from petitioners, USIMINAS/COSIPA and CSN on January 5, 2000. On December 23, 1999, the Department sent a request to USIMINAS to submit a new home market sales listing as a result of minor corrections identified at verification. The Department received this information on December 30, 1999.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in

successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or

(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);

- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤ 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm²
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area Percentage
Sulfide Inclusion %	≤0.04
Oxide Inclusion %	≤0.05

Compressive Stress: 10 to 40 Kgf/mm²

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μ)
t ≤0.209	Rz ≤0.5
0.209 <t ≤0.310	Rz ≤0.6
0.310 <t ≤0.440	Rz ≤0.7
0.440 <t ≤0.560	Rz ≤0.8
0.560 <t	Rz ≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm²

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron.
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness.
Coil Set (in 1.0 m)	<75.0 mm.

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch +/− .0015 inch

Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz)	3.8 Watts/Pound max.
NAAS	
Permeability (1.5T/60 Hz)	1700 gauss/oersted typical
NAAS	1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03			—	0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	—	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	<0.08	<0.04	<0.40	<0.03	<0.03	0.010–0.025	<0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	±5 percent (aim ±4 percent)
Width Tolerance	−0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	>275N/mm^2
Elongation	>36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/−10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION:

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone-Finish	16(0.4)	8(0.2)	24(0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM A–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥ 15%
Tensile Strength	51,000 psi ±4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)
Width	≤10 inches (+¼ to ⅜ inch/–0)
Tensile strength	55,000 psi max.
Elongation:	minimum of 15 percent in 2 inches

• Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

• Thickness (nominal): ≤ 0.019 inch

- Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain cold-rolled steel, which meets the following characteristics:
- Width: > 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

- Certain band saw steel, which meets the following characteristics:
Thickness: ≤ 1.31 mm
Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams, smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.
- Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

• Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.15	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %:	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. See Memorandum to Joseph A. Spetrini (Scope Memorandum), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

Period of Investigation

The period of the investigation (POI) is April 1, 1998, through March 31, 1999.

Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong. 2nd Sess. (1994), at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Final Rule: Antidumping Duties; Countervailing Duties:, 62 FR 27296, 27340 (May 19, 1997). The statute notes, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

CSN

We have determined that, in light of CSN's refusal to continue it's participation in this investigation, facts available are warranted with respect to CSN for the final determination. Further, as a result of CSN's refusal to permit verification, adverse inferences are appropriate, pursuant to section 776(b). The Department, for this final determination, has selected as the facts otherwise available with respect to CSN, the highest margin in the petition of 63.32 percent. Please see Comment 3 below for a more detailed explanation of this issue.

USIMINAS/COSIPA

Please see comment section below.

Critical Circumstances

As in the Preliminary Determination, 64 FR 61249, 61261 (November 10, 1999), we continue to find critical circumstances for respondents USIMINAS/COSIPA as well as for "all others." As for CSN, due to its refusal to permit verification of its company-specific shipment data for the base and comparison periods, we no longer have reliable data upon which to base a critical circumstances determination for this respondent. Therefore, we must use facts available in accordance with section 776(a) of the Act. Accordingly, we examined whether U.S. Customs data reasonably preclude an increase in shipments of fifteen percent or more within a relatively short period for CSN. However, these data include products not subject to this investigation and, therefore, we cannot rely on these data in determining whether there were massive shipments of subject merchandise over a relatively short period. Moreover, these data do not permit the Department to ascertain the import volumes for any individual company, including CSN. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available and determine that there were massive imports from CSN over a relatively short period.

With respect to companies in the "all others" category, it is the Department's normal practice to base its determination on the experience of

investigated companies. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate From Japan, 64 FR 73215, 73218 (December 29, 1999), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey , 62 FR 9737, 9741 (March 4, 1997). However, for companies in the "all others" category we do not use adverse facts available. Accordingly, we considered the verified shipping data of the other mandatory respondents (USIMINAS/COSIPA). In this case, we found massive imports for USIMINAS/COSIPA, based on an increase in imports of more than 100 percent. We also considered whether U.S. customs data would permit the Department to analyze imports of subject merchandise by other producers (by, for example, backing out shipments by USIMINAS/COSIPA). However, these data include products not subject to this investigation. Therefore, it is not appropriate to base our critical circumstances determination on these data. (See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30728 (June 8, 1999)). We considered that the sole respondent with verified scope-specific shipment data for the base and comparison periods demonstrated massive imports. See Preliminary Determination, 64 FR 61249,61261 (November 10, 1999) Based on these facts, we find that there were massive imports from the uninvestigated companies.

Accordingly, for this final determination we find that critical circumstances exist for USIMINAS/COSIPA, CSN and for the "all others" category.

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Brazil were made at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by respondents covered by the description in the Scope of Investigation section above and sold in Brazil during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Affiliated Respondents

In our preliminary determination, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Collapsing Memorandum to Joseph A. Spetrini from Richard Weible, October 12, 1999 (Collapsing Memo). For the purpose of this investigation, we continue to consider these two respondents as a single entity. Petitioners also argue that all three respondents are affiliated and should be collapsed. For this final determination, the Department determined that there is insufficient evidence on the record to warrant a collapsing of all three respondents. See Comment 1 below for a further discussion of this issue.

Level of Trade

USIMINAS/COSIPA

In our preliminary determination, the Department found that in the home market USIMINAS/COSIPA made sales to end-users, affiliated distributors, and unaffiliated distributors. USIMINAS/COSIPA claims seven "channels of distribution" with respect to home market sales: (1) Mill to original equipment manufacturer (OEMs); (2) mill to affiliated distributor; (3) mill to unaffiliated distributor; (4) affiliated distributor to affiliated distributor; (5) affiliated distributor to OEM; (6) affiliated distributor to non-affiliated distributor; and (7) affiliated distributor to retailer. As in the Preliminary Determination, we determine that the selling functions of the affiliates for downstream sales were significantly different than those for mill direct sales, and therefore, we determine that downstream sales by affiliates were made at a different level of trade (LOT) than other HM sales.

In addition, while USIMINAS/COSIPA mill direct sales to end-users (whether or not further processed) and mill direct sales to unaffiliated distributors involve different channels of distribution, these sales do not involve significant differences in selling functions. Therefore, we do not consider these channels to represent different levels of trade. Thus, we determine that downstream sales and mill direct sales represent two different home market LOTs.

In the U.S. market USIMINAS/COSIPA claim that all sales were made at one level of trade, through one channel of distribution. USIMINAS/COSIPA state that all U.S. sales were made to unaffiliated trading companies. As in the Preliminary Determination, the Department finds U.S. sales to be at the same LOT as home market mill direct sales. Therefore, U.S. sales were only compared to home market mill direct sales, and no LOT adjustment was necessary.

Export Price

The Department based its calculations on EP in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. The Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We calculated EP for USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination, except as noted in the comment section below, and in addition, amounts reported as warranty for U.S. sales are treated as movement expenses in the final determination (see Final Analysis Memorandum dated January 18, 2000).

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, we determined that the home market was viable for USIMINAS/COSIPA. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5% or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c) and Preamble to 19 CFR 351.403(c). In

instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that sales to that affiliated customer were made at arm's length prices and, therefore, we excluded them from our LTFV analysis. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993).

Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Petitioners provided reasonable grounds to believe or suspect that USIMINAS/COSIPA's sales of the foreign like product under consideration for determining NV may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by the respondents in this investigation.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of respondents' cost of materials, fabrication, general expenses, and packing costs. We relied on USIMINAS/COSIPA's submitted COP, except in the following specific instances:

1. For USIMINAS we adjusted the transfer price for iron ore obtained from an affiliated supplier in accordance with the major input rule. See Comment 20.
2. Consistent with the preliminary determination we revised its submitted G&A expense ratio to exclude packing expenses from the cost of goods sold used as the denominator in the calculation of the ratio. In addition, for the final determination we revised the G&A expense ratio to include employee profit sharing expenses and write-offs of idled-assets. See Comments 22 and 24.
3. We revised the reported cost of manufacturing (COM) to include idled-asset depreciation expense in COSIPA's costs. See Comment 23.
4. Consistent with the preliminary determination we revised respondents submitted financial expense ratio to include expenses for export financing and exclude foreign exchange losses related to accounts receivable. See Comment 21.

Test of Home Market Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices (including billing adjustments), less any applicable movement charges, discounts and rebates, and vat taxes (ICMS and IPI).

Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, general expenses, U.S. packing costs, and profit. We made adjustments to each respondent's reported cost as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based selling, general and administrative expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Brazil. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 of the Department's regulations. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs (see Comment 8).

As in the Preliminary Determination, we find it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. This methodology is consistent with our policy adopted in Stainless Steel Plate in Coils from Korea, 64 FR 15444, 15452 (March 31, 1999) (SSPC from Korea) and Stainless Steel Sheet and Strip from Korea, 64 FR 30664, 30676 (June 8, 1999) (Stainless Sheet from Korea). Therefore, for all respondents, we have used two averaging periods for this final determination, the beginning of the POI through January 12, 1999, and January 13, 1999, through the end of the POI.

We calculated NV for USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination except as noted in the comment section below, in addition to minor changes noted in the Final Analysis Memorandum as a result of verification.

Currency Conversion

As in the Preliminary Determination, our analysis of dollar-real exchange rates show that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. As such, we determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. We find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999.

We used daily rates from January 13, 1999 through March 4, 1999 based on the analysis discussed in the preliminary determination. We then resumed the use of our normal methodology through the end of the period of investigation (March 31, 1999), starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999. See Comment 3 below for further discussion of our methodology.

Analysis of Interested Party Comments

I. Issues Pertaining to All Three Respondents

Comment 1: Whether To Collapse USIMINAS/COSIPA With CSN

Petitioners assert that in addition to collapsing USIMINAS/COSIPA, all of the respondents should be collapsed into a single entity for purposes of this investigation. They argue that CSN and USIMINAS/COSIPA produce the same products, share common directors, and have intertwined operations, all of which create the potential for the manipulation of price or production. Referring to the Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A–351–828 (March 11, 1999) (Collapsing Comments) and the November 8, 1999, submission by petitioners in the instant case, petitioners argue that the linkages between all three respondents clearly satisfy the affiliation and collapsing criteria set out in the Department's regulations.

Petitioners cite to the definition of affiliated parties and what constitutes "control" of one entity over another in section 771(33)(E) and (G) of the Act and in the Statement of Administrative Action, H.R. Doc. No. 103–316, at 838–30 (1994) (SAA). Petitioners maintain that CSN, in conjunction with Companhia Vale do Rio Doce (CVRD) and other affiliated companies, or the "CSN/CVRD group," is affiliated with USIMINAS/COSIPA as evidenced by (1) the CSN/CVRD group sharing equity and managerial relationships, thereby establishing a single business unity under the control of Benjamin Steinbruch, the chairman of the board of CSN and CVRD; (2) the CSN/CVRD group being the largest single shareholder in USIMINAS. See Memorandum from Case Analysts to the File, Case No. A–351–830 at Exhibit 2, page 1 (December 23, 1999) (USIMINAS Sales Verification Report); and (3) the "CSN/CVRD group" sharing board members with USIMINAS.

Petitioners note that the Department's regulations at section 351.401(f)(2) provide that two or more affiliated producers will be collapsed where producers have production facilities for similar and identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and the Secretary concludes there is significant potential for manipulation of price or production. Referring to this same section, which explains that the Department examines the following factors, among others: (i) The level of common ownership; (ii) overlapping board of directors; and (iii) whether operations are intertwined, such as through involvement in production and pricing decisions, petitioners claim that there is a potential for CSN and USIMINAS/COSIPA to manipulate price and production. According to petitioners, CSN and USIMINAS/COSIPA are capable of easily shifting production among themselves, as evidenced by similar production facilities and similar products. Additionally, petitioners point out that the Brazilian government determined that CVRD, the biggest shareholder in USIMINAS and a major shareholder in CSN, should sell off some or all of its steel assets on the basis of "unacceptable concentration of interests and abuse of economic power." See Petitioners' November 8, 1999 submission at 2–3 and Attachment 1 ("CVRD Told to Sell Steel Interests," Metal Bulletin, August 19, 1999, at 19). Petitioners also point out that the Brazilian government has been investigating, and recently fined, CSN, USIMINAS, and COSIPA for price-fixing and allegedly operating a cartel. See Petitioners' November 8, 1999 submission at 2–3 and Attachment 2 ("Brazilian Mills Deny Price-Fixing, Face Large Fines," Metal Bulletin, November 1, 1999, at 3).

Petitioners cite cases (*see FAG Kugelfischer* v. *United States*, 932 F. Supp. 315 (CIT 1996); *Nihon Cement Co., Ltd.* v. *United States*, 17 CIT 400 (1993); *Queen's Flowers de Colombia, et al.*, v. *United States*, 981 F. Supp. 617 (CIT 1997)) in which the U.S. Court of International Trade (the Court) upheld the Department's articulation of these collapsing criteria. Petitioners state that the central issue according to the Court is "whether parties are sufficiently related to present the possibility of price manipulation." Petitioners stress that there is more than a "possibility" of price manipulation in the instant investigation, and that evidence confirms that the three companies are extensively intertwined and act collectively to manipulate prices and production.

According to petitioners, CSN's refusal to cooperate in this investigation or to permit verification at its facilities casts doubts on CSN's assertion that it operates independently. Furthermore, petitioners claim that the factors in this investigation are similar to those relied upon in prior determinations such as Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Columbia, 61 FR 42833, 42853 (August 19, 1996) (Fresh Cut Flowers); Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13151 (March 17, 1999); Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453–54 (July 29, 1998); and Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 62 FR 55574, 55587–88 (October 27, 1997), in which the Department collapsed respondents. Petitioners argue that the record in the instant case is even more compelling because of the findings of the Brazilian government. Petitioners concluded that the three companies should be assigned a single rate in this investigation based on the companies meeting the statutory standard for affiliation and collapsing, the documentation of collusive practices by the Brazilian government, CSN's refusal to cooperate, and the Department's previous decisions.

CSN counters that petitioners have not provided any new or convincing arguments or information to support collapsing. CSN stresses that two criteria in section 351.401(f)(1) of the Department's regulations must be met with respect to collapsing: (1) The companies are affiliated, and (2) the companies have similar production facilities that could be used to restructure manufacturing priorities and there is a significant potential for manipulation of price or production. Regarding criterion one, CSN argues that shareholdings and board memberships have not changed since the Hot-Rolled Steel from Brazil investigation, where the Department found an absence of affiliation (see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 64 FR 38756, 38762–63 (July 19, 1999) (Hot-Rolled Steel from Brazil)) nor have they changed since the cold-rolled countervailing verification of CSN and CVRD (CVD Verification Report of CVRD at 1–2 (December 1, 1999); and

CVD Verification Report of CSN at 2 (December 1, 1999).

CSN points out that the Brazilian government findings, which it claims is the only new information proffered by petitioners, does not meet criterion two: the potential for the manipulation of price or production. CSN states that the Brazilian government was merely recommending CVRD sell some or all of its steel assets, and that the government observed the "possibility" of limited competition. CSN claims that this does not mean that CVRD controls either CSN or USIMINAS/COSIPA, or that petitioners have produced any new facts. Regarding the charges of price-fixing between CSN and USIMINAS/COSIPA, CSN maintains that these charges are not true. Nonetheless, CSN claims that the Brazilian government's investigation proves that CSN and USIMINAS/COSIPA are not affiliated, since affiliated companies are permitted to discuss and set prices. Furthermore, CSN emphasizes that the Brazilian government claimed that the companies were resembling a cartel not a monopoly; but, in any case, the government has not brought up charges.

CSN concludes that the second criterion of the law cannot be used to prove the first criterion, and that petitioners have failed to present anything new on the issue of affiliation. Although petitioners presented new information on the issue of price manipulation, CSN states that this information, which is being appealed, does not prove that the companies are affiliated.

USIMINAS/COSIPA (hereinafter, referred to as respondents) agree with CSN that the collapsing argument is moot because the Department has already rejected it six times in four consecutive investigations. Respondents assert that, in the Hot-Rolled Steel from Brazil investigation, the Department had rejected the significance of USIMINAS and CSN sharing a board member and the allegations of price fixing. See Hot-Rolled Steel From Brazil, 64 FR 38756, 38762–38763. Additionally, respondents point out that Mr. Gabriel Stoliar, who petitioners claim was a member of the board for both USIMINAS and CSN during the POI, has not served on the USIMINAS board since June 1999. See USIMINAS Sales Verification Report at 9–10.

On the subject of price-fixing, respondents state that USIMINAS/COSIPA and CSN are fierce competitors. See CVD Verification Report of CSN at 3 (December 1, 1999). Respondents argue that the Brazilian authorities' price-fixing allegations, which USIMINAS/COSIPA have denied, support their claim that they have a competitive relationship with CSN and that the companies are not affiliated. Referring to Milton Handler et Al., Trade Regulation ch. 4 (3d ed. 1990) (discussing "Competitor Collaboration on Price Fixing and Division of Markets,") respondents argue that price-fixing arises when competitors share price information, not when different arms of the same company share it.

Respondents also agree with CSN that the Brazilian government's recommendation that CVRD divest itself of certain investments was merely an unenforceable policy recommendation. Respondents follow up by stressing that CVRD does not face any sanctions or penalties if it does not act on the Brazilian government's recommendation. See CVD Verification Report of CVRD at 2. Additionally, respondents agree with CSN that this information does not prove that CVRD actually controls both CSN and USIMINAS.

Respondents argue that petitioners documented links between CVRD and CSN, not between CSN and USIMINAS or even CVRD and USIMINAS. In any case, respondents emphasize that neither CSN nor CVRD controls USIMINAS, as noted in the Hot-Rolled Steel From Brazil, 64 FR 38756, 38763 and the CVD Verification Report of CVRD at 2, or COSIPA. Furthermore, respondents claim that CVRD almost sued USIMINAS to withdraw its investment, the two companies are moving toward a more distant relationship, and CVRD refused to assist USIMINAS in responding to the Department's requests for information. See USIMINAS and COSIPA's Section A Response, July 20, 1999, at Exhibit. 9; USIMINAS Verification Report at 7 and 8; CVD Verification Report of CVRD at 2, and Respondents Rebuttal Brief, January 5, 2000 at Exhibit 3.

As to petitioners comments regarding CSN's refusal to cooperate in verification, respondents counter that the Department did verify CSN extensively in the CVD proceeding, but have no opinion as to whether the Department should apply adverse facts available against CSN for not participating further in the instant investigation (see Comment 2). However, respondents strongly disagree with petitioners' argument that the Department apply adverse facts available against USIMINAS/COSIPA because of CSN's withdrawal from the case. Respondents state that applying adverse facts available on one company based on the actions of another unaffiliated company is against WTO agreements, the U.S. "facts available" statute, the Department's regulations, and the Department's practice (see Section 773e(b) of the Act). Respondents emphasize that they fully cooperated with the Department on the collapsing issue; therefore the Department cannot render its collapsing decision on the basis of facts available (see 19 U.S.C. section 1677e). Furthermore, respondents contend that applying adverse facts available in the collapsing issue would reward CSN for its non-participation, while penalizing USIMINAS/COSIPA for their full cooperation, because this would result in lower weighted-average rate for CSN and a higher rate for USIMINAS/COSIPA than the rates calculated in the Preliminary Determination.

Respondents conclude that the cases petitioners discussed with respect to the collapsing issue are based on factors that are completely absent from the instant investigation. USIMINAS/COSIPA and CSN should not be collapsed because they are not mutually controlled by a third party, and do not control each other. In addition, respondents note that petitioners have abandoned their argument in the parallel countervailing duty investigation.

Department's Position

We disagree with petitioners. The Department has determined that USIMINAS and COSIPA should be collapsed for margin calculation purposes. To collapse CSN with USIMINAS/COSIPA, as petitioners suggest, requires that we first find that CSN and USIMINAS/COSIPA are affiliated parties within the meaning of section 771(33) of the Act. Because we find that USIMINAS/COSIPA is not affiliated with CSN, we have not collapsed these entities for purposes of this investigation.

The issue of whether CSN is affiliated with USIMINAS/COSIPA is governed by section 771(33) of the Act, which deems the following persons to be affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of this provision, a person controls another person if the person is in a position to exercise restraint or direction over the

other person. Petitioners arguments for finding USIMINAS/COSIPA and CSN affiliated appear to be based on subparagraphs (E) and (G) of section 771(33) of the Act.

Pursuant to section 771(33)(E), the Department examined CSN's ownership interest, direct or indirect, in USIMINAS (USIMINAS/COSIPA does not own or control any shares in CSN). CSN owns a 31% equity interest in Valepar, which owns 27% of CVRD. Throughout the POI, CVRD, in turn, had a 15.48%, 23.14%, or 22.99% interest in USIMINAS, with changes in equity interest taking place in July 1998 and January 1999. Even assuming the highest possible percentages of equity ownership by CSN in Valepar, by Valepar in CVRD, and by CVRD in USIMINAS, CSN would own well under 5% of USIMINAS. Based on this evidence, CSN and USIMINAS/COSIPA are not affiliated within the meaning of section 771(33)(E) of the Act.

With respect to affiliation based on control, petitioners have not clearly identified which entities they believe are in a position to exercise control over CSN and USIMINAS (or USIMINAS/COSIPA) or on which specific subparagraph (F or G) of section 771(33) they are relying in their analysis. Therefore, we have analyzed petitioners comments under both section 771(33)(F) and (G).

In accordance with section 771(33)(F), we first examined whether the record establishes common control over these entities by Mr. Steinbruch, CVRD, or Previ pension fund (which itself holds significant ownership interests in CSN, CVRD, and USIMINAS) as separate entities. Assuming arguendo that we were to conclude that Mr. Steinbruch, as chairman of CSN's board of directors, controls CSN, the record contains no evidence that he controls USIMINAS.

CVRD is affiliated with both CSN and USIMINAS under section 771(33)(E). CVRD directly owns more than 5% of USIMINAS (22.99% of the voting shares at the end of the POI) and indirectly owns, through its holdings in Docenave, more than 5% of CSN (10.3% of the voting shares). However, CVRD does not control both CSN and USIMINAS. Mr. Gabriel Stoliar, the CEO of CVRD, serves on the eight-to-ten-member boards of both CSN and USIMINAS. However, Brazilian law prohibits board members from representing any other company's interests while serving on the board of a different company. See COSIPA's Sales Verification Report at 4. In addition, the record indicates that the USIMINAS board of directors (the "administrative council") is responsible for macroeconomic issues such as investment matters and does not control daily operations. See USIMINAS' Sales Verification Report at 9. Finally, CVRD is not a member of the USIMINAS shareholder's agreement, whose members control 50.52% of the voting stock of that company. The Department finds that, under the circumstances of this case, CVRD is not in a position to control USIMINAS within the meaning of section 771(33) of the Act. Because CVRD does not control USIMINAS, it cannot exercise common control over both CSN and USIMINAS within the meaning of subsection (F). Therefore, the issue of whether CVRD controls CSN is moot for purposes of this analysis.

Previ, like CVRD, is affiliated with both CSN and USIMINAS through equity ownership. However, subsection (F) requires a finding of common control, not merely of common affiliation. Previ is not a member of the USIMINAS shareholders' agreement, which controls 50.52% of the voting stock of that company. Nor is there other evidence that Previ is in a position to control USIMINAS. Because the record evidence does not establish that Previ is in a position to control USIMINAS, we find that CSN and USIMINAS are not affiliated by virtue of common control by Previ.

The SAA recognizes that, even in the absence of an equity relationship, control may be established "through corporate or family groupings" (see SAA at 838), *i.e.*, a corporate or family group may constitute a "person" within the meaning of section 771(33) of the Act. *See Ferro Union* v. *United States*, Slip Op. 99–27 (CIT, March 23, 1999). In such a case, the control factors of individual members of the group (*e.g.*, stock ownership, management positions, board membership) are considered in the aggregate. Accordingly, the Department considered whether USIMINAS and CSN are affiliated by virtue of common control by a corporate or family group.

What constitutes a "corporate group" for purposes of the affiliation analysis is not defined; the Department must address the issue on a case-by-case basis. The cases in which the Department has recognized that affiliation exists by virtue of participation in the same corporate or family group involved common control of the firms at issue by members of the same family, the same group of investors, or the same group of corporations. In other words, the "control group" language in the SAA does not add a new criterion to the statutory definition of "affiliation." It merely acknowledges that the controlling entity of the "common control" provision can be something other than a physical or legal person, and can exercise that common control by means other than equity ownership. It does not allow for treating all affiliation relationships as if they created new "control groups." With respect to USIMINAS and CSN, there is no such pattern of common control. We do not find any definable corporate group that controls both CSN and USIMINAS. Thus, we do not have a basis in the record to find affiliation under section 771(33)(F) of the Act.

With respect to section 771(33)(G) of the Act, petitioners have again failed to clearly identify a basis for finding that CSN controls USIMINAS (or USIMINAS/COSIPA), or vice versa. Petitioners appear to argue that CSN and CVRD are a "corporate group" for purposes of the affiliation analysis. While we agree that CSN and CVRD are affiliated, that by itself is not sufficient to consider them a "corporate group" for purposes of an affiliation analysis. Moreover, even if the Department were to treat CSN and CVRD as a corporate group, there is no evidence that the alleged "CSN/CVRD group" controls USIMINAS within the meaning of section 771(33)(G) of the Act. More to the point, we do not find a sufficient basis in the record to treat CSN, CVRD and Previ as a corporate group for purposes of the affiliation analysis. See Hot-Rolled Steel From Brazil, 64 FR 38756, 38762.

Although petitioners have submitted new information since the Hot-Rolled Steel From Brazil on the investigation by the Brazilian Ministry of Justice of these companies, there is not sufficient evidence on the record to determine that USIMINAS/COSIPA and CSN should be collapsed. As noted by respondents, section 351.401(f)(1) of the Department's regulations indicates that the two criteria must be met with respect to collapsing: (1) the companies are affiliated, and (2) the companies have similar production facilities that could be used to restructure manufacturing priorities and there is a significant potential for manipulation of price or production. While the Brazilian Ministry of Justice investigation may relate to the second criterion, the first threshold requirement, affiliation, has not been met.

Because the record evidence does not support a finding that USIMINAS (or USIMINAS/COSIPA) and CSN are affiliated under any provision of section 771(33), there is no basis to apply the collapsing criteria in section 351.401(f). Therefore, the Department has continued to treat CSN and USIMINAS/

COSIPA as separate entities for the purposes of this investigation.

II. Company Specific Sales Comments

CSN

Comment 2: Use of Total Facts Available for CSN

Petitioners state that CSN's abrupt refusal to cooperate in this investigation warrants the use of total adverse facts available. Petitioners specifically reference CSN's failure to provide a reconciliation of its submitted costs to the amounts in its cost of manufacturing statement. In addition, petitioners point out that CSN refused to provide information regarding its reported commission payments, and on the eve of verification, refused to respond to any requests for further information, and would not permit the Department to verify any information.

Citing section 782(i)(1) of the Act, petitioners state that the Department must verify information before making a final determination or must use facts available if the information cannot be verified. Petitioners further assert that it is the Department's longstanding practice, which the courts have upheld, to use total facts available, including information and comments on the record, when a party prevents the Department from verifying its data and withdraws from participation in an investigation. Petitioners maintain that CSN stands to benefit from its lack of cooperation and its withdrawal from this proceeding; therefore, using total adverse facts available is justified.

Petitioners note that the statute permits the Department, in relying on facts available, to draw an adverse inference where a respondent has failed to cooperate by not acting to the best of its ability. Petitioners argue that this is the case here, since CSN has withdrawn from the proceeding, refuses further participation, and would not permit verification of its information. Petitioners note that the Department's well-established practice in such cases is to employ total adverse facts available. Petitioners further note that when a company refuses to cooperate or otherwise significantly impedes an investigation, the Department uses as adverse facts available the highest of: (1) The highest margin in the petition (or initiation); (2) the highest margin calculated for another respondent within the same country for the same class or kind of merchandise, or (3) the estimated margin found in the Preliminary Determination.

With respect to adverse facts available, petitioners cite Notice of Final Determination of Sales at Less Than Fair Value of Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom, 61 FR at 51411, 51412 (October 2, 1996), where the respondent withdrew from the proceeding and the Department used the respondent's own information to calculate the margin because it was higher than the highest margin alleged in the petition or the highest calculated rate of any respondent in the investigation. Petitioners conclude that the instant investigation requires the Department to use a margin of 63.32 percent, which is the highest margin provided in the Petition, as adverse facts available.

CSN responds by referring to its November 2, 1999 letter to the Department, where it announced that it was pulling out of the investigation because any results of the investigation "would have no basis in reality." CSN states that the verified dumping margin would have been close to, and just as commercially prohibitive as, the facts available rate. While CSN expected to be painted as uncooperative, CSN claims it did not want the Department to invest its resources in verifying data that would have still resulted in a market-prohibitive rate reflective of a time when the Brazilian real was overvalued.

In sum, CSN expects the Department to use facts available to determine CSN's deposit rate, and denies that it has ever "frustrated the Department's inquiry." CSN claims that it submitted the cost reconciliations cited by petitioners. Additionally, CSN stresses that it has not prevented the Department from investigating the affiliation issue. According to CSN, these issues were verified in the instant countervailing duty investigation, as well as in the hot-rolled steel investigation.

Department's Position

We agree with petitioners that the application of adverse facts available is warranted. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information by the deadlines for the submission of information or in the form and manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to subsections 782 (c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because the respondent CSN withdrew from the proceeding following the Preliminary Determination, CSN's questionnaire response on the record is unverifiable. See "Letter to the Secretary of Commerce from Counsel for CSN", November 2, 1999. In addition, CSN failed to respond to a second supplemental questionnaire of October 15, 1999. Therefore, under sections 776 (a)(2)(B), (C), and (D) of the Act, the Department must use facts otherwise available in making its determination.

In addition, as required by section 782(d), CSN was warned that failure to participate in the investigation or permit verification constituted a deficiency which could result in the use of the facts available. Moreover, section 782(e) is not applicable as CSN did not permit verification, the information CSN submitted cannot serve as a reliable basis for making the final determination, and CSN has not demonstrated that it has acted to the best of its ability to provide the information requested and to meet other requirements (*e.g.* verification) established by the Department with respect to the information. Thus, the use of facts available is also warranted under section 782.

Section 776(b) provides that, where facts available are otherwise appropriate, an adverse inference may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. (See also SAA at 198.) Such adverse inference may include reliance on information derived from the petition. To determine whether the respondent cooperated by acting to the best of its ability under 776(b), the Department considers, among other facts, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, *e.g.* Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand;, 62 FR 53808, 53819–53820, (October 16, 1997) (Certain Welded Carbon Steel from Thailand); Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany; 63 FR 42823, 42824 (August 11, 1998).

CSN's failure to participate following the Preliminary Determination and refusal to permit verification of its information on the record demonstrate the CSN has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted with regard to CSN. The Department's well-established practice in such cases is to employ total adverse facts available. Consistent with Department practice in cases in which a respondent fails to cooperate to the

best of its ability by withdrawing from the investigation and refusing to respond to the supplemental questionnaires, and pursuant to section 776(b)(1) of the Act, we have applied, as facts available, a margin based on the highest margin alleged in the petition. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737–9738 (March 4, 1997).

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA at 870 as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used.

During the Department's pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the information in the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, foreign market research reports, and data from U.S. producers). See Initiation of Antidumping Duty Investigations; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey and Venezuela, 64 FR 34194 (June 25, 1999) (Notice of Initiation) and "Import Administration AD Investigation Initiation Checklist," (June 21, 1999). The estimated dumping margins of the petitioners were based on two different methods. First, EP was determined based on the import average unit value (AUV) for the three ten-digit categories of the HTSUS accounting for 90 percent of in-scope imports from Brazil during the fourth quarter of 1998. Petitioners presumed that the customs values used to calculate the AUV for each HTSUS category reflect the actual "transaction value" of the merchandise being shipped by Brazilian mills. Second, EP was determined based on Brazilian producers' offers for sale of CR flat products in the United States. Petitioners obtained this information from industry sources in the United States. The Department determined the adequacy and accuracy of the information from which the petition margin was calculated by reviewing all of the data presented and by requesting clarification and confirmation from petitioners and their sources as needed. See Attachment B to the Initiation Checklist and Memorandum to the File: Telephone Conversation with Market Research Firm Regarding the Petition for the Imposition of Antidumping Duties (June 21, 1999).

We noted that the U.S. price quote of the per unit values of the subject merchandise derived by petitioners were well within the range of the average unit values reported by U.S. Customs. U.S. official import statistics are sources which we consider to require no further corroboration by the Department. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 5140, 51412 (October 1, 1997). To further corroborate the home market prices in the petition, for the final determination, we reexamined the highest margin in the petition in light of information obtained during the investigation to the extent it is practicable, and determined it has probative value. Specifically, we compared the ex works home market prices in the petition to the verified home market prices for similar steel products (*i.e.*, of the same quality, dimensions, *etc.*) reported by USIMINAS/COSIPA, net of all movement expenses, discounts and billing adjustments, and direct selling expenses. We found that the petition prices were well within the range of prices reported by respondents for similar products; in fact, these prices were quite conservative compared to the actual prices reported by respondents. Based on the above, we find that the estimated margins set forth in the petition have probative value. Therefore, we are assigning to CSN the highest margin in the petition of 63.32 percent.

Comment 3: Currency Conversion Methodology

Petitioners do not agree with how the Department handled its currency conversion methodology for the Preliminary Determination. Citing sections 773A(a) of the Act and 351.415(c) of the Department's regulations, petitioners stress that the Department is to employ daily exchange rates for currency conversion purposes, but that fluctuations in exchange rates shall be ignored. Petitioners note that this language is mandatory and provides no exceptions. Petitioners assert that no mention is made in the statute of special treatment for large and precipitous drops. Petitioners do acknowledge that the Change in Policy Regarding Currency Conversion, 61 FR 9434 (March 8, 1996) (Policy Bulletin 96–1) calls for the use of actual daily rates when declines in the value of foreign currency are so "precipitous and large" as to reasonably preclude the possibility that it is only fluctuating. However, they argue that while the Department has the discretion to establish the definition "fluctuation in exchange rates," that definition must be reasonable. See *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984) (Chevron). Petitioners assert that the Department's exception to its stated definition is unreasonably pro-respondent and has no basis in law or logic. Petitioners further argue that Policy Bulletin 96–1, in effect, allows countries to dump during times of financial crisis.

In conclusion, petitioners state that in accordance with the statute, the Department must ignore fluctuations in all exchange rates, regardless of their size or speed. Moreover, petitioners emphasize that the Department should apply the normal 40-day benchmark standard in this investigation. Otherwise, petitioners recommend that if the Department should persist in adhering to its policy in dealing with large and precipitous declines, certain legal and methodological defects must be rectified. Petitioners note the Department's methodology does not adequately indicate when a precipitous decline occurs, and the methodology fails to adhere to the underlying rationale as to why currency fluctuations are ignored, namely because they provide an inaccurate representation of reality. Therefore, petitioners recommend the Department find that a "precipitous decline" occurs whenever the daily exchange rate is more than 25 percent below the preceding 40-day average. In addition, petitioners suggest that if the Department finds a 40-day benchmark is too long to reflect the volatility of exchange rates in a period of decline, then it could instead use a 10-day benchmark during periods when daily exchange rates deviated from the 40-day benchmark figure by more than 25 percent.

Respondents disagree with petitioners and request that the Department continue applying its well-established currency conversion methodology. Respondents maintain that 773A(a) of the Act "ensure[s] that the process of currency conversion does not distort

dumping margins." (see also SAA at 841). According to respondents, Policy Bulletin 96–1 recognizes that there can be precipitous and large declines, precluding the possibility that a currency is only fluctuating. Respondents argue that the Department has applied this aspect of its currency-conversion methodology in other cases involving precipitous currency changes. (See Preliminary Determination 64 FR 61249, 61258 (November 10, 1999).

Respondents argue that the currency conversion methodology employed by the Department is necessary to ensure its calculations are consistent with the objectives of the antidumping law. Respondents point out that the Department has the discretion to interpret antidumping laws. Furthermore, respondents argue that cases that petitioners cite do not support their proposition that the Department's currency conversion methodology should be changed. To ensure a fair comparison, respondents state that the Department must ensure that its calculation methodology continually reflects all changes in the commercial circumstances of a particular producer that effect the analysis of comparative revenue, such as dramatic declines in the exchange rate. Citing Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444, 15451 (March 31, 1999). Respondents argue that "[d]umping margins should not be 'artificially' created simply due to unforeseen changes in the exchange rate."

Respondents further assert that the Department's currency conversion methodology ensures that calculations accurately measure the existence or absence of dumping on a sale-by-sale basis. Respondents claim that U.S. law and the WTO Antidumping Agreement mandate that the Department focus on whether calculations accurately compare the per unit revenue received by a producer for a particular export sale with the per unit revenue received for a contemporaneous home market sale, rather than the results of the calculations. Respondents maintain that the purpose of the trade laws is not to punish companies for whom dramatic currency drops in short periods of time—which are utterly beyond their control—distort their home market sales prices once they are converted to U.S. dollars.

Respondents cite Stainless Sheet from Korea, SSPC from Korea and Certain Welded Carbon Steel from Thailand, stating that the Department's methodology is not "pro-respondent" because it often leads to a more favorable result for petitioners. Furthermore, respondents argue that there is no bias in acknowledging that a precipitous drop in a currency's value presents different methodological problems than a routine fluctuation. According to respondents, petitioners' proposed alternative to the Department's established methodology would produce inaccurate results. Respondents further assert that petitioners did not provide any evidence or support for their proposition. In addition, respondents point out that petitioners' proposed methodology would overstate the actual exchange rate, causing unjustifiable rises and falls during particular periods. Respondents conclude that the Department should continue to use the currency-conversion methodology it has used for almost four years.

Department's Position

We disagree with petitioners that our exchange rate methodology has no basis in law or logic. As stated in the preliminary results, we made currency conversions into U.S. dollars in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. See Policy Bulletin 96.1; see also Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands, 64 FR 36841, 36843 (July 8, 1999); Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 64 FR 30476, 30480 (June 8, 1999). (An exception to this rule is described below.)

Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement occurs when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method see Policy Bulletin 96–1: such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar.) However, because the current case involves a decrease rather than an increase in the value of a foreign currency, this provision does not apply. See SAA at 842.

In adopting its currency conversion policy, the Department recognized that a sudden large decrease in the value of a currency without any significant rebound could meet the technical definition of a fluctuation. To avoid this unintended result, in Policy Bulletin 96.1 the Department explained that we would apply the average benchmark rate in the case of an exchange rate "fluctuation" but also stated that we would use daily rates when "the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is merely fluctuating." We recognize the Policy Bulletin did not define a "precipitous and large" decline in the value of a foreign currency, because the Department had not yet faced the situation, but properly left this determination to be made in future cases. In Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From The Republic of Korea, 64 FR 14865,14867 (March 29, 1999) (Rubber from Korea) and other Korean cases, the Department found that a decline of more than 40 percent within a two-month period was sufficiently large and precipitous that use of daily rates was warranted during this two-month period. In contrast, in Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia, 64 FR 14690, 14693 (March 26, 1999) (Extruded Rubber Thread from Indonesia), the Department found that a decline of some 50 percent spread over five months was not precipitous and large and continued to employ its normal exchange rate methodology. See 64 FR 14690, 14693 (March 26, 1999). See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand, 64 FR 56759, 56763 (October 21, 1999) (Pipe and Tube from Thailand). See also, DRAMS from Korea: Final Results of Antidumping Duty Administrative Review, 64 FR 69694, 69703–04 (December 14, 1999).

Our analysis of dollar-real exchange rates show that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any

change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. Indeed, the decline in value of the real was as large and more rapid than the decline in the value of the Korean won in 1997, which we have found to be precipitous and large in numerous recent cases. As such, we continue to determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. We find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999, warranting application of daily exchange rates.

We recognize that, following a large and precipitous decline in the value of a currency, a period may exist during which exchange rate expectations are revised and thus it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in January 1999. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume the rates were merely fluctuating. Beginning on January 13, 1999, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely "fluctuating." Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time. Accordingly, from the first of these five days, we resumed classifying daily rates as "fluctuating" or "normal" in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. See Pipe and Tube from Thailand.

Applying this methodology in the instant case, we used daily rates from January 13, 1999, through March 4, 1999. We then resumed the use of our normal methodology through the end of the period of investigation (March 31, 1999), starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999.

While petitioners have suggested a 10-day benchmark (instead of a 20 or 40-day benchmark), they have not submitted any information to indicate that a 10-day average would be any more appropriate or produce more accurate results than a 20-day average, which day-by-day builds back up to a 40-day benchmark.

Comment 4: Home Market Sales With Warranty Expenses

Petitioners request that the Department reclassify all of USIMINAS' home market sales with home market warranty (WARRH) amounts as sales of non-prime merchandise, and exclude all of these particular sales from the calculation of normal values. Petitioners note that WARRH equals the amount of credit notes provided to customers for product quality problems, and that warranty expenses are sale-specific.

Respondents counter that petitioners' request must be rejected for several reasons. First, early in this investigation, respondents note that the Department rejected the petitioners' request for blanket reclassification of respondent's sales of prime product into non-prime product; in its supplemental questionnaire, the Department redirected respondents to classify all sales as prime or non-prime on a "sold as" basis. Second, respondents state that there have been no developments since the Department originally rejected the petitioners' identical request. Although the petitioners cite the Department's verification report finding that USIMINAS' warranties relate to quality problems, respondents argue that this statement only confirms that the Department verified that respondents' warranty expenses are based on customer claims of product quality problems after a sale is made. Third, respondents state that warranty expenses are based on customer claims of product quality problems, and are in a separate field from the prime/non-prime field. Respondents argue that the significance of this designation at the time of sale is important because it is fair to assume that a seller will price prime products differently than non-prime products. Respondents further state that the prime/non-prime fields allows the Department to segregate sales based on information that was known to the buyer and seller at the time of sale.

Respondents argue that the objective of the warranty field is entirely different. Respondents state that all purchasers of prime material assume that they are in fact buying a prime product that meets the specifications requested. Respondents explain that it is inevitable, in the course of doing business, that some customers will claim, after receipt of the product, that the product does not meet its expectations, due to defects, shipping damages or a number of other reasons. Respondents note that in all of these circumstances, the underlying "problem" with the steel occurs after the sale.

Respondents explain that when a company reimburses the customer for a warranty claim, because it warrants that its products will always meet the customer's expectations, the company incurs a warranty cost. Respondents state that the entire purpose of the Department's field is to isolate these costs either on a sale-specific or a product line-specific basis. Respondents continue to state that there is no Department practice whereby sale-specific warranty expenses are used as a key to then reclassify all sales for which warranty expenses were incurred from prime to non-prime sales.

Respondents, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy, 64 FR 30750, 30753 (June 8, 1999), also noted that for most companies, there are never any warranty costs for non-prime sales, which are sales where a buyer forfeits his right to a warranty claim. Therefore, respondents maintain that all sales with warranty claims should not be reclassified as non-prime merchandise because it would make the Department's warranty field meaningless. Respondents conclude that the warranty expense field presumes that the product was purchased and sold as a prime product.

Department's Position

We agree with the petitioners in part and with respondents in part. The Department has reclassified USIMINAS' home market sales as non-prime sales when no quantity adjustment was reported but there is a warranty claim. When the Department examined two invoices from a list of invoices with warranty reported during verification, the company noted that the material was not returned, but was reclassified as scrap or irregular blank scrap. Since all sales examined with warranties (and no returned quantity) were for sales of merchandise that ended up being non-prime, we have assumed all sales with warranties (and no returned quantities) are non-prime. This is appropriate since the net price reported (gross unit price less warranties) is representative of non-prime merchandise, which is what the customer ended up receiving.

In addition, as noted on page 39 of the USIMINAS' Sales Verification Report, we have found (and at verification USIMINAS agreed) that where a warranty adjustment was reported and a partial quantity adjustment was also reported, these sales are actually partial returns and warranty is not applicable. Therefore, we have set the warranty field (WARRH) to zero where there was a partial return of merchandise.

Comment 5: Home Market Discounts

Petitioners argue that the Department should deny adjustments for USIMINAS' reported home market discounts. Petitioners state that the Court of Appeals for the Federal Circuit (Federal Circuit) recently held that price adjustments must relate exclusively to merchandise within the scope of the proceeding, unless the same rebate percentage is uniformly applied to both subject and non-subject merchandise. See *SKF USA Inc.* v. *United States*, 180 F.3d 1370 (Fed. Cir. 1999) (SKF) and SKF, 180 F.3d 1376, citing *Smith-Corona Group, Consumer Products Div.* v. *United States*, 713 F.2d 1568, 1580–81 (Fed. Cir. 1983). Petitioners argue that USIMINAS used both subject and non-subject merchandise to calculate the rebate percentage for discounts, and did not provide the Department with documentation regarding the "unusually high" discount in the other discount category, reported in the field OTHDISH. Therefore, petitioners conclude that the Department should deny USIMINAS' claimed home market discounts (quantity discounts (QTYDISH) and OTHDISH) to customers.

Respondents counter that the Department should allow this adjustment to NV. Respondents explain that USIMINAS was not able to report discounts on a sale-by-sale basis given the difficulties in tracing these adjustments to the actual sale.* Respondents note the allocation methodology used by USIMINAS is the same as the Department accepted in Hot-Rolled Steel from Brazil which was based on the same facts. Respondents further state that USIMINAS' allocation methodology is consistent with the Department's regulations and the SAA. Respondents note that while petitioners imply SKF breaks new ground, the Federal Circuit emphasized its decision was consistent with its past decisions and those of the Court that accepted reasonable apportionment of adjustments. Respondents note that the Department was able to verify all information from USIMINAS, with a single exception. Respondent argue that although USIMINAS was unable to provide a requested document because of the many demands placed on it during verification, this single omission cannot serve as a reasonable basis to deny USIMINAS' home market discount adjustment as requested by petitioners.

Department's Position

We agree in part with both petitioners and respondents. Two types of discounts were reported by USIMINAS: (1) Quantity discounts, which were reported on a customer specific basis; and (2) other discounts, which were reported based on an aggregate amount for the POI. Both types of discounts involved dividing all discounts granted in the period (by customer in the case of quantity discounts) for subject and non-subject merchandise, by the total sales in the period (by customer in the case of quantity discounts) for subject and non-subject merchandise.

Section 351.401(g) of the Department's regulations state that the Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions. In addition, any party seeking to report an expense or price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible. Also, the Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable). We note that the cases cited by petitioner relate to the Department's practice prior to changes made by the URAA and adoption of the Department's new regulations.

For quantity discounts, we find that USIMINAS has reported this discount in the most specific basis that is feasible. Moreover, having examined the information provided by USIMINAS regarding the products it manufactures, we find no reason to conclude that discounts would be granted disproportionately on its out-of-scope steel products as opposed to its in-scope steel products as this merchandise is broadly similar in value, physical characteristics and the manner in which it is sold. Therefore, this adjustment meets the criteria of section 351.401(g) of the Department's regulations, and we are continuing to allow an adjustment to NV for quantity discounts.

For other discounts, we were unable to verify one large item (composing the vast majority of this expense). In addition, the allocation on this expense was done in the aggregate, for various types of discounts. In other words, several discounts were lumped together for sales of all products to all customers; thus, the allocation was not customer-, product-, or even discount-specific. Therefore, we are not satisfied that USIMINAS submitted this adjustment in the most specific basis that is feasible. Therefore, we are disallowing the adjustment to NV for other discounts.

Comment 6: Home Market Interest Revenue

Petitioners point out that USIMINAS' late payment interest plus fines charges (INTREVH) are applied to all sales on a global basis rather than to specific sales. Referring to SKF, petitioners argue that the interest revenue is not uniformly applied. Furthermore, they contend that the interest revenue adjustment for USIMINAS' home market sales is calculated based on both subject and non-subject merchandise. In the instant investigation, according to petitioners, the amount of interest revenue that USIMINAS receives from the customer is not the same for each sale let alone for each product, as it depends on factors that vary from sale-to-sale, such as the number of days after the due date that interest is charged. Petitioners request the Department to deny USIMINAS' calculation of the adjustment for home market interest revenue, and, as facts available, instead add the highest reported amount for INTREVH to the price of all home market sales.

Respondents argue that it is well established that a company may allocate price adjustments when transaction-specific reporting is not feasible. Respondents indicate that the Department allowed USIMINAS to report home market interest revenue in this manner in Hot-Rolled Steel From Brazil investigation, and granted the same adjustment. Respondents state that petitioners miss the point with their argument in that of course, the amount that USIMINAS receives in interest will vary from sale to sale, because there is no reasonable basis for the Department to expect every delinquent customer to withhold payment the exact same number of days. Moreover, respondents note, when the customer has an acceptable reason for late payment then USIMINAS may decide to extend the due date without charging interest revenue as stated in the Section B response. Respondents maintain that USIMINAS reported interest revenue amounts to the best of its ability, and that its methodology was reasonable and

not distortive. Further, Respondents argue that the Department verified the accuracy of USIMINAS' reported home market interest revenue.

Department's Position

We agree with respondents that it is reasonable for USIMINAS to allocate price adjustments when transaction-specific reporting is not feasible, and that the price adjustment methodology used was appropriate. In Hot-Rolled Steel from Brazil, 64 FR 38756, 38790–38791 (July 19, 1999) we accepted a similar allocation methodology for USIMINAS' interest revenue. Section 351.401(g) of the Department's regulations state that the Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions. In addition, any party seeking to report an expense or price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible. Also, the Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable). Therefore, this adjustment meets the criteria of section 351.401(g) of the Department's regulations, and we are continuing to accept USIMINAS' calculation of the adjustment for home market interest revenue.

Comment 7: Indirect Selling Expenses/ Warehousing Expenses

Petitioners argue that the Department should reclassify all of USIMINAS' U.S. indirect selling expenses as movement expenses. Petitioners point out that USIMINAS includes warehousing expenses incurred at the port of export in its indirect selling expenses. Petitioners note that at verification, when asked to break out warehousing expenses from its indirect selling expenses, USIMINAS stated it had no means of precisely ascertaining these costs. Petitioners insist that the Department has established a clear practice of treating post-shipment warehousing expenses as movement expenses, as prescribed in section 351.401(e)(2) of the Department's Regulations. Respondents state that USIMINAS' warehousing expenses are properly treated as indirect selling expenses based on verification and the Department's determination in past investigations. Respondents note that USIMINAS has consistently classified its port warehouse expenses as indirect selling expenses because it is unable to isolate all of its warehouse costs from other indirect selling expenses, *i.e.* these expenses are fixed expenses and are aggregated with other fixed selling expenses in USIMINAS' accounting system. Respondents argue that the Department has consistently accepted USIMINAS's treatment of its port expenses as indirect selling expenses, including in Hot-Rolled Steel from Brazil and the facts surrounding these expenses have not changed. It is further claimed that there is nothing inequitable in USIMINAS' treatment of its warehouse expense as indirect selling expenses, because USIMINAS treated all warehouse expenses the same, regardless of whether they were related to home market sales, export sales, or both.

Department's Position

We disagree with petitioners. Respondents consistently informed the Department that USIMINAS was unable to segregate warehousing expenses from its indirect selling expenses and that it had reported all warehousing as part of these expenses. See respondents' Section B response at B–50 (August 30, 1999). The Department did not uncover any information at verification to indicate that USIMINAS was able to segregate warehousing from indirect expense. Therefore, we have accepted USIMINAS' data, as reported, and are not reclassifying USIMINAS' indirect selling expenses as movement expenses for this final determination.

Comment 8: Home Market Packing

Petitioners request that the Department exclude COSIPA's home market packing expenses from its home market sales analysis because the Department was unable to examine and confirm these costs during verification. Petitioners assert that at verification, COSIPA explained it had selected a month as representative of POI-wide packing costs, but that the Department was unable to examine and confirm the validity of the underlying presumption that one month was, in fact, representative.

Respondents state that the Department should deny the petitioners' request. Respondents note that Section B of COSIPA's response made it clear that the adjustment for packing materials was based on two components: valuation of per unit cost and a quantification of types of materials used for each packing type. Respondents argue that with respect to the valuation of the per unit costs for each type of packing, COSIPA explained at verification that it used the value of material inputs in the month of September 1998 as a representative month for per unit packing materials costs. Respondents note that COSIPA used the same methodology for the packing adjustment for home market sales and export sales, so the methodology was market-neutral.

Respondents point out that the Department verified that the material cost valuations were based on its September 1998 inventory values after viewing similar records for purchases from other months to see if September was distortive.

According to respondents, although there were minor variations in per unit packing for some other packing materials, the variations did not undermine COSIPA's methodology of using prevailing inventory valuations in September as a surrogate for per unit values during the POI. Respondents point out that there was a decision to defer additional verification of the packing adjustment to the cost verification to give COSIPA time to prepare similar documents for additional months. Respondents note that during the cost verification, COSIPA presented the additional information requested at the sales verification but the cost verifiers did not dedicate time in the cost verification to COSIPA's packing adjustment.

Respondents note that the Department will accept a Respondent's packing adjustment if reasonable and not distortive. Respondents state the Department should reject the petitioners' request to apply adverse inferences and to reject the petitioners home market packing costs, and that COSIPA provided details of its packing adjustment in its Section B/C responses, as well as explained and prepared additional documentation of all aspects of packing adjustment at verification.

Department's Position

We agree with petitioners that COSIPA's home market packing expenses should be excluded from the final determination. The COSIPA verification report notes that COSIPA based its packing costs solely on company records for September 1998. While the verification team attempted to establish that these mid-POI costs were representative by comparing the reported figures to those for other periods at the beginning and end of the POI, we were unable to do so, because COSIPA did not provide the appropriate

data from its microfiched records. Although COSIPA had been specifically advised in the verification outline that the Department would be looking into its home market packing claim, COSIPA only produced worksheets purporting to reflect packing material costs throughout the POI at the very end of verification. These data, however, were untimely and, in any case, unverifiable, given that they arrived when there was no longer time to look into their accuracy. Thus, we have not reviewed this data for the final determination.

We also note that COSIPA used the same methodology for its U.S. packing expense which, as on the home market side, could not be verified. Because of this verification failure for U.S. and home market packing expenses, we are, as an adverse inference, using the reported packing figures for export sales while denying them for normal value as the facts otherwise available, in accordance with sections 776(a) and (b) of the Act. Section 776 (a)(2)(D) requires the use of facts available where information can not be verified. Section 776(b) calls for the Department to use an adverse inference where it finds, as here, that a party failed to act to the best of its ability to respond to the Department's requests for information. As was made abundantly clear at verification, the necessary documentation to calculate accurate packing costs for both markets based on a POI-wide sampling of costs, was readily at hand for COSIPA. In spite of this, COSIPA elected to base its claim for adjustments for packing costs solely on a single month's inventory cost reports, without making any effort to establish the validity of this assumption. Accordingly, we find that COSIPA did not act to the best of its ability to report these costs, indeed, disregarding readily-available cost data for this adjustment. Therefore, as an adverse inference, we are denying the home market packing adjustment, while using the reported U.S. packing costs, based on verified data for September, for calculating EP. This approach is fully consistent with the intent of section 776(b) of the Act, as well as the Court's holding in *Timken Company* v. *United States*, 673 F. Supp. 495, 512 (CIT 1987).

Comment 9: COSIPA's Home Market Billing Adjustments

Petitioners request that the Department deny COSIPA's claimed home market billing adjustments in their entirety because those adjustments could not be verified or, alternatively, revise the adjustments to the amounts that the Department identified during verification. Petitioners claim that COSIPA's billing adjustment methodology is questionable because the Department disagreed with some of COSIPA's amounts during verification.

Respondents state the Department should reject petitioners' argument and continue to grant COSIPA's home market billing adjustment, as corrected. Respondents state the billing adjustment for the first home-market sales trace was properly verified. Respondents argue that the petitioners base their claim on a corrected billing adjustment and an ambiguous sentence in the verification report regarding an apparent overstatement of the billing adjustment because the supplemental nota fiscal on its face indicated a different corrected billing adjustment than that presented by COSIPA. Respondents note that the "difference" identified on the supplementary nota fiscal does not reflect the Department's prescribed calculation (total credit divided by tons shipped) but the calculator tape (in COSIPA Sales Verification Exhibit 26) divides the value of the supplemental nota fiscal by the total quantity shipped to arrive at the corrected billing adjustment.

Respondents point out that on all other home market pre-select and surprise sales traces, the Department noted no discrepancies. Therefore, respondents see no reason to reject all home market billing adjustments, as petitioners suggest.

In their rebuttal briefs, petitioners state that the Department should treat billing adjustments (BILLADJH) not as a deduction to gross unit price (GRSUPRH), but as an addition to the gross unit price. Petitioners state that a careful analysis of COSIPA's data indicates that the company's reported billing adjustments represent increases to gross unit price (as opposed to deductions). Petitioners state that in the Preliminary Determination, the Department subtracted billing adjustments (BILLADJH) from gross unit price (GRSUPRH) for all of COSIPA's home market sales. Petitioners urge the Department to correct this alleged error by adding billing adjustments to gross unit price, or alternatively, by employing a second variable (GRSUPRH2) which represents the fully-adjusted gross unit price amounts (*i.e.*, the prices after all billing adjustments have been taken into account). Also in their rebuttal, petitioners withdraw their original argument that these adjustments were improperly reported as they believe it would be inappropriate for the Department to reward COSIPA for any errors that may have been found at verification.

Department's Position

The Department reviewed the per-ton calculation of COSIPA's billing adjustments at verification and, minor mathematical corrections aside, had no reason to question the underlying methodology. The correct adjustment was calculated on a transaction-specific basis as the adjustment's total value, inclusive of taxes, divided by the applicable tonnage. After reviewing the respondents' clarifications on the proper treatment of these billing adjustments the Department does not find error with the methodology used for calculating the corrected billing adjustment for this sale. Therefore, we agree with the respondents that billing adjustment values were properly calculated.

We also agree with the argument raised by petitioners in their rebuttal brief. After careful analysis of the information on the record, we agree that COSIPA's billing adjustments represent increases to gross unit price, rather than deductions from gross unit price. See Memorandum to the File, dated January 7, 2000. The Department has corrected this error in the final determination by employing GRSUPRH2, which represents the fully-adjusted gross unit price amounts (*i.e.*, the prices after all billing adjustments have been taken into account).

Comment 10: COSIPA's Home Market Resales

Petitioners point out that COSIPA has certain resales that were not linked to their original production records. Instead, petitioners state, COSIPA relied on product characteristics as described on the billing invoice to generate CONNUMs, making COSIPA's reported material specifications questionable. Petitioners note that the specifications reported by COSIPA for such resales are not specifications of the material actually sold, since the material was originally produced to a different order. Petitioners further assert that COSIPA made no attempt to link the material involved in such resales to production records even though it said it was possible to do so. Petitioners recommend that the Department exclude all sales of such resales, but since the resales cannot be separately identified, as facts available, the Department should exclude all home market sales below a specific price.

Respondents state that the Department should use COSIPA's databases as submitted and verified by the Department. Respondents stress that petitioners argument that the

Department should exclude all of COSIPA's home market sales with no production records from its home market database demonstrates a wholesale misunderstanding of the products sold.

Respondents point out that COSIPA's initial Section B response indicated that for some isolated product characteristic fields, in limited circumstances, COSIPA believed it was helpful to reference its production records to confirm the correct product characteristic code. Respondents note that for a limited category of grades, COSIPA referenced production records if there was differing yield strength information (*i.e.*, whereas some grades specified a minimum yield strength, some grades only identified a maximum.) In addition, respondents note that reference to production records and customer orders was also helpful in coding the thickness tolerance field. Respondents state that reference to production records was entirely unnecessary as COSIPA's invoices provided all of the necessary information.

Respondents note that in the event COSIPA was unable to link a particular invoice with a particular production record, COSIPA used alternative methodology for these sales for certain product characteristic fields. Respondents point out that in the case of a customer returning and COSIPA then reselling this product to another customer, COSIPA would lose the link between the final sale and the original production records. Respondents note that COSIPA used the information in the invoice or customer order or other resource as a basis to decide the product characteristic of the product sold. Respondents claim that the use of alternative information such as the invoice is not distortive, and that it is fair to presume a company would not mischaracterize its product characteristics on an invoice.

Respondents claim that petitioners logic is twisted because they assert affirmatively that the specifications reported by COSIPA for resales are not the specifications of the material actually sold. Respondents point out that at the time of invoicing when the product is resold, COSIPA is able to ascertain the product characteristics of the product to be sold. Respondents note that in rare cases, COSIPA was not in a position to confirm the product characteristic on the invoice with the information for a particular production run. Respondents state that in many dumping investigations, respondents are not able to access production information for each individual invoice.

Respondents argue that petitioners wrongly claim that COSIPA "made no attempt" to link the material invoiced and sold to underlying production records. Respondents note that COSIPA explored several methods to attempt to correlate production records with invoices for resales; however, at verification, for any given resale COSIPA was not always able to find the production records, invoice or order related to the original sale. Respondents note that this is not the same as COSIPA not attempting to make the link at all.

Department's Position

We agree with respondents that sales with no production records should not be excluded. Respondents have consistently acknowledged COSIPA's inability to link production records to a limited amount of sales. However, COSIPA used alternative methodologies, such as referencing the invoice and customer order, to confirm the product characteristics of the products sold. At verification, for each home market and U.S. sales traced, we compared product characteristics as recorded on COSIPA's nota fiscal with underlying production records and did not find a single instance where these characteristics differed between the two sources. Therefore, we conclude that the nota-fiscal is a valid substitute for the missing production records in this case, and we find no evidence which would cast doubt on the reported specifications and characteristics of COSIPA's sales. Accordingly, we have accepted the reported product specifications and characteristics for this group of sales.

Comment 11: Date of Sale for COSIPA's U.S. Sales

According to petitioners, per section 351.401(i) of the Department's regulations, the essential terms of COSIPA's U.S. sales were established by export contract before the commercial invoice was issued because sales price did not change after the export contract date. Petitioners urge the Department to use COSIPA's contract date in lieu of the commercial invoice date as the official U.S. date of sale. Since contract dates are not reported, petitioners suggest that, as facts available, the Department revise sales dates by subtracting an average number of days between the export contract and commercial invoice from the reported sale dates, excluding any sales whose revised dates of sales fall outside of the POI.

Respondents state that the Department should continue to use the date of sale as identified by COSIPA *i.e.*, the earlier of the commercial invoice or the not a fiscal date, as the date of sale, not the petitioner's proposed use of a surrogate export contract date as the date of sale. Respondents note that the Department presumptively used the invoice date as date of sale, although it may use another date only if satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sales.

Respondents argue that use of the export contract date would be unlawful and unreasonable. Respondents point out the export contract date does not establish the critical term of sale: actual quantity produced and sold. According to respondents, quantity is not known until, at the earliest, the steel is actually produced and leaves the factory. Respondents further note that COSIPA's date of sale methodology was based on its entire universe of sales during the POI, not a limited sample of 4 or 5 sales. Therefore, that the Department's sales traces at verification found no instance of the price or quantity changing is of little moment. Additionally, the Department addressed this very issue in Hot-Rolled Steel from Brazil, rejecting petitioners' arguments regarding COSIPA's date of sale.

Further, respondents state that petitioners' allegations are untimely since the Department's practice is to address the date of sale issue in the early stages of an investigation in the Section A response. Respondents argue that during this proceeding neither the petitioners nor the Department ever suggested COSIPA's export contract date would be a more appropriate date of sale at the supplemental Section A or C stages nor at verification, nor did the Department request that COSIPA alter its date of sale methodology. This eleventh-hour challenge must be rejected, COSIPA insists, as it raised at a stage in the proceeding which precludes any correction.

Department's Position

We agree with the respondents that the evidence on the record does not establish that the contract date best represents the date of sale for COSIPA's U.S. sales. Thus, for date of sale, we have continued to use the earlier of the commercial invoice date or the nota fiscal date. Petitioners make reference to page 9 of the COSIPA verification report, which states that the export contract "for U.S. sales shows the total tonnage, price and product quality. It also specifies the estimated delivery time, sales conditions, payment terms, and has the date of issuance." This statement is accurate; however, this statement only relates to the tiny number of COSIPA's sales examines,

and does not establish that the sales conditions and payment terms do not change after the contract date. With no evidentiary basis for disregarding the presumptive date of sale identified in our regulations, we have continued to use COSIPA's reported sale dates, consistent with our approach in Hot-Rolled Steel from Brazil 64 FR 38756, 38780 (July 19, 1996).

Comment 12: Direct Selling Expense Related to U.S. Sales

Petitioners point out that COSIPA sells to the United States via COSIPA Overseas, located in the Cayman Islands. Petitioners argue that activities conducted on behalf of COSIPA Overseas' and the expenditures associated with them relate exclusively to export transactions. (The precise nature of these expenses necessitates extensive reference to business proprietary information. For a complete discussion of this issue, and our position thereon, please see the Final Analysis Memorandum, January 18, 2000, a public version of which is on file in room B–099 of the main Commerce building.) Petitioners go on to indicate that COSIPA funds these expenditures by paying an amount to COSIPA Overseas on sales from COSIPA to COSIPA Overseas. Petitioners assert that the Department found this should have been a direct expense. Therefore, petitioners state that the Department should deduct this amount from the U.S. price.

Respondents assert that while COSIPA's accounting books refer to these amounts as a specific type of expense, this label is not entirely accurate, thus explaining the "confusion" engendered by statements referenced in the Department's COSIPA Sales Verification Report. In fact, respondents conclude, there is no basis in fact or law for concluding that these amounts represent direct selling expenses or for deducting these amounts from COSIPA's U.S. sales prices.

Department's Position

We disagree with petitioners. After careful review of the record, the Department has determined that the foreign sales expense identified by petitioners cannot be considered a direct expense, since the accounting entries do not represent an "expense" at all. Therefore, despite the ambiguity engendered by statements recounted in the COSIPA verification report on this subject, the Department cannot treat these accounting entries between COSIPA Overseas and COSIPA as direct selling expenses because they do not invoice "expenses" of any kind. See Final Analysis Memorandum for an additional discussion of this issue.

Comment 13: Imputed Interest Revenue

Respondents argue that the Department should not impute interest revenue on sales for which COSIPA has never been paid and therefore never collected such revenue. Respondents note that for COSIPA's home market sales that remained unpaid as of October 1, 1999 (the date of its first supplemental response), the Department selected October 1, 1999, as a surrogate payment date and used that date to calculate an imputed interest revenue. Respondents state that in the Preliminary Determination, the Department's decision to impute interest revenue is based upon an incorrect assumption that COSIPA will inevitably be paid for these sales and will collect interest and penalties. Respondents acknowledge that it receives interest revenue from customers who pay late, but states it has reported these receipts appropriately. However, respondents state that the record does not support the Department's decision to impute interest revenue receipts on sales for which no payment at all has been received, and that COSIPA cannot predict with certainty when, or if, certain customers will pay the invoiced amount (including late payment charges). Respondents state that the Department's reference in the Preliminary Determination to Section 776(b) of the Act, which authorizes the use of adverse inferences against parties who fail to cooperate, is unwarranted with regard to home market interest revenue on unpaid sales. Respondents reference *Olympic Adhesives Inc.* v. *United States*, 899 F2nd 1565, 1573 (Fed. Cir. 1990) and state that a company's inability to provide information is not the same as a refusal to provide that information.

Petitioners state that if it is in fact the case, as respondents claim, that there is ample reason to believe that the sales with missing payments within COSIPA's home market dataset are sales for which full payment is not expected by COSIPA, then the Department should classify all of those sales as being made outside of the ordinary course of business, and should exclude those sales from its margin analysis. Petitioners state that companies such as COSIPA will not ordinarily sell merchandise to customers from whom they do not expect payment in full for the merchandise. Petitioners emphasize that while non-payment of some portion of bills is a possibility, it is not the normal practice for any company within a market economy desiring to stay in business for very long.

Department's Position

We disagree with the respondents' argument, and agree, in part, with the petitioners' argument. We agree with the general principle of the petitioners' argument that it is not the normal practice for a company operating within a market economy to continue operating for any length of time under conditions of non-payment for a significant portion of its invoices. At minimum, if a company over time does not receive a significant portion of payments, the company would certainly try to minimize this loss by discontinuing selling to, or altering the level of business conducted with these customers. Although COSIPA may indeed not receive full payment (with interest and penalties) for a certain number of sales, the Department cannot assume non-payment for all sales with missing payments reported to the Department. Without any additional evidence supporting the respondent's claim on this matter, the Department is not in a position to assume non-payment of interest revenue for all of these sales. Stating this, the Department likewise cannot assume the petitioners' argument that these sales are sales outside the ordinary course of trade is accurate, absent additional record evidence. Therefore, for sales with unreported payment dates, we are continuing as we did in the Preliminary Determination, 64 FR 61249, 61259 (November 10, 1999) to calculate an imputed interest revenue expense for COSIPA. See Final Analysis Memorandum.

Comment 14: Home Market Freight Adjusted by ICMS Tax

Respondents argue that the Department should not make a downward adjustment to the reported home market freight adjustments for ICMS. Respondents note that in the Preliminary Determination, the Department excluded from home market inland freight costs the associate ICMS taxes. Respondents state that the Department is obligated to make deductions from normal value for all inland freight expenses associated with home market sales. See 19 U.S.C. 1677b(a)(6)(B). Respondents state that neither the Department is obligated to make deductions from normal value for all inland freight expenses associated with home market sales. See 19 U.S.C. 1677b(a)(6)(B). Respondents state that neither the Department nor the petitioners have suggested that the

respondents are receiving some form of tax credit as they do in connection with the ICMS paid on raw materials purchases; nor can this inference be gathered from any other Brazilian proceeding. Respondents conclude that the Department should find that taxes paid on freight expenses are part of movement expenses, and deduct the ICMS incurred on freight from normal value (in addition to the expense for the freight service itself), as it has done in all previous investigations and administrative reviews involving Respondents. See Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 FR 6899, 6908 (February 11, 1998).

Petitioners argue that the Department correctly subtracted ICMS taxes from the respondents' home market inland freight amounts. Petitioners state that the ICMS tax is unquestionably a VAT tax and that the Department's adjustment is consistent with its current methodology (petitioners cite to Hot Rolled Steel from Brazil). Petitioners claim that the respondents' assertion that the Department has included ICMS taxes in home market freight expenses in "all previous investigations and administrative reviews" involving respondents is not accurate, and that there is no basis on the record in this investigation to deviate from the Department's stated practice.

Department's Position

We agree with petitioners. For USIMINAS' U.S. sales examined at verification, respondents did not include ICMS tax within home market inland freight for U.S. sales, but did include ICMS taxes in inland freight for home market sales. Likewise, COSIPA did not include ICMS taxes within home market inland freight for U.S. sales. For COSIPA's home market sales, the evidence is unclear. The vast majority of sales examined at verification were within Sao Paulo state and, thus, freight charges would not be subject to ICMS taxes; the freight invoice for one remaining home market observation indicated no ICMS taxes were included. However, COSIPA has stated affirmatively that "freight charges are based on the services plus any applicable taxes (*i.e.*, ICMS tax). In this scenario, the freight provider then remits the taxes collected from * * * COSIPA and USIMINAS to the state." USIMINAS/COSIPA Case Brief at 5 (original emphasis); see also Respondents' Supplemental Questionnaire Response, October 29, 1999, at 9. Thus, we conclude that the preponderance of record evidence indicates that for USIMINAS/COSIPA, home market freight carriers on interstate runs include ICMS in their freight charges. This is similar to the reporting of ICMS taxes on sales of the merchandise under investigation (ICMS taxes are paid on home market sales and not on U.S. sales; we deduct ICMS taxes from reported gross unit price). If ICMS taxes are included within movement expenses, which are deducted from the gross unit price, and we calculate gross unit price net of ICMS taxes, then the movement expenses should similarly be a net of the ICMS taxes. ICMS taxes must be concurrently deducted from movement expenses, as well as gross unit price to make the entire calculation tax-neutral.

In the Second Supplemental Questionnaire, we asked respondents to report, for each individual sale, the ICMS taxes paid on inland freight on the sales tape. Respondents replied: "[w]hether or not the ICMS is included in the transport expense paid by Respondents depends on the destination of the shipment. For example, for shipments by COSIPA to destinations within the state of Sao Paulo, COSIPA pays the transporter its fee for the transport services, and then COSIPA pays the ICMS directly to the state. For shipments outside the state of Sao Paulo, it is the transporter's responsibility to pay ICMS." See Respondents' Supplemental Response at 9 (October 29, 1999). Respondents stated that the Department should deduct any ICMS paid by respondents directly to the state, but if they could not identify these ICMS taxes, it would only prejudice them. Respondents claimed that they were unable to *perfectly isolate* ICMS related to freight in the time permitted (see Id. at 10). Therefore, they did not report it separately. Printouts in USIMINAS" sales verification exhibits indicate that they are indeed able to break out ICMS paid to the freight provider. Because respondents have failed to provide information by the deadline for submission, the Department is required to apply facts available under section 776(a)(2)(A). Moreover, because respondents has not acted to the best of its ability to identify the amount ICMS an adverse inference is appropriate under 776(b). Consequently, as facts available, we have deducted ICMS tax from movement expenses (for all home market sales with inland freight reported, by USIMINAS/COSIPA and their affiliated resellers) based on the highest rate applicable to respondents, 18 percent. See Respondents' Section B Response at B–42 (August 30, 1999). While COSIPA may not have paid taxes on some of those sales, we are deducting ICMS taxes nonetheless since we have no way of distinguishing which sales had ICMS tax since respondents did not break out the taxes as requested.

Comment 15: Non-Rectangular Blanks

Respondents argue that the Department should exclude all non-rectangular blanks from the scope of the investigation. Respondents submit a brief historical overview:(1) Respondents submitted on July 12, 1999 a letter requesting the Department to exclude all non-rectangular blanks from the scope of the investigation; (2) the Department's November 1, 1999; Memorandum from Case Analyst to Joseph A. Spetrini (Scope Memorandum) did not identify or address the respondent's scope request; and (3) since the Preliminary Determination, petitioners have requested the Department to exclude most non-rectangular blanks from the scope of the investigation.

Respondents emphasize that there is a subset of non-rectangular blanks that is covered by the respondents exclusion request which is not covered by petitioners' request. The petitioners' exclusion request proposes to limit the exclusion only to non-rectangular blanks that are in the "approximate shape or outline of a finished article."

Respondents argue that the Department should revise petitioners' proposed exclusion definition for several reasons: (1) It would be difficult for U.S. Customs officials to determine, on an entry-by-entry basis, whether a particular non-rectangular blank approximates the shape or outline of a finished article; (2) the petitioners' exclusion request does not consider the fact that consumers of non-rectangular blanks normally require the manufacturer to stamp the product into a shape that is similar to the shape of the final finished product; for the customer to do otherwise would not be economical; (3) an application of the Diversified Products criteria demonstrates that all non-rectangular blanks should be excluded. In particular, there are significant and meaningful differences in the physical characteristics of the product, the expectations of the ultimate purchasers, the ultimate use of the product, and the channels of trade in which the product is sold, from the primary cold-rolled steel products subject to this investigation. See *Diversified Products* v. *United States*, 572 F. Supp 883 (CIT 1983). Respondents refer to their July 12, 1999, analysis of the Diversified Products criteria and state that the application of the Diversified Products

criteria is identical whether or not the non-rectangular blank conform with the petitioners' proposed definition of the non-rectangular blanks excluded from the investigation.

Petitioners initially point out although parties agree on the term "blanks," petitioners did not exclude *all* cold-rolled steel of non-rectangular shape. See Scope Exclusion Letter at 2. Petitioners maintain that if cold-rolled steel imports are within the scope definition, then they are covered by the investigation, regardless of their shape. Referring to Chapter 72, Note 1.(k) of the HTSUS (already set up), petitioners state that non-rectangular shapes are properly classified as "flat-rolled products." Petitioners stress that products that should not be classified as "flat-rolled products" are those that assume the character of products of other headings.

Petitioners argue that if the Department were to revise the scope of the investigation, it would be an invitation to circumvent this proceeding, an abuse of its discretion, and a direct contradiction to recent pronouncements by the Administration that the law will be vigorously enforced. According to petitioners, respondents' argument that there is "no commercial incentive" for a customer to insert an additional step into its production process is false. Petitioners maintain that if respondents can avoid a duty cost with a less expensive change—*i.e.*, cutting a corner of a steel sheet—then there is, in fact, a "commercial incentive," and such imported products would compete for sales with products made by the domestic industry.

With regard to respondents' argument that the definition provided in Petitioners' Scope Clarification Letter would be "unmanageable" by the U.S. Customs Service, petitioners maintain that the letter makes clear that products that assume the character and parts or finished articles are not intended to be covered. Petitioners also disagree with respondents' contention that application of Diversified Products criteria suggests that all non-rectangular blanks should be excluded. According to petitioners, their letter reveals that the products not included are those that are actually dedicated components of other items or complete articles themselves. Petitioners note that there is a real difference between a steel sheet that has been cut to a shape that is technically non-rectangular and a piece of steel that can only be used as part of some other article.

Petitioners submitted a clarification to the scope exclusion, which replaces petitioners' November 3, 1999 submission. Petitioners agree that the following product should be excluded from the scope of the instant investigation: "Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS." See Petitioners' Draft of Scope Exclusion/Clarification Letter (January 12, 2000). Petitioners emphasize that any product that does not meet these specifications is included within the scope of the investigation.

Department's Position

We agree with petitioners, who have revised the scope, carefully articulating the "non-rectangular" products that are excluded. It has been determined that the HTSUS will be the governing factor for classifying these products. In this case, products that are no longer commercially recognized as basic steel mill products—*i.e.*, advanced products which have assumed the character of articles or products classified outside Chapter 72 of the HTSUS—will not be included in the scope. See "Scope of the Investigation," above.

Comment 16: Thickness Tolerance

The respondents contend that the Department should recognize COSIPA's ¾ mill thickness tolerance code distinctions. Respondents note that the Department's antidumping questionnaire identifies codes for thickness tolerance to include ¼ mil tolerance, ½ mil tolerance, and standard mil tolerance. Respondents further state that the questionnaire also allows respondents to specify and explain any other codes for thickness tolerances which they consider applicable to the subject merchandise. In response to the questionnaire, respondents note that they provided a code which represents subject merchandise with a ¾ mil thickness tolerance.

Respondents note that in the Preliminary Determination, the Department treated ¾ mil tolerance as standard mill tolerance. The respondents state that the Department has not provided an explanation why it recognized some tolerance distinctions while at the same time it has ignored other tolerance distinctions of the same magnitude. Respondents believe that the Department should revise its computer programs so that ¾ mil thickness tolerance sales are kept distinct from standard tolerance sales.

Petitioners disagree with the respondents' argument that ¾ mil thickness tolerance sales should be kept distinct from standard tolerance sales. Petitioners believe the Department should reject this argument since respondents were offered an opportunity to propose a ¾ mil thickness tolerance in their response to the Department's model-matching criteria, and did not. Petitioners make reference to respondents' August 30, 1999, questionnaire response, which states that sales are categorized as standard tolerance sales which meet the following conditions: (1) Customer did not specify a thickness tolerance; (2) sales which cannot be linked to a customer order; (3) sales from inventory.

Petitioners state that the burden is on the respondents to justify the need for an additional tolerance category, and that the respondents' case brief has offered nothing more than the unsupported assertion that the ¾ mil thickness tolerance is a "fairly common customer specification" for COSIPA sales. Petitioners believe that the Department's decision to place these ¾ mil tolerance sales into the standard mil category is consistent with respondents' own practice of assigning various categories of sales to the standard category, which in effect uses that category as a "catchall".

Department's Position

We agree with petitioners. The respondents were given every opportunity to propose a ¾ mil thickness tolerance in their response to the Department's model-match criteria, and did not. In fact, the antidumping questionnaire explicitly states that if the respondents need to add subcategories to the thickness tolerances, the respondents should contact the Department immediately and describe why the Department should use this information to define identical and similar merchandise. Respondents did not contact the Department as requested, nor did the Respondents place any information on the record to indicate that ¾ mil tolerance is a industry-wide recognized mil tolerance category. In their questionnaire response, the respondents simply stated that they were adding this additional thickness tolerance to the mil thickness tolerances categories provided by the Department. However, respondents failed to submit any information or documentation which would indicate that the steel industry recognizes "¾ mil" tolerances as a production standard, as it does ¼ mil and mil tolerances. Therefore, for the Final Determination, we continued to treat the limited number of ¾ mil tolerance sales as standard mil tolerance.

Comment 17: Credit Cost Calculations

The respondents note that in the Preliminary Determination the Department adjusted the credit cost calculation for USIMINAS because USIMINAS had calculated credit costs based on a gross price. The Department adjusted the credit cost calculation by deducting taxes from gross price. Respondents state that in the event the Department continues to deduct taxes from gross price prior to calculating credit costs, the Department may now use USIMINAS' reported credit costs, since the adjustment was already made to the respondent's data in the October 29, 1999, submission.

Petitioners do not address this issue in their rebuttal briefs.

Department's Position

The Department concludes that it is appropriate to deduct taxes from gross unit price for the calculation of credit costs in the Final Determination. We accept the respondents' adjusted credit costs, which were calculated using prices net of taxes.

Comment 18: Theoretical Weight Sales

Respondents state that the Department adjusted all home market sales with a conversion factor, which was used by the Department in a recent administrative review involving cold-rolled steel. Respondents note that on October 29, 1999, USIMINAS provided the Department with a conversion factor based on its historical sales experience. Respondents assert that the Department verified the conversion factor and that the Department verified that USIMINAS sells sheet in the home market based on both theoretical weight and adjusted theoretical weight. Respondents note that all USIMINAS'' U.S. sheet sales are on adjusted theoretical basis. Therefore, respondents contend that in matching these U.S. sales of sheet to home market sales, it is necessary to adjust the home market sheet sales sold on a theoretical weight basis to an adjusted theoretical weight basis.

Respondents contend that in light of USIMINAS' submissions, the Department can now adjust price and charges for USIMINAS' home market theoretical weight sales. They note that the adjusted theoretical weight is always greater than the theoretical weight. Respondents note that when the Department adjusts prices and charges, the Department must divide by the conversion factor. Respondents note that this applies to all adjustments except freight and other adjustments not dependent on invoice weight. Respondents contend that freight costs are invoiced by freight providers on a gross weight basis. Respondents note this also applies to packing costs which were calculated on an actual weight basis.

Petitioners argue that Department should reject the conversion factor provided by USIMINAS, and as facts available, continue to convert all of USIMINAS' home market theoretical weight sales to an actual weight basis by multiplying the reported quantities for these sales by 0.96 and dividing the reported prices for these sales by that factor.

Petitioners state that the conversion factor provided by USIMINAS at verification relates exclusively to conversions from a theoretical weight basis to an adjusted theoretical weight basis, meaning that the company still has never provided a conversion factor that might be used to convert actual weight to a theoretical weight basis (or vice versa). Petitioners argue that the conversion factor provided by USIMINAS is suspect, and state that the respondents have not put forward any arguments which provides the Department with any reason to alter its use of facts available for the final determination. Petitioners also refer to the verification report which states that the USIMINAS conversion factor was based on a study done a long time ago. Petitioners argue that this statement provides reason to doubt whether the figure provided by USIMINAS represents the relationship between the company's theoretical weight quantities and adjusted theoretical weight sales quantities during the period of investigation.

Department's Position

In the Preliminary Determination we treated all USIMINAS' U.S. sales as actual weight sales, and we treated all USIMINAS' home market sales of sheet as theoretical weight sales. USIMINAS later clarified that its U.S. sales of sheet are in adjusted theoretical weight and its home market sales are in adjusted theoretical and theoretical weight, and it provided a conversion factor between theoretical and adjusted theoretical weight.USIMINAS claimed that adjusted theoretical weight approximates actual weight.

While we verified the relationship between theoretical and adjusted theoretical weight using this factor, we find that USIMINAS did not submit convincing evidence that adjusted theoretical weight approximates actual. Therefore, for the final determination, we are using the factor submitted by USIMINAS to convert its U.S. and home market adjusted theoretical weight sales to theoretical weight (including conversion of all prices and adjustments, excepting packing). We then converted the U.S. and home market theoretical weight to actual weight (including conversion of all prices and adjustments, excepting packing) using the factor used in the Preliminary Determination 64 FR 61249, 61259 (November 10, 1999).

Comment 19: PIS/COFINS Taxes

Respondents argue that the Department incorrectly declined to deduct PIS and COFINS taxes from home market prices. Respondents note that the tax adjustment provision of section 773(a)(6)(B)(iii) of the Act ensures that the Department makes a tax-neutral comparison when comparing normal value to export price by requiring the Department to adjust normal value by the amount of any indirect taxes imposed on home market sales, but not on export sales. Respondents state that, until recently, the Department considered Brazil's Programa de Integracao Social (PIS) and Contribuicao do FinSocial (COFINS) taxes to be indirect taxes that fall within the meaning of the tax adjustment provision. The Department's change in its treatment of these taxes, according to respondents, is based on a factually incorrect assumption that these taxes apply to total gross revenues and on a legally improper understanding of what indirect taxes are.

Respondents point out that the statute and prior case law make clear that three circumstances must exist for the tax adjustment provision to apply to a particular tax. First, the tax must be "directly" imposed on the home market product. Second, it must be rebated or not collected on export sales. Third, it must be added to or included in the price of the home market sale. Respondents argue that the fact that these taxes are not imposed on exports has never been an issue. Thus, respondents state that the only requirements of significance in this review are the first and third requirements.

With the Department failing to adjust respondents' home market price for Brazil's PIS/COFINS taxes in the Preliminary Determination, respondents argue that the Department incorrectly determined that "these taxes are levied on total revenues." Respondents state that until recently, the Department consistently held that PIS/COFINS fall within the meaning of the tax adjustment provision. Respondents cite numerous antidumping cases from Brazil in support of their position that PIS and COFINS should be deducted

from home market price. See respondents' Case Brief at 17.

Respondents contend that in the Final Administrative Review of Silicon Metal from Brazil, 62 FR 1970 (January 14, 1997) (Silicon Metal from Brazil, 1997), the Department erroneously determined that PIS/COFINS are analogous to two Argentine taxes previously determined not to be indirect taxes within the meaning of the tax adjustment provision. Respondents state that in the Final Determination of the Less-Than-Fair Value Investigation of Silicon Metal from Argentina, 56 FR 37891 (August 9, 1991) (Silicon Metal from Argentina), the Department refused to make an upward adjustment to U.S. price for two Argentine taxes because these taxes were based on non-sales revenue as well as sales revenue. Respondents argue that the Department concluded that these taxes were not "directly" imposed on Argentine sales within the meaning of section 773(a)(6)(B)(iii) of the Act.

According to respondents, petitioners in Silicon Metal from Brazil, 1997 glossed over the fact that Brazilian and Argentine taxes are, in fact, vastly different by asserting that PIS/COFINS are "almost identical" to the two Argentine taxes. Respondents state that, contrary to the Argentine taxes, PIS/COFINS are imposed only on a company's sales revenue.

In addition, respondents claim that the Department's decision not to make an adjustment for PIS and COFINS is unsupported by any accounting or economic analysis. Respondents contend that the fact that PIS and COFINS sales taxes are calculated on an aggregate basis as opposed to an invoice-specific basis is irrelevant—the tax liability is the same. In respondents' view, no basis exists to conclude that the manner of calculating a tax disqualifies a tax from an adjustment under section 773(a)(6)(B)(iii) of the Act.

Respondents state that the Department has not, in any of its decisions relating to this issue, identified any support for its classification of a sales tax as a "gross revenue tax" simply because it is calculated on an aggregate basis. As a result, respondents reiterate that the taxes are based exclusively on home market sales and for this reason the Department for almost two decades found these taxes to qualify for a circumstance of sale adjustment.

Respondents state that the third prong, inclusion of the taxes in the home market price, is satisfied in the instant case; the Department has never based its denial of the PIS/COFINS adjustment on a specific or explained finding that the taxes were not included in the price and passed through to the home market customer. Respondents note that in the Final Administrative Review of Color Television Receivers from Korea, 49 FR 50420 (December 28, 1984), the Department made an adjustment for home market taxes based on the conclusion that the taxes were fully passed through to the home market customers. Respondents assert that the Department determined that it was authorized to make an adjustment under section 772(d)(1)(C) of the Act. Therefore, respondents urge the Department to determine that PIS and COFINS are included in the home market price, and passed through to home market customers. In addition, respondents assert that in the Preliminary Determination, the Department did not cite to any record evidence that there is no pass-through, nor did it prepare any questions related to the pass-through aspect of these taxes in its questionnaires or at verification. Since the Department never asked respondents to rebut any newfound presumption that these taxes were not included in the home market price to the customers, respondents believe the Department is not justified in finding no pass-through in this investigation.

If the Department were to argue that PIS and COFINS are not included in the price because they are not itemized on the invoice (like the IPI and ICMS taxes), respondents maintain that it would be wrong for two reasons: (1) PIS and COFINS were not itemized on the Brazilian invoices in all the Department's previous investigations which allowed adjustments to normal value for these taxes, yet it always found that these taxes were included in the home market price, and qualified for an adjustment; (2) whether or not the tax is itemized on the invoice is irrelevant to a pass-through finding. Respondents note that if the tax is not itemized, it is simply included in the gross unit price. According to respondents, itemization on the invoice only indicates how the tax is calculated in the accounting records of the company.

Respondents conclude that there is no justification for the Department's preliminary decision to ignore the necessary deduction for PIS and COFINS. Respondents argue that the PIS/COFINS adjustment is consistent with Department findings (except for recent "erroneous" decisions), and decisions by the Courts. Moreover, according to respondents, there is no evidence on the record to support a Department presumption that PIS/COFINS are not included in the home market price. Respondents state that the PIS/COFINS adjustment is required to ensure that the Department's LTFV comparisons are tax neutral, as contemplated by the U.S. dumping law and Article 2.4 of the WTO Antidumping Agreement.

Petitioners argue that PIS/COFINS taxes should not be deducted from normal value. Petitioners state that the statute and the SAA clearly state that downward adjustments to normal value may only be made for tax amounts directly imposed upon sales of the foreign like product. See section 773(a)(6)(B)(iii) of the Act and SAA at 827 and 828. Petitioners refer to the COSIPA verification report at 22, which states that PIS and COFINS taxes use the same base of calculation. Petitioners claim that the base of calculation is the total gross revenue of the corporation, and that neither the PIS nor the COFINS tax is directly imposed on sales of the foreign like product. Petitioners maintain that these taxes are imposed on *all* of the company's domestic sales revenue, including service revenue, on an aggregate basis. Accordingly, petitioners argue, these taxes are not imposed directly upon the foreign like product or components thereof, and there is no statutory basis for their deduction from normal value.

Contrary to respondents' suggestion that the Department lacks an understanding of indirect taxes, petitioners state that the Department is intimately familiar with the way the PIS/COFINS taxes are imposed and collected, and the Department has painstakingly reviewed this issue in several recent cases. Petitioners make special note of the Final Results of Antidumping Duty Administrative review of Certain Cut-to-Length Carbon Steel Plate from Brazil, 63 FR 6889, 6911 (February 11, 1998) and add that the respondents simply seek to overturn the Department's practice based on no new facts or new arguments.

Department's Position

Since 1997, the Department has consistently disallowed claimed adjustments to normal value for PIS/COFINS taxes. According to section 773(a)(6)(B)(iii) of the Act, normal value of the merchandise will be reduced by the amount of any taxes imposed directly upon the foreign-like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign-like product.

PIS/COFINS taxes do not appear to be imposed on subject merchandise or components thereof, leading to no statutory basis to deduct them from NV.

See page 29 of USIMINAS' Sales Verification Report and Verification Exhibit 24. Citing to Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6305, 6318 (February 9, 1999) (Silicon Metal from Brazil), the Department determined that "a deduction of the PIS and COFINS taxes is not correct in the calculation of NV because these taxes are levied on total revenues (except for export revenues), and thus the taxes are direct, similar to taxes on profit or wages." See Hot-Rolled Steel from Brazil at 38765. Therefore, the Department will not deduct the PIS/COFINS taxes from the NV in the Final Determination.

III. Cost Issues

Comment 20: Major Inputs

USIMINAS and COSIPA argue that the Department does not have evidence on the record to support disregarding the transfer price of iron ore from its affiliate CVRD or demonstrating that the transfer price is below CVRD's cost of production. Respondents assert that the Department has confirmed that the iron ore prices charged by CVRD are above the prices charged by unaffiliated suppliers. Further, respondents maintain that, even though they could not compel CVRD to provide its COP for iron ore, the evidence on the record shows that CVRD made a profit during the POI in its ore and metals division; therefore, the Department has no reasonable grounds to believe that iron ore was being supplied at less than its COP and the use of facts available for this issue is not warranted. As support respondents cite article 2.2.1.1 of the international antidumping agreement which states that "costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration."

Moreover, respondents claim that the cost of iron ore does not represent a significant portion of the cost of the merchandise under investigation as the regulations suggest. COSIPA argues that not only is iron ore a minor input, but its relationship with CVRD is indirect and does not permit influence or control over the company, and thus does not constitute affiliation. COSIPA points to the fact that the relationship exists strictly because of CVRD's minority stock ownership in USIMINAS.

Additionally, COSIPA asserts that in the preliminary determination the Department violated the statute by using adverse inferences (*i.e.*, petition rate) in the application of facts available relating to the major input rule. Both USIMINAS/COSIPA note that they were unable to compel CVRD to provide cost of production information. However, they maintain that under section 776(b) of the Act, the Department must find that "the respondent failed to cooperate to the best of its ability," in order to resort to adverse inferences in applying facts available. Respondents state that the record shows that they attempted in every way to obtain the cost of production from CVRD, but CVRD refused. Thus, if the Department decides to use information other than the invoice price from CVRD to determine iron ore costs, it should use corroborated information from independent sources.

Petitioners contend that the Department's use of adverse facts available in valuing the iron ore acquired by respondents' from CVRD is appropriate. According to petitioners, the record clearly indicates that (1) iron ore is a major input to the production of subject merchandise, (2) CVRD is affiliated with both USIMINAS and COSIPA, (3) respondents refused to provide the Department with CVRD's cost of producing iron ore, thereby failing to act to the best of their ability to provide requisite information, and (4) the statute mandates valuing the purchase of a major input from an affiliated party at the highest of the transfer price, the market price, or the cost of production. Thus, in lieu of CVRD's actual production cost information, the Department had no choice but to resort to facts available.

Departments Position

We have applied the major input rule in accordance with section 773(f)(3) of the Act in valuing the iron ore received from CVRD. In doing so, we have used, as non-adverse facts available, the COP information provided in the June 2, 1999 petition as the COP of iron ore from CVRD since respondents' did not provide the COP information as requested by the Department.

We consider iron ore to be a major input in accordance with section 773(f)(3) of the Act. In determining whether an input is considered major, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus unaffiliated suppliers) and the percentage the individual element represents of the product's COM. We determined in this case that iron ore represents a significant percentage of the total cost of manufacturing and that USIMINAS receives a significant portion of its iron ore from its affiliate CVRD. The combination of the significant amounts of the inputs obtained from CVRD and the relatively large percentage the iron ore represents of the product's COM increases the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act applies to this input.

Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.*, major or minor inputs) are at prices that "fairly reflect the market under consideration." Section 773(f)(3) allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is less than the affiliated supplier's COP where there is reasonable cause to believe or suspect the price of iron ore is below COP. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to ensure that the transfer price or market price is not below cost. We consider the initiation of a sales-below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act. See, *e.g.*, Final Results of Antidumping Administrative Review: Silicomanganese from Brazil, 62 FR 37871 (July 15, 1997).

Because we have determined that iron ore purchased from an affiliate is a major input in production of cold-rolled steel, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with sections 773(f)(2) and (3) of the Act, we attempted to compare the transfer price for iron ore purchased from USIMINAS/COISPA's affiliated supplier to the supplier's COP and a market price. As noted above, even though the Department requested that USIMINAS/COSIPA provide its affiliated supplier's actual COP for iron ore in the original section D questionnaire, the supplemental questionnaires and at verification, USIMINAS failed to do so. Contrary to USIMINAS/COSIPA's assertion, the fact that CVRD's metals division may be

profitable does not demonstrate that the prices it charged to USIMINAS and COSIPA were above its COP.

Section 776(a) of the Act provides for the use of facts available where necessary information is not available on the record. As a result of USIMINAS' and COSIPA's failure to provide the requested information, we have used partial facts available to ensure the COP of the major input is taken into consideration in applying the major input rule. As a gap filling facts available, we included the iron ore cost from the petition as the COP of iron ore to preform the major input rule test. We note that we have not made an adverse inference in selecting the facts available as respondents claim. Rather, it is a gap filling facts available based on the only information on the record related to the COP of iron ore.

Comment 21: Financial Expense

USIMINAS/COSIPA argue that in the Preliminary Determination the Department improperly included interest expenses and foreign exchange losses related to export sale-specific financing and improperly excluded foreign exchange gains related to accounts receivable. According to respondents, Brazilian law permits banks to provide advance financing to companies, based on a letter of credit obtained from customers for export sales. Respondents state that under the financing agreement they pay the bank interest and assume the risk of exchange rate gains or losses until the merchandise is shipped. The bank assumes the risk of the exchange rate gains or losses from the date of shipment to the date of payment from the customer. Because the financing costs are incurred exclusively on export sales, the respondent asserts that the costs should not be included in the COP calculation. As support respondents cite *AK Steel Corp.* v. *United States,* Slip Op. 97–152, at 12 n. 2 (CIT November 14, 1997) which states "when referring to the cost of producing the merchandise the statute plainly means the merchandise in question sold in the home market."

Further, respondents contend that the petitioners argument that money is fungible does not justify the inclusion of these expenses in the COP and CV calculations. According to respondents, the Department does not recognize that all money is fungible, because it does not permit income from long-term assets or non-operating income to reduce financial costs. If all money was fungible such income would be used to reduce financial costs of production. In addition, respondents argue that if money is fungible there is no justification for including all financial expenses while including only some financial income, as in the instant case where income generated by foreign exchange gains related to accounts receivable has been excluded.

Petitioners contend that the Department properly included the financing costs under the fungibility principle. Petitioners claim that it's the Department's longstanding policy to treat interest expense as financial expenses not selling expenses. Petitioners assert that funds obtained from export sales financing could be used in producing the merchandise sold in the home market. Therefore, the Department appropriately included these costs in the calculation of COP and CV because they do relate to production of merchandise for all markets.

Further, petitioners argue that the Department properly excluded foreign exchange gains related to accounts receivable from the calculation of the financial expense ratio. According to petitioners, only foreign exchange gains and losses related to debt are relevant to the financial expense calculation. Thus, the foreign exchange gains generated from accounts receivable relate to sales transactions and were properly excluded from the financial expense ratio calculation.

Department's Position

We agree with petitioners that interest expense and foreign exchange losses incurred on advance financing for export sales should be included in the financial expense ratio calculation. The Department's longstanding practice recognizes the fungible nature of a company's invested capital resources (*i.e.,* debt and equity). This practice was upheld in *Camargo Correa Meais, S.A.* v. *United States,* 17 C.I.T. 897, 902 (August 13, 1993), where the court approved the Department's policy of recognizing the fungible nature of invested capital resources. In this case, we determined that the interest expense and foreign exchange losses incurred on the export financing represent financing activities of the entity. As noted by the petitioners, the funds received from using the accounts receivable as collateral may be used in any capacity the company decides, such as, in producing subject merchandise. Accordingly, the interest expense and foreign exchange losses incurred on these types of agreements are related to the companies' debt. Therefore, we have included both the expense and losses in the calculation of the financial expense ratio.

We disagree with respondents' argument that we should include foreign exchange gains related to accounts receivable as an offset to interest expense in the calculation of financial expenses. The Department typically includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing activities (*e.g.,* purchases of inputs). See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998). We do not consider exchange gains and losses resulting from sales transactions to be related to the manufacturing activities of the company. Thus, for the final determination we have disallowed foreign exchange gains related to accounts receivable as an offset to financial expenses.

Comment 22: Including Employee Profit Sharing Expenses in the G&A Expense Ratio

For the final determination, petitioners assert that the Department should recalculate USIMINAS/COSIPA's combined G&A expense ratio to include employee profit-sharing expenses. According to petitioners, the Department typically includes these expenses in the calculation of the COP. For example, petitioners cite the Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Sheet and Strip in Coils from France, 64 FR 30820, 30823 (June 8, 1999), in which the Department included similar profit-sharing costs in the calculation of COP.

USIMINAS/COSIPA did not comment on this issue.

Department's Position

We agree with petitioners that respondents' employee profit sharing expense should be included in the calculation of COP and CV. It is the Department's established practice to include this type of expense in the calculation of COP and CV. Because employee profit sharing is a cost of labor and it is an expense recognized within the POI it should be included in the reported cost in accordance with full absorption costing principle. See, e.g., Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey, 63 FR 68429 (December 11, 1998). For the final determination we included USIMINAS' employee profit sharing expenses in the combined G&A expense rate calculation.

Comment 23: Idled-Assets

Petitioners argue that COSIPA did not include idled-asset depreciation expense as an element of its production costs. Petitioners assert that the Department has a longstanding practice of including depreciation on idled-assets in the reported costs, citing Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 63 FR 20585, 20609 (April 27, 1998) (TRBs from Japan). As further support, petitioners cite, Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part; Silicon Metal From Brazil, 62 FR 1954, 1958 (January 14, 1997) where the Department adjusted the respondent's depreciation expense stating "fully absorbed costs, including idle-equipment depreciation expense for producing the subject merchandise should be included in the COP and CV." Thus, petitioners contend that in the final determination the Department should include the depreciation expense related to COSIPA's idled-assets in the reported costs.

COSIPA did not comment on this issue.

Department's Position

We agree with the petitioners that depreciation expense of idled-assets should be included in the COP and CV. It is the Department's practice to include in fully absorbed factory overhead the depreciation of equipment not in use or temporarily idled, notwithstanding home market accounting standards which may allow companies to refrain from doing so. See, TRBs from Japan. See also *NTN Bearing Corp. of America, et al., plaintiffs,* v. *United States,* Slip Op. 93–129 (CIT August 4, 1993), where the court upheld the Department's decision to include depreciation expenses for idled equipment. Accordingly, in the final determination we included the idled-asset depreciation expense in COSIPA's costs.

Comment 24: Write-Offs of Idled-Assets

During the POI, COSIPA wrote off certain production assets, but excluded the loss from write-offs from the reported COP and CV. Petitioners maintain that it is the Department's standard practice to include the costs related to write-offs of production assets in the reported costs, citing *Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia,* 61 FR 54767, 54772 (October 22, 1996) (Extruded Rubber Thread). Accordingly, Petitioners contend that in the final determination the Department should include the costs related to COSIPA's write-offs of production assets in the reported costs.

COSIPA argues that the Department should not include the costs related to write-offs of production assets in the reported costs because these assets were idled before and after the POI and are classified as "non-operating costs" under Brazilian GAAP. Respondent maintains that in Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy, 60 FR 31981, 31990 (June 19, 1995), the Department refused to include as a cost of production the cost of idled assets which "relate clearly to discontinued operations from a prior period and are no longer productive assets." According to the respondent, the Department normally uses the last completed fiscal year of the POI to calculate the G&A expense ratio. Therefore, since a large portion of the written-off assets were idled before the POI and the remaining amount relates to assets idled in the first two months of the 1999 fiscal year these costs should not be included in the G&A expense ratio, which is calculated based on the 1998 fiscal year. As support, respondent cites the Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From Thailand, 60 FR 22557, 22560 (May 8, 1995). Further, the respondent asserts that if the Department decides to include the expense for the assets written-off in the numerator for calculating the G&A expense rate, then the Department should also include this amount in the denominator.

Department's Position

We disagree with the respondent. In accordance with past practice, the Department has included write-offs of the permanently idled assets in COP and CV. See, *e.g.,* Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain, 63 FR 40391, 40403 (July 29, 1998), wherein the Department included write-offs of permanently idled assets and related spare parts in the COP and CV. We do not consider write-offs of idled assets to be the type of expense we would exclude from the COP and CV. This equipment was related to the production operations of the company, the undepreciated value has never been charged against income, and it was expensed during the period of review. The loss realized from the assets written off is an actual expense to the company. Accordingly, the Department normally includes this type of equipment write-off in the calculation of COP and CV. See Extruded Rubber Thread., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy, 60 FR 31981, 31990 (June 19, 1995); Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Germany, 61 FR 13834, 13836 (March 28, 1996); and Final Results of Antidumping Duty Administrative Review: High-Tenacity Rayon Filament Yarn from Germany, 59 FR 15897, 15899 (March 28, 1995).

The Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe case cited by the respondent is not controlling because during that investigation a gain or loss on the discontinued operations had yet to be recognized in the company's normal books and records. However, the notice did state that "upon disposal of the assets, the gain or loss on the sales will be included on the respondent's income statement and we will include the gain or loss in COP/CV." In this case, we are including write-offs of equipment which were being recognized by the company during the POI.

Regarding respondent's argument concerning including the write-offs in both the numerator and denominator in calculating the G&A rate, we disagree. If the Department calculated the G&A expense ratio as respondent suggest, the result would distort the dumping analysis because we would be applying a ratio which includes write-offs in the denominator to a base (*i.e.,* COM) which does not include write-offs. In order to correctly reflect the G&A expenses incurred by respondents, the G&A ratio must be calculated using a COS figure that excludes write-offs and applied to a COM that excludes write-offs. This is consistent with the methodology used in the Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 63 FR 32833, 32837 (June 16, 1998) and the Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8910, 8933 (February 23, 1998).

Comment 25: Weighted-Average Cost by CONNUM

USIMINAS and COSIPA contend that for collapsing purposes the Department should use a single cost of manufacture and general expense ratio for each

company, calculate a dumping margin for each company, then weight-average the two margins to obtain a single dumping margin. Respondents make this assertion because the two companies: (1) Have separate production facilities, (2) are located in two different regions of Brazil, (3) are separately run on a day-to-day basis, (4) have different production costs, (5) possess different machinery and processes, and (6) maintain different cost accounting systems. Thus, given these differences it is unreasonable for the Department to expect either company to price its products above the other company's COP.

Further, respondents claim that the first court decision approving the Department's collapsing policy makes clear that it is limited to "calculating a single dumping margin." According to respondents, the purpose for the policy was to protect against price manipulation. However, in the present case, the Department has allegedly extended the collapsing policy beyond the intended purpose of the policy for no reason.

Petitioners maintain that the Department has properly calculated a combined cost of manufacture and a combined G&A rate for USIMINAS and COSIPA. Petitioners contend that it is the Department's stated policy to treat collapsed companies as divisions of the same corporate entity, rather than as affiliated parties, for cost reporting purposes. See Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13185 (March 18, 1998). Petitioners counter respondent's argument against the use of a combined cost of manufacture by stating that USIMINAS is COSIPA's parent company and that the costs of the two companies are combined in the preparation of USIMINAS' consolidated financial statements. USIMINAS and COSIPA also produce essentially the same products and therefore the potential for cost and price manipulation exists.

Department's Position

We agree with the petitioners that it is the Department's standard practice to weight-average the collapsed entity's separate costs into a single COP. Section 351.401(f) of the regulations provides for special treatment of affiliated producers where the potential for manipulation of prices or production in an effort to evade antidumping duties imposed on the sale of subject merchandise exists. In accordance with this section of the regulations, we collapse all sales prices and production costs of the affiliated entities as if they were a single company with different production facilities. See, *e.g.*, Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy, 64 FR 6615, 6622 (February 10, 1999). See also Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13185 (March 18, 1998), wherein the Department weight-averaged the cost across all collapsed entities. Accordingly, in the final determination we calculated a combined cost of manufacture and a combined G&A rate for USIMINAS and COSIPA.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing Customs to continue to suspend liquidation of all entries of cold-rolled flat-rolled, carbon-quality steel products from Brazil that are entered, or withdrawn from warehouse, for consumption on or after August 12, 1999 (90 days prior to the date of publication of the Preliminary Determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price shown below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter manufacturer	Weighted-average margin (percent)
CSN	63.32
USIMINAS/COSIPA	46.68
All Others	46.68

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue in antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1850 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Notice of Antidumping Duty Order: Creatine Monohydrate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Rosa Jeong, or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4207, (202) 482–3853, and (202) 482–1279, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all citations to the regulations of the Department of Commerce ("the Department") are to 19 CFR part 351 (1998).

Scope of the Order

For purposes of this investigation, the product covered is creatine monohydrate, which is commonly referred to as "creatine." The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service ("CAS") registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although

the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On January 28, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department that a U.S. industry is "materially injured," within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of creatine monohydrate from the PRC. Therefore, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price of the subject merchandise for all relevant entries of creatine monohydrate from the PRC, except for subject merchandise imported from Tianjin Tiancheng Pharmaceutical Co., Ltd. ("Tiancheng") and Nantong Medicines and Health Products Import and Export Co., Ltd. ("Nantong"), which both received a zero final margin. Antidumping duties will be assessed on all unliquidated entries of creatine monohydrate from the People's Republic of China ("PRC") (except entries from Tiancheng and Nantong) entered, or withdrawn from warehouse, for consumption on or after July 30, 1999, the date of publication of the Department's preliminary determination in the **Federal Register** (64 FR 41375). Furthermore, we will instruct Customs to refund all cash deposits, or bonds posted, for entries of subject merchandise from Tiancheng and Nantong.

The ITC further found that critical circumstances do not exist with respect to imports of the subject merchandise from the PRC. As a result, the Department will direct Customs officers to refund any cash deposits made, or bonds posted, pursuant to the Department's affirmative determination of critical circumstances on merchandise produced/exported by Shanghai Freemen International Trading Co., Ltd., Shanghai Greenmen International Trading Co., Ltd. and by any companies subject to the PRC-wide rate which were entered on or after May 1, 1999 (which is 90 days prior to the Department's preliminary determination publication date of July 30, 1999) and before July 30, 1999.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Weighted-average margin percentage
Blue Science International Trading (Shanghai) Co., Ltd.	58.10
Nantong Medicines and Health Products Import and Export Co., Ltd.	0.00
Shanghai Desano International Trading Co., Ltd.	24.84
Shanghai Freemen International Trading Co., Ltd. and Shanghai Greenmen International Trading Co., Ltd.	44.43
Suzhou Sanjian Fine Chemical Co., Ltd.	50.32
Tianjin Tiancheng Pharmaceutical Co., Ltd.	0.00
PRC-wide rate	153.70

This notice constitutes the antidumping duty order with respect to creatine monohydrate from the PRC, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2582 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The product covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink") and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the

Tariff Schedules of the United States Annotated ("TSUSA"). Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.0060.8 and 0302.12.0065.3 of the Harmonized Tariff Schedule of the United States ("HTSUS") (56 FR 7678, February 25, 1991). Currently, it is provided for under HTSUS item number 0302.12.00.02.09. The subheadings above are provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the subject order. There was one changed circumstances determination in which the Department affirmed that Kinn Salmon AS was the successor-in-interest to Skaarfish Group A/S.[1]

History of the Order

In the February 25, 1991, final determination in the antidumping duty investigation, covering the period September 1, 1989, through February 28, 1990, the Department determined the following weighted-average dumping margins for respondent companies (56 FR 7661):

Salmonor A/S	18.39
Sea Star International A/S	24.61
Skaarfish Mowi A/S	15.65
Fremstad Group A/S	21.51
Domstein and Co.	31.81
Saga A/S	26.55
Chr. Bjelland Seafoods A/S	19.96
Hallvard Leroy A/S	31.81
All others	23.80

Since the April 12, 1991, issuance of the antidumping duty order, the Department has completed four administrative reviews on imports of the subject merchandise from Norway (56 FR 14920). In the first administrative review, covering the period October 3, 1990, through March 31, 1992, Skaarfish A/S ("Skaarfish") and "all others" were assigned margins of 2.15 percent and 23.80 percent, respectively.[2]

The second administrative review, conducted at the request of the Coalition for Fair Atlantic Salmon Trade, covered 85 exporters during the period April 1, 1992, through March 31, 1993, and the Department found that 31 of the 85 reviewed firms did not ship subject merchandise during the period of review ("POR"). Of those 31 firms, 28 had not been previously reviewed, and the Department assigned to them the original "all others" rate of 23.80 percent. The Department assigned the remaining three non-shipper respondents—Domstein Salmon A/S, Hallvard Leroy A/S and Saga A/S—their rates from the original investigation. The 52 respondent companies that failed to respond were assigned a margin of 31.91 percent.[3]

In the third administrative review, covering the period April 1, 1993, through March 31, 1994, where the Department reviewed 24 exporters, the dumping margin changed for two exporters, Skaarfish and Norwegian Salmon A/S ("Norwegian Salmon"), to 2.28 percent and 13.88 percent, respectively.[4]

In the fourth administrative review, covering the period April 1, 1997, through March 31, 1998, the Department reviewed one exporter, Nornir Group A/S, to which it assigned a margin of 31.81 percent.[5]

Additionally, the Department completed one new shipper review, covering Nordic Group A/L ("Nordic"), from May 1, 1995, through October 31, 1995.[6]

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of domestic interested parties within the deadline (July 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Subsequently, we received a complete substantive response to the notice of initiation on August 2, 1999, on behalf of the Coalition for Fair Atlantic Salmon Trade ("FAST") and the following individual members of FAST: Atlantic Salmon of Maine, Connors Aquaculture, Inc., DE Salmon, Inc., Island Aquaculture Corp., Maine Aqua Foods, Inc., Maine Coast Nordic, Inc., Treats Island Fisheries, and Trumpet Island Salmon Farm, Inc. (collectively, "domestic interested parties"). As U.S. producers of the subject merchandise and a business association whose members are U.S. producers of the subject merchandise, the domestic interested parties claim interested-party status under sections 771(9)(C) and (F) of the Act. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 18, 1999, the Department determined that the sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway is extraordinarily complicated, and, therefore, we extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[7]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted the review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent administrative reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department discusses below its determinations concerning continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the antidumping duty

[1] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstance Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999).

[2] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 58 FR 37912 (July 14, 1993), and *Fresh and Chilled Atlantic Salmon From Norway; Amended Final Results of Antidumping Duty Administrative Review*, 60 FR 11070 (March 1, 1995).

[3] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 59 FR 12242 (March 16, 1994).

[4] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 61 FR 65522 (December 13, 1996); and *Fresh and Chilled Atlantic Salmon From Norway; Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 44255 (August 20, 1995).

[5] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 64 FR 17616 (April 12, 1999).

[6] *See Fresh and Chilled Atlantic Salmon From Norway; Final results of New Shipper Antidumping Duty Administrative Review*, 62 FR 1430 (January 10, 1997).

[7] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

order revoked. In addition, the domestic interested parties' comments on each of these issues are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The domestic interested parties argue that revocation of the antidumping duty order would result in continued dumping by Norwegian producers/exporters and material injury to the U.S. industry (*see* August 2, 1999, Substantive Response of domestic interested parties at 16). With respect to declining import volumes, the domestic interested parties assert that the imposition of antidumping duties has significantly reduced the volume of U.S. imports of subject merchandise from Norway. *Id.* at 18. Citing U.S. Census Bureau statistics, they note that the average import volume from Norway in the three years following the imposition of the order was 95.7 percent lower than average import volumes in the three years prior to the order. *Id.*

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. With the exception of Nordic, which received a 0.00 percent margin in a new shipper review (62 FR 1430; January 10, 1997), dumping margins above *de minimis* have existed throughout the life of the order, and continue to exist, for shipments of subject merchandise from all other Norwegian producers/exporters investigated by the Department.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the 1991 order. By examining U.S. Census Bureau IM146 reports, the Department finds that, consistent with import statistics provided by domestic interested parties, imports of the subject merchandise from Norway declined significantly following the issuance of the antidumping duty order, and continue to remain at very low levels.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Given that dumping has continued at levels above *de minimis* after the issuance of the order, import volumes for subject merchandise have significantly declined, respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

The domestic interested parties assert that the Department should provide to the Commission the margins from the original investigation for Skaarfish Mowi A/S (now Kinn Salmon A/S), Domstein, Saga, Hallvard Leroy A/S as the rates likely to prevail if the order were revoked (*see* August 2, 1999, Substantive Response of domestic interested parties at 23). Further, domestic interested parties identify Sea Star International, Fremstad Group, Chr. Bjelland, Salmonor A/S and Nornir Group A/S as companies from the original investigation that have chosen to increase dumping. Domestic interested parties recommend that the Department assign to these companies a margin of 31.81 percent from the 1992/93 review because these companies would be likely to dump at least to the same degree without the discipline of the order. *Id.* at 24. For Norwegian producers/exporters that were not parties to the original investigation, but were assigned margins in the Department's second and third administrative reviews, the domestic interested parties assert that the Department should assign to these companies the margins from those reviews. *Id.* at 25.

According to the *Sunset Policy Bulletin*, a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order (*see* section II.B.2 of the *Sunset Policy Bulletin*). The *Sunset Policy Bulletin* notes that the Department will normally consider market share; however, absent information on relative market share, and absent argument to the contrary, we have looked at import volumes in the present case.

As discussed in the *Sunset Policy Bulletin*, a more recent rate may be appropriate where a company chooses to increase dumping in order to increase or maintain market share. According to the U.S. Census Bureau IM146 reports, however, overall imports have decreased. Without company-specific information or argument related to increasing exports corresponding to increased dumping, we have no basis to determine that a more recent rate is more probative. Therefore, we will report to the Commission the company-specific and "all others" rates as contained in the Final Results of Review section of this notice, because these rates reflect the behavior of producers/

exporters without the discipline of the order.

Final Results of Review

As a result of the review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin of dumping (percent)
Salmonar A/S	18.39
Sea Start International	24.61
Kinn Salmon A/S (formerly, Skaarfish)	15.65
Fremstad Group (A/S)	21.51
Domstein and Co	31.81
Saga A/S	26.55
Chr. Bjelland	19.96
Hallvard Leroy (A/S)	31.81
All others	23.80

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2591 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris or John R. Brinkmann, at (202) 482–1775 or (202) 482–4126, respectively; AD/CVD Enforcement II, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that certain large diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Mexico are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 20, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from the Czech Republic, Japan, the Republic of South Africa and Romania*, 64 FR 40825 (July 28, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events occurred:

On August 12, 1999, the Department issued its antidumping questionnaire to Tubos de Acero de Mexico, S.A. (TAMSA), the sole Mexican producer of the subject merchandise.

On August 23, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to each of these antidumping investigations are materially injuring the U.S. industry. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa*, 64 FR 46953 (August 27, 1999).

We issued supplemental questionnaires where appropriate. Responses to those supplemental questionnaires were timely filed between November 1, 1999 and November 16, 1999, and we have incorporated the information provided in those responses into this preliminary determination.

On November 17, 1999, the Department concluded, consistent with section 733(c)(1)(B) of the Act, that the Mexican investigation of large diameter pipe is extraordinarily complicated, and that additional time was necessary to issue the preliminary determination. Consequently, we extended the deadline for the preliminary determination to January 26, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico*, 64 FR 66168 (November 24, 1999).

Although the deadline for this determination was originally January 26, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by two days.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On January 14, 2000, TAMSA requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the affirmative

[1] The petitioners in this investigation are Gulf States Tube, a division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; United Steel Workers of America; and U.S. Steel Group, a unit of USX Corporation, hereinafter referred to as Petitioners.

preliminary determination in the **Federal Register**. TAMSA also included a request to extend the provisional measures to not more than six months. Therefore, in accordance with 19 CFR 351.210(b), because (1) our determination is affirmative; (2) the requesting exporter accounts for a significant portion of exports of the subject merchandise; and (3) no compelling reason for denial exists, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of this investigation (POI) comprises TAMSA's four most recent fiscal quarters prior to the filing of the petition, (*i.e.*, April 1, 1998, through March 31, 1999).

Scope of Investigation [2]

For purposes of this investigation, the products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335 (grades P1, P2, P11, P12, P21 and P22 only), ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this investigation are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this investigation are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335 (grades P1, P2, P11, P12, P21 and P22 only), ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from the scope of this investigation are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335 (grades P1, P2, P11, P12, P21 and P22 only), ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition,

[2] On September 9, 1999, the petitioners requested that the scope of the investigations be amended to exclude certain products made to the A–335 specification. This change is reflected in the current scope.

finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

Class or Kind

From August through November 1999, the Department received submissions from importers, respondents, and consumers in the companion investigations involving small and large diameter seamless pipe from Japan, requesting that the subject merchandise be considered more than one class or kind. Specifically, those parties requested that the Department subdivide each of these investigations into the following separate classes or kinds of merchandise: (1) Commodity grade carbon seamless standard, line and pressure pipe; (2) alloy seamless pipe; and (3) high-strength seamless line pipe. On November 8, 1999, the petitioners rebutted these arguments. We have preliminarily determined that there is a single class or kind of merchandise for small diameter pipe and another distinct single class or kind of merchandise for large diameter pipe. For further discussion on this topic, including the comments received, see the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, 64 FR 69721 (December 14, 1999).

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by TAMSA covered by the description in the *Scope of Investigation* section, above, and sold in Mexico during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end-finish. These characteristics have been weighted by the Department, where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics as listed above.

Fair Value Comparisons

To determine whether sales of seamless pipe products from Mexico were made in the United States at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Constructed Export Price

In accordance with section 772 of the Act, we calculated a CEP for each sale. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted.

When sales are made prior to importation through an affiliated U.S. sales agent to an unaffiliated customer in the United States, it is the Department's practice to examine several criteria in order to determine whether or not the sales are CEP or export price (EP) sales. Those criteria are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a "processor of sales-related documentation" and a "communications link" between the exporter and the unaffiliated U.S. buyer. *See, e.g., Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 26934, 26941 (May 18, 1999); and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews (Canadian Steel)*, 63 FR 12725, 12738 (March 16, 1998). In the Canadian Steel case, the Department clarified its interpretation of the third prong of this test, as follows:

> Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales.

Canadian Steel, 63 FR at 12738.

For sales of seamless pipe products during the POI, TAMSA utilizes the services of two affiliated selling agents in the United States, Siderca Corporation (Siderca) and another affiliate, hereinafter referred to as Company A (the name of Company A is business proprietary information). TAMSA reported, as EP transactions, its seamless pipe sales for which Siderca and Company A served as the importers of record and which were shipped directly from Mexico to the unaffiliated U.S. customer. Conversely, TAMSA reported as CEP transactions the subject merchandise that was stored in Company A's warehouse and later sold out of Company A's inventory. After careful examination of the record, the Department has preliminarily determined that both selling agents, Siderca and Company A, act as more than simply a "processor of sales-related documentation" or "a communication link." As a result of our analysis, we are reclassifying TAMSA's reported EP sales as CEP sales, as defined in section 772(b) of the Act. Specifically, both Siderca and Company A solicit sales, negotiate the price, obtain customer approval, prepare sales documentation (*i.e.*, invoices), receive payment and forward payment to TAMSA. For a further discussion, see Memorandum *Whether to Reclassify Certain EP Sales by Tubos de Acero de Mexico, S.A in the U.S. Market as CEP Sales*, dated January 28, 2000, public version, on file in the Central Record Unit (CRU), Room B–099, of the Main Commerce Building.

We based CEP on the packed, cost-insurance-freight (CIF), ex-factory, free-on-board (FOB), or delivered prices to the first unaffiliated customer in the United States, as appropriate. We reduced these prices for discounts and rebates, where appropriate.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from the plant or warehouse to the port of exportation, foreign brokerage, handling and loading charges, international freight, marine insurance, U.S. duties and U.S. inland freight expenses (from port to the customer).

In accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those

selling expenses that related to economic activity in the United States, including direct selling expenses (credit costs, warehousing, and warranties), indirect selling expenses and indirect selling expenses of the affiliated selling agents. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See Preliminary Calculation Memorandum*, dated January 28, 2000, public version on file in the CRU.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities, and that there is no particular market situation that prevents a proper comparison with the U.S. price. The statute contemplates that quantities normally will be considered insufficient if they are less than five percent of the aggregate quantity of sales of the subject merchandise to the United States.

TAMSA had a viable home market for seamless pipe products, and reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made certain adjustments to price as detailed in the *Calculation of Normal Value Based on Home-Market Prices* section of this notice, below.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997) and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties)*, 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. See 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.

To determine whether comparison market sales were at different LOTs we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act, where appropriate.

In accordance with the Act, we examined the chain of distribution and the selling activities associated with sales reported by TAMSA to its two customer categories in the home market. TAMSA reported three distinct channels of distribution in the home market: (1) Sales to end users; (2) sales to distributors; and (3) sales to one specific end user which received additional services pursuant to a just-in-time agreement. We found that the channels of distribution through the distributors and the first referenced end users differed significantly from the channel to the end user that received additional services as enumerated in the just-in-time agreement. Based on our overall analysis, we found that the home market sales constituted two LOTs: (1) Distributors and end users (LOT 1), and (2) the end user that received additional services pursuant to the just-in-time agreement (LOT 2).

We examined the sales from TAMSA to the two affiliated resellers (*i.e.*, at the constructed, or CEP LOT) and found only one LOT in the U.S. market. This CEP LOT was comparable to the home market LOT 1. For the vast majority of comparisons, we were able to determine NV based on sales of identical merchandise made at the same LOT as the U.S. CEP sales. Accordingly, because we compared U.S. to home market sales at the same LOT, no LOT adjustment was warranted under section 773(a)(7)(A) of the Act. Where there were no identical comparison market sales at the same LOT as the U.S. CEP sales, we compared U.S. sales to identical merchandise sold at the other LOT in the home market and made a LOT adjustment under section 773(a)(7)(A) of the Act. For a detailed description of our LOT analysis and adjustment methodology for these preliminary results, see the January 28, 2000, *Antidumping Investigation of Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Preliminary Level of Trade Findings Memorandum*, on file in the CRU.

We note that the U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOTs for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.*, v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) (*Borden*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in *Borden* on the LOT issue. *See Borden, Inc.*, v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the Department's regulations at § 351.412.

D. Calculation of Normal Value Based on Home-Market Prices

We calculated NV based on ex-factory or delivered prices. Pursuant to 19 CFR 351.401(c), we adjusted the gross unit price for discounts and rebates to arrive at the "starting price" for NV. We made deductions from the starting price for inland freight, warehousing, and inland insurance. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses, warranty expenses, commissions, interest revenue, and performance bond fees. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs. *See Preliminary Calculation Memorandum*, dated January 28, 2000, public version on file in the CRU.

In accordance with § 351.410(e) of the Department's regulations, where commissions are incurred in one market

(in this case the home market), but not in the other, we make an allowance for indirect selling expenses in the other market up to the amount of the commissions granted. In this case, because commissions were paid in the home market, but not in the United States, and thus were deducted from the home market price, we made an adjustment for U.S. indirect selling expenses incurred in Mexico which were associated with sales of the subject merchandise. We made such an adjustment by adding the U.S. indirect selling expenses, up to the amount of the home market commissions, to home market price rather than subtracting them from the CEP.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773(A) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of large diameter seamless pipe products from Mexico, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
TAMSA	4.60
All others	4.60

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by this determination are materially injuring, or threaten material injury to, the United States industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than March 16, 2000. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2580 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–2305, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 30, 1999, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 1998 to June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than April 3, 2000.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than June 30, 2000. *See* Decision Memorandum from John Brinkmann to Holly A. Kuga, dated January 31, 2000, which is on file in the Central Records

Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 00–2586 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Final Results of Expedited Sunset Review: Polyethylene Terephthalate Film From Korea

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Result of Expedited Sunset Review: Polyethylene Terephthalate Film from Korea.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on polethylene terephthalate ("PET") film from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise covered by this antidumping duty order includes all gauges of raw pre-treated, or primed polythylene terephthalate film, sheet, and strip, whether extruded or co-extruded. The films excluded from this antidumping duty order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order. PET film is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3920.62.00.00. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

On June 5, 1991, the Department published the antidumping duty order and amended final determination of sales at less than fair value ("LTFV") on PET film from Korea. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* as amended (56 FR 25669, June 5, 1991). On September 26, 1997 (62 FR 50557) the Department published *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation.* In the notice of final court decision and amended final determination of the antidumping duty LTFV investigation, based on our determination on remand, SKC Limited and SKC America, Inc. (collectively "SKC") was assigned a margin of 13.92 percent ad valorem, Cheil Synthetics Incorporated ("Cheil"), a margin of 36.33 percent ad valorem, and the "all others" margin was 21.5 percent.

The Department has completed six administrative reviews of PET film since the issuance of the antidumping duty order.[1] On September 26, 1997, the Department issued the *Final Results of Changed Circumstances Antidumping Duty Administration Review*, 63 FR 3703 (January 26, 1998), in which the Department determined that Saehan Industries, Inc. ("Saehan") was the successor firm to Cheil. The Department has not found duty absorption with respect to this order.

The order remains in effect for all producers and exporters of PET film from Korea, except for Cheil and Kolon, for which the Department revoked the antidumping duty order.[2]

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on PET film from Korea (64 FR 35588) pursuant to section 751(c) of the Act. On July 15, 1999, the Department received a Notice

[1] *See* 1.a. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 42835 (August 17, 1995), as amended *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review*, 61 FR 53997 (February 12, 1996).

2.b. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part*, 61 FR 35177 (July 5, 1996).

3.c. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part*, 61 FR 58374 (November 14, 1996), as amended 62 FR 1735 (January 13, 1997).

4.d. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 62 FR 38064 (July 16, 1997), as amended 62 FR 45222 (August 26, 1997).

5.e. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 37334 (July 10, 1998), and *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review*, 63 FR 52241 (September 30, 1998).

6.f. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part;* 64 FR 62648 (November 17, 1999).

[2] *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part*, 61 FR 35177 (July 5, 1996), and *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part*, 61 FR 58374 (November 14, 1996).

of Intent to Participate on behalf of E.I. Dupont de Nemours & Company ("DuPont"), and Mitsubishi Polyester Film, LLC ("MFA"), (collectively "the domestic interested parties"), within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. On August 2, 1999, we received a complete substantive response to the notice of initiation from the domestic interested parties within the deadline specified in § 351.218(d)(3)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product. Dupont states that it was the petitioner in the original investigation and has been a participant in all completed administrative reviews of this antidumping duty order. MFA states that it purchased U.S. PET film operations from the Hoechst Celanese Corporation. Hoechst Celanese Corporation was also a petitioner in the original investigation and an active participant in prior administrative reviews.

Although we did not receive a substantive response from any respondent interested party, on August 2, 1999, we received a waiver of participation from SKC. Co., Ltd. and SKC America, Inc. (collectively "SKC"). Pursuant to 19 CFR 351.218(e)(1)(ii)(C), we determined to conduct an expedited sunset review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the antidumping duty order on PET film from Korea is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[3] Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time-frame for issuing this determination has been extended by two days.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the petitioners' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. The Department received a waiver of participation from SKC. In addition, the Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations*, lack of substantive response from respondent interested parties also constitutes a waiver of participation.

The petitioners argue that revocation of the antidumping duty order would likely lead to continuation of dumping by producers and exporters of PET film from Korea based on the continuation of dumping since the original investigation. The petitioners assert that from 1990 to 1995 dumping margins remained above *de minimis* (*see* the petitioners August 2, 1999, Substantive Response at 6). Additionally, although in some instances (between 1996 and 1998) dumping margins fell below *de minimis*, these *de minimis* dumping margins do not establish that producers and exporters of the subject merchandise have ceased dumping. Instead, petitioners argue that the most recent preliminary results of administrative review provide a strong indication that one producer, has resumed dumping (FR 41380 (July 30, 1999)). Further petitioners assert that the other producer that was assessed *de minimis* dumping margins in the past, STC, did not make any sales or shipments during the subsequent two reviews. Petitioners argue that this suggests that STC is unable to remain competitive in the U.S. market with the discipline of the order in place.

With respect to import volume, the domestic interested parties assert that, based on the Department's *Sunset Policy Bulletin*, an examination of import volumes by the Department is not necessary to make a likelihood determination given that dumping continues. However, the petitioners state that should the Department examine import statistics, the Department will find that import volumes are highly inconclusive. Using official import statistics for HTS subheading 3920.62.00.00, the petitioners argue that prior to the issuance of the antidumping duty order (between 1989 and 1990) the quantity of imports of the subject merchandise to the United States grew by 1,265.15 percent (*see* the petitioners August 2, 1999, Substantive Response at 7, and Exhibit 2). The petitioners note that after the imposition of the antidumping duty order, the level of import growth dropped. The petitioners maintain that, although between 1991 and 1992 import volume increased, the increase was only

[3] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

by 62.93 percent, compared to the 1,265.15 percent increase between 1989 and 1990. In addition, by 1998, imports declined by 5.57 percent. Further, the petitioners assert that over the history of the order, absolute import volumes have fluctuated significantly. *See* the petitioners August 2, 1999 Substantive Response at 7 & 8, and Exhibit 1.

The petitioners, also argue that the exchange rate movements (won/$) can be relevant to a determination of likelihood of future dumping because the movement in the exchange rate can mask the extent of dumping and affect the Department's dumping margin calculations. *See* the domestic interested parties Substantive Response at 8. Moreover, petitioners argue that the Department should consider the change in producer and importers behavior when making its likelihood determination. Petitioners assert that a major portion of the margins calculated in the original investigation was attributable to certain types of PET film products, such as off-grade film. Petitioners contend that producers and importers decreased their shipments of off-grade material in order to obtain lower dumping margins. Once the order is removed petitioners argue that producers and importers can resume easily their shipment of off-grade material which would result in dumping at a significant level.

As discussed above in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

After examining the history of this antidumping duty order, we find that dumping margins above *de minimis* levels continue to exist for at least some producers. Given that dumping margins continue to exist, respondent interested parties waived their right to participate in the instant review, and absent argument and evidence to the contrary, the Department determines that dumping would likely continue or recur if the order on PET film from Korea were revoked. Because we based our determination on continuation of dumping margins above *de minimis*, we did not consider import volumes and the other factors cited by the petitioners.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The petitioners argue that, consistent with the SAA, the Department should report to the Commission the rates from the original investigation as the magnitude of the margin likely to prevail if the antidumping duty order is revoked, because they are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place. In addition, for companies that did not participate in the investigation, or for companies that did not begin shipping until after the order was issued, the petitioners argue that the Department should use the "all others" rate from the investigation.

We agree with the petitioners that the dumping margins from the original investigation are representative of Korean producers and exporters behavior should the order be revoked because they reflect the behavior of producers and exporters without the discipline of the order. Therefore, absent argument or evidence to the contrary, we will report to the Commission margins contained in the Final Results of Review of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
SKC Limited and SKC America, Inc.(SKC).	13.92.
Saehan (formerly Cheil Synthetics, Inc.).	Revoked.
Kohn Industries. (Kohn) ...	Revoked.
All others	21.50.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2590 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0650, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 1, 1999).

Preliminary Determination

We preliminarily determine that certain small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from Romania is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on July 20, 1999, based on a petition filed by the Koppel Steel Corporation, Gulf States Tube (a division of Vision Metals), Sharon Tube, U.S. Steel Group (a unit of USX Corporation), and the United Steelworkers of America (collectively, petitioners). *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania,* 64 FR 40825 (July 28, 1999). Since the initiation of this investigation, the following events have occurred:

On August 12 and 17, 1999, we issued antidumping questionnaires to the Romanian embassy with instructions to identify any additional producers/exporters of the subject merchandise who had not contacted the Department, and to forward the questionnaire to all producers/exporters of the subject merchandise. On August 31, 1999, we received a response from the Romanian embassy.

On August 16, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the products under investigation are materially injuring the United States industry. *See* 64 FR 46953 (August 27, 1999) (ITC Report Publication No. 3321).

On September 9, 1999, we received a letter from S.C. Republica S.A. (Republica), a producer of the subject merchandise in Romania, stating that it did not sell the subject merchandise to the United States during the period of investigation (POI) and, therefore, will not file a response to the Department's questionnaire.

On September 13 and October 7, 1999, we received questionnaire responses from Sota Communication Company (Sota) and Metal Business International S.R.L. (MBI) (collectively, respondents), the trading companies exporting the subject merchandise during the POI, and their respective producers S.C. Silcotub S.A. (Silcotub) and S.C. Petrotub S.A.(Petrotub). We issued supplemental questionnaires on September 24 and October 18, 1999, to which we received responses on October 14, November 1, and November 5, 1999.

On September 15, 1999, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from the respondents on October 15 and November 17, 1999.

On October 7, and November 19, 1999, the respondents and their respective producers requested that the Department find the seamless pipe industry in Romania to be a market-oriented industry (MOI). Subsequently, the Department issued a letter to the Romanian embassy on October 14, 1999, requesting any additional information relevant to the MOI request. On October 22, 1999, we received comments from the Romanian Ministry of Industry and Commerce in support of the MOI claim. The petitioners submitted comments to the Department on November 2, 1999, objecting to the MOI claim made by the responding companies and the Romanian Ministry of Industry and Commerce.

Based on a request made by the petitioners on November 10, 1999, we postponed the preliminary determination until January 26, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico,* 64 FR 66168 (November 24, 1999).

Between January 6 and January 12, 2000, the petitioners and the respondents submitted additional comments regarding the preliminary determination.

Although the deadline for this determination was originally January 26, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by two days.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 5, 1999, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. Further to that request, on November 12, 1999, the respondents requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of this investigation includes small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this investigation are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this investigation are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure

pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple- or quadruple-certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this investigation includes all seamless pipes meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from the scope of this investigation are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

Class or Kind

From August through November 1999, the Department received submissions from importers, respondents, and consumers in the companion investigations involving small and large diameter seamless pipe from Japan, requesting that the subject merchandise be considered more than one class or kind. Specifically, those parties requested that the Department subdivide each of these investigations into the following separate classes or kinds of merchandise: (1) Commodity grade carbon seamless standard, line and pressure pipe; (2) alloy seamless pipe; and (3) high-strength seamless line pipe. On November 8, 1999, the petitioners rebutted these arguments. We have preliminarily determined that there is a single class or kind of merchandise for small diameter pipe and another distinct single class or kind of merchandise for large diameter pipe. For further discussion on this topic see the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, FR 64 69721 (December 14, 1999).

Period of Investigation

The period of this investigation (POI) comprises each exporter's two most recent fiscal quarters prior to the filing of the petition (*i.e.*, October 1, 1998, through March 31, 1999).

Nonmarket Economy Status

The Department has treated Romania as a non-market-economy (NME) country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania*, 61 FR 24274 (May 14, 1996)). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of Romania's NME status. We have, therefore, preliminarily determined to continue to treat Romania as a NME.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the *Normal Value* section, below.

Market-Oriented Industry

As indicated above, the two Romanian producers and their respective trading companies, as well as the Romanian Ministry of Industry and Commerce, requested that the Department find the seamless pipe industry in Romania to be a MOI.

The criteria for determining whether a MOI exists are: (1) There must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market determined prices must be paid for all significant inputs, whether material or non-material, and for all but an insignificant portion of all inputs accounting for the total value of the merchandise. *See Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Administrative Review*, 61 FR 58514, 58516 (November 15, 1996) (*Lug Nuts*). In addition, in order to make an affirmative determination that an industry in a NME country is a MOI, the Department requires information on virtually the entire industry. A MOI claim, and supporting evidence, must cover producers that collectively constitute the industry in question; otherwise, the MOI claim is dismissed. (*See, e.g., Freshwater Crawfish Tailmeat from the People's Republic of China, Final Determination of Sales at Less than Fair Value*, 62 FR 41347, 41353 (August 1, 1997) (*Crawfish*).)

We find preliminarily in this investigation that the Romanian seamless pipe industry does not meet the Department's criteria for an affirmative MOI finding because the respondents have placed information on the record showing that all of the known seamless pipe producers were primarily owned by the government during virtually the entire POI. Specifically, in prior cases, even where we have found some degree of private and collective ownership in the industry in question, we determined that the second prong of the MOI test was not met because the share of total production capacity accounted for by private enterprises or collectives was small. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China* 63 FR 251, 72261 (December 31, 1998). Furthermore, notwithstanding the issue of ownership, we do not have sufficient information with respect to approximately 20 percent of the seamless pipe industry in Romania and, therefore, are unable to determine whether the Romanian government is involved in setting prices or amounts to be produced for a significant portion of the industry for which we have no information on the record. For a complete discussion of the Department's preliminary determination that the seamless pipe industry does not constitute a MOI, *see* the December 15, 1999, memorandum, *Whether the Seamless Pipe Industry* in Romania Should Be Treated as a Market-Oriented Industry, which is on file in the Central Records Unit (CRU) (room B–099 of the main Commerce Building).

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise subject to investigation in a non-market-economy (NME) country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. For purposes of this "separate rates" inquiry, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (de jure) and in fact (de facto).

Evidence supporting, though not requiring, a finding of de jure absence of government control includes the following: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control with respect to exports is based on the following four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. (*See Silicon Carbide*, 59 FR at 22587.)

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that the evidence of record demonstrates an absence of government control, both in law and in fact, with respect to exports by Sota and MBI. Both Sota and MBI were established as privately-owned limited-liability trading companies after Romania began its extensive privatization program in 1990; neither company has been state-owned nor controlled by provincial or local governments. These companies are only limited by their respective articles of incorporation and bylaws and are not subject to legislative enactments decentralizing the companies' control. Specifically, the information on the record shows that these companies are autonomous in selecting their management, negotiating and signing contracts, setting their own export prices and retaining their own profits. For a complete discussion of the Department's preliminary determination that Sota and MBI are entitled to separate rates, *see* the January 28, 2000, memorandum, *Assignment of Separate Rates for Respondents in the Antidumping Duty Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania*, which is on file in the CRU.

Romania-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the "NME entity." The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that Sota and MBI are the only Romanian exporters to the United States of the subject merchandise produced by Silcotub and Petrotub. Further, as noted above, although Republica produces the subject merchandise, we have confirmed with U.S. Customs that no subject merchandise produced by Republica was sold to the United States during the POI, either directly by Republica or through trading companies in Romania.

Since all exporters/producers of the subject merchandise sold to the United States during the POI responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Romania-wide rate based on the weighted-average margins determined for Sota and MBI.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Sota and MBI to the United States were made at LTFV, we compared the export price (EP) to the NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with

section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because Sota and MBI sold the subject merchandise directly to unaffiliated customers in the United States prior to importation, and CEP methodology was not otherwise appropriate.

1. Sota

We calculated EP based on packed C&F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, brokerage and handling in Romania, and ocean freight. Because certain domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Indonesia and Egypt. (*See* the *Normal Value* section for further discussion.)

2. MBI

We calculated EP based on packed FOB Romanian-port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, and brokerage and handling in Romania. As with Sota, because certain domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Indonesia and Egypt. (*See* the *Normal Value* section for further discussion.)

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that Egypt, the Philippines, Morocco, Algeria, Jamaica, and Ecuador are the countries most comparable to Romania in terms of overall economic development (*see* the August 24, 1999, memorandum, *Certain Small Diameter Pipe ("S–D Pipe") from Romania: Nonmarket Economy Status and Surrogate Country Selection*). We subsequently included Indonesia among the countries which are economically comparable to Romania because Indonesia's GNP per-capita and overall economic development are also similar to those of the above-referenced countries.

Because of a lack of the necessary factor price information from the other potential surrogate countries that are significant producers of comparable products to the subject merchandise, we have relied, where possible, on information from Indonesia, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Indonesian values to the Romanian producers' factors of production for virtually all factors. Where we were unable to obtain Indonesian values, we used values for inputs from Egypt, which also produces products comparable to the subject merchandise. For a complete analysis of the selection of the surrogate country, see the January 28, 2000, memorandum, *Selection of the Surrogate Country in the Antidumping Duty Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania* on file in the CRU.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in Romania which produced seamless pipes for the exporters that sold seamless pipes to the United States during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indonesian and, where necessary, Egyptian values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Indonesian surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory because this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported, *i.e.*, the distance between the Romanian seaport and the producer's location. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing material (*i.e.*, where applicable, steel billet, lacquer, plastic caps, ink, paint, strap, clips, steel scrap, and foil) by Harmonized Tariff Schedule (HTS) number, using imports statistics from the UN Commodity Trade Statistics for 1998. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued such a material input at the actual purchase price in accordance with § 351.408 (c)(1) of the Department's regulations. For a complete analysis of surrogate values, *see* the January 28, 2000, memorandum, *Factors of Production Valuation for Preliminary Determination Valuation Memorandum*), on file in the CRU.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted, for Indonesia reported in the publication *Energy Prices and Taxes*, 2nd quarter 1999. We based the value of natural gas on 1998 Indonesian prices reported in *Energy Prices and Taxes*, 2nd quarter 1999.

We based our calculation of factory overhead and selling, general and administrative (SG&A) expenses on 1997 financial statements of three Indonesian producers (*i.e.*, PT Jakarta Kyoei, PT Jaya Pari, and PT Krakatau) of products comparable to the subject merchandise. In order to calculate a positive amount for profit consistent with *Certain Fresh Cut Flowers From Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 18878 (April 16, 1999), we calculated profit based only on PT Krakatau's financial statement because the financial statements for PT Jakarta Kyoei and PT Jaya Pari indicate that those companies incurred losses. Disregarding those financial statements enabled us to derive an "element of profit" as intended by the SAA. *See* SAA at 839.

To value truck freight rates, we used a 1999 rate provided by a trucking company located in Indonesia. For rail transportation, we valued rail rates using information found in a December, 1994 cable from the U.S. Embassy in Jakarta, Indonesia, as adjusted for inflation.

For brokerage and handling, because an Indonesian value was unavailable, we used a 1999 rate provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see *Valuation Memorandum*.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Sota Communication Company	13.75
Metal Business International S.R.L.	10.99
Romania-wide rate	12.34

The Romania-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine by the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs in six copies must be submitted to the Assistant Secretary for Import Administration no later than March 20, 2000, and rebuttal briefs no later than March 27, 2000. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 23, 2000, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later then 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2577 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Brinkmann, at (202) 482–0984 or (202) 482–4126, respectively; AD/CVD Enforcement, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from the Czech Republic are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on July 20, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania*, 64 FR 40825 (July 28, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

As of the date of initiation of this investigation, the Czech Republic was still considered a non-market economy (NME) country. On July 23, 1999, the Department received a letter from the Czech Ambassador, on behalf of the Government of the Czech Republic, requesting revocation of the Czech Republic's NME status, under section 771(18)(A) of the Act, in the context of this investigation. On August 5, 1999, the Department initiated a formal inquiry into the Czech Republic's status as a NME. On August 12, 1999, the Department selected Nova Hut, a.s. (Nova Hut), the sole producer of the subject merchandise in the Czech Republic, as a mandatory respondent, and issued section A of the NME and market economy[2] antidumping questionnaires to Nova Hut. On August 16, 1999, the Department received comments from the Czech Government and petitioners addressing the criteria necessary to revoke the Czech Republic's NME status.

[1] The petitioners in this investigation are Gulf States Tube, a Division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and the United Steelworkers of America.

[2] Both versions of the questionnaire were issued because Nova Hut had requested that the NME status of the Czech Republic be revoked.

On August 23, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this antidumping investigation are materially injuring the U.S. industry. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa*, 64 FR 46953 (August 27, 1999).

On August 17, 1999, we issued the remainder of the NME and market economy questionnaires to Nova Hut.

While Nova Hut responded to section A of the Department's NME questionnaire on September 9, 1999, no further NME responses were received. Nova Hut submitted its responses to Department's market economy questionnaire on September 9 and October 14, 1999.

On November 2, 1999, the petitioners requested that the Department initiate a below-cost sales investigation. After examining the petitioners' request, on November 5, 1999, the Department initiated a below-cost sales investigation and requested that Nova Hut respond to the Department's cost of production questionnaire. See Memorandum from John Brinkmann to David Mueller, *Allegation of Sales Below the Cost of Production for Nova Hut, a.s. (Cost Memo)*, dated November 5, 1999, on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Department Building. Nova Hut submitted its response to the Department's cost of production questionnaire on December 13, 1999.

We issued supplemental questionnaires where appropriate. Responses to those supplemental questionnaires were timely filed between November 12, 1999 and January 6, 2000 and we have incorporated the information provided in those responses into this preliminary determination.

On November 10, 1999, the petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations from Romania and Mexico on the grounds that these investigations are extraordinarily complicated. On November 17, 1999, in accordance with section 733(c)(1) of the Act we extended the deadline for the preliminary determination to January 28, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico*, 64 FR 66168 (November 24, 1999).

On December 10, 1999, the Department revoked the Czech Republic's NME status. *See* Memorandum to Robert S. LaRussa, *Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy ("NME") Country Status (Czech Republic: NME Status)*, dated November 29, 1999, on file in the CRU and the section on *Revocation of the Czech Republic's Non-Market Economy Status*, below. Thereafter, this investigation continued under the Department's market economy procedures.

On January 18, 2000, the petitioners submitted comments regarding Nova Hut's response to the Department's section D questionnaire. We note that the petitioners' submission was not received in sufficient time to be considered for purposes of the Department's preliminary determination.[3] However, we intend to examine these comments in detail and, if necessary, we will issue an additional questionnaire to clarify or supplement information previously submitted by Nova Hut.

On January 19 and 20, 2000, in response to the Department's section D supplemental questionnaire, Nova Hut provided additional information from its affiliated suppliers. On January 21, 2000, Nova Hut responded to the petitioners' January 18, 2000, comments. As explained above, we will take these comments into consideration for the final determination.

Although the deadline for this determination was originally January 26, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by two days.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 29, 1999, Nova Hut requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Nova Hut also included a request to extend the provisional measures to not more than six months. Therefore, in accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant portion of exports of the subject merchandise, and (3) no compelling reason for denial exists, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of this investigation (POI) comprises Nova Hut's four most recent fiscal quarters prior to the filing of the petition (*i.e.*, April 1, 1998, through March 31, 1999).

Scope of Investigation

For purposes of this investigation, the products covered are small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this investigation are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process

[3] Given that the Department did not revoke the Czech Republic's NME status until December 10, 1999, Nova Hut did not respond to the Department's December 22, 1999 supplemental section D questionnaire until January 6, 2000. As a result, the petitioners did not submit their comments regarding this response until January 18, 2000.

(hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this investigation are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from the scope of this investigation are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

Class or Kind

From August through November 1999, the Department received submissions from importers, respondents, and consumers in the companion investigations involving small and large diameter seamless pipe from Japan, requesting that the subject merchandise be considered more than one class or kind. Specifically, those parties requested that the Department subdivide each of these investigations into the following separate classes or kinds of merchandise: (1) Commodity grade carbon seamless standard, line and pressure pipe; (2) alloy seamless pipe; and (3) high-strength seamless line pipe. On November 8, 1999, the petitioners rebutted these arguments. We have preliminarily determined that there is a single class or kind of merchandise for small diameter pipe and another distinct single class or kind of merchandise for large diameter pipe. For further discussion on this topic see the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, FR 64 69721 (December 14, 1999).

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by Nova Hut covered by the description in the *Scope of Investigation* section, above, and sold in the Czech Republic during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six criteria to match U.S. sales

of subject merchandise to comparison-market sales of the foreign like product: specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end-finish. These characteristics have been weighted by the Department, where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics as listed above.

Revocation of the Czech Republic's Non-Market Economy Status

In determining whether to revoke NME-country status under section 771(18)(A) of the Act, the Department must take into account the following factors under section 771(18)(B): (1) The extent to which the currency of the foreign country is convertible into the currency of other countries; (2) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (4) the extent of government ownership or control of the means of production; (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (6) such other factors as the administering authority considers appropriate.

Since its emergence as an independent, democratic state, the Czech Republic has made significant progress in its transformation into a market economy country. The Czech currency is now fully convertible. Wages in the Czech Republic are largely determined by free bargaining between labor and management. Trade has been liberalized and tariffs reduced, and the Czech government is actively promoting foreign investment and business ventures. Industry, agriculture and services have all been privatized, and the power to make decisions related to the allocation of resources, and over pricing and output decisions, now rests with the private sector. Based on the preponderance of evidence related to economic reforms in the Czech Republic required under section 771(18)(B) of the Act, the Department revoked the Czech Republic's NME country status, effective January 1, 1998. *See Czech Republic: NME Status.*

Fair Value Comparisons

To determine whether sales of seamless pipe products from the Czech Republic were made in the United States at LTFV, we compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772 of the Act, because Nova Hut sold the subject merchandise directly to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States prior to the date of importation, and CEP methodology was not otherwise, appropriate.

We calculated EP based on documents alongside freight (DAF Polish border) packed prices charged to the first unaffiliated customer in the United States. In accordance with section 772(c)(2) of the Act, we made deductions from the starting price, where appropriate, for movement expenses, including foreign inland freight and export license fees for shipment.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities, and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities will normally be considered insufficient if they are less than five percent of the aggregate quantity of sales of the subject merchandise to the United States.

Nova Hut had a viable home market for seamless pipe products, and reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made certain adjustments to price as detailed in the *Calculation of Normal Value Based on Home-Market Prices* section of this notice, below.

B. Cost of Production Analysis

As noted above, on November 2, 1999, petitioners filed a below-cost sales allegation against Nova Hut. Based on our analysis of the allegation, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of seamless pipe, manufactured in the Czech Republic, were made at prices below the cost of production (COP). *See Cost Memo.* As a result, the Department conducted an investigation to determine whether Nova Hut made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Nova Hut's costs of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing.

For the COP calculation, we relied on Nova Hut's COP information from the company's December 13, 1999, and January 6, 2000 submissions, except in the following instances:

(1) Nova Hut obtained iron, a major input, from an affiliate. For reporting purposes, Nova Hut valued this input at the weighted-average transfer price.[4] Based on the transfer price and market price information in Nova Hut's December 12, 1999, and January 6, 2000, cost of production responses, for the preliminary determination, we compared the transfer price of iron to the market price of iron. Because the market price was higher than the transfer price, we increased the transfer price to reflect the market price;

(2) For the minor inputs purchased from affiliated parties (*i.e.*, oxygen and iron ore), we increased the reported transfer prices to reflect the higher market prices;

(3) We revised Nova Hut's general and administrative (G&A) expense rate calculation; and

(4) We revised the financial expense ratio.

See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination for Nova Hut, dated January 28, 2000, on file in the CRU.

[4] Sections 773(f)(2) and (3) of the Act prescribe how the Department is to treat affiliated-partly transactions in the calculation of cost of production and constructed value. With respect to major inputs purchased from affiliated suppliers, the Department's practice is that such imports will normally be valued at the higher of the affiliated party's transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the input. (*See, e.g. Fresh Atlantic Salmon From Chile: Final Determination of Sales at Less Than Fair Value*, 63 FR 31426, 31427 June 9, 1998); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 64 FR 6615, 6621–6623 (February 10, 1999). However, Nova Hut was unable to provide the suppliers' cost information in time for consideration in this preliminary determination (this information was provided on January 19 and 20, 2000). Therefore, for this preliminary determination, we used the transfer prices or market prices, as appropriate. We will consider the respondent's suppliers' cost data for the final determination.

2. Test of Home-Market Sales Prices

We compared the weighted-average COP for Nova Hut to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities [5] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

We used the revised COP data from the December 13, 1999, and January 6, 2000, submissions, to compare to the home market prices, less any applicable billing adjustments, discounts, rebates, and indirect selling expenses, on a model-specific basis.

3. Results of the COP Test

Pursuant to section 773(b)(2)(B) of the Act, since we found 20 percent or more of Nova Hut's sales of certain products during the POI were at prices less than the weighted-average COP for the POI, we preliminary determine such sales to have been made in "substantial quantities" within an extended period of time. We also preliminary determine these sales below cost were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of these preliminary results, we have disregarded these below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Although, some products had no above-cost sales, we did not need to use constructed value (CV) as a basis for NV in our comparisons to EP, because all EP sales were matched to similar models of above-cost sales from the home market.

C. Arms-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997) and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties)*, 62 FR 27295, 27355–56 (May 19, 1997). We included those sales to affiliated customers that passed the arm's-length test in our analysis. (*see* 19 CFR 351.403).

D. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316 at 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.

We examined information on the selling activities associated with each channel of trade in each of Nova Hut's markets. Nova Hut's home market sales were all exworks and its U.S. sales were DAF Polish border. The EP LOT did not differ considerably from the home market LOT with respect to selling activities, although there were slight differences with respect to advertising and warehousing. Therefore, we determine that there was a single LOT in each market and that these LOTs were comparable. For a detailed description of our level-of-trade methodology and findings for this preliminary determination, *see* the January 28, 2000, *Antidumping Investigation of Certain Small Diameter Seamless Pipe from the Czech Republic: Preliminary Level of Trade Findings Memorandum* on file in the CRU.

E. Calculation of Normal Value Based on Home-Market Prices

We performed price-to-price comparisons using sales of comparable merchandise in the home market that did not fail the cost test. We calculated NV based on "exworks" prices. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses and billing adjustments. We made no adjustments for discounts or rebates since the invoice price is already net of these discounts and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

We made the following adjustments to Nova Hut's reported home market sales data: (1) We recalculated the imputed credit expenses by adding back to the gross price, on-invoice billing adjustments made for orders that did not meet a minimum quantity requirement; (2) for sales with missing payment dates, the Department set the date of payment as the projected preliminary results date; (3) we deleted seamless pipe products that were sold as an overrun or non-prime product since overrun and non-prime seamless pipe were not sold in the U.S. market; and (4) we used the revised variable cost of manufacturing and total cost of manufacturing reported in the COP database and CV database to calculate our difference in merchandise adjustment, as noted above in the *Cost of Production Analysis* section. *See Preliminary Calculation Memorandum for Nova Hut, a.s.*, dated January 28, 2000, on file in the CRU.

Currency Conversions

We made currency conversions into United States dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the United States sales, as provided by the Dow Jones Business Information Services.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of seamless pipe products from the Czech Republic, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
Nova Hut	12.55
All Others	12.55

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our

[5] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the United States industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later March 16, 2000. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2583 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702, A–580–813, and A–583–816]

Final Results of Expedited Sunset Reviews: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, South Korea, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan, South Korea and Taiwan.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on certain stainless steel butt-weld pipe and tube fittings ("pipe and tube fittings") from Japan, South Korea ("Korea"), and Taiwan (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate response (in these cases, no response) from respondent interested parties in each of these reviews, the Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by these reviews include certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas. The subject merchandise are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item number 7307.23.00.00. The HTSUS item number is provided for convenience and customs purposes. The written description remains dispositive.

With respect to the order on subject imports from Japan and Taiwan, the Department has made several scope rulings. The following products were determined to be within the scope of the order:

Product within scope	Importer	Citation
Superclean or ultraclean pipe fittings from Japan	Benkan Corporation	56 FR 1801 (January 17, 1991).
A774 type stainless steel pipe fittings from Taiwan	Tachia Yung Ho	58 FR 28556 (May 14, 1993).
Cast butt-weld pipe fittings from Taiwan	Eckstrom Industries	Eckstrom Ind. v. United States, Court No. 97–10–01913, Slip. Op., 99–99 (Ct. Int'l Trade Sept. 20, 1999).

The following products were determined to be outside the scope of the order:

Product outside scope	Importer	Citation
Certain gasket raised face seal sleeves and certain stainless steel "Fine-fit" tube fittings imported from Japan.	Fujikin of America, Inc	60 FR 54212 (October 20, 1995).
Stainless steel tube fittings with non-welded end connection, and other products from Taiwan.	Top Line Process Equipment Corporation.	60 FR 54213 (October 20, 1995).
Primet joint metal seal fittings and primet joint weld fittings from Japan.	Daido	61 FR 5533 (February 13, 1996).
Sleeves of clean vacuum couplings and superclean microfittings from Japan.	Benkan	61 FR 5533 (February 13, 1996).
Superclean fittings from Japan	Benkan UCT Corporation	61 FR 40194 (August 1, 1996).

These reviews cover imports from all manufacturers and exporters of pipe and tube fittings from Japan, Korea, and Taiwan.

History of the Orders

Japan

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of pipe and tube fittings from Japan on February 4, 1988 (53 FR 3227). In this determination, the Department published three weighted-average dumping margins (which included a *de minimis* margin [1]) and an "all others" rate. The Department published its antidumping duty order on pipe and tube fittings from Japan on March 25, 1988.[2] The Department has conducted four administrative reviews of this order since its imposition.[3] In each of the four reviews we calculated one company-specific margin. The order remains in effect for all manufacturers and exporters of the subject merchandise from Japan, other than Fuji who was excluded from the antidumping duty order.

Korea

The Department published its final affirmative determination of sales at LTFV with respect to imports of pipe and tube fittings from Korea on December 29, 1992 (57 FR 61881). In this determination, the Department published weighted-average dumping margins for one company and an "all others" rate. The Department published its antidumping duty order on pipe and tube fittings from Korea on February 23, 1993.[4] The Department has not conducted an administrative review of this order since its imposition. The order remains in effect for all manufacturers and exporters of the subject merchandise from Korea.

Taiwan

On May 14, 1993, the Department issued its final affirmative determination of sales at LTFV regarding pipe and tube fittings from Taiwan (58 FR 28556). In this determination, the Department published weighted-average dumping margins for three companies and an "all others" rate. The Department subsequently published an amended final determination and antidumping duty order on June 16, 1993.[5] Since the order was issued, the Department has completed three administrative reviews with respect to pipe and tube fittings from Taiwan.[6] The order remains in effect for all manufacturers and exporters of the subject merchandise from Taiwan.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan (64 FR 35588), pursuant to section 751(c) of the Act. We received Notices of Intent To Participate in each of the three sunset reviews, on behalf of Alloy Piping Products, Inc. ("Alloy"), Flowline Division of Markovitz Enterprises, Inc. ("Flowline"), Gerlin, Inc. ("Gerlin"), and Taylor Forge Stainless, Inc. ("Taylor") (collectively "domestic interested parties"), by July 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested-party status as U.S. manufacturers whose workers are engaged in the production of domestic like products. Moreover, the domestic interested parties stated that they have been involved in these proceedings since their inception. The Department received complete substantive responses from the domestic interested parties by August 2, 1999, within the 30-day deadline specified in the Sunset Regulations under § 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[7]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether

[1] One of the three companies investigated, Fuji Acetylene Industries Co., Ltd. ("Fuji"), was excluded from the antidumping duty order, since the Department found that it had a *de minimis* dumping margin.

[2] See Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan, 53 FR 9787 (March 25, 1988).

[3] See Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 14922 (April 12, 1991); 56 FR 20592 (May 6, 1991); 57 FR 46372 (October 8, 1992); 59 FR 12240 (March 16, 1994).

[4] See Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Korea, 58 FR 11029 (February 23, 1993).

[5] See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan, 58 FR 33250 (June 16, 1993).

[6] See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review, 63 FR 67855 (December 9, 1998) (3rd review); 65 FR 2116 (January 13, 2000) (1st & 2nd review).

[7] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis. See Sunset Policy Bulletin, 63 FR at 18872. In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. See *Id.*

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these instant reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive responses, the domestic interested parties argue that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by Japanese, Korean, and Taiwanese, producers/manufacturers. They argue further that since the imposition of the antidumping duty orders, most respondents have continued to dump in the U.S. market and have reduce their sales of pipe and tube fittings dramatically. The domestic interested parties argue that this demonstrates the inability of the producers from subject countries to sell in the United States at any significant volume without dumping. Therefore, they assert, were the antidumping duty orders revoked, it is likely that Japanese, Korean, and Taiwanese producers would need to dump in order to sell their pipe and tube fittings in any significant quantities in the United States.

Japan

The domestic interested parties argue that the imposition of the antidumping duty order had a dramatic effect on subject import volumes from Japan. They indicate that in the years following the order, Japanese imports have averaged 13 percent of their pre-order levels. Moreover, they assert, the dumping margins for Japanese manufacturers continue at significant levels. In sum, the domestic interested parties argue, the dramatic decline in import volumes following the imposition of the order in conjunction with continued margins of dumping indicates that dumping by Japanese pipe and tube fitting producers is likely to continue or recur in the event of revocation of the order.[8]

Korea

With respect to subject merchandise from Korea, the domestic interested parties maintain that, in the year the order was imposed, imports from Korea fell to 4,228 pounds from approximately 523,619 pounds the year before. They argue further that, in the years following the imposition of the order, average import volumes of the subject merchandise were more than 90 percent lower than in the years preceeding the issuance of the order. Therefore, the domestic interested parties argue that the near cessation of imports from Korea demonstrates that Korean manufacturers need to dump pipe and tube fittings in the U.S. market in order to sell at pre-order volumes. To support this conclusion the domestic interested parties assert that dumping margins for all Korean manufacturers of pipe and tube fittings are extraordinarily high at 21.2 percent. Yet, they contend, Korean manufacturers never availed themselves of the administrative review process to demonstrate that their dumping has ceased or abated.[9]

Taiwan

The domestic interested parties assert that only one Taiwanese respondent has had dumping margins below *de minimis* levels since the issuance of the order. They argue that, following the issuance of the order, imports from Taiwan dropped to a level far below their pre-order level and have never been more than 50 percent of their pre-order level. The domestic interested parties conclude that Taiwanese importers need to dump pipe and tube fittings in the U.S. market in order to sell at pre-order volumes. To corroborate this conclusion, the domestic interested parties note that the dumping margins for all but one Taiwanese manufacturer are extraordinarily high and yet, they have never availed themselves of the administrative review process to demonstrate that their dumping has abated.[10]

General Discussion

If companies continue dumping with the discipline of an order in place or imports ceased after the issuance of the order, the Department may reasonably infer that dumping would continue or recur if the discipline were removed. See section II.A.3 of the Sunset Policy Bulletin and the SAA at 890, and the House Report at 63–64. As pointed out above, dumping margins at levels above *de minimis* continue to exist for shipments of the subject merchandise from Japan, Korea, and Taiwan.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each respective section above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from

[8] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipe and tube fittings from Japan at 12.

[9] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipe and tube fittings from Korea at 13.

[10] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipe and tube fittings from Taiwan at 14.

Japan, Taiwan, and Korea since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. In their substantive responses, the domestic interested parties provided statistics demonstrating the decline in import volumes of pipe and tube fittings from Japan, Korea, and Taiwan. The Department agrees with the domestic interested parties' arguments that imports of the subject merchandise fell sharply after the orders were imposed and never regained pre-order volumes.

As noted above, in conducting its sunset reviews, the Department considered the weighted-average dumping margins and volume of imports in determining whether revocation of these antidumping duty orders would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins at levels above de minimis and a reduction in export volumes after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above *de minimis* continues in effect for exports of the subject merchandise by all (except as indicated in footnotes 11 & 12) known Japanese,[11] Korean and Taiwanese,[12] manufacturers/exporters of the subject merchandise. Therefore, given that dumping has continued over the life of the orders, import volumes have declined significantly after the imposition of the order, respondent parties have waived participation in these reviews, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that normally it will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. See Sunset Policy Bulletin 63 FR 18873. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. See *id.* at 18873–74. To date, the Department has not issued any duty-absorption findings in any of these three cases.

In their substantive response, the domestic interested parties recommended that, consistent with the Sunset Policy Bulletin, the Department provide to the Commission the company-specific margins from the original investigations. Moreover, regarding companies not reviewed in the original investigations, the domestic interested parties suggested that the Department report the "all others" rates included in the original investigations.

The Department agrees with the domestic interested parties. The Department finds that the margins calculated in the original investigations are probative of the behavior of Japanese, Korean, and Taiwanese manufacturers/exporters if the orders were revoked as they are the only margins which reflect their actions absent the discipline of the order.

Therefore, the Department will report to the Commission the company-specific and all others rates from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

JAPAN

Manufacturer/exporter	Margin (percent)
Mie Horo	65.08
Nippon Benkan Kogyo, K.K	37.24
All others	49.31

Fuji Acetylene Industries, Co., Ltd. was excluded from the antidumping duty order based on a de minimis dumping margin calculated in the Final Less Than Fair Value Determination. See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, 53 FR 3227 (February 4, 1988).

KOREA

Manufacturer/exporter	Margin (percent)
The Asia Bend Co. Ltd.	21.20
All others	21.20

TAIWAN

Manufacturer/exporter	Margin (percent)
Tachia Yung Ho Machine Industry Co. Ltd.	76.20
Ta Chen Stainless Pipe Co. Ltd.	0.64
Tru-Flow Industrial Co., Ltd.	76.20
All others	51.01

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

[11] One Japanese producer was excluded from the antidumping duty order based on a de minimis dumping margin calculated in the Final Less Than Fair Value Determination. Supra at footnote 1.

[12] As noted above, one Taiwanese producer/exporter currently has a de minimis dumping margin.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810, A–583–815]

Final Results of Expedited Sunset Reviews: Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on certain welded stainless steel pipes ("pipes") from the Republic of Korea ("Korea") and Taiwan (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate response (in these cases, no response) from respondent interested parties in each of these reviews, the

Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to these reviews are certain welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials ("ASTM") for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of these orders also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312. Pipes are produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. Pipes are a commodity product generally used as a conduit to transmit liquids or gases. Major applications for pipes include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of pipes are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and United States Customs purposes, our written description of the scope of these orders are dispositive.

History of the Orders

Korea

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of pipes from Korea on November 12, 1992 (57 FR 53693). In this determination and subsequent antidumping duty order, the Department published two weighted-average dumping margins and an "all others" rate.[1] These margins were later amended by the Department pursuant to a ruling by the Court of International Trade.[2] The Department has not completed an administrative review of this order since its imposition;[3] however, there has been one changed-circumstance review.[4] The order remains in effect for all Korean manufacturers and exporters of the subject merchandise.

Taiwan

On November 12, 1992, the Department issued its final affirmative determination of sales at LTFV regarding pipes from Taiwan (Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992). In this determination, the Department published four weighted-average dumping margins and an "all others" rate.[5] These margins were later amended by the Department,[6] pursuant to a ruling by the Court of International Trade.[7] Since the order was issued, the Department has completed four administrative reviews[8] and one changed-circumstances review[9] with respect to pipes from Taiwan. The order remains in effect for all manufacturers and exporters of the subject merchandise from Taiwan, other than Chang Mien.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on pipes from Korea and Taiwan (64 FR 35588), pursuant to section 751(c) of the Act. We received Notices of Intent To Participate, in each of the two sunset reviews, on behalf of Avesta Sheffield Pipe Co., Damascus Tubular Division of Damascus-Bishop Tube Co., Davis Pipe Inc., and the United Steel Workers of America (AFL–CIO/CLC) (collectively "domestic interested parties"), by July 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) and (D) of the Act, the domestic interested parties claimed interested-party status as U.S. manufacturers and workers engaged in the production of domestic like products. Moreover, the domestic interested parties stated that they have been involved in all segments of these proceedings since their inception. The Department received complete substantive responses from the domestic

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[1] See Antidumping Duty Order and Clarification; Certain Welded Stainless Steel Pipes from the Republic of Korea, 57 FR 62301 (December 30, 1992) (clarifying HTSUS numbers).

[2] *See Avesta Sheffield, Inc.* v. *United States*, 17 CIT 1212, 838 F.Supp. 608 (1993); *see* also *Federal Mogul Corp. and the Torrington Co.* v. *United States*, 17 CIT 1093, 834 F.Supp. 1391 (1993); and Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe From Korea, 60 FR 10064 (February 23, 1995).

[3] However, on December 28, 1999, the Department issued preliminary results of review in this case. See Certain Welded ASTM A–312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 72645 (December 28, 1999).

[4] See Certain Welded Stainless Steel Pipe From Korea; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 16979 (April 7, 1998) (determination that SeAH Steel Corp. ("SeAH") is the corporate successor to Pusan Steel Pipe Co., Ltd. ("Pusan")).

[5] Chang Tieh Industry Co. Ltd. ("Chang Tieh") currently Chang Mien was excluded from the Taiwanese antidumping duty order in light of the zero percent margin it received in the final determination of sales at LTFV. However, it was listed as one of the four respondent companies originally investigated by the Department (57 FR 5370); see also Notice of Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipes from Taiwan, 59 FR 6619 (February 11, 1994) and *Chang Tieh Industry Co.* v. *United States*, 840 F.Supp. 141 (Ct. Int'l Trade 1993) (regarding the Department's error in imposing conditions upon Chang Tieh's exclusion from the antidumping duty order.)

[6] Notice of Amended Final Determination, 59 FR 6619.

[7] See Chang Tieh Industry Co. 840 F.Supp. at 141.

[8] See Welded Stainless Steel Pipes from Taiwan; Final Results of Administrative Review, 64 FR 33243 (June 22, 1999) (the first and second administrative reviews were jointly published); 62 FR 37543 (July 14, 1997); 63 FR 38382 (July 16, 1998).

[9] See Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 34147 (June 23, 1998) (determination that Chang Mien Industries Co., Ltd ("Chang Mien") is the corporate successor to Chang Tieh).

interested parties by August 2, 1999, within the 30-day deadline specified in the Sunset Regulations under § 351.218(d)(3)(i). On August 2, 1999, the Department received a waiver of participation, in the sunset review of certain welded stainless steel pipes from Korea, on behalf of Korea Iron & Steel Association ("KOSA"), SeAH Steel Corporation, Ltd. ("SeAH"), and Hyundai Pipe Co., Ltd. ("Hyundai"). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on pipes from Korea and Taiwan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[10]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (See Sunset Policy Bulletin, 63 FR at 18872). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see id).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. We received a waiver of participation, in the sunset review of certain stainless steel pipes from Korea, from KOSA, SeAH, and Hyundai on August 2, 1999. The Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the Sunset Regulations, lack of substantive response from respondent interested parties constitutes a waiver of participation.

In their substantive responses, the domestic interested parties argue that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by Korean and Taiwanese producers/manufacturers. The domestic interested parties argue that the records in these proceedings demonstrate that respondents reduced their sales to the United States after the issuance of the orders and continued to dump at the same or at higher rates of dumping. Further, they argue that the substantial decline in the volume of imports of pipes from Korea and Taiwan following the issuance of the orders demonstrates the inability of the producers from subject countries to sell in the United States at any significant volume without dumping. They support this argument with statistics showing that, since the imposition of the orders, respondents have generally reduced their shipments to the United States. Therefore, they assert, were the antidumping duty orders revoked, it is likely that Korean and Taiwanese producers would need to dump in order to sell their pipes in any significant quantities in the United States. In conclusion, the domestic interested parties state that whether comparing the level of imports during the calendar year encompassing the period of investigation or the calendar year most immediately preceding the order, the dramatic decrease in import levels underscores the importance of the orders in the domestic market.

Korea

With respect to subject merchandise from Korea, the domestic interested parties maintain that Korean importers need to dump pipes in the U.S. market in order to sell at pre-order volumes. They state that the order's extraordinary impact on imports in the period following the issuance of the order demonstrates the inability of Korean producers to sell pipes in the United States without dumping. The domestic interested parties also note that in 1998 Korean imports of the subject merchandise jumped to 116 percent of 1991 levels after Pusan purchased Sammi Metal Products Co., Ltd. ("Sammi") pipe division out of bankruptcy. Apart from 1998's unusually high level, they argue that imports of the subject merchandise from Korea following the issuance of the order have never been more than 59 percent of their 1991 level.[11]

[10] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

[11] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipes from Korea at 16.

Taiwan

The domestic interested parties argue that the imposition of the antidumping duty order had a dramatic effect on subject import volumes from Taiwan. In addition, they note that post-order imports from Taiwan have, on average, remained at 57 percent of the 1991 level. Even in 1998, the domestic interested parties add, when consumption of stainless steel products was at an all time high, imports from Taiwan were only 80 percent of 1991 imports. In conclusion they state that a comparison of the pre- and post-order import levels supports a reasonable inference that dumping would continue absent the disciplinary influence of the order.[12]

If companies continue dumping with the discipline of an order in place or imports ceased after the issuance of the order, the Department may reasonably infer that dumping would continue or recur if the discipline were removed (see section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64). Dumping margins above *de minimis* continue to exist for all producers and exporters of pipes from Korea and Taiwan, other than Chang Mien, which was excluded from the order on Taiwan.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each respective section above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from Korea and Taiwan since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. In their substantive responses, the domestic interested parties provided statistics demonstrating the decline in import volumes of pipes from Korea and Taiwan immediately following the issuance of the orders. The Department agrees with the domestic interested parties' arguments that imports of the subject merchandise fell after the orders were imposed and never regained pre-order volumes.[13]

As noted above, in conducting its sunset reviews, the Department considered the weighted-average dumping margins and volume of imports in determining whether revocation of these antidumping duty orders would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins at levels above *de minimis* after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above *de minimis* continues in effect for exports of the subject merchandise by all known Korean and Taiwanese manufacturers/exporters of the subject merchandise.[14] Therefore, given that dumping has continued over the life of the orders, import volumes have declined significantly after the imposition of the order,[15] respondent parties have waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that normally it will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. See Sunset Policy Bulletin, 63 FR at 18873. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. See id, 63 FR at 18873–74. To date, the Department has not issued any duty-absorption findings in any of these cases.

In their substantive response, the domestic interested parties recommended that, consistent with the Sunset Policy Bulletin, the Department provide to the Commission the company-specific margins from the original investigation, except that the Department should use the 31.90 percent margin assigned to Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") in the first two annual administrative reviews, not the 3.27 percent found in the original investigation. Moreover, regarding companies not reviewed in the original investigations, the domestic interested parties suggested that the Department report the "all others" rates included in the original investigations.

In the Sunset Policy Bulletin we indicated that, consistent with the SAA and the House Report, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order was revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The Sunset Policy Bulletin provides that we will entertain such considerations in response to argument from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporter's behavior absent the discipline of an order, the Department normally will consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market-share information, in past sunset reviews, where market-share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. See, *e.g.*, Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998), and Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999).

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the order while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior

[12] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipes from Taiwan at 15.

[13] With the exception of Korean imports of the subject merchandise in 1998, which increased to 116 percent of 1991 pre-order level as noted above.

[14] With the exception of Chang Tieh, now Chang Mien, which was excluded from the Taiwanese order.

[15] Based on import data from the U.S. Department of Commerce, the U.S. Treasury, the International Trade Commission, and the domestic interested parties.

demonstrating increased dumping coupled with increased market share.

Our review of import statistics, provided by the domestic interested parties, covering pipes from Korea and Taiwan demonstrated that the margins calculated in the original investigations are probative of the behavior of Korean and Taiwanese manufacturers/exporters if the orders were revoked as they are the only margins which reflect their actions absent the discipline of the order. However, with respect to Ta Chen, the Department disagrees with the domestic interested parties. Absent evidence that Ta Chen chose to increase dumping in order to maintain or increase market share, the margin calculated in the original investigation is the margin the Department will provide to the Commission.[16]

Therefore, the Department will report to the Commission the company-specific and all others rates from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

KOREA

Manufacturer/exporter	Margin (percent)
Pusan Steel Pipe Co., Ltd (now SeAH Steel Corp.)[1]	2.67
All manufacturers/producers/exporters	7.00

[1] SeAH is the corporate successor to Pusan, and Pusan had acquired certain of Sammi's production assets. See Certain Welded Stainless Steel Pipe from Korea; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 16979 (April 7, 1998).

[16] The Department recently made a preliminary determination to revoke the order, with respect to Ta Chen, based on *de minimis* margins in the last three reviews. See Certain Welded Stainless Steel Pipe from Taiwan Certain Welded: Preliminary Results of Antidumping Administrative Review, 64 FR 71728 (December 22, 1999). However, given that Ta Chen waived participation in this sunset proceeding and did not provide any information indicating that a more recently calculated margin would be more appropriate, the Department determined that, consistent with the Sunset Policy Bulletin, the margin calculated in the original investigation is most likely to prevail if the order were revoked.

TAIWAN

Manufacturer/exporter	Margin (percent)
Chang Tieh Industry Co:, Ltd (now Chang Mien)[1].	excluded.
Jaung Yuann Enterprise Co., Ltd..	31.91.
Ta Chen Stainless Pipe Co., Ltd.	3.27.
Yeun Chyang Industrial Co., Ltd.	31.90.
All Others	19.84.

[1] For the purposes of antidumping duty law the Department concluded that Chang Mein is the successor firm to Chang Tieh, and, as such is excluded from the order. See Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 34147 (June 23, 1998).

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2585 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Settlement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: On January 18, 1991, the Department of Commerce ("the Department") published in the **Federal Register** its final results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period 1986 (56 FR 1976). Pursuant to a settlement agreement, the Department has recalculated the countervailing duty rates. The final countervailing duty rates for this review period are listed below in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On January 18, 1991, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1986 through December 31, 1986. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 56 FR 1976. Subsequently, respondents challenged the final results before the Court of International Trade (CIT). The primary issue involved the calculation of the program rates for the subsidies provided under India's International Price Reimbursement Scheme (IPRS). The IPRS is a program through which the Government of India (GOI) provided rebates to castings exporters that purchased domestically-produced pig iron at prices set by the GOI. According to the GOI, these rebates were calculated to equal the differences between the higher domestic prices actually paid and the lower alternative prices available from sources outside of India.

As the IPRS was also the subject of litigation for the review period 1985 in *Creswell v. United States*, Consolidated Court No. 91–01–00012 (*Creswell*), litigation for the review period 1986 was stayed pending finalization of *Creswell*. After the CIT affirmed the Department's remand determination for the 1985 administrative review (*see Creswell*, slip op. 98–139 (CIT Sept. 29, 1998)), the Department published a notice of amended final results in accordance with that opinion. *See Certain Iron-metal Castings from India: Amended Final Results of Countervailing Duty Administrative Review In Accordance With Decision Upon Remand*, 63 FR 67858 (December 9, 1998). In lieu of pursuing further litigation with respect to the administrative review of the review period 1986, the parties have entered into a settlement agreement. The parties agreed to countervailing duty rates that were calculated based on the methodology approved by the CIT in *Creswell*. On December 10, 1999, the

CIT approved the settlement agreement and dismissed the lawsuit. *See Southern Star, Inc.*, v. *United States*, Slip Op. 99–130, Consol. Ct. No. 91–01–00060 (CIT December 10, 1999).

Final Results of Review

Pursuant to the settlement agreement, we recalculated the company-specific and all-other subsidy rates for the period January 1, 1986, through December 31, 1986. The amended final countervailing duty rates are:

Manufacturer/exporter	Revised rates (percent)
Crescent Foundry Co. Pvt. Ltd. ..	9.07
Kejriwal Iron & Steel Works	23.75
Govind Steel	128.60
Uma Iron & Steel Co./Commex Corp.	30.24
All Others	16.66

The Department will instruct the U.S. Customs Service (Customs) to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to Customs. The above rates will not affect the cash deposit requirements currently in effect.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)), 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: January 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2578 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Settlement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: On August 22, 1991, the Department of Commerce ("the Department") published in the **Federal Register** its final results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period 1987 (56 FR 41658). Pursuant to a settlement agreement, the Department has recalculated the countervailing duty rates. The final countervailing duty rates for this review period are listed below in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On August 22, 1991, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1987 through December 31, 1987. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 56 FR 41658. Subsequently, respondents challenged the final results before the Court of International Trade (CIT). The primary issue involved the calculation of the program rates for the subsidies provided under India's International Price Reimbursement Scheme (IPRS). The IPRS is a program through which the Government of India (GOI) provided rebates to castings exporters that purchased domestically-produced pig iron at prices set by the GOI. According to the GOI, these rebates were calculated to equal the differences between the higher domestic prices actually paid and the lower alternative prices available from sources outside of India.

As the IPRS was also the subject of litigation for the review period 1985 in *Creswell* v. *United States*, Consolidated Court No. 91–01–00012 (*Creswell*), litigation for the review period 1987 was stayed pending finalization of *Creswell*. After the CIT affirmed the Department's remand determination for the 1985 administrative review (*see Creswell*, slip op. 98–139 (CIT Sept. 29, 1998)), the Department published a notice of amended final results in accordance with that opinion. *See Certain Iron-metal Castings from India: Amended Final Results of Countervailing Duty Administrative Review In Accordance With Decision Upon Remand*, 63 FR 67858 (December 9, 1998). In lieu of pursuing further litigation with respect to the administrative review of the review period 1987, the parties have entered into a settlement agreement. The parties agreed to countervailing duty rates that were calculated based on the methodology approved by the CIT in *Creswell*. On December 10, 1999, the CIT approved the settlement agreement and dismissed the lawsuit. *See Super Castings*, v. *United States*, Slip Op. 99–131, Consol. Ct. No. 91–09–00659 (CIT December 10, 1999).

Final Results of Review

Pursuant to the settlement agreement, we recalculated the company-specific and all-other subsidy rates for the period January 1, 1987, through December 31, 1987. The amended final countervailing duty rates are:

Manufacturer/exporter	Revised rates (%)
Crescent Foundry Co. Pvt. Ltd. ..	8.25
Kejriwal Iron & Steel Works	7.18
RSI India Pvt. Ltd.	9.42
Uma Iron & Steel Co.	7.56
Super Castings (India)	37.96
Select Steel	37.17
Commex	24.39
All Others	18.62

The Department will instruct the U.S. Customs Service (Customs) to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to Customs. The above rates will not affect the cash deposit requirements currently in effect.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)), 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: January 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2579 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application No. 90–7A007.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to The United States Surimi Commission ("USSC") on January 28, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on August 30, 1990 (55 FR 35445).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs,

International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export TradingCompany Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90–7A007, was issued to The United States Surimi Commission ("USSC") on August 22, 1990 (55 FR 35445, August 30, 1990), and lastly amended on August 3, 1995 (60 FR 41879, August 14, 1995).

USSC's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new "Members" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Highland Light Seafoods, LLC, Seattle, WA (Controlling Entity: Highland Light, Inc., Seattle, WA) and The Starbound Limited Partnership, Seattle, WA (Controlling Entity: Aleutian Spray Fisheries, Inc., Seattle, WA).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 28, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–2568 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 88–5A013.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review ("Certificate") to the Construction Industry Suppliers Association of America International ("CISAI") on January 13, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Casting Industry Suppliers of America International's original Certificate was issued on October 13, 1988 (53 FR 43253, October 26, 1988), and previously amended on March 2, 1990 (55 FR 23123, June 6, 1990), December 16, 1991 (57 FR 883, January 9, 1992) and on October 9, 1997 (62 FR 54832, October 22, 1997). Casting Industry Suppliers of America International's Certificate has been amended to:

1. Change the listing of the Certificate holder cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: CISA Export Trade Group, Inc. (Casting Industry Suppliers of America International); and

2. Change the listing of the "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Didion Manufacturing Company (Didion International, Inc.); and

3. Delete the following companies as "Members" of the Certificate within the meaning of section 325.2 (1) of the Regulations (15 CFR 325.2 (1)): Georg Fischer Disa, Inc., Holly, MI; Hickman, Williams & Company, Livonia, MI; Borden Chemical Company, Louisville, KY; Delta Resins & Refractories, Milwaukee, WI; Vulcan Engineering, Helena, AL and

4. Add the following companies as new "Members" of the Certificate within the meaning of § 325.2 (1) of the regulations (15 CFR 325.2 (1)): ABB Industrial System Inc, Columbus, Ohio, for the activities of its division ABB Metallurgy, New Brunswick, NJ; CSI Industrial Systems Corporation, Grayling, MI; Fairmount Minerals, Ltd., Chardon, OH; and Hamilton Technical Ceramics, Paris, ON Canada.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 13, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–2569 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020100B]

Fishing Vessel Declaration For Western Gulf of Maine Restricted Fishery Program; Proposed Information Collection; Comment Request

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 4, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *LEngelme@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard A. Pearson, One Blackburn Drive, Gloucester, MA 01930, 978–281–9279.

SUPPLEMENTARY INFORMATION:

I. Abstract

The New England Fishery Management Council (NEFMC) is currently considering management alternatives for the Gulf of Maine (GOM) multispecies fishery for inclusion in Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan (FMP). Two of the potential management measures have collection-of-information requirements associated with them.

These are the Western Gulf of Maine (WGOM) Restricted Fishery Program and the Multispecies Party/Charter Closed Area Exemption Certificate. These are described here.

Western GOM Restricted Fishery Program.

One of the management measures proposes to establish a new declaration that would allow vessel owners to annually enroll into a program entitled the Western Gulf of Maine (WGOM) Restricted Fishery Program. Vessels enrolled in this program would be allowed access to the area referred to as the WGOM Restricted Fishery Area, but would be limited to 25 Days-At-Sea or 25 trips, whichever is less, during the months of February, March, April and May in any fishing year. Vessels not enrolled in the WGOM Restricted Fishery Program category would be prohibited from fishing in the WGOM restricted fishery area during these months.

The WGOM restricted fishery area has preliminarily been described as an area extending from 43°50' N. Lat. and the Maine coast to 43°50' N. Lat., 70°00' W. Long. to 43°00' N. Lat., 70°15' W. Long. to 42°00' N. Lat., 70°15' W. Long. to 42°00' and the Massachusetts coast.

Multispecies Party/Charter GOM Closed Area Exemption Certificate

This proposed management measure would require vessel owners possessing a multispecies party/charter Federal permit, or operating a vessel as a party/charter vessel and fishing for multispecies, to obtain an exemption certificate to be allowed access to fish in GOM closed areas. This exemption certificate would allow access to GOM closed areas but would prohibit the vessel owner from utilizing multispecies days-at-sea while carrying passengers for hire on-board the vessel for the duration of the exemption certificate. Three potential duration periods have been proposed for the certificate, three months, six months and 12 months.

II. Method of Collection

Vessel owners electing to enroll into the WGOM Restricted Fishery Program would be required to complete an application form. Vessel owners would apply for the Multispecies Party/Charter GOM Closed Area Exemption Certificate by making a phone call.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,003.

Estimated Time Per Response: 5 minutes for the Western GOM Restricted Fishery Program and 2 minutes for the Multispecies Party/Charter GOM Closed Area Exemption Certificate.

Estimated Total Annual Burden Hours: 57.

Estimated Total Annual Cost to Public: $438.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–2575 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020100A]

Marine Mammal Stranding Report; Proposed Information Collection; Comment Request

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 4, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *LEngelme@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nicole R. Le Boeuf, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 402(b) of the Marine Mammal Protection Act (MMPA) requires that information on marine mammal strandings be collected. The Marine Mammal Stranding Reports provide baseline information on marine mammal mortalities, human interactions with marine mammals, and marine mammal population dynamics. NMFS uses the information to fulfill management responsibilities under the

MMPA. The Marine Mammal Stranding Reports are submitted by members of the marine mammal stranding network—the vast majority of whom are volunteers who have been authorized by NMFS to respond to strandings.

There are three marine mammal stranding data forms proposed for use. All the forms are intended to accurately characterize marine mammal strandings data. The new Marine Mammal Human Interaction and Marine Mammal Disposition Reports are designed to supplement the existing main form, the Marine Mammal Stranding Report.

The Marine Mammal Stranding Report was designed to provide a basic record of a marine mammal stranding event. The proposed Marine Mammal Stranding Report contains minor modifications of the form currently in use by the stranding networks. The modifications were made to increase consistency with data collected and currently used databases, to clarify meanings of data fields, and to improve the overall readability and appearance of the form.

The Marine Mammal Human Interaction Report is designed to provide stranding responders with a tool to objectively examine and collect data on marine mammal strandings specific to signs of human interaction. The Report is intended to prompt the examiner to collect data that will lead to a human interaction determination of "yes", "no", or "could not be determined". The determination is recorded on the Marine Mammal Stranding Report, but the detailed information supporting this determination is provided on the Marine Mammal Human Interaction Report. The data collected on this form will help managers determine the frequency and type of human interactions that occur with marine mammals.

The Marine Mammal Disposition Report is designed to provide information regarding the treatment and disposition of a live marine mammal after initial examination and/or rehabilitation. Stranding network participants submit the Marine Mammal Stranding Report on a timely basis, but a live stranded animal may require longer care and/or may be deemed non-releasable and may be permanently retained in a captive display facility. The Marine Mammal Disposition Report allows the stranding network to provide follow-up information on the care, release, tagging, and specimen collection of live stranded marine mammals. This information will help managers track the final disposition of marine mammals that strand alive.

II. Method of Collection

Stranding Network members submit basic biological data contained on the reporting forms to NMFS Regional Offices for compilation and analysis.

III. Data

OMB Number: 0648–0178.

Form Number: NOAA Forms 89–864, 89–870, and 89–869.

Type of Review: Regular submission.

Affected Public: Individuals, not-for-profit institutions, business or other for-profit, Federal government, and state and local government

Estimated Number of Respondents: 400

Estimated Time Per Response: 20 minutes

Estimated Total Annual Burden Hours: 2,240

Estimated Total Annual Cost to Public: $2,200

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–2576 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012800I]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a meeting to discuss stock assessment plans for 2000. The meeting will be open to the public.

DATES: The meeting will be held February 28–February 29, 2000. The meeting will begin on Monday, February 28, 2000 at 10:00 a.m., and reconvene February 29, 2000 at 8:00 a.m.; the meeting will run as late as necessary each day to complete scheduled business.

ADDRESSES: The meeting will be held at the Pacific States Marine Fisheries Commission, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027–2522.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to plan the stock assessment process for groundfish species in 2000. The meeting will consider revisions to the terms of reference used for 1999 stock assessments, revise the goals and objectives for the annual stock assessment cycle, develop a calendar for 2000 stock assessment activities, confirm the list of species to be assessed in 2000, designate the resources and personnel for the assessments and the reviews, and discuss ways of improving coordination of the process. The meeting will also consider developing draft terms of reference for the process to rebuild overfished stocks.

Although non-emergency issues not contained in this notice may be discussed at the meeting, those issues will not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2574 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 000131021–0021–01]

National Weather Service (NWS) Modernization and Associated Restructuring; Final Certification of No Degradation of Service for the Combined Consolidation and/or Automation and Closure of Eight Weather Service Offices (WSO)

AGENCY: NWS, NOAA, Commerce.

ACTION: Notice.

SUMMARY: On January 28, 2000, the Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of Consolidation and/or Automation and Closure certification approval for WSOs Hartford, Connecticut; Kahului, Hawaii; Portland, Maine; Boston and Worcester, Massachusetts; Concord, New Hampshire; Providence, Rhode Island; and Beckley, West Virginia. Pub. L. 102–567 requires the final certifications be published in the FR. This notice is intended to satisfy that requirement.

EFFECTIVE DATE: February 4, 2000.

ADDRESSES: Requests for copies of the final certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910–3283.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 ext. 136.

SUPPLEMENTARY INFORMATION: These eight certifications were proposed in the March 26, 1999, FR for public comment. The 60-day public comment period closed on May 26, 1999. One public comment was received from Mr. Jack W. Ferns, Director, State of New Hampshire Department of Transportation, pertaining to WSO Concord. The comment and the NWS response is set forth here for reference.

Comment on Concord: Mr. Ferns wrote, "A number of years ago our office opposed the consolidation of Flight Service Stations (FSS) and specifically the closure of the FSS at Concord. We felt strongly, at the time, that loosing [sic] the FSS would compromise aviation safety. Now with the proposed closure of the NWS we feel that Concord has been dealt a second blow.

While we understand the effects of automation on our economy and the existing modernization process, we continue to recognize that weather services available on a person to person basis is becoming obsolete.

Our Department supports your effort to commission and certify an Automated Surface Observing System (ASOS) at Concord. Thank you for the opportunity to respond."

NWS Response: Mr. John Jensenius, Liaison Officer for WS Concord, spoke with Mr. Ferns to assure him of the NWS commitment to provide continued support to the Concord area. Mr. Ferns said he is disappointed he will no longer be able to walk to the Concord office and discuss the weather with NWS personnel. Mr. Jensenius told him he could call the Portland forecast office, located in Gray, Maine, anytime for a weather briefing and offered to provide Mr. Ferns with a tour of the Portland office. Mr. Ferns stated he would try to work a tour into his schedule.

At its June 25, 1999, meeting, the Modernization Transition Committee (MTC) endorsed these certifications as not resulting in a degradation of service.

After consideration of the public comment received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved these eight combined consolidation and/or automation and closure certifications and transmitted notice of approval to Congress on January 28, 2000. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements of Pub. L. 102–567 by publishing the final consolidation and/or automation and closure certification notice in the FR.

Dated: February 1, 2000.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 00–2572 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 February 2000 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C. January 28, 2000.

Charles H. Atherton,

Secretary.

[FR Doc. 00–2510 Filed 2–3–00; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of November 24, 1999 (64 FR 66171), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Cigarette Lighters (16 CFR Part 1210). No comments from members of the public were received in response to the **Federal Register** notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval.

The Safety Standard for Cigarette Lighters requires disposable and novelty lighters to be manufactured with a mechanism to resist operation by children younger than five years of age. Certification regulations implementing the standard require manufacturers and importers to submit to the Commission a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and a physical specimen of the lighter before the introduction of each model of lighter in commerce.

The Commission uses the records of testing and other information required

by the certification regulations to determine that disposable and novelty lighters have been tested and certified for compliance with the standard by the manufacturer or importer. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Cigarette Lighters, 16 CFR Part 1210.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of disposable and novelty cigarette lighters.

Estimated number of respondents: 45.

Estimated average number of hours per respondent: 175 per year.

Estimated number of hours for all respondents: 7,875 per year.

Estimated cost of collection for all respondents: $500,000 to $1,000,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by [insert date that is 30 days from publication of this notice in the **Federal Register**] to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 31, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–2438 Filed 2–3–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION:

SUMMARY: In the **Federal Register** of November 24, 1999 (64 FR 66171), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR Part 1505). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval by OMB.

The regulations in Part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Section 1505.4(a)(3) of the regulations requires manufacturers and importers of electrically operated toys and children's articles to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The records of testing and other information required by the regulations allow the Commission to determine if electrically operated toys and children's articles comply with the requirements of the regulations in Part 1505. If the Commission determines that products fail to comply with the regulations, this information also enables the Commission and the firm to: (i) identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, 16 CFR Part 1505.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of electrically operated toys and children's articles.

Estimated number of respondents: 40.

Estimated average number of hours per respondent: 200 per year.

Estimated number of hours for all respondents: 8,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by [insert date that is 30 days from publication of this notice in the **Federal Register**] to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available for Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 3, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–2439 Filed 2–3–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of

information under the provisions of the Paperwork Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Technical Assistance for Public Participation (TAPP) Application; DD Form 2749; OMB Number 0704–0392.

Type of Request: Extension.

Number of Respondents: 265.

Responses per Respondent: 1.

Annual Responses: 265.

Average Burden per Response: 4 hours.

Annual Burden Hours: 1,060.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements. Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will aid communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review committees receiving the products and services.

Affected Public: Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2441 Filed 2–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–12]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–12 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 November 1999

In reply refer to:
I-99/012810

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-12, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $45 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Mark P. Scher

Mark P. Scher
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 19 million
Other	$ 26 million
TOTAL	$ 45 million

(iii) Description of Articles or Services Offered: Seven hundred Joint Direct Attack Munitions (JDAM) tail kits, MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) Military Department: Air Force (YEQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 12 November 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - Joint Direct Attack Munitions

The Government of Israel has requested a possible sale of 700 Joint Direct Attack Munitions (JDAM) tail kits, MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $45 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will contribute significantly to U.S. strategic and tactical objectives. Israel will maintain its qualitative edge with a balance of new weapons procurement and upgrades supporting its existing systems. Israel will have no difficulty absorbing these JDAMs into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Joint Direct Attack Munitions is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–2440 Filed 2–3–00; 8:45 am]
BILLING CODE 5001–15–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Seventh Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: Department of Defense, National Security Education Program (NSEP).

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its Seventh Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: The 2000 NSEP Grants Competition begins on Friday, February 4, 2000. [Preliminary Proposals are due Monday, April 10, 2000.

ADDRESSES: Grants Solicitations (application and guidelines) will be available and may be downloaded from the NSEP home page (http://www.ndu.edu/nsep) beginning Friday, February 4, 2000. As alternate methods, you may obtain copies of the solicitation package by: writing to NSEP, Institutional Grants, Rossyln P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248; by facsimile request nsepo@ndu.edu

FOR FURTHER INFORMATION CONTACT: Carol Anne Spreen, Institutional grants Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209–2248; (703) 696–1991; Electronic mail address: spreenc@ndu.edu

Dated: November 22, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2442 Filed 2–3–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Eastern Arkansas Region Comprehensive Study, Bayou Meto Basin, AR, General Reevaluation

AGENCY: U.S. Army Corps of Engineers, Department of Defense

ACTION: Notice of intent.

SUMMARY: The purpose of this general reevaluation is to develop a plan that

provides flood control, agricultural water supply, groundwater protection and conservation, waterfowl management, and environmental enhancement and restoration. The Grand Prairie Region and Bayou Meto Basin, Arkansas, flood-control project was authorized by the Flood Control Act of 1950 and deauthorized by the Water Resources Development Act (WRDA) of 1986. This project was reauthorized by the WRDA of 1996 with an expanded scope that includes groundwater protection and conservation, agricultural water supply, and waterfowl management. Language in the Fiscal Year 1998 Appropriations Act directed the U.S. Army Corps of Engineers to initiate a reevaluation of the Bayou Meto Basin from within available funds. The appropriations acts for fiscal year 1999 and 2000 provided funding to continue to reevaluation.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Bright, telephone (901) 544–0745, CEMVM–PM, 167 North Main Street, Room B–202, Memphis, TN 38103–1894. Questions regarding the DEIS may be directed to Mr. Edward Lambert, telephone (901) 544–0707, CEMVM–PM–E.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Eastern Arkansas Region Comprehensive Study, completed in 1990, indicated that a feasible plan of improvement for agricultural water supply and conservation exists for the Bayou Meto Basin, Arkansas. The Bayou Meto Basin Project general reevaluation will focus on developing a plan of improvement that will meet the flood control and water supply needs of the project area while providing substantial net environmental benefits. Preliminary studies indicate the a combination of measures of needed to meet the water supply needs of the project area. Identified water-supply components are (1) water conservation (increased irrigation efficiencies), (2) groundwater protection and conservation, (3) additional on-farm storage, and (4) a system to import surface water from the Arkansas River. Irrigation and flood-control features will be designed to avoid or minimize adverse environmental impacts; alternative plan designs will include recommendations from state and Federal natural resource agencies. Moreover, a major emphasis will be placed on the formulation of environmental project features. Measures to create and/or restore fish and wildfish habitat (including waterfowl habitat), improve water quality, and protect existing surface water and groundwater resources will be integral components of all alternative plans. The project area encompasses 779,109 acres between the Arkansas and White rivers in east central Arkansas; it includes portions of Arkansas, Jefferson, Lonoke, and Prairie counties.

2. Alternatives

Alternatives will be developed that provide flood control, agricultural water supply, groundwater conservation and protection, waterfowl management, and environmental enhancement and restoration. Comparisons will be made among alternative plans, and alternative plans will be compared to the "no action" alternative.

3. Scoping Process

An intensive public involvement program has been initiated and will be maintained throughout the study to (1) solicit input from individuals and interested parties so that problems, needs, and opportunities within the project area can be properly identified and addressed and (2) provide status updates to concerned organizations and the general public. Affected Federal, state, and local agencies; affected Indian tribes; and other interested private organizations and parties are encouraged to participate in the scoping process. Significant issues to be analyzed include potential impacts (negative and positive) to groundwater and surface water resources, fisheries, water quality, wetlands, wildlife, endangered species, cultural resources, and agricultural lands. Two public scoping meetings will be held within the project area. The first scoping meeting will be held on February 15, 2000, 5:30 p.m., at the England Elementary School, 400 East DeWitt, England, Arkansas. The second meeting is scheduled for February 16, 2000, 5:30 p.m., at the Lonoke Primary School, 800 Lincoln Street, Lonoke, Arkansas. It is anticipated that the DEIS will be available for public review during the fall of 2002. A public meeting will be held during the review period to receive comments and address questions concerning the DEIS.

Dated: January 26, 2000.

Daniel W. Krueger,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–2545 Filed 2–3–00; 8:45 am]

BILLING CODE 3710–KS–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Mining Activities Associated With Hobet Mining, Inc.'s (Hobet) Spruce No. 1 Surface Mine Located Near Blair, in Logan County, West Virginia

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to Section 404 of the Clean Water Act, the Huntington District, U.S. Army Corps of Engineers (Corps), in cooperation with several Federal and State cooperating agencies will prepare (in accordance with Section 102(2)(c) of the National Environmental Policy Act) an Environmental Impact Statement (EIS). The EIS will evaluate potentially significant impacts to the natural, physical, and human environment as a result of the proposed mining activities associated with Hobet's Spruce No. 1 Surface Mine.

ADDRESSES: Send written comments and suggestions concerning this proposal to Teresa Hughes, U.S. Army Corps of Engineers, Huntington District, Attn: Regulatory Branch–OR–FS, 502 8th Street, Huntington, West Virginia, 25701. Telephone (304) 529–5710 or electronic mail at Teresa.D.Huges@Lrh01.usace.army.mil. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Michael D. Gheen, Chief of Regulatory Branch, Attn: Regulatory Branch–OR–F, U.S. Army Corps of Engineers, Huntington district, 502 8th Street, Huntington, West Virginia 25701, Telephone (304) 529–5487 or electronic mail at Michael.D.Gheen@Lrh01.usace.army.mil

SUPPLEMENTARY INFORMATION: The Corps invites comments and suggestions regarding potential effects of the proposed action, including the regulatory issues and significant environmental effects to be addressed in the EIS, to promote open communication and better decision making. All persons and organizations that have an interest in the proposed project, including affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties, are urged to participate in this NEPA environmental analysis process. Written comments from the public regarding the

environmental and regulatory issues and alternatives to be addressed in the EIS will be accepted. The Corps will hold public meetings to receive public input, either verbal or written, on relevant environmental and regulatory issues that should be addressed in the EIS. The locations and starting times of the public meetings will be announced.

In accordance with 40 CFR 1506.5(c) and 33 CFR Part 325, Appendix B, (8)(f)(2), it is our understanding that Hobet will secure the services of a contractor for the preparation of an EIS. Hobet solicited bids for prospective contractors. Hobet will employ Michael Baker, Jr., Inc. to prepare the EIS for the proposed mining activities associated with the Spruce No. 1 Surface Mine.

The Corps and its cooperating agencies implement Federal and State laws with which mining operations and associated discharges to waters of the United States must comply. The cooperating agencies involved in this NEPA process are the Office of Surface Mining (OSM), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), and the West Virginia Division of Environmental Protection (WVDEP). Each of the cooperating Federal and State agencies will provide their expertise in compiling information and evaluating potential impacts of the proposed project. OSM is responsible for national administration of the Surface Mining Control and Reclamation Act (SMCRA); it has delegated the authority for the SMCRA programs for surface mining operations in West Virginia to the State of West Virginia DEP. Discharges of fill material into waters of the United States are regulated under Section 404 of the Clean Water Act, administered by the Corps and applicable 404 regulations issued by the Corps and EPA. Other discharges to waters of the United States are subject Section 402 of the Clean Water Act, administered nationally by the EPA with authority for the program delegated to the State of West Virginia (DEP). Coordination with the FWS will be accomplished in compliance with the Endangered Species Act (ESA) and the Fish and Wildlife Coordination Act (FWCA). Coordination required by other laws and regulations will also be conducted.

This EIS will evaluate potentially significant environmental impacts associated with Hobet's proposed Spruce No. 1 Surface mine on water quality, streams, aquatic and terrestrial habitat, habitat fragmentation, the hydrological balance, and other individual and cumulative effects. Cumulative environmental impacts may include the efficacy of stream restoration; the viability of reclaimed streams compared to natural waters; the impact of valley fills on aquatic life, wildlife and nearby residents; biological and habitat analyses; and practicable alternatives for in-stream placement of excess overburden; measures to minimize stream filling to the maximum extent practicable; and the effectiveness of mitigation and reclamation measures.

The activity is to remove overburden to expose coal seams in order conduct surface mining activities on the Spruce No. 1 mining area. The proposed action is to issue a 404 permit to authorize the discharge of overburden into the streams in the surrounding project area.

The scoping process (40 CFR 1501.7 and 33 CFR Part 325, Appendix B) will consist of determining the extent to which potentially significant issues shall be analyzed. It shall define the study area based on the resources potentially affected, opportunities, and geographic areas likely affected by alternative plans. It shall identify current and potential future planning related activities to and not part of the study under consideration. The process shall identity and review consultation requirements, so that cooperating agencies (as defined in 40 CFR 15 CFR 1508.12) may prepare required analyses and studies concurrently with the study under consideration. Coordination of such agencies will be in accordance with Executive Order 12372 and 33 CFR 384. The process shall also indicate tentative planning and a decision making schedule.

Comments received in response to this solicitation, including names and address of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered.

To assist the Corps in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. These comments will assist in early scoping and later development of alternatives for the DEIS.

Michael D. Gheen,

Chief, Regulatory Branch.

[FR Doc. 00–2546 Filed 2–3–00; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES AND TIMES: Friday, February 11, 2000, 9:00 am–3:00 pm.

ADDRESSES: Conference Rooms A–106/A–107, U.S. Department of Energy, Nevada Operations Office, 232 Energy Way, North Las Vegas, Nevada 89030–4199. Note: Members of the public who plan to attend this open meeting are requested to contact Mr. Darwin Morgan, Director of the Office of Public Affairs, U.S. Department of Energy, Nevada Operations Office in advance of the meeting in order to facilitate access to the meeting site. Mr. Morgan may be reached at (702) 295–3521 or via e-mail at morgan@nv.doe.gov.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Friday, February 11, 2000

9:00 am–9:15 am—Welcome & Opening Remarks—SEAB Chairman Andrew Athy

9:15 am–9:35 am—Opening Remarks—Energy Secretary Bill Richardson

9:35 am–9:45 am—Introduction of New Board Members

9:45 am–10:15 am—Briefing on the DOE's Racial Profiling Task Force Report

10:15 am–11:00 am—Board Action on the Laboratory Operations Board's External Members' Report on Laboratory Directed Research and Development.

11:00 am–11:45 am—Updates on SEAB Subcommittees and Working Group Activities:

—Russia Task Force

—Education Working Group

11:45 am–1:00 pm—Lunch

1:10 pm–1:30 pm—Updates on SEAB Subcommittees and Working Group Activities:

—Openness Advisory Panel

—NIF Task Force
1:30 pm–2:45 pm—Update on DOE Activities:
—National Nuclear Security Administration
—Energy Efficiency
2:45 pm–3:00 pm—Public Comment Period
3:00 pm–Closing Remarks & Adjourn

This tentative agenda may change. We will have a final agenda available at the meeting.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in North Las Vegas, Nevada, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the programmatic issues that needed to be resolved prior to publication.

Minutes

We will make minutes and a transcript of the meeting available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. You can find more information on the Secretary of Energy Advisory Board at the Board's web site, located at http://www.hr.doe.gov/seab

Issued at Washington, D.C., on January 31, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2542 Filed 2–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–167–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2000.

Take notice that on January 27, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective February 1, 2000, the following tariff sheets:

Thirty-Seventh Revised Sheet No. 8A
Twenty-Eighth Revised Sheet No. 8A.01
Twenty-Ninth Revised Sheet No. 8A.02
Thirty-Third Revised Sheet No. 8B
Twenty-Sixth Revised Sheet No. 8B.01

FGT states that in Docket No. TM00–1–34–000 filed on August 27, 1999, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.75% to become effective for the six-month Winter Period beginning October 1, 1999. In the instant filing, FGT states that it is filing a flex adjustment of 0.25% to be effective February 1, 2000, which, when combined with the proposed Base FRCP of 2.75%, results in an Effective Fuel Reimbursement Charge Percentage of 3.00%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. FGT states that the instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2459 Filed 2–3–00; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–000]

Natural Gas Pipeline Company of America; Notice of Rescheduling of Conference

January 31, 2000.

Take notice that due to closure of the Federal Government because of inclement weather, the conference in the above-captioned proceeding originally scheduled for Tuesday, January 25, 2000, has been rescheduled for Thursday, February 10, 2000, beginning at 10:00 a.m., in Hearing Room No. 1, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 00–2458 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–84–000, et al.]

Panda Gila River, L.P., et al., Electric Rate and Corporate Regulation Filings

January 27, 2000.

Take notice that the following filings have been made with the Commission:

1. Panda Gila River, L.P.

[Docket No. EG00–84–000]

Take notice that on January 20, 2000, Panda Gila River, L.P. (Panda Gila River), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to

Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda Gila River is a Delaware limited partnership, which will construct, own and operate a 2000 MW natural gas-fired generating facility within the region governed by the Western System Coordinating Council (WSCC) and sell electricity at wholesale.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. e prime, inc.; IEP Power Marketing, LLC; CNG Retail Services Corporation; J. Anthony & Associates Ltd.; Energetix, Inc.; Environmental Resources Trust, Inc.; Burlington Resources Trading Inc.

[Docket No. ER95–1269–015; Docket No. ER95–802–019; Docket No. ER97–1845–011; Docket No. ER95–784–017; Docket No. ER97–3556–010; Docket No. ER98–3233–006; Docket No. ER96–3112–013]

Take notice that on January 19, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Union Electric Development Corporation; Central Hudson Enterprises Corporation; PacifiCorp Power Marketing, Inc.

[Docket No. ER97–3663–010; Docket No. ER97–2869–010; Docket No. ER95–1096–021]

Take notice that on January 20, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Bangor Energy Resale, Inc.

[Docket No. ER98–459–008]

Take notice that on January 18, 2000, Bangor Energy Resale, Inc. filed their quarterly report for the quarter ending December 31, 1999, for information only.

5. Central Maine Power Company; Lone Star Steel Sales Company; Northeast Empire Limited Partnership #1; Northeast Empire Limited Partnership #2; Grayling Generation Station L.P.

[Docket No. ER00–1161–000; Docket No. ER00–1162–000; Docket No. ER00–1163–000; Docket No. ER00–1164–000; Docket No. ER00–1165–000]

Take notice that on January 19, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. PEI Power Corp.; Ameren Services Company; Arizona Public Service Company; CH Resources, Inc.; Central and South West Services, Inc.; Maine Public Service Company

[Docket No. ER00–1173–000; Docket No. ER00–1179–000; Docket No. ER00–1180–000; Docket No. ER00–1181–000; Docket No. ER00–1189–000; Docket No. ER00–1190–000]

Take notice that on January 20, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–1182–000]

Take notice that on January 20, 2000, Puget Sound Energy, Inc. (PSE), as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with PP&L Montana, LLC (PPLM), as Transmission Customer.

PSE requests that the Service Agreements become effective as of January 17, 2000.

A copy of the filing was served upon PPLM.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER00–1183–000]

Take notice that on January 20, 2000, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with TransCanda Power Marketing, Ltd. under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on January 10, 2000.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Old Dominion Electric Cooperative

[Docket No. ER00–1199–000]

Take notice that on January 21, 2000, Old Dominion Electric Cooperative filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ES00–16–000]

Take notice that on January 21, 2000, Consolidated Edison Company of New York, Inc. filed an application under Section 204 of the Federal Power Act seeking authorization to issue unsecured short-term debt until December 31, 2001, in an amount not to exceed $800 million at any one time.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Santa Rosa Energy LLC

[Docket No. QF97–138–001]

Take notice that on January 21, 2000, Santa Rosa Energy LLC, located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a qualifying cogeneration facility (facility) pursuant to 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, located at the Santa Rosa Energy Center, is a gas turbine combined cycle cogeneration facility that uses natural gas as its fuel source. The facility includes one combustion turbine generator, with a rated capacity of approximately 168,300 kW at ISO conditions, a heat recovery steam generator, and a condensing steam turbine generator rated at approximately 74,500 kW. The facility will be located in Pace, Florida, in the county of Santa Rosa.

The facility will interconnect directly with the transmission system of Gulf Power Company, located in Pensacola, Florida, and will sell its useful output at wholesale to Gulf Power Company as well as other various qualified buyers. Gulf Power Company will provide supplementary, standby, back-up and maintenance power to the Santa Rosa Energy Center.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER98–1643–002]

Take notice that Portland General Electric Company (PGE), on January 19, 2000, tendered for filing proposed changes in its FERC Electric Service Tariff Rate schedule No. 11. The changes consist of restrictions on the

sale of power between PGE, on one hand, and Sierra Pacific Power Company, Nevada Power Company, Sierra Pacific Energy Company, and Sierra Pacific Resources, on the other, based on the proposed acquisition of PGE by Sierra Pacific Resources.

Copies of the filing were served upon PGE's jurisdictional customers and the Oregon Public Utility Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Detroit Edison Company

[Docket No. ER00–459–001]

Take notice that on January 29, 2000, Detroit Edison Company submitted a compliance filing in the above-referenced matter.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Nordic Marketing, L.L.C.

[Docket No. ER00–774–000]

Take notice that on December 21, 1999, and January 6, 2000, Nordic Marketing, L.L.C., tendered for filing supplemental information to its December 10, 1999, filing in the above-referenced docket.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–957–000]

Take notice that on January 19, 2000, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an Amendment to its executed Service Agreement for Network Integration Transmission Service between LG&E/KU and East Kentucky Power Cooperative, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Potomac Electric Power Company

[Docket No. ER00–977–000]

Take notice that on January 19, 2000, Potomac Electric Power Company submitted a correction to Amendment No. 1 to its electric service agreement with Southern Maryland Electric Cooperative, Inc. The requested effective date of January 1, 2000 for Amendment No. 1, a rate reduction, was not changed.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER00–1143–000]

Take notice that on January 19, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Northern States Power Company (NSP).

Northern Indiana has requested an effective date of January 20, 2000.

Copies of this filing have been sent to NSP, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER00–1151–000]

Take notice that on January 19, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a Letter of Termination of the Service Agreement between Virginia Electric and Power Company and Southern Company Energy Marketing L.P. (Southern) dated January 1, 1997 and approved by the FERC in a letter order on June 11, 1997 under Docket No. ER97–2834–000.

Virginia Power respectfully requests an effective date of the termination of February 12, 2000, as requested by Southern.

Copies of the filing were served upon Southern Company Energy Marketing L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company

[Docket No. ER00–1152–000]

Take notice that on January 19, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Powerex British Columbia Power Exchange Corporation.

CILCO requested an effective date of January 11, 2000, for the service agreements.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Ogden Martin Systems of Union, Inc.

[Docket No. ER00–1155–000]

Take notice that on January 19, 2000, Ogden Martin Systems of Union, Inc. (Ogden Union), tendered for filing a Power Sales Agreement by and between Sempra Energy Trading Corp. and Ogden Union as a service agreement under Ogden Union's Market Based Rate Tariff.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Power a division of Duke Energy Corporation

[Docket No. ER00–1156–000]

Take notice that on January 19, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with PG&E Energy Trading-Power, L.P., for power sales at market-based rates. Duke requests that the proposed Service Agreement be permitted to become effective on January 6, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Energy Corporation

[Docket No. ER00–1157–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Consumers Energy Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 7, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Duke Energy Corporation

[Docket No. ER00–1158–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Consumers Energy Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 7, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Duke Energy Corporation

[Docket No. ER00–1159–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Tenaska Power Service Co., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 10, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Energy Corporation

[Docket No. ER00–1160–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with PECO Energy Company (PECO), for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 1, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Enron Energy Services, Inc.

[Docket No. ER00–1167–000]

Take notice that on January 19, 2000, Enron Energy Services, Inc. (EES), tendered for filing pursuant to Section 205 of the Federal Power Act, its FERC Electric Rate Schedule No. 3 for the Sale, Assignment or Transfer of Firm Transmission Rights (FTRs) to become effective as of February 1, 2000, EES requests a waiver of the 60-day notice requirement. The Rate Schedule authorizes EES to sell, assign or transfer FTRs in California. EES states that Rate Schedule No. 3 is filed in accordance with the Commission's order in California Independent System Operator Corporation, 89 FERC¶ 61,153 (1999).

This filing was sent to the California Independent System Operator Corporation.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Company

[Docket No. ER00–1168–000]

Take notice that on January 19, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's regulations, an agreed-upon rate reduction for full requirements service to Caprock Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., and Roosevelt Electric Cooperative, Inc. NCS also filed a Service Agreement for Network Transmission Service between SPS Wholesale Merchant Function and SPS Transmission Function.

NCS proposes that the filing become effective January 14, 2000.

Copies of this filing were served upon the affected purchasers under the rate schedules and the state commissions within whose jurisdiction SPS sells electricity under the affected rate schedules.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Tiverton Power Associates Limited Partnership

[Docket No. ER00–1171–000]

Take notice that on January 19, 2000, Tiverton Power Associates Limited Partnership (Tiverton), tendered for filing, under section 205 of the Federal Power Act, a rate schedule under which Tiverton will sell energy, capacity and ancillary services at market-based rates and will reassign of transmission capacity.

Tiverton requests an effective date for the proposed rate schedule concurrent with the commencement of operations at its generating facilities.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Williams Energy Marketing & Trading Company

[Docket No. ER00–1172–000]

Take notice that on January 19, 2000, Williams Energy Marketing&Trading Company (Williams EM&T), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, revised pages to the Reliability Must-Run Service Agreements (RMR Agreements) between Williams EM&T and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos, Huntington Beach, and Redondo Beach Generating Stations.

The purpose of the filing is to update Williams EM&T's existing RMR Agreements to reflect an extension of the existing RMR Agreements for a reduced number of RMR units for 2000, certain annual updates to Schedules A, B & D of the RMR Agreements, and changes to the personnel to receive notice pursuant to Schedule J of the RMR Agreements.

Williams EM&T requests waiver of the prior notice requirements of Section 35.3 of the Commission's Regulations, 18 CFR 35.3, to permit its revised RMR Agreements to become effective as of January 1, 2000.

Copies of the filing were served upon the ISO and Southern California Edison Company.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Northern States Power Company (Minnesota); Northern States Power Company; (Wisconsin)

[Docket No. ER00–1175–000]

Take notice that on January 20, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Network Operating Agreement and a Network Integration Transmission Service Agreement between NSP and City of Medford, WI—Medford Electric Utility.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. AmerGen Energy Company, L.L.C.

[Docket No. ER00–1177–000]

Take notice on January 20, 2000, AmerGen Energy Company, L.L.C.,

tendered for filing a Reactive Power Compensation Agreement with GPU Energy under its FERC Electric Tariff Original Volume No. 1.

AmerGen is requesting an effective date of December 21, 1999, for the Reactive Power Compensation Agreement.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Tampa Electric Company

[Docket No. ER00–1178–000]

Take notice that on January 20, 2000, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with the City of Tallahassee, Florida (Tallahassee) under Tampa Electric's market-based sales tariff.

Tampa Electric requests that the service agreement be made effective on December 26, 1999.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2456 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1142–000, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER00–1142–000]

Take notice that on January 19, 2000. Wisconsin Electric Power Company filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas and Electric Company

[Docket No. ER00–1154–000]

Take notice that on January 19, 2000, Southern Indiana Gas & Electric Company filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power, Inc.; Kansas City Power & Light Company

[Docket Nos. ER00–1174–000, ER00–1176–000]

Take notice that on January 20, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power a Division of Duke Energy Corporation

[Docket No. ER00–1184–000]

Take notice that on January 20, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with TXU Energy Trading Company for power sales at market-based rates. Duke states that this filing is in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Part 35).

Duke requests that the proposed Service Agreement be permitted to become effective on November 2, 1999.

Duke states that a copy of this filing has been served on the North Carolina Utilities Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power a Division of Duke Energy Corporation

[Docket No. ER00–1185–000]

Take notice that on January 20, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Statoil Energy Services, Inc. for power sales at market-based rates. Duke states that this filing is in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Part 35).

Duke requests that the proposed Service Agreement be permitted to become effective on January 14, 2000.

Duke states that a copy of this filing has been served on the North Carolina Utilities Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER00–1186–000]

Take notice that on January 20, 2000, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Coral Power, L.L.C. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool, Inc.

[Docket No. ER00–1187–000]

Take notice that on January 20, 2000, Southwest Power Pool, Inc. (SPP) tendered for filing executed service agreements for firm point-to-point transmission service and loss compensation service under the SPP Tariff with Southwestern Electric Power Company as Designated Agent for Tex-La Electric Cooperative of Texas, Inc (Tex-La).

Copies of this filing were served on Tex-La.

SPP requests an effective date of January 1, 2000 for each of these service agreements.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Potomac Electric Power Company

[Docket No. ER00–1188–000]

Take notice that on January 29, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Reliant Energy Services, Inc.

An effective date of September 29, 1999 for these service agreements, with waiver of notice, is requested.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER00–1191–000]

Take notice that on January 21, 2000, Niagara Mohawk Power Corporation tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and PSEG Power New York Inc. dated as of January 10, 2000.

Niagara Mohawk Power Corporation requests an effective date of February 15, 2000 or, if later, the closing date of the sale of the Albany generating facility. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cabrillo Power I LLC; Cabrillo Power II LLC

[Docket No. ER00–1192–000]

Take notice that on January 21, 2000, Cabrillo Power I LLC and Cabrillo Power II LLC (Cabrillo I & II) tendered for filing their annual update filing governing Reliability Must Run (RMR) services provided by their power plants to the California Independent System Operator Corporation (ISO). Cabrillo I & II's filing includes an agreed upon one-year extension of the RMR Agreements, and provides updates to various Schedules appended to the RMR Agreements related to Contract Service Limits, Target Available Hours, and pre-paid Start-up Charges under the RMR Service Agreements.

Cabrillo I & II have requested an effective date of January 1, 2000.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. EnerZ Corporation

[Docket No. ER00–1193–000]

Take notice that on January 21, 2000, EnerZ Corporation (EnerZ) filed a Notice of Cancellation of its Rate Schedule FERC No. 1, with a proposed effective date of January 31, 2000. EnerZ is no longer engaged in the power marketing business, will not conduct power marketing activities in the future, and has no outstanding power sales contracts; accordingly, no purchasers will be affected by this notice.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Pennsylvania Electric Company

[Docket No. ER00–1194–000]

Take notice that on January 21, 2000, Pennsylvania Electric Company (doing business and hereinafter referred to as GPU Energy) submitted for filing amendments to the 115 kV Seward-Conemaugh Interconnection Agreement Between GPU Energy and Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Metropolitan Edison Company, Pennsylvania Power and Light Company, Philadelphia Electric Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and the United Gas Improvement Company. The amendments modify Schedule 1 and Schedule 2 of the Interconnection Agreement.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company; Jersey Central Power & Light Company

[Docket Nos. ER00–1195–000, ER00–1196–000]

Take notice that on January 21, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. El Paso Merchant Energy, L.P.

[Docket No. ER00–1197–000]

Take notice that on January 21, 2000, El Paso Merchant Energy, L.P. filed a Notice of Succession in Ownership or Operation which hereby adopts, ratifies and makes its own in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by El Paso Power Services Company and Sonat Power Marketing L.P., effective December 31, 1999.

El Paso Power Services Company—Rate Schedule FERC No. 1 (Market-Based Rate Schedule)

Sonat Power Marketing L.P.—Rate Schedule FERC No. 1 (Market-BasedRate Schedule)

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. El Paso SPM Company

[Docket No. ER00–1198–000]

Take notice that on January 21, 2000, El Paso SPM Company, 1001 Louisiana Street, Houston, Texas 77002, filed a Notice of Succession in Ownership or Operation which hereby adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by Sonat Power Marketing Inc., effective December 31, 1999.

Rate Schedule FERC No. 1 (Market-Based Rate Schedule)

Comment dqte: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER00–1206–000]

Take notice that on January 24, 2000, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Clinton Energy Management, Inc. (3CEMS).

Cinergy and CEMS are requesting an effective date of January 1, 2000.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Sunbury Generation, LLC

[Docket No. ER00–1170–000]

Take notice that on January 19, 2000, Sunbury Generation, LLC (Sunbury), tendered for filing a Power Purchase Agreement between Sunbury and WPS Energy Services, Inc., (PPA).

Sunbury requests that the Commission waive its notice of filing requirements to allow the PPA to become effective on January 20, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Soyland Power Cooperative, Inc.

[Docket No. ER00–1204–000]

Take notice that on January 24, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement between Soyland and Clinton Electric Cooperative, Inc., dated December 15, 1999, and Amendment No. 1 to such Service Agreement dated January 11, 2000. During the terms of the Service Agreement and Amendment No. 1, Soyland will provide firm short-term power to Clinton. Clinton was formerly a member of Soyland, but left Soyland as of December 31, 1997. The Service Agreement represents a decrease in rates when compared to the rates paid by Clinton as a Soyland member as of December 31, 1997. Soyland seeks Commission authorization to provide power according to the terms and rates of the Service Agreement and Amendment No. 1 to Clinton with an effective date of January 1, 2000.

Soyland also seeks a waiver of the commission 60 day prior notice requirements. The power sale will provide Clinton with all of its requirements for the period January 1 through February 29, 2000. Clinton has submitted a Certificate of Concurrence indicating its acceptance of the rates and terms of the Service Agreement and Amendment No. 1.

A copy of this filing was served on Clinton Electric Cooperative, Inc.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. WPS Energy Services, Inc.

[Docket No. ER00–1169–000]

Take notice that on January 19, 2000, WPS Energy Services, Inc. (ESI), tendered for filing a Brokering and Dispatch Agreement (Agreement) between ESI and Sunbury Generation, LLC (Sunbury).

ESI requests that the Commission waive its notice of filing requirements to allow the Agreement to become effective on January 20, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Cleco Utility Group Inc.

[Docket No. ER00–1153–000]

Take notice that on January 19, 2000, Cleco Utility Group Inc., Transmission services (CLECO), tendered for filing service agreements for non-firm and short term firm point-to-point transmission services under its Open Access Transmission Tariff with Williams Energy Marketing & Trading Company.

CLECO requests an effective date of January 17, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Southwestern Public Service Company

[Docket No. ER00–1168–000]

Take notice that on January 24, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, an amendment to it January 19, 2000, filing of an agreed-upon rate reduction for full requirements service to Caprock Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., and Roosevelt Electric Cooperative, Inc., and Service Agreement for Network Transmission Service between SPS Wholesale Merchant Function and SPS Transmission Function. The amendment corrects one page of each rate schedule that was incorrectly redlined in the January 19, 2000 filing.

NCS proposes that the amended filing become effective January 14, 2000.

Copies of this filing were served upon the affected purchasers under the rate schedules and the state commissions within whose jurisdiction SPS sells electricity under the affected rate schedules.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER00–1211–000]

Take notice that on January 24, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with QST Energy Trading, Inc., (QST).

A copy of the filing was served upon QST.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Energy, Inc.

[Docket No. ER00–1212–000]

Take notice that on January 24, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with NP Energy Inc.

A copy of the filing was served upon NP Energy Inc.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER00–1210–000]

Take notice that on January 24, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with PECO Energy (PECO).

A copy of the filing was served upon PECO.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER00–1208–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Consumers Energy Company (Consumers).

Cinergy and Consumers are requesting an effective date of one date after this filing.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Soyland Power Cooperative, Inc.

[Docket No. ER00–1205–000]

Take notice that on January 24, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement between Soyland and Tri-County Electric Cooperative, Inc., dated December 16, 1999, and Amendment No. 1 to such Service Agreement dated January 12, 2000. During the terms of the Service Agreement and Amendment No. 1, Soyland will provide firm short-term power to Tri-County. Tri-County was formerly a member of Soyland, but left Soyland as of December 31, 1997. The Service Agreement represents a decrease in rates when compared to the rates paid by Tri-County as a Soyland member as of December 31, 1997. The power sale will provide Tri-County with all of its requirements for the period January 1 through February 29, 2000. Tri-County has submitted a Certificate of Concurrence indicating its acceptance of the rates and terms of the Service Agreement and Amendment No. 1.

Soyland seeks Commission authorization to provide power according to the terms and rates of the Service Agreement and Amendment No. 1 to Tri-County with an effective date of January 1, 2000. Soyland also seeks a waiver of the commission 60 day prior notice requirements.

A copy of this filing was served on Tri-County Electric Cooperative, Inc.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Central Power and Light Company

[Docket No. ER00–1203–000]

Take notice that on January 24, 2000, Central Power and Light Company (CPL), tendered for filing an Interconnection Agreement between CPL and Duke Energy Hidalgo, L.P., (Duke).

CPL requests an effective date for the Interconnection Agreement of November 12, 1999. Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Duke and the Public Utility Commission of Texas.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. FirstEnergy System

[Docket No. ER00–1201–000]

Take notice that on January 24, 2000, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for ACN Power, Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is January 7, 2000 for the above mentioned Service Agreement in this filing.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Indeck Pepperell Power Associates

[Docket No. ER00–1202–000]

Take notice that on January 24, 2000, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and Niagara Mohawk Energy Marketing, Inc. (NMEM), dated December 21, 1999, for service under Indeck Pepperell's Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of December 21, 1999.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. FirstEnergy System

[Docket No. ER00–1200–000]

Take notice that on January 24, 2000, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for: ACN Power, Inc. , the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is January 07, 2000 for the above mentioned Service Agreement in this filing..

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. ER00–1209–000]

Take notice that on January 21, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Consumers Energy Company (Consumers).

Cinergy and Consumers are requesting an effective date of one day after this filing.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. ER00–1221–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and British Columbia Power Exchange Corp., (British).

Cinergy and British are requesting an effective date of December 31,1999.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. ER00–1207–000]

Take notice that on January 24, 2000, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC (AESC).

Cinergy and AESC are requesting an effective date of January 13, 2000.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER00–1220–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Generating Station Unit No's. 1–5.

Cinergy and Cinergy, the Customer are requesting an effective date of January 1, 2000.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER00–1222–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and British Columbia Power Exchange Corp., (British).

Cinergy and British are requesting an effective date of December 31, 1999.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Fitchburg Gas and Electric Light Company

[Docket No. ER00–1215–000]

Take notice that on January 24, 2000, Fitchburg Gas and Electric Light Company (FG&E), tendered for filing changes to the rate set forth in FG&E's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 4. The changes reflect a decrease in FG&E's Transmission Plant and corresponding decrease in FG&E's rate for transmission service.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Cinergy Services, Inc.

[Docket No. ER00–1216–000]

Take notice that on January 24, 2000, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Engage Energy US, L. P. (Engage), replacing the unexecuted service agreement filed in April 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2457 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Dates and Locations for Regional Collaborative Workshops

January 31, 2000.

On December 20, 1999, the Commission issued Order No. 2000[1] to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process[2] to aid in the formation of RTOs. To initiate the collaborative process, the Commission is organizing a series of regional workshops. The following five locations are designated for the Spring 2000 workshops and, as stated in order No. 2000, "* * * the selection of locations for initial workshops is not to indicate a preference for specific RTO boundaries, but to provide convenient workshop locations."[3] The workshops are open to all interested parties and attendance at more than one workshop is permitted. The Commission expects that all transmission owners will attend at least one workshop.

The dates and locations for the Spring 2000 regional workshops are as follows:

March 1–2, 2000 in Cincinnati, OH
March 15–16, 2000 in Philadelphia, PA
March 23–24, 2000 in Las Vegas, NV
March 29–30, 2000 in Kansas City, MO
April 5–6, 2000 in Atlanta, GA

Agendas, procedural rules and specific meeting locations will be provided in advance of the workshops on the Commission's website (*http://www.ferc.fed.us/*). The Commission contact person for these workshops is James Apperson, (202) 219–2962.

David P. Boergers,

Secretary.

[FR Doc. 00–2488 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 65 FR 809 (January 6, 2000).

[2] *Id.* at 942–43.

[3] *Id.* at 943.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6532–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; IAQ Practices in Large Buildings Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): IAQ Practices in Large Buildings Survey, EPA ICR Number 1917.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 4, 2000.

ADDRESSES: To obtain a copy of the ICR without charge, contact: Mr. Lee Salmon, Indoor Environments Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., (6609J), Washington, D.C. 20460. A copy of the ICR can also be downloaded off the Internet at http://www.epa.gov/icr; refer to EPA ICR No. 1917.01.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Salmon by telephone at (202) 564–9451 or by e-mail at salmon.lee@epa.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are selected owners and managers of office buildings over 50,000 square feet. Survey recipients were selected from the membership lists of the Building Owners and Managers Association (BOMA) and the International Facilities Management Association (IFMA), as well as a list of commercial office buildings greater than 50,000 square feet generated from electronically-available tax records. Federally-owned properties were selected by EPA in consultation with the General Services Administration (GSA).

Title: IAQ Practices in Large Buildings Survey (EPA ICR No. 1917.01).

Abstract: EPA is currently working with other Federal agencies and the public, as well as with other nations, to promote effective approaches for identifying and solving indoor air quality (IAQ) problems. As part of this effort, EPA has developed a guide which addresses indoor air quality in large office buildings entitled "Building Air Quality: A Guide for Building Owners and Facility Managers" (BAQ). This document provides an extensive discussion of a wide range of potential indoor air pollutants and suggests ways in which building owners and managers can improve the indoor air quality of their buildings. As a complement to the Guide, EPA has also developed a comprehensive BAQ Action Plan, which describes an eight-step process for improving a building's indoor air quality. The BAQ Action Plan can be used to determine the current condition of an office building's indoor air quality, as well as to successfully implement good IAQ management practices.

Using a seven-page survey, EPA proposes to collect data from building owners and managers. This survey will allow EPA to determine the extent to

which elements of the BAQ guidance have been incorporated into building management practices throughout the United States. The Agency also wishes to determine what barriers to implementation, if any, have been incurred by building owners and managers. These data are essential for measuring the effectiveness of EPA's efforts to encourage good IAQ management practices in large office buildings against the Agency's established Government Performance and Results Act or 1993 (GPRA) goal. By the year 2005, EPA wishes to demonstrate a five-percent increase in the number of large office buildings (*i.e.*, over 50,000 square feet) that use good IAQ management practices.

To determine its success in achieving this goal, EPA intends to survey owners and managers of commercial and Federally-owned office buildings greater than 50,000 square feet on a variety of IAQ practices. The Agency will mail a survey and instructions for completing it to approximately 4,150 building owners and managers. Building owners/ managers will be given up to 30 days to respond. At the end of this period, a follow-up letter will be sent to building owners/ managers to remind them of the survey and to encourage them to respond. The initial survey will establish a baseline for the use rate of IAQ-related practices recommended in EPA's guidance. After its completion, EPA will continue efforts to encourage large office building owners and managers to adopt the IAQ practices outlined in BAQ. EPA intends to conduct another survey in 2005 to assess changes in the use of these practices.

EPA does not expect to receive confidential information from the building owners and managers voluntarily participating in the IAQ Practices in Large Buildings Survey. However, if a respondent does consider the information submitted to be of a proprietary nature, EPA will assure its confidentiality based on the provisions of 40 CFR Part 2, Subpart B, "Confidentiality of Business Information."

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) enhance the quality, utility, and clarity of the information to be collected.

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA expects to mail surveys to approximately 4,150 building owners and managers. EPA expects approximately 43 percent of those surveyed to respond to this information collection request. Over three years, EPA estimates that the burden to building owners and managers who respond to the survey will be approximately 3,233 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This survey effort is expected to cost the respondents approximately $67,890. Respondents will incur no capital or start-up costs and the only operation and maintenance component of the survey will be the cost to photocopy the survey once completed (if desired). Burden and cost estimates for the future administration of the IAQ Practices in Large Buildings Survey will be provided at the time this ICR is renewed, but they are expected to be similar to those provided in this **Federal Register** notice.

Dated: January 21, 2000.

Mary T. Smith,

Director, Indoor Environments Division.

[FR Doc. 00–2481 Filed 2–3–00; 8:45 am]

BILLING CODE 6550–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6250–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 17, 2000 Through January 21, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements(EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–COE–E32079–SC Rating EO2, Daniel Island Marine Cargo Terminal Development, Permits and Approvals, South Caroline State PortsAuthority, (SCSPA), Charleston, Berkeley County, SC.

Summary: EPA expressed environmental objections due to significant indirect and induced impacts related to wetlands, environmental justice, waste treatment, air quality, dredge material disposal and discharge permit issues. EPA requested additional information and mitigation measures.

ERP No. D–COE–E39049–FL Rating EC2, Southwest Florida Improvement to the RegulatoryProcess for Rapid Growth and Development,Alternatives Development Group (ADG), Lee and Collier Counties, FL.

Summary: EPA expressed environmental concerns about finalizing this regulatory process given its scope/ complexity.Additional information about future development trends will need to be evaluated in the context of an improved review process to avoid unacceptable losses to the natural environment.

ERP No. D–FAA–G51015–TX Rating EC2, George Bush Intercontinental Airport Houston,Construction and Operation, Runway 8L–26R and Associated Near Term Master Plan Project,City of Houston, Harris County, TX.

Summary: EPA expressed environmental concerns due to potential noise and air related impacts. The FEIS should clarify and demonstrate air conformity requirements including implication to the State Implementation Plan and mitigation measures should be included in the ROD.

ERP No. D–FHW–E40781–FL Rating EC2, FL–423 (John Young Parking), Improvements from FL–50 to Fl–434, City of Orlando, Orange County,FL.

Summary: EPA expressed environmental concern regarding relocation issues and potential noise impacts. EPA requested additional consideration of residential relocations and noise mitigation. EPA also suggested that the project design provide for future light rail and bike lanes.

ERP No. D–SFW–K99029–CA Rating EC2, San Joaquin County Multi-Species HabitatConservation and Open Space Plan, Issuance of Incidental Take Permit, San Joaquin County, CA.

Summary: EPA expressed environmental concerns about compliance with EPA's CWA Section 404(b)(1) guidelines. TheFinal EIS should clearly reflect the requirements to avoid and minimize, to the fullest extent practicable, the discharge of dredged or fill material into waters of the United States.

ERP No. D–USN–E11047–00 Rating EC1, USS Winston S. Churchill (DDG 81), Conducting a Shock Trial, Offshore of Naval Stations,Mayport, FL; Norfolk, VA and/or Pascagoula, MS.

Summary: EPA expressed environmental concerns about the proposed ship shock test, and recommended post-monitoring results be made available to assess mitigation measures.

Final EISs

ERP No. F–COE–G39031–ARGrand Prairie Area Demonstration Project,Implementation, Water Conservation, GroundwaterManagement and Irrigation Water Supply,Prairie, Arkansas, Monroe and Lonoke Counties, AR.

Summary: EPA continued to express concerns about the project and urged the Corps to conduct a comprehensive, or cumulative impact study of the White River basin in order to gain a better understanding of the interaction of implemented and planned projects.

ERP No. F–FAA–C51019–NY LaGuardia Airport East End Roadway Improvements Project, Four New Ramps at the 102nd Street Bridge Construction, Airport Layout Plan Approval and Funding, Queens County, NY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11104–CA Marine Corp Air Station (MCAS) Tustin Disposal and Reuse Plan, Cities of Tustin and Irvine, Orange County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–UAF–C11011–NY Griffiss Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY.

Summary: No formal comment letter was sent to the preparing agency.

Dated: February 1, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–2594 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6250–7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa Weekly receipt of Environmental Impact Statements Filed January 24, 2000 Through January 28, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000020, Final EIS, COE, FL, Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, St. Lucie and Caloosahatchee River Estuaries, FL , Due: March 6, 2000, Contact: Elmar Kurzbach (904) 232–2325.

EIS No. 000021, Final EIS, USN, NV, Fallon Naval Air Station (NAS), Proposal for the Fallon Range Complex Requirements, Federal and Private Lands, Churchill, Eureka, Lander, Mineral, Nye and Washoe Counties, NV, Due: March 6, 2000, Contact: Terri Knutson (775) 885–6156.

EIS No. 000022, Final EIS, DOE, NM, The Conveyance and Transfer of Certain Land Tracts Administered by the US DOE and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM, Due: March 6, 2000, Contact: Elizabeth Withers (505) 667–8690.

EIS No. 000023, Draft EIS, SFW, CA, San Diequito Wetland Restoration Project, Implementation, Comprehensive Restoration Plan, COE Section 404 Permit, Cities of Del Mar and San Diego, San Diego County, CA, Due: March 20, 2000, Contact: Jack Fancher (760) 431–9440.

EIS No. 000024, Draft EIS, FHW, TX, TX–130 Construction, I–35 of Georgetown to I–10 near Seguin, Funding, COE Section 404 Permit, Williamson, Travis, Caldwell, Guadalupe Counties, TX, Due: March 20, 2000, Contact: Walter Waidelich (512) 916–5988.

EIS No. 000025, Final EIS, FHW, AR, MS, AR, Great River Bridge, Construction, US 65 in Arkansas to MS–8 in Mississippi, Funding, COE Section 404 Permit and US Coast Guard Bridge Permit, Desha and Arkansas Counties, AR and Bolivar County, MS, Due: March 6, 2000, Contact: Elizabeth A. Romero (504) 324–5625.

EIS No. 000026, Final EIS, UAF, LA, TX, NM, Realistic Bomber Training Initiative, Improve the B–52 and B–1 Aircrews Mission Training and Maximize Combat Training Time, Barksdale Air Force Base, LA, NM and TX, Due: March 6, 2000, Contact: Brenda Cook (757) 764–9339.

EIS No. 000027, Final EIS, FRC, FL, MS, Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS, Due: March 6, 2000, Contact: Paul McKee (202) 208–1088.

Dated: February 1, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–2595 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–6]

Environmental Laboratory Advisory Board; Meeting Dates and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App 2) notification is hereby given of an open meeting of the Environmental Laboratory Advisory Board (ELAB).

DATES: The meeting will be held on February 15, 2000, from 1:30 p.m. to 4:00 p.m. (EST).

ADDRESSES: While the meeting will be conducted by teleconference, the public is invited to participate by joining David Friedman in EPA Conference Room 2 on the fourth floor of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW.

SUPPLEMENTARY INFORMATION: Among the items the Board will discuss are updates from its subcommittees, laboratory performance testing, shipment of environmental samples, and any public comments that the Board has received since their December 1999 meeting.

The meeting is open to the public and time will be allotted for public comment. Written comments are encouraged and should be directed to David Friedman; USEPA; 1200 Pennsylvania Avenue, NW (8101R); Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Friedman; Designated Federal Officer; USEPA; 1300 Pennsylvania Avenue, NW; Washington, DC 20460. If questions arise, please contact Mr. Friedman by phone at (202) 564–6662, by facsimile at (202) 565–2432 or by email at friedman.david@epa.gov.

Dated: January 21, 2000.

Henry L. Longest II,

Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 00–2478 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00641; FRL–6490–6]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review the following sets of scientific issues being considered by the Agency pertaining to: Food allergenicity of Cry9C endotoxin and other non-digestible proteins; Dietary Exposure Evaluation Model (DEEM) Decompositing procedure and software; MaxLIP (Maximum Likelihood Imputation Procedure) Pesticide residue decompositing procedure and software; Dietary Exposure Evaluation Model (DEEM); and consultation on development and use of distributions of pesticide concentrations in drinking water for FQPA assessments.

The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Laura Morris or Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on Tuesday, February 29, through Friday, March 3, 2000, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton hotel is: (703) 486–1111.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00641 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Laura Morris or Paul Lewis, Designated Federal Officials, FIFRA SAP (7101C), Office of Science Coordination and Policy, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6212 or (703) 305–5369; fax number: (703) 605–0656; e-mail address: morris.laura or lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related . Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda and copies of EPA background documents for the meeting will be available early February, 2000. The meeting agenda and EPA primary background documents will be available on the FIFRA SAP web site at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00641. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall2 (CM2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00641 in the subject line on the first page of your response.Members of the public wishing to submit comments should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and the agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the persons listed under **FOR**

FURTHER INFORMATION CONTACT and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00641. Electronic comments may also be filed online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting?

This 4-day meeting concerns several scientific issues undergoing consideration within the EPA/Office of Pesticide Programs (OPP). The four session topics to be addressed during the 4-day meeting are indicated as follows:

The first session will focus on assessing the potential allergenicity of non-digestible proteins expressed as plant-pesticides. The specific case in question concerns the Cry9C insecticidal protein derived from *Bacillus thuringiensis* and expressed in field corn. The Agency is asking questions on the use of amino acid homology, the brown Norway rat model for food allergenicity and other subjects with regards to the assessment for potential allergenicity.

The second session will address the decomposition module in the Dietary Exposure Evaluation Model (DEEM) software. In estimating dietary exposure to pesticides, the Agency uses several sources for monitoring data of pesticide residues in foods. These monitoring data, however, are in the form of pesticide residues on composited samples and do not directly represent concentrations of pesticide residues in single food items. For acute dietary exposure estimation, it is the residues in single items of produce that are of interest rather than "average" residues measured in composited samples. The decomposition module in the DEEM software uses a statistical procedure in order to "decomposite" composited monitoring data to estimate residues in single items. The purpose of this presentation is to describe the decomposition component of the software.

The second session will also include a presentation of the MaxLIP (Maximum Likelihood Imputation Procedure) Pesticide residue decompositing procedure and software. For acute dietary exposure estimation, it is the residues in single items of produce that are of interest rather than "average" residues measured in composited samples. The MaxLIP software uses a maximum likelihood estimation procedure in order to "decomposite" composited monitoring data to estimate residues in single items.

The third session will focus on the Dietary Exposure Evaluation Model (DEEM). A major component of assessing the risks of pesticide substances is the estimation of dietary exposure to pesticide residues in foods. The Agency currently uses the DEEM exposure assessment software in conducting its dietary exposure and risk assessment. The purpose of this session is to describe the components and methodologies used by the DEEM software.

The last session is to provide the FIFRA SAP with a progress report on the Agency's efforts to implement the drinking water component of the FQPA aggregate exposure assessment. Aggregate exposure is defined to encompass multiple potential sources of exposure to pesticides and includes exposure from pesticide residues in food, in drinking water and in the home. In order to combine the drinking water component with the population based distribution of pesticide residues on food items in a statistically rigorous manner, the data should be developed with the same general structure. In this way, the Monte Carlo procedure used for the risk assessment for food stuffs can be extended to the drinking water component.

The Agency will outline the basic steps envisioned in developing national, population-weighted distributions of pesticide residues in drinking water and aggregating them with distributions in food. These steps include development of distributions of pesticide drinking water concentration values across surface water/drinking water intake locations, consideration of the impact of treatment by a water utility, and development of methodologies to combine the adjusted distributions with the distribution of pesticide residues on food items. The presentation on development of distributions of drinking water concentrations will describe a process using measured data with a computer modeling/analysis overlay. The details of how the Agency will consider the effects of treatment will be largely addressed in a future FIFRA SAP meeting.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I.B. of this document.

List of Subjects

Environmental protection.

Dated: January 27, 2000.

Steven Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–2483 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1—Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB), will meet on Wednesday, February 23, 2000 and Thursday, February 24, 2000 in the Madison Hotel, 15th and M Streets, NW, Washington, DC 20005; telephone number (202) 862–1600. The meeting will be held in the Arlington-Monticello Room and it will begin at 8:30 am and end no later than 5:00 pm on both days.

Charge to the Committee

The Science Advisory Board (SAB) has been asked to review and comment on the FY2001 Presidential Budget proposed for EPA's Office of Research and Development (ORD) and the overall Science and Technology (S&T) budget proposed for the EPA. The RSAC will consider how well the budget request: (a) Reflects priorities identified in the EPA and ORD strategic plans; (b) supports a reasonable balance in terms of attention to core research on multimedia capabilities and issues and to media-specific problem-driven topics; and (c) balances attention to near-term and to long-term research issues. In addition, the Committee will offer its advice on: (d) whether the objectives of the research and development program in ORD and the broader science and technology programs in EPA can be achieved at the resource levels requested; and (e) how can EPA use or improve upon the Government Performance and Results Act (GPRA) structure to communicate research plans, priorities, research requirements, and planned outcomes. A portion of the meeting will be devoted to development of the Committee's report.

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting should contact Dr. Jack Fowle, Designated Federal Officer, Research Strategies Advisory Committee (RSAC), USEPA Science Advisory Board (1400A), Room 6450, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0582; or via e-mail at <fowle.jack@epa.gov.> For a copy of the draft meeting agenda, please contact Ms. Wanda R. Fields, Management Assistant at (202) 564–4539 or by FAX at (202) 501–0582 or via e-mail at <fields.wanda@epa.gov>.

Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Mr. Lek Kadeli Office of Research and Development. Mr. Feldman can be reached on (202) 564–6951 or by e-mail at <feldman.mike@epa.gov> and Mr. Kadeli can be reached on (202) 564–6696 or via e-mail on <kadeli.lek@epa.gov>.

Providing Oral or Written Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. Fowle *in writing* (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, February 17, 2000 in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (*e.g.*, overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

2—Environmental Economics Advisory Committee (EEAC)

The Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB) will meet on Friday, February 25, 2000, at the Madison Hotel, 15th and M Streets, NW, Washington, DC 20005; telephone number (202) 862–1600. The meeting will be held in the Arlington-Monticello Room and it will begin at 9:00 am and end no later than 4:00 pm.

Purpose of the Meeting

The EEAC is meeting to consider and to provide advice and comment to EPA on its white paper entitled, Valuing Fatal Cancer Risk Reductions.

Background Information

The draft EPA Guidelines for Preparing Economic Analyses (Guidelines) provide information and guidance on the valuation of reduced mortality risks. They note that one practical means to value changes in mortality risks is to use the Value of a Statistical Life (VSL) approach. The Guidelines describe a number of important factors to consider in applying benefit transfer approaches using VSL estimates from the empirical literature on wage-risk tradeoffs. The Agency Guidelines, recognizing the importance of this benefit category, noted EPA's commitment to "continue to conduct annual reviews of the risk valuation literature" and "reconsider and revise the recommendations in these guidelines accordingly." Further, EPA committed to "seek advice from the Science Advisory Board as guidance recommendations are revised." The Agency is now returning to the SAB–EEAC to obtain additional counsel on this subject.

The importance of these issues was articulated in a recently proposed regulation to reduce human health risks from radon in drinking water. The proposed rule estimated the number of reduced fatal cancers resulting from different regulatory options. The Agency presented information on the economic values for the reductions in fatal cancer risks, along with other quantified benefits. A brief discussion of some of the benefit transfer issues involved in this estimation was published in the preamble to the proposed rule for setting standards for exposure to radon from drinking water sources (**Federal Register**, November 2, 1999 volume 64, Number 211, pages 59245–59378).

In the process of responding to reviews prepared during deliberations on the proposed radon rule, the Agency found that the Guidelines lack sufficient detail on how to fully evaluate and characterize the different risk attributes that are central to a complete understanding of the benefit-cost implications of this rule. For example, time can pass between the point of initial exposure to a carcinogen, the biological manifestation or onset of cancer in the body, the medical diagnosis of cancer, and death caused by the cancer. During development of policies affecting cancer risks, suggestions have been made to discount the VSL estimate to account for latencies, or the delay in time between reduced exposure and when the cancer death would have occurred absent the exposure reduction (even though latency periods may not be known or well-understood).

Others argued that a suitable approach for valuing benefits from reduced cancer risks must consider simultaneously all of the benefit transfer factors related to valuing cancer risks to ensure a careful and full treatment of benefits. There is evidence in the economics literature regarding many such factors (*e.g.*, potential premiums ascribed to cancer risk reductions due to a higher willingness to pay to avoid the dread, pain and suffering, morbidity effects, and other features of cancer endpoints) that may suggest introducing upward adjustment factors which offset any potential downward adjustments caused by accounting for cancer latency. In addition, proponents argue that adjustments for the age of population at risk, income, altruism and other risk characteristics (*e.g.*, controllability, voluntariness) can all have some potential influence on the value of a statistical cancer fatality (VSCF) and

therefore need to be reflected in the quantitative benefit assessment.

While developing the primary benefit estimates for reduced fatal cancer risks in the proposed radon rule, questions arose regarding the implementation of adjustments for some factors, but not others. For example, would it ever be appropriate to adjust only for latency periods, and not other factors, in the valuation of reduced cancer deaths? The Agency is requesting the SAB's counsel to help answer this and related questions regarding the valuation of cancer risks.

Charge to the Committee

The Agency has requested a review by the SAB–EEAC of its "white paper" on approaches to estimating the benefits of reduced fatal cancer risks. The principal questions for the Science Advisory Board are:

(a) Does the white paper accurately describe the empirical economic literature relevant to the benefit transfer issues that ensue when using the VSL literature to estimate the VSCF in a benefit-cost analysis?

(b) Does the white paper present the important risk and demographic factors that can affect benefit transfer approaches that use VSL estimates for VSCF?

(c) Does the white paper accurately describe attempts in the economic literature to measure VSCF directly?

(d) There are two numeric case studies of environmental cancer risks developed for the white paper. Each presents risk assessment information that forms the basis for quantifying the number of statistical cancer fatalities that will be reduced as a consequence of a hypothetical proposed environmental policy. The case studies are used to illustrate the outcome of using direct measures of the VSCF and benefit transfer adjustments to VSL estimates in order to calculate the VSCF.

(1) Which of the valuation approaches applied to the case study designated as ALPHA are valid to use? Does this case study omit any credible alternative protocols for valuing reductions in fatal cancer risks for benefit-cost analyses of environmental programs?

(2) Which of the valuation approaches applied to the case study designated as OMEGA are valid to use? Does this case study omit any credible alternative protocols for valuing reductions in fatal cancer risks for benefit-cost analyses of environmental programs?

(e) Which economic methods illustrated with the case studies, or additional methods identified by the Committee under charge question d), serve as credible protocols for the Agency to use in representing quantitative data, qualitative information, and sensitivity analyses for the economic value of reduced fatal cancer risks reported in benefit-cost analyses?

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting should contact Mr. Thomas Miller, Designated Federal Officer, Environmental Economics Advisory Committee (EEAC), USEPA Science Advisory Board (1400A), Room 6450, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4558; fax at (202) 501–0582; or via e-mail at <miller.tom@epa.gov>. For a copy of the draft meeting agenda, please contact Ms. Dorothy Clark, Management Assistant at (202) 564–4537 or by FAX at (202) 501–0582 or via e-mail at <clark.dorothy@epa.gov>. Single copies of the background document, *Valuing Fatal Cancer Risk Reductions* can be obtained by contacting Mr. Brett Snyder, U.S. Environmental Protection Agency, Office of Policy and Reinvention (Mail Drop 2172), 1200 Pennsylvania Ave., NW, Washington, DC, 20460, (202) 260–5610, FAX (202) 260–2685, or via email at: <snyder.brett@epa.gov>.

Providing Oral or Written Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Thomas Miller, Designated Federal Officer for the Environmental Economics Advisory Committee, *in writing* (by letter or fax) no later than 4:00 pm Eastern Time, Thursday, February 17, 2000, at the address noted above in order to be included on the agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any audio-visual equipment (*e.g.*, overhead projector, 35 mm projector, chalkboard, etc.), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 564–4558. For a copy of the draft agenda please contact Ms. Dorothy Clark, Management Assistant, at (202) 564–4537, or by FAX at (202) 501–0582 or via e-mail at <clark.dorothy@epa.gov>.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 28, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–2477 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–908; FRL–6398–9]

Novartis Crop Protection; Notice of Filing a Pesticide Petition To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–908, must be received on or before March 6, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–908 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker (PM 22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–908. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–908 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–908. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food,

Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

9F6004

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition (9F6004) from Novartis Crop Protection, P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of 1,2,3-benzothiadiazole-7-carbothioic acid S-methyl ester (acibenzolar-S-methyl) in or on the raw agricultural commodity brassica leafy vegetables crop group and bananas at 1.0 and 0.1 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Novartis believes the metabolism of acibenzolar-S-methyl has been well characterized. Only 4.6% and 14.9% of the total radioactive residue (TRR) was non-extractable in lettuce at the recommended application rate and three times the recommended application rate, respectively. Non-extractables were also low in a tomato metabolism study; 3.4% and 7.4% in tomatoes and foliage, respectively. The metabolism in these crops proceeded via hydrolysis of benzo [1,2,3] thiadiazole-7-carbothioic acid S-methyl ester to benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA), followed by conjugation as ester, glycoside and/or other plant constituents. The metabolism profile supports the use of an analytical enforcement method that accounts for acibenzolar-S-methyl and metabolites containing the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety.

2. *Analytical method.* Novartis Analytical Method AG-671A is a practical and valid method for the determination and confirmation of CGA-245704 (acibenzolar-S-methyl) in raw agricultural commodities (RAC) and processing substrates from the tobacco, leafy (including brassica) and fruiting vegetable crop groups at a limit of quantitation (LOQ) of 0.02 ppm. The method involves extraction, solid phase cleanup of samples with analysis by high performance liquid chromotography (HPLC) with ultraviolet (UV) detection or confirmatory LC/MS. The validity is demonstrated by the acceptable accuracy and precision obtained on numerous procedural recovery samples (radiovalidation and field trial sample sets), and by the extractability and accountability obtained by the analysis of weathered radioactive substrates using Analytical Method AG-671A. Novartis Analytical Method REM 172.11 is a practical and valid method for the determination and confirmation of CGA-245704 in RAC of bananas at a LOQ of 0.02 ppm. The method involves hydrolytic extraction, partitioning, and solid phase cleanup of samples with analysis by two-column HPLC switching with UV detection. The validity is demonstrated by the acceptable accuracy and precision obtained on numerous procedural recovery samples (banana, tomatoes, cucumbers, and milk).

3. *Magnitude of residues.* This petition is supported by 17 field trials conducted on representative members of the brassica leafy vegetable crop groupings. All samples were analyzed for by the total residue method (AG-671A) to determine the combined residues of acibenzolar-S-methyl and metabolites which contain the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety. In brassica leafy vegetables, the maximum residues found on representative commodities were 0.63 ppm, 0.57 ppm, 0.31 ppm, 0.64 ppm, and 0.80 ppm, for broccoli (flower, head and stem), cabbage head (with wrapper leaves), cabbage head (without wrapper leaves), cabbage wrapper leaves, and mustard greens leaves, respectively. A tolerance of 1.0 ppm for the brassica leafy vegetable crop group has been proposed. This petition is supported by 14 field trials conducted on bananas. Banana samples were analyzed for by the total residue method REM 17.11 to determine the combined residues of acibenzolar-S-methyl and metabolites which contain the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety. The maximum residue found in bananas was 0.08 ppm. A tolerance of 0.1 ppm in bananas has been proposed.

B. Toxicological Profile

1. *Acute toxicity.* The risk from acute dietary exposure to acibenzolar-S-methyl is considered to be very low. CGA-245704 and the formulated 50 WG product have low orders of acute toxicity by the oral, dermal and inhalation exposure routes. Results from acute studies all fall within toxicity rating categories of III or IV. CGA-245704 technical has a low order of acute toxicity, is only slightly irritating to skin and eyes, but may cause sensitization by skin contact. An LD_{50} of greater than 5,000 milligrams/kilograms (mg/kg) was observed for the acute oral toxicity study in rats. The lowest no observed adverse effect level (NOAEL) in a short-term exposure scenario, identified as 50 mg/kg in the rabbit and rat teratology studies, is 10–fold higher than the chronic NOAEL. Based on worst case assumptions, the chronic exposure assessments (see below) did not result in any margin of exposure (MOE) less than 3,330 for even the most impacted population subgroup. Novartis believes the MOE is greater than 100 for any population subgroups; EPA considers MOEs of 100 or more as satisfactory. The following are results from the acute toxicity tests conducted on the technical material:

i. Rat oral $LD_{50} > 5,000$ mg/kg/bwt male/female (M/F) toxicity Category IV.

ii. Rat dermal $LD_{50} > 2,000$ mg/kg/bwt (M/F) toxicity Category III.

iii. Acute inhalation $LC_{50} > 5,000$ mg/L (M/F) toxicity Category IV.

iv. Rabbit eye irritation: Minimally irritating—toxicity Category III.

v. Rabbit dermal irritation: Slightly irritating—toxicity Category IV.

vi. Dermal sensitization: Sensitizer.

2. *Genotoxicty.* CGA-245704 technical was not mutagenic or clastogenic and did not provoke unscheduled DNA

synthesis when tested thoroughly in a battery of standard *in vivo*, and *in vitro* independent assays, using both eukaryotes and prokaryotes, and with or without metabolic activation. These tests are summarized below:

i. Microbial/Microsome Mutagenicity Assay: Non-mutagenic.

ii. Mammalian Cell Chinese Hampster Ovary (CHO) Mutagenicity Assay: Non-mutagenic; Non-clastogenic.

iii. Chinese Hampster (CH) Bone marrow: Non-clastogenic; negative for chromosome aberrations.

iv. Mouse Micronucleus Test: Non-clastogenic; negative for chromosome aberrations.

v. DNA Damage and Repair Rat hepatocyte: Negative.

3. *Reproductive and developmental toxicity.* Acibenzolar-S-methyl is not a teratogenic hazard except at, or close to, the maximum tolerated dose. In the rat multigeneration study, CGA-245704 (acibenzolar-S-methyl) technical had no effect on rat reproductive parameters including gonadal function, estrus cycles, mating behavior, conception, parturition, lactation, weaning, and sex organ histopathology. At 4,000 ppm, parental body weights (bwt) were reduced. This demonstrated by the results of the following studies:

i. Rat oral teratology—Maternal NOAEL of 200 mg/kg based on embryotoxicity and teratogenic effects; fetal NOAEL of 50 mg/kg.

ii. Rabbit oral teratology study—Maternal NOAEL of 50 mg/kg based on maternal toxicity and slightly delayed ossification; fetal NOAEL of 300 mg/kg based on changes in bwt.

iii. Rat 2-generation reproduction study—NOAEL of 25 mg/kg based on weight development in adults at 4,000 ppm and pups during lactation at 2,000 ppm and above. No adverse effects on reproduction or fertility.

4. *Subchronic toxicity.* No signs of neurotoxicity were noted with CGA-245704 in both acute and subchronic studies even at the highest dose levels of 800 mg/kg and 8,000 ppm, respectively. The evaluated parameters included functional observation battery, motor activity measurement and neurohistopathologic assessment. These tests are summarized below:

i. Rat 28-day dermal study—NOAEL of 1,000 mg/kg/day.

ii. Dog 90-day feeding study—NOAEL of 10 mg based on reduced bwt gain at 50 mg/kg/day.

iii. Mouse 90-day feeding—NOAEL of < 30 mg/kg based on reduced bwt development at 1,000 ppm and above.

iv. Rat 90-day feeding study—NOAEL of 25 mg/kg based on inappetence and reduced bwt development at higher dose levels (4,000, and 8,000 ppm).

5. *Chronic toxicity.* Based on the available chronic toxicity data, Novartis Crop Protection, Inc. believes the Reference Dose (RfD) for acibenzolar-S-methyl is 0.05 mg/kg/day. Acibenzolar-S-methyl is not oncogenic in rats or mice and is not likely to be carcinogenic in humans. No carcinogenic activity was detected in mice and rats at the Maximum Tolerated Dose (MTD). There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 24-month feeding study in rats. Dosage levels in both the mouse and the rat studies were adequate for identifying a cancer risk. Novartis believes acibenzolar-S-methyl should be classified as a "Not Likely" carcinogen based on the lack of carcinogenicity in rats and mice.

6. *Animal metabolism.* Metabolism proceeded primarily via hydrolysis to form the corresponding carboxylic acid (BTCA) which was subsequently conjugated with several amino acids including glycine, lysine and ornithine. Elimination was rapid in all cases. Oxidation of the aromatic ring of the acid was a very minor pathway observed in goats. The metabolic fate of CGA-245704 in plants paralleled that observed in animals. The major metabolite in all test systems was the same hydrolysis product BTCA. Thus, the metabolism profile supports the use of an analytical enforcement method that accounts principally for parent and BTCA.

7. *Metabolite toxicology.* In short-term toxicity studies in rats, CGA-210007 was found to be of, at most, equal or less toxicity than the parent compound. As with parent CGA-245704, the subchronic NOAEL for CGA-210007 was 100 mg/kg bwt.

8. *Endocrine disruption.* Acibenzolar-S-methyl does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that acibenzolar-S-methyl might have any effects on endocrine function related to development and reproduction. Acibenzolar-S-methyl is not a teratogenic hazard except at, or close to, the maximum tolerated dose. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For the purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate from the previously requested tolerances for the raw agricultural commodities: leafy vegetables (excluding spinach) at 0.25 ppm; spinach at 1.0 ppm; and fruiting vegetables at 1.0 ppm (PP 8F4974); and the requested tolerances for brassica leafy vegetables at 1.0 ppm and bananas at 0.1 ppm (PP 9F6004). Maximum expected chronic exposure to CGA-245704 in the diets of the most sensitive sub-population, children (1–6 years), was calculated to be 0.5% of the RfD. For the U.S. population (48 contiguous States) chronic exposure was 0.3% of the RfD. Acute dietary exposure is also minimal. Exposure to the most sensitive sub-population, children (1–6 years), was 2.17% of the acute RfD (aRfD). Acute exposure to the U.S. population was 1.2% of the aRfD. Dietary exposure analyses for CGA-245704 (and CGA-210007) were conducted using anticipated residues generated from field trials conducted at the maximum use rate and minimum pre-harvest interval (PHI). In addition, actual dietary exposure would be much less than the estimates made herein since significant residue reduction often takes place in commerce and during food preparation and cooking. Projected market share was included on all commodities except bananas. One hundred percent market share was assumed for bananas. These results (minimal exposure) show more than a reasonable certainty of no harm.

ii. *Drinking water.* The potential for exposure to CGA-245704 through drinking water (surface or ground water) is slight due to the minimal level of this chemical anticipated to reach these bodies of water. This expectation is based on the rapid degradation of CGA-245704 and the recommended low use rates that will further restrict the amount of chemical available for leaching or run-off. A Maximum Contaminant Level Goal (MCLG) of 350 parts per billion (ppb) has been calculated for CGA-245704. This calculated safe exposure value is substantially above the levels that are likely to be found in the environment under proposed conditions of use.

2. *Non-dietary exposure.* Novartis believes that the potential for non-occupational exposure to the general public is unlikely except for potential residues in food crops discussed above. The proposed uses for acibenzolar-S-methyl are for agricultural crops and the product is not used residentially in or around the home.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate

at this time since there is no information to indicate that toxic effects produced by acibenzolar-S-methyl would be cumulative with those of any other chemicals. Acibenzolar-S-methyl is a plant activator and no other compounds in this class are registered in the United States. Consequently, Novartis is considering only the potential exposure to acibenzolar-S-methyl in its aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* For the U.S. population (48 contiguous States) chronic exposure was 0.3% of the RfD. Acute dietary exposure is also minimal. Acute exposure to the U.S. population was 1.2% of the aRfD. EPA usually has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to acibenzolar-S-methyl residues.

2. *Infants and children.* Embryotoxicity and fetotoxicity were apparent at maternally toxic doses of CGA-245704 technical in rats and rabbits. The lowest NOAEL for this effect was established in the 2-generation reproduction study at 25 mg/kg (200 ppm).

Maximum expected chronic exposure to CGA-245704 in the diets of the most sensitive sub-population, children (1–6 years), was calculated to be 0.5% of the RfD. Acute dietary exposure is also minimal. Exposure to the most sensitive sub-population, children (1–6 years), was 2.17% of the aRfD.

Additionally, CGA-245704 is not a reproductive toxin. Some signs of teratogenicity were found at, or close to, maternally toxic doses. No neurotoxic effects or oncogenic activity has been observed with CGA-245704. From these available toxicology data, no special susceptibility of infants or children is anticipated.

Dietary exposure analyses for CGA-245704 (and CGA-210007) were conducted using anticipated residues generated from field trials conducted at the maximum use rate and minimum pre-harvest interval (PHI). In addition, actual dietary exposure would be much less than the estimates made herein since significant residue reduction often takes place in commerce and during food preparation and cooking. Projected market share was included on all commodities except bananas. One hundred percent market share was assumed for bananas. These results (minimal exposure) show more than a reasonable certainty of no harm.

Acute Dietary Exposure for the U.S. Population and the Most Sensitive Population Sub-Groups at the 99.9th Percentile

Population Sub-group	% aRfD (Diet Only)
U.S. Population - 48 contiguous states - all seasons.	1.20%
All infants (<1 year)	1.54%
Nursing infants (<1year)	0.41%
Non-nursing infants (<1 year)	1.80%
Children (1–6 years)	2.17%
Children (7–12)	1.37%

Exposure to residues of CGA-245704 and CGA-210007 in consumed food is minimal. Both chronic and acute exposure estimates demonstrate the use of CGA-245704 on crops results in more than a reasonable certainty of no harm. The results herein are conservative since field trial residues utilized in these assessments were generated under maximum label use rates and minimum pre-harvest intervals.

F. International Tolerances

Codex maximum residue levels (MRLs) have not been established for residues of CGA-245704 in or on raw agricultural commodities from the fruiting vegetable and leafy vegetable crop groups. Maximum residue levels of 0.1 ppm have been established for CGA-245704 on wheat in Switzerland and Hungary. Proposed CODEX MRLs of 1.0 ppm on tomatoes and 0.1 ppm on bananas, cereals, wheat, spring barley, and rice have been proposed (Japan).

[FR Doc. 00–2484 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–5]

The QTRACER Program for Tracer-Breakthrough Curve Analysis for Karst and Fractured-Rock Aquifers; and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of two final documents and CD–ROM.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of two final documents, The QTRACER Program for Tracer-Breakthrough Curve Analysis for Karst and Fractured-Rock Aquifers (EPA/600/R–98/156a, February 1999) and CD–ROM (EPA/600/R–98/156b, February 1999), and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology (EPA/600/R–99/006, January 1999), prepared by the National Center for Environmental Assessment—Washington Office (NCEA–W), within the Office of Research and Development.

The QTRACER program was developed to provide a fast and easy method for evaluating tracer-breakthrough curves generated from tracing studies conducted in karst and fractured-rock aquifers. The results may then be applied in solute-transport modeling and risk assessment studies. The QTRACER document will serve as a technical guide to various groups who must address potential and/or existing ground-water contamination problems in karst and fractured-rock terranes. Tracing studies are always appropriate and probably necessary, but analyses can be difficult and tedious. This document and associated computer programs alleviate some of these problems.

A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology was prepared to satisfy the need to understand the terminology common to the field of karst. This document is a glossary of most terms that have some relationship to the field of environmental karst, as well as specific karst terms. It includes many foreign terms because much karst research is conducted in foreign countries and published using local terminology. In many instances common environmental terms are defined in such a way as to specifically reference karstic phenomena. This document will serve as a technical guide for those who must read the karst literature or hold discussion with karst researchers. It is intended to remove much of the confusion surrounding many karst terms.

ADDRESSES: These documents are being made available electronically from the NCEA web site at http://www.epa.gov/ncea. A limited number of copies of the printed and CD–ROM version of the QTRACER document is available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). Please provide the title and EPA number when ordering from NSCEP. Paper copies of both documents also may be purchased from the National Technical Information Service

(NTIS) in Springfield, VA (1–800–553–NTIS[6847] or 703–605–6000; facsimile 703–321–8547). Please provide the following PB numbers when ordering from NTIS: The QTRACER Program for Tracer-Breakthrough Curve Analysis for Karst and Fractured-Rock Aquifers (PB99–151904), and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology (PB2000–101071).

FOR FURTHER INFORMATION CONTACT: Malcolm Field, NCEA–W (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; phone: 202–564–3279; facsimile: 202–565–0079; e-mail: field.malcolm@epa.gov.

Dated: January 19, 2000.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 00–2480 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6532–8]

Lakewood Battery Superfund Site Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Lakewood Battery Site in Atlanta, Fulton County, Georgia with the following Settling Parties: the 162 Milton Avenue Trust and Doris V. Henderson. The settlement requires the Settling Parties to pay a total of $25,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the Settling Parties pursuant to 42 U.S.C. 9607(a). EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from:Ms. Paula V. Batchelor,U.S. Environmental Protection Agency, Region IV,CERCLA Program Services Branch,Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303,404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: January 20, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–2482 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, February 29, 2000 at 2:00 P.M. (Eastern Time). (This Meeting was rescheduled from Tuesday, January 25, 2000)

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW, Washington, DC 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

Review of Pending Litigation.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions). Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR FURTHER INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 2, 2000.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 00–2682 Filed 2–2–00; 1:39 pm]

BILLING CODE 6750–06–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 the Export-Import Bank of the United States is submitting to the Office of Management and Budget (OMB) a request to review and approve a revised exporter and banker survey which expired on February 28, 1999. The purpose of the survey is to fulfill a statutory mandate (the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of lending institutions to determine whether their export financing is competitive with that of their foreign counterparts.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB No. 00–02) be sent to approximately 50 respondents, split equally between bankers and exporters. The new survey is the same as in previous years as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs vis-à-vis foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness.

DATES: Written comments should be received on or before March 6, 2000.

ADDRESSES: Direct all written comments or requests for additional information to David Rostker, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503, (202) 395–3897.

FOR FURTHER INFORMATION CONTACT: Carlista Robinson (202) 565–3351

SUPPLEMENTARY INFORMATION:

Type of Request: Revision.
Annual Number of Respondents: 50.
Annual Burden Hours: 50.
Frequency of Reporting or Use: Annual survey.

Dated: January 31, 2000.

Carlista Robinson,

Agency Clearance Officer.

[FR Doc. 00–2507 Filed 2–3–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to merge with Grand Premier Financial, Inc., Wauconda, Illinois, and thereby indirectly acquire Grand National Bank, Wauconda, Illinois.

Board of Governors of the Federal Reserve System, January 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2454 Filed 2–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480–2171:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; and its subsidiary, Olivia Bancorporation, Inc., Olivia, Minnesota; to engage de novo through their subsidiary, American State Insurance Agency, Inc., Olivia, Minnesota, in general insurance agency activities in a place where the bank holding company has a lending office and that has a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2453 Filed 2–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System .

TIME AND DATE: 10:00 a.m., Wednesday, February 9, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2680 Filed 2–2–00; 1:19 pm]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EST), February 14, 2000.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 10, 2000, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Labor Department audit briefing.
4. Investment policy review.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 1, 2000.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 00–2679 Filed 2–2–00; 1:19 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0087]

Draft Guidance for Industry on IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for

industry entitled "IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information." This draft guidance provides recommendations to industry on formal meetings between sponsors of investigational new drug applications (IND's) and the Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) on chemistry, manufacturing, and controls (CMC) information.

DATES: Submit written comments on the draft guidance by May 4, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1488, FAX: 888–CBERFAX or 301–827–3844. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Stephen K. Moore, Center for Drug Evaluation and Research (HFD–501), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6430; or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Bldg. N29B, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information." This draft guidance covers three kinds of meetings held between sponsors and the agency: (1) Pre-IND, (2) end-of-phase 2, and (3) pre-new drug application or pre-biologics license application. These meetings address questions and scientific issues that arise during the course of clinical investigations, aid in the resolution of problems, and facilitate evaluation of the drug. The meetings often coincide with critical points in the drug development and/or regulatory process. This draft guidance is intended to assist in making these meetings on CMC information more efficient and effective by providing information on the: (1) Purpose, (2) meeting request (3) information package, (4) format, and (5) focus of the meeting.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on "IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2436 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB 0915–0174)—Extension

The Division of Facilities Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under Section 621 of Title VI and Section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the Section 242 Hospital Mortgage Insurance Program of the National Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Hospital Facility Data Abstract	150	1	1	150

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 28, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–2433 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Grants for the Community Access Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of $25 million to assist communities and their safety net providers in developing integrated health care delivery systems that serve the uninsured and underinsured with greater efficiency and improved quality of care. The $25 million in available funding has been appropriated under the FY 2000 HHS Appropriations Act.

In FY 2000, HRSA will provide funding for approximately 20 communities to further their development of integrated delivery systems for the uninsured and underinsured. Grants will vary in size, based on the scope of the project and the size of the service area.

During the first year of funding for this program, HRSA will support infrastructure development in communities that have already begun to reorganize and integrate their health care delivery systems. FY 2000 funding is not intended to support those communities that have not yet begun the planning and development of necessary organizational structure.

Up to 100 communities may ultimately be funded as part of this national program targeted by the Administration to spend $1 billion over five years. FY 2000 funded communities may be eligible for available FY 2001 funding (assuming continued appropriations) to support further infrastructure development and filling service gaps. In addition, using the experiences of the FY 2000 funded communities as potential models for adaptation, FY 2001 funding is anticipated for support of new communities for planning and system development. Thus, communities that have not yet begun the planning and development of necessary organizational structure should have an opportunity to apply in FY 2001.

Over the years that the program is funded, funds are anticipated to be available to fill service gaps within coordinated systems of care.

This program shares some of the same goals of the W.K. Kellogg Foundation's Community Voices Program and the Robert Wood Johnson Foundation's Communities in Charge Program. Thus, CAP will take into account the experiences of these foundations as well as other programs that promote the integration of services to the uninsured and underinsured.

DATES: The timeline for application submission, review, and award are as follows:

February 10, 2000: Application kits and additional guidance will be available through the HRSA Grants Application Center (GAC).

March 7–16, 2000: There will be a series of six pre-application workshops conducted across the country: Boston, MA—March 7, 2000; Atlanta, GA—March 8, 2000; Chicago, IL—March 9, 2000; Dallas, TX—March 14, 2000; Los Angeles, CA—March 15, 2000; Seattle, WA March 16, 2000.

June 1, 2000: Applications due.

July 3–17, 2000: Applications reviewed.

August 2000: Site visits to selected applicants.

September 2000: Grant awards announced.

ADDRESSES: To receive a complete application kit (*i.e.*, application instructions, necessary forms, and application review criteria), contact the HRSA GAC at: HRSA GAC, 1815 N. Fort Meyer Drive, Suite 300, Arlington, VA 22209, Phone: 1–877-HRSA–123, Fax: 1–877-HRSA–345, E-Mail: *hrsagac@hrsa.gov*

FOR FURTHER INFORMATION CONTACT: For further information, contact the Community Access Program Office: Community Access Program Office, Health Resources and Services Administration, Parklawn Building, Suite 9A–30, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443–0536, Fax: (301) 443–0248.

SUPPLEMENTARY INFORMATION: In 1998, 44.5 million people in the United States did not have health insurance. Of these, 24.6 million were employed—18.7 million worked full time and 5.9 million worked part time.

The uninsured and underinsured often have complex medical needs, remain outside organized systems of care, and have insufficient resources to obtain care. They may defer care or not receive needed services, and they are about half as likely to receive a routine check-up as insured adults. The uninsured and underinsured also rely heavily on expensive emergency rooms, and because they lack a routine source of care, they often do not receive needed follow-up services.

Many of the uninsured and underinsured rely on the nation's institutions, systems, and individual health professionals that provide a significant volume of health care services without regard for ability to pay. In many communities, these providers are struggling to care for the increasing numbers of uninsured and underinsured individuals. They face many challenges such as an uneven distribution of the burden of uncompensated care, the fragmentation of services for the uninsured, insufficient numbers of certain types of providers, reduced Medicaid revenues, and a growing need for mental health and substance abuse services.

While integration among these providers is critical to serve the uninsured and underinsured with greater efficiency and to improve quality of care, many of these providers are so pressured by basic caregiving tasks, that they need assistance to coordinate their efforts with other providers and to develop integrated community-based systems of care.

The Community Access Program

Program Purpose

The purpose of this program is to assist communities and consortia of

health care providers to develop the infrastructure necessary to fully develop or strengthen integrated health systems of care that coordinate health services for the uninsured and underinsured.

Program Goal

The coordination of services through the CAP grant will allow the uninsured and underinsured to receive efficient and higher quality care and gain entry into a comprehensive system of care. The system will be characterized by effective collaboration, information sharing, and clinical and financial coordination among all levels of care in the community network. The system will be committed to continuous performance improvement, implementation of best practices, staff development, and real-time feedback of outcomes of care. Care management (*e.g.*, case, disease) will be applied across the continuum for those with chronic illnesses, high-risk individuals, and high utilizers. The system will also strive to provide universal access to the target population, and to improve the health status of the community population.

This vision requires a re-thinking of the relationships, priorities, and desired outcomes for local or regional care delivery. It means adopting the philosophy that care for the ill and injured occurs within the context of a comprehensive system design of population health improvement.

The community being served should be actively involved in the system design. Broad understanding, two-way learning between providers and community, and participation in priority setting and governance by the community are essential components of this vision. This will reduce out migration for services in rural areas and assure sustainability of the system.

Program Description

In implementing a system of coordinated care for the uninsured and underinsured in a community, we are seeking to fund a variety of program models in communities that have an established track record for building partnerships and that have completed the basic planning necessary to implement a system. The successful applicant will design a program that builds upon its current capacities and strengths; brings the major players in the political and health delivery systems to the table; uses the federal funds available to plan a transition to an expanded and innovative approach that will ultimately be competitive within its own market; and, in any event, will sustain the delivery of services and funding after these federal grants no longer exist. The successful applicant will work with its county board, city council, state legislature, and state health programs to assure the coordination and efficient use of all available resources to achieve program goals.

There is no one successful model that we are trying to replicate. Rather, there are several models that already exist and that each community may draw from in creating a program to address its own needs.

In surveying innovative community approaches to the provision of safety net services, we have come across communities that have:

- combined the development of managed care networks for the indigent funded through local tax increases and the redirection of funds towards the care network and away from the support of tertiary care at public hospitals;
- Redistributed caseload to private providers because of the forced closure of public hospitals;
- Coordinated the provision of care through public hospitals, public health departments, and community health centers;
- Linked hospital and clinic services through state of the art data systems and are able to create seamless transitions between Medicaid, uninsured, and insured status for low income populations;
- Linked behavioral and acute care service provision; and
- Created networks to allocate uncompensated ambulatory care loads among physicians.

We are looking for applicants with clear goals, an operational plan for meeting those goals, a history of commitment to serving indigent populations, and enough of a track record to indicate a fair chance at being successful. Innovative proposals for sustaining the service delivery component of projects could include state redirection of DSH funds or general assistance funds, creative use of local or state taxing authorities, use of tobacco settlement funds, and creative partnerships with the provider and business communities. Applications will be judged from the perspective of whether the financing proposed is realistic—given state and community resources—and appropriate to the project proposed.

Funded Projects Will Contain Several Common Elements

Community Need: Communities funded through this program will have high or increasing rates of uninsured and underinsured and will have identified specific organizational needs within existing delivery systems. A "community" for the purpose of this program may be based on geography or a population group (e.g., the homeless) as defined by the people in the community.

Collaboration Among Safety Net Providers: The proposed system should build upon current investments in communities for serving these populations and include the safety net providers who have traditionally provided services without regard to the ability to pay. The coalition should be built upon formal arrangements among the partners that define the extent of the commitment and involvement in policy development and decision-making from each partner.

Comprehensive Services: The proposed system will include all partners necessary to assure access to a full range of services, including mental health and substance abuse treatment. It is anticipated that the health services (prevention, primary, and specialty) provided by Federally-supported programs that are present in the community will be part of this coalition of providers.

Coordination with Public Insurance Programs: The proposed system will demonstrate coordination with state (e.g., memorandum of agreements) programs to ensure that eligible beneficiaries are enrolled in public insurance programs (e.g., S–CHIP, Medicaid).

Community Involvement: There is strong community support for these efforts that provide a broad foundation of assistance to the provider community undertaking this project. Management and governance structures are in place that assure accountability to funders and define the community role in setting policy. The community involvement in the development, implementation, and governance of the project will be evident. This should include the leadership within the appropriate legislative and executive bodies, providers identified above, health plans and payers, and community leaders.

Sustainability: A plan for long-term sustainability is designed and has community consensus. There is evidence that the program is capable of leveraging other sources of funds and integrating current funding sources in a way to assure long-term sustainability of the project.

Eligible Applicants

To encourage the development of various types of system integration models, this program seeks a variety of

applicants representing all types of communities. Applicants who receive funding may be large health care systems or small organizations. Applications are encouraged from large urban areas, small rural communities, and tribal organizations.

Applications may be submitted by public, private, and non-profit entities that demonstrate a commitment to and experience with providing a continuum of care to uninsured individuals. Each applicant must represent a community-wide coalition that is committed to the project and includes safety net providers (where they exist) who have traditionally provided care to the community's uninsured and underinsured regardless of ability to pay. The community-wide coalition must consist of partners from all levels of care (*i.e.*, primary, secondary, tertiary) and partners who represent a range of services (*e.g.*, mental health and substance abuse treatment, maternal and child health care, oral health, HIV/AIDS).

Examples of eligible applicants who may apply on behalf of the community-wide coalition include but are not limited to:

- A consortium or network of providers (*e.g.*, public and charitable hospitals; community, migrant, homeless, public housing, and school-based health centers; rural health clinics; free health clinics; teaching hospitals and health professions education schools)
- Local government agencies (*e.g.*, local public health departments with service delivery components)
- Tribal governments
- Managed care plans or other payers (*e.g.*, HMOs, insurance companies)

Agencies of State governments, multi-state health systems, or special interest groups may submit applications on behalf of multiple communities if they demonstrate the ability to coordinate community health care delivery systems and bring resources to the community.

Competing applications for the same patient population will not be considered for funding; therefore, applicants from the same community are required to collaborate.

Funding Criteria

- Review criteria that will be used to evaluate applications include:
- Evidence of progress towards integration prior to application for funding
- Evidence that the target population has a high or increasing rate of uninsurance
- Evidence of established partnerships among a broad-based community consortium
- Appropriateness and quality of clinical services to be provided
- Commitments from local government agencies, public and private health care providers, community leaders
- Demonstration of existing and sustainable public and private funding sources
- Accountable management and budget plan
- Commitment to self evaluation and participation in a national evaluation

Program Expectations

Funding through this initiative may be used to support a variety of projects that would improve access to all levels of care for the uninsured and underinsured. While each community should design a program that best addresses the needs of the uninsured and underinsured, and the providers in their community, funding is intended to encourage safety net providers to develop coordinated care systems for the community's uninsured and underinsured.

Examples of activities that could be supported with this funding include:

- Offering a comprehensive delivery system for the uninsured and underinsured through a network of safety net providers. [Single registration, eligibility systems]
- Integrating preventive, mental health, substance abuse, HIV/AIDS, and maternal and child health services within the system. [Block grant funded services, other DHHS programs, state and local programs]
- Developing a shared information system among the community's safety net providers. [Tracking, case management, medical records, financial records]
- Developing and incorporating shared clinical protocols, quality improvement systems, utilization management systems, and error prevention systems.
- Sharing core management functions. [Finance, purchasing, appointment systems]
- Coordinating and strengthening priority services to specific targeted patient groups.
- Developing affordable pharmaceutical services.

Use of Grant Funds

Funding provided through this program may NOT be used to substitute for or duplicate funds currently supporting similar activities. Grant funds may support costs such as:

- Project staff salaries
- Consultant support
- Management information systems (*e.g.*, hardware and software)
- Project-related travel
- Other direct expenses necessary for the integration of administrative, clinical, information system, or financial functions
- Program evaluation activities

With appropriate justification on why funds are needed to support the following costs, up to 15 percent of grant funds may be used for:

- Alteration or renovation of facilities
- Primary care site development
- Service expansions or direct patient care

Grant funds may NOT be used for:

- Construction
- Reserve requirements for state insurance licensure

Expected Results

The integration and coordination of services among a community's safety net providers are expected to result in:

- A system of care that provides coordinated coverage to the target population.
- Increased access to primary care resulting in a reduction in hospital admissions for ambulatory sensitive conditions among the uninsured and underinsured.
- Elimination of unnecessary, duplicate functions in service delivery and administrative functions, resulting in savings to reinvest in the system.
- Increased numbers of low-income uninsured people with access to a full range of health services.

Dated: January 31, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–2567 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting; Correction

In **Federal Register** Document 00–1032 appearing on page 2634 in the issue for Tuesday, January 18, 2000, the February 10–11, 2000, meeting dates of the "National Advisory Council on Migrant Health" are incorrect. The meeting will be held on February 11–12, 2000; 9:00 a.m.–5:00 p.m.

All other information is correct as it appears.

Dated: January 28, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–2434 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://wmcare.samhsa.gov*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SPECIAL NOTE: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories,8901 W. Lincoln Ave.,West Allis, WI 53227,414–328–7840/800–877–7016,(Formerly: Bayshore Clinical Laboratory).

Advanced Toxicology Network,3560 Air Center Cove, Suite 101,Memphis, TN 38118,901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc.,345 Hill Ave.,Nashville, TN 37210,615–255–2400.

Alabama Reference Laboratories, Inc.,543 South Hull St.,Montgomery, AL 36103,800–541–4931/334–263–5745.

Alliance Laboratory Services,3200 Burnet Ave.,Cincinnati, OH 45229,513–585–9000,(Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc.,14225 Newbrook Dr.,Chantilly, VA 20151,703–802–6900.

Associated Pathologists Laboratories, Inc.,4230 South Burnham Ave., Suite 250,Las Vegas, NV 89119–5412,702–733–7866/800–433–2750.

Baptist Medical Center—Toxicology Laboratory,9601 I–630, Exit 7,Little Rock, AR 72205–7299,501–202–2783,(Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab,8433 Quivira Rd.,Lenexa, KS 66215–2802800–445–6917.

Cox Health Systems, Department of Toxicology,1423 North Jefferson Ave.,Springfield, MO 65802,800–876–3652/417–269–3093,(Formerly: Cox Medical Centers).

Dept. of the Navy, Navy Drug Screening Laboratory,Great Lakes, IL,P.O. Box 88–6819,Great Lakes, IL 60088–6819,847–688–2045/847–688–4171.

Diagnostic Services Inc., dba DSI,12700 Westlinks Drive,Fort Myers, FL 33913,941–561–8200/800–735–5416.

Doctors Laboratory, Inc.,P.O. Box 2658,2906 Julia Dr.,Valdosta, GA 31604,912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC,1229 Madison St., Suite 500, Nordstrom Medical Tower,Seattle, WA 98104,206–386–2672/800–898–0180,(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof,Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc.,P.O. Box 2969,1119 Mearns Rd.,Warminster, PA 18974,215–674–9310.

Dynacare Kasper Medical Laboratories*,14940–123 Ave.,Edmonton, Alberta,Canada T5V 1B4,780–451–3702/800–661–9876.

ElSohly Laboratories, Inc.,5 Industrial Park Dr.,Oxford, MS 38655,601–236–2609.

Gamma-Dynacare Medical Laboratories*,A Division of the Gamma-Dynacare Laboratory Partnership,245 Pall Mall St.,London, ON,Canada N6A 1P4,519–679–1630.

General Medical Laboratories,36 South Brooks St.,Madison, WI 53715,608–267–6267.

Hartford Hospital Toxicology Laboratory,80 Seymour St.,Hartford, CT 06102–5037,860–545–6023.

Info-Meth,112 Crescent Ave.,Peoria, IL 61636,309–671–5199/800–752–1835,(Formerly: Methodist Medical Center Toxicology Laboratory).

Integrated Regional Laboratories,5631 NW 33rd Avenue,Fort Lauderdale, FL 33309,954–777–0018, 800–522–0232,(Formerly: Cedars Medical Center, Department of Pathology).

Kroll Laboratory Specialists, Inc.,1111 Newton St.,Gretna, LA 70053,504–361–8989/800–433–3823,(Formerly: Laboratory Specialists, Inc.).

Laboratory Corporation of America Holdings,1904 Alexander Drive,Research Triangle Park, NC 27709,919–572–6900/800–833–3984,(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings,4022 Willow Lake Blvd.,Memphis, TN 38118,901–795–1515/800–233–6339,(Formerly: LabCorp Occupational Testing Services, Inc.,MedExpress/National Laboratory Center).

LabOne, Inc.,10101 Renner Blvd.,Lenexa, KS 66219,913–888–3927/800–728–4064,(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings,69 First Ave.,Raritan, NJ 08869,908–526–2400/800–437–4986,(Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories,Forensic Toxicology Laboratory,1000 North Oak Ave.,Marshfield, WI 54449,715–389–3734/800–331–3734

MAXXAM Analytics Inc.*,5540 McAdam Rd.,Mississauga, ON,Canada L4Z 1P1,905–890–2555,(Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory,Department of Pathology,3000

Arlington Ave.,Toledo, OH 43614,419–383–5213
MedTox Laboratories, Inc.,402 W. County Rd. D,St. Paul, MN 55112,651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services,1225 NE 2nd Ave.,Portland, OR 97232,503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center,Forensic Toxicology Laboratory,1 Veterans Drive,Minneapolis, Minnesota 55417,612–725–2088
National Toxicology Laboratories, Inc.,1100 California Ave.,Bakersfield, CA 93304,661–322–4250
NWT Drug Testing,1141 E. 3900 South,Salt Lake City, UT 84124,801–268–2431/800–322–3361,(Formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc.,1705 Center Street,Deer Park, TX 77536,713–920–2559,(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories,P.O. Box 972,722 East 11th Ave.,Eugene, OR 97440–0972,541–687–2134
Pacific Toxicology Laboratories,6160 Variel Ave.,Woodland Hills, CA 91367,818–598–3110,(Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories,11604 E. Indiana,Spokane, WA 99206,509–926–2400/800–541–7891
PharmChem Laboratories, Inc.,1505–A O'Brien Dr.,Menlo Park, CA 94025,650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division,7606 Pebble Dr.,Fort Worth, TX 76118,817–215–8800,(Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory,7800 West 110th St.,Overland Park, KS 66210,913–339–0372/800–821–3627
Poisonlab, Inc.,7272 Clairemont Mesa Blvd.,San Diego, CA 92111,619–279–2600/800–882–7272
Quest Diagnostics Incorporated,3175 Presidential Dr.,Atlanta, GA 30340,770–452–1590,(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated,4444 Giddings Road,Auburn Hills, MI 48326,810–373–9120/800–444–0106,(Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science,1901 Sulphur Spring Rd.,Baltimore, MD 21227,410–536–1485,(Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated,8000 Sovereign Row,Dallas, TX 75247,214–638–1301,(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated,4770 Regent Blvd.,Irving, TX 75063,972–916–3376/800–526–0947,(Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated,801 East Dixie Ave.,Leesburg, FL 34748,352–787–9006,(Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated,400 Egypt Rd.,Norristown, PA 19403,610–631–4600/800–877–7484,(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated,875 Greentree Rd., 4 Parkway Ctr.,Pittsburgh, PA 15220–3610,412–920–7733/800–574–2474,(Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated,506 E. State Pkwy.,Schaumburg, IL 60173,800–669–6995/847–885–2010,(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated,7470 Mission Valley Rd.,San Diego, CA 92108–4406,619–686–3200/800–446–4728,(Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC,2320 Schuetz Rd.,St. Louis, MO 63146,314–991–1311/800–288–7293,(Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated,One Malcolm Ave.,Teterboro, NJ 07608,201–393–5590,(Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated,7600 Tyrone Ave.,Van Nuys, CA 91405,818–989–2520/800–877–2520,(Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory,6122 Nancy Ridge Dr.,San Diego, CA 92121,800–677–7995
Scientific Testing Laboratories, Inc.,463 Southlake Blvd.,Richmond, VA 23236,804–378–9130
Scott & White Drug Testing Laboratory,600 S. 25th St.,Temple, TX 76504,254–771–8379/800–749–3788
S.E.D. Medical Laboratories,5601 Office Blvd.,Albuquerque, NM 87109,505–727–6300/800–999–5227
South Bend Medical Foundation, Inc.,530 N. Lafayette Blvd.,South Bend, IN 46601,219–234–4176
Southwest Laboratories,2727 W. Baseline Rd.,Tempe, AZ 85283,602–438–8507
Sparrow Health System,Toxicology Testing Center,St. Lawrence Campus,1210 W. Saginaw,Lansing, MI 48915,517–377–0520,(Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory,1000 N. Lee St.,Oklahoma City, OK 73101,405–272–7052
Toxicology & Drug Monitoring Laboratory,University of Missouri Hospital & Clinics,2703 Clark Lane, Suite B, Lower Level,Columbia, MO 65202,573–882–1273
Toxicology Testing Service, Inc.,5426 N.W. 79th Ave.,Miami, FL 33166,305–593–2260
UNILAB,18408 Oxnard St.,Tarzana, CA 91356,818–996–7300/800–492–0800,(Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC,10210 W. Highway 80,Midland, Texas 79706,915–561–8851/888–953–8851

The following laboratory is voluntarily withdrawing from the NLCP program, effective February 1, 2000: Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888, (Formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–2461 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Mr. Tom Knox, Department of Energy, Office of Contract and Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: January 28, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/4/00

Suitable/Available Properties

Buildings (by State)

Maryland

Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010032
Status: Utilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only.

Washington

Moses Lake U.S. Army Rsv Ctr
Grant County Airport
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 21199630118
Status: Surplus
Comment: 4499 sq. ft./2.86 acres, most recent use—admin., temporary permit from COE granted to an organization, FAA recommended land not be used for residential use due to aircraft noise problem, restriction
GSA Number: 9–D–WA–1141.

Unsuitable Properties

Buildings (by State)

Colorado

Bldg. 776
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 777
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 778
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 712–712A
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010004
Status: Excess

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 713–713A
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 771 TUN
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 776A–781
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Florida

Bldg. A–952
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–962
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–1105
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010036
Status: Unutilized
Reason: Extensive deterioration.

Maryland

Bldg. 163
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010033
Status: Unutilized
Reason: Extensive deterioration.

Mississippi

Bldg. 49
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 130
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 368
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 390
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Unsuitable Properties

Land (by State)

Maryland

Land—5000 sq. ft.
Naval Air Station
Patuxent River Co: MD 20670–1603
Landholding Agency: Navy
Property Number: 77200010023
Status: Unutilized
Reason: Secured Area.

New Hampshire

Parcel #4
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #5
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #6
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010030
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #7
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010031
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

[FR Doc. 00–2314 Filed 2–3–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

FISH AND WILDLIFE SERVICE

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad During Construction of a Single Family Residence on Two Lots in the Circle D Country Acres Subdivision, Bastrop County, Texas

SUMMARY: Cornerstone Construction (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021793. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 17, Section 5 and Lot 21, Section 6 in the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, US Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021793 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Cornerstone Construction plans to construct one single family residence each on Lot 17, Section 5 and Lot 21, Section 6 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicant proposes to compensate for this incidental take of the Houston Toad by contributing $3,000.00 ($1,500.00 for each homesite) to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2462 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad During Construction of a Single Family Residence on 0.75-acre Lot 141 in the Pine View Estates Subdivision, Bastrop County, Texas

SUMMARY: Miguel Sanchez (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021792. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 141 in the Pine View Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021792 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Miguel Sanchez plans to construct one single family residence on 0.75 acres platted as Lot 141 in the Pine View Estates Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicant proposes to compensate for this incidental take of the Houston Toad by contributing $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2463 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit for Houston Toad (Bufo houstonensis) During Construction of a Single Family Residence on 5.0 acres on Lot 6 in the Pine Ridge Farm Subdivision, Bastrop County, TX

SUMMARY: Cory Ehrler (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021561–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction of a single family residence on Lot 6 in the Pine Ridge Farm Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c), of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box

1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021561–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Englehard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Cory Ehrler plans to construct a single family residence on 5.0 acres platted as Lot 6 in the Pine Ridge Farm Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat. The applicant proposes to mitigate for this incidental take of the Houston toad by donating $1,500 into the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2464 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit of the Houston Toad (Bufo houstonensis) During Construction of a Single Family Residence on 1.3 acres on Lot 51, Section 5 in the Circle D Country Acres Subdivision, Bastrop County, TX

SUMMARY: Dorathy Walters (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021659–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction of a single family residence on Lot 51, Section 5 in the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021659–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Englehard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Dorathy Walters plans to construct a single family residence on 1.03 acres platted as Lot 51, Section 5 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat. The applicant proposes to mitigate for this incidental take of the Houston toad by donating $1,500 into the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2465 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

San Dieguito Lagoon Restoration Plan Draft Environmental Impact Statement/Report

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement/Report for the San Dieguito Lagoon Restoration Plan, San Diego County, California.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Fish and Wildlife Service (FWS) announces the availability of a draft environmental impact statement/report (DEIS/R) for the San Dieguito Lagoon Restoration Plan, San Diego County, California.

DATES: A 45-day comment period will follow the Environmental Protection Agency's notice of availability of the DEIS/R on February 4, 2000. Comments

must be received no later than Monday, March 20, 2000. A Public Hearing to receive comments on the DEIS/R will be held on Monday, February 28, 2000 at 7:00 PM in the City of Del Mar City Hall Annex, 235 11th St., Del Mar, California.

ADDRESSES: Public reading copies of the DEIS/R will be available for review at:

Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008
San Dieguito River Park, 18372 Sycamore Creek Rd., Escondido, California 92025
Del Mar Library, 1309 Camino del Mar, Del Mar, California
Carmel Valley Library, 3919 Townsgate Drive, San Diego, California
Solana Beach Branch Library, 981 Lomas Santa Fe Drive, Suite F, Solana Beach, California

SUPPLEMENTARY INFORMATION: This DEIS/R has been prepared and is being circulated in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This project involves the proposal to implement a comprehensive habitat restoration plan with a public access component for an approximately 400-acre area known as the San Dieguito Lagoon. The project site is in the western San Dieguito River Valley under the influence of the Pacific Ocean, within the northwestern-most portions of the City of San Diego and the City of Del Mar in San Diego County, CA.

A major component of this planning effort is a tidal restoration proposal to 1) restore the aquatic functions of the lagoon through permanent inlet maintenance and expansion of the lagoon's tidal prism and 2) create subtidal and intertidal habitats on both the east and west sides of Interstate 5, which bisects the project site. It is anticipated that tidal restoration would be accomplished primarily by Southern California Edison and partners (SCE), provided the restoration satisfies the conditions of the California Coastal Commission (CCC) permit for the construction and operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. Upland habitat restoration, non-tidal wetland restoration, endangered species habitat improvements, and public trails and interpretive facilities would be provided by the San Dieguito River Park in cooperation with other agencies and organizations including the Fish and Wildlife Service, Coastal Conservancy, Cities of Del Mar and San Diego, and others. The draft EIS/R analyzes six project alternatives including the Mixed Habitat, Maximum Tidal Basin, Maximum Intertidal, Hybrid, Reduced Berm, and No Action Alternatives. Potentially significant environmental impacts have been identified in the areas of land use, landform alteration/visual quality, hydrology/water quality, traffic circulation, noise, air quality, geology and soils, public utilities, biological resources, and natural resources. The project includes measures to mitigate some potential impacts, while other mitigation will be made conditions of subsequent permits.

FOR FURTHER INFORMATION CONTACT: Jack Fancher, Coastal Program Coordinator, Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008, phone (760) 431–9440.

Dated: January 24, 2000.

Elizabeth H. Stevens,

Acting Manager, California-Nevada Office, Fish and Wildlife Service.

[FR Doc. 00–2214 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–98–1610–AF–24–1A]

Notice of Emergency Closure Policy and Procedures for Public Lands Managed by the Hollister Field Office, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Proposed Implementation Policy for Emergency Closures on an As Needed Basis for Public Lands Administered by the Hollister Field Office, California.

SUMMARY: In order to facilitate emergency operations and protect resources in the event of severe seasonal storms and/or natural disasters, the Hollister Field Officer is hereby serving notice that it will be adopting an emergency closure policy to be enacted on an as-needed basis when basic criteria are met. The closure will be invoked or lifted in public media such as Information Hot Lines, Press Releases, and on-the-ground postings. The lands covered by this emergency closure policy include all public lands administered by the Hollister Field Office. Public notices in the media and on recording information will specify which public lands will be temporarily closed, and will reflect local conditions. One of the following criteria shall be met: (1) State, County or Federal road access to the area is closed or restricted to residents and emergency personnel; (2) BLM or emergency response personnel cannot access and/or perform their duties in a given location; (3) Roads or trails are saturated with moisture to the point where vehicle traffic causes ruts or bogs leading to increased erosion. See attached moisture criteria supplement sheet.

The above policy is intended to allow the BLM flexibility in implementing emergency closure while also utilizing the most time-effective method of notifying the public. This will also facilitate management to minimize threats to public health and safety, as well as the potential for resource damage. Any time the closure policy is enacted, the following persons will be exempt:

(1) Federal, State, or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Any member of an organized rescue, fire-fighting force, Emergency Medical Services organization while in the performance and execution of an official duty.

(4) Any member of a federal, state, or local public works department while in the performance of an official duty.

(5) Any person in receipt of a written authorization of exemption obtained from the Hollister Field Office.

(6) Local landowners, persons with valid existing rights or lease operations, or representatives thereof, who have a responsibility or need to access their property or to continue their operations on public land.

EFFECTIVE DATE: This policy will become effective March 6, 2000, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: These closures and restrictions are under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Parties exempt from the closure action shall be responsible for mitigating any resource damage caused by entering the closed area. Waivers can be granted for emergency circumstances, however in the event an emergency is caused by a negligent action, the responsible party would then be responsible for the mitigation.

FOR FURTHER INFORMATION CONTACT: Area Manager, Hollister Field Office, 20 Hamilton Court, Hollister, CA 95024, (831) 630–5000.

Dated: January 19, 2000.
Robert E. Beehler,
Hollister Field Manager.

Supplemental Soil Moisture Closure Criteria

Clear Creek Management Area

No action would be taken until the annual total precipitation exceeds 8 inches, the rain year would be the same as that used by the national weather service and rainfall data would be from the California Water Resources Board, nearest available rain gage. Once 8 inches of precipitation has been exceeded, the following would apply. Additional rainfall exceeding ½ inch within a 24 hour period, or 1 inch within a 72 hour period would result in a 3 day closure. Once the area has been closed a field inspection will be completed prior to reopening, and daily thereafter to determine suitability of road conditions. When recorded field observations show that road and trail surfaces have not dried sufficiently to allow traffic without damage to the surface, the area shall remain closed. Closure criteria may be amended or refined as results of area closures are evaluated. Specific criteria may be developed for other areas as needed.

[FR Doc. 00–2513 Filed 2–3–00; 8:45 am]
BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1492–ER]

DEPARTMENT OF DEFENSE

Navy Department

Notice of Availability for the Final Environmental Impact Statement, Bureau of Land Management Carson City and Battle Mountain, Nevada Field Offices and Department of the Navy, Naval Air Station Fallon, Nevada

AGENCY: Bureau of Land Management, Department of the Interior and Naval Air Station Fallon, Nevada, Department of the Navy.

COOPERATING AGENCIES: Federal Aviation Administration, U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Indian Affairs, Yomba Shoshone Tribe, Fallon Paiute-Shoshone Tribe, Walker River Paiute Tribe, Nevada Division of Wildlife, Eureka, Lander, and Churchill County Commissions, and Kingston Town Board.

ACTION: Notice of availability of a final environmental impact statement (EIS) for the Naval Air Station Fallon's proposed Fallon Range Training Complex Requirements.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and 40 CFR 1500–1508 Council on Environmental Quality Regulations (CEQ), notice is given that the Bureau of Land Management (BLM) Carson City and Battle Mountain, Nevada Field Offices and the Department of the Navy (Navy) Naval Air Station Fallon have jointly prepared, with the assistance of a third-party consultant, a Final EIS on the proposed Fallon Range Training Complex Requirements, and has made the document available for public and agency review.

DATES: Comments will be accepted until March 6, 2000.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, Attn: Terri Knutson, Project Manager. Comments may also be sent via electronic mail to the following address: *tknutson@nv.blm.gov* or via fax: (775) 885–6147. A limited number of copies of the Draft EIS may be obtained at the above BLM Field Office in Carson City, NV, as well as, BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820. In addition, the Final EIS is available on the internet via the Carson City Field Office Home Page at: *www.nv.blm.gov/carson.*

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.—5:00 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Carson City BLM, at (775) 885–6156 or Gary Foulkes, Battle Mountain BLM, at (775) 635–4060, or John Smith, NAS Fallon, at (775) 426–2101.

After the review period ends for the Final EIS, comments will be analyzed and considered jointly by the BLM and the Navy in preparing the Record of Decision (ROD).

Dated: January 25, 2000.
John Singlaub,
Manager, BLM Carson City.

Dated: January 24, 2000.
RADM T.R. Beard,
Commander, Naval Strike and Air Warfare Center Fallon.

[FR Doc. 00–2223 Filed 2–3–00; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–2822–M948: GPO–0099]

Emergency Motor Vehicle Use Limitations; Lincoln Fire; Oregon

AGENCY: Bureau of Land Management, Vale District, Oregon, Department of the Interior.

ACTION: A temporary closure to motor vehicle use on public lands within the area of the Lincoln Fire (M948) administered by the Bureau of Land Management (BLM), Malheur Resource Area, Vale District, Oregon.

SUMMARY: One June 24, 1999 the Lincoln Fire burned 1415 acres of public and private land within T.19S., R.46E., Williamette Meridian, Sections 28, 29, 30, 31, 32, and 33. Because of the damage caused by the fire, this closure is necessary to prevent erosion and enhance the fire rehabilitation efforts within the burned area. The authorized officer has determined that vehicle use other than on designated routes will cause considerable adverse effects upon recovering soil and vegetation resources in the burned area and may also limit the successful establishment of desirable vegetation or other proposed rehabilitation actions.

Open roads within the fire area will be clearly identified. A map designating those routes which will remain open to vehicle use is included in the Vale District Bureau of Land Management, Lincoln Fire Rehabilitation Plan M948, Environmental Assessment (EA No. OR–030–99–021). The map and plan can be reviewed at: Vale District Office, USDI Bureau of Land Management, 100 East Oregon Street, Vale, Oregon 97918.

Prohibited Act: Pursuant to 43 CFR 8364.1, motorized vehicle use is prohibited on public land within the

boundaries of the Lincoln-Fire (M948), except on designated roads.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)) and 43 CFR 8360.0–7. Any person who knowingly and willfully violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571.

DATES: This closure will take effect upon the published date of this notice and will continue for one year.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Office Manager, Malheur Resource Area, Vale District Office, 100 Oregon Street, Vale, OR 97914, Telephone—(541) 473–3144.

Dated: January 28, 2000.

Roy L. Masinton,

Field Office Manager, Malheur Resource Area.

[FR Doc. 00–2514 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 114773]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW114773 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW114773 effective February 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–2512 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–00–1430–01; AZA–31150]

Notice of Realty Action; Recreation and Public Purposes (R&PP) ActClassification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Gila County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869,*et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

AZA–31150

The following described lands, located near the Town of Globe, Gila County, have been found suitable for lease or conveyance to the Globe Unified School District #1 for public school buildings and supporting facilities.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 15½ E.
Sec. 26, W½NE¼, NW¼SE¼, W½NE¼SE¼, W½SE¼NE¼.
Containing approximately 159.06 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights as Donald H. Harrington Estate, may have as to that portion of the Buckeye Mountain Grazing Allotment.

FOR FURTHER INFORMATION CONTACT: Angela Mogel at the PhoenixField Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (623) 580–5638.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manager, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for: A public school facility, for Globe Unified School District #1. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: January 21, 2000.

Margo E. Fitts,

Assistant Field Manager.

[FR Doc. 00–2511 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–62870, N–62869]

Notice of Realty Action:

Segregation Termination, Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Segregation Termination, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada were segregated on August 21, 1995 for exchange purposes under serial number N–60073, on December 01, 1996 for administrative purposes under serial number N–61855. The segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**.

The lands have been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use these lands for two elementary school sites.

Mount Diablo Meridian, Nevada

Case file No.	Legal description	Acres
N–62870	T. 22 S., R. 61 E., section 32: N½NW¼SW¼NW¼, SW¼NW¼NW¼	15
N–62869	T. 22 S., R. 60 E., section 36: SE¼NE¼NW¼SW¼, SW¼NW¼NE½SW¼,NE¼SE¼NW¼SW¼, NW¼SW¼NE¼SW¼, N½SE¼SE¼NW¼SW¼,N½SW¼SW¼NE¼SW¼.	12.5

Containing a total of 27.5 acres, more or less.

The land is not required for any federal purpose. The leases/conveyances are consistent with current Bureau planning for this area and would be in the public interest. The leases/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and each will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Easements in favor of Clark County for roads, public utilities and flood control purposes in accordance with the Clark County Transportation Plan.

2. All valid and existing rights, which are identified in the respective case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (P.L. 105–263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for elementary school sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for the development of two elementary schools.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 14, 2000.

Cheryl A. Ruffridge,

Assistant Field Manager, Las Vegas, NV.

[FR Doc. 00–2228 Filed 2–3–00; 8:45 am]

BILLING CODE 1430–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Final)]

Bulk Acetylsalicylic Acid (Aspirin) From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–828 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of bulk acetylsalicylic acid (aspirin), provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

[1] For purposes of this investigation, Commerce has defined the subject merchandise as "bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption)."

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of bulk acetylsalicylic acid (aspirin) from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 28, 1999, by Rhodia, Inc., Cranbury, NJ.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on May 5, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 18, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 10, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 15, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 12, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 25, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 25, 2000. On June 15, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 19, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2525 Filed 2–3–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Cancellation of the hearing and revision of the schedule of a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1999 (64 FR 46952), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan. The schedule provided for a public hearing on January 25, 2000. Requests to appear at the hearing were filed with the Commission on behalf of NACCO Materials Handling Group and on behalf of Clark Material Handling Co. However, the Federal Government was closed on January 25, 2000, because of snow and so the Commission hearing was not held as scheduled. Subsequently, each of the parties requesting to appear at the hearing withdrew their request. Since there are no current requests by interested parties to appear at a public hearing, the Commission determined to cancel, instead of reschedule, the public hearing on internal combustion industrial forklift trucks from Japan and provide those parties scheduled to appear an opportunity to present written testimony. The Commission unanimously determined that no earlier announcement of this cancellation was possible.

The Commission's new schedule for the review is as follows: the deadline for filing posthearing briefs is February 15, 2000; the Commission will make its final release of information on March 9, 2000; and final party comments are due on March 13, 2000.

For further information concerning the review, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.35 and 207.62 of the Commission's rules.

Issued: January 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2524 Filed 2–3–00; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James Garvey Cavanagh, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Garvey Cavanagh, M.D., of Hawthorne, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC9084485 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada. The order also notified Dr. Cavanagh that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 21, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cavanagh or anyone purporting to represent him in this matter. Therefore the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cavanagh is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on December 22, 1999, and published at 64 FR 73,586 (December 30, 1999).

The Deputy Administrator finds that Dr. Cavanagh currently possesses DEA Certificate of Registration AC9084485 issued to him in Nevada. The Deputy Administrator further finds that on March 18, 1999, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cavanagh's license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Cavanagh is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Cavanagh is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cavanagh is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 USC 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC9084485, previously issued to James Garvey Cavanagh, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2526 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–9]

Michael G. Dolin, M.D., Denial of Request for Modification of Registration

On December 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael Glen Dolin, M.D. (Respondent) of Rockville Center, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AD4476378 pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for modification or renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

On January 4, 1999, Respondent, through counsel, filed a request for a

hearing. Following prehearing proceedings, a hearing was held in New York City, New York on May 26, 1999, and continued on July 13, 1999, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence.

On July 9, 1999, prior to the second hearing session, the Government filed a Motion to Amend Prehearing Statement and to Reopen Record, which was granted at the hearing on July 13, 1999. The Government introduced evidence that the New York Department of Health, State Board for Professional Medical Conduct (Medical Board), had revoked Respondent's license to practice medicine in New York, and that the New York State Supreme Court, Appellate Division, Third Judicial Department (Appellate Division), stayed the revocation, but precluded Respondent from prescribing controlled substances. Based upon this evidence, the Government made an oral Motion for Summary Disposition at the July 13, 1999 hearing session.

After being given an opportunity to reply to the Government's motion, on August 23, 1999, Respondent filed a motion requesting that Judge Randall deny the Government's motion and adjourn these proceedings until the Appellate Division renders its decision on the Respondent's appeal of the Medical Board's revocation of his medical license.

On September 1, 1999, the Government filed a Renewed Motion for Summary Disposition, and sought to reopen the record to introduce evidence of the Appellate Division's decision lifting the temporary stay of the revocation of Respondent's New York medical license. The Government asserted that since Respondent is no longer authorized to handle controlled substances in New York, DEA cannot register him in that state. In a letter dated September 8, 1999, Respondent replied to the Government's Renewed Motion for Summary Disposition.

On September 28, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the State of New York; denying Respondent's Motion to Adjourn; granting the Government's Motion for Summary Disposition; and recommending that Respondent's request for modification of his DEA registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 4, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent was issued DEA Certificate of Registration AD4476378 at an address in North Carolina with an expiration date of June 30, 1998. On June 14, 1998, Respondent submitted an application to modify his registration with DEA. On the application, Respondent crossed out the registered address in North Carolina and hand wrote in an address in Rockville, New York. Pursuant to 21 CFR 1301.51, this request for modification is treated like a new application for registration.

The Deputy Administrator further finds that in a decision dated May 17, 1999, the Hearing Committee of the Medical Board revoked Respondent's license to practice medicine in the State of New York. On June 10, 1999, the Appellate Division temporarily stayed the revocation, pending Respondent's appeal of the Medical Board's decision. Subsequently, in a decision dated August 6, 1999, the Appellate Division lifted the temporary stay of the Medical Board's revocation of Respondent's license to practice medicine in New York.

In arguing against summary disposition and for an adjournment of these proceedings pending a ruling on his appeal, Respondent asserted that if the Government's motion is granted and Respondent ultimately wins his appeal of the Medical Board's revocation of his medical license, he would be without a DEA registration to handle controlled substances. Respondent further argued that the public interest would be protected by delaying a decision in this matter pending the outcome of the appeal in the Appellate Division since he is currently without a medical license and he has not written a controlled substance prescription since his DEA registration expired in 1998.

The Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the State of New York and it is therefore reasonable to infer that he is also not authorized to handle controlled substances in that state. The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Michael J. Pine, D.D.S., 64 FR 33318 (1999); Eric Jones, M.D., 63 FR 10042 (1998); Romeo J. Perez, M.D., 62 FR 16193 (1997).

Here, it is clear that Respondent is not authorized to practice medicine or handle controlled substances in New York, and therefore, he is not eligible to possess a DEA registration in that state. As Judge Randall noted, "[a] pending judicial challenge to the Medical Board's decision does not alter Respondent's status in New York. The outcome of a potential judicial challenge to the Medical Board's action is speculative, and the decision of the Medical Board is final until otherwise overturned." Under these circumstances, Judge Randall found that it would be inappropriate to stay or adjourn these proceedings.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in New York. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Jesus R. Juarez, M.D., 62 FR 14945 (1997); Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

The Deputy Administrator agrees with Judge Randall's conclusion that because Respondent lacks state authorization in New York, the state where he is seeking to be registered, it is unnecessary to address the other allegations raised in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the request of Michael G. Dolin, M.D. to modify his DEA Certificate of Registration AD4476378, dated June 14, 1998, be, and it hereby is, denied. The Deputy Administrator notes that DEA Certificate of Registration AD4476378 is no longer valid since it expired without being renewed or modified. This order is effective March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2537 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–11]

Robert M. Golden, M.D.; Grant of Restricted Registration

On January 22, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Golden, M.D. (Respondent) of Alpharetta, GA, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that this registration would be inconsistent with the public interest.

By letter dated February 2, 1999, Respondent requested a hearing, and following prehearing procedures, a hearing was held in Atlanta, GA on June 9, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed finding of fact, conclusions of law and argument. On November 23, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings, of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's application for a DEA Certificate of Registration be granted in Schedules IV and V subject to several conditions. Neither party filed exceptions to Judge Bittner's Opinion and on December 23, 1999, she transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon finding of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, with slight modifications to the recommended decision as noted below. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent previously possessed DEA Certificate of Registration AG6243125. On May 25, 1994, an Order to Show Cause was issued proposing to revoke that Certificate of Registration and alleging that Respondent's continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Paul A. Tenney, the then-Deputy Administrator revoked Respondent's DEA registration effective June 17, 1996. See Robert M. Golden, M.D., 61 FR 24808 (May 16, 1996).

In that prior proceeding, the then-Deputy Administrator found that in April 1987, Respondent entered into a Consent Order with the Georgia State Board of Medical Examiners (Board) based upon allegations of recordkeeping violations, the prescribing or dispensing of controlled substances while not acting in the usual course of professional practice, and the prescribing or ordering of controlled substances for an illegitimate medical purpose, Respondent's medical license was placed on probation for four years, and he was prohibited from prescribing, administering or dispensing Schedule II and III controlled substances, except in an institutional setting; required, for at least one year, to personally maintain a log of all Schedule IV controlled substances that he prescribed, administered or dispensed in his office; and required to attend at least 100 hours of continuing medical education focusing on drug abuse and/or pharmacology. The Consent Order specified that it was "not an admission of wrongdoing for any purpose other than resolving the matters pending before the Board."

In addition in the prior proceeding, the then-Deputy Administrator found that in 1992 a confidential informant received prescriptions for Xanax, a Schedule IV controlled substance, from Respondent who issued the prescriptions using names other than that of the informant. Also, on two occasions in 1992, Respondent issued prescriptions for Xanax to an undercover police officer for no legitimate medical purpose. Further, Respondent increased the dosage strength of the controlled substances prescribed based upon the patient's demands rather than on his own medical judgment.

In his final order revoking Respondent's previous DEA Certificate of Registration, the then-Deputy Administrator found that Respondent's conduct "demonstrate[s] a cavalier behavior regarding controlled substances"; and that "Respondent did not acknowledge any possibility of questionable conduct in his prescribing practices." The then-Deputy Administrator found that he "was provided no basis to conclude that Respondent would lawfully handle controlled substances in the future."

On April 4, 1996, Respondent entered into another Consent Order with the Board wherein the Board contended that following the termination of Respondent's earlier probation in 1991, he "prescribed and otherwise distributed controlled and/or dangerous substances without adequate medical justification." Respondent's license was placed on probation for a least four years and he was required to relinquish his right to prescribe, administer, dispense, order or possess Schedule I, II, IIN, III and IIIN controlled substances, as well as specifically named drugs to include the Schedule IV controlled substances Xanax and Stadol, and their generic equivalents. In addition pursuant to this Consent Order, Respondent is required to utilize triplicate prescriptions for all controlled substances prescribed by him; to maintain a contemporaneous log of his handling of controlled substances; and to successfully complete a specific continuing medical education course regarding the appropriate prescribing of controlled substances, as well as other continuing medical education.

On June 15, 1997, Respondent submitted an application for a new DEA Certificate of Registration. On January 9, 1998, DEA issued an Order to Show Cause proposing to deny this application and alleging that Respondent's registration would be inconsistent with the public interest. Respondent did not reply to the Order to Show Cause, and consequently the then-Acting Deputy Administrator deemed that Respondent had waived his right to a hearing. On July 10, 1998, the then-Acting Deputy Administrator issued a final order denying Respondent's application for registration effective August 17, 1998. See 63 FR 38669 (July 17, 1998).

In his final order denying Respondent's application, the then-Acting Deputy Administrator found that the circumstances had not changed sufficiently from the revocation of Respondent's previous DEA registration to warrant granting Respondent's application.

On October 12, 1998, Respondent submitted an application for a new DEA registration in Schedules II through V. Subsequently, Respondent's application was amended to seek registration in Schedules IV and V only. That application is the subject of these proceedings.

The Deputy Administrator concludes that the then-Deputy Administrator's findings in the 1996 final order revoking Respondent's previous DEA Certificate of Registration are res judicata since they were made following an evidentiary hearing. See Stanley Alan Azen, M.D., 61 FR 57893 (1996).

However, since the then-Acting Deputy Administrator's findings in the 1998 final order denying Respondent's previous application for registration were based on the investigative file and following an evidentiary hearing, res judicata does not apply and therefore, Respondent is not precluded from litigating the matters at issue in the 1998 proceeding.

Accordingly, the Deputy Administrator concludes that the critical consideration in this proceeding is whether the circumstances, which existed at the time of the 1996 revocation of Respondent's previous DEA Certificate of Registration, have changed sufficiently to support a conclusion that Respondent's registration with DEA would be in the public interest.

As discussed previously, Respondent is subject to a Consent Order with the Board until at least April 4, 2000. A DEA investigator testified at the hearing in this matter that Respondent has been in compliance with the terms of this Consent Order.

Respondent testified that he has been practicing medicine for approximately 20 years, and for most of that time he practiced general or family medicine. In or about 1995, he realized that he was not suited for that type of medical practice and changed his specialization to cosmetic surgery. Specifically, Respondent specializes in tumescent liposuction where the cosmetic surgeon uses local rather than general anesthesia during the procedure.

Respondent testified that in his current practice he needs to use Schedule IV and V controlled substances to effectively treat his patients. According to Respondent and his medical assistant, some patients have a heightened sense of anxiety that is not relieved by non-controlled sedatives. Respondent testified that if needed, he prefers to use Valium to help patients with anxiety pre-operatively, intra-operatively, and post-operatively. According to Respondent and literature in evidence, patients who undergo tumescent liposuction surgery experience minimal post-operative pain, and therefore do not need narcotic pain relievers. In those situations where a patient has needed some type of pain relief, Respondent has prescribed a non-controlled, non-sterodial, anti-inflammatory analgesic.

Respondent introduced evidence of his completion of a course in the proper handling of controlled substances. He testified that in the future, he is "going to practice very defensive medicine." According to Respondent, "[t]the old Dr. Robert Golden is dead and buried as far as I'm concerned."

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that until at least April 4, 2000, Respondent is subject to the terms of a Consent Order entered into with the Board. Pursuant to this Consent Order, Respondent is limited to handling Schedule IV and V controlled substances only and is further precluded from handling the Schedule IV controlled substances Xanax and Stadol, and their generic equivalents.

As to factors two and four, the then-Deputy Administrator found in the 1996 final order revoking Respondent's previous DEA Certificate of Registration that prior to 1993 Respondent prescribed controlled substances knowing that a person other than the one named on the prescription was the intended recipient of the controlled substances in violation of 21 CFR 1306.05, and that Respondent increased the strength of the medication prescribed based on the patient's request rather than using his professional medical judgment. The then-Deputy Administrator concluded that these prescriptions were not issued for a legitimate medical purpose in violation of 21 CFR 1306.04.

The Deputy Administrator finds that there was no evidence presented in this proceeding to warrant a finding that Respondent has improperly handled controlled substances since 1993. The Consent Order with the Board dated April 4, 1996, alleges that Respondent prescribed and otherwise distributed controlled and/or dangerous substances without adequate medical justification. However, the Consent Order also indicates that Respondent denies these allegations and no evidence of the underlying facts of these allegations was introduced by the Government at this hearing.

As to factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to controlled substances. Further, the record contains no evidence of other conduct that may threaten the public health and safety that would be considered under factor five.

Judge Bittner noted that Respondent's last application for registration was denied because he had not presented sufficient evidence to indicate that his registration with DEA would be in the public interest. However, she concluded that Respondent has now presented such evidence. Judge Bittner noted that "Respondent has completed a six day seminar in the appropriate prescribing of controlled substances, he is in compliance with the Board's 1996 Consent Order, and he has changed his practice to a specialty in which the use of controlled substances is limited to very specific purposes and for specific periods of time."

Judge Bittner found Respondent's testimony to be credible and concluded that Respondent "now understands and accepts the responsibility inherent in a DEA registration." Therefore, she recommended that Respondent be issued a DEA registration limited to Schedule IV and V, with the exception of Xanax and Stadol, subject to the following conditions:

1. Respondent shall maintain accurate records showing all purchases, administering, and dispensing (including prescribing) of all controlled substances; and

2. Respondent shall submit copies of all such records to the Special Agent in Charge of the DEA's Atlanta office, or his designee, quarterly, for two years from the effective date of his registration.

The Deputy Administrator finds that the Government has established a prima facie case for denial of Respondent's application for registration. However, like Judge Bittner, the Deputy Administrator concludes that it would not be in public interest to deny Respondent's application, but rather to register him on a very limited a basis to give him the opportunity to demonstrate

that he can responsibly handle controlled substances.

Therefore, the Deputy Administrator concludes that Respondent should be issued a DEA Certificate of Registration in Schedules IV and V subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) While Respondent will be registered in Schedule IV, he shall not prescribe, dispense, administer, order or otherwise handle Xanax, Stadol, or their generic equivalents.

(2) Respondent shall send copies of records documenting all of his purchases of controlled substances to the Special Agent in Charge of the DEA Atlanta office, or his designee, on a quarterly basis.

(3) Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered, or dispensed during the previous quarter, to the Special Agent in charge of the DEA Atlanta office, or his designee. The log shall include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, Respondent shall indicate that fact in writing in lieu of submission of the log.

(4) Respondent shall consent to random, unannounced inspections by DEA without requiring an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted Robert M. Golden, M.D., be, and it hereby is, granted in Schedules IV and V, subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2539 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–10]

Wesley G. Harline, M.D.; Continuation of Registration With Restrictions

On October 27, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Wesley Harline, M.D. (Respondent) of Ogden, Utah, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1650248 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that his continued registration would be inconsistent with the public interest.

By letter dated December 14, 1995, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Salt Lake City, Utah on April 1 through 3 and May 6 through 8, 1997, and by telephone in Salt Lake City and Arlington, Virginia, on August 18 through 21, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument.

In his brief, Respondent's counsel included findings based upon evidence that was not introduced at the hearing. On January 5, 1998, the Government filed a Motion to Strike Post Record Evidence from Respondent's Proposed Findings of Fact, Conclusions of Law and Argument. On January 21, 1998, Respondent filed his Opposition to Government's Motion to Strike Post Record Evidence, and in the alternative, Motion to Reopen the Record.

On April 2, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), granting the Government's motion to strike the additional evidence, denying Respondent's motion to reopen the record, and recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied. On June 14, 1999, Respondent filed exceptions to Judge Bittner's Opinion and on August 2, 1999, the Government filed its response to Respondent's exceptions. Thereafter, on August 10, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

While this matter was pending with the Deputy Administrator, Respondent submitted a letter dated November 4, 1999, responding to the Government's response to his exceptions and formally moving that the record be reopened to allow additional evidence to be considered. As will be discussed more fully below, the Deputy Administrator denies Respondent's motion to reopen the record and has not considered Respondent's letter dated November 4, 1999, in rendering his decision in this matter.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on December 9, 1999, and published at 64 FR 72678 (December 28, 1999). The Deputy Administrator adopts, except as specifically noted below, the findings of fact set forth in Judge Bittner's Opinion, but does not adopt Judge Bittner's recommended conclusions of law and decision.

The Deputy Administrator finds that Respondent graduated from medical school in 1945. In or about 1953, Respondent joined a general surgery practice in Ogden, Utah. He has been a licensed physician in Utah since 1953 and has held state and Federal authorizations to handle controlled substances since approximately the time he obtained his medical license. According to Respondent, sometime in the 1980s, he virtually terminated his general surgery practice to concentrate on cosmetic surgery. Respondent testified that he considered weight control to be a part of cosmetic surgery, and as of 1997, he saw 15 to 20 weight control patients every weekday and a few weight control patients on Saturdays.

Primarily at issue in this proceeding is whether Respondent properly prescribed controlled substances to his weight control patients. Therefore, provisions of Utah law relating to this issue were placed into evidence. As of 1987 [1], the Utah Administrative Code (Administrative Code) authorized the Utah Division of Occupational and Professional Licensing (DOPL) to revoke a State license to handle controlled substances if the holder "[p]rescribes or administers any controlled substance for weight control for more than 30 days in any 12 twelve-month period." Utah Admin. Code R153–38–8 (1987–1988).

[1] The Government did not provide any evidence of the statutory provisions relating to weight control in existence prior to 1987.

The Administrative Code also required that "each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner." Utah Admin. Code R153–37–10.D (1987–1988).

The 1989 Administrative Code generally provided that:

> Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substances is utilized and information upon which the diagnosis is based.

Utah Admin. Code R153–37–9.A (1989). Further, Utah Admin. Code R153–37–10.H (1989), provided that Schedule II controlled substances could not be prescribed, dispensed or administered for weight reduction or control. In addition, section 10.J essentially provided that Schedule III and IV controlled substances could only be used for weight reduction in the treatment of obesity as an adjunct, in accordance with Food and Drug Administration approved labeling for the product, and in a regimen of caloric restriction provided that among other things the prescribing practitioner determines that the patient has made good faith efforts to lose weight in a structured treatment program and the program was ineffective, obtains a thorough history; performs a thorough physical examination; and rules out any contraindications to the use of controlled substances. This section precluded the prescribing of Schedule III and IV controlled substances for weight reduction for a period longer than 12 weeks in any one year period. Also pursuant to this section, a practitioner was required to discontinue prescribing controlled substances if the patient failed to lose weight while under treatment for a period of 28 days as determined by weighings of the patient at least every fourteenth day.

In 1991, the provision was reworded slightly but essentially was substantively unchanged, and remained so until January 16, 1996. As of that date, Utah Admin. Code R156–37–604 (1996) provided that Schedule II and III controlled substances shall not be prescribed, dispensed, or administered for purposes of weight reduction or control. Further, Schedule IV controlled substances can only be used in the treatment of excessive weight when certain conditions are met. However, this provision no longer imposed the 12 week limitation on the use of Schedule IV controlled substances.

On June 5, 1992, the DOPL issued an emergency order restricting Respondent's authority to perform certain types of surgery and ordering him to cease providing overnight patient care at his facility. On September 29, 1993, a Third Amended Petition was filed in that proceeding alleging, among other things, that Respondent prescribed a Schedule III anorectic controlled substance beyond the period of time permitted by Utah regulation to at least 13 patients and that the prescriptions did not bear the full names and addresses of the patients and the dates issued as required by law.

On December 10, 1996, Respondent executed a Stipulation and Order in which he denied all of the allegations of the Third Amended Petition but agreed to various terms and conditions. Specifically, the Stipulation and Order suspended Respondent's medical license for three months, but stayed enforcement of the suspension and placed his license on a five-year probation subject to various conditions including that he provide adequate means to permit patients to exercise informed consent with respect to medical and surgical procedures, anesthesia, and medications to be administered or dispensed; meet with the Physicians' Licensing Board (Board) quarterly for five years; allow a qualified physician to review records of 1.4 percent of his patients; and maintain prescription records in accordance with State and Federal law and make his prescription records available for inspection by the board and the DOPL upon request.

In the latter half of 1995, DEA conducted a pharmacy survey to determine whether Respondent was complying with various regulatory requirements. The survey revealed that Respondent had written prescriptions for anorectic controlled substances for more than 12 weeks in a year in violation of state law. The survey further revealed seven prescriptions that Respondent issued between 1993 and 1995 and 202 prescriptions that he issued between 1990 and 1992 that did not bear the patient's full name and/or date of issuance.

Respondent testified that he had written incomplete prescriptions, but that in discussions with other physicians he had learned that such prescriptions "are a quite frequent occurrence." According to Respondent, he was told by a DOPL investigator that no more than 50% of prescriptions for Schedule III, IV and V controlled substances are properly filled out.

On May 11, 1995, DOPL subpoenaed records for 43 Respondent's patients. At issue in this proceeding is whether Respondent properly prescribed controlled substances to these patients for weight control. As a result, there was evidence presented by both the Government and Respondent regarding when an individual is considered obese or overweight, when the use of controlled substances is appropriate for weight control, and when such treatment is deemed effective. The Government offered the testimony of a physician who mainly treats chronic pain patients, but who was qualified as an expert in the legitimate use of anorectic controlled substances. Respondent testified on his own behalf and also offered the testimony of a physician whose practice prior to 1991 consisted of some weight management patients and since 1991 was solely weight management patients. Both parties offered extensive documentary evidence.

Evidence was presented that different methods are used to determine when a patient is considered obese or overweight. These include comparing the patient's height and weight to charts published by insurance companies, and calculating the individual's body mass index (BMI), which is the person's weight in kilograms divided by the square of his/her height in meters. The Government's expert as well as most of the documentary evidence regarding this issue cite BMI as the best general guideline. Judge Bittner went into great detail, which will not be repeated here, summarizing the various opinions in evidence regarding at what BMI an individual is considered obese or overweight. After reviewing all of the evidence, the Deputy Administrator finds that there seems to be disagreement within the medical community as to when an individual is considered obese or overweight using BMI as a guideline.

Respondent testified that his standard practice for weight control patients during the time period at issue was to use the life insurance tables, and that he was not aware of BMI as a criterion until the 1990s. He further testified that although BMI is "helpful" in determining whether or not to prescribe weight control medication, he found it cumbersome to use.

Judge Bittner concluded that:

> Based on my review of all the foregoing, and recognizing that there is some disagreement among the experts, I find that for purposes of this proceeding the [National Institute of Health's National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)] definitions are the most appropriate standards. I therefore find that a person aged thirty-five or older is obese if he

or she has a BMI of 27 [kilograms/meters squared] or more, that a person age thirty-four or younger should be considered obese if he or she has a BMI of 25 [kilograms/meters squared] or more, and that a BMI greater than 30 [kilograms/meters squared] indicates moderate to severe obesity.

The Deputy Administrator disagrees with Judge Bittner that the NIDDK definitions are the most appropriate standards. The Deputy Administrator finds that given the disagreement within the medical community, he is not comfortable finding that one standard is more appropriate than another. In fact the NIDDK standard that Judge Bittner cites also noted that while BMI "is the measurement of choice for many physicians and researchers studying obesity," it

poses some of the same problems as the height-for-weight tables. Doctors don't agree on the cutoff points for "healthy" versus "unhealthy" BMI ranges. BMI does not provide information on a person's percentage of body fat. However, like the height-for-weight table, BMI is a useful general guideline.

Understanding Adult Obesity, NIH Publication No. 94–3680, November 1993 <http://www.niddk.nih.gov/Aobesity/adultobe.htm>.

Therefore, the Deputy Administrator is reluctant to set an objective standard to determine when an individual is considered obese or overweight which might not necessarily be appropriate for each patient. Rather it appears that there are a number of different criteria that may be considered by a physician in determining whether an individual patient is obese or overweight.

Next, Judge Bittner addressed when it is appropriate to use controlled substances in a weight loss program. A consensus of the documentary evidence, as well as the testimony of both Respondent and the Government's expert, indicate that obesity is a chronic condition, and as such, using medication to treat it only for a short time is not effective. However, by virtue of the fact that the drugs at issue are controlled substances, it has already been determined that these drugs have some potential for abuse and that abuse would lead to some level of physical or psychological dependence.

The Physicians' Desk Reference (PDR) advises that these drugs should only be used for a few weeks. However, DEA has previously held that the PDR is not binding on a physician. See Paul W. Saxton, D.O., 64 FR 25073 (1999); Margaret E. Sarver, M.D., 61 FR 57896 (1996). Even the Government's expert testified that research has found that the Food and Drug Administration recommendations on which the PDR is based may be too restrictive, at least for some Schedule IV substances. The Government's expert further testified that the risks associated with the controlled substances at issue here are low and that the medications are reasonably safe drugs, but that they do have side effects and there is some potential for abuse, although low for Schedule IV substances. The Government's expert testified that the potential benefit of using controlled substances must be balanced against the potential risk.

Judge Bittner went into great detail, which will not be reiterated here, regarding the documentary evidence regarding tolerance and the abuse potential associated with anorectic controlled substances and as to their efficacy. After reviewing all of this evidence, the Deputy Administrator concludes that there have been few if any meaningful studies on the long-term use of anorectic controlled substances in the treatment of weight control.

However, the Deputy Administrator finds it noteworthy that in the prologue to the Anorectic Usage Guidelines adopted by the American Society of Bariatric Physicians on November 10, 1990 (1990 ASBP Prologue) it was reported that the reported incidence of serious side effects of Schedule III and IV anorectics "is low indeed." The 1990 ASBP Prologue also stated, among other things, that short and long term studies have not documented concerns about the abuse potential of anorectics, and that a significant number of bariatric physicians reported that they maintained patients on anorectics for long periods of time without significant ill effects. The 1990 ASBP Guidelines stated that Schedule III and IV anorectics "can often be useful in helping patients to lose weight and to maintain a reduced weight," and that these medications "by definition have a low level of risk and little potential for addiction or psychologic dependence when carefully used by a physician in a properly supervised medical practice."

The Deputy Administrator also finds it significant that in a 1996 article,[2] the National Task Force on the Prevention and Treatment of Obesity (National Task Force) advised that obesity is likely to require continued treatment, and that therefore drug treatment for only weeks or months is generally not warranted. The National Task Force warned that drug treatment might need to continue for years, even for the patient's lifetime, but that there were few published studies in which patients received these drugs for more than a year. Consequently, the Deputy Administrator is reluctant to find that long-term use of anorectic controlled substances is inappropriate.

Judge Bittner next addressed the criteria for an appropriate weight loss program utilizing controlled substances. The Government's expert and the documentary evidence suggest that controlled substances should only be used as part of an overall program including dietary modification, behavioral instruction and exercise. The Government's expert emphasized that the key determinant of a weight loss program's efficacy is whether the weight loss improves the patient's health. It was the opinion of the Government's expert that it is not appropriate to use controlled substances for weight loss in order to enhance a patient's self-image or for prophylactic use, for instance if other members of a patient's family are overweight. According to the Government's expert it is not appropriate to prescribe controlled substances for cosmetic purposes.

Respondent testified that in determining whether to prescribe medications for weight control he considered the patient's feelings about him or herself, whether he or she wanted to lose weight, how much the patient wanted to lose, and whether it was feasible for the patient to do so.

The Government's expert testified that a weight loss of at least 10% is considered a good sustained weight loss. Other evidence in the record indicates that some believe that a weight loss as low as 5% is considered good. The Government's expert testified that once a 10% weight loss has been achieved, that does not necessarily mean that controlled substances should be discontinued because the medication helps prevent regaining weight loss. But the expert further testified that there needs to be an ongoing review process to assess the efficacy of the use of controlled substances.

Judge Bittner went into great detail summarizing the documentary evidence relating to the criteria for determining when controlled substances should be utilized in a weight control program. After considering all of the evidence the Deputy Administrator concludes that there appears to be a difference of opinion within the medical community as to when it is appropriate to use controlled substances in a weight management program and when such use is considered effective.

[2] National Task Force on the Prevention and Treatment of Obesity, Long-term Pharmacotherapy in the Management of Obesity, 276 JAMA 1907 (1996).

The Deputy Administrator finds it significant that the 1990 ASBP Guidelines specify that the guidelines,

> provide suggestions regarding the use of the anorectics but they are not intended to and indeed cannot, replace the individual judgment of the treating bariatrician which remains and must remain paramount. Thus, the bariatrician must not rely on these guidelines, or on any other guidelines to provide an infallible blueprint for patient treatment. It is not the intent of these guidelines to limit the bariatricians' right to adjust the therapy based on the patient's condition, medical problems or therapeutic response.

The Government's expert testified that this statement should be interpreted in the context of a clear-cut treatment program with established goals.

Judge Bittner concluded that

> [i]n light of my findings above as to when a person should be considered obese, I further find that anorectic controlled substances should not be used in the treatment of a patient unless the individual is thirty-five or more years of age and has a BMI of at least 27 [kilograms/meters squared], or, if younger than thirty-five year of age, has a BMI of 25 [kilograms/meters squared] or more. I especially note that the evidence establishes that prescribing controlled substances to a patient for cosmetic purposes is not within the scope of legitimate medical practice.
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> * * * Based on my review of the record and for purposes of this proceeding, I find that it is appropriate to continue prescribing anorectic controlled substances to those patients who initially are candidates for such treatment only if (a) the patient achieves a loss of five percent of body weight or a reduction in BMI by one or more units and maintains that loss for at least one year, or (b) if the patient achieves a significant clinical response as defined in the 1990 ASBP Guidelines, *i.e.*, (1) a loss of at least twelve pounds over the initial twelve weeks, and (2) a loss of at least four pounds for each additional four weeks of treatment, providing that if the patient has lost at least ten percent of his or her initial body weight, he or she may be considered to have reached [90% Target Weight] and may appropriately continue to be prescribed anorectics if needed. If the patient gains weight and exceeds that benchmark, the physician should cease prescribing the medications unless the patient again achieves the [90% Target Weight] benchmark in a period of time equaling one week for each pound above the benchmark. (Footnotes omitted).

The Deputy Administrator disagrees with these findings. There appears to be differing opinions within the medical community as to when it is appropriate to use controlled substances in weight management treatment and when such use is considered effective. As a result, the Deputy Administrator is not comfortable setting objective standards which might not necessarily be appropriate for each individual patient.

As to the 42 patients at issue in this proceeding, Judge Bittner went into great detail in her Opinion regarding their history of treatment with Respondent. She discussed the patient charts and patient summaries in evidence, the assessment of the Government's expert of each patient, Respondent's testimony regarding each patient, and the patient interviews conducted by DEA and/or the patients' testimony. Since the Deputy Administrator is adopting Judge Bittner's findings of fact except as specifically noted, there is no need for him to reiterate them. It should be noted that based upon the Deputy Administrator's rejection of certain of Judge Bittner's findings as noted above, the Deputy Administrator does not adopt any of Judge Bittner's findings regarding specific patients that use her objective standard to conclude that treatment with controlled substances was inappropriate or to assess whether or not treatment was successful.

The Deputy Administrator makes the following general findings regarding Respondent's treatment of the patients at issue. These patients were all being treated by Respondent for weight loss or management. There is no evidence that anorectic controlled substances were prescribed for other purposes, or that controlled substances received pursuant to Respondent's prescriptions were sold or in any other way diverted from the patients' use.

On the initial visit, the patient would be weighed, his/her height would be measured and blood pressure taken. A family/medical history would be taken and Respondent would perform a physical examination. Respondent would discuss goals and a target weight with the patient, give the patient a generalized diet, generally discuss exercise, lifestyle changes, and possible side effects of the controlled substances, and ask whether the patient had previously attempted to lose weight and by what methods.

Thereafter, Respondent would see the patient no more than once a month. In fact, several patients testified that they had tried to obtain their prescriptions earlier because they were going on vacation, but their requests were refused. At each visit the patient would be weighed and his/her blood pressure taken. The patient would always be seen by Respondent before any controlled substances would be prescribed. Respondent would admonish the patient if he/she were not losing weight. If the patient was not losing weight, Respondent would very rarely change the diet he had provided the patient because according to Respondent, more likely than not the patient was not following the diet. Respondent would remind the patient on follow-up visits of the importance of following the diet.

Respondent testified that he used the insurance company height and weight tables to determine whether to use controlled substances in the treatment of a patient. However, he also testified that he is now stricter in his approach to weight control treatment.

Respondent's office manager testified that although a patient's blood pressure was taken at each visit, the result was not always noted in the patient's chart unless it was abnormal. Respondent testified that he might not always note the responses to the medical/family history questions or the results of the physical examination in the patient's chart if the responses and/or findings were normal.

For the most part, the charts for the patients at issue here do not indicate the patient's target weight, medical history, or results of physical examinations, nor do the charts indicate whether the patient previously saw another physician for weight control or was ever enrolled in a formal weight control program. Also, for the most part, there is no indication in the charts that Respondent gave the patient diet or exercise information on an initial or subsequent visit, or that Respondent subsequently discussed these subjects with the patient or modified the recommended diet and exercise regimes. Also there were several instances where controlled substances were prescribed by Respondent but not noted in the patient charts. In addition, a number of the patients were prescribed benzodiazepines for extended periods of time with no reason for these prescriptions noted in the charts.

The Government's expert testified that Respondent's patient records did not comply with Utah requirements regarding patient histories and physical examinations, and characterized Respondent's records as "grossly deficient * * * in terms of the evaluation of the patients." According to the Government's expert, as far as the patient records show, "the patients came in, were weighed, were given a prescription and left * * *. That's all you can tell from the records. This isn't saying other things weren't done, but certainly they weren't documented if they were."

Respondent testified that the medical records in evidence as Government exhibits were incomplete, and included only his handwritten notes, not all of the information in the patient charts, and that these notes were the only

portions of the charts that DEA investigators asked his staff to copy. However as Judge Bittner pointed out, Respondent did not object when the Government offered the charts into evidence, did not request that the Government be required to introduce other documents at that time, and did not offer the complete charts as his own exhibits. Regarding the benzodiazepine prescriptions, while the reasons for the prescriptions were not noted in the charts, Respondent and the patients who testified were able to give explanations for the prescriptions. Nonetheless, Respondent admitted at the hearing that his patient records were not as good as they could have been.

Respondent also admitted that with respect to all 42 patients at issue in this proceeding, he violated Utah law in existence at the time that limited the prescribing of Schedule III and IV anorectic controlled substances to no more than 12 weeks in a one-year period (12-week rule). Respondent testified that he did not agree with Utah's pre-1996 restriction because a weight control program for 12 weeks is not feasible and that the rule was not in the mainstream of medicine. According to Respondent, "I thought I was still in the mainstream of medicine because most of my colleagues were violating the 12-week rule and certainly all of the drugstores were." Respondent asserted that "that doesn't make me any less guilty, but it explains why I did it." Respondent testified that he should not have disobeyed the law but he felt that it was in the best interest of his patients. He further testified that his patients have been inconvenienced and embarrassed by their involvement in these proceedings, and that his health has suffered and he has been financially burdened due to his violation of the law.

In general, the Government's expert opined that it did not appear that Respondent monitored the patients' treatment; that the patient interviews failed to show that Respondent used any behavior therapy; that many of Respondent's patients did not qualify as candidates for treatment with anorectic controlled substances "under any definition"; and that it did not appear that Respondent placed his patients on structured diet and exercise programs. The Government's expert testified that the lack of documentation in the patient charts raised questions about the quality of care that Respondent provided these patients.

For the most part, the Government's expert concluded that Respondent's treatment of the patients at issue with controlled substances was not appropriate. Respondent admitted that his treatment of 10 of the patients was failure. However, even the Government's expert conceded that Respondent's treatment of several of the patients was successful and he characterized Respondent's treatment of several others as minimally effective.

Respondent's treatment of one patient is of particular concern. From January 1993 to May 1995, the patient was prescribed Nardil, a non-controlled antidepressant, as well as anorectic controlled substances. The Government's expert characterized Nardil as a "fairly dangerous medication," that is typically prescribed by psychiatrists. According to the Government's expert, even many psychiatrists are reluctant to prescribe Nardil because it interacts with a number of other drugs, particularly anorectics, and some foods which can lead to life threatening side effects. At the hearing in this matter, Respondent conceded that he made a mistake and should not have prescribed Nardil for this patient.

At the hearing in this matter, Respondent testified that he did not know when he became aware of the 12-week rule. He further testified that he was not aware of the change in Utah law effective January 16, 1996, which prohibited the prescribing of Schedule III controlled substances for weight control and which eliminated the 12-week rule for Schedule IV controlled substances, until he was personally advised of this change by a DOPL inspector in February 1996. A pharmacy survey revealed that Respondent had issued 16 prescriptions for Schedule III anorectics after the effective date of the law prohibiting such prescribing but before he was advised of the change in the law by the DOPL inspector.

There was also an allegation raised at the hearing that Respondent authorized a pharmacy to change a prescription that he had written on March 12, 1996 for a Schedule IV controlled substance to a Schedule III controlled substance. A DOPL investigator testified that a pharmacy technician indicated that the patient requested the change and that the pharmacy technician had gotten approval from someone at Respondent's office. Respondent testified that the individual at his office did not recall giving the pharmacy technician authorization to change the prescription. Respondent further testified that "I'm not stupid. I have been notified months previous that this was no longer a drug that we prescribed," and that he would not have authorized such a change.

Evidence was presented by Respondent regarding his practice as of the date of the hearing. Respondent testified that his patient charts have been "up to speed" from the time he entered into the agreement with the state to undergo peer review. Also as of August 1997, he follows procedures specified in a document that was prepared with the assistance of counsel which includes a checklist for the physician on the initial consult, a medical history form, an informed consent form, and a follow-up consultation questionnaire. These forms all remain as part of each patient's permanent record. Respondent's office manager testified that weight control patients are now given a handbook which includes information on diet, exercise, and medication. Respondent testified that he is now complying with all State, Federal and local laws pertaining to controlled substances and would never violate a regulation in the future.

In this brief filed after the conclusion of the hearing, Respondent's counsel sought to introduce and rely upon evidence not admitted at the hearing. Respondent's counsel attached and discussed in his brief a letter dated October 2, 1997, from a physician who stated that he had conducted a random sampling of Respondent's charts for weight control patients. In a motion filed on January 5, 1998, the Government objected to consideration of this information arguing that Respondent did not move to reopen the record to receive additional evidence, and even if he had, the record should not be reopened because Respondent has not demonstrated that the evidence was previously unavailable and is material and relevant. See Robert M. Golden, M.D., 61 FR 24808 (1996). Further the Government asserted that at most, the letter shows that Respondent is complying with his probationary requirements with the Board, which is presumed, and that the letter raises issues of fact that would require further testimony and documentary evidence in this proceeding. On January 21, 1998, Respondent filed his opposition to the Government's motion in which he moved to reopen the record and argued that the letter meets the standard for reopening the record.

In her opinion, Judge Bittner granted the Government's motion to strike from Respondent's brief the October 2, 1997 letter and references to it. Judge Bittner found that to appropriately evaluate the assertions in the October 2, 1997 letter the record would have to be reopened for additional testimony and documentary evidence. Judge Bittner

further found that this is not warranted since, "the most the letter adds to the record is an indication that Respondent is complying with his probation; [and] as the Government asserts, such compliance is presumed."

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, Judge Bittner noted that Respondent entered into a Stipulation and Order with the DOPL in December 1996, but no restrictions were imposed on his state authorization to handle controlled substances. Judge Bittner concluded however, that "inasmuch as State licensure is a necessary but not sufficient condition for DEA registration, this factor is not dispositive." In his exceptions to Judge Bittner's opinion, Respondent contended that the state "is in the best position to judge Respondent's fitness to practice." Respondent argued that it is "unfair and excessively punitive" for DEA to seek to take action against Respondent above and beyond that taken by the state. The Deputy Administrator notes that the recommendation of the appropriate state licensing authority is but one factor to be considered in determining the public interest. However in this case, the Deputy Administrator does not find it significant that Utah did not restrict Respondent's ability to handle controlled substances after reviewing Respondent's treatment of his weight control patients, his documentation in his patient charts, and his failure to include all required information on controlled substance prescriptions.

As to factor two, Judge Bittner found that Respondent prescribed the patients at issue anorectic controlled substances for anywhere from a few months to twenty years, and that the vast majority were prescribed Schedule III controlled substances. Judge Bittner noted that "[a]lthough Respondent introduced evidence on the long-term use of some Schedule IV medications, the record is devoid of such evidence with respect to Schedule III anorectics." Judge Bittner evaluated the treatment of these 42 patients and concluded that

> Respondent's treatment of all forty-two patients whose records are in evidence was inappropriate because he did not provide the comprehensive program required by good medical practice. In addition, twenty-six of the patients were not sufficiently overweight to justify treatment with controlled substances at the outset and eight of these became obese while taking the medications. Of the sixteen patients who may initially have been candidates for treatment with anorectic controlled substances, ten did not achieve a weight loss that met the standard of efficacy stated above.

Judge Bittner also found it significant that Respondent prescribed benzodiazepines to 14 patients for substantial periods of time without documenting the reasons for the prescriptions in the patient charts. As a result, Judge Bittner "conclude[d] that this factor weighs strongly in favor of a finding that Respondent's continued registration would not be in the public interest."

The Deputy Administrator finds that it does seem like Respondent issued a large number of prescriptions for anorectic controlled substances to the majority of these patients. However, the Deputy Administrator cannot find that Respondent's prescribing was inappropriate. While the record is devoid of much evidence regarding the long-term use of Schedule III anorectics, the Deputy Administrator is reluctant to find that such prescribing is inappropriate. In evaluating this case, it is apparent that there is a variety of opinions within the medical community as to when a person is considered obese or overweight and when it is appropriate to use controlled substances in the treatment of weight control.

DEA has been faced with an analogous situation when it sought to determine whether physicians' prescribing for chronic pain patients was appropriate. In one recent case, the Deputy Administrator quoted the Administrative Law Judge who stated that "DEA is in a difficult position, for it is asked to determine appropriate prescribing practices in a treatment area in which the medical profession is not in accord. * * *" Paul W. Saxton, D.O., 64 FR 25073 (1999). DEA has previously held that it is not DEA's role to resolve this disagreement. In William F. Skinner, M.D., 60 FR 62887 (1995), the then-Deputy Administrator found that, "the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. * * * It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law."

As previously noted, the Deputy Administrator does not agree with Judge Bittner's conclusion that a person is obese or overweight at a set BMI. While it is true that there is evidence in the record that BMI is a good, if not the best, measure of obesity, there are still other guidelines that may be considered. In addition there is conflicting evidence in the record as to when it is appropriate to use controlled substances. Consequently, the Deputy Administrator finds that it is not DEA's role to resolve these differences and set the standard for the medical community. This is not to say that physicians have free reign to prescribe anorectic controlled substances for non-legitimate reasons. But in this case, all of the patients at issue were seeking to control their weight and there is no evidence in the record that the controlled substances were diverted from this purpose.

While one might argue that Respondent did not individualize the treatment for these patients as the evidence suggests is appropriate, Respondent did meet with the patients before prescribing controlled substances and when necessary would discuss diet and exercise with the patients. On some occasions, Respondent would cease treatment when the patient failed to follow Respondent's weight control program. Judge Bittner took issue with the amount of time Respondent spent with the patients saying that it was not sufficient to provide individualized therapy. However, the Deputy Administrator is not in a position to find whether the amount of time spent with the patients was sufficient since no evidence was presented as to what is considered an appropriate amount of time.

As for Respondent's prescribing of benzodiazepines for extended periods of

time to some of these patients, it is true that Respondent may not have documented his reasons for these prescriptions in the patient charts. However at the hearing, Respondent and some of these patients testified as to why these controlled substances were prescribed. The Deputy Administrator concludes that he cannot find that these prescriptions were inappropriate based on the fact that the reasons for the prescriptions were not noted in the patient charts.

The Deputy Administrator finds that Respondent's prescribing of Nardil along with anorectic controlled substances to one patient was inappropriate. However, this is the only example of Respondent prescribing contraindicated drugs, and Respondent has admitted that he was wrong in so doing.

Regarding factor three, there is no evidence that Respondent has been convicted of any criminal charges under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor four, Respondent's compliance with applicable laws, Respondent has admitted that he violated Utah law with respect to the 42 patients at issue in this proceeding by prescribing anorectic controlled substances to them for more than 12 weeks in one year period and by failing to properly document his treatment of these patients in their charts. The Deputy Administrator does not find that Respondent violated 21 CFR 1306.04, which states that controlled substances may only be prescribed for a legitimate medical purpose. As discussed above, given the difference of opinion in the medical community, the Deputy Administrator cannot find that Respondent issued controlled substance prescriptions to the patients at issue for no legitimate medical purpose.

As to factor five, Judge Bittner concluded that Respondent did not provide adequate assurances that he would properly document the treatment of his patients in their chards. However, the Deputy Administrator finds that pursuant to the Stipulation and Order with the state, Respondent's patient charts are currently reviewed on a periodic basis for completeness. As a result the Deputy Administrator finds that Respondent's documentation will be sufficiently monitored. Judge Bittner also concluded that Respondent showed no remorse for his violations of Utah law and continued to assert that despite the medical evidence to the contrary, there was no need to individualize the diet and exercise programs, and that behavioral counseling would be useless. The Deputy Administrator finds that Respondent did show some remorse for his violation of state law and indicated that he acknowledged that what he did was wrong and he would not violate the law in the future. The Deputy Administrator also finds that while Respondent appears reluctant to individualize his weight loss treatment programs as suggested by the medical literature, this does not warrant revocation of his DEA registration.

Judge Bittner concluded "that the record as a whole establishes that Respondent is unwilling or unable to accept the responsibilities inherent in holding a DEA registration." As a result, Judge Bittner concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that Respondent's DEA registration be revoked.

Respondent filed exceptions to Judge Bittner's Opinion and the Government filed a response to Respondent's exceptions which have all been considered by the Deputy Administrator in rendering his decision in this matter. Most of the arguments set forth in these filings have already been addressed in this final order, or it is not necessary to address them in light of the findings of the Deputy Administrator. However, Respondent does argue in his exceptions that Judge Bittner erroneously excluded the October 2, 1997 report of the physician who reviewed Respondent's charts pursuant to the terms of the Stipulation and Order with the state. In its response to Respondent's exceptions, the Government argues that Judge Bittner properly excluded the report since it added nothing to the record in this matter and in order to properly assess the value of the report, the reviewing physician would need to testify and be subjected to cross-examination. This issue will be discussed below.

On August 10, 1999, the record in this matter was transmitted to the Deputy Administrator. On November 4, 1999, Respondent sent a letter to the Deputy Administrator responding to the Government's response to his exceptions and attaching seven reports from the physician who reviewed Respondent's patient charts pursuant to the Stipulation and Order that were generated between October 2, 1997 and September 2, 1999. Respondent recognized that such a filing is not provided for in the regulations, but argued that consideration of it is necessary "to avoid a gross miscarriage of justice." In addition, Respondent filed a formal motion to reopen the record.

The Deputy Administrator finds that Judge Bittner should have reopened the record to allow Respondent to introduce into evidence the October 2, 1997 report from the reviewing physician and to provide the Government with an opportunity to cross-examine the physician and/or introduce rebuttal evidence. Clearly, this report was not available to Respondent until October 2, 1997, after the conclusion of the hearing in this matter. In addition, the Deputy Administrator finds that this report is clearly material and relevant to the issue in this proceeding. Both Government counsel and Judge Bittner state that the report merely shows that Respondent is complying with the state's Stipulation and Order, which is presumed. However, the Deputy Administrator finds that this report also shows the extent of Respondent's compliance. The issue in this proceeding is whether Respondent's continued registration is inconsistent with the public interest. The state of Respondent's current practice is clearly relevant and this information was not available until after the conclusion of the hearing.

Nonetheless, the Deputy Administrator has decided not to remand this matter to the Administrative Law Judge and has further decided to deny Respondent's request to reopen the record dated November 4, 1999, to introduce the October 2, 1997 report of the reviewing physician as well as six subsequent reports. As the Government has stated, in order to admit these reports for reconsideration, the Government would need to be provided with an opportunity to cross-examine the reviewing physician and to possibly introduce rebuttal evidence, which would delay a final decision in this matter. In light of the findings and conclusions set forth in the final order, the Deputy Administrator does not believe that Respondent would want to delay issuance of this decision. Therefore, the seven reports of the reviewing physician attached to Respondent's November 4, 1999 letter have not been considered by the Deputy Administrator in rendering his decision in this matter.

The Deputy Administrator has not considered the other statements made by Respondent in the November 4, 1999 letter. First, such a filing is not permitted by the regulations, and second, they merely reiterate arguments already made by Respondent in his brief and exceptions.

After reviewing the entire record in this matter, the Deputy Administrator concludes that revocation of Respondent's DEA Certificate of

Registration is not warranted. The Deputy Administrator does not find that the patients at issue in this proceeding were prescribed controlled substances for no legitimate medical purpose. While Respondent may not have been as careful in prescribing controlled substances and in documenting the reasons for his prescribing, the Deputy Administrator does not believe that revocation is appropriate given the dispute within the medical community as to when it is proper to use controlled substances in weight control.

However, Respondent clearly violated state law by ignoring the 12-week rule and by failing to properly document the treatment of his patients. The Deputy Administrator does not condone Respondent's defiance of state law, but the Deputy Administrator finds it noteworthy that the state is currently monitoring Respondent's treatment of patients and documentation of this treatment; that the state did not restrict Respondent's ability to handle controlled substances based upon the same patient charts in evidence in this proceeding; and that Respondent has taken remedial steps to ensure that he practices in compliance with the law.

But given Respondent's admitted defiance of state law by ignoring the 12-week limitation on prescribing controlled substances for weight control that was in effect at the time of the events at issue, the Deputy Administrator finds that some controls are necessary to ensure that Respondent properly handles controlled substances in the future. Therefore, for two years from the effective date of this final order Respondent shall: (1) Forward to the DEA Salt Lake City office copies of the reports of the physician reviewing his charts pursuant to the Consent Order with the State of Utah; and (2) consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1650248, previously issued to Wesley G. Harline, M.D., be and it hereby is continued, subject to the above described restrictions. This order is effective March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2536 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–16]

Judy L. Henderson, D.V.M.; Grant of Restricted Registration

On February 3, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Judy L. Henderson, D.V.M. (Respondent) of Corinth, Mississippi, notifying her of an opportunity to show cause as to why DEA should not deny her application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that her registration would be inconsistent with the public interest.

By letter dated March 3, 1998, Respondent requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Memphis, Tennessee on November 18, 1998, and April 20, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, the Government called witnesses and introduced documentary evidence and Respondent testified on her own behalf. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument.

On September 21, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's application for registration be granted limited to four specific substances and subject to two conditions. Neither party filed exceptions to Judge Bittner's Opinion, and on October 25, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge in their entirety, and adopts with several modifications, as noted below, the conclusion and recommended decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent is a veterinarian. At various times during her career she suffered from serious medical conditions which prevented her from practicing veterinary medicine.

In March 1987, a local pharmacist advised the Mississippi Bureau of Narcotics (MBN) that Respondent had used prescriptions and DEA order forms to obtain a large amount of Demerol, a Schedule II narcotic controlled substance, from the pharmacy. A subsequent pharmacy survey revealed a total of six prescriptions and eight order forms written by Respondent. The prescriptions were for a total of 30 dosage units of Ionamin, a Schedule IV controlled substance, 30 dosage units of diazepam, a Schedule IV controlled substance, six ampules of Demerol, one ounce of liquid Demerol, and 20 dosage units of Mepergan Fortis, a Schedule II narcotic controlled substance. The Ionamin and diazepam prescriptions listed Respondent as the patient, the prescription for six ampules of Demerol listed the clinic where Respondent worked and had the notation "clinic use only," the Mepergan Fortis prescription was made out to Respondent's then-husband, and the prescription for one ounce of Demerol was made out in a dog's name. Each of the order forms was for one 30 cc. vial of Demerol.

On March 26, 1987, MBN agents interviewed Respondent who told the agents that she had obtained the various narcotics for her own use because she suffered from extremely painful medical conditions. The agents subsequently confirmed with Respondent's physician that he was treating Respondent for the medical conditions. However, the physician indicated that he did not know that Respondent was self-prescribing and that he would help her. No charges were filed against Respondent as a result of this investigation.

Respondent testified at the hearing in this matter that she was treated with intravenous Demerol for a painful kidney disorder. Following surgery for this disorder, Respondent experienced withdrawal from the Demerol. Respondent testified that she was ashamed that she had become dependent on the Demerol and attempted to wean herself off by taking oral Demerol intended for the animals she treated. This attempt was unsuccessful and in fact Respondent was taking more Demerol than she had before her surgery. According to Respondent she then began injecting herself with Demerol. Finally, at or about the end of November 1997, Respondent entered a 28-day treatment program and stopped using controlled substances.

As to the other prescriptions discovered during this investigation, Respondent testified that she purchased Ionamin to treat an obese dog, and that the Valium was for use in a clinic where she worked. Respondent further testified that she did not prescribe Mepergan Fortis for her then-husband, but that the prescription was for her then-mother-in-law's dog, who Respondent was treating for cancer.

The Government alleged that Respondent surrendered her DEA Certificate of Registration in 1987. However, the investigator who testified at the hearing indicated that she could not locate a copy of the surrender form. Respondent testified that at some point in 1987 the attorney for the Mississippi State Board of Veterinary Medicine (Veterinary Board) wrote to her recommending that she surrender her DEA registration, but that she did not respond to this letter since she was very ill and not working at the time. It was Respondent's recollection that she simply let her DEA registration expire. She testified that she still had the registration certificate in her possession the next time that she applied for a DEA registration. Judge Bittner found Respondent's testimony to be credible and therefore found that the evidence does not support a finding that Respondent's surrendered her DEA Certificate of Registration in 1987.

Respondent was issued DEA Certificate of Registration BE2196687 on March 20, 1990.

In October 1992, DEA was advised by Respondent's then-husband that Respondent was abusing controlled substances. A subsequent pharmacy survey did not reveal any controlled substance prescriptions issued by Respondent. DEA then contacted Respondent's drug distributor and discovered that Respondent had ordered 500 dosage units of lorazepam 2 mg., a Schedule IV controlled substance, and 2200 dosage units of hydrocodone with APAP, a Schedule III controlled substance, between March 4 and October 19, 1992.

A DEA investigator contacted two physician who had treated Respondent. One physician treated Respondent for painful medical conditions from 1989 until June 1992, and prescribed her Lortab 7.5 mg., a Schedule III controlled substance. The other physician indicated that he treated Respondent from February 1987 until March 1991, also for painful medical conditions. There is no indication in the record whether this physician prescribed Respondent any controlled substances.

On October 21, 1992, DEA agents met with Respondent at her home. Respondent told the agents that she had not been practicing veterinary medicine for a period of time because she was ill. She further told the agents that rather than filling the prescriptions that her physician issued to her, she was ordering the drugs using her DEA registration because it was less expensive to obtain the drugs that way. At this meeting, Respondent surrendered her DEA Certificate of Registration, order forms, and controlled substances in her possession.

Respondent testified at the hearing that in 1990 she developed an extremely painful medical condition that rendered her unable to work. She acknowledged that she ordered controlled substances during this period, and that at one point she bought Demerol from a hospital pharmacy. Respondent further testified that her physician did not know that she was ordering hydrocodone, and that although she know that ordering the drug for herself was an unethical use of her DEA registration, she had not thought that it was criminal conduct. Respondent testified that she ultimately recovered from this illness following radical surgery.

On March 1, 1996, Respondent executed an application for a new DEA Certificate of Registration. DEA sought a recommendation from the Veterinary Board as to whether this application should be granted. On June 10, 1996, the Veterinary Board responded, stating in pertinent part:

> While the granting or denial of [a DEA registration] is a determination to be made by your agency, the Mississippi Board of Veterinary Medicine cannot recommend unrestricted approval by your agency. While the Board is happy that [Respondent] has returned to practice, nevertheless, the Board feels that, at most, [Respondent's] purchases of controlled drugs should be limited to the purchase of euthanasia solutions and a limited number of purchases for anesthetics.

As a result of this letter, Respondent wrote to the Veterinary Board asking for its approval for her to use ketamine, at the time a non-controlled substance; Socumb, brand name for a product containing sodium pentobarbital, a Schedule II non-narcotic controlled substance; Valium, brand name for a product containing diazepam; Sodium Pentothal, trade name for thiopental, a Schedule III non-narcotic controlled substance; phenobarbital, a Schedule IV controlled substance; testosterone, a Schedule III controlled substance; and Winstrol-V, Telazol, and Tussigon, all controlled substances. By letter to Respondent dated October 28, 1996, the Veterinary Board recommended that she use ketamine, Rompun, acepromazine (or other tranquilizers), gas anesthesia, lidocaine (for local use), Torbutral, and Sodium Pentothal as a pre-anesthetic. Rompun, acepromazine, and lidocaine are not controlled substances. Ketamine was previously noncontrolled but was placed in Schedule III effective August 12, 1999. Torbutral is a controlled substance.

During the course of investigating Respondent's application for a DEA registration, DEA contacted the local sheriff. The local sheriff indicated that in 1993, Respondent was caught stealing ketamine from another veterinarian.

In explaining why she stole the ketamine, Respondent testified that after her radical surgery, she went through a very bitter divorce and custody proceeding, that she "lost everything," and that her ex-husband made allegations about her to other veterinarians in the area that effectively prevented her from obtaining work. She further testified that her ex-husband was physically abusive and had threatened to kill her if she did not stop attempting to regain custody of their child. Respondent testified that upon the recommendation of a local police officer, she obtained a gun to protect herself from her ex-husband. According to Respondent, she ultimately realized that she would not be able to shoot her ex-husband if threatened and instead decided to obtain ketamine to use as a chemical immobilizer. Respondent testified that shortly before stealing the ketamine, her ex-husband had attacked her with a hammer, resulting in her being admitted to an emergency room.

Respondent testified that she stole ketamine from the other veterinarian twice. The first time, she took a total of two cc. of ketamine, but then decided that that would not be a sufficient quantity to subdue her ex-husband. Respondent testified that she then took a bottle that had held 10 cc. of ketamine and had about one cc. of the drug left in it, and she then added small quantities of ketamine that she took from other bottles, substituting saline in those bottles. Respondent acknowledged that what she did was wrong.

The other veterinarian decided not to press charges against Respondent provided that Respondent seek treatment. As a result, Respondent entered a treatment program to be treated for depression and tested for ketamine. According to Respondent, she stayed in that program for two weeks and then went to a program that treated health care professionals where she stayed for three to four months. Thereafter she moved to an outpatient facility. Respondent testified that she spent a total of five months in treatment for clinical depression and hydrocodone

addiction. According to Respondent, her treatment ended in February 1994. She testified that she has not taken any narcotic drug, except during surgery, since October 1993.

On November 5, 1996, a DEA investigator asked Respondent to send information regarding her rehabilitation and aftercare treatment. According to the investigator, Respondent did not send any such information. Respondent acknowledged that the DEA investigator had asked her to provide records of her treatment, but that she had substantial difficulty obtaining these records from the facilities.

Respondent testified that she eventually started her own veterinary practice, and that she was the only veterinarian in her town who was always available. According to Respondent, the majority of her practice is trauma emergency medicine, unlike other veterinarians.

In June 1997, Respondent contacted the DEA investigator and advised that the only drug she was using at that time was Socumb. The investigator asked Respondent how she obtained the Socumb since she was not registered with DEA to handle controlled substances at that time. Respondent indicated that she received a partial bottle from another veterinarian. The DEA investigator contacted the other veterinarian who indicated that he provided the sodium pentobarbital to Respondent after Respondent showed him a letter from the Veterinary Board stating that she could use the drug. Respondent told the other veterinarian that she had an animal in distress, so he gave her 10 to 20 cc. to euthanize the animal.

Respondent testified at the hearing that the dog she was treating had been poisoned, that the incident occurred late at night on a weekend, and that the dog was in intense pain. She contacted the other veterinarian who refused to put the dog to sleep himself, but offered to prescribe enough of the drug so Respondent could euthanize the dog. Respondent testified that because she was working under the other veterinarian she did not realize that she had done anything wrong. It is undisputed that after speaking to the DEA investigator, Respondent returned the remaining sodium pentobarbital to the other veterinarian.

Respondent asserted that since she is the only veterinarian in the area who handles emergencies after hours, she needs a DEA registration in order to care for her patients. Respondent testified that she needs to use sodium pentobarbital, butorphanol, and Valium in her practice. The sodium pentobarbital would be used to euthanize animals, the butorphanol to relive pain in the animals, and the Valium to control seizures and treat sick cats that refuse to eat. According to Respondent, she would be willing to install security measures, maintain whatever records are required, and be subject to random drug testing.

Respondent has acknowledged her mistakes. Respondent testified that she has "suffered greatly because of this. And I expect to the rest of my life. This will be a great humiliation to me. But I truly—I truly don't believe it will ever happen again. I never have a desire to. I never had before these two instances and I never have since."

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest.

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the Veterinary Board recommended that Respondent not be given an unrestricted registration, however the Veterinary Board did recommend that Respondent be authorized to handle thiopental and ketamine, Schedule III controlled substances, and butorphanol, a Schedule IV controlled substance. Although Respondent has indicated that she also needs to be able to use sodium pentobarbital for euthanasia, the Veterinary Board did not mention this substance in its June 10, 1996 letter. The Deputy Administrator agrees with Judge Bittner that while the Veterinary Board's recommendations are not dispositive, they certainly weigh in favor of at the very least granting Respondent a DEA registration restricted to certain substances.

Regarding factor two, the evidence supports a finding that prior to 1987, Respondent abused her DEA registration by issuing prescriptions and using DEA order forms to obtain controlled substances for her own use. In 1992, Respondent again used her DEA registration to obtain controlled substances for her own use. Respondent also handled sodium pentobarbital in 1997, when she was not authorized to do so.

As to factor three, there is no evidence that Respondent has been convicted of any criminal charges relating to the manufacture, distribution or dispensing of controlled substances.

Regarding factor four, Respondent's compliance with applicable laws relating to controlled substances, it is undisputed that Respondent used DEA order forms in violation of 21 U.S.C. 828(e) to obtain controlled substances for her own use. In addition, Respondent issued prescriptions to obtain Demerol for her own use in violation of 21 U.S.C. 829 and 21 CFR 1306.04. The Deputy Administrator notes however that these violations occurred when Respondent was suffering from painful medical conditions and had become addicted to narcotic controlled substances. According to Respondent, these conditions are now under control, she has undergone treatment for her addiction, and she has not improperly obtained or personally used controlled substances, except as a result of surgery, since October 1993. As recently as 1997, Respondent handled sodium pentobarbital when she was not registered with DEA to do so in violation of 21 U.S.C. 841(a). While not condoning this violation, the Deputy Administrator does not find under the circumstances that this isolated incident warrants denying Respondent's application for registration.

As to factor five, the Deputy Administrator is troubled by Respondent's theft of ketamine in 1993. Although ketamine was not a controlled substance at the time, her stated purpose of immobilizing her ex-husband with the drug raises serious concerns about her fitness to handle controlled substances. However, the Deputy Administrator notes that this incident occurred in 1993, that Respondent has since undergone extensive treatment for depression and drug addiction, that Respondent has acknowledged the wrongfulness of this behavior, and that there is no evidence

of any similar type behavior since that time.

The Deputy Administrator also finds it relevant under this factor that Respondent was previously addicted to narcotic controlled substances. Respondent has acknowledged her past problems and appears to be remorseful. However, while Respondent asserts that she has undergone treatment and that she has not improperly used controlled substances since 1993, the Deputy Administrator is troubled by the lack of evidence in the record, other than Respondent's own testimony, regarding Respondent's treatment for her addiction. The record is also devoid of evidence of any continued monitoring of Respondent and any support network in place to help prevent a relapse.

The Deputy Administrator agrees with Judge Bittner that the Government has presented a prima facie case for the denial of Respondent's application for registration based upon Respondent's use of her previous DEA registrations to obtain controlled substances for her own use, her abuse of controlled substance, her violation of laws relating to controlled substances, her handling of sodium pentobarbital in 1997 when not authorized to do so, and her theft of a non-controlled substance in 1993 to be used to temporarily immobilize her ex-husband. However, Judge Bittner found credible Respondent's testimony that she has not used controlled substances since 1993 except as prescribed lawfully by a physician. Judge Bittner also found credible Respondent's testimony regarding the circumstances surrounding her theft to ketamine in 1993 and her 1997 handling of sodium penotobarbital, and that she regrets her misconduct, is willing to accept restrictions on her registration, and will not abuse her registration or controlled substances in the future.

Therefore, Judge Bittner concluded that it would not be inconsistent with the public interest to grant Respondent a DEA Certificate of Registration limited to the Schedule II controlled sodium pentobarbital, the Schedule III controlled substances ketamine and thiopental, and the Schedule IV controlled substance butorphanol subject to the following conditions:

(1) Respondent shall maintain accurate records showing all purchases, administering and dispensing (including prescribing) of all controlled substances; and

(2) Respondent shall submit copies of all such records to the Special Agent in Charge of DEA's New Orleans Office, or his designees, quarterly, for five years from the effective date of her registration.

The Deputy Administrator agrees with Judge Bittner that it is not in the public interest to deny Respondent's application for registration and basically agrees with Judge Bittner's recommended restrictions. However, the Deputy Administrator is extremely reluctant to grant Respondent the authority to handle ketamine, the very substance she admitted stealing in 1993 to potentially use to incapacitate her ex-husband. Nonetheless, the Deputy Administrator will do so given that the Veterinary Board recommended that Respondent be authorized to handle ketamine and the recommendation of the appropriate state licensing authority is one of the factors to be considered by the Deputy Administrator in determining the public interest. The Deputy Administrator is also troubled by the lack of evidence in the record, other than Respondent's own testimony, regarding her treatment and rehabilitation. Consequently, the Deputy Administrator finds it necessary to have safeguards in place to be certain that Respondent does not abuse controlled substances once she is issued a limited registration.

Therefore, the Deputy Administrator concludes that Respondent should be issued a DEA Certificate of Registration in Schedules II non-narcotic, III and IV subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) While Respondent shall be registered in Schedules II non-narcotic, III and IV, she shall only handle sodium pentobarbital, ketamine, thiopental, and butorphanol.

(2) Respondent shall send copies of records documenting all of her purchases of controlled substances to the Special Agent in Charge of the DEA New Orleans office, or her designee, on a quarterly basis.

(3) Respondent shall submit, on a quarterly basis, a log of all of the controlled substances she has prescribed, administered, or dispensed during the previous quarter, to the Special Agent in Charge of the DEA New Orleans office, or his designee. The log shall include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, Respondent shall indicate that fact in writing, in lieu of submission of the log.

(4) Respondent shall submit to random urinalysis, at her own expense, not less than one time per month. Within 30 days of the effective date of this order, Respondent shall notify the Special Agent in Charge of the DEA New Orleans office, or his designee, in writing, as to the identity of the laboratory or hospital that will be conducting the random urinalysis. Reports documenting the results of these tests shall be forwarded to the Special Agent in Charge of the DEA New Orleans office, or his designee.

(5) Respondent shall consent to random, unannounced inspections without the need for an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Judy L. Henderson, D.V.M., be, and it hereby is, granted in Schedules II non-narcotics, III and IV, subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2540 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Archibald W. Hutchinson, M.D.; Revocation of Registration

On July 28, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Archibald W. Hutchinson, M.D., of Marietta, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BH2898053 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Ohio. The order also notified Dr. Hutchinson that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Hutchinson at his registered location. DEA received a signed receipt indicating that it was received and signed for by an individual on November 3, 1999. The Order to Show

Cause was also sent to Dr. Hutchinson at his last known address in Illinois. The return receipt indicates that the Order to Show Cause was forwarded to another address in Illinois and was signed for on or about August 20, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Hutchinson or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received concludes that Dr. Hutchinson is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Hutchinson currently possesses DEA Certificate of Registration BH2898053 issued to him in Ohio. The Deputy Administrator further finds that on July 8, 1998, the State Medical Board of Ohio permanently revoked his license to practice medicine in the State of Ohio. Therefore, the Deputy Administrator concludes that Dr. Hutchinson is not currently licensed to practice medicine in Ohio, and as a result, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Hutchinson is not currently authorized to handle controlled substances in the State of Ohio. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BH2898053, previously issued to Archibald W. Hutchinson, M.D., be, and it hereby is revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2527 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99-36]

Kenneth Leroy Jones, M.D.; Revocation of Registration

On August 24, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Kenneth Leroy Jones, M.D. (Respondent) of Paintsville, Kentucky, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AJ1551399, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent was not currently authorized to handle controlled substances in the Commonwealth of Kentucky.

By letter dated September 17, 1999, Respondent requested a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 20, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Kentucky, however, he is not currently authorized by the Commonwealth of Kentucky to handle controlled substances. Respondent was given until November 10, 1999, to file a response to the Government's motion. Respondent failed to file a timely response.

On November 18, 1999, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the Commonwealth of Kentucky; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, however on November 30, 1999, Respondent filed a letter with Judge Bittner indicating that he no longer wished to pursue this matter and asking that favorable consideration be given to any future applications for registration with DEA. On December 20, 1999, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

As a preliminary matter, the Deputy Administrator has not considered Respondent's letter filed on November 30, 1999, since it was not timely filed and Respondent has not offered any explanation for the late filing.

The Deputy Administrator finds that Respondent possesses DEA Certificate of Registration AJ1551399, issued to him at an address in Paintsville, Kentucky. The Deputy Administrator further finds that on January 7, 1999, the Commonwealth of Kentucky, State Board of Medical Licensure ordered the revocation of Respondent's Kentucky medical license. Respondent did not dispute that he is not currently authorized to practice medicine in Kentucky.

Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the Commonwealth of Kentucky. As a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez. M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.* 58 FR 51.104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in Kentucky. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Kentucky. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving

evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration AJ1551399, issued to Kenneth Leroy Jones, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2528 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–31]

Richard Eaton Leach, M.D. Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard Eaton Leach, M.D. (Respondent) of Lake Charles, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AL8792106, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of Louisiana.

By letter dated August 19, 1999, Respondent filed a request for a hearing, listing a Lake Charles, Louisiana address. The matter was docketed before Administrative Law Judge Gail A. Randall. On September 1, 1999, Judge Randall issued an Order for Prehearing Statements. On September 23, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Louisiana, however he is not currently authorized by the State of Louisiana to handle controlled substances. In addition, the Government requested that Judge Randall stay the proceedings pending her ruling on the Government's motion. In an order dated September 24, 1999, Judge Randall stayed the proceedings pending her ruling on the Government's motion and gave the Respondent an opportunity to file a response to the Government's motion.

Both the Order for Prehearing Statements and the September 24, 1999 order were mailed to Respondent at the address listed on his request for a hearing, however according to Judge Randall, both were returned to DEA with the notation "moved left no address, unable to forward, return to sender." Then, according to Judge Randall, the two orders were sent to Respondent's registered location in Jonesville, Louisiana. The Order for Prehearing Statements was returned to DEA with a notation "return to sender, not at this address," and the other order has not been returned.

On October 22, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent has waived his opportunity to reply to the Government's Motion for Summary Disposition. He is no longer receiving mail at his registered address nor at the address listed in his request for a hearing. Further he has failed to inform Judge Randall of any viable address. In her Opinion and Recommended Decision, Judge Randall also found that Respondent lacks authorization to handle controlled substances in the State of Louisiana; granted the Government's Motion for Summary Disposition; and recommended that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 22, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on January 3, 2000. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds based upon the evidence in the record that Respondent's license to practice medicine in Louisiana was indefinitely suspended on February 27, 1998. Additionally, by a letter dated April 20, 1998, Respondent was informed that his state license to possess, distribute, or prescribe controlled substances was suspended due to the loss of his medical license. No evidence was presented by Respondent to dispute that he is not currently authorized to handle controlled substances in the State of Louisiana. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in Louisiana, the state in which he is registered with DEA.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Louisiana. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Louisiana. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D. 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AL8792106, previously issued to Richard Eaton Leach, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.
Donnie R. Marshall,
Deputy Administrator.
[FR Doc. 00–2529 Filed 2–4–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–33]

Brett L. Lusskin, M.D.; Revocation of Registration

On August 10, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Brett L. Lusskin, M.D. (Respondent), of Hallandale, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AL0133102, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of Florida.

By letter dated September 8, 1999, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On October 7, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Florida, however he is not currently authorized by the State of Florida to handle controlled substances. On November 1, 1999, Respondent filed a response to the Government's motion arguing that Judge Randall does not have sufficient evidence to support the allegation that Respondent lacks authorization to handle controlled substances in Florida.

On November 15, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the State of Florida; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, and on December 14, 1999, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration AL0133102, issued to him at an address in Hallandale, Florida. The Deputy Administrator further finds that on May 7, 1998, the Medical Board of the State of Florida (Medical Board) issued a final order indefinitely suspending Respondent's medical license. In an Opinion filed on March 31, 1999, the District Court of Appeal of the State of Florida, Fourth District, granted Respondent a new hearing before the Medical Board but declined to stay the suspension of Respondent's medical license.

In his response to the Government's motion, Respondent argued that he is retired from the active practice of medicine, and therefore, his continued registration poses no risk to the public interest. Additionally, Respondent noted that he has filed an Amended Complaint with the Agency for Health Care Administration and expects a hearing in the near future.

In her Opinion and Recommended Decision, Judge Randall found that the Government presented credible evidence that Respondent's Florida medical license was indefinitely suspended, and the suspension has not been stayed. Respondent has presented no evidence to the contrary. As Judge Randall noted, "[a] pending rehearing of the Medical Board's decision does not alter the Respondent's status in Florida. The outcome of a rehearing of the Medical Board's action is speculative, and the decision of the Medical Board is final until otherwise overturned."

Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of Florida and as a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Florida. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Florida. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration AL0133102, issued to Brett L. Lusskin, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 6, 2000.

Dated: January 18, 2000.
Donnie R. Marshall,
Deputy Administrator.
[FR Doc. 00–2530 Filed 2–3–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles W. Marshall, D.P.M.; Revocation of Registration

On July 28, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles W. Marshall, D.P.M., of Chicago, Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM2648472 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 8231(f), for reason that he is not currently authorized to handle controlled substances in the State of Illinois. The order also notified Dr.

Marshall that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 23, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Marshall or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Marshall is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Marshall currently possesses DEA Certificate of Registration BM2648472 issued to him in Illinois. The Deputy Administrator further finds that on August 19, 1997, the State of Illinois, Department of Professional Regulation issued an order indefinitely suspending Dr. Marshall's license to practice podiatric medicine. Additionally, Dr. Marshall's state controlled substance license expired on January 31, 1999. Therefore, the Deputy Administrator concludes that Dr. Marshall is not currently licensed to handle controlled substances in Illinois.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here is clear that Dr. Marshall is not currently authorized to handle controlled substances in the State of Illinois. As a result, Dr. Marshall is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and) 0.104, hereby orders that DEA Certificate of Registration BM2648472, previously issued to Charles W. Marshall, D.P.M., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2531 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Melvin John Miller, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Melvin John Miller, M.D. of Ellijay, Georgia, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM1167077 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Georgia. The order also notified Dr. Miller that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Miller or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Miller is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43 (d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Miller currently possesses DEA Certificate of Registration BM1167077 issued to him in Georgia. The Deputy Administrator further finds that on July 10, 1997, Dr. Miller entered into a Consent Order with the Composite State Board of Medical Examiners for the State of Georgia wherein Dr. Miller agreed to the indefinite suspension of his medical license because he had "relapsed and returned to the use of chemicals for which he has no legitimate and/or medical need." There is no evidence in the record to indicate that this indefinite suspension is no longer in effect.

Therefore the Deputy Administrator concludes that Dr. Miller is not currently licensed to practice medicine in Georgia, and as a result, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Miller is not currently authorized to handle controlled substances in the State of Georgia. As a result, Dr. Miller is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM1167077, previously issued to Melvin John Miller, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2532 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–38]

Theodore Neujahr, D.V.M.; Continuation of Registration

On July 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Theodore A. Neujahr, D.V.M. (Respondent) of Eatonville, Washington, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AN1015331, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification of such registration as a practitioner under 21 U.S.C. 823(f), for reason that his registration is inconsistent with the public interest.

By letter dated July 28, 1998, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Tacoma, Washington on March 3, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On July 19, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's registration be continued and any pending applications be granted. Neither party filed exceptions to Judge Bittner's Opinion, and on August 19, 1999, the record was transmitted to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on December 14, 1999, and published at 64 FR 72362 (December 27, 1999). The Deputy Administrator adopts, with one noted exception, the Opinion of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent received his degree in veterinary medicine in 1979. In 1981, Respondent started his own practice in Eatonville, Washington, where he continues to practice.

Respondent testified that he developed a chemical dependency problem in 1988 or 1989 while going through a divorce. He further testified that "I found that the pain relievers that I had purchased for animals helped to relieve some of my pain, and I found that the amphetamines made me feel better too." According to Respondent, he took approximately three Dexedrine 5 mg. tablets per week and two or three Percodan tablets per week for a period of more than a year. Both of these drugs are Schedule II controlled substances.

Respondent testified that he became concerned about his drug use and contacted a treatment program. On February 23, 1990, Respondent and his receptionist, who was also a close personal friend, met with the doctor in charge of the program. It was agreed that the doctor and Respondent's receptionist would monitor Respondent by requesting that Respondent submit to a urinalysis if they suspected that he had taken a mood altering substance.

In April 1990, a DEA investigator was reviewing DEA order forms used for purchasing Schedule II controlled substances and noticed that Respondent had purchased Dexedrine, which is not commonly used in veterinary practice, and Percodan, which is occasionally used in veterinary practice. On April 6, 1990, the DEA investigator and an investigator with the Washington Board of Pharmacy went to Respondent's office where they discovered that Respondent kept controlled substances in an unlocked drawer in his office and at his residence, which is an unregistered location. Initially, Respondent told the investigators that he was going to use the Dexedrine to treat obese dogs, but ultimately admitted that he had taken the Dexedrine himself. Respondent also said at some point that he had used the Percodan to treat dogs. However, the record does not indicate whether he admitted to the investigators during this meeting that he had taken the Percodan himself.

At the conclusion of this meeting, the DEA investigator gave Respondent the opportunity to voluntarily surrender his Schedule II and IIN privileges. Respondent signed the voluntary surrender form and checked the box that indicated that he was surrendering his DEA registration in Schedules II and IIN "[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part."

Respondent testified that at the time that he surrendered his Schedule II privileges, he was abstaining from controlled substances and alcohol, but that he felt threatened by the two investigators and signed the voluntary surrender form out of fear. Judge Bittner credited Respondent's testimony on this point and found that Respondent perceived that he was being threatened.

On May 23, 1990, Respondent began an outpatient treatment program which he completed on January 16, 1991. At the time Respondent entered the program, he had been drug-free for several months. This program consisted of random urinalysis which were all negative, and counseling sessions.

On January 7, 1991, the Washington State Veterinary Board of Governors (Veterinary Board) issued a Statement of Charges against Respondent seeking suspension or revocation of his license to practice veterinary medicine on grounds that he had possessed Schedule II controlled substances for other than legitimate or therapeutic purposes by possessing them for his own use. It is unclear from the record, but it appears that at some point Respondent entered into a stipulation with the Veterinary Board admitting that he possessed Schedule II controlled substances including, but not limited to, Dexedrine, Percodan, and oxycodone with aspirin for other than legitimate or therapeutic purposes. The Veterinary Board suspended Respondent's license to practice veterinary medicine for at least 24 months, but stayed the suspension subject to various terms of probation. Specifically, the Veterinary Board required Respondent to submit quarterly progress reports on his methods of handling stress, his use of and handling of drugs, his mental and physical health, his methods of dealing with legal charges, professional responsibilities and activities and personal activities relating to his practice; to attend at least two Narcotics Anonymous or Alcoholics Anonymous (12-step) meetings per week; to submit to random and observed biological fluid testing at least once per month; not to possess a Schedule II or IIN registration for two years; and not to submit a request for reinstatement of his license for at least two years.

On April 27, 1992, the Veterinary Board accepted a stipulation between Respondent and the State of Washington Department of Health which provided, among other things, that Respondent would sign a contract with the Washington Health Professional Services (WHPS) program and comply with the terms and conditions of that contract, and that if Respondent failed

to comply with that contract his license would be subject to disciplinary action by the Veterinary Board.

The WHPS is a division of the Washington Department of Health and is a monitoring program that provides an alternative to license discipline for various health care professions. The WHPS referred Respondent to a chemical dependency and family therapist who reported to the WHPS monthly on Respondent's progress. The therapist testified that he did not recall making any adverse reports regarding Respondent; that he felt that Respondent "was doing all of the things that a person who is successful in recovery does;" that he did not violate any of the rules of the program; that he was convinced that Respondent was continuing his recovery and was stable in his lifestyle; and that he thought it would be in the public interest for Respondent to have a DEA registration.

Respondent's case manager with WHPS from December 1993 until November 1994 testified that Respondent complied with his contract with the WHPS; that he consistently attended more 12-step meetings than required; and that all of his urinalyses were negative.

On October 5, 1992, Respondent executed a renewal application for his DEA registration, answering "No" to the question, hereinafter referred to as the liability question, which asks, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Respondent testified while he knew that he had surrendered a portion of his DEA registration in 1990, he did not know how to answer the liability question. According to Respondent, he asked the instructors at continuing education courses that, "if you voluntarily give up a portion of your DEA registration is that for cause and does that mean that you have to answer that question 'yes' and they told me that it was not true if you voluntarily give it up." Respondent also testified that he relied upon statements of the investigators that his "license" would not be affected if he signed a confession and if he did whatever the treatment program told him to do; that he tended to confuse his license to practice veterinary medicine that his DEA registration; and that the investigators also told him that he could reapply for registration to handle Schedule II and IIN substances later.

Respondent testified that he was "quite nervous" when he sent off his application but that when he received his updated Certificate of Registration, he concluded that he had answered the question properly. On September 30, 1995, Respondent executed another renewal application for his DEA registration and answered "No" to essentially the same liability question. Respondent testified that in executing this application, he did not give the question "any thought at all" because he knew how he had answered the similar question on the 1992 application and it had been granted with no difficulty. In 1995, Respondent sought registration in Schedules II, IIN, III, IIIN, IV and V.

On November 3, 1995, another DEA investigator telephoned Respondent to verify information on his 1995 renewal application. The investigator testified that she read the liability question from the 1995 application to Respondent and that Respondent said that the answer to the question was "No." According to the investigator, she then asked Respondent, "[Y]ou've never had any action taken?" and Respondent again stated "No."

Respondent testified that the investigator caught him off guard and he was convinced that he had answered the liability question on the 1992 and 1995 renewal applications correctly. Respondent further testified that after he hung up with the investigator he realized that he had made a mistake, but he did not know how to contact the investigator. Respondent also testified that if he remains registered with DEA, he would find someone to help him answer the liability questions properly on his next renewal application.

At the hearing, Respondent testified that he has not had any relapses since he stopped using controlled substances in 1990, and that he has a good support network in place. Respondent's case manager with the WHPS testified that completing an adequate number of years in a monitored recovery program greatly decreases the likelihood of a relapse, and that she was not aware of any reason that Respondent should not be authorized to handle controlled substances.

Pursuant to 21 U.S.C. 824(a)(1), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has materially falsified an application for registration. DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See Martha Hernandez, M.D., 62 FR 61145 (1997); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

It is undisputed that Respondent answered "No" to the liability question on his 1992 and 1995 renewal applications despite the fact that his state veterinary license was placed on probation and he had surrendered his Schedule II and IIN privileges. Respondent testified that he did not know how to answer the question, since he did not think that he had surrendered his Schedule II privileges "for cause." However, there is no indication that Respondent even attempted to contact the DEA investigator who obtained the surrender from Respondent for guidance. Yet, even if one were to accept Respondent's explanation, it would not explain why Respondent did not disclose that his state veterinary license was placed on probation.

The Deputy Administrator finds that Respondent knew or should have known that his responses were false. Answers to the liability question are always material because DEA relies on the answers to these questions to determine whether it is necessary to conduct an investigation prior to granting an application. *See Bobby Watts, M.D.*, 58 FR 46995 (1993); *Ezzat E. Majd Pour, M.D.*, 55 FR 47547 (1990). DEA has previously held that it is the registrant's "responsibility to carefully read the question and to honestly answer all parts of the question." *Martha Hernandez, M.D.*, 62 FR 61147. Therefore, grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1).

Also, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

As to factor one, it is undisputed that Respondent's state veterinary license was suspended for 24 months, with the suspension stayed and his license placed on probation subject to various conditions. It is also undisputed that Respondent entered into a Stipulation with the state whereby he agreed to enter into a contract with the WHPS. However, his state license is now unrestricted and he is authorized to handle controlled substances in the State of Washington. But as Judge Bittner noted, "inasmuch as State authorization is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative."

Regarding factor two, it is undisputed that Respondent used his DEA Certificate of Registration and official order forms to obtain Schedule II controlled substances which he then abused himself for about a year in 1988 or 1989. However, this behavior was a result of Respondent's chemical dependency for which he has received treatment. He has not abused controlled substances since 1990, and he has a good support network in place to help prevent any relapse. There is no other evidence that Respondent has improperly dispensed controlled substances.

As to factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

Regarding factor four, there is evidence in the record that Respondent has failed to comply with applicable laws relating to controlled substances. By furnishing false information on his applications for DEA registration, Respondent violated 21 U.S.C. 843(a)(4)(A). By using DEA order forms to obtain controlled substances for his own use, Respondent violated 21 U.S.C. 828(e), and by dispensing controlled substances for other than legitimate medical purposes, Respondent violated 21 U.S.C. 841(a)(1). Further, Respondent violated 21 CFR 1301.75(b) by failing to maintain adequate physical security of controlled substances. It also appears from evidence in the record that Respondent violated various provisions of Washington state law.

As to factor five, other than Respondent's material falsification of his applications for registration, there is no evidence that Respondent has engaged in any other conduct that may threaten the public health and safety.

The Deputy Administrator agrees with Judge Bittner's conclusion that the Government has made a *prima facie* case that Respondent's continued registration would be inconsistent with the public interest. Respondent used his privileges as a DEA registrant to obtain controlled substances to support his chemical dependency, and he materially falsified his 1992 and 1995 renewal applications.

However, he has undergone treatment for his chemical dependency and has not abused controlled substances since 1990. Further, evidence in the record suggests that there is little likelihood of Respondent relapsing. The Deputy Administrator finds it noteworthy that Respondent first sought treatment for his chemical dependency on his own and not at the direction of another.

Judge Bittner also found it significant that "there is no evidence that [Respondent] improperly handled controlled substances in any way since 1992, when he regained a DEA registration." However, the Deputy Administrator can find no evidence in the record that Respondent ever completely lost his DEA privileges. But it appears from the evidence in the record that Respondent has had a DEA registration since 1981. Therefore, the Deputy Administrator finds it significant that there is no evidence that Respondent has improperly handled controlled substances in any way since 1990.

Regarding the material falsification of Respondent's renewal applications, the Deputy Administrator agrees with Judge Bittner who noted that "Respondent acknowledged that he falsified his applications, he apparently regretted that conduct, and I believe that he will not repeat it."

Judge Bittner concluded "that the evidence that Respondent has remained drug free for more than eight years prior to the hearing and is remorseful about his prior behavior weighs in favor of continuing his registration." As a result, Judge Bittner recommended that Respondent's DEA registration be continued. The Deputy Administrator agrees.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AN1015331, previously issued to Theodore Neujahr, D.V.M., be, and it hereby is, continued and renewed in Schedules II, IIN, IIIN, IV and V. This final order is the final agency action for appellant purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2534 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–1]

Michael Alan Patterson, M.D.; Grant of Restricted Registration

On September 23, 1998, the Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Alan Patterson, M.D. (Respondent) of Memphis, Tennessee, notifying him of an opportunity to show causes as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated October 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Nashville, Tennessee on March 10, 1999, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On August 11, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Opinion), recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Randall's Opinion, and on September 15, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order

replaces and supersedes the final order issued on December 22, 1999, and published at 64 FR 73,587 (December 30, 1999). The Deputy Administrator adopts, with specifically noted exceptions, the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administration Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of factor or law.

The Deputy Administrator finds that Respondent admits to a history of drug and alcohol abuse, beginning with marijuana and beer on the weekends as a teenager. When Respondent entered college in 1980, he used cocaine sporadically after being introduced to the drug by one of his brothers.

Respondent received his medical degree in 1983, and from July 1983 through June 1986, Respondent was a resident in family practice in Florida. During his residency Respondent used a DEA certificate of Registration issued to him in Florida that expired on March 31, 1987. As a resident, his drug use remained sporadic but became more frequent.

In 1986, Respondent moved to Mississippi to fulfill an obligation to the National Health Service Corps. Respondent obtained medical licenses in both Mississippi and Tennessee. Ultimately, Respondent was issued DEA Certificate of Registration in both states.

In order to earn additional income, Respondent also worked for an emergency room service and for a freestanding urgent care center from 1986 through 1989. During this time he worked approximately 80 to 100 hours per week. According to Respondent, in 1986 his drug use "progress[ed] to heavy," and the use of cocaine helped him stay awake so he could continue working.

Respondent testified that financial, marital, and work-related stress contributed to his drug use. He further testified that he began staying out late at night, if he returned home at all, and he frequented topless clubs. He failed to show up for work, and if he did show up, he was too "crashed out" to be productive. Eventually, Respondent's former wife notified his employer that Respondent had a cocaine problem.

As a result, the then-medical director the Tennessee Medical Foundation, Physicians Health Program (PHP), set up an intervention with Respondent, and Respondent entered treatment on March 16, 19990. According to Respondent he was very resistant to treatment at that time and fought it "tooth and nail." Respondent completed the four-month treatment program in July or August 1990; however, he did not enter into an ongoing contract with the treatment center at that time.

After his treatment, Respondent returned to work part-time at the freestanding urgent care center, and later in 1990, he began a second job working full-time at a 24-hour minor medical emergency center. Additionally, in November or December 1991, Respondent began working at a hospital center. Respondent's employers were aware of his drug abuse problems and treatment.

In the spring or summer of 1991, Respondent began drinking again, and allowed his DEA registrations to expire. Although he had been sent notices to renew his registrations, Respondent testified that he "avoid[ed] the mail" during this time because he owed debts to several bill collectors. By January 1992, Respondent began using cocaine and crack cocaine again. As a result of his relapse, Respondent was fired from the 24-hour minor medical emergency center in March 1992.

Respondent was not aware that he had let his DEA registrations lapse until the hospital where he was working requested a copy of his current DEA registration. Respondent attempted to renew his registration in Tennessee, but he inadvertently sent the wrong form to DEA with the fee. When the incorrect form and money were returned to Respondent, he spent the money on cocaine and failed to renew his registration. Since he still needed to have a current registration to submit to the hospital, Respondent's then-girlfriend altered his expired DEA Certificate of Registration to reflect a 1995 expiration date instead of the actual 1991 expiration date. This forgery resulted in the hospital terminating Respondent's employment on September 15, 1992. At the hearing Respondent testified that he was abusing drugs and alcohol at the time of the alteration of his Certificate of Registration, and that "there's no real justification to give you, other than I was sick and irresponsible."

Respondent's substance abuse worsened, and during this time he was arrested and charged with the misdemeanors of drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. Respondent pled guilty to two of the charges. In addition, from the summer of 1991 to November 1992, Respondent prescribed controlled substances without a valid registration and exchanged prescriptions for discounts on the cost of cocaine.

An investigation of Respondent began in 1992 based upon information from a confidential informant that she received controlled substance prescriptions from Respondent for no legitimate medical reason. On February 16, 1993; Respondent voluntarily met with law enforcement personnel. At this time, Respondent was currently undergoing inpatient treatment at a halfway house for his addiction. Respondent cooperated and provided full disclosure during this meeting, as well as subsequent meetings.

The investigation of Respondent, as well as his own admissions, revealed that Respondent had written controlled substance prescriptions to a number of individuals for no legitimate medical reason. He exchanged these prescriptions for services to include topless or private dances. He traded cocaine for sex and private dances, and he used cocaine and marijuana with these dancers.

Respondent acknowledged his prior behavior, his activity regarding his relationship with these individuals, and his unlawful prescribing of controlled substances. Respondent has accepted responsibility for his actions.

Subsequently, Respondent agreed to cooperate with the local police department. He provided a list of people that he had written controlled substance prescriptions to for no legitimate medical purpose. He also provided the names of individuals from whom he had purchased drugs from in the past and indicated from whom he thought he could buy drugs from in the future. Respondent agreed to work with the local police department to make telephone calls and contacts in an effort to set up undercover buys for drugs. Respondent was not very successful in gaining evidence against others since it was known that Respondent was in trouble. Respondent's cooperation with the local police department continued until August 1993.

Respondent entered treatment for a second time in November 1992, this time voluntarily. Respondent testified that he realized that his first attempt at treatment was "a half-hearted effort" and that at that time he was in denial of his addiction. By the time of his second attempt at treatment he had essentially lost everything. He testified, "if I didn't get into treatment at that time, I really didn't think I would be here much longer." Respondent was in inpatient treatment for three weeks and then continued to undergo inpatient treatment at a halfway house for impaired professionals until June 1993.

While in treatment, Respondent's Tennessee medical license expired on

December 31, 1992. Respondent did not submit a renewal application for this license until March 23, 1993 and did not pay the license fee until May 11, 1993. Respondent continued to practice medicine even though his license had not been renewed. Respondent explained that when he returned to work in 1993, he thought his medical license was in a "grace period."

After completing his treatment in June 1993, Respondent returned to work at the 24-hour minor medical emergency center and for the emergency room service, both of which were aware of Respondent's prior drug treatments. On his application for employment with the emergency room service submitted on September 29, 1993, Respondent indicated that his privileges or professional services at any hospital had never been revoked, even though his privileges at the hospital center had been revoked in September 1992. At the hearing, Respondent admitted that this mistake was an oversight and that "[he] had no reason to intentionally try and mislead or lie on that application."

Respondent has maintained a contract with the PHP since March 3, 1993. After treatment, the PHP coordinates and monitors physicians' recovery process for a minimum of two years. As part of this contract with the PHP physicians agree to attend weekly peer group meetings and monthly meetings with PHP personnel, to undergo random drug testing, to attend Alcoholics Anonymous or Narcotics Anonymous meetings, and to participate in individualized therapy.

After fulfilling the terms of his initial two-year contract with the PHP, Respondent has continued to renew his contract. Respondent has complied with the terms of his contract.

As a result of Respondent's past behavior, the Tennessee Board of Medical Examiners (Board) sought to take action against Respondent's Tennessee medical license. Respondent failed to appear for a scheduled hearing before the Board on June 21, 1994. According to Respondent he never received notice from the Board that the hearing was going to take place. As a result, on June 22, 1994, the board entered a Default Order revoking Respondent's Tennessee medical license and assessing a $4,300 civil penalty. The Board found among other things that Respondent had lied on his Tennessee medical license renewal form and on his employment application dated September 29, 1993, that he engaged in unprofessional, dishonorable or unethical conduct, that he was habitually intoxicated which affected his ability to practice medicine, and that he dispensed controlled substances not in the course of professional practice. Respondent stopped practicing medicine when he received written notification in July 1994 of the Board's action.

Based upon his conduct in 1991 and 1992, Respondent was indicted on July 19, 1995, in the United States District Court for the Western District of Tennessee, and charged with 387 felony counts related to his handling of controlled substances. On November 18, 1996, Respondent pled guilty to 17 counts of the unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). On March 27, 1997, Respondent was sentenced to three years probation, 2,000 hours of community service, and assessed a fine of $850. As conditions of his probation, Respondent is required to submit a random drug screens and to meet monthly with his probation officer. As of the date of the hearing Respondent had completed 1,500 to 1,600 hours of his community service obligation and had complied with all of the conditions of his probation.

On July 1, 1995, Respondent began a three-year psychiatry residency program at the University of Tennessee. He was selected for the position of Chief Resident in psychiatry by his fellow residents and faculty. During his residency, Respondent used the institutional DEA numbers of the institutions where he worked as a resident. No questions were ever raised by any official or representative at the University of Tennessee regarding Respondent's handling of controlled substances.

After his indictment and while in his residency program, Respondent assisted DEA in undercover activities for close to a year. Respondent's assistance produced four controlled substance buys, two of which resulted in convictions.

Effective October 6, 1997, the Board reinstated Respondent's medical license, finding that "[t]he [Respondent] has been monitored by the Tennessee Medical Foundation's Physician Health Program and is currently in good standing with the program. He presented evidence of five (5) years of sobriety." The Board placed several restrictions on Respondent's medical license including that he maintain an affiliation with the PHP for five years to include at least five unannounced drug screens per year; that he only apply for a DEA registration in Schedules III, IV and V; and that he only practice in a supervised setting under a licensed physician acceptable to the Board until his criminal probation is lifted, but for not less than two years.

Respondent has been in compliance with the Board's restrictions. On average, Respondent is tested for drugs eight to ten times per year. According to Respondent, he plans to maintain a lifetime relationship with the PHP, not just the five years imposed by the Board.

The medical director of the PHP testified at the hearing that he has been in frequent contact with Respondent for over three and a half years. He believes that Respondent's prognosis for continued recovery from his drug addiction is excellent. The medical director testified that he does not have any reservations concerning Respondent's ability to handle Schedules III, IV and V controlled substances and that he "fully support[s]" the granting of Respondent's application. However, both Respondent and the medical director testified that Respondent may benefit from a course on the proper handling of controlled substances.

Respondent testified that he has been sober since November 6, 1992. He further testified that he would pay greater attention to detail about his registration status, and the proper maintenance and renewal of his DEA and state registration "won't be a problem in the future at any time." He feels that he is "much more responsible" now. Respondent is ashamed of his previous conduct. He testified however that "today I know that I'm not the same person that I was six, seven, eight years ago * * * who was sick and addicted." Respondent testified that he understands the consequences of a relapse.

Since 1998, Respondent has been employed at a treatment facility where, for the most part, he practices addiction medicine. Presently, if Respondent's treatment of a patient requires the use of controlled substances, one of Respondent's supervisors writes the prescription. The Board has approved Respondent's employment at the treatment facility and any change in employment would require additional Board approval.

On October 28, 1997, Respondent executed the application for registration that is the subject of these proceedings. Respondent applied to be registered in Schedules III, IV and V and provided his home address as his "Proposed Business Address." Respondent testified that he does not intend to handle controlled substances at his residence and that the address on his application should be modified to reflect the address at the treatment facility where he is currently employed.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the Board revoked Respondent's Tennessee medical license in June of 1994. However, three years later the Board reinstated Respondent's license subject to various restrictions. In reinstating Respondent's license, the Board recognized that Respondent had been drug-free for five years and was in good standing with the PHP. Therefore, it is undisputed that Respondent is currently authorized to handle controlled substances in Tennessee.

While state licensure is a prerequisite for a DEA registration, it is not dispositive of whether Respondent's registration would be in the public interest. However, it is noteworthy that the Board stated that "[a]ny DEA certificate that the [Respondent] shall apply for shall be limited to Schedule III, IV and V." The Deputy Administrator agrees with Judge Randall that, "[a]lthough this restriction is not an endorsement by the Board for issuing a DEA registration to the Respondent, at a minimum, this statement expresses the Board's confidence in the Respondent's ability to handle the responsibilities of a DEA registrant, particularly regarding the Respondent's ability to handle Schedules III, IV and V controlled substances."

Respondent's experience in dispensing controlled substances and his compliance with laws related to controlled substances may be considered under factors two and four. The Deputy Administrator finds that Respondent's handling of controlled substances was abysmal during his active drug abuse. Respondent violated 21 U.S.C. 843(a)(2) by prescribing controlled substances without a valid DEA registration. He caused his expired DEA Certificate of Registration to be altered. In addition, Respondent violated 21 U.S.C. 841(a)(1) by prescribing controlled substances to individuals for no legitimate medical purpose. He wrote these prescriptions in exchange for discounts on his cocaine and crack purchases and in exchange for topless dances from women.

The Deputy Administrator finds this conduct to be reprehensible, and certainly could justify denying Respondent's application for registration. However, all of this conduct occurred when Respondent was heavily involved in substance abuse. Respondent has been drug-free since November 1992. He underwent intensive treatment and is still actively participating in aftercare treatment.

Also of concern is that Respondent continued to practice medicine in 1993 after he failed to timely renew his state medical license. However, this occurred when Respondent was undergoing substance abuse treatment and he thought his license was subject to a grace period.

Other than his practice of medicine without a current state license, there is no evidence that Respondent improperly handled controlled substances after he entered treatment in November 1992. In fact, Respondent handled controlled substances without question from July 1, 1995 to June 30, 1998 when using institutional numbers issued to him by the University of Tennessee during his residency.

Regarding factor three, it is undisputed that when Respondent was abusing drugs and alcohol, he was arrested for drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. He pled guilty to two of these charges. In addition, on November 18, 1996, Respondent pled guilty to 17 counts of unlawful distribution of controlled substances. Respondent was sentenced to three years probation and 2,000 hours of community service. Evidence in the record indicates that Respondent has complied with the terms of his probation. While such convictions clearly could justify denying Respondent's application for registration, the Deputy Administrator finds it significant that these convictions resulted from Respondent's behavior when he was addicted to drugs and alcohol, and as has been previously discussed, Respondent has been drug-free for seven years and his prognosis for continued recovery is excellent.

As to factor five, other conduct which may threaten the public health and safety, it is undisputed that Respondent was previously addicted to alcohol and drugs, including marijuana, cocaine and crack cocaine. According to Respondent, his conduct was "dangerous, illegal, [and] irresponsible" when he was addicted. However, Respondent has under gone intensive treatment for his substance abuse and his treatment is ongoing.

It is true that Respondent previously had undergone treatment but had relapsed. However, Respondent admits that he was resistant to treatment at that time. The second time that Respondent entered treatment, he did so voluntarily and is committed to such treatment. The evidence suggests that his chances of relapse are slight. He understands the consequences of a relapse. He intends to maintain a lifetime relationship with the PHP and he currently works with others who are addicted to drugs and alcohol.

Judge Randall also found it significant under this factor that Respondent incorrectly listed his home address on his application for registration. However, she further found that it was not so egregious as to warrant a denial of Respondent's application for registration. The Deputy Administrator agrees that this incorrect listing of his business address does not warrant denial of Respondent's application.

Judge Randall concluded, and the Deputy Administrator agrees, that the Government has made a prima facie case for denial of Respondent's application. Respondent unlawfully prescribed controlled substances, altered his DEA Certificate of Registration, abused alcohol and drugs, and was convicted of offenses relating to controlled substances. However, it is not in the public interest to deny Respondent's application.

Respondent has acknowledged his past unlawful behavior and has accepted responsibility for his conduct. Respondent had a serious addiction to drugs and alcohol during his unlawful conduct. He has been sober since November 1992 and his chances of continued recovery are excellent. He intends to maintain a lifetime relationship with the PHP and he is currently still being monitored by the State of Tennessee. The evidence suggests that Respondent is clearly committed to his recovery and is seeking to help others with substance abuse problems by predominantly

practicing addiction psychiatry. Judge Randall also found it significant that Respondent cooperated with law enforcement by fully disclosing his unlawful conduct, by providing information against others, and by assisting in undercover buys.

Therefore, the Deputy Administrator agrees with Judge Randall that it would not be in the public interest to deny Respondent's application. However given the egregiousness of Respondent's past behavior, Judge Randall recommended that restrictions be imposed on Respondent's registration that would "add a measure of protection to the public interest, while affording [Respondent] the opportunity to demonstrate his ability and willingness to handle controlled substances responsibly in his medical practice." Judge Randall recommended that Respondent's application for registration be granted subject to the following restrictions:

(1) The Respondent must resubmit a registration application reflecting his "Proposed Business Address" as required by regulation;

(2) The Respondent be granted a Certificate of Registration only for Schedules III, IV and V;

(3) By not later than two years after the date of the final order, the Respondent shall submit to the local DEA office evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense;

(4) For three years after the effective date of the final order in this case, the Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered or dispensed during the previous quarter, to the Special Agent in Charge of the nearest DEA office, or his or her designee. The log should include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log. Review of such a log should provide adequate assurances for his future responsible conduct as a registrant.

The Deputy Administrator agrees with Judge Randall that Respondent's application for registration should be granted and that it is appropriate to impose restrictions on such registration. However, the Deputy Administrator finds it unnecessary to require Respondent to resubmit an application listing his proper business address. At the hearing in this matter, Respondent requested that his application be modified to reflect the address of his current place of employment. The Deputy Administrator finds that this request is sufficient to modify his application and a new application for registration is not required. However, if Respondent's place of employment has changed from that represented at the hearing, a new written request for modification of the address on his application must be submitted.

In addition, the Deputy Administrator disagrees with Judge Randall's recommendation that Respondent be given two years to present evidence of successful completion of formal training in the proper handling or prescribing of controlled substances. Given the nature of Respondent's past conduct, the Deputy Administrator finds that it is in the public interest for such training to be completed within one year of being issued his DEA registration.

Finally, the Deputy Administrator believes that it is prudent to require Respondent to continue his affiliation with the PHP for three years regardless of whether such affiliation is required by the Board.

Therefore, the Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration in Schedules III, IV and V subject to the following restrictions:

(1) By not later than one year after the Certificate of Registration is issued, Respondent shall submit to the DEA office in Nashville, Tennessee evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense.

(2) For three years after the issuance of the Certificate of Registration, Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered, or dispensed during the previous quarter, to the Resident Agent in Charge of the DEA office in Nashville, Tennessee, or his or her designee. The log should include: The patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered, or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log.

(3) Respondent shall continue his affiliation with the Tennessee Medical Foundation's Physicians' Health Program for at least three years from the issuance of the Certificate of Registration, regardless of whether such affiliation is required by the Tennessee Board of Medical Examiners.

Accordingly, the Deputy administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Michael Alan Patterson, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2541 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–41]

Paul W. Saxton, D.O.; Denial of Application for Fees and Expenses Under the Equal Access to Justice Act

On July 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Paul W. Saxton, D.O. (Respondent), proposing to revoke his DEA Certificate of Registration AS9420059, and to deny any pending application for renewal of such registration. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Following a lengthy hearing and post-hearing filings, Administrative Law Judge Gail A. Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision on October 6, 1998, recommending that no adverse action be taken against Respondent's DEA registration. On November 5, 1998, Respondent's counsel filed an Application for Attorney's Fees and Expenses (Application), under the Equal Access to Justice Act, 28 U.S.C. 2412.

On November 19, 1998, Judge Randall transmitted the record, including Respondent's Application, to the then-Acting Deputy Administrator for final agency action. After a careful review of the entire record, the Deputy Administrator issued his final order in this matter on May 3, 1999, adopting, in full, the Administrative Law Judge's findings of fact and conclusions of law, and continuing Respondent's registration without taking any adverse action. See Paul W. Saxton, D.O., 64 FR 25073 (May 10, 1999). In his final order, the Deputy Administrator denied Respondent's application for attorney's fees finding that Respondent's Application was premature because "such a request may only be filed after a party has prevailed in an action brought by DEA." *Id.* at 25074.

On May 18, 1999, after issuance of the final order, Respondent's counsel filed a letter requesting to renew his Application filed on November 5, 1998, since the agency's final order had now been entered. On June 17, 1999, the Government filed an Answer in Opposition to Respondent's Application for Attorneys' Fees and Expenses Under the Equal Access to Justice Act. Judge Randall then provided Respondent an opportunity to respond to the Government's submission, and on July 19, 1999, Respondent filed a Response to the Government's Answer.

On September 22, 1999, Judge Randall issued her Supplemental Decision: Recommended Decision, Findings and Conclusions of the Administrative Law Judge Concerning the Respondent's Application for Fees and Expenses Under the Equal Access to Justice Act (Supplemental Decision), recommending that Respondent's Application be denied. Neither party filed exceptions to Judge Randall's Supplemental Decision and on October 25, 1999, the record concerning Respondent's Application was forwarded to the Deputy Administrator.

Pursuant to 28 CFR 24.307, the "decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application." "Department" is defined as "the relevant departmental component which is conducting the adversary adjudication (*e.g.*, Drug Enforcement Administration * * *.)" See 28 CFR 24.102. Therefore, the Deputy Administrator hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on December 22, 1999. The Deputy Administrator adopts, in full, the Supplemental Decision: Recommended Decision, Findings and Conclusions of the Administrative Law Judge Concerning the Respondent's Application for Fees and Expenses Under the Equal Access to Justice Act. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that a party may file a claim for attorney's fees and other expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412. Pursuant to 5 U.S.C. 504(a)(1), which incorporates the EAJA into the Administrative Procedure Act, an agency that conducts adversary adjudications shall award fees and expenses if: (1) The claimant is a prevailing party in the underlying action; (2) the position of the Government was not substantially justified; and (3) there were no special circumstances that would make an award against the Government unjust. An administrative hearing to revoke a DEA Certificate of Registration to dispense controlled substances is considered an "adversary adjudication" covered by the EAJA. See 28 CFR 24.103(a)(1).

The Deputy Administrator concludes that Respondent is a prevailing party and has therefore met the initial qualifying threshold for an award of fees and expenses under the EAJA. A "prevailing party" is one who can be found to have essentially succeeded on the claims for relief. See *Brown* v. *Secretary of Health and Human Servs.* 747 F.2d 878, 883 (3rd Cir. 1984). In the underlying matter upon which this Application is based, Respondent contended that his continued registration would not be inconsistent with the public interest, and that his DEA registration should not be revoked. The Deputy Administrator agreed with Respondent and ordered that no adverse action be taken against Respondent's DEA registration. See Saxton, 64 FR at 25080. Therefore, the Deputy Administrator concludes that Respondent has succeeded on his claims for relief.

In addition, for a claimant to be considered a prevailing party eligible for an award of attorney's fees and other expenses the claimant must be an individual whose net worth does not exceed $2,000,000 at the time the adversary adjudication was initiated. See 5 U.S.C. 504(b)(1)(B). In his Application, Respondent asserts that he has a net worth of less than $2,000,000. The Government does not dispute Respondent's assertion. Therefore, the Deputy Administrator concludes that Respondent has met the initial threshold that he is a prevailing party eligible for attorney's fees and other expenses under the EAJA.

Next, it must be determined whether the position of the Government was substantially justified. A presumption exists that a prevailing party may recover an EAJA award, unless the position of the Government was substantially justified. See 28 U.S.C. 2412(d)(1)(A); 28 CFR 24.106(a). Once alleged by the claimant that the position of the Government was not substantially justified, the burden of proof shifts to the Government to demonstrate by a preponderance of the evidence that its position was substantially justified and that attorney's fees and other expenses should not be awarded. See *United States* v. *One Parcel of Real Property*, 960 F.2d 200, 208 (1st Cir. 1992).

The "position of the United States" is defined as being that position "in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based." 28 U.S.C. 2412(d)(2)(D). Although "position" encompasses the Government's prelitigation conduct and subsequent litigation position, only one determination of substantial justification to the entire matter should be made. See *Commissioner, INS* v. *Jean*, 496 U.S. 154, 160–62 (1990) ("While the parties' postures on individual matters may be more or less justified, the EAJA—like other fee-shifting statutes—favors treating a case as an inclusive whole, rather than as atomized line-items.") Therefore, the Deputy Administrator concludes that the Government's position as a whole must be considered in determining whether there was substantial justification for that position.

The test for substantial justification is whether a reasonable person would find that the Government's position was reasonable in both fact and law. See *Derickson Co.* v. *NLRB*, 774 F.2d 229, 232 (8th Cir. 1985); *Enerhaul, Inc.* v. *NLRB*, 710 F.2d 748, 750, reh'g denied, 718 F.2d 1115 (11th Cir. 1983); *see also* H.R. Conf. Rep. No. 96–1434 at 22 (1980). To meet its burden of demonstrating the substantial justification for its position, the Government must make a "strong showing" and must demonstrate that it "had a reasonable basis for the facts alleged, that it had a reasonable basis in law for the theories it advanced, and that the former supported the latter." One Parcel of Real Property, 960 F.2d at

208 (quoting *Sierra Club* v. *Secretary of the Army*, 820 R.2d 513, 517 (1st Cir. 1987)).

Also, it is noteworthy that pursuant to 28 CFR 24.105(c), "[n]o presumption arises that the agency's position was not substantially justified simply because the agency did not prevail." See also, Griffon v. *Department of Health and Human Servs.*, 832 F.2d 51, 52 (5th Cir. 1987). As Judge Randall noted, "the government may demonstrate that its position was substantially justified, even though it was a losing one."

In this case, the Deputy Administrator agrees with Judge Randall's conclusion that "an evaluation of the record as a whole supports the position that the Government was substantially justified in initiating and pursuing the underlying cause of action." As noted by Judge Randall, "the final order recognized, '[w]ithout a doubt, the Government had legitimate concerns as a result of its initial investigation of the Respondent and his prescribing practices' " See Saxton, 64 FR at 25079.

Judge Randall concluded that both the Government and Respondent incorrectly reargued the evidence regarding each of the five public interest factors in asserting whether the Government's position was substantially justified. The test is not whether each individual litigated claim was substantially justified, but rather oversell, whether the Government's litigation and prelitigation position was substantially justified. See Jean, 496 U.S. at 160–62. As further support, the Government's "position," in the singular, suggests that only one finding concerning substantial justification need by made. See *id.* at 159. After evaluating the record in this matter, Judge Randall concluded "that in the eyes of a reasonable person, the Government's position was reasonable both in fact and in law."

The state agency responsible for regulating health-care professionals had received complaints over the years regarding Respondent's prescribing practices. An initial evaluation of patient profiles showed that Respondent's prescribing practices exceeded the recognized prescribing standards established by the Physician's Desk Reference (PDR). While the PDR does not establish binding standards on physicians, exceeding those standards is a sufficient indicator that further investigation into the physician's prescribing is warranted. See *Saxton*, 64 FR at 25078; *see also Margaret E. Sarver, M.D.*, 61 FR 57896, 57900 (1996). An expert in pain management reviewed Respondent's prescribing patterns and patient charts for the Government and found "consistent patterns supporting the contention that [Respondent] has been inappropriately and excessively prescribing controlled substances, particularly opioids." See *Saxton*, 64 FR at 25074. Also, Respondent failed to inventory his controlled substances properly and failed to retain the required records needed to ensure accountability for the controlled substances maintained and dispensed in his medical practice. See *id.* at 25079. Failure to maintain proper records has previously been a basis for revocation of a DEA Certificate of Registration. See *Farmacia Ortiz*, 61 FR 726, 727–728 (1996); *Harlan J. Borcherding, D.O.*, 60 FR 28796, 28798 (1995). Finally, at the time the Government initiated its action against Respondent, it had evidence that Respondent had prescribed anabolic steroids for muscle enhancement in violation of state and Federal law. See *Saxton*, 64 FR at 25074, 25079.

Thus, the Deputy Administrator finds that the Government was substantially justified in pursuing the revocation of Respondent's DEA Certificate of Registration. Respondent ultimately prevailed because of the evidence that he presented at the hearing.

Respondent presented evidence that the medical community was in disagreement over the use of controlled substances in the treatment of chronic pain patients. Respondent's two experts testified that Respondent's method of pain management was a medically recognized form of chronic pain treatment. See *id.* at 25075. As Judge Randall stated, "[t]he Respondent prevailed only after exploring and presenting evidence on the split in the medical community concerning the prescribing of controlled substances for chronic pain. The Respondent's witnesses were found to be more persuasive than those of the Government; yet, this does not mean that the Government was not substantially justified in its position or its case presentation."

As to Respondent's recordkeeping violations, the Deputy Administrator concluded that revocation was not warranted not because the Government failed to prove its case, but because Respondent presented significant evidence of rehabilitation and remedial training. See *id.* at 25079. Judge Randall noted that "this evidence does not eradicate the Respondent's prior wrongdoing, on which the Government's position was based; rather, this evidence of remedial action merely added weight in favor of the Respondent and enabled the Deputy Administrator, in his discretionary authority, to find for the Respondent."

Regarding Respondent's illegal prescribing of anabolic steroids, the Deputy Administrator agrees with Judge Randall that "Respondent ultimately prevailed, not because the Government failed to prove its case, but because the Deputy Administrator, in his discretionary authority, found persuasive the Respondent's rehabilitation evidence that he had ceased his unlawful prescribing of anabolic steroids."

Therefore, Judge Randall found that "the Government's actions in preparing and pursuing the revocation of the Respondent's DEA Certificate of Registration were substantially justified." The Deputy Administrator agrees. While Respondent ultimately prevailed in the underlying matter, the Government's position was reasonable and therefore substantially justified.

The Deputy Administrator finds that neither party alleged that special circumstances exist that would make an award of attorney's fees and other expenses under the EAJA unjust.

Judge Randall noted that the parties argued about the appropriate amount of attorney's fees to be awarded. However, Judge Randall found it unnecessary to decide this issue since she found that the Government's position was substantially justified and therefore recommended that no fees be awarded.

The Deputy Administrator agrees. While Respondent ultimately prevailed and his registration was not revoked, the Government's position was substantially justified. Therefore, Respondent's application for attorney's fees and other expenses must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 28 U.S.C. 2412, 5 U.S.C. 504, and 28 CFR 24.307, 0.100(b) and 0.104 hereby orders that the Application for Fees and Expenses under the Equal Access to Justice Act submitted by Paul W. Saxton, D.O., be, and it hereby is, denied. This final order is considered the final agency action for purposes of appellate review pursuant to 5 U.S.C. 504(c)(2) and 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2535 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

C. Van Nostrand-Perkins, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to C. Van Nostrand-Perkins, M.D., of Huntington Beach, California, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration BP3939165 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that she is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Van Nostrand-Perkins that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on or about August 13, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Van Nostrand-Perkins or anyone purporting to represent her in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Van Nostrand-Perkins is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Depufy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Van Nostrand-Perkins currently possesses DEA Certificate of Registration BP3939165 issued to her in California. The Deputy Administrator further finds that effective August 14, 1997, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California revoked Dr. Van Nostrand-Perkins' license to practice medicine. The Deputy Administrator concludes that Dr. Van Nostrand-Perkins is not currently licensed to practice medicine in California, and therefore it is reasonable to infer that she is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts her business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51, 104 (1993).

Here it is clear that Dr. Van Nostrand-Perkins is not currently authorized to handle controlled substances in the State of California. As a result, she is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP3939165, previously issued to C. Van Nostrand-Perkins, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2533 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 7:30 a.m. to 5 p.m. on Monday, March 6, 2000 and 8:30 a.m. to 12 noon to Tuesday, March 7, 2000.

PLACE: Westin Hotel—Seattle, 1900 Fifth Avenue, Seattle, Washington 98101.

STATUS: Open.

MATTERS TO BE CONSIDERED: Tours/Presentations Concerning King County Crisis Triage Unit/Pre-Booking Diversion, Seattle Police Department Crisis Intervention Team, King County Mental Health Court Proceedings and Post-Booking Diversion Proceedings; Updates on Mentally Ill in Prisons and Jails, the NIC Strategic Plan, Interstate Compact Activities, Advisory Board Hearings; Reports by Program Divisions; FY 2001 Service Plan Recommendations; and FY 2002 Budget Recommendations.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 00–2515 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission of OMB Review; Comment Request

February 2, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Agency (ESA).

Title: Equal Opportunity Survey.

OMB Number: 1215–ONEW.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 60,000.

Estimated Time Per respondent: 12 hours.

Total Burden Hours: 720,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $180,000.

Description: Government contractors provide information on their personnel activities and the results of their affirmative efforts to employ and promote minorities and women. This information is used to select specifically identified contractors for compliance evaluations and technical assistance.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 00–2654 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–45–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,000 and NAFTA–3402]

Barry Callebaut, USA, Incorporated Van Leer Division Jersey City, New Jersey; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 13, 2000, petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and North American Free Trade Agreement, Transitional Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notices were signed on November 15, 1999. The notice for TA–W–37,000 was published in the **Federal Register** on December 28, 1999 (64 FR 72691). The notice for NAFTA–3402 will soon be published in the **Federal Register**.

The petitioners present information regarding company imports of chocolate products and related ingredients and a shift in production of certain articles from Jersey City, New Jersey to Canada.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 24th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2497 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of adjustment assistance for workers (TA–W) issued during the period of January, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,011; Cooper Energy Service, Grove City, PA

TA–W–37,065; Svedala Grinding Hodge Foundry, Greenville, PA

TA–W–37,099; Schuylkill Haven Bleach & Dye Works, Inc., Schuylkill Haven PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,074; American Pharmaceutical Co., Fairfield, NJ

TA–W–37, 103 & A; Alaska Anvil, Inc., Consulting Engineers, Anchorage, AK and Kenai Office, Kenai, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–36,909; Topcraft Precision Molders, Inc., Warminster, PA

TA–W–36,684; Pacific Scientific, HTL Kin/Tech Facility, Yorba Linda, CA

TA–W–37,035; Court Metal Finishing, Inc., Flint, MI

TA–W–37,091; Morgan Adhesives Co. d/b/a Mactac, Stow, OH

TA–W–36,873; Hunting Oilfield Service, Landell Div., Spring, TX

TA–W–36,776; Westwood LLC, Southridge, MA

TA–W–36,978; Curtis Wright Flight Systems, Inc., Fairfield, NJ

TA–W–37,145; HCC, Inc., Earlville, IL

TA–W–37,188; Jet Sew Technologies, Barneveld, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,192; West Coast Forest Products, Arlington, WA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,915; Voith Sulzer Paper Technoligy, Monroe, OH: September 27, 1998.

TA–W–37,073; Fedders North America, Inc., Effingham, IL: November 1, 1998.

TA–W–37,020; Motorola Corp., Motorola Cable Products Div., Motorola ING, Mansfield, MA: October 18, 1998.

TA–W–36,999; Drew Shoe Corp., Lancaster, OH: October 14, 1998.

TA–W–36,934; ColumbiaKnit, Portland, OR: September 23, 1998.

TA–W–37,084; The Stanley Works, Tools Div., Stanley Tools Plant, New Britain, CT: October 26, 1998.

TA–W–37,037; Falk Corp., Milwaukee, WI: November 8, 1998.

TA–W–37,167; GL&V/Dorr Oliver, Inc., Hazleton, PA: November 23, 1998.
TA–W–37,212; Young Generations, Inc., Hendersonville, NC: December 9, 1998.
TA–W–37,193; Russell Corp, Russell Athletic, Columbia, AL and Crestview, FL: December 10, 1998.
TA–W–37,150; SRC Vision, Medford, OR: November 22, 1998.
TA–W–36,945; Moll Industries, Inc., Anchor Advanced Products, Cosmetic Packaging Div., Morristown, TN: September 23, 1998.
TA–W–36,949; Spring Ford Industries, Inc., Plant #1, and Plant #2, Chilhowie, VA: September 28, 1998.
TA–W–37,133; Fuchs Systems, Inc., Salisbury, NC: November 22, 1998.
TA–W–37,213; U.S. Forest Industries, Inc., White City, OR: December 13, 1998.
TA–W–37,127; Carter Footwear, Inc., Wilkes Carre, PA: January 31, 2000.
TA–W–37,111; Crown Cork & Seal Co., Inc., Closures Div., South Connellsville, PA: November 12, 1998.
TA–W–37,207; Tultex Corp., Roanoke, VA: December 9, 1998.
TA–W–37,208; Tultex Corp., South Boston, VA: December 16, 1998.
TA–W–37,081; Joy Mining Machinery, A Div. of Harnischfeger Industries, Franklin, PA: November 3, 1998.
TA–W–36, 81; Temco Fireplace Products, A Div. of Temtex Industries, Perris, CA: September 9, 1998.
TA–W–37,171; Sims Manufacturing Co., Inc., Payne, OH: December 7, 1998.
TA–W–36,922; West Coast Circuits, Watsonville, CA: September 23, 1998.
TA–W–36,947; Smurfit-Stone Container Corp., El Paso, TX: September 27, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 205(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03402; Barry Callebaut USA, Inc., Van Leer Div., Jersey City, NJ
NAFTA–TAA–03549; Competitive Edge Sportswear, Fall River, MA
NAFTA–TAA–03551; Joy Mining Machinery, A Div. of Harnischfeger Industries, Franklin, PA
NAFTA–TAA–03617; Altec International, La Crosse, WI
NAFTA–TAA–03566; Morgan Adhesives Co., d/b/a Mactac, Stow, OH
NAFTA–TAA–03540; ColumbiaKnit, Portland OR
NAFTA–TAA–03369; Superior-Essex, Pauline, KS
NAFTA–TAA–03527; Cooper Energy Services, Grove City, PA
NAFTA–TAA–03560; Schuylkill Haven Bleach & Dye Works, Inc., Schuylkill Haven, PA
NAFTA–TAA–03519; Piezo Crystal, Carlisle, PA
NAFTA–TAA–03602; HCC, Inc., Earlville, IL
NAFTA–TAA–03344; Flynt Fabrics, Inc., Wadesboro, NC
NAFTA–TAA–03647; Jet Sew Technologies, Barneveld, NY
NAFTA–TAA–03562; Steeltech, Milwaukee, WI
NAFTA–TAA–03649; Fogel Neckwear Corp., New York, NY
NAFTA–TAA–03515 A, B, C; Bayer Clothing Group, Inc., Target Square Facility, Clearfield, PA, Fletcherville Facility, Clearfield, PA, Hyde Facility, Hyde, PA and Kent Facility, Curwensville, PA
NAFTA–TAA–03345; Pacific Scientific HTL Kin/Tech Facility, Yorba Linda, CA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–3622; American Meter Co., Industrial Products Business Unit, Erie, PA

The investigation revealed that criteria (2) has not been met. Sales or Production, or both, of such firm or subdivision did not decrease absolutely.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03610; GL&V/Dorr-Oliver, Inc., Hazleton, PA: November 23, 1998.
NAFTA–TAA–03583; Crown Cork & Seal Co., Inc., Closures Div., South Connellsville, PA: November 12, 1998.
NAFTA–TAA–03585; AlliedSignal, Inc., Emlenton Refinery, Emlenton, PA: November 12, 1998.
NAFTA–TAA–03596; Elinco, Inc., A Div. of Eastern Air Devices, Waterbury, CT: November 22, 1998.
NAFTA–TAA–03604; Elinco, Inc., A Div. of Eastern Air Devices, Stamford, CT: November 30, 1998.
NAFTA–TAA–03590; U.S. Forest Industries, Inc., White City, OR: October 30, 1998.
NAFTA–TAA–03625; Master Form, Inc., North Hollywood, CA: November 9, 1998.
NAFTA–TAA–03456; TAB Products Co., Turlock, CA: September 3, 1998.
NAFTA–TAA–03518; Temco Fireplace Products, A Div. of Temtex Industries, Perris, CA: October 6, 1998.
NAFTA–TAA–03627; Tultex Corp., South Boston, VA December 9, 1998.
NAFTA–TAA–03633; Tultex Corp., Roanoke, VA: December 15, 1998.
NAFTA–TAA–03629; Russell Corp., Russell Athletic, Crestview, FL: December 10, 1998.
NAFTA–TAA–03628; Russell Corp., Russell Athletic, Columbia, AL: December 10, 1998.
NAFTA–TAA–03451; NEC Technologies, Inc., Georgia Plant, McDonough, GA: September 17, 1998.
NAFTA–TAA–03614; Sims Manufacturing Co., Inc., Payne, OH: December 1, 1998.
NAFTA–TAA–03594; Workpros, Inc., Div. of Crystal Art, Maspeth, NY: November 3, 1998.

NAFTA–TAA–3631; Rebound Manufacturing, New London, NC: December 7, 1998.
NAFTA–TAA–03657; A & B; Third Generation, Inc., Latta, SC, Ware Shoals, SC and Honea Path, SC: January 4, 1999.
NAFTA–TAA–03623; & A; Tultex Corp., Roxboro, NC and Longhurst, NC: December 15, 1998.
NAFTA–TAA–03639; Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: January 23, 2000.
NAFTA–TAA–03476; Smurfit-Stone Container Corp., El Paso, TX: September 27, 1998.

I hereby certify that the aforementioned determinations were issued during the month of January 2000. Copies of these determinations are available for inspection in Room C–4138, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 28, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–2493 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,258 and TA–W–36,258A]

Burlen Corporation, Fitzgerald Plant, Fitzgerald, Georgia and Burlen Corporation, Tifton Plant, Tifton, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 20, 1999, applicable to workers of Burlen Corporation, Fitzgerald Plant, Fitzgerald, Georgia. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55751).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of women's underwear. New information shows that workers were separated in December, 1999 at the Tifton Plant, Tifton, Georgia location of Burlen Corporation. The workers are engaged in the production of women's underwear and provide distribution and shipping services for the subject firms' production facility in Fitzgerald, Georgia which closed in July, 1999.

Accordingly, the Department is amending the certification to cover the workers of Burlen Corporation, Tifton Plant, Tifton, Georgia.

The intent of the Department's certification is to include all workers of Burlen Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,258 is hereby issued as follows:

"All workers of Burlen Corporation, Fitzgerald Plant, Fitzgerald, Georgia (TA–W–36,258) and Tifton Plant, Tifton, Georgia (TA–W–36,258A) who became totally or partially separated from employment on or after May 14, 1998 through September 20, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 19th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2504 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,004]

Chester County Sportswear Including Workers of SkilStaf, Inc., Henderson, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 1999, applicable to workers of Chester County Sportswear, located in Henderson, Tennessee. This notice was published in the **Federal Register** on December 28, 1999 (64 FR 72692).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. New information shows that workers at Chester County Sportswear are considered to be employees of SkilStaf, Inc. The workers were engaged in employment related to the production of men's casual slacks and various sportswear.

Based on these findings, the Department is amending the certification to include workers of SkilStaf, Inc. employed at the Henderson, Tennessee facility of the subject firm.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased imports.

The amended notice applicable to TA–W–37,004 is hereby issued as follows:

All workers of Chester County Sportswear, including workers employed SkilStaf, Inc. employed at Chester County Sportswear, Henderson, Tennessee who became totally or partially separated from employment on or after October 15, 1998 through November 10, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2501 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than February 14, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 10th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON JAN. 10, 2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,224	Foster Wheeler (Wkrs)	Playas, NM	01/03/2000	Copper.
37,225	Middle Bay Oil (Co.)	Wichita, KS	12/22/1999	Crude Oil.
37,226	Burgett Geothermal (Co.)	Animas, NM	12/01/1999	Cut Roses.
37,227	Nobleville Casting (UAW)	Nobleville, IN	12/29/1999	Iron Ductile Castings.
37,228	Third Generation, Inc (Co.)	Latta, SC	12/22/1999	Ladies' Apparel.
37,229	L.G.&E. Natural Gatherin (Wkrs)	Hobbs, NM	12/20/1999	Natural Gas (Methane).
37,230	Elizabethtown Sportswear (UNITE)	Elizabethtown, KY	12/21/1999	Men's Tailored Trousers.
37,231	Laurel Mold (Wkrs)	Jeannette, PA	12/15/1999	Glass Moulds.
37,232	Thomas Bradford Shirt (UNITE)	Huntingdon, TN	12/23/1999	Woven Shirts for Men, Women, Children.
37,233	Dana Corporation (USWA)	Reading, PA	12/14/1999	Light Duty Pick-Up Trucks.
37,234	Seagate (Wkrs)	Oklahoma City, OK	12/17/1999	Computer Hardare and Software.
37,235	Angelica Image Apparel (Wkrs)	Ackerman, MS	12/10/1999	Polo Shirts.
37,236	Chicago Pneumatic Tool (Co.)	Rock Hill, SC	12/15/1999	Air Powered Hand Tools.
37,237	International Paper (Wkrs)	Natchez, MS	12/13/1999	Dissolving Wood Pulp (DWP).
37,238	Harborside Graphics (Co.)	Belfast, ME	12/10/1999	Printed and Emboidered T-Shirts.
37,239	Dezurik (Wkrs)	McMinnville, TN	12/13/1999	Frame Fabs Super-structures.
37,240	Chevron Products Co (Wkrs)	Roosevelt, UT	01/04/2000	Pipeline Distsribution of Crude Oil.
37,241	Contour Energy Co (Wkrs)	Houston, TX	12/30/1999	Drill Natural Gas.
37,242	Wardson, Inc (Co.)	Adamsville, TN	12/28/1999	Sewing Thread for Apparel.
37,243	Whizard Protective Wear (Wkrs)	Birmingham, OH	12/06/1999	Resistant Gloves.

[FR Doc. 00–2495 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 3rd day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

PETITIONS INSTITUTED ON 01/03/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,214	Fox Point Sportswear (UNITE)	Merrill, WI	12/20/1999	Sports Apparel.
37,215	Item House (UFCW)	Tacoma, WA	12/15/1999	Men's and Women's Outerwear.
37,216	AK Steel Corp (Wrks)	Dover, OH	12/20/1999	Galvanized Steel.
37,217	Penguin Putnam Inc (Wrks)	Newbern, TN	12/14/1999	Distribution Center.
37,218	Bausch & Lomb (Wrks)	Rochester, NY	12/09/1999	Contact Lens.

PETITIONS INSTITUTED ON 01/03/2000—Continued

TA–W.	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,219	Boeing Co. (The) (UAW)	Melbourne, AR	12/20/1999	Aircrafts.
37,220	Owenby Co. (The) (Comp)	Tellico Plains, TN	12/21/1999	T-Shirts and Polo Shirts.
37,221	Weigh-Tronix, Inc (Comp)	Fairmont, MN	12/22/1999	Postal Scale Systems.
37,222	Wagener Mfg Co (Wrks)	Wagener, SC	12/09/1999	Robes, Wraps, Beachwear.
37,223	Linden Apparel (Comp)	Allentown, PA	12/22/1999	Men's, Ladies' & Children's Knitwear.

[FR Doc. 00–2500 Filed 2–3–00 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,592]

Guidant Intermedics, Cardiac Pacemakers, Inc. (CPI), Angleton, Texas; Amended Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on August 4, 1999, applicable to workers of Guidant Intermedics, Angeleton, Texas. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52540).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of pacemakers and defibrillators, associated leads for the pacemakers and defibrillators and a personnel computer specifically designed for the programming of the pacemakers and defibrillators. Findings show that Cardiac Pacemakers, Inc. (CPI) is a wholly owned subsidiary of Guidant Intermedics. Findings also show that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Cardiac Pacemakers, Inc., Angleton, Texas.

The intent of the Department's certification is to include all workers of Guidant Intermedics who were adversely affected by increased imports. Accordingly, the Department is amending the Notice of Determinations to reflect this matter.

The amended notice applicable to TA–W–36,592 is hereby issued as follows:

"All workers of Guidant Intermedics, Cardiac Pacemakers, Inc., (CPI), Angleton, Texas engaged in employment related to the production of pacemakers and defibrillators who became totally or partially separated from employment on or after July 13, 1998 through August 4, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

"I further determine that all workers at Guidant Intermedics, Cardiac Pacemakers, Inc., (CPI), Angleton, Texas engaged in activities related to the production of leads, hybrid circuits and PC's for the programming of pacemakers are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 19th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2503 Filed 2–3–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 14, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

The petition filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington. DC 20210.

Signed at Washington, DC this 18th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 01/18/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,244	Motorola, Inc. (Wkrs)	Arlington, IL	12/10/1999	Printed Circuit Boards.
37,245	Pioneer Wear (Wkrs)	Albuquerque, NM	12/30/1999	Westernwear.
37,246	Epperheimer, Inc. (Wkrs)	Kenai, AK	12/14/1999	Painters.

APPENDIX—Continued

[Petitions Instituted on 01/18/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,247	ON Semiconductor (Co.)	Phoenix, AZ	01/06/2000	Semiconductors.
37,248	First Fleet (Wkrs)	Harlingen, TX	01/01/2000	Provide Equipment for Distribution.
37,249	Snap-On-Tool (Wkrs)	Ottawa, IL	01/05/2000	Distribution Center.
37,250	BP Amoco Refinery (Wkrs)	Texas City, TX	12/29/1999	Gasoline.
37,251	Beloit Mill Production (Wkrs)	Hattiesburg, MS	12/02/1999	Paper Making Machinery.
37,252	Hampton Industries (Wkrs)	Martinsville VA	12/28/1999	Sleepwear and Bathrobes.
37,253	Tab Products (Wkrs)	Turlock, CA	12/16/1999	Business File Folders.
37,254	Sony Electronics (Co.)	Frankville, PA	01/06/2000	Audio Speakers.
37,255	Otis Elevator (IUE)	Bloomington, IN	01/07/2000	Elevator Fixtures, Finals Sheetmetal.
37,256	ABB Automation (Wkrs)	Williamsport, PA	01/07/2000	Cable Harnesses and Assembles.
37,257	Great American Knitting (Co.)	Pottstown, PA	01/07/2000	Men's Gold Toe Socks.
37,258	IPM Service (Co.)	Dallas, TX	12/20/1999	Testers for Alternator & Starters.
37,259	ASC Automotive Specialist (Wkrs)	Raucho Dominque, CA	01/05/2000	Convertible Automobiles.
37,260	L.P.F. Apparel Corp (Wkrs)	New York, NY	01/06/2000	Ladies' Better Suits.
37,261	Ithaca Industries (Co.)	Glennville, GA	01/06/2000	Men's T-Shirts and Underwear.

[FR Doc. 00–2496 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,841]

Sony Magnetic Products Inc. of America, Dothan, Alabama; Notice of Revised Determination on Reopening

By letter postmarked January 5, 2000, a company official requested administrative reconsideration of the Department's notice of negative determination regarding eligibility to apply for worker adjustment assistance applicable to workers of the subject firm.

On December 21, 1999, workers of Sony Magnetic Products Inc. of America producing VHS videocassettes were denied TAA eligibility based on the finding that criterion (3) of Section 222 of the worker group eligibility requirements of the Trade Act of 1974 was not met. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2432). A survey was conducted by the Department of the subject firms' major declining customers. None of the respondents increased import purchases while reducing business with Sony. Although Sony Magnetic Products Inc. of America was shifting production of VHS videocassettes from Dothan, Alabama to a foreign country, imports had not yet been returned to the U.S.

The Department has obtained new information from the company documenting that the company has received VHS videocassette imports and the reliance on imports will continue as production decreases at the Dothan, Alabama plant.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with VHS videocassettes produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Sony Magnetic Products Inc. of America, Dothan, Alabama, engaged in employment related to the production of VHS videocassettes, separated from employment on or after September 2, 1998 through two years from the issuance of this determination, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 24th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2505 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,995]

Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi Electronics Facility, Novi, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 25, 1999, in response to a worker petition which was filed by the company on behalf of its workers at Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi, Michigan, located in Novi, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2502 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2000 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 2000.

SUMMARY: The Administrator, Office of Workforce Security, announces 2000 adverse effect wage rate (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services, the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day, and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2000.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Administrator also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expense. The minimum reimbursement is the charge for three daily meals as discussed above. The Administrator here announces the current maximum reimbursement for works with receipts.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Grace A. Kilbane, Administrator, Office of Workforce Security, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: 202–219–7831 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 2000

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Administrator, Office of Workforce Security, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 2000 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE.—2000 ADVERSE EFFECT WAGE RATES (AEWRS)

State	2000 AEWR
Alabama	$6.72
Arizona	6.74
Arkansas	6.50
California	7.27
Colorado	7.04
Connecticut	7.68
Delaware	7.04
Florida	7.25
Georgia	6.72
Hawaii	9.38
Idaho	6.79
Illinois	7.62
Indiana	7.62
Iowa	7.76
Kansas	7.49
Kentucky	6.39
Louisiana	6.50
Maine	7.68
Maryland	7.04
Massachusetts	7.68
Michigan	7.65
Minnesota	7.65
Mississippi	6.50
Missouri	7.76
Montana	6.79
Nebraska	7.49
Nevada	7.04
New Hampshire	7.68
New Jersey	7.04
New Mexico	6.74
New York	7.68
North Carolina	6.98
North Dakota	7.49
Ohio	7.62
Oklahoma	6.49
Oregon	7.64
Pennsylvania	7.04
Rhode Island	7.68
South Carolina	6.72
South Dakota	7.49
Tennessee	6.39
Texas	6.49
Utah	7.04
Vermont	7.68
Virginia	6.98
Washington	7.64
West Virginia	6.39
Wisconsin	7.65
Wyoming	6.79

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and

655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPU–U for Food between December of the year just past and December of the year prior to that. The regulations require the Administrator, Office of Workforce Security, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1999 rates were published in a notice on February 10, 1999 at 64 FR 6689.

DOL has determined the percentage change between December of 1998 and December of 1999 for the CPI–U for Food was 2.1 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2000 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $8.00 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $9.90 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 31st day of January, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

Timothy F. Sullivan

Chief, U.S. Employment Service/ALMIS.

[FR Doc. 00–2547 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03188]

Philips Electronics North America Corporation Philips Components Division Departments 133, 134, 136, 400, 630, 420, 240, 261, 266 and 430 Saugerties, New York; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 25, 1999, applicable to workers of Philips Electronics North America Corporation, Philips Components Division, Departments 133, 134, 136, 400, 630, 420, 240, 261 and 266, Saugerties, New York. The notice was published in the **Federal Register** on July 20, 1999 (64 FR 38922).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Philips Components Division, Department 430 of Philips Electronics North America Corporation, Saugerties, New York. The workers are engaged in the production of soft ferrites ("back end"—*i.e.* grinding, toroids and inspect and pack, and related support departments).

The intent of the Department's certification is to include all workers of Philips Electronics North America Corporation, Philips Components Division who were adversely affected by the shift in production to Mexico.

Accordingly, the Department is amending the certification to cover the workers of Philips Electronics North America Corporation, Philips Components Division, Department 430, Saugerties, New York.

The amended notice applicable to NAFTA–03188 is hereby issued as follows:

All workers of Philips Electronics North America Corporation, Philips Components Division, Departments 133, 134, 136, 400, 630, 420, 240, 261, 266 and 430, Saugerties, New York who became totally or partially separated from employment on or after May 19, 1998 through June 25, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2498 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Public Law 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of OTAA not later than February 14, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than February 14, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Tultex Corporation (Co.)	Roxboro, NC	12/15/1999	NAFTA–3,623	sweatshirts.
Tultex Corporation (Co.)	Longhurst, NC	12/15/1999	NAFTA–3,623	sweatshirts.
Ritvik Holdings (Wkrs)	Lakeville, MA	12/16/1999	NAFTA–3,624	plastic toy blocks.
Master Foam (Co.)	North Hollywood, CA	12/14/1999	NAFTA–3,625	foam for packaging.
Russell Manufacturing—Movie Star (Co.).	Lebanon, VA	12/15/1999	NAFTA–3,626	ladies clothing.
Tultex Corporation (UNITE)	South Boston, VA	12/15/1999	NAFTA–3,627	fleece activewear.
Russell Corporation (Co.)	Columbia, AL	12/15/1999	NAFTA–3,628	sweatshirts and t-shirts.
Russell Corporation (Co.)	Crestview, FL	12/16/1999	NAFTA–3,629	sweatshirts and t-shirts.
Allied Signal (Co.)	Ocala, FL	12/13/1999	NAFTA–3,630	heat transfer and fan aerospace hardware.
Rebound Manufacturing (Co.)	New London, NC	12/13/1999	NAFTA–3,631	t-shirts.
Belmont Garment Dyers (Wkrs)	Reading, PA	12/17/1999	NAFTA–3,632	dyer of garments.
Tultex Corporation (UNITE)	Roanoke, VA	12/16/1999	NAFTA–3,633	fleece activewear.
General Electric Capital (Wkrs)	Brookfield, WI	12/10/1999	NAFTA–3,634	service collectors.
Whistler Corporation of Massachusetts (Co.).	Novi, MI	10/01/1999	NAFTA–3,635	circuit boards.
Cooper Standard Automotive (Wkrs).	Gaylord, MI	12/21/1999	NAFTA–3,636	seals for car windows.
Laurel Mold, Inc. (Wrks)	Jeannette, PA	12/21/1999	NAFTA–3,637	Glass Molds.
Fox Point Sportswear ( )	Merrill, WI	12/23/1999	NAFTA–3,638	Apparel.
Dana Corporation (USWA)	Reading, PA	12/23/1999	NAFTA–3,639	light duty pickup truck frames.
Boeing Co. (The) ( )	Melbourne, AR	12/27/1999	NAFTA–3,640	Boeing Aircraft Assemblies.
Thomas Bradford Shirt (UNITE)	Huntington, TN	12/27/1999	NAFTA–3,641	woven shirts.
Dezurik—General Signal (Wkr)	McMinnville, TN	12/27/1999	NAFTA–3,642	eccentric gate and butterfly valves.
Republic Builders Products (Wkrs)	McKenzie, TN	12/27/1999	NAFTA–3,643	frames for commercial doors.
Penguin Putnam (Wkrs)	Newbern, TN	12/28/1999	NAFTA–3,644	book distribution center.
Yates Industries—Circuit Foil (IUE).	Bordentown, NJ	12/21/1999	NAFTA–3,645	electro deposited copper foil.
Seagull Lighting (Wkrs)	Philadelphia, PA	12/29/1999	NAFTA–3,646	lighting fixtures.
Jet Sew Technologies (Wkrs)	Barneveld, NY	12/28/1999	NAFTA–3,647	industrial sewing machines.
Wardson (Co.)	Adamsville, TN	01/03/2000	NAFTA–3,648	sewing thread.
Fogel Neckwear (Wkrs)	New York, NY	12/28/1999	NAFTA–3,649	men's and boys' neckwear.
Ball Foster Glass Container (GMPPA).	Marion, IN	01/03/2000	NAFTA–3,650	glass containers for beverages.
IPM Service (Co.)	Dallas, TX	01/07/2000	NAFTA–3,651	testers.
ABB Automotive (Wkrs)	Williamsport, PA	01/07/2000	NAFTA–3,652	cable, harnesses and assemblies.
Goss Graphics Systems (Wkrs)	Wyomissing, PA	01/05/2000	NAFTA–3,653	printing presses.
Porta Systems—North Hills Electronics (Co.).	Glen Cove, NY	01/05/2000	NAFTA–3,654	transformers.
Broan Nutone (Co.)	Coppell, TX	01/05/2000	NAFTA–3,655	rangehood.
Bailey Creation (Wkrs)	York, AL	12/21/1999	NAFTA–3,656	baby clothes, children clothes.
Third Generation (Co.)	Latta, SC	01/04/2000	NAFTA–3,657	ladies apparel.

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Third Generation (Co.)	Ware Shoals, SC	01/04/2000	NAFTA–3,657	ladies apparel.
Third Generation (Co.)	Honea Path, SC	01/04/2000	NAFTA–3,657	ladies apparel.
Martin Mills (Fruit of the Loom) (Wkrs).	St. Martinville, LA	01/06/2000	NAFTA–3,658	t-shirts and briefs.
First Fleet (Wkrs)	Murfreesboro, TN	01/10/2000	NAFTA–3,659	trucking service.
Sony Electronics (Co.)	Frackville, PA	01/11/2000	NAFTA–3,660	audio speakers.
Fasco Motors Group (Wrks)	Eldon, MO	01/12/2000	NAFTA–3,661	Fractional Horsepower Motors.
Gatesville Walls Industries (Comp)	Gatesville, TX	01/12/2000	NAFTA–3,662	Insulated Clothing.
Walls Industries, Inc (Comp)	Carthage, MO	01/12/2000	NAFTA–3,663	Insulated Clothing.
Snap-On, Inc. (Wrks)	Ottawa, IL	01/12/2000	NAFTA–3,664	Electrical Harnesses.
Cooper Lighting ( )	Elk Grove Village, IL	01/12/2000	NAFTA–3,665	Lighting Fixtures.
Otis Elevator ( )	Bloomington, IN	01/11/2000	NAFTA–3,666	Fixtures.
Winpak Portion Packaging ( )	Bristol, PA	01/13/2000	NAFTA–3,667	Single Service Dairy Containers.
Barrick Goldstrike (Wrks)	Elko, NV	01/13/2000	NAFTA–3,668	Gold.
Mineral Ridge Resources, Inc. (Comp).	Silver Peak, NV	01/11/2000	NAFTA–3,669	Gold Mine.
PacifiCorp (Wrks)	Portland, OR	01/14/2000	NAFTA–3,670	Power Electricity.
Southeast Stevedoring Corp (Wrks).	Ketchikan, AK	01/13/2000	NAFTA–3,671	Hire Longshoremen.
Miller International, Inc (Comp)	Rocky Ford, CO	01/18/2000	NAFTA–3,672	Ladies' Jeans and Vests.
Apparel Specialist (Co.)	Green Bay, WI	01/21/2000	NAFTA–3,673	embroidered and screen print on clothes.
Florence Eiseman (Wkrs)	Milwaukee, WI	01/21/2000	NAFTA–3,674	girls dresses, coats and baby clothes.
KTI Energy of Martinsville (Co.)	Martinsville, VA	01/18/2000	NAFTA–3,675	steam.
BICC General (Wkrs)	Williamstown, MA	01/13/2000	NAFTA–3,676	cord sets.
American Timber (Wkrs)	Olney, MT	01/14/2000	NAFTA–3,677	stud lumber and byproducts.
John Plant Company (The) (Co.)	Ramseur, NC	01/14/2000	NAFTA–3,678	lightweight industrial gloves.
Nordic Group (The) (Wkrs)	Hubbard, OR	01/18/2000	NAFTA–3,679	outerwear.
Sause Bros./Southern Oregon Maine (Wkrs).	Coos Bay, OR	01/14/2000	NAFTA–3,680	repair maintenance.
Smiley Container—Russell Stover Candies (PACE).	Poplar Bluff, MO	01/25/2000	NAFTA–3,681	boxes, bows and ribbons.
Colorado Greenhouse (Co.)	Westminster, CO	01/19/2000	NAFTA–3,682	tomatoes.
Nova Bus (Wkrs)	Roswell, NM	01/19/2000	NAFTA–3,683	large commercial buses.
Allied Signal—Honeywell (Wkrs)	Torrance, CA	01/18/2000	NAFTA–3,684	automotive turbo chargers.
ASC (Wkrs)	Rancho Domingez, CA	01/19/2000	NAFTA–3,685	convertible tops.
General Electric (IUE)	Tell City, IN	08/26/1999	NAFTA–3,686	industrial motors.
Hewlett Packard (Wkrs)	Vancouver, WA	01/24/2000	NAFTA–3,687	inkjet printers for computers
Motor Coils (IUE)	Emporium, PA	01/24/2000	NAFTA–3,688	rebuilt traction motor.

[FR Doc. 00–2499 Filed 2–3–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3635]

Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi Electronics Facility, Novi, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 1999, in response to a worker petition which was filed by a company official on behalf of its workers at Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi Electrics Facility, located in Novi, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 24th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2494 Filed 2–3–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hours Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the

foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

None.

VOLUME II

None.

VOLUME III

None.

VOLUME IV

None.

VOLUME V

None.

VOLUME VI

None.

VOLUME VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 27th day of January 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–02053 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. CONSOL of Kentucky, Inc.

[Docket No. M–1999–143–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Rhoades Branch H–4 Mine (I.D. No. 15–18212) located in Lechter County, Kentucky. The petitioner proposes to use a diesel-generated source of low and medium voltage, three-phase electrical power during transportation of certain mobile equipment underground. The petitioner has listed in this petition specific terms and conditions for using the generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. CONSOL of Kentucky, Inc.

[Docket No. M–1999–144–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Rhoades Branch H–4 Mine (I.D. No. 15–18212) located in Lechter County, Kentucky. The petitioner proposes to use a diesel-generated source of low- and medium-voltage, three-phase electrical power during transportation of certain mobile equipment underground. The petitioner proposes to derive a low-and medium-voltage, three-phase, alternating current for use underground from a portable, diesel-driven generator. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. CONSOL of Kentucky, Inc.

[Docket No. M–1999–145–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Rhoades Branch H–4 Mine (I.D. No. 15–18212) located in Lechter County, Kentucky. The petitioner proposes to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The

petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

4. Old Ben Coal Company

[Docket No. M–1999–146–C]

Old Ben Coal Company, P.O. Box 397, 13101 Zeigler Road, Coulterville, Illinois 62237 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Zeigler #11 Mine (I.D. No. 11–02408) located in Randolph County, Illinois. The petitioner requests a modification of the mandatory safety standard to permit the use of an alternative method for ground check monitoring. The petitioner proposes that the ground monitor would open a vacuum contactor instead of a circuit breaker in all combination stationary belt starters at the Zeigler #11 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

5. Old Ben Coal Company

[Docket No. M–1999–147–C]

Old Ben Coal Company, P.O. Box 397, 13101 Zeigler Road, Coulterville, Illinois 62237 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Zeigler #11 Mine (I.D. No. 11–02408) located in Randolph County, Illinois. The petitioner requests that Item #1 of its previous petition for modification, docket number M–96–147–C, be amended to read as follows: The petition for modification shall apply to the requirement for under-voltage protection and grounded phase protection for three-phase circuits supplying stationary belt drive installations presently in use or installed in the future. The petitioner asserts that this amendment would provide at least the same measure of protection as the previous petition.

6. Consolidation Coal Company

[Docket No. M–1999–148–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteroriating roof conditions in certain areas of the return air course, the petitioner proposes to establish two check points that will be maintained in safe condition at all times, and to have a certified person test for methane and the quantity of air at both check points on a weekly basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

7. Fork Creek Mining Company

[Docket No. M–1999–149–C]

Fork Creek Mining Company, Fork Creek Mine Road, P.O. Box 24, Alum Creek, West Virginia 25003 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Fork Creek No. 1 Mine (I.D. No. 48–08763) located in Kanawha County, West Virginia. The petitioner proposes to use air coursed through the belt haulage entry to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

8. Perry County Mining Company

[Docket No. M–1999–150–C]

Perry County Mining Company, P.O. Box 5002, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Eas #1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. Due to deteriorating roof conditions in certain areas of the intake air course, the petitioner proposes to establish four check points as air measurement stations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

9. The DOE Run Company

[Docket No. M–1999–021–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its West Fork Mine (I.D. No. 23–01787) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

10. The DOE Run Company

[Docket No. M–1999–022–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Fletcher Mine and Mill (I.D. No. 23–00409) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

11. The DOE Run Company

[Docket No. M–1999–023–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Brushy Creek Mine/Mill (I.D. No. 23–00499) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

12. The DOE Run Company

[Docket No. M–1999–024–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Buick Mine/Mill (I.D. No. 23–00457) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

13. The DOE Run Company

[Docket No. M–1999–025–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Sweetwater Mine/Mill (I.D. No. 23–00458) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

14. The DOE Run Company

[Docket No. M–1999–026–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its No. 35 Mine (Casteel) (I.D. No. 23–01800) located in Iron County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

15. The DOE Run Company

[Docket No. M–1999–027–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its No. 28 Mine/Mill (I.D. No. 23–00494) located in Iron County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

16. The DOE Run Company

[Docket No. M–1999–028–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its No. 29 Mine (I.D. No. 23–00495) located in Iron County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 6, 2000. Copies of these petitions are available for inspection at that address.

Dated: January 27, 2000.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–2516 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and Midamerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.60(a) for Facility Operating Licenses Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), located in Cordova, Illinois.

Environmental Assessment

Identification of the Proposed Action

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated November 12, 1999, that the staff exempt Quad Cities from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of 2, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits (excluding Code Cases N–588 and N–640) are based on the 1989 edition of the ASME Code.

The proposed action is in accordance with the licensee's application for exemption dated November 12, 1999.

The Need for the Proposed Action

ASME Code Case N–588 and Code Case N–640 are needed to revise the method used to determine the RCS P–T limits, since continued use of the present curves unnecessarily restricts the P–T operating window. Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Quad Cities with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the Quad Cities reactor vessels.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on January 28, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 12, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2522 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc.; Duane Arnold Energy Center; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating License No. DPR–49 for the Duane Arnold Energy Center (DAEC), currently held by IES Utilities Inc. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated November 24, 1999, seeking approval of the transfer, the Commission was informed that IES Utilities Inc., has entered into a Nuclear Power Plant Operating Services Agreement with NMC. Under this Agreement, NMC would assume exclusive responsibility for the operation and maintenance of DAEC. Ownership of DAEC will not be affected by the proposed transfer of operating authority; IES Utilities Inc., the Central Iowa Power Cooperative, and the Corn Belt Power Cooperative will retain their respective current ownership interests, according to the application. Likewise, the three owners' entitlement to capacity and energy from DAEC will not be affected by the proposed transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment would reflect the transfer of authority under the license to operate DAEC from IES Utilities Inc., to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Alvin H. Gutterman, counsel for IES Utilities Inc., at Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7468; fax: 202–467–7176; e-mail: ahgutterman@mlb.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 6, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2520 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 40–8084

Rio Algom Mining Corporation; Request to Revise a Site-Reclamation Milestone

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Rio Algom Mining Corporation to revise a site-reclamation milestone in License No. SUA–1119 for the Lisbon, Utah, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 23, 1998 and subsequent telephone conversation, a request from Rio Algom Mining Corporation (Rio Algom) to amend License Condition (LC) 55 A.(3) of Source Material License SUA–1119 for the Lisbon, Utah, facility. The license amendment request proposes to modify LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile to December 31, 2000 for the area not covered by the evaporation pond. Due to continuing use of the evaporation pond, the final radon barrier at the pond location will be completed by 2014.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6699.

SUPPLEMENTARY INFORMATION: The portion of LC 55 A.(3) with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2 sec above background—December 31, 2000 for areas not covered by the evaporation ponds and by December 31, 2014 for the area under the evaporation ponds.

Rio Algom's request to amend LC 55 A.(3) of Source Material License SUA–1119, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal**

Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Rio Algom Corporation, 6305 Waterford Blvd., Suite 325, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 28th day of January 2000.

For the U.S. Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–2523 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company Point Beach Nuclear Plant, Units 1 and 2; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating Licenses Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Units 1 and 2, currently held by Wisconsin Electric Power Company (WEPCo), as owner and licensed operator of Point Beach, Units 1 and 2. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. If authorized to operate the facility, NMC, according to the application, will also act as the general licensee for the Independent Spent Fuel Storage Installation at Point Beach, Units 1 and 2, pursuant to 10 CFR 72.210.

By application dated November 24, 1999, seeking approval of the transfer, the Commission was informed that WEPCo has entered into a Nuclear Power Plant Operating Services Agreement with NMC. Under this Agreement, NMC is to assume exclusive responsibility for the operation and maintenance of Point Beach, Units 1 and 2. WEPCo's ownership of Point Beach, Units 1 and 2, will not be affected by the proposed transfer of operating authority, according to the application. Likewise, WEPCo's entitlement to capacity and energy from Point Beach, Units 1 and 2, will not be affected by the transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would reflect the transfer of authority under the licenses to operate Point Beach, Units 1 and 2, from WEPCo to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure

to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon John H. O'Neill, Jr., counsel for WEPCo, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202–663–8148; fax: 202–663–8007; e-mail: john.o'neill@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 3, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 31st day of January 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2521 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation, Wisconsin Power and Light Company, Madison Gas and Electric Company, Kewaunee Nuclear Power Plant; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant, currently held by Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light Company (WP&L), and Madison Gas and Electric Company (MGE), as owners and licensed operators of Kewaunee. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated November 24, 1999, as supplemented December 7, 1999, seeking approval of the transfer, the Commission was informed that WPSC, on behalf of itself and WP&L and MGE, has entered into a Nuclear Power Plant Operating Services Agreement with NMC. Under this Agreement, NMC would assume exclusive responsibility for the operation and maintenance of Kewaunee. Ownership of Kewaunee by the current co-owners, WPSC, WP&L, and MGE, will not be affected by the proposed transfer of operating authority, according to the application. Likewise, the current owners' entitlement to capacity and energy from Kewaunee will not be affected by the transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment would reflect the transfer of authority under the license to operate Kewaunee from the current licensees to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or

petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon David J. Molzahn, licensing representative for WPSC, at Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19001, Green Bay, WI 54307–9001 (tel: 920–433–1308; fax: 920–433–5544; e-mail: dmolzah@wspr.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 6, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, as supplemented December 7, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2519 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. on February 10, 2000.

PLACE: The Commission's National Office at One Lafayette Centre, 1120 20th St., N.W., 9th Floor, Washington, DC 20036–3419.

STATUS: Pursuant to 29 CFR § 2203.3(a) this meeting will be open to the public.

MATTERS TO BE CONSIDERED: The meeting previously scheduled for February 10, 2000 will be opened to allow the Commission to discuss the evaluation of the Commission's pilot program for the Settlement Part (29 CFR § 2200.120) and of E–Z Trial (29 CFR §§ 2200.200–211). The Commission also will consider whether to extend the pilot program for the Settlement Part in order to complete the evaluation.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., General Counsel, (202) 606–5410.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 00–2596 Filed 2–1–00; 4:18 pm]

BILLING CODE 7600–01–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on February 7, 2000, at 3:30 p.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 21st Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 21st Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: January 28, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–2466 Filed 2–3–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24268]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 28, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by wfiting to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information, Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Sefton Funds Trust [File No. 811–8948]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 22, 1999, applicant transferred its assets to Kayne Anderson Mutual Funds based on net asset value. Expenses of $119,500

incurred in connection with the reorganization were paid by Kayne Anderson Investment Management, LLC, Investment adviser to the acquiring fund.

Filing Dates: The application was filed on January 3, 2000, and amended on January 20, 2000.

Applicants Address: 2550 Fifth Avenue, Suite 808, San Diego, California 92103.

State Street Research Portfolios, Inc. [File No. 811–6375]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 1, 1999, applicant transferred its assets to State Street Research International Equity Fund, a series of State Street Research Financial Trust, based on net asset value. Expenses of $67,250 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on January 7, 2000.

Applicant's Address: One Financial Center, Boston, Massachusetts 02111.

The Universal Funds [File No. 811–9627]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Date: The application was filed on January 6, 2000.

Applicant's Address: Via Mizner Financial Plaza, 700 South Federal Highway—Suite 300, Boca Raton, Florida 33432.

AIM Eastern Europe Fund [File No. 811–5978]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 10, 1999, applicant transferred its assets to AIM Developing Markets Fund, a series of AIM Investment Funds, based on net asset value. Expenses of $125,730 incurred in connection with the reorganization were paid by AIM Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 29, 1999.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

Cadre Network Health Financial Services Trust [File No. 811–6567]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 1, 1999, all shareholders of applicant had redeemed their shares at net asset value. Expenses of $3,888 incurred in connection with the liquidation will be paid by applicant.

Filing Dates: The application was filed on November 24, 1999, and amended on December 22, 1999.

Applicant's Address: 905 Marconi Avenue, Ronkonkoma, New York 11779.

Latin America Smaller Companies Fund, Inc. [File No. 811–7197]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 24, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $111,388 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on November 23, 1999, and amended on January 7, 2000.

Applicant's Address: 101 Federal Street, 6th Floor, Boston, Massachusetts 02110.

Merrill Lynch Technology Fund, Inc. [File No. 811–6407]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 1999, applicant transferred its assets to Merrill Lynch Global Technology Fund, Inc. based on net asset value. Expenses of $299,965 incurred in connection with the reorganization were paid by the surviving fund.

Filing Dates: The application was filed on December 22, 1999, and amended on January 19, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

Trust for Return and Income [File No. 811–6617]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering on engage in business of any kind.

Filing Dates: The application was filed on December 6, 1999, and amended on January 10, 2000.

Applicant's Address: 125 Broad Street, New York, New York 10004–2708.

American Equity Life Variable Account [File No. 811–8643]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on December 17, 1999.

Applicant's Address: 5000 Westown Parkway, Suite 440, West Des Moines, Iowa 50266.

Farm Bureau Life Annuity Account III [File No. 811–8975]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on December 20, 1999.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

General American Life Insurance Company Separate Account Two [File No. 811–9387]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on July 26, 1999.

Applicant's Address: 700 Market Street, St. Louis, Missouri 63101.

PFL Wright Variable Annuity Account [File No. 811–7688]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. There are no remaining policyholders.

Filing Date: The application was filed on September 2, 1999.

Applicant's Address: 4333 Edgewood Road, N.E., Cedar Rapids, IA 52499–0001.

Alexander Hamilton Variable Insurance Trust [File No. 811–8682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 5, 1997 and December 12, 1997, applicant made liquidating distributions to its shareholders based on net asset value per share. Applicant incurred $16,995 in legal expenses regarding an order of substitution granted by the SEC that is connected to the liquidation.

Filing Date: The application was filed on September 13, 1999.

Applicant's Address: 100 North Greene Street, Greensboro, NC 27401.

Astra Strategic Investment Series [File No. 811–0038], Astra Global Investment Series [File No. 811–4468], Astra Institutional Securities Trust [File No. 811–6408] and Astra Institutional Trust [File No. 811–6518]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By December 29, 1997, each applicant had made a final liquidating distribution to its shareholders based on net asset value. Shareholder Communications Corporation, a professional pre-escheat service provider, has been retained to search for shareholders whose whereabouts could not be ascertained. Astra Strategic Investment Series paid approximately $90,271 in expenses in connection with its liquidation. Each of the remaining applicants paid approximately $23,798 in expenses in connection with their liquidations.

Filing Dates: Each application was filed on January 3, 2000, and amended on January 21, 2000.

Applicant's Address: c/o PFPC, Inc., 103 Bellevue Parkway, Wilmington, Delaware 19809.

American Skandia Life Assurance Corporation Variable Account C [File No. 811–5676]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on January 4, 2000 and amended on January 18, 2000.

Applicant's Address: One Corporate Drive, Shelton, CT 06484.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–02448 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24270, 812–11778]

HT Insight Funds, Inc., et al., Notice of Application

January 28, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of Harris Insight Funds Trust ("HIFT") to acquire all of the assets and liabilities of all of the series of HT Insight Funds Inc. ("HTIF") (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: HIFT, HTIF, and Harris Trust and Savings Bank ("Harris Bank").

FILING DATES: The application was filed on September 17, 1999, and amended and restated on January 18, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. HIFT and HTIF, Four Falls Corporate Center, 6th Floor, West Conshohocken, Pennsylvania, 19428–2961. Harris Bank, 111 West Monroe Street/6W, Chicago, Illinois, 60603.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. HTIF, a Maryland corporation, is registered under the Act as an open-end management investment company and is comprised of five series, Harris Insight Equity Fund, Harris Insight Short/Intermediate Bond Fund, Harris Insight Money Market Fund, Harris Insight Government Money Market Fund, and Harris Insight Tax-Exempt Money Market Fund (the "Acquired Funds").

2. HIFT, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is currently comprised of thirteen series. As part of the Reorganization, HIFT is organizing the following five new shell series: Harris Insight Equity Fund, Harris Insight Short/Intermediate Bond Fund, Harris Insight Money Market Fund, Harris Insight Government Money Market Fund, and Harris Insight Tax-Exempt Money Market Fund (the "Acquiring Funds," collectively with the Acquired Fund, the "Funds").[1] Applicants state that the investment objectives and policies of the Acquiring funds are substantially similar to those of the corresponding Acquired Funds.

3. Harris Bank serves as investment adviser to the Acquired Funds and is exempt from registration under the Investment Advisers Act of 1940. Harris Bank will act as the investment adviser to the Acquiring Funds. Harris Investment Management, Inc. ("HIM"), an affiliate of Harris Bank, is registered as an investment adviser under the Advisers Act, and serves as subadviser to four of the Acquired Funds and will serve as subadviser to the four corresponding Acquiring Funds. Harris Bank and HIM are each wholly-owned subsidiaries of Harris Bankcorp, Inc. Currently, Harris Bank, HIM and/or certain of their affiliates that are under common control (the "Harris Group") hold of record, in their names or in the names of their nominees, in excess of 25% of the outstanding voting securities of each of the Acquired Funds. All of these securities are held for the benefit of others in a trust, agency, custodial or other fiduciary or representative capacity.

4. On July 29, 1999, the board of directors of HTIF (the "Board" or "HTIF") and the board of trustees of HIFT, none of whom are "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Directors/Trustees"), approved the Reorganization pursuant to which the assets and liabilities of each of the Acquired Funds will be transferred to the corresponding Acquiring Fund in exchange for shares of designated classes of the corresponding Acquiring Fund

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[1] A registration statement for the five shell Acquiring Funds is expected to be filed in February, 2000, and it is anticipated that it will be declared effective on or before May 1, 2000. The Acquiring funds are expected to commence operations upon the consummation of the Reorganization.

("Reorganization Plan").[2] Shareholders of each of the Acquired Funds will receive shares of the corresponding Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares held by each shareholder, as determined on the closing date of the Reorganization, currently anticipated to occur on May 2, 2000. The value of the assets of the Funds will be determined in the manner set forth in the Funds' then current prospectuses and statements of additional information. As soon as practicable after the closing date, the Acquiring Fund shares received by each Acquired Fund will be distributed *pro rata* to the shareholders of the Acquired Fund and each Acquired Fund will liquidate and dissolve.

5. The Acquired Funds and the Acquiring Funds fall into two categories. First, there are two non-money market funds that offer or, after the Reorganization, will offer shares in three classes (a shares, N shares and Institutional shares) ("Non-Money Market Funds"). Second, there are three Money Market Funds that offer or, after the Reorganization, will offer shares in two classes (N shares and Institutional shares) ("Money Market Funds").

6. Class A shares of the Funds are subject to a maximum front-end sales load of 5.50%, a maximum contingent deferred sales charge ("CDSC") of 1.00%, and a maximum .35% rule 12b–1 fee. Class N shares of the Funds are subject to a maximum .25% service fee, and class N shares of the Money Market Funds have a maximum .10% rule 12b–1 fee. None of the class N shares is subject to a front-end sales charge of CDSC. Institutional shares are offered without service fees, front-end sales charges, CDSCs or 12b–1 fees. For purposes of calculating the CDSCs on class A shares, shareholders of class A shares of each of the Non-Money Market Acquired Funds will be deemed to have held the class A shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the Class A shares of the Acquired Fund. Shareholders of the Acquired Funds will not incur any sales charges in connection with the Reorganization. Harris Bank assumed approximately one half of the proxy costs, and the shareholders of the Acquired Funds will pay the remainder of the Reorganization expenses, as determined by the Board of each Acquired Fund.

7. The Board of each Acquired Fund, consisting solely of Disinterested Directors, found that the Reorganization is in the best interests of the Acquired Fund, and that the interests of existing shareholders of the Acquired Fund will not be diluted as a result of the Reorganization. During its deliberations, the Board reviewed, among other things: (a) the terms and conditions of the Reorganization; (b) the investment advisory and other fees projected to be paid by the Acquiring Fund, and the projected expense ratio of the Acquiring Fund as compared to that of the Acquired Fund; (c) the investment objectives, strategies, investment risks, policies and limitations of the Acquiring Fund and their compatibility with those of the Acquired Fund; (d) the potential economies of scale to be gained from combining the assets of the Acquired Fund into the Acquiring Fund; and (e) the anticipated tax-free nature of the Reorganization.

8. The Reorganization is subject to a number of conditions precedent, including that: (a) the shareholders of each of the Acquired Funds will have approved the Reorganization Plan; (b) applicants will have received exemptive relief from the SEC; (c) a registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; and (d) an opinion of counsel is received with respect to the tax-free nature of the Reorganization. The Reorganization Plan may be terminated by mutual written consent of the Boards of HTIF and HIFT at any time prior to the closing. Applicants agree not to make any material changes to the Reorganization Plan without prior SEC approval.

9. The definitive proxy statement was filed with the SEC on October 25, 1999. A special meeting of the shareholders of the Acquired Funds was held on November 29, 1999, at which the shareholders approved the Reorganization Plan.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by the Harris Group of more than 25% of the outstanding voting securities of each of the Acquired Funds, each of the Acquired Funds may be deemed an affiliated person of an affiliated person of each of the corresponding Acquiring Fund. In addition, because of this ownership, the Funds may be deemed to be under common control, and thus affiliated persons under Section 2(a)(3)(C) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Board of HTIF, including a majority of its Disinterested Directors, found that participation in the Reorganization is in the best interests of each of the Acquired Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired

[2] Prior to the implementation of the Reorganization Plan, the Acquired Funds intend to discharge substantially all of their liabilities. Each Acquiring Fund will assume all remaining liabilities of the corresponding Acquired Fund.

Funds' assets for shares in the Acquiring Funds will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2449 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24269; 812–11630]

Salomon Smith Barney Inc., et al.; Notice of Application

January 28, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(3) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain series of unit investment trusts to invest up to 10.5%, certain other series to invest up to 15.5%, and certain other series to invest up to 20.5% of their respective total assets in securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities; and (b) certain series to sell portfolio securities to certain new series.

APPLICANTS: Salomon Smith Barney Inc. (the "Sponsor"), The Uncommon Values Trust, Equity Focus Trusts, Angels with Dirty Faces Trust, The CountryFund Opportunity Trust, Robinson-Humphrey Annual Themes Series and certain other future unit investment trusts sponsored by the Sponsor (collectively, the "Trusts" and the various series of the Trusts, each a "Series").

FILING DATES: The application was filed on May 26, 1999. Applicants have agreed to file an amendment to the application during this notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000; and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, 7 World Trade Center, 36th Floor, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Trust is a unit investment trust registered under the Act with multiple series. Each Trust is created by a trust indenture between the Trust, the Sponsor, and the Chase Manhattan Bank, which is a bank within the meaning of section 2(a)(5) of the Act that satisfies the criteria in section 26(a) of the Act and is unaffiliated with the Sponsor (the "Trustee"). Applicants also request belief for any future Trust sponsored by the Sponsor.[1]

2. Certain Series of the Trusts will hold a portfolio of common stocks of growth companies (each such Series, a "Growth Series"). The investment objective of each Growth Series is to seek capital appreciation. Other Series (each an "Index Series") will hold a portfolio of common stocks which represent a portion of a specific index. The investment objective of each Index Series is to seek a greater total return than that achieved by the stocks comprising the entire related index over the life of the Index Series.

3. Certain of the Index Series (each, a "Ten Series") will invest approximately 10%, but no more than 10.5% of their total assets in each of the ten common stocks in the Dow Jones Industrial Average ("DJIA"), the Financial Times Industrial Ordinary Share Index ("FT Index"), the Nikkei 225 Index (the "Nikkei Index"), or the Hang Seng Index (each an "Index," and together the "Indexes"), as the case may be, having the highest dividend yields no more than three business days prior to the Ten Series' initial date of deposit. Certain other Index Series (each, a "Five Series") will invest approximately 20%, but in no event more than 20.5%, of their total assets in each of the five lowest dollar price per share stocks of the ten common stocks in one of the Indexes, as the case may be, having the highest dividend yields no more than three business days prior to the Five Series' initial date of deposit. The other Index Series (each a "Ten/A+ Series") will invest approximately 50% of their total assets in the ten common stocks contained in the DJIA having the highest dividend yields and 50% in the common stocks contained in the DJIA having a quality ranking of A+ by Standard & Poor's ("S&P") no more than three business days prior to the Ten/A+ Series initial date of deposit.[2]

4. Applicants state that each of the Indexes is a recognized indicator of the stock market in its respective country, and that S&P has been ranking common stock for quality since 1956.[3] The publishers of the Indexes and S&P are not affiliated with any Index Series or the Sponsor, and do not participate in any way in the creation of any Index Series or the selection of its stocks. The common stocks included in the Indexes may include stocks of issuers that derive more than 15% of their gross revenues from securities related activities, as that term is defined in rule 12d3–1 under the Act, as discussed below ("Securities Related Issuers").

5. The securities deposited in each Index Series will be chosen solely according to the formulas described below, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Index Series, and to

[1] All existing Trusts that intend to rely on the order are named as applicants. Any existing of future Trust that relies on the order in the future will comply with the terms and conditions of the application.

[2] Applicants state that the number of common stocks listed on the DJIA that have received S&P ratings of A+ has ranged from six to eleven stocks over the past 25 years.

[3] The DJIA, which is owned by Dow Jones & Company, Inc., comprises 30 widely-held common stocks listed on the New York Stock Exchange, which are chosen by the editors of The Wall Street Journal. The FT Index comprises 30 widely-held common stocks listed on the London Stock Exchange, which are chosen by the editors of The Financial Times. The Nikkei Index comprises 225 common stocks listed on the Tokyo Stock Exchange. The Hang Seng index comprises 33 common stocks listed on the Stock Exchange of Kong, Ltd. "A+" is the highest S&P ranking for. earning and dividends of common stock and is based on per-share earnings and dividend records of the most recent ten years.

supervise each Index Series' portfolio. The Sponsor will have no discretion as to which securities are purchased.

6. The Index Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units, payment of expenses, and the termination of an Index Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, such as when an issuer defaults on the payment of any outstanding obligations, or when the price of a security has declined to such an extent or other credit factors exist so that in the opinion of the Sponsor, it would be detrimental to the Index Series to retain the securities. The adverse financial condition of an issuer will not necessarily require the sale of its securities from an Index Series' portfolio.

7. Certain Series have either (i) a contemplated date ("Rollover Date")on which unitholders in a terminating Series ("Terminating Series") may at their option redeem their units and receive units of a subsequent Series of the same type ("New Series"), which will be created on or about the Rollover Date or (ii) a contemplated date or dates (an "Exchange Date") on which unitholders in an existing series (the "Exchange Series") may at their option redeem their units and receive units of a New Series which is created on or about the Exchange Date (the Terminating Series and Exchange Series collectively, the "Rollover Series").

8. Certain Rollover Series may have a portfolio containing equity securities many, if not all, of which are either (i) listed by the Sponsor on a "top picks" list disseminated to customers and the general public as securities recommended for purchase ("Top Picks Securities") and that have (a) a minimum market capitalization of U.S. $1 billion and (b) had an average daily trading volume in the preceding 60 trading days of at least 50,000 shares equal in value to at least U.S. $250,000 on a Qualified Exchange (defined below), or (ii) are not Top Picks Securities and are actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least U.S. $25,000) on an exchange (a "Qualified Exchange") which is either (a) a national securities exchange which meets the qualifications of Section 6 of the Securities Exchange Act of 1934, (b) a foreign securities exchange (a "Qualified Exchange") which meets the qualifications set out in the proposed amendment to Rule 12d3–1(d)(6) under the Act as proposed by the SEC[4] and which releases daily closing prices or (c) the Nasdaq-National Market System ("Nasdaq-NMS") (securities meeting the preceding tests in (i) and (ii) above are referred to as "Qualified Securities").

9. Applicants state that there is normally some overlap form one year to the next in the stocks having the highest dividend yields in each of the Indexes, as well as the DJIA stocks rated A+ by S&P. The Sponsor anticipates that there will be some overlap from one year to the next in the stocks selected for the portfolios of a Growth Series that is a Rollover Series and a Growth Series that is a New Series. Absent the requested relief, each Rollover Series would sell all of its securities and each New Series investing in any of theses securities would acquire them on the applicable Qualified Exchange. This procedure would result in the unitholders of both the Rollover Series and the New Series incurring brokerage commissions on the same securities.

Applicants' Legal Analysis

A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3–1 Limits

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company form acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts the purchase of securities of a Securities Related Issuer, provided that, among other things, immediately after the acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the Securities Related Issuer.[5]

2. As noted above, applicants state that some of the stocks comprising the Indexes include securities of Securities Related Issuers. Applicants assert that, in order to comply with rule 12d3–1, absent the requested relief, each Index Series may be precluded from most effectively implementing its investment objective.

3. Under section 6(c), SEC may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit a Ten Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of a Securities Related Issuer, to permit a Ten/A+ series to invest up to 15%, but in no event more than 15.5% of the value of its total assets in securities of a Securities Related Issuer, and to permit a Five Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of a Securities Related Issuer.

5. Applicants state that the proposed transactions satisfy the requirements of section 6(c). Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflict so interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicants state that this concern does not arise in connection with the Index Series because the selection of securities is based on certain set formulas, and neither the Index Series nor the Sponsor has discretion in choosing the securities of a Securities Related Issuer or the amount purchased.

6. Applicants also state that the effect of an Index Series' purchase on the stock of a Securities Related Issuer would be de minimis. Applicants assert that the Securities Related Issuers represented in the Indexes are widely held and have active markets, and that potential purchases by any Index Series would represent an insignificant amount of the outstanding common stock and trading volume of any of these Securities Related Issuers.

7. Another potential conflict of interest could occur if an investment

[4] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where (a) trading generally occurred at least four days a week; (b) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange; (c) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (d) the exchange had a turnover ratio for the preceding year of least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

[5] Under rule 12d3–1, a Securities Related Issuer is a person that derives more than 15% of its gross revenues from activities as a broker, dealer, underwriter, investment adviser registered under the Investment Advisers Act of 1940, or investment adviser to a registered investment company.

company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicants agree, as a condition to the order, that no company held in a portfolio of an Index Series, nor any affiliated person of the company, will act as a broker for any Index Series in the purchase or sale of any security for such Series' portfolio.

B. Purchases and Sales Between Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an 'affiliated person" of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Each Series will have a common sponsor. Since the Sponsor of a series may be deemed to control the Series, all of the series may be deemed to be under common control and affiliated persons of each other.

2. Rule 17a–7 under the Act permits registered investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a unit investment trust does not have a board of directors, the Series would be unable to comply with this requirement.

4. Section 17(b) of the Act provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) that terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. As noted above, section 6(c) of the Act provides that the SEC may exempt classes of transactions if the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 17(b) to permit any Rollover Series to sell Qualified Securities to a New Series, and to permit the New Series to purchase the Qualified Securities.

5. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Series will be consistent with the policy of each Series. Applicants state that the Qualified Securities to be sold to a New Series will be Qualified Securities that are available fro a Rollover Series by reason of units tendered for redemption that day or termination of the Rollover Series. Applicants note that the Trustee will continue its general practice of redeeming units of an Exchange Series by selling securities in a manner that maintains the same portfolio composition, and in the same proportions, as prior to the sale. Applicants further state that permitting the proposes transactions would result in savings on brokerage fees for the Series.

6. Applicants state that the condition that the Qualified Securities must be actively traded on a Qualified Exchange protects against overreaching. In addition, applicants state that the Sponsor will make an initial determination that the Rollover Series and the New Series are on the opposite side of a transaction in Qualified Securities. The Sponsor then will certify to the Trustee, no later than the close of business on the business day following each sale from a Rollover series to a New Series: (a) that the transaction is consistent with the investment objective and policies of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the reason that the Rollover Series is selling the Qualified Securities, (c) the date of the transaction, (d) how the securities being sold meet the definition of Qualified Securities set forth in the requested order, and (e) the closing sale price of the Qualified Securities on the Qualified Exchange for the date the Qualified Securities are sold to the New Series ("Sale Date"). The Trustee will then countersign the certificate, unless, in the event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of the units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3–1 Limits

No company held in a Ten Series portfolio, a Five Series portfolio, or a Ten/A+Series portfolio, nor any affiliated person of the company, will act as broker for any Ten Series, any Five Series or any Ten/A+Series in the purchase or sale of any security for such Series' portfolio.

B. Purchases and Sales Between Series

1. Each sale of Qualified Securities by a Rollover to a New Series will be effected at the closing price of the Qualified Securities sold on a Qualified Exchange on the Sale Date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the prospectus of each Rollover Series and New Series.

3. The Trustee of each Rollover Series and New Series will review the procedures relating to the sale of securities from a Rollover Series and the purchase of those securities for deposit in a New Series, and make such changes to the procedures as the Trustee deems necessary to ensure compliance with paragraphs (s) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction effected pursuant to the order will be maintained as provided in rule 17a–7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2450 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 7, 2000.

A closed meeting will be held on Wednesday, February 9, 2000 at 11:00 a.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, February 9, 2000 is: **amicus participation.**

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The office of the Secretary at (202) 942–7070.

Dated: February 2, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–2721 Filed 2–2–00; 4:02 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42366; File No. SR–DTC–00–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Interpretation of an Existing Rule Pertaining to the Direct Registration System

January 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 20, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interest parties.

I. Self-Regulatory Organization's Statement of the Terms of substance of the Proposed Rule Change

The proposed rule change provides an interpretation of DTC's rule relating to the Profile Modification System feature of the Direct Registration System facility.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide an interpretation with respect to the meaning of DTC's current rule relating to the administration of the Direct Registration System ("DRS") facility and the Profile Modification System ("Profile"), a specific feature of the DRS facility.[3] Under DTC's rule, only those DRS limited participants[4] who "implement Profile" are allowed to make additional securities eligible for inclusion in DRS.[5] With this filing, DTC is interpreting the phrase "implements Profile" to be satisfied when a DRS limited participant enters into a written agreement with DTC stating that the DRS limited participant will continue to use DRS, including Profile, when Profile becomes operational. DTC will make Profile operational using either an electronic medallion program[6] or a screen-based indemnity.[7]

In the case of a screen-based indemnity, before an instruction relating to a customer's DRS position is permitted to be sent via DRS to the DRS limited participant, a DTC participant would have to agree to a screen-based indemnity in substantially the following form:

(1) Participant represents that it has customer authority for the request appearing on the following screen and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete; and

(2) Participant indemnifies the issuer and its transfer agent against any breach of such representations in connection with the transaction that is the subject of such request.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a description of the DRS facility administered by DTC, see Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) [File No. SR–DTC–96–15] (order relating to the establishment of DRS); Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) [file No. SR–DTC–99–16] (order relating to implementation of the Profile Modification System).

[4] A DRS Limited Participant is a transfer agent who is permitted under DTC rules to facilitate DRS transactions. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) [File No. SR–DTC–96–15].

[5] *Id.*

[6] Representatives of the New York Stock Exchange, which operates the Medallion Stamp Program (a signature guarantee program), the Securities Transfer Association, the Securities Industry Association, and issuers have been negotiating in order to implement an electronic medallion program. Such an electronic medallion program would operate under a mutually agreed-upon indemnification agreement that would address the risks undertaken by the respective parties participating in transferring customer positions in DRS.

[7] DTC will be to submitting to the Commission in the near future a proposed rule change to implement Profile.

[8] 15 U.S.C. 78q–1.

and the rules and regulations thereunder applicable to DTC because it clarifies DTC's interpretation of its rule, thereby eliminating confusion in the industry relating to the implementation of the Profile feature and providing for more expeditious implementation of Profile. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with several DTC participants and DRS limited participants. Written comments relating to the proposed rule change have not yet been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[9] of the Act and Rule 19b–4(f)(1)[10] promulgated thereunder because the proposal interprets the meaning of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views,and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–01 and should be submitted by February 25, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2487 Filed 2–23–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42363; File No. SR–NASD–00–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Notice to Members on Extended Hours Trading

January 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as one constituting a stated policy and interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1)[4] thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is issuing a Notice of Members reminding members of their obligation under just and equitable principles of trade and the advertising rules to disclose to customers the material risks of extended hours trading. The text of the Notice to Members is provided below.

* * * * *

NASD Notice to Members

Disclosure To Customers Engaging In Extended Hours Trading

Suggested Routing

Legal & Compliance; Senior Management

Executive Summary

NASD Regulation, Inc. (NASD Regulation) reminds members of their obligation under just and equitable principles of trade and the advertising rule to disclose to customers the material risks of extended hours trading.

A model disclosure statement is included with this *Notice* in Attachment A.

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728–8104.

Background and Discussion

A number of member firms recently have started offering their retail customers various opportunities to trade stocks after regular market hours in what is known as "extended hours trading." An even greater number of member firms have announced plans to offer extended hours trading in coming months.

The growth of extended hours trading provides retail customers with greater opportunities to trade securities and manage their portfolios, and in so doing, provides access to markets that were previously limited to institutional customers. Participation in extended hours trading may offer certain benefits to retail customers, but entails several material risks. Depending on the particular extended hours trading environment, these risks may include:

- lower liquidity
- high volatility
- changing prices
- unlinked markets
- an exaggerated effect from news announcements; and
- wider spreads.

In light of these risks, members have an obligation to their retail customers to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

disclose the material risks of extended hours trading to customers before permitting them to engage in extended hours trading. NASD Regulation commends the many members that have already provided detailed disclosures about the risks of extended hours trading. This *Notice* is a reminder that these disclosures are not only a laudable business practice, but are a regulatory requirement under just and equitable principles of trade.

To assist members with their disclosure obligation, NASD Regulation has developed a series of model disclosures dealing with the risks of extended hours trading. Members are free to develop their own disclosures or modify these model disclosures to meet their particular disclosure needs. In some cases, members may need to develop additional disclosures to address such issues as options trading, options exercises, the effect of stock splits, dividend payments, as well as any additional risks that may arise in the future.

In addition, members are reminded that Rule 2210 requires that all communications with the public shall be based on principles of fair dealing and good faith, and that exaggerated, unwarranted, or misleading statements are prohibited. Members should use caution in communications with the public about their extended hours trading systems to ensure that these requirements are satisfied. Members describing the benefits of extended hours trading must also describe the material risks.

Finally, members are also reminded that in *Notice of Members* 99–11, NASD Regulation described the types of general disclosure that firms may use to inform their customers about the risks associated with stock volatility. In preparing disclosures regarding extended hours trading, members may wish to review the types of disclosure suggested in that *Notice*.

Attachment A

Model Extended Hours Trading Risk Disclosure

• *Risk of Lower Liquidity.* Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

• *Risk of Higher Volatility.* Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.

• *Risk of Changing Prices.* The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

• *Risk of Unlinked Markets.* Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours trading system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

• *Risk of News Announcements.* Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

• *Risk of Wider Spreads.* The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A number of member firms have recently started offering their retail customers opportunities to trade stocks after traditional market hours in what is known as "extended hours trading." An even greater number of member firms have announced plans to offer extended hours trading in the next several months.

The growth of extended hours trading provides retail customers with greater opportunities to trade securities and manage their portfolios, and in so doing, provides access to markets that were previously limited to institutional customers. Participation in extended hours trading may offer certain benefits to retail customers, but entails several material risks. Depending on the particular extended hours trading environment, these risks may include: (1) lower liquidity; (2) higher volatility; (3) changing prices; (4) unlinked markets; (5) an exaggerated effect from news announcements; and (6) wider spreads. In light of these risks, NASD Regulation believes that members have an obligation to their retail customers to disclose the material risks of extended hours trading before permitting them to engage in extended hours trading.

The Notice to Members states that just and equitable principles of trade (NASD Rule 2110) require members to disclose to customers the material risks of extended hours trading. The Notice to Members also states that the advertising rule (NASD Rule 2210) requires that all communications with the public shall be based upon principles of fair dealing and good faith, and that members describing the benefits of extended hours trading must also describe the material risks.

The Notice to Members does not require any standardized disclosure. However, to assist members with their disclosure obligations, NASD Regulation staff has developed model extended hours trading risk disclosures that address each of the six factors identified above. The model disclosures are provided as guidance only. Members will be free to modify the model disclosures or draft their own disclosures, so long as all of the material risk factors are addressed.

2. Statutory Basis

NASD Regulation believes that the Notice to Members is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that member firms that permit customers to engage in extended hours trading have an obligation under just and equitable principles of trade to disclose to such customers the material risks of extended hours trading. Similarly, members that advertise the opportunities and benefits of extended hours trading must also disclose the materials risks. NASD Regulation believes that this Notice to Members is an important element to protect investors and the public interest with respect to extended hours trading.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78o–3(b)(6).

[6] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.196–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the purposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–01 and should be submitted by February 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2486 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 3211]

30-Day Notice of Information Collection; Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee Or Former Employee of the U.S. Government Abroad, Form DS–1884

SUMMARY: The Department of State has submitted the following information to the Office of Management and Budget(OMB) in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.

Originating Office: CA/VO/F/P.

Title of Information Collection: Petition to ClassifySpecial Immigrants Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad.

Frequency: 500.

Form Number: DS–1884.

Respondents: Foreign Applicants.

Estimated Number of Respondents: 500.

Average Hours Per Response: .5 hours.

Total Estimated Burden: 250 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Daria Darnell, U.S. Department of State, 2401E ST NW, RM L–703, Washington, DC 20520, Tel: 202–663–1253.Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),Washington, DC 20530, (202) 395–5871.

Dated: January 12, 2000.

Nancy H. Sambaiew,

Deputy Assistant Secretary of State for Visa Services.

[FR Doc. 00–2549 Filed 2–3–00; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice No. 3189]

Secretary of State's Advisory Committee on Private International

Law: Study Group Related to the Protection of Children Conventions and Agreements; Meeting notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Saturday, February 26, 2000, to discuss international protection of children issues. The meeting will be held from 9:30 to 4:30

p.m. in room 208 Vanderbilt Hall, New York University School of Law, 40 Washington Square South, New York, New York 10012. The meeting is scheduled to follow the Sixth Annual Herbert and Rose L. Rubin Symposium on International Law taking place at the School of Law on Friday, February 25, 2000, presented by the Journal of International Law and Politics: "Celebrating Twenty Years: The Past and Promise of the 1980 Hague Convention on the Civil Aspects of International Child Abduction."

The purpose of the Study Group meeting is to assist the State Department develop United States policy in regard to existing and possible future international arrangements governing the protection of children. Discussions will center on the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; United States bilateral arrangements for the enforcement of family support obligations, state arrangements for the enforcement of family support obligations, the 1956 United Nations Convention on the Recovery of Maintenance Abroad, and the proposed development of a new Hague convention on the enforcement of maintenance obligations.

Presentations by experts, both domestic and foreign, at the New York University symposium on Friday will provide a comprehensive background on the 1980 Abduction and 1996 Protection Conventions. In particular, the Study Group will consider the advisability of seeking signature and ratification of the 1996 Convention. The issues covered by these conventions are also related to the extent and effectiveness of international maintenance enforcement and the feasibility of the United States concluding bilateral arrangements. The experience of the United States at the federal and state level with bilateral arrangements will affect the policy positions to be taken by the United States in its continuing consideration of such arrangements and in participating in the development of a new multilateral maintenance convention by the Hague Conference on Private International Law.

Persons interested in the Study Group or in attending the February 26 meeting in New York may request copies of the conventions to be discussed, the United States legislation authorizing bilateral arrangements and the report of the 1999 Hague Conference meeting on maintenance conventions. These documents may be requested from Ms. Rosie Gonzales by fax at (202) 776–8482, by telephone at (202) 776–8420 (you may leave your request, name, telephone number and mailing address on the answering machine) or by email to [pildb@his.com].

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to attend the meeting should notify Ms. Gonzales no later than February 23, and also provide their company or organization affiliation, mailing and email addresses and fax and telephone numbers. Any person who is unable to attend, but wishes to have his or her views considered, may send comments to Ms. Gonzales at the above fax number or email address or may address them to the office of the Assistant Legal Adviser for Private International Law (L/PIL), Suite 203, South Building, 2430 E Street, NW, Washington, DC 20037–2856.

Persons who are also interested in and want information about the symposium on Friday, February 25 should contact Ms. Karin Wolfe, Senior Symposium Editor, Journal of International Law and Politics, New York University School of Law, 110 West Third Street, New York, NY 10012–1074; phone: (212) 998–6520, fax: (212) 995–4032.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 00–2548 Filed 2–3–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Columbus Municipal Airport Authority for Port Columbus International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.1, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7296.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Port Columbus International Airport are in compliance with applicable requirements of Part 150, effective January 3, 2000.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as the "Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Columbus Municipal Airport Authority for Port Columbus International Airport. The specific maps under consideration are the noise exposure maps:

Figure 3.4, "1998 Existing Condition Noise Exposure Map", and Figure 4.4, "2003 Future Condition Noise Exposure Map" of the submission. The FAA has determined that these maps for Port Columbus International Airport are in compliance with applicable requirements. This determination is effective on January 3, 2000. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part

150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Great lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Detroit Airports District Office, Willow Run airport, East, 8820 Beck Road, Belleville, Michigan 48111

Columbus Municipal Airport Authority, Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on January 3, 2000.

James M. Opatrny,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 00–2565 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McAllen International, McAllen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miller International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATE: Comments must be received on or before March 6, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Derald Lary of Miller International at the following address: Mr. Derald Lary, Director of Aviation, Miller International Airport, 2500 S. Bicentenial Blvd., Suite 100, McAllen, TX 78503–3140.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miller International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 13, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2002.

Proposed charge expiration date: September 1, 2004.

Total estimated PFC revenue: $2,424,500.

PFC application number: 00–02–C–00–MFE.

Brief description of proposed project(s):

Projects To Impose and Use PFC'S

Improve Runway 31 Safety Area.

Acquire Passenger Lift Device.

Acquire Aircraft Rescue and Fire Fighting Vehicle.

Construct Blast Pads for Runway 13/31.

Conduct Master Plan Update and Terminal Area Study.

Passenger Facility Charge Administrative Fees.

Proposed Class or Classes of Air Carriers To Be Exempted From Collecting PFC's:

None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Miller International.

Issued in Fort Worth, Texas on January 13, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–2563 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

TSO–C77b, Gas Turbine Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Technical Standard Order and request for public comment.

SUMMARY: This notice announces the availability of draft Technical Standard Order (TSO), C77b. This proposed TSO pertains to minimum performance standards that gas turbine auxiliary power units (APUs), commonly used in commercial aircraft, must meet in order to be identified with the proposed TSO marking.

DATES: Comments must identify the TSO file number and be received on or before May 4, 2000.

ADDRESSES: Send all comments on the proposed TSO to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Rumizen, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7113, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft TSO may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed TSO, and to submit such written data, views, or arguments as they desire. Commenters must identify the TSO file number, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final TSO.

Background

The standards of this TSO would apply to all APUs used for any new application submitted after the effective date of this TSO. APUs currently approved under TSO–C77 or TSO–C77a authorization may continue to be manufactured under the provisions of their original approval. However, under § 21.611(b) of the Federal Aviation Regulations, any major design change to an APU previously approved under TSO–C77 or TSO–C77a would require a new authorization under this TSO. The general layout of this document complies with the updated TSO format.

How To Obtain Copies

A copy of the proposed TSO–C77b may be obtained via Internet (http://www.faa.gov/avr/air/air100/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, MA on January 7, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2564 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington and Benton Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed intermodal highway project in Washington and Benton Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Elizabeth Romero, Environmental Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, Telephone: (501) 324–5625; or Brenda Price, Environmental Scientist, Environmental Division, Arkansas State Highway and Transportation Department, Post Office Box 2261, Little Rock, Arkansas 72203, Telephone (501) 569–2281; or Uvalde Lindsey, Northwest Arkansas Regional Airport Authority Staff Consultant, 100 West Center Street, Suite 300, Fayetteville, Arkansas 72701, Telephone (501) 582–2100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas Department of Transportation and the Northwest Arkansas Regional Airport Authority, will prepare an environmental impact statement (EIS) on a proposal to construct a new intermodal access road to the Northwest Arkansas Regional Airport. It is intended that the access road be a toll road. The proposed construction would involve a new intermodal toll road from either US 71 or US 412 on the existing Federal Highway System and connect to the Northwest Arkansas Regional Airport, for a distance of approximately eight to twelve miles (13 to 19 kilometers).

The new access road is considered necessary to provide for existing and projected traffic demand to the airport. Bridges and water crossings will be required, the number and location depending upon the exact route. Alternatives under consideration include (1) taking no action, (2) improving the existing highways, and (3) constructing a new access road at a new location. Several location alternatives will be considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal. A formal public Scoping meeting will be held on March 28, 2000, between the hours of 4:00 p.m. and 7:00 p.m. at the City Hall, Elm Springs, Arkansas. A series of public meetings will be held in the project area during the course of the Study. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 24, 2000.

Elizabeth Romero,

Environmental Specialist,Federal Highway Administration,Little Rock, Arkansas.

[FR Doc. 00–2517 Filed 2–3–00 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 4, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130—New. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 C.F.R. Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. § 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(I)–(iv); 5 CFR § 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. § 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Rail-Equipment Accident/Incident Cost Analysis Study.

OMB Control Number: 2130—New.

Abstract: The collection of information proposes a new method to calculate dollar damages in the event of a railroad accident/incident. The current method of calculating damages yields accurate but widely varying results for accidents of approximately equal severity. The information collected will be used for a one-time six-month study. Participation on the part of railroads is completely voluntary. If the statistical analysis from this study provides valid results, then FRA will produce an Notice of Proposed Rulemaking (NPRM) to modify the current reporting system.

Form Number(s): FRA F 6180.105.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Estimated Annual Burden: 1,150 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR §§ 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. §§ 3501–3520.

Issued in Washington, D.C. on February 1, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–2552 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 4, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert

Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0500. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations,5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. § 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(i)–(iv); 5 CFR § 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. § 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The collection of information is due to the railroad accident reporting regulations set forth in 49 CFR Part 225 which require railroads to submit monthly reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

Form Number(s): FRA F 6180.33; 54; 55; 55A; 56; 57; 78; 81; 97; and 98.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total annual burden cost
225.21—Railroad Injury and Illness Summary (Form FRA F 6180.55.	685 railroads	8,148 forms	45 minutes	6,111 hours	$171,108
225.19/21—Form FRA 6180.55A—Continuation Sheet.	685 railroads	12,000 forms	30 minutes	6,000 hours	168,000
225.21—Rail Equipment Accident/Incident Report—Form FRA F 6180.54.	685 railroads	3,000 forms	3 hours	9,000 hours	252,000
225.19/21—Rail-Highway Grade Crossing Accident/Incident Report—Form FRA F 6180.57.	685 railroads	3,500 forms	3 hours	10,500 hours	294,000
225.21—Annual Railroad Report of Employee Hours and Casualties, By State—Form FRA F 6180.56.	685 railroads	700 forms	3 hours	2,100 hours	58,000
225.9—Telephone Reports of Certain Accidents/Incidents.	685 railroads	300 phone reports	15 minutes	75 hours	2,100
225.21/25—Railroad Employee Injury and/or Illness Record—Form FRA F 6180.98.	246 railroads	30,108 forms	30 minutes	15,054 hours	466,674
—Copies of Forms to Employees	246 railroads	903 form copies	2 minutes	30 hours	840
225.25(h)—Posting of Monthly Summary.	685 railroads	8,220 lists	16 minutes	2,192 hours	61,376
219.209(b)—Doubtful Cases & Refusal to Be Tested; Alcohol or Drug Involvement.	685 railroads	80 reports	15 minutes	20 hours	560

CFR Section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total annual burden cost
225.21—Employee Human Factor Attachment—Form FRA F 6180.81.	685 railroads	1,013 forms	15 minutes	253 hours	7,084
225.12/21—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor—Form FRA F 6180.78 (Part I).	685 railroads	1,013 notices	30 minutes	507 hurs	14,196
—Employee Statement Supplemental Railroad Accident Report—Form FRA F 6180.78 (Part II).	685 railroads	101 statements	2 hours	202 hours	6,262
225.12(C)—Railroad Consultation in Joint Operations Accidents/Incidents.	685 railroads	30 requests	1 hour	30 hours	840
225.12(g)(3)—Employee Confidential Letter.	30 Employees	30 letters	2 hours	60 hours	1,860
225.12—Railroad Review of Statement	685 railroads	101 supplements/25 reports.	1.5 hours/4 hours	252 hours	7,056
225.37—Batch Control Form—FRA F 6180.99.	8 railroads	96 forms	10 minutes	16 hours	448
225.21—Initial Rail Equipment Accident/Incident Record—Form FRA F 6180.97.	433 railroads	12,095 forms	30 minutes	6,048 hours	169,344
225.33—Internal Control Plans	246 railroads	246 contril plans	Varies	2,101 hours	58,828
—Intimidation/Harrassment Policies—Model Statements.	433 railroads	433 statements	30 minutes	217 hours	6,076
—Subsequent Years—Internal Control Plan.	1 railroad	1 control plan	14 hours	14 hours	392
—Amendments to Internal Control Plan.	246 railroads	50 amendments	1 hour	50 hours	1,400
225.25(h)(15)—Written Request by Employee Not to Post their Injury/Illness.	685 railroads	25 requests	1 hour	25 hour	700

Total Responses: 82,218.
Estimated Total Annual Burden: 60,857 hours.
Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. § 3501–3520.

Issued in Washington, D.C. on February 1, 2000.

Margaret B. Reid,

Acting Director Office of Information Technology and Support SystemsFederal Railroad Administration.

[FR Doc. 00–2553 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Extension of Comment Period; Petition for Grandfathering of Non-Compliant Equipment; National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant passenger equipment manufactured by Renfe Talgo of America (Talgo) for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

Through published notice in the **Federal Register**, FRA has extended the comment period in this proceeding and explained the reasons therefor. FRA most recently extended the comment period until January 31, 2000. See 65 FR 2223; Jan. 13, 2000. By this notice, FRA is further extending the comment period until February 22, 2000. This extension will allow FRA to resolve an ongoing Freedom of Information Act (FOIA) request for information related to this proceeding, see 65 FR 2223, and permit the requester sufficient time in which to analyze any further documents that may be released by FRA. FRA will place in the docket a copy of any documents provided to the FOIA requester. FRA expects that further extensions of the comment period will not be necessary.

Comments received after February 22, 2000, will be considered to the extent possible. Amtrak's petition, documents inserted in the docket, and all written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, D. C. on January 28, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–2551 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33833 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33833 [1] to permit the trackage rights to expire on February 7, 2000, in accordance with the agreement of the parties.

DATES: This exemption is effective on February 7, 2000.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33833 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Yolanda Grimes Brown, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039, and (2) Robert Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Office Solutions, Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

[1] On December 29, 1999, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company over UP's rail line between Stockton, CA, in the vicinity of UP's milepost 82.3 (Fresno Subdivision), and Fresno, CA, in the vicinity of UP's milepost 207.0 (Fresno Subdivision). *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33833 (STB served Jan. 18, 2000). The trackage rights operations under the exemption became effective and were scheduled to be consummated on January 15, 2000.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 28, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–2566 Filed 2–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Deposits and Electronic Banking.

DATES: Submit written comments on or before April 4, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0092. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Regulations and Legislation, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7135.

SUPPLEMENTARY INFORMATION:

Title: Deposits and Electronic Banking.

OMB Number: 1550–0092.

Form Number: Not applicable.

Abstract: 12 CFR Part 557 relies on the disclosure requirements applicable to savings associations under the Federal Reserve Board's Regulation DD (12 CFR Part 230). The information required by Regulation DD is needed by OTS in order to supervise savings associations and develop regulatory policy.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1104.

Estimated Time Per Respondent: 1,484 hours.

Estimated Total Annual Burden Hours: 1,638,704 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–2446 Filed 2–3–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on General Reporting and Recordkeeping by Savings Associations.

DATES: Submit written comments on or before April 4, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0011. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joseph Casey, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5741.

SUPPLEMENTARY INFORMATION:

Title: General Reporting and Recordkeeping by Savings Associations.

OMB Number: 1550–0011.

Form Number: Not applicable.

Abstract: This collection of information allows management of savings associations to exercise prudent controls and to provide OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness, and regulatory compliance.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Recordkeepers: 1,104.

Estimated Time Per Recordkeepers: 2,649 average hours.

Estimated Total Annual Burden Hours: 3,718,911 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 2000.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 00–2447 Filed 2–3–00; 8:45 am]

BILLING CODE 6720–01–P

VOL

65

SS

24

FE

4

000

MI

Federal Register

Friday,
February 4, 2000

Part II

The President

Directive of January 31, 2000—Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Referendum)

Directive of January 31, 2000—Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Community Assistance)

VOL

65

SS

24

FE

4

000

MI

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

Presidential Documents

Title 3—

The President

Directive of January 31, 2000

Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Referendum)

Directive to the Secretary of Defense [and] Director, Office of Management and Budget

By virtue of the authority vested in me and in order to further the interests of national security and to address the legitimate interests and concerns of the residents of Vieques and the people of Puerto Rico, I hereby direct the following:

1. The future of Navy training on Vieques will be determined by a referendum of the registered voters of Vieques, using Puerto Rico electoral laws and regulations as they exist as of the date of this directive. This referendum will occur on May 1, 2001, or 270 days prior to or following May 1, 2001, the exact date to be specified on the request of the Department of the Navy. (This specified date and the terms of the referendum must be requested at least 90 days in advance of the referendum.) It is understood that the full implementation of this directive is contingent upon the Government of Puerto Rico authorizing and supporting this referendum, and the cooperation of the Government of Puerto Rico as specified in paragraph 5(a).

2. This referendum will present two alternatives. The first shall be that the Navy will cease all training not later than May 1, 2003. The second will permit continued training, to include live fire training, on terms proposed by the Navy. Live fire training is critical to enhance combat readiness for all our military personnel and must occur in some location.

3. In the event the referendum selects the option of termination of Navy activities, then

(a) Navy lands on the Eastern side of Vieques (including the Eastern Maneuver Area and the Live Impact Area) will be transferred within 1 year of the referendum to the General Services Administration (GSA) for disposal under the Federal Property and Administrative Services Act, except for conservation zones, which will be transferred to the Department of the Interior for continued preservation.

(b) The GSA will supervise restoration of the lands described in section 3(a) consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) before it is further transferred under the Federal Property and Administrative Services Act, except that the Live Impact Area will be swept for ordnance and fenced to meet the same range standards used after the closure of the live impact area used by Naval Air Station, South Weymouth, Massachusetts. The Government of Puerto Rico may request transfer of the restored lands in accordance with the Federal Property and Administrative Services Act.

(c) Under no conditions will the land described in this section be returned to the Department of Defense or used for military training.

4. In the event the referendum selects the option of continued training submitted by the Navy, the Office of Management and Budget will request congressional funding to further provide for the enhancement of infrastructure and housing on the Western portions of Vieques in the amount of $50 million.

5. Between the date of this directive and the referendum, the following will occur:

(a) The Department of Defense and the Government of Puerto Rico will work in cooperation with relevant Federal authorities to ensure the integrity and accessibility of the range is uninterrupted and trespassing and other intrusions on the range cease entirely by providing complementary support among Federal and Puerto Rican jurisdictions.

(b) Navy training on Vieques will recommence, but it shall not exceed 90 days per calendar year and will be limited to nonexplosive ordnance, which may include spotting devices.

(c) The Navy will ensure procedures are in place that will enhance safety and will position ships to reduce noise in civilian areas whenever possible.

(d) Before any major training occurs on the range, the Government of Puerto Rico, through its Secretary of State, will be given 15 days notification under the terms of the Memorandum of Understanding of 1983.

(e) The Office of Management and Budget will initiate a funding request to the Congress:

(1) to fund a Public Health Service study in coordination with appropriate agencies to review health concerns raised by the residents of Vieques.

(2) to complete the conveyance of 110 acres of Navy property to extend the runway at the Vieques Municipal Airport to accommodate larger passenger aircraft; and for the Navy to provide training and supplemental equipment to bolster the airport fire, safety, and resource capability.

(3) to maintain the ecosystem and conservation zones and implement the sea turtle, sea mammal, and Brown Pelican management plans as specified in the Memorandum of Understanding of 1983.

(f) Within 30 days of this directive, the Navy will submit legislation to the Congress to transfer land on the Western side of Vieques surrounding the Naval Ammunition Facility (except 100 acres of land on which the ROTHR and Mount Pirata telecommunications sites are located). The legislation submitted will provide for land transfer not later than December 31, 2000. This transfer will be to the Government of Puerto Rico for the benefit of the municipality of Vieques as determined by the Planning Board of the Government of Puerto Rico. This land shall be restored consistent with CERCLA standards prior to transfer.

6. The Director of OMB shall publish this directive in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 31, 2000.

[FR Doc. 00–2750
Filed 2–3–00; 11:22 am]
Billing code 3110–01–M

Presidential Documents

Directive of January 31, 2000

Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Community Assistance)

Directive to the Secretary of Defense [and] Director, Office of Management and Budget

By separate directive I have addressed the resumption of Navy and Marine Corps training on the island of Vieques.

1. Provided that training opportunity has resumed and is continuously available on Vieques, then within 90 days of this directive, I direct the Office of Management and Budget (OMB) to request authority and funding (which with funding for projects described in paragraph 5(e) of the previously referenced directive will total $40 million) from the Congress for the following projects:

(a) To support the construction of a new commercial ferry pier and terminal by the Army Corps of Engineers.

(b) To establish an artificial reef construction and fish aggregation program to create substantial new commercial fishing areas for Vieques fisherman. Until such time as these new fishing grounds are operational, this legislation will authorize direct payments of an amount (to be determined by the National Marine Fisheries Services) to be paid to registered Vieques commercial fishermen for each day they are unable to use existing waters because the Navy is training.

(c) To support expanding or improving the major cross-island roadways and bridges on Vieques.

(d) To establish an apprenticeship/training program for young people on Vieques to facilitate participation in small-scale civic construction projects.

(e) To establish a program with the Government of Puerto Rico to preserve the Puerto Mosquito Vieques bioluminescent bay and to commit Federal resources to its preservation.

(f) To establish a professional economic development office for Vieques for the purpose of promoting Vieques and attracting jobs to the island.

2. The Director of OMB shall publish this directive in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 31, 2000.

[FR Doc. 00–2751
Filed 2–3–00; 11:22 am]
Billing code 3110–01–M

VOL
65
SS
24
FE
4
000
MI

Reader Aids

Federal Register

Vol. 65, No. 24

Friday, February 4, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3
5407–5732	4

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219

Administrative Orders:
Directive of January 31, 2000 5727
Directive of January 31, 2000 5727

Presidential Determination:
No. 2000–10 of January 31, 2000 5407

5 CFR

581 4753
582 4753
1201 5409
1208 5410

7 CFR

1 5414
301 ..... 4865, 5221
981 4867

Proposed Rules:
54 4780
718 5444

12 CFR

960 5418

Proposed Rules:
Ch. I 4895
611 5286
951 5447
997 5447

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428
71 ..... 4871, 4872, 4873, 4874
91 5396
93 5396
97 ..... 4875, 4877, 4879
121 5396
135 5396

Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459
71 ..... 4910, 4911
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

18 CFR

Proposed Rules:
382 5289

19 CFR

132 5430
163 5430

21 CFR

876 4881
1308 5024

Proposed Rules:
1310 4913

24 CFR

206 5406

26 CFR

1 5432

29 CFR

Proposed Rules:
1910 4795

30 CFR

938 4882

34 CFR

676 4886

36 CFR

Proposed Rules:
217 5462
219 5462
242 5196
1234 5295

38 CFR

Proposed Rules:
21 4914

39 CFR

111 4864

Proposed Rules:
111 4918

40 CFR

52 ..... 4887, 5245, 5252, 5259, 5262, 5264, 5433
300 5435
761 5442

Proposed Rules:
52 ..... 5296, 5297, 5298, 5462, 5463
130 4919
300 5465

42 CFR

Proposed Rules:
36 4797

45 CFR

1303 4764

Proposed Rules:
96.....5471

47 CFR
Ch. I.....5267
1.....4891
Proposed Rules:
73.....4798, 4799, 4923
76.....4927
95.....4935

48 CFR
203.....4864
209.....4864
225.....4864
249.....4864

Proposed Rules:
30.....4940

49 CFR
195.....4770

50 CFR
17.....4770, 52680
18.....52750
679.....4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442
Proposed Rules:
17.....4940, 5298, 5474
100.....5196
622.....5299
648.....4941, 5486

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 4, 2000

AGRICULTURE DEPARTMENT

Organization, functions, and authority delegations:
- Agency Administrators; published 2-4-00

COMMODITY FUTURES TRADING COMMISSION

Commodty option transactions:
- Enumerated agricultural commodities; off-exchange trade options; published 12-6-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Montana; published 12-6-99
- Utah; published 12-6-99

FEDERAL COMMUNICATIONS COMMISSION

Organization, functions, and authority delegations:
- Wireless Telecommunications Bureau Chief; published 1-5-00

FEDERAL HOUSING FINANCE BOARD

Affordable housing program operation:
- Reporting and recordkeeping requirements; published 2-4-00

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
- Uniformed services employment and reemployment rights and veterans employment opportunities; appeals; published 2-4-00
- Uniformed services employment and reemployment rights and veterans employment opportunities; appeals; cross-reference; published 2-4-00

NUCLEAR REGULATORY COMMISSION

Radiation protection standards:
- Respiratory protection and controls to restrict internal exposures; published 10-7-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Eurocopter Deutschland GMBH; published 1-25-00
- Rolladen Schneider Flugzeugbau GmbH; published 1-12-00

Class E airspace; published 1-5-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Asset transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs); published 2-7-00
- Qualified retirement plans; remedial amendment period; published 2-4-00¶

RULES GOING INTO EFFECT FEBRUARY 6, 2000

POSTAL SERVICE

Domestic Mail Manual:
- Experimental nonletter-size business reply mail categories and fees; termination; published 1-28-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in—
- Florida; comments due by 2-11-00; published 12-13-99

Melons grown in—
- Texas; comments due by 2-9-00; published 1-10-00

Raisins produced from grapes grown in—
- California; comments due by 2-8-00; published 12-10-99

COMMERCE DEPARTMENT

International Trade Administration

Watches, watch movements, and jewelry:
- Duty-exemption allocations—
  - Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pollock; comments due by 2-8-00; published 12-10-99
- Atlantic highly migratory species—
  - Atlantic pelagic longline fishermen; time/area closures; hearings and Advisory Panel meetings; comments due by 2-11-00; published 12-28-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 2-10-00; published 1-26-00
- West Coast States and Western Pacific fisheries—
  - Western Pacific Region pelagic; comments due by 2-10-00; published 12-27-99

Marine mammals:
- Incidental taking—
  - San Francisco-Oakland Bay Bridge, CA; pile installation demonstration project; comments due by 2-7-00; published 1-7-00

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:
- Advisors that provide advice by means of various media; registration exemption; comments due by 2-7-00; published 12-7-99

EDUCATION DEPARTMENT

Postsecondary education:
- Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP); comments due by 2-10-00; published 2-7-00

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Central air conditioners and heat pumps; energy conservation standards; comments due by 2-7-00; published 11-24-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Stratospheric ozone protection—
  - Essential-use allowances; allocation; comments due by 2-7-00; published 1-6-00

Air quality implementation plans; approval and promulgation; various States:
- Kansas; comments due by 2-10-00; published 1-11-00
- Missouri; comments due by 2-11-00; published 1-12-00
- Tennessee; comments due by 2-7-00; published 1-7-00

Hazardous waste:
- Identification and listing—
  - Exclusions; comments due by 2-7-00; published 12-9-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Tebufenozide; comments due by 2-7-00; published 12-8-99

Solid wastes:
- Municipal solid waste landfill permit programs; adequacy determinations—
  - Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00
  - Kansas, Missouri, and Nebraska; comments due by 2-11-00; published 1-12-00

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 2-7-00; published 1-7-00
  - National priorities list update; comments due by 2-7-00; published 1-7-00
- Toxic chemical release reporting; community right-to-know—
  - Phosphoric acid; comments due by 2-7-00; published 12-7-99

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Illinois; comments due by 2-7-00; published 1-21-00
- Kansas; comments due by 2-7-00; published 1-21-00
- Michigan; comments due by 2-7-00; published 12-30-99

New York; comments due by 2-7-00; published 1-4-00

Texas; comments due by 2-7-00; published 12-30-99

Satellite Home Viiewer Act; network nonduplication, syndicated exclusivity and sports blackout rules to satellite retransmissions; comments due by 2-7-00; published 2-2-00

Television broadcasting:

Class A television service; establishment; comments due by 2-10-00; published 1-20-00

Two way transmissions; mutlipoint distribution service and instructional television fixed service licenses participation; comments due by 2-10-00; published 1-26-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs and biological products:

Postmarketing studies; status reports; comments due by 2-9-00; published 12-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Fellowships, internships, training:

National Institutes of Health Contraception and Infertility Research Loan Repayment Program; comments due by 2-8-00; published 12-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and State health care programs:

Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-8-00; published 12-10-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Alabama sturgeon; comments due by 2-10-00; published 1-11-00

INTERIOR DEPARTMENT

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 2-7-00; published 1-6-00

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf operations:

Minerals prospecting; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Extension of distance Mexican nationals may travel into U.S. without obtaining additional immigration documentation at selected Arizona ports-of-entry; comments due by 2-7-00; published 12-8-99

Organization, functions, and authority delegations:

Los Angeles and San Francisco Asylum Offices, CA; jurisdictional change; comments due by 2-7-00; published 12-8-99

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:

United States Marshals Service; fees for services; comments due by 2-7-00; published 12-7-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Digital Millennium Copyright Act:

Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-10-00; published 11-24-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Attorney fees; reimbursement; comments due by 2-7-00; published 12-23-99

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Family relationships; inheritance rights; comments due by 2-7-00; published 12-8-99

SMALL BUSINESS ADMINISTRATION

Business loans:

Liquidation of collateral and sale of disaster assistance loans; comments due by 2-9-00; published 1-10-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 2-7-00; published 1-6-00

Bell; comments due by 2-7-00; published 12-8-99

Boeing; comments due by 2-7-00; published 12-8-99

Bombardier; comments due by 2-11-00; published 1-12-00

British Aerospace; comments due by 2-9-00; published 1-6-00

Eurocopter Deutschland GMBH; comments due by 2-8-00; published 12-10-99

Eurocopter France; comments due by 2-8-00; published 12-10-99

Fokker; comments due by 2-7-00; published 1-6-00

McDonnell Douglas; comments due by 2-7-00; published 12-22-99

MD Helicopters Inc.; comments due by 2-7-00; published 12-8-99

Pratt & Whitney; comments due by 2-7-00; published 12-8-99

Turbomeca; comments due by 2-7-00; published 12-8-99

Airworthiness standards:

Special conditions—

Ayres Corp. Model LM-200 Loadmaster airplane; comments due by 2-11-00; published 1-12-00

Class E airspace; comments due by 2-8-00; published 12-29-99

TREASURY DEPARTMENT

Balanced Budget Act of 1997; implementation:

District of Columbia retirement plans; Federal benefit payments; comments due by 2-11-00; published 12-13-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

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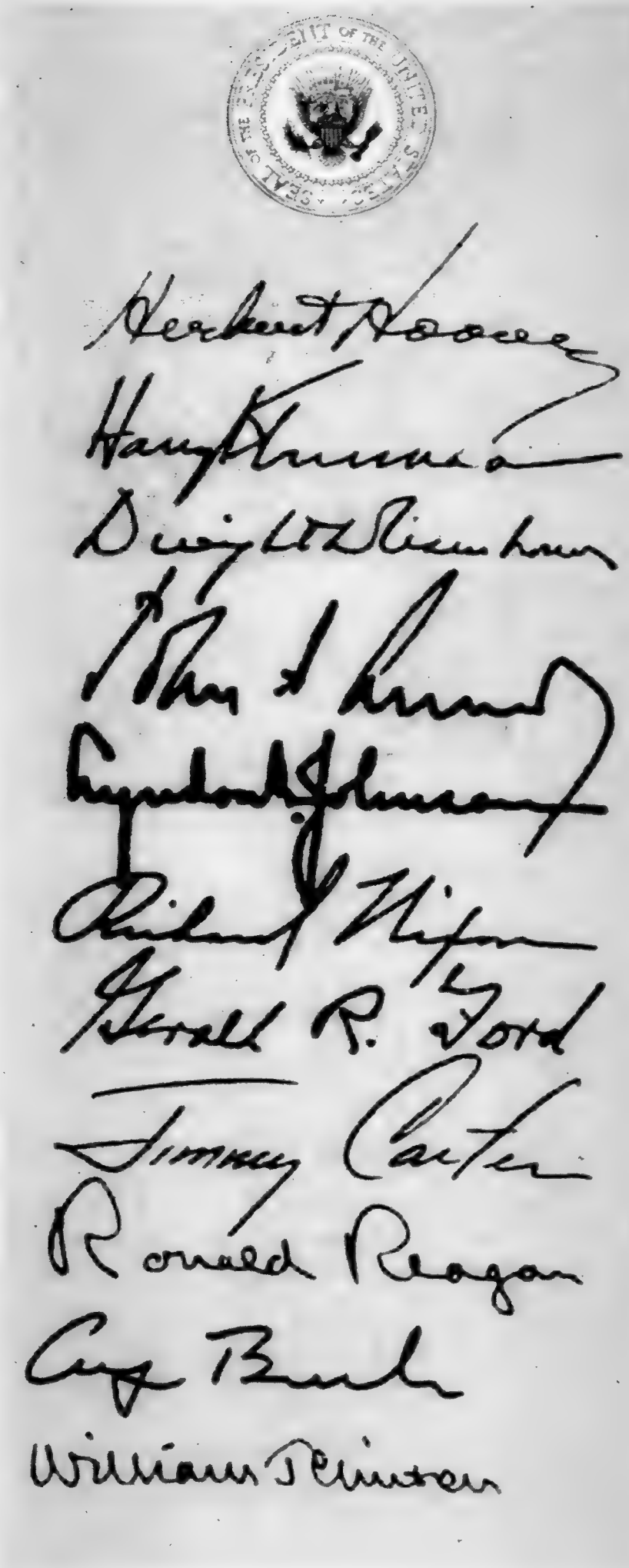

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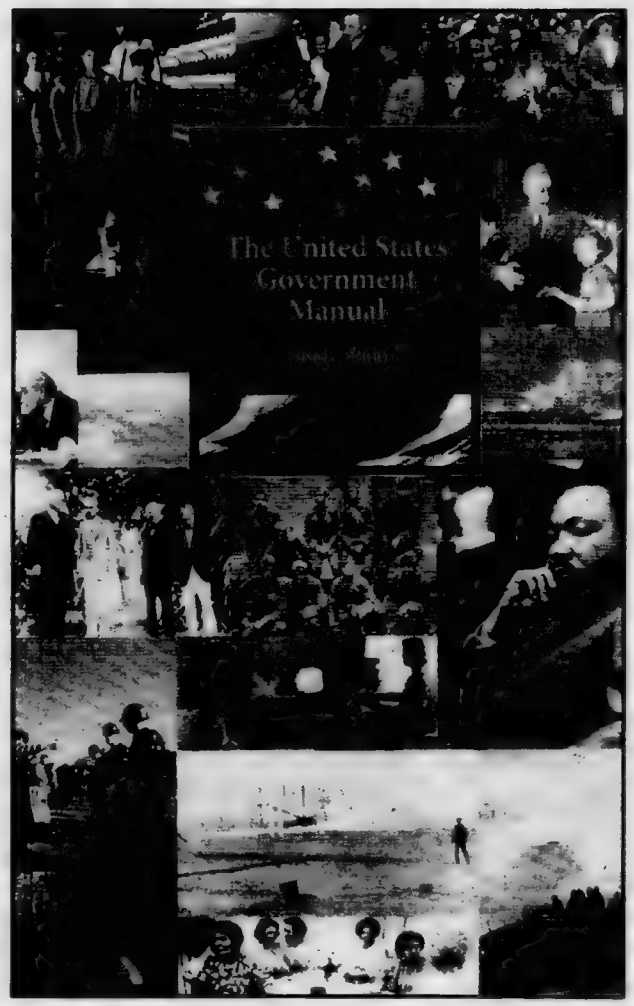

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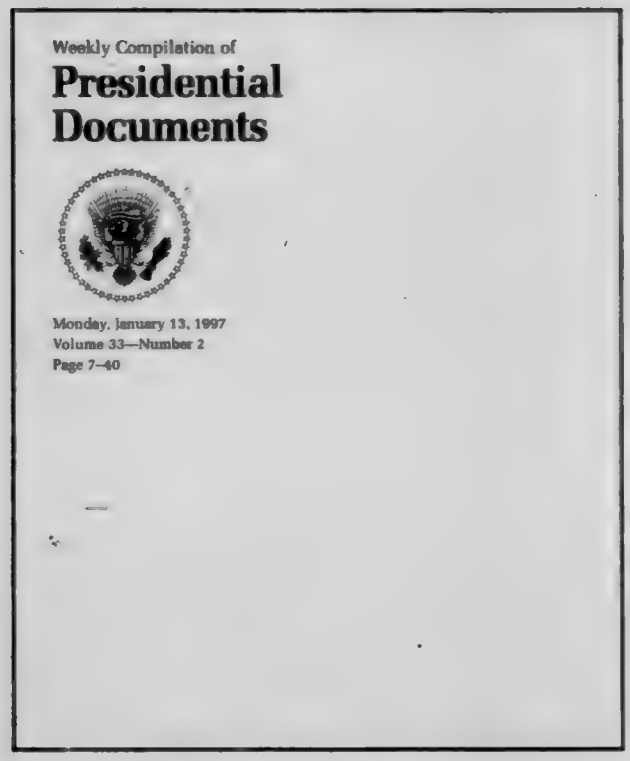

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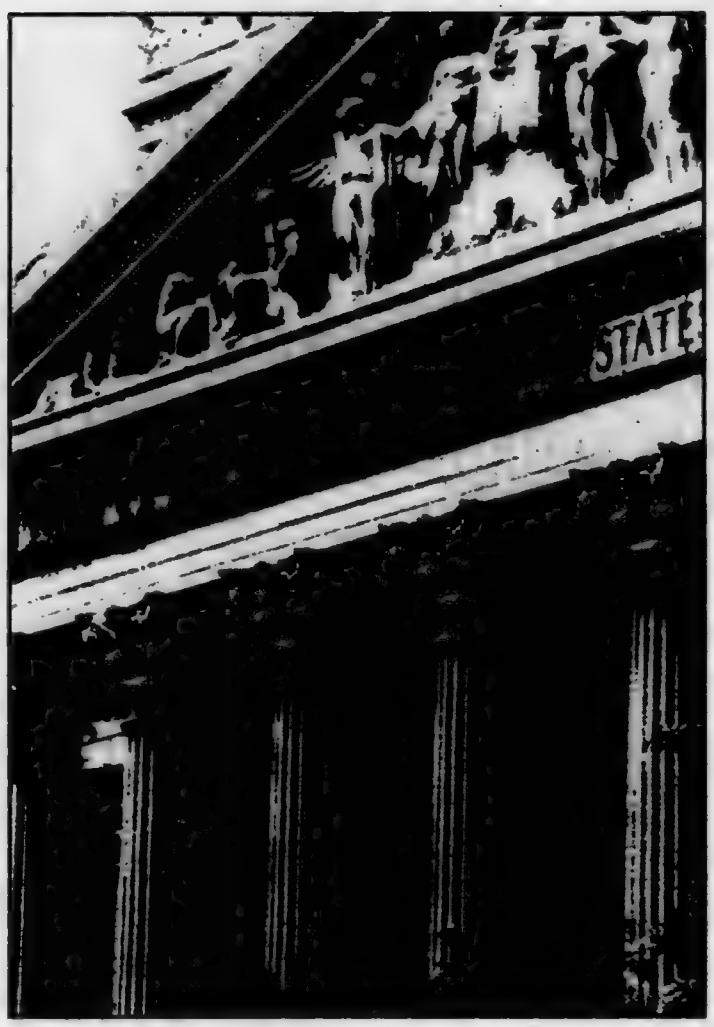

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Contents

Federal Register
Vol. 65, No. 25
Monday, February 7, 2000

Agricultural Marketing Service
RULES
Onions (Vidalia) grown in—
Georgia, 5736–5738
Oranges, grapefruit, tangerine, and tangelos grown in Florida and imported grapefruit, 5733–5736
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5852–5853
Reports and guidance documents; availability, etc.:
Commodity research and promotion programs; agency oversight guidelines; comment request, 5853

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Rural Utilities Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5850–5852

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Lodi, CA, 5828–5833

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Imetal et al., 5891–5894

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Native American language projects, 5978–5988

Coast Guard
RULES
Drawbridge operations:
Louisiana, 5785
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty; eligibility criteria, etc., 5785–5789
PROPOSED RULES
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL 2000/International Naval Review 2000; regulated areas, 5833–5844
NOTICES
Environmental statements; notice of intent:
District of Columbia, Prince George's County, MD, and Alexandria and Fairfax County, VA, 5925

Commerce Department
See International Trade Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5854
Electronic commerce; laws or regulations posing barriers; correction, C0–2198

Congressional Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration preview report for 2001 FY; transmittal to Congress and OMB, 5857

Defense Department
RULES
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty; eligibility criteria, etc., 5785–5789

Education Department
PROPOSED RULES
Postsecondary education:
Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Program, 5844
NOTICES
Grants and cooperative agreements; availability, etc.:
Centers for Independent Living Program, 5857–5858

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
High Pressure Combustion Kinetics; universities, private energy equipment researchers, developers, or manufacturers, 5858–5859
Inventions, Government-owned; availability for licensing, 5859
Meetings:
Environmental Management Site-Specific Advisory Board—
Los Alamos National Laboratory, NM, 5859
Semi-Annual Chairs, 5860

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer products; energy conservation program:
Representative average unit costs of energy sources—
Electricity, natural gas, heating oil, propane, and kerosene, 5860–5861

Environmental Protection Agency
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 5844–5847
NOTICES
Project XL (excellence and leadership) innovative technologies projects:
Elmendorf Air Force Base, AK, 5868–5869
Solid wastes:
Recovered materials advisory notice; availability; correction, C0–1068

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Reduced vertical separation minimum, 5936–5943
Airworthiness directives:
Airbus, 5739–5741 , 5751–5754 5757–5759 ,
Boeing, 5743–5757
Bombardier, 5745–5746
Eurocopter France, 5741–5742
General Electric Co., 5759–5762
Raytheon, 5749–5751
Class D and Class E airspace, 5762–5763
Class E airspace, 5763–5772
PROPOSED RULES
Class E airspace, 5804–5805
NOTICES
Passenger facility charges; applications, etc.:
Bradley International Airport, CT, 5925–5926

Federal Communications Commission
NOTICES
Meetings:
North American Numbering Council, 5869–5870
Rulemaking proceedings; petitions filed, granted, denied, etc., 5870

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5870–5871
Submission for OMB review; comment request, 5871–5872
Disaster and emergency areas:
Kentucky, 5872
Virgin Islands, 5872

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
North Hartland, LLC, et al., 5865–5866
Environmental statements; availability, etc.:
Yadkin, Inc., 5866
Meetings; Sunshine Act, 5866–5868
Practice and procedure:
Off-the-record communications, 5868
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 5861–5862
Columbia Gas Transmission Corp., 5862
Duke Energy Hidalgo, L.P., 5862–5863
El Paso Natural Gas Co., 5863
Equitrans, L.P., 5863
Florida Gas Transmission Co., 5863–5864
Natural Gas Pipeline Co. of America, 5864
Potomac Electric Power Co., 5864
Southaven Power, LLC, et al., 5864–5865
TransColorado Gas Transmission Co., 5865

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
District of Columbia, Prince George's County, MD, and Alexandria and Fairfax County, VA, 5925
Linn County, IA, 5926

Federal Housing Finance Board
RULES
Federal home loan bank system:
Community support requirements; reporting and recordkeeping requirements, 5738–5739

Federal Motor Carrier Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Global Positioning System (GPS) technology pilot demonstration project, 5927–5928

Federal Procurement Policy Office
RULES
Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting standards coverage; applicability, thresholds, and waivers, 5990–5992

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 5872–5873
Permissible nonbanking activities, 5873

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Gerling Global Reinsurance Corp. of America, 5929–5930

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Alabama sturgeon, 5848–5849
Critical habitat determinations—
Coastal California gnatcatcher, 5946–5976

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
National school lunch and school breakfast programs; alternatives to standard application and meal counting procedures, 5791–5804

Health and Human Services Department
See Children and Families Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
Hospital inpatient prospective payment systems and 2000 FY rates; correction, C0–126

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Steilacoom Tribe of Indians, WA, 5880–5883

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

NOTICES
Environmental statements; availability, etc.:
Central Utah Water Conservancy District—
Strawberry Valley Project; conversion of portion of water from irrigation to municipal and industrial use, 5880

Internal Revenue Service
RULES
Income taxes:
Asset transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs), 5775–5777
Foreign investment; passive foreign investment company preferred shares; qualified electing fund elections; special exclusions, 5777–5782
Tax-exempt organizations; travel and tour activities, 5772–5775
PROPOSED RULES
Income taxes:
Asset transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs); cross-reference and hearing, 5805–5807
Financial asset securitization investment trusts; real estate mortgage investment conduits, 5807–5828

International Trade Administration
NOTICES
Countervailing duties:
Fresh and chilled Atlantic salmon from—
Norway, 5854–5857

International Trade Commission
NOTICES
Import investigations:
Downhole well data recorders and components, 5889
Industrial nitrocellulose from—
Various countries, 5889–5890
Semiconductor memory devices and products containing same, 5890–5891

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
GAF Corp. et al., 5891

Labor Department
See Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5894–5898

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Northwest and Front Range Resource Advisory Councils, 5883
Meetings:
Resource Advisory Councils—
Northeast California, 5883
Southwest, 5883–5884
Public land orders:
New Mexico; correction, 5884
Realty actions; sales, leases, etc.:
Colorado; correction, 5884
Recreation management restrictions, etc.:
Arcata Resource Area, CA; off-road vehicle use, overnight camping, etc.; supplementary rule, 5884–5885

Management and Budget Office
See Federal Procurement Policy Office

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5928–5929

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas operations, 5885–5886
Outer Continental Shelf operations:
OCS offshore Northern New Jersey—
Sand and gravel resources lease sale, 5886
Royalty management:
Federal natural gas from Gulf of Mexico; bid invitations, 5886–5887

National Highway Traffic Safety Administration
PROPOSED RULES
Vehicles built in two or more stages:
Negotiated Rulemaking Committee; meetings, 5847–5848

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5873–5874
Grants and cooperative agreements; availability, etc.:
Corticotropin Releasing Factor antagonists; research and development for treatment of cocaine dependence, 5874–5875
Meetings:
National Center for Research Resources, 5875
National Human Genome Research Institute, 5875–5876
National Institute of Mental Health, 5876
Scientific Review Center, 5876–5878
Patent licenses; non-exclusive, exclusive, or partially exclusive:
EndocrinoLogix, Inc., 5878–5879
Mitos, Inc., 5879
Varian Biosynergy, Inc., 5879–5880

National Park Service
NOTICES
Environmental statements; availability, etc.:
Booker T. Washington National Monument, VA, 5887
Glacier National Park, MT, 5888
Meetings:
Boston Harbor Islands Advisory Council, 5888–5889
Reports and guidance documents; availability, etc.:
Director's Order 42; accessibility for visitors with disabilities in NPS programs, facilities, and services, 5887

National Science Foundation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5916

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear fuel cycle facilities oversight program; public workshop, 5916–5917
Reactor Oversight Process Pilot Program; workshops, 5917–5918

Postal Service
RULES
Domestic Mail Manual:
Nonautomation mail processing instructions and letter tray label revisions, 5789–5790

Public Debt Bureau
See Fiscal Service

Public Health Service
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5918

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Alabama Electric Cooperative, 5853–5854

Securities and Exchange Commission
NOTICES
Options price reporting authority:
Temporary Capacity Allocation Plan, 5919–5921
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 5921–5922
Philadelphia Stock Exchange, Inc., 5922–5924
Applications, hearings, determinations, etc.:
AirTouch Communications, Inc., 5918–5919

Special Counsel Office
NOTICES
Senior Executive Service:
Performance Review Board; membership, 5924

State Department
NOTICES
Art objects; importation for exhibition:
Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni, 5924–5925

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Virginia, 5782–5785

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Transportation Statistics Bureau
NOTICES
Aviation proceedings:
Hearings, etc.—
Cardinal Airlines, Inc., 5925

Transportation Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5929

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty; eligibility criteria, etc., 5785–5789
NOTICES
Cost-of-living adjustments and headstone or marker allowance rate, 5930–5932

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless Veterans Reintegration Projects, 5898–5915

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 5936–5943

Part III
Department of the Interior, U.S. Fish and Wildlife Service, 5946–5976

Part IV
Department of Health and Human Services, Administration for Children and Families, 5978–5988

Part V
Office of Management and Budget, Office of Federal Procurement Policy, 5990–5992

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
905.....5733
944.....5733
955.....5736
Proposed Rules:
245.....5791

12 CFR
936.....5738

14 CFR
39 (11 documents) 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761
71 (8 documents) 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770
91.....5936
Proposed Rules:
71.....5804

26 CFR
1 (3 documents) 5772, 5775, 5777
602 (2 documents) 5775, 5777
Proposed Rules:
1 (2 documents) 5805, 5807
602.....5807

27 CFR
Proposed Rules:
9.....5828

30 CFR
946.....5782

33 CFR
117.....5785
Proposed Rules:
100.....5833
110.....5833
165.....5833

34 CFR
Proposed Rules:
694.....5844

38 CFR
21.....5785

39 CFR
111.....5789

40 CFR
Proposed Rules:
300.....5844

42 CFR
412.....5933
413.....5933
483.....5933
485.....5933

48 CFR
9903.....5990

49 CFR
Proposed Rules:
567.....5847
568.....5847

50 CFR
Proposed Rules:
17 (2 documents) 5848, 5946

VOL
65
SS
25
FE
7
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Rules and Regulations

Federal Register
Vol. 65, No. 25
Monday, February 7, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99–905–6 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule continues to relax the minimum size requirement for Florida red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended the change for Florida grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 12, 2000, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E–mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade requirement for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 12, 2000, and size 48 (3$^{9}/_{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect a change to the order's rules and regulations relaxing the minimum size requirement for domestic and import shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 grapefruit. This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 12, 2000. Absent this change, the minimum size would be size 48 (3$^{9}/_{16}$ inches diameter). The Committee met on August 31, 1999, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and

size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule continues in effect the adjustments in Table I to establish a minimum size of 56 through November 12, 2000. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule also continues the adjustments in § 944.106 to establish a minimum size of 56 through November 12, 2000. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. The official crop estimate of 27 million 1⅗ bushel boxes is below last year's production of 28.7 million 1⅗ bushel boxes of red seedless grapefruit. Acreage has declined in recent years from 81,348 acres in 1996, to 76,025 acres in 1998, to 71,731 acres in 1999. The acreage declines are due to groves being abandoned due to economic reasons, unhealthy groves being removed and replanted, and sick and diseased trees being removed from healthy, productive groves and not being replanted.

The Committee anticipates that fresh shipments of red seedless grapefruit will be approximately 16 million ⅘ bushel cartons, similar to last season's level of 16.7 million ⅘ bushel cartons. The quality of this year's crop is anticipated to be below normal. The fruit is expected to be misshapen more than normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The individual fruit size for the current crop is projected to be a little smaller than normal, but not as small as last season. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1999–2000 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, because it will permit Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will maximize shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red seedless grapefruit is for export.

During the first 11 weeks of the season (September 20 through December 5), there was a volume regulation in effect to limit the volume of small red seedless grapefruit that entered the fresh market. The Department issued rules, which were published on September 17, 1999 (64 FR 50419) and November 1, 1999 (64 FR 58759), implementing that regulation. The Committee believes that the percentage size regulation has been helpful in reducing the negative effects of size 56 on the domestic market, and that no additional restrictions are needed for the upcoming season.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on the available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 12, 2000. This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1999–2000 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule continues to relax the minimum size requirement for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) until November 12, 2000, to reflect the relaxation in effect under the order for red seedless grapefruit grown in Florida.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Based on the industry and Committee data for the 1998-99 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1998–99 season was around $7.60 per ⅘ bushel carton, and total fresh shipments for the 1998–99 season were approximately at 16.7 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Handlers in Florida shipped approximately 37,395,000 4/5 bushel cartons of grapefruit to the fresh market during the 1998–99 season. Of these cartons, about 22,123,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,720,000 cartons. During the period 1994 through 1998, imports have averaged 580,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule continues to relax the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3 9/16 inches diameter) to size 56 (3 5/16 inches diameter) through November 12, 2000. No change is being made in the minimum size 56 requirement for export shipments. Absent this rule, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 12, 2000, was passed by the Committee unanimously. In addition, there was a volume regulation in effect for the first 11 weeks of the 1999–2000 season (September 22 through December 5) that limited the volume of small red seedless grapefruit that entered the fresh market (64 FR 50419, September 17, 1999; and 64 FR 58759, November 1, 1999).

This rule will have a positive impact on affected entities by maximizing shipments of red seedless grapefruit into fresh market channels. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation.

This rule continues to relax the minimum size from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter) through November 12, 2000. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. Matching the sizes that can be shipped with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to handlers to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

During the period October 1, 1998, through June 30, 1999, imports of grapefruit totaled 15,500 metric tons (approximately 800,000 cartons). Recent yearly data indicate that imports during July, August, and September are typically negligible. Therefore, the 1998–99 season imports should not vary significantly from 15,500 metric tons. The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change must also be applicable to imported grapefruit. This rule relaxes the minimum size for imported grapefruit to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 12, 2000.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 31, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on November 1, 1999 (64 FR 58759). Copies of the rule were mailed by the Committee staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended January 3, 2000. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 58759, November 1, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 64 FR 58759 on November 1, 1999, is adopted as a final rule without change.

Dated: January 31, 2000.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2689 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00–955–1 FR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Vidalia Onion Administrative Committee (Committee) for fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag of Vidalia onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on January 1 and ends on December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia Onions grown in Georgia area, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning January 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag of Vidalia onions handled.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 30, 1999, and unanimously recommended fiscal period 2000 expenditures of $421,600 and an assessment rate of $0.10 per 50-pound bag of Vidalia onions handled. In comparison, 1998–1999 budgeted expenditures were $373,577. However, during the 1998–99 fiscal period the Committee recommended and the Department approved a change in the fiscal period under the order to January 1–December 31 from September 16–September 15 to make the fiscal period consistent with the Vidalia onion marketing season (64 FR 48243, September 3, 1999; 64 FR 72265, December 27, 1999). To provide for continuous operation of the order, the 1998–99 fiscal period was extended by 3 and ½ months (from September 16 to December 31, 1999). As a result, actual expenditures for 1998–99 are expected to total about $475,577. In addition, the quantity of assessable onions for 1998–99 and assessment income is much less than expected. The Committee projected the quantity of assessable onions for 1998–99 at 4,842,857 50-pound bags and assessment revenue at $339,000. The actual quantity of assessable onions is expected to be 3,617,017 50-pound bags, and assessment revenue is expected to total $253,191. Because of this shortfall, the Committee will have to use more of its operating reserve to cover approved expenses than it expected.

The assessment rate of $0.10 is $0.03 higher than the rate currently in effect. The increase is needed so the Committee can maintain its operating

reserve at an acceptable level, and to cover increases in the Committee's promotion expenses for fiscal period 2000.

The major expenditures recommended by the Committee for fiscal period 2000 include $135,127 for administrative costs, $31,800 for compliance activities, $175,000 for promotional activities, and $47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) are $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Onion shipments for fiscal period 2000 are estimated at 4,200,000 50-pound bags or equivalent which should provide $420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for fiscal period 2000. Funds in the reserve (totaling $110,000 on December 31, 1999), would be kept within the maximum permitted by the order (about three fiscal period's budgeted expenses; § 955.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's fiscal period 2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

This action also changes the 7 CFR Part number and title from "Part 911—Vidalia Onions Grown in Georgia" to "Part 955—Vidalia Onions Grown in Georgia", and the section heading number from "§ 911.209 Assessment rate." to "955.209 Assessment rate." that appeared at the end of the proposed rule to correctly state the title and section heading number.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 133 producers of Vidalia onions in the production area and approximately 91 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia onions during the 1998–99 season was $15.45 per 50-pound bag or equivalent and total shipments were 3,617,017 bags. Approximately 28 percent of all handlers handled 83 percent of Vidalia onion shipments. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data but would contribute further to handler receipts.

Using the average price, about 97.4 percent of the Vidalia onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia onion producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag or equivalent of assessable Vidalia onions. The Committee unanimously recommended fiscal period 2000 expenditures of $421,600 and an assessment rate of $0.10 per 50-pound bag or equivalent. The assessment rate of $0.10 per 50-pound bag is $0.03 higher than the 1998–99 rate. The quantity of assessable Vidalia onions for fiscal period 2000 is estimated at 4,200,000 50-pound bags. Thus, the $0.10 rate should provide $420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for fiscal period 2000 include $135,127 for administrative costs, $31,800 for compliance activities, $175,000 for promotional activities, and $47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) were $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

As mentioned earlier, in an effort to recover from its assessment income shortfall in 1998–99, maintain its operating reserve at an acceptable level, and expand its promotion activities, the Committee voted unanimously to increase its assessment rate to cover operating expenses during fiscal period 2000. The Committee believes that increased promotion activities are needed to help the Vidalia onion industry remain competitive in the marketplace.

The Committee reviewed and unanimously recommended fiscal period 2000 expenditures of $421,600. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Research Subcommittee, and the Advertising and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various promotion and research projects to the Vidalia onion industry. The assessment rate of $0.10 per 50-pound bag or equivalent of assessable Vidalia onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 4,200,000 50-pound bags for fiscal period 2000. This rate will generate $420,000, which is $1,600 below the anticipated expenses. The Committee found this acceptable because interest income and reserve funds are available to make up the deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for fiscal period 2000 could range between $10.00 and $15.00 per 50-pound bag of Vidalia

onions. Therefore, the estimated assessment revenue for fiscal period 2000 as a percentage of total grower revenue could range between 0.7 and 1.0 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 13, 1999 (64 FR 69419). Copies of the proposed rule were also mailed or sent via facsimile to all Vidalia onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending January 12, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000 fiscal period began on January 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR parts 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

§ 955.209 Assessment rate.

On and after January 1, 2000, an assessment rate of $0.10 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: January 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2688 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 2000–04]

RIN 3069–AA95

Information Collection Approval; Technical Amendment to Community Support Requirements Rule

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Act), the Office of Management and Budget (OMB) has approved a three-year extension of the information collection contained in the Federal Housing Finance Board's (Finance Board) community support requirements regulation and community support statement form. The OMB control number approving the information collection now expires on January 31, 2003. In accordance with the requirements of the Act, the Finance Board is amending the community support requirements rule to reflect this new expiration date.

EFFECTIVE DATE: The final rule will become effective on February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Background

In order to extend the expiration date of the OMB control number approving the information collection contained in its community support requirements regulation and community support statement form, the Finance Board published requests for public comments regarding the information collection in the **Federal Register** on June 30 and November 15, 1999. *See* 64 FR 35157 (June 30, 1999) and 64 FR 61877 (Nov. 15, 1999). The Finance Board also submitted an analysis of the information collection, entitled "Community Support Requirements," to the OMB for review and approval. The OMB has approved a three-year extension of the information collection under OMB control number 3069–0003. The OMB control number now expires on January 31, 2003.

Under the Act and the OMB's implementing regulation, 44 U.S.C. 3507 and 5 CFR 1320.5, an agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless the regulation or form collecting the information displays a currently valid OMB control number. Accordingly, the Finance Board is amending the community support requirements rule and community support statement form to reflect the new expiration date of the OMB control number.

II. Notice and Public Participation

Because the effectiveness of the information collection contained in the community support requirements rule and community support statement form must be maintained, the Finance Board for good cause finds that the notice and public procedure requirements of the Administrative Procedures Act are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

III. Effective Date

For the reasons stated in part II above, the Finance Board for good cause finds that the final rule should become effective on February 7, 2000. *See* 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act do not apply since this technical amendment to the community support requirements rule does not require publication of a notice of proposed rulemaking. *See* 5 U.S.C. 601(2) and 603(a).

V. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 936

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 936 as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

1. Revise the authority citation for part 936 to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), and 1430(g).

§§ 936.2, 936.3, 936.5 [Amended]

2. Revise the parenthetical statement that appears after §§ 936.2, 936.3, and 936.5 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0003 with an expiration date of January 31, 2003.)

§ 936.4 [Amended]

3. Add a parenthetical statement immediately after § 936.4 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0003 with an expiration date of January 31, 2003.)

By the Board of Directors of the Federal Housing Finance Board.

Dated: January 27, 2000.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–2544 Filed 2–4–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–254–AD; Amendment 39–11554; AD 2000–02–36]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This amendment continues to require the relocation using new electrical contacts, and, for certain airplanes, adds a requirement to replace certain contacts installed in shelf 95VU during relocation of the relay with new contacts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 27, 1998 (63 FR 50492, September 22, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–20–10, amendment 39–10777 (63 FR 50492, September 22, 1998), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on October 21, 1999 (64 FR 56715). The action proposed to continue to require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay using new electrical contacts. The action also proposed to add, for certain airplanes, a requirement to replace certain contacts installed in shelf 95VU during relocation of the relay with new contacts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request to Revise Cost Estimate

One commenter concurs with the content of the proposed rule, but states that the estimate of work hours required to accomplish the replacement of the contacts is inaccurate in the proposed AD. The commenter states that for airplanes previously modified in accordance with Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997, or Revision 02, dated March 9, 1998, the replacement of contacts would take approximately 12 hours. For airplanes already in the process of being modified, the replacement would take approximately 3 hours.

The FAA infers that the commenter's estimate includes work hours for access and close to replace certain contacts with new contacts for previously

modified airplanes. However, the cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 2 hours in the cost impact information, was provided to the FAA by the manufacturer. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 120 airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 98–20–10 takes approximately 61 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $209 or $961 per airplane, depending on the modification kit purchased. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be as low as $3,869 per airplane, or as high as $4,621 per airplane.

Should an operator be required to accomplish the replacement of certain contacts that is required in this AD action, it will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10777 (63 FR 50492, September 22, 1998), and by adding a new airworthiness directive (AD), amendment 39–11554, to read as follows:

2000–02–36 Airbus Industrie: Amendment 39–11554. Docket 99–NM–254–AD. Supersedes AD 98–20–10, Amendment 39–10777.

Applicability: Model A319, A320, and A321 series airplanes; as listed in Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 18 months after October 27, 1998 (the effective date of AD 98–20–10, amendment 39–10777), relocate the engine/master 1 relay (11QG) from relay box 103VU to shelf 95VU in the avionics bay, in accordance with Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; Revision 02, dated March 9, 1998; or Revision 03, dated September 16, 1998. After the effective date of this AD, only Revision 03 shall be used.

(b) For airplanes on which Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; or Revision 02, dated March 9, 1998; has been accomplished prior to the effective date of this AD: Within 500 flight hours after the effective date of this AD, replace the contacts on lines 20 through 23 in shelf 95VU with new contacts, in accordance with paragraph B.(2)(m) of the Accomplishment Instructions of Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–24–1092,

dated March 26, 1997; Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997; Airbus Service Bulletin A320–24–1092, Revision 02, dated March 9, 1998; or Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997; and Airbus Service Bulletin A320–24–1092, Revision 02, dated March 9, 1998, was approved previously by the Director of the Federal Registeras of October 27, 1998 (63 FR 50492, September 22, 1998).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–263–134(B), dated June 30, 1999.

(f) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2403 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–63–AD; Amendment 39–11550; AD 2000–02–32]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA. 315B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model SA. 315B helicopters, that currently requires initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube). This amendment requires the same corrective actions as the existing AD and would require an additional dye-penetrant inspection of the half-shell attachment clamps (clamps). This amendment is prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The actions specified by this AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–12–21, Amendment 39–10575 (63 FR 31610), applicable to Eurocopter France Model SA. 315B helicopters, was published in the **Federal Register** on November 8, 1999 (64 FR 60743). That action proposed to require initial and repetitive visual inspections and modification, if necessary, of the spar tube, as well as installing safety wire around each attachment clamp.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for two nonsubstantive changes that have been made to paragraph (f) and Note 3 of the AD. In paragraph (f), the NPRM incorrectly states that alternative methods of compliance (AMOC) or adjustments of the compliance time may be approved by the "Manager, Rotorcraft Standards Staff, Rotorcraft Directorate." This is incorrect and has been changed to state that the Manager, Regulations Group, Rotorcraft Directorate, is responsible for approving any AMOC or adjustment of the compliance time. Note 3 of the NPRM states that information concerning the existence of approved AMOC may be obtained from the "Rotorcraft Standards Staff;" this is also incorrect and has been changed to state that information may be obtained from the "Regulations Group." The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 28 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the inspections; 3 work hours per helicopter to accomplish the modification; and 0.5 work hour per helicopter to inspect and fit the safety wire. The average labor rate is $60 per work hour. Required parts will cost approximately $1,100 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,520.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10575 (63 FR 31610), and by adding a new airworthiness directive (AD), Amendment 39–11550, to read as follows:

AD 2000–02–32 Eurocopter France: Amendment 39–11550. Docket No. 98–SW–63–AD. Supersedes AD 98–12–21, Amendment 39–10575, Docket No. 98–SW–02–AD.

Applicability: Model SA. 315B helicopters with horizontal stabilizers, part number (P/N) 315A35–10–000–1, 315A35–10–000–2, or higher dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect the aircraft records and the horizontal stabilizer installation to determine whether Modification 072214 (installation of the spar tube without play) or Modification 072215 (adding two half-shells on the spar) has been accomplished.

(2) If Modification 072214 has not been installed, comply with paragraphs 2.A., 2.B.1), 2.B.2)a), and 2.B.2)b) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998 (SB). If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts.

(3) If Modification 072215 has not been installed, first comply with paragraphs 2.A., 2.B.1), and 2.B.3), and then comply with paragraph 2.B.2)c) of the Accomplishment Instructions of the SB.

Note 2: Modification kit P/N 315A–07–0221571 contains the necessary materials to accomplish this modification.

(b) Before the first flight of each day:

(1) Visually inspect the installation of the half-shells, the horizontal stabilizer supports, and the horizontal stabilizer for corrosion or cracks. Repair any corroded parts in accordance with the applicable maintenance manual. Replace any cracked components with airworthy parts before further flight.

(2) Confirm that there is no play in the horizontal stabilizer supports by lightly shaking the horizontal stabilizer. If play is detected, comply with paragraphs 2.A. and 2.B.2)a) of the Accomplishment Instructions of the SB. If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts before further flight.

(c) At intervals not to exceed 400 hours time-in-service (TIS) or four calendar months, whichever occurs first, inspect and lubricate the spar tube attachment bolts.

(d) Within 90 calendar days and thereafter at intervals not to exceed 24 calendar months, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the Accomplishment Instructions of the SB.

(1) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next 500 hours TIS or 18 calendar months, whichever occurs first.

(2) If corrosion is found inside the tube in the half-shell area, apply a protective treatment as described in paragraph 2.B.1)b) of the Accomplishment Instructions of the SB.

(e) Within 30 calendar days, perform a one-time dye-penetrant inspection for cracking on the 4 attachment clamps (See No. 11 on Figure 3 of the SB) of the half-shells as shown in Figure 3 of the SB. If a crack is found in any clamp, replace the cracked clamp with an airworthy clamp. If no crack is found, safety wire the clamp as shown in Detail C in the SB using two wraps of 0.6-mm or 0.8 mm (.023 or .032 inch) diameter lockwire (See No. 21 on Figure 3 of the SB) around the clamp so that the clamp is held together in the event of clamp failure. After installing the safety wire, inspect the clamps before the first flight of each day in accordance with paragraph (b)(1) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The inspections and modifications shall be done in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 13, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–277–037(A)R2, dated July 29, 1998.

Issued in Fort Worth, Texas, on January 26, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–2401 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–252–AD; Amendment 39–11551; AD 2000–02–33]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Boeing Model 747–400 series airplanes that requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This amendment is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), which is applicable to all Boeing Model 747–400 series airplanes, was published in the **Federal Register** on June 22, 1999 (64 FR 33229). The action proposed to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found.

Explanation of Changes to the Proposed Rule

The original notice of proposed rulemaking (NPRM) proposed to supersede AD 94–15–05, which is applicable to Boeing Model 747–400 series airplanes equipped with either Pratt & Whitney PW4000 series engines; Rolls-Royce RB211–524G/H series engines; or General Electric (GE) CF6–80C2 series engines. Since the issuance of that NPRM, the FAA has determined that, in order to simplify compliance, each engine type should be addressed in separate rulemaking actions that do not supersede AD 94–15–05. Therefore, the FAA currently is developing separate rulemaking to address the Pratt & Whitney PW4000 series engines, and Rolls-Royce RB211–524G/H series engines referenced in the original NPRM, and has revised the applicability in this final rule to address the requirements for the GE CF6–80C2 series engines only. In addition, paragraphs (a) through (d) of the original NPRM are not restated in this final rule. The cost impact information, below, also has been revised accordingly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

One commenter supports the proposed rule.

Request for Credit for Previously Accomplished Work

One commenter requests credit for accomplishing the thrust reverser center drive unit (CDU) cone brake test during production. The commenter states that the tests were accomplished previously in accordance with methods equivalent to those described in Boeing Service Bulletins 747–78A2166 and 747–78A2113.

The FAA concurs with the commenter's request that accomplishment of the test during production is acceptable for compliance with the applicable test requirement in the final rule. "Note 2" has been added to the final rule to provide credit for accomplishment of the test during production.

One commenter requests credit for accomplishing the modification to install the third locking system of the thrust reversers during production. The commenter states that all Model 747–400 series airplanes, line numbers 1061 and subsequent, equipped with GE CF6–80C2 series engines, had a third locking system installed during production in accordance with Production Revision Record (PRR) 80452–102, and were not modified in accordance with Boeing Service Bulletin 747–78–2151 (which is a retrofit action applicable to line numbers 700 through 1060 inclusive).

The FAA concurs with the commenter's request. The FAA has determined that the production modification is technically equivalent to the modification described in Boeing Service Bulletin 747–78–2151; therefore, paragraphs (a)(1) and (a)(2) of this final rule [referenced as paragraphs (e)(1) and (e)(2) in the proposed rule], have been revised accordingly. In addition, "Note 3" has been added to the final rule for further clarification.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 146 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD.

The new actions required by this AD will not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service for thrust reversers that have not been modified.) That test requires approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test required by this AD on U.S. operators is estimated to be $11,520, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–33 Boeing: Amendment 39–11551. Docket 98–NM–252–AD.

Applicability: Model 747–400 series airplanes equipped with General Electric CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Repetitive Functional Tests

(a) Within 1,000 hours time-in-service after the most recent test of the center drive unit (CDU) cone brake performed in accordance with paragraph (b)(1) of AD 94–15–05, amendment 39–8976; or within 650 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or the applicable section of paragraph III.A. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997.

Note 2: Accomplishment of the CDU cone brake test during production in accordance with Production Revision Record (PRR) 80452–102 prior to the effective date of this AD is considered acceptable for compliance with the test required by paragraph (a) of this AD.

(1) For Model 747–400 series airplanes equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 747–400 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 1,000 hours time-in-service.

Note 3: Model 747–400 series airplanes, line numbers 1061 and subsequent, equipped with GE CF6–80C2 engines, had a third locking system installed during production in accordance with Production Revision Record (PRR) 80452–102, and were not modified in accordance with Boeing Service Bulletin 747–78–2151 (which is a retrofit action for airplanes having line numbers 700 through 1060 inclusive).

Terminating Action

(b) Accomplishment of the functional test of the CDU cone brake, as specified in paragraph (a) of this AD, constitutes terminating action for the repetitive tests of the CDU cone brake required by paragraph (b)(1) of AD 94–15–05.

Corrective Action

(c) If any functional test required by paragraph (a) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any functional test required by paragraph (a) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, repair in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997, Or,

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance for the functional test of the Thrust Reverser Actuation System (TRAS) lock for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines that have been modified in accordance with Boeing Service Bulletin 747–78–2151, or production equivalent, approved previously in accordance with AD 94–15–05, amendment 39–8976, are considered to be approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995, and Boeing Service Bulletin 747–78A2113, Revision 3, dated September 11, 1997. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2413 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–34–AD; Amendment 39–11552; AD 2000–02–34]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that requires revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions. This amendment is prompted by an accident report indicating that possible accretion of ice on the wings of the airplane, due to the wing anti-ice system not being activated by the flightcrew, could have contributed to the source of the accident. The actions specified by this AD are intended to prevent undetected accretion of ice on the wings, which could result in reduced controllability of the airplane during normal icing conditions.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket No. 99–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes was published in the **Federal Register** on July 14, 1999 (64 FR 37913). That action proposed to require revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Review Appendix C Icing Envelope

One commenter states its understanding that the use of 22,000 feet as a limitation to conduct certain procedures is related to the maximum altitude limit of the icing envelope specified in Appendix C of 14 CFR part 25. The commenter requests that the icing envelope of Appendix C be reviewed for its applicability to current flight operations, and, if necessary, expanded to ensure that all aircraft types are properly certificated to operate in icing conditions typically encountered during line operations. The commenter questions the overall suitability of Appendix C for certification of aircraft because it is based upon operational data collected over 50 years ago.

The FAA partially concurs. The FAA is considering redefining the icing cloud envelopes for the global atmospheric icing environment specified in Appendix C. When sufficient worldwide meteorological information and means are available to demonstrate that airplanes are able to safely operate in the redefined icing environment, the FAA may consider action in this regard. However, this AD is not the appropriate context in which to address that issue. Therefore, no change to this final rule is necessary.

Request To Require Operational Check Prior to Every Flight

The same commenter recommends that a provision be included in the proposed AD to conduct an operational check of the ice detection system prior to every flight versus prior to the first flight of the day. The commenter states that, if the procedures of the proposed AD are implemented, a greater reliance on the ice detection system will be necessary. The commenter suggests that this functional check prior to every flight would provide an additional level of safety below 22,000 feet and would provide the flightcrew a positive means to determine whether the system is operating properly and permit them to be more vigilant in the event of a known failure.

The FAA does not concur with the request to add a provision in the AD to conduct an operational check of the ice detection system prior to every flight versus prior to the first flight of the day. The check verifies latent failures that are not detected by the powerup check or on the continuous built-in test equipment (BITE) check. Based on the once-per-day check, the latest reliability and safety analysis establishes that failure of the ice detectors to annunciate icing is an extremely improbable event. Additionally, the AD does not depend on the ice detectors as primary means to activate the anti-ice systems below 22,000 feet mean sea level (MSL); instead it requires activation of the systems whenever icing conditions exist. Consequently, requiring a check of the ice detectors prior to every flight is considered to be redundant. No change to the final rule is necessary in this regard.

Request Concerning Dispatch Without Ice Detection System

The same commenter recommends that ice detection systems not be permitted to be deferred or placed on the Minimum Equipment List (MEL) due to increased reliance on ice detection systems.

The FAA does not concur. The current Canadair CL–65 Regional Jet Master Minimum Equipment List (MMEL, Revision 4, dated November 27, 1996) is considered appropriate and is consistent with the AD. The MMEL allows one of the two ice detectors to be inoperative provided the wing and engine cowl anti-ice systems are ON when the static air temperature (SAT) on the ground is 10 degrees Celsius or less and visible moisture in any form is present; and the wing and engine cowl anti-ice systems are ON when total air temperature (TAT) in flight is 10 degrees Celsius or less and visible moisture in any form is present. The MMEL also allows both ice detectors to be inoperative provided the aircraft is not operated in known or forecast icing conditions; and repairs are made within one flight day. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted

above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 133 Model Bombardier Model CL–600–2B19 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–34 Bombardier, Inc. (Formerly Canadair): Amendment 39–11552. Docket 99–NM–34–AD.

Applicability: All Model CL–600–2B19 (Regional Jet Series 100) series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent undetected accretion of ice on the wings, which could result in reduced controllability of the airplane during normal icing conditions, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD: Revise the FAA-approved Canadair Regional Jet Airplane Flight Manual (AFM) by inserting a copy of the pages specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD into the AFM.

(1) Revise the Limitations Section to include pages 2 and 3 of Canadair Regional Jet Temporary Revision (TR) RJ/61–2, dated October 30, 1998.

(2) Revise the Emergency Procedures Section to include pages 4 through 6 inclusive of Canadair Regional Jet TR RJ/61–2, dated October 30, 1998.

(3) Revise the Normal Procedures Section to include pages 7 through 27 inclusive of Canadair Regional Jet TR RJ/61–2, dated October 30, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision shall be done in accordance with Canadair Airplane Flight Manual Temporary Revision RJ/61–2, dated October 30, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2412 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–41–AD; Amendment 39–11555; AD 2000–02–37]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires a one-time inspection to determine whether latch pins on the lower lobe and main deck side cargo doors are installed backward, and corrective actions, if necessary. This amendment also requires eventual modification of the latch pin fittings on certain cargo doors. This amendment is prompted by reports that latch pins have been found installed backward on the cargo doors of several airplanes. The actions specified by this AD are intended to prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the

Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Julie Alger, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2779; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on May 5, 1999 (64 FR 24092). That action proposed to require a one-time inspection to determine whether latch pins on the lower lobe and main deck side cargo doors are installed backward, and corrective actions, if necessary. For certain airplanes, that action also proposed to require eventual modification of the latch pin fittings on certain cargo doors.

Explanation of Change Made to the Final Rule

The FAA has revised the applicability statement of the final rule to reference "line numbers" instead of "line positions." The airplane manufacturer has informed the FAA that "line numbers" is the proper reference, although some Boeing service bulletins still refer to "line positions."

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule, and two commenters state no objection to the proposed rule. An additional commenter supports the proposed modification.

Requests To Revise Applicability

One commenter requests that the applicability of the AD be revised to remove the airplane having line number 1079. The commenter points out that that airplane was modified in production and was removed from the effectivity of Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995, by Notice of Status Change 747–52A2258 NSC 03, dated December 14, 1995. The FAA concurs and has revised the applicability of the final rule accordingly.

In addition, one commenter requests that the one-time inspection of the latch pins of the main deck side cargo door be made applicable only to airplanes having line numbers 1 through 307 inclusive. The commenter states that the latch pins on airplanes having line numbers 308 and subsequent were modified in production with a bracket that prevents the latch pins from being installed backward. The FAA concurs with the commenter's request and has revised paragraph (a) of the final rule accordingly. [Also, as a result of the revision of paragraph (a) of this final rule, a new paragraph (b) has been added to incorporate the corrective actions specified in paragraphs (a)(1) and (a)(2) of the proposal, and all other paragraphs have been renumbered accordingly.]

Request for Credit for Previously Accomplished Actions

One commenter requests that a statement be added to the proposed rule to clarify that no further action is required for airplanes inspected in accordance with the proposed rule prior to the effective date of this AD. The FAA agrees that no further inspection is required for these airplanes. Operators are always given credit for previously accomplished actions by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously." Therefore, no change to the final rule is necessary in this regard.

Request for Extension of the Compliance Time

One commenter requests that the compliance time for the modification required by paragraph (b) of the proposed rule [paragraph (c) of the final rule] be extended from two years after the effective date of this AD to six years or at the next removal of the latch pins. The commenter states that the immediate safety concern is addressed once the one-time inspection specified in paragraph (a) of the proposed rule is accomplished, and that the modification does not need to be accomplished until the next time the latch pins are removed.

The FAA does not concur with the commenter's request to extend the compliance time for the modification. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, as well as the possibility that a latch pin may be misinstalled during maintenance until the modification is accomplished, the FAA has determined that two years represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Revise Structural Inspection Requirements

One commenter requests that the proposed rule be revised to allow a Boeing Company Designated Engineering Representative to approve procedures for the structural inspection specified in paragraph (a)(2) of the proposed rule [paragraph (b)(2) of the final rule]. The commenter states that, in the event that a latch pin is installed backward, an airplane would be grounded until inspection methods are approved and accomplished, because no structural inspection methods are currently approved by the Manager of the FAA's Seattle Aircraft Certification Office [as specified in paragraph (a)(2) of the proposed rule].

The FAA does not concur with the commenter's request. To date, the airplane manufacturer has not provided the FAA with structural inspection criteria. The extent of the area that must be inspected for damage is not defined because the extent of the inspection depends on the number and location of latch pins found to be installed backward. Procedures for the structural inspections are also not defined, and there are no published standards that can be used as a basis for a compliance finding. The FAA is not authorized to delegate a function for which there is no established standards [i.e., in accordance with Part 25 ("Airworthiness Standards: Transport Category Airplanes") of the Federal Aviation Regulations (14 CFR part 25)]. No change to the final rule is necessary in this regard.

Request To Revise Service Information

One commenter requests that Boeing Alert Service Bulletin 747–52A2258 be revised to include the structural inspection methods specified in paragraph (a)(2) of the proposed rule [paragraph (b)(2) of the final rule]. The commenter states that this would reduce the number of requests for approvals of alternative methods of compliance that the FAA would have to review.

The FAA does not concur. As stated previously, the airplane manufacturer has not provided structural inspection procedures for inclusion in the final rule. The FAA has determined that further delay in issuance of this AD

while the airplane manufacturer revises Boeing Alert Service Bulletin 747–52A2258 would not provide an acceptable level of safety. However, the airplane manufacturer may request approval of an alternative method of compliance for structural inspection procedures on behalf of all affected operators, thereby limiting the number of requests for approval of alternative methods of compliance from individual operators. No change to the final rule is necessary in this regard.

Request To Add One-Time Inspection of Interchanged Latch Pins

One commenter, the airplane manufacturer, recommends that the proposed rule be revised to require accomplishment of Boeing Service Bulletin 747–52–2142, dated May 6, 1977. That service bulletin recommends a one-time inspection to detect interchanged latch pins between the lower lobe cargo doors and the main deck side cargo door, and installation of a pin stop bracket. The commenter provides no technical justification for its request.

The FAA does not concur with the commenter's request. To require this modification would necessitate issuance of a supplemental notice of proposed rulemaking and reopening of the comment period. The FAA finds that to further delay the issuance of this rule in this way would be inappropriate. Furthermore, though two interchanged latch pins were found during production, the FAA has not received any reports that operators have found such interchanged latch pins. Therefore, the FAA finds that mandatory action is not necessary. No change to the final rule is necessary in this regard.

Explanation of Change Made to Proposal

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposal specified a visual inspection, the FAA has revised this final rule to clarify that its intent is to require a general visual inspection. Additionally, a note has been added to the final rule to define that inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 990 airplanes of the affected design in the worldwide fleet. The FAA estimates that 235 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $28,200, or $120 per airplane.

It will take approximately 3 work hours per airplane to accomplish the required modification, at the average labor rate of $60 per work hour. Required parts will cost approximately $2,045 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $522,875, or $2,225 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–37 Boeing: Amendment 39–11555. Docket 99–NM–41–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1078 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight, accomplish the following:

One-Time Inspection

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995.

(1) For airplanes having line numbers 1 through 307 inclusive: Perform a one-time general visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors and the main deck side cargo door are installed backward.

(2) For airplanes having line numbers 308 through 1078 inclusive: Perform a one-time general visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors are installed backward.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect

obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions

(b) If any latch pin is found installed incorrectly during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Reinstall the affected latch pin correctly, in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995.

(2) Perform structural inspections to detect damage of the affected cargo door and doorway cutout, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Modification

(c) Within 2 years after the effective date of this AD, modify the latch pin fittings of the forward and aft lower lobe cargo doors, in accordance with Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996.

Note 3: Modification of the latch pin fittings accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–52–2260, dated December 14, 1995, is considered acceptable for compliance with paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (b)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995; and Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2411 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–160–AD; Amendment 39–11553; AD 2000–02–35]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800 and 1000 Airplanes and Model DH.125, HS.125, BH.125, and BAe.125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800 and 1000 airplanes and Model DH.125, HS.125, BH.125, and BAe.125 series airplanes, that requires replacement of cadmium plated fittings and cone caps in the oxygen system plumbing with improved fittings and cone caps, a detailed visual inspection of the oxygen system plumbing in the area of the replaced parts, and corrective actions, if necessary. This amendment is prompted by reports indicating that a field survey of the affected parts revealed that a reaction process was occurring, which resulted in cadmium flaking. The actions specified by this AD are intended to prevent flaking of cadmium from certain oxygen system plumbing fittings and cone caps from blocking the valves and impairing the function of the oxygen system, which could deprive the crew and passengers of necessary oxygen during an emergency that requires oxygen.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085.

This information may be examined at:

The Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or

The Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or

The Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800 and 1000 airplanes and Model DH.125, HS.125, BH.125, and BAe.12 series airplanes was published in the **Federal Register** on November 16, 1999 (64 FR 62129). That action proposed to require replacement of cadmium plated fittings and cone caps in the oxygen system plumbing with improved fittings and cone caps, a detailed visual inspection of the oxygen system plumbing in the area of the replaced parts, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 724 airplanes of the affected design in the

worldwide fleet. The FAA estimates that 481 airplanes of U.S. registry will be affected by this AD.

For Model DH.125, HS.125, BH.125 series 1A/1B, 3A/3B, 400A, 400B, 401B, 403A, 403B, 600A, 600B, 700A, 700B airplanes (236 airplanes of U.S. registry), it will take approximately 7 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately between $28 and $79 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $105,728, and $117,764, or between $448 and $499 per airplane.

For Model BAe.125 series 800A (C–29A) airplanes (6 airplanes of U.S. registry), it will take approximately 3 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $61 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $1,446, or $241 per airplane.

For Model BAe.125 series 800A, and 800B airplanes, and Model Hawker 800 airplanes (202 airplanes of U.S. registry), it will take approximately 10 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately between $16 and $22 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $124,432 and $125,644, or between $616 and $622 per airplane.

For Model BAe.125 series 1000A and 1000B airplanes, and Model Hawker 1000 airplanes (37 airplanes of U.S. registry), it will take approximately 6 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately between $66 and $122 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $15,762 and $17,834, or between $426 and $482 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for some labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–35 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11553. Docket 99–NM–160–AD.

Applicability: Models and series of airplanes as listed in the applicable service bulletin(s) specified in Table 1 of this AD, certificated in any category.

TABLE 1

Model of Airplane	Raytheon Service Bulletin	Date of Service Bulletin
DH.125, HS.125, BH.125 series 1A, 1B, 3A, 3B, 400A, 400B, 401B, 403A, 403B, 600A, 600B, 700A, and 700B airplanes.	SB 35–3169	September 1998.
BAe.125 series 800A (C–29A) airplanes	SB 35–3171	September 1998.
BAe.125 series 800A and 800B airplanes, and Hawker 800 airplanes	SB 35–3034 and SB 35–3170.	September 1998.
BAe.125 series 1000A and 1000B airplanes, and Hawker 1000 airplanes	SB 35–3167 and SB 35–3168.	September 1998.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent flaking of cadmium from certain oxygen system plumbing fittings and cone caps from blocking the valves and impairing the function of the oxygen system, which could deprive the crew and passengers of necessary oxygen during an emergency that requires oxygen, accomplish the following:

(a) For Model DH.125, HS.125, BH.125 series 1A, 1B, 3A, 3B, 400A, 400B, 401B, 403A, 403B, 600A, 600B, 700A and 700B airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated cone caps in the oxygen system plumbing with improved cone caps, and perform a detailed visual inspection of the removed cone caps, tee-piece and sleeve for evidence

of flaking or corrosion; in accordance with Raytheon Service Bulletin SB 35–3169, dated September 1998. If any flaking or corrosion is detected, prior to further flight, clean the tee-piece and sleeve, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) For Model BAe.125 series 800A (C–29A) airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated cone caps in the oxygen system plumbing with improved cone caps, and perform a detailed visual inspection of the removed cone caps, tee-piece and sleeve for evidence of flaking or corrosion; in accordance with Raytheon Service Bulletin SB 35–3171, dated September 1998. If any flaking or corrosion is detected, prior to further flight, clean the tee-piece and sleeve, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

(c) For Model BAe.125 series 800A and 800B airplanes and Model Hawker 800 airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated cone caps in the oxygen system plumbing with improved cone caps, and perform a detailed visual inspection of the removed cone caps, tee-piece and sleeve for evidence of flaking or corrosion; in accordance with Raytheon Service Bulletins SB 35–3034 or SB 35–3170, both dated September 1998, as applicable. If any flaking or corrosion is detected, prior to further flight, clean the tee-piece and sleeve, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

(d) For Model BAe.125 series 1000A and 1000B airplanes and Model Hawker 1000 series airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated fittings in the oxygen system plumbing with improved fittings, and perform a detailed visual inspection of the removed fittings and the pipe connections for evidence of flaking or corrosion; in accordance with Raytheon Service Bulletin SB 35–3167 or SB 35–3168, both dated September 1998, as applicable. If any flaking or corrosion is detected, prior to further flight, clean the pipe connections, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

(e) If any discrepancy is found during a flow check required by paragraph (a), (b), (c), or (d) of this AD and the applicable service bulletin specifies to contact the manufacturer for a repair disposition, prior to further flight, repair the oxygen system in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (e) of this AD, the actions shall be done in accordance with Raytheon Service Bulletin SB 35–3169, dated September 1998; Raytheon Service Bulletin SB 35–3171, dated September 1998; Raytheon Service Bulletin SB 35–3034, dated September 1998; Raytheon Service Bulletin SB 35–3170, dated September 1998; Raytheon Service Bulletin SB 35–3167, dated September 1998; or Raytheon Service Bulletin SB 35–3168, dated September 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2410 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–23–AD; Amendment 39–11556; AD 2000–02–38]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A300–600, and A310 series airplanes, equipped with a welded auxiliary power unit (APU) fuel feedline adapter. That AD currently requires repetitive dye penetrant inspections to detect cracks, rupture, or fuel leaks of the fuel feedline adapter; and replacement of the adapter, if necessary. That AD also provides for optional terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fuel leakage in the APU compartment, which could result in a fire in the APU compartment.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 7, 1991 (56 FR 47672, September 20, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–20–07, amendment 39–8041 (56 FR 47672, September 20, 1991), which is applicable to certain Airbus Model A300, A300–600, and A310 series airplanes, was published in the **Federal Register** on October 6, 1999 (64 FR 54249). The action proposed to continue to require repetitive dye penetrant inspections to detect cracks, rupture, or fuel leaks of the fuel feedline adapter, and replacement of the adapter, if necessary. The action also proposed to continue to require verification of the correct torque values of the starter motor cable terminals and the generator cable terminals. The action also proposed to require accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests clarification concerning the relationship between the adapter part number identified in the referenced French airworthiness directive and Airbus service bulletin and the adapter part number referred to in the Airbus Illustrated Parts Catalog (IPC). The commenter has already modified its auxiliary power units (APU) to incorporate the adapter [part number (P/N) A4937021700200] specified in the service bulletin. The Airbus IPC suggests an alternative P/N for the adapter, i.e., P/N A4937021700400; yet the IPC makes no reference to any supersedure, nor does it refer to a service bulletin authorizing that P/N. The commenter asks whether the installation of an adapter having either P/N is acceptable for compliance with the French airworthiness directive and this proposed AD.

The FAA concurs that clarification is necessary. Airbus has advised the FAA that the only difference between the two referenced P/N's is that the tolerance for the B-nut thread of the adapter having P/N A4937021700400 has been modified following service experience. P/N A4937021700400 is installed on airplanes by Airbus Modification 10323 and is two-way interchangeable with P/N A4937021700200. Airbus advises that an adapter having either P/N will fully comply with the intent of the French airworthiness directive. The FAA has determined that installation of an adapter having either P/N will adequately address the unsafe condition identified in this AD. A NOTE has been added to the final rule to state that installation of an adapter having P/N A4937021700400 is also acceptable for compliance with the requirements of paragraph (b) of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 165 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 91–20–07 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane.

The new actions that are required by this new AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $274 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $394 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8041 (56 FR 47672, September 20, 1991), and by adding a new airworthiness directive (AD), amendment 39–11556, to read as follows:

2000–02–38 Airbus Industrie: Amendment 39–11556. Docket 99–NM–23–AD. Supersedes AD 91–20–07, Amendment 39–8041.

Applicability: Model A300, A300–600, and A310 series airplanes; certificated in any category; equipped with an auxiliary power unit (APU) fuel feedline adapter, P/N A4937021700000 (welded configuration).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an APU compartment fire, accomplish the following:

Restatement of Requirements of AD 91–20–07, Amendment 39–8041

Repetitive Inspections

(a) Within 100 hours time-in-service after October 7, 1991 (the effective date of AD 91–20–07, amendment 39–8041), and thereafter at intervals not to exceed 400 hours time-in-service: Perform a dye penetrant inspection to detect cracks, rupture or fuel leaks at the weld of the fuel feedline adapter, in accordance with Airbus Industrie All Operators Telex (AOT) 49–01, Issue 3, dated April 25, 1991. If cracks, rupture, or fuel leaks are found, replace the adapter with an improved, non-welded one-piece-body adapter prior to the next APU operation, or placard the APU inoperative until the adapter is replaced with the improved adapter, in accordance with Airbus Industrie Service Bulletin A300–49–0049, A300–49–6009, or A310–49–2012; all dated July 12, 1991; as applicable.

(b) Within 100 hours time-in-service after October 7, 1991, verify the correct torque values of the starter motor cable terminals and the generator cable terminals in accordance with Airbus Industrie All Operators Telex (AOT) 49–01, Issue 3, dated April 25, 1991. Correct any torque value discrepancies prior to further flight, in accordance with the AOT.

New Requirements of This AD

Installation

(c) Within 15 months after the effective date of this AD, install an improved APU fuel feedline adapter in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–49–0049, Revision 1 (for Model A300 series airplanes); A300–49–6009, Revision 1 (for Model A300–600 series airplanes); or A310–49–2012, Revision 1 (for Model A310 series airplanes); all dated November 28, 1991; as applicable. Such installation constitutes terminating action for the requirements of this AD.

Note 2: Although the service bulletins referenced in paragraph (b) of this AD specify installation of an APU fuel feedline adapter having part number P/N A4937021700200, installation of an adapter having P/N A4937021700400 is also acceptable for compliance with the requirements of that paragraph.

Spares

(d) As of the effective date of this AD, no person shall install an APU fuel feedline adapter, P/N A4937021700000 (welded configuration), on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with the following Airbus All Operators Telex (AOT) and Airbus service bulletins:

Service information referenced and date	Page No.	Revision level shown on page	Date shown on page
AOT 49–01, Issue 3, April 25, 1991	1–3	3	April 25, 1991.
A300–49–0049, July 12, 1991	1–11	Original	July 12, 1991.
A300–49–0049, Revision 1, November 28, 1991	1–4, 7, 8, 11	1	November 28, 1991.
	5, 6, 9, 10	Original	July 12, 1991.
A300–49–6009, July 12, 1991	1–9	Original	July 12, 1991.
A300–49–6009, Revision 1, November 28, 1991	1–6, 9	1	November 28, 1991.
	7, 8	Original	July 12, 1991.
A310–49–2012, July 12, 1991	1–11	Original	July 12, 1991.
A310–49–2012, Revision 1, November 28, 1991	1–4, 7, 8, 11	1	November 28, 1991.
	5, 6, 9, 10	Original	July 12, 1991.

(1) The incorporation by reference of Airbus Service Bulletin A300–49–0049, Revision 1, dated November 28, 1991; Airbus Service Bulletin A300–49–6009, Revision 1, dated November 28, 1991; and Airbus Service Bulletin A310–49–2012, Revision 1, dated November 28, 1991; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus All Operators Telex (AOT) 49–01, Issue 3, dated April 25, 1991; Airbus Service Bulletin A300–49–0049, dated July 12, 1991; Airbus Service Bulletin A300–49–6009, dated July 12, 1991; and Airbus Service Bulletin A310–49–2012; dated July 12, 1991; was approved previously by the Director of the Federal Register as of October 7, 1991 (56 FR 47672, September 20, 1991).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–480–269(B), dated December 2, 1998.

(h) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2469 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–88–AD; Amendment 39–11558; AD 2000–03–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100 and –200 series airplanes, that requires repetitive inspections of the

upper and lower chords of the wing front spar for cracks, and corrective action, if necessary. For airplanes on which no cracking is detected, this AD also provides an optional terminating action in lieu of repetitive inspections. This amendment is prompted by reports of cracks in the upper chord of the wing front spar. The actions specified by this AD are intended to detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100 and –200 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45481). That action proposed to require repetitive inspections of the upper and lower chords of the wing front spar for cracks, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Allow Alternative Inspection Method

One commenter requests that the FAA revise paragraph (a) of the proposal to allow accomplishment of an open hole high frequency eddy current (HFEC) inspection in lieu of the ultrasonic inspection that is specified in paragraph (a) of the proposal. The commenter asserts that accomplishment of an HFEC inspection "equals or exceeds the capability of surface ultrasonic inspections" for detecting cracking of the upper and lower chords of the wing front spar. The commenter states that the HFEC inspection should be accomplished in accordance with Figure 6 of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999 (which was referenced in the proposal as the appropriate source of service information for accomplishment of the proposed actions).

The FAA concurs with the commenter's request to approve the alternative inspection method. However, the FAA finds that, rather than revising paragraph (a) of this AD, it is more appropriate to add a NOTE stating that accomplishment of an HFEC inspection in accordance with Figure 6 of the service bulletin is acceptable for compliance with the requirements of paragraph (a) of this AD. NOTE 2 has been added to this final rule accordingly.

Request to Reference Alternative Terminating Action

One commenter requests that the FAA revise paragraph (b) of the proposed rule to reference accomplishment of certain strut and wing modifications or certain other terminating actions as terminating action for the requirements of this AD. The commenter states that accomplishment of certain modifications meets the intent of the terminating action described in the proposed rule, provided that an HFEC inspection of affected fastener holes has been accomplished (in accordance with Boeing 747 Non-Destructive Test Manual D6–7170, Part 6, Subject 51–00–00, Figure 16) prior to oversizing of the holes, and the holes were found to be free of cracks, corrosion, or damage.

The FAA infers that the commenter is referring to the terminating action specified in paragraph (c) of this AD. The FAA concurs with the commenter's request. The FAA finds that the strut and wing modifications and terminating action referenced by the commenter are already required by certain other AD's, which are described below.

- AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), applies to certain Boeing Model 747 series airplanes, and requires, among other things, modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.
- AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), applies to certain Boeing Model 747 series airplanes, and requires modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994.
- AD 99–10–09, amendment 39–11162 (64 FR 25194, May 11, 1999), applies to certain Model 747–100, –200, and 747SP series airplanes, and military type E–4B airplanes. That AD provides for replacement of the wing front spar web with a new shot-peened wing front spar web, in accordance with Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, as an optional terminating action for the repetitive inspection requirements of that AD.

The FAA has determined that accomplishment of the wing and strut modification specified in AD 95–10–16 or AD 95–13–07, or the optional terminating action specified in AD 99–10–09, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, provided that an HFEC inspection of subject fastener holes has been accomplished (in accordance with Boeing 747 Non-Destructive Test Manual D6–7170, Part 6, Subject 51–00–00, Figure 16) prior to oversizing of the holes, and the holes were found to be free of cracks, corrosion, or damage. The FAA has added NOTE 3 to this final rule accordingly.

Request to Delete Certain Supplemental Structural Inspection Document Inspections

One commenter requests that the FAA revise the proposal by adding a paragraph that eliminates the requirement for certain inspections to be accomplished in accordance with the Supplemental Structural Inspection Document (SSID). The commenter justifies its request by saying that oversizing the web-to-chord fastener holes, as described in the optional terminating action in Boeing Service Bulletin 747–57–2305, Revision 1, will "zero time" the fastener holes, renewing the fatigue life. The commenter states that, if this optional terminating action is accomplished, SSID inspections W–24B at the front spar web-to-chord fastener holes between the upper link fittings and W–24C at the front spar web-to-chord fastener holes at the outboard upper link fittings would no longer be necessary.

The FAA partially concurs with the commenter's request. The FAA acknowledges that, following accomplishment of the optional

terminating action, fatigue life will be renewed in the affected web-to-chord fastener holes. However, the SSID inspections that the commenter references are required, along with various other inspections, by AD 94–15–12, amendment 39–8983 (59 FR 37933, July 26, 1994), and AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994). The FAA finds that deleting SSID inspections required by other AD's is not an appropriate action to take in this AD. Therefore, no change to the final rule is necessary in this regard.

Request to Allow Use of Original Issue of Service Bulletin

One commenter requests that the FAA revise paragraphs (a), (b), and (c) of the proposal to reference the original issue of Boeing Service Bulletin 747–57–2305, dated October 8, 1998, in addition to Revision 1 of the service bulletin, as appropriate sources of service information for the actions required by this AD. The commenter states that there is no substantial difference between the two versions of the service bulletin, and the inspection methods and procedures for terminating action are the same. The commenter states that Revision 1 adds missing fastener codes and revises grip lengths of fasteners. Further, the commenter states that operators that accomplished inspections or terminating action in accordance with the original issue of the service bulletin should not be required to perform the inspections or terminating action in accordance with Revision 1, nor should they be required to apply for an alternative means of compliance.

The FAA does not concur with the commenter's request. The FAA considers the grip length of fasteners (one of the items changed between the original issue and Revision 1) important for proper clamp-up, and the FAA has been advised that certain fasteners specified in the original issue of the service bulletin had grip lengths that were too long. In addition, the FAA considers the fact that certain fastener codes were missing from the original issue of the service bulletin to be significant, in that it could result in installation of fasteners that are not structurally satisfactory. Also, Revision 1 of the service bulletin deleted inspections of the fasteners in the upper and lower chords between the upper link fittings. For these reasons, the FAA does not find that accomplishment of the actions required by this AD in accordance with the original issue of the service bulletin is acceptable for compliance with this AD. No change to the final rule is necessary in this regard.

Request to Revise Statement of Unsafe Condition

One commenter, the airplane manufacturer, requests that the FAA revise the reason for issuing the proposed rule. The proposed rule states that "the actions specified by the proposed AD are intended to detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire." The commenter states that the correct reason for issuing the AD is that cracks addressed by Boeing Service Bulletin 747–57–2305 are subject to Item W–24A and W–24B in Boeing Document D6–35022, "Supplemental Structural Inspection Document." The commenter also states that the service bulletin was issued to address undetected cracks in the front spar chords that could result in extensive labor hours and downtime if the cracks propagate to the extent that replacement of a section of chord is necessary. The commenter concludes that there are no safety-of-flight issues associated with such cracking, and that fuel leakage due to undetected cracks is very unlikely because, for leakage to occur, cracks in the chord would have to grow through the thickness of the chord, beyond the upper or lower edges of the front spar web, and beyond the fillet seal.

The FAA does not concur with the commenter's request. The statement of unsafe condition, as stated in the proposal, specifies what could happen if the inspections of the front spar upper and lower chords that will be required by this AD are not accomplished. The fact that fuel leaks have not been detected to date does not preclude leaks from occurring in the future. For example, even though an operator may have accomplished the strut and wing modification required by another AD (as discussed previously), if an HFEC inspection to detect cracking of the fastener holes was not accomplished, a crack may still be present and could grow to the point that fuel leakage occurs. The FAA finds no justification for revising the statement of unsafe condition as the commenter suggested. Therefore, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 332 Model 747–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $16,440, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it will take approximately 37 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,000 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $7,220 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–03–01 Boeing: Amendment 39–11558. Docket 99–NM–88–AD.

Applicability: Model 747–100 and –200 series airplanes, listed in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire, accomplish the following:

Inspections and Corrective Action

(a) Prior to the accumulation of 12,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later, accomplish an ultrasonic inspection for cracking of the upper and lower chord of the wing front spar, in accordance with Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999.

Note 2: Accomplishment of an open hole high frequency eddy current inspection in accordance with Figure 6 of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, is acceptable for compliance with the inspection requirement of paragraph (a) of this AD.

(1) If no cracking is found, repeat this inspection thereafter at intervals not to exceed 6,000 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is found, prior to further flight, accomplish "Part 2—Terminating Action" of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of this action constitutes terminating action for the requirements of this AD.

(b) During accomplishment of the terminating action required by paragraph (a)(2) of this AD, if any crack is found in the upper chord that is outside the limits specified in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999; or if any crack is found in the lower chord; prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this AD, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(c) Accomplishment of "Part 2—Terminating Action" of the Accomplishment Instructions of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, constitutes terminating action for the requirements of this AD.

Note 3: Accomplishment of the wing and strut modification specified in AD 95–10–16, amendment 39–9233, or AD 95–13–07, amendment 39–9287, or the optional terminating action specified in AD 99–10–09, amendment 39–11162, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, provided that an HFEC inspection of subject fastener holes has been accomplished in accordance with Boeing 747 Non-Destructive Test Manual D6–7170, Part 6, Subject 51–00–00, Figure 16, prior to oversizing of the holes in accordance with AD 95–10–16, AD 95–13–07, or AD 99–10–09, and the holes were found to be free of cracks, corrosion, or damage.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2468 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–16–AD; Amendment 39–11557; AD 2000–02–39]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. This action requires either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct cracking of the longitudinal skin splice above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Effective February 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes. The DGAC advises that, during a routine maintenance check, a horizontal crack of 35.6 inches was detected in the surrounding panel above the right mid-passenger door. The exact cause of the cracking is unknown at this time. The area of the crack is covered by a sealant bead at the junction of two skin panels and is not visible from the outside. After the insulation blankets were removed from the inside, the crack was visually detected 1 inch below stringer 11, and started 9 inches from frame 29 and extended 6.7 inches aft frame 30. Such cracking, if not detected and corrected, could result in reduced structural integrity of the fuselage pressure vessel.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–53A0352, dated January 4, 2000, which describes procedures for a one-time ultrasonic inspection and repetitive detailed visual inspections to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 left- and right-hand and between frames 28A and 30A, and corrective actions, if necessary. The corrective actions involve installing either a temporary or permanent repair. The temporary repair consists of stop drilling all cracks and installing an external doubler attached with rivets. The temporary repair is to be replaced with a permanent repair within 2,000 flight cycles. The permanent repair consists of cutting out all cracked areas, and installing an external doubler with a milled step. The DGAC classified this AOT as mandatory and issued French airworthiness directive T2000–001–300(B), Revision 1, dated January 7, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct cracking of the longitudinal skin splice above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel. This AD requires accomplishment of the actions specified in the AOT described previously, except as discussed below. This AD also requires that operators report results of all inspection findings to Airbus.

Differences Between Rule and AOT

Operators should note that, unlike the procedures described in the Airbus AOT, this AD would not permit further flight if cracks are detected. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any cracks must be repaired or modified prior to further flight.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–16–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between

the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–02–39 Airbus Industrie: Amendment 39–11557. Docket 2000–NM–16–AD.

Applicability: Model A300 series airplanes, having serial numbers 1 through 156 inclusive; certificated in any category; except those airplanes on which Airbus Modification 2011 has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the longitudinal skin splice above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

Ultrasonic or Detailed Visual Inspection

(a) Within 14 days after the effective date of this AD, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Airbus All Operators Telex (AOT) A300–53A0352, dated January 4, 2000.

(1) Perform a one-time ultrasonic inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

(i) If no cracking is detected, no further action is required by this AD.

(ii) If any cracking is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(2) Perform a detailed visual inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) If no cracking is detected, accomplish the requirements of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Repeat the detailed visual inspection thereafter at intervals not to exceed 80 flight cycles; and

(B) Within 90 days after the effective date of this AD, accomplish the requirements of paragraph (a)(1) of this AD.

(ii) If any cracking is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

Corrective Actions

(b) For airplanes on which any cracking is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, install either a temporary or permanent repair, in accordance with Airbus AOT A300–53A0352, dated January 4, 2000.

(1) If a temporary repair is installed, prior to the accumulation of 2,000 flight cycles after the installation of the temporary repair, install the permanent repair.

(2) If a permanent repair is installed, no further action is required by this AD.

Reporting Requirement

(c) Within 10 days after accomplishing the initial inspection required by paragraph (a)(1) or (a)(2) of this AD, and after all repetitive inspections required by paragraph (a)(2)(i) of this AD, as applicable, submit a report of the inspection results (both positive and negative findings) to: Mr. Rolland Filaquier—AI/SE–A21, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus All Operators Telex A300–53A0352, dated January 4, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive T2000–001–300(B), Revision 1, dated January 7, 2000.

(g) This amendment becomes effective on February 22, 2000.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2467 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–49–AD; Amendment 39–11560; AD 2000–03–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF34 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD also requires that an air carrier's approved continuous airworthiness maintenance program incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (238) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company CF34 series turbofan engines was published in the **Federal Register** on October 7, 1999 (64 FR 54584). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to the CF34 Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA), and, for air carriers, their approved continuous airworthiness maintenance program. General Electric Company, the manufacturer of CF34–3A1 and –3B1 series turbofan engines, has provided the FAA with a detailed proposal that identifies and prioritizes the critical rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined in this AD, rather than at specific inspection intervals.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Name of Manual Section

One commenter (the manufacturer) states that the proposal should reference the Airworthiness Limitations Section instead of the Time Limits Section. The FAA concurs in part. The reference to the Time Limits Section will be removed and changed to the CF34 Engine Maintenance Program in this final rule.

Part Numbers (P/Ns)

One commenter notes that in Table 804 of the proposal, the Stage 2 High Pressure Turbine (HPT) Rotor Disk, P/N 5079T53 is incorrect. The correct P/N is 5079T73. The FAA concurs. To make this AD consistent with other enhanced inspection ADs, and in response to comments received on the other ADs, the P/Ns have been removed from Table 804 and the word "all" has been substituted for P/Ns.

Concurs With Proposal

One commenter concurs with the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

The FAA estimates that 352 engines installed on aircraft of US registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The total cost of the new inspections per engine will be approximately $120 per year. Using average shop visit rates, 275 engines are expected to be affected per year. The annual cost impact of the AD on US operators is therefore estimated to be $33,000.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under EO 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–03–03 General Electric Company: Amendment 39–11560. Docket 99–NE–49–AD.

Applicability: General Electric Company (GE) CF34–3A1 and –3B1 series turbofan

engines, installed on but not limited to Bombardier Canadair CL601R (RJ) aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the CF34 Engine Maintenance Program, Chapter 5–21–00, of the GE CF34 Series Turbofan Engine Manual, SEI–756, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"9. *CF34–3A1 and CF34–3B1 Engine Maintenance Program—Shop Level Mandatory Inspection Requirements.*

A. This procedure is used to identify specific piece-parts that require mandatory inspections that must be accomplished at each piece-part exposure using the applicable Chapters referenced in Table 804 for the inspection requirements.

B. Piece-part exposure is defined as follows:

(1) For engines that utilize the "On Condition" maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions in the GEAE engine authorized overhaul Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(2) For engines that utilize the "Hard Time" maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions used in the "Minor Maintenance" or "Overhaul" instructions in the GEAE engine authorized Engine Manual, and the part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

C. Refer to Table 804 below for the mandatory inspection requirements.

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part nomenclature	Manual chapter/section/subject	Mandatory inspection
Fan Disk (all)	72–21–00, Inspection	All areas (FPI) [1] Bores (ECI) [2]
Stage 1 high pressure turbine (HPT) Rotor Disk (all)	72–46–00, Inspection	All areas (FPI) [1] Bores (ECI) [2] Boltholes (ECI) [2] Air Holes (ECI) [2]
Stage 2 HPT Rotor Disk (all)	72–46–00, Inspection	All areas (FPI) [1] Bores (ECI) [2] Boltholes (ECI) [2] Air Holes (ECI) [2]
HPT Rotor Outer Torque Coupling (all)	72–46–00, Inspection	All areas (FPI) [1] Bore (ECI) [1]

[1] FPI = Fluorescent Penetrant Inspection Method.
[2] ECI = Eddy Current Inspection.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the CF34 Engine Maintenance Program, Chapter 5–21–00, of the General Electric Company, CF34 Series Turbofan Engine Manual, SEI–756.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34 Series Turbofan Engine Manual.

(f) This amendment becomes effective on March 13, 2000.

Issued in Burlington, Massachusetts, on February 1, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2687 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–51–AD; Amendment 39–11559; AD 2000–03–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines, that requires reducing the cyclic life limits for certain fan mid shafts with undesirable microstructure, and removing from service those mid fan shafts prior to exceeding the new limits and replacing with serviceable parts. This amendment is prompted by reports of magnetic particle inspections conducted by the manufacturer identifying segregation in the raw material, resulting in lower fatigue life properties. The actions specified by this AD are intended to prevent fan mid shaft failure, which could result in a total loss of thrust and inflight engine shutdown.

DATES: Effective April 7, 2000.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7742, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90–90B, –85B, and –76B series turbofan engines was published in the **Federal Register** on November 26, 1999 (64 FR 66415). That action proposed to reduce the cyclic life limits for certain fan mid shafts with undesirable microstructure, and remove from service those fan mid shafts prior to exceeding the new limits and replace with serviceable parts. That action was prompted by reports of magnetic particle inspections conducted by the manufacturer identifying segregation in the raw material, resulting in lower fatigue life properties. That condition, if not corrected, could result in fan mid shaft failure, which could result in a total loss of thrust and inflight engine shutdown.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Unsafe Condition Language

One commenter states that the statement of unsafe condition in the proposed rule is not accurate. The commenter believes that the language used does not correctly reflect the failure consequences of the fan mid shaft. The commenter also is concerned that the engine is not in compliance with Federal Aviation Regulations (FAR) 33 (14 CFR 33) requirements regarding shaft failure. The FAA concurs in part. Though the language used in the statement of unsafe condition in the proposal is typical of life limited parts ADs, a more accurate description of the failure consequences of the fan mid shaft would be a total loss of thrust and inflight engine shutdown. The statement of unsafe condition in this final rule has been changed accordingly.

GE90 Engine Model Applicability

The same commenter believes the proposal should apply to all GE90 engine models and not just those listed in the applicability. The FAA does not concur. The proposal addresses those fan mid shaft part numbers (P/Ns) and engine models that have had their published life limits reduced. This proposal does not address the fan mid shafts P/Ns and engine models that have had their published life limits increased. These fan mid shafts P/Ns and engine model combinations are discussed in GE90 Alert Service Bulletin 72–A0389, Revision 1, dated August 25, 1999.

Delete Ferry Flight Authorization

The same commenter believes that the special flight permit authorization paragraph included in the proposal should be deleted. The commenter believes that ferry flight permits should not be authorized in the case of a life reduction AD. The FAA concurs and that paragraph has been removed from this final rule.

Concurrence

One commenter concurs with the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 118 engines of the affected design in the worldwide fleet. The FAA estimates that 4 engines installed on aircraft of US registry will be affected by this AD and that the prorated life reduction will cost approximately $71,000 per engine. Based on these figures, the total cost impact of the AD on US operators is estimated to be $284,000.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under EO 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–03–02 General Electric Company: Amendment 39–11559. Docket 98–ANE–51–AD.

Applicability: General Electric Company (GE) GE90–90B, –85B, and –76B series turbofan engines, with fan mid shafts, part numbers (P/Ns) 1767M71G01, 1767M71G02, and 1767M75G02, installed. These engines are installed on but not limited to Boeing 777 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan mid shaft failure, which could result in a total loss of thrust and inflight engine shutdown, accomplish the following:

Reduced Life Limits

(a) Remove from service fan mid shafts and replace with serviceable parts prior to the following new, lower cyclic life limits:

(1) For fan mid shafts, P/N 1767M71G01, installed on GE90–85B and –90B series engines, the new life limit is 4,200 cycles-since-new (CSN).

(2) For fan mid shafts, P/N 1767M71G02, installed on GE90–85B and –90B series engines, the new life limit is 4,200 CSN.

(3) For fan mid shafts, P/N 1767M75G02, installed on GE90–76B, –85B, and –90B series engines, the new life limit is 8,200 CSN.

(b) This AD establishes new life limits for fan mid shafts, P/N 1767M71G01, 1767M71G02, and 1767M75G02. Except as provided in paragraph (c) of this AD, no alternate life limits for these affected parts may be approved.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) This amendment becomes effective on April 7, 2000.

Issued in Burlington, Massachusetts, on February 1, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2686 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–4]

Remove Class D and Class E Airspace; Kansas City, Richards-Gebaur Airport, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D and Class E airspace areas at Kansas City, Richards-Gebaur Airport, MO. The airport was closed January 9, 2000.

EFFECTIVE DATE: 0901 UTC April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On January 9, 2000, the Kansas City, Richard-Gebaur Airport, MO was closed. Based on the airport being closed the Class D and Class E airspace areas are no longer necessary.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) removes the Class D and Class E airspace areas at Kansas City, Richards-Gebaur Airport, MO, extending upward from the surface to 1200 feet Above Ground Level (AGL). The closing of the airport made this action necessary.

The FAA concludes that there is an immediate need to remove the Class D and Class E airspace in order to incorporate this change into the next Sectional Chart and avoid confusion on the part of the pilots. Therefore, it is found that notice and opportunity to prior public comment herein are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace area designated for an airport that contains at least one primary airport around which the airspace is designated

* * * * *

ACE MO D Kansas City, Richards-Gebaur Airport, MO [Removed]

* * * * *

Paragraph 6004 Class E airspace areas designated as an Extension to Class D airspace area

ACE MO E4 Kansas City, Richards-Gebaur Airport, MO [Removed]

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth

ACE MO E5 Kansas City, Richards-Gebaur Airport, MO [Removed]

* * * * *

Issued in Kansas City, MO on January 24, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2670 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE1]

Amendment to Class E Airspace; Creston, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Creston Municipal Airport, Creston, IA. A review of the Class E airspace area for Creston Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, June 15, 2000.

Comments for inclusion in the rules Docket must be received on or before March 17, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket number 00–ACE–1, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Creston, IA. A review of the Class E airspace for Creston Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outmost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Creston Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for a flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charges. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contract concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–1." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and

unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Creston, IA [Revised]

Creston Municipal Airport, IA
(Lat. 41°01'17"N., long. 94°21'48"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Creston Municipal Airport and within 2.6 miles each side of the 169° bearing from the airport extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2562 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–2]

Amendment to Class E Airspace; Ord, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Ord, Evelyn Sharp Field, Ord, NE. A review of the Class E airspace area for Ord, Evelyn Sharp Field, NE indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. In addition, a minor revision to the Airport Reference Point (ARP) is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

Effective date: 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 20, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–2, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Ord, NE. A review of the Class E airspace for Ord, Evelyn Sharp Field, NE, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Ord, Evelyn Sharp Field, NE, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–2" The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Ord, NE [Revised]

Ord, Evelyn Sharp Field, NE
(Lat. 41°37′27″ N., long. 98°57′09″ W.)
Ord NDB
(Lat. 41°37′26″ N., long. 98°56′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Evelyn Sharp Field and within 2.6 miles each side of the 311° bearing from the Ord NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2561 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–56]

Amendment to Class E Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Central Nebraska Regional Airport, Grand Island, NE. The FAA has developed Area Navigation (RNAV) Runway (RWY) 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Grand Island, Central Nebraska Regional Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new RNAV RWY 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 21, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–56, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 SIAPs to serve the Grand Island, Central Nebraska Regional Airport, NE. The amendment to Class E airspace at Grand Island, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby

facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Grand Island, Central Nebraska Regional Airport, NE, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comment are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–56." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse on negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward form 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Grand Island, NE [Revised]

Grand Island, Central Nebraska Regional Airport, NE
(Lat. 40°58′03″N., long. 98°18′31″W.)
Grand Island VORTAC
(Lat. 40°59′03″N, long. 98°18′53″W.)
Grand Island, Central Nebraska Regional Airport ILS
(Lat. 40°58′55″N., long. 98°18′53″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Central Nebraska Regional Airport and within 4 miles each side of the Grand Island ILS Localizer course extending from the 6.9-mile radius to 8.7 miles south of the airport and within 4 miles northeast and 6 miles southwest of the 294° radial of the Grand Island VORTAG extending from the 6.9-mile radius to 16 miles northwest of the VORTAC and within 4 miles east and 6 miles west of the 360° radial of the Grand Island VORTAC extending from the 6.9-mile radius to 16 miles north of the VORTAC.

* * * * *

Issued in Kansas City, MO, on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2560 Filed 2–4–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–55]

Amendment to Class E Airspace; O'Neill, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at O'Neill Municipal-John L. Baker Field, O'Neill, NE. The FAA has developed Area Navigation (RNAV) Runway (RWY) 13 and RNAV RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve O'Neill Municipal-John L. Baker Field, O'Neill, NE. Additional controlled airspace extending upward from 700 feet Above Ground level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 13 and RNAV RWY 13 and RNAV RWY 31 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 13 and RNAV RWY 31 SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 16, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–55, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 ;.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 13 and RNAV RWY 31 SIAPs to serve the O'Neill Municipal-John L. Baker Field, O'Neill, NE. The amendment to Class E airspace at O'Neill, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at O'Neill Municipal-John L. Baker Field, O'Neill, NE, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–55." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, datedSeptember 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 O'Neill, NE [Revised]

O'Neill Municipal-John L. Baker Field, NE
(Lat. 42°28'12" N., long. 98°41'17" W.)
O'Neill VORTAC
(Lat. 42°28'14" N., long. 98°41'13" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of John L. Baker Field and within 2.6 miles each side of the 148° radial of the O'Neill VORTAC extending from the 6.4-mile radius to 7.4 miles southeast of the VORTAC and within 4.4 miles each side of the 315° radial of the O'Neill VORTAC extending from the 6.4-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2559 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–94]

Amendment to Class E Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace area at Burlington, VT (KBTV) to correct the longitude and latitude coordinates for the Burlington International Airport.

DATES: Effective 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2000.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 99–ANE–94, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ane-airspace@faa.dot.gov"

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: This action corrects the longitude and latitude coordinates for the Burlington International Airport. This action is necessary to accurately describe the controlled airspace necessary for aircraft arriving at the departing from the Burlington Airport under instrument flight rules. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ANE–94." The postcard will be date stamped and returned to the commenter.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ANE VT E5 Burlington, VT [Revised]

Burlington International Airport, VT
(Lat. 44°28′23″ N, long. 73°09′01″ W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Plattsburgh, NY, Class E airspace area.

* * * * *

Issued in Burlington, MA, on January 20, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–2558 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–93]

Amendment to Class F Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class Airspace area at Burlington, VT (KBTV) to correct the longitude and latitude coordinates for the Burlington International Airport.

DATES: Effective 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2000.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 99–ANE–93, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ane-airspace@faa.dot.gov"

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: This action corrects the longitude and latitude coordinates for the Burlington International Airport. This action is necessary to accurately describe the controlled airspace necessary for aircraft executing instrument approaches to the Burlington Airport at times when Burlington Class C airspace area is active. Class E airspace designations for airspace areas designated as extensions to Class C surface areas are published in paragraph 6003 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse of negative comment, and, therefore, issues its as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments as necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ANE–93." The postcard will be date stamped and returned to the commenter.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: (49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6003—Class E airspace areas designed as an extension to a Class C surface area

* * * * *

ANE VT E3 Burlington, VT [Revised]

Burlington International Airport, VT
(Lat. 44°28′23″ N, long. 73°09′01″ W)
Burlington, VORTAC
(Lat. 44°23′50″ N, long. 73° 10′57″ W)

That airspace extending upward from the surface within 2.4 miles on each side of the Burlington VORTAC 201° radial extending from a 5-mile radius of the Burlington International Airport to 7 miles southwest of the Burlington VORTAC, and that airspace extending upward from the surface within 1.8 miles on each side of the Burlington International Airport 302° bearing extending from the 5-mile radius to 5.4 miles northwest of the Burlington International Airport.

* * * * *

Issued in Burlington, MA, on January 20, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–2557 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–5]

Amendment to Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Monticello Regional Airport, Monticello, IA. A review of the Class E airspace area for Monticello Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–5, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9: a.m. and 3: p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Monticello, IA. A review of the Class E airspace for Monticello Regional Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Monticello Regional Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this

document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–5." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Monticello, IA [Revised]

Monticello Regional Airport, IA
(Lat. 42°13′34″N., long. 91°10′02″W.)
Monticello NDB
(Lat. 42°12′02″N., long. 91°08′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Monticello Regional Airport and within 2.6 miles each side of the 141° bearing from the Monticello NDB extending from the 6.4-mile radius to 9.2 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on January 26, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2672 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8874]

RIN 1545–AW10

Travel and Tour Activities of Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying when the travel and tour activities of tax-exempt organizations are substantially related to the purposes for which exemption was granted. This action provides needed guidance for tax-exempt organizations concerning when travel tour activities may be subject to tax as an unrelated trade or business. This action affects tax-exempt organizations that engage in travel tour activities.

DATES: *Effective Date:*

These regulations are effective on February 7, 2000.

Applicability Date: These regulations are applicable for taxable years beginning after February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1998, the IRS published in the **Federal Register** (63 FR 20156) a notice of proposed rulemaking under section 513 to clarify when the travel and tour activities of tax-exempt organizations are substantially related to the purposes for which exemption was granted. The notice of proposed rulemaking added Treas. Reg. § 1.513–7, which provides that whether travel tour activities are substantially related to an organization's exempt purposes is determined by examining all the relevant facts and circumstances. The proposed regulations also contain examples applying the facts and circumstances test in four situations.

The notice of proposed rulemaking solicited comments from the public. Nineteen commentators submitted written comments. A public hearing was held on February 10, 1999, at which eight speakers presented testimony. After consideration of all the comments, the proposed regulations under section 513 are adopted as revised by this Treasury Decision. The comments and revisions are discussed below.

Explanation of Provisions and Summary of Comments

Many of the commentators welcomed the proposed regulations as workable guidance that will promote tax compliance. Commentators differed on the approach that the IRS should adopt in final regulations. Some commentators suggested that the final regulations should adopt specific, weighted standards to be used in evaluating relatedness to exempt purpose. Other commentators recommended against adopting specific standards, arguing that no single set of standards would be appropriate given the broad range of tax-exempt organizations. One commentator suggested that the final regulations adopt a set of specific standards that would apply to test relatedness of tours in the educational context and a more general consistency standard that would evaluate whether the marketing, location, and execution of a tour are consistent with the organization's core exempt activities.

Section 513(a) generally defines an unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). *See also United States* v. *American Bar Endowment,* 477 U.S. 105, 109–110 (1986). Treas Reg. § 1.513–1(d)(2) provides that, for the conduct of a trade or business to be substantially related to the purposes for which exemption was granted, the production or distribution of the goods or the performance of services must contribute importantly to the accomplishment of those purposes. Whether activities generating gross income contribute importantly to accomplishing any purpose for which an organization was granted exemption depends in each case upon the particular facts and circumstances. *Id.* This rule applies to travel tours.

Organizations exempt from tax under section 501(a) have diverse exempt purposes (for example: charities; social welfare organizations; labor, agricultural and horticultural organizations; business leagues; fraternal beneficiary societies). Accordingly, no one set of factors could be sufficiently comprehensive as to define relatedness for the variety of exempt organizations to which these travel tour regulations apply. Even among exempt organizations that share a common exempt purpose, such as education, the methods of accomplishing that purpose vary considerably. For this reason, the final regulations do not enumerate any specific factors that determine relatedness of travel tour activities to exempt purposes. The final regulations adopt the general facts and circumstances approach of the proposed regulations. *See e.g, Hi-Plains Hospital* v. *United States,* 670 F.2d 528 (5th Cir. 1982) (need for case-by-case analysis identifying exempt purpose and analysis of how activity in each case contributes to exempt purpose); *Louisiana Credit Union League* v. *United States,* 693 F.2d 525, 534 (5th Cir. 1982) (resolution of the substantial relationship test requires "an examination of the relationship between the business activities that generate the income in question* * * and the accomplishment of the organization's exempt purposes"). However, as discussed below, the final regulations include new examples that provide additional guidance regarding the application of this facts and circumstances approach in both educational and noneducational contexts.

Another commentator suggested that the final regulations should clarify that the manner in which an organization develops and promotes a tour is relevant to determining whether the tour activity is substantially related to exempt purposes. The development, promotion and operation of a tour are all indicators of whether an organization's offering of a tour is related or unrelated to its exempt purpose. *See International Postgraduate Medical Found.* v. *Commissioner,* 1989–36 T.C. Memo., 56 T.C.M. (CCH) 1140 (1989) (brochures promoting the trips emphasized recreational sightseeing activity and omitted educational course descriptions). Language has been added to the final regulations stating that relevant facts and circumstances include (but are not limited to) how a travel tour is developed, promoted and operated. Examples in the final regulations also illustrate the relevance of these factors.

Many commentators requested more examples addressing specific areas. As noted above, examples have been added that further illustrate the application of the facts and circumstances rule. Some commentators raised concerns regarding the number of hours of related activities a travel tour must offer. Examples in the final regulation clarify that the number of hours spent on any related travel tour activity is only one factor in determining relatedness of the tour as a whole to exempt purposes and is not by itself determinative. Examples in the final regulation clarify that the nature of the related activities, and the practicalities of engaging in such activities (for example, the hours during which the activity normally would be conducted), must also be taken into account.

One commentator suggested adding an example addressing whether income from travel tour activity is a royalty under section 512(b)(2) where the exempt organization does not operate the tour, but provides member names to a for-profit tour operator. Section 512(b)(2) excludes royalties from the computation of unrelated business taxable income. The question of what constitutes a royalty is beyond the scope of these regulations. For guidance as to whether income received by a tax-exempt organization from travel tour activities is excludable from unrelated business taxable income as a royalty, *see generally* Treas. Reg. § 1.512(b)–1(b) and *Sierra Club* v. *Commissioner,* 86 F.3d 1526 (9th Cir. 1996).

Some commentators suggested that the final regulations should contain provisions that prevent tax-exempt organizations from competing unfairly with taxable travel businesses. However, the test under section 513 is substantial relatedness to exempt purposes, not the presence or absence of unfair competition. Section 513 was enacted to prevent unfair competition between exempt organizations and taxable businesses. H.R. Rep. No. 2319, 81st Cong., 2d Sess. (1950), *reprinted in* 1950–2 C.B. 380, 409; S. Rep. No. 2375, 81st Cong., 2d Sess. (1950), *reprinted in* 1950–2 C.B. 483, 504; *Portland Golf*

Club v. *Commissioner*, 497 U.S. 154, 161–162, fn. 12 (1990); Treas. Reg. § 1.513–1(b). Nevertheless, "Congress did not force exempt organizations to abandon all commercial ventures", but rather imposed a tax on ventures that are not substantially related to an organization's exempt purposes. *United States* v. *American College of Physicians*, 475 U.S. 834, 838 (1986). *See also Louisiana Credit Union League* v. *United States*, 693 F.2d 525, 541 (5th Cir. 1982). Following this approach, the section 513(a) regulations, published in 1967, state that "any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute 'trade or business' within the meaning of section 162—and which, in addition, is not substantially related to the performance of exempt functions—presents sufficient likelihood of unfair competition to be within the policy of the tax [imposed by section 511(a)]." Treas. Reg. § 1.513–1(b). In expanding the categories of organizations subject to unrelated business income tax in 1969, Congress revisited the unfair competition issue. "[A] business competing with taxpaying organizations should not be granted an unfair competitive advantage by operating tax free *unless* the business contributes importantly to the exempt function." H.R. Rep. No. 413 (Part 1), 91st Cong., 1st Sess., 44, 50 (1969), *reprinted in* 1969 U.S.C.C.A.N. 1645, 1689, 1695 (emphasis added). If an organization's trade or business is substantially related to its exempt purposes, the tax under section 511 is not imposed, regardless of the existence of competition with taxable entities. Accordingly, the final regulations continue to focus on relatedness to exempt purposes, as required by section 513.

The preamble to the proposed regulations requested comments on whether the final regulations should include documentation and recordkeeping requirements specific to travel tours. Commentators split on the preferred approach. Some commentators requested general guidance as to the types of records that an organization should keep to establish a tour's purpose, but did not want the IRS to mandate specific recordkeeping requirements. Other commentators asked that the IRS specify what documentation is required. Section 6001 authorizes the Secretary to prescribe regulations that require taxpayers to keep records sufficient to establish whether a taxpayer is liable for any tax imposed under the Code. Currently, any person subject to tax under subtitle A of the Code, including the tax imposed under section 511, or required to file a return of information with respect to income, must keep permanent books or records sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any return of tax or information. *See* Treas. Reg. § 1.6001–1(a). In addition, every organization exempt from tax under section 501(a) must keep permanent books of account or records sufficient to show specifically items of gross income, receipts and disbursements, and to substantiate the information required by section 6033. *See* Treas. Reg. § 1.6001–1(c).

The IRS and Treasury Department believe that, with respect to travel tours, it is unnecessary to supplement the existing recordkeeping requirements under sections 6001 and 6033. Therefore, the final regulations do not impose additional recordkeeping requirements. However, in response to commentators' suggestions, examples in the final regulations illustrate that contemporaneous documentation showing how an organization develops, promotes and operates the travel tour is relevant to the facts and circumstances analysis.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robin Ehrenberg, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.513–7 is added to read as follows:

§ 1.513–7 Travel and tour activities of tax exempt organizations.

(a) Travel tour activities that constitute a trade or business, as defined in § 1.513–1(b), and that are not substantially related to the purposes for which exemption has been granted to the organization constitute an unrelated trade or business with respect to that organization. Whether travel tour activities conducted by an organization are substantially related to the organization's exempt purpose is determined by looking at all relevant facts and circumstances, including, but not limited to, how a travel tour is developed, promoted and operated. Section 513(c) and § 1.513–1(b) also apply to travel tour activity. Application of the rules of section 513(c) and § 1.513–1(b) may result in different treatment for individual tours within an organization's travel tour program.

(b) *Examples.* The provisions of this section are illustrated by the following examples. In all of these examples, the travel tours are priced to produce a profit for the exempt organization. The examples are as follows:

Example 1. O, a university alumni association, is exempt from federal income tax under section 501(a) as an educational organization described in section 501(c)(3). As part of its activities, O operates a travel tour program. The program is open to all current members of O and their guests. O works with travel agencies to schedule approximately 10 tours annually to various destinations around the world. Members of O pay $x to the organizing travel agency to participate in a tour. The travel agency pays O a per person fee for each participant. Although the literature advertising the tours encourages O's members to continue their lifelong learning by joining the tours, and a faculty member of O's related university frequently joins the tour as a guest of the alumni association, none of the tours includes any scheduled instruction or curriculum related to the destinations being visited. The travel tours made available to O's members do not contribute importantly to the accomplishment of O's educational purpose. Rather, O's program is designed to generate revenues for O by regularly offering its members travel services. Accordingly, O's tour program is an unrelated trade or

business within the meaning of section 513(a).

Example 2. N is an organization formed for the purpose of educating individuals about the geography and culture of the United States. It is exempt from federal income tax under section 501(a) as an educational and cultural organization described in section 501(c)(3). N engages in a number of activities to accomplish its purposes, including offering courses and publishing periodicals and books. As one of its activities, N conducts study tours to national parks and other locations within the United States. The study tours are conducted by teachers and other personnel certified by the Board of Education of the State of P. The tours are directed toward students enrolled in degree programs at educational institutions in P, as reflected in the promotional materials, but are open to all who agree to participate in the required study program. Each tour's study program consists of instruction on subjects related to the location being visited on the tour. During the tour, five or six hours per day are devoted to organized study, preparation of reports, lectures, instruction and recitation by the students. Each tour group brings along a library of material related to the subject being studied on the tour. Examinations are given at the end of each tour and the P State Board of Education awards academic credit for tour participation. Because the tours offered by N include a substantial amount of required study, lectures, report preparation, examinations and qualify for academic credit, the tours are substantially related to N's educational purpose. Accordingly, N's tour program is not an unrelated trade or business within the meaning of section 513(a).

Example 3. R is a section 501(c)(4) social welfare organization devoted to advocacy on a particular issue. On a regular basis throughout the year, R organizes travel tours for its members to Washington, DC. While in Washington, the members follow a schedule according to which they spend substantially all of their time during normal business hours over several days attending meetings with legislators and government officials and receiving briefings on policy developments related to the issue that is R's focus. Members do have some time on their own in the evenings to engage in recreational or social activities of their own choosing. Bringing members to Washington to participate in advocacy on behalf of the organization and learn about developments relating to the organization's principal focus is substantially related to R's social welfare purpose. Therefore, R's operation of the travel tours does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 4. S is a membership organization formed to foster cultural unity and to educate X Americans about X, their country of origin. It is exempt from federal income tax under section 501(a) and is described in section 501(c)(3) as an educational and cultural organization. Membership in S is open to all Americans interested in the X heritage. As part of its activities, S sponsors a program of travel tours to X. The tours are divided into two categories. Category A tours are trips to X that are designed to immerse participants in the X history, culture and language. Substantially all of the daily itinerary includes scheduled instruction on the X language, history and cultural heritage, and visits to destinations selected because of their historical or cultural significance or because of instructional resources they offer. Category B tours are also trips to X, but rather than offering scheduled instruction, participants are given the option of taking guided tours of various X locations included in their itinerary. Other than the optional guided tours, Category B tours offer no instruction or curriculum. Destinations of principally recreational interest, rather than historical or cultural interest, are regularly included on Category B tour itineraries. Based on the facts and circumstances, sponsoring Category A tours is an activity substantially related to S's exempt purposes, and does not constitute an unrelated trade or business within the meaning of section 513(a). However, sponsoring Category B tours does not contribute importantly to S's accomplishment of its exempt purposes and, thus, constitutes an unrelated trade or business within the meaning of section 513(a).

Example 5. T is a scientific organization engaged in environmental research. T is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). T is engaged in a long-term study of how agricultural pesticide and fertilizer use affects the populations of various bird species. T collects data at several bases located in an important agricultural region of country U. The minutes of a meeting of T's Board of Directors state that, after study, the Board has determined that non-scientists can reliably perform needed data collection in the field, under supervision of T's biologists. The Board minutes reflect that the Board approved offering one-week trips to T's bases in U, where participants will assist T's biologists in collecting data for the study. Tour participants collect data during the same hours as T's biologists. Normally, data collection occurs during the early morning and evening hours, although the work schedule varies by season. Each base has rustic accommodations and few amenities, but country U is renowned for its beautiful scenery and abundant wildlife. T promotes the trips in its newsletter and on its Internet site and through various conservation organizations. The promotional materials describe the work schedule and emphasize the valuable contribution made by trip participants to T's research activities. Based on the facts and circumstances, sponsoring trips to T's bases in country U is an activity substantially related to T's exempt purpose, and, thus, does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 6. V is an educational organization devoted to the study of ancient history and cultures and is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, V conducts archaeological expeditions around the world, including in the Y region of country Z. In cooperation with the National Museum of Z, V recently presented an exhibit on ancient civilizations of the Y region of Z, including artifacts from the collection of the Z National Museum. V instituted a program of travel tours to V's archaeological sites located in the Y region. The tours were initially proposed by V staff members as a means of educating the public about ongoing field research conducted by V. V engaged a travel agency to handle logistics such as accommodations and transportation arrangements. In preparation for the tours, V developed educational materials relating to each archaeological site to be visited on the tour, describing in detail the layout of the site, the methods used by V's researchers in exploring the site, the discoveries made at the site, and their historical significance. V also arranged special guided tours of its exhibit on the Y region for individuals registered for the travel tours. Two archaeologists from V (both of whom had participated in prior archaeological expeditions in the Y region) accompanied the tours. These experts led guided tours of each site and explained the significance of the sites to tour participants. At several of the sites, tour participants also met with a working team of archaeologists from V and the National Museum of Z, who shared their experiences. V prepared promotional materials describing the educational nature of the tours, including the daily trips to V's archaeological sites and the educational background of the tour leaders, and providing a recommended reading list. The promotional materials do not refer to any particular recreational or sightseeing activities. Based on the facts and circumstances, sponsoring trips to the Y region is an activity substantially related to V's exempt purposes. The scheduled activities, which include tours of archaeological sites led by experts, are part of a coordinated educational program designed to educate tour participants about the ancient history of the Y region of Z and V's ongoing field research. Therefore, V's tour program does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 7. W is an educational organization devoted to the study of the performing arts and is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, W presents public performances of musical and theatrical works. Individuals become members of W by making an annual contribution to W of q dollars. Each year, W offers members an opportunity to travel as a group to one or more major cities in the United States or abroad. In each city, tour participants are provided tickets to attend a public performance of a play, concert or dance program each evening. W also arranges a sightseeing tour of each city and provides evening receptions for tour participants. W views its tour program as an important means to develop and strengthen bonds between W and its members, and to increase their financial and volunteer support of W. W engaged a travel agency to handle logistics

such as accommodations and transportation arrangements. No educational materials are prepared by W or provided to tour participants in connection with the tours. Apart from attendance at the evening cultural events, the tours offer no scheduled instruction, organized study or group discussion. Although several members of W's administrative staff accompany each tour group, their role is to facilitate member interaction. The staff members have no special expertise in the performing arts and play no educational role in the tours. W prepared promotional materials describing the sightseeing opportunities on the tours and emphasizing the opportunity for members to socialize informally and interact with one another and with W staff members, while pursuing shared interests. Although W's tour program may foster goodwill among W members, it does not contribute importantly to W's educational purposes. W's tour program is primarily social and recreational in nature. The scheduled activities, which include sightseeing and attendance at various cultural events, are not part of a coordinated educational program. Therefore, W's tour program is an unrelated trade or business within the meaning of section 513(a).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 21, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–2154 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8872]

RIN 1545–AW93

Certain Asset Transfers to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply with respect to the net built-in gain of C corporation assets that become assets of a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. The regulations generally require the corporation to recognize gain as if it had sold the assets transferred or converted to RIC or REIT assets at fair market value and immediately liquidated. The regulations permit the transferee RIC or REIT to elect, in lieu of liquidation treatment, to be subject to the rules of section 1374 of the Internal Revenue Code and the regulations thereunder. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective February 4, 2000.

Applicability Dates: For dates of applicability, see the Effective Dates portion of the preamble under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Christopher W. Schoen, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. section 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1672. Responses to this collection of information are required to obtain a benefit, *i.e.*, to elect to be subject to section 1374 of the Internal Revenue Code (Code) and the regulations thereunder.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions as to reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Sections 631 and 633 of the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514), as amended by sections 1006(e) and (g) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647), amended the Code to repeal the *General Utilities* doctrine. The 1986 Act amended sections 336 and 337 of the Code, generally requiring corporations to recognize gain when appreciated property is distributed in connection with a complete liquidation. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to "ensure that such purposes shall not be circumvented * * * through the use of a regulated investment company [RIC], a real estate investment trust [REIT], or a tax exempt entity * * *." The transfer of the assets of a C corporation to a RIC or REIT could result in permanently removing the built-in gain inherent in those assets from the reach of the corporate income tax because RIC and REIT income is not subject to a corporate-level income tax if such income is distributed to the RIC or REIT shareholders.

Accordingly, on February 4, 1988, the IRS issued Notice 88–19 (1988–1 C.B. 486). Notice 88–19 announced that the IRS intended to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in the ownership of C corporation assets by a RIC or REIT with a basis determined by reference to the corporation's basis (a carryover basis). Notice 88–19 served as an "administrative pronouncement," and could be relied upon to the same extent as a revenue ruling or revenue procedure. Notice 88–19 also indicated that the regulations would be applicable retroactively to June 10, 1987. See also Notice 88–96 (1988–2 C.B. 420).

As a result of the issuance of Notice 88–19, many taxpayers have become uncertain about the current law applicable to their transactions, as well as the proper method of making a valid election to be subject to the rules of section 1374 and the regulations thereunder. In order to resolve this uncertainty and to provide taxpayers with guidance, the IRS and Treasury are issuing these temporary regulations.

Explanation of Provisions

These regulations implement Notice 88–19 by providing that when a C corporation (1) qualifies to be taxed as a RIC or REIT, or (2) transfers assets to a RIC or REIT in a carryover basis transaction, the C corporation is treated as if it sold all of its assets at their respective fair market values and immediately liquidated, unless the RIC or REIT elects to be subject to tax under

section 1374. Any resulting net built-in gain is recognized by the C corporation and the bases of the assets in the hands of the RIC or REIT are generally adjusted to their fair market values to reflect the recognized net built-in gain. The regulations do not permit a C corporation to recognize a net built-in loss, and, in this case, the carryover bases of the assets in the hands of the RIC or REIT are preserved.

If the RIC or REIT elects to be subject to treatment under section 1374, its built-in gain, and the corporate-level tax imposed on that gain, is subject to rules similar to the rules applying to the net income of foreclosure property of REITs.

Effective Dates

In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christopher W. Schoen of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–5T also issued under 26 U.S.C. 337. * * *

Par. 2. Section 1.337(d)–5T is added to read as follows:

§ 1.337(d)–5T Tax on C assets becoming RIC or REIT assets (temporary).

(a) *Treatment of C corporations*—(1) *Scope.* This section applies to the net built-in gain of C corporation assets that become assets of a RIC or REIT by—

(i) The qualification of a C corporation as a RIC or REIT; or

(ii) The transfer of assets of a C corporation to a RIC or REIT in a transaction in which the basis of such assets are determined by reference to the C corporation's basis (a carryover basis).

(2) *Net built-in gain.* Net built-in gain is the excess of aggregate gains (including items of income) over aggregate losses.

(3) *General rule.* Unless an election is made pursuant to paragraph (b) of this section, the C corporation will be treated, for all purposes including recognition of net built-in gain, as if it had sold all of its assets at their respective fair market values on the deemed liquidation date described in paragraph (a)(7) of this section and immediately liquidated.

(4) *Loss.* Paragraph(a)(3) of this section shall not apply if its application would result in the recognition of net built-in loss.

(5) *Basis adjustment.* If a corporation is subject to corporate-level tax under paragraph (a)(3) of this section, the bases of the assets in the hands of the RIC or REIT will be adjusted to reflect the recognized net built-in gain. This adjustment is made by taking the C corporation's basis in each asset, and, as appropriate, increasing it by the amount of any built-in gain attributable to that asset, or decreasing it by the amount of any built-in loss attributable to that asset.

(6) *Exception*—(i) *In general.* Paragraph (a)(3) of this section does not apply to any C corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC was subject to tax as a C corporation for a period not exceeding one taxable year; and

(B) Immediately prior to being subject to tax as a C corporation was subject to the RIC tax provisions for a period of at least one taxable year.

(ii) *Additional requirement.* The exception described in paragraph (a)(6)(i) of this section applies only to assets acquired by the corporation during the year when it was subject to tax as a C corporation in a transaction that does not result in its basis in the asset being determined by reference to a corporate transferor's basis.

(7) *Deemed liquidation date*—(i) *Conversions.* In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the deemed liquidation date is the last day of its last taxable year before the taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Carryover basis transfers.* In the case of a C corporation that transfers property to a RIC or REIT in a carryover basis transaction, the deemed liquidation date is the day before the date of the transfer.

(b) *Section 1374 treatment*—(1) *In general.* Paragraph (a) of this section will not apply if the transferee RIC or REIT elects (as described in paragraph (b)(3) of this section) to be subject to the rules of section 1374, and the regulations thereunder. The electing RIC or REIT will be subject to corporate-level taxation on the built-in gain recognized during the 10-year period on assets formerly held by the transferor C corporation. The built-in gains of electing RICs and REITs, and the corporate-level tax imposed on such gains, are subject to rules similar to the rules relating to net income from foreclosure property of REITs. See sections 857(a)(1)(A)(ii), and 857(b)(2)(B), (D), and (E). An election made under this paragraph (b) shall be irrevocable.

(2) *Ten-year recognition period.* In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's taxable year for which the corporation qualifies to be taxed as a RIC or REIT. In the case of a C corporation that transfers property to a RIC or REIT in a carryover basis transaction, the 10-year recognition period begins on the day the assets are acquired by the RIC or REIT.

(3) *Making the election.* A RIC or REIT validly makes a section 1374 election with the following statement: "[Insert name and employer identification number of electing RIC or REIT] elects under § 1.337(d)–5T(b) to be subject to the rules of section 1374 and the regulations thereunder with respect to its assets which formerly were held by

a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of RIC or REIT]." This statement must be signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the first taxable year in which the assets of the C corporation become assets of the RIC or REIT.

(c) *Special rule.* In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or REIT ends after June 10, 1987 but before March 8, 2000, the section 1374 election may be filed with the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Par. 3. In § 1.852–12, paragraph (d) is added to read as follows:

§ 1.852–12 Non-RIC earnings and profits.

* * * * *

(d) For treatment of net built-in gain assets of a C corporation that become assets of a RIC, see § 1.337(d)–5T.

Par. 4. In § 1.857–11, paragraph (e) is added to read as follows:

§ 1.857–11 Non-REIT earnings and profits.

* * * * *

(e) For treatment of net built-in gain assets of a C corporation that become assets of a REIT, see § 1.337(d)–5T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR Part or section where identified or described	Current OMB control No.
* * * * *	
1.337(d)–5T	1545–1672
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 21, 2000.

Jonathan Talisman,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 00–1894 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8870]

RIN 1545–AV39

General Rules for Making and Maintaining Qualified Electing Fund Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 (section 1295 election) to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis (retroactive election). In addition, this document contains a final regulation that provides guidance under section 1291 to a PFIC shareholder that is a tax-exempt organization. Lastly, this document contains final regulations under section 1293 for calculating and reporting net capital gain by a QEF, and also clarifies the application of the current income inclusion rules of section 1293 to interest in a QEF held through a domestic pass through entity.

DATES: *Effective Date.*

These regulations are effective February 7, 2000.

Applicability Date. In general, these regulations are applicable as of January 2, 1998. For special dates of applicability see § 1.1295–1(k).

FOR FURTHER INFORMATION CONTACT: Margaret A. Fung, (202) 622–3840 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1555. Responses to these collections of information are mandatory for PFIC shareholders that wish to make the section 1295 election to treat the PFIC as a QEF.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

The estimated average annual burden per respondent and/or recordkeeper varies from fifteen minutes to three hours, depending on individual circumstances, with an estimated average of twenty-nine minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 2, 1998, the Treasury and the IRS published temporary regulations regarding the section 1295 election and rules applicable to a PFIC shareholder under sections 1291, 1293, 1295 and 1297 (redesignated as section 1298 by the Taxpayer Relief Act of 1997, and hereafter referred to as section 1298) (TD 8750, 63 FR 6). On that same date, the Treasury and the IRS published a notice of proposed rulemaking in the **Federal Register** (63 FR 35). The text of the temporary regulations served as the text of the proposed regulations.

Sections 1291, 1293, 1295 and 1298 were added by the Tax Reform Act of 1986, effective for taxable years of foreign corporations beginning after December 31, 1986. As originally enacted, the section 1295 election was an election made by the PFIC. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended section

1295, effective for taxable years of foreign corporations beginning after December 31, 1986, to change the section 1295 election to a shareholder-by-shareholder election. Sections 1291, 1293 and 1298 were also amended by TAMRA, and sections 1293 and 1298 were further amended by the Omnibus Budget Reconciliation Act of 1993. Section 1298 also was amended by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996. In addition, the Taxpayer Relief Act of 1997 (1997 TRA) amended section 1 to provide categories of long-term capital gain and the maximum rates of tax to which the categories are subject. In certain cases, this amendment affects the calculation of net capital gain for purposes of section 1293.

No written comments were received on the proposed regulations, and no public hearing was requested or held. The proposed regulations are adopted as final regulations as revised by this Treasury Decision. The revisions are summarized in the explanations below.

Explanation of Revisions

A foreign corporation is a PFIC for a taxable year if the foreign corporation satisfies either the income or asset test of section 1297(a) for that year. A foreign corporation is a PFIC under the income test if 75 percent or more of its gross income for its taxable year is passive, or investment-type, income. Alternatively, under the asset test, a foreign corporation is a PFIC if 50 percent or more of the average fair market value of its assets during its taxable year are assets that produce or are held for the production of passive income. A shareholder of a foreign corporation that qualifies as a PFIC is subject to the interest charge regime of section 1291 with respect to certain distributions by the PFIC and certain dispositions of its stock. Generally, a shareholder of a PFIC may avoid the interest charge regime by making a timely election under section 1295 to treat a PFIC as a QEF, in which case the shareholder will be taxed annually pursuant to section 1293 on its pro rata share of the ordinary earnings and net capital gain of the PFIC. Under section 1295(a), a section 1295 election will apply with respect to the PFIC if the PFIC complies with requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gain of the PFIC and otherwise carrying out the purposes of the PFIC provisions.

Section 1295(b)(1), as enacted by TAMRA, provides that a shareholder may make a section 1295 election with respect to a PFIC for any taxable year of the shareholder (shareholder election year). Once made, the election will apply to that year and to all subsequent years of the shareholder unless revoked by the shareholder with the consent of the Secretary. Section 1295(b)(2) prescribes the time for making the election. In general, for the section 1295 election to be applicable to a taxable year, the shareholder must make the election by the due date, as extended under section 6081, for the shareholder's return for that taxable year. However, to the extent provided in the regulations, a section 1295 election may be made for a taxable year after the prescribed due date if the shareholder failed to make a timely election because the shareholder reasonably believed that the foreign corporation was not a PFIC.

Under temporary regulations § 1.1295–1T(d)(1) and (f)(1), the shareholder, as defined in § 1.1291–9(j)(3), of a PFIC makes the section 1295 election by filing a Form 8621 with the shareholder's Federal income tax return by the election due date for the shareholder election year, and by filing a copy of that form with the Philadelphia Service Center. In addition, under temporary regulation § 1.1295–1T(f)(2), the shareholder must file an annual Form 8621 with its Federal income tax return to report the shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF. Temporary regulation § 1.1295–1T(f)(2) also required that a copy of the annual Form 8621 be filed with the Philadelphia Service Center. To reduce taxpayer burden, this final regulation eliminates the requirement for filing a copy of Form 8621 with the Philadelphia Service Center when the shareholder makes the section 1295 election or reports the shareholder's annual pro rata share of the ordinary earnings and net capital gain of the QEF.

In addition, this final regulation clarifies the rule in temporary regulation § 1.1295–1T(c)(2)(ii) for income inclusion by the shareholder of a QEF under section 1293 for any taxable year that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). This final regulation clarifies that in such case, the shareholder is not required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year, and the shareholder shall not be required to satisfy the section 1295 annual reporting requirement for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the section 1295 annual reporting requirement.

The Taxpayer Relief Act of 1997 added section 1296 to provide PFIC shareholders with an alternative method for current income inclusion by making a mark-to-market election with respect to their PFIC stock that qualifies as marketable stock. The election is available to shareholders whose taxable years begin after December 31, 1997 for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. The effect of a mark-to-market election on a section 1295 election will be addressed in subsequent regulations under section 1296. In addition, temporary regulation § 1.1297–3T(c) governing the deemed dividend election by a United States person that is a shareholder of a PFIC will be finalized in a future regulation project.

Notice 98–22 (1998–17 I.R.B. 5) provides that taxpayers will be permitted to apply the rules of the temporary regulations under § 1.1295–1T(b)(4) (section 1295 election by shareholders who file a joint return) and § 1.1295–1T(f) and (g) (procedures for making a section 1295 election and annual information requirements by the PFIC or intermediary) to taxable years beginning before January 1, 1998, for which the statute of limitations on the assessment of tax has not expired and, with respect to § 1.1295–1T(b)(4), if certain consistency requirements are met. The rule of Notice 98–22 has been incorporated into § 1.1295–1(k) of this regulation. Final regulation § 1.1295–1(k) is changed to reflect the special effective dates for § 1.1295–1(b)(4), (f) and (g) as provided by Notice 98–22. Accordingly, Notice 98–22 is obsoleted since the effective date provisions are contained in this final regulation.

Notice 88–125 described the requirements a shareholder must satisfy to make and maintain a section 1295 election for taxable years beginning before January 1, 1998. As a result of the procedures and requirements set forth first in the temporary regulations published on January 2, 1998, and now in these final regulations, Notice 88–125 is obsoleted effective February 7, 2000.

Effect On Other Documents

Notice 88–125 and Notice 98–22 are obsoleted as of February 7, 2000.

Special Analyses

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on substantial number of small entities. The cost of collection of information to small entities is insignificant because the primary reporting burden is on individual PFIC shareholders who make the section 1295 election. Therefore, the collection of information will not have a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the final regulations is Margaret A. Fung, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sec. 1.1291–1 also issued under 26 U.S.C. 1291. * * *

Sec. 1.1293–1 also issued under 26 U.S.C. 1293. * * *

Sec. 1.1295–3 also issued under 26 U.S.C. 1295. * * *

§ 1.1291–1T [Redesignated as § 1.1291–1]

Par. 2. Section 1.1291–1T is redesignated as § 1.1291–1 and the section heading is revised to read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of PFICs that are not pedigreed QEFs.

* * * * *

§ 1.1293–1T [Redesignated as § 1.1293–1]

Par. 3. Section 1.1293–1T is redesignated as § 1.1293–1 and the newly designated section is amended by revising the section heading and the first sentence of paragraph (c)(1) to read as follows:

§ 1.1293–1 Current taxation of income from qualified electing funds.

* * * * *

(c) Application of rules of inclusion with respect to stock held by a pass through entity—(1) *In general.* If a domestic pass through entity makes a section 1295 election, as provided in paragraph (d)(2) of this section, with respect to the PFIC shares that it owns, directly or indirectly, the domestic pass through entity takes into account its pro rata share of the ordinary earnings and net capital gain attributable to the QEF shares held by the pass through entity. * * *

* * * * *

Par. 4. Section 1.1295–0 is amended by:

1. Revising the introductory text of the section.
2. Removing the entry for the heading of § 1.1295–1T, and adding an entry for the heading of § 1.1295–1 in its place.
3. Revising the entries for § 1.1295–1(d)(3) through (d)(5).
4. Adding entries for § 1.1295–1 (d)(6) and (e) (1) and (2).
5. Removing the entry for the heading of § 1.1295–3T, and adding an entry for the heading of § 1.195–3 in its place.

The revisions and additions read as follows:

§ 1.1295–0 Table of contents.

This section contains a listing of the headings for §§ 1.1295–1 and 1.1295–3.

§ 1.1295–1 Qualified electing funds.

* * * * *

(d) * * *

(3) Indirect ownership of a PFIC through other PFICs.

(4) Member of consolidated return group as shareholder.

(5) Option holder.

(6) Exempt organization.

(e) * * *

(1) General rule.

(2) Examples.

* * * * *

§ 1.1295–3 Retroactive elections.

* * * * *

§ 1.1295–1T [Redesignated as § 1.1295–1]

Par. 5. Section § 1.1295–1T is redesignated as § 1.1295–1 and the newly designated section is amended by:

1. Revising the section heading.
2. Revising paragraph (b)(3)(iv)(B).
3. Adding paragraph (b)(3)(v).
4. Adding a sentence to the end of paragraph (b)(4).
5. Revising paragraphs (c)(2)(ii) and (iii).
6. Revising the third sentence in paragraph (c)(2)(v) *Example 3.*
7. Redesignating paragraphs (d)(3), (d)(4) and (d)(5) as paragraphs (d)(4), (d)(5) and (d)(6), respectively.
8. Adding a new paragraph (d)(3).
9. Revising paragraph (e).
10. In the last sentence of paragraph (f)(1)(iii), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
11. Adding the word "and" at the end of paragraph (f)(1)(ii).
12. Removing paragraph (f)(1)(iv).
13. Adding the word "and" at the end of paragraph (f)(2)(i)(B).
14. In the last sentence of paragraph (f)(2)(i)(C), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
15. Removing paragraph (f)(2)(i)(D).
16. Adding a new paragraph (f)(3).
17. Revising the introductory language of paragraph (g)(3).
18. Adding paragraph (g)(5).
19. Revising the first sentence of paragraph (h).
20. Revising paragraph (k).

The revisions and additions read as follows:

§ 1.1295–1 Qualified electing funds.

* * * * *

(b) * * *

(3) * * *

(iv) * * *

(B) In the case of PFIC stock transferred by an interest holder or beneficiary to a pass through entity in a transaction in which gain is not fully recognized (including pursuant to regulations under section 1291(f)), the pass through entity makes the section 1295 election with respect to the PFIC stock transferred for the taxable year in which the transfer was made. The PFIC stock transferred will be treated as stock of a pedigreed QEF by the pass through

entity, however, only if that stock was treated as stock of a pedigreed QEF with respect to the interest holder or beneficiary at the time of the transfer, and the PFIC has been a QEF with respect to the pass through entity for all taxable years of the PFIC that are included wholly or partly in the pass through entity's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j).

(v) *Characterization of stock distributed by a partnership.* In the case of PFIC stock distributed by a partnership to a partner in a transaction in which gain is not fully recognized, the PFIC stock will be treated as stock of a pedigreed QEF by the partners only if that stock was treated as stock of a pedigreed QEF with respect to the partnership for all taxable years of the PFIC that are included wholly or partly in the partnership's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j), and the partner has a section 1295 election in effect with respect to the distributed PFIC stock for the partner's taxable year in which the distribution was made. If the partner does not have a section 1295 election in effect, the stock shall be treated as stock in a section 1291 fund. See paragraph (k) of this section for special applicability date of paragraph (b)(3)(v) of this section.

(4) * * * See paragraph (k) of this section for special applicability date of paragraph (b)(4) of this section.

(c) * * *

(2) * * *

(ii) *Effect of PFIC status on election.* A foreign corporation will not be treated as a QEF for any taxable year of the foreign corporation that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). Therefore, a shareholder shall not be required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year and shall not be required to satisfy the section 1295 annual reporting requirement of paragraph (f)(2) of this section for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the section 1295 annual reporting requirement.

(iii) *Effect on election of complete termination of a shareholder's interest in the PFIC.* Complete termination of a shareholder's direct and indirect interest in stock of a foreign corporation will not terminate a shareholder's section 1295 election with respect to the foreign corporation. Therefore, if a shareholder reacquires a direct or indirect interest in any stock of the foreign corporation, that stock is considered to be stock for which an election under section 1295 has been made and the shareholder is subject to the income inclusion and reporting rules required of a shareholder of a QEF.

* * * * *

(v) * * *

Example 3. * * * If P does not make the section 1295 election with respect to the FC stock, C will continue to be subject, in C's capacity as an indirect shareholder of FC, to the income inclusion and reporting rules required of shareholders of QEFs in 1999 and subsequent years for that portion of the FC stock C is treated as owning indirectly through the partnership. * * *

(d) * * *

(3) *Indirect ownership of a PFIC through other PFICs*—(i) *In general.* An election under section 1295 shall apply only to the foreign corporation for which an election is made. Therefore, if a shareholder makes an election under section 1295 to treat a PFIC as a QEF, that election applies only to stock in that foreign corporation and not to the stock in any other corporation which the shareholder is treated as owning by virtue of its ownership of stock in the QEF.

(ii) *Example.* The following example illustrates the rules of paragraph (d)(3)(i) of this section:

Example. In 1988, T, a U.S. person, purchased stock of FC, a foreign corporation that is a PFIC. FC also owns the stock of SC, a foreign corporation that is a PFIC. T makes an election under section 1295 to treat FC as a QEF. T's section 1295 election applies only to the stock T owns in FC, and does not apply to the stock T indirectly owns in SC.

* * * * *

(e) *Time for making a section 1295 election—(1) In general.* Except as provided in § 1.1295–3, a shareholder making the section 1295 election must make the election on or before the due date, as extended under section 6081 (election due date), for filing the shareholder's income tax return for the first taxable year to which the election will apply. The section 1295 election must be made in the original return for that year, or in an amended return, provided the amended return is filed on or before the election due date.

(2) *Examples.* The following examples illustrate the rules of paragraph (e)(1) of this section:

Example 1. In 1998, C, a domestic corporation, purchased stock of FC, a foreign corporation that is a PFIC. Both C and FC are calendar year taxpayers. C wishes to make the section 1295 election for its taxable year ended December 31, 1998. The section 1295 election must be made on or before March 15, 1999, the due date of C's 1998 income tax return as provided by section 6072(b). On March 14, 1999, C files a request for a three-month extension of time to file its 1998 income tax return under section 6081(b). C's time to file its 1998 income tax return and to make the section 1295 election is thereby extended to June 15, 1999.

Example 2. The facts are the same as in *Example 1* except that on May 1, 1999, C filed its 1998 income tax return and failed to include the section 1295 election. C may file an amended income tax return for 1998 to make the section 1295 election provided the amended return is filed on or before the extended due date of June 15, 1999.

* * * * *

(f) * * *

(3) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (f) of this section.

(g) * * *

(3) *Annual Intermediary Statement.* In the case of a U.S. person that is an indirect shareholder of a PFIC that is owned through an intermediary, as defined in paragraph (j) of this section, an Annual Intermediary Statement issued by an intermediary containing the information described in paragraph (g)(1) of this section and reporting the indirect shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF as described in paragraph (g)(1)(ii)(A) of this section, may be provided to the indirect shareholder in lieu of the PFIC Annual Information Statement if the following conditions are satisfied—

* * * * *

(5) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (g) of this section.

(h) *Transition rules.* Taxpayers may rely on Notice 88–125 (1988–2 C.B. 535) (see § 601.601(d)(2) of this chapter), for rules on making and maintaining elections for shareholder election years (as defined in paragraph (j) of this section) beginning after December 31, 1986, and before January 1, 1998. * * *

* * * * *

(k) *Effective dates.* Paragraphs (b)(2)(iii), (b)(3), (b)(4) and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1,

1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998 and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired.

§ 1.1295–3T [Redesignated as § 1.1295–3]

Par. 6. Section § 1.1295–3T is redesignated as § 1.1295–3 and the newly designated section is amended by revising the section heading and paragraphs (b)(1) and (c)(5)(i) to read as follows:

§ 1.1295–3 Retroactive elections.

* * * * *

(b) * * *

(1) Reasonably believed, within the meaning of paragraph (d) of this section, that as of the election due date, as defined in § 1.1295–1(e), the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year;

* * * * *

(c) * * *

(5) *Time of and manner for filing a Protective Statement*—(i) *In general.* Except as provided in paragraph (c)(5)(ii) of this section, a Protective Statement must be attached to the shareholder's federal income tax return for the shareholder's first taxable year to which the Protective Statement will apply. The shareholder must file its return and the copy of the Protective Statement by the due date, as extended under section 6081, for the return.

* * * * *

Par. 7. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column.

Affected Section	Remove	Add
1.1293–1(c)(1), last sentence	§ 1.295–1T(j)	§ 1.1295–1(j).
1.1293–1(c)(2)(i), first sentence	§ 1.1295–1T(D)(2)	§ 1.1295–1(d)(2).
1.1295–1(b)(3)(iv)(A)	stock), and	stock) and
1.1295–1(c)(2)(ii), first sentence	1296(a)	1297(a)
1.1295–1(c)(2)(ii), first sentence	1297(b)(1).	1298(b)(1).
1.1295–1(c)(2)(iv), last sentence	§ 1.1293–1T(c).	§ 1.1293–1(c).
1.1295–1(d)(1), last sentence	(d)(5)	(d)(6)
1.1295–1(d)(2)(i)(A), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(2)(ii), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(2)(iii), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(6), first sentence	§ 1.1291–1T(e),	§ 1.1291–1(e),
1.1295–1(f)(1)(iii), last sentence	QEF calculated the QEF's	PFIC calculated the PFIC's
1.1295–1(g)(1) introductory text, second sentence, last word.	representation—	representations—
1.1295–1(g)(1)(ii)(A)	§ 1.1293–1T(a)(2)	§ 1.1293–1(a)(2)
1.1295–1(h), second sentence	§ 1.1295–1T	§ 1.1295–1
1.1295–1(i)(1)(iii), last sentence	never was made.	was never made.
1.1295–1(i)(3)(iii)	through 1297	through 1298
1.1295–3(a), first sentence	§ 1.1295–1T(j),	§ 1.1295–1(j),
1.1295–3(a), first sentence	§ 1.1295–1T(e)	§ 1.1295–1(e)
1.1295–3(b)(2)	and 1297	and 1298
1.1295–3(c)(3)	§ 1.1295–1T(d).	§ 1.1295–1(d).
1.1295–3(c)(4)(i)(A), third sentence	assessment of taxes	assessment of all PFIC related taxes
1.1295–3(c)(6)(i), last sentence	see § 1.1295–1T(c)(2)(iii).	see § 1.1295–1(c)(2)(iii).
1.1295–3(d)(1), first sentence	section 1296(a)	section 1297(a)
1.1295–3(d)(1), second sentence	section 1296(a)	section 1297(a)
1.1295–3(f)(2)(i) introductory text, second sentence	PFIC and the availability	PFIC and of the availability
1.1295–3(f)(4)(vi), first sentence	§ 1.1295–1T(d).	§ 1.1295–1(d).
1.1295–3(g)(3), first sentence	§ 1.1295–1T(d).	§ 1.1295–1(d).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In 602.101, paragraph (b) is amended by removing the entries for §1.1295–1T and 1.1295–3T and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.1295–1	1545–1555
1.1295–3	1545–1555
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1892 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–114–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent

regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment clarifies the State's interpretation of its regulations concerning the disposal of excess spoil. The amendment is intended to improve the operational efficiency of the Virginia program.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment.

By letter dated November 24, 1998 (Administrative Record No. VA–961), the Virginia Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMLR) submitted a clarification to its interpretation of its regulations at 4 VAC 25–130–816/817.76 concerning the disposal of excess spoil..

We announced receipt of the proposed amendment in the December 23, 1998, **Federal Register** (63 FR 71049), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1999. No one requested to speak at a public hearing, so no hearing was held. By letters dated December 6, 1999, and January 11, 2000 (Administrative Record No. VA–995 and VA–998, respectively), the DMLR submitted additional information concerning the amendment, and withdrew the proposal to dispose of excess spoil on bond forfeiture sites.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

The proposed clarification is as follows:

The Division of Mined Land Reclamation proposes to clarify the interpretation of 4 VAC 25–130–816.76. The regulation states that excess spoil may be placed on "another area under a permit issued pursuant to the Act, or on abandoned mine lands under contract for reclamation according to the Abandoned Mine Land (AML) Guidelines and approved by the Division of Mined Land Reclamation." The Virginia Division of Mined Land Reclamation interprets this regulation to mean excess spoil from a permitted coal mining operation may be used by the Division of Mined Land Reclamation to reclaim a bond forfeiture site or an AML project site. Through any of the contracting procedures available to the agency, including negotiated, no-cost, or competitively bid contracts, the agency may cause the placement of excess spoil on the forfeiture or AML site in accordance with the provisions of a contract executed between the Division and a contractor. The spoil material removed from the permitted area will be demonstrated to be excess spoil and unnecessary for the achievement of approximate original contour within the permitted area.

The forfeiture or AML project must be:

1. Located in general proximity to the permit area;
2. on the AML inventory list or bond forfeiture list; and
3. referenced in the permit plans, along with the demonstration that the spoil is excess and identified on the permit map. However, the forfeiture or AML site will not be included in the permit acreage; will not be subject to the requirements for permits, performance bonds; and will not delay or otherwise affect bond release on the permitted area.

In the event the contractor fails to perform the work specified in the "no-cost contract", the Division will invoke the appropriate contact sanctions to cause completion of the contract terms. When the contractor and the mine operator happen to be one and the same, the contract will include an additional default provision. In this case, the contract will specify that the mine operator will revise the permit boundary to include the area upon which the excess spoil was placed pursuant to the "no-cost contract." The permit performance bond requirements will become applicable.

In response to our comments on the proposal (Administrative Record Numbers VA–983, 984, and 985), DMLR submitted a letter on December 6, 1999, stating the following:

1. Virginia is proposing to follow the information contained in the letters of November 24, 1997, and November 24, 1998, as well as the AML Guidelines. The November 24, 1997, letter was a previous request by Virginia for OSM to approve an interpretation of 4 VAC 25–13–816.76 that would allow the placement of excess spoil on eligible AML sites pursuant to "no-cost" contracts. In that letter, Virginia committed to apply the following guidelines for such contracts:
   - —Conditions for placement of spoil are to be outlined in a written agreement between the operator and the regulatory authority;
   - —Only spoil not necessary to restore AOC or reclaim the permitted area can be placed on abandoned mine lands;
   - —The spoil is to be disposed of in a technically and environmentally sound fashion;
   - —The spoil is placed where it will not destroy or degrade features of environmental value;
   - —Areas for excess spoil disposal must be eligible as noted in the state reclamation plan;
   - —The mining company will not be required to permit the disposal area;
   - —No coal can be removed from the disposal area; and,
   - —The abandoned mine land features reclaimed will be moved to the completed column of AMLIS and noted as Private Reclamation;

2. For financial assurance, the DMLR would require the operator to post an AML bond on the site;

3. The DMLR withdraws its proposal to dispose of excess spoil on bond forfeiture sites; and

4. The DMLR stated that it will not allow fills to be constructed on abandoned mine land.

We disapproved a similar Virginia proposal to allow the placement of excess spoil on unpermitted abandoned sites through "no-cost" contracts in 1990. That proposal was disapproved for three reasons. First, Virginia failed to designate a fund that could be used in the event that the contractor defaults on his reclamation obligations. Second, the proposal did not contain a reference to the Federal AML policy guidelines. Finally, the proposal did not provide for "public notice or participation such as would occur on an AML contract or

mining permit." (55 FR 2240, 2243–4, January 23, 1990).

We have also addressed the placement of excess spoil on adjacent abandoned mine land previously in program amendment decisions in other states. Most recently, we approved a Pennsylvania amendment regarding the placement of excess spoil on abandoned mine sites (March 26, 1999; 64 FR 14610). In that approval, we explained that in order to obtain our approval of "no cost reclamation," such reclamation would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore the approximate original contour (AOC) and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. In short, "no cost reclamation" amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation contract. 64 FR at 14617.

The approved Virginia program at 4 VAC 25–130–816/817.76(a) provides that the DMLR may approve, where environmental benefits will occur, the placement of spoil not needed to restore the approximate original contour of the land and reclaim land within the permit area in a manner consistent with the Virginia Coal Surface Mining Control and Reclamation Laws and the Virginia Coal Surface Mining Reclamation Regulations on abandoned mine lands under a contract for reclamation according to the AML Guidelines and approved by the Division. In the amendment, Virginia would authorize the placement of excess spoil, via a no-cost contract, on AML sites. "No-cost" contracts are so called because the contractor receives no moneys from the state AML agency in exchange for performance of the terms of the contract. Rather, the contractor receives the benefit of a free disposal area for its excess spoil in consideration for performance of the needed reclamation. To be approvable, the policies and procedures applicable to such no-cost contracts must provide a degree of security comparable to contracts under Federally-funded AML projects.

In Virginia's amendment, AML lands will be reclaimed in accordance with 4 VAC 25–130–816/817.76(a)(2). That is, all reclamation must be in accordance with the AML Guidelines, regardless of whether the contracts are "no-cost," or Federally funded AML contracts. The DMLR confirmed in its December 6, 1999, letter that the disposal of excess spoil as incidental reclamation will be in accordance with the AML Guidelines, will require an AML bond to be posted, and that excess spoil fills will not be constructed on the AML sites.

We find, therefore, that Virginia's amendment regarding the use of "no-cost contracts" under the approved provisions at 4 VAC 25–130–816/817.76 concerning the disposal of excess spoil and incidental reclamation will afford the same degree of performance incentives and safeguards as Federally funded AML construction projects. We are approving the amendment for the reasons set below.

First, the requirements of 4 VAC 25–130–816/817.76 provide that the placement of the excess spoil under a contract for reclamation must be in accordance with the AML guidelines. These guidelines were published in the **Federal Register** at 61 FR 68777, December 30, 1996.

Second, the amount of excess spoil placed on an abandoned site will only be that needed to reclaim the bond forfeiture or AML site. Therefore, valley, head-of-hollow and durable rock fills will not be constructed on these AML sites, because the amount of material deposited would exceed that necessary to address the reclamation of the forfeited site or AML impacts and problems.

Third, the use of the "no-cost contracts" contains sufficient performance incentives to require compliance with all applicable requirements to ensure that the sites are fully reclaimed. In its December 6, 1999, letter, the DMLR stated that it will require the operator conducting a no-cost contract to post an AML bond on the site. In addition, in its January 11, 2000, letter, the DMLR stated that Virginia's AML grant funds would also be a source available to reclaim a site in the event of operator default or, after the project is released, to correct any failure of the project reclamation.

IV. Summary and Disposition of Comments

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that there appears to be no conflict with MSHA regulations and/or procedures. The U.S. Department of Agriculture, Natural Resources Conservation Service responded and stated that its position is that the amendment be accepted. The U.S. Fish and Wildlife Service (USFWS) responded and stated that it appears that no impacts to Federally listed or proposed species or critical habitat will occur and, therefore, it has no comments on the proposed amendments. The U.S. Forest Service responded that it concurs with the amendment, as long as the AML sites will not lose soil or water quality as a result of this additional spoil material. In response, we note that the DMLR has confirmed in its December 6, 1999, letter that the disposal of excess spoil as incidental reclamation will be in accordance with the AML Guidelines. By following these guidelines, soil and water quality will be protected at least to the extent that they are under Federally-funded AML projects.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to any provisions of the State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the clarifications Virginia proposed pertain to air or water quality standards. Nevertheless, we requested EPA's comments on the proposed amendment. EPA did not provide any comments.

Public Comments

We solicited public comments on the amendment. The Virginia Department of Historic Resources responded that the amendment will not affect historic properties, and that it has no objection to the amendment.

V. Director's Decision

Based on the above findings, we approve the Virginia amendment as submitted by Virginia on November 24, 1998, and clarified on December 6, 1999, and January 11, 2000.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 946 which codifies decisions concerning the Virginia program. We are making this final rule effective immediately to expedite the State program amendment process.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 2000.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* *
November 24, 1998	February 7, 2000	Policy clarification for implementing 4 VAC 25–130–816/817.76.

[FR Doc. 00–2641 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[GGD08–99–058]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor Navigation Canal, mile 4.5, at New Orleans, Orleans Parish, Louisiana. This deviation allows the Port of New Orleans to close the bridge to navigation daily from 7 a.m. until noon and from 1 p.m. until 6 p.m. from Monday, March 6, 2000 through Wednesday, April 19, 2000. This temporary deviation was issued to allow for the repair of the damaged fender system. The draw will open at any time for a vessel in distress. Presently, the draw opens on signal at all times.

DATES: This deviation is effective from 7 a.m. on Monday, March 6, 2000 through 6 p.m. on Wednesday, April 19, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor Navigation Canal in New Orleans, Louisiana, has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels,and other recreational craft. The Port of New Orleans requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the portions of the fender system.

This deviation allows the draw of the Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor

Navigation Canal, mile 4.5, at New Orleans, Orleans Parish, Louisiana to remain closed to navigation daily from 7 a.m. until noon and from 1 p.m. until 6 p.m. from Monday, March 6, 2000 through Wednesday, April 19, 2000. The draw shall open on signal at any time for a vessel in distress.

Dated: January 12, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–2678 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF DEFENSE
DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900–AI63

Eligibility Criteria for the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The amendments reflect statutory changes which set forth new eligibility criteria that will allow additional individuals to establish eligibility for educational assistance under the Montgomery GI Bill—Active Duty (MGIB); and also reflect statutory provisions concerning the approval of courses leading to alternative teacher certification. This document also makes changes for the purpose of clarification.

DATES: *Effective date:* February 7, 2000.

Dates of application:

October 1, 1996: 38 CFR 21.7020(b)(1); new § 21.7042(f)(3); and newly redesignated § 21.7042(f)(4).

October 9, 1996: §§ 21.4135(b); 21.5021(d)(3); 21.5058(b); 21.5130(d); 21.7020(b)(29); all changes to § 21.7042 except new § 21.7042(f)(3) and newly redesignated § 21.7042(f)(4); §§ 21.7045; 21.7050; 21.7131; 21.7520(b); and 21.7635.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 202–273–7187.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 12, 1998 (63 FR 63253), the Department of Defense (DOD), the Department of Transportation (Coast Guard), and the Department of Veterans Affairs (VA) proposed amending subparts D, G, K, and L of 38 CFR part 21, as set forth in the SUMMARY portion of this document.

DOD, the Department of Transportation (Coast Guard), and VA gave interested persons 60 days to submit comments. VA received one letter from a service organization. The organization noted that the amendments would be beneficial for veterans and concurred in them.

Based on the rationale stated in this document and the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change except to the authority citations for subparts D, G, and L.

DOD is issuing this final rule jointly with VA insofar as it relates to VEAP. DOD funds this program and VA administers it. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. DOD and the Coast Guard fund this program, and VA administers it. The remainder of this final rule is issued solely by VA.

Administrative Procedure Act

Under 5 U.S.C. 553, there is a basis for dispensing with a 30-day delay of the effective date since the changes made by this final rule are restatements of statute, interpretive rules, and nonsubstantive changes for the purpose of clarity.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements associated with this final rule concerning 38 CFR 21.7131(l) and (m) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520). The proposed rule provided an opportunity to comment to OMB and VA on those requirements, but no comments were received on them. OMB has assigned OMB control number 2900–0607 to those information collection and recordkeeping requirements. Under the collection of information provisions in § 21.7131(l) and (m), a veteran may be required to submit evidence to show that the veteran's election to receive educational assistance under the MGIB was a valid one, and the date of VA's receipt of the evidence may have an effect on the effective date of an award of educational assistance.

OMB assigns a control number to each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are displaying the OMB control number assigned to the collection of information in this final rule at the end of § 21.7131.

Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause educational institutions to make changes in their activities and has minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs that this final rule affects are 64.117, 64.120, and 64.124. This final rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 28, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: July 13, 1999.

P.A., Tracey,

Vice Admiral, USN Deputy Assistant Secretary (Military Personnel Policy) Department of Defense.

Approved: October 18, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commander for Human Resources.

For the reasons set forth above, 38 CFR part 21 (subparts D, G, K, and L) is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4135, paragraph (b) is added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election was made pursuant to procedures described in § 21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

* * * * *

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

3. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, unless otherwise noted.

§ 21.5021 [Amended]

4. In § 21.5021, paragraph (d)(3) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,".

5. In § 21.5058, the authority citation for paragraph (b) is revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3018A, 3018B, 3018C, 3202(l), 3222)

§ 21.5130 [Amended]

6. In § 21.5130, paragraph (b) is amended by removing "(except paragraph (b))".

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

7. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

8. In § 21.7020, paragraph (b)(29)(iii) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; the authority citation for paragraph (b)(29) is revised; paragraph (b)(1)(iv) is added immediately after the authority citation for paragraph (b)(1)(iii); and paragraph (b)(44) is added immediately after the authority citation for paragraph (b)(43), to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(1) * * *

(iv) When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by § 3.6(b) of this chapter) and who made the election described in § 21.7042(a)(7) or (b)(10), the term *active duty* when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(29) * * *

(Authority: 38 U.S.C. 3002(8), 3452(c))

* * * * *

(44) *Date of election.* The term *date of election* means:

(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and

(ii) For an election that must be submitted to VA, the date VA receives the written election.

(Authority: 38 U.S.C. 3018C(a)(5); sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

9. In § 21.7042, paragraph (f)(3) is redesignated as paragraph (f)(4); newly redesignated paragraph (f)(4) is amended by removing "Paragraph (f)(2) of this section does" and adding, in its place, "Paragraphs (f)(2) and (f)(3) of this section do", by removing "Coast" and adding, in its place, "United States Coast", and by removing "Reserve" and adding, in its place, "Senior Reserve"; paragraph (a)(7) is added immediately after the authority citation for paragraph (a)(6); paragraph (b)(10) is added immediately after the authority citation for paragraph (b)(9); new paragraph (f)(3) and paragraph (g)(5) are added; and paragraphs (f)(2), (g)(1), and (g)(4) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) * * *

(7) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(b) * * *

(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(f) * * *

(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon graduation from:

(i) The United States Military Academy;

(ii) The United States Naval Academy;

(iii) The United States Air Force Academy; or

(iv) The United States Coast Guard Academy.

(3) Except as provided in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 is not eligible for educational assistance under 38 U.S.C. chapter 30, if the individual enters on active duty—

(i) Before October 1, 1996; or

(ii) After September 30, 1996, and while participating in that program received more than $2,000 for each year of participation.

(Authority: 38 U.S.C. 3011(c), 3012(d))

* * * * *

(g) *Reduction in basic pay.* (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

* * * * *

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

(5) If through administrative error, or other reason—

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

(Authority: 38 U.S.C. 3002, 3011, 3012, 3018)

10. In § 21.7045, the heading and introductory text are revised; and paragraph (d) is added, to read as follows:

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in this subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) of this section.

* * * * *

(d) *Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program.*—(1) *Making an election.* To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must—

(i) Have elected to do so before October 9, 1997;

(ii) Have been a participant (as that term is defined in § 21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;

(iii) Have been on active duty on October 9, 1996; and

(iv) Receive an honorable discharge.

(2) *Election.* The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) *$1,200 collection.* An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C)

11. In § 21.7050, paragraph (a)(1) is amended by removing "paragraph (b)" and adding, in its place, "paragraphs (b) and (c)", and by removing "of this part"; paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; the authority citation for paragraph (b) is revised; and a new paragraph (c) is added to read as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3031(e))

(c) *Time limit for some members of the Army and Air National Guard.* (1) If a veteran or servicemember establishes eligibility for the educational assistance payable under this subpart by making the election described in § 21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in § 21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in § 21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

12. In § 21.7131, paragraphs (l) and (m) are added to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(l) *Eligibility established under § 21.7042 (a)(7) or (b)(10).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either § 21.7042 (a)(7) or (b)(10). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7042(g)(4) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 5113; sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(m) *Eligibility established under 21.7045(d).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7045(d)(3) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 3018C(a), (b), 5113) (The Office of Management and Budget has approved information collection requirements in this section under control number 2900–0607.)

Subpart L—Educational Assistance for Members of the Selected Reserve

13. The authority citation for part 21, subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

14. In § 21.7520, paragraph (b)(23)(iv) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; and the authority citation for paragraph (b)(23) is revised to read as follows:

§ 21.7520 Definitions.

* * * * *

(b) * * *

(23) * * *

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

* * * * *

15. In § 21.7635, paragraph (y) is redesignated as paragraph (z); and a new paragraph (y) is added, to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the reservist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in § 21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in § 21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * * *

[FR Doc. 00–2637 Filed 2–4–00; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes to Processing Instructions for Nonautomation Mail and Revisions to Letter Tray Labels

AGENCY: Postal Service.

ACTION: Final Rule.

SUMMARY: This final rule revises Domestic Mail Manual (DMM) sections M130 and M610 with amendments to optional processing instructions for nonautomation mail. New standards provide a means for mailers to exclude their letter-size mail from any automated processing involved with initial distribution of mail, including tabbing and labeling machines, barcode sorters, and optical character readers. This final rule also revises DMM section M013, with inclusion of an optional endorsement line, "MANUAL ONLY," and section M032, with changes to the second line of tray labels for Presorted First-Class Mail letters and Presorted Standard Mail (A) letters.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jamie Gallagher, (202) 268–4031.

SUPPLEMENTARY INFORMATION: On October 25, 1999, the Postal Service published for public comment in the **Federal Register** a proposed rule (FR 64 57419–57421) that expanded provisions for mailers who wanted nonautomated (manual) processsing and revised Line 2 of letter tray labels for First-Class Mail and Standard Mail (A). The Postal Service also invited comments on the proposed rule from interested parties and accepted comments until December 9, 1999. This final rule contains the DMM standards adopted by the Postal

Service after review of the comments that were submitted.

Evaluation of Comments Received

The Postal Service received eight pieces of correspondence offering comments on the October 25 proposed rule. Respondents included major mailing associations, large business mailers, and mailing agents.

Based on additional costs expected to be incurred by mailers, four commenters objected to the use of facing slips on package bundles. An alternative to facing slips was proposed by two other commenters who suggested the use of optional endorsement lines with "DO NOT AUTOMATE" printed on mailpieces. For package identification of letter-size mail, the use of optional endorsement lines will be added to the DMM revisions. Mailers must use either facing slips or optional endorsement lines printed with "MANUAL ONLY" on all required bundles that are to be excluded from automated processing.

Three commenters objected to postal tabbing, claiming that marketing effectiveness could be compromised. Similarly challenged was the right of the Postal Service to change the physical properties of a mailpiece. However, according to the view of the Postal Service's General Counsel, the legal authority to make reasonable alterations to mailpieces in order to facilitate processing of the mail is implied within the Postal Service's express authority to provide for an efficient system of sorting and delivery of the mail. Tabbing by the Postal Service, placing labels on mailpieces, and spraying barcodes on letters are included in the Postal Service's authority to exercise powers incidental, necessary, or appropriate to the performance of its assigned functions.

One commenter noted problems from postal labeling when information on Standard Mail (A) carrier route pieces had been covered by LMLM (letter mail labeling machine) labels. This commenter suggested adding carrier route mail to the category of mailings that could be excluded from automated processing. This proposal will be deferred for publication and comment in the **Federal Register** at a later time.

Processing letter-size mail has been revolutionized during the past decade as the Postal Service deployed a network of automated equipment. Optical character readers, barcode sorters, tabbing machines, and labeling machines are among the pieces of automated equipment currently used to process mail. Today's infrastructure provides many efficiencies which contribute to holding postage rates down. Nationally, the average cost for a postal plant to process 1,000 letters through automation is around $5. Manual sortation, the alternative, costs the Postal Service nearly $60 per 1,000 letters.

In an effort to minimize more costly and slower manual processing, the Postal Service will attempt to sort machineable pieces through automation. Letter-size mailpieces, for which an automated postage rate has not been paid, are considered potentially upgradeable and subject to automated processing. Even though 95 percent of letter-size mail is processed through automation, some mailers prefer to have their mailpieces sorted manually. New processing instructions will provide a means for mailers to indicate if presorted pieces should be processed exclusively by manual operations. To maintain the handling request through downstream postal processes, mailers must use facing slips or optional endorsement lines with "Manual Only" applied to required packages. Additionally, letter tray labels for First-Class Mail and Standard Mail (A) are revised, with Line 2 reflecting new information.

The Domestic Mail Manual is revised as follows. These changes are incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 5552(a): 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

* * * * *

M013 Optional Endorsement Lines

1.0 USE

1.1 Basic Standards

* * * * *

[Add a new category with the following Sortation Levels and OEL examples to end of table.]

Optional Tray Level for Manual Processing:

5-digit—5-DIGIT 23456 MANUAL ONLY

3-digit—3-DIGIT 090 MANUAL ONLY

ADC (3-digit ZIP Code Prefix)—ALL FOR ADC 103 MANUAL ONLY

ADC (5-digit ZIP Code)—ALL FOR ADC 98765 MANUAL ONLY

Mixed ADC (3-digit ZIP Code prefix)—MIXED ADC 630 MANUAL ONLY

Mixed ADC (5-digit ZIP Code)—MIXED ADC 12345 MANUAL ONLY

* * * * *

M030 Containers

* * * * *

M032 Barcoded Labels

* * * * *

[Amend Exhibit 1.3a as follows:]

EXHIBIT 1.3A.—3-DIGIT CONTENT IDENTIFIER NUMBERS

Class and mailing	CIN	Human-readable content line
FIRST-CLASS MAIL		
FCM Letters—Presorted (Basic Preparation)		
[Revise the following CIN and human-readable content lines:]		
5-digit trays	250	FCM LTRS 5D NON BC.
3-digit trays	253	FCM LTRS 3D NON BC.
ADC trays	256	FCM LTRS ADC NON BC.
mixed ADC trays	259	FCM LTRS NON BC WKG.
[Add a new category:]		
FCM Letters—Presorted (Nonautomation Processing)		
5-digit trays	267	FCM LTRS 5D MANUAL.
all other required trays	268	FCM LTRS MANUAL ONLY.
STANDARD MAIL (A)		
STD Letters—Presorted (Basic Preparation)		
[Revise the following CIN and human-readable content lines:]		
5-digit trays	550	STD LTRS 5D NON BC.
3-digit trays	553	STD LTRS 3D NON BC.
ADC trays	556	STD LTRS ADC NON BC.
mixed ADC trays	559	STD LTRS NON BC WKG.
[Add a new category:]		
STD Letters—Presorted (Nonautomation Processing)		
5-digit trays	604	STD LTRS 5D MANUAL.
all other required trays	605	STD LTRS MANUAL ONLY.

* * * * *

M100 First-Class Mail (Nonautomation)

* * * * *

M130 Presorted First-Class Mail

1.0 BASIC STANDARDS

* * * * *

1.5 Processing Instructions

[Revise 1.5 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

2.0 REQUIRED PREPARATION—LETTER- AND CARD-SIZED PIECES

* * * * *

[Revise 2.3 to read as follows:]

2.3 Tray Line 2

Line 2:

a. 5-digit: "FCM LTRS 5D NON BC."

b. 3-digit: "FCM LTRS 3D NON BC."

c. ADC: "FCM LTRS ADC NON BC."

d. Mixed ADC: "FCM LTRS NON BC WKG."

[Add new 2.4 and 2.5 to read as follows:]

2.4 Optional Tray Line 2

For trays that mailers do not want automated under 1.5:

a. 5-digit: "FCM LTRS 5D MANUAL."

b. All other required trays: "FCM LTRS MANUAL ONLY."

2.5 Package Identification

Required 5-digit, 3-digit, ADC, and mixed ADC packages must be identified with facing slips on which "MANUAL ONLY" is printed or with optional endorsement lines under M013.

* * * * *

M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail (A)

1.0 BASIC STANDARDS

* * * * *

1.4 Processing Instructions

[Revise 1.4 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

2.0 REQUIRED PREPARATION—LETTER- AND CARD-SIZED PIECES

* * * * *

[Revise 2.3 to read as follows:]

2.3 Tray Line 2

Line 2:

a. 5-digit: "STD LTRS 5D NON BC."

b. 3-digit: "STD LTRS 3D NON BC."

c. ADC: "STD LTRS ADC NON BC."

d. Mixed ADC: "STD LTRS NON BC WKG."

[Add new 2.4 and 2.5 to read as follows:]

2.4 Optional Tray Line 2

For trays that mailers do not want automated under 1.5:

a. 5-digit: "STD LTRS 5D MANUAL."

b. All other required trays: "STD LTRS MANUAL ONLY."

2.5 Package Identification

Required 5-digit, 3-digit, ADC, and mixed ADC packages must be identified with facing slips on which "MANUAL ONLY"is printed or with optional endorsement lines under M013.

* * * * *

[An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–2604 Filed 2–4–00; 8:45 am]

BILLING CODE 7710–12–P

Proposed Rules

Federal Register
Vol. 65, No. 25
Monday, February 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

RIN 0584–AC25

National School Lunch Program and School Breakfast Program: Alternatives to Standard Application and Meal Counting Procedures

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the procedures for determining eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. Existing regulations provide school food authorities with two alternatives to the standard requirements for the annual determinations of eligibility for free and reduced price school meals and daily meal counts by type, commonly termed "Provision 1" and "Provision 2". This proposed rule would allow for an extension of Provision 2 procedures and provide for a new alternative, "Provision 3". For schools choosing to participate in one of the alternate application and meal counting procedures, this proposed rule would also codify the alternate counting and claiming provisions of Public Law 103–448 which have been implemented, and codify revisions to the counting and claiming provisions authorized by Public Laws 104–193 and 105–336. This proposed rule would streamline program operations for program administrators and participants. State agency and school food authority recordkeeping burdens are expected to decrease because the determinations of eligibility for free and reduced price meals would not be made as frequently. In addition, for those schools electing to participate, this proposed rule may increase participation in nutritious school meal programs, thereby helping students develop lifelong healthy eating habits. A primary reason for the increase in participation is that local schools would be offering meals at no charge to all enrolled students.

DATES: To be assured of consideration, comments must be postmarked on or before April 7, 2000.

ADDRESSES: Comments must be sent to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or via E:Mail at CNDPROPOSAL@fns.usda.gov. All written submissions, as well as the Regulatory Impact Analysis, will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Jane Whitney or Todd Barrett at the above address, by telephone at 703–305–2620. Copies of the Regulatory Impact Analysis are available upon request.

SUPPLEMENTARY INFORMATION:

Background

Generally, schools must collect applications on an annual basis from the households of enrolled children and make annual determinations of their eligibility for free or reduced price school meals. They must also count the number of free, reduced price, and paid meals at the point of service on a daily basis in order to claim Federal reimbursement. However, school food authorities may participate in alternatives to annual eligibility determinations and daily meal counts by type (free, reduced price and paid) which are intended to reduce some of this administrative burden. These alternatives are commonly referred to as Provision 1, Provision 2 and Provision 3. This proposed rule would make no changes to Provision 1, codify changes to Provision 2 and codify the implementation of Provision 3. A brief description of each Provision as authorized by the National School Lunch Act (42 U.S.C. 1759a) follows:

Provision 1

Provision 1 reduces application burdens by allowing free eligibility to be certified for a 2 year period in schools where at least 80 percent of the children enrolled are eligible for free or reduced price meals.

Notification of program availability and certification of children already certified eligible for free meals may be reduced to once every 2 consecutive school years. All other households must be notified of program availability, provided a meal application, and allowed to apply for meal benefits each school year.

All other program rules are unchanged. Provision 1 schools are not required to serve meals at no charge to all students. Schools must continue to record daily meal counts of meals served to children by type as the basis for calculating reimbursement claims.

Provision 2

Provision 2 reduces application burdens and simplifies meal counting and claiming procedures by allowing a school to establish claiming percentages that apply for a 4-year period provided the school serves meals to participating children at no charge.

During the first, or base, year the school takes applications, makes eligibility determinations, and records meal counts by type, just as it would under normal program rules, with the exception that all reimbursable meals are provided at no charge to the students. During the next 3 years, the school counts only the total number of reimbursable meals served each day. Reimbursement during these years is determined by applying the percentages of free, reduced price and paid meals during the corresponding month of the base year to the total meal count for the claiming month. After the base year, the school makes no new eligibility determinations (for as long as they remain operating under the Provision). The base year is included as part of the 4 years. At the end of each 4-year period, the State agency may approve an extension for 4 years if the income level, as adjusted for inflation, of the school's population has remained stable.

Schools electing this alternative must pay the difference between Federal reimbursement and the cost of providing all meals at no charge. The statute requires that money to pay for this difference must be from sources other than Federal funds.

Provision 3

Provision 3 reduces application burdens and meal counting and

claiming procedures by allowing a school to simply receive a comparable level of Federal cash and commodity assistance each year as it received in the base year, provided the school serves all meals at no charge. Provision 3 schools serve reimbursable meals to all participating children at no charge for a period of up to 4 years, or longer if an extension is granted.

Provision 3 schools receive the level of Federal cash and commodity support paid to them for the last year in which they made eligibility determinations and meal counts by type under regular program rules; this is the base year. For each successive year that the school remains in Provision 3, the level of Federal cash and commodity support is adjusted to reflect changes in enrollment and inflation. After the base year, the school makes no new eligibility determinations for as long as it remains in the Provision. The base year is not included as part of the 4 years. At the end of each 4 year period, the State agency may approve 4-year extensions if the income level, as adjusted for inflation, of the school's population has remained stable.

Schools electing this alternative must pay the difference between Federal reimbursement and the cost of providing all meals at no charge. The statute requires that money to pay for this difference must be from sources other than Federal funds. In order to make this procedure available promptly, Provision 3 was implemented via memorandum in 1995.

History of the Provisions and Changes Being Implemented

No changes are being made to Provision 1. The changes being made to Provisions 2 and 3 are in response to statutory changes and the experience gained from operating the Provisions via policy memorandum.

Under current regulations for Provision 2, schools that elect: (a) To serve reimbursable meals at no charge to all children for 3 successive school years regardless of the household's ability to pay, and (b) to pay the difference between the meal service costs and the Federal reimbursement, from sources other than Federal funds, may conduct public notification and make eligibility determinations once every 3 school years. During the first year of the 3-year cycle (the base year), free and reduced price eligibility determinations are made and daily meal counts are taken according to the eligibility status of the child served, even though all meals are served at no charge. In the second and third year of the cycle, schools are not required to count meals by type. Instead, they submit claims based on the total number of meals served each month. The school's reimbursement amount is determined by applying the percentages of free, reduced price and paid meals served during the corresponding month of the first year to the total meal count for the claim month.

Section 111 of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, amended section 11(a)(1)(C) of the NSLA to allow an extension to the initial 3-year Provision 2 cycle by an additional 2 years if the school food authority established, through available and approved socioeconomic data, that the income level of the population of the school remained stable since free and reduced price applications were taken. These extensions were limited to those schools participating under Provision 2 on November 2, 1994. Subsequently, section 704(a) of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted August 22, 1996, removed the November, 1994 limitation so that any Provision 2 school could extend the initial 3-year cycle an additional 2 years with subsequent 5-year cycles provided the available and approved socioeconomic data established that the income level of the school's population has remained stable. At the end of the 3 year/2year cycle, and each subsequent 5-year cycle, the State agency could approve an extension of Provision 2 procedures if the school food authority established that the income level of the school's population remained stable when compared with the income level of the school's population during the base year.

Section 103 of Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, enacted on October 31, 1998, amended section 11(a)(1)(C) and (D) of the NSLA to make the period of operation for Provision 2 consistent with that of Provision 3. The statute eliminated Provision 2's initial 3-year cycle, 2-year extension and subsequent 5-year extensions. As a result of Public Law 105–336, the initial cycle for operating Provision 2 is now 4 years. In addition, State agencies may grant extensions to operate Provision 2 for an additional 4 years in those schools where the available and approved socioeconomic data identifies that the income level of the school's population has remained stable. Schools currently operating Provision 2 must finish their cycle under previous requirements and the new 4-year timeframe will be effective upon application for, and approval of, an extension.

Public Law 103–448 added a new alternative, Provision 3, to section 11(a)(1)(E) of the NSLA. Under Provision 3, schools elect to serve reimbursable meals at no charge to all children for a period of 4 successive school years. Provision 3 schools receive the level of Federal cash and commodity assistance paid to them for the last year in which they made eligibility determinations, known as the base year, adjusted annually to reflect changes in enrollment and inflation. The implementation of Provision 3 does not affect a school food authority's receipt of bonus commodities. At the end of the 4-year cycle (not including the base year) and each subsequent 4-year cycle, the State agency may approve an extension of Provision 3 procedures if the school food authority can establish that the income level of the school's population remained consistent with the income level of the population of the school during the base year. The school food authority of a school implementing Provision 3 must use available and approved socioeconomic data and submit the data to their State agency for approval. (Approved data sources are discussed later in this preamble.)

An analysis of this proposed rule identified that it would offer significant benefits for school food authorities and households. During non-base years, school food authorities of schools operating under Provisions 2 and 3 would experience a significant reduction of administrative burdens associated with making eligibility determinations, counting meals by type (free, reduced price and paid), operating a payment system for children eligible for reduced price and paid meals and conducting verification. Similarly, households with children enrolled in schools under Provision 2 or Provision 3 would not be required to submit paperwork documenting their eligibility.

The analysis also finds that State agencies would experience some additional burden through this rule due to the responsibility of making extension determinations and reporting information on usage of Provision 2 and Provision 3 and possibly having to report information on extension determinations. The analysis asserts that once State agencies and school food authorities are accustomed with Provisions 2 and 3, the extension determination burden on State agencies would be minimal and the reporting burdens would be noticeable, but not significant. However, the significant

reduction in burdens by eliminating eligibility determinations, meal counts by type, verification and a payment system for reduced price and full price meals offsets the insignificant increase in burdens associated with extension determinations.

The remainder of this preamble discusses the proposed changes to the regulations to reflect the extensions for Provision 2 schools and to codify the implementation of Provision 3.

Definitions

Section 245.2(f-2), *Operating day,* would be added to the definitions to define an operating day as a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

Section 245.2(j), *Special assistance certification and reimbursement alternatives,* would be amended to remove the reference to "two" optional alternatives and replace it with "three" optional alternatives.

Provision 2

Section 245.9(b), *Provision 2,* of this proposed rule would restate the existing regulatory language although a number of editorial changes would be made to parallel the new Provision 3, including the addition of a definition of "Provision 2 base year". The proposal would define the Provision 2 base year to mean the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as outlined under § 245.9(c)(2)(iii). Under a Provision 2 base year, schools would offer reimbursable meals to all students at no charge. The Provision 2 base year would be included in the 4-year cycle. The Department would take this opportunity to provide Provision 2 schools with additional areas of flexibility as discussed below.

Section 245.9(b)(1), *Free meals,* would clarify that schools participating under Provision 2 must serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge.

Section 245.9(b)(2), *Cost differential,* would restate the existing requirement that the school food authority of a school participating in Provision 2 must pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and Federal reimbursement.

Section 245.9(b)(3), *Meal counts,* would set forth the meal counting methodology for Provision 2. Paragraph (b)(3)(i), *Monthly percentages,* would restate the existing meal count provision which converts the monthly meal counts, by type, in the first year into percentages which are then applied to the total counts for the corresponding months in the second, third and fourth consecutive years and in years for which extensions of Provision 2 have been granted. Paragraph (b)(3)(ii), *Annual percentages,* would add a new method of meal claiming based on annual percentages.

Under the annual percentages option, the actual number of all meals served, by type, during the base year would be converted to an annual percentage for each type of meal. Schools that begin Provision 2 at a point in time other than the beginning of a school year would be required to complete the equivalent of a full school year to develop annual percentages. For example, a school implementing Provision 2 in January and continuing through June of one school year, would be required to take applications and obtain meal counts by type for September through December of the following school year in order to develop annual percentages for each meal type. These three percentages would then be multiplied by the total number of all meals served (free, reduced price and paid) in each month of the second, third and fourth consecutive school years, and in years for which extensions of Provision 2 have been granted, in order to calculate reimbursement claims for free, reduced price and paid meals each month.

Extension of Provision 2

Under § 245.9(c), *Extension of Provision 2,* of this proposed rule, State agencies may authorize a school food authority to continue under Provision 2 without taking new free and reduced price applications and daily meal counts by type. Schools approved for Provision 2 would continue to use the claiming percentages calculated during the most recent base year.

State agencies would be allowed to grant such an extension of Provision 2 if the school food authority could establish through available and approved socioeconomic data that the income level of the school population, as adjusted for inflation, remained stable, declined or had only negligible improvement since free and reduced price applications and meal counts by type were taken in the most recent base year. (The terms "negligible improvement" and "approved data sources" are discussed later in this preamble.) State agencies would be responsible for reviewing all available and approved socioeconomic data submitted by school food authorities requesting an extension. Prior to granting or denying an extension, State agencies would be required to evaluate the data to determine whether it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, remained stable, declined or had only negligible improvement.

State agencies would not be allowed to approve an extension for those schools for which the available and approved socioeconomic data did not reflect the school's population, was not equivalent data for the base year and last year of the current cycle or indicated more than a negligible improvement in the income level of the school's population after adjusting for inflation. (The term "negligible improvement" is discussed later in this preamble.) Such schools would be required to: (1) Return to standard meal counting and claiming procedures; (2) establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price determinations and counting meals as described in § 245.9(b); (3) establish a new Provision 2 base year by using the streamlined process as described in § 245.9(c)(2)(iii); or, (4) establish a new Provision 3 base year or streamlined base year as described in § 245.9(d) and (e)(2)(iii).

Under the option presented in paragraph (c)(2)(ii), *Establish a new base year,* schools electing to continue to operate Provision 2 would be allowed to establish a new Provision 2 base year by taking new free and reduced price applications, making new eligibility determinations and taking meal counts, by type, for the first year of the new Provision 2 cycle. These meal counts would be converted into claiming percentages pursuant to § 245.9(b)(3). These percentages would then be used for the purpose of claiming reimbursement in the remaining years of the 4 year cycle and any extensions.

Alternately, paragraph (c)(2)(iii), *Establish a streamlined base year,* would permit a streamlined application process for schools with changed socioeconomic data that choose to continue to operate Provision 2 or begin operating Provision 3. In lieu of taking new free and reduced price applications for the enrolled population, such schools could, in accordance with guidance established by FNS, determine program eligibility on the basis of household size and income for a statistically valid portion of the school's

enrollment as of October 31, or other date approved by the State agency, of the first year of the new cycle. Using the data obtained from the sample, enrollment based claiming percentages would be developed and applied to total daily meal counts of reimbursable meals at the point of service. These percentages represent the proportion of the school's population that are eligible for free, reduced price and paid meals. These enrollment based claiming percentages would then be used for each year of the new cycle and any extensions.

Finally, paragraph (c)(2)(iv), *Establish a Provision 3 base year,* would permit schools with changed socioeconomic conditions to convert to Provision 3. Schools electing to convert to Provision 3 would be allowed to establish a Provision 3 base year by taking new free and reduced price applications, making new eligibility determinations and taking meal counts, by type, for the first year of the new Provision 3 cycle by using the procedures outlined in § 245.9(d) or by using the streamlined base year procedures set forth in § 245.9(e)(2)(iii).

Provision 3

Under § 245.9(d), *Provision 3,* of this proposed rule, schools implementing Provision 3 would be required to serve reimbursable meals at no charge to all participating children in the school for up to 4 successive school years. Schools would be required to continue serving complete meals that meet the requirements for reimbursement during the successive years. Provision 3 schools would receive Federal cash and commodity assistance at the same level as the school received in the base year, as adjusted annually for enrollment, inflation and, if applicable, operating days when the difference in operating days affects the number of meals. This proposed rule would define the term base year to mean the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as outlined in § 245.9(e)(2)(iii). The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meals may be charged for meals during the Provision 3 base year. School food authorities are encouraged to consider offering all meals at no charge during the base year in order to optimize participation and develop a level of cash and commodity assistance that may be more reflective of participation during successive years. This proposed rule would also require upward and downward adjustments to be made in those school years when the number of operating days in the current year differs from the number of operating days in the base year and the difference affects the number of meals. These adjustments are further discussed under § 245.9(d)(4).

To participate as a Provision 3 school, several conditions would apply. Paragraph (d) sets forth these operating conditions. Commenters are asked to pay particular attention to these operating conditions and address their feasibility in written comments to this rulemaking.

Paragraph (d)(1), *Free meals,* would require participating schools to serve reimbursable meals, as determined by a point of service observations, to all participating children at no charge during non-base years of operation.

Paragraph (d)(2), *Cost differential,* would require the school food authority of a participating school to pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and the establishment of Federal reimbursement.

Paragraph (d)(3), *Meal counts,* would require schools to take daily meal counts of reimbursable meals at the point of service during the non-base years of operation. Commenters should note that this provision would require total meal counts at the point of service, not meal counts by eligibility category.

Unlike the standard meal counting system and Provision 2, these meal counts would not provide the basis for financial assistance under Provision 3. However, the Department believes that total meal counts at the point of service remain a good management tool. Obtaining meal counts would provide a system to evaluate whether there has been a decline in participation, compared to the base year, even though a school food authority would continue to receive the same level of reimbursement and commodities as their base year (adjusted for inflation, enrollment and operating days if the difference in operating days affects the number of meals). Such a decline in participation may be indicative of decreased meal quality and would require the State agency to consider providing technical assistance. For this reason, this proposed rule would require meal counts to be retained at the local level per § 245.9(g).

Records of such counts would be required to be maintained for the period of time specified under paragraph (g). The submission of the total daily meal counts on the school food authority's Claim for Reimbursement or through other means could be required by the State agency if the State agency believed that submission of such data would enhance program integrity. In addition, school food authorities must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from base year. If participation declines significantly, the school food authority shall provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard application and meal counting procedures, as appropriate.

The Department also recognizes that there may be situations in residential child care institutions (RCCIs) where meal counts would not be necessary for a system operating under Provision 3. For example, an RCCI may have a fixed number of children enrolled and be a closed campus with a pre-plate meal service. In such a case, the RCCI may not experience a change in enrollment or participation from year-to-year and would not need to obtain total daily meal counts. Therefore, the Department would provide State agencies the discretion to approve such sites for Provision 3 without the requirement to obtain a total daily meal count during "non-base" years of operation.

Paragraph (d)(4), *Annual adjustments,* would require the State agency or school food authority to make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The annual adjustments for enrollment would be effected by comparing the school's current year enrollment as of October 31, to the school's base year enrollment as of October 31. The adjustments would reflect the changes in the number of children with access to the program(s). State agencies would be responsible for checking actual enrollment annually on October 31 of each year against the October 31 enrollment for the base year in order to determine any changes that must be made in reimbursement and the value of commodities for the school year. The State agency would be allowed to approve the use of data from an alternate date if it is determined to be a more accurate reflection of the school's enrollment or if it accommodates the reporting system in effect for that State agency. In addition, State agencies could, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If

more frequent enrollment adjustments were calculated, it would be required to be applied for both upward and downward adjustments. The adjustments to enrollment would begin with the month the enrollment data is collected and applied to any outstanding Claims for Reimbursement.

The Department adjusts the rates of reimbursement for meals served in schools annually to reflect changes in inflation. Therefore, the adjustment for inflation for the Provision 3 school meals would automatically occur when the school food authority's adjusted meal counts would be processed through the State agency's claim payment system using updated reimbursement rates. The formula for calculating commodity assistance would remain unchanged.

Paragraph (d)(4) also would require an adjustment for the number of operating days to the extent that the number of operating days in the current school year differs from the number of operating days in the base year and the difference affects the number of meals. Under this paragraph (d)(4), State agencies would be required to make an upward adjustment to the level of cash and commodity assistance for any "non-base" school year in which the number of operating days is more than the number of operating days in the base year and the difference in operating days affects the number of meals. Similarly, paragraph (d)(4) would require State agencies to make a downward adjustment to the level of cash and commodity assistance for any "non-base" school year in which the number of operating days is less than the number of operating days in the base year and the difference affects the number of meals. No operating day adjustment would be required if the number of operating days in a non-base year is the same as the number of operating days in the base year. Under this proposed rule, operating days means those days that meals are offered to eligible children under the National School Lunch Program or School Breakfast Program.

Paragraph (d)(4) would allow two methods for making adjustments to the base year level of assistance as a result of differences in the number of operating days between the base year and subsequent years when the difference in operating days affects the number of meals. In cases where the school food authority would be paid based on meal counts (*i.e.*, base year meal counts adjusted by enrollment), State agency or local officials would multiply the average daily meals claimed, by type, for the current school year by the difference in the number of serving days between the base year and the current school year. The resulting adjustments would be reflected in the final Claim for Reimbursement submitted by the school food authority for the school year or on the respective monthly Claim for Reimbursement. When making monthly adjustments, each month's Claim for Reimbursement would be adjusted for changes in the number of operating days between the month being reported in the current year and the corresponding month of the base year. In cases where the school food authority would be paid the value of base year assistance, State agency or local officials would multiply the dollar amount otherwise payable (i.e., the base year level of assistance as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year. Such adjustments could also be made on a monthly basis.

Paragraph (d)(5), *Reporting requirements*, would require the State agency to submit to the Department on the monthly FNS–10, the Report of School Program Operations, the number of meals, by type, as an adjustment to base year meal counts (adjusted for enrollment and, if applicable, operating days) or the number of meals, by type, constructed to reflect the adjusted level of cash assistance.

This proposed rule outlines two methods to effect payment of reimbursement for Provision 3 schools. The preferred method would be for State agencies or school food authorities to make adjustments to school food authorities base year meal counts on the monthly Claim for Reimbursement. Changes due to enrollment and/or operating days would be reflected in the adjusted meal counts and inflation would be automatically adjusted by the State agency's payment system using the annually updated reimbursement rates. A second option would be for State agencies to provide the same level of cash assistance as the base year, adjusted for enrollment, operating days and inflation.

Under paragraph (e), *Extension of Provision 3*, of this proposed rule, the State agency could allow a school to continue under Provision 3 for subsequent 4-year periods without taking new applications and daily meal counts by type. State agencies would be able to grant an extension of Provision 3 if the school food authority could establish, through available and approved socioeconomic data, that the income level, as adjusted for inflation, of the population of the school remained stable, declined, or had only negligible improvement since the most recent base year. The school food authority of a school implementing Provision 3 would be required to use available and approved socioeconomic data and submit the data to their State agency for approval. (Approved data sources are discussed later in this preamble). These schools would continue to receive reimbursement and commodity assistance at the same level as the school received in the base year, adjusted for changes in inflation, enrollment and, if applicable, operating days.

State agencies would not be allowed to approve an extension for those schools in which the available and approved socioeconomic data does not reflect the school's population, was not equivalent data or the data indicated more than a negligible improvement in the income level of the school population, as adjusted for inflation. Such schools would be required to: (1) Return to standard meal counting and claiming procedures; (2) establish a new Provision 3 base year as described in § 245.9(d); (3) establish a new Provision 3 base year by using the streamlined process as described in § 245.9(e)(2)(iii); or, (4) establish a new Provision 2 base year or streamlined base year as described in § 245.9(b) and (c)(2)(iii).

Paragraph (e)(2)(iii), *Establish a streamlined base year*, would permit a streamlined application process for schools with changed socioeconomic data that choose to continue to operate under Provision 3. In lieu of taking new free and reduced price applications for the enrolled population, such schools could, in accordance with guidance established by the Secretary, determine program eligibility on the basis of family size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. Using the data obtained from the sample, enrollment-based claiming percentages would be developed and applied to total daily meal counts of reimbursable meals at the point of service during the new base year. Schools choosing to implement the streamlined base year for Provision 3 would be required to offer meals at no charge to all participating students during the newly established base year. In the subsequent 4-year period, the school would continue to receive reimbursement and commodity assistance at the same level as the school received in the newly established streamlined base year, adjusted for changes in inflation, enrollment and, if applicable, operating days.

Paragraph (e)(2)(iv), *Establish a Provision 2 base year*, would allow

schools which were not approved for an extension of Provision 3 to establish a Provision 2 base year or Provision 2 streamlined base year.

Approved Data Sources

Paragraphs (c)(1) and (e)(1) of § 245.9 of this proposed rule would permit Provision 2 and Provision 3 school food authorities to use available and approved socioeconomic data to determine whether the income level of the school population, as adjusted for inflation, remained consistent with the income level of the population of the school in the last school year for which the school accepted applications (i.e., the base year).

Pre-approved sources of socioeconomic data would include local data developed or collected by city or county zoning and economic planning offices or unemployment data for the area from which the school draws attendance which measures the stability of the income level of the school's population. Local food stamp data could also be used. Because schools may determine children eligible for free meals based on information obtained directly from the agency administering food stamps that the children are from households certified to receive food stamps (hereafter referred to as "direct certification"), a school that had been using direct certification would be allowed to produce a current direct certification roster for the school. The percentage of enrolled students directly certified during the base year would be compared to the percentage of enrolled students currently eligible because of their participation in the Food Stamp Program to assess whether the income level of the school's population remained stable. (Since this method uses food stamp participation data, and food stamp eligibility standards account for inflation, this method would inherently adjust for inflation). Additional sources include Food Distribution Program on Indian Reservations data, statistical sampling of the school's population using the application or equivalent income measurement process and the Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation).

If a school food authority of a participating school would like to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data sources would have to be approved by FNS. The school food authority of a participating school would submit a request to use alternate sources of socioeconomic data through their State agency to their FNS Regional Office for review and approval. School food authorities would be required to use socioeconomic data reflective of the area from which the school draws attendance or data reflective of the school's population. In selecting alternate sources of socioeconomic data, school food authorities would also need to consider: (a) Whether the data effectively measures the income level of the school's population and (b) whether equivalent data is available for both the base year and the current year. Generally, census data would only be acceptable if it provided information reflective of both the base year and the current year.

Under this proposed rule, the local school food authority of a participating school would be responsible for collecting and evaluating the socioeconomic data to establish that the income level of the school's population remained stable, declined or had only negligible improvement. State agencies would be responsible for reviewing and approving or denying the socioeconomic data as submitted by school food authorities. FNS Regional Offices would be responsible for approving the use of alternate sources of socioeconomic data. For both pre-approved and alternate sources of socioeconomic data, relative measurements (such as the percentage of families living below the Federal Poverty Level or median family income) would be considered a better measurement of the income composition of the area than absolute measures (such as the number of households living below the Federal Poverty Level). Under this proposed rule, the State agency's approval of an extension would allow a school to continue receiving reimbursement through one of the alternate meal counting procedures. Therefore, State agencies are reminded that, under this proposed rule, any improper payments resulting from a State agency's approval of extension requests would be subject to the recovery provisions of § 210.19(c).

Paragraphs (c)(1)(ii) and (e)(1)(ii) would establish that the income level of the school population would be considered to have had negligible improvement if there is a 5.0% or less improvement over the base year (after adjusting for inflation) in the level of the socioeconomic indicator which is used to establish the income level of the school's population. The Department believes that "5.0% or less" allows for minor fluctuations in data and at the same time ensures that any meaningful improvement in economic conditions would preclude a school from receiving an extension.

For example, 74 percent of the school's population is certified to receive food stamps in the base year. Five percent of 74 percent is equal to 3.7 percentage points (.05 × .74 = .037). Therefore, an extension may be granted if the percentage of the population currently certified to receive food stamps is no lower than 70.3% (.74 − .037 = .703 or 70.3%). Note that rounding rules do not apply. In this example, current food stamp eligibility standards account for inflation so separate inflationary adjustments would not need to be made.

The Free and Reduced Price Policy Statement

Section 245.9(f), *Policy statement requirement*, of this proposed rule would require school food authorities to amend their Free and Reduced Price Policy Statement to include a list of all schools participating in Provision 1, Provision 2, and Provision 3 and, for each school, the initial year of implementing the provision, the years the cycle is expected to remain in effect, the year the provision must be reconsidered, and the available and approved socioeconomic data that will be used in the reconsideration. Additionally, the school food authority would be required to certify that the school(s) meet the criteria for participating in the special assistance provisions, as specified in § 245.9, as appropriate.

Record Retention

Section 245.9(g), *Recordkeeping*, of this proposed rule would require that school food authorities of schools participating under Provision 2 or Provision 3 retain records for the base year and succeeding years for specified time periods. The Department believes that it is imperative that accurate records be retained by the school food authority of a school implementing one of the provisions. Accordingly, paragraph (g) stipulates that the failure to maintain records would result in the State agency requiring the school to return to standard meal counting and claiming procedures because the level of federal reimbursement could not be justified. The failure to maintain records could also result in fiscal action. Be aware that base year records would need to be retained during the time Provision 2 or Provision 3 is in force, plus 3 years for audit or review purposes. Commenters should note that while base year records would be retained for

several years, other records such as free and reduced price applications and verification documentation, would not be generated during non-base years and, therefore, would provide some offset to the base year record retention.

Paragraph (g)(1), *Base year records*, would require school food authorities of schools participating under Provision 2 or Provision 3 to retain all records as listed in § 210.15(b) and § 220.7(e) which relate to the base year and support subsequent year earnings. In addition, enrollment data for the base year would have to be retained for schools under Provision 3. Such base year records would be required to be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed base year data. For example, a school may have established a Provision 2 base year in school year 1998–99, received two 4-year extensions, then returned to standard procedures school year 2010–11. If the school food authority of the Provision 2 school filed the final Claim for Reimbursement for fiscal year 2010 in November 2010, the Provision 2 base year records would be required to be retained until November 2013 (or longer if there are open audit issues).

School food authorities that conduct a streamlined base year would be required to retain all records related to the statistical methodology and the determination of new claiming percentages. Such records would have to be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed streamlined base year data. In either case, if audit findings had not been resolved, base year and extension records would have to be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

Paragraph (g)(2), *Non-base year records*, would require school food authorities of schools participating under Provision 2 or Provision 3 to retain records of total daily meal counts of reimbursable meals, edit checks, on-site review documentation. In addition, school food authorities of schools participating under Provision 3 would be required to retain records of annual enrollment data which is used to adjust the level of assistance and the number of operating days for each Provision 3 school. Such records would have to be retained for three years after submission of the final Claim for Reimbursement for the fiscal year. School food authorities which receive an extension of a provision would be required to retain records of the available and approved socioeconomic data used to determine the income level of the school's population for the base year and year(s) in which extension(s) were made. State agencies would also be required to retain copies of all records of the available and approved socioeconomic data which was used to determine the income level of a school's population for any school granted an extension. Such records would be required to be retained during the period the provision was in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed base year data. If audit findings have not been resolved, records would have to be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

The provisions of this proposed rule are intended to affect only those reporting or recordkeeping provisions associated with the implementation of Provision 2 or Provision 3. The reporting and recordkeeping requirements associated with the implementation of 7 CFR parts 210 and 220 which are unrelated to the implementation of Provisions 2 or 3 would remain unchanged.

Availability of Documentation

Under redesignated § 245.9(h), *Availability of documentation*, of this proposed rule, school food authorities would be required to make documentation available for purposes of monitoring and audit, upon request. In addition, upon request from FNS, school food authorities under Provision 2 or Provision 3 or a State agency would be required to submit to FNS all data and documentation used in granting extensions. FNS intends to review such data to evaluate the procedures for granting extensions.

Return to Standard Procedures

Under redesignated § 245.9(i), *Return to standard meal counting and claiming*, of this proposed rule, the words "in the following year" would be removed and the words "at any time" would be added in their place to permit schools to return to standard notification and application procedures in the current year if standard procedures better suit the school's program needs.

Puerto Rico and Virgin Islands

Redesignated § 245.9(j), *Puerto Rico and Virgin Islands*, of this proposed rule would be amended to include Provision 3 by adding a reference to paragraphs (c), (d) and (e), as applicable.

Statistical Sampling

Section 245.9(k), *Statistical income measurements*, of this proposed rule would provide the minimum requirements for statistical validity for income measurements used under this section. In order to be considered statistically valid, such measurements must meet five standards. First, the sample frame, or pool of students from which the sample of students will be selected, must be limited to enrolled students who have access to the school meals program. Second, students must be randomly selected from the sample frame. Third, the response rate to the survey shall be at least 80 percent. This means that all information necessary to compute household income as a percentage of the poverty level shall be collected from at least 80 percent of the students in the sample. Fourth, the number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are: (1) Enrolled in the school; (2) have access to the school meals program; and (3) are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample. For example, if a sample's point estimate of the percentage of students who are: (1) Enrolled in the school; (2) have access to the school meals program; and (3) are eligible for free meals is 85 percent and the 95 percent confidence interval ranges from 84.2 percent to 86.5 percent, then it can be asserted with 95 percent confidence that the interval 84.2 percent to 86.5 percent contains the true percentage of students eligible for free meals. Fifth, to minimize statistical bias, data from all households that complete the survey instrument must be used when calculating enrollment based claiming percentages. For example, if 92% of randomly selected students responded to the survey, the school could not discard a selection of 12% of the respondents to bring the response rate to the minimally acceptable rate of 80%.

Action by State Agencies and FNSROs

Section 245.11, *Action by State agencies and FNSROs*, paragraph (h) of this proposed rule would require the State agency to take action to ensure the proper implementation of Provisions 1, 2, and 3. State agencies would be required to remind schools through written notification, sent on or before February 15 of the fourth year of a school's cycle, that the school must

return to standard procedures unless they exercise the option to request an extension. The Department is proposing that the notice be sent by February 15 to allow school food authorities sufficient time to gather appropriate data to request an extension or prepare for returning to standard procedures, a new provision or a streamlined base year.

Under this proposed rule, if a State agency determined at any time that the school or school food authority did not maintain records for a participating school, the State agency would require the school to return to standard application and meal counting procedures.

In addition, a State agency would be required to take action if it determined at any time that: (1) The school or school food authority did not correctly implement Provision 1, Provision 2 or Provision 3; (2) meal quality declined because of the implementation of the provision; (3) participation in the program declined over time; (4) eligibility determinations were incorrectly made; or (5) meal counts were incorrectly taken or incorrectly applied. State agency actions could include technical assistance, adjustments to the level of financial assistance for the current school year, or requiring that the school return to standard application and meal counting procedures, as appropriate.

Paragraph (b)(4), *State agency recordkeeping*, would require State agencies to retain records of the following information annually for the month of October and, upon request, submit to FNS:

1. The number of schools using Provision 2 and Provision 3 for NSLP;
2. The number of schools using Provision 2 and Provision 3 for SBP only;
3. The number of extensions granted to schools using Provision 2 or Provision 3 during the previous school year;
4. The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;
5. The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;
6. The number of extensions granted during the previous year on the basis of local data collected by the city or county zoning and economic planning office;
7. The number of extensions granted during the previous year on the basis of applications collected from enrolled students;
8. The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and
9. The number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would reduce school food authority administrative burdens, streamline program operations and enhance access to the programs by needy children. The Department of Agriculture (the Department or USDA) does not anticipate any significant fiscal impact would result from implementation of this proposed rulemaking.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule, when finalized, would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule would not have retroactive effect unless so specified in the DATES section of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and the School Breakfast Program, the administrative procedures are set forth under the following regulations (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q) and 220.14(e); (2) School food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS administrative review process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other agencies to comment on proposed information collection.

Written comments on this proposed information collection must be received on or before April 7, 2000.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESS** section of this preamble. Commenters are asked to separate their comments on the information collection requirements from their comments on the remainder of the proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 to 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having full

consideration if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The chart below identifies only the burden hours associated with those sections of 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, that are proposed to be amended under this rule, Alternatives to Standard Application and Meal Counting Procedures. These burden hours represent proposed changes to the current reporting and recordkeeping requirements and incorporate additional proposed requirements.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Section 7 CFR	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
SFAs develop notice to parents containing eligibility criteria and maintain documentation. Not required for Provision 2 and 3					
Existing	245.5(a)(1)	20,780	1	.25	5,195
Proposed	245.9(b–e)	20,280	1	.25	5,070
SFA recordkeeping requirements for Provision 2 and 3					
Existing	.....	0	0	0	0
Proposed	245.9(h)	500	1	4	2,000
SFAs amend Free and Reduced Price Policy statement					
Existing	245.9(c)	121	1	.10	12
Proposed	245.9(f)	500	1	.50	250
SFAs develop and distribute a public release with information similar to letter to parents. Not required for Provision 2 and 3					
Existing	245.5(a)(2)	20,780	1	.25	5,195
Proposed	245.9(b–e)	20,280	1	.25	5,070
SFAs develop and distribute supplies of form to be used by households to apply for benefits. Not required for Provision 2 and 3					
Existing	245.6(a)	20,780	1	1	20,780
Proposed	245.9(b–e)	20,280	1	1	20,280
SA recordkeeping requirements for Provision 2 and 3					
Existing	.....	0	0	0	0
Proposed	245.9(g)	54	1	12	648
SAs maintain information on schools participating and extensions granted					
Existing	.....	0	0	0	0
Proposed	245.11(h)	54	1	3	162
Schools distribute applications forms to households. Not required for Provision 2 and 3					
Existing	245.6	101,000	1	.25	25,250
Proposed	245.9	97,000	1	.25	24,250
Schools review applications and make eligibility determinations. Not required for Provision 2 and 3					
Existing	245.6(b)	101,000	41	.052	215,332
Proposed	245.9	97,000	41	.052	206,804
Total Existing Recordkeeping for Part 245	.....	.....	.....	.....	369,782
Total Proposed	.....	.....	.....	.....	362,552
Difference	.....	.....	.....	.....	−7,230

*SA—State agency; SFA—school food authority.

ESTIMATED ANNUAL REPORTING BURDEN

	Section 7 CFR	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
SFAs submit to SAs data and documentation used in granting extensions under Provision 2 and 3					
Existing		0	0	0	0
Proposed	245.9(h)	500	1	.25	125
SAs submit to FNS data and documentation used in granting extensions under Provision 2 and 3					
Existing		0	0	0	0
Proposed	245.11 (h)(4)	54	1	4	216
Total Existing Reporting for Part 245					658,367
Total Proposed					658,708
Difference					+341

*SA—State agency; SFA—school food authority.

Title: 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0026.

Expiration Date: 09/30/2001.

Type of Request: Revision of existing collection

Abstract: This proposed rule would amend the regulations governing the procedures for determining eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. This proposal would allow for an extension of Provision 2 procedures for an additional 4 years and provide for a new alternative, "Provision 3". Under Provision 3, schools serve reimbursable meals at no charge to all children for 4 consecutive years. State agencies and school food authorities would be required to maintain specific documents that were used to determine the eligibility of a school to serve free meals to all children participating in the school nutrition programs, and also would be required to submit such data to FNS upon request. For schools choosing to participate in one of the alternate application and meal counting procedures, this proposed rule would also codify the alternate counting and claiming provisions of Public Law 103–448 which have been implemented, and codify revisions to the counting and claiming provisions authorized by Public Laws 104–193 and 105–336. State agencies and school food authorities recordkeeping burdens would initially increase but after the "base year" the burden hours are expected to decrease because the determinations of eligibility for free and reduced price meals would not be made as frequently. Reporting hours would also increase marginally due to the requirement to track participation in these provisions.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.556, respectively, are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs-education, Civil rights, Food and Nutrition Service, Grant Programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR Part 245 is proposed to be amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

2. In § 245.2:

a. Paragraph (f-2) is added; and

b. Paragraph (j) is amended by removing the word "two" and adding, in its place, the word "three".

The addition reads as follows:

§ 245.2 Definitions.

* * * * *

(f-2) *Operating day* means a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

* * * * *

3. In § 245.9:

a. A heading is added to paragraph (a) to read "*Provision 1.*";

b. Paragraphs (b)–(g) are revised and paragraphs (h)–(k) are added.

The revisions and additions read as follows:

§ 245.9 Special assistance certification and reimbursement alternatives.

* * * * *

(b) *Provision 2.* A school food authority may certify children for free and reduced price meals for up to 4 consecutive school years if a school serves meals at no charge to all enrolled children in that school; provided that public notification and eligibility determinations shall be in accordance with § 245.5 and § 245.3, respectively, during the base year. For purposes of this paragraph (b), the term *base year* means the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as authorized under paragraph (c)(2)(iii) of this section. Schools shall offer reimbursable meals to all students at no charge during the Provision 2 base year. The Provision 2 base year is the first year, and is included in the 4-year cycle. The following requirements apply:

(1) *Free meals.* Participating schools shall serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge.

(2) *Cost differential.* The school food authority of a school participating in Provision 2 shall pay, with funds from non-Federal sources, the difference between the cost of serving lunches

and/or breakfasts at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* During the base year, even though meals are served to participating students at no charge, schools shall take daily meal counts of reimbursable meals by type (free, reduced price, and paid) at the point of service. During the non-base years, participating schools shall take total daily meal counts (not by type) of reimbursable meals at the point of service. For the purpose of calculating reimbursement claims in the non-base years, school food authorities shall establish monthly or annual percentages, as follows:

(i) *Monthly percentages.* The monthly meal counts of the actual number of meals served by type (free, reduced price, and paid) during the base year shall be converted to monthly percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g., free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all reimbursable meals served in the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid meals each month: or,

(ii) *Annual percentages.* The actual number of all meals served by type (free, reduced price, and paid) during the base year shall be converted to an annual percentage for each meal type. Annual percentages shall be based on a full school year, or equivalent number of months. Each percentage is derived by dividing the annual total number of meals served of one meal type (e.g., free meals) by the total number of meals served for all meal types (i.e., free, reduced price and paid). The percentages for the reduced price meal and paid meal types are calculated using the same method as the above example for free meals. These three percentages shall be multiplied by the monthly meal count total of all reimbursable meals served in each month of the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid meals each month.

(c) *Extension of Provision 2.* At the end of the initial cycle, and each subsequent 4-year cycle, the State agency may allow a school to continue under Provision 2 for another 4 years using the claiming percentages calculated during the most recent base year if the school food authority can establish, through available and approved socioeconomic data, that the income level of the school's population, as adjusted for inflation, has remained stable, declined or has had only negligible improvement since the base year.

(1) *Extension criteria.* School food authorities must submit to the State agency available and approved socioeconomic data to establish whether the income level of a school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: Local data collected by the city or county zoning and economic planning office; unemployment data; local Food Stamp certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application or equivalent income measurement process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). In order to grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the school food authority to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the school food authority wants to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data must be approved by FNS. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school's population shall be considered negligible if there is a 5.0% or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* The State agency shall not approve an extension of Provision 2 procedures in those schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5.0% improvement, after adjusting for inflation, in the income level of the school's population. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. For these schools, the new Provision 2 cycle will be 4 years. Schools electing to establish a Provision 2 base year shall follow procedures contained in paragraph (b) of this section;

(iii) *Establish a streamlined base year.* In accordance with guidance established by FNS, establish a new Provision 2 base year by determining program eligibility on the basis of household size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the school's enrollment must be obtained during the first year of the new cycle. Using the data obtained, enrollment-based claiming percentages representing a proportion of the school's population eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service. For schools electing to participate in Provision 2, these percentages shall be used for claiming reimbursement for each year of the new cycle and any extensions; or

(iv) *Establish a Provision 3 base year.* Schools may convert to Provision 3 using the procedures contained in paragraphs (e)(2)(ii) or (e)(2)(iii) of this section.

(d) *Provision 3.* A school food authority of a school which serves all

enrolled children in that school reimbursable meals at no charge during any period for up to 4 consecutive school years may elect to receive Federal cash reimbursement and commodity assistance at the same level as the total Federal cash and commodity assistance received by the school during the last year that eligibility determinations for free and reduced price meals were made and meals were counted by type—free, reduced price and paid—at the point of service. Such cash reimbursement and commodity assistance shall be adjusted for each of the 4 consecutive school years pursuant to paragraph (d)(4) of this section. For purposes of this paragraph (d), the term *base year* means the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as authorized under paragraph (e)(2)(iii) of this section. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meal benefits may be charged for meals during the Provision 3 base year. The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. This alternative shall be known as Provision 3, and the following requirements shall apply:

(1) *Free meals.* Participating schools shall serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge during non-base years of operation.

(2) *Cost differential.* The school food authority of a participating school shall pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* Participating schools shall take daily meal counts of reimbursable meals served to participating children at the point of service during the non-base years. Such meal counts shall be retained at the local level in accordance with paragraph (g) of this section. State agencies may require the submission of the meal counts on the school food authority's Claim for Reimbursement or through other means. In addition, school food authorities must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from the base year. If participation declines significantly, the school food authority shall provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard application and meal counting procedures, as appropriate. In residential child care institutions (RCCIs), the State agency may approve implementation of Provision 3 without the requirement to obtain daily meal counts of reimbursable meals at the point of service if:

(i) the State agency determines that enrollment, participation and meal counts do not vary; and

(ii) there is an approved mechanism in place to ensure that students will receive reimbursable meals.

(4) *Annual adjustments.* The State agency or school food authority shall make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The adjustments shall be made for increases and decreases in enrollment of children with access to the program(s). The annual adjustment for enrollment shall be based on the school's base year enrollment as of October 31 compared to the school's current year enrollment as of October 31. Another date within the base year may be used if it is approved by the State agency, and provides a more accurate reflection of the school's enrollment or accommodates the reporting system in effect in that State. If another date is used for the base year, the current year date must correspond to the base year date of comparison. State agencies may, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If more frequent enrollment is calculated, it must be applied for both upward and downward adjustments. The annual adjustment for inflation shall be effected through the application of the current year rates of reimbursement. To the extent that the number of operating days in the current school year differs from the number of operating days in the base year, and the difference affects the number of meals, a prorata adjustment shall also be made to the base year level of assistance, as adjusted by enrollment and inflation. Upward and downward adjustments to the number of operating days shall be made. Such adjustment shall be effected by either:

(i) Multiplying the average daily meal count by type (free, reduced price and paid) by the difference in the number of operating days between the base year and the current year and subtract that number of meals from the Claim for Reimbursement. In developing the average daily meal count by type for the current school year, schools shall use the base year data adjusted by enrollment; or,

(ii) Multiplying the dollar amount otherwise payable (i.e., the base year level of assistance, as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year.

(5) *Reporting requirements.* The State agency shall submit to the Department on the monthly FNS–10, Report of School Programs Operations, the number of meals, by type, as an adjustment to base year meal counts; or, the number of meals, by type, constructed to reflect the adjusted levels of cash assistance. State agencies may employ either method to effect payment of reimbursement for Provision 3 schools.

(e) *Extension of Provision 3.* The State agency may allow a school to continue under Provision 3 for subsequent 4-year cycles without taking new free and reduced price applications and meal counts by type. State agencies may grant an extension of Provision 3 if the school food authority can establish through available and approved socioeconomic data that the income level of the school's population, as adjusted for inflation, has remained stable, declined, or has had only negligible improvement since the most recent base year.

(1) *Extension criteria.* School food authorities must submit to the State agency available and approved socioeconomic data to establish whether the income level of the school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: local data collected by the city or county zoning and economic planning office; unemployment data; local Food Stamp certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). In order to grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the school food authority to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle,

and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the school food authority wants to establish the income level of the school's population using alternate sources of data, the use of such data must be approved by FNS. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school population shall be considered negligible if there is a 5.0% or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* Schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5.0% improvement after adjusting for inflation, shall not be approved for an extension. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 3 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. Schools electing to establish a Provision 3 base year shall follow procedures contained in paragraph (d) of this section;

(iii) *Establish a streamlined base year.* In accordance with guidance established by FNS, establish a new Provision 3 base year by providing free meals to all participating children and determining program eligibility on the basis of household size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the schools enrollment shall be obtained during the base year of the new cycle. Using the data obtained, enrollment based claiming percentages, representing a proportion of the school's population eligible for free, reduced price and paid benefits, shall be developed and applied to total daily counts of reimbursable meals at the point of service during the base year. For schools electing to participate in Provision 3, the streamlined base year level of assistance shall be adjusted for enrollment, inflation and, if applicable, operating days for each subsequent year of the new cycle and any extensions; or

(iv) *Establish a Provision 2 base year.* Schools may convert to Provision 2 using the procedures contained in paragraphs (c)(2)(ii) or (c)(2)(iii) of this section.

(f) *Policy statement requirement.* A school food authority of a Provision 1, 2, or 3 school shall amend its Free and Reduced Price Policy Statement, specified in § 245.10, to include a list of all schools participating in Provision 1, 2, or 3, and for each school, the initial year of implementing the provision, the years the cycle is expected to remain in effect, the year the provision must be reconsidered, and the available and approved socioeconomic data that will be used in the reconsideration. The school food authority shall also certify that the school(s) meet the criteria for participating in the special assistance provisions, as specified in paragraphs (a), (b), (c), (d) or (e) of this section, as appropriate.

(g) *Recordkeeping.* School food authorities of schools implementing Provision 2 and Provision 3 shall retain records related to the implementation of the provision. Failure to maintain sufficient records shall result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action.

(1) *Base year records.* A school food authority shall ensure that records as specified in § 210.15(b) and § 220.7(e) of this chapter which support subsequent year earnings are retained for the base year for schools under Provision 2 and Provision 3. In addition, records of enrollment data for the base year shall be retained for schools under Provision 3. Such base year records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the base year data. School food authorities that conduct a streamlined base year shall retain all records related to the statistical methodology and the determination of claiming percentages. Such records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the streamlined base year data. In either case, if audit findings have not been resolved, base year records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(2) *Non-base year records.* A school food authority shall ensure that non-base year records pertaining to total daily meal count information, edit checks and on-site review documentation are retained for schools under Provision 2 and Provision 3. In addition, a school food authority shall ensure that non-base year records pertaining to annual enrollment data and the number of operating days, which are used to adjust the level of assistance, are retained for schools under Provision 3. Such records shall be retained for three years after submission of the final Claim for Reimbursement for the fiscal year. School food authorities that are granted an extension of a provision shall retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extension(s) are made. In addition, State agencies must also retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extensions are made. Such records shall be retained at both the school food authority level and at the State agency during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed base year data. If audit findings have not been resolved, records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(h) *Availability of documentation.* Upon request, the school food authority shall make documentation including enrollment data, participation data, available and approved socioeconomic data that was used to grant the extension, if applicable, or other data available at any reasonable time for monitoring and audit purposes. In addition, upon request from FNS, school food authorities under Provision 2 or Provision 3, or State agencies shall submit to FNS all data and documentation used in granting extensions including documentation as specified in paragraphs (g) and (h) of this section.

(i) *Return to standard meal counting and claiming.* A school food authority may return a school to standard notification, certification and counting procedures at any time if standard procedures better suit the school's program needs. The school food

authority will then notify the State agency.

(j) *Puerto Rico and Virgin Islands.* Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with § 245.4 or may opt for Provision 2 or Provision 3 provided the eligibility requirements as set forth in paragraphs (a), (b), (c), (d) and (e) as applicable, of this section are met.

(k) *Statistical income measurements.* Statistical income measurements that are used under this part shall meet the following standards:

(1) The sample frame shall be limited to enrolled students who have access to the school meals program,

(2) A sample of enrolled students shall be randomly selected from the sample frame,

(3) The response rate to the survey shall be at least 80 percent,

(4) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are enrolled in the school, have access to the school meals program, and are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample, and,

(5) To minimize statistical bias, data from all households that complete the survey must be used when calculating the enrollment based claiming percentages for § 245.9(c)(2)(iii) and § 245.9(e)(2)(iii) of this section.

4. In § 245.11, a new paragraph (h) is added to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(h) The State agency shall take action to ensure the proper implementation of Provisions 1, 2, and 3. Such action shall include:

(1) *Notification.* Notifying school food authorities of schools implementing Provision 2 and/or 3 that they must return to standard application and meal counting procedures or apply for an extension under Provision 2 or 3. Such notification must be in writing, and be sent no later than February 15 of the fourth year of a school's current cycle;

(2) *Return to standard procedures.* Returning the school to standard application and meal counting procedures if the State agency determines that records were not maintained; and,

(3) *Technical assistance.* Securing technical assistance, adjustments to the level of financial assistance for the current school year, and returning the school to standard application and meal counting procedures, as appropriate, if a State agency determines at any time that:

(i) The school or school food authority has not correctly implemented Provision 1, Provision 2 or Provision 3;

(ii) Meal quality has declined because of the implementation of the provision;

(iii) Participation in the program has declined over time;

(iv) Eligibility determinations were incorrectly made; or

(v) Meal counts were incorrectly taken or incorrectly applied.

(4) *State agency recordkeeping.* State agencies shall retain the following information annually for the month of October and, upon request, submit to FNS:

(i) The number of schools using Provision 2 and Provision 3 for NSLP;

(ii) The number of schools using Provision 2 and Provision 3 for SBP only;

(iii) The number of extensions granted to schools using Provision 2 or Provision 3 during the previous school year;

(iv) The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;

(v) The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;

(vi) The number of extensions granted during the previous year on the basis of local data collected by a city or county zoning and/or economic planning office;

(vii) The number of extensions granted during the previous year on the basis of applications collected from enrolled students;

(viii) The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and

(ix) the number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

Dated: January 28, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–2550 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–01]

Proposed Revision of Class E Airspace, Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would amend the Englewood, CO, Class E airspace to accommodate the revision of a Standard Instrument Approach Procedure (SIAP) at the Centennial Airport, Englewood, CO.

DATES: Comments must be received on or before March 23, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the

following statement is made: "Comments to Airspace Docket No. 00–ANM–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising a Class E airspace extension at Englewood, CO, in order to accommodate a revised SIAP to the Centennial Airport, Englewood, CO. This amendment would provide a small amount of additional Class E4 airspace at Englewood, CO, to meet current criteria standards associated with the SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and enroute environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the Centennial Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as an extension to a Class D airspace area, are published paragraph 6004, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

* * * * *

ANM CO E5 Englewood, CO [Revised]

Centennial Airport, CO
(Lat. 39°34′13″N, long. 104°50′58″W)

That airspace extending upward from the surface within 3.2-mile radius each side of the 178° bearing from the Centennial Airport extending from the 4.4-mile radius to 14.1 miles south of the airport, and within 2.1 miles each side of the 109° bearing from the Centennial Airport extending from the 4.4-mile radius to 5.5 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on January 24, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–2671 Filed 2–4–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209135–88]

RIN 1545–AW92

Certain Asset Transfers to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations which apply with respect to the net built-in gain of C corporation assets that become assets of a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for May 10, 2000, at 10 a.m. in the IRS Auditorium, must be received by April 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG–209135–88], Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG–209135–88], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by

selecting the "Tax Regs" option on the Home Page or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing has been scheduled for May 10, 2000, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Christopher W. Schoen, (202) 622–7750, concerning submissions and the hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 7, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.337(d)–5. This information is necessary for the Service to determine whether liquidation treatment or section 1374 treatment is appropriate for the entity for which the regulation applies. The collection of information is required to obtain a benefit, i.e., to elect to be subject to section 1374 in lieu of liquidation treatment. The likely respondents are Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return. The burden for the collection of information in § 1.337(d)–5T(b)(3) is as follows: Estimated total annual reporting burden: 50 hours Estimated average annual burden per respondent: 30 minutes Estimated number of respondents: 100 Estimated annual frequency of responses: Once

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations provide rules that when a C corporation (1) qualifies to be taxed as a RIC or REIT, or (2) transfers assets to a RIC or REIT in a carryover basis transaction, the C corporation is treated as if it sold all of its assets at their respective fair market values and immediately liquidated, unless the RIC or REIT elects to be subject to tax under section 1374 of the Code. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for May 10, 2000 at 10 a.m., in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply at the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (signed original and eight (8) copies) by April 19, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Christopher W. Schoen of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 11—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–5 also issued under 26 U.S.C. 337. * * *

Par. 2. Section 1.337(d)–5 is added to read as follows:

§ 1.337(d)–5 Tax on C assets becoming RIC or REIT assets.

[The text of proposed § 1.337(d)–5 of this section is the same as the text of § 1.337(d)–5T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1895 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–100276–97; REG–122450–98]

RIN 1545–AV59; RIN 1545–AW98

Financial Asset Securitization Investment Trusts; Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to financial asset securitization investment trusts (FASITs). This action is necessary because of changes to the applicable tax law made by the Small Business Job Protection Act of 1996. The proposed regulations affect FASITs and their investors. This document also contains proposed regulations relating to real estate mortgage investment conduits (REMICs). This document provides notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by May 8, 2000. Outlines of topics to be discussed at the public hearing scheduled for May 15, 2000 at 10 a.m., must be received by April 24, 2000.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–100276–97 and REG–122450–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100276–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting them directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in Room 2615, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations other than issues relating specifically to cross border transactions, David L. Meyer at (202) 622–3960 (not a toll-free number) and for issues relating specifically to cross border transactions, Rebecca Rosenberg or Milton Cahn at (202) 622–3870 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 7, 2000.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in § 1.860H–1(b)(2) and § 1.860H–6(e). This information is required to permit qualified entities to elect to become a Financial Asset Securitization Investment Trust and to ensure the holder of the ownership interest in a FASIT properly reports the FASIT's items of income, gain, deduction, loss, and credit. This information will be used to properly administer the provisions of part V of subchapter M of the Code. The collection of information is mandatory. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or record keeping burden: 750 hours.

Estimated average annual burden hours per respondent and/or record-keeper: 5 hours.

Estimated number of respondents and/or record-keepers: 150.

Estimated annual frequency of responses: one annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1621(a) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (August 20, 1996) (the Act) amended the Internal Revenue Code (Code) by adding part V (sections 860H through 860L) (the FASIT provisions) to subchapter M of chapter 1. Part V, which is effective September 1, 1997, authorizes a securitization vehicle called a Financial Asset Securitization Investment Trust (FASIT). FASITs are meant to facilitate the securitization of debt instruments, including non-mortgage and mortgage debt instruments.

A solicitation for comments was published in the **Federal Register** for November 4, 1996 (61 FR 56647). The comments received both raised and helped resolve significant issues. The IRS and Treasury request comments on these proposed regulations generally, and specifically request suggestions on how they may be revised to be more easily understood.

Explanation of Provisions

In General

A FASIT is a qualified arrangement that elects FASIT treatment and meets certain requirements concerning the

composition of its assets and the interests it issues to investors. A qualified arrangement can be a corporation (other than a regulated investment company (RIC) as defined in section 851(a)), partnership, trust, or segregated pool of assets.

A FASIT may issue one or more classes of regular interests, which are treated as debt for all purposes of the Code. In addition, each FASIT must have a single ownership interest, which must be held entirely by a non-exempt domestic C corporation (other than a RIC, real estate investment trust (REIT), real estate mortgage investment conduit (REMIC), or subchapter T cooperative).

A FASIT is not subject to income tax. Instead, the tax items of the FASIT are included in the taxable income of the holder of the ownership interest (the Owner). The Owner, (and in some circumstances a person related to the Owner) must recognize gain (if any) when property is either transferred to the FASIT or supports the regular interests.

Congress enacted the FASIT provisions to facilitate the securitization of revolving, non-mortgage debt obligations. An anti-abuse rule incorporated in these proposed regulations is designed to ensure that FASITs are used in a manner that is consistent with this intent and not to create opportunities for tax planning that would not exist but for the enactment of the FASIT provisions and these proposed regulations.

Rules Applicable to the FASIT

Administrative Provisions

1. Background

The administrative provisions have three objectives: (1) ensuring accurate and timely reporting of the FASIT's tax items, (2) ensuring compliance by the FASIT with the operating and qualification rules, and (3) reducing administrative burdens on FASIT interest holders and the IRS.

2. FASIT Election

The proposed regulations provide that a FASIT election is made by attaching a statement to the Owner's Federal income tax return for the taxable year that includes the startup day. No particular form is presently required, but the statement must be specified as a FASIT election, and must identify the arrangement for which the election is made. The IRS and Treasury want to ensure that the persons most affected by a FASIT election have agreed to make the election. Therefore, if the electing arrangement is an entity, the election statement must be signed by the person who would sign the entity's return in the absence of the FASIT election. If the electing arrangement is a segregated pool of assets, the election statement must be signed by each person that owns the assets in the pool for Federal income tax purposes immediately before the startup day.

3. Treatment of FASIT Under Subtitle F

None of the FASIT provisions addresses how a FASIT is treated under subtitle F (Procedure and Administration), which governs matters such as returns, penalties, tax payments, and assessments. One rule considered was to make a FASIT's subtitle F treatment depend on the classification of the electing arrangement. Thus, for example, if a partnership makes a FASIT election, the FASIT is a partnership for purposes of subtitle F. Rather than adopt this approach, which leads to several different administrative regimes for FASITs, the proposed regulations treat each FASIT as a branch or division of its Owner for purposes of subtitle F. Because an Owner must always be a domestic C corporation, this solution results in uniform treatment.

The proposed regulations also make the Owner responsible for reporting interest income with respect to the regular interests which are treated for reporting purposes as collateralized debt obligations (CDOs).

Relationship of a FASIT to the Owner

The FASIT provisions do not provide a general rule defining the relationship between a FASIT and its Owner for non-FASIT Federal income tax purposes. The nature of this relationship may be relevant in determining the Federal income tax consequences of a number of transactions entered into with a FASIT. For example, it is necessary to know the extent to which transactions with a FASIT are treated as transactions with the Owner in determining how the portfolio interest exception applies and whether a change in the Owner of the FASIT results in a realization event for holders of the FASIT regular interests.

The IRS and Treasury considered proposing a general rule to characterize the FASIT's relationship to its Owner for all non-FASIT Federal income tax purposes. Among the alternatives evaluated were (1) treating the FASIT as an entity separate from the Owner; (2) treating the FASIT as a branch of the Owner; and (3) treating the FASIT as an entity for some purposes and as a branch for others.

Each alternative has some underpinning in the statutory scheme. For example, in determining the Owner's taxable income, the FASIT provisions treat a FASIT's assets, liabilities, and tax items as the assets, liabilities, and tax items of the Owner. This supports treating a FASIT as a branch of the Owner. However, the restrictions on what kind of assets may be held and what type of investor interests may be issued apply to the FASIT alone and favor treating a FASIT as a separate entity.

The IRS and Treasury have decided it is better to resolve the nature of the FASIT's relationship with the Owner on an issue-by-issue basis rather than by adopting a single general rule. A few situations (for example, the treatment of a FASIT under subtitle F and the treatment of a FASIT under the portfolio interest rules) are addressed in these proposed regulations. The IRS and Treasury welcome additional comments on whether and how additional rules should detail the FASIT's relationship with the Owner for non-FASIT Federal income tax purposes.

Assets That May Be Held by a FASIT (Permitted Assets)

1. Background

Except during a brief formation period, substantially all of a FASIT's assets must consist of permitted assets. Permitted assets include cash and cash equivalents, debt instruments (and rights to acquire debt instruments), foreclosure property, interest and currency hedges (and rights to acquire interest and currency hedges), guarantees (and rights to acquire guarantees), regular interests in other FASITs, and regular interests in REMICs. The FASIT provisions generally do not allow a FASIT to hold debt instruments issued by the Owner (or a related person).

Several commentators requested guidance on whether certain assets qualified as permitted assets. Other comments focused on the prohibition on Owner debt. In particular, the commentators requested guidance on the extent to which an Owner may guarantee assets or enter into a permitted hedge with the FASIT without violating the prohibition on Owner debt.

2. "Substantially All"

The FASIT provisions *require substantially all* of a FASIT's assets to be permitted assets. Under the proposed regulations, a FASIT meets this test if the aggregate adjusted basis of its assets other than permitted assets is less than one percent of the aggregate adjusted basis of all its assets.

The proposed rule is patterned after a safe harbor rule applicable to REMICs.

The proposed regulations do not incorporate a provision in the REMIC safe harbor that allows a qualified entity that fails the REMIC safe harbor to otherwise demonstrate that it does not own more than a de minimis amount of non-qualified assets. This provision does not appear necessary because a FASIT, unlike a REMIC, can acquire additional permitted assets if it is in danger of failing the *substantially all* test.

3. Cash and Cash Equivalents

The FASIT provisions treat *cash and cash equivalents* as permitted assets. The proposed regulations generally define the phrase *cash and cash equivalents* to mean functional currency. Investment quality debt instruments that are close to maturity are also cash and cash equivalents because of their perceived liquidity.

In response to some commentators, the proposed regulations provide that cash and cash equivalents include shares in U.S.-dollar-denominated money market mutual funds. Although such shares are technically stock, money market mutual funds are practical investments for cash balances pending either distribution to regular interest holders or reinvestment in new debt instruments. The IRS and Treasury, therefore, believe it is appropriate to allow FASITs to hold these investments.

4. Debt Instruments in General

Under the FASIT provisions, a debt instrument must satisfy two criteria to be a permitted asset. First, it has to be a *debt instrument* as defined in section 1275(a)(1) of the Code, which means it has to be a bond, debenture, note or certificate, or other evidence of indebtedness. Second, interest payments (if any) must be made in the manner prescribed for REMIC regular interests. Interest payments on REMIC regular interests must be based on a fixed or variable rate (as allowed in regulations), or must consist of a specified portion of the interest payments on the underlying mortgages held by the REMIC. This means that under the FASIT provisions, interest payments on a debt instrument held by a FASIT must also be payable at a fixed or variable rate, or consist of a specified portion of the interest payments on some underlying debt instrument.

The proposed regulations enumerate the types of debt instruments that meet this standard and therefore qualify as permitted assets. In general, a FASIT may hold fixed-rate debt instruments, specified floating-rate debt instruments, inflation-indexed debt instruments, and credit card receivables. In response to comments received, the proposed regulations also clarify that a FASIT may generally hold beneficial interests in, or coupon and principal strips created from, these instruments.

One commentator requested that the proposed regulations specifically allow FASITs to hold debt instruments that provide for prepayment penalties. The commentator's concern was that prepayment penalties might be viewed as contingent payments that are not fixed or variable interest payments within the meaning of the FASIT provisions. The proposed regulations accommodate this concern by including in the list of permitted debt instruments, debt instruments to which § 1.1272–1(c) (relating to debt instruments that provide for alternate payment schedules) applies. These rules generally accommodate prepayment penalties.

To prevent a FASIT from indirectly holding equity-like or other non-debt interests, the proposed regulations disqualify any debt instrument that can be converted into, or the value of which is based on, anything other than a permitted debt instrument. Impermissible debt instruments include, for example, a debt instrument convertible into stock and a debt instrument the interest payments on which vary based on the spot price of oil. The proposed regulations also do not permit a FASIT to hold debt instruments that, when acquired by the FASIT, are in default due to any payment delinquency unless the Owner reasonably expects the obligor to cure the default (including the payment of any interest and penalties) within 90 days of the date the instrument is acquired by the FASIT. The concern is that a distressed debt instrument may take on the characteristics of equity because the FASIT (and in turn the regular interest holders): (1) may have to look to the obligor's general assets for payment of the instrument, (2) may not receive full payment of the instrument, and (3) may not receive any payment until the satisfaction of claims held by the obligor's other creditors.

5. Participation Interests

One commentator requested guidance on whether a participation interest in a pool of revolving loans would be considered a permitted asset. The commentator pointed out that a participation interest can be based either on a fixed percentage of assets in the pool or on a fixed dollar amount of assets in the pool.

The proposed regulations do not specifically address participation interests. It does not appear that guidance is needed concerning participation interests that are based on a fixed percentage of assets. If a FASIT owns a fixed-percentage participation interest, as the outstanding principal balance of the pool rises and falls, the FASIT may be required to pay additional amounts or entitled to receive distributions to maintain its fixed percentage ownership in the pool. As long as the distributions are paid in cash (or in the form of an otherwise permitted asset), the FASIT's fixed-percentage interest should be considered a fixed-percentage interest in each of the debt instruments in the pool. Thus, the FASIT's fixed-percentage participation interest should qualify as a permitted debt instrument to the extent the underlying debt instruments are themselves permitted assets.

The result under the FASIT provisions is less clear in cases where the participation interest is based on a fixed dollar amount of assets in a pool. In this case, each change in the outstanding balance of the pool would trigger a corresponding change in the FASIT's percentage ownership of the pool. When the size of the pool increases, the FASIT could be viewed as exchanging an interest in each asset in the old pool for a lower percentage interest in each asset in the new pool. This exchange might constitute an impermissible asset disposition. In some cases, this disposition could result in the imposition of the prohibited transaction tax.

While the problem with fixed-dollar participation interests might be resolved by treating a pool as a single asset, a rule specifically allowing a FASIT to hold participation interests may be used as a means of inappropriately avoiding other rules. The IRS and Treasury welcome additional comments on whether and how the need for a FASIT to hold fixed-dollar amount participation interests can be accommodated.

6. Debt Instruments Issued by the Owner

To ensure that the holders of the regular interests are looking primarily to the FASIT, and not the Owner, for payment, the FASIT provisions generally prohibit a FASIT from holding debt instruments issued either by the Owner or a person related to the Owner (collectively, Owner debt). An exception is made for cash equivalents and other instruments specified by regulation.

Under the proposed regulations, Owner debt means more than just debt instruments issued by the Owner. It includes an obligation of the Owner embedded in another instrument, a third party debt instrument the

performance of which is contingent on the performance of Owner debt, and any partial interest in Owner debt such as a principal or coupon strip. Similarly, a debt instrument guaranteed by an Owner is treated as Owner debt, if at the time the FASIT acquires the debt instrument, the Owner is in substance the primary obligor of the debt instrument. See Rev. Rul. 97–3 (1997–1 C.B. 9).

Cash equivalents of the Owner, which are permitted under the FASIT provisions, are limited by the proposed regulations to short-term investment quality debt instruments that are acquired to temporarily invest cash pending either distribution to the FASIT interest holders or re-investment in other permitted assets.

One commentator noted that under the FASIT provisions, it is unclear whether the Owner of two or more FASITs may use regular interests from one FASIT to fund another of its FASITs. If regular interests are considered debt of the Owner, then, technically, the regular interests held by the second FASIT would be impermissible Owner debt. The commentator noted that this form of tiering arrangement is commonly used in REMICs and should be available for use with FASITs. In response to this comment, the proposed regulations allow this type of tiering arrangement. As discussed below, however, tiered FASITs may not be used to achieve benefits that could not be obtained without the FASIT provisions.

7. Foreclosure Property

The FASIT provisions allow a FASIT to hold an asset (foreclosure property) acquired upon the default or imminent default of a permitted debt instrument. The FASIT provisions generally allow a FASIT to retain foreclosure property for a designated grace period of approximately three to four years. After the grace period, a 100-percent tax is imposed on any net income derived from the foreclosure property, including income from its operation or disposition.

In some cases, the property acquired upon foreclosure may independently qualify as another type of permitted asset. Under the proposed regulations, the FASIT may retain this type of foreclosure property beyond the grace period. If the FASIT retains the property beyond the grace period, the property loses its status as foreclosure property at the end of the grace period.

At this point, the proposed regulations require the Owner to recognize gain, if any, on the property as if it had been contributed to the FASIT at the close of the grace period. In addition, after the grace period, the property can no longer qualify for the foreclosure exception to the prohibited transaction rules.

8. Contracts or Agreements in the Nature of a Line of Credit

A FASIT may generally hold as a permitted asset a contract or agreement in the nature of a line of credit as long as the FASIT does not originate the contract or agreement.

9. Guarantees and Hedges

Under the FASIT provisions, a contract may qualify as a permitted asset if it is a permitted hedge or guarantee. The FASIT provisions impose two requirements on permitted hedges and guarantees. First, the contract must be an interest rate or foreign currency notional principal contract, letter of credit, insurance, guarantee against defaults, or other similar instrument. Second, the contract must be reasonably required to guarantee or hedge against the FASIT's risks associated with being the obligor on the interests that the FASIT has issued. Several commentators asked for guidance on the scope of this rule.

The proposed regulations provide guidance as to what constitutes a permitted hedge or guarantee. Rather than focus on the type of contract, the proposed regulations focus on its intended function. Under the proposed regulations, a contract is a permitted hedge or guarantee if the contract is reasonably required to offset differences that specified risk factors may cause between the amount or timing of the cash flows on a FASIT's assets and the amount or timing of the cash flows on the FASIT's regular interests. The specified risk factors are (1) fluctuations in market interest rates, (2) fluctuations in currency exchange rates, (3) the credit quality of the FASIT's assets and regular interests, and (4) the receipt of payments on the FASIT's assets earlier or later than originally anticipated.

Several commentators requested that the proposed regulations list specific types of hedges and guarantees that qualify as permitted assets. Because the proposed regulations define permitted assets and guarantees in terms of their function, the proposed regulations do not include this type of list. Out of a concern that hedges could be used to effect the economic equivalent of a transfer of non-permitted assets to the FASIT, the proposed regulations prohibit a hedge or guarantee from referencing certain assets and indices. In particular, a hedge is not a permitted hedge if it references an asset other than a permitted asset or if it references an index, economic indicator or financial average that is not widely disseminated and designed to correlate closely with changes in one or more of the four specified risk factors.

One commentator requested that the proposed regulations permit the incidental hedging of assets allocable to ownership interests. The commentator suggested that, as a practical matter, an Owner may desire to hedge all of the FASIT's assets inside the FASIT even though the FASIT securitizes less than all of the assets. The proposed regulations accommodate this concern by allowing the FASIT to hedge assets held (or to be held) and liabilities issued (or to be issued). Thus, under the proposed regulations, an Owner can hedge assets inside a FASIT that currently relate to the ownership interest if the assets are being held inside the FASIT because the Owner intends for them to support FASIT regular interests in the future.

The proposed regulations provide special rules for hedges and guarantees entered into with the Owner or a related party. These rules generally allow a FASIT to enter into a hedge (other than a credit hedge) with the Owner (or a related party) if two conditions are met. First, the Owner (or related party) must be a dealer with respect to that type of hedging contract. Second, the Owner must maintain records establishing that the hedge contract was entered into at arm's length. In addition, the special rules provide that an Owner (or a related party) may issue a guarantee to a FASIT if the Owner can demonstrate that, immediately after the guarantee is issued, less than three percent of the value of the FASIT's assets are attributable to Owner guarantees.

Finally, the usefulness of a hedge is diminished if the tax character of the hedge (as an ordinary or capital asset) does not match the tax character of the hedged item. Absent a special rule, disposing of a FASIT hedge could generate capital loss even though the associated assets and liabilities of the FASIT generate ordinary income and deductions. To alleviate this character mismatch, the proposed regulations treat a permitted hedge as an ordinary asset.

Prohibited Transactions

1. Background

The FASIT provisions restrict the types of transactions in which a FASIT may engage through the imposition of a prohibited transactions tax. The tax is equal to 100 percent of the income a FASIT realizes from a prohibited

transaction. The four categories of prohibited transactions set out in the FASIT provisions include the receipt of any income from a loan originated by the FASIT and the receipt of gains from the FASIT's disposition of its assets.

2. Loan Origination

Commentators expressed considerable concern over the lack of statutory guidance on determining whether a debt instrument held by a FASIT has been originated by the FASIT. Commentators noted that debt instruments originated through the Owner's business activities might be deemed to be originated by the FASIT thereby exposing the FASIT to liability for the prohibited transactions tax on any income realized on the instrument.

The proposed regulations contain five safe harbors to limit the scope of the prohibited transaction rules as they relate to loan origination. Under the first safe harbor, a FASIT is not considered to have originated a loan if the FASIT acquires the loan from an established securities market.

Under the second safe harbor, a FASIT is not considered to have originated a loan if the FASIT acquires the loan more than a year after the loan was created.

Under the third safe harbor, a FASIT is not considered to have originated a loan if the FASIT acquires the loan from a person that regularly originates similar loans in the ordinary course of its trade or business. Importantly, this third safe harbor extends to transactions entered into with the Owner (or a related party). As a result, a FASIT that acquires credit card receivables from its Owner (or a related party), or creates new receivables from issuances made on accounts held by the FASIT will not be considered to have originated the receivables to the extent the Owner (or related party) originates similar loans in the ordinary course of its business.

The fourth safe harbor provides that the FASIT will not be treated as originating any new loan it may receive from the same obligor in exchange for the obligor's original loan in the context of a workout.

Finally, a FASIT will not be treated as having originated a debt instrument when it makes a loan pursuant to a contract or agreement in the nature of a line of credit the FASIT is permitted to hold.

3. Substitution or Distribution of Debt Instruments

The FASIT provisions generally impose a prohibited transaction tax on the distribution of debt instruments to the Owner. An exception to this rule exists for distributions to the Owner so long as the principal purpose of the distribution is not the recognition of gain that is due to changes in market conditions while the FASIT held the debt instrument. This rule effectively allows an Owner to reduce over-collateralization so long as the reduction is not designed to obtain a character advantage. Absent this rule, in times of falling market interest rates, an Owner could inappropriately generate capital gain and economically offsetting ordinary loss by disposing of distributed appreciated debt instruments while having the FASIT dispose of related hedges. To clarify the application of the distribution rule, the proposed regulations deem a distribution of a debt instrument to be carried out principally to recognize gain if the Owner (or a related person) sells the substituted or distributed debt instrument at a gain within 180 days of the substitution or distribution. In this case, the distribution will be a prohibited transaction subject to the 100-percent tax.

Consequences of FASIT Cessation

Under the FASIT provisions, the Commissioner may consent to the intended cessation of a FASIT and may grant conditional relief in the case of an inadvertent cessation. There are, however, no comprehensive rules describing the consequences of a cessation. The proposed regulations, therefore, detail how a cessation affects the FASIT, the underlying arrangement that made the FASIT election, the Owner, and the regular interest holders. These rules apply unless a cessation is carried out with the Commissioner's consent, in which case the consent document controls.

Under the proposed regulations the Owner is treated as disposing of the FASIT's assets for their fair market value in a prohibited transaction. Gain, if any, on this deemed distribution is subject to the prohibited transactions tax. Any loss is disallowed. The Owner is also treated as satisfying the regular interests for an amount equal to the lesser of the adjusted issue price or fair market value of the regular interests. This deemed satisfaction will result in cancellation of indebtedness income in cases where the aggregate fair market value of the assets is less than the aggregate adjusted issue price of the regular interests. The underlying arrangement is no longer treated as a FASIT and generally is prohibited from making a new FASIT election. In addition, the underlying arrangement is treated as holding the assets of the terminated FASIT and is classified (for example, as a corporation or partnership) under general tax principles. Finally, the regular interest holders are treated as exchanging their FASIT regular interests for new interests in the underlying arrangement. These new interests are classified under general tax principles, and the deemed exchange of the regular interests for the new interests may require the regular interest holders to recognize gain or loss.

Rules Applicable to Owner

Under the FASIT provisions, an Owner generally determines its taxable income by including the gains, losses, income and deductions of the FASIT and by treating the assets and liabilities of the FASIT as its own. In addition, the Owner must also follow special rules concerning the FASIT's tax-exempt income, prohibited transactions and method of accounting for debt instruments. Few comments were received concerning these provisions.

Under the special rule concerning the method of accounting for debt instruments, a FASIT must use the constant yield method in determining all interest, acquisition discount, original issue discount (OID), market discount, and premium deductions or adjustments. To ensure that the Owner uses a constant yield method for all interest and interest-like items, the proposed regulations require the Owner to compute the amount of interest income and premium offset accruing on debt instruments held in a FASIT under the methodology described in § 1.1272–3(c).

One commentator noted that the FASIT provisions speak in terms of determining the Owner's *taxable income*, and that taxable income, which the Code defines as gross income minus deductions, makes no reference to credits. The proposed regulations, therefore, clarify the extent to which an Owner, in determining its tax, may claim the FASIT's credits. In general, the Owner may claim a credit for taxes paid or deemed paid by the FASIT in the same manner and to the same extent as if the FASIT were an unincorporated branch of the Owner. As discussed below, the allowance of a foreign tax credit is subject to the anti-abuse provisions of this regulation, and other relevant authorities including case law and the potential application of IRS Notice 98–5 (1998–3 I.R.B. 49).

Because the Owner includes the FASIT's tax items in determining its credits and taxable income, the proposed regulations make the Owner (rather than the FASIT) responsible for reporting those items on its Federal

income tax return. The Owner is required to attach a separate statement to its income tax return detailing these items. No specific form is required.

Gain Recognition on Property Transferred to a FASIT

1. Background

The FASIT provisions require Owners (or, in some cases, related persons) to include in income gain (but not loss) realized on the transfer of assets to a FASIT. In general, the amount of gain (if any) that must be included is equal to the value of the transferred asset over its adjusted basis in the transferor's hands. In addition, the FASIT provisions require gain (if any) to be recognized on assets the Owner holds outside of the FASIT but which nonetheless support FASIT regular interests. Significant comments were received regarding the gain recognition rule. In particular, comments were received on the method of valuing property, the scope of the support rule, and the need for a gain deferral rule.

2. Related-Person Gain Recognition Rule

The IRS and Treasury have determined that the gain recognition rule of the FASIT provisions could be circumvented when a related person transfers property to a FASIT. Because the FASIT provisions do not require that the related person be a taxable C corporation (or even that the related person be subject to U.S. tax), the intended corporate-level tax on gain could be avoided by having non-corporate or foreign related persons make asset transfers. In this case, the FASIT provisions could be interpreted as allocating gain to the related person and the economically offsetting losses (usually in the form of premium offset) to the Owner. This misallocation of gain, if allowed, would frustrate the purpose of the gain recognition rule.

The IRS and Treasury considered two ways to address this issue in developing these proposed regulations. One approach would have required any contribution from a related party to the FASIT to be taxed as if it were a deemed sale to the Owner followed by a contribution to the FASIT. This rule would conform the treatment of related person contributions with the treatment of contributions from unrelated persons under section 860I(a)(2). This rule would also ensure that gain upon contribution would be allocated to the taxpayer entitled to the subsequently occurring offsetting economic loss, namely, the Owner. A second approach was to develop regulations that would limit related person treatment to taxable, domestic C corporations and ensure that the misallocation of gain (in the related person) and associated loss (in the Owner) would not produce unwarranted tax benefits.

The proposed regulations adopt the first approach. Under the proposed regulations, transactions between a related person and the FASIT are treated as transactions between the related person and the Owner followed by transactions between the Owner and the FASIT. This rule, however, does not apply in all cases. Transfers of publicly traded property by related persons are unlikely to be abusive. The rule in the proposed regulations, therefore, only applies if the related person transfers property not traded on an established securities market. Thus, for example, the rule applies to a transfer of consumer receivables, but not to a transfer of Treasury bills.

3. Determination of Value for Gain Recognition Purposes

a. *In general.* To determine value for purposes of applying the gain recognition rules, the FASIT provisions divide property into two categories: (1) debt instruments not traded on an established securities market, and (2) all other property. The value of debt instruments not traded on an established securities market is determined by a special statutory rule. The value of all other property (which includes debt instruments that *are* traded on an established securities market) is fair market value.

Under the special rule, the value of a debt instrument not traded on an established securities market is the sum of the reasonably expected cash flows on the instrument, discounted using semiannual compounding at a rate equal to 120 percent of the applicable federal rate (AFR).

The intent behind the special valuation rule is uncertain. The legislative history of the FASIT provisions indicates the rule was meant to be a simple and mechanical formula that, by its nature, would not produce accurate results in every case. Specifically, the legislative history states that the value of an asset is determined by the special valuation rule even if a different value would be determined by applying a willing buyer/willing seller standard. See H.R. Rept.104–737, 104th Cong. 2d Sess., 327 (1996). At the same time, by applying a fair market value standard to all other assets (including market-traded debt), Congress showed a clear preference for using actual fair market value whenever it can be determined with reasonable accuracy.

Several commentators made suggestions on how to interpret the legislative intent behind the special valuation rule. In general, the commentators were concerned that implementing the rule without modification would in many cases generate tax gains far in excess of economic gains. Because the commentators viewed this overvaluation as a substantial impediment to the use of FASITs, they asked that the proposed regulations narrow as much as possible the debt instruments subject to the special valuation rule.

The proposed regulations attempt to reconcile the legislative intent and the commentators' concerns in a consistent and principled manner. The policy justification for the special valuation rule is strongest where it is difficult, if not impossible, to separate the value of a debt instrument from the value of the Owner's business relationship with the debtor. For example, the value of credit card receivables may be inferred if the receivables are placed in trust and used to create new debt instruments that are sold to the public at a disclosed price. In this case, however, the implied price necessarily includes both the value of the receivables and the value of the transferor's implicit or explicit promise to replace the receivables as they mature. Because there is no objective, easily administrable method for allocating the portion of the price allocable to the receivable (as opposed to the portion allocable to the transferor's ongoing business), the special valuation rule seems appropriate in this context.

By contrast, the policy justification for the special valuation rule is weakest in cases where the fair market value of the debt instrument can be easily established. For example, if a FASIT purchases a pool of non-market-traded securities for cash in a transaction where the FASIT maintains no continuing relationship with the seller, there appears to be no reason to distrust the value as determined by an actual arm's length bargaining.

Consistent with this understanding of the purpose behind the special valuation rule, the proposed regulations take a broad view of what constitutes an established securities market. In addition, the regulations clearly delineate whether property is subject to the special rule and provide a number of exceptions from the special rule.

b. *Traded on an established securities market.* The proposed regulations define the term *traded on an established securities market* by reference to § 1.1273–2(f)(2) through (4) of the OID

regulations. The proposed regulations also give the Commissioner the power to determine that debt instruments not meeting the standards of the OID regulations are nevertheless traded on an established securities market. Under the cross-reference to the OID regulations, debt is considered traded on an established securities market if (1) it is listed on certain specified securities exchanges or on certain interdealer quotation systems, (2) it is traded on a board of trade or interbank market, or (3) it appears on a quotation medium that provides a reasonable basis to determine fair market value by disseminating either recent price quotations or actual prices of recent sales transactions.

The proposed regulations do not cross-reference § 1.1273–2(f)(5) of the OID regulations. Consequently, debt is not considered *traded on an established securities market* if it is merely readily quotable within the meaning of § 1.1273–2(f)(5). The IRS and Treasury do not expect this omission to have a significant impact because, under a special exception (the spot purchase rule, discussed below) the proposed regulations value non-publicly traded debt instruments at their cost if a FASIT acquires them in (or soon after) an arm's length cash purchase.

According to one commentator, bank loans and private placement loans, which are typically made to small and medium sized businesses, are readily quotable within the meaning of § 1.1273–5(f)(5) but would not otherwise be considered as traded on an established securities market. The commentator stated there would be commercial interest in securitizing these loans through FASITs but for application of the special valuation rule. Although the proposed regulations do not adopt the readily quotable standard, the IRS and Treasury believe bank and private placement loans will be securitized in transactions qualifying for the spot purchase exception. Nevertheless, comments are requested on whether the readily quotable standard is still necessary.

c. *Exceptions for debt not traded on an established securities market.* The proposed regulations except from the special valuation rule certain beneficial and stripped interests. Under this exception, a certificate representing beneficial ownership of debt instruments constitutes beneficial ownership of debt instruments traded on an established securities market if either the certificate or all of the underlying debt instruments are traded on an established securities market. Similarly, a stripped bond or stripped coupon represents debt traded on an established securities market, if either the strip or the underlying debt instrument is traded on an established securities market. Because fair market value is easily determined in these circumstances, there appears to be little reason to apply the special valuation rule.

Finally, the proposed regulations provide an exception for certain debt instruments that are contemporaneously purchased and transferred to the FASIT (the spot purchase rule). Under this provision, the value of a debt instrument is its cost to the Owner if four conditions are met: (1) the debt instrument is purchased from an unrelated person in an arm's length transaction, (2) the debt instrument is acquired for cash, (3) the price of the debt instrument is fixed no more than 15 days before the date of the purchase, and (4) the debt instrument is transferred to the FASIT no more than 15 days after the date of the purchase.

d. *Debt instruments not traded on an established securities market.* As discussed above, the special valuation rule values a debt instrument by discounting the reasonably expected cash flows on the instrument. The proposed regulations require that the determination of reasonably expected cash flows be commercially reasonable. The proposed regulations also permit reasonable assumptions concerning credit risk, early repayments, and loan servicing costs to be taken into account. Additional rules discourage the use of assumptions known to be inaccurate.

One safeguard is a consistency test. Even though a debt instrument may not be traded on an established securities market, a person securitizing the debt instrument may make certain public representations about the debt instrument, such as in a prospectus or an offering memorandum. The consistency test prevents the use of one set of assumptions for tax purposes and the use of another set for different purposes. Specifically, all assumptions used in determining reasonably expected cash flows (for purposes of the FASIT valuation rule) must be no less favorable than the assumptions underlying the representations made to any of the following groups in the prescribed order: investors, rating agencies, or governmental agencies. For example, if one default rate is assumed to value debt instruments in a prospectus, a higher default rate cannot be assumed to value the debt instruments for purposes of the gain recognition provisions. Even if no representations concerning value are made to investors, rating agencies, or governmental agencies, the assumptions made for purposes of the gain recognition provisions must still be consistent with any applicable industry customs and standards. To encourage adherence to the consistency test, the Commissioner may determine reasonably expected cash flows without making any adjustment if the assumption made with respect to that adjustment (for example, assumed credit risks) fails the consistency test or is otherwise unreasonable.

In addition to the consistency test, the proposed regulations place a ceiling on projected loan servicing costs. Specifically, the amount of loan servicing costs projected may not exceed the lesser of (1) the amount the FASIT agrees to pay the Owner (or a related person) for servicing all, or a portion, of the loans held by the FASIT, or (2) the amount a third party would reasonably pay for the servicing of identical loans.

e. *Special valuation rule for guarantees.* Because a guarantee usually is not a debt instrument, any gain recognized on transferring a guarantee to a FASIT would be determined using the guarantee's fair market value absent a special rule. Nevertheless, if a guarantee relates solely to non-traded debt instruments, the proposed regulations allow taxpayers to value the guarantee and the debt instruments together. Under this rule, the reasonably expected payments on the guarantee are treated as part of the reasonably expected payments on the debt instruments to which the guarantee relates.

4. Property Held Outside a FASIT Supporting FASIT Regular Interests

An Owner (or a person related to the Owner) must recognize gain on any property the Owner or related person holds outside the FASIT that supports the regular interests. In addition, property held by the Owner or related person that supports regular interests is treated as held by the FASIT for all purposes of the FASIT provisions. By treating support property as transferred to and held by a FASIT, the support rules discourage taxpayers from trying to avoid the gain-on-transfer rules and ensure that FASIT income includes the income from all FASIT property.

Commentators asked for a clear and narrow definition of support property. They suggested limiting the support rule to situations in which the arrangement with the regular interest holders indicates that assets held outside the FASIT would have been transferred to the FASIT but for the gain recognition rules. Under this view, support property

includes: (1) subordinated interests in debt instruments contributed to the FASIT, (2) property securing an Owner's guarantee, and (3) contribution agreements that allow the FASIT to purchase a debt instrument for an amount significantly below its fair market value. Several commentators argued that unless a narrow view of support is adopted, the support rule threatens to subject to the gain recognition rule all property held by an Owner whenever the Owner guarantees a regular interest or has any kind of continuing relationship with the FASIT.

Consistent with the comments received, the proposed regulations narrowly define support property. Under the proposed regulations, property generally is *support property* if the Owner (or a related person): (1) Identifies the property as providing security for a regular interest, (2) sets aside the property for transfer to the FASIT under a contribution agreement, or (3) holds an interest in the property that is subordinate to the FASIT's interest in the property. This last situation can arise, for example, if the Owner holds the junior interests in a pool of debt instruments while the FASIT holds the senior interests.

5. Deferral of Gain Recognition

Although gain must ordinarily be recognized as soon as property is transferred, the FASIT provisions authorize regulations under which gain on transferred property is deferred until the transferred property supports regular interests. Several commentators specifically requested a gain deferral system and one explained in detail how a gain deferral system could be applied to a constantly revolving pool of assets.

The proposed regulations do not provide a general gain deferral system. After carefully considering the issues involved, the IRS and Treasury have determined that gain deferral rules must build on rules for accounting for pooled debt instruments. The IRS and Treasury anticipate providing rules for pooled debt instrument in future guidance, and at that time expect to revisit the FASIT gain deferral rules.

Although the proposed regulations do not provide rules for gain deferral generally, rules permitting gain deferral for pre-effective date FASITs have been developed consistent with the requirements of the Act. The IRS and the Treasury request comments on whether and how the gain deferral system for pre-effective date FASITs may be modified to accommodate a general gain deferral system.

Ownership Interests and Consolidated Groups

By statute, to qualify as a FASIT, an arrangement must have one (and only one) ownership interest, and that ownership interest must be held by one (and only one) eligible corporation. Congress, however, anticipated that Treasury would "issue guidance on how the ownership rule would apply to cases in which the entity that owns the FASIT joins in the filing of a consolidated return with other members of the group that wish to hold an ownership interest in the FASIT." See H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 329 (1996).

Commentators urged the IRS and Treasury to issue guidance that would change the statutory rule and permit members of a consolidated group to jointly hold a FASIT ownership interest. In studying the issue, however, the IRS and Treasury became concerned about how such guidance would continue to satisfy those general principles of the consolidated return regulations that preclude the shifting of stock basis, income, or loss. The IRS and Treasury considered different models that would permit members of a consolidated group to jointly hold (or enjoy the benefits of jointly holding) a FASIT ownership interest, but none of these were found to adequately address the government's concerns without adding administrative complexity for both the IRS and taxpayers. Moreover, the IRS and Treasury are not convinced the level of potential attribute shifting should be disregarded or addressed through an anti-abuse rule or would be so minor that disregarding it would be appropriate. Therefore, the proposed regulations do not provide rules permitting members of a consolidated group to jointly hold ownership interests in a FASIT. The IRS and Treasury invite the submission of additional comments that would address these concerns.

Transfers of Ownership Interests

The proposed regulations ignore the transfer of an ownership interest if the transfer is accomplished to impede the assessment or collection of tax. A transfer is accomplished to impede the assessment or collection of tax if the transferor knows, or should know, that the transferee would be unwilling or unable to pay some or all of the tax arising from holding the ownership interest. A safe harbor, incorporated through a cross-reference to comparable rules regarding transfers of REMIC residual interests, is available to Owner-transferors who conduct a reasonable investigation of the transferee's financial condition. As explained under the caption PROPOSED AMENDMENT TO REMIC REGULATIONS in this preamble, the REMIC safe harbor incorporated by the FASIT rules has been modified.

Rules Applicable to Regular Interest Holders

The FASIT provisions treat a regular interest as a debt instrument for all purposes of the Code and require the holder to account for gross income with respect to the regular interest under an accrual method.

Few comments were made with respect to FASIT regular interests. One commentator suggested a rule that would prevent the holder of a debt instrument from recognizing a loss on, or changing the tax consequences of, the debt instrument by transferring it to a FASIT in exchange for an identical or similar FASIT regular interest. No such rule is adopted by the proposed regulations because the IRS and Treasury believe this type of transaction is adequately addressed by the wash sales rules of the Code and the FASIT anti-abuse rule described later. Similarly, the proposed regulations have adopted no special rules concerning the consequences of modifying regular interests, because the IRS and Treasury believe these issues are adequately addressed under existing principles of Federal tax law.

Special Rules

Anti-Abuse Rule

The proposed regulations contain an anti-abuse rule patterned after the anti-abuse rule in the partnership regulations issued under subchapter K. The FASIT anti-abuse rule evaluates transactions against the underlying purpose of the FASIT provisions, which is to promote the spreading of credit risk on debt instruments by facilitating the securitization of debt instruments. If a FASIT is formed or used to achieve a tax result inconsistent with this purpose, the Commissioner may take remedial action, including disregarding the FASIT election, reallocating items of income, deductions and credits, recharacterizing regular interests, and redesignating the holder of the ownership interest. Whether a FASIT is formed or used to achieve a tax result that is inconsistent with the FASIT provisions is a question of fact. In addition to applying the specific anti-abuse rule included in these proposed regulations, the IRS and Treasury will also continue to apply other statutory, administrative, and judicial anti-abuse provisions, such as the judicial

doctrines of economic substance and substance over form, to transactions and structures involving FASITs. For example, see the principles of Notice 98–5 (1998–3 I.R.B. 49), regarding foreign tax credits.

Although regular interests in a FASIT may be held in a tiered FASIT structure and treated by each FASIT as permitted assets, the tiering of FASITs may not be used for double or multiple counting of the FASIT gross income or gross assets for other purposes of the Code in a manner that would be inconsistent with the intent of the FASIT provisions. In this regard, the IRS and Treasury consider the recognition of interest expense paid and the corresponding interest income received by the same Owner to be inconsistent with the intent of the provisions. Accordingly, such Owner-created attributes must be disregarded because a taxpayer may not enter into a transaction with itself. For example, the gross income and gross assets from the tiering of FASITs may not be taken into account more than once for purposes of testing whether an Owner is an 80/20 company under section 861, or for purposes of determining the relative domestic and foreign source gross assets of the Owner or the Owner's affiliated group in applying the interest expense allocation rules proposed here under section 864(e).

International Provisions

Prohibition of Foreign FASITS and Segregated Pools Subject to Foreign Tax

It appears that taxpayers may attempt to exploit differences in the characterization of a FASIT or the interests in a FASIT under U.S. law and relevant foreign law to produce inappropriate tax avoidance (including by producing a non-economic allocation of foreign taxes to the holder of the FASIT ownership interest). To minimize this possibility, the proposed regulations provide that a foreign entity (including but not limited to a foreign corporation or a foreign partnership) may not be a qualified arrangement. In addition, a qualified arrangement may not be a domestic entity or a segregated pool of identified assets any of the income of which is subject to tax on a net basis by a foreign country. The IRS and Treasury intend that the imposition of foreign tax on a net basis with respect to the assets and liabilities of a FASIT will disqualify a FASIT election without regard to whether the segregated pool of assets is actually held through a U.S. or foreign office or fixed place of business. In addition, a preexisting qualified FASIT may cease to be a FASIT prospectively by being subjected to foreign net taxation for the first time in a later year as a result of newly conducted foreign activities. It is not necessary that actual foreign tax be imposed for an arrangement to be considered subject to foreign net taxation.

The IRS and Treasury request comments regarding whether there may be circumstances in which legitimate (non-tax) business reasons justify allowing a FASIT election to be made by a foreign entity, or an entity the income of which is subject to net foreign taxation, or on behalf of a segregated pool which may be subject to net foreign taxation.

Prohibition on Foreign FASITs and Segregated Pools Subject to Foreign Tax

The IRS and Treasury are also concerned that taxpayers may attempt to use FASITs to produce non-economic allocations of foreign withholding taxes to the holder of the FASIT ownership interest. The IRS and Treasury believe that such transactions may be facilitated by the ease with which an Owner can acquire publicly-traded debt that is subject to foreign withholding tax. In addition, prohibiting a FASIT from holding publicly-traded debt subject to a foreign withholding tax should not unduly interfere with legitimate securitizations of debt held by an Owner. Accordingly, the proposed regulations provide that the definition of permitted debt instruments does not include debt instruments traded on an established securities market if such debt instruments are subject to foreign withholding tax. The IRS and Treasury request comments concerning whether the scope of this rule is adequate to address potentially abusive transactions and whether legitimate (non-tax) business reasons may justify the use of a FASIT to hold foreign debt that is traded on an established securities market and is subject to a foreign withholding tax.

Avoidance of U.S. Withholding Tax

The IRS and Treasury are also concerned that FASITs may be used by foreign resident taxpayers to avoid U.S. withholding taxes that would otherwise be imposed on direct cross-border financing to a foreign person's U.S. subsidiary. In particular, the IRS and Treasury are aware that foreign taxpayers may attempt to use FASITs to convert interest that would be disqualified from the portfolio interest exemption under sections 871(h)(3), 881(c)(3)(B), and 881(c)(3)(C) (concerning interest paid to a 10 percent shareholder and interest paid to a controlled foreign corporation from a related person) into interest that qualifies as portfolio interest. To prevent such avoidance, the proposed regulations provide that interest paid or accrued to a foreign holder of a FASIT regular interest will not qualify as portfolio interest under sections 871(h)(3) and 881(c)(3) to the extent that the FASIT receives or accrues interest from an obligor who is a U.S. resident taxpayer (the related obligor) if (1) the foreign holder is a 10 percent shareholder (within the meaning of Section 871(h)(3)) of the related obligor or (2) the foreign holder is a controlled foreign corporation and the related obligor is a *related person* (within the meaning of section 864(d)(4)) with respect to the foreign holder. For these purposes, the related obligor is defined as a *conduit debtor* who is treated as paying interest directly to the 10 percent shareholder or the controlled foreign corporation for purposes of sections 871, 881, 1441 and 1442. This rule characterizes all interest of the foreign regular interest holder as non-portfolio interest if the FASIT receives or accrues an equal or greater amount of interest from the related obligor.

Further, the IRS and Treasury request comments concerning whether FASIT regular interests, REMIC regular interests, and pass through certificates should be treated in a consistent manner for purposes of applying U.S. withholding tax rules.

The IRS and Treasury intend to issue regulations that will provide that the FASIT and its Owner are withholding agents in respect of payments made to foreign regular interest holders.

The IRS and Treasury solicit comments with respect to circumstances in which the FASIT and its Owner may be unaware of a possible relationship between foreign regular interest holders and the related obligors of the debt instruments held by the FASIT or other circumstances under which it would be inappropriate to treat payments to a regular interest holder as payments directly from a conduit debtor. It is anticipated that these regulations will provide that the FASIT and its Owner will not be responsible for withholding amounts paid to the foreign regular interest holders in the above circumstances unless the FASIT or its Owner knows, or has reason to know, that the foreign regular interest holder is a 10 percent shareholder of the related obligor or is a controlled foreign corporation considered to be receiving interest from a related person. It is expected that these regulations will further provide that the FASIT and its Owner shall be presumed to know that

these circumstances exist if the foreign regular interest holder owns 10 percent or more of the total value of the FASIT's regular interests and the debt of the related obligor accounts for 10 percent or more of the total value of the FASIT's assets.

Earnings Stripping and Original Issue Discount

The IRS and Treasury are also aware that regular interests in FASITs may be used by foreign residents to avoid other consequences that might apply to cross-border related-party payments. The IRS and Treasury are concerned that taxpayers may attempt to use FASITs to avoid the deferrals on deductibility imposed by sections 163(e)(3) on OID owing to related foreign persons and 163(j) on net interest expense that is otherwise treated as disqualified under the earnings stripping rules.

Similar to the rules adopted for portfolio indebtedness purposes, the proposed regulations treat a U.S. resident taxpayer who is an obligor to a FASIT as a conduit debtor to the extent a related person (within the meaning of section 267(b) or 707(b)(1)) who would not be subject to tax on a direct payment by the U.S. obligor receives interest with respect to a regular interest in the FASIT. In such circumstances, the earnings stripping provisions will apply to treat interest paid by a U.S. corporation or a U.S. trade or business of a foreign corporation on an obligation held by a FASIT as disqualified interest for purposes of section 163(j). Similarly, the conduit debtor rule also operates to treat OID accrued to a FASIT by a domestic party as deferred to the extent a related foreign person (as defined in section 163(e)(3)(B)) receives interest with respect to a regular interest of the FASIT. These rules apply to payments and accruals made during the same period the regular interest in the FASIT is held by the 10 percent shareholder or foreign related party.

No Correlative Adjustments to FASIT

The FASIT and its Owner are not entitled to any correlative adjustments for amounts that are treated as directly paid by a conduit debtor and treated as directly received by or accrued to a related party. Accordingly, all interest paid or accrued by the conduit debtor to the FASIT must be taken into account by the Owner in determining its own taxable income. This treatment is consistent with Treasury's general approach, already adopted in conduit financing regulations, to preventing withholding tax avoidance. TD 8611, 1995–2 C.B. 266, 293.

Interest Expense Allocation

For purposes of applying the interest expense allocation rules to the Owner under section 864(e) and the regulations thereunder, new proposed regulations provide that all interest expense from all FASITs that is treated as incurred by any Owner or by any other Owner that is a member of the same affiliated group of which the Owner is a member is directly allocated solely to all income from all FASITs of such Owners. The directly allocated interest expense is treated as directly related to all activities and assets of all the Owner's FASITs and is apportioned between domestic and foreign source FASIT gross income by applying the general asset method to the FASIT's assets. The proposed interest allocation rules also extend the existing asset adjustment rules under the asset method in § 1.861–9T(g), which reduce assets to reflect the principal amount of indebtedness outstanding relating to the interest which is directly allocated. The rules of § 1.861–10T(d)(2) are also made applicable. In addition, the new proposed interest allocation rules are the exclusive method for the direct allocation of FASIT interest expense. The IRS and Treasury are not aware of any situations in which the direct allocation rules of the existing temporary regulations would apply to any items of FASIT income and interest expense. Comments are solicited in this regard.

The rules apply to interest expense with respect to any FASIT as of that FASIT's startup day and throughout the entire period that the arrangement continues to qualify as a FASIT. The rules provide the Commissioner with discretion to continue to directly allocate interest expense with respect to a ceased FASIT to FASIT income if the Commissioner determines that a principle purpose for terminating the FASIT was to affect the interest allocation.

The IRS and Treasury believe that directly allocating FASIT interest expense solely to FASIT gross income is an administrable and appropriate way to limit distortions (favorable or unfavorable as the case may be) to a taxpayer's overall allocation of interest expense for foreign tax credit purposes. It is recognized, however, that the new proposed direct allocation rules may enable certain interest expense allocation planning that may create distortions that would not occur under existing interest allocation rules. To address these concerns, the IRS and Treasury are considering whether to adopt rules in final regulations that limit the extent to which the direct allocation rules may apply, including rules regarding the amount of variance between the direct allocation and combined asset allocation rules that is appropriate. Comments are solicited on this issue.

Pre-Effective Date FASITs

Section 1691(e) of the Small Business Job Protection Act of 1996 (the Act) provides special transition rules for securitization entities in existence on August 31, 1997. Under these rules, the Owner of a pre-effective date FASIT may defer the recognition of FASIT gain on assets attributable to pre-FASIT interests. For purposes of this rule, a *pre-effective date FASIT* is a FASIT the underlying arrangement of which was in existence on August 31, 1997. A *pre-FASIT interest* is an interest in the underlying arrangement that was outstanding on the FASIT startup date and that is considered debt under general tax principles.

The proposed regulations provide a safe-harbor method of accounting that allows the separation of FASIT gain attributable to pre-FASIT interests, and other FASIT gain. Basically, the safe-harbor method has three steps. Under the first step, the Owner groups the assets of the FASIT into pools. To ensure that each pool can be marked to market using a valuation methodology appropriate for its constituent assets, the proposed regulations provide that no pool may contain assets of more than one of the following three types: (1) assets that are valued under the special valuation rule and that have FASIT gain on the first day they are held by the FASIT, (2) assets that are valued under general fair market value principles and that have FASIT gain on the first day they are held by the FASIT, and (3) assets that do not have FASIT gain on the first day they are held by the FASIT.

Under the second step, the Owner periodically computes for each pool the difference between the income determined under a mark-to-market system (using the appropriate FASIT valuation methodology) and the income determined under an accrual system. This difference is referred to as FASIT gain (or loss) and is essentially a measure of the gain (or loss) from the pool that is attributable to the operation of the FASIT gain recognition rules. These rules require gain to be determined at the pool level when assets are contributed to a FASIT, and implicitly allow this gain to be reversed out (as deductions in the nature of premium offset) as the assets in the pool mature. In periods in which net contributions are made to the pool, the

calculation generally will produce FASIT gain. In periods in which the pool decreases in size or duration, the calculation generally will produce FASIT loss. This FASIT loss is, in effect, a recapture of previously determined FASIT gain. Over the entire life of a pool, the aggregate FASIT gain (or loss) will be zero; the FASIT valuation rules do not create lifetime net income.

Under the third step, the Owner determines the proper amount of FASIT gain (or loss) to recognize during the current period. To determine this amount, the Owner first calculates the total amount of FASIT gain as of the last day of the current period. The Owner then reduces this amount to exclude the percentage of the FASIT gain that is attributable to pre-FASIT interests outstanding on the last day of the period. This reduced amount represents the cumulative amount of FASIT gain the Owner should recognize by the end of the current period. Finally, to adjust for amounts recognized in previous periods, the Owner subtracts from this amount the cumulative amount of FASIT gain that the Owner had recognized at the end of the previous period. The difference is the amount of FASIT gain (or loss) to be recognized in the current period.

Owners of pre-effective date FASITs that presently use a gain deferral methodology that differs from the safe harbor method described above may adopt the safe-harbor method. The IRS and Treasury request comments on whether guidance is needed on how this change of method may be accomplished.

Proposed Amendment to REMIC Regulations

Final regulations governing REMICs, issued in 1992, contain rules governing the transfer of noneconomic REMIC residual interests. In general, a transfer of a noneconomic residual interest is disregarded for all tax purposes if a significant purpose of the transfer is to enable the transferor to impede the assessment or collection of tax. A purpose to impede the assessment or collection of tax (a wrongful purpose) exists if the transferor, at the time of the transfer, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the REMIC's taxable income.

Under a safe harbor, the transferor of a REMIC residual interest is presumed not to have a wrongful purpose if two requirements are satisfied. First, the transferor must conduct a reasonable investigation of the transferee's financial condition. Second, the transferor must secure a representation from the transferee to the effect that the transferee understands the tax obligations associated with holding a residual interest and intends to pay those taxes.

The IRS and Treasury are concerned that some transferors of residual interests claim they satisfy the safe harbor even in situations where the economics of the transfer clearly indicate the transferee is unwilling or unable to pay the tax associated with holding the interest. The proposed regulations, therefore, would clarify the safe harbor. The proposal explains that the safe harbor is unavailable unless the present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of: (1) the present value of any consideration given to the transferee to acquire the interest; (2) the present value of the expected future distributions on the interest; and (3) the present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses. No inference is intended regarding whether any existing transactions satisfy the substantive requirements of this safe harbor before the clarification made by this amendment.

Proposed Effective Date

In general, the proposed regulations including the proposed amendments to the interest expense allocation regulations are proposed to apply on the date final regulations are filed with the **Federal Register**. The portion of the proposed regulations containing the anti-abuse rule and the portion of the proposed regulations allowing the deferral of gain on assets held by a pre-effective date FASIT are proposed to apply on February 4, 2000. The proposed amendment to the REMIC regulations is proposed to apply to all transfers occurring after the date final regulations concerning the amendment are published in the **Federal Register**.

Special Analyses

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that it is unlikely that a substantial number of small entities will hold FASIT ownership interests. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 15, 2000, beginning at 10 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 24, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

26 CFR Part 602

Reporting and record keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for 1.861–10(e) and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.860H–1 also issued under 26 U.S.C. 860L(h).

Section 1.860H–2 also issued under 26 U.S.C. 860L(h).

Section 1.860H–3 also issued under 26 U.S.C. 860L(h) and 860L(f).

Section 1.860H–4 also issued under 26 U.S.C. 860L(h).

Section 1.860H–5 also issued under 26 U.S.C. 860L(h) and 7701(l).

Section 1.860I–1 also issued under 26 U.S.C. 860L(h) and 860I(c).

Section 1.860I–2 also issued under 26 U.S.C. 860L(h).

Section 1.860J–1 also issued under 26 U.S.C. 860L(h).

Section 1.860K–1 also issued under 26 U.S.C. 860L(h).

Section 1.860L–1 also issued under 26 U.S.C. 860L(h).

Section 1.860L–2 also issued under 26 U.S.C. 860L(h).

Section 1.860L–3 also issued under 26 U.S.C. 860L(h).

Section 1.860L–4 also issued under 26 U.S.C. 860L(h). * * *

Section 1.861–9 also issued under 26 U.S.C. 864(e)(7).

Section 1.861–10 also issued under 26 U.S.C 863(a), 26 U.S.C. 864(e)(7), 26 U.S.C. 865(i), and 26 U.S.C. 7701(f). * * *

Par. 2. Section 1.860E–1 is amended by:

1. Revising paragraph (c)(4).

2. Adding paragraphs (c)(5) and (c)(6).

The addition and revision read as follows:

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

* * * * *

(c) * * *

(4) *Safe harbor for establishing lack of improper knowledge.* A transferor is presumed not to have improper knowledge if—

(i) The transferor conducted, at the time of the transfer, a reasonable investigation of the financial condition of the transferee and, as a result of the investigation, the transferor found that the transferee had historically paid its debts as they came due and found no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future;

(ii) The transferee represents to the transferor that it understands that, as the holder of the noneconomic residual interest, the transferee may incur tax liabilities in excess of any cash flows generated by the interest and that the transferee intends to pay taxes associated with holding residual interest as they become due; and

(iii) The present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of—

(A) The present value of any consideration given to the transferee to acquire the interest;

(B) The present value of the expected future distributions on the interest; and

(C) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(5) *Computational assumptions.* The following rules apply for purposes of paragraph (c)(4)(iii) of this section:

(i) The transferee is assumed to pay tax at a rate equal to the highest rate of tax specified in section 11(b)(1); and

(ii) Present values are computed using a discount rate equal to the applicable Federal rate prescribed by section 1274(d) compounded semiannually (a lower discount rate may be used if the transferee can demonstrate that it regularly borrows, in the course of its trade or business, substantial funds at such lower rate from unrelated third parties).

(6) *Effective date.* Paragraphs (c)(4) and (5) of this section are applicable on February 4, 2000.

Par. 3. Sections 1.860H–0 through 1.860L–4 are added to read as follows:

§ 1.860H–0 Table of contents.

This section lists captions that appear in §§ 1.860H–1 through 1.860L–4.

§ 1.860H–1 FASIT defined, FASIT election, other definitions.

(a) FASIT defined.
(b) FASIT election.
(1) Person that makes the election.
(2) Form of election.
(3) Time for filing election.
(4) Contents of election.
(5) Required signatures.
(6) Special rules regarding startup day.
(c) General definitions.
(1) Owner.
(2) Transfer.

§ 1.860H–2 Assets permitted to be held by a FASIT.

(a) Substantially all.
(b) Permitted debt instrument.
(1) In general.
(2) Special rules for short-term debt instruments issued by the Owner or related person.
(3) Exceptions.
(c) Cash and cash equivalents.
(d) Hedges and guarantees.
(1) In general.
(2) Referencing other than permitted assets.
(3) Association with particular assets or regular interests.
(4) Creating an investment prohibited.
(e) Hedges and guarantees issued by Owner (or related person).
(1) Hedges.
(2) Guarantees.
(f) Foreclosure property.
(g) Special rule for contracts or agreements in the nature of a line of credit.
(h) Contracts to acquire hedges or debt instruments.

§ 1.860H–3 Cessation of a FASIT.

(a) In general.
(b) Time of cessation.
(c) Consequences of cessation.
(d) Disregarding inadvertent failures to remain qualified.

§ 1.860H–4 Regular interests in general.

(a) Issue price of regular interests.
(1) Regular interests not issued for property.
(2) Regular interests issued for property.
(b) Special rules for high-yield regular interests.
(1) High-yield interests held by a securities dealer.
(2) High-yield interests held by a pass-thru.

§ 1.860H–5 Foreign resident holders of regular interests.

(a) Look-through to underlying FASIT debt.
(b) Conduit debtor.
(c) Limitation.
(d) Cross-references.

§ 1.860H–6 Taxation of Owner, Owner's reporting requirements, transfers of ownership interest.

(a) In general.
(b) Constant yield method to apply.
(c) Method of accounting for, and character of, hedges.
(d) Coordination with mark to market provisions.
(1) No mark to market accounting.
(2) Transfer of a mark to market asset to a FASIT.
(e) Owner's annual reporting requirements.
(f) Treatment of FASIT under subtitle F of Title 26 U.S.C.
(g) Transfer of ownership interest.
(1) In general.
(2) Safe harbor for establishing lack of improper knowledge.

§ 1.860I–1 Gain recognition on property transferred to FASIT or supporting FASIT regular interests.

(a) In general.
(b) Support property defined.
(c) Time of gain determination and recognition.
(d) Gain deferral election. [Reserved]
(e) Amount of gain.
(f) Record keeping requirements.
(g) Special rule applicable to property of related persons.

§ 1.860I–2 Value of property.

(a) Special valuation rule.
(b) Traded on an established securities market.
(c) Reasonably expected payments.
(1) In general.
(2) Consistency requirements.
(3) Servicing costs.

(4) Nonconforming or unreasonable assumptions.
(d) Special rules.
(1) Beneficial ownership interests.
(2) Stripped interests.
(3) Contemporaneous purchase and transfer of debt instruments.
(4) Guarantees.
(e) Definitions.

§ 1.860J–1 Non-FASIT losses not to offset certain FASIT inclusions.

(a) In general.
(b) Special rule for holders of multiple ownership interests.
(c) Related persons.
(1) Taxable income.
(2) Effect on net operating loss.
(3) Coordination with minimum tax.

§ 1.860L–1 Prohibited transactions.

(a) Loan origination.
(1) In general.
(2) Acquisitions presumed not to be loan origination.
(3) Activities presumed to be loan origination.
(4) Loan workouts.
(b) Origination of a contract or agreement in the nature of a line of credit.
(1) In general.
(2) Activities presumed to be origination.
(3) Debt instruments issued under contracts or agreements in the nature of a line of credit.
(c) Disposition of debt instruments.
(d) Exclusion of prohibited transactions tax to dispositions of hedges.

§ 1.860L–2 Anti-abuse rule.

(a) Intent of FASIT provisions.
(b) Application of FASIT provisions.
(c) Facts and circumstances analysis.

§ 1.860L–3 Transition rule for pre-effective date FASITs.

(a) Scope.
(1) Pre-effective date FASIT defined.
(2) Pre-FASIT interest defined.
(3) FASIT gain defined.
(b) Election to defer gain.
(c) Safe harbor method.
(d) Example
(e) Election to apply gain deferral retroactively
(f) Effective date.

§ 1.860L–4 Effective date.

§ 1.860H–1 FASIT defined, FASIT election, other definitions.

(a) *FASIT defined*—(1) A *FASIT* is a qualified arrangement (as defined in paragraph (a)(2) of this section) that meets the requirements of section 860L(a)(1) and the FASIT regulations (as defined in paragraph (c) of this section). A qualified arrangement fails to meet the requirements of section 860L(a)(1) unless it has one and only one ownership interest and that ownership interest is held by one and only one eligible corporation (as defined in section 860L(a)(2)).

(2) Except as provided in paragraph (a)(3) of this section, a qualified arrangement is an arrangement that is either—

(i) An entity (other than a regulated investment company as defined in section 851(a)); or

(ii) A segregated pool of assets if—

(A) The initial assets of the pool are clearly identified, such as through an indenture; and

(B) Changes in the assets of the pool are clearly identified, such as through instruments of conveyance or release.

(3) Notwithstanding paragraph (a)(2) of this section, a qualified arrangement does not include—

(i) An entity created or organized under the law of a foreign country or a possession of the United States;

(ii) An entity any of the income of which is or ever has been subject to net tax by a foreign country or a possession of the United States; or

(iii) A segregated pool of assets any of the income of which at any time is subject to net tax by a foreign country or a possession of the United States.

(b) *FASIT election*—(1) *Person that makes the election.* For a qualified arrangement to be a FASIT an eligible corporation (as defined in section 860L(a)(2)) must make the election required under section 860L(a)(1)(A).

(i) If the qualified arrangement is an entity described in paragraph (a)(2)(i) of this section, the eligible corporation making the election must hold one or more interests in the entity, and one of those interests must be the interest designated as the FASIT's ownership interest.

(ii) If the qualified arrangement is a segregated pool of assets described in paragraph (a)(2)(ii) of this section, the eligible corporation making the election must be the first taxpayer to be treated as the Owner of the resulting FASIT.

(2) *Form of election.* Unless the Commissioner prescribes otherwise, a FASIT election is made by means of a statement attached to the Federal income tax return of the eligible corporation making the election.

(3) *Time for filing election.* The statement referred to in paragraph (b)(2) of this section must be attached to a timely filed (including extensions) original Federal income tax return for the eligible corporation's taxable year in which the FASIT's startup day occurs. An election may not be made on an amended return.

(4) *Contents of election.* The statement referred to in paragraph (b)(2) of this section must include—

(i) For other than a segregated pool of assets, the name, address, and taxpayer identification number of the arrangement (if one was issued prior to the making of the election);

(ii) For a segregated pool of assets, the following information—

(A) The name, address, and taxpayer identification number of the person or persons holding legal title to the pool of assets;

(B) The name, address, and taxpayer identification number of the person or persons that, immediately before the startup day, are considered to own the pool for Federal income tax purposes; and

(C) Information describing the origin of the pool (including the caption and date of execution of any instruments of indenture or similar documents that govern the pool);

(iii) The startup day; and

(iv) The name and title of all persons signing the statement.

(5) *Required signatures.* The statement referred to in paragraph (b)(2) of this section must be signed by the authorized person, described in this paragraph (b)(5).

(i) For other than a segregated pool of assets, the authorized person is any person authorized to sign the qualified arrangement's Federal income tax return in the absence of a FASIT election. For example, if a qualified arrangement is a corporation or trust under applicable state law, an authorized person is a corporate officer or trustee, respectively.

(ii) For a segregated pool of assets, the authorized person is each person who, for Federal income tax purposes, owns the assets of the pool immediately before the earlier of the date on which—

(A) An outstanding interest in the pool is designated as a regular or ownership interest in a FASIT; or

(B) The pool issues an interest designated at the time of issuance as a regular or ownership interest in a FASIT.

(6) *Special rule regarding startup day.* The startup day must be a day on which the eligible corporation making the election is described in paragraph (b)(1)(i) or (ii) of this section.

(c) *General definitions.* For purposes of the regulations issued under part V of subchapter M of chapter 1 of subtitle A of the Internal Revenue Code (the FASIT regulations)—

(1) *Owner* means the eligible corporation that holds the interest described in section 860L(b)(2);

(2) *Transfer* includes a sale, contribution, endorsement, or other conveyance of a legal or beneficial interest in property.

§ 1.860H–2 Assets permitted to be held by a FASIT.

(a) *Substantially all.* For purposes of section 860L(a)(1)(D), substantially all of the assets held by a FASIT consist of

permitted assets if the total adjusted bases of the permitted assets is more than 99 percent of the total adjusted bases of all the assets held by the FASIT, including those assets deemed to be held under section 860I(b)(2).

(b) *Permitted debt instrument*—(1) *In general.* Except as otherwise provided, a debt instrument is described in section 860L(c)(1)(B) only if it is a permitted debt instrument. For purposes of the FASIT regulations, a permitted debt instrument is—

(i) A fixed rate debt instrument, including a debt instrument having more than one payment schedule for which a single yield can be determined under § 1.1272–1(c) or (d);

(ii) A variable rate debt instrument within the meaning of § 1.1275–5 if the debt instrument provides for interest at a qualified floating rate within the meaning of § 1.1275–5(b);

(iii) A REMIC regular interest;

(iv) A FASIT regular interest (including a FASIT regular interest issued by anotherFASIT in which the Owner (or a related person) holds an ownership interest);

(v) An inflation-indexed debt instrument as defined in § 1.1275–7;

(vi) Any receivable generated through an extension of credit under a revolving credit agreement (such as a credit card account);

(vii) A stripped bond or stripped coupon (as defined in section 1286(e)(2) and (3)), if the debt instrument from which the stripped bond or stripped coupon is created is described in paragraphs (b)(1)(i) through (vi) of this section; and

(viii) A certificate of trust representing a beneficial ownership interest in a debt instrument described in paragraphs (b)(1)(i) through (vii) of this section.

(2) *Special rules for short-term debt instruments issued by the Owner or related person.* Notwithstanding section 860L(c)(2) and paragraph (b)(3)(iii) of this section, a debt instrument issued by the Owner (or a related person) is a permitted debt instrument if it—

(i) Is described in paragraph (b)(1)(i) or (ii) of this section;

(ii) Has an original stated maturity of 270 days or less;

(iii) Is rated at least investment quality by a nationally recognized statistical rating organization that is not a related person of the issuer; and (

iv) Is acquired to temporarily invest cash awaiting either reinvestment in permitted assets not described in this paragraph (b)(2), or distribution to the Owner or holders of one or more FASIT regular interests.

(3) *Exceptions.* Notwithstanding paragraph (b)(1) of this section, the following debt instruments are not permitted assets.

(i) *Equity-linked debt instrument.* A debt instrument is not a permitted asset if the debt instrument contains a provision that permits the instrument to be converted into, or exchanged for, any legal or beneficial ownership interest in any asset other than a permitted debt instrument (such as a debt instrument that is exchangeable for an interest in a partnership). Similarly, a debt instrument is not a permitted asset if the debt instrument contains a provision under which one or more payments on the instrument are determined by reference to, or are contingent upon, the value of any asset other than a permitted debt instrument (such as a debt instrument containing a provision under which one or more payments on the instrument are determined by reference to, or are contingent upon, the value of stock).

(ii) *Defaulted debt instrument.* A debt instrument is not a permitted asset if, on the date the debt instrument is acquired by the FASIT, the debt instrument is in default due to the debtor's failure to have timely made one or more of the payments owed on the debt instrument and the Owner has no reasonable expectation that all delinquent payments on the debt instrument, including any interest and penalties thereon, will be fully paid on or before the date that is 90 days after the date the instrument is first held by the FASIT.

(iii) *Owner debt.* A debt instrument is not a permitted asset if the debt instrument is issued by the Owner (or a related person) and the debt instrument does not qualify as a permitted debt instrument under paragraphs (b)(1)(iv) or (2) of this section.

(iv) *Certain Owner-guaranteed debt.* A debt instrument is not a permitted asset if the debt instrument is guaranteed by the Owner (or a related person) and, based on all of the facts and circumstances existing at the time the guarantee is given, or at the time the FASIT acquires the guaranteed debt instrument the Owner (or a related person) is, in substance, the primary obligor on the debt instrument. For this purpose, a guarantee includes any promise to pay in the case of the default or imminent default of any debt instrument.

(v) *Debt instrument linked to the Owner's credit.* A debt instrument that is issued by a person other than the Owner (or a related person) is not a permitted asset if the timing or amount of payments on the instrument are determined by reference to, or are contingent on, the timing or amount of payments made on a debt instrument issued by the Owner (or a related person).

(vi) *Partial interests in non-permitted debt instruments.* A debt instrument is not a permitted asset if the debt instrument is a partial interest such a stripped bond or stripped coupon (as defined in section 1286(e)) in a debt instrument described in paragraphs (b)(3)(i) through (v) of this section.

(vii) *Certain Foreign Debt Subject to Withholding Tax.* A debt instrument is not a permitted asset if the debt instrument is traded on an established securities market (within the meaning of § 1.860I–2) and interest on the debt instrument is subject to any tax determined on a gross basis (such as a withholding tax) other than a tax which is in the nature of a prepayment of a tax imposed on a net basis.

(c) *Cash and cash equivalents.* For purposes of section 860L(c)(1)(A) and the FASIT regulations, the term *cash and cash equivalents* means—

(1) The United States dollar;

(2) A currency other than the United States dollar if the currency is received as payment on a permitted asset described in § 1.860H–2, or the currency is required by the FASIT to make a payment on a regular interest issued by the FASIT according to the terms of the regular interest;

(3) A debt instrument if it—

(i) Is described—

(A) In paragraphs (b)(1)(i), (ii), or (v) of this section, or

(B) In paragraph (b)(vii) of this section if it is created from an instrument described in paragraphs (b)(1)(i), (ii), or (v) of this section;

(ii) Has a remaining maturity of 270 days or less; and

(iii) Is rated at least investment quality by a nationally recognized statistical rating organization that is not a related person to the issuer; and

(4) Shares in a U.S.-dollar-denominated money market fund (as defined in 17 CFR 270.2a–7).

(d) *Hedges and guarantees*—(1) *In general.* Subject to the rules in paragraphs (d)(2) through (4) of this section, a hedge or guarantee contract is described in section 860L(c)(1)(D) (a *permitted hedge*) only if the hedge or guarantee contract is reasonably required to offset any differences that any risk factor may cause between the amount or timing of the receipts on assets the FASIT holds (or expects to hold) and the amount or timing of the payments on the regular interests the FASIT has issued (or expects to issue). For purposes of this paragraph (d), the risk factors are—

(i) Fluctuations in market interest rates;

(ii) Fluctuations in currency exchange rates;

(iii) The credit quality of, or default on, the FASIT's assets or debt instruments underlying the FASIT's assets; and

(iv) The receipt of payments on the FASIT's assets earlier or later than originally anticipated.

(2) *Referencing other than permitted assets.* A hedge or guarantee contract is not a permitted hedge if it references an asset other than a permitted asset or if it references an index, economic indicator, or financial average, that is not both widely disseminated and designed to correlate closely with changes in one or more of the risk factors described in paragraphs (d)(1)(i) through (iv) of this section.

(3) *Association with particular assets or regular interests.* A hedge or guarantee contract need not be associated with any of the FASIT's assets or regular interests, or any group of its assets or regular interests, if the hedge or guarantee contract offsets the differences described in paragraph (d)(1) of this section.

(4) *Creating an investment prohibited.* A hedge or guarantee contract is not a permitted hedge if at the time the hedge or guarantee is entered into, it in substance creates an investment in the FASIT.

(e) *Hedges and guarantees issued by Owner (or related person)*—(1) *Hedges.* A hedge contract issued by the Owner (or a related person) is a permitted asset only if—

(i) The contract is a permitted hedge other than a guarantee contract;

(ii) The Owner (or the related person) regularly provides, offers, or sells substantially similar contracts in the ordinary course of its trade or business;

(iii) On the date the contract is acquired by the FASIT (and on any later date that it is substantially modified) its terms are consistent with the terms that would apply in the case of an arm's length transaction between unrelated parties; and

(iv) The Owner maintains records that—

(A) Show the terms of the contract are consistent with the terms that would apply in the case of an arm's length transaction between unrelated parties; and

(B) Explain how the Owner (or related person) determined the consideration for the contract.

(2) *Guarantees.* A guarantee contract issued by the Owner (or a related person) is a permitted asset only if—

(i) The contract is a permitted hedge and satisfies paragraphs (e)(1)(iii) and (iv) of this section;

(ii) The contract is a credit enhancement contract under § 1.860G–2(c); and

(iii) Immediately after the contract is acquired by the FASIT (and on any later date that it is substantially modified), the value (determined under section 860I and § 1.860I–2) of all the FASIT's guarantee contracts issued by the Owner (and related persons) is less than 3 percent of the value (determined under section 860I and § 1.860I–2) of all the FASIT's assets.

(f) *Foreclosure property.* Property acquired in connection with the default or imminent default of a debt instrument held by a FASIT may qualify both as foreclosure property under section 860L(c)(1)(C) and as another type of permitted asset under section 860L(c)(1). If foreclosure property qualifies as another type of permitted asset, the FASIT may hold the property beyond the grace period prescribed for foreclosure property under section 860L(c)(3). In this case, immediately after the grace period ends, the taxpayer must recognize gain, if any, as if the property had been contributed by the Owner to the FASIT on that date. See § 1.860I–1(a)(1)(iii). In addition, after the close of the grace period, disposition of the property is subject to the prohibited transactions tax imposed under section 860L(e) without the benefit of the exception for foreclosure property.

(g) *Special rule for contracts or agreements in the nature of a line of credit.* For purposes of section 860L(c)(1), the term *permitted asset* includes a lender's position in a contract or agreement in the nature of a line of credit (other than a contract or agreement that is originated by the FASIT). Such a contract or agreement is not subject to the rules of section 860I(a) at the time the contract or agreement is transferred to the FASIT. Extensions of credit under the contract or agreement are subject to the rules of section 860I(a) at the time the extension is made. See section 860I(d)(2). To determine whether a contract or agreement is originated by a FASIT, see § 1.860L–1.

(h) *Contracts to acquire hedges or debt instruments.* A contract is not described in section 860L(c)(1)(E) if it is an agreement under which the Owner (or a related person) agrees to transfer permitted hedges or permitted debt instruments to a FASIT for less than —

(1) Fair market value, in the case of hedges or debt instruments traded on an established securities market (as defined in § 1.860I–2); or

(2) Ninety percent of their value, as determined under section 860I(d)(1)(A) and the FASIT regulations, in the case of debt instruments not traded on an established securities market.

§ 1.860H–3 Cessation of a FASIT.

(a) *In general.* An arrangement ceases to be a FASIT if it revokes its election with the consent of the Commissioner or if it fails to qualify as a FASIT and the Commissioner does not determine the failure to be inadvertent.

(b) *Time of cessation.* An arrangement ceases to be a FASIT at the close of the day designated by the Commissioner in the consent to revoke, or if there is no consent to revoke or determination of inadvertence, at the close of the day on which the arrangement initially fails to qualify as a FASIT.

(c) *Consequences of cessation.* Except as otherwise determined by the Commissioner, the consequences of cessation are as follows:

(1) *The FASIT and the underlying arrangement.* The arrangement that made the FASIT election (the underlying arrangement) is no longer a FASIT and cannot re-elect FASIT treatment without the Commissioner's approval. Immediately after the cessation, the arrangement's classification (for example, as a partnership or corporation) is determined under general principles of Federal income tax law. Immediately after the cessation, the arrangement holds the FASIT's assets with a fair market value basis. Any election the Owner made (other than the FASIT election), and any method of accounting the Owner adopted with respect to those assets, binds the underlying arrangement as if the underlying arrangement itself had made the election or adopted the method of accounting. If the underlying arrangement is a segregated pool of assets, the person holding legal title to the pool is responsible for complying with any tax filing or reporting requirements arising from the pool's operation.

(2) *The Owner.* (i) The Owner is treated as exchanging the assets of the FASIT for an amount equal to their value (as determined under § 1.860I–2). Gain realized on the exchange is treated as gain from a prohibited transaction and the Owner is subject to the tax imposed by 860L without exception. Loss, if any, is disallowed. The determination of gain or loss on assets for purposes of this paragraph is made on an asset-by-asset basis.

(ii) The Owner must recognize cancellation of indebtedness income in an amount equal to the adjusted issue

price of the regular interests outstanding immediately before the cessation over the fair market value of those interests immediately before the cessation. This determination is made on a regular interest by regular interest basis. The Owner cannot take any deduction for acquisition premium.

(iii) If, after the cessation, the Owner has a continuing economic interest in the assets, the characterization of this economic interest (for example, as stock or a partnership interest) is determined under general principles of Federal income tax law. If the Owner has a continuing economic interest in the assets immediately after cessation, the Owner holds the interest with a fair market value basis.

(3) *The regular interest holders.* Holders of the regular interests are treated as exchanging their regular interests for interests in the underlying arrangement. Interests in the underlying arrangement are classified (for example, as debt or equity) under general principles of Federal income tax law. Gain must be recognized if a regular interest is exchanged either for an interest not classified as debt or for an interest classified as debt that differs materially either in kind or extent. No loss may be recognized on the exchange. The basis of an interest in the underlying arrangement equals the basis in the regular interest exchanged for it, increased by any gain recognized on the exchange under this paragraph (c)(3).

(d) *Disregarding inadvertent failures to remain qualified*—(1) If a qualified arrangement that ceases to be a FASIT meets the requirements of paragraph (d)(2) of this section, then the Commissioner may either—

(i) Deem the qualified arrangement as continuing to be a FASIT notwithstanding the cessation; or

(ii) Allow the qualified arrangement to re-elect FASIT status after cessation notwithstanding the prohibition in section 860L(a)(4) .

(2) The requirements of this paragraph are satisfied if —

(i) The Commissioner determines that the cessation was inadvertent;

(ii) No later than a reasonable time after the discovery of the event resulting in the cessation, steps are taken so that all of the requirements for a FASIT are satisfied; and

(iii) The qualified arrangement and each person holding an interest in the qualified arrangement at any time during the period the qualified arrangement failed to qualify as a FASIT agree to make such adjustments (consistent with the treatment of the qualified arrangement as a FASIT or the treatment of the Owner as a C corporation) as the Commissioner may require with respect to such period.

§ 1.860H–4 Regular interests in general.

(a) *Issue price of regular interests*—(1) *Regular interests not issued for property.* The issue price of a FASIT regular interest not issued for property is determined under section 1273(b).

(2) *Regular interests issued for property.* Notwithstanding sections 1273 and 1274 and the regulations thereunder, the issue price of a FASIT regular interest issued for property is the fair market value of the regular interest determined as of the issue date.

(b) *Special rules for high-yield regular interests*—(1) *High-yield interests held by a securities dealer*—(i) *Due date of tax imposed on securities dealer under section 860K(d).* The excise tax imposed under section 860K(d) (treatment of high-yield interest held by a securities dealer that is not an eligible corporation) must be paid on or before the due date of the securities dealer's Federal income tax return for the earlier of the taxable year in which the securities dealer—

(A) Ceases to be a dealer in securities; or

(B) Commences holding the high-yield interest for investment.

(ii) [Reserved]

(2) *High-yield interests held by a pass-thru*—(i) *Nature and due date of tax imposed under section 860K(e).* The tax imposed under section 860K(e) (treatment of high-yield interest held by a pass-thru entity) is an excise tax which must be paid on or before the due date of the pass-thru entity's Federal income tax return for the taxable year in which the pass-thru entity issues the debt or equity interest described in section 860K(e).

(ii) *Pass-thru entity includes REMIC.* For purposes of section 860K(e), a pass-thru entity includes a real estate mortgage investment conduit (REMIC) as defined in section 860D.

§ 1.860H–5 Foreign resident holders of regular interests.

(a) *Look-through to underlying FASIT debt.* If, during the same period, a foreign resident holds (either directly or through a vehicle which itself is not subject to the Federal income tax such as a partnership or trust) a regular interest in a FASIT and a conduit debtor (as defined in paragraph (b) of this section) pays or accrues interest on a debt instrument held by the FASIT, then any interest received or accrued by the foreign resident with respect to the regular interest during that period is treated as received or accrued from the conduit debtor. This rule applies to both the foreign resident holder of the FASIT regular interest and the conduit debtor for all purposes of subtitle A and the regulations thereunder.

(b) *Conduit debtor.* A debtor is a conduit debtor if the debtor is a U.S. resident taxpayer or a foreign resident taxpayer to which interest expense paid or accrued with respect to the debt held by the FASIT is treated as paid or accrued by a U.S. trade or business of the foreign taxpayer under section 884(f)(1)(A), and the foreign resident holder described in paragraph (a) of this section—

(1) Is a 10-percent shareholder of the debtor (within the meaning of section 871(h)(3)(B));

(2) Is a controlled foreign corporation, but only if the debtor is a related person (within the meaning of section 864(d)(4)) with respect to the controlled foreign corporation; or

(3) Is related to the debtor (within the meaning of section 267(b) or 707(b)(1)).

(c) *Limitation.* The amount of income treated under paragraph (a) of this section as received from a conduit debtor is the lesser of—

(1) The income received or accrued by the foreign resident holder with respect to the FASIT regular interest; or

(2) The amount paid or accrued by the conduit debtor with respect to the debt instrument held by the FASIT.

(d) *Cross references.* For the treatment of related-party interest accrued to foreign related persons, see sections 163(e)(3), 163(j), 871(h)(3), 881(c)(3)(B), and 881(c)(3)(C).

§ 1.860H–6 Taxation of Owner, Owner's reporting requirements, transfers of ownership interest.

(a) *In general.* For purposes of determining an Owner's credits and taxable income, all assets, liabilities, and items of income, gain, deduction, loss, and credit of the FASIT are treated as assets, liabilities, and such items of the Owner.

(b) *Constant yield method to apply.* The income from each debt instrument a FASIT holds is determined by applying the constant yield method (including the rules of section 1272(a)(6)) described in § 1.1272–3(c).

(c) *Method of accounting for, and character of, hedges.* The method of accounting used for a permitted hedge (as described in § 1.860H–2(e)) must clearly reflect income and otherwise comply with the rules of § 1.446–4 (whether or not the permitted hedge instrument is part of a hedging transaction as defined in § 1.1221–2(b)). The character of any gain or loss realized on a permitted hedge (as described in § 1.860H–2(e)) is ordinary.

(d) *Coordination with mark-to market provisions*—(1) *No mark to market accounting.* Mark to market accounting does not apply to any asset (other than a non-permitted asset) while it is held, or deemed held, by a FASIT.

(2) *Transfer of a mark to market asset to a FASIT.* If an Owner transfers a permitted asset to a FASIT and the asset would have been marked to market if the taxable year had ended immediately before the transfer (for example, an asset accounted for under section 475(a)), then immediately before the transfer, the Owner must mark the asset to market and take gain or loss into account as if the taxable year had ended at that point. See § 1.475(b)–1(b)(4). If the asset is a debt instrument that is valued under the special valuation rule of § 1.860I–2(a), then immediately after the asset is marked to market under this paragraph (d)(2), the asset is also valued under § 1.860I–2(a), and any additional gain is taken into account under section 860I. The latter gain, but not any mark to market gain, is subject to section 860J.

(e) *Owner's annual reporting requirements.* Unless the Commissioner otherwise prescribes, specified information regarding the FASIT must be reported by means of a separate statement, attached by the Owner to its income tax return for the taxable year that includes the reporting period. The reporting period is the period in the Owner's taxable year during which the Owner holds the ownership interest in the FASIT. Unless the Commissioner otherwise requires, the statement must set forth—

(1) The name, address, and taxpayer identification number (if any) of the FASIT and any other information necessary to establish the identity of the FASIT for which the statement is being filed;

(2) If the ownership interest was acquired from another person during the Owner's taxable year, the date on which it was acquired, and the name and address of the person from which it was acquired;

(3) If the ownership interest was transferred by the Owner during the Owner's taxable year, the date on which it was transferred, the name and address of the person to which it was transferred, and whether such person is described in section 860L(a)(2);

(4) If any regular interests are issued during the reporting period, a description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6) and any regulations thereunder, including a statement supporting the selection of the prepayment assumption;

(5) The FASIT's items (taken into account during the reporting period) of income, gain, loss, deduction and credit from permitted transactions, and separately stated, the FASIT's items (taken into account during the reporting period) of income, gain, loss, deduction and credit from prohibited transactions;

(6) Information detailing the extent to which the items described in paragraph (f)(5) of this section consist of interest accrued that, but for section 860H(b)(4), is exempt from the taxes imposed under subtitle A of 26 U.S.C.; and

(7) If a qualified arrangement ceases to be a FASIT during a reporting period (including at the close of a reporting period), information disclosing—

(i) The effective date of the cessation;

(ii) A description of how the cessation occurred; and

(iii) A statement regarding whether the arrangement will continue after cessation and, if so, the continuing arrangement's name, address, and taxpayer identification number.

(f) *Treatment of FASIT under subtitle F of Title 26 U.S.C.* For purposes of subtitle F (Procedure and Administration)—

(1) A FASIT is treated as a branch or division of the Owner;

(2) The Owner is treated as the issuer of the regular interests; and

(3) The regular interests are treated as collateralized debt obligations as defined in §1.6049–7(d)(2).

(g) *Transfer of ownership interest*—(1) *In general.* If, at the time of any transfer of the ownership interest, the Owner knew or should have known that the transferee would be unwilling or unable to pay some or all of the tax arising from the application of section 860H(b), then the transfer is disregarded for all Federal tax purposes.

(2) *Safe harbor for establishing lack of improper knowledge.* A transfer will not be disregarded under paragraph (g)(1) of this section if the rules of § 1.860E–1(c)(4) (safe harbor for establishing lack of improper knowledge on the transfer of a non-economic REMIC residual interest) are satisfied with respect to the FASIT ownership interest.

§ 1.860I–1 Gain recognition on property transferred to FASIT or supporting FASIT regular interests.

(a) *In general*—(1) Except as provided in paragraphs (a)(2) and (d) of this section, the Owner of a FASIT (or a related person) must recognize gain (if any) on—

(i) Property the Owner (or the related person) transfers either to the FASIT or its regular interest holders;

(ii) Support property; and

(iii) Property acquired by the FASIT as foreclosure property and held beyond the grace period allowed for foreclosure property.

(2) An Owner (or a related person) does not have to recognize gain under section 860I or paragraph (a)(1) of this section on a transfer or pledge of property to a regular interest holder, if the Owner (or the related person) makes the transfer or pledge in a capacity other than as Owner (or related person), and the regular interest holder receives the transfer or pledge in a capacity other than regular interest holder.

(b) *Support property defined.* Property is *support property* if the Owner (or a related person)—

(1) Pledges the property, directly or indirectly, to pay a FASIT regular interest, or otherwise identifies the property as providing security for the payment of a FASIT regular interest;

(2) Sets aside the property for transfer to a FASIT under any agreement or understanding; or

(3) Holds an interest in the property, that is subordinate to the FASIT's interest in the property (for example, the Owner holds subordinate interests in a pool of mortgages and the FASIT holds senior interests in the same pool).

(c) *Timing of gain determination and recognition.* Gain is determined and recognized under paragraph (a)(1) of this section immediately before the property is transferred to the FASIT or becomes support property, or in the case of foreclosure property, on the day immediately following the termination of the grace period allowed for foreclosure property.

(d) *Gain deferral election.* [Reserved]

(e) *Amount of gain.* Except as provided in paragraph (f) of this section, the amount of gain recognized under paragraph (a)(1) of this section is the same as if the Owner (or the related person) had sold the property for its value as determined under § 1.860I–2.

(f) *Recordkeeping requirements.* The Owner is required to maintain such books and records as may be necessary or appropriate to demonstrate that the requirements of this section are satisfied.

(g) *Special rule applicable to property of related persons.* Except in the case of property traded on an established securities market (as defined in § 1.860I–2(b)), if a related person holds property that becomes support property, or if a related person transfers property to a FASIT or its regular interest holders, then for purposes of applying the gain recognition provisions of this section—

(1) The related person is treated as transferring the property to the Owner for the property's fair market value as

determined under general tax principles; and

(2) The Owner is treated as transferring the property to the FASIT for the property's value as determined under § 1.860I–2.

§ 1.860I–2 Value of property.

(a) *Special valuation rule.* For purposes of section 860I(d)(1)(A), except as provided in paragraph (c) of this section, the value of a debt instrument not traded on an established securities market is the present value of the reasonably expected payments on the instrument determined—

(1) As of the date the instrument is to be valued (as described in § 1.860I–1(c)); and

(2) By using a discount rate equal to 120 percent of the applicable federal rate, compounded semi-annually, for instruments having the same term as the weighted average maturity of the reasonably expected payments on the instrument. For this purpose, the applicable federal rate is the rate prescribed under section 1274(d) for the period that includes the date the instrument is valued (as described in § 1.860I–1(c)).

(b) *Traded on an established securities market.* For purposes of section 860I(d)(1)(A), a debt instrument is traded on an established securities market if it is traded on a market described in § 1.1273–2(f) (2), (3), or (4).

(c) *Reasonably expected payments*—(1) *In general.* Reasonably expected payments on an instrument must be determined in a commercially reasonable manner and, except as otherwise provided in this section (c), may take into account reasonable assumptions concerning early repayments, late payments, non-payments, and loan servicing costs. No other assumptions may be considered.

(2) *Consistency requirements.* Except as provided in paragraph (c)(3) of this section, any assumption used in determining the reasonably expected payments on an instrument must be consistent with (and no less favorable than) the first of the following categories that applies—

(i) Representations made in connection with the offering of a regular interest in the FASIT;

(ii) Representations made to any nationally recognized statistical rating organizations;

(iii) Representations made in any filings or registrations with any governmental agency with respect to the FASIT; and

(iv) Industry customs or standards (as defined in paragraph (e) of this section).

(3) *Servicing costs.* Notwithstanding paragraph (c)(2) of this section, the amount of loan servicing costs assumed may not exceed the lesser of—

(i) The amount the FASIT agrees to pay the Owner for servicing the loans held by the FASIT if the Owner is providing the servicing; or

(ii) The amount a third party would reasonably pay for servicing identical loans.

(4) *Nonconforming or unreasonable assumptions.* If a taxpayer, in determining the expected payments on an instrument, takes into account an assumption that either fails to meet the requirements of paragraph (c)(2) or (3) of this section or is unreasonable, the Commissioner may determine the reasonably expected payments on the instrument without the assumption. Thus, for example, if a taxpayer makes an unreasonable assumption concerning non-payments, the Commissioner may compute expected payments without any adjustment for non-payments.

(d) *Special rules*—(1) *Beneficial ownership interests.* A certificate representing beneficial ownership of a debt instrument, is deemed to represent beneficial ownership of a debt instrument traded on an established securities market, if either —

(i) The certificate is traded on an established securities market; or

(ii) The certificate represents ownership in a pool of assets composed solely of debt instruments all of which are traded on established securities markets.

(2) *Stripped interests.* A stripped bond or stripped coupon (as defined in section 1286(e)) not otherwise traded on an established securities market is considered as being traded on an established securities market, if—

(i) The underlying bond (the bond from which the stripped bond or stripped coupon is created) is traded on an established securities market; and

(ii) The stripped bond or stripped coupon is valued using a commercially reasonable method based on the market value of the underlying bond.

(3) *Contemporaneous purchase and transfer of debt instruments*—(i) Notwithstanding paragraph (a) of this section, the value of a debt instrument not traded on an established securities market is its cost to the Owner (or a related person) if—

(A) The debt instrument is purchased from an unrelated person in an arm's length transaction in which no other property is transferred or services provided;

(B) The debt instrument is acquired solely for cash;

(C) The price of the debt instrument is fixed no more than 15 days before the date of purchase; and

(D) The debt instrument is transferred to the FASIT no more than 15 days after the date of purchase.

(ii) For purposes of paragraph (d)(3)(i) of this section, the date of purchase is the earliest date on which the burdens and benefits of ownership of the debt instrument irrevocably pass to the Owner (or a related person).

(4) *Guarantees.* Notwithstanding paragraph (c)(1) of this section, if a guarantee qualifying as a permitted hedge under this paragraph (d) relates solely to a debt instrument not traded on an established securities market and the taxpayer determines the reasonably expected payments on the debt instrument by including the reasonably expected payments on the guarantee, then the guarantee and the property need not be valued separately.

(e) *Definitions.* For purposes of § 1.860I–2—

(1) An *industry custom* is any long-standing practice in use by entities that engage in asset securitization as part of their ordinary business activities; and

(2) An *industry standard* is any standard that is both—

(i) Commonly used in evaluating the expected payments on securitized debt instruments (or debt instruments pending securitization) in similar transactions; and

(ii) Disseminated through written or electronic means by any independent, nationally recognized trade association or other authority that is recognized as competent to issue the standard.

§ 1.860J–1 Non-FASIT losses not to offset certain FASIT inclusions.

(a) *In general.* For purposes of applying section 860J(a)(1), an Owner's taxable income from a FASIT includes any gains recognized by the Owner under § 1.860I–1(a).

(b) *Special rule for holders of multiple ownership interests.* For purposes of applying section 860J and the rules of § 1.860J–1, a person may aggregate the net income (or loss) from all FASITs in which the person holds the ownership interest.

(c) *Related persons*—(1) *Taxable income.* The taxable income of a related person for any taxable year is no less than the sum of—

(i) The amounts specified in section 860J(a); plus

(ii) Any gains recognized under § 1.860I–1(a).

(2) *Effect on net operating loss.* Any increase in a related person's taxable income attributable to paragraph (c)(1) of this section is disregarded—

(i) In determining under section 172 the amount of the related person's net operating loss for the taxable year; and

(ii) In determining the related person's taxable income for such taxable year for purposes of the second sentence of section 172(b)(2).

(3) *Coordination with minimum tax.* For purposes of part VI of subchapter A of chapter 1 of subtitle A of Title 26 U.S.C., the alternative minimum taxable income of any related person is in no event less than the related person's taxable income as computed under paragraph (c)(1) of this section.

§ 1.860L–1 Prohibited transactions.

(a) *Loan origination*—(1) *In general.* Section 860L(e) imposes a prohibited transactions tax on the receipt of any income derived from any loan originated by a FASIT. Except as provided in paragraphs (a)(2) and (3) of this section, whether a FASIT originates a loan for purposes of section 860L(e) depends on all the facts and circumstances.

(2) *Acquisitions presumed not to be loan origination.* Except as provided in paragraph (a)(3) of this section, a FASIT is considered not to have originated a loan if the FASIT acquires the loan—

(i) From an established securities market described in § 1.1273–2(f)(2), (3), or (4);

(ii) On a date more than 12 months after the loan was issued; or

(iii) From a person (including the Owner or a related person) that regularly originates similar loans (such as through a standardized contract) in the ordinary course of its business.

(3) *Activities presumed to be loan origination.* (i) Notwithstanding paragraph (a)(2) of this section, a FASIT is considered to originate a loan if the FASIT either engages in or facilitates (other than through a person from whom the FASIT acquires the loan and who is described in paragraph (a)(2)(iii) of this section)—

(A) Soliciting the loan, including advertising to solicit borrowers, accepting the loan application, or generally making any offer to lend funds to any person;

(B) Evaluating an applicant's financial condition;

(C) Negotiating or establishing any terms of the loan;

(D) Preparing or processing any document related to negotiating or entering into the loan; or

(E) Closing the loan transaction.

(ii) For purposes of paragraph (a)(3)(i) of this section, if a FASIT enters into a contract to engage in purchases described in paragraph (a)(2)(iii) of this section, the FASIT is not treated as originating the loans it acquires solely because it was a party to the contract.

(4) *Loan workouts.* If a FASIT holds a loan, the FASIT is not treated as originating a new loan that it receives from the same obligor in exchange for the old loan in the context of a workout.

(b) *Origination of a contract or agreement in the nature of a line of credit*—(1) *In general.* A FASIT is presumed not to have originated a contract or agreement in the nature of a line of credit if the FASIT acquires the contract or agreement from a person (including the Owner or a related person) that regularly originates similar contracts or agreements in the ordinary course of its business.

(2) *Activities presumed to be origination.* If a FASIT assumes the role of a lender under a contract or agreement in the nature of a line of credit from a person that does not regularly originate similar contracts or agreements in the ordinary course of its business, the FASIT is considered to originate the contract or agreement if, with respect to the contract or agreement, the FASIT engages in any of the activities described in paragraphs (A) through (E) of § 1.860L-1(a)(3)(i) of this section.

(3) *Debt instruments issued under contracts or agreements in the nature of a line of credit.* If a FASIT acquires a debt instrument as a result of the FASIT's position as a lender under a contract or agreement in the nature of a line of credit, the FASIT is presumed to have originated the debt instrument if and only if the FASIT originated the related contract or agreement.

(c) *Disposition of debt instruments.* Notwithstanding sections 860L(e)(3)(B)(i) and (ii) (certain exceptions from the prohibited transactions tax), the distribution to the Owner of a debt instrument contributed by the Owner, and the transfer to the Owner of one debt instrument in exchange for another, are prohibited transactions, if within 180 days of receiving the debt instrument the Owner realizes a gain on the disposition of the instrument to any person, regardless of whether the realized gain is recognized.

(d) *Exclusion of prohibited transactions tax to dispositions of hedges.* The rules of section 860L(e) and paragraph (b) of this section do not apply to the disposition of any asset described in section 860L(c)(1)(D).

§ 1.860L–2 Anti-abuse rule.

(a) *Intent of FASIT provisions.* Part V of subchapter M of the Internal Revenue Code (the FASIT provisions) is intended to promote the spreading of credit risk on debt instruments by facilitating the securitization of those debt instruments. Implicit in the intent of the FASIT provisions are the following requirements—

(1) Assets to be securitized through a FASIT consist primarily of permitted debt instruments;

(2) The source of principal and interest payments on a FASIT's regular interests is primarily the principal and interest payments on permitted debt instruments held by the FASIT (as opposed to receipts on other assets or deposits of cash); and

(3) No FASIT provision may be used to achieve a Federal tax result that cannot be achieved without the provision unless the provision clearly contemplates that result.

(b) *Application of FASIT provisions.* The FASIT provisions and the FASIT regulations must be applied in a manner consistent with the intent of the FASIT provisions as set forth in paragraph (a) of this section. Therefore, if a principal purpose of forming or using a FASIT is to achieve results inconsistent with the intent of the FASIT provisions and the FASIT regulations, the Commissioner may make any appropriate adjustments with regard to the FASIT and any arrangement or transaction (or series of transactions) involving the FASIT. The Commissioner's authority includes—

(1) Disregarding a FASIT election;

(2) Treating one or more assets of a FASIT as held by a person or persons other than the Owner;

(3) Allocating FASIT income, loss, deductions and credits to a person or persons other than the Owner;

(4) Disallowing any item of FASIT income, loss, deduction, or credit;

(5) Treating the ownership interest in a FASIT as held by a person other than the nominal holder;

(6) Treating a FASIT regular interest as other than a debt instrument; and

(7) Treating a regular interest held by any person as having the same tax characteristics as one or more of the assets held by the FASIT.

(c) *Facts and circumstances analysis.* Whether a FASIT is created or used for a principal purpose of achieving a result inconsistent with the intent of the FASIT provisions is determined based on all of the facts and circumstances, including a comparison of the purported business purpose for a transaction and the claimed tax benefits resulting from the transaction.

(d) *Effective date.* This section is applicable on February 4, 2000.

§ 1.860L–3 Transition rule for pre-effective date FASITs.

(a) *Scope.* This section applies if a pre-effective date FASIT has one or

more pre-FASIT interests outstanding on the startup day of the FASIT.

(1) *Pre-effective date FASIT defined.* A *pre-effective date FASIT* is a FASIT whose underlying qualifying arrangement was in existence on August 31, 1997.

(2) *Pre-FASIT interest defined.* A *pre-FASIT interest* is an interest in a pre-effective date FASIT that—

(i) Was issued before February 4, 2000;

(ii) Was outstanding on the date the FASIT election for the underlying qualifying arrangement goes into effect; and

(iii) Is considered debt of the Owner under general principles of Federal income tax law.

(3) *FASIT gain defined.* For purposes of this section, the term FASIT gain means any gain that the Owner of a pre-effective date FASIT must recognize under the rules of this section.

(b) *Election to defer gain.* The Owner of a pre-effective date FASIT may elect to defer the recognition of FASIT gain on assets that are held by the FASIT but that are allocable to pre-FASIT interests. An Owner that elects under this section must establish a method of accounting for its FASIT gain. To clearly reflect income, this method must periodically determine the aggregate amount of FASIT gain on all of the assets in the FASIT and exclude the portion of the FASIT gain attributable to the pre-FASIT interests.

(c) *Safe-harbor method.* This paragraph (c) provides a safe-harbor method for determining the amount of FASIT gain that can be deferred under this section. The method has the following steps:

(1) *Step one: Establish pools*—(i) *Group assets into pools.* The Owner must group the assets of the FASIT into one or more pools. No pool may contain assets of more than one of the following three types—

(A) Assets that are valued under the special valuation rule of § 1.860I–2(a) and that have FASIT gain on the first day held by the FASIT;

(B) Assets that are valued for FASIT gain purposes under a standard other than the special valuation rule of § 1.860I–2(a) and that have FASIT gain on the first day held by the FASIT; and

(C) Assets that do not have FASIT gain on the first day held by the FASIT.

(ii) *Treatment of pools.* If a pool contains assets described in paragraph (c)(1)(i)(A) or (B) of this section, the Owner must apply paragraphs (c)(2) through (5) of this section to the pool. If a pool contains assets described in paragraph (c)(1)(i)(C) of this section, the pool is ignored for FASIT gain purposes.

(2) *Step two: Determine the FASIT gain (or loss) at the pool level*—(i) *In general.* For each taxable year, the FASIT gain (or loss) at the pool level is equal to the net increase (or decrease) in the value of the pool minus the income that is included with respect to the pool under general income tax principles (without regard to the FASIT rules). For purposes of the preceding sentence, the net increase (or decrease) in the value of the pool is equal to—

(A) The sum of the value of the pool (as determined under § 1.860I–2) at the end of the taxable year and the amount of any cash distributed (even if reinvested) from the pool during the taxable year; minus

(B) The sum of the value of the pool (as determined under § 1.860I–2) at the end of the previous taxable year and the Owner's adjusted basis in the assets contributed to the pool during the taxable year.

(ii) *Limitation.* This paragraph applies if the calculation in paragraph (c)(2)(i) of this section produces a loss for the taxable year and the amount of the loss exceeds the net amount of the FASIT gain from the pool in all prior years. In this case, the amount of the loss for the current year is limited to the amount of net FASIT gain for all previous years.

(3) *Step three: Determine the percentage of total FASIT gain that must be recognized by the end of the current taxable year.* The percentage of FASIT gain that must be recognized by the end of the current taxable year is equal to 100 percent minus the percentage of FASIT gain that may be deferred at the end of the current taxable year. The percentage of FASIT gain that may be deferred at the end of the taxable year is equal to the lesser of 100 percent and the ratio of—

(i) The product of 107 percent and aggregate adjusted issue prices of all pre-FASIT interests outstanding on the last day of the taxable year; over

(ii) The total value of all assets held by the FASIT on the last day of the taxable year.

(4) *Step four: Determine the total amount of FASIT gain that is not attributed to pre-effective date FASIT interests.* The total amount of FASIT gain that is not attributed to pre-effective date FASIT interests is equal to the product of—

(i) The sum of the amount of FASIT gain (as determined under paragraph (c)(2) of this section) for the current taxable year and all previous taxable years; and

(ii) The percentage of FASIT gain that must be recognized in the current taxable year (as determined under paragraph (c)(3) of this section).

(5) *Step five: Determine the amount of FASIT gain (or loss) to be recognized in the taxable year.* For the taxable year that includes the startup date, the amount of FASIT gain to be recognized is equal to the total amount of FASIT gain not attributable to pre-effective date FASIT interests (as determined under paragraph (c)(4) of this section). Thereafter, the amount of FASIT gain (or loss) to be recognized in a given taxable year is equal to the total amount of FASIT gain not attributable to pre-effective date FASIT interests for that taxable year (as determined under paragraph (c)(4) of this section) less the amount of FASIT gain not attributable to pre-effective date FASIT interests for the immediately preceding taxable year (as determined under paragraph (c)(4) of this section).

(d) *Example.* The rules of this section are illustrated by the following example:

Example. (i) *Facts. O* is an eligible corporation within the meaning of section 860(a)(2) that uses the calendar year as its taxable year. On July 1, 1996, *O* forms *TR*, a trust. Shortly thereafter, *O* contributes credit card receivables to *TR* and *TR* issues certificates that, for Federal income tax purposes, are characterized as debt of *O*. Effective March 31, 1999, *O* elects FASIT status for *TR*. On March 31, 1999, *TR* holds credit card receivables that have an outstanding principal balance of $20,000,000 and *TR* has outstanding certificates (that are characterized for Federal income tax purposes as debt of *O*) that have an aggregate adjusted issue price of $10,000,000.

(ii) *Status as a pre-effective date FASIT. TR* is a pre-effective date FASIT because *TR* was a trust that was in existence on August 31, 1997. The certificates outstanding on March 1, 1999, are pre-FASIT interests because they were outstanding on March 31, 1999, and they were considered debt of *O* under general principles of Federal income tax law.

(iii) *Facts: 1999.* From April 1, 1999, through December 31, 1999, the credit card receivables held by *TR* generated $800,000 of taxable income and $4,000,000 of total cash flow. *TR* distributed $2,500,000 of the cash flow to *O* in exchange for new receivables having an outstanding principal balance of $2,500,000. *TR* used the remaining $1,500,000 of cash flow to make payments on its outstanding debt instruments. On December 31, 1999, *TR* contributed additional credit card receivables with an outstanding principal balance of $10,700,000 and an aggregate adjusted basis of $10,700,000. On December 31, 1999, *TR* held credit card receivables that had an outstanding principal balance of $30,000,000, an aggregate adjusted basis of $30,000,000, and a value (as determined under § 1.860I–2(a)) of $30,300,000. In addition, on December 31, 1999, the outstanding adjusted issue price of the pre-FASIT interests was $9,000,000.

(iv) *FASIT gain recognition for 1999*—(A) *Establish pools. TR* elects to defer gain recognition under the safe harbor method.

Consistent with paragraph (c)(1) of this section, *TR* groups the assets of the FASIT into a single pool because all of the assets of the FASIT are credit card receivables subject to the special valuation rule of § 1.860I–1(a) and the assets have FASIT gain on the date they are acquired by the FASIT.

(B) *Determination of FASIT gain for 1999.* The sum of the value of the pool at the end of 1999 ($30,300,000) and the cash distributed during 1999 ($4,000,000) is $34,300,000. There are three contributions of assets by *O* during 1999: one of $20,000,000 on March 31, 1999; one of $2,500,000 over the course of 1999; and an additional contribution of $10,700,000 on December 31, 1999. Thus, *O*'s basis in assets contributed to the pool during 1999 is $33,200,000. The net increase in the value of the pool is $1,100,000 ($34,300,000 minus $33,200,000). Under paragraph (c)(2) of this section, the FASIT gain for 1999 is $300,000 ($1,100,000 net increase in value minus $800,000 taxable income).

(C) *Determination of percentage of total FASIT gain that must be recognized by the end of 1999.* Under paragraph (c)(3) of this section, the percentage of FASIT gain that may be deferred for the taxable year is 31.78 percent (107 percent × $9,000,000 adjusted issue price of pre-FASIT interests divided by $30,300,000 value of the assets). The percentage of the FASIT gain that must be recognized is for the taxable year, therefore, 68.22 percent (1—31.78 percent).

(D) *Determination of total amount of FASIT gain not attributed to pre-effective date FASIT interests in 1999.* Under paragraph (c)(4) of this section, the total amount of FASIT gain not attributed to pre-effective date FASIT interests in 1999 is $204,660 ($300,000 FASIT gain × 68.22 percent).

(E) *Determine the amount of FASIT gain to be recognized in 1999.* Under paragraph (c)(5) of this section, because 1999 includes the startup date, *TR* must include in income the entire $204,660 of FASIT gain not attributed to pre-effective date FASIT interests.

(v) *Facts: 2000.* In 2000, the credit card receivables held by *TR* generated $1,500,000 of taxable income and $5,000,000 of cash flow. *TR* distributed $4,000,000 of the cash flow to *O* in exchange for new receivables having an outstanding principal balance of $4,000,000. *TR* used the remaining $1,000,000 of cash flow to make payments on its outstanding debt instruments. On December 31, 2000, *TR* contributed additional credit card receivables with an outstanding principal balance of $9,500,000 and an aggregate adjusted basis of $9,500,000. On December 31, 2000, *TR* held credit card receivables that had an outstanding principal balance of $40,000,000, an aggregate adjusted basis of $40,000,000, and a value (as determined under § 1.860I–2(a)) of $40,800,000. In addition, on December 31, 2000, the outstanding adjusted issue price of the pre-FASIT interests was $8,500,000.

(vi) *FASIT gain recognition for 2000*—(A) *Determination of FASIT gain for 2000.* The sum of the value of the pool on December 31, 2000 ($40,800,000) and the cash distributed during 2000 ($5,000,000) is $45,800,000. The value of the pool on December 31, 1999, was $30,300,000. During 2000, *O* contributed receivables in which *O* had a basis of $13,500,000 ($4,000,000 over the course of the year and $9,500,000 on December 31, 2000). The net increase in the value of the pool during 2000 is $2,000,000 ($45,800,000 minus $43,800,000). Under paragraph (c)(2), the FASIT gain for 2000 is $500,000 ($2,000,000 net increase in value minus $1,500,000 taxable income).

(B) *Determination of percentage of total FASIT gain that must be recognized by the end of 2000.* Under paragraph (c)(3), the percentage of FASIT gain that may be deferred for the taxable year is 22.29 percent (107 percent times $8,500,000 adjusted issue price of pre-FASIT interests divided by $40,800,000 value of the assets). The percentage of the FASIT gain that must be recognized is, therefore, 77.71 percent (1—22.29 percent).

(C) *Determination of total amount of FASIT gain not attributed to pre-effective date FASIT interests in 2000.* Under paragraph (c)(4) of this section, the total amount of FASIT gain not attributed to pre-effective date FASIT interests in 2000 is $388,500 ($500,000 FASIT gain multiplied by 77.71 percent).

(D) *Determine the amount of FASIT gain to be recognized in 2000.* Under paragraph (c)(5) of this section, the FASIT gain to be recognized for 2000 is equal to the FASIT gain that not attributable to pre-effective date FASIT interests in 2000 ($388,500) minus the FASIT gain not attributable to pre-effective date FASIT interests in 1999 ($204,660). Thus, in 2000, *TR* must include $183,840.

(e) *Election to apply gain deferral retroactively.* The Owner of a pre-effective date FASIT, including a pre-effective date FASIT having a startup date before February 4, 2000, may apply the rules of paragraph (a) of this section for the period beginning on the startup date by making an election in the manner prescribed by the Commissioner.

(f) *Effective date.* This section is applicable on February 4, 2000.

§ 1.860L–4 Effective date.

Except as otherwise provided in § 1.860L–2(e) (relating to the rules on anti-abuse) and § 1.860L–3(f) (relating to the rules governing transition entities) this section is applicable on the date final regulations are filed with the **Federal Register**.

Par. 4. Section 1.861–9T is amended by redesignating the text of paragraph (g)(2)(iii) as paragraph (g)(2)(iii)(A) and adding a heading to new paragraph (g)(2)(iii)(A), and adding paragraph (g)(2)(iii)(B):

§ 1.861–9T Allocation and apportionment of interest expense (temporary regulations).

* * * * *

(g) * * *

(2) * * *

(iii) *Adjustment for directly allocated interest*—(A) *Nonrecourse indebtedness and integrated financial transactions.*

* * *

(B) *FASIT Interest Expense.* The rules of paragraph (g)(2)(iii)(A) of this section shall also apply to all assets to which FASIT interest expense is directly allocated during the current taxable year under the rules of § 1.861–10T(f). This paragraph (g)(2)(iii)(B) applies on the date final regulations are filed with the **Federal Register**.

Par. 5. Section 1.861–10T is amended by—

1. Revising paragraph (a); and
2. Adding paragraph (f).

§ 1.861–10T Special allocations of interest expense (temporary regulations).

(a) *In general.* This section applies to all taxpayers and provides four exceptions to the rules of § 1.861–9T that require the allocation and apportionment of interest expense on the basis of all assets of all members of the affiliated group. Paragraph (b) of this section describes the direct allocation of interest expense to the income generated by certain assets that are subject to qualified nonrecourse indebtedness. Paragraph (c) of this section describes the direct allocation of interest expense to income generated by certain assets that are acquired in integrated financial transactions. Paragraph (d) of this section provides special rules that are applicable to all transactions described in paragraphs (b) and (c) of this section. Paragraph (e) of this section requires the direct allocation of third party interest of an affiliated group to such group's investment in related controlled foreign corporations in cases involving excess related person indebtedness (as defined therein). Paragraph (f) of this section provides rules for the direct allocation and apportionment of all FASIT interest expense to all FASIT gross income, on the basis of all FASIT assets. See also § 1.861–9T(b)(5), which requires direct allocation of amortizable bond premium.

* * * * *

(f) *FASIT Interest Expense*—(1) *In general.* All FASIT interest expense of the taxpayer's affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group) shall be directly allocated solely to the FASIT gross income of the affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group).

(2) *Asset method.* Interest expense that is directly allocated under this paragraph (f) shall be treated as directly related to all the activities and assets of all FASITs in which the taxpayer or any

member of the taxpayer's affiliated group holds the ownership interest. The directly allocated interest expense shall be apportioned among all of the FASIT gross income of the affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group) under the asset method described in § 1.861–9T(g).

(3) *FASIT period.* After a FASIT's startup day (as defined in section 860L(d)(1)), the taxpayer must allocate the interest expense of the FASIT according to the rules of this paragraph (f) during the entire period that the arrangement continues to be a FASIT. If an arrangement ceases to be a FASIT, interest expense with respect to the ceased FASIT arrangement shall no longer be allocated and apportioned under the rules of this paragraph (f) as of the time the arrangement is treated as having ceased in accordance with § 1.860H–3(b). The Commissioner may continue to allocate interest expense with respect to a ceased FASIT arrangement under this paragraph (f) if the Commissioner determines that the principal purpose of ending the arrangement's qualification as a FASIT was to affect the taxpayer's interest expense allocation.

(4) *Application of special rules.* In applying this paragraph (f), the rules of paragraph (d)(2)of this section shall apply.

(5) *Definitions.* For purposes of this paragraph (f):

(i) *FASIT defined.* FASIT has the meaning given such term in § 1.860H–1(a).

(ii) *FASIT interest expense defined.* (A) In general. FASIT interest expense means any amount paid or accrued by or on behalf of a FASIT to a holder of a regular interest in such FASIT, if such amount is—

(*1*) treated as incurred by the taxpayer or any member of the taxpayer's affiliated group by reason of § 1.860H–6(a), because the taxpayer or such member holds the ownership interest in a FASIT; and

(*2*) treated as interest by reason of section 860H(c).

(B) *Interest equivalents.* FASIT interest expense includes any expense or loss from a hedge that is a permitted asset (as described in § 1.860H–2 (d) and (e)), but only to the extent such expense or loss is an interest equivalent as described in § 1.861–9T(b).

(iii) *FASIT gross income defined.* FASIT gross income means gross income of the taxpayer's affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group) treated as received or accrued by the taxpayer, or any member of the taxpayer's affiliated group, by reason of § 1.860H–6(a).

(iv) *Affiliated group defined.* Affiliated group has the meaning given such term by § 1.861–11T(d).

(6) *Coordination with other provisions.* If any FASIT interest expense is directly allocable under both this paragraph (f) and paragraph (b) or (c) (determined without regard to this paragraph (f)(6)), only the rules of this paragraph (f) shall apply.

(7) *Effective date.* The rules of this section apply for taxable years beginning after December 31, 1986. However, paragraphs (a) and (f) apply as of the date final regulations are filed with the **Federal Register**, and paragraph (e) applies to all taxable years beginning after December 31, 1991.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1896 Filed 2–4–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 891]

RIN 1512–AA07

Expansion of Lodi Viticultural Area (98R–109P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition for expansion of the Lodi Viticultural Area. The proposed additions to the Lodi Viticultural Area are located in San Joaquin County, California, in the northern San Joaquin Valley. The additions are situated contiguous to the western and southern boundaries of the current viticultural area. The proposed western addition encompasses approximately 14,500 acres, of which 3,640 acres are planted to vineyards. Situated contiguous to the southern boundary of the viticultural area, the proposed southern addition encompasses approximately 66,600 acres, of which 5,600 acres are planted to vineyards. Attorney Christopher Lee, on behalf of nine (9) growers who own vineyards within the proposed expansion area, submitted the petition. According to the petitioner, the importance of Lodi as a viticultural area demands that particular care be taken in extending the viticultural area boundaries, in order to safeguard the region's identity, integrity, and reputation. The petitioner states that this petition adds only that land which meets all the historical and geographical criteria that distinguish the Lodi viticultural area.

DATES: Written comments must be received by April 7, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 891). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Liaison and Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Joyce Drake, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672–54624), which revised regulations in 27 CFR part 4 to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which are delineated in subpart C of part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

The petition to expand a current viticultural area should include:

(a) Historical or current evidence that the boundaries of the viticultural area to be expanded are as specified in the petition;

(b) Evidence relating to the geographical characteristics (climate,

soil, elevation, physical features, etc.) which distinguished the viticultural features of the proposed area from surrounding areas;

(c) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(d) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the expansion of the Lodi American viticultural area (AVA). The proposed additions to the Lodi AVA are located in San Joaquin County, California, in the northern San Joaquin Valley. Situated contiguous to the western boundary of the current viticultural area, the proposed western addition encompasses approximately 14,500 acres, of which 3,640 acres are planted to vineyards. Situated contiguous to the southern boundary of the viticultural area, the proposed southern addition encompasses approximately 66,600 acres, of which 5,600 acres are planted to vineyards.

Evidence That the Name of the Area Is Locally or Nationally Known

According to the petitioner, there is evidence of the region's local and national renown which was detailed in the Lodi viticultural area petition submitted to the ATF in August of 1982, and summarized in the final rulemaking for the Lodi viticultural area, published in the **Federal Register** on February 13, 1986.

The petitioner states that he is persuaded after reviewing the evidence and consulting with growers in the Lodi viticultural area, that the current viticultural boundaries do not accurately encompass land historically and geographically recognized as within the Lodi grape growing region. The petitioner further states that, while not included in the original petition to establish the Lodi viticultural area, it is now apparent that the two additions proposed in this petition, the first along the western boundary adjacent to Interstate Highway 5, the second along the southeastern boundary south of the Calaveras River, should be included in the Lodi viticultural area because they share the viticultural area's name identification and geographical features. Further, the petitioner claims that the viticultural area and the proposed additions contrast sharply with land beyond the revised boundaries presented in this petition, which are geographically distinct from Lodi.

According to the petitioner, both *The Grape Districts of California H.I. Stoll* (1931) and *California Wine Country* (Lane Books 1968) define the Lodi grape growing region as a larger area than that presented in the original viticultural area petition. The former document additionally shows that the Lodi name was used in this context as early as 1931.

ATF approved the Lodi original petition in 1986, and determined that the name "Lodi" was recognized locally and nationally.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, Lodi has a long viticultural history and strong regional identity. Precise boundaries for the region were not delineated until 1986 with the establishment of the Lodi viticultural area. The petitioner states that, in 1991, the Lodi name became associated with a second, far larger area with the creation of the Lodi-Woodbridge Wine Commission, established in California Crush District 11 by grower and winery mandate for the purposes of regional promotion, research and education. Per the petitioner, this petition does not attempt to reconcile these two entities. Rather, this petition proposes the previously described additions to the Lodi viticultural area which, based on name identity and natural features, should have been encompassed by the original petition. He stated that special care has been taken to assure that the modified boundaries maintain both the historic and geographic integrity of the existing Lodi viticultural area.

According to the petitioner and, as noted in the section addressing historical evidence, the Lodi grape-growing region is described in broader terms than those presented and approved in the original Lodi viticultural area petition. *The Soil Survey of the Lodi Area, California* (1937) states as follows: "Essentially comprising the northern half of the San Joaquin County, the Lodi area is bounded on the south by parallel 38 north latitude and on the north by the San Joaquin-Sacramento County line along Dry Creek and Mokelumn River. The western area includes a small part of Sacramento County and extends to the Sacramento River; and on the east it extends to the San Joaquin County line in the foothills of the Sierra Nevada."

The petitioner stated that, while similar to *The Soil Survey of the Lodi Area, California* in its overall depiction of Lodi's boundaries, *California Wine Country* defines the western boundary of the Lodi grape growing region in a slightly more restrictive manner stating "Lodi nestles within the angle formed by the meeting of the Sacramento and San Joaquin Rivers," but not extending to those rivers' banks.

The petitioner stated that *The Grape Districts of California* clearly shows that the Lodi grape growing region extends south beyond both the current southern boundary of the Lodi viticultural area and the latitude 38 degrees north limit detailed above, stating that, "The Lodi section takes in the south line of Stockton . . . while the Manteca, Escalon and Ripon sections take in from the south line of Stockton to the north to Stanislaus County line on the south." According to the petitioner, "Wines & Vines" magazine of September, 1936, confirms this extension, stating, "San Joaquin County's 60,065 acres in vines comprise two important districts, where some 47 varieties are grown commercially: the Lodi Section and the Manteca, Escalon and Ripon Section." The petitioner contends that, since Manteca, Escalon and Ripon are located 15 miles to 20 miles south of Stockton, near San Joaquin County's southern boundary, this description strongly suggests that vineyards situated to the east of Stockton were recognized as being within the Lodi grape growing region.

The petitioner believes that this evidence provides strong historical basis for modification of the Lodi viticultural area boundaries to those proposed in this petition.

According to the petitioner, the proposed additions encompassed by these boundary changes contain approximately 29 vineyards totaling 9,240 acres planted to vineyards. Approximately 80,000 acres in total are proposed for addition to the existing Lodi area. He further states that evidence presented in Section Three of this petition details the geographic features which distinguish them from surrounding areas. Although a few vineyards are situated just outside both revised boundaries, these exclusions are due to the conservative approach of this petition. This conservative approach requires that the land encompassed by the new boundaries meet both the historical and geographic standards established in the original Lodi viticultural area.

The petitioner states that the proposed expansion of the Lodi viticultural area is supported by growers in the region. The petitioner stated that the letter from Mr. Bob Schulenburg of the Lodi District Grape Growers

Association, Inc. reflects the general support this expansion has received from the Lodi viticultural community.

The petitioner states that the new boundaries of the Lodi viticultural area have been drawn to add only that land that meets the regulatory criteria set forth in 27 CFR 4.25a (e)(2). The proposed western boundary closely follows the zero (sea level) elevation west of Interstate Highway 5, while the proposed southern boundary follows State Highway 4 between Jack Tone Road and the San Joaquin County line. The petitioner stated that the areas proposed for inclusion in the viticultural area are supported by evidence of name and boundary recognition as well as by specific criteria including soils, climate, elevation and exposure, which distinguish them from areas to the west and south.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

According to Mr. Steven Newman, Meteorologist, Earth Environment, Santa Rosa, California, the proposed additions to the existing Lodi viticultural area have a climate nearly identical to the existing appellation. Both additions receive the same moderating influences of the Sacramento Delta winds that define the current boundaries, while areas just outside have climates distinctly different from both the additions and land within the existing boundaries. Every significant climate feature, such as rainfall, degree-days, frost occurrence and mean temperatures, are virtually the same within the proposed additions as those that occur inside the existing Lodi viticultural area.

Mr. Newman stated that the area west of Interstate Highway 5 experiences essentially the same climate as that within the existing Lodi viticultural area. The pronounced seabreezes from the San Francisco Bay and Sacramento Delta provide nearly identical conditions to those found within the original western boundary. There is no discernible difference in average growing season, monthly mean temperature, or rainfall throughout this addition from that which exists in the current Lodi viticultural area.

According to Mr. Newman, areas immediately to the south and southwest of the proposed addition, however, have a distinctly different climate due to the sharp drop-off of the Delta winds and other terrain effects. Lower humidity levels associated with a greater distance from the moist winds produce cooler overnight temperatures and warmer "rain-show" effect of the Diablo mountain range. The climate of the proposed western addition is also distinctively different from the more moist Delta region, to the west of the proposed boundary, which experiences cooler summers, and far more frequent summertime fog.

Mr. Newman claims that records indicate that the monthly mean temperature during the growing season for Linden, in the heart of the proposed southern addition, is within approximately two degrees of the readings from Lodi, and well within the range of temperatures throughout the existing viticultural area. He further states that, by contrast, records for Stockton, located in a site less influenced by marine cooling through the narrow Delta gap, show an average nearly five degrees warmer.

According to Mr. Newman, areas just a few miles to the east of the proposed addition, in western Calaveras County, receive significant cold-air drainage from the Sierra Nevada foothills, causing more frequent frost and a shorter growing season. The more upland locations also receive an increase in rainfall associated with the higher elevations.

Mr. Newman stated that rainfall records for this proposed addition show an annual precipitation range of approximately 14 to 18 inches. These totals are consistent with those received within the existing boundaries. He stated that, in sharp contrast, rainfall totals to the south drop off rapidly due to a more arid climate associated with the remainder of the San Joaquin Valley.

In summary, according to Mr. Newman, the climatic evidence clearly supports a modification of both the southern and western boundaries of the Lodi viticulture area to include the proposed additions. All climate factors within these additions are nearly identical to those within the existing appellation. Climate evidence also substantiates that conditions outside the areas to be included are significantly different from the existing Lodi viticultural area and the proposed additions.

Soils

The petition indicates that the soils of the proposed expansion area are substantially similar to those of the existing viticultural area. Mr. Sidney W. Davis of Davis Consulting Earth Scientists, Georgetown, California, states that soils of the Lodi viticultural area derive mainly from mixed mineral alluvium, products of weathering, erosion and deposition along the western slope of the Sierra Nevada. Source materials are varied, consisting of Mesozoic igneous, Paleozoic and Jurassic metamorphics, and Teritary-age volcanic lithology outcropping along the foothills. Older alluvium nests along toe slopes of the foothills on the Great Valley's east side, descending in elevation and age, westward, to below sea level at the Sacramento-San Joaquin Delta interface.

Mr. Davis claims that paleoclimatic fluctuations over the past two million years caused glaciers to advance in the Sierra Nevada, periodically lowering regional base level (sea level) by several hundred feet, which prompted incision on the major drainages. Interruptions of warm, dry periods resulted in glacial melt, thus releasing water and sediment for valley filling. These cyclical events, each lasting many thousands of years, continued throughout the Pleistocene Epoch, and in conjunction with regional tectonic uplift, had an effect of wearing down and fragmenting older terraces by deep incision along major drainages of the Consumnes River, Dry Creek, Mokelumne River, and the Calaveras Rivers. Downcutting on the major rivers and streams, punctuated by periods of aggradation, in conjunction with regional uplift of the Sierra Nevada, caused younger deposits to inset along flood plains at relatively lower geomorphic position, leaving relatively older alluvial surfaces stranded at higher elevation. Transition periods of relative stability between major events allowed the soil forming factors of climate biota, slop-aspect parent materials and time of exposure to develop and sculpt the landforms now present. Very young soils with little development characteristics, Holoene-age deposits, and histosols (organic soils) are present along the active flood plains of streams and perimeter of the Sacramento-San Joaquin Delta.

According to Mr. Davis, subsequent to the latest Sierra glaciation and rise of sea level, the present-day Sacramento-San Joaquin Delta with its associated peaty soils formed sometime around 5,000 years ago, when sea level finally reached its present elevation (Mean Sea Level—00 Feet). He further stated that, around the turn of the 20th Century, the banks of coalescing rivers, channels and sloughs within the Delta region were bermed to create a system of man-made levees. "Islands" of peat soils within the levees were created at or below Mean Sea Level by installation of a broad grid system of open ditches, pipes and

pumps for lowering of the water table to facilitate agricultural production. Exposure of the peat soils to the atmosphere subsequent to draining has induced rapid oxidation and subsidence within the Delta region, ever since.

Mr. Davis provided an abbreviated description of soils within the Lodi viticultural area, utilizing information from the USDA Soil Conservation Service's Generalized Soil Map for Sacramento and San Joaquin counties. He stated that soil associations are presented as most representative of soil mapping units characteristic of broader geomorphic units. According to the petition, these soils share properties distinctive to the Lodi viticultural area with regard to viticultural use and management under the present-day climatic regime.

Mineral Soils of the Current Lodi Viticultural Area

Mr. Davis stated that, between the two published soil surveys for Sacramento and San Joaquin Counties, there are twenty-two soil map unit associations identified in the existing Lodi Viticultural Area. *All twenty-two soil mapping units are identified in the proposed expansion area.* He stated that no other soil association mapping units are proposed for the expansion areas. There may be small isolated areas of organic soils along the Mean Sea Level margin that protrude into the proposed expansion area, but these occurrences are minimal and necessary to exact a reasonable map boundary line.

According to Mr. Davis, to avoid redundancy between the two soil survey reports for Sacramento and San Joaquin Counties, the major soil associations have been combined in the following groups and are used for the current, proposed western and southern expansion viticultural areas:

Natural Levees and Low Flood Plains Soils

Peliter-Egbert-Sailboat: Very deep mineral soils with high organic matter content. They are partially drained, moderately fine textured and moderately alkaline. These reside near the confluence of the Consumnes and Mokelumne rivers.

Merritt-Grangeville-Columbia-Vina-Coyotecreek: Nearly level, very deep and from poorly drained to moderately well drained. Textures range from moderately coarse to moderately fine. These soils are easy to manage with moderate permeability and moderately high to high waterholding capacity, moderately alkaline.

Basins and Basin Rim Soils

Jacktone-Hollenbeck-Stockton: Basin soils, somewhat poorly drained and moderately well drained, fine textured soils that are moderately deep and deep to a cemented hardpan. Most areas have been artificially drained and are moderately alkaline.

Devries-Rioblancho-Guard: Basin rim soils of moderately fine texture to moderately coarse texture. Moderately deep to cemented hardpan. Mildly to moderately alkaline.

Interfan Basins and Alluvial Fans, Low Fan Terraces and Stream Soils

Archerdale-Cogna-Finrod: Moderately well drained and well drained, medium textured to moderately fine textured soil that are deep to hardpan, or very deep on low terraces. Neutral to mildly alkaline.

Tokay-Acampo: Moderately well-to well-drained, moderately coarse to medium textured that are deep to cemented hardpan or are very deep on low fan terraces. Mildly alkaline to slightly acid.

Nearly Level to Undulating Soils on Low Terraces

Madera-San Joaquin-Burella: Moderately well-and well drained, moderately coarse to medium textured that are moderately deep or deep to cemented hardpan. Slightly acid.

Nearly Level to Steep Soils on Dissected Terraces, Fan Terrace, High Terraces and Hills

Cometa-San Joaquin-Rocklin: Moderately well drained, moderately coarse textured soils that are moderately deep to weakly cemented sediment, or a cemented hardpan on dissected terraces. Slightly to moderately acid.

Pentz-Pardee-Keyes-Hadslkeville-Mokelumne: Moderately well drained and well drained, moderately coarse texture and gravelly medium textured soils that are shallow to sandstone, conglomerate, or cemented hardpan on hills and high terraces. Moderately acid.

Redding-Redbluff-Yellowlark: Moderately well drained, gravelly medium textured soils that are moderately deep and deep to a cemented hardpan, mainly on fan terraces and high terraces. Moderately acid.

Undulating to Hilly Soils on Low Foothills

Auburn-Whiterock-Argonaut: Somewhat excessively and well-drained soils moderately coarse to moderately fine textured that are very shallow to moderately deep. Moderately acid.

According to Mr. Davis, soils below Mean Sea Level have been, as much as possible, differentiated and excluded from the proposed Lodi viticultural area expansion due to a differing moisture control regime, geomorphic position and relative organic matter content.

Mr. Davis stated that, with respect to viticultural use and management, water tables north of Walnut Grove Road within the proposed expansion area are lower (deeper) than further south. Vine moisture control is critical to wine grape quality prior to harvest. Ripening varies among grape varieties that are usually segregated into individual blocks, fields or specific moisture control systems that are regulated by irrigation or soil profile drainage, or both. Soils above Mean Sea Level have deep drainage systems, and allow for water table management in the root zone and precise moisture control. The proposed area to the west is at the zero elevation level.

Mr. Davis asserts that most soils below elevation 00 are mainly characterized as Histosols, meaning that they contain upwards of 20 percent organic matter, are moderately to strongly acidic, and represent a unique and different geomorphological province than the mineral soils above Mean Sea Level to the east. The richness of oxidizing organic matter in the way of available nutrients to a crop during the growing season is significantly higher than contributions from oxidizing mineral soils, on an annual basis. Complex chemical reactions separate the peaty soils below Mean Sea Level from soils derived from mineral parent materials from a use and management standpoint.

Mr. Davis' Summary and Conclusions

Mr. Davis summarized his comments by stating the proposed changes to the Lodi viticultural area are consistent with geomorphic and soil mapping units found within the existing boundaries. Mr. Davis stressed that all the soils in the proposed expansion areas are mapped within the existing Lodi viticultural area. Only soils found in the existing viticultural area are proposed for the expansion area, with the exception of some limited and isolated inclusions of peaty soils along the diffuse natural western boundary. A line conforming to roads, and elevation contours, roughly at the Mean Sea Level mark, is intended to separate the mineral soil from the peats on the west. County lines, roads and natural features define the remaining boundaries.

Proposed Boundaries

The boundaries of the proposed viticultural area, as expanded, are as specified in the proposed regulation.

Public Participation—Written Comments

The petitioner presents evidence of boundaries and of geographical features relating to soils. ATF is interested in comments relating to whether the geographical features, such as elevation, exposure, or other physical characteristics of the proposed expansion area are more similar to the existing Lodi viticultural or to the land outside of the proposed expansion area.

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and the comment form through the address *http://www.atf.treas.gov/core/alcohol/rules/rules.htm* or by making the following choices at ATF's web site: (1) select "Core Areas" tab; (2) select "Alcohol" tab; (3) select "Regulations" tab; and (4) select "notice of proposed rulemaking (alcohol)" line.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The expansion of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather a further identification of an area that is distinct from surrounding areas. ATF believes that the expansion of a viticultural area merely allows wineries to more accurately describe the origin of their wines to consumers. Also it helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's efforts and consumer acceptance of wine from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information. The principal author of this document is Joyce A. Drake, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Par. 2 Section 9.107 is amended by revising paragraphs (b) and (c) to read as follows:

§ 9.107 Lodi

(a) * * *

(b) Approved maps. The appropriate maps for determining the boundaries of the Lodi viticultural area are 23 U.S.G.S. 7.5 minute series maps and are titled as follows:

1. "Valley Springs SW, Calif." (1962)
2. "Farmington, Calif." (1968, photo revised 1987)
3. "Peters, Calif." (1952, photo revised 1968, minor revision, 1994)
4. "Linden, Calif." (1968, minor revision 1993)
5. "Stockton East, Calif." (1968, photo revised 1987)
6. "Waterloo, Calif." (1968, photo inspected 1978)
7. "Lodi South, Calif." (1968, photo revised 1976)
8. "Terminous, Calif." (1978, minor revision 1993)
9. "Thornton, Calif." (1978)
10. "Bruceville, Calif." (1968, photo revised 1980)
11. "Florin, Calif." (1968, photo revised 1980)
12. "Elk Grove, Calif." (1968, photo revised 1979)
13. "Sloughhouse, Calif." (1968, photo revised 1980, minor revision 1993)
14. "Buffalo Creek, Calif." (1967, photo revised 1980)
15. "Folsom SE, Calif." (1954, photo revised 1980)
16. "Carbondale, Calif." (1968, photo revised 1980, minor revision 1993)
17. "Goose Creek, Calif." (1968, photo revised 1980, minor revision 1993)
18. "Clements, Calif." (1968, minor revision 1993)
19. "Wallace, Calif." (1962)
20. "Lodi North, Calif." (1968, photo revised 1976)
21. "Galt, Calif." (1968, photo revised 1980)
22. "Clay, Calif." (1968, photo revised 1980, minor revision 1993)
23. "Lockeford, Calif." (1968, photo revised 1979, minor revision 1993)

(c) Boundaries. The Lodi viticultural area is located in California in the counties of San Joaquin and Sacramento.

1. The beginning point is located in the southeast corner of the viticultural area, where the Calaveral River intersects the eastern boundary of San Joaquin County ("Valley Springs SW" U.S.G.S. map);
2. Thence south along the common boundary between San Joaquin County and Stanislaus County to Highway 4 (beginning in "Valley Springs SW" map and ending in "Farmington" map);
3. Thence west to Waverly Road, then south to Highway 4, then west again along Highway 4 to the point of intersection with Jack Tone Road (beginning in Valley Springs SW" map passing through "Peters" map and ending in "Stockton East" map);
4. Thence north along Jack Tone Road to the point of intersection with Eightmile Road (beginning in "Stockton East" map and ending in "Waterloo" map);
5. Thence west along Eightmile Road to the point of intersection with Sea

Level (beginning in "Waterloo" map, passing through "Lodi South" map and ending in "Terminous" map);
6. Thence north northwest along Sea Level elevation to the point where it reaches the unnamed extension of White Slough ("Terminous" map);
7. Thence east along the unnamed extension of White Slough to the point where it forks ("Terminous"map);
8. Thence northwest and north along the northern fork of the unnamed extension of White Slough to its termination ("Terminous" map);
9. Thence due west in a straight line to Guard Road ("Terminous" map);
10. Thence north along Guard Road to the point of intersection with Victor Road (beginning in "Terminous" map and ending in "Thornton" map);
11. Thence north northwest in a straight line to the pumping station of the north bank of Hog Slough ("Thornton" map);
12. Thence due north along the unnamed canal, crossing Beaver Slough and continuing due north along the unnamed road to the point where it intersects Walnut Grove Road at Four Corners ("Thornton" map);
13. Thence west along Walnut Grove Road to the point where it intersects South Mokelumne River ("Thornton" map);
14. Thence north along South Mokelumne River to the point where Mokelumne River divides into North and South forks ("Thornton" map);
15. Thence north and east along Mokelumne River to the point where it intersects Interstate Highway 5 (beginning in "Thornton" map and ending in "Bruceville" map);
16. Thence northwest along Interstate Highway 5 to its intersection with an unnamed road (known locally as Hood-Franklin Road) (beginning in the "Bruceville" map and ending in the "Florin" map);
17. Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard ("Florin" map);
18. Thence northeast along the Franklin Boulevard to its meeting point with the section line running due east and its connection with the western end of Sheldon Road ("Florin" map);
19. Thence due east along the section line connecting to the western end of Sheldon Road ("Florin" map);
20. Thence due east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning in "Florin" map and ending in "Elk Grove" map);
21. Thence southeast along the Central California Tracton Co. Railroads to its point of intersection with Grant Line Road ("Elk Grove" map);
22. Thence northeast along Grant Line Road to the point of intersection with California State Highway 16 (beginning in "Elk Grove" map, passing through "Sloughhouse" map and ending in "Buffalo Creek" map);
23. Thence southeast along California State Highway 16 to the point of intersection with Deer Creek (beginning in "Buffalo Creek" map and ending in "Sloughhouse" map);
24. Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County (beginning in "Sloughhouse map and ending in "Folsom SE" map).
25. Thence southeast along the eastern boundary of Sacramento county and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, to the point of beginning (beginning in "Folsom SE" map, passing through "Carbondale", "Goose Creek", "Clements" and "Wallace" maps, and ending in "Valley Springs, SW" map).

Signed: January 27, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–2716 Filed 2–4–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD01–99–050]

RIN 2115–AA97, AA98, AE46

Temporary Regulations: OPSAIL 2000/ International Naval Review 2000 (INR 2000), Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull for OPSAIL 2000/INR 2000 activities. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000/ INR 2000. This action is intended to restrict vessel traffic in portions of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull.

DATES: Comments and related material must reach the Coast Guard on or before March 23, 2000.

ADDRESSES: You may mail comments and related material to the Waterways Oversight Branch (CGD01–99–050), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 203 at the same address. Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 205, the Waterways Oversight Branch of Coast Guard Activities New York, between 8 a.m., e.s.t. and 3 p.m., e.s.t. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–99–050), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch of Coast Guard Activities New York at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary regulations are for OPSAIL 2000/INR 2000 events held on New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull. These events will be held from July 2—10, 2000. This rule is proposed to provide for the safety of life on navigable waters and to protect the U.S. Navy vessels and Port of New York and New Jersey during these events.

Discussion of Proposed Rule

The U.S. Navy is sponsoring the International Naval Review.

This event will consist of the anchoring of approximately 50 US and foreign naval vessels in line between the Verrazano-Narrows Bridge and the George Washington Bridge. A high level U.S. dignitary will transit aboard a U.S. Navy vessel along this line as a ceremonial review. Operation Sail, Inc. is sponsoring the seventh OPSAIL Parade of Tall Ships, as well as a fireworks display co-sponsored by Macy's Inc. Operation Sail will consist of a parade of sailing vessels from the Verrazano-Narrows Bridge north past a reviewing stand aboard the USS JOHN F. KENNEDY (CV–67) anchored in Federal Anchorage 21B in Upper New York Bay. This parade will continue north to the George Washington Bridge where these vessels will turn south and go to berth throughout the Port of New York and New Jersey. These events are scheduled to take place on July 4, 2000, in the Port of New York/New Jersey, on the waters of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull. The Coast Guard expects a minimum of 40,000 spectator craft for these events. The proposed regulations create temporary anchorage regulations, vessel movement controls, and two security zones. The regulations will be in effect at various times in the Port of New York and New Jersey during the period June 29, 2000 through July 5, 2000. The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish two regulated areas in New York Harbor that will be in effect from July 3—5, 2000. These two proposed regulated areas are needed to protect the maritime public and participating vessels from possible hazards to navigation associated with; an International Naval Review conducted on the Hudson River and New York Harbor Upper Bay, a Parade of Tall Ships transiting the waters of Sandy Hook Bay, New York Harbor, and the Hudson River in close proximity; fireworks fired from 18—21 barges on the Hudson and East Rivers and in Upper New York Bay; and a large number of naval vessels, Tall Ships, and spectator craft anchored in close proximity throughout the duration of these events. These regulated areas include vessel anchoring and operating restrictions.

Regulated Area A covers all waters of New York Harbor Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00′00″ W (NAD 1983) between Coney Island, New York, and Navesink, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W (NAD 1983) between Fort Wadsworth, Staten Island, and Leonardo, New Jersey and all waters of Ambrose Channel shoreward of buoys 1 and 2. Please see Chartlet I, depicting Regulated Area A, included with this NPRM for the convenience of the reader. This proposed area is to be used as a staging area for vessels participating in the Parade of Tall Ships. This proposed regulated area is effective from 6 a.m., e.s.t. July 3, until 4 p.m., e.s.t. on July 4, 2000.

BILLING CODE 4910–15–U

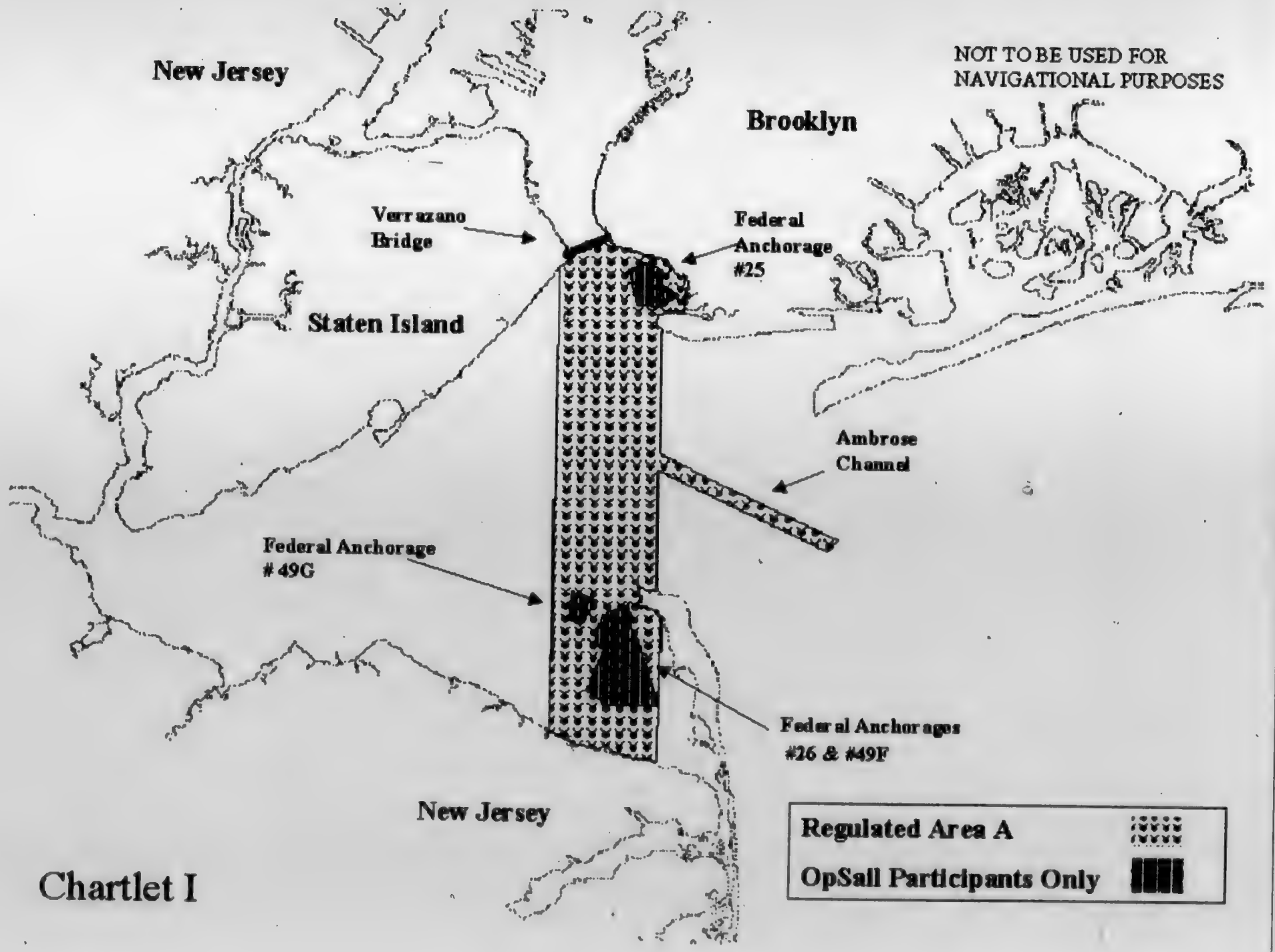
NOT TO BE USED FOR
NAVIGATIONAL PURPOSES
New Jersey
Brooklyn
Verrazano
Bridge
Federal
Anchorage
#25
Staten Island
Ambrose
Channel
Federal Anchorage
#49G
Federal Anchorages
#26 & #49F
New Jersey
Regulated Area A
OpSail Participants Only

Chartlet I

Regulated Area B covers all waters of New York Harbor, Upper Bay, the Hudson, Harlem, and East Rivers, and the Kill Van Kull within the following boundaries: south of 40°52′39″ N (NAD 1983) on the Hudson River at Spuyten Duyvil Creek; west of the Throgsneck Bridge on the East River; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W (NAD 1983) between New Brighton, Staten Island, and Constable Hook, New Jersey, in the Kill Van Kull. Please see Charlet II , depicting Regulated Area B, included with this NPRM for the convenience of the reader.

This proposed area is for the International Naval Review, the Parade of Tall Ships, and the July 4th fireworks display. This proposed regulated area is effective from 10:00 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

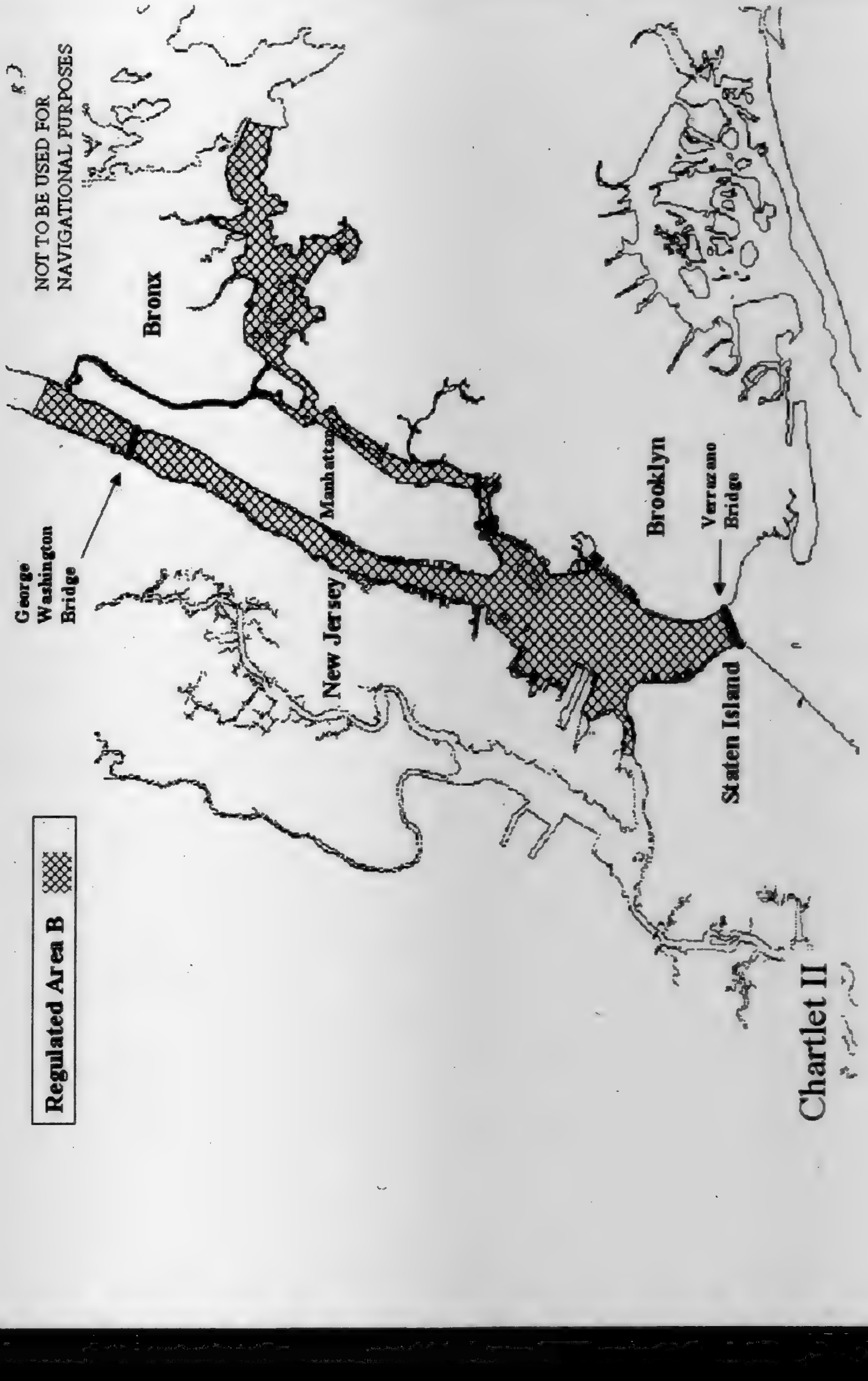
NOT TO BE USED FOR
NAVIGATIONAL PURPOSES
Bronx
Manhattan
Brooklyn
Verrazano
Bridge
George
Washington
Bridge
New Jersey
Staten Island
Regulated Area B
Chartlet II

Spectator vessels transiting Regulated Area A or B must do so at no wake speed or at speeds not to exceed 10 knots, whichever is less. No vessels other than OPSAIL 2000/INR 2000 vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the Anchorage Channel or Hudson River in regulated Area B unless specifically authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative. No vessel may anchor in the Anchorage Channel or Hudson River outside of the designated spectator anchorages in Regulated Area B at any time without authorization. The operation of seaplanes, including taxiing, landing, and taking off, is prohibited in Area B on July 3–4, 2000, without prior written authorization from the Captain of the Port. Ferry services may operate in Area B on July 3 and 5, 2000. On July 4, 2000 only those ferry services with prior written authorization from the Coast Guard Captain of the Port will be authorized to operate in this area.

No vessel, other than OPSAIL 2000/INR 2000 vessels, their assisting tugs, and enforcement vessels, is permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 7 a.m., e.s.t. July 4, 2000 until the end of the Parade of Sail. Vessels which must transit to or from the East River may only do so by using Buttermilk Channel unless otherwise authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative.

Proposed Regulated Area A contains three anchorage grounds for use by OPSAIL 2000/INR 2000 vessels only and it will also serve as a staging area for the vessels participating in the Parade of Sail. Proposed Regulated Area B contains anchorage grounds for OPSAIL 2000/INR 2000 vessels and spectator craft. It contains the International Naval Review of Ships on the Hudson River and New York Harbor's Upper Bay, from the Verrazano-Narrows Bridge to the George Washington Bridge (river mile 11.0). The International Naval Review will be conducted on the morning of July 4, 2000 and consists of a column of approximately 50 International Naval Ships anchored in the Hudson River and New York Harbor's Upper Bay along the western side of the Anchorage Channel. The U.S. Navy Review Ship will transit south along this column from the George Washington Bridge to the Verrazano-Bridge and conduct a review of all the participating naval ships. After the INR, approximately 300 vessels will participate in the Parade of Sailing Vessels which will take place in Area B between the Verrazano-Narrows Bridge and the George Washington Bridge (river mile 11.0) on the Hudson River. Additionally, Area B will contain 18–21 fireworks barges being used for the July 4th fireworks display. Fireworks barges will be located in the Hudson River between the Holland Tunnel Ventilators and West 65th Street in Manhattan, in the East River between the southern tip of Roosevelt Island and The Battery, and in the Anchorage Channel north of the Verrazano-Narrows Bridge.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL 2000/INR 2000 ships and spectator craft. Some current Anchorage Regulations in 33 CFR 110.155 will be temporarily suspended by this regulation and new Anchorage Grounds and regulations will be temporarily established. Chartlets I, III, and IV illustrate the proposed anchorage grounds and are included for the convenience of the reader.

The proposed anchorage regulations designate selected current or temporarily established Anchorage Grounds for spectator or OPSAIL 2000/INR 2000 participant vessel use only. They restrict all other vessels from using these Anchorage Grounds during a portion of the OPSAIL 2000/INR 2000 event. The Anchorage Grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL/INR vessels and to protect boaters and spectator vessels from the hazards associated with the International Naval Review and the Parade of Tall Ships.

The Coast Guard proposes to designate Anchorage Grounds 16, 17, and 18–A in the Hudson River in the vicinity of the George Washington Bridge (river mile 11.0); and the temporarily established Liberty Island Anchorage, Ellis Island Anchorage, Caven Point Anchorage, Jersey Flats Anchorage and Robbins Reef Anchorage in New York Harbor's Upper Bay, and a temporary Anchorage Ground from north of the Verrazano-Narrows Bridge to Owls Head Park along the Brooklyn shoreline exclusively for spectator vessel use from 12 noon on June 29, 2000, until 12 noon on July 5, 2000.

The Coast Guard also proposes to designate Anchorage Grounds 21–B, 23–A, 23–B, and 24 in New York Harbor's Upper Bay for OPSAIL 2000/INR 2000 participant vessels. These regulations are effective from 3 a.m., e.s.t. July 1, 2000, through 6 p.m., e.s.t. July 5, 2000. Other vessels may be authorized to use these anchorages on July 1 and 2, 2000 as determined by the Captain of the Port, New York.

Additionally, the Coast Guard proposes to designate Anchorage Ground 25 and a temporarily established Anchorage Ground covering portions of Anchorage Grounds 26, 49–F and 49G in Sandy Hook Bay for OPSAIL 2000/INR 2000 participant vessels. These proposed regulations are effective from 6 a.m., e.s.t. July 2, 2000, through 4 p.m., e.s.t. July 4, 2000.

The eastern portions of the Jersey Flats and Robbins Reef Anchorages and the Narrows Temporary Anchorage Ground are for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length. Anchorage 21–C is for vessels greater than 60 meters (197 feet). Positioning within these three anchorages will be controlled by the Captain of the Port, New York. Persons desiring to use these anchorages must apply for a permit as outlined in the public notice titled Lottery for Spectator Craft Viewing Anchorages for OPSAIL 2000/International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

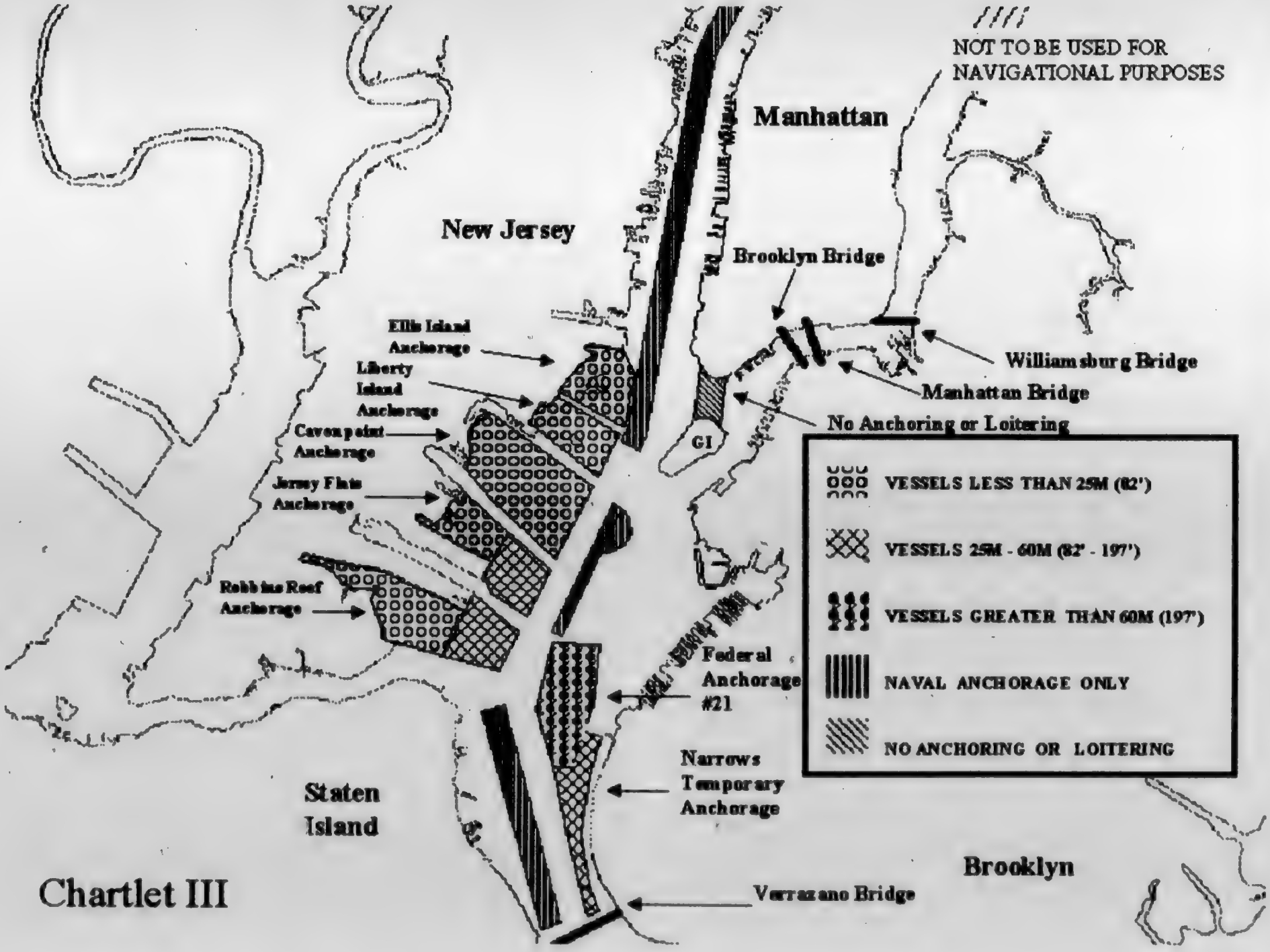

Chartlet III

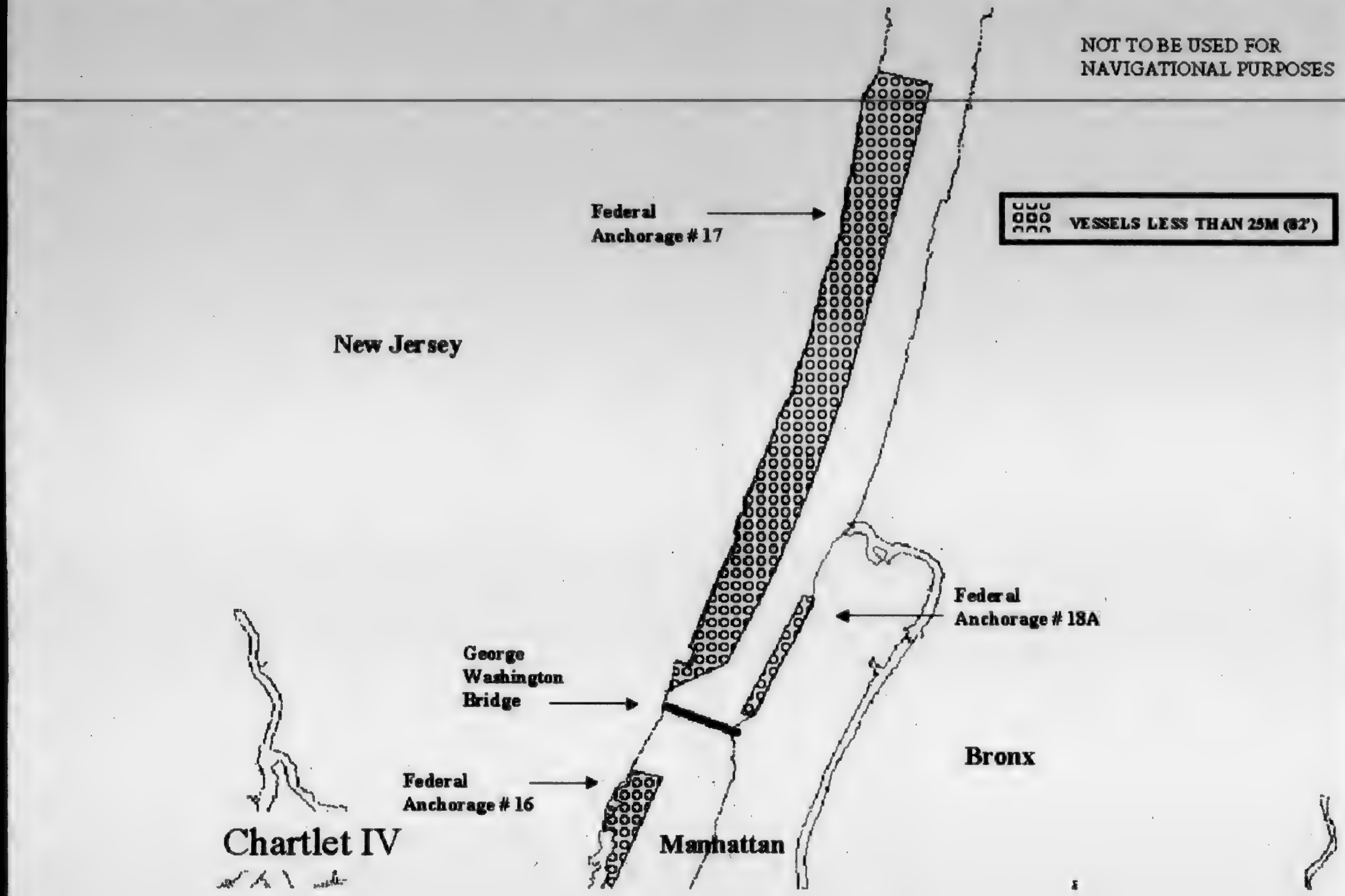
NOT TO BE USED FOR
NAVIGATIONAL PURPOSES
VESSELS LESS THAN 25M (82')
Federal
Anchorage # 17
New Jersey
Federal
Anchorage # 18A
George
Washington
Bridge
Bronx
Federal
Anchorage # 16
Chartlet IV
Manhattan

Security Zones

The Coast Guard proposes to establish a moving security zone for all waters within 500 yards of the Review Ship for the International Naval Review from 7 a.m., e.s.t. until 11 a.m., e.s.t. on July 4, 2000. The Review Ship will be the U.S. Navy vessel that is anchored the furthest north in the Hudson River at 7 a.m., e.s.t. on July 4, 2000. This ship will get underway and transit down the Hudson River and Upper New York Bay between the George Washington Bridge (river mile 11.0) and the Verrazano-Narrows Bridge. The Review Ship will be easily identifiable during its transit because it will be the only large U.S. Navy vessel that is underway at this time in the Port of New York, and it will be escorted by numerous U.S. Coast Guard small boats. A second security zone is proposed for all waters within 500 yards of the USS JOHN F. KENNEDY (CV–67), from 10 a.m., e.s.t. until 5 p.m., e.s.t. on July 4, 2000 while in Anchorage 21–B and while being used as the reviewing stand for the Parade of Sailing Vessels. These security zones are needed to protect the Port of New York and New Jersey and U.S. Navy vessels during the International Naval Review and Parade of Sailing Vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, New York Harbor Operations Committee meetings, and New York area newspapers, so mariners can adjust their plans accordingly. At no time will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to those areas may be accomplished using Raritan Bay, Arthur Kill, Kill Van Kull, and Newark Bay as an alternate route. This will allow the majority of the maritime industrial activity in the Port of New York/New Jersey to continue, relatively unaffected. Similar regulated areas were established for the 1986 and 1992 OPSAIL events. Based upon the Coast Guard's experiences learned from these previous events of a similar magnitude, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of Lower and Upper New York Bay and the Hudson and East Rivers during various times from July 2–10, 2000. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Although these regulations would apply to a substantial portion of the Port of New York/New Jersey, designated areas for viewing the Parade of Sailing Vessels and the Fourth of July Fireworks are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant J. Lopez, Coast Guard Activities New York, Waterways Oversight Branch at (718) 354–4193.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34 (f, g, and h), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. These temporary regulations establish special local regulations, anchorage grounds, and security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.T01–050 to read as follows:

§ 100.T01–050 OPSAIL 2000/ International Naval Review (INR) 2000, Port of New York/ New Jersey.

(a) Regulated areas. (1) Regulated Area A—(i) *Location.* All waters of New York Harbor, Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00′00″ W (NAD 1983) between Coney Island, New York, and Navesink, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W (NAD 1983) between Fort Wadsworth, Staten Island, and Leonardo, New Jersey, and all waters of Ambrose Channel shoreward of buoys 1 and 2.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 6 a.m., e.s.t. July 3, until 4 p.m., e.s.t. on July 4, 2000.

(2) Regulated Area B.—(i) *Location.* All waters of New York Harbor, Upper Bay, the Hudson and East Rivers, and the Kill Van Kull within the following boundaries: south of 40°52′39″ N (NAD 1983) on the Hudson River at Spuyten Duyvil Creek; west of the Throgsneck Bridge on the East River; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W (NAD 1983) between New Brighton, Staten Island, and Constable Hook, New Jersey, in the Kill Van Kull.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 10 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

(b) *Special local regulations.* (1) No vessel except OPSAIL 2000/INR 2000 participating vessels and their assisting tugs, spectator vessels, and those vessels exempt from the regulations in this section, may enter or navigate within Areas A and B, unless specifically authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative.

(2) Vessels transiting Area B must do so at no wake speed or at speeds not to exceed 10 knots, whichever is less.

(3) Notwithstanding paragraph (b)(1) of this section, no vessel, other than OPSAIL 2000/INR 2000 Vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the main shipping channels in Area B unless they are specifically authorized to do so by Coast Guard Captain of the Port, New York, or his on-scene representative. No vessel in Area B is permitted to cross through the parade of sail, cross within 500 yards of the lead or last vessel in the parade of sail, or maneuver alongside within 100 yards of any OPSAIL 2000/INR 2000 Vessel unless authorized to do so by the Captain of the Port.

(4) No vessel is permitted to anchor in the Anchorage Channel or the Hudson River outside of the designated anchorages at any time without authorization. Vessels which need to anchor to maintain position will only do so in designated anchorage areas.

(5) No vessel, other than OPSAIL 2000/INR 2000 Vessels, their assisting tugs, and enforcement vessels, is permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 7 a.m., e.s.t. July 4, 2000 until the end of the Parade of Sailing Vessels. Vessels which must transit to or from the East River may only do so by using Buttermilk Channel, unless otherwise authorized by the Coast Guard Captain of the Port, New York, or his designated on-scene representative.

(6) Ferry services may operate in Area B on July 3 and 5, 2000. On July 4, 2000 only those with prior written authorization from the Coast Guard Captain of the Port will be authorized to operate in this area.

(7) The operation of seaplanes, including taxiing, landing, and taking off, is prohibited in Area B on July 3–4, 2000, without prior written authorization from the Captain of the Port.

(8) All spectator vessels must maintain their position in the designated spectator craft anchorages during the fireworks display on July 4th scheduled from 9 p.m., e.s.t. until 10:45 p.m., e.s.t.

(c) *Effective period.* This section is effective from 6 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Effective June 29, 2000 through July 5, 2000, § 110.155 is amended as follows:

a. Add introductory text to the beginning of the section;

b. Add new paragraphs (c)(1)(ii), (c)(2)(ii) and (c)(3)(ii);

c. Paragraphs (d)(1) through (5), (d)(7) through (9), (d)(10)(i), (d)(12)(i) and the introductory text of paragraph (d)(16) are suspended and new paragraphs (d)(10)(ii), (d)(11)(iii), (d)(12)(iii) through (iv), (d)(13)(vi), (d)(14)(iv), (d)(15)(iii), and (d)(17) through (20) are added;

d. Add new paragraph (e)(1)(iii);

e. The Note to paragraph (f)(1) is suspended;

f. Paragraphs (m)(2)(i) through (ii) and (m)(3)(i) are suspended and new paragraphs (m)(2)(iii) and (m)(3)(ii) are added;

g. Paragraph (n)(1) is suspended; and

h. Add new paragraph (o).

§ 110.155 Port of New York.

Mariners are cautioned that the areas designated as anchorage grounds in this section have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. In addition, the anchorages are in areas of substantial currents, and not all anchorages are over good holding ground. Mariners are advised to take

appropriate precautions when using these temporary anchorages. These are not special anchorage areas. Vessels must display anchor lights, as required by the navigation rules.

* * * * *

(c) * * *

(1) * * *

(ii) This anchorage is designated for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis.

(2) * * *

(ii) See paragraph (c)(1)(ii) of this section.

(3) * * *

(ii) See paragraph (c)(1)(ii) of this section.

* * * * *

(d) * * *

(10) * * *

(ii) This anchorage is for OPSAIL 2000 participating vessels only.

(11) * * *

(iii) This anchorage is reserved for OPSAIL 2000/INR 2000 participating vessels. No other vessel may anchor or operate in this area within 100 yards of OPSAIL 2000/INR 2000 participating vessels.

(12) * * *

(iii) This anchorage is for vessels greater than 60 meters (197 feet) in length. Persons desiring to use this anchorage must apply for a permit as outlined in the public notice Lottery for Spectator Craft Viewing Anchorages for OPSAIL 200/International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(iv) This anchorage is available for vessels observing or participating in OPSAIL 2000/INR 2000 festivities and which have been authorized by the Coast Guard Captain of the Port, New York. No vessel may anchor within this area without authorization to do so.

(13) * * *

(vi) See paragraph (d)(12)(iv) of this section.

(14) * * *

(iv) See paragraph (d)(12)(iv) of this section.

(15) * * *

(iii) See paragraph (d)(12)(iv) of this section.

* * * * *

(17) The anchorages in this paragraph are designated for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis.

(i) *Ellis Island Anchorage.* That area bound by the following points: 40°41′55″N, 074°02′56″W; 40°41′29.5″N, 074°02′05″W; 40°41′42″N, 074°02′00.5″W; 40°41′55″N, 074°01′58″W; 40°42′05″N, 074°01′57″W; 40°42′20.5″N, 074°02′06″W (NAD 1983); thence along the shoreline to the point of beginning.

(ii) *Liberty Island Anchorage.* That area bound by the following points: 40°41′30.5″N, 074°03′15.5″W; 40°41′11.5″N, 074°02′44″W; 40°41′34″N, 074°02′26.5″W; 40°41′51.5″N, 074°02′59.5″W (NAD 1983); thence along the shoreline to the point of beginning.

(iii) *Caven Point Anchorage.* That area bound by the following points: 40°40′33″N, 074°03′33″W; 40°40′25″N, 074°03′23″W; 40°40′09.5″N, 074°02′59″W; 40°40′59.5″N, 074°02′26.5″W; 40°41′26″N, 074°03′18″W (NAD 1983); thence along the shoreline and the Caven Point Pier to the point of beginning.

(18) *Jersey Flats Anchorage.* That area bound by the following points: 40°39′57″N, 074°04′00″W; 40°39′50″N, 074°03′56″W; 40°39′35″N, 074°03′22″W; 40°40′02.5″N, 074°03′04″W; 40°40′53″N, 074°04′17″W (NAD 1983); thence along the shoreline to the point of beginning.

(i) The area west of the eastern end of the Global Marine Terminal Pier is for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis. The area east of the eastern end of the Global Marine Terminal Pier is for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length.

(ii) Persons desiring to use this anchorage must apply for a permit as outlined as outlined in the public notice Lottery for Spectator craft Viewing Anchorages for OPSAIL 200/ International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(19) *Robbins Reef Anchorage.* That area bound by the following points: 40°39′19.5″N, 074°05′10″W; 40°39′00″N, 074°03′46″W; 40°39′22″N, 074°03′29″W; 40°39′49.5″N, 074°04′06″W; (NAD 1983); thence along the shoreline to the point of beginning.

(i) The area west of the eastern end of the Military Ocean Terminal Pier is for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis. The area east of the eastern end of the Military Ocean Terminal Pier is for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length.

(ii) Persons desiring to use this anchorage must apply for a permit as outlined in the public notice Lottery for Spectator craft Viewing Anchorages for OPSAIL 2000/International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(20) All vessels anchored in the anchorages described in paragraphs (d)(17 through 19) of this section must comply with the requirements in paragraphs (d)(16)(iii through vii) of this section. Any vessel anchored in or intending to anchor in Federal Anchorage 21–A through 21–C, 23–A, 23–B, 24 or 25 must comply with the requirements in paragraphs (d)(16)(i) through (x) of this section.

(e) * * *

(1) * * *

(iii) No vessel other than OPSAIL 2000/INR 2000 Vessels and their designated assist tugs may anchor and/ or approach within 100 yards of any OPSAIL 2000/INR 2000 Vessel navigating or anchored in this area.

* * * * *

(m) * * *

(2) * * *

(iii) Anchorage No. 49–F is reserved for vessels as set out in paragraph (o)(2) of this section.

(3) * * *

(ii) Anchorage No. 49–G is reserved for vessels as set out in paragraph (o)(2) of this section.

* * * * *

(o) Temporary anchorage grounds. (1) *Narrows anchorage:* That area bound by the following points: 40°38′17″ N, 074°02′18.5″W; 40°38′22″N, 074°02′39″W; 40°38′02.5″N, 074°02′47.5″W; 40°37′21.5″N, 074°02′48.5″W; 40°36′31″N, 074°02′34″W; 40°36′36.5″N, 074°02′15.5″W; 40°36′53.5″N, 074°02′28.5″W; 40′37′13″N, 074°02′34″W; 40°37′44″N, 074°02′33″W; thence to the point of beginning at 40°38′17″N, 074°02′18.5″W (NAD 1983).

(i) This anchorage is designated for the exclusive use of spectator vessels between 25 meters (82 feet) and 60 meters (197 feet) in length. Persons desiring to use this anchorage must apply for a permit as outlined in the public notice Lottery for Spectator craft Viewing Anchorages for OPSAIL 2000/ International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(ii) *Effective period.* Paragraph (o)(1) of this section is effective from 12 p.m., e.s.t. on July 2, 2000, through 12 noon on July 5, 2000.

(2) *Sandy Hook Bay Anchorage:* That area bound by the following points: 40°28′30″N, 074°01′42″W; 40°27′56″N, 074°01′35″W; 40°27′54″N, 074°01′25″W; 40°26′00″N, 074°00′58″W; 40°26′00″N, 074°02′00″W; 40°26′29″N, 074°02′51″W;

40°27′29″N, 074°02′10″W; 40°27′40″N, 074°02′36″W; 40°28′07″N, 074°02′19″W (NAD 1983); thence along the shoreline to the point of beginning.

(i) This anchorage sets aside Anchorage No. 49–F and a portion of Anchorage No. 26, as described in paragraph (f)(1) of this section, for the exclusive use of OPSAIL 2000/INR 2000 Vessels.

(ii) No vessels other than OPSAIL 2000/INR 2000 naval and Tall Ships, their designated assist tugs, and enforcement vessels may anchor, loiter, or approach within 100 yards of any OPSAIL 2000/INR 2000 Vessel when it is navigating or at anchor in this area.

(iii) *Effective period.* Paragraph (o)(2) of this section is effective from 6 a.m., e.s.t. on July 2, 2000, through 4 p.m., e.s.t. on July 4, 2000.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–050 to read as follows:

§ 165.T01–050 Security Zones: International Naval Review (INR) 2000, Hudson River and Upper New York Bay.

(a) The following areas are established as security zones:

(1) Security zone A.—(i) *Location:* This security zone includes all waters within 500 yards of the U.S. Navy review ship and the zone will move with the review ship as it transits the Hudson Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(ii) [Reserved]

(b) [Reserved]

Dated: January 14, 2000.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–2245 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF EDUCATION

34 CFR 694

Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document reopens the comment period for the proposed regulations for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. On December 21, 1999 we published in the **Federal Register** (64 FR 71551) a notice of proposed rulemaking (NPRM) proposing new regulations for the GEAR UP program. The deadline for comments on the proposed regulations was January 20, 2000. We are reopening the original 30-day comment period for the proposed regulations until February 10, 2000, because the comment period occurred in part over the holiday season.

DATES: We must receive your comments on or before February 10, 2000.

ADDRESSES: All comments concerning the proposed regulations should be addressed to: Rafael Ramirez, Acting Director, GEAR UP, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term GEAR UP in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: David Condon, Telephone: (202) 502–7676. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at any of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
http://www.ed.gov/legislation/HEA/rulemaking

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply.)

Program Authority: 20 U.S.C. 404A

Dated: January 31, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–2601 Filed 2–4–00; 8:45 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6532–5]

National Oil and Hazardous Substance Pollution Contingency Plan: National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for Partial Deletion of Moton Elementary School, including Mugrauer Playground (Operable Unit 4) and Groundwater (Operable Unit 5) of the Agriculture Street Landfill Superfund Site from the National Priorities List and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete Moton Elementary School, including Mugrauer Playground (Operable Unit 4) and Groundwater (Operable Unit 5) of the Agriculture Street Landfill Superfund

Site from the National Priorities List (NPL) and requests public comment on this proposed action.

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA, in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that the Operable Units pose no significant threat to public health, welfare, or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: The EPA will accept comments concerning its proposal to delete for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of general circulation.

ADDRESSES: Comments may be mailed to: Ms. Janetta Coats, Community Relations Coordinator, EPA (6SF-PO), 1445 Ross Ave., Dallas, Texas 75202–2733, (214)665–7308 or 1–800–533–3508 (Toll Free).

Information Repositories: Comprehensive information on the site has been compiled in a public docket which is available for viewing at the Agriculture Street Landfill Superfund Site information repositories:

EPA Region 6, 7th Floor Reception Area, 1445 Ross Avenue, Suite 1000, Dallas, Texas 75202–2733, (214) 665–6548, Mon.–Fri. 8 a.m. to 4 p.m.

Louisiana Department of Environmental Quality, Inactive and Abandoned Sites Division, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (504) 765–0487, Mon.—Fri. 8 a.m. to 4 p.m.

Agriculture Street Landfill Site, Community Outreach Office, 3221 Press Street, New Orleans, Louisiana 70126, (504) 944–6445, Mon. 12 noon to 6 p.m., Tues., Thurs., and Fri. 3 to 6 p.m., Wed. 10 a.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Ursula R. Lennox, Remedial Project Manager, EPA (6SF–LP), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6743 or 1–800–533–3508 (Toll Free).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete Moton Elementary School, including Mugrauer Playground (Operable Unit 4) and Groundwater (Operable Unit 5), two portions of the Agriculture Street Landfill Superfund Site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Code of Federal Regulations, Title 40 (40 CFR), Part 300, and requests comments on the proposed deletion. OU Nos. 1, 2, and 3 (undeveloped property, residential area, and Shirley Jefferson Community Center) are not the subject of this partial deletion.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites or portions of sites deleted from the NPL remain eligible for remedial actions in the unlikely event that site conditions warrant such action.

The EPA will accept comments concerning its intent to delete OU Nos. 4 and 5 for thirty (30) days after publication of this notice. The EPA has also published a notice of the availability of this Notice Of Intent for Partial Deletion (NOID) in a major newspaper of general circulation at or near the site.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Agriculture Street Landfill Superfund site and demonstrates how Operable Units 4 and 5 meet the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the proposed deletion of the site:

(1) EPA Region 6 issued a Record of Decision on September 2, 1997 which documented that no further remedial action is necessary to ensure protection of human health and the environment for Agriculture Street Landfill's Operable Unit 4 and Operable Unit 5;

(2) LDEQ, on behalf of the State of Louisiana, concurred by letter dated August 28, 1997, with EPA's decision that no action was necessary for Operable Units 4 and 5 and that deletion from the NPL was appropriate;

(3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the availability of the Notice of Intent for Partial Deletion and the commencement of a 30-day public comment period; and,

(4) EPA placed copies of documents supporting the proposed deletion in the site information repositories identified above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

This **Federal Register** notice, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete OU Nos. 4 and 5 from the NPL. All critical documents needed to

evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. The EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously, and members of the public are encouraged to review them. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of OU Nos. 4 and 5 does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following information provides the Agency's rationale for the proposal to delete OU Nos. 4 and 5 from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

A. Site Location

The Agriculture Street Landfill Superfund Site (site) is approximately 95 acres and is located in the eastern section of the city of New Orleans. The site is bound on the north by Higgins Boulevard, and on the south and west by the Southern Railroad rights-of-way. The eastern site boundary extends from the cul-de-sac at the southern end of Clouet Street, near the railroad tracks, to Higgins Boulevard between Press and Montegut streets. Approximately 48 acres are undeveloped property. The other 47 acres are developed with multiple- and single-family residences, commercial properties, a community center, and a school.

To effectively investigate and develop alternatives for the remediation of the site, EPA divided the site into five operable units (OUs):

- OU1—The undeveloped (currently fenced-in) property;
- OU2—The residential development which consists of the Gordon Plaza Apartments, single family dwellings in Gordon Plaza subdivision, and the Press Park town homes;
- OU3—Shirley Jefferson Community Center (formerly known as Press Park Community Center);
- OU4—Moton Elementary School which includes Mugrauer Playground; and,
- OU5—Groundwater.

Operable Unit 4 is located in the southeast corner of the site. Coordinates for its four corners, beginning in the northwest are 29°59′ 18.76″ north latitude, 90°02′ 20.26″ west longitude; 29°59′ 17.52″ north latitude, 90°02′ 20.52″ west longitude; 29°59′ 11.12″ north latitude, 90°02′ 27.67″ west longitude; and 29°59′ 09.63″ north latitude, 90°02′ 21.76″ west longitude. Operable Unit 5 is designated as the groundwater beneath the site, within which no identified plume of contamination has been specified.

B. Site History

The Agriculture Street Landfill was a municipal waste landfill operated by the City of New Orleans. Operations at the site began in approximately 1909 and continued until the landfill was closed in the late 1950's. The landfill was reopened for approximately one year in 1965 for use as an open burning and disposal area for debris left in the wake of Hurricane Betsy. Records indicate that during its operation the landfill received municipal waste, ash from the city's incineration of municipal waste, and debris and ash from open burning. There is no evidence that industrial or chemical wastes were ever transported to, or disposed of at, the site.

From the 1970's through the late 1980's, approximately 47 acres of the site were developed for private and public uses that included: private single-family homes, multiple-family private and public housing units, Shirley Jefferson Community Center, a recreation center, retail businesses, the Moton Elementary School, and an electrical substation. The remaining 48 acres of the former landfill are currently undeveloped and covered with vegetation. Previous investigations on the undeveloped property have indicated the presence of hazardous substances, pollutants, or contaminants at concentrations above background and/or regulatory levels.

In 1986, EPA Region 6 conducted a Site Inspection and prepared a Hazard Ranking System (HRS) documentation record package utilizing the 1982 HRS model. The site score was not sufficient for the site to be considered for proposal and inclusion on the NPL. Pursuant to the requirements of Superfund Amendment and Reauthorization Act of 1986 (SARA), which amended the original Superfund legislation, EPA published a revised HRS model on December 14, 1990. At the request of area community leaders, EPA initiated, in September 1993, an Expanded Site Inspection (ESI) to support the preparation of an updated HRS documentation record package that would evaluate the site's risks using the revised HRS model. Subsequently, on August 23, 1994, the site was proposed for inclusion on the NPL as part of NPL update No. 17, and on December 16, 1994, EPA placed the site on the NPL.

Prior to 1994, access to OU1, the undeveloped portion of the former landfill, was unrestricted, allowing unauthorized waste disposal and exposure to contaminants of potential concern such as lead, arsenic and carcinogenic polynuclear aromatic hydrocarbons (cPAHs) found in the surface and subsurface soils. In a time-critical removal action, initiated in March 1994, EPA installed an 8-foot-high, chain-link fence topped with barbed wire around the entire undeveloped portion of the former landfill.

Concurrent with the time-critical removal action, EPA performed a Remedial Removal Integrated Investigation (RRII) of the entire site. RRII fieldwork was conducted from April 4 through June 20, 1994. Samples of surface and subsurface soil, sediment, surface water, groundwater, air, dust, tap water, garden produce, and paint chips collected during the field investigation were submitted to specialized laboratories for analysis. Aerial photographs, geophysical investigations and computer modeling were used to supplement the analytical data in defining site boundaries and evaluating migration pathways. These data were also used to prepare the Human Health Risk Assessment and the Ecological Risk Assessment.

Based on information presented in the RRII report, EPA conducted a second time-critical removal action at the site in February 1995, and performed confirmational air and groundwater sampling. Through this sampling event, EPA was able to obtain a second round of analyses of the groundwater, to clarify earlier identified ambient air contaminants, and to verify composition and magnitude of indoor air contaminants. In 1995, EPA prepared an Engineering Evaluation and Cost Analysis examining response action alternatives for Operable Units 1–3.

EPA Region 6 issued a Record of Decision selecting the no action alternative for Operable Units 4 and 5 on September 2, 1997. On the same day, EPA signed an Action Memorandum selecting non-time-critical removal actions for Operable Units 1, 2, and 3.

C. Characterization of Risk

No further action will be taken by EPA on Moton School, including the Mugrauer Playground (OU4) and

Groundwater (OU5). This decision is based on the risk assessment that evaluated Moton School (OU4) and Groundwater (OU5), which concluded that no unacceptable risk exists that is attributable to site related contaminants.

The baseline Human Health Risk Assessment, conducted as part of the Remedial Removal Integrated Investigation for this site, evaluated potential adverse health effects associated with site-related contaminants in the absence of remedial action. As part of the baseline Risk Assessment, an extensive evaluation of exposures to lead was performed, using EPA's Integrated Exposure Uptake Biokinetic (IEUBK) model. For contaminants other than lead, the likelihood of adverse public health impacts associated with long-term exposure to site-related contaminants was determined by (a) estimating potential excess lifetime cancer risks for carcinogens and (b) by computing hazard indices (HIs) for non-carcinogens. Federal laws, regulations, and guidance define a range of acceptable cancer risks of 1×10^{-4} (one in ten thousand) to 1×10^{-6} (one in one million), and a Hazard Index of unity (1) for non-cancer risks.

For Moton School (OU4), the total excess lifetime cancer risk posed to children attending the school was estimated 2×10^{-5} (or two in one hundred thousand), which is within the acceptable risk range specified by federal law, regulations, and guidance. Most of this estimated risk was attributable to inhalation of non-site-related benzene and chloroform from indoor and outdoor air. In addition, none of the HIs exceeded EPA's regulatory benchmark of unity.

Given the findings of the Risk Assessment, no further action for this operable unit is warranted. Deletion from the NPL should clear the way for beneficial utilization of the property of the City of New Orleans or the New Orleans School Board.

For the Groundwater Operable Unit, (OU5), information supplied to EPA by the Louisiana Department of Environmental Quality indicates that the shallow aquifer beneath the site is not suitable for human consumption, is not used for any beneficial purpose, and is not considered a potential future source of drinking water. Residents at the site area are connected to the municipal water supply for domestic water requirements. There are no on-site drinking water wells. Site groundwater presents no other exposure pathway. Therefore, no further action for this operable unit is warranted.

Because these no-action remedies will result in hazardous substances remaining on-site, a review will be conducted every five years after commencement of remedial action in accordance with CERCLA Section 121(c), 42 U.S.C. 9621(c). Should future reviews indicate that the site poses an unacceptable risk to human health or the environment, then EPA may initiate response actions under the authority of CERCLA and in accordance with the NCP.

D. Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the Partial deletion from the NPL are available to the public in the information repositories.

E. Proposed Action

The EPA, with concurrence of the State of Louisiana (LDEQ), has determined that Operable Unit 4 (Moton Elementary School, including Mugrauer Playground) and Operable Unit 5 (Groundwater) pose no significant threat to public health or the environment; therefore, no remedial measures are appropriate. In accordance with EPA policy on partial deletion of sites listed on the National Priorities List, EPA proposes to delete OU4 and OU5 from the NPL.

Dated: January 26, 2000.

Jerry Clifford,

Deputy Regional Administrator, EPA Region 6.

[FR Doc. 00–2479 Filed 2–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 568

[Docket No. NHTSA–99–5673]

RIN 2127–AE27

Vehicles Built in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: This document announces the dates of the public meetings of the Negotiated Rulemaking Committee on the development of recommended amendments to the existing NHTSA regulations (49 CFR Part 567, 568) governing the certification of vehicles built in two or more stages to the Federal motor vehicle safety standards (49 CFR Part 571). The Committee was established under the Federal Advisory Committee Act.

DATES: The meetings are scheduled as follows:

1. February 9–10, 2000.
2. March 7–8, 2000.
3. April 11–12, 2000.
4. May 17–18, 2000.
5. June 21–22, 2000.

ADDRESSES: The first meeting of the advisory committee will take place at the Hotel Washington, 515 Fifteenth Street, NW., and will begin at 10 on February 9th. Information on the location of subsequent meetings may be obtained from NHTSA two weeks before the relevant meeting is to take place.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Charles Hott, Office of Crashworthiness Standards, at 202–366–4920.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 1999, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for regulations governing the certification of vehicles built in two or more stages. The notice requested comment on membership, the interests affected by the rulemaking, the issues that the Committee should address, and the procedures that it should follow. The reader is referred to that notice (64 FR 27499) for further information on these issues.

On December 14–15, 1999, interested parties attended a public meeting in Washington, DC. As part of that meeting, the schedule of specific dates for holding meetings of the Advisory Committee was agreed upon. Meetings of the Committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee, if time permits, or file statements with the Committee.

II. Authority

5 U.S.C. sections 561 *et seq.*, delegation of authority at 49 CFR 1.50.

Issued on: February 2, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–2717 Filed 2–2–00; 4:34 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF56

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Released Study, Submission of New Report, and Opening of Comment Period on the New Report as it Relates to the Proposed Rule to List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; opening of comment period.

SUMMARY: We, the Fish and Wildlife Service, give notice that we are withdrawing consideration of Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar," from the decision-making process associated with the proposal to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We are replacing it with a report relevant to the Alabama sturgeon listing process. The report, "Genetic Variation in the River Sturgeon Scaphirhynchus (Acipenseridae) as Inferred from Partial mtDNA Sequences of Cytochrome b," summarizes information from the retracted study which is specific only to the Alabama sturgeon and its relevancy to the proposed listing. We are accepting comments related specifically to the relationship of this report, as it pertains to the proposed listing of the Alabama sturgeon as endangered. You may also provide comments concerning our decision to withdraw Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar" from the decision-making process for listing the Alabama sturgeon as endangered.

DATES: We will accept comments until March 8, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to the Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. You may also comment via the Internet to paul—hartfield@fws.gov. See the **SUPPLEMENTARY INFORMATION** section for comment procedures.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see "**ADDRESSES**" section), telephone 601/321–1125; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1999, we published a rule proposing endangered status for the Alabama sturgeon in the **Federal Register** (64 FR 14676). On January 11, 2000, we published a notice in the **Federal Register** (65 FR 1583), to reopen the comment period through February 10, 2000, to make available for comment Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar." With this notice, we are withdrawing from consideration Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar." This study describes a method for identifying the species source of sturgeon/paddlefish caviar in international trade and includes information that is not relevant to the decision to list the Alabama sturgeon as endangered. Nonetheless, The information contained in that study that is relevant to the decision to list the Alabama sturgeon is summarized in this new report, "Genetic Variation in the River Sturgeon Scaphirhynchus (Acipenseridae) as Inferred from Partial mtDNA Sequences of Cytochrome b." For clarity and ease of understanding, we have added this new report, which describes the amount of genetic variation observed within and between species of the genus *Scaphirhynchus*, for consideration in the decision-making process, and retracted the more general report that covers identification of the species source of sturgeon/paddlefish caviar in international trade.

Public Comments Solicited

We request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this report and its relation to the proposed rule. You may also provide comments concerning our decision to withdraw Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar" from consideration in the decision-making process for the listing of the Alabama sturgeon as endangered.

Comment Procedures

Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attention: [Alabama sturgeon]" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the address given in the **ADDRESSES** section or by telephone at 601/965–4900. Finally, you may also hand-deliver comments to the address given in the **ADDRESSES** Section. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. To obtain copies of either of the aforementioned reports, you can download or print one from http://endangered.fws.gov/listing/index.html (under Announcements) or contact Kelly Bibb at 404/679–7132 (phone) or 404/679–7081 (facsimile) to receive a faxed or mailed copy. All questions related to this notice should be directed to Paul Hartfield at the address or phone number listed in the **ADDRESSES** section of this notice.

References Cited

Fain, S.R., J.P. Lemay, J. Shafer, R.M. Hoesch, and B.H. Hamlin. 1999. Unpublished study. National Fish and Wildlife Forensics Laboratory, Ashland, OR. 23 pp. with figures.

Fain, S.R., B. Hamlin, and D. Straughan. 1999. Unpublished report. Genetic Variation in the River Sturgeon Scaphirhynchus (Acipenseridae) as Inferred from Partial mtDNA Sequences of Cytochrome b. National Fish and Wildlife Forensics

Laboratory, Ashland, OR. 14 pp. with figures.

Author

The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

Authority

The authority for this notice is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 1, 2000.

Sam D. Hamilton,

Regional Director, Fish and Wildlife Service.

[FR Doc. 00–2638 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 25
Monday, February 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 1, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection through the use of appropriate automated, electronic, mechanical, or other technological technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–6502. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utility Service

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Summary of Collection: Under the authority of the Rural Electrification Act of 1936 (ACT), as amended 7 U.S.C. 901 *et seq.*, the Administrator is authorized and empowered to make loans under certain specified circumstances. As a requirement for these loans the Rural Utility Service (RUS) mortgage in Article 2, Section 12, requires each Mortgagor to prepare and furnish financial statements to RUS at least annually. RUS, in representing the Federal Government as Mortgagee and in furthering the objectives of the Act, relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper Act purposes.

Need and Use of the Information: RUS will collect information to evaluate borrowers' financial performance, determine whether current loans are at financial risk, and determine the credit worthiness of future losses. If information is not collected, it would delay RUS' analysis of the borrowers' financial strength, thereby adversely impacting current lending decisions.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,800.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20,374.

Rural Utility Service

Title: 7 CFR 1792, Subpart C—Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, the time and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Public Law 95–124, 42 U.S.C. 7701 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordination's approved by RUS or RTB.

Need and Use of the Information: RUS will collect information on the project designation and owners name; name of the architectural/engineering firm; name and registration number (for the State in which the building project is located) of the certifying architect or engineer; purpose and location of the facility; seismic factor for the building location; the code identity and date of the model code used for the design and construction of the building project(s); total square footage of the building project; total cost of the building project; and estimated cost of the structural systems affected by the requirements of 7 CFR part 1792, Subpart C.

Description of Respondents: Business or other for-profit.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Rural Utility Service

Title: Prospective Large Power Service.

OMB Control Number: 0572–0001.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that

agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. RUS Form 170 is used to obtain information from borrowers on contracts that the borrower proposes to enter into for a large industrial or commercial electric power load, specifically setting forth load estimates by analyzing market costs.

Need and Use of the Information: RUS will collect information to show the feasibility of providing services to prospective large power consumers; check the adequacy of rates based on the amount of investment in facilities; show the method used to obtain funds for financing construction; and show contract terms, *i.e.*, length of service, proposed rate, and minimum charge.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22.

Food and Nutrition Service.

Title: Summer Food Service Program Claim for Reimbursement.

OMB Control Number: 0584–0041.

Summary of Collection: The Summer Food Service Program Claim for Reimbursement Form is used to collect meal and cost data from sponsors to determine the reimbursement entitlement for meals served. The form is sent to the Food and Nutrition Service's (FNS) Regional Offices where it is entered into a computerized payment system. The payment system computes earnings to date and the number of meals to date and generates payments for the amount of earnings in excess of prior advance and claim payments. To fulfill the earned reimbursement requirements set forth in the Summer Food Service Program regulations issued by the Secretary of Agriculture (7 CFR 225.9), the meal and cost data must be collected on the FNS–143 claim form.

Need and Use of the Information: FNS will collect information to manage, plan, evaluate, and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds. If the information is not collected on the claim form, the sponsor could not receive reimbursement.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 530.

Frequency of Responses: Recordkeeping; Reporting: Other (Summer).

Total Burden Hours: 1,193.

Forest Service

Title: Improve Management of the Tongass National Forest and Service to Local, Regional, and National Customers.

OMB Control Number: 0596–NEW.

Summary of Collection: The Tongass National Forest encompasses nearly 85 percent of the land in southeast Alaska and forms the basis for the regional economy. Commercial fishing, timber production, mineral extraction, and the quickly growing tourism industry depend on the renewable and non-renewable natural resources of this national forest. Forest plans are required by the National Forest Management Act of 1976; the Alaska National Interest Conservation Act of 1980 requires evaluation of forest plans and other use actions in Alaska that may affect subsistence use of fish and wildlife. The Forest Service (FS) will manage the Tongass National Forest, the nation's largest National Forest, over the next 10–15 years. Tourism, expected to continue to grow at 10–20% per year in coming years, is beginning to tax both the natural resources and the resident communities of the area. The Tongass Land Management Plan recognized significant changes in public use of the forest and in public values and attitudes and identified the information need to collect relevant socioeconomic data. The FS will collect information using a study survey.

Need and Use of the Information: FS will collect information to identify needs by providing information on public use of the Tongass National Forest and on public attitudes and values relevant to the forest management issues that are likely to be important in coming years. The information will be used in making regular management decisions and in developing larger scale plans for the Tongass National Forest. If the information is not collected, FS decision-makers/will lack essential information.

Description of Respondents: Individuals or households.

Number of Respondents: 1600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 800.

Farm Service Agency

Title: Warehouse Regulations under USWA and Standards for Approval of Warehouses.

OMB Control Number: 0560–0120.

Summary of Collection: Section 4 of the United States Warehouse Act (USWA) (7 U.S.C. 244) states that the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be hereunder: PROVIDED, that each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehousemen agree, as a condition to the granting of the license, to comply with and abide by all the terms of this act and the rules and regulations prescribed hereunder. The USWA is administered by the Farm Service Agency (FSA). Although there are several warehouse types covered under the USWA, the reporting requirements within a particular warehouse type are essentially the same as those across all warehouse types and, with some exceptions, the forms are used bilaterally; that is, they are used for both USWA licensing and Commodity Credit Corporation purposes. The forms are furnished to interested warehousemen/warehouse operators or used by the warehouse examiners employed by FSA to secure and record information about the warehouseman/warehouse operators and the warehouse. FSA will collect information using several forms.

Need And Use of the Information: FSA will collect Information (1) to determine whether or not the warehouse and the warehouseman/warehouse operator making application for licensing and/or approval meets applicable standards; (2) to issue such licensed or approvals' (3) to determine, once licenses or approved, that the licensee or warehouse operator continues to meet such standards and is conforming to regulatory or contractual obligations; (4) to determine that the stored commodity is in good condition; and (5) to determine that the licensee or warehouse operator is storing the commodity for which licensed or approved in a safe and prudent manner.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,500.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually; Other (daily record).

Total Burden Hours: 15,151.

Food and Nutrition Service

Title: 7 CFR Part 220 School Breakfast Program.

OMB Control Number: 0584–0012.

Summary of Collection: Section 4 of the Child Nutrition Act (CNA) of 1966, as amended, authorizes the School Breakfast Program (SBP). The Food and

Nutrition Service (FNS) administers the School Breakfast Program on behalf of the Secretary of Agriculture so that needy children may receive their breakfasts free or at a reduced price. Although supervised by FNS, the SBP is delivered through State agencies and school food authorities. FNS must collect information at regular intervals from these organizations to determine eligibility and to determine the number of meals served and the amount of reimbursement due. FNS also requires that certain records be maintained as directed by the CNA and associated regulations.

Need and Use of the Information: School food authorities provide information to State agencies. The State agencies report to FNS. FNS uses the information submitted to determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to develop projections for future program operations.

Description of Respondents: State, Local, or Tribal Government, Individuals or household, Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 81,748.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually; Other.

Total Burden Hours: 4,894,701.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–2619 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–932–4 NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for Olives Grown in California, Marketing Order 932.

DATES: Comments on this notice must be received by April 7, 2000, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, Telephone: (202) 720–2491, Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Gerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Olives Grown in California, Marketing Order 932.

OMB Number: 0581–0142.

Expiration Date of Approval: October 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good-quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California olive marketing order program, which has been operating since 1965.

The California olive marketing order authorizes the issuance of quality, size, and inspection requirements. The order also has authority for research and development projects, including paid advertising. Pursuant to section 8e of the Act, import grade and size requirements are implemented on olives imported into the United States.

The order and its rules and regulations authorize the California Olive Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to olive supplies, shipments, dispositions, and other information necessary to effectively carry out the purpose of the Act and the order. California olives are shipped year-round and these forms are used accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the order.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

All the forms under this program require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .28 hour per response.

Respondents: California olive handlers and growers.

Estimated Number of Respondents: 692.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 3881 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0142 and California Olive Marketing Order No. 932, and be sent to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments received will be available for public inspection during regular business hours at the same address and will become a matter of public record.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2691 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–00–02]

Guidelines for AMS Oversight of Commodity Research and Promotion Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: The Department of Agriculture (USDA) is extending the comment period for notice seeking comments on the "Guidelines for AMS Oversight of Commodity Research and Promotion Programs" (Guidelines). The extension will provide interested persons with additional time in which to prepare and submit comments on the notice.

DATES: Comments must be received on or before June 30, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice to: Barbara C. Robinson, Deputy Associate Administrator, Room 3069 South Bldg., U.S. Department of Agriculture, AMS, OA, Washington, D.C. 20250; telephone (202) 720–4276; fax (202) 690–3967. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: public.comments@usda.gov. All comments should indicate the docket number and the date and page number of this issue of the **Federal Register**. A copy of this notice may be found at: www.AMS.USDA.Gov/R&P/.

SUPPLEMENTARY INFORMATION: On December 17, 1999, we published in the **Federal Register** Doc. 99–32730, a notice seeking comments on the Guidelines. Comments were to be received on or before March 17, 2000. The notice was authorized under the following Federal statutes: the Beef Promotion and Research [7 U.S.C. 2901–2911]; the Canola and Rapeseed Research, Promotion, and Consumer Information Act [7 U.S.C. 7441–7452]; the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425]; the Cotton Research and Promotion Act [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Floral Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801–6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the National Kiwifruit Research, Promotion, and Consumer Information Act [7 U.S.C. 7461–7473]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901–4916]; and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401–3417].

There are currently 13 active programs under these statutes: beef, cotton, dairy, eggs, fluid milk, honey, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons.

USDA's Agricultural Marketing Service (AMS) developed the guidelines to facilitate uniform oversight of these and any future national research and promotion programs. The guidelines are part of the findings and recommendations of the Research and Promotion Task Force (task force) that was created by Secretary Glickman in November 1998. The task force held a public meeting in March 1999 and held several working meetings to review the oversight responsibilities of AMS and board operations.

In response to requests from several organizations for additional time to comment, we are extending the comment period until June 30, 2000. This action will allow interested groups, individuals, and other entities additional time to prepare and submit comments.

Dated: February 1, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–2690 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Alabama Electric Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Alabama Electric Cooperative for financing assistance to finance the construction of the a 496 megawatt combined cycle electric generation plant in Covington County, Alabama.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The proposed plant will be constructed on a site adjacent to the existing Alabama Electric Cooperative's McWilliams Plant located near Gantt in Covington County, Alabama. It will be made up of two combustion turbines which have the potential to generate 166 megawatts each. The exhaust gas from each

combustion turbine will be fed to a heat recovery steam generator. The output from each heat recovery steam generator will be fed to a single steam turbine that has the potential to generate 164 megawatts. Each heat recover steam generator will incorporate a selective catalytic reduction system to remove nitrogen oxides from the combustion turbine's exhaust gas. The combustion turbines units will be shop-built and shipped to the site as modules that will be installed on steel-reinforced concrete foundations. Related improvements will include the construction of a new electric transmission station and an 18.6-mile, 230 kV transmission line circuit between the Gantt Plant and the Opp Switching Station. The Southeast Alabama Gas District will construct a 60-mile-long, 20-inch diameter natural gas pipeline from Flomaton, Alabama, to the Gantt site to provide the natural gas to power the plant. RUS will not provide financing assistance for the natural gas pipeline.

Based on its environmental assessment of the project, RUS has concluded that the construction and operation of the 496 megawatt plant at the Gantt site would have no significant impact to the quality of the human environment. Therefore, RUS will not prepare an environmental impact statement for its action related to this project.

Copies of the FONSI are available from RUS at the address provided herein or from Mike Noel, Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420–0550, telephone (334) 427–3248. Mike's e-mail address is: mike.noel@powersouth.com.

Dated: January 31, 2000.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 00–2692 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2000 Panel of the Survey of Income and Program Participation, Wave 2 Topical Modules.

Form Number(s): SIPP–20205(L), SIPP/CAPI automated instrument.

Agency Approval Number: 0607–0865.

Type of Request: Revision of a currently approved collection.

Burden: 25,467 hours.

Number of Respondents: 26,250.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau conducts the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are use by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed at 4-month intervals or waves over the life of the panel. The duration of a panel is typically 3 to 4 years. The length of the 2000 SIPP Panel is subject to the approval of budget initiatives but is currently scheduled for one year and will include three waves of interviews.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of the panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules for Wave 2. The core questionnaire and topical modules for Wave 1 were cleared previously. The topical modules for Wave 2 are: Work Disability, Education and Training History, Marital History, Fertility History, Migration History, and Household Relationships. Wave 2 interviews will be conducted from June through September 2000. Additionally, a reinterview for quality control purposes will be conducted with a small sub-sample of respondents throughout the life of the panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2633 Filed 2–4–00; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–403–802]

Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, as well as inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 7, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The product covered by the countervailing duty order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink") and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated ("TSUSA"). Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.0060.8 and 0302.12.0065.3 of the Harmonized Tariff Schedule of the United States ("HTSUS") (56 FR 7678, February 25, 1991). Currently, it is provided for under HTSUS item number 0302.12.00.02.09. The subheadings above are provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the subject order.

History of the Order

On February 25, 1991, the Department issued a final determination in the countervailing duty investigation, covering the period September 1, 1989, through February 28, 1990. The following six programs were found to confer countervailable subsidies on Norwegian producers/exporters of subject merchandise: (1) *Regional Development Fund Loans and Grants*; (2) *National Fishery Bank of Norway Loans*; (3) *Regional Capital Tax Incentive*; (4) *Reduced Payroll Taxes*; (5) *Advance Depreciation of Business Assets*; and (6) *Government Bank of Agricultural Grants*. The Department found a net subsidy of 2.27 percent *ad valorem* for all Norwegian producers/exporters of subject merchandise.

There have been no administrative reviews of this countervailing duty order.

Background

On July 1, 1999, the Department initiated a sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of domestic interested parties within the deadline (July 15, 1998) specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. Subsequently, we received a complete substantive response to the notice of initiation on August 2, 1999, on behalf of the Coalition for Fair Atlantic Salmon Trade ("FAST") and the following individual members of FAST: Atlantic Salmon of Maine, Connors Aquaculture, Inc., DE Salmon, Inc., Island Aquaculture Corp., Maine Aqua Foods, Inc., Maine Coast Nordic, Inc., Treats Island Fisheries, and Trumpet Island Salmon Farm, Inc. (collectively, "domestic interested parties"). As U.S. producers of the subject merchandise and a business association whose members are U.S. producers of the subject merchandise, the domestic interested parties claim interested-party status under sections 771(9)(C) and (F) of the Act. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218 (e)(1)(ii)(C), determined to conduct an expedited (120-day) review of this order.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). On October 18, 1999, the Department determined the sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway to be extraordinarily complicated, and, therefore, we extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the Commission the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic interested parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues,

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a sunset review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[2] In the instant review, the Department did not receive a response from the foreign government or any other respondent interested party. Pursuant to 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The domestic interested parties argue that revocation of the countervailing duty order on fresh and chilled Atlantic salmon from Norway likely result in continued unfair subsidization by the Government of Norway, as well as material injury to the U.S. industry. They assert that, because there have been no administrative reviews of the countervailing duty order and the Department has not examined the programs further, the Government of Norway presumably continues to subsidize producers/exporters of subject merchandise.

The domestic interested parties also note that the European Commission, in a 1996 countervailing duty investigation, determined that the Government of Norway conferred countervailing subsidies amounting to 3.84 percent *ad valorem* on producers/exporters of fresh Atlantic salmon (*see* August 2, 1999, Substantive Response of domestic interested parties at 21). The domestic interested parties note that the European Commission's findings, which investigated subsidies provided to Norwegian salmon farmers between July 1, 1995 and July 31, 1996, demonstrate that the Government of Norway has continued to subsidize its domestic salmon farming industry and the amount of these subsidies has increased since the Department's 1991 final affirmative determination. *Id.*

The Department agrees with the domestic interested parties that because there have been no administrative reviews of this order and no evidence has been submitted to the Department demonstrating the termination of the countervailable programs, it is reasonable to assume that these programs continue to exist and are utilized. Moreover, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where the foreign government and/or a respondent interested party waives its participation in the sunset review. Therefore, because we assume countervailable programs continue to exist, the foreign government and other respondent interested parties have waived participation in the review, and absent any argument to the contrary, the Department concludes that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[3]

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. However, this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[4]

The domestic interested parties, citing the SAA, note that the Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior or exporters and foreign governments without the discipline of an order in place (*see* August 2, 1999 Substantive Response of domestic interested parties at 25). The domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail is 2.27 percent, the rate set forth in the original investigation.

The Department agrees with the domestic interested parties. The rate determined in the original investigation was 2.27 percent for all imports of fresh and chilled Atlantic salmon from Norway. As noted above, there have been no administrative reviews of the order. Absent administrative review, the Department has never found that substantive changes have been made to the programs found to be countervailable. Furthermore, there are no other U.S. countervailable duty proceedings involving Norway. Therefore, since there is no evidence that changes have been made to any of the Norwegian subsidy programs, and absent any argument and evidence to the contrary, the Department determines that a net countervailable subsidy of 2.27 percent would be likely to prevail if the order were revoked. This rate is the rate for all producers and exporters of subject merchandise from Norway.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic interested parties did not address this issue in their substantive response of August 2, 1999.

The following programs, although not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

Regional Development Fund Loans and Grants (RDF). The RDF provides

[2] *See* 19 CFR 351.218(d)(2)(iv).

[3] *See* 19 CFR 351.218(d)(2)(iv).

[4] *See* section III.B.3 of the *Sunset Policy Bulletin*

loan guarantees, long-term loans, and investment and business development grants to producers and exporters located only in specified regions of Norway to strengthen the economic base and to increase employment in regions with low levels of economic activity.

National Fishery Bank of Norway Loans (NFB). The NFB provided loans for the financing of fish farms from 1974 through 1987, including long-term loans for investment in production equipment and buildings.

Regional Capital Tax Incentive. The aim of the Regional Capital Tax Incentive is to encourage investment in regions of Norway with a weak industrial base and considerable unemployment. Funds set aside by the taxpayer under this program are deducted from taxable income (at a maximum amount of 15 percent), and must then be invested in capital assets for the use in the taxpayer's own business.

Reduced Payroll Taxes. This program aims at encouraging employment of persons living in underdeveloped regions of Norway. Under the National Insurance Act, employers are liable for the payment of payroll taxes which are based on a percentage of the wages paid in the course of a year. However, since 1975, the amount of contributions have been geographically differentiated depending on the municipality in which the employee resides.

Advance Depreciation of Business Assets. This program encourages investment in less-developed areas of Norway by allowing companies located in selected districts of the country to claim a higher rate of depreciation in the year in which capital assets are acquired. Eligible companies, depending on their location, are allowed to take a first-year deduction of either 25 or 40 percent. After this initial deduction, the producer is then allowed to take the standard deduction on the remainder of the depreciable value of the asset.

Government Bank of Agriculture. The Bank administers the Norwegian Fund of Development in Agriculture which was established to create supplemental income and employment for farmers. The Bank provides both long-term loans and interest-free loans and grants to all agricultural producers throughout Norway, however, there are maximum levels of assistance which differ by region.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Producer/exporter	Net countervailable subsidy (percent)
All Producers/Exporters from Norway	2.27

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2592 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 2001 to the Congress and the Office of Management and Budget.

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Sequestration Preview Report for Fiscal Year 2001* to the House of Representatives, the Senate, and the Office of Management and Budget

Dan L. Crippen,

Director, Congressional Budget Office.

[FR Doc. 00–2843 Filed 2–4–00; 8:45 am]

BILLING CODE 0070–02–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–1]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under Available Funds.

Deadline for Transmittal of Applications: March 31, 2000.

Deadline for Intergovernmental Review: May 30, 2000.

Applications Available: February 8, 2000.

Available Funds: $697,191 as distributed in the following manner:

American Samoa	$154,046
Arizona	32,983
California	124,582
Guam	58,162
Maryland	25,597
New York	77,043
N. Marianas	58,162
Ohio	47,459
Texas	119,157

Estimated Range of Awards: $25,597–$154,046.

Estimated Average Size of Awards: $77,466.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 364 and 366.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site *(http://www.ed.gov/pubs/edpubs.html)* or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A–1.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Jackie Maddox, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 401–3088. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use to PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority:
29 U.S.C. 796f, 796f–1, 796f–4, and 796f–5.

Dated: February 1, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–2599 Filed 2–4–00; 8:45 am]

BILLING CODE 4001–01–M

DEPARTMENT OF ENERGY

Notice of Availability of Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), U.S. Department of Energy (DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation DE–PS26–00NT40777 entitled "High Pressure Combustion Kinetics". The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (cooperative agreements) to U.S. universities, private energy equipment researchers, developers or manufacturers. Teaming among organizations with expertise in energy systems development, computational modeling, and experimental research is highly encouraged. The program seeks to obtain reaction kinetic data of high pressure (12–33 atmospheres) and high temperature (1600–3000 °F) combustion systems, which operate in reaction environments ranging from sub-stoichiometric to oxygen enhanced, to serve as a basis for development of advanced combustion power systems. Applications will be subjected to review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

DATES: The solicitation will be available on the DOE/NETL's Internet address at http://www.netl.doe.gov/business on or about February 15, 2000. The closing date for submission of applications will be April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Donna J. Jaskolka, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, Pittsburgh PA 15236–0940, Telephone: (412) 386–6106, FAX: (412) 386–6137, E-mail: jaskolka@netl.doe.gov.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: DE–PS26–00NT40777, "High Pressure Combustion Kinetics".

Objectives: The overall objective of Financial Assistance Solicitation No. DE–PS26–00NT40777 is to obtain quantitative kinetic expressions required for flow simulation, design and operation of high pressure (12–33 atm), high temperature (1600–3000 °F) combustion systems, which operate in reaction environments ranging from sub-stoichiometic to oxygen enhanced, to serve as a basis for development of advanced combustion power systems.

Eligibility: Eligibility for participation in this Program Solicitation is unrestricted. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor.

Areas of Interest: Each proposal (application) submitted in response to DE–PS26–00NT40777 must focus on one of the following distinct areas of interest: (1) Suspension fired combustion systems including pulverized coal and cyclone fired combustion systems, or (2) Fluidized bed combustion systems including bubbling, circulating, and transport fluidization combustion systems. If an offeror is interested in conducting research in more than one area, the offeror must submit a separate proposal for each item.

The proposers (applicants) who do the best job of focusing and integrating the combustion kinetics experimental program to extend and/or develop computational combustion systems models that can be used for evaluation and design of Vision 21 combustion systems will have the highest potential for acceptance. The proposals that include schematics and narrative descriptions of coal fueled energy plants (power and/or transportation fuels and/or chemical) that include combustion systems that have a high potential to meet the Vision 21 goals referenced above based on extension of the state of the art or based on new novel systems approaches are sought. The experimental work proposed must be a product for the extension or development of a specific (proposer defined) design model to characterize combustion systems defined in the areas of interest described below.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not

support, with or without discussion, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. Approximately $3,000,000 is planned for this solicitation over a three-year period. The total estimated DOE funding is $1,000,000–$1,500,000 per award. Cost sharing by the applicant is to be not less than 20% of the total proposed amount, and may consist of in-kind contributions.

E-Mail Notification Process: Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the "Coal Conversion/Solid Fuels Feedstocks" technology choice located under the heading "Fossil Energy." Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation will not be accepted and/or honored. Applications must be prepared and submitted in accordance with instructions contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on January 25, 2000.

Dale A. Siciliano,

Deputy Director Acquisition and Assistance Division.

[FR Doc. 00–2708 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Computer Software Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that the following computer software is available for license: EC–WEB and EC/EDI Gateway small purchase software.

FOR FURTHER INFORMATION CONTACT: Michael P. Hoffman, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: The above-captioned computer software was prepared by a DOE contractor. It is used to assist the Department in making small purchases. The software is currently in need of revision, and the Department is looking for one or more private-sector parties who will revise and maintain the software at their own expense. A royalty free, worldwide, non-exclusive, or if deemed necessary, exclusive copyright license will be given as the incentive. The Government will retain an unlimited, royalty free, non-exclusive license in the original version of the software, and will receive a Government-wide, non-exclusive, world-wide, royalty free license to reproduce, distribute and modify the revised version prepared by the selected exclusive copyright licensee. The selected private-sector party or parties will have the right to market the software to non-Government parties. Parties will be given 45 calendar days from the date of this Notice to contact the Department. After the period for response has elapsed, respondents will be sent a series of questions on their plans for revising and maintaining the software, and under what terms they would make it available to the Government. DOE will then decide which party or parties to select.

Issued in Washington, DC, on February 1, 2000.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 00–2704 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 23, 2000 6:00 p.m.–9:00 p.m.

ADDRESSES: Richard E. Lucérno Community and Recreation Center, 404 North Paseo de Onate, Espanola, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Opening Activities, 6:00 p.m.–6:30 p.m.

Public Comment, 6:30 p.m.–7:00 p.m.

Committee Reports: Environmental Restoration, Monitoring and Surveillance, Waste Management, Community Outreach, Budget.

Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on February 1, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2705 Filed 2–4–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Semi-Annual Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Semi-Annual Chairs Meeting. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, February 18, 2000, 8:30 a.m.–5:00 p.m.; Saturday, February 19, 2000, 8:00 a.m.–5:00 p.m.

ADDRESSES: Cavanaugh's on the Falls, 475 River Parkway, Idaho Falls, Idaho, 800–325–4000.

FOR FURTHER INFORMATION CONTACT: Fred Butterfield, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585, (202) 586–5542.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities.

Tentative Agenda

Friday, February 18, 2000: EM SSAB Chairs Meeting (Day 1)

8:00–8:30 a.m—Registration
8:30–8:45 a.m—Welcome by Ms. Bev Cook, Manager, DOE Idaho Operations Office; Mr. Chuck Rice, Chair of INEEL CAB; and the Honorable Linda Milam, Mayor of Idaho Falls, ID
8:45–8.50 a.m—Introductory remarks (Martha Crosland, Director, EM Office of Intergovernmental and Public Accountability, DOE-Headquarters)
8:50–9:00 a.m—EM SSAB Chairs Meeting "Rules of Engagement" (Wendy Green Lowe, INEEL CAB Administrator/Facilitator)
9:00–10:00 a.m—Update on EM Integration Program (Mr. David Huizenga, Deputy Assistant Secretary for Integration and Disposition)
10:00–10:15 a.m—Break
10:15–11:00 a.m—Integrated Nuclear Materials Management Plan (Dave Huizenga)
11:00 a.m.–11:45 a.m—Update on Status of Stakeholder Questions from May 1999 SSAB Transportation Workshop, Cincinnati, OH (Dave Huizenga)
11:45 a.m.–1:00 p.m—Lunch
1:00 p.m.–2:45 p.m—"Round-robin" general issues and information exchange among local EM SSABs (SSAB Chairs)
2:45–3:00 p.m—Break
3:00–4:00 p.m—Overview of the FY 2001 EM Budget and discussion of EM's 2000 Paths to Closure Process (Fred Butterfield, Office of Policy, Planning & Budget)
4:00–4:45 p.m—Summary/Discussion: Oak Ridge Stewardship Seminar (Oak Ridge)
4:45–5:00 p.m—Public Comment period (Wendy)
5:00 p.m—Dinner (on your own)

Saturday, February 19, 2000: EM SSAB Chairs Meeting (Day 2)

8:00–9:00 a.m—DOE–EM Informational and Status Updates (Martha)
- Waste Management PEIS and Disposal Records of Decision
- PEIS Lawsuit Settlement
- Waste Isolation Pilot Plant (WIPP)
- NEPA (EIS/EA) Status Updates
- Transportation Protocols Standardization Initiative
- DOE–EM Reorganization ImplementationP='02'≤

9:00–10:00 a.m—Update/Discussion on Draft Revised EM SSAB Guidance (Fred)
10:00–10:30 a.m—Discussion: Determine Interest in Offering the EM "Environmental Laws and Regulations" Training Course for EM SSAB Chairs at next SSAB Chairs' Meeting (Martha)
10:30–11:00 a.m—New Business/TBD (Martha)
11:00–11:15 a.m—Public comment period (Wendy)
11:15–11:30 a.m—Break
12:00 p.m—Closing Remarks/Adjourn (Martha)
12:00 p.m.–1:00 p.m—Lunch (on your own)P='02'≤
1:00–5:00 p.m—Opportunities for informal gatherings of EM SSAB Chairs, SSAB Administrators/ Facilitators, and DOE SSAB Federal Coordinators
5:00 p.m—Dinner (on your own)
(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda)P='02'≤

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at their specific site, or Fred Butterfield at the address listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer, Martha Crosland, and the Deputy Designated Federal Officer, Fred Butterfield, U.S. Department of Energy, are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: A written summary of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. The meeting summary will also be available by writing the EM–SSAB Chair or Designated Deputy Federal Officer of every EM–SSAB that participated in the meeting.

Issued at Washington, DC on February 1, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2706 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 2000. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products, established by Part B of Title III of the Energy Policy and Conservation Act.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective March 8, 2000 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act) [1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission's appliance labeling program, established by section 324 of the Act, and in connection with advertisements of appliance energy use and energy costs, which are covered by section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on January 5, 1999. (64 FR 487). Effective March 8, 2000, the cost figures published on January 5, 1999 will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 2000 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, propane, and kerosene prices found in this notice. The cost projections for heating oil, electricity, and natural gas are found in the fourth quarter, 1999, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (99/4Q), and reflect the mid-price scenario. Projections for residential propane and kerosene prices are derived from their relative prices to that of heating oil, based on 1998 averages for these three fuels. The source for these price data is the September 1999, *Monthly Energy Review* (DOE/EIA–0035(99/09). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8800.

We provide the 2000 representative average unit costs in Table 1 pursuant to section 323(b)(4) of the Act, and they will become effective March 8, 2000. They will remain in effect until further notice.

Issued in Washington, DC, on February 2, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[2000]

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$23.53	8.03¢/kWh [2] [3]	$.0803/kWh
Natural gas	6.88	68.8¢/therm [4] or $7.07/MCF [5] [6]	.00000688/Btu
No. 2 Heating Oil	7.86	$1.09/gallon [7]	.00000786/Btu
Propane	10.07	92¢/gallon [8]	.00001007/Btu
Kerosene	8.44	$1.14/gallon [9]	.00000844/Btu

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 00–2707 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–15–001]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2000.

Take notice that on January 24, 2000, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of February 1, 2000:

Twenty-Eight Revised Sheet No. 31
Fifty-Fifth Revised Sheet No. 32
Forty-Seventy Revised Sheet No. 33
Twenty-First Revised Sheet No. 34
Twenty-Fourth Revised Sheet No. 35
Third Revised Sheet No. 130
Fifth Revised Sheet No. 346
Fifth Revised Sheet No. 347
Fifth Revised Sheet No. 348
Fifth Revised Sheet No. 349
Seventh Revised Sheet No. 350A
Third Revised Sheet No. 380

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended. 42 U.S.C. 6291–6309.

CNG states that the purpose of this filing is to implement the Stipulation and Agreement Amending Rate Case Settlement filed October 5, 1999, (Settlement) that was approved by the Settlement Order. To implement the Settlement, CNG is required to make two types of tariff revisions: (1) It must reduce its rates as required by the Settlement for services that are subject to the Transportation Cost Rate Adjustment (TCRA); and (2) it must revise certain tariff language that is affected by the Settlement.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2652 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–010]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2000.

Take notice that on January 27, 2000, CNG Transmission Corporation (CNG), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Eighth Substitute 17th Revised Sheet No. 31
Fourth Substitute 19th Revised Sheet No. 35

CNG requests an effective date of November 1, 1998, for Eighth Substitute 17th Revised Sheet No. 31 and an effective date of January 1, 1999, for Fourth Substitute 19th Revised Sheet No. 35.

CNG states that the purpose of its filing is to correct two inadvertent and recently discovered errors appearing on two tariff sheets filed on November 10, 1999, in Docket No. TM99–1–22–008. CNG also states that the changes do not affect the amounts billed to CNG's customers.

CNG states that copies of its filing are being served upon the parties listed on the Official Service List of the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2656 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–170–000]

Columbia Gas Transmission Corporation; Notice of Proposed Change in Gas Tariff

February 1, 2000.

Take notice that on January 28, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of March 1, 2000.

Columbia is making the instant filing to reflect various administrative revisions to its FERC Gas Tariff, Second Revised Volume No. 1 to reflect items including, but not limited to, changes to date references on various forms of service agreements and revisions to company contact information.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Sections 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2655 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–73–000]

Duke Energy Hidalgo, L.P.; Notice of Amended Application for Commission Determination of Exempt Wholesale Generator Status

February 1, 2000.

Take notice that on January 20, 2000, Duke Energy Hidalgo, L.P. filed an amendment to their application for exempt wholesale generator status filed on December 30, 1999.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before February 11, 2000, and must be served on the applicant. Any person

wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2657 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–043]

El Paso Natural Gas Company; Notice of Compliance Filing

February 1, 2000.

Take notice that on January 27, 2000, El Paso Natural Gas Company (El Paso) tendered for filing a revised, partially executed Transportation Service Agreement (TSA) between El Paso and Enron North America Corp. dated December 17, 1999 to be effective February 1, 2000.

El Paso states that the above TSA providing for Block II capacity rights is being filed to comply with the Commission's order issued January 19, 2000 in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2658 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–187–016]

Equitrans, L.P.; Notice of Reconciliation Report

February 1, 2000.

Take notice that on January 28, 2000, Equitrans, L.P. (Equitrans) hereby submits the Reconciliation Report pursuant to Article II, Section 1 of the Stipulation and Agreement (Settlement) filed on July 31, 1995 in the above reference dockets, approved by the Commission on September 28, 1995.

Equitrans states that the purpose of this filing is to report the actual costs expended by Equitrans during the four-year surcharge period for well plugging and abandonment. The report shows by well number each of the wells plugged and abandoned, the date of the plugging and abandonment, current net book value of the wells of Equitrans' books, and the amounts incurred for such plugging and abandonment. Equitrans states that it will file a refund report with a true-up within thirty days of filing this reconciliation report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2651 Filed 2–04–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–366–012]

Florida Gas Transmission Company; Notice of Compliance Filing

February 1, 2000.

Take notice that on January 27, 2000, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective March 1, 2000:

Twenty-Ninth Revised Sheet No. 8A.01

FGT states that on August 5, 1997, FGT filed a Stipulation and Agreement of Settlement (Settlement) in Docket Nos. RP96–366, *et al.* resolving all issues in this rate proceeding. Pursuant to Article XIII, the Settlement became effective upon the first day of the first month following the issuance of a final Commission order. On September 24, 1997, the Commissiion issued an order approving the Settlement. Because no party requested rehearing as of October 24, 1997, the Settlement became effective November 1, 1997.

FGT states that the Settlement, among other provisions, provided that the Rate Schedule FTS–2 rates for transportation service through FGT's incremental expansion capacity would be tiered the filed rate would be effective from March 1, 1997 through February 28, 1999 with decreases becoming effective March 1, 1999 and March 1, 2000. Tariff Sheet 8A.01, which contains the Rate Schedule FTS–2 rates, reflected the Settlement rates for all three periods for FTS–2 service, with the decreases becoming effective March 1, 1999 and March 1, 2000 contained in a footnote.

FGT states that it is making the instant filing to replace the FTS–2 rates which are effective from March 1, 1999 through February 28, 2000 with the reservation and usage rates which become effective March 1, 2000. The reservation and usage rates which become effective March 1, 2000 are contained in footnote 1 on the currently effective sheet No. 8A.01.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2659 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–169–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2000.

Take notice that on January 28, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective March 1, 2000.

Natural states that the purpose of this filing is to implement a new Rate Schedule FRSS, under which Natural would provide a firm "reverse" storage service. Although this new service is available to all customers, it is primarily designed to meet the needs of the electric generation market during the summer peak period for electric demand. This new service mirrors some of the fundamental elements of Natural's Rate Schedule DSS, but with injection and withdrawal seasons reversed. Both are delivered firm storage services with no-notice delivery rights, but Rate Schedule DSS primarily supports traditional winter withdrawals for customers with peak demand in the heating season. By contrast, all withdrawals under new Rate Schedule FRSS must be made during the summer and would be followed by winter injections. Natural also states that conforming tariff changes have also been made in the General Terms and Conditions in its Tariff.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective March 1, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–2087–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2653 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–977–000]

Potomac Electric Power Company; Notice of Filing

February 1, 2000.

Take notice that on January 19, 2000, Potomac Electric Power Company tendered for filing a correction to Amendment No. 1 to its electric service agreement with Southern Maryland Electric Cooperative, Inc.

The requested effective date of January 1, 2000, for Amendment No. 1, a rate reduction was not changed.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–2661 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–710–000, ER00–741–000, and ER00–744–000]

Southaven Power, LLC, Canal Emirates Power International, Inc., PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, and PPL Susquehanna, LL; Notice of Issuance of Order (Not consolidated)

February 1, 2000.

Southaven Power, LLC, Cannal Emirates Power International, Inc., PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, and Susquehanna, LLC (hereafter , "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On January 27, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's January 27, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/* online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2613 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–005]

TransColorado Gas Transmission Company; Notice of Tariff Filing

February 1, 2000.

Take notice that on January 28, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 20, with an effective date of February 1, 2000.

TransColorado states the filing is being made in compliance with the Commission's January 14, 2000, Order on Uncontested Settlement in Docket Nos. RP99–106–000 and –004 (the January 14 order). In the January 14 order, the Commission accepted the Interim Rates reflected on Sheet No. 20 to be effective February 1, 2000, as provided by Section II.A.6.b of the November 4, 1999, settlement that states Interim Rates will "be in effect, subject to refund under § III.F.1 below, as maximum filed rates from the first day of the month following the date the Settlement is approved by the Commission until February 1, 2001."

TransColorado states that a copy of this filing has been served upon parties to the proceeding TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ww.fer.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2660 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–85–000, et al.]

North Hartland, LLC, et al.; Electric Rate and Corporate Regulation Filings

January 31, 2000.

Take notice that the following filings have been made with the Commission:

1. North Hartland, LLC

[Docket No. EG00–85–000]

Take notice that on January 27, 2000, North Hartland, LLC filed with the Federal Energy Regulatory Commission and application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

North Hartland, LLC will be engaged exclusively in the business of owning the North Hartland Hydroelectric Project and selling electricity at wholesale. It will make wholesale sales to various entities. The North Hartland Project is a 4,000 kW hydroelectric facility completed in 1985, and located in the Town of Hartland, Vermont.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Tacoma Energy Recovery Company

[Docket No. EG00–86–000]

Take notice that on January 27, 2000, Tacoma Energy Recovery Company filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant, a corporation organized under the laws of the State of Delaware, will be engaged directly and exclusively in operating a 50 MW generating station in Tacoma, Washington and selling electric energy at wholesale.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. First Electric Cooperative Corporation

[Docket No. EL00–37–000]

Take notice that on January 27, 2000, First Electric Cooperative Corporation (First Electric) tendered for filing a Request For Waiver of Requirements of Order Nos. 888 and 889 and Certain Other Commission Regulations.

Comment date: February 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. TransCanada Power (a Division of TransCanada Energy Ltd.)

[Docket No. ER95–692–019]

Take notice that on January 14, 2000, TransCanada Power filed their quarterly report for the quarter ending December 31, 1999, for information only.

5. Conoco Power Marketing Inc.; CSW Energy Services, Inc.

[Docket Nos. ER95–1441–020, ER98–2075–008]

Take notice that on January 20, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. NESI Power Marketing, Inc.

[Docket No. ER97–841–012]

Take notice that on January 21, 2000, NESI Power Marketing, Inc. filed their quarterly report for the quarter ending December 31, 1999, for information only.

7. APS Energy Services; ProLiance Energy, LLC; CHI Power Marketing, Inc.

[Docket Nos. ER99–4122–002, ER97–420–013, ER96–2640–013]

Take notice that on January 19, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

8. Kincaid Generation L.L.C.; Yadkin, Inc.

[Docket Nos. ER00–1213–000, ER00–1214–000]

Take notice that on January 24, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2648 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–035, North Carolina]

Yadkin, Inc., Notice of Availability of Draft Environmental Assessment

February 1, 2000.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for the Yadkin Hydroelectric Project located on the Yadkin-Pee Dee River in Montgomery, Stanly, Davidson and Rowan Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Commission staff believe the SMP would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA can be viewed on the web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the DEA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 60 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the project number P–2197–035 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Oral comments on the DEA will be taken by Commission staff at a public meeting to be scheduled in the vicinity of the Yadkin Project. The exact date, time and location of the public meeting have not yet been determined. Commission staff will issue a separate notice when the exact date, time and location of the public meeting are finalized. If you have any questions regarding this notice, pleas call Steve Hocking at (202) 219–2656.

David P. Boergers,

Secretary.

[FR Doc. 00–2650 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 2, 1000.

The following Notice of Meeting is published pursuant to Section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 9, 2000, 10: A.M.

PLACE: Room 2C 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE —Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items, stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 734th—Meeting February 9, 2000, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–2170, 011, Chugach Electric Association, Inc.
CAH–2.
Docket# P–13, 010, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
Other#s P–2047, 006, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2060, 007, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2084, 022, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2318, 006, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2320, 017, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2330, 036, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2474, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2482, 024, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2539, 010, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2554, 007, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2569, 047, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2616, 012, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2641, 004, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2645, 080, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2696, 013, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.

P–2701, 032, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2713, 045, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2837, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–3452, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–5984, 028, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7320, 012, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7321, 009, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7387, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7518, 003, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–9222, 018, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–10461, 005, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–10462, 005, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–11408, 022, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
CAH–3.
Docket# P–4797, 056, Cogeneration, Inc.

Consent Agenda—Electric

CAE–1.
Docket# ER00–798, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
Other#s ER99–4235, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
CAE–2.
Docket# ER00–870, 000, PJM Interconnection, L.L.C.
CAE–3.
Docket# ER00–845, 000, Southern California Edison Company
Other#s ER00–860, 000, San Diego Gas & Electric Company
ER00–851, 000, Pacific Gas and Electric Company
CAE–4.
Docket# ER00–839, 000, Southwest Power Pool, Inc.
CAE–5.
Docket# ER00–586, 000, Madison Gas & Electric Company
Other#s ER00–816, 000, Ameren Services Company
ER00–840, 000, Tenaska Alabama Partners, L.P.
ER00–891, 000, Delano Energy Company, Inc.
ER00–895, 000, Onodago Cogeneration Limited Partnership
CAE–6.
Docket# ER00–886, 000, New York State Reliability Council
CAE–7.
Docket# ER99–3886, 001, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–8.
Docket# ER00–879, 000, California Independent System Operator Corporation
CAE–9.
Docket# ER00–749, 000, ISO New England, Inc.
CAE–10.
Docket# ER00–894, 000, Geysers Power Company, LLC
CAE–11.
Docket# ER00–799, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–12.
Docket# ER97–412, 000, Firstenergy Corporation
Other#s ER97–412, 001, Firstenergy Corporation
ER97–413, 000, Firstenergy Corporation
ER98–1932, 000, Firstenergy Corporation
CAE–13.
Docket# ER00–898, 000, Amergen Energy Company, L.L.C.
Other#s ER99–754, 000, Amergen Energy Company, L.L.C.
EL00–30, 000, Amergen Energy Company, L.L.C.
ER00–899, 000, Jersey Central Power & Light Company
CAE–14.
Docket# OA97–523, 000, Upper Peninsula Power Company
Other#s OA97–676, 000, Upper Peninsula Power Company
CAE–15.
Docket# ER00–298, 001, PJM Interconnection, L.L.C.
CAE–16. Omitted
CAE–17. Omitted
CAE–18.
Docket# EL99–17, 000, The Ameren Companies
Other#s EL98–1, 000, The Ameren Companies
CAE–19.
Docket# EG00–54, 001, Tenaska Alabama Partners, L.P.

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP00–162, 000, Panhandle Eastern Pipe Line Company
CAG–2.
Docket# RP00–163 000, Kern River Gas Transmission Company
RP00–163, 001, Kern River Gas Transmission Company
CAG–3.
Docket# RP00–164, 000, Northern Natural Gas Company
CAG–4.
Docket# RP00–166, 000, CNG Transmission Corporation
Other#s RP00–74, 001, CNG Transmission Corporation
RP00– 74, 002, CNG Transmission Corporation
CAG–5.
Docket# PR00–4, 000, PG&E Gas Transmission TECO, Inc.
CAG–6.
Docket# RP93–5, 034, Northwest Pipeline Corporation
Other#s RP93–96, 013, Northwest Pipeline Corporation
CAG–7.
Docket# TM00–1–30, 001, Trunkline Gas Company
CAG–8.
OMITTED
CAG–9.
Docket# RP94–72, 011, Iroquois Gas Transmission System, L.P.
Other#s RP94–72, 009, Iroquois Gas Transmission System, L.P.
FA92–59, 007, Iroquois Gas Transmission System, L.P.
RP97–126, 015, Iroquois Gas Transmission System, L.P.
RP97–126, 000, Iroquois Gas Transmission System, L.P.
CAG–10.
Docket# CP88–391, 024, Transcontinental Gas Pipe Line Corporation
Other#s RP93–162, 009, Transcontinental Gas Pipe Line Corporation
CAG–11.
Docket# PR95–18, 001, Duke Energy Intrastate Network, L.L.C.
CAG–12.
Docket# OR99–4, 001, Sinclair Oil Corporation v. Platte Pipe Line Company
CAG–13.
Docket# RP99–274, 003, Kern River Gas Transmission Company
CAG–14.
Docket# RP99–496, 002, Southern Natural Gas Company
CAG–15.
Docket# OR89–2, 000, Trans Alaska Pipeline System
CAG–16.
Docket# MG00–1, 000, Clear Creek Storage Company, L.L.C.
CAG–17.
Docket# CP99–322, 000, El Paso Natural Gas Company
Other#s CP99–323, 000, El Paso Natural Gas Company
CAG–18.
Docket# CP96–53, 000, NE Hub Partners, L.P.
Other# s CP96–53, 006, NE Hub Partners, L.P.
CP96–53, 009, NE Hub Partners, L.P.
CP96–53, 010, NE Hub Partners, L.P.
CAG–19.
Docket# CP96–610, 003, Granite State Gas Transmission, Inc
Other#s CP99–238, 000, Granite State Gas Transmission, Inc.
CAG–20.
Docket# PL99–3, 001, Certification of New Interstate Natural Gas Pipeline Facilities
CAG–21.
Docket# RM–5, 000, Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act

Hydro Agenda

H–1. Reserved

Electric Agenda

H–1. Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1A.
Docket# RM98–10, 000, Regulation of Short-Term Natural Gas Transportation Services
Other#s RM98–12, 000, Transportation Services Final rule
PR–1B.
Docket# RM96–14, 003, Secondary Market Transactions on Interstate Natural Gas Pipelines
Other#s RM94–10, 000, Petition of United Distribution Companies for Rulemaking Regarding The Secondary Market
RM96–7, 000, Regulation of Negotiated Transportation Services of Natural Gas Pipelines
RM96–352, 002, Transwestern Pipeline Company, Pacific Gas and Electric Company and Southern California Gas Company
RP96–353, 001, National Fuel Gas Distribution Company
RP96–355, 001, Columbia Gulf Trnsmission Corporation
RP96–356, 001, Columbia Gas Transmission Company
RP96–360, 001, Transcontinental Gas Pipe Line Corporation
RP96–368, 001, Washington Gas Light Company
RP96–369, 001, Brooklyn Union Gas Company
RP96–370, 001, Kern River Gas Transmission Company
RP96–371, 001, Central Hudson Gas Electric Corporation
RP96–372, 001, Mountaineer Gas Company
RP96–373, 001, Boston Gas Company
RP96–379, 001, Arizona Public Service Company
RP96–382, 001, Orange and Rockland Utilities, Inc.
RM98–11, 000, Rate Design for Interstate Natural Gas Pipelines Order on Proceedings

II. Pipeline Certificate

PC–Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–2753 Filed 2–3–00; 10:57 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 1, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

EXEMPT

1. CP98–150–000 and CP98–151–000	1–7–00	Steven C. Resler.
2. CP98–150–00 and CP98–151–000	1–12–00	Douglas P. Mackey.
3. CP99–94–000	1–7–00	Wayne E. Daltry.
4. Project No. 77–110	1–14–00	Rodney R. McInnis.
5. Project Nos. 10100–004 and 10416–007	12–20–99	Gerry A. Jackson.
6. CP00–14–000	12–28–99	George C.J. Craciun.
7. CP00–14–000	1–14–00	Tina & Lee Windschitl.
8. Project No. 372–008	1–21–00	Erik T. Ostly.
9. CP00–14–000	12–17–99	Karen Skinner.
10. CP00–14–000	12–7–99	Barry Campbell.
11. CP00–14–00	1–6–00	Barry Campbell.
12. CP00–14–000	1–10–00	Brian O'Higgins.

David P. Boergers,

Secretary.

[FR Doc. 00–2649 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6534–1]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Elmendorf Air Force Base Project XL Final Project Agreement and related documents.

SUMMARY: EPA is announcing the signing of the Project XL Final Project Agreement (FPA) for Elmendorf Air Force Base (EAFB).

DATES: The FPA was signed on December 15, 1999.

ADDRESSES: To obtain a copy of the Final Project Agreement, Fact Sheet, or public comments received, contact: Dave Bray, Office of Air Quality, OAQ–107, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW,

Room 1025WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region X in Seattle. Questions to EPA regarding the documents can be directed to Dave Bray at (206) 553–4253 or L. Nancy Birnbaum at (202) 260–2601. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL'.

SUPPLEMENTARY INFORMATION: The FPA is a voluntary agreement developed by EAFB, stakeholders, the State of Alaska, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

On November 5, 1999, EPA announced the availability of the draft FPA in the **Federal Register** (64 FR 60443) and requested comments. As a result of that announcement, EPA received one comment from the Trustees for Alaska. The comment and EPA's response to it are available from the contacts listed in the **ADDRESSES** section and on the Project XL website at http://www.epa.gov/ProjectXL. No other comments were received.

The project will streamline the application, implementation, management, and renewal process for EAFB's Title V permit, through reduced scope of applicability, monitoring, and recordkeeping. EAFB estimates that total monitoring, recordkeeping, reporting, and overall management costs would decrease by about 80 percent, yielding about $1.5 million in savings. These realized cost savings will be directed toward pollution prevention (P2) opportunities. One such P2 project involves installation of a compressed natural gas (CNG) fueling station, the purchase of new CNG vehicles, and the conversion of certain base fleet vehicles to be capable of using CNG as an alternative fuel. Any additional cost savings will be applied to another pollution prevention project(s) agreed to by the parties. A list of additional feasible projects available at EAFB has been developed, along with the estimated costs and environmental benefits of each. While this list focuses primarily on hazardous air contaminant reduction projects, EAFB will hold at least one public meeting to discuss these and other possible pollution prevention opportunities. Upon concurrence of the parties, a supplemental agreement will be developed, setting forth the project(s) selected and any necessary measures to assure their performance.

Dated: January 11, 2000.

Richard T. Farrell,

Associate Administrator, Office of Reinvention.

[FR Doc. 00–2715 Filed 2–4–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–169]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 3, 2000, the Commission released a public notice announcing the February 22 and 23, 2000, meeting and agenda of the North American Numbering Council (NANC). For reasons described below, a portion of the meeting will be closed to the public on Wednesday, February 23, from 8:30 a.m. until 11 a.m. The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: February 3, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, February 22, 2000, from 8:30 a.m. until 5 p.m., and on Wednesday, February 23, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC.

The meeting is to be held on Tuesday, February 22, 2000 from 8:30 a.m. until 5 p.m., and Wednesday, February 23, 11 a.m. until 12 noon meeting segment are open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT** stated above.

It has been determined that the portion of the meeting to be held on Wednesday, February 23, 2000 from 8:30 a.m. until 11 a.m. will be closed to the general public. In response to NANC Chairman John R. Hoffman's request, after review by the General Counsel, FCC Chairman William E. Kennard, has determined that this portion of the February 23, 2000, meeting of the NANC may be closed to the public. In making this determination, Chairman Kennard stated: Given that the NANC's review, at the meeting, of the proposal by NeuStar, Inc., to provide number pooling administration is likely to involve disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential, that portion of the NANC meeting is subject to the Government in Sunshine Act's (GISA) allowance for closure of meetings otherwise required to be open to the public. See GISA Section 552b(c)(4). Under the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA), the requirement that Federal Advisory Committee meetings be open to the public is, therefore, not applicable to the above-specified portion of the February 23, 2000 meeting of the NANC.

Proposed Agenda—Tuesday, February 22, 2000

1. Approval of January 18–19, 2000, meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Local Number Portability Administration (LNPA) Working Group Report.
6. Cost Recovery Working Group Report.
7. Industry Numbering Committee (INC) Report.

8. Assumptions Issue Management Group workplan and timeline.

9. Oversight update regarding Limited Liability Corporations (LLCs) and the regional Number Portability Administration Centers (NPACs).

10. North American Numbering Plan Administration Billing and Collection Agent (NBANC) Update.

Wednesday, February 23, 2000

11. Number Pooling Issue Management Group (IMG) Report. Final report and recommendation regarding the NeuStar, Inc., response to the NANC Thousand Block Pooling Administrator Requirements Document. Report from the Legal Expertise Working Group on their review of the NeuStar response. The NANC will finalize its recommendation to be forwarded to the Federal Communications Commission's, Chief, Common Carrier Bureau for consideration. This presentation and discussion will take place during the 8:30 a.m. until 11 a.m., segment of the meeting and will be closed to the general public.

12. Steering Group Report.

13. Other Business.

Federal Communications Commission.

Diane Griffin Harmon,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–2752 Filed 2–4–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2386]

Petitions for Reconsideration of Action in Rulemaking Proceeding

January 31, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143)

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2647 Filed 2–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on information collected and maintained on students attending National Fire Academy (NFA) and Emergency Management Institute (EMI) courses.

SUPPLEMENTARY INFORMATION: Public Law 93–498, Federal Fire Prevention and Control Act, as amended, established the National Fire Academy (NFA) to "advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities * * *" and authorizes the Superintendent, NFA , to "conduct courses and programs of training and education * * *" Public Law 100–707, Robert T. Stafford Disaster Relief and Emergency Assistance Act, authorizes the President to establish "a program of disaster preparedness that utilizes services of all appropriate agencies and includes * * * (2) training and exercises * * *" Under the authorities of Executive Order 12127 and 12148, the Director, Federal Emergency Management Agency, is responsible for carrying out the mandates of the public laws mentioned above. The director established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland, which houses the NFA and the Emergency Management Institute (EMI). The data collection is used to: (1) Determine eligibility for courses and programs offered by NFA and EMI, (2) provide a consolidated record of all FEMA training taken by a student, (3) provide a transcript which can be used by the student in requesting college credit or continuing education units for courses completed, and (4) to determine eligibility for student stipends.

Collection of Information

Title: General Admissions Application and General Admissions Application Short Form.

Type of Information Collection: Extension.

OMB Number: 3067–0024.

Form Numbers: FEMA Form 75–5, General Admissions Application and FEMA Form 75–5a, General Admissions Application Short Form.

Abstract: NFA and EMI (located at the National Emergency Training Center (NETC) in Emmitsburg, Maryland) use FEMA Forms 75–5, General Admissions Application, and 75–5a, General Admissions Application Short Form, to admit applicants to resident courses and programs offered at NETC, Mount Weather Emergency Assistance Center (MWEAC) and various locations throughout the United States. Information from the application forms is maintained in the Admissions System. The system:

(1) Provides a consolidated record of all FEMA training taken by a student;

(2) Identifies or verifies participation in any prerequisite course;

(3) Produces a transcript which can be used by the student in requesting college credit or continuing education units for courses completed;

(4) Provides statistical information to members of Congress, members of the respective Boards of Visitors, sponsoring states or local officials; and

(5) Determines which students receive stipends for attending NFA or EMI courses.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or tribal government.

Estimated Total Annual Burden Hours:

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
75–5	40,000	1	9 minutes	6,000
75–5a	25,000	1	6 minutes	2,500
Total	65,000			8,500

Estimated Cost: Costs include data entry contract at $125,000, 50% of the annual salary cost of three full-time personnel working in the NETC Admissions Office (GS6, GS7, and GS11) at approximately $70,000, printing at $500 per year. Total average estimated cost to Federal Government is $195,500 annually.

Comments

Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received on or before April 7, 2000.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Darlyn Vestal, Admissions Specialist, Educational and Technology Services Branch, U.S. Fire Administration, (301) 447–1415 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: January 24, 2000.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–2664 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Site Inspection, Landowners Authorization/Ingress/Egress Agreement.

Type of Information Collection: Reinstatement without change of a previously approved collection.

OMB Number: 3067–0222.

Abstract: Public Law 93–288, as amended by Public Law 100–707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Section 408, authorizes the Federal Emergency Management Agency (FEMA) to provide Temporary Housing Assistance. Mobile homes, travel trailers, or other forms of readily fabricated housing are used to provide housing to eligible victims of federally declared disasters. The collection of this information is required to determine the site feasibility for the placement of a temporary housing unit on the land, and rights of ingress and egress for the unit. FEMA Form 90–1, Request for Site Inspection, is designed to ensure sites for temporary housing units will accommodate the home and comply with local, State and Federal regulations regarding the placement of the temporary housing units; FEMA Form 90–31, Landowner's Authorization/Ingress-Egress Agreement, ensures the landowner (if other than the recipient of the home) will allow the temporary housing unit to be placed on the property; and ensure that routes on ingress and egress to and from the main property are maintained.

Affected Public: Individuals or households.

Number of Respondents: 1,000.

Estimated Time per Respondent: 10 minutes for each form.

Estimated Total Annual Burden Hours: 333.

Frequency of Response: On Occasion.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: January 13, 2000.

Mike Bozzelli,

Acting Director Program Services Division, Operations Support Directorate.

[FR Doc. 00–2665 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Capability Assessment for Readiness (CAR).

Type of Information Collection: Reinstatement with change of previously approved collection for which approval has expired.

OMB Number: 3067–0272.

Abstract: The CAR is needed by FEMA to determine that current capabilities of the States to respond to

major disasters and emergencies. It is also an essential means of reporting to the United States Congress and the President on the degree to which States, as primary recipients of FEMA grants, are capable of performing their emergency management responsibilities. The CAR provides a mechanism to evaluate the effectiveness of FEMA programs that are designed to help States attain a high level of achievement in mitigation, preparedness response and recovery programs. It can be used by States for: (1) Developing strategic planning initiatives; (2) producing annual work plans for Federal grants based on areas requiring improvement that are identified in the CAR; (3) providing a basis for budget submissions to State legislatures; and (4) modifying CAR to establish an instrument to assess the capabilities of local jurisdictions.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 60 hours.

Estimated Total Annual Burden Hours: 3,360 hours.

Frequency of Response: Biennially.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: January 28, 2000.

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–2666 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1310–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1310–DR), dated January 10, 2000, and related determinations.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 2000:

Hancock and Henderson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–2668 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1248–DR]

U.S. Virgin Islands; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the U.S. Virgin Islands (FEMA–1248–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 20, 2000, the President concurred with the Director's recommendation to adjust the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), and the Insular Areas Act (10 U.S.C. 1469a(d) in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in the U.S. Virgin Islands, resulting from Hurricane Georges on September 19–22, 1998, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements for Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"),

Therefore, I concur with your recommendation to amend my declaration of September 24, 1998 to authorize Federal funds for the Individual and Family Grant, Public Assistance, and Hazard Mitigation Grant Programs at 90 percent of total eligible costs.

Please notify the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–2667 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Davis Trust Financial Corporation, Elkins, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Davis Trust Company, Elkins, West Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. TransAtlantic Holding Corp., Miami, Florida; to become a bank holding company by acquiring up to 100 percent of the voting shares of TransAtlantic Bank, Coral Gables (Miami), Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan; Sun Community Bancorp Limited, Phoenix, Arizona; and Nevada Community Bancorp Limited, Las Vegas, Nevada; to acquire 51 percent of the voting shares of Black Mountain Community Bank (in organization), Henderson, Nevada.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Michigan Financial Corporation, Marquette, Michigan, and thereby indirectly acquire MFC First National Bank, Marquette, Michigan; MFC First National Bank, Minominee, Michigan; MFC First National Bank, Ironwood, Michigan; MFC First National Bank, Iron River, Michigan; MFC First National Bank, Iron Mountain, Michigan; MFC First National Bank, Houghton, Michigan; and MFC First National Bank, Escanaba, Michigan.

In connection with this application, Applicant also has applied to acquire Michigan Financial Life Insurance Company, Marquette, Michigan, and thereby engage in underwriting life insurance and accident and health insurance that is directly related to an extension of credit by the bank holding company organization, pursuant to § 225.28(b)(11) of Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2616 Filed 2–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Northern Star Financial, Inc., Mankato, Minnesota; to acquire First Federal Holding Company of Morris, Inc., Morris, Minnesota, and thereby indirectly acquire First Federal Savings Bank, Morris, Minnesota, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; providing securities brokerage, pursuant to § 225.28(b)(7)(i) of Regulation Y; providing insurance directly related to an extension of credit by the bank holding company or any of its subsidiaries, pursuant to § 225.28(b)(11)(i) of Regulation Y; and engaging in general insurance agency activity in a place with a population of less than 5,000, pursuant to § 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2617 Filed 2–4–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; NCI Cancer Information Service Demographic/Customer Service Data Collection

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NCI Cancer Information Service Demographic/Customer Service Data Collection. *Type of Information Collection Request:* Revision of a currently approved collection. OMB control number 0925–0208, expiration date July 31, 2000. *Need and Use of Information Collection:* The CIS provides the general public, cancer patients, families, health professionals, and others with the latest information on cancer. Essential to providing the best customer service is the need to collect data about callers and how they found out about the service. This effort involves asking three questions to 100% of five categories of callers for an annual total of approximately 333,620 callers and four questions to 50% of the same five categories of callers for an annual total of approximately 166,810 callers.

Frequency of Response: One time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 333,620 for three questions and 166,810 for four questions; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .0033 for 3 questions and .0083 for 4 questions; and *Estimated Total Annual Burden Hours Requested:* 2,479. The annualized cost to respondents is estimated at: $29,748. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals or households				
—3 questions	333,620	1	.0033	1,094
—4 questions	166,810	1	.0083	1,385
Total				2,479

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Chris Thomsen, Chief, Cancer Information Service Branch, Office of Cancer Information, Communication, and Education, National Cancer Institute, NIH, Building 31, Room 10A16, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–5583 ext. 239 or E-mail your request, including your address to: *thomsenc@mail.nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before April 7, 2000.

Dated: January 28, 2000.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 00–2629 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cooperative Research and Development Agreement (CRADA) To Undertake Research and Development of a Corticotropin Releasing Factor (CRF) Antagonist(s) for the Treatment of Cocaine Dependence

AGENCY: National Institute of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institute on Drug Abuse (NIDA), a component of the National Institutes of Health, is seeking proposals from potential collaborators for a Cooperative Research and Development Agreement (CRADA) to test, by scientific means meeting U.S. Food and Drug Administration (FDA) standards, the hypothesis that Corticotropin Releasing Factor (CRF) antagonists may be useful in the treatment of cocaine dependence. NIDA will consider proposals from all qualified entities and will, subject to negotiation of a mutually agreed upon research plan, provide substantial in kind clinical and preclinical resources with the understanding that the CRADA collaborator will be free to utilize data from the CRADA to pursue regulatory filings in the U.S. and abroad. Subject to negotiation of details in a mutually agreed upon research plan, NIDA will provide the CRADA collaborator with access to its preclinical development components and clinical trials contractual network. No NIH funding may be provided to a collaborator under a CRADA, therefore the collaborator will bear the financial and organizational costs of meeting its obligations under the research plan. It is NIDA's intention to provide, at a minimum, clinical trials services sufficient to permit, subject to FDA approval, research and development up to and including Phase II hypothesis testing trials. Assuming demonstration of safety and efficacy at the conclusion of Phase II trials and subject to negotiation, NIDA will consider undertaking Phase III trials sufficient to permit collaborator to seek a U.S. New Drug Approval (NDA).

DATES: NIDA will consider all proposals received within 90 days of the date of publication of this notice. This notice is active until May 8, 2000.

ADDRESSES: Questions about this notice may be addressed to Mr. Lee Cummings (301–443–1143) or Dr. Frank Vocci (301–443–2711) at the following address: Division of Treatment Research and Development, National Institute on Drug Abuse, 6001 Executive Boulevard, MSC 9551, Bethesda, Maryland 20892–9551.

SUPPLEMENTARY INFORMATION: There is mounting evidence that drugs of abuse effect the brain systems mediating the stress response. Evidence suggests that withdrawal syndromes associated with chronic use of drugs of abuse results in elevations of Corticotropin Releasing Factor (CFR) levels. The effects of chronic opiate and cocaine abuse in human subjects have been studied. Investigators have reported derangements of the stress response, even long after cessation of drug use. Taken together, these results would suggest a role of the CRF system in acute and, possibly, protracted abstinence. A role of stress in relapse to drugs of abuse is strongly suspected.

Stress has been shown to modify the intake of drugs of abuse in preclinical studies of drug self-administration. The effect of stress to increase drug intake has been shown for opiates and cocaine. Moreover, the effects of stress can be mimicked by CRF administration and inhibited by CRF antagonists. The inhibitory effect of CRF antagonists on stress-induced increases in drug-taking behavior is impressively robust. Hence,

further study of the modulation of stress responses by CRF antagonists in drug dependent and formerly dependent subjects and the possible relationship to reduction of drug use or prevention of relapse is a high priority for NIDA.[1] NIDA does not currently own or have access to a CRF antagonist with which to undertake this line of research and development. To this end, NIDA is seeking collaborations with pharmaceutical partners to evaluate CRF antagonists in drug dependent and formerly drug dependent subjects. NIDA is seeking to enter into a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical company or its license, the purpose of which would be to assess the effects of CRF antagonists in drug dependent populations. NIDA is willing to provide both intellectual expertise and preclinical and clinical support in a collaboration. While NIDA would prefer to enter into a CRADA with a company or licensee that is already in clinical testing phase with a CRF antagonist, it would also entertain collaborations involving drug candidates in the preclinical stage of testing. NIDA's Medications Development Program possesses the capacity to perform pharmacological and toxicological testing, pharmacokinetics, dosage form development and clinical testing from Phase I through Phase III testing and is willing to apply these capacities in the assessment of a CRF antagonist.

Selection factors of importance of NIDA include:

(1) It is mandatory that the collaborator have proprietary rights to the CRF antagonist sufficient to permit research and commercial development for the intended field of use, i.e., treatment of cocaine dependence. In the event the collaborator does not own the CRF antagonist, collaborator must provide appropriate documentation of a commercialization license to the field of use sufficient to permit the CRADA to proceed. Collaborator must be able to supply dosage forms of a CRF antagonist made to FDA Good Manufacturing Practices (GMP) standards sufficient to permit each stage of research and development to proceed.

(2) NIDA will consider the amount of research and development documentation and experience already in the collaborator's possession. NIDA will sign appropriate confidential disclosure agreements in order to review proprietary and unpublished data. While NIDA will consider all proposals, it will give a higher priority to proposals that can document a more advanced level of development with the proposed CRF antagonist.

(3) NIDA will consider the amount and type of research and development resources the collaborator proposes to undertake as part of a proposed CRADA.

(4) NIDA will consider the background, experience, and expertise in medications development of the proposed collaborator.

Dated: February 1, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–2628 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

[1] A review of the scientific literature on stress, drugs of abuse, and relapse to drug use is available upon request.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: February 10, 2000.

Time: 2:00 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Sybil A. Wellstood, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2625 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commrcial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 28–29, 2000.

Open: February 28, 2000, 8:30 AM to 3:00 PM.

Agenda: Discussion of matters of program relevance.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: February 28, 2000, 3:00 PM to Adjournment on Tuesday, February 29, 2000.

Agenda: to review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1&E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elke Jordan, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS,

DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2626 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 15–17, 2000.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 30037.

Contact Person: Lawrence E. Chaitkin, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2623 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 1, 2000.

Time: 9 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2624 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 1, 2000.

Time: 11:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edmund Copeland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group Bacteriology and Mycology Subcommittee 2.

Date: February 9–10, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 9–10,2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional, and Cognitive Neuroscience Initial Review Group Visual Sciences B Study Section

Date: February 9–10, 2000.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Leonard Jakubczak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 9, 2000.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 9, 2000.

Time: 6:00 PM to 7:30 PM.

Agenda: To review and evaluate grant applications.

Place: LaJolla Cove Suites, La Jolla, CA 92037.

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, lrosen@csr/nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 9, 2000.

Time: 7:30 PM to 9:30 PM.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cove Suites, La Jolla, CA 92037.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Biochemical Endocrinology Study Section.

Date: February 10, 2000.

Time: 8:00 AM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group Diagnostic Imaging Study Section.

Date: February 10–11, 2000.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cove Suites, La Jolla, CA 92037.

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Molecular and Cellular Biophysics Study Section.

Date: February 10–11, 2000.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hotel de La Poste, 316 Chartres Street, New Orleans, LA 70130.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 10–11, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Lameridia Hotel, New Orleans, LA 70130.

Contact Person: Mary Custer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group Diagnostic Radiology Study Section.

Date: February 10–11, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: St James Hall, La Jolla, CA 92037.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group Hematology Subcommittee 1.

Date: February 10–11, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 10–11, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 10–11, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washignton, DC 20007.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 13, 2000.
Time: 7:00 PM to 9:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, General Medicine A Subcommittee 2.
Date: February 14–15, 2000.
Time: 8:00 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Mushtaq A. Khan, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, khanm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing lmitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 14, 2000.
Time: 8:00 AM to 12:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Washington, DC 20007.
Contact Person: Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Reproductive Endocrinology Study Section.
Date: February 14–15, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.
Contact Person: Abubakar A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 3.
Date: February 14–15, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Christine Melchior, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group Nursing Research Study Section.
Date: February 14–16, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Getrude McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group General Medicine A Subcommittee 1.
Date: February 14–15, 2000.
Time: 8:30 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Harold M. Davidson, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, davidsoh@csr.nih,gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Science Initial Review Group Endocrinology Study Section.
Date: February 14–15, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Syed M. Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group Surgery, Anesthesiology and Trauma Study Section.
Date: February 14–15, 2000.
Time: 1:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Mirage I Room, 2101 Wisconsin Avenue, Washington, DC 20007.
Contact Person: Gerald L. Becker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2627 Filed 2–4–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 09/185,408 filed May 6, 1996 entitled "Glycoprotein Hormone Superagonists", to EndocrinoLogiz, Inc., having a place of business in Princeton, NJ 08542. The contemplated exclusive license may be limited to use for human therapeutics and diagnostics. The United States of America is the assignee of the patent rights in this invention.

This announcement replaces an earlier **Federal Register** notice (64 FR 38685, July 19, 1999) which is hereby withdrawn.

DATES: Only written comments and/or application for a license which are

received by the NIH Office of Technology Transfer on or before April 7, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Charles Maynard, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 243; Facsimile: (301) 402–0220; e-mail: CM251N@NIH.GOV.

SUPPLEMENTARY INFORMATION: This invention relates generally to modified glycoprotein hormones and specifically to modifications to a human glycoprotein, which create superagonist activity. Glycoprotein hormones comprise a family of hormones, which are structurally related heterodimers consisting of a species common α sub-unit and a distinct β sub-unit that confers the biological activity for each hormone. However, this invention is not limited to specific hormones, specific subjects such as humans as well as non-humans mammals, specific amino acids, specific clinical conditions, specific analogs, or specific methods.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 1, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–2630 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Nitroxides as Protectors Against Oxidative Stress and in the Prophylactic and Therapeutic Treatment of Aging, Obesity and Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 07/494,532, filed March 16, 1990, entitled "Nitroxide as Protectors Against Oxidative Stress" and U.S. Patent Application Serial No. 60/047,724 filed May 27, 1997 entitled," The use of Nitroxides in the prophylactic and therapeutic treatment of cancer due to genetic defects" and corresponding foreign patent applications to Mitos, Inc., having a place of business in San Diego, California. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to the use compounds and methods disclosed and claimed in the invention for the prevention and treatment of obesity, cancer and the amelioration of the direct effects of aging.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 8, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquires, comments and other materials relating to the contemplated license should be directed to: Norbert J. Pontzer, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7736, ext. 284; Facsimile: (301) 402–0220; E–mail: np59n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: New metal-independent nitroxide compounds are anti-oxidants capable of protecting cells, tissues, and organs against the harmful effects of toxic oxygen related species (hydroxyl radical, hydrogen peroxide, superoxide). The toxic oxygen related species have been implicated in cancer and aging. These nitroxides slow the death rate in experimental animals with cancers caused by deletion of the p53 suppressor gene. These nitroxides also cause weight loss in mice with no apparent toxicity.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 31, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–2631 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Nitroxides as Protectors Against Oxidative Stress and the Prophylactic and Therapeutic Treatment Radiation Damage to Normal Tissue

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 07/494,532, filed March 16, 1990, entitled "Nitroxides as Protectors Against Oxidative Stress" and U.S. Patent Application Serial No. 60/047,724 filed May 27, 1997 entitled,

"The use of Nitroxides in the prophylactic and therapeutic treatment of cancer due to genetic defects" and corresponding foreign patent applications to Varian Biosynergy, Inc., having a place of business in Palo Alto, California. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to use of topical or local tissue application of compounds disclosed and claimed in the invention for the protection of normal tissue against radiation damage caused by radiation therapy of diseased tissue.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 8, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Norbert J. Pontzer, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7736, ext. 284; Facsimile: (301) 402–0220; E-mail: np59n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: Effective radioprotective drugs could significantly improve the therapeutic ratio of radiation therapy by protecting normal tissues and allowing greater doses of radiation to be delivered to the tumor. One approach to avoid protecting the tumor is local application of the radioprotective drugs to adjacent health tissue. The patent applications claim a new class of metal independent nitroxide compounds that appear capable of protecting tissue against radiation damage if clinically useful, non-toxic formulations that deliver sufficient local tissue concentrations can be developed.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplating license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 31, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–2632 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Prepare an Environmental Assessment for the Conversion of a Portion of Strawberry Valley Project Water From Irrigation to Municipal and Industrial Use

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Assessment for the conversion of a portion of Strawberry Valley Project (SVP) water from irrigation to other beneficial uses including municipal and industrial (M&I) use.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Department of the Interior, Central Utah Project Completion Act Office will prepare an Environmental Assessment on the conversion of SVP water from agricultural to municipal and industrial use.

The SVP, authorized December 15, 1905, is one of the earliest Reclamation Projects. The SVP water from the Colorado River Basin is stored in the enlarged Strawberry Reservoir. The SVP water is then conveyed through the Diamond Fork System into the Great Basin where it is delivered through natural stream courses to the Spanish Fork River diversion structure and into the Strawberry Power Canal. The SVP service area is located in south Utah County, Utah. The Strawberry Water Users Association is responsible for the operation and maintenance of the SVP and contractually uses Central Utah Project (CUP) facilities to store and convey SVP water.

Suburban development in the SVP service area has resulted in agricultural land being taken out of production, annexed into the cities, and developed into residential areas. Under the authority of the Water for Miscellaneous Purposes Act of 1920 (43 U.S.C. 521), the Secretary of the Interior has authority to approve converting a portion of the SVP water from irrigation to M&I use. This conversion will: (1) authorize the conversion of SVP water from irrigation to M&I use; (2) ensure the orderly marketing of CUP and SVP M&I water; (3) provide an adequate water supply to the cities; (4) generate revenue to fund the rehabilitation of SVP facilities; and (5) eliminate unauthorized use of SVP water within the service area. Of the total SVP annual average water supply of about 71,000 acre-feet, approximately 10,200 acre-feet has already been converted and an additional 1,800 acre-feet will be converted from irrigation to M&I use in the foreseeable future with the opportunity to gradually convert additional amounts as growth continues in the area.

The Environmental Assessment will identify potential effects of the proposed action and determine whether those effects are significant. Alternatives identified at this time include the proposed action and the no action alternatives. Issues to be analyzed include impacts on wildlife, cultural resources, special status plants and animals, and water resources.

DATES: Public scoping comments relating to issues and potential additional alternatives will be accepted for 30 days following the publication of this notice.

FOR FURTHER INFORMATION: Scoping comments should be sent to: Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154.

Comments, including names and street addresses of respondents will be available for public review at the CUP Completion Act Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Assessment and other related documents.

Dated: February 1, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–2640 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–RK–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Steilacoom Tribe of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary proposes to determine that the Steilacoom Tribe of Indians, c/o Mrs. Joan Ortez, P.O. Box 419, Steilacoom, Washington 98388 does not exist as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the tribe does not satisfy all of the criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner. Names and addresses of commenters on the proposed finding are generally available under the Freedom of Information Act.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research. Mail Stop 4660–MIB.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Steilacoom Tribe of Indians (STI) asserted that it was eligible for consideration under 25 CFR 83.8 as the continuation of the Steilacoom band which signed the Treaty of Medicine Creek on December 24, 1854, and that the Steilacoom were recognized as a tribe by the Federal Government in the 1930's. The evidence did not show that the STI descends from the "Steilacoom" group which was a party to the treaty. In addition, the evidence demonstrated that the Steilacoom organizations of the 1920's and 1930's were dealt with only for the purpose of prosecuting claims against the Federal Government. Therefore, because the petitioner did not provide substantial evidence of unambiguous prior Federal acknowledgment, the STI petition has been evaluated under the provisions of 25 CFR 83.7. The STI meets criteria 83.7(d), 83.7(f), and 83.7(g), but does not meet 83.7(a), 83.7(b), 83.7(c), and 83.7(e).

Criterion 83.7(a) requires that the petitioner have been identified as an American Indian entity on a substantially continuous basis since 1900. For the period from 1900 through 1925, the evidence did not show any external identifications of an existing Steilacoom Indian entity. In 1925, seven people described in BIA minutes as "Steilacoom Indians" attended a claims meeting. The claims group appeared in BIA records through the late 1930's. There was also an effort in the later 1930's to organize a Steilacoom Tribe of Public Domain Indians of Washington under the IRA. There were no Federal identifications of any Steilacoom entity between 1941 and 1951. Federal identifications of the claims organization resumed in 1951 and continued until the final judgment award in 1974. In 1953, it was included on the list of groups with which the BIA discussed proposed termination legislation.

In 1952, a longtime local resident of the Steilacoom, Washington, area, testified on behalf of the claims organization that she could still identify a Steilacoom tribe. During the 1950's and 1960's, the State of Washington Department of Fisheries recognized the BIA "blue cards" issued to persons listed on the rolls of claims organizations. On this basis, an official of the Washington State Game Department stated in 1971 that he considered the STI as a bonafide tribe representing a continuation of the historical Steilacoom band.

The evidence in the record for this proposed finding did not include any other identifications of an existing Steilacoom entity in local newspapers, by local or regional historians, or in scholarly works for the period prior to the 1970's. In February 1974, the Steilacoom Indian Tribe incorporated within the State of Washington as a nonprofit organization. From 1974 to the present, the Steilacoom Tribe of Indians has regularly been identified as a non-recognized Indian tribe by Federal and State agencies, in newspaper articles, by local historians, and by scholars.

The evidence was not adequate to demonstrate that STI has been identified as an American Indian entity on a substantially continuous basis for the entire period since 1900. The STI does not meet criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning community comprise a distinct community and have existed as a community from historical times until the present. The petitioner did not demonstrate any of the five forms of evidence listed under 83.7(b)(2) at any point in time since the beginning of sustained contact with non-Indian settlers.

Section 83.7(b)(1)(iii) states that a petitioner may show significant rates of informal social interaction which exist broadly among the members of a group. In order for this to occur, there must first be a group. The evidence showed that the ancestors of the current STI membership did not, historically, constitute a group whose history could be traced through time and place. The petitioner's ancestors in the 19th century consisted of several different categories of unconnected people (see discussion below under criterion 83.7(e)).

The evidence did not demonstrate that persons from any one of these different categories regularly interacted either with persons from other categories or with persons identified in the historical record as Steilacoom Indians (83.7(b)(1)(ii)). The petitioner did not show significant rates of marriage within the group at any time since record keeping began in the mid-19th century (83.7(b)(1)(i)). From first sustained contact with non-Indians until the present, the ancestral families and current members of the STI have intermarried primarily with non-Indians.

There was no evidence that there was a significant degree of shared or cooperative labor or other economic activity among STI ancestral families in the past (83.7(b)(1)(iv)). Participation by STI members in commercial fishing in the 1970's was by invitation of federally acknowledged tribes, and did not involve a significant degree of shared or cooperative labor among the STI membership. For the modern period, the evidence showed that there was intra family social and economic interaction, but little interfamily association. The petition contained no evidence of patterns of institutionalized discrimination or other social distinctions by nonmember either in the past or in the present (83.7(b)(1)(v)). There was no evidence that the ancestral families or current members of the STI had any shared sacred or ritual activity, or cultural patterns, that encompassed most of the groups (83.7(b)(1)(vi) and (vii)).

Section 83.7(b)(1)(viii) lists one possible form of evidence for

community as: "[t]he persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name." There was no named, collective identity between 1854 and 1925. At different times during the 1925–1941 period, two Steilacoom claims organizations existed. There are no membership lists of these organizations. Therefore, it was not possible to determine to what extent, if any, the petitioner's ancestors identified with either or both, or to what extent the membership of the earlier period overlapped with that of the post-1951 group, the petitioner. Regardless, these organizations did not continue for a period of 50 years. There was an approximate 65 percent overlap between the 1950's lists and the lists for the group from the mid-1970's to the present. The STI incorporated in 1974 and has existed continuously since that date. The identity asserted by the formal organization of a group is entitled to weight as representing the views of the membership. However, the existence of a formal organization is not in itself sufficient evidence to show collective group identity.

The evidence in the record was not sufficient to demonstrate the existence of community from historical times to the present. The STI does not meet criterion 83.7(b).

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The evidence in the record does not show the post-treaty existence of an autonomous Steilacoom band. The STI petition did not present the types of evidence described under 83.7(c)(2). The evidence in the record under 83.7(c)(1) did not demonstrate the exercise of political authority of influence over the petitioner's ancestors as a group, whether as members of a "Steilacoom" entity or any other entity. The individual extended ancestral families of the modern STI, throughout the second half of the 19th century and first quarter of the 20th century were not connected with one another in such a way as to permit any kind of bilateral political relationship.

Because there was no identifiable entity in the later 19th and early 20th centuries, there were no identifiable group leaders or governing bodies prior to 1925. In so far as the petition mentioned individual 19th century Steilacoom Indians as leaders, there was no evidence that most STI ancestral families associated with them. In so far as it mentioned identified STI ancestors as leaders, there was no evidence that their influence extended beyond their own family line.

There was very little evidence concerning mobilization of resources from members of family lines ancestral to the STI for any common purposes from the mid-19th century until the formation of the Steilacoom claims organization in 1925. Since the membership of the Steilacoom claims organization in the 1920's and 1930's is unknown, there was no evidence to show the level of support provided by its members even for this limited function. There was no data indicating that there were any common purposes among the STI ancestral families other than the prosecution of claims prior to the development of concern over fishing rights in the 1950's.

For the modern period, approximately 30 out of 612 members attend meetings. Other STI activities such as work toward Federal acknowledgment and representational and educational activities directed at the wider community have been conducted primarily by a small group of members. There was very little evidence concerning communication between leaders and members and the minutes provided little data concerning internal conflicts, if any, and their resolution. The STI does not meet criterion 83.7(c).

Criterion 83.7(d) requires that the petitioner provide copies of the group's current constitution and by-laws. The STI meets criterion 83.7(d).

Criterion 83.7(e) states that the petitioner's membership must consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Of the 612 STI members, only three from one nuclear family have been documented as descendants of persons who, in the 19th century and first quarter of the 20th century, were identified as Steilacoom Indians. The 91 per cent of the current STI members for whom the petitioner submitted data descend primarily from two other categories of Indian ancestors.

Just under two-thirds descend from Indian women who, between 1839 and 1870, married men who had recently come to the region of Fort Nisqually in Pierce County and Cowlitz Prairie in Lewis County, most as employees of the Hudson's Bay Company (HBC). The petition asserted that these Indian women were Steilacoom and that they maintained their Steilacoom tribal affiliation. Contemporary records did not verify this assertion. Their children and grandchildren described them variously as Nisqually, Puyallup, Cowlitz, Clallam, Chimacum, Quinault, Duwamish, Skokobish, Yakima, and Snohomish in affidavits made between 1910 and 1918. None of these affidavits described an ancestress as Steilacoom.

The other one-third of the STI members with documented Indian ancestry trace their lineage to Canadian Indian tribes through Red River metis families from Manitoba. The petition asserted that these Red River families were adopted, sometimes by way of intermarriage, into a continuously existing Steilacoom tribe during the second half of the 19th century. However, the few documented intermarriages did not take place between Red River immigrants and Steilacoom Indians. Rather, they took place between Red River immigrants and the non-Steilacoom Indian/HBC descendant families described above.

The identified STI ancestral family lines can all be documented to the mid-19th century, but the limited documentation available concerning the claims organization did not indicate that a significant proportion of the families were associated with the Steilacoom claims organization of the 1920's and 1930's. The family lines adopted into the STI in the 1950's included families whose Indian ancestry was Cowlitz, Cowlitz/Quinault, Lummi, Red River, and Colville, and who were previously unconnected with one another. Thus, although the petitioner's membership consists of Indian descendants, it does not consist of "individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous entity." The STI does not meet criterion 83.7(e).

Criterion 83.7(f) states that the petitioner's membership must be composed principally of persons who are not members of any acknowledged North American Indian tribe. The STI meets criterion 83.7(f).

Criterion 83.7(g) states that neither the petitioner nor its members can have been the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The STI meets criterion 83.7(g).

Based on this preliminary factual determination, the Steilacoom Tribe of Indians should not be granted Federal acknowledgment under 25 CFR Part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and other interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be

addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 4660–MIB. Comments on the proposed finding should be submitted within 180 calendar days from the date of publication of this notice. Third party comments must be provided to the petitioner as well as to the Federal Government. After the close of the 180-day comment period, the petitioner has 60 calendar days to respond to third-party comments.

After the expiration of the comment and response periods described above, the BIA will consult with the petitioner concerning establishment of a time frame for preparation of the final determination. After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after beginning preparation of the final determination, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1).

Dated: January 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–2635 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–220–1020XQ]

Call for Nominations for Northwest and Front Range Resource Advisory Councils (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill positions which have recently been vacated on two Colorado, Bureau of Land Management (BLM), Resource Advisory Councils.

These councils provide advice and recommendations to BLM on management of the public lands. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Under Section 309 of FLPMA the Secretary has selected 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council will reflect a balanced membership representative of the various interests concerned with the management of public lands and users of the public lands.

The position to be filled on the Northwest Resource Advisory Council is Public-at-Large in Group 3.

The position on the Front Range Resource Advisory Council which is being filled is also Public-at-Large in Group 3. Nominees must be residents of Colorado. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed Nomination/Background Information Form, as well as any other information that speaks to the nominee's qualifications.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the appropriate office on or before March 23, 2000.

ADDRESSES: For more information and a Nomination/Background Information Form, contact the appropriate BLM office:

Northwest Resource Advisory Council—Bureau of Land Management, Northwest Center, Attn: RAC Nomination, 2815 H Road, Grand Junction, Colorado 81506.

Front Range Resource Advisory Council—Bureau of Land Management, Front Range Center, Attn: RAC Nomination, 3170 East Main Street, Canon City, Colorado 81212.

Completed Nomination/Background Forms should be returned to the appropriate address listed above.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 269–8553; for information about the Front Range Resource Advisory Council or Lynn Barclay (970) 826–5096 for information about the Northwest Resource Advisory Council.

SUPPLEMENTARY INFORMATION: Individuals may nominate themselves or others. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Dated: January 29, 2000.

John Carochi,

Acting Front Range Center Manager.

[FR Doc. 00–2701 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Friday, March 10, 2000, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 8 a.m. in the Eagle Lake Field Office Conference Room. Agenda items include an update on Grass Banking, a status report on a proposal to list the sage grouse under the Endangered Species Act, and a report from the council's off highway vehicle working group. The council will also hear reports on the status of a proposal to designate a National Conservation Area is parts of the Black Rock Desert and High Rock Canyon, and other proposals for special area designations. Time will be set aside on the agenda for public comments.

FOR FURTHER INFORMATION CONTACT: Contact BLM Alturas Field Manager Tim Burke at (530) 257–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–2683 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–0777–XQ–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Southwest Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in March, 2000 in Paonia, CO.

DATES: The meeting will be held on Thursday, March 9, 2000.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Southwest Center, 2465 South Townsend Avenue, Montrose, CO 81401; phone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The March 9, 2000 meeting will be held at the Paonia Senior Citizens Center, 106 Third Street, Paonia CO. The meeting will begin at 9:00 a.m. and end no later than 4:30 p.m. The agenda will include updates on the North Fork Coal Leasing EIS, the Gunnison Gorge and Anasazi Heritage Center recreation fee demonstration projects, the proposed recreation fee for Yankee Boy Basin, Colorado's RACs' proposed recreation guidelines and the Anasazi Area of Critical Environmental Concern. A presentation on the Delta-Montrose Public Lands Partnership proposed Uncompahgre Plateau project is also scheduled. General public comment is scheduled for 9:15 a.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: January 31, 2000.

Roger Alexander

Public Affairs Specialist.

[FR Doc. 00–2685 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 102308]

Public Land Order No. 7427; Withdrawal of Public Lands and Federal Minerals for the Carlsbad Cave and Karst Area; New Mexico; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 7427, 65 FR 2423–2424, published January 14, 2000, as FR Doc. 00–937.

On page 2423, third column, paragraph 1, under the total areas described, which reads "8,970.59 acres in Eddy County," is hereby corrected to read "8470.59 acres in Eddy County."

Dated: January 27, 2000.

Carsten F. Goff,

Deputy State Director.

[FR Doc. 00–2698 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1430–ET; NMNM 42909, et al.]

Public Land Order No. 7416; Revocation of Executive Orders Dated June 24, 1914, April 28, 1917, February 11, 1918, July 10, 1919, May 25, 1921, and February 7, 1930, and Partial Revocation of Executive Order Dated April 17, 1926; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This order corrects Public Land Order No. 7416, 65 FR 67295–67297, published December 1, 1999, as FR Doc. 99–31202. .

On page 67297, in the first column, under T. 24 S., R. 15 W., remove sec. 5, lot 1 and SE¼NE¼, and after T. 24 S., R. 15 W., sec. 23, NE¼NW¼, add T. 24 S., R. 15 E., sec. 5, lot 1 and SE½NE¼.

Dated: January 28, 2000.

Carsten F. Goff,

Deputy State Director.

[FR Doc. 00–2699 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–ES; COC–49757]

Notice of Realty Action—Fremont and Chaffee Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 99–12127 beginning on page 25902 in the issue of May 13, 1999, the legal descriptions of two of the public land parcels (known as the Collegiate Peaks Gateway, Chaffee County and Point Bar, Fremont County) classified for Recreation and Public Purposes lease should be corrected to read:

Sixth Principal Meridian, Colorado

T. 14 S., R. 78 W., Section 23: E½NW¼SW¼, E½SW¼NW¼, west of Chaffee County Road 102 containing approximately 25 acres known as the Collegiate Peaks Gateway.

New Mexico Principal Meridian, Colorado

T. 49 N., R. 10 E., Section 28: That portion of Lots 2, 3, 6, 7, 10 and 11 lying north of U.S. Highway 50 right-of-way and south of the Union Pacific Railroad right-of-way containing approximately 37 acres known as Point Bar.

In notice document 99–8170 beginning on page 15988 in the issue of April 2, 1999, the legal description of the public land parcel in Chaffee County classified for Recreation and Public Purposes lease should be corrected to read:

New Mexico Principal Meridian, Colorado

T. 50 N., R. 8 E., Section 21: The northerly portion of the E½E½NE¼SE¼ lying east of Highway 285. Section 22: The northerly portion of the NW¼SW¼ containing approximately 18 acres known as Big Bend.

In notice document 89–12003 beginning on page 21677 in the issue of May 19 1989, the legal description of the public land parcel (known as the Spike Buck recreation site) classified for Recreation and Public Purposes lease should be corrected to read:

Sixth Principal Meridian, Colorado

T. 18 S., R. 72 W., Section 29: That portion of the NW¼NW¼NE¼ and the NE¼NE¼NW¼ between the thread of the Arkansas River and U.S. Highway 50 containing approximately 7 acres known as Spike Buck.

ADDRESSES: Field Office Manager, Royal Gorge Field Office, 3170 E. Main St., Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: David Hallock, Realty Specialist, Telephone (719)269–8536.

Dated: January 29, 2000.

Levi Deike,

Associate Field Office Manager.

[FR Doc. 00–2700 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CA–330–1220–AA

Resource Management Plan for Arcata Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of Supplementary Rule pertaining to all public lands managed by the Bureau of Land Management (BLM) in the areas known as the Samoa Dunes Recreation Area (T.5N., R.1W., Section 31; T.4N., R.1W., Section 6, Humboldt Meridian)

and the Manila Dunes Area of Critical Environmental Concern (ACEC) (T.6N., R.1W., Sections 26, 27, 34 and 35, Humboldt Meridian). Existing rules and regulations have been documented and previously published in the **Federal Register** and Code of Federal Regulations (CFR) and/or are approved in two land use plans that cover the areas: the *Record of Decision, Arcata Resource Area Resource Management Plan*, dated April, 1992 and the *Decision Record, Arcata Resource Area Resource Management Plan Amendment*, dated July, 1995. In accordance with approved land use plans and regulations contained in 43 CFR 8341.2, 43 CFR 8364.1 and 43 CFR 8365.1–6, the Manila Dunes ACEC is closed to all Off Road Vehicle (ORV) use. The Samoa Dunes Recreation Area is closed to all vehicle use one hour after sunset to one hour before sunrise; 175 acres are designated "closed" to all ORV use; 25 acres are designated "limited" to all ORV use; overnight camping is prohibited; and the 40-acre endangered plant protection area is closed to all public use. Vegetative gathering is prohibited between November 1 and May 1 of each year at both Samoa Dunes and Manila Dunes ACEC. The use of firearms and archery equipment are also prohibited in both areas. Employees, agents and permittees of the BLM may be exempt from these rules and regulations as determined by the authorized officer.

EFFECTIVE DATE: This notice is effective February 4, 2000, as all rules and regulations listed are already in effect.

ADDRESSES: Maps and other supporting documentation are available for review at the following location: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Bruce Cann, Outdoor Recreation Planner or Michael Dodson, Law Enforcement Ranger, at the above address. Telephone (707) 825–2300.

SUPPLEMENTARY INFORMATION: The purpose of the existing rules and regulations is to preserve and protect rare and endangered plant and animal species, protect cultural resources, reduce conflicts among different types of recreation uses, and to protect public property and facilities. The purpose of this supplementary rule is to make permanent existing temporary emergency closures and to provide citation authority. Any person who fails to comply with this supplementary rules and regulations is subject to arrest and/or a fine of up to $100,000 and/or imprisonment not to exceed 12 months, sec 18 U.S.C. section 3571.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 00–2807 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OSC)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS minerals proposals of the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Coastal Oil & Gas Corporation, Pipeline Activity, SEA No. P–12384 (G–21469).	Main Pass Area, Blocks 265, 264, 263, 280, and 281, Lease OCS–G 21469, 70 miles off the coast of Alabama.	01/07/00
Fugro GeoServices, Inc., G&G Activity, SEA No. M00–01	Bayou La Batre, Alabama to Piney Point in Tampa Bay, Florida	01/19/00
Coastal Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 99–129.	Main Pass Area, Block 243, Lease OCS–G 5726, 44 miles east of Plaquemines Parish, Louisiana.	11/03/99
Coastal Oil & Gas Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–130, 99–131, 99–142, and 99–143.	Main Pass Area, Blocks 244, 227, and 265, Leases OCS–G 5727, 6825, and 4834, 47 miles east of Plaquemines Parish, Louisiana.	11/01/99
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 99–135.	West Cameron Area, Block 607, Lease OCS–G 10602, 111 miles south of Cameron Parish, Louisiana.	10/22/99
Prime Natural Resources, Inc., Structure Removal Operations, SEA No. ES/SR 99–136.	Eugene Island Area, Block 196, Lease OCS–G 0802, 43 miles southwest of Terrebonne Parish, Louisiana.	10/15/99
Chevron U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 99–137.	Main Pass Area, Block 42, Lease OCS–G 1367, 19 miles east of Plaquemines Parish, Louisiana.	10/22/99
Chevron U.S.A. Inc., Structure Removal Operations, SEA Nos. ES/SR 99–138 and 99–139.	Eugene Island Area, Blocks 229 and 230, Leases OCS–G 5505 and 0979, 46 miles southwest of Terrebonne Parish, Louisiana.	11/01/99
Marathon Oil Company, Structure Removal Operations, SEA Nos. ES/SR 99–140 and 99–141.	East Cameron Area, Block 313, Lease OCS–G 8656, 95 miles south of Cameron Parish, Louisiana.	10/22/99
Fairways Specialty Sales and Service, Inc., Structure Removal Operations, SEA No. ES/SR 99–144.	Galveston Area, Block A–34, Lease OCS–G 12514, 35 miles southeast of Brazoria County, Texas.	10/27/99
Murphy Exploration & Production Company, Structure Removal Operations, SEA No. ES/SR 99–145.	Matagorda Island Area, Block 710, Lease OCS–G 10205, 30 miles east of Aransas County, Texas.	10/09/99
Ocean Energy, Inc., Structure Removal Operations, SEA No. ES/SR 99–146.	Eugene Island Area, Block 119, Lease OCS–G 0049, 23 miles southwest of Terrebonne Parish, Louisiana.	11/09/99
Samedan Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–147 and 99–148.	Grand Isle Area, Block 79, Lease OCS–G 5657, Vermilion Area, Block 162, Lease OCS–G 5419, 40 miles from the nearest shoreline offshore the Louisiana Coast.	12/14/99
Ocean Energy, Inc., Structure Removal Operations, SEA No. ES/SR 99–149.	Eugene Island Area, Block 119, Lease OCS–G 0049, 23 miles southwest of Terrebonne Parish, Louisiana.	12/30/99

Activity/Operator	Location	Date
Range Resources Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–150 and 99–151.	Mustang Island Area, Block 847, Lease OCS–G 6011, 24 miles Offshore Kleberg County, Texas.	12/30/99

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: January 31, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–2689 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Request for Information and Interest in a Commercial Sand and Gravel Lease Sale Offshore Northern New Jersey

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Change starting time for information meeting.

SUMMARY: The information meeting scheduled to be held in Bradley Beach, New Jersey, on February 28, 2000, will begin at 7:30 p.m., and not 7:00 p.m., as previously announced in the **Federal Register** at Vol. 65, No. 6, Page 1413, "Outer Continental Shelf Request for Information and Interest in a Commercial Sand and Gravel Lease Sale Offshore Northern New Jersey."

FOR FURTHER INFORMATION CONTACT: Carol A. Hartgen, Chief, International Activities and Marine Minerals Division, (703) 787–1300.

Dated: February 1, 2000.

Carol A. Hartgen,

Chief, International Activities and Marine Minerals Division, Minerals Management Service.

[FR Doc. 00–2622 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Two Invitations for Bids on Natural Gas from Federal Properties in the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Invitations for Bids on Federal Royalty Gas.

SUMMARY: The Minerals Management Service has posted on MMS's Internet Home Page, and will make available in hard copy, public competitive offerings of approximately 490,000 mmBtu per day of natural gas, to be taken as royalty-in-kind from Federal properties in the Gulf of Mexico under two Invitations For Bids (IFB), Numbers MMS-RIK–2000-GOMR–002, and MMS-RIK–2000-GOMR–003.

DATES: The two IFBs were posted on MMS's Internet Home Page on January 21, 2000. Bids will be due to MMS at the posted receipt location on February 18, 2000. MMS will notify successful bidders on or about February 25, 2000. The Federal Government will begin actual taking of awarded royalty gas volumes for delivery to successful bidders for a 7-month period beginning on April 1, 1999.

ADDRESSES: The IFBs are posted on MMS's Home Page at http://www.mms.gov under the icon "What's New." The IFBs may also be obtained by contacting Mr. Michael Del-Colle at the address in the **FURTHER INFORMATION** section. Bids should be submitted to the address provided in the IFBs.

FOR FURTHER INFORMATION CONTACT: For additional information on MMS's RIK pilots, contact Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230,Washington DC 20240; telephone number (202) 208–3827; fax (202)208–3918; e-mail *Bonn.Macy@mms.gov*. For additional information concerning the IFB document, terms, and process for Federal leases, contact Mr. Michael Del-Colle, Minerals Management Service, MS-2510, 381 Elden Street, Herndon, VA 20170–4817; telephone number (703) 787–1375; fax (703) 787–1009; e-mail Michael.Del-Colle@mms.gov.

SUPPLEMENTARY INFORMATION: These offerings of natural gas continue MMS's RIK pilot program and will involve Federal properties in the Gulf of Mexico. MMS's objective is to identify the circumstances in which taking oil and gas royalties as a share of production is a viable alternative to its usual practice of collecting oil and gas royalties as a share of the value received by the lessee for sale of the production.

IFB Number MMS–RIK–2000–GOMR–002 offers approximately 280,000 mmBtu per day of natural gas from selected Federal properties located in the East Breaks, Garden Banks, High Island, East and West Cameron, and Vermillion areas of the Gulf of Mexico. This royalty gas flows through 88 facility measurement points (FMP's) on five pipeline systems—High Island/UTOS, ANR, Transco/NHIS, Pelican, and Stingray. This production was offered most recently October 8, 1999, under IFB No. RIK–2000–GOMR–001 for deliveries through March 31, 2000. Under terms of this new IFB, purchasers will, as before, take the royalty gas from these properties and locations near the lease and, in return, deliver a fixed daily volume of natural gas (based on monthly nominations) to the General Services Administration (GSA) at a specified location for GSA's use in managing supply commitments to Federal agency end users.

IFB Number MMS–RIK–2000–GOMR–003 offers an additional natural gas volume of approximately 210,000 mmBtu per day from selected Federal properties in the East and West Cameron, Garden Banks, Vermilion,

South Marsh, Ship Shoal and Eugene Island areas. This production flows through about 84 FMP's on the Sea Robin and Bluewater Pipeline systems. Successful bidders will be required to deliver production volumes to an onshore location; further disposition of these volumes will be announced at a later date.

Purchasers may bid on production from all FMPs on both pipelines, and/or for all FMPs on the Sea Robin Pipeline, and/or from all FMPs on individual segments of the Bluewater Pipeline.

The following are some of the additional details regarding the offerings that were posted to MMS's website as two IFB's on January 21, 2000.

- List of specific properties;
- For each property—FMP location and identification number, average daily royalty volume, 1-year production histories, quality, current operator; and other pipeline information.
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

Information on the internet posting and availability of the IFB in hard copy are being made available to oil and gas trade journals as well as in this **Federal Register** notice.

Dated: January 31, 2000.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 00–2598 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Order Concerning Accessibility for Visitors With Disabilities in National Park Service Programs, Facilities and Services

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service (NPS) is updating its policies and procedural guidance concerning accessibility for visitors with disabilities in NPS programs, facilities and services. It is the goal of the NPS to ensure that all people, including the estimated 54 million citizens with disabilities, have the highest level of accessibility that is reasonable to our programs, facilities and services in conformance with applicable laws and regulations. Directors Order #42 establishes operational policies and procedural guidance concerning accessibility for visitors with disabilities in NPS programs, facilities and services.

DATES: Information from interested parties will be accepted until February 23, 2000.

ADDRESSES: Send information or suggestions to David Park, National Park Service, Park Facility Management Division, 1849 C Street, NW, Room 7252, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David Park at 202/565–1255.

SUPPLEMENTARY INFORMATION: The NPS is converting and updating its current system of internal instructions to a three-level system consisting of: (1) NPS Management Policies; (2) Director's Orders; and (3) Reference Manuals/Handbooks and other helpful information. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public comment. Visitor accessibility policies were first addressed in Special Directive 83–3, issued in 1983. Those policies were subsequently updated in the 1988 NPS Management Policies. The five objectives of Director's Order #42 are to:

1. Institutionalize within the day-to-day operation of the NPS, the policies, organizational relationships and implementation strategies necessary to accomplish the long range goal of providing the highest level of accessibility that is reasonable for people with disabilities in all programs, facilities and services;

2. Provide further guidance and direction regarding the NPS interpretation of laws and policies;

3. Establish a framework for the effective implementation of actions necessary to achieve the highest level of accessibility that is reasonable;

4. Encourage the implementation of "universal design" principles within the NPS; and

5. Promote the infusion of access for persons with disabilities into the day-to-day operation of the NPS, rather than as a "separate" or "special" program.

Organizations and individuals with an interest in NPS policy and procedural guidance concerning accessibility for visitors with disabilities in NPS programs, facilities and services are invited to provide information or suggestions that should be considered by NPS during the review process. The proposed Director's Order #42 is posted at *http://www.nps.gov/refdesk/DOrders/index.htm#drafts*. If you are unable to access the Internet, and would like to receive a copy by mail, please contact David Park at the address given above.

Dated: February 1, 2000.

John Gingles,

Acting Chief, Park Facility Management Division.

[FR Doc. 00–2609 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Booker T. Washington National Monument Abbreviated Final General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Booker T. Washington National Monument Abbreviated Final General Management Plan and Environmental Impact Statement.

SUMMARY: The National Park Service has prepared and released an Abbreviated Final General Management Plan and Environmental Impact Statement for the management, protection, use, and development of Booker T. Washington National Monument in Hardy, Virginia. A record of decision will be signed by the Regional Director, Northeast Region, National Park Service thirty days after this notice is published in the **Federal Register**. Copies of the Booker T. Washington National Monument Abbreviated Final General Management Plan and Environmental Impact Statement are available at Booker T. Washington National Monument and at the Franklin County Public Library in Rocky Mount, Virginia. The document can be viewed on the monument's web site (http://www.nps.gov/bowa).

For more information, contact the Superintendent, Booker T. Washington National Monument, 12130 Booker T. Washington Highway, Hardy, VA 24101–9688. The superintendent's phone number is 540–721–2094.

Dated: December 17, 1999.

Dale Ditmanson,

Associate Regional Director, Operations, NER.

[FR Doc. 00–2611 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation Draft Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Draft Environmental Impact Statement (DEIS) for the Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Glacier National Park, Montana.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a DEIS for the Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Glacier National Park, Montana.

DATES: The DEIS will remain available for public review through March 31, 2000. If any public meetings are held concerning the DEIS, they will be announced at a later date.

Comments

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Wastewater Project, Glacier National Park, West Glacier MT 59936. You may also comment via the Internet to *www.nps.gov/glac*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Wastewater Project" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Glacier National Park, (406) 888–7901. Finally, you may hand-deliver comments to Glacier National Park, Headquarters, West Glacier, MT. Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

ADDRESSES: Copies of the DEIS for the Wastewater Project are available from the Superintendent, Glacier National Park, West Glacier Montana 59936. It is also available on the Internet at *www.nps.gov/glac*. Public reading copies of the DEIS will be available for review at the following locations:

Office of the Superintendent, Glacier National Park, West Glacier, MT 59936, Telephone: (406) 888–7901

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 [or (303) 969–2377]

Office of Public Affairs, National Park Service, Department of Interior 18th and C Streets NW, Washington D.C. 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement (DEIS) was prepared to address rehabilitation of the wastewater treatment system that currently serves the west side of Glacier National Park (Park). The service area for the existing wastewater treatment plant (WWTP) includes Park Headquarters and residences, campgrounds, Lake McDonald Lodge, and concession businesses and employee housing. The existing WWTP is no longer meeting its original treatment objective or operating at design capacity.The preferred alternative (Alternative 3) is to construct an advanced WWTP, with a land discharge site. This alternative would provide the greatest level of treatment and the highest water quality of the alternatives considered. Minimal new site disturbance would be necessary to implement the preferred alternative and the existing spray field in the floodplain of the Middle Fork of the Flathead River and McDonald Creek would no longer be used. Alternative 1A includes construction of an additional storage lagoon and a new spray field to discharge treated effluent. This would require clearing 6.5 hectares of undisturbed land and the existing spray field would continue to be used. Alternative 1B includes construction of two new storage lagoons and an additional aerated lagoon (3.6 hectares). The existing spray field would continue to be used. Alternative 2A includes construction of an advanced WWTP and a series of three rapid infiltration basins (3.6 hectares) to discharge treated effluent to the ground water. The existing spray field would no longer be used. The no action alternative (Alternative 4) would continue operation of the existing WWTP and spray field. Occasional raw sewage spills are possible when storage capacity is exceeded and the spray field cannot be operated because of wet conditions. The details of the alternatives and potential impacts to wildlife, vegetation, and threatened and endangered species and benefits to water quality and Park and concession operations are described in this document and are summarized in Table 2. Estimated costs to implement the alternatives are presented in Table 1.

FOR FURTHER INFORMATION CONTACT: Superintendent, Glacier National Park at the above address and telephone number.

Dated: January 28, 2000.

John A. King,

Director, Intermountain Region, National Park Service.

[FR Doc. 00–2612 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, March 2, 2000. The meeting will convene at 6:00 PM at the University Club, University of Massachusetts, 100 Morrissey Boulevard, Healey Library, 11th Floor, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from February 10, 2000
2. Present and review annual report

3. Nomination for Advisory Council seats.
4. Election of officers
5. Discussion on the draft General Management Plan

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, 02110, telephone (617) 223–8667.

Dated: January 24, 2000.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 00–2610 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–427]

Certain Downhole Well Data Recorders and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 5, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Petroleum Reservoir Data, Inc., 700 W. 41st Ave., Suite 101, Anchorage, Alaska 99503. A supplement to the complaint was filed on January 28, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain downhole well data recorders and components thereof by reason of infringement of claims 1, 2 and 4 of U.S. Letters Patent 5,130,705. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1999).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 1, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain downhole well data recorders and components thereof by reason of infringement of claims 1, 2 or 4 of U.S. Letters Patent 5,130,705, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Petroleum Reservoir Data, Inc., 700 W. 41st Ave., Suite 101, Anchorage, Alaska 99503.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Spartek Systems, 4–4 Erickson Crescent, Sylvan Lake, Alberta T4S 1P5, Canada. Halliburton Company, 500 N. Akard, Suite 3600, Dallas, Texas 75201–3391.

(c) Juan Cockburn, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2695 Filed 2–4–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–96 and 439–445 (Review)]

Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: John Fry (202–708–4157), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-

impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Effective October 15, 1999, the Commission established a schedule for the conduct of the subject reviews (64 FR 57483, October 25, 1999). On January 19, 2000, counsel for Wolff Walsrode AG, a German producer, and Bayer Corporation, a German importer, requested a two-month extension of the schedule on the assumption that a decision may be made within that time frame by Hercules, the sole U.S. producer, as to whether it will close or sell its production facility. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675 (c)(5)(B), and is hereby revising its schedule.

The Commission's new schedule for the reviews is as follows: the prehearing staff report will be placed in the nonpublic record on May 18, 2000; the deadline for filing prehearing briefs is May 30, 2000; requests to appear at the hearing must be filed with the Secretary to the Commission not later than May 31, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 5, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 8, 2000; the deadline for filing posthearing briefs is June 19, 2000; the Commission will make its final release of information on July 13, 2000; and final party comments are due on July 17, 2000.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2697 Filed 2–4–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Commission Decision to Review An Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety a final initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., of Boise, Idaho ("complainant"). Respondents are Mosel Vitelic, Inc., of Hsinchu City, Taiwan and Mosel Vitelic Corp. of San Jose, California. The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 FR 51372 (1998).

The complaint alleged violations of section 337 in the importation, sale for importation, and sale after importation of certain semiconductor memory devices and products containing same that infringe claims of U.S. Letters Patents Nos. 5,514,245; 4,992,137; 4,436,584; and 5,486,129. *Id.* On May 17, 1999, the presiding administrative law judge (ALJ) granted complainant's motion for termination of the investigation as to the 245 patent. Complainant's current allegations of infringement concern 18 claims of the 137 patent, six claims of the 584 patent, and one claim of the 129 patent. An evidentiary hearing was held from May 19 through June 2, 1999.

The ALJ issued his final ID on November 29, 1999, concluding that there was no violation of section 337, based on the following findings: (a) complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct. On December 13, 1999, the ALJ issued his recommended determination on remedy and bonding, in the event the Commission concludes there is a violation of section 337.

On December 10, 1999, complainant filed a petition for review of the ID. The Commission investigative attorney (IA) also petitioned for review of the ID. On December 17, 1999, respondents and the IA filed responses to the petitions for review.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety. The Commission has also determined to review two procedural issues: (1) whether the ALJ erred in considering respondents' inequitable conduct allegation that the inventors of the 137 patent intentionally concealed their best mode of practicing their invention; and (2) with respect to the 137 patent, whether the ALJ erred in admitting into evidence videotapes provided by an expert witness that were not made available to complainant until after that expert's deposition.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the

Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's December 13, 1999, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on February 15, 2000. Reply submissions must be filed no later than the close of business on February 22, 2000. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2696 Filed 2–4–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Time To Submit Comments on Consent Decree Lodged Pursuant to Sections 104 and 107 of CERCLA

On December 1, 1999, the United States lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas, No. G–99–731, in *United States of America* v. *GAF Corp., et al.*, pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. 9604 and 9607. The proposed Consent Decree resolves civil claims of the United States against thirty-five *de minimis* generator Defendants for the Tex Tin Superfund Site located in Texas City and La Marque, Texas. The Defendants will pay a total of approximately $1.5 million in reimbursement of response costs at the Site.

On December 16, 1999 a Notice was published which advised that the Department of Justice would receive comments relating to the proposed Consent Decree for 30 days following publication of the Notice. Notice is hereby given that the period during which the Department of Justice will receive comments relating to the proposed Consent Decree has been extended at the request of a member of the public. The Department of Justice will continue to accept comments through the 30th day following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States of America* v. *GAF Corp., et al.*, DJ No. 90–11–3–1669/1. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, Houston, Texas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $14.75 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–2702 Filed 2–4–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Imetal, DBK Minerals, Inc., English China Clays, PLC, and English China Clays, Inc.; Civil Action No. 99–1018 (GK)(D.D.C.); Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Public Comment and the Response of the United States have been filed with the United States District Court for the District of Columbia in United States v. Imetal, DBK Minerals, Inc., English China Clays, PLC, and English China Clays, Inc., Civil Action No. 99–1018 (GK)(D.D.C., filed April 26, 1999). On April 26, 1999, the United States filed a Compliant alleging that the proposed acquisition of English China Clays by Imetal would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time

as the Complaint, permits Imetal to acquire English China Clays, but requires that Imetal divest specified assets used in the manufacture and sale of kaolin, calcined kaolin, paper-grade ground calcium carbonate, and fused silica.

Public comment was invited within the statutory 60-day comment period. The one Comment received, and the Response thereto, have been filed with the Court and are hereby published in the **Federal Register**. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, Public Comment and the Response of the United States are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States' Response to Comment Filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE")

The United States of America hereby files with the Court the single written comment that it received in this case, and its response thereto, and states:

1. The Complaint in this case, the proposed Final Judgment, and the Hold Separate Stipulation and Order ("Stipulation") were filed on April 26, 1999. The United States' Competitive Impact Statement was filed on May 24, 1999.

2. Pursuant to 15 U.S.C. 16(b), the proposed Final Judgment, Stipulation, and Competitive Impact Statement were published in the **Federal Register** on June 11, 1999 (64 FR 31624–38).

3. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Final Judgment and the Competitive Impact Statement were published in The Washington Post, a newspaper of general circulation in the District of Columbia, during the period May 27, 1999 through June 2, 1999.

4. The 60-day comment period specified in 15 U.S.C. 16(b) ended on August 10, 1999. The United States received a single written comment on the proposed settlement, from the Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE"), on August 10, 1999. A copy of that comment is attached as Exhibit 1.

5. Pursuant to 15 U.S.C. 16(d), the United States has considered and responded to that comment. A copy of the United States' response is attached as Exhibit 2.

6. The United States is making arrangements to have PACE's comment and the United States' response thereto published in the **Federal Register**, pursuant to 15 U.S.C. 16(d). As soon as that publication has been effected, the United States will notify the Court that it has complied with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(d), and that the Court may then enter the proposed Final Judgment after it determines that the Judgment serves the public interest.

Dated: January 14, 2000.

Respectfully submitted,

Patricia G. Chick, D.C. Bar #266403, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W. Suite 3000, Washington, D.C. 20530, Telephone: (202) 307–0946, Facsimile: (202) 514–9033, Attorney for Plaintiff the United States.

The Cuneo Law Group, P.C.

August 10, 1999.

Mr. J. Robert Kramer, II
Chief, Litigation II Section Antitrust Division United States Department of Justice

Re: *United States* v. *Imetal, DBK Minerals, Inc., English China Clays, PLC, and English China Clays, Inc., Civil No. 99–1018 (D.D.C.)*

Dear Mr. Kramer:

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the Paper, Allied—Industrial, Chemical and Energy Workers International Union ("PACE") urges the Antitrust Division of the Department of Justice to give "due consideration" to these comments and to "withdraw its consent to the proposed Final Judgment" in this case. Competitive Impact Statement ("CIS") at 11.

Summary

Without remedial action, the Imetal/English China Clays ("ECC") merger will produce a combination of the only two producers in the Southeastern United States of ground calcium carbonate ("GCC") in slurry form for the paper industry, a key ingredient in paper-making. The Antitrust Division has already found that this combination will raise prices and reduce output. According to the Antitrust Division's Complaint in this case: "If the acquisition were permitted, Imetal would * * * have an interest in *all* of the paper grade GCC production capacity in the Southeastern United States" Complaint at 2 (emphasis added) The Complaint goes on to state; "[D]ue to the dominant position Imetal would have with respect to paper-grade GCC sold in the Southeastern United States * * * the threat of unilateral price increases * * * as a result of this acquisition is particularly high." *Id.* Left unchecked, the merger could well combine duopolists into monopolist.

Under the proposed consent decree, Imetal/ECC must spin off certain assets in the hope that another firm will have sufficient economic incentives to enter the market. Such speculative hopes will not substitute for adequate law enforcement. The Antitrust Division's proposed consent decree would allow the replacement of two existing competitors with a single more powerful competitor—and a competitor to be created, maybe. The replacement of two existing competitors with a monopolist and a potential competitor clearly violates Section 7 of the Clayton Act. Moreover, the CIS does not come close to providing enough information to evaluate whether it is in any sense realistic to expect that an effective second competitor will emerge.

Analysis

PACE came into being in January 1999 through the merger of the Oil, Chemical and Atomic Workers International Union and the United Paperworkers International Union. The antitrust interests of PACE in this transition are twofold. First, as a union of 330,00 members, PACE has a direct and substantial interest in the preservation of competitive market conditions. Because a monopolistic output restriction will constrict supply as well as raise prices, unions such as PACE, who are concerned about full employment, have a direct interest in preservation of competitive conditions in the paper industry. PACE represents approximately 125,000 workers in the forest products and paper industry who could be adversely affected by any monopoly constriction of supply. Part, but by no means all, of this concern stems from the fact that PACE Local 3–0516 represents approximately 140 employees at the Imetal-controlled Georgia Marble dry processing facility in Sylacauga, Alabama. Second, PACE and its members are purchasers of paper and paper supplies throughout the United States, including the Southeast, and therefore have a consumer interest in the preservation of a free and open market of all of the ingredients in the paper-making process.

As relevant here, the essential facts are as follows: GCC begins as calcium carbonate, which is found in marble or limestone deposits. Paper-making requires the brightest white GCC. High bright deposits are scarce, and some of the best are located in the Sylacauga area.

Once quarried, GCC is dry-processed through a series of screening and grinding steps into particles. Dry-processed GCC is then wet-processed and sold in slurry form to the paper-making industry. *See generally* CIS at 6. There are no ready substitutes. According to the CIS: "A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products." *Id.*; Complaint at 6.

Earlier this year, Imetal, SA, a large French company, made a cash tender offer of U.S. $1.24 billion to acquire English China Clays, PLC. Both companies have U.S. revenues in the hundreds of millions of dollars.

Imetal owns an American company, DBK Minerals, Inc., which owns Georgia Marble. Georgia Marble owns vast GCC reserves in Sylacauga, and owns and operates a facility to dry process GCC there. Georgia Marble is also a 50% partner in Alabama Carbonates, L.P., which wet processes GCC at a facility located next door to Georgia Marble's dry processing facility.

The acquired company, English China Clays, PLC, is a British firm that owns an American subsidiary, English China Clays, Inc. (referred to collectively as "ECC"). ECC owns and operates a fully integrated GCC mining and processing facility across the street from the Georgia Marble/Alabama Carbonates facilities in Sylacauga.

According to the Justice Department, Imetal and ECC are the *only* two suppliers of GCC to paper mills in the Southeastern United States. It bears repeating that the CIS makes clear that GCC is a product market unto itself: "A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products." CIS at 6.

The CIS also makes clear that GCC in the Southeastern United States is a geographic market: "Because of high transportation costs, sales of GCC tend to be regional rather than nationwide." *Id.* at 7. The Antitrust Division's Complaint charges that the "development, production, and sale of GCC for paper coating applications is a line of commerce and a relevant product market" and the thirteen Southeastern states comprise "a relevant geographic market" within the meaning of Section 7 of the Clayton Act. Complaint, paras. 22, 28–30.

If the merger were left unchallenged, it would reduce a duopoly to a significantly enhanced competitor and a joint venture—Alabama Carbonates—at the mercy of the significantly enhanced competitor. Reserves of sufficient quality are "scarce" and "may be unavailable in the Southeast." For this and other reasons, "new entry is unlikely to occur." Complaint para. 42.

It is axiomatic that reduction from two viable, active competitors to a monopoly in a particular geographic and regional market clearly violates Section 7 of the Clayton Act, 15 U.S.C. § 18, because the merger's impact "may be substantially to lessen competition or to create a monopoly." Under the Herfindahl-Hirschmann Index ("HHI"), the minimum pre-merger HHI of a two-firm market is 5,000, over two and a half times 1800, the HHI index the Merger Guidelines call "highly concentrated." After any merger, the HHI could be as high as 10,000, the maximum HHI possible. U.S. Department of Justice and Federal Trade Commission. *Horizontal Merger Guidelines* § 1.51 (1997).

How does the Antitrust Division propose to remedy this clear competitive problem? By replacing a duopoly with a monopoly and a potential competitor that the Antitrust Division apparently hopes will enter. The proposed Final Judgment requires a number of steps that the Antitrust Division apparently hopes will become the predicate for further entry by another competitor.

The proposed Final Judgment requires: (1) that Georgia Marble dives its interest in the Alabama Carbonates wet-processing facility; and (2) that Imetal/Georgia Marble and/or ECC divest sufficient GCC reserves for Alabama Carbonates to operate at its maximum stated contractual capacity for 30 years. The divestiture of reserves is designed to reduce Alabama Carbonates' dependence on Georgia Marble's reserves and dry processing facilities.

The theory of the proposed Final Judgment is, apparently, that access to these divested reserves is the *"minimum"* that will be sufficient for Alabama Carbonates "*to consider* making the required investments in processing facilities." CICS at 15 (emphasis supplied). In order to effectuate the hoped-for transition, the proposed Final Judgment requires defendants to provide Alabama Carbonates with feedstock for a period of up to three years.

The proposed relief is plainly insufficient under the Clayton Act, the merger Guidelines, and the rule of common sense. Competition in this market is already fragile. There are two competitors only. Under the proposed decree, there is no guarantee that there will even be two competitors in the future, much less two effective competitors. The CIS has no finding, much less a requirement, that Alabama Carbonates will actually enter the market. There is only a hope that if it can gain access to a "minimum" of reserves, Alabama Carbonates will "consider" making the necessary investment to enter the market.

In contrast to the approach in this case, the Horizontal Merger Guidelines require that entry be "timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern." *Horizontal Merger Guidelines*, § 3.0. In this instance, there is no finding of timeliness, likelihood or sufficiency in the CIS. We should not give up current competition in a highly concentrated market in exchange for a hope of future competition.

Likelihood of competition is clearly an issue. So is sufficiency. The CIS makes clear that access to high quality reserves is what drives the ability to compete. Yet, under the best circumstances, Alabama Carbonates is limited to 30 years' worth of supply at its *current* contractual capacity. This artificial limitation, to be sure, raises the question even if Alabama Carbonates enters the market, whether it will have enough reserves to sufficiently compete in the future if demand increases. Access to reserves should be keyed to marketplace demand, not current production capacity.

The Final Judgment should not permit *any* possibility of a decrease in competition in such a highly concentrated market. There can be no question that the proposed merger "may lessen competition" and/or "create a monopoly" in violation of Section 7 of the Clayton Act. According to the CIS, "[t]he proposed transaction would likely result in unilateral price increases to customers in the Southeastern United States. Entry is unlikely to occur, and would *not* be *timely* or *sufficient* to defeat a post-acquisition increase in the price of paper grade GCC." CIS at 10 (emphasis supplied); *see* Horizontal Merger Guidelines § 3.0. The CIS goes on to say: "A *de novo"* entrant would have to acquire substantial high bright reserves in the Southeast, establish a quarry and build a processing plant. While the quarry and plant would require considerable expenditures of money and take substantial time, the most significant barrier is obtaining appropriate reserves. Paper-grade GCC requires high bright reserves, which are scarce resources and are generally believed to be largely unavailable in the Southeast because they were owned primarily by Georgia Marble and ECC. CIS at 10."

There is no promise—much less a guarantee—that the decree will preserve any competition, much less effective competition. The Antitrust Division should require that the Imetal/ECC combination leave existing competition intact and that there be market conditions that maximize future competition. Access to reserves in the future should be pegged to future market demands, not current plant capacity. Nothing less will protect consumers.

PACE is also concerned that the transition provisions of the proposed Final Judgment do not fully protect any fledgling competition. Obviously, a situation in which a firm must rely upon its competitor for supply is inherently subject to competitive abuse. Under the transition provisions of the proposed decree, Imetal/ECC must supply Alabama Carbonates with feedstock for a period of up to three years.

According to the CIS: "This provision is designed to provide Alabama Carbonates with a reasonable transition period to make the investment required for it to be self-sufficient in the long term." *Id.* at 16. This bald statement does not answer any of the questions that naturally arise in a transition. Just a few of the questions might be:

- What proof exists that three years is enough time for a potential competitor to secure financing, gain any necessary permits (*e.g.*, zoning or environmental permits), and actually construct a facility?
- What protections exist against the Imetal/ECC combination's adulterating the product that it furnishes Alabama Carbonates? How will quality of the Imetal/ECC input be monitored and maintained? What protections exist against furnishing the product at grossly excessive prices?
- What protections exist against Imetal/ECC delaying delivery of the necessary inputs?
- What protections exist against the Imetal/ECC combination's low-balling the price of GCC slurry so that it becomes infeasible for Alabama Carbonates to enter?
- What protections exist against the Imetal/ECC combination's engaging in so-called "limit pricing"—pricing above the competitive level but not so high as to induce entry?
- In the event of a recession and a slackening of demand, will there be sufficient incentive for Alabama Carbonates to enter?

In sum, the proposed remedy and explanation are completely insufficient to provide any reassurance that any competition—much less effective competition—will continue to exist. In essence, the Antitrust Division proposes, as a result of this merger, to replace two existing competitors with one competitor and a potential competitor. And there is no reason

to believe that the transition provisions will be sufficient to protect any new competitor that does emerge.

Far from being a reassurance, the CIS is a warning. The Antitrust Division should oppose the merger or force a broader divestiture, and preserve competition.

Thank you very much for your consideration of our views.

Sincerely,

Jonathan W. Cuneo, The Cuneo Law Group, P.C., 317 Massachusetts Avenue, N.E., Suite 300, Washington, DC 20002
Attorneys for The Paper, Allied-Industrial Chemical and Energy Workers International Union

cc: George M. Chester, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, Washington, DC 20004

William R. Norfolk, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

U.S. Department of Justice, Antitrust Division

January 14, 2000.

Jonathan W. Cuneo, Esquire
The Cuneo Law Group, P.C.

Re: Comment on proposed Final Judgment in *United States* v. *Imetal, et al., Civil No. 99 1018 (D.D.C., filed April 26, 1999)*

Dear Mr. Cuneo:

This letter responds to your August 10, 1999 letter commenting on the proposed Final Judgment in *U.S.* v. *Imetal, et al.*, Civil No. 99–1018 (D.D.C., filed April 26, 1999), which is currently pending in federal district court in the District of Columbia. The Complaint in the case charged that Imetal's acquisition of English China Clays ("ECC") would substantially lessen competition in a number of relevant markets, including in the manufacture and sale of paper-grade ground calcium carbonate ("GCC") in the southeastern United States. The proposed Final Judgment would settle the case by requiring divestitures in all the relevant markets alleged. With respect to paper-grade GCC, the proposed Final Judgment requires that Imetal divest its interest in the limited partnership through which it participates in that market, and also divest substantial reserves for the use of that entity.

In your letter, you expressed concern that the proposed Final Judgment did not go far enough to eliminate the effects of Imetal's acquisition of ECC in the market for paper-grade GCC in the southeastern United States. Specifically, you characterize the mandated divestiture as requiring Imetal to "spin off certain assets in the hope that another firm will have sufficient economic incentives to enter the market," and resulting in "the replacement of two existing competitors with a single more powerful competitor—and a competitor to be created."

I disagree with your characterization of the market structure that would result from the proposed Final Judgment, and thus with the fundamental premise of your comments. Before Imetal announced its plans to acquire ECC, there were two competitors in the manufacture and sale of paper-grade GCC in the southeastern United States: ECC and Alabama Carbonates. After Imetal's acquisition of ECC, there are still the same two viable competitors in this market. The competitive issue arose because Imetal had a 50% interest in ECC's only competitor, Alabama Carbonates. The proposed Final Judgment, by requiring Imetal to divest its interest in Alabama Carbonates, ensure that the two competitors that existed before the acquisition will continue to exist as competitors after the acquisition. Alabama Carbonates does not need to "enter the market", it is already in the market. The remedy provided for in the proposed Final Judgment means that Imetal's acquisition of ECC results in no change in the number of firms selling paper-grade GCC in the southeastern United States, no change in concentration, and no change in the HHI for that market.

As you are aware, Alabama Carbonates has historically competed in this market by contracting for its raw materials. Since its inception, it has purchased the feedstock for its wet-processing operations from its joint venturer, Georgia Marble (Imetal). With Imetal's acquisition of ECC, however, if Alabama Carbonates were to continue this arrangement, it would be dependent on its only competitor for its source of supply. The proposed Final Judgment requires Imetal to continue to provide feedstock for the Alabama Carbonates operation, if requested, for up to three years, to permit Alabama Carbonates a reasonable amount of time in which to become independent of Imetal. In addition, recognizing that the company might well decide that the optimum way to achieve that independence is through vertical integration, and that a lack of adequate reserves would be a substantial barrier to such integration, the proposed Final Judgment also requires that Imetal divest substantial reserves of GCC for use by Alabama Carbonates.

Specifically, the proposed Final Judgment requires that Imetal divest sufficient reserves so that Alabama Carbonates will have enough feedstock to make 500,000 tons a year of GCC for thirty years. The United States specified this quantity of reserves in the proposed Final Judgment because we concluded, based on our investigation, that 500,000 tons was an efficient scale for a dry processing plant, and that a business would need to be assured a 30-year supply of reserves in order to justify the investment required to build a dry processing plant. This provision is not intended to limit Alabama Carbonates to competing at its current capacity—rather, it provides the reserves for the company to operate efficiently far into the future. Moreover, there is nothing in the decree that limits in any way the company's ability to expand its operations, including seeking additional reserves.

The United States strongly believes that the divestitures in the proposed Final Judgment relating to paper-grade GCC and other injunctive relief will alleviate the competitive concerns alleged in the Complaint. The divestiture of Imetal's interest in the Alabama Carbonates joint venture and the reserves needed to build a viable dry processing plant ensures that there will be no reduction in the pre-acquisition competition. The two competitors that existed before the acquisition will continue to exist. The requirement that Imetal divest reserves eliminates what could have been a substantial barrier to Alabama Carbonates' continuing to compete without being dependent on Imetal for feedstock for its operations. And finally, the transition agreement assures that Alabama Carbonates will be able to continue as a competitor in the short term while it takes the steps necessary to eliminate its historical dependence on Imetal. The term of that transition agreement was set based on the United States' conclusion, from its investigation, that three years would be sufficient for the joint venture to make the transition to independence. The proposed Final Judgment does provide a mechanism for extending that term, however, if this assumption proves incorrect. In addition, the requirement that the terms of the transition agreement be substantially similar to the supply agreement that existed before the acquisition, and subject to approval by the United States, should provide sufficient protection against the kinds of conduct that you have expressed concern about.

Thank you for bringing your concerns to our attention. I trust you appreciate that we have given them due consideration, and hope this response will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II, Chief, Litigation II Section

Certificate of Service

I hereby certify that I caused a copy of the foregoing United States' Response to Comment Filed by the Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE") to be served by first class mail, postage prepaid, this 14th day of January, 2000, on:

George M. Chester, Jr., Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004–7566, Counsel for All Defendants
Jonathan W. Cuneo, Esquire, The Cuneo Law Group, P.C., 317 Massachusetts Avenue, N.E., Suite 300, Washington, D.C. 20002, Counsel for PACE
Patricia G. Chick, D.C. Bar #266403, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0946.

[FR Doc. 00–2703 Filed 2–4–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 28, 2000.

The Department of Labor (DOL) has submitted the following public

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: The 13 Carcinogens Standard.

OMB Number: 1218–0085.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 97.

Estimated Time Per respondent: Time per response ranges from approximately 5 minutes (for employers to maintain records) to 5 hours (for employers to develop emergency/incident reports).

Total Burden Hours: 2,798.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $86,226.

Description: The 13 Carcinogens Standard requires employers to develop signs and labels to warn employees about the hazards associated with the 13 carcinogens. Also, employers must notify OSHA Area Directors of new regulated areas, changes to regulated areas, and incidents that occur in regulated areas. Employers must establish and implement a medical surveillance program for employees assigned to enter regulated areas. This program must inform employees of their medical examination results and provide them with access to their medical records. In addition, employers must retain employee medical records for specified time periods and provide these records to the National Institute for Occupational Safety and Health under certain circumstances.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–2644 Filed 2–4–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 28, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Revising Quarterly Contribution and Wage Reports to Accommodate Expanded Name Fields and Additional Labor Market Information.

OMB Number: 1205–0New.

Affected Public: State, Local, or Tribal Government.

Frequency: One-time.

Number of Respondents: 53.

Estimated Time Per Respondent: 100 Hours.

Total Burden Hours: 5,300.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected with this survey is necessary to assess the burden employers and SESAs would experience if the quarterly contribution and wage reports filed by employers and processed by SESAs were revised to accommodate full names and additional labor market information (LMI). The full name fields are necessary to enhance the efficiency of the National Directory of New Hires database in locating the employment of individuals who are not meeting their parental responsibilities. The additional LMI data are needed to improve the ability to accurately assess the value of various Workforce Investment Act vocational training programs and to enrich the pool of LMI data available.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Employment and Training Administration.

Title: Standard Job Corps Request for Proposal and Related Contractor Information Gathering.

OMB Number: 1205–0219.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

RECURRING PERIODIC JOB CORPS REPORTS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Inspection Residential & Educational Facilities	6–37	114	4	456	1	456
Inspection Water Supply Facilities	6–38	114	4	456	1.25	570
Inspection of Waste Treatment Facilities	6–39	114	4	456	1.25	570
Program Description—Narrative Section	6–124	114	1	114	1	114
Job Corps Health Staff Activity	6–125	114	1	114	.25	29
Job Corps Health Annual Service Costs	6–128	114	1	114	.25	29
Job Corps Utilization Summary	6–127	114	12	1368	2	2,736
Center Financial Report	2110	114	12	1368	3.25	4,446
Center Operations Budget	2181/2181A	250	2	500	2.00	1,000
WSSR Log	6–142B					900
Total Burden						10,850

JOB CORPS NON-PERIODIC REPORTS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Property inventory transcript	3–28	175	12	2100	.75	1,575
Disciplinary discharge	6–131A	1500	1	1500	.5	750
Review board hearings	6–131B	1500	1	1500	.10	150
Rights to appeal	6–131C	1500	1	1500	.10	150
Total Burden						2,625

JOB CORPS CENTER PLANS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Center operation plan		86	1	86	30	2,580
Maintenance		114	1	114	5	570
C/M Welfare		114	1	114	2	228
Annual VST (if applicable)		114	1	114	4	456
Annual staff training		114	1	114	1	114
Energy Conservation		114	1	114	5	570
Outreach (if applicable)		114	1	114	2	228
Total Burden						4,746

STUDENT RECORDS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Allowance & allotment change	6–101					
Forms transmittal letter	6–102					
Signature card	6–103					
Voucher for allocation for living expense	6–104					
Initial allowance authorization	6–106					
Receipt for taxable clothing and transportation	6–105					
Receipt for cash payment	6–107					
Receipt for miscellaneous cash collections	6–108					
Total burden						7,800

Data from the automated forms listed above are being collected from data input screens which are transmitted electronically to a centralized database. This data are then processed for management and performance reports and ad hoc queries at a Center, contractor, regional and national level. The deletion of these forms significantly reduced paper and mailing of hard copy documents.

PERSONNEL REQUIREMENTS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Notice of termination	6–61	60000	1	60000	.03 (2 min.)	1,800
Student profile	6–640	60000	1	60000	.017 (1 min.)	1,020
Academic achievement cert.	6–99	50	20	1000	.10 (6 min.)	100
Total Burden						2,900

NON-STANDARD MEDICAL RECORDS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Immunication record	6–112	60000	1	60000	.10	6,000
CM Health record envelope	6–135	60000	1	60000	.25	15,000
CM Health record folder	6–136	60000	1	60000	.25	15,000
Total Burden						36,000

Standard Job Corps Center Request for proposals (RFPS): 19,800 hours.

Total Burden Hours: 84,741.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Standard Request for Proposal for the operation of a Job Corps Center completed by prospective contractors for competitive procurements and Federal paperwork requirements for contract operators of such centers.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–2645 Filed 2–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

January 27, 2000.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by February 18, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Ira Mills, Departmental Clearance Officer, ((202) 219–5096, x 143). Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of response.

Type of Review: Emergency.

Agency: Employment and Training Administration.

Title: Workforce Investment Act Cumulative Quarterly Financial Reporting for Funds Allotted to States for Services to Youth, Services to Adults, Services to Dislocated Workers, Local Area Administration, Statewide Activities (15% of Total Federal Allotment), and Statewide Rapid Response.

OMB Number: 1205–0New.

Frequency: Quarterly.

Affected Public: States, Local, or Tribal governments; Not-for-profit institutions.

Number of Respondents: 56.

DOL-ETA REPORTING BURDEN FOR WIA TITLE I–B STATES

Requirements	PY 1999	PY 2000	PY 2001	PY 2002
Number of Reports Per Entity Per Quarter	3	3	3	3
Total Number of Reports Per Entity Per Year	12	12	12	12
Number of Hours Required Per Report	1	1	1	1
Total Number of Hours Required for Reporting Per Entity Per Year	12	12	12	12

DOL-ETA Reporting Burden for WIA Title I–B States—Continued

Requirements	PY 1999	PY 2000	PY 2001	PY 2002
Number of Entities Reporting	16	56	56	56
Total Number of Hours Required for Reporting Burden Per Year	192	672	672	672

Note: Number of reports required per entity per quarter/per year is impacted by the 3 year life of each year of appropriated funds, *i.e.*, PY 1997 and 1998 funds are available for expenditure in PY 1999, thus 3 reports reflect 3 available funding years. DOL estimates 16 entities reporting for PY 1999. Beginning in PY 2000, all entities (56) are required to report under WIA.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The proposed Information Collection Request (ICR) incorporates the necessary reporting instructions for States to report financial data related to Workforce Investment Act programs to DOL. These instructions have been prepared in response to the requirement set forth at 20 CFR 667.300, for DOL to issue financial reporting instructions to States; and to ensure State compliance with the reporting elements contained in the Workforce Investment Act (WIA) of 1998, Subtitle E. Sec. 185.

The WIA requires quarterly financial reports which shall include information identifying all program and activity costs by cost category in accordance with generally accepted accounting principles and by year of appropriation. The WIA also requires reporting any income or profits earned, such including such income or profits earned by subrecipients and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. In addition, WIA requires the reporting of costs only as administrative or programmatic, with computerization/technology costs not included in the administrative cost limit calculation.

The Standard Form 269 has been modified to provide the six reporting formats which will be used for WIA reporting. Separate reporting formats will be needed for: (1) Local area youth, (2) local area adults, (3) local area dislocated workers, (4) local administration, (5) Statewide activities (15% total Federal allotment), and (6) Statewide rapid response.

ETA is designing software that will contain the data elements required for each of the reporting formats. Instructions corresponding to the required data elements also will be provided to the States in the software package. Transmittal of this data will occur on a quarterly basis via the Internet.

The data collection and reporting requirements requested by the Employment and Training Administration are necessary to effectively manage and evaluate the financial status of the WIA program, to measure regulatory compliance, to prepare required reports to Congress, and for audit purposes.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–2646 Filed 2–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Homeless Veterans' Reintegration Project Competitive Grants

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant applications for Homeless Veterans Reintegration Projects (SGA 00–01).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act. Such projects will assist eligible veterans who are homeless by providing employment, training, supportive and transitional housing assistance. Under this solicitation, VETS may award up to thirty-three grants in FY 2000.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 00–01. VETS anticipates that up to $8.25 million will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, *all applicants must register their name and address with the Procurement Services Center.* Please send this information as soon as possible, Attention: Grant Officer, to the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210. Please reference SGA 00–01.

DATES: One (1) blue ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210, not later than 4:45 p.m., Eastern Standard Time, March 8, 2000, or be postmarked by the U.S. Postal Service on or before that date. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Lisa Harvey, Reference SGA 00–01, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION:

Homeless Veterans Reintegration Project Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services in accordance with the Stewart B. McKinney Homeless Assistance Act (MHAA), as reauthorized and codified at Title 38, Chapter 41, Section 4111. These instructions contain general program information, requirements and forms for application for funds to operate a Homeless Veterans Reintegration Project (HVRP).

II. Background

The Stewart B. McKinney Homeless Assistance Act of 1987, enacted on July 22, 1987, under Title VII, Subtitle C, Section 738 provides that "The Secretary shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to *expedite the reintegration of homeless veterans into the labor force.*" This program was reauthorized under Section 621 of the McKinney Homeless Assistance Amendments Act of 1990 (Public Law 101–645) for an additional three years, *i.e.*, through FY 1993. Under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590—enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995. However, the program was rescinded in FY 1995. Public Law 104–275, dated October 9, 1996, was amended to reauthorize the program through FY 1998. Public Laws 105–41 and 105–114, enacted in 1997, extend the program through FY 1999. Public Law 106–73 dated October 19, 1999, reauthorized and codified at Title 38, Chapter 41, Section 4111 extends the program through FY 2003.

The Homeless Veterans Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. In accordance with the MHAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $8.25 million of the funds available to award grants for HVRPs in selected cities in FY 2000 under this competition. A separate competition for a small number of demonstration grants to operate in rural areas will be announced separately within a short time. Both types of projects, urban and rural, in the past have provided valuable information on approaches that work in the different environments.

III. Application Process

A. Potential Jurisdictions to be Served

Due to the demonstration nature of the Act, the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the MHAA, the only potential jurisdictions which will be served through this urban competition for HVRPs in FY 2000 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix E.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) and/or Workforce Investment Boards (WIBS) as defined in Title I, Section 102 of the Job Training Partnership Act (JTPA), Public Law 97–300, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and homeless problems of veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

2. Also eligible to apply are nonprofit organizations which have operated an HVRP or similar employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility of the organization.

Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $8.25 million. It is anticipated that up to 33 awards may be made under this solicitation. Awards are expected to range from $100,000 to $250,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding this range by 15% or more may be considered non-responsive.

D. Period of Performance

The period of performance will be for nine months from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before April 1, 2000. Actual start dates will be negotiated with each successful applicant.

E. Second Year Option

As stated in Section II of this Part, the Homeless Veterans Reintegration Project was reauthorized and codified by statute at Title 38, Chapter 41, Section 4111. Should there be action by Congress to appropriate funds for this purpose, a second year option may be considered. The Government does not, however, guarantee an option year for any awardee.

The grantees' performance during the first period of operations will be taken into consideration as follows:

1. By the end of the second quarter, has the grantee achieved at least 60% of the nine month total goals for Federal expenditures, enrollments, and placements? or

2. Has the grantee met 85% of goals for Federal expenditures, enrollments and placements for the nine month period if planned activity is NOT evenly distributed in each quarter? and

3. The Grantee is in compliance with all terms identified in the solicitation for grant applications.

All instructions for modifications and announcement of fund availability will be issued at a later date. Please note that the Government does reserve its right to compete any subsequent funds appropriated for this purpose in lieu of an option year.

F. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EST, March 8, 2000, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before March 8, 2000;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2)

working days, excluding weekends and Federal holidays, prior to March 8, 2000.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

G. Submission of Proposal

A cover letter, and an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I—Technical Proposal shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Resumes, charts, standard forms, exhibits, letters of support and letters of reference are not counted against the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the narrative. The following format is strongly recommended:

1. Need for the project: the applicant should identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program, and programs under the Job Training Partnership Act. Please include a plan for follow up of participants who entered employment at 30 and 90 days and also a plan for follow up six months after the end of the ninety day period. (See discussion on results in Section V. D.) Include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information called for in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the homeless and to veterans: Describe the linkages this programs will have with other providers of services to veterans and to the homeless outside of the HVRP grant. List the types of services provided by each. Note the type of agreement in place if applicable. Linkages with the workforce development system [inclusive of JTPA and State Employment Security Agencies (SESAs)] should be delineated. Describe any linkages with Department of Housing and Urban Development (HUD) and Department of Veterans Affairs resources and programs for the homeless. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be delineated. (For consideration by panel members, the government reserves the right to have a representative of the Veterans' Employment and Training Service within your state provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of applications) Provide information denoting outcomes of past programs in terms of enrollments and placements. Applicants who have operated an HVRP program, or Homeless Veterans Employment and Training (HVET) program should include final or most recent technical performance reports. (This information is also subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans will be obtained or accessed. These resources may be from linkages or sources other than the HVRP grant such as HUD, community housing resources, DVA leasing or other programs. The applicant should explain whether HVRP resources will be used and why this is necessary.

Part II—Cost Proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative." Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.805, which should be entered on the SF 424, Block 10. Please show leveraged resources/matching funds and/or the value of in-kind contributions in Section B of the Budget Information Sheet.

Budget Narrative Information

As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and

percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 32.5 cents per mile;

(d) In order that the Department of Labor meet legislative requirements, submit a plan along with all costs associated with retaining participant information pertinent to a longitudinal follow up survey for at least six months after the ninety day closeout period.

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind Services.

IV. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 USC 11302).

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

V. Project Summary

A. Program Concept and Emphasis

The HVRP grants under Section 738 of the Stewart B. McKinney Homeless Assistance Act are intended to address dual objectives:

Provide services to assist in reintegrating homeless veterans into the labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2000 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of housing resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The HVRP has since its inception featured an outreach component consisting of veterans who have experienced homelessness. In recent years this requirement was modified to allow the projects to utilize formerly homeless veterans in other positions where there is direct client contact if outreach was not needed extensively, such as counseling, peer coaching, intake and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to homeless veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is required.

3. Projects will be "employment focused." That is, they will be directed towards (a) increasing the employability of homeless veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

C. Scope of Program Design

The HVRP project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at shelters, day centers, soup kitchens, VA medical centers and other programs for the homeless. Program staff providing outreach services are to be veterans who have experienced homelessness.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, JTPA Title IV, Part C (IV–C) Veterans' Employment Program

—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary and other programs, including those offering transitional housing

—Veteran service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS)

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug
—Medical
—Post Traumatic Stress Disorder
—Mental Health
—Coordinating with MHAA Title VI programs for health care for the homeless

Referral to housing assistance provided by:

—Local shelters
—Federal Emergency Management Administration (FEMA) food and shelter programs
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing)

Employment and training services such as:

—Basic skills instruction
—Basic literacy instruction
—Remedial education activities
—Job search activities
—Job counseling
—Job preparatory training, including resume writing and interviewing skills
—Subsidized trial employment (Work Experience)
—On-the-Job Training
—Classroom Training
—Job placement in unsubsidized employment
—Placement follow up services
—Services provided under JTPA Program Titles

D. Results-Oriented Model

Based on past experience of grantees working with this target group, a workable program model evolved which

is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the HVRP to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for results rather than process. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach veterans who are homeless. This may also include establishing contact with other agencies that encounter homeless veterans such as shelters, soup kitchens and other facilities. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Transitional housing may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. The DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff have received training in case management at the National Veterans' Training Institution and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources. If the DVOP and LVER staff are not being utilized, the applicant must submit a written explanation explaining the reasons why they are not.

Follow up to determine if the veteran is in the same or similar job at the 30 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping the job may be provided. The 90 day followup is fundamental to assessing the results of the program interventions. Grantees should be careful to budget for this activity so that followup can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

VETS emphasizes in its Strategic Plan to implement GPRA that suitable outcomes involve careers, not just jobs. Successful results are achieved when the veteran is in the same or similar job after one or more years. Towards that end, VETS solicits the cooperation of successful applicants to budget for the activity of retaining participant information pertinent to a longitudinal follow up survey, *i.e.*, at least for six months after the ninety day closeout period. Retention of records will be reflected in the Special Provisions at time of award.

E. Related HVRP Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the HVRP program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by HVRP grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, to out station staff, to develop individual service contracts, and to involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. *Providers of hands-on services to the homeless*, such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

b. *Federal, State and local entitlement services* such as the Social Security Administration, Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate JTPA, labor exchange and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

c. *Civic and private sector groups*, and especially veterans' service organizations, to describe homeless veterans and their needs.

2. Stand Down Support

A "Stand Down" as it relates to homeless veterans is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing and medical attention. For the most part this type of event is a volunteer effort which is organized within a community and brings service providers such as the DVA, Disabled Veterans Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such exercises have been held throughout the nation. In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP MHAA grant funds may be used to supplement the Stand Down effort where funds are not otherwise available and should be reflected in the budget and budget narrative.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify approximately 33 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based

upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 00–01 is the final agency action. The submission of the same proposal from any prior year HVRP or HVET competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant shall document the extent of need for this project, as demonstrated by: (1) the potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 30 Points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement followup services. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (DVOP and LVER Programs), JTPA IV-C, other JTPA programs, and Workforce Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services. Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 20 Points

The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless or veterans in the local community outside of the HVRP grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's "continuum of care" approach to respond to homelessness and any linkages to HUD or DVA programs or resources to benefit the proposed program.

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for HVRP, HVET or other relevant programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. Quality of Overall Housing Strategy: 15 Points

The application should demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, lease, HVRP or other means. HVRP funds may not be used to purchase housing.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of costs, but will not be scored.

VII. Post Award Conference

A post-award conference for those awarded FY 2000 HVRP funds is tentatively planned for April or May, 2000. Costs associated with attending this conference for up to three grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs shall be charged as administrative costs and reflected in the proposed budget. The site of the conference has not yet been determined but will likely be for three days in Washington, DC. Please use Washington, DC for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below:

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form*. These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report no later than 30 days after the end of each Federal fiscal quarter. Grantee will submit to the DVET a Quarterly Technical Performance Report (QTPR) containing the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of the corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after grant expiration.

In addition, the grantees will also be required to submit a closeout Technical Performance Report pertinent to the longitudinal follow up efforts due 6 months after the 90 day closeout period.

C. Summary of Final Report Packages

No later than 90 days after the grant period ends, regardless of approval for second year funding, the grantee will submit a final report containing the following:

1. Final Financial Status Report (SF–269A).

2. Final Technical Performance Report—(Program Goals).

3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined (directed/assisted) number of veterans placed during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

No later than 6 months after the 90 day closeout period, the grantee will submit a followup report containing the following:

1. Closeout Financial Status Report (SF–269A).

2. Closeout Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)

3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in MHAA grants to SESAs.

4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, DC this 1st day of February, 2000.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C; Assurances and Certifications Signature Page

Appendix D. Technical Performance Goals Form

Appendix E. List of 75 largest U.S. Cities

Appendix F. HVRP Performance Goals Definitions

Appendix G. Direct Cost Descriptions for Applicants and Sub-Applicants

BILLING CODE 4510-30-P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Appendix D

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 30 Days				
Number Retaining Jobs For 90 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Appendix E

POTENTIAL HVRP JURISDICTIONS - FY 2000

ALABAMA
- Birmingham

ALASKA
- Anchorage

ARIZONA
- Mesa
- Phoenix
- Tucson

CALIFORNIA
- Anaheim
- Fresno
- Long Beach
- Los Angeles
- Oakland
- Riverside
- Sacramento
- San Diego
- San Francisco
- San Jose
- Santa Ana
- Stockton

COLORADO
- Aurora
- Colorado Springs
- Denver

DISTRICT OF COLUMBIA

FLORIDA
- Jacksonville
- Miami
- St. Petersburg
- Tampa

GEORGIA
- Atlanta

HAWAII
- Honolulu

ILLINOIS
- Chicago

INDIANA
- Indianapolis

KANSAS
- Wichita

KENTUCKY
- Lexington-Fayette
- Louisville

LOUISIANA
- Baton Rouge
- New Orleans

MARYLAND
- Baltimore

MASSACHUSETTS
- Boston

MICHIGAN
- Detroit

MINNESOTA
- Minneapolis
- St. Paul

MISSOURI
- Kansas City
- St. Louis

NEBRASKA
- Omaha

NEVADA
- Las Vegas

NEW JERSEY
- Jersey City
- Newark

NEW MEXICO
- Albuquerque

NEW YORK
- Buffalo
- New York
- Rochester

POTENTIAL HVRP JURISDICTIONS - FY 2000

NORTH CAROLINA
- Charlotte
- Raleigh

OHIO
- Akron
- Cincinnati
- Cleveland
- Columbus
- Toledo

OKLAHOMA
- Oklahoma City
- Tulsa

OREGON
- Portland

PENNSYLVANIA
- Philadelphia
- Pittsburgh

TENNESSEE
- Memphis
- Nashville/Davidson

TEXAS
- Arlington
- Austin
- Corpus Christi
- Dallas
- El Paso
- Fort Worth
- Houston
- San Antonio

VIRGINIA
- Norfolk
- Virginia Beach

WASHINGTON
- Seattle

WISCONSIN
- Milwaukee

PUERTO RICO
- San Juan

Appendix F

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans' Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Appendix G

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

[FR Doc. 00–2643 Filed 2–4–00; 8:45 am]
BILLING CODE 4510–79–C

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award Information—Grant Proposal Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by April 7, 2000 to be assured of consideration. Comments received after the date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 306–1125 x 2017 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Sciences Foundation Proposal/Award Information—Grant Proposal Guide".

OMB Approval Number: 3145–0058.

Expiration Date of Approval: June 30, 2002.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The missions of NSF are to: increase the Nation's base of scientific and engineering knowledge and strengthen its ability to support research in all areas of science and engineering; and promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future. The Foundation is committed to ensuring the Nation's supply of scientists, engineers, and science educators. In its role as leading Federal supporters of science and engineering, NSF also has an important role in national science policy planning.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new projects, and makes approximately 10,000 new awards. Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is cleared under OMB Control No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 38,000 proposals are expected during the course of one year. These figures compute to an estimated 4,560,000 public burden hours annually.

Dated: February 2, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–2669 Filed 2–4–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Workshop Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Public Workshop.

SUMMARY: NRC will host a public workshop in Rockville, Maryland to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This workshop follows the recent public stakeholder workshop held in Rockville, Maryland on December 15, 1999. Presentations and other documents provided at each workshop, together with a transcript of each workshop, are placed on the NRC INTERNET web page (http://www.nrc.gov).

Similar to the revision of the oversight program for commercial nuclear power plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, "EVALUATION AND PROPOSED REVISION OF THE NUCLEAR FUEL CYCLE FACILITY SAFETY INSPECTION PROGRAM." SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Workshop

To obtain stakeholder views for improving the NRC oversight program for ensuring licensee and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for nuclear material in the interest of national security. The oversight program applies to nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, and environment. In revising the oversight program, the goal is to have an oversight program that: (1) provides earlier and more objective indications of acceptable and changing safety and safeguards performance, (2) increases

stakeholder confidence in the NRC, and (3) increases regulatory effectiveness and efficiency. In this regard, the NRC desires the revised oversight program to be more risk-informed and performance-based and more focused on significant risks and poorer performers.

The workshop will focus on:

- Industry initiatives for identification, resolution, and correction of problems
- Objective and scope of safety and safeguards oversight program cornerstones
- Key safety and safeguards risk attributes for each cornerstone
- Safety and safeguards performance attributes the NRC needs to monitor and assess to ensure cornerstone objectives are met
- Performance monitoring attributes and means

DATES: The workshop, which is open for public participation, is scheduled for 8:00 a.m. to 5:00 p.m. on Tuesday, February 22, and Wednesday, February 23, 2000.

ADDRESSES: NRC's Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION, CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland this 1st day of February 2000.

For the Nuclear Regulatory Commission.

Walter Schwink,

Assistant Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 00–2709 Filed 2–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised Reactor Oversight Process Workshop

AGENCY: Nuclear Regulatory Commission

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on a concept as described in SECY–99–007, "Recommendations for Reactor Oversight Process Improvements" dated January 8, 1999, and SECY–99–007A, "Recommendations for Reactor Oversight Improvements (Follow-Up to SECY–99–007)" dated March 22, 1999. On June 18, 1999, the Staff Requirements Memorandum on SECY–99–007 and SECY–99–007A was issued which approved the scope and concepts for the revised reactor oversight process (RROP), and approved the staff's plan for conducting a pilot program. The six-month pilot program for the RROP was conducted at two sites per region from May 30, 1999, to November 27, 1999. The purpose of the pilot program was to apply the RROP and collect lessons learned so that the various processes and procedures could be refined and revised as necessary prior to initial implementation.

Now that the pilot program is complete and lessons learned identified, the NRC will hold public workshops in each of the four NRC regions. The workshop will provide information to NRC, industry, and the public on the NRC's Revised Reactor Oversight Process that is currently scheduled to be implemented starting April 2, 2000, pending NRC Commission approval. The workshop will focus on the key attributes of the new oversight process and their associated program documents.

Information about the revised reactor oversight process and the pilot program is available on the Internet at: *www.nrc.gov/NRR/OVERSIGHT/index.html*

A preliminary agenda for the workshop will consist of the following:

Day 1: registration, background and concept review, workshop objectives, performance indicators—overview, performance indicator threshold review, examples, and recent changes

Day 2: baseline inspection program—overview, program review, procedure review, and recent changes supplemental inspection program, inspection planning and documentation regional inspection planning significance determination processes (SDP)—reactor and non-reactor, including recent changes

Day 3: reactor and non-reactor SDPs) examples of SDP and enforcement (parallel breakout sessions for enforcement and recent changes event response inspection activities assessment process, examples, and recent changes wrap-up/closing remarks

DATES: Registration for the workshop will be held from 8:00 to 10:00 on the first day of the workshop. There is no pre-registration. The workshop will run from 10:00 a.m. to 5:00 p.m. the first day and from 8:00 a.m. to 5:00 p.m. the second and third day.

Workshop Locations

Region III

Date: Feb 22–24
Address: Hilton Lisle/Naperville, IL, 3003 Corporate West Dr, Lisle, IL 60532.
Telephone: (630)–505–0900.
Special Rate: $89.00*
Cut off date: 1/31/2000

Region II

Date: March 6–8, 2000
Address: Georgia International Convention Center (Location is Tentative), 1902 Sullivan Road, College Park, GA 30337–0506.
Hotel: There are a number of Hotels in the immediate area. The convention center does not have sleeping facilities.

Region IV

Date: March 14–16, 2000.
Address: Wyndham Arlington, 1500 Convention Center Drive, Arlington, TX 76011.
Telephone: (800)–442–7275.
Special Rate: $77*.
Cut off date: 2/11/2000.

Region I

Dated: March 21–23, 2000.
Address: Holiday Inn, Independence Mall, 400 Arch Street, Philadelphia, PA.
Telephone: (800)–843–2355.
Special Rate: $139*.
Cut off date: 2/28/2000.

* Special group rate is available when registering with the hotel and asking for the "NRC's Regulatory Oversight Process Workshop" block of rooms. The group rate is subject to applicable state and local taxes and availability.

FOR FURTHER INFORMATION CONTACT: Alan Madison, Mail Stop: O5–H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555–001, telephone 301–415–1490.

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission.

William M. Dean,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2710 Filed 2–4–00; 8:45 am]

BILLING CODE 7590–01–U

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Unemployment Benefits and Employment Service, OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days). Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325.

RRB Form UI–1, Application for Unemployment Benefits and Employment Service, is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 also registers an unemployment claimant for the RRB's employment service. Significant non-burden impacting, formatting and editorial changes are being proposed to Form UI–1.

The RRB also utilizes Form UI–3, Claim for Unemployment Benefits, for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days. The RRB proposes minor non-burden impacting editorial changes to UI–3.

Completion of Forms UI–1 and UI–3 is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB estimates that approximately 11,200 Form UI–1's are filed annually. Completion time is estimated at 10 minutes. The RRB estimates that approximately 67,500 Form UI–3's are filed annually. Completion time is estimated at 6 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–2615 Filed 2–4–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24271; 812–11954]

AirTouch Communications, Inc.; Notice of Application

January 28, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: AirTouch Communications, Inc. ("AirTouch") requests an order under section 3(b)(2) of the Act declaring that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

Filing Dates: The application was filed on January 24, 2000.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. AirTouch, One California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Michael Mundt, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (Tel. 202–942–8090).

Applicant's Representations

1. AirTouch is a Delaware corporation and a subsidiary of Vodafone AirTouch Public Limited Company ("Vodafone AirTouch"). AirTouch states that it is the third largest provider of cellular and personal communication services in the United States. Vodafone AirTouch owns approximately 96.8% of the outstanding voting securities of AirTouch. AirTouch states that at the present time it is not an investment company under section 3(a) of the Act.

2. On September 21, 1999, Vodafone AirTouch entered into an agreement with Bell Atlantic Corporation ("Bell Atlantic") to create a new joint venture ("Wireless"), a Delaware general partnership, through which they will conduct their U.S. wireless telecommunications business. AirTouch and Bell Atlantic will transfer their U.S. mobile telecommunications businesses and assets to Wireless (the "Transaction"), with AirTouch contributing approximately 46% of the value of its total unconsolidated assets. GTE Corp., following its merger with Bell Atlantic, also will contribute its cellular and personal communication services assets to Wireless. After contribution of these assets, AirTouch

will hold a 45% general partner interest in Wireless and Bell Atlantic will hold the remaining 55% general partner interest. The Transaction is expected to be consummated in early March 2000. AirTouch states that, following the Transaction, on an unconsolidated basis, approximately 62% of its total assets will consist of securities of operating companies that AirTouch controls (within the meaning of section 2(a)(9) of the Act), including Wireless, approximately 17% will consist of securities of wholly- and majority-owned subsidiaries, approximately 19% will consist of other securities, and approximately 2% will consist of assets other than securities.[1]

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. AirTouch states that as a result of the Transaction, it may meet the definition of an investment company under section 3(a)(1)(C) of the Act because Wireless will not be a wholly- or majority-owned subsidiary and, therefore, AirTouch's "investment securities," as defined in section 3(a)(2) of the Act, may represent approximately 81% of its total assets on an unconsolidated basis.

3. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. AirTouch requests an order under section 3(b)(2) declaring that it is primarily engaged through its wholly- and majority-owned subsidiaries and controlled companies in a business other than that of investing, reinvesting, owning, holding, or trading in securities.[2]

4. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the SEC considers: (a) The applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

(a) *Historical Development.* AirTouch states that it has been an operating company since 1984, developing mobile telecommunications networks and providing telecommunications services in the U.S. and, beginning in 1989, overseas.

(b) *Public Representations of Policy.* AirTouch states that it has never held, and does not now hold, itself out as an investment company. AirTouch asserts that, in its annual reports, shareholder communications, prospectuses, SEC filings, and on its Internet web site, it consistently has held itself out to the public as an operator of mobile telecommunications networks and provider of telecommunications services.

(c) *Activities of Officers and Directors.* AirTouch states that its officers and directors are actively engaged in the management of its wholly- and majority-owned subsidiaries and controlled companies through which AirTouch conducts its telecommunications business. AirTouch states that it has approximately 14,000 full-time employees, only two of whom spend any time on investment activities.

(d) *Nature of Assets.* AirTouch states that, as of September 30, 1999, its assets other than securities, together with securities of wholly- and majority-owned subsidiaries, represented approximately 65%, securities and controlled companies represented approximately 16%, and other securities represented approximately 19% of its total assets on an unconsolidated basis. AirTouch further states that, following the consummation of the Transaction, on a pro forma basis, its assets other than securities, together with securities of wholly- and majority-owned subsidiaries, will represent approximately 19%, securities of controlled companies, including Wireless, will represent approximately 62%, and other securities will represent approximately 19% of its total assets on a unconsolidated basis.

(e) *Sources of Income.* AirTouch states that for the twelve months ended March 31, 1999, it had net income of $844 million, of which 40.1% was attributable to its wholly- and majority-owned subsidiaries, 45.3% was attributable to controlled companies,and 14.6% was attributable to investments. AirTouch states that post-Transaction, on a pro forma basis, for the twelve months ended March 31, 1999, its net income was $925 million, of which 86.7% was attributable to controlled companies, including Wireless, and 13.3% was attributable to investments.

5. AirTouch thus states that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2605 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

[2] If the requested order is granted, Vodafone AirTouch's counsel have advised Vodafone AirTouch that it is not an investment company under section 3(a) of the Act.

[3] *See Tonopah Mining Company of Nevada*, 26 S.E.C. 426, 427 (1947).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42362; File No. SR–OPRA–00–02]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

January 28, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 28, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment proposes to allocate the message handling capacity of OPRA's processor among the participant exchanges for a temporary period ending March 4, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's (*i.e.*, Securities Industry Automation Corporation) aggregate message handling capacity.[3] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Plan amendment, and to grant accelerated approval to the proposed Plan amendment through March 4, 2000.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to allocate the message handling capacity of its processor among the participant exchanges for a temporary period ending March 4, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's aggregate message handling capacity. During this period, the processor's aggregate message-handling capacity, which is estimated by the processor to be 3,110 messages per second, will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 910 messages per second
Chicago Board Options Exchange: 1,210 messages per second
Pacific Exchange: 545 messages per second
Philadelphia Stock Exchange: 445 messages per second

OPRA proposes to allocate the message handling capacity of its processor in response to significant increases in the number of options quotations that have recently been experienced by all of the participant exchanges as a result of the greater number of options series being traded on the exchanges and the heightened volatility in the underlying securities. Although the aggregate amount of options market information messages is generally still within the capacity of the OPRA processor, the aggregate options message traffic is now so close to reaching the processor's maximum message-handling capacity that some short-term solution to the problem is necessary to avoid risking unacceptable delays and queuing in the dissemination of real-time options market information. Although some long-term solutions have been proposed in the course of the Options Capacity Planning and Quote Mitigation Program that has been taking place over the past several months, these may not be in place soon enough to deal with the current expansion of message traffic.[4] For this reason, during the month of January 2000, OPRA's participant exchanges agreed upon a capacity allocation based upon an assumed maximum processor capacity of 3,000 messages per second.[5] OPRA's processor now estimates that the capacity allocation may prudently be adjusted upwards to reflect an assumed maximum processor capacity of 3,110 messages per second. Accordingly, OPRA's participant exchanges, in the presence of Commission staff pursuant to the September 1999 Order, have agreed to the allocation that is proposed in this filing to be effective during February 2000. Because this allocation is based upon an assumed maximum processor capacity of 3,110 messages per second, which the processor advises is a realistic number, it should serve the intended purpose of avoiding delays and queues in OPRA's real-time stream of market information.

To retain sufficient flexibility to deal with changed circumstances within and among the options markets, including the planned commencement of options trading by the International Securities Exchange, the proposed allocations will remain in effect only until March 4, 2000, unless OPRA decides that the proposed allocation or some revised allocation should be continued beyond that date.[6]

II. Implementation of the Plan Amendment

OPRA believes the temporary implementation of the proposed capacity allocation program is essential to avoid delays and queues in the dissemination of options market information, which in turn is necessary to achieve the objective of Section 11A(a)(1)(C)(iii),[7] including to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the proposed allocation program to be put into effect summarily upon publication of notice of this filing, on a temporary basis, pursuant to paragraph (c)(4) of Rule 11Aa3–2,[8] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–00–2 and should be submitted by February 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed Plan amendment is consistent with the requirements of the Act and the rules

[3] OPRA has determined to treat this proposed capacity allocation as an amendment to its national market system plan and, accordingly, to file the proposed capacity allocation for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2. Any determination made by OPRA to continue the effectiveness of the proposed capacity allocations or any revised capacity allocations beyond March 4, 2000 will be the subject of a separate filing under the same Rule.

[4] *See* Exchange Act Release No. 41843 (September 8, 1999) in which the Commission issued an order authorizing the options exchanges, OPRA, OPRA's processor and other parties to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic and related matters ("September 1999 Order").

[5] *See* Exchange Act Release No. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (File No. SR–OPRA–00–01).

[6] Any such continued allocation of OPRA capacity that might be approved by OPRA would be the subject of a separate filing under Rule 11Aa3–2. 17 CFR 240.11Aa3–2. *See* note 3, *supra*.

[7] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[8] 17 CFR 240.11Aa3–2(c)(4).

and regulations thereunder.[9] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation proposal is a reasonable means for addressing potential strains on capacity that may occur between now and March 4, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate and possibly, implement, other quote mitigation strategies. In addition, the limited time frame of the applicability of the capacity allocation program should provide the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed Plan amendment is appropriate and consistent with Section 11A of the Act.[10]

[9] In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition,and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[11] that the proposed Plan amendment (SR–OPRA–00–02) is approved on an accelerated basis through March 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2607 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42371; File No. SR–CBOE–99–63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals for FLEX Equity Options

January 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 1999, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to delete Interpretation .01 of CBOE Rule 24A.4(c)(2)[3] which limits exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete Interpretation .01 under CBOE Rule 24A.4(c)(2). This interpretation limits the exercise price intervals and exercise prices available for FLEX Equity call options to those intervals and prices that are available for Non-FLEX Equity call options pursuant to Interpretation and Policy .01 under CBOE Rule 5.5. This policy was intended to eliminate uncertainty concerning what constitutes a "qualified" covered call for certain purposes under the Internal Revenue Code pending clarification of this tax issue.

Currently, under Section 1092(c)(4)(B) of the Internal Revenue Code, certain covered short positions in call options qualify for advantageous tax treatment if the options are not in the money by more than a specified amount at the time they are written. One measure used to determine whether a call option is qualified is whether its exercise or "strike" price is no lower than the "lowest qualified benchmark price," which is generally the highest strike price available for trading that is less than the current price of the underlying stock. Since the exercise prices of FLEX Equity Options are not subject to the same intervals that apply to Non-FLEX Equity Options, this has raised the question whether the existence of a series of FLEX Equity Options with a strike price of, for example, 58 when the price of the underlying stock is 59 would disqualify a Non-FLEX call option with a strike price of 55, which would otherwise be the highest strike price available that is less than the price of the stock.

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 240.11Aa3–02.

[11] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved this Interpretation in 1996. *See* Release No. 34–37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).

The Internal Revenue Service ("IRS") reviewed this issue and proposed rulemaking that would not require that strike prices established by equity options with flexible terms be taken into account in determining whether standard term equity options are too deep in the money to receive qualified covered call treatment.[4] The IRS approved this proposal on January 25, 2000.[5] The effect of the IRS rulemaking and the Exchange's proposed withdrawal of the limitation on the exercise price of Equity FLEX call options is that certain taxpayers, particularly institutional and other large investors, can engage in transactions in Equity FLEX call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Internal Revenue Code for qualified covered call options involving equity options with standard terms.

The Exchange believes that the proposed rule change, by eliminating a restriction on Equity FLEX call options which has restricted their usefulness as a risk managing mechanism, will remove impediments to and perfect the mechanism of a free and open market in FLEX Equity Options, and thus is consistent with the objectives of Section 6(b)(5)[6] of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[7] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent wit the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–63 and should be submitted by February 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[8] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[9] of the Act. Section6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission believes that the proposal allows sophisticated, high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow investors to manage their risks by having the ability to negotiate strike prices, contract terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the potential adverse tax effect on qualified covered calls, the Exchange limited FLEX call strike prices to those available for standardized equity calls. Now that the tax issue has been clarified, this limitation is being removed. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX options.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. A virtually identical proposal, SR–CBOE–98–39, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comment.[11] CBOE later withdrew SR–CBOE–98–39 because the IRS had not yet acted on its proposed rulemaking. The current proposal mirrors the changes that were originally proposed in SR–CBOE–98–39. In addition, the proposal allows FLEX options to be used as they were originally intended to be used, and therefore raises no new regulatory issues. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–98–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2606 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42365; File No. SR–Phlx–99–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration of Trading Floor Personnel

January 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

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[4] Department of the Treasury, IRS REG–104641–97, 63 FR 34616 (June 25, 1998).

[5] Department of the Treasury, IRS REG–104641–97, 65 FR 3812 (January 25, 2000).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission expects that the Options Disclosure Document ("ODD") will promptly be amended to reflect the removal of the risk strike price limitation for FLEX equity call options. *See* October 1996 Supplement to the ODD. Telephone call between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Katherine A. England, Assistant Director, Division of Market Regulation, Commission, on January 31, 2000.

[11] *See* Release No. 34–40584 (October 21, 1998), 63 FR 58080 (October 29, 1998) (notice of filing of SR–CBOE–98–39.)

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Phlx Rule 620, Trading Floor Registration. The proposed rule requires that all trading floor personnel be registered with the Exchange; trading floor personnel successfully complete specified examinations,[3] and all member/participant organizations notify the Exchange of any change in the status of such personnel. The Exchange also is proposing to amend Regulation 7(b), Required Filing for Floor Member Firm Employee Status Notices with the Exchange, to include members, non-members and clerks to be consistent with the test of new Phlx Rules 620.[4] Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 620: Trading Floor Registration

(a) Trading Floor Member Registration—Registered Options Trader on any Exchange trading floor must register as such with the Exchange by completing the appropriate form(s) (with period updates submitted by the firm, as determined by the Exchange) and successfully complete the appropriate floor trading examination(s), if prescribed by the Exchange, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the trading status of any such members/participant who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

(b) Non-member/Clerk Registration—All trading floor personnel, including clerks, interns, stock execution clerks and any other associated person, of member/participant organizations not required to register pursuant to Rule 620(a) must register as such with the Exchange by completing the appropriate form(s) for non-registered persons (with periodic updates submitted by the firm, as determined by the Exchange). Further, the Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the status of any such personnel of a member/participant organization who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

* * * * *

Regulation 7

(a) No Change

(b) Required Filing for Floor Member Firm Employee Status Notices with the Exchange

Following the termination of, or the initiation of a change in the trading status of any *member/participant or any non-member/clerk and trading floor personnel including clerks, interns, stock execution clerks and any other associated person, of member/participant organizations* [employee of a member/participant firm] who have been issued an Exchange access card and trading floor badge, *the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and* [a completed "Status Notice" must be] submitted to the *appropriate Exchange Department* [Director of Regulatory Services of the exchange] as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Further, every effort should be made to obtain the employee's access card and trading floor badge and to submit these to the *appropriate Exchange Department* [Security Department].

1st Occurrence	$100.00
2nd Occurrence	$200.00
3rd Occurrence and Thereafter.	Sanction is discretionary with the Business Conduct Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change requires, in a single Exchange rule, all floor personnel to be registered with the Exchange and all member/participant organizations to notify the Exchange of any change in the status of such personnel. The Phlx believes that this will enable the Exchange to more efficiently monitor individuals on the Exchange's trading floors, as well as their current status.

Currently, Regulation 7(b) governs the termination of, or the initiation of change in the trading status of, an employee of a member/participant firm who has been issued an exchange access card and trading floor badge. New Phlx Rule 620 codifies Regulation 7(b) into a more comprehensive Exchange Rule. Phlx Rule 620(a) sets forth a comprehensive rule that addresses registration, examinations, termination

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[3] The Phlx's current practice is to administer an examination to specialists, market makers and other floor trading personnel before giving them access to the trading floor. This examination, developed by the Phlx, is undergoing conversion from a paper test to a computer-generated test of 100 random questions covering Phlx trading rules. Although the Phlx does not currently administer an examination to clerks and other "non-member" floor personnel, the Phlx will explore the feasibility of such a test during the current year. Telephone conversion among Adrienne Hart, First Vice President, Regulatory Group, Cynthia Hoekstra, Counsel, Phlx, and Joseph Morra and Geoffrey Pemble, Attorneys, Division of Market Regulations, SEC, December 10, 1999.

[4] Regulation 7 was enacted pursuant to Phlx Rule 60, Assessments for Breach of Regulations. *See* Securities Exchange Act Release No. 27629 (January 16, 1990), 55 FR 2469 (Jan. 24, 1990) (File No. SR–Phlx–90–1).

and change in status of trading floor members, which includes floor brokers, specialists, and market makers, including Registered Options Traders on any Exchange trading floor. Phlx Rule 620(b) addresses non-member/clerk registration of all trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons of member/participant organizations who are not required to be registered pursuant to Phlx Rule 620(a).[5]

The exchange believes that the proposal to require all floor personnel to be registered with the Exchange and to require all member/participant organizations to notify the exchange of any change in the status of such personnel is consistent with Section 6 of the Act,[6] in general, and with Sections 6(b)(5)[7] and 6(c)(3)(B),[8] in particular. Specifically, new Phlx Rule 620 is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that all trading floor personnel are properly registered and, thus, monitored. In addition, Section 6(c)(3)(B)[9] provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the Exchange and require any person associated with a member, or any class of such persons, to be registered with the Exchange in accordance with procedures so established.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20540–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–46 and should be submitted by February 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2662 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

[5] The Exchange presently requires the completion of forms and procedures for registering new floor members pursuant to various Phlx Rules, including Rule 202, Registrant (Specialists); Rule 214, Violations of Rules (Specialists); Rule 604, Registration and Termination of Registered Person; Rule 623, Fingerprinting; Rule 1020, Registration and Functions of Options Specialists; Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; and Rule 1061, Registration of Floor Brokers.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Appointment of Member to Agency Performance Review Board

AGENCY: Office of Special Counsel (OSC).

ACTION: Notice.

Authority: 5 U.S.C. § 4314(c)(4).P='04'≤

SUMMARY: This notice announces the appointment of the following individual to serve as a new member of the Performance Review Board previously established by the OSC pursuant to 5 U.S.C. 4314(c)(2): Steven J. Mandel, Associate Solicitor, Fair Labor Standards Division, Office of the Solicitor, U.S. Department of Labor.

FOR FURTHER INFORMATION, CONTACT: M. Marie Glover, Director of Personnel, Management Division, U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036–4505, telephone (202) 653–8964.

Dated: February 1, 2000.

Elaine Kaplan,

Special Counsel.

[FR Doc. 00–2634 Filed 2–4–00; 8:45 am]

BILLING CODE 7405–01–U

DEPARTMENT OF STATE

[Public Notice 3217]

Culturally Significant Objects Imported for Exhibition Determinations: "The Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about

February 27, 2000, to on or about May 28, 2000, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, DC 20547–0001.

Dated: January 31, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–2713 Filed 2–4–00; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2000–2–1; Docket OST–99–5798]

Application of Cardinal Airlines, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Cardinal Airlines, Inc., fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 17, 2000.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–99–5798 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: February 1, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–2677 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

Federal Highway Administration

Woodrow Wilson Bridge; Potomac River, District of Columbia and Prince George's County, MD

AGENCY: Federal Highway Administration, Coast Guard, DOT.

ACTION: Notice of public hearings; correction.

SUMMARY: This document contains corrections to the notice of public hearings which was published January 6, 2000 (65 FR 801). The notice announced the dates and locations of two public hearings to receive information concerning the environmental and navigational impacts of the replacement of the Woodrow Wilson Bridge, but the notice did not contain the snow dates for these meetings.

DATES: This correction is effective on February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John Gerner, Project Manager (FHWA), Woodrow Wilson Bridge Center, 1800 Duke Street, Suite 200, Alexandria, Virginia 22314 (703 519–9800); Mr. N.E. Mpras, Chief, Office of Bridge Administration, Commandant (G–OPT), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 (202 267–0368); or Ms. Ann Deaton, Chief, Bridge Administration Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (757 398–6222).

SUPPLEMENTARY INFORMATION:

Need for Correction

The Federal Highway Administration and the Coast Guard published a document in the Federal Register of January 6, 2000 (65 FR 801), which announced the dates and location of two public hearings to receive information concerning the environmental and navigational impacts of the replacements of the Woodrow Wilson Bridge. That document failed to publish alternative snow dates for these meetings. This document corrects that oversight.

In notice FR Doc. 00–258 published on January 6, 2000 (65 FR 801), make the following corrections: On page 801, second column, under **DATES:** correct the first sentence to read "The hearing will start 7 p.m. on Tuesday, February 8, (snow date February 15) and Thursday, February 10, 2000, (snow date February 16) and display materials will be available beginning at 5:30 p.m. on these dates."

Dated: February 2, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard Director of Operations Policy.

[FR Doc. 00–2694 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, Connecticut

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 8, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England

Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose use a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 20, 2000, the FAA determined that the application to impose and use a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 2000.

The following is a brief overview of the impose and use application.

PFC Project #: 00–10–C–00–BDL.

Level of the proposed PFC: $3.00.

Charge effective date: July 1, 2000.

Estimated charge expiration date: January 1, 2001.

Estimated total PFC revenue: $4,358,000.

Brief description of projects:

Impose project: Construction and Installation of Instrument Landing System—CAT II/III Runway 24.

Impose and Use projects: Acquisition Snow Removal Equipment; and Upgrade of Surface Condition Monitoring System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may insect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on January 26, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–2673 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement: Linn County, Iowa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for a proposed roadway and bridge project at Cedar Rapids in Linn County, Iowa.

FOR FURTHER INFORMATION CONTACT: Philip Taylor, Assistant Transportation Engineer, Federal Highway Administration, Iowa Division Office, 105 6th Street, Ames, Iowa 50010, Telephone: (515) 233–7307. Harry S. Budd, Director, Office of Project Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1391.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT), will prepare a supplement to the environmental impact statement (FHWA–Iowa–EIS–78–4–DS) for the proposed construction of the extension of Iowa 100 around Cedar Rapids. The proposed project begins at U.S. 30 west of Cedar Rapids and extends north and northeast to existing Iowa 100 at Edgewood Road. The supplement to the environmental impact statement will evaluate a proposed four-lane, controlled access roadway connected by a bridge across the Cedar River. Total length of the proposed project is approximately 12.9 km (8.0 mile).

The proposed project is considered necessary to complete the highway loop around Cedar Rapids and alleviate congestion on several major arterial highways. It is also needed to reduce traffic congestion on Interstate-380 and other major arterials, provide another more northern river crossing for truck traffic, reduce transportation costs and social environmental impacts elsewhere in Cedar Rapids, and enhance economic development.

The environmental impact statement (FHWA–Iowa–EIS–78–4–F) was approved October 6, 1980. A supplement to the 1980 EIS is being prepared to examine new information and changes that were not addressed in the 1980 EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will be sought throughout the analysis of this proposal. In addition, a public hearing will be offered. A scoping meeting with interested public agencies was held September 15, 1999, to identify significant environmental issues that should be addressed. The participating agencies will be kept informed of any significant changes in the scope of the environmental analysis. Public notice will be given of the time and place of all public meetings. The draft supplemental environmental impact statement will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the supplement to the EIS should be directed to the FHWA or Iowa DOT at the addresses provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: January 31, 2000.

Bobby W. Blackmon,

Division Administrator.

[FR Doc. 00–2614 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Global Positioning System (GPS) Technology Pilot Demonstration Project; Extension of Deadline for Submission of Applications

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of extension of deadline for submission of applications to participate in pilot demonstration project.

SUMMARY: The FMCSA is extending the deadline for motor carriers to submit applications to participate in the agency's Global Positioning System (GPS) technology pilot demonstration project. This project allows qualified motor carriers that use GPS technology and related safety management computer systems to enter into an agreement with the FMCSA to use such systems to record and monitor drivers' hours-of-service, in lieu of requiring them to prepare handwritten records of duty status. This project is intended to demonstrate that the motor carrier industry can use this technology to improve compliance with the hours-of-service requirements in a manner which promotes safety and operational efficiency while reducing paperwork.

DATES: Applications must be received on or before December 29, 2000.

ADDRESSES: Written applications should be mailed to: GPS Technology Pilot Demonstration Project, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001, or Mr. Charles Medalen, Office of Chief Counsel (HCC–20), (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Application requests and specific questions regarding this pilot demonstration project may also be directed to the contact person(s) named in this notice or the Division Offices of the FMCSA in your State.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register home page at: *http://www.nara.gov/fedreg*and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Creation of New Agency

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748). The new statute established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule rescinding the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS's Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Resource Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. For the time being, all phone numbers and addresses are unchanged.

Background

On September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers to use certain automatic on-board devices to record their drivers' duty status in lieu of the handwritten records required by 49 CFR 395.8. This provision is now codified at 49 CFR 395.15. Many motor carriers employing this technology found that their compliance with the hours-of-service regulations improved. New technologies are emerging, however, and the current on-board recorder provision is becoming obsolete. Before considering changes to the rule, the agency determined that it would be prudent to demonstrate the effectiveness of more recent technology for ensuring compliance with the hours-of-service regulations.

On April 6, 1998 (63 FR 16697), the FHWA announced a pilot project that would allow motor carriers to use GPS technology and related computer programs to monitor compliance with the hours-of-service regulations. Drivers would be exempted from the requirement to maintain paper logs. Werner Enterprises, Inc., was the first carrier to enter into an agreement with the FHWA to use GPS technology for this purpose.

On July 13, 1999 (64 FR 37689), the FHWA extended the deadline for submission of applications to participate in the GPS technology pilot demonstration project. The agency indicated that it had received letters and telephone calls from various entities expressing interest in participating in the program and that two of these entities had acquired the software necessary to participate. The agency also indicated that other entities would soon have the hardware and software necessary. To date, however, Werner Enterprises, Inc. is the only carrier operating under an agreement with the agency to use GPS technology to monitor drivers' hours-of-service.

Reason for Extending the Application Deadline

The FMCSA believes GPS technology and many of the complementary safety management computer systems currently available to the motor carrier industry provide at least the same degree of monitoring accuracy as 49 CFR 395.15. The FMCSA also believes extending the application deadline to enable other motor carriers to participate will help to demonstrate that the use of technology to reduce paperwork and minimize recordkeeping burdens is consistent with highway safety.

The FMCSA continues to receive letters or telephone calls from motor carriers expressing interest in participating in the GPS pilot demonstration project. Many of these motor carriers are either considering modifications to their current GPS technology programs, or planning to have changes made to GPS technology being purchased, in order to meet the hardware and software requirements for participation in the pilot demonstration project. The FMCSA is extending the application deadline until December 29, 2000, to provide these motor carriers with an opportunity to participate in the pilot demonstration project once they have in place the hardware and software needed to satisfy the criteria for participation. Motor carriers that wish to participate in the pilot demonstration project must have GPS technology and complementary safety management computer systems which meet all of the

conditions specified in the April 6, 1998, notice.

Authority: 49 U.S.C. 31136, and 31502; and 49 CFR 1.73.

Issued on: January 26, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 00–2675 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–6853]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR 810, 400 Seventh St., SW, Room 7209, Washington, DC 20590. Telephone: 202–366–8888, or FAX 202–366–6988.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Inventory of American Intermodal Equipment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0503.

Form Numbers: None.

Expiration Date of Approval: September 30, 2000.

Summary of Collection of Information: The collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment.

Need and Use of the Information: The information contained in the inventory provides data about U.S.-based companies that own or lease intermodal equipment and is essential to both government and industry in planning for contingency operations.

Description of Respondents: The report requests information from U.S. steamship and intermodal equipment leasing companies.

Annual Responses: 22.

Annual Burden: 66 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility; accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: February 2, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–2711 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2000-6854]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Seamen's Claims; Administrative Action and Litigation."

DATES: Comments should be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, D.C. 20590, telephone number—202–366–4161. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0522.

Form Number: None.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: The collection of information is obtained from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

Need and Use of the Information: The information obtained will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.

Description of Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration, or successor. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of officers or crew members.

Annual Responses: 250 responses.

Annual Burden: 3,125 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: February 2, 2000.

By Order of the Maritime Administrator.
Joel C. Richard,
Secretary.
[FR Doc. 00–2712 Filed 2–4–00; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–2000–6845]

Request for OMB Clearance of an Information Collection; Customer Satisfaction Surveys

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics (BTS) intends to request approval from the Office of Management and Budget for an information collection, its Customer Satisfaction Surveys. Before submitting its request, BTS is publishing this notice to invite public comment on the continuing need and usefulness of BTS collecting this information.

DATES: You must submit your written comments by April 7, 2000.

ADDRESSES: Please send comments to the Docket Clerk, Docket No. BTS–2000–6845, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

You only need to submit one copy. If you would like the Department to acknowledge receipt of the comments, you must include a self-addressed stamped postcard with the following statement: Comments on Docket BTS–2000–6845. The Docket Clerk will date stamp the postcard and mail it back to you. If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information. This website can also be used to read comments received.

FOR FURTHER INFORMATION CONTACT: Heather M. Contrino, Office of Statistical Programs and Services, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, telephone number 202/366–6584, email heather.contrino@bts.gov.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Surveys.
OMB Control Number: 2139–0007.
Type of Request: Extension of a currently approved collection.
Needs and Uses: Executive Order 12862, Setting Customer Service Standards, directs BTS to conduct surveys to determine the kind and quality of services and products our customers want and their level of satisfaction with existing services and products. BTS will use the information it collects to improve product development and service delivery and determine whether additional products and services are needed.
Description of Survey Topics: In 1998 and 1999, the BTS Customer Survey Program included two surveys—the Product Evaluation Survey (PES) and the Customer Satisfaction Survey (CSS). The main objective of the PES was to give BTS a better understanding of the technical preferences and information needs of specific users. While it provided information on levels of customer satisfaction, the PES focused on products. The main objective of the CSS was to provide information about the overall satisfaction of BTS customers, the frequency of use of products and services, and specific information on how BTS is meeting various customer service criteria. Although the CSS addresses some product issues such as format compatibility and difficulty of use, those were not the main objectives of the survey.

In the next three years, BTS anticipates surveys in two areas—products and services. The product survey is a continuation of the CSS and PES and will sample the population of BTS customers who have ordered BTS products. The survey will obtain information on overall levels of customer satisfaction, technical preferences, and informational needs of customers. In addition, it will obtain feedback from customers on specific BTS products.

The services surveys will provide BTS with feedback on the services it provides to the general public and to other agencies in the Department of Transportation. Through these surveys, BTS will obtain feedback on the quality, completeness, utility, responsiveness, and timeliness of its Statistical Information Line, National Transportation Library, website, and BTS-sponsored workshops.

Burden Statement: The total annual respondent burden estimate is 1,665 hours. The number of respondents and average burden hour per response will vary with each survey.

Public Comments Invited: BTS requests comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the Bureau of Transportation Statistics; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information, including the use of automated collection techniques or other forms of information technology. BTS will summarize the comments submitted in response to this notice in its request for OMB clearance.

Susan Lapham,
Acting Associate Director for Statistical Programs and Services.
[FR Doc. 00–2676 Filed 2–4–00; 8:45 am]
BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Gerling Global Reinsurance Corporation of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable reinsurer on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 35895 to reflect this addition: *Gerling Global Reinsurance Corporation of America. Business address: 717 Fifth Avenue, New York, NY 10022.* Phone: (212) 754–7500. Underwriting Limitation b/: $34,265,000. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at

http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 24, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–2603 Filed 2–4–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1999. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 2000, which began on October 1, 1999.

DATES: These COLAs are effective December 1, 1999. The headstone or marker allowance rate is effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (212A), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under former 38 U.S.C. 2306(d), VA was authorized to provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the lesser of the actual cost of the non-Government headstone or marker or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O.G.C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1999 under the above computation method was $90. Therefore, effective October 1, 1999, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 2000 is $90.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.4 percent cost-of-living increase in Social Security benefits effective December 1, 1999. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1999:

TABLE 1.—IMPROVED PENSION

Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $8,989
Veteran with one dependent, $11,773
For each additional dependent, $1,532
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $14,999
Veteran with one dependent, $17,782
For each additional dependent, $1,532
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $10,987
Veteran with one dependent, $13,771
For each additional dependent, $1,532
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $11,773
Either veteran in need of aid and attendance, $17,782
Both veterans in need of aid and attendance, $23,168
Either veteran housebound, $13,771
Both veterans housebound, $15,770
One veteran housebound and one veteran in need of aid and attendance, $19,777
For each dependent child, $1,532
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $6,026
Surviving spouse and one child in his or her custody, $7,891

TABLE 1.—IMPROVED PENSION—Continued

Maximum annual rates
For each additional child in his or her custody, $1,532
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $9,635
Surviving spouse with one child in custody, $11,497
Surviving Spouse of Spanish-American War veteran alone, $10,258
Surviving Spouse of Spanish-American War veteran with one child in custody, $12,119
For each additional child in his or her custody, $1,532
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $7,367
Surviving spouse and one child in his or her custody, $9,228
For each additional child in his or her custody, $1,532
(8) Surviving child alone (38 U.S.C. 1542), $1,532

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $2,037. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $429 reduced on the basis of the parent's annual income according to the following formula:

TABLE 2

For each $1 of annual income		
The $429 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$800
.08	$800	10,226

No DIC is payable under this table if annual income exceeds $10,226.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $309 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $309 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	10,226

No DIC is payable under this table if annual income exceeds $10,226.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $289 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $289 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	13,746

No DIC is payable under this table if combined annual income exceeds $13,746.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $230 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $10,226 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $10,726 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $13,746 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $14,246 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $8,358 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,262 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,951 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $12,905 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.). Effective December 1, 1999, spina bifida monthly rates are as follows:

Level I $213
Level II $743
Level III $1,272

Dated: January 24, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–2636 Filed 2–4–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 65, No. 25
Monday, February 7, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce

Correction

In notice document 00–2198 beginning on page 4801 in the issue of Tuesday, February 1, 2000, make the following correction:

On page 4801, first column, in the third line of **ADDRESSES:** remove the space in front of *gov* in the electronic address. It should be corrected to read "*http://www.ecommerce.gov/ebarriers/respond*".

[FR Doc. C0–2198 Filed 2–4–00; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL-6524-3]

Recovered Materials Advisory Notice III

Correction

In notice document 00–1068, beginning on page 3082, in the issue ofWednesday, January 19, 2000, make the following corrections:

1. On page 3082, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, in the seventh line, "V." should read "IV.".

2.On page 3089, in the first column, in the table, under the heading Postconsumer content (%), in the sixth line, above the number "67" add "16".

3. On page 3089, in the first column, in the table, under the heading Total recovered materials content (%), in the fifth line, above the number "100" add "25-30".

[FR Doc. C0–1068 Filed 2–4–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485

[HCFA-1053-CN2]

RIN 0938-AJ50

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates; Corrections

Correction

In rule document 00–126 beginning on page 1817 in the issue of Wednesday, January 12, 2000 make the following corrections:

On page 1822, in the table:

a. In the 18th entry, the "GAF" listing should read 1.1301.

b. In the 19th entry, the "Wage Index" and "GAF" listings should respectively read "1.3784"and "1.2458".

[FR Doc. C0–126 Filed 2–4–99; 8:45 am]

BILLING CODE 1505–01–D

VOL

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Federal Register

Monday,
February 7, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Reduced Vertical Separation Minimum (RVSM); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–1999–5925; Amdt. No. 91–261]

RIN 2120–AG82

Reduced Vertical Separation Minimum (RVSM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airspace where Reduced Vertical Separation Minimum (RVSM) may be applied to include Pacific oceanic airspace. RVSM is the reduction of the vertical separation of aircraft from 2,000 feet to 1,000 feet at flight levels (FLs) between FL 290 (29,000 feet) and FL 410 (41,000 feet). RVSM is applied only between aircraft that meet stringent altimeter and autopilot performance requirements. RVSM is currently applied only in North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) airspace. The introduction of RVSM in Pacific oceanic airspace will make more fuel and time efficient flight levels and tracks available to operators. RVSM will also enhance airspace capacity in the Pacific. In North Atlantic airspace, RVSM has been shown to maintain in acceptable level of safety since March 1997.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 600 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking actions should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 99–15 published in the **Federal Register** on July 8, 1999 (64 FR 37018) as amended by correction that was published in the **Federal Register** on July 28, 1999 (64 FR 40791). That proposed rule proposed to amend 14 CFR Part 91 Appendix G, Operations within Airspace Designated as Reduced Vertical Separation Minimum (RVSM) Airspace.

A final rule is published in the **Federal Register** at least 30 days before the effective date unless it is determined that good cause exists to provide an effective date that is less than 30 days after publication. This final rule will be effective less than 30 days after publication to meet the implementation date agreed to by the International Civil Aviation Organization (ICAO) Pacific RVSM Implementation Task Force. The Flight Information Regions (FIRs) and aircraft associated with specific oceanic airspace have planned to implement RVSM in the Pacific on the effective date.

Statement of the Problem

Air traffic on Pacific routes between the U.S. and Asia has increased steadily in the past few years and is projected to continue to increase. The North Pacific Track System (NOPAC) is the densest oceanic traffic area in the Pacific. Between 1994 and 1998, the annual traffic count on the NOPAC increased from 42,305 to 60,772 flights which represents an increase of 44 percent. The FAA Aviation Forecast for Fiscal Years 1998–2010 estimates that transpacific passenger traffic will continue to increase at the rate of 6.6 percent per year through 2010. Studies conducted by independent aviation industry analysts forecast the Pacific area to be the fastest growing area for flights to and from the United States.

Unless action is taken, as traffic increases, the opportunity for aircraft to fly at fuel-efficient altitudes and tracks will be significantly diminished. In addition, air traffic service providers may not be able to accommodate greater numbers of aircraft in the airspace without invoking restrictions that can result in traffic delays and fuel penalties.

RVSM alleviates the limitation on air traffic management at high altitudes imposed by the conventional 2,000-foot vertical separation standard. Increasing the number of FLs available in the Pacific region is projected to achieve operator benefits similar to those achieved in the NAT (*i.e.*, mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks). In the Pacific, the FAA plans to initially implement RVSM between FL 290 and FL 390 (inclusive). At this time, traffic density above FL 390 does not warrant implementing RVSM at FL 400 and FL 410.

History

The International Civil Aviation Organization (ICAO) Asia Pacific Air Navigation Planning and Implementation Regional Group (APANPIRG) develops and provides oversight for plans and policy related to air navigation in the Pacific and Asia. The APANPIRG established the Asia Pacific RVSM Task Force to develop and implement RVSM policy and programs in the Region. The Task Force is using the policy and criteria developed in other ICAO forums to build the RVSM program for the Pacific. The following paragraphs review the RVSM program development in U.S. and ICAO forums.

Rising traffic volume and fuel costs, which made flight at fuel-efficient altitudes a priority for operators, sparked an interest in the early 1970s in implementing RVSM above FL 290. In April 1973, the Air Transport Association of America (ATA) petitioned the FAA for a rule change to reduce the vertical separation minimum to 1,000 feet for aircraft operating above FL 290. The petition was denied in 1977 in part because (1) aircraft altimeters had not been improved sufficiently, (2) improved maintenance and operational standards had not been developed, and (3) altitude correction was not available in all aircraft. In addition, the cost of modifying nonconforming aircraft was prohibitive. The FAA concluded that granting the ATA petition at that time would have adversely affected safety. Nevertheless, the FAA recognized the potential benefits of RVSM under certain circumstances and continued to review technological developments, committing extensive resources to studying aircraft altitude-keeping performance and necessary criteria for safely reducing vertical separation above FL 290. Data showing that RVSM

implementation is technically and economically feasible has been published in studies conducted cooperatively in international forums, as well as separately by the FAA.

Because of the high standard of performance and equipment required for RVSM, the FAA advocated initial introduction of RVSM in oceanic airspace where special navigation performance standards were already required. Special navigation areas require high levels of long-range navigation precision due to the separation standard applied. RVSM implementation in such airspace requires an increased level of precision demanded of operators, aircraft, and vertical navigation systems.

On March 27, 1997, RVSM was implemented in one such special navigation area of operation established in the ICAO NAT Region, the NAT MNPS. In designated NAT MNPS airspace, tracks are spaced 60 nautical miles (NM) apart. Between FLs 310 and 390 (inclusive), aircraft are separated vertically by 1000 feet. All aircraft operating in this airspace must be appropriately equipped and capable of meeting required lateral navigation performance standards of part 91, section 91.705 and vertical navigation performance standards of part 91, section 91.706. Operators must follow procedures that ensure the navigation standards are met. Flight crews must also be trained on RVSM policy and procedures. Each operator, aircraft, and navigation system combination must receive and maintain authorization to operate in the NAT MNPS. The North Atlantic Systems Planning Group (NATSPG) Central Monitoring Agency monitors NAT aircraft fleet performance to ensure that a safe operating environment is maintained.

FAA data indicate that the altitude-keeping performance of most aircraft flying in oceanic airspace can meet the standards for RVSM operations. The FAA and ICAO research to determine the feasibility of implementing RVSM included the following four efforts:

1. FAA Vertical Studies Program. This program began in mid-1981, with the objectives of collecting and analyzing data on aircraft performance in maintaining assigned altitude, developing program requirements to reduce vertical separation, and providing technical and operational representation on the various working groups studying the issue outside the FAA.

2. RTCA Special Committee (SC)–150. RTCA, Inc., (formerly Radio Technical Commission for Aeronautics) is an industry organization in Washington, DC, that addresses aviation technical requirements and concepts and produces recommended standards. When the FAA hosted a public meeting in early 1982 on vertical separation, it was recommended that RTCA be the forum for development of minimum system performance standards for RVSM. RTCA SC–150 was formed in March 1982 to develop minimum system performance requirements, identify required improvements to aircraft equipment and changes to operational procedures, and assess the impact of the requirements on the aviation community. SC–150 served as the focal point for the study and development of RVSM criteria and programs in the United States from 1982 to 1987, including analysis of the results of the FAA Vertical Studies Program.

3. ICAO Review of the General Concept of Separation Panel (RGCSP). In 1987, the FAA concentrated its resources for the development of RVSM programs in the ICAO RGCSP. The U.S. delegation to the ICAO RGCSP used the material developed by SC–150 as the foundation for U.S. positions and plans on RVSM criteria and programs. The panel's major conclusions were:

- RVSM is technically feasible without imposing unreasonably demanding technical requirements on the equipment.
- RVSM provides significant benefits in terms of economy and en route airspace capacity.
- Implementation of RVSM on either a regional or global basis requires sound operational judgment supported by an assessment of system performance based on: aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment.

4. NATSPG and the NATSPG Vertical Separation Implementation Group (VSIG).

The NATSPG Task Force was established in 1988 to identify the requirements to be met by the future NAT Region air traffic services system; to design the framework for the NAT airspace system concept; and to prepare a general plan for the phased introduction of the elements of the concept. The objective of this effort was to permit significant increases in airspace capacity and improvements in flight economy. At the meeting of the NATSPG in June 1991, all of the NAT air traffic service provider States, as well as the International Air Transport Association (IATA) and International Federation of Airline Pilots Association (IFALPA), endorsed the Future NAT Air Traffic Services System Concept Description developed by the NATSPG Task Force. With regard to the implementation of RVSM, the Concept Description concludes that priority must be given to implementation of this measure as it is believed to be achievable within the early part of the concept time frame. The NATSPG's initial goal was to implement RVSM between 1996 and 1997. To meet this goal, the NATSPG established the VSIG in June 1991 to take the necessary actions to implement RVSM in the NAT. These actions included:

- Developing programs and documents to approve aircraft and operators for conducting flight in the RVSM environment and to address all issues related to aircraft airworthiness, maintenance, and operations. The group has produced guidance material for aircraft and operator approval that ICAO has distributed to civil aviation authorities and NAT users. Also, ICAO has planned that the guidance material be incorporated in the approval process established by the States.
- Developing the system for monitoring aircraft altitude-keeping performance. This system is used to observe aircraft performance in the vertical plane to determine that the approval process is uniformly effective and that the RVSM airspace system is safe.
- Evaluating and developing ATC procedures for RVSM, conducting simulation studies to assess the effect of RVSM on ATC, and developing documents to address ATC issues.

The ICAO Limited NAT Regional Air Navigation Meeting held in Portugal in November 1992 endorsed the NATSPG RVSM implementation program. At that meeting, it was concluded that RVSM implementation should be pursued. The FAA concurred with the conclusions of the NATSPG on RVSM implementation.

Reference Material

The FAA and other organizations developing RVSM requirements have produced a number of studies and reports. The FAA used the following documents in the development of this amendment:

- Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (FAA, July 1988).
- Initial Report on Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (RTCA SC–150, November 1984); the report provides information on the methodology for evaluating safety, factors influencing vertical separation, and strawman system performance standards.
- Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (Draft 7, RTCA. August 1990); the FAA concurred with the material developed by RTCA SC–150.

• The Report of RGCSP/6 (ICAO, Montreal, 28 November–13 December 1988) published in two volumes. Volume 1 summarizes the major conclusions reached by the panel and the individual States. Volume 2 presents the complete RVSM study reports of the individual States:

• European Studies of Vertical Separation Above FL 290—Summary Report (prepared by the EUROCONTROL Vertical Studies Subgroup).

• Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (prepared by the FAA Technical Center and ARINC Research Corporation).

• The Japanese Study on Vertical Separation.

• The Report of the Canadian Mode C Data Collection.

• The Results of Studies on the Reduction of Vertical Separation Intervals for USSR Aircraft at Altitudes Above 8,100 m (prepared by the USSR).

• Report of RGCSP/7 (Montreal, 30 October–20 November 1990) containing a draft Manual on Implementation of a 300 M (1,000 Ft) Vertical Separation Minimum (VSM) Between FL 290 and 410 Inclusive, approved by the ICAO Air Navigation Commission in February 1991 and published as ICAO Document 9574.

• 14 CFR Part 91 Section 91.706—Operations Within Airspace Designed As Reduced Vertical Separation Minimum Airspace

• 14 CFR Part 91 Appendix G—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace.

• Flight Standards Handbook Bulletin for Air Transportation (HBAT) and General Aviation (HBGA) "Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where a 1,000 Foot Vertical Separation Minimum is Applied" (HBAT 99–11A and HBGA 99–17A).

• Interim Guidance Material 91–RVSM, "Approval of Aircraft and Operators for Flight in Airspace Above FL 290 Where a 1,000 Foot Vertical Separation is Applied", Change 1 (June 30, 1999). The interim guidance continues to provide recommended procedural steps for obtaining FAA approval.

• AC No. 91–70, "Oceanic Operations" (September 6, 1994).

• NATSPG Airspace Monitoring Subgroup Vertical Monitoring Report. (Issued quarterly)

Related Activity

Project increases in Pacific oceanic air traffic and the successful implementation of RVSM operations in the NAT support the implementation of RVSM in the Pacific. Pacific operators and Air Traffic Service (ATS) providers have requested that RVSM be pursued aggressively.

The ICAO Asia Pacific RVSM Implementation Task Force is the international body that is developing Pacific RVSM implementation plans. The Task Force is chaired by an FAA representative from the Air Traffic International Staff and supported by an ICAO representative from the Asia/Pacific Regional Office. The Task Force has three standing sub-groups: The Air Traffic Operations Group, the Aircraft Operations and Airworthiness Group and the Safety and Monitoring Group. The working groups are chaired by FAA air traffic and flight standards specialists. The Task Force includes representatives from Asia and Pacific civil aviation authorities, operators and the pilot and air traffic controller associations. The Task Force meets at approximately quarterly intervals to develop policy and procedure documents and to progress implementation tasks.

Discussion of Comments

The FAA received comments on the proposed rule from the following 6 organizations:

(1) The Air Traffic Control Association (ATCA)
(2) United Airlines (UAL)
(3) The Department of Defense (DOD)
(4) The National Business Aviation Association, Inc. (NBAA)
(5) The Hagadone Corporation
(6) The Independent Pilots Association (IPA)

Detailed Discussion of Comments and Disposition

ATCA Comments. ATCA states that it concurs with the proposed rule to implement RVSM in Pacific oceanic airspace. ATCA also states that RVSM will improve Air Traffic Management (ATM) and accommodate traffic growth in the Pacific.

UAL Comments. United Airlines (UAL) commented that it has no technical objections to this NPRM. UAL already has approval to operate four major aircraft types in RVSM airspace and anticipates no difficulties in obtaining RVSM approval for three other aircraft types prior to the February 24, 2000 implementation date. UAL supports the initial requirement for operators to monitor the altitude-keeping performance of two aircraft per fleet type, however it objects to the potential for a long term monitoring requirement.

FAA Response. Since the initial implementation of RVSM in March 1997, operator monitoring requirements have been systematically reduced as aircraft altitude-keeping performance data has been accumulated. FAA specialists are currently working with the airlines on the ICAO Asia Pacific RVSM Implementation Task Force to develop a post-implementation aircraft monitoring program that will accumulate enough data and information to show that RVSM operations remain safe. UAL is represented on that group and the FAA will continue to seek UAL's input and consider its arguments.

DOD Comments. DOD concurs, in principal, with the NPRM. It requests, however, that the FAA acknowledge and specific wording agreed to in recent meetings on the procedure for handling aircraft that are not RVSM compliant.

FAA Response. The FAA is adopting the wording on this issue that DOD cited in its comment. The FAA and the other Pacific Air Traffic Service Providers are adopting the following policy: "Aircraft that are not RVSM compliant (*e.g.*, State aircraft, ferry and maintenance flights) will only be cleared to operate between FL 290 and 390 (inclusive) after coordination with the first and notification given to subsequent oceanic centers. Notification constitutes approval."

NBAA Comments. First, the NBAA states that RVSM is currently implemented only between FLs 310–390 (inclusive) in the North Atlantic (NAT) and in portions of Canadian airspace. (Note: Canada only applies RVSM in designated transition airspace where aircraft transition between conventional and reduced vertical separation). NBAA requests that Pacific RVSM altitudes be made consistent with RVSM altitudes in the NAT and Canada. Second, NBAA states that general aviation aircraft manufacturers will not be able to publish approved RVSM Service Bulletins (SBs) for certain aircraft types by the February 24, 2000 implementation date. NBAA states that efforts must be made to accommodate such aircraft on a case by case basis for a designated period of time to allow manufacturers enough time to publish SBs.

FAA Response. (1) Consistency of RVSM Implementation. 14 CFR 91, Appendix G, Section 1 defines RVSM airspace as airspace between FL 290–FL 410 (inclusive) where 1,000-foot vertical separation is applied. Air Traffic Service Providers (ATSP) have elected to implement RVSM in phases. In October 1998, the NAT ATSP implemented RVSM between FL 310–FL 390 (inclusive). The planned initial implementation of Pacific RVSM will be FL 290–FL 390 (inclusive). The Pacific ATSP have published these FLs in NOTAMS and Aeronautical Information Publications. The FAA has provided adequate information to the operators and does not consider the applying RVSM to different FL stratum in the NAT and Pacific as a significant safety or training issue.

(2) Accommodation of Unapproved Aircraft in Pacific RVSM Airspace.

NBAA states that aircraft manufacturer engineering packages may not be available for the February 24, 2000 implementation for 1,000 business jet-airframes. The FAA has the following comments:

(a) Prior Notification. The FAA believes it has given the operator community adequate time to prepare for Pacific RVSM implementation and has made extensive efforts to keep it informed on the progress of implementation plans. In January 1998, the ICAO Pacific RVSM Implementation Task Force identified February 2000 as the target date for Pacific RVSM implementation. Since that time, FAA representatives have briefed the target Pacific implementation date at user forums such as the NBAA International Operations Conference and the Pacific Oceanic Working Group. In February 1999, the FAA published an International NOTAM announcing the RVSM implementation target date of February 2000 for Oakland and Anchorage Oceanic airspace. Also, RVSM has been implemented for the past two and a half years in North Atlantic airspace. It was implemented there between FL 330–FL 370 (inclusive) in March 1997 and expanded to FL 310–FL 390 (inclusive) in October 1998. The operators and aircraft manufacturers have been well informed of the planned expansion of RVSM to other airspace.

(b) Non-group Approval Option. Operators have the option of having their aircraft approved as a non-group aircraft if an aircraft manufacturer does not develop a group approval process. Although this is a more expensive process, certain operators have used it successfully to gain RVSM approval for their aircraft. This option is available to the business aviation community.

(c) Number of Airframes Affected. NBAA states that 1,000 business jet airframes could be non-compliant on the 24 February 2000 Pacific RVSM implementation date. The FAA estimate is that 700 airframes could be affected, but this figure represents all airframes in the fleet. Not all of these airframes actually conduct operations in Pacific oceanic airspace.

(d) Percentage of Flights Affected. The majority of operators that will be prepared for RVSM implementation should not be denied the benefits of RVSM because a small percentage of operators are not yet prepared. One percent (1.0%) of flights in Pacific oceanic airspace are conducted by business aviation. Airworthiness documents (*e.g.*, Aircraft Service Changes, Service Bulletins) that detail the requirements for RVSM aircraft approval are available for the majority of aircraft types including the major business jet types. The percentage of flights conducted by aircraft for which RVSM airworthiness documents are not forecast to be available by February 2000 is 0.16 per cent. This situation will not affect 99.84 percent of flights.

(e) Accommodation of Unapproved Aircraft: Effect on Controller Workload. RVSM has been implemented as exclusionary airspace. That is, aircraft operating in RVSM designated areas at designated FLs are normally required to be RVSM approved. The flight of unapproved aircraft is only allowed on an infrequent basis, if the operator coordinates the operation with ATC prior to the flight and ATC can accommodate them in accordance with CFR Part 91, Appendix G, Section 5. By standardizing RVSM approval in a given airspace, air traffic controllers can apply one aircraft separation standard to the vast majority of aircraft operating in that airspace.

Note: Pacific ATSP have made provisions for infrequent flight of non-compliant aircraft such as State aircraft and maintenance and humanitarian flights.

If, on a *regular* basis, controllers are required to apply 1,000-foot vertical separation to certain aircraft and 2,000-foot vertical separation to others, the operation of the airspace becomes more complex and there is a negative effect on air traffic management and on controller workload. Additionally, service to RVSM-approved aircraft would be significantly diminished if unapproved aircraft were accommodated in RVSM airspace on other than rare occasions, such as those stated above. It should be noted that the application of RVSM in the North Atlantic is also exclusionary and the same provisions for limited accommodation of unapproved aircraft are applied.

(f) Concluding Comment. For the reasons cited above, the FAA has determined that in RVSM airspace it will accommodate only the infrequent flight of unapproved aircraft for maintenance, humanitarian and State aircraft flights.

The Hagadone Corporation Comments. The Hagadone Corporation states that the FAA has not approved an aircraft modification kit to enable Gulfstream II (GII) aircraft to comply with the requirements for RVSM. The Hagadone Corporation requests one of three options for RVSM implementation on the Hawaii routes. One option would be to limit the upper RVSM altitude to FL 370 on all or some of the routes from the West Coast of the U.S. to Hawaii. The second option would be to delay the implementation on these routes. The third option would be that Oakland Oceanic, with prior notice, would provide 2,000-foot separation for non-RVSM aircraft for these routes.

FAA Response. First, Hagadone states that the FAA has not approved an RVSM aircraft modification kit for the GII aircraft. The FAA has approved aircraft engineering packages for aircraft for which it has received adequate justifying data. The FAA has approved Aircraft Service Change (ASC) 499 (effective September 27, 1999) for a group of 20 GII aircraft equipped with the Honeywell SPZ–800 autopilot. Also, ASC 498 that addresses a group of 184 GII aircraft equipped with the Honeywell SP–50 autopilot is expected to be released in the 1st quarter of 2000. In addition, ASC 505 that addresses a group of 11 GIIB aircraft equipped with the Honeywell SPZ–800 autopilot and ASC 504 that addresses a group of 31 GIIB equipped with the Honeywell SP–50 autopilot is expected to be released in the 2nd quarter of 2000.

Second, Hagadone suggests three options for RVSM implementation on the Hawaii routes.

Option 1: Limit the ceiling of RVSM airspace to FL 370. This option has not been accepted. The planned ceiling is FL 390. The small percentage of flights affected (0.16%) does not warrant limiting the RVSM ceiling for the large majority of aircraft that will be compliant.

Option 2: Delay RVSM implementation on the West Coast to Hawaii routes. This option has not been accepted. The vast majority of operators and aircraft will be ready for RVSM on 24 February 2000. These operators should not be denied the benefits of RVSM because a small minority will not be ready.

Option 3: Following prior notification from the operator, Oakland Oceanic to provide conventional 2,000-foot vertical separation to non-compliant aircraft. This option has not been accepted. As noted in the response to the NBAA comments, this option affects airspace complexity and controller workload and negatively impacts service to approved users.

IPA Comments. IPA believes that Traffic Alert and Collision Avoidance System (TCAS) must be required equipment for the introduction of RVSM into Pacific oceanic airspace.

Note: RVSM has been implemented since March 1997 in North Atlantic oceanic airspace. IPA does *not* recommend that Section 91.706 and Appendix G be revised to require aircraft operating in NAT RVSM airspace to equip with TCAS.

IPA believes that the introduction of RVSM into Pacific oceanic airspace will increase the probability of accidents occurring and that TCAS will provide a safety net.

FAA Response. (1) Part 91 Aircraft Equipage Requirements for RVSM Approval. Part 91 Section 91.706 and Appendix G do not require TCAS equipage for aircraft approval for RVSM operations. 1,000-foot vertical separation has been applied up to flight level 290 since the early 1960s without special aircraft equipage or performance requirements. RVSM programs enable the use of 1,000-foot vertical separation between FL 290–410 (inclusive). Section 91.706 and Appendix G require that for an aircraft to be approved for RVSM operations, the aircraft altimetry systems, automatic altitude-keeping devices and altitude alerters must meet stringent performance requirements and also be equipped with a transponder. Aircraft equipage and performance requirements were developed in the ICAO Review of the General Concept of Separation Panel (RGCSP) and published in ICAO Document 9574 in 1992. Section 91.706 and Appendix G reflect the ICAO requirements.

(2) North Atlantic RVSM Experience. RVSM has been applied successfully since March 1997 in North Atlantic oceanic airspace. NAT airspace has the highest traffic density of any oceanic airspace in the world. Between 900 to 1100 flights are conducted each day in the RVSM airspace of the North Atlantic. By contrast, the busiest route system in the Pacific is the North Pacific Route System (NOPAC) where approximately 175 flights are conducted each day. In addition, approximately 440 flights operate per day in the entire Pacific.

(3) Applicability of IPA Comments to TCAS Rulemaking. The FAA believes that the IPA comments relate more specifically to the benefits of TCAS as a safety net in general operations and are more applicable to the rulemaking related specifically to TCAS equipage requirements. The FAA does not believe that the IPA recommendation for TCAS equipage related specifically to the expansion of 1,000-foot vertical separation above FL 290. IPA cited several incidents where TCAS could have or did contribute to the prevention of an accident. None of these incidents occurred in airspace where RVSM is applied and many of them occurred below FL 290.

(4) Current Projects Related to TCAS Equipage Requirements. There are efforts under way in the United States to revise the existing regulations related to TCAS equipage. Also, ICAO has now published Standards and Recommended Practices (SARPS) addressing TCAS equipage. The status of these efforts is as follows:

(a) Revision of Regulations Related to TCAS Equipage. In response to the IPA petition for rulemaking, the FAA is developing an NPRM. The FAA believes that the IPA comments are more applicable to this effort than to RVSM rulemaking.

(b) ICAO Annex 6 (Operation of Aircraft): Part I (International Commercial Air Transport Aeroplanes) and Part II (International General Aviation Aeroplanes). ICAO has published standards intended to expand equipage with collision avoidance systems and transponders. In November 1998, Annex 6 Part 1 was amended to state that by January 1, 2003, aircraft in excess of 15,000 kg (33,000 pounds) takeoff weight or authorized to carry more than 30 passengers shall be equipped with an airborne collision avoidance system (ACAS II) and by January 1, 2005, aircraft in excess of 5,700 kg (12,500 pounds) take off weight or authorized to carry more than 19 passengers shall be equipped with ACAS II. In addition, Annex 6 Part II paragraph 6.13 now states that by January 1, 2003, unless exempted by appropriate authorities, all aeroplanes shall be equipped with a pressure-altitude reporting transponder that operates in accordance with Annex 10, Volume IV. A note also states that this provision is intended to support the effectiveness of ACAS.

Summary of Specific IPA Issues

(1) Non-concur Due to Unacceptable Risk. IPA states that it has no objection, in principal, to the concept of reducing vertical separation if safety is not compromised. IPA, however, opposes this rule because the FAA does not mandate that all transport category aircraft operating in RVSM airspace must be equipped with an operational Traffic Alert and Collision Avoidance System (TCAS). Without a TCAS requirement, IPA believes that RVSM poses unacceptable risks to safety.

(2) Applicability of Collision Risk Modeling to Operational Safety. IPA questions the FAA statement that "all factors have been assessed" in developing the safety goals for RVSM. They question the FAA statement that the Target Level of Safety of 5 accidents in 1 billion flight hours leads to a theoretical calendar year interval between accidents in RVSM airspace of 322 years.

(3) Need for Safety Net. IPA argues that RVSM will lead to higher density traffic in airspace where it is applied and that will increase the risk of collision. IPA believes that TCAS is required to provide a safety net.

(4) Pilot Error; Mis-setting Altimeters. IPA states that mis-set altimeters in an RVSM environment will pose a threat to safety. They are particularly concerned about aircraft operating to and from Russian and Chinese airspace where metric altitudes are used and operating from Alaska and Canada where extremely low altimeter settings can be encountered.

(5) Review of TCAS Saves. IPA cites a number of incidents or accidents both below and above FL 290 where TCAS could have or did contribute to the prevention of a collision.

FAA Response to IPA Issues

(1) Unacceptable Risk Posed by RVSM Implementation Without TCAS. RVSM has been applied successfully in the NAT for 2.5 years. 1,000-foot vertical separation has been applied below FL 290 in both oceanic and continental airspace for approximately 35 years. TCAS has not been specifically required for the application of 1,000 foot-vertical separation in these environments. Instead, TCAS equipage is required by operational rules in part 121, 125, 129, and 135.

Although TCAS is not specifically required for RVSM aircraft approval, a large percent of oceanic operations are already conducted by aircraft that are TCAS equipped. Because 14 CFR parts 121, 125, 129, and 135 require TCAS equipage of airplanes with passenger seat configurations of up to 30 seats, approximately 90 percent of flights in Pacific Oceanic airspace are conducted by TCAS equipped aircraft.

The United States was the first State to require TCAS equipage. The FAA recognizes the benefits to operational safety provided by TCAS, however it does not believe that the requirement for TCAS equipage is related to the RVSM standard. TCAS equipage requirements are, therefore, published in separate regulations.

The primary threat to safety in the vertical plane both prior to and after RVSM implementation has been from human errors such as the pilot failing to level at the assigned FL. (These are referred to hereafter as operational errors). These types of errors can occur in airspace where 2,000-foot vertical separation is applied as well as those where a 1,000-foot vertical separation is applied. Recognizing the TCAS safety benefit when such errors occur, as noted previously, ICAO has already published SARPs to expand TCAS equipage and the FAA published rules requiring TCAS equipage. Also, as noted, the FAA

is developing an NPRM in response to the IPA petition for additional rulemaking related to TCAS equipage requirements.

Operational errors are also being addressed by RVSM implementation groups. Airspace monitoring organizations have been established in both the North Atlantic and the Pacific. (in the Pacific, the organization is the Asia/Pacific Approvals Registry and Monitoring Organization (APARMO). One of the stated responsibilities of the monitoring organizations is to track operational errors, analyze their effect on risk in the airspace and to administer the effort to ensure operator compliance with RVSM requirements. The APARMO will track civil aviation authority investigation of operational errors and coordinate measures to mitigate the occurrence.

The safety of RVSM is based on standardized aircraft equipage and performance and pilot and controller procedures related to altitude keeping. Monitoring of the altitude-keeping performance of RVSM approved aircraft in the NAT has shown that aircraft maintain FL better than that required for airspace system safety. The ICAO Altimetry System Error (ASE) requirements are for mean ASE not to exceed 80 feet and the mean plus 3 standard deviations of ASE not to exceed 245 feet. The mean ASE observed in the NAT aircraft population is −4 feet and the mean plus 3 standard deviations observed is 150 feet.

(2) Applicability of Collision Risk Modeling (CRM) to Operational Safety. CRM is an ICAO recognized tool that is used to analyze traffic density, aircraft altitude-keeping and human errors. It is used to establish aircraft performance requirements as well as to establish limits on the frequency of large errors. It provides a statistical probability of an accident occurring. The Target Level of Safety (TLS) established for RVSM is a theoretical 2.5 equipment related fatal accidents in a billion flight hours. The NAT Central Monitoring Agency (CMA) and the Asia/Pacific Approvals Registration and Monitoring Organization (APARMO) are tasked with collecting and investigating all errors beyond established limits in RVSM airspace. Both aircraft and human errors observed and reported are evaluated against this TLS.

Both ICAO and the FAA consider CRM to be only a tool to be used to evaluate safety and not a substitute for operational and engineering judgment. Because of this, the NAT CMA and APARMO investigate altitude-keeping errors that exceed established values individually to determine their cause and recommend measures to mitigate future errors. The FAA and the other civil aviation authorities have established operational procedures and policy to mitigate the occurrence of errors that can threaten safety.

(3) Need for a Safety Net Due to Increases in Traffic Density. As noted previously, a large percentage of U.S. aircraft are already required to be TCAS equipped by the existing regulations and ICAO has published SARPs that are intended to standardize and increase the effectiveness of TCAS operation in international airspace.

(4) Pilot Error: Mis-Setting Altimeters. Setting of altimeters to 29.92 when passing the transition altitude and re-checking for proper setting when reaching the initial cleared FL is identified as a special emphasis item for pilot training for RVSM operations. The FAA will re-emphasize the importance of properly following altimeter setting procedures for operations in all RVSM airspace. The FAA will emphasize this to FAA Flight Standards Offices as well in the ICAO Pacific RVSM Implementation Task Force that is providing guidance to the international community on RVSM policy and procedures. In regard to low altimeter settings, aircraft have operated for the past 2.5 years from Canada where low altimeter settings are encountered into NAT RVSM airspace.

(5) Review of TCAS Saves. The FAA recognizes the safety net that TCAS provides. The FAA agrees that TCAS plays a major role in limiting the probability of collision in the incidents cited in Attachment A of the IPA comments. However, none of these incidents occurred in RVSM airspace and most of them occurred below FL 290. The FAA believes this supports its position that TCAS equipage should be related to the existing operational regulations requiring TCAS and not to the regulations governing RVSM operations.

After considering the comments submitted in response to the final rule, the FAA determined that no further rulemaking is necessary.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule remain the same as under current rules and have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0026. There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any differences.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, or $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will not have a significant economic impact on a substantial number of small entities and will not constitute a barrier to international trade.

This final rule amends 14 CFR 91, Appendix G. Section 8 (Airspace Designation) by adding the appropriate Pacific oceanic Flight Information Regions (FIRs) where RVSM would be implemented. The benefits of this amendment are that, for Pacific oceanic operations, it will (1) increase the number of available flight levels, (2) enhance airspace capacity, (3) permit operators to operate more fuel/time efficient tracks and altitudes, and (4) enhance air traffic controller flexibility

by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this final rule will cost U.S. operators $21.7 million for the ten-year period 2000–2009 or $19.5 million, discounted. Estimated benefits, based on fuel savings for the commercial airplane fleet over the years 2000–2009, would be $120 million, or $83.8 million, discounted. Therefore, based on a quantitative and qualitative evaluation of this action, the proposed rule would be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulations." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

A review of the Pacific traffic data shows that no small entities operate in Pacific oceanic airspace where this rule applies. The FAA has also examined the impact of this rulemaking on small commercial operators of business jet aircraft and found that such operators are all computer or air taxi operators that do not operate in Pacific oceanic airspace. This information was obtained from the FAA database of U.S. registered aircraft and operators.

The FAA has determined that there are reasonable and adequate means to accommodate the transition to RVSM requirements, particularly for general aviation operators (many of whom are small). As of May 1999, 50% of the U.S registered GA airframes that are capable of conducting oceanic operations were approved for RVSM. Operators of such aircraft have already obtained approved in order to operate in the NAT.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act of 1995 Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501, 1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental and private sector mandate that exceeds $100 million a year, therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rule qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14 Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Appendix G is amended by revising Section 8 to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 8. Airspace Designation

(a) RVSM in the North Atlantic.

(1) RVSM may be applied in the NAT in the following ICAO Flight Information Regions (FIRs): New York Oceanic, Gander Oceanic, Sondrestrom FIR, Reykjavik Oceanic, Shanwick Oceanic, and Santa Maria Oceanic.

(2) RVSM may be effective in the Minimum Navigation Performance Specification (MNPS) airspace within the NAT. The MNPS airspace within the NAT is defined by the volume of airspace between FL 285 and FL 420 (inclusive) extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundaries of control areas Reykjavik Oceanic, Gander Oceanic, and New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

(b) RVSM in the Pacific.

(1) RVSM may be applied in the Pacific in the following ICAO Flight Information Regions (FIRs): Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, Ujung Pandang and Vancouver.

Issued in Washington, DC, on February 1, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–2556 Filed 2–4–00; 8:45 am]

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Federal Register

Monday,
February 7, 2000

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Coastal California Gnatcatcher; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the coastal California gnatcatcher pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat unit boundaries encompasses approximately 323,726 hectares (799,916 acres) of gnatcatcher habitat in Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California. The actual area containing gnatcatcher habitat is smaller.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the gnatcatcher are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Areas that do not currently contain all of the primary constituent elements, but that could develop them in the future, may be essential to the conservation of the species and may be designated as critical habitat.

Proposed critical habitat does not include lands covered by an existing, legally operative, incidental take permit for the coastal California gnatcatcher under section 10(a)(1)(B) of the Act. The Habitat Conservation Plans (HCPs) provide for special management and protection under the terms of the permit and the lands covered by them are therefore not proposed for inclusion in the critical habitat.

In areas where HCPs have not yet had permits issued, we have proposed critical habitat for lands encompassing core populations of gnatcatchers and areas essential for habitat connectivity which may require special management considerations or protections.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling HCPs. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: *Comments:* We will consider comments received by April 7, 2000.

Public Hearings: The dates of three public hearings scheduled for this proposal are:

1. Los Angeles and Orange Counties—February 15, 2000.
2. San Diego County—February 17, 2000.
3. Riverside and San Bernardino Counties—February 23, 2000.

All public hearings will be held from 1:00 p.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m.

ADDRESSES: *Comments:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may send comments by electronic mail (e-mail) to fw1cagn@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

Public Hearings: Three public hearings are scheduled. Public hearing locations are:

1. Los Angeles and Orange Counties—Sheraton Anaheim Hotel, 1015 West Ball Road, Anaheim, California.
2. San Diego County—San Diego Hilton Mission Valley, 901 Camino del Rio South, San Diego, California.
3. Riverside and Bernardino Counties—Holiday Inn Select Riverside, 3400 Market Street, Riverside, California.

Availability of Documents: Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; facsimile 760/431–9624). For information about western Los Angeles County, contact the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road Suite B, Ventura, California 93003 (telephone: 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The insectivorous coastal California gnatcatcher (*Polioptila californica californica*) is a small (length 11 centimeters (4.5 inches), weight 6 grams (0.2 ounces)), long-tailed member of the old-world warbler and gnatcatcher family Sylviidae (American Ornithologist Union 1998). The bird's plumage is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap which is absent during the winter. Both sexes have a distinctive white eye-ring.

The coastal California gnatcatcher is one of three subspecies of the California gnatcatcher (*Polioptila californica*). This taxon is restricted to coastal southern California and northwestern Baja California, Mexico, from Ventura and San Bernardino Counties, California, south to approximately El Rosario, Mexico, at about 30° north latitude (American Ornithologists' Union 1957, Atwood 1991, Banks and Gardner 1992, Garrett and Dunn 1981). An evaluation of the historic range of the coastal California gnatcatcher indicates that about 41 percent of its latitudinal distribution is within the United States and 59 percent within Baja California, Mexico (Atwood 1990). A more detailed analysis, based on elevational limits associated with gnatcatcher locality records, reveals that a significant portion (65 to 70 percent) of the coastal California gnatcatcher's historic range may have been located in southern California rather than Baja California (Atwood 1992). The analysis suggested that the species occurs below about 912 meters (m) (3,000 feet (ft)) in elevation. Of the approximately 8,700 historic or current locations used in the analysis for this proposed rule, more than 99 percent were below 770 m (2,500 ft).

The coastal California gnatcatcher was considered locally common in the mid-1940s although a decline in the extent of its habitat was noted (Grinnell and Miller 1944). By the 1960s, this species had apparently experienced a significant population decline in the United States that has been attributed to widespread destruction of its habitat.

Pyle and Small (1961) reported that "the California subspecies is very rare, and lack of recent records of this race compared with older records may indicate a drastic reduction in population." Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remained in the United States. He also noted that remnant portions of its habitat were highly fragmented with nearly all being bordered on at least one side by rapidly expanding urban centers. Subsequent reviews of coastal California gnatcatcher status by Garrett and Dunn (1981) and Unitt (1984) paralleled the findings of Atwood (1980). The species was listed as threatened in March 1993, due to habitat loss and fragmentation resulting from urban and agricultural development, and the synergistic effects of cowbird parasitism and predation (58 FR 16742).

The coastal California gnatcatcher typically occurs in or near sage scrub habitat, which is a broad category of vegetation that includes the following plant communities as classified by Holland (1986): Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan (areas created when sediments from the stream are deposited) scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub. Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995).

The majority of plant species found in sage scrub habitat are low-growing, drought-deciduous shrubs and sub-shrubs. Generally speaking, most types of sage scrub are dominated by one or more of the following— California sagebrush (*Artemisia californica*), buckwheats (*Eriogonum fasciculatum* and *E. cinereum*), encelias (*Encelia californica* and *E. farinosa*), and various sages (commonly *Salvia mellifera, S. apiana,* and *S. leucophylla*). Sage scrub often occurs in a patchy, or mosaic, distribution pattern throughout the range of the gnatcatcher.

Gnatcatchers also use chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and riparian (areas near a source of water) habitats where they occur in proximity to sage scrub. These non-sage scrub habitats are used for dispersal and foraging (Atwood *et al.* 1998; Campbell *et al.* 1998). Availability of these non-sage scrub areas may be essential during certain times of the year, particularly during drought conditions, for dispersal, foraging, or nesting.

A comprehensive overview of the life history and ecology of the coastal California gnatcatcher is provided by Atwood (1990) and is the basis for much of the discussion presented below. The coastal California gnatcatcher is non-migratory and defends breeding territories ranging in size from 1 to 6 hectares (ha) (2 to 14 acres (ac)). Reported home ranges vary in size from 5 to 15 ha (13 to 39 ac) for this species (Mock and Jones 1990). The breeding season of the coastal California gnatcatcher extends from late February through July with the peak of nest initiations (startups) occurring from mid-March through mid-May. Nests are composed of grasses, bark strips, small leaves, spider webs, down, and other materials and are often located in California sagebrush about 1 m (3 ft) above the ground. Nests are constructed over a 4- to 10-day period. Clutch size averages four eggs. The incubation and nestling periods encompass about 14 and 16 days, respectively. Both sexes participate in all phases of the nesting cycle. Although the coastal California gnatcatcher may occasionally produce two broods in one nesting season, the frequency of this behavior is not known. Juveniles are dependent upon, or remain closely associated with, their parents for up to several months following departure from the nest and dispersal from their natal (place of birth) territory.

Dispersal of juveniles generally requires a corridor of native vegetation providing certain foraging and shelter requisites to link larger patches of appropriate sage scrub vegetation (Soulé 1991). These dispersal corridors facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soulé 1991 and Galvin 1998). It has been suggested that "natal dispersal [through corridors] is therefore an important aspect of the biology of [a] * * * nonmigratory, territorial bird * * * [such as] the California gnatcatcher * * *" Galvin (1998). Although it has also been suggested that juvenile coastal California gnatcatchers are capable of dispersing long distances (up to 22 kilometers (14 miles)) across fragmented and highly disturbed sage scrub habitat, such as found along highway and utility corridors or remnant mosaics of habitat adjacent to developed lands, generally the species disperses short distances through contiguous, undisturbed habitat (Bailey and Mock 1998, Famolaro and Newman 1998, and Galvin 1998). Moreover, it is likely that populations will experience increased juvenile mortality in fragmented habitats where dispersal distances are greater than average (Atwood *et al.* 1998). This would be particularly true if dispersal was across non-or sub-optimal habitats that function as population sinks (areas where mortality is greater than reproduction rates) (Soulé 1991).

Previous Federal Action

On March 30, 1993, we published a final rule determining the gnatcatcher to be a threatened species (58 FR 16741). In making this determination, we relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory. As is standard practice in the scientific community, we cited the conclusions by Dr. Atwood in a peer reviewed, published scientific article pertaining to the subspecific taxonomy of the gnatcatcher (Atwood 1991).

On December 10, 1993, we published a final special rule concerning the take of the gnatcatcher pursuant to section 4(d) of the Act (58 FR 63088). This rule defines the conditions for which incidental take of the gnatcatcher resulting from certain land-use practices regulated by State and local governments through the Natural Community Conservation Planning Act of 1991 (NCCP) would not be a violation of section 9 of the Act. We found that implementation of the special 4(d) rule and the NCCP program provides for conservation and management of the gnatcatcher and its habitat in a manner consistent with the purposes of the Act.

The Endangered Species Committee of the Building Industry Association of Southern California and other plaintiffs filed a suit challenging the listing on several grounds, but primarily based on our conclusions regarding gnatcatcher taxonomy. In a Memorandum Opinion and Order filed in the U. S. District Court for the District of Columbia (District Court) on May 2, 1994, the District Court vacated the listing determination, holding that the Secretary of the Interior (Secretary) should have made available the underlying data that formed the basis of Dr. Atwood's conclusions on the taxonomy of the gnatcatcher.

Following the District Court's decision, Dr. Atwood released his data to the Service. We made these data available to the public for review and comment on June 2, 1994 (59 FR 28508). By order dated June 16, 1994, the District Court reinstated the threatened

status of the gnatcatcher pending a determination by the Secretary whether the listing should be revised or revoked in light of the public review and comment of Dr. Atwood's data. On March 27, 1995, we published a determination to retain the threatened status for the gnatcatcher (60 FR 15693).

At the time of the listing, we concluded that designation of critical habitat for the gnatcatcher was not prudent because such designation would not benefit the species and would make the species more vulnerable to activities prohibited under section 9 of the Act. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process. In addition, most land occupied by the gnatcatcher was in private ownership, and we did not believe a designation of critical habitat to be of benefit because of a lack of a Federal nexus (critical habitat has regulatory applicability only for activities carried out, funded, or authorized by a Federal agency).

On May 21, 1997, the U.S. Court of Appeals for the Ninth Circuit issued an opinion (Natural Resources Defense Council v. U.S. Department of the Interior, 113 F. 3d 1121) that required us to issue a new decision regarding the prudency of determining critical habitat for the gnatcatcher. In this opinion, the Court held that the "increased threat" criterion in the regulations may justify a not prudent finding only when we have weighed the benefits of designation against the risks of designation. Secondly, with respect to the "not beneficial" criterion explicit in the regulations, the Court ruled that our conclusion that designation of critical habitat was not prudent because it would fail to control the majority of land-use activities within critical habitat was inconsistent with Congressional intent that the not prudent exception to designation should apply "only in rare circumstances." The Court noted that a substantial portion of gnatcatcher habitat would be subject to a future Federal nexus sufficient to trigger section 7 consultation requirements regarding critical habitat. Thirdly, the Circuit Court determined that our conclusion that designation of critical habitat would be less beneficial to the species than another type of protection (e.g., State of California Natural Communities Conservation Program (NCCP) efforts) did not absolve us from the requirement to designate critical habitat. The Court also criticized the lack of specificity in our analysis.

On February 8, 1999, we published a notice of determination in the **Federal Register** (64 FR 5957) regarding the prudency of designating critical habitat for the gnatcatcher. We found that the designation of critical habitat was prudent on Federal lands within the range of the gnatcatcher and nonFederal lands where a current or likely future Federal nexus exists. We determined that designating critical habitat on private lands lacking a current or likely future Federal nexus or any lands subject to the provision of an approved HCP under section 10(a)(1)(B) of the Act and/or an approved NCCP under which the gnatcatcher is a covered species would provide no additional benefit to the species. Further, we determined that the threats (e.g., activities prohibited under section 9 of the Act) from designating critical habitat on private lands would outweigh the benefits in certain areas.

On August 4, 1999, in response to a motion filed by the Natural Resources Defense Council, the U.S. District Court for the Central District of California ordered the Service to propose critical habitat by October 4, 1999. In response to this order and in preparation of a proposal using our prudency determination (64 FR 5957), we had difficulty delineating critical habitat because of the uncertainty regarding likely future Federal nexuses. Since publication of the determination, we discovered that the Federal nexuses relied on in our prudency determination for several development projects no longer existed. Conversely, other projects were found to have current Federal nexuses, which were lacking when we developed the prudency determination. Given the unpredictability of determining whether a Federal nexus is likely to exist on any given parcel of private land, we have reevaluated our previous conclusion and now conclude that there may be a regulatory benefit from designating critical habitat for the gnatcatcher on private lands now lacking an identifiable Federal nexus because such lands may have a nexus to a Federal agency action in the future.

In our prudency determination (64 FR 5957), we described the threat posed by vandalism towards the gnatcatcher and its habitat, largely coastal sage scrub. We cited several cases under investigation by our Law Enforcement Division and various newspaper articles regarding this threat. We determined that the designation of critical habitat would increase the instances of habitat destruction and exacerbate threats to the gnatcatcher. Therefore, we concluded that the threat posed by vandalism that would result from designating private lands lacking a Federal nexus as critical habitat would outweigh the benefit that would be provided. We acknowledged that critical habitat may provide some benefit by highlighting areas where the species may occur or areas that are important to recovery. However, we stated that such locational data are well known, and designation of critical habitat on private lands may incite some members of the public and increase incidences of habitat vandalism above current levels.

We have reconsidered our evaluation in the prudency determination of the threats posed by vandalism. We have determined that the threats to the gnatcatcher and its habitat from the specific instances of habitat destruction we identified do not outweigh the broader educational, and any potential regulatory and other possible benefits, that a designation of critical habitat would provide for this species. The instances of likely vandalism, though real, were relatively isolated given the wide-ranging habitat of the gnatcatcher. Additionally, having determined that the existence of current or likely future Federal nexuses is an unreliable basis upon which to include or exclude private lands as critical habitat, we are not compelled to identify specific scattered parcels of private land with presumptive Federal nexuses. Instead, we are able to use a landscape approach in identifying areas for critical habitat designation that does not appear to highlight individual parcels of private land. Consequently, we conclude that designating critical habitat on private lands will not increase incidences of habitat vandalism above current levels for this species. In contrast, a designation of critical habitat will provide some educational benefit by formally identifying on a range-wide basis those areas essential to the conservation of the species and, thus, the areas likely to be the focus of our recovery efforts for the gnatcatcher. Therefore, we conclude that the benefits of designating critical habitat on nonFederal lands essential for the conservation of the gnatcatcher outweigh the risks of increased vandalism resulting from such designation.

The Service considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. NonFederal lands that are covered by an

existing operative permit issued for California gnatcatcher under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the permit and are therefore not being proposed for inclusion in critical habitat.

We expect that critical habitat may be used as a tool to help identify areas within the range of the California gnatcatcher most critical for the conservation of the species, and we will encourage development of HCPs for such areas on nonFederal lands. We consider HCPs to be one of the most important methods through which nonFederal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for the California gnatcatcher. HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species. Therefore, we have not included any lands covered by an existing legally-operative incidental take permit for California gnatcatcher in this proposed critical habitat designation.

In light of our decision to reconsider the prudency determination, we needed additional time to revise the determination (64 FR 5957) and develop a proposed critical habitat rule based on the revised determination. We therefore requested an extension of 120 days in which to reevaluate prudency and propose critical habitat, which the District Court granted. The Court also ordered us to publish a final critical habitat rule by September 30, 2000.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain all of the primary constituent elements, but that could develop them in the future, may be essential to the conservation of the species and may be designated as critical habitat.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other nonFederal lands that do not involve a Federal nexus, critical habitat designation would not afford any protection under the Act against such activities.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish a preserve area where no actions are allowed, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation and section 10 HCPs.

Section 3(5)(C) of the Act generally requires that not all areas that can be occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the conservation of the species. Areas that contain one or more of the primary constituent elements that may support gnatcatchers, but are not included within critical habitat boundaries, would be considered under other parts of the Act and/or other conservation laws and regulations.

Methods

In determining areas that are essential to conserve the gnatcatcher, we used the best scientific and commercial data available. This included data from research and survey observations published in peer reviewed articles; regional Geographic Information System (GIS) coverages; habitat evaluation models for the San Diego County Multiple Species Conservation Plan (MSCP), the North San Diego County Multiple Habitat Conservation Plans (MHCP), and the North County Subarea of the MSCP for Unincorporated San Diego County; approved HCPs; and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. Following the listing of the species, a concerted effort was undertaken to survey significant portions of the species' range in San Diego and Orange Counties for the purpose of developing and implementing HCPs, and more recently, surveys of varying intensity have been conducted in Los Angeles, Riverside, San Bernardino, and Ventura Counties.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The areas we are proposing to designate as critical habitat provide some or all of those habitat components essential for the primary biological needs of the gnatcatcher also called primary constituent elements.

The primary constituent elements for the gnatcatcher are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in undeveloped areas, including agricultural lands, that support or have the potential to support, through natural successional processes, various types of sage scrub or chaparral, grassland, and riparian habitats where they occur proximally to sage scrub and where they may be utilized for biological needs such as breeding and foraging (Atwood *et al.* 1998, Campbell *et al.* 1998). Primary constituent elements associated with the biological

needs of dispersal are also found in undeveloped areas, including agricultural lands, that provide or could provide connectivity or linkage between or within larger core areas, including open space and disturbed areas containing introduced plant species that may receive only periodic use.

Primary constituent elements include, but are not limited to, the following plant communities—Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995). Dominant plants within these communities include California sagebrush, buckwheats, encelias, and various sages (commonly *Salvia mellifera*, *S. apiana*, and *S. leucophylla*). Other commonly occurring plants include coast goldenbush (*Isocoma menziesii*), bush monkeyflower (*Mimulus aurantiacus*), Mexican elderberry (*Sambucus mexicana*), bladderpod (*Isomeris arborea*), deerweed (*Lotus scoparius*), chaparral mallow (*Malacothamnus fasciculatum*), laurel sumac (*Malosma laurina*), and several species of *Rhus* (*R. integrifolia*, *R. ovata*, and *R. trilobata*). Succulent species, such as boxthorn (*Lycium* spp.), cliff spurge (*Euphorbia misera*), jojoba (*Simmandsia chinensis*), and various species of cacti (*Opuntia littoralis*, *O. prolifera*, and *Ferocactus viridescens*), and live-forever (*Dudleya* spp.), are represented in maritime succulent scrub, coast prickly-pear scrub, and southern coastal bluff scrubs.

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection and proposal of specific areas or units for gnatcatcher critical habitat. Such criteria focused on designating units—(1) Throughout the geographical and elevational range of the species; (2) within various occupied plant communities, such as Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub; (3) in documented areas of large, contiguous blocks of occupied habitat (i.e., core population areas); and/or in areas that link core populations areas (i.e., linkage areas). These criteria are similar to criteria used to identify reserve/preserve lands in approved HCPs covering the gnatcatcher.

To identify proposed critical habitat units, we first examined those lands identified for conservation under approved HCPs covering the gnatcatcher. These planning efforts utilized habitat evaluation models, gnatcatcher occurrence data, and reserve design criteria to identify reserve systems of core gnatcatcher populations and linkage areas that are essential for the conservation of the species.

We then evaluated those areas where on-going habitat conservation planning efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the gnatcatcher. These include—the Western Riverside County MSHCP, the Rancho Palos Verdes MSHCP, the North San Diego County MHCP, the North County Subarea of the MSCP for Unincorporated San Diego County, and the Southern Subregion of Orange County's NCCP. We used those biological analyses in concert with data regarding current gnatcatcher occurrences—(1) sage scrub vegetation, (2) elevation, and (3) connectivity to identify those lands that are essential for the conservation of the gnatcatcher within the respective planning area boundaries.

Finally, we evaluated other lands for their conservation value for the gnatcatcher. We delimited a study area by selecting geographic boundaries based on the following—(1) gnatcatcher occurrences, (2) sage scrub vegetation, (3) elevation, and (4) connectivity to other gnatcatcher occurrences. We determined conservation value based on the presence of, or proximity to, significant gnatcatcher core populations and/or sage scrub, sage scrub habitat quality, parcel or habitat patch size, surrounding land-uses, and potential to support resident gnatcatchers and/or facilitate movement of birds between known habitat areas.

Proposed Critical Habitat Units are defined by specific map units that have been delineated using public land survey (PLS) sections (generally one square mile) or Universal Transverse Mercator (UTM) coordinates in Spanish Land Grant areas (areas which have not been surveyed for inclusion into PLS). On Marine Corps Base Camp Pendleton we used training area boundaries and UTM coordinates. Within the Orange County NCCP Central/Coastal Subregions we used boundaries of select Existing Land Use and North Ranch Policy Plan areas.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for gnatcatcher conservation. Within the delineated critical habitat unit boundaries, only lands where one or more constituent elements are found are proposed for critical habitat. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, railroads, and other features, do not contain one or more of the primary constituent elements. Therefore, these areas are not proposed for critical habitat.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes gnatcatcher habitat throughout the species' range in the United States (i.e., Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California). Lands proposed are under private, State, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management (BLM), Department of Defense (DOD), Service, and Forest Service. Lands proposed as critical habitat have been divided into 15 Critical Habitat Units. A brief description of each unit and reasons for proposing it as critical habitat are presented below.

Table 1. Approximate proposed critical habitat area (hectares (acres)) by county and land ownership. Estimates reflect the total area within critical habitat unit boundaries, without regard to the presence of primary constituent elements. The area actually proposed as critical habitat is therefore less than that indicated in Table 1.

County	Federal*	Local/state	Private	Total
Los Angeles	4,407 ha (10,890 ac)	1,066 ha (2,633 ac)	28,795 ha (71,151 ac)	34,268 ha (84,675 ac)

County	Federal*	Local/state	Private	Total
Orange	1,428 ha (3,529 ac)	3,736 ha (9,232 ac)	34,128 ha (84,463 ac)	39,346 ha (97,224 ac)
Riverside	7,378 ha (18,230 ac)	7,430 ha (18,360 ac)	90,726 ha (224,181 ac)	105,534 ha (260,771 ac)
San Bernardino	2,952 ha (7,295 ac)	352 ha (870 ac)	29,666 ha (73,304 ac)	32,971 ha (81,470 ac)
San Diego	35,767 ha (88,378 ac)	2,597 ha (6,418 ac)	73,243 ha (180,981 ac)	111,607 ha (275,777 ac)
Total	51,932 ha (128,322 ac)	15,181 ha (37,513 ac)	256,558 ha (634,080 ac)	323,726 ha (799,916 ac)

*Federal lands include Bureau of Land Management, Department of Defense, National Forest, and Fish and Wildlife Service lands.

Unit 1: San Diego Multiple Species Conservation Program (MSCP)

Unit 1 encompasses approximately 20,697 ha (51,141 ac) within the MSCP planning area. Lands proposed contain core gnatcatcher populations, sage scrub and areas providing connectivity between core populations and sage scrub. Proposed critical habitat includes lands within the MSCP planning areas that have not received incidental take permits for the gnatcatcher under section 10(a)(1)(B) of the Act. This includes lands essential to the conservation of the gnatcatcher within: the cities of Chula Vista, El Cajon, and Santee; major amendment areas within the San Diego County Subarea Plan; the Otay-Sweetwater Unit of the San Diego National Wildlife Refuge Complex; and water district lands owned by Sweetwater Authority, Helix Water District and Otay Water District.

Unit 2: Marine Corps Air Station, Miramar

Unit 2 encompasses approximately 4,859 ha (12,007 ac) on Marine Corps Air Station, Miramar (Station). Lands proposed include areas identified as occupied by core gnatcatcher populations in the Station's proposed Integrated Natural Resource Management Plan as well as canyons and corridors that provide east-west and north-south linkages to defined preserve lands adjacent to this unit.

Unit 3: Multiple Habitat Conservation Open Space Program (MHCOSP) for San Diego County

Unit 3 encompasses approximately 6,014 ha (14,860 ac) within the MHCOSP. Lands proposed include a core population of gnatcatchers on the Cleveland National Forest south of State Route 78 near the upper reaches of the San Diego River. It also includes important corridors of sage scrub for connectivity.

Unit 4: North San Diego County Multiple Habitat Conservation Plan (MHCP)

Unit 4 encompasses approximately 28,542 ha (70,526 ac) within the MHCP planning area in northwestern San Diego County. Lands proposed contain core gnatcatcher populations and sage scrub identified by the San Diego Association of Governments' (SANDAG) "Gnatcatcher Habitat Evaluation Model," dated March 24, 1999, as high or moderate value. In addition, areas proposed provide connectivity between habitat valued as high or moderate. This unit also provides connectivity between core gnatcatcher populations within adjacent units.

Unit 5: Marine Corps Base Camp Pendleton

Unit 5 encompasses approximately 20,613 ha (50,935 ac) on Marine Corps Base Camp Pendleton (Base). Areas proposed include 26 training areas and portions of an additional 9 training areas (refer to the legal description for this unit for the names of the training areas affected). The Base contains a substantial coastal corridor of gnatcatcher-occupied sage scrub that provides the primary linkage between San Diego populations and those in southern Orange County (Unit 8). Another corridor of gnatcatcher-occupied sage scrub occurs along the Santa Margarita River valley that branches inland, connecting with habitat in the Fallbrook Naval Weapons Station (Unit 6) and further north into southwestern Riverside County (Unit 12).

Unit 6: Fallbrook Naval Weapons Station

Unit 6 encompasses approximately 3,606 ha (8,909 ac) on Fallbrook Naval Weapons Station in northern San Diego County. The unit provides a significant segment of a corridor of sage scrub between core gnatcatcher populations on Camp Pendleton (Unit 5) and populations in southwestern Riverside County (Unit 12).

Unit 7: North County Subarea of the MSCP for Unincorporated San Diego County

Unit 7 encompasses approximately 27,295 ha (67,446 ac) within the planning area for the North County Subarea of the MSCP for San Diego County. Lands proposed contain several core gnatcatcher populations and sage scrub identified as high or moderate value. In addition, proposed areas provide connectivity between habitat valued as high or moderate. This unit constitutes the primary inland linkage between San Diego populations and those in southwestern Riverside County (Unit 12).

Unit 8: Southern NCCP Subregion of Orange County

Unit 8 encompasses approximately 27,828 ha (68,763 ac) within the planning area for the Southern NCCP Subregion of Orange County. This unit contains significant core populations and provides the primary linkage for core populations on Marine Corps Base Camp Pendleton (Unit 5) to those further north in Orange County (Unit 9).

Unit 9: Central/Coastal NCCP Subregions of Orange County (Central/Coastal NCCP)

Unit 9 encompasses approximately 2,337 ha (5,776 ac) within the Orange County Central/Coastal NCCP planning area. It includes lands containing core gnatcatcher populations and sage scrub habitat determined to be essential for the conservation and recovery of the gnatcatcher within select Existing-Use Areas, the western portion of the North Ranch Policy Plan Area (i.e., west of State Route 241), and the designated reserve (panhandle portion) of Marine Corps Air Station El Toro.

Unit 10: Palos Verdes Peninsula Subregion, Los Angeles County

Unit 10 encompasses approximately 5,588 ha (13,808 ac) within the

subregional planning area for the Palos Verdes Peninsula in Los Angeles County, including the City of Rancho Palos Verdes MSHCP area. This unit includes a core gnatcatcher population and sage scrub habitat.

Unit 11: East Los Angeles County-Matrix NCCP Subregion of Orange County

Unit 11 encompasses approximately 22,130 ha (54,682 ac) within the Montebello, Chino-Puente Hills, East Coyote Hills and West Coyote Hills area. The unit provides the primary connectivity between core gnatcatcher populations and sage scrub habitat within the Central/Coastal Subregions of the Orange County NCCP (Unit 9), the Western Riverside County MSHCP (Unit 12), and the Bonelli Regional Park core population within the North Los Angeles linkage (Unit 14).

Unit 12: Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

Unit 12 encompasses approximately 106,908 ha (264,167 ac) within the proposed planning area for the Western Riverside County MSHCP. Lands proposed include core populations within the Temecula/Murietta/Lake Skinner region and the Lake Elsinore/Lake Mathews region. Also proposed are regions of connectivity and additional core populations that occur along the I–15 corridor, the Lake Perris area, the Alessandro Heights area, the Box Spring Mountains/The Badlands, and along the foothills of the Santa Ana Mountains into the Chino-Puente Hills. These areas provide connectivity between core populations within Riverside County and to populations in San Diego, San Bernardino, Orange, and Los Angeles Counties. Unit 12 encompasses some of the Core Reserves established under the Stephens' Kangaroo Rat HCP. The Lake Mathews/Estelle Mountain, Steele Peak, Lake Perris/San Jacinto Core Reserves, the Potrero Area of Critical Environmental Concern, and the Southwestern Riverside County Multi-Species Reserve provide essential habitat for the gnatcatcher and, therefore, have been proposed for designation as critical habitat.

Unit 13: San Bernardino Valley MSHCP, San Bernardino County

Unit 13 encompasses approximately 30,076 ha (74,316 ac) along the foothills of the San Gabriel Mountains and within the Jurupa Hills on the border of San Bernardino and Riverside Counties. The unit includes lands within the San Bernardino National Forest and on Norton Air Force Base. This unit contains breeding gnatcatcher populations and constitutes a primary linkage between western Riverside County (Unit 12) and eastern Los Angeles County (Unit 11).

Unit 14: East Los Angeles County Linkage

Unit 14 encompasses approximately 3,384 ha (8,361 ac) in eastern Los Angeles County along the foothills of the San Gabriel Mountains. Its main function is in establishing the primary east-west connectivity of sage scrub habitat between core gnatcatcher populations in San Bernardino County (Unit 13) to those in southeastern Los Angeles County (Unit 11).

Unit 15: Western Los Angeles County

Unit 15 encompasses approximately 13,897 ha (34,339 ac) in western Los Angeles county along the foothills of the San Gabriel Mountains. It includes breeding gnatcatcher populations and sage scrub habitat in the Placerita, Box Springs Canyon, and Plum Canyon areas. This unit encompasses the northern distributional extreme of the gnatcatcher's current range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other nonFederal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is

designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the coastal California gnatcatcher or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U. S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on nonFederal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the gnatcatcher is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to—

(1) Removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, invasion of exotic plants or animals, or fragmentation).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to—

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the BLM or Forest Service;

(4) Road construction and maintenance, right of way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(6) Military training and maneuvers on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands;

(7) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

All proposed critical habitat is within the geographical area occupied by the species and is likely used by gnatcatchers, whether by reproductive, territorial birds, or by birds merely moving through the area. Thus, in a broad sense, we consider all critical habitat to be occupied by the species. Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species, thus we do not anticipate additional regulatory protection will result from critical habitat designation.

Relationship to Incidental Take Permits Issued Under Section 10

Several habitat conservation planning efforts have been completed within the range of the gnatcatcher. Principal among these are NCCP efforts in Orange and San Diego Counties. NCCP plans completed and permitted to date have resulted in the conservation of 40,208 ha (99,310 ac) of gnatcatcher habitat.

In southwestern San Diego County, the development of the MSCP has resulted in our approval of three subarea plans under section 10(a)(1)(B) of the Act. These three southern subarea plans account for approximately 95 percent of the gnatcatcher habitat in southern San Diego County. When fully implemented, the MSCP will result in the establishment of conservation areas that collectively contain 28,844 ha (71,274 ac) of coastal sage scrub vegetation within a 69,573-ha (171,917-ac) preserve area.

Additionally, we have approved the Orange County Central-Coastal NCCP/HCP and issued an incidental take permit under section 10(a)(1)(B) of the Act. Implementation of the plan will result in the conservation of 15,677 ha (38,738 ac) of Reserve lands, which contain 7,621 ha (18,831 ac) of coastal sage scrub.

The gnatcatcher habitat in the approved planning areas in San Diego and Orange Counties was selected, with our technical assistance and that of the California Department of Fish and Game (CDFG), for permanent preservation and configuration into a biologically viable interlocking system of reserves by the local jurisdictions. The reserve system established within the approved planning areas includes those habitat areas that we consider essential to the long-term survival and recovery of the gnatcatcher. In addition, the plans detail management measures for the reserve lands that protect, restore, and enhance their value as gnatcatcher habitat.

The essential gnatcatcher habitat that is within planning areas is permanently

protected in the habitat reserves; no additional private lands within the planning areas warrant designation as critical habitat. Because the gnatcatcher habitat preserved in the planning areas is managed for the benefit of the gnatcatcher under the terms of the plans, and associated section 10 (a)(1)(B) permits there are no "additional management considerations or protections" required for those lands. Therefore, we have determined that private lands within approved HCP planning areas and covered by an existing section 10(a)(1)(B) permit for the gnatcatcher do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

We also have approved several smaller multiple species HCPs in San Diego Riverside, Los Angeles, and Orange Counties. These include, Bennett Property, Meadowlark Estates, Fieldstone, and Poway Subarea Plan in San Diego County; Coyote Hills East and Shell Oil in Orange County; Ocean Trails in Los Angeles County; and Lake Mathews in Riverside County. These efforts have resulted in the protection of 3,743 ha (9,250 ac) of gnatcatcher habitat.

The currently approved and permitted HCPs are designed to ensure the long-term survival of covered species, including the gnatcatcher, within the plan areas. The reserve lands and other conservation lands that require protection under these approved plans encompass those lands essential for the survival and recovery of the gnatcatcher. The HCPs and implementation agreements outline management measures and protections for the conservation lands that are crafted to protect, restore, and enhance their value as gnatcatcher habitat. Because appropriate management and protection of areas essential for the conservation of the gnatcatcher are required under these approved and permitted plans, we do not believe these areas meet the definition of critical habitat nor do we believe they require designation.

As is the case with existing approved gnatcatcher HCPs, the gnatcatcher plans currently under development will provide for protection and management of habitat areas essential for the conservation of the gnatcatcher while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by gnatcatchers. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the gnatcatcher. Several HCP efforts are now underway for the gnatcatcher and other listed and non-listed species, in Orange, Los Angeles, Riverside, San Bernardino, and San Diego Counties in areas proposed herein as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the gnatcatcher should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

Relationship to the 4(d) Special Rule for the Gnatcatcher

On December 10, 1993, a final special rule concerning take of the gnatcatcher was published pursuant to section 4(d) of the Act (58 FR 63088). Under the 4(d) special rule, incidental take of gnatcatchers is not considered to be a violation of section 9 of the Act if—(1) Take results from activities conducted pursuant to the requirements of the NCCP and in accordance with an approved NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State of California's Conservation and Process Guidelines (Guidelines) dated November 1993; and (2) the Service issues written concurrence that the plan meets the standards for issuance of an incidental take permit under 50 CFR 17.32(b)(2). Within enrolled subregions actively engaged in the preparation of an NCCP plan, the take of gnatcatchers will not be a violation of section 9 of the Act if such take results from activities conducted in accordance with the Guidelines. The Guidelines limit habitat loss during the interim planning period to no more than 5 percent of coastal sage scrub with lower long-term conservation potential in existence at the time of adoption of the 4(d) special rule.

The Guidelines specify criteria to evaluate the long-term conservation potential of sage scrub that is proposed for loss during the period that NCCP plans are being developed to assist participating jurisdictions in providing interim protection for areas that support habitat that is likely to be important to conservation of the gnatcatcher. These jurisdictions are—the Southern and Matrix subregions of Orange County; the cities of Rancho Palos Verdes and San Dimas in Los Angeles County; MSCP subareas in the cities of Santee, El Cajon, Chula Vista, and Coronado; the MHCP Subregion of northwestern San Diego County; the North County Subarea of San Diego's MSCP; San Diego County's MHCOSP; and six water districts in San Diego County.

We intend that participating jurisdictions will be able to continue to apply the 4(d) special rule within designated critical habitat and to issue Habitat Loss Permits, with the joint concurrence of us and the CDFG, provided the jurisdictions are actively working to complete their subarea plans and adhere to the Guidelines. To be consistent with the Guidelines, the jurisdictions must find, and we and CDFG must concur, that:

1. The proposed habitat loss is consistent with the interim loss criteria in the Guidelines and with any subregional process if established by the subregion:

(a) the habitat loss does not cumulatively exceed the 5 percent guideline;

(b) the habitat loss will not preclude connectivity between areas of high habitat values;

(c) the habitat loss will not preclude or prevent the preparation of the subregional NCCP;

(d) the habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with section 4.3 of the Guidelines.

2. The habitat loss will not appreciably reduce the likelihood of the survival and recovery of listed species in the wild, and

3. The habitat loss is incidental to otherwise lawful activities.

Because, in addition to avoiding jeopardy to the gnatcatcher, the Guidelines direct habitat loss to areas with low long-term conservation potential that will not preclude

development of adequate NCCP plans and ensure that connectivity between areas of high habitat value will be maintained, we believe that allowing a small percentage of habitat loss within designated critical habitat pursuant to the 4(d) rule is not likely to adversely modify or destroy critical habitat by appreciably reducing its value for both the survival and recovery of the species. When we make a final critical habitat determination, we will prepare a new biological opinion on the 4(d) rule to formally evaluate the effects of the rule on designated critical habitat.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U. S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave., Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6143).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

In this proposed rule, we do not propose to designate critical habitat on nonFederal lands within the boundaries of an existing approved HCP and covered by an existing legally operative incidental take permit for California gnatcatchers issued under section 10(a)(1)(B) of the Act because the existing HCPs provide for development in nonessential areas and establish long-term commitments to conserve the species and areas essential to the conservation of the gnatcatcher. Therefore, we believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the gnatcatcher is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the gnatcatcher in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Additionally, we are seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now underway for the gnatcatcher (and other listed and nonlisted species) in Orange, Los Angeles, Riverside, San Bernardino, and San Diego Counties in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the gnatcatcher—

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the gnatcatcher, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required.

This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Additionally, we are seeking comments on the following—

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation or other consequences to conservation of the gnatcatcher resulting from designation;

(2) Specific information on the amount and distribution of gnatcatchers and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the gnatcatcher such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish the final determination by September 30, 2000, we have scheduled three hearings. The hearings are scheduled to be held in Anaheim for Los Angeles and Orange Counties on February 15, 2000; in San Diego for San Diego County on February 17, 2000; and in Riverside for Riverside and San Bernardino Counties on February 23, 2000. Written comments submitted during the comment period will receive equal consideration as comments presented at a public hearing. For additional information on public hearings see the **ADDRESSES** section.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following—(1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The coastal California gnatcatcher was listed as a threatened species in 1993. In fiscal years 1998 through 2000 we have conducted 50 formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the gnatcatcher. We have also issued an estimated 15 section 10(a)(1)(B) incidental take permits for entities that have prepared HCPs for areas where the species occurs.

The areas proposed for critical habitat are currently occupied by the coastal California gnatcatcher. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on nonFederal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or nonFederal persons that receive Federal authorization or funding. NonFederal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the coastal California gnatcatcher since the listing in 1993. The prohibition against adverse modification of critical habitat is not

expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF GNATCATCHER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities such as removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.* noise, edge effects, invasion of exotic plants or animals, or fragmentation that the Federal Government carries out.	None
Private Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.* noise, edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding).	None

[1] This column represents the activities potentially affected by listing the gnatcatcher as a threatened species (March 30, 1993; 58 FR 16741) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section) we have designated property owned by Federal, State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the BLM or Forest Service;

(4) Road construction and maintenance, right of way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(6) Military training and maneuvers on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands;

(7) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on nonFederal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in

section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the coastal California gnatcatcher. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the gnatcatcher.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the coastal California gnatcatcher imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the gnatcatcher.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. The Appendix to Secretarial Order 3206 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) provides that critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. The Appendix further provides that in designating critical habitat; "the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

We have determined that there are no Tribal lands essential for the conservation of the gnatcatcher because they do not support core gnatcatcher populations, nor do they provide essential linkages between core populations. Therefore, we are not proposing to designate critical habitat for the gnatcatcher on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this notice is Douglas Krofta (see **ADDRESSES** section)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Gnatcatcher, coastal California"' under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * * * *							
BIRDS							
* * * * * * *							
Gnatcatcher, coastal California.	*Polioptila californica californica*	U.S.A. (CA), Mexico	do	T	496	17.95(b)	17.41(b)
* * * * * * *							

3. In § 17.95 add critical habitat for the coastal California gnatcatcher (*Polioptila californica californica*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Coastal California gnatcatcher (*Polioptila californica californica*)

1. Critical Habitat Units are depicted for Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California, on the maps below.

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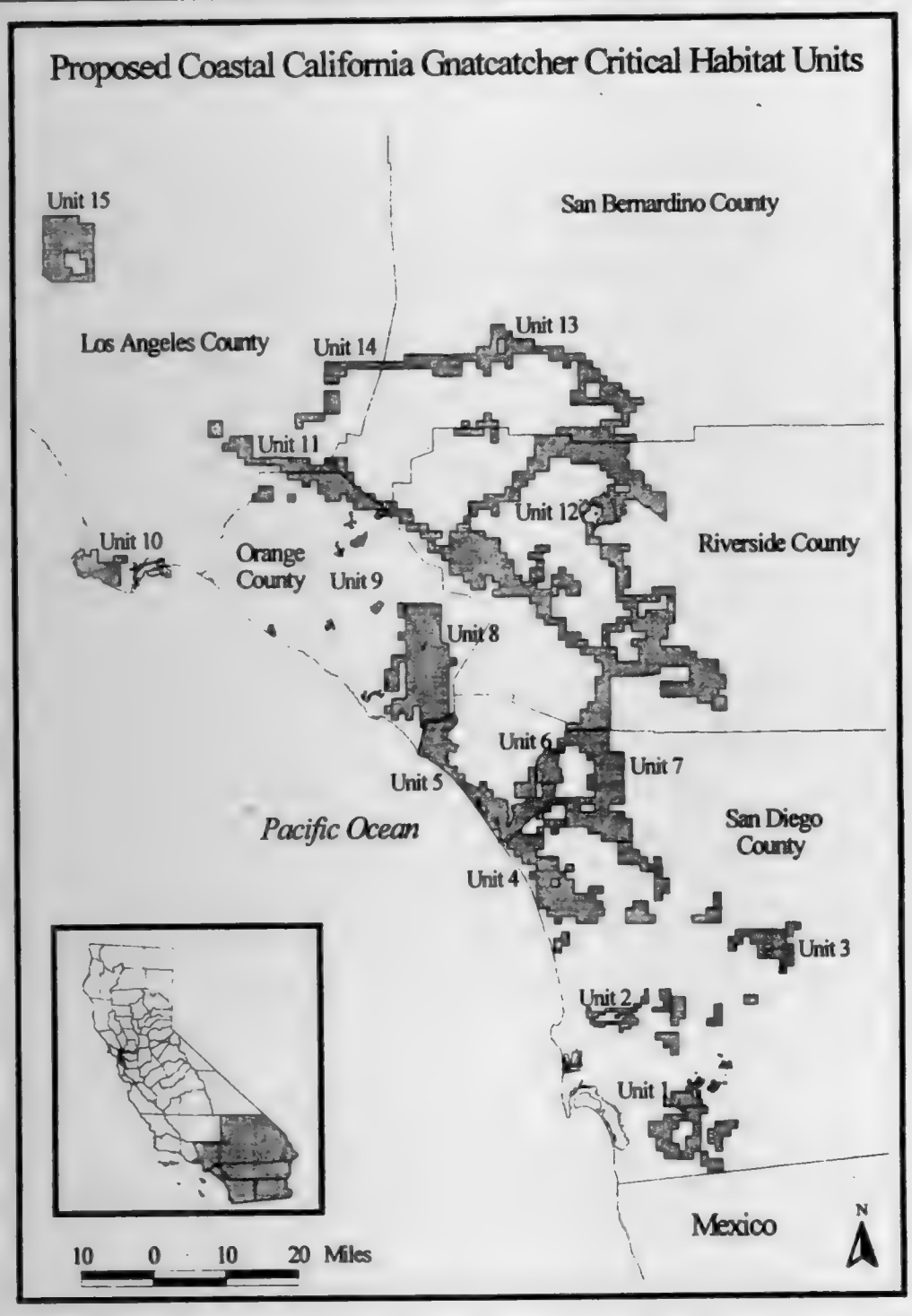

2. Within these areas, the primary constituent elements for the gnatcatcher are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in undeveloped areas, including agricultural lands, that support or have the potential to support, through natural successional processes, various types of sage scrub or support chaparral, grassland, and riparian habitats where they occur proximal to sage scrub and where they may be utilized for biological needs such as breeding and foraging (Atwood *et al.* 1998, Campbell *et al.* 1998). Primary constituent elements associated with the biological needs of dispersal are also found in undeveloped areas, including agricultural lands, that provide or could provide connectivity or linkage between or within larger core areas, including open space and disturbed areas that may receive only periodic use.

Primary constituent elements include, but are not limited to, the following plant communities: Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995). Dominant species within these plant communities include California sagebrush (*Artemisia californica*), buckwheats (*Eriogonum fasciculatum* and *E. cinereum*), encelias (*Encelia californica* and *E. farinosa*), and various sages (commonly *Salvia mellifera, S. apiana,* and *S. leucophylla*). Other commonly occurring plants include coast goldenbush (*Isocoma menziesii*), bush monkeyflower (*Mimulus aurantiacus*), Mexican elderberry (*Sambucus mexicana*), bladderpod (*Isomeris arborea*), deerweed (*Lotus scoparius*), chaparral mallow (*Malacothamnus fasciculatum*), and laurel sumac (*Malosma laurina*), and several species of *Rhus* (*R. integrifolia, R. ovata,* and *R. trilobata*). Succulent species, such as boxthorn (*Lycium spp.*), cliff spurge (*Euphorbia misera*), jojoba (*Simmondsia chinensis*), and various species of cacti (*Opuntia littoralis, O. prolifera, and Ferocactus viridescens*), and live-forever (*Dudleya spp.*) are represented in maritime succulent scrub, coast prickly-pear scrub, and southern coastal bluff scrubs.

3. Critical habitat does not include nonFederal lands covered by a legally operative incidental take permit for the coastal California gnatcatcher issued under section 10(a)(1)(B) of the Act on or before February 7, 2000.

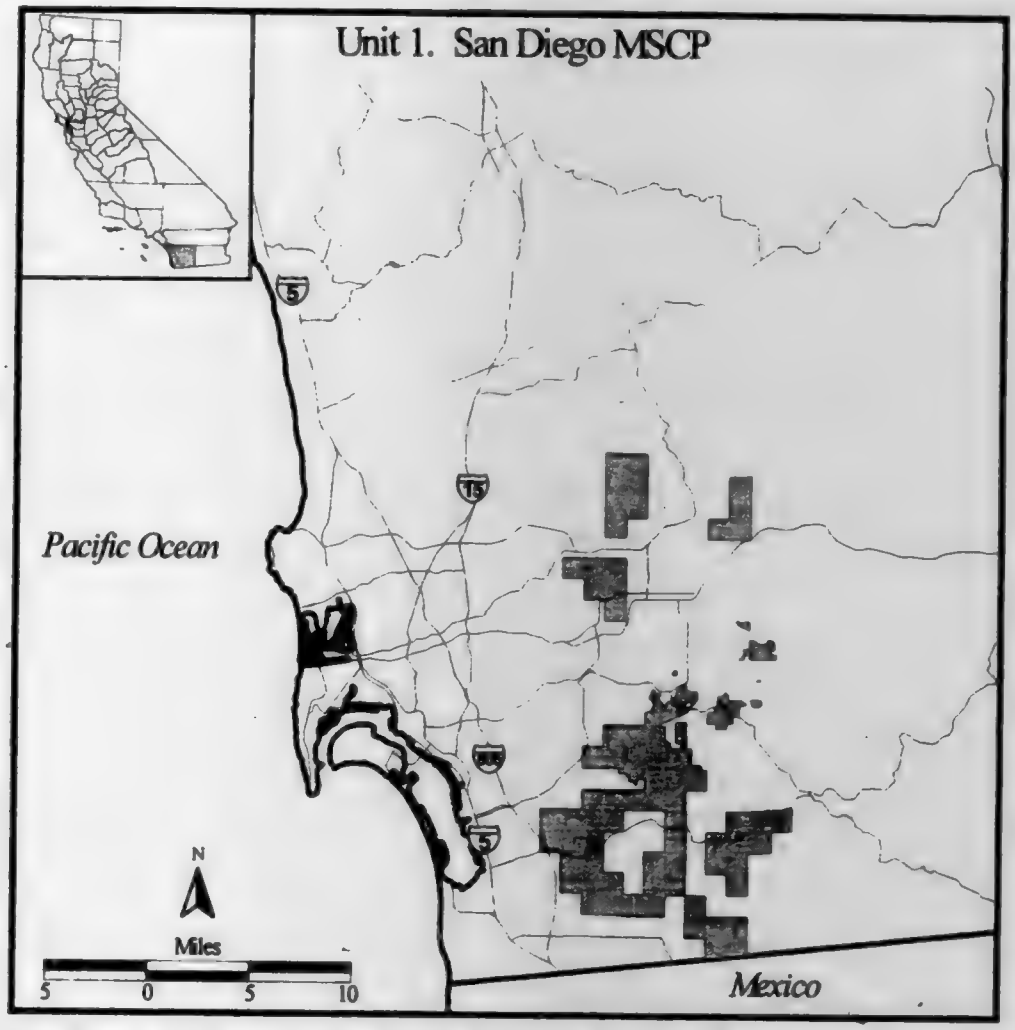

Map Unit 1: San Diego County MSCP, San Diego County, California. From USGS 1:100,000 quadrangle maps San Diego (1980) and El Cajon (1982), California. Lands defined by the boundaries of the Otay-Sweetwater Unit of the San Diego National Wildlife Refuge Complex and the San Miguel Major Amendment Area for the San Diego Multiple Species Conservation Program. Lands within T. 12 S., R. 01 E., San Bernardino Principal Meridian, secs. 28 and 33; T. 12 S., R. 01 W., San Bernardino Principal Meridian, secs. 20 and 30; T. 13 S., R. 01 E., San Bernardino Principal Meridian, sec. 5; T. 13 S., R. 02 W., San Bernardino Principal Meridian, sec. 12; T. 13 S., R. 03 W., San Bernardino Principal Meridian, secs. 2, 10, and 13; T. 14 S., R. 01 W., San Bernardino Principal Meridian, secs. 29 and 32; T. 14 S., R. 02 W., San Bernardino Principal Meridian, sec. 35; T. 15 S., R. 01 E., San Bernardino Principal Meridian, sec. 9; T. 15 S., R. 01 W., San Bernardino Principal Meridian, secs. 3–5; T. 15 S., R. 02 E., San Bernardino Principal Meridian, sec. 6; T. 15 S., R. 02 W., San Bernardino Principal Meridian, secs. 2, 3, and 12; T. 15 S., R. 03 W., San Bernardino Principal Meridian, sec. 9; T. 16 S., R. 01 W., San Bernardino Principal Meridian, sec. 5; T. 17 S., R. 01 E., San Bernardino Principal Meridian, secs. 19, 27, and 33–35; T. 17 S., R. 01 W., San Bernardino Principal Meridian, secs. 5, 10, 11, 15–17, 23–28, and 33; T. 18 S., R. 01 E., San Bernardino Principal Meridian, secs. 3–5, 8, 9, 16, 19, 28–30, 32, and 33; T. 18 S., R. 01 W., San Bernardino Principal Meridian, secs. 13, 17, 18, and 20–23. The following lands within Rincon del Diablo Land Grant: UTM coordinates (X, Y) 497000, 3667600; 497100, 3667600; 500000, 3664000; 497000, 3662400; 497000, 3667600. The following lands within San Bernardino (Snook) Land Grant: UTM coordinates (X, Y) 492200, 3661600; 495500, 3661600; 495500, 3658500; 497200, 3658500; 497000, 3657000; 496600, 3656700; 490600, 3656700; 490600, 3660000; 492200, 3660000; 492200, 3661600. The following lands within Canada de San Vicente y Mesa del Padre Barona Land Grant: UTM coordinates (X, Y) 515000, 3651400; 515000, 3650400; 513300, 3650400; 513300, 3651100; 515000, 3651400. The following lands within El Cajon Land Grant: UTM coordinates (X, Y) 501000, 3640000; 503600, 3640400; 503600, 3635600; 502000, 3635600; 502000, 3634100; 500300, 3634100; 500300, 3637200; 498100, 3637200; 501000, 3640000; 511600, 3638900; 511700, 3638900; 511700, 3634000; 508400, 3634000; 508400, 3635600; 510000, 3635600; 510000, 3638500; 511600, 3638900; 497000, 3632500; 502000, 3632500; 502000, 3627600; 500300, 3627600; 500300, 3629200; 498700, 3629200; 498700, 3630900; 497000, 3630900; 497000, 3632500. The following lands within Mission San Diego Land Grant: UTM coordinates (X, Y) 497000, 3632500; 502000, 3632500; 502000, 3627600; 500300, 3627600; 500300, 3629200; 498700, 3629200; 498700, 3630900; 497000, 3630900; 497000, 3632500. The following lands within Mission San Diego and Pueblo Lands of San Diego Land Grants: UTM coordinates (X, Y) 481600, 3637800; 485800, 3637400; 485800, 3636600; 484200, 3636600; 484200, 3635900; 483400, 3635900; 483400, 3635100; 489700, 3635100; 489700, 3635900; 490600, 3635900; 490600, 3636500; 489000, 3636500; 489000, 3635800; 488000, 3635800; 488000, 3636600; 488900, 3636600; 488900, 3637300; 491700, 3637300; 491700, 3636600; 492300, 3636600; 492300, 3635800; 493100, 3635800; 493100, 3634300; 491500, 3634300; 491500, 3633400; 489800, 3633400; 489800, 3632600; 489000, 3632600; 489000, 3634400; 485800, 3634400; 485800, 3633900; 483300, 3633900; 483300, 3634500; 482500, 3634500; 482500, 3635900; 481600, 3635900; 481600, 3637800. The following lands within Jamacho and La Nacion Land Grants: UTM coordinates (X, Y) 500300, 3619600; 504500, 3619600; 504500, 3619500; 504000, 3618000; 503000, 3617800; 502000, 3617800; 502000, 3617200; 500300, 3616200; 498700, 3616200; 498700, 3617900; 500300, 3617900; 500300, 3619600. The following lands within La Nacion, Otay (Dominguez), and Otay (Estudillo) Land Grants: UTM coordinates (X, Y) 498700, 3614600; 500500, 3614600; 501500, 3611300; 500400, 3611300; 500400, 3608200; 502000, 3608200; 502000, 3606500; 503600, 3606500; 503600, 3609800; 505200, 3609800; 505200, 3613000; 506900, 3613000; 506900, 3608000; 507000, 3607000; 507000, 3606000; 506300, 3606400; 505300, 3606400; 505300, 3606000; 501900, 3604900; 499900, 3604900; 497000,

3607600; 497000, 3609700; 495400, 3609700; 495400, 3613100; 498700, 3613100; 498700, 3614600. The following lands within Jamul Land Grant: UTM coordinates (X, Y) 514600, 3613200; 515200, 3613200; 515200, 3612700; 514000, 3611000; 510000, 3610000; 510000, 3612000; 511900, 3613000; 513000, 3613000; 513000, 3613100; 514600, 3613100; 514600, 3613200.

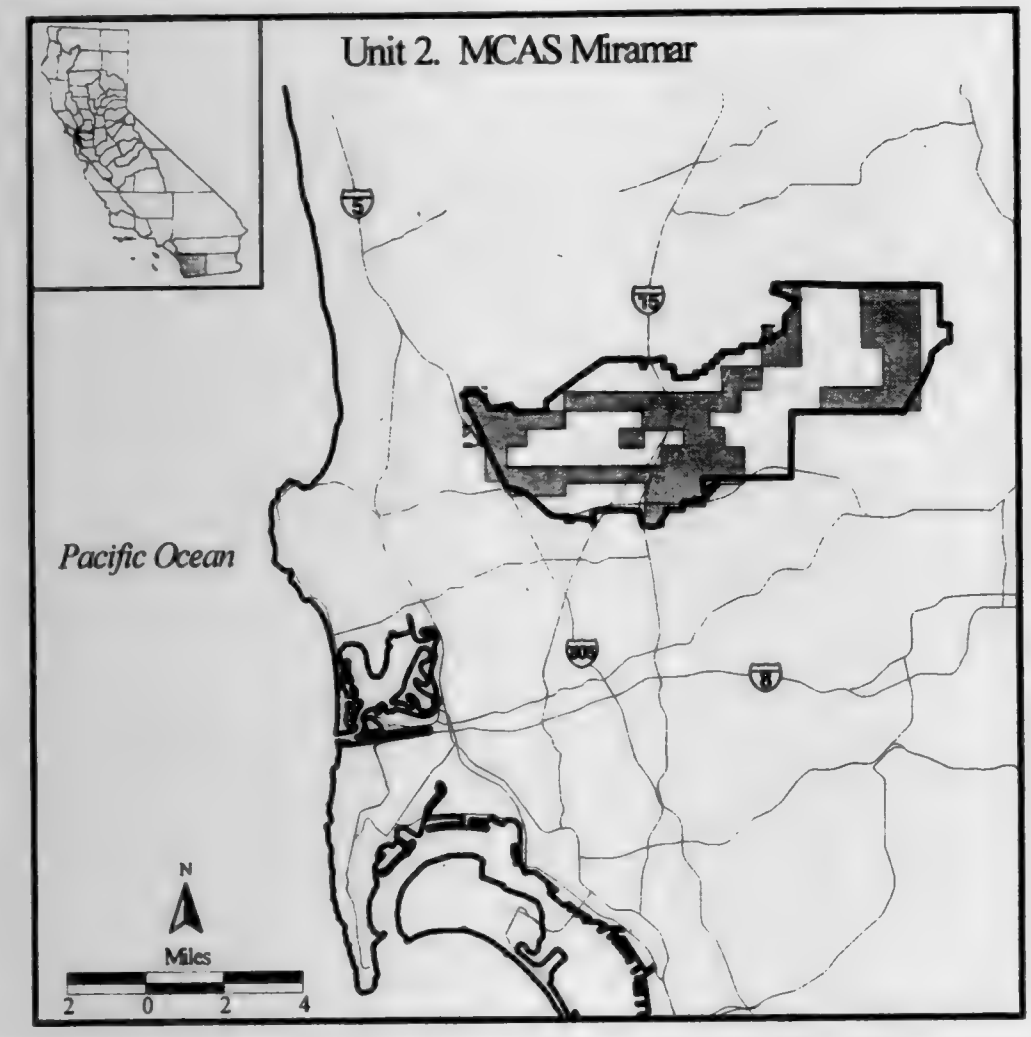

Map Unit 2: Marine Corps Station, Miramar, San Diego County, California. From USGS 1:100,000 quadrangle maps El Cajon (1982) and San Diego (1980), California. Lands within the following: T. 15 S., R. 3 W., San Bernardino Principal Meridian, SE. ¼ sec. 9; S. ½ sec. 12. Lands within T. 14 S., R. 2 W., San Bernardino Principal Meridian, E.½ sec. 35. Federal lands within T. 15 S., R. 2 W., San Bernardino Principal Meridian, sec. 2; S. ½ sec. 7; S. ½ sec. 8; S½ sec. 9; sec. 10 except SE. ¼. Lands within T. 14 S., R. 1 W., San Bernardino Principal Meridian, E. ½ sec. 31; sec. 32. Lands within T. 15 S., R. 1 W., San Bernardino Principal Meridian, NE. ¼ sec. 6; sec. 5; S. ½ sec. 7; and sec. 8. Lands within T. 15 S., R. 2 W., San Bernardino Principal Meridian, SE. ¼ sec. 12. The following lands within El Cajon Land Grant: UTM coordinates (X, Y) 501000, 3640000; 503600, 3640400; 503600, 3635600; 502000, 3635600; 502000, 3634100; 500300, 3634100; 500300, 3637200; 498100, 3637200; 501000, 3640000. The following lands within Mission San Diego and Pueblo Lands of San Diego Land Grants: UTM coordinates (X, Y) 481600, 3637800; 485800, 3637400; 485800, 3636600; 484200, 3636600; 484200, 3635900; 483400, 3635900; 483400, 3635100; 489700, 3635100; 489700, 3635900; 490600, 3635900; 490600, 3636500; 489000, 3636500; 489000, 3635800; 488000, 3635800; 488000, 3636600; 488900, 3636600; 488900, 3637300; 491700, 3637300; 491700, 3636600; 492300, 3636600; 492300, 3635800; 493100, 3635800; 493100, 3634300; 491500, 3634300; 491500, 3633400; 489800, 3633400; 489800, 3632600; 489000, 3632600; 489000, 3634400; 485800, 3634400; 485800, 3633900; 483300, 3633900; 483300, 3634500; 482500, 3634500; 482500, 3635900; 481600, 3635900; 481600, 3637800.

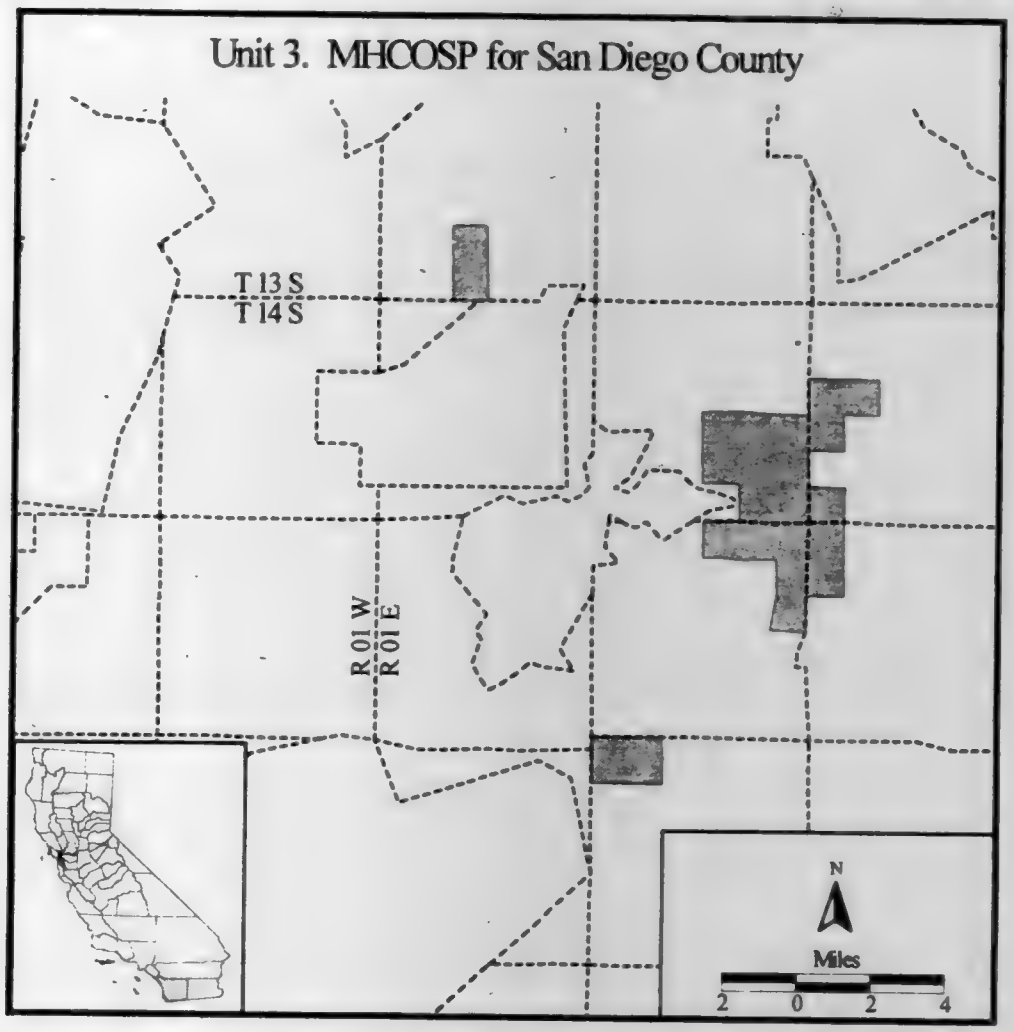

Map Unit 3: Multiple Habitat Conservation Open Space Program (MHCOSP), San Diego County, California. From USGS 1:100,000 quadrangle map Borrego Valley, California (1983). Lands within T. 12 S., R. 01 E., San Bernardino Principal Meridian, secs. 28 and 33; T. 13 S., R. 02 E., San Bernardino Principal Meridian, secs. 22–27, 35, and 36; T. 13 S., R. 03 E., San Bernardino Principal Meridian, secs. 17–19, and 31; T. 14 S., R. 02 E., San Bernardino Principal Meridian, secs. 1–3, 12, and 13; T. 14 S., R. 03 E., San Bernardino Principal Meridian, secs. 6 and 7; T. 15 S., R. 02 E., San Bernardino Principal Meridian, secs. 5 and 6.

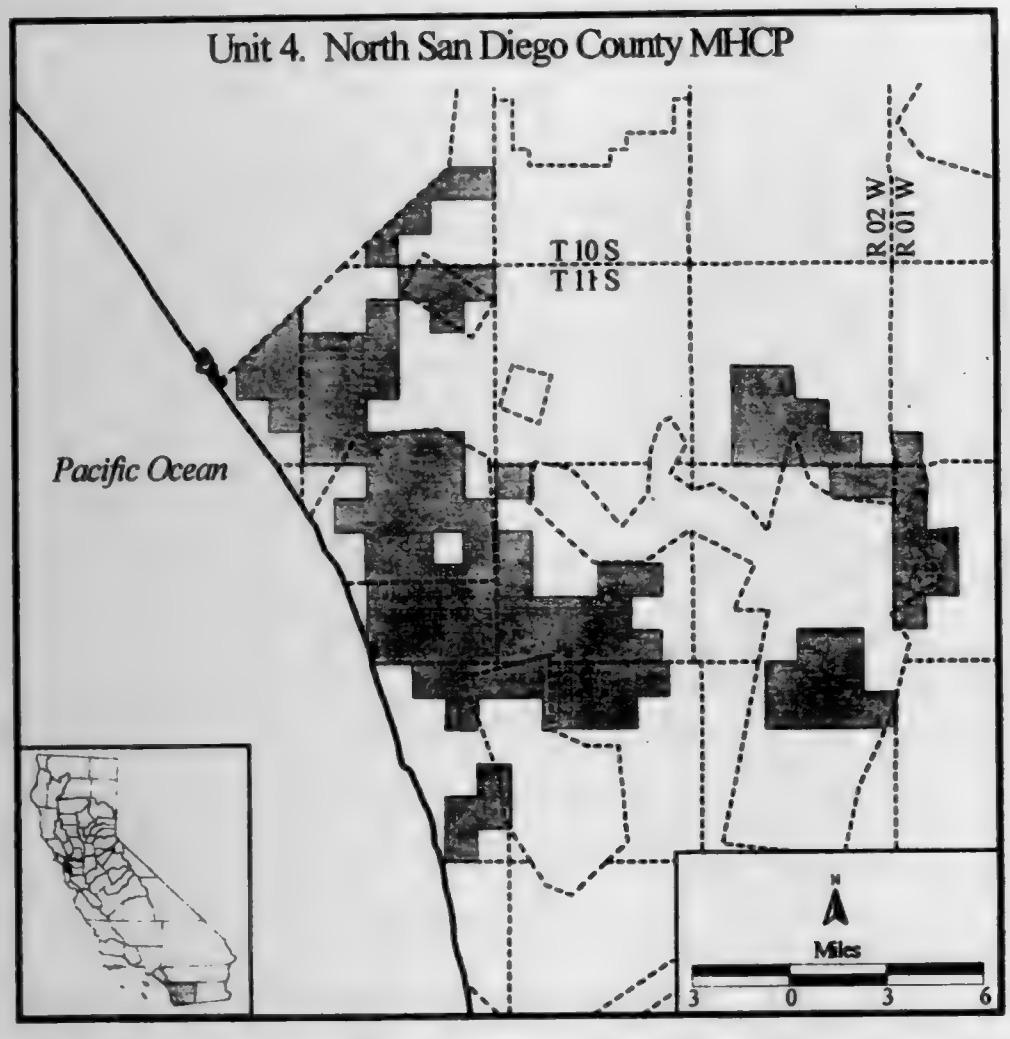

Map Unit 4: North San Diego County MHCP, San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984). Lands within T. 10 S., R. 04 W., San Bernardino Principal Meridian, secs. 22–24, 27, 28, and 33; T. 11 S., R. 01 W., San Bernardino Principal Meridian, sec. 31; T. 11 S., R. 02 W., San Bernardino Principal Meridian, secs. 20, 21, 27–29, and 32–35; T. 11 S., R. 04 W., San Bernardino Principal Meridian, secs. 1–3, 9, 11, 12, 16–21, 29–33, and 35; T. 11 S., R. 05 W., San Bernardino Principal Meridian, secs. 12–14, and 23–25; T. 12 S., R. 01 W., San Bernardino Principal Meridian, secs. 6, 7, 17–20, and 30; T. 12 S., R. 02 W., San Bernardino Principal Meridian, secs. 1 and 2; T. 12 S., R. 03 W., San Bernardino Principal Meridian, secs. 6, 18, 19, 22, 23, and 27-35; T. 12 S., R. 04 W., San Bernardino Principal Meridian, secs. 12, 13, 21–28, and 33–36; T. 13 S., R. 02 W., San Bernardino Principal Meridian, sec. 12; T. 13 S., R. 03 W., San Bernardino Principal Meridian, secs. 2–6, 8–10, and 13; T. 13 S., R. 04 W., San Bernardino Principal Meridian, secs. 1–3, 11, 24–26, and 35. The following lands within Guajome Land Grant: UTM coordinates (X, Y) 473300, 3679600; 474600, 3679600; 477300, 3677800; 477200, 3677700; 477200, 3677800; 475700, 3677800; 475700, 3676300; 475600, 3676300; 474000, 3677300; 474000, 3677800; 473300, 3677800; 472000, 3678000; 473300, 3679600. The following lands within Agua Hedionda Land Grant: UTM coordinates (X, Y) 474000, 3672000; 475700, 3670900; 475700, 3668100; 477100, 3668100; 478000, 3664000; 470700, 3664000; 470700, 3666500; 469200, 3666500; 469200, 3668200; 470800, 3668200; 470800, 3669800; 469400, 3669800; 470000, 3672000; 474000, 3672000; excluding UTM coordinates (X, Y) 474100, 3666500; 474100, 3664900; 475600, 3664900; 475600, 3666500; 474100, 3666500. The following lands within Rincon del Diablo Land Grant: UTM coordinates (X, Y) 492000, 3672000; 492700, 3669600; 491600, 3669600; 492000, 3672000; 497000, 3667600; 497100, 3667600; 500000, 3664000; 497000, 3662400; 497000, 3667600; 497000, 3662100; 497100, 3662100; 497400, 3661600; 497400, 3661500; 497000, 3661500; 497000, 3662100; 492200, 3661600; 495500, 3661600; 495500, 3658500; 497200, 3658500; 497000, 3657000; 496600, 3656700; 490600, 3656700; 490600, 3660000; 492200, 3660000; 492200, 3661600. The following lands within Los Vallecitos de San Marcos Land Grant: UTM coordinates (X, Y) 479000, 3669000; 479100, 3669000; 479100, 3668000; 478800, 3668000; 479000, 3669000. The following lands within San Bernardino (Snook) Land Grant: UTM coordinates (X, Y) 492200, 3661600; 495500, 3661600; 495500, 3658500; 497200, 3658500; 497000, 3657000; 496600, 3656700; 490600, 3656700; 490600, 3660000; 492200, 3660000; 492200, 3661600. The following lands within Los Encinitos and San Dieguito Land Grants: UTM coordinates (X, Y) 475000, 3660000; 480000, 3661000; 480000, 3656700; 479500, 3656700; 479500, 3658300; 476300, 3658300; 476300, 3657400; 476200, 3657400; 475000, 3660000; 477000, 3655100; 477900, 3655100; 477900, 3652000; 477800, 3652000; 477000, 3653000.

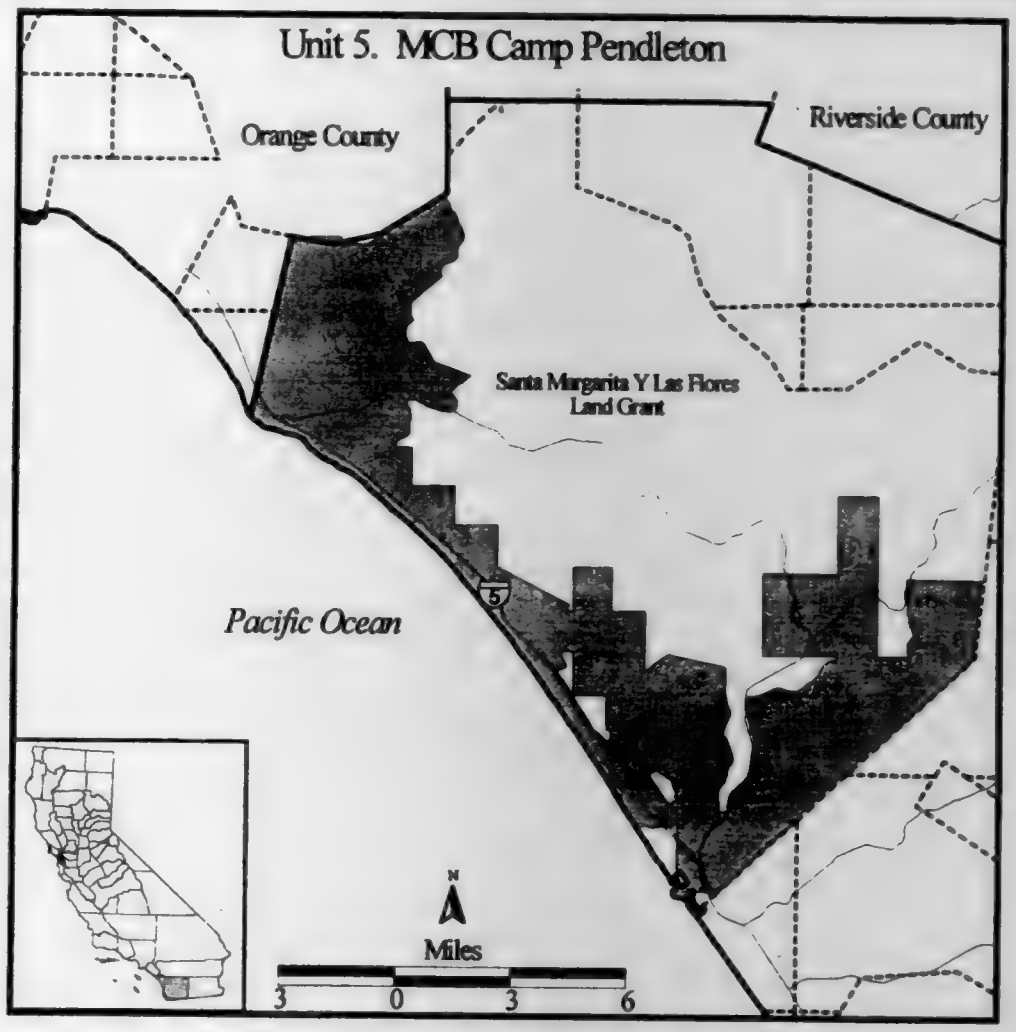

Map Unit 5: Marine Corps Base Camp Pendleton, San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984). Lands within T. 11 S., R. 05 W., San Bernardino Principal Meridian, sec. 22. The following lands within Santa Margarita y Las Flores Land Grant: UTM coordinates (X, Y) 440400, 3727400; 442300, 3727400; 447000, 3724000; 450100, 3719400; 450100, 3718600; 451100, 3718600; 451700, 3718100; 451700, 3715400; 452700, 3715400; 452700, 3713600; 451700, 3713600; 451700, 3712700; 451600, 3712700; 451600, 3702900; 451500, 3702900; 451500, 3702200; 450000, 3702200; 450000, 3700700; 448500, 3700700; 448500, 3701600; 447000, 3701600; 447000, 3700100; 445900, 3700100; 445100, 3701700; 445100, 3704800; 443600, 3704800; 443600, 3702700; 443000, 3701600; 441900, 3701600; 441900, 3703200; 440300, 3703200; 440300, 3701700; 438700, 3701700; 438700, 3703200; 437200, 3703200; 437200, 3704700; 443200, 3704700; 442000, 3708000; 442000, 3714500; 440500, 3714500; 440500, 3709200; 437000, 3711000; 437500, 3713000; 438900, 3713000; 438900, 3716100; 442100, 3716100; 442100, 3719300; 440400, 3719300; 440400, 3721000; 442100, 3721000; 442100, 3724100; 440400, 3724100; 440400, 3727400; 449800, 3692900; 451400, 3692900; 451400, 3691300; 453200, 3691300; 453200, 3689700; 455000, 3689700; 455000, 3688000; 453000, 3688000; 449800, 3690900; 449800, 3692900; 469200, 3691000; 470900, 3691000; 470900, 3684400; 475100, 3684400; 470800, 3680600; 470800, 3682700; 469200, 3682700; 469200, 3684400; 466100, 3684400; 466100, 3687800; 469200, 3687800; 469200, 3691000; 458200, 3688000; 459800, 3688000; 459800, 3686200; 461200, 3686200; 461200, 3681300; 459600, 3681300; 459600, 3682700; 458200, 3682700; 458200, 3684500; 456500, 3684500; 456500, 3686200; 458200, 3686200; 458200, 3688000; 462600, 3678000; 467700, 3678000; 467700, 3677700; 464400, 3674700; 462400, 3674700; 462600, 3675400. The Camp Pendleton Marine Corps Station Designated Areas (1996); Alpha One; Alpha Two; Bravo One; Bravo Two; Bravo Three; Juliett; Lima; Mike; November; Oscar One; Tango; Uniform; Victor; Agriculture Lease Area (North); 52 Area; 62 Area; 63 Area; 64 Area; San Onofre Housing Area; State Park Lease Area; Red Beach, White Beach; Asistencia de Las Flores; Edson Range Impact Area; Agriculture Lease Area (South); Mass 3; and Golf Course.

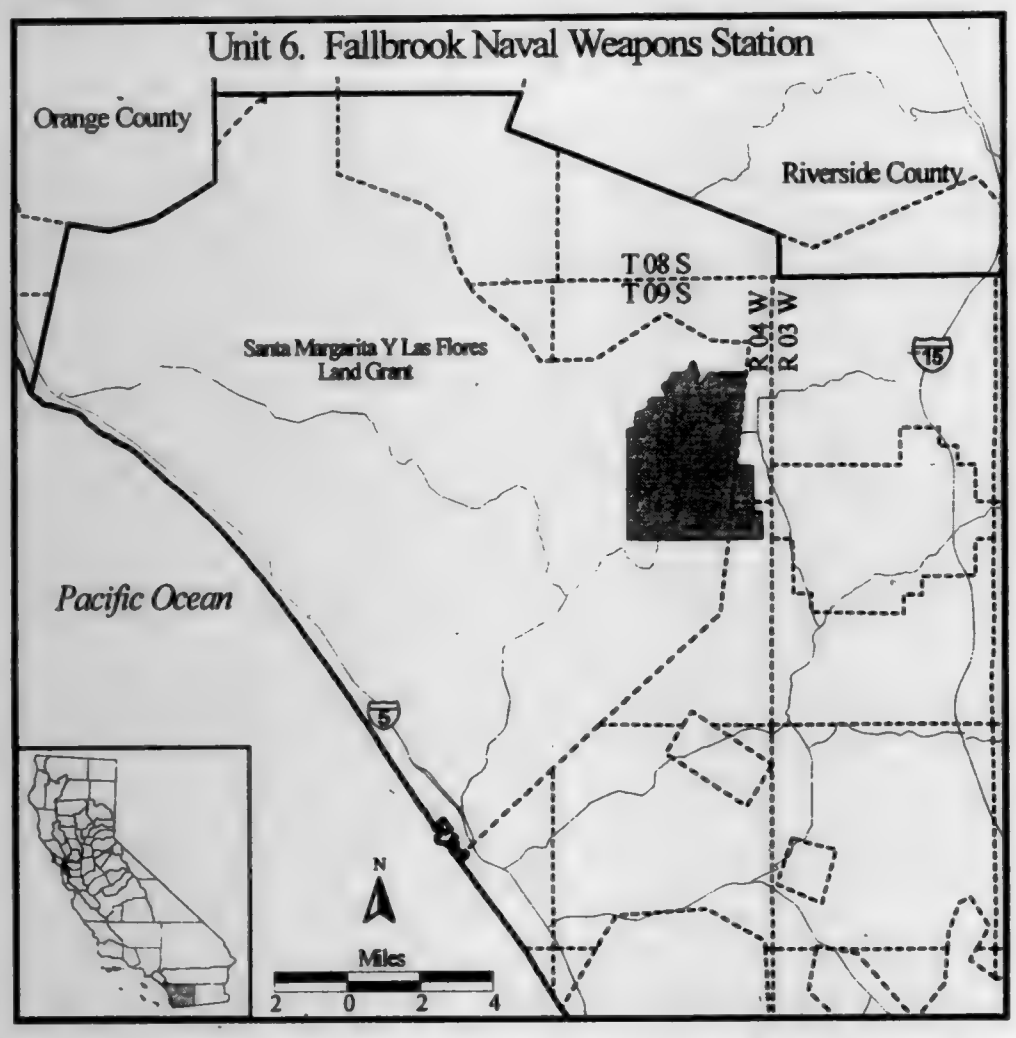

Map Unit 6: Fallbrook Naval Weapons Station, San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984): The following lands within the Santa Margarita y Las Flores Land Grant: Fallbrook Naval Weapons Station. The following Federal Lands associated with the Fallbrook Naval Weapons Station within T. 9 S., R. 4 W., San Bernardino Principal Meridian, secs. 35 and 36; T. 10 S., R. 4 W., San Bernardino Principal Meridian, secs. 1 and 2.

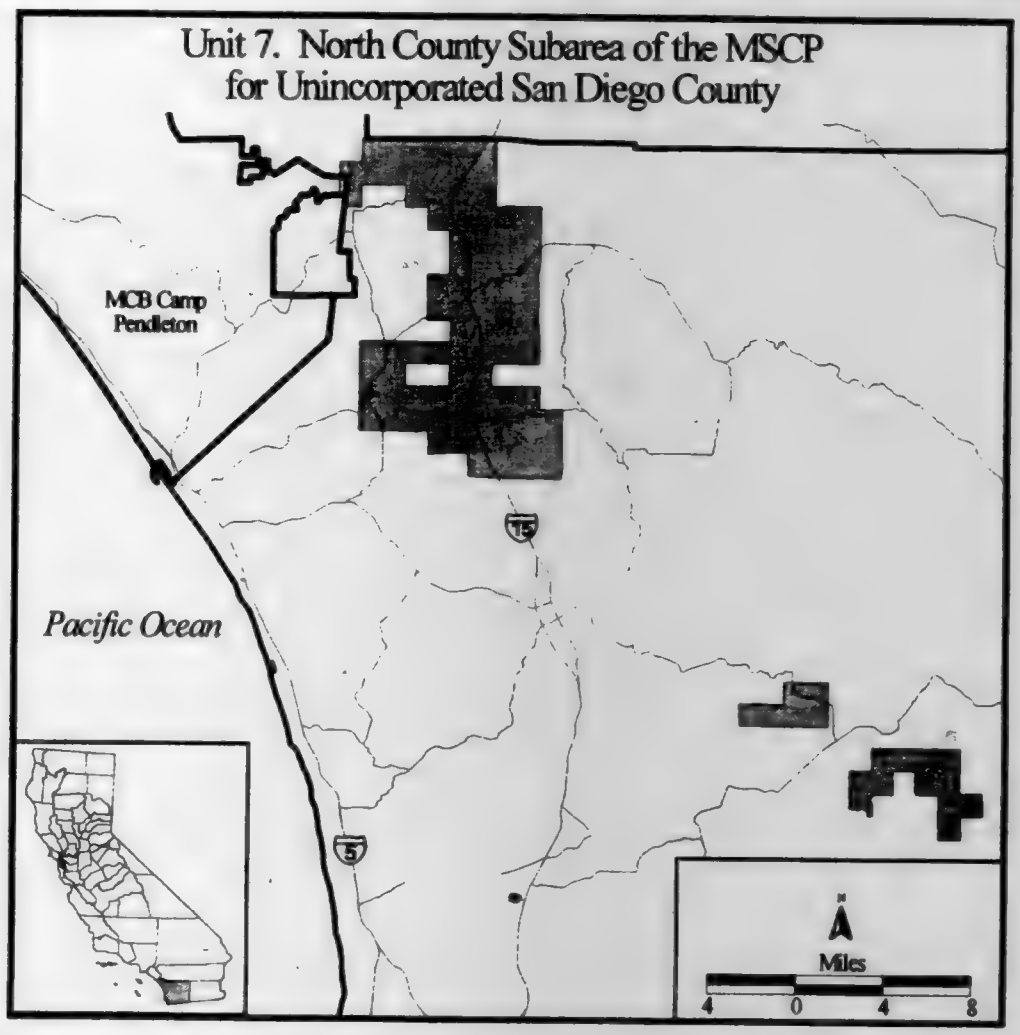

Map Unit 7: North County Subarea of the MSCP for Unincorporated San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984). Lands within T. 09 S., R. 02 W., San Bernardino Principal Meridian, secs. 19, 20, and 29–32; T. 09 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–16, 22–26, and 36; T. 09 S., R. 04 W., San Bernardino Principal Meridian, secs. 12 and 13; T. 10 S., R. 02 W., San Bernardino Principal Meridian, secs. 5–8, 17–20, 31, and 32; T. 10 S., R. 03 W., San Bernardino Principal Meridian, secs. 12–14, 19-26, and 29–36; T. 11 S., R. 02 W., San Bernardino Principal Meridian, secs. 4–9 and 16–18; T. 11 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–6 and 10–13; T. 13 S., R. 01 E., San Bernardino Principal Meridian, secs. 4, 5, 7, 8, 24, 25, 35, and 36; T. 13 S., R. 01 W., San Bernardino Principal Meridian, sec. 12; T. 13 S., R. 02 E., San Bernardino Principal Meridian, secs. 19–21, 28–30, 33, and 34; T. 14 S., R. 02 E., San Bernardino Principal Meridian, sec. 4. The following lands within Santa Margarita y Las Flores Land Grant: UTM coordinates (X, Y) 477000, 3697000; 476100, 3694000; 475700, 3694000; 475700, 3696200; 477000, 3697000. The following lands within Monserate Land Grant: UTM coordinates (X ,Y) 485000, 3693000; 488000, 3689000; 487000, 3685000; 484000, 3685900; 482200, 3685900; 482200, 3689200; 483800, 3689200; 483800, 3692500; 485000, 3693000. The following lands within Valle de Paro (or Santa Maria) Land Grant: UTM coordinates (X, Y) 511700, 3660000; 511700, 3656700; 506800, 3656700; 506800, 3656800; 511000, 3660000; 511700, 3660000; 514900, 3655200; 515300, 3655200; 515400, 3651900; 515000, 3651900; 515000, 3651700; 513300, 3651700; 513300, 3653600; 514900, 3653600; 514900, 3655200. The following lands within Canada de San Vicente y Mesa del Padre Barona Land Grant: UTM coordinates (X, Y) 516000, 3655000; 520000, 3655000; 519000, 3653000; 518100, 3652200; 518100, 3653600; 516400, 3653600; 516500, 3653300; 516500, 3651900; 516300, 3651900; 516000, 3653000; 519000, 3653000; 523000, 3652000; 523000, 3651000; 519800, 3649500; 519800, 3651900; 518500, 3651900; 518500, 3652000; 515000, 3651400; 515000, 3650400; 513300, 3650400; 513300, 3651100.

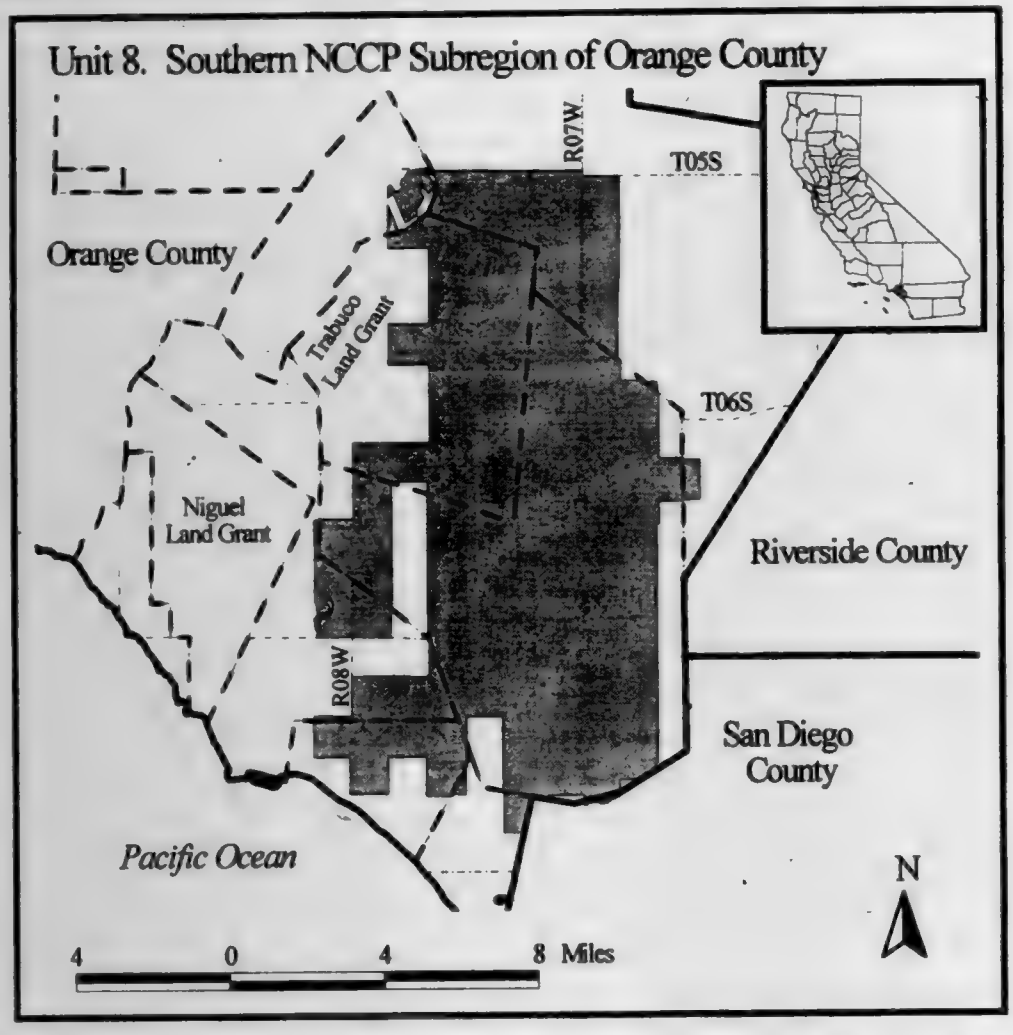

Map Unit 8: Southern NCCP Subregion of Orange County, California. From USGS 1:100,000 quadrangle maps Oceanside (1984) and Santa Ana (1985), California. Lands within T. 06 S., R. 06 W., San Bernardino Principal Meridian, secs. 6, 7, 18, 19, 30, and 32; T. 06 S., R. 07 W., San Bernardino Principal Meridian, secs. 1–4, 9–14, and 23–25; T. 07 S., R. 06 W., San Bernardino Principal Meridian, sec. 9; T. 07 S., R. 07 W., San Bernardino Principal Meridian, secs. 30 and 31; T. 07 S., R. 08 W., San Bernardino Principal Meridian, secs. 24, 25, and 36; T. 08 S., R. 07 W., San Bernardino Principal Meridian, secs. 4, 7–9, 16–18, 21, 23, and 26; T. 08 S., R. 068 W., San Bernardino Principal Meridian, sec. 13. The following lands within Boca de La Playa, Canada de Los Alisos, Mission Viejo/La Paz, and Trabuco Land Grants: UTM coordinates (X, Y) 440400, 3727400; 442300, 3727400; 447000, 3724000; 450100, 3719400; 450100, 3718600; 451100, 3718600; 451700, 3718100; 451700, 3715400; 452700, 3715400; 452700, 3713600; 451700, 3713600; 451700, 3712700; 451600, 3712700; 451600, 3702900; 451500, 3702900; 451500, 3702200; 450000, 3702200; 450000, 3700700; 448500, 3700700; 448500, 3701600; 447000, 3701600; 447000, 3700100; 445900, 3700100; 445100, 3701700; 445100, 3704800; 443600, 3704800; 443600, 3702700; 443000, 3701600; 441900, 3701600; 441900, 3703200; 440300, 3703200; 440300, 3701700; 438700, 3701700; 438700, 3703200; 437200, 3703200; 437200, 3704700; 443200, 3704700; 442000, 3708000; 442000, 3714500; 440500, 3714500; 440500, 3709200; 437000, 3711000; 437500, 3713000; 438900, 3713000; 438900, 3716100; 442100, 3716100; 442100, 3719300; 440400, 3719300; 440400, 3721000; 442100, 3721000; 442100, 3724100; 440400, 3724100; 440400, 3727400.

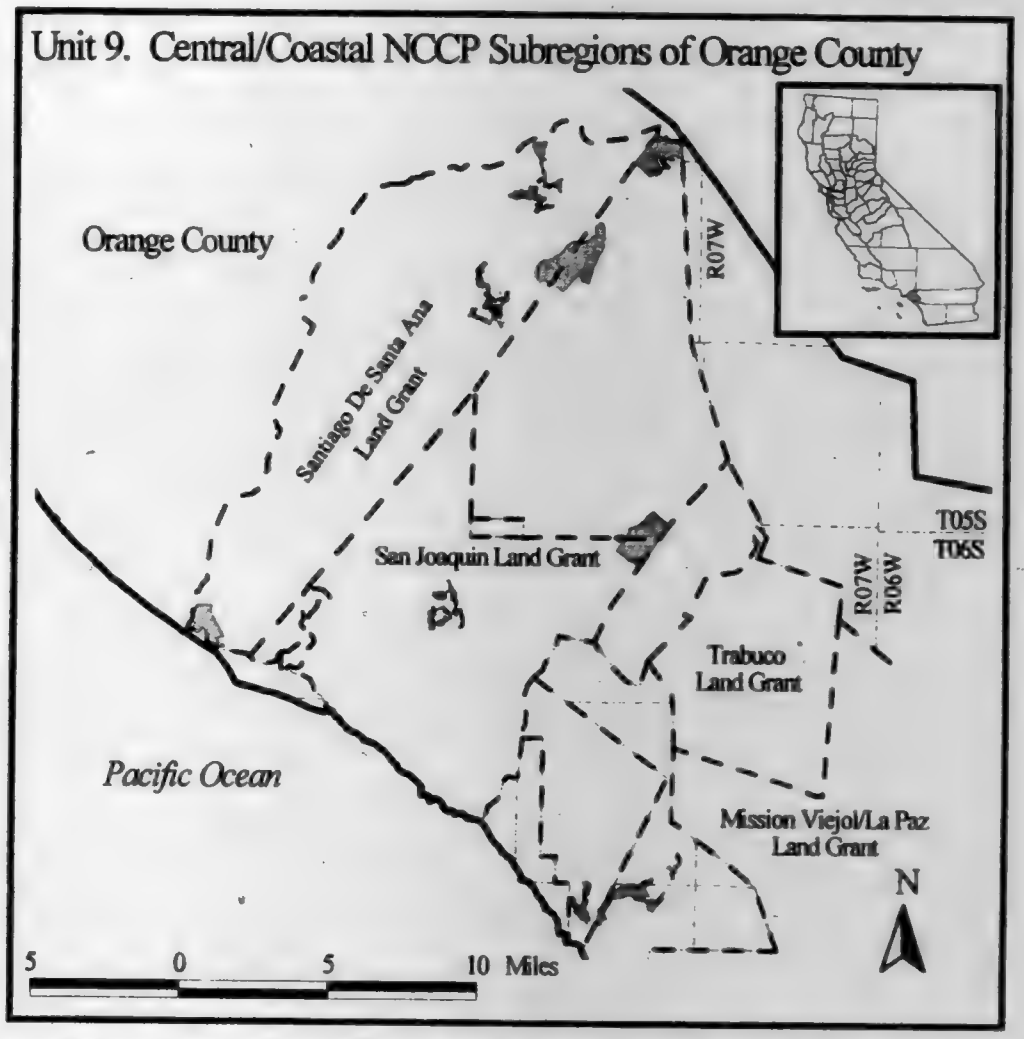

Map Unit 9: NCCP for Central/Coastal Subregions of Orange County (Central/Coastal NCCP), Orange County, California. From USGS 1:100,000 quadrangle maps Santa Ana (1985) and Oceanside (1984), California. Lands defined by the boundary of the designated reserve within Marine Corps Air Station El Toro within the Natural Communities Conservation Plan for the Central/Coastal Subregions. Lands within T. 06 S., R. 07 W., San Bernardino Principal Meridian, sec. 4; T. 07 S., R. 08 W., San Bernardino Principal Meridian, secs. 25 and 36. The following lands within Canon de Santa Ana and Lomas de Santiago Land Grants: UTM coordinates (X, Y) 412300, 3759800; 414500, 3759800; 414500, 3759700; 418100, 3759700; 418100, 3759600; 421100, 3759600; 421700, 3757500; 429300, 3756300; 429300, 3751500; 435600, 3751500; 435600, 3749900; 437200, 3749900; 437200, 3748000; 438000, 3748000; 437800, 3746600; 437100, 3746600; 437100, 3748000; 430700, 3748000; 430700, 3749800; 429200, 3749800; 429200, 3751400; 427800, 3751400; 427800, 3749900; 424400, 3749900; 424400, 3751500; 422800, 3751500; 422800, 3754600; 421200, 3754600; 421200, 3753100; 419400, 3753100; 419400, 3754700; 416100, 3754700; 416100, 3756400; 414500, 3756400; 414500, 3758000; 409800, 3758000; 409000, 3759000; 412300, 3759700; 412300, 3759800. The following lands within Canada de Los Alisos and Trabuco Land Grants: UTM coordinates (X, Y) 440400, 3727400; 442300, 3727400; 447000, 3724000; 450100, 3719400; 450100, 3718600; 451100, 3718600; 451700, 3718100; 451700, 3715400; 452700, 3715400; 452700, 3713600; 451700, 3713600; 451700, 3712700; 451600, 3712700; 451600, 3702900; 451500, 3702900; 451500, 3702200; 450000, 3702200; 450000, 3700700; 448500, 3700700; 448500, 3701600; 447000, 3701600; 447000, 3700100; 445900, 3700100; 445100, 3701700; 445100, 3704800; 443600, 3704800; 443600, 3702700; 443000, 3701600; 441900, 3701600; 441900, 3703200; 440300, 3703200; 440300, 3701700; 438700, 3701700; 438700, 3703200; 437200, 3703200; 437200, 3704700; 443200, 3704700; 442000, 3708000; 442000, 3714500; 440500, 3714500; 440500, 3709200; 437000, 3711000; 437500, 3713000; 438900, 3713000; 438900, 3716100; 442100, 3716100; 442100, 3719300; 440400, 3719300; 440400, 3721000; 442100, 3721000; 442100, 3724100; 440400, 3724100; 440400, 3727400.

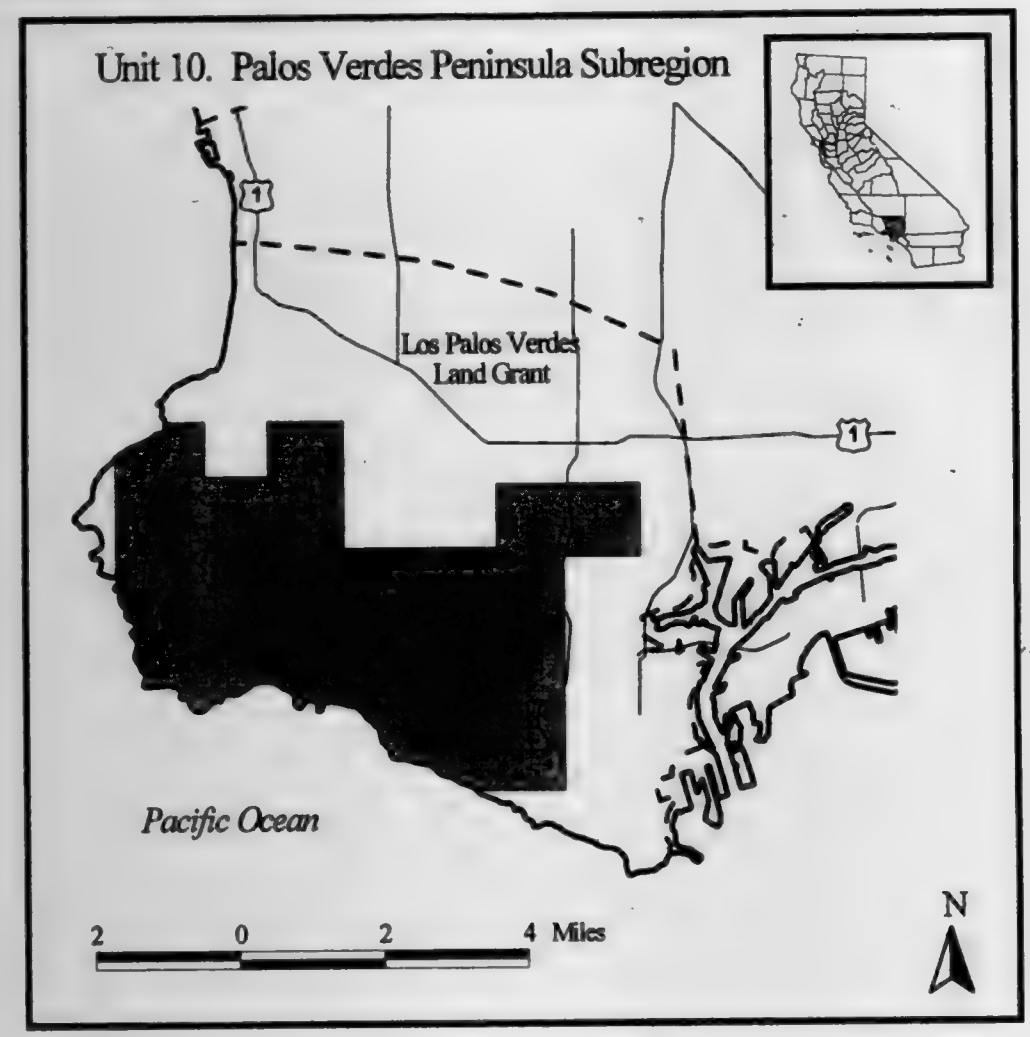

Map Unit 10: Palos Verdes Peninsula Subregion, Los Angeles County, California. From USGS 1:100,000 quadrangle map Long Beach, California (1981). The following lands within Los Palos Verdes Land Grant: UTM coordinates (X, Y) 369800, 3739900; 370700, 3739900; 370700, 3738700; 372100, 3738700; 372100, 3739900; 373800, 3739900; 373800, 3737100; 377200, 3737100; 377200, 3738500; 380400, 3738500; 380400, 3736900; 378700, 3736900; 378700, 3731800; 376500, 3731800; 369000, 3734000; 368700, 3735900; 368700, 3739300; 369800, 3739900.

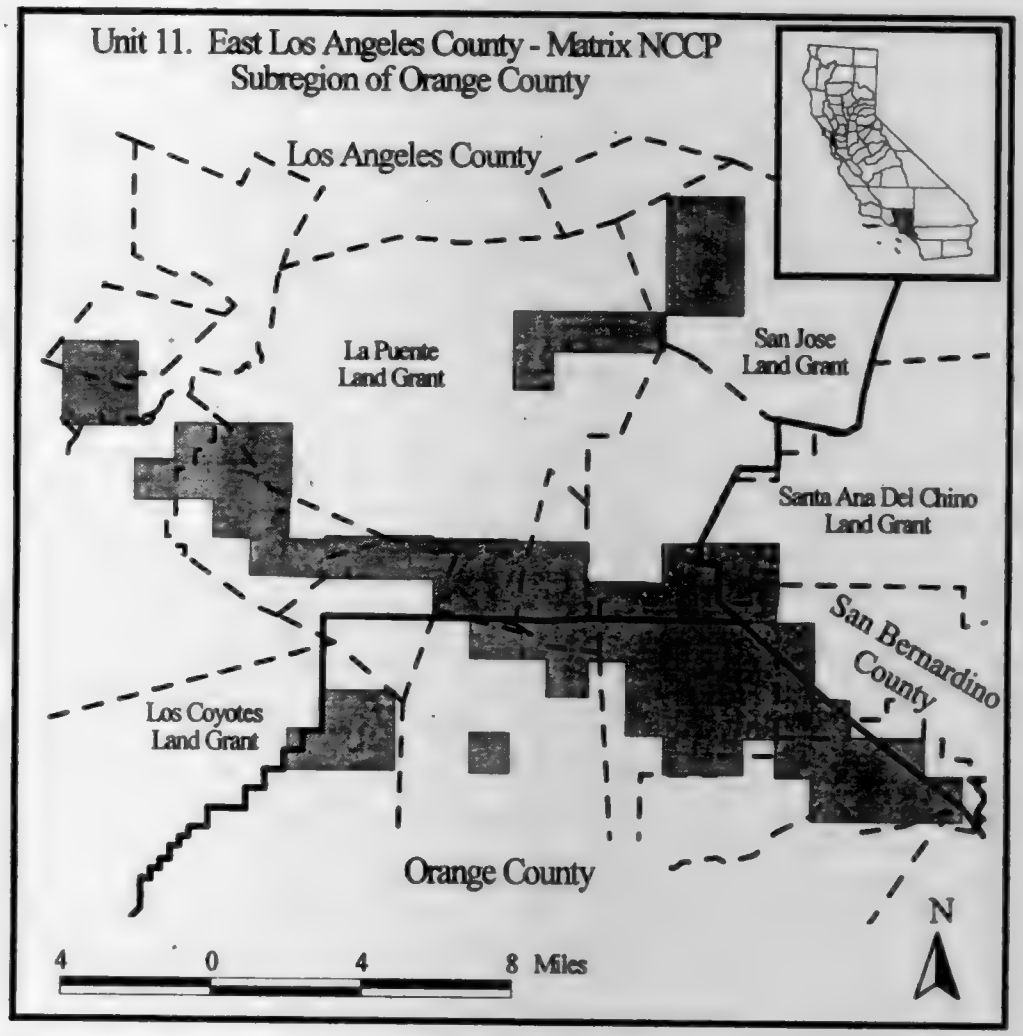

Map Unit 11: East Los Angeles-Orange County Matrix NCCP Subregion of Orange County, Los Angeles County and Orange County, California. From USGS 1:100,000 quadrangle maps Long Beach (1981), Los Angeles (1983), San Bernardino (1982), and Santa Ana (1985), California. Lands within T. 01 S., R. 09 W., San Bernardino Principal Meridian, secs. 28 and 33; T. 02 S., R. 08 W., San Bernardino Principal Meridian, sec. 31; T. 02 S., R. 09 W., San Bernardino Principal Meridian, secs. 20, 22, 23, 26, 27, 29, and 32–36; T. 02 S., R. 10 W., San Bernardino Principal Meridian, secs. 20, 29, and 30; T. 02 S., R. 11 W., San Bernardino Principal Meridian, secs. 3, 9, 10, 13–16, 21–23, 25, 26, and 36; T. 03 S., R. 08 W., San Bernardino Principal Meridian, secs. 6, 7, 14, 17, and 18; T. 03 S., R. 10 W., San Bernardino Principal Meridian, secs. 1–3. The following lands within La Puente and San Jose Dalton et al. Land Grants: UTM coordinates (X, Y) 424400, 3774200; 427700, 3774200; 427700, 3769200; 424400, 3769200; 424400, 3767900; 424200, 3767600; 419600, 3767600; 419600, 3766000; 417900, 3766000; 417900, 3769300; 424400, 3769300; 424400, 3774200. The following lands within Paso de Bartolo (Pico), Potrero Grande, San Antonion (Lugo), San Francisquito (Dalton), and unnamed Land Grants: UTM coordinates (X, Y) 401800, 3767900; 401800, 3764400; 398600, 3764400; 398600, 3767900; 401800, 3767900. The following lands within Paso de Bartolo (Pico) Land Grant: UTM coordinates (X, Y) 403400, 3764500; 405100, 3764500; 405000, 3762000; 403500, 3761300; 401700, 3761300; 401700, 3763000; 403400, 3763000; 403400, 3764500. The following lands within La Puente Land Grant: UTM coordinates (X, Y) 405500, 3764500; 408400, 3764500; 408400, 3761400; 406000, 3762000; 406000, 3763000; 405500, 3764500. The following lands within Canon de Santa Ana, La Habra, La Puente, Lomas de Santiago, Rincon de La Brea, San Juan Cajon de Santa Ana, Santiago de Santa Ana, and unnamed Land Grants: UTM coordinates (X, Y) 412300, 3759800; 414500, 3759800; 414500, 3759700; 418100, 3759700; 418100, 3759600; 421100, 3759600; 421700, 3757500; 429300, 3756300; 429300, 3751500; 435600, 3751500; 435600, 3749900; 437200, 3749900; 437200, 3748000; 438000, 3748000; 437800, 3746600; 437100, 3746600; 437100, 3748000; 430700, 3748000; 430700, 3749800; 429200, 3749800; 429200, 3751400; 427800, 3751400; 427800, 3749900; 424400, 3749900; 424400, 3751500; 422800, 3751500; 422800, 3754600; 421200, 3754600; 421200, 3753100; 419400, 3753100; 419400, 3754700; 416100, 3754700;

416100, 3756400; 414500, 3756400; 414500, 3758000; 409800, 3758000; 409000, 3759000; 412300, 3759700; 412300, 3759800. The following lands within Santa Ana del Chino (addition to) Land Grants: UTM coordinates (X, Y) 425900, 3759600; 429300, 3759600; 429300, 3757000; 426700, 3757100; 425900, 3758700; 425900, 3759600. The following lands within La Habra and Los Coyotes Land Grants: UTM coordinates (X, Y) 409700, 3753300; 412900, 3753300; 412900, 3750000; 408300, 3750000; 408300, 3751700; 409700, 3751700; 409700, 3753300. The following lands within San Juan Cajon de Santa Ana Land Grant: UTM coordinates (X, Y) 416100, 3751600; 417800, 3751600; 417800, 3749900; 416100, 3749900; 416100, 3751600.

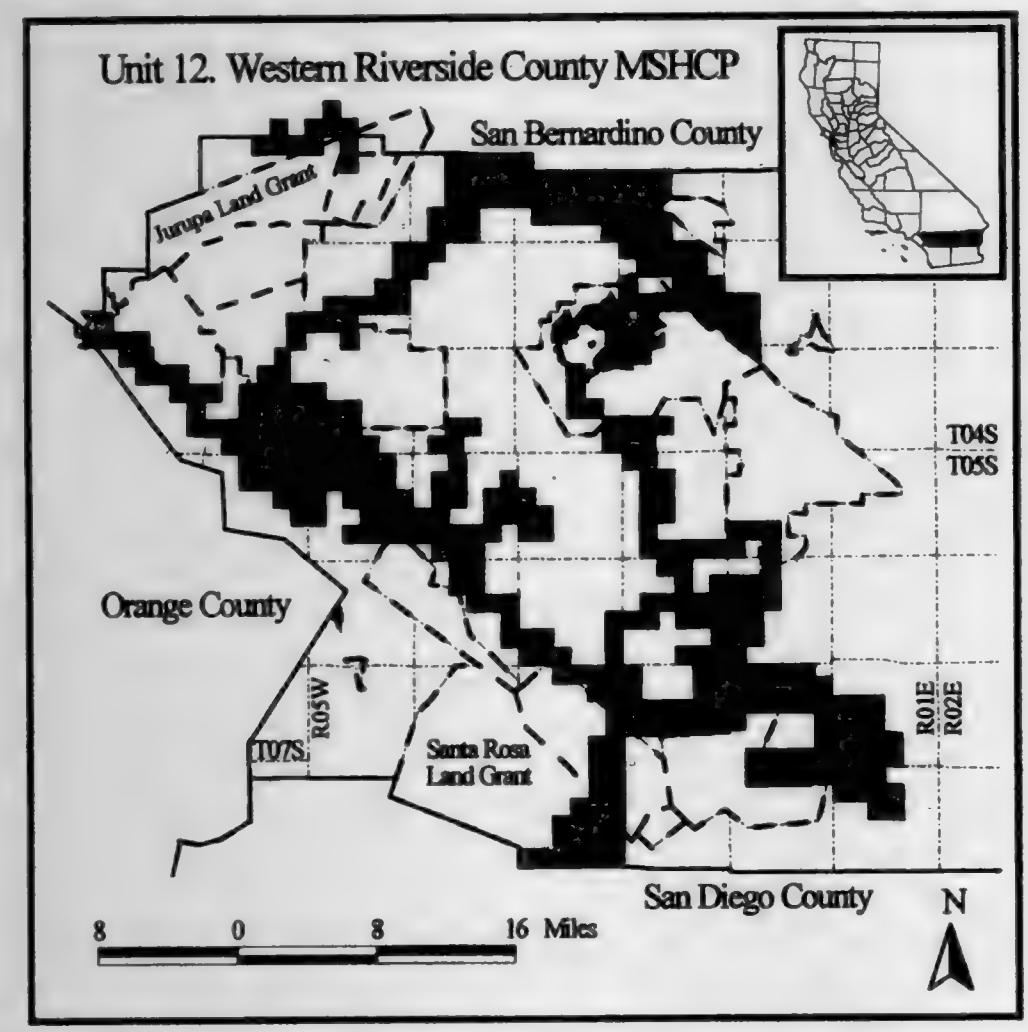

Map Unit 12: Western Riverside County MSHCP, Riverside County, California. From USGS 1:100,000 quadrangle maps Santa Ana (1985) and San Bernardino (1982), California. Lands defined by the boundary of the Lake Perris/San Jacinto Core Reserve. Lands within T. 01 S., R. 05 W., San Bernardino Principal Meridian,. secs. 29 and 31–33; T. 01 S., R. 06 W., San Bernardino Principal Meridian, sec. 35; T. 02 S., R. 02 W., San Bernardino Principal Meridian, secs. 8, 16–21, and 28–33; T. 02 S., R. 03 W., San Bernardino Principal Meridian, secs. 7, 8, 13–29, and 36; T. 02 S., R. 04 W., San Bernardino Principal Meridian, secs. 9–16, 21–24, 27–29, and 32–34; T. 02 S., R. 05 W., San Bernardino Principal Meridian, secs. 4 and 6; T. 02 S., R. 06 W., San Bernardino Principal Meridian, secs. 1–3; T. 03 S., R. 01 W., San Bernardino Principal Meridian, secs. 19, 20, and 29–32; T. 03 S., R. 02 W., San Bernardino Principal Meridian, secs. 2–6, 8–11, 13–15, 21–26, and 36; T. 03 S., R. 03 W., San Bernardino Principal Meridian, secs. 21and 28; T. 03 S., R. 04 W., San Bernardino Principal Meridian, secs. 5–7; T. 03 S., R. 05 W., San Bernardino Principal Meridian, secs. 1, 12–1420–24, and 27; T. 03 S., R. 07 W., San Bernardino Principal Meridian, secs. 29–33; T. 03 S., R. 08 W.,

San Bernardino Principal Meridian, secs. 25 and 36; T. 04 S., R. 01 W., San Bernardino Principal Meridian, sec. 5; T. 04 S., R. 02 W., San Bernardino Principal Meridian, secs. 20 and 28–32; T. 04 S., R. 03 W., San Bernardino Principal Meridian, secs. 25 and 36; T. 04 S., R. 04 W., San Bernardino Principal Meridian, secs. 27, 28, 32, and 33; T. 04 S., R. 05 W., San Bernardino Principal Meridian, secs. 28–34; T. 04 S., R. 06 W., San Bernardino Principal Meridian, secs. 16, 18, 21, 22, 25–30, and 32–36; T. 04 S., R. 07 W., San Bernardino Principal Meridian, secs. 4, 5, 9–11, 13, 14, 24, and 25; T. 05 S., R. 01 W., San Bernardino Principal Meridian, secs. 28–31 and 33; T. 05 S., R. 02 W., San Bernardino Principal Meridian, secs. 5, 6, 8, 9, 16, 17, 20, 21, 29, and 33–36; T. 05 S., R. 03 W., San Bernardino Principal Meridian, secs. 18–20, 29, and 30; T. 05 S., R. 04 W., San Bernardino Principal Meridian, secs. 4, 8, 9, 12–14, 16, 17, 19, 20, 23, 24, 26–30, and 32–34; T. 05 S., R. 05 W., San Bernardino Principal Meridian, secs. 2–11, 13–16, 18, 19, and 22–28; T. 05 S., R. 06 W., San Bernardino Principal Meridian, secs. 1–4, 9–14, and 24; T. 06 S., R. 01 W., San Bernardino Principal Meridian, secs. 4, 7–9, 16–20, and 29–31; T. 06 S., R. 02 W., San Bernardino Principal Meridian, secs. 3, 4, 10, 12–17, 19, 20, 22–25, and 34–36; T. 06 S., R. 03 W., San Bernardino Principal Meridian, secs. 24, 25, 29–33, and 36; T. 06 S., R. 04 W., San Bernardino Principal Meridian, secs. 3, 4, 9, 10, 13–15, 24, and 25; T. 07 S., R. 01 E., San Bernardino Principal Meridian, secs. 16–21 and 27–34; T. 07 S., R. 01 W., San Bernardino Principal Meridian, secs. 2–18, 24, 25, and 32–36; T. 07 S., R. 02 W., San Bernardino Principal Meridian, secs. 1, 2, 6, 7, and 11–22; T. 07 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–4, 11–13, and 24; T. 08 S., R. 01 E., San Bernardino Principal Meridian, secs. 4–10, 15, and 16; T. 08 S., R. 01 W., San Bernardino Principal Meridian, secs. 1–5; T. 08 S., R. 03 W., San Bernardino Principal Meridian, secs. 23–28 and 31–36. The following lands within Jurupa (Rubidoux) and Jurupa (Stearns) Land Grants: UTM coordinates (X, Y) 463100, 3766300; 463100, 3762500; 461400, 3762500; 461400, 3765700; 463100, 3766300; 459900, 3765100; 459900, 3764100; 457400, 3764100; 457400, 3764200; 459900, 3765100. The following lands within Canon de Santa Ana, Lomas de Santiago Land Grants: UTM coordinates (X, Y) 412300, 3759800; 414500, 3759800; 414500, 3759700; 418100, 3759700; 418100, 3759600; 421100, 3759600; 421700, 3757500; 429300, 3756300; 429300, 3751500; 435600, 3751500; 435600, 3749900; 437200, 3749900; 437200, 3748000; 438000, 3748000; 437800, 3746600; 437100, 3746600; 437100, 3748000; 430700, 3748000; 430700, 3749800; 429200, 3749800; 429200, 3751400; 427800, 3751400; 427800, 3749900; 424400, 3749900; 424400, 3751500; 422800, 3751500; 422800, 3754600; 421200, 3754600; 421200, 3753100; 419400, 3753100; 419400, 3754700; 416100, 3754700; 416100, 3756400; 414500, 3756400; 414500, 3758000; 409800, 3758000; 409000, 3759000; 412300, 3759700; 412300, 3759800. The following lands within El Sobrante de San Jacinto Land Grant: UTM coordinates (X, Y) 463000, 3750000; 463100, 3748500; 463100, 3746300; 461400, 3746300; 461400, 3747900; 458200, 3747900; 458200, 3746300; 456700, 3746300; 456700, 3743200; 460000, 3743200; 460000, 3741600; 463300, 3741600; 463300, 3739000; 456000, 3739000; 452000, 3742000; 452800, 3743200; 453700, 3743200; 453700, 3744800; 455300, 3744800; 455300, 3746500; 456400, 3746500; 456400, 3749600; 458100, 3749600; 463000, 3750000. The following lands within La Sierra (Yorba) Land Grant: UTM coordinates (X, Y) 440400, 3749500; 440400, 3748000; 443700, 3748000; 443700, 3746600; 444100, 3746600; 444100, 3745300; 443900, 3745300; 438700, 3747900; 438700, 3749500; 440400, 3749500; 444500, 3744900; 447300, 3744900; 447300, 3743200; 450500, 3743200; 450000, 3741000; 448000, 3741000; 444500, 3744800; 444500, 3744900. The following lands within San Jacinto Viejo Land Grant: UTM coordinates (X, Y) 497000, 3730400; 502000, 3730400; 502000, 3726400; 500300, 3725800; 500300, 3728000; 497000, 3729000; 497000, 3730400. The following lands within La Laguna (Stearns) Land Grant: UTM coordinates (X, Y) 466000, 3730000; 467000, 3730000; 467600, 3728600; 465500, 3728600; 466000, 3730000; 472000, 3725000; 472200, 3723900; 472200, 3723800; 471300, 3723800; 471300, 3724500. The following lands within Temecula Land Grant: UTM coordinates (X, Y) 480000, 3718000; 481000, 3718000; 483400, 3715700; 480900, 3715700; 480900, 3717300; 480200, 3717300; 480200, 3717400; 480000, 3718000; 484100, 3714100; 484100, 3715100; 485200, 3714100; 484100, 3714100; 488000, 3712000; 488700, 3710900; 487500, 3710900; 487500, 3702000; 480800, 3701000; 480800, 3703700; 482500, 3703700; 482500, 3705300; 484200, 3705300; 484200, 3710900; 485800, 3710900; 485800, 3713600; 488000, 3712000. The following lands within Santa Rosa (Morino) Land Grant: UTM coordinates (X, Y) 488000, 3712000; 488700, 3710900; 487500, 3710900; 487500, 3702000; 480800, 3701000; 480800, 3703700; 482500, 3703700; 482500, 3705300; 484200, 3705300; 484200, 3710900; 485800, 3710900; 485800, 3713600; 488000, 3712000; 478300, 3700700; 479900, 3700700; 479900, 3700600; 479000, 3700000; 478300, 3700600. The following lands within San Jacinto Neuvo y Potrero Land Grant: UTM coordinates (X, Y) 490000, 3754000; 490900, 3752800; 488900, 3752800; 488900, 3749600; 487200, 3749600; 487200, 3753000; 490000, 3754000; 490500, 3751300; 492100, 3751300; 493900, 3749600; 490500, 3749600; 490500, 3751300; 482300, 3744800; 484000, 3744800; 484000, 3741600; 485700, 3741600; 485700, 3740000; 490400, 3740000; 489000, 3739000; 485600, 3739100; 485600, 3739900; 482300, 3739900; 482300, 3744800. The following lands within Pauba Land Grant: UTM coordinates (X, Y) 503000, 3715000; 501800, 3713000; 498700, 3713000; 498700, 3711400; 497300, 3711400; 497300, 3711100; 495700, 3711100; 495700, 3711000; 493500, 3711000; 493500, 3710900; 492300, 3710900; 492300, 3711000; 492000, 3712000; 502000, 3716000; 503000, 3715000; 498700, 3709700; 500400, 3709700; 506000, 3707000; 506300, 3706400; 504800, 3706400; 504800, 3706300; 498700, 3706300.

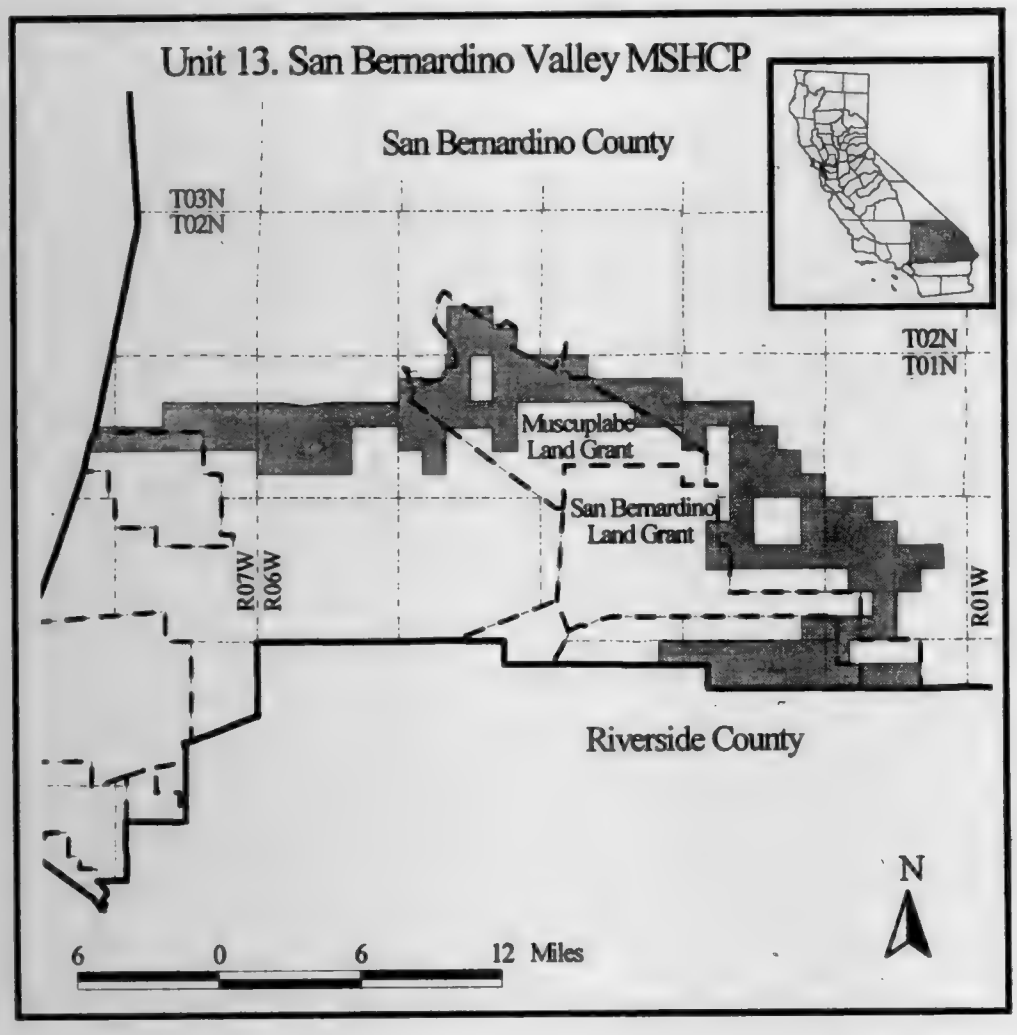

Map Unit 13: San Bernardino Valley MSHCP, San Bernardino County, California. From USGS 1:100,000 quadrangle map San Bernardino, California (1982). Lands within T. 01 N., R. 03 W., San Bernardino Principal Meridian, secs. 16–19, 21, 22, 26–28, 30, and 33–36; T. 01 N., R. 04 W., San Bernardino Principal Meridian, secs. 5, 6, 9–15, and 24; T. 01 N., R. 05 W., San Bernardino Principal Meridian, secs. 1, 4, 7, 8, 17–20, and 29; T. 01 N., R. 06 W., San Bernardino Principal Meridian, secs. 13–22 and 27–30; T. 01 N., R. 07 W., San Bernardino Principal Meridian, secs. 13–16, and 19–24. T. 01 N., R. 08 W., San Bernardino Principal Meridian, sec. 24; T. 01 S., R. 02 W., San Bernardino Principal Meridian, secs. 5–9, 14–18, 20–22, 28, and 31–33; T. 01 S., R. 03 W., San Bernardino Principal Meridian, secs. 1, 4, 8, 9, 12–16, and 36; T. 02 N., R. 05 W., San Bernardino Principal Meridian, secs. 21, 27, 28, 33, and 35; T. 02 S., R. 02 W., San Bernardino Principal Meridian, secs. 6–10; T. 02 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–6 and 8–12; T. 02 S., R. 04 W., San Bernardino Principal Meridian, sec. 1. The following lands within Muscupiabe Land Grant: UTM coordinates (X, Y) 461600, 3788400; 463000, 3788400; 464800, 3787300; 464800, 3786900; 466300, 3786900; 466400, 3785500; 466400, 3785200; 467000, 3785200; 469300, 3785100; 469700, 3785100; 472000, 3784000; 473700, 3781900; 466400, 3781900; 466400, 3778600; 464700, 3778600; 464700, 3780200; 461400, 3780200; 459000, 3782000; 459000, 3783600; 461400, 3783600; 461400, 3784200; 461600, 3786200; 461600, 3788400; excluding UTM coordinates 463200, 3785100; 463200, 3782000; 464700, 3782000; 464700, 3785100; 463200, 3785100. The following lands within Cucamonga Land Grant: UTM coordinates (X, Y) 437000, 3781000; 445000, 3781000; 445000, 3778800; 437000, 3778800; 437000, 3781000. The following lands within San Bernardino Land Grant: UTM coordinates (X, Y) 479200, 3773800; 480100, 3773800; 480100, 3772200; 480900, 3772200; 480900, 3770500; 479200, 3770500; 479200, 3773800; 488000, 3767300; 489700, 3767300; 489700, 3765700; 488900, 3765700; 488900, 3764100; 488000, 3764100; 488000, 3767300; 489700, 3764100; 493700, 3764100; 493700, 3762400; 489600, 3762400; 489700, 3764100.

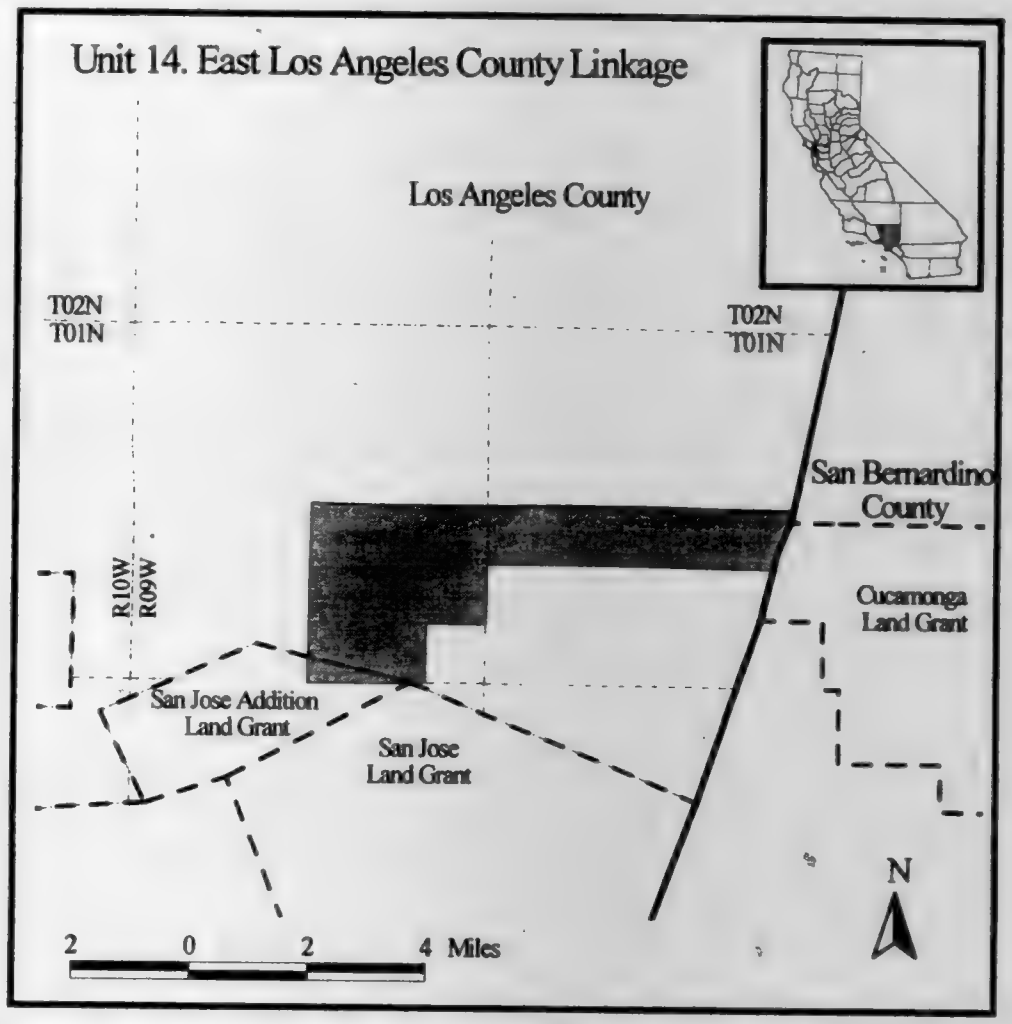

Map Unit 14: East Los Angeles County Linkage, Los Angeles County, California. From USGS 1:100,000 quadrangle map Los Angeles, California (1983). Lands within T. 01 N., R. 08 W., San Bernardino Principal Meridian, secs. 19–24; T. 01 N., R. 09 W., San Bernardino Principal Meridian, secs. 22–27, 34, and 35; T. 01 S., R. 09 W., San Bernardino Principal Meridian, sec. 2. The following lands within Cucamonga Land Grant: UTM coordinates (X, Y) 437000, 3781000; 445000, 3781000; 445000, 3778800; 437000, 3778800; 437000, 3781000. The following lands within San Jose (Dalton et al.) and San Jose Addition Land Grants: UTM coordinates (X, Y) 427000, 3776000; 427300, 3775700; 424400, 3775700; 424400, 3776500; 427000, 3776000.

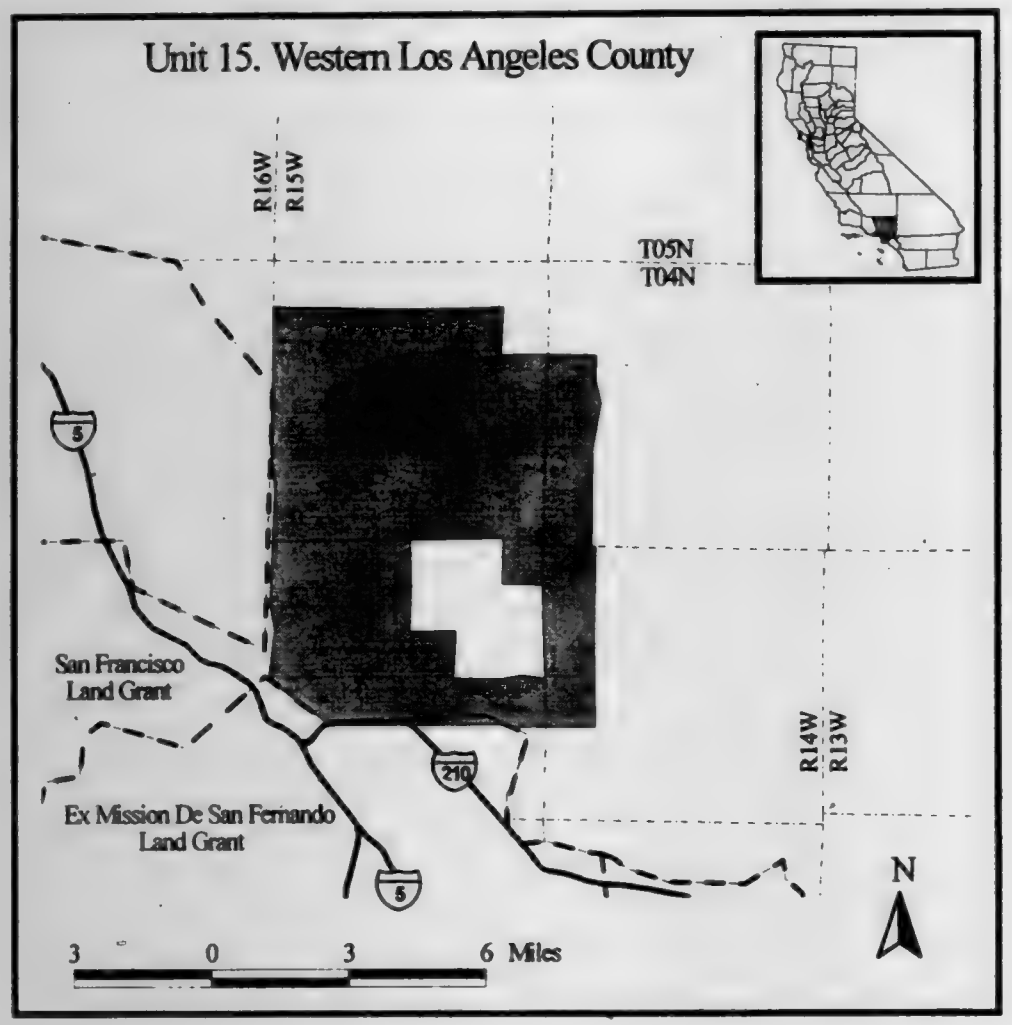

BILLING CODE 4310-55-C

Map Unit 15: Western Los Angeles County, California. From USGS 1:100,000 quadrangle map Los Angeles, California (1983). Lands within T. 03 N., R. 14 W., San Bernardino Principal Meridian, secs. 6, 7, 18, and 19; T. 03 N., R. 15 W., San Bernardino Principal Meridian, secs. 1, 4–9, and 15–24; T. 04 N., R. 14 W., San Bernardino Principal Meridian, secs. 18, 19, 30, and 31; T. 04 N., R. 15 W., San Bernardino Principal Meridian, secs. 7–11, 13–36. The following lands within Ex Mission de San Fernando Land Grant: UTM coordinates (X, Y) 369500, 3799000; 369600, 3799000; 370200, 3798700; 364300, 3798700; 364300, 3798800; 369500, 3799000.

Dated: February 1, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–2600 Filed 2–2–00; 1:12 pm]

BILLING CODE 4310–55–P

Federal Register

Monday,
February 7, 2000

Part IV

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans FY 2000 Availability of Financial Assistance for Native American Languages; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–003]

Administration for Native Americans FY 2000 Availability of Financial Assistance for Native American Languages

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of Fiscal Year 2000 funds and other available funds for Native American language projects. Financial assistance provided by ANA is designed to assist applicants in designing projects which will promote the survival and continuing vitality of Native American languages.

Special Note: The Administration for Native Americans advises all applicants that grant awards made under this announcement will have a September 30, 2000 project Start Date. Applicants should, therefore develop projects that begin no earlier than this date.

Application Kit: Application kits, approved by the OMB under control number 0980–0204, which expires August 31, 2000, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained by calling: The Applicant Help Desk, Administration for Native Americans, 202–690–7843.

Application kits may also be obtained from ANA training and technical assistance providers. ANA employs contractors to provide short-term training and technical assistance (T/TA) to eligible applicants. T/TA is available under these contracts for a wide range of grant application needs, however, the contractors are not authorized to write applications. The Training and Technical Assistance (T/TA) is provided at no cost.

The ANA Providers serve six areas divided as follows:

Area I, Eastern serves federally recognized Tribes in AL, AR, CT, DC, DE, FL, GA, IL, IN, KY, LA, MA, MD, ME, MI, MN, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI, and WV.

Area II, Central serves federally recognized Tribes in AZ, CO, IA, KS, ND, NE, NM, MO, MT, OK, SD, UT, WY, NV, ID, and TX.

Area III, Western serves federally recognized Tribes in CA, OR, and WA.

Area IV, Alaska serves all eligible applicants in AK.

Area V, Pacific serves all eligible applicants in Hawaii (HI) and the Pacific Islands of American Samoa (AS), Guam (GU), Northern Mariana Islands (MP), and Palau (PW).

Area VI, National serves all eligible applicants on the mainland United States not served by providers for areas 1 through 5. This includes non-federally recognized Tribes, Urban Indians, off-reservation rural Indian communities, Native Americans served through non-federally recognized urban and consortia arrangements and organizations serving Native Hawaiians and Pacific Island Natives living on the Mainland.

ANA employs contracting firms to provide short-term training and technical assistance (T/TA) to clients in the six identified, geographical regions which are served by ANA. The ANA training and technical assistance (T/TA) contractors and their Geographic Areas are:

Geographic Area I

Eastern

Native American Management Services, Inc., Tonya Parker, Project Director, 6858 Old Dominion Drive, Suite 302, McLean, Va. 22101, (703) 821–2226, Fax (703) 821–3680 or (703) 821–8626, 1 (800) 388–7670 (Toll Free), e-mail: *nams@namsinc.org.*

Geographic Area II

Central

RJS & Associates, Inc., Dr. Robert J. Swan, C.E.O., RR1, Box 694, Box Elder, Mt. 59521, (406) 395–4727, Fax (406) 395–4759, 1 (888) 838–4757 (Toll Free), Website: *http://www.rjsinc.org/region2.html,* e-mail: *rjsinc@rjsinc.org.*

Geographic Area III

Western

Development Associates, Inc., E. Robles, Project Director, 1475 North Broadway, Suite 200, Walnut Creek, Ca. 94596, (925) 935–9711, 1 (800) 666–9711 (Toll Free), Fax (925) 935–0413, Website: *http://www.devassoc.com/ana/anaversion2.htm,* e-mail: *ana3@devassoc.com.*

Geographic Area IV

Alaska

Native American Management Services, Inc., P.J. Wilkins-Bell, Project Director, 1515 Tudor Road, Suite No. #4, Anchorage, Alaska 99519, (907) 770–6230, Fax (907) 770–6232, e-mail: *pbell@gci.com.*

Geographic Area V

Pacific

Please call the ANA Help Desk at (202) 690–7776 to learn the name and telephone number of the T/TA Provider for this area. ANA is issuing a new contract for this geographic area.

Geographic Area VI

National

RJS & Associates, Inc., Dr. Robert J. Swan, C.E.O., RR 1, Box 694, Box Elder, Mt. 59521, (406) 395–4757, Fax (406) 395–4759, 1 (888) 838–4757 (Toll Free), Website: *http://www.rjsinc.org/region6.html,* e-mail: rjsinc@rjsinc.org.

By World-Wide-Web: Copies of this program announcement and many of the required forms may also be obtained electronically at the ANA World Wide Web Page: *http://www.acf.dhhs.gov/programs/ana.*

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

DATES: The closing date for submission of applications is March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Ryan, Native American Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, telephone: (202) 401–7365 or (202) 690–7776, telefax: (202) 690–7441, or e-mail: kryan@acf.dhhs.gov

Part I: Supplementary Information

A. Purpose and Availability of Funds

The purpose of this notice is to announce the availability of fiscal year 2000 financial assistance to eligible applicants for the purpose of assisting Native Americans in assuring the survival and continuing vitality of their languages. Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this

announcement. Approximately $2,000,000 in Fiscal Year 2000 has been allocated for category I and II grants. For Category I, Planning Grants (project length: 12 months), the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants (project length: up to 36 months), the funding level for a budget period of 12 months will be up to $125,000. In accordance with current agency policies, ANA may fund additional highly ranked applications if additional funds become available prior to the next competition.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a Native American language grant in either of the two categories, an applicant may only submit one application and no applicant may receive more than one Native American language grant.

All applicants must clearly demonstrate a plan for an employee fringe benefit package which includes an employee retirement benefit plan of .05%. Applicants must also include within their program budgets adequate funding to allow two program personnel to travel and attend post-award grant management and administration training which is sponsored by ANA T/TA providers in their assigned geographical region.

New for fiscal year 2000, under the goals of Executive Order 13031 of October 19, 1996 on Tribally Controlled Colleges and Universities (TCU's), TCU's may now independently apply for an ANA Grant without impacting the eligibility of the Tribe to apply. Previously, only one application was accepted, either from the Tribe or the TCU. Now both the Tribe and the TCU may compete for and receive ANA grants at the same time, in the same program(s).

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past 500 years. Consequently, the Native American languages Act (Title 1, Pub.L. 101–477) was enacted to address this decline.

This legislation invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to "preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American languages." While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy.

In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, about 150 are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken by the most elderly.

In response to this testimony, the Congress passed the Native American languages Act of 1992 (the Act), P.L. 102–524, to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of the Act was an important second step in attempting to ensure the survival and continuation of Native languages, as it provides the basic foundation upon which the tribal nations can rebuild their economic strength and rich cultural diversity.

While the Federal government recognizes that substantial loss of Native American languages over the past several hundred years, the nature and magnitude of the status of Native American languages will be better defined when eligible applicants under the Act have completed language assessments.

The Administration for Native Americans (ANA) believes that the responsibility for achieving self-sufficiency rests with the governing bodies of Indian Tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs which support the community's long-range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of Native communities and significantly contribute to their efforts toward self-sufficiency.

The Administration for Native Americans recognizes that eligible applicants must have the opportunity to develop their own language plans, technical capabilities, and access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This program announcement reflects these special needs and circumstances.

C. ANA Program and Administrative Policies

Applicants must comply with the following programmatic policies:

- Funds will not be awarded for projects addressing dead languages. For purposes of this announcement, dead languages are those languages that are no longer spoken by any tribal member or community member.
- The Commissioner shall determine the repository for copies of products from Native American language grants funded under this program announcement. At the end of the project period, products or project models of Native American languages grants funded by this program announcement should be sent to the designated repository. Federally recognized Indian Tribes are not required to comply with this condition.

Applicants must comply with the following administrative policies:

- Current Native American language grantees whose grant project period extends beyond September 30, 2000, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area. Current Native American language grantees with project periods beyond September 30, 2000, may not compete for additional Native American language grants.
- Applicants for Category I may propose 12- to 17-month projects; applicants for Category II may propose up to 36-month projects.
- Applicants must describe a locally-determined strategy to carry out a proposed project with fundable objectives and activities.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a tribal resolution which clearly demonstrates the Tribe's support of the

project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.

• If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.

• ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.

• Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

• If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

• Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.

• Grantees must provide at least 20 percent of the total approved cost of the project; *i.e.*, the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR Part 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match; examples follow:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

• If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

• A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

• Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for the grants under this Native American language program, no match is required for grants to these insular areas.

D. Proposed Projects to be Funded

Category I—Planning Grants

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed and to establish community long-range goal(s) to ensure its survival. Project activities may include, but are not limited to:

• Data collection, compilation, organization and description of current language status through a "formal" method (*e.g.* work performed by a linguist, and/or a language survey conducted by community members) or an "informal" method (e.g. a community consensus of the language status based on elders, tribal scholars, and/or other community members);

• Establishment of community long-range language goals; and

• Acquisition of necessary training and technical assistance to administer the project and achieve project goal(s).

Category II—Design and/or Implementation Grants

The purposes of Design and/or Implementation Grants are (1) So Tribes or communities may design and/or implement a language program to achieve their long-range goal(s); and (2) To accommodate where the Tribe or community is in reaching their long-term language goal(s).

Applicants under Category II must be able to document that:

(a) Language information has been collected and analyzed, and that it is current (compiled within 36 months prior to the grant application);

(b) The community has established long-range language goals; and

(c) Community representatives are adequately trained so that the proposed project goals can be achieved.

Category II applications may include purchasing specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

The types of projects ANA may fund under Category II include, but are not limited to:

1. Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilitate and encourage the teaching of Native American languages skills from one generation to another;

2. Establishment of a project to train Native Americans to teach Native

American languages to others or to enable them to serve as interpreters or translators of such languages;

3. Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;

4. Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and

5. Compilation, transcription and analysis of oral testimony to record and preserve Native American languages

Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States; and
- Tribally controlled community colleges, tribally controlled post-secondary vocational institutions; and,
- Colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Further information on eligibility requirements is presented in Part I.C, ANA Program and Administrative Policy. Some important policies found in Part I are highlighted as follows:

Current ANA Native American language grantees whose grant project period ends on or before September 30, 2000 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State or Tribe in which the corporation or association is domiciled.

If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) A prospective participant or beneficiary of the project to be funded; or (3) Have a cultural relationship with the community to be served. A list of board members with this information including tribal or Village affiliation is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

Participating Organizations: If a tribal organization, or other eligible applicant, decides that the objective of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

F. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I.C, ANA Program and Administrative Policy.

Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (78 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000. (including in-kind contributions). Therefore, for the ANA grants under these announced programs, no match is required for grants to these insular areas.

G. Review Criteria

The proposed project should address the purposes of the Native American languages stated and described in the section I.B, "Background" of this announcement.

The evaluation criteria below are closely inter-related. Points are awarded only to applications which respond to these criteria. Proposed projects will be reviewed on a competitive basis using the following separate sets of evaluation criteria; one set for planning grant applications, the other for design and/or implementation grant applications:

H. Planning Grants

(1) Current Status of Native American language(s) (15 points)

- The application fully describes the current status of Native American language(s) in the community. Since

obtaining this data may be part of the planning grant application being reviewed, applicants can meet this requirement by explaining their current language status and providing a detailed description of any circumstances or barriers which have prevented the collection of community language data. If documentation exists, describe it in terms of current language status.

(2) Goals and Available Resources (25 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

- How the specific Native American long-range community goal(s) relate to the proposed project; and
- How the goal(s) fit within the context of the current language status.

(b) The application explains how the community and the tribal government (where one exists) intends to achieve these goals. The type of community served will determine the type of documentation necessary to demonstrate participation. All Tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in their projects and include them in development of language goals and strategies and in evaluation of project outcomes. Ways to demonstrate community and tribal government support for the project include:

- A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning;
- Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolutions; and
- Minutes of community meetings, tribal presentations and discussion forums;

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, and not "letters of support".

- "Letters of support" merely express another organization's endorsement of a proposed project. Such support letters and related documentation do not indicate a binding commitment, do not establish the authenticity of other resources, and do not offer or bind specific resources to the project.
- "Letters of commitment" are binding and specify the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.
- Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Objectives, Approach and Activities (30 points)

The proposed objectives in the Objective Work Plan(s) relate to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve for the Tribe or community's language goals for the proposed project.

Each Objective Work Plan clearly describes:

- The tribal government's and community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How the results or outcomes relate to the community's long-range goals or the establishment of those goals;
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective; and
- What the next steps may be after the Planning project is completed.

(4) Organizational capabilities/ Qualifications (20 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well-defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.P='04'≤

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Identifies and explains each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability

and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.

• Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan must be "qualified", i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.

• The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

• The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

II. Design and/or Implementation Grants

(1) Current Status of Native American Language(s) (10 points)

(a) The application fully describes the current status of the Native American language to be addressed; current status is defined as data compiled within the previous 48 months. The description of the current status minimally includes the following information:

• Number of speakers
• Age of speakers
• Gender of speakers
• Level(s) of fluency
• Number of first language speakers (Native language as the first language acquired)
• Number of second language speakers (Native language as the second language acquired)
• Where Native language is used (e.g. home, court system, religious ceremonies; church, media, school, governance and cultural activities)
• Source of data (formal and/or informal)
• Rate of language loss or gain

(b) the application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. Existing programs and projects may be formal (e.g., work by a linguist, and/or language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members).

The description should answer the following: has applicant had a community language or language training program within the last 48 months? (2) Within the last 10 years? If so, fully describe the program(s), and include the following:

• Program goals
• Number of program participants
• Number of speakers
• Age range of participants (e.g., 0–5, 6–10, 11–18, etc.)
• Number of language teachers
• Criteria used to acknowledge competency of language teachers
• Resources available to the applicant (e.g. valid grammars, dictionaries, and/or thographics or describe other suitable resources)
• Program achievements

If applicant has never had a language program, a detailed explanation of what barriers or circumstances prevented the establishment of a community language program should be included.

(2) Goals and Available Resources (20 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

• How the specific Native American long-range community goal(s) relate to the proposed project; and
• How the goal(s) fit within the context of the current language status;
• A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American languages addressed in the community.

(b) The application explains how the community and the tribal government (where one exists) intends to achieve these goals. The type of community served will determine the type of documentation necessary to demonstrate participation. All Tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in their projects and include them in development of language goals and strategies and in evaluation of project outcomes. Ways to demonstrate community and tribal government support for the project include:

• A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning;
• Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolutions; and
• Minutes of community meetings, tribal presentations and discussion forums;

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, and not "letters of support".

• "Letters of support" merely express another organization's endorsement of a proposed project. Such support letters and related documentation do not indicate a binding commitment, do not establish the authenticity of other resources, and do not offer or bind specific resources to the project.
• "Letters of commitment" are binding and specify the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.

• Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Objectives, Approach and Activities (30 points)

The proposed objectives in the Objective Work Plan(s) relate to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve for the Tribe or community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed.

Each Objective Work Plan clearly describes:

• The tribal government's and community's active involvement in the continuing participation of Native American language speakers;

• Measurable or quantifiable results or outcomes;

• How they relate to the community's long-range goals or the establishment of those goals;

• How the project can be accomplished with the available or expected resources during the project period;

• How the main activities will be accomplished;

• Who specifically will conduct the activities under each objective; and

• How the project will be completed, become self-sustaining, or be financed by other than ANA funds at the end of the project period.

(4) Organizational capabilities/ Qualifications (15 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well-defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/ or by the individual designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

• Identifies and explains each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.

• Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project.

• Requests funds which are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.

• Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan must be "qualified", *i.e.*, approved by the Internal Revenue Service to receive special tax-favored treatment.

• The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

• The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, *e.g.*, Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

(6) Evaluation, Sharing and Preservation Plans (15 points)

The application should include the following three plans:

(a) An "evaluation plan" with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (*e.g.*, an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(b) A "sharing plan" that identifies how the project's methodology, research data, outcomes or other products can be shared and modified for use by other Tribes or communities. If this is not feasible or culturally appropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and the continuing vitality of Native languages.

(c) A "plan to preserve project products" describes how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations.

I. Application Due Date

The closing date for submission of applications under this program announcement is March 17, 2000.

Special Note: The Administration for Native Americans advises all applicants that grant awards made under this announcement will have a September 30, 2000 project start date. Applicants should, therefore develop projects that begin no earlier than this date.

J. For Further Information Contact

Dr. Kenneth Ryan, Native American Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, telephone: (202) 401–7365 or (202) 690–7776; telefax: 202–690–7441; e-mail: kryan@acf.dhhs.gov.

Part II: General Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

A. Definitions

- "Language preservation" is the maintenance of a language so that it will not decline into non-use.
- "Language vitality" is the active use of a language in a wide range of domains of human life.
- "Language replication" is the application of a language program model developed in one community to other linguistically similar communities.
- "Language survival" is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.
- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A "multi-year project" is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- "Budget Period" is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- "Core administration" is funding for staff salaries for those functions that support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.
- "Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- "Construction" is the term which specifies a project supported through a discretionary grant or cooperative agreement, to support the initial building of a facility.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other Tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.
- Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) Include the salaries of personnel, (2) Occupy space, and (3) Benefit from the organization's indirect costs.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Section H, "General Guidance to Applicants", below.

C. Multi-Year Projects

Only Category II "Design and/or Implementation" projects may be developed as multi-year projects, i.e. for up to three years. The information in this section is not applicable to Category I, planning projects.

A multi-year project is a project on a single theme that requires more than 12 to 17 months to complete. It affords the applicant an opportunity to develop and address more complex and in-depth strategies. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Initial awards, on a competitive basis, will be for a one-year budget period (up to 17 months), although project periods may be for three years.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be funded in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

E. The Application Process

1. Application Submission by Mail

One signed original, and two copies, of the grant application, including all

attachments, must be mailed on or before the closing date to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002, Attention: Lois B. Hodge, ANA No. 93612–992.

2. Application Submission by Courier

Applications hand-carried by applicants, applicant couriers, or by overnight express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 am and 4 pm at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93612–992.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ACF. An incomplete application is one that is:
- Missing Form SF 424.
- Does not have a signature on Form SF 424.
- Does not include proof of non-profit status, if applicable.
- The application (Form 424) must be signed by an individual authorized (1) To act for the applicant Tribe or organization, and (2) To assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and Native American languages evaluate each application using the published criteria in this announcement.

As a result of the review, a normalized numerical score will be assigned to each application.

- Each Tribe, Native American organization, or other eligible applicant may compete for one grant award under this program announcement.
- The Administration for Native Americans will accept only one application for this program announcement from any one applicant. If an eligible applicant sends in two applications for this program announcement, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and requires this program announcement, and the availability of funds.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

Special Note: The Administration for Native Americans advises all applicants that grant awards made under this announcement will have a September 30, 2000 project start date. Applicants should, therefore develop projects that begin no earlier than this date.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and,
- The application is signed and submitted by the deadline; and,
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

- ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.
- After the Commissioner has made decisions on all applications funded with fiscal year 2000 funds, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- Projects will not be ranked on the basis of general financial need.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community."
- Applicants must document the community's support for the proposed project and explain the role of the

community in the planning process and implementation of the proposed project. For Tribes, a current signed resolution from the governing body of the Tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members Tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, language goals, and the community's long-range goals or plan.
- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Applications which were not funded under a previous years closing date and for resubmission should make a reference to the changes, or reasons for not making changes, in their current ANA application which are based on ANA panel review comments.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other federally recognized Indian Tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.
- The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.
- Applicants proposing multi-year projects under Category II must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects under Category II must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.
- The Administration for Native Americans will critically evaluate applications in which the acquisition equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or month per "unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project by ANA.
- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents and tabbing of the sections be provided.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.
- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.
- Applicants may propose up to a 17 month project period under Category I and up to a 36 month project period under Category II.

4. Projects or Activities That Generally Will Not Meet The Purposes of This Announcement

- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions.
- Project goals which are not responsive to this program announcement.

• Proposals from consortia of Tribes that are not specific with regard to support from, and roles of, member Tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of Tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both tribal consortia and a Tribe who belongs to the consortia receives ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member Tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, Tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

• Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to:

U. S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002 Attention: Lois B. Hodge ANA No. 93612–992

• Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

• Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 pm at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

• ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

• No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.587 Promoting the Survival and Continuing Vitality of Native American languages)

Dated: January 20, 2000.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 00–2602 Filed 2–4–00; 8:45 am]

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Federal Register

Monday,
February 7, 2000

Part V

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

OFFICE OF FEDERAL PROCUREMENT POLICY

48 CFR Part 9903

Cost Accounting Standards Board; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Interim Rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is revising applicability, thresholds and procedures for the application of the Cost Accounting Standards (CAS) to negotiated government contracts. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act, 41 U.S.C. 422. The Board is taking action on this topic in order to adjust CAS applicability requirements and dollar thresholds in accordance with the provisions of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65.

DATES: The effective date of this interim rule is April 2, 2000. Comments on the rule must be submitted in writing, by letter, and must be received by April 7, 2000.

ADDRESSES: Comments should be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503. Attn: CASB Docket 00–01. The submission of public comments via the Internet by "E-mail" will not satisfy the specified requirement that public comments must be submitted in writing, by letter, as receipt of a readable data file cannot be assured.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION

A. Regulatory Process

The CAS Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Normally, the CAS Board follows a statutorily prescribed "four-step" rulemaking process prior to the issuance of a final rule (see 41 U.S.C. § 422(g)). However, the Board is proceeding to issue this interim rule in light of recent statutory changes to its enabling statute. The Board welcomes public comment on these changes, and will consider any comments received prior to promulgation of a final rule.

B. Background

On October 5, 1999, the President signed into law the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65. Sec. 802 of that Act, entitled "Streamlined Applicability of Cost Accounting Standards," makes certain changes in the applicability requirements for CAS coverage. This interim rule is designed to reflect these changes in the CAS Board's rules.

Summary of Amendments

"Trigger contract": 48 CFR 9903.201–1(b) is amended by adding a new subparagraph (7) that exempts contracts and subcontracts from CAS coverage, provided that the business unit of the contractor or subcontractor has not received a single CAS-covered contract or subcontract of $7.5 million or more.

"Firm-fixed price contract exemption": The Board is implementing this statutory exemption by amending 48 CFR 9903.201–1(b) to revise subparagraph (15) to exempt from CAS coverage, firm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data. The Board is using the term "cost or pricing data" rather than "certified" cost or pricing data in order to conform to the statutory requirements of 10 U.S.C. § 2306(h)(1) and 41 U.S.C. § 254(b), which defines "Cost or pricing data" as data that requires certification.

"Types of CAS coverage": 48 CFR 9903.201–2(a) is amended by revising the dollar threshold for "full CAS coverage" from $25 million to $50 million, and deleting the requirement that to be subject to "full CAS coverage", that a contractor or subcontractor have received at least one contract or subcontract that exceeded $1 million (the previous "trigger contract" amount for initiation of "full CAS coverage"). 48 CFR 9903.201–2(b) is amended by revising the definition of "modified CAS coverage" to indicate that such coverage applies to covered contracts and subcontracts where the total value of CAS-covered contracts and subcontracts received by a business unit is less than $50 million. Conforming amendments have also been made to the solicitation provisions and contract clauses appearing at 9903.201–3 and 9903.201–4, respectively.

"Waiver": 48 CFR 9903.201–5 is amended by revising this section to provide for agency CAS waiver authority under certain circumstances.

"Disclosure requirements": 48 CFR 9903.202–1(b) is amended by revising the dollar amount for disclosure from $25 million to $50 million, and deleting the requirement that a contractor or subcontractor have received at least one contract in excess of $1 million.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. § 3501, *et seq.* The purpose of this rule is to implement Pub. L. 105–65.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule serves to eliminate certain administrative requirements associated with the administration of the Cost Accounting Standards by covered government contractors and subcontractors. The economic impact on contractors and subcontractors is therefore expected to be minor. As a result, the Board has determined that this is not a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this rule will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the amendments contained in this interim rule. All comments must be in writing and submitted timely to the address indicated in the **ADDRESSES** section of this document.

List of Subjects in 48 CFR Part 9903

Cost Accounting Standards, Government Procurement.

Nelson F. Gibbs,

Executive Director, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

9903.201 Contract requirements.

2. Section 9903.201–1 is amended by adding paragraph (b)(7) and revising paragraph (b)(15) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

* * * * *

(7) Contracts or subcontracts of less than $7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at $7.5 million or greater.

* * * * *

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

3. Section 9903.201–2 is amended by revising paragraphs (a)(1) and (2) and (b)(1) and (2) to read as follows:

9903.201–2 Types of CAS coverage.

(a) * * *

(1) Receive a single CAS-covered contract award of $50 million or more; or

(2) Received $50 million or more in net CAS-covered awards during its preceding cost accounting period.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than $50 million awarded to a business unit that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $50 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

* * * * *

4. Section 9903.201–3 is amended by revising the clause heading; by revising paragraph (c)(3) in Part I of the clause; by revising the CAUTION paragraph following paragraph (c)(4) in Part I; and by revising Part II of the clause, to read as follows:

9903.201–3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (April 2000)

* * * * *

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

* * * * *

(c) * * *

(3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) * * *

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90th day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $50 million or more.

* * * * *

5. Section 9903.201–4 is amended by revising paragraph (c)(1) to read as follows:

9903.201–4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

* * * * *

6. Section 9903.201–5 is revised to read as follows:

9903.201–5 Waiver

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than $15 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work—

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this chapter.

(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policymaking level in the agency.

(d) The head of each executive agency shall report the waivers granted under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201–4(a), Cost Accounting Standards, or 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

7. Section 9903.202–1 is amended by revising paragraphs (b) (1) and (2) to read as follows:

9903.202–1 General requirements.

* * * * *

(b) * * *

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $50 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

* * * * *

[FR Doc. 00–2621 Filed 2–4–00; 8:45 am]

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Federal Register

Vol. 65, No. 25

Monday, February 7, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3
5407–5732	4
5733–5992	7

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219

Administrative Orders:
Directive of January 31, 2000 5727
Directive of January 31, 2000 5727

Presidential Determination:
No. 2000–10 of January 31, 2000 5407

5 CFR

581 4753
582 4753
1201 5409
1208 5410

7 CFR

1 5414
301 ..... 4865, 5221
905 5733
944 5733
955 5736
981 4867

Proposed Rules:
54 4780
245 5791
718 5444

12 CFR

936 5738
960 5418

Proposed Rules:
Ch. I 4895
611 5286
951 5447
997 5447

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428, 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761,
71 ..... 4871, 4872, 4873, 4874, 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770
91 ..... 5396, 5936
93 5396
97 ..... 4875, 4877, 4879
121 5396
135 5396

Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459
71 ..... 4910, 4911, 5804
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

18 CFR

Proposed Rules:
382 5289

19 CFR

132 5430
163 5430

21 CFR

876 4881
1308 5024

Proposed Rules:
1310 4913

24 CFR

206 5406

26 CFR

1 ..... 5432, 5772, 5775, 5777
602 ..... 5775, 5777

Proposed Rules:
1 ..... 5805, 5807
602 5807

27 CFR

Proposed Rules:
9 5828

29 CFR

Proposed Rules:
1910 4795

30 CFR

938 4882
946 5782

33 CFR

117 5785

Proposed Rules:
100 5833
110 5833
165 5833

34 CFR

676 4886

Proposed Rules:
694 5844

38 CFR

Proposed Rules:
217 5462

219.....5462
242.....5196
1234.....5295

38 CFR

21.....5785

Proposed Rules:

21.....4914

39 CFR

111.....4864, 5789

Proposed Rules:

111.....4918

40 CFR

52.....4887, 5245, 5252, 5259, 5262, 5264, 5433
300.....5435
761.....5442

Proposed Rules:

52.....5296, 5297, 5298, 5462, 5463
130.....4919
300.....5465, 5844

42 CFR

412.....5933
413.....5933
483.....5933
485.....5933

Proposed Rules:

36.....4797

45 CFR

1303.....4764

Proposed Rules:

96.....5471

47 CFR

Ch. I.....5267
1.....4891

Proposed Rules:

73.....4798, 4799, 4923
76.....4927
95.....4935

48 CFR

203.....4864
209.....4864
225.....4864
249.....4864
9903.....5990

Proposed Rules:

30.....4940

49 CFR

195.....4770

Proposed Rules:

567.....5847
568.....5847

50 CFR

17.....4770, 52680
18.....52750
679.....4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442

Proposed Rules:

17.....4940, 5298, 5474, 5848, 5948
100.....5196
622.....5299
648.....4941, 5486

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 7, 2000

DEFENSE DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Montgomery GI Bill-Active Duty; eligibility criteria, etc.; published 2-7-00

ENVIRONMENTAL PROTECTION AGENCY

Water pollution control:

National pollutant discharge elimination system (NPDES)—

Storm water program (Phase II); municipal sewer systems and construction sites; published 12-8-99

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Colorado; published 1-12-00

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:

Community support requirements; reporting and recordkeeping requirements; published 2-7-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Dietary supplements; effect on structure or function of body; types of statements, definition; published 1-6-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; published 2-7-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

New York Harbor, NY; safety zone; published 1-7-00

Vocational rehabilitation and education:

Veterans education—

Montgomery GI Bill-Active Duty; eligibility criteria, etc.; published 2-7-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 1-3-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Foreign investment; passive foreign investment company preferred shares; qualified electing fund elections; special exclusions; published 2-7-00

Tax-exempt organizations; travel and tour activities; published 2-7-00

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Nursing home care of veterans in State homes; per diem payments; published 1-6-00

Vocational rehabilitation and education:

Veterans education—

Montgomery GI Bill-Active Duty; eligibility criteria, etc.; published 2-7-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food stamp program:

Personal Responsibility and Work Opportunity Reconcilation Act; implementation—

Personal responsibility provisions; comments due by 2-15-00; published 12-17-99

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

Telecommunication loans:

Guaranteed and insured loans; post-loan policies and procedures; comments due by 2-14-00; published 12-15-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pollock; comments due by 2-14-00; published 12-29-99

Pollock; comments due by 2-17-00; published 2-2-00

Atlantic highly migratory species—

Pelagic longline management; comments due by 2-14-00; published 12-15-99

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 2-15-00; published 12-17-99

ENERGY DEPARTMENT

Nuclear waste repositories:

Yucca Mountain Site, NV; suitability guidelines

Hearings; comments due by 2-14-00; published 12-15-99

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Dishwashers; test procedures; comments due by 2-14-00; published 1-13-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 2-18-00; published 1-19-00

Connecticut; comments due by 2-14-00; published 12-16-99

Delaware; comments due by 2-14-00; published 12-16-99

District of Columbia, Maryland, and Virginia; comments due by 2-14-00; published 12-16-99

Florida; comments due by 2-18-00; published 1-19-00

Georgia; comments due by 2-14-00; published 12-16-99

Illinois; comments due by 2-14-00; published 12-16-99

Indiana; comments due by 2-14-00; published 12-16-99

Maryland; comments due by 2-14-00; published 12-16-99

Massachusetts; comments due by 2-14-00; published 12-16-99

New Jersey; comments due by 2-14-00; published 12-16-99

New York; comments due by 2-14-00; published 12-16-99

Pennsylvania; comments due by 2-14-00; published 12-16-99

Tennessee; comments due by 2-18-00; published 1-19-00

Texas; comments due by 2-14-00; published 12-16-99

Wisconsin; comments due by 2-14-00; published 12-16-99

Air quality implementation plans; approval and promulgation; various States; air quality planning

purposes; designation of areas:
Indiana; comments due by 2-18-00; published 1-19-00
Hazardous waste program authorizations:
North Dakota; comments due by 2-18-00; published 1-19-00
Hazardous waste:
Cement kiln dust; management standards; comments due by 2-17-00; published 10-28-99
Identification and listing—
Mixture and derived-from rules; treatment, storage or disposal; comments due by 2-17-00; published 11-19-99
Mixed waste; storage, treatment, transportation, and disposal; comments due by 2-17-00; published 11-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metsulfuron methyl; comments due by 2-14-00; published 12-16-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 2-15-00; published 11-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 2-17-00; published 12-15-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Cowhead Lake tui chub; comments due by 2-16-00; published 2-2-00
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-14-00; published 1-12-00
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 2-14-00; published 1-14-00

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Group health plans; access, portability, and renewability requirements:
National Medical Support Notice; child support orders; health care coverage provisions; comments due by 2-14-00; published 11-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Elements; elimination as category in evaluation; comments due by 2-14-00; published 12-16-99
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Technical amendments; hearing; comments due by 2-16-00; published 1-12-00

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 2-15-00; published 1-21-00
Rulemaking petitions:
Quigley, Barry; comments due by 2-14-00; published 12-1-99

SECURITIES AND EXCHANGE COMMISSION
Regulatory Flexibility Act:
Rules to be reviewed; list; comments due by 2-15-00; published 1-21-00

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles; comments due by 2-17-00; published 11-19-99
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; comments due by 2-14-00; published 12-14-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 2-18-00; published 12-20-99
Bell; comments due by 2-14-00; published 12-16-99
Boeing; comments due by 2-14-00; published 12-29-99
Bombardier; comments due by 2-14-00; published 1-14-00
Cessna; comments due by 2-14-00; published 12-29-99
Fokker; comments due by 2-14-00; published 1-14-00
Learjet; comments due by 2-14-00; published 12-29-99
McDonnell Douglas; comments due by 2-18-00; published 12-20-99
New Piper Aircraft, Inc.; comments due by 2-17-00; published 12-14-99
Transport airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input; comments due by 2-14-00; published 12-16-99
Class E airspace; comments due by 2-16-00; published 1-12-00

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety enforcement procedures:
Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 2-14-00; published 1-12-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Interior trunk releases; comments due by 2-15-00; published 12-17-99

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
National banks; financial subsidiaries and operating subsidiaries; comments due by 2-14-00; published 1-20-00

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Generation-skipping transfer tax issues; comments due by 2-16-00; published 11-18-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
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Title	Stock Number	Price	Revision Date
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

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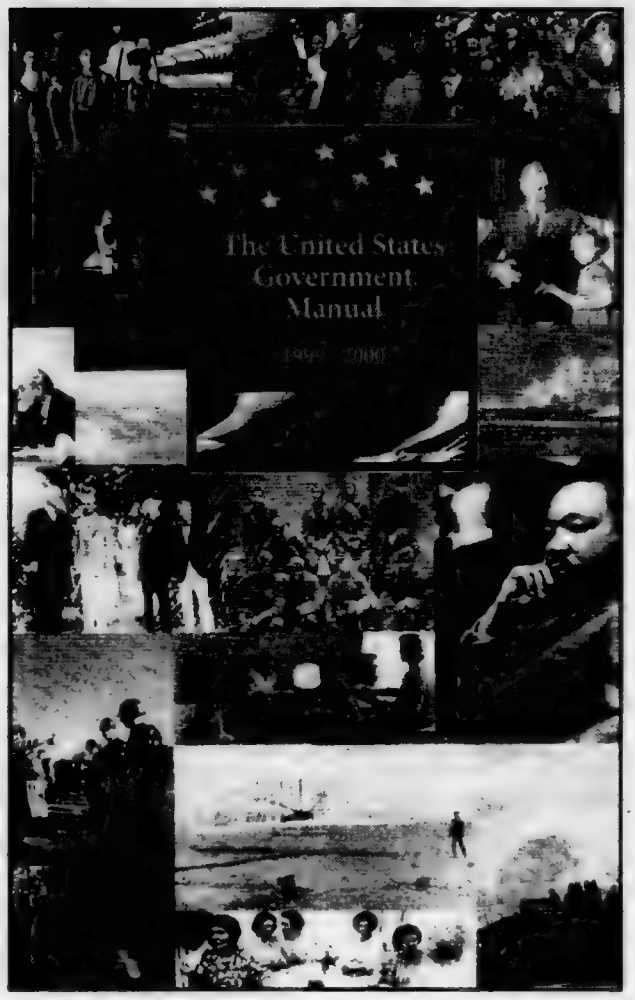

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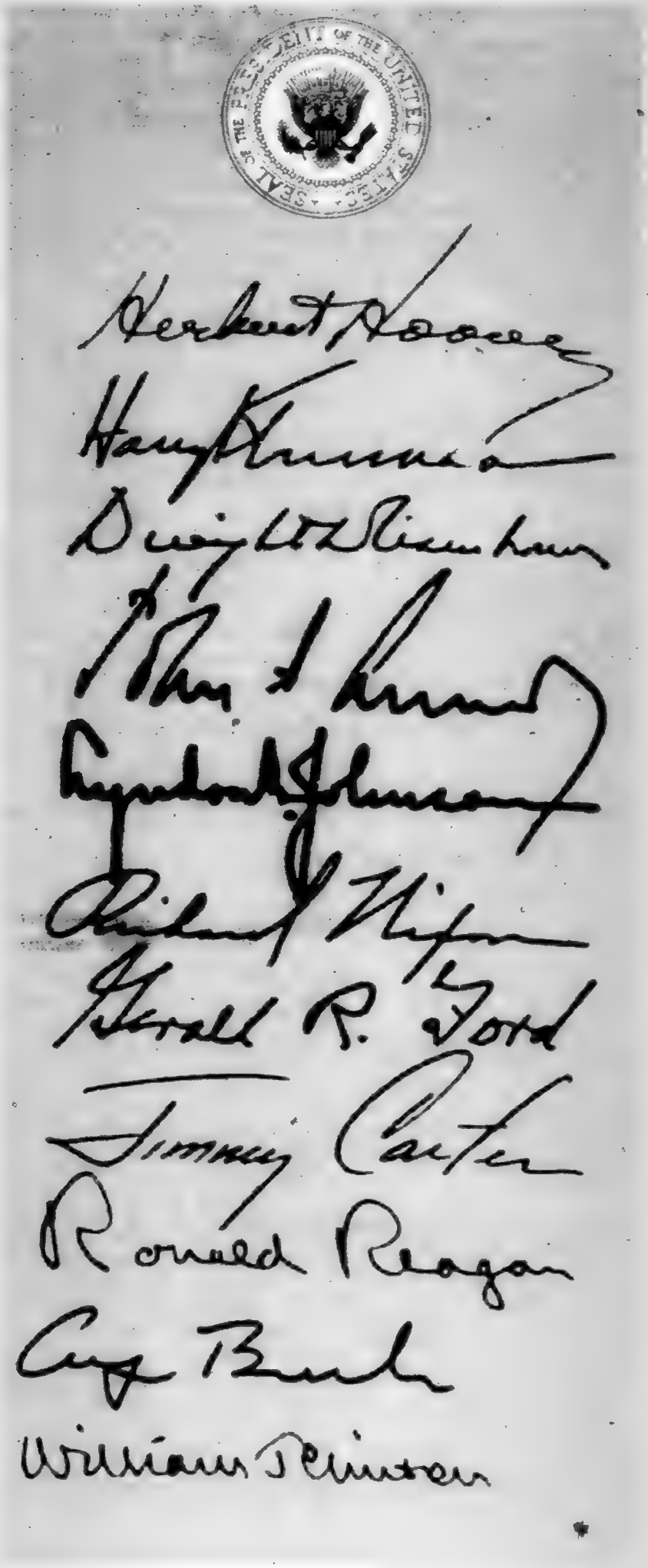

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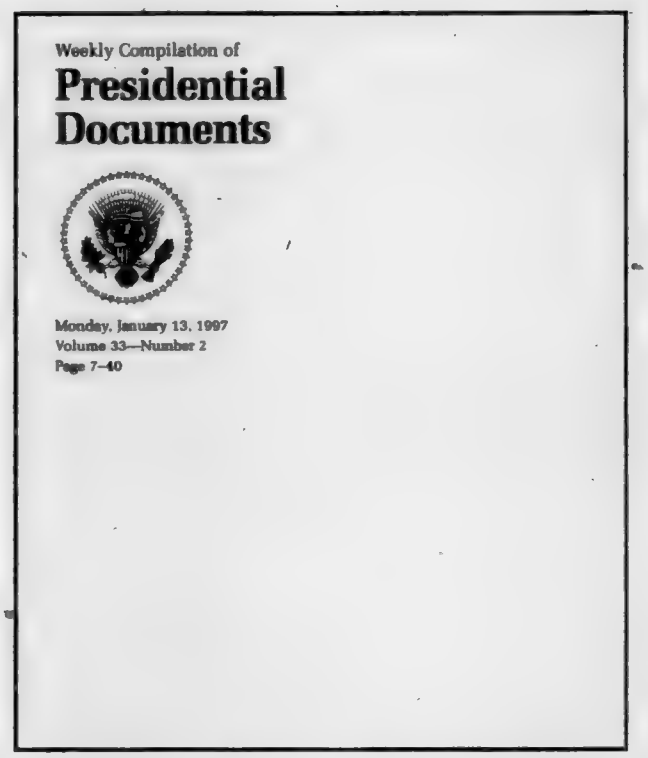

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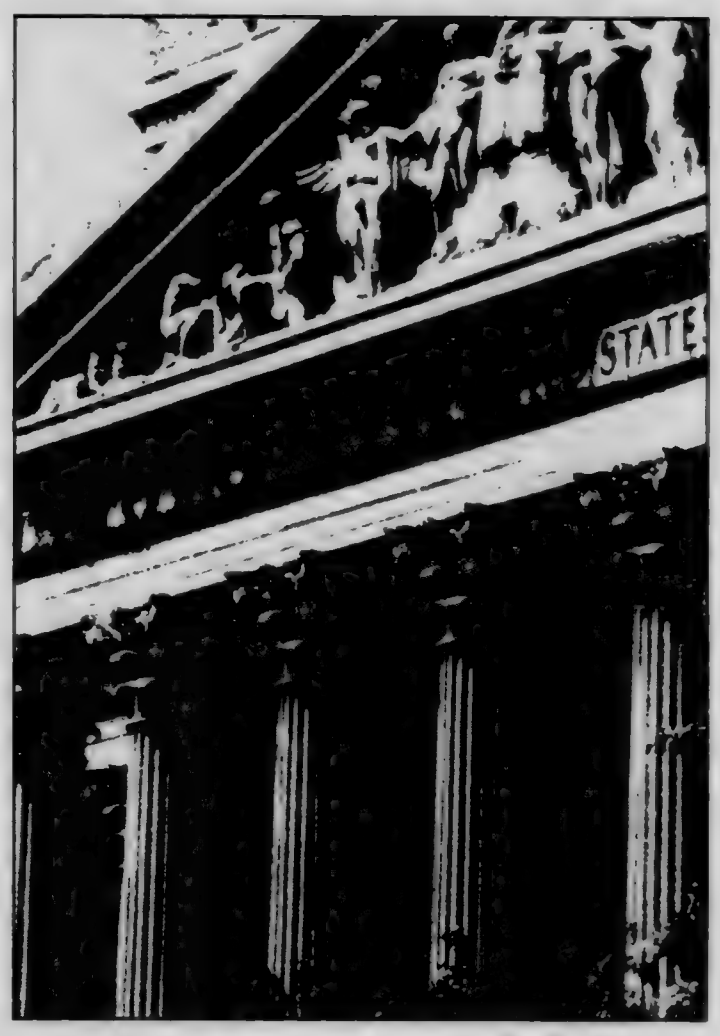

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Contents

Federal Register

Vol. 65, No. 26

Tuesday, February 8, 2000

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Federal Crop Insurance Corporation

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 5998–5999
PROPOSED RULES
Exportation and importation of animals and animal products:
Poultry products from Mexico transiting U.S., 6040–6044

Army Department
NOTICES
Privacy Act:
Systems of records, 6176–6179

Centers for Disease Control and Prevention
NOTICES
Meetings:
Guide to Community Preventive Services Task Force, 6213

Coast Guard
PROPOSED RULES
Electrical engineering:
Marine shipboard electrical cable standards, 6111–6113

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Malaysia, 6175
Export visa requirements; certification, waivers, etc.:
Romania, 6175–6176

Cooperative State Research, Education, and Extension Service
RULES
Grants:
Agricultural research, education, and extension formula funds; stakeholder input requirements for recipients, 5993–5998
NOTICES
Grants and cooperative agreements; availability, etc.:
Food and Agricultural Sciences National Needs Graduate Fellowship Program, 6132–6134

Customs Service
PROPOSED RULES
Customs bonds:
Articles subject to exclusion orders issued by International Trade Commission; bond procedures, 6062–6065
NOTICES
Committees; establishment, renewal, termination, etc.:
COBRA Fees Advisory Committee, 6254–6255

Defense Department
See Army Department
See Defense Logistics Agency
See Navy Department
NOTICES
Meetings:
Science Board, 6176
Scientific Advisory Board, 6176

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching programs, 6179–6181

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Systemwide improvement program, 6272–6300
Elementary and secondary education—
Public Charter Schools Program, 6302–6304
Meetings:
Foreign Medical Education and Accreditation National Committee, 6191
President's Advisory Board on Tribal Colleges and Universities, 6191–6192
President's Board of Advisors on Historically Black Colleges and Universities, 6192

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Yucca Mountain, NV; spent nuclear fuel and high-level radioactive waste disposal; geologic repository, 6192–6193
Grants and cooperative agreements; availability, etc.:
Advanced microturbine systems; cooperative research and development, 6193–6195
Meetings:
Basic Energy Sciences Advisory Committee, 6195

Energy Efficiency and Renewable Energy Office
NOTICES
Building Energy Codes Program; standard analysis workshop, 6195–6197
Grants and cooperative agreements; availability, etc.:
State science initiative for applied research, development, and demonstration projects, 6197–6199

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire, 6008–6012

PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire, 6102–6103
Air quality implementation plans; approval and promulgation; various States:
California, 6091–6102
NOTICES
Pesticide registration, cancellation, etc.:
Formetanate hydrochloride, 6208–6211

Executive Office of the President
See National Partnership for Reinventing Government

Federal Aviation Administration
RULES
Class E airspace, 5999–6001
PROPOSED RULES
Airworthiness directives:
Fokker, 6046–6048

Federal Communications Commission
PROPOSED RULES
Practice and procedure:
Communication between applicants in spectrum auctions, 6113–6114

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance regulations:
Figs, pears, walnuts, almonds, prunes, table grapes, peaches, plums, apples, and stonefruit, 6033–6040

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 6211

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 6014–6032
PROPOSED RULES
Flood elevation determinations:
Various States, 6103–6111
NOTICES
Disaster and emergency areas:
Georgia, 6211–6212

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Well category determinations, 6048–6062
NOTICES
Electric rate and corporate regulation filings:
Bangor Hydro Electric Co. et al., 6202–6206
Hydroelectric applications, 6206–6208
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 6199–6200
Columbia Gulf Transmission Co., 6200
Overthrust Pipeline Co., 6200
Texas Gas Transmission Corp., 6201
TransAlta Centralia Generation LLC, 6201
Williston Basin Interstate Pipeline Co, 6201–6202

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 6212
Meetings; Sunshine Act, 6212

Federal Transit Administration
NOTICES
Transfer of federally assisted land or facility:
Sedalia, MO; maintenance building extension transfer to city, 6248

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Spectacled eider, 6114–6131
NOTICES
Endangered and threatened species:
Recovery plans—
Southern sea otter, 6221–6222

Food and Drug Administration
NOTICES
Biological product licenses:
Optimum Healthcare, Inc., 6213–6214
Meetings:
Oncologic Drugs Advisory Committee, 6214
Reports and guidance documents; availability, etc.:
Supplemental applications for approved new animal drugs; Center responsibility and standards for prompt review; guidance, 6214–6216

General Accounting Office
NOTICES
Meetings:
Government Auditing Standards Advisory Council, 6212

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Genetic Testing Advisory Committee, 6212–6213

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
RULES
Natural resource damage assessments; correction, 6012–6014

Internal Revenue Service
RULES
Income taxes:
Retirement plans; new technologies; electronic transmission of notices and consents, 6001–6008
PROPOSED RULES
Income taxes:
Depletion; treatment of delay rental, 6090–6091
Exclusions from gross income of foreign corporations, 6065–6090
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6255
Meetings:
Citizen Advocacy Panels—
Brooklyn District, 6255–6256
South Florida District, 6256

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Canada, 6134–6136
Circular welded non-alloy steel pipe from—
Mexico, 6136–6139
Electrolytic manganese dioxide from—
Japan and Greece, 6140
Extruded rubber thread from—
Malaysia, 6140–6147
Granular polytetrafluoroethylene resin from—
Italy and Japan, 6147–6148
Industrial nitrocellulose from—
United Kingdom, 6148–6153
Large and small diameter carbon and alloy seamless standard, line, and pressure pipe from—
Japan and South Africa, 6153
Malleable cast iron pipe fittings from—
Brazil, 6153–6155
Stainless steel sheet and strip in coils from—
Japan, 6155–6156
Sulfanilic acid from—
India and China, 6156–6159
Welded carbon steel pipe and tube from—
Turkey, 6159–6162
Countervailing duties:
Cold rolled and corrosion-resistant carbon steel plate from—
Korea, 6162–6163
Industrial phosphoric acid from—
Israel, 6163–6166
Stainless steel wire rod from—
Italy, 6171
Spain, 6166–6171
Sulfanilic acid from—
India, 6171–6174

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
PROPOSED RULES
Land resource management:
Disposition; occupancy and use—
Alaska occupany and use; Alaska Native veterans allotments, 6260–6270
NOTICES
Meetings:
Resource Advisory Councils—
Northwest California, 6222

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6249

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Advanced Bus Industries, LLC, 6249–6250
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (1998 CY), 6250–6254

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 6216
National Institute of Environmental Health Sciences, 6217–6218
National Institute on Aging, 6216–6218
National Institute on Alcohol Abuse and Alcoholism, 6218–6219
National Institute on Drug Abuse, 6217
Scientific Review Center, 6219–6221

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 6174–6175

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 6222–6223

National Partnership for Reinventing Government
NOTICES
Grants and cooperative agreements; availability, etc.:
BEST Communities; performance partnerships to boost education, skills, training, and lifelong learning, 6240–6241

National Science Foundation
NOTICES
Meetings:
Advanced Networking and Infrastructure Research Special Emphasis Panel, 6241–6242
Computer-Communications Research Special Emphasis Panel, 6242
Design, Manufacturing, and Industrial Innovation Special Emphasis Panel, 6242
Earth Sciences Proposal Review Panel, 6242
Neuroscience Advisory Panel, 6242–6243
Physics Special Emphasis Panel, 6243
Undergraduate Education Special Emphasis Panel, 6243

Navy Department
NOTICES
Environmental statements; availability, etc.:
NIMITZ-class aircraft carriers in support of U.S. Pacific Fleet; home port facilities development, 6181–6184
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Virotek, LLC, 6184
Privacy Act:
Systems of records, 6184–6191

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Westinghouse Electric Co. LLC, 6044–6046
NOTICES
Applications, hearings, determinations, etc.:
Duke Energy Corp., 6243–6245
Philippon, Michel A., 6245

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Business Men's Assurance Co. of America et al., 6223–6228
Deutsche Bank AG et al.; correction, 6228–6229
Morgan Guaranty Trust Co. of New York et al., 6229–6240

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Victory Portfolios et al., 6245–6247

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6247

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 6247
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 6247–6248

Treasury Department
See Customs Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Legal interpretations; General Counsel-precedent opinions:
Veterans' benefits under VA administered laws; summary, 6256–6258

Separate Parts In This Issue

Part II
Department of Interior, Bureau of Land Management, 6259–6270

Part III
Department of Education, 6271–6300

Part IV
Department of Education,, 6301–6304

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
3418.....5993
Proposed Rules:
457.....6033

9 CFR
77.....5998
Proposed Rules:
94.....6040

10 CFR
Proposed Rules:
50.....6044

14 CFR
71 (3 documents) 5999, 6000
Proposed Rules:
39.....6046

18 CFR
Proposed Rules:
270.....6048
375.....6048
381.....6048

19 CFR
Proposed Rules:
12.....6062
113.....6062

26 CFR
1.....6001
35.....6001
602.....6001
Proposed Rules:
1 (2 documents) 6065, 6090

40 CFR
62.....6008
Proposed Rules:
52.....6091
62.....6102

43 CFR
11.....6012
Proposed Rules:
2560.....00000

44 CFR
65 (4 documents) 6014, 6018, 6023, 6025
67 (2 documents) 6028, 6031
Proposed Rules:
67 (2 documents) 6103, 6105

46 CFR
Proposed Rules:
110.....6111
111.....6111

47 CFR
Proposed Rules:
1.....6113

50 CFR
Proposed Rules:
17.....6114

Rules and Regulations

Federal Register
Vol. 65, No. 26
Tuesday, February 8, 2000

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3418

RIN 0524–AA23

Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) adds new regulations for the purpose of implementing section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions that receive agricultural research, extension, or education formula funds to establish a process for stakeholder input on the uses of such funds. Failure to comply with these stakeholder input requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Sally Rockey; Deputy Administrator, Competitive Research Grants and Awards Management; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2240; 1400 Independence Avenue, SW; Washington, DC 20250–2240; at 202–401–1761, or via electronic mail at srockey@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) adds this rule to implement section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862, 1890, and 1994 institutions (specific land-grant colleges and universities as defined by section 2 of AREERA (7 U.S.C. 7601)) receiving agricultural research, extension, or education formula funds from CSREES to establish a process for receiving input from persons who conduct or use agricultural research, extension, or education on the uses of such funds. For purposes of this rule, these persons are referred to as stakeholders. Section 102(c)(2) of AREERA required the Secretary of Agriculture to promulgate regulations specifying what those land-grant institutions had to do to meet this stakeholder input requirement, and what consequences would befall any institution that did not meet such a requirement.

Section 102(c) on its face only applies to land-grant colleges and universities established pursuant to the First Morrill Act, as amended (7 U.S.C. 301, *et seq.*) (1862 institutions), the Second Morrill Act, as amended (7 U.S.C. 321, *et seq.*) (1890 institutions), and the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note) (1994 institutions). CSREES has determined that the formula funds specified in section 102(c) are: Agricultural research funds provided to the 1862 institutions and agricultural experiment stations under the Hatch Act of 1887, as amended (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b) and (c)), and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471, as amended; agricultural research and extension funds provided to 1890 institutions under sections 1444 and 1445, respectively, of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided for forestry schools under the McIntire-Stennis Act of 1962, as amended (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA, as amended (7 U.S.C. 3195).

The 1862, 1890, and 1994 institutions are not the sole institutions eligible to receive formula funds under all of these Acts. There is one agricultural experiment station that is not a college or university, and twelve forestry or veterinary schools that are not land-grant institutions. However, given that the number of such institutions is de minimus, and the impracticality of trying to segregate stakeholder comments with respect to these few institutions, CSREES has determined to apply this rule to any recipient of the aforementioned formula funds.

The rule does not require recipient institutions to adopt any particular format for soliciting stakeholder input. It only requires that recipient institutions report annually to CSREES (1) the actions taken to encourage stakeholder input; (2) a brief statement of the process used by a recipient institution to identify individuals or groups as stakeholders and to collect input from them; and (3) a statement of how collected input was considered.

Failure to comply with the requirements of this rule may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions, as authorized by law.

Public Comments and Changes to the Final Rule

Summary of Statutory Changes

CSREES has added the definition of *seek stakeholder input* to the Final Rule. This definition has already been included in the Final Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds that was published in the **Federal Register** on July 1, 1999, 62 FR 35910–35919.

CSREES revised § 3418.4, Reporting Requirement, by adding a third reporting requirement as follows: "(3) a statement of how collected input was considered." The third and final revision was to change the title of

§ 3418.5, from "Failure to Report" to "Failure to Comply and Report."

CSREES also will be conducting an evaluation of how the stakeholder input requirements in section 102(c) of AREERA are being implemented by both CSREES and the affected colleges and universities after a 2-year implementation period. Part of this evaluation will be to determine whether this Final Rule will need to be revised.

Background

CSREES developed the proposed rule for stakeholder input requirements in consultation with the State partners at the 1862 and 1890 land-grant institutions. Since the enactment of AREERA on June 23, 1998, CSREES has engaged in these consultations under an exemption to the Federal Advisory Committee Act (7 U.S.C. 3124a(e)), with members of the Federal and State partnership, not only on this rule, but on other aspects of implementation of AREERA requirements including the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds. This consultation process was consistent with the consultation process required by Executive Order 13132, Federalism, issued by the President on August 4, 1999 (64 FR 43255).

The proposed rule for stakeholder input requirements was published in the **Federal Register** on April 14, 1999, 64 FR 18534–18536, with a 30-day comment period. The proposed rule did not require recipient institutions to adopt any particular format for soliciting stakeholder input. It only required that recipient institutions report annually to CSREES (1) the actions taken to encourage stakeholder input; and (2) a brief statement of the process used by the recipient institution to identify individuals or groups as stakeholders and to collect input from them.

In the preamble to the proposed rule, CSREES encouraged interested parties to review the Proposed Guidelines for State Plans of Work which were published in the **Federal Register** for a 30-day comment period on April 19, 1999, 64 FR 19242–19248. The Proposed Guidelines for State Plans of Work explained in greater detail the stakeholder input requirements, especially how they relate to the development of the 5-Year Plans of Work. These 5-Year Plans of Work include the reporting requirement on the stakeholder input process for the 1862 and 1890 land-grant institutions and these plans apply to the agricultural research and extension formula funds received under the Hatch Act of 1887, sections 3(b) and 3(c) of the Smith-Lever Act, and under sections 1444 and 1445 of NARETPA. These Proposed Guidelines for State Plans of Work did not apply to the agricultural education formula funds received by the 1994 land-grant institutions or to the research or extension formula funds received by colleges and universities under section 3(d) of the Smith-Lever Act, the McIntire-Stennis Act of 1962 for cooperative forestry research, and section 1433 of NARETPA for animal health and disease research.

The 1862 and 1890 land-grant institutions will fulfill their annual reporting requirement on the stakeholder input process via the Annual Report of Accomplishments and Results as outlined in the Final Guidelines for State Plans of Work. The reports on the stakeholder input process for the 1994 land-grant institutions will be required as part of their Tribal College Education Equity Grant proposals and their stakeholder input processes will be reviewed at the time these grant proposals are evaluated. The recipients of the Smith-Lever Act (section 3(d)) formula funds, McIntire-Stennis Cooperative Forestry Research funds, and the Animal Health and Disease Research funds will be required to submit an annual report on their stakeholder input processes prior to the distribution of formula funds each fiscal year. This report will be reviewed by the appropriate program official to determine whether the stakeholder input requirements have been met.

Impact of Comments on the Related Final Guidelines for State Plans of Work on This Rule

Two comments were received on the Proposed Guidelines for State Plans of Work published in the **Federal Register** on April 19, 1999, 64 FR 19242–19248, regarding the stakeholder input process. One of the commenters supported the decision of CSREES to provide the maximum flexibility to institutions in the way they report their stakeholder input in their plans of work. The other commenter focused on the definition of *seek stakeholder input*. The notice of the Proposed Guidelines defined *seek stakeholder input* as "means an open and fair process which allows opportunities for individuals, groups, and organizations a voice in a process that treats all with dignity and respect." This commenter urged CSREES to adopt a new definition, building upon the concepts of "open and fair," "equality of service," and "ease of access" in the Final Guidelines, as follows: "*Seek stakeholder input* means an open, fair, transparent, accessible, inclusive, accountable, and comprehensive process which provides opportunities for diverse individuals, groups, and organizations, especially the traditionally under-served and under-represented, to have a voice in a process that treats all with dignity and respect."

CSREES modified the definition of *seek stakeholder input* to "*Seek stakeholder input* means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice and one that treats all with dignity and respect." However, although CSREES did encourage States to implement a stakeholder input process satisfying the above definition posed by the commenter, CSREES recognized in consultation with the State partners that each State or Tribe has unique characteristics and should implement a stakeholder input process that best suits the needs of their State or Tribe. CSREES had determined to use this modified definition of *seek stakeholder input* as the lowest acceptable threshold of stakeholder input process because CSREES wants to maintain an environment in which land-grant institutions may quickly modify their stakeholder input processes to respond effectively to existing and emerging critical agricultural issues. Also, CSREES did not want to place undue administrative burdens upon the land-grant institutions in meeting the stakeholder input requirements that potentially may interfere with the conduct and delivery of research and extension programs. This determination by CSREES is consistent with the policies set forth in Executive Order 13132, Federalism.

The above commenter made three additional comments. First, the commenter noted that while the definition for *under-served* is referenced once in the review criteria, the definition of *under-represented* did not appear in the Proposed Guidelines. As the commenter had thought, this was an oversight and had been included in the review criteria. Second, this commenter thought CSREES should address *under-served* and *under-represented* in the target audiences section under "Program Descriptions." Third, the commenter urged CSREES to broaden the definition of *under-represented* to specifically include "small farm owners and operators." CSREES revised the Guidelines to incorporate these last two suggestions.

The Final Guidelines for State Plans of Work were published prior to this Final Rule on stakeholder input requirements due to the urgency of the plans of work being received, reviewed, and approved prior to October 1, 1999,

to prevent any disruption in the delivery of research and extension programs. However, 1862 and 1890 land-grant institutions are required to comply with any additional requirements as set forth in this Final Rule.

Comments on the Proposed Stakeholder Input Requirements Rule

Eighty-nine comments were received. Eighty-four were received from individuals and stakeholder groups; four from deans or directors at the 1862 land-grant institutions; and one from the USDA Office of Inspector General (OIG).

A. Individuals and Stakeholder Groups

Sixty of the 84 comments received from individuals and stakeholder groups wrote that the proposed rule in the April 14, 1999, **Federal Register** did not provide adequate guidance as to what constitutes a reasonable and adequate stakeholder input process. These commenters felt that by not establishing minimal criteria for a satisfactory and adequate stakeholder input process, the proposed rule did not address the Congressional concern for increased accountability within the land-grant system. CSREES has included in this Final Rule the definition of *seek stakeholder input* which requires that a stakeholder input process be fair, open, and accessible. This definition was originally included in the Proposed Guidelines for State Plans of Work and had been developed in consultation with the 1862 and 1890 land-grant community. Failure to include the definition in the Proposed Rule for stakeholder input requirements was an oversight on the part of CSREES.

Sixty-two commenters felt that while it is not USDA's role to dictate the particular style or format for stakeholder input process, it is vitally important for USDA to ensure that every stakeholder process meet certain minimal public accountability standards. Generally, all of these commenters felt that these public accountability standards should include:

Fairness: Basic fairness requires equal access to the process by all citizens and taxpayers.

Transparency: All aspects of the stakeholder process should be in the open and on public record.

Accountability: Those who take the time and effort to provide input and recommendations should be given the courtesy of reviewing the written record of any meeting they participated in for accuracy as well as some type of timely reporting as to how the stakeholder input was utilized, and if specific recommendations were rejected, the reasons why.

Balanced Representation: Each institution should be required to demonstrate a good faith effort to solicit input from, and active engagement with, traditionally under-served and under-represented constituencies (e.g., the full range of farmers and ranchers).

Comprehensive and Meaningful Role: Stakeholder input should be sought on a variety of different levels, including but not limited to:

- Advice on priority setting and program development;
- Input on both immediate needs and long-term goals;
- Participation in relevancy and portfolio reviews;
- Guidance on monitoring, evaluation, and oversight systems employed to track performance and results; and
- Counsel on emerging technologies and recommendations for public education and discussion about the mission and directions of the institution.

The Rule applies not only to the 1862 land-grant institutions, but to the 1890 and 1994 land-grant institutions as well as to colleges and universities that are not land-grant institutions, but receive agricultural research, education, and extension formula funds. The 1994 land-grant institutions just started to receive formula funds from CSREES in fiscal year 1996, and the amount of funding per institution is very limited. For the non-land-grant institutions, funding is for a very specific purpose. In addition, there are other new AREERA requirements for the land-grant institutions in addition to section 102(c), such as the submission and approval of plans of work prior to the distribution of formula funds on October 1, 1999, and the establishment of either a merit review process or a scientific peer review process prior to October 1, 1999. Therefore, CSREES has determined at this time to require at the minimum a stakeholder input process that is fair, open, and accessible.

Representation was a particular concern to 34 commenters as summarized by one of the commenters: "I believe that the original intent of Congress when this Act was passed was to ensure that land-grant institutions are acknowledging their accountability to a larger public and simply not to the traditional land-grant stakeholders. * * * Rather than giving up on stakeholder processes, I believe the land-grants must be encouraged to embrace multiple approaches and to specifically seek out the views of those who are seldom heard in the land-grants such as the full range of farmers and ranchers.* * *"

As mentioned previously, minimal public accountability standards now include a fair, open, and accessible process. Although this Final Rule may not impose all of the public accountability standards desired by the commenters, this will be a new major requirement for many institutions; and it is anticipated that to meet this requirement, institutions will provide more opportunities for stakeholder input. As evident through some of the 5-year Plans of Work received, institutions are establishing processes that are more inclusive, more accessible, and reach beyond their traditional audiences. The concept of balanced representation also is incorporated in the Final Guidelines for State Plans of Work for the 1862 and 1890 land-grant institutions through plan of work reporting requirements and evaluation criteria that address giving attention to under-served and under-represented audiences.

Nine commenters felt that the land-grant institutions tended to serve the needs of agribusiness over the needs of the public good, and seven commenters criticized USDA for only requiring an annual report from the land-grant institutions. Eighteen commenters charged CSREES, by publishing the proposed rule, with "business as usual" at the land-grant institutions or supporting the "status quo," and thought that very little would change at the land-grant institutions. Two commenters felt that USDA was being pressured by the land-grant institutions to adopt the proposed rule.

CSREES does not agree that the land-grant institutions tend to serve the needs of agribusiness over the needs of the public but rather focus on meeting the needs of the public at large through the delivery of a wide range of agricultural research, education, and extension programs. In addition, many of the land-grant institutions have modified their stakeholder input processes to extend beyond the traditional advisory groups. Although it may appear that CSREES is only requiring an annual report on the stakeholder input process, CSREES has evaluated the 5-Year Plans of Work (FY 2000–FY 2004) and will continue to evaluate plans of work by reviewing the stakeholder input process and determining whether the input gathered during the process has been considered in developing the plan of work. By reviewing the plans of work in this context, CSREES is not conducting "business as usual" with the land-grant institutions.

Four comments were received that suggested this was an opportunity for USDA "to submit a new proposed rule for comment which will offer substantive, 'broad parameters and guidelines' for stakeholder input as called for by the legislative language and history * * *. The 'broad parameters and guidelines' which CSREES is required to propose should take the form of general performance goal-statements for land-grant institutions' stakeholder input processes. Institutions, in turn, must be required to report their methods, plans and progress in meeting these performance goals."

By including the minimal standards of fairness, openness, and accessibility for stakeholder input processes, CSREES is establishing broad criteria to which performance goals can be established and outcomes and impacts measured. By requiring institutions to report on how the stakeholder input was considered, CSREES is ensuring that agricultural research and extension programs conducted are indeed a priority and are relevant to the critical agricultural issues in the States.

Seven commenters viewed the implementation of the stakeholder input requirement as an opportunity for the land-grant system to reinvigorate itself and to improve citizen estimation of them. One commenter stated: "A stakeholder input process that is inclusive, fair, comprehensive, and open should be viewed as an opportunity for the land-grant institution to demonstrate its relevance to the people of the State who support it * * *."

CSREES does see the implementation of section 102(c) of AREERA for stakeholder input requirements as an opportunity for the land-grant system to make the public more aware of the existence and availability of agricultural research, education, and extension programs; reach new audiences; and deliver agricultural research, education, and extension programs more efficiently and effectively through multistate, multidisciplinary, and multi-institutional activities as well as integrated research and extension activities.

Ten commenters noted the range of stakeholder input processes in the States. They cited examples of processes that were successful as well as those they thought required improvement. Since CSREES is aware of the wide range of stakeholder input processes at the affected institutions, CSREES thought it prudent to establish minimal standards through the definition of *seek stakeholder input* for all affected institutions, including the 1994 land-grant institutions and colleges and universities that are not land-grant institutions. And since the State Plans of Work for the 1862 and 1890 land-grant institutions encompass a significant portion of the Federal formula funds dedicated to agricultural research and extension (approximately $500 million) and support a broad range of agricultural research, education, and extension programs, the Final Guidelines for State Plans of Work require that efforts be made to address traditionally under-served and under-represented audiences.

Three commenters suggested that there be a full array of methods to solicit stakeholder input including small groups, large groups with formal testimony, conventional and electronic contacts, posters at public institutions, and public service announcements on radio and television. CSREES expects that a broad range of methods will be used to solicit input from stakeholders as the definition of seek stakeholder input includes "accessible," but does not feel it is necessary to dictate any specific method to be used.

Two commenters referred to earlier drafts of the proposed rule as follows: "Earlier draft versions of the proposed rule, while far from adequate, at least made reference to the necessity of an open and fair process, encouraging participation of diverse individuals and groups, and demonstrating that stakeholder input was actually considered * * *." CSREES assumes that these commenters were referring to the references in the Proposed Guidelines for State Plans of Work which included the definitions of *seek stakeholder input, under-represented,* and *under-served* as well as the evaluation criteria addressing the involvement of stakeholders in the planning process and the attention given to under-served and under-represented populations. Hence, CSREES has added the definition of *seek stakeholder input* to the Final Rule.

Four comments were received suggesting that the annual reporting requirement be changed to reporting on the actions taken and plans to meet the five public accountability standards identified above by sixty-two commenters as well as an assessment of the progress made towards fulfilling each of these public accountability standards. Two of the commenters suggested that the existing language in § 3418.4 be amended to refer not only to processes to "collect" input but also to utilize it, or in the words of the statute "solicit and consider input and recommendations." CSREES has adopted the commenter's suggestion by adding the third reporting requirement under § 3418.4, Reporting Requirement, as follows: "(3) a statement of how collected input was considered."

Two comments were received that suggested that the title of § 3418.5, Failure to Report, be revised to include language about failure to comply. CSREES has revised the title of the section as suggested by the commenter to "Failure to Comply and Report."

Forty-four commenters felt that CSREES needed to either amend the proposed rule or rewrite the rule and hold another public comment period based on the above comments. CSREES has made three revisions to the Proposed Rule based on the comments received. Based on both the content and the number of comments received, CSREES will be conducting an evaluation of implementation of section 102(c) of AREERA by CSREES and the affected institutions after a 2-year implementation period. This should provide sufficient time for the affected institutions to implement a stakeholder input process based on the Final Rule.

B. Land-Grant Institutions

As mentioned previously, four comments were received from deans or directors at the 1862 land-grant institutions. Two of these commenters felt that the proposed rule as published in the **Federal Register** was adequate. However, one of these commenters thought that meeting the public accountability standards should be strongly encouraged rather than specifically spelled out in the rules. The other commenter was pleased that the proposed rule provided flexibility and noted: "States are unique in the organizations, structures and processes available in their area. Given the diversity among States it is important to provide flexibility so that each State can optimize stakeholder input in their State." As stated previously, CSREES agrees that all stakeholder input processes should be fair, open, and accessible.

One of the commenters stated that there should be maximum transparency and accountability while keeping the administrative costs to a minimum. The commenter continued by stating that AREERA reporting requirements diverted significant resources from the delivery of programs to administrative functions and that any additional requirements would place an unreasonable burden on the agricultural experiment stations. These comments were considered in establishing the minimum criteria for stakeholder input processes. Another commenter was

concerned that while the requirements for stakeholder participation can be accommodated by the land-grant institution, they are concerned about situations in which an individual or stakeholder group may proclaim stakeholder "rights" and proclaim that "no opportunity" was given to provide input. CSREES feels that stakeholders should be given reasonable opportunity to provide input and that issues such as this one may be addressed during the evaluation of the entire process.

One commenter noted that the clientele of the land-grant system is highly diverse with multiple and broad ranging needs and that it is recognized that resources will simply not be adequate to address all identified needs. Although CSREES agrees with this statement, CSREES feels that this is the primary reason for implementing and maintaining an adequate stakeholder input process. If resources were unlimited, there would be no need for priority setting processes which include soliciting and considering stakeholder input.

Another commenter wanted to know why the stakeholder input process only applied to the agricultural research and extension Federal formula funds and not all the funds supporting agricultural research and extension. Section 102(c) of AREERA only applies to agricultural research, education, and extension formula funds from CSREES.

C. USDA Office of Inspector General

The comment from the USDA Office of Inspector General (OIG) concentrated on three issues: Performance indicators identified in section 102(d) of AREERA, lack of criteria, and the recommendation that CSREES review the descriptions of the stakeholder input processes to assess the institutions' compliance.

The OIG commented "that the performance indicators prescribed by Congress as the 'management principles' of the priority setting process must be ensured by targeting stakeholders who can achieve this goal and setting priorities for research, education, or extension activities that meet these performance criteria." The OIG continued by stating that they found no reference in the Proposed Rule to the performance indicators listed in section 102(d) of AREERA and that they consider the indicators to be critical controls over the outcome of the recipients' solicitation process.

Section 102(d)of AREERA states that the Secretary shall ensure that federally supported and conducted agricultural research, extension, and education activities are accomplished in a manner that (1) integrates agricultural research, extension, and education functions to better link research to technology transfer and information dissemination activities; (2) encourages regional and multistate programs to address relevant issues of common concern and to better leverage scarce resources; and (3) achieves agricultural research, extension, and education objectives through multi-institutional and multifunctional approaches and by conducting research at facilities and institutions best suited to serve those objectives. CSREES accomplished this task in the establishment of the Final Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds with evaluation criteria addressing these "management principles" and the development of requests for proposals which includes evaluation criteria for competitive research, education, and extension grant programs. Section 102(d) is the responsibility of CSREES and is evident in how CSREES establishes evaluation criteria and how they administer both the formula and competitive grant programs. It would defeat the whole purpose of the stakeholder input process if section 102(d) of AREERA was applied to the stakeholders themselves.

As mentioned previously, CSREES plans to conduct an evaluation of implementation of section 102(c) of AREERA by CSREES and the affected institutions after a 2-year implementation period to determine both the adequacy of the stakeholder input processes in priority setting and the effectiveness of this Final Rule. Through the inclusion of the definition for *seek stakeholder input* in the Final Rule, CSREES has adopted the minimum standards or criteria for a stakeholder input process as being fair, open, and accessible.

Estimated Burden Hours on the Information Collection

The estimated burden hours per response for the information collection associated with the Final Rule was revised from the original estimate of 9.19 hours to 57.32 hours per response. This estimate was revised after the Office of Management and Budget questioned whether 9.19 hours were sufficient to report not only on the stakeholder input process but on the actual consideration of input and recommendations from stakeholders concerning the use of formula funds.

The estimate for the original burden hours was calculated at 9.19 hours and based mainly on preparing an annual report describing actions taken to seek stakeholder input that encourages their participation and a brief statement of the process used by the recipient institutions to identify individuals and groups who are stakeholders and to collect input from them. The increase to 57.32 hours per response, or an additional 48.13 hours per response, is attributed to the requirement under § 3418.4 relating to how the collected input was considered. It is estimated that it will take 24.5 hours to review the stakeholder input gathered, 23.63 hours to determine whether the priorities for agricultural research, extension, and education activities conducted by the institution need to be adjusted, and 9.19 hours to write and edit the annual report.

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be non-significant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this executive order. This rule also will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this proposed rule.

Catalog of Federal Domestic Assistance

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act, No. 10.205, Payments to 1890 Land-Grant Colleges and Tuskegee University, No. 10.202, Cooperative Forestry Research, No. 10.207, Animal Health and Disease Research, No. 10.500, Cooperative Extension Service, and No. 10.221, Tribal Colleges Education Equity Grants.

Paperwork Reduction Act

Under the provisions of the paperwork Reduction Act of 1995, as

amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this Final Rule have been reviewed and approved by the Office of Management and Budget (OMB) and given OMB Document No. 0524–0035. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

The public reporting burden for this collection of information contained in this rule is estimated at 57.32 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Office of the Chief Information Officer, Stop 7603, 1400 Independence Avenue, SW., Washington, DC 20250–7603, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. This rule has no additional impact on any existing data collection burden.

Report to Congress

As required by 5 U.S.C. 801(a), CSREES submitted a report on this final rule to both houses of Congress and the Comptroller General prior to publication.

List of Subjects in 7 CFR part 3418

Agricultural education, Agricultural extension, Agricultural research, Colleges and universities.

For reasons stated in the preamble, chapter XXXIV of Title 7 of the Code of Federal Regulations is amended by adding Part 3418 to read as follows:

PART 3418—STAKEHOLDER INPUT REQUIREMENTS FOR RECIPIENTS OF AGRICULTURAL RESEARCH, EDUCATION, AND EXTENSION FORMULA FUNDS

Sec.

3418.1 Definitions.
3418.2 Scope and purpose.
3418.3 Applicability.
3418.4 Reporting requirement.
3418.5 Failure to comply and report.
3418.6 Prohibition.

Authority: 5 U.S.C. 301; 7 U.S.C. 7612(c)(2).

§ 3418.1 Definitions.

As used in this part:

1862 institution means a college or university eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*).

1890 institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, et seq.), including Tuskegee University.

1994 institution means an institution as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Formula funds means agricultural research funds provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, et seq.); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471; agricultural extension and research funds provided to 1890 institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA)(7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided to forestry schools under the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, et seq.); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

Recipient institution means any 1862 institution, 1890 institution, 1994 institution, or any other institution that receives formula funds from the Department of Agriculture.

Seek stakeholder input means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice, and one that treats all with dignity and respect.

Stakeholder means any person who has the opportunity to use or conduct agricultural research, extension, or education activities of recipient institutions.

§ 3418.2 Scope and Purpose.

Section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(c)) requires land-grant institutions, as a condition of receipt of formula funds, to solicit and consider input and recommendations from stakeholders concerning the use of formula funds. This regulation implements this requirement consistently for all recipient institutions that receive formula funds.

§ 3418.3 Applicability.

To obtain formula funds after September 30, 1999, each recipient institution shall establish and implement a process for obtaining stakeholder input on the uses of formula funds in accordance with this part.

§ 3418.4 Reporting requirement.

Each recipient institution shall report to the Department of Agriculture by October 1 of each fiscal year, the following information related to stakeholder input and recommendations:

(a) Actions taken to seek stakeholder input that encourages their participation;

(b) A brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them; and

(c) A statement of how collected input was considered.

§ 3418.5 Failure to comply and report.

Formula funds may be withheld and redistributed if a recipient institution fails to either comply with § 3418.3 or report under § 3418.4.

§ 3418.6 Prohibition.

A recipient institution shall not require input from stakeholders as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs of the recipient institution.

Done at Washington, DC, this 31st day of January, 2000.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–2822 Filed 2–7–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–063–2]

Tuberculosis in Cattle and Bison; State Designations; California, Pennsylvania, and Puerto Rico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate

movement of cattle and bison by raising the designations of California, Pennsylvania, and Puerto Rico from modified accredited States to accredited-free States. We have determined that California, Pennsylvania, and Puerto Rico meet the criteria for designation as accredited-free States.

EFFECTIVE DATE: The interim rule became effective on October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective October 14, 1999, and published in the **Federal Register** on October 20, 1999 (64 FR 56399–56400, Docket No. 99–063–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing California, Pennsylvania, and Puerto Rico from the list of modified accredited States in § 77.1 and adding them to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before December 20, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 64 FR 56399–56400 on October 20, 1999.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 2nd day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2779 Filed 2–7–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–17]

Establishment of Class E Airspace; Puerto Rico, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the geographic coordinates of a final rule that was published in the **Federal Register** on January 18, 2000, (65 FR 2538), Airspace Docket No. 99–ASO–17.

EFFECTIVE DATE: This correction is effective February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr18ja00–6, Airspace Docket No. 99–ASO–17, published on January 18, 2000, (65 FR 2538), amended Class E airspace at Puerto Rico, PR. Errors were discovered in the geographic coordinates of the San Juan Fernando Luis Ribas Dominicci Airport, PR, and in the airspace description. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for San Juan Fernando Luis Ribas Dominicci Airport, PR, and the airspace description as published in the **Federal Register** on January 18, 2000 (65 FR 2538) (Federal Register Document DOCID: fr18ja00–6: page 2538, column 3 and page 2539, column 1), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO PR E Puerto Rico, PR [Corrected]

By removing "Lat. 18°27′41″ N, long. 66°05′89″ W" and substituting "lat. 18°27′25″ N, long. 66°05′53″ W" for the airport coordinates, and by removing "long. 5°45′ W" and substituting "long. 65°45′ W" in the airspace description.

* * * * *

Issued in College Park, Georgia, on January 26, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–2774 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–23]

Amendment of Class E Airspace; London, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at London, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) has been developed for Manchester Memorial Hospital, Manchester, KY. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Manchester Memorial Hospital.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at London KY, (64 FR 70612). This action provides adequate Class E airspace for IFR operations at the Manchester Memorial Hospital. Designations for Class E airspace extending upward form 700 feet or more above the surface are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at London, KY, for the Manchester Memorial Hospital.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120: EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Adminsitration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward form 700 feet or More above the Surface of the Earth.

* * * * *

ASO KY E5 London, KY [Revised]

London—Corbin Airport—Magee Field, KY
(Lat 37°05′14″ N, long. 84°04′37″ W)
Manchester memorial Hospital, Manchester, KY
Point in Space Coordinates
(Lat 37°10′28″ N, long. 83°46′35″ W)

That airspace extending upward from 700 feet or more above the surface with an 11-mile radius of London—Corbin—Magee Field and that airspace within a 6-mile radius of the point in space (lat. 37°10′28″ N, long. 83°46′35″ W) serving Manchester Memorial Hospital, Manchester, KY.

* * * * *

Issued in College Park, Georgia, on January 20, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 00–2773 Filed 2–7–00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–25]

Amendment of Class E Airspace; Lexington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Lexington, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) has been developed for Saint Joseph's Hospital and The University of Kentucky Medical Center, Lexington, KY. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Saint Joseph's Hospital and The University of Kentucky Medical Center.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E Airspace at Lexington, KY (64 FR 70611). This action provides adequate Class E airspace for IFR operations at the Saint Joseph's Hospital and The University of Kentucky Medical Center. Designations for Class E airspace extending upward from 700 feet or more above the surface and published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Lexington, KY, for the Saint Joseph's Hospital and The University of Kentucky Medical Center.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routin matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO KY E5 Lexington, KY [Revised]

Lexington, Blue Grass Airport, KY
(Lat. 38°02′13″ N, long. 84°36′20″ W)
Saint Joseph's Hospital and The University of Kentucky Medical Center, Lexington, KY
Point In Space Coordinates
(Lat. 38°01′15″ N, long. 84°30′59″ W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of Blue Grass Airport and that airspace within a 6-mile radius of the point in space (Lat. 38°01′15″ N, long. 84°30′ 59″ W) serving Saint Joseph's Hospital and the University of Kentucky Medical Center, Lexington, KY.

* * * * *

Issued in College Park, Georgia, on January 20, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region

[FR Doc. 00–2772 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 35, and 602

[TD 8873]

RIN 1545–AW78

New Technologies in Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans. Specifically, these regulations set forth applicable standards for the transmission of those notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices. The regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The regulations affect retirement plan sponsors, administrators, and participants.

DATES: *Effective Date:* These regulations are effective January 1, 2001.

Applicability Date: These regulations apply to plan years beginning on or after January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1632. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent and/or recordkeeper is 76 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 35) under sections 402(f), 411(a)(11) and 3405(e)(10)(B). The regulations under section 3405(e)(10)(B) (new Q/A d–35 and d–36 of section 35.3405–1), like the regulations under sections 402(f) and 411(a)(11) are final regulations. These regulations finalize proposed regulations that were published as a notice of proposed rulemaking (REG–118662–98) in the **Federal Register** (63 FR 70071) on December 18, 1998. A public hearing was held on the proposed regulations on April 15, 1999.

In addition to the proposed regulations, the IRS and Treasury issued Notice 99–1 (1999–2 I.R.B. 8), and Announcement 99–6 (1999–4 I.R.B. 24), concerning the use of electronic media under retirement plans. Notice 99–1 confirms that the "paperless" administration of participant enrollments, contribution elections, investment elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, and certain other transactions do not cause a qualified plan to fail to satisfy the requirements of section 401(a) (or the requirements for a qualified cash or deferred arrangement under section 401(k)). Announcement 99–6 authorizes the electronic transmission of Form W–4P.

The proposed regulations, Notice 99–1, and Announcement 99–6 were issued pursuant to section 1510 of the Taxpayer Relief Act of 1997. That section provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time, and related recordkeeping requirements under the Code and the Employee Retirement Income Security Act of 1974 (ERISA) regarding the use of new technologies by sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit paperless transactions. Section 1510 provides that the guidance must protect participant and beneficiary rights. Any final regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after issuance as final regulations.

Explanation of Provisions

General

Commentators generally praised the approach taken in the proposed regulations of providing broad, flexible standards for the transmission of certain notices and consent required for distributions through electronic media. Commentators stated that the guidelines set forth in the proposed regulations facilitate the expanded use of new technologies and recognize the likelihood of future technological advances in plan administration. Accordingly, the final regulations retain this approach and:

- Permit electronic delivery of the notice of distribution options and the right to defer distribution under section 411(a)(11), the rollover notice under section 402(f), and the withholding notice under section 3405(e)(10)(B);

- Permit electronic transmission of participant consent to a distribution under section 411(a)(11); and
- Permit a plan to provide the section 411(a)(11) and section 402(f) notices more than 90 days before a distribution, if the plan provides a summary of the notices within 90 days before the distribution.

Notices Under Sections 402(f), 411(a)(11), and 3405(e)(10)(B)

1. Use of Electronic Media for Delivery of Notices

The proposed regulations provide that, in general, a plan may furnish a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium reasonably accessible to the participant to whom the notice is given. The proposed regulations require that any electronic notice be provided under a system reasonably designed to give the notice in a manner no less understandable to the participant than a written paper document and that the participant be advised of the right to request and to receive a copy of the notice on a written paper document without charge. The final regulations adopt these rules without change.

One commentator noted that the proposed regulations do not define the term *reasonably accessible* and suggested that the final regulations require that participants have effective access at their place of work to any electronic medium used to deliver the notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B). The IRS and Treasury, after further consideration, believe that the reasonably accessible standard protects the interests of plan participants and, therefore, have retained the proposed terminology.

The same commentator raised more general concerns with the use of electronic media to transmit notices. This commentator argued that an electronic notice should be "actually received (not just sent or available) and read by the participant, be permanently accessible, and easily converted to a printed document, by using an available printer and/or through a request for a paper writing." In response to these concerns, the IRS and Treasury reiterate the view, expressed in the preamble to the proposed regulations, that the legal standards for the delivery of distribution-related notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B) should be the same regardless of the medium of delivery. Additionally, the IRS and Treasury note that many of the concerns raised by this commentator about electronic media are adequately addressed by the requirement in the regulations that participants always have the right to request and to receive a written paper notice without charge.

Several commentators objected to the requirement that participants be able to receive the notice on a written paper document upon request. These commentators argued that simply making written paper notices available through an electronic medium (such as a printing option on an e-mail system or a plan web site) protects the interests of participants in having access to written paper notices without placing the burden of providing written paper notices on plan sponsors and administrators. However, the IRS and Treasury believe that the right to request and to receive a written paper notice is an important fail-safe for paperless plan administration. The requirement ensures that no participant is denied ready access to a usable copy of a required distribution notice, and it limits the need for the IRS and Treasury to regulate the manner in which written paper notices are made available through electronic media. The IRS and Treasury believe that the burden for plan sponsors and administrators to maintain a process that will generate written paper notices upon request is outweighed by the important safeguards provided by the requirement. In addition, as indicated in the preamble to the proposed regulations, the written paper notice provided on request need not be identical to the electronic notice. Therefore, the written paper notice can be either a printed version of the electronic notice or a separate notice prepared for distribution on paper. In light of these considerations, the requirement is retained in the final regulations.

One commentator requested clarification that the proposed regulations under section 3405 would permit the electronic delivery of the annual notice described in section 3405(e)(10)(B)(i)(III) (which is provided to recipients of periodic payments). The proposed regulations, as written, apply to that annual notice; however, the final regulations make this point expressly. One commentator asked that the proposed regulations be amended to provide for electronic withholding elections under section 3405 in addition to electronic transmission of notices under section 3405. It is unclear what, if any, utility such a change in the regulations would have in light of the ability to use electronic media for transmission of Form W–4P, as set out in Announcement 99–6. Therefore, no change has been made to the regulations on this point.

2. Flexibility for Timing Requirement in Providing Notices

Commentators favored the provision in the proposed regulations that provided flexibility with respect to the 90-day period under sections 402(f) and 411(a)(11) by providing an alternative timing rule. Under this alternative timing rule, a plan may give the full section 402(f) and section 411(a)(11) notices more than 90 days before the distribution and provide the participant a summary of the notice during the 90/30-day period under those sections. The full notice is not required to be provided on a regular periodic basis and may be provided in connection with other materials (for example, in the summary plan description or in a brochure describing plan distribution features), but it must be updated (and provided to the participant) as necessary to ensure accuracy as of the time the summary is given. The proposed regulations provide that the summary notice must set out the principal provisions of the full notice, must refer the participant to the most recent occasion on which the full notice was provided, and must advise the participant of the right to request and to receive a copy of the full notice without charge.

Several commentators interpreted the requirement in the proposed regulations that the summary refer the participant to the most recent occasion on which the full notice was provided as requiring an indication of the precise date on which the participant was given the full notice and the precise location of the full notice if it was provided in a document containing other information (such as the summary plan description). These commentators argued that this information may vary on a participant-by-participant basis and so imposes a considerable administrative burden on plan sponsors and administrators.[1]

The IRS and Treasury did not intend for the proposed regulations to be construed as requiring individualized information about the full notice. Therefore, the final regulations clarify, first, that the summary must refer participants to the most recent version of the full notice. The purpose of this rule is to minimize confusion among participants if more than one version of a full notice has been provided in the

[1] For example, many plan sponsors provide a copy of the summary plan description to each employee when the employee is first hired. If the full notice is provided through the summary plan description, the precise date on which the full notice was last provided could differ for each participant.

past. In many of those cases, this reference could reasonably be made by calendar year (for example, by referring to the 1999 version of the section 402(f) notice). If more than one version of a distribution notice was provided in a single calendar year, more precise reference should be made (for example, by referring to the May 1999 version of the section 402(f) notice). Reference to the notice by month or year would not be necessary if only one version of the notice had been provided in the past. If the full notice were constantly available (for example, a notice that is available on a plan web site and is kept up-to-date), it would be adequate to state that fact.

Additionally, the regulations have been modified to provide that, in the case of a full notice provided in a document containing other information, the summary must identify that document and must provide a reasonable indication of where the notice may be found in the document. This requirement could be satisfied through a number of means, including identification of page number, section heading, an index reference, the title of the notice, or any other reference that would reasonably direct the participant to the notice.

One commentator objected to the alternative timing rule set out in the proposed regulations. This commentator argued that distribution-related notices should be tied to a specific event (such as a participant request for a distribution) and that "it is inappropriate to provide a notice of the notice when using electronic or other new technologies when it is just as easy to provide the actual notice itself." The IRS and Treasury agree that the information contained in the section 402(f) and section 411(a)(11) notices should be provided to a participant in connection with the participant's contemplation of a distribution, but the IRS and Treasury believe that providing a summary of a previously provided notice and informing the participant of the right to request and to receive the full notice adequately protect the interests of participants in this regard.

The preamble to the proposed regulations includes an example of a summary section 402(f) notice provided through an automated telephone system. Many commentators raised questions about this example. Several commentators argued that the sample summary is too long and complex to be of use in plan administration; others argued that it does not include reference to every potentially applicable rule concerning the taxation of plan distributions (for example, it does not refer to the taxation of net unrealized appreciation on the distribution of employer securities). Commentators also inquired about the legal status of the example because of its placement in the preamble. The example was intended merely to illustrate a summary notice that, in the view of the IRS and Treasury, satisfies the requirements of the proposed regulations. It was not intended as a model summary or as the exclusive form for such a summary. Although the example is not restated in these final regulations, the IRS and Treasury are considering whether to issue additional guidance providing additional examples of summary notices. In this regard, the IRS and Treasury will solicit comments from interested parties regarding the development of those examples and will invite interested parties to submit draft summary notices to assist in the development of that guidance.

Consent Under Section 411(a)(11)

Consistent with the proposed regulations, the final regulations provide that, in general, a plan may receive a participant's consent either on a written paper document or through an electronic medium reasonably accessible to the participant. As in the case of participant notices, the regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. The standards are intended to parallel the key attributes of participant consent provided on written paper documents without imposing more stringent requirements on electronic consents. The proposed regulations provide that participant consent transmitted through an electronic medium must be given under a system that is reasonably designed to preclude an individual other than the participant from giving the consent and that provides the participant a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective. Comments on this portion of the proposed regulations were generally favorable, and no change has been made in the final regulations.

One commentator, however, objected outright to the use of electronic media for the transmission of participant consent and argued that, at a minimum, such consent "should not be effective until after a written confirmation is received and the participant has a specified amount of time to revoke it." This commentator also argued that the final regulations should prohibit the use of automated telephone systems to provide distribution-related notices and to receive participant consent unless an automatic, mandatory written confirmation of the participant's election of a distribution option is required along with a seven-day right of revocation. The IRS and Treasury concluded that it is not advisable to impose new revocation rules based on the medium through which a participant consents to a distribution. Both the proposed regulations and the final regulations require that the terms of any consent made through an electronic medium be confirmed to the participant. Additionally, the IRS and Treasury do not believe that a right of revocation for a defined period after consent is given is more necessary or appropriate in the case of consent made through an electronic medium than it is in the case of consent made through a written paper document. More generally, the IRS and Treasury do not believe that the use of electronic media is improper or inappropriate for the transmission of a participant's consent under section 411(a)(11). If the requirements of the regulations are satisfied, consent provided in that manner should reflect the considered wishes of the participant as reliably as a consent provided through a written paper document.

Changes to the Examples in the Regulations

Several commentators expressed concern about details in the examples illustrating the proposed regulations for distribution notices and consent. One of the concerns involved the statement in the examples that a participant who wished to change a PIN electronically would be unable to proceed with a distribution transaction until the plan sent a confirmation of the change to the participant. Commentators stated that the electronic systems maintained by plan sponsors and administrators use an array of security features to ensure participant identity, some of which might permit an electronic transaction to proceed after a PIN change. Although the prohibition on proceeding with an electronic transaction after a PIN change was intended only to illustrate a commonly used system and not as a substantive requirement, the final regulations omit the statement from the examples for the sake of clarity. Of course, the examples in the final regulations presuppose that plan sponsors and administrators maintain adequate measures to ensure participant identity when a PIN is changed.

Notice 99–1 and Announcement 99–6

Commentators expressed support for Notice 99–1, which indicates that a qualified plan will not fail to meet the requirements of section 401(a) (and that a qualified cash-or-deferred arrangement will not fail to meet the requirements of section 401(k)) merely because it permits a participant or beneficiary to use electronic media to effect a transaction for which no specific provision of the Code, the regulations, or other guidance of general applicability sets forth rules or standards regarding the media through which it may be conducted. Announcement 99–6 permits the electronic transmission of Form W–4P.

Commentators asked for clarification whether Form W–4P may be transmitted through a telephone system. The underlying standards for the electronic transmission of Form W–4P are intended to be the same as those for the electronic transmission of Form W–4, as set out in § 31.3402(f)(5)–1(c). The preamble to the proposed regulations for the electronic transmission of Form W–4 indicates that "[i]f an employer chooses to establish an electronic system, the employer will be free to determine the type of system (such as telephone or computer) or systems available to its employees." (59 FR 18508 (Apr. 15, 1994)). Therefore, the use of a telephone system for electronic transmission of Form W–4P, if otherwise consistent with Announcement 99–6 and § 31.3402(f)(5)–1(c), is permissible.

Commentators also asked the IRS and Treasury to reconsider the requirement, stated in Announcement 99–6, that the electronic signature on Form W–4P be the final entry in the submission of the form. These commentators argue that this effectively requires the participant in most cases to enter a PIN at both the beginning and the end of a transaction that involves the use of an electronic Form W–4P. The IRS and Treasury are considering this issue and anticipate issuing additional guidance on this question.

Scope of These Regulations

These regulations do not address the application of Title I of ERISA (except for section 203(e)) to the use of electronic media for any plan communication or transaction. Several commentators requested that the regulations be expanded to include matters not covered by the proposed regulations. Most notably, commentators asked that the IRS and Treasury provide guidance on the use of electronic media for plan loans under section 72(p), nondiscrimination safe-harbor notices under sections 401(k)(12) and 401(m)(11), notices under section 204(h) of ERISA, and distribution notices, elections, and spousal consents governed by sections 401(a)(11) and section 417.

The IRS and Treasury are actively considering comments submitted on regulations proposed under section 72(p) and expect to issue additional guidance under that section. It is anticipated that any guidance on the use of electronic media in connection with plan loans would be issued in connection with that additional guidance. As the IRS and Treasury have noted in the past, notices under sections 401(k)(12) and 401(m)(11) and ERISA section 204(h) present legal issues distinct from those presented by notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B). Notice 2000–3 (2000–4 I.R.B.____) provides that, pending further guidance, notices under sections 401(k)(12) and 401(m)(11) may be issued through electronic media if standards set forth in Notice 2000–3 which are similar to those applicable to notices under these regulations, are satisfied. Because of the unique considerations applicable to notices under ERISA section 204(h), guidance with respect to the use of electronic media in connection with section 204(h) notices is not being issued at this time.

Finally, regarding notices, elections, and spousal consents governed by sections 401(a)(11) and section 417, the IRS and Treasury note that the statutory requirement that spousal consent be witnessed either by a notary public or a plan representative appears to presuppose that a spouse be in the physical presence of the notary public or the plan representative at the time consent is given. This appears to place significant limitations on the utility of electronic media in effecting spousal consent.[2] Thus, it is unclear what guidance the IRS and Treasury could issue that would meaningfully facilitate paperless distributions in the case of plans subject to sections 401(a)(11) and 417.

Reliance

Plan sponsors and administrators may rely on these final regulations for guidance for distributions made prior to the effective date.

[2] One commentator suggested that electronic transmission of spousal consent be permitted if the plan has "reasonable certainty that the spouse has consented." That suggested standard appears to fall far short of the witnessing requirement specifically set forth in the statute.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide paperless alternatives to notices that otherwise must be sent as written paper documents. It is anticipated that most small businesses affected by these regulations will be sponsors of retirement plans. Since these notices are provided only upon distributions and since, in the case of a small plan, there will be relatively few distributions per year, small plans that implement a paperless system for delivering these notices will likely contract for them as part of a paperless system for distributions offered by outside vendors. The paperless delivery of the notices will not add more than a minor increment to the cost of these distribution systems or the plan sponsor will continue to use a paper-based system. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Catherine Livingston Fernandez, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 35

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 35, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.402(f)–1 is amended by:

1. Revising Q&A–2.
2. Adding Q&A–5 and Q&A–6.

The revision and additions read as follows:

§ 1.402(f)—1 Required explanation of eligible rollover distributions; questions and answers.

* * * * *

Q–2: When must the plan administrator provide the section 402(f) notice to a distributee?

A–2: The plan administrator must provide the section 402(f) notice to a distributee at a time that satisfies either paragraph (a) or (b) of this Q&A–2.

(a) This paragraph (a) is satisfied if the plan administrator provides a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of a distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided the plan administrator clearly indicates to the distributee that the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be either provided in the section 402(f) notice or stated in a separate document (*e.g.*, attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of paragraph (a) of this Q&A–2, the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)–20, Q&A–10, for the date of the distribution.

(b) This paragraph (b) is satisfied if the plan administrator—

(1) Provides a distributee with the section 402(f) notice;

(2) Provides the distributee with a summary of the section 402(f) notice within the time period described in paragraph (a) of this Q&A–2; and

(3) If the distributee so requests after receiving the summary described in paragraph (b)(2) of this Q&A–2, provides the section 402(f) notice to the distributee without charge and no less than 30 days before the date of a distribution (or the annuity starting date), subject to the rules for the distributee's waiver of that 30-day period. The summary described in paragraph (b)(2) of this Q&A–2 must set forth a summary of the principal provisions of the section 402(f) notice, must refer the distributee to the most recent version of the section 402(f) notice (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must provide a reasonable indication of where the notice may be found in that document, such as by index reference or by section heading), and must advise the distributee that, upon request, a copy of the section 402(f) notice will be provided without charge.

* * * * *

Q–5: Will the requirements of section 402(f) be satisfied if a plan administrator provides a distributee with the section 402(f) notice or the summary of the notice described in paragraph (b)(2) of Q&A–2 of this section other than through a written paper document?

A–5: A plan administrator may provide a distributee with the section 402(f) notice or the summary of that notice described in paragraph (b)(2) of Q&A–2 of this section either on a written paper document or through an electronic medium reasonably accessible to the distributee. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the distributee than a written paper document.

(b) At the time the notice or summary is provided, the distributee must be advised that the distributee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the distributee at no charge.

Q–6: Are there examples that illustrate the provisions of Q&A–2 and Q&A–5 of this section?

A–6: The following examples illustrate the provisions of Q&A–2 and Q&A–5 of this section:

Example 1. (i) A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A by e-mail and the distribution is an eligible rollover distribution, the plan administrator provides the participant with a section 402(f) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice.

(ii) In *Example 1*, Plan A does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 2. (i) A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution that is an eligible rollover distribution, the participant is automatically shown a page on the web site containing a section 402(f) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice.

(ii) In this *Example 2*, Plan B does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 3. (i) A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. Plan C provides the section 402(f) notice in the summary plan description, the most recent version of which was distributed to participants in 1997. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. In 1999, a participant, using Plan C's automated telephone system, requests a distribution that is an eligible rollover distribution. The automated telephone system refers the participant to the most recent version of the section 402(f) notice which was provided in the summary plan description, informs the participant where the section 402(f) notice

may be located in the summary plan description, and provides an oral summary of the material provisions of the section 402(f) notice. The system also advises the participant that the participant may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution, the participant must acknowledge receipt, review, and comprehension of the summary. Under Plan C's system for processing such transactions, the participant's distribution will be made no more than 90 days and no fewer than 30 days after the participant requests the distribution and receives the summary of the section 402(f) notice (unless the participant waives the 30-day period).

(ii) In this *Example 3*, Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary is provided to the participant other than through a written paper document.

Example 4. (i) Same facts as *Example 3*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the summary of the section 402(f) notice by reading from a prepared text.

(ii) In this *Example 4*, Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary of the section 402(f) notice is provided to the participant other than through a written paper document.

Example 5. (i) Same facts as *Example 3*, except that Plan C does not provide the section 402(f) notice in the summary plan description. Instead, the automated telephone system reads the section 402(f) notice to the participant.

(ii) In this *Example 5*, Plan C does not satisfy the notice requirement of section 402(f) because oral delivery alone of the section 402(f) notice through the automated telephone system is not sufficient.

Example 6. (i) The facts are the same as in *Example 1*, except that Participant D requested a distribution by e-mail, then terminated employment, and, following the termination, no longer has reasonable access to Plan A e-mail.

(ii) In this *Example 6*, Plan A does not satisfy the notice requirement of section 402(f) because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the section 402(f) notice to Participant D in a written paper document or by an electronic means that is reasonably accessible to Participant D.

Par. 3. Section 1.411(a)–11 is amended by:

1. Revising paragraphs (c)(2)(i) and (iii).

2. Removing the language "Written consent" in paragraph (c)(2)(ii) and (c)(3) and adding "Consent" in its place.

3. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) *Consent.* (i) No consent is valid unless the participant has received a general description of the material features of the optional forms of benefit available under the plan. In addition, so long as a benefit is immediately distributable, a participant must be informed of the right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

* * * * *

(iii) A plan must provide a participant with notice of the rights specified in this paragraph (c)(2) at a time that satisfies either paragraph (c)(2)(iii)(A) or (B) of this section:

(A) This paragraph (c)(2)(iii)(A) is satisfied if the plan provides a participant with notice of the rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided the plan administrator clearly indicates to the participant that the participant has a right to at least 30 days to consider whether to consent to the distribution.

(B) This paragraph (c)(2)(iii)(B) is satisfied if the plan—

(*1*) Provides the participant with notice of the rights specified in this paragraph (c)(2);

(*2*) Provides the participant with a summary of the notice within the time period described in paragraph (c)(2)(iii)(A) of this section; and

(*3*) If the participant so requests after receiving the summary described in paragraph (c)(2)(iii)(B)(*2*) of this section, provides the notice to the participant without charge and no less than 30 days before the date the distribution commences, subject to the rules for the participant's waiver of that 30-day period. The summary described in paragraph (c)(2)(iii)(B)(*2*) of this section must advise the participant of the right, if any, to defer receipt of the distribution, must set forth a summary of the distribution options under the plan, must refer the participant to the most recent version of the notice (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must provide a reasonable indication of where the notice may be found in that document, such as by index reference or by section heading), and must advise the participant that, upon request, a copy of the notice will be provided without charge.

* * * * *

(f) *Medium for notice and consent*—(1) *Notice.* The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(*2*) of this section may be provided either on a written paper document or through an electronic medium reasonably accessible to the participant. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the participant than a written paper document.

(ii) At the time the notice or summary is provided, the participant must be advised that he or she may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the participant at no charge.

(2) *Consent.* The consent described in paragraphs (c)(2) and (3) of this section may be given either on a written paper document or through an electronic medium reasonably accessible to the participant. A consent given through an electronic medium must be given under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other than the participant from giving the consent.

(ii) The system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective.

(iii) The system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution either on a written paper document or through an electronic medium under a system that

satisfies the requirements of paragraph (f)(1) of this section.

(g) *Examples.* The provisions of paragraph (f) of this section are illustrated by the following examples:

Example 1. (i) A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). Within a reasonable time after the participant's consent by e-mail, the plan administrator, by e-mail, sends confirmation of the terms (including the form) of the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) In this *Example 1,* Plan A does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 2. (i) Same facts as *Example 1,* except that, instead of sending a confirmation of the distribution by e-mail, the plan administrator, within a reasonable time after the participant's consent, sends the participant an account statement for the period that includes information reflecting the terms of the distribution.

(ii) In this *Example 2,* Plan A does not fail to satisfy the consent requirement of section 411(a)(11) merely because the consent is provided other than through a written paper document.

Example 3. (i) A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing a section 411(a)(11) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document by calling a telephone number indicated on the web page and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The web site requires the participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent via e-mail, the Plan B web site confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) In this *Example 3,* Plan B does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 4. (i) A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. Plan C provides only the following distribution options: a lump sum and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The automated telephone system requires the participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Because Plan C has relatively few and simple distribution options, the provision of the section 411(a)(11) notice over the automated telephone system is no less understandable to the participant than a written paper notice.

(ii) In this Example 4, Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 5. (i) Same facts as *Example 4,* except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with predetermined instructions of the plan administrator.

(ii) In this *Example 5,* Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 6. (i) Same facts as *Example 1,* except that Participant D requested a distribution by e-mail, then terminated employment and, following the termination, no longer has access to e-mail.

(ii) In this *Example 6,* Plan A does not satisfy the notice or consent requirement of section 411(a)(11) because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide Participant D the section 411(a)(11) notice in a written paper document or by an electronic means that is reasonably accessible to Participant D.

Par. 4. The heading for part 35 is revised to read as follows:

PART 35—EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 5. The authority citation for part 35 is revised to read as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Public Law 97–248 (96 Stat. 623).

Section 35.3405–1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Section 35.3405–1T also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Par. 6. Redesignate § 35.3405–1T and revise the heading to read as follows:

§ 35.3405–1T Questions and answers relating to withholding on pensions, annuities, and certain other deferred income (temporary regulations).

* * * * *

Par. 7. A new § 35.3405–1 is added to read as follows:

§ 35.3405–1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1986, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Public Law 97–248) (TEFRA).

a–1 through d–34 [Reserved] For further guidance, see § 35.3405–1T.

d–35. Q. *Through what medium may a payor provide the notice required under section 3405 to a payee?*

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d–27 and the annual notice described in d–31) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the payee at no charge.

d–36. Q. *Are there examples that illustrate the provisions of d–35 of this section?*

A. The provisions of d–35 of this section are illustrated by the following examples:

Example 1. (i) An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 1*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 2. (i) An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 2*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 3. (i) An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 3*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 4. (i) Same facts as *Example 3*, except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text.

(ii) *Conclusion.* In this *Example 4*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 5. (I) Same facts as *Example 1*, except that Participant D requested a distribution by e-mail and then terminated employment. Participant D no longer has access to e-mail.

(ii) In *this Example 5*, Plan A does not satisfy the notice requirement of section 3405 because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the notice required by section 3405 to Participant D in a written paper document or by an electronic medium that is reasonably accessible to Participant D.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (b) is amended by adding the following entry in the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.402(f)–1	1545–1632
* * * * *	
1.411(a)–11	1545–1632
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 20, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1897 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. NH040–7167a; FRL–6532–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the Sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NHDES) on June 2, 1999. This State Plan is for implementing and enforcing provisions at least as protective as the Emissions Guidelines (EG) applicable to

existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs) for which construction commenced on or before June 20, 1996.

DATES: This direct final rule is effective on April 10, 2000 without further notice unless EPA receives significant, material and adverse comment by March 9, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Brian Hennessey, Acting Chief, Air Permits Unit, Office of Ecosystem Protection, U.S. EPA-New England, Region 1, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Documents which EPA has incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. You may examine copies of materials the NHDES submitted to EPA relative to this action during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency-New England, Region 1, Air Permits Unit, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, Concord, New Hampshire 03301, (603) 271–1370.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking today?
II. Why Does EPA Want To Regulate Air Emissions From HMIWIs?
III. When did EPA first publish these requirements?
IV. Who must comply with the requirements?
V. Are any sources exempt from the requirements?
VI. By what date must HMIWIs in New Hampshire achieve compliance?
VII. What happens if an HMIWI does not/cannot meet the requirements by the final compliance date?
VIII. What options are available to operators if they cannot achieve compliance within one year of the effective date of the State Plan?
IX. What Is a State Plan?
X. What did the state submit as part of its State Plan?
XI. Why Is EPA Approving New Hampshire's State Plan?
XII. Why does EPA need to approve State Plans?
XIII. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving New Hampshire's State Plan submitted on June 2, 1998 for the control of air emissions from HMIWIs throughout the State. When EPA developed the New Source Performance Standards (NSPS) for HMIWIs, the Agency simultaneously developed the Emission Guidelines (EG) to control air emissions from older HMIWIs (see 62 FR 48348–48391, September 15, 1997). New Hampshire developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into its body of regulations, and EPA is acting today to approve New Hampshire's State Plan.

Under section 129 of the Act, the EG are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules, see 60 FR 65414 (December 19, 1995). This action approves the State Plan submitted by New Hampshire to implement and enforce the EG, as it applies to older HMIWI units.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 9, 2000, this action will be effective April 10, 2000.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. Why Does EPA Want To Regulate Air Emissions From HMIWIs?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. When Did EPA First Publish These Requirements?

The EPA proposed the EG in the **Federal Register** on June 20, 1996. On September 15, 1997, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final form of the EG applicable to existing HMIWIs. The EG are at 40 CFR Part 60,

Subpart Ce. See 62 FR 48348 and the Background section.

IV. Who Must Comply With The Requirements?

All HMIWIs that commenced construction on or before June 20, 1996 must comply with these requirements.

V. Are Any Sources Exempt From the Requirements?

The following incinerator source categories are exempt from the federal requirements for HMIWIs:

(1) Incinerators that burn only pathological, low-level radiation, and/or chemotherapeutic waste (all defined in section 60.51c). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the periods of time when only pathological, low-level radioactive, and/or chemotherapeutic waste is burned.

(2) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act.

(3) Incinerators that are subject to the NSPS and/or EG for Municipal Waste Combustors.

(4) Existing incinerators, processing operations, or boilers that co-fire medical/infectious waste or hospital waste with other fuels or wastes and that combust less than ten percent or less medical/infectious waste and hospital waste by weight (on a calendar quarter basis). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the amount of each fuel and waste fired.

VI. By What Date Must HMIWIs in New Hampshire Achieve Compliance?

All existing HMIWIs in the state of New Hampshire must comply with these requirements within one year of the effective date of EPA approval of this plan, unless NHDES grants an extension. However, final compliance must be achieved by September 15, 2002.

VII. What Happens If an HMIWI Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing HMIWI that fails to meet the requirements by September 15, 2002 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

VIII. What Options Are Available to Operators If They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?

If an HMIWI cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until they achieve compliance. The State Rule details the increments of progress for the affected HMIWIs.

IX. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

X. What did the state submit as part of its State Plan?

The State of New Hampshire submitted its Sections 111(d)/129 State Plan to EPA for approval on June 2, 1999 and supplemented it on November 1, 1999. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env–A–3500, "Hospital/Medical/Infectious Waste Incineration" on January 29, 1999 and promulgated certain revisions on October 30, 1999. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.
2. New Hampshire Rule CHAPTER Env–A–3500, "Hospital/Medical/Infectious Waste Incineration" as the enforceable mechanism.
3. An inventory of the sources on pages 4 and 5 of the State Plan.
4. An emissions inventory on pages 5 and 6 of the State Plan.
5. Emission limits, at least as protective as the EG, that are contained in Env–A–3505. (Please note that the State's mercury limit of 0.055 "g/dscm is more stringent than EPA's EG.)
6. Provisions for compliance schedules that are contained in Env–A–3507.
7. Testing, monitoring, and inspection requirements that are contained in Env–A–3510, 3511, and 3512.
8. Reporting and Recordkeeping requirements that are contained in Env–A–3513.
9. Operator training and qualification requirements that are contained in Env–A–3506.
10. Requirements for the development of a Waste Management Plan that are contained in Env–A–3509.
11. A record of the public notice and hearing requirements that are contained in Appendices D and E of the State Plan.
12. Provisions for state progress reports to EPA that are contained on page 10 of the State Plan.
13. Title V permit application due date requirements that are contained in Env–A–3514 and are due on September 1, 2000.
14. A final compliance date of September 15, 2002.

XI. Why Is EPA Approving New Hampshire's State Plan?

EPA has evaluated the HMIWI State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EG, as it applies to older HMIWIs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

(1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EG for HMIWIs, and

(2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

XII. Why Does EPA Need to Approve State Plans?

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and

enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR Part 60, Subpart B. EPA originally issued the Subpart B provisions on November 17, 1975. EPA amended Subpart B on December 19, 1995, to allow the subparts developed under Section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

XIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves an existing state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E. O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not create any new requirements on any entity affected by this State Plan. Thus, the action will not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. They simply approve requirements that the state is already imposing. Furthermore, in developing the HMIWI emission guidelines and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1997 promulgation notice (*see* 62 FR 48348). In accordance with EPA's determination in issuing the 1997 HMIWI emission guidelines, this State Plan does not include any new requirements that will have a significant economic impact on a substantial number of small entities. Therefore, because the Federal 111(d) Plan approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with

statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

In developing the HMIWI emission guidelines and standards, EPA prepared a written statement pursuant to section 202 of the Unfunded Mandates Act which it published in the 1997 promulgation notice (*see* 60 FR 48374 to 48378). The EPA has determined that this State Plan does not include any new Federal mandates above those previously considered during promulgation of the 1997 HMIWI guidelines. The State Plan does include an emission limitation for mercury that will be more stringent than the limit required by the EG. However, that limit is not the result of a Federal mandate. In approving the State Plan, EPA is approving pre-existing requirements under State law and imposing no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from EPA's approval of State Plan provisions that may be more stringent than the EG requirements, nor will EPA's approval of the State Plan significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving State Plans under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Furthermore, New Hampshire's Plan incorporates by reference test methods and sampling procedures for existing HMIWI units already established by the emissions guidelines for HMIWIs at 40 CFR Part 60, Subpart Ce, and does not establish new technical standards for HMIWIs. Therefore, the requirements of the NTTAA are not applicable to this final rule.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 20, 2000.

Mindy S. Lubber,

Acting Regional Administrator, Region 1.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart EE—New Hampshire

2. Section 62.7325 is amended by adding paragraphs (b)(2) and (c)(2) to read as follows:

§ 62.7325 Identification of plan.

(b) * * *

(2) Control of air emissions from existing hospital/medical/infectious waste incinerators, submitted on June 2, 1999.

(c) * * *

(2) Hospital/medical/infectious waste incinerators.

3. Part 62 is amended by adding a new § 62.7450 and a new undesignated center heading to Subpart EE to read as follows:

Air Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

§ 62.7450 Identification of sources.

(a) The plan applies to existing hospital/medical/infectious waste incinerators for which construction commenced on or before June 20, 1996.

(b) [Reserved].

[FR Doc. 00–2472 Filed 2–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA72

Natural Resource Damage Assessments—Type A Procedures

AGENCY: Department of the Interior.

ACTION: Final rule: correcting amendments.

SUMMARY: On May 7, 1996, the Department of the Interior published a final rule establishing two simplified, or "type A," procedures for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act. 61 FR 20559. Those procedures incorporated two computer models. The Department made a number of technical corrections to the models on November 10, 1997. 62 FR 60457. This rule makes additional technical corrections to those models.

DATES: This final rule is effective February 8, 2000. The incorporation by reference of the publications listed in this rule was approved by the Director of the Federal Register as of February 8, 2000.

FOR FURTHER INFORMATION CONTACT: David Rosenberger at (202) 208–3301.

Interested parties may obtain copies of the computer models and supporting documentation free of charge from the Department through April 28, 2000, and thereafter for a fee from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, ph: (703) 487–4650. The models are also on the Internet at http://www.doi.gov/oepc/oepcbb.html.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA) provides that certain categories of persons, known as potentially responsible parties (PRPs), are liable for natural resource damages resulting from a release of a hazardous substance. CERCLA sec. 107(a). Natural resource damages are monetary compensation for injury to, destruction of, or loss of natural resources. CERCLA sec. 107(a)(4)(C). Only those Federal, State, and Indian tribe officials designated as natural resource trustees may recover natural resource damages. CERCLA requires the President to promulgate regulations for the assessment of natural resource damages resulting from hazardous substance releases. CERCLA sec. 301(c). The President delegated the responsibility for promulgating these regulations to the Department. E.O. 12316, as amended by E.O. 12580. CERCLA requires that the natural resource damage assessment regulations include two types of assessment procedures. "Type A" procedures are "standard procedures for simplified assessments requiring minimal field observation." CERCLA sec. 301(c)(2)(A). "Type B" procedures are "alternative protocols for conducting assessments in individual cases." CERCLA sec. 301(c)(2)(B). Both types of procedures are codified at 43 CFR part 11.

On May 7, 1996, the Department published a final rule that revised an existing type A procedure for assessing natural resource damages from minor releases in coastal areas and established an additional type A procedure for minor releases in the Great Lakes. Trustees obtain a rebuttable presumption in litigation for damages, up to $100,000, calculated in accordance with those procedures. Both procedures incorporate computer models. The type A procedure for coastal areas incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) and the type A procedure for Great Lakes incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE). The Department made a number of technical corrections to the models on November 10, 1997. 62 FR 60457. The models currently incorporated by reference in the regulations are the NRDAM/CME Version 2.5 and the NRDAM/GLE Version 1.5.

The regulations identify the conditions under which trustees may use the models. 43 CFR 11.34. The regulations also specify the data inputs trustees must provide to operate the NRDAM/CME and the NRDAM/GLE. After trustees supply the data inputs, the models themselves perform the remaining calculations necessary to establish if there has been an injury, quantify the extent of injury, estimate the cost of restoration actions, and value economic losses. Both models include four linked submodels: a physical fates submodel, a biological effects submodel, a restoration submodel, and a compensable value submodel.

Need for This Rulemaking

The Department has discovered that the NRDAM/CME Version 2.5 and the NRDAM/GLE Version 1.5 are not Y2K compliant. The source codes for the models make limited use of dates, instead using time since the spill for most calculations. However, the compensable value submodel does use the spill year (supplied by the user as a 2-digit number) when determining how to discount economic values into present-day terms.

Test runs of the NRDAM/GLE Version 1.5 showed that the year entry "0" for year 2000 caused the model to enter an infinite loop, such that it is unable to run a spill occurring in year 2000. The model would run year = 1 for 2001, but the year was incorrectly interpreted as 1901. This caused the discounting to be incorrectly calculated. Test runs of the NRDAM/CME Version 2.5 showed that, unlike the NRDAM/GLE Version 1.5, the year entry "0" for year 2000 (or 1, 2, etc. for after 2000) allowed the model to run. However, as with the NRDAM/GLE Version 1.5, the year was interpreted incorrectly (as 1900), thus causing the discounting to be calculated incorrectly.

The Department has also learned of two non-Y2K related programming errors in the models. In the model output text of the NRDAM/GLE Version 1.5, the implicit price deflator (which is entered by the user and used in the discounting calculations) was stated to be relative to 1987, when in fact the regulations require that the user supply the implicit price deflator relative to 1992. In the NRDAM/CME Version 2.5, a problem arose if a user ran the physical fates submodel alone and then ran the biological effects and compensable value submodels later. In that case, the user interface was not providing the implicit price deflator to the biological effects and compensable value submodels, and zero was assumed, which caused compensable values to be zeroed out.

The Department has developed new versions of the models that correct these programming errors: the NRDAM/GLE Version 1.51 and the NRDAM/CME Version 2.51. The Department is issuing this rule to announce the availability of these new versions and to amend the regulations so that they incorporate these new versions. In order to obtain the rebuttable presumption, trustees must now use the new versions of the models.

Changes to the NRDAM/GLE and its Technical Documentation

To fix the Y2K problem, the Department made two changes in the source code for the NRDAM/GLE. First, the infinite loop for year = 0 was caused by the model simply not accepting a zero entry; therefore, the Department changed the source code so that a year greater than or equal to zero is acceptable to the model. Second, the Department changed the source code so that years from 0 to 49 are interpreted as 2000 to 2049, while years 50–99 are interpreted as 1950–1999. The Department has also changed the source code so that the model output text indicates the correct base year (1992) for the implicit price deflator.

The source code for the NRDAM/GLE is included in Volume IV of "The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments, Technical Documentation," which is incorporated by reference into the regulations. 43 CFR 11.18(a)(5). The Department is amending Volume IV with a document entitled "Revision II," and dated December 1999, that describes how the source code for the NRDAM/GLE Version 1.5 was modified to create the NRDAM/GLE Version 1.51.

Changes to the NRDAM/CME and its Technical Documentation

To fix the Y2K problem in the NRDAM/CME, the Department changed the source code so that years from 0 to 49 are interpreted as 2000 to 2049, while years 50–99 are interpreted as 1950–1999. The Department also changed the source so that the user interface supplies the implicit price deflator to the biological effects and compensable value submodels even

when those submodels are run separately from the physical fates submodel.

The source code for the NRDAM/CME is included in Volume VI of "The CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments, Technical Documentation," which is incorporated by reference into the regulations. 43 CFR 11.18(a)(4). The Department is amending Volume VI with a document entitled "Revision II," and dated December 1999, that describes how the source code for the NRDAM/CME Version 2.5 was modified to create the NRDAM/CME Version 2.51.

Justification for Issuing a Direct Final Rule

This rule does not modify any substantive decisions the Department made in the May 7, 1996 rulemaking. The technical corrections described in this rule are necessary to ensure that NRDAM/CME and NRDAM/GLE conform to the descriptions and decisions stated in the May 7, 1996, preamble and in the supporting technical documentation for the models. The additional changes are also nonsubstantive in nature. Therefore, the Department finds that there is good cause under section 553(b)(3)(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) to make these corrections and changes without first issuing a notice of proposed rulemaking. For the same reasons, the Department finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act to make this final rule effective immediately.

List of Subjects in 43 CFR Part 11

Coastal zone, Environmental protection, Fish, Hazardous substances, Incorporation by reference, Indian lands, Marine resources, National forests, National parks, Natural resources, Public lands, Recreation areas, Sea shores, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is amended as follows:

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for Part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.18 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 11.18 Incorporation by reference.

(a) * * *

(4) The CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments Technical Documentation, Volumes I–VI, dated April 1996, including Revision I dated October 1997, and Revision II dated December 1999, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., A.T. Kearney, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/CME technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501788; ph: (703) 487–4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix II refer to this document.

(5) The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation, Volumes I–IV, dated April 1996, including Revision I dated October 1997, and Revision II dated December 1999, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/GLE technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501770; ph: (703) 487–4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix III refer to this document.

* * * * *

Subpart C—Assessment Plan Phase

3. Section 11.33(a) is amended by revising the third sentence to read as follows:

§ 11.33 What types of assessment procedures are available?

* * * * *

(a) * * * There are two type A procedures: a procedure for coastal or marine environments, which incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 2.51 (NRDAM/CME); and a procedure for Great Lakes environments, which incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.51 (NRDAM/GLE).

* * * * *

Subpart D—Type A Procedures

4. Section 11.40(a) is amended by revising the third and fifth sentences to read as follows:

§ 11.40 What are type A procedures?

(a) * * * The type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.51 (NRDAM/CME). * * * The type A procedure for Great Lakes environments incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.51 (NRDAM/GLE). * * *

* * * * *

John Berry,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 00–2432 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–RG–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of

modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective Date of modification	Community No.
Arizona:					
Coconino (FEMA Docket No. 7296).	City of Flagstaff ..	July 8, 1999, July 15, 1999, *Arizona Daily Sun.*	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	June 4, 1999	040020
Pima (FEMA Docket No. 7296).	City of Tucson	June 8, 1999, June 15, 1999, *Tucson Citizen.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 11, 1999	040076
Arkansas: Saline (FEMA Docket No. 7296).	Unincorporated Areas.	June 17, 1999, June 24, 1999, *Benton Courier.*	The Honorable Lanny Fite, Saline County Judge, 200 North Main, Room 116, Benton, Arkansas 72015.	May 7, 1999	050191
California:					
Orange (FEMA Docket No. 7296).	City of Irvine	June 8, 1999, June 15, 1999, *Orange County Register.*	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623.	Sept. 13, 1999	060222
Orange (FEMA Docket No. 7296).	City of Placentia	July 8, 1999, July 15, 1999, *Placentia News-Times.*	The Honorable Constance Underhill, Mayor, City of Placentia, 410 East Chapman Avenue, Placentia, California 92870.	June 9, 1999	060229
Sacramento (FEMA Docket No. 7296).	Unincorporated Areas.	July 7, 1999, July 14, 1999, *Sacramento Bee.*	The Honorable Illa Collin, Chairperson, Sacramento County, Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	Oct. 12, 1999	060262

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective Date of modification	Community No.
San Diego (FEMA Docket No. 7296).	City of San Diego	June 18, 1999, June 25, 1999, *San Diego Daily Transcript.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	May 25, 1999	060295
San Diego (FEMA Docket No. 7296).	Unincorporated Areas.	July 15, 1999, July 22, 1999, *San Diego Union-Tribune.*	The Honorable Pam Slater, Chairperson, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	June 22, 1999	060289
Ventura (FEMA Docket No. 7296).	City of Simi Valley.	June 22, 1999, June 29, 1999, *Ventura County Star.*	The Honorable Bill Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199.	May 26, 1999	060421
Orange (FEMA Docket No. 7296).	City of Tustin	June 8, 1999, June 15, 1999, *Orange County Register.*	The Honorable Thomas Saltarelli, Mayor, City of Tustin, 300 Centennial Way, Tustin, California 92780.	Sept. 13, 1999	060235
Colorado: Summit (FEMA Docket No. 7296).	Town of Frisco	June 18, 1999, June 25, 1999, *Breckenridge Summit County Journal.*	The Honorable M.L. Etie, Mayor, Town of Frisco, P.O. Box 4100, Frisco, Colorado 80443.	May 14, 1999	080245
Iowa: Story (FEMA Docket No. 7296).	City of Ames	June 23, 1999, June 30, 1999, *The Tribune.*	The Honorable Ted Tedesco, Mayor, City of Ames, 515 Clark Avenue, Ames, Iowa 50010.	Sept. 28, 1999	190254
Kansas:					
Sedgwick (FEMA Docket No. 7296).	City of Haysville ..	June 21, 1999, June 28, 1999, *Haysville Times.*	The Honorable Tim Norton, Mayor, City of Haysville, 200 West Grand, Haysville, Kansas 67060.	May 20, 1999	200324
Johnson (FEMA Docket No. 7296).	City of Prairie Village.	July 9, 1999, July 16, 1999, *The Sun.*	The Honorable Ronald Schaffer, Mayor, City of Prairie Village, 7700 Mission Road, Prairie Village, Kansas 66208.	June 15, 1999	200175
Sedgwick (FEMA Docket No. 7296).	Unincorporated Areas.	June 30, 1999, July 7, 1999, *Wichita Eagle.*	The Honorable William Hancock, Chairman, Board of Commissioners, Sedgwick County, 525 North Main, Wichita, Kansas 67203.	May 27, 1999	200321
Sedgwick (FEMA Docket No. 7296).	Unincorporated Areas.	June 21, 1999, June 28, 1999, *Wichita Eagle.*	The Honorable William Hancock, Chairman, Board of Commissioners, Sedgwick County, 525 North Main, Wichita, Kansas 67203.	May 20, 1999	200321
Sedgwick (FEMA Docket No. 7296).	City of Wichita	June 22, 1999, June 29, 1999, *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, First Floor, Wichita, Kansas 67202.	May 20, 1999	200328
Sedgwick (FEMA Docket No. 7296).	City of Wichita	June 30, 1999, July 7, 1999, *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, First Floor, Wichita, Kansas 67202.	May 27, 1999	200328
Missouri: St. Louis (FEMA Docket No. 7296).	City of Maryland	June 15, 1999, June 22, 1999, *St. Louis Countian.*	The Honorable Michael O'Brien, Mayor, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, Missouri 63043.	Sept. 20, 1999	290889
North Dakota: Cass (FEMA Docket No. 7296).	City of Fargo	June 22, 1999, June 29, 1999, *The Forum.*	The Honorable Bruce Furness, Mayor, City of Fargo, City Hall, 200 Third Street North, Fargo, North Dakota 58102–4809.	May 21, 1999	385364
Oklahoma:					
Oklahoma (FEMA Docket No. 7296).	City of Oklahoma City.	June 18, 1999, June 25, 1999, *Daily Oklahoman.*	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	May 27, 1999	405378
Tulsa (FEMA Docket No. 7296).	City of Tulsa	June 11, 1999, June 18, 1999, *Tulsa World.*	The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103.	Sept. 16, 1999	405381
Oregon: Clackamas (FEMA Docket No. 7296).	City of Milwaukie	June 24, 1999, July 1, 1999, *The Oregonian.*	The Honorable Carolyn Tomei, Mayor, City of Milwaukie, 10722 Southeast Main Street, Milwaukie, Oregon 97222.	May 21, 1999	410019

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective Date of modification	Community No.
South Dakota: Minnehaha (FEMA Docket No. 7296).	Unincorporated Areas.	June 18, 1999, June 25, 1999, *Argus Leader.*	The Honorable Robert Kolbe, Chairman, Minnehaha County Commissioners, 415 North Dakota Avenue, Sioux Falls, South Dakota 57104–2465.	May 21, 1999	460057
Texas:					
Tarrant (FEMA Docket No. 7296).	City of Arlington ..	July 9, 1999, July 16, 1999, *Fort Worth Star-Telegram.*	The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	June 11, 1999	485454
Tarrant (FEMA Docket No. 7296).	City of Arlington ..	June 15, 1999, June 22, 1999, *Fort Worth Star-Telegram.*	The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	Sept. 20, 1999	485454
Travis (FEMA Docket No. 7296).	City of Austin	June 22, 1999, June 29, 1999, *Austin American-Statesman.*	The Honorable Kirk Watson, Mayor, City of Austin, 124 West Eighth Street, Austin, Texas 78701.	May 27, 1999	480624
Williamson (FEMA Docket No. 7296).	City of Cedar Park.	July 7, 1999, July 14, 1999, *Hill Country News.*	The Honorable George Denny, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, Texas 78613.	Oct. 12, 1999	481282
Tarrant (FEMA Docket No. 7296).	City of Colleyville	June 11, 1999, June 18, 1999, *Fort Worth Star-Telegram.*	The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Fort Worth, Texas 76034–0185.	May 19, 1999	480590
Dallas (FEMA Docket No. 7296).	City of Farmers Branch.	July 23, 1999, July 30, 1999, *Dallas Morning News.*	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	June 23, 1999	480174
Tarrant (FEMA Docket No. 7296).	City of Fort Worth	June 15, 1999, June 22, 1999, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	Sept. 20, 1999	480596
Tarrant (FEMA Docket No. 7296).	City of Fort Worth	June 23, 1999, June 30, 1999, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	May 20, 1999	480596
Collin (FEMA Docket No. 7296).	City of Frisco	June 11, 1999, June 18, 1999, *Frisco Enterprise.*	The Honorable Kathy Seel, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034.	May 21, 1999	480134
Dallas and Collin (FEMA Docket No. 7296).	City of Garland ...	June 24, 1999, July 1, 1999, *Garland News.*	The Honorable Jim Stence, Mayor, City of Garland, 200 North Fifth Street, Garland, Texas 75040.	May 21, 1999	485471
Galveston (FEMA Docket No. 7296).	City of League City.	June 18, 1999, June 25, 1999, *Galveston Daily News.*	The Honorable A. Tommy Frankovich, Mayor, City of League City, City Hall, 300 West Walker, League City, Texas 77573.	May 19, 1999	485488
Williamson (FEMA Docket No. 7296).	City of Leander ...	July 7, 1999, July 14, 1999, *Hill Country News.*	The Honorable Charles E. Eaton, Mayor, City of Leander, P.O. Box 319, Leander, Texas 78646.	Oct. 12, 1999	481282
Tarrant (FEMA Docket No. 7296).	Unincorporated Areas.	June 11, 1999, June 18, 1999, *Fort Worth Star-Telegram.*	The Honorable Tom Vandergriff, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, Texas 76196–0601.	May 19, 1999	480582
Washington: Spokane (FEMA Docket No. 7296).	Unincorporated Areas.	June 8, 1999, June 15, 1999, *Spokesman-Review.*	The Honorable Kate McCaslin, Chairperson, Spokane County, Board of Commissioners, 1116 West Broadway Avenue, Spokane, Washington 99260–0100.	Sept. 13, 1999	53017

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2799 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7312]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification.

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism.

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Cochise	Unincorporated Areas.	November 10, 1999, November 17, 1999, *Arizona Range News.*	The Honorable Mike Palmer, Chairman, Cochise County Board of Supervisors, 1415 West Melody Lane, Building B, Bisbee, Arizona 85603.	February 15, 2000	040012

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Town of Gilbert	October 20, 1999, October 27, 1999, *The Tribune Newspapers.*	The Honorable Cynthia Dunham, Mayor, Town of Gilbert, 1025 South Gilbert Road, Gilbert, Arizona 85296.	September 28, 1999.	040044
Graham	Unincorporated Areas.	November 10, 1999, November 17, 1999, *Eastern Arizona Courier.*	The Honorable Lynn Skinner, Chairman, Graham County Board of Supervisors, 921 Thatcher Boulevard, Safford, Arizona 85546.	February 15, 2000	040032
Pima	Town of Marana	October 8, 1999, October 15, 1999, *Arizona Daily Star.*	The Honorable Ora Mae Harn, Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653.	August 31, 1999	040118
Maricopa	Unincorporated Areas.	October 20, 1999, October 27, 1999, *Arizona Republic.*	The Honorable Fulton Brock, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	September 28, 1999.	040037
Maricopa	Unincorporated Areas.	November 12, 1999, November 19, 1999, *Arizona Republic.*	The Honorable Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	February 17, 2000	040037
Maricopa	City of Mesa	October 20, 1999, October 27, 1999, *Mesa Tribune.*	The Honorable Wayne Brown, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211–1466.	September 28, 1999.	040048
Pima	Unincorporated Areas.	October 8, 1999, October 15, 1999, *The Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	August 31, 1999	040073
Pima	Unincorporated Areas.	November 10, 1999, November 17, 1999, *The Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	October 1, 1999	040073
Maricopa	Town of Queen Creek.	October 20, 1999, October 27, 1999, *Arizona Republic.*	The Honorable Mark Schnepf, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, Arizona 85242.	September 28, 1999.	040132
Pima	Town of Sahuarita	November 10, 1999, November 17, 1999, *Green Valley News & Sun.*	The Honorable Gordon Van Camp, Mayor, Town of Sahuarita, P.O. Box 879, Sahuarita, Arizona 85629.	October 1, 1999	040173
Santa Cruz	Unincorporated Areas.	October 19, 1999, October 21, 1999, *Nogales International.*	The Honorable Robert Damon, Chairperson, Santa Cruz County Board of Supervisors, 2150 North Congress Drive, Nogales, Arizona 85621.	September 21, 1999.	040090
Cochise	City of Willcox	November 10, 1999, November 17, 1999, *Arizona Range News.*	The Honorable Marlin Easthouse, Mayor, City of Willcox, 101 South Railroad Avenue, Suite B, Willcox, Arizona 85643.	February 15, 2000	040018
Yavapai	Unincorporated Areas.	October 21, 1999, October 28, 1999, *Prescott Courier.*	The Honorable A.G. "Chip" Davis, Chairman, Yavapai County Board of Supervisors, 10 South Sixth Street, Cottonwood, Arizona 86326.	January 26, 2000	040093
Arkansas:					
Craighead	City of Jonesboro	October 8, 1999, October 15, 1999, *The Jonesboro Sun.*	The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845.	September 10, 1999.	050048

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pulaski	City of Little Rock ..	November 4, 1999, November 11, 1999, *Arkansas Democrat Gazette.*	The Honorable Jim Dailey, Mayor, City of Little Rock, City Hall, 500 West Markham Street, Room 203, Little Rock, Arkansas 72201.	September 30, 1999.	050181
California:					
Los Angeles	City of Calabasas ..	October 7, 1999, DOctober 14, 1999, D*Los Angeles Daily News.*	The Honorable Robert Sibilia, Mayor, City of Calabasas, 26135 Mureau Road, Calabasas, California 91302.	September 2, 1999	060749
Riverside	City of Murrieta	November 16, 1999, November 23, 1999, *The Californian.*	The Honorable Chuck Washington, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, CA 92562.	October 19, 1999 ...	060751
Riverside	Unincorporated Areas.	November 10, 1999, November 17, 1999, *Press-Enterprise.*	The Honorable Roy Wilson, Chairperson, Riverside County Board of Supervisors, County Administrative Center, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	October 6, 1999	060245
San Diego	Unincorporated Areas.	November 9, 1999, November 16, 1999, *San Diego Union-Tribune.*	The Honorable Pam Slater, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	February 14, 2000	060284
San Deigo	City of Santee	November 9, 1999, November 16, 1999, *San Diego Union-Tribune.*	The Honorable Jack Dale, Mayor, City of Santee, 10601 Magnolia Avenue, Santee, California 92071–1266.	February 14, 2000	060703
Colorado:					
Arapahoe	Unincorporated Areas.	November 4, 1999, November 11, 1999, *The Villager.*	The Honorable Steve Ward, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	October 12, 1999 ...	080011
Arapahoe	Unincorporated Areas.	November 18, 1999, November 25, 1999, *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	October 12, 1999 ...	080011
Boulder	Unincorporated Areas.	November 9, 1999, November 16, 1999, *Daily Camera.*	The Honorable Ron Stewart, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471.	October 5, 1999	080023
Boulder	City of Boulder	November 12, 1999, November 19, 1999, *Daily Camera.*	The Honorable Robert D. Greenlee, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306–0791.	October 12, 1999 ...	080024
Arapahoe	Town of Columbine Valley.	November 4, 1999, November 11, 1999, *The Littleton Independent.*	The Honorable James C. McShane, Mayor, Town of Columbine Valley, 5931 South Middlefield Road, Suite 101, Columbine Valley, Colorado 80123.	October 12, 1999 ...	080014
Douglas	Unincorporated Areas.	November 17, 1999, November 24, 1999, *Douglas County News Press.*	The Honorable James Sullivian, Chairperson, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	October 12, 1999 ...	080049
Boulder	City of Longmont ...	November 9, 1999, November 16, 1999, *Longmont Daily Times-Call.*	The Honorable Leona Stoecker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501.	October 5, 1999	080027

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hawaii:					
	City and County of Honolulu.	October 19, 1999, October 26, 1999, *Honolulu Star Bulletin.*	The Honorable Jeremy Harris, Mayor, City of Honolulu, Honolulu Hali, 530 South King Street, Honolulu, Hawaii 96813.	January 24, 2000 ...	150001
Kansas:					
Johnson	City of Overland Park.	November 5, 1999, November 12, 1999, *Overland Park Sun.*	The Honorable Ed Eiler, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	October 12, 1999 ...	200174
Missouri:					
Jefferson	City of Crystal City	October 20, 1999, October 27, 1999, *Suburban Journal.*	The Honorable Grant Johnston, Mayor, City of Crystal City, 130 Mississippi Avenue, Crystal City, Missouri 63019.	September 28, 1999.	290189
Clay, Platte, and Jackson.	City of Kansas City	October 12, 1999, October 19, 1999, *Daily Record.*	The Honorable Kay Barnes, Mayor, City of Kansas City, 414 East 12th Street, 29th Floor, Kansas City, Missouri 64106.	September 8, 1999	290173
New Mexico:					
Bernalillo	City of Albuquerque	November 3, 1999, November 10, 1999, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 29, 1999.	350002
Nevada:					
Clark	Unincorporated Areas.	October 14, 1999, October 21, 1999, *Las Vegas Review-Journal.*	The Honorable Bruce Woodbury, Chairperson, Clark County Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	January 19, 2000 ...	320003
Clark	Unincorporated Areas.	October 14, 1999, October 21, 1999, *Las Vegas Review-Journal.*	The Honorable Bruce Woodbury, Chairperson, Clark County Board of Supervisors, P.O. Box 551601, Las Vegas, Nevada 89155–1601.	September 17, 1999.	320003
Clark	City of Henderson ..	October 14, 1999, October 21, 1999, *Las Vegas Review-Journal.*	The Honorable James Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015.	January 19, 2000 ...	320005
Oklahoma:					
Tulsa	City of Broken Arrow.	October 22, 1999, October 29, 1999, *Broken Arrow Ledger.*	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, Oklahoma 74013.	September 28, 1999.	400236
Cleveland	City of Moore	October 22, 1999, October 29, 1999, *Moore American.*	The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, Oklahoma 73160.	September 24, 1999.	400044
Texas:					
Tarrant	City of Arlington	October 21, 1999, October 28, 1999, *Fort Worth Star-Telegram.*	The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	January 26, 2000 ...	485454
Tarrant	City of Arlington	November 19, 1999, November 26, 1999, *Fort Worth Star-Telegram.*	The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	October 25, 1999 ...	485454
Bexar	Unincorporated Areas.	November 10, 1999, November 17, 1999, *San Antonio Express-News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 101, San Antonio, Texas 78205–3036.	October 12, 1999 ...	480035

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Brazos	City of College Station.	November 19, 1999, November 16, 1999, *Bryan and College Station Eagle.*	The Honorable Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842–9960.	October 8, 1999	480083
Dallas	City of Dallas	October 12, 1999, October 19, 1999, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	January 17, 2000	480171
Dallas	City of Dallas	October 14, 1999, October 21, 1999, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	September 17, 1999.	480171
Dallas	City of Dallas	November 16, 1999, November 23, 1999, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	October 6, 1999	480171
Dallas	City of Garland	October 14, 1999, October 21, 1999, *The Garland News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	September 15, 1999.	485471
Harris	Unincorporated Areas.	November 3, 1999, November 10, 1999, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	September 29, 1999.	480287
Hays	Unincorporated Areas.	November 26, 1999, December 3, 1999, *San Marcos Daily Record.*	The Honorable Eddy Etheredge, Hays County Judge, Hays County Courthouse, 111 East San Antonio Street, San Marcos, Texas 78666.	March 2, 2000	480321
Tarrant	City of Keller	October 6, 1999, October 13, 1999, *Fort Worth Star-Telegram.*	The Honorable Dave Phillips, Mayor, City of Keller, P.O. Box 770, Keller, Texas 76244.	August 30, 1999	480602
Kendall	Unincorporated Areas.	October 19, 1999, October 26, 1999, *The Boerne Star.*	The Honorable Bill Gooden, Kendall County Judge, 201 East San Antonio Street, 120, Boerne, Texas 78006.	September 15, 1999.	480417
Dallas	City of Lancaster	October 7, 1999, October 14, 1999, *Lancaster Today.*	The Honorable Martha Wallace, Mayor, City of Lancaster, P.O. Box 940, Lancaster, Texas 75146–0940.	September 7, 1999	480182
Collin	City of Plano	October 13, 1999, October 20, 1999, *Plano Star Courier.*	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	September 7, 1999	480140
Bexar	City of San Antonio	October 15, 1999, October 22, 1999, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	January 20, 2000	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2802 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7316]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
California:					
Santa Clara	City of Milpitas	December 3, 1999, December 10, 1999, *San Jose Mercury News.*	The Honorable Henry Manayan, Mayor, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.	November 2, 1999	060344
Sacramento	City of Sacramento	December 21, 1999, December 28, 1999, *Sacramento Bee.*	The Honorable Joe Serna, Mayor, City of Sacramento, City Hall, 9151 I Street, Room 205, Sacramento, California 95814.	November 24, 1999	060266
Sacramento	Unincorporated Areas.	December 15, 1999, December 22, 1999, *Sacramento Bee.*	The Honorable Muriel Johnson, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	March 21, 2000	060262
Sacramento	Unincorporated Areas.	December 21, 1999, December 28, 1999, *Sacramento Bee.*	The Honorable Muriel Johnson, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	November 24, 1999	060262

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Colorado:					
Boulder	City of Boulder	December 9, 1999, December 16, 1999, *Daily Camera.*	The Honorable Robert D. Greenlee, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	November 9, 1999	080024
Kansas:					
Butler	Unincorporated Areas.	November 26, 1999, December 3, 1999, *El Dorado Times.*	The Honorable Linsey Cutsinger, Butler County Commissioner Chair, Butler County Courthouse, 205 West Central Avenue, Fourth Floor, El Dorado, Kansas 67042.	March 2, 2000	200037
Missouri:					
St. Louis	City of Chesterfield	December 14, 1999, December 21, 1999, *St. Louis Countian.*	The Honorable Nancy Greenwood, Mayor, City of Chesterfield, 16052 Swingley Ridge Road, Suite 100, Chesterfield, Missouri 63017.	November 24, 1999	290896
Clay	Unincorporated Areas.	December 16, 1999, December 23, 1999, *Kearney Courier.*	The Honorable Thomas M. Brandon, Commissioner, Clay County, Courthouse Square, Liberty, Missouri 64068.	March 22, 2000	290068
Jackson	Unincorporated Areas.	December 16, 1999, December 23, 1999, *The Independence Examiner.*	The Honorable Katheryn Shields, County Executive, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106.	March 22, 2000	290492
Ray	Unincorporated Areas.	December 16, 1999, December 23, 1999, *Daily News.*	The Honorable William Edgar, Commissioner, Ray County, 100 West Main Street, Richmond, Missouri 64085.	March 22, 2000	290778
Nevada:					
Clark	City of Las Vegas	December 8, 1999, December 15, 1999, *Las Vegas Review Journal.*	The Honorable Oscar Goodman, Mayor, City of Las Vegas, 400 East Stewart Avenue, Las Vegas, Nevada 89101.	November 2, 1999	325276
Oregon:					
Marion	Unincorporated Areas.	December 2, 1999, December 9, 1999, *Statesman Journal.*	The Honorable Patti Milne, Chairman, Marion County Board of Supervisors, County Courthouse, 100 High Street Northeast, Salem, Oregon 97301.	November 9, 1999	410154
Texas:					
Collin	City of Allen	December 8, 1999, December 15, 1999, *Allen American.*	The Honorable Steve Terrell, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	November 2, 1999	480131
Tarrant	City of Arlington	December 3, 1999, December 10, 1999, *Fort Worth Star-Telegram.*	The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	November 3, 1999	485454
Denton	Town of Copper Canyon.	December 22, 1999, December 29, 1999, *Lewisville News.*	The Honorable Thomas A. Rogers, Mayor, Town of Copper Canyon, City Hall, 400 Woodland Drive, Copper Canyon, Texas 75067–8501.	March 28, 2000	481508
Dallas	City of Dallas	November 30, 1999, December 7, 1999, *Dallas Morning News.*	The Honorable Ronald Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201.	November 1, 1999	480171
Denton	Town of Flower Mound.	December 22, 1999, December 29, 1999, *Lewisvillle News.*	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, Town Hall, 2121 Cross Timbers Drive, Flower Mound, Texas 75028.	November 29, 1999	480777

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Denton	City of Highland Village.	December 22, 1999, December 29, 1999, *Lewisville News.*	The Honorable Austin Adams, Mayor, City of Highland Village, City Hall, 1800 FM 407, Highland, Texas 75077.	March 28, 2000	481105
Montgomery	Unincorporated Areas.	December 20, 1999, December 27, 1999, *Conroe Courier.*	The Honorable Alan Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, Texas 777301.	November 29, 1999	480483
Hays	City of San Marcos	November 26, 1999, December 3, 1999, *San Marcos Daily Record.*	The Honorable Billy Moore, Mayor, City of San Marcos, City Hall, 630 East Hopkins Street, San Marcos, Texas 78666.	March 2, 2000	485505
Fort Bend	Unincorporated Areas.	December 15, 1999, December 22, 1999, *Herald Coaster.*	The Honorable James C. Adolphus, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469.	November 5, 1999	480228
Collin	City of Frisco	December 3, 1999, December 10, 1999, *Frisco Enterprise.*	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034.	March 9, 2000	480134
Dallas	City of Garland	November 18, 1999, November 25, 1999, *Garland News.*	The Honorable Jim Spence, Mayor, City of Garland, 200 North Fifth Street, Garland, Texas 75040.	October 12, 1999	485471
Dallas	City of Garland	November 18, 1999, November 25, 1999, *Garland News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	February 23, 2000	485471
Cameron	Town of South Padre Island.	November 18, 1999, November 25, 1999, *Port Isable and South Padre Press.*	The Honorable Edmund Cyganiewicz, Mayor, Town of South Padre Island, 4501 Padre Boulevard, South Padre Island, Texas 78597.	October 12, 1999	480115
Utah:					
Davis	Unincorporated Areas.	December 2, 1999, December 9, 1999, *Davis County Clipper.*	The Honorable Dannie McConkie, Chairman, Davis County Board of Supervisors, P.O. Box 618, Farmington, Utah 84025.	October 26, 1999	490038
Davis	City of Kaysville	December 2, 1999, December 9, 1999, *Davis County Clipper.*	The Honorable Brian Cook, Mayor, City of Kaysville, 23 East Center Street, Kaysville, Utah 84037.	October 26, 1999	490046

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2803 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive

Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alaska:					
Kenai Peninsula Borough (FEMA Docket No. 7304).	City of Homer	September 21, 1999, September 28, 1999, *Homer Tribune.*	The Honorable Jack Cushing, Mayor, City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603–7624.	August 25, 1999	020107
Arizona:					
Greenlee (FEMA Docket No. 7304).	Town of Clifton	September 15, 1999, September 22, 1999, The *Copper Era.*	Ms. Tonya L. Williams, Town Manager, Town of Clifton, P.O. Box 1415, Clifton, Arizona 85533.	August 23, 1999	040035
Maricopa (FEMA Docket No. 7304).	City of Peoria	August 13, 1999, August 20, 1999, *Peoria Times.*	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	July 6, 1999	040050
Pima (FEMA Docket No. 7304).	City of Tucson	September 23, 1999, September 30, 1999, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	September 2, 1999	040076
Arkansas:					
Pulaski (FEMA Docket No. 7304).	City of North Little Rock.	September 10, 1999, September 17, 1999, *Arkansas Democrat Gazette.*	The Honorable Patrick Henry Hays, Mayor, City of North Little Rock, P.O. Box 5757 North Little Rock, Arkansas 72119.	August 13, 1999	050182
California:					
Riverside (FEMA Docket No. 7304).	City of Corona	August 20, 1999, August 27, 1999, *The Press-Enterprise.*	The Honorable Bill Franklin, Mayor, City of Corona, P.O. Box 940, Corona, California 91718.	August 5, 1999	060250

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Riverside (FEMA Docket No. 7304).	City of Indian Wells	September 15, 1999, September 22, 1999, *The News Review.*	The Honorable Phil Bostley, Jr., Mayor, City of Indian Wells, 44–950 El Dorado Drive, Indian Wells, California 92210.	August 24, 1999	060254
Riverside, (FEMA Docket No. 7304).	City of Norco	August 20, 1999, August 27, 1999, *The Press-Enterprise.*	The Honorable Bill Vaughan, Mayor, City of Norco, P.O. Box 428, Norco, California 91760–0428.	August 5, 1999	060256
Riverside (FEMA Docket No. 7304).	Unincorporated Areas.	September 15, 1999, September 22, 1999, *The Press Enterprise.*	The Honorable John Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646 Riverside, California 95202–1359.	August 24, 1999	060245
Ventura (FEMA Docket No. 7304).	City of San Buenaventura.	August 19, 1999, August 26, 1999, *Ventura County Star.*	The Honorable James J. Friedman, Mayor, City of San Buenaventura, P.O. Box 99, Ventura, California 93002–0099.	July 26, 1999	060419
Ventura (FEMA Docket No. 7304).	Unincorporated Areas.	August 19, 1999, August 26, 1999, *Ventura County Star.*	The Honorable Susan K. Lacey, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	July 26, 1999	060413
Colorado:					
Arapahoe (FEMA Docket No. 7304).	Unincorporated Areas.	August 19, 1999, August 26, 1999 *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	July 15, 1999	080011
Arapahoe (FEMA Docket No. 7304).	Unincorporated Areas.	September 23, 1999, September 30, 1999, *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	August 26, 1999	080011
Kansas:					
Johnson (FEMA Docket No. 7304).	City of Olathe	September 21, 1999, September 28, 1999, *The Olathe Daily News.*	The Honorable Larry L. Campbell, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 66051–0768.	August 18, 1999	200173
Johnson (FEMA Docket No. 7304).	City of Overland Park.	September 3, 1999, September 10, 1999, *Overland Park Sun.*	The Honorable Ed Eilér, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	August 16, 1999	200174
Nebraska:					
Douglas (FEMA Docket No. 7304).	City of Omaha	August 18, 1999, August 25, 1999, *The Daily Record.*	The Honorable Hal Daub, Mayor, City of Omaha, 1819 Farman Street, Suite 300, Omaha, Nebraska 68183.	July 23, 1999	315274
New Mexico:					
Sandoval (FEMA Docket No. 7304).	Unincorporated Areas.	August 24, 1999, August 31, 1999, *Santa Fe New Mexican.*	Ms. Debbie Hays, County Manager, Sandvol County, P.O. Box 40, Bernalillo, New Mexico 87004.	November 29, 1999	350055
Texas:					
Collin (FEMA Docket No. 7304).	City of Allen	August 18, 1999, August 25, 1999, *Allen American.*	The Honorable Kevin Lilly, Mayor, City of Allen, One Butler Circle Allen, Texas 75013.	November 23, 1999	480131
Bexar (FEMA Docket No. 7304).	Unincorporated Areas.	August 27, 1999, September 3, 1999, *San Antonio Express-News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205–3036.	August 9, 1999	480035

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Cameron (FEMA Docket No. 7304).	Unincorporated Areas.	August 13, 1999, August 20, 1999, *Brownsville Herald.*	The Honorable Gilberton Hinojosa, Cameron County Judge, 964 East Harrison, Brownsville, Texas 78520.	July 26, 1999	480101
Bexar (FEMA Docket No. 7304).	City of Castle Hills	August 27, 1999, September 3, 1999, *San Antonio Express-News.*	The Honorable Bob Anderson, Mayor, City of Castle Hills, 6915 West Avenue, San Antonio, Texas 78213–1822.	August 9, 1999	480037
Denton (FEMA Docket No. 7304).	City of Coppell	August 13, 1999, August 20, 1999, *Citizen's Advocate.*	The Honorable Candy Sheehan, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.	July 6, 1999	480170
Denton (FEMA Docket No. 7304).	Town of Double Oak.	August 20, 1999, August 27, 1999, *Lewisville News.*	The Honorable Bill Wilkinson, Mayor, Town of Double Oak, City Hall, 100 Cross Timbers Drive, Double Oak, Texas 75067.	July 27, 1999	481516
El Paso (FEMA Docket No. 7304).	City of El Paso	September 23, 1999, September 30, 1999, *El Paso Times.*	The Honorable Charles M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	August 30, 1999	480214
Dallas (FEMA Docket No. 7304).	City of Farmers Branch.	October 1, 1999, October 8, 1999, *Metrocrest News.*	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	September 1, 1999	480174
Denton (FEMA Docket No. 7304).	Town of Flower Mound.	August 20, 1999, August 27, 1999, *Lewisville News.*	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028.	July 27, 1999	480777
Collin (FEMA Docket No. 7304).	City of Frisco	August 13, 1999, August 20, 1999, *Frisco Enterprise.*	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034.	July 13, 1999	480134
Tarrant (FEMA Docket No. 7304).	City of Hurst	August 11, 1999, August 18, 1999, *Dallas Morning News.*	The Honorable Bill Sounder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	July 15, 1999	480601
Denton (FEMA Docket No. 7304).	City of Lewisville	August 18, 1999, August 25, 1999, *Lewisville News.*	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	July 22, 1999	480195
Parker (FEMA Docket No. 7304).	Unincorporated Areas.	August 20, 1999, August 27, 1999, *Weatherford Democrat.*	The Honorable Mark Riley, County Judge, One Courthouse Square, Weatherford, Texas 76086.	July 30, 1999	480520
Bexar (FEMA Docket No. 7304).	City of San Antonio	August 27, 1999, September 3, 1999, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	August 9, 1999	480045
Bexar (FEMA Docket No. 7304).	City of Shavano Park.	August 27, 1999, September 3, 1999, *San Antonio Express-News.*	The Honorable Tommy Peyton, Mayor, City of Shavano Park, 99 Sandletree Road, San Antonio, Texas 78231.	August 9, 1999	480047

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2798 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Butte County (and Incorporated Areas) (FEMA Docket No. 7270)	
Keefer Slough:	
Just upstream of State Route 99	None
Approximately 930 feet upstream of Keefer Road	None
Maps are available for inspection at the Butte County Public Works Department, 7 County Center Drive, Oroville, California.	
Fremont (City), Alameda County (FEMA Docket No. 7242)	
Line K (Zone 6):	
At confluence with Line E (Zone 6) Laguna Creek	*42
Approximately 2,170 feet upstream of Paseo Padre Parkway (at downstream end of 60-inch reinforced concrete pipe)	*263
Line B (Zone 5):	
At upstream side of Interstate 880	*32
Approximately 630 feet upstream of Paseo Padre Parkway	*56
Line C (Zone 6) (Torges Creek):	
At confluence of Line D (Zone 6)	*13
Just upstream of Interstate 680	*183
Line E (Zone 6) Laguna Creek:	
At mouth	*9
Approximately 2,400 feet downstream of Cushing Parkway	*10
Approximately 50 feet upstream of parking lot driveway	*54
Line F (Zone 6) Arroyo Del Agua Caliente Creek:	
At confluence with Line E (Zone 6) Laguna Creek	*10
Approximately 1,300 feet upstream of Curtner Road	*200
Maps are available for inspection at the City of Fremont Planning Department, 39550 Liberty Street, Fremont, California.	
IDAHO	
Carey (City) and Blaine County (Unincorporated Areas) (FEMA Docket No. 7294)	
Little Wood River:	
Approximately 1.5 miles downstream of Santa Rosa Lane	*4,754
Approximately 1.2 miles upstream of Highway 26/93 (Main Street)	*4,805
Middle Branch of Little Wood River:	
Approximately 50 feet upstream of Griffin Loop Road	*4,761
At confluence with Little Wood River, approximately 1,700 feet upstream of Highway 26/93 (Main Street)	*4,786
Maps are available for inspection at the Planning and Zoning Department, 206 First Avenue South, Suite 310, Hailey, Idaho.	
Maps are available for inspection at the City of Carey, 20516 Main Street, Carey, Idaho.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
IOWA	
Dickinson County (Unincorporated Areas) (FEMA Docket No. 7290)	
Lower Gar Outlet Channel:	
Approximately 2,700 feet upstream of confluence with Little Sioux River	*1,354
Approximately 1.23 miles (6,480 feet) upstream of County Road A34	*1,397
Spirit Lake:	
Entire lake shoreline	*1,404
Okoboji Lake Chain:	
Entire lake shoreline	*1,399
Maps are available for inspection at the Dickinson County Zoning Office, 1810 Ithaca Avenue, Spirit Lake, Iowa.	
NEVADA	
Washoe County (and Incorporated Areas) (FEMA Docket No. 7298)	
Mogul Creek:	
At intersection with Interstate 80 Frontage Road	*4,680
Approximately 1,050 feet upstream from Cliff View Court	*4,737
Maps are available for inspection at Washoe County Engineering, 1001 East 9th Street, Reno, Nevada.	
Maps are available for inspection at the Community Development Office, 450 Sinclair Street, Reno, Nevada.	
TEXAS	
Harris County (and Incorporated Areas) (FEMA Docket No. 7270)	
Bens Branch (G103–33–00):	
Just upstream of confluence with Lake Houston	*50
Just upstream of Tree Lake Court	*66
Approximately 2,800 feet upstream of Woodland Hills	*74
Brays Bayou:	
Just upstream of Forest Hill Boulevard	++18
Just upstream of Martin Luther King Boulevard	++32
Approximately 300 feet downstream of Kirby Drive	++48
At the intersection of Cason and Swanee	++49
Just upstream of Southern Pacific Railroad	++51
Just upstream of Interstate 610	++53
Approximately 1,000 feet upstream of Beechnut	++70
Just upstream of Dairy Ashford Road	++79
Approximately 1,100 feet upstream of Addicks-Clodine Road	++83
Yates Gully: Approximately 1,300 feet upstream of South Wayside Drive	++19
Kuhlman Gully: At Sunrise Drive	++28
Willow Waterhole Bayou:	
Approximately 500 feet upstream of South Post Oak Road	++52
Just upstream of Chimney Rock Road	++56
Chimney Rock Diversion Channel:	
Approximately 550 feet upstream of Ruthglenn Avenue	++56
Approximately 400 feet upstream of McKnight	++56
Tributary 17.42 to Brays Bayou:	
Approximately 700 feet downstream of Grape	++61
Just downstream of Neff Drive	++65
Fondren Diversion Channel:	
Approximatley 2,000 feet downstream of West Bellefort	++61
Just downstream of Arbor Ridge	++64
Approximately 1,900 feet upstream of McLain Boulevard	++67
Keegans Bayou:	
Approximately 1,500 feet upstream of South Braeswood Boulevard	++68
Just downstream of U.S. Highway 59	++77
Approximately 1,000 feet upstream of Synott Road	++86
Tributary 20.86 to Brays Bayou:	
Just downstream of Carvel Lane	++69
Just upstream of Leader Street	++72
Just upstream of Harwin Drive	++74
Tributary 20.90 to Brays Bayou:	
Approximately 1,300 feet downstream of Sam Houston Tollway	++69
Approximately 2,300 feet upstream of Kirkwood Road	++80
Tributary 21.95 to Brays Bayou:	
Just downstream of Bellepark Drive	++72
Approximately 800 feet downstream of Synott Road	++82
Tributary 22.69 to Brays Bayou:	
Approximately 200 feet downstream of Richmond Avenue	++74
Approximately 400 feet upstream of Richmond Avenue	++74
Tributary 23.53 to Brays Bayou:	
Approximately 150 feet upstream of Bellepark Drive	++75
Just upstream of Dairy Ashford Road	++76
Tributary 26.20 to Brays Bayou:	
Approximately 2,000 feet upstream of Piping Rock Road	++84
Tributary 29.16 to Brays Bayou:	
Approximately 1,200 feet downstream of Old Winkleman Road	++84
At the intersection of Marchena Road and Mesita Drive	++84
Approximately 200 feet upstream of Addicks-Clodine Road	++85
Fort Bend County (and Incorporated Areas)	
Keegans Bayou:	
Along Monticeto Lane, approximately 500 feet west of the intersection of Briarwood	++83
Just south of Belknap Road, approximately 500 feet west of the intersection of Maykirk	++84
Approximately 1,000 feet upstream of Synott Road	++86
++NGVD—1987 Releveling	
Maps are available for inspection at the Harris County Flood Control District Building, 9900 Northwest Freeway, Suite 103, Houston, Texas.	
Maps are available for inspection at the City of Piney Point Village City Office, 7721 San Felipe, Suite 100, Houston, Texas.	
Maps are available for inspection at Putney, Moffitt & Easley, Inc., 1303 Sherwood Forest, Houston, Texas.	
Maps are available for inspection at 7007 South Rice, Bellaire, Texas.	
Maps are available for inspection at the City of Houston Building (Basement), 1801 Main, Houston, Texas.	
Maps are available for inspection at the City of Humble City Hall, 114 West Higgins, Humble, Texas.	
Maps are available for inspection at the Office of the Chief Building Official, 3826 Amherst, West University Place, Texas.	
Maps are available for inspection at the City of Stafford City Hall, 2610 South Main, Stafford, Texas.	
Maps are available for inspection at the City of Missouri City, City Hall, 1522 Texas Parkway, Missouri City, Texas.	
Maps are available for inspection at the City of Galena Park, City Hall, 2000 Clinton Drive, Galena Park, Texas.	
Maps are available for inspection at 800 First City Tower, 1001 Fannin Street, Houston, Texas.	
Maps are available for inspection at Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas.	
Maps are available for inspection at 2300 First City Tower, 1001 Fannin, Houstin, Texas.	
Maps are available for inspection at the City of Meadows Place, City Hall, One Troyan Drive, Meadows Place, Texas.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the City of Sugarland Engineering Department, 10405 Corporate Drive, Sugarland, Texas.	
Maps are available for inspection at the City of Southside Place, City Hall, 6309 Edloe Street, Houston Texas.	
Harris County (and Incorporated Areas) (FEMA Docket No. 7298)	
White Oak Bayou (E–100–00–00):	
At confluence with Buffalo Bayou (W100–00–00)	*38
Just upstream of West 18th Street	*59
Just upstream of Lakeview Drive	*107
Approximately 300 feet upstream of Huffmeister Road	*133
Little White Oak Bayou (E101–00–00):	
At confluence with White Oak Bayou (E100–00–00)	*43
Just upstream of West Rittenhouse	*86
Brickhouse Gully (E115–00–00):	
At confluence with White Oak Bayou (E100–00–00)	*68
Just upstream of Campbell Road	*90
Approximately 700 feet upstream of Talina Way	*101
Cole Creek (E117–00–00):	
At confluence with White Oak Bayou (E100–00–00)	*73
Approximately 1,300 feet upstream of Sommermeyer Road	*104
Vogel Creek (E121–00–00):	
At confluence with White Oak Bayou (E100–00–00)	*77
Just upstream of West Gulf Bank Road	*85
Just upstream of Silentwood Lane	*108
Approximately 2,500 feet upstream of FairBanks-Fallbrook Road	*115
Ditch (E141–00–00):	
At confluence with White Oak Bayou (E100–00–00)	*103
Approximately 9,200 feet upstream of Windfern Forest	*108
Maps are available for inspection at Harris County Permits Division, 9900 North West Freeway, Houston, Texas.	
Maps are available for inspection at the Planning and Development Office, 611 Walker, 6th Floor, Houston, Texas.	
Maps are available for inspection at the Public Works Department, 16501 Jersey Drive, Houston, Texas.	
Harris County (and Incorporated Areas) (FEMA Docket No. 7242)	
Clear Creek:	
Approximately 4,300 feet upstream of Interstate 45/75	+14
Just upstream of Edgewood Drive	+26
Approximately 1,000 feet upstream of Mykawa Road	+47
Approximately 800 feet upstream of South Freeway	+58
Tributary 10.08 to Clear Creek:	
Just downstream of Interstate 45/75	+12
Approximately 850 feet downstream of Forest Park Cemetery Road	+13
Turkey Creek: Approximately 2,000 feet upstream of Beamer Road	+28
Halls Road Ditch: Approximately 1,600 feet upstream of Dixie Farm Road	+29
Fort Bend County (and Incorporated Areas) (FEMA Docket No. 7242)	
Clear Creek:	
Just downstream of Missouri Pacific Railroad	+63
Downstream of Rouen Road	+70
Maps are available for inspection at the Harris County Engineering Division, c/o Ms. Lupe Zamora, Permit Department, 9900 Northwest Freeway, Suite 103, Houston, Texas.	
Maps are available for inspection at the City of Houston, c/o Mr. Mike Loomis, Floodplain Group, P.O. Box 1562, Houston, Texas.	
Maps are available for inspection at the Fort Bend County Engineer's Office, 1124 Blume Road, Rosenberg, Texas.	
Maps are available for inspection at the City of Webster, c/o Mr. Jim Williams, Director of Community Development, P.O. Box 57130, Webster, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2800 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Amador County (Unincorporated Areas) (FEMA Docket No. 7302)	
Sutter Creek:	
At Old Stockton Road	*271
Approximately 2,780 feet upstream from Preston Avenue (Highway 104)	*313
Sutter Creek Overflow:	
Approximately 230 feet upstream of Stockton Road	*259
Approximately 2,400 feet upstream from the Southern Pacific Railroad	*279
Maps are available for inspection at Amador County Planning Department, 500 Argonaut Lane, Jackson, California.	
Ione (City), Amador County (FEMA Docket No. 7302)	
Sutter Creek:	
Approximately 11,880 feet upstream of mouth	*271
Approximately 2,160 feet upstream of Preston Avenue	*312
Sutter Creek Overflow:	
Approximately 1,820 feet downstream of Depot Road	*278
At its divergence from Sutter Creek	*302
Maps are available for inspection at City Hall, 1 E. Main Street, Ione, California.	
Texas	
Edinburg (City) Hidalgo County (FEMA Docket No. 7294)	
North Main Drain:	
Approximately 2,735 feet downstream of Davis Road	*82
At downstream side of Chapin Street (formerly part of Hidalgo County)	*95
At confluence of West Main Drain	*95
Maps are available for inspection at 1304 South 25th Street, Edinburg, Texas.	
Hidalgo County (Unincorporated Areas) (FEMA Docket No. 7294)	
East Lateral Drain:	
Approximately 2,620 feet downstream of Mile 2 West Road	*59
Approximately 595 feet upstream of Mile 11 North Road	*70
North Main Drain:	
At confluence with Donna Drain	*74
Approximately 1,175 feet upstream of Mile 17½ Road (Russell Road)	*93
At Chaplin Road	*95
West Main Drain:	
Approximately 2 feet downstream of a drop structure located approximately 1,000 feet downstream of Taylor Road	*124
Approximately 2,095 feet upstream of Brushliner Road	*202
Maps are available for inspection at 1304 South 25th Street, Edinburg, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000..

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2801 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 65, No. 26
Tuesday, February 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Fig Crop Insurance Provisions, Pear Crop Insurance Provisions, Walnut Crop Insurance Provisions, Almond Crop Insurance Provisions, Prune Crop Insurance Provisions, Table Grape Crop Insurance Provisions, Peach Crop Insurance Provisions, Plum Crop Insurance Provisions, Apple Crop Insurance Provisions and Stonefruit Crop Insurance Provisions. The intended effect of this action is to provide policy changes to better meet the needs of the insureds.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business March 9, 2000 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through April 7, 2000.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments relating to the Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions may also be sent via the Internet to (pddirector@rm.fcic.usda.gov). A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to OMB. Please submit your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, D.C. 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053 which expires April 30, 2001.

Title: Multiple Peril Crop Insurance (Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit).

Abstract: This rule improves the existing Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions. The Apple Crop Insurance Provisions are revised by allowing optional units and price elections by varietal group. The Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions are revised by adding provisions to specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased and that each subsequent crop year coverage begins on the day immediately following the end of the insurance period for the prior crop year. The Almond and Walnut crop insurance provisions are revised by allowing insurance coverage for trees that have been grafted. The Almond crop insurance provisions are revised by deleting the word "rejects" from the definition of "meat pounds."

Purpose: The purpose of this proposed rule is to clarify existing crop provisions, clarify the methodology for calculating losses, and provide additional coverage benefits to improve these risk management tools so they better meet the needs of producers in all regions of the country.

Burden statement: The information FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee or amount of insurance, calculating losses qualifying for a payment, etc. The burden hours may increase the information collection because of the possibility the number of claims may increase as a result of these changes.

Estimate of Burden: We estimate it will take insured producers, a loss adjuster, and an insurance agent an average of .9 of an hour to provide the information required by the Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions.

Respondents: Insureds, insurance agents, and loss adjusters.

Estimated annual number of respondents: 14,137.

Estimated annual number of responses per respondents: 2.8.

Estimated annual number of responses: 39,255.

Estimated total annual burden of respondents: The total public burden for this proposed rule is estimated at 13,314 hours.

Record keeping requirements: FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of the normal business practice. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating additional burden related to record keeping requirement.

Copies of this information collection can be obtained from Information Collection Clearance Office, OCIO, USDA, Room 404–W, 1400 Independence Ave., S.W., Washington, D.C. 20250.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the states. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending the following Crop Insurance Provisions:

1. 7 CFR 457.110 Fig Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring fig are as follows:

a. Section 3—This section has been redesignated as section 3(a) and (b) to specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change was made to preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

b. Section 8(b)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides for fig year round coverage. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. This rule proposes to eliminate any lapse in insurance coverage between crop years.

c. Section 8(c)—Clarify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

2. FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 457.111 Pear, 457.133 Prune, 457.149 Table Grape, 457.153 Peach, 457.157 Plum and 457.159 Stonefruit Crop Insurance Provisions, effective for the 2001 and succeeding crop years. The changes are as follows:

a. Section 1—Peach—Add definition for "marketable" for clarification.

b. Section 2—Peach and section 3—Table Grape, Pear, Plum, Prune and Stonefruit—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change was made to preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or will reduce the yield of the crop.

c. Section 7 for Peach, section 8 for Pear, Plum, Prune and Stonefruit, and section 9 for Table Grape—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. These provisions provide for year round coverage. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current provisions specify calendar dates for the beginning and end of the insurance period, thereby establishing a minimum time period during which no insurance coverage exists between crop years. This rule proposes to eliminate any lapse in insurance coverage between crop years. Also, specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

3. 7 CFR 457.122 Walnut Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring walnuts as well as other minor editorial changes are as follow:

a. Section 3(c)—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change was made to preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

b. Section 8(a)(3)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides year round coverage for walnuts. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current Walnut Crop Insurance Provisions specify calendar dates for the beginning and end of the insurance period, thereby, establishing a time period during which no insurance coverage exists between crop years. This rule proposes to eliminate any lapse in insurance coverage between crop years.

c. Section 8(a)(4)—Specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

d. Section 10—Modify the format of this section and require that notice be given 15 days prior to harvest if there is mold damage to the walnuts so that an inspection may be performed.

e. Section 11(b)—Add an example of claim for indemnity for clarity.

f. Section 11(d)—Add that whenever mold damage exceeds 30 percent and such production will not be sold, the production to count will be zero.

4. 7 CFR 457.123 Almond Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring almonds are as follows:

a. Section 1—Delete the words "and rejects" in the definition of "meat pounds." These changes were made to better fit the current almond industry practice and to be consistent with the changes to section 11(c)(2).

b. Section 3(c)—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change will preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

c. Section 8(a)(3)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides year round coverage for almonds. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current Almond Crop Insurance Provisions specify calendar dates for the beginning and end of the insurance period, thereby, establishing a time period during which no insurance coverage exists between crop years. This rule proposes to eliminate any lapse in insurance coverage between crop years.

d. Section 8(a)(4)—Specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

e. Section 11(b)—Add an example of claim for indemnity for clarity.

f. Section 11(c)(2)—Revise language to count all harvested meat pounds towards the production to count that is accepted by a buyer. Also removed exception for harvested meat pounds rejected due to an insured cause of loss. Under the current exception it is difficult to accurately determine whether the rejects are due to an insurable cause of loss, so the term, "rejects" will be removed.

1. 7 CFR 457.158 Apple Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring apples are as follows:

a. Section 1—For clarity, define "varietal group" as apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

b. Section 2—In addition to section 34(b) of the Basic Provisions, allow optional units by varietal group and if on non-contiguous land. This will allow apple producers to produce new apple varieties in response to public demand while having adequate risk management protection through crop insurance.

c. Section 3(a) and (b)—Add references to price election and reporting by type or "varietal group." This change was made to clarify that insureds may select one price election for each apple type or varietal group and must report all varietal groups of apples for insurance.

d. Section 3(c)—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time

that change in coverage is requested. This change will preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

e. Section 8(c)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides year round coverage for apples. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current Apple Crop Insurance Provisions specify calendar dates for the beginning and end of the insurance period, thereby, establishing a time period during which no insurance coverage exists. This rule proposes to eliminate any lapse in insurance coverage between crop years.

f. Section 8(d)—Specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

g. Section 14 Option C—Prices and Units by Varietal Group—Allow optional units and price elections by varietal group for an additional premium designated in the actuarial documents. Allow optional units and price elections based on varietal groups and non-contiguous land. This will allow apple producers to produce new apple varieties in response to public demand while having adequate risk management protection through crop insurance. The option is not available to producers insured under the Catastrophic Risk Protection (CAT) level of coverage. This limitation is consistent with options contained in other crop policies and the CAT Endorsement. Option C is targeted toward producers of apples intended for fresh market; therefore, Option C is unavailable to insureds who select Fresh Fruit Option A for all insurable acreage. Fresh Fruit Option A primarily covers apples intended for processing.

List of Subjects in 7 CFR Part 457

Almond, Apple, Crop insurance, Fig, Peach, Pear, Plum, Prune, Stonefruit, Table Grape, Walnut, and Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.110 to:

a. Revise the first sentence of the introductory text;

b. Revise section 3 of the crop provisions; and

c. Revise section 8 of the crop provisions all to read as follows:

§ 457.110 Fig crop insurance provisions.

The Fig Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements under section 3 of the Basic Provisions, you may select only one price election for each fig type designated in the Special Provisions and insured in the county under this policy.

(b) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

* * * * *

8. Insurance Period.

(a) In lieu of the provisions of section 11 of the Basic Provisions, insurance attaches on each unit the later of the date you submit your application or March 1 of the crop year and ends the earliest of:

(1) Total destruction of the fig crop;

(2) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(3) Harvest of the figs;

(4) Final adjustment of a loss;

(5) Abandonment of the crop; or

(6) October 31 of the crop year.

(b) Notwithstanding paragraph (a) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(c) If your fig policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

3. Amend 457.111 to revise the first sentence of the introductory text, and add sections 3(c), 8(c) and 8(d) of the crop provisions to read as follows:

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop occurs prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your pear policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

4. Amend 457.122 to:

a. Revise the first sentence of the introductory text;

b. Revise the introductory text and paragraph (b) of section 3 of the crop provisions by removing the parenthetical phrase, "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)," and add a new paragraph (c);

c. Add a new section 3(c) to the crop provisions.

d. Revise section 4 of the crop provisions by removing the parenthetical phrase, "(Contract Changes);"

e. Revise section 5 of the crop provisions by removing the parenthetical phrase, "(Life of Policy, Cancellation, and Termination);"

f. Revise section 6 of the crop provisions introductory text, by removing the parenthetical phrase, "(Insured Crop);"

g. Revise section 7 of the crop provisions introductory text, by removing the parenthetical phrase, "(Insurable Acreage);"

h. Revise section 8, paragraph (a) of the crop provisions, introductory text, by removing the parenthetical phrase, "(Insurance Period);"

i. Add section 8(a)(3) and 8(a)(4) to the crop provisions.

j. Revise section 9, paragraph (a) of the crop provisions, introductory text, by removing the parenthetical phrase "(Causes of Loss);"

k. Revise section 10 of the crop provisions; and

l. In the crop provisions add an example of settlement of claim in section 11 after paragraph (b)(7) and revise paragraph (d);

The additions and revisions read as follows:

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(a) * * *

(3) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your walnut policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Duties in the Event of Damage or Loss.

(a) In addition to the requirements of section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(1) You must notify us prior to the beginning of harvest so that we may inspect the damaged production;

(2) You must notify us of any mold damage 15 days before harvest so that we may inspect the mold damaged production; and

(3) You must not sell or dispose of the damaged crop until we have given you written consent to do so.

(b) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of $0.61 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × $0.61 price election = $152,500 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × $0.61 price election = $122,000 total value of production to count;

(6) $152,500 total value guarantee − $122,000 total value of production to count = $30,500 loss; and

(7) $30,500 × 100 percent share = $30,500 indemnity payment.

* * * * *

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. Walnut production that exceeds 30 percent mold damage and such production will not be sold, the production to count will be zero.

* * * * *

5. Amend 457.123 to read as follows:

a. Revise the first sentence of the introductory text;

b. In the crop provisions in section 1 revise the definition of "meat pounds;"

c. In the crop provisions revise section 3, the introductory text and paragraph (b), the introductory text, by removing the parenthetical phrase, "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)," and adding paragraph (c);

d. In the crop provisions add section 3(c);

e. In the crop provisions revise section 4 by removing the parenthetical phrase, "(Contract Changes);"

f. In the crop provisions revise section 5 by removing the parenthetical phrase, "(Life of Policy, Cancellation and Termination);"

g. In the crop provisions revise section 6 by removing the parenthetical phrase, "(Insured Crop);"

h. In the crop provisions revise section 7 by removing the parenthetical phrase, "(Insurable Acreage);"

i. In the crop provisions revise section 8(a), introductory text, by removing the parenthetical phrase, "(Insurance Period);"

j. In the crop provisions add section 8(a)(3) and (4);

k. In the crop provisions revise section 9(a), introductory text, by removing the parenthetical phrase, "(Causes of Loss);"

l. In the crop provisions amend section 10 by removing the parenthetical phrase, "(Duties In the Event of Damage or Loss);"

m. In the crop provisions add an example of settlement of claim after section 11 (b)(7) and revise paragraph (c)(2);

The additions and revisions read as follows:

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * * *

Meat pounds. The total pounds of almond meats (whole, chipped and broken, and in-shell meats). Unshelled almonds will be converted to meat pounds in accordance with FCIC approved procedures.

* * * * *

3. Insurance Guaranteed, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(a) * * *

(3) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your almond policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of almonds in the unit, with a guarantee of 1,200 pounds per acre and a price election of $1.70 per pound. You are only able to harvest 100,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 1,200 pounds = 120,000 pound insurance guarantee;

(2 & 3) 120,000 pounds × $1.70 price election = $204,000 total value of insurance guarantee;

(4 & 5) 100,000 pounds production to count × $1.70 price election = $170,000 total value of production to count;

(6) $204,000 total of value guarantee − $170,000 total value of production to count = $34,000 loss; and

(7) $34,000 × 100 percent share = $34,000 indemnity payment.

(c) * * *

(2) All harvested meat pounds accepted by a buyer.

* * * * *

6. Amend 457.133 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add section 3(c); and

c. In the crop provisions add section 8(c) and (d) all to read as follows:

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your prune policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

7. Amend 457.149 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add section 3(c); and

c. In the crop provisions add section 9(c) and (d) all to read as follows:

§ 457.149 Table grape crop insurance provisions.

The Table Grape Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

9. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your table grape policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

8. Amend 457.153 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for "marketable" in section 1;

c. In the crop provisions add section 2(c); and

d. In the crop provisions add section 7(c) and (d) all to read as follows:

§ 457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Marketable—Peach production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

* * * * *

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

7. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the

insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your peach policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

9. Amend 457.157 to:

a. Revise the first sentence of the introductory text; and

b. In the crop provisions add sections 3(c) and 8(c) and (d) all to read as follows:

§ 457.157 Plum crop insurance provisions.

The Plum Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your plum policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Amend 457.158 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for "varietal group" in section 1;

c. In the crop provisions revise section 2;

d. In the crop provisions revise sections 3(a),(b) introduction, (b)(4) and add new section 3(c);

e. In the crop provisions add new sections 8(c) and (d); and

f. In the crop provisions add a new section 14 all to read as follows:

§ 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Varietal group. Apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. Unit Division.

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is located on non-contiguous land. Optional units may also be established by varietal group in accordance with section 14 of these provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type or varietal group in which case you may select one price election for each apple type or varietal group designated in the Special Provisions. The price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type or varietal group, you must also choose 100 percent of the maximum price election for all other types or varietal group.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group if applicable:

* * * * *

(4) The separate acreage for each varietal group of apples intended for fresh-market or processing, for each varietal group as shown on the actuarial table; and

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your apple policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

14. Option C—Prices and Units by Varietal Group.

(a) Exclusive of other options, optional units and price elections by varietal group apply only if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement; and

(2) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered notice of cancellation of the option by you.

(b) If you select the Fresh Fruit Option A for all insurable acreage, Option C is not available.

11. Amend 457.159 to revise the first sentence of the introductory text, and add sections 3(c), 8(c) and 8(d) of the crop provisions all to read as follows:

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of

the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your stonefruit policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

Signed in Washington, D.C., on January 28, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–2620 Filed 2–7–00; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–094–1]

Poultry Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country. We believe such in-transit movements would present a negligible risk of introducing END into the United States. This action would relieve restrictions on trade while continuing to provide protection against the introduction of END into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by April 10, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–094–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–094–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. The regulations in § 94.6 govern, among other things, the importation of poultry carcasses, parts, products, and eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) or *Salmonella enteritidis*, phage-type 4, is considered to exist. Because END exists in certain parts of Mexico, Mexico is characterized, under § 94.6(a), as a region where END is considered to exist. Further, under the regulations in § 94.6(b), Mexico is also characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist.

Under the regulations, poultry carcasses, and parts and products of poultry carcasses may be imported into the United States from Mexico only if they have been cooked or are consigned directly to an approved establishment in the United States. Poultry eggs (other than hatching eggs) from Mexico may be imported into the United States only if: (1) They are accompanied by a health certificate regarding the flock of origin and meet certain other conditions; (2) they are consigned directly to an approved establishment for breaking and pasteurization; (3) they are imported under permit for scientific, educational, or research purposes; or (4) they are imported under permit and have been cooked or processed or will be handled in a manner that prevents the introduction of END and *S. enteritidis* into the United States.

Further, poultry carcasses, parts, products, and eggs (other than hatching eggs) that do not qualify for entry into the United States under one of these conditions may transit the United States via air and sea ports under the conditions contained in § 94.15(d).

Mexico's Director of Animal Health has requested that we allow poultry carcasses, parts, and products from the Mexican States that Mexico considers free of END to transit the United States via land border ports for export to another country. Currently, Mexico recognizes the States of Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan as free of END.

In response, officials of the Animal and Plant Health Inspection Service (APHIS) have met with representatives from Mexico knowledgeable in disease prevention, epidemiology, and diagnostic methods. The APHIS officials reviewed the information supplied by these representatives (discussed below) and found two factors contributing to the 12 States' apparent successes in remaining free of END: The States' locations and relative isolation from States or countries where END is considered to exist, and controls by Mexico's Division of Animal Health on the movement of poultry and eggs into and through the END-free States. Based on this review, the APHIS officials recommended granting Mexico's request. However, because the term "poultry carcasses, parts, and products" might be construed to include eggs and egg products, we wish to make it clear that because Mexico is characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist, eggs (other than hatching eggs) and egg products are only allowed to transit the United States via air and sea ports under the conditions currently contained in § 94.15(d). We are not proposing to amend the regulations concerning the transit of eggs or egg products from Mexico in this document.

General Information

The table below shows the year of the last outbreak of END in each State and the year Mexico officially declared each State free of END. As shown in the table, none of the States listed has had an outbreak of END in the last 8 years.

Mexican State	Year of last outbreak of END	Year declared free of END
Baja California	1982	1995
Baja California Sur	*N/A	1995
Campeche	*N/A	1997
Chihuahua	*N/A	1995
Coahuila	1987	1997
Durango	1991	1995
Nuevo Leon	1983	1995
Quintana Roo	1990	1997
Sinaloa	1989	1993
Sonora	1989	1993
Tamaulipas	1989	1997
Yucatan	1984	1996

*Never reported.

Geographically, the 12 States compose two contiguous areas in Mexico. The States of Yucatan, Campeche, and Quintana Roo are located on the Yucatan Peninsula. They are bordered by only one Mexican State, Tabasco, and two countries, Guatemala and Belize, not considered free of END. Yucatan, Campeche, and Quintana Roo maintain active border surveillance, ensuring that no poultry from Tabasco, Guatemala, and Quintana Roo enters without proper documentation, as explained below.

The remaining nine States considered by Mexico to be free of END—Baja California, Baja California Sur, Chihuahua, Coahuila, Durango, Nuevo Leon, Sinaloa, Sonora, and Tamaulipas—are contiguously located in northern Mexico, along the U.S. border and south into north-central Mexico. These States are bordered to the south by States not considered free of END, but, like the Yucatan Peninsula States, they maintain active border surveillance to ensure the safety of their poultry from END.

Of the 12 States that would be eligible to transit poultry carcasses, parts, and products (except eggs and egg products) through the United States via land ports under this proposed rule, Nuevo Leon had the highest volume of poultry production in 1997 (120,000 metric tons, or less than one-tenth of one percent of Mexico's total poultry production for that year). Following Nuevo Leon were Durango and Coahuila, with a combined total of 150,000 metric tons, and Yucatan with 60,000 metric tons. The other 8 States produced less than 60,000 metric tons of poultry each.

Poultry carcasses, parts, and products from Mexico that would be eligible to transit the United States via land border ports under this proposed rule must be processed and packaged in Tipo Inspección Federal (TIF) plants. TIF plants are facilities that are approved by the Government of Mexico and that are subject to strict Federal supervision to ensure that international health standards are maintained. A TIF plant may be a slaughter facility, a processing plant, or a combination of the two. The number of TIF plants in each of the 12 Mexican States is shown in the table below. Data is not available on the exact number of nonslaughter TIF plants that process poultry. The number of TIF plants listed in the "Industrial plant" column below includes pork, beef, and poultry processing plants.

Mexican State	Number of TIF Plants Slaughtering Poultry	Number of "Industrial" TIF plants
Baja California	0	1
Baja California Sur	0	0
Campeche	0	0
Chihuahua	0	5
Coahuila	0	3
Durango	1	0
Nuevo Leon	1	11
Quintana Roo	0	0
Sinaloa	1	2
Sonora	2	1
Tamaulipas	0	0
Yucatan	1	1

As required by the Government of Mexico, the 12 States that are subject to this proposed rule may import live poultry only from other END-free States and countries. The Government of Mexico requires shipments of poultry from END-free countries to be accompanied by a certificate of origin issued by that country's veterinary authorities and by a certificate of import issued by Mexico's veterinary authorities. States recognized by Mexico as free of END also require and issue their own permits and health certificates, further ensuring that the products originate in an END-free region. In addition, live poultry and poultry carcasses, parts, or products imported into these END-free States must be shipped in sealed trucks, and all shipments are inspected at inspection stations located either on State lines or at international ports of entry.

The Government of Mexico also requires that any poultry carcasses, parts, or products that are shipped for processing to an END-free State from a region where END is believed to exist arrive at TIF processing plants in sealed, numbered containers. The seals must show no evidence of tampering, and the shipment must be accompanied by a certificate signed by an authorized official in the region of origin. Once they arrive at the TIF plant in an END-free State, such poultry carcasses, parts, or products are not allowed to come in contact with poultry that is eligible for importation into the United States in accordance with the regulations contained in 9 CFR part 94 to ensure that no commingling occurs. The poultry carcasses, parts, or products must be immediately cooked to eliminate any risk of disseminating END.

Conditions for Movement Through the United States

Under this proposed rule, the following conditions would apply to the in-transit movement of poultry carcasses, parts, and products (except eggs and egg products) from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan:

1. Any person wishing to move poultry carcasses, parts, or products from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan through the United States via land ports for export must first obtain a permit from APHIS. The application for the permit would tell APHIS how much and what type of poultry carcasses, parts, or products would be transported; when they would be transported; the method and route of shipment; and who would be involved in the transportation.

2. The poultry carcasses, parts, or products must be packaged prior to movement from the TIF plant in leakproof containers sealed with serially numbered seals approved by APHIS. The containers must remain sealed at all times while transiting Mexico and the United States.

3. The person moving the poultry carcasses, parts, or products through the United States via land ports must inform the APHIS officer at the U.S. port of arrival, in writing, of the following information before the poultry carcasses, parts, or products arrive in the United States: The time and date that the poultry carcasses, parts, or products are expected at the port of arrival in the United States, the time schedule and route of the shipments through the United States, the permit

number, and the serial numbers of the seals on the containers.

4. The poultry carcasses, parts, or products must transit the United States under Customs bond.

5. The poultry carcasses, parts, or products must be exported from the United States within the time period specified on the permit.

Any poultry carcasses, parts, or products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

These safeguards are intended to prevent tampering with the shipments, ensure that the shipments actually leave the United States, and otherwise ensure that the shipments do not present a significant risk of introducing END into the United States.

Under these circumstances—the low risk associated with the poultry carcasses, parts, and products coupled with the safeguards for in-transit shipments—we believe that there would be little, if any, risk of introducing END into the United States as a result of this proposed rule. Therefore, we are proposing to amend § 94.15 to allow poultry carcasses, parts, and products (except eggs and egg products) that do not meet the requirements in § 94.6 for entry into the United States and that originate in one of the Mexican States listed above to transit the United States via land ports for export to another country.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Currently, the regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals or animal products into the United States to prevent the introduction of certain animal diseases. Under the regulations, poultry carcasses, parts, and products from Mexico must meet the requirements of § 94.6 to be imported into the United States because exotic Newcastle disease (END) is considered to exist in certain areas in Mexico. However, under § 94.15, certain products that are not eligible for entry into the United States in accordance with the regulations in 9 CFR part 94 may transit the United States for immediate export if certain conditions are met. Currently § 94.15(b) covers only pork and pork products from Chihuahua, Baja California, Sonora, or Yucatan, Mexico, and 94.15(d) allows the transit via air and sea ports of all meat and animal products not otherwise eligible for entry into the United States.

In this document, we are proposing to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States under § 94.6 to move via land ports through the United States from 12 Mexican States, under certain conditions, for export to another country. These 12 States have been officially declared by the Government of Mexico to be free of END.

An APHIS review of the END situation in those States has revealed that, if proper risk management techniques continue to be applied in Mexico, and if accident and exposure are minimized by proper handling during transport, there would be a negligible risk that END could be disseminated into the United States as a result of this proposal.

The proposed regulations would have no direct effect on U.S. producers and consumers of poultry because Mexican poultry would only transit the United States en route to other countries and would not enter U.S. marketing channels. Neither the quantity or price of poultry traded in U.S. domestic markets nor U.S. consumer or producer surplus would be affected by the proposed rule.

A benefit of allowing Mexican poultry to transit the United States for export is that U.S. companies would ship the poultry from U.S. receiving centers in the border States of California, Arizona, and Texas to export points. Current Department of Transportation regulations restrict trucks from Mexico from proceeding into the United States due to safety restrictions. However, any economic activity that would result from this proposal is dependent on the volume of poultry shipped from Mexico for export to other countries. Given Mexico's low volume of poultry and poultry product exports, few shipments of poultry are likely to transit the United States to other countries under this proposal, and benefits to U.S. carriers and shippers are likely to be very small.

Potential losses from disease outbreaks are not quantified because APHIS judges the likelihood of outbreaks (which could result from a combination of factors such as the presence of the disease in Mexico, failure of the preclearance program, accidental openings while in transit, or exposure after an accidental opening of a shipment) to be negligible.

Mexican Poultry Production and Exports

Since 1990, poultry meat production in Mexico has grown 5 percent annually to reach 1.7 million metric tons in 1998. However, nearly all of the poultry meat produced in Mexico is consumed domestically. For example, in 1997, Mexico produced 1.5 million metric tons of poultry, but exported only 5,000 metric tons of that total. Therefore, we anticipate that the volume of poultry that would transit the United States under this proposal would be very small.

Effects on Small Trucking Companies

This proposed rule, if implemented, could directly affect U.S. trucking companies operating in the border States of California, Arizona, and Texas. Small Business Administration (SBA) data show that there are approximately 18,000 trucking companies operating in those States, and over 96 percent of those companies are small entities. However, it is unclear how many of those companies would be affected by this proposal.

At present, freight arriving in the Customs territory of the United States by truck from Mexico has to be delivered to customers within the commercial zone of the U.S. cities along the border or else transferred to a U.S. trucking or other shipping company within that zone. U.S. trucking companies would benefit from transporting Mexican poultry from U.S. land border ports to U.S. maritime ports. However, given the anticipated low volume of Mexican exports, this proposed rule would likely not have a significant economic effect on a substantial number of small trucking companies.

Effects on Small Railroad Companies

This proposed rule, if implemented, could also affect four U.S. railroad companies that currently transport goods across the U.S.-Mexico border. Two of these railroad companies meet SBA criteria for small entities (fewer than 1,500 employees). Any economic effects on railroad companies, whether small or large, would likely be positive, but such effects are anticipated to be insignificant, given the expected small volume of Mexican exports.

Effects on U.S. Poultry Exporters

This proposal could also affect U.S. poultry exporters. Historical data on shipments of Mexican poultry suggest that the poultry would be shipped to

either Japan or the Middle East; but, once again, given the anticipated low volume of Mexican exports, U.S. companies that export poultry and poultry products to these two regions are unlikely to be significantly affected.

Trade Relations

This proposal would remove some restrictions on the movement of poultry carcasses, parts, or products (except eggs and egg products) from Mexico and would encourage a positive trading environment between the United States and Mexico by stimulating economic activity and providing export opportunities to Mexican poultry industries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–094–1. Please send a copy of your comments to: (1) Docket No. 98–094–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country.

Implementing this proposed rule would necessitate the use of several paperwork collection activities, including the completion of an import permit application, the placement of serially numbered seals on product containers, and the forwarding of a written pre-arrival notification to APHIS port personnel.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 43 minutes per response.

Respondents: Mexican exporters and full-time, salaried veterinarians employed by Mexico's Federal animal health protection service.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 37.

Estimated annual number of responses: 555.

Estimated total annual burden on respondents: 398 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.15, paragraphs (c) and (d) would be redesignated as paragraphs (d) and (e). respectively, and a new paragraph (c) would be added to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(c) Poultry carcasses, parts, or products (except eggs and egg products) from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States via land ports for immediate export if the following conditions are met:

(1) The person desiring to move the poultry carcasses, parts, or products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). An application for the permit may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

(2) The poultry carcasses, parts, or products are packaged at a Tipo Inspección Federal plant in Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, in leakproof containers with serially numbered seals of the Government of Mexico, and the containers remain sealed during the entire time they are in transit across Mexico and the United States.

(3) The person moving the poultry carcasses, parts, or products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the U.S. port of arrival prior to such

transiting. The notification must include the following information regarding the poultry to transit the United States:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The poultry carcasses, parts, or products transit the United States under Customs bond and are exported from the United States within the time limit specified on the permit. Any poultry carcasses, parts, or products that have not been exported within the time limit specified on the permit or that have not transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0145)

Done in Washington, DC, this 2nd day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2778 Filed 2–7–00; 8:45 am]

BILLING CODE 3410-34-U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–69]

Westinghouse Electric Company LLC; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Westinghouse Electric Company LLC (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–69. The petitioner is requesting that the NRC regulations governing pressure and temperature limits for the reactor pressure vessel be amended to eliminate requirements for the metal temperature of the closure head flange and vessel flange regions. The petitioner believes the elimination of the flange requirement has no impact on Boiling Water Reactors (BWRs) and could improve plant safety in Pressurized Water Reactors (PWRs).

DATES: Submit comments by April 24, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 202–634–3273, or by email to *pdr@nrc.gov*.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://ruleforum.llnl.gov*). This site provides the availability to view and upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: *DLM1@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated November 4, 1999, submitted by Westinghouse Electric Company LLC (petitioner). The petitioner is requesting that Table 1 in 10 CFR part 50, appendix G, be amended by removing requirements related to the metal temperature of the closure head flange and vessel flange regions. Specifically, the petitioner is requesting that footnotes 2 and 6 be removed from Table 1. The removal of these footnotes would eliminate requirements that restrict heat-up and cool-down pressure temperature curves.

In support of its petition, the petitioner has attached a Westinghouse document, WCAP–15315, "Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR and BWR Plants" (October 1999). The petitioner believes that this document sets forth the technical basis for the proposed modification, the grounds for and interest in the requested action, and the specific issues and facts that support the petition.

On the basis of the information in WCAP–15315, the petitioner has concluded that the requirements pertaining to the reactor vessel closure head flange in 10 CFR part 50, Appendix G, Table 1, are not necessary and believes that removal of these requirements will have no impact on BWRs and could improve plant safety in PWRs. The petitioner requests that the regulations in 10 CFR part 50 be amended by removing footnotes 2 and 6 in Table 1 of Appendix G that pertain to the reactor vessel closure head flange.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–50–69. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner notes that requirements pertaining to the reactor vessel closure head flange are contained in 10 CFR part 50, appendix G, Table 1 entitled, "Pressure and Temperature Requirements for the Reactor Pressure Vessel." These requirements appear in footnotes 2 and 6 of Table 1. These footnotes require that the metal temperature of the closure flange regions must exceed the material unirradiated RT_{NDT} by at least 120° F for normal operation when the pressure exceeds 20 percent of the pre-service hydrostatic test pressure (621 psig for a typical PWR and 300 psig for a typical BWR). The petitioner believes that these requirements are unnecessary and requests that these footnotes be eliminated.

In support of its petition, the petitioner has attached a Westinghouse document, WCAP–15315, "Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR and BWR Plants' (October 1999) that it believes sets forth the technical basis for the proposed modification, the grounds for and interest in the requested action, and the specific issues and facts that support the petition. The Westinghouse document indicates that the method used to develop pressure-temperature limits on the reactor vessel closure head flange in NRC requirements is based on fracture toughness data from the mid 1970s. Specifically, the margin of 120° F and the pressure limitation of 20 percent of hydrotest pressure were developed using the K_{IA} fracture toughness curve provided in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code. The petitioner does not specify the editions of the ASME B&PV Code that contain the K_{IA} or the K_{IC} fracture toughness curves. The petitioner believes that improved knowledge of fracture toughness and other factors affecting the integrity of the reactor vessel have led to the recent change to permit the use of the K_{IC} fracture toughness curve, provided in Appendix A to Section XI of the ASME B&PV Code, in the development of pressure-temperature curves as specified in ASME Code Case N640, "Alternative Reference Fracture Toughness for Development of P–T Limit Curves for Section XI, Division 1."

The petitioner also believes the Westinghouse report demonstrates that a typical heat-up curve for both PWRs and BWRs using the K_{IC} curve provides for a much higher allowable pressure through the entire range of temperatures. The petitioner concludes that the higher specified limits for a typical PWR are negated by the current NRC closure flange requirement. The petitioner contends that the Westinghouse report shows that the use of the K_{IC} curve recently adopted by the ASME for flange considerations will lead to the conclusion that the current flange requirement can be eliminated.

The petitioner contends that the Westinghouse report demonstrates that irradiation effects studies lead to the conclusion that the location of the closure flange region is in an area of the reactor where irradiation levels are very low, meaning that the fracture toughness of the closure head flange is not measurably affected. The Westinghouse report indicates that steady state operation stresses in several PWR designs are not very high, but in other designs the stresses are much higher. Loadings are primarily membrane stress with somewhat lower bending stresses for two PWR designs. In other PWR designs, the bending stresses are approximately twice (or more) the membrane stresses. In BWRs, the membrane stress is very similar to that in PWRs, but the bending stresses are higher in BWR designs, due to the larger diameter and smaller thickness.

The report indicates that the relative impact of these stresses is best addressed through a fracture mechanics evaluation that postulates a semi-elliptic surface flaw at the outer surface of the closure head flange. The petitioner believes the report demonstrates that in both BWRs and PWRs, the stress intensity factors and fracture toughness variables at boltup provide a significant margin of safety and concludes that the integrity of the closure head/flange region is not a concern for any operating plant using the K_{IC} fracture toughness curve. The petitioner also believes the report concludes that there are no known mechanisms of degradation in this region other than fatigue and that the calculated design fatigue usage level is so low that flaws are unlikely to initiate in the closure head/flange region.

The Westinghouse document indicates that for PWRs the boltup temperature ranges from 10° F to 51° F, with a nominal boltup temperature of 60° F. For BWRs the boltup temperature using the K_{IC} fracture toughness curve ranges from 10° F to 66° F, with a nominal boltup temperature of 80° F. The petitioner believes that these comparisons make it clear that no additional boltup requirements are necessary and concludes that the requirements in footnotes 2 and 6 of Table 1 in 10 CFR part 50, appendix G can be eliminated.

The Westinghouse report states that an important safety concern is the narrow operating window at low temperatures forced by the closure flange requirement. Because the flange requirement sets a pressure limit of 621 psi for a PWR (20 percent of hydrotest pressure), the pressure-temperature (P–T) limit curve may be superceded by the flange requirement for temperatures below RT_{NDT} + 120° F. The report also states that although this requirement was originally imposed to ensure the integrity of the flange region during boltup, it is no longer a concern as specified in the "Flange Integrity" analysis section of the report.

The report indicates that the flange requirement can cause severe operational limitations when instrument uncertainties are added to the lower limit (621 psi) for the Low Temperature Overpressure Protection (LTOP) system of PWRs. Because the minimum pressure required to cool the seals of the main coolant pumps is 325 psi, the operating window between minimum system pressure necessary for seal cooling and maximum system pressure to comply with PT limits on the flange sometimes becomes very small. The report states that if the operator allows the pressure to drop below the pump seal limit, the seals could fail and cause the equivalent of a small break loss of cooling accident (LOCA), a significant safety problem. The petitioner believes that elimination of the flange requirement will significantly widen the operating window for most PWRs as stated in the report, reducing the likelihood of such an occurrence.

The Westinghouse report cites the Byron Unit 1 facility as an example of a PWR that the petitioner believes illustrates how elimination of the flange requirement could improve plant safety. According to the report, Byron has LTOP setpoints significantly below the flange requirement of 621 psi, because of a relatively large instrument uncertainty. The setpoints of the two power-operated relief valves (PORVs) are staggered by about 16 psi to prevent a simultaneous activation. Because the two PORVs have different instrument uncertainties, the higher uncertainty is used for conservatism. The report states that:

> "Elimination of the flange requirement for Byron Unit 1 would mean that the PORV curve could become level at 604/587 psig, which are the leading/trailing setpoints to protect the PORV downstream piping, through the temperature of the 350° F down to boltup at 60° F. The operating window between the leading PORV and the pump seal limit rises from 121 psig (446–325) to 262 psig (587–325). This change will make a significant improvement in plant safety by reducing the probability of a small LOCA, and easing the burden on operators."

The report acknowledges that the Byron situation is only one example of the flange requirement's impact. The report also states that although each operating PWR facility will have different parameters, the operational safety will generally be improved by elimination of the flange requirement.

The Westinghouse report further states that elimination of the flange temperature requirement would have no impact on BWRs:

> "The saturation temperature corresponding to the 300 psig operating pressure (20% of the pre-service hydrostatic test pressure) is 420° F. This is well in excess of the RT_{NDT} + 120° F requirement. Therefore the flange temperature requirements are satisfied regardless of whether they exist or not.

Therefore, elimination of the flange temperature requirement has no impact on BWR flange integrity."

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements governing pressure and temperature limits for the reactor pressure vessel should be amended to eliminate reactor vessel closure head flange requirements. The petitioner has also concluded that the elimination of the flange requirement has no impact on BWRs and could improve plant safety in PWRs. The petitioner requests that the reactor vessel closure head flange requirement be eliminated from the regulations at 10 CFR part 50, appendix G, Table 1 as presented in its petition for rulemaking.

Dated at Rockville, Maryland, this 1st day of February, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–2833 Filed 2–7–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–358–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require a one-time review of the maintenance records to determine if tripping of the fuel boost pump circuit breakers has been recorded, repetitive inspections to detect fuel leakage from the fuel boost pump wiring conduits, and corrective actions, if necessary. This proposal also would require replacement of the three single wires inside the metal conduit sleeve of the fuel boost pumps with new wires protected by a polyamide sleeve, which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the fuel boost pump wiring from chafing, which could result in electrical arcing and a possible fuel tank ignition source.

DATES: Comments must be received by March 9, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–358–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–358–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–358–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. Subsequent to the accident, the RLD advises that the manufacturer has conducted a Fuel System Safety Program (FSSP) investigation. This investigation revealed that, on an F.28 "Fellowship" series airplane, the wiring insulation layers of the fuel boost pumps can be damaged during removal and installation of the wiring, or by chafing within the conduits. Additionally, two separate incidents of arcing have been found in the metal conduits of the wiring of the fuel boost pumps. Circumferential cracks were found in the insulation layering of the fuel boost pump wiring. In some cases, the cracks extended down to the conductor of the wiring. This condition, if not corrected, could result in electrical arcing and a possible fuel tank ignition source.

Explanation of Relevant Service Information

The manufacturer has issued Fokker Service Bulletin SBF28/28–046, dated September 1, 1999, which describes procedures for the following:

- Part 1 of the Accomplishment Instructions: A one-time review of the maintenance records to determine if tripping of the fuel boost pump circuit breakers has been reported, and repetitive visual inspections to detect fuel leakage of the fuel boost pumps.
- Part 2, paragraph D., of the Accomplishment Instructions: Corrective actions for tripping of the fuel boost pump circuit breakers. These actions involve performing a resistance check of the wiring, and, if necessary, installing a new or serviceable fuel boost pump and correcting any system problems between the circuit breaker and the main landing gear (MLG) wheel bay connector, and repairing any fuel

leak in the metal conduit of the fuel boost pump. The corrective actions also involve performing one-time inspections (visual and boroscopic) to detect discrepancies (*i.e.*, arcing, chafing, and cracking) of the insulation layers of the wiring and wiring conduits, and replacing the wiring and repairing the wiring conduits.

- Part 2, paragraph E., of the Accomplishment Instructions: Corrective actions in the event that fuel leakage is detected from the fuel boost pump wiring conduits. The corrective actions involve inspecting the pressure bung for serviceability, and, if necessary, installing a new or serviceable pressure bung. Additionally, the corrective actions involve inspecting (visual and boroscopic) to detect discrepancies (*i.e.*, arcing, chafing, and cracking) of the insulation layers of the wiring and wiring conduits, and replacing the wiring and repairing the wiring conduits.
- Part 3 of the Accomplishment Instructions: Replacement of the three single wires inside the metal conduit sleeve of the fuel boost pump with new wires protected by a polyamide sleeve. The replacement also involves performing a visual inspection, and, if necessary, a boroscopic inspection of the boost pump wiring to detect discrepancies (*i.e.*, arcing, chafing, and cracking) of the insulation layers of the wiring and wiring conduits, and replacing the wiring and repairing the wiring conduits. Accomplishment of the replacement eliminates the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1999–114, dated September 13, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed review of the maintenance records, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the review proposed by this AD on U.S. operators is estimated to be $1,320, or $60 per airplane.

It would take approximately 3 work hours per airplane to accomplish the proposed repetitive inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection by this AD on U.S. operators is estimated to be $3,960, or $180 per airplane, per inspection cycle.

It would take approximately 33 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,355 per airplane. Based on these figures, the cost impact of the proposed modification by this AD on U.S. operators is estimated to be $73,370, or $3,335 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V: Docket 99–NM–358–AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes having serial numbers 11003 through 11241 inclusive and 11991 through 11994 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the fuel boost pump wiring from chafing, which could result in electrical arcing and a possible fuel tank ignition source, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the maintenance records of the airplane to determine if tripping of the fuel boost pump

circuit breakers has been reported within the last 30 days, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999.

(b) If resettable or unresettable tripping of the circuit breaker of the fuel boost pump is reported during the inspection required by paragraph (a) of this AD, or if such tripping is reported at any time subsequent to that inspection: Within 10 days after the date of the inspection or any occurrence, accomplish the applicable repair (including a resistance check and inspections of the wire and conduit for discrepancies), in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999. If any discrepancy is detected during any inspection performed during the repair, prior to further flight, repair in accordance with the service bulletin.

(c) In the event of any resettable or unresettable tripping of the circuit breakers of the fuel boost pump as indicated in paragraph (b) of this AD, the airplane may be operated for a period not to exceed 10 days after the occurrence, provided the circuit breaker of the fuel boost pump and fuel boost pump switch have been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

(d) Within 30 days after the effective date of this AD, perform a general visual inspection to detect signs of fuel leakage from the wiring conduits of the fuel boost pumps, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999. If any fuel leakage is detected during the inspection, prior to further flight, isolate the fuel leak, and repair in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 90 days.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(e) Replace the existing three single wires (including inspections) inside the metal conduits of the fuel boost pumps with three twisted wires protected by a polyamide braided wire sleeve, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999, at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable. If any discrepancy is detected during any inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the actions required by this AD.

(1) For airplanes that have accumulated less than 40,000 total flight hours as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 40,000 or more total flight hours as of the effective date of this AD: Within 1 year after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1999–114, dated September 13, 1999.

Issued in Renton, Washington, on February 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2830 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 375 and 381

[Docket No. RM00–6–000]

Well Category Determinations

January 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to reinstate certain regulations involving well category determinations for Internal Revenue Code Section 29 tax credits, but limited to certain well recompletions commenced after January 1,1993. These regulations were deleted by the Commission in Order No. 567.

DATES: Comments on the proposed rulemaking are due on or before April 10, 2000.

ADDRESSES: File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments should reference Docket No. RM00–6–000.

FOR FURTHER INFORMATION CONTACT:

Marilyn Rand (Technical Information), Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426, (202) 208–0444

Jacob Silverman (Advisory Attorney), Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208–2078

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be access using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public

Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to reinstate provisions for well category determinations. With such determinations, natural gas producers may claim tax credits provided for by section 29 of the Internal Revenue Code (Section 29 tax credit).

The Section 29 tax credits are available only for certain categories of high cost gas. In 1999, the United States Court of Appeals for the Tenth Circuit in *True Oil Co. v. Commissioner of Internal Revenue*[1] (*True Oil*), held that, in order to obtain the tax credit, there must be a formal determination under the procedures provided by section 503 of the Natural Gas Policy Act of 1978 (NGPA) that the gas is high cost gas. However, after the January 1, 1993 decontrol of wellhead sales of natural gas by the Wellhead Decontrol Act of 1989 (Decontrol Act),[2] the Commission, in 1994, in Order No. 567,[3] deleted its regulations implementing NGPA ceiling prices, including the well category determination procedures under section 503, even though the tax credit was still available for gas produced through the year 2002. The *True Oil* decision has prompted the Commission to reconsider its prior action. In addition, a number of producers filed a petition requesting the Commission to reinstate the NGPA section 503 well category procedures because at present while producers are entitled to the section 29 tax credit for qualified gas, there is no procedure to obtain the prerequisite determination.[4] The Department of Energy (DOE) filed in support of the producers' petition and requested the Commission to renew the well category section 503 procedures as consistent with the nation's energy policy of increasing the supply of domestically produced natural gas. As a result, the Commission is proposing to reinstate some of these regulations, with modifications, in order to permit qualifying parties to obtain the tax credit provided under section 29 of the Internal Revenue Code (Code). Determinations would be limited to well recompletions commenced after January 1, 1993, and which comply with IRS Revenue Ruling 93–54, as detailed below.

II. Background

A. The NGPA and the Adoption of the Tax Credits

The NGPA established a system of varying price ceilings for different categories of natural gas. Among other things, section 107(b) authorized the Commission to establish incentive prices for various categories of unconventional natural gas. Section 107(c) of the NGPA specifically identified four types of natural gas deemed to be "high-cost natural gas", which were gas from (a) deep wells, (b) geopressurized brine, (c) coal seams, and (d) Devonian shale. In addition, section 107(c)(5) of the NGPA gave the Commission the authority to include in the term "high-cost natural gas" any natural gas "produced under such other conditions as the Commission determines to present extraordinary risks or costs." NGPA section 503 set forth the procedures used for determining whether gas qualified as section 107(c) "high-cost natural gas." Under that section the agency having regulatory jurisdiction with respect to the production of the natural gas in question (the jurisdictional agency)[5] makes the initial determination, and submits it to the Commission. The Commission can either affirm, reverse, remand, make a preliminary finding on, or simply take no action, regarding the agency's determination. If the Commission takes no action within 45 days after receipt of the agency's determination, that determination becomes final. Judicial review is available under section 503 only if the Commission remands or reverses the determination.

In Order Nos. 99 and 99–A,[6] the Commission exercised its authority under NGPA sections 107(b) and (c)(5) to define gas produced from tight formations as high-cost gas, and to establish an incentive ceiling price for that gas, and also set forth procedures for the designation of specific portions of formations as tight formations. After the designation of a portion of a formation as a tight formation, in order for production from a specific well to qualify as tight formation gas, the appropriate state or federal jurisdictional agency was required to make a determination that that well was producing gas from the formation which had been found to be a tight formation, and submit its determination to the Commission. In *Williston Basin Interstate Pipeline Co.* v. *FERC*,[7] the Court held that jurisdictional agency tight formation determinations must be reviewed only through the procedural scheme set forth in NGPA section 503.

Two years after passage of the NGPA, Congress enacted section 29 of the Internal Revenue Code as part of the Crude Oil Windfall Profit Tax of 1980. Section 29 allowed taxpayers to claim a credit for qualified fuels (1) which were produced from wells drilled between January 1, 1980 and December 31, 1990,[8] and (2) which were sold before January 1, 2001. The section 29 list of qualified fuels included only the NGPA section 107 (c)(2)-(4) categories, and tight formation gas under section 107(c)(5).[9] Section 29(c)(2)(A) also provided that the determination whether gas falls into a category qualifying for the tax credit "shall be made in accordance with section 503 of the [NGPA]."

The Natural Gas Wellhead Decontrol Act of 1989 repealed all remaining NGPA price controls on wellhead sales of natural gas, as well as NGPA section 503, effective January 1, 1993. The Senate Committee on Energy and Natural Resources' Report on the 1989 Wellhead Decontrol Act stated, "The Committee intends that any incomplete section 503 procedures continue to be carried out by the state agencies and the FERC, so that the necessary determination can be made as to sales of gas delivered before contract expiration and decontrol."[10] The Senate

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[1] 170 F.3d 1294 (10th Cir. 1999).

[2] Pub. L. No. 101–60; 103 Stat. 157 (1989).

[3] Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, 59 FR 40240, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,999 (1994), Order on Rehearing, 69 FERC ¶¶ 61,055 and 61,042 (1994). A petition to review the deletion of other provisions in these regulation was denied by the Court of Appeals in Hadson Gas System, Inc. v. FERC, 75 F.3d 680 (D.C. Cir. 1996).

[4] The producers consisted of Smith Management Company; Patina Oil & Gas; BP Amoco; Burlington Resources; Vastar Resources, Inc.; Red Willow Production Co.; Cross Timbers Oil Company; Colorado Oil & Gas Association; Coalbed Methane Association of Alabama; Cabot Oil & Gas Corp.; and HS Resources, Inc.

[5] That agency may be either a State or Federal agency.

[6] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,183 (1980); *reh'g denied*, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,198 (1980) (Order No. 99–A); *aff'd;* Pennzoil Co. v. FERC, 671 F.2d 119 (5th Cir. 1982).

[7] 816 F.2d 777 (D.C. Cir. 1987).

[8] For purposes of the tax credit, the initial drilling had to be started after January 1, 1980, and this date was never changed, although the period was extended in subsequent legislation as described below. Thus, this starting date is assumed throughout.

[9] Deep gas and other categories of gas under section 107 (c)(5) were never eligible for the tax credit.

[10] Similarly, the House Report on the Decontrol Act states, "the gradual expiration of controls after

Continued

Report also expressly noted that section 29 of the Code provided for tax credits for certain types of fuels which qualify under the NGPA section 503 procedures. The Senate Report stated that approval of the Decontrol Act, which repealed the NGPA sections referenced in section 29, was "not intended * * * to reflect an adverse judgment by the Committee as to the merits of tax credits for any categories of natural gas production that might be affected by such action." [11]

B. The Commission's Actions After Passage of the Decontrol Act

In February 1990, before full wellhead price deregulation took effect under the Decontrol Act, the Commission issued Order No. 519, terminating the incentive ceiling price for sales of tight formation natural gas produced from wells spudded or recompleted after May 12, 1990. Shortly thereafter, Congress, in the Revenue Reconciliation Act of 1990, extended the Section 29 tax credit so that it would be available for qualified fuels produced from wells drilled before January 1, 1993, and sold before January 1, 2003. That act also revised the terms of eligibility so that tight formation gas would be eligible for the tax credit even though the price for such gas was no longer regulated. However, that act made no change to the provision of Section 29 (c)(2)(A) that the determination of eligibility for the tax credit shall be made in accordance with NGPA section 503.

In Order No. 523, issued April 25, 1990, the Commission amended its regulations to conform them to the Decontrol Act. [12] In that order the Commission recognized its duty to continue processing requests for well category determinations under NGPA section 503 to allow producers to obtain tax credits, even if the determinations no longer affected the price of the gas. After summarizing the statement in the Senate Report on the Decontrol Act that the Act was not intended to reflect an adverse judgment by the Committee as to the merits of tax credits for decontrolled gas, the Commission stated:

In view of the legislative history noted above which indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels (footnote), the Commission will continue to process well determinations, until January 1, 1993, in order to allow producers to obtain tax credits that are dependent upon such determinations even if the gas has been otherwise decontrolled. [13]

Congress' decision in the Revenue Reconciliation Act of 1990 to reinstate the tax credit for tight formation gas even though the price for such gas was no longer regulated necessitated certain technical changes in the standards the Commission used to determine whether gas qualified as tight formation gas. On April 9, 1992, the Commission issued Order No. 539, [14] making the necessary technical changes. In addition, Order No. 539 clarified the Commission's statement in Order No. 523 that it would only continue processing well determination requests until December 31, 1992. A concern had been expressed to the Commission that it would not be practical for the Commission to complete the processing of well determination requests with respect to wells drilled through December 31, 1992 by that same date, since ordinarily such requests are not filed until after the well is drilled. The Commission stated that both the House and Senate committee reports on the Decontrol Act had stated that decontrol on January 1, 1993, would not affect proceedings pending on that date. Therefore, the Commission concluded that Congress did not intend that repeal of NGPA Title I and section 503, would terminate the authority of the Commission to process well category applications filed with the jurisdictional agencies on or before December 31, 1992. Accordingly, the order stated that the Commission would continue to process notices of determination which were filed with the jurisdictional agencies by December 31, 1992, and received by the Commission by June 30, 1993. [15]

On July 7, 1992, the Commission issued Order No. 539–A, [16] denying rehearing of Order No. 539. On rehearing, no party contended that the Commission should continue to process well determination requests under NGPA section 503 for wells drilled or recompleted [17] after January 1, 1993. However, parties did seek an extension of the December 31, 1992 date for producers to file applications with applicable jurisdictional agencies for well category determinations for pre-January 1, 1993 wells. The Commission denied that request, explaining that while both the jurisdictional agencies and the Commission have authority to complete the processing of applications for well category determinations under section 503 which were pending on December 31, 1992, there was no authority to commence new proceedings before jurisdictional agencies after that date. The Commission reiterated that the December 31, 1992 deadline was jurisdictional, stating:

In light of the fact that—effective January 1, 1993—decontrol applies to all section 503 procedures carried out by the state agencies and the FERC, the Commission clarifies that the December 31, 1992 and September 30, 1993 deadlines pertain to all NGPA categories, not just applications and determinations under section 107(c)(5). [18]

However, the Commission extended the date by which jurisdictional agencies could submit their determinations to the Commission until September 30, 1993.

On July 12, 1993, the Commission issued Order 539–C, [19] extending until April 30, 1994, the time for jurisdictional agencies to submit their determinations. [20] The Commission explained that the reason for continuing

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enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on pre-decontrol acts or conduct."

[11] S. Rep. No. 101–39 at 9 (1989). Senate Committee on Energy and Natural Resources' Report quoted in Order No. 523, *infra* n. 13 at 31,760.

[12] Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, 55 FR 17425, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,887 (1990).

[13] *Id.* at 31,760. The footnote in the quote made reference to a letter from Senator J. Bennett Johnston to Commission Chairman Allday as also supporting this interpretation of the Decontrol Act. The letter was not quoted in the order. Senator Johnston's letter stated:

Until such time as the Internal Revenue Code is amended to provide a new mechanism for qualification for the nonconventional fuels tax credit, we believe that the Commission should continue to make the well category determination procedure available for these purposes. As sponsors of the wellhead decontrol legislation, we believe that this would be consistent with the intent of such legislation. We request that this letter be made part of the record in the rulemaking proceeding.

[14] Qualifying Certain Tight Formation Gas for Tax Credit, 57 FR 13009, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,940 (1992).

[15] The Commission noted in Order No. 539 that a complete application might not be able to be filed with the jurisdictional agency by December 31, 1992. Accordingly, the Commission stated that "the jurisdictional agencies have the discretion to assign a filing date to an application that is substantially complete and specify a date when a complete application must be filed." FERC Stats. & Regs., Regulations Preamble 1991–1996 ¶30,940 n. 41 at 30,488. In Order No. 539–C, the Commission stated the same would be true for recompletions. In all cases, however, the well had to be initially drilled before January 1, 1993.

[16] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,947 (1992).

[17] The Commission has defined a recompletion as any perforation that occurs after reentry of a well. Thus, a perforation that occurs as part of the initial entry of the well is not a recompletion. But, once the well has been initially entered and perforated, and the tool used to perforate has been withdrawn, and the well is subsequently reentered, any subsequent perforations constitute recompletions. Oklahoma Corporation Commission and Oil Conservation Division, 68 FERC ¶61,323 at 62,320 (1994).

[18] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,947 at 30,513 (1992).

[19] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,974 (1993).

to review agency determinations for a transition period, was "while NGPA Section 107 well category determinations have no price consequence, they are necessary to obtain the Section 29 tax credit." [21] However, the Commission reiterated that it "will not accept determinations where the well was spudded or recompletion commenced on or after January 1, 1993." [22]

C. The Internal Revenue Service's Recompletion Ruling

As discussed above, section 29 of the Code provides that, in order to qualify for the tax credit, gas must be produced from a well drilled before January 1, 1993. During the period the Commission was issuing the above orders, both the Commission and all the parties appear to have assumed that this provision of Section 29 meant that the tax credit would not be available for wells originally drilled before December 31, 1992, that were recompleted after December 31, 1992. In any event, no party raised the issue whether the Commission's refusal to process well determination requests for wells recompleted after December 31, 1992, would improperly prevent producers from obtaining tax credits for such wells.

On August 16, 1993, a month after the Commission issued Order No. 539–C, the IRS issued Revenue Ruling 93–54, [23] which took a different view of the eligibility of recompletions after January 1, 1993 to receive the Section 29 tax credit. The IRS interpreted the provision of Section 29 that states that gas must be produced from a well drilled before January 1, 1993, as permitting tax credits for non-conventional fuels produced from a well that was drilled before January 1, 1993, through a post-January 1, 1993 recompletion in the well, as long as the recompletion does not involve additional drilling to deepen or extend the well. The IRS reasoned that the drilling deadline in Section 29 referred to the date of the initial drilling of the well, and not to the date of any subsequent recompletion in the portion of the well which had already been drilled.

After the IRS Revenue Ruling 93–54, the Commission received jurisdictional agency determinations for recompletions commenced after January 1, 1993. However, the Commission refused to process those submissions relating to those recompletions on the ground that the Decontrol Act's repeal of NGPA section 503 eliminated the Commission's authority to review well determinations for wells recompleted after December 31, 1992. For example, in *Railroad Commission of Texas,* [24] the Commission returned two well determinations to the jurisdictional agency because they were for well recompletions commenced after January 1, 1993. The Commission observed that regardless of the Commission's action, "the IRS has the responsibility to determine whether production from a well that has not received a determination under NGPA section 503 is eligible for a tax credit." [25] In *Oklahoma Corporation Commission and Oil Conservation Division,* [26] the Commission rejected that part of the jurisdictional agency's determination that related to recompletions after December 31, 1992.

Producers sought review of the Commission's action, and argued to the Court that the Commission had misapplied the Commission's own definition of recompletion, and that by refusing to process these determinations, the Commission was improperly denying them the ability to obtain the Section 29 tax credit they were entitled to because the IRS had stated that such a recompletion could receive the tax credit. In *Marathon Oil Company* versus *FERC,* [27] (*Marathon Oil*) the Court upheld the Commission's refusal to process the post-December 31, 1992 recompletion determinations. The Court stated the IRS was the agency responsible for granting the tax credit, not the Commission. The Court noted that:

> While the IRS might be required to apply FERC's substantive definition of tight formation gas, it does not seem to us obliged to employ the same eligibility limitations that the Commission has adopted. Indeed, a revenue ruling seems to indicate that the IRS will consider recognizing a tax credit for gas from wells that would no longer be eligible to receive a tight formation gas designation from FERC (citing Revenue Ruling 93–54). [28]

The Court added that the Commission has obviously changed its mind as to the necessity of its role regarding tax credits, because the Commission had previously stated it was continuing to process well determinations after section 503 was repealed to enable parties to get the tax credit. [29] The Court concluded since "the IRS may well simply ignore FERC's determination during its phase-out period" (*i.e.* the period after January 1, 1993), "FERC's actions in this case have no necessary legal significance bearing on the IRS' decision whether to grant the tax credit," [30] and denied the petitions for review.

The Court in *Marathon* did not directly discuss whether the Commission had the authority to process well determinations for recompletions commenced after the Decontrol Act's effective date. Rather, the Court concluded that there was no injury to the party from the Commission's action of not processing the determination because it did not foreclose the party from obtaining the tax credit from the IRS.

Following the *Marathon* decision, the Commission continued to decline to process jurisdictional agency determinations for post-December 31, 1992 recompletions. However, since it appeared that the IRS would permit the Section 29 credit for such recompletions without any Commission action, there did not seem to be any need for the Commission to reconsider its position.

In addition, on July 29, 1994, the Commission issued Order No. 567, [31] deleting regulations that were no longer required due to the decontrol of wellhead sales of natural gas. Among the regulations the Commission deleted were those in Part 270 through Part 275 of its regulations which set forth eligibility requirements, filing requirements, and the procedures for making well determinations under section 503 of the NGPA. The Commission concluded that those regulations were no longer needed because the Decontrol Act had repealed NGPA section 503 and the deadline for jurisdictional agency determinations to be filed with the Commission had passed. [32]

Thus matters stood from 1994 until the *True Oil* decision changed the legal landscape.

D. The 10th Circuit's True Oil Decision

In 1999, in *True Oil* v. *Commissioner of Internal Revenue,* [33] the Tenth Circuit reviewed the IRS's denial of a claim of the Section 29 credit because the producer had not obtained a formal well category determination from the jurisdictional agency or the

[20] *Id.* at 30,858.
[21] *Id.*
[22] *Id.* at n. 12.
[24] 66 FERC ¶61,130 (1994).
[25] *Id.* at n.12, 61,236.
[26] 68 FERC ¶61,323(1994).
[27] 68 F.3d 1376 (D.C. Cir. 1995).
[28] *Id.* at 1379.
[29] *Id.*
[30] *Id.*
[31] *Supra,* n.3.
[32] The Commission stated that rescission of Part 275 was prospective only and any timely filed applications for NGPA well category determination proceedings still pending before the Commission would continue to be subject to the requirements of Part 275.
[33] 170 F.3d 1264 (10th Cir. 1999).

Commission. The well was completed in 1984, but due to an oversight, no well-category determination application was filed with the jurisdictional agency. There was no issue whether the well could have qualified for the tax credit if there had been a determination. On appeal, the producer asserted that the reference to section 503 of the NGPA in section 29(c)(2)(A) merely incorporated the Commission's substantive definitions of tight formation gas. It contended that for purposes of section 29(c)(2)(A), the taxpayer itself can make the initial determination of whether a well is producing from a tight formation by applying those substantive definitions. The IRS denied the tax credit because there had been no well category determination by any authority authorized to make such determination. The Tax Court upheld the IRS, and the 10th Circuit similarly rejected the producer's contention. The Court held that notwithstanding the D.C. Circuit's decision in *Marathon Oil*, certain IRS revenue rulings, and the Commission's last position on the lack of a need for a formal well determination under NGPA section 503 to qualify for the tax credit, "[a] producer must obtain a formal well-category determination before it can claim the Section 29 Credit." [34] The Court stated that, although section 29 has been amended more than once since the repeal of section 503 of the NGPA, Congress has never deleted the reference to section 503 from section 29.

The Court also specifically addressed the potential conflict between (1) the Commission's decision in Order No. 539 not to process well determinations for post-January 1, 1993 recompletions and (2) the IRS' revenue ruling one month later that gas produced from a post-January 1, 1993 recompletion could qualify for tax credits if it was produced in a well initially drilled before January 1, 1993. The producer contended that the IRS' revenue ruling should be interpreted as a finding that a well determination by the Commission was unnecessary for a producer to qualify for a tax credit for post-January 1, 1993 recompletions, since otherwise the revenue ruling would have been meaningless. The Court responded that revenue rulings do not have the force and effect of law and do not control when contrary to statute or the intent of Congress. Therefore, to the extent the revenue ruling could be interpreted to conflict with the requirement in section 29 of the Code for an NGPA section 503 determination, the Court held that it would not give the revenue ruling any weight. The Court then stated:

> While it is apparently true that a well recompleted after January 1, 1993 will not qualify for the Section 29 Credit because it is no longer possible to obtain a well category determination, this court is not at liberty to ignore the plain language of the statute and hold that a well-category determination is not required to claim the Section 29 Credit. It is the responsibility of this court to interpret statutes, not rewrite them.[35]

Thus, under *True Oil*, unless the Commission's NGPA section 503 procedures are available, the Section 29 tax credit cannot be obtained for post-January 1, 1993 recompletions, despite the IRS' revenue ruling that post-January 1, 1993 recompletions can qualify for the tax credit as long as there is no additional drilling to deepen or extend the well.

After the *True Oil* decision, a number of producers, *supra* n.4, filed a petition under Commission Rule 207, 18 CFR § 385.207, requesting that the Commission resume the NGPA section 503 well determination review process. They assert that unless the Commission does so, Congress' will would be thwarted because Congress provided that the producers could claim the Section 29 tax credit for qualified fuels until at least January 1, 2003 but at present there is no procedure to obtain it for gas produced from post-January 1, 1993 recompletions.

III. Discussion

The Commission proposes to resume processing jurisdictional agency well category determinations for certain recompletions commenced after January 1, 1993, so the Section 29 tax credit can be claimed for natural gas produced from these qualifying wells. Since the agency responsible for ruling on the Section 29 tax credit, the IRS, will permit the tax credit for certain recompletions after January 1, 1993, and in light of the *True Oil* decision requiring Commission action under NGPA section 503 procedures for a producer to obtain the Section 29 tax credit, the Commission believes it can, and should, reinstate those procedures for well recompletions commenced after January 1, 1993, in wells initially drilled before January 1, 1993, until the tax credit ends, which is now scheduled to cease on December 31, 2002. Below, the Commission first discusses its legal authority to resume processing jurisdictional agency well category determinations under NGPA section 503. The Commission then discusses the details of its proposal.

A. Legal Authority

The Commission recognizes that, in Order Nos. 539 and 539–A, the Commission stated that the Decontrol Act had terminated the Commission's authority to make well category determinations under NGPA section 503 with respect to all drilling activity after the effective date of decontrol, namely January 1, 1993. However, the Commission now concludes that Congress, in both the Wellhead Decontrol Act and the Revenue Reconciliation Act of 1990, intended to authorize the Commission to continue to review well category determinations under NGPA section 503 after wellhead decontrol, to the extent such determinations are necessary to permit qualifying producers to receive tax credits under section 29 of the Code.

At the time of Order Nos. 539 and 539–A, the Commission did not have to confront the possibility that its interpretation of the Wellhead Decontrol Act as terminating its authority to review well category determinations with respect to all post-December 31, 1992 "drilling activity" would affect the availability of the section 29 tax credit. It was only after Order No. 539–A that the IRS issued Revenue Ruling 93–54, interpreting section 29 of the Code, as amended by the Revenue Reconciliation Act of 1990, as permitting tax credits for post-January 1, 1993 recompletions in wells initially drilled before January 1, 1993, so long as the recompletion does not involve additional drilling to deepen or extend the well. While the Commission continued to refuse to perform well category determinations under NGPA section 503 for post-January 1, 1993 recompletions, the Commission suggested that its refusal to perform well determinations did not necessarily conflict with the IRS's revenue ruling.[36] This was because the Commission believed a formal Commission well determination under NGPA section 503 might not be a prerequisite for a tax credit. Similarly, the D.C. Circuit in *Marathon Oil* concluded that the Commission's refusal to process well category determinations did not injure producers, because producers might obtain the tax credit from the IRS without a formal NGPA section 503 determination from the Commission. In *Marathon Oil*, the jurisdictional agency had made the determination that the gas was from a well that met the tight formation requirement. Thus, neither the Commission nor the D.C. Circuit have thus far had to address the

[34] 170 F.3d at 1305.

[35] *Id.* at 1304.

[36] See 68 FERC ¶ 61,323 at 62,231.

question whether Congress intended to permit the Commission to make NGPA section 503 well category determinations with respect to post-December 31, 1992 drilling activity, where such determinations are a necessary prerequisite to obtaining tax credits Congress authorized in Section 29 of the Internal Revenue Code.

The Tenth Circuit's *True Oil* decision, combined with the IRS' interpretation of section 29 as authorizing tax credits for post-December 31, 1992 recompletions, now squarely presents this question to the Commission. In *True Oil*, the Court held that section 29 of the Internal Revenue Code requires a formal NGPA section 503 determination to obtain the Section 29 tax credit, since Section 29 states that the tight formation determination shall be made in "accordance with section 503 of the Natural Gas Policy Act of 1978." Moreover, in *True Oil*, the Court specifically referred to post-January 1, 1993 recompletions as being subject to its ruling. The Court concluded:

> Although the result of our holding may appear unfair to producers who failed to obtain well-category determinations while they were being issued by FERC or to those producers who recomplete their wells after January 1, 1993, the judiciary is not "licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result (citing case)." [37]

Thus, *True Oil* requires that in order to obtain the Section 29 tax credit the entire section 503 procedure must be followed, including Commission review of jurisdictional agency well determinations.

Therefore, unless the Commission recommences processing of requests for well category determinations under NGPA section 503, producers will be unable to obtain tax credits for gas produced from post-January 1, 1993 recompletions that qualify under Revenue Ruling 93–54. This will be true despite the fact the IRS has interpreted Section 29 of the Code, as amended by the Revenue Reconciliation Act of 1990, as authorizing tax credits for such gas. The Commission defers to the IRS's interpretation of Congress's intent in enacting the current version of section 29 as it applies to recompletions. This is because the IRS is the agency that administers the Code, and is responsible for determining whether the section 29 tax credit should be permitted in a particular situation. In light of the IRS' view that Congress intended its amendment of section 29 of the Internal Revenue Code by the Revenue Reconciliation Act of 1990 to permit tax credits for post-January 1, 1993 recompletions, we believe Congress must also have intended the Commission to continue the NGPA section 503 procedures after the decontrol date for those recompletions. Otherwise, the producers could not obtain the very credits the IRS has found Congress intended to authorize.

This conclusion is buttressed by the legislative history of the Decontrol Act. As the Commission found in Order No. 523, *supra*, that legislative history "indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels (footnote) * * *." [38] In particular, there is the statement in the Senate Report accompanying the Decontrol Act that refers to the tax credit for qualifying fuels and states that the repeal in the Decontrol Act of NGPA sections referenced in Section 29 of the Code was not intended to reflect any adverse judgment on the merits of the tax credit. Moreover, the Chairman of the Senate Committee involved in the Decontrol Act had written to the Commission that until the Code was amended to provide a new mechanism for qualification for the gas subject to the section 29 tax credit, the Commission should continue to make the section 503 determination.[39] Since that time the Code has not been amended to provide any other mechanism for obtaining a formal determination even though the Section 29 tax credit is available at least through December 31, 2002.

Also, the Revenue Reconciliation Act of 1990 permitted tight formation gas to qualify for tax credits, even though it was no longer subject to NGPA ceiling prices. The Commission accordingly continued to process requests for well category determinations through April 1994 to aid producers in obtaining the tax credits, even though such determinations were no longer necessary to allow the gas to qualify for NGPA ceiling prices. Thus, despite the fact Congress originally enacted the NGPA section 503 well category determination procedures for the purpose of qualifying gas for NGPA ceiling prices, the Commission has previously recognized that those procedures can continue to be used, even where the determination has no significance for purposes of NGPA ceiling prices. This fact also suggests that the Wellhead Decontrol Act's elimination of all such price ceilings as of January 1, 1993, should not be viewed as requiring the Commission to cease well category determinations for tax credit purposes as of that date. Congress had previously unlinked eligibility for the tax credit from the existence of NGPA ceiling prices in 1990, and expanded the tax credit to tight formation gas.

Enabling producers to receive the tax credit would also be consistent with Congress' desire to encourage, enhance, and expand the United States natural gas supply base, allowing legitimately qualified producers to call upon a tax credit associated with developing and producing gas from formations and wells that otherwise might not have been available to supply consumers.

In summary, since the agency responsible for ruling on the Section 29 tax credit, the IRS, will permit the tax credit for certain recompletions after January 1, 1993, and in light of the *True Oil* decision which requires Commission action under NGPA section 503 procedures for a producer to obtain the Section 29 tax credit, the Commission believes it can, and should, reinstate those procedures for well recompletions commenced after January 1, 1993, in wells initially drilled before January 1, 1993, until the tax credit ends, which is now scheduled to cease on December 31, 2002. In light of this, the Commission proposes to reinstate these procedures until the later of June 30, 2003, or six months after the tax credit is no longer available for production from any well should Congress further extend the tax credit.

B. Details of the Commission's Proposal

The Commission proposes to accept jurisdictional agency determinations on those post-January 1, 1993 recompletions which satisfy the IRS' definition under Revenue Ruling 93–54, namely, that the recompletion does not involve additional drilling to deepen or extend the well. For this purpose, the Commission proposes to reinstate regulations necessary to (1) define the categories of high cost gas eligible for the tax credit and (2) provide procedures for jurisdictional agencies to file their determinations and the Commission to review those determinations. The Commission's action to provide a mechanism for claiming the section 29 tax credit for gas produced from these recompleted wells should have no consumer price impact. This is because the wellhead ceiling prices were terminated long ago, and therefore the only effect of this proposed rule will be to enable producers to obtain the tax credit. DOE states that the tax credits will help increase the Nation's supply of domestically

[37] 170 F.3d at 1305.

[38] FERC Stats. & Regs., Regulation Preambles 1986–1990 ¶30,887 at 31,760.

[39] *Supra*, n. 13.

produced natural gas by permitting unconventional gas wells to continue to operate. In addition to adding to the nation's natural gas supply, DOE states that continued operation of unconventional gas wells will be important in testing the new generation of petroleum technology.

With respect to the tight formation gas category, the Commission action will be limited to reviewing the jurisdictional agency determinations for qualifying recompletions in already designated tight formations. Well determinations for recompletions in coal seams and Devonian Shale will also be accepted.[40] The Commission proposes not to accept determinations with respect to either initial completions in wells spudded before January 1, 1993, or any pre-1993 recompletions. In Order No. 539, the Commission established deadlines for filing applications involving wells that were spudded and/or recompleted prior to January 1, 1993, and the time has long passed when those applications should have been filed. Also, in their petition, producers have not requested that the Commission accept determinations with regard to wells spudded or recompleted before January 1, 1993. However, parties may comment on this matter. Finally, the substantive rulings that the Commission has made previously concerning well determinations and the qualification under these NGPA section 107 category will continue to govern.

The Commission estimates that there are probably at least 4,000 recompletions that were performed between 1993–1999 for which a determination may be sought under the proposed rule, and that another 1,500 recompletions may occur between 2000–2002, when the tax credit is now scheduled to end.[41] The Commission finds the assistance of the State and Federal agencies to be essential to its ability to process the substantial number of new well category determination requests the Commission anticipates will be filed under the proposed rule. NGPA section 503 requires the jurisdictional agencies to make an initial well category determination, unless, as permitted by section 503(e)(2), the Commission enters into an agreement with a State or Federal agency under which the Commission would make the determinations that would otherwise be made by that agency. The Commission intends not to exercise its discretion to enter into any such agreement. Since the Commission's role in the producing area has virtually been eliminated, the Commission's resources in this area have been substantially reduced. Thus, the Commission must rely upon the jurisdictional agencies to develop the full record in these proceedings, and the Commission will limit its role to reviewing initial determinations made by the jurisdictional agencies. The Commission requests comments from the jurisdictional agencies whether they will make initial determinations under NGPA section 503, if this rule is adopted. If the jurisdictional agencies are not prepared to do this, the Commission may not proceed with the proposed rule.

Accordingly, the Commission is proposing to reinstate those portions of its prior regulations, with appropriate modifications, that are necessary to allow producers to obtain well category determinations solely for tax credit purposes. In general, the proposed regulations retain the definitions, the filing and notice requirements, and the review procedures that the Commission promulgated prior to the termination of the regulations due to the Decontrol Act. The significant changes are identified below.

Proposed § 270.101 contains the necessary definitions to implement well determination procedures to receive determinations for tax credit purposes. Definitions for tight formation gas, coal seam gas and Devonian shale gas, three of the types of gas eligible for tax credits, are included.[42] The Commission is not including a definition for gas produced from geopressured brine since our past experience shows that there is no gas likely to qualify for this category given the Commission's definition of geopressured brine and the current state of technology. Comments on this matter are requested.

Proposed § 270.201 limits the availability of the determination procedures to recompletions commenced after January 1, 1993, in wells initially drilled before that date. As discussed above, this reflects the Commission's decision to limit the determination process to correct the situation caused by the *True Oil* decision, but parties may comment on this matter. Similarly, the Commission is also not proposing any regulations that would allow a jurisdictional agency to designate additional tight formation areas. The designation of additional tight formations would require the Commission to review extensive geologic data. This could place an undue burden on the Commission. Also, it appears likely that most producing formations that qualify as tight formations were designated as such during the decade when such a designation enabled producers to qualify for a higher price ceiling.

Consistent with the Commission's prior NGPA regulations, the Commission is also proposing to revise the delegation authority to the Director of the Office of Markets, Tariffs and Rates (OMTR) or the Director's designee in § 375.307 to include tolling letters advising jurisdictional agencies notices of determination are incomplete. In addition, to facilitate the Commission's review under the reinstated procedures, the Commission is proposing to delegate to the Director of OMTR the authority to issue preliminary findings under the proposed section. However, the Commission is not proposing to delegate the authority to issue a final order to the Director of OMTR.

The Commission is also proposing to revise its regulations by adding § 381.401 to the regulations to specify a filing fee of $115 per well determination. This reflects the last fee ($100) for review of a jurisdictional agency well determination that was in effect prior to the repeal of the determination procedures, adjusted for inflation. It is the Commission's best estimate, at this time, of the cost to the Commission to review well determinations. As in the past, this fee will be revised annually in accordance with § 381.104. In addition, the past billing procedures will apply, whereby the Commission will bill each producer at the end of each billing year based on the number of determinations received during that year for that producer.

The proposed regulations contain no provisions permitting a jurisdictional agency to request alternative filing requirements. The proposed filing requirements are not unduly burdensome and are readily available to producers. However, since the Commission previously approved alternative filing requirements for Devonian shale wells in Michigan based

[40] As explained below, the Commission is not including geopressurized brine gas.

[41] Although the tax credit is scheduled to expire on December 31, 2002, it could be extended.

[42] We note that a new determination will not be required for some recompletions involving Devonian shale gas if there is a prior determination covering the entire gross Devonian age stratigraphic interval penetrated by the wellbore. The Commission will view all natural gas produced from a well to have been previously qualified as Devonian shale production if: (1) the well previously received an affirmative Devonian shale determination that was not reversed or remanded by the Commission; and (2) that determination was based on a gamma ray index test for non-shale footage that spans the entire gross Devonian age stratigraphic interval. In such cases, the Commission sees no reason to re-affirm what has already been established, i.e., that any gas produced from the gross Devonian age stratigraphic interval penetrated by such well qualifies as natural gas produced from Devonian shale within the meaning of section 107(c)(4) of the NGPA.

on unique circumstances, the proposed regulations reflect those previously-approved alternate filing requirements.

The Commission is reinstating and revising FERC Form No. 121, which a producer files with an application for determination. This form, a copy of which is attached, identifies the producer filing the application, the type of determination the producer is seeking, and information identifying the well and the completion location of the well. The Commission is considering whether or not to require producers to file this form electronically, to facilitate the Commission's noticing of determinations and requests comments on this issue.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[43] The instant proposed rule reinstates regulations that were previously in effect, and does not substantially change the effect of the underlying legislation or the regulations being revised. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

The instant proposed rule reinstates regulations that were previously in effect, and would enable entities to obtain Internal Revenue Code Section 29 tax credits. There is no reporting requirement, merely the ability to obtain a formal determination that gas qualifies for the tax credit. The Commission certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities.

VI. Public Reporting Burden and Information Collection Statement

The following collections of information pursuant to Part 270 contained in this proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[44] These information collection requirements were previously in effect until the removal of the Commission regulations implementing NGPA section 503 and are now proposed to be reinstated.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC Form 121	1800	1	.25	450
FERC–568	1800	1	6.01	10818

Total Annual Hours for Collection (Reporting + Record keeping) = 11,268.

Based on the Commission's previous experience for processing applications for well determinations and completion of the FERC Form 121, it is estimated that about 1800 filings per year will be made over the next three years at a burden of 6.01 hours per filing for the application, .25 hours per filing for the Form 121, for a total of 11,268 hours under the proposed regulations. These two collections of information were eliminated after passage of the Wellhead Decontrol Act of 1989. The Commission is requesting that OMB reinstate these data collections to their inventory. The total hours associated with the proposed rule will be added to the total hours for the Commission's collections of information as well as to OMB's inventory.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs: $201,425.

Annualized Costs (Operations & Maintenance) $0.00.

Total Annualized Costs: $201,545.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC Form 121, Application for Maximum Lawful Price under the Natural Gas Policy Act of 1978, FERC–568, Well Category Determinations.

OMB Control No: 1902–0038 and 1902–0112.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of the Information: The proposed rule reinstates the regulations to establish the procedures for the Commission to make determinations under NGPA Section 503. A determination by the Commission will enable producers of natural gas to claim credits for high cost gas as provided for by Section 29 of the Internal Revenue Code. The 10th Circuit held in a recent decision that a formal section 503 determination is required to obtain the Section 29 tax credit. The implementation of these data requirements will help the Commission to carry out its responsibilities under the NGPA.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information

[43] 18 CFR 380.4.

[44] 44 U.S.C. 3507(d)

requirements. The Commission's Office of Markets, Tariffs, and Rates will use the data submitted by the information collections to determine whether it should affirm, reverse, remand, make a preliminary finding on, or take no action on an initial determination by a jurisdictional agency. The agency's initial determination is as to whether any natural gas produced under extraordinary conditions in terms of risks or costs can be considered as "high-cost natural gas" under Section 107(c) of the NGPA. These requirements have been reinstated as a result of the Court's decision to require well determinations in order to obtain Section 29 tax credits. These tax credits are available for qualified fuels through January 1, 2003 unless Congress should extend the program. These requirements conform to the Commission's plan for efficient information collection and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, email: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.]

VII. Public Comment Procedures

Prior to taking final action on this proposed rulemaking, we are inviting written comments from interested persons. The Commission also is notifying each affected State Commission and is giving reasonable opportunity to each State Commission to present its views for our consideration. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM00–6–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before April 10, 2000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–6–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM00–6–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at: 202–501–8145, E-Mail address: brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Record and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 270, Chapter I, Title 18 of the *Code of Federal Regulations*, as follows:

1. Part 270 is added to read as follows:

PART 270—PROCEDURES GOVERNING WELL DETERMINATIONS FOR TAX CREDIT PURPOSES

Subpart A—General Definitions

Sec.

§ 270.101 *General definitions*

Subpart B—Determination by Jurisdictional Agencies

§ 270.201 *Applicability*
§ 270.202 *Definition of determination*
§ 270.203 *Determinations by jurisdictional agencies*
§ 270.204 *Notice to the Commission*

Subpart C—Requirements for Filing with Jurisdictional Agencies

§ 270.301 *General requirement*
§ 270.302 Occluded natural gas produced from gas seams.
§ 270.303 *Natural gas produced from Devoian Shale*
§ 270.304 *Tight formation gas*
§ 270.306 *Recompletions in Devonian Shale wells in Michigan.*

Subpart D—Identification of State and Federal Jurisdictional Agencies

§ 270.401 *Jurisdictional agency*

Subpart E—Procedures for Commission Review of Jurisdictional Agency Determination

§ 270.501 *Publication of Notice from Jurisdictional Agency*
§ 270.502 *Commission review of final determination*
§ 270.503 *Protests to the Commission*
§ 270.504 *Contents of protests to the Commission*
§ 270.505 *Procedure for reopening determinations*
§ 270.506 *Confidentiality*

Authority: 15 U.S.C. 717–717w, 3301 *et. seq.*; 42 U.S.C. 7101 *et seq.*; EO 12009, 3 CFR 1978 Comp., p. 142.

Subpart A—General definitions

§ 270.101 General definitions.

(a) *NGPA definitions.* Terms defined in the Natural Gas Policy Act of 1978 (NGPA) will have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) *Subchapter H definitions.* For purposes of this part:

(1) *NGPA* means the Natural Gas Policy Act of 1978.

(2) *Surface* location means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in permanent surface waters, the Earth's surface means the mean elevation of the surface of the water.

(3) *Jurisdictional agency* means the state or federal agency identified in Subpart D of this part.

(4) *Tight formation gas* means natural gas that a jurisdictional agency has determined to be produced from a designated tight formation.

(5) *Designated tight formation* means the portion of a natural gas bearing formation that was:

(i) Designated as tight formation by the Commission, pursuant to section 501 of the NGPA, or

(ii) Determined to be a tight formation pursuant to section 503 of the NGPA.

(6) *Occluded natural gas produced from coal seams* means naturally occurring natural gas released from entrapment from the fractures, pores and bedding planes of coal seams.

(7) *Natural gas produced from Devonian shale* means natural gas produced from fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.

(8) *Shales deposited during the Paleozoic Devonian Period* can be defined as either:

(i) The gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or

(ii) One continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater (but if the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the 5 percent test independently).

(9) Gamma ray index means when measuring the Devonian age stratigraphic interval, the gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

Subpart B—Determinations by Jurisdictional Agencies

§ 270.201 Applicability.

This part applies to determinations of jurisdictional agencies for tight formation gas, occluded natural gas produced from coal seams, and natural gas produced from Devonian shale which is produced through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, and before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993.

§ 270.202 Definition of determination.

For purposes of this subpart, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

§ 270.203 Determinations by jurisdictional agencies.

A jurisdictional agency must make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

§ 270.204 Notice to the Commission.

Within 15 days after making a determination that natural gas qualifies under this part, the jurisdictional agency must give written notice of the determination to the Commission. The notice must include the following:

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(b) A statement indicating whether the matter was opposed before the jurisdictional agency;

(c) A copy of the application together with a copy or description of all other materials upon which the jurisdictional agency relied in the course of making the determination, together with any information which may be inconsistent with the determination.

(d) An explanatory statement, including appropriate factual findings and references, which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

Subpart C—Requirements for Filings With Jurisdictional Agencies

§ 270.301 General requirements.

(a) An application to which this subpart applies may be filed with the jurisdictional agency and signed by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(b) The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(c) Each applicant must pay the fee prescribed in § 381.401 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant must submit the fee, or petition for waiver pursuant to § 381.106, within 30 days following the billing date.

§ 270.302 Occluded natural gas produced from coal seams.

A person seeking a determination that natural gas is occluded natural gas produced from coal seams must file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports.

(c) A radioactivity, electric or other log which will define the coal seams.

(d) Evidence to establish that the natural gas was produced from a coal seam;

(e) A statement by the applicant, under oath, that

(1) The gas was produced from a coal seam through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993,

(2) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(3) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.303 Natural gas produced from Devonian shale.

A person seeking a determination that natural gas is produced from Devonian shale shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to § 270.101(b)(8);

(d) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(e) A sworn statement:

(1) Calculating the percentage of footage of the producing interval which

is not Devonian shale as indicated by a Gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to § 270.101(b)(7);

(3) Attesting that the natural gas is being produced from Devonian Shale, through a recompletion commenced after December 31, 1979, in a well the surface drilling of which began on or after January 1, 1980 and before January 1, 1993;

(4) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(5) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.304 Tight formation gas.

A person seeking a determination that natural gas is tight formation gas must file with the jurisdictional agency an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A map that identifies the geographic location of the well and the geographic location of the post-January 1, 1993, recompletion's completion location in the designated tight formation, along with the geographic boundaries of such designated tight formation, or a location plat identifying the geographic location of the well and the post-January 1, 1993 recompletion's completion location in the designated tight formation, along with a list of the tract (or tracts) of land that comprise such designated tight formation;

(d) A complete copy of the well log, including the log heading identifying the designated tight formation stratigraphically; and

(e) A statement by the applicant, under oath, that:

(1) The natural gas is being produced from a designated tight formation through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993,

(2) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(3) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.306 Recompletions in Devonian shale wells in Michigan.

A person seeking a determination that natural gas is being produced from the Devonian Age Antrim shale in Michigan shall file an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log from the closest available well bore (producing or dry hole) that is within a one mile radius of the well for which a determination is sought, with superimposed indications of

(1) The shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section penetrated by the well bore; and

(2) The boundary between the Antrim shale and the overlying formation (Berea Sandstone, Ellsworth, Bedford, or Sunbury shales, or their equivalents);

(d) A location plat showing the well for which the determination is sought and the well for which a gamma ray log has been filed;

(e) A mud log from the well for which the determination is sought, with a detailed description of samples taken from 10-foot, or less, intervals throughout the Devonian age stratigraphic section penetrated by the well bore;

(f) A driller's log, or similar report, from the well for which the determination is sought, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section penetrated by the well bore;

(g) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(h) A sworn statement:

(1) Calculating the percentage of footage of the producing interval (or the Antrim Shale in the event the well is a dry hole) in the well for which a gamma ray log was submitted which is not Devonian shall as indicated by a gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the Devonian age stratigraphic section penetrated by the well bore for which the submitted gamma ray log is equal to or less than 5 percent;

(3) Attesting that the natural gas is being produced from the Devonian Age Antrim Shale, through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993;

(4) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(5) Declaring that the applicant has no knowledge of any information not described in the application which is inconsistent with these conclusions.

Subpart D—Identification of State and Federal Jurisdictional Agencies

§ 270.401 Jurisdictional agency.

(a) *Definition.* With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), "jurisdictional agency" means the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas.

(b) The jurisdictional agency for wells located on Federal lands in each state are:

(1) Alabama—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(2) Alaska, Anchorage District—Assistant District Manager for Mineral Resources, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, AK 99507.

Alaska, Fairbanks District—Assistant District Manager for Mineral Resources, Bureau of Land Management, North Post Fort Wainwright, Box 1150, Fairbanks, AK 99707.

(3) Arizona, except for the Navaho and Hopi Indian Reservations " Deputy State Director for Mineral Resources, Bureau of Land Management, P.O. Box 16563, Phoenix, AZ 85011.

Arizona, Navaho and Hopi Indian Reservations " District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(4) Arkansas—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(5) California, except Naval Petroleum Reserve No. 1 (Elk Hills) and No. 2 (Buena Vista)—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources (C–920), 2800 Cottage Way, Room E–1827, Sacramento, CA 95825.

(6) Colorado—Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.

(7) Florida and Georgia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern

States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(8) Idaho—Deputy State Director for Mineral Resources, Bureau of Land Management, Idaho State Office (920), 3380 Americana Terrace, Boise, ID 83706.

(9) Illinois, Indiana, and Iowa—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(10) Kansas—Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.

(11) Kentucky, Louisiana, Maryland, Michigan, Mississippi, and Missouri—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(12) Montana—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.

(13) Nebraska—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(14) Nevada—State Director, Bureau of Land Management, Nevada StateOffice (NV–920), 300 Booth Street, Reno, NV 89520.

(15) New Mexico, Northern New Mexico—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

New Mexico, Southern New Mexico—District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.

(16) New York and North Carolina—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(17) North Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.

(18) Ohio—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(19) Oklahoma, except the Osage Reservation—District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.

Oklahoma, the Osage Reservation only—Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U. S. Department of the Interior, Pawhuska, OK 74056.

(20) Oregon—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965 Portland, OR 97208.

(21) Pennsylvania and South Carolina—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(22) South Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800 Billings, MT 59107.

(23) Tennessee—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(24) Texas, east of the 100th Meridian—District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.

Texas, west of the 100th Meridian—District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.

(25) Utah, except for the Navajo and Hopi Indian Reservations—Chief, Branch of Fluid Minerals, Bureau of Land Management, Utah State Office (U–922), 324 South State Street, Suite 301, Salt Lake City, UT 84111.

Utah, the Navajo and Hopi Indian Reservations only—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(26) Virginia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(27) Washington—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.

(28) West Virginia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(29) Wyoming, excluding Naval Petroleum Reserve No. 3 (Teapot Dome)—Casper District * * * District Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601.

Rawlins District * * * District Manager, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301.

Rock Springs District * * * District Manager, Bureau of Land Management, P.O. Box 1869, Rock Springs, WY 82902.

Worland District * * * District Manager, Bureau of Land Management, P.O. Box 119, Worland, WY 82401.

(c) The jurisdictional agency for wells located on Other lands in each state are:

(1) Alabama—State Oil and Gas Board, P.O. Box O, Tuscaloosa, AL 35486–9780.

(2) Alaska—Department of Natural Resources, Oil & Gas Division, 550 West 7th Avenue, Anchorage, AK 99501.

(3) Arizona—Oil and Gas Conservation Commission, 416 West Congress Street, Suite 100, Tucson, AZ 85701

(4) Arkansas—Oil & Gas Commission, P.O. Box 1472, El Dorado, AR 71730–1472.

(5) California—Department of Conservation, Division of Oil & Gas, 801 K Street, MS24–01, Sacramento, CA 95814.

(6) Colorado—Oil & Gas Conservation Commission, Chancery Building 1120 Lincoln, #801, Denver, CO 80203.

(7) Florida—Administrator Oil and Gas, Bureau of Geology, Department of Natural Resources, 903 West Tennessee Street, Tallahassee, FL 32304.

(8) Georgia—Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW., Atlanta, GA 30334.

(9) Idaho—Idaho Public Utilities Commission, Statehouse Mail, Boise, ID 83720.

(10) Illinois—Department of Natural Resources, Office of Oil & Gas Division, 524 South 2nd Street, Springfield, IL 62701.

(11) Indiana—Department of Natural Resources, Oil & Gas Division, 402 West Washington Street, Room 256, Indianapolis, IN 46204.

(12) Kansas—Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604

(13) Kentucky Natural Resources Department, 663 Teton Trail, Frankfort, KY 40601.

(14) Louisiana—Department of Natural Resources Conservation, P.O. Box 94275, Baton Rouge, LA 70804.

(15) Maryland—Department of Natural Resources, Tawes State Office Building, Annapolis, MD 21404.

(16) Michigan—Department of Natural Resources, Box 30028, Lansing MI 48909.

(17) Mississippi—State Oil & Gas Board, 500 Graymont Avenue, Suite E, Jackson, MS 39202.

(18) Missouri—Department of Natural Resources Geology and Survey Division, P.O. Box 250, 111 Fairgrounds Road, Rolla, MO 65402.

(19) Montana—Department of Natural Resources and Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, MT 59102.

(20) Nebraska—Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.

(21) Nevada—Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.

(22) New Mexico—Department of Energy and Minerals and Natural Resources, Oil Conservation Division, 2040 S. Pacheco Street, Sante Fe, NM 87505.

(23) New York—Department of Environmental Conservation, Division of Mineral Resources, 50 Wolf Road, Albany, NY 12233.

(24) North Carolina—Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, NC 27611.

(25) North Dakota—Industrial Commission, State Capitol, 600 East Boulevard Avenue, Department 405, Bismarck, ND 58505.

(26) Ohio—Department of Natural Resources, Division of Oil and Gas, 1930 Belcher Drive, Building D–3, Columbus, OH 43224.

(27) Oklahoma—Corporation Commission, Oil & Gas Conservation Division, P.O. Box 52000, Oklahoma City, OK 73152–2000.

(28) Oregon—Department of Geology & Mineral Industries, 800 N.E. Oregon Street, #28 Portland, OR 97232.

(29) Pennsylvania—Department of Conservation and Natural Resources, P.O. Box 8767, Harrisburg, PA 17105–8767.

(30) South Carolina—South Carolina Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211.

(31) South Dakota—Department of Environment and Natural Resources, Foss Building, 523 East Capitol Avenue, Pierre, SD 57501.

(32) Tennessee—Office of Conservation, Division of Geology, 401 Church Street, Nashville, TN 37243.

(33) Texas—Railroad Commission Oil and Gas Division, P.O. Box 12967, Austin, TX 78711.

(34) Utah—Department of Natrual Resources, Division of Oil, Gas and Mining, P.O. Box 145801 West North Temple, Suite 1210, Salt Lake City, UT 84114–5801.

(35) Virginia—Department of Mines, Minerals & Energy, Division of Mines and Quarries, Oil & Gas Section, P.O. Box 1416, Abingdon, VA 24210.

(36) Washington—Department of Natural Resources, Geology and Earth Resources Division, P.O. Box 47001, Olympia, WA 98504.

(37) West Virginia—Commerce Bureau, Geological and Economic Survey, Oil and Gas Section, P.O. Box 879, Morgantown, WV 26507.

(d) *Federal lands.* For purposes of this section, "Federal lands" means

(1) All lands leased under:

(i) The Mineral Lands Leasing Act, as amended, 30 U.S.C. 181 et seq.; and

(ii) The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 et seq.; and

(2) All Indian lands which are under the supervision of the United States Geological Survey or any successor federal agency (30 CFR Part 221); and

(3) All Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(e) *Divided-interest leases.* Unless an agreement under this paragraph provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) The Federal jurisdictional agency will make the determination where the majority lease interest is Federal (or Indian);

(2) The State jurisdictional agency will make the determination where the majority lease interest is private (or State); and

(3) The State jurisdictional agency will make the determination where the lease is divided equally.

(f) *Drilling units.* Unless an agreement under paragraph (e) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency will make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency will make the determination if the completion location of the well in question is located on a private (or State) lease.

(g) *Agreements.* If a jurisdictional agency that has jurisdiction over Federal lands enters into an agreement with a jurisdictional agency that has jurisdiction over State lands that either authorizes the State jurisdictional agency to make determinations for wells located on Federal lands or the Federal agency to make determinations for wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement, the agency so authorized will be considered to be the jurisdictional agency for wells on the lands subject to the agreement.

Subpart E—Procedures for Commission Review of Jurisdictional Agency Determinations

§ 270.501 Publication of notice from jurisdictional agency.

(a) Upon receipt of notice of determination by a jurisdictional agency under § 270.204, the Commission will send an acknowledgment to the applicant and will post acknowledgment in the Commission's Public Reference Room and on the Commission's web site. Another source of the information is the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

(b) The acknowledgment will contain the following:

(1) The date on which the jurisdictional agency notice was received;

(2) Certain information contained in FERC Form No. 121;

(3) A statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under § 270.506, at the offices of the Commission; and

(4) A statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to this section.

§ 270.502 Commission review of final determinations.

(a) *Review by Commission.* Except as provided in paragraphs (b), (c) and (d) of this section, a determination submitted to the Commission by a jurisdictional agency will become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) Makes a preliminary finding that:

(i) The determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) The determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) Issues written notice of such preliminary finding, including the reasons for the preliminary finding. Copies of the written notice will be sent to the jurisdictional agency which made the determination, to the persons

identified in the notice under § 270.204 of such determination, and to any persons who have filed a protest.

(b) *Incomplete notice.* Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination will not begin if:

(1) The notice forwarded to the Commission pursuant to § 270.204 does not contain all the material specified therein; and

(2) The Commission notifies the jurisdictional agency, within 45 days after the date on which the Commission receives notice of the determination, that the notice is incomplete.

(c) *Withdrawal of notice.* (1) The jurisdictional agency may withdraw a notice of determination by giving notice as specified in paragraph (c)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraphs (a) or (g)(4) of this section. Such notice must include the jurisdictional agency's reasons for the withdrawal.

(2) Withdrawal of a notice of determination will take effect at such time as the jurisdictional agency has notified the Commission, and the parties to the proceeding before the agency, of such withdrawal.

(3) Withdrawal of a notice of determination shall nullify such notice of determination.

(d) *Withdrawal of application.* (1) An applicant may withdraw an application for a determination which is before the Commission by giving notice as specified in paragraph (d)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraphs (a) or (g)(4) of this section.

(2) Withdrawal of an application will take effect at such time as the applicant has notified the Commission and the jurisdictional agency.

(3) Withdrawal of an application will nullify such application and the notice of determination on such application.

(e) *Public notice.* The Commission will publish notice of the preliminary finding in the **Federal Register** and will post the notice in its Public Reference Room. The notice will set forth the reasons for the preliminary finding.

(f) *Procedures following notice of preliminary finding.* Any state or federal agency or any person may submit, within 30 days after issuance of the preliminary finding, written comments, and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) of this Section may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) of this section and to state or federal agencies or persons who submitted comments under this paragraph.

(g) *Final orders.* (1) In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding.

(2) In any case in which no protest was filed with the Commission pursuant to this subpart, and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under paragraphs (g)(1) or (g)(2) will either affirm, reverse, or remand the determination of the jurisdictional agency. Such order will state the specific basis for the Commission's action. Notice of the issuance of such order will be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 270.503.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

§ 270.503 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to § 270.204.

(b) *Grounds.* Protests may be based only on the grounds that the final determination is:

(1) Not supported by substantial evidence;

(2) Not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) Not consistent with information submitted with the protests for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) Not based on an application which complied with the filing requirements set forth in this subpart.

§ 270.504 Contents of protests to the Commission.

Each protest must include:

(a) An identification of the determination protested;

(b) The name and address of the person filing the protest;

(c) A statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for the nonparticipation;

(d) A statement of the effect the determination will have on the protestor;

(e) A statement of the precise grounds under § 270.503(f) for the protest, and all supporting documents or references to any information relied on which is in the record on which the determination is based or is in or to be inserted in the public files of the Commission; and

(f) A statement that the protestor has served, in accordance with § 385.2010 of this chapter, a copy of the protest together with all supporting documents on the jurisdictional agency and all persons listed in the notice of determination filed pursuant to § 270.204.

§ 270.505 Procedure for reopening determinations.

(a) *Grounds.* At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) In making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) There was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) *Contents of petition.* A petition to reopen the determination proceedings must contain the following information, under oath:

(1) The name and address of the person filing the petition;

(2) The interest of the petitioner in the outcome of the determination proceeding;

(3) The statement of material fact that is alleged to be untrue or omitted;

(4) A statement explaining why the outcome of the determination

proceeding would have been different had the statement or omission not occurred; and

(5) Copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the commission.

(c) *Procedures after reopening.* In the event the Commission reopens a determination pursuant to this section it will:

(1) Give notice to the jurisdictional agency and all persons who participated before both that agency and the Commission in the proceedings resulting in the determination in question;

(2) Permit the jurisdictional agency and other persons receiving notice pursuant to paragraph (C)(1) of this section to submit whatever documentary evidence such agency or persons deem relevant; and

(3) Take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it will vacate the determination.

§ 270.506 Confidentiality.

(a) Except as provided in paragraph (b) of this section, the Commission will accord confidential protection to, and not disclose to the public, any information submitted by a jurisdictional agency under § 270.204, if:

(1) The jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) The agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a), the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt. 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines the information is exempt, the Commission will not make it public unless it determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission will provide at least 5 days notice to the person who submitted the information.

PART 375—THE COMMISSION

3. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. § 375.307 paragraph (p) is added to read as follows:

§ 375.307 Delegation to the Director of the Office of Markets, Tariffs, and Rates

* * * * *

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to § 270.502(b) of this chapter that the notice is incomplete under § 270.204 of this chapter.

(2) Issue preliminary findings under § 270.502(a)(1) of this chapter.

PART 381—FEES

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

5. The authority citation for part 381 will continue to read as follows:

Authority: 15 U.S.C. 717–717W; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

6. Section 381.401 is added to read as follows:

§ 381.401 Review of jurisdictional agency determinations

The fee established for review of a jurisdictional agency determination is $115. The fee must be submitted in accordance with subpart A of this part and § 270.301(c) of this chapter.

Note: The following form will not appear in the Code of Federal Regulations.

Attachment—Federal Energy Regulatory Commission Form No. 121 Application for Well Category Determination

1.0 API well number for this well (14 digits maximum. If no API number assigned, leave blank.): _____-_____-_____-_____

2.0 Section 107 determination being sought (check one) is for gas produced from:
____(1) coal seams;
____(2) Devonian shale; or
____(3) a designated tight formation.

3.0 Spud date of this well:
____/____/____ (month/day/year)

4.0 Recompletion commenced: ____/____/____ (month/day/year)

5.0 Measured depth of recompletion: from _____ (top and base, in feet)

6.0 Applicant's name, address and zip code:
Name* _____
Street* _____
City* _____
State _____
Zip Code _____

7.0 Name and identification number of this well, name of reservoir into which well has been recompleted, and location of this well:
Well* _____
Reservoir* _____
Field* _____
County* _____
State* _____

8.0 If applying for determination on a recompletion into a designated tight formation, provide designated tight formation's name and corresponding FERC Designation:
Formation* _____
FERC Designation* _____

9.0 Person responsible for this application:
Name* _____
Title* _____
Signature _____
Phone No. _____

*Signifies that line entry may contain up to 35 letters and/or numbers.

[FR Doc. 00–2367 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 113

RIN 1515–AC43

Amended Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reflect the statutory provisions regarding bond procedures for the entry of articles subject to exclusion orders issued by the U.S. International Trade Commission ("Commission"). This document also proposes to include the text of a new special importation and entry bond in the Customs Regulations. These proposed changes reflect the terms of section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements Act. As amended,

section 337 requires that the bond prescribed by the Secretary of the Treasury must be in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

DATES: Comments must be received on or before April 10, 2000.

ADDRESSES: Written comments (preferably in triplicate), regarding both the substantive aspects of this proposal as well as the clarity of the proposed rule and how it may be made easier to understand, may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Entry Procedures and Carriers Branch, (202) 927–1327.

SUPPLEMENTARY INFORMATION:

Background

U.S. International Trade Commission Investigations Under Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337)

Under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), the Commission has the authority to conduct investigations into certain alleged unfair practices in import trade. Most complaints filed under this provision involve allegations of patent infringement, trademark infringement, or misappropriation of trade secrets. The Commission may determine that section 337 has been violated or, during the course of an investigation, that there is reason to believe that section 337 has been violated.

Exclusion From Entry Into the U.S. of Articles that are the Subject of an Unfair Trade Practice Determination

If the Commission finds a violation, or reason to believe there is a violation, of section 337, it may direct the Secretary of the Treasury to exclude the subject articles from entry into the U.S.

Entry Under Bond of Excluded Articles

During the period the Commission' s exclusion order remains in effect, and prior to the date that the Commission's determination of a violation of section 337 becomes final, articles otherwise excluded may be entered under a single entry bond prescribed by the Secretary of the Treasury.

Statutory Amendments to Sections 337(e)(1) and (j)(3) Require Amendments to the Customs Regulations

Certain statutory changes to section 337 of the Tariff Act of 1930 were enacted pursuant to the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (December 8, 1994). Paragraphs (e)(1) and (j)(3) of section 337, as respectively amended by sections 321(a)(3) and (6) of the URAA, provide that articles subject to a Commission exclusion order may be entered under bond prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

Customs has determined that the amendments to section 337 effected by section 321 of the URAA, as described above, require changes to the Customs Regulations. It is Customs view that these amendments also warrant inclusion of the text of a special bond that indemnifies a complainant pursuant to the terms of section 337, as amended.

Present Regulatory Provisions

Section 12.39 of the Customs Regulations (19 CFR 12.39) sets forth provisions regarding imported articles involving unfair methods of competition or trade practices. Section 12.39(b)(1) identifies the manner by which such articles may be excluded from entry into the United States. Section 12.39(b)(2) provides that such excluded articles may be entitled to entry under a single entry bond in an amount determined by the Commission.

Section 113.62 of the Customs Regulations (19 CFR 113.62) sets forth basic importation and entry bond conditions. Section 113.62(l) identifies the consequence of default on certain agreements by which merchandise is released conditionally from Customs custody. Section 113.62(l)(1) provides, in pertinent part, that if a principal defaults on an agreement involving merchandise subject to an exclusion order of the Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay the amount specified in the order for failure to redeliver such merchandise.

Explanation of Amendments

The specific regulatory amendments proposed in this document are explained in more detail below.

Section 12.39

As mentioned previously, § 12.39(b)(2) provides that during the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the Commission. This document proposes to amend § 12.39(b)(2) to provide that the bond must be in an amount determined by the Commission to be sufficient to protect the complainant from any injury and, if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant. These proposed changes reflect the amendments to sections 337(e)(1) and (j)(3) of the Tariff Act of 1930 enacted pursuant to sections 321(a)(3) and (6) of the URAA. The statutory amendments were enacted to bring Commission practice with respect to bonding requirements into closer conformity with district court practice.]

It is further proposed that § 12.39(b)(2) be amended by deleting reference to Customs Form (CF) 301 and to the bond conditions set forth in § 113.62. The deletion of these terms reflects the fact that a CF 301 and § 113.62 pertain to basic importation and entry bonds. The single entry bond contemplated by § 12.39(b)(2), as amended, is a special importation and entry bond, not under cover of basic importation and entry bonds because the bond does not inure to the Treasury, but rather to the complainant, in the event of forfeiture.

It is proposed to add two new paragraphs to § 12.39(b)(2) which set forth the procedures for importing merchandise subject to the bonding requirements of sections 337(e)(1) and (j)(3). The first paragraph, (b)(2)(i), requires that a bond, in the amount determined by the Commission and containing the conditions identified in the text of the newly created special importation and entry bond, set forth in appendix B to part 113 of this chapter, be filed with the port director prior to entry. Paragraph (b)(2)(ii) directs that in the event of a forfeiture of this bond, § 210.50(d) of the United States International Trade Commission Regulations, (19 CFR 210.50(d)), will apply.

Section 113.62

Section 113.62 is proposed to be amended by striking that portion of the existing introductory paragraph which reads, "except that a bond taken in the case of merchandise subject to an exclusion order of the International

Trade Commission under 19 U.S.C. 1337 shall be a single entry bond."

Section 113.62(l)(1) is proposed to be amended by striking that portion of the existing text which reads, "except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise."

These two proposed amendments reflect that § 113.62 is to pertain only to basic importation and entry bonds and that the bond taken in the case of merchandise subject to an exclusion order of the Commission under 19 U.S.C. 1337 will be a special entry bond. Accordingly, all references to the bond taken out in regard to 19 U.S.C. 1337 are proposed to be removed from § 113.62.

Section 113.74

It is proposed to create a new provision at § 113.74 which sets forth that a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, is contained in appendix B to part 113. Section 113.74 would provide that the bond must be filed in accordance with the provisions set forth in § 12.39(b)(2), must be a single entry bond that contains the conditions listed in appendix B to part 113 and, for the forfeiture or return of the bond, the provisions of 19 CFR 210.50(d) will apply. The bond set forth in appendix B to part 113 is, of course, in addition to any other Customs requirements for the importation of merchandise subject to a section 337 exclusion order.

Appendix B to Part 113

It is proposed to add an appendix B to part 113 which sets forth the bond conditions for a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The introductory paragraph to appendix B to part 113 would state that the provisions contained in §§ 12.39(b)(2) and 113.74 of the Customs Regulations and § 210.50(d) of the U.S. International Trade Commission Regulations will apply.

In consideration of the fact that the regulatory proposals discussed above include documentation requirements for the entry of merchandise covered by a Commission exclusion order, the "(a)(1)(A)" list set forth in the appendix to part 163 of the Customs Regulations (19 CFR part 163) will be modified accordingly if these proposed regulatory changes are adopted as a final rule.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Because these proposed amendments to the Customs Regulations regarding bond procedures for articles subject to exclusion orders issued by the Commission merely reflect the terms of the statute, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch at the address set forth above. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these proposed regulations is in appendix B to part 113. The information requested is necessary to enable Customs to permit entry under a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The likely respondents are individuals or commercial organizations who seek to import merchandise which is the subject of a section 337 exclusion order into the U.S.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden per respondent/recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of response: 2.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Suzanne Karateew, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Unfair competition.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Surety bonds.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, parts 12 and 113 of the Customs Regulations (19 CFR parts 12 and 113) are proposed to be amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.39 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.39 is also issued under 19 U.S.C. 1337, 1623.

* * * * *

2. It is proposed to revise § 12.39(b)(2) to read as follows:

§ 12.39 Imported articles involving unfair methods of competition or practices.

* * * * *

(b) * * *

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must:

(i) File with the port director prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

* * * * *

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows, and a new authority citation is added for § 113.74:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.74 also issued under 19 U.S.C. 1337.

2. In § 113.62:

a. The introductory paragraph is proposed to be amended by removing that portion of the text which reads, "except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond".

b. Paragraph (l)(1) is proposed to be amended by removing the words "except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise".

3. It is proposed that a new § 113.74 be added to read as follows:

§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single entry bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

4. It is proposed to add appendix B to part 113 to read as follows:

Appendix B to Part 113—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

This appendix contains the bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The provisions contained in §§ 12.39(b)(2) and 113.74 of the Customs Regulations (19 CFR Chapter I) and § 210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

_____ as principal and _____ as surety, are held and bound to the complainant of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of _____ dollars ($_____), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the U.S. International Trade Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the port director of Customs, the principal is obligated to export or destroy under Customs supervision the merchandise released under this stipulation within 30 days from the date of the port director's notification.

The principal and surety agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this _____ day of _____(month), _____ (year).

(seal) _____
Principal

(seal) _____
Surety

Raymond W. Kelly,
Commissioner of Customs.

Approved: October 21, 1999.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–2725 Filed 2–7–00; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208280–86]

RIN 1545–AJ57

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed rules implementing the portions of section 883(a) and (c) of the Internal Revenue Code (Code) that relate to income derived by foreign corporations from the international operation of a ship or ships or aircraft. The proposed rules reflect changes made by the Tax Reform Act of 1986 and subsequent legislative amendments. The proposed rules provide, in general, that a foreign corporation organized in a qualified foreign country and engaged

in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of United States Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. The proposed rules explain when a foreign country is a qualified foreign country and what income is considered to be qualified income.

The proposed rules specify how a foreign corporation may satisfy the ownership and related documentation requirements. In addition, the proposed rules describe the information that the foreign corporation must include on its United States income tax return in order to claim an exemption. This document provides notice of a public hearing on these proposed rules.

DATES: Written comments must be received by May 8, 2000.

Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Thursday, April 27, 2000, at 10 a.m. must be received by Wednesday, April 5, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208280–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208280–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed rules, Patricia A. Bray, (202) 622–3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the IRS, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 10, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.883–1, 1.883–2, 1.883–3, 1.883–4, and 1.883–5. The information required in these sections will enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of a ship or ships or aircraft from gross income on its U.S. Federal income tax return. The information required in these sections will also enable the IRS to monitor compliance with the provisions of the proposed regulations with respect to the stock ownership requirements of § 1.883–1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income as required under section 6012.

The collection of information and responses to these collections of information are mandatory. The likely respondents are foreign corporations engaged in the international operation of a ship or ships or aircraft that wish to claim an exemption from U.S. tax under section 883, and certain of their shareholders owning (directly or indirectly) a majority of the value of the shares of such corporations.

Estimated total annual reporting/recordkeeping burden on corporations: 1,400 hours.

The estimated annual burden per respondent varies from 30 minutes to eight hours, depending on the circumstances of the foreign corporation, with an estimated average of one hour.

Estimated number of respondents: 1,400.

Estimated annual frequency of responses: Once.

Estimated total annual reporting burden on shareholders: 22,500 hours.

The estimated annual burden per respondent varies from 15 minutes to eight hours, depending on the circumstances of the shareholder or intermediary, with an estimated average of 90 minutes.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 883 provides an exemption from gross income for earnings of a foreign corporation derived from the international operation of a ship or ships or aircraft (hereinafter ships or aircraft) if an equivalent exemption from tax is granted by the applicable foreign country to corporations organized in the United States. Section 883 has generally been referred to as the reciprocal exemption provision. Before 1986, section 883 eliminated U.S. tax on earnings from the operation of ships or aircraft derived by foreign persons, including U.S.-controlled foreign corporations, based on whether the country of documentation of the ship or registry of the aircraft provided an exemption to U.S. persons. Section 883 did not require a foreign transportation company to be organized or resident in the country of registration or documentation. Many countries offered various incentives, including no taxation, to non-resident shipping companies that registered ships in that jurisdiction (referred to as flagging-out or documenting ships under flags of convenience). Thus, foreign corporations that documented their

ships in such flag of convenience countries could claim a reciprocal exemption from U.S. income tax.

Congress concluded in 1986 that the reciprocal exemption provisions were not meeting their original goal of reserving the right to tax transportation income to the country of residence of the taxpayer (and therefore to eliminate double taxation). In cases where residents of a country with which the United States might desire a reciprocal exemption used vessels or aircraft documented or registered under another flag, the unilateral U.S. concession provided under prior law left the country of residence little incentive to exempt U.S. shippers. Congress was concerned that U.S.-based transportation companies were at a competitive disadvantage because U.S. companies remained potentially subject to tax by the countries in which their foreign competitors were organized and resident.

Congress amended the reciprocal exemption provisions of section 883 to rectify this situation. Tax Reform Act of 1986, section 1212, Public Law 99–514, ((1986–3 C.B. 1) (the 1986 Act)), as amended by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647 (1988–3 C.B. 1), and by the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (1990–1 C.B. 210), (the 1986 Act, as amended). It is now irrelevant under section 883 where a ship is documented or an aircraft is registered. Instead, section 883 provides that a foreign corporation may qualify for the reciprocal exemption only if it is organized in a foreign country that grants corporations organized in the United States an equivalent exemption with respect to income derived from the international operation of ships or aircraft. In addition, more than 50 percent of the value of the stock of the foreign corporation must be owned by individuals who are residents of a foreign country that grants corporations organized in the United States an equivalent exemption. The 50 percent ownership requirement generally does not apply if the corporation is either a qualifying controlled foreign corporation (CFC) or if its stock is primarily and regularly traded on an established securities market in a qualified foreign country or the United States.

Since 1986, the United States and more than 30 foreign countries have entered into reciprocal exemption agreements incorporating the statutory amendments of section 883. In addition, more than 60 countries now provide an equivalent exemption through domestic law or an income tax convention. The current regulations under § 1.883–1, however, have not been amended to reflect the statutory changes enacted since 1986. This document proposes updated rules reflecting the statutory changes.

Explanation of Provisions

General Rule

Section 1.883–1(a) provides the general rule. A foreign corporation engaged in the international operation of a ship or aircraft shall exclude from its gross income for U.S. Federal income tax purposes any income it derives from the international operation of ships or aircraft if such income is qualified income under paragraph (b) and if the corporation is a qualified foreign corporation under paragraph (c).

Section 1.883–1(b) provides that qualified income is income that is properly includible in an income category described in paragraph (h)(2) of this section and that is the subject of an equivalent exemption granted by the foreign country in which the foreign corporation seeking qualified foreign corporation status is organized.

Section 1.883–1(c)(1) describes the general requirements that a foreign corporation must satisfy to be considered a qualified foreign corporation. A qualified foreign corporation is a corporation, as defined in §§ 301.7701–2(b) and 301.7701–3, that is engaged in the international operation of ships or aircraft and that is organized in a qualified foreign country. A qualified foreign corporation must also satisfy one of the three stock ownership tests described in paragraph (c)(2) of this section as well as the substantiation and reporting requirements described in paragraph (c)(3) of this section.

Paragraph (c)(2) describes the three stock ownership tests. Generally, a foreign corporation must be able to demonstrate and document that more than fifty percent of the value of its stock is owned by qualified shareholders, as determined under § 1.883–4 (qualified shareholder stock ownership test). However, a foreign corporation will not be required to demonstrate that it satisfies the qualified shareholder stock ownership test if it can demonstrate either that its stock is primarily and regularly traded on an established securities market in a qualified foreign country or in the United States, as determined under § 1.883–2 (publicly-traded test), or that it is a qualifying controlled foreign corporation as determined under § 1.883–3 (CFC test).

To satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section, a foreign corporation must include the information set out in that paragraph in its Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," in such form and manner as the Form 1120F and its accompanying instructions prescribe. The information to be submitted with the return includes information set out in §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e), as applicable, relating to information demonstrating that the foreign corporation satisfies one of the three stock ownership tests. Section 1.883–5(c) provides a transition rule that will require such information to be included in a statement attached to the return until the Form 1120F and its instructions are amended to conform to final regulations under this section.

Paragraph (c)(3)(ii) provides that if the Commissioner requests in writing that the foreign corporation substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.882–3(d) or 1.883–4(e), the foreign corporation must provide the supporting documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide all of the information requested within the 60 day period but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the supporting documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause shall be determined by the Commissioner after considering all the facts and circumstances.

Paragraph (c)(4) contains a rule that allows the Commissioner to retain the right to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

Paragraph (d) defines a *qualified foreign country* as a foreign country that grants an equivalent exemption to corporations organized in the United States for the relevant category of qualified income earned by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of income but not with respect to other categories of income.

Operation of Ships or Aircraft

Section 1.883–1(e) explains what it means to be engaged in the operation of ships or aircraft for purposes of these proposed rules and provides examples of activities that are not treated as the operation of ships or aircraft. Under the general rule, only a corporation that is an owner, lessor, or lessee of an entire ship or aircraft used to carry cargo or persons for hire can be considered engaged in the operation of ships or aircraft.

The term *operation of ships or aircraft*, which includes the operation of a single ship or aircraft, means: The carrying of cargo or passengers for hire; the time or voyage charter of a ship or the wet lease of an aircraft, as those terms are defined in the regulations; and the bareboat charter of a ship or the dry lease of an aircraft, as those terms are defined in the regulations. The term also includes active participation by a corporation that is otherwise engaged in the operation of ships or aircraft in a pool, partnership, strategic alliance, joint operating agreement or code sharing arrangement, or other joint venture that is itself engaged in the operation of ships or aircraft.

Paragraph (e)(2) provides as examples that activities of the following will not be considered *operation of ships or aircraft:* A non-vessel operating common carrier (an NVOCC); a space or slot charterer; a ship management company; a company that obtains ships crews; a ship's agent; a ship or aircraft broker; a freight forwarder; a travel agent; a tour operator; a pure container leasing company; a passive investor in a shipping or aircraft business; or a concessionaire. The proposed rule also provides the definitions of a number of relevant terms.

International Operation of Ships or Aircraft

Section 1.883–1(f) distinguishes international from domestic operation of ships or aircraft. In TAMRA, Congress directed that transportation income derived solely from sources within the United States under section 863(c)(1) should not be granted exemption from U.S. income taxation under section 883. Congress also specified, however, that the reciprocal exemption generally should be available for income from international transport activity that is treated as 50 percent U.S. source income under section 863(c)(2). This is the same type of income on which the gross basis tax of section 887 generally would be imposed. See, S. Rep. No. 100–445, 100th Cong., 2d Sess. 241–242 (1988). However, the reciprocal exemption may not necessarily be available to all types of persons earning that type of income.

To carry out Congress's intent, § 1.883–1(f)(1) defines the term *international operation* to mean the operation of ships or aircraft on voyages or flights that begin or end in the United States and correspondingly end or begin in a foreign country, determined on a passenger-by-passenger or cargo-by-cargo basis, as discussed below. The term specifically excludes a "cruise to nowhere" that begins in a U.S. port, travels out into open waters beyond the territorial limits of the United States, and then returns to the U.S. port of origin without touching a foreign port during the voyage. The fact that a ship travels beyond United States territorial limits does not, in itself, constitute international operation of ships or aircraft if there is no stop in a foreign country, as determined under paragraph (f)(2). The same rules apply for aircraft.

Paragraph (f)(2) provides rules for determining the beginning and ending points of a voyage for purposes of the definition of the term *international operation*. Except in the case of a round trip cruise, the carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at a U.S. intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change aircraft or ships at the U.S. intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if en route to the passenger's final destination, a stop is made at a U.S. intermediate point provided the passenger does not change aircraft or ships at the U.S. intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. intermediate point if the passenger changes aircraft or ships at that location. See, H.R. Rep No. 432, 98th Cong., 2d Sess. 1340 (1984); H.R. Rep. No. 861, 98th Cong., 2d Sess. 934 (1984).

The carriage of a passenger on a round trip cruise that begins in the United States and stops at one or more foreign ports for day excursions, maintenance or other business reasons, and returns to the same or another U.S. port will be treated as the international operation of a ship. Pursuant to paragraph (f)(2)(i)(A) such a round trip cruise may also include one or more intermediate stops at a U.S. port or ports for similar purposes.

Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft, or provided the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin even if, en route to its final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft or provided both that the same taxpayer transports the cargo on both legs of the trip and that the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point will not change these results. See, H.R. Rep No. 432, 98th Cong., 2d Sess. 1340 (1984); H.R. Rep. No. 861, 98th Cong., 2d Sess. 934 (1984), reprinted in 1984–3 C.B. Vol.2., 1, 188.

Whether income is from international operation is generally to be determined on a passenger-by-passenger and item of cargo-by-item of cargo basis. In the case of income from the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income is derived from international operation is determined by reference to the use of the ship or aircraft by the lowest-tier lessee-operator in the chain of lessees.

A person that is the lessor of a ship under a bareboat charter or of an aircraft under a dry lease will be treated as engaged in the international operation of such ship or aircraft to the extent that the lowest-tier lessee-operator in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire during the shorter of the period of the charter or the taxable year. Paragraph (f)(2)(iii) adopts the guidance in section 5.02 of Rev. Proc. 91–12 (1991–1 C.B. 473), for determining the amount of income from the bareboat charter of a ship or the dry lease of an aircraft that is treated as derived from the international operation of the ship or aircraft. The rule provides that a foreign corporation must use a reasonable method for determining the proportion of the charter income that is attributable to such international operation.

One reasonable method, described in § 1.883–1(f)(2)(iii)(A), is based on the proportion of the days in the term of the charter or the taxable year, whichever is shorter, that the ship or aircraft is used in international operation by the lowest tier lessee-operator in its chain of lessees. For this purpose, the number of

days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2) (for example, days during which the ship or aircraft is out of service while being repaired or maintained) should not be included in the numerator of the ratio. Another reasonable method described in paragraph (f)(2)(iii)(B) is based on the proportion of the gross income of the lowest tier lessee-operator of the ship or aircraft derived from the international operation of the ship or aircraft during the taxable year. An allocation based on the net income of such lessee-operator will not be considered reasonable for this purpose due to the administrative difficulties involved in determining and verifying the proper allocation of the operator's expenses.

Activities Incidental to International Operations

Some corporations engaged in the operation of ships or aircraft earn income from activities that are so closely related to the primary activity of operation of ships or aircraft that it is appropriate to exclude income from these activities from taxation under section 883 of the Code. By contrast, in cases where the operator's activities are not so closely related to the primary activity of operation of ships or aircraft, it is not appropriate to exclude the income from such activities from taxation.

The purpose of § 1.883–1(g) is to provide rules for determining when a closely related activity is incidental to the business of the international operation of ships or aircraft. Paragraph (g)(1) provides examples of activities that will be considered incidental to the international operation of ships or aircraft. For example, where a ship operator contracts for the international carriage of cargo or passengers on a second operator's ship, the activity may be incidental to the international operation of a ship by the first operator. Other examples are: the temporary investment of working capital funds; the sale of tickets for international travel by a ship operator for another ship operator, or by an air carrier for another air carrier; the rental by the operator of a ship or aircraft of containers and related equipment used in connection with the international operation of its ship or aircraft; and bareboat charter of ships or aircraft normally operated on international voyages or flights but currently not needed by the operator, and that are used for international voyages or flights by the lessee/charterer.

If an operator enters into a contract that requires a concessionaire to provide services onboard during the international operation of the operator's ship or aircraft and if the operator receives income from such services, then the income of the operator is appropriately treated as incidental to the operation of the ship or aircraft by the operator.

Paragraph (g)(2) provides examples of activities that are not considered incidental to the international operation of ships or aircraft. These examples include: the sale of or arranging for train travel, bus transfers, land tour packages, or port city hotel accommodations within the United States or a foreign country; and the sale of airline tickets by a cruise ship operator or cruise tickets by an air carrier. Further examples include the sale or rental of U.S. real property; treasury activities involving the investment of excess funds or funds awaiting repatriation generated by the operation of ships or aircraft; rental of containers for a domestic leg of transportation in connection with international carriage of cargo; mere passive investment in an enterprise engaged in the international operation of ships or aircraft; services performed by the operator for parties other than passengers, consignors or consignees; or the carriage of passengers or cargo on ships or aircraft on domestic legs, not treated as international operation, either by the foreign operator or by a U.S. member of a joint operating agreement, such as a code sharing arrangement, pooling or alliance.

Determining Whether a Foreign Country Grants an Equivalent Exemption

Section 1.883–1(h)(1) addresses the conditions under which a foreign country's exemption of certain categories of income from income tax may constitute an "equivalent exemption" within the meaning of section 883 of the Code. A foreign country will be considered to grant an equivalent exemption if: the foreign country generally imposes no tax on income, including income from the international operation of ships or aircraft; the foreign country specifically provides a domestic law exemption from a tax on income from the international operation of ships or aircraft either by statute, decree, or otherwise; or the foreign country provides for a reciprocal exemption by means of an exchange of diplomatic notes or other agreement with the United States. In addition, solely with respect to determining whether a shareholder is a resident of a qualified foreign country in § 1.883–4 (for purposes of the qualified shareholder stock ownership test), the foreign country may provide a reciprocal exemption with respect to income from the international operation of ships or aircraft by means of an income tax convention with the United States. Paragraph (h)(3) of this section discusses under what circumstances an income tax convention will be considered to provide an equivalent exemption.

Whether a foreign country provides an equivalent exemption is determined separately with respect to each of the following categories of income—

(A) Income from the carriage of cargo and passengers;

(B) Time or voyage (full) charter income;

(C) Bareboat charter income;

(D) Incidental bareboat charter income;

(E) Incidental container-related income;

(F) Any other income that is incidental to the business of operating ships or aircraft; or

(G) Gains of the operator from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that operator in international operation.

If an equivalent exemption is not granted by the foreign country for a category of income, income in that category cannot be exempted from U.S. tax regardless of whether the foreign country grants an equivalent exemption for other categories of income. Furthermore, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa.

Section 1.883–1(h)(3) contains a special rule regarding income tax conventions. If a foreign corporation is organized in a foreign country that provides an equivalent exemption only through an income tax convention with the United States, the foreign corporation may claim benefits under section 894 and the income tax convention, but not under section 883. See, H.R. Rep. No. 841, 99th Cong., 2d Sess., (1986); Staff of joint Comm. on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, 931 (1987). If, however, the foreign corporation is organized in a country that offers an equivalent exemption under an income tax convention and also by some other means, such as by a diplomatic note, the foreign corporation may choose annually whether it will claim an

exemption under section 894 and the income tax convention or under section 883 by means of the diplomatic note. Such an election must be made with respect to all income of the foreign corporation from the international operation of ships or aircraft and cannot be made separately with respect to each category of such income. If a foreign corporation elects to be covered under section 883 rather than under the income tax convention, the foreign corporation must satisfy the requirements of this proposed rule, including demonstrating that it satisfies the stock ownership test of paragraph (c)(2) of this section.

Section 1.883–1(h)(4) describes certain foreign residence-based taxation systems that may not satisfy the equivalent exemption requirements of this section. For example, the exemption granted by a foreign country's law or income tax convention must be a complete exemption and not merely a reduction to a non-zero rate of tax levied against corporations organized in the United States engaged in the international operation of ships or aircraft, except in the case of a reduction to a zero rate for an unlimited period of time. An exemption granted by a foreign country's law that reduces the rate of tax to a zero rate for only a limited period of time, such as in the case of a tax holiday, would not be considered a complete exemption for purposes of this rule.

Similarly, many foreign countries impose tax only on the income of ships or aircraft derived from transporting cargoes into, but not out of, the country or vice versa. Such a foreign country will not be treated as granting an equivalent exemption on the non-taxed income. For example, a foreign country that imposes tax only on the transportation of cargo carried out of the country (outbound freight) will not be treated as granting an equivalent exemption for income from the transporting of cargo into that country (inbound freight). Thus, if a corporation organized in such a country derives U.S. source income from voyages that end in the United States, it cannot claim an exemption on the basis of an equivalent exemption granted by the foreign country for inbound freight income. With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting cargo both inbound and outbound before it will be considered to grant an equivalent exemption.

An equivalent exemption also does not arise where a foreign country only exempts tax on specific types of cargo. Unless a country exempts income from transporting all types of cargo, it will not be considered to grant an equivalent exemption for purposes of this section.

A foreign country that has a territorial tax system will be considered to grant an equivalent exemption only if the tax system treats income from the international operation of ships or aircraft as 100 percent foreign source, and thereby not subject to tax, even if the income is derived from a voyage or flight that begins or ends in that foreign country.

Pursuant to authority provided in section 883(a)(5) of the Code, these rules provide that if a foreign country generally grants an equivalent exemption to corporations organized in the United States, but also imposes a residence-based tax on certain corporations organized in the United States, the foreign country may nevertheless be considered to grant an equivalent exemption and to be a qualified foreign country if the residence-based tax is imposed only on a corporation organized in the United States that is treated as a resident of the other country because its place of management or control, or other comparable standard, is in that foreign country. See, H.R. Rep. No. 247, 101st Cong., 1st Sess. 1415 (1989). If instead the residence-based tax is imposed on a corporation organized in the United States that is not managed and controlled in that foreign country, the foreign country would not be treated as a qualified foreign country and would not grant an equivalent exemption for purposes of this section.

Finally, a foreign country must provide an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption for income from bareboat charter of aircraft.

Pursuant to section 872(b)(7), the proposed rule explains in § 1.883–1(i) that a possession of the United States is considered to be a foreign country for purposes of this proposed rule. Thus, a possession on a mirror system is a qualified foreign country and is considered to grant an equivalent exemption to corporations organized in the United States. The term *mirror system* refers to the general applicability of the Code in the possession with the name of the possession substituted for *United States* in the Code where appropriate. Therefore, a qualified foreign corporation that is organized in a possession on a mirror system, and that operates a transportation business between the possession and the United States, could exclude its income from the international operation of ships or aircraft from its gross income for purposes of U.S. Federal income tax and such income could be exempt from U.S. income tax. In cases where a possession is not on a mirror system, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law.

Section 1.883–1(j) confirms the rule of section 265(a)(1). If a qualified foreign corporation derives income from a non-exempt activity as well as qualified income, and both are effectively connected with the conduct of a U.S. trade or business, the foreign corporation may not deduct from any income derived from the non-exempt activity any amount otherwise allowable as a deduction from qualified income that is excluded from gross income and exempt under this proposed rule.

Stock Ownership Tests

As provided in § 1.883–1(c)(2), a foreign corporation must satisfy one of three stock ownership tests to be considered a qualified foreign corporation. It must demonstrate that more than fifty percent of the value of its stock is owned by qualified shareholders, as determined under § 1.883–4 (qualified shareholder test) or that its stock is primarily and regularly traded on an established securities market in a qualified foreign country or in the United States, as determined under § 1.883–2 (publicly-traded test), or that it is a controlled foreign corporation as determined under § 1.883–3 (CFC test). Separate reporting and documentation requirements apply to each test. A foreign corporation that satisfies the publicly-traded test or the CFC test and its relevant reporting and documentation requirements does not have to comply with the reporting and documentation requirements of the qualified shareholder test.

The Publicly-Traded Stock Ownership Test

The branch profits tax rules under § 1.884–5(d) provide the framework for the publicly traded test due to the strong similarities between the statutory language in sections 883(c) and 884(d)(4)(B) and the fact that both statutes were first enacted as part of the Tax Reform Act of 1986. Section 1.883–2(a) provides that a corporation is a publicly-traded corporation if its stock is primarily and regularly traded on one or more established securities markets in any qualified foreign country or in the United States. The proposed rule

generally follows § 1.884–5(d)(2) of the branch profits tax regulations in defining the term *established securities market*, except that the proposed rule does not require the foreign securities exchange to be the principal exchange in a country. In addition, the proposed rule follows § 1.884–5(d)(3) in defining the term *primarily traded*, except that in the proposed rule the corporation's stock may be traded in any qualified foreign country or the United States and is not limited to trading only in the country where the corporation is organized or the United States.

Similarly, the proposed rule follows § 1.884–5(d)(4)(i) in defining the general rule for the term *regularly traded*. Section 1.883–2(d) provides that stock of a foreign corporation is regularly traded if one or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and 80 percent or more of the total value of all classes of stock of such corporation are listed on an established securities market or markets during the taxable year; and, with respect to each class relied on to meet the 80 percent requirement, trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the taxable year (or ⅙ of the number of days in a short taxable year). In addition, the aggregate number of shares in each such class that are traded on such market or markets during the taxable year must be at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the short taxable year multiplied by the number of days in the short taxable year, divided by 365).

In addition, if a class of stock of the foreign corporation is traded on an established securities market in the United States, and it is regularly quoted by brokers or dealers making a market in the stock, it can also be treated as meeting the trading requirements, provided that the closely-held exception, described below, does not apply. A broker or dealer makes a market in a stock only if the broker or dealer holds himself out to buy or sell the stock at the quoted price.

A closely-held class of stock, as set out in § 1.883–2(d)(3)(i), cannot be treated as meeting the trading requirements of the publicly-traded stock ownership test. See, § 1.884–5(d)(4)(iii)(A). Section 1.883–2(d)(3)(i) provides that a class of stock is closely held if at any time during the taxable year, one or more 5 percent shareholders own, in the aggregate, 50 percent or more of the value of the outstanding shares of the class of stock at any time during the taxable year. A five percent shareholder is any person who owns at least five percent of the value of the outstanding shares of the class of stock, taking into account stock owned by related persons. See § 1.883–2(d)(3)(iii). See also § 1.884–5(d)(4)(iii)(B).

For this purpose, persons will be treated as related if they are related within the meaning of section 267(b). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

The closely-held test in this proposed rule differs in one significant respect from the rule in the branch profits tax regulations. The proposed rule allows the foreign corporation to look through the five percent shareholders of the closely-held class to the ultimate owners and to demonstrate that such owners are qualified shareholders, provided no shares of stock in the chain of ownership are issued in bearer form. In the proposed rule, a class of stock of a foreign corporation that is otherwise regularly traded but is also closely-held will be treated as regularly traded if the foreign corporation demonstrates that more than 50 percent of the value of that class of stock is owned, or is treated as owned by applying the rules of attribution contained in § 1.883–4(c), by qualified shareholders for more than half of the days of the taxable year. The requirements for being treated as a qualified shareholder are described in § 1.883–4(b). Under this rule, an individual cannot be treated as a qualified shareholder if any corporation in the relevant chain of ownership issues stock in bearer form.

Thus, a foreign corporation with a class of stock that is closely-held may nevertheless count that class as regularly traded provided that the foreign corporation is able to establish that more than 50 percent of the value of the entire class of stock is owned (for example, through a partnership, trust or holding company) by persons who would themselves be qualified shareholders. The branch profits tax regulations do not treat a closely-held class of stock as regularly traded if 50 percent or more of the value of the closely-held block is owned by one or more 5 percent shareholders who are not qualifying shareholders, as defined in § 1.884–5(b)(1) and those regulations do not permit the foreign corporation to look beyond the 5 percent shareholders to the owners. The IRS is considering whether to make conforming changes to § 1.884–5(d)(4)(iii).

Paragraph (d)(4) is similar to § 1.884–5(d)(4)(iv) and provides that trades between related persons described in section 267(b), as modified by § 1.883–2(d)(3)(iii), and trades conducted in order to meet the regularly traded requirements are disregarded. A class of stock shall not be treated as meeting the trading requirements if there is a pattern of trades conducted to meet such requirements. For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d) of this section.

Section 1.883–2(d)(5) provides an example to illustrate the application of the rules regarding regularly traded stock and the closely-held exception.

Section 1.883–2(e) provides that a foreign corporation relying on the publicly-traded stock ownership test to establish that it satisfies the stock ownership test of § 1.883–1(c)(2) must substantiate that it meets such requirements. The proposed rule requires, for example, that if a class of stock of a foreign corporation is closely-held within the meaning of paragraph (d)(3)(i), then the foreign corporation must obtain an ownership statement from each qualified shareholder upon whom it relies to meet the exception to the closely-held test. The ownership statements are described in § 1.883–4(d). In addition, the foreign corporation must maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information.

Section 1.883–2(f) describes the information that the foreign corporation must include in its Form 1120F in order to rely on the publicly-traded stock ownership test to satisfy the stock ownership test of § 1.883–1(c)(2).

Controlled Foreign Corporation Stock Ownership Test.

Section 1.883–3 provides rules that a foreign corporation must follow if the foreign corporation relies on this section to satisfy the stock ownership test of

§ 1.883–1(c)(2). A controlled foreign corporation (CFC) satisfies the stock ownership test of § 1.883–1(c)(2) if it is organized in a qualified foreign country, satisfies the income inclusion test of paragraph (b) of this section, and satisfies the documentation and reporting requirements of paragraphs (c) and (d) of this section, respectively (the CFC test). For purposes of these proposed rules, a CFC that fails the income inclusion test may only satisfy the stock ownership test of § 1.883–1(c)(2) if the CFC demonstrates that it meets either the publicly traded test of § 1.883–2 or the qualified shareholder test of § 1.883–4.

To satisfy the income inclusion test of paragraph (b), the foreign corporation must be a CFC as defined in section 957(a) if such section were applied without regard to section 318(a)(4). In addition, more than 50 percent of the CFC's subpart F income (as defined in section 952) derived from the international operation of ships or aircraft must be included, pursuant to section 951, in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations for the taxable years of such persons in which the taxable year of the CFC ends. This additional requirement was included in order to prevent inappropriate extension of benefits under section 883. The rule is illustrated by two examples.

Paragraph (c) provides that a CFC relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must establish all the facts necessary to satisfy the Commissioner that it qualifies under the CFC stock ownership test. To meet this requirement with respect to the income inclusion test, the CFC must obtain the documentation described in paragraph (c)(2). This documentation includes a copy for the taxable year of the Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations (if otherwise required to be filed) prepared by or on behalf of any U.S. shareholder that is a partnership, estate or trust. In addition, the documentation must include a written statement from each such U.S. shareholder that is a partnership, estate or trust providing the name, address, taxpayer identification number and percentage of interest in the U.S. shareholder held by each partner, beneficiary or other interest owner that is a U.S. citizen, individual resident of the United States or domestic corporation.

Finally, paragraph (d) explains that if a CFC is relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2), it must include certain additional information in its Form 1120F for the taxable year, along with the information required to be included in its return by § 1.883–1(c)(3). This additional information is set out in paragraph (d) and should be current as of the end of the corporation's taxable year.

Qualified Shareholder Stock Ownership Test

Section 1.883–4(a) provides that a foreign corporation shall satisfy the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of its stock (by value) is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders. In addition, a foreign corporation must meet the substantiation and reporting requirements of paragraphs (d) and (e) of this section (qualified shareholder stock ownership test).

Paragraph (b)(1) of this section explains that a shareholder is a qualified shareholder only if the shareholder meets certain criteria. First, the shareholder must be a resident in a country that offers an equivalent exemption for the same type of income as that earned by the foreign corporation. Second, the shareholder must not own its interest in the foreign corporation through bearer shares either directly or by applying the attribution rules of paragraph (c) of this section. Third, the shareholder must provide to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation must meet the reporting requirements of paragraph (e) of this section with respect to such shareholder. Finally, the shareholder must be described in one of the following categories of qualified shareholders—

(A) An individual who is not a beneficiary of a pension fund, as described in paragraph (E), and who is a resident of a qualified foreign country, as determined under paragraph (b)(2);

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded rules of § 1.883–2;

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country; or

(E) A beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) administered in or by a qualified foreign country (whose residency is determined under paragraph (d)(3)).

Paragraph (b)(2) of this section explains when an individual is a resident of a qualified foreign country for purposes of this proposed rule. An individual is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (for example, an individual who is liable to tax only on a remittance basis in a foreign country may not be treated as a resident of that country), and in addition, either: (1) The individual's tax home, within the meaning of paragraph (b)(2)(ii) of this section, is within that qualified foreign country 183 days or more of the taxable year; or (2) the individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraphs (d)(3) of this section.

Paragraph (b)(2)(ii) explains that for purposes of this section an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section and, therefore, is not a qualified shareholder unless either a special rule in paragraphs (d)(3)(ii) through (v) of this section applies or the individual demonstrates that he is fully liable to tax as a resident in such country. If further guidance is needed to determine the tax home of an individual for the purpose of determining whether the individual is a qualified shareholder under this paragraph, the proposed rule anticipates that the foreign corporation would look to published guidance under section 911(d)(3), with the exception of guidance relating to the treatment of itinerants.

Paragraph (b)(3) provides that a shareholder otherwise described in paragraph (b)(1) of this section may be a resident of a foreign country that provides an equivalent exemption for the category of income at issue through an income tax convention with the

United States. If the shareholder relies on the convention to demonstrate that the country of residence provides an equivalent exemption and the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, or in the limitation on benefits article, such as a percentage of resident ownership, the shareholder is not a qualified shareholder unless the corporation seeking qualified foreign corporation status would satisfy any such additional requirement if it were organized in such foreign country. The proposed rule offers two examples to illustrate this rule.

Paragraph (b)(4) explains the requirements for a not-for-profit organization to be a qualified shareholder. This rule generally follows the rules in the first paragraph of § 1.884–5(b)(1)(iv) of the branch profits tax regulations. Similarly, paragraph (b)(5) explains the requirements that a pension fund must satisfy in order for its beneficiaries to be qualified shareholders. The proposed rule addresses both government and non-government pension funds and defines the term beneficiary of a pension fund. This paragraph generally follows § 1.884–5(b)(8)(i) through (iii) of the branch profits tax regulations.

Paragraph (c) of this section contains the rules for determining constructive ownership for purposes of applying the stock ownership test of § 1.883–1(c)(2) and the qualified shareholder stock ownership test of paragraph (a) of this section. Paragraph (c)(1) provides that stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders as provided in paragraphs (c)(2)through (6) of this section. The proportionate interest rules of this paragraph apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period that is taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c).

Paragraph (c)(2) explains that a partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of three distributive shares: The partner's percentage distributive share of the partnership's dividend income from the stock; the partner's percentage distributive share of gain from disposition of the stock by the partnership; or the partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership. This rule generally follows the constructive ownership rules in § 1.884–5(b)(2)(ii) of the branch profits tax regulations. It differs, however, because all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. This divergence was necessary because one country may be a qualified foreign country while another may not and it is necessary for the foreign corporation to identify the value of the stock owned by residents of each country. Several examples illustrate the rules of this paragraph.

Paragraph (c)(3) of this section provides rules for determining the owners of stock owned by or for a trust or estate. These rules generally adopt the rules of § 1.884–5(b)(2)(iii) of the branch profits tax regulations. Similarly, paragraphs (c)(4) and (5) provide rules for determining the owners of stock owned by corporations that issue stock and by mutual insurance companies and similar entities, respectively. These rules adopt the rules of § 1.884–5(b)(2)(iv) and (v) of the branch profits tax regulations, respectively.

Paragraph (c)(6) explains how to compute the beneficial interests of individuals in non-government pension funds. This rule differs from the rule in § 1.884–5(b)(8)(iv) of the branch profits tax regulations in that the proposed rule provides that stock held by a non-government pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if certain conditions are met. For example, the trustees, directors or other administrators of the pension fund must have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock).

The branch profits tax regulations determine such beneficial interests on an actuarial basis. The other conditions that must be satisfied generally follow those set out in § 1.884–5(b)(8)(iv).

Paragraph (d)(1) provides that a foreign corporation that relies on this section to satisfy the ownership requirements of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned by applying paragraph (c) of this section, by qualified shareholders. A foreign corporation cannot meet this requirement with respect to any stock issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

Paragraph (d)(2)(i) provides that, except as provided in paragraph (d)(3), a person may only be a qualified shareholder if for the relevant period, the person completes an ownership statement, which is described in paragraph (d)(4) of this section. In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status must also complete an intermediary ownership statement, which is described in paragraph (d)(4)(v). In addition, the foreign corporation must receive such ownership statements and retain them with the corporate books and records until the close of statute of limitations for the taxable year to which the statements relate.

The ownership statements required in paragraph (d)(2)(i) remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30,

2000, remains valid through December 31, 2003, unless circumstances change that make the information of the statement no longer correct.

Paragraph (d)(3) contains special rules for determining the residence of certain shareholders. These rules are intended to simplify and reduce the effort needed by the foreign corporation and its intermediary shareholders to obtain the documentation required to substantiate whether the foreign corporation satisfies the qualified shareholder stock ownership test. If one of these special rules applies, the foreign corporation is not required to obtain an ownership statement from the individual owners covered by that rule.

Paragraph (d)(3)(ii) provides a special rule for registered shareholders owning less than one percent of widely-held corporations. This rule is adopted from § 1.884–5(b)(3)(iii) of the branch profits tax regulations. A foreign corporation with at least 250 registered individual shareholders, that is not a publicly-traded corporation, as described in § 1.883–2, (a widely-held corporation), may not be required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year. If such widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less that one percent of such intermediary, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if the individual's address of record is not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent and the officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

Paragraph (d)(3)(iii) provides special rules for pension funds. An individual who is a beneficiary of a government pension fund shall be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section, relating to ownership statements from pension funds. An individual who is a beneficiary of a non-government pension fund having more than 100 beneficiaries shall be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. This rule applies only if the non-government pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*2*) of this section.

Paragraph (d)(3)(iv) provides a special rule for publicly-traded corporations owning a direct or indirect interest in the foreign corporation seeking qualified foreign corporation status. Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly traded corporation will be treated as owned by a person resident in the country where the publicly traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded shareholder along with copies of any relevant ownership statements that the publicly traded shareholder relies on to satisfy the exception to the closely-held class of stock rule of § 1.883–2(d)(3)(ii).

Finally, paragraph (d)(3)(v) provides a special rule for not-for-profit organizations. For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine where such persons are resident, provided that: The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary; the officers, directors or administrators or the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and the foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for profit organization.

Paragraph (d)(4) describes the information that must be obtained by a corporation seeking qualified foreign corporation status for each taxable year if the foreign corporation relies on § 1.883–4 to meet the stock ownership requirements of § 1.883–1(c)(2), or to demonstrate that it is not a closely-held corporation. Treasury and the IRS solicit comments with respect to the appropriateness of these information requirements.

Paragraph (d)(4)(i) provides that an ownership statement from an individual shareholder is a written statement signed under penalties of perjury stating certain general information about a shareholder's ownership interest and country of residence. Paragraph (d)(4)(ii) provides additional information that must be included if the shareholder is a foreign government. Paragraph (d)(4)(iii) provides additional information that must be included if the shareholder is a publicly traded corporation. Paragraph (d)(4)(iv) provides additional information that must be included if the shareholder is a not-for-profit organization.

The foreign corporation seeking qualified foreign corporation status must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified shareholders upon whom it relies to meet the qualified shareholder stock ownership test. Paragraph (d)(4)(v) provides that an intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) stating certain general information about the intermediary's ownership interest and residence. Paragraph (d)(4)(v)(B) provides additional information that must be included if the shareholder is a widely-held intermediary with registered shareholders owning less than one percent of the widely-held intermediary. Paragraph (d)(4)(v)(C) provides additional information that must be included if the shareholder is a pension fund. This paragraph describes the information to be included in the intermediary ownership statement by both government and non-government pension funds and provides that the determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's taxable year to which the determination is relevant.

Paragraph (d)(5) requires the foreign corporation seeking qualified foreign corporation status to retain the documentation described in paragraphs (d)(3) and (4) of this section until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation

relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request.

A foreign corporation relying on the ownership requirements of this section to demonstrate that it is a qualified foreign corporation for purposes of § 1.883–1(c)(2) must provide the information described in paragraph (e) in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for each taxable year. The information should be current as of the end of the corporation's taxable year. This information is to be based on an analysis of the ownership records of the foreign corporation, as well as on the ownership statements and other documentation that are obtained from its shareholders.

Proposed Effective Dates

The effective date provisions for the proposed rule are contained in § 1.883–5. The proposed rule applies to taxable years of the foreign corporation ending 30 days or more after the date the proposed rule is published as a final regulation in the **Federal Register**. When the regulation is final, taxpayers may rely on all the provisions of this section for guidance and may elect to apply all such substantive provisions for any open taxable year beginning after December 31, 1986, and ending before the date the final regulation is effective. Such election will be applicable for the year of the election and for all subsequent taxable years. However, in no event will § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies one of three stock ownership tests) apply to any taxable years ending prior to the effective date of this regulation.

Section 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) requires that certain information be included in the foreign corporation's Form 1120F, "U.S. tax Return of Foreign Corporation." Sections 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to information to be included to demonstrate whether the foreign corporation satisfies one of three stock ownership tests) require that additional information also be included in such return. When this regulation becomes generally applicable, and until the taxable year for which the Form 1120F and its instructions are revised to conform to this regulation and the foreign corporation seeking qualified foreign corporation status is otherwise directed by such instructions, the information required in § 1.883–1(c)(3) and § 1.883–2(f), 1.883–3(d) or 1.883–4(e), as applicable, must be included in a written statement signed under penalties of perjury by a person authorized to sign the return, attached to the Form 1120F, and filed with the return.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. An initial regulatory flexibility analysis has been prepared as required for the collection of information in this notice of proposed rulemaking under 5 U.S.C. 603. The analysis is set forth in this preamble under the heading "Initial Regulatory Flexibility Analysis."

Initial Regulatory Flexibility Analysis

This initial analysis is prepared pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The objective of the proposed regulations is to provide guidance to foreign corporations engaged in the international operation of a ship or ships or aircraft. This guidance will enable the foreign corporation to determine if it is eligible to exclude its income from these activities from gross income for purposes of its United States Federal income tax. The legal basis for these requirements is section 883. The IRS and Treasury are not aware of any Federal rules that duplicate, overlap, or conflict with the proposed regulations.

The documentation and reporting requirements of the proposed regulations enable the IRS to identify those taxpayers that may or may not be eligible to claim a reciprocal exemption. In addition, analysis of the required shareholder documentation will enable the foreign corporation to correctly file its U.S. Federal income tax return.

There are approximately 1,400 foreign corporations that operate a ship or ships or aircraft on voyages or flights to or from the United States annually. These foreign corporations all have an obligation to file a U.S. Federal income tax return, regardless of whether they are entitled to a reciprocal exemption. However, many of those corporations are organized in qualified foreign countries and may be eligible to exempt their income from the international operation of a ship or ships or aircraft from U.S. tax. Because it is impossible to determine at this time which of these foreign corporations satisfies the ownership requirements of the proposed rule, an estimate of the number of small entities that would be affected by these regulations is unavailable. A foreign corporation that complies with the documentation requirements of these proposed rules should have the information necessary to determine with certainty whether it is eligible for an equivalent exemption. This, in turn, is expected to create the additional benefits of increasing compliance with the filing requirements of the Internal Revenue Code and enabling the IRS to confirm whether the foreign corporation is entitled to an exemption.

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of the collections of information on small entities. In considering the significant alternatives that would be permissible under the Code and would enable the IRS to ensure compliance with the Code, the IRS and Treasury concluded that the alternatives generally would impose equal or greater burdens.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for April 27, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish

to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 5, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Patricia A. Bray of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.883–1 is also issued under 26 U.S.C. 883.

Section 1.883–2 is also issued under 26 U.S.C. 883.

Section 1.883–3 is also issued under 26 U.S.C. 883.

Section 1.883–4 is also issued under 26 U.S.C. 883.

Section 1.883–5 is also issued under 26 U.S.C. 883. * * *

Par. 2. Section 1.883–0 is added to read as follows:

§ 1.883–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.883–1 through 1.883–5.

§ 1.883–0 Outline of major topics.

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) General rule.
(b) Qualified income.
(c) Qualified foreign corporation.
(1) General rule.
(2) Stock ownership tests.
(3) Substantiation and reporting requirements.
(i) General rule.
(ii) Further documentation.
(4) Commissioner's discretion to cure defects in documentation.
(d) Qualified foreign country.
(e) Operation of ships or aircraft.
(1) General rule.
(2) Activities not considered operation of ships or aircraft.
(3) Definitions.
(i) Full charter.
(ii) Time charter.
(iii) Voyage charter.
(iv) Wet lease.
(v) Bareboat charter.
(vi) Dry lease.
(vii) Space or slot charter.
(viii) Nonvessel operating common carrier (NVOCC).
(ix) Code sharing arrangements.
(f) International operation.
(1) General rule.
(2) Determining whether income is from international operation.
(i) International carriage of passengers.
(A) In general.
(B) Round trip travel on cruise ships.
(ii) International carriage of cargo.
(iii) Bareboat charter of ships or aircraft used in international operations.
(A) Ratio based on use.
(B) Ratio based on gross income.
(g) Activities incidental to the international operation of ships or aircraft.
(1) General rule.
(2) Activities not considered incidental to the international operation of ships or aircraft.
(h) Equivalent exemption.
(1) General rule.
(2) Determining equivalent exemptions for each category of income.
(3) Special rule with respect to income tax conventions.
(4) Exemptions not qualifying as equivalent exemptions.
(i) General rule.
(ii) Reduced tax rate or time limited exemption.
(iii) Inbound or outbound freight tax.
(iv) Exemptions for limited types of cargo.
(v) Territorial tax systems.
(vi) Countries that tax on a residence basis.
(vii) Exemptions within categories of income.
(i) Treatment of possessions.
(j) Expenses related to exempt income not deductible from non-exempt income.

§ 1.883–2 Treatment of publicly-traded corporations.

(a) General rule.
(b) Established securities market.
(1) General rule.
(2) Exchanges with multiple tiers.
(3) Computation of dollar value of stock traded.
(4) Over-the-counter market.
(5) Discretion to determine that an exchange does not qualify as an established securities market.
(c) Primarily traded.
(d) Regularly traded.
(1) General rule.
(2) Classes of stock traded on a domestic established securities market treated as meeting trading requirements.
(3) Closely-held classes of stock not treated as meeting trading requirements.
(i) General rule.
(ii) Exception.
(iii) Treatment of related persons.
(4) Anti-abuse rule.
(5) Example.
(e) Substantiation that a foreign corporation is publicly-traded.
(i) In general.
(ii) Availability and retention of documents for inspection.
(f) Reporting requirements.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) General rule.
(b) Special rule for CFC's with certain entity shareholders.
(1) Income inclusion test.
(2) Examples.
(c) Substantiating CFC stock ownership.
(1) In general.
(2) Documentation from certain U.S. shareholders.
(3) Availability and retention of documents for inspection.
(d) Reporting requirements.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) General rule.
(b) Qualified shareholder.
(1) General rule.
(2) Residence of individual shareholders.
(i) General rule.
(ii) Tax home.
(3) Certain income tax convention restrictions applied to shareholders.
(i) Application of restrictions.
(ii) Examples.
(4) Not-for-profit organizations.
(5) Pension funds.
(i) Pension fund defined.
(ii) Government pension funds.
(iii) Non-government pension funds.
(iv) Beneficiary of a pension fund.
(c) Rules for determining constructive ownership.
(1) General rules for attribution.
(2) Partnerships.
(i) General rule.
(ii) Partners resident in same country.
(iii) Examples.
(3) Trusts and estates.
(i) Beneficiaries.
(ii) Grantor trusts.
(4) Corporations that issue stock.
(5) Mutual insurance companies and similar entities.
(6) Computation of beneficial interests in non-government pension funds.
(d) Substantiation of stock ownership.
(1) General rule.
(2) Application of general rule.
(i) Ownership statements.
(ii) Three-year period of validity.
(3) Special rules.
(i) Determining residence of certain shareholders.
(ii) Special rule for registered shareholders owning less than one percent of widely-held corporations.
(iii) Special rules for beneficiaries of pension funds.
(A) Government pension fund.
(B) Non-government pension fund.
(iv) Special rule for stock owned by publicly-traded corporations.

(v) Special rule for not-for-profit organizations.
(4) Ownership statements from shareholders.
(i) Ownership statements from individuals.
(ii) Ownership statements from foreign governments.
(iii) Ownership statements from publicly-traded corporate shareholders.
(iv) Ownership statements from not-for-profit organizations.
(v) Ownership statements from intermediaries.
(A) General rule.
(B) Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.
(C) Ownership statements from pension funds.
(*1*) Ownership statements from government pension funds.
(*2*) Ownership statements from non-government pension funds.
(*3*) Time for making determinations.
(5) Availability and retention of documents for inspection.
(e) Reporting requirements.

§ 1.883–5 Effective date.

(a) General rule.
(b) Election for retroactive application.
(c) Transition rule.

PAR. 3. Section 1.883–1 is revised to read as follows:

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) *General rule.* A foreign corporation shall exclude from its gross income for U.S. tax purposes any income it derives from the international operation of ships or aircraft if such income is qualified income under paragraph (b) of this section and if the corporation is a qualified foreign corporation under paragraph (c) of this section. See paragraph (e) of this section for the definition of the term *operation of ships or aircraft* and see paragraph (f) of this section for the definition of the term *international operation.*

(b) *Qualified income.* Qualified income is income from the international operation of ships or aircraft that—

(1) Is properly includible in any of the income categories described in paragraph (h)(2) of this section; and

(2) Is the subject of an equivalent exemption, as described in paragraph (h) of this section, granted by the qualified foreign country in which the foreign corporation seeking qualified foreign corporation status is organized. See paragraph (d) of this section for the definition of the term *qualified foreign country.*

(c) *Qualified foreign corporation*—(1) *General rule.* A qualified foreign corporation is a corporation, as defined in §§ 301.7701–2(b) and 301.7701–3 of this chapter, that is engaged in the international operation of ships or aircraft and that is organized in a qualified foreign country. To be a qualified foreign corporation the corporation must also satisfy one of the three stock ownership tests described in paragraph (c)(2) of this section and satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section. A corporation may be a qualified foreign corporation with respect to one category of qualified income but may not be with respect to another category of income. See paragraph (h)(2) of this section for a discussion of categories of qualified income.

(2) *Stock ownership tests.* To be a qualified foreign corporation the foreign corporation generally must demonstrate and document that more than fifty percent of the value of its stock is owned by qualified shareholders, as determined in § 1.883–4 (qualified shareholder stock ownership test). However, a foreign corporation will not be required to demonstrate that it satisfies the qualified shareholder stock ownership test if it can demonstrate either that its stock is primarily and regularly traded on an established securities market in a qualified foreign country or in the United States, as determined under § 1.883–2 (publicly-traded test), or that it is a controlled foreign corporation as determined under § 1.883–3 (CFC test).

(3) *Substantiation and reporting requirements*—(i) *General rule.* To be a qualified foreign corporation, a foreign corporation must include the following information in its Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," in the manner that the Form 1120F and its accompanying instructions prescribes—

(A) The corporation's name and address (including mailing code);

(B) The corporation's U.S. taxpayer identification number;

(C) The foreign country in which the corporation is organized;

(D) The applicable authority for an equivalent exemption, (e.g., a citation to either a statute in the country where the corporation is organized or a diplomatic note between the foreign country where the corporation was organized and the United States that provides an equivalent exemption, or to Rev. Rul. 97–31 (1997–1 C.B. 703) (see § 601.601(d)(2) of this chapter), if the foreign country is included in Part II or III of the Table of countries that currently provide an equivalent exemption);

(E) The category or categories of qualified income for which an exemption is being claimed;

(F) A reasonable estimate of the amount of each category of U.S. source qualified income for which the exemption is claimed;

(G) Any other information required under § 1.883–2(f), 1.883-3(d), or 1.883–4(e); and

(H) Any other specified information.

(ii) *Further documentation.* If the Commissioner requests in writing that the foreign corporation substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.882–3(d) or 1.883–4(e), the foreign corporation must provide the supporting documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide all of the information requested within the 60 day period but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the supporting documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause shall be determined by the Commissioner after considering all the facts and circumstances.

(4) *Commissioner's discretion to cure defects in documentation.* The Commissioner retains the discretion to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

(d) *Qualified foreign country.* A qualified foreign country is a foreign country that grants to corporations organized in the United States an equivalent exemption, as described in paragraph (h) of this section, for the category of qualified income earned by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of income but not with respect to another category of income, as described in paragraph (h)(2) of this section.

(e) *Operation of ships or aircraft*—(1) *General rule.* Only a corporation that is an owner, lessor or lessee of an entire ship or aircraft used to carry cargo or passengers for hire can be considered engaged in the operation of ships or aircraft. The term *operation of ships or aircraft,* which includes the operation of a single ship or aircraft, means—

(i) Carriage of passengers or cargo for hire;

(ii) Time or voyage charter of a ship, or wet lease of an aircraft (full charter), as defined in paragraph (e)(3) of this section;

(iii) Bareboat charter of a ship, or dry lease of an aircraft, as defined in paragraph (e)(3) of this section; or

(iv) Active participation by a foreign corporation that is otherwise engaged in the operation of ships or aircraft in a pool, partnership, strategic alliance, joint operating agreement, code sharing or other joint venture, that is itself engaged in the operation of ships or aircraft.

(2) *Activities not considered operation of ships or aircraft.* A corporation that is not engaged in any of the activities described in paragraph (e)(1) of this section shall not be considered engaged in the operation of ships or aircraft. Examples of activities that do not constitute activities described in paragraph (e)(1) of this section include—

(i) The activities of a nonvessel-operating common carrier (NVOCC), as defined in paragraph (e)(3)(viii) of this section;

(ii) Space or slot charter, as defined in paragraph (e)(3)(vii) of this section;

(iii) Ship management;

(iv) Obtaining crews for ships or aircraft not operated by the corporation;

(v) The activities of a ship's agent;

(vi) Ship or aircraft brokering;

(vii) Freight forwarding;

(viii) The activities of travel agents and tour operators;

(ix) Rental by a container leasing company of containers and related equipment for inland transportation;

(x) Passive investment in an enterprise, including a pool, partnership, strategic alliance, joint operating agreement, or other joint venture, engaged in the international operation of ships or aircraft; or

(xi) The activities of a concessionaire.

(3) *Definitions*—(i) *Full charter.* Full charter (or full rental) means a time charter or a voyage charter of a ship or a wet lease of an aircraft.

(ii) *Time charter.* A time charter is a contract for the use of a ship or aircraft for a specific period of time during which the owner/lessor of the ship or aircraft retains control of the navigation and management of the ship or aircraft (*e.g.*, the owner/lessor continues to be responsible for the crew, supplies, repairs and maintenance, fees and insurance, charges, commissions and other expenses connected with the use of the ship or aircraft).

(iii) *Voyage charter.* A voyage charter is a contract similar to a time charter except that the ship or aircraft is chartered for a specific voyage or flight rather than for a specific period of time.

(iv) *Wet lease.* When a time charter or voyage charter involves an aircraft, it is referred to, in both cases, as a wet lease.

(v) *Bareboat charter.* A bareboat charter is a contract for the use of aircraft whereby the charterer/lessee is in complete possession, control, and command of the ship or aircraft and performs functions normally performed by the owner/lessor of the ship or aircraft. For example, the charterer/lessee is responsible for the navigation and management of the ship or aircraft, the crew, supplies, repairs and maintenance, fees, insurance, charges, commissions and other expenses connected with the use of the ship or aircraft. The owner/lessor of the ship bears none of the expense or responsibility of operation of the ship or aircraft.

(vi) *Dry lease.* When a bareboat charter involves an aircraft, it is referred to as a dry lease.

(vii) *Space or slot charter.* A space or slot charter is a contract for use of a certain amount of space (but less than all of the space) on a ship or aircraft, and may be on a time or voyage basis. When used in connection with passenger aircraft this may be referred to as the sale of block seats.

(viii) *Nonvessel operating common carrier (NVOCC).* A nonvessel operating common carrier is an entity that holds itself out to the public as providing transportation for hire, assumes responsibility or has liability by law for safe transportation of shipments and arranges in its own name with underlying carriers for the performance of such transportation. An NVOCC is distinguishable from a charterer/lessee in that a charterer/lessee hires and has control of all or part of a vessel. An NVOCC is merely a customer of the ocean common carrier. Where an NVOCC consolidates shipments and holds itself out to the public as providing transportation for hire, its services and liabilities are comparable to that of a freight forwarder.

(ix) *Code-sharing arrangements.* Code sharing is an arrangement in which one air carrier puts its identification code on the flight of another carrier. This allows the first carrier to hold itself out as providing service in markets where it does not operate or where it operates infrequently. Code sharing can range from a very limited agreement involving only one market, to alliances between international carriers involving agreements on joint marketing, baggage handling, one-stop check-in service and sharing of frequent flyer awards.

(f) *International operation*—(1) *General rule.* The term *international operation* means operation of ships or aircraft, as defined in paragraph (e) of this section, on voyages or flights that begin or end in the United States, as determined in paragraph (f)(2) of this section, and correspondingly end or begin in a foreign country. The term does not include a voyage or flight that begins and ends in the United States even if the voyage or flight contains a segment extending beyond the territorial limits of the United States with no stop in a foreign country. Operation of ships or aircraft beyond the territorial limits of the United States does not, in itself, constitute international operation of ships or aircraft.

(2) *Determining whether income is from international operation.* Whether income is derived from the international operation of ships or aircraft is determined on a passenger-by-passenger basis (as provided in paragraph (f)(2)(i) of this section) and item of cargo-by-item of cargo basis (as provided in paragraph (f)(2)(ii) of this section). In the case of the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income is derived from international operation is determined by reference to the use of the ship or aircraft by the lowest-tier operator in the chain of lessees (as provided in paragraph (f)(2)(iii) of this section).

(i) *International carriage of passengers*—(A) *In general.* Except in the case of a round trip cruise, income from the carriage of a passenger will be income from the international operation of ships or aircraft if the passenger is carried between a beginning point in the United States and an ending point in a foreign country and vice versa. Carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at an intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change aircraft or ships at the intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if, en route to the passenger's final destination, a stop is made at an intermediate point and the passenger does not change aircraft or ships at the intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. or foreign intermediate point if the passenger changes aircraft or ships at that intermediate point.

(B) *Round trip travel on cruise ships.* In the case of the carriage of a passenger on a round trip cruise that begins in the United States, stops at a foreign intermediate port for shore excursions, refueling, maintenance, or other business reasons, and returns to the same or another U.S. port, the carriage of such passenger on the round trip cruise will be treated as international

operation of a ship under paragraph (f)(2)(i)(A) of this section. Such a round trip cruise may also include one or more intermediate stops at a U.S. port or ports for similar purposes.

(ii) *International carriage of cargo.* Income from the carriage of cargo will be income from the international operation of ships or aircraft if the cargo is carried between a beginning point in the United States and an ending point in a foreign country or vice versa. Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as ending at its final destination if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin, even if en route to its final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as beginning at the point of origin if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point will not change these results if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point.

(iii) *Bareboat charter of ships or aircraft used in international operations.* If a qualified foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee and the lowest tier lessee-operator in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire, as described in paragraphs (f)(2)(i) and (ii) of this section, the qualified foreign corporation may exclude the proportion of the bareboat charter income attributable to such international operation of the ship or aircraft. The foreign corporation must use a reasonable method for determining the proportion of the charter income that is attributable to such international operation. Two reasonable methods for determining the amount of charter income attributable to the international operation of the ship or aircraft are the following:

(A) *Ratio based on use.* Multiply the annual charter amount attributable to use of the ship or aircraft by a lessee by a ratio, the numerator of which is the total number of days of uninterrupted travel on voyages or flights of such ship or aircraft between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States, and the denominator of which is the total number of days in the smaller of the taxable year or the particular charter period. For this purpose, the number of days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2), for example while the ship or aircraft is out of service while being repaired or maintained, should not be included in the numerator of the ratio.

(B) *Ratio based on gross income.* Multiply the annual charter amount attributable to the use of the ship or aircraft by the lessee by a ratio, the numerator of which is the U.S. source gross transportation income (USSGTI as that term is defined in section 887(b)) earned from the operation of the vessel or aircraft by the lowest tier lessee-operator, and the denominator of which is the total gross income of such lessee-operator from the operation of the ship or aircraft during the smaller of the taxable year or the term of the charter, if such information is available. An allocation based on the net income of such lessee-operator will not be considered reasonable for this purpose.

(g) *Activities incidental to the international operation of ships or aircraft*—(1) *General rule.* Certain activities of an operator of ships or aircraft are so closely related to the primary activity of operation of ships or aircraft that they are considered incidental to such operations. Income from these incidental activities is eligible for the reciprocal exemption under this section. Examples of activities of a foreign corporation engaged in the international operation of ships or aircraft that may be considered incidental to such operation include—

(i) Contracting for the international carriage of cargo or passengers, as defined in paragraph (f) of this section, using a space or slot charter, alliance, code sharing or similar arrangement, on ships or aircraft operated by another carrier;

(ii) Temporary investment of working capital funds;

(iii) Sale of tickets for an international voyage by a ship operator for another ship operator;

(iv) Sale of tickets for an international flight by an air carrier for another air carrier;

(v) Rental of containers in connection with the international carriage of goods by sea by the operator of a ship or by air by the operator of an aircraft;

(vi) Contracting with concessionaires for performance of services onboard during the international operation of the operator's ship or aircraft as the case may be; or

(vii) Bareboat charter of ships or aircraft normally used by the operator in international operation but currently not needed, if the ship or aircraft is used by the lessee for international voyages or flights.

(2) *Activities not considered incidental to the international operation of ships or aircraft.* Examples of activities that are not considered to be incidental to the international operation of ships or aircraft by an operator include—

(i) The sale of or arranging for train travel, bus transfers, land tour packages, or port city hotel accommodations within the United States or a foreign country, or the sale of airline tickets by a cruise ship operator or cruise tickets by an air carrier;

(ii) The sale or rental of real property;

(iii) Treasury activities involving the investment of excess funds or funds awaiting repatriation generated by the operation of ships or aircraft;

(iv) Rental of containers for a domestic leg of transportation in connection with international carriage of cargo;

(v) Passive investment in an enterprise engaged in the international operation of ships or aircraft;

(vi) Services performed for parties other than passengers, consignors or consignees, such as ground services at ports or airports or ship or aircraft maintenance; or

(vii) The carriage of passengers or cargo on ships or aircraft on domestic legs, not treated as international operation under paragraph (f) of this section, either by the foreign operator or by a U.S. operator that is a member with the foreign operator in a pool, partnership, strategic alliance, joint operating agreement, code sharing or other joint venture, that is itself engaged in the operation of ships or aircraft.

(h) *Equivalent exemption*—(1) *General rule.* A foreign country grants an equivalent exemption when it exempts from taxation income from the

international operation of ships or aircraft derived by corporations organized in the United States. Whether a foreign country provides an equivalent exemption must be determined separately with respect to each category of income, as provided in paragraph (h)(2) of this section. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. For rules regarding shareholders resident in a foreign country that offers an exemption under an income tax convention, see § 1.883–4(b)(3). An equivalent exemption may exist where the foreign country—

(i) Generally imposes no tax on income, including income from the international operation of ships or aircraft;

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, or otherwise; or

(iii) Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption under section 883.

(2) *Determining equivalent exemptions for each category of income.* Whether a foreign country grants an equivalent exemption is determined separately with respect to each category of income listed in paragraphs (h)(2)(i) through (vii) of this section and is determined separately with respect to income from the operation of ships and income from the operation of aircraft. Where an exemption is unavailable in the foreign country for a particular category of income, a foreign corporation organized in that country shall not be permitted to exempt that category of income from U.S. tax under this section, even though the foreign country may grant an equivalent exemption for other categories of income. An equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. A separate determination of whether a foreign country grants an equivalent exemption must be made for each of the following categories of income—

(i) Income from the carriage of cargo and passengers (operating income);

(ii) Time or voyage (full) charter income (or full rental);

(iii) Bareboat charter income (or bareboat rental);

(iv) Incidental bareboat charter income (or incidental bareboat rental);

(v) Incidental container-related income;

(vi) Income incidental to the operation of ships or aircraft other than incidental income described in paragraphs (h)(2)(iv) and (v) of this section; and

(vii) Capital gains of the operator from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that operator in the international operation of ships or aircraft.

(3) *Special rule with respect to income tax conventions.* If a corporation is organized in a foreign country that provides an equivalent exemption only through an income tax convention with the United States, the foreign corporation must satisfy the terms of that convention before it can receive a benefit under the convention and the foreign corporation may not claim an exemption under section 883. If, however, the corporation is organized in a foreign country that offers an equivalent exemption under an income tax convention and also by some other means, such as by diplomatic note or domestic law, the foreign corporation may choose annually whether it will claim benefits under section 894 and the income tax convention or an exemption under section 883. This choice will apply with respect to all income of the corporation from the international operation of ships or aircraft and the choice cannot be made separately with respect to different categories of such income. If a foreign corporation bases its claim for an exemption on section 883 rather than the income tax convention, the foreign corporation must satisfy all of the requirements under this regulation to qualify for an exemption from U.S. income tax. See § 1.883–4(b)(3) for rules regarding shareholders resident in a foreign country that offers an equivalent exemption under a treaty.

(4) *Exemptions not qualifying as equivalent exemptions—(i) General rule.* Exemptions provided to corporations organized in the United States by certain foreign countries may not satisfy the equivalent exemption requirements of this section.

(ii) *Reduced tax rate or time limited exemption.* The exemption granted by the foreign country's law or income tax convention must be a complete exemption. The exemption may not constitute merely a reduction to a non-zero rate of tax levied against corporations organized in the United States engaged in the international operation of ships or aircraft or a temporary reduction to a zero rate of tax for only a limited period of time, such as in the case of a tax holiday.

(iii) *Inbound or outbound freight tax.* With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting freight both inbound and outbound before it will be considered to grant an equivalent exemption. A foreign country that imposes tax only on outbound freight will not be treated as granting an equivalent exemption for income from transporting freight inbound into that country.

(iv) *Exemptions for limited types of cargo.* A foreign country must provide an exemption from tax for income from transporting all categories of cargo before it will be considered to grant an equivalent exemption. For example, if a foreign country were generally to impose tax on income from the international carriage of cargo but to provide a statutory exemption for income from transporting agricultural products, the foreign country would not be considered to grant an equivalent exemption with respect to income from the international carriage of cargo and passengers and would not be a qualified foreign country with respect to that type of income.

(v) *Territorial tax systems.* A foreign country with a territorial tax system will be treated as granting an equivalent exemption if it treats income from the international operation of ships or aircraft derived by a U.S. corporation as 100 percent foreign source and thereby not subject to tax, even if the income is derived from a voyage or flight that begins or ends in that foreign country.

(vi) *Countries that tax on a residence basis.* A foreign country that generally provides an equivalent exemption to corporations organized in the United States but also imposes a residence-based tax on certain corporations organized in the United States, may nevertheless be considered to grant an equivalent exemption if the residence-based tax is imposed only on a corporation organized in the United States that maintains its center of management and control or other comparable attributes in that foreign country. If the residence-based tax is imposed on corporations organized in the United States and engaged in the international operation of ships or aircraft that are not managed and controlled in that foreign country, the foreign country shall not be treated as a qualified foreign country and shall not be considered to grant an equivalent exemption for purposes of this section.

(vii) *Exemptions within categories of income.* A foreign country must provide

an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa.

(i) *Treatment of possessions.* A possession of the United

States will be considered to grant an equivalent exemption and will be treated as a qualified foreign country if it is on a mirror system. The term *mirror system* refers to the general applicability in the possession of the Internal Revenue Code of 1986, as amended, with the name of the possession substituted for "United States" where appropriate. If a possession does not use a mirror system, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law.

(j) *Expenses related to exempt income not deductible from non-exempt income.* If a qualified foreign corporation derives income from the international operation of ships or aircraft as well as from a non-exempt activity, and that income is effectively connected with the conduct of a trade or business within the United States, the foreign corporation may not deduct from income derived from a non-exempt activity, any amount otherwise allowable as a deduction from qualified shipping or aircraft income if that income is excluded under this proposed rule. See section 265(a)(1).

Par. 4. Sections 1.883–2 through 1.883–5 are added to read as follows:

§ 1.883–2 Treatment of publicly-traded corporations.

(a) *General rule.* A foreign corporation shall satisfy the stock ownership test of § 1.883–1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of paragraphs (e) and (f) of this section. To be considered a publicly-traded corporation, the stock of the foreign corporation must be primarily traded and regularly traded on one or more established securities markets, as those terms are defined in paragraphs (b), (c), and (d) of this section, in the United States or any qualified foreign country.

(b) *Established securities market*—(1) *General rule.* For purposes of this section, the term *established securities market* means, for any taxable year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(ii) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f);

(iii) A United States over-the-counter market, as defined in paragraph (b)(4) of this section;

(iv) Any exchange designated under a Limitation On Benefits article in a United States income tax convention; and

(v) Any other exchange that the Secretary may designate by regulation or otherwise.

(2) *Exchanges with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(3) *Computation of dollar value of stock traded.* For purposes of paragraph (b)(1)(i) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(4) *Over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(5) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may determine that a securities exchange that otherwise meets the requirements of this paragraph (b) of this section does not qualify as an established securities market, if—

(i) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(ii) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(c) *Primarily traded.* For purposes of this section, stock of a corporation is primarily traded on one or more established securities markets, as defined in paragraph (b) of this section, if, with respect to each class of stock described in paragraph (d)(1)(i) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(1) The number of shares in each such class that are traded during the taxable year on all established securities markets in that country exceeds

(2) The number of shares in each such class that are traded during that year on established securities markets in any other single foreign country.

(d) *Regularly traded*—(1) *General rule.* For purposes of this section, stock of a corporation is regularly traded on one or more established securities markets, as defined in paragraph (b) of this section, if—

(i) One or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year; and

(ii) With respect to each class relied on to meet the 80 percent requirement of paragraph (d)(1)(i) of this section—

(A) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(B) The aggregate number of shares in each such class that are traded on such market or markets during the taxable year are at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the taxable year multiplied by the number of days in the short taxable year, divided by 365).

(2) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall

be considered to meet the trading requirements of paragraph (d)(1)(ii) of this section if the stock is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(3) *Closely-held classes of stock not treated as meeting trading requirement*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a class of stock of a foreign corporation listed on an established securities market or markets and otherwise meeting the trading requirements of paragraph (d)(1)(ii) of this section shall not be treated as meeting the trading requirements of paragraph (d)(1)(ii) of this section (or the requirements of paragraph (d)(2) of this section) for a taxable year if, at any time during the taxable year, one or more persons who own at least 5 percent of the value of the outstanding shares of the class of stock (5 percent shareholders as determined under paragraph (d)(3)(iii) of this section) own, in the aggregate, 50 percent or more of the value of the shares.

(ii) *Exception.* Notwithstanding the general rule of paragraph (d)(3)(i) of this section, a closely-held class of stock that otherwise satisfies the trading requirements of paragraph (d)(1)(ii) of this section may be treated as meeting such trading requirements if the foreign corporation can establish that more than 50 percent of the value of the outstanding shares of the class of stock is owned, or treated as owned under § 1.883–4(c), by persons who are qualified shareholders, within the meaning of § 1.883–4(b), for more than half the number of days during the taxable year. In addition, such persons may not own their interests in the foreign corporation either directly or by applying the attribution rules of § 1.883–4(c) through bearer shares. Further, the foreign corporation must obtain from such persons the relevant documentation described in § 1.883–4(d).

(iii) *Treatment of related persons.* Solely for purposes of determining whether a person is a 5 percent shareholder, persons related within the meaning of section 267(b) shall be treated as one person. In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(4) *Anti-abuse rule.* Trades between related persons described in section 267(b), as modified by paragraph (d)(3)(iii) of this section, and trades conducted in order to meet the requirements of paragraph (d)(1) of this section (the trading rule) shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(1) of this section if there is a pattern of trades conducted to meet the requirements of paragraph (d)(1) of this section. For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(1)(ii) of this section.

(5) *Example.* The closely-held class of stock rule in paragraph (d)(3) is illustrated by the following example:

Example.

Closely-held exception— (i)*Facts.* X is a corporation organized in a qualified foreign country. X has one class of stock that is listed and primarily traded on an established securities market in the qualified foreign country. The class of stock of X also meets the trading requirements of paragraph (d)(1)(ii) of this section. However, the founding family owns 60 percent of that class of stock through Hold Co. The remaining 40 percent is not owned by any 5 percent shareholder. Some of the family members are U.S. residents, while the remaining family members are residents of the qualified foreign country. Individuals A and B are members of the founding family and each owns 10 percent of the stock of Hold Co.

(ii) *Analysis.* Because Hold Co owns 60 percent of the class of stock, Hold Co is a 5 percent shareholder and the class of stock will not be regularly traded unless X can prove, applying the attribution rules of § 1.883–4(c), that more than 50 percent of the stock of X is owned, or treated as owned under § 1.883–4(c), by residents of a qualified foreign country. If X can demonstrate that more than 50 percent of the stock held by Hold Co is owned by qualified shareholders, X can meet this burden and the stock of X will be regularly traded because the exception in paragraph (d)(3)(ii) of this section would apply.

(e) *Substantiation that a foreign corporation is publicly traded*—(1) *In general.* A foreign corporation that relies on the publicly traded test of this section to establish that it is a qualified foreign corporation for purposes of § 1.883–1(c)(2) must substantiate that the stock of the foreign corporation is primarily and regularly traded on an established securities market. If one of the classes of stock on which the foreign corporation relies to meet this test is closely-held within the meaning of paragraph (d)(3)(i) of this section, the foreign corporation must obtain an ownership statement described in § 1.883–4(d) from each qualified shareholder and intermediary that it relies upon to satisfy the exception to the closely-held class of stock rule, but only to the extent such statement would be required if the foreign corporation were relying on the qualified shareholder test of § 1.883–4 with respect to those shares of stock. The foreign corporation must also maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information known to the foreign corporation.

(2) *Availability and retention of documents for inspection.* The documentation described in paragraph (e)(1) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner may request in writing.

(f) *Reporting requirements.* A foreign corporation relying on this section to satisfy the stock ownership requirements of § 1.883–1(c)(2) must provide the following information that is current as of the end of the corporation's taxable year, in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for the taxable year—

(1) The name of the country in which the stock is primarily traded;

(2) The name of the established securities market or markets on which that the stock is listed;

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including the number of shares issued and outstanding as of the close of the taxable year;

(4) For each class of stock relied upon to meet the requirements of paragraph (d) of this section, if one or more 5 percent shareholders, as defined in paragraph (d)(3)(i) of this section, own in the aggregate 50 percent or more of the value of the outstanding shares of that class of stock at any time during the taxable year, state—

(i) The name and address of each 5 percent shareholder of that class of stock and each related person whose stock is treated as owned by the 5 percent shareholder;

(ii) For each qualified shareholder of the closely-held class of stock upon whom the corporation intends to rely to satisfy the exception to the closely-held class of stock rule of paragraph (d)(3)(ii) of this section—

(A) The name of each such shareholder;

(B) The percentage of the total value of the stock held by each such shareholder;

(C) The address of record of each such shareholder;

(D) The country of residence of each such shareholder, determined under § 1.883–4(b)(2) (residence of individual shareholders) or § 1.883–4(d)(3) (special rules for residence of certain shareholders);

(E) The portion of the taxable year of the foreign corporation during which the requisite ownership in the closely-held block of stock by qualified shareholders was satisfied;

(5) The percentage of the value of the class of stock represented by the widely-held block of stock; and

(6) Any other specified information.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation that is a controlled foreign corporation (CFC), as defined in section 954(a), satisfies the stock ownership test of § 1.883–1(c)(2) if it meets the income inclusion test in paragraph (b)(1) of this section and satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively (the CFC test). A CFC that fails the income inclusion test of paragraph (b)(1) of this section may not satisfy the stock ownership test of § 1.883–1(c)(2) unless the CFC demonstrates that it meets either the publicly traded test of § 1.883–2 or the qualified shareholder test of § 1.883–4.

(b) *Special rule for CFCs with certain entity shareholders*— (1) *Income inclusion test.* For purposes of these proposed rules, a CFC will not be considered to satisfy the requirements of paragraph (a) of this section unless—

(i) Such corporation would be a CFC as defined in section 957(a) if such section were applied without regard to section 318(a)(4); and

(ii) More than 50 percent of the CFC's subpart F income (as defined in section 952) derived from the international operation of ships or aircraft is includible, pursuant to section 951, in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations for the taxable years of such persons in which the taxable year of the CFC ends.

(2) *Examples.* The income inclusion test of this paragraph

(b) is illustrated in the following examples:

Example 1. CFC earns U.S. source income from the international operation of aircraft that is not effectively connected with the conduct of a U.S. trade or business. CFC is organized in a qualified foreign country. CFC is not a publicly traded corporation and all of its U.S. shareholders, as defined in section 951(b), are domestic partnerships. All of the partners in those domestic partnerships are citizens and residents of foreign countries. Thus, the CFC fails the income inclusion test of paragraph (b)(1) of this section because no amount of the CFC's relevant subpart F income is includible in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations. Therefore the CFC must satisfy the rules of § 1.883–4, regarding the qualified shareholder stock ownership test, in order to satisfy the stock ownership test of § 1.883–1(c)(2) and be considered a qualified foreign corporation.

Example 2. Ship Co is a CFC organized in a qualified foreign country and is not a publicly traded corporation. Corp A, a domestic corporation, owns 50 percent of the value of the stock of Ship Co. X, a domestic partnership, owns the remaining 50 percent of the value of the stock of Ship Co. A U.S. citizen is a partner owning a 20 percent interest in X. Individual partners owning 80 percent of X are citizens and residents of foreign countries. There are no special allocations of partnership income. Ship Co satisfies the income inclusion test of paragraph (b)(1) of this section because 60 percent (50% + (20% × 50%)) of the subpart F income would be includible in the gross income of U.S. citizens or individual residents of the United States or domestic corporations. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively and the reporting requirements of § 1.883–1(c)(3), it will be a qualified foreign corporation.

(c) *Substantiating CFC stock ownership*—(1) *In general.* A CFC relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must establish all the facts necessary to satisfy the Commissioner that it qualifies under the CFC test. For purposes of the income inclusion test of paragraph (b)(1) of this section, if the CFC has one or more U.S. shareholders that are domestic partnerships, estates, or trusts, the proportionate interest of the subpart F income of the CFC will not be treated as includible in the gross income of any partner, beneficiary or other interest owner of such U.S. shareholder that is a U.S. citizen, resident of the United States or a domestic corporation unless the CFC obtains the documentation described in paragraph (c)(2) of this section.

(2) *Documentation from certain U.S. shareholders*—(i) *In general.* A CFC can only meet the documentation requirements of paragraph (c)(1) of this section if the CFC obtains the following documentation from each U.S. shareholder that is a partnership, estate or trust, with respect to the taxable year of the entity which ends with or within the taxable year of the CFC—

(A) A copy of the Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," if required to be filed with the U.S. shareholder's return and with the Internal Revenue Service Center, Philadelphia PA 19255;

(B) A written statement, signed under penalties of perjury by a person authorized to sign the U.S. Federal tax return of the U.S. shareholder, providing the following information with respect to each U.S. citizen, individual resident of the United States or domestic corporation that is a partner, beneficiary or other interest owner of each such U.S. shareholder and upon whom the CFC intends to rely to satisfy the income inclusion test of paragraph (b)(1) of this section—

(1) The name, address (if not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number;

(2) The interest owner's proportionate interest in the U.S. shareholder that reflects that owner's share of subpart F income required to be included in income on such interest owner's U.S. Federal income tax return;

(3) The percentage of the vote and the percentage of the value of shares of the CFC owned by each such interest owner; and

(C) Any other specified information.

(ii) *Availability and retention of documents for inspection.* The documentation described in paragraph (c)(2)(i) of this section must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the

Commissioner at such place as the Commissioner may request in writing.

(d) *Reporting requirements.* A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of § 1.883–1(c)(2), must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name, address in the corporate records (if that address is not a non-residential address such as a post office box or in care of a financial intermediary or stock transfer agent) and taxpayer identification number of each U.S. shareholder of the CFC;

(2) The percentage of the value of the shares of the CFC that is owned by each U.S. shareholder, as defined in section 957(a) if such section were applied without regard to section 318(a)(4);

(3) If one or more of the U.S. shareholders is a domestic partnership, estate or trust, the name, address, taxpayer identification number and percentage of the vote and the percentage of the value of shares of the CFC owned by each interest owner of each such U.S. shareholder that is a U.S. citizen, individual resident of the United States or a domestic corporation; and

(4) Any other specified information.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) *General rule.* A foreign corporation shall satisfy the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of its stock (by value) is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders. In addition, a foreign corporation must meet the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder*—(1) *General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) Is a resident of a country that offers an equivalent exemption for the same type of income (as described in § 1.883–1(h)(2)), as that earned by the foreign corporation and for which the foreign corporation is seeking an exemption;

(ii) Does not own its interest in the foreign corporation through bearer shares either directly or by applying the attribution rules of paragraph (c) of this section;

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of this section with respect to such shareholder; and

(iv) Is described in one of the following categories of qualified shareholders—

(A) An individual not described in paragraph (b)(1)(iv)(E) of this section (whose residency is determined under paragraph (b)(2) of this section);

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded rules of § 1.883–2;

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country; or

(E) A beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) administered in or by a qualified foreign country (whose residency is determined under paragraph (d)(3)(iii) of this section).

(2) *Residence of individual shareholders*—(i) *General rule.* An individual not described in paragraph (b)(1)(iv)(E) of this section is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (*e.g.*, an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country) and, in addition—

(A) The individual's tax home, within the meaning of paragraph (b)(2)(ii) of this section, is within that qualified foreign country for 183 days or more of the taxable year; or

(B) The individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraph (d)(3) of this section.

(ii) *Tax home.* For purposes of this section, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section.

(3) *Certain income tax convention restrictions applied to shareholders*—(i) *Application of restrictions.* A shareholder otherwise described in paragraph (b)(1) of this section may be a resident of a foreign country that provides an equivalent exemption for the category of income at issue through an income tax convention with the United States. If the shareholder relies on the convention to demonstrate that the country of residence provides an equivalent exemption and the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, or in the limitation on benefits (LOB) article, such as a percentage of resident ownership, the shareholder is not a qualified shareholder unless the corporation seeking qualified foreign corporation status would satisfy any such additional requirement if it were organized in such foreign country.

(ii) *Examples.* The rules of this paragraph (b)(3) are illustrated by the following examples:

Example 1. LOB article requiring additional Country B ownership. Ship Co is organized in Country A. Country A provides an equivalent exemption through a diplomatic note. Eighty percent of the value of the shares of Ship Co is owned by a resident of Country B. Country B provides an equivalent exemption only through an income tax convention with the United States. The limitation on benefits article in the income tax convention between the United States and Country B requires that more than 75 percent of the value of the shares of a Country B corporation must be owned by residents of Country B before such corporation could receive benefits under the income tax convention. In accordance with paragraph (b)(3) of this section, in order for the Country B resident to be a qualified shareholder, Ship Co must meet the LOB requirements of the United States/Country B income tax convention applied as if Ship Co were a Country B corporation. Because 80 percent of the value of the shares of Ship Co is owned by a resident of Country B, this requirement is satisfied and the Country B shareholder may be a qualified shareholder.

Example 2. 2Income tax convention requiring registration of ship. Ship Co is organized in Country X and owned entirely by residents of Country Y. Country X's domestic law grants an equivalent exemption to shipping corporations organized in the United States. Country Y grants an equivalent exemption for shipping income through an income tax convention between the United States and Country Y. Article 8 of the income tax convention provides that the exemption will apply only if the ships are registered in

the contracting state of the taxpayer's country of residence. Ship Co owns a ship registered in Country Y and a ship registered in Country Z. In accordance with paragraph (b)(3) of this section, in order for the Country Y resident to be a qualified shareholder, Ship Co must meet the flagging requirements of the United States/Country Y income tax convention applied as if Ship Co were a Country Y corporation. Thus, the Country Y shareholders may be qualified shareholders with respect to income earned by the ship registered in Country Y but not with respect to the income earned by the ship registered in Country Z. Thus, if Ship Co otherwise satisfies the requirements of this proposed rule, Ship Co may exclude its income derived from the international operation of the ship registered in Country Y from gross income for purposes of its United States income tax, but may not exclude its income from the international operation of the ship registered in Country Z.

(4) *Not-for-profit organizations.* A not-for-profit organization is a qualified shareholder if it meets the following requirements—

(i) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and not organized for profit;

(ii) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status; and

(iii) Either—

(A) More than 50 percent of its annual support is expended on behalf of persons described in paragraph (b)(1)(i) of this section (see paragraph (d)(3)(v) of this section for rules regarding the residence of individual beneficiaries); or

(B) More than 50 percent of its annual support is derived from persons described in paragraph (b)(1)(i) of this section (see paragraph (d)(3)(v) of this section for rules regarding the residence of individual supporters).

(5) *Pension funds*—(i) *Pension fund defined.* The term pension fund shall mean a government pension fund or a non-government pension fund, as those terms are defined, respectively, in paragraph (b)(5)(ii) and paragraph (b)(5)(iii) of this section, that is a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(ii) *Government pension funds.* A government pension fund is a pension fund that is a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) (relating to pension funds established for the benefit of employees or former employees of a foreign government).

(iii) *Non-government pension funds.* A non-government pension fund is a pension fund that—

(A) Is administered in a foreign country and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) Is generally exempt from income taxation in its country of administration;

(C) Has 100 or more beneficiaries; and

(D) The trustees, directors or other administrators of which pension fund provide the documentation required in paragraph (d) of this section.

(iv) *Beneficiary of a pension fund.* The term *beneficiary of a pension fund* shall mean any person who has made contributions to a pension fund, as that term is defined in paragraph (b)(5)(i) of this section, or on whose behalf contributions have been made, and who is currently receiving retirement, disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested. See paragraph (c)(6) of this section for rules regarding the computation of stock ownership through non-government pension funds.

(c) *Rules for determining constructive ownership*—(1) *General rules for attribution.* For purposes of applying the exception to the closely-held test of § 1.883–2(d)(3)(ii) and paragraph (a) of this section, stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders as provided in paragraphs (c)(2)through (6) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period that is taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c).

(2) *Partnerships*—(i) *General rule.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership; or

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(ii) *Partners resident in the same country.* For purposes of this paragraph, all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. For the meaning of the term *resident*, see paragraph (b)(2) of this section.

(iii) *Examples.* The rules of paragraph (c)(2)(ii) of this section are illustrated by the following examples:

Example 1. Stock held solely by qualified shareholders through a partnership. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P's only asset is the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualified and non-qualified shareholders through a partnership. Assume the same facts as in *Example 1*

except that C, an individual who is not a resident of a qualified foreign country, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1* except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, qualified shareholders A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (*i.e.*, the lowest aggregate percentage of A and B's distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock). Thus, Z fails to satisfy the ownership requirements of paragraph (a) of this section.

Example 3. Stock held through tiered partnerships. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P is a partner in Partnership P1, which owns the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualified shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent X 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualified shareholders.

(3) *Trusts and estates*—(i) *Beneficiaries.* In general, an individual shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the individual's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (c)(3)(i), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualified shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to the extent that someone other than the beneficiaries is treated as owning the stock under paragraph (c)(3)(ii) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (c)(3)(i), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(ii) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671 through 679 (relating to grantors and others treated as substantial owners).

(4) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If, however, there is an agreement, express or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(5) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policy holders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(6) *Computation of beneficial interests in non-government pension funds.* Stock held by a pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if—

(i) The pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(ii) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(iii) Either—

(A) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(B) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(C) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(iv) The trustees, directors or other administrators provide the relevant documentation as required in paragraph (d) of this section.

(d) *Substantiation of stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the ownership requirements of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders. A foreign

corporation cannot meet this requirement with respect to any stock that is issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

(2) *Application of general rule*—(i) *Ownership statements.* Except as provided in paragraph (d)(3) of this section, a person shall only be treated as a qualified shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (d)(4) of this section or has a valid ownership statement in effect under paragraph (d)(2)(ii) of this section;

(B) In the case of a person owning stock in the foreign

corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status completes an intermediary ownership statement described in paragraph (d)(4)(v) of this section or has a valid intermediary ownership statement in effect under paragraph (d)(2)(ii) of this section; and

(C) The foreign corporation seeking qualified foreign corporation status obtains the statements described in paragraphs (d)(2)(i)(A) and (B) of this section.

(ii) *Three-year period of validity.* The ownership statements required in paragraph (d)(2)(i) of this section shall remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30, 2000, remains valid through December 31, 2003, unless circumstances change that make the information of the statement no longer correct.

(3) *Special rules*—(i) *Determining residence of certain shareholders.* A foreign corporation seeking qualified foreign corporation status or an intermediary that is a direct or indirect shareholder of such foreign corporation may determine the residence of certain shareholders, for purposes of paragraph (b)(2)(i)(B) of this section, under one of the following special rules, in lieu of obtaining the ownership statements required in paragraph (d)(2)(i) of this section from such shareholders.

(ii) *Special rule for registered shareholders owning less than one percent of widely-held corporations.* A foreign corporation with at least 250 registered individual shareholders, that is not a publicly-traded corporation, as described in § 1.883–2, (a widely-held corporation), may not be required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year. If such widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if—

(A) The individual's address of record is not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(B) The officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

(iii) *Special rule for beneficiaries of pension funds*—(A) *Government pension fund.* An individual who is a beneficiary of a government pension fund, as defined in paragraph (b)(5)(ii) of this section, shall be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section.

(B) *Non-government pension fund.* An individual who is a beneficiary of a non-government pension fund, as described in paragraph (b)(5)(iii) of this section, shall be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. The rules of this paragraph (d)(3)(iii)(B) shall apply only if the non-government pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*2*) of this section.

(iv) *Special rule for stock owned by publicly-traded corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly-traded corporation will be treated as owned by an individual resident in the country where the publicly-traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded intermediary and copies of any relevant ownership statements from shareholders of the publicly traded corporation relied on to satisfy the exception to the closely-held class of stock rule of § 1.883–2(d)(3)(ii) as required in paragraph (d)(2)(i) of this section.

(v) *Special rule for not-for-profit organizations.* For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine the residence of an individual beneficiary or supporter, within the meaning of paragraph (b)(2)(i)(B) of this section, to the extent required under paragraph (b)(4) of this section, provided that—

(A) The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary;

(B) The officers, directors or administrators or the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and

(C) The foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for-profit organization.

(4) *Ownership statements from shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The individual's name, permanent address, and country where the individual is fully liable to tax as a resident, if any;

(B) If the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified foreign corporation status, state each of the foreign countries in which the individual resided and the dates of such residence during the taxable year of such foreign corporation;

(C) If the individual directly owns stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the period of time during the taxable year of

the foreign corporation during which the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary, and the period of time during the taxable year of the corporation seeking qualified foreign corporation status during which the individual held such interest;

(E) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the corporation seeking qualified foreign corporation status, including the name and address of each intermediary standing between the intermediary described in paragraph (d)(4)(i)(D) of this section and the foreign corporation and whether this interest is owned either directly or indirectly through bearer shares; and

(F) Any other specified information.

(ii) *Ownership statements from foreign governments.* An ownership statement from a government that is a qualified shareholder is a written statement—

(A) Signed by either—

(*1*) An official of the governmental authority, agency or office who has supervisory authority with respect to the government's ownership interest and who is authorized to sign such a statement on behalf of the authority, agency or office; or

(*2*) The competent authority of the foreign country (as defined in the income tax convention between the United States and the foreign country);

(B) That provides—

(*1*) The title of the official signing the statement;

(*2*) The name and address of the government authority, agency or office that has supervisory authority;

(*3*) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (substituting "government" for "individual") with respect to the government's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(C) Any other specified information.

(iii) *Ownership statements from publicly-traded corporate shareholders.* An ownership statement from a publicly-traded corporation that is a direct or indirect owner of the corporation seeking qualified foreign corporation status is a written statement, signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the shareholder corporation containing the following information—

(A) The name of the country in which the stock is primarily traded;

(B) The name of the established securities market or markets on which that the stock is listed;

(C) A description of each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), including the number of shares issued and outstanding as of the close of the taxable year;

(D) For each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), if one or more 5 percent shareholders, as defined in § 1.883–2(d)(3)(i), own in the aggregate 50 percent or more of the value of the outstanding shares of that class of stock at any time during the taxable year, state—

(*1*) The name and address of each 5 percent shareholder and of each related person whose stock is treated as owned by the 5 percent shareholder;

(*2*) For each qualified shareholder upon whom the corporation intends to rely to satisfy the exception to the closely-held class of stock rule of § 1.883–2(d)(3)(ii)—

(*i*) The name of each such shareholder;

(*ii*) The percentage of the total outstanding shares of that class owned by such shareholder;

(*iii*) The address of record of such shareholder;

(*iv*) The country of residence of such shareholder, determined under paragraph (b)(2) or (d)(3) of this section; and

(E) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (substituting "publicly-traded corporation" for "individual") with respect to the publicly-traded corporation's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(F) Any other specified information.

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(5) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (substituting "not-for-profit organization" for "individual");

(C) A representation that the not-for-profit organization satisfies the requirements of paragraph (b)(4) of this section; and

(D) Any other specified information.

(v) *Ownership statements from intermediaries*—(A) *General rule.* The foreign corporation seeking qualified foreign corporation status under the shareholder stock ownership test must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified shareholders on whom it relies to meet this test. An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information—

(*1*) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary and, if the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law), or the name and permanent address of place of administration of the intermediary (if a pension fund);

(*2*) The information described in paragraphs (d)(4)(i)(C) through (F) (substituting "intermediary" for "individual");

(*3*) If the intermediary is a nominee for a shareholder or another intermediary, the name and permanent address of the shareholder, or the name and principal place of business of such other intermediary;

(*4*) If the intermediary is not a nominee for a shareholder or another intermediary, the name and country of residence (within the meaning of paragraph (b)(2) of this section) and the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (or if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder) which the foreign corporation seeking qualified foreign corporation status intends to rely on to satisfy the requirements of paragraph (a) of this section, as well as an ownership statement from such person and the period of time during the taxable year for which the interest in the intermediary was owned by the shareholder, partner, beneficiary, grantor or other interest holder. For

purposes of this paragraph (d)(4)(v)(A), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (c) of this section;

(*5*) If the intermediary is a widely-held corporation with registered shareholders owning less than one percent of the stock of such widely-held corporation, the statement set out in paragraph (d)(4)(v)(B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediaries;

(*6*) If the intermediary is a pension fund, within the meaning of paragraph (b)(5) of this section, the statement set out in paragraph (d)(4)(v)(C) of this section, relating to ownership statements from pension funds; and

(*7*) Any other specified information.

(B) *Ownerships statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.* An ownership statement from an intermediary that is a corporation with at least 250 individual shareholders, but that is not a publicly-traded corporation within the meaning of § 1.883–2, and that relies on paragraph (d)(3)(ii) of this section, relating to the special rule for registered shareholders owning less than one percent of widely-held corporations, must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) The aggregate proportionate interest by country of residence in the widely-held corporation of such registered shareholders or other interest holders whose address of record is not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(*2*) A representation that the officers and directors of the widely-held intermediary neither know nor have reason to know that the individual shareholder does not reside at his or her address of record in the corporate records; and

(*3*) Any other specified information.

(C) *Ownership statements from pension funds—(1) Ownership statements from government pension funds.* A government pension fund (as defined in paragraph (b)(5)(ii) of this section) that relies on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the documentation required in paragraph (d)(4)(v)(A) of this section and, in addition, the government pension fund must also provide the following information—

(*i*) The name of the country in which the plan is administered;

(*ii*) A representation that the fund is established exclusively for the benefit of employees or former employees of a foreign government, or employees or former employees of a foreign government and non-governmental employees or former employees that perform or performed governmental or social services;

(*iii*) A representation that the funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(*iv*) A representation that the trust forming part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered;

(*v*) A representation that the income of the trust satisfies the obligations of the foreign government to the participants under the plan, rather than inuring to the benefit of a private person; and

(*vi*) Any other specified information.

(*2*) *Ownership statement from non-government pension funds.* The trustees, directors, or other administrators of the non-government pension fund, as defined in paragraph (b)(5)(iii) of this section, that rely on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the pension fund's intermediary ownership statement described in paragraphs (d)(4)(v)(A) of this section, and, in addition, the non-government pension fund must also provide the following information—

(*i*) The of the country in which the pension fund is administered;

(*ii*) A representation that the pension fund is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country, and, if so, the name of the governmental authority (or other authority delegated to perform such supervision or regulation);

(*iii*) A representation that the pension fund is generally exempt from income taxation in its country of administration;

(*iv*) The number of beneficiaries in the pension plan;

(*v*) The aggregate percentage interest of beneficiaries by country of residence based on addresses shown on the books and records of the fund, provided the addresses are not nonresidential addresses, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not a resident of such foreign country;

(*vi*); A representation that the pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(*vii*) A representation that the trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(*viii*) Either—

(*A*) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(*B*) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(*C*) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(*ix*) Any other specified information.

(*3*) *Time for making determinations.* The determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's

taxable year to which the determination is relevant.

(5) *Availability and retention of documents for inspection.* The documentation described in paragraphs (d)(3) and (4) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and place as the Commissioner may request in writing.

(e) *Reporting requirements.* A foreign corporation relying on the qualified shareholder test of this section to demonstrate that it is a qualified foreign corporation for purposes of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for each taxable year. The information should be current as of the end of the corporation's taxable year. The information must include the following—

(1) A representation that more than 50 percent of the value of the outstanding shares of the corporation is owned (or treated as owned by reason of paragraph (c) of this section) by qualified shareholders for the category of income for which the exemption is claimed;

(2) With respect to each individual qualified shareholder owning 5 percent or more of the foreign corporation, applying the attribution rules of paragraph (c) of this section, and relied upon to meet the 50 percent ownership test of paragraph (a) of this section, the name and address, as represented on each such individual's ownership statement;

(3) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by all qualified shareholders resident in a qualified foreign country, by country; and

(4) Any other required documentation.

§ 1.883–5 Effective date.

(a) *General rule.* Sections 1.883–1 through 1.883–4 apply to taxable years of the foreign corporation ending 30 days or more after the date these regulations are published as final regulations in the **Federal Register**.

(b) *Election for retroactive application.* When §§ 1.883–1 through 1.883–4 become generally applicable, taxpayers may rely on all the provisions of §§ 1.883–1 through 1.883–4 for guidance and may elect to apply all such substantive provisions for any open taxable year of the foreign corporation beginning after December 31, 1986, and ending less than 30 days after the date these regulations are published as final regulations in the **Federal Register**. However, such election is not required to be applied with respect to § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies one of three stock ownership tests). Such election will be applicable for the year of the election and for all subsequent taxable years.

(c) *Transition rule.* For taxable years of the foreign corporation ending 30 days or more after the date these regulations are published as final regulations in the **Federal Register**, and until such time as the Form 1120F and its instructions are revised to conform to §§ 1.883–1 through 1.883–4, the information required in § 1.883–1(c)(3) and § 1.883–2(f), 1.883–3(d) or 1.883–4(e), as applicable, must be included on a written statement signed under penalties of perjury by a person authorized to sign the return, attached to the Form 1120F, and filed with the return.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1899 Filed 2–7–00; 8:45 am]

BILLING CODE 4831–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103882–99]

RIN 1545–AX06

Depletion; Treatment of Delay Rental

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments conforming regulations relating to delay rental to the requirements of section 263A relating to capitalization and inclusion in inventory of costs of certain expenses. Changes to the applicable law were made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations provide the public with guidance concerning the application of section 263A to delay rental.

DATES: Written comments must be received by May 8, 2000. Outlines of topics to be discussed at the public hearing scheduled for May 26, 2000, at 10 a.m. must be received by May 5, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103882–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103882–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Brenda M. Stewart, (202) 622–3120; concerning submissions and the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 612 to conform them to the requirements of section 263A. Section 263A was enacted by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), and amended by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342).

Explanation of Provisions

Under the terms of a lease of mineral property, the lessee acquires, for a stated term, the right and obligation to obtain production of minerals from the property. A lease may provide that for each year that the lessee fails to make efforts to obtain production, the lessee must pay a "delay rental" to the lessor.

Section 1.612–3(c)(1) of the final regulations defines a delay rental as an amount paid for the privilege of deferring development of the property

and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production. Section 1.612–3(c)(2) of the final regulations provides that since a delay rental is in the nature of rent, it is ordinary income to the payee and not subject to depletion. The payor may at his election deduct the delay rental as an expense, or charge it to depletable capital account under section 266.

Section 263A was enacted subsequent to the issuance of § 1.612–3(c) of the final regulations. The uniform capitalization rules of section 263A generally require the capitalization of all direct costs and certain indirect costs properly allocable to property produced by the taxpayer. Capitalization may be required even though production (development) has not yet begun. § 1.263A–2(a)(3)(ii). In some situations, a delay rental may be required to be capitalized under section 263A. Accordingly, the proposed regulation clarifies that subsequent to the enactment of section 263A, the payor of a delay rental may elect to expense currently the delay rental or charge it to depletable capital account under section 266 to the extent that the delay rental is not required to be capitalized under section 263A and the regulations thereunder.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight copies) to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and they may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for May 26, 2000, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments (a signed original and eight (8) copies) by May 8, 2000. The outline of topics to be discussed at the hearing must be received by May 5, 2000.

A period of 10 minutes will be allotted for each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this proposed regulation is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.612–3, the second sentence of paragraph (c)(2) is removed and two sentences are added in its place to read as follows:

§ 1.612–3 Depletion; treatment of bonus and advanced royalty.

* * * * *

(c) * * *

(2) * * * To the extent the delay rental is not required to be capitalized under section 263A and the regulations thereunder, the payor may at his election deduct such amount or under section 266 and the regulations thereunder, charge it to depletable capital account. The second sentence of this paragraph (c)(2) applies to delay rentals paid with respect to leasing transactions entered into on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–2730 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–237–0221; FRL–6534–5]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision by the State of California to provide for attainment of the ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before March 9, 2000.

ADDRESSES: Written comments should be addressed to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or jesson.david@epa.gov. The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, California

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California

The SIP materials are also electronically available at: http://www.aqmd.gov/aqmp/

FOR FURTHER INFORMATION CONTACT: Dave Jesson at (415) 744–1288.

SUPPLEMENTARY INFORMATION: This section provides background information on the South Coast ozone plan, applicable Clean Air Act requirements, and EPA's proposed action on the plan.

Table of Contents

I. Background
A. What is the ozone problem in the South Coast?
B. What Clean Air Act requirements apply to this plan?
C. What action have we taken on previous South Coast ozone plans?
1. Final approval of the 1994 ozone SIP
2. Proposed partial approval and partial disapproval of the 1997 ozone revision
3. Final approval of a 1999 State update to the South Coast ozone SIP reflecting conclusion to the Public Consultative Process (PCP) and the implementation status of CARB's control measures.
D. What are the changes in the new plan?
1. Control measure revisions
2. Technical revisions
E. What further revisions are planned in the future?
II. Review of the Revised Ozone Plan
A. Did the SCAQMD and CARB meet the CAA procedural requirements?
B. Do the revised baseline and projected emissions inventories meet CAA requirements?
C. Is the modeled attainment demonstration consistent with modeling guidelines?
D. Do the control measures meet CAA requirements?
1. What are the applicable CAA requirements?
2. How does the revised ozone plan address these requirements?
a. Control measures already adopted
b. Short- and intermediate-term control measure commitments
c. Long-term control measure commitments
3. Does the revised ozone plan meet the CAA requirements for control measures?
a. Short- and intermediate-term control measure commitments
b. Long-term control measure commitments
E. Does the plan show reasonable further progress?
1. What are the applicable CAA requirements?
2. How does the revised ozone plan address these requirements?
3. Does the revised ozone plan meet the CAA requirements?
F. Does the plan provide for attainment?
1. What are the applicable CAA requirements?
2. How does the revised ozone plan address these requirements?
3. Does the revised ozone plan meet the CAA requirements?
G. Are the emissions budgets approvable?
1. Motor vehicle emissions budgets
2. General conformity emissions budgets
H. What are the implications of our proposed plan approval?
III. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. National Technology Transfer and Advancement Act

I. Background

A. What is the ozone problem in the South Coast?

In 1999 the South Coast had the largest number of ozone violations in the country, and trailed only the Houston area in terms of the peak ozone concentration.[1] The South Coast in 1999 recorded 43 days with 1-hour levels at or above the 0.12 parts per million (ppm) NAAQS for ozone. In 1998, the South Coast had the worst ozone levels in the nation, experiencing 12 days with Stage I smog alerts, when 1-hour concentrations reach 0.20 ppm.[2]

Ozone causes serious health problems, particularly in children, by damaging lung tissue and sensitizing the lungs to other irritants. Even at very low levels, ozone can cause acute respiratory problems; aggravate asthma; cause temporary decreases in lung capacity of 15 to 20 percent in healthy adults, cause inflammation of lung tissue; lead to hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia.

B. What Clean Air Act Requirements Apply to this Plan?

The CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under CAA section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including the South Coast, were designated nonattainment by operation of law.

Under CAA section 181(a), each ozone area designated nonattainment under section 107(d) was also classified by operation of law as either marginal, moderate, serious, severe, or extreme, based on air quality monitoring data. An ozone area with a design value at or above 0.280 ppm was classified as extreme. The South Coast was the only area so classified. Section 181(a) sets attainment deadlines for each class of area. The attainment date for an extreme area is as expeditiously as practicable but no later than November 15, 2010 (20 years after enactment of the CAA Amendments).

CAA section 172 contains general requirements applicable to SIPs for nonattainment areas. Section 182 sets out additional air quality planning requirements for ozone nonattainment areas. The most fundamental of these nonattainment area provisions applicable to the South Coast is the requirement that the State submit by November 15, 1994, a SIP demonstrating how the area would attain the ozone NAAQS by the CAA deadline and how the area would achieve reductions of precursor emissions of 15 percent for the first 6 years and 9 percent for each 3-year period until attainment (rate-of-progress or ROP). This demonstration must be based upon enforceable measures to expeditiously achieve emission reductions leading to emissions at or below the level predicted to result in attainment throughout the nonattainment area.

We have issued a "General Preamble" describing our preliminary views on how we intend to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). You should refer to the General Preamble for a more detailed discussion of our interpretations of Title I requirements. In this proposed rulemaking action, we apply these policies to the South Coast ozone SIP submittal, taking into consideration the specific factual issues presented.

C. What Action Have we Taken on Previous South Coast Ozone Plans?

1. Final approval of the 1994 Ozone SIP

SCAQMD adopted an ozone plan on September 9, 1994, as part of the 1994 South Coast Air Quality Management Plan (AQMP). The California Air Resources Board (CARB) supplemented the SCAQMD plan with State measures and submitted it as a proposed revision to the California SIP on November 15, 1994. On July 10, 1996, CARB submitted

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[1] The 1999 air quality information is preliminary data from EPA's Aerometric Information Retrieval System (AIRS). For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] In 1998, the areas with the highest peak 1-hour ozone concentrations were: South Coast .244 ppm, Houston .230 ppm, Southeast Desert (the area immediately to the east of the South Coast) .202 ppm, San Joaquin Valley .194 ppm, Ventura County .174 ppm, San Diego County .164 ppm. An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average concentration above 0.124 ppm. An area is violating the standard if, over a consecutive 3-year period, more than 3 exceedances are expected to occur at any one monitor. Ground-level ozone is formed when emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) react in the presence of sunlight. NOx and VOCs are referred to as precursors of ozone. California air quality agencies generally use the term "reactive organic gas" (ROG) instead of VOC.

an extensive revision to the South Coast control measure adoption schedule to adjust for slippage in the plan's initial implementation. On January 8, 1997 (62 FR 1150), we finalized approval of the South Coast ozone plan, including the ozone portions of the 1994 South Coast AQMP, as amended in 1996, and the State measures ("1994 ozone SIP"). [3] The plan also contained "Federal measures," which the State wished us to adopt and implement in order to reduce emissions from mobile sources. [4]

2. Proposed Partial Approval and Partial Disapproval of the 1997 Ozone Revision

SCAQMD adopted a completely revised plan on November 15, 1996, and the California Air Resources Board (CARB) submitted the revision on February 5, 1997. The 1997 revision was not federally required for ozone, but was adopted by SCAQMD to address, in a comprehensive and consistent fashion, federal and state requirements for particulate matter, carbon monoxide, and nitrogen dioxide (NO2), and state requirements for an ozone plan update. [5]

On January 12, 1999 (64 FR 1770), we proposed to find that the revised plan met the CAA section 110(a)(1) procedural requirements for adoption following public notice and hearings. We also proposed to approve the baseline and projected emissions inventory updates under CAA sections 172(c)(3) and 182(a)(1).

Because CAA section 110(l) does not allow us to approve a SIP revision that interferes with any applicable CAA requirement concerning attainment and reasonable further progress or any other requirement of the Act, we proposed to disapprove the 1997 ozone plan as not meeting: (1) the control measure requirements of CAA sections 172(c)(6), and 182(e)(5); (2) the attainment demonstration requirements of CAA section 182(c)(2)(A); and (3) the quantitative milestones and reasonable further progress requirements of CAA section 182(c)(2)(A).

Our proposed disapproval of these provisions was based on our findings that:

(1) the control measures in the 1997 ozone plan were an impermissible relaxation of the 1994 ozone SIP, inasmuch as the plan relaxed, abandoned, or postponed approximately 30 short-term SCAQMD measures, and did not show that this revision meets the expeditious attainment test;

(2) the 1997 ozone plan was inconsistent with the intent of CAA section 182(e)(5), in that it increased, rather than reduced, the proportion of needed SCAQMD reductions that are assigned to conceptual, new-technology measures;

(3) the plan relied on unlawful assignments to the Federal Government to achieve a portion of the reductions needed for attainment; and

(4) the plan relied on commitments to adopt by the end of 1998 23 measures, of which SCAQMD had adopted less than 10, and we may not approve a plan that is not being implemented.

Since our proposed action in this document is an action on both the 1997 ozone plan and the 1999 Amendment to it, we are withdrawing the January 12, 1999 proposed partial approval and partial disapproval of the 1997 ozone plan. Therefore, if you submitted comments on our January 12, 1999 proposal and believe that those comments are relevant to our proposed action on the 1999 ozone plan, you will need to resubmit your comments within the public comment period for today's proposed action.

3. Final Approval of a 1999 State Update to the South Coast Ozone SIP

On July 23, 1999 (64 FR 39923), we approved an update to the South Coast 1994 ozone SIP, reporting on implementation of CARB's control measures in the 1994 SIP and the contribution from Federal mobile source controls undertaken as part of the Public Consultative Process. We also updated our own commitment and approved a new CARB commitment to adopt by December 31, 2001, control measures needed to achieve any additional reductions which are determined to be appropriate for CARB. Please consult this final approval document and our proposed approval (64 FR 30276, June 7, 1999) for more details on the update, the "Federal measures," the Public Consultative Process on national mobile source measures, and our associated consent decree in *Coalition for Clean Air, et al.* vs. *SCAQMD, CARB, and USEPA*, No. CV 97–6916 HLH (C.D. CA.).

D. What are the Changes in the New Plan?

SCAQMD adopted an amendment to the 1997 plan on December 10, 1999, to update the District's control measures and to address the deficiencies that formed the basis for our proposed disapproval. The 1999 amendment adds new SCAQMD control measures, revises existing SCAQMD measures, and amends the reasonable further progress, attainment demonstration, and stationary source emissions budget portions of the 1997 plan. [6] The 1999 amendment does not change the emission inventories, modeling, non-SCAQMD control measures, and the non-ozone portions of the 1997 plan. In this proposed rulemaking, we refer to the 1997 plan as amended in 1999 as "the revised ozone plan." If we approve this revised ozone plan, it will replace the 1994 ozone SIP except for that portion of the SIP that consists of State control measures and EPA's commitment.

1. Control Measure Revisions

The 1999 amendment adds commitments to adopt 8 short-term stationary source control measures, 4 of which are new control measures and 4 of which implement portions of the 1997 plan's long-term control measures. The revised ozone plan now includes 26 short- and intermediate-term control measures and 4 long-term measures. Along with 17 regulations adopted after the 1994 ozone SIP was submitted, these control measure commitments completely replace all SCAQMD control measure commitments in the SIP and greatly reduce the amount of the attainment demonstration dependent upon long-term conceptual measures. SCAQMD long-term VOC control measures in the 1994 ozone SIP were assigned credit for a reduction of 180 tpd; in the 1999 amendment, the long-term reductions amount to only 28 tpd. [7] Neither the 1997 plan nor the 1999 amendment changes the State control measures in the 1994 ozone SIP.

[3] We approved some of the State and SCAQMD measures in the plan earlier. See particularly 60 FR 43379 (August 21, 1995).

[4] In response to this "assignment," we established a Public Consultative Process to identify the best options for achieving further emission reductions from mobile source controls, at least to the extent they are needed for attainment of the ozone NAAQS in the South Coast. In connection with the establishment of this process, both EPA and CARB made commitments regarding appropriate future emission reductions. Please see EPA's final approval of the 1994 ozone SIP for a discussion of the "Federal measures" and our rationale, at that time, for establishing the Public Consultative Process (62 FR 1152–5, 1184–6). See also section I.C.3 below.

[5] We approved the CO and NO2 portions of the submittal on April 21, 1998 (63 FR 19661) and July 24, 1998 (63 FR 39747), respectively.

[6] The "attainment demonstration" includes both the control measures and air quality modeling showing that the control measures are sufficient to reduce emissions to levels where violations of the NAAQS would not occur. The 1999 amendment does not change the modeling in the 1997 plan, which we continue to find approvable, but does add new control measures, thus allowing us to propose in this document approval of the plan with respect to both the control measure and the attainment demonstration requirements of the Act.

[7] Unless otherwise indicated, when we speak of emission reductions in this document we refer to reductions in the attainment year (2010), net of growth.

2. Technical Revisions

Although SCAQMD did not revise the baseline emissions inventory included in the 1997 plan, the 1999 amendment revises the District's control measures portion of the plan, adding new measures and accelerating adoption and implementation dates of measures in the 1997 plan. Since these changes amend the plan's scheduled emission reductions, the 1999 amendment revises the 1997 plan's stationary source emissions budgets for VOC and NO_X. The 1999 amendment also presents new rate-of-progress calculations.

E. What Further Revisions Are Planned in the Future?

While the revised ozone plan represents more current and accurate information than was used in the 1994 ozone SIP, SCAQMD and CARB consider the new plan to be an interim update. A comprehensive ozone plan revision is scheduled for adoption and submittal as a SIP revision in 2001. This future revision will use new emission inventories and modeling, and it will include a revised control strategy if needed to provide for expeditious attainment.

II. Review of the Revised Ozone Plan

A. Did SCAQMD and CARB Meet the CAA Procedural Requirements?

SCAQMD has satisfied applicable requirements for reasonable public notice and hearing prior to adoption of the 1997 plan and the 1999 amendment. SCAQMD conducted public workshops and public hearings prior to the adoption of the 1997 plan on November 15, 1996 (Governing Board Resolution No. 96–23), and before adoption of the 1999 amendment on December 10, 1999 (Governing Board Resolution 99–35). On January 23, 1997, CARB adopted the 1997 plan (Resolution No. 97–1) following public notice, and CARB submitted the plan to us on February 5, 1997. After public notice, CARB adopted the 1999 amendment at a public hearing on January 27, 2000, and the State indicates its intent to submit the amendment promptly as a SIP revision. Assuming that the State makes this submittal, we believe that the submittal will have met the procedural requirements of CAA sections 110(a) and (l).

B. Do the Revised Baseline and Projected Emissions Inventories Meet CAA Requirements?

As discussed in our proposed approval of the emissions inventory in the 1997 plan (64 FR 1774–7), the revised and updated emissions inventory conforms to our guidance documents. Please see that notice for further details regarding the inventories, the socio-economic forecasts underlying the projected inventories, and our emissions inventory guidance documents. The 1999 amendment makes no changes to these inventory summaries, which are included in Chapter 3 and Appendix III of the 1997 plan.

CARB has prepared draft revisions to the motor vehicle emissions factors. Once the new factors are adopted by the State, the responsible agencies will begin the process of revising the plan to reflect the new emissions data. The State has also recently prepared a new offroad mobile source emissions model, and local agencies are revising the regional growth and control effectiveness data. These updates and enhancements will improve emissions information for the comprehensive 2001 plan revision.

Because the methodologies used to prepare the inventories in the revised ozone plan are acceptable, we propose to approve the plan revision with respect to the emissions inventory requirements of CAA sections 172(c)(3) and 182(a)(1).

C. Is the Modeled Attainment Demonstration Consistent With Modeling Guidelines?

The attainment demonstration in the revised ozone plan employs the Urban Airshed Model (UAM) with the Carbon Bond IV mechanism. The UAM analysis uses 4 episodes in 1987, including a September 7–9 episode with a peak ozone concentration of 0.33 ppm.

The 1994 ozone SIP analysis used a more severe episode, June 5–7, 1985, which had a peak concentration of 0.36 ppm. For the revised ozone plan, SCAQMD modeled the 1985 episode but did not show attainment with all control measures, and the episode was dropped for purposes of the attainment demonstration. SCAQMD based its decision not to use the 1985 episode on the age of the episode and the District's contention that the episode reflects meteorological conditions that rarely occur in the area. This is consistent with our current modeling guidance.[8]

On November 18, 1998, the SCAQMD submitted a weight of evidence analysis for the June 1985 episode.[9] A copy of this analysis has been placed in the docket for this rulemaking. The analysis addresses our current modeling guidance and argues for elimination of the 1985 episode under a weight of evidence approach. Attachment B to the SCAQMD correspondence addresses the acceptability of the remaining 4 episodes as a basis for an attainment demonstration. SCAQMD provides evidence that the episodes are representative of the types of meteorological episodes expected in the South Coast when high ozone concentrations occur. The evidence examines the episodes based on the deviation index (Horie CART analysis) and the Chu-Cox methodology for assessing episode frequency.

The model performance for the 1987 episode shows a high systematic bias, e.g., ozone underprediction of 44 percent for June 24, 40 percent for June 25, 47 percent for September 8, and 38 percent for September 9. SCAQMD showed that this underprediction is significantly reduced if motor vehicle VOC emissions are doubled, in which case underprediction becomes 24 percent for June 24, 19 percent for June 25, 2 percent for September 8, and 3 percent for September 9. CARB's draft revisions to the motor vehicle factors support this inventory adjustment. Because the model performance falls within an acceptable range of accuracy after these adjustments to the inventory and because the modeling otherwise conforms to our guidance, we propose to approve the modeling analysis.

More accurate and comprehensive UAM analyses will soon be possible, based on the Southern California Ozone Study (SCOS), for which an extensive field study was completed in the summer of 1997 and continued, in limited form, through the summer of 1998. SCAQMD and CARB intend to complete a new modeling analysis using updated emission inventories and SCOS modeling, as part of a comprehensive ozone SIP revision to be submitted in 2001. We strongly endorse this effort to update and enhance the technical foundation of the attainment demonstration. This revised SIP will be important to ensure that emission reduction target levels and control measures are sufficient to provide for attainment within the South Coast, and to establish a technically improved basis for making adjustments to the control strategy to achieve efficient and expeditious attainment.

[8] Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007 (1996).

[9] Letter from Barry R. Wallerstein, SCAQMD Executive Officer, to Felicia Marcus, Regional Administrator, EPA Region IX, Attachment A.

D. Do the Control Measures Meet CAA Requirements?

1. What Are the Applicable CAA Requirements?

The CAA requires that SIPs include enforceable control measures sufficient to meet rate-of-progress milestones and provide the reductions needed for attainment by the applicable CAA deadline. Where it is infeasible for a state to accomplish the necessary regulatory adoption in the short term, we have recognized that this requirement can be satisfied, to some extent, by enforceable commitments to adopt regulations in the future, since these commitments can be enforced in court by EPA or citizens.

In view of the magnitude of reductions required in the South Coast and the fact that SCAQMD and CARB have already adopted in regulatory form more stringent measures than are included in most other SIPs, we approved the 1994 ozone SIP despite its heavy reliance on commitments to adopt regulations. See 62 FR 1155–7, 1177–82. Over the past 5 years following adoption of the 1994 ozone SIP, SCAQMD rule adoptions and attainment demonstration revisions have reduced the dependence of the plan on SCAQMD commitments, which now amount to 84 tpd of VOC and NO_x, compared to well over 400 tpd in the 1994 ozone SIP.

2. How Does the Revised Ozone Plan Address These Requirements?

a. Control Measures Already Adopted

Following submittal of the 1994 ozone SIP, SCAQMD adopted rules projected to reduce VOC emissions by over 150 tpd by 2010. These rules fulfill many of the control measure commitments in both the 1994 and 1997 plans. The table below entitled "Table 1—SCAQMD Rules Adopted between November 1994 and September 1999" lists the rules with projected emission reduction levels. If these levels are not actually achieved by the rules, the SCAQMD enforceably commits to revise the rules or adopt new rules to provide for compensating reductions.[10]

TABLE 1.—SCAQMD RULES ADOPTED BETWEEN NOVEMBER 1994 AND SEPTEMBER 1999

Control measure	Rule No.	Title	Adoption date	Implementation dates	2010 reductions in tpd VOC
CTS–C	1171	Solvent Cleaning Operations	1996	1999	26.8
CTS–02H	1107	Metal Parts and Products	1998	1999	5.8
CTS–02M	1145	Plastic, Rubber, Glass Coatings	1997	1998	1.2
CTS–02N	1122	Solvent Degreasers	1997	1999	48.1
CTS–07	1113	Architectural Coatings—Phase I	1996	1998–2008	14.8
CTS–07	1113	Architectural Coatings—Phase II	1999	2002–06	16.5
CMB–02B	1146.2	Small Boilers and Process Heaters	1998	2000–06	4.2 NO_x
FUG–01	462	Organic Liquid Transfer	1995	1999	0.8*
FUG–02	1176	Sumps and Wastewater Separators	1996	1997	5.0*
PRC–03	1138	Restaurant Operations	1997	1999	0.2
RFL–02	461	Gasoline Dispensing Facilities	1995	1998	3.7*
	1104	Wood Flat Stock Coating Operations	1998	2000	negligible
	1136	Wood Products Coatings	1996	2005	7.9*
	1124	Aerospace Assembly and Component Manufacturing Operations.	1996	2002	0.2*
	1130.1	Screening Printing Operations	1996	2003	0.1*
	1168	Adhesive Applications	1998	2003	1.3*
CTS–07	1113	Architectural Coatings	1999	2002–6	18.5*
Total Reductions of VOC.	.....	.....	.....	.....	153.9
Total Reductions of NO_x.	.....	.....	.....	.....	4.2

*Reductions incorporated in baseline inventory.

In addition to these rules, SCAQMD also adopted 3 rule revisions in October and November 1999, implementing plan measures and contributing additional emission reductions as shown: CTS–02C (Phase 2)—Further Emission Reductions from Solvent Cleaning Operations (Rule 1171)—11 tpd VOC (with an additional 16 tpd subject to technology assessment in the future); CTS–08—Further Emission Reductions from Industrial Coating and Solvent Operations (Rule 1130)—2 tpd VOC; and CMB–06—Emission Standards for New Commercial and Residential Water Heaters (Rule 1121)—7.6 tpd NO_x.

b. Short and Intermediate-term Control Measure Commitments

As discussed above, the revised ozone plan now includes commitments to adopt 26 short- and intermediate-term control measures. The plan describes each control measure in detail, identifying 1993 baseline emissions from the source category, projected 2006 and 2010 emissions, 2006 and 2010 emission reductions, control cost effectiveness, methods and technologies of control, rule compliance, implementation schedule, implementing agency, and control measure history, including an explanation of changes in the measures in successive plan updates. The table labeled "Table 2—Short- and Intermediate-Term Control Measure Commitments" indicates for each control measure the dates of rule adoption and implementation and the

[10] "The District is committed to adopt Table 2–1 measures unless these measures or a portion thereof are found infeasible and other substitute measures that can achieve equivalent reductions in the same adoption/implementation timeframes are adopted. Findings of infeasibility will be made at a regularly scheduled meeting of the District Board with proper public notification. For purposes of SIP commitment, infeasibility means the proposed control technology is not reasonably likely to be available by the implementation date in question, or achievement of the emission reductions by that date is not cost effective. The District acknowledges that this commitment is enforceable under Section 304(f) of the federal Clean Air Act." 1999 Amendment, page 2–18. Table 2–1, which is labeled "Revised AQMP Short- and Intermediate-Term Control Measures, Implementing Agency, Adoption Date and Implementation Period," contains the complete list of SCAQMD commitments for short- and intermediate-term control measures, as also shown in Table 2 of this document.

emission reductions projected to occur by 2006 and 2010.

TABLE 2—SHORT-AND INTERMEDIATE-TERM CONTROL MEASURE COMMITMENTS (IN TONS PER SUMMER DAY OF VOC OR (NO_X))

Control measure No.	Control measure title	Implementing agency	Adoption date	Implementation date	Emission reductions	
					2006	2010
CTS–02(P2)	Further Emission Reductions from Solvent Cleaning Operations—Rule 1171*.	SCAQMD	1999	2002	10.6	11.0
CTS–02E	Emission Reductions from Adhesives—Rule 1168.	SCAQMD/CAR B	2000	2007–2008	0.0	1.3
CTS–02O	Emission Reductions from Solvent Usage—Rule 442*.	SCAQMD	2000	2002	1.1	1.0
CTS–07(P 3)	Further Emission Reductions from Architectural Coatings and Cleanup Solvents—Rule 1113.	SCAQMD	2003	2006–2008	3.1	9.8
CTS–08	Further Emission Reductions from Industrial Coating and Solvent Operations (Phases 1 and 2)*.	SCAQMD	2002 2003	2004–2008 2005–2008	2.4	5.0
CTS–09	Further Emission Reductions from Large Solvent and Coating Sources (Phases 1 and 2).	SCAQMD	2000 2002	2003–2004 2005–2006		4.0 3.0
FUG–03	Further Emission Reductions from Floating Roof Tanks—Rule 463.	SCAQMD	TBD	TBD	TBD	TBD
FUG–04	Further Emission Reductions from Fugitive Sources—Rule 1121.	SCAQMD				
FUG–05	Further Emission Reductions from Large Fugitive VOC Sources (Phases 1, 2, and 3)*.	SCAQMD	2001 2002 2003	2003–2006 2004–2007 2005–2008		1.0 1.0 1.0
FUG–06	Control of Methanol Emissions from Refinery Hydrogen Plan Vents.	SCAQMD	2000	2001–2003	0.8	0.8
RFL–02(P2)	Further Emission Reductions from Gasoline Dispensing Facilities—Rule 461.	SCAQMD/CAR B2000	2000	2001–2002	2.0	2.0
CMB–06	Emission Standards for New Commercial and Residential Water Heaters—Rule 1121.	SCAQMD	1999	2002–2005	(3.6)	(7.6)
PRC–03(P2)	Further Emission Reductions from Restaurant Operations.	SCAQMD	2000	2001 (new) 2003 (retr ofit).	0.9	0.9
PRC–06	Further Emission Reductions from Industrial Processes*.	SCAQMD	2001	2004–2007	1.9	3.0
MSC–01	Promotion of Lighter Color Roofing and Road Materials and Tree Planting Programs.	SCAQMD/Loc al Govt	TBD	TBD	Air quality benefit from lowering ambient temperature	
MSC–03	Promotion of Catalyst-Surface Coating Technology Programs.	SCAQMD	TBD	TBD	Conversion of ambient ozone and CO into Oxygen and CO^2	
WST–01	Emission Reductions from Livestock Waste.	SCAQMD	2002	2004	3.3	3.3
WST–02	Emission Reductions from Composting.	SCAQMD	2001	2004–2006	TBD	TBD
WST–03	Emission Reductions from Waste Burning (implemented through MOUs).	SCAQMD/Local Fire Agencies.		2002	Air quality benefit but no emission reduction	
WST–04	Disposal of Materials Containing Volatile Organic Compounds.	SCAQMD	2000	2002	0.7	0.8
FSS–04	Emission Charges of $5,000 per Ton of VOC for Stationary Sources Emitting over 10 Tons per Year.	SCAQMD	TBD	TBD	TBD	TBD
FLX–01	Intercredit Trading Program	SCAQMD	TBD	TBD	Promotion of advanced pollution control technology	
Total Reductions of VOC					26.8	48.1
Total Reductions of NO_X					3.6	7.6

*SCAQMD commits to achieve the reductions shown but identifies a potential for greater emission reductions from these control measures (Table 2–4, 1999 Amendment). Any reductions achieved from these measures beyond the amount of the commitment will reduce the long-term measure commitment, shown in Table 4, below.

SCAQMD commits to meet the adoption dates, implementation dates, and emission reduction targets, unless a measure, in whole or in part, is determined to be infeasible. Should that be the case, SCAQMD commits to achieve equivalent reductions on the same schedule through substitute controls.

Recognizing that such control strategy adjustments may be necessary and that development and implementation of regulations may achieve actual emission reductions that do not match those projected, SCAQMD included in the revised plan an additional enforceable commitment to achieve emission reduction targets in future years (1999 Amendment, pp. 2–18 and 2–19). This complementary commitment is shown below in the table titled "Table 3—Emission Reduction Commitments." In order to ensure expeditious progress, SCAQMD commits to achieve these emission reductions even if control measures are determined to be infeasible.

TABLE 3.—EMISSION REDUCTION COMMITMENTS

[In tons per day for 2010 Planning Inventory.]

Year	Based on adoption date		Based on implementation date*	
	VOC	NO_x	VOC	NO_x
1999	11.0	7.6	.....	.....
2000	10.0	.....	.....	.....
2001	4.0	.....	.....	.....
2002	9.3	.....	14.8	.....
2003	13.8	.....	0.9	.....
2004	.....	.....	7.3	.....
2005	.....	.....	.....	.....
2006	.....	.....	4.0	.....
2007	.....	.....	4.0	.....
2008	.....	.....	17.1	.....
Total	48.1	7.6	48.1	7.6

*Represents the final, full implementation date; typically, a rule contains multiple implementation dates.

The 1999 amendment provides the following clarification on the "currency" that will be used in determining emission reduction progress under the revised ozone plan: "For purpose of tracking the progress in emission reductions, the baseline emissions for the year 2010 planning inventory (summer inventory for ozone) in the 1997 AQMP will be used, regardless of any subsequent new inventory information that reflects more recent knowledge. This is to assure that the same "currency" is used in measuring progress as was used in designing the AQMP. This will provide a fair and equitable measurement of progress. Therefore, whether progress is measured by emission reductions or by remaining emissions for a source category provides no material difference." (Page 2–16) We propose to accept the use of this approach for determinations of compliance with emission reduction commitments associated with the control measures in the revised ozone plan.

The new or amended control measure commitments in the revised ozone plan replace 31 control measure commitments contained in the 1994 ozone SIP. These measures are listed in the table below labeled "Table 4—Measures Deleted from the 1994 Ozone SIP."

TABLE 4.—MEASURES DELETED FROM THE 1994 OZONE SIP

Control measure No.	Control measure title
CTS–A	Electronic Components
CTS–C	Solvent Cleaning
CTS–D	Marine/Pleasure Craft Coatings
CTS–E	Adhesives
CTS–F	Motor Vehicle Non-Assembly Coating
CTS–G	Paper/Fabric/Film Coatings
CTS–H	Metal Parts/Product Coatings
CTS–I	Graphic Arts/Screen Printing
CTS–J	Wood Products Coatings,
CTS–K	Aerospace/Component Coatings
CTS–L	Automotive Assembly Operations
CTS–07	Architectural Coatings
FUG–01	Organic Liquid Transfer
FUG–02	Active Draining of Liquid Products
FUG–04	Fugitive Emissions of VOCs
RFL–02	Gasoline Dispensing Facilities
RFL–03	Pleasure-Boat Fueling Operations
CMB–02F	Internal Combustion Engines
CMB–05	Clean Stationary Fuels
PRC–02	Bakeries
PRC–03	Restaurant Operations
WST–01	Livestock Waste
WST–03	Waste Burning
WST–04	Disposal of Materials Containing VOCs

TABLE 4.—MEASURES DELETED FROM THE 1994 OZONE SIP—Continued

Control measure No.	Control measure title
ISR–01	Special Events Centers
ISR–02	Shopping Centers
ISR–03	Registration and Commercial Vehicles
ISR–04	Airport Ground Access
ISR–05	Trip Reduction for Schools
ADV–CTS–02	Advanced Technology—Coatings

Appendix A of the 1999 Amendment presents SCAQMD's reasons for replacing these control measures.

c. Long-Term Control Measure Commitments

Section 182(e)(5) of the Act allows an extreme ozone nonattainment area additional time, if necessary, beyond the November 15, 1994 ozone SIP submittal deadline, to develop, adopt, and submit some of the specific regulations and programs needed to achieve attainment. The CAA allows us to approve plans based on long-term measures if the State demonstrates that the measures are not needed to meet ROP requirements during the first 10 years and if the State has submitted enforceable commitments to adopt contingency measures to be implemented if the long-term measures do not achieve planned reductions.

None of the long-term measures in the revised ozone plan are scheduled for implementation during the period 1990–2000, and the plan meets CAA requirements for ROP without reliance on the long-term measures, which are needed only for attainment. The revised ozone plan identifies additional measures beyond those credited with reductions toward ROP or attainment, to be scheduled for adoption and implementation in the future. The plan also provides a range of additional emission reductions from several of the short- and intermediate-term measures that may contribute additional emission reductions creditable against all or part of the long-term measure commitments.

In addition, the 1999 Amendment includes SCAQMD commitments to submit semi-annual progress reports on meeting the District's commitments, and to hold annual workshops on identifying new controls to minimize, and potentially eliminate, reliance on long-term measures.

Because of SCAQMD's success in accelerating long-term control measures, there remain in the revised ozone plan only 28 tpd of VOC assigned to this special category of measures, which is authorized for extreme ozone areas under CAA section 182(e)(5). The table entitled "Table 5—Long-Term Control Measures" displays SCAQMD's long-term measure commitments in the revised ozone plan.

TABLE 5—LONG—TERM CONTROL MEASURES

[2010 VOC reduction in tons per summer day]

Control measure	Title	Adoption date	Implementation date	Emission reductions
ADV–CLNG	Solvent Cleaning and Degreasing Operations	2003–4	2005	16
ADV–CTS	Miscellaneous Industrial Coating and Solvent Operations	2003–5	2006–10	6
ADV–FUG	Fugitive Emissions	2003–5	2006–10	5
ADV-PRC	Industrial Process Operations	2003–5	2006–10	1
Total reductions				28

3. Does the revised ozone plan meet the CAA requirements for control measures?

a. Short- and intermediate-term control measure commitments

In our proposed action on the 1997 ozone plan, we proposed to disapprove the near-term control measures because: (1) SCAQMD had already failed to adopt many of the measures by the scheduled date; (2) the control measures represented an impermissible relaxation of the 1994 ozone SIP; and (3) the SIP included unlawful assignments of control measures to the Federal government (64 FR 1775–7). SCAQMD has remedied the first deficiency and is currently on schedule with regard to the commitments in the revised ozone plan. The recently adopted rules and the short-and intermediate-term control measure commitments, as revised in the 1999 Amendment, cure the second deficiency by accelerating emission reduction progress beyond the level set out in the 1997 plan and thereby eliminating our concern regarding backsliding from the 1994 ozone SIP. The third deficiency was remedied by our recent rulemaking concluding the Public Consultative Process (64 FR 39923, July 23, 1999).

We now propose to approve, under CAA section 110(k)(3), the enforceable SCAQMD commitments to adopt and implement the short-and intermediate-term control measures, and to implement those measures that have already been adopted in regulatory form, by the dates specified to achieve the emission reductions shown above in Tables 1, 2, and 3. We are proposing to assign credit to these measures for purposes of the attainment demonstration in the revised ozone plan. We propose to approve SCAQMD's commitment to achieve the overall emission reduction schedule in Table 3, which provides the basis for allowing alternative or revised measures to substitute for those identified in Table 2, so long as SCAQMD continues to meet the Table 3 schedule for adopting and implementing regulations to achieve specific levels of emissions reduction. Finally, we propose to approve the deletion of the 31 control measures from the 1994 ozone SIP, listed above in Table 4.

b. Long-Term Measure Commitments

In our proposed action on the 1997 ozone plan, we proposed to disapprove the long-term control measures because the 1997 plan increased the proportion of reductions assigned to the long-term category, and we believed that CAA section 182(e)(5) did not authorize us to approve SIP revisions that postpone SIP

commitments in the near-term and shift the balance of the SIP toward more distant and less specific commitments (64 FR 1777). The revised ozone plan remedies this deficiency by dramatically reducing the emission reductions assigned to this category.

We therefore propose to approve, as meeting CAA section 182(e)(5), the SCAQMD commitments to adopt and implement the long-term control measures in Table 4, and we propose to assign the emission reductions from these measures to the attainment demonstration in the revised ozone plan. As mentioned above, however, SCAQMD may satisfy all or a part of its long-term control measure obligations by adopting near-and intermediate-term control measures that achieve more emission reductions than assigned to these measures in Table 2.

E. Does the plan show reasonable further progress?

1. What are the applicable CAA requirements?

CAA sections 182(c)(2) and (e) require that extreme area ozone SIPs include quantitative milestones that are to be achieved every 3 years until attainment, and that demonstrate reasonable further progress (RFP) toward attainment by the applicable date. CAA section 171(a) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date."

For ozone areas classified as serious or above, section 182(c)(2) requires that the SIP must provide for reductions in ozone-season, weekday VOC emissions of at least 3 percent per year net of growth averaged over each consecutive 3-year period beginning in 1996 until the attainment date. This is in addition to the 15 percent reduction over the first 6-year period required by CAA section 182(b)(1) for areas classified as moderate and above.

2. How Does the Revised Ozone Plan Address These Requirements?

The revised ozone plan shows reductions consistent with the 3 percent per year rate of progress requirement for 1997–1999 and 2000–2002 through use of VOC emission reductions from currently adopted regulations. For 2003–2005, 2006–2008, and 2009–2010 milestone periods, however, the plan does not have enough creditable VOC reductions to meet the milestones, and must substitute NOx reductions, as allowed by CAA section 182(c)(2)(C). As shown below in the table entitled "Table 6—Rate-of-Progress Plan," NOx substitution accounts for 3.6 percent of the required 9 percent reduction between 2003–2005; 8.5 percent between 2006–2008; and 0.5 percent between 2009–2010.

TABLE 6.—RATE-OF-PROGRESS PLAN
[Emissions Rounded to Nearest Ton per Day]

	1999		2002		2005		2008		2010	
	VOC	NO_x	VOC	NO_x	VOC	NO_x	VOC	NO_x	VOC	NO_x
Adjusted 1990 Base Year	1527	1472	1515	1472	1510	1472	1509	1472	1509	1472
Required Percent Reduction	24	0	[illegible]	0	5.4	3.6	0.5	8.5	0.5	8.5
Required Reductions	367	0	136	0	[illegible]	53	[illegible]	125	[illegible]	81
Emissions Target	1161	1472	1012	1472	926	1419	917	1294	[illegible]	1213
Emissions (Adopted Rules)	982	956	946	859	918	797	913	764	[illegible]	751
Emissions (Counting Reductions from Commitments)	939	935	[illegible]	815	708	695	587	[illegible]	414	530

The 1999 Amendment significantly increases VOC reductions in all interim milestone years, compared to the 1997 ozone plan.

3. Does the Revised Ozone Plan Meet the CAA Requirements?

As shown by Table 6, the revised ozone plan meets the ROP requirements based entirely on fully adopted regulations. Taking into account reductions from SCAQMD and CARB enforceable commitments, implementation of the plan should result in reductions in excess of the minimum ROP requirement (compare the last line in Table 6 to the emissions target for each milestone year). This is appropriate, given the enormous reductions required for this area to reach attainment.

Compliance with the milestone and RFP provisions of the Act requires that all of the creditable emission reductions be approved as enforceable parts of the SIP (General Preamble, April 16, 1992, at 57 FR 13517). Because we proposed to disapprove the control measure provisions in the 1997 ozone plan, we also proposed to disapprove the plan with respect to the CAA section 182(c)(2) quantitative milestone and reasonable further progress requirements. As discussed above, however, we now propose to approve the control measures in the revised ozone plan, and therefore propose to approve the new plan as meeting the quantitative milestone and RFP requirements of CAA section 182(c)(2).

F. Does the Plan Provide for Attainment?

1. What are the Applicable CAA Requirements?

CAA sections 182(c)(2)(A) and (e) require that ozone SIPs for areas classified as extreme demonstrate attainment of the ozone NAAQS by the applicable deadline—in the case of the South Coast, as expeditiously as practicable but not later than November 15, 2010. CAA section 181(a)(1). The demonstration must be based upon photochemical grid modeling or any other analytical method determined to be at least as effective.

2. How Does the Revised Ozone Plan Address These Requirements?

As discussed above, the modeling approach in the revised ozone plan is consistent with our modeling guidelines. The modeling analysis shows that attainment of the ozone NAAQS will require reducing ozone precursors to the following summer day levels: 413 tpd VOC and 530 tpd NO_X. These levels are frequently called the "carrying capacity" of the area. The enforceable emission reductions in the revised ozone plan will reduce 2010 baseline emissions to these attainment levels, as shown in the table entitled "Table 7—Ozone Attainment Demonstration."

TABLE 7.—OZONE ATTAINMENT DEMONSTRATION

[In tons per summer day]

	VOC	NO_X
1990 baseline emissions	1733	1472
2010 baseline emissions (assuming reductions from all rules adopted as of 9/96)	839	727
Plan reductions from baseline	425	197
2010 emissions assuming reductions from plan implementation	413	530
Carrying capacity	413	530
Percent reduction from 1990 baseline emissions	76%	64%

3. Does the Revised Ozone Plan Meet the CAA Requirements?

The revised ozone plan includes enforceable measures and commitments that will achieve the ozone precursor reductions needed to reach attainment, as established in a modeling analysis consistent with our guidelines. Moreover, the stringent new measures, aggressive implementation schedules, and accelerated progress in the revised ozone plan also meet the expeditious attainment requirement of CAA section 181(a). We therefore propose to approve the attainment demonstration under CAA section 182(c)(2).

G. Are the emissions budgets approvable?

1. Motor vehicle emissions budgets

Attainment demonstration submittals must specify the maximum motor vehicle emissions allowed in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. In order for us to find the budget adequate and approvable, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The motor vehicle emissions caps defined by this and other plans when they are approved into the SIP are used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(2)(A). For more detail on this part of the conformity requirements see 40 CFR 93.118. For transportation conformity purposes, the cap on motor vehicle emissions is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets in the revised ozone plan for 2010 are 80.7 tpd VOC and 277.8 tpd NO_X. These budgets were developed using the State's EMFAC7G motor vehicle emissions factors. We propose to approve the budgets as consistent with all of the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the 2010 baseline emissions inventory, the motor vehicle control measure emission reductions used in the attainment demonstration, and the reductions needed for attainment.

In the near future, CARB is expected to issue refinements to the emissions factors for use in transportation conformity determinations. The refinements would more accurately reflect emission reductions associated with the State's motor vehicle inspection and maintenance (I/M) program and other motor vehicle controls.[11] These refinements must be used in conformity determinations, in accordance with our transportation conformity regulations, which require use of the most current and accurate information (40 CFR 93.110(e), 122(a)(2)). Subsequent budgets will reflect these changes and any new or modified control measures.

2. General Conformity Emissions Budgets

CAA section 176(c)(1) provides that "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an implementation plan. . . ." This provision establishes requirements for "general conformity," as distinct from "transportation conformity," discussed above.[12] General conformity must be based on the most recent estimates of emissions in the federally approved SIP.

The revised ozone plan establishes new emissions budgets for ROP milestone years for each source category. The budgets appear in Table 4–9 of Appendix V of the 1997 ozone revision, and are modified by Table 2–6 of the 1999 Amendment, which reduces the stationary source VOC emissions consistent with the new and accelerated SCAQMD control measures in the 1999 Amendment. The emissions budgets as revised by the 1999 Amendment appear below in the table entitled "Table 8—Emissions Budgets by Milestone Year."

[11] The updated emission reductions which, among other things, would reflect more accurately the I/M program as compared to the 1994 submittal, are necessary in the case of I/M to account for a legislative change to the program in 1997.

[12] For more details on the general conformity requirements, you should consult 40 CFR 51.850–51.860 and 40 CFR part 93.

TABLE 8.—EMISSIONS BUDGETS BY MILESTONE YEAR

[In tons per day]

Year	Stationary		Onroad		Nonroad		Total	
	VOC	NO_x	VOC	NO_x	VOC	NO_x	VOC	NO_x
1999	435.2	115.7	354.0	526.8	137.3	292.6	938.5	935.1
2002	402.4	96.7	273.1	447.1	125.1	270.7	826.1	814.5
2005	334.4	91.4	206.0	369.1	116.6	234.0	707.6	694.5
2008	305.1	91.4	145.4	310.1	106.7	209.2	587.4	609.0
2010	267.6	88.3	80.7	277.8	65.1	164.3	413.6	530.4

Final approval of the revised ozone plan would establish these budgets for purposes of general conformity under CAA section 176(c)(1), replacing the budgets in the 1994 ozone SIP. Thus, projects requiring general conformity determinations may be able to show that emissions from the project are specifically included in the revised ozone plan's attainment demonstration (see, 40 CFR 93.158(a)(1)).

H. What are the implications of EPA's proposed plan approval?

If we finalize the proposed approval of the revised ozone plan, this plan would replace and supersede the 1994 ozone SIP with the exception of the State control measures for mobile sources, consumer products, and pesticides, and EPA's commitment. These State measures remain unchanged from those approved as part of the 1994 ozone SIP. Final approval would also set new emissions budgets for purposes of conformity.

Our final approval would also make enforceable the SCAQMD commitments to adopt and implement the control measures and regulations listed above in Tables 1, 2, and 5, to achieve the specified emissions reductions, computed consistently with the assumptions in the plan's emissions inventory. Similarly, final plan approval would make enforceable the SCAQMD commitment to achieve the overall emission reduction schedule in Table 3, and this would create the possibility of SCAQMD control measure adjustments and substitutions under the approved SIP, so long as the emission reduction obligations of Table 3 are met.[13]

As discussed in section I.E. above, CARB and SCAQMD intend to adopt and submit a comprehensive revision to the ozone plan in 2001. This new plan will use an entirely new UAM attainment analysis, updated and corrected baseline and projected emissions information, and updates to the control measures to reflect the current status of the measures and any changes to the measures that may be required to meet the emission reduction needs in the new attainment demonstration or to ensure that the SIP emission reduction commitments are met. We strongly support the timely completion of this new comprehensive revision to refine and enhance the technical foundations of the attainment demonstration and update the control measures, as necessary.

[13] Once a substitute control measure has been adopted as a regulation and submitted as a SIP revision, we will undertake formal rulemaking, with opportunity for public comment, on the regulation.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the

Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 28, 2000.

Nora L. McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–2827 Filed 2–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. NH040–7167b; FRL–6532–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the Sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (DES) on June 2, 1999. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to certain existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units in accordance with sections 111 and 129 of the Clean Air Act. The New Hampshire DES submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of the **Federal Register**, EPA is approving the New Hampshire State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule elsewhere in this **Federal Register**. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments in writing by March 9, 2000.

ADDRESSES: You should address your written comments to: Mr. Brian Hennessey, Acting Chief, Air Permits Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The

interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301–0095, (603) 271–1370.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov*. While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules Section of this **Federal Register**.

Dated: January 20, 2000.

Mindy S. Lubber,

Acting Regional Administrator, Region 1.

[FR Doc. 00–2473 Filed 2–7–00; 8:45 am]

BILLING CODE 0560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7314]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376. *§ 67.4*

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Hawaii	City and County of Honolulu.	Moanalua Stream	Approximately 250 feet downstream of Moanalua Road.	*12	*12
			Approximately 180 feet upstream of Jarrett White Road.	None	*29
		Manaika Stream	At confluence with Moanalua Stream	None	*12
			Approximately 260 feet upstream of Mahole Street.	None	*35
		Waiawa Stream	At Middle Loch	None	*3
			Approximately 4,400 feet upstream of confluence with Panakauahi Gulch.	None	*63
		Overflow of Waiawa Stream.	At Middle Loch	None	*4
			Approximately 2,600 feet upstream from Middle Loch.	None	*16
		Panakauahi Gulch	At confluence with Waiawa Stream	None	*44
			Approximately 800 feet upstream of Cane Haul Road.	None	*97
		Flow along Cane Haul Road.	At convergence point with Panakauahi Gulch.	None	*52
			At divergence point from Panakauahi Gulch.	None	*93
		Split flow of Waiawa Stream.	At Middle Loch	None	*3
			Approximately 870 feet upstream of Waipulani Avenue.	None	*11

Maps are available for inspection at the Planning and Zoning Department, 650 S. King Street, Honolulu, Hawaii.

Send comments to The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 S. King Street, Honolulu, Hawaii 96813.

South Dakota	Jefferson (City) Union County.	Big Sioux River	Approximately 200 feet northwest of intersection of Lincoln Street with the Burlington Northern Railroad.	None	*EL113
			Approximately 1,150 feet southeast of intersection of Lincoln Street with the Burlington Northern Railroad.	None	*EL113

Maps are available for inspection at City Hall, 208 Main Street, Jefferson, South Dakota.

Send comments to The Honorable Tom Brandt, Mayor, City of Jefferson, P.O. Box 276, Jefferson, South Dakota 57038.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2804 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7310]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376. *§ 67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

§ 67.4 [Amended]

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Santa Cruz County (Unincorporated Areas).	Tubac Creek	At confluence with Santa Cruz River	None	*3,192
			Approximately 0.35 mile (1,850 feet) upstream of Interstate 19.	None	*3,263
		Tubac Creek North Channel.	At confluence with Santa Cruz River	None	*3,189
			At divergence from Tubac Creek approximately 680 feet upstream of Calle De Olivas.	None	*3,251
		Tributary 1 of Tubac Creek.	At confluence with Tubac Creek	None	*3,213
			At approximately 0.229 mile (1,210 feet) upstream of Interstate 19.	None	*3,250

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Tributary 2 of Tubac Creek.	At confluence with Tubac Creek	None	*3,195
			Immediately downstream of East Frontage Road.	None	3,222
Maps are available for inspection at Floodplain Administrator, 2150 N. Congress Drive, Nogales, Arizona. Send comments to The Honorable Dennis Miller, County Manager, 2150 N. Congress Drive, Nogales, Arizona 85621.					
Iowa	Johnston (City) Polk County.	Beaver Creek	Approximately 1,550 feet above its confluence with Des Moines River.	None	*805
			At NW 70th Avenue	*822	*824
Maps are available for inspection at City Hall, 6221 Merle Hay Road, Johnston, Iowa. Send comments to The Honorable Dallas Patterson, Mayor, City of Johnston, P.O. Box 410, Johnston, Iowa 50131.					
Iowa	Urbandale (City) Polk County.	Beaver Creek	Approximately 1,000 feet upstream of Merle Hay Road.	*800	*811
			Approximately 3,600 feet upstream of Merle Hay Road.	*810	*812
Maps are available for inspection at Community Development Department, City Hall, 3315 70th Street, Urbandale, Iowa. Send comments to The Honorable Brad Zaun, Mayor, City of Urbandale, 3315 70th Street, Urbandale, Iowa 50322.					
Louisiana	Tangipahoa Parish (Unincorporated Areas).	Ponchatoula Creek	At Old Genessee Road	None	*54
			Approximately 1,100 feet from confluence with Ponchatoula Creek Tributary 2.	None	*60
		Ponchatoula Creek Tributary 1.	At confluence with Ponchatoula Creek	None	*55
			Approximately 3,300 feet upstream from confluence with Ponchatoula Creek.	None	*57
		Ponchatoula Creek Tributary 2.	At confluence with Ponchatoula Creek	None	*58
			Approximately 2,200 feet upstream from confluence with Ponchatoula Creek.	None	*60
Maps are available for inspection at Parish Permit Office, 15481 Club Deluxe Road, Hammond, Louisiana. Send comments to The Honorable Gordon Burgess, Parish President, P.O. Box 215, Amite, Louisiana 70422.					
Louisiana	Village of Tickfaw (Tangipahoa Parish).	Ponchatoula Creek	Approximately 2,950 feet downstream from Highway 442.	None	*60
			At Niccio Road	None	*65
		Ponchatoula Creek Tributary 1.	Approximately 1,100 feet downstream from the Illinois Central Gulf Railroad.	None	*57
			Approximately 3,000 feet upstream from State Highway 442.	None	*63
		Ponchatoula Creek Tributary 2.	Approximately 1,800 feet downstream from Chapel Road.	None	*60
			At Chapel Road	None	*61
Maps are available for inspection at City Hall, 50081 Highway 51, Tickfaw, Louisiana. Send comments to The Honorable Anthony Lamonte, Mayor, Village of Tickfaw, P.O. Box 249, Tickfaw, Louisiana 70466.					
Louisiana	West Baton Rouge Parish and Incorporated Areas.	Lateral 1–C	At the confluence with the Gulf Intracoastal Waterway.	*9	*9
			At intersection with Interstate 10	*11	*10
			At intersection with State Highway 986	*17	*16
		Oaks Avenue Canal	At the confluence with the Gulf Intracoastal Waterway.	None	*10
			Just upstream of LeBlanc Road	None	*19
		Oaks Avenue Canal Tributary No. 1.	At the confluence with Oaks Avenue Canal.	None	*10
			Just upstream of South Jefferson Avenue	None	*25
Maps are available for inspection at Parish Zoning Office, 880 North Alexander, Port Allen, Louisiana. Send comments to The Honorable Ted Denster, Parish President, P.O. Box 757, Port Allen, Louisiana 70767. Maps are available for inspection at City Hall, 750 N. Jefferson Avenue, Port Allen, Louisiana. Send comments to The Honorable Marilyn Robertson, Mayor, City of Port Allen, 750 N. Jefferson Avenue, Port Allen, Louisiana 70767.					
Missouri	Creve Coeur (City) St. Louis County.	Monsanto Sunswept Creek.	Approximately 950 feet downstream of Private Bridge.	*531	*532

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just upstream of Chilton Lane	None	*561

Maps are available for inspection at City Hall, 300 North New Ballas Road, Creve Coeur, Missouri.
Send comments to The Honorable Annette Kolis-Mandel, Mayor, City of Creve Coeur, 300 North New Ballas Road, Creve Coeur, Missouri 63141.

Missouri	Des Peres (City) St. Louis County.	Des Peres Creek	At confluence with Sugar Creek	*448	*450
			Approximately 450 feet upstream of Hospital Drive.	*460	*459
		Sugar Creek	Approximately 1,150 feet downstream of Old Dougherty Ferry Road.	*445	*446
			Just upstream of Interstate 270	*463	*462

Maps are available for inspection at City Hall, 12325 Manchester Road, Des Peres, Missouri.
Send comments to The Honorable Sharon Burkhardt, Mayor, City of Des Peres, 12325 Manchester Road, Des Peres, Missouri 63131.

Missouri	Frontenac (City) St. Louis County.	Deer Creek	Just upstream of Lindbergh Boulevard	*523	*524
			Approximately 3,300 feet upstream of Spoede Road.	*541	*542
		Monsanto Sunswept Creek.	Approximately 400 feet downstream of Glen Abbey Road.	*527	*528
			Approximately 180 feet upstream of Glen Abbey Road.	*527	*528

Maps are available for inspection at City Hall, 10555 Clayton Road, Frontenac, Missouri.
Send comments to The Honorable Mark C. Brennan, Mayor, City of Frontenac, 10555 Clayton Road, Frontenac, Missouri 63131.

Missouri	Kirkwood (City) St. Louis County.	Sugar Creek	Just upstream of Interstate 270	*463	*462
			Approximately 150 feet upstream of Interstate 270.	*463	*462

Maps are available for inspection at City Hall, 139 South Kirkwood Road, Kirkwood, Missouri.
Send comments to The Honorable Marge Schramm, Mayor, City of Kirkwood, 139 South Kirkwood Road, Kirkwood, Missouri 63122.

Missouri	St. Louis County (Unincorporated Areas).	Grand Glaize Creek	Approximately 400 feet upstream of Dougherty Ferry Road.	*441	*442
			Approximately 3,000 feet upstream of Dougherty Ferry Road.	*445	*446

Maps are available for inspection at the Department of Planning, 41 South Central Avenue, Clayton, Missouri.
Send comments to The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, Clayton, Missouri 63105.

Missouri	Valley Park (City) St. Louis County.	Grand Glaize Creek	Grand Glaize Creek.		

Maps are available for inspection at City Hall, 320 Benton Street, Valley Park, Missouri.
Send comments to The Honorable Daniel Adams, Mayor, City of Valley Park, City Hall, 320 Benton Street, Valley Park, Missouri 63088.

Missouri	Westwood (Village) St. Louis County.	Deer Creek	Approximately 3,300 feet upstream of Spoede Road.	*541	*542
			Approximately 4,500 feet upstream of Spoede Road.	None	*549

Maps are available for inspection at 9 Westwood Country Club Ground Road, Westwood, Missouri.
Send comments to The Honorable Phillip Isserman, Chairman, Board of Trustees, Village of Westwood, 9 Westwood Country Club Gardens, Westwood, Missouri 63131.

Nevada	Washoe County and Incorporated Areas.	Golden Valley Wash	Approximately 2,180 feet upstream of Tholl Drive.	None	4,981
			Approximately 2,700 feet upstream of Spearhead Way.	None	*5,176
		Hidden Valley Wash	Approximately 1,800 feet upstream of its confluence with Steamboat Creek.	None	*4,442
			Approximately 3,420 feet upstream of Parkway Drive.	None	*4,647
		Sun Valley Wash	At the Sun Valley Flood Control Detention Dam.	*4,445	*4,548
			At East 7th Avenue	None	*4,725
		Sun Valley Wash Split Flow.	At convergence with Sun Valley Wash	None	4,647

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At divergence from Sun Valley Wash	None	*4,695
Maps are available for inspection at Washoe County Engineering Department, 1001 E. 9th Street, Reno, Nevada.					
Send comments to The Honorable Jim Galloway, Commission Chairman, P.O. Box 11130, Reno, Nevada 89520.					
Maps are available for inspection at Engineering Department, 431 Prater Way, Sparks, Nevada.					
Send comments to The Honorable Tony Armstrong, Mayor, City of Sparks, 431 Prater Way, Sparks, Nevada 89431.					
North Dakota	Fargo (City) Cass County.	County Drain 45	At County Road 14 (52nd Avenue)	None	*893
			Approximately 2,800 feet upstream of 19th Avenue.	None	*894
Maps are available for inspection at City Hall, 200 N. 3rd Street, Fargo, North Dakota.					
Send comments to The Honorable Bruce Furness, Mayor, City of Fargo, 200 N. 3rd Street, Fargo, North Dakota 58102.					
North Dakota	Harwood (City) Cass County.	Sheyenne River	At U.S. Highway 81	None	*891
			Approximately 7,600 feet upstream from County Highway 22.	None	*894
		County Drain 40/45	Approximately 3,600 feet downstream from County Highway 22.	None	*890
			Approximately 1,200 feet upstream from County Drain 40/45 split.	None	*897
Maps are available for inspection at City Hall, 202 Dakota Avenue, Harwood, North Dakota.					
Send comments to The Honorable Garry Roth, Mayor, City of Harwood, 108 Lind Boulevard, Harwood, North Dakota 58042.					
North Dakota	Reed (Township) Cass County.	Sheyenne River	Approximately 7,400 feet downstream of County Road 17.	*893	*894
			At 52nd Avenue	*895	*896
			Approximately 1,600 feet upstream of its confluence with County Drain 21.	*898	*898
		County Drain 21	At confluence with the Sheyenne River ...	*898	*898
			Approximately 900 feet upstream of its confluence with the Sheyenne River.	None	*898
		County Drain 45	Approximately 5,800 feet downstream of 52nd Avenue.	None	*893
			At County Road 20	None	*893
		Maple River	At its confluence with the Sheyenne River	None	*897
			Approximately 480 feet upstream of its confluence with the Sheyenne River.	None	*897
Maps are available for inspection at City Hall, 7420 40th Avenue North, Fargo, North Dakota.					
Send comments to The Honorable Gene Johnson, Mayor, Reed Township, 7420 40th Avenue North, Fargo, North Dakota 58103.					
North Dakota	Reiles Acres (City) Cass County.	County Drain 45	Approximately 5,400 feet downstream from 32nd Avenue.	None	*893
			Approximately 3,000 feet upstream from 32nd Avenue.	None	*893
Maps are available for inspection at 3348 45th Street N.W., Reiles Acres, North Dakota.					
Send comments to The Honorable David Baumann, Mayor, City of Reiles Acres, 3545 46th Street N.W., Fargo, North Dakota 58108.					
North Dakota	West Fargo (City) Cass County.	Sheyenne River	Approximately 8,700 feet downstream from 19th Avenue.	None	*898
			At confluence with County Drain 2	None	*899
		County Drain 21	Approximately 1,400 feet downstream from Township Road.	*898	*898
			At divergence of County Drain 21 outlet structure.	None	*899
Maps are available for inspection at City Hall, 800 4th Avenue East, West Fargo, North Dakota.					
Send comments to The Honorable David Stedman, Mayor, City of West Fargo, 800 4th Avenue East, West Fargo, North Dakota 58078.					
South Dakota	North Sioux (City) Union County.	Big Sioux River	Approximately 5,900 feet downstream from Military Road.	*1,100	*1,101
			Approximately 7,425 feet upstream from the Chicago Milwaukee St. Paul and Pacific Railroad.	*1,109	*1,108
		Big Sioux River Split at Interstate 29.	Approximately 50 feet downstream from Westshore Drive.	None	*1,109
			At divergence from Big Sioux River	None	*1,110
Maps are available for inspection at City Hall, 301 Military Road, North Sioux City, South Dakota.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Send comments to The Honorable Lieser Hallwas, Mayor, P.O. Box 338 North Sioux City, South Dakota 57049.					
South Dakota	Union County (Unincorporated Areas).	Big Sioux River	At mouth of Big Sioux River	*1,090	*1,090
			At Interstate 29	None	*1,094
			At State Route 48	None	*1,143
			Approximately 1,800 feet downstream of Westshore Drive.	None	*1,108
		Big Sioux River Split at Interstate 29.	At divergence from Big Sioux River	None	*1,110
Maps are available for inspection at Union County Planning and Zoning Office, 209 East Main, Elk Point, South Dakota.					
Send comments to The Honorable Roger Boldenow, Chairman, Union County Commissioners, County Courthouse, 209 East Main Street, Elk Point, South Dakota 57025.					
Texas	Gillespie County and Incorporated Areas.	Baron's Creek	Approximately 4,000 feet upstream of U.S. Highway 290.	*1,611	*1,611
			Approximately 4,200 feet upstream of U.S. Highway 290.	*1,611	*1,612
			Downstream of East Main Street	*1,649	*1,650
		Stream FB–1	At confluence with Baron's Creek	*1,641	*1,641
			Approximately 1,500 feet upstream of confluence with Baron's Creek.	*1,646	*1,647
			Approximately 1,950 feet upstream of Lower Crabapple Road.	None	*1,780
		Town Creek	Approximately 60 feet downstream of Edison Street.	*1,710	*1,710
			Approximately 200 feet upstream of Schubert Road.	*1,712	*1,711
			Approximately 2,150 feet upstream of Morse Street.	None	*1,751
		Pedernales River	At Gillespie/Blanco County Line	None	*1,398
			Approximately 3,100 feet upstream of Cellemar Lane.	None	*1,473
		Salt Branch	At confluence with Pedernales River	None	*1,442
			Approximately 4,300 feet upstream of Highway 290.	None	*1,473
		Stream SB–1	At confluence with Salt Branch	None	*1,444
			Approximately 5,800 feet upstream of Highway 290.	None	*1,465
		Split Flow #1	At convergence with Pedernales River	None	*1,422
			At divergence from Pedernales River	None	*1,435
Maps are available for inspection at City Hall, 126 W. Main Street, Fredericksburg, Texas.					
Send comments to The Honorable Linda Langerhans, Mayor, City of Fredericksburg, P.O. Box 111, Fredericksburg, Texas 78624.					
Maps are available for inspection at Gillespie County Floodplain Department, 101 West Main, Unit #9, Fredericksburg, Texas.					
Send comments to The Honorable Mark Stroeher, County Judge, 101 West Main, Unit #9, Fredericksburg, Texas 78624.					
Texas	Tom Green County (Unincorporated Areas).	Red Arroyo	Just downstream of eastbound Route 67	None	*1,888
			Approximately 1,300 feet upstream of earthen lake dam.	None	*1,987
		Stream RA–1	At confluence with Red Arroyo	None	*1,897
			Just downstream of O.C. Fisher Dam spillway.	None	*1,928
		Stream RA–2	At confluence with Red Arroyo	None	*1,898
			Just upstream of Arden Road	None	*1,941
		Goodfellow Draw	120 feet downstream of Stock Tank Dam	None	*1,805
			790 feet upstream of Stock Tank Dam	None	*1,810
Maps are available for inspection at the Public Health Building, Two City Hall Plaza, San Angelo, Texas.					
Send comments to The Honorable Michael D. Brown, Judge, Tom Green County, County Courthouse, 112 West Beauregard Street, San Angelo, Texas 76902.					
Washington	Whatcom County and Incorporated Areas.	Johnson Creek	At the confluence with Sumas River	None	*38
			Approximately 1,500 feet upstream of South Pass Road.	None	*85

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
	Whatcom County Incorporated Areas (Cont'd).	Nooksack River	At Bellingham Bay	None	*8
			Approximately 600 feet downstream of Burlington Northern Railroad, at the confluence with South Fork.	*226	*222
		Nooksack River Right Overbank Divided Flow.	At Lummi Bay	None	*8
			Approximately 800 feet upstream of River Road.	None	*26
		Middle Fork Nooksack River.	At the confluence with North Fork Nooksack River.	None	*284
			Approximately 11,500 feet upstream of the confluence of Canyon Creek.	None	*406
		North Fork Nooksack River.	At the confluence with South Fork Nooksack River.	None	*222
			Approximately 35,600 feet (7 miles) upstream from Mosquito Lake Road.	None	*466
		South Fork Nooksack River.	At the confluence with North Fork Nooksack River.	*226	*222
			Approximately 7,400 feet upstream of Saxon Road.	*386	*385
		South Fork Nooksack River Divided Flow.	At Burlington Northern Railroad	None	*246
			At Acme Road	None	*280
		Samish River	Approximately 2,900 feet downstream of Wickersham Road at the County Boundary.	None	*267
			At Burlington Northern Railroad	None	*311
		Squalicum Creek	Approximately 200 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	None	*127
			Approximately 2,000 feet upstream of Dewey Road.	None	*206
		Sumas River	Approximately 1,700 feet downstream of Jones Road at the International Boundary.	None	*34
			Approximately 1,000 feet upstream of Massey Road.	None	*93
		Sumas River Left Overbank Divided Flow.	Approximately 200 feet downstream of Telegraph Road.	None	*56
			Approximately 6,300 feet upstream of Kadin Road.	None	*69
		Terrell Creek	Approximately 500 feet downstream of Alderson Road.	None	*8
			At Helweg Road	None	*10

Maps are available for inspection at Whatcom County Public Works Department, Division of Engineering, 5280 NW Drive, Suite C, Bellingham, Washington.

Send comments to The Honorable Pete Kremen, County Executive, 311 Grand Avenue #108, Bellingham, Washington 98225.

Maps are available for inspection at the Community Development Department, 210 Lottie Street, Bellingham, Washington.

Send comments to The Honorable Mark Asmundson, Mayor, City of Bellingham, 210 Central Avenue, Bellingham, Washington 98225.

Maps are available for inspection at City Hall, 111 W. Main Street, Everson, Washington.

Send comments to The Honorable Gena Tolle, Mayor, P.O. Box 315, Everson, Washington 98247.

Maps are available for inspection at the Planning Department, 5694 2nd Avenue, Ferndale, Washington.

Send comments to The Honorable Yvonne Goldsmith, Mayor, City of Ferndale, 5694 2nd Avenue, Ferndale, Washington 98248.

Maps are available for inspection at the Planning Department 2828 Kwina Road, Bellingham, Washington.

Send comments to The Honorable Tim Ballew, Tribal Chair, City of Lummi Indian Nation, 2626 Kwina Road, Bellingham, Washington 98226.

Maps are available for inspection at the Planning Department, 323 Front Street, Lynden, Washington.

Send comments to The Honorable Daryl Brennick, Mayor, City of Lynden, 323 Front Street, Lynden, Washington 98264.

Maps are available for inspection at City Hall, 103 W. Madison Street, Nooksack, Washington 98276.

Send comments to The Honorable James S. Ackerman, Mayor, City of Nooksack, P.O. Box 4265, Nooksack, Washington 98276.

Maps are available for inspection at City Hall, 433 Cherry Street, Sumas, Washington 98295.

Send comments to The Honorable Don Peterson, Mayor, City of Sumas, P.O. Box 9 Sumas, Washington 98295.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 28, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–2805 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 110 and 111

[USCG–1999–6096]

RIN 2115–AF89

Marine Shipboard Electrical Cable Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its electrical engineering regulations for merchant vessels by adding alternate cable standards that are equivalent to the existing standards. Our intent is to revise requirements that create an unwarranted difference between domestic rules and international standards for marine cable.

DATES: Comments and related material must reach the Docket Management Facility on or before May 8, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–6096), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

You may inspect the material proposed for incorporation by reference at room 1300, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0658. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Ms. Dolores Mercier, Project Manager, Office of Design and Engineering Standards (G–MSE), Coast Guard, telephone 202–267–0658. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–6096), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Since the last revision of our electrical engineering regulations in 46 CFR chapter I, subchapter J, (62 FR 23894, May 1, 1997), we have received a number of letters concerning the construction requirements in 46 CFR 111.60–1 and 111.60–3 for cable used on merchant vessels. Sections 111.60–1 and 111.60–3 allow the use of cables meeting certain industry standards listed in those sections. The letters suggest that there are other cable standards beside those listed in the two sections that would provide a level of performance and safety equivalent to the listed standards. The Coast Guard reviewed these standards and found them to be equivalent. Therefore, the purpose for this notice of proposed rulemaking is to gather your comments on whether you agree that these standards do provide an equivalent level of performance and safety for cable used on merchant vessels. The Coast Guard completed equivalency determinations on UL 1309 (1995); IEC 92–350, 1988, amendment 1 (1994); and IEC 92–353 (1995–01). We believe that these standards offer an equivalent level of performance and safety to those standards already listed. These equivalency determinations have been placed in the public docket for the rulemaking.

In the text of the Transportation and Infrastructure Committee report accompanying HR 820, the committee stated that the Coast Guard should undertake a formal rulemaking process before deciding whether IEC 92–350, IEC 92–353, and UL 1309 are approved for use.

The Coast Guard encourages public comment on all aspects of this rulemaking initiative.

Discussion of Proposed Rule

The title and edition of the standards referred to in this discussion are found in proposed § 110.10–1(b) or in existing 46 CFR 110.10–1(b).

Proposed § 111.60–1(a)

This paragraph would be amended to allow the use of marine shipboard cable meeting UL 1309, IEC 92–350, or IEC 92–353, as well as cable meeting one of the standards presently listed.

Proposed § 111.60–1(b)

This paragraph would be amended to specify the flammability requirements for cable meeting IEC 92–350 or IEC 92–353.

Proposed § 111.60–1(c)

This paragraph would be amended to also allow the use of type T/N cable as listed in UL 1309.

Proposed § 111.60–3(a)

This paragraph would be amended to allow the use of marine shipboard cable meeting UL 1309, IEC 92–350, or IEC 92–353, as well as cable meeting one of the standards presently listed.

Proposed § 111. 60–3(b)

This paragraph would be amended to also allow the use of type T/N cable as listed in UL 1309.

This rulemaking is intended to further reduce the regulatory burden on the industry, eliminate misinterpretation of the regulations by all affected parties, and bring the regulations in line with the current technology in the industry as well as with standards accepted by the international maritime community.

Incorporation by Reference

Material proposed for incorporation by reference appears in 46 CFR 110.10–1(b). You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 110.10–1(b).

Before publishing a final rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The proposed rule would provide a greater choice in the type of shipboard cables by allowing the use of cables made to standards other than those specified in the current regulations. This should increase the number of choices for vessel owners without increasing costs. In addition, it might benefit vessel owners by enhancing competition within the cable industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As discussed in the Regulatory Evaluation section of this preamble, there are no costs associated with it this proposed rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Summary Impact Statement

We have analyzed this proposed rule under Executive Order 13132, Federalism. This rule would amend the regulations on vessel design and construction. In particular, it would provide vessel owners with additional options in the choice of cable used on their vessels.

It is well settled that States are precluded from regulating in the categories of vessel design, construction, and equipment—categories that are reserved for regulation by the Coast Guard under 46 U.S.C. 3306 and 3703(a). See *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978), which clearly evidences Congressional intent to preempt State law, because the exercise of State authority would conflict with the exercise of Federal authority under Federal statute. Also see *International Association of Independent Tank Vessel Owners (Intertanko)* v. *Locke*, 148 F.3d 1053 (9th Cir. 1998). Further, it is the position of the United States that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (e.g., design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from State regulation. See the Brief for the United States at 26, *United States* v. *Locke; Intertanko* v. *Locke* (Nos. 98–1701 and 98–1706) (cert. granted 120 S. Ct. 133), available in LEXIS, Genfed Library, Briefs file. This entire rule falls into the field encompassed by 46 CFR 3306 and 3703(a), where, by operation of law, State regulation is precluded. For this reason, consultation under section 6 of the Executive Order would not be meaningful and, therefore, is unnecessary.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule concerns the equipping of, and carriage requirements for, vessels. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 110

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 110 and 111 as follows:

PART 110—GENERAL PROVISIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

2. In § 110.10–1(b), in the entries for "International Electrotechnical Commission" and "Underwriters Laboratories, Inc.," revise the introductory text and add, in numerical order, new standards IEC 92–350, IEC 92–353, and UL 1309 to read as follows:

§ 110.10–1 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

International Electrotechnical Commission (IEC), 3 Rue de Varembe, Geneva, Switzerland. (Also available from ANSI.).

* * * * *

IEC 92–350, Electrical Installations in Ships, Part 350: Low Voltage Shipboard Power Cables—General Construction and Test Requirements, 1988 amendment 1 (1994).	111.60–1

* * * * *

IEC 92–353, Electrical Installations in Ships, Part 353: Single and Multicore Non-radial Field Power Cables with Extruded Solid Insulation for Rated Voltages 1kV and 3kV, 1995–01.	111.60–1; 111.60–3

* * * * *

Underwriters Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709–3995..

* * * * *

UL 1309, Standard for Marine Shipboard Cables, 1995.	111.60–1; 111.60–3

* * * * *

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

3. The authority citation for part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

4. In § 111.60–1, revise paragraphs (a) and (b) and the introductory text of paragraph (c) to read as follows:

§ 111.60–1 Cable construction and testing.

(a) Each marine shipboard cable must meet all of the construction and identification requirements of either IEEE Std 45, IEC 92–3, IEC 92–350, IEC 92–353, UL 1309, MIL–C–24640A, or MIL–C–24643A and the respective flammability test contained in them and be of a copper stranded type.

Note to Paragraph (a): MIL–C–915 cable is acceptable only for repairs and replacements in kind. MIL–C–915 cable is no longer acceptable for alterations, modifications, conversions, or new construction. (See § 110.01–3 of this chapter).

(b) Each cable constructed to IEC 92–3 or IEC 92–353 must meet the flammability requirements of IEC 332–3, Category A.

(c) Electrical cable that has a polyvinyl chloride insulation with a nylon jacket (Type T/N) must meet UL 1309 or, must meet the requirements for polyvinyl chloride insulated cable in section 18 of IEEE Std 45, except—

* * * * *

5. In § 111.60–3, revise paragraphs (a) and (b) to read as follows:

§ 111.60–3 Cable application.

(a) Cable constructed in accordance with IEEE Std 45 must meet the cable application provisions of section 19 of IEEE Std 45. Cable constructed in accordance with IEC 92–3, IEC 92–353, or UL 1309 must meet the provisions of section 19 of IEEE Std 45, except 19.6.1, 19.6.4, and 19.8. Cable constructed in accordance with IEC 92–3 and IEC 92–353 must comply with the ampacity values of IEC 92–352, Table 1.

(b) Type T/N cables must meet section 19 of IEEE Std 45 for Type T insulation or the provisions listed in UL 1309.

* * * * *

Dated: February 2, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–2821 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 99–384]

Communication Between Applicants in Commission Spectrum Auctions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulation of the Federal Communications Commission (FCC) regarding communications between applicants in FCC spectrum auctions. The Commission proposes to require any auction applicant that makes or receives a prohibited communication of bids or bidding strategies to report promptly such a communication to the Commission. The information reported to the FCC would facilitate the Commission's monitoring and investigation of unlawful activity during Commission spectrum auctions.

DATES: Comments are due on or before April 10, 2000. Reply comments are due on or before June 7, 2000. Written comments by the public on the proposed information collections are due April 10, 2000. The Office of Management and Budget (OMB) must submit written comments on the proposed information collection(s) on or before April 10, 2000.

ADDRESSES: An original and four copies of each filing must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. If you want each Commissioner to receive a copy of your comments, you must file an original plus eleven copies. Alternatively, comments and reply comments may be filed with the FCC using the Commission's Electronic Comment Filing System ("ECFS"), via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *vhuth@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 418–0920, or via the Internet at *rarsenau@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: 1. In the subject Notice of Proposed Rulemaking (NPRM), the FCC proposes to amend its regulation, 47 CFR 1.2105(c)(1), regarding communications between applicants in FCC spectrum auctions. The Commission proposes to amend

§ 1.2105(c)(1) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) to report promptly such a communication to the Commission. The Commission also proposes to amend § 1.2105(c)(1) to reflect a recent clarification that the rule prohibits an auction applicant from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies. *See Western PCS BTA 1 Corporation,* Memorandum Opinion and Order at paragraphs 7 through 9, FCC 99–385 (released December 13, 1999). Lastly, the Commission seeks comment regarding whether other changes to § 1.2105(c)(1) may be warranted at this time.

2. The proposed rules are not major rules for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the FCC certifies that the proposed rules will not have a significant impact on small business entities. The NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other Federal agencies to comment on the information collection(s) contained in the NPRM, as required by the PRA. Public and agency comments are due April 10, 2000. OMB notification of action is due April 10, 2000. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

3. Parties who chose to file comments or reply comments on the NPRM using the Commission's ECFS system, should include their full name, postal service mailing address, and the applicable docket or rulemaking number on the transmittal screen. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper should also submit their comments on diskette. A 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software Diskettes should be submitted to: Richard Arsenault, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Room 4–A234, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 97–82), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

OMB Control Number: 3060–XXXX.

Title: Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures

Form No.: None.

Type of Review: New collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

Number of Respondents: 25.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 200 hours

Total Annual Costs: $40,000.

Needs and Uses: Section 1.2105(c)(1) of the Commission's rules provides that "all [auction] applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies. . . ." 47 CFR 1.2105(c)(1). The Commission's experience enforcing § 1.2105(c)(1) over the past five years, however, indicates that, on occasion, some auction applicants engage in communications prohibited by the rule. In the NPRM, we seek comment on amending § 1.2105(c) to require anyone who makes or receives a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) to report promptly such a communication to the Commission. This amendment is intended to deter parties from engaging in prohibited conduct and thereby enhance the competitiveness and fairness of our spectrum auctions. The information reported to the FCC would facilitate the Commission's monitoring and investigation of unlawful activity during Commission spectrum auctions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2766 Filed 2–7–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spectacled Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the spectacled eider (*Somateria fischeri*), a threatened species listed pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed designation of critical habitat for the spectacled eider includes areas on Alaska's North Slope and adjacent marine waters; the Yukon-Kuskokwim Delta (Y–K Delta) and adjacent marine waters; and Norton Sound, Ledyard Bay, and the Bering Sea between St. Lawrence and St. Matthew Islands. These areas total 193,054 square kilometers (km²) (74,539 square miles (mi²)) or 19,305,400 hectares (ha) (47,704,500 acres).

If this proposal is made final, Federal agencies proposing actions that may affect the areas designated as critical habitat must consult with us on the effects of the proposed actions, pursuant to section 7(a)(2) of the Act. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until May 8, 2000. Public hearing requests must be

received in writing at the address below by March 24, 2000. We will publish the dates and locations of any public hearings in the **Federal Register** and appropriate local newspapers at least 15 days prior to the first hearing.

ADDRESSES: Send your comments and other materials on this proposal to Ann G. Rappoport, Field Supervisor, Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–61, Anchorage, AK 99501. The complete file for this rule is available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ann G. Rappoport, Field Supervisor, at the above address (telephone 907/271–2787 or toll-free 800/272–4174; facsimile 907/271–2786).

SUPPLEMENTARY INFORMATION:

Background

Description

The spectacled eider is a large sea duck, 52–56 centimeters long (20–22 inches). Sea ducks, waterfowl that spend at least part of their lives at sea, are a subgroup of the subfamily Anatinae, family Anatidae. The spectacled eider is one of three species in the genus *Somateria* found in the United States. The species was first described by Brandt in 1847 as *Fuligula fischeri*, then later placed in the genera *Lampronetta* and *Arctonetta*, and finally under *Somateria* (American Ornithologist's Union 1983). Within each subfamily, taxonomists group the waterfowl species into tribes, but while Delacour and Mayr (1945) originally placed the eiders (Tribe Somaterini) in a separate tribe from other sea ducks (Tribe Mergini), Johnsgard (1960) and others have grouped them together under Tribe Mergini.

In the winter and spring, adult males are in breeding plumage with a black chest, white back, and pale green head with a long sloping forehead and black-rimmed white spectacle-like patches around the eyes. During the late summer and fall, males are mottled brown. Females and juveniles are mottled brown year-round with pale brown eye patches. Spectacled eiders are diving ducks that spend most of the year in marine waters where they primarily feed on bottom-dwelling molluscs and crustaceans.

Geographic Range

In the United States, spectacled eiders historically nested discontinuously from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian border. Today two breeding populations remain in Alaska. The remainder of the species breeds in Arctic Russia. This entire species, including the Arctic Russian population, is listed under the Act as threatened wherever it occurs.

On the Y–K Delta, spectacled eiders breed mostly within 15 kilometers (km) (9.3 miles (mi)) of the coast from Kigigak Island north to Kokechik Bay (Service 1996), with smaller numbers nesting south of Kigigak Island to Kwigillingok and north of Kokechik Bay to the mouth of Uwik Slough. The coastal fringe of the Y–K Delta is the only subarctic breeding habitat where spectacled eiders occur at high density (3.0–6.8 birds/km^2 (Service 1996). Nesting on the Y–K Delta is restricted to areas dominated by low wet-sedge and grass marshes with numerous small shallow water bodies. Nests are rarely more than 190 meters (m) (680 feet (ft)) from water and are usually within a few meters of a pond or lake.

On Alaska's North Slope, nearly all spectacled eiders breed north of 70° latitude between Icy Cape and the Shaviovîk River. Within this region, most spectacled eiders occur between Cape Simpson and the Sagavanirktok River (Service 1996). Spectacled eiders on the North Slope occur at low densities (0.03–0.79 birds/km^2, Larned and Balogh 1997) within about 80 km (50 mi) of the coast. During pre-nesting and early nesting, they occur most commonly on large shallow productive thaw lakes generally with convoluted shorelines or small islands (Larned and Balogh 1997). Such shallow water bodies with emergent vegetation and low islands or ridges appear to be important as eider nesting and brood-rearing habitat on the arctic coastal plain (Derksen *et al.* 1981, Warnock and Troy 1992, Andersen *et al.* 1998).

Within the United States, spectacled eiders molt in Norton Sound and Ledyard Bay. There, they congregate in large, dense flocks that are particularly susceptible to disturbance and contamination. For several weeks during the molting period (late July through October), each bird is flightless. However, there is no time in which all birds are simultaneously flightless (Petersen *et al.* 1999).

Norton Sound is located along the western coast of Alaska between the Y–K Delta and the Seward Peninsula. It is the principal molting and staging area for females nesting on the Y–K Delta (Petersen *et al.* 1999), probably the most imperiled of the three breeding populations. Some Y–K Delta male spectacled eiders, presumably subadult males, also molt in Norton Sound (Petersen *et al.* 1999). As many as 4,030 spectacled eiders have been observed in Norton Sound at one time (Larned *et al.* 1995a). Spectacled eiders molted in the same portion of eastern Norton Sound each year from 1993 to 1997. Charles Lean (Alaska Department of Fish and Game (ADFG), Nome, pers. comm. 1999) reported seeing large flocks in this same area in August and September from 1982 to 1990, suggesting that this area has a history of consistent use by molting spectacled eiders. Spectacled eiders arrive in eastern Norton Sound at the end of July and depart in mid-October (Petersen *et al.* 1999). Although overall benthic biomass (quantity of organisms living on the sea floor) in this area is thought to be lower than in other parts of Norton Sound, the abundance of large gastropods (*e.g.*, snails, which are presumably a spectacled eider food item) is higher in this area than elsewhere (Springer and Pirtle 1997).

Ledyard Bay is one of the primary molting grounds for female spectacled eiders breeding on the North Slope, and most female birds molting here are from the North Slope (Petersen *et al.* 1999). Satellite telemetry data suggest that male spectacled eiders from the North Slope appear to molt and stage in equal numbers in Ledyard Bay and the two primary molting areas in Russia, Mechigmenskiy Bay and the Indigirka-Kolyma Delta (Petersen *et al.* 1999). Aerial surveys in September 1995 found 33,192 spectacled eiders using Ledyard Bay. Most were concentrated in a 37-km (23-mi) diameter circle with their distribution centered 67 km (42 mi) southwest of Point Lay and 41 km (25 mi) offshore (Larned *et al.* 1995b).

During winter, spectacled eiders congregate in exceedingly large and dense flocks in openings in the pack ice in the central Bering Sea between St. Lawrence and St. Matthew Islands (Larned *et al.* 1995c). Spectacled eiders from all three known breeding populations use this wintering area (Service 1999); no other wintering areas are currently known. Larned and Tiplady (1999) estimated the entire wintering population, and perhaps the worldwide population, of spectacled eiders at 374,792 birds (95 percent Confidence Interval = 371,278–378,305). Because nearly all individuals of this species may spend each winter occupying an area of ocean less than 50 km (31 mi) in diameter, they may be particularly vulnerable to chance events during this time.

Population Status

Between the 1970s and 1990s, spectacled eiders on the Y–K Delta declined by 96 percent, from 48,000 pairs to fewer than 2,500 pairs in 1992

(Stehn *et al.* 1993). Based upon surveys conducted during the past few years, the Y–K Delta breeding population is estimated to be about 4,000 pairs.

The breeding population on the North Slope is currently the largest breeding population of spectacled eiders in North America. The most recent population estimate, uncorrected for aerial detection bias, is 9,488 (± 1,814 birds) (Larned *et al.* 1999). However, because this breeding area is so much larger than that on the Y–K Delta, the density of spectacled eiders on the North Slope is markedly lower than on the Y–K Delta; 0.03–0.79 vs. 3.0–6.8 birds/km^2, respectively (Larned and Balogh 1997, Service 1996). North Slope eiders have no clear population trend (Larned *et al.* 1999).

We do not know the size of the nonbreeding segment of any population. Presumably, nonbreeding birds remain at sea year round until they attempt to breed at age two or three. We do not know which areas at sea are important to nonbreeding spectacled eiders.

Previous Federal Action

On December 10, 1990, we received a petition from James G. King, dated December 1, 1990, to list the spectacled eider as an endangered species and to designate critical habitat on the Yukon Delta National Wildlife Refuge (YDNWR) and the National Petroleum Reserve-Alaska (NPR–A). We convened a workshop on February 6 and 7, 1991, to review existing information and develop priorities and recommendations for future studies of both spectacled and Steller's eiders. We published a 90-day finding on April 25, 1991, that the petition had presented substantial information indicating that the requested action may be warranted (56 FR 19073).

On February 12, 1992, a 12-month finding was signed, determining that listing was warranted. On May 8, 1992, we published a proposed rule to list the spectacled eider as a threatened species throughout its range (57 FR 19852). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. We proposed that it was not prudent to designate critical habitat for the spectacled eider because there was no demonstrable benefit that could be shown at that time (50 CFR 424.12). We solicited comments from all interested parties during an extended comment period (160 days). This extended comment period was intended to accommodate foreign scientists, whose comments may not have been received during the normal 90-day period, and Alaskan Natives, who spend substantial portions of each year away from their homes engaged in subsistence activities. We particularly sought comments concerning threats to spectacled eiders, their distribution and range, whether critical habitat should be designated, and activities that might impact spectacled eiders. Notice of the proposed rule was sent to appropriate State agencies, Alaska Native regional corporations, borough and local governments, Federal agencies, foreign countries, scientific organizations, and other interested parties with a request for information that might contribute to the development of a final rule.

After a review of all comments received in response to the proposed rule, we published the final rule to list the spectacled eider as threatened without critical habitat on May 10, 1993 (58 FR 27474). Only 5 of the 24 comments received specifically addressed critical habitat designation. Of these, one supported and four opposed the "not prudent" determination. Those that opposed the "not prudent" finding recommended that critical habitat be designated, at least for nesting areas. They also felt that we should have considered and provided information on possible marine critical habitat. In our final rule to list the spectacled eider as threatened, we maintained that designation of critical habitat was not prudent because no demonstrable overall benefit could be shown at that time (50 CFR 424.12).

We initiated recovery planning for the spectacled eider in 1993. The Spectacled Eider Recovery Team was formed, consisting of seven members and four consultants with a variety of expertise in spectacled eider biology, conservation biology, population biology, marine ecology, Native Alaskan culture, and wildlife management. The Recovery Team and its consultants developed the Spectacled Eider Recovery Plan, which we approved on August 12, 1996. The Recovery Plan established the recovery criteria that must be met prior to the delisting of spectacled eiders. The plan also identified the actions that are needed to assist in the recovery of spectacled eiders. Additionally, since this species was listed as threatened, new information has become available concerning the spectacled eiders' wintering habitat, and we also now have a better delineation of its breeding habitat.

On March 10, 1999, the Southwest Center for Biological Diversity and the Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five species in California and two in Alaska. These species include the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helmintholglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider, and the Steller's eider (*Polysticta stelleri*). Subsequently, the Federal Government entered into a settlement agreement with the plaintiffs whereby we agreed to readdress the prudency of designating critical habitat for spectacled eiders. If, upon consideration of existing data and public comments we determine that designating critical habitat is prudent, we agreed to submit a proposed rule to the **Federal Register** for publication by February 1, 2000, and a final rule by December 1, 2000. If we determine that designation of critical habitat is not prudent, we have agreed to submit a notice of this finding to the **Federal Register** for publication by August 1, 2000.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions and the availability of new information concerning the species' recovery and habitat needs, we recognized the value in reexamining the question of whether critical habitat for the spectacled eider would be prudent.

Due to the vast and remote nature of this species' distribution, we are making our initial critical habitat delineations with the best available scientific and commercial information available, but we also recognize that we do not have complete information on the distribution of this species at all times of the year. Thus, if additional information becomes available on the biology and distribution of the species, we may reevaluate our critical habitat designation, including proposing additional critical habitat or proposing deletion or boundary refinement of existing critical habitat.

Critical Habitat

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3(3) of the Act as all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat designation if the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by Federal agencies. Section 7 requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Once finalized, Federal agencies must ensure that any action they carry out, fund, or authorize will not result in destruction or adverse modification of the critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of legal protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation has no regulatory implications for actions conducted on non-Federal lands that lack a Federal nexus.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR 402.02). Therefore, a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), set aside areas as preserves, or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in section 7 consultations for specific projects, or through recovery planning.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could contain the habitat features (primary constituent elements described below) that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Prudency Finding

In the absence of a finding that critical habitat would increase threats to a species, if critical habitat designation would provide any benefits, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Raising the profile of the lands and waters within our proposed critical habitat boundary may also be beneficial to the species because it may increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act (to use their authorities to carry out programs for the conservation of listed species). Designating critical habitat may also provide some educational or informational benefits.

We do not have specific evidence of taking, vandalism, collection, or trade in this species that might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity. Therefore, we propose that critical habitat is prudent for the spectacled eider.

After reviewing the best scientific and commercial data available, we propose to withdraw the previous finding that designation of critical habitat for the spectacled eider is not prudent, and we propose to designate critical habitat on the Y–K Delta and adjacent marine waters, on the North Slope of Alaska and adjacent marine waters, in eastern Norton Sound and Ledyard Bay, and in the Bering Sea between St. Lawrence and St. Matthew Islands.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, when we determined which areas to propose as critical habitat, we considered those physical and biological features that are essential to the conservation of the species (primary constituent elements) and that may require special management considerations or protection. These include, but are not limited to, the following: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Selection of Areas for the Critical Habitat Designation

Areas meeting the definition of critical habitat for spectacled eiders are those areas that contain or could contain the primary constituent elements and that may require special management considerations or protection.

Section 3(5)(C) of the Act generally requires that not all areas that can be occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the conservation of the species. However, unless we have information to support designating only a subset of that habitat, we may designate all or most of the areas occupied by the species. Geographic areas that contain one or more of the primary constituent elements, but that are not included within critical habitat boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations, such as the Migratory Bird Treaty Act, Clean Water Act, and Fish and Wildlife Coordination Act.

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that are essential for the survival and recovery of the species. This information included data from radio telemetry, satellite telemetry, satellite imagery, aerial surveys, ground plot surveys, ground-based biological investigations, and site-specific species information. We have reviewed available information that pertains to the habitat requirements and preferences of this species. We have reviewed the approach of the appropriate local, State, Native, and Federal agencies in managing for the conservation of spectacled eiders and have reviewed the recovery tasks outlined in the Spectacled Eider Recovery Plan. We will initiate public meetings in representative communities adjacent to and within the areas proposed as critical habitat. We anticipate that these meetings and comments received through the public review process will provide us with additional information to use in our decision making process, and in assessing the potential economic impact of designating critical habitat for the species.

The regulations for designating critical habitat require that designations include areas outside the geographical area presently occupied by the species only when a designation limited to its current range would be inadequate to ensure the conservation of the species (50 CFR 424.12 (e)). The regulations further specify that critical habitat cannot be designated within foreign countries or in other areas outside of United States jurisdiction (50 CFR 424.12(h)).

In summary, the proposed critical habitat areas described below constitute our best assessment of the areas needed for the species' conservation using the best available scientific and commercial data available. We put forward this proposal acknowledging that we have incomplete information regarding breeding ground habitat preferences, distribution of preferred breeding ground habitats, migration corridors, offshore staging areas, marine habitats used by nonbreeding birds during the breeding season, the extent of the Ledyard Bay molting area, marine diet, and distribution of preferred prey items at sea. As new information accrues, we may reevaluate which areas warrant critical habitat designation.

Proposed Critical Habitat

The approximate area of proposed critical habitat by land ownership is shown in Table 1. Proposed critical habitat includes spectacled eider habitat throughout the species' range in the United States. Lands proposed are under private, State, Native, and Federal ownership. Lands proposed as critical habitat have been divided into eight Critical Habitat Units, which are part of larger areas described below.

TABLE 1.—HECTARES OF LAND AND MARINE WATERS PROPOSED AS CRITICAL HABITAT, WHICH ARE OCCUPIED BY THE SPECTACLED EIDER, SUMMARIZED BY PRIVATE, STATE, FEDERAL AND NATIVE GOVERNMENT OWNERSHIP.

[Hectare figures and percentages are preliminary estimates only. Hectare figures are rounded to the nearest 100. Subsequent information gathering and analysis may result in substantial changes to the data in this table.]

Location	Federal		State		Native		Private non-native		Total
	Hectares	Percent	Hectares	Percent	Hectares	Percent	Hectares	Percent	
Y–K Delta (land)	225,200	48.8	0.0	0.0	234,300	50.7	2,300	0.5	461,800
Y–K Delta (marine)	1,496,400	88.6	192,100	11.4	0.0	0.0	0.0	0.0	1,688,500
North Slope (land)	2,467,300	76.3	472,100	14.6	291,000	9.0	3,200	0.1	3,233,600
North Slope (marine)	2,170,500	83.2	438,300	16.8	0.0	0.0	0.0	0.0	2,608,800
Norton Sound (marine)	1,491,200	85.2	259,000	14.8	0.0	0.0	0.0	0.0	1,750,200
Ledyard Bay (marine)	2,043,000	94.2	125,800	5.8	0.0	0.0	0.0	0.0	2,168,800
Wintering Area (marine)	7,290,200	98.6	103,500	1.4	0.0	0.0	0.0	0.0	7,393,700
Total	17,183,800	89.0	1,590,800	8.2	525,300	2.7	5,500	<.1	19,305,400

Yukon-Kuskokwim Delta

The Y–K Delta areas proposed as critical habitat comprise 75 townships and adjacent marine waters within 40 km (25 mi) of the coast, for a combined area of 21,503 km^2 (8,302 mi^2) or 2,150,300 ha (5,313,500 acres). The known primary constituent elements of spectacled eider critical habitat on the Y–K Delta include open water, low wet sedge, grass marsh, dwarf shrub/graminoid (consisting of grasses and sedges) meadow, high and intermediate graminoid meadow, mixed high graminoid meadow/dwarf shrub uplands, and areas adjacent to open water, low wet sedge and grass marsh

habitats. The habitat also includes all marine waters, its associated aquatic flora and fauna in the water column, and the underlying benthic community (the organisms living on the sea floor).

The Y–K Delta breeding population declined 96 percent between the 1970s and 1992 (Stehn *et al.* 1993). To what extent the breeding range of the birds has been constricted is unknown. Therefore, we have included as proposed critical habitat, with few exceptions, all townships within which observations of spectacled eiders were made during annual aerial surveys of breeding waterfowl from 1993 to 1999. We also included a few adjacent townships that shared physiographic characteristics of those townships containing eiders. These surveys were designed primarily to detect changes in goose populations, and may not have been designed optimally for documenting eider distribution; some townships were inadequately surveyed for the presence of eiders. Transect spacing throughout the survey area ranged from 1 to 16 miles. Approximately 60 percent of the townships included in our proposed critical habitat for the Y–K Delta fall within the YDNWR boundaries. The remaining 40 percent is primarily Native-owned land, but is not considered under the Alaska National Interest Lands Conservation Act to be a reservation. Lastly, we have also included marine waters within 40 km (25 mi) of those areas we have proposed on land.

We excluded townships near Uwik Slough on the northern edge of the Yukon River Delta. Although a few eider sightings have been made there during the past 7 years, habitat preference analysis indicates these areas are less favored by the species (as eiders occurred there in much lower densities than we would have expected had the birds been randomly distributed across the coastal zone). We therefore believe that this portion of the Y–K Delta is not essential for the species' conservation.

The spectacled eider recovery plan sets forth several recovery goals that, if met, would allow us to consider delisting the species. An example recovery goal is that three annual surveys indicate at least 10,000 breeding pairs are present on a breeding area. The Y–K Delta breeding population of spectacled eiders cannot reasonably be expected to reach established recovery goals (Service 1996) in the absence of the area on the Y–K Delta within which the current remnant population occurs. Indeed, adverse modification of this habitat would probably result in the loss of this population, which would represent a loss of a significant portion of the species' range, thus precluding eventual recovery of the species. Therefore, we believe that the entire area under consideration meets the definition of critical habitat as being essential to the conservation of the species.

At least a portion of the spectacled eiders breeding on the Y–K Delta migrate south along the coast from somewhere north of Cape Romanzoff (Brian McCaffery, YDNWR, pers. comm. 1998). Little else is known of Y–K Delta spectacled eider spring migration routes or habitat use. Aerial surveys off the coast of the Y–K Delta suggest use of the area by spectacled eiders, primarily adult males, during late June and early July (Dau 1987). Satellite telemetry confirms the use of these offshore waters by post-breeding spectacled eiders (Petersen *et al.* 1999). Therefore, we believe that marine waters within 40 km (25 mi) of the proposed Y–K Delta terrestrial critical habitat areas are essential to the conservation of the species.

North Slope

The 402 proposed townships and proposed marine areas on the North Slope total approximately 58,424 km^2 (22,558 mi^2) or 5,842,400 ha (14,436,800 acres) in area. The primary constituent elements within this area include all deep water bodies, all water bodies that are part of basin wetland complexes; all permanently flooded wetlands and water bodies containing either *Carex aquatilis, Arctophila fulva,* or both; all habitat immediately adjacent to these habitat types; and all marine waters, the associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Unlike on the Y–K Delta, we have no evidence that a population decline has occurred on the North Slope due to our complete lack of historical data. The North Slope contains the largest breeding population of spectacled eiders in North America. Therefore, this geographic area is essential to the conservation of the species. Absent trend information, it is impossible to know how much land on the North Slope is essential for conservation of the species. Erring in favor of conservation of the species, we believe that, with eight exceptions, those townships in which spectacled eider observations were made during annual systematic aerial surveys of breeding eiders from 1992 to 1998 are essential to the species' conservation. We also chose to include as critical habitat several townships that were near to and within the same physiographic strata as townships with spectacled eiders observations. We believe that the entire area under consideration meets the definition of critical habitat as being essential to the conservation of the species.

We have excluded from this group eight townships at which eiders that we considered to be outliers were observed (one observation at each township). In all cases, these observations were on the periphery of the species occupied breeding range, and were disjunct from the contiguous breeding area used by the vast majority of North Slope eiders.

The aerial surveys that we relied upon in establishing critical habitat boundaries were flown during early to mid-June, when spectacled eiders were about to nest or had recently initiated nesting. Transect lines were flown at 5-mile intervals, covered a 400-m (1,312-ft) swath, and sampled about 4 percent of suitable spectacled eider breeding habitat. The survey repeats the same complete set of survey lines every 4 years.

About 75 percent of the terrestrial portion of the North Slope proposed critical habitat unit is managed by the Bureau of Land Management (BLM) as the NPR–A. BLM recently conducted an oil and gas lease sale for the Northeast Planning Area of the NPR–A. Approximately 18 percent of the Northeast Planning Area that is currently available for lease is within the boundary of proposed spectacled eider critical habitat. The Teshekpuk Lake Surface Protection Area is a portion of the Northeast Planning Area within the NPR–A that is unavailable for leasing for a period of at least 10 years. This entire surface protection area is within the boundary of the proposed spectacled eider critical habitat.

Also part of the North Slope designation are marine areas in the Beaufort sea. Our information on the importance of the Beaufort Sea to migrating spectacled eiders, in both spring and fall, is very limited. Only one spectacled eider was observed among 420,000 eiders migrating past point Barrow during spring (Woodby and Divoky 1982) suggesting that either the timing of this survey was not concurrent with spectacled eider spring migration, or spectacled eiders do not migrate along the Beaufort Sea coast in spring. Little else is known of North Slope spectacled eider spring migration routes.

Beaufort Sea seaduck and waterbird surveys flown from shore to 81 km (50 mi) offshore during June, July, August, and September 1999, resulted in the sighting of only two groups of fewer than four spectacled eiders (Bill Larned, Service, MBM, pers. comm. 1999; TERA

1999). No spectacled eiders were observed on these offshore surveys during June and July, nor were spectacled eiders sighted on surveys of the near shore lagoon areas and within bays. However, aerial survey biologists concede that eider species in summer plumage are exceedingly difficult to discern from one another on aerial surveys. Nine groups of unknown eiders were observed in the vicinity of Harrison Bay between August 31 and September 2, 1999. Aerial observers suspect that spectacled eider family groups use the waters offshore of the Colville River Delta and west, and within Harrison Bay during the summer (Bill Larned, Service, MBM, pers. comm. 1999). Satellite telemetry supports this belief. Most satellite-tagged post-nesting female spectacled eiders from Prudhoe Bay used Harrison Bay briefly (5 of 13 tagged birds were detected there once from satellite telemetry data that is acquired every 3 days, another 5 of 13 were detected there twice, resulting in a mean residence time of at least 4 days) (TERA 1999). Thus, it seems that spectacled eiders nesting near to or, presumably, east of Prudhoe Bay make use of the Beaufort Sea, especially those waters near Harrison Bay. Satellite telemetry indicates that molt migration and fall migration of North Slope eiders takes place in the offshore waters of the Beaufort and Chukchi Seas (Peterson *et al.* 1999). We believe that the Beaufort and Chukchi Seas is probably important habitat to eiders that nest west of Prudhoe Bay, as well. Satellite telemetry indicates post-breeding spectacled eiders use the Beaufort and Chukchi Seas out to 40 km (25 mi) (Peterson *et al.* 1999). Therefore, we believe that waters of the Beaufort and Chukchi Seas within 40 km (25 mi) of the mainland are essential to the conservation of the species.

Norton Sound

The area of this proposed parcel in eastern Norton Sound east of the line connecting Unwik Slough on the northern edge of the Yukon River Delta to Priest Rock on the northern shore of Norton Sound is approximately 17,502 km² (6,758 mi²) or 1,750,200 ha (4,324,800 acres). As stated earlier, Norton Sound is the principal, and perhaps only, molting area for breeding female spectacled eiders from the Y–K Delta (Petersen *et al.* 1999). As many as 4,030 spectacled eiders have been observed in one portion of eastern Norton Sound at one time (Larned *et al.* 1995a). Use of this area by molting eiders has been documented regularly from 1982 to 1999 (Charles Lean, Alaska Department of Fish and Game, Nome, pers. comm. 1999; Bill Larned, Service, MBM, pers. comm. 1999; Petersen *et al.* 1999). The area is used by spectacled eiders from mid-July until the end of October (Petersen *et al.* 1999).

Primary constituent elements of this habitat include the marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Energy needs of waterfowl during molt are high (Hohman *et al.* 1992). The benthic biomass in the portion of Norton Sound that spectacled eiders inhabit apparently meets the high metabolic needs for the many birds that molt there. Indeed, the abundance of large gastropods is higher in this area than elsewhere in Norton Sound (Springer and Pirtle 1997). Therefore, we consider this habitat to be essential to the conservation of the species.

Ledyard Bay

We propose to designate as critical habitat for spectacled eiders waters within Ledyard Bay between Cape Lisburne and Icy Cape west to 167°00′W. The area of this parcel totals approximately 21,688 km² (8,374 mi²) or 2,168,800 ha (5,359,200 acres). Ledyard Bay is located along the western coast of Alaska between Cape Lisburne and Point Lay. It is one of the primary molting grounds for female spectacled eiders breeding on the North Slope, and most female birds molting here are from the North Slope (Petersen *et al.* 1999). Male spectacled eiders from the North Slope appear to molt and stage in equal numbers in Ledyard Bay and the two primary molting areas in Russia: Mechigmenskiy Bay and the Indigirka-Kolyma Delta (Petersen *et al.* 1999). The area is used by eiders from early July through mid-October (Petersen *et al.* 1999).

Primary constituent elements of the Ledyard Bay molting area include the marine waters, associated aquatic flora and fauna in the water column, and the underlying benthic community. As stated earlier, the energy needs of birds during molt is high. Due to the importance of the benthic biomass in this area to spectacled eiders during molt, we believe that Ledyard Bay is essential to the conservation of the species. Spectacled eiders molting in Ledyard Bay may be particularly susceptible to disturbance because they occur in dense concentrations and are flightless for several weeks. Aerial surveys in September 1995, found 33,192 spectacled eiders primarily concentrated in a 37 km (23 mi) diameter circle in Ledyard Bay (Larned *et al.* 1995b). A single ill-timed oil-spill in this area could harm thousands of eiders.

Wintering Area

We are proposing to designate as critical habitat those waters between St. Lawrence and St. Matthew Islands that are used by spectacled eiders during late fall, winter, and early spring. No portion of St. Lawrence Island or Russia is included in this parcel. The area of this parcel is approximately 73,937 km² (28,547 mi²) or 7,393,700 ha (18,270,200 acres). Spectacled eiders typically winter south and southwest of St. Lawrence Island in the central Bering Sea; they wintered in the same place in 4 of 5 years since the discovery of their wintering area. In the 1 year when they are known to have wintered elsewhere, they were found further south and east between St. Lawrence and St. Matthew Islands. Prior to the formation of sea ice in the area, spectacled eiders inhabit waters directly south of Powooiliak Bay, St. Lawrence Island, moving farther off shore as winter progresses. Spectacled eiders from all three main breeding populations (Y–K Delta, North Slope, and Arctic Russia) concentrate within a 50-km (31-mi) diameter circle in small openings in the sea ice (Service 1999). The location of this area changes slightly among years and perhaps within years. Distribution of wintering eiders overlapped for the surveys conducted in late winter of 1996–1999, but was far removed from that area in 1995 (Larned and Tiplady 1999). The most recent estimate of the number of spectacled eiders wintering in this area is 374,792 (±3,514) birds (Larned and Tiplady 1999). Most, perhaps all, of the worldwide population of spectacled eiders congregates for several months in this small portion of the central Bering Sea. The primary constituent elements of this habitat include the marine waters, associated aquatic flora and fauna in the water column, and underlying benthic community. Because this area receives such intensive use by the species, and because wintering spectacled eiders are not known to use any other habitat, we believe that this area is essential to the conservation of this species.

Summary

We propose designation of critical habitat on the North Slope and marine waters within 40 km (25 mi) of the coast; on the Y–K Delta and marine waters within 40 km (25 mi) of the coast; in Norton Sound, Ledyard Bay, and the waters between St. Lawrence and St. Matthew Islands. We believe all of these areas meet the definition of critical habitat in that they contain

physical or biological elements essential for the conservation of the species and may require special management considerations or protection. Designation of these areas will highlight the conservation needs of the species, and perhaps increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act.

In accordance with the regulations implementing the listing provisions of the Act (50 CFR 424.12(h)), we have not proposed any areas outside the jurisdiction of the United States (*e.g.*, within Russian jurisdiction or international waters).

Spectacled eiders formerly bred on the Seward Peninsula, St. Lawrence Island, and elsewhere between the Y–K Delta and North Slope. We have a recent record of a single spectacled eider nest on St. Lawrence Island (Shawn Stephensen, Service, pers. comm. 1998). We have no other recent breeding records outside of the previously discussed breeding areas. In addition, we are unaware of any reports suggesting that these formerly occupied habitats are essential to the conservation of the species. Because we believe the areas within our proposed critical habitat boundaries encompass all of the existing eider breeding range in Alaska that is essential to the conservation of the species, we therefore believe that the breeding areas we have proposed are sufficient to support the recovery of these populations of spectacled eiders. Consequently, we have not proposed as critical habitat areas on St. Lawrence Island or outside of the species' current breeding range.

We are unaware of other parts of the United States within the range of the spectacled eider that are essential to the conservation of the species. We believe currently available information supports designating critical habitat only in those areas that we have proposed. Should additional information on the value of any marine area to spectacled eiders become available, we will consider that information in our critical habitat decision making process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protections required by Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is subsequently designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Consequently, as a result of this proposal, some Federal agencies may wish to request conferencing with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). We may also prepare a formal conference report to address the effects on proposed critical habitat from issuance of an incidental take permit, under section 10(a)(1)(B) of the Act.

Activities on Federal lands that may affect the spectacled eider or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit or license from a Federal agency (*e.g.*, a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act for wetland fill), would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded, permitted, or licensed would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the spectacled eider is appreciably reduced. We note that such activities are also likely to jeopardize the continued existence of the species. Such activities that may have the potential to destroy or adversely modify critical habitat for spectacled eiders include, but are not limited to: (1) Commercial fisheries, (2) oil exploration and development, and (3) petroleum product transport.

The specific types of activities that have required section 7 consultation include but are not limited to: (1) Construction and installation of facilities and roads associated with oil and gas development; (2) village growth and upkeep, such as housing developments, road building and maintenance, and airport improvements; (3) wastewater discharge from communities and oil development facilities; and (4) commercial fisheries. Designation of critical habitat for spectacled eiders notifies the Army Corps of Engineers, other permitting agencies, and the public that Clean Water Act section 404 nationwide permits and other authorizations for activities with these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we review the direct and indirect effects of the proposed projects on spectacled eiders.

TABLE 2.—ACTIVITIES POTENTIALLY AFFECTED BY SPECTACLED EIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities involving a Federal action potentially affected by species listing only [1]	Additional activities involving a Federal action potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities that the Federal Government carries out such as scientific research, land surveys, law enforcement, oil spill response, resource management, and construction/expansion of physical facilities.	None.
Private Activities Potentially Affected [4].	Activities that also require a Federal action (permit, authorization, or funding) such as scientific research, commercial fishing, sport and subsistence hunting, shipping and transport of fuel oil and gasoline to villages, and village maintenance, construction and expansion.	None.

[1] This column represents impacts of the final rule listing the spectacled eider (May 10, 1993) (58 FR 27474) under the Endangered Species Act.
[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

In instances where we have consulted on projects and a Federal action agency has retained discretionary authority over the action, we will notify the agency of this proposal and will, when requested, render a conference opinion on their action as it relates to spectacled eider critical habitat prior to publication of a final critical habitat determination.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ecological Services Anchorage Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 405 West 4th Street, Room G–62, Anchorage, AK 99501 (telephone 907–271–2888, facsimile 907–271–2786).

Although we are proposing critical habitat throughout much of the North American portion of the spectacled eider's range and anticipate that doing so will be beneficial to the species, this action is not meant to imply that little is currently being done to ensure the species' survival. On the contrary, tremendous strides have been made in recent years in our understanding of the species and in ways to assist it in its recovery.

For example, shortly after we learned that spent lead shot was affecting birds, we launched a public relations campaign throughout remote bush communities where lead shot was often not recognized to be a hazard. We later offered to swap boxes of steel shot for subsistence hunters' existing stores of lead shot in an effort to reduce future lead deposition. We designed field projects to minimize disturbance of the birds, and enforced the laws prohibiting harvest of this species. Posters, flyers, and fact sheets have been distributed throughout rural Alaska, and we regularly air radio spots reminding hunters that spectacled eiders need their help and that they are not legal quarry. We also attend meetings of the Waterfowl Conservation Committee, a committee comprising elders from Native communities throughout the region that cooperatively manage subsistence waterfowl harvest on the Y–K Delta.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of spectacled eiders and habitat, and what habitat is essential to the conservation of the species and why;

(3) Current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information on threats of take of spectacled eiders by humans that may result from critical habitat designation; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on native villages.

(6) Economic and other potential values associated with designating critical habitat for the spectacled eider such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, "existence values," and reductions in administrative costs).

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the

description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 90-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule three public hearings on this proposal. We will announce the dates, times, and places of those hearings in local newspapers at least 15 days prior to the first hearing.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The Spectacled eider was listed as a threatened species in 1993. Between the Fiscal Years 1997–2000 we have conducted 108 section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the spectacled eider. The areas proposed for critical habitat are currently occupied by the spectacled eider. Under the Endangered Species Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (they continue to be bound by the provisions of the Act concerning "take" of the species).

b. This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spectacled eider since the listing in 1993. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (from critical habitat determination) will have any incremental effects because all proposed critical habitat is occupied.

d. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

2. Regulatory Flexibility Act

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section) we have proposed land and marine waters, which are occupied by the spectacled eider, and summarized by Private, State, Federal and Native government ownership. Within these areas, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the spectacled eider is appreciably reduced. We note that such activities are also likely to jeopardize the continued existence of the species. Such activities that may have the potential to destroy or adversely modify critical habitat for spectacled eiders include, but are not limited to: (1) Commercial fisheries, (2) oil exploration and development, and (3) petroleum product transport. Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed under Regulatory Planning and Review above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in

effect and this rule has no additional restrictions (See Table 2 under Available Conservation Measures above).

3. Small Business Regulatory Enforcement Fairness Act

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

5. Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the spectacled eider. Due to the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values should be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spectacled eider.

6. Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the spectacled eider imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas protected are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the spectacled eider.

8. Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October 1983 (48 FR 49244).

10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that "Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." While this Order does not apply to the State of Alaska, we recognize our responsibility to inform affected Native Corporations, and regional Native governments of this proposal. Subsequent to this proposal, we will coordinate with the Native communities and analyze the need to designate critical habitat on Native lands; and consult with other bureaus and offices of the Department about the potential effects of this rule on Indian tribes.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Ecological Services Anchorage Field Office (see **ADDRESSES** section).

Author

The primary authors of this document are Greg Balogh and Terry Antrobus (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544: 16 U.S.C. 4201–4245: Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11 (h) revise the entry for spectacled eider under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Eider, spectacled	Somateria (=*Arctonetta*, =*Lampronetta*,) *fischeri*.	USA (AK); Russia ...	Entire	T	503	17.95(b)	NA
*	*	*	*	*	*	*	

3. In § 17.95 add critical habitat for the spectacled eider (*Somateria fischeri*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat—Fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Spectacled Eider (Somateria fischeri)

1. Critical habitat units are depicted for the Yukon-Kuskokwim Delta and adjacent marine waters, North Slope and adjacent marine waters, Ledyard Bay, Norton Sound, and the Bering Sea between St. Lawrence and St. Matthew Islands for reference only. The areas in critical habitat are described below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, nesting, brood rearing, roosting, molting, migrating and wintering. The primary constituent elements on the Y–K Delta include open water; low wet sedge; grass marsh; dwarf shrub/graminoid meadow; high and intermediate graminoid meadow; mixed high graminoid meadow/dwarf shrub uplands; areas adjacent to open water, low wet sedge and grass marsh; and all marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Primary constituent elements on the North Slope include all marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community; all deep water bodies; all water bodies that are part of basin wetland complexes; all permanently flooded wetlands and water bodies containing either *Carex aquatilis*, *Arctophila fulva*, or both; and all habitat immediately adjacent to these habitat types. Primary constituent elements for the Norton Sound Unit, the Ledyard Bay Unit and the Wintering Unit include all marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

3. Critical habitat does not include existing human structures.

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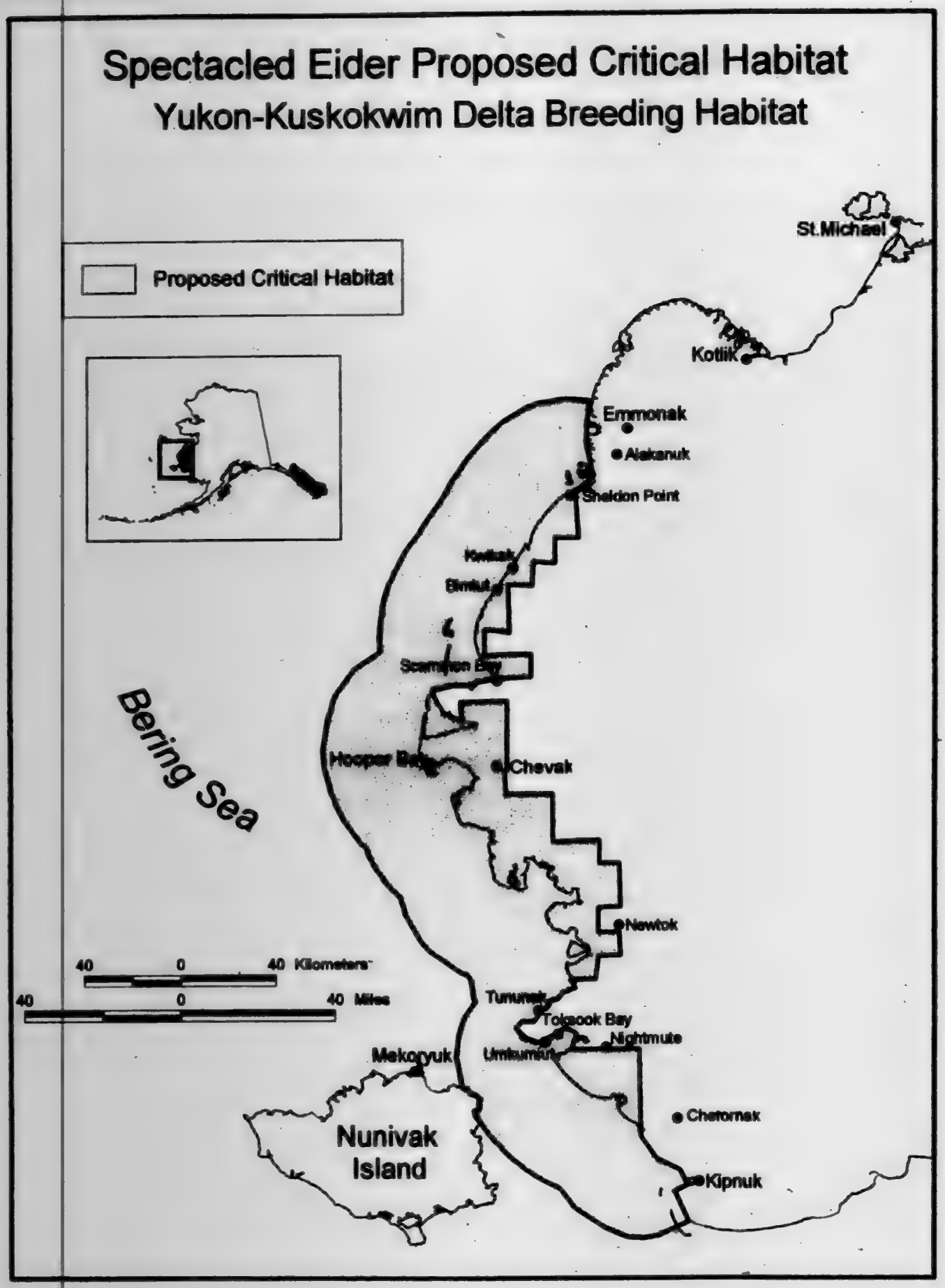

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Unit 1. North Y–K Delta Unit

Seward Meridian: T28N, R86W; T28N, R85W; T27N, R86W; T27N, R85W; T26N, R87W; T26N, R86W; T25N, R88W; T25N, R87W; T24N, R90W; T24N, R89W; T23N, R90W; T23N, R89W; T22N, R90W; T21N, R90W; T21N, R89W; T21N, R88W; and all marine waters of the Bering Sea within 40 kilometers (25 miles) of the above area.

Unit 3. Central Y–K Delta Unit

Seward Meridian: T19N, R91W; T19N, R90W; T18N, R93W; T18N, R92W; T18N, R91W; T18N, R90W; T17N, R93W; T17N, R92W; T17N, R91W; T17N, R90W; T16N, R94W; T16N, R93W; T16N, R92W; T16N, R91W; T15N, R93W; T15N, R92W; T15N, R91W; T15N, R90W; T15N, R89W; T14N, R93W; T14N, R92W; T14N, R91W; T14N, R90W; T14N, R89W; T13N, R91W; T13N, R90W; T13N, R89W; T13N, R88W; T13N, R87W; T12N, R92W; T12N, R91W; T12N, R90W; T12N, R89W; T12N, R88W; T12N, R87W; T11N, R91W; T11N, R90W; T11N, R89W; T11N, R88W; T11N, R87W; T10N, R90W; T10N, R89W; T10N, R88W; T9N, R89W; T9N, R88W; T9N, R87W; T8N, R90W; T8N, R89W; and all marine waters of the Bering Sea within 40 kilometers (25 miles) of the above area.

Unit 4. South Y–K Delta Unit

Seward Meridian: T4N, R91W; T4N, R90W; T4N, R89W; T4N, R88W; T3N, R91W; T3N, R90W; T3N, R89W; T3N, R88W; T2N, R89W; T2N, R88W; T1N, R88W; and all marine waters of the Bering Sea within 40 kilometers (25 miles) of the above area.

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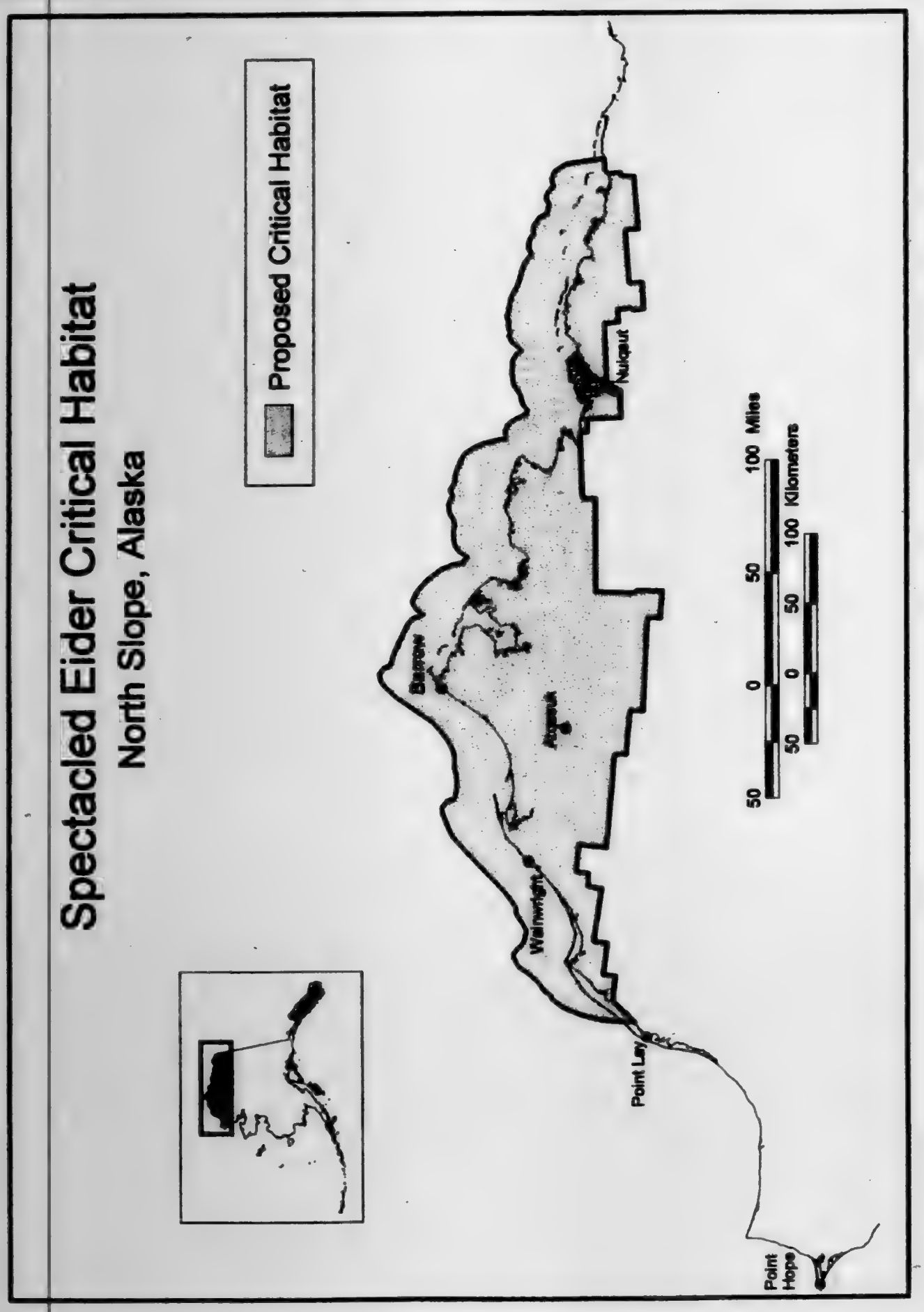

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Unit 5. North Slope Unit

Umiat Meridian: T23N, R18W; T23N, R17W; T22N, R19W; T22N, R18W; T22N, R17W; T22N, R16W; T22N, R15W; T21N, R20W; T21N, R19W; T21N, R18W; T21N, R17W; T21N, R16W; T21N, R15W; T21N, R14W; T21N, R13W; T21N, R12W; T20N, R21W; T20N, R20W; T20N, R19W; T20N, R18W; T20N, R17W; T20N, R16W; T20N, R15W; T20N, R14W; T20N, R13W; T20N, R12W; T20N, R11W; T19N, R21W; T19N, R20W; T19N, R19W; T19N, R18W; T19N, R17W; T19N, R16W; T19N, R15W; T19N, R14W; T19N, R13W; T19N, R12W; T19N, R11W; T19N, R10W; T18N, R23W; T18N, R22W; T18N, R21W; T18N, R20W; T18N, R19W; T18N, R18W; T18N, R17W; T18N, R16W; T18N, R15W; T18N, R14W; T18N, R13W; T18N, R12W; T18N, R11W; T18N, R10W; T18N, R8W; T18N, R7W; T18N, R6W; T18N, R5W; T18N, R4W; T18N, R3W; T18N, R2W; T17N, R30W; T17N, R29W; T17N, R28W; T17N, R27W; T17N, R26W; T17N, R25W; T17N, R24W; T17N, R23W; T17N, R22W; T17N, R21W; T17N, R20W; T17N, R19W; T17N, R18W; T17N, R17W; T17N, R16W; T17N, R15W; T17N, R14W; T17N, R13W; T17N, R12W; T17N, R11W; T17N, R10W; T17N, R9W; T17N, R8W; T17N, R7W; T17N, R6W; T17N, R5W; T17N, R4W; T17N, R3W; T17N, R2W; T17N, R1W; T16N, R31W; T16N, R30W; T16N, R29W; T16N, R28W; T16N, R27W; T16N, R26W; T16N, R25W; T16N, R24W; T16N, R23W; T16N, R22W; T16N, R21W; T16N, R20W; T16N, R19W; T16N, R18W; T16N, R17W; T16N, R16W; T16N, R15W; T16N, R14W; T16N, R13W; T16N, R12W; T16N, R11W; T16N, R10W; T16N, R9W; T16N, R8W; T16N, R7W; T16N, R6W; T16N, R5W; T16N, R4W; T16N, R3W; T16N, R2W;

T15N, R32W; T15N, R31W; T15N, R30W; T15N, R29W; T15N, R28W; T15N, R27W; T15N, R26W; T15N, R25W; T15N, R24W; T15N, R23W; T15N, R22W; T15N, R21W; T15N, R20W; T15N, R19W; T15N, R18W; T15N, R17W; T15N, R16W; T15N, R15W; T15N, R14W; T15N, R13W; T15N, R12W; T15N, R11W; T15N, R10W; T15N, R9W; T15N, R8W; T15N, R7W; T15N, R6W; T15N, R5W; T15N, R4W; T15N, R3W; T15N, R2W; T14N, R33W; T14N, R32W; T14N, R31W; T14N, R30W; T14N, R29W; T14N, R28W; T14N, R27W; T14N, R26W; T14N, R25W; T14N, R24W; T14N, R23W; T14N, R22W; T14N, R21W; T14N, R20W; T14N, R19W; T14N, R18W; T14N, R17W; T14N, R16W; T14N, R15W; T14N, R14W; T14N, R13W; T14N, R12W; T14N, R11W; T14N, R10W; T14N, R9W; T14N, R8W; T14N, R7W; T14N, R6W; T14N, R5W; T14N, R4W; T14N, R3W; T14N, R2W; T14N, R1W; T14N, R1E; T14N, R2E; T13N, R34W; T13N, R33W; T13N, R32W; T13N, R31W; T13N, R30W; T13N, R29W; T13N, R28W; T13N, R27W; T13N, R26W; T13N, R25W; T13N, R24W; T13N, R23W; T13N, R22W; T13N, R21W; T13N, R20W; T13N, R19W; T13N, R18W; T13N, R17W; T13N, R16W; T13N, R15W; T13N, R14W; T13N, R13W; T13N, R12W; T13N, R11W; T13N, R10W; T13N, R9W; T13N, R8W; T13N, R7W; T13N, R6W; T13N, R5W; T13N, R4W; T13N, R3W; T13N, R2W; T13N, R1W; T13N, R1E; T13N, R2E; T13N, R4E; T13N, R5E; T13N, R6E; T13N, R7E; T13N, R8E; T13N, R9E; T13N, R10E; T13N, R11E; T13N, R12E; T13N, R13E; T12N, R35W; T12N, R34W; T12N, R33W; T12N, R32W; T12N, R31W; T12N, R30W; T12N, R29W; T12N, R28W; T12N, R27W; T12N, R26W; T12N, R25W; T12N, R24W; T12N, R23W; T12N, R22W; T12N, R21W; T12N, R20W; T12N, R19W; T12N, R18W; T12N, R17W; T12N, R16W; T12N, R15W; T12N, R14W; T12N, R13W; T12N, R12W; T12N, R11W; T12N, R10W; T12N, R9W; T12N, R8W; T12N, R7W; T12N, R6W; T12N, R5W; T12N, R3E; T12N, R4E; T12N, R5E; T12N, R6E; T12N, R7E; T12N, R8E; T12N, R9E; T12N, R10E; T12N, R11E; T12N, R12E; T12N, R13E; T12N, R14E; T12N, R15E; T12N, R16E; T11N, R40W; T11N, R39W; T11N, R37W; T11N, R36W; T11N, R35W; T11N, R34W; T11N, R33W; T11N, R30W; T11N, R29W; T11N, R28W; T11N, R27W; T11N, R26W; T11N, R25W; T11N, R24W; T11N, R23W; T11N, R22W; T11N, R21W; T11N, R20W; T11N, R19W; T11N, R18W; T11N, R17W; T11N, R16W; T11N, R15W; T11N, R14W; T11N, R13W; T11N, R12W; T11N, R3E; T11N, R4E; T11N, R5E; T11N, R6E; T11N, R7E; T11N, R8E; T11N, R9E; T11N, R10E; T11N, R11E; T11N, R12E; T11N, R13E; T11N, R14E; T11N, R15E; T11N, R16E; T11N, R17E; T10N, R40W; T10N, R39W; T10N, R38W; T10N, R37W; T10N, R36W; T10N, R35W; T10N, R34W; T10N, R30W; T10N, R29W; T10N, R28W; T10N, R27W; T10N, R26W; T10N, R25W; T10N, R24W; T10N, R23W; T10N, R22W; T10N, R21W; T10N, R20W; T10N, R19W; T10N, R18W; T10N, R17W; T10N, R16W; T10N, R15W; T10N, R14W; T10N, R13W; T10N, R12W; T10N, R3E; T10N, R4E; T10N, R10E; T10N, R11E; T10N, R12E; T10N, R13E; T10N, R14E; T10N, R15E; T10N, R16E; T10N, R17E; T10N, R18E; T10N, R19E; T9N, R41W; T9N, R40W; T9N, R39W; T9N, R38W; T9N, R23W; T9N, R22W; T9N, R21W; T9N, R20W; T9N, R19W; T9N, R18W; T9N, R17W; T9N, R16W; T9N, R15W; T9N, R14W; T9N, R13W; T9N, R12W; T9N, R11E; T9N, R12E; T9N, R13E; T9N, R14E; T9N, R15E; T9N, R16E; T9N, R17E; T9N, R18E; T9N, R19E; T9N, R20E; T8N, R42W; T8N, R41W; T8N, R20W; T8N, R19W; T8N, R18W; T8N, R17W; T8N, R16W; T8N, R15W; T8N, R14W; T8N, R13W; T8N, R12W; T8N, R11E; T8N, R12E; T8N, R17E; T8N, R18E; T8N, R19E; T8N, R20E; T7N, R13W; T7N, R12W; and all marine waters of the Beaufort and Chukchi Seas within 40 kilometers (25 miles) of the above area.

BILLING CODE 4310-55-P

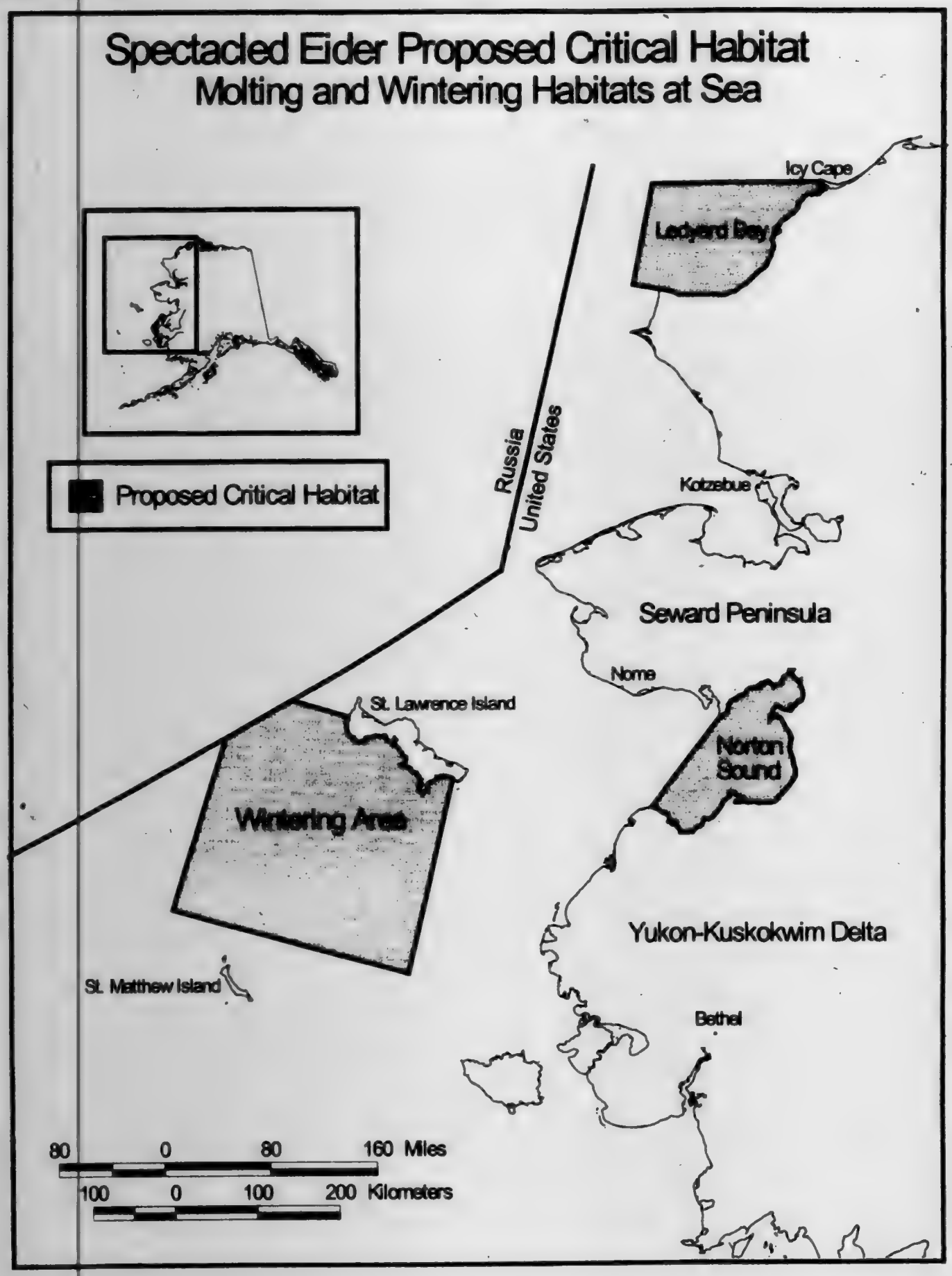

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Unit 6. Norton Sound Unit

The area east of a great circle route connecting the east bank of the mouth of Uwik Slough, on the northern edge of the Yukon River Delta, to Priest Rock, on the northern shore of Norton Sound (a great circle route connecting the geographic coordinates 63°15′ N × 164°09′ W and 64°19′ N × 162°47′ W).

Unit 7. Ledyard Bay Unit

The area bound by the following description: from Cape Lisburne (68°5′ N × 166°11′ W) along the mean low tide line of the Alaska coast north and east to Icy Cape (70°18′ N × 161°54′ W); from Icy Cape west along 70°18′ N to 70°18′ N × 167°00′ W; south from 70°18′ N × 167°00′ W along 167°00′ W to 68°52′ N × 167°00′ W, and from 68°52′ N × 167°00′ W east along 68°52′ N back to Cape Lisburne.

Unit 8. Wintering Area Unit

The area bound by the following description: from 61°00′ N × 174°30′ W east along that latitude to 61°00′ N × 169°00′ W, north along 169°00′ W longitude to the south shore of St. Lawrence Island (at approximately 63°12′ N × 169°00′ W), west and north along the mean low tide line of the south shore of St. Lawrence Island to 63°30′ N × 171°48′ W, west to the U.S.-Russia border at 63°30′ N × 173°16.2′ W, southwest along the U.S.-Russia Border to 62°56.4′ N × 174°30′ W, south along 174°30′ W to 61°00′ N × 174°30′ W.

* * * * *

Dated: January 28, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–2608 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 26
Tuesday, February 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program for Fiscal Year 2000; Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is giving notice that a competition for new graduate fellowship grants will not be held during Fiscal Year (FY) 2000. CSREES is also announcing the availability of supplemental grants for Special International Study or Thesis/Dissertation Research Travel Allowances for FY 2000. Applications for supplemental grants are invited from recipients of currently active Food and Agricultural Sciences National Needs Graduate Fellowship Grants to support special international study or thesis/dissertation research experiences for current Fellows. CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2).

DATES: Supplemental Grant proposals must be received by January 12, 2001. User comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable (see Section G.).

ADDRESSES: Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before January 12, 2001, at the following address: Graduate Fellowship (International) Supplemental Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before January 12, 2001. Proposals submitted through the U.S. mail should be sent to the following address: Graduate Fellowship (International) Supplemental Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. (This address is only for user comments and not for requesting forms or information.) In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

FOR FURTHER INFORMATION CONTACT: Dr. Howard Sandberg, Higher Education Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture, STOP 2251, 1400 Independence Avenue, SW; Washington, DC 20250–2251; Telephone: (202) 720–2193; E-mail: hsandberg@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Administrative Provisions and Legislative Authority
B. Program Description
C. Selection Process and Evaluation Criteria
D. How to Obtain Application Materials
E. What to Submit
F. Catalog of Federal Domestic Assistance
G. Stakeholder Input

A. Administrative Provisions and Legislative Authority

This Program is subject to the provisions found at 7 CFR part 3402. 7 CFR 3402.5(e) sets forth procedures to be followed when submitting supplemental grant proposals for special international study or thesis/dissertation research travel allowances, rules governing the evaluation of proposals and the awarding of such grants, and regulations relating to the post-award administration of grant projects.

Legislative authority for this program is contained in section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(6)).

B. Program Description

CSREES has determined that a new competition for special international study or thesis/dissertation research travel allowances will be held during FY 2000, and hereby solicits proposals for competitive supplemental grants. Proposals may be submitted by universities or colleges who currently have active Food and Agricultural Sciences National Needs Graduate Fellowship Grants. Eligibility for this opportunity is limited to any current Fellow with sufficient time to complete the international experience before the termination date of the fellowship grant under which he/she is supported. These supplementary grants provide support for a Fellow to conduct thesis/dissertation research or to undertake studies at a site outside of the United States primarily for the pursuit of activities that are not generally available within the United States. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

Estimated funds for supplemental grants in FY 2000 are approximately $60,000. These funds are obtained from

no-year funds drawn from expired fellowship grants with unspent funds remaining. CSREES has determined that no FY 2000 appropriations will be targeted to supplemental grants supporting special international study or thesis/dissertation research travel allowances. For each travel allowance, the institution may request up to $5,000. Travel allowance monies may be used only to pay travel and living expenses for the Fellow while the Fellow is on the specific international assignment as proposed in the application for the special international study or thesis/dissertation research travel allowance. No limitation is placed on the number of applications an institution may submit. Awards will be made to the extent possible based on the review of the proposal and availability of funds.

C. Selection Process and Evaluation Criteria

Applications for the special international travel allowances will be evaluated as they are received until available funds for the supplemental grants are exhausted. Upon receipt of an application, CSREES staff will first determine the eligibility of the Fellow for whom the application was submitted for an international travel experience. Eligible and complete requests then will be reviewed by professional staff from USDA or other Federal agencies, as appropriate. Since awards for supplemental grants will be awarded as reviews are completed, there is no assurance funds will be available late in the application period for every acceptable proposal.

The six evaluation criteria are:

1. Destination and duration—the degree to which the destination and duration of the travel experience is appropriate for enhancing the Fellow's academic program—10 points.

2. Travel experience activities—the degree to which the specific international experiences contribute to the Fellow's program of study—30 points.

3. Advance preparations—the degree to which the proposed study or research activities are well-planned, including the likelihood that these activities will come to fruition and that the participation of identified personnel will materialize—20 points.

4. Budget—the degree to which the budget for the international experience is justified—10 points.

5. Personnel—the degree to which the personnel, both U.S. and international, involved with the travel experience have the appropriate credentials and experience to direct the Fellow's international experience, and the likelihood that their participation as mentors, trainers, advisors, or teachers will contribute to the educational value of the travel experiences—20 points.

6. Supporting documentation—the degree to which letters from the dean of the college (or equivalent administrative unit) and the fellowship grant project director support the application—10 points.

D. How To Obtain Application Materials

An Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, Request for Proposals, Program Announcement, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting the Application Kit for the FY 2000 Graduate Fellowship (International) Supplemental Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 2000 Graduate Fellowship (International) Supplemental Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

E. What To Submit

An original plus six copies of each application must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½" x 11" white paper, double-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using a font no smaller than 12 point and one-inch margins. Each copy of the application should be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the application must be submitted in one package. Applications transmitted via a facsimile (FAX) machine will not be accepted.

A separate application must be submitted by a fellowship grant project director at an eligible institution on behalf of each Fellow for which a special international study or thesis/dissertation research travel allowance is requested.

Each application must include an "Application for Funding," Form CSREES–661, and a "Budget," Form CSREES–55. To provide the office of Higher Education Programs (HEP) with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following: (1) The specific destination(s) and duration of the travel; (2) the specific study or thesis/dissertation research activities in which the Fellow will be engaged; (3) how the international experience will contribute to the Fellow's program of study; (4) a budget narrative specifying and justifying the dollar amount requested for the travel; (5) summary credentials of both the U.S. and international faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person; "Summary Vita—Teaching Proposal," Form CSREES–708, may be used for this purpose); (6) a letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and (7) a letter from the fellowship grant project director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

The narrative portion of the application must not exceed 10 pages, excluding the summary vita/vitae.

F. Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210.

G. Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). Comments

should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Done at Washington, DC, this 28th day of January, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–2823 Filed 2–7–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by Hussey Copper Ltd., The Miller Company, Olin Corporation, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America ("AFL–CIO"), Mechanics Educational Society of America ("Local 56"), and the United Steel Workers of America ("AFL–CIO/CLC") (collectively the "Petitioners"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Wolverine Tube (Canada), Inc., ("Wolverine"). The period covered is January 1, 1998, through December 31, 1998. As a result of the review, the Department has preliminarily determined that a dumping margin exists for this respondent for the covered period.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Nithya Nagarajan, Antidumping/Countervailing Duty Enforcement, Import Administration, Office IV, Group II , International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0651 or 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (1999).

Background

The Department of Commerce ("the Department") published an antidumping duty order on brass sheet and strip from Canada on January 12, 1987 (52 FR 1217). On January 14, 1999, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on brass sheet and strip from Canada (64 FR 2470). On January 29, 1999, the Petitioners requested an administrative review of Wolverine's exports of the subject merchandise to the United States for the period January 1, 1998 through December 31, 1998. In accordance with 19 CFR 351.213 we published a notice of initiation of the review on February 22, 1999 (64 FR 8542). The Department is now conducting this administrative review in accordance with section 751 of the Act.

On April 22, 1999, we issued an antidumping questionnaire to Wolverine. Wolverine submitted the response to Sections A, B, C, and D on July 9, 1999. On July 29, 1999, the Petitioners submitted comments with respect to Wolverine's questionnaire which response.

We issued a supplemental questionnaire to Wolverine on October 13, 1999. The response to this supplemental questionnaire was submitted by Wolverine on November 12, 1999. On December 2, 1999, the Petitioners submitted comments with respect to Wolverine's supplement questionnaire response.

On December 20, 1999 we issued a second supplemental questionnaire to Wolverine. Wolverine filed its response to the second supplemental questionnaire which was received on January 11, 2000.

On January 28, 2000, the Department issued its third supplemental questionnaire to Wolverine. The response to the supplemental questionnaire is not due until after the preliminary results are completed. Therefore, we will take that response into account for the final results of review.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On October 19, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to January 31, 2000. *See Brass Sheet and Strip from Canada: Time Limit*, 64 FR 56308 (October 19, 1999).

Scope of Review

The product covered by this review is brass sheet and strip ("BSS"), other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive. Pursuant to the final affirmative determination of circumvention of the antidumping duty order, covering the period September 1, 1990, through September 30, 1991, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993).

The period of review ("POR") is January 1, 1998, through December 31, 1998. The review involves one manufacturer/exporter, Wolverine.

United States Price ("USP")

In calculating the price to the United States, we used export price ("EP") as

defined in section 772(a) of the Act because the subject merchandise was sold to unaffiliated U.S. purchasers in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of the record.

We calculated EP based on prices that were for merchandise delivered to the customers' premises. In accordance with section 772(c)(1) of the Act, we adjusted the gross USP for U.S. brokerage and handling, foreign and U.S. inland freight, and customs duty. No other adjustments to EP were claimed or allowed.

Normal Value ("NV")

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Wolverine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Wolverine's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Wolverine.

B. Below Cost of Production Test

Because we disregarded sales below the cost of production ("COP") in the 1997 POR, the most-recently completed segment of this proceeding, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the COP, within the meaning of section 773(b)(2)(A)(ii) of the Act. *See Notice of Final Results of Review and Intent Not to Revoke Order in Part: Brass Sheet and Strip from Canada*, 64 FR 46344 (August 25, 1999) (*"BS&S 1997"*). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Wolverine. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses ("SG&A") and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information Wolverine provided in its questionnaire responses. After calculating COP, we tested whether home market sales of subject BSS were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices permitted the recovery of all costs within a reasonable period of time. To conduct this test, we compared model-specific COPs to the reported home market prices less any applicable movement charges.

Pursuant to section 773(b)(2)(C) of the Act, where less than twenty percent of Wolverine's home market sales of a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where twenty percent or more of Wolverine's home market sales of a particular model were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (B) and (C) of the Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we compared home market prices to the weighted-average COPs for the POR. The results of our cost test for Wolverine indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for Wolverine also indicated that for certain other home market models more than twenty percent of the home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Differences in Levels of Trade ("LOT")

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action ("SAA") at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sales. When the Department is unable to find sales in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign market at different LOTs, and adjust NV if appropriate. The NV LOT is that of the starting-price sales in the home market. As the Department explained in *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17156 (April 9, 1997), for both EP and CEP, the relevant transaction for the LOT analysis is the sale from the exporter to the importer.

To determine whether comparison market NV sales are at a different LOT than the U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 17, 1997), and *Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25826 (May 11, 1998).

In its questionnaire responses, Wolverine stated that there were no significant differences in its selling activities by customer categories between markets. Therefore, Wolverine did not distinguish between LOTs for this review and did not claim a LOT adjustment. Our analysis of the questionnaire responses detailing the selling functions (*e.g.*, strategic and economic planning; technical support; engineering services; procurement services; packing; computer, legal, accounting, audit, and/or business-systems development; and freight and delivery arrangements) provided by Wolverine in the U.S. and home markets leads us to conclude that sales in those markets are not made at different LOTs. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, all price comparisons are at the same LOT and no adjustment pursuant to section 773(a)(7) of the Act is necessary. For a complete discussion, *see Preliminary Results Analysis Memo* (*"Analysis Memo"*), dated January 31, 2000, on file in the Central Records Unit, Room B–099 of the main Commerce Department Building.

D. Model-Matching

We calculated NV using prices of BSS products having the same characteristics as to form, temper, gauge, width, and

alloy as the U.S. products. We used the same gauge and width groupings and the same model-match methodology in this review as in the last completed administrative review. *See BS&S 1997.* Also, *see Analysis Memo.*

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as defined by section 773(a)(1)(B)(i) of the Act.

We reduced NV for warranty and home market credit expenses, and increased NV for U.S. credit expenses in accordance with section 773(a)(6)(C)(iii), due to differences in circumstances of sale. We reduced NV for home market movement expenses, in accordance with section 773(a)(6)(B)(ii); and for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i); and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A).

Preliminary Results of the Review

As a result of our comparison of EP to NV, we preliminarily determine that a 3.33 percent dumping margin exists for Wolverine for the period January 1, 1998, through December 31, 1998.

Assessment

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine, the sole respondent covered by this review, will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the manufacturer nor the exporter is a firm covered in this or any previous review, the cash deposit rate will continue to be 8.10 percent, the "all others" rate established in the LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing not later than 120 days after the date of publication of these preliminary results.

Notification to Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2851 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Final Results of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of administrative reviews.

SUMMARY: On June 25, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1992–1993 and 1993–1994 administrative reviews of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico (64 FR 34190). These reviews cover one manufacturer/exporter of the subject merchandise during the periods of review (POR) for April 28, 1992 through October 31, 1993, (the 92/93 POR) and November 1, 1993 through October 31, 1994 (the 93/94 POR).

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have not changed the results from those presented in our preliminary results for the 92/93 administrative review. However, we have changed the results for the 93/94 administrative review.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: John Drury at (202) 482–0195 or Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Tariff Act) and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of Opportunity to Request an Administrative Review of the antidumping duty order for the 92/93 POR on November 3, 1993 (58 FR 58682). On November 19, 1993, respondent Hylsa S.A. de C.V. (Hylsa) requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1993, respondent Tuberia Nacional S.A. de C.V. (TUNA) requested that the Department conduct an administrative review of this order. We initiated this review on January 18, 1994 (59 FR 2593).

The Department published a notice of Opportunity to Request an Administrative Review of the antidumping duty order for the 93/94 POR on November 10, 1994 (59 FR 56034). On November 29, 1994, respondent Hylsa requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1994, respondent Western American Manufacturing, Inc. (Western American) requested that the Department conduct an administrative review of this order. We initiated this review on December 15, 1994. (59 FR 64650).

We published the preliminary results of these reviews, and termination of reviews with respect to TUNA and Western American, in the **Federal Register** on June 25, 1999 (Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Reviews; and Partial Revocation, 64 FR 34190 (Preliminary Results)). Hylsa filed a case brief on July 26, 1999; we did not receive any other case or rebuttal comments.

The Department has now completed these reviews in accordance with section 751 of the Tariff Act.

Scope of the Review

The review of circular welded non-alloy steel pipe and tube covers products of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this review, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. In accordance with the Final Negative Determination of Scope Inquiry (56 FR 11608, March 21, 1996), pipe certified to the API 5L line pipe specification, or pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications, which fall within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, are outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.3010.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

Comment 1: Use of Best Information Available for 92/93 Administrative Review.

Hylsa takes issue with the Department's statement that [t]he inability of Hylsa to reconcile aggregate quantities and values to its financial statements throws into doubt the accuracy of Hylsa's reported transaction-specific sales, and that because of such inaccuracies, the Department does [n]ot believe that it is possible to calculate an accurate margin for the first review. (64 FR 34190, at 34192). On the contrary, Hylsa states that the Department was able to verify that the reported information was consistent with the sales information in Hylsa's accounting system. Any discrepancies, argues Hylsa, were minor, and did not undermine the integrity of the response.

By way of explaining any discrepancies, Hylsa points to the fact that the verification for the review took place over 2½ years after Hylsa filed its initial response. In the intervening time, according to Hylsa, a failure of a computer hard drive resulted in the loss of the database used to prepare the original response. Compounding the problem, according to Hylsa, is the fact that it had to respond to Department requests for submissions and information concerning four separate reviews. According to Hylsa, the burden of responding to information requests, and preparing for verifications for the 94/95 administrative review concerning the same product, prevented Hylsa from having adequate time and resources to resolve this problem.

In examining the discrepancies found by the Department, Hylsa classifies them into two categories. The first category contains errors that Hylsa asserts are inconsequential because, according to Hylsa, the sales involved will not be used in the Department's margin calculations. These involve third country sales, and sales regarding unreported secondary merchandise.

Hylsa places the discrepancies between both U.S. and home market quantity and value figures into the second category. These discrepancies might affect the Department's dumping calculations. However, according to Hylsa, these discrepancies were small and insignificant for the purposes of verifying the accuracy of Hylsa's response.

Furthermore, Hylsa states that it cooperated with the Department to the best of its ability to provide the requested information. Given the nature of the errors, and the fact that Hylsa cooperated with the Department, Hylsa believes that the submitted information was sufficient and that there is no reasonable basis for the Department not to use the submitted data.

Petitioners did not comment on the issues.

Department's Position

We disagree with respondent. To begin, the Department takes issue with Hylsa's statement that it could not provide the necessary database because of a computer failure. During the

verification, Hylsa stated to the Department that it had changed computer systems and neglected to preserve those data files which it would need to document and explain its method of responding to the Department's questionnaire. (*See* verification report at page 20). Thus, rather than being the result of a computer failure, findings at verification indicated that the company, in the process of changing computer systems, simply failed to preserve a key database.

With regard to the errors in quantity and value, both those known before verification and those discovered at verification, the Department disagrees with Hylsa's statements that they were either minor or irrelevant to the Department's analysis. Establishing the completeness and accuracy of the response with respect to the quantity and value of sales in both the home and U.S. markets is a very significant element of verification. Only with a complete and accurate response can the Department reasonably calculate values for a price analysis.

19 CFR 353.37(a) states that [t]he Secretary will use the best information available whenever the Secretary: (1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted. In the instant case, Hylsa did not provide a complete, accurate, and timely response to the Department. Additionally, the Department was unable to verify, within the time specified, the accuracy and completeness of the information which Hylsa did submit.

At verification the Department ascertained that Hylsa's submission contained two errors. Both errors prevented the Department from establishing completeness and accuracy. The first error was that certain sales of subject merchandise were not reported to the Department until the verification, including large amounts of sales of subject merchandise in the home market. The second error was that even with these unreported sales included, Hylsa was unable to reconcile quantity and value figures. While the Department provided Hylsa with three separate opportunities to reconcile its quantity and value figures during the verification process, using separate databases, Hylsa was ultimately unable to reconcile any of the differences (*See* verification report at 16).

With regard to the first error (unreported sales), the Department discovered at verification that approximately 10 percent of sales of subject merchandise in the home market (most of which, but not all, were seconds) had not been reported and that a large volume of third country sales were not reported. The failure to report approximately 10 percent of home market sales until verification is especially disturbing and, by itself, is reasonable grounds to apply BIA to this case (19 CFR 353.37(a)(1)). The importance of providing accurate information regarding the quantity and value of sales in the home market, on a timely basis, which forms the basis of calculating fair market value, cannot be overstated. Full disclosure of such information prior to verification is critical to the process of verifying its accuracy and suitability for use in determining fair market value. Due to stringent time deadlines and the significant limitations on Commerce's resources, 'it is vital that accurate information be provided promptly to allow the agency sufficient time for review.' *Ceramica Regiomontana, S.A.* v. *United States*, 10 CIT 399, 406, 636 F. Supp. 961, 967 (1986). *Tatung Co.* v. *United States*, 18 CIT 1137, 1140 (1994). The failure to report a substantial portion of information regarding quantity or value is sufficient grounds for the application of BIA. The use of a 'neutral' margin . . . [where respondent failed to report a significant percentage of its home market prices] . . . would be inconsistent with the purpose of BIA, which is to insure a reasonably adverse inference against respondents which fail to comply fully with the Department's requests for information. (*See* Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany, 58 FR 37136, 37145 (July 9, 1993)). As the Court noted in *Persico Pizzamiglio, S.A.* v. *United States*, by allowing the Department to reject a submission in toto, the court encourages full disclosure by the respondent, because only full disclosure will lead to a dumping margin lower than that established by employing BIA. *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299 (CIT 1994). The lack of full information prior to verification substantially compromised the integrity of Hylsa's response.

In addition to the failure of Hylsa to report all home market sales of subject merchandise, the Department was unable to verify the quantity and value figures for both home market and U.S. sales for the review. Hylsa claims that the loss of the database used to create the original submission, as well as the need to respond to multiple Department requests for information on various reviews over a one-year period, complicated its efforts to reconcile quantity and value figures. However, the Department provided Hylsa with three separate opportunities to reconcile the quantity and value figures during verification (*See* verification report at 16). Hylsa was unable to do so. The failure to verify the submitted information is sufficient grounds for the application of BIA (19 CFR 353.37(a)(2)).

Despite its failure to reconcile quantity and value, Hylsa argues that the percentage differences were minor and did not prevent the Department from making reasonable price comparisons. However, even accepting Hylsa's figures, some of the percentage differences are sufficiently great to affect the margin calculations (*See* Analysis Memorandum, dated January 7, 2000). More importantly, because the Department was unable to verify quantity and value figures, we have no way of determining whether the unreported sales we uncovered represented all unreported sales. Verification is not a complete audit, and not an opportunity to provide substantial new data. As we said in Final Results of Antidumping Duty Administrative Review; Sodium Nitrate from Chile (52 FR 25897, 25898 (July 9, 1987)):

Comment 4

SQM claims that during the first period only 3.28 percent and during the second period only 1.60 percent of sales in the United States of commercial grade nitrates were not included in its response and these omissions would not have appreciably affect the Department's analysis.

Department's Position

The Department was unable to complete its price analysis because of the omission of an undeterminable number of U.S. sales and a substantial number of other deficiencies found at verification. The purpose of verification is to confirm the accuracy of the data submitted; the Department is not authorized to use verification for the purpose of supplementing the information originally missing from the response and investigating these unreported sales. Failure to include certain sales information in the original response meant that the Department was not able to conduct verification.

Taken together, the Department believes that the totality of the errors

and omissions found at verification render Hylsa's submitted data unusable for purposes of calculating a margin. To summarize, at verification the Department found that both the reported quantity and value of home market sales were misreported to varying degrees. Additionally, the value of sales to the United States was also misreported. Hylsa was unable to reconcile these differences. Finally, Hylsa failed to report a number of home market sales of subject merchandise until the Department arrived at Hylsa to begin verification.

The decision to resort to BIA in an administrative review is made on a case-by-case basis after evaluating all evidence in the administrative record. See *Allied-Signal Aerospace Corp.* v. *United States*, 966 F.2d 1185, 1191 (Fed. Cir. 1993). Once again, the multiple and pervasive nature of errors and omissions in the information provided by Hylsa prevented the Department from relying on Hylsa's response, as the Department was not confident that the response was an accurate reflection of Hylsa's sales activity during the POR. Therefore, the use of BIA is appropriate. Since Hylsa substantially cooperated with the Department's request for information, the Department believes that assigning Hylsa second-tier BIA is the most reasonable approach. (See *Allied Signal Aerospace Corp.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993) (concluding that the Department's two-tiered BIA methodology, under which cooperating companies are assigned the lower, second tier BIA rate, is reasonable).) As such, the Department is not deviating from its preliminary results with respect to the first administrative review.

Comment 2: Use of Best Information Available for 93/94 Administrative Review.

Hylsa believes that the Department's use of BIA in establishing Hylsa's cost of production in the second review is unfair. While acknowledging that it failed to report weighted-average costs for the full POR, Hylsa states that it had no reason to suspect that its methodology was inappropriate until verification. In fact, Hylsa indicates that it had ample reason to believe that the methodology was the Department's preferred methodology for this review.

In the second administrative review, Hylsa reported six-month costs corresponding to the time in which Hylsa made sales to the United States. The Department approved a six-month reporting period for sales data in this review, and had approved six-month cost reporting for the 94/95 administrative review. Furthermore, after the submission, the Department did not notify Hylsa that the cost data were in error. Citing *Olympic Adhesives, Inc.* v. *U.S.*, 899 F.2d 1565, 1573 (Fed. Cir. 1990), Hylsa indicates that the Department was required to give notice of any perceived inadequacies of the responses. Since the Department did not do so prior to verification, Hylsa asserts, there was no reason to suspect that the reported cost data was unacceptable. Therefore, in the interest of fairness, Hylsa requests that the Department use Hylsa's reported costs for this review.

Petitioners did not comment on the issues.

Department's Position

We agree with respondent, and have used its reported costs when calculating the margin for this administrative review. The Department accepted limited reporting in the third administrative review. As the Department used a similar methodology in a previous review, the use of limited reporting in this review is consistent with previous practice. Further, the Department did not request that Hylsa alter its reporting methodology in this review. Consequently, application of BIA for this review is not warranted.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made no changes in the margins for Hylsa in the first review. We have determined that Hylsa's weighted-average margin for the period April 28, 1992 through October 31, 1993 is 32.62 percent. Hylsa's margin for the November 1, 1993 through October 31, 1994 period of review is 7.17 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific ad valorem duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the fnal results of these administrative reviews for all shipments of circular welded non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of these administrative reviews, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Hylsa will continue to be 8.31 percent (*See* Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Administrative Review, 63 FR 33041 (June 17, 1998);

(2) For previously reviewed or investigated companies other than Hylsa, the cash deposit rate will continue to be the company-specific rate publish for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 32.62 percent. *See* Antidumping Duty Order; Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 49453 (November 2, 1992).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: January 11, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2849 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–806, A–484–801]

Electrolytic Manganese Dioxide From Japan and Greece: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the antidumping duty administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. The period of review is April 1, 1998, through March 31, 1999.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tabash, Hermes Pinilla or Richard Rimlinger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047, (202) 482–3477 or (202) 482–4477, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Extension of Time Limits for Preliminary Results

The Department has received a request to conduct administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. On May 20, 1999, and June 30, 1999, the Department initiated these administrative reviews covering the period April 1, 1998, through March 31, 1999 (64 FR 28973 and 64 FR 35124, respectively).

On December 28, 1999, we extended the preliminary results for both cases from December 31, 1999, to February 14, 2000. Because it is not practicable to complete these reviews by February 14, 2000, due to the complexity of the issues involved (*see* Memoranda from Laurie Parkhill to Richard W. Moreland, Extension of Time Limit for Administrative Reviews of Electrolytic Manganese Dioxide from Japan and Greece, February 1, 2000), the Department is extending the time limits for the preliminary results by 75 days from the current deadline of February 14, 2000. Thus, the extended deadline for issuance of the preliminary results is May 1, 2000. The Department intends to issue the final results of reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: February 1, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

A–557–805

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 8, 1999, the Department of Commerce published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1997, through September 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (64 FR 60766). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Period of Review

The period of review (POR) is October 1, 1997, through September 30, 1998.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Facts Available

A. Use of Facts Available for Rubfil Sdn. Bhd. (Rubfil)

In accordance with section 776(a)(2)(A) of the Act, we determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Paragraphs 776(a)(2)(A) through (D) of the Act provide, respectively, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a

determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1998. Because Rubfil did not respond to the Department's questionnaire, paragraphs A through C of section 776(a)(2) of the Act apply. Moreover, Rubfil was advised that failure to respond to the Department's questionnaire would be considered a deficiency which would result in the use of facts available. In light of Rubfil's continued failure to respond and in accordance with sections 776(a) and 782(d) of the Act, we must use facts otherwise available to determine Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate for any respondent in any segment of this proceeding. That rate is 52.89 percent. We find that the rate of 52.89 percent, which was assigned in a prior administrative review, is sufficiently high as to effectuate the purpose of the adverse facts available rule (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752 (Mar. 16, 1998) (*Thread Fourth Review*)).

B. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (*Fresh Cut Flowers*) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1995–1996 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Rubberflex, as specified in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. We compared the constructed export price (CEP) to the NV for Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd (collectively Heveafil), and Rubberflex Sdn. Bhd. (Rubberflex), also as specified in those sections.

When making comparisons in accordance with section 771(16) of the Act, we considered all home market sales of extruded rubber thread that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales in the ordinary course of trade of identical merchandise in the home market, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers (OEMs)). According to these respondents, no level of trade adjustment was warranted. Although Filati claimed that the home market level was different, and more remote, than the level of trade of the CEP, we

have found the levels of trade to be the same.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. In examining the record, we found that all sales in the home market for all respondents were in a single channel of trade (*i.e.*, to OEMs) constituting a single stage of marketing. Moreover, we found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for all home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an FOB foreign port price after the deduction of expenses associated with U.S. selling activities. *See* 19 CFR 351.412(c)(2). Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 1, 1999.

Export Price and Constructed Export Price

For Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

In addition, for all companies, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that the extent of the affiliates' activities performed in the United States in connection with those sales was significant. For further discussion, see *Comment 1* in the "Analysis of Comments Received" section of this notice.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 64 FR 12967, 12968 (Mar. 16, 1999) (*Thread Fifth Review; Thread Fourth Review*, 63 FR at 12754; and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043, 54075 (Oct. 17, 1997) (*AFBs*). *Also see Comment 2* in the "Analysis of Comments Received" section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Heveafil

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. Rubberflex

We based EP or CEP, as appropriate, on the starting price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there was during the POR a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home

market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Thread Fifth Review*, 64 FR at 12969. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, and rebates.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(c)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which we were unable to make comparisons with home market sales, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

B. Heveafil

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

C. Rubberflex

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made a circumstance-of-sale adjustment for credit expenses.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from North American Rubber Thread (the petitioner) and two respondents, Filati and Rubberflex. We also received rebuttal comments from the petitioner.

A. Filati

Comment 1: Treatment of Direct Container Sales

During the POR, Filati shipped some thread directly from the factory in Malaysia to its U.S. customers. The Department treated these "direct container" shipments as CEP sales for purposes of the preliminary results. Filati argues that this treatment was incorrect, based on the Department's criteria for determining whether a sale is an EP transaction (rather than a CEP sale). According to Filati, whenever sales are made prior to the date of importation through an affiliated sales agent in the United States, the Department concludes that EP is the most appropriate determinant of the U.S. price where all of the following factors are present:

- The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;
- Direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and
- The selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404, 40418 (July 29, 1998) (*Korean Steel*); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551 (Apr. 26, 1996) (*Carbon Steel from Korea*).

Filati contends that each of these criteria was met with respect to its direct container sales. Specifically, Filati states that, because the date of sale was prior to entry, the direct container sales were made prior to importation. In addition, Filati asserts that the first and second criteria were met, since: (1) The subject merchandise was shipped directly to the U.S. customer without being introduced into the physical inventory of Filati USA; and (2) direct shipments have been a normal commercial channel for the customer involved.

Regarding the third criterion, Filati argues that the Department erroneously found in the preliminary results that the activities carried out by its U.S. affiliate, FLE–USA, exceeded those of a document processor and communication link. Filati contends that the selling activities performed by FLE–USA are within the range of activities previously determined by the Department to be consistent with EP classification.

Filati acknowledges that FLE–USA takes title to the merchandise, invoices the customer, and in some cases, arranges and pays for delivery from the port of entry. However, Filati contends that FLE–USA has only limited authority to set prices in the United States. As support for this assertion, Filati cites to the U.S. sales verification report issued in the prior administrative review, where the Department noted that prices are quoted in accordance with a window that is set based on consultations with the parent company. (*See* Memorandum from Irina Itkin to Louis Apple regarding Verification of the Sales Questionnaire Responses of Filati Lastex Sdn. Bhd. and Filati Lastex Elastofibre in the Antidumping Duty Administrative Review on Extruded Rubber Thread from Malaysia, dated Oct. 7, 1998, at page 4 (*FLE–USA Verification Report*).)

In addition, Filati asserts that the Department has accorded EP treatment to sales by respondents who performed selling functions that were more significant than those performed by FLE–USA. Filati cites to *AK Steel Corp. v. United States*, Slip Op. 98–159 at 10–12 (Court of International Trade (CIT), Nov. 23, 1998) (*AK Steel*) and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 64 FR 11825, 11828 (Mar. 10, 1999) (*Dutch Steel*) in support of its position. Filati asserts that, in the former, the CIT upheld the Department's EP classification of U.S. sales where the U.S. affiliate: (1) took title to the shipment; (2) acted as importer of record; (3) made initial contact with the direct shipment customer; (4) negotiated price based upon predetermined factors; (5) received purchase orders from the customer and forwarded them to the exporter/producer for confirmation; (6) invoiced the customer; (7) conducted market research and economic planning; (8) found customers; (9) arranged and paid for post-sale warehousing, transportation, U.S. Customs duties, brokerage, handling, and other expenses; (10) extended credit to and accepted payment from direct container customers; and (11) maintained relationships with those customers.

Regarding the latter, Filati asserts that the Department found that sales were properly classified as EP transactions where the U.S. affiliate: (1) arranged visits and accompanied the foreign producer/exporter on visits to U.S. customers; (2) relayed customer price and quantity quotes to the producer and the producer's reply to the customer; (3) advised the producer whether the price quotes were reasonable based on market research; (4) drafted and signed sales contracts on behalf of the foreign producer; (5) processed U.S. customs declarations and made arrangements with U.S. freight forwarders; (6) acted as importer of record; (7) received payment from the customer; and (8) provided some after-sale support functions, such as facilitating visits by the producer's service technician.

Finally, Filati notes that the Department found that Filati's direct container shipments were EP transactions in the second and third reviews of this proceeding. Filati contends that, because its method of making these shipments has not changed since the time of those reviews, the Department should continue to treat direct container sales as EP transactions in the instant review.

The petitioner contends that the Department correctly treated Filati's direct container shipments as CEP transactions. According to the petitioner, Filati concedes that its U.S. subsidiary negotiates U.S. prices, albeit within the constraints of a "window." The petitioner asserts that Filati has failed to adequately define this window, including how it is determined, whether it changes from sale to sale, or whether FLE–USA can in fact determine what the window is. Thus, the petitioner asserts that the Department should continue to classify the sales in question as CEP sales.

DOC Position

In the preliminary results of this review, we examined the facts of this case in light of the statutory definitions of EP and CEP sales. Section 772(b) of the Act, as amended, defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted"

(emphasis added). Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise *outside of the United States* to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted" (emphasis added).

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. The decisive factor for classifying sales made prior to importation is where the selling activity takes place (*i.e.*, inside or outside of the United States). Distinguishing EP and CEP transactions based on where selling activity takes place is consistent with the purpose of ensuring that, where appropriate, expenses related to selling activity in the United States are deducted to reach a constructed "export" price.

It is the Department's practice to examine several criteria to determine whether sales made prior to importation through a sales agent to an unaffiliated customer in the United States are EP sales, including: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a "processor of sales-related documentation" and a "communications link" with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met the Department has classified the sales in question as CEP sales. (*See, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820, 32821 (June 16, 1998) (*Viscose Rayon from Finland); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170 (Mar. 18, 1998).)

The crucial distinction between EP and CEP treatment in this case lies in the last factor (*i.e.*, whether the entity in the United States acted only as a processor of documentation and a communication link). *See Mitsubishi Heavy Industries* v. *United States*, 15 F. Supp. 2d 807, 811–12 (CIT 1998). This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate. *See Id.* The classification of sales as EP or CEP is not confined to tallying up the various functions of the U.S. selling agent. In *Industrial Nitrocellulose From the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, 6611 (Feb. 10, 1999), we observed that "[t]he Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond the ancillary role." As noted above, in cases where the U.S. affiliate or sales agent has a significant role in making U.S. sales (including setting the price in the United States and providing after-sale support), we generally find that CEP treatment is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30664, 30685–86 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 40391, 40395 (July 29, 1998) (*SSWR from Spain);* and *Viscose Rayon from Finland*. 63 FR at 32821.

Our analysis of the facts in this case indicates that during the POR Filati's U.S. affiliate, FLE–USA, played an extensive role in making direct container sales. Specifically, FLE–USA: (1) Made initial contact with the customer; (2) transmitted the order to Filati in Malaysia; (3) quoted prices without consulting the parent company on a sale-by-sale basis; (4) took title to the merchandise; (5) invoiced, and received payment from, the customer; and (6) arranged and paid for delivery from the U.S. port to the customer. *See* page 9 of the September 13, 1999, supplemental response and the *FLE–USA Verification Report* at page 4. Thus, the record shows that FLE–USA was significantly involved in every aspect of the sales to U.S. direct container customers, except for arranging for shipment of the subject merchandise from Malaysia to the U.S. port of entry.

FLE–USA's role in negotiating the terms of the sales in question is more significant than that of a conduit of information between the U.S. customer and the Malaysian parent. Specifically, FLE–USA had the authority to contact U.S. customers directly, and then to negotiate and accept sales terms and prices on a case-by-case basis without Filati's approval. Both of these functions contradict Filati's claim that the U.S. subsidiary's role is ancillary. The record of this case shows FLE–USA's involvement in the U.S. sales process is extensive, as evidenced by the selling functions described herein. Based on these facts, we determine that FLE–USA's role in making direct container sales exceeds that of a mere processor of sales-related documentation and communication link between the parent company and U.S. customer.

We also find unpersuasive Filati's claim that FLE–USA had limited authority to set prices because it did so only within parameters set by Filati. In similar circumstances, we have found the U.S. subsidiary's role in making the sales at issue to be significant enough to warrant their treatment as CEP sales. For example, in *SSWR from Spain*, we found that the U.S. subsidiary's ability to negotiate prices within the parameters set by the parent company, in conjunction with other sale related activities, was sufficient to warrant classification of those sales as CEP sales. In addition, in *U.S. Steel Group* v. *United States*, Slip Op. 98–96 at 26 (CIT 1998), the CIT upheld the Department's classification of U.S. sales as CEP transactions, based in part on the U.S. subsidiary's ability to negotiate prices above the minimum set by the parent company.

We also find that Filati's reliance upon *Dutch Steel* is misplaced. The record on which that determination was based demonstrated that the U.S. subsidiary performed limited liaison functions in the processing of sales-related documentation and held a limited role as a communication link. Specifically, the U.S. subsidiary in that case did not take title to the merchandise, finance sales, provide technical assistance, issue order confirmations or invoices, or accept payment from customers (except in extraordinary circumstances). *See Dutch Steel*, 64 FR at 11828. Moreover, the Department stated in its final determination that the U.S. subsidiary had no authority to negotiate prices, that it did not initiate contact with U.S. customers on its own authority, and that the preponderance of selling functions involved in U.S. sales occurred in the Netherlands. *Id.* at 11828–29. In the instant case, because FLE–USA contacted customers, took title to the merchandise, quoted prices without consulting with the parent company on a sale-by-sale basis, issued invoices, and accepted payment, we find that FLE–USA did not act as a mere communications link or document processor.

We similarly find Filati's citation to *AK Steel* to be inapposite. In *AK Steel*,

the CIT affirmed the Department's initial classification of direct container sales as EP transactions based on the fact that there was no evidence on the record to indicate that the U.S. subsidiary had the freedom to negotiate prices. More importantly, the CIT in *AK Steel* expressly distinguished its holding in that case from its prior holding in *U.S. Steel Group*, citing to this factual distinction as the basis for reconciling the decisions.

Consequently, consistent with the final results in the most recent reviews of this proceeding (*see Thread Fourth Review* and *Thread Fifth Review*) and the Department's current practice, we have continued to treat these transactions as CEP sales for purposes of the final results.

Comment 2: Offset for Imputed Costs Associated With AD/CVD Duty Deposits

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati concedes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with the recent practice articulated in *AFBs*. However, Filati contends that the Department's change in policy conflicts with prior decisions made both by the Department and the CIT. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2104 (Jan. 15, 1997 (*1994–1995 AFBs Reviews*); and *Federal-Mogul* v. *United States*, 950 F. Supp. 1179 (CIT 1996).

Specifically, Filati asserts that the reasoning in *AFBs* was flawed in two respects. First, Filati asserts that *AFBs* was based on the premise that money is fungible. According to Filati, however, this point is irrelevant, just as it is irrelevant whether a company has actually obtained loans or has otherwise financed the antidumping cash deposits, because the company has incurred a real expense which it would not have incurred but for the existence of the antidumping duty order. Second, Filati asserts that *AFBs* was based on the premise that there is no "real" opportunity cost associated with the duty deposits. Filati maintains that this point is also incorrect, because respondents making cash deposits are required to divert funds from more profitable ventures.

In addition, according to Filati, the Department has correctly held that the costs associated with antidumping or countervailing duty deposits are not "selling expenses." Consequently, Filati maintains that the antidumping law does not allow their deduction from CEP.

Finally, Filati contends that the CIT has taken a consistent position which approves of the offset. Filati cites to *Timken Co.* v. *United States*, 16 F. Supp. 2d 1102, 1105 (CIT 1998) (*Timken*), which lists the cases in which the court has upheld the Department's decisions to grant the adjustment and the cases in which it has remanded decisions to deny the offset.

Based on the above arguments, Filati contends that the Department should allow its offset to indirect selling expenses for the imputed cost of financing its cash deposits of antidumping and countervailing duties for purposes of the final results.

DOC Position

Consistent with Department's current practice, we have continued to deny an offset to Filati's U.S. indirect selling expenses for theoretical expenses related to financing of antidumping and countervailing duty cash deposits. For a discussion of the Department's reasoning behind this practice, see *AFBs*, 62 FR at 54075 and *Thread Fifth Review*, 64 FR at 12973.

We continue to believe that this practice is valid in general for the reasons articulated in *AFBs* and *Thread Fifth Review*. However, even were we to reverse our practice, the record of this case does not support Filati's claim. Specifically, we disagree with Filati's argument that it incurred a real expense that it would not have incurred but for the existence of the antidumping duty order. The only expenses relevant to this question are U.S. financing expenses. Because the record shows no evidence of financing activity in the United States, we find that Filati incurred no "real" expense, despite its assertions to the contrary.

Regarding Filati's argument that expenses associated with financing cash deposits of antidumping duties may not be deducted from CEP, we find that Filati failed to demonstrate how the Department's denial of its offset resulted in an improper deduction of such selling expenses. Indeed, because the Department deducted neither actual nor imputed financing expenses, nor the cash deposits themselves, we have in fact made no deduction for expenses associated with financing Filati's cash deposits. In contrast, we find that Filati's scheme to reduce actual expenses by the amount of a theoretical offset is contrary to the explicit language of the Act, which requires the deduction of all selling expenses incurred by or for account of the affiliated seller in the United States in selling the subject merchandise. *See* section 772(d) of the Act.

Finally, regarding Filati's citation to *Timken*, we note that in this decision the CIT acknowledged that it is the Department's current practice to deny the type of offset in question. While we concede that *Timken* references a number of cases which were remanded to the Department after denying the offset, we note that these cases were decided according to the Department's prior practice in this area.

Therefore, in accordance with our current practice, we have continued to deny an offset to Filati's indirect selling expenses for purposes of the final results.

B. Rubberflex

Comment 3: Errors in Rubberflex's Sales Response

In December 1999, Rubberflex notified the Department that it had discovered an error in its home market database which affected two sales. Specifically, Rubberflex stated that it had discovered that one of the sales in question had been exported to a third country and the other returned by the customer. At the Department's request, Rubberflex submitted documentation demonstrating that these transactions were not in fact home market sales. (*See* Memorandum from Shawn Thompson to The File regarding Submission of Additional Data and Extension of Briefing Schedule in the 97–98 Antidumping Duty Administrative Review on Extruded Rubber Thread from Malaysia, dated December 3, 1999.) Accordingly, Rubberflex contends that the Department should disregard these transactions when calculating NV.

The petitioner maintains that Rubberflex's December submission should be rejected because it was untimely. Moreover, the petitioner alleges that Rubberflex has not demonstrated that the submission complies with the Department's requirements on new submissions—namely that the nature of the alleged errors is apparent from the prior record itself.

DOC Position

It is the Department's practice to accept a correction of a party's clerical error if certain conditions are met. *See, e.g., Antifriction Bearings (Other Than*

Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590, 35625 (July 1, 1999). In this case, those conditions have been met.

In accordance with 19 CFR 351.301(c)(2), the Department may request that a respondent submit factual information at any time during a proceeding. Because the Department requested that Rubberflex submit the documentation in question, it is not untimely within the meaning of 19 CFR 351.301.

We find that the documentation provided by Rubberflex provides clear evidence that the sales at issue had been reported in error. Contrary to the petitioner's assertions, the Department does not require respondents to demonstrate that factual errors in their data are apparent in the record of a proceeding. The effect of such a requirement would be to preclude respondents, as is the case here, from notifying the Department of any clerical errors found in their data. *See NTN Bearing Corp.* v. *U.S.*, 74 F.3d 1204, 1207–08 (1995). Consequently, because Rubberflex provided sufficient proof that the sales in question were not home market transactions, we have disregarded them for purposes of the final results.

Comment 4: Calculation of U.S. Indirect Selling Expenses

The petitioner argues that Rubberflex understated the indirect selling expenses of its U.S. subsidiary, Flexfil, because it allocated a certain portion of these expenses to Canadian sales which were not invoiced by Flexfil. The petitioner contends that, if Flexfil had had significant involvement in the sales, they would have appeared on Flexfil's books. Furthermore, the petitioner asserts that such "off the books" allocations are inherently unverifiable and arbitrary. According to the petitioner, the Department should reallocate these expenses using only the sales made by the subsidiary and recorded in the subsidiary's books.

DOC Position

In its supplemental questionnaire response, Rubberflex demonstrated that Flexfil was actively involved in making sales to Canada. (*See* pages 15 and 16, as well as Exhibit 32, of the September 7, 1999, submission.) Not only did Flexfil routinely accept orders from Canadian customers on behalf of Rubberflex, but it also corresponded with them regarding the status of these orders and it handled various problems which arose during the sales process.

Thus, because the indirect selling expenses incurred by Flexfil related, in part, to sales to Canada, we find that it is appropriate to allocate a portion of these expenses to Canadian sales. We note that this treatment of Flexfil's indirect selling expenses is in accordance with our treatment of such expenses in prior segments of this proceeding. *See, e.g., Thread Fifth Review*, 64 FR at 12976, where the Department verified Flexfil's role in making Canadian sales. Accordingly, we have accepted Flexfil's indirect selling expense allocation for purposes of the final results.

Final Results of Review

As a result of comments received we have revised our analysis and determine that the following margins exist for the period October 1, 1997, through September 30, 1998:

Manufacturer/Exporter	Percent margin
Filati Lastex Sdn. Bhd	0.45
Heveafil Sdn. Bhd./	
Filmax Sdn. Bhd	0.17
Rubberflex Sdn. Bhd	1.10
Rubfil Sdn. Bhd	52.89

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. These rates will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except for Filati and Heveafil the cash deposit rates will be zero because their margins are *de minimis*); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2845 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703, A–588–707]

Continuation of Antidumping Duty Orders: Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Orders: Granular Polytetrafluoroethylene Resin from Italy and Japan.

SUMMARY: On December 3, 1999, the Department of Commerce ("the

Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin ("PTFE") from Italy and Japan would likely lead to continuation or recurrence of dumping (64 FR 67865 (December 3, 1999)). On December 27, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on PTFE from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 72362 (December 27, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the antidumping duty orders on PTFE from Italy and Japan.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

Background

On May 3, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 23596 and 64 FR 23677, respectively) of the antidumping duty orders on PTFE from Italy and Japan pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the orders revoked. [1]

On December 27, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on PTFE from Italy and Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [2]

[1] *See Final Results of Expedited Sunset Reviews: Granular Polytetrafluoroethylene Resin from Italy and Japan*, 64 FR 67865 (December 3, 1999).

[2] *See Granular Polytetrafluoroethylene Resin from Italy and Japan*, 64 FR 72362 (December 27, 1999), and USITC Publication 3260 (December 1999), Granular Polytetrafluoroethylene Resin from Italy and Japan: Investigations Nos. 731–TA–385–386 (Review).

Scope

The merchandise subject to these antidumping duty orders is PTFE from Italy and Japan. The subject merchandise is defined as granular PTFE resin, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. Such merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 3904.61.00. This HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

There has been one scope ruling with respect to the order on PTFE from Japan in which reprocessed PTFE powder was determined to be outside the scope of the order (57 FR 57420; December 4, 1992). The Department issued a circumvention determination in which it determined that PTFE wet raw polymer exported from Italy to the United States falls within the scope of the order on PTFE from Italy (58 FR 26100; April 30, 1993).

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on PTFE from Italy and Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In these instant cases, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of these orders is January 3, 2000, seven days after the publication in the **Federal Register** of the Commission's determination. As a result, pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than December 2004.

Dated: February 1, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2837 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 1999, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose ("INC") from the United Kingdom. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1997, through June 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results. The final results are listed below in the section *Final Results of the Review*.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Thomas Futtner, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6320 or 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round

Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** (64 FR 42908) the preliminary results of the administrative review of the antidumping order on industrial nitrocellulose (INC) from the United Kingdom, 55 FR 28270 (July 10, 1990). We gave interested parties an opportunity to comment on the preliminary results. On September 7, 1999, we received a case brief from Imperial Chemical Industries PLC ("ICI") ("respondent"). On September 8, 1999, we received a case brief from Hercules Incorporated ("petitioner"). On September 14, 1999, we received a rebuttal case brief from the respondent. Based on our analysis of the comments received, we changed the final results from those presented in the preliminary results as described below in *"Changes from the Preliminary Results" and "Interested Party Comments"* sections of this notice. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Changes From the Preliminary Results

1. We corrected an error in the model match program with regard to the physical characteristic viscosity. *See* Comment 5.

2. We corrected an error in the calculation of net interest expense used to determine the constructed export price ("CEP") profit ratio. *See* Comment 4.

Interested Party Comments

Comment 1: Categorization of U.S. Sales

The petitioner states that in the 1996–1997 administrative review of the subject antidumping duty order, the Department determined that sales to the United States by ICI were CEP, and not export price ("EP") transaction. *See Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6609 (Feburary 10, 1999) (*"1996–1997 Final Results"*). According to the petitioner, ICI has failed to show any changes in the manner in which its merchandise is sold in the United States that would lead the Department to change its categorization. Thus, the petitioner contends that the Department was correct in finding ICI's U.S.sales to be CEP in this review as well, and should not alter such finding. In addition, the petitioner notes that ICI reported all of its U.S. sales as CEP transactions in response to the Department's instructions in its February 17, 1999 supplemental questionnaire.

In rebuttal ICI states that its action to acquiesce to the Department's determination that its U.S. sales in this review are CEP sales does not represent agreement with petitioner's comments and "is without prejudice to its position involving sales in future reviews."

Department's Position

We agree with the petitioner and for these final results we have continued to treat ICI's U.S. sales as CEP sales.

Comment 2: CEP Offset

The petitioner states that the Department incorrectly granted ICI a CEP offset. The petitioner contends that the Department's present methodology for determining the appropriateness of a CEP offset has been deemed "contrary to law" by recent Court of International Trade ("CIT") decisions, *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241 (Ct. Intl. Trade 1998) ("Borden") and *Micron Technology* v. *United States*, 40 F. Supp 2d 481, (Ct. Intl. Trade1999) ("Micron").

In rebuttal ICI states that the Department has filed notice of appeal of *Borden* and the *Micron* decision is on remand to the Department. According to ICI, *Borden* and *Micron* are not final decisions because a decision of the CIT that has been appealed "is not a "final court decision'. . ." *See Timken Co.* v. *United States*, 893 F.2d 337, 339 (Fed. Cir. 1990). Thus, ICI contends that the Department's position to continue to apply its current methodology of adjusting CEP, as articulated in section 351.412 of the Department's regulations, is correct since the issue has not been fully judicially determined.

Department's Position

The Department has consistently stated that the statute and the Statement of Administrative Action ("SAA") support analyzing the level of trade ("LOT") of CEP sales at the constructed level, after expenses associated with economic activities in the United States have been deducted, pursuant to section 772(d) of the Act. In the preamble to our proposed regulations, we stated:

> With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price EP and CEP sales ... The Department believes that this proposal is not supported by the SAA. If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

See Antidumping Duties; Countervailing Duties; Notice of Proposed Rule Making and Request for Public Comments, 61 FR 7308, 7347 (February 27, 1996).

Consistent with the above position, the Department evaluates the level of trade for CEP sales based on the price after adjustments are made under section 772(d) of the Act. *See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 38139, 38143 (July 23, 1996). We note that, in every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. *See, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 15766, 15768 (April 9, 1996); *Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review*, 61 FR 8915, 8916 (March 6, 1996); *Antifriction Bearings (Other Than Tapered Roller*

Bearings) and parts Thereof from France, et. al., Preliminary Results of Antidumping Duty Administrative Review, 61 FR 25713, 35718–23 (July 8, 1996); and *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part*, 64 FR 69694 (December 14, 1999).

In accordance with the above precedent, our instructions in the questionnaire issued to ICI for this case stated that constructed LOT should be used. ICI adequately documented the differences in selling functions in the home and in the U.S. markets. See Memorandum Regarding industrial Nitrocellulose from the United Kingdom-LOT Analysis-Imperial Chemical Industries, PLC, August 2, 1999 ("LOT Analysis Memo"). Therefore, the Department's decision to grant a CEP offset to ICI was consistent with the statute and the Department's practice, and was supported by substantial evidence on the record.

We disagree with the petitioner's interpretation of *Borden* and of its impact on our current practice. In *Borden*, the court held that the Department's practice to base the LOT comparisons on CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden*, 4 F. Supp. 2d at 1236–38 ; *see also Micron*, 40 F. Supp. 2d at 485–86. The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in Borden on the LOT issue. *See Borden, Inc.* v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act, prior to starting a LOT analysis, as articulated in the regulations at section 351.412. Accordingly, consistent with the preliminary results, we will continue to analyze the LOT based on adjusted CEP prices, rather than the starting CEP prices.

Comment 3: LOT Analysis

Notwithstanding its argument above, the petitioner contends that the respondent is not entitled to a CEP offset even on the basis of the Department's LOT/CEP methodology. The petitioner states that in the *1996–1997 Final Results*, the Department denied a CEP offset to ICI using the same methodology as that used in the instant review. According to the petitioner, "even after removing many of ICI's selling activities in the U.S. market, the Department nonetheless found that not only did significant selling functions remain in both the U.S. and home markets, but that these functions were "essentially identical" in both markets."

The petitioner argues that in the present review, as in the prior segment, ICI is not entitled to the CEP offset. First, the channels of distribution are the same in both markets. Second, significant parallel selling functions "remain in both the U. S. and home markets" even after adjusting for selling functions occurring in the United States pursuant to section 772(d) of the Act.

The petitioner notes that in its LOT analysis the Department concludes that "the home market LOT includes significantly more selling functions and greater selling expenses than the CEP LOT." *See* LOT Analysis Memo. However, the petitioner claims that in this review, as in the preceding one, significant selling functions continue to be carried out at the CEP LOT. Moreover, the petitioner contends that certain of the "selling functions" listed in the chart in the LOT Analysis Memo in order to differentiate ICI's home market and CEP sales are distinctions without a difference.

According to the petitioner, the category "Technical Support Services" is insignificant for both home market and CEP sales. The petitioner argues that the Department has compared a "may-occasionally-answer-a-technical-question" in the home market with a "no-expense-incurred" answer regarding CEP sales. Moreover, the petitioner maintains that as one of only five categories of selling activities designed to show differences between home market and CEP sales significant enough to warrant a CEP offset, this item carries a full 20 percent of the "conceptual totality" of home market to CEP sales differences.

The petitioner contends that, in this manner, the Department has elevated an item of virtual non-difference to a level whereby it may significantly impact the CEP offset determination, and thus, ultimately, the dumping margin.

The petitioner notes that for the second of the chart's five categories, "Sales Activities", there is a "Yes" for home market sales and a "No" for sales CEP sales. However, the petitioner argues that despite the "No" grade, there are certain functions subsumed under the "Sales Activities" box on the chart with regard to CEP sales, such as order processing, issuing confirmations, etc..

The fourth of the five categories on the chart, "Sales Support", shows a "Yes" for the home market and a "No" for CEP sales. With regard to this category, the petitioner alleges that the respondent has failed to disclose that ICI entertained numerous U.S. customers and potential customers in Scotland.

According to the petitioner, it can be seen that the chart used in the LOT Analysis Memo to differentiate ICI's home-market and CEP selling functions gives the erroneous impression that major differences exist between the two. However, the petitioner argues that the differences in the functions are very few.

In rebuttal, ICI states that the petitioner's argument that ICI is not entitled to a CEP offset in the present review because it was denied a CEP offset in the 1996–1997 review is legally flawed. ICI argues that each administrative review is a separate proceeding, conducted and based upon its own record. ICI maintains that as preliminarily determined by the Department, the record in this administrative review fully supports the allowance of a CEP offset. According to ICI, it is this record that is determinative and not the record from the previous review or for that matter the determination that was based on the prior record.

ICI contends that virtually the entire argument submitted by the petitioner under its category "sales support" is based on assertions made at the time its case brief was filed. According to ICI, the Department should not accept this information into the record and should not consider it in its analysis. Further, ICI notes that throughout its factual analysis comments the petitioner attempts to assign a 20 percent numerical value to each of the five categories listed in the chart and attempts to find minor flaws with the Department's factual analysis in each category. ICI contends that this biased approach seems absurd on its face and that there is no basis to claim that each of the summary categories carries the same weight. Moreover, ICI claims that the petitioner's critiques are extremely selective and limited and, for the most part, do not address the record as a whole.

ICI asserts that in its "sales activities" table the petitioner seems to criticize the Department for not taking into account ordering and freight functions in sales to the U.S. affiliate. However, ICI argues that these categories of activities were considered and analyzed by the

Department with regard to the sales administration and sales services section of the chart. Further, ICI notes that although the petitioner "pays lip service to the notion" that selling functions for respondent's U.S. sales and related expenses associated with economic activity in the United States are removed from the analysis, its comments consistently seem to use such functions as support for its argument.

Department's Position:

We disagree with the petitioner's claim that ICI is not entitled to a CEP offset in the present review because it was denied a CEP offset in a preceding segment of the proceeding. Each review is a separate segment of the proceeding with a separate and distinct factual record. *See 1996–1997 Final Results*, 64 FR at 6612.

Section 773(a)(7)(A) of the Act provides for a LOT adjustment if the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value (NV) is based and comparison market sales at the LOT of the export transaction. Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews such factors as selling functions, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT.

Similarly, while customer categories such as "distributor" and "wholesaler" may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in the LOT. In addition, the Department bases the LOT of CEP sales on the transaction to the affiliate in the United States after making CEP deductions under section 772(d) of the Act, as amended. *See Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 13148 (March 17,1999) *("Gray Portland Cement"); Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61631 (November 19, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (January 15, 1997).

Based upon our analysis of the record, we determine, as in the preliminary results of review, that ICI's home market sales occurred at a different and more advanced stage of distribution than ICI's sales to it U.S. affiliate. The record demonstrates that ICI performs sales activities, sales support, and technical service support for its sales in the home market but not for its CEP sales to the U.S. affiliate after deducting the expenses pursuant to section 772(d) of the Act. Thus, contrary to the petitioner's assertions, we find adequate basis on the record to conclude that ICI performs three of its five selling functions with respect to only its home market sales and not with respect to its CEP sales.

In addition, based on our analysis of sales administration and sales services, we find that ICI performs these selling functions at a higher level of intensity for its home market sales than for its CEP sales. Contrary to the petitioner's assertion, selling functions do not carry the same weight. In the Department's questionnaire, respondents are asked to describe the degree to which each selling activity was performed on its reported sales. Thus, when we compare the CEP level of trade to the home market level of trade, we analyze selling functions on the basis of not only function but intensity, as well. *See Gray Portland Cement*, 64 FR at 13161; *Professional Electric Cutting Tools from Japan; Preliminary Results of Antidumping Duty Review*, 63 FR 30706, 30708 (June 5, 1998).

Thus, as the record demonstrates, ICI performs the majority of its selling functions with respect to its home market sales and not with respect to its CEP sales. In addition, ICI does not perform any services for its CEP sales which it does not perform for its home market sales. Accordingly, we determine that ICI's home market sales occur at a different and more advanced stage of distribution than its CEP sales. We also determine that a LOT adjustment cannot be calculated because the data provided do not provide an appropriate basis upon which to determine a LOT adjustment. Therefore, in accordance with section 773(a)(7)(B) of the Act, a CEP offset is appropriate for these final results.

Finally, we agree with ICI that the petitioner's assertions regarding the entertaining of U.S. market customers and potential customers by ICI in Scotland are unsubstantiated by factual information on the record and we have disregarded these assertions for the purposes of these final results.

Comment 4: CEP Profit Ratio

The petitioner alleges that the Department has incorrectly calculated the CEP profit ratio by looking to ICI's net operating income as the numerator, instead of ICI's total U.S. expenses. According to the petitioner, under section 772(f) of the Act, CEP profit is determined by multiplying total actual profit by the applicable percentage, which is determined pursuant to section 772(f)(2)(A) of the Act, by dividing total U.S. expenses by total expenses. The CEP profit ratio should be stated as "[p]rofit on ordinary activities before taxation" divided by operating costs plus net interest payable.

In rebuttal, ICI contends that the petitioner is confusing the terms "applicable percentage" and "CEP profit ratio" as having the same meaning. According to ICI, the "applicable percentage" consists of the ratio of U.S. total expenses divided by the total expenses, whereas, the "CEP profit ratio" is a percentage derived from a two-step calculation: (1) calculation of a total actual profit by deducting total expenses from total revenue, and (2) dividing the total actual profit by the total expenses. This CEP ratio is then applied to the CEP selling expenses to derive an actual CEP profit for the CEP sales. ICI maintains that this is the formula used by the Department in its calculation of the CEP profit for the CEP sales.

ICI argues that the numerator used by the petitioner in calculating the CEP profit ratio, *i.e.*, profit on ordinary activities before taxation, is incorrect. According to ICI, the profit figure used by the petitioner does not consist of profit before ordinary activities ; rather, it takes into account profit realized on activities which have nothing to do with income derived from ICI's main core business.

ICI maintains that the Department's calculation of the total actual profit and CEP ratio is correct because it deducts the total revenue derived from operations from the total expenses. According to ICI, this methodology reflects the actual profit earned by ICI from the operations of its main core business.

Department's Position

We agree with respondent that the correct methodology was used in the calculation of CEP profit in our preliminary results and thus, we have used the same methodology for calculating CEP profit in these final results.

Section 772(d)(3) of the Act provides that CEP shall be reduced by the profit allocable to selling, distribution, and further manufacturing activities in the United States.

Section 772(f) of the Act provides three alternative methods for determining total expenses for purposes of computing CEP profit. These alternatives form a hierarchy where the use of any one of the methods depends on the data available to the Department from the case record. We were unable to apply the first alternative (section 772(f)(2)(C)(i)) because the Department is not conducting a sales below cost investigation and, therefore, ICI did not report COP or CV information for the home market and U.S. products. In addition, we were unable to apply the second alternative (section 772 (f)(2)(C)(ii)) because the financial statements of ICI are not specific to the production costs and sales information of merchandise sold only in the U.S. and home market. Therefore, we calculated CEP profit using alternative three (section 772(f)(2)(C)(iii)). Under this alternative, we calculated the profit percentage based on ICI's financial statement of 1997 for merchandise produced and sold by the respondent in all countries.

Pursuant to the Department's policy as embodied in Policy Bulletin 97.1, "Calculation of Profit for Constructed Export Price Transactions," we determined the CEP profit ratio by using ICI's income before taxes which we calculated by subtracting total expenses (cost of sales, distribution costs, research and development, administrative expenses and net interest expense) from net sales revenue. We then divided income before taxes by total expenses to arrive at a CEP profit ratio which we then multiplied by CEP selling expenses to arrive at CEP profit.

During the course of our analysis, we discovered that an incorrect amount for net interest expense was used in the calculation of the CEP profit ratio. Therefore, for these final results, we have recalculated the CEP profit ratio to include the correct net interest expense. See Calculation Memorandum of the Final Results for the 1997–1998 Administrative Review of Imperial Chemical Industries, February 2, 2000 ("Final Calculation Memo").

Comment 5: Clerical Error in Model Match Program

ICI states that the Department should correct a clerical error in its model match program that resulted in the failure of the program to match certain U.S. sales transactions with the most similar home market sales. According to ICI, the Department's model match computer program was based on six physical characteristics reported in both the U.S. and home market sales files. With regard to the physical characteristic viscosity, the Department ranked the viscosity ranges for each U.S. and home market control number (CONNUM) by assigning a code. ICI contends that the Department's program contains a computer programming error in the ranking of the viscosity codes for both home market and U.S. products. ICI argues that this error resulted in matching one U.S. product with a home market product that is not the most similar match in terms of physical characteristics to the U.S. product. No comments were submitted by the petitioner on this issue.

Department's Position

We agree with ICI and have made the appropriate modifications to the Department's model match program for these final results. *See* Final Calculation Memo.

Comment 6: Error in Preliminary Results

ICI noted that in the preliminary determination the Department states that "* * * all sales to the first unaffiliated purchaser took place after importation." *See* 64 FR at 42909. ICI alleges that based on the factual record and the Department's own analysis this statement appears to be in error and should be corrected. No comments were submitted by the petitioner on this issue.

Department's Position

We agree with ICI. In our preliminary determination we stated that in calculating price to the United States for ICI, we used CEP, as defined in section 772(b) of the Act because all sales to the first unaffiliated purchaser in the United States took place after importation. This statement was incorrect. In the instant review, as in the previous segment of this proceeding, we determined that ICI's U.S. sales were CEP transactions even though the sales took place before importation because ICI's U.S. selling agent was substantially involved in the sales process in the United States on behalf of or for the account of ICI. *See 1996–1997 Final Results*, 64 FR at 6611–12.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period of July 1, 1997 through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Imperial Chemical Industries PLC	18.49

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

For assessment purposes, we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries made by the relevant importer during the POR.

The following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of industrial nitrocellulose from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 11.13 percent, the "all others" rate established in the LTFV investigation (55 FR 21058, May 22, 1990). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to

administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with Sections 351.305 and 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary, Import Administration.

[FR Doc. 00–2850 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850, A–588–851, A–791–808]

Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Constance Handley at (202) 482–0631, AD/CVD Enforcement, Office V, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Postponement of Final Determinations

The Department of Commerce (the Department) is postponing the final determinations in the antidumping duty investigations of certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line and pressure pipe from Japan and the Republic of South Africa.

On December 14, 1999, the Department published its preliminary determinations in these investigations. *See* "Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa", 64 FR 69718 (December 14, 1999). The notice stated that the Department would issue its final determinations no later than 75 days after the date of issuance of the notice.

Pursuant to section 735(a)(2)(A) of the Act, on January 13, 2000, Sumitomo Metal Industries (Sumitomo), a respondent in the investigations involving Japan, and Iscor Ltd. (Iscor), the sole respondent in the investigation involving South Africa, requested that the Department postpone its final determinations. Further to those requests, the respondents requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because: (1) these preliminary determinations are affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise in their respective investigations; and (3) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determinations until no later than 135 days after the publication of the preliminary determinations in the **Federal Register** (*i.e.*, until no later than April 27, 2000). Suspension of liquidation will be extended accordingly.

This extension is in accordance with section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2).

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary, Import Administration.

[FR Doc. 00–2841 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–505]

Certain Malleable Cast Iron Pipe Fittings From Brazil: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil in response to a request from a respondent, Indústria de Fundição Tupy Ltda. This review covers the period May 1, 1998, through April 30, 1999.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On May 28, 1999, the Department received a request from Indústria de Fundição Tupy Ltda. (Tupy) to conduct an administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On June 30, 1999, the Department published a notice of initiation of an administrative review of Tupy, covering the period May 1, 1998, through April 30, 1999, in the **Federal Register** (64 FR 14860).

Scope of Review

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original antidumping duty order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item

numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

United States Price

In calculating the price to the United States, we used export price (EP) as defined in section 772(a) of the Act because the subject merchandise was sold to an unaffiliated U.S. purchaser in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of record.

We calculated EP for U.S. sales based on C&F U.S. port prices to the United States. We made adjustments for domestic inland freight, domestic inland freight insurance, domestic brokerage and handling, international freight, and freight revenue in accordance with section 772(c)(2)(A) of the Act. According to Tupy's representations, the material terms of sale were established on the purchase-order date. Therefore, we used the purchase-order date as the date of sale for the U.S. market. No other adjustments to EP were claimed.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value (NV), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We compared the EP sales of individual transactions to the monthly weighted-average price of sales of the identical product Tupy sold in Brazil. We based NV on delivered prices to unaffiliated purchasers in the home market. Where applicable, we made adjustments to home-market price for billing adjustments and inland freight. We matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. (See *Level of Trade* below.)

When applicable, we made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. To make COS adjustments, we reduced home-market price by an amount for home-market credit, advertising expenses, and commissions, and we increased it by an amount for U.S. credit expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the home market but not in the U.S. market, we made a upward adjustment to normal value for the lesser of (1) the amount of the commission paid in the home market, or (2) the amount of indirect selling expenses incurred in the U.S. market. We also deducted value-added taxes pursuant to section 773(a)(6)(B)(iii) of the Act. Because we compared U.S. sales to identical merchandise sold in the home market, no adjustment for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act was necessary.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 103–316, at 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade as the U.S. sales (either EP or constructed export price). When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home-market and EP sales, including a description of the selling activities Tupy performed for each channel of distribution. Tupy reported three types of customers in the home market: wholesalers, distributors, and retailers. We found that the selling and other activities associated with selling to each of the three types of customers differed significantly from activities for the other two types of customers. For example, we found differences with respect to inventory maintenance, freight and delivery arrangements, packing and handling, advertising, technical services, and sales and administrative functions. Based on these differences, we found that the three types of home-market customers constituted three different levels of trade.

All of the U.S. sales were EP sales. Based on our examination of the record, we determined that the level of trade of the EP sales was the same as that of the home-market wholesale level of trade. We found that the level of trade of the EP sales was different from that of distributor and retail sales because Tupy performed a number of selling functions for distributor and retail sales at a moderate or high level that it either did not perform or performed at a low level for the EP and wholesale sales. These selling functions included freight and delivery arrangements, inventory maintenance, packing and handling, advertising, technical services, and sales and administrative functions.

Because we found that Tupy's EP sales were made at the same level of trade as its home-market wholesale level and because we were able to match EP sales to home-market sales made at the wholesale level of trade in all instances, no level-of-trade adjustments to normal value were necessary.

Preliminary Results of Review

As a result of our comparison of EP and NV, we preliminarily determine a weighted-average dumping margin of

2.91 percent for Tupy for the period May 1, 1998, through April 30, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 38 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication.

Parties who submit argument are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/customer-specific assessment value for subject merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain malleable cast iron pipe fittings from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Tupy will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.64 percent, the all-others rate established in the LTFV investigation.

The deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary, Import Administration.

[FR Doc. 00–2847 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Notice of Initiation and Preliminary Results of Changed Circumstance Antidumping Duty Review, and Intent to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstance antidumping duty review, and intent to revoke order in part.

EFFECTIVE DATE: February 8, 2000.

SUMMARY: On August 13, 1999, the Department of Commerce (the Department) received a request on behalf of Watanabe Trading Co., Ltd. (Watanabe), and Byram Steel Trading Co., (Byram) for a changed circumstance antidumping (AD) duty review and an intent to revoke in part the AD order with respect to specific stainless steel sheet and strip from Japan. The Department received a letter on August 30, 1999, from petitioners (Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. of CA) not opposing the request of Watanabe and Byram for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1391 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351.

Background

On July 27, 1999, the Department published the Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order on stainless steel sheet and strip from Japan (64 FR 40565).

On August 13, 1999, Watanabe and Byram requested revocation in part of the Antidumping Duty (AD) order pursuant to section 751(b) of the Act and section 351.216 of the Department's regulations, with respect to specific stainless steel sheet and strip in coils from Japan as described below.

Scope of the Review

The products covered by this exclusion request are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (AWS) specification ANSI/AWS A5.9–93. The products are 0.5mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER308L, ER 309L, ER 316L and ER347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon—0.03% maximum
Chromium—20.0–22.0%
Nickel—10.0–12.0%
Molybdenum—0.75% maximum
Manganese—1.0–2.5%
Silicon—0.65% maximum
Phosphorus—0.03% maximum
Sulphur—0.03% maximum

Copper—0.75% maximum
Columbium—8 times the carbon level minimum—1.0% maximum

Initiation and Preliminary Results of Changed Circumstance AD Review, and Intent To Revoke Order in Part

At the request of Watanabe and Byram, in accordance with sections 751(d)(1) and 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstance review of stainless steel sheet and strip from Japan to determine whether partial revocation of the AD order is warranted with respect to the stainless steel sheet and strip subject to this request. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act and sections 351.222(g)(l)(i) and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstance review and have determined that expedited action is warranted. Our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the specific stainless steel sheet and strip covered by this request. Additionally, in accordance with section 351.216(a) we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the AD order to the stainless steel sheet and strip subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the merchandise described above from Japan.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstance review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary determination. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated AD duties collected for all unliquidated entries of the specific stainless steel sheet and strip covered by this request from Japan. The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstance review.

This initiation of review and notice are in accordance with sections 751(b) of the Act (19 U.S.C. 1675(b)) and 19 CFR 351.216, 351.221, and 351.222.

Dated: January 24, 2000.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 00–2853 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–806, A–570–815]

Final Results of Expedited Sunset Reviews: Sulfanilic Acid From India and The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Sulfanilic Acid from India and The People's Republic of China.

SUMMARY: On October 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on sulfanilic acid from India and The People's Republic of China ("China") (64 FR 53320) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and an inadequate response (in these cases no response) from respondent interested parties in each of these reviews, the Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 8, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by these orders are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25

percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 2921.42.22 and 2921.42.24.20.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders are dispositive.

These reviews cover imports from all manufacturers and exporters of sulfanilic acid from India and China.

History of the Orders

India

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of sulfanilic acid from India on January 8, 1993 (58 FR 3251). In this determination, the Department published a weighted-average dumping margin for all manufacturers/producers/exporters of 114.8 percent. However, consistent with section 772(d)(1)(D) of the Act, which prohibits assessing antidumping duties on the portion of the margin attributable to an export subsidy, we established, for duty deposit purposes, an estimated antidumping duty deposit rate of 71.09 percent. The Department issued its antidumping duty order on sulfanilic acid from India on March 2, 1993.[2] The Department has not conducted an administrative review of this order since its imposition. The order remains in effect for all manufacturers and exporters of the subject merchandise from India.

China

On July 6, 1992, the Department published its affirmative final determination of sales at LTFV regarding sulfanilic acid from China (57 FR 29705). The Department issued its antidumping duty order on August 19, 1992.[3] In this determination, the Department published weighted-average dumping margins for one company and an "all others" rate. Since the order was issued, the Department has conducted four administrative reviews with respect to sulfanilic acid from China.[4] The order remains in effect for all manufacturers and exporters of the subject merchandise from China.

Background

On October 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on sulfanilic acid from India and China (64 FR 53320), pursuant to section 751(c) of the Act. We received a Notice of Intent to Participate, in each of the two sunset reviews, on behalf of National Ford Chemical Company ("NFC"), by October 15, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, NFC claimed interested party status as a U.S. manufacturer whose workers are engaged in the production of domestic like products. Moreover, NFC claims that it was a petitioner in the original investigation and, with respect to China, a domestic interested party in each of the six initiated administrative reviews. The Department received a complete substantive response from NFC, in each of the two sunset reviews, by November 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the orders were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, NFC's comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a substantive response from any respondent interested party. Under section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, NFC argues that the substantial decline (or cessation, with respect to India) in the volume of imports of sulfanilic acid from the subject countries following the issuance of the order demonstrates the inability of the producers from subject countries to sell in the United States at any significant volume without dumping. NFC argues further that revocation of the antidumping duty orders in these sunset reviews would likely lead to a continuation or recurrence of dumping by Indian and Chinese producers/manufacturers. NFC

[1] HTSUS subheadings for sulfanilic acid and sodium salts of sulfanilic acid have changed since the issuance of this order. The petitioner asserts that the HTSUS subheading for sulfanilic acid was 2921.42.24.20 in 1993 and has remained at 2921.42.22 since 1994.

[2] See Notice of Antidumping Duty Order; Sulfanilic Acid from India, 58 FR 12025 (March 2, 1993).

[3] See Antidumping Duty Order: Sulfanilic Acid from the People's Republic of China, 57 FR 37524 (August 19, 1992).

[4] See Sulfanilic Acid from the People's Republic of China: Final Results of Administrative Review, 61 FR 53711 (October 15, 1996); 61 FR 53702 (October 15, 1996); 62 FR 48597 (September 16, 1997); 63 FR 63834 (November 17, 1998).

supports this argument with evidence showing that, since the imposition of the orders, respondents have generally reduced (ceased with respect to Indian imports) their shipments to the United States. Therefore, NFC asserts it is likely that Indian and Chinese producers would need to dump in order to sell sulfanilic acid in any significant quantities in the United States.

India

With respect to subject merchandise from India, NFC maintains that, in the years preceding the order, India was a major foreign supplier of the subject merchandise to the U.S. market. Following the issuance of the order, it asserts, Indian imports have ceased completely. Furthermore, NFC comments, deposit rates for Indian manufacturers of sulfanilic acid continue to exist at 71.09 percent. In sum, it argues, cessation of imports following the imposition of the order and high dumping margins, in conjunction with the fact that Indian manufactures never availed themselves of the administrative review process to demonstrate that dumping has ceased or abated, provides clear evidence that the Indian producers are incapable of selling at fair value in the U.S. market.[5]

China

NFC argues that the imposition of the antidumping duty order had a dramatic effect on subject import volumes from China. NFC states that in the years following the order, imports of the subject merchandise from China dropped nearly 40 percent. Moreover, NFC asserts, import volumes of the subject sulfanilic acid from China have remained low relative to the pre-order levels. Furthermore, NFC mentions, that there has been a reduction in the Chinese producers' share of U.S. domestic consumption of sulfanilic acid. This decline in imports and share of U.S. domestic consumption, NFC adds, coupled with above de minimis dumping margins demonstrates that Chinese manufacturers cannot maintain a presence in the U.S. market without dumping.[6]

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, or imports ceased after the issuance of the order, the Department may reasonably infer that dumping would continue or recur if the discipline were removed. As pointed out above, dumping margins above de minimis continue to exist for shipments of the subject merchandise from India and China.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each section above, NFC argues that a significant decline in the volume of imports of the subject merchandise from China and a cessation of imports with regard to India since the imposition of the orders, provides further evidence that dumping would continue or recur if the orders were revoked. In its substantive response, NFC provided statistics demonstrating the decline/cessation in import volumes of sulfanilic acid from China and India. The Department disagrees, in part, with NFC's arguments that Chinese imports of the subject merchandise fell sharply after the order was imposed and never regained pre-order volumes. In 1992 and 1993 the import volume of the subject merchandise did significantly drop below pre-order levels. However, in 1994 and 1995 import levels of the subject merchandise exceeded pre-order volumes.[7] The Department also disagrees, in part, with NFC's assertion that Indian imports of the subject merchandise ceased completely since the issuance of the order.[8]

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels and a reduction/cessation in export volumes after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues for exports of the subject merchandise by all known Indian and Chinese manufacturers/exporters. Therefore, given that dumping has continued and import volumes have declined significantly or ceased after the imposition of the order, the respondent interested parties waived participation in these reviews, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.) We note that, to date, the Department has not issued any duty absorption findings in any of these cases.

In its substantive response, NFC recommends that the Department adhere to its general practice of selecting dumping margins from the original investigation. Regarding companies not reviewed in the original investigations, NFC suggests that the Department report to the Commission the "all others" rate published in the original investigations. Specifically, NFC recommends that the Department report a margin of 71.09 percent for all manufacturers/producers/exporters under the order on India and with respect to the order on China, 19.14 percent for China National Chemicals Import & Export Corporation, Hebei Branch and 85.20 for all other producers. Since the Department has not conducted an administrative review of sulfanilic acid from India, and imports of Chinese and Indian sulfanilic acid to the United States have decreased dramatically since the issuance of the order, the Department has decided that it would not be appropriate to use a more recently calculated rate.

The Department agrees, with NFC that the margins calculated in the original investigations are probative of the behavior of Indian and Chinese producers/exporters if the orders were revoked, as they are the only margins which reflect their actions absent the discipline of the orders. Therefore, the Department will report to the Commission the company-specific and "all others" rates from the original investigations as contained in the Final Results of Reviews section of this notice. As noted above, in the original investigation the Department

[5] See November 1, 1999, Substantive Response of NFC, regarding sulfanilic acid from India at 9.

[6] See November 1, 1999, Substantive Response of NFC, regarding sulfanilic acid from China at 9.

[7] Nevertheless, in 1996–1999 import volumes dropped well below pre-order levels.

[8] In 1994 Indian manufacturers exported 20,000 kg. of sulfanilic acid to the United States, and 36,000 kg. in 1996. Only since 1997 have the imports of the subject merchandise ceased completely.

determined the margin of dumping for all manufacturers/producers/exporters of the subject merchandise from India to be 114.80 percent, and established an antidumping duty deposit rate of 71.09 percent after taking into account the 43.71 percent export subsidy rate. Therefore, we will report to the Commission the margins from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely lead to continuation or recurrence of dumping at the margins listed below:

India

Manufacturer/Exporter	Margin (percent)
All Manufacturers/Producers/Exporters	*114.80

*(71.09 as adjusted for CVD)

China

Manufacturer/Exporter	Margin (percent)
China National Chemicals Import & Export Corporation, Hebei Branch	19.14
All Others	85.20

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2839 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the respondent, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. This review covers shipments of this merchandise to the United States during the period May 1, 1998, through April 30, 1999.

We preliminarily determine that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the differences between the United States price and the normal value.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to the regulations codified at 19 CFR Part 351 (1999).

Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on certain welded carbon steel pipe and tube from Turkey (51 FR 17784). On May 19, 1999 (64 FR 27235), we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order covering the period May 1, 1998, through April 30, 1999, hereinafter referred to as the POR. In accordance with 19 CFR 351.213(b)(2), on May 28, 1999, The Borusan Group (Borusan), a producer and exporter of certain welded carbon steel pipe and tube, requested a review. On June 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period May 1, 1998, through April 30, 1999 (64 FR 35124). We are now conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe application. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs

purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the POR (approximately 45 percent), as is Department practice, we limited our comparisons to comparison market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60 contemporaneity rule" (*see*, e.g., *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68430 (December 11, 1998). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, diameter, wall thickness, finish, and end finish. However, given that there were no contemporaneous sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Export Price

Because Borusan sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the record facts of this review, in accordance with section 772(a) of the Act, we used EP as the basis for all of Borusan's sales.

We calculated EP as the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price (gross unit price), where appropriate, for foreign inland freight, foreign inland insurance, international freight and other related charges. In addition, we added countervailing duties and duty drawback.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Borusan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We calculated NV as noted in the "Price to Price Comparisons" section of this notice.

Cost of Production Analysis

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Borusan, we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Borusan in the home market. (*See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From Turkey (Final Results)*, 63 FR 35190 (June 29, 1998)).

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Borusan's costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment.

In order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Borusan submit monthly production costs incurred during each month of the POR. We calculated a POR-average cost for each product after indexing the reported monthly costs of manufacturing (COM) during the POR to an equivalent currency level using the wholesale price index for Turkey from the *International Financial Statistics*, published by the International Monetary Fund. We then restated the POR-average COM to the currency level of each month and calculated monthly COP and constructed value (CV) for each product. We relied on Borusan's submitted costs to calculate COP and CV. To obtain a Borusan Group general and administrative (G&A) expense factor, we used the company-wide cost information from Borusan's three pipe and tube manufacturing companies. We applied the G&A and interest expense rates to the COM plus packing because the denominator used to compute the rates included packing.

The respondent provided information in the response showing that one of the Borusan mills, Kartal Boru, received coil and zinc inputs from affiliated parties. We consider coil and zinc to be major inputs and therefore we have applied the major input rule to value such purchases (*see Notice of Final Results and Partial Recission of Antidumping Review: Certain Pasta from Italy*, 64 FR 6615, 6621 (February 10, 1999)). The major input rule of section 773(f)(3), together with section 772(f)(2) of the Act, provides that the Department may value inputs obtained from affiliated parties at the highest of the transfer price, the market price or the affiliated supplier's costs. *See* 16 CFR Section 351.407(b). However, some of the inputs in this review were purchased from an affiliated mill that was collapsed with Borusan for purposes of this and previous reviews. With respect to those inputs (*i.e.*, inputs from a collapsed entity), we do not apply the major input rule. Rather, in those instances, we value the purchases based upon the cost of producing the input. *See e.g., AK Steel Corp.* v. *United States*, 34 F Supp. 2d 75b(CIT 1998) (affirming the Department's determination not to apply the major input rule to transactions between collapsed entities).

Therefore, for major input purchases of coil from the affiliated party not collapsed with Borusan, we have utilized the highest of: (1) The cost of producing the input; (2) the transfer price; or (3) the market price. In contrast, we have valued major input purchases of coil and zinc from the collapsed entity at the cost to the affiliated provider. *See* Preliminary Results Analysis Memorandum, dated January 31, 2000, on file in the Central Records Unit (room B–099 of the main Commerce Department Building).

B. Test of Home Market Prices

We compared the indexed weighted-average COP figures to home market sales of the foreign like product as called for by section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates and direct selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we do

not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because they (1) were made over an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Borusan's home market sales were sold at below the COP. Further, we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1).

Price to Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales of a similar foreign like product made in the ordinary course of trade, based on matching characteristics. We calculated NV based on FOB mill/warehouse or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (see discussion below regarding these sales). We made deductions, where appropriate, from the starting price for inland freight, pre-sale warehouse expense, discounts, and rebates. Additionally, we added late payment charges. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses. We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We calculated POR-average variable and total COMs, by product, after indexing the reported monthly costs using the wholesale price index for Turkey. We then restated the average variable and total COMs to the currency level of each respective month.

Arm's-Length Sales

We included in our analysis Borusan's home market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which Borusan sold identical merchandise to unrelated customers. *See* section 773(a)(1)(B) of the Act. In order to determine the arm's-length nature of Borusan's home market sales to affiliated customers we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct and indirect selling expenses, and packing (*see Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993)).

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade (LOT) as the U.S. sales (either EP or Constructed Export Price). When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting-price sales in the home market. To determine whether home market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities performed by Borusan for each channel of distribution. Consistent with the prior review of this respondent (POR 96–97), we determined that with respect to Borusan's sales, there were two home market LOTs and one U.S. LOT (*i.e.*, the EP LOT). *See Final Results,* 63 FR 35190, 35193.

Where possible, we compared sales at the U.S. LOT to sales at the identical home market LOT. If no match was available at the same LOT, we compared sales at the U.S. LOT to sales at the second home market LOT.

To determine whether a LOT adjustment was warranted, we examined, on a monthly basis, the prices of comparable product categories, net of all adjustments, between sales at the two home market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs.

In making the LOT adjustment, we calculated the difference in weighted-average prices between the two different home market LOTs. Where U.S. sales were compared to home market sales at a different LOT, we reduced the home market price by the amount of this calculated difference.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine a fluctuation to have existed, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice.

When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and the home market sales. For this reason, as

discussed above, we are comparing home market and U.S. sales in the same month. For the same reason, we have used the daily exchange rates for currency conversion purposes. *See, e.g., Certain Porcelain on Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 30309 (June 14, 1996).

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period May 1, 1998, through April 30, 1999:

Manufacturer/exporter	Margin (percent)
Borusan	0.48

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding within five (5) days after the date of publication of this notice any calculations performed in connection with these preliminary results.

Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 752(a)(2)(c) of the Act: (1) The cash deposit rate for Borusan will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis* within the meaning of section 733(b)(3) of the Act, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the "all others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2846 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–816]

Cold Rolled and Corrosion-Resistant Carbon Steel Plate From the Republic of Korea: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On September 24, 1999, in response to a request from petitioner and respondents, the Department of Commerce initiated an administrative review of the countervailing duty order on cold rolled and corrosion-resistant carbon steel plate from the Republic of Korea. The review covers the period January 1, 1998 through December 31, 1998. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the petitioner and respondents have withdrawn their requests for review.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Tipten Troidl, AD/CVD Enforcement, Group II, Office VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION: On August 31, 1999, the Department received requests for an administrative review of the countervailing duty order on cold rolled and corrosion-resistant carbon steel plate from the Republic of Korea from Weirton Steel Corporation (petitioner) and Pohang Iron & Steel Co., Ltd., Dongbu Steel Co., Ltd., and Union Steel Manufacturing Co., Ltd. (respondents), for the period January 1, 1998 through December 31, 1998. On October 1, 1999, the Department published in the **Federal Register** (64 FR 53318) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review. On January 4, 2000, petitioner withdrew its request for review. On January 6, 2000, respondents withdrew their request for review.

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. In this case, the parties to the proceeding did not withdraw their requests within the 90 day period. However, our regulations state that the Secretary may extend the time limit if the Secretary decides that it is reasonable to do so. Since both parties have requested to withdraw and because their requests were made shortly after the 90 day period, we find it reasonable to accept parties' withdrawals of their requests for review. No other interested party requested a review, and we have received no other submissions regarding parties' withdrawals of their requests for review. Therefore, we are rescinding this review of the countervailing duty order on cold

rolled and corrosion-resistant carbon steel flat products from the Republic of Korea covering the period January 1, 1998, through December 31, 1998.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: January 27, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–2842 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Final Results of Full Sunset Review: Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Industrial phosphoric acid from Israel.

SUMMARY: On September 27, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 51954) the preliminary results of the full sunset review of the countervailing duty order on industrial phosphoric acid from Israel pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results and received comments filed on behalf of domestic and respondent interested parties. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, N.W., Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 8, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

This order covers shipments of industrial phosphoric acid ("IPA") from Israel. According to the final results of the Department's most recent administrative review, the merchandise subject to this order is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").[1] Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

Background

On September 27, 1999, the Department published in the **Federal Register** the Preliminary Results of Full Sunset Review: Industrial Phosphoric Acid from Israel (64 FR 51954). In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. Further, we found the net countervailable subsidy likely to prevail if the order were revoked to be 10.93 percent for Haifa Chemicals Ltd. ("Haifa") and 5.97 percent for "all others."

On November 16, 1999, we received a case brief on behalf of Albright and Wilson Americas Inc., FMC Corporation, and Solutia Inc. (collectively, "domestic interested parties"), within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received a case brief on behalf of the Government of Israel ("GOI") and Rotem Amfert Negev Ltd. ("Rotem") (collectively, "respondent interested parties"). On November 23, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from domestic and respondent interested parties. We have addressed the comments below.

Although the deadline for this determination was originally January 25, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by three days.

Comments

Comment 1

The domestic interested parties assert that the Department correctly concluded in its preliminary results that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy, and further, that this conclusion is appropriate for the final results in light of the results in the recently completed eleventh administrative review (*see* November 16, 1999, Case Brief of domestic interested parties at 5).

The respondent interested parties argue that, because of a recent WTO interim panel determination that privatization extinguishes prior non-recurring subsidies,[2] and because the Department has verified in the last several reviews the GOI's intention to fully privatize Rotem, the Department should reconsider its preliminary results and find that revocation of the order on Rotem will not lead to continuation of their benefits from subsidies (*see* November 16, 1999, Case Brief of respondent interested parties at 2). They claim that, whereas the privatization of Rotem was 68.48 percent complete as of the last administrative review, today, it is approximately 98 percent complete. *Id.* Therefore, the Department's calculation of the countervailing duty applicable to Rotem, which assumes that most prior, non-recurring subsidies are passed through to the new owners, is contrary to the WTO dispute panel determination. *Id.*

In rebuttal, the domestic interested parties argue that the WTO finding noted by respondent interested parties is neither relevant nor binding, and there is no reason why the Department should alter its reasoning as a result of an unadopted interim panel report with no legal status in U.S. domestic proceedings (*see* November 23, 1999, Rebuttal of Case Brief of domestic interested parties at 2). Further, they argue that the report apparently concludes that the United States should not assume, in an administrative review, that the sale of a company to private bidders automatically terminates the subsidies the company received when it was government-owned, and that the United States should recalculate anew

[1] *See Industrial Phosphoric Acid from Israel: Final Results and Partial Recission of Countervailing Duty Administrative Review*, 64 FR 49460 (September 12, 1999).

[2] *See* October 8,1999, "WTO Interim Panel Finds Against U.S. CVD Rules on Privatization," 17 Inside U.S. Trade No. 140 at 4.

any countervailable subsidies received after privatization. *Id.* at 3. Therefore, the domestic interested parties assert that were the interim report adopted, its relevance to a sunset review would be unclear, and the Department still would be free to conclude, in a sunset review, that subsidization would be likely to continue or recur.

Department's Position

We disagree with the respondent interested parties that the WTO interim panel finding requires the Department to alter its approach to privatization in the instant case and revise its preliminary determination of likelihood. The domestic interested parties are correct in noting that, because the final panel report has not been adopted by the Dispute Settlement Body, the United States has no obligation with respect to the report. As the report has not been adopted, it is premature to consider what obligations, if any, the panel report may impose on the United States.

Even if it were not premature for the Department to reconsider our approach to privatization in light of the panel report, and it were otherwise appropriate to do so, 19 U.S.C. § 3533(g)(1) provides that a regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until very specific statutorily mandated actions have been fulfilled and the appropriate congressional committees have been consulted. Thus, we continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company.

Comment 2

The domestic interested parties agree with the Department's method of adjusting the original net subsidies to reflect new and terminated programs, and increased usage of a program. Further, they agree with the rates selected by the Department to report to the Commission for Rotem and Haifa (*see* November 16, 1999, Case Brief of domestic interested parties at 6–7).

Respondent interested parties assert that, should the Department maintain its position that subsidization will continue, then it must revise the magnitude of the margin in the preliminary results to reflect the Department's findings in the most recent review. The respondent interested parties reassert that the Department's methodology with respect to privatization of previously subsidized companies is contrary to the WTO dispute panel determination holding that the Department is in violation of the WTO Subsidies Agreement (*see* November 16, 1999, Case Brief of respondent interested parties at 2). Thus, they argue, the Department should adjust its calculation of the countervailing duty for Rotem. *Id.* Respondent interested parties add that should the Department find that it can take into account only the level of privatization as of the most recently completed administrative review, then the Department should still recalculate the rate using the privatization level of 68.48 percent to reflect that review. Therefore, the Department should report to the Commission a rate of 1.88 percent for Rotem (5.97–(0.6848*5.97 = 1.88%). *Id.* at 3.

Accordingly, the Department should adjust the Encouragement of Capital Investments Law ("ECIL") Grants benefits from 5.58 percent to the 5.43 percent from the most recent review. *Id* at 3. Further, the subsidy of 0.11 percent from the Environmental Grants Program was expensed entirely by the Department in the 1996 review and was found not to be used in the 1997 review; therefore, the Department should not include the program in its calculations. Finally, the Department should find no benefit from Long-Term Industrial Development ("LTID") Loans because, as verified in the original investigation, all loans were terminated in 1985 and any loan taken in 1985 would be fully repaid ten years later, in 1995. Thus, no benefits from this program were found in the results of the 1996 review.

In summary, the respondent interested parties assert that the calculation of the likely level of subsidization for Rotem should exclude two programs, Environmental Grants Program and LTID Loans, and reduce the subsidy from ECIL Grants benefits from 5.58 percent to 5.43 percent. Thus, according to respondent interested parties, the Department should adjust its calculations to include: (1) 5.43 percent from the ECIL Grants; (2) 0.18 percent from the Infrastructure Grant Program; and (3) 0.04 percent from the Encouragement of Research and Development Law ("EIRD") Grants, for a net subsidy of 5.65 percent.

In rebuttal, the domestic interested parties reassert that the Department's calculation of the net countervailable subsidy for Rotem reflects the Department's standard methodology of presuming that the rate calculated in the original investigation is the best indicator of the behavior of exporters and foreign governments without the discipline of the order in place (*see* November 23, 1999, Rebuttal Brief of domestic interested parties at 4). Further, the domestic interested parties reassert that the Department's adjustments to the original subsidy rate fall well within the Department's discretion. *Id.*

Department's Position

The Department agrees, in part, with the respondent interested parties' argument. We agree that, in the original investigation, the Department found the LTID Loans program was terminated in 1985. The Department, nonetheless, included an estimated subsidy from the program on the basis that loans taken prior to termination of the program would continue to provide countervailable benefits. Loans taken in 1985 would not be fully repaid until ten years later; after 1995, there would be no benefits conferred by this program. In the 1996 review, the GOI stated that the LTID Loan program was terminated in 1985 and had not been reinstated. Accordingly, in the 1996 review and all subsequent reviews, the Department found the program "not used" and that Rotem did not hold any outstanding loans from this program.

We disagree with the respondent interested parties' argument that we should eliminate the benefits from the Environmental Grants Program from our calculation of the net subsidy. The Department has not found the program terminated in any administrative reviews. Without such Department determination, consistent with the *Sunset Policy Bulletin*, we find that this program continues to exist and may provide benefits in the future. Therefore, we will continue to include a benefit in our calculation of the rate to report to the Commission.

We disagree with the respondent interested parties' assertion that we erred in selecting a benefit from the 1996 administrative review of 5.58 percent for the ECIL Grant program on the basis that the 1997 administrative review (with the rate of 5.43 percent) reflects the results of the Department's most recent review. While the final results of our 1997 administrative review, which was issued after the deadline for submitting comments for our preliminary results, were not addressed by interested parties in pre-preliminary comments, we do not agree that our policy is to select the benefit rates from the most recently completed review. Rather, as noted in section III.B.3(d) of the *Sunset Policy Bulletin*, where the Department has conducted an administrative review of an order and determined to increase the net countervailable subsidy rate for any reason, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate. In our preliminary results we stated that

because, over the life of the order, there has been a consistent pattern of increased usage of the grants provided by this program, we determined that the rate for this program from the original investigation should be adjusted to reflect this increased usage. While the reduction in the rate from the 1996 to 1997 administrative review reflects a decrease in the benefits from the previously bestowed grants, it does not necessarily reflect the behavior of the exporters and foreign government without the discipline of the order. The ECIL Grant program continues to exist and grants continue to be available. Therefore, we continue to determine that the history of increased usage of this program makes it appropriate that the Department select a more recently calculated rate that reflects the increased usage of this program. Therefore, we will continue to add the benefit as determined in the 1996 administrative review to determine the net countervailable subsidy likely to prevail.

Therefore, the Department will not include benefits from LTID Loans in the net countervailable subsidy. With respect to the ECIL Grants, the Department will continue to use the rate of 5.58 percent from the preliminary results for Haifa and "all others."

Comment 3

The respondent interested parties argue that the Department should not report a higher rate for Haifa than the rate it will report for Rotem. Specifically, the rate for the LTID Loans program should be 0.00 percent instead of 5.02 percent because, as noted above, the LTID Loans program was terminated in 1985, and any residual benefits from the program ended in 1995, after all ten-year loans were repaid (*see* November 16, 1999 Case Brief of the respondent interested parties at 7). Further, the respondent interested parties note that the Department has used Rotem's rates for all other programs to determine Haifa's overall rate. Therefore, should the Department disagree with a rate of zero for the LTID Loans, then the rate for this program for Haifa should still be no greater than 0.06 percent, Rotem's rate for this program. *Id.* at 7.

In rebuttal, the domestic interested parties contend that the Department has no information indicating that Haifa did not obtain LTID Loans or that it has not received residual benefits from such loans in later years (*see* November 23, 1999, Rebuttal Brief of domestic interested parties at 6). Thus, there is no basis for a downward adjustment to Haifa's net countervailable subsidy. Additionally, they reassert that the original rate is the most accurate predictor of Haifa's actions were the order revoked and the Department should not recalculate this rate for its final results. *Id.* at 7.

Department's Position

The Department agrees with the respondent interested parties. As noted above, we determined in the original investigation that the program was terminated in 1985, but that benefits from loans granted under the LTID Loans program would be conferred through 1995. Further, we found the program to be not used in the administrative reviews since 1996. Therefore, we will not include the benefits from this terminated program in our calculation of the net subsidy likely to prevail. With respect to the respondent interested parties assertion that the Department has used Rotem's rates for all other programs to determine Haifa's overall rate, two programs, the Infrastructure Grant Program and the Environmental Grant Program, were not included in the original investigation. The third program, EIRD Grants conferred the same benefits on Haifa and "all others" in the final determination. Therefore, the Department, in each instance, has used the only available rates to determine Haifa's net subsidy.

Comment 4

The domestic interested parties agree with the Department's description of the information it intends to provide to the Commission with respect to the nature of the subsidies found and their categorization (whether the subsidy is a subsidy described in Article 3 or 6.1) under the WTO Subsidies Agreement (*see* November 16, 1999, Case Brief of domestic interested parties at 9). Specifically, they agree that the Bank of Israel Export Loans would fall under Article 3 of the Subsidies Agreement. Further, domestic interested parties assert that the remaining subsidies are actionable subsidies under Article 5 of the Subsidies Agreement, which defines an actionable subsidy as one that is "specific" within the meaning of Articles 1 and 2 of the Agreement, and causes adverse effects to the interests of other WTO members. *Id.* at 9. Finally, the domestic interested parties note that, of the eleven administrative reviews of the order, a net countervailing subsidy exceeding five percent was found in all but one (the 1992 review). *Id.* at 11. Accordingly, it is reasonable to assume that these programs continue to exist and are utilized, and that the Department is justified in reporting to the Commission that these subsidies constitute "serious prejudice" to the interests of the United States under Article 6.1 of the Subsidies Agreement.

In their rebuttal brief, respondent interested parties agree with the Department's approach of providing the

Commission with "descriptions" of the nature of the subsidy (*see* November 23, 1999, Rebuttal Brief of the respondent interested parties at 2). However, with respect to the Bank of Israel Export Loans, they assert that, because the Department found in the original investigation that the loans were no longer at preferential rates, the program's consistency with the Subsidies Agreement is irrelevant. *Id.* at 3.

With respect to the other programs, respondent interested parties contend that, even as measured by the Department's methodology, the other programs will not exceed the five percent threshold of Article 6 of the Subsidies Agreement in future reviews. First, of the six subsidies mentioned in the Preliminary Results other than the Bank of Israel Export Loans, three are not relevant: The LTID Loans and the Exchange Rate Risk Insurance Scheme ("ERIS") have been terminated, and the Environmental Grant Program was used only one time and provides no residual benefits. *Id.* All the other programs combined *i.e.*, the ECIL Grants, EIRD Grants, and Infrastructure Grant Program will not exceed five percent in the future. *Id.* at 3–4. This is because ECIL and infrastructure grants are diminishing, both as a result of their allocation over time and as a result of the fact that any new grants have been minimal. Additionally, further privatization of Rotem, from about 31 percent government ownership to about two percent, will significantly reduce the residual subsidization from prior grants. *Id.* at 4.

Department's Position

The Department agrees with the respondent interested parties' assertion that descriptions of the Bank of Israel Export Loans, LTID Loans, and ERIS should not be included in the nature of the subsidy section because these programs were found to be terminated. However, as noted above, the Department has not found the Environmental Grant Program to be terminated. Therefore, we will revise the descriptions of the nature of the subsidies from these programs.

Additionally, as we noted in our preliminary results, we do not have information with which to calculate the net countervailable subsidy in accordance with Annex IV of the Subsidies Agreement, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

Although the programs conferring benefits do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, they could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

The Encouragement of Capital Investments Law (ECIL) Grants. In the 1987 original investigation, the Department found that Negev Phosphates, Ltd. ("Negev") and Haifa Chemicals, Ltd. received countervailable subsidies from this program, the benefits of which depend on the geographic location of the eligible enterprises. ECIL Grants were found to confer subsidies in each subsequent administrative review.

Encouragement of Research and Development Law ("EIRD") Grants. Israeli manufacturers, producers or exporters of IPA may benefit from research and development grants under this program. With the exception of the 1988, 1989 and 1991 administrative reviews, the Department found the EIRD Law Grants to be countervailable in each yearly review since the issuance of the order.

Infrastructure Grant Program. In the administrative review of the 1996 period, the Department found that this program enables the GOI to establish new industrial areas by partially reimbursing companies for their costs of developing the infrastructure in certain geographical zones.

Environmental Grant Program. Additionally, in the 1996 administrative review, the Department found that the GOI administers this countervailable subsidy program to provide financial assistance for the adaptation of existing industrial facilities to new environmental requirements.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the final results of review. As discussed more fully above, we will adjust our calculations of the net subsidy to reflect the termination of the LTID Loans program on the rates listed below:

Manufacturer/Exporter	Margin (Percent)
Haifa, Ltd.	5.91
All Others	5.91

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Assistant Secretary for Import Administration.

[FR Doc. 00–2852 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–004]

Final Results of Expedited Sunset Review: Stainless Steel Wire Rod From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Stainless steel wire rod from Spain.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on stainless steel wire rod from Spain (64 FR 35589) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this

review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue N.W., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 8, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

Imports covered by this order are shipments of stainless steel wire rod ("SSWR") from Spain, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured, from Spain. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule ("HTS") of the United States. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

On November 15, 1982, the Department issued a final affirmative countervailing duty determination on certain stainless steel products from Spain.[1] During the investigation, the Department reviewed four companies: Olarra, S.A. ("Olarra"), Roldan, S.A. ("Roldan"), S.A. Echevarria ("Echevarria"), and Forjas Alavesas, S.A. ("FASA").[2] The Department determined that four general subsidy programs were providing countervailable subsidies to Spanish manufacturers, producers, and exporters of the subject merchandise. The four relevant subsidy programs are as follows: medium- and long-term preferential loans under the Concerted Action Program ("CAP"), Privileged Circuit Exporter Credits program operating capital loans ("PCEC-OC"), Privileged Circuit Exporter Credits program pre-financing loans ("PCEC-PF"), and cash grants.[3]

Specifically, in its original investigation, the Department found Roldan was subsidized at the rate of 1.31 percent from the CAP and 1.88 percent from PCEC–OC and PCEC–PF; hence, the net countervailable subsidy rate for Roldan regarding the subject merchandise was 3.19 percent. Likewise, the Department found Echevarria was subsidized at the rates of 11.48 from the CAP, 1.88 percent from PCEC–OC, and 2.07 percent from a government-directed grant. Therefore, the net countervailable subsidy rate for Echevarria regarding the subject merchandise was 15.43 percent. Similarly, the subsidy rates for FASA are 0.21 and 1.88 percent for the CAP and for PCEC-OC, respectively. Thus, the net countervailable subsidy rate for FASA regarding the subject merchandise was 2.09 percent. As for Olarra, the Department determined that the net countervailable subsidy rate was 0.00 percent.[4] Finally, the all-others rate was 15.43 percent.

The Department published the countervailing duty order on SSWR from Spain in the **Federal Register** on January 3, 1983.[5] Since that time, the Department has completed several administrative reviews.[6] In the first administrative review, covering the period January 1, 1986 through December 31, 1986, the Department determined that the net countervailable subsidy for Roldan was 1.42 percent:[7] the benefits from PCEC–OC, PCEC–PF, and the CAP were 0.07, 1.02, and 0.33 percent *ad valorem*, respectively. At the same time; however, the Department found that two subsidy programs were terminated: PCEC–OC (effective January 1, 1986 as per Treasury Order of April 14, 1982) and PCEC–PF (effective March 5, 1987 pursuant to Royal Decrees 321/1987 and 322/1987). Since the net countervailable subsidy for Roldan was reduced to *de minimis* (0.33 percent *ad valorem*) when the Department incorporated the above terminations into consideration, it waived cash deposits for any future shipments from Roldan, until the final results of the next administrative review.

In its second administrative review, covering January 1, 1987 through December 31, 1987, the Department determined that Roldan benefitted from PCEC–PF and the CAP at the rate of 0.15 and 0.27 percent *ad valorem*—combined rate of 0.42 percent *ad valorem*.[8] In its

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[1] See Final Affirmative Countervailing Duty Determinations; Certain Stainless Steel Products From Spain, 47 FR 51453 (November 15, 1982). However, this product designation was changed to "stainless steel wire rod" in the subsequent countervailing duty order because the International Trade Commission determined that only imports of SSWR from Spain are causing material injury or are threatening material injury to a domestic industry. The countervailing duty investigations pertaining to hot-rolled stainless steel bars and cold-formed stainless steel bars from Spain were terminated. See Stainless Steel Wire Rod From Spain; Countervailing Duty Order. 48 FR 52 (January 3, 1983).

[2] *See id.* The Department found that there were five known producers and exporters of the subject merchandise to the United States. The fifth company, La Calibradora Mechanica, S.A., was lumped with all others because it did not respond to the Department's inquiry. (Although Echevarria also did not provide the Department with a response, the Department had enough information to employ the best information otherwise available in determining the net subsidy rate for that company.)

[3] *See id.* For other subsidy programs investigated, the Department determined that some programs fall outside the purview of the countervailing duty law (such as, Desgravacion Fiscal a la Exportacion ("DFE") and Export Credit Insurance), and the others are either not applicable to or not used by Spanish producers/exporters of the subject merchandise (such as, some of Certain Privileged Circuit Exporter Credits, Warehouse Construction Loans, Regional Investment Incentive Programs, Equity Infusion, Special Credits to Aceros de Llodio, and Research and Development Incentives).

[4] Although the Department determined that Olarra was in a court-ordered bankruptcy receivership and, therefore, any benefits associated with pre-receivership loans have been lost (*i.e.*, Olarra's net countervailable subsidy rate is zero), Olarra was not excluded from the final determination, countervailing duty order, and final results of subsequent administrative reviews because the Department determined that if the financial condition of Olarra improves, it could again qualify for and obtain the benefits under these programs in the future.

[5] Stainless Steel Wire Rod From Spain: Countervailing Duty Order, 48 FR 52 (January 3, 1983).

[6] See Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review, 53 FR 28427 (July 28, 1988); Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative review, 54 FR 26826 (June 26, 1989); and Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review. 55 FR 349 (January 4, 1990).

[7] *See id.* Roldan was the lone subject of all three administrative reviews because the Department determined that Roland was the only known Spanish producer/exporter of the subject merchandise during the relevant periods of reviews.

[8] *See* footnote 6, *supra*. Also see Stainless Steel Wire Rod From Spain: Preliminary Results of

Continued

third and the latest administrative review, covering January 1, 1988 through December 31, 1988, the Department determined that the only subsidy program that conferred a benefit to Roldan was the CAP at the rate of 0.19 percent *ad valorem*.[9] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On July 1, 1999, the Department initiated a sunset review of the countervailing duty order on SSWR from Spain (64 FR 35588), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Inc., Talley Metals Technology, Inc., and United Steelworkers of America (collectively referred to as "the domestic interested parties"), on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. In their Notice of Intent to Participate, the domestic interested parties denoted that none of them is related to a foreign producer/exporter or is a U.S. importer of the subject merchandise, nor are any of them importers of the subject merchandise.

We received a complete substantive response on behalf of the domestic interested parties on August 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The domestic interested parties claimed interested party status pursuant to sections 771(9)(C) and (D) of the Act, as U.S. producers of the domestic like product and as a union representing workers that engage in the production of the like product in the United States. In their substantive response, the domestic interested parties indicated that the most of them have participated in this proceeding since its inception and that, as a group, they remain committed to a full participation in the instant review. (*See* the domestic interested parties' August 2, 1999 Substantive Response, at 4–5.)[10] The domestic interested parties also submitted their rebuttal comments on August 9, 1999, within the five-day deadline in accordance with section 351.218(d)(4).

The Department received substantive responses from the Government of the Kingdom of Spain ("KOS") and from the European Commission ("EC") on July 30, 1999 and July 29, 1999, respectively.[11] Both the KOS and EC indicated, in their respective substantive responses, that they are willing to participate in the instant review and that they have in the past participated in the proceedings of the order. However, the Department did not receive a substantive response from any foreign producer/manufacturer, exporter, or the U.S. importer, etc., as defined under 771(9)(A) of the Act. Thus, pursuant to section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, the Department determined that respondent interested parties' substantive responses were inadequate to warrant a full review. Consequently, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the countervailing duty order on SSWR from Spain is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[12]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by two days.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic interested parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the

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Countervailing Duty Administrative Review, 54 FR 16384 (April 24, 1989). Since PCEC–PF was terminated pursuant to Royal Decrees 321/1987 and 322/1987, effective March 5, 1987, the Department preliminarily determined that cash deposit of estimated countervailing duties under this program is zero. In its final results of the administrative review, because the combined subsidy rate was *de minimis*, the Department required zero cash deposits for Roldan until the final results of the next administrative review is published.

[9] *See* footnote 6, *supra*.

[10] *See* footnote 1, *supra*. AL Tech Specialty Steel Corp., Carpenter Technology Corp., and Republic Engineered Steels were members of the original group which filed the petition.

[11] Although both the KOS and EC did not explicitly claim their interested party status, they are interested parties within the meaning of 771(9)(B) of the Act.

[12] *See Extension of Time Limit for Final Results of Five-Year Reviews* 64 FR 62167 (November 16, 1999).

Sunset Policy Bulletin). Also, if the Department determines that the fully allocated benefit stream of a countervailable subsidy is likely to continue after the end of a sunset review, it will normally determine that the subsidy continues to exist regardless whether the program that gave rise to such benefit continues to exist. (*See Id.* at section III.A.4.)

In addition to considering guidance on likelihood provided in the Sunset Policy Bulletin and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent manufacturers/producers or exporters of the subject merchandise.[13] Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties contend that revocation of the countervailing duty order would be likely to lead to continued unfair subsidization by the KOS. The domestic interested parties further contend that the KOS and its regional governments continue to provide an array of subsidy programs benefitting the Spanish steel industry. In support of their contention, the domestic interested parties point to Roldan's 1990–1994 financial statements, in which Roldan allegedly admitted receiving unspecified subsidies. Also, the domestic interested parties state that Roldan received subsidies from the Industrial Expansion Area of Castilla Leon in 1987 and 1990.[14] In addition, the domestic interested parties request the Department to reconsider, in the instant sunset review, the legal method by which the KOS eliminated some of its subsidy programs and to analyze whether the KOS is likely to reinstate such programs. In other words, the domestic interested parties are urging the Department to revisit its decisions in previous administrative reviews in which the Department determined that PCEC–OC and PCEC–PF were eliminated. (See August 2, 1999 Substantive Response of the domestic interested parties at 14–17 and 21–23.)[15]

In conclusion, the domestic interested parties suggest that the countervailing duty order has been only marginally effective because of the existence of the other subsidy provisions[16] and that it is likely that the KOS and its regional governments will continue and resume subsidizing Spanish manufacturers/exporters of the subject merchandise. Id.

In its substantive response, the KOS indicates that the programs, on which the countervailing duty order was determined, have expired a long time ago: the CAP was only applicable during the period 1974–1982, and the PCEC–OC has not been applicable since 1986. Thus, according to the KOS, any outstanding benefit stream from 16-year-old programs would have long been amortized. Also, the KOS insists that the countervailing duty rates established in the original investigation were either zero or insignificant. Last, the KOS argues that the records clearly indicate that there is no subsidization of the product concerned. (See July 30, 1999 Response of the KOS.)

The EC emphasizes, in its substantive response, that the countervailing duty order under consideration is very old. According to the EC, all subsidies which were relevant in the original investigation, have since been terminated or no longer benefit the Spanish exporters/manufacturers of the subject merchandise. Also, the EC contends that, because the domestic interested parties withdrew their request for an administrative review in 1993,[17] the domestic interested parties acknowledged that there was no further evidence of subsidization in Spain. In conclusion, the EC asserts that revocation of the order is not likely to lead to continuation or recurrence of subsidization. (See July 29, 1999 Response of the EC.)

The domestic interested parties, in their rebuttal, claim that the KOS continues to provide significant countervailable subsidies to its domestic steel industry. Also, the domestic interested parties argue against the respondent interested parties' suggestion that outstanding benefit streams have already been amortized and, therefore, that the order should be revoked. The domestic interested parties note that because the analytical framework applied by the Department in a sunset review is forward-looking, the Department should not give undue significance to the respondents' claim that subsidies provided to Roldan have been completely allocated. (See August 9, 1999 the domestic interested parties' Rebuttal Comments, at 1–7.)

Furthermore, the domestic interested parties note that the countervailable subsidy rates for Roldan, Echevarria, and all others, determined in the original investigation, are significant because the subsidies enable the manufacturers/exporters to aggressively price the subject merchandise in the U.S. market, where purchasers of SSWR consider price to be a significant factor. Id.

As noted above, in the final affirmative countervailing duty determination, the Department determined that all Spanish producers/exporters of the subject merchandise, except one, were benefitting from countervailable subsidies under the CAP, PCEC–OC, PCEC–PF, and cash grants programs at levels above de minimis.[18] In the first administrative review, however, the Department found that PCEC–OC was terminated pursuant to a Treasury Order of April 14, 1982, effective January 1, 1986; that PCEC–PF was terminated as per Royal Decrees 321/1987 and 322/1987, effective March 5, 1997; and that Roldan was not benefitting from a cash grant.[19] Therefore, based on the Department's prior findings regarding the termination of PCEC–OC and PCEC–PF and based on lack of evidence to the contrary, we determine that PCEC–OC and PCEC–PF were eliminated and are not likely to be reinstated if the order is revoked. In addition, the Department determines that the domestic interested parties' claim that other or new subsidies are benefitting Roldan is not supported by sufficient facts. Specifically, the domestic interested parties did not provide sufficient and/or appropriate information, evidence, or arguments to warrant consideration of newly alleged

[13] The Department did not receive a substantive response from Roldan, which is the only known exporter of the subject merchandise. (See footnote 7, supra.) As noted earlier, the Department received substantive responses from the respondent governments, the KOS and EC.

[14] The domestic interested parties' claims, however, do not go beyond a general statement; i.e., their claims lack specifics. In other words, other than merely arguing that other or new subsidies are benefitting Roldan, with respect to manufacturing/exporting the subject merchandise, the domestic interested parties did not provide the Department with any evidence or information in support of their claims.

[15] The domestic interested parties acknowledge that resumption or continuation of subsidization might not be likely if the terminations of subsidy programs are permanent and not replaced. (See the domestic interested parties' substantive response at 15, footnote 5.)

[16] As noted above, the domestic interested parties failed to supply any specific facts with respect to their claim that other or new subsidies will benefit Roldan.

[17] See Stainless Steel Wire Rod From Spain; Termination of Countervailing Duty Administrative Review, 58 FR 39197 (July 22, 1993).

[18] See footnote 1, supra.

[19] See Stainless Steel Wire Rod From Spain; Preliminary Results of Countervailing Duty Administrative Review, 53 FR 9789 (March 25, 1988).

subsidy programs in this sunset review. Moreover, whether the domestic interested parties are making subsidy allegations on products within the purview of the instant review is unclear. Finally, the domestic interested parties have provided no information that would cause us to revisit the final results of our prior administrative reviews, in which the above terminations and the non-usage of grants were found, and to reconsider the legal method by which the KOS eliminated the above subsidy programs.

Nevertheless, despite the KOS's claim that the CAP is expired as of 1982 and the EC's contention that the subsidies countervailed in the original investigation either were terminated or no longer benefit the exporters of the subject merchandise, the Department found that Roldan had an outstanding balance of long-term loans that were extended under the CAP and that Roldan, consequently, was benefitting from the said loan, as late as December 31, 1989, the last period considered by the Department in an administrative review.[20]

Section III.A.4 of the Sunset Policy Bulletin stipulates that in considering a subsidy for which the benefits are allocated over time, the Department normally will determine that the countervailable subsidy will continue to exist when the benefit stream will continue beyond the end of the sunset review regardless of whether the program that gave rise to the long-term benefit continues to exist. In the instant review, Roldan or other respondent parties did not come forth with information which would indicate whether Roldan's long-term loans under the CAP have been fully paid off or whether Roldan is no longer benefitting from the CAP. Hence, the Department is forced to rely on the information contained in the latest administrative review, in which the Department found residual benefits from the CAP still lingering with respect to Roldan, and to determine that Roldan is still benefitting from the eliminated subsidy, the CAP.

In conclusion, because we find that a countervailable program currently is being used (or the benefit stream therefrom continues beyond the end of this sunset review), and respondent interested parties waived their right to participate in this review before the Department, we determine that it is likely that a countervailable subsidy will continue or recur were the order revoked.

[20] See Stainless Steel Wire Rod From Spain; Fnal Results of Countervailing Duty Administrative Review, 55 FR 349 (January 4, 1990).

Net Countervailable Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department went on to clarify that this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or all others rate. (See Sunset Policy Bulletin at section III.B.2.)

The domestic interested parties, citing the Sunset Policy Bulletin, state that the Department should select, as the net countervailable subsidy that is likely to prevail if the order is revoked, the company-specific and all-others rates from the original investigation. (See the domestic interested parties substantive response at 24–25.) In contrast, the respondent interested parties assert that all the countervailing duty rates established at the original investigation were either zero or insignificant and that the only meaningful or significant rate in the investigation was imposed against a particular producer because the producer had not cooperated. Both the KOS and EC stress that the order is 16 years old; therefore, any outstanding benefit streams have long been amortized. Therefore, they argue the rates likely to prevail if the order is revoked would be zero. (See the KOS and EC's July 30, 1999 and July 29, 1999 substantive responses, respectively.)

The Department disagrees with the domestic interested parties' argument concerning the net countervailable subsidy rate that is likely to prevail were the order revoked. The Department normally will choose the rates from the investigation because such rates reflect how companies will act without the discipline of an order in place. (See section III.B.1 of the Sunset Policy Bulletin.) Section III.B.3 of Sunset Policy Bulletin also provides that the Department may make an adjustment with respect to the likely-to-prevail subsidy rate to reflect change(s) in the programs that gave rise to the order. As the Department noted in its administrative reviews and as the KOS indicated in its substantive response, all subsidies pertaining to manufacturing/exporting of the subject merchandise, except cash grants, have been terminated.[21] Also, the KOS stipulates in its substantive response that the CAP was applicable only during the period 1974–1982.

As a result of changes in programs since the imposition of the countervailing duty order, we determine that selecting the net countervailable subsidy rates, as determined in the original investigation, is no longer appropriate. Rather, to reflect these changes in the programs, which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews, we have adjusted the company-specific and all-others countervailing duty rates from the original investigation by subtracting the subsidy rates from programs that have been terminated and that have no existing benefit stream. (See Memos to the File—Calculation of the Likely-to-Prevail Rates.) As a result, the Department will report to the Commission the rates as contained in the Final Results of Review section of this notice.

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic interested parties do not specifically address this issue in their substantive response.

Among the benefits provided by the KOS's countervailable programs, the Department determined that those provided by the PCEC–OC and PCEC–PF were contingent upon export performance;[22] therefore, both programs fall within the purview of Article 3(a). Since the CAP and government-directed

[21] See footnote 6, supra. The Department, in its administrative reviews, determined that PCEC–OC and PCEC–PF had been terminated with no residual benefits. Moreover, the Department found that the Cash Grant program was never used by Roldan during the investigation and throughout the existence of the order.

[22] See Stainless Steel Wire Rod From Spain: Preliminary Results of Countervailing Duty Administrative Review, 53 FR 9789 (March 25, 1988). The maximum amount of loan a company can acquire was expressed in terms of the percentage of the company's exports in previous years. Also, see footnote 1.

grants are not contingent upon exports, these programs seem to fall outside the definition of export subsidies under Article 3(a) of the Subsidies Agreement. However, the Department does not have enough information to calculate or determine whether the total ad valorem subsidization of the subject merchandise from the CAP/government-directed grants exceeds five-percent or whether the CAP/government-directed grants were meant to cover operating losses or to be used as direct forgiveness of debt. Nor does the Department believe such calculation or determination would be appropriate in the course of a sunset review. Instead, we are providing the Commission with the following program descriptions.

The CA

Under the Concerted Action Program established by Royal Decree 669/74, the Spanish government directs banks to make long-term loans to steel companies at below market rates. Because loans under the CAP are provided to a specific industry at rates and terms inconsistent with commercial consideration, the Department determined that this loan confers a countervailable domestic subsidy.[23]

Government-directed grants

Although initially the disbursements were characterized as zero interest loans, the Department found that this is an untied cash grant meant to keep some companies in operation until a reconversion plan could be implemented. Thus, the Department determined that the disbursements were government-directed grants and countervailable subsidies.[24]

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/exporters	Margin (percent)
Roldan, S.A.	0.19
S.A. Echevarria	13.55
Forjas Alavesas, S.A.	0.21
Olarra	[25] 0.00
All others	13.55

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2838 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

[23] See id.

[24] See footnote 1, supra.

[25] See footnote 4, supra.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Stainless Steel Wire Rod From Italy: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On October 28, 1999, in response to a request from respondents, the Department of Commerce initiated an administrative review of the countervailing duty order on stainless steel wire rod from Italy. The review covers the period January 1, 1998 through December 31, 1998. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the respondents have withdrawn their request for review.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Enforcement, Group II, Office VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION: On September 30, 1999, the Department received a request for an administrative review of the countervailing duty order on stainless steel wire rod from Italy from Accaiaerie Valbruna S.r.l. and Accaiaerie di Bolzano SpA (respondents), for the period January 1, 1998 through December 31, 1998. On November 4, 1999, the Department published in the **Federal Register** (64 FR 60161) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review. On November 15, 1999, respondents withdrew their request for review.

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. In this case, respondents have withdrawn their request within the 90 day period. No other interested party requested a review, and we have received no other submissions regarding respondents' withdrawal of its request for review. Therefore, we are rescinding this review of the countervailing duty order on stainless steel wire rod from Italy covering the period January 1, 1998, through December 31, 1998.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: January 27, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–2844 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–807]

Final Results of Expedited Sunset Review: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Sulfanilic Acid from India.

SUMMARY: On October 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on sulfanilic acid from India (64 FR 53320) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and an inadequate response (in this case no response) from respondent interested parties, the Department decided to conduct an expedited (120-day) review. As a result of this review, the Department finds that revocation of the countervailing duty order would be

likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by this order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 2921.42.22 and 2921.42.24.20.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

This review covers imports from all manufacturers and exporters of sulfanilic acid from India.

History of the Order

The Department published its final affirmative countervailing duty determination on sulfanilic acid from India in the **Federal Register** on January 8, 1993 (58 FR 3259). In the final determination the Department found an estimated net subsidy, for all manufacturers/producers/exporters of sulfanilic acid from India, of 43.71 percent *ad valorem* based on four programs: (1) 2.17 percent under the Preferential Export Financing Through Packing Credits; (2) 1.69 percent under the Preferential Post-Shipment Financing; (3) 6.13 percent under the Import Tax Deduction for Exporters (Section 80HHC); and (4) 33.72 percent under the Import Duty Exemptions Available Through Advance Licenses. Receipt of benefits under each of these programs was contingent upon exports.

On March 2, 1993, the Department issued the countervailing duty order, utilizing the subsidy rates found in the original investigation.[2] Since the issuance of the order, the Department has not conducted an administrative review.

Background

On October 1, 1999, the Department initiated a sunset review of the countervailing duty order on sulfanilic acid from India (64 FR 53320), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of National Ford Chemical Company ("NFC") on October 18, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, NFC claimed interested party status as a U.S. manufacturer whose workers are engaged in the production of domestic like products. Moreover, NFC claims that it was a petitioner in the original investigation. The Department received a complete substantive response from NFC by November 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to a conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, NFC's comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action (the "SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of

[1] HTSUS subheadings for sulfanilic acid and sodium salts of sulfanilic acid have changed since the issuance of this order. The petitioner asserts that the HTSUS subheading for sulfanilic acid was 2921.42.24.20 in 1993 and has remained at 2921.42.22 since 1994.

[2] See Countervailing Duty Order: Sulfanilic Acid From India, 58 FR 12026 (March 2, 1993).

likelihood will be made on an order-wide basis (see section III.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (see section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (see section III.A.3.b of the Sunset Policy Bulletin).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[3] In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, NFC argues that revocation of the countervailing duty order on sulfanilic acid from India will result in the continuation or recurrence of a countervailable subsidy. Citing the SAA, at 888, NFC asserts that continuation, or temporary or partial termination, of a subsidy program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary (see November 1, 1999, Substantive Response of NFC regarding sulfanilic acid from India at 6). NFC asserts that there is no indication that the Indian government's subsidy programs have been modified or eliminated (see November 1, 1999, Substantive Response of NFC regarding sulfanilic acid from India at 8). NFC argues as support the fact that the order has never been subject to an administrative review, nor has any evidence been submitted to the Department demonstrating the termination of these programs that conferred countervailable subsidies. Therefore, NFC adds, it is reasonable to assume that these programs continue to exist and are utilized. Moreover, NFC notes that section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review.

As stated above, the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. Therefore, because countervailable programs continue to exist and be used, the foreign government and other respondent interested parties waived their right to participate in this review before the Department, and absent argument to the contrary, the Department concludes that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[4]

Net Countervailable Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[5]

NFC, citing the SAA, notes that the Administration intends that Commerce normally will select the rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place (see November 1, 1999, Substantive Response of NFC regarding sulfanilic acid from India at 8). Therefore, NFC argues that the Department should determine that the net countervailable subsidy likely to prevail is 43.71 percent, the rate set forth in the original investigation.

As noted above, the Department has not conducted an administrative review of this order. Thus, we have never found that substantive changes have been made to any of the Indian subsidy programs. Therefore, absent any argument or evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 43.71 percent. This rate is for all producers and exporters of the subject merchandise from India.

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the Subsidies Agreement. NFC did not address this issue in its substantive response of November 1, 1999.

Because the receipt of benefits provided by the Government of India under all four of the programs are contingent on exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. Therefore, the Department is providing the Commission with the following program descriptions.

1. Preferential Export Financing Through Packing Credits

The Reserve Bank of India, through commercial banks, provides "packing" credits or pre-shipment loans to exporters. With these pre-shipment loans, exporters may purchase raw materials to produce goods for export based on the presentation of a confirmed purchase order. In general, the pre-shipment loans are granted for a period of up to 180 days. Because only exporters are eligible for these pre-shipment loans, they are countervailable to the extent that they are provided at preferential rates.

2. Preferential Post-Shipment Financing

The Reserve Bank of India, through commercial banks, provides post-

[3] See 19 CFR 351.218(d)(2)(iv).

[4] See 19 CFR 351.218(d)(2)(iv).

[5] See section III.B.3 of the Sunset Policy Bulletin.

shipment financing loans to exporters. The purpose of post-shipment financing is to enable exporters to extend favorable payment terms such as deferred payment, to the foreign purchaser. Post-shipment financing loans may not exceed a period of 180 days. Because only exporters are eligible for the post-shipment loans, they are countervailable to the extent that they are provided at preferential interest rates.

3. Import Tax Deduction for Exporters (Section 80HHC)

For tax returns filed during the period of investigation, the Indian government allowed exporters to claim a tax deduction related to their export sales. This tax deduction was calculated by dividing export sales by total sales and then multiplying the resulting figure by the exporter's profit as shown in the tax return. This amount is then deducted from taxable profits. Because this program is only available to exporters, we determine it to be countervailable.

4. Import Duty Exemptions Available Through Advance Licenses

Advance licenses are available to exporters, to enable them to import raw material inputs used in the production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced. We consider the use of the advance licenses to be equivalent to a duty drawback program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. However, where imported inputs are not physically incorporated into the exported product, we consider the duty savings afforded by the advance license to be a countervailable export subsidy.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/exporter	Margin (percent)
All manufacturers/producers/exporters	47.31

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2840 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011100F]

Marine Mammals; File No. 738–1454

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Ms. Carole Conway, University of California, Davis, CA 95616–8521, has requested an amendment to scientific research Permit No. 738–1454.

DATES: Written or telefaxed comments must be received on or before March 9, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 090802–4213.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 738–1454, issued on January 13, 1998(63 FR 38391) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 739–1454 authorizes the permit holder to import blue whale samples from Canada. The permit holder now requests authorization to import samples from any where blue whales are found. Currently, samples are available in Mexico. No additional samples above that already authorized is requested.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 1, 2000.

Gene Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2810 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010700A]

Marine Mammals; Scientific Research Permit (PHF 924–1484–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Marsha Green, Ph.D., Psychology Department, Albright College, P.O. Box 15234, Reading, PA 19612–5234, has been issued a permit to take (*i.e.*, harass) humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027) and

Pacific Islands Area Office, National Marine Fisheries Service, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu HI 96814–4700 (808/973–2935).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 21, 1998, notice was published in the **Federal Register** (63 FR 70395) that a request for a scientific research permit to take (i.e., harass) North Pacific humpback whales during the course of vessel effects studies, had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222 - 226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 2, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2811 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

February 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62657, published on November 17, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on February 8, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Other Specific Limits	
331/631	2,433,678 dozen pairs.
351/651	301,416 dozen.
638/639	557,587 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–2825 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement and New Certification Stamp for Outward Processed Goods for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania; Amendment

February 2, 2000.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (64 FR 69744), insert the following sentence on page 69746, 1st column, 6th paragraph, line 20, right above "**General Provisions**": "Any shipment which is declared for the Outward Processing Program but found not to qualify may be

permanently denied entry into the United States."

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–2824 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of Cancellation of Advisory Committee Meeting.

SUMMARY: The Defense Science Board was scheduled to meet in closed session at the Pentagon, Arlington, VA, on January 26–27, 2000. However, due to severe weather conditions, the meeting was cancelled and has not been rescheduled. Notice of this meeting was published in the **Federal Register** on November 24, 1999 (Volume 64, Number 226, Page 66173).

Dated: February 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2816 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: March 14, 2000 from 1000 to 1700 and March 15, 2000 from 0830 to 1210.

Place: 1777 North Kent Street, 14th Floor, Arlington, VA 22209.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: February 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–2815 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 9, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–37a DAPE

SYSTEM NAME:

Special Review Board Appeal Case Summary File (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Office of the Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained by the Special Review Board for 6 years, then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300."

* * * * *

A0600–37a DAPE

SYSTEM NAME:

Special Review Board Appeal Case Summary File.

SYSTEM LOCATION:

Office of the Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army officer and enlisted personnel who have submitted substantive, as opposed to administrative, appeal of Officer Evaluation Reports, Enlisted Evaluation Reports, Academic Evaluation Reports, and cases referred for promotion reconsideration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification data on individual, date of appeal, dates of contested OER/EER/AER period, and supporting documentation; promotion reconsideration referrals including information provided by the promotion board and relevant documents from individual's OMPF, names of voting SRB member, names of persons contacted by SRB, summary of evidence considered, discussion,

recommendations, conclusions, final determination of appeal, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To review and adjudicate appeals of officer and noncommissioned officer ratings, academic ratings, and promotion board reconsideration cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated authorized persons in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records are retained by the Special Review Board for 6 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves contained in this system should address written inquiries to the Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE-MPC-S), Washington, DC 20310–0300.

Individuals should furnish full name, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should write to the Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.

Individuals should furnish full name, current address and telephone number. For personal visits, individuals must provide acceptable identification such as military identification card.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0621–1 DAPE

SYSTEM NAME:

Army Continuing Education System (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Education Centers at Army installations; centralized automated education registry transcript system is maintained at Fort Leavenworth, KS. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.'

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Change second paragraph to read 'Information may be disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records and computer printouts; discs and magnetic tapes.'

* * * * *

A0621–1 DAPE

SYSTEM NAME:

Army Continuing Education System.

SYSTEM LOCATION:

Education Centers at Army installations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. A centralized automated education registry transcript system is maintained at Fort Leavenworth, KS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel on active duty, Army Reserves and National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, rank, Social Security Number, Military Occupational Specialty, educational and military training achievements, course attendance/completion records; tuition assistance documents; counseling records; academic and diagnostic tests which measure educational level and/or needs including recommendations of American Council on Education (ACE). A composite of course descriptors and scores is recorded in a transcript registry for each soldier who volunteers for educational courses and/or programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 4302; Army Regulation 621–5, Army Continuing Education System and E.O. 9397 (SSN).

PURPOSE(S):

To determine academic/vocational level of education; to provide educational guidance and counseling; to enhance soldiers' military effectiveness, prepare them for greater responsibility in the Armed Forces and for productive post-service careers; to provide for systematic recording of all educational accomplishments of Army members; and to render statistical and managerial reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records and computer printouts; discs and magnetic tapes.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are protected from unauthorized disclosure by storage in areas accessible only to authorized personnel within buildings secured by locks or guards. Automated records may be called up by terminals supported by remote and dedicated lines. Each terminal has a physical key lock and is identified by its own physical profile containing user ID, user password which are confidential. Software prohibits entry to files by other than designated authorized personnel.

RETENTION AND DISPOSAL:

Automated data are erased after selected information is captured for managerial reports and course/score data transferred to individual's DA Form 669 which becomes part of the Military personnel Records Jacket. Automated data in the registry transcript system are retained during the soldier's tenure and for 2 additional years following separation after which they are converted to microfiche and retained for 40 years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–MPO, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300; or the installation's Privacy Act Officer.

RECORD ACCESS PROCEDURES:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300; or the installation's Privacy Act Officer.

For verification purposes, individual should provide full name, rank, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

School transcripts, Education Services Officer/Counselor, the individual, test results, SIDPERS, Enlisted Master File.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–2819 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 9, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060-5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0340 JDMSS

SYSTEM NAME:

HQDA Correspondence and Control/ Central Files System *(February 22, 1993, 58 FR 10002).*

CHANGES:

SYSTEM IDENTIFIER:

Change to 'A0025 JDIM'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (until NARA disposition is approved, treat as permanent).'

STORAGE:

Delete entry and replace with 'Paper records and computer database.'

RETRIEVABILITY:

Delete entry and replace with 'Paper records are retrieved by date of correspondence; electronic records are retrieved by name, date of correspondence, subject natter, or key word (which may include Social Security Number and date of birth).'

SAFEGUARDS:

Delete entry and replace with 'Records are controlled; access to information from specified documents if restricted to persons who have been designated by their agency to have official need for the information in the performance of their duties. File areas are protected by electronic surveillance systems with combination lock doors. Users of the system receive training designed to preclude misuse or unauthorized disclosure of information.'

* * * * *

A0340 JDMSS

SYSTEM NAME:

HQDA Correspondence and Control/ Central Files System.

SYSTEM LOCATION:

Office, Secretary of the Army; Office, Chief of Staff; Headquarters, Department of the Army Staff agencies. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who either initiated, or are the subject of, communications with the Headquarters, Department of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries, with referrals and responses, and other communications pertaining to any function or subject involving or of interest to Headquarters, Department of the Army level. Records may include, but are not restricted to, complaints, appeals, grievances, investigations, alleged improprieties, personnel actions, medical reports,

intelligence, and similar matters. They may be either specific or general in nature and may include such personal information as an individual's name, Social Security Number, date and/or place of birth, description of events or incidents of a sensitive or privileged nature, commendatory or unfavorable data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–1, The Army Information Resources Management Program; and E.O. 9397 (SSN).

PURPOSE(S):

To control correspondence, document actions taken, and locate records for reference purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: Disclosure of information from documents or records which properly become part of another system of records will be as authorized in the 'routine uses' portion of that system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer database.

RETRIEVABILITY:

Paper records are retrieved by date of correspondence; electronic records are retrieved by name, date of correspondence, subject natter, or key word (which may include Social Security Number and date of birth).

SAFEGUARDS:

Records are controlled; access to information from specified documents if restricted to persons who have been designated by their agency to have official need for the information in the performance of their duties. File areas are protected by electronic surveillance systems with combination lock doors. Users of the system receive training designed to preclude misuse or unauthorized disclosure of information

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Correspondence, Office of the Secretary of the Army, 101 Army Pentagon, Washington, DC 20310–0101.

Chief of Staff, 200 Army Pentagon, Washington, DC 20310–0200.

Commander, Corps of Engineers, 200 Massachusetts Avenue, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the system manager having functional responsibility or interest.

For verification purposes, the individual should provide full name, current address, and Social Security Number (if applicable), and the request must be signed. Inquiry should include timeframe of correspondence, subject matter, and details that will assist in identifying the records sought.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the system manager having functional responsibility or interest.

For verification purposes, the individual should provide full name, current address, and Social Security Number (if applicable), and the request must be signed. Inquiry should include timeframe of correspondence, subject matter, and details that will assist in identifying the records sought.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; correspondence emanating within the Army Secretariat, the Office, Chief of Staff, and Army Staff agencies; and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–2820 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5

U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Department of Veterans Affairs (VA) and DoD that their records are being matched by computer. The record subjects are VA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by VA.

DATES: This proposed action will become effective March 9, 2000, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at telephone (703) 607-2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that VA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between VA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Management Center, U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on January 21, 2000, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. PARTICIPATING AGENCIES:

Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH:

Upon the execution of this agreement, VA will provide and disclose debtor records to DMDC to identify and locate any Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by VA. VA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by VA of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to OPM in the case of retired non-postal civilian employees, to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1–105.5, Federal Claims Collection Standards; 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Government Employees (OPM); 38 CFR 1.980–1.994 (VA).

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

VA will use personal data from the following Privacy Act record system for the match: Accounts Receivable Records-VA, 88VA244, published in the **Federal Register** at 63 FR 16864 on April 6, 1998.

DoD will use personnel data from the record system identified as S322.11 DMDC, entitled "Federal Creditor Agency Debt Collection Data Base" last published in the **Federal Register** at 64 FR 42101 on August 3, 1999.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

VA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs VA administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the VA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DoD, OPM, OMB and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members, both active and retired. The "hits" or matches will be furnished to VA. VA is responsible for verifying and

determining that the data on the DMDC electronic reply tape file are consistent with VA's source file and for resolving any discrepancies or inconsistencies on an individual basis. VA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by VA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 200,000 delinquent debtors.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

DMDC will match the SSNs on the VA tape by computer against the DMDC database. Matching records, "hits" based on SSN's, will produce data elements of the individual's name, SSN, military service or employing agency, and current work or home address.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time on a six month basis. By agreement between VA and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 00–2818 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Developing Home Port Facilities for Three NIMITZ–Class Aircraft Carriers in Support of the U.S. Pacific Fleet

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational, environmental, and cost implications of home port facilities for NIMITZ-class nuclear-powered aircraft carriers ("CVNs") in the Pacific Fleet, announces its decision to: (1) construct facilities and infrastructure required to home port two additional CVNs at Naval Air Station North Island (NASNI), Coronado, CA; (2) upgrade existing CVN support facilities at Puget Sound Naval Shipyard (PSNS), Bremerton, WA; and (3) retain Naval Station (NAVSTA) Everett, WA, as a CVN home port.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

Background

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c), the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, and 40 CFR 93, the General Conformity Rule of the Clean Air Act, the Department of the Navy (DON) announces its decision regarding home port facilities and infrastructure for CVNs in support of the U.S. Pacific Fleet.

First, as conventionally-powered aircraft carriers (CVs) reach the end of their service life and are replaced by nuclear-powered carriers (CVNs), the Navy has a need to create the capacity to home port these new CVN assets. Compared to the CV, the CVN is a newer class of aircraft carrier that has a wider beam, a deeper draft, and different shore maintenance and support requirements. Consequently, a CVN home port requires different shore infrastructure than that provided for a CV. The U.S. Pacific Fleet is preparing for the replacement of two CVs assigned within the U.S. Pacific Fleet area of responsibility (AOR) with two CVNs. Therefore, there is a need to select locations within the Pacific Fleet AOR for the construction of facilities and infrastructure necessary to create the capacity to home port these CVNs.

Second, changes in CVN home port pier, logistics support area, and utility infrastructure standards for CVN home ports created the need to decide whether to upgrade the existing CVN home port facilities at PSNS to meet those standards or maintain the existing facilities even though they did not meet current standards.

Third, development of Planned Incremental Availability (PIA) maintenance for CVNs created the need to re-evaluate the viability of retaining NAVSTA Everette as a CVN home port to determine if the facilities and infrastructure could efficiently support a CVN while undergoing a PIA maintenance program without adversely affecting crew quality of life.

The DON undertook the planning effort for these decisions on December 3, 1996, when it published a Notice of Intent (NOI) to prepare an Environmental Impact Statement in the **Federal Register**. A public scoping meeting was held in each of the following locations: Bremerton, Washington; Everett, Washington; Pearl City, Hawaii; and Coronado, California. A Notice of Availability (NOA) for the Draft EIS (DEIS) was published in the **Federal Register** on August 28, 1998. Public hearings were held on the DEIS in the same four locations as the scoping meetings and in San Diego, CA. Approximately 317 individuals, agencies, and organizations submitted comments on the DEIS during the 75 day public comment period. All oral and written comments were considered in the preparation of the Final EIS (FEIS). The NOA for the FEIS was published in the **Federal Register** on July 9, 1999. In addition, public notices and news releases noting the availability of the FEIS and draft Final Clean Air Act (CAA) Conformity Determination were published in local and regional newspapers beginning on July 10, 1999. The DON received approximately 60 public comment letters on the FEIS during a 60-day public review period.

Alternatives

Four areas within the Pacific Fleet AOR were considered as feasible locations for the development of CVN home port capacity. The four areas considered were: Naval Air Station North Island (NASNI) Coronado, CA; Puget Sound Naval Shipyard (PSNS) Bremerton, WA; Naval Station (NAVSTA) Everett, WA; and Pearl Harbor Naval Shipyard (PHNSY) Pearl Harbor, HI. Using these four locations, six alternative configurations for creating the necessary CVN home port capacity, including a no construction alternative, were developed and analyzed. Each alternative was evaluated and compared against the

others in terms of: operational, logistical, and personnel requirements; environmental impacts; and facility and infrastructure life cycle costs.

The EIS contained a commitment on the part of the DON to carefully review information collected on crew quality of life (QOL) and maintenance during USS ABRAHAM LINCOLN's first PIA at PSNS. USS ABRAHAM LINCOLN's PIA was completed in October 1999. Information collected concerning QOL demonstrated that commuting from home port at NAVSTA Everett to PSNS did not significantly impact the crew of USS ABRAHAM LINCOLN. The results of this PIA revealed the quality of maintenance met expectations, the maintenance schedule was achieved, the increase in overall cost to perform the maintenance away from home port was acceptable, and the PERSTEMPO/OPTEMPO implications of maintaining NAVSTA Everett as a home port were acceptable.

This additional information was not available at the time the FEIS was published, but was included in DON's evaluation of whether to keep existing home port facilities at NAVSTA Everett or develop home port facilities at PSNS. The availability of this new information does not generate a need for additional environmental analysis. The analysis of the six alternatives considered in the EIS process thoroughly addressed the environmental impacts associated with a CVN remaining at NAVSTA Everett and those associated with creating additional home port capacity at PSNS.

Based upon my review of the comparative analysis of alternatives and public comments received during the NEPA process, I have selected Alternative Two, which was identified as the preferred Alternative in the DEIS and FEIS, as the DON action for developing CVN home port capacity. Alternative Two will create home port capacity for two additional CVNs at NASNI, bringing the total CVN home port capacity at NASNI to three. Under Alternative Two the CVN home port facilities at PSNS will be upgraded to meet current standards and NAVSTA Everett will remain a CVN home port.

Implementation of Alternative Two at NASNI requires that existing Pier J/K be demolished and replaced by a wharf meeting the berthing requirements of a CVN. Approximately 582,000 cubic yards (cy) of sediment will be dredged to meet depth requirements. Most of the material will be deposited at an in-bay location south of the Naval Amphibious Base (NAB) to create an NAB Habitat Enhancement Area, and some of the material will be used as fill for the wharf. A 1.5 to 2.5 acre intertidal habitat will be created from an upland site to compensate for intertidal/subtidal habitat filled as part of the wharf construction. Berthing for a second additional CVN will be along the section of the existing quay wall that currently serves as the transient berth for CVNs not homeported at NASNI. No dredging is required to convert the transient berth to a permanent berth for the second additional CVN. Utility upgrades are required, as is additional fencing.

Implementation of Alternative Two at PSNS requires that Pier D be removed and replaced by a new pier that meets current berthing criteria for a CVN home port. Dredging of approximately 425,000 cy will be accomplished at Pier D and its turning basin and also at two other CVN maintenance berths and their associated turning basins. The dredged material determined to be suitable for unconfined aquatic disposal will be deposited at a site in Elliot Bay designated under the Puget Sound Dredge Disposal Analysis Program. Material unsuitable for unconfined aquatic disposal will be deposited at an appropriately permitted upland landfill or in one of three Confined Disposal Facilities/Confined Aquatic Disposal sites shown in the FEIS.

Implementation of Alternative Two at NAVSTA Everett requires no action.

Alternative Six (the no construction alternative) is the environmentally preferred alternative because it involves the least disturbance of the natural environment. While environmentally preferable, this alternative would overtax utility, logistical, and personnel support infrastructures at NASNI and PSNS. Consequently, Alternative Six places an unacceptable constraint on the mission capability of the U.S. Pacific Fleet from an operational, training, and personnel perspective.

Environmental Impacts and Mitigation

The DON analyzed the potential impacts of the selected action in fifteen environmental resource areas: geology; topography and soils; terrestrial hydrology and water quality; marine water quality; sediment quality; marine biology; transportation; air quality; noise; aesthetics; cultural resources; general services/access; health and safety; utilities; and environmental justice. This ROD summarizes the potentially significant, but mitigable, impacts associated with Alternative Two, the DON's selected alternative.

Dredging and pier replacement at NASNI will cause the loss of 1.5 acres of intertidal and subtidal habitat. Impacts to habitat will be mitigated by the construction of 1.5 to 2.5 acres of intertidal habitat at a nearby upland site, and creation of additional snowy plover nesting habitat. The potential loss of eelgrass will be monitored through surveys before and after construction. If the post-construction surveys determine that a loss of eelgrass has occurred, the Navy will provide mitigation for that loss. The amount of eel grass lost will be applied against the Navy's north-central eelgrass mitigation bank according to the 1992 Southern California Eelgrass Mitigation Policy Guidelines, as amended.

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service led to the conclusion that dredging and pier construction at PSNS could impact threatened and endangered species of salmon during their out-migration season. In order to mitigate impacts on salmon migration, the Navy will avoid dredging and marine construction during established salmon migration windows. Impacts from construction of a confined disposal facility (CDF), if such a facility is required by the terms of the CWA Section 404 permit obtained for dredging and marine construction activities, will be offset by making the area occupied by the CDF a shallow water habitat area.

Overall impacts on the coastal resources in California were addressed in the coastal consistency determination (CCD) submitted to the California Coastal Commission (CCC) by DON. On December 8, 1999, the California Coastal Commission unanimously concurred that the proposed development of home port capacity at NASNI was consistent to the maximum extent practicable with the California Coastal Management Program. In public hearings on the DON consistency determination held on the same day, DON agreed to continue discussions with the CCC staff about emergency planning issues, thermal discharges from CVNs, and Best Management Practices (BMPs) for stormwater runoff control. DON agreed to discuss these three issues further with the CCC staff, and to present the results to the Commission at another public hearing on or before April 2000. DON also agreed that, if the DON Record of Decision for the development of CVN home port facilities required pier construction at NASNI, no construction work would begin at NASNI before presentation of these results to the Commission on or before April 2000. All construction activities and the operation of facilities necessary to implement Alternative Two will be undertaken in a manner consistent with the terms and conditions of required permits.

Responses to Comments on the FEIS

The DON received comments on the FEIS from elected officials, federal, state, and local government agencies, citizen's groups, and individuals. Most of the issues raised in the comments had already been addressed in the FEIS in response to comments received on the DEIS. New issues raised in comments received on the FEIS concerning those aspects of the proposed action at NASNI are addressed below. No new issues were raised in comments received concerning those aspects of the proposed action at PSNS, NAVSTA Everett or NAVSTA Pearl Harbor.

Commentors noted that the FEIS did not discuss the potential for the proposed project to exacerbate water quality problems in San Diego Bay associated with areas identified under CWA, Section 303(d). Section 303(d) requires states to list those areas for which water quality standards cannot be implemented. As none of the sites in San Diego Bay listed under Section 303(d) are near enough to the proposed pier and mitigation sites to be affected by short term construction and dredging activities, these activities will not further hinder the implementation of water quality standards at any of the sites listed under the CWA.

Commentors noted that the cumulative impact section did not address traffic increases in the City of Coronado they anticipated would accompany the upgraded commissary and exchange facilities proposed for NASNI. The Navy does not anticipate that upgrading commissary and exchange facilities at NASNI will cause any appreciable increase in traffic. Commissary and exchange facilities are already present at NASNI. Changes to those facilities are not expected to attract new users. The pool of eligible patrons in the San Diego area is relatively stable. Patrons are expected to continue to shop at the larger, more conveniently located facilities at Naval Station San Diego, Marine Corps Air Station Miramar, and Camp Pendleton.

Commentors stated that the FEIS failed to analyze the increased probability that invasive species would be introduced into San Diego Bay through ballast water discharges from CVNSs homeported at NASNI. Trim and list on CVNs are maintained through a closed system of freshwater tanks. Unlike conventionally-powered ships, no ballast water is taken from or discharged to surrounding waters. Therefore there is no avenue by which invasive species can be introduced into San Diego Bay from CVN ballast water.

It was clear from some comments received on the FEIS that concern still exists about the Navy's adherence to the NEPA process, the marine environment in San Diego Bay, traffic within the City of Coronado, and nuclear propulsion aspects of the addition of more home port capacity for CVNs in the San Diego area. Even though these issues were specifically addressed in the FEIS and there is no requirement that the DON address them further in the ROD, a brief discussion is included here to demonstrate that these concerns have been carefully considered.

Some commentors suggested that regulations implementing NEPA required Navy to reissue the DEIS due to changes included in the FEIS. The DON carefully reviewed the differences between the DEIS and FEIS and concluded that reissuing the DEIS was not required. The NEPA process is an iterative one, designed to produce an FEIS that reflects change, clarification, and refinement of the DEIS based upon comments received from the public. No changes included in the FEIS were so substantial as to require republication of the DEIS.

Some commentors sought more information on the potential loss of eelgrass and soil contamination levels at the upland mitigation site on North Island. In the DEIS, the best available information was used to predict impacts to eelgrass and pollutant levels at the mitigation site. This information was subsequently validated by additional data collected and analyzed in conjunction with the DON's pending application for a CWA Section 404 permit.

Some commentors sought a new discussion about copper leaching into San Diego Bay from anti-fouling paint on ship hulls. The Navy calculated the amount of copper expected to leach from anti-fouling paint on ship hulls and concluded in the FEIS that the net difference from replacement of CVs by CVNs will not be significant. Also, the number of Navy ships berthed in San Diego has decreased. Therefore, there would be no cumulative increase in the amount of copper leaching into the bay.

The City of Coronado and a number of its citizens expressed concern that creating the home port capacity for three CVNs at NASNI will result in major increases in commuter traffic along Coronado streets. The DON took a hard look at the traffic impact associated with creating home port capacity for two additional CVNs. The best available historical data on the days spent in port by CVs homeported at NASNI was analyzed and future days in port by CVNs were projected based upon anticipated training and deployment requirements. These historical data and projections suggest that the decision to create home port capacity for two additional CVNs at NASNI will not cause significant traffic impacts.

Historically, even when three aircraft carriers were assigned NASNI as a home port, all three of those aircraft carriers were present in port at the same time only an average of thirteen days per year. Based upon training requirements, maintenance schedules, and projected operational tempo, the implementation of Alternative Two is not expected to increase the average number of days a year three CVNs will be present at their NASNI home port. While traffic levels will increase for those brief periods when three CVNs assigned to NASNI are present, overall traffic impacts will be less than significant. Nevertheless, the DON will use mitigation measures to reduce the level of traffic during those infrequent periods when three CVNs assigned to NASNI are simultaneously in port. Mitigation may include measures such as staggering work hours, encouraging carpools and vanpools, and subsidizing the use of public transportation by military personnel and civilian employees. The DON will monitor the effectiveness of these traffic mitigation measures. If the mitigation measures are not successful and traffic associated with the presence of a third homeported CVN creates a significant adverse effect on traffic conditions in Coronado, DON will develop additional mitigation measures.

Several commentors from the San Diego area expressed concern that nuclear propulsion issues such as reactor accident analysis, emergency planning, perimeter monitoring, distribution of potassium iodide, and notification of releases were not thoroughly considered in the FEIS process. The FEIS discusses, among other points, how NIMITZ Class reactor designs have received independent review by the Nuclear Regulatory Commission and the Advisory Committee on Reactor Safeguards, and that the Navy has plans and procedures in place for all types of emergencies that could be associated with Naval Nuclear Propulsion Program (NNPP) operations. These plans and procedures contain classified and sensitive military information that cannot be released to the public. In recent meetings among DON, State, County, and local emergency response officials, the consensus was reached that existing DON, State, County, and local emergency plans are adequate in the highly unlikely event of a radiological emergency.

I thoroughly reviewed the entire discussion of nuclear propulsion radiologcal issues in the EIS, including classified information not releasable to the public. I am convinced that there are no significant radiological impacts associated with creating and utilizing home port capacity at any of the three locations affected by this decision. As there are no significant radiological impacts, mitigation measures such as installation of a perimeter monitoring system or disputing of potassium iodide are not warranted.

Conclusion

On behalf of the Department of Navy, I have decided to implement Alternative Two, as set out in the FEIS, for development of home port capacity for CVNs within the U.S. Pacific Fleet AOR.

In selecting where to create home port capacity for the two CVNs programmed to replace existing CV assets within the U.S. Pacific Fleet, I considered how the development of home port capacity as set out in each alternative analyzed in the EIS would affect: (1) Operations and training, crew quality of life, and the CVN maintenance program; (2) the environment; and (3) facility and infrastructure life cycle costs. I took a hard look at the environmental impacts analyzed in the EIS and gave careful consideration to the comments received on the DEIS and FEIS.

After weighing all of these factors, I have determined that Alternative Two, the preferred alternative in the FEIS, best serves the interests of the DON while keeping environmental impacts at a less than significant level. Alternative Two satisfies the operational, training, and maintenance requirements of the Pacific Fleet, provides acceptable quality of life for Navy sailors and their families, causes no significant environmental impacts, and entails manageable facility and infrastructure costs.

Dated: January 28, 2000.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 00–2831 Filed 2–7–00; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Virotek, LLC

AGENCY: Department of the Navy.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Virotek, LLC, a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent No. 6,015,681 issued 18 January 2000, and its PCT serial No. 96/12135, filed 12 Dec 1996, entitled "Rapid Immunoassay for Cariogenic Baceria"; and U.S. Patent Serial No. 90/44214, filed on 3 Aug 1999 and its PCT serial No. 99/10482 filed on 3 Aug 1999, entitled "Rapid Immunoassay to Detect Infection with Mycobacterium tuberculosis" in the field of Rapid, Hand-held Salivary Diagnostics for Streptococcus mutans, lactobacillus and Mycobacterium tuberculosis.

DATE: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 10, 2000. Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 8901 Wisconsin Ave, Bethesda, MD 20889–5607, telephone (301) 319–7428.

FOR FURTHER INFORMATION CONTACT: CDR Charles Schlagel, MSC, USN, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Avenue, Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: January 27, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–2728 Filed 2–7–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend six systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on March 9, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend six systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: February 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070-1

SYSTEM NAME:

JAG Corps Officer Personnel Information *(February 22, 1993, 58 FR 10694).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In paragraph 2, delete 'a semi-annual' and replace with 'an annual'.

* * * * *

N01070-1

SYSTEM NAME:

JAG Corps Officer Personnel Information.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Officers in the Judge Advocate General's Corps, Law Education and Excess Leave Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, designator, date of birth, Social Security Number, date of rank, pay entry base data, active duty service date, active commission base date, year and month of graduation from Naval Justice School, service date, lineal number, year group, current billet, future billets that are finalized, sub-specialty code, number of primary and secondary dependents, spouse's name, projected loss date and reason for loss, projected rotation date, law school and year of graduation from law school, state bar membership and year admitted, officer's preference for duty assignment and postgraduate education.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397 (SSN).

PURPOSE(S):

To manage the officers of the Navy JAG Corps, as the Judge Advocate General is statutorily required to make recommendation on the assignment of all active duty JAG Corps officers; to determine qualifications of an officer to receive a JAG Corps designation and to be certified as a trial or defense counsel; to determine the rotation dates and release from active duty dates of JAG Corps officers as well as the date new officers will be available for duty; to prepare JAG Corps strength plans for submission to OPNAV; and to obtain an officer's preference for duty assignment as well as eligibility for consideration for postgraduate education and overseas assignments. Certain information is promulgated to all active duty JAG Corps officers in a semi-annual publication known as the Directory of Navy Judge Advocates. The information is promulgated in the directory for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Certain information (not including Social Security Number and date of birth) is promulgated to active-duty JAG Corps officers in an annual publication known as the Directory of Navy Judge Advocates. The information is promulgated for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation and as a social roster for official and nonofficial functions.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is maintained on personal computers and paper records filed in file folders in storage devices.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Data is maintained on personal computers and paper records filed in file folders in storage devices.

RETENTION AND DISPOSAL:

Upon release from active duty, records are kept three years and then destroyed. Upon retirement from active duty, records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Code 61), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066. Personnel visits may be made to the JAG Personnel Office, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; orders to active duty and subsequent transfer orders; and computer strips provided by the Navy Personnel Command on all active duty officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01301-2

SYSTEM NAME:

Naval Officer Development and Distribution Support System *(February 22, 1993, 58 FR 10712).*

CHANGES:

* * * * *

SYSTEM NAME:

'Delete entry and replace with 'On-Line Distribution Information System (ODIS).'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All Navy personnel on active duty including reservists on active duty more than 60 days.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Personnel records in automated form concerning qualifications, assignment, placement, career development, education, training, recall, release from active duty, advancement, performance, retention, reenlistment, separation, morale, personal affairs, benefits, entitlements, and administration.'

* * * * *

N01301-2

SYSTEM NAME:

On-Line Distribution Information System (ODIS).

SYSTEM LOCATION:

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-8340.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy personnel on active duty including reservists on active duty more than 60 days.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records in automated form concerning qualifications, assignment, placement, career development, education, training, recall, release from active duty, advancement, performance, retention, reenlistment, separation, morale, personal affairs, benefits, entitlements, and administration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5504, Lineal List; 10 U.S.C. 5708, Promotion Selection List; and E.O. 9397 (SSN).

PURPOSE(S):

To assist Navy officials and employees in the classification, qualification determinations, assignment, placement, career development, education, training, recall and release of officer personnel pursuant to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, or drums. Manual records may be stored in paper file folders, microfiche, or microfilm.

RETRIEVABILITY:

Records may be retrieved by Social Security Number and/or name.

SAFEGUARDS:

Computer terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having an official need-to-know.

RETENTION AND DISPOSAL:

Records are generally maintained until superseded, or for a period of two years or until release from active duty and disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600. Advance notification is required for personal visits. Proof identification will consist of military identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600. Advance notification is required for personal visits. Proof of identification will consist of military identification card.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel Service Jackets; records of the officer promotion system; officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and regulations promulgated by competent authority; education institutions; official records of professional qualifications; general correspondence concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01306-1

SYSTEM NAME:

Enlisted Development and Distribution Support System *(February 22, 1993, 58 FR 10713).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Job Advertisement and Selection System (JASS).'

SYSTEM LOCATION:

Delete entry and replace with 'Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-0600.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Limited personnel records in automated form displaying basic qualifications. This system primarily displays a listing of available billets from which a sailor can request through their career counselor.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To allow active Navy personnel to participate in the selection of their next assignment.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Social Security Number'.

* * * * *

N01306-1

SYSTEM NAME:

Job Advertisement and Selection System (JASS).

SYSTEM LOCATION:

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-0600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy enlisted personnel: active, inactive, reserve, fleet reserve, and retired.

CATEGORIES OF RECORDS IN THE SYSTEM:

Limited personnel records in automated form displaying basic qualifications. This system primarily displays a listing of available billets

from which a sailor can request through their career counselor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN).

PURPOSE(S):

To assist Navy officials and employees in the initiation, development, implementation of policies pertaining to enlisted personnel assignment, placement, retention, career enhancement, and motivation, and other career related matters, in order to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche, or microfilm.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Computer processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are generally maintained until superseded or for a period of two years and then disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel service jackets, correspondence, official records of professional qualifications, and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N03760-1

SYSTEM NAME:

Naval Flight Record Subsystem (NAVFLIRS) *(February 22, 1993, 58 FR 10732).*

CHANGES:

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Automated records are password protected and access limited to personnel with an official need to know.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Permanent data base maintained by the Naval Air Systems Command.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.'

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry 'and enlisted aircrew members.'

* * * * *

N03760-1

SYSTEM NAME:

Naval Flight Record Subsystem (NAVFLIRS).

SYSTEM LOCATION:

Primary data base is maintained at the Naval Air Systems Command (Code AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-21626.

Secondary data base is maintained at the Naval Safety Center, 375 A Street, Norfolk, VA 23511-4399.

Local data bases are maintained at Navy and Marine Corps aviation activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All aeronautically designated commissioned Navy and Marine Corps Officers and enlisted members assigned as aircrew members in the operation of an aircraft in accordance with the direction of competent authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of each flight submitted to the custodian of the aircraft. Records contain personal identification (name, rank, Social Security Number), and specific technical data related to the flight of naval aircraft.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

Naval Flight Record Subsystem consolidates the collection of naval flight data into a single, locally controlled collection and correction system, and implements a standard data collection source document (the Naval Flight Record OPNAV 3710/4) throughout the Navy and Marine Corps. It further establishes a single control data base containing all naval flight data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records.

RETRIEVABILITY:

Individual records are primarily retrieved by a unique document number assigned to each naval flight record. Additionally, each of the data elements such as pilots' Social Security Number, model aircraft and squadron may be used to retrieve individual records.

SAFEGUARDS:

Automated records are password protected and access limited to personnel with an official need to know.

RETENTION AND DISPOSAL:

Primary and secondary data base at the Naval Safety Center are permanent. Records in the secondary data base at Headquarters, U.S. Marine Corps are erased from tape when the individual is removed from active flight status. Local data bases purge all magnetic tape records after six months.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.

The request should contain full name, Social Security Number, squadron assigned, and address of the individual concerned and should be signed. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Aircraft reporting custodian, Navy and Marine Corps pilots and enlisted aircrew members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05801-1

SYSTEM NAME:

JAG Management Information System (JAGMIS) *(February 22, 1993, 58 FR 10770).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Service members who are pending courts-martial, administrative separation proceedings, nonjudicial punishment proceedings, or who have sought advice or counseling or other representational services from a Trial Service Office, Naval Legal Service Office, Detachment, or Branch Office. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with '(1) Legal Assistance Card Files: Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.

(2) Judge Advocate General Management Information System (JAGMIS): JAGMIS records contain identification information about the individual being courts-martialed such as name; rank/rate; Social Security Number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Trial Service Office or Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges of which convicted, if any, sentence adjudged; and other information describing overall case management and processing. This information may also be entered into the JAGMIS system by the office rendering service.

(3) Legal Assistance, Personnel Claims, and Personal Representation Client Records: File contains I.D. information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To process courts-martials and render legal assistance and advice to naval personnel and their dependents. Trial Service Offices, Naval Legal Service Offices, and legal assistance offices will use the data for internal management purposes, such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Name of client or accused, or by assigned case number.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for legal assistance files and Deputy Assistant Judge Advocate General, Management and Plans Division, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for case files.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Basic information contained in the legal assistance records file is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Trial Service Office or Naval Legal Service Office. Information regarding personal representation services is provided by the client, by the commanding officer of the individual being processed, and by administrative personnel of the Trial Service Office or Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.'

* * * * *

N05801-1

SYSTEM NAME:

JAG Management Information System (JAGMIS).

SYSTEM LOCATION:

Naval Legal Service Command, 1322 Patterson Avenue SE, Suite 3000, Washington DC 20374-5066; Trial Service Offices and detachments; Naval Legal Service Offices and detachments; and any other Naval Legal Office providing legal assistance services. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service members who are pending courts-martial, administrative separation proceedings, nonjudicial punishment proceedings, or who have sought advice or counseling or other representational services from a Naval Legal Service Office, Detachment, or Branch Office. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal Assistance Card Files: Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.

(2) Judge Advocate General Management Information System (JAGMIS): JAGMIS records contain identification information about the individual being courts-martialed such as name; rank/rate; Social Security Number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Trial Service Office or Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges of which convicted, if any, sentence adjudged; and other information describing overall case management and processing. This information may also be entered into the JAGMIS system by the office rendering service.

(3) Legal Assistance, Personnel Claims, and Personal Representation Client Records: File contains I.D. information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Manual of the Judge Advocate General; and E.O. 9397 (SSN).

PURPOSE(S):

To process courts-martials and render legal assistance and advice to naval personnel and their dependents. Naval Legal Service Offices and legal assistance offices will use the data for internal management purposes, such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Military justice, legal assistance, and personal representation case files are stored in file cabinets. Case data is entered into the JAGMIS computer system which is maintained on computer hard disks.

RETRIEVABILITY:

Name of client or accused, or by assigned case number.

SAFEGUARDS:

Manual records/cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours. Information in the JAGMIS system is stored on computer hard disks which are afforded the same physical protection afforded to manual records/cards. Additionally, computers containing JAGMIS information are protected by individual operator passwords to preclude access by unauthorized personnel.

RETENTION AND DISPOSAL:

Manual records, cards, and case files are retained for two years after completion of the case, then destroyed. JAGMIS records, maintained since July 1985, are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for legal assistance files and Deputy Assistant Judge Advocate General, Management and Plans Division, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for case files.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, for case files.

The written request should include full name and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, for case files.

The written request should include full name and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Basic information contained in the legal assistance records file is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Trial Service Office or Naval Legal

Service Office. Information regarding personal representation services is provided by the client, by the commanding officer of the individual being processed, and by administrative personnel of the Trial Service Office or Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12950-7

SYSTEM NAME:

Drug-Free Workplace Records *(July 29, 1994, 59 FR 38589).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N12792-7'.

SYSTEM NAME:

After the word 'Workplace' add 'Program'.

SYSTEM LOCATION:

Delete entry and replace with 'Records are located at the local naval activity, the local servicing human resources offices or the Department of the Navy Headquarters office.'

* * * * *

PURPOSE(S):

In paragraph 2, line 2, delete 'employee's Medical Review Official' and replace with 'Medical Review Officer'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Records are obtained from the individual to whom the record pertains; DON or contractor employees involved in the selection, notification, and collection of urine from individuals who are tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program; processing adverse actions based on drug test results; and DON or contractor electronic databases.'

* * * * *

N12792-7

SYSTEM NAME:

Drug-Free Workplace Program Records.

SYSTEM LOCATION:

Records are located at the local naval activity, the local servicing human resources offices or the Department of the Navy Headquarters office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees and applicants, urine specimens, drug test results, collection authentication and chain of custody documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100-71, 5 U.S.C. 7301; 21 U.S.C. 812; and E.O. 12564, Drug-Free Federal Workplace; and E.O. 9397 (SSN).

PURPOSE(S):

The system is established to maintain records relating to the selection and testing of Department of the Navy employees, and applicants for employment, for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

The records are also used by the Medical Review Officer; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with the provisions of 5 U.S.C. 7301, the 'Blanket Routine Uses' published at the beginning of the Navy's compilation do not apply to this system.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Navy's 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of written materials and/or electronic media.

RETRIEVABILITY:

Records are retrieved by name of employee, applicant for employment, Social Security Number, I.D. number assigned, or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Urine specimens will be stored in appropriate locked storage facilities. Access to such records and specimens is restricted. Chain-of-custody and other procedural and documentary requirements of Pub. L. 100-71 and the Department of Health and Human Services Guidelines will be followed in collection of urine samples, conducting drug tests, and processing test results. All information contained in computers is password protected.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media.

Written records and test results together with urine specimens shall be retained until litigation is complete when the employee challenges or appeals adverse actions.

SYSTEM MANAGER(S) AND ADDRESS:

DON Drug Program Coordinator, Deputy Assistant Secretary of the Navy (Civilian Personnel/Equal Employment Opportunity, 800 North Quincy Street, Arlington, VA 22203-1998.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or

were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; DON or contractor employees involved in the selection, notification, and collection of urine from individuals who are tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program; processing adverse actions based on drug test results; and DON or contractor electronic databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–2817 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the meeting on March 17, 2000 beginning at 9 a.m. in Ballroom D at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024–2197. You may call the Hotel on (202) 484–1000 to inquire about room accommodations.

What Access Does the Hotel Provide for Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

What Are the Functions of the Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended by Public Law 105–244. The Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Are the Issues To Be Considered At This Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. Beginning February 18, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

Who Is the Contact Person for the Meeting?

Please contact Bonnie LeBold, who is the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, 7th Floor—Rm. 7107, 1990 K St. NW, Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: Bonnie_LeBold@ed.gov. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

Dated: February 2, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–2765 Filed 2–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Board on Tribal Colleges and Universities; Meeting

AGENCY: President's Advisory Board on Tribal Colleges and Universities.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the President's Advisory Board on Tribal Colleges and Universities and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date and Time: February 11, 2000, from 9:00 a.m. to 5:00 p.m., and February 12, 2000, from 8:30 a.m. to 4:00 p.m.

Location: The Federal South Conference Room on February 11th, and the Congressional Conference Room on February 12th, Holiday Inn on the Hill, 415 New Jersey Avenue, NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Carrie Billy, Executive Director, President's Advisory Board on Tribal Colleges and Universities, U.S. Department of Education, 4050 MES, 330 C. Street, SW, Washington, DC 20202–7594, Telephone: 202–260–5714.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13021 (October 19, 1996) to provide advice regarding the progress made by federal agencies toward fulfilling the purposes and objective of the order. The Board shall also provide recommendations to the President and the Secretary of Education at least annually on ways Tribal Colleges can:

(1) Use long-term development, endowment building, and master planning to strengthen institutional viability;

(2) Use the federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement federal education initiatives;

(3) Develop institutional capacity through the use of new and emerging technologies offered by the federal and private sectors;

(4) Enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) Help achieve National Education Goals and meet other high standards of education accomplishment.

The meeting agenda will include: Strategic Planning discussions; information sharing among Presidentially appointed members; and organizing the Presidential Advisory Board on Tribal Colleges and Universities into cluster committees and developing their agenda. The general public is encouraged to attend. However, space is limited and is available on a first come, first served basis.

A summary of the activities of the meeting and other related materials, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at White House Initiative on Tribal Colleges & Universities, U.S. Department of Education, 4050 MES, 330 C. Street, SW, Washington, DC from 9:00 a.m. to 5:30 p.m.

Dated: February 3, 2000.

Robert D. Muller,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 00–2902 Filed 2–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Rescheduled notice of meeting.

SUMMARY: Due to inclement weather the President's Board of Advisors on Historically Black Colleges and Universities meeting was cancelled for Friday, January 21, 2000, and is rescheduled for Wednesday, February 16, 2000. This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Wednesday, February 16, 2000 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Washington Hilton Hotel, located at 1919 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Suite 8108, Washington, DC 20006–5120. Telephone: (202) 502–7900.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on efforts to expand federal and private sector support for Historically Black Colleges and Universities.

Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW., Suite 8099, Washington, DC, 20006, from the hours of 8:30 a.m. to 5 p.m.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–2763 Filed 2–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Comment Period Extension and Additional Public Hearing for Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of comment period extension and additional public hearing.

SUMMARY: On August 13, 1999, the U.S. Department of Energy (DOE) published a Notice of Availability (64 FR 44200) of its Draft Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250–D) and announced a 180-day public comment period ending February 9, 2000. Based on input from the public, DOE is now announcing an additional public hearing in San Bernardino, California. The comment period is being extended to February 28, 2000.

DATES: The additional public hearing will be held on February 22, 2000, from 11:00 a.m. until 2:00 p.m. and from 6:00 p.m. until 9:00 p.m. The comment period for the Draft EIS is extended to February 28, 2000.

ADDRESSES: The additional public hearing will be held at the following location: Radisson Hotel, 295 North E. Street, San Bernardino, CA 92401.

Written comments on the Draft EIS should be directed to: Ms. Wendy R. Dixon, EIS Program Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307. Comments may also be transmitted by facsimile to 1–800–967–0739 and should include the following identifier: "Yucca Mountain Draft EIS." Comments may be submitted over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing "Environmental Impact Statement."

INVITATION TO COMMENT: The public is invited to provide comments on the Draft EIS during the comment period that ends on February 28, 2000. DOE will consider comments received during the comment period in preparation of the Final EIS. Comments received after February 28, 2000 will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy R. Dixon, EIS Program Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739. Copies of the document may also be requested by telephone (1–800–967–3477) or over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing "Environmental Impact Statement"; the Draft EIS also may be viewed on this website.

Issued in Washington, DC, February 2, 2000.

Ivan Itkin,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 00–2714 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Industrial Technologies; Notice of Solicitation for Financial Assistance Applications for Cooperative Research and Development for Advanced Microturbine Systems

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance. The purpose of this research is to advance the state of development of one or more cost-effective technologies for integration into Advanced Microturbine Systems that will be commercialized and used in power and/or combined heat and power generation. In order to reach this goal, component and subsystem development, testing integration and demonstration of optimized and fully integrated microturbine systems will be performed.

DATES: The solicitation document will be available on or about February 25, 2000. Applications are due on or about April 12, 2000. Awards are anticipated by August 15, 2000.

ADDRESSES: The solicitation will be available on the internet by accessing the DOE Chicago Operations Office, Acquisition and Assistance Group home page at *http://www.ch.doe.gov/business/acq.htm* under the heading "Current Solicitations", Solicitation No. DE–SC02–00CH11016. Completed applications referencing Solicitation No. DE–SC02–00CH11016 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Communications Center, Building 201, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899, ATTN: Tonja L. Stokes, Acquisition and Assistance Group.

FOR FURTHER INFORMATION CONTACT: Tonja L. Stokes at 630/252–2136, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at 630/252–5045, or by electronic mail at *tonja.stokes@ch.doe.gov.*

SUPPLEMENTARY INFORMATION: The Scope of Work covers applied research in five work areas as described below as Tasks 1, 2, 3, 4 and 5. In addition to these tasks, the Scope of Work includes Subtasks A and B. Subtask A will require the participant to provide a report that will identify and quantify the potential technical market for microturbine systems. Subtask B will require the participant to provide a commercialization plan which supports the proposed technological development.

The Tasks represent an increasing progression of maturation stages for technology development. Task 1 involves concept research and development; Task 2 involves subsystem component design and development; Task 3 involves microturbine modifications for integration of advanced technologies; Task 4 involves microturbine system assembly and testing, and Task 5 involves pre-commercial demonstration. Depending on the current maturation of proposed technologies, the work may start at any task if prior work has been performed that would satisfy completion or sufficient progress of the previous task(s). For example, an applicant with an innovative concept but limited development experience for that concept may decide to apply only under Task 1. Whereas, applicants with more developed concepts may elect to bypass the initial tasks. Applications may address any combination or portions of the tasks. While it is not mandatory for applications to address only sequentially numbered tasks (e.g., applying under Tasks 1, 3 and 4 is allowable), there must be a logical sequence of the tasks to be performed based on the nature of the work to be performed.

The ultimate maturation of technologies will be reached upon the attainment of the solicitation objectives in a pre-commercial demonstration of 8000 hours (Task 5). Although it is the intention of this solicitation to support development of microturbine systems that will so culminate, there also is relevancy in gaining a better understanding of advanced technologies and their impact on microturbines. In such a case, development of a completed commercial system may not be feasible. For example, development may end prior to the maturation state of Task 5, or Task 5 may be scheduled to complete less than the 8000 hours (but more than 4000 hours as discussed below) identified in the solicitation as a goal for commercialization. Regardless of the tasks proposed, applications will raise the maturation level of the concept relative to the solicitation objectives.

Insofar as Subtask A and B are concerned, all participants will complete the program and planning report required by Subtask A, which will become part of the lowest numbered Task proposed. Additionally, participants performing work under Tasks 3, 4 and/or 5 will complete the commercialization plan required by Subtask B as a part of the lowest numbered Task proposed that is equal to or greater than 3.

All work proposed to be performed under an application must be scheduled for completion within the five year life expectancy of this program.

Under Tasks 1 and 2 that follow, the work may be performed with respect to any test device or turbines that could serve as a logical and cost effective intermediate basis for developing a technology for microturbines. However, any such technology developed under Tasks 1 and 2 must have applicability to microturbines.

Under Tasks 3, 4 and 5 that follow, all work must be performed with respect to microturbines and the demonstration required under Task 5 must be performed on a microturbine. In performing this work, one or more such turbines may be used.

Work under all tasks will be enhanced by the participation of an end user. For these tasks, this solicitation encourages the coordination of technical and administrative activities with an end user. Long-term demonstration under Task 5 should be conducted at an end user that is committed by the applicant. We encourage the demonstration to be conducted at an Industry of the Future Company.

Task 1—The starting point of this task shall be, as a minimum, a technological concept(s) with prior experimental evidence of its potential for meeting the solicitation objectives. The participant will identify the form, function, and fit of all components necessary to execute the proposed technology. The participant will also develop preliminary designs compatible with the properties of the advanced material system(s). The participant will also develop preliminary designs for the components. Testing on preliminary articles may be done at a scale suitable to confirm the design parameters that were used and to give qualitative and quantitative indications that the components will perform as planned.

Task 2—The participant will complete detailed designs of the selected subsystem components. The design process will include the investigations of all process and economic parameters for integrating the selected components into a viable microturbine system. The components will be manufactured and the subsystem will be assembled. Development and testing will be done to verify and optimize the overall approach, to provide operating and control parameters, and to establish allowable microturbine operating ranges, energy efficiency, sensitivity to fuel variability, and other factors affecting the performance and competitiveness of the microturbine system.

Task 3—The design of a microturbine will be adapted in parallel to component development to assure compatibility, optimum fit, and functionality. The work under this task will integrate hardware, controls, and operating procedures for startup, steady operation over the usual power range (for example 50% to 100% of rated output), planned changes (such as anticipated shutdown or transitions of operating load), and unexpected changes in power output (such as lost load) and determining such parameters as energy efficiency and emissions.

Task 4—The applicant shall design and fabricate a complete microturbine system that utilizes the subsystems components developed under Task 2 or elsewhere. The subsystem components shall exhibit the form, function, and fit compatible with the modified microturbine developed either under Task 3 or elsewhere. The applicant shall prove, either by subsystem rig testing or by demonstrating on a microturbine, the ability of the subsystem components to perform as planned. Such testing shall include those sensors and controllers needed to maintain testing over the design operating range of the turbine. Test results shall include relationships among performance, efficiency, emissions, temperatures, and all other relevant parameters that quantify and qualify the system for commercial delivery.

The completion of Task 4 would result in the assembly of an advanced industrial gas turbine that incorporates components completed under this task or elsewhere. The advanced industrial gas turbine shall be ready for insertion into a commercial package that is suitable for shipment, installation, and demonstration in the field under Task 5.

Task 5—A host site(s) will be selected for demonstration of the microturbine system developed by the completion of Task 4 or elsewhere. The participant will integrate the turbine with the balance of plant equipment that makes the microturbine system compatible with the needs of a specific host site(s). The completion of Task 5 would result in an 8000-hour demonstration of an advanced microturbine that can be reasonably expected to meet one or more project objectives. At a minimum, the demonstration shall comprise 4000 hours of operation at a host site that is compatible with an operating rate of at least 4000 hours per annum.

The applicant will complete a coordinated plan for the demonstration that incorporates the perspectives of all relevant parties, including the host site. The plan will also assign responsibilities on all matters necessary to execute the demonstration plan, such as business arrangements, balance of plant equipment, site construction, site integration, periodic inspections of hardware, visitations of third parties, data acquisition at the host site to verify expected benefits, and obtainment of environmental, construction, operating, and other permits.

In support of the Office of Industrial Technologies and the nation's industries, it is preferred that the demonstration be conducted at an Industry of the Future Company. If it is not feasible to conduct the demonstration at an Industry of the Future Company or if there are valid reasons to do the demonstration elsewhere, a host site other than an Industry of the Future Company may be proposed. Host sites comprising buildings or natural gas and electric utility sites may be relevant to programs of the Office of Energy Efficiency and Renewable Energy, Office of Building and Community Systems, and the Office of Power Technologies respectively. In such cases, the result of the demonstration will be coordinated with these offices as feasible and appropriate by the DOE program manager.

The demonstration shall be representative of significant market segments of the distributed power generation industry. As a result, the successful demonstration at the host site will be expected to exemplify the resolution of the typical barriers (such as technical, environmental, industry acceptance, and control issues related to an interconnection to the existing local utility transmission and distribution grid) that impede the widespread adoption of distributed generation. In this regard, all hours of operation may be accumulated under the demonstration while the host site is interconnected to the existing local utility grid that exists for the routine transmission and distribution of electric power. Accordingly, the balance of plant equipment may be sufficient to generate and condition such electric power, and all hardware may be provided for interconnection to the local utility grid.

Subtask A—Subtask A is required for any applicant selected for award and will be performed in conjunction with the lowest numbered task which the participant will do work. The completed report must be received within 90 days of award of the cooperative agreement and will be submitted in accordance with topical report requirements.

With emphasis on the Industries of the Future Companies, but not excluding other applicants, the report will further define completed distributed generation and combined heat and power systems likely to be available at the successful completion of this project. The participant will identify and quantify the potential technical markets for such systems. In areas such as energy efficiency, performance, cost, and emissions, the participant will provide detailed rationale that supports these projections. All barriers such as the lack of uniform grid connection standards that will impact on the technical market will be identified. However, any barriers that are out of the control of the participant shall be deemed not to impact on the projected technical market.

Subtask B—Subtask B is required for any applicant selected for award that proposed on Tasks 3, 4, and/or 5 and will be performed in conjunction with the lowest numbered task proposed. The completed report must be received within 180 days of initiation of the lowest numbered Task (3–5) under which the participant will do work. This report will be submitted in accordance with topical report requirements.

The main impetus for this work is the commercial implementation of efficiency, clean, and cost-effective microturbines in distributed generation and combined heat and power system(s). It is essential that a commercialization plan support the proposed technological development. Participants doing work under Tasks 3, 4, or 5 shall complete commercialization plans and strategies for all relevant functions in the commercialization process such as cost-effective manufacturing, marketing, production volumes, and support for the participant's microturbine system. The commercialization plan will emphasize market applications in the Industries of the Future Companies.

As applicants may apply under one or more of the five tasks within the solicitation's Scope of Work, there is a wide range in the number of potential awards and award values. DOE expects to award six (6) to ten (10) cooperative agreements under this solicitation. It is estimated that individual awards will range in value between approximately $500,000.00 and $10,000,000.00 of DOE funding and will require recipient cost sharing. A minimum non-federal cost sharing commitment of 30% of the total cost for Tasks 1 and 2, 45% of the total cost for Tasks 3 and 4, and 60% of the total cost for Task 5 is required.

Estimated DOE funding is $40 million over a five-year period. DOE reserves the right to fund any, all, or none of the applications submitted in response to this solicitation. All awards are subject to the availability of funds.

Any non-profit or for-profit organization or other institution of higher education, or non-federal agency or entity is eligible to apply, unless otherwise restricted by the Simpson-Craig Amendment. In addition, applicants must satisfy the requirements of the Energy Policy Act in order to be eligible for award.

Issued in Argonne, Illinois on February 1, 2000.

James R. Bieschke,

Acquisition and Assistance Group, Acting Group Manager.

[FR Doc. 00–2796 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science, Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notices announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 28, 2000, 8:15 a.m. to 5:15 p.m.; Tuesday, February 29, 2000, 8:30 a.m. to 4:30 p.m.; and Wednesday, March 1, 2000, 8:30 a.m. to 12:00 p.m.

ADDRESS: Gaithersburg Washingtonian Marriott Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, February 28, 2000

- Welcome and Introduction
- Remarks from Acting Director, Office of Science
- News from Basic Energy Sciences
- President's R&D Focus Areas for FY 2001
- BES Discussion of R&D Focus Areas for FY 2001
- Report of the Neutron Scattering Subpanel
- Update on 4th Generation Synchrotron Light Source Activities

Tuesday, February 29, 2000

- Report of the Electron Beam Microcharacterization Center Review Subpanel
- Report of the Advanced Light Source Subpanel
- Brief overviews of BES programs

Wednesday, March 1, 2000

- Advisory Committee Discussion of Issues
- Review of Calendar Year 2000 Calendar

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on February 3, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2794 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Building Energy Codes Program: Workshop on Analysis of Standard 90.1–1999

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy is in the process of making a determination as to whether ASHRAE/IESNA Standard 90.1–1999 would save energy in commercial buildings. In doing so, we are performing a comparative analysis of the 1989 edition of that standard to the 1999 edition and seeking input on our proposed approach to carrying out that analysis.

DATES: The Department will hold a public workshop on February 17, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4:00 p.m., February 14, 2000. The Department must also receive ten (10) copies of statements to be given at the public workshop no later than 4:00 p.m., February 15, 2000, and we request that you provide a computer diskette of each statement in WordPerfect ™ at that time.

ADDRESSES: Please address requests for the proposed methodology for the comparative analysis or requests to make statements at the public workshop and copies of those statements to Brenda Edwards-Jones at the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW,

Washington, DC 20585–0121. You should identify documents as either, "Request for Proposed Methodology," or "Request to Speak," or "Statement," followed by, "Workshop on Analysis of Standard 90.1-1999". The workshop will begin at 9:00 a.m., on February 17, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC.

You can read copies of the transcript of the public workshop in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may obtain copies of the referenced standard ASHRAE/IESNA Standard 90.1–1999 by request from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636–8400, *http://www.ASHRAE.org*. You may obtain a copy of the "Proposed Methodology for a Comparative Analysis of ASHRAE/IESNA Standard 90.1–1989 and Standard 90.1–1999" from the Department by request from the address listed above. The proposed methodology may also be downloaded from the Office of Building Technical Assistance web site listed below.

The latest information regarding the public workshop is available on the Office of Building Technical Assistance web site at the following address: http://www.eren.doe.gov/buildings/codes_standards/.

FOR FURTHER INFORMATION CONTACT: Jean J. Boulin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–42, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9870, email: Jean.Boulin@EE.DOE.gov

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Section 304(b)(2) of Title III of the Energy Conservation and Production Act, as amended (ECPA or Act), requires the Secretary of Energy (We, DOE, or the Department) to determine whether the revisions of ASHRAE/IESNA Standard 90.1 embodied in the 1999 edition will improve energy efficiency in commercial buildings. A notice of the determination is required to be published in the **Federal Register**. If the Secretary makes an affirmative determination, each State is required to review and update the provisions of its commercial building code regarding energy efficiency in accordance with Standard 90.1–1999. Each State is further required, within two years of an affirmative determination, to certify and demonstrate to the Secretary that its State commercial building code meets or exceeds the revised standard. If, on the other hand, the Secretary determines that Standard 90.1–1999 will not improve energy efficiency in commercial buildings, then State commercial code provisions regarding energy efficiency shall continue to meet or exceed Standard 90.1–1989.

B. Background

In preparation for making the determination, we are doing a comparative analysis between the 1989 edition and 1999 edition of Standard 90.1. An initial analysis was prepared in the summer of 1999 and the results were presented to the Standing Standards Project Committee 90.1, the ASHRAE committee responsible for revising Standard 90.1. It was also shared with other interested parties. At that time we identified the shortcomings that we perceived in the analysis, and suggested how some could be resolved. Comments were requested on these issues and other issues that people might identify. We have developed an approach to complete that analysis that addresses these issues. We are holding a workshop to obtain comment on the approach and to identify any other issues. This workshop is the subject of today's notice.

C. Summary of Proposed Comparative Analysis

We propose to carry out both a qualitative and quantitative comparison of the Standard 90.1-1989 and Standard 90.1–1999. The proposed analysis would provide qualitative comparisons of the stringencies between the two editions of Standard 90.1 in the scope of the standard; the building envelope requirements; the building lighting requirements; the building mechanical equipment requirements; and the paths to compliance. The quantitative comparison of energy codes would be done on whole building energy simulations of buildings built to each standard. We propose to simulate seven representative building types in 11 representative U.S. climates. The detailed methodology for the quantitative comparison is presented in "Proposed Methodology for a Comparative Analysis of ASHRAE/IESNA Standard 90.1–1989 and Standard 90.1–1999."

II. Discussion

A. Proposed Comparative Analysis of Standard 90.1–1989 and Standard 90.1–1999

We propose to carry out both a qualitative and quantitative comparison of the Standard 90.1–1989 and Standard 90.1–1999.

Qualitative Comparisons

The proposed analysis would provide qualitative comparisons of the stringencies between the two editions of Standard 90.1 in each of the following areas:

Scope of the standard,
Building envelope requirements,
Building lighting requirements,
Building mechanical equipment requirements,
Paths to compliance.

The emphasis of the qualitative comparison would differ between the envelope, lighting, and mechanical sections. In the building envelope section, the comparison would focus on the impact of the different building envelope requirements on the building heating and cooling loads for different building types and climates. The envelope comparison would examine requirements for all envelope components, including roofs, walls, floors, and fenestration as well as explore variations in construction types and in the window-to-wall ratio.

In the lighting requirements comparison, the focus would be primarily on the impact the different lighting requirements have on lighting energy use, as well as on building loads. The comparison would look separately at the whole building and space-by-space lighting requirements in both standards in a variety of commercial building types, as well as examine the affect of any "additional lighting power allowances."

The mechanical requirements comparison would be divided into comparisons of equipment efficiency requirements and system design requirements. The system design requirements affect both the system efficiency, system load, and may have direct energy impacts due for instance to fan design. Tables of relative stringency and estimated positive or negative national energy impact would be prepared based on practical application of the system design requirements in each standard.

Each standard has multiple ways to demonstrate compliance. We would enumerate the multiple paths to compliance, but do not propose a detailed comparison of the relative

stringency of alternate paths internal to a single standard or between standards. The large quantity of variables among the alternative compliance paths would make such analysis prohibitive to undertake. Further, we know of no data on which to base the selection of representative requirements for such an analysis. Assignment of requirements would be arbitrary. Rather we would focus on what we believe is the most common approach to using the standard in question for particular building types.

Quantitative Comparison

We propose to base the quantitative comparison of energy codes on whole building energy simulations of buildings built to each standard. We would simulate seven representative building types in 11 representative U.S. climates. The simulated buildings would utilize the 15 zone building prototype used in previous DOE building research, and the energy use intensities for each zone from the simulations would be scaled to correctly reflect variations in characteristic building sizes and shapes for each representative building type. Energy Use Intensities (EUIs) developed for each representative building type would be weighted by total national square footage in each representative building category to provide an estimate of the national energy savings. Note that only changes to new buildings would be considered in this quantitative analysis. The scope of ASHRAE 90.1–1999 also addresses additions and renovations to existing buildings. While this may have a significant energy impact, we do not believe the data is available to quantify this impact. We propose to point out this difference in the qualitative comparison of the two standards.

B. Public Workshop

1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice. The Department invites any person who would like to attend the public workshop to notify Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

2. Conduct of Workshop

The workshop will be conducted in an informal, conference style. The Department may use a professional facilitator to facilitate discussion, and a court reporter will be present to record the transcript of the meeting. We will present summaries of comments received before the workshop, allow time for presentations by workshop participants, and encourage all interested parties to share their views on issues affecting the proposed analysis. Following the workshop, we will provide an additional one week comment period, during which interested parties will have an opportunity to present further comment on the proposed analysis.

The Department will arrange for a transcript of the workshop and will make the entire record of the workshop, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues Requested for Comment

The Department of Energy is interested in receiving comments and/or data concerning issues relating to the comparative analysis of Standard 90.1–1989 and Standard 90.1–1999. We are especially interested in any comments or data regarding:

(1) The seven building types listed below and selected for analysis.

(2) The 11 representative climate locations proposed for the analysis.

(3) The frequency of use of alternative paths to compliance in building standards (e.g. space-by-space versus whole building lighting power allowances).

(4) New non-residential building construction data by State or census division and building type.

(5) Data to quantify the impact of Standard 90.1–1999 on additions and renovations to existing buildings.

(6) The prevalence of the semi-heated building envelope subcategory in the building types proposed for analysis.

(7) Specific comments on the preliminary energy savings analysis distributed in June 1999.

The seven building types proposed for the analysis are Office, Retail, Education, Lodging, Public Assembly, Food Service, and Warehouse and Storage. It is currently proposed to include outpatient health care buildings in the office building category. These buildings together will account for approximately 80% of commercial building energy use, and national weights for each of these building categories can be readily obtained through the Commercial Buildings Energy Consumption Survey (CBECS) data. One category of building which is conspicuously absent is multifamily dwellings over three stories above grade. Relevant data on current stock, construction, or building configuration for this category would allow its inclusion in the analysis.

The 11 climate variations proposed for the analysis are the same as those used in the National Energy Model, version 5, and in the initial analysis and they are proposed to be represented by the same climate locations used in that analysis. The climate locations are: Providence, Rhode Island; Detroit, Michigan, Minneapolis, Minnesota; Knoxville, Tennessee; Shreveport, Louisiana, Tampa, Florida; Denver, Colorado; Phoenix, Arizona; Seattle Washington; Fresno, California; and Los Angeles, California. We would be interested to know of any data or analysis that would indicate that these are inappropriate for this analysis, and what alternatives are more appropriate and why.

This analysis proposes to set criteria for buildings using what are believed to be the most common paths to compliance. Any data describing the relative frequency of use of alternative paths to compliance would be appreciated as would more detailed data on building construction by State, region and building type. Additionally, we are interested in data regarding the type and fraction of buildings which should be modeled as semi-heated buildings for the 90.1–1999 standard. Finally, as the methodology proposed is an extension of what was done for the preliminary analysis in June, any comments on that methodology and the questions raised in the presentation, would be appreciated.

These data will help us to make a determination whether ASHRAE/IESNA Standard 90.1–1999 will improve energy efficiency in commercial buildings.

Issued in Washington, DC, on February 2, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00–2793 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

AGENCY: U.S. Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation, State Science Initiative for Applied Research, Development and Demonstration Projects.

SUMMARY: The Department of Energy (DOE) is announcing a competitive solicitation for applications for cooperative agreements to pursue applied research, development and demonstration (including field testing) involving energy efficiency. Demonstrations will be limited to field tests which provide critical operational feedback to researchers and/or manufacturers for the purpose of improving technical performance or lowering costs.

It is estimated that funding of approximately $6 million will be available for 7 to 10 awards under this solicitation in fiscal year 2000. Seven priority areas of interest have been identified through a collaborative planning process with the States during the past year: (1) Bio-based products and bioenergy; (2) Fuel cells and microturbines; (3) Petroleum industry; (4) Schools; (5) Combined heat and power and distributed generation; (6) Data acquisition; and (7) Transportation. The awards will be for a period of one to three years.

Proposals will be subject to the objective merit review procedures for the Office of Energy Efficiency and Renewable Energy (EERE). Eligibility under this solicitation is restricted to state energy offices and state energy research organizations. These organizations may enter teaming arrangements with industry, DOE national laboratories, private educational institutions, non-profit organizations, and Native American organizations.

Applications by DOE management and operating contractors (M&O) will not be eligible for award. However, applications that include performance of a portion of the project, not to exceed 50 percent of the total effort, by an M&O contractor will be eligible provided that the proposed use of any such entity is specifically authorized in writing by the DOE Contracting Officer or authorized designee responsible for the M&O.

This solicitation provides opportunities to leverage funds for important Research, Development and Demonstration (RD&D) designed to advance technologies that promote energy efficiency. It is anticipated that a minimum of 20 percent non-Federal cost-sharing will be required for all projects receiving awards. Any proposed cost-sharing above the minimum 20 percent will be given favorable consideration in the selection process.

DATES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, due dates and evaluation criteria, is expected to be issued later in February 2000. Prospective applicants will be encouraged to submit a pre-application, not longer than two pages, within 20 days following issuance of the solicitation. All pre-applications must be submitted by an eligible applicant. A response to the pre-application encouraging or discouraging a formal application will be communicated to the applicant. Submission of a pre-application is not a requirement for submitting an application under this solicitation.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation No. DE–PS36–00GO10499 through the Golden Field Office's World Wide Web site at http://www.eren.doe.gov/golden/solicitations.html.

FOR FURTHER INFORMATION CONTACT: Contact the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401. The Contract Specialist is James Damm, at FAX (303) 275–4788 or e-mail at jim__damm@nrel.gov. All questions or comments concerning this announcement must be in writing and should be directed to the attention of Mr. Damm. The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments submitted to Mr. Damm will be considered. Questions and/or comments requiring coordination with EERE program officials will be directed by Mr. Damm to the cognizant offices.

SUPPLEMENTARY INFORMATION: The Office of EERE implements DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in global markets; and delivering leading-edge technologies.

The purpose of the planned solicitation is to pursue applied research, development, and demonstration (including field testing) with state energy offices and state energy research organizations in the following technology areas (or combination of technology areas) as described below:

1. Bio-Based Products and Bioenergy

Applications will be accepted on applied research and development for promoting the use of crops, trees and residues to (a) replace conventional feedstocks to make chemical products; or (b) enhance existing, or produce new, forest or agricultural (non-food, non-feed) products. We anticipate that proposals will include, but are not limited to, R&D on: (a) Biotechnology for accelerating the development or deployment of plant feedstocks that could be used by companies to perform biochemical and other conversions to produce chemicals and other products; (b) plant physiology controlling important traits affecting crop and forest productivity; (c) improved production methods and practices to ensure that an adequate supply of plant-derived material is available for industrial use; or (d) improved conversion methods or practices for the production of bio-based chemicals and products. Priority will be given to projects that integrate the areas of plant science and production with processing and utilization of new chemical, forest or agricultural (non-food, non-feed) products. Such integrated projects that also show a linkage to the biopower and biofuels technologies are encouraged.

2. Fuel Cells and Microturbines

Applications will be accepted for applied research and technology field tests focused in both the buildings and transportation sectors. Proposals in the fuel cells technology area should include, but are not limited to, applied research and field testing of: (a) Proton exchange membrane (PEM) fuel cells adapted for use in residential and light commercial facilities, particularly the operation of PEM fuel cells in a variety of existing building types (*e.g.*, small commercial retail, light manufacturing, multi-family residential) under various operating scenarios; (b) other types of fuel cells (*e.g.*, molten carbonate, solid oxide) in commercial and industrial facilities; (c) fuel cell performance in on-road vehicles under various operating conditions; and (d) vehicle fleets as a test bed for improving current systems or advancing technologies to generate hydrogen from natural gas reforming or through electrolysis.

In the microturbine technology area, cooperative projects should focus on applied research and field testing over a range of applications, geographic locations, and operating systems: (a) To demonstrate technical performance reliability and durability and to provide feedback for further technology development; and (b) to demonstrate

microturbine technology improvements or upgrades, including components or subsystems (e.g., gas compressors, recuperators, and combustors).

3. Petroleum Industry

Applications will be accepted for applied research and testing of motors and other energy-using equipment in domestic oil fields to assess usage and modify or replace equipment to reduce energy costs. Examples of efforts with the states could include, but are not limited to: (a) Improving sensor and control technologies for reducing electricity demand in the oil fields; (b) developing models for field energy use assessments; and (3) developing guidelines for equipment replacement.

4. Schools

Applications will be accepted for applied research and technology field validations/operational tests which accelerate adoption of new technologies to improve the energy efficiency of school facilities. This work should be focused in the following areas:

(a) *Building Technologies*—Conduct applied research and technology field testing through an integrated buildings approach in a range of technology areas, such as: space conditioning and refrigeration; other energy-efficient appliances; super-efficient windows and lighting; productivity enhancing approaches (e.g., increased daylighting); and peak shaving/load shifting technologies that reduce peak air conditioning demand during the day.

(b) *Advanced Technologies*—Conduct applied research and field testing of (i) distributed generation technologies, including but not limited to, fuel cell, microturbine and cogeneration applications in school facilities; and (ii) advanced energy technologies for use in school facilities.

(c) *Technology Integration*—Develop a mechanism that will take the results of the building and advanced technologies research and field testing and integrate them into a comprehensive program which supports, but is not limited to, the development of technical design guidelines for new school construction and renovations which will be used by architects, engineers and product manufacturers. Emphasis also will be placed on building design and financing templates and related facilitation of financial assistance aimed at integrated building efficiency improvements.

5. Combined Heat and Power (CHP) and Distributed Power

Applications will be accepted for work involving distributed power and combined heat and power technologies. This work includes, but is not limited to, applied research and field testing to address:

(a) Transmission constraints, interconnect barriers, and to encourage strategic placement of distributed power technologies, consistent and streamlined siting and permitting regulations, and an equipment pre-certification program to avoid long and costly permitting delays;

(b) New commercial and industrial development and urban infill redevelopment for distributed generation utilizing several DOE developed technologies (e.g., fuel cells, microturbines, industrial turbines, photovoltaics, wind, solar geothermal and energy storage) and demand-side management measures to examine systemic operational parameters and capabilities;

(c) Advanced distributed power and combined heat and power technologies at state and federal facilities; and

(d) Hybrid applications (e.g., hybrid wind/fuel cell/microturbine applications) for institutional and commercial application.

6. Data Acquisition

Applications will be accepted for: (a) Reviewing and developing complementary State and Federal energy data sets; (b) expanding energy data sets; and (c) redesigning federal and state data collection instruments to evaluate the changing structure of the electric power industry and the natural gas industry.

7. Transportation

Emphasis should be placed upon applied research and technology field validations/operational tests designed to maximize the benefits of clean and efficient vehicle technologies. These activities include, but are not limited to: (a) Testing alternative fuels performance in on-road vehicles under operating conditions to test propulsion systems; (b) research on operating a refueling infrastructure for alternative fuel vehicles; (c) transportation applications, such as fuel cells, hybrid propulsion systems, motors, controllers, and sensors.

Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at http://www.eren.doe.gov/ee.html.

Issued in Golden, CO

Dated: February 1, 2000.

Jerry Zimmer,

Procurement Director, Golden Field Office.

[FR Doc. 00–2795 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–72–000]

ANR Pipeline Company; Notice of Application

February 2, 2000.

Take notice that on January 27, 2000, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP00–72–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation service provided to Texas Gas Transmission Corporation (Texas Gas) under an individually certificated agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

ANR proposes to abandon a firm natural gas transportation service provided to Texas Gas under ANR's Rate Schedule X–153 contained in its respective FERC Gas Tariff, Original Volume No. 2. ANR states that the service agreement provided for an initial term of fifteen years from the date of first deliveries and from year to year thereafter, unless canceled by either party. ANR asserts that transportation of the gas commenced on February 7, 1985. ANR states that Texas Gas has requested that the parties terminate the transportation service effective February 27, 2000 and requests that authority to abandon the transportation service provided under Rate Schedule X–153 be made effective as of that date. ANR declares that it does not propose to abandon any facilities pursuant to the instant application.

Any person desiring to be heard or to make any protest with reference to said Application should on or before February 23, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds • that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–2781 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–173–000]

ANR Pipeline Company; Notice of Proposed Change to FERC Gas Tariff

February 2, 2000.

Take notice that on January 28, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with an effective date of March 1, 2000.

Second Revised Sheet No. 45E.1

ANR states that the purpose of the filing is to designate one additional point as being eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2790 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–171–000]

Columbia Gulf Transmission Company; Notice of Proposed Change in Gas Tariff

February 2, 2000.

Take notice that on January 28, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of March 1, 2000.

Columbia Gulf is making the instant filing to reflect various administrative revisions to its FERC Gas Tariff, Second Revised Volume No. 1 to reflect items including, but not limited to, changes to date references on various forms of service agreements and revisions to company contact information.

Columbia Gulf states further that copies of this filing have been mailed to all of its firm and interruptible customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2788 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–013]

Overthrust Pipeline Company; Notice of Report of Refunds

February 2, 2000.

Take notice that on January 27, 2000, Overthrust Pipeline Company tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 1999.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85–60–000 and –002. Overthrust explains the Article V of the settlement, as modified, requires Overthrust to file an annual report 60 days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2785 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–014]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2000.

Take notice that on January 27, 2000 Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Thirty-third Revised Sheet No. 10
Sixteenth Revised Sheet No. 10A
Twenty-ninth Revised Sheet No. 11
Twenty-first Revised Sheet No. 11A
Seventeenth Revised Sheet No. 11B
Thirty-first Revised Sheet No. 12
Tenth Revised Sheet No. 12A
Eleventh Revised Sheet No. 15
Twelfth Revised Sheet No. 16
Eleventh Revised Sheet No. 17

Texas Gas states that this filing is made to implement the provisions of Article XI, Section 1(a), of the Offer of Settlement and Explanatory Statement in Docket No. RP97–344, *et al.*, and, as presented in the referenced Appendix D, page 2, of said Settlement, Texas Gas, in the instant filing, proposes to reflect the unit rate reductions, effective March 1, 2000, resulting from the termination of the ANR X–153 contract. The attached tariff sheets reflect reductions to the NNS and FT demand rates of ($0.0025), NNS and FT commodity rates of ($0.0009), SGT rates of ($0.0059), and IT rates of ($0.0034).

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdiction customers, all parties on the Commission's official service list in this proceeding, interested state commissions, and the FERC Staff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–2786 Filed 2–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–172–000]

Texas Gas Transmission Corporation; Notice of Annual Cash-Out Report

February 2, 2000.

Take notice that on January 28, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a report that compares its cash-out revenues with cash-out costs for the annual billing period November 1, 1998 through October 1, 1999.

Texas Gas states that the filing is being made in accordance with the Federal Energy Regulatory Commission's December 16, 1993, "Order on Third Compliance Filing and Second Order on Rehearing" in Docket Nos. RS92–24, et al. There is no rate impact to customers as a result of this filing.

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–2789 Filed 2–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–49–000]

TransAlta Centralia Generation LLC; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

February 1, 2000.

Take notice that on January 24, 2000, TransAlta Centralia Generation LLC (TACG) tendered for filing with the Federal Energy Regulatory Commission (FERC), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before February 22, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–2780 Filed 2–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–104–004]

Williston Basin Interstate Pipeline Company; Notice of Pooling Report

February 2, 2000.

Take notice that on January 24, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), filed a Report of Pooling Activity pursuant to a Letter Order dated January 7, 1999 regarding the above-captioned proceeding.

Williston Basin stated that it is complying with the Letter Order by submitting its report of pooling and nomination aggregation activity for the first year of pooling service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2787 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–174–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

February 2, 2000.

Take notice that on January 27, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 288A, to become effective February 1, 2000.

Williston Basin states that on January 18, 2000, it filed with the Commission, pursuant to Order Nos. 636, et seq., and Subsection 39 3.1 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, certain tariff sheets to implement the recovery of Gas Supply Realignment Transition Costs. The tariff sheets in the referenced filing proposed a new reservation charge surcharge of 43.714 cents per equivalent dekatherm of Maximum Daily Delivery Quantity applicable to firm transportation service and a new GSR unit rate of 0.441 cents per dekatherm applicable to Rate Schedule IT–1.

Williston Basin also states it has come to its attention that it inadvertently neglected to include reference to the GSR surcharge in Subsection 21.6.1, of the General Terms and Conditions of its Tariff. Williston Basin states that it is filing Sixth Revised Sheet No. 288A to include reference to the GSR surcharge in Subsection 21.6.1, Reservation Rate Discounts, of the General Terms and Conditions of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2791 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–978–000, et al.]

Bangor Hydro Electric Company et al.; Electric Rate and Corporate Regulation Filings

February 1, 2000.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro Electric Company

[Docket No. ER00–978–000]

Take notice that on January 27, 2000, Bangor Hydro-Electric Company tendered for filing a Notice of Withdrawal of its December 30, 1999 filing of Notices of Cancellation of its FERC Electric Rate Schedules Nos. 7 (Eastern Maine Electric Cooperative, Inc.), 27 (Swan's Island Electric Cooperative), and 52 (Isle Au Haut Electric Power Company) to be effective March 1, 2000.

Copies of the filing were served upon the service list in this proceeding, the affected purchasers, Swan's Island Electric Cooperative, Eastern Maine Electric Cooperative, Inc., Isle Au Haut Electric Power Company, the Maine Public Utilities Commission, and Maine Public Advocate.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation, California Power Exchange Corporation, Avista Corporation, Hardee Power Partners Limited, Elwood Energy LLC, Tampa Electric Company

[Docket Nos. ER00–1217–000; ER00–1218–000; ER00–1235–000; ER00–1237–000; ER00–1236–000; and ER00–1238–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket No. ER00–1219–000]

Take notice that on January 27, 2000, Delmarva Power & Light Company (Delmarva) filed a new Interconnection Agreement dated January 25, 2000 between Delmarva and the City of Dover, Delaware.

Delmarva requests an effective date of February 1, 2000, in accordance with the terms of the agreement.

The submittal also includes a notice of withdrawal by the City of Dover and its agent, Duke/Louis Dreyfus, LLC, of their requests for rehearing regarding interconnection agreement issues in Docket Nos. OA97–586–001, EL98–27–001, ER97–3189–019 and ER99–2367–001.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER00–1225–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated October 28, 1999, with Central Illinois Light Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Central Illinois Light Company, the Iowa Utilities Board, the Illinois

Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER00–1226–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated December 1, 1999, with Peoples Energy Services entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of December 27, 1999 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Peoples Energy Services, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER00–1227–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated November 23, 1999, with New Energy, Inc. entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on New Energy, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER00–1228–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated January 3, 2000, with TXU Energy Trading Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on TXU Energy Trading Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER00–1229–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated October 1, 1999, with Illinova Power Marketing, Inc. entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Illinova Power Marketing, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER00–1230–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated October 6, 1999, with NRG Power Marketing, Inc. entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on NRG Power Marketing, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota Company)

[Docket No. ER00–1231–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing the Amendment No.1 to the Distribution Facilities Agreement (Contract) between the City of Arlington (City) and NSP.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER00–1232–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing the Amendment No.1 to the Distribution Facilities Agreement (Contract) between the City of Brownton (City) and NSP.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota Company)

[Docket No. ER00–1233–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing the Amendment No.1 to the Distribution Facilities Agreement (Contract) between the City of Winthrop (City) and NSP.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER00–1234–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing an Agreement to extend the Distribution Facilities Agreement between NSP and

the City of Shakopee, Minnesota (City), and an Agreement to extend a previously approved interim rate for the period January 1, 2000, through December 31, 2000.

NSP requests the Agreement be accepted for filing effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–1239–000]

Take notice that on January 27, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a proposed amendment (Amendment No. 25) to the ISO Tariff. Amendment No. 25 includes proposed Tariff and Protocols revisions, concerning imports of Regulation, release of bid information, Firm Transmission Right implementation, Reliability Must-Run Generation cost allocation, Transmission Owner debit clarification, implementation of the Phase II Payments Calendar, and Transmission Maintenance Outage Scheduling.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER00–1240–000]

Take notice that on January 27, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and British Columbia Power Exchange Corporation.

Entergy Services requests that the service agreements become effective January 10, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER00–1241–000]

Take notice that on January 27, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Utilicorp United, Inc.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ES00–15–000]

Take notice that on January 21, 2000, UtiliCorp United Inc. (Applicant) filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue and sell up to and including 1,500,000 shares of common stock, pursuant to the 1986 UtiliCorp United Inc. Employee Stock Purchase Plan.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER00–1223–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing with the Commission a Service Agreement dated December 14, 1999, with Northern Indiana Public Service Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Northern Indiana Public Service Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–907–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing Amendment No. 1 to Supplement No. 10 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 29, 1999, to PP&L, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Cleco Evangeline LLC

[Docket No. ER00–1271–000]

Take notice that on January 27, 2000, Cleco Evangeline LLC (Evangeline), tendered for filing an umbrella service agreement under which Evangeline will make market-based power sales under its power marketer tariff to the City of Alexandria, Louisiana. Evangeline is an affiliate of Cleco Utility Group Inc., a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a *et seq*.

Evangeline states that a copy of the filing has been served upon the City of Alexandria, Louisiana.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1262–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a request to amend their Pro Forma Open Access Transmission Tariff to make format and editorial changes, to

incorporate the North American Electric Reliability Council's Transmission Loading Relief Procedures, adopted by the Commission on December 16, 1998 at Docket No. EL98–52–000, to waive the deposit requirement for creditworthy customers, and to clarify scheduling procedures.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1263–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 19 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 15, 1999 or as of a date determined by the Commission to Duquesne Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Northeast Utilities Service Company

[Docket No. ER00–1305–000]

Take notice that on January 27, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Great Bay Power Corporation (Great Bay) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Great Bay.

NUSCO requests that the Service Agreement become effective January 8, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. New Century Services, Inc.

[Docket No. ER00–1306–000]

Take notice that on January 27, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between the Companies and Municipal Energy Agency of Nebraska.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. New Century Services, Inc.

[Docket No. ER00–1307–000]

Take notice that on January 27, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. New Century Services, Inc.

[Docket No. ER00–1308–000]

Take notice that on January 27, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1309–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 18 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 8, 1999 or as of a date determined by the Commission to Coral Power, L.L.C.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power & Light Company

[Docket No. ER00–1310–000]

Take notice that on January 27, 2000, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with The Legacy Energy Group, LLC for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on February 1, 2000.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Ameren Services Company

[Docket No. ER00–1311–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Reliant Energy Services, Inc., (RES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to RES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Ameren Services Company

[Docket No. ER00–1312–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-

Term Firm Point-to-Point Transmission Service between ASC and Reliant Energy Services, Inc. (RES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to RES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Ameren Services Company

[Docket No. ER00–1313–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Dynegy Power Marketing, Inc., (DPM). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to DPM pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Ameren Services Company

[Docket No. ER00–1314–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Dynegy Power Marketing, Inc. (DPM). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to DPM pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2747 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

February 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2042–013.

c. *Date filed:* January 21, 2000.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho. About 709 acres within the project boundary are located on lands of the United states, including Kalispel Indian Reservation (493 ac), U.S. Forest Service Colville National Forest (182.93), U.S. Department of Energy, Bonneville Power Administration (24.14), U.S. Fish and Wildlife Service (2.45), U.S. Army Corps of Engineers (5.29), and U.S. Bureau of Land Management (1.44).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Geddes, Public Utility District No. 1 of Pend Oreille County, 130 North Washington, Newport, WA 99156; (509) 447–3137.

i. *FERC Contact:* David Turner (202) 219–2844, Email: david.turner@ferc.fed.us

j. *Brief Project Description:* The 60-megawatt (MW) project consists of the following: (1) 46-foot-high, 160-foot-long reinforced concrete dam with integral spillway, (2) 217-foot-long, 35-foot-diameter diversion tunnel, (3) 1,170-foot-long forebay channel, (4) auxiliary spillway, (5) powerhouse containing four generating units with a combined capacity of 60 MW, (2) 8,850-acre reservoir at maximum operating pool elevation of 2030.6 feet, and other associated facilities.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

l. With this notice, we are initiating consultation with the Montana and Idaho STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, Naitonal Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 00–2782 Filed 2–7–00; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

February 2, 2000.

a. *Type of Filing:* Notice of Intent to File Applications for New License

b. *Project No.:* 2233

c. *Date Filed:* December 21, 1999.

d. *Applicants:* Portland General Electric Company, current licensee.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River in Clackamas County, Oregon.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Contact:* Julie A. Keil, Director of Hydro Licensing and Water Rights, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204.

i. *Expiration date of original license:* December 31, 2004.

j. The project consists of the T.W. Sullivan Development on the west side of the Willamette Falls near the City of

West Linn with a total installed capacity of 16 MW, and the Smurfit Development on the east side of the Willamette Falls near Oregon City with a total installed capacity of 1.5 MW.

k. *FERC contact:* Hector M. Perez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2002.

David P. Boergers,

Secretary.

[FR Doc. 00–2783 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Offer of Settlement and Application for Amendment of License

February 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Offer of Settlement and Amendment of License.

b. *Project No:* 2342–011.

c. *Date Filed:* October 21, 1999.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Condit.

f. *Location:* The project is located on the White Salmon River in Skamania and Klickitat Counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 79(a)–825(r), and Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (1999).

h. *Applicant Contacts:* Mr. Randy Landolt, Managing Director Hydro Resources Group, PacifiCorp, 825 NE Multnomah Street, Suite 1500, Portland, OR 97232, (503) 813–6651; Mr. Thomas H. Nelson, Mr. Jeffrey S. Lovinger, Law Offices of Thomas H. Nelson and Associates, 825 NE Multnomah Street, Suite 925, Portland, OR 97232, (503) 230–8311; and Mr. Robert A. Nelson, Stoel Rives LLP, 1275 K Street, Suite 810, Washington, DC 20005–4006, (202) 408–2102.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385 or by e-mail at david.snyder@ferc.fed.us

j. *Filing the Removal Plan associated with the Settlement Agreement:* It appears, based upon the contents of the Offer of Settlement and of the Settlement Agreement, Section 2.1, that PacifiCorp may intend a portion of the draft Condit Hydroelectric Project Removal Summary Report, Engineering Considerations, filed on June 19, 1998, referenced as the "Removal Plan," to be included as a part of the Settlement Agreement. Section 2.1 of the Agreement provides for PacifiCorp to file a copy of the Removal Plan, and such filing will make the Offer of Settlement complete.

k. *Deadline for filing comments and or motions:* March 15, 2000 or 45 days after the filing of the Removal Plan with the Commission, whichever occurs later.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the Project Number (Project No. 2342–011) on any comments or motions filed.

Under Rule 602(f)(3), 18 CFR 602(f)(3) (1999), a failure to file comments on the settlement agreement constitutes a waiver of all objections to the Offer of Settlement.

l. *Description of Filing:* PacifiCorp filed an Offer of Settlement on behalf of itself and the Yakama Indian Nation, the U.S. Forest Service, the U.S. Department of the Interior, the National Marine Fisheries Service, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, the Washington Wilderness Coalition, and the Columbia River Intertribal Fish Commission.

The Offer of Settlement proposes retirement of the Condit Project and dam removal by December 2007. In addition, PacifiCorp requests an amendment of the current license to extend the license term through October 1, 2006 (increasing the term of the current license from 28 years to 41 years), and to incorporate the terms and conditions of the Settlement Agreement in the license.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–2784 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application For Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 2, 2000

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of License.

b. *Project No.* 2543–045.

c. *Date Filed:* December 28, 1999.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Milltown.

f. *Location:* On the Clark Fork River in Missoula County, Montana. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (406) 497–2456.

i. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: *regina.saizan@ferc.fed.us.*

Deadline for filing comments and or motions: March 10, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2543–045) on any comments or motions filed.

k. *Description of Amendment:* The licensee requests that its license be amended to extend the expiration date of the license two years, from December 31, 2004 to December 31, 2006. On December 30, 1999, the license filed a notice of intent not to relicense the Milltown Project, with the understanding that its notice would become moot if its request to extend the term of the license is granted.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–2792 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64046; FRL–6489–6]

Formetanate Hydrochloride; Receipt of Requests to Voluntarily Delete Uses, Request for Cancellation, and Advance Notification of Tolerance Revocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: AgrEvo USA Company, the company that holds the pesticide registration of pesticide products containing formetanate hydrochloride (m- [[(dimethylamino)methylene] amino]phenyl methylcarbamate hydrochloride) has asked EPA to amend its registration to delete use on plums, prunes, and greenhouse grown ornamental plants, and cancel six pesticide products registered for greenhouse grown ornamental plants under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In accordance with section 6(f)(1) of FIFRA, as amended, EPA is issuing a notice of receipt of this request by the registrant. The request to delete the aforementioned uses from the registration, and voluntary cancellation of 24(c) registrations for greenhouse grown ornamental plants are the result of an agreement between EPA and the registrant regarding the registration of pesticide products containing formetanate hydrochloride. Given the potential dietary risks from formetanate hydrochloride use on registered food crops, the registrant requested, among other things, that uses that appear to be of little benefit (i.e., plums and prunes) be deleted from pesticide product labels. In addition, due to potential worker exposure risks from formetanate hydrochloride pesticide product use on greenhouse grown ornamental plants, the registrant requested that this use also be terminated and registrations for this use under section 24(c) of FIFRA be canceled. Following publication of this Notice and completion of a 30-day public comment period, EPA intends to grant the requested amendments to delete uses and voluntary registration cancellations.

DATES: Comments on the requested amendments to delete uses and voluntary registration cancellations must be submitted to the address provided below by March 9, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Goodis, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (703) 308–8157; e-mail address: goodis.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may potentially be affected by this action if you manufacture, sell, distribute, or use pesticide products containing the active

ingredient formetanate hydrochloride. Formetanate hydrochloride, trade name is Carzol® SP, is an insecticide/miticide of the carbamate class, and is presently registered in the United States and is used on citrus, stone and pome fruits, alfalfa (grown for seed), and greenhouse grown ornamental plants. AgrEvo USA Company is the sole technical manufacturer of formetanate hydrochloride.

Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the " **Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

In Person. The Agency has established an official record for this action under docket control number OPP–64046. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwys, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–64046 in the subject line on the first page of your response.

By mail. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

In person or by courier. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwys, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

Electronically. You may submit your comments electronically by E-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–64046. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views/interests as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

This notice announces the Agency's receipt of a request from the registrant to amend their pesticide products registered under section 3 of FIFRA. In a memorandum of agreement ("Agreement") effective October 14, 1999, EPA and the registrant of products containing formetanate hydrochloride agreed to several voluntary measures to reduce dietary, agricultural worker, and ecosystem risks associated with formetanate hydrochloride exposure. EPA initiated the negotiations with registrants after formetanate hydrochloride, as currently registered, was found to pose an unacceptable dietary risk, especially to children ages 1 to 6 years old, risks of concern to agricultural workers, and unacceptable risks to birds, terrestrial mammals, and aquatic invertebrates. As part of the Agreement, the registrant agreed, among other things, to reduce application rates on all food crops, reduce the number of applications, and to take a number of steps to reduce worker exposure. The registrant also agreed to terminate formetanate hydrochloride product use on plums and prunes, which appear to benefit little from use of the product, and greenhouse grown ornamentals, to address worker risk concerns. In return, EPA agreed at this time not to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA to achieve the risk reduction measures set forth in the Agreement.

In order to terminate formetanate hydrochloride use on plums, prunes, and greenhouse grown ornamentals, the registrant has submitted a request to

amend their registration of pesticide products containing formetanate hydrochloride pursuant to section 6(f)(1)(A) of FIFRA. These registrations are listed in the following Table 1:

TABLE 1.— REGISTRATIONS WITH PENDING USE DELETIONS

Registration No.	Product
45639–82	Formetanate Hydrochloride Technical
45639–163	Carzol® SP

This notice also announces receipt by the Agency of an application from the registrant to cancel six pesticide products registered under section 24(c) of FIFRA. These registrations are listed in alphabetic order of the registration number in Table 2 below.

TABLE 2.— REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product
IN–97000400	Carzol® SP
NC–97000200	Carzol® SP
OH–97000800	Carzol® SP
SC–97000700	Carzol® SP
TX–98000800	Carzol® SP
UT–92000100	Carzol® SP

The following Table 3 includes the name and address of record for the registrant of the products listed in Tables 1 and 2:

TABLE 3.— REGISTRANT REQUESTING DELETED USES AND VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
45639	AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808

III. What is the Agency's Authority for Taking this Action?

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** .

Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request to cancel registrations or delete pesticide uses. In the case of minor agricultural uses, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period under certain circumstances.

For this action, the registrant of formetanate hydrochloride has requested that EPA waive any public comment period provided in 6(f) of FIFRA. In light of this request, EPA is granting the request to waive the 180–day comment period, but is providing a 30–day public comment period before taking action on the requested voluntary cancellations and amendments to delete uses.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under "FOR FURTHER INFORMATION CONTACT," postmarked before March 9, 2000. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The registrant has requested amendment of the formetanate hydrochloride registrations identified in Table 1 and voluntary cancellation of the formetanate hydrochloride registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary amendment and cancellation. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, pursuant to EPA's existing stocks policy as prescribed in the **Federal Register** of June 26, 1991, (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

As part of the October 14, 1999, Agreement negotiated with the registrant, all formetanate hydrochloride products sold or distributed, including existing stocks, (except for the purpose of relabeling according to the Agreement) by the registrant after December 1, 1999, shall bear labeling approved by EPA pursuant to the Agreement. Moreover, sale and distribution by persons other than the registrant of products, including existing stocks, not bearing labeling approved by EPA pursuant to the Agreement (except for the purpose of relabeling according to the Agreement), shall be prohibited after June 1, 2000.

VI. Notification of Intent to Revoke Tolerances

This document also serves as an advance notification that the Agency intends to propose to revoke the tolerances found in: 40 CFR 180.276 for residues of formetanate hydrochloride in or on plums (fresh prunes) and dried prunes. This action reflects the October 14, 1999, Agreement, in which the registrant agreed to delete the use of formetanate hydrochloride products on plums and prunes. In accordance with the October 14, 1999, Agreement, the Agency intends to revoke these tolerances to help reduce acute dietary risks that currently exceed the margins of safety deemed acceptable by the Agency. The Agency intends that the tolerance revocations become effective June 1, 2000.

VII. Import Tolerance Guidance

The Agency is willing to consider requests to modify or maintain a tolerance following the cancellation of the accompanying registration. Such request should be sent to the person identified in the "FOR FURTHER INFORMATION CONTACT" section. If EPA receives a request to modify or maintain a tolerance in response to this Notice, the Agency will issue a Notice under section 408(f) of FFDCA

informing the public of the data required to support the tolerance and stating the time period for submitting the required data. Regardless of whether a tolerance applies solely to domestic food uses or solely to imported foods, the same technical chemistry and toxicology data are required to support tolerances under FFDCA section 408. For pesticide chemicals used in or on food, EPA requires residue chemistry data that are representative of growing conditions in exporting countries in the same manner that the EPA requires representative residue chemistry data from different U.S. regions to support domestic use of the pesticide and the tolerance. Persons supporting the maintenance or modification of tolerances to cover residues in or on imported food have the burden of demonstrating the relevance of any existing domestic data to foreign growing conditions.

If EPA does not receive any indication of a need to retain a tolerance for imported foods following the cancellation of the registered food use, the Agency will publish in the **Federal Register** a notice proposing to revoke the tolerance. That notice will again give interested parties the opportunity to come forward to support the maintenance of the tolerance.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 1, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–2828 Filed 2–7–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3 p.m. on Wednesday, February 9, 2000, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposed amendment to Part 325—Risk–Based Capital Treatment of Recourse and Direct Credit Substitutes.

Discussion Agenda: Memorandum and resolution re: Notice of Proposed Rulemaking—New Part 332—Privacy of Consumer Financial Information.

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 2, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–2889 Filed 2–3–00; 4:48 pm]

BILLING CODE 6214–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Wednesday, February 9, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory activities and reports of the Office of Inspector General.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—7th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 4, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–2940 Filed 2–4–00; 1:22 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 28, 2000:

Carroll, Douglas, Floyd, and Rockdale counties for debris removal (Category A) and emergency protective measures, (Category B), including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–2806 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1311–DR), dated

January 28, 2000, and related determinations.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 28, 2000:

Banks, Barrow, Bartow, Carroll, Chattooga, Cherokee, Cobb, Dawson, DeKalb, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Hart, Lumpkin, Newton, Oconee, Paulding, Pickens, Rabun, Rockdale, Stephens, Union, Walker, White, and Wilkes for utilities (Category F) under the Public Assistance program (already designated for debris removal (Category A) and emergency protective measures, (Category B), including direct Federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–2808 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire 8.34 percent of the voting shares of NorthStar Bancshares, Inc., Riverside, Missouri, and thereby acquire shares of NorthStar Bank, N.A., Kansas City, Missouri.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. FNB Bancorp, Layton, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Layton, Layton, Utah.

Board of Governors of the Federal Reserve System, February 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2720 Filed 2–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9 a.m., Friday, February 11, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2890 Filed 2–3–00; 4:54 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, February 28, 2000, from 8:30 a.m. to 5:00 p.m., and Tuesday, February 29, 2000, from 8:30 a.m. to 12:15 p.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 00–2859 Filed 2–7–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice of meeting.

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held at the International Trade Center, Polaris Ballroom, 1300 Pennsylvania Avenue, NW, Washington, DC 20004, starting on February 24, 2000, at approximately 9:00 a.m. and will recess at approximately 5:30 p.m. The meeting will reconvene on February 25, 2000, at approximately 8:00 a.m. and will adjourn at approximately 5:00 p.m. The meeting will be open to the public. Attendance by the public will be limited by the space available. The committee will review public comments received in response to A Public Consultation on Oversight of Genetic Tests published in the **Federal Register** on December 1, 1999 (64 FR 67273), and work toward the development of final recommendations on the oversight of genetic testing. A limited period of time will be provided for public comment, and individuals interested in participating in the public comment period should contact Ms. Sarah Carr, SACGT Executive Secretary, as shown below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services (DHHS) established the SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to: (1) Recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; (3) and identify research needs related to the Committee's purview.

Further information about the SACGT is available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm*. If you wish to attend, please register through the web site. A draft meeting agenda will be posted to the web site prior to the meeting. Individuals who wish to provide public comments should notify Ms. Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov* as soon as possible and provide a copy of their remarks to Ms. Carr by February 15, 2000. Those who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Ms. Carr at 301–496–9838. The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: February 3, 2000.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 00–2906 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 9 a.m.-5:30 p.m., February 9, 2000; 8 a.m.–3:30 p.m., February 10, 2000.

Place: The Renaissance Waverly Hotel, 2450 Galleria Parkway, Atlanta, Georgia 30339, telephone (770) 953–4500.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be Discussed: Agenda items include: a briefing of administrative activities in the Community Guide Branch, recommendation approvals for the Oral Health and Tobacco Chapters, updates for the following chapters: Diabetes, Cancer, Motor Vehicle Occupant Injuries, Mental Health, Physical Activity, Nutrition, Sexual Behavioral, Alcohol, Violence Prevention and Sociocultural Environment, an update on the Economic Evaluation and a discussion of actions items for the next quarter.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Stephanie Zaza, M.D., M.P.H., Chief, CPS Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 7, 2000.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–2899 Filed 2–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0671]

Bestblood, Ltd.; Revocation of U.S. License No. 1116

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1116) and product licenses (the licenses) issued to Bestblood, Ltd., doing business as Optimum Healthcare, Inc., for the manufacture of Whole Blood, Red Blood Cells, Red Blood Cells Frozen, Whole Blood CPD, Red Blood Cells Deglycerolized, and Whole Blood CPDA–1. Bestblood, Ltd., did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

DATES: The revocation of the establishment license (U.S. License No. 1116) and product licenses is effective February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD. 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the establishment license (U.S. License No. 1116) and product licenses issued to Bestblood, Ltd., doing business as Optimum Healthcare, Inc., 239 Randall St., San Francisco, CA 94131, for the manufacture of Whole Blood, Red Blood Cells, Red Blood Cells Frozen, Whole Blood CPD, Red Blood Cells Deglycerolized, and Whole Blood CPDA–1. Proceedings to revoke the licenses were initiated because an attempted inspection of the facility by FDA, as required under 21 CFR 600.21, revealed that the firm was no longer in operation.

In a certified, return-receipt letter dated June 16, 1997, FDA notified the firm that the attempt to conduct an inspection at Bestblood, Ltd., 239 Randall St., San Francisco, CA 94131 was unsuccessful because the facility was apparently no longer in operation and requested that the firm notify FDA in writing of the firm's status. This letter was sent to 239 Randall St., San Francisco, CA 94131, and also to P.O. Box 843, Cupertino, CA 95054–0843,

and each was returned to the agency as undeliverable.

In a certified, return-receipt letter sent to Bestblood, Ltd., dated March 4, 1998, at both addresses mentioned previously and returned as undeliverable, FDA indicated that an attempt to conduct an inspection at the facility was unsuccessful. The letter advised the firm that, under 21 CFR 601.5(b)(1) and (b)(2), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection required under § 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection cannot be made, proceedings for license revocation may be instituted. FDA also indicated that a meaningful inspection could not be made at the establishment and issued to the firm a notice of FDA's intent to revoke U.S. License No. 1116 and announced its intent to offer an opportunity for a hearing.

Under 21 CFR 12.21(b), FDA published in the **Federal Register** of April 15, 1999 (64 FR 18623), a notice of opportunity for a hearing on a proposal to revoke the licenses of Bestblood, Ltd. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility because it was no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061 Rockville, MD 20852. The notice provided the firm 30 days to submit a written request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The firm did not respond within the 30-day time period with a written request for a hearing. The 30-day time period prescribed in the notice of opportunity for a hearing and in the regulations, may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68) the establishment license (U.S. License No. 1116) and the product licenses issued to Bestblood, Ltd., are revoked, effective February 8, 2000.

Dated: January 13, 2000.

Mark Elengold,

Deputy Director for Operations, Center for Biologics Evaluation and Research.

[FR Doc. 00–2768 Filed 2–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 16, 2000, from 8:30 a.m. to 5:30 p.m., and March 17, 2000, from 8 a.m. to 1 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 16, 2000, the committee will discuss: (1) New drug application (NDA) 21–063, Eloxatin® (oxaliplatin), Sanofi Pharmaceuticals, Inc., indicated for the first-line treatment of patients with advanced colorectal cancer in combination with 5–U based chemotherapy; and (2) NDA 20–571/SE1–009, Camptosar® Injection (irinotecan hydrochloride injection), Pharmacia and Upjohn Co., indicated as a component of first-line therapy for patients with metastatic carcinoma of the colon or rectum. On March 17, 2000, the committee will discuss NDA 21–174, gemtuzumab zogamicin, Wyeth-Ayerst Laboratories, indicated for the treatment of patients with CD33 positive acute myeloid leukemia in relapse.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 8, 2000. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and 1:30 p.m. and 1:45 p.m. on March 16, 2000, and between approximately 8:15 a.m. and 8:45 a.m. on March 17, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 8, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by March 8, 2000, to address issues specific to the submission or topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–2770 Filed 2–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2912]

Review of Supplemental Applications for Approved New Animal Drugs; Center Responsibility and Standards for Prompt Review; Availability of Draft Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: As required by the Food and Drug Administration Modernization Act of 1997 (FDAMA), the Food and Drug Administration's (FDA) Center for Veterinary Medicine (CVM) is making available information regarding the approval of supplemental applications for approved new animal drugs. CVM is publishing standards for the prompt review of supplemental applications and referencing an existing guidance that describes how supplemental applications may qualify for priority review. CVM is also designating an

individual within the Center who is responsible for encouraging the prompt review of supplemental applications and for working with sponsors to facilitate the development and submission of data to support supplemental applications. Further, CVM is describing its efforts to collaborate with other organizations and persons to identify published and unpublished studies that may support supplemental applications and to encourage sponsors to submit supplemental applications based on such studies. In addition, CVM is announcing the availability of a draft guidance entitled "Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs." This draft guidance explains how drug sponsors can use data submitted in support of an original application to support supplemental applications.

DATES: Written comments should be submitted by May 8, 2000. Written comments on the existing guidance entitled "CVM's Program Policy and Procedures Guide 1240.3135," which describes how supplemental applications qualify for priority review, may be submitted at any time.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs" or "CVM's Program Policy and Procedures Guide 1240.3135" to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. Copies of the draft guidance and the existing guidance may be obtained on the Internet at http://www.fda.gov/cvm.

Submit written comments on the draft guidance, "Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs" to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on CVM's "Program Policy and Procedures Guide 1240.3135" to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Marilyn N. Martinez, Office of New Animal Drug Evaluation (HFV–130), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301–827–7577.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403 of the FDAMA (Pub. L. 105–115) instructs FDA to provide certain information regarding approval of supplemental applications for approved products. Among other things, section 403 requires that FDA do the following: (1) Section 403(a) requires that the agency publish standards for the prompt review of supplemental applications; (2) section 403(b)(1) requires that FDA provide guidance to "clarify circumstances in which published matter may be the basis for the approval of a supplemental application"; (3) section 403(b)(2) requires that FDA provide guidance that specifies "data requirements that will avoid duplication of previously submitted data by recognizing the availability of data previously submitted in support of an original application." (4) section 403(b)(3) requires that FDA provide guidance that defines supplemental applications that are eligible for priority review; (5) section 403(c) requires that FDA designate an individual within each Center to be responsible for encouraging the prompt review of supplemental applications and working with sponsors to facilitate development and submission of data to support supplemental applications; and (6) section 403(d) requires the implementation of programs and policies to foster collaboration between FDA and other organizations and persons to identify published and unpublished studies that might support supplemental applications and to encourage sponsors to submit supplemental applications based on such studies.

This document and the guidance documents discussed in it fulfill the requirements of section 403(a), (b)(2), (b)(3), and (c). This document also discusses FDA's continuing efforts at collaboration as required by section 403(d). Section 403(b)(1) will be addressed in a future **Federal Register** notice.

II. Section 403(a): Standards

Section 403(a) of FDAMA requires that FDA publish "standards for the prompt review of supplemental applications submitted for approved articles * * *." The legislative history of this section indicates that these performance standards should cover supplements submitted for changes in product use.

Section 512(c)(1) of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(1))sets a 180-day time frame for review of new animal drug applications (NADA's). This time frame applies to all applications, including supplements to approved applications.

The agency intends to use the performance goals set forth in the fiscal year (FY) 2001 performance plan to fulfill the requirement of the FDAMA that it establish standards for the prompt review of efficacy supplements. In FY 2000, the agency's goal is to review and act on 65 percent of NADA's and abbreviated new animal drug applications (ANADA's), including supplemental applications, within 180 days of receipt. For FY 2001, the goal is 70 percent.

To facilitate prompt reviews, CVM encourages sponsors of supplemental applications to work closely with CVM personnel through presubmission conferences or other means to aid CVM in assuring that supplemental applications are reviewed promptly.

III. Section 403(b)(2)(i): Specify Data Requirements That Will Avoid Duplication of Previously Submitted Data by Recognizing the Availability of Data Previously Submitted in Support of an Original Application

CVM has developed and is announcing the availability of a draft guidance, "Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs" that represents the agency's current thinking. The Center designates two categories of supplemental new animal drug applications (NADA's), Category I and Category II. Ordinarily, for Category I supplemental NADA's, FDA does not require a reevaluation of any of the safety or effectiveness data in the parent application. For Category II supplemental NADA's, FDA may ordinarily require drug sponsors to submit new data. Therefore, the Center may be required to reevaluate certain safety or effectiveness data in the original application. The draft guidance lists the types of supplemental NADA's that fall into each of the categories, and it provides an overview of issues that drug sponsors should consider with respect to safety and effectiveness data and data supporting the environmental and manufacturing controls technical sections when seeking the approval of Category II supplemental NADA's.

The draft guidance is organized by type of Category II supplement. For each type (e.g., a change in the amount of drug administered per dose), the document provides a table and comments. The table lists each technical section for which information would be required for approval of the supplement

and whether the information in a previously approved application is sufficient or new information would be needed. Comments provide additional information to assist the sponsor. In this way, the draft guidance specifies data requirements that will avoid duplication of previously submitted data. It also refers drug sponsors to related guidance documents that will aid them in the preparation of supplemental NADA's.

This draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

IV. Section 403(b)(3): Define Supplemental Applications That Are Eligible for Priority Review

When CVM determines that a product represents an important advance in animal health, it may expedite the review of original and supplemental applications. The circumstances in which CVM may make such a determination are outlined in an existing guidance entitled "CVM Program Policy and Procedures Guide 1240.3135," available at the address above.

V. Section 403(c): Responsibilities of Centers

FDA has designated the following individual within CVM to be responsible for encouraging prompt review of supplemental applications for approved articles and for working with sponsors to facilitate the development and submission of data to support the approval of supplemental applications in accordance with section 403(c) of FDAMA:

Director, Office of New Animal Drug Evaluation (ONADE), Center for Veterinary Medicine, (HFV–100), Food and Drug Administration, 7500 Standish Place, Rockville MD 20855, 301–594–1620.

VI. Section 403(d): Collaboration to Identify Published and Unpublished Studies

CVM currently collaborates with the U.S. Department of Agriculture (USDA) National Research Support Project #7 (NRSP–7) and others, including state agencies, extension agents, universities, the National Coordinator for Aquaculture NADA's, and other USDA agencies, to encourage sponsors to make supplemental applications for minor use new animal drugs by encouraging development of Public Master Files (PMF's). Minor use new animal drugs are drugs used in minor animal species or drugs used in any animal species for the control of a disease that occurs infrequently or occurs in limited geographic areas. Minor species are defined in 21 CFR 514.1(d). PMF's contain public data from unpublished and published studies that can be used in conjunction with data already available in a major use product's original NADA to support a supplemental NADA. The majority of approved minor use drugs have been approved as supplements to products approved for use in major species.

In a notice entitled "Proposals to Increase the Legal Availability of Animal Drugs for Minor Species and Minor Uses; Availability" published in the **Federal Register** (63 FR 58056, October 29, 1998), CVM proposed other methods of collaboration to make data available for minor use supplemental applications.

In addition, CVM frequently participates in discussions with animal industry trade associations to help clarify the new animal drug approval process. These discussions encourage university researchers and others to identify or initiate studies that may be used to support supplemental applications.

VII. Comments

The draft guidance discussed in section III of this document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Written comments may be submitted at any time, however, comments should be submitted by May 8, 2000, to ensure adequate consideration in preparation of the final document. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2767 Filed 2–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: February 28, 2000.

Time: 1:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joyce A. Hunter, PHD, NIH, NHLBI, DEA, Rockledge Center, II, 6701 Rockledge Drive, Suite 7192, Bethesda, MD 20892–7924, (301) 435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2757 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, CONTRACT REVIEW RFP.

Date: February 8, 2000.

Time: 1 pm to 6 pm.

Agenda: To review and evaluate contract proposals.

Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel "Oxidative Stress in Age Associated Neurodegeneration."

Date: February 23, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Suite 502C, MD 20891, (Telephone Conference Call).

Contact Person: Paul Lenz, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: March 2–3, 2000.

Time: 7 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: March 13–15, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 31, 2000.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2754 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR—"Measurement Modules for Prevention Interventions."

Date: February 3, 2000.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphaisis Panel, SBIR—"Develop Prevention Research Dissemination."

Date: February 3, 2000.

Time: 10:30 am to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 31, 2000.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2755 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Development of Effective Mitigation Methods or Devices for Reduction of Indoor Allergens (SBIR Topic 72 & 73).

Date: February 4, 2000.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: David P. Brown, MPH, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Construction of Xenopus cDNA "chips" for Analysis of Gene Expression (SBIR Topic 74).

Date: February 9, 2000.
Time: 1 p.m. to 3:30 p.m.
Agenda: To review and evaluate contract proposals.
Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: David P. Brown, MPH, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: January 31, 2000.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2756 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Date: February 23, 2000.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate contract proposals.
Place: Residence Inn, Conference Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2758 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Project Site Visit on Reactive Oxygen Species and Aging.
Date: February 17, 2000.
Time: 10 am to 12 pm.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ramesh Vemuri, PHD, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review a Program Project Grant Application.
Date: March 2, 2000.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Hampton Inn, 5601 Fortune Circle West, Indianapolis, IN 46241.
Contact Person: Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Sociology Aging Review Committee.
Date: March 9, 2000.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PHD, Scientific Review Administrator, The Betsesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, (SEP) Small Grants in Sociology and Psychology.
Date: March 10, 2000.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PHD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2759 Filed 2–7–00 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the

discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: January 31, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contract Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Name of Committee: National Institute on Alchol Abuse and Alcoholism Special Emphasis Panel.

Date: February 25, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Sean O'Rouke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2760 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15–16, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Pathology A Study Section.

Date: February 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW, Washington, DC 20037.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of committee: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 1.

Date: February 16–17, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Madison Hotel, Fifteenth & M Streets NW., Washington, DC 20005.

Contact Person: Russell T. Dowell, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16–17, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Syed Husain, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Medicinal Chemistry Study Section.

Date: February 16–18, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ronald J. Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Chemical Pathology Study Section.

Date: February 16–18, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Syed Quadri, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 1.

Date: February 16–18, 2000.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MS 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16, 2000.

Time: 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alec S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17–18, 2000.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17–18, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, NW., Washington, DC 20008.

Contact Person: Gillian Einstein, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, (301) 435–4433.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17–18, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Michael Nunn, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 1.

Date: February 17–18, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Michael H. Sayre, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Biophysical Chemistry Study Section.

Date: February 17–18, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Human Embryology and Development Subcommittee 1.

Date: February 17–18, 2000.

Time: 8 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Knecht, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 5.

Date: February 17–18, 2000.

Time: 8:30 an to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health. 6701 Rockledge Drive, Room 5136, MSC 784[illegible] Bethesda, MD 20892, (301) 435–1021, duperes@csr.nih.gov.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 1.

Date: February 17–18, 2000.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkinsp@csr.nih.gov.

Name of Committee: Biochemical Sciences Initial Review Group, Biochemistry Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chse, MD 20815.

Contact Person: Chhanda L. Ganguly, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Biochemical Sciences Initial Review Group, Pathobiochemistry Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Immunological Sciences Initial Review Group, Experimental Immunology Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Calbert A. Laing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group, Visual Sciences A Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 (IFCN–7 (01).

Date: February 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Tropical Medicine and Parasitology Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Biochemical Sciences Initial Review Group, Medical Biochemistry Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Alexander S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Metallobiochemistry Study Section.

Date: February 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: John L. Bowers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17–18, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Richard Marcus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

Name of Committee: Genetic Sciences Initial Review Group, Mammalian Genetics Study Section.

Date: February 17–18, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Camilla Day, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov.

Name of Committee: Genetic Sciences Initial Review Group, Genetics Study Section.

Date: February 17–19, 2000.

Time: 9 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17–18, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Kathryn Meadow-Orlans, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

Name of Committee: Immunological Sciences Initial Review Group, Immunobiology Study Section.

Date: February 17–18, 2000.

Time: 9 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Kathryn Meadow-Orlans, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 18, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW., Washington, DC 20008.

Contact Person: Nancy Hicks, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2761 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Southern Sea Otter (Enhydra lutris nereis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revision of the southern sea otter recovery plan for public review. This species occurs along the central coast of California, from Half Moon Bay south to Gaviota. The Service solicits review and comment from the public on this draft revised plan.

DATE: Comments on the draft revised recovery plan must be received on or before April 10, 2000 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by written request addressed to the Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments and materials regarding the plan should be addressed to Mr. Carl Benz at the above Ventura, California address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Benz at the above Ventura address (telephone 805–644–1766).

SUPPLEMENTARY INFORMATION:

Background

The southern (California) sea otter (*Enhydra lutris nereis*) was listed as threatened in 1977 under the Endangered Species Act of 1973, as amended. It is also recognized as a depleted population pursuant to the Marine Mammal Protection Act. Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons for the threatened status. The southern sea otter population contains about 2,000 individuals and ranges between Half Moon Bay south to Gaviota, California. Approximately 20 otters, including pups, are at San Nicolas Island as a result of translocation efforts to establish an experimental population. After review of new biological information, the Service, with assistance of the Southern Sea Otter Recovery Team, drafted for public review and comment a revised recovery plan in 1991. A second revision was drafted for public review in 1996. After review of public comments on those drafts, and review of new technical information regarding oil spill risk to southern sea otters, the Service, with assistance of the Southern Sea Otter Recovery Team and technical consultants, has drafted for public review and comment a new draft revised recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 2, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 00–2764 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Northwest California Resource Advisory Council, Redding, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, March 30 and 31, 2000, for a business meeting and field tour. The meeting and tour are open to the public, but anyone attending must provide their own transportation and lunch.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Thursday, March 30, at the Bureau of Land Management's Redding Field Office, 355 Hemsted Drive, Redding, CA. The members will depart immediately for a tour of public lands managed by the BLM's Redding Field Office. On Friday, March 31, the business meeting begins at 8 a.m. in the Conference Room of the Redding Field Office. Agenda items include an update on the Headwaters Forest, the status of the Redding Resource Management Plan amendment process, a status report on recovery from the Lowden Fire, and a status report on a management feasibility study for the Lake Berryessa region.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

FOR ADDITIONAL INFORMATION CONTACT: Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–2829 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 29, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 23, 2000.

Patrick W. Andrus,

Acting Keeper of the National Register.

ALABAMA

Blount County

Grifith, Robert G., Sr., House, 1204 Cty. Rd. 25, Summit, 00000143

Clarke County

Airmount Grave Shelter (Clarke County MPS), N side of AL 5, 0.5 mi. W of Cty Line, Thomasville, 00000142

McClellan, Doit W., Lustron House (Lustron Houses in Alabama, MPS), 116 W. Pearl St., Jackson, 00000136

McKee, J.P., Lustron House (Lustron Houses in Alabama, MPS), 519 College Ave., Jackson, 00000132

Nettles, Isaac, Gravestones (Clarke County MPS), E side Mt Nebo Rd., 0.5 mi. S of Cty Rd. 19, Carlton, 00000141

Colbert County

Newman, E.L., Lustron House (Lustron Houses in Alabama, MPS), 1406 34th St., Sheffield, 00000134

Jefferson County

Gleissner, John D. and Katherine, Lustron House (Lustron Houses in Alabama, MPS), 2420 Cahaba Rd., Birmingham, 00000133

Lustron House on Columbiana Road (Lustron Houses in Alabama, MPS), 430 Columbiana Rd., Birmingham, 00000131

Wright, Bernice L., Lustron House, (Lustron Houses in Alabama, MPS) 2424 Cahaba Rd., Birmingham, 00000130

Lauderdale County

Bowen, William, Lustron House, (Lustron Houses in Alabama, MPS) 1145 Wildwood Park Rd., Florence, 00000135

Darby, E. H., Lustron House, (Lustron Houses in Alabama, MPS) 321 Beverly, Florence, 00000127

Forks of Cypress Cemetery, 0.25 mi. N of Jackson Rd., E side of Dowdy Rd., N of Little Cypress Creek, Florence vicinity, 00000140

Madison County

Jude, George, House, 2132 Winchester Rd., Huntsville, 00000139

Montgomery County

Huntingdon College Campus Historic District, 1500 E. Fairview Ave., Montgomery, 00000138

Perry County

Uniontown Historic District, Roughly bounded by Tomasene St., Taylor St., East Ave., and Green St., Uniontown, 00000137

Tuscaloosa County

Quayle, Margaret, Lustron House, (Lustron Houses in Alabama, MPS) 27 Parkview Dr., Tuscaloosa, 00000126

ALASKA

Juneau Borough-Census Area

MacKinnon Apartments, 236 Third St., Juneau, 00000144

ARIZONA

Maricopa County

Ross, John M., House, 6722 N. Central Ave., Phoenix, 00000145

MASSACHUSETTS

Worcester County

Warren Public Library, Main St. at Bacon St., Warren, 00000146

MISSOURI

St. Louis Independent City

Jewel Box, Jct. of Wells Dr. and McKinley Dr., Forest Park, St. Louis, 00000147

MONTANA

Blaine County

Lodgepole Community Hall, Fort Belknap Indian Community, Lodgepole, 00000148

A request for REMOVAL has been made for the following resource:

PENNSYLVANIA

Greene County

Kent, Thomas, Jr., Farm 208 Laurel Run Rd., Waynesburg, 98000444

[FR Doc. 00–2745 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 2000–05; Exemption Application No. D–10542, et al.; Grant of Individual Exemptions; Business Men's Assurance Company of America, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Business Men's Assurance Company of America (BMA) Located in Kansas City, MO

[Prohibited Transaction Exemption 2000–05; Exemption Application No. D–10542]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the sales and transfers of assets of an employee benefit plan (the Plan) to BMA pursuant to the terms of a benefit-responsive or a non-benefit responsive synthetic guaranteed investment contract (the Benefit-Responsive BMA Synthetic GIC or the Non-Benefit Responsive BMA Synthetic GIC) entered into by the Plan sponsor with BMA; [1]

(2) Advances made by BMA to a Plan in order to make unanticipated benefit payments, if applicable, under a Benefit-Responsive BMA Synthetic GIC; and (3) the sweeping of interest and other proceeds to BMA from a Plan's Contractholder Custodial Account established under either a Benefit-Responsive BMA Synthetic GIC or a Non-Benefit Responsive BMA Synthetic GIC. This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The decision to enter into a BMA Synthetic GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of BMA.

(b) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to purchase BMA Synthetic GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has

[1] Unless specifically noted, references to the BMA Synthetic GIC refer to both types of Synthetic GIC products that are offered to Plan investors by BMA.

purchased a BMA Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a BMA Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity —

(i) Has full investment responsibility with respect to Plan assets invested therein, and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million.

(c) Prior to the execution of a BMA Synthetic GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the BMA Synthetic GIC, including—

(1) A copy of the underlying agreement for the BMA Synthetic GIC and accompanying application, which stipulate the relevant provisions of the Contract, the applicable fees, if any, and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which BMA will manage the assets in the Contractholder Custodial Account;

(3) A copy of the Custodial Agreement between BMA, the Plan fiduciary and the custodian (the Custodian); and

(4) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a BMA Synthetic GIC, BMA will supply the Plan fiduciary of a Plan [including a Plan that provides for participant investment selection (the Section 404(c) Plan)], a summary of the pertinent features of the documents listed above in paragraphs (c)(1) through (c)(3) of this Section II which the Plan fiduciary, in its discretion, deems appropriate for distribution to such participant, to the extent necessary to satisfy the requirements of section 404(c) of the Act.

(e) Subsequent to a Plan's investment in a BMA Synthetic GIC, the Plan fiduciary will receive the following ongoing disclosures regarding such investment:

(1) A periodic report consisting of a Contract Value Record Report, which specifies the affected Plan's BMA Synthetic GIC Contract Value Record balance for the prior period, contributions, withdrawals [*i.e.*, Scheduled Withdrawals (the Scheduled Withdrawals) and, if applicable, Unscheduled Withdrawals (the Unscheduled Withdrawals)], interest earned, and the current period's ending Contract Value Record balance; (The time periods covered by the Contract Value Record Report will be selected in advance by the independent Plan fiduciary and may be sent monthly, quarterly or annually.)

(2) A periodic Market Value Statement, which is supplied by the Custodian on a quarterly basis, that specifies the prior period's ending market value for the assets in the Contractholder Custodial Account, contributions made by the Plan sponsor to the BMA Synthetic GIC after the initial deposit, Scheduled Withdrawals and, if applicable, Unscheduled Withdrawals, any fees paid to BMA, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current period's ending market value and rate of return, and a summary of transactions; and

(3) Upon request from the Custodian (*i.e.*, not more often than quarterly), a portfolio listing. (The reports referred to in paragraphs (e)(1)–(e)(3) of this Section II will be made available to the Plan fiduciary, which, in turn, will provide copies to participants in a Section 404(c) Plan upon request, to the extent the Plan fiduciary deems it necessary.)

(f) Each BMA Synthetic GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(g) Each BMA Synthetic GIC has a predefined, fixed maturity date selected by the Plan fiduciary and agreed to by BMA.

(h) In the event BMA sells assets from a Plan's Contractholder Custodial Account to BMA's general account or to an affiliate during the term of the BMA Synthetic GIC or at such GIC's maturity, the transaction is—

(1) Effected for cash;

(2) The sales price of the security is equal to the fair market value of such asset as of the close of business on the date of the sale, as determined by independent sources; and

(3) The Plan incurs no brokerage or transaction costs in connection with the transaction.

(i) BMA maintains books and records of each BMA Synthetic GIC transaction for a period of six years. Such books and records are subject to annual audit by independent, certified public accountants.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on December 17, 1999 at 64 FR 70732.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

John Hancock Mutual Life Insurance Company (John Hancock) Located in Boston, MA

[Prohibited Transaction Exemption 2000–06; Exemption Application No. D–10718]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the (1) receipt of common stock of John Hancock Financial Services, Inc., the holding company for John Hancock (the Holding Company), or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of John Hancock which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, other than certain Eligible Policyholders which are Plans maintained by John Hancock or an affiliate for their own employees (the John Hancock Plans), in exchange for such Eligible

Policyholder's membership interest in John Hancock, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by John Hancock and implemented pursuant to Chapter 175 of the Massachusetts General Laws.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the John Hancock Plans, of employer securities in the form of excess Holding Company stock, in accordance with the terms of the Plan of Reorganization.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts Insurance Law and is subject to review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and determines, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to the Eligible Policyholders of John Hancock or the insuring public. The Superintendent may object to the Plan of Reorganization if he or she finds that it is not fair and equitable to New York Eligible Policyholders.

(c) As part of their determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

(d) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by John Hancock.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither John Hancock nor any of its affiliates exercises any discretion or provides "investment advice," as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(f) After each Eligible Policyholder is allocated 17 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of John Hancock which formulas have been approved by the Commissioner.

(g) With respect to a John Hancock Plan, where the consideration may be in the form of Holding Company stock an independent Plan fiduciary,—

(1) Determines whether the Plan of Reorganization is in the best interest of the John Hancock Plans and their participants and beneficiaries.

(2) Votes at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization.

(3) If the vote is to approve the Plan or Reorganization,

(i) Decides whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and instructs the appropriate Plan trustee to receive such consideration on behalf of the affected John Hancock Plan;

(ii) Monitors, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received;

(iii) Makes determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; and

(iv) Disposes of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months year following the effective date of the demutualization;

(v) Takes all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans; and

(vi) Provides the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(j) All of John Hancock's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

Section III. Definitions

For purposes of this exemption:

(a) The term "John Hancock" means The John Hancock Mutual Life Insurance Company and any affiliate of John Hancock as defined in paragraph (b) of this Section III.

(b) An "affiliate" of John Hancock includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with John Hancock. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on the conversion date on John Hancock's records as the owner of a policy under which there is a right to vote and which, on both the December 31 immediately preceding the conversion date an the date the John Hancock's Board of Directors first votes to convert to stock form, is in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period, or which is being continued under a nonforfeiture benefit and continues to be eligible for participation in John Hancock's annual distribution of divisible surplus.

(d) The term "policy credit" means (i) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy; and (ii) for all other individual or joint life policies and annuities, (x) if the policy or contract has a defined account value, an increase in the account value, or, (y) if the policy or contract does not have a defined account value, the crediting of dividends left on deposit under the policy or contract.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on October 22, 1999 at 64 FR 57136.

Written Comments

The Department received 45 written comments with respect to the proposed exemption. Forty-four of the comments were submitted by Eligible Policyholders and one comment was submitted by John Hancock.

Of the Eligible Policyholder comments received, fourteen commenters said they were in favor of the exemption and urged the Department to approve it. Six commenters requested information that

was pertinent to their insurance policies, but was not germane to the exemption request. Twenty-four commenters expressed their objection to the exemption for various reasons, which could be categorized in the following areas: (a) the effect of John Hancock's demutualization on policyholder benefits; (b) risks inherent in the demutualization; (c) the lack of benefits to Plan participants if the exemption is granted; and (d) whether the formula utilized by John Hancock to determine the amount of consideration to be allocated to Eligible Policyholders was adequate.

John Hancock's comment requested clarification to the Notice. The comment also sought to expand upon the description of the transactions described therein.

Discussed below are the substantive comments that were submitted by the Eligible Policyholders as well as John Hancock's responses to the issues raised in comment letters. Also discussed is John Hancock's comment and the Department's responses to specific areas of technical clarification in the operative language and definitions of the Notice and the Summary of Facts and Representations (the Summary).

Eligible Policyholder Comments

Sixteen commenters questioned the effect of John Hancock's demutualization on a policyholder's benefits or tax-exempt status. In response these comments, John Hancock represents that the concerns of the policyholders have been addressed in the Policyholder Information Statement which was sent to all Eligible Policyholders. According to John Hancock, the document clearly states that the conversion of the company to a stock company will not reduce the benefits, values, guarantees or dividend rights of any policy, nor adversely affect any grandfathering or special tax status of any policy.

Also in connection with the effect of the demutualization on existing policyholder benefits, another commenter asserted that two representations made by John Hancock in the proposed exemption were false. First, the commenter noted that on page 57139 of the Summary, the second paragraph of Representation 6 states that—

> John Hancock believes these consequences of the conversion will benefit all of its policyholders. John Hancock further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

Second, the commenter noted that on page 57141 of the Summary, paragraph (h) of Representation 13 states that—

> The Plan of Reorganization will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of John Hancock to its policyholders and contractholders.

The commenter believed that, as a result of the demutualization, John Hancock's proposed changes to products and services offered under its health insurance program would constitute an unlawful termination of its group insurance policy which was not authorized under such policy. The commenter also argued that these material breaches would have severe consequences and an adverse effect upon its organization.

In response to this comment, John Hancock explains that it sold its group benefit operations to the Unicare Life and Health Insurance Company (Unicare) and the sale was structured as a reinsurance transaction so that John Hancock would still be the insurer of record until the next renewal of the contract. John Hancock explains that the correspondence between Unicare and the commenter stems from an attempt by Unicare to modify its product line with respect to its association business (*i.e.*, business sold to associations on behalf of many employers within the association). John Hancock acknowledges that Unicare is attempting to standardize its product mix for this type of business for the next contract cycle. In any event, John Hancock states that ongoing discussions between Unicare and the commenter do not relate to the demutualization and that John Hancock's statement in the Plan of Reorganization and Policyholder Information Statement regarding no changes to existing contracts as a result of the demutualization are entirely accurate. Further, John Hancock points out that none of the changes to the commenter's policy, if implemented, would be as a result of, or caused by the Plan of Reorganization.

Four commenters described the increased risk that would be caused by John Hancock's conversion to a stock company. However, in response to these commenters, John Hancock asserts that the policyholders lacked an understanding of the transaction and had every right to be heard at the hearing that was held on November 17, 1999.

Still another commenter suggested that there would be "no possible benefit to Plan participants" if the exemption is granted. In response to this commenter, John Hancock asserts that the policyholder's notion is incorrect inasmuch as Eligible Policyholders that are Plans will receive Holding Company stock, cash or policy credits in exchange for their illiquid membership interests in John Hancock.

Finally, a commenter expressed concern about the adequacy of the formula utilized by John Hancock to determine the amount of consideration to be allocated to Eligible Policyholders. Based on prior experience with another insurance company demutualization, the commenter questioned John Hancock's characterization of certain investment contracts as "nonparticipating" as well as the resulting allocation formula.

In response to this comment, John Hancock asserts that only "participating" contractholders will be eligible for both the fixed and variable components of compensation, with the variable component being dependent on the policy's contribution to the surplus of the insurer, both historically and prospectively. John Hancock notes that the fixed component will be based upon a policy's voting interest while the variable component will be given in respect of a policy's contribution to the insurer's surplus. John Hancock further notes that only participating policies will have rights to divisible surplus and these views are consistent with the approach taken in insurance company demutualizations that have occurred in the United States over the past decade.

John Hancock explains that while the commenter may represent Plans that have non-participating policies with John Hancock, these Plans may have contracts with another insurer that are deemed participating. Although many of the features of the contracts may be similar, John Hancock explains that the difference in the participating status of the contracts is paramount for purposes of determining eligibility for the fixed component.

John Hancock's Comments

1. *Insurance Regulator Roles.* On page 57136 of the Notice, paragraphs (b) and (c) of the General Conditions describe the respective roles of the Massachusetts Insurance Commissioner and the New York Superintendent of Insurance with respect to John Hancock's Plan of Reorganization. John Hancock states that these paragraphs are not entirely clear. In the case of Massachusetts, John Hancock points out that the Commissioner must determine, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to

the policyholders of John Hancock or the insuring public. John Hancock also points out that the Superintendent may object to the Plan of Reorganization if he finds that it is not fair and equitable to New York Eligible Policyholders.

Paragraph (c) of Section II states that both the Commissioner and the Superintendent must concur on the terms of the Plan of Reorganization. However, John Hancock states that while it is true that both regulators must be satisfied that the Plan of Reorganization meets the appropriate statutory standard, there is no formal process in which they "concur on the terms of the Plan of Reorganization."

In response to these comments, the Department has revised paragraphs (b) and (c) of Section II to read as follows:

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and determines, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to the Eligible Policyholders of John Hancock or the insuring public. The Superintendent may object to the Plan of Reorganization if he or she finds that it is not fair and equitable to New York Eligible Policyholders.

(c) As part of their determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

John Hancock also wishes to acknowledge that there are differences between the statutory language describing the Commissioner's standard of review and those of the Superintendent. As noted above, the Massachusetts standard requires the Commissioner to find whether the Reorganization Plan is "prejudicial to the Eligible Policyholders of John Hancock or the insuring public." John Hancock believes the Massachusetts standard is broader because it focuses not only on "the eligible policyholders" of the demutualizing company but also on "the insuring public." In contrast, John Hancock explains that the New York standard requires the Superintendent to find that the transaction is "fair and equitable" to New York policyholders of the insurer and can, therefore, be viewed somewhat more narrowly than the Massachusetts standard.

John Hancock represents that it sees no substantive difference between the "not prejudicial" concept and the "fair and equitable concept." In John Hancock's view, the phrase "not prejudicial" implies "fairness." From John Hancock's past experience, it believes the Commissioner also shares this view.

2. *John Hancock Plans.* On pages 57136 and 57141 of the Notice, paragraph (g)(3)(i) of Section II of the General Conditions and Representation 11 of the Summary, indicate that an independent fiduciary "receives such consideration on behalf of the affected John Hancock Plan." John Hancock wishes to clarify that while U.S. Trust Company, N.A. (U.S. Trust), the independent fiduciary for the John Hancock Plans, will make the decision as to what each Plan receives, the consideration, itself, is received by the Plan trustee based on the instructions of the independent fiduciary.

The Department concurs with this comment and has revised paragraph (g)(3)(i) of Section II and the second sentence of Representation 11 by adding the phrase "* * * and instructs the appropriate Plan trustee to receive such consideration on behalf of the affected John Hancock Plan" after the parenthetical.

3. *Definition of "Policy Credit."* On page 57137 of the Notice, in Section III(d) of the Definitions, the term "policy credit" is defined as follows:

* * * (1) for an individual or joint ordinary life insurance policy, an increase to the paid-up dividend addition value, and (2) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, or
(ii) if the policy or contract does not have a defined account value, an increase to the dividend accumulation fund.

John Hancock concedes that this definition is generally correct. However, it does not correspond exactly with the definition of the term in John Hancock's final Plan of Reorganization which defines the term as follows:

"Policy Credit" means (i) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy, and (ii) for all other individual or joint life policies and annuities, (x) if the policy or contract has a defined account value, an increase in the account value, or, (y) if the policy or contract does not have a defined account value, the crediting of dividends left on deposit under the policy or contract.

For the sake of conformity with John Hancock's final Plan of Reorganization, the Department has revised the definition of the term "policy credit," accordingly.

4. *Holding Company Formation.* On page 57138 of the Notice, in Representation 4 of the Summary, the third sentence of paragraph three states that the Holding Company will own 100 percent of two new holding companies being established to own existing subsidiaries of John Hancock and most other foreign insurance subsidiaries. John Hancock states that this sentence should be deleted as this aspect of its reorganization is no longer contemplated. In response to this change, the Department has deleted this sentence from the Summary.

5. *Date of Demutualization.* On page 57139 of the Notice, in Representation 5 of the Summary, the second sentence of paragraph (b) states that John Hancock's expected date of demutualization will occur during early February 2000. John Hancock wishes to clarify that the actual date of its demutualization will occur on February 1, 2000.

6. *Risk-Based Capital Ratio Formula.* On page 57139 of the Notice, in Representation 5 of the Summary, paragraph (c) states, in part, that the Holding Company will contribute cash raised in the initial public offering to John Hancock in an amount at least equal to the amount required for John Hancock to maintain a risk-based capital ratio of not less than 200 percent following the payment and crediting of cash and establishment of reserves for policy credits called for by the Plan of Reorganization. John Hancock represents that the 200 percent risk-based capital ratio formula was revised at the request of the Commissioner during her informal review of the draft Plan of Reorganization and was subsequently incorporated into the final Plan of Reorganization. John Hancock explains that the Commissioner required the change to a more complicated formula in order to maximize the amount of IPO proceeds that would be available to be contributed to the insurer and used to fund distributions of cash to policyholders who do not elect Holding Company stock. Because its risk-based capital ratio is in excess of 200 percent, John Hancock states that the old formula would have permitted more IPO proceeds to be retained by the Holding Company.

Therefore, in accordance with the formula revision, John Hancock requests that Representation 5(c) be modified to read as follows:

(c) *Contribution to the Capital of John Hancock.* Following the transactions described above, the Holding Company will contribute cash raised in the IPO (after the payment of transaction expenses and the retention of a certain amount by the Holding Company, as permitted under both the old and the new formulas) to John Hancock, which shall apply substantially all such

proceeds to fund cash and policy credit consideration to policyholders.

The Department concurs with this change and has made the requested modification to the Summary. The Department also wishes to note that while both formulas would allow the Holding Company to retain a certain amount of cash raised in the IPO, under the new formula, more cash will be contributed by the Holding Company to John Hancock.

7. *Time Frame For Eligible Policyholder Submission of Election Form.* On page 57140 of the Notice, the first paragraph of Representation 10 of the Summary states, in pertinent part, that an Eligible Policyholder will be entitled to receive Holding Company stock if such Policyholder affirmatively elects, on a form provided to such Eligible Policyholder that has been properly completed and received by John Hancock prior to the date of the special policyholder meeting, a preference to receive stock. John Hancock notes that the time within which an Eligible Policyholder may submit the election form, indicating a preference to receive shares of Holding Company stock, has been extended until December 31, 1999.

8. *Role of U.S. Trust.* On pages 57136 and 57141 of the Notice, Section II(g)(3)(ii) and (iii) and Representation 11 of the Summary describe the role of U.S. Trust, the independent fiduciary for the John Hancock Plans in connection with the demutualization. Specifically, U.S. Trust will vote and make elections (*i.e.*, stock or cash) which are available to the John Hancock Plans under the Plan of Reorganization. However, once the demutualization is completed, John Hancock represents that U.S. Trust will have an ongoing role only with respect to those John Hancock Plans which continue to hold Holding Company stock that is in excess of the limitations of section 407(a) of the Act. Thus, once the stock holdings of an affected John Hancock Plan are brought within the 10 percent limit, which must occur within six months of the effective date of the demutualization, John Hancock explains that the retention of U.S. Trust will no longer be required.

The Department concurs with John Hancock's understanding with respect to the retention of U.S. Trust following the demutualization.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10718) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Cassano's Inc. 401(k) Plan and Trust (the Plan) Located in Dayton, Ohio

[Prohibited Transaction Exemption 2000–07; Exemption Application Number D–10734]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of an improved parcel of real property (the Property) by the Plan to Cassano's, Inc. (Cassano's), a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the greater of $155,500 or the fair market value of the Property as of the date of the Sale;

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and

(e) Cassano's files Form 5330 with the Internal Revenue Service (the Service) and pays certain excise taxes with respect to the past prohibited leasing of the Property within 90 days of the date this notice granting this exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to notice of proposed exemption published on November 9, 1999 at 64 FR 61134

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of Febraury, 2000.

Ivan Strasfeld,

Director of Exemption Determination, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–2858 Filed 2–7–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Exemption Application No. D–10384; Deutsche Bank AG, et al. (Deutsche Bank)

AGENCY: Pension and Welfare Benefits Administration, Labor (the Department).

ACTION: Notice of technical correction.

On February 1, 2000, the Department published in the **Federal Register** (65 FR 4843) a notice of proposed exemption for Deutsche Bank which

would allow the assets of certain employee benefit plans to be invested in synthetic guaranteed investment contracts (the Buy & Hold Synthetic GICs) that would be offered by Deutsche Bank. Due to a printing error, appearing on page 4846 of the proposed exemption in Representation 7, the formula for computing the Crediting Rate for each Buy & Hold Synthetic GIC, was stated as follows:

$$BV = \sum_{k=n.}^{N} ((\text{net cashflow}_k)/((1\ IRR^k))$$

The Department notes that the correct formula for calculating the Crediting Rate is

$$BV = \sum_{k=n}^{N} ((\text{net cashflow}_k)/((1+IRR^{k-n}))$$

and it hereby amends the proposal.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department at (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, DC this 3rd day of February, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–2857 Filed 2–7–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D–10119 and D–10120, et al.]

Morgan Guaranty Trust Company of New York, et al.

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed exemptions.[1]

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by the Internal Revenue Code of 1986 (the Code).

The exemptions, if granted, would permit purchases of securities by the applicants' asset management affiliate on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the applicants' broker-dealer affiliate participates as a manager or syndicate member. The exemptions, if granted, would affect participants and beneficiaries of the plans investing in such securities.

EFFECTIVE DATE: The exemptions, if granted, would be effective as of the date of publication of this notice in the **Federal Register**.

DATES: Written comments and/or requests for a public hearing must be received by the Department by March 24, 2000.

ADDRESSES: All written comments and/or requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application Nos. D–10119 and D–10120, *et al.* The applications pertaining to the proposed exemptions and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Janet L. Schmidt, or Karin Weng of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of five applications for exemption from the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code. The exemptions were requested in separate applications filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), by the following entities: Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc., Goldman, Sachs & Co., The Chase Manhattan Bank, Citigroup Inc., and Morgan Stanley Dean Witter & Co. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this notice of pendency is being issued solely by the Department.[2]

Summary of Facts and Representations

The facts and representations contained in the applications are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

The Applicants

The five applicants, diversified financial services firms, have requested similar exemptive relief. It is represented that the applicants and their various affiliates are all regulated by other federal government agencies such as the Securities and Exchange Commission (the SEC), as well as state government agencies, and securities regulatory organizations. For convenience, following the initial description of each of the applicants, below, the applicants and their affiliates shall be referred to in the remainder of the notice in generic terms that denote certain roles, namely, "the Applicant," "the Asset Manager,"[3] or "the Affiliated Broker-Dealer."[4]

1. Morgan Guaranty Trust Company of New York (MGT) is a New York Trust Company. J.P. Morgan Investment Management Inc. (JPMIM), is a registered investment adviser. Both MGT and JPMIM are wholly owned subsidiaries of J.P. Morgan & Co. (JPM), a Delaware corporation. MGT and JPMIM (together, the Applicant) provide investment management and investment advisory services. Hereinafter, the Applicant shall be referred to as "the Asset Manager" when discussing the Applicant's activities relating to investment management or investment advisory services. J.P. Morgan Securities Inc., a wholly owned indirect subsidiary of JPM, is a registered broker-dealer (hereinafter, the Affiliated Broker-Dealer). It is represented that, as of December 31, 1998, the last day of the

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[1] The term "Proposed Exemptions" refers to the following individual exemption applications: Application Nos. D–10119 and D–10120, Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc.; Application No. D–10587, Goldman, Sachs & Co.; Application No. D–10779, The Chase Manhattan Bank; Application No. D–10820, Citigroup Inc; and Application No. D–10832, Morgan Stanley Dean Witter & Co.

[2] All references in the remainder of the preamble to specific provisions of Title I of the Act shall refer also to the corresponding provisions of the Code (if any).

[3] To the extent that the Applicant has more than one asset management affiliate, all references to the Asset Manager herein shall refer also to the other asset management entity or entities.

[4] To the extent that the Applicant has more than one registered broker-dealer affiliate that participates in underwriting or selling syndicates, all references to the Affiliated Broker-Dealer herein shall refer also to the other broker-dealer entity or entities.

most recent fiscal year for which information is available, JPMIM and MGT had $316 billion in total client assets under management. As of that date, approximately 40 percent of client assets under management were attributable to employee benefit plans (Client Plans) subject to the fiduciary responsibility provisions of the Act, including Client Plans investing in a pooled fund (Pooled Fund).

2. Goldman, Sachs & Co. (Goldman), a New York limited partnership, is a wholly owned subsidiary and the principal operating subsidiary of The Goldman Sachs Group, Inc. Goldman is a registered broker-dealer and investment adviser. Hereinafter, Goldman shall be referred to, generally, as "the Applicant" and, specifically, as "the Affiliated Broker-Dealer" when discussing Goldman's activities as an underwriter. Goldman, Sachs Asset Management (hereinafter, the Asset Manager) is a separate operating division of the Applicant and is engaged in the investment management and investment advisory business. It is represented that, as of November 26, 1999, the last day of the Applicant's most recent fiscal year, the Asset Manager had total client assets under management of $241.4 billion. As of that date, approximately 12.7 percent of client assets under management were attributable to Client Plans, including those investing in a Pooled Fund.

3. The Chase Manhattan Bank (CMB), a New York State bank, is a subsidiary of The Chase Manhattan Corporation (CMC). Chase Asset Management (CAM), a registered investment adviser, is a subsidiary of CMB. CMB and CAM (together, the Applicant) provide investment management and investment advisory services. Hereinafter, the Applicant shall be referred to as "the Asset Manager" when discussing the Applicant's activities relating to investment management or investment advisory services. Chase Securities Inc., a subsidiary of CMC, is a registered broker-dealer (hereinafter, the Affiliated Broker-Dealer). It is represented that, as of December 31, 1998, the last day of its most recent fiscal year for which information is available, CMB had total client assets under management of approximately $31 billion. As of that date, CAM had total client assets under management of approximately $48 billion. As of December 31, 1998, approximately 1.0 percent of client assets of CMB, and approximately 9.6 percent of client assets of CAM, were attributable to Client Plans, including those investing in a Pooled Fund.

4. Citigroup, Inc. (Citigroup or the Applicant) is a Delaware corporation and a diversified holding company. Salomon Smith Barney Inc. (SSB or the Applicant), a New York corporation, is an indirect subsidiary of Citigroup. SSB is a registered broker-dealer and investment adviser. Hereinafter, SSB shall be referred to, generally, as the "the Applicant" and, specifically, as "the Affiliated Broker-Dealer" when discussing SSB's activities as an underwriter. Salomon Smith Barney Asset Management (hereinafter, the Asset Manager) is a separate operating division of SSB and is engaged in the investment management and investment advisory business. It is represented that, as of September 30, 1999, the last day of its most recent fiscal year, all of Citigroup's asset management affiliates had, in the aggregate, client assets under management of approximately $351 billion. As of that date, approximately 3.7 percent of client asset under management were attributable to Client Plans, including those investing in a Pooled Fund.

5. Morgan Stanley Dean Witter & Co. (hereinafter, the Applicant) is a publicly traded Delaware corporation. The Applicant is a registered investment adviser. Morgan Stanley Dean Witter Investment Management Inc. (hereinafter, the Asset Manager) is a wholly owned subsidiary of the Applicant. The Asset Manager is a registered investment adviser. Morgan Stanley & Co. Incorporated (hereinafter, the Affiliated Broker-Dealer) is another wholly owned subsidiary of the Applicant. The Affiliated Broker-Dealer is a registered investment adviser and broker-dealer. It is represented that all of the Applicant's asset management affiliates had, in the aggregate, client assets under management of approximately $425 billion, as of November 30, 1999, the last day of their most recent fiscal year. As of that date, approximately 20 percent of client assets under management were attributable to Client Plans, including those investing in a Pooled Fund.

Requested Exemption

6. Each Applicant requests exemptive relief permitting purchases of securities by the Asset Manager, for the Asset Manager's Client Plans, including Pooled Funds, from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. Each Applicant states that such purchases would be made from an underwriter or broker-dealer other than the Affiliated Broker-Dealer and that the Affiliated Broker-Dealer would not receive any selling concessions with respect to the securities sold to Client Plans.

7. Each Applicant represents that where the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager makes purchases of securities for its Client Plans in compliance with Prohibited Transaction Exemption (PTE) 75–1 (40 FR 50845, October 31, 1975), Part III. PTE 75–1, Part III, provides a class exemption, under certain conditions, for a plan fiduciary to purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, relief under PTE 75–1 is unavailable if the fiduciary or its affiliate is a manager of the underwriting or selling syndicate.

8. Regardless of whether the fiduciary or its affiliate is a manager or member of the underwriting or selling syndicate, PTE 75–1 is also unavailable for the purchase of unregistered securities, including securities that have been purchased by an underwriter for resale to "qualified institutional buyers" (QIBs), pursuant to SEC Rule 144A (17 CFR 230.144A) under the Securities Act of 1933 (the 1933 Act)(Rule 144A Securities). Rule 144A is frequently used for sales of securities of foreign issuers to U.S. investors who are QIBs. Each Applicant states that syndicates selling securities pursuant to Rule 144A are functionally equivalent to syndicates selling securities in registered offerings.

9. Each Applicant represents that the Affiliated Broker-Dealer is frequently involved in securities offerings as a manager of underwriting or selling syndicates, or as a manager or member of a syndicate selling Rule 144A Securities. Each Applicant further asserts that the inability of the Asset Manager to purchase securities for its Client Plans from such syndicates can be detrimental to those accounts because the accounts can lose important investment opportunities.

10. According to each Applicant, there has been considerable consolidation in the nation's financial services industry since 1975, resulting in more situations where a plan fiduciary may be affiliated with the manager of an underwriting syndicate.[5]

[5] For further background, see "The Costs Imposed on Pension Plans by ERISA's Prohibited Transactions Provisions," December 1998, Anthony Saunders and Ingo Walter. This study, by Professors Saunders and Walter of the Stern School of Business of New York University, discusses the consolidation of the financial services industry. It was privately commissioned by J.P. Morgan (see Application Nos. D–10119 and D–10120). The study estimates the economic loss to plans resulting from their investment managers' inability to purchase securities from affiliated underwritings by examining the one-day, one-week, and one-month investment returns on various initial public offerings (IPOs) during the years 1991 through 1996. In response to the Department's request for

In addition, many plans have expanded their investment portfolios in recent years to include foreign securities. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchases of certain securities that may be appropriate plan investments.[6]

Investments in Offered Securities

11. Each Applicant represents that the Asset Manager makes investment decisions on behalf of, or renders investment advice to, its Client Plans in accordance with the governing document of the particular Client Plan or Pooled Fund and the guidelines and objectives established in the investment management or advisory agreement. Since the Client Plans are covered by Title I of the Act, such investment decisions are also subject to the fiduciary responsibility provisions of the Act.

12. Each Applicant states, therefore, that a decision to invest in particular securities is made on the basis of price, value, and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. Each Applicant further asserts that the Asset Manager has little incentive to make purchases from offerings for which the Affiliated Broker-Dealer is an underwriter that are not in the interests of the Client Plans because the Asset Manager's compensation for its services is generally based upon assets under management. If the assets under its management do not perform well, the Asset Manager will receive less compensation and could lose clients.

13. Each Applicant states that the Asset Manager generally purchases securities in large blocks because the same investments will be made across several of its accounts. If there is a new offering of an equity or fixed income security that the Asset Manager had otherwise intended to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with a reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Asset Manager's Client Plans.

14. However, absent an individual exemption, if the Affiliated Broker-Dealer is a manager of the syndicate underwriting the offering, the Asset Manager is currently foreclosed from purchasing any securities from that underwriting syndicate. If the Asset Manager then purchases the same securities in the secondary market, the Client Plans may incur greater costs because the market price is often higher than the offering price, and because of transaction and market impact costs. Alternatively, the Asset Manager may have foregone other investment opportunities because of its decision to purchase in the offering, and these opportunities, if still available, may have become more expensive.

Underwriting of Securities Offerings

15. Each Applicant represents that the Affiliated Broker-Dealer manages and participates in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

16. Each Applicant represents that while, as a legal matter, the syndicate assumes the risk that the securities might not be distributable, as a practical matter, this risk is reduced, in marketed deals, through "building a book" (*i.e.*, taking indications of interest) prior to pricing the securities. Each Applicant asserts that, consequently, there is little incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

17. Each syndicate has a lead manager, who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

18. Where more than one underwriter is involved, the lead manager, who has been selected by the issuer, contacts other underwriters, and the underwriters enter into an Agreement Among Underwriters. Most lead managers have a form of agreement. This document is then supplemented for the particular deal by sending an "invitation telex" setting forth particular terms to the other underwriters.

19. The arrangement between the syndicate and the issuer is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. The underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities, in the event that not all of the securities are sold.

20. However, each Applicant represents that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained indications of interest in purchasing the securities from a sufficient number of investors to acquire all the securities being offered. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. The underwriters are anxious to complete the sales as soon as possible because until they "break syndicate," they cannot enter the market. In many cases, the underwriters will act as market-markers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

21. Each Applicant represents that the process of "building a book" or soliciting interest occurs as follows. In an equity offering, after a registration statement is filed with the SEC and while it is under review by the SEC

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additional information, Professor Walter explained, in a letter dated August 20, 1999, why short periods were selected for calculating the hypothetical returns: "The fact that IPOs do not have significant excess performance over the long run is well documented in finance and is known to all mutual and pension fund managers. Indeed, long-term relative performance of IPOs (*i.e.*, those held for a period over 3 years) is significantly below market performance as measured by standard indices such as the S&P 500 . . ."

[6] Under the Gramm-Leach-Bliley Act, signed into law by the President on November 12, 1999, certain provisions of the Glass-Steagall Act and the Bank Holding Company Act of 1956, as amended, are repealed. The Department notes that the effect of such law will likely be further consolidation of the financial services industry. The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of "financial holding companies" that will be permitted to engage in a broad range of financial and related activities, including underwriting and dealing activities.

staff, representatives of the issuer and the managers conduct meetings with potential investors, who learn about the company and the securities and receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors thus cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a "book" of investors who are willing to "circle" a particular portion of the issue. These indications of interest are sometimes referred to as a "soft circle" because investors cannot be legally bound to buy the securities until the registration statement is effective. However, each Applicant represents that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn), because if they do not follow through, the underwriters will be reluctant to sell to them in future offerings.

22. Assuming that the meetings have produced sufficient indications of interest, each Applicant represents that the issuer and the managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors who have indicated an interest in purchasing securities in the offering to execute the sales. Each Applicant represents that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if an issue is a "hot issue," i.e., it is selling in the market at a premium above its offering price, the underwriters may not hold this hot issue in their own accounts, nor sell it to their officers and directors. A hot issue may also not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds, and investment advisers. (NASD Manual & Notices to Members, IM–2110–1)

23. Each Applicant represents that debt offerings may be "negotiated" offerings, "competitive bid" offerings, or "bought deals." "Negotiated" offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. "Competitive bid" offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under "shelf" registration statements pursuant to SEC Rule 415 under the 1933 Act (17 CFR 230.415).[7]

24. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

25. Because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the Securities Exchange Act of 1934 (the 1934 Act) for at least one year.

26. Occasionally, in highly-rated debt issues, underwriters "buy" the entire deal off of a "shelf registration" before obtaining indications of interest. These "bought" deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

Structure of Diversified Financial Services Firms

27. Each Applicant represents that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel. These policies are designed to protect against "insider trading," i.e., trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm—e.g., the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—e.g., the investment management group—could be trading in the securities of that issuer for its clients.[8]

28. Each Applicant states that its business separation policies and procedures are also designed to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager's clients.

29. Each Applicant states that major clients of the Affiliated Broker-Dealer include investment management firms that are competitors of the Asset Manager. Similarly, the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely adversely affect the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with that affiliate. Therefore, a goal of each Applicant's business separation policy is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

Underwriting Compensation

30. Each Applicant represents that the underwriters are compensated through the "spread," or difference, between the price at which the underwriters buy the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

31. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon prior to soliciting indications of interest (the process of "building a book"). Thus, according to each Applicant, such management fee allocations are not

[7] Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[8] The Insider Trading and Securities Fraud Enforcement Act of 1988 required brokers and dealers to maintain and enforce written policies and procedures that are "reasonably designed . . . to prevent the misuse in violation of [the federal securities laws] . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer." (Section 15(f) of the 1934 Act (15 U.S.C. 780(f)); see also Rules 342 and 351 of the NYSE and SEC Regulation M (17 CFR 242.100(a)(3)).

reflective of the amount of securities that particular managers sell in an offering.

32. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer.

33. The first and second components are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters follows the allocation of the securities for sales purposes, except to the extent that buyers designate other broker-dealers (who may be other underwriters as well as broker-dealers outside the syndicate) to receive the selling concessions from the securities they purchase.

34. Securities are allocated for sales purposes into two categories. The first and larger category is the "institutional pot," which is the pool of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or broker-dealers. When securities are sold from the institutional pot, the managers sometimes receive a portion of the selling concessions, referred to as a "fixed designation,"[9] attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designation generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

35. The second category of allocated securities is "retail," which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

36. Each Applicant asserts that the Affiliated Broker-Dealer's inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

Rule 144A Securities

37. Each Applicant represents that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining the securities. However, PTE 75–1, Part III, does not include a category for Rule 144A Securities, regardless of whether the Affiliated Broker-Dealer is a manager or member of the underwriting or selling syndicate. Therefore, absent an individual exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

38. Each Applicant states that Rule 144A, which was adopted in 1990, acts as a "safe harbor" exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

39. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded fn the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities.

40. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a "foreign private issuer" for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

41. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

42. Each Applicant asserts that this potential liability for fraud provides a considerable incentive to the issuer and offering syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a "10b–5" opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, are not misleading.

43. Each Applicant represents that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are generally limited to contacting QIBs and that there are no general solicitations for buyers (e.g., no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings has been as a lead or co-manager. While, generally, there are no non-manager members in the syndicate, each Applicant also requests relief for situations where the Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

44. According to each Applicant, one of the policy objectives of Rule 144A

[9] A fixed designation is sometimes referred to as an "auto pot split."

was to attract more foreign issuers to the United States, and Rule 144A has been achieving this objective—from April 1990 through December 1993, the first three years of Rule 144A, over $25.6 billion in foreign securities was sold under Rule 144A, representing more than one-fourth of Rule 144A placements. See SEC Staff Report on Rule 144A (August 18, 1994), [1994–95 Transfer Binder] Fed. Sec. L. Rep. ¶ 85,428 (Question 1). This figure continued to hold in 1998, at 30.4 percent, so that foreign issuer Rule 144A offerings have kept pace with the rapid growth of Rule 144A offerings overall. (Securities Data Company, Inc.)

Summary

In summary, the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Client Plans will gain access to desirable investment opportunities; (b) in each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer; (c) conditions similar to those of PTE 75–1, Part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases; (d) the amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations; (e) the Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager; (f) prior to any purchase of securities, the Asset Manager will make the required disclosures to an independent fiduciary (Independent Fiduciary) of each Client Plan and obtain written authorization; (g) the Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted; (h) each Client Plan will be subject to a minimum size requirement of at least $50 million ($100 million for "Eligible Rule 144A Offerings"),[10] with certain exceptions for Pooled Funds; and (i) the Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

Discussion of Proposed Exemption

1. The exemptive relief for underwritings proposed herein is similar to that provided in PTE 75–1, Part III. Under PTE 75–1, exemptive relief is subject to a number of conditions and limitations, including the following: (1) The plan fiduciary or its affiliate may not be a manager of the underwriting or selling syndicate; (2) the purchase must be from a person other than the plan fiduciary or its affiliate; (3) the types of securities that may be purchased and the price and timing of the purchases are circumscribed; (4) the amount of securities purchased on behalf of each plan may not exceed three percent of the offering; and (5) the consideration paid may not exceed three percent of the plan's total net assets (one percent, if the consideration involved exceeds $1 million).

2. The exemptive relief proposed herein differs from that provided by PTE 75–1 in the following respects: (1) The proposed exemption covers transactions where the plan fiduciary is affiliated with a manager, as well as a member, of the underwriting or selling syndicate; [11] (2) the proposed exemption covers purchases of Rule 144A Securities; [12] (3) percentage limitations on the amount of securities that may be purchased have been modified to provide an aggregate limitation on a fiduciary's purchases for all Client Plans from a particular offering; and (4) the proposed exemption provides additional conditions, including: (a) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the plan fiduciary or its affiliate; (b) neither a manager nor a member of the underwriting or selling syndicate may receive any selling concessions with respect to the securities purchased for Client Plans by its affiliate; (c) prior to any purchase of securities on behalf of a Client Plan, certain disclosures are provided to an Independent Fiduciary of each such Client Plan and written authorization is obtained; (d) periodic reporting regarding the covered transactions is provided to an Independent Fiduciary of each Client Plan; and (e) investing plans and their investment managers must meet certain minimum size requirements.

Types of Securities and Offerings

3. Paragraphs (a) and (b) of the proposed exemption are derived from PTE 75–1, Part III, and provide the following: (1) The securities [13] are part of an issue registered under the 1933 Act, or if exempt from registration under such Act, fall within specified categories: issued or guaranteed by the United States; issued by a bank; exempt from registration under a federal statute other than the 1933 Act; registered under the 1934 Act; or are part of an Eligible Rule 144A Offering—a change from PTE 75–1, Part III, as noted

[10] SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], rule 144A thereunder [Sec. 230.144A of this chapter], or rules 501–508 thereunder [Secs. 230.501–230.508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in Sec. 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to Sec. 230.144A of this chapter.

[11] In restricting the scope of PTE 75–1, Part III, to exclude transactions where the plan fiduciary is affiliated with the syndicate manager, the Department was concerned that the syndicate manager, as distinguished from a mere member of a syndicate, has a greater interest in the success of the sale of the new securities. If an affiliate of the managing underwriter is an investment manager for plans, those plans could provide a potential market for the less attractive offerings of underwritten securities. This proposed exemption contains certain safeguards and conditions that are designed to address these potential conflict of interest situations.

[12] The Department notes that the provisions of the Act do not preclude plans from investing in any securities sold by an underwriting or offering syndicate, including those securities sold pursuant to Rule 144A. The exemptive relief provided by PTE 75–1, Part III, and the additional relief sought here are required because of the affiliation between the plan fiduciary and a member of the underwriting or selling syndicate.

[13] With respect to any purchase of asset-backed securities by a Client Plan, the Department notes that this proposed exemption provides relief only for the transactions described herein and does not cover any additional prohibited transactions that may occur as a result of a purchase of such securities. For example, additional prohibited transactions may occur by operation of the "look-through rule" contained in the Department's regulation defining "plan assets" for purposes of plan investments (see 29 CFR 2510.3–101). Such additional prohibited transactions may be covered by one of the Department's existing individual exemptions for asset-backed securities. A listing of such exemptions is provided in the text of the operative language of PTE 97–34 (62 FR 39021, July 21, 1997), which granted an amendment to these exemptions.

Further, the Department notes that, under the Department's plan asset regulation, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (*i.e.*, the "look-through rule" will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a "publicly-offered" security as one that is freely transferable, widely-held, and registered under the federal securities laws. For this purpose, a class of securities is considered "widely held" if it is owned by 100 or more investors who are independent of the issuer and of one another (see 29 CFR 2510.3–101(b)(3)).

above; [14] (2) the securities are purchased for not more than the offering price within a specific time period,[15] subject to certain specified exceptions for rights offerings and debt offerings; [16] (3) the securities are sold pursuant to a firm-commitment offering, in which the syndicate members are committed to purchasing all the securities being offered, subject to certain exceptions for rights offerings and over-allotment options; and (4) the issuer of the securities has been in continuous operation for not less than three years, with certain exceptions.

Percentage Limitations on the Amount of Purchased Securities

4. Paragraphs (c) and (d) of the proposed exemption contain percentage limitations applicable to the amount of purchased securities. The first percentage test in paragraph (c) provides that the amount of securities to be purchased by the Asset Manager on behalf of a particular Client Plan or Pooled Fund may not exceed three percent of the total amount of securities being offered. Paragraph (c) further provides percentage limitations on the aggregate amount of securities that the Asset Manager may purchase for all its Client Plans, including Pooled Funds, from the total amount of securities being offered: 10 percent for equity securities; 35 percent for debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); and 25 percent for debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations.[17]

5. Paragraph (d) provides that the consideration to be paid by the Client Plan or Pooled Fund in purchasing the offered securities may not exceed three percent of the fair market value of such Client Plan's or Pooled Fund's total net assets. However, paragraph (d) eliminates the requirement contained in PTE 75–1, Part III, that, if the consideration involved exceeds $1 million, it may not exceed one percent of the fair market value of the plan's total assets. This modification by the Department parallels the amendment in 1997 of SEC Rule 10f–3.

Underwriting Compensation

6. The proposed exemption requires in paragraph (e) that any purchase of securities by the Asset Manager pursuant to the exemption may not be part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.[18] Paragraph (f) further provides that the Affiliated Broker-Dealer may not receive, either directly, indirectly, or through designation, any selling concession, or other consideration that is based upon the amount of securities purchased by the Asset Manager's Client Plans pursuant to the exemption. Those selling concessions would be allocated to members of the syndicate who are not affiliated with the Asset Manager. The Affiliated Broker-Dealer may also not receive, either directly or indirectly, that portion of the fixed designation that is attributable to securities purchased pursuant to the exemption. The Affiliated Broker-Dealer is not precluded from receiving management fees, underwriting fees, or other consideration that is not based upon the amount of securities actually sold to the Asset Manager's Client Plans.

7. Paragraph (g) provides that the amount the Affiliated Broker-Dealer receives in management fees, underwriting fees, or other consideration may not be increased for the purpose of offsetting the reduction of the Affiliated Broker-Dealer's compensation from selling concessions. Further, the Affiliated Broker-Dealer must provide the Asset Manager with a written certification that the Affiliated Broker-Dealer complied with the underwriting compensation requirements found in paragraphs (e), (f), and (g) of the proposed exemption, in any offering where the Asset Manager purchased securities for its Client Plans. This certification will also be part of the quarterly report which the Asset Manager provides to the Independent Fiduciaries of the Client Plans.[19]

Disclosures

8. The proposed exemption requires in paragraphs (h) and (l) that the Asset Manager obtain written authorization from an Independent Fiduciary of each Client Plan, including each fiduciary of a plan that invests in a Pooled Fund, before engaging in the covered transactions.[20] Prior to, and subsequent

[14] Paragraph (a)(1)(ii) of the proposed exemption requires that if the securities are equity securities in an Eligible Rule 144A Offering, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum. This condition may be satisfied by the type of "10b–5" opinion customarily obtained in connection with such offerings. The Department believes that requiring such review by a law firm will help insure that the offering memorandum meets federal securities law standards. The Department notes that paragraph (c) of the proposed exemption requires debt securities to be rated by at least one independent nationally recognized statistical rating organization, thus insuring that sufficient information about those securities and their issuer will be available to investors.

[15] The language regarding the timing of the purchase differs slightly from PTE 75–1, Part III. This language is based upon Rule 10f–3, as amended in 1997 (17 CFR 270.10f–3; 62 FR 42401, August 7, 1997).

[16] Paragraph (a)(2)(ii) of the proposed exemption permits certain purchases of debt after the first day of the offering. Should the debt be downgraded after the offering commences and prior to being purchased for a Client Plan, the Department expects that the Asset Manager would consider whether, prior to purchase, the price was adjusted to reflect the downgrade.

[17] Paragraph (c)(4) of the proposed exemption requires that when calculating the percentages of securities purchased in an Eligible Rule 144A Offering, one must consider any concurrent public offering. The Department notes that any concurrent offering will necessarily be in a foreign securities market, since Rule 144A is unavailable where there is a concurrent domestic offering.

[18] The Department notes that the intent of the condition in paragraph (e) of the proposed exemption was not to deny direct benefits to other parties to a transaction but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement, or understanding designed to benefit parties in interest.

[19] The certification required in paragraph (g)(2) of the proposed exemption is necessary because the Asset Manager and its Client Plans must monitor compliance with all the conditions of the exemption, if granted. However, the Asset Manager would not normally have access to the Affiliated Broker-Dealer's records detailing each underwriter's share of the compensation from a particular underwriting, as those records are considered confidential. Such records are required to be maintained pursuant to SEC and NASD rules and would, of course, be made available to the Department pursuant to the terms of the exemption, if granted.

[20] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of an Independent Fiduciary to authorize the Asset Manager to invest in securities covered by this proposed exemption (Covered Securities) and to the decision to continue such authorization. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Independent Fiduciary must act "prudently" with respect to the decision to authorize investment in these Covered Securities and the decision to continue such authorization.

The Department wishes to emphasize that it expects that the Independent Fiduciary, prior to authorizing investment in these Covered Securities, will fully understand the potential risks and rewards associated with investing in the initial offering of a security, following disclosure by the Asset Manager of all relevant information pertaining to the proposed transactions. Such consideration must necessarily include the fact that the Asset Manager's affiliate may be the managing underwriter. In addition, the Independent Fiduciary must be capable of periodically monitoring the actions taken by the Asset Manager in the performance of its duties. Thus, in considering whether to enter into transactions of the kind described herein, the Independent Fiduciary should take into account its ability to provide adequate oversight of the Asset Manager.

The Department further notes that, under section 405(a) of the Act, any plan fiduciary (including an investment manager) will have co-fiduciary liability

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to, execution of the written authorization, the Asset Manager must provide certain disclosures described in paragraphs (i), (j), (k), and (m) to an Independent Fiduciary of each Client Plan. In addition, the Asset Manager must provide a termination form, at least annually, that enables the Independent Fiduciary to terminate the authorization without penalty.

Periodic Reporting

9. Paragraph (n) of the proposed exemption requires that at least once every three months, the Asset Manager provide a report to an Independent Fiduciary of each Client Plan containing information about the Covered Securities purchased during the previous quarter. The Department modeled paragraph (n), in part, on the reporting provisions of Rule 10f–3 (17 CFR 270.10f–3).[21] The preamble to the 1997 amendments to Rule 10f–3 states that this rule "permits an investment company that is related to certain participants in an underwriting to purchase securities during an offering, if certain conditions are met." [22] The SEC explained the origin of its rule as follows:

Section 10(f) of the Investment Company Act was designed to address one of the major abuses noted in the period before enactment of the Investment Company Act—the use of funds by underwriters that controlled these funds as a "dumping ground" for unmarketable securities. [23]

Under Rule 10f–3, the Board of Directors of the investment company (including the directors who are not "interested persons" of the investment company) is responsible for monitoring compliance.[24]

10. Because the transactions covered by this proposed exemption are similar in nature to those covered by Rule 10f–3, the Department has determined that it is appropriate to adopt similar reporting requirements as in that rule. In addition to the items required to be reported by investment companies under Rule 10f–3, the proposed exemption requires that the Asset Manager report to the Independent Fiduciary the price at which any securities purchased during the reporting period were sold and the market value at the end of the reporting period of each security purchased during such period.[25]

11. The additional information should help the Independent Fiduciary monitor compliance with the exemption, if granted. The Independent Fiduciaries of the Client Plans would play a similar role to that of the Board of Directors of an investment company, *i.e.*, they have a fiduciary duty to monitor the activities of the Asset Manager.[26] In monitoring compliance, the Independent Fiduciary should bear in mind that the Asset Manager's subsequent decision to hold or sell a security purchased pursuant to the exemption, would not be covered by the exemption, if granted.[27]

12. Further, the Asset Manager must report any instance during the past quarter where the Asset Manager was precluded from trading in any security purchased under the exemption for any period of time because of its status as an affiliate of the Affiliated Broker-Dealer. For example, the security could be placed on a watch or restricted list due to activities of the Affiliated Broker-Dealer, and these restrictions could prevent the Asset Manager from trading the security. Such a situation could arise where a security was purchased by the Asset Manager pursuant to this proposed exemption on the first day of the offering and the rest of the offering was not selling well. In this situation, SEC Regulation M, [28] or the general anti-fraud or anti-manipulation provisions of the securities laws, [29] may limit the Asset Manager's ability to subsequently trade in that security, although these restrictions will generally not apply to the Asset Manager if the proper business separations are in place between the Affiliated Broker-Dealer and the Asset Manager (see, *e.g.*, Regulation M, 17 CFR 242.100(b)(3)). Should the Asset Manager's ability to trade a security purchased on behalf of a Client Plan be restricted, this information may be relevant to the decision whether or not to continue to permit purchases under the exemption.

Minimum Size Requirements

13. The proposed exemption applies only to Client Plans with total net assets of at least $50 million, as provided in paragraph (o). In the case of a Pooled Fund, however, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets of at least $50

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for any breach of fiduciary responsibility of another plan fiduciary: (1) if he knowingly participates in or conceals such breach; (2) if, by his failure to comply with section 404(a)(1) of the Act, he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort, under the circumstances, to remedy the breach.

Finally, the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of any plans' participation in the covered transactions.

[21] PTE 75–1, Part III, was based, in part, on a prior version of Rule 10f–3.

[22] 62 FR 42401, Aug. 7, 1997.

[23] *Id.*

[24] The information that the Board of Directors uses to monitor compliance must be included as an exhibit to the fund's semi-annual publicly available reports to the SEC, known as the Form N–SAR.

[25] See paragraph (n) of the proposed exemption.

[26] With respect to the directors' duty, the SEC stated in the preamble to Rule 10f–3:

A fund's board should be vigilant in reviewing the procedures and transactions required by 10f–3 as well as in conducting any additional reviews that it determines are needed to protect the interests of investors, particularly if the fund purchases significant amounts of securities in reliance on 10f–3. For example, the board should consider monitoring how the performance of securities purchased in reliance on rule 10f–3 compares to securities not purchased in reliance on the rule, or to a benchmark such as a comparable market index. Such monitoring would enable the board to determine not only whether existing procedures are being followed, but whether the procedures are effective in fulfilling the policies underlying section 10(f). (62 FR at 42406) (See also footnote 52, 62 FR at 42406.)

[27] The Department notes that this proposed exemption would provide relief from the self-dealing and conflict of interest provisions of Part 4 of Title I of the Act for purchases of securities by the Asset Manager from an underwriting or selling syndicate in which an affiliate of the Asset Manager participates as a manager or member of such syndicate. It would not provide relief from any acts of self-dealing not directly arising from a purchase of the Covered Securities. Thus, no relief would be available for any violation of section 406(b) of the Act that may arise after the purchase. For example, because it is well-documented that securities purchased in IPOs may not perform well in the long term (see footnote 4), a violation of the Act could occur if the Asset Manager's decision regarding the holding or sale of the Covered Securities by the Client Plan was influenced by the interests of the Affiliated Broker-Dealer.

The Affiliated Broker-Dealer's interest in the security may extend beyond the sale of the security. As the SEC noted in its preamble to Regulation M, addressing Regulation M's protections against price manipulation: "[i]mmediately following an offering * * * underwriters now engage in substantial syndicate-related market activity, and enforce penalty bids in order to reduce volatility in the market for the offering security." 62 FR 519, 521 (January 3, 1997). The SEC defines penalty bid as "an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions." SEC Regulation M (17 CFR 242.100(b)). For further background on the role of underwriters, see "Corporate Finance and the Securities Laws, (2d ed. 1997)," Charles J. Johnson, Jr. and Joseph McLaughlin, Aspen Publishers; "Securities Industry Association: Capital Markets Handbook," edited by Bruce S. Foester, Aspen Publishers (1999). Recent Developments in Underwriting of IPO's: Spinning and Penalty Bids, Meredith B. Cross and Christine Sarudy Roberts, 1084 PLI/Corp 595 (Nov. 1998).

[28] A security might be put on a restricted list, for example, if the offering was not completely sold before the security began trading in the market. In this instance, the restricted period for purposes of Regulation M (17 CFR 242.101(a)) continues until all securities are sold. See, generally, "Corporate Finance and the Securities Laws, (2d ed. 1997)," Charles J. Johnson, Jr. and Joseph McLaughlin, Aspen Publishers; "Securities Industry Association: Capital Markets Handbook," edited by Bruce S. Foester, Aspen Publishers (1999).

[29] These rules include Section 17(a) of the 1933 Act (15 U.S.C. 77q(a)) and Sections 9, 10(b), and 15(c) of the 1934 Act (15 U.S.C. 78i, 78j(b) and 78o(c)).

million. In the case of an Eligible Rule 144A Offering, each Client Plan must have at least $100 million in securities. For a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to Rule 144A (17 CFR 230.144A(a)(F)). The Department believes that these minimum size requirements will help insure that the Client Plans have the resources and investment sophistication needed in order to monitor the Asset Manager's investment performance with respect to the covered transactions.

14. Further, the proposed exemption applies only if the Asset Manager is a "qualified professional asset manager" (QPAM), as defined under Part V(a) of PTE 84–14, (49 FR 9494, 9506, March 13, 1984),[30] subject to the following modifications: The Asset Manager has as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his or her duties respecting a plan solely in the interest of the participants and beneficiaries of such plan and in a prudent manner in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the affected plans and their participants and beneficiaries, and protective of the rights of those participants and beneficiaries; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in the applications accurately describe all material terms of the transactions that are the subject of the exemptions.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) either:

(i) part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et. seq.) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) part of an issue that is an "Eligible Rule 144A Offering," as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) if such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) if such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) such securities are purchased by others pursuant to a rights offering; or

(ii) such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's

[30] PTE 84–14 provides a class exemption, under certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or

(3) such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D) and this paragraph (b).

(c) The amount of such securities to be purchased by the Asset Manager on behalf of any single Client Plan or any Pooled Fund, does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans (including Pooled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) if purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) the principal amount of the offering of such class sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) the principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan or Pooled Fund in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan or Pooled Fund, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I, paragraphs (e), (f), or (g), of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) a copy of this notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**;

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) a termination form, with instructions specifying how to use the form, expressly providing that the authorization described in paragraph (h) may be terminated without penalty by the Independent Fiduciary on no more than five days' notice.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will, at least annually, provide the Independent Fiduciary with another termination form and the information specified in subparagraph (i)(2) and (3) above.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) a notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of this notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**;

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) a termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its continued participation in covered transactions as a Pooled Fund investor.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicant or an affiliate thereof.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials

described in subsections (1), (2), and (3) of paragraph (k) and an explanation of the plan's ability to terminate its investment in the Pooled Fund. For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicant or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will, at least annually, provide the Independent Fiduciary with a termination form and the information specified in subparagraph (k)(3) above.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:

(i) the type of security (including the rating of any debt security);

(ii) the price at which the securities were purchased;

(iii) the first day on which any sale was made during this offering;

(iv) the size of the issue;

(v) the number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) the identity of the underwriter from whom the securities were purchased;

(vii) the spread on the underwriting;

(ix) the price at which any securities purchased during the period were sold; and

(x) the market value at the end of such period of each security purchased during the period and not sold;

(2) provide to the Independent Fiduciary written certifications signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I, paragraphs (e), (f), and (g) of this exemption;

(3) disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) the date on which the securities were purchased on behalf of the plan;

(ii) the percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) the identity of all members of the underwriting syndicate; and

(4) disclose to the Independent Fiduciary in the next quarterly report, whether at any time during the preceding quarter, the Asset Manager was precluded from trading in a security purchased under this exemption for any period of time because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a "qualified professional asset manager" (QPAM), as that term is defined under Part V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 10 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (s) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) no party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and

(2) a prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by—

(i) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or

(iii) any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) none of the persons described in paragraphs (s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2)

above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(a) The term "the Affiliated Broker-Dealer" means any broker-dealer affiliate of the Applicant (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption.

(b) The term "the Asset Manager" means any asset management affiliate of the Applicant (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption.

(c) The term "affiliate" of a person includes:

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "Client Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in paragraph (f) below).

(f) The term "Pooled Fund" means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g) The term "Independent Fiduciary" means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager. For purposes of this exemption, a Client Plan fiduciary will not be deemed to be unrelated to, and independent of, the Asset Manager if:

(1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager;

(2) such fiduciary, or any officer, director, partner, employee, or relative of such fiduciary is an officer, director, partner, or employee of the Asset Manager (or is a relative of such persons); or

(3) such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of the Asset Manager (or a relative of such persons), is a director of such Independent Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then paragraph (g)(2) of this Section II, shall not apply.

(h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)).

(i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270. 10f–3(a)(4)) under the 1940 Act.

(j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

Signed at Washington, D.C., this 3rd day of February, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–2856 Filed 2–7–00; 8:45 am]

BILLING CODE 4510–29–P

EXECUTIVE OFFICE OF THE PRESIDENT

National Partnership for Reinventing Government

BEST Communities: Boosting Education, Skills and Training

AGENCY: National Partnership for Reinventing Government.

ACTION: Notice of performance partners with community-based coalitions.

AUTHORITY CITATION: Non-statutory.

BACKGROUND: The number one problem facing American business today is a shortage of highly skilled workers. America's competitiveness and the prosperity of the American people will depend increasingly upon high-skill, high-wage jobs. Realizing this potential will require investing in education and learning so all of our people can continue to learn throughout their lifetime and get the skills they need to succeed in the 21st century.

The BEST Communities initiative was recommended by the 21st Century Leadership Group—a forum of leaders from business, organized labor, education, and all levels of government—convened by the Vice President in January 1999. The Vice President asked the group to develop a set of recommendations to their peers that would help ensure a prepared and thriving workforce in the next century.

Their report, Skills for a New Century: A Blueprint for Lifelong Learning, presented to the Vice President in November 1999, outlined five broad recommendations to provide adults the skills they need and employers the skilled employees needed to remain competitive.

(1) Deliver education and training that is tied to high standards, leads to useful credentials and meets labor market needs.

(2) Improve access to financial resources for lifetime learning for all adult Americans, including those in low-wage jobs.

(3) Promote learning at a time, place, and manner that meets worker needs and interests, including through the use of learning technologies to enable learning at home, the workplace, or elsewhere.

(4) Encourage and motivate adults to pursue further education and training and inform them of resources available to help them do so.

(5) Form partnerships among a wide array of organizations and stakeholders to support workforce development and lifelong learning for adults.

Based on the Leadership Group's recommendation, the Vice President announced a new initiative to assist local communities interested in developing and implementing community-wide strategies to help adults get the skills they need to succeed. This effort would support community-based partnerships involving business, labor, education and government that develop plans focused on clear, objective, measurable goals for adult learning and skill development across a community. Existing web sites will be used to share key information and best practices across a broader network of communities.

Announcement: The National Partnership for Reinventing Government is seeking ten performance partners with community-based coalitions that want to work with Federal partners to enhance education, skills, training and lifelong learning for adults in their community. Community-based partnerships that are not selected as one

of the performance partners will be invited to become charter members of the larger BEST Network.

The BEST Network will connect communities across the country to demonstrate model ways to encourage lifelong learning. The overall initiative also seeks to minimize administrative barriers to problem solving and help communities maximize currently available federal resources.

This is the first step toward creating a national network of communities working together and sharing best practices to help more adults get 21st century skills and find more opportunities for lifelong learning. The network will help communities collaborate with each other, across sectors and with the federal partners to:

- Increase the number of Americans with 21st century skills and help them find high-skill, high-wage jobs;
- Close the Skills Gap;
- Promote lifelong learning;
- Address barriers at the federal, state, and local level—in ways allowable under current law—to increase the flexibility and effectiveness of resources;
- Obtain technical support and facilitate access to best practices employed in various communities; and
- Share lessons with other communities.

What Are The Benefits To Communities? This is not a grant program and includes no new Federal funds. To help community, State and local partners, Federal partners will:

- Participate in the formation of a national "community of practice" that shares best practices and works together to solve problems and get results.
- Assign a federal "champion" to each performance partner to help communities navigate the hallways of inter-governmental programs, policies, and federal resources across government;
- Help create solid management systems that focus on meaningful outcomes for learners;
- Provide increased access to federal data and geographic information related to 21st century skills, jobs and work trends; and
- Facilitate consolidated reporting and increased flexibility in administration—within existing legal requirements—for communities that use Federal funds from different government departments and agree to public measures of outcomes and results.

The larger BEST Network will:

- Connect communities and relevant agencies with peers working on similar issues;
- Share lessons learned;
- Give national recognition to innovative communities for their effective strategies and results;
- Link to other, related federal initiatives; and
- Help communities and local agencies measure results and obtain expert advice in devising strategies for collecting, analyzing, and using data to achieve results.

Who Can Apply To Be a Local Partner? Expressions of Interest can be submitted by the head of a community-based partnership, local government, network of local governments, state or local workforce development agency, or network of state or local agencies or organizations. Where state funds or agencies are involved or where federal funds flow through the state, there must be clear evidence of state partnership.

How Does My Community Express Interest in the BEST Network? Potential partners should submit a brief Expression of Interest. To minimize any burden, submissions should be under ten pages in length. Communities are encouraged to use existing plans and documents wherever possible.

Selection Criteria: A cross-agency team will select local partners based on:

- Existence of a partnership that crosses sectors such as business, labor, education and government.
- A community-wide plan for adult learning and skill development that has clear, objective, measurable goals.
- Effective leadership and participation of key stakeholders such as community, business, labor, and educational leaders; federal, state, and local officials; faith community representatives; and others.
- Readiness and commitment of partners to work together, cut red tape, coordinate operations, use current funding more effectively, and achieve better results.
- Potential impact of proposed performance partnership on closing the skills gap in the local community, as demonstrated by a focus on one or more of the five broad recommendations in the report Skills for a New Century: A Blueprint for Lifelong Learning;
- Balance in terms of geography, demographic characteristics, and areas of focus.

The BEST Network will be supported by the Lifelong Learning Inter-Agency Strategy Group that includes representatives of the U.S. Departments of Labor, Education, and Commerce, facilitated by the Vice President's National Partnership for Reinventing Government.

Expressions of Interest: Expressions of Interest in partnerships must be received by close of business on February 25, 2000. They may be submitted by mail, fax or electronically to: BEST Communities, National Partnership for Reinventing Government, Suite 200, 750 17th Street NW, Washington, DC 20007, Fax: (202) 632–0390, or e:mail at *BEST@npr.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Lynn S. Kahn, (202) 694–0038, *lynn.kahn@npr.gov;* or Meshell Jones, (202) 694–0122; *meshell.jones@npr.gov.*

Dated: January 20, 2000.

Lynn S. Kahn,

Team Leader.

[FR Doc. 00–2814 Filed 2–7–00; 8:45 am]

BILLING CODE 3115–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

Date/Time: February 22 and 23, 2000; 8:30 AM–5:00 PM.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–2743 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

Date/Time: March 2 and 3, 2000; 8:30 a.m.–5:00 p.m.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–2744 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communications Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer-Communications Research (1192).

Date/Time: March 2 and 3, 2000; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Yechezkel Zalcstein, Program Director, Theory of Computing Program, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1914.

Purpose of Meeting: to provide advice and recommendations for the Theory of Computing Program (TOC) by providing review of approximately 60 proposals with special attention to changing emphasis for that program.

Agenda: Review and evaluate TOC proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–2738 Filed 2–7–00; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation (61).

Date/Time: March 7, 8, 14–17, 20–24, 28, 29, & 31, 2000; 8:30 a.m.–5:00 p.m.

Place: Rooms 130, 310, 330, 360, 370, 380, and 580, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1395, extension 5283.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–2739 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date/Time: March 8–10, 15–17, 22–24 & 27–29, 2000; 8:00 a.m. to 6:00 p.m. each day.

Place: Rooms 340, 360, 380 & 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Herman B. Zimmerman, Division Director, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1550.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–2735 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date/Time: April 26–28, 2000; 8:00 a.m. to 5:00 p.m.

Place: Room 330, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Sonya Sobrian, Program Director, Behavioral Neuroscience; Dr. Roy White, Program Director, Computational Neuroscience; Division of

Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 28, 2000; 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. Closed Session: April 26–27; 8:00 a.m. to 5:00 p.m.; April 28, 9:00 a.m. to 10:00 a.m., and 11:00 a.m. to 5:00 p.m. To review and evaluate Behavioral Computational Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–2736 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date/Time: May 1–2, 2000; 8 a.m. to 5 p.m.

Place: Room 365, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Soo-Siang Lim, Program Director, Neuronal & Glial Mechanisms; Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: May 1, 2000; 4 p.m. to 4:30 p.m., to discuss goals and assessment procedures. Closed Session: May 1, 2000; 8 a.m. to 4 p.m.; and 4:30 p.m. to 5 p.m. May 2, 2000; 8 a.m. to 5 p.m. To review and evaluate Neuronal Glial Mechanisms proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–2737 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), as amended, the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel In Physics (1208).

Date/Time: March 27–29, 2000; 8:00 a.m.–6:30 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Winston Roberts, Program Director for Nuclear Theory, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1805.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Nuclear Theory Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–2742 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (1214).

Date/Time: Thursday, February 17, 2000; 8:00 am–6 pm, Rooms 830 and 880 [Closed]. Friday, February 18, 2000; 8:00 am–2:00 pm, Room 830 and 880 [Closed]. Friday, February 18, 2000; 2:00–3:30 pm, room 830 [Open].

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Part Open (see Agenda, below).

Contact Person: Dr. Herbert Levitan, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 306–1681.

Purpose of Meeting: To carry out a Committee of Visitors (COV) review of the CCLI and ATE programs over the past three fiscal years, including program evaluation, examination of decisions on proposals, reviewer comments, and to access other privileged information.

Agenda: February 17, 2000, 8:00 am–6:00 pm, Closed review of privileged documents. February 18, 2000, 8:00 am–2 pm. Closed review of privileged documents. February 18, 2:00 pm–3:30 pm, Open discussion on the impact of the projects funded and an evaluation of the programs. Session is open to meet requirements of Government Performance and Results Act (GPRA).

Reason for Closing: During the closed session, the COV will be reviewing proposals which include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–2741 Filed 2–7–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Oconee Nuclear Station Units 1, 2, and 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3 located in Oconee County, Seneca, South Carolina.

The proposed amendment would update the Oconee Nuclear Station Units 1, 2, and 3 Facility Operating Licenses by (a) deleting the license conditions that have been fulfilled by actions that have been completed, (b) changing the license conditions that have been superseded by the current

plant status, and (c) incorporating other administrative changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed amendment to the Oconee FOLs [Facility Operating Licenses] involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by this amendment. Therefore, implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

The proposed amendment to the Oconee FOLs involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by these amendments. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems. Therefore, implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. The changes are adminstrative in nature and eliminate outdated or completed requirements; therefore, no reduction in any existing margin of safety is involved.

Based upon the preceding discussion, Duke Energy Corporation has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 9, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 27, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 2nd day of February, 2000.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2834 Filed 2–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–32443–SP]

In the Matter of Michel A. Philippon (Denial of Senior Reactor Operator) License Application; Notice of Appointment of Adjudicatory Employee

Commissioners: Richard A. Meserve, Chairman, Greta J. Dicus, Nils J. Diaz, Edward McGaffigan, Jr., Jeffrey S. Merrifield.

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Richard Baldwin, a Commission employee in Region II, Division of Reactor Safety, Operator Licensing and Human Performance Branch, has been appointed as a Commission adjudicatory employee within the meaning of section 2.4, to advise the Commission regarding issues relating to the pending petition for review of the Presiding Officer's Initial Decision, LBP–99–44. Mr. Baldwin has not previously performed any investigative or litigating function in connection with this or any related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Baldwin.

It is so ordered.

For the Commission.

Dated at Rockville, Maryland, this 2nd day of February, 2000.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–2832 Filed 2–7–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24274; 812–11898]

The Victory Portfolios, et al.; Notice of Application

February 1, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY: Applicants seek to amend a prior order that permits non-money market series of a registered open-end management investment company to purchase shares of one or more of the money market series of such registered investment company by adding one registered open-end management investment company and one investment adviser as applicants.

Applicants: The Victory Portfolios (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group (collectively, the "Original Funds"); Society Asset Management, Inc., Union

Bank of California, N.A. (formerly known as The Bank of California), First of America Investment Corporation, Meridian Investment Company, AmSouth Bank (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (collectively, the "Original Advisers"); BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) ("BISYS"), BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury Service Corporation) (all of the above entities collectively, the "Original Applicants"); BISYS Fund Services, Inc. ("BISYS Services"); Martindale Andres & Company, Inc. and 1st Source Bank (collectively, the "First Additional Advisers"); Eureka Funds, Performance Funds Trust, and Centura Funds, Inc. (collectively, the "First Additional Funds"); Sanwa Bank California, Trustmark National Bank and Centura Bank (collectively, the "Second Additional Advisers"); The Infinity Mutual Funds, Inc. (the "Second Additional Fund"); First American National Bank (the "Third Additional Adviser"); Magna Funds (the "New Fund") and Union Planters Bank, National Association (the "New Adviser").

The Sessions Group, BISYS, BISYS Fund Services Ohio, Inc. and the First Additional Advisers are also referred to as the "First Subsequent Applicants." BISYS, BISYS Services, the First Additional Funds, and the Second Additional Advisers are also referred to as the "Second Subsequent Applicants." BISYS, BISYS Fund Services Ohio, Inc., the Second Additional Fund and the Third Additional Adviser are referred to collectively as the "Third Subsequent Applicants." The Original Applicants, the First Subsequent Applicants, the Second Subsequent Applicants and the Third Subsequent Applicants are also referred to collectively as the "Prior Applicants." BISYS, BISYS Services, the New Fund, and the New Adviser are referred to collectively as the "New Applicants."

FILING DATE: The application was filed on December 21, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o Charles H. Hire, Esq., Baker & Hostetler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Mary Kay Frech, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. On October 5, 1993, the Commission issued an order (the "Original Order") under sections 6(c) and 17(b) of the Act that exempted the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permitted, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) and rule 17d–1.[1] The Original Order permitted: (i) the non-money market series of an Original Fund to utilize cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the money market series of such Original Fund; and (ii) the sale of shares by the money market series of an Original Fund to the non-money market series of such Original Fund, and the purchase (or redemption) of their shares by the money market series of the Original Fund from the non-money market series of such Original Fund.

2. On May 20, 1997, the Commission issued an order that amended the Original Order (together with the Original Order, the "First Amended Order"), by extending the relief granted in the Original Order to the First Subsequent Applicants.[2]

3. On September 15, 1998, the Commission issued an order that amended the Original Order for the second time (together with the First Amended Order, the "Second Amended Order"), by extending the relief granted in the Original Order to the Second Subsequent Applicants.[3]

4. On September 21, 1999, the Commission issued an order that amended the Original Order for the third time (together with the Second Amended Order, the "Third Amended Order"), by extending the relief granted in the Original Order to the Third Subsequent Applicants.[4] The Original Order, the First Amended Order, the Second Amended Order and the Third Amended Order are referred to herein collectively as the "Amended Order."

5. The New Fund is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The New Fund currently offers three series, one of which is a money market fund, and is advised by the New Adviser. The New Adviser is not registered under the Investment Advisers Act of 1940 (the "Advisers Act") in reliance upon the exclusion from the definition of investment adviser set forth in section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the principal underwriter and administrator for each series of the New Fund. BISYS Services, also one of the Prior Applicants, is the transfer agent and fund account for each series of the New Fund.

6. The New Applicants seek to have the exemptive relief granted under the Amended Order extended to include them so as to permit the non-money market series of the New Fund which are advised by the New Adviser to utilize Uninvested Cash to purchase shares of one or more of the money market series of the New Fund which are advised by the New Adviser.[5] The New Applicants consent to the

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[1] Investment Company Act Release Nos. 19695 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order).

[2] Investment Company Act Release Nos. 22636 (April 24, 1997) (notice) and 22677 (May 20, 1997) (order).

[3] Investment Company Act Release Nos. 23393 (Aug. 18, 1998) (notice) and 23436 (Sept. 15, 1998) (order).

[4] Investment Company Act Release Nos. 23962 (Aug. 23, 1999) (notice) and 24021 (Sept. 21, 1999) (order).

[5] The requested relief also would extend to any other registered open-end management investment companies advised by the New Adviser or any person directly or indirectly controlling, controlled by, or under common control with the New Adviser, and for which BISYS or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter.

conditions set forth in the application for the Amended Order and agree to be bound by the terms and provisions of the Amended Order to the same extent as the Prior Applicants. The New Applicants believe that granting the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2746 Filed 2–7–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, the Social Security Administration (SSA) is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by 02/16/2000 of the information collections listed below.

1. Request to be Selected as Payee—0960–0014. The information collected on Form SSA–11–BK is used to determine the proper payee for a Social Security beneficiary, and it is designed to aid in the investigation of a payee applicant. The form will establish the applicant's relationship to the beneficiary, the justification, the concern for the beneficiary and the manner in which the benefits will be used. The respondents are applicants for selection as representative payee for Old Age, Survivors and Disability Insurance (OASDI), Supplemental Security Income (SSI), Black Lung benefits and title-VIII Special Veterans Benefits.

Number of Respondents: 2,121,686.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 371,295 hours.

2. Application for Special Benefits for World War II Veterans–0960–NEW. The information collected on Form SSA–2000 will be used by the Social Security Administration to elicit the information necessary to determine entitlement of an individual to benefits under title VIII of the Social Security Act. Respondents are certain World War II Veterans as identified under title VIII.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 4,000 hours.

Background Information

In November 1999, Congress passed the Foster Care Independence Act, and on December 14, 1999, the President signed it into law (Pub. L. 106–169). An important part of this legislation, section 251, creates a new title VIII of the Social Security Act, which is a new program for SSA to administer. Title VIII provides for a program of special benefits for certain World War II veterans as defined below:

Veterans of the U.S. military and the organized military forces of the Philippines (while in the service of the U.S. Armed Forces) during World War II, who are age 65 or older on or before December 14, 1999 and who are eligible for SSI benefits in both the month of enactment and the month of application for the Special Veterans Benefit (SVB), and whose total benefit income is less than the title VIII benefit amount, are entitled to a title VIII benefit for each month the individual resides outside the United States.

The law provides that an individual who meets all statutory requirements will be entitled to title VIII benefits beginning with October 2000, or such earlier month that the Commissioner determines is administratively feasible.

In recognition of the stated desire of many foreign-born potential applicants for special benefits under SVB to return to their homelands, SSA is targeting its implementation efforts to begin payments as early as May 2000.

Accordingly SSA has revised the SSA–11–BK, Request to be Selected as Payee, to include payee applicants under title VIII, and has developed the new SSA–2000, Application for Special Benefits for World War II Veterans, in order to administer the title VIII program.

You can obtain a copy of the collection instruments and/or OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd.,.1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: February 1, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 00–2727 Filed 2–7–00; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 28, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–6826.
Dated Filed: January 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0408 dated 28 January 2000; Mail Vote 060—Resolution 043i; TC3 Intermediate Class Fares between Japan, Korea and South East Asia—Amend Fares from Singapore to Japan; Intended effective date: 1 April 2000.

Docket Number: OST–2000–6830.
Dated Filed: January 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: CAC/27/Meet/008/Expedited/99; Cargo Agency Expedited Resolution 809; Intended effective date: January 1, 2000.

Docket Number: OST–2000–6837.
Dated Filed: January 28, 2000.
Parties: Members of the International Air Transport Association.
Subject: CTC Comp 0052 dated 12 August 1997—Mail Vote 875; Resolution 116ss; Airline Justifications; Intended effective date—Upon Government Approvals.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–2775 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 28, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures.

Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–196.
Date Filed: January 18, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 15, 2000.
Description: Application of United Air Lines, Inc. ("United") pursuant to 49 U.S.C. 41101 and subpart Q, applies for renewal of its certificate of public convenience and necessity for Route 669, authorizing United to engage in foreign air transportation of persons, property and mail between a point or points in the United States and the terminal point Kiev, Ukraine via the intermediate point Frankfurt, Germany.P='02'≤

Docket Number: OST–2000–6831.
Date Filed: January 27, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 24, 2000.
Description: Application of Delta Air Lines, Inc. ("Delta") pursuant to 49 U.S.C. 41102 and 41108, part 201, and subpart Q, applies for renewal of its certificate of public convenience and necessity for Route 667, which authorizes Delta to engage in foreign air transportation of persons, property and mail between a point or points in the United States; the intermediate point Vienna, Austria; and the coterminal points Kiev and Odessa, Ukraine.P='02'≤

Docket Number: OST–2000–6835.
Date Filed: January 28, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 25, 2000.
Description: Application of Trans Continental Airlines, Inc. ("TCA") pursuant to 49 U.S.C. 41105 and subpart Q, requests that the Department disclaim jurisdiction over or, in alternative, approve the transfer of the TCA certificate of public convenience and necessity authorizing it to provide interstate scheduled air transportation of property and mail to EXPRESS.NET AIRLINES LLC, reissue the certificate in the name EXPRESS.NET AIRLINES LLC.P='02'≤

Docket Number: OST–2000–6836.
Date Filed: January 28, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 25, 2000.
Description: Application of Northwest Airlines, Inc. ("Northwest") pursuant to 49 U.S.C. 41102, 41108 and subpart Q, applies for renewal of its experimental certificate of public convenience and necessity for Route 668 authorizing it to engage in foreign air transportation of persons, property and mail "between a point or points in the United States; the intermediate point Amsterdam, The Netherlands; and the terminal point Kiev, Ukraine."

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 00–2776 Filed 2–7–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: 49 U.S.C. 5334(g), (formerly called section 12(k) of The Federal Transit Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Missouri Department of Transportation intends to transfer an extension on the City of Sedalia's maintenance building, consisting of approximately 5,600 square feet, to the City of Sedalia, Missouri.

EFFECTIVE DATE: Any Federal agency interested in acquiring the facility must notify the FTA Kansas City Regional Office of its interest by March 9, 2000.

ADDRESSES: Interested parties should notify the Regional Office by writing to Mr. Mokhtee Ahmad, Regional Administrator, Federal Transit Administration, 901 Locust, Room 404, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Louise Lloyd, Transportation Program Specialist, Region 7, at 816/329–3938 or Ann Catlin, Real Estate Specialist, Office of Program Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. Section 5334 (g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter and at least in part with that assistance is no longer needed for the purpose for which it was acquired, then the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government.

49 U.S.C. Section 5334(g) Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for not less than 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g). Accordingly, FTA hereby provides notice of the availability of the facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (1)(D) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The subject building was built as a butler style extension onto the City of Sedalia's maintenance facility in 1983. The extension contains approximately 5,600 square feet and is 70 feet by 80 feet in dimension. Six vans can be stored inside the extension. There is no federal interest in the land and any interested party would need to negotiate a ground lease with the City of Sedalia.

Issued on: February 2, 2000.

Mokhtee Ahmad,
Regional Administrator.
[FR Doc. 00–2777 Filed 2–7–00; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–6856]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Cargoes on U.S.-flag Commercial Vessels."

DATES: Comments should be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Olsen, Office of Financial and Rate Approvals, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, DC 20590, telephone number—202–366–2313. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Cargoes on U.S.-flag Commercial Vessels.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0514.

Form Number: None.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: This collection of information requires U.S.-flag operators to submit vessel operating costs and capital costs data to MARAD officials on an annual basis. The costs are used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. In addition, U.S.-flag vessel operators are required to submit Post Voyage Reports to MARAD after completion of a cargo preference voyage.

Need and Use of the Information: The information collection is used by MARAD officials to calculate fair and reasonable rates for U.S.-flag vessels engaged in the carriage of preference cargoes.

Description of Respondents: U.S. citizens that own and/or operate U.S.-flag vessels.

Annual Responses: 160 responses.

Annual Burden: 640 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov.submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.P='02

Dated: February 2, 2000.

Joel G. Richard,

Secretary.

[FR Doc. 00–2749 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6478; Notice 2]

Advanced Bus Industries, LLC; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

For the reasons given below, we are granting the application by Advanced Bus Industries, LLC, of Columbus, Ohio, ("ABI") for a temporary exemption for its MSV small bus from the requirement of Motor Vehicle Safety Standard No. 105 *Hydraulic and Electric Brake Systems* that a service brake system be provided on all wheels. ABI applied for the exemption on the basis that it "is otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles." 49 CFR 555.6(d).

We published notice of receipt of the application on November 17, 1999 (64 FR 62740), and received no comments on it.

The discussion that follows is based on information contained in ABI's application.

ABI's Reasons Why it Needs a Temporary Exemption

Paragraph S5.1 of Standard No. 105 requires motor vehicles to which the standard applies to be equipped with a service brake system acting on all wheels. ABI applied on behalf of its "MSV Test and Development Vehicle," a small bus with a GVWR of 13,500 pounds.

ABI described the configuration of the MSV by saying that the four-wheel independent-suspension support is augmented by a small-wheeled tag axle. The tag axle is located behind the two rear-independent suspension wheels. The four independent-suspension wheels are fitted with hydraulic-caliper disc brakes but the two small wheels of the tag axle are not fitted with brakes. ABI asked to be excused from providing brakes for the wheels of the tag axle.

The MSV was originally developed without the tag axle, but pre-production changes increased the gross weight on the two rear wheels beyond the rated load capacity of the rear tires. ABI has added a Dexter tag axle to support the additional weight.

The standard-equipment brakes operate with a low displacement of hydraulic fluid at a pressure of approximately 1,600 psi. The vehicle is equipped with an antilock braking system (ABS). However, "there is no commercially-available tag axle with a braking system that is compatible with the vehicle's main service brake system." Absent an exemption, ABI will not be able to sell the production version of the MSV. While any exemption provided is in effect, ABI intends "to develop a new higher-capacity, rear wheel suspension system that will eliminate the need for the tag axle", and does not anticipate selling more than 75 vehicles for any 12-month period that the exemption is in effect.

ABI's Reasons Why the Overall Level of Safety of the MSV Is at Least Equal to That of a Complying Motor Vehicle

Although the MSV does not contain any safety features other than those required by the Federal motor vehicle safety standards, ABI argued that it otherwise exceeds the requirements of Standard No. 105 "and easily complies with brake-in-turn (stability and control) standards expected to be proposed by NHTSA in the near future."

The company has tested the MSV service brake system to the requirements of Standard No. 105, and enclosed a copy of the test report with its petition. The report stated that "even without brakes on the tag axle, the vehicle was still able to meet all of the performance

requirements of FMVSS 105 by a significant margin." (Test No. RAI–ABI–01, Radlinski & Associates, Inc., August 1999, p. 2). The report also concluded that the results demonstrated "that the tag axle, which only carries 1,500 lbs (11 percent of the total weight), does not really need brakes in order for the vehicle to provide safe stopping performance as defined by the requirements of the standard" (*id.*, p. 2).

ABI's Reasons Why an Exemption Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

ABI argued that an exemption would be in the public interest and consistent with traffic safety objectives because granting the exemption "will permit public-transit use of the advanced features of the MSV bus while fulfilling the letter, and the intent, of the FMVSS standards." These advanced features are "significantly improved ride and handling characteristics compared to existing small buses and the MSV's stainless steel frame and FRP body will be more durable than conventionally-constructed buses in this class." In addition, the company argued that the test report shows that the braking performance, even without brakes on the tag axle, significantly exceeds the requirements of Standard No. 105.

Our Findings

ABI is presently unable to sell its MSV because the bus does not provide a service brake system acting on all wheels as required by S5.1 of Standard No. 105. Although the four principal wheels are part of the service brake system, the two smaller wheels of the bus's tag axle are not part of the overall service brake system. The lack of a service brake system on the tag axle wheels does not create a noncompliance with the stopping distance specifications of Standard No. 105. Indeed, the bus is designed to exceed these by, in its words, "a significant margin." In this sense, the overall level of safety of the MSV may exceed that of a similar bus with a complying brake system.

Even though the anticipated production of the bus is small, the vehicles serve the public interest by providing mass transportation in the markets where they will be sold and operated.

Accordingly we find that, to require compliance would prevent ABI from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles, and that a temporary exemption is in the public interest and consistent with the objectives of traffic safety. Accordingly, Advanced Bus Industries is hereby granted NHTSA Exemption No. 2000–1 from the requirement in S5.1 of 49 CFR 571.105 Standard No. 105, *Hydraulic and electric brake systems*, that its MSV bus be equipped with a service brake system on the two wheels of the bus's tag axle. The exemption shall expire January 1, 2002.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: February 2, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–2719 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6586; Notice 01]

RIN 2127–AH76

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 1998, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 1998. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 1998 vehicles (2.53 thefts per thousand vehicles) decreased by 17.05 percent from the theft rate for CY/MY 1997 vehicles (3.05 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before April 10, 2000.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10:00 am to 5:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 1998, the most recent calendar year for which data are available.

In calculating the 1998 theft rates, NHTSA followed the same procedures it used in calculating the MY 1997 theft rates. (For 1997 theft data calculations, see 64 FR 41183, July 29, 1999). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1998 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1998 vehicles of that line stolen during calendar year 1998, by the total number of vehicles in that line manufactured for MY 1998, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 1998 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1997. The preliminary theft rate for MY 1998 passenger vehicles stolen in calendar year 1998 decreased to 2.53 thefts per thousand vehicles produced, a decrease of 17.05 percent from the rate of 3.05 thefts per thousand vehicles experienced by MY 1997 vehicles in CY 1997. For MY 1998 vehicles, out of a total of 196 vehicle lines, 41 lines had a theft rate higher than 3.5826 per thousand vehicles, the

established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 41 vehicle lines with a theft rate higher than 3.5826, 35 are passenger car lines, six are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 1998 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR Part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998

	Manufacturer	Make/model (line)	Thefts 1998	Production (Mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
1	Mitsubishi	Diamante	87	6,584	13.2139
2	Lamborghini	DB132/Diablo	1	104	9.6154
3	Saab	9000	12	1,335	8.9888
4	Honda	Acura Integra	314	36,253	8.6614
5	Mitsubishi	Mirage	357	41,904	8.5195
6	Toyota	Tercel	92	11,207	8.2092
7	Chrysler Corp	Dodge Stratus	750	107,276	6.9913
8	Mitsubishi	Montero Sport/Nativa [1]	318	45,772	6.9475
9	General Motors	Oldsmobile Achieva	181	26,922	6.7231
10	General Motors	GMC Safari Van	161	24,451	6.5846
11	General Motors	Buick Skylark	122	18,851	6.4718
12	Hyundai	Sonata	101	16,406	6.1563
13	Suzuki	X–90	3	500	6.0000
14	Chrysler Corp	Plymouth Breeze	393	66,612	5.8998
15	Mitsubishi	Galant	172	29,618	5.8073
16	Chrysler Corp	Plymouth Neon	499	87,055	5.7320
17	Chrysler Corp	Dodge Neon	725	130,154	5.5703
18	Mitsubishi	Eclipse	307	56,294	5.4535
19	Nissan	Maxima	682	130,862	5.2116
20	Chrysler Corp	Sebring Convertible	251	50,812	4.9398
21	Ford Motor Co	Mercury Tracer	177	35,850	4.9372
22	Hyundai	Elantra	169	35,792	4.7217
23	Suzuki	Swift	15	3,265	4.5942
24	General Motors	Pontiac Sunfire	409	90,469	4.5209
25	Mitsubishi	Montero	38	8,506	4.4674
26	Suzuki	Esteem	67	15,222	4.4015
27	Chrysler Corp	Jeep Grand Cherokee	1,085	249,097	4.3557
28	BMW	M3	50	11,537	4.3339
29	Toyota	Supra	3	697	4.3042
30	Mazda	Millenia	82	19,908	4.1189
31	Toyota	Lexus GS	124	30,810	4.0247
32	Toyota	4-Runner	489	121,745	4.0166
33	BMW	7	73	18,179	4.0156
34	Ford Motor Co	Contour	866	217,548	3.9807
35	Hyundai	Accent	123	31,692	3.8811
36	General Motors	Pontiac Grand AM	385	101,814	3.7912
37	Mitsubishi	3000GT	18	4,753	3.7871
38	Nissan	Altima	602	159,224	3.7808
39	Chrysler Corp	Eagle Talon	16	4,317	3.7063
40	Audi	Cabriolet	3	809	3.6188
41	Ford Motor Co	Mustang	612	170,587	3.5876
42	Mercedes Benz	140 (CL-Class & SL-Class)	34	9,593	3.5443

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

	Manufacturer	Make/model (line)	Thefts 1998	Production (Mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
43	Suzuki	Sidekick	65	18,396	3.533
44	Nissan	Sentra/200SX	395	111,821	3.5324
45	Mazda	Protégé	201	57,165	3.5161
46	General Motors	Chevrolet Blazer S10/T10	759	216,854	3.5001
47	KIA Motors	Sephia	156	45,860	3.4017
48	General Motors	Chevrolet Prizm	153	45,000	3.4000
49	General Motors	Pontiac Firebird/Formula	107	32,228	3.3201
50	General Motors	Chevrolet Camaro	159	48,562	3.2742
51	Ford Motor Co	Mercury Mystique	195	59,826	3.2595
52	Isuzu	Rodeo	223	68,558	3.2527
53	Chrysler Corp	Cirrus	121	37,295	3.2444
54	Porsche	911	8	2,474	3.2336
55	General Motors	Chevrolet Metro	104	32,499	3.2001
56	Chrysler Corp	Dodge Avenger	85	26,634	3.1914
57	General Motors	Chevrolet Cavalier	844	270,401	3.1213
58	Ford Motor Co	Mercury Sable	282	91,297	3.0888
59	Ford Motor Co	Lincoln Town Car	253	82,965	3.0495
60	Toyota	Corolla	690	228,197	3.0237
61	Mercedes Benz	129 (SL-Class)	25	8,315	3.0066
62	Ford Motor Co	Lincoln Mark VIII	43	14,357	2.9951
63	General Motors	Chevrolet Corvette	86	28,732	2.9932
64	Chrysler Corp	Jeep Cherokee	439	148,207	2.9621
65	Nissan	Infiniti I30	92	31,060	2.9620
66	Ford Motor Co	Escort	995	336,729	2.9549
67	General Motors	Cadillac Deville	305	104,209	2.9268
68	General Motors	Chevrolet Malibu	669	231,143	2.8943
69	General Motors	GMC Jimmy S–15	204	71,583	2.8498
70	Ford Motor Co	Taurus	943	332,243	2.8383
71	Toyota	Tacoma Pickup Truck	484	170,992	2.8305
72	Honda	Prelude	45	15,973	2.8173
73	Jaguar	XJ8	32	11,374	2.8134
74	Mazda	626	246	87,448	2.8131
75	General Motors	Oldsmobile Bravada	77	27,790	2.7708
76	Chrysler Corp	Sebring Coupe	93	35,035	2.6545
77	Hyundai	Tiburon	17	6,444	2.6381
78	Chrysler Corp	Dodge Intrepid	182	70,283	2.5895
79	Nissan	Infiniti QX4	44	17,109	2.5717
80	Honda	Passport	63	25,435	2.4769
81	General Motors	Chevrolet Lumina/Monte Carlo	616	255,423	2.4117
82	General Motors	Chevrolet Tracker	50	20,999	2.3811
83	Nissan	Pathfinder	186	81,428	2.2842
84	Honda	Civic	838	368,876	2.2718
85	General Motors	Pontiac Bonneville	146	65,539	2.2277
86	Volkswagen	Golf/GTI	40	17,971	2.2258
87	Mercedes Benz	208 (CLK-Class)	11	5,103	2.1556
88	Chrysler Corp	Jeep WRangler	185	90,341	2.0478
89	BMW	3	76	38,098	1.9949
90	Volkswagen	Jetta	149	74,701	1.9946
91	Chrysler Corp	Stratus[2]	1	505	1.9802
92	BMW	5	70	35,631	1.9646
93	Ford Motor Co	F–150 Pickup Truck	805	409,940	1.9637
94	Jaguar	XJR	3	1,534	1.9557
95	Toyota	Camry	790	404,850	1.9513
96	Ford Motor Co	Windstar Van	646	333,746	1.9356
97	Chrysler Corp	Neon[2]	1	518	1.9305
98	Kia Motors	Sportage	51	26,455	1.9278
99	Volvo	S70/V70	167	87,069	1.9180
100	Chrysler Corp	Plymouth Voyager/Grand	299	156,440	1.9113
101	Toyota	Lexus ES	96	50,585	1.8978
102	Chrysler Corp	Dodge Caravan/Grand	538	288,662	1.8638
103	General Motors	Cadillac Eldorado	33	17,950	1.8384
104	General Motors	Oldsmobile Intrigue	180	99,035	1.8175
105	Honda	Acura TL	33	18,337	1.7996
106	Toyota	Lexus SC	5	2,801	1.7851
107	Isuzu	Trooper	33	18,657	1.7688
108	Isuzu	Oasis Van	3	1,702	1.7626
109	Ford Motor Co	Mercury Grand Marquis	154	87,762	1.7547

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

	Manufacturer	Make/model (line)	Thefts 1998	Production (Mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
110	Ford Motor Co	Explorer	773	446,467	1.7314
111	General Motors	Cadillac Seville	47	27,650	1.6998
112	Chrysler Corp	Dodge Dakota Pickup Truck	245	144,215	1.6989
113	Mercedes Benz	210 (E-Class)	72	42,466	1.6955
114	Volvo	C70	4	2,394	1.6708
115	Toyota	T100 Pickup Truck	18	10,783	1.6693
116	General Motors	Cadillac Catera	46	27,571	1.6684
117	Mazda	MPV	25	15,037	1.6626
118	General Motors	Oldsmobile Cutlass	86	52,679	1.6325
119	General Motors	Oldsmobile Aurora	39	23,955	1.6281
120	Isuzu	Hombre Pickup Truck	32	20,289	1.5772
121	General Motors	Buick Century	198	128,899	1.5361
122	Ford Motor Co	Ranger Pickup Truck	451	297,551	1.5157
123	Ford Motor Co	Mercury Mountaineer	77	51,022	1.5092
124	General Motors	Pontiac Grand Prix	188	127,838	1.4706
125	Mazda	B Series Pickup Truck	70	48,270	1.4502
126	Toyota	RAV4	93	64,298	1.4464
127	General Motors	Buick Regal	101	70,556	1.4315
128	Honda	Acura CL	36	25,471	1.4134
129	General Motors	Chevrolet S–10 Pickup Truck	348	248,330	1.4014
130	Isuzu	Amigo	13	9,374	1.3868
131	Jaguar	XK8	8	5,792	1.3812
132	Porsche	Boxster Convertible	10	7,253	1.3787
133	Mercedes Benz	202 (C-Class)	45	34,100	1.3196
134	General Motors	GMC Sonoma Pickup Truck	77	59,359	1.2972
135	General Motors	Buick Park Avenue	80	62,015	1.2900
136	General Motors	Pontiac Trans Sport Van	70	54,839	1.2765
137	Nissan	Frontier Pickup Truck	111	89,205	1.2435
138	General Motors	Saturn SC	42	34,035	1.2340
139	General Motors	Buick Riviera	13	10,601	1.2263
140	Volkswagen	Cabrio	15	12,252	1.2243
141	Honda	Accord	490	403,085	1.2156
142	BMW	Z3	20	16,482	1.2134
143	Toyota	Lexus LS	27	22,840	1.1821
144	Subaru	Impreza	23	19,550	1.1765
145	Chrysler Corp	Concorde	52	46,543	1.1172
146	Mercedes Benz	163 (ML-Class)	44	39,493	1.1141
147	Honda	Acura SLX	2	1,800	1.1111
148	Mercedes Benz	170 (SLK-Class)	14	12,658	1.1060
149	General Motors	Oldsmobile 88/Regency	69	64,116	1.0762
150	Toyota	Avalon	80	76,189	1.0500
151	Subaru	Legacy	95	90,721	1.0472
152	General Motors	Chevrolet Venture Van	93	93,027	0.9997
153	General Motors	Saturn SL	146	147,604	0.9891
154	Honda	Acura RL	14	14,182	0.9872
155	Nissan	Quest	26	26,388	0.9853
156	Ford Motor Co	Lincoln Continental	38	38,671	0.9826
157	Chrysler Corp	Dodge Viper	1	1,067	0.9372
158	Volvo	S90/V90	12	12,825	0.9357
159	Volkswagen	Passat	24	25,869	0.9278
160	Nissan	240SX	2	2,178	0.9183
161	Nissan	Infiniti Q45	7	7,795	0.8980
162	Toyota	Celica	3	3,343	0.8974
163	Audi	A4	21	24,225	0.8669
164	Chrysler Corp	Town and Country MPV	52	62,976	0.8257
165	General Motors	Buick Lesabre	111	143,354	0.7743
166	Honda	CR–V	74	96,828	0.7642
167	Jaguar	Vanden Plas	4	5,284	0.7570
168	Ford Motor Co	Mercury Villager MPV	28	37,471	0.7472
169	Toyota	Sienna Van	48	73,777	0.6506
170	Subaru	Forester	28	43,490	0.6438
171	Audi	A6	10	16,938	0.5904
172	Volkswagen	New Beetle	22	38,999	0.5641
173	Honda	Odyssey Van	8	14,633	0.5467
174	Ford Motor Co	Crown Victoria	43	85,305	0.5041
175	General Motors	Oldsmobile Silhouette Van	17	35,827	0.4745
176	General Motors	Saturn SW	8	18,322	0.4366

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

	Manufacturer	Make/model (line)	Thefts 1998	Production (Mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
177	Saab	900	5	12,003	0.4166
178	General Motors	Chevrolet Astro Van	34	83,317	0.4081
179	Aston Martin	DB7	0	213	0.0000
180	Audi	A8	0	1,978	0.0000
181	Chrysler Corp	Intrepid[2]	0	171	0.0000
182	Fiat	Ferrari	456	25	0.0000
183	Fiat	Ferrari 550	0	149	0.0000
184	Fiat	Ferrari F355	0	511	0.0000
185	General Motors	Buick Funeral Coach	0	1,061	0.0000
186	General Motors	Cadillac Limousine	0	1,134	0.0000
187	Honda	Acura NSX	0	254	0.0000
188	Lotus	Esprit	0	54	0.0000
189	Rolls-Royce	Bentley Azure	0	99	0.0000
190	Rolls-Royce	Bentley Brooklands	0	39	0.0000
191	Rolls-Royce	Bentley Continental R	0	24	0.0000
192	Rolls-Royce	Bentley Continental T	0	20	0.0000
193	Rolls-Royce	Bentley Turbo R/RT	0	25	0.0000
194	Rolls-Royce	Silver Spur Park Ward	0	12	0.0000
195	Rolls-Royce	Silver Spur	0	30	0.0000
196	Vector Auto	Avtech SC/M12	0	5	0.0000

[1] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.
[2] These vehicles were manufactured for sale only in U.S. territories under the Chrysler name plate.

Issued on: February 2, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–2723 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Solicitation of Applications for Membership on Customs Cobra Fees Advisory Committee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice establishes criteria and procedures for the selection of members and requests applications for membership on the Customs COBRA Fees Advisory Committee.

DATES: Applications will be accepted until March 9, 2000.

ADDRESSES: Applications should be addressed to Richard Coleman, Trade Compliance Team, United States Customs Service, 1300 Pennsylvania Avenue NW., Room 5.2, Washington, DC 20229, Attention: COBRA 1999.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Trade Compliance Team, U.S. Customs Service, 202–927–0563.

SUPPLEMENTARY INFORMATION:

Background

By enactment of Pub. L. 106–36, the Miscellaneous Trade and Technical Corrections Act of 1999, section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) was amended by adding language which directs the Commissioner of Customs to establish an advisory committee (the Customs COBRA Fees Advisory Committee) whose membership shall consist of representatives from the airline, cruise ship and other transportation industries who may be the subject of fees under section 13031.

The Committee will advise the Commissioner of Customs on issues related to the performance of inspectional services of the United States Customs Service. Such advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspectional officers, the level of fees and the appropriateness of any proposed fee.

The Committee will consist of eight industry members and one U.S. Customs representative. The Deputy Commissioner of the U.S. Customs Service will be the Customs representative and chair the Committee. Two senior managers representing the Office of Finance and the Office of Field Operations of the U.S. Customs Service will serve as technical representatives to the chairperson. The Committee shall be in existence unless, or until, such time as its establishment is repealed by Congress.

The members shall be selected by the Commissioner of Customs from applicants representing the transportation industry served by Customs, such as but not limited to, the following: commercial cargo vessels, commercial passenger vessels, rail transportation, trucking transportation, air passenger, barge operators and general aviation.

The members must demonstrate professional or personal qualifications relevant to the purpose, functions and tasks of the Committee. Appointments will be made with the objective of creating a diverse and balanced body with a variety of interests, backgrounds and viewpoints represented. In addition, the members shall represent as much as possible all geographical regions of the country. Persons who serve on another advisory committee will not be eligible to serve on this Committee.

The Deputy Commissioner may designate another official to serve in his absence as Acting Chairperson for purposes of presiding over a meeting of the Committee or performing any other duty of the chairperson. Not more than four meetings will be held during a two year period, in accordance with the Federal Advisory Committee Act. Regular meetings will be held at six

month intervals. An occasional special meeting may be held at the discretion of the chairperson and the members. Meetings will generally be held at the U.S. Customs Service headquarters in Washington, DC. On occasion, meetings may be held outside of Customs Headquarters, generally at a Customs port.

The meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting to the public. The Committee may elect to receive oral or written presentations by parties not directly represented by a member of the Committee where such presentations would contribute to committee deliberations.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on the advisory committee. Members shall not be paid compensation, nor shall they be considered federal government employees for any reason. No per diem, transportation or other expenses will be reimbursed for the cost of attending committee meetings at any location.

Membership on the Committee is personal to the appointees. Regular attendance is essential to the effective operation of the Committee. Members are selected based on their individual credentials and qualifications. Members may not designate alternates to represent them at Committee meetings. In the event of an unavoidable absence of a member, even if the meeting is closed to the public, a representative of the member's organization may attend the session as a nonparticipating observer.

Initially, four members will be appointed for a term of twelve months and four members will be appointed for a term of twenty four months. Thereafter members will serve for a period of twenty four months. Members who served on the Committee during a prior two year term or terms are eligible to reapply for membership. However, it is expected that approximately half of the seats on the Committee will be filled with new members.

Any interested person wishing to serve on the Customs COBRA Fees Advisory Committee must provide the following: a statement of interest and reasons for application and a complete professional biography or resume. In addition, applicants must state in their applications that they agree to submit to preappointment security and tax checks. There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications, along with a resume.

Dated: February 2, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–2724 Filed 2–7–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 6559 & 6559–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6559, Transmitter Report and Summary of Magnetic Media and Form 6559–A, Continuation Sheet for Form 6559.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the forms and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transmitter Report and Summary of Magnetic Media (Form 6559) and Continuation Sheet for Form 6559 (Form 6559–A).

OMB Number: 1545–0441.

Form Number: 6559 & 6559–A.

Abstract: Forms 6559 and 6559–A are used by filers of Form W–2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 90,000.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 27,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2731 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy

Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday, February 25, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday, February 25, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Friday Feb. 25, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 29, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–2732 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, South Florida District

AGENCY: Internal Revenue Service.

ACTION: Notice.

SUMMARY: A public meeting of the South Florida District Citizen Advocacy Panel will be held in Fort Myers, Florida.

DATES: The meeting will be held Saturday, February 26, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227 or 954–423–7974.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a Public meeting of the Citizen Advocacy Panel will be held Saturday, February 26, 2000, 9:00 a.m. to Noon at the Edison Community College, Learning Resource Building, J–103 Corbin Auditorium, 8099 College Parkway SW, Fort Myers, FL 33919.

For more information contact Nancy Ferree at 1–888–912–1227 or 954–423–7974. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7974, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd #225, Sunrise, FL 33351. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 29, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–2733 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Uniondale, New York.

DATES: The meeting will be held Thursday, March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, March 2, 2000, 7:30 p.m. to 9:30 p.m. at the Long Island Marriott Hotel at 101 James Doolittle Boulevard 9, Uniondale, NY 11553. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:30 p.m. to 9:30 p.m. on Thursday, March 2, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY 11202. The Agenda will include the following: introductions of the panel and open discussions with the public.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 29, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–2734 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to

assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 11–99

Question Presented

a. To the extent that provisions in the Veterans Benefits Administration (VBA) (formerly Department of Veterans Benefits) Adjudication Procedures Manual M21–1 extant in 1964 purported to constitute an absolute bar to service connection for retinitis pigmentosa, were such provisions a valid exercise of regulatory authority?

b. To the extent that provisions in VBA Manual M21–1 extant in 1964 created a valid limitation on the grant of service connection for retinitis pigmentosa, did such a limitation bar service connection for the in-service aggravation of preexisting retinitis pigmentosa?

c. If there was no previous bar to the award of service connection for retinitis pigmentosa, what statutory and regulatory provisions are for consideration in determining the effective date for the award of service connection for retinitis pigmentosa in the case giving rise to this opinion request?

d. If the award of service connection for retinitis pigmentosa was barred at the time of a claimant's application for benefits, does the application of 38 U.S.C. § 5110(g) and 38 CFR § 3.114(a) permit assignment of an effective date based on the effective date of Op. G.C. 1–85 (reissued as VAOPGCPREC 82–90); Op. G.C. 8–88 (reissued as VAOPGCPREC 67–90) or a 1986 revision to VBA Manual M21–1?

Held

a. The provisions in paragraph 50.05 of chapter 50 of the Veterans Benefits Administration (VBA) (formerly Department of Veterans Benefits) Adjudication Procedures Manual M21–1 extant in 1964 did not purport to bar service connection for the in-service aggravation of preexisting retinitis pigmentosa.

b. The effective date of the award of compensation for retinitis pigmentosa in the case giving rise to the opinion request is governed by the generally-applicable provisions of 38 U.S.C. § 5110(a), unless the Board determines, based on its review of the record, that another provision in chapter 51 of title 38, United States Code, is applicable to that effective-date determination.

c. Because the statutes and regulations existing at the time of the veteran's claim for benefits permitted an award of service connection for in-service aggravation of retinitis pigmentosa, subsequent Department of Veterans Affairs General Counsel opinions and changes to VBA Manual M21–1 cannot be considered "liberalizing" changes which created the right to such benefits. Accordingly, the effective dates of those documents do not govern the effective date of the veteran's award under 38 U.S.C. § 5110(g) and 38 CFR § 3.114(a).

Effective Date: September 2, 1999.

VAOPGCPREC 12–99

Question Presented

a. What is the definition of the phrase "engaged in combat with the enemy," as used in 38 U.S.C. § 1154(b)?

b. What evidence is considered satisfactory proof that a veteran engaged in combat with the enemy?

c. Besides recognized military citations, what other supportive evidence may be used to support a determination that a veteran engaged in combat with the enemy?

d. Is a statement in service personnel records indicating that a veteran participated in certain military campaigns or operations—such as "participated in operations against Viet Cong, Chu Lai, South Vietnam" during a specified time period—sufficient in itself to establish engagement in combat, or is further evidence of actual or threatened exposure to hostile fire or some other similar type of event or threat required?

e. How does the benefit-of-the-doubt rule under 38 U.S.C. § 5107(b) apply in determining whether a veteran engaged in combat with the enemy for purposes of 38 U.S.C. § 1154(b)?

Held

a. The ordinary meaning of the phrase "engaged in combat with the enemy," as used in 38 U.S.C. § 1154(b), requires that a veteran have participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. Nothing in the language or history of that statute or any Department of Veterans Affairs (VA) regulation suggests a more specific definition. The issue of whether any particular set of circumstances constitutes engagement in combat with the enemy for purposes of section 1154(b) must be resolved on a case-by-case basis. VA may issue regulations clarifying the types of activities that will be considered to fall within the scope of the term.

b. The determination as to what evidence may be satisfactory proof that a veteran "engaged in combat with the enemy" necessarily depends on the facts of each case. Determining whether evidence establishes that a veteran engaged in combat with the enemy requires evaluation of all pertinent evidence in each case, and assessment of the credibility, probative value, and relative weight of the evidence.

c. There is no statutory or regulatory limitation on the types of evidence that may be used in any case to support a finding that a veteran engaged in combat with the enemy. Accordingly, any evidence which is probative of that fact may be used by a veteran to support an assertion that the veteran engaged in combat with the enemy, and VA must consider any such evidence in connection with all other pertinent evidence of record.

d. Whether a particular statement in service-department records indicating that the veteran participated in a particular "operation" or "campaign" is sufficient to establish that the veteran engaged in combat with the enemy depends upon the language and context of the records in each case. As a general matter, evidence of participation in an "operation" or "campaign" often would not, in itself, establish that a veteran engaged in combat, because those terms ordinarily may encompass both combat and non-combat activities. However, there may be circumstances in which the context of a particular service-department record indicates that reference to a particular operation or campaign reflects engagement in combat. Further, evidence of participation in a particular "operation" or "campaign" must be considered by VA in relation to other evidence of record, even if it does not, in itself, conclusively establish engagement in combat with the enemy.

e. The benefit-of-the-doubt rule in 38 U.S.C. § 5107(b) applies to determinations of whether a veteran engaged in combat with the enemy for purposes of 38 U.S.C. § 1154(b) in the same manner as it applies to any other determination material to resolution of a claim for VA benefits. VA must evaluate the credibility and probative value of all pertinent evidence of record and determine whether there is an approximate balance of positive and negative evidence or whether the evidence preponderates either for or against a finding that the veteran engaged in combat. If there is an approximate balance of positive and negative evidence, the issue must be resolved in the veteran's favor.

Effective Date: October 18, 1999.

VAOPGCPREC 13–99

Question Presented

1. Does a liberalizing precedent opinion of General Counsel have the effect of overruling previous final decisions of the VA agency of jurisdiction?

2. If the answer is affirmative, is VA obligated to award retroactive educational assistance benefits based on new evidence received in support of a claim finally denied before the liberalizing General Counsel opinion was issued?

3. May VA pay benefits under the Montgomery GI Bill (MGIB) when no claim was filed by the veteran, but proof of enrollment in qualifying training is submitted by or on behalf of the veteran?

Held

1. A precedent VA General Counsel opinion that invalidates or liberalizes an existing regulatory or statutory interpretation may have retroactive effect in regard to a claim still open on direct review, but can have no such effect on a finally adjudicated agency decision.

2. In view of the preceding conclusion, it is unnecessary to address the second inquiry.

3. Under the facts given, potentially the earliest indication of the veteran's intent to claim benefits for education he pursued in 1995 would be the submission in 1999 of an enrollment certification form. Those facts, however, are insufficient to enable forming an opinion about whether submission of the enrollment form constituted an "informal claim" within the meaning of 38 CFR § 21.1029(d)(2) and, consequently, about the nature of VA's responsibility to act on that submission. It does seem clear that the veteran, thereafter, did not file a formal claim for his 1995 enrollment, as required by 38 U.S.C. § 5101(a). Nevertheless, even if he had, we find the provisions of 38 CFR § 21.7131(a) would have precluded paying benefits based on that claim. That regulation provides that no educational assistance benefits may be paid for education/training received prior to a date 1 year before a claim therefor is filed.

Effective Date: October 28, 1999.

VAOPGCPREC 14–99

Issue

Is an individual who successfully completes all requirements for eligibility for educational assistance benefits under the Montgomery GI Bill (MGIB) barred, under 38 U.S.C. § 3011(c)(2), from receiving those benefits if he or she graduates from one of the U. S. military academies and receives a commission in the Armed Forces?

Conclusion

As provided by 38 CFR § 21.7042(f)(3), an individual who has met all the military service requirements to become entitled to MGIB benefits, as set forth in 38 U.S.C. § 3011(a)(1)(A) or § 3012(a)(1)(A), and who subsequently graduates from a military academy and is commissioned an officer in the Armed Forces is not barred by 38 U.S.C. § 3011(c)(2) or § 3012(d)(2) from receiving the vested MGIB benefits. However, if an individual is commissioned upon graduating from a military academy after December 31, 1976, and before completing the military service needed to establish MGIB entitlement, that individual is disqualified by section 3011(c)(2) and section 3012(d)(2) from MGIB eligibility.

Effective Date: November 4, 1999.

VAOPGCPREC 15–99

Question Presented

Are the provisions of 38 CFR § 3.311(b)(3) and (4) valid insofar as they appear to preclude claimants from establishing that polycythemia vera was incurred as the result of exposure to ionizing radiation in service?

Held

Paragraphs (b)(3) and (b)(4) of 38 CFR § 3.311 are inconsistent with 38 U.S.C. § 1113(b) to the extent that those regulatory provisions purport to preclude a claimant from establishing by evidence that a particular veteran incurred polycythemia vera as the result of exposure to ionizing radiation in service. The Department of Veterans Affairs (VA) may not rely upon 38 CFR § 3.311(b)(3) and (4) as a basis for summarily denying any claim that polycythemia vera was incurred as a result of exposure to ionizing radiation in service. Rather, VA must give a claimant the opportunity to submit evidence to establish that a particular veteran incurred polycythemia vera as the result of exposure to ionizing radiation in service.

Effective Date: November 16, 1999.

VAOPGCPREC 16–99

Questions Presented

a. May a claimant who has been discharged from active duty with an entry level separation due to fraudulent enlistment and credited with zero net active service time by the Air Force be considered a veteran under 38 U.S.C. § 101(2)?

b. Should VA consider an Air Force enlistment which is terminated with an entry level separation to have been voided by the service department under 38 CFR § 3.14?

c. For purposes of 38 CFR § 3.14(a), if the service department has voided an enlistment, is concealment of past illegal behavior a basis for considering the discharge to have been under dishonorable conditions?

d. Does 38 CFR § 3.12(k)(1) compel a finding that a claimant's military service terminated by an uncharacterized entry level separation was "under conditions other than dishonorable," regardless of the circumstances surrounding the separation from service?

Held

a. A claimant who served on active duty in the Air Force and was discharged from such service with an entry level separation due to fraudulent enlistment may qualify as a veteran under the provisions of 38 U.S.C.)101(2), even though the claimant was not credited with any net active service time.

b. Section 3.12(k)(1) of title 38, Code of Federal Regulations, requires a finding that an individual who was released from military service with an uncharacterized entry level separation was separated "under conditions other than dishonorable." In such a case, the provisions of 38 CFR § 3.14(a) and (b) concerning enlistments voided by the service department are not controlling for purposes of determination of character of discharge.

Effective Date: December 15, 1999.

By Direction of the Secretary.

Leigh A. Bradley,

General Counsel.

[FR Doc. 00–2762 Filed 2–7–00; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
February 8, 2000

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 2560
Alaska Native Veterans Allotments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

[WO–350–1410–00–24 1A]

RIN 1004–AD34

Alaska Native Veterans Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations to allow certain Alaska Native veterans another opportunity to apply for a Native allotment under the repealed Native Allotment Act of 1906. Congress passed the Alaska Native Veterans Law in 1998 which mandates regulations to implement it. This action would enable certain Alaska Native veterans who, because of their military service, were not able to apply for an allotment during the early 1970s, to do so now.

DATES: *Comments:* Send your comments to reach BLM by April 10, 2000. BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: *Comments:* You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW., Washington, DC 20240. You may also hand-deliver comments to BLM at Room 401, 1620 L Street, NW., Washington, DC. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599; telephone (907) 271–3767; or Frank Bruno, Bureau of Land Management, Regulatory Affairs Group (WO–630), Mail Stop 401, 1620 L Street, NW., Washington, DC 20036; telephone (202) 452–0352. To reach Ms. Van Horn or Mr. Bruno, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. Please also include "Attention: '1004–AD34' and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*) repealed the Native Allotment Act of 1906 (34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970) on December 18, 1971. During the time just before the 1906 Act was repealed, certain Alaska Natives who were eligible to apply for allotments were serving in the U.S. military and may have missed their opportunity to apply because of their military service.

Section 432 of Public Law 105–276 (43 U.S.C. 1629g) of October 21, 1998, allows certain Alaska Native veterans a new opportunity to apply for allotments under the1906 Act as it was in effect before its repeal. Public Law 105–276 amended ANCSA by adding section 41, requiring the Department of the Interior to create regulations within 18 months to carry it out.

III. Discussion of Proposed Rule

A. How To Read This Rulemaking

What Is the Best Way To Read This Rulemaking To Understand What BLM Is Proposing and Why?

The part you are reading now is called the preamble. It discusses why BLM is proposing the regulatory text and expands on elements of it.

The "regulatory text" is the part that follows the authorization of the rulemaking by the Assistant Secretary of the Interior, and begins with "Part 2568—Alaska Native Allotments for Certain Veterans."

This regulatory text is what would become the regulation in the Code of Federal Regulations to implement the Alaska Native Veterans program should this proposed rulemaking become final. It is what BLM is proposing.

B. The Laws Which Authorize This Rulemaking

What Authorizes BLM To Grant an Allotment To Certain Veterans?

Section 432 of Public Law 105–276 (43 U.S.C. 1629g) of October 21, 1998 (hereafter referred to as the Alaska Native Veterans law) and ANCSA authorize this proposed rulemaking.

Why Was the 1998 Law Enacted?

Alaska Native Allotments were originally authorized by the Native Allotment Act of 1906, which was repealed by Section 18 of ANCSA on December 18, 1971. In the years before the repeal, several Native advocacy groups had anticipated that the law would be repealed. Between 1969 and 1971, they contacted eligible Alaska Natives who had not applied for allotments to help them with their applications. However, Alaska Natives who were in the military just before the repeal could not be readily reached. The 1998 law allows certain Alaska Native veterans another opportunity to file allotment applications.

C. Regulations Which Affect This Rulemaking

Would Existing Regulations Also Apply To Those Filing Under These Proposed Regulations?

Yes. Existing regulations implement the 1906 Native Allotment Act (43 CFR part 2561), shorespace limitations and waivers (43 CFR part 2094), and the Department of the Interior's hearings and appeals procedures (43 CFR part 4).

How Do These Existing Regulations Relate to the Proposed Regulations?

Persons applying under these proposed regulations must also comply with the existing regulations. In the event that the regulations are inconsistent, these rules must be followed.

D. Interested Parties

Is BLM Required To Consult With Anyone on These Regulations?

Yes. Section 41(e) of ANCSA requires BLM to consult with Alaska Native groups before enacting regulations which affect them.

Which Interested Parties Were Involved in This Rulemaking?

The Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and the Office of the Special Assistant to the Secretary for Alaska met several times with:

- The Land Committee of the Alaska Federation of Natives (AFN).
- Various ANCSA corporations.
- Native groups providing Bureau of Indian Affairs realty services under Indian Self Determination and Education Assistance Act (ISDEA; Pub. L. 93–638) contracts.
- Other Native individuals.

How Were They Involved?

Before BLM wrote this proposed regulation it asked them to comment on the Alaska Native Veterans Law, and on how it should be implemented:

- Interior Department representatives met twice with members of the AFN Land Committee to discuss the statute and its implementation.
- During the annual ISDEA Tribal Service Providers Conference in Anchorage in December, 1998, BIA, BLM, and the Special Assistant's Office held two meetings to field questions and to record suggestions from realty service providers and others.
- Also in December 1998, BLM and BIA addressed the shareholders of Bristol Bay Native Corporation to explain the Alaska Native Veterans law, and the process of developing regulations.
- A February 5, 1999, letter from the BIA Area Director to Native leaders was distributed to hundreds of tribal and corporate Native groups in Alaska. In the letter BIA asked for comments on the existing Native allotment regulations and the Alaska Native Veterans law. Several realty contractors and ANCSA corporations submitted detailed written comments and suggestions. The Interior agencies studied these and considered them in the drafting of these proposed regulations.
- In early May 1999 BLM sent copies of the draft regulations to about 450 Native individuals and groups, and invited them to attend meetings in Anchorage on May 19 and Fairbanks on May 21, to review the draft in detail with Interior Department representatives and to discuss and record comments and suggested changes. BLM published notices of these two meetings in the Anchorage Daily News and the Fairbanks Daily News Miner. BLM also encouraged the Native entities to submit written comments. After the meetings, BLM thoroughly reviewed written comments, oral comments they had recorded, and the draft regulations to see how many suggested changes BLM could adopt. BLM did not adopt changes that were contrary to law or would have created different allotment requirements for Alaska Native veterans than those that the original allottees had to meet under the 1906 Act.

E. Qualifications for an Alaska Native Veteran Allotment

How Did BLM Choose the Definitions of "Alaska Native" and "Veteran" in These Regulations?

The definition of "Alaska Native" is the same as the one currently used for the Native Allotment Act of 1906. BLM chose this definition because Native veterans must meet the same Native status requirements as persons who applied under the Native Allotment Act of 1906 while it was in effect.

Congress said in the Alaska Native Veterans law that the term "veteran" would have the same meaning as it has in 38 U.S.C. 101, paragraph 2, which is the Department of Veterans Affairs' legal definition.

F. Applying for an Allotment

Who Is Eligible for an Allotment?

You may be eligible for an allotment if:

(1) You would have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971;

(2) You are a veteran who served at least six months between January 1, 1969, and June 2, 1971, or enlisted or was drafted after June 2, 1971, but before December 3, 1971.

You are not eligible for an allotment if you already received an allotment under the Native Allotment Act (unless you received an allotment interest by inheritance, devise, gift, or purchase) or if you had a pending allotment application on October 21, 1998.

May a Personal Representative Apply on Behalf of an Eligible Deceased Veteran?

Yes, a personal representative who acts for the benefit of the deceased veteran's heirs may apply on behalf of an eligible deceased veteran. The personal representative must prove either (1) that he or she has been appointed by the proper court or (2) that the appointment process has begun. A personal representative may apply only on behalf of an individual who, between January 1, 1969, and December 31, 1971: (1) Was killed in action; (2) was wounded in action and was later determined by the Department of Veterans Affairs to have died as a direct consequence of that wound; or (3) died while a prisoner of war.

Under What Circumstances Will BLM Accept or Reject the Appointment of a Personal Representative?

BLM will accept an appointment of a personal representative made any time after an eligible person dies, even if that appointment was made before the Alaska Native Veterans law was enacted.

BLM will reject an appointment of a personal representative if the appointment process is incomplete when the allotment application is filed and the prospective personal representative does not file proof of the appointment within 18 months after the application filing deadline.

When Must I Apply for an Allotment?

You must apply no later than 18 months after this rule becomes effective.

What Information Must I Include in My Application?

You must include the following information in your application: Name, address, date of birth, telephone number, dates of military service, branch of service, legal description of land for which you are applying, dates of occupancy of land, description and value of improvements on land, and an explanation of your specific uses of land. You must also file a Certificate of

Indian Blood, which is a Bureau of Indian Affairs form, and verification of your qualifying military service obtained from the Department of Defense.

Do I Have To Pay Any Fees To File My Application?

Under the proposed regulations, no.

Since the Alaska Native Veterans Law gives eligible veterans a chance to file applications under the 1906 Act as it was in effect before it was repealed, a Native veteran would have to meet the same filing requirements that existed before December 18, 1971. At no time were there ever any fees required for applications under the 1906 Act. Therefore, we made the initial decision that no fees will be charged.

However, we would like those who comment on this rulemaking to give us their views on the following:

(a) Should we charge a fee for filing an application?

(b) If so, should this fee be refundable if you do not receive an allotment?

What Else Must I Do When I File My Application?

The proposed rulemaking states you must:

(1) Post the land in your application by marking all corners on the ground with your name and address, but only after these regulations are put into effect;

(2) give an adequate legal description of the parcel of land; and

(3) provide a map at a scale of 1:63,360 or larger.

However, we would like those who comment on this rulemaking to give us their views on the following: Should we consider an alternative to physical posting of corners on the ground which provides certainty of the location of the allotment application and provides notice to subsequent claimants?

Is This Application Information Different From What Previous Applicants Had To File?

The application for Alaska Native Veterans allotments is different from the application for an allotment under the 1906 Act in that you must provide information about your military service. You must do this because your eligibility for a veteran allotment is based partly on your military service and BLM needs to know this information to determine that you qualify.

Why Would I Need To File Proof of Military Service and the BIA "Certificate of Indian Blood" Form?

BLM would need to verify that you have enough military service during the proper time frame to be eligible for an allotment under the Alaska Native Veterans law.

Since the Alaska Native Veterans law also requires you to have been eligible for an allotment under the Native Allotment Act of 1906, you would need to show proof that BIA has determined you are an Alaska Native under the 1906 Act and the regulations (43 CFR 2561.0–3) associated with the 1906 Act.

May I File Additional Information To Prove My Use and Occupancy?

You may file supporting evidence such as photographs and statements from knowledgeable witnesses describing when and how you used the allotment for which you are applying. You may also accompany the BLM field examiner to the land and show physical evidence of your use.

Why Would I Have To Prove Use and Occupancy That Began More Than Thirty Years Ago? Why Can't I Simply Apply for Available Land?

To be eligible for this new opportunity, a veteran must prove use and occupancy as if he or she had applied for an allotment before the Native Allotment Act was repealed in 1971. The Alaska Native Veterans law allows veterans who missed, due to their military service, their opportunity to apply for an allotment by 1971 to apply now for an allotment under the Native Allotment Act of 1906.

If BLM Finds Errors in My Application Will BLM Give Me a Chance To Correct the Application?

Yes. BLM will give you at least 60 days to correct errors. If you fail to do so within the time we give, BLM will reject your application.

G. The Type of Land Available for an Allotment

If I Am Eligible, What Land May BLM Convey to Me?

The BLM may only convey land that is currently owned by the federal government, is not a regularly used and recognized campsite, is not valuable for minerals, and does not have a special status. The special status may include land:

(a) Selected but not conveyed to either the State of Alaska or a Village or Regional Corporation,

(b) Withdrawn for any reason,

(c) Selected or claimed, but not conveyed, under a public land law.

How Much Land May I Apply For?

You may apply for one or two parcels which may not total more than 160 acres. In the case of water frontage you may apply for a half mile (160 rods) but if you apply for more than a half-mile BLM will treat your application as a request to waive this limitation.

What Happens if the Land for which I Qualified is no Longer Owned by the Government?

The Alaska Native Veterans law allows eligible veterans only to receive allotments of land that are currently owned by the Federal government. BLM has no authority to convey land to you that is not now owned by the Federal government, even if it was Federal land when you first began to use and occupy it. If you apply for this type of land BLM must reject your application.

May I Choose an Alternative Allotment If My Original Allotment Choice Is Unavailable?

You may be able to choose an alternative allotment if your original choice was for certain types of Federal land that BLM cannot convey to you. Section 2568.110 lists the types of land for which you may apply. The land must be within the same ANCSA region as the land in your original application.

Only applicants whose original choice is for land in a National Park unit, and who meet the use and occupancy requirements for that land, can qualify to receive an allotment of National Park land. You cannot choose an alternative allotment on National Park land if your original choice of land cannot be conveyed to you.

You cannot choose an alternative allotment if your original choice was for land that is not currently owned by the Federal government.

If I Have To Apply for an Alternative Allotment, When Do I Have To Apply?

BLM must receive your request within 12 months of when you received notification that you are eligible for an alternative allotment or within the original 18-month deadline if that is longer.

Can BLM Convey to Me Both the Land and the Rights to Valuable Minerals?

No. The Native Allotment Act of 1906 authorized allotment of only nonmineral land. A 1956 amendment to the Act allowed allotment of land known to be valuable for coal, oil, or gas. However, ownership of those minerals, along with the right to extract them, remains with the Federal government when BLM conveys the land.

BLM cannot convey a Native allotment on land known to be valuable for minerals like gold or silver or other hardrock minerals. If you apply for an

allotment of land known to be valuable for such minerals BLM must reject your application.

What If the land Is Valuable for Sand and Gravel?

Alaska Native veterans cannot receive allotments of land known to be valuable for sand or gravel. The Alaska Native Veterans law says that the eligibility for allotments is under the 1906 Act as it was in effect before December 18, 1971. Since the law at that time considered land valuable for sand or gravel to be mineral and not available for allotment, BLM cannot convey such land to Alaska Native veterans.

Some Alaska Natives who applied under the 1906 Act for land known to be valuable for sand or gravel have received their allotments. This is because Section 905(a)(3) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) states that land valuable for sand or gravel is "nonmineral" under the 1906 Act. Since the authority under the Alaska Native Veterans Law is the 1906 Act as it was in effect in 1971, this 1980 amendment cannot be applied to Alaska veteran allotments.

What Is a Conservation System Unit (CSU)?

A CSU is an Alaska unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

Can I Receive Title to an Allotment in Any One of the CSU's?

No. It may be possible for you to receive title to an allotment in certain CSU's, but you cannot receive title to an allotment of any land designated as wilderness by statute or of any land in a National Forest Monument CSU because the Alaska Native Veterans law specifically prohibits conveyance of such land.

In Those CSU Units Where I Am Permitted To Receive an Allotment, Are There Any Special Limitations or Procedures?

Congress provided that the CSU manager may find that conveyance of the land in your allotment application would be inconsistent with the purposes for which the CSU was established. However, you would still be able to receive an alternative allotment from other lands in or outside the CSU, other than in a National Park.

You must show that you used and occupied your original allotment choice to be able to choose an alternative allotment. You would not have to show use and occupancy of your alternative allotment.

The Alaska Native Veterans law emerged after long discussions between Congressional staff and Department of the Interior officials. Congress could have decided not to allow any veterans' allotments within CSU's. However, to balance the rights of Native veterans and the desire to protect the unique values of the CSU's, Congress and the Department agreed to this compromise which allows allotments within certain CSU's if the allotment is consistent with the purpose of the CSU.

How Will a CSU Manager Determine If Conveyance of My Allotment Would Be Consistent With CSU Purposes?

Each CSU was created by a law or withdrawal order which explains the reasons the CSU was created. The manager of the CSU will make each determination on a case-by-case basis, taking into account such factors as:

(a) The law or withdrawal order which created the CSU,

(b) The mission of the agency that manages the CSU,

(c) The proximity of the allotment to land that has already been conveyed to a Native corporation,

(d) Issues relating to access to and from the allotment, and

(e) The possible cumulative effects on the CSU of all the activities that would take place on the allotment.

Is It Possible That I Might Not Receive Any Land at All, Even If I Qualify To Apply for an Allotment?

Yes, it is possible that you might not receive an allotment even if you are a qualified Alaska Native Veteran. For example, if you apply for land that is not currently owned by the Federal government, BLM would have to reject your application and you would not be able to choose an alternative allotment. BLM would also reject your application if you apply for land known to be valuable for certain minerals and you would not be able to choose land elsewhere. If you fail to correct errors or fail to complete an application in a timely manner, your application may be rejected.

H. Appeals

What can I do if I disagree with any of the decisions?

You may appeal all decisions, except for the CSU compatibility decisions or determinations made by the Department of Veterans Affairs, to the Interior Board of Land Appeals. There is an appeal process for CSU compatibility decisions that is described in §§ 2568.121 through 2568.123. Determinations made by the Department of Veterans Affairs have to be appealed through that department's process.

Why Is The Appeal Process for CSU Decisions Different From the Appeal Process for Other Types of Allotment Decisions?

Most allotment decisions issued by BLM that are appealed to the Interior Board of Land Appeals (IBLA) involve questions of law or evaluation of facts and evidence to determine eligibility. However, the question of whether an allotment is incompatible within a given CSU requires the technical knowledge of that CSU's managers. The three Department of the Interior agencies (Bureau of Land Management, National Park Service, Fish and Wildlife Service) responsible for CSU's already have resource decision appeal processes similar to the one contained in this proposed regulation. The Department believes this proposed CSU appeal process would be the most efficient.

The time frames in these proposed regulations would ensure that disagreements are resolved as quickly as possible so that conveyance of allotments would not be excessively delayed.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These proposed regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. The effect of these proposed regulations will be on a limited number of individuals who are qualified to apply for allotments and on the Interior Department agencies responsible for administering the allotment program. The allotment application period is limited by law to 18 months, and

existing staff of responsible agencies will process applications following most of the same rules that are currently in effect for allotment applications under the 1906 Native Allotment Act.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading, for example **Sec. 2568.61 Where do I file my application?**) (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1638, made conveyances, regulations, and other actions which lead to the issuance of conveyances to Natives under ANCSA exempt from NEPA compliance requirements. Since Congress made the Veterans's Allotment Act a part of ANCSA, NEPA does not apply.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed rule would apply only to certain Alaska Native veterans eligible to apply for allotments. This rule applies only to Alaska Native veterans as individuals. Therefore, the Department of the Interior certifies that this document will not have any significant impacts on small entities under the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These proposed regulations are not a "major rule" as defined at 5 U.S.C. 804(2). This proposed rule does not meet any of the criteria for a "major rule" under the definition contained in SBREFA. The proposed rule would result in some costs to allotment applicants, and to the Department of the Interior to implement the allotment program over the next several years. It would not result in major cost or price increases for consumers, industries, or regions, and the cost increases for government agencies would be small. This proposed rule would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The total annual effect on the economy would be far below $100 million. Based on Department of Veterans Affairs data, BLM estimates that about 1,100 individuals with at least one quarter Alaska Native blood meet the military service criteria in the Alaska Native Veterans law and may be eligible to apply for allotments. If each applicant were to choose the maximum number of land parcels allowed (2), the total number of parcels involved would be 2,200. BLM estimates the cost of processing an application for a single allotment parcel does not exceed $25,000, including the cost of adjudication, examination, survey, and conveyance. This estimate is based on the average cost of processing allotment applications originally filed under the Alaska Native Allotment Act of 1906. The total cost to process 2,200 parcels would be $55 million over the life of the program, which is, the statutory 18-month application period and as many additional years as necessary to complete all applications. In no case would these costs approximate the $100 million annual impact threshold.

Unfunded Mandates Reform Act

These proposed regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The only mandate imposed on State governments would be for the State court appointment of personal representatives in cases involving the estates of certain deceased applicants, but this mandate would cost far below $100 million per year. These proposed regulations impose no mandate on local or tribal governments or the private sector. Program costs would fall primarily on the Department of the Interior. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The proposed rule would allow BLM to convey Federal land only under certain circumstances, and land containing other applications or entries is specifically forbidden by law from being conveyed to Native veterans. Even if a Native veteran could show use and occupancy of land before another application or entry was made, the Native would have no vested property right until he or she filed an application for an allotment under Section 41 of ANCSA. No existing applications or entries or other private property interests would be affected by this proposed rule. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 41 of ANCSA does not allow any land selected by the State of Alaska to be conveyed to a Native veteran, so there would be no effect on the State's ability to reach its full acreage entitlement from the Federal government. Native veterans would not be able to apply for land already owned by the State, even if they could show that they used and occupied the land before the State applied for it. Allotments conveyed under Section 41 of ANCSA are not taxable, just as allotments conveyed under the 1906 Act are not taxable, so there would be no

effect on State or local property tax revenue. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. Representatives of the State of Alaska and the BLM Alaska have had general discussions on the content of the statute and the proposed regulations. Representatives of the State of Alaska and of the Natives recognize that lands selected by the State or conveyed to the State are prohibited from land availability under this statute.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule contains information collection requirements covered under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C 3501 *et seq*. All the information requirements pertain to an application form, whereby Alaska veterans may apply for the benefits described in this proposed rule. BLM has prepared and requested OMB to review and approve an information collection package for the application form. Because all the information requirements are contained in the application form and covered by that information collection package, BLM has not prepared a separate information collection package for these regulations.

The information BLM asks for in the form identified in Section 2568.73 will be collected through the allotment application form "Alaska Native Vietnam Veteran Allotment Application," under an OMB form number to be assigned when OMB approves the collection. BLM would require individual Alaska Native veterans who apply for allotments under Section 41 of ANCSA or, in the case of certain deceased veterans, the personal representatives of their estates to comply with the information collection requirement.

Specific information to be collected is as follows:

Name, address, date of birth, telephone number, dates of military service, branch of service, legal description of land for which veteran or representative is applying, dates of occupancy of land, description and value of improvements on land, and specific uses of land.

BLM estimates the total number of respondents will be approximately 1,100 and the burden on new respondents will be approximately 30,800 hours. These estimates apply to the entire 18-month application period. For a 12-month period this works out to 732 applicants and 20,496 hours. The estimate of the number of respondents is based on computer data from the Department of Veterans Affairs concerning Alaska Native veterans with at least one quarter Alaska Native blood who served in the U.S. military between January 1, 1969, and December 31, 1971. This data was further screened to identify those persons who met the 6 months' service requirement in Section 41 of ANCSA. BLM derived the total estimated burden hours by multiplying the number of potential respondents by an estimate of the 28 hours required to complete the application form and obtain the other documentation required by the form. The majority of questions on the form require brief answers, many of them simply "yes" or "no." Only two questions require narrative responses and in both cases responses are not required from all applicants.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Department of the Interior.

BLM considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of BLM, including whether the information will have practical use;

Evaluating the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; Enhancing the quality, usefulness, and clarity of the information to be collected; and Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; such as permitting electronic submittal of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BLM on the proposed regulations.

Author

The principal author of this rule is Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Frank Bruno of BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian Lands, Public Lands, Public Lands-Sale, and Reporting and Recordkeeping requirements.

Dated: February 2, 2000.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, BLM proposes to amend 43 CFR part 2560 as follows:

1. The authority citation for part 2560 continues to read as follows:

Authority: 43 U.S.C. 1201, 1740.

2. Add subpart 2568 to read as follows:

Subpart 2568—Alaska Native Allotments for Certain Veterans

Purpose

Sec.

2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Regulatory Authority

2568.20 What is the legal authority for these allotments?
2568.21 Do other regulations directly apply to these regulations?

Definitions

2568.30 What terms do I need to know to understand these regulations?

Information Collection

2568.40 Does BLM have the authority to ask me for the information required in these regulations?

Who Is Qualified for an Allotment

2568.50 What qualifications do I need to be eligible for an allotment?

Personal Representatives

2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?
2568.61 What are the requirements for a personal representative?
2568.62 Under what circumstances does BLM accept the appointment of a personal representative?
2568.63 Under what circumstances does BLM reject the appointment of a personal representative?

2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?

Applying for an Allotment

2568.70 If I am qualified for an allotment, when can I apply?
2568.71 Where do I file my application?
2568.72 When does BLM consider my application to be filed too late?
2568.73 Do I need to fill out a special application form?
2568.74 What else must I file with my application?
2568.75 Must I include a Certificate of Indian Blood as well as Department of Defense verification of qualifying military service when I file my application with BLM? Also, if I am a personal representative filing on behalf of the estate of a deceased veteran, must I also file the Department of Veterans Affairs verification of cause of death at this time?
2568.76 Do I need to pay any fees when I file my application?
2568.77 Do I have to post the land in my application on the ground?
2568.78 Will my application segregate the land for which I am applying from other applications or land actions?
2568.79 Are there any rules about the number and size of parcels?
2568.80 Does the parcel have to be surveyed before I can receive title to it?
2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?
2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?

Available Lands General

2568.90 If I qualify for an allotment, what land may BLM convey to me?
2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?
2568.92 Is there a limit to how much water frontage my allotment can include?
2568.93 Can I receive an allotment of land that is valuable for minerals?

Available Lands-Conservation System Units (CSU)

2568.100 What is a Conservation System Unit?
2568.101 If the land I used and occupied is within a Conservation System Unit (CSU) other than a National Wilderness or any part of a National Forest, can I receive title to it?
2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?
2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?
2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?
2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?
2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?

Alternative Allotments

2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?
2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?
2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?
2568.113 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?
2568.114 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

Appeals

2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?
2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?
2568.122 What then does the CSU manager do with my request for reconsideration?
2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?

Subpart 2568-Alaska Native Allotments for Certain Veterans

Purpose

§ 2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Eligible Alaska Native veterans may receive an allotment of one or two parcels of Federal land in Alaska totaling no more than 160 acres.

Regulatory Authority

§ 2568.20 What is the legal authority for these allotments?

(a) The Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (ANCSA), as amended.

(b) Section 432 of Public Law 105–276, the Appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for fiscal year 1999, which amended ANCSA by adding section 41.

(c) The Native Allotment Act of 1906, 34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970).

§ 2568.21 Do other regulations directly apply to these regulations?

Yes. The regulations implementing the Native Allotment Act of 1906, 43 CFR Subpart 2561, also apply to Alaska Native Veteran Allotments to the extent they are not inconsistent with section 41 of ANCSA or any provisions in this Subpart.

Definitions

§ 2568.30 What terms do I need to know to understand these regulations?

Alaska Native is defined in the Native Allotment Act of 1906 as amended by the Act of August 2, 1956, 70 Stat. 954.

Allotment has the same meaning as in 43 CFR 2561.0–5(b).

Conservation System Unit (CSU) has the same meaning as under Sec. 102(4) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 16 U.S.C. 3102(4).

Veteran has the same meaning as in 38 U.S.C. 101, paragraph 2.

Information Collection

§ 2568.40 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved, under 44 U.S.C. 3507, the information collection requirements contained in this subpart 2568 and has assigned them clearance number xxxx-xxxx for Form AK–2561–10. BLM uses this information to determine if using the public lands is appropriate. You must respond to obtain a benefit.

(b) BLM estimates that the public reporting burden for this information is as follows: 28 hours per response to fill out form AK–2561–10. These estimates include the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

(c) Send comments regarding this burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St. N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Who Is Qualified for an Allotment

§ 2568.50 What qualifications do I need to be eligible for an allotment?

To qualify for an allotment you must:

(a) Have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971; and

(b) Be a veteran who served at least six months between January 1, 1969, and June 2, 1971, or enlisted or was drafted after June 2, 1971, but before December 3, 1971; and

(c) Not have already received conveyance or approval of an allotment.

(However, if you received an allotment interest by inheritance, devise, gift, or purchase you are not disqualified from applying); and

(d) Not have a Native allotment application pending on October 21, 1998.

Personal Representatives

§ 2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?

Yes. The personal representative may apply for an allotment, for the benefit of the deceased veteran's heirs, if between January 1, 1969, and December 31, 1971, the deceased veteran:

(a) Was killed in action, or

(b) Was wounded in action and later died as a direct consequence of that wound, as determined and certified by the Department of Veterans Affairs, or

(c) Died while a prisoner of war.

§ 2568.61 What are the requirements for a personal representative?

The person filing the application must present proof of a current appointment as personal representative of the estate of the deceased veteran by the proper court, or proof that this appointment process has begun.

§ 2568.62 Under what circumstances does BLM accept the appointment of a personal representative?

BLM will accept an appointment of personal representative made any time after an eligible person dies, even if that appointment came before enactment of the Alaska Native Veterans Law.

§ 2568.63 Under what circumstances does BLM reject the appointment of a personal representative?

If the appointment process is incomplete at the time of allotment application filing, the prospective personal representative must file the proof of appointment with BLM within 18 months after the application filing deadline or BLM will reject the application.

§ 2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?

No. The estate of the deceased veteran eligible under section 2568.60 must meet the same requirements for a Native allotment as other living Alaska Native veterans.

Applying for an Allotment

§ 2568.70 If I am qualified for an allotment, when can I apply?

If you are qualified, you can apply between *(insert the effective date of rule)* and *(insert the date which is 18 months after the effective date of the rule).*

§ 2568.71 Where do I file my application?

You must file your application in person or by mail with the BLM Alaska State Office.

§ 2568.72 When does BLM consider my application to be filed too late?

BLM will consider applications to be filed too late if they are:

(a) Submitted in person after the deadline in 43 CFR 2568.70, or

(b) Postmarked after the deadline indicated at 43 CFR 2568.70.

§ 2568.73 Do I need to fill out a special application form?

Yes. You must complete form no. AK–2561–10, "Alaska Native Veteran Allotment Application."

§ 2568.74 What else must I file with my application?

You must also file:

(a) A Certificate of Indian Blood, which is a Bureau of Indian Affairs form,

(b) A DD Form 214 "Certificate of Release or Discharge from Active Duty" or other documentation from the Department of Defense to verify military service, as well as any information on cause of death supplied by the Department of Veterans Affairs,

(c) A map at a scale of 1:63,360 or larger, sufficient to locate on the ground the land for which you are applying, and

(d) A legal description of the land for which you are applying. If there is a discrepancy between the map and the legal description, the map will control. The map must be sufficient to allow BLM to locate the parcel on the ground. You must also estimate the number of acres in each parcel.

§ 2568.75 Must I include a Certificate of Indian Blood as well as Department of Defense verification of qualifying military service when I file my application with BLM? Also, if I am a personal representative filing on behalf of the estate of a deceased veteran, must I also file the Department of Veterans Affairs verification of cause of death at this time?

Yes. If any of these documents is missing when you file the application, BLM will ask you to provide the information within the time specified in a notice. BLM will not process the application until you file the necessary documents but will consider the application as having been timely filed.

§ 2568.76 Do I need to pay any fees when I file my application?

No. You do not need to pay a fee to file an application.

§ 2568.77 Do I have to post the land in my application on the ground?

(a) Yes. Before you file your application you must post the land by marking all corners on the ground with your name and address.

(b) On land within a CSU, you must get a free special use permit from the CSU manager before you erect any signs or markers. The CSU manager may establish in the permit a maximum size of any signs or markers. If the CSU manager later decides under § 2568.104 that your allotment is not consistent with the CSU, you must promptly remove the signs or markers unless the CSU manager waives this requirement in the special use permit.

§ 2568.78 Will my application segregate the land for which I am applying from other applications or land actions?

The filing of an application with a sufficient description to identify the lands will segregate those lands. "Segregation" has the same meaning as in 43 CFR 2091.0–5(b).

§ 2568.79 Are there any rules about the number and size of parcels?

Yes. You may apply for one or two parcels, but if you apply for two parcels the two combined cannot total more than 160 acres. You may apply for less than 160 acres. Each parcel must be reasonably compact.

§ 2568.80 Does the parcel have to be surveyed before I can receive title to it?

Yes. The land in your application must be surveyed before BLM can convey it to you. BLM will survey your allotment at no charge to you, or you may obtain a private survey. BLM must approve the survey if it is done by a private surveyor.

§ 2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?

Yes. If you file your application during the 18-month filing period and BLM finds correctable errors, it will consider the application to be timely filed once you correct them. BLM will send you a notice advising you of any correctable errors and give you at least 60 days to correct them. You must make corrections within the specified time or BLM will reject your application.

§ 2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?

(a) BLM will not reject your application without giving you an opportunity for a hearing to establish the facts of your use.

(b) If BLM cannot determine from the information you submit that you met the use and occupancy requirements of the 1906 Act, it will send you a notice saying that you have not submitted enough evidence and will give you at least 60 days to file additional information.

(c) If you do not submit additional evidence by the end of the time BLM gives you or if you submit additional evidence but BLM still cannot determine that you meet the use and occupancy requirements, the following process will occur:

(1) BLM will issue a formal contest complaint telling you why it believes it should reject your application.

(2) If you answer the complaint and tell BLM you want a hearing, BLM will ask an Administrative Law Judge (ALJ) of the Interior Department, Office of Hearings and Appeals, to preside over a hearing to establish the facts of your use and occupancy.

(3) The ALJ will evaluate all the written evidence and oral testimony and issue a decision.

(4) You can appeal this decision to the Interior Board of Land Appeals according to 43 CFR part 4.

Available Lands—General

§ 2568.90 If I qualify for an allotment, what land may BLM convey to me?

You may receive title only to:

(a) Land that:

(1) Is currently owned by the Federal government,

(2) Was vacant, unappropriated, and unreserved when you first began to use and occupy it,

(3) Has not been continuously withdrawn since before your 5th birthday,

(4) You started using before December 13, 1968, and

(5) You prove by a preponderance of the evidence that you used and occupied in a substantially continuous, and independent manner, at least potentially exclusive of others, for five or more years. This possession of the land must not be merely intermittent. "Preponderance of evidence" means evidence which is more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows that the fact you are trying to prove is more likely a fact than not.

(b) Substitute land explained in 43 CFR 2568.110.

§ 2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?

You cannot receive an allotment containing any of the following:

(a) A regularly used and recognized campsite that is primarily used by someone other than yourself. The campsite area that you cannot receive is that which is actually used as a campsite.

(b) Land selected by, but not conveyed to, the State of Alaska;

(c) Land presently selected by, but not conveyed to, a Village Corporation as defined in section 3(j) of ANCSA (43 U.S.C. 1602(j)); a Regional Corporation as defined in section 3(g) of ANCSA (43 U.S.C. 1602(g)); a Native group as defined in section 3(d) of ANCSA (43 U.S.C. 1602(d)); or an urban Native corporation to which conveyance is authorized by section 14(h)(3) of ANCSA (43 U.S.C. 1613(h)(3)). A Native corporation may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR part 2650. Any such relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection;

(d) Land designated as wilderness by statute;

(e) Land acquired by the Federal government through gift, purchase, or exchange;

(f) Land containing any development owned or controlled by a unit of government, or a person other than yourself;

(g) Land withdrawn or reserved for national defense, other than the National Petroleum Reserve-Alaska;

(h) National Forest land; or

(i) Land selected or claimed, but not yet conveyed, under a public land law, including but not limited to the following:

(1) Land within a recorded mining claim;

(2) Home sites;

(3) Trade and manufacturing sites;

(4) Reindeer sites and headquarters sites;

(5) Cemetery sites.

§ 2568.92 Is there a limit to how much water frontage my allotment can include?

Yes, in some cases. You will normally be limited to a half-mile (referred to as160 rods in the regulations at 43 CFR part 2094) along the shore of a navigable water body. If you apply for land that extends more than a half-mile, BLM will treat your application as a request to waive this limitation. As explained in 43 CFR 2094.2, BLM can waive the half-mile limitation if it determines the land is not needed for a harborage, wharf, or boat landing area, and that a waiver would not harm the public interest.

§ 2568.93 Can I receive an allotment of land that is valuable for minerals?

BLM can convey an allotment that is known to be or believed to be valuable, for coal, oil, or gas, but the ownership of these minerals remains with the Federal government. BLM cannot convey to you land valuable for other kinds of minerals such as gold, silver, sand or gravel. If BLM conveys an allotment that is valuable for coal, oil, or gas, the allottee owns all minerals in the land except those expressly reserved to the United States in the conveyance.

Available Lands-Conservation System Units (CSU)

§ 2568.100 What is a Conservation System Unit?

A Conservation System Unit (CSU) is an Alaska unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

§ 2568.101 If the land I used and occupied is within a Conservation System Unit (CSU) other than a National Wilderness or any part of a National Forest, can I receive title to it?

You may receive title if you qualify for that allotment and the managing agency of the CSU agrees that conveyance of that allotment is not inconsistent with the purposes of the CSU.

§ 2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?

No. This process is unique to this regulation. It should not be confused with any similar process under any other act, including the incompatibility process under the National Wildlife Refuge System Improvement Act of 1998.

§ 2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?

(a) BLM conducts a field exam, with you or your representative, to check the boundaries of the land for which you are applying and to look for signs of use and occupancy. The CSU manager or a designated representative may also attend the field exam.

(b) The CSU manager or representative assesses the resources to determine if the allotment would be consistent with CSU purposes at that location. You may submit any other information for the CSU manager to consider. You or your representative may also accompany, at your expense,

the CSU representative on any field exam.

(c) The CSU manager submits a written decision and resource assessment to BLM within 18 months of the BLM field exam. The CSU manager will send you a copy of the decision. You may request a copy of the resource assessment.

§ 2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?

The CSU manager will decide this on a case-by-case basis by considering the law or withdrawal order which created the CSU. The law or withdrawal order explains the purposes for which the CSU was created. The manager would also consider the mission of the CSU managing agency as established in law and policy. The manager will also consider how the cumulative impacts of the various activities that would take place on the allotment might affect the CSU.

§ 2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?

An allotment could generally be consistent with the purposes of the CSU if:

(a) You locate an allotment near land that BLM has conveyed to a Native corporation under ANCSA, or

(b) A Native corporation has selected the land under ANCSA and has said it would relinquish such selection, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR part 2650. Any relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection.

§ 2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?

An allotment could generally be inconsistent in situations including, but not limited to, the following:

(a) If, by itself or as part of a group of allotments, it could significantly interfere with biological, physical, cultural, scenic, recreational, natural quiet or subsistence values of the CSU.

(b) If, by itself or as part of a group of allotments, it obstructs access by the public or managing agency to the resource values of surrounding CSU lands.

(c) If, by itself or as part of a group of allotments, it could trigger development or future uses in an area that would adversely affect resource values of surrounding CSU lands.

(d) If it is isolated from existing private properties and opens an area of a CSU to new access and uses that adversely affect resource values of the surrounding CSU lands.

(e) If it interferes with the implementation of the CSU management plan.

Alternative Allotments

§ 2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?

Yes. In this case, you may choose an alternative allotment from the following types of land within the same ANCSA Region as the land for which you originally qualified:

(a) Land within an original withdrawal under section 11(a)(1) of ANCSA for selection by a Village Corporation which was:

(1) Not selected,

(2) Selected and later relinquished, or

(3) Selected and later rejected by BLM;

(b) Land outside of, but touching a boundary of a Village withdrawal, not including land described in 43 CFR 2568.91 or land within a National Park; or

(c) Vacant, unappropriated, and unreserved land.

§ 2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?

BLM will notify you in writing that you are eligible to choose an alternative allotment from lands described in 43 CFR 2568.110.

§ 2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?

You must file a request for an alternative allotment in the Alaska State Office as stated in 43 CFR 2568.71 and follow all the requirements you did for your original allotment application.

§ 2568.113 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

You should contact the appropriate CSU manager as quickly as possible to discuss resource concerns, potential constraints, and impacts on existing management plans. After you do this you must file a request for an alternative allotment with the BLM Alaska State Office as stated in 43 CFR 2568.71 and follow all the requirements of the original allotment application.

§ 2568.114 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

Your application for an alternative allotment must be filed:

(a) Within 12 months of when you receive a decision from a CSU manager that says your original allotment is inconsistent with the purposes of the CSU or,

(b) Within six months of when you receive a decision from the CSU manager on your request for reconsideration of the original decision affirming that your original allotment is inconsistent with the purposes of the CSU, or

(c) Within three months of the date an appellate decision from the National Park Service (NPS) Regional Director, U.S. Fish and Wildlife Service (USFWS) Regional Director, or BLM Alaska State Director becomes final.

Appeals

§ 2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?

You may appeal all decisions, except for the CSU consistency decisions or determinations by the Department of Veterans Affairs, to the Interior Board of Land Appeals under 43 CFR part 4.

§ 2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?

(a) You or your legal representative may request reconsideration of a CSU manager's decision by sending a signed request to that manager.

(b) The request for reconsideration must be submitted in person or postmarked to the CSU manager no later than 90 calendar days of when you received the decision.

(c) The request for reconsideration must include:

(1) The BLM case file number of the application and parcel, and

(2) Your reason(s) for filing the reconsideration, and any new pertinent information.

§ 2568.122 What then does the CSU manager do with my request for reconsideration?

(a) The CSU manager will reconsider the original compatibility decision and send you a written decision within 45 calendar days after they receive your request. The 45 days may be extended for a good reason in which case you would be notified of the extension in writing. The reconsideration decision will give the CSU Manager's reasons for this new decision and it will summarize the evidence that was used.

(b) The reconsideration decision will provide information on how to appeal if you disagree with it.

§ 2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?

(a) Yes. If you or your legal representative disagree with the decision you may appeal to the NPS Regional Director, the USFWS Regional Director, or BLM Alaska State Director responsible for the CSU where your proposed allotment is located.

(b) Your appeal must:

(1) Be in writing,

(2) Be submitted in person to the CSU manager or postmarked no later than 45 calendar days of when you received the reconsidered decision.

(3) State any legal or factual reason(s) why you believe the decision is wrong. You may include any additional evidence or arguments to support your appeal.

(c) You may present oral testimony to the NPS Regional Director, USFWS Regional Director, or BLM Alaska State Director to clarify issues raised in the written record.

(d) The NPS Regional Director, USFWS Regional Director, or BLM Alaska State Director will send you their written decision within 45 calendar days of when they receive your appeal. This period can be extended for a good reason. You will be notified.

(e) The decision of the NPS Regional Director, USFWS Regional Director, or BLM Alaska State Director is the final administrative decision of the Department of the Interior.

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Federal Register

Tuesday,
February 8, 2000

Part III

Department of Education

Bilingual Education: Systemwide Improvement Grants; Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

(CFDA No.: 84.291R)

Bilingual Education: Systemwide Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7115 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7425 and 7426)).

Purpose of Program: This program provides grants to implement districtwide bilingual education programs or special alternative instruction programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency (LEA), that serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

Eligible Applicants: (a) One or more LEAs; or (b) one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: March 31, 2000.

Deadline for Intergovernmental Review: May 30, 2000.

Available Funds: $5 million.

Estimated Range of Awards: $350,000–$650,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 75 pages or 2,000 characters per page for the page limit specified, using the following standards:

- A page is 8.5 inches x 11 inches, on one side only, with 1-inch margins at the top, bottom, and both sides. For electronic submission a page equals 2,000 characters; and the Department of Education (we) will convert any charts, tables, figures, and graphs from a page equivalency to a character count.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page and character count limits do not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information—Non-Construction Programs Form (ED 524), including the itemized budget; the other application forms; the assurances and certifications; or the one-page abstract, the table of contents, the resumes, the bibliography, or the letters of support.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 299.

Description of Program

Funds under this program may be used during the first 12 months exclusively for activities preparatory to the delivery of services. Funds may be used to improve the education of LEP students and their families by reviewing, restructuring, and upgrading—

(A) Educational goals, curriculum guidelines and content, standards and assessments;

(B) Personnel policies and practices including recruitment, certification, staff development, and assignment;

(C) Student grade-promotion and graduation requirements;

(D) Student assignment policies and practices;

(E) Family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children;

(F) The instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures and, if appropriate, applying educational technology;

(G) Tutorials and academic or career counseling for children and youth of limited-English proficiency; and

(H) Such other activities, related to the purposes of this part, as the Secretary may approve.

Priorities

Absolute Priority: The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55246–55247) applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Competitive Priority: Within the absolute priority specified in this notice, the Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Safe and Drug-Free Schools: Projects that contribute to the creation and maintenance of a safe and drug-free learning environment for limited English proficient students by being

made an integral part of a comprehensive school safety plan.

Information on developing and implementing a comprehensive school safety plan is found in the 1998 Annual Report on School Safety prepared by the U.S. Departments of Education and Justice.

Invitational Priority 2—Professional Development: Applicants that consider the U.S. Department of Education Professional Development Principles in planning and designing a Systemwide Improvement Grant project.

These principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Extent of need for the project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited-English proficiency in the school district to be served

(ii) The characteristics of such children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English-proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(2) *Project Design.* (35 points) (i) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the project design:

(A) Relates to the linguistic and academic needs of the children and youth of limited-English proficiency to be served;

(B) Is coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts, as appropriate in accordance with section 14306 of this Act;

(C) Involves the parents of the children and youth of limited-English proficiency to be served;

(D) Ensures accountability in achieving high academic standards; and

(E) Promotes coordination of services for the children and youth of limited-English proficiency to be served and their families.

(ii) If appropriate, the quality of the applicant's proposal to collaborate with institutions of higher education, community-based organizations, local or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the project.

(iii) The extent to which the project will be integrated with the overall educational program.

(iv) The extent to which the project will provide for training for personnel participating in or preparing to participate in the program which will assist such personnel in meeting State and local certification requirements and that, to the extent possible, will award college or university credit for such training.

(Authority: 20 U.S.C. 7426(g)(1)(B)and (c), (2)(B)(i), and (i)(5))

(3) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(a)(1)

(4) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(Authority: 34 CFR 75.210(g)(1) and (2)(i) and (iv))

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Employment of teachers in the proposed program that, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(ii) Use of qualified personnel, including personnel who are proficient in the language or languages used in instruction.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(6) *Adequacy of resources.* (5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 34 CFR 75.210(f)(1) and (2)(iii)–(iv)).

(7) *Evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited-English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction;

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433 (c)(1)–(3))

(8) *Capacity building, dissemination, and serving students with disabilities.* (5 points) The Secretary reviews each application to determine the extent to which:

(i) Limited English proficient students who are disabled will be identified and served in accordance with the requirements of the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*);

(ii) The assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited-English proficiency;

(iii) The applicant will have the resources and commitment to continue the program when assistance is reduced or no longer available; and

(iv) The applicant will provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5), and (6))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963), or you may view the latest SPOC list on the OMB Web site at the following address: http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.291R, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E200, Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please Note That the Above Address is not the Same ADDRESS as the one to Which the Applicant Submits its Completed Application. *Do not send applications to the above address.*

Instructions for Transmitting Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The US Department of Education is conducting a limited pilot project of electronic submission of discretionary grant applications for selected programs. Bilingual Education: Systemwide Improvement Grants (CFDA No. 84.291R) is one of the programs included in the pilot project. If you are an applicant under Bilingual Education: Systemwide Improvement Grants, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in the e-GAPS pilot project. By participating you will have an opportunity to have input into the overall design and approach of e-GAPS. At the conclusion of the pilot project, we will evaluate its successfulness and solicit suggestions for improvements.

If you participate as a grant applicant in an e-GAPS pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED Form No. 524), and all necessary assurances and certifications. We may request that you give us original signatures on forms at a later date.

You may access the electronic grant application for Bilingual Education: Systemwide Improvement Grants at:

http://e-grants.ed.gov

In the Appendix to this notice, we have placed additional information about the e-GAPS pilot project (see Parity Guidelines between Paper and Electronic Applications).

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail:*

You must mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: CFDA# 84.291R, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept

either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand:*

You or your courier must hand deliver the original and two copies of the application by 4:30 P.M. (Washington, DC time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: CFDA# 84.291R, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) *If You Submit Your Application Electronically:*

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. till 12:00 midnight (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Please note that on Wednesdays the Web site closed for maintenance at 7:00 p.m. (Washington, DC time).

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised January 12, 1999) the CFDA number—and suffix letter—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Instructions and Forms:

The appendix to this application contains the following forms and instructions, including a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), a checklist for applicants, and various assurances, certifications, and required documentation:

a. Estimated Burden Statement.
b. Application Instructions.
c. Checklist for Applicants.
d. List of Empowerment Zones and Enterprise Communities.
e. Application for Federal Education Assistance (ED 424) and Instructions.
f. Group Application Certification.
g. Budget Information—Non-Construction Programs (ED 524) and Instructions.
h. Student Data
i. Project Documentation
j. Program Assurances
k. Assurances—Non-Construction Programs (Standard Form 424B) and Instructions.
l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.
m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and Instructions.
n. Disclosure of Lobbying Activities (Standard Form LLL) and Instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.
o. Notice to All Applicants (GEPA Requirement) and Instructions (OMB No. 1801–0004).

An applicant may submit information on a photostatic copy of the application forms, assurances, and certifications. However, if an application is submitted in conventional paper form, one copy of the application forms, assurances, and certifications must have an original signature.

All applicants submitting their applications in conventional paper form must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as original or copy. No grant may be awarded unless a complete application has been received.

FOR FURTHER INFORMATION CONTACT: Lorena Dickerson, Ana Garcia, or Sharon Saez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5605, Switzer Building, Washington, DC 20202–6510. Telephone: Lorena Dickerson (202) 205–9044, Ana Garcia (202) 205–8077, Sharon Saez (202) 205–9157. E-mail: Lorena__Dickerson@ed.gov; Ana__Garcia@ed.gov; Sharon__Saez@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html. To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 7425.

Dated: February 3, 2000.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Appendix—Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number for this information collection is OMB No. 1885–0537 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 120 hours per response, including the time

to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5605, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Parity Guidelines Between Paper and Electronic Applications

The Department of Education is conducting a limited pilot project that allows applicants to use an Internet-based electronic system for submitting applications under selected discretionary grant programs. This competition is among those that have an electronic submission option available to all applicants. The system, called e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to the Department (us) electronically, using a current version of the applicant's Internet browser. To see e-GAPS visit the following address: *http://e-grants.ed.gov*

Because we want to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-GAPS has an impact on all applicants under this competition.

E-GAPS is a data-driven system; that is, e-GAPS users will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

However, this pilot project is only the first step in the Department's eventual transition to electronic applications for grants. The pilot project is designed to enable us to evaluate the experience of gathering application data on-line. We will assess the on-line review process separately; so, during this pilot project, we will ultimately review in hard copy all information that we receive.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere voluntarily to the following guidelines:

- Use consistent font throughout your document, with no formatting of any kind (that is, no bolding, underlining, italics, or colored text).
- If you are preparing your application on a conventional typewriter, make sure that the pitch (characters per inch) of the font is consistent throughout your document, and do not use formatting of any kind (for example, underlining or italics).
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page or character count limitation. You should append charts, tables, graphs, and graphics of any kind after you have completed the text of the relevant section. We suggest that you begin these items on a separate sheet of paper and refer to them within the text.

Example

1. Please describe your project management plan.

Our project plan is composed of three major components: start-up, fulfillment, and closure. The flow of these components into the stated outcomes for this project is described below and presented in figure 3–1.

- Create all illustrations (including charts, tables, graphs, and pictures) in grayscale only.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.
- At the top right of each page, place the name of the applicant, the applicant's DUNS number (if available), and the CFDA number of the competition.

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. The table should include the page numbers where the parts of the narrative are found.

Budget

A separate budget summary and cost itemization must be provided on the Budget Information Form (ED 524) and in the itemized budget for each project year. Budget line items should be directly related to the activities proposed to achieve the goals and objectives of the project.

Submission of Application to State Education Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting the application to the U.S. Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter requesting the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. Applicants That Do Not Submit a Copy of Their Application to Their State Educational Agency in Accordance with These Statutory and Regulatory Requirements Will Not be Considered for Funding.

Final Application Preparation

Use the Checklist for Applicants provided below to verify that your application is complete. If you submit your application in conventional paper form, provide three copies of the application, including one copy with an original signature on each form that requires the signature of the authorized representative. Do not use elaborate bindings, notebooks, or covers. If you mail your application, the application must be postmarked by the deadline date.

Checklist for Applicants

Order of the Forms and Other Items for the Application

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemized budget for each project year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA (if applicable);

Section B—Documentation of consultation with nonprofit private school officials (if applicable);

Section C—Appropriate box checked;

Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Program Assurances Form.

8. Assurances—Non-Construction Programs Form (SF 424B).

9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).

10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).

11. Disclosure of Lobbying Activities Form (SF–LLL).

12. Notice to All Applicants (GEPA Requirement) (OMB No. 1801–0004).

13. One-page abstract.

14. Table of contents.

15. Application narrative.

Transmittal of the Application

1. By mail or hand delivery: one original and two copies of the application to the U.S. Department of Education Application Control Center; *or* by electronic transmission: software provided on the e-Grants Web site.

2. One copy to the appropriate State Educational Agency (if applicable).

3. One copy to the appropriate State Single Point of Contact (if applicable).

BILLING CODE 4000-01-P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ ____ _____ _____ - _____
City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number: |_|_|_|_|_|_|_|_|_|

3. Applicant's T-I-N: |_|_|_|_|_|_|_|_|_|

4. Catalog of Federal Domestic Assistance #: **84._2|_9|_1|_R|** →

Title: **Bilingual Education: Systemwide Improvement Grants**

5. Project Director: _____

Address: _____

_____ ____ _____ _____
City State Zip code + 4

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ___Yes ____No
If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify)*: _____

8. Novice Applicant ___Yes ____ No

Application Information

9. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____ Non-Construction	_X__Non-Construction

10. Is application subject to review by Executive Order 12372 process?

____ Yes *(Date made available to the Executive Order 12372 process for review): ____/____/_____*

____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No

a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

_____ ***OR*** _____

c. IRB approval date: ____ Full IRB **or**
_____ ____ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$ _____	**.00**
b. Applicant	$ _____	**.00**
c. State	$ _____	**.00**
d. Local	$ _____	**.00**
e. Other	$ _____	**.00**
f. Program Income	$ _____	**.00**
g. TOTAL	$ _____	**.00**

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. **Signature of Authorized Representative**

_____ Date: ___/____/_____

ED 424 (rev 1.12.99)

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor.

Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an

individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number *Draft*

Expiration Date: *Pending OMB Clearance*

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

STUDENT DATA	
Name of Local Educational Agency	

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

BILLING CODE 4000-01-C

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. **Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12**

2. **Total number of language groups that will participate in the project.** _____

3. **List the five largest participating language groups and the approximate number of students in each group.**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Project Documentation

Note: Submit the appropriate documents and information as specified below for the following programs: Comprehensive School Grants and Systemwide Improvement Grants.

Section A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§ 75.155 Review procedure if State may comment on applications: Purpose of §§ 75.156–158.

If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158 for that purpose.

(Authority: 20 U.S.C. 1221e–3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

(In addition to the requirement in § 75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§ 75.156 When an applicant under § 75.155 must submit its application to the State: proof of submission.

(a) Each applicant under a program covered by § 75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e–3(a)(1))

Section B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103–382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications.

"(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§ 75.119 Information needed if private schools participate.

If a program requires that applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880–0513)

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e–3(a)(1))

Section C

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form ☐
- There are no eligible nonprofit private schools in the proposed service delivery area ☐

Section D

If applicable, identify on the *line at the right* the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.)

BILLING CODE 4000–01–P

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

BILLING CODE 4000-01-C

Notice To All Applicants

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: Gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc., from such access or participation in the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time and estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

State Single Point of Contact

(As of April 22, 1999)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SSPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SSPOC.

ARIZONA

Ms. Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, jonis@ep.state.az.us

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206, tlcopeland@dfa.state.ar.us

CALIFORNIA

Grants Coordination, State Clearinghouse, Office of Planning and Research, 1400 10th Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018, No e-mail address

DELAWARE

Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661, No e-mail address

DISTRICT OF COLUMBIA

Mr. Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W.—Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), FAX: (202) 727–1617, No e-mail address

FLORIDA

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Ms. Cherie Trainor, (850) 414–5495, cherie.trainor@dca.state.fl.us

GEORGIA

Ms. Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–7901, ssda@mail.opb.state.ga.us

ILLINOIS

Ms. Virginia Bova, Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, IL 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

INDIANA

Ms. Allison Becker, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–7221 (direct line), FAX: (317) 233–3323, No e-mail address

IOWA

Mr. Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809, steve.mccann.@ided.state.ia.us

KENTUCKY

Mr. Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–0437, kgoldmkgosmith@mail.state.ky.us, sbrewer@mail.state.ky.us

MAINE

Ms. Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–h3261, FAX: (207) 287–6489, joyce.benson@state.me.us

MARYLAND

Ms. Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Telephone: (410) 767–4490, FAX: (410) 767–4480, linda@mail.op.state.md.us

MICHIGAN

Mr. Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869, pfaf@semcog.org

MISSISSIPPI

Ms. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, FAX: (601) 359–6758, No e-mail address

MISSOURI

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, Room 915, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395, pohll__@mail.oa.state.mo.us

NEVADA

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89710, Telephone: (702) 684–0222, FAX: (702) 684–0260, Contact; Ms. Heather Elliot, (702) 684–0209, helliot@govmail.state.nv.us

NEW HAMPSHIRE

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mr. Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–4991, FAX: (603) 271–1728, No e-mail address

NEW MEXICO

Mr. Nick Mandell, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4984, No e-mail address

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, Fax: (518) 486–1217, No e-mail address

NORTH CAROLINA

Ms. Jeannette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571, jeannette__furney@mail. doa. state.nc.us

NORTH DAKOTA

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue Department105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308, No e-mail address

RHODE ISLAND

Mr. Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–1220 (secretary), FAZ: (401) 222–2093 (direct), knelson@planning.state.ri.us

SOUTH CAROLINA

Ms. Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645, No e-mail address

TEXAS

Mr. Tom Adams, Governors Office, Director, Intergovernmental Coordination P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 936–2681, tadams@governor.state.tx.us

UTAH

Ms. Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535 (direct), FAX: (801) 538–1547, cwright@state.ut.us

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248, fcutlip@wvdo.org

WISCONSIN

Mr. Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 267–6931, FAX: (608) 267–6931, sjt@doa.state.wi.us

WYOMING

Ms. Sandy Ross, State Single Point of Contact, Department of

Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, FAX: (307) 777–3696, sross1@missc.state.wy.us

TERRITORIES

GUAM*

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Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Sherron Duncan at the Office of Management and Budget (202) 395–3914 and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalog of Federal Domestic Assistance. The last changes made were to Delaware, Indiana, Missouri, New Mexico, Puerto Rico, Rhode Island, Utah, and Wisconsin.

*Guam and the Virgin Islands are not confirmed.

Empowerment Zones and Enterprise Communities

(As of January 13, 1999)

Empowerment Zones

California: Los Angeles, Oakland, Santa Ana, Riverside County*
Connecticut: New Haven +
Florida: Miami +
Georgia: Atlanta, Cordele* +
Illinois: Chicago, East St. Louis +, Ullin*
Indiana: Gary, East Chicago
Kentucky: Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston +
Michigan: Detroit
Minnesota: Minneapolis +
Mississippi: Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
Missouri/Kansas: Kansas City, Kansas City
Missouri: St. Louis +
New Jersey: Cumberland County
New York: Harlem, Bronx
North Dakota: Lake Agassiz*
Ohio: Cleveland, Cincinnati, Columbus +
Ohio/West Virginia: Ironton/Huntington +
Pennsylvania/New Jersey: Philadelphia/Camden
South Carolina: Columbia/Sumter
South Dakota: Oglala Sioux Reservation in Pine Ridge*
Tennessee: Knoxville
Texas: Houston, El Paso +, Rio Grande Valley* (Cameron, Hidalgo, Starr, and Willacy Counties)
Virginia: Norfolk +/Portsmouth

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*, Green County*, Sumter County*
Alaska: Juneau*
Arizona: Arizona Border* (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock*
Arkansas: East Central* (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County*, Pulaski County
California: Imperial County*, Los Angeles, Huntington Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville*, Orange Cove*
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*, Miami, Dade County, Tampa, Immokalee*
Georgia: Albany, Central Savannah River* (Burke, Hancock, Jefferson, McDuffie, Tallafero, and Warren Counties), Crisp County*, Dooley County*
Hawaii: Kaunakakai*
Illinois: East St. Louis, Springfield
Indiana: Indianapolis, Austin*
Iowa: Des Moines
Kansas: Leoti*
Kentucky: Louisville, Bowling Green*
Louisiana: Macon Ridge* (Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Louisiana Delta* (Madison parish), Ouachita Parish
Maine: Lewiston*
Massachusetts: Lowell, Springfield
Michigan: Five Cap*, Flint, Muskegon, Harrison*
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie*, St. Louis
Montana: Poplar*
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
New York: Albany, Schenectady, Troy
New York: Buffalo, Rochester
New York: Newburgh, Kingston
North Carolina: Charlotte
North Carolina: Edgecombe, Halifax, Robeson, Wilson Counties*
Ohio: Akron, Columbus, Greater Portsmouth* (Scioto County)
Oklahoma: Choctaw, McCurtain Counties*, Oklahoma City, Ada*
Oregon: Josephine County*, Portland
Pennsylvania: Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
Rhode Island: Providence
South Carolina: Charleston, Williamsburg, Florence County*, Hallandale*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas, El Paso, San Antonio, Waco, Uvalde*
Utah: Ogden
Vermont: Burlington
Virginia: Accomack (Northampton County)*, Norfolk
Washington: Lower Yakima County*, Seattle, Tacoma, Collie*
West Virginia: Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
Wisconsin: Milwaukee, Keshena*

*Denotes rural designee.

+Also an Enterprise Community, Round One.

For further information consult the following Internet site: http://www.ezec.gov.

[FR Doc. 00–2813 Filed 2–7–00; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
February 8, 2000

Part IV

Department of Education

Office of Elementary and Secondary Education—Public Charter Schools Program; Inviting Applications for New Awards for Fiscal Year 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.282A]

Office of Elementary and Secondary Education—Public Charter Schools Program (PCSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The purpose of the PCSP is to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools; evaluating the effects of charter schools; and disseminating information about charter schools and successful practices in charter schools.

Who May Apply: (a) State educational agencies (SEAs) in States with a specific State statute authorizing the establishment of charter schools. The Secretary awards grants to SEAs to enable them to conduct charter school programs in their States. SEAs use their PCSP funds to award subgrants to "eligible applicants," as defined in this notice, for planning, program design, and initial implementation of a charter school; and to support the dissemination of information about, and successful practices in, charter schools. A charter school may apply for funds to carry out dissemination activities, whether or not the charter school has applied for or received funds under the PCSP for planning or implementation, if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success, including–

(1) Substantial progress in improving student achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

(b) An authorized public chartering agency in partnership with a charter school developer is eligible to receive funding directly from the U.S. Department of Education (Department) if the SEA in the State elects not to participate in the PSCP or does not have an application approved under the program. If an SEA's application is approved in this competition, applications received from non-SEA eligible applicants in that State will be returned to the applicants. In such a case, the non-SEA eligible applicant should contact the SEA for information related to its subgrant competition.

Note: The following States currently have approved applications under this program: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Puerto Rico, Texas, Utah, Virginia, and Wisconsin. In these States, only the SEA is eligible to receive an award under this competition. Non-SEA eligible applicants in these States should contact their respective SEAs for information about participation in the State's charter school subgrant program. Non-SEA eligible applicants in States that are not listed above must apply directly to the Department on or before the DEADLINE FOR RECEIPT OF APPLICATIONS in order to be considered for funding in this competition.

Deadline for Receipt of Applications: March 22, 2000

Note: We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for Elementary and Secondary Education has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: April 21, 2000.

Applications Available: February 8, 2000.

Estimated Available Funds: $24,000,000.

Estimated Range of Awards:

State educational agencies: $500,000–$5,000,000 per year.

Other eligible applicants: $25,000–$150,000 per year.

Estimated Average Size of Awards:

State educational agencies: $3,000,000 per year.

Other eligible applicants: $100,000 per year.

Estimated Number of Awards:

State educational agencies: 3–5.

Other eligible applicants: 30–50.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period

State educational agencies: Up to 36 months.

Other eligible applicants: Up to 36 months.

Note: Grants awarded by the Secretary directly to non-SEA eligible applicants or subgrants awarded by SEAs to eligible applicants will be awarded for a period of up to 36 months, of which the eligible applicant may use—

(a) Not more than 18 months for planning and program design;

(b) Not more than two years for the initial implementation of a charter school; and

(c) Not more than two years to carry out dissemination activities.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (except § 75.210), 77, 79, 80, 81, 82, 85, 86, and 99. Title X, Part C, Elementary and Secondary Education Act of 1965 (ESEA), *as amended,* 20 U.S.C. 8061–8067.

SUPPLEMENTARY INFORMATION: As part of wider education reform efforts to strengthen teaching and learning, charter schools can be an innovative approach to improving public education and expanding public school choice. While there is no one model, public charter schools are exempted from most statutory and regulatory requirements in exchange for performance-based accountability. They are intended to stimulate the creativity and commitment of teachers, parents, students, and citizens and contribute to better student academic achievement.

Congress reauthorized the PCSP in October 1998, by enacting the Charter School Expansion Act of 1998 (Act). Under the new legislation, SEA applicants for funding are required to include in their applications descriptions of how the SEA will (a) inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate; (b) ensure that each charter school in the State receives the charter school's commensurate share of Federal education funds that are allocated by formula each year, including during the charter school's first year of operation; and (c) disseminate best or promising practices of charter schools to LEAs in the State. The new legislation also added a requirement that SEA applicants as well as non-SEA eligible applicants include in their applications descriptions of how charter schools that are considered to be LEAs under State law and LEAs in which a charter school is located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act. Additional information regarding the required contents of applications, diversity of projects, and waivers are provided in the application package for this program.

The following definitions, selection criteria, priority criteria, amount criteria, authorized uses of funds for

dissemination activities, and allowable activities are taken from the Public Charter Schools Program authorizing statute, in Title X, Part C of the ESEA, as amended by the Act. They are being repeated in this application notice for the convenience of the applicant.

Definitions

The following definitions apply to this program:

(a) *Charter school* means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(8) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law; and

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with this program.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

Selection Criteria for SEAs

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an SEA, the Secretary considers the following criteria:

(a) The contribution that the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State content standards, State student performance standards, and, in general, a State's education improvement plan (20 points).

(b) The degree of flexibility afforded by the SEA to charter schools under the State's charter schools law (20 points).

(c) The ambitiousness of the objectives for the State charter school grant program (20 points).

(d) The quality of the strategy for assessing achievement of those objectives (20 points).

(e) The likelihood that the charter schools grant program will meet those objectives and improve educational results for students (20 points).

(f) The number of high quality charter schools created under this part in the State (20 points).

(g) In the case of State educational agencies that propose to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

Selection Criteria for Non-SEA Eligible Applicants

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an eligible applicant other than an SEA the Secretary considers the following criteria:

(a) The quality of the proposed curriculum and instructional practices (20 points).

(b) The degree of flexibility afforded by the SEA and, if applicable, the local educational agency to the charter school (20 points).

(c) The extent of community support for the application (20 points).

(d) The ambitiousness of the objectives for the charter school (20 points).

(e) The quality of the strategy for assessing achievement of those objectives (20 points).

(f) The likelihood that the charter school will meet those objectives and improve educational results for students (20 points).

(g) In the case of an eligible applicant that proposes to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

Priority Criteria

In awarding grants for FYs 1999, 2000, and 2001 from funds appropriated under section 10311 of the ESEA that are in excess of $51 million for the FY, the Secretary gives priority under this competition to States to the extent that the State meets the criterion described in paragraph (a) below, and one or more of the criteria described in paragraphs (b) through (d) below (20 points).

(a) The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) The State has demonstrated progress, in increasing the number of high quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the

educational progress of the students attending the schools, in the period prior to the period for which a State educational agency or eligible applicant applies for a grant under this competition.

(c) The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to such State law; or

(2) In the case of a State in which local educational agencies are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Amount Criteria

In determining the amount of a grant to be awarded under this competition to a State educational agency, the Secretary shall take into consideration the number of charter schools that are operating or approved to open in the State.

Allowable Activities

An eligible applicant receiving a grant or subgrant under this program may use the grant or subgrant funds for only—

(a) Post-award planning and design of the educational program, which may include—

(1) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(2) Professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include—

(1) Informing the community about the school;

(2) Acquiring necessary equipment and educational materials and supplies;

(3) Acquiring or developing curriculum materials; and

(4) Other initial operating costs that cannot be met from State or local sources.

Use of Funds for Dissemination Activities

A State educational agency may reserve not more than 10 percent of the grant funds to support dissemination activities. A charter school may use such funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and startup of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

FOR APPLICATIONS OR INFORMATION CONTACT: Donna M. Hoblit, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C148, Washington, D.C. 20202–6140. Telephone (202) 205–9178. Internet address: Donna__Hoblit@ed.gov

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Program Authority: 20 U.S.C. 8061–8067.

Dated: February 4, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–2919 Filed 2–7–00; 8:45 am]

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Federal Register

Vol. 65, No. 26

Tuesday, February 8, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3
5407–5732	4
5733–5992	7
5993–6304	8

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219

Administrative Orders:
Directive of January 31, 2000 5727
Directive of January 31, 2000 5727

Presidential Determination:
No. 2000–10 of January 31, 2000 5407

5 CFR

581 4753
582 4753
1201 5409
1208 5410

7 CFR

1 5414
301 ..... 4865, 5221
905 5733
944 5733
955 5736
981 4867
3418 5993

Proposed Rules:
54 4780
245 5791
457 6033
718 5444

9 CFR

77 5998

Proposed Rules:
94 6040

10 CFR

Proposed Rules:
50 6044

12 CFR

936 5738
960 5418

Proposed Rules:
Ch. I 4895
611 5286
951 5447
997 5447

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428, 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761,
71 ..... 4871, 4872, 4873, 4874, 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770, 5999, 6000
91 ..... 5396, 5936
93 5396
97 ..... 4875, 4877, 4879
121 5396
135 5396

Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459, 6046
71 ..... 4910, 4911, 5804
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

18 CFR

Proposed Rules:
270 6048
375 6048
381 6048
382 5289

19 CFR

132 5430
163 5430

Proposed Rules:
12 6062
113 6062

21 CFR

876 4881
1308 5024

Proposed Rules:
1310 4913

24 CFR

206 5406

26 CFR

1 ..... 5432, 5772, 5775, 5777, 6001
35 6001
602 ..... 5775, 5777, 6001

Proposed Rules:
1 ..... 5805, 5807, 6065, 6090
602 5807

27 CFR

Proposed Rules:
9 5828

29 CFR

Proposed Rules:
1910 4795

30 CFR
938.....4882
946.....5782

33 CFR
117.....5785
Proposed Rules:
100.....5833
110.....5833
165.....5833

34 CFR
676.....4886
Proposed Rules:
694.....5844

36 CFR
Proposed Rules:
217.....5462
219.....5462
242.....5196
1234.....5295

38 CFR
21.....5785
Proposed Rules:
21.....4914

39 CFR
111.....4864, 5789
Proposed Rules:
111.....4918

40 CFR
52 .....4887, 5245, 5252, 5259, 5262, 5264, 5433
62.....6008
300.....5435
761.....5442
Proposed Rules:
52 .....5296, 5297, 5298, 5462, 5463, 6091
62.....6102
130.....4919
300.....5465, 5844

42 CFR
412.....5933
413.....5933
483.....5933
485.....5933
Proposed Rules:
36.....4797

43 CFR
11.....6012
Proposed Rules:
2560.....6259

44 CFR
65 .....6014, 6018, 6023, 6025
67 28, 6031
Proposed Rules:
67.....6103, 6105

45 CFR
1303.....4764
Proposed Rules:
96.....5471

46 CFR
Proposed Rules:
110.....6111
111.....6111

47 CFR
Ch. I.....5267
1.....4891
Proposed Rules:
1.....6113
73 .....4798, 4799, 4923
76.....4927
95.....4935

48 CFR
203.....4864
209.....4864
225.....4864
249.....4864
9903.....5990
Proposed Rules:
30.....4940

49 CFR
195.....4770
Proposed Rules:
567.....5847
568.....5847

50 CFR
17.....4770, 52680
18.....52750
679 .....4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442
Proposed Rules:
17 .....4940, 5298, 5474, 5848, 5946, 6114
100.....5196
622.....5299
648.....4941, 5486

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 8, 2000

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions (Vidalia) grown in—
- Georgia; published 2-7-00

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

Grants:
- Agricultural research, education, and extension formula funds; stakeholder input requirements for recipients; published 2-8-00

INTERIOR DEPARTMENT

Natural resource damage assessments; correction; published 2-8-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 1-4-00
- Boeing; published 1-4-00
- British Aerospace; published 1-4-00
- Kaman Aerospace Corp.; published 1-24-00
- Saab; published 1-4-00

Class E airspace; published 1-18-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food stamp program:
- Personal Responsibility and Work Opportunity Reconcilation Act; implementation—
  - Personal responsibility provisions; comments due by 2-15-00; published 12-17-99

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:
- Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
- Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

Telecommunication loans:
- Guaranteed and insured loans; post-loan policies and procedures; comments due by 2-14-00; published 12-15-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pollock; comments due by 2-14-00; published 12-29-99
  - Pollock; comments due by 2-17-00; published 2-2-00
- Atlantic highly migratory species—
  - Pelagic longline management; comments due by 2-14-00; published 12-15-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 2-15-00; published 12-17-99

ENERGY DEPARTMENT

Nuclear waste repositories:
- Yucca Mountain Site, NV; suitability guidelines
  - Hearings; comments due by 2-14-00; published 12-15-99

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Dishwashers; test procedures; comments due by 2-14-00; published 1-13-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 2-18-00; published 1-19-00
- Connecticut; comments due by 2-14-00; published 12-16-99
- Delaware; comments due by 2-14-00; published 12-16-99
- District of Columbia, Maryland, and Virginia; comments due by 2-14-00; published 12-16-99
- Florida; comments due by 2-18-00; published 1-19-00
- Georgia; comments due by 2-14-00; published 12-16-99
- Illinois; comments due by 2-14-00; published 12-16-99
- Indiana; comments due by 2-14-00; published 12-16-99
- Maryland; comments due by 2-14-00; published 12-16-99
- Massachusetts; comments due by 2-14-00; published 12-16-99
- New Jersey; comments due by 2-14-00; published 12-16-99
- New York; comments due by 2-14-00; published 12-16-99
- Pennsylvania; comments due by 2-14-00; published 12-16-99
- Tennessee; comments due by 2-18-00; published 1-19-00
- Texas; comments due by 2-14-00; published 12-16-99
- Wisconsin; comments due by 2-14-00; published 12-16-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Indiana; comments due by 2-18-00; published 1-19-00

Hazardous waste program authorizations:
- North Dakota; comments due by 2-18-00; published 1-19-00

Hazardous waste:
- Cement kiln dust; management standards; comments due by 2-17-00; published 10-28-99
- Identification and listing—
  - Mixture and derived-from rules; treatment, storage or disposal; comments due by 2-17-00; published 11-19-99
- Mixed waste; storage, treatment, transportation, and disposal; comments due by 2-17-00; published 11-19-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Metsulfuron methyl; comments due by 2-14-00; published 12-16-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 2-18-00; published 1-19-00
  - National priorities list update; comments due by 2-18-00; published 1-19-00
  - National priorities list update; comments due by 2-18-00; published 1-19-00
  - National priorities list update; comments due by 2-18-00; published 1-19-00

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 2-15-00; published 11-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 2-17-00; published 12-15-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Cowhead Lake tui chub; comments due by 2-16-00; published 2-2-00
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-14-00; published 1-12-00
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 2-14-00; published 1-14-00

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Group health plans; access, portability, and renewability requirements:
National Medical Support Notice; child support orders; health care coverage provisions; comments due by 2-14-00; published 11-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
Elements; elimination as category in evaluation; comments due by 2-14-00; published 12-16-99
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

NORTHEAST DAIRY COMPACT COMMISSION

Over-order price regulations:
Technical amendments; hearing; comments due by 2-16-00; published 1-12-00

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 2-15-00; published 1-21-00
Rulemaking petitions:
Quigley, Barry; comments due by 2-14-00; published 12-1-99

SECURITIES AND EXCHANGE COMMISSION

Regulatory Flexibility Act:
Rules to be reviewed; list; comments due by 2-15-00; published 1-21-00

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles; comments due by 2-17-00; published 11-19-99
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; comments due by 2-14-00; published 12-14-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Agusta S.p.A.; comments due by 2-18-00; published 12-20-99
Bell; comments due by 2-14-00; published 12-16-99
Boeing; comments due by 2-14-00; published 12-29-99
Bombardier; comments due by 2-14-00; published 1-14-00
Cessna; comments due by 2-14-00; published 12-29-99
Fokker; comments due by 2-14-00; published 1-14-00
Learjet; comments due by 2-14-00; published 12-29-99
McDonnell Douglas; comments due by 2-18-00; published 12-20-99
New Piper Aircraft, Inc.; comments due by 2-17-00; published 12-14-99
Transport airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input; comments due by 2-14-00; published 12-16-99
Class E airspace; comments due by 2-16-00; published 1-12-00

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety enforcement procedures:
Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 2-14-00; published 1-12-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Interior trunk releases; comments due by 2-15-00; published 12-17-99

TREASURY DEPARTMENT

Comptroller of the Currency

Corporate activities:
National banks; financial subsidiaries and operating subsidiaries; comments due by 2-14-00; published 1-20-00

TREASURY DEPARTMENT

Internal Revenue Service

Estate and gift taxes:
Generation-skipping transfer tax issues; comments due by 2-16-00; published 11-18-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

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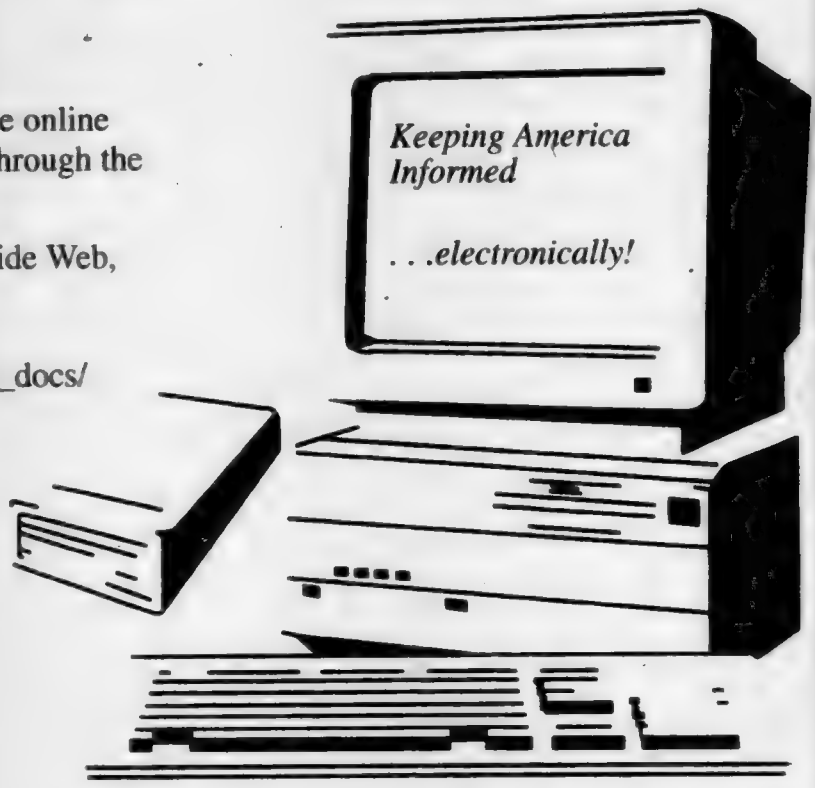

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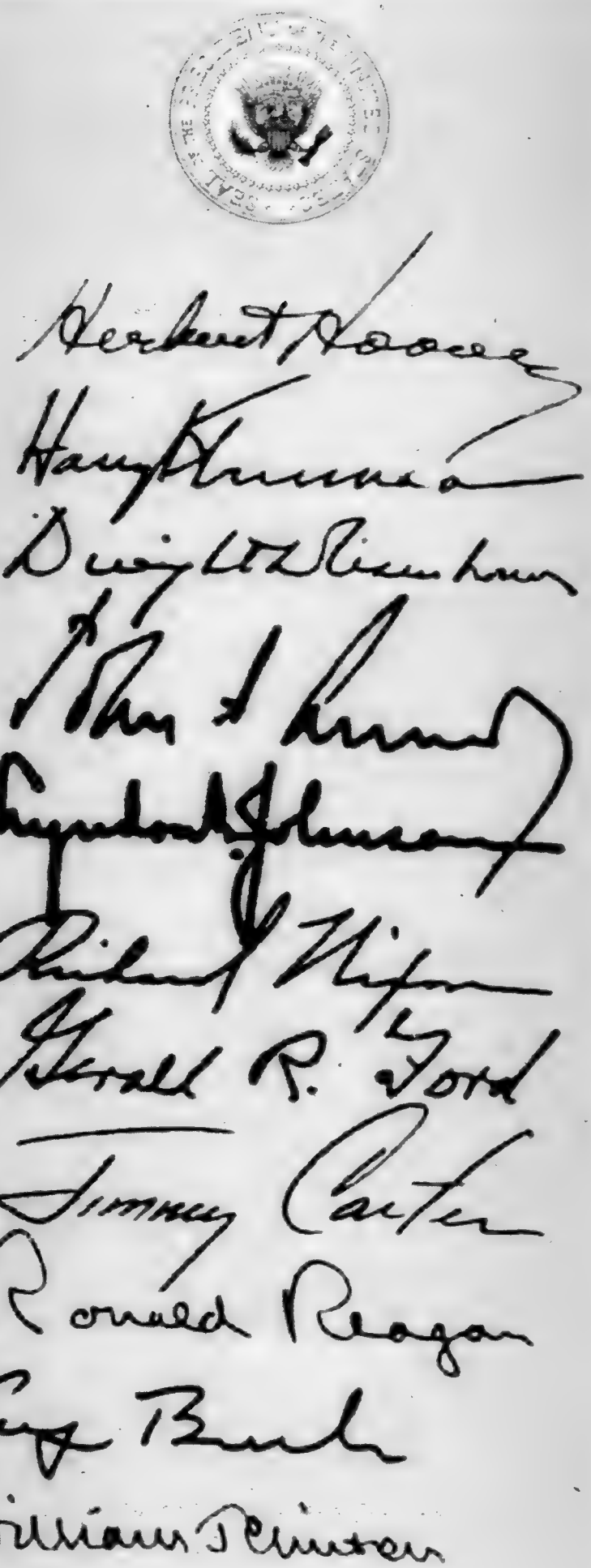

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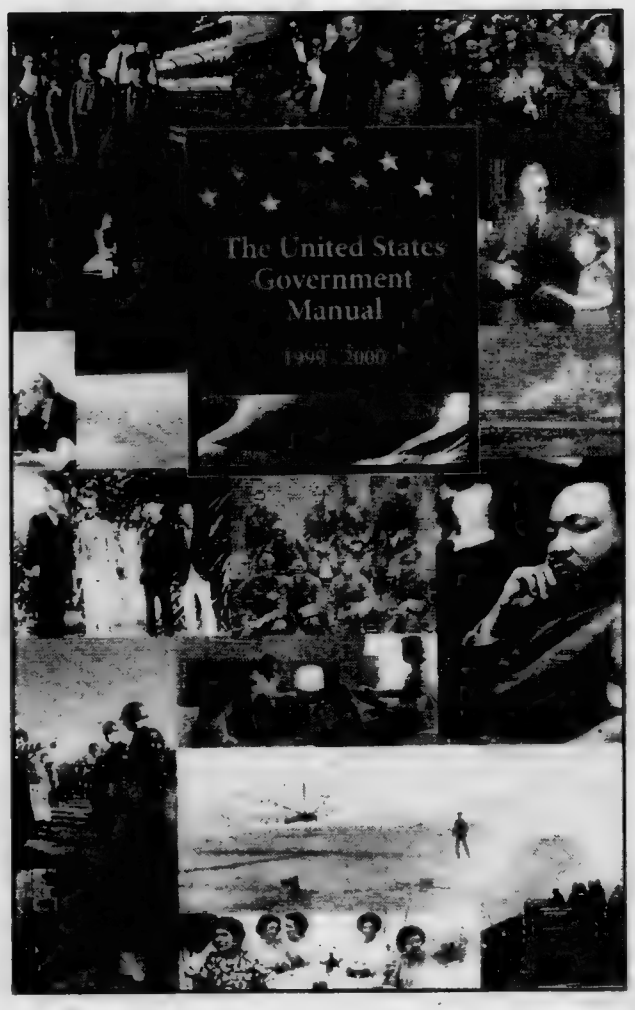

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Contents

Federal Register

Vol. 65, No. 27

Wednesday, February 9, 2000

Agricultural Marketing Service
RULES
Nectarines and peaches grown in—
California, 6305–6308
Spearmint oil produced in Far West, 6308–6312
PROPOSED RULES
Raisins produced from grapes grown in—
California, 6341–6344
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal-State Marketing Improvement Program; correction, 6353

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
Animal welfare:
Field study; definition, 6312–6314

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6356–6357

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Vaccine Advisory Committee, 6374

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6374–6376
Reporting and recordkeeping requirements, 6376

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 6325–6327
Vessel inspection; frequency, 6494–6510
PROPOSED RULES
Merchant marine officers and seamen:
Manning requirements—
Federal pilotage for foreign-trade vessels in Maryland, 6350–6351
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6437–6438

Commerce Department
See Census Bureau
See Economic Analysis Bureau
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6355–6356

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Five year and ten year agency notes, 6361

Consumer Product Safety Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6361–6362
Meetings; Sunshine Act, 6362

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
B.I. Chemicals, Inc., 6395
Glaxo Wellcome, Inc., 6395
Mallinckrodt, Inc., 6396

Economic Analysis Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6357–6358

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Jacob K. Javits gifted and talented students education program, 6520–6521
State educational agencies; submission of expenditure and revenue data, etc., 6362–6363

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Electricity export and import authorizations, permits, etc.:
Tractebel Energy Marketing, Inc., 6363–6364
Meetings:
Environmental Management Site-Specific Advisory Board, 6364–6365

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Iowa; plan identification; effective date note; CFR correction, 6327
NOTICES
Pesticide registration, cancellation, etc.:
Burkholderia cepacia strain Ral-3, 6369–6370
Pesticides; experimental use permits, etc.:
Monsanto Co., 6370–6371
Reports and guidance documents; availability, etc.:
Chesapeake Bay Program; participating organizations—
Qualifications and preliminary proposals for communications, outreach, and education, 6371

Executive Office of the President
See Presidential documents

Export Administration Bureau
NOTICES
Meetings:
President's Export Council, 6358

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing; correction, 6444
Class D and Class E airspace, 6320–6321
Standard instrument approach procedures, 6321–6325
NOTICES
International slots for winter 2000/2001 scheduling season; submission deadline, 6438

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6371–6372

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 6372

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Cinergy Services, Inc., et al., 6366–6369
Applications, hearings, determinations, etc.:
Interenergy Sheffield Processing Co. et al., 6365
Questar Southern Trails Pipeline Co., 6365
Tennessee Gas Pipeline Co., 6365–6366

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Utilities, 6344–6350

Federal Maritime Commission
NOTICES
Agreements filed, etc., 6372
Freight forwarder licenses:
Logis Services of America, Inc., 6372–6373

Federal Railroad Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6438–6441

Federal Reserve System
RULES
Procedure rules:
Federal Open Market Committee; technical amendment, 6319–6320
NOTICES
Meetings; Sunshine Act, 6373

Fish and Wildlife Service
RULES
Endangered and threatened species:
Kneeland Prairie Penny-Cress, 6332–6338
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6388–6390
Submission for OMB review; comment request, 6390
Comprehensive conservation plans; availability, etc.:
Nisqually National Wildlife Refuge, WA, 6390–6391
Endangered and threatened species permit applications, 6391–6392

Food and Drug Administration
NOTICES
Meetings:
Psychopharmacologic Drugs Advisory Committee, 6377
Reports and guidance documents; availability, etc.:
Special Protocol Assessment; industry guidance, 6377–6380

Forest Service
NOTICES
Environmental statements; notice of intent:
Fernow Experimental Forest, WV, 6353–6354
Meetings:
Resource Advisory Councils—
John Day Snake, 6354–6355

General Services Administration
NOTICES
Inquiry as to availability; form cancellation, 6373

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
HIV/AIDS Presidential Advisory Council, 6373
Vital and Health Statistics National Committee, 6373–6374

Health Care Financing Administration
NOTICES
Medicare:
Ambulatory surgical center payment rates update, 6380–6383

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
340B Drug Pricing Program, 6383

Hearings and Appeals Office, Energy Department
RULES
Contractor employee protection program; criteria and procedures, 6314–6319

Housing and Urban Development Department
RULES
Acquisition regulations:
Miscellaneous amendments; correction, 6444

Interior Department
See Fish and Wildlife Service
See National Park Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Meetings:
Citizen Advocacy Panels—
Midwest District, 6443

International Trade Administration
NOTICES
Antidumping:
Circular welded carbon steel pipes and tubes from—
Taiwan, 6359
Cut-to-length carbon steel plate from—
Mexico, 6359–6360
Polyethylene terephthalate, film, sheet, and strip from—
Korea, 6360
Antidumping and countervailing duties:
New steel rail from—
Canada, 6358–6359

International Trade Commission
NOTICES
Meetings; Sunshine Act, 6394

Justice Department
See Drug Enforcement Administration
See Juvenile Justice and Delinquency Prevention Office
See National Institute of Corrections
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6394–6395

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Mental health and juvenile justice, effective service delivery, 6512–6517

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6397
Submission for OMB review; comment request, 6397–6398

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Hydraulic brake systems—
Passenger car brake systems, 6327–6332
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6441–6442

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Restorative Justice Outcomes/Measurements and Evaluation, 6396–6397

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing; correction, 6444
Meetings:
Center for Scientific Review, 6383–6386
National Cancer Institute, 6386–6387
National Institute of Child Health and Human Development, 6387
National Institute of Environmental Health Sciences, 6388
National Institute of Mental Health, 6387
National Institute on Deafness and Other Communication Disorders, 6388

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Fishery Management Council; hearings, 6351–6352
NOTICES
Marine mammals:
Permit applications, 6360–6361

National Park Service
NOTICES
Environmental statements; availability, etc.:
Dyke Marsh Wildlife Preserve, VA, 6392

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 6398
Antarctic Conservation Act of 1978; permit applications, etc., 6398

Natural Resources Conservation Service
NOTICES
Conservation Practices National Handbook:
Conservation practice standards, new or revised; comment request, 6355

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6398–6399
Commercial nuclear power plants; licensee performance; integrated review of assessment process, 6399–6401
Environmental statements; availability, etc.:
Private Fuel Storage, L.L.C., 6401–6402
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 6402–6417

Personnel Management Office
PROPOSED RULES
Absence and leave:
Sick leave for family care purposes, 6339–6341

Presidential Documents
ADMINISTRATIVE ORDERS
Internationaal entities; certification against withholding funds (Presidential Determination No. 2000-10)[**Editorial Note:** This document, published at 65 F.R. 1095 in the **Federal Register** of February 4, 2000, this Presidential document, published at 65 FR 5407, was incorrectly listed as a Memorandum of January 31, 2000.]

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Privacy Act:
Systems of records, 6393–6394

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline safety—
Damage Prevention ("path forward"), 6442

Securities and Exchange Commission
RULES
Electronic Data Gathering, Analysis, and Retrieval (EDGAR):
Filer Manual—
Update adoption and incorporation by reference; correction, 6444
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6417–6419
Investment Company Act of 1940:
Exemption applications—
Ark Funds, et al., 6423–6425
Options Price Reporting Authority:
Consolidated options last sale reports and quotation information; reporting plan
Correction, 6444
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, 6425–6427
Municipal Securities Rulemaking Board, 6427–6430
National Association of Securities Dealers, Inc., 6430–6432
New York Stock Exchange, Inc., 6432–6434
Philadelphia Stock Exchange, Inc., 6434
Applications, hearings, determinations, etc.:
Public utility holding company filings, 6419–6420
Scudder Global Fund, Inc., et al., 6420–6423
Invalid Status Code
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board; correction, 6444

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
NOTICES
Disaster loan areas:
Pennsylvania, 6436

Special Counsel Office
NOTICES
Privacy Act:
Systems of records, 6436

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 6437

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Center for Substance Abuse Prevention—
Drug Testing Advisory Board, 6388

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
RULES
Procedural regulations:
Practice rules in proceedings; Federal regulatory review, 6446–6491
NOTICES
Meetings:
Aviation, Marine, and Land Radionavigation Users Conference, 6437

Treasury Department
See Internal Revenue Service

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy states for Federal courts, 6434–6436

Veterans Affairs Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6443

Separate Parts In This Issue

Part II
Department of Transportation, 6445–6491

Part III
Department of Transportation, Coast Guard, 6493–6510

Part IV
Department of Justice, Juvenile Justice and Delinquency Prevention Office, 6511–6517

Part V
Department of Education , 6519–6521

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proposed Rules:
630....6339
7 CFR
916....6305
917....6305
985....6308
Proposed Rules:
989....6341
9 CFR
1....6312
10 CFR
708....6314
12 CFR
272....6319
14 CFR
39....6444
71....6320
97 (2 documents)....6321, 6324
200....6446
211....6446
213....6446
216....6446
291....6446
300....6446
302....6446
303....6446
305....6446
377....6446
385....6446
399....6446
17 CFR
232....6444
23 CFR
Proposed Rules:
645....6344
33 CFR
117 (2 documents)....6325, 6326
40 CFR
52....6327
46 CFR
2....6494
30....6494
31....6494
52....6494
61....6494
71....6494
90....6494
91....6494
98....6494
107....6494
110....6494
114....6494
115....6494
125....6494
126....6494
132....6494
133....6494
134....6494
167....6494
169....6494
175....6494
176....6494
188....6494
189....6494
195....6494
199....6494
Proposed Rules:
15....6350
48 CFR
2432....6444
49 CFR
571....6327
50 CFR
17....6332
Proposed Rules:
660....6351

VOL

65

SS

27

FE

9

000

MI

Rules and Regulations

Federal Register
Vol. 65, No. 27
Wednesday, February 9, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–3 FR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the rules and regulations of the marketing orders (orders) for fresh nectarines and peaches grown in California pertaining to reporting requirements. The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). Under the orders, authority is provided for the committees to require handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. This rule will require handlers to file such destination reports. Additional and timely information will thus be available to the committees and industry, facilitating improved decision making and program administration with regard to marketing research and development, and promotional activities.

EFFECTIVE DATE: This final rule becomes effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the orders' rules and regulations pertaining to reporting requirements under the orders. This rule establishes procedures in the orders' rules and regulations for handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. Under the orders the term "handler" is synonymous with the term "shipper." This rule was unanimously recommended by the committees at their meetings on December 2, 1998.

In §§ 916.60 and 917.50 of the orders, authority is provided for the committees to require handlers to file reports with the committees. The information authorized includes, but is not limited to: (1) The name of the shipper and the shipping point; (2) The car or truck license number (or name of the trucker), and identification of the carrier; (3) The date and time of departure; (4) The number and type of containers in the shipment; (5) The quantities shipped, showing separately the variety, grade, and size of the fruit; (6) The destination; and (7) The identification of the inspection certificate or waiver pursuant to which the fruit was handled. Handlers have not been required to report the destinations of their shipments of fresh nectarines and peaches.

The Nectarine Administrative Committee's (NAC) and the Peach Commodity Committee's (PCC) discussions on destination reports were prompted by recommendations of two subcommittees which met prior to the December 2, 1998, committee meetings. At a Domestic Promotion Subcommittee meeting, the merits of destination reports were discussed, among other issues. The subcommittee unanimously recommended adding a requirement to the orders' rules and regulations for destination reports. The subcommittee believed that having information about markets to which nectarines and peaches are shipped will be a valuable marketing tool. The members believed that such information will allow the subcommittee to target markets more effectively for promotion, and permit a more effective analysis of the effectiveness of industry funded media and promotional campaigns. At an International Programs Subcommittee meeting, the merits of destination

reports also were discussed. The members of this subcommittee also believed that such reports will provide invaluable information to assist the NAC and PCC in targeting their promotional activities in the most-promising markets for these two fruits.

The NAC and PCC discussed the subcommittees' recommendations and the merits of destination reporting. Both the NAC and PCC agreed that the establishment of such a report requiring each handler to list the destination of his/her shipments of nectarines and peaches in both domestic and international markets will provide invaluable information and greatly benefit the industries.

With destination information from handlers, the committees will be able to make better-informed decisions about marketing research and development projects conducted, and gauge the success of such activities knowing the volume of fruit shipped to various markets. With this information, the committees will also be able to direct their marketing research and development activities and funds to the most-promising markets, and tailor the activities to meet the needs of the particular markets, focus on the more successful promotional activities, and target markets based on consumption.

Current market analysis tools, such as consumer and retail surveys, provide useful information based on a small group of respondents, but specific shipment and destination information will enable the committees to direct their activities to the most successful markets, and perform a more thorough analysis of the benefits of their promotional activities.

Without exact destination information, the committees do not know precisely the quantities of nectarines and peaches shipped to various markets, and, therefore, may be spending funds on promotional activities not appropriate for the particular market. Experience has shown that certain types of promotion are appropriate for developing markets and other activities are more appropriate when trying to expand markets. With the ability to determine the markets to which nectarines and peaches are not shipped, the committees will have the ability to direct their marketing research and promotion funds to open those markets for future shipments. In addition, such information will permit the committees to constructively evaluate the effectiveness of their marketing promotion and research programs by helping them get a better handle on promotions that have been working and those that have not, and determine the reason(s) for any lack of success. The industries have long recognized the importance of this information in making their promotion activities more effective and in helping to sell more nectarines and peaches. They have tried voluntary reporting, but this has not worked.

The shipping season for nectarines begins April 1 and ends on October 31 of each year, and the shipping season for peaches begins on April 1 and ends on November 23 of each year. The destination report will be required from all handlers by the fifteenth of the month following the month in which the shipments were made. Handlers will be required to report the number of packages of peaches and nectarines shipped to each destination, and indicate whether the fruit were white-fleshed or yellow-fleshed, and whether the fruit were "CA Utility" quality. Destination information for domestic market shipments will include the city and state, and zip code, if known. Destination information for international market shipments will include the country to which shipped.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

Based upon committees' staff data, it is estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Less than 20 handlers ship more than 555,000 boxes of nectarines and/or peaches. Small handlers would, therefore, represent approximately 94 percent of the handlers within the industry. In addition, there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were $6.00 per box or box equivalent for nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. More than 1,400 producers produce less than 84,000 boxes of nectarines or 89,000 boxes of peaches. Therefore, small producer entities would represent approximately 78 percent of the producers within the industry. For these reasons, a majority of the handlers and producers may be classified as small entities.

This final rule revises §§ 916.160 and 917.178 of the orders' administrative rules and regulations to require handlers to file destination reports on a monthly basis during the shipping season by adding a new paragraph (c) to each section. The information obtained from such reports will improve decision making and program administration with regard to marketing research and development activities undertaken to expand shipments of fresh nectarines and peaches domestically and in foreign markets.

Two comments were received as a result of a proposed rule published in the **Federal Register** on June 7, 1999 (64 FR 30252). The commenters raised issues concerning both the initial regulatory impact analysis and the information collection requirements, as proposed. These comments are discussed more fully later in this document.

Requiring handlers to file this report on a monthly basis will impose an additional reporting burden on both small and large handlers. The report is estimated to take three-quarters of an hour to complete. It is further estimated that handlers will file an average of four destination reports per year, creating an estimated total annual burden of three hours per handler. The total industry annual burden is, therefore, estimated at approximately 900 hours per year for nectarine and peach shipments each.

Although this action creates an additional burden on handlers of fresh nectarines and peaches, the benefits of

collecting additional and timely information regarding destinations are anticipated to outweigh the estimated increased reporting burden. The committees will have detailed information about markets to which fruit is sent; and, therefore, will be able to make better-informed decisions about marketing research and promotion fund expenditures and activities undertaken. Such reports and forms will be filed by all handlers, regardless of size; and thus, the increased burden will be equitably distributed to all handlers. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0072 for documents required under the nectarine marketing order, and OMB No. 0581–0080 for documents required under the peach marketing order. The estimated burden has been revised based upon a comment received. The revised estimated total annual burden for nectarine and peach handlers is reduced from 1,200 hours to 900 hours. As previously stated, this comment is discussed more fully later in the document. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

An alternative to this action would be to continue operations without required destination reporting. Most committee members agreed that the value of having destination information outweighed the burden on handlers of filing such reports in terms of targeting marketing and promotion funds and activities. In recent years, the committees have decided to keep their marketing and promotion expenses relatively constant. Because of this, the committee members felt that greater emphasis should be placed on using the funds to their greatest advantage.

All committee members agreed that continuing to spend promotion funds, without the information to be provided by destination reports, was not in the best interest of the industries. Further, as the percentage of promotion funds either decreases or remains constant in relationship to total committee funds, and as shipments of nectarines and peaches increase over time, detailed information on the destinations of nectarine and peach shipments will be valuable in targeting promising markets. The committee members also noted that voluntary destination reports have been requested in the past, but very few handlers provided the information. The committees, therefore, voted unanimously at all the meetings to require destination reports from nectarine and peach handlers.

During the deliberations, some committee members indicated their concern that destination information will not be kept confidential by committee staff. The Act states, in part, in § 608d(2), that "all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information * * *, shall be kept confidential by all officers and employees of the Department of Agriculture." In addition, §§ 916.60(d) and 917.50(d) of the orders also require committee employees to maintain confidentiality of all reports and records submitted by handlers. Therefore, each handler is generally protected against disclosure of any confidential information the handler furnishes to the committees. Further, under the Act, persons found guilty of revealing confidential information could be subject to a fine, imprisonment, or both, or could be removed from office.

The committee meetings were widely publicized throughout the tree fruit industry and all interested persons were invited to express their views and participate in committee deliberations on all issues. Like all committee meetings, the December 2, 1998, meetings were public meetings, and all entities, large and small, were able to express their views on this issue. The subcommittee meetings were also public meetings at which large and small entities were invited to express their views and participate in all deliberations. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on June 7, 1999 (64 FR 30252). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the orders. Copies of the proposal were also mailed to handlers on June 9, 1999, by the California Tree Fruit Agreement staff, who conduct day-to-day business operations for the committees. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period, ending August 6, 1999, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One commenter, a handler, made two points concerning the proposed rule. First, the commenter was of the view that the proposed information to be collected was not necessary to ensure the high quality of nectarines and peaches and adequate returns to producers. This commenter went on to state that the marketing orders have never been concerned with the returns to the producer, only moving the crop at whatever price necessary to move it, in addition to collecting the mandatory assessment. The Department disagrees with the commenter's views. The marketing orders were issued consistent with the provisions of the Act. The regulations issued in this rulemaking are authorized under the orders and their purpose is to provide additional and timely information to the committees and the industries, thereby facilitating improved decision making and program administration with regard to marketing research and development, and promotional activities. Accordingly, the Department believes that the information required by the regulations is needed to accomplish their stated objectives.

With regard to the commenter's second point, the commenter stated that the number of producers that are small entities should be based on an average of boxes shipped over 3–5 years. The regulatory flexibility analysis discusses and sets forth the identification and estimates of small entities under criteria established by the Small Business Administration. The information is based on the most current and accurate information available, and, as such, the Department believes is best suited to accomplish the objectives of the Regulatory Flexibility Act and this program. The commenter went on to state that there should be a minimum of perhaps 50,000 shipped boxes before a destination report should be required of producers who are also handlers. While minimum exemptions are and have been used as an alternative in a variety of regulatory schemes, they may not be appropriate in all programs. For example, with regard to this program, a second commenter noted that given the structure of the industries, it was important that all handlers report their destinations and that the report be compiled collectively to measure trends and to analyze marketing effectiveness. Accordingly, given the purpose and nature of these regulations, the

Department does not believe that a minimum exemption is appropriate. Further, based upon information in another comment received concerning the proposed rule, the committees have revised the detail in the forms to be used to further minimize the burden.

The second commenter, the manager of the California Tree Fruit Agreement, the body which manages the PCC and NAC, supported the proposed rule, stating that destination reports will help in providing information for the committees to make long-term decisions designed to improve the marketing of nectarines and peaches grown in California. This commenter noted, as well, the importance of requiring all handlers to file destination reports. This commenter also discussed requirements for similar information in other programs, the confidentiality of the information submitted, and the need to finalize this action as soon as possible.

The comment went on to state that the NAC and the PCC have revised the destination reports since the proposed rule was issued to make it more simple for handlers to complete. For example, requested information concerning grade and size has been removed, and zip code information would be required only if known by the handler. Reporting "CA Utility" quality fruit also would be required. It was suggested that the computer technology that is being used in the industries may also assist handlers in completing the destination report in less time that it would take to complete the report by hand.

The Department has revised its estimate of the time it would take to complete the destination report from one hour to three-quarters of an hour. The revised estimated total annual burden to nectarine and peach handlers is reduced from 1,200 hours to 900 hours.

Accordingly, appropriate changes have been made to the rule as proposed, based on this second comment. Finally, this rule will be effective for the beginning of the 2000 shipping season.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.160, paragraph (c) is added to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(c) *Destination report.* Each shipper who ships nectarines shall furnish to the manager of the Nectarine Administrative Committee a report of the number of packages of nectarines shipped to each destination, and whether the nectarines were yellow-fleshed or white-fleshed, and whether the nectarines were "CA Utility" quality. The destination is defined as nectarine shipments to any domestic or international market. Destination information for domestic market shipments shall include city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which nectarine shipments were made.

PART 917—PEACHES GROWN IN CALIFORNIA

3. In § 917.178, paragraph (c) is added to read as follows:

§ 917.178 Peaches.

* * * * *

(c) *Destination report.* Each shipper who ships peaches shall furnish to the manager of the Control Committee a report of the number of packages of peaches shipped to each destination, and whether the peaches shipped were yellow-fleshed or white-fleshed, and whether the peaches were "CA Utility" quality. The destination is defined as peach shipments to any domestic or international market. Destination information for domestic market shipments shall include the city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which peach shipments were made.

Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2978 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–00–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2000–2001 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the authority in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2000–2001 marketing year at its October 6, 1999, meeting. With 7 members in favor and 1 member opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 72 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales fell to a low of about 38 percent during the 1994–95 season. Beginning with the 1996–97 marketing year, the Committee has employed a marketing strategy for Scotch spearmint oil that is intended to foster market stability and that would retain and expand market share. Using this approach, the Far West's market share has increased to approximately 43 percent of total world sales. The Committee's current recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining more of the Far West's historical share of the global market.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have generally stabilized between $10.50 and $11.50 per pound. During the past year, however, the price of Native spearmint oil has decreased about $2.00 per pound despite the Committee's efforts to balance available supplies with the demand for the oil. Based on comments made at the Committee's meeting, factors contributing to the low price could include the relatively poor returns being realized from other essential oils, as well as the overall weak farm situation.

With approximately 90 percent of the U.S. production located in the Far West, and with nearly 80 percent of total world sales originating in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

The salable quantity and allotment percentage for each class of spearmint oil for the 2000–2001 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2000—869,206 pounds. This figure is derived by subtracting the estimated 1999–2000 marketing year trade demand of 887,500 pounds from the revised 1999–2000 marketing year total available supply of 1,756,706 pounds.

(B) Estimated global sales for the 1999–2000 marketing year—2,082,500 pounds. This figure is based on preliminary information the Committee has compiled.

(C) Estimated Far West sales for the 1999–2000 marketing year—900,000 pounds.

(D) Approximate Far West percentage of estimated total world sales in 1999–2000—43 percent. This is down from the 1980 level of approximately 72 percent, but up from the low of approximately 38 percent during the 1994/95 marketing year.

(E) Total estimated allotment base for the 2000–2001 marketing year—1,863,396 pounds. This figure represents a one percent increase over the revised 1999–2000 allotment base.

(F) Recommended 2000–2001 allotment percentage—65 percent. This figure is based upon recommendations made at the October 6, 1999, meeting, as well as at the five Scotch spearmint oil production area meetings held during September 1999.

(G) The Committee's computed 2000–2001 salable quantity—1,211,207 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2000–2001 marketing year—2,080,413 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 2000, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 2000–2001 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 2000–2001 marketing year—887,500 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on May 31, 2001—1,192,913 pounds. This figure is the difference between the 2000–2001 estimated trade demand and the 2000–2001 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2000—64,602 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand of 1,168,474 pounds and the revised 1999–2000 marketing year total available supply of 1,233,076 pounds.

(B) Estimated trade demand (domestic and export) for the 2000–2001 marketing year—1,170,974 pounds. This figure is based on the average of the estimates provided at the four production area meetings held in September 1999.

(C) Salable quantity required from the year 2000 production—1,106,372 pounds. This figure is the difference between the estimated 2000–2001 marketing year trade demand and the estimated carry-in on June 1, 2000.

(D) Total estimated allotment base for the 2000–2001 marketing year—2,067,296 pounds. This figure represents a one percent increase over the revised 1999–2000 allotment base.

(E) Computed allotment percentage—53.5 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—50 percent. This is the Committee's recommendation based on the computed allotment percentage and takes into account the recent sharp decline in the Native spearmint oil price.

(G) The Committee's recommended salable quantity—1,033,648 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,211,207 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,106,372 pounds and allotment percentage of 50 percent are based on the anticipated supply and trade demand during the 2000–2001 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2000–2001 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this final rule, the Committee's marketing policy statement for the 2000–2001 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 2000–2001 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages allows for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the order, and approximately 119 producers of Class 1 (Scotch) spearmint oil and approximately 105 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates

that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms fall into the SBA category of large businesses.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51, and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have generally stabilized between $10.50 and $11.50 per pound. During the past year, however, the price of Native spearmint oil has decreased about $2.00 per pound despite the Committee's efforts to balance available supplies with the demand for the oil. Based on comments made at the Committee's meeting, factors contributing to the low price could include the relatively poor returns being realized from other essential oils as well as the overall weak farm situation.

With approximately 90 percent of the U.S. production located in the Far West, and with nearly 80 percent of total world sales originating in the Far West, the Committee's method of calculating the Native spearmint oil salable quantify and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

Alternatives to this rule included not regulating the handling of spearmint oil during the 2000–2001 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of over a million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Like all Committee meetings, the October 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule was published in the **Federal Register** (64 FR 238) on December 13, 1999. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. A copy of the proposed rule was faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. A copy of the proposal was also

made available on the Internet by the U.S. Government Printing Office. No comments were received. Accordingly, no changes are made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.219 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 985.219 Salable quantities and allotment percentages—2000–2001 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2000, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,211,207 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,033,648 pounds and an allotment percentage of 50 percent.

Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2979 Filed 2–8–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 98–043–2]

Field Study; Definition

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations by clarifying the definition of the term *field study*. We will clarify that a field study cannot involve an invasive procedure, harm the animals under study, or materially alter the behavior of the animals under study. As worded prior to this final rule, the definition of *field study* could be interpreted to mean that a field study may include one of these situations. This action will help ensure the proper use and care of animals used in field studies.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228; (301) 734–7586.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

The regulations established under the Act are contained in title 9 of the Code of Federal Regulations, chapter I, subchapter A, parts 1, 2, and 3. Part 1 defines various terms used in parts 2 and 3.

As defined in § 1.1 of the regulations prior to this final rule, *field study* meant any study that is "conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study."

We have always intended that field studies not include any invasive procedures, harm the animals under study, or materially alter the behavior of the animals under study. However, we were concerned that the definition, as worded above, could be interpreted to mean that a field study could include any one of these situations.

On July 31, 1998, we published in the **Federal Register** (63 FR 40844–40845, Docket No. 98–043–1) a proposal to amend the definition of *field study* in § 1.1 of the regulations by defining *field study* as any study conducted on free-living wild animals in their natural habitat. We also proposed to add the provision that the term *field study* excludes any study that involves an invasive procedure *or* has the potential to harm or materially alter the behavior of the animals under study. This proposed action was based on the need to ensure that studies conducted in free-living wild animals in their natural habitat are correctly classified as field studies based on the definition of *field study*.

We solicited comments concerning our proposal for 60 days ending September 29, 1998. We received seven comments. They were from universities; animal welfare organizations; an association representing birds; an association representing fish, reptiles, and amphibians; and an association representing zoos and aquariums. Two commenters supported the proposal as written. However, one of these commenters and the remaining commenters had concerns that are discussed below.

One commenter stated that the previous definition of *field study* was perfectly clear and unambiguous and did not need to be amended. In addition, two commenters stated that the proposed change in the definition of *field study* would exclude all projects that involve invasive procedures. One commenter requested that we delay the change of the definition. Two commenters stated that any study has the potential to harm or materially alter the behavior of the animals under study; therefore, no study could be classified as a field study.

We do not believe that the previous definition was clear to everyone. For instance, two commenters stated that the proposed change in the definition of *field study* would exclude all projects that involve invasive procedures. However, the previous definition of *field study* always excluded studies that involved invasive procedures, harmed the animals under study, or materially altered the behavior of the animals under study. In addition, in the past, some entities interpreted the definition to mean that a *field study* may include any one of these situations as long as it did not include all of them. In our proposed definition of *field study*, we clarified that a study that includes any one of the situations could not be considered a field study.

As to the use of the word potential, we agree that it is unnecessary; therefore, we are removing the word

potential from the definition of *field study* in this final rule.

One commenter stated that the definition is internally inconsistent. The commenter stated that if a field study is *any* study conducted on free-living wild animals in their natural habitat (emphasis added), then the second part of our definition, which excludes a subset of those studies (those that involve invasive procedures or have the potential to harm or materially alter the behavior of an animal), does not make sense.

This is a question of sentence structure, which we have addressed in this final rule by changing the word "any" in the first sentence to "an" and beginning the second sentence with "However,". We believe that this change solves the sentence structure problem.

One commenter stated that the words "harm," "invasive," and "materially alter" should be defined or else the determination of whether a study should be classified as a field study will be left to the discretion of the Institutional Animal Care and Use Committee (IACUC) at different facilities. One commenter stated that the Animal and Plant Health Inspection Service (APHIS) should provide definitions for invasive or noninvasive, and one commenter stated that APHIS should provide guidelines or regulations for defining invasive procedure and standard animal husbandry procedures. In addition, one commenter stated that APHIS should issue guidelines or a policy to state what the Agency classifies as a field study.

We do not believe that the terms "harm," "invasive," and "materially alter" need to be defined. However, we are considering the development of a policy statement that would provide examples of what APHIS considers invasive or noninvasive procedures. We do not believe that guidelines or regulations for defining standard animal husbandry procedures are necessary. Standard animal husbandry procedures are procedures that are necessary for the health and maintenance of animals on a premises.

One commenter stated that the proposed definition of field study obscures rather than clarifies the intent of field studies. This commenter stated that restriction of the term *field study* to exclude invasive procedures does not clarify the definition. This commenter stated that field studies have no inherent implication of invasiveness and should retain the common and professional meaning of "the study of organisms in the field," and after classification as a field study, the study should then be qualified as invasive or noninvasive.

The term *field study* has always excluded any study that involved an invasive procedure; therefore, we have not altered the intent of the definition. In order to be absolutely clear as to what constitutes a field study, the definition of *field study* had to provide the situations that would exclude a study from being considered a field study under the AWA regulations.

One commenter requested clarification that our proposal would not make changes in the administration of the AWA regulations by APHIS and IACUC's and that it would not prohibit or restrict field studies or impose additional requirements on researchers.

We only clarified the definition of field study by removing the word "and" and any ambiguity created by the word "and." We did not make substantive changes, prohibit or restrict field studies, or impose additional requirements on researchers.

One commenter stated that the composition of the members of the IACUC can vary greatly and the expertise of the membership may not represent all disciplines that are subject to review. This commenter further stated that the IACUC may not have members experienced in the activities commonly conducted in field studies or experience in performing certain procedures under field conditions. Another commenter stated that most IACUC's do not include field researchers who are able to appreciate the unique conditions of field research. One commenter stated that a growing number of investigators, institutions, and granting agencies require any research use of animals in the field or laboratory to be reviewed by their IACUC, and self-determination by the investigator does not protect him or her or the institution, nor does it provide for consistent peer-reviewed determination of invasive procedures.

Comments regarding the membership and function of IACUC's are beyond the scope of this rule; however, in accordance with § 2.31(a) of the regulations, the Chief Executive Officer of the research facility is responsible for appointing the members of the IACUC. Members of the IACUC are required to have the experience and expertise to assess the research facility's animal programs, facilities, and procedures, including the review of all proposed and ongoing research projects.

The principal investigator is responsible for determining whether a study is a field study. If the principal investigator reviews a field study protocol and has questions regarding whether a procedure is invasive or noninvasive, the investigator can consult with the IACUC of the facility. In addition, in accordance with the regulations in § 2.31(c)(1), at least once every 6 months the IACUC must review the research facility's program for the humane care and use of animals by using the AWA regulations as a basis for evaluation. Therefore, if a study is misclassified as a field study, the IACUC will have the opportunity to take action to reclassify the study.

One commenter stated that there are studies that involve implantation of transponders or radiotransmitters and procedures, such as marking the animals with minor clipping or branding, that could technically be considered invasive procedures and are not conducted under sterile conditions. The commenter further stated that trauma to subjects is minimized by reducing the handling time.

An invasive procedure is typically one in which the living animal is entered by either perforation or incision in a manner that could cause more than short-lived pain or distress and may materially alter the behavior of the animal for more than a short period of time. For instance, opening the body cavity of an animal would be considered invasive and could cause the animal to materially alter its behavior until completely healed from the surgery. However, implantations of microchips and transponders may not be invasive depending on the site and method of implantation.

One commenter asked if a facility that is currently licensed as an exhibitor under the AWA would have to register as a research facility if an employee is approved to initiate a noninvasive research project in the field. The commenter stated that it was unclear when a research project is considered a regulated research project.

If the research project meets the definition of *field study*, the research project would not fall under the AWA regulations. However, if the research project does not meet the definition of *field study* (*i.e.*, includes an invasive procedure, harms, or materially alters the behavior of the animals) the research project would need to be regulated under the AWA, and the facility would need to be registered as a research facility.

One commenter stated that he could not locate the statutory authority given to the U.S. Department of Agriculture (USDA) over animal care in the wild, whether or not the animals are involved in research. The commenter stated that the AWA assigns APHIS authority over specific warm-blooded animals on

public display or intended for use in research facilities (7 U.S.C. 2131). The commenter added that it is not clear how USDA has authority if the noninvasive research does not involve animals or activities that are in interstate or foreign commerce or does not substantially affect such commerce or its free flow as provided in the AWA (7 U.S.C. 2131).

The purpose of defining the term *field study* in our regulations is to exclude from the regulations those activities that meet the definition. Thus, if a study is conducted on free-living wild animals in their natural habitat and the study does not involve an invasive procedure, does not harm the animals under study, and does not materially alter the behavior of the animals under study, then that activity is not regulated.

The AWA defines *animal* as any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or such other warm-blooded animal as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet. This definition does not exclude animals in the wild. If a research facility conducts a study on animals in the wild that does not meet the criteria for a field study, then that activity would be regulated. The AWA defines *research facility* as any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments and that: (1) Purchases or transports live animals in commerce; or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments. * * *"

One commenter stated that researchers appear to be circumventing the AWA by claiming that trap tests performed on wildlife are field studies. Trapping, including the testing of traps, is not regulated by the AWA.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule will clarify that a *field study* cannot include an invasive procedure, harm the animals under study, or materially alter the behavior of the animals under study.

We have always intended that field studies not include any invasive procedures, harm the animals under study, or materially alter the behavior of the animals under study. This rule makes no substantive changes to the definition. By clarifying the definition of *field study*, this final rule will help ensure that studies that should be covered under the Animal Welfare regulations are covered.

The only entities that will be affected by this rule will be entities that perform studies conducted on free-living wild animals in their natural habitat. We estimate that at least 50 entities may be affected by this final rule. These entities may be considered small and large entities by Small Business Administration standards, but this final rule will only affect a small portion of the entities' activities. As we are not proposing a substantive change in the definition, the effect on these entities will not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State and local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we are amending 9 CFR part 1 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 1.1, the definition of *field study* is revised to read as follows:

§ 1.1 Definitions.

* * * * *

Field study means a study conducted on free-living wild animals in their natural habitat. However, this term excludes any study that involves an invasive procedure, harms, or materially alters the behavior of an animal under study.

* * * * *

Done in Washington, DC, this 3rd day of February 2000.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–2922 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 708

RIN 1901–AA76

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts, with minor changes, an interim final rule published on March 15, 1999, to amend the DOE contractor employee protection program ("whistleblower") regulations.

EFFECTIVE DATE: This final rule is effective on March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0107; telephone: 202–426–1449; e-mail: roger.klurfeld@hq.doe.gov, thomas.mann@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 1999, DOE published an interim final rule in the **Federal Register** (64 FR 12862) that comprehensively revised the regulations for the DOE contractor employee protection program, which are codified

at 10 CFR part 708. DOE became aware during the comment period on the interim final rule that three provisions in the original Part 708 had been inadvertently omitted from the interim final rule. DOE published an amendment to the interim final rule on July 12, 1999 (64 FR 37396) to correct the omission.

DOE provided a 60-day public comment period for the interim final rule published on March 15, 1999. DOE did not invite public comments on the July 12, 1999, amendment to the interim final rule because those changes were procedural and DOE determined that no purpose would be served by inviting comments.

Section 3164 of the National Defense Authorization Act for Fiscal Year 2000 directs DOE to establish a whistleblower protection program for covered individuals (DOE and DOE contractor employees engaged in the defense activities of the Department) who disclose to certain Governmental (including certain Congressional) personnel "classified or other information" that they reasonably believe provides evidence of violations of law, gross mismanagement, a gross waste of funds or abuse of authority, or a false statement to Congress on an issue of material fact. DOE is aware of the new statutory requirement, and we are working separately on the implementation of the program mandated in section 3164. We are evaluating its effect, if any, on the DOE contractor employee protection program regulations.

II. Summary and Response to Comments on the Interim Final Rule

DOE received written comments from five interested organizations and individuals on the interim final amendments to the DOE contractor employee protection program regulations. This section of the Supplementary Information summarizes the issues raised in the comments and gives DOE's response, as follows:

Comment: Three different commenters expressed concern about the definition of the term "contractor" in § 708.2, which was changed in the interim final rule to extend protection to certain employees who do not work at DOE sites. Under the old rule, an employee eligible for protection under this rule must have been employed by a contractor performing work on sites that DOE owns or leases. The new language covers employees of contractors performing work "directly related to activities" at DOE-owned or DOE-leased sites, even if the contractor is located, or the work is performed, off-site. Two of the comments express the concern that the phrase directly related to activities does not draw a bright line between those employees who will now be protected by these regulations and those who will not, and that the definition of contractor will be difficult to apply. The third comment challenges the decision to expand the scope of coverage, arguing that off-site coverage will be "difficult to manage," will drive away potential bidders for DOE contracts, thus raising the costs of procurement, and is unnecessary because "other laws adequately protect employees of commercial entities."

Response: We have decided that this language should remain unchanged from the interim final rule. As with any rule, determining who is and who is not covered by Part 708 will sometimes require interpretation. Even the previous formulation, though it appeared to present more of a bright line distinction, was subject to interpretation. *See C. Lawrence Cornett,* 26 CCH Fed. Energy Guidelines ¶87,504 (1996); *META, Inc.,* 26 CCH Fed. Energy Guidelines ¶87,501 (1996) (these cases are also available on the Office of Hearings and Appeals Internet web site, http://www.oha.doe.gov). More important, the definition of contractor in the interim final rule will cover the employees we intend to protect, *i.e.* those performing work that promotes the mission of the Department of Energy. Clearly, some interpretation through case law will be needed as we face some particular factual circumstances, but we believe that the rule is adequately clear as it applies to most cases.

To furnish additional guidance to the DOE contractor community, without considering any specific case, examples of contractor employees we intend to cover by this rule include contractor employees engaged in defense-related industrial activities that are central to the DOE's mission, such as workers processing or transporting nuclear materials, or workers involved in the preparation of environmental assessments of proposed actions involving radioactive waste or mixed waste, wherever they work, on-site or off-site. By contrast, part 708 is not intended to cover contractor employees delivering office supplies or servicing vending machines, regardless of where they are located, because their work is ancillary to, rather than central to DOE's mission. In addition, this rule is meant to cover employees who work on the Department's mission under the terms of a procurement "contract," but not employees who work under the terms of a "grant" or a "cooperative agreement," as those terms are defined in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*, or under the terms of a "cooperative research and development agreement" (CRADA), as that term is defined by the Stevenson-Wydler Technology Innovation Act, 15 U.S.C. 3710a(d)(1).

Comment: One commenter maintains that DOE has created a "camouflaged loophole" by the interim final rule's use of the word "retaliation," instead of "discrimination," to define actions prohibited by contractors against employees who engaged in conduct protected by part 708. According to this commenter, retaliation "is a legal term of art requiring animus or hostility," so that a claim of retaliation can be defeated by a showing that the contractor officials had no "hard feelings" against a whistleblower.

Response: A reading of the definition of retaliation in § 708.2 shows that this commenter has misinterpreted the significance of the interim final rule's use of a different generic term to describe the types of conduct prohibited by this rule. The term was changed as part of DOE's effort to rewrite Part 708 in "plain language." The kinds of conduct prohibited by the definition of retaliation in the interim final rule are the same as those previously prohibited in the definition of discrimination under the old rule. Moreover, the term retaliation more precisely describes the nature of the conduct prohibited under Part 708, and avoids possible confusion with "discrimination" as that term is used in Title VII of the Civil Rights Act of 1964 and other Federal anti-discrimination statutes, as EEO violations are not covered by the DOE contractor employee protection program.

Court decisions under the Whistleblower Protection Act of 1989, Pub. L. 101–12, 103 Stat. 16 (1989) (codified as amended in scattered sections of 5 U.S.C.), do consider "the existence and strength of any motive to retaliate on the part of the agency officials who were involved in the decision" to take action against a Federal employee covered by that whistleblower protection program as one of several factors to determine whether an employer has met its burden of proving by clear and convincing evidence that it would have taken the same action absent the protected conduct. *Cadell* v. *Dep't of Justice,* 66 M.S.P.R. 347, 351 (1995), aff'd 96 F.3d 1367, 1370 (Fed. Cir. 1996); *Sanders* v. *Dep't of the Army,* 64 M.S.P.R. 136 (1994), aff'd 50 F.3d 22 (Fed. Cir. 1995). Evidence of an employer's motive is therefore relevant in a whistleblower

case, but contrary to the commenter's assertion, evidence of a benign motive in and of itself will not meet the contractor's burden under Part 708.

Comment: Also concerning the definition of retaliation in ? 708.2, this same commenter asserted that the use of the phrase "action with respect to the employee's compensation, terms, conditions or privileges of employment" in that provision does not include common forms of harassment such as retaliatory investigations, removal of support staff, removal from a case or assignment, or tampering with (denying, suspending or revoking) a security clearance. The commenter also asserts that the rule should be changed to explicitly cover psychiatric examinations, and security clearances, as well as "any other significant change in duties, responsibilities or working conditions."

Response: The other types of adverse actions mentioned in the comment are generally meant to be covered by the broad definition of retaliation used in § 708.2. The definition enumerates examples of prohibited employment practices, but the list does not purport to be exclusive. For example, OHA decisions have recognized that the removal of the complainant from one job assignment and his reassignment to another job constituted retaliation, even though removal from an assignment is not specifically mentioned in § 708.2. *Ronald Sorri*, 23 CCH Fed. Energy Guidelines ¶87,503 at 89,010 (1993). It is not necessary to rewrite the definition of retaliation in order to give DOE the necessary flexibility to carry out the policy objectives of Part 708.

Actions taken regarding "security clearances," *i.e.*, resolving questions about the eligibility of an individual for DOE access authorization, are governed by another regulation, 10 CFR part 710, subpart A. The preamble to the interim final rule explains that the resolution of national security concerns about an employee's eligibility for a DOE security clearance under part 710 takes precedence over individual retaliation claims under part 708. See 64 FR 12862 at 12867. However, the preamble recognizes that retaliation "could include actions by a contractor that cause the questioning, suspension, or termination of a security clearance," and that "with respect to consequences beyond the eligibility determination, Part 708 may apply." With regard to psychiatric examinations, psychiatric evaluations can be a proper tool to resolve questions of an individual's eligibility for a security clearance under § 710.8(h).

Comment: The same commenter also contends that "the audience for protected activity is too limited" under § 708.5. According to this commenter, the interim final rule "only protects communications directly to recipients such as an official at the Department of Energy, a member of Congress and other governmental agencies with oversight responsibility at a DOE facility." The comment urges that the language of the rule and the preamble should specify that it will be interpreted consistently with the case law for employee protection statutes administered by the Department of Labor, such as amendments to the Energy Reorganization Act of 1992 (ERA), codified in 42 U.S.C. 5851, the provision that protects employees of Nuclear Regulatory Commission (NRC) licensees. The commenter claims that Department of Labor and the Federal courts have consistently interpreted those statutes to mean that employees are also protected for disclosures to the media and citizen associations, which are "frequently the breeding ground for investigations and/or enforcement actions by the relevant regulatory agency."

Response: As first proposed in 1990, part 708 only would have covered disclosures to DOE (55 FR 9326). Comments were received that advocated expanding the coverage to encompass disclosures to citizen groups, the media, state and Federal regulatory officials, and members of Congress. The final 1992 version of part 708 extended the coverage beyond DOE, to include in-house disclosures to the complainant's employer, higher tier contractors, and to Congress, but went no further (57 FR 7535). In explaining why we chose to limit coverage to those parties, DOE noted that a fundamental purpose of this rule is to encourage DOE contractor employees to feel free to disclose to the DOE information about health and safety problems or mismanagement at DOE facilities so that DOE can take corrective action. The Department reasoned that disclosures to other parties would not foster that objective. Additionally, DOE believed that "extension of this rule to employees making disclosures to other parties could unduly complicate these procedures with evidentiary problems respecting whether a disclosure had actually been made." (57 FR 7535). We believe that reasoning is still sound. Nevertheless, the interim final rule expanded the coverage to include disclosures made to other government officials, such as those from other Federal or state agencies who have responsibility for oversight of activities on DOE-owned or -leased sites. This reflects the fact that some DOE sites are now subject to regulatory oversight by other agencies. But there is still no compelling reason to expand the coverage of this rule to include disclosures to citizen groups or the media. The Federal courts have granted protection under 42 U.S.C. 5851 to employees who made disclosures to parties other than their employers or to the Federal government to a very limited extent. *See Stone & Webster Engineering Corp.* v. *Herman*, 115 F.3d 1568 (11th Cir., 1997). In *Stone & Webster*, the U.S. Court of Appeals affirmed the Secretary of Labor's determination that a nuclear power plant worker was acting in furtherance of safety compliance when, after speaking to his employer about his safety concerns, he spoke to his co-workers about those same concerns, and thus communication to those workers was protected by the ERA. According to the holding in that case, which does not control proceedings under part 708, disclosures to outside parties must be closely related to the "regular channels" of protected activity in order to be protected under 42 U.S.C. 5851.

Comment: In the same vein, this commenter contends that the scope of protected activity in § 708.5(a) is unclear because "it is possible that employee would be denied relief merely for doing his/her job." The commenter argues that this result "would cancel protection for employees whose jobs require them to take risks of whistleblowers—auditors, inspectors and investigators who make a record of violations that are too politically hot to handle. . . ." The commenter conjectures that the protection of the rule is only available to employees who make protected disclosures "after hours," outside of their regular duty assignments.

Response: The rule clearly protects employees such as safety and quality inspectors whose job it is to make disclosures about violations of rules and dangers to employees and public health and safety. The commenter has misinterpreted the plain language of § 708.5(a), which contains nothing that would exclude disclosures that are routinely made in the course of an employee's work assignment.

Comment: The same commenter expressed concern over the requirement of § 708.5(a)(1) that an employee's disclosure must concern a "substantial" violation of law in order to be protected. This commenter correctly notes that both the Federal whistleblower protection statutes and the case law

have used an objective standard to determine whether activities are protected. According to this commenter, the insertion of this term 'introduces an unprecedented, subjective wild-card" that would present an unduly burdensome test for a worker seeking whistleblower protection.

Response: The imposition of this requirement in § 708.5(a)(1) would not result in the adoption of a subjective test that a whistleblower would have to pass to qualify for protection. As noted in the preamble to the interim final rule, "substantial violation of law" is the same standard that is used in the Section 6006 of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, codified in 41 U.S.C. 265, and implemented by the regulation found at 48 CFR part 3, Subpart 3.9, "Whistleblower Protection for Contractor Employees." The interim final rule emulated the standard in the FASA because it represents a balanced approach designed to ensure that minor, insubstantial issues do not waste limited resources, so whistleblower protection is available to those workers who legitimately need it.

Comment: The same commenter expressed concern about the phrase "in good faith" that appears in §§ 708.5(a) and 708.6(a), claiming it could impose a "motives test" that "allows an employee's intentions to be put on trial as a precondition to using the rule." This commenter correctly notes that the inclusion of a good faith test in those provisions is inconsistent with the Whistleblower Protection Act, which uses the standard that the employee must "reasonably believe" the matters they are disclosing are among the types of concerns enumerated in the Act.

Response: The commenter's views on the "good faith" test have considerable merit. DOE did not intend to place the employee's state of mind into issue. We think the "reasonable belief" standard is sufficient, in and of itself. None of the other federal whistleblower protection statutes contains a similar "good faith" requirement. Accordingly, the final rule omits this phrase in order to conform to the current state of the Federal law on whistleblower protection.

Comment: The same commenter noted that under § 708.13, employees are now required to "exhaust all applicable grievance-arbitration procedures" before being eligible to file a whistleblower complaint with DOE under part 708. According to the commenter, this disadvantages employees because "grievance systems cannot order mandatory relief and are run by the same institution that will be an adverse party in any future litigation." The commenter fears that this "forces the whistleblower to preview his or her case to the defendant, before even filing it with the DOE," and that the employer will have an advance opportunity to "perfect pretexts or defenses," "destroy evidence" and learn the identity of witnesses to "pressure" them. The commenter states that it "regularly advises employees to bypass any system of protection that requires them first to tell their side of the dispute to the defendant."

Response: The requirement to exhaust all applicable grievance-arbitration procedures reflects DOE's commitment to solving problems at the earliest possible stage. We want the employee and the contractor to share information about alleged reprisals for protected conduct as quickly as possible, so that little problems do not escalate into big ones. We hope that by dealing with the concerns sooner rather than later and by using existing grievance-arbitration procedures, the parties will resolve the problem and the employee will not need to file a complaint under part 708. That is why the new rule requires employees to use grievance-arbitration processes before filing a complaint under part 708. DOE has worked to change the culture across the Department's nationwide complex to sensitize its contractors against reprisal, and we believe this effort has been reasonably successful. We know of few recent cases involving the circumstances alluded to by the commenter.

In addition, under the National Labor Relations Act, a recognized labor organization serves as the exclusive representative for collective bargaining purposes of the employees in the recognized bargaining unit. Successful collective bargaining results in a collective bargaining agreement between the labor organization and the employer concerning the terms and conditions of employment of the employees in the bargaining unit. The collective bargaining agreement usually includes the establishment of an employee grievance arbitration procedure and describes how it will operate. A grievance arbitration procedure represents a continuation of the collective bargaining process, which the National Labor Relations Act protects. An employer, even an employer who has allegedly retaliated against a whistleblower, ignores the bargained-for grievance procedure at its peril. The National Labor Relations Board, which is responsible for the enforcement of the provisions of the National Labor Relations Act, does not permit an employer to bypass dealing with the union in such a manner. Thus, the provisions of § 708.13 requiring exhaustion of all applicable grievance arbitration procedures prior to filing a complaint with DOE under part 708 is a recognition of the importance of the collective bargaining process in maintaining effective labor-management relations at DOE's facilities.

Comment: The same commenter noted its approval of § 708.20, which encourages the parties to use mediation as an alternative dispute resolution tool, but contends that the rule should also require mandatory arbitration if mediation does not work.

Response: We decline to adopt this suggestion. If allegations of reprisal cannot be resolved informally by mediation, the OHA hearing should be the next step in the process.

Comment: The same commenter has reiterated the argument it raised twice before (in response to the 1996 Notice of Inquiry and again in response to the 1998 Notice of Proposed Rulemaking) that discovery must be mandatory, instead of being subject to the discretion of the hearing officer. Discovery is authorized in § 708.28(b) of the interim final rule, which states that the hearing officer "may order discovery at the request of a party."

Response: OHA hearing officers generally leave discovery to the parties to work out between themselves. It is usually unnecessary for the hearing officer to become involved in the process. However, to make certain the discovery process cannot be abused in the ways described in the comment, it is important for the hearing officer to have the authority to rule on contested discovery issues if they arise. We therefore decline to adopt the commenter's suggestion.

Comment: Another comment maintains that the scope of relief permitted under part 708 is "unclear" because § 708.36(a) does not specifically authorize "personal and/or institutional discipline for violating anti-retaliation provisions." This commenter maintains that without the power to punish "bureaucratic bullies" who commit acts of retaliation, the rule cannot deter harassment.

Response: As noted in the preamble to the interim final rule, 64 FR 12867, the restitutionary remedies authorized under § 708.36 are intended to correct unwarranted employment actions, by restoring employees to the position they would have occupied but for the retaliation. They are not designed to punish the persons who are found to have committed acts of retaliation. Other remedies are available in different forums for employees who are seeking more than the abatement of the

retaliatory practices and basic restitution. We therefore decline to adopt the approach suggested by the commenter.

Comment: One comment seeks clarification that the decision of an arbitrator will not be disturbed in cases in which a claim of retaliation, already the subject of arbitration, is also eligible for review under this rule. The interim final rule addresses this concern in § 708.4(c)(3), which provides that an employee may not file a complaint under these regulations if it is based on the same facts for which the employee has chosen to pursue a remedy through final and binding grievance-arbitration procedures or other state or other applicable law, except as provided by § 708.15(a).

Response: Section 708.15(a)(3) answers this question. An employee may file a complaint under part 708 after submitting the same facts to arbitration after he or she has "exhausted grievance-arbitration procedures pursuant to § 708.13, and issues related to alleged retaliation for conduct protected under § 708.5 remain." Whether retaliation issues remain is a question that depends on the facts in each case.

Comment: This comment also requests clarification of the kinds of claims precluded, in § 708.4(e), from coverage under these regulations because they deal with "terms or conditions of employment" within the meaning of the National Labor Relations Act.

Response: As noted in the preamble to the interim final rule, 64 FR 12868, "terms and conditions of employment" are subject to review under part 708 when the complaint alleges that they have been changed in retaliation for a protected disclosure. Part 708 is not otherwise intended to intrude into the domain traditionally covered by the National Labor Relations Act.

Comment: The same comment points out a perceived discrepancy between paragraphs (a) and (b) of § 708.15. Paragraph (a) provides that a complaint may not be filed if a remedy under the same facts was sought "under State or other applicable law, including final and binding grievance-arbitration procedures, unless" one of the exceptions from the binding election of remedies described in the ensuing subsections of § 708.15 is met. Paragraph (b) states, "Pursuing a remedy other than final and binding grievance-arbitration procedures does not prevent you from filing a complaint under this part." The comment asks whether remedies listed in paragraph (a), other than the grievance-arbitration procedures, i.e., remedies under "State or other applicable law," also fall within the exception under paragraph (b).

Response: The comment reads paragraph (b) to mean that as long as an employee does not pursue final and binding grievance-arbitration procedures, a remedy sought under State and other applicable law does not bar a complaint under these regulations. This is not what we intended. Rather, paragraph (b) means that seeking a remedy through an informal procedure that is non-binding and non-final, such as a contractor's internal employee concerns program, will not bar the filing of complaints under part 708. Paragraph (b) thus describes one of the limited conditions under which an employee who has first sought another remedy will still have recourse to part 708. Paragraph (c) of § 708.15 makes it clear that electing to pursue a formal legal remedy "under State or other applicable law" does bar a complaint under part 708.

Comment: Finally, the same comment perceives a discrepancy between paragraphs (e) and (f) of § 708.22, which state that an individual being interviewed has the right to representation and that representatives of parties to the complaint are not entitled to be present at interviews.

Response: We do not find a discrepancy. While representatives of parties to the complaint (e.g., their attorneys) do not have a right to be present during a witness interview, they may attend at the request of the person being interviewed. Thus, a contractor's counsel may be present, but only if requested by the subject of the interview. It is for the interview subject to choose whether he or she wishes to speak to the investigator with no one else present, or with a representative present. The comment also seeks clarification whether this section applies to the procedures of the DOE's Employee Concerns Program. The provisions of § 708.22 apply to the investigation, hearing and appeal procedures in subpart C; they do not apply to informal resolution procedures undertaken by DOE offices, which are described in subpart B.

Finally, we are correcting a typographical error in § 708.15(d), which in the interim final rule refers to § 708.17(c)(2) when it should refer to § 708.17(c)(3), and we are adding the following new section at the end of the final rule to restore an important policy statement in the original 1992 version of part 708 that was inadvertently omitted from the interim final rule:

Section 708.40 Does This Rule Impose an Affirmative Duty on DOE Contractors Not To Retaliate?

Yes. DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in sections 708.5(a)–(c).

DOE never meant to imply that contractors do not have an affirmative duty not to retaliate against employees who take protected actions. This new § 708.40 is restating what has always been a part of the rule (see old § 708.5, "Prohibition against reprisals"), and thus it does not require notice and comment.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to

determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose the rule for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Specifically, this rule deals only with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policy making discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This interim final rule does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

Issued in Washington, on February 1, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

Accordingly, the interim rule amending 10 CFR part 708 which was published at 64 FR 12862 on March 15, 1999, and amended at 64 FR 37396 on July 12, 1999, is adopted as a final rule with the following changes:

PART 708—[AMENDED]

1. The authority citation for part 708 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i) and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

2. Section 708.5(a) (introductory text) is revised to read as follows:

§ 708.5 What employee conduct is protected from retaliation by an employer?

* * * * *

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably believe reveals—

* * * * *

3. Section 708.6(a) is revised to read as follows: •

§ 708.6 What constitutes "a reasonable fear of serious injury?"

* * * * *

(a) A reasonable person, under the circumstances that confronted the employee, would conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice; or

* * * * *

4. Section 708.15(d) is revised to read as follows:

§ 708.15 What happens if an employee files a complaint under this part and also pursues a remedy under State or other law?

* * * * *

(d) If you file a complaint under State or other applicable law after filing a complaint under this part, your complaint under this regulation will be dismissed under § 708.17(c)(3).

5. A new Section 708.40 is added as follows:

§ 708.40—Does this rule impose an affirmative duty on DOE contractors not to retaliate?

Yes. DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in §§ 708.5(a)–(c).

[FR Doc. 00–2797 Filed 2–8–00; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 272

[Docket No. R–1059]

Rules of Procedure

AGENCY: Federal Open Market Committee.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Open Market Committee ("the Committee") is

amending its Rules of Procedure to revise and expand upon the means of communication available to the Secretary of the Committee and the members regarding meetings and proposed actions between meetings. The current rules provide that such communications must be in writing or by telegram. The proposed amendments would delete telegram as an accepted means of communication and would permit communications by telephone, including facsimile transmissions, or electronic means, such as by electronic mail. The option to require written communications would be retained.

DATES: February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, Board of Governors of the Federal Reserve System, (202) 452–3920. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The rules were last updated in 1979. Since that time, new and reliable, readily available methods of transmittal, such as facsimile and electronic mail, have become available while previously relied on methods, such as the telegram, are no longer used.

The proposed amendments would affect the manner in which the Secretary gives notice to members of the Committee of calls for meetings by the Chairman or requests by members for the calling of a meeting. They would also affect the means by which the Secretary transmits the relevant information and recommendations for an action to modify an outstanding Committee authorization or directive at a time when it is not feasible to call a meeting. The amendments to the rules also would permit a member to communicate with the Secretary by telephone or electronic means to request a meeting, to inform the Secretary when he or she will not be available to attend a meeting, and also to transmit his or her vote on an action proposed between meetings.

Accordingly, the Committee is amending its Rules of Procedure by changing all references to "in writing or by telegram" to "in writing, by telephone, or by electronic means" as the accepted methods of communication.

The amendments adopted by the Committee are rules of procedure. Accordingly, neither 5 U.S.C. 553(b), requiring notice and opportunity for public comment, nor the Congressional Review Act, 5 U.S.C. 801 *et seq.*, applies. In addition, the amendments are technical amendments to update the rules to reflect new methods of communication, and its prompt implementation will improve the Committee's operational efficiency without adversely affecting any other persons. Accordingly, the Committee finds good cause not to delay the effective date of the amendments pursuant to 5 U.S.C. 553(d).

List of Subjects in 12 CFR part 272

Administrative practice and procedure, Federal Open Market Committee, Organization and functions (Government agencies).

For the reasons set out in the preamble, 12 CFR part 272 is amended as set forth below:

PART 272—FEDERAL OPEN MARKET COMMITTEE—RULES OF PROCEDURE

1. The authority citation for part 272 continues to read as follows

Authority: 5 U.S.C. 552

§ 272.3 [Amended]

2. In § 272.3(a) and (b), remove the words "in writing or by telegram" wherever they appear and add in their place, the words "in writing, by telephone, or electronic means."

§ 272.4 [Amended]

3. Section 272.4(b) is amended by revising the fourth sentence to read as follows: "All communications of recommended actions and votes under this paragraph shall be in writing, by telephone, or electronic means; if the communication is made orally, the Secretary shall cause a written record to be made without delay."

By order of the Federal Open Market Committee, February 3, 2000.

Donald L. Kohn,

Secretary of the Committee.

[FR Doc. 00–2941 Filed 2–8–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–3

Amendment to Class D and Class E Airspace, Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of Tupelo Municipal—C.D. Lemons Municipal Airport to Tupelo Regional Airport and changes the title of the airspace designation for the Tupelo Regional Airport located at Tupelo, MS, from Tupelo Municipal—C.D. Lemons Municipal Airport to Tupelo Regional Airport.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The Tupelo, MS, Airport Authority has changed the name of the airport to better describe the area served. This amendment is necessary to reflect that change. The dimensions, configuration and operating requirements of the affected airspace do not change. This rule will become effective on the date specified in the **DATES** section. Since this action does not change the dimensions, configuration or operating requirements of the Class D, Class E2 or Class E5 airspace for the airport, and as a result, has no impact on users of the airspace in the vicinity of the Tupelo Regional Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Designations for class D, Class E2 and Class E5 airspace areas extending upward from 700 feet or more above the surface are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of Tupelo Municipal—C.D. Lemons Municipal Airport and changes the title of the airspace designation for the Tupelo Regional Airport located at Tupelo, MS, from Tupelo Municipal—C.D. Lemons Municipal Airport, MS, to Tupelo Regional Airport. MS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Tupelo, MS [Revised]

Tupelo Regional Airport, MS
(Lat. 34°16′05″ N, long. 88°46′12″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of Tupelo Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Area.

* * * * *

ASO MS E2 Tupelo, MS

Tupelo Regional Airport, MS
(Lat. 34°16′05″ N, long. 88°46′12″ W)

Within a 4.1-mile radius of Tupelo Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO MS E5 Tupelo, MS

Tupelo Regional Airport, MS
(Lat. 34°16′05″ N, long. 88°46′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Tupelo Regional Airport.

* * * * *

Issued in College Park, Georgia, on January 31, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–2958 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29920; Amdt. No. 1974]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with

the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency section of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 4, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 9727, 97.31, 97.33 AND 97.35 [Amended]

By amending; § 97.23 VOR,/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV, § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
01/10/00	GA	MARIETTA	COBB COUNTY—MCCOLLUM FIELD	FDC 0/0261	GPS RWY 9 ORIG... CORRECTS TL–04
01/14/00	GA	DEADHORSE	DEADHORSE	FDC 0/0387	VOR/DME OR TACAN RWY 22 AMDT 2...
01/18/00	GA	MARIETTA	COBB COUNTY—MCCOLLUM FIELD	FDC 0/0460	VOR/DME RWY 9, ORIG–C
01/19/00	AK	DEADHORSE	DEADHORSE	FDC 0/0491	LOC/DME BC RWY WW AMDT 8... THIS REPLACES FDC 0/03888
01/19/00	AK	HOMER	HOMER	FDC 0/0499	GPS RWY 3, ORIG–A... THIS REPLACES FDC 0/0247 AND 9/9697
01/19/10	OR	AURORA	AURORA STATE	FDC 0/0498	VOR/DME OR GPS–A, AMDT 2...
01/19/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0496	VOR/DME OR TACAN RWY 3 AMDT 3...
01/19/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0497	GPS RWY 3 ORIG...
01/19/00	OR	HERMISTON	HERMISTON MUNI	FDC 0/0495	VOR/DME OR GPW–A, AMDT 2...
01/19/00	PA	COATESVILLE	CHESTER COUNTY G.O. CARLSON	FDC 0/0486	GPS RWY 29, ORIG...
01/19/00	PA	COATESVILLE	CHESTER COUNTY G.O. CARLSON	FDC 0/0487	GPS RWY 11, ORIG...
01/19/00	PA	COATESVILLE	CHESTER COUNTY G.O. CARLSON	FDC 0/0488	ILS RWY 29, AMDT 6B..
01/19/00	TX	BRENHAM	BRENHAM MUNI	FDC 0/0478	GPS RWY 16, ORIG...
01/19/00	WI	EAU CLAIRE	CHIPPEWA VALLEY REGIONAL	FDC 0/0481	VOR OR GPS–A, AMDT 21...
01/19/00	WI	EAU CLAIRE	CHIPPEWA VALLEY REGIONAL	FDC 0/0483	ILS RWY 22, AMDT 6...
01/19/00	WI	EAU CLAIRE	CHIPPEWA VALLEY REGIONAL	FDC 0/0484	NDB OR GPS RWY 22, AMDT 6...
01/20/00	AK	KOTZBUE	RALPH WIEN MEMORIAL	FDC 0/0520	VOR/DME RWY 27, AMDT 1A...
01/20/00	AL	TALLAGEGA	TALLAGEGA MUNI	FDC 0/0463	VOR/DME RWY 3, AMDT 4...
01/20/00	AZ	TAYLOR	TAYLOR MUNI	FDC 0/0521	GPS RWY 21, ORIG...
01/20/00	GA	NASHVILLE	BERRIEN COUNTY	FDC 0/0527	GPS RWY 9, ORIG...
01/20/00	PA	REEDSVILLE	MIFFLIN COUNTY	FDC 0/0510	LOC RWY 5, AMDT 7A...

FDC date	State	City	Airport	FDC No.	SIAP
01/20/00	TX	HARLINGEN	VALLEY INTL	FDC 0/0511	VOR/DME OR TACAN RWY 31 ORIG... THIS REPLACES FDC 0/0131
01/21/00	CA	SAN DIEGO	SAN DIEGO INTL–LINDBERG FIELD	FDC 0/0539	LOC RWY 27 AMDT. 2B...
01/21/00	OH	YOUNGSTOWN	YOUNGSTOWN–WARREN REGIONAL.	FDC 0/0564	NBD OR GPS RWY 32, AMDT 18...
01/21/00	OR	ONTARIO	ONTARIO MUNI	FDC 0/0535	NDB OR GPS RWY 32, AMDT 4...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0568	RADAR–1 AMDT 9A...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0574	ILS RWY 11 (CAT I, II, III), AMDT 14...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0575	ILS RWY 29, AMDT 3D...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0576	VOR GR GPS–A, AMDT 15...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0577	GPS RWY 5, ORIG...
01/21/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/0578	GPS RWY 23, ORIG–A...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0541	RADAR–1, AMDT 3...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0553	NDB RWY 17L, AMDT 9...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0554	GPS RWY 17L, ORIG...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0557	GPS RWY 35R, ORIG...
01/21/00	TX	WACO	TSTC WACO	FDC 0/0558	ILS RWY 17L, AMDT 11A...
01/21/00	WY	LARAMIE	LARAMIE REGIONAL	FDC 0/0563	VOR/DME OR TACAN OR GPS RWY 30, AMDT 6...
01/21/00	WY	SHERIDAN	SHERIDAN COUNTY	FDC 0/0561	ILS/DME RWY 32, ORIG–A...
01/21/00	WY	SHERIDAN	SHERIDAN COUNTY	FDC 0/0562	VOR OR GPS RWY 14, ORIG...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0643	ILS RWY 3, AMDT 6B...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0644	NDB OR GPS–A, AMDT 19B...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0645	VOR/DME OR GPS–F, ORIG–A...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0646	VOR–H, AMDT 14A...
01/24/00	KS	MANHATTAN	MANHATTAN REGIONAL	FDC 0/0647	VOR OR GPS RWY 3, AMDT 17A...
01/24/00	MN	LITCHFIELD	LITCHFIELD MUNI	FDC 0/0658	VOR/DME RWY 13, ORIG...
01/24/00	NC	WASHINGTON	WARREN FIELD	FDC 0/0599	NDB RWY 5, ORIG–A...
01/24/00	NY	FARMINGDALE	REPUBLIC	FDC 0/0659	ILS RWY 14 AMDT 7...
01/24/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0650	VOR/DME OR TACAN RWY 34, AMDT 4...
01/24/00	OR	PENDLETON	EASTERN OREGON REGIONAL AT PENDLETON.	FDC 0/0649	VOR OR GPS RWY 7, AMDT 14...
01/24/00	PA	LATROBE	ARNOLD PALMER REGIONAL	FDC 0/0657	ILS RWY 23, AMDT 15...
01/24/00	PA	MEADVILLE	PORT MEADVILLE	FDC 0/0662	LOC RWY 25 AMDT 3A...
01/24/00	PA	MEADVILLE	PORT MEADVILLE	FDC 0/0663	GPS RWY 25 ORIG...
01/24/00	PA	MEADVILLE	PORT MEADVILLE	FDC 0/0664	VOR OR GPS RWY 7 AMDT 6...
01/24/00	TX	WACO	TSTC WACO	FDC 0/0661	NDB RWY 35R, AMDT 10...
01/26/00	KS	CHANUTE	CHANUTE MARTIN JOHNSON	FDC 0/0721	VOR/DME RNAV OR GPS RWY 36, AMDT 3B...
01/26/00	KS	CHANUTE	CHANUTE MARTIN JOHNSON	FDC 0/0722	VOR/DME OR GPSLA, AMDT 9B...
01/27/00	AK	PETERSBURG	JAMES A... JOHNSON	FDC 0/0759	LDA–DME–D, AMDT 5B...
01/27/00	AL	DECATUR	DECATUR/PRYOR FIELD REGIONAL	FDC 0/0752	VOR OR GPS RWY 18, AMDT 12...
01/27/00	NM	CLOVIS	CLOVIS MUNI	FDC 0/0742	VOR RWY 22, AMDT 4...
01/27/00	NM	CLOVIS	CLOVIS MUNI	FDC 0/0743	GPS RWY 22, ORIG...
01/28/00	AL	DECATUR	DECATUR/PRYOR FIELD REGIONAL	FDC 0/0780	VOR OR GPS RWY 36, AMDT 4...
01/28/00	FL	WILLLISTON	WILLISTON MUNI	FDC 0/0813	GPS RWY 22, ORIG...
01/28/00	KY	PIKEVILLE	PIKE COUNTY–HATCHER FIELD	FDC 0/0778	GPS RWY 8, ORIG...
01/28/00	KY	PIKEVILLE	PIKE COUNTY–HATCHER FIELD	FDC 0/0779	GPS RWY 26, ORIG...
01/28/00	PA	DOYLESTOWN	DOYLESTOWN	FDC 0/0795	VOR OR GPS RWY 23 AMDT 6...
01/28/00	PA	DOYLESTOWN	DOYLESTOWN	FDC 0/0801	NDB RWY 23 AMDT 2...
01/28/00	TN	MEMPHIS	MEMPHIS INTL	FDC 0/0775	ILS RWY 27 AMDT 2...
01/31/00	CA	SAN DIEGO	SAN DIEGO INTL–LINDBERGH FIELD	FDC 0/0849	NDB OR GPS RWY 27 AMDT 1B...
01/31/00	LA	SHREVEPORT	SHREVEPORT REGIONAL	FDC 0/0852	ILS RWY 14 (CAT I, II), AMDT 23...
01/31/00	MO	JEFFERSON CITY	JEFFERSON CITY MEMORIAL	FDC 0/0866	GPS RWY 30, ORIG...
01/31/00	MO	JEFFERSON CITY	JEFFERSON CITY MEMORIAL	FDC 0/0867	GPS RWY 12, ORIG...
01/31/00	UT	OGDEN	OGDEN–HINCKLEY	FDC 0/0869	VOR RWY 7, AMDT 5A...
02/01/00	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	FDC 0/0954	LOC BC RWY 26L AMDT 9...
02/01/00	AZ	TUCSON	TUCSON INTL	FDC 0/0951	LOC/DME BC RWY 29R AMDT 7...
02/01/00	AZ	TUCSON	TUCSON INTL	FDC 0/0952	VOR/DME OR TACON OR GPS RWY 29R AMDT2...
02/01/00	AZ	WINDOW ROCK	WINDOW ROCK	FDC 0/0909	VOR/DME OR GPS–A ORIG–A...
02/01/00	AZ	YUMA	YUMA MICAS–YUMA INTL	FDC 0/0948	GPS RWY 17 ORIG...
02/01/00	AZ	YUMA	YUMA MICAS–YUMA INTL	FDC 0/0964	VOR/DME OR TACAN–1 RWY 17 AMDT 1...
02/01/00	CA	BAKERSFIELD	MEADOWS FIELD	FDC 0/0906	GPS RWY 30R ORIG...
02/01/00	CA	BAKERSFIELD	MEADOWS FIELD	FDC 0/0910	NDB RWY 30R AMDT 6A...
02/01/00	CA	SAN FRANCISCO	SAN FRANCISCO INTL	FDC 0/0967	VOR RWY 19L AMDT 8A...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0805	ILS RWY 9L, AMDT 6A...
02/01/00	CA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0940	VOR OR GPS RWY 27L, AMDT 4...

FDC date	State	City	Airport	FDC No.	SIAP
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0941	ILS RWY 27L, AMDT 13...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0944	ILS RWY 27R, AMDT 3A...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0946	ILS RWY 26L, AMDT 17B...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0947	ILS RWY 8L (CAT II, III), AMDT 1B...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0950	ILS RWY 8R (CAT II), AMDT 58A...
02/01/00	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	FDC 0/0953	ILS RWY 9R (CAT II, III), AMDT 16...
02/01/00	NV	RENO	RENO/TAHOR INTL	FDC 0/0959	LOC/DME BC RWY 34L AMDT 1A...
02/01/00	NV	TONOPAH	TONOPAH	FDC 0/0960	GPS RWY 15 ORIG...
02/01/00	OR	EUGENE	MAHLON SWEET FIELD	FDC 0/0979	GPS RWY 34, ORIG...
02/01/00	PA	BEAVER FALLS	BEAVER COUNTY	FDC 0/0968	LOC RWY 10 AMDT 3...
02/01/00	PA	BEDFORD	BEDFORD COUNTY	FDC 0/0919	GPS RWY 32 ORIG...
02/01/00	PA	BEDFORD	BEDFORD COUNTY	FDC 0/0920	GPS RWY 14 ORIG...
02/01/00	PA	BEDFORD	BEDFORD COUNTY	FDC 0/0922	VOR OR GPS–A ORIG...
02/01/00	PA	ERIE	ERIE INTL	FDC 0/0936	ILS RWY 24 AMDT 7A...
02/01/00	PA	ERIE	ERIE INTL	FDC 0/0938	ILS RWY 6 AMDT 15A...
02/01/00	PA	HAZELTON	HAZELTON MUNI	FDC 0/0924	VOR RWY 10 AMDT 10B...
02/01/00	PA	HAZELTON	HAZELTON MUNI	FDC 0/0925	LOC RWY 28 AMDT 5B...
02/01/00	PA	HAZELTON	HAZELTON MUNI	FDC 0/0926	VOR RWY 28 AMDT 8B...
02/01/00	PA	INDIANA	INDIANA COUNTY/JIMMY STEWART FIELD.	FDC 0/0966	LOC RWY 28 ORIG...
02/01/00	PA	QUAKERTOWN	QUAKERTOWN	FDC 0/0927	NDB OR GPS RWY 29 AMDT 9...
02/01/00	PA	QUAKERTOWN	QUAKERTOWN	FDC 0/0928	VOR RWY 29 ORIG...
02/01/00	PA	SHAMOKIN	NORTHUMBERLAND COUNTY	FDC 0/0921	GPS RWY 26 ORIG...
02/01/00	PA	SHAMOKIN	NORTHUMBERLAND COUNTY	FDC 0/0923	VOR OR GPS RWY 8 AMDT 3...
02/01/00	SC	CHARLESTON	CHARLESTON AFB/INTL	FDC 0/0918	NDB RWY 15 AMDT 18...
02/01/00	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT.	FDC 0/0975	ILS RWY 8, AMDT 18F...
02/01/00	VA	CHESAPEAKE	CHESAPEAKE REGIONAL	FDC 0/0931	NDB RWY 5 AMDT 1B...
02/01/00	VA	CHESAPEAKE	CHESAPEAKE REGIONAL	FDC 0/0932	GPS RWY 5 AMDT 1...
02/01/00	VA	CHESAPEAKE	CHESAPEAKE REGIONAL	FDC 0/0934	LOC RWY 5 AMDT 2B...

[FR Doc. 00–2956 Filed 2–8–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29919; Amdt. No. 1973]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form

documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 4, 2000.

L. Nicholas Lacy,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, AND VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER, SIAPs, identified as follows:

** * * Effective February 24, 2000*

Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 8L, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV RWY 4R, Orig
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 4R, Orig, CANCELLED
Atlantic City, NJ, Atlantic City Intl, RNAV RWY 13, Orig
Greenville, NC, Pitt-Greenville, NDB RWY 20, Amdt 15
Greenville, NC, Pitt-Greenville, ILS RWY 20, Amdt 3
Sherman/Denison, TX, Grayson County, ILS RWY 17L, Orig
Charlottesville, VA, Charlottesville-Albemarle, RNAV, RWY 3, Orig
Morgantown, WV, Morgantown Muni-Walter L Bill Hart Field, RNAV RWY 18, Orig
Morgantown, WV, Morgantown Muni-Walter L Bill Hart Field, GPS RWY 18, Orig, CANCELLED

** * * Effective March 23, 2000*

Cocoa, FL, Merritt Island, NDB RWY 11, Amdt 1
Jasper, TX, Jasper County-Bell Field, NDB RWY 18, Amdt 9
Jasper, TX, Jasper County-Bell Field, GPS RWY 18, Amdt 1
Jasper, TX, Jasper County-Bell Field, GPS RWY 36, Orig

** * * Effective April 20, 2000*

Yap Island, FM, Yap International, GPS RWY 7, Amdt 1
Yap Island, FM, Yap International, GPS RWY 25, Amdt 1
Lakeland, FL, Lakeland Linder Regional, VOR OR GPS RWY 9, Amdt 3
Lakeland, FL, Lakeland Linder Regional, VOR OR GPS RWY 27, Amdt 6
Lakeland, FL, Lakeland Linder Regional, NDB OR GPS RWY 5, Amdt 3
Lakeland, FL, Lakeland Linder Regional, ILS RWY 5, Amdt 6
Westfield, MA, Barnes Muni, VOR OR TACAN RWY 2, Amdt 4
Westfield, MA, Barnes Muni, VOR RWY 20, Amdt 20
Westfield, MA, Barnes, NDB RWY 20, Amdt 15
Westfield, MA, Barnes, ILS RWY 20, Amdt 5
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 7, Amdt 1
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 25, Amdt 1
Minneapolis, MN, Flying Cloud, VOR OR GPS RWY 36, Amdt 12
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 9, Amdt 1
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 27, Amdt 1
Blacksburg, VA, Virginia Tech, NDB OR GPS–A, Amdt 3

[FR Doc. 00–2955 Filed 2–8–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–001]

Drawbridge Operation Regulations: Chelsea River, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation; withdrawal.

SUMMARY: The Commander, First Coast Guard District has withdrawn the

temporary deviation from the drawbridge operation regulations for the P.J. McArdle Bridge, mile 0.3, across the Chelsea River between Chelsea and East Boston, Massachusetts. This withdrawal was necessary because the bridge has been repaired and is operating under its normal operating regulations. The normal operating regulations require the bridge to open on signal at all times for vessel traffic.

DATES: This deviation withdrawal is effective January 18, 2000.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The bridge owner, the City of Boston, requested a temporary deviation from the operating regulations to facilitate vehicular and pedestrian traffic during electrical repairs at the P. J. McArdle Bridge, mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. The submarine electrical cable for the bridge was damaged during harbor dredging operations requiring emergency repairs to be implemented in order to restore bridge operation and facilitate marine traffic.

The Coast Guard issued a temporary deviation from the operating regulations published in the **Federal Register** (65 FR 2541; January 18, 2000) effective January 6, 2000 through March 5, 2000. The purpose of the deviation was to help facilitate vehicular traffic during the weekday rush hours.

A temporary auxiliary operating system has been installed to open the bridge and the bridge is now operating under its normal operating regulations.

The temporary deviation from the operating regulations is no longer necessary as a result of the bridge being returned to a fully operable status. The bridge owner was advised on January 18, 2000, that the deviation has been withdrawn.

Notice is given that the P.J. McArdle Bridge, mile 0.3, across the Chelsea River shall open on signal at all times for vessel traffic.

Dated: January 25, 2000.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–2897 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–003]

RIN 2115–AE47

Drawbridge Operation Regulations: Reserved Channel, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the drawbridge operation regulations governing the Summer (L) Street Bridge, mile 0.2, across the Reserved Channel in Boston, MA. The bridge has been rebuilt as a fixed bridge and the operating regulations are no longer necessary. Notice and public procedure have been omitted from this action because the bridge the regulations formerly governed no longer exists.

DATES: This rule is effective February 9, 2000.

ADDRESSES: This docket (CGD01–00–003), is available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Summer (L) Street Bridge has been removed and replaced with a fixed bridge that does not open for navigation. The operating regulations are now unnecessary and will be removed by this final rule.

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. Notice and comment are unnecessary because the bridge the regulations governed no longer exists.

The Coast Guard, for the reasons stated above, has determined that good cause exists for this rule to be effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge the regulations governed no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize

litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.617 [REMOVED]

2. Section 117.617 is removed.

Dated: January 25, 2000.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–2896 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

In Title 40 of the Code of Federal Regulations, part 52 (§§ 52.01 to 52.1018), revised as of July 1, 1999, page 533, § 52.820 is corrected by adding the effective date note following the source note as follows:

§ 52.820 Identification of plan.

* * * * *

Effective Date Note: At 64 FR 25827, May 13, 1999, § 52.820, paragraph (c) was amended by revising the entries for "567–20.2" in Chapter 20, "567–22.1, 567–22.203, and 567–22.300" in Chapter 22, "567–23.1" in Chapter 23, "567–25.1" in Chapter 25, and "567–28.1" in Chapter 28, effective July 12, 1999. For the convenience of the user, the superseded text is set forth as follows:

* * * * *

[FR Doc. 00–55502 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Docket No. NHTSA 2000–6740

RIN 2127–AH64

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: This document responds to two petitions for reconsideration of amendments we made in September 1997 to Federal Motor Vehicle Safety Standards Nos. 105 and 135 specifying requirements for brake systems on electric vehicles (EV). In response to the petition by Hydro-Quebec of Canada, we are allowing the use, under certain conditions, of a regenerative braking system (RBS) for EV testing in accordance with S7.7 of Standard No. 135. This action is taken to facilitate new technology in the braking system of an EV. We are not amending Standard Nos. 105 and 135 in response to the petition for reconsideration by Toyota Motor Sales USA Inc. Amending the Standards as requested by Toyota may degrade the safety of EVs by reducing the stringency of the thermal tests.

DATES: The final rule is effective March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Samuel Daniel, Vehicle Dynamics Division, Office of Vehicle Safety Standards, NHTSA (phone: 202–366–4921).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Petitions for Reconsideration
A. HQ's Petition for Reconsideration
1. The Petition
2. Design of HQ's EV Brake System
3. Amendments Recommended by HQ
4. Conclusions
B. Toyota's Petition for Reconsideration
1. The Petition
2. Comparison of Thermal Tests in FMVSS No. 135 and ECE R13–H
3. Amendments Recommended by Toyota
4. Conclusions
III. Additional Amendments—RBS Malfunction Indicator Lamp

I. Background

On September 5, 1997, we amended Federal Motor Vehicle Safety Standards (FMVSS) Nos. 105, Hydraulic Brake Systems, and 135, Passenger Car Brake Systems to accommodate EV brake systems. See 62 FR 46907 for full background information on this rule.

Electrically-powered vehicles have unique performance characteristics that do not permit them to be tested for braking performance in the same way that other light-duty vehicles are tested. For example, because of the limited range of EVs and the extensive travel distance specified in several Federal brake test series, we established procedures for re-charging or replacing the propulsion batteries during testing. Most EVs have a feature called a "regenerative braking system" (RBS) designed to extend the range of the vehicle by as much as 10 to 20 percent through conversion of vehicle kinetic energy into electrical energy when the vehicle is being decelerated. When operating, the RBS provides a vehicle deceleration, or braking force. The September 1997 amendments also established procedures for testing EV braking systems and EVs equipped with RBS.

We received two petitions for reconsideration of the final rule, from Hydro-Quebec of Canada (HQ), and from Toyota Motor Sales Corporation USA Inc. (Toyota).

II. Petitions for Reconsideration

A. HQ's Petition for Reconsideration

1. *The petition.* HQ commented that S7.7.3(h) of FMVSS No. 135, which specifies that an EV with an RBS be tested with the RBS inoperative during the S7.7 Stops with Engine Off tests, is inconsistent with other parts of FMVSS No. 135. Specifically, the stopping distance performance requirements of S7.5, Cold Effectiveness and S7.7, Stops with Engine Off, are identical; each test requires that the vehicle be stopped from 100 km/h (62 mph) within a distance of 70 m (230 ft.). However, the

RBS must be inoperative for S7.7 testing but operative for S7.5 testing. According to HQ, its EV brake system cannot meet the requirements of S7.7 without use of the RBS.

HQ recommends amendments to S7.7.3(h) that it believes are consistent with the intent of S7.7, and allow RBS use during the test. Amending FMVSS No. 135 as petitioned for by HQ would allow that company to meet the brake performance requirements in FMVSS No. 135 without altering its present EV brake system design. We anticipate that most EV manufacturers will certify their vehicles to FMVSS No. 135 rather than to FMVSS No. 105, because the latter will not apply to passenger cars built on and after September 1, 2000. What's more, FMVSS No. 105 will not apply to any vehicles with a GVWR less than 3,500 kg. (7,716 lb.) produced on and after September 1, 2002. HQ's petition refers specifically to FMVSS No. 135. We shall also, below, examine its relevance to compliance with brake performance requirements of FMVSS No. 105.

2. *Design of HQ's EV brake system.* According to its petition, HQ is developing a four-wheel drive power-train technology which features four in-wheel electric motors. The technology is aimed at producing sport utility vehicles and passenger cars with improved energy consumption, safety, and emissions. The RBS and the hydraulic brake system have approximately the same braking force capability. According to HQ, the braking force developed by the RBS is not dependent on the state of charge of the propulsion system batteries, unlike most production RBS. In the HQ system, when the electrical energy produced by the RBS is greater than the recharging rate of the batteries, the excess electrical energy is dissipated. As described in the petition, the HQ EV RBS will function if the propulsion batteries are disabled or if the motors are not supplied with electrical energy. According to HQ, the hydraulic braking system has a lower priority than the RBS in a series compound braking system and does not have the braking capacity to meet the S7.7 requirements of FMVSS No. 135, independent of the RBS.

3. *Amendments recommended by HQ.* HQ cannot comply with S7.7.3(h) of FMVSS No. 135, which specifies that EVs must be tested for compliance with S7.7, Stops with Engine Off, without RBS. HQ offered two versions of amendments for S7.7 that would allow RBS to be operative during this test. HQ believes that allowing the use of RBS during the test specified in S7.7.3(h) would not violate the intent of the test. According to HQ, switching off the power supply to the electric motors of its EV does not disable the RBS.

HQ had previously commented on this issue in responding to the Notice of Proposed Rulemaking (NPRM), 60 FR 49544. HQ requested in its comments on the NPRM that a definition or interpretation be provided for the term "no electromotive force" in S7.7.3(h). HQ also indicated in its comments that the HQ EV design had no failure mode that would be directly analogous to an engine stalling in an internal combustion engine (ICE) vehicle.

Engine stalling of a vehicle with an internal combustion engine (ICE) results in loss of power to vacuum or hydraulically operated brake power units, brake power assist units, and components of some antilock brake systems (ABS). The purpose of the S7.7 test in FMVSS No. 135 is to ensure that these components have sufficient reserve capacity to bring the vehicle to a complete stop, with acceptable effectiveness, in the event of engine stalling. We want to offer similar assurances for the braking performance of EVs.

In Section 7.C of the preamble for the September 5, 1997 final rule, we agreed with the comments on the NPRM from other EV manufacturers stating that the RBS is designed to convert some of the kinetic energy dissipated during braking into electrical energy to charge the propulsion batteries, thus extending the vehicle's travel range. At that time, the information available to us indicated that the RBS system would not be a major contributor to the braking capacity of EVs. We decided, in the September 1997 final rule, to require EVs to meet the stopping performance requirements of S7.7 without RBS.

According to HQ's petition, the front-wheel hydraulic brakes would need to be re-designed with increased braking capacity for its EV to meet the requirements of S7.7 without use of the RBS. According to HQ, this would limit HQ EV braking technology to small vehicles and would not be feasible for some intended applications such as installation on compact sport utility vehicles.

To deny HQ's petition would require it to conform with the apparent design practices of the rest of the industry and to redesign its brake system to meet the final rule. However, we do not believe it is in the public interest to restrict alternative technology this early in the development of RBS.

To resolve this issue, we have decided to allow use of RBS during the S7.7.3(h) test, if the RBS remains functional after the supply of electric power to the propulsion motor(s) has been switched off (EV equivalent to engine stalling in an ICE vehicle). If switching off the electric power supply to the propulsion motor(s) disables the RBS, then S7.7.3(h) must be conducted without use of the RBS.

We have decided to remove the term "electromotive force" from S7.7.3(h) since the term may cause confusion, and to replace it with the term "electrical power." Accordingly, we are amending S7.7.3(h) of FMVSS No. 135 to read: For an EV, this test is conducted with no electrical power supplied to the vehicle's propulsion motor(s), but with the RBS and brake power or power assist still operating, unless cutting off the supply of electrical power to the propulsion motor(s) also disables those systems.

We believe that this approach to a resolution of the RBS use issues raised by HQ will allow adequate flexibility in EV braking system technology. According to HQ, the technology is available to produce in-wheel motor regenerative braking with deceleration rates only slightly lower than the average deceleration rate required by FMVSS No. 135 (0.56 g) for a fully operational, cold brake system.

HQ also commented that there is an inconsistency in the final rule between S7.7, Stops with Engine Off, S7.10, Hydraulic circuit failure, and S7.11, Brake power unit or brake power assist unit inoperative (System depleted). HQ correctly noted that the maximum stopping distance specified in S7.10 and S7.11, which is 168 m, is more than twice the stopping distance specified in S7.7, whereas under the final rule, all the EV tests, S7.7, S7.10, and S7.11 were to be conducted without use of the RBS.

The procedure in S7.7 is a test of the fully functional brake system rather than a partially failed brake system, as is the case with S7.10 and S7.11. The inconsistency between the requirements of these tests has been eliminated with our decision to allow RBS use for testing under S7.7.3(h) as long as switching off the supply of electrical power to the propulsion motor(s) does not disable the RBS. The intent of the S7.7 test is to ensure that brake system will stop the vehicle with normal effectiveness when the vehicle's engine is not operating. For ICE vehicles, the test is conducted by switching off the engine ignition prior to brake application. We are amending the standard to require the analogous test procedure for EVs.

We have also decided to retain the requirement that an EV manufacturer must certify that the vehicle meets S7.10 of FMVSS No. 135, test procedures conducted to evaluate brake system

performance under partial brake failure conditions. The test conditions and procedures in S7.10.3(f) require that an EV be tested for stopping performance with the RBS disabled and all other braking systems intact. Since the S7.10 test procedures apply to vehicles with a partially disabled brake system, a longer stopping distance is specified.

In addition to the amendments noted above, we have decided that the specification in S7.11(n) that EVs be tested without RBS should be removed because the RBS test requirements for EVs in S7.10 and S7.11 are identical.

4. *Conclusions.* We believe that HQ has identified some key issues with regard to the test conditions and requirements for EVs in the final rule amending FMVSS No. 135. The HQ petition has made us more aware that the EV braking amendments adopted in 1997 need further revisions to accommodate alternative EV braking systems. According to HQ, its EV braking system prioritizes RBS over the hydraulic brake system. The two systems are essentially connected in a series arrangement in which the hydraulic braking system is activated when braking force requirements approach the maximum capacity of the RBS. The HQ EV braking system design is based on in-wheel motor technology, which may be used in the future by other EV manufacturers.

We believe that these amendments will maintain the safety benefits of FMVSS No. 135 while improving the ability of the standards to accommodate unique EV brake system design features. Vehicles in which RBS is functional when the propulsion motor(s) are not being supplied with electrical power will be able to use the RBS for testing designed to simulate loss of power to the propulsion motor(s).

No further amendments to FMVSS No. 105 appear necessary. The standard does not contain a test for the fully functional brake system with the engine off in contrast to S7.7 of FMVSS No. 135. As a result, FMVSS No. 105 does not include a test for the fully functional brake system of an EV without use of the RBS.

B. Toyota's Petition for Reconsideration

1. *The petition.* Toyota stated it is "disappointed" that the September 1997 final rule amendments did not achieve more harmonization with the European light duty vehicle braking regulation, ECE R13–H. Its petition did not make specific recommendations for amendments to FMVSS No. 135, but asked us to harmonize the thermal test procedures with those of ECE R13–H.

2. Comparison of the thermal tests in FMVSS No. 135 and ECE R13–H.

a. *Overall test specifications.* FMVSS No. 135 and ECE R13–H are essentially the same with respect to the thermal test procedures, conditions, and requirements (Heating snubs, Hot performance, Cooling stops, and Recovery performance) for ICE vehicles, but not for Evs. ECE R13–H allows use of the RBS, whether or not the RBS is part of the service brake system, for the entire thermal test. FMVSS No. 135 allows an RBS that is not part of the service brake system to be used only in the burnish procedures, and not during any other phases of brake system performance testing, including the thermal tests.

b. *Comparison of four phases in the thermal tests.* The first phase of the thermal test in ECE R13–H and S7.13 of FMVSS No. 135, Heating procedure and Heating Snubs, respectively, have identical test procedures and conditions for ICE vehicles. ECE R13–H (Annex 3 Paragraph 1.5.1, Heating procedure) provides a specific procedure for testing EVs, which is designed to accommodate vehicles with insufficient power and energy to complete the brake heating procedure (in FMVSS No. 135, S7.13, Heating Snubs) on a single charge. The ECE procedure requires that the EV be accelerated to the test speed (120 km/h or 80 percent of maximum vehicle velocity) for the first of 15 decelerations (snubs) that reduce the vehicle speed to one-half the initial speed. For each subsequent deceleration in the procedure, the speed for initiation of braking is the speed reached after 45 seconds of maximum acceleration, which may be lower than the speed specified for the first test. By contrast, FMVSS No. 135 does not provide specific EV procedures or conditions for the thermal tests.

In the second phase of the thermal test series, ECE R–13H allows for the initial speed for the Hot performance tests to be the vehicle speed for the last test run of the Heating Procedure. The Hot performance test consists of two braking tests with a 100 km/h test speed immediately following the Heating Procedure. The Hot Performance test conditions and performance requirements in ECE R13–H and No. 135 (S7.14) are nearly identical for ICE vehicles and EVs. Each vehicle must meet a performance criterion that is based on a comparison of Hot performance (No. 135, S7.14) test results with the vehicle's Cold effectiveness test results (No. 135, S7.5).

The third phase of the thermal test is referred to as the Recovery procedure in ECE R13–H (Annex 3; 1.5.3) and Brake cooling stops in FMVSS No. 135 (S7.15). These procedures, which are identical in the two regulations for all vehicles, specify four stops from 50 km/h (31.1 mph) beginning immediately after the Hot performance tests. These stops are conducted at a constant deceleration rate and are designed to simulate normal braking.

The final phase of the thermal test procedure is called Recovery performance in both ECE R13–H and FMVSS No. 135 (S7.16). This phase of the thermal tests is designed to test the performance of the brakes after heating followed by normal brake use. The performance requirements for this phase of the thermal test are based on the cold effectiveness test results for the vehicle. Two recovery tests are required beginning immediately after completion of the fourth cooling stop (in FMVSS No. 135, S7.16.3(f) and (i)). In this phase, neither ECE R13–H nor FMVSS No. 135 include specific procedures for testing EVs.

3. *Amendments recommended by Toyota.* Toyota stated that harmonization between ECE R13–H and FMVSS No. 135 had not been achieved with the September 1997 amendments to FMVSS No. 135 and also indicated that the fade test (thermal test) should be further harmonized. Specifically, ECE R13–H allows use of RBS by EVs, whether or not the RBS is part of the service brake system, during all phases of the thermal test. Toyota's petition requests that we allow RBS use during the thermal tests for vehicles in which RBS is not part of the service brake system.

The ECE R13–H Heating procedure for EVs allows a reduction of the test speed during the acceleration and braking cycles if a vehicle cannot maintain the specified test speed for the entire procedure. The regulation does not specify, however, a minimum test speed below which the EV Heating procedure tests should not be conducted. Test speeds below 40 km/h (25 mph) are typically too low to allow proper evaluation of a vehicle's brake system. Further, ECE R13–H does not provide procedures or requirements for charging or replacing the propulsion batteries for an EV that is unable to accelerate to test speed during the test procedure. Also, ECE R13–H does not provide EV test procedures for the Recovery procedure portion of the thermal tests. These tests are to be conducted immediately after the Hot performance stops. Therefore, an EV that completed the Hot performance tests at a reduced speed due to depleted batteries may not be able to accelerate to the Recovery procedure test speed of 50 km/h.

For those reasons, the thermal test procedures for EVs in ECE R13–H are not sufficiently clear or objective to be adopted in FMVSS No. 135.

Toyota indicated that EVs in which RBS is not part of the service brake system may not be able to complete the thermal tests on a single battery charge. Toyota further implied that ECE R13H's allowance of RBS use may increase the range of all EVs, including EVs in which RBS is not part of the service brake system, and enhance their ability complete the thermal tests.

We do not believe the power and energy requirements of the heating cycle, or the entire thermal test, are beyond the capability of the propulsion systems of marketable EVs. We estimate that the entire thermal tests (S7.13 Heating Snubs, S7.14 Hot performance, S7.15 Brake cooling stops, and S7.16 Recovery performance) specified in FMVSS No. 135 and ECE R13–H can be completed with a total vehicle travel distance of 30 kilometers (19 miles) or less. However, the heating procedure/snubs phase of the thermal test series is essentially a series of 15 maximum accelerations with short intervals between to allow for braking. The heating procedure/snubs phase is a severe test of the power capacity of the batteries although the energy requirements are modest. However, if a vehicle cannot complete the test protocol on a single charge, the system can be recharged pursuant to S6.11.3.

An RBS that is not part of the service brake system may be deactivated by the vehicle driver at any given time, thus eliminating the braking force provided by the RBS. NHTSA usually specifies tests in our brake performance standards that represent the most stringent conditions that would be faced by drivers on the road. Following this practice, the final rule of September 7, 1997 did not allow use of RBS that is not part of the service brake system (driver-controlled), during brake performance testing in FMVSS Nos. 135 and 105. It is also possible that the stringency of the Hot performance test and the Recovery performance test would be reduced if these EVs with driver-controlled RBS were allowed to use RBS. The service brakes would reach a lower temperature during the S7.13 Heating snubs with RBS operational than they would with the RBS disabled. The magnitude of this temperature reduction has not been quantified, but any service brake temperature reduction for the Hot performance and Recovery performance tests would tend to reduce the stringency of the tests. The improvement in brake performance resulting from RBS use is a safety benefit for EVs in which RBS is part of the service brake system, but would not necessarily be realized with RBS controlled by the driver. Toyota did not provide test data or other information with which to evaluate the effect of RBS use on the safety benefits of the thermal tests. For these reasons, we do not believe FMVSS No. 135 should be amended to allow use of RBS that is not part of the service brake system during any phase of the thermal tests.

We did not specify unique conditions, procedures, or requirements in 1997 for conducting the thermal test on EVs. However, we did provide procedures to be used if a vehicle could not complete a given test on a single propulsion system charge (FMVSS No. 135, S6.11.3.) Since FMVSS No. 135 has provisions for testing EVs with depleted propulsion battery(s), we do not believe it is necessary to allow RBS use if RBS is not part of the service brake system, during any portion of the thermal test.

4. *Conclusions.* We believe the ECE R13–H Heating procedure and the Recovery procedure tests for EVs are not sufficiently demanding or objective when compared with the corresponding FMVSS No. 135 portions of the thermal test. Some of the test speeds reached during the R13–H Heating procedure may be too low for meaningful brake performance evaluation. The entire thermal test is required to be conducted without interruption and ECE R13–H does not provide procedures for conducting the Hot performance or the Recovery procedure tests if the vehicle is not capable of accelerating to test speed. We do not want to facilitate the introduction of EVs in the United States that are not tested in accordance with a sufficiently demanding and objective thermal test for brakes.

S6.3.11 State of charge of batteries of FMVSS No. 135 allows EVs to achieve the brake test speeds required in the thermal test series (S7.13–S7.16) under any battery state-of-charge condition. No such provisions are included in ECE R13–H. Allowing RBS to be operative during the Heating procedure may not be sufficient for some vehicles to complete the thermal test series on a single charge. As we have previously stated, FMVSS No. 135 includes procedures for EVs to assure that brake test speeds can be reached if a vehicle's batteries are depleted and need to be recharged or replaced to accelerate the vehicle to test speeds under its own power.

After our review of the Toyota petition for reconsideration, ECE R13–H, and FMVSS No. 135, we have concluded that the ECE R13–H EV thermal test conditions and procedures should not be included in FMVSS Nos. 135 and 105. We have also concluded that the use of an RBS that is not part of the service brake system during the thermal test would have a negative impact on the safety benefits of these tests, since the stringency of the tests would not be representative of encountered driving conditions.

For these reasons, we are denying Toyota's petition for reconsideration. We will continue to allow RBS use, for vehicles in which an RBS is part of the service brake system, in all testing except when the use of RBS is explicitly prohibited.

III. Additional Amendments—RBS Malfunction Indicator Lamp

The September 1997 final rule required that a RBS malfunction indicator lamp be mounted in front of and in clear view of the driver, FMVSS No. 105, S5.3 Brake system indicator lamp. S5.3 is organized with a description of the activation protocol in S5.3.1 and a description of the lamp word, symbol, and color of the lamp in S5.3.5. Inadvertently, we placed the activation protocol, the word or symbol to be used for RBS, and the color of the symbol in S5.3.1. For consistency and to eliminate confusion, we are taking this opportunity to place the various aspects of the malfunction lamp description in the proper section of FMVSS No. 105. We are making a similar amendment to FMVSS No. 135 for the same reason. Also, for the reason stated previously, the references to the color "amber" in the description of the RBS malfunction indicator lamp are removed and the color "yellow" is substituted. This change will make the color of the RBS malfunction warning indicator consistent with other malfunction indicator lamps.

Effective Dates

Because FMVSS No. 105 and FMVSS No. 135 are in effect, because EVs are being manufactured to comply with these standards, because the amendments serve to clarify existing requirements, and because the amendments do not affect existing requirements for vehicles with hydraulic brake systems, it is hereby found, for good cause shown, that an effective date earlier than 180 days after issuance of the amendments is in the public interest. Accordingly, the amendments are effective March 27, 2000.

Regulatory Analysis

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

This rulemaking has not been reviewed under Executive Order 12866. NHTSA has considered the economic implications of this regulation and determined that it is not significant within the meaning of the DOT Regulatory Policies and Procedure. The rule does not affect a substantial regulatory program or involve a change in policy.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Accordingly, no Regulatory Flexibility Analysis has been prepared.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendment primarily affects manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 passenger cars manufactured per year by U.S. small businesses.

In contrast, in 1999, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions are not be significantly affected as the price of motor vehicles ought not to change as the result of this final rule.

Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The E.O. defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule, which regulates the manufacture of certain motor vehicles, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action will not have a significant effect upon the environment. There is no environmental impact associated with adaptation of test procedures to make them more appropriate for vehicles already required to comply with the Federal motor vehicle safety standards. However, to the extent that this rulemaking might facilitate the introduction of EVs which are powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electric current, and which may include a nonelectrical source of power designed to charge batteries and components thereof, the rulemaking would have a beneficial effect upon the environment and reduce fuel consumption because EVs emit no hydrocarbon emissions and do not depend directly upon fossil fuels to propel them.

Civil Justice Reform (Executive Order 12778)

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 of Title 49 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards.

That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. Section 571.105 is amended by:

a. Revising S5.3.1(g);

b. Adding S5.3.5(c)(1)(E);

c. Revising S5.3.5(c)(2).

The revised and added paragraphs read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S5.3 Brake system indicator lamp

* * *

S5.3.1 * * *

(g) For an EV with RBS that is part of the service brake system, failure of the RBS.

* * * * *

S5.3.5 * * *

(c)(1) * * * *

(E) If a separate indicator is used for the regenerative brake system, the symbol "RBS" may be used. RBS failure may also be indicated by a lamp displaying the symbol "ABS/RBS."

* * * * *

(c)(2) Except for a separate indicator lamp for an anti-lock system, a regenerative system, or an indicator for

both anti-lock and regenerative system, the letters and background of each separate indicator lamp shall be of contrasting colors, one of which is red. The letters and background of a separate lamp for an anti-lock system, a regenerative system, or a lamp displaying both an anti-lock and a regenerative system shall be of contrasting colors, one of which is yellow.

§ 571.135 [Amended]

3. Section 571.135 is amended by:
a. Revising S5.5.1(g);
b. Revising S5.5.5(d)(6);
c. Adding S5.5.5(d)(7);
d. Amending S7.7.1 to add a second sentence;
e. Revising S7.7.3(h); and
f. Removing S7.11.3(n).

The revisions, additions, and amendments read as follows:

§ 571.135 Standard No. 135; Passenger car brake systems.

* * * * *

S5.5.1. Activation. * * *

(g) For an EV with a regenerative braking system that is part of the service brake system, failure of the RBS.

* * * * *

S5.5.5. Labeling. * * *

(d) * * *

(6) If a separate indicator is provided for the condition specified in S5.5.1(g), the letters and background shall be of contrasting colors, one of which is yellow. The indicator shall be labeled with the symbol "RBS." RBS failure in a system that is part of the service brake system may also be indicated by a yellow lamp that also indicates "ABS" failure and displays the symbol "ABS/RBS."

(7) If a separate indicator is provided for any other function, the display shall include the word "Brake" and the appropriate additional labeling.

* * * * *

S7.7 * * *

S7.7.1 General information. * * * This test is also for EVs.

* * * * *

S7.7.3. * * *

(h) For an EV, this test is conducted with no electrical power supplied to the vehicle's propulsion motor(s), but with the RBS and brake power or power assist still operating, unless cutting off the supply of electrical power to the propulsion motor(s) also disables those systems.

Issued on: January 19, 2000.

Frank Seales, Jr.,

Acting Administrator.

[FR Doc. 00–2923 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE55

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Thlaspi californicum (Kneeland Prairie Penny-Cress) From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). *Thlaspi californicum* is known only from Kneeland Prairie in Humboldt County, California, where it grows in coastal prairie on serpentine outcrops. We consider the occurrences of *T. californicum* reported from Mendocino County to be *T. montanum*, a widely distributed species. Habitat loss, potential road realignment, and proposed airport expansion activities imperil the continued existence of *T. californicum*. The restricted range of this species, limited to a single population, increases the risk of extinction from naturally occurring events such as fire. This action implements the protection of the Act for this plant species.

DATES: This rule is effective on March 10, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W2605, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Jan Knight, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone number 916/414–6645; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

The single known population of *Thlaspi californicum* (Kneeland Prairie penny-cress) is found on serpentine soils at a coastal prairie in Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron) such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and Coast Ranges of California from Santa Barbara County to Humboldt County. The chief constituent of the parent rock is a variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock and are, therefore, shallow, rocky, and highly erodible. Serpentine soils, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

Sereno Watson (1882) described *Thlaspi californicum* based on a collection made by Volney Rattan from Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation in Humboldt County, California. Payson (1926) maintained it as a full species in his monograph of the genus, whereas it was referred to as *T. alpestre* var. *californicum* in Jepson's (1925) manual and *T. glaucum* ssp. *californicum* by Munz (1959). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum* and gave its range as Kneeland Prairie (including a 1952 specimen from a serpentine rockpile toward Ashfield Butte). She noted that the plant had last been collected in 1962. Rollins (1993a, 1993b) has elevated it to a full species—*Thlaspi californicum*.

Thlaspi californicum is a perennial herb in the mustard family (Brassicaceae) that grows from 9.5 to 12.5 centimeters (cm) (3 to 6 inches (in)) tall, with a basal cluster of leaves that develops at the base of the plant prior to the flowering stage. The margins of the basal leaves range from entire to toothed. The white flowers have strongly ascending pedicels (flower stalks). The fruit is a sharply pointed silicle (a short fruit typically no more than 2 to 3 times longer than wide). *Thlaspi californicum* flowers from May to June. Characteristics that separate *T. californicum* from *T. montanum* include the orientation of the pedicel, shape and notching of the fruit, and length/width ratio of the fruit. *Thlaspi montanum* has pedicels perpendicular to the stem, not strongly ascending, and the silicles are either truncate or shallowly notched, but not as acute at the apex as they are in *T. californicum* (Meyers 1991).

Rollins (1993a, 1993b) and Holmgren (1971) considered *Thlaspi californicum* to occur only at Kneeland Prairie. Smith and Wheeler (1991), in their "Flora of Mendocino County," reported two additional occurrences of *T. californicum* located on Mendocino National Forest in Mendocino County. These sites have been examined by David Isle, Mendocino National Forest botanist; Dave Imper, Environmental Specialist with SHN Consulting Engineers and Geologists; and Service staff. In addition, all of the herbarium specimens for *T. californicum* and *T. montanum* at Humboldt State University, including those collected in Mendocino County, have been examined by Imper and Service staff. The only collections considered by Imper and the Service to be *T. californicum* are from Kneeland Prairie in Humboldt County (Imper 1997; Larry Host and Kirsten Tarp, U.S. Fish and Wildlife Service (USFWS), pers. comms., 1997). Plants from Blue Banks and near the Spruce Grove campground on the Mendocino National Forest have pedicels that are perpendicular to the stem and silicles that are truncate and notched, characteristic of *T. montanum*. Additionally, the habitat and elevation are different from Kneeland Prairie. Other herbarium specimens, housed at the Humboldt State University herbarium and collected from Blue Banks and from Spruce Grove campground, are identified as *T. montanum*. McCarten and Rogers (1991) did not find any *T. californicum* in their habitat management study of rare plants and communities associated with serpentine soils on the Mendocino National Forest. The Mendocino National Forest botanist and the botanical consultant for Humboldt County concurred with this conclusion (Imper 1997; David Isle, botanist, Mendocino National Forest, pers. comm., 1997; L. Host and K. Tarp, pers. comms., 1997).

The California Natural Diversity Database (CNDDB) includes one occurrence for *Thlaspi californicum* based on Constance & Rollins' collection #2877 from 1942 (5 mi S of Hoopa Valley), housed at the Humboldt State University herbarium. The specimen had been annotated as *T. californicum* in 1976 by T. Nelson, then the herbarium's curator. A duplicate of this specimen, housed at another herbarium, had been assigned to *T. montanum* var. *montanum* by Patricia Holmgren in her 1971 biosystematic study of North American *T. montanum* and its allies. The specimen has since been examined by Imper and Service staff, who concur that it is *T. montanum* (Meyers 1991, Imper 1997).

The only known population of *Thlaspi californicum* is scattered within an area of 0.25 hectare (ha) (0.6 acre (ac)), with a total of about 11,000 individuals at Kneeland Prairie in Humboldt County (Dave Imper, Environmental Specialist, SHN Consulting Engineers and Geologists, pers. comm., 1997). The Kneeland Prairie population is bisected into two colonies by the Kneeland Prairie Airport. Both colonies occur on private land immediately adjacent to the Kneeland Prairie Airport. At Kneeland Prairie, the habitat for *T. californicum* has been reduced by approximately 60 to 70 percent within the past 33 years through development of the site for the Kneeland Prairie Airport, a county road realignment, and a helitack base (CNDDB 1997, Meyer 1991, Imper 1997). This population is currently threatened by the proposed expansion of the County airport and potential additional realignment of the adjacent road. Because of its extremely restricted range, the plant is also vulnerable to extinction from naturally occurring events such as fire (CNDDB 1997).

To assess the significance of the Kneeland Prairie population to the species, Imper (1997) inspected potentially suitable habitat for *Thlaspi californicum* in other areas near Kneeland Prairie and to the south. He found no other occurrences. Additionally, *T. californicum* has been targeted for surveys by the Bureau of Land Management (BLM) and U.S. Forest Service staff. The Six Rivers National Forest has no documented occurrences (Lisa Hoover, botanist, Six Rivers National Forest, pers. comm., 1997). A search for the species has not revealed any *T. californicum* on the serpentine at Iaqua Buttes on BLM lands (Jennifer Wheeler, botanist, BLM, Arcata Resource Area, pers. comm., 1997).

Previous Federal Action

Federal Government action on *Thlaspi californicum* began when we published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480), that identified those plants currently being considered for listing as endangered or threatened. We included *T. californicum* (then known as *T. californicum* var. *montanum*) as a category 2 candidate for Federal listing in this document. Category 2 candidates were those taxa for which data on biological vulnerability and threats in our possession indicated that listing was possibly appropriate but was not sufficient to support proposed rules. Our November 28, 1983, supplement to the NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526), included *T. californicum* as a category 2 candidate.

We revised the plant NOR again on February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In both notices, we included *Thlaspi californicum* as a category 1 candidate. Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. In our February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596), we discontinued designation of multiple categories of candidates, and only those taxa meeting the definition of former category 1 are now considered candidates for listing. *Thlaspi californicum* was included as a candidate species in the February 28, 1996, notice. We published a proposed rule on February 11, 1998, to list this species as endangered. We based the proposal on information supplied by reports to the CNDDB and observations and reports by numerous botanists.

Based on all available information including comments received in response to the proposal (see the Summary of Comments and Recommendations section of this final rule), we have now determined *Thlaspi californicum* to be endangered. The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. This final rule is a Priority 2 action. We have updated this rule to reflect any changes in information

concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the proposed rule published February 11, 1998, in the **Federal Register** (63 FR 7112) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. The public comment period closed on April 13, 1998. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments. We also sent copies of the proposed rule and the letter for request of comment to three local libraries for public display. We published a newspaper notice in the *Eureka Times-Standard* on February 25, 1998, which invited general public comment. We received no requests for a public hearing.

Six individuals or agencies submitted comments. Two commenters supported the listing, three commenters opposed the listing, and one commenter was neutral. We received supporting comments from the California Native Plant Society and BLM. We received opposing comments from the Washington Legal Foundation, Pacific Legal Foundation, and a private citizen. We organized opposing comments and other comments questioning the proposed rule into specific issues, grouped comments of a similar nature by issue, and summarized them as follows:

Issue 1: One respondent asserted that listing this species would exceed the scope of the Federal commerce power under the Commerce Clause of Article I, section 8 of the U.S. Constitution.

Response: We maintain that we do have the authority to list plants such as the one in this final rule pursuant to the Act. A recent decision in the United States Court of Appeals for the District of Columbia Circuit (*National Association of Home Builders of the U.S.* v. *Babbitt*, 130 F.3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States* v. *Lopez*, 514 U.S. 549 (1995), that regulation of species limited to one State under the Act is within Congress' commerce clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of this case (118 S. Ct. 2340 1998). Therefore, our application of the Act to *Thlaspi californicum* is constitutional.

Issue 2: One respondent wanted to know the full economic impact of the listing of this plant.

Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions," H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "Applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in this legislation," H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). Because we are specifically precluded from considering economic impacts in a final decision on a proposed listing, we have not examined such impacts and cannot respond to comments and requests concerning possible economic consequences of listing this plant.

Issue 3. One respondent stated that the Service does not have sufficient scientific data to support a determination of endangered and that the Service did not cite any studies that might question the validity of the proposal.

Response: The Act requires us to reach a decision based on the best scientific and commercial information available. We believe that botanical study of the appropriate habitats on public lands in Humboldt and nearby counties has been adequate to show that this plant is indeed extremely rare. The threats to this species discussed under the Summary of Factors Affecting the Species section of this rule are also based on the best information available and are well documented or reasonably foreseeable. By their nature, threats are descriptions of events that have not yet taken place but are likely to occur in the foreseeable future. All information received from all sources was carefully evaluated.

Criteria for what information may be considered are discussed in the Summary of Factors Affecting the Species section. We have attempted to check all substantive information for accuracy and believe that the information included in this rule is reliable.

Issue 4: One respondent asked a series of questions about the CNDDB including its function, sources of information and funding, and review process.

Response: The CNDDB is a computerized inventory with information on the location and condition of special status plants, animals, and natural communities. The CNDDB receives funding through the State of California and receives its information from a variety of sources including consultants, academia, State and Federal agency biologists, and knowledgeable lay people. The information submitted to CNDDB is reviewed by CNDDB staff for general accuracy before it is entered into the database.

Peer Review

We have routinely solicited comments from parties interested in, and knowledgeable of, species that have been proposed for listing as threatened or endangered. The July 1, 1994, Peer Review Policy (59 CFR 34270) established the formal requirement that a minimum of three independent peer reviewers be solicited to review our listing decisions. We received no responses to our requests for peer review of this listing action.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Thlaspi californicum* should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thlaspi californicum* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Thlaspi californicum* has been significantly reduced within the past 33 years. Just before 1964, an estimated 2.0 to 2.25 ha (5 to 6 ac) of habitat existed at Kneeland Prairie (Meyers 1991). Approximately 60 to 70 percent of the habitat at Kneeland Prairie has been lost since 1964, due to construction of the Kneeland Prairie Airport, realignment of the county road that runs through Kneeland Prairie, and construction of the California Department of Forestry (CDFFP) helitack base (Meyers 1991; Imper 1990; Imper, pers. comm., 1997). Additional habitat and plants are currently threatened by the proposed expansion of the Kneeland Prairie Airport and potential road realignment.

The Kneeland Prairie Airport serves principally as the backup airport for Rohnerville, Murray, Eureka Municipal, and Arcata-Eureka airports. Small single-engine and occasionally twin-engine planes use Kneeland Prairie Airport. This airfield is especially important when airports at lower elevations are fogged in, a frequent occurrence in the region (Hodges & Shutt 1993). Kneeland Prairie Airport is the only airport in the Humboldt Bay area that can be used when the bay is fogged in (Don Tuttle, Resource Specialist, Humboldt County Public Works, pers. comm., 1997). The airport is particularly important for commercial express mail and air freight carriers, as well as other couriers (Ray Beeninga, Airports Manager, Humboldt County, pers. comm., 1997).

Humboldt County contracted a study to evaluate its airports and prepare appropriate planning documents (Hodges & Shutt 1993). The study provided an assessment of Kneeland Airport's role and associated airfield requirements. The report also discussed land use compatibility issues and descriptions of capital projects and provided documentation required to upgrade Kneeland Prairie Airport from temporary to permanent inclusion in the National Plan for Integrated Airport Systems. That designation allows the county to receive Federal funding for airport modifications through the Federal Aviation Administration (FAA). Recommendations in the report included development of a complete geotechnical study of specific engineering designs to stabilize the airport and construction of a new parking area meeting FAA setback standards. The report discussed design constraints for placement of the new parking area. The location of the CDFFP helitack base limits the ability of the airport to expand the existing parking area to the northwest (Hodges & Shutt 1993). The recommended location for the new parking area is on the eastern side of the airport (Hodges & Shutt 1993), adjacent to the eastern colony of *Thlaspi californicum*. Construction of the parking facility at Kneeland Prairie Airport could adversely affect the habitat and individuals of the eastern colony due to the proximity of the plants to the potential site.

Humboldt County is also contracting an initial study to evaluate the geotechnical feasibility and cost of modifying Kneeland Prairie Airport. The study, currently in progress (D. Tuttle and D. Imper, pers. comms., 1997), is evaluating ways to solve problems involving subsidence of the runway, slope stabilization, and the safety issue that the runway is too short (Dave Dietz, Project Manager, Shutt-Moen Associates, pers. comm., 1997). Possible options include leaving the airport configuration as is (i.e., repairing current subsidence, but not extending the runway), finding a different site for a new airport, or modifying the existing airport (D. Dietz, pers. comm., 1997). Financial constraints could influence the choice among the alternatives (R. Beeninga, pers. comm., 1997). In addition, exploratory soil boring is needed to determine how to stabilize the airport and to determine the cost of extending the runway (D. Dietz, pers. comm., 1997). *Thlaspi californicum* occurs on the slopes immediately adjacent to the airfield. Exploratory boring may affect individuals located immediately adjacent to airport lands (L. Host and K. Tarp, pers. obs. 1997). Modification of the existing airport is anticipated to occur in the year 2000 (R. Beeninga, pers. comm., 1997).

The realignment of the county road adjacent to the airport could affect the western occurrence of *Thlaspi californicum* at Kneeland Prairie (D. Imper, pers. comm., 1997). The road currently runs along the southwest edge of the runway and serves areas beyond the airport. The aviation manager would not be authorized to modify the road except as necessary for slope stabilization or as the result of possible runway extension at the south end of the airport. The extension of the runway to the south is not expected to directly impact *T. californicum*. However, if the runway is extended 30 to 65 m (90 to 200 ft) (R. Beeninga, pers. comm., 1997), the runway will run through the current road. The road would then either need to go under the runway via a tunnel or be realigned. The western colony of *T. californicum* occurs just downslope of the current road. Road realignment could result in impacts to habitat and individual plants.

For safety reasons, it is likely that Humboldt County will undertake straightening and/or widening the road, either independent of or concurrent with runway expansion (L. Host, *in litt.*, 1997). The road adjacent to the airport is narrow; a blind, 90-degree curve in the road around the end of the runway limits safe speeds to only 10 to 15 miles per hour. These conditions could warrant a county decision to realign the road to achieve a safer curve radius at the end of the runway. Unless the approach to that portion of the road is moved outward beyond the plants (which would require extra length and expense), the realignment would cross the remaining serpentine habitat and eliminate about half of the remaining plants in the western colony. We anticipate that such roadwork would occur during airport construction to avoid the expense of bringing necessary machinery to the site twice.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat for this plant.

C. *Disease or predation.* We know of no threats to *Thlaspi californicum* from disease. Cattle grazing occurs throughout the prairie and the area surrounding the airport (Imper 1997). Cattle trails run through *T. californicum* habitat (Meyers 1991), but current levels of grazing do not appear to threaten the species.

D. *The inadequacy of existing regulatory mechanisms.* The California Environmental Quality Act (CEQA) (chapter 2, section 21050 *et seq.* of the California Public Resources Code) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to reduce the number or restrict the range of a rare or endangered plant or animal. Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved.

When the CDFFP constructed the Kneeland Helitack Base in 1980, a botanical assessment was required by the Humboldt County Planning Department for issuance of a conditional use permit. However, CDFFP did not include any analysis of potential impacts to *Thlaspi californicum*, although records of its California Native Plant Society 1B status and CNDDB documentation of the species' presence were available at that time (Imper 1990, Meyers 1991).

E. *Other natural or manmade factors affecting its continued existence.* *Thlaspi californicum* has never been found anywhere other than at Kneeland Prairie, where the single population occupies 0.25 ha (0.6 ac), bisected by the Kneeland Airport. This plant occupies serpentine prairie habitat that is quite restricted in extent. The combination of a single population and restricted habitat makes *T. californicum* susceptible to destruction of all or a significant portion of its range from naturally occurring events such as fire, drought, or severe erosion (Shaffer 1981, Primack 1993). Chance events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution becomes as limited as with *T. californicum* (Primack 1993). The single known locality of the species also makes the population at Kneeland Prairie particularly susceptible to extinction due to fire or an erosional event causing slope failure. Even one such event has the potential to seriously impact the sole population of the species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Airport expansion activities, potential road realignment, inadequate regulatory mechanisms, and naturally occurring events such as fire imperil the continued existence of this plant. The one known population of *Thlaspi californicum* includes approximately 11,000 individual plants scattered within a 0.25 ha (0.6 ac) area. The species is in danger of extinction throughout all of its known range. Based on this evaluation, the preferred action is to list *T. californicum* as endangered. Other alternatives to this action were considered but not preferred. A conservation agreement could not be negotiated with the private land owners (D. Imper, *in litt.*, 1994), and listing *T. californicum* as threatened would not provide adequate protection and would not be consistent with the Act. Listing *T. californicum* as endangered would provide additional protection and is consistent with the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. The regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Thlaspi californicum* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g.*, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Thlaspi californicum* would be prudent.

Due to the small number of populations, *Thlaspi californicum* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Thlaspi californicum* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if a critical habitat designation would provide any benefits, then a prudent finding is warranted. In the case of this species, designating critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat (see Available Conservation Measures section). While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for *Thlaspi californicum*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Thlaspi californicum* has allowed us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *Thlaspi californicum* without further delay. However, because we have successfully reduced, although not eliminated, the

backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for *Thlaspi californicum* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

All of the occurrences of *Thlaspi californicum* are on privately owned land. However, impacts of modifying the adjacent airport have the potential to adversely affect *T. californicum*, due to the proximity of the plants to the proposed parking apron. Funds from the FAA have been used to partially finance a planning document for the Kneeland Prairie Airport and are proposed to be used for airport modifications. Private sector funding is not anticipated to be available for Kneeland Prairie Airport (Hodges & Shutt 1993). Realignment of a county road adjacent to the airport may be required if the runway is extended. This work could be partially funded by Federal Highway Administration grants, thereby providing another avenue for section 7 consultation.

Listing *Thlaspi californicum* would provide for development of a recovery plan for this plant. Such a plan would bring together both State and Federal efforts for conservation of the plant species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish recovery. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, under section 6 of the Act, we would be able to grant funds to the State for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport such a plant in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale an endangered plant in interstate or foreign commerce, or remove and reduce an endangered plant to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9 should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Regulatory Planning and Review

This rule is not subject to review by the Office of Management and Budget under Executive Order 12866.

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references cited in this rule is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Flowering Plants, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Thlaspi californicum	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae	E	684	NA	NA
*	*	*	*	*	*	*	*

Dated: January 13, 2000.

Jamie Rappport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–2950 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–U

Proposed Rules

Federal Register
Vol. 65, No. 27
Wednesday, February 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI76

Sick Leave for Family Care Purposes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to expand the use of sick leave for family care purposes. Under the proposed regulations, an employee would be able to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. This benefit would broaden the options available for employees to meet their family responsibilities.

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX (202) 606–0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On May 24, 1999, President Clinton issued a memorandum directing the Office of Personnel Management (OPM) to expand the use of paid sick leave for family care purposes. Consistent with the President's goal of eliminating "a significant barrier to caring for a family member with a serious health condition," we are issuing proposed regulations that would permit full-time employees to use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition.

Current regulations permit Federal employees to use a maximum of 13 days of sick leave each leave year to care for a family member who is incapacitated or to make arrangements for or attend the funeral of a family member. Federal employees and agencies have expressed full support for the use of sick leave for family care or bereavement purposes. Federal agencies believe the program fosters goodwill and creates a more compassionate, family-friendly work environment, resulting in a more productive workforce that enables the Government to accomplish its mission. However, because of the 13-day limitation, many employees face extended periods of leave without pay when caring for a family member after they have exhausted their entitlement to use annual and sick leave. In a survey for our 1997 report to Congress on the use of sick leave for family care purposes, OPM found there was concern that the 13-day limitation was inadequate for employees affected by long-term, catastrophic illnesses of family members.

Under the proposed regulations, mothers and fathers caring for their children, grandparents who are raising their grandchildren, and employees caring for other family members, including mothers- and fathers-in-law, would all greatly benefit from the more generous leave entitlement. The new benefit also would address the dilemmas faced by parents of children with special needs when trying to balance their work and family responsibilities. Allowing an employee to use up to 12 weeks of his or her own accrued sick leave each year would reduce the need for extended periods of leave without pay, which has a negative effect on an employee's pay and benefits, such as within-grade increases and health benefits. As a result, employees would be better able to deal with the financial and personal strain caused by a family member's medical needs.

Under the proposed regulations, the term "serious health condition" would have the same meaning as found in OPM's regulations at 5 CFR 630.1202 for administering the Family and Medical Leave Act of 1993 (FMLA). That definition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term "family member" would have the same meaning as found in OPM's regulations at 5 CFR 630.201, which includes the following relatives of the employee: (a) Spouse and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Part-Time and Uncommon Tours

Under the proposed regulations, the entitlement to use sick leave to care for a family member with a serious health condition would be prorated for part-time employees or employees with an uncommon tour of duty. For those employees, the amount of sick leave available to care for a family member with a serious health condition would be equal to 12 times the average number of hours in the employee's regularly scheduled administrative workweek.

Requesting and Approving Sick Leave for Family Care Purposes

Employees who wish to use more than 13 days of sick leave in a leave year to care for a family member with a serious health condition would be subject to the requirements in 5 CFR 630.402 for requesting sick leave. To the extent possible, employees would be required to request advance approval for sick leave to provide care for a family member with a serious health condition. In addition, employees would be subject to the requirements in 5 CFR 630.403 for providing administratively acceptable evidence or medical certification of a serious health condition. Most agencies have established procedures for requesting and approving sick leave, and employees would continue to follow these procedures when requesting sick leave for family care purposes.

In addition, we are proposing to revise 5 CFR 630.403 to permit agencies to establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide the required evidence or medical certification within the specified time period would not be entitled to sick leave.

Relationship to Other Family-Friendly Leave Programs

An employee would continue to be entitled to a total of up to 12 workweeks of unpaid leave under the FMLA for certain family and medical needs. Therefore, an employee would be permitted to substitute up to12 weeks of sick leave for unpaid leave under the FMLA if he or she is caring for a spouse, son or daughter, or parent with a serious health condition.

Employees would continue to be entitled to use a total of up to 13 days of sick leave each leave year to (1) provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or (2) make arrangements necessitated by the death of a family member or attend the funeral of a family member, subject to the requirements and limitations in 5 CFR 630.401. The proposed regulations simply extend the period during which sick leave may be used to care for a family member with a serious health condition. Under the proposed regulations, however, any portion of the 13 days of sick leave previously used in a leave year for general family care purposes would be subtracted from the new entitlement to use a total of up to 12 weeks of sick leave to care for a family member with a serious health condition.

Example 1: An employee uses 13 days (104 hours) of sick leave for family care purposes early in the leave year (leave year 1). On April 1, the employee requests additional sick leave to care for a mother-in-law with a serious health condition. Since the employee has already used the 13-day (104-hour) entitlement to sick leave to care for a family member under § 630.401(a)(3)(i), she may use only 9 weeks and 2 days (376 hours) of sick leave in the same leave year to care for a family member with a serious health condition. As of the beginning of the next leave year (leave year 2), the employee has a new entitlement to use up to 13 days of sick leave for family care or bereavement purposes and a new entitlement to use up to 480 hours of sick leave to care for a family member with a serious health condition.

Example 2: An employee used 3 days (24 hours) of sick leave to attend the funeral of her grandmother in January. The employee then requested an additional 4 weeks (160 hours) of sick leave to care for her grandfather, who had pneumonia, a serious health condition. The employee has used 184 hours of sick leave for all family care purposes. She has a remaining entitlement to 10 days (80 hours) of sick leave for general family care purposes or up to 7 weeks and 2 days (296 hours) of sick leave to care for a family member with a serious health condition.

An employee would continue to be responsible for notifying the employing agency as to whether he or she is requesting sick leave for family care or bereavement purposes or to care for a family member with a serious health condition. The employing agency would continue to be responsible for maintaining a record of each employee's use of sick leave for all family care or bereavement purposes, as required by 5 CFR 630.408.

Employees who exhaust their available sick and annual leave as a result of caring for a family member may request donated annual leave under the voluntary leave transfer or leave bank programs. However, an employee's expanded entitlement to use 12 weeks of sick leave under the proposed regulations would have to be considered in determining his or her eligibility to become a leave recipient under these programs. Under the proposed regulations, if an employee wishes to become a leave recipient, and the medical emergency involves a family member, the employee would have to use all sick leave available to him or her under 5 CFR 630.401 for family care purposes before qualifying for donated annual leave.

Minimum Sick Leave Balance

A full-time employee is entitled to use up to 5 days (40 hours) of his or her accrued or accumulated sick leave (or in the case of a part-time employee or an employee on an uncommon tour of duty, the number of days in his or her regularly scheduled workweek) for family care or bereavement purposes without regard to his or her sick leave balance. To use more than 5 days (40 hours) of sick leave to care for a family member, up to a maximum of 13 days (104 hours), an employee must maintain a sick leave balance of at least 10 days (80 hours) at all times. Under the proposed regulations, if an employee uses sick leave to care for a family member with a serious health condition, these same limitations would apply. In summary, an employee may not use more than 5 days (40 hours) of sick leave for any family-care purpose, unless he or she maintains a sick leave balance of at least 10 days (80 hours) (or, in the case of a part-time employee or an employee with an uncommon tour of duty, two times the number of days in his or her regularly scheduled workweek). Although an agency may advance up to 40 hours of sick leave for family care or bereavement purposes, an agency may not advance sick leave to fulfill the 80-hour requirement. In addition, an agency may not advance sick leave to allow an employee who has a minimum of 80 hours of sick leave in his or her account to use additional sick leave for family care purposes.

Since the President directed OPM to issue proposed regulations, we have received numerous inquiries from employees, agency officials, and other interested parties who are experiencing a family medical emergency and need additional paid time off. To accommodate the pressing need for this benefit, we are shortening the normal 60-day public comment period to 45 days in order to expedite final action on this proposal.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR,

1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201(b), a new definition of *serious health condition* is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Serious health condition has the meaning given that term in § 630.1202.

* * * * *

Subpart D—Sick Leave

3. In § 630.401, the introduction to paragraph (a) and paragraphs (a)(3) and (b) are revised; paragraphs (c) through (e) are redesignated as paragraphs (d) through (f), respectively; a new paragraph (c) is added; and in newly designated paragraph (e), "(c)" is removed and "(d)" is added in its place wherever it appears to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee—

* * * * *

(3)(i) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition.

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) during a leave year, subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (a)(3)(ii) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, that amount must be subtracted from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition.

* * * * *

4. Section 630.403 is revised to read as follows:

§ 630.403 Supporting Evidence.

(a) An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as evidence administratively acceptable. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide required administratively acceptable evidence or medical certification within his or her agency's specified time period is not entitled to sick leave.

§ 630.405 [Amended.]

5. In paragraph (a), remove "(e)" and add in its place "(f)," and in paragraph (b), remove the last sentence.

* * * * *

[FR Doc. 00–2932 Filed 2–4–00; 4:26 pm]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–969–2 PR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services Performed Regarding Reserve Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on increasing, by approximately 15 percent, the compensation rate for handlers' services performed in connection with reserve raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). These changes are necessary to reflect current industry costs.

DATES: Comments must be received by April 10, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on increasing the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. This rule would increase this rate from $40 to $46 per ton to reflect current industry costs. This action was unanimously recommended by the Committee on November 10, 1999. Additional payment for reserve raisins held beyond the crop year of acquisition would be increased from $2.00 to $2.30 per ton for the first 3 months, and from $1.03 to $1.18 per ton per month for the remaining 9 months. This action was unanimously recommended by the Committee on January 13, 2000.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Proceeds generated from sales of reserve raisins are also used to support handler sales to export markets, which are generally lower-priced than the domestic market. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the Committee, in accordance with a schedule of payments established by the Committee and approved by the Secretary. Such compensation is paid by the Committee to handlers as soon as practicable after the end of the second quarter of the crop year (January) and quarterly thereafter. The crop year runs from August 1 through July 31. The order also requires that the Committee review this rate annually.

Section 989.401(a) of the order's rules and regulations specifies that handlers be compensated at a rate of $40 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year. The Committee conducted a survey among handlers to obtain data on the current costs of receiving, storing, fumigating, and handling raisins. The survey showed that such costs ranged from about $40 to $71.50 per ton. After analyzing the survey, the Committee recommended that the compensation rate provided for such services performed in connection with reserve raisins be increased from $40 to $46 per ton to reflect current industry costs. Paragraph (a)(1) of § 989.401 is proposed to be modified accordingly.

In addition, the Committee recommended that payment to handlers for reserve raisins held beyond the end of a crop year be increased by the same percentage (15 percent). Additional payment for reserve raisins held beyond the crop year of acquisition would be increased from $2.00 to $2.30 per ton for the first 3 months (August through October), and from $1.03 to $1.18 per ton per month for the remaining 9 months (November through July). Appropriate modifications are proposed to paragraph (b) of § 989.401.

This rule would also make a minor correction to paragraph (b) of § 989.401. That paragraph, which, as indicated above, specifies the additional payment for reserve raisins held beyond the crop year of acquisition, states such additional payment for months reflecting a crop year from September 1 through August 31. However, the order was amended in 1976 to change the crop year from August 1 through July 31. Thus, the first 3 months of the crop year should be August through October, rather than September through November, and the remaining 9 months of the crop year would be the period November through July. Accordingly, appropriate modifications are proposed to paragraph (b) of § 989.401.

Finally, this rule would make a conforming change to paragraph (c) of § 989.401 regarding rental payment on boxes and bins containing raisins held beyond the crop year of acquisition. Persons who furnish boxes or bins used for storing reserve raisins are compensated for the use of such containers. Section 989.401(c) currently reflects a crop year from September 1 through August 31 and should be modified to reflect the current August 1 through July 31 crop year. Appropriate changes are proposed to § 989.401(c).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have estimated sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Pursuant to § 989.66(f) of the order, this rule would increase the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. This rule would revise paragraphs (a)(1) and (b) of § 989.401, respectively, to increase the handlers' compensation for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year from $40 to $46 per ton, and increase such additional payment for reserve raisins held beyond the crop year of acquisition from $2.00 to $2.30 per ton for the first 3 months (August through October), and from $1.03 to $1.18 per ton per month for the remaining 9 months (November through July). These changes are necessary to reflect current industry costs. Conforming changes are also proposed to paragraphs (b) and (c) of § 989.401 to reflect the current August 1 through July 31 crop year.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the Committee. Net proceeds from sales of such reserve raisins are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins. Currently, handlers are compensated at a rate of $40 per ton for reserve raisins acquired during a particular crop year. For example, for the 1997–98 crop year, about 130,000 tons of raisins were held in reserve, and handlers were compensated a total of about $5.7 million from the 1997–98 reserve pool. A Committee survey showed that handler costs regarding reserve raisins has increased in recent years and that handlers have been absorbing these costs. Increasing the $40 per ton fee to $46 per ton for reserve raisins acquired during a particular crop year would more appropriately reflect the costs incurred by handlers and thereby reduce net proceeds to equity holders. There should be no disproportionate impact of this proposed action on small entities. Costs are allocated to equity holders based on their proportionate share of raisins in the reserve pool. In addition, this cost is incorporated into the price of reserve raisins that are sold to handlers for free use. Thus, the reserve pool is ultimately reimbursed for some of this cost.

Other alternatives to the proposed rates were considered by the raisin industry prior to the Committee's recommendations. The Committee's Administrative Issues Subcommittee met on November 9, 1999, and considered rates of $44 and $50 per ton for services performed in connection with reserve raisins acquired during a crop year. Ultimately, the Committee concluded that the proposed $46 per ton rate for services performed during the year of acquisition, and comparable rates for the succeeding crop year, were appropriate.

This proposed rule would increase the compensation rate for handlers' services regarding reserve tonnage raisins. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's Administrative Issues Subcommittee meeting on November 9, 1999, and the Committee meetings on November 10, 1999, and on January 13, 2000, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.401, paragraphs (a)(1), (b), and (c) are revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition.*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $46 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Committee during all or any part of the same crop year.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between August 1 and October 31, and at the rate of $1.18 per ton per month, or any part thereof, between November 1 and July 31. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing

reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds and *bin* means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

* * * * *

Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2980 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. FHWA–99–6232]

RIN 2125–AE68

Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulation prescribing policies, procedures, and reimbursement provisions for the adjustment and relocation of existing utility facilities, and for the accommodation of new utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. These amendments will bring the FHWA's utilities regulation into conformance with recent laws, regulations, or guidance, and will provide State transportation departments (STDs) clarification and more flexibility in implementing it.

DATES: Comments in response to this NPRM must be received on or before April 10, 2000.

ADDRESSES: Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets Room, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, (202) 366–4104, Office of Program Administration, HIPA–20, or Mr. Reid Alsop, (202) 366–0791, Office of the Chief Counsel, HCC–31. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

Present FHWA regulations regarding utility relocation and accommodation matters have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The present regulations are found in 23 CFR part 645. Subpart A of this part pertains to utility relocations, adjustments, and reimbursement. Subpart B pertains to the accommodation of utilities.

The utility regulations were revised on May 15, 1985, when a final rule was published in the **Federal Register** at 50 FR 20344. Three significant changes have occurred since then, on February 2 and July 1, 1988, when amendments to the regulation were published at 53 FR 2829 and 53 FR 24932; and on July 5, 1995, when a final rule was published at 60 FR 34846. The February 2, 1988, amendment provided that each State must decide, as part of its utility relocation plan, whether to allow longitudinal utility installations within the access control limits of freeways and if allowed under what circumstances. The July 1, 1988, amendment clarified that costs incurred by highway agencies in implementing projects solely for safety corrective measures to reduce the hazards of utilities to highway users are eligible for Federal-aid participation. The July 5, 1995, amendment raised the upper limit for FHWA forgoing preaward review and/or approval of consultant contracts for preliminary engineering from $10,000 to $25,000; increased the ceiling for lump sum agreements from $25,000 to $100,000; clarified the methodology to be used to compute indirect or overhead rates; required utilities to submit final billings within 180 calendar days following completion of the work; brought the definition of "clear zone" into conformance with the American Association of State Highway and Transportation Officials (AASHTO) "Roadside Design Guide"; and conformed the utilities regulations to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914.

The proposed amendments would change the regulation as follows:

—Eliminate the $100,000 upper limit for lump-sum agreements.
—Allow reimbursement for labor surcharge, material, and supply costs to be based upon unit costs, as well as average costs, in lieu of actual costs.
—Apply the utility regulations to facilities similar to utilities, *i.e.*, facilities, such as wireless telecommunications towers, that are included in the definition of utility and are considered to be utilities by many, but not all, of the States.
—Suggest the Federal share of net income from revenues obtained by STDs for utility use of highway rights-of-way on Federal-aid highway projects be used by the State for projects eligible under title 23, U.S.C.
—Clarify the intent of the regulations that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways.
—Set forth as the most important consideration in determining whether

a proposed installation is a utility or not is how the STD views it under its own State laws and/or regulations.

—Suggest when a STD intends to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project.

—Suggest when acquiring highway right-of-way, the STD, in consultation with the utilities, should consider acquiring sufficient right-of-way to accommodate utility needs.

—Indicate when a STD acquires and retains right-of-way on a Federal-aid highway project for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

—Eliminate a confusing provision to clarify the intent that the utility regulations are not applicable to longitudinal installations of private lines.

—Delete the provision encouraging STDs to adopt the alternate procedure for utilities.

—Incorporate an amendment conforming the utilities regulations to the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107.

The FHWA proposes to amend these regulations in the following manner and for the reasons indicated below.

Section-by-Section Analysis

Section 645.101 Purpose

The term "utility facilities" would be changed to "utilities." The term "utilities" has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. Hence, the term "utility facilities," as presently used to describe the purpose of subpart A, though technically correct, is not all inclusive as it fails to cover "lines" and "systems." The term "utilities" is a more common term and better covers all possible adjustment or relocation activities.

Section 645.105 Definitions

Paragraph designations would be removed from all definitions and all definitions would be placed in alphabetical order in order to conform subpart A to the existing format in subpart B. Also, the definitions "State highway agency" and "Highway agency (HA)" would be changed to "State transportation department" and "Transportation department," respectively, to conform the utilities regulation to section 1212(a) of the TEA–21. The definition "adjustment" would be added, and the definition "relocation" would be revised. Adjustment and relocation are two separate activities in subpart A, but both are included under the definition for relocation. This amendment would merely separate the one, all-inclusive definition, into two separate definitions without changing the intent or meaning of either activity.

Section 645.113 Agreements and Authorizations

Paragraph (f) would be amended to eliminate the $100,000 ceiling for using the lump sum payment arrangement for reimbursement for utility adjustments on Federal-aid and direct Federal highway projects. The proposed amendment would provide the States greater flexibility in utilizing the lump sum payment arrangement. The purpose of allowing lump sum agreements, in lieu of agreements based on an accounting of actual costs, is to reduce the administrative burden associated with utility relocation projects. Under the lump sum process, cost accounting is easier, project billings are simplified, and a final audit of detailed cost records is not required. The FHWA believes the small degree of accuracy that might be realized if more detailed cost accounting methods were followed does not justify the extra cost involved in carrying out detailed audits. This revision would increase the number of utility relocations potentially eligible for lump sum payment.

Section 645.117 Cost Development and Reimbursement

Paragraphs (c)(1) and (e)(4) would be revised to: Allow reimbursement for labor surcharge, material, and supply costs based upon unit costs, as well as average costs, in lieu of actual costs; indicate average rates or unit costs may be adjusted as deemed appropriate by the STD or the FHWA; and indicate approval of the methodology to be used and periodic STD reviews may provide all the oversight necessary to satisfy the intent of the regulations. The proposed amendments would provide the States greater flexibility in utilizing the lump sum payment arrangement. They would also decrease unnecessary paperwork and encourage innovation.

Paragraph (i)(2) would be revised to clarify the intent of the regulation requiring utilities to submit final billings within 180 calendar days following completion of work. The intent was to authorize STDs to require utilities to submit final bills for utility relocation work within one year of completion of the work, and if final bills were not submitted within that time frame, to consider previous payments to the utility to be final. This regulation was intended to be a tool to help STDs close out projects in a timely manner; however, the intent was also to allow STDs to make exceptions. If they desire, STDs may pay bills received from utilities more than one year following completion of the work and be reimbursed with Federal-aid highway funds for eligible items.

Section 645.119 Alternate Procedure

The first sentence in paragraph (c) would be amended to delete the provision encouraging STDs to adopt the alternate procedure for utilities, but would continue to indicate that if they want to adopt the alternate procedure, they may do so by filing a formal application to the FHWA for approval. The alternate procedure was a forerunner of the certification acceptance process and was similar in many ways. But, with passage of the TEA–21, the States were given the option of exempting the FHWA from oversight on many Federal-aid projects under the provisions of 23 U.S.C. 106(b). As a result, there became limited interest in using the alternate procedure for utilities. The alternate procedure will remain available for STDs that want to use it, but the FHWA will no longer encourage STDs to use it.

Section 645.201 Purpose

The term "utility facilities" would be changed to "utilities." The term "utilities" has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. The term "utility facilities," as presently used to describe the purpose of subpart B, though technically correct, is not all inclusive as it fails to cover "lines" and "systems." The term "utilities" better covers all possible accommodation activities.

Section 645.203 Applicability

Paragraph (e) would be added to apply the utility regulations to facilities similar to utilities, *i.e.*, facilities, such as wireless telecommunications towers, that are considered by the FHWA to be included in the definition of "utility" in this subpart and are considered to be utilities by many, but not all, of the States. This proposed amendment would only effect the FHWA

accommodation procedures. Presently, utilities may be accommodated on highway right-of-way under provisions in this subpart; whereas, non-utilities may also be accommodated on highway right-of-way, but under provisions in another regulation, 23 CFR 1.23(c). The FHWA definition of "utilities" and many States' definitions of "utilities" cover wireless telecommunications towers; whereas, some States' definitions of "utilities" do not. The proposed amendment would allow wireless telecommunications towers, and other similar facilities, whether considered by an individual State to be "utilities" or not, to be accommodated under the provisions contained in this part of the utility regulations. This will provide uniformity by avoiding wireless telecommunications towers, and similar facilities, from being accommodated under one FHWA procedure in one State and a different FHWA procedure in another State.

Section 645.205 Policy

Paragraph (e) is added to indicate States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects, but suggests that if they do the proceeds should be used for title 23, U.S.C., projects. It has been the FHWA's policy for many years to allow States to charge fees for utility use if they desire, but to allow them to use the proceeds as they see fit. The FHWA has informally encouraged the States to use such proceeds for transportation purposes. This proposed amendment would formally establish the FHWA's desire for proceeds from fees charged for utility use of highway right-of way to be used for title 23, U.S.C., purposes.

Section 645.207 Definitions

The definitions "State highway agency" and "Highway agency" would be changed to "State transportation department" and "transportation department," respectively, to conform the utilities regulation to section 1212(a) of the TEA–21.

The definition "utility facility" would be changed to "utility," and in the definition "private lines" the term "utility facility" would be changed to "utility." As discussed previously, the term "utilities" has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. Hence, the term "utility facilities," as presently used to describe the purpose of subpart B, though technically correct, is not all inclusive as it fails to cover "lines" and "systems." The term "utilities" better covers all possible accommodation activities.

The definition of "clear zone" is amended to remove the date of the referenced publication and to indicate that the most current edition should be used, and to remove the reference to FHWA Regional Offices. The purpose for deleting the date of the publication and making reference to "the most current edition" would be to ensure the most recent information is used. Reference to FHWA Regional Offices would be deleted because in a recent reorganization all FHWA Regional Offices were abolished. All utility-related responsibilities of the FHWA Regional Offices have been delegated to FHWA Division Offices.

Section 645.209 General Requirements

Paragraph (d) would be amended to clarify the intent that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways. The FHWA's concern in this regard is limited to streets and highways that have been developed and constructed using Federal-aid highway funds. Even though STDs may only be required to regulate utility use on Federal-aid highway projects, as a practical matter it is difficult for them to adopt one policy for Federal-aid funded projects versus a different policy for adjoining State funded projects. As a result, STDs normally adopt a utility accommodation policy that covers highway routes under their jurisdiction as a group. Even so, the distinction in this regard between Federal-aid projects and Federal-aid highways may be helpful.

Paragraph (j) would be amended to remove the date of the referenced publication and indicate the most current edition should be used, and to remove the reference to FHWA Regional Offices. The reasons for doing this are the same as discussed in § 645.207 above.

Paragraph (m) would be added to clarify existing policy that the most important consideration in determining whether a proposed installation is a "utility" or not is how the STD views it under its own State laws and/or regulations, and a lesser, but nonetheless important consideration in making this determination is the definition of a "utility" in the definitions section of subpart B. This determination is important because utilities are handled under this regulation; whereas, private lines and other non-utilities are handled under other regulations, except for wireless telecommunications towers and other similar facilities as discussed above in § 645.203. As in many utility-related matters, the FHWA policy is broad enough in this instance to cover most situations, but nonetheless, in States where the State policy is more restrictive, and sometimes more liberal, than the FHWA policy, the FHWA will normally look upon a particular situation in the same manner the State does.

Paragraph (n) would be added to encourage STDs, when they intend to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, to consider such potential use in determining the extent and adequacy of the right-of-way needed for the project. Paragraph (n) would also encourage STDs, in consultation with the utilities, to consider acquiring the right-of-way needed to accommodate the utilities, with the understanding they may keep the acquired right-of-way, or may sell, lease, or somehow convey it to the utilities. This will minimize inconvenience to property owners. Right-of-way acquired for utility purposes and retained by STDs may be eligible for Federal-aid reimbursement.

The FHWA's authority for allowing utility use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects is contained in 23 CFR 1.23. Under the provisions of this section, the State must acquire right-of-way which is adequate not only for the construction of the highway facility, but also for its operation and maintenance. The right-of-way must be devoted exclusively to public highway purposes.

Section 1.23(c) permits certain non-highway uses of the right-of-way which are found to be in the public interest, provided such uses do not impair the highway or interfere with the free and safe flow of traffic thereon. Such a public interest finding has been made for utility facilities. A direct relationship exists between § 1.23 requirements concerning the adequacy of right-of-way to be acquired and the provisions for permitted non-highway uses. Proposed non-highway uses cannot be of a nature which would negate the general requirement regarding the adequacy of the right-of-way. Therefore, it is implicit in the public interest finding for utility use of the right-of-way of Federal-aid or direct Federal highway projects that there must be adequate space available to locate the utility facilities in a manner which does not interfere with the safe and efficient operations of the highway. Consequently, when a State intends to permit utilities to use and occupy

public highway right-of-way, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. Failure to recognize the impact of such use, as well as other uses on private property located adjacent to the public highway right-of-way, may affect the safe and efficient operations of the highway and may result in the acquisition of right-of-way which is inadequate to meet the needs of the highway and the traveling public.

For example, little would be gained by acquiring restricted right-of-way and denying its use to certain utilities if these utilities could locate their facilities on private property adjacent to the restricted right-of-way with substantially the same impact on the highway and its user. The issue of adequate accommodation of utilities is a legitimate consideration in the development of highway projects. This is particularly true of land service facilities where the highway user and utility consumer tend to be one and the same.

A corresponding issue then becomes who pays for right-of-way acquired to accommodate utilities, the STD or the utilities. This is a matter to be determined by the affected parties. No matter who ends up paying for the right-of-way, it is normally desirable for the STD to approach a property owner for the purpose of acquiring all the right-of-way needed for both the highway and the utilities. The STD may later sell, lease, or somehow convey a portion of the right-of-way to the utilities for their use. At any rate, the property owner is only inconvenienced once. Should the STD decide to acquire right-of-way for utilities and retain possession, Federal-aid highway funds may be eligible to participate in the acquisition costs of the needed right-of-way. Utility use of highway right-of-way is not considered to be a use for a highway purpose. Therefore, Federal-aid highway funds are, theoretically, not eligible to participate in right-of-way acquired solely for the purpose of accommodating utility facilities in excess of that normally acquired in accordance with standard criteria and procedures. Even so, when a State or locality routinely dedicates or permits a portion of the road and street right-of-way for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

Section 645.211 State Highway Agency Accommodation Policies

The section heading would be changed to reflect the statutory name change from "State highway agency" to "State transportation department." The introductory paragraph would be amended to remove the dates of the referenced publications and indicate that the most current editions should be used, and to remove the reference to FHWA Regional Offices. This is for the same reasons as discussed in § 645.207 above.

Section 645.215 Approvals

Paragraph (d) would be amended to remove all references to the approval of longitudinal installations of private lines. In § 645.203, it is indicated that private lines installed longitudinally on highway right-of-way are to be approved under the provisions of § 1.23(c) which cover the use of highway right-of-way, including air space, for non-highway purposes. This provision in § 645.203 was intended to exclude longitudinal private line installations from coverage under the utility regulations. It was not originally intended, however, for longitudinal private lines to be handled under the FHWA's air space provisions, but since that time, air space has come to be defined to include everything over, under, and on the right-of-way, and it has become common practice to include longitudinal private lines in this category. Not knowing that this would happen when § 645.203 was written, another reference was made to longitudinal private lines in § 645.215(d)(2) relative to approvals. This reference is no longer applicable and conflicts with existing requirements for handling air space items; therefore, it would be removed from the utility regulations.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address or via the electronic addresses provided above. The FHWA will file comments received in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866, nor would it be a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The proposed amendments would simply make minor changes to update the utilities regulations to conform to recent laws, regulations, or guidance, and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the proposed amendments would only simplify or clarify procedures presently being used by STDs and utilities. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This is because the proposed amendments would only clarify or simplify procedures used by STDs and utilities in accordance with existing laws, regulations, or guidance.

National Environmental Policy Act

The FHWA has also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and anticipates this action would not have any effect on the quality of the human and natural environment.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient Federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This proposed rule would merely reduce the level of Federal approval actions by placing greater responsibility at the State or local level. Throughout the proposed regulation

there is an effort to keep administrative burdens to a minimum.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must determine whether requirements contained in proposed rulemakings are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed action would not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no burden on the States and private entities because it merely provides clarification and more flexibility to STDs in implementing the FHWA's utilities regulations contained in 23 CFR 645. As a result, no additional information collection burdens will be imposed on the States, the local governments, or the private sector.

At present, the FHWA sponsors four information collections that are related to public utilities requirements. Each of these collections is currently cleared by the Office of Management and Budget (OMB). These FHWA collections are entitled as follows: (1) Develop and Submit Utility Accommodation Policies, OMB Control No. 2125–0514; (2) Eligibility Statement for Utility Adjustments, OMB Control No. 2125–0515; (3) Developing and Recording Costs for Utility Adjustments, OMB Control No. 2125–0519; and (4) Utility Use and Occupancy Agreements, OMB Control No. 2125–0522. The currently approved burden hours for these collections would not be affected by this proposal.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 645

Grant Programs—transportation, Highways and roads, Utilities—relocations.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by revising part 645, subparts A and B to read as set forth below.

Issued on: January 28, 2000.

Kenneth R. Wykle,

Administrator.

PART 645—[REVISED]

1. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

2. In part 645, revise all references in the left column wherever they appear to read as shown in the right column:

Old reference	New reference
Highway agency	Transportation department
Highway agencies	Transportation departments
State highway agency	State transportation department
State highway agencies.	State transportation departments
HA	TD
SHA	STD

3. Revise § 645.101 to read as follows:

§ 645.101 Purpose.

The purpose of this subpart is to prescribe policies, procedures, and reimbursement provisions for the adjustment and relocation of utilities on Federal-aid and direct Federal highway projects.

4. Amend § 645.105 by removing the paragraph designations from all definitions; by placing all definitions in alphabetical order; by adding the definition "adjustment'; and by revising the definition "relocation" to read as follows:

§ 645.105 Definitions.

* * * * *

Adjustment—the adjustment of utility facilities required by the highway project. It includes moving, rearranging, or changing the type of existing facilities at the existing location, and taking any necessary safety and protective measures. It also means constructing a replacement facility in place that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

* * * * *

Relocation—the relocation of utility facilities required by the highway project. It includes removing and reinstalling the facility at a new location, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities, and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

* * * * *

5. Revise § 645.113(f) to read as follows:

§ 645.113 Agreements and authorizations.

* * * * *

(f) When proposed utility adjustment or relocation work on a project for a specific utility company can be clearly defined and the cost can be accurately

estimated, the FHWA may approve an agreement between the TD and the utility company for a lump-sum payment without later confirmation by audit of actual costs.

* * * * *

6. Revise § 645.117(c)(1), (e)(4), and (i)(2) to read as follows:

§ 645.117 Cost development and reimbursement.

* * * * *

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates or unit costs which are representative of actual costs may be used in lieu of actual costs if approved by the STD and the FHWA. Prior FHWA approval of the methodology to be used in developing average rates or unit costs and periodic STD reviews may provide all the oversight that is necessary to satisfy the intent of the regulations in this subpart. These average rates or unit costs should be adjusted at least once annually, or as otherwise deemed appropriate by the STD and the FHWA, to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

* * * * *

(e) *Material and supply costs.* * * *

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates or unit costs which are representative of actual costs may be used if approved by the STD and the FHWA. Prior FHWA approval of the methodology to be used in developing average rates or unit costs and periodic STD reviews may provide all the oversight that is necessary to satisfy the intent of the regulations in this subpart. These average rates or unit costs should be adjusted at least once annually, or as otherwise deemed appropriate, to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, five percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual, average, or unit costs for handling.

* * * * *

(i) Billings. * * *

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the STD and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the STD so desires, and Federal-aid highway funds may participate in these payments.

* * * * *

7. Revise the introductory paragraph in § 645.119(c) to read as follows:

§ 645.119 Alternate procedure.

* * * * *

(c) To adopt the alternate procedure, the STD must file a formal application for approval by the FHWA. The application must include the following:

* * * * *

8. Revise § 645.201 to read as follows:

§ 645.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for accommodating utilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects.

9. Amend § 645.203 in paragraph (c) by removing the last word "and"; in paragraph (d) by replacing the last period with ", and"; and by adding paragraph (e) to read as follows:

§ 645.203 Applicability.

* * * * *

(e) Facilities similar to utilities (*i.e.*, facilities, such as wireless telecommunications towers, that are included in the definition of "utility" in this subpart and are considered to be utilities by many, but not all, of the States).

10. Amend § 645.205 by adding paragraph (e) to read as follows:

§ 645.205 Policy.

* * * * *

(e) States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects. When this is done, the Federal share of net income from the revenues obtained should be used by the State for projects eligible under title 23, United States Code. Disposition of income received shall be the STD's responsibility and credit to Federal funds is not required.

11. Amend § 645.207 by revising the definitions "clear zone" and "private lines" by revising the definition heading "utility facility" to read "utility" and by placing all definitions in alphabetical order to read as follows:

§ 645.207 Definitions.

* * * * *

Clear zone—the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The current edition of the AASHTO "Roadside Design Guide" should be used as a guide for establishing clear zones for various types of highways and operating conditions. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.).

* * * * *

Private lines—privately-owned facilities which convey or transmit the commodities outlined in the definition of "utility" of this section, but are devoted exclusively to private use.

* * * * *

12. In § 645.209, revise paragraphs (d) and (j); and add paragraphs (m) and (n) to read as follows:

§ 645.209 General requirements.

* * * * *

(d) *Uniform policies and procedures.* For a highway agency to fulfill its responsibilities to control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

* * * * *

(j) *Traffic control plan.* Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility

work force in accordance with procedures established by the transportation department. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the current edition of the "Manual on Uniform Traffic Control Devices" (MUTCD) and 23 CFR part 630, subpart J. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.).

* * * * *

(m) *Utility determination.* In determining whether a proposed installation is a "utility" or not, the most important consideration is how the STD views a particular facility under its own State law and/or regulations.

(n) *Right-of-way considerations.* When an STD intends to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. When acquiring highway right-of-way, the STD in consultation with the utilities should consider acquiring sufficient right-of-way to accommodate utility needs. This will minimize inconvenience to property owners. The STD may retain possession of the acquired right-of-way, or may sell, lease, or convey it to the utilities. When an STD acquires and retains right-of-way on a Federal-aid highway project for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

13. Amend § 645.211 by revising the introductory paragraph to read as follows:

§ 645.211 State transportation department accommodation policies.

The FHWA should use the current editions of the AASHTO publications, "A Guide for Accommodating Utilities Within Highway Right-of-Way" and "Roadside Design Guide" to assist in the evaluation of adequacy of STD utility accommodation policies. They are available for inspection from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.). At a minimum, such policies shall make adequate provisions with respect to the following:

* * * * *

14. Revise § 645.215(d) to read as follows:

§ 645.215 Approvals.

* * * * *

(d) When a utility files a notice or makes an individual application or request to a STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this subpart or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

* * * * *

[FR Doc. 00–2674 Filed 2–8–00; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[USCG 1999–6097]

Federal Pilotage for Foreign-Trade Vessels in Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting and extension of comment period.

SUMMARY: The Coast Guard is holding a public meeting to solicit comments on a proposed change to the licensing requirements for pilots of vessels engaged in foreign trade, under way on the navigable waterways within the State of Maryland. We have proposed to require that such vessels be under the direction and control of Federally-licensed pilots when not under the direction and control of State-licensed pilots. Because of substantial interest, we have scheduled a public meeting on March 1, 2000, regarding the proposed rule, and we have extended the public comment period until April 1, 2000. We encourage you to provide oral and written comments about the proposed change.

DATES: The public meeting is scheduled for Wednesday, March 1, 2000, from 7 p.m. to 10 p.m. The meeting will convene at 7 p.m.; however, it may conclude before 10 p.m. if we finish early. Comments and related material must reach the Docket Management Facility on or before April 1, 2000.

ADDRESSES: The public meeting will be held at the Bachelors Officers' Quarters (B.O.Q.) conference room at the Coast Guard Yard, Building 28A, 2401 Hawkins Point Road, Baltimore, MD 21226–1791.

Because of heightened security considerations on Federal installations, we will require photo identification (a driver's license, merchant mariner's document, or State identification) for admittance to the Coast Guard Yard. Please register in advance of the meeting with Mr. Timothy Farley, Office of Investigations and Analysis (G–MOA), Coast Guard, phone 202–267–1414, e-mail Tfarley@comdt.uscg.mil. For security and organizational purposes, we want to know your name and whether you intend to speak at the meeting. The resulting list will assist security guards at the gate and provide the order of speakers at the meeting. Individuals who do not call in advance may be required to sign in at the gate. Vehicles and possessions are subject to search pursuant to Title 41 of the Code of Federal Regulations, part 101–20.

To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG 1999–6097), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Timothy Farley, Office of Investigations and Analysis (G-MOA), Coast Guard, telephone 202–267–1414, e-mail Tfarley@comdt.uscg.mil; or you

may contact Lieutenant Michael Dreier, Office of Standards, Evaluation and Development (G–MSR), Coast Guard, telephone 202–267–6490, e-mail Mdreier@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation at 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 1999–6097), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the facility, please enclose a self-addressed, stamped postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. Timothy Farley, phone 202–267–1414, e-mail Tfarley@comdt.uscg.mil, as soon as possible.

Background and Purpose

Under 46 U.S.C. 8503(a) the Secretary of Transportation may require a Federally-licensed pilot to be aboard a self-propelled vessel engaged in foreign trade and operating on the navigable waters of the United States when State law does not require a pilot. 46 U.S.C. 8503(b) provides the Coast Guard the authority to require Federally-licensed pilots on vessels engaged in foreign trade. This authority terminates when the State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Coast Guard of that fact.

Commercial vessels transit the navigable waters of the State of Maryland carrying various types of freight, oil, and hazardous substances and materials, as well as large quantities of bunkers. Under Maryland law [General Statutes of Maryland, § 11–501], every vessel (foreign or domestic) sailing under register must use a State-licensed pilot if it is under the control of a docking master while maneuvering with tug assistance during berthing or unberthing, or shifting within a port. Maryland does not license, establish qualifications for, or regulate the competency of docking masters. Although all docking masters now operating in the Port of Baltimore already hold valid Federal pilots' licenses (or pilotage endorsements on Federal licenses), holding these is voluntary and is as yet neither a State nor a Federal requirement. Anyone may serve as a docking master, and, by law, no one needs to demonstrate proficiency or competency to do so.

We have determined that it is unsafe for certain vessels to undertake intra-port transits, or otherwise navigate in the waters of the State of Maryland, except when under the direction and control of pilots accountable to the State or the Coast Guard. Operating these vessels with docking masters who are either not licensed (or endorsed) as Federal or State pilots or not operating under the authority of pilots' licenses presents an unacceptable risk to human life, property, and the environment.

To ensure accountability, the Coast Guard proposed changes to its licensing regulations in a notice of proposed rulemaking entitled, "Federal Pilotage for Foreign-Trade Vessels in Maryland" [October 21, 1999 (64 FR 56720)]. These changes would require persons providing pilotage to operate under the authority of either a valid State or a valid Federal pilot's license. The proposed rule would add a new section to Subpart I of 46 CFR part 15 to require that a foreign-trade vessel be under the direction and control of a Federally-licensed pilot when operating in designated waters of Baltimore Harbor from the Key Bridge to moor, except when under the direction and control of a State-licensed pilot operating under the authority of his or her State license.

The rule would ensure that vessels are navigated by competent, qualified persons, knowledgeable in the local area and accountable to either the State or the Coast Guard. It would also promote navigational safety by increasing the level of accountability and reducing the risk of marine casualties in the waters of Maryland.

Dated: February 2, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–2894 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 012400C]

Western Pacific Fishery Management Council; Notice of Intent; Public Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an EIS; notice of intent to prepare amendments; public scoping sessions; request for comments.

SUMMARY: The Western Pacific Fishery Management Council (Council) announces its intention to prepare an environmental impact statement (EIS) on the Federal management of precious corals in the Western Pacific Region. The scope of the EIS analysis will include all activities related to the conduct of the fisheries and will examine the impacts of precious coral harvest on, among other things, protected species. The Council will hold public scoping meetings and accept written comments to provide for public input into the range of actions, alternatives, and impacts that the EIS should consider.

The Council also announces its intention to develop amendments to the Fishery Management Plan (FMP) for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, the FMP for Crustacean Fisheries of the Western Pacific Region, and the FMP for Precious Coral Fisheries of the Western Pacific Region. The Council will hold meetings to give the public an opportunity to consider management alternatives and provide comments on these amendments.

DATES: Written comments on the intent to prepare an EIS will be accepted on or before March 15, 2000. Public scoping meeting will be held between February 16 and March 1, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates, times and locations.

ADDRESSES: Written comments on suggested alternatives and potential

impacts should be sent to Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Dr. Charles Karnella, Administrator, National Marine Fisheries Service, Pacific Islands Area Office, 2570 Dole St., Honolulu, HI 96822. Copies of the documents for the precious corals EIS are available from the Council office. Public scoping meetings will be held in Hawaii and the Commonwealth of the Mariana Islands (CNMI). See **SUPPLEMENTARY INFORMATION** for specific scoping meeting locations and for special accommodations.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 808–522–8220.

SUPPLEMENTARY INFORMATION: Scoping meetings for the precious corals EIS will be held at the locations listed here. A summary of the current Federal management system for precious corals in the western Pacific region will be reviewed during a public scoping hearing. A principal objective of the scoping and public input process is to identify a reasonable set of management alternatives that, with adequate analysis, will sharply define critical issues and provide a clear basis for choice among the alternatives. The intent of the EIS is to present an overall picture of the environmental effects of fishing as conducted under the FMPs. The EIS will include a range of reasonable management alternatives and an analysis of their impacts in order to define issues and provide a clear basis for public comments and for choices among options by the Council.

The EIS will discuss the impacts of potential precious coral harvest on the human environment and consider a range of representative alternative management regulations. Alternatives will be assessed for impacts on essential fish habitat, target and non-target species of fish, discarded fish, marine mammals (Hawaiian monk seals and cetaceans), and other protected species present in the western Pacific ecosystem. In addition, the environmental consequences section will contain an analysis of socio-economic impacts of the fishery on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market the fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

The Council is evaluating the need to amend the bottomfish, crustacean and precious corals FMPs to better achieve the management objectives of these FMPs. Currently, no Federal regulations are in place to manage the bottomfish, crustacean and precious coral fishery resources in the EEZ waters surrounding the CNMI. There are also no Federal regulations for the bottomfish and crustacean fisheries for the EEZ waters surrounding the Pacific Remote Island Areas (PRIAs). The amendments will consider a wide range of management alternatives to address data shortfalls and possible impacts from the bottomfish, crustacean, and precious coral fisheries in the PRIAs and the CNMI. The Council seeks to solicit public comment and input on a wide range of management alternatives including, but not limited to, the following: Federal permit and data reporting requirements; limited access; vessel monitoring systems; observer program; closed season; closed areas; gear restrictions; size limits; catch quotas; and prohibitions on the use of destructive fishing techniques, including the use of explosives, poisons, bottomset gill-nets, bottom trawls, and tangle nets.

Dates, Times, and Locations of the Scoping Meetings

The public scoping meetings will be held on:

Wednesday, February 16, 2000, from 6:30–8:30 p.m., Joeten-Kiyu Public Library Conference Room, Saipan, CNMI. Phone the Division of Fish and Wildlife Resources, 670–322–9834, for information;

Thursday, February 24, 2000, from 8:30 a.m–12:00 p.m., 73rd Scientific and Statistical Committee meeting, Council Office Conference Room, Honolulu, HI. Phone the Council Office, 808–522–8220, for information; and

Thursday, March 1, 2000, Hibiscus Ballroom, Ala Moana Hotel, Honolulu, HI. Phone the Council Office, 808–522–8220, for information.

These meetings will be advertised in the local newspapers.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–20 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–2933 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 27
Wednesday, February 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–00–200]

Notice of Program Continuation; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Agricultural Marketing Service (AMS) is correcting a notice that appeared in the **Federal Register** on January 12, 2000. The notice announces that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for Fiscal Year 2000; however, pertinent information in the **SUMMARY** and **DATES** sections of the notice was omitted.

FOR FURTHER INFORMATION CONTACT: FSMIP Staff, Transportation and Marketing, Agricultural Marketing Service, U.S. Department of Agriculture, Room 4006 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

SUPPLEMENTARY INFORMATION:

Background

AMS published a notice that appeared in the January 12, 2000 **Federal Register** at 65 FR 1846. The notice announced that the FSMIP was allocated $1,200,000 in the Federal budget for fiscal year 2000. Pertinent information in the **SUMMARY** and **DATES** sections of the notice was omitted. In the **SUMMARY,** a reference to community-based organizations was omitted. In the **DATES** section, reference to a two-round consideration of proposals was not made. Accordingly, this document makes the appropriate corrections to those sections of the notice.

Correction

In FR Doc. 00–714, published on January 12, 2000, on page 1846, first column, the **SUMMARY** and **DATES** sections are corrected to read:

"SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for FY 2000. Funds remain available for this program. States interested in obtaining funds under this program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry groups and community-based organizations in the development of proposals and the conduct of projects." and

"DATES: Funds will be allocated on the basis of two rounds of consideration. Proposals received by February 18, 2000 will be considered during the first round. Proposals which are not selected for funding during the first round and other proposals received by May 1, 2000 will be considered during the second round."

Dated: February 3, 2000.

Eileen Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–2977 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement; Fernow Experimental Forest, Tucker County, WV

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service intends to prepare an environmental impact statement (EIS) for proposed research activities on the Fernow Experimental Forest. The purpose of the proposed research is to evaluate the effectiveness of silvicultural tools that include cutting and prescribed burning on central Appalachian forests. The goal of the proposed research is to improve understanding about and management of central Appalachian hardwood forests.

The 4700-acre Fernow Experimental Forest is situated inside the parameters of the Monongahela National Forest in Tucker County, West Virginia. These proposed research activities are in compliance with the Monongahela National Forest Management Plan, which provides overall guidance for management of the area, including direction for management of the Fernow Experimental Forest. Public comment is invited on the scope of the analysis that should be conducted and on the identification of alternatives.

DATES: Comments must be submitted in writing and received by March 27, 2000.

ADDRESSES: Written comments concerning the scope of the proposed research activities should be directed to Dr. Mary Beth Adams, Project Leader and Responsible Official, Timber and Watershed Laboratory, P.O. Box 404, Parsons, WV 26287.

Comments also may be submitted via facsimile to (304) 478–8692 or by e-mail to madams/r9__monong@fs.fed.us. Comments received in response to this notice, including name and address when provided, will be considered part of the public record and will be available for public inspection.

The public may inspect comments received at the Office of the Project Leader, Timber and Watershed Laboratory, Nursery Bottom, Parsons, West Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Beth Adams, Project Leader, Timber and Watershed Laboratory, at (304) 478–2000, ext. 130.

SUPPLEMENTARY INFORMATION:

Background

The charter of the Fernow Experimental Forest is to facilitate ecological research on the central Appalachian forests. The 4700-acre Fernow Experimental Forest (the Forest) is situated inside the parameters of the Monongahela National Forest and is located south of Parsons, West Virginia. The Forest is administered by the Forest Service Northeastern Research Station, Research Work Unit NE–4353, "Sustainable Forest Ecosystems in the Central Appalachians." The Research Work Unit is located at the Timber and Watershed Laboratory in Parsons, West Virginia. The mission of this research unit is: (1) To explain the role of natural and human-induced factors in sustaining central Appalachian forest ecosystems and (2) to provide guidelines for managing central Appalachian forests for a range of

products and benefits while maintaining the productivity and diversity of the soil, water, and forest resources. The goal of the proposed research activities is to improve understanding about and management of central Appalachian hardwood forests.

The Forest Service proposes to continue some research activities begun in the 1950s and to initiate some new research activities in the year 2000. These actions are consistent with the Research Work Unit Description; individual Study Plans; the Monongahela National Forest Land and Resource Management Plan, Management Prescription 8, page 202, Vegetation; and the General Plan for the Fernow Experimental Forest.

The purpose of the research initiated in the 1950s was to study the effects of various silvicultural practices on forest productivity, species composition and diversity, wildlife populations, and ecosystem processes. This research continues and involves the application of experimental treatments, including diameter-limiting cutting on 186 acres, single-tree selection on 229.6 acres, a financial maturity harvesting method based on projected rates of return on investment on 343.4 acres, and small clearcuts on 26 acres.

The proposed new research activities would involve application of silvicultural treatments to stands of trees as part of an ongoing research experiment. The silvicultural treatments involve cutting individual trees, according to the silvicultural prescription, and removing the stems from the stand. Branches and tree tops remain in the stand. Rubber-tired skidders and cable logging systems will be used to remove the trees. Existing skid trails and roads will be utilized. No new permanent roads will be constructed. After completion of silvicultural treatments, roads and decks used in the logging process will be closed.

One of the purposes of the proposed new research activities is to evaluate the effectiveness of prescribed burning as a silvicultural and ecological tool on the central Appalachian forests. An area of 119 acres will be treated with prescribed fire. Research activities that include prescribed fires will be conducted according to State regulations administered by the West Virginia Division of Forestry. A slow-moving fire (1–5 ft/min) that produces high amounts of heat (2–4 ft flame lengths) conducted in the spring is deemed to have the most beneficial effect in improving oak competitiveness and will be used in these research activities. All personnel supervising and working on the fire will have received training in the use of prescribed fire and in fire suppression.

Comments Are Requested

The Forest Service is soliciting comments from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed research activities in:

- Identifying potential issues;
- Identifying issues to be analyzed in depth;
- Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis;
- Identifying potential environmental effects of the proposed activities;
- Identifying and exploring alternatives to the proposed research activities; and
- Determining potential cooperating agencies and task assignments.

The following issues already have been identified:

- Potential impacts to Threatened, Endangered or Sensitive Species;
- Potential impacts on Biodiversity, including concerns about fragmentation of interior habitat, and loss of old growth habitat;
- Sediment impacts on streams from roads, skid trails, and log landings.

Comments received will be considered in preparation of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 2000. EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the management of the Fernow Experimental Forest comment at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. (*City of Angoon* v. *Hodel* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.* v. *Harris*, 490F. Suppl. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS will be completed in June 2000. In the final EIS, the Forest Service will respond to comments received in response to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The responsible official will document the decision and the rationale for that decision in the Record of Decision. That decision will be subject to Forest Service Administrative Appeal Regulations at 36 CFR part 215.

Dated: January 28, 2000.

Randle G. Phillips,

Deputy Chief, Programs and Legislation.

[FR Doc. 00–2748 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on March 9 and 10, 2000, at the Baker Ranger District, 3165 10th Street, Baker City, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. the first day

and will begin at 8 a.m. and continue until 4 p.m. on the second day. Agenda items to be covered include: (1) Review draft CMP alternatives and, (2) Open Public forum. All meetings are open to the public. Public comments will be received at 1:30 p.m. on March 9.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: February 3, 2000.

Karyn L. Wood,

Forest Supervisor.

[FR Doc. 00–2985 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Alley Cropping, Constructed Wetland, Firebreak, Forest Site Preparation, Forest Stand Improvement, Forest Trails and Landings, Prescribed Burning, Riparian Forest Buffer, Spring Development, Tree/Shrub Establishment, Tree/Shrub Pruning, Use Exclusion, Windbreak/Shelterbelt Establishment, and Windbreak/Shelterbelt Renovation. These standards are used to convey national guidance when developing Field Office Technical Guide Standards used in the States. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: Comments will be received on or before April 10, 2000. T his series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, D.C. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, D.C. 20013–2890. Telephone Number 202–720–5023. The standards are also available and can be downloaded from the Internet at: http://www.ftw.nrcs.usda.gov/practice__stds.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed at Washington, DC, on January 27, 2000.

Danny D. Sells,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 00–2863 Filed 2–8–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: Pollution Abatement Costs and Expenditures (PACE) Survey.

Agency Form Number(s): MA–200.

OMB Approval Number: 0607–0176.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 160,000 hours.

Number of Respondents: 20,000.

Average Hours Per Response: 8 hours.

Needs and Uses: The Pollution Abatement Costs and Expenditures (PACE) Survey was conducted annually prior to 1995 but suspended due to Census Bureau budget limitations. The PACE Survey provided measures of the cost to private industry for the Nation's commitment to protecting the environment. This survey is an essential source of data for monitoring the impact of environmental programs on the U.S. economy and responsiveness to these programs. The absence of the data over the past 4 years has highlighted the need for measures of private industry spending on pollution abatement activities. With support from the EPA, the Census Bureau proposes to reinstate this survey.

The survey will collect information similar to that previously collected: Pollution abatement expenditures, operating costs for pollution abatement, each by media, air pollution control, water pollution control and multi-media, and waste disposal. In addition, the survey will include the nature of the costs incurred, distinguishing between prevention and treatment. The survey will include approximately 20,000 establishments selected to represent manufacturing, mining and electric utilities industries defined by the North American Industry Classification System (NAICS) with emphasis on industries most heavily involved in pollution abatement activities. The survey sample will also include representation of establishments in the apparel and textile industry and manufacturing establishments with less than 20 employees. These groups had been excluded from the earlier survey design under the assumption that they contributed little or nothing to the estimates. Representation from these groups will be used to confirm the assumption.

The EPA will use the data to monitor the impact of environmental programs and to estimate cost projections for its regulatory impact analysis for proposed pollution regulations. Capital expenditures for pollution abatement is an important component of total capital expenditures when analyzing investment and productivity at the Bureau of Labor Statistics and the Bureau of Economic Analysis. State and local governments, trade associations, the academic community, and private businesses will use the data to evaluate regional pollution abatement spending, local legislation, and performance of specific industries.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 1, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2963 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2001 Residential Finance Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before April 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230, or by e-mail at LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Walter L. Busse, U.S. Census Bureau, Housing and Household Economic Statistics Division, Room 1445–3, Washington, DC 20233–8500, and telephone (301)457–3220.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau has conducted the Residential Finance Survey (RFS) every 10 years as part of the decennial census since 1950. The RFS is the only survey designed to collect and produce data about the financing of nonfarm, privately-owned residential properties.

The RFS does the following:

- Collects, tabulates, and presents data for properties, the standard unit of reference for financial transactions related to housing. In most other demographic surveys, the unit of reference is the person, household, or housing unit;
- Provides the only source of information on property, mortgage, and financial characteristics for multi-unit rental properties.; and
- Conducts interviews of property owners and mortgage lenders, resulting in more accurate information on property and mortgage characteristics.

Some uses of the RFS data are:

- As benchmark data for estimates of several economic aggregates prepared by the Bureau of Economic Analysis, such as the gross domestic product (GDP) and the national income accounts;
- As the only source of information on the acquisition, financing, and ownership of multifamily rental properties;
- As source of data for developing benchmark per-unit estimates of rents collected, operating expenses, and capital expenditures on different classes of rental properties;
- As the basis for developing an estimate of the number of age-restricted housing units and other categories of seniors' housing units, and to study how they are financed;
- As data to help the Department of Housing and Urban Development regulate the Government Sponsored Enterprises and to monitor these organizations' progress in reaching established goals, such as to expand housing opportunities for working class and low-income families, and for families in underserved communities;
- As a source of information on the sources and uses of mortgage credit in rural areas and the rates and terms relative to metropolitan areas;
- As a source of data on credit extensions of individuals and on residential investor-property finance;
- As the only source of information on non-traditional sources of mortgage credit, such as individuals, trust funds, and philanthropic organizations;
- As the basis for studying the role second mortgages, mortgage refinancings, and home equity loans play in financing modeling;
- As an excellent and comprehensive source of information on the ability of all Americans to have equal access to mortgage credit; and
- As the basis for strategic planning and business decisions by firms involved with housing or mortgage credit.

We are undertaking several steps to make sure that the content for the 2001 RFS addresses the changes that occurred in the mortgage industry during the 1990s. This includes bringing together a group of primary RFS data users and mortgage finance experts from in and out of government to develop the questionnaire content. We are also conducting cognitive testing with property owners and mortgage lenders to obtain their input on the RFS content and collection procedures, and to improve the validity of the questions asked.

II. Method of Collection

In the RFS, we select a sample of addresses identified in Census 2000. From this sample, we first decide if a property is a homeowner property or a rental property. This determines the type of questionnaire the respondent will complete. A homeowner property is defined as one having fewer than five units where the owner of the property lives in one of the units. A rental property is one with five or more units or a property of fewer than five units with none being owner occupied. Condominium apartments are homeowner properties if the owner lives in the unit and rental properties if the owner does not live in the unit.

Forms

We anticipate using the following four questionnaires to collect data for the 2001 RFS.

- An "owner seeker" letter will be mailed to units at basic street addresses having two or more housing units in order to identify the name and address of the owner or the owner's agent and to determine if the property is a homeowner property or a rental property.
- A homeowner questionnaire will be mailed to all addresses with only one unit, to all mobile homes, and to units identified on the "owner seeker" letter as having fewer than five units, one of which is owner occupied. If the property is mortgaged, the respondent will be asked to report the person or institution to whom mortgage payments are made.
- A rental and vacant property questionnaire will be mailed to owners or agents of properties with five or more housing units or those with fewer than five units when none is owner occupied as indicated by responses on the "owner seeker" letter and the homeowner questionnaire. As with the homeowner questionniare, the respondents are asked to whom mortgage payments are made.
- A lender questionnaire will be mailed to financial institutions, government agencies, firms or individuals to whom mortgage payments are made, as indicated on the homeowner and the rental and vacant

property questionnaires. The questionnaire is designed to collect data on both first and junior (second or third) mortgages, including home equity lines of credit.

Timing

The "owner seeker" letters and the first round of the homeowner questionnaires are scheduled for mailout in early 2001. A second mailing of the homeowner questionnaires (those identified by the owner seeker letter) is expected in early spring 2001. The rental and vacant property questionnaires are scheduled for initial mailing in early 2001. The lender questionnaires are to be mailed in two primary cycles, the first in summer 2001 and the second in early fall 2001, with possible additional smaller mailings from follow-up operations.

Enumeration

The RFS is essentially a centralized mail-out/mail-back operation. We will limit our field interviewing for property owners to cases in which the owner was either not identified or failed to respond to the original mailed questionnaires and follow-up letters. Follow-up interviewing of lenders will occur in two stages. For financial institutions, follow-up telephone inquiries will be made. Follow-up for mortgages held by individuals will involve a telephone call and, if necessary, a personal visit by Census Bureau field representatives from the 12 census regional offices.

III. Data

OMB Number: Not available.
Form Number:
D–2900 (Homeowner Questionnaire)
D–2901 (Rental and Vacant Property Qustionnaire)
D–2902 (Lender Questionnaire)
D–2905(L) (Owner Seeker Letter)
Type of Review: Regular submission.
Affected Public: Individual property owners and lending institutions.
Estimated Number of Respondents:
D–2900—35,000 respondents
D–2901—35,000 respondents
D–2902—50,000 respondents
D–2905(L)—210,000 respondents
Estimated Time Per Response:
D–2900 @ 30 minutes/response = 17,500 hours
D–2901 @ 45 minutes/response = 26,250 hours
D–2902 @ 30 minutes/response = 25,000 hours
D–2905(L) @ 2.5 minutes/response = 8,750 hours
Estimated Total Annual Burden Hours: 77,500 hours.
Estimated Total Annual Cost: The only cost to a respondent is the time necessary to respond to this survey. There is no monetary cost to the respondent.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S.C., Section 141 and Section 1113(d) of the Right to Financial Privacy Act (12 U.S.C. Section 3413(d)).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 3, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2962 Filed 2–8–00; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

BEA Customer Satisfaction Survey; Proposed Information Collection; Comment Request

SUMMARY: The U.S. Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Interested persons are invited to submit comments on or before April 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230; (or via e-mail at LEngelmeier@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Verna M. Learnard, U.S. Department of Commerce, Bureau of Economic Analysis, BE–53, Washington, DC 20230, or by telephone at 202–606–9690.

SUPPLEMENTARY INFORMATION:

I. Abstract

As one of the Nation's leading statistical agencies, the Bureau of Economic Analysis (BEA) provides reliable and consistent measures of economic activity that are essential to intelligent decision making of business people and policy makers and to the efficient operations of financial markets. The purpose of the BEA Customer Satisfaction Survey will be to obtain feedback from customers on the quality of BEA products and services. The results of the information collected will serve to assist BEA in improving the quality of its data products and its methods of dissemination.

II. Method of Collection

The Survey and a cover letter with instructions on how to complete the survey will be mailed to 7,500 potential respondents. BEA will request that responses be returned 30 days after the mailing. The survey will be designed so that all responses are anonymous and therefore eliminates the necessity for recordkeeping of respondents.

III. Data

OMB Number: _____.
Type of Review: New.
Affected Public: Individuals from profit and non-profit organizations and individuals from other Federal, state, and local government agencies.
Estimated Number of Respondents: 7,500.
Estimated Response Time: 15 minutes.
Estimated Total Annual Burden Hours: 1,875.
Estimated Total Annual Cost: The only cost to the respondents is that of their time.
Legal Authority: Executive Order 12862, Section 1(b), of September 11, 1993.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 3, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2961 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–06–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Open Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on February 25, 2000, at the Hewlett-Packard Company, Spyglass Room, Building 5, 1501 Page Mill Road, Palo Alto, California, 94304. The meeting will begin at 9:00 a.m. and is scheduled to adjourn at 4 p.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:00 a.m.–4 p.m.

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Update on Bureau of Export Administration initiatives
4. Issue briefings
5. Open discussion

The meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW, Washington, DC 20230.

For more information, contact Ms. Carpenter on (202) 482–2583.

Dated: February 3, 2000.

Brian Nilsson,

Acting Assistant Secretary.

[FR Doc. 00–2860 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–804, C–122–805]

Continuation of Antidumping Duty Order and Countervailing Duty Order: New Steel Rail From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order and countervailing duty order: new steel rail from Canada.

SUMMARY: On December 29, and December 30, 1999, respectively, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order and countervailing duty order on new steel rail from Canada would likely lead to continuation or recurrence of dumping and a countervailable subsidy (64 FR 73013 (December 29, 1999) and 64 FR 73519 (December 30, 1999), respectively). On January 26, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order and countervailing duty order on new steel rail from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 4261 (January 26, 2000)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the antidumping duty order and countervailing duty order on new steel rail from Canada.

DATES: February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

Background

On June 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 23596 and 64 FR 23677, respectively) of the antidumping duty order and countervailing duty order on new steel rail from Canada pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy. The Department notified the Commission of the magnitude of the margin likely to prevail, the net countervailable subsidy, and the nature of the subsidy likely to prevail were the antidumping duty order and countervailing duty order revoked.[1]

On January 26, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order and countervailing duty order would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Scope

The merchandise subject to this antidumping duty order and this countervailing duty order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes, but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the antidumping duty

[1] *See Final Results of Expedited Sunset Review: New Steel Rail from Canada*, 64 FR 73013 (December 29, 1999) and *Final Results of Expedited Sunset Review: New Steel Rail from Canada*, 64 FR 73519 (December 30, 1999).

[2] *See Steel Rails From Canada*, Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review), 65 FR 4261(January 26, 2000).

order on new steel rail was partially revoked with regard to 100ARA–A new steel rail, except light rail, from Canada.[3] Also, nominal 60 pounds per yard steel rail is outside the scope of this order.[4]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[5] The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty and countervailing duty orders would likely lead to continuation or recurrence of dumping and a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order and countervailing duty order on new steel rail from Canada. The Department will instruct the U.S. Customs Service to continue to collect deposits at the rate in effect at the time of entry for all imports of subject merchandise.

Pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than January 2005.

Dated: February 3, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2974 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See New Steel Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders*, 61 FR 11607 (March 21, 1996).

[4] *See New Steel Rail, Except Light Rail, From Canada; Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language*, 63 FR 43137 (August 12, 1998).

[5] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers one manufacturer/exporter of the subject merchandise, and the period of review May 1, 1998 through April 30, 1999.

EFFECTIVE DATE: Febraury 9, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: We initiated the review on June 30, 1999 (64 FR 35125) following a request made by the petitioners on May 28, 1999. Section 751(a)(3)(A) of the Act directs the Department to make a preliminary determination within 245 days for each administrative review. The section provides, however, that if it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days. Due to the reasons enumerated in the Memorandum from Richard Weible to Joseph A. Spetrini, Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan, Extension of Time Limit for the Preliminary Results, dated January 28, 2000, the Department has determined that it is not practicable to complete this review within the 245-day time limit.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results of the administrative review by 120 days to May 30, 2000.

Dated: January 28, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–2972 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is rescinding the review it initiated on October 1, 1999 of the antidumping duty order on certain cut-to-length carbon steel plate from Mexico (64 FR 53318).

EFFECTIVE DATE: Febraury 9, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Killiam or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3019 and 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Background

On August 31, 1999, the sole respondent, Altos de Hornos de Mexico (AHMSA), and the petitioners, Bethlehem Steel Corporation, Geneva Steel, Gulf Lakes Steel, Inc., of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation) requested that the Department conduct an administrative review of subject merchandise exported by AHMSA from Mexico to the United States for the period August 1, 1998 through July 31, 1999. On October 1, 1999, the Department published in the **Federal Register** (64 FR 53318) a notice of initiation of administrative review with respect to AHMSA for that period. The

petitioners withdrew their request for a review on December 21, 1999; AHMSA withdrew its request on December 28, 1999.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because both parties' withdrawals were submitted within the 90-day time limit, we are rescinding this review. We will issue appropriate appraisement instructions directly to the US Customs Service.

This notice serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3)(1999). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Act, 19 CFR 351.213(d)(1) and 19 CFR 351.213(d)(4).

Dated: January 28, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–2975 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethelene Terephthalate, Film, Sheet, and Strip From Korea; Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. The review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. The review covers three manufacturers/exporters of the subject merchandise and the period June 1, 1998 through May 31, 1999.

EFFECTIVE DATE: February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

Postponement of Preliminary Results of Review

On July 29, 1999, the Department initiated this administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. (64 FR 41075). The current deadline for the preliminary results is February 29, 2000. We determine that it is not practicable to complete this review within the original time frame. (*See* Memorandum to Joseph A. Spetrini dated February 3, 2000.)

Accordingly, the deadline for issuing the preliminary results of this review is now no later than May 1, 2000. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: February 3, 2000.

Richard Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 00–2976 Filed 2–8–00; 8:45 am]

BILLING CODE 3519–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012800G]

Marine Mammals; File No. 962–1562

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that The North Gulf Oceanic Society, P.O. Box 15191, Homer, Alaska 99603, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before March 10, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222–226).

The applicant is requesting authorization to harass, up to 6 times each, up to 500 North Pacific humpback whales (*Megaptera novaeangliae*) annually, over a five year period, during photo-identification studies in Alaska waters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 2, 2000.

Eugene T. Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–2934 Filed 2–8–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on Five Year Agency Notes and Ten Year Agency Notes

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and options on five year agency notes and ten year agency notes. The proposals were submitted under the Commission's 45-day Fast Tract procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before February 24, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME five and ten year agency notes futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st NW, Washington, DC 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on March 13, 2000, 45 days after receipt of the proposals. In view of the limited period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 3, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–2916 Filed 2–8–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Request for Approval of a Collection of Information—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than April 10, 2000.

ADDRESSES: Written comments should be captioned "Residential Garage Door Operators" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1211, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation requiring residential garage door operators to comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment. The Consumer Product Safety Improvement Act of 1990 (the Improvement Act) (Pub. L. 101–608, 104 Stat. 3110) includes requirements that residential garage door operators

manufactured on or after January 1, 1993, must comply with the entrapment protection provisions in UL Standard 325 in effect on or before January 1, 1992. The entrapment protection requirements of UL Standard 325 are codified as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211.

The Office of Management and Budget (OMB) approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on April 30, 2000. The Commission now proposes to request an extension of approval without changes of this collection of information.

A. Certification Requirements

The Improvement Act provides that UL Standard 325 shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 14(b) of the CPSA allows firms that are required to issue certificates of compliance to use an independent third-party organization to conduct the testing required to support the certificate of compliance.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require establishment and maintenance of records necessary to implement the CPSA or determine compliance with rules issued under the authority of the CPSA. On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part 1211, Subparts B and C.

The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard. The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

The Commission staff estimates that about 22 firms are subject to the testing and recordkeeping requirements of the certification regulations. The staff estimates that each respondent will spend 60 hours annually on the collection of information for a total of about 1320 hours. Using an hourly rate of $13.50, based on 1999 Statistical Abstract data for average all private sector wages, the total industry cost would be about $18,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 4, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–2918 Filed 2–8–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Monday, February 14, 2000, 11:30 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS:

Closed to the Public.

Matter to be Considered:

Compliance Operational Matter (OS# 5756)

The Commission and staff will discuss a compliance operational matter.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 7, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–3151 Filed 2–7–00; 2:58 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Department of Education.

ACTION: Notice of dates of submission of state revenue and expenditure reports for fiscal year 1999 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by state educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 1999. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2001 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 2000. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 5, 2000.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

Alternatively, SEAs may hand deliver submissions by 4 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD.

If an SEA's submission is received by the Bureau of the Census after September 5, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.

2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 219–1618.

SUPPLEMENTARY INFORMATION: Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average state per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8801(12)).

In addition to using the SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965 as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as the Goals 2000: Educate America Act, the Technology Literacy Challenge Fund, the Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In January 2000, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 2000, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 5, 2000.

Having accurate and consistent information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 5, 2000, as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 5, the data may also be too late to be included in the final NCES published dataset.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Authority: 20 U.S.C. 9003(a).

Dated: February 4, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–2948 Filed 2–8–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–151–A and EA–152–A]

Application To Export Electric Energy; Tractebel Energy Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Tractebel Energy Marketing, Inc. (TEMI) has applied for renewal of its authority to transmit electric energy from the United States to Mexico and to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 10, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and

require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 14, 1997, the Office of Fossil Energy (FE) of the Department of Energy issued Order No. EA–151 authorizing TEMI to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities owned and operated by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization expired on July 14, 1999.

On August 13, 1997, FE issued Order No. EA–152 authorizing TEMI to transmit electric energy to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on August 13, 1999.

On January 13, 2000, TEMI filed two separate applications with FE for renewal of the export authority contained in Order Nos. EA–151 and EA–152. TEMI has requested those authorizations be issued for five year terms and that the international transmission facilities of Long Sault, Inc. be added to the list of authorized export points in the authorization to export to Canada.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on TEMI's request to export to Mexico should be clearly marked with Docket EA–151–A. Comments on the TEMI request to export to Canada should be clearly marked with Docket EA–152–A. Additional copies are to be filed directly with Howard H. Shafferman, Ballard Spahr Andrews & Ingersoll, 601 13th Street, NW, Suite 1000 South, Washington, DC 20005–2205 and Jeff Brattain, Tractebel Energy Marketing, Inc., 1177 West Loop South, Suite 800, Houston, TX 77027.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Order EA–151 and FE Order EA–152. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–151 and FE Docket EA–152 proceedings.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on February 3, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 00–2921 Filed 2–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, February 22, 2000: 1:00 p.m.—5:00 p.m.

ADDRESSES: Amarillo College, Business Center, 1314 South Polk Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1:00—Welcome-Agenda Review-Approval of minutes
1:15—Co-Chair Comments
1:30—Task Force/Subcommittee Reports
2:00—Updates-Occurrence Reports-DOE
2:30—Ex-Officio Reports
3:00—Presentation and Questions and Answers (To Be Decided)
3:45—Groundwater Briefing on Remediation Program
4:15—Public Comments
4:30—Closing Comments
4:45—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 p.m. Monday through Thursday; 7:45 am to 5:00 p.m. on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 4, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2920 Filed 2–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–684–001]

Interenergy Sheffield Processing Company, Bear Paw Energy, L.L.C.; Notice of Filing

February 3, 2000.

Take notice that on January 28, 2000, Bear Paw Energy, L.L.C., a Delaware limited liability company, whose mailing address is 3170 17th Street, Suite 2750, Denver, Colorado 80202, filed in Docket No. CP96–684–001, a request seeking that the Section 3 authorization and Presidential Permit held in the name of its predecessor company, Interenergy Sheffield Processing Company, be changed to recognize its company's reorganization and change in its corporate name, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

Bear Paw Energy, L.L.C. states that in 1997 a Section 3 authorization and Presidential Permit were granted in the above captioned proceeding to Interenergy Sheffield Processing Company (Interenergy Sheffield), a general partnership between Bear Paw Energy Inc. and Interenergy Corporation. These authorizations permitted Interenergy Sheffield, an otherwise non-jurisdictional natural gas gathering and processing system, to construct and operate natural gas facilities at the International Boundary line near Portal, North Dakota, to import gas from Canada. Bear Paw Energy, L.L.C. also states that, in 1998, Bear Paw Energy Inc. became the sole and direct owner of the gathering and processing system and the border crossing facilities. In the present filing, Bear Paw Energy, L.L.C. informs the Commission that, as of January 20, 2000, Bear Paw Energy Inc. was merged into a Delaware limited liability company, with its ultimate name change to Bear Paw Energy, L.L.C. Bear Paw Energy, L.L.C. states that these transactions do not, in any way, alter the operation of the gathering and processing system or the border crossing facilities.

Bear Paw Energy, L.L.C. requests that the Commission modify its records in the above captioned proceeding to reflect the final name change, such that the Section 3 authorization and Presidential Permit previously granted to Interenergy Sheffield will hereafter be in the name of Bear Paw Energy, L.L.C. In the alternative, Bear Paw Energy, L.L.C. requests that a new Section 3 authorization and Presidential Permit be granted in its own name.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before, February 22, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 00–2886 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–163–000, CP99–165–000 and CP99–166–000]

Questar Southern Trails Pipeline Company; Notice of Meeting

February 3, 2000.

Take notice that a meeting will be held in the above-docketed proceedings on Thursday, February 24, 2000, at 10: a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The purpose of the meeting is to clarify and ascertain additional information regarding Questar Line 90 Company's request of November 9, 1999, for an opinion from the General Counsel that certain prospective salvage activities related to Line 90 Company's oil pipeline purchased from ARCO Pipe Line Company are nonjurisdictional and will not require prior certificate authorization. Line 90 Company is also concerned that these activities will not prejudice Questar Southern Trails Pipeline Company's pending certificate application in Docket No. CP99–163–000 *et al.* to acquire (from Line 90 Company), convert, and operate the heretofore oil pipeline for the transportation of natural gas in interstate commerce.

Specifically, all of the parties should be prepared for a discussion on the following questions, among others, relating to the requested General Counsel interpretation:

What are the specific activities to be undertaken by Line 90 Company with respect to the oil pipeline and why? Identify specific equipment/facilities.

Would the specific activities, including removal of facilities and equipment, be undertaken regardless of whether the conversion of the oil pipeline to natural gas was planned?

What are the "environmental remediation obligations" of ARCO with respect to the subject pipeline, and what is the reason for and nature of Line 90 Company's involvement in such measures? What is ARCO's schedule for all remaining activities associated with the oil pipeline?

Any party, as defined in 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), in the above-captioned proceedings are invited to participate in the meeting. However, no topics other than those pertaining to the requested General Counsel opinion will be considered. For additional information, please contact Dennis Vasapoli (202) 208–0461 or Robert Christin (202) 208–1022, at the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–2887 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–48–001]

Tennessee Gas Pipeline Company; Notice of Application

February 3, 2000.

Take notice that on January 24, 2000, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP–48–000, to amend its original application (Application) filed in that docket on December 10, 1999. Tennessee states that the purpose of the amendment is to revise that text of the Application and certain exhibits to correct an inadvertent mistake in the rate amounts originally provided. The

rate is changed from a fixed monthly reservation charge of $1,1967 per dekatherm (Dth) and a fixed commodity charge of $.0031 per Dth to a fixed monthly reservation charge of $1.1298 per Dth and a fixed commodity charge of $.0053. Tennessee also states that it seeks to amend certain language in the Application and in an exhibit to the transportation agreement included with the Application in order to clarify the surcharges that it intends to discount under the negotiated rate agreement proposed in the Application. Tennessee requests that the Commission approve the Application as amended by September 1, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–2888 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1242–000, et al.]

Cinergy Services, Inc., et al., Electric Rate and Corporate Regulation Filings

February 2, 2000.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER00–1242–000]

Take notice that on January 27, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and UtiliCorp United, Inc.(UtiliCorp).

Cinergy and British are requesting an effective date of January 10, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket No. ER00–1243–000]

Take notice that on January 27, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

This service agreement has a yearly firm transmission service with American Electric Power via the Zimmer Generating Station Unit No. 1.

Cinergy and Cinergy, the Customer are requesting an effective date of January 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER00–1244–000]

Take notice that on January 27, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

This service agreement has a yearly firm transmission service with Northern Indiana Public Service Company via the Gibson Unit No. 5 Generating Station.

Cinergy and Cinergy, the Customer are requesting an effective date of February 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1245–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 21 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 28, 1999 to The Dayton Power and Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER00–1246–000]

Take notice that on January 27, 2000, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Williams Energy Marketing and Trading Co. under its Market-Based Rate Tariff.

Wisconsin Public Service Corporation has requested an effective date of December 30, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER00–1247–000]

Take notice that on January 27, 2000, Kansas City Power & Light Company (KCPL) tendered for filing nine Service Agreements dated December 20, 1999.

KCPL proposes an effective date of February 1, 2000. These Agreements provide for the rates and charges for Firm Point-to-Point Transmission Service by KCPL for wholesale transactions.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreements are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power a division of Duke Energy Corporation

[Docket No. ER00–1248–000]

Take notice that on January 27, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Clinton Energy Management Services, Inc. for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on January 20, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–1249–000]

Take notice that on January 27, 2000, Virginia Electric and Power Company (Virginia Power) filed an amended Transaction Agreement (Agreement) with Constellation Energy Source, Inc. (CES) pursuant to Virginia Power's Service Agreement with CES under its FERC Electric Tariff, Second Revised Volume No. IV.

Virginia Power requests that the Commission waive its notice of filing requirements to allow the agreement, as amended, to become effective January 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tacoma Energy Recovery Company

[Docket No. ER00–1250–000]

Take notice that on January 27, 2000, Tacoma Energy Recovery Company (Operator), a corporation organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) A ccepting Operator's Rate Schedule FERC No. 1; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; and (3) granting certain blanket approvals. Operator is an indirect subsidiary of Northern States Power Company.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PG&E Energy Trading—Power, L.P.

[Docket No. ER00–1251–000]

Take notice that on January 27, 2000, PG&E Energy Trading-Power, L.P. (PGET), 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed revisions to its Electric Rate Schedule No. 1 providing for the resale of Firm Transmission Rights pursuant to the Commission's November 10, 1999 Order in Docket No. ER 99–3594–000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Potomac Electric Power Company

[Docket No. ER00–1252–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and: Delmarva Power & Light Company; Dayton Power and Light Company; Rainbow Energy Marketing Corporation and Merchant Energy Group of the Americas, Inc.

An effective date of May 14, 1999 for these service agreements, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Potomac Electric Power Company

[Docket No. ER00–1253–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and DTE Energy Trading, Inc.

An effective date of June 8, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Potomac Electric Power Company

[Docket No. ER00–1254–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and PG&E Energy Trading—Power, L.P.

An effective date of October 1, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER00–1255–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and: Cinergy Services, Inc. as agent for and on behalf of The Cincinnati Gas and Electric Company and PSI Energy, Inc. collectively Cinergy Operating Companies.

An effective date of May 6, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER00–1315–000]

Take notice that on January 28, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing two firm Transmission Service Agreements between NSP and NSP Energy Marketing.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER00–1316–000]

Take notice that on January 28, 2000, Central Power and Light Company (CPL), and West Texas Utilities Company (WTU), tendered for filing a service agreement under the Central and South West Open Access Transmission Tariff with Sharyland Utilities, L.P., (Sharyland).

CPL and WTU seek an effective date of January 1, 2000 for the agreement.

Copies of the filing were served on Sharyland and the Public Utility Commission of Texas.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corporation

[Docket No. ER00–1317–000]

Take notice that on January 28, 2000, Central Vermont Public Service Corporation tendered for filing Network Integration Transmission Service Agreements and Network Operating Agreements with Vermont Electric Cooperative, Inc.; Woodsville Fire District Water and Light Department;

Village of Johnson Water and Light Department; Rochester Electric Light and Power Company; Village of Ludlow Electric Light Department; Lyndonville Electric Department; and Village of Hyde Park Water and Light Department for service under Central Vermont's Open Access Transmission Tariff No. 7.

Central Vermont requests that the Commission waive its notice of filing requirements and allow the agreements to become effective as of January 1, 2000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PG Power Sales Ten, L.L.C.

[Docket No. ER00–1318–000]

Take notice that, on January 28, 2000, PG Power Sales Ten, L.L.C., tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–1319–000

Take notice that on January 28, 2000, Wisconsin Energy Corporation Operating Companies (WEC), tendered for filing a charge for Schedule 2 (Reactive Supply and Voltage Control from Generation Sources Service) of Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1. WEC also made an addition to Exhibit C (Methodology to Assess Available Transmission Capacity) to the OATT to clarify that other analytic tools may be used in addition to the cited PTI PSS/E load flow program.

WEC requests an effective date of March 28, 2000.

Copies of the filing have been served on all transmission service customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Texas-New Mexico Power Company

[Docket No. ER00–1320–000]

Take notice that on January 28, 2000, Texas-New Mexico Power Company (TNP), tendered for filing under TNP's Market-Based Rate Tariff an executed Power Sale Agreement and companion Service Agreement for Negotiated Market-Based Rates with Southwestern Public Service Company (SPS) as the customer.

TNP has requested an effective date of January 1, 2000 for capacity and energy sales by TNP to SPS at market-based rates under these Agreements. Service to be provided under these Agreements is for one year.

A copy of this filing was served upon SPS.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Metropolitan Edison Company

[Docket No. ER00–1321–000]

Take notice that on January 28, 2000, Metropolitan Edison Company (doing business and referred to as GPU Energy), tendered for filing an amendment to the Generation Facility Transmission Interconnection Agreement between GPU Energy and Solar Turbines Incorporated. (Metropolitan Edison Company, Rate Schedule FERC No. 75). The amendment consists of new Schedule 1 of Appendix E, which amends the interconnection agreement by providing for a fee of $576.40 per month to compensate GPU Energy for relaying PJM operating orders.

Copies of the filing were served upon Solar Turbines and regulators in the Commonwealth of Pennsylvania.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Jersey Central Power & Light Company and Metropolitan Edison Company

[Docket No. ER00–1322–000]

Take notice that on January 28, 2000, Jersey Central Power & Light Company and Metropolitan Edison Company (each doing business and hereinafter collectively referred to as GPU Energy), tendered for filing a letter agreement (Agreement) between GPU Energy and PECO Energy (PECO). Under the Agreement, PECO has agreed to accept certain operational and financial responsibilities, including those set forth in the GPU Energy's procedure manuals, associated with PECO acting as the Load Serving Entity for the New Jersey boroughs of Butler, Lavallette, Madison, Pemberton, and Seaside Heights, and the Pennsylvania borough of Middletown.

Copies of the filing were served upon PECO and regulators in the State of New Jersey and the Commonwealth of Pennsylvania.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. New Century Services, Inc.

[Docket No. ER00–1323–000]

Take notice that on January 28, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Black Hills Power and Light Company, which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on January 24, 2000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. New Century Services, Inc.

[Docket No. ER00–1324–000]

Take notice that on January 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and West Texas Municipal Power Agency.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cleco Utility Group Inc.

Docket No. ER00–1304–000

Take notice that on January 27, 2000 Cleco Utility Group Inc., Transmission services (CLECO), tendered for filing service agreements for short term firm point-to-point transmission service under its Open Access Transmission Tariff with Central and South West Services, Inc., (CSWS).

CLECO requests an effective date of January 20, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Dighton Power Associates Limited Partnerships, FPL Energy, L.L.C., Southern Energy New England, L.L.C. and Southern Energy Kendall, L.L.C. v. ISO New England, Inc.

[Docket No. EL00–40–000]

Take notice that on February 1, 2000, Dighton Power Associates Limited Partnerships, FPL Energy, L.L.C., Southern Energy New England, L.L.C., Southern Energy Kendall, L.L.C., tendered for filing pursuant to Sections 206 and 306 of the Federal Power Act

a complaint against ISO New England, Inc.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Maine Independent System Administrator, Inc.

[Docket No. ES00–17–000]

Take notice that on January 28, 2000, the Northern Maine Independent System Administrator, Inc. (NMISA) submitted an application under Section 204 of the Federal Power Act, requesting authorization to enter into a $1,000,000 revolving line of credit with an effective date of no later than March 1, 2000. NMISA also requests that the Commission waive its competitive bidding or negotiated placement requirements of 18 CFR 34.2.

Comment date: February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2885 Filed 2–8–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30451B; FRL–6487–3]

Burkholderia cepacia Strain Ral-3; Withdrawal of an Application to Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Agrium U.S., Inc., has withdrawn its application to register a pesticide product containing the active ingredient *Burkholderia cepacia* strain Ral-3 (EPA File Symbol 70724–R). The application is withdrawn without prejudice to future filing for registration of products containing *Burkholderia cepacia* strain Ral-3.

FOR FURTHER INFORMATION CONTACT: Denise L. Greenway, c/o Product Manager 91, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (703) 308–8263, e-mail address: greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

Although this action only applies to the registrant in question, it is directed to the public in general. Since various individuals or entities may be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30451B. The official record consists of the documents specifically referenced in this action and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. Background Information

EPA issued a notice in the **Federal Register** on March 24, 1998 (63 FR 14114) (FRL–5780–3), which announced the Agrium U.S., Inc. submission of an application to register a pesticide product (EPA File Symbol 70724–R) containing an active ingredient, the microbial pesticide *Burkholderia cepacia* strain Ral-3, an active ingredient not included in any previously registered pesticide product. Subsequently, EPA issued a correction notice in the **Federal Register** on April 15, 1998 (63 FR 18410) (FRL–5783–3) for the microbial pesticide *Burkholderia cepacia* strain Ral-3.

The application was the subject of a joint review with the Pest Management Regulatory Agency of Health Canada, where the application was also withdrawn from further consideration by the applicant.

EPA received comments from the Allegheny University of the Health Sciences, the University of Edinburgh Medical School, Children's Hospital of Oklahoma, the University of British Columbia, and the Cystic Fibrosis Foundation. EPA co-chaired and participated in a symposium entitled, "*Burkholderia cepacia*–Friend or Foe?," at a joint meeting of the American Phytopathological Society (APS) and the Entomological Society of America (ESA). EPA held and participated in an inter-Agency meeting entitled, "Risk Assessment for Intentional Use of Opportunistic Pathogens," with the Food and Drug Administration (FDA), the United States Department of Agriculture (USDA), the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS), the National Institutes of Health (NIH), the National Institute of Environmental Health Sciences, and Health Canada. EPA also participated in several meetings of the International *Burkholderia cepacia* Working Group (IBCWG) and held and participated in a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) meeting entitled, "*Burkholderia cepacia:* Risk Assessment of a Biopesticide with Affinities to a Human Opportunistic Pathogen," a record of which is

available at http://www.epa.gov/scipoly/sap/1999/index.htm#july.

IV. What Action is the Agency Taking?

EPA is announcing that Agrium U.S., Inc., South Ulster St., Suite 1400, Denver, CO 80237, has withdrawn its application to register a microbial pesticide containing *Burkholderia cepacia* strain Ral-3, as provided for in section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act of 1996 (FQPA). *Burkholderia cepacia* strain Ral-3 is an active ingredient not included in any previously registered pesticide product. *Burkholderia cepacia* strain Ral-3 had been proposed as a microbial pesticide for commercial indoor application to seed and/or seedlings of conifers and deciduous trees.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 21, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–2934 Filed 2–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50865; FRL–6488–4]

Plant-Pesticide Insect-Protected Soybean Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of application 524–EUP–OR from Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Missouri 63198, requesting an experimental use permit (EUP) for the Cry1Ac protein and the genetic material necessary for its production (Vector PV–GMBT01) in soybean. The Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50865, must be received on or before March 10, 2000.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50865 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0515; and e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of plant-pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50865. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50865 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically* . You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50865. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Proposed Experimental Programs

The subject program proposes to test and evaluate genetically modified soybean that has been developed to provide control of velvetbean caterpillar (*Anticarsia gemmatalis*), stem borer (*Epinotia aporema*), and soybean looper (*Pseudoplusia includens*). Monsanto Company proposes to plant 66.5 acres of the plant-pesticide in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas; Louisiana, Maryland, Mississippi, Missouri, North Carolina, Pennsylvania, and Tennessee on March 1, 2000. All plantings of soybean containing the Cry1Ac protein under this experimental program will be contained during the experimental program. No portion of the crop will be used for food or feed.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 21, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–2485 Filed 2–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6534–4]

Request for Qualifications and Preliminary Proposals for Communications, Outreach and Education

The U.S. Environmental Protection Agency (EPA) is issuing a request for qualifications and preliminary proposals for organizations interested in assisting the Chesapeake Bay Program in its effort to provide the communications, outreach and education components of the Bay Program partnership. Applicants must be a non-profit organization, interstate agency, college or university institution. The organization must have conducted work within the Chesapeake Bay watershed. Note, this is a request for proposals for the benefit of the Chesapeake Bay Program partnership and not for direct benefit to EPA. Funding will be provided to an organization under the authority of the Clean Water Act, Section 117(a) and (b).

An original and 5 copies of proposals must be received by the US EPA, Chesapeake Bay Program by close of business March 3, 2000. The RFP is available at the following web-site: *http://www.epa.gov/r3chespk/* You may also request a copy by calling Robert Shewack at 410–267–9856 or by E-mail at: shewack.robert@epa.gov. All proposals must be received by EPA by close of business March 3, 2000. Any late, incomplete or fax proposals will not be considered.

William Matuszeski,

Director, Chesapeake Bay Program.

[FR Doc. 00–2826 Filed 2–8–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Applicant Background Questionnaire."

DATES: Comments must be submitted on or before April 10, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Applicant Background Questionnaire." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Add the Following Collection of Information

Title: Applicant Background Questionnaire.

OMB Number: new collection.

Frequency of Response: Occasional.

Affected Public: Potential FDIC employment applicants.

Estimated Number of Respondents: 16,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden: 800 hours.

General Description of Collection: The FDIC Applicant Background Questionnaire will be completed voluntarily by FDIC job applicants who are not currently FDIC employees. Responses to questions on the survey will provide information on gender, age, disability, race/national origin, and the applicant's source of vacancy announcement information. Data will be used by the Office of Diversity and Economic Opportunity and the Personnel Services Branch to evaluate the effectiveness of various recruitment methods used by the FDIC to ensure that the agency meets workforce diversity objectives.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 3rd day of February 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–2903 Filed 2–8–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, February 9, 2000, 10:00 a.m., Meeting Open to the Public.

The following items were added to the agenda.

1996 Republican National Convention Committee on Arrangements—Administrative Review of Repayment Determination, Proposed Statement of Reasons (LRA#472).

Express Advocacy Rule (11 CFR 100.22).

Legislative Recommendations, 2000.

DATE AND TIME: Tuesday, February 15, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC

STATUS: This Meeting Will Be Closed to the Public

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, February 16, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This Hearing Will Be Open to the Public.

MATTERS BEFORE THE COMMISSION: Notice of Proposed Rulemaking on General Public Political Communications Coordinated with Candidates.

DATE AND TIME: Thursday, February 17, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

1996 Democratic National Convention Committee, Inc—Administrative Review of Repayment Determination, Proposed Statement of Reasons (LRA#471).

Advisory Opinion 1999–39: WellPoint Health Networks Political Action Committee by counsel, James A. Sivesind.

Final Rules and Statement of Basis and Purpose Implementing the Electronic Freedom of Information Act Amendments.

Status of Regulations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–3152 Filed 2–7–00; 2:58 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011688.

Title: Iceland Steamship/Samskip Slot Charter Agreement.

Parties: Iceland Steamship Company Ltd. (Eimskip) Samskip hf.

Synopsis: Under the proposed agreement, Samskip agrees to charter space on Eimskip vessels in the trade between U.S. East Coast ports and Iceland. This agreement replaces the parties' previous agreement that expired on January 31, 2000. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: February 4, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2939 Filed 2–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Logis Services of America, Inc., 3027 Marina Bay Drive, Suite 110, League City, TX 77573, Officers: Louis De Scioli, President (Qualifying Individual), Michael Reed, Secretary

USAS Express Int'l, Inc., 11099 S. La Cienega Blvd., Suite 265, Los Angeles, CA 90045, Officers: Hong S. Kim, Secretary (Qualifying Individual) Young Il Choi, President

Vayer L.A., Inc., 11755 Sheldon Street, Sun Valley, CA 91352, Officers: Arik Hezroni, Treasurer (Qualifying Individual), Hasday Aroch, President

Gulf Logistics & Projects Co., Inc., 769 Bradfield Road, Houston, TX 77060, Officer: Jeong Dae Kim, President (Qualifying Individual)

ANA Link, Ltd., 177–25 Rockaway Blvd., Suite 205, Jamaica, NY 11434, Officer: Tal Y. Yo, President (Qualifying Individual)

C.F.L. Freight Service, Inc., 2089 S. Atlantic Blvd., Suite H, Monterey Park, CA 91754, Officers: Po-Hsun Huang, Secretary (Qualifying Individual) Bonnet Fan, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Global Caribbean, Inc., 12000 Biscayne Blvd., Suite 106, Miami, FL 33181, Officers: Sandra Rivera, Secretary (Qualifying Individual) Jose Luis Rivera, President

H.L.M. Cargo Corp. d/b/a Sea Line Express, 5567 NW, 72 Avenue, Miami, FL 33166, Officers: Nilo E. Villena, Jr., President (Qualifying Individual) Nilo E. Villena, Sr., Vice President

Dated: February 4, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–2938 Filed 2–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting:

Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, February 14, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3030 Filed 2–4–00; 4:51 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION/OFFICE OF PERSONNEL MANAGEMENT

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is canceled because of low usage:

Of 5, Inquiry As to Availability.

DATES: Effective February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: January 24, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–2953 Filed 2–8–00; 8:45am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

January 15, 2000.

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS that was previously scheduled on February 13–15, 2000, at the Radisson-Barcelo, Washington, D.C. has been re-scheduled for March 19–21, 2000. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, March 20, and Tuesday, March 21, and Tuesday, (8:30 a.m. to 6 p.m. on Monday and Tuesday) at the Radisson-Barcelo, 2121 P Street, NW, Washington, D.C. 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Appropriations, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than February 29, 2000.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 00–2726 Filed 2–8–00; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates:

9:00 a.m.–5:30 p.m., February 23, 2000

9:00 a.m.–5:00 p.m., February 24, 2000

Place: Conference Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington DC 20201.

Status: Open.

Purpose: The National Committee on Vital and Health Statistics is planning to meet on February 23–24, 2000. The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of

the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will discuss and take action on its annual report to Congress on the Implementation of HIPAA. In addition, the Committee will discuss a draft of its forthcoming report to HHS on standards for patient medical record information. An export panel will discuss summary measures of population health, and IOM representatives will brief the Committee on the IOM medical errors report. Subcommittee breakout sessions also are planned.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

Contact Person for More Information: Substantive information as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://ncvhs.hhs.gov) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: February 2, 2000.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 00–2960 Filed 2–8–00; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2:45 p.m., February 28, 2000.

8:30 a.m.–4:15 p.m., February 29, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: Agenda items will include: an update on the National Vaccine Program Office (NVPO) activities; an update on Unmet Needs Funding; an update on Pandemic Planning; Global Plan of Action for Laboratory Containment of Poliovirus; an update on Polio Eradication; Global Vaccines—White House Initiatives; Emerging Issues in Vaccine Safety; Vaccine Safety and Communication Subcommittee Report; Immunization Coverage Subcommittee Report; Future Vaccines Subcommittee Report; update from the Office of the Assistant Secretary for Health and Surgeon General; Healthy People 2010-Update on Vaccines; Annual Report on the Vaccine Injury Compensation Program; ACIP Annual Report; Budget Status on 317, CBER, Pandemic Influenza and Vaccine Safety Implementation Plan; and an update on Immunization Registries.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:45 p.m.–5:00 p.m., February 28, 2000.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: Agenda items will include discussions on the Institute of Medicine Report "Vaccines for the 21st Century"; CMV Workshop planning; Vaccines for special populations; and Vaccines for chronic diseases.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:45 p.m.–5 p.m., February 28, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: Agenda items will include updates on the Working Group on Adult Immunization Standards; the implementation of NVAC's recommendations on Adult Immunization; the process for Strategies to Sustain Success paper; discussions of Philosophical Exemptions; and discussions on Adolescent Immunization.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2:45 p.m.–5 p.m., February 28, 2000.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Plans for NVAC Workshop on Risk Communication; Plans for a Workshop on Surveillance for Rare Events; update on Pediatric Standards of Immunization; update on Rotavirus Vaccine.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 2, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–2900 Filed 2–8–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Training and Technical Assistance Assessment.

OMB No.: New Collection.

Description: This data will be used to assess the Head Start Training and Technical Assistance (T/TA) delivery system. Data collected will provide

information on the quality of services that Head Start Quality Improvement Centers (QICs) provide to Head Start grantees. Respondents will include QIC staff, collaborative partners of QIC organizations, and Head Start grantees. Specifically, site visit interviews will be conducted with QIC Directors and QIC Area Specialists, while telephone interviews will be conducted with QIC Directors, Grantee Directors, and Partner Agencies.

Training and technical assistance are critical in supporting the continuous improvement efforts of Head Start grantee and delegate agencies serving children birth to five and their families. The report of the Advisory Committee on Head Start Quality and Expansion in December 1993 reaffirmed the importance of T/TA and recommended that the Head Start Bureau reassess and design the T/TA system to support program quality and expansion. The Head Start Act of 1994 (Pub. L. 103–252) also emphasized the importance of T/TA and stated that T/TA activities must ensure that needs of local Head Start agencies relating to improving program quality and expansion are addressed to the maximum extent feasible. The Advisory Committee on Services for Families with Infants and Toddlers also stressed the need for ongoing staff training and training programs to ensure that staff are "cross-trained" in the areas of child development, family development, and community building.

The assessment is designed to gather information for program management and planning purposes about the kind and quality of services provided by each QIC. Information collected will be used by the Bureau to: (1) Identify the quality of approaches undertaken in each phase of the strategic planning cycle; (2) identify any patterns or changes over time in the delivery of T/TA; and (3) determine the feasibility of future initiatives and funding decisions. The data collected will provide a means for the Head Start Bureau to carry out the Federal role outlined in the Cooperative Agreement establishing the QICs. These data also may be used, in part, to fulfill the Department's requirement to report to Congress on the Head Start program under the Government Performance and Results Act (GPRA).

Respondents: Head Start Partner Agencies and Head Start Quality Improvement Centers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
QIC Director, Site Visit Interview	28	30	.1	84
QIC Area Specialist, Site Visit Interview	116	19	.16	353
QIC Director, Telephone Interview	26	8	.19	42
Head Start Partner, Agency Telephone Interview	112	11	.09	112
Grantee Director, Telephone Interview	256	18	.11	512

Estimated Total Annual Burden Hours: 1103.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the Title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 1, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–2663 Filed 2–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Provision of Services in Interstate Child Support.

Enforcement: Standard Forms.

OMB No.: 0970–0085.

Description: Pub. L. 104–193, The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amended 42 U.S.C. 666 to require State Child Support Enforcement (CSE) programs to enact the Uniform Interstate Family Support Act (UIFSA) into State law by January 1, 1998. To ensure standardization among the States, section 311(b) of UIFSA requires the States to use standard interstate forms, as mandated by Federal law. 45 CFR 303.7 requires CSE programs to transmit child support case information on standard interstate forms when referring cases to other States for processing. The forms, which promote uniformity and standardization, and expiring and we are taking this opportunity to make minor revisions to them to, among other things, reflect the UIFSA is now the law for all 54 CSE programs.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Transmittal #1	54	10,861.20	.42	246,332.02
Transmittal #2	54	2,715.30	.08	11,730.01
Transmittal #3	54	543.05	.17	4,985
Uniform Petition	54	5430.60	.12	35,190.29
Gen Testimony	54	6,516.72	.33	116,127.95
Affidavit/Paternity	54	2715.30	.25	36,656.55
Locate Data Sheet	54	375	.08	1,620
Notice/Control Order	54	8,145.75	.17	74,777.98
Registration Statement	54	7,168.39	.17	65,805.82
Estimate Total Annual Burden Hours	.....	.....	.....	593,226

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–2865 Filed 2–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: April 2000 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	47,000	1	.0241	1,136

Estimated Total Annual Burden Hours: 1,136.

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by April 1, 2000. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Bob Sargis at (202) 401–6465 or e-mail at rsargis@acf.dhhs.gov.

Comments and questions about the information collection described above should be directed to the following by April 1, 2000: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW, Washington, DC 20503, (202) 395–7316.

Dated: February 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–2866 Filed 2–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

ACTION: Notice.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 9, 2000, 8 a.m. to 4:30 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra L. Titus or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the best way to develop drugs for the treatment of the various psychiatric and behavioral disturbances that are frequently associated with Alzheimer's disease and other dementias. In particular, the presentations and discussions will focus on the problem of how to identify, define, and name the clinical entities that fall under this broad category of disorders. This is a major regulatory issue because the failure to adequately define specific disorders in this area could lead to misleading labeling. As background information for this meeting, FDA has provided an issues paper at http://www.fda.gov/ohrms/dockets/dockets/00n–0088/00n–0088.htm) that describes in detail the regulatory issues and concerns and proposes how this question might be addressed. This paper is intended to serve as a stimulus for others in the community of clinicians, academicians, and pharmaceutical sponsors to articulate and submit alternative positions in response to this question. Interested persons may submit written statements by February 17, 2000. Written statements submitted by the above date will be made available on FDA's website identified above. In addition to submitting written statements, interested persons are invited to make presentations of up to 10 minutes in an expanded open public session at the March 9, 2000, meeting. Those persons interested in making a presentation should follow the procedures given in the *"Procedure"* section below.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the Dockets Management Branch, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These submissions should contain Docket No. 00N–0088, and should be received by February 17, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 12:30 p.m. Additional time may be allocated for oral presentations. Time allotted for each presentation may be limited to 10 minutes. Those desiring to make formal oral presentations should notify the contact person before February 17, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–2861 Filed 2–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0084]

Draft Guidance for Industry on Special Protocol Assessment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Special Protocol Assessment." This draft guidance is intended to provide guidance for industry on procedures that will be adopted by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) to evaluate issues related to the adequacy (e.g., design, conduct, analysis) of certain proposed studies.

DATES: Submit written comments on the draft guidance and the collection of information provisions by April 10, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX: 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400; or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Special Protocol Assessment." The draft guidance is intended to provide guidance for industry on procedures that will be adopted by CDER and CBER to evaluate issues related to the adequacy (e.g., design, conduct, analysis) of certain proposed studies. This draft guidance describes procedures for sponsors to request

special protocol assessment and for the agency to act on such requests.

The Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571) was reauthorized in November 1997 as part of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115). In conjunction with the reauthorization of PDUFA, FDA agreed to specific performance goals (PDUFA goals) for activities associated with the development and review of products in human drug applications as described in section 735(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379g) (PDUFA products). The PDUFA goals are summarized in "PDUFA Reauthorization Performance Goals and Procedures," an enclosure to a letter dated November 12, 1997, from the Secretary of the U.S. Department of Health and Human Services, Donna E. Shalala, to Senator James M. Jeffords. The PDUFA goals for special protocol assessment and agreement provide that, upon request by a sponsor, FDA will evaluate within 45 days of receipt certain protocols and issues relating to the protocols to assess whether their design is adequate to meet scientific and regulatory requirements identified by the sponsor. Three types of protocols are eligible for this special protocol assessment under the PDUFA goals: (1) Animal carcinogenicity protocols, (2) final product stability protocols, and (3) clinical protocols for phase 3 trials whose data will form the primary basis for an efficacy claim if the trials had been the subject of discussion at an end-of-phase 2/pre-phase 3 meeting with the review division or if the division is otherwise aware of the developmental context in which the protocol is being reviewed and the questions are being answered. These protocols for phase 3 clinical trials may relate to efficacy claims that will be part of an original new drug application (NDA) or biologics license application (BLA) or that will be part of an efficacy supplement to an approved NDA or BLA.

Section 119(a) of the Modernization Act amends section 505(b) of the act (21 U.S.C. 355(b)). Section 505(b)(4)(B) of the act directs FDA to meet with sponsors and applicants, provided certain conditions are met, for the purpose of reaching agreement on the design and size of clinical trials intended to form the primary basis of an effectiveness claim in a marketing application submitted under section 505(b) of the act or section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Such marketing applications include NDA's, BLA's, and efficacy supplements to approved NDA's and BLA's.

The procedures and policies described in this draft guidance are designed to implement section 505(b)(4)(B) of the act and the PDUFA goals for special protocol assessment and agreement.

This draft Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on special protocol assessment in CDER and CBER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Special Protocol Assessment

Description: FDA is issuing a draft guidance on agency procedures to evaluate issues related to the adequacy of certain proposed studies. The draft guidance describes procedures for sponsors to request special protocol assessment and for the agency to act on such requests. The draft guidance provides information on how the agency will interpret and apply provisions of the Modernization Act and the specific PDUFA goals for special protocol assessment associated with the development and review of PDUFA products.

The draft guidance describes two collections of information: (1) The submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol, and (2) the submission of a request for special protocol assessment.

A. Notification for a Carcinogenicity Protocol

As described in the draft guidance, a sponsor interested in agency assessment of a carcinogenicity protocol should notify the appropriate division in CDER or CBER of an intent to request special protocol assessment at least 30 days prior to submitting the request. With such notification, the sponsor should submit relevant background information so that the agency may review reference material related to carcinogenicity protocol design prior to receiving the carcinogenicity protocol. The agency is currently drafting a separate guidance describing the type of information that would be appropriate to submit before requesting carcinogenicity protocol assessment.

B. Request for Special Protocol Assessment

In the draft guidance, CDER and CBER ask that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to the agency in triplicate with Form FDA 1571 attached. The agency also suggests that the sponsor submit the cover letter to a request for special protocol assessment via

facsimile to the appropriate division in CDER or CBER. Agency regulations (21 CFR 312.23(d)) state that information provided to the agency as part of an IND is to be submitted in triplicate and with the appropriate cover form, Form FDA 1571. An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA and the reporting and recordkeeping burden has been approved by OMB until December 31, 1999, under OMB control number 0910–0014. In the **Federal Register** of May 6, 1999 (64 FR 24402), FDA published a notice requesting comments on the burden estimates for the information collection requirements in part 312. The notice also requested an extension of OMB approval for this information collection.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via facsimile to the appropriate division in CDER or CBER to enable agency staff to prepare for the arrival of the protocol for assessment. The agency recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1) To ensure that each request is kept in the administrative file with the entire IND, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking data bases. Use of the information in the agency's tracking data bases enables the appropriate agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the draft guidance recommends that the following information should be submitted to the appropriate Center with each request for special protocol assessment so that the Center may quickly and efficiently respond to the request:

1. Questions to the agency concerning specific issues regarding the protocol; and

2. All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) The role of the study in the overall development of the drug; (2) information supporting the proposed trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization and relevant manufacturing data.

1. Description of Respondents

A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the agency under the act or section 351 of the PHS Act who requests special protocol assessment.

2. Burden Estimate

Table 1 of this document provides an estimate of the annual reporting burden for requests for special protocol assessment. The procedures for requesting special protocol assessment that are set forth in the draft guidance have not been previously described by the agency, although the PDUFA goals and the requirements of section 505(b)(4)(B) of the act have been in effect since October and November 1998, respectively, as follows:

a. *Notification for a carcinogenicity protocol.* Based on data collected from the review divisions and offices within CDER and CBER, including the number of carcinogenicity protocols submitted for review in the first half of fiscal year (FY) 1999 and the number of IND's for new molecular entities that were received by the agency per year over the last 5 years, CDER and CBER anticipate that approximately 30 respondents will notify the agency of an intent to request special protocol assessment of a carcinogenicity protocol. The agency further estimates that the total annual responses, i.e., the total number of notifications that will be sent to CDER and CBER, will be 60, based on data collected from the offices within CDER and CBER. Therefore, the agency estimates that there will be approximately two responses per respondent. The hours per response, which is the estimated number of hours that a respondent would spend preparing the notification and background information to be submitted in accordance with the draft guidance, is estimated to be approximately 8 hours. While FDA has not finalized the separate guidance describing background information that should be submitted with notification of a carcinogenicity protocol for assessment, the agency anticipates that it will take respondents approximately 8 hours to gather and copy articles and study reports that are relevant to the carcinogenicity protocol. Therefore, the agency estimates that respondents will spend 480 hours per year notifying the agency of an intent to request special protocol assessment of a carcinogenicity protocol.

b. *Requests for special protocol assessment.* Based on data collected from the review divisions and offices within CDER and CBER, including the number of requests for special protocol assessment in the first half of FY 1999, the number of IND's for new molecular entities that were received by the agency per year over the past 5 years, the number of sponsors who have submitted protocols for agency review in the past and in the first half of FY 1999, and the number of end-of-phase 2/pre-phase 3 meetings that occur between respondents and the agency per year, FDA anticipates that 70 respondents will request special protocol assessment per year. The total annual responses are the total number of requests for special protocol assessment that are submitted to CDER and CBER in 1 year. Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that it will receive approximately 180 requests for special protocol assessment per year. Therefore, the agency estimates that there will be approximately 2.57 responses per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on estimates provided by the regulated industry and on the agency's experience in requesting similar information, FDA estimates approximately 15 hours on average would be needed per response. Therefore, FDA estimates that 2,700 hours will be spent per year by respondents requesting special protocol assessment. Overall, FDA anticipates that respondents will spend 3,180 hours per year to participate in the programs described in the draft guidance.

FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Notification and Requests	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Notification for Carcinogenicity Protocols	30	2.0	60	8	480
Requests for Special Protocol Assessment	70	2.57	180	15	2,700
Total					3,180

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2982 Filed 2–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1085–N]

RIN 0938–AJ79

Medicare Program; Update of Ambulatory Surgical Center Payment Rates Effective for Services on or after October 1, 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice implements section 1833(i)(2)(C) of the Social Security Act, which mandates an inflation adjustment to Medicare payment amounts for ambulatory surgical center (ASC) facility services during the years when the payment amounts are not updated based on a survey of the audited costs incurred by ASCs.

EFFECTIVE DATE: The payment rates contained in this notice are effective for services furnished on or after October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC), in a critical access hospital. (Under section 4201(c)(1) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, the term "rural primary care hospital" is replaced with "critical access hospital" applicable to services furnished on or after October 1, 1997.) To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25, which set forth basic requirements for ASCs.

Generally, there are two elements in the total charge for a surgical procedure: A charge for the physician's professional services for performing the procedure, and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, Medicare pays participating ASCs 80 percent of the prospectively determined rate for facility services, adjusted for regional wage variations. This rate is intended to represent our estimate of a fair payment that takes into account the costs incurred by ASCs generally in providing the services that are furnished in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment for use in the patient's home) for which separate payment may be authorized under other provisions of the Medicare program.

We have grouped procedures into nine groups for purposes of ASC payment rates. The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility. (For an indepth discussion of the methodology and rate-setting procedures, see our **Federal Register** notice published on February 8, 1990, entitled "Medicare Program; Revision of Ambulatory Surgical Center Payment Rate Methodology" (55 FR 4526).)

Statutory Provisions

Section 1833(i)(2)(A) of the Act requires the Secretary to review and update standard overhead amounts annually. Section 1833(i)(2)(A)(ii) requires that the ASC facility payment rates result in substantially lower Medicare expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Under section 1833(i)(3)(A), the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to the lesser of the following two amounts:

- The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) (that is, the lower of the hospital's reasonable costs or customary charges less deductibles and coinsurance).
- The amount determined under section 1833(i)(3)(B)(i) based on a blend of the lower of the hospital's reasonable costs or customary charges, less deductibles and coinsurance, and the amount that would be paid to a free-standing ASC in the same area for the same procedures.

Under section 1833(i)(3)(B)(i), the blend amount for a cost reporting period is the sum of the hospital cost proportion and the ASC cost proportion. Under section 1833(i)(3)(B)(ii), the hospital cost proportion and the ASC cost proportion for portions of cost reporting periods beginning on or after January 1, 1991 are 42 and 58 percent, respectively.

Section 13531 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993)

(Pub. L. 103–66), enacted on August 10, 1993, prohibited the Secretary from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2)(A) and (B) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993 reduced the amount of payment for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999, to $150.

Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103–432), enacted on October 31, 1994, amended section 1833(i)(2)(A)(i) of the Act to require that, for the purpose of estimating ASC payment amounts, the Secretary survey not later than January 1, 1995, and every 5 years thereafter, the actual audited costs incurred by ASCs, based upon a representative sample of procedures and facilities.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an application of an inflation adjustment during a fiscal year in which the Secretary does not update ASC rates based on survey data of actual audited costs. Section 1833(i)(2)(C) of the Act provides that ASC payment rates be increased by the percentage increase in the consumer price index for urban consumers (CPI–U), as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, if the Secretary has not updated rates during a fiscal year, beginning with FY 1996.

Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require the Secretary to consult with appropriate trade and professional organizations in reviewing and updating the list of Medicare-covered ASC procedures.

Section 141(b) of SSAA 1994 requires the Secretary to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs. A notice of proposed rulemaking was published in the **Federal Register** on June 16, 1999, entitled "Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers' (BPD–3831–F) (64 FR 32198).

Section 4555 of the BBA amends section 1833(i)(2)(C) of the Act to require, in each of the fiscal years 1998 through 2002, that the percentage increase by which ASC rates are to be adjusted be reduced (but not below zero) by 2.0 percentage points.

We published our last ASC payment rate update notice on October 1, 1998 (63 FR 52663). In this notice, we explained that the current rates were frozen and we stated the comment period for proposed rule (HCFA–1885–P) published in the **Federal Register** June 12, 1998 entitled "Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998" would be extended to November 13, 1998. We further extended the comment period for this proposed rule in **Federal Register** notices published January 12, 1999, March 12, 1999, and July 6, 1999. The comment periods have been running concurrently with those of another proposed rule addressing a prospective payment system (PPS) for hospital outpatient services published September 8, 1998 (63 FR 47552).

HCFA–1885–P proposes to update the criteria for determining which surgical procedures can be appropriately and safely performed in an ASC, makes additions and deletions from the current list of procedures based on the revised criteria, rebases the ASC payment rates using cost, charge, and utilization data collected by a 1994 survey of ASCs, refines the ratesetting methodology that was implemented by a final notice published on February 8, 1990 in the **Federal Register**, and requires that ASC payment, coverage and wage index updates be implemented annually on January 1 rather than having these updates occur randomly throughout the year.

II. Provisions of This Notice

As previously stated, during years in which the Secretary has not otherwise updated ASC rates based on a survey of actual audited costs, section 1833(i)(2)(C) of the Act requires application of an inflation adjustment equal to the percentage increase in the CPI–U as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, reduced (but not below zero) by 2.0 percentage points in each of the fiscal years 1998 through 2002. (The CPI–U is a general index that reflects prices paid by urban consumers for a representative market basket of goods and services.)

Based on estimates prepared by Data Resources, Inc./McGraw Hill, the forecast rate of increase in the CPI–U for the fiscal year that ends March 31, 2000 is 2.8 percent. Reducing the CPI–U factor by 2.0 percent results in an adjustment factor of 0.8 percent. Increasing the ASC payment rates currently in effect by 0.8 percent results in the following schedule of rates that are payable for facility services furnished on or after October 1, 1999:

Group 1—$317
Group 2—$425
Group 3—$486
Group 4—$600
Group 5—$683
Group 6—$794 (644 + 150)
Group 7—$949
Group 8—$934 (784 + 150)

ASC facility fees are subject to the usual Medicare deductible and copayment requirements. The allowance for an IOL that is part of the payment rates for group 6 and group 8 remains $150.

A ninth payment group allotted exclusively to extracorporeal shockwave lithotripsy (ESWL) services was established in the notice with comment period published December 31, 1991 (56 FR 67666). The decision in *American Lithotripsy Society* v. *Sullivan*, 785 F. Supp. 1034 (D.D.C. 1992), prohibits payment for these services under the ASC benefit at this time. ESWL payment rates were the subject of a separate **Federal Register** proposed notice, which was published October 1, 1993 (58 FR 51355).

We will continue to use the inpatient hospital PPS wage index to standardize ASC payment rates for variation due to geographic wage differences in accordance with the ASC payment rate methodology published in the February 8, 1990 notice. The inpatient PPS wage index final rule published on July 30, 1999 (64 FR 41490), for implementation on October 1, 1999, will be used to adjust the ASC payment rates announced in this notice for facility services furnished on or after October 1, 1999.

III. Regulatory Impact Analysis

A. Introduction

This notice implements section 1833(i)(2) of the Act, which mandates an inflation adjustment to Medicare payment amounts for ASC facility services during the years in which the payment amounts are not updated based on a survey of the actual audited costs incurred by ASCs.

Actuarial estimates of the cost of updating the ASC rates by 0.8 percent are as follows:

PROJECTED ADDITIONAL MEDICARE COSTS
[In millions *]

FY 2000	$10
FY 2001	10
FY 2002	10
FY 2003	10

PROJECTED ADDITIONAL MEDICARE COSTS—Continued

[In millions *]

FY 2004	10

*Rounded to the nearest $10 million.

The BBA is considered in the estimate, including the PPS for hospital outpatient services, which will be implemented in the mid-2000, and the formula-driven overpayment elimination effective October 1, 1997.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, most ASCs and hospitals are considered to be small entities either by non-profit status or by having resources of $5 million or less annually.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Although we believe that this notice will not have a significant impact on a substantial number of small rural hospitals, it may have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief discussion of the impact this notice may have on all hospitals.

1. Impact on ASCs

Section 1833(i)(2)(C) of the Act requires that for fiscal years 1998 through 2002, we automatically adjust ASC rates for inflation during a fiscal year in which we do not update ASC payment rates based on survey data by a CPI–U factor reduced (but not below zero) by 2.0 percent. Therefore, we are updating the current ASC payment rates, which were published in our October 1, 1997 **Federal Register** notice (63 FR 8462), by incorporating the projected rate of change in the CPI–U for the 12-month period ending March 31, 2000 minus 2.0 percentage points. There are other factors, however, that affect the actual payments to an individual ASC.

First, variations in an ASC's Medicare case mix affect the size of the ASC's aggregate payment increase. Although we uniformly adjusted ASC payment rates by the CPI–U forecast for the 12-month period ending March 31, 2000, we did not adjust the IOL payment allowance that is included in the payment rate for group 6 and group 8 because OBRA 1993 froze the amount of payment for an IOL furnished by an ASC at $150 for the period beginning January 1, 1994 through December 31, 1998. Therefore, because the net adjustment for inflation for procedures in group 6 is 0.63 percent and for group 8 is 0.64 percent, ASCs that perform a high percentage of the IOL insertion procedures that comprise these groups may expect a somewhat lower increase in their aggregate payments than ASCs that perform fewer IOL insertion procedures.

A second factor determining the effect of the change in payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenue an ASC receives from the Medicare program, the greater the impact of the updated rates in this notice. The percentage of revenue derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for as much as 80 percent of all IOL insertion procedures performed in ASCs, an ASC that performs a high percentage of IOL insertion procedures will probably receive a higher percentage of its revenue from Medicare than would an ASC with a case mix comprised largely of procedures that do not involve insertion of an IOL. For an ASC that receives a large portion of its revenue from the Medicare program, the changes in this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, we expect the rate changes in this notice to affect ASCs positively by increasing the rates upon which payments are based.

2. Impact on Hospitals and Small Rural Hospitals

Section 1833(i)(3)(A) of the Act mandates the method of determining payments to hospitals for ASC-approved procedures performed in a hospital outpatient setting. The Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. The Congress recognized, however, that hospitals have certain overhead costs that ASCs do not and allowed for those costs by establishing a blended payment methodology. For ASC procedures performed in an outpatient setting, hospitals are paid based on the lower of their aggregate costs, aggregate charges, or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the lower of the hospital's aggregate costs or charges. According to statistics from the Office of Strategic Planning within HCFA, 12 percent of Medicare payments to hospitals by intermediaries is attributable to services furnished in conjunction with ASC-covered procedures.

We would not expect an ASC rate increase in every instance to keep pace with actual hospital cost increases, although we would fully recognize cost increases resulting from inflation alone to the extent that the blended payment methodology includes aggregate hospital costs. The weight of the ASC portion of the blended payment amount, which would reflect the ASC rate increase, is offset to a degree when hospital costs significantly exceed the ASC rate. Another element that would eliminate the effect of the ASC rate increase on hospital outpatient payments is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments. The number of Medicare beneficiaries a hospital serves and its case-mix variation would also influence the total impact of the new ASC rates on Medicare payments to hospitals. Based on these factors, we have determined, and we certify that this notice will not have a significant impact on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

We have reviewed this notice under the threshold criteria of Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255). The Executive Order is effective November 2, 1999, which is 90 days after the date of this Order. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

IV. Waiver of 30-Day Delay in the Effective Date

We ordinarily publish notices, such as this, subject to a 30-day delay in the effective date. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. The provisions of this

notice are effective for services furnished on or after October 1, 1999. These provisions will increase payment rates to ASCs by 0.8 percent (before applying the wage index), in accordance with section 1833(i)(2)(C) of the Act, as amended by the BBA. As a practical matter, if we allowed a 30-day delay in the effective date of this notice, ASCs would be unable to take timely advantage of the increase in payment rates contained in this notice. Moreover, we believe a delay is impracticable and unnecessary because as explained earlier, the statute provides that ASC payment rates be increased by the percentage increase in the CPI–U if the Secretary has not updated rates during a fiscal year, beginning with FY 1996. Therefore, we find good cause to waive the delay in the effective date.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Sections 1832(a)(2)(F) and 1833(i) (1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 1395l(i) (1) and (2)); 42 CFR 416.120, 416.125, and 416.130)

(Catalog of Federal Domestic Assistance Programs No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 6, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: October 25, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 00–2959 Filed 2–8–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding HRSA Grant Requirement—Participation in the 340B Drug Pricing Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing its decision to withdraw the proposal to impose a grant award requirement that would have required HRSA grantees listed in section 340B of the Public Health Service Act and Federally Qualified Health Center (FQHC) Look-Alikes to participate in the 340B Drug Pricing Program or provide good cause for non-participation. Instead of the proposed grant requirement, HRSA will add a statement to the Notice of Grant Award (NGA) concerning the need for grantees to determine the appropriateness of their drug purchasing practices under applicable cost principles.

FOR FURTHER INFORMATION CONTACT: Captain Robert Staley, the Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, East West Towers, 4350 East-West Highway, Bethesda, MD 20814; Phone (800) 628–6297; Fax (301) 594–4982.

SUPPLEMENTARY INFORMATION: The proposed grant requirement for eligible HRSA grantee and FQHC Look-Alike participation in the 340B Drug Pricing Program was announced in the **Federal Register** at 63 FR 56656 on October 22, 1998. A period of 60 days was established to allow interested parties to submit comments. HRSA received 21 comments. In light of the concerns expressed about the potential adverse impact of the proposed grant requirement, HRSA has decided not to institute the requirement at this time. Instead, HRSA will implement another administrative option to increase participation in the 340B Drug Pricing Program: a statement in the HRSA Notice of Grant Award (NGA) encouraging those grantees not participating in the 340B Program to determine whether their drug purchasing practices meet Federal requirements regarding reasonable and cost effective purchasing. (*See* 42 CFR part 50, subpart E, and OMB Circulars A–122 and A–87 regarding cost principles). If grantees can obtain drugs through the Drug Pricing Program at lower cost, it would be reasonable to take advantage of such cost savings. This policy will be implemented during the fiscal year (FY) 2000 grant award cycle.

Dated: January 3, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–2862 Filed 2–8–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 10, 2000.

Time: 4:30 PM to 7 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: February 21–22, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.

Date: February 21–22, 2000.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd, Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22–23, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joanne T. Fujii, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: February 22, 2000.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22, 2000.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23–24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Pathophysiologial Sciences Initial Review Group, Lung Biology and Pathology Study Section.

Date: February 23–24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Preferred Residence, 950 24th St., NW, Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

Name of Committee: Cardiovascular Sciences Initial Review Group, Cardiovascular Study Section.

Date: February 23–24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: February 23–24, 2000.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Martin L. Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.

Date: February 23–25, 2000.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23–24, 2000.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6701, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 3:00 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 5:00 PM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sooja K. Kim, PhD, Chief, Nutritional and Metabolic Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Nutrition Study Section.

Date: February 24–25, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.

Date: February 24–25, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Westin Fairfax Hotel, 2100 Massachusetts, Ave., NW, Washington, DC 20008.
Contact Person: Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.
Date: February 24–25, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arilington, VA 22202.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.
Name of Committee: Cell Development and Function Initial Group, Cell Development and Function 3.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolic Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W. Washington, DC 20007
Contact Person: Krish Krishnan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7808, Bethesda, MD 20892, 301–435–1045. coraroc@csr.nih.gov.

Name of Committee: Cell Development and Function Initial Review Group, International and Cooperative Projects Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Sandy Warren, MPH, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Michael A. Lang, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Samuel Rawlings, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.
Date: February 24–25, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.
Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To provide concept review of proposed grant applications.
Place: The Doyle Hotel, 1500 New. Hampshire Avenue, NW, Washington, DC 20036.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24–25, 2000.
Time: 9:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Bio-Organic and Natural Products Chemistry Study Section.
Date: February 24–25, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, radtkem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 24, 2000.
Time: 11:00 AM to 12:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husian, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–26, 2000.

Time: 7:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2915 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Dietary and Hormonal Determinants of Cancer in Women.

Date: February 9–11, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Best Western Boston—The Inn at Longbeach Medic, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Christopher L. Hatch, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8044, Bethesda, MD 20892 (301) 496–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2907 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Memorial Sloan Kettering Cancer Gene Therapy Program.

Date: February 8–10, 2000.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2908 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Mechanism of Human Bladder Carcinogenesis.

Date: February 28–March 1, 2000.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton Huntington Hotel & Spa, 1401 South Oak Knoll Ave, Passadena, CA 91106.

Contact Person: Michael B Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2909 Filed 2–08–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board (NCAB), February 15, 2000, 9:00 AM to February 16, 2000, 12:00 PM, National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, Maryland 20892, which was published in the **Federal Register** on January 28, 2000, 65 FR 4563.

In lieu of a face-to-face meeting, the NCAB will now convene by way of a telephone conference call on Wednesday, February 16, 2000, between the hours of 10:00 AM to 12;15 PM.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to observe the open portion of the telephone conference call and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the contact person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below.

Name of Committee: National Cancer Advisory Board.

Date: February 16, 2000 (Teleconference).

Open: February 16, 10:00 a.m. to 11:40 a.m.

Agenda: Approval of December 1999 meeting minutes; annual approval of operating guidelines and delegation of authority; Director's Report; other business of the Board.

Closed: February 16, 2000, 11:45 a.m. to Adjournment.

Agenda: Review of Grant Applications.

Place: Building 31 C, Wing, 6 Floor Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8022, Bethesda, MD 20892–8327, (301) 496–5147.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2911 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

Dates: March 9–10, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: American Inn, 8130 Wisconsin Avenue Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2910 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 18, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gerald E. Calderone, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2912 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 9, 2000.

Time: 12:30 PM to 2:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2913 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel RFA ES00–002: The Role of the Environment in Parkinson's Disease.

Date: March 1–3, 2000.

Time: 7 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-South Campus, Building 101, Conference Room B, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PHD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.141, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2914 Filed 2–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 2000.

The Drug Testing Advisory Board meeting will be open from 8:30 a.m. until 10:15 a.m. on March 13, 2000. The open session will include a roll call, an HHS update, a DOT update, and a brief review of alternative specimen testing. A public comment period will be scheduled during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

The Drug Testing Advisory Board meeting will be closed from 10:15 a.m. on March 13, 2000, until 3:30 p.m. on March 14, 2000, because it involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App.2, § 10(d).

An agenda for the open session of this meeting and a roster of board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board

Meeting Date: March 13–14, 2000

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open: March 13, 2000; 8:30 a.m.–10:15 a.m.

Closed: March 13, 2000; 10:15 a.m.–4:30 p.m.

Closed: March 14, 2000; 8:30 a.m.–3:30 p.m.

Contact: Donna M. Bush, PhD., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: February 2, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–2981 Filed 2–8–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. We have included a copy of the information collection requirement in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and

explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before April 10, 2000.

ADDRESSES: Send your comments on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Room 222 ARLSQ, 1849 C Street, NW, Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact Rebecca A. Mullin at (703) 358–2287 or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew approval of the collection of information for special use permit applications on national wildlife refuges in Alaska. We are requesting a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Title: Special Use Permit Applications on National Wildlife Refuges in Alaska.

Approval Number: 1018–0014.

Service Form Number: 3–2001.

Description and use: The National Wildlife Refuge System Improvement Act of 1997 that amends the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668 dd–ee) requires that we authorize economic privileges on any national wildlife refuge by permit only when the activity will not be incompatible with the purposes for which the refuge was established. The Alaska National Interest Lands Conservation Act (ANILCA) provides for the disposition and use of a variety of federally owned lands in Alaska. Section 1307 of ANILCA contains two provisions concerning persons and entities who we are to give special rights and preferences with respect to providing "visitor services" on certain lands under the administration of the Secretary of the Interior (Secretary), in this context, units of the National Wildlife Refuge System. The term, "visitor services," is defined in section 1307 as "* * * any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides, excepting the guiding of sport hunting and fishing." Other sections of ANILCA allow the Secretary to permit uses on national wildlife refuges in Alaska under certain conditions. Specifically, section 1303 of ANILCA states that we will issue no special use permits unless the permit applicant provides certain items of information.

We will provide the permit applications as requested by interested Alaska citizens. We will use information provided on the required written forms and/or verbal applications to ensure that the applicant is eligible for non-competitively awarded permits, or in the case of competitively awarded permits, the most qualified applicant to receive benefits of a refuge permit. In the case of "1307" permits, we will use the information to determine whether the applicant is: a member of a Native Corporation; a local resident; engaged in adequately providing visitors services on or before January 1, 1979; or eligible to receive Cook Inlet Region rights.

We make provision in our general refuge regulations for public entry for specialized purposes, including economic activities such as the operation of guiding and other visitor services on refuges by concessionaires or cooperators under appropriate contracts or legal agreements (found in 50 CFR 25.61) or special use permits (found in 50 CFR parts 26.22(b) and 26.25). These rules provide the authorities and procedures for selecting permittees on Alaska refuges, the vast majority of which are providers of services and facilities to the public. We will issue permits for a specific period as determined by the type and location of the use or visitor service provided.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and households; Business and other for-profit; Not-for-profit institutions; Farms; and State, local or Tribal governments.

Total Annual Burden Hours: (see table below).

INFORMATION COLLECTION BURDEN ESTIMATE

Type of permit	Competitive respondents	Non-competitive respondents
Visitor Services:		
Hunting and Fishing	50	160
Completion time	30 hours	1.5 hours
Annual burden hours	1,500 hour	240 hours
Total annual burden hours: 1,740.		
Visitor Services:		
General	2.	
Completion time	40 hours.	
Annual burden hours: 80.		
Combined Annual Burden:		
Number of responses: 212.		
Average burden per response: 8.6 hours.		
Annual burden: 1,820 hours.		

We invite comments concerning this renewal on (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) The accuracy of our estimate of the burden of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: February 1, 2000.

Paul R. Schmidt,

Acting Assitant Director for Refuges and Wildlife.

[FR Doc. 00–2809 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We will submit a request to OMB to renew its approval of the collection of information for the Federal Subsistence Hunt Application and Permit, Designated Hunter Permit Application and Report, and Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application. We are requesting a 3-year term of approval of this new information collection activity. Pursuant to our request for OMB approval of this new information collection, we invite comments on (1) whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions used, and (3) ways to enhance the quality, utility, and clarity of the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 10, 2000.

ADDRESSES: Harvest Data Coordinator, Alaska Subsistence Office, 1011 East Tudor Road, Anchorage, Alaska 99503. Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Miller, Alaska Subsistence Office, 907/786–3888 or Rebecca Mullin, Service Information Collection Clearance Officer 703/358–2287.

Title: Federal Subsistence Hunt Application and Permit and Designated Hunter Permit Application and Permit.

OMB Approval Number: 1018–0075.

Service Form Number(s): 7–FW 1 and 7–FW 2.

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations, found in 50 CFR 100, require that persons engaged in taking fish and wildlife must comply with reporting provisions of the Federal Subsistence Board. The harvest activity must be reported. In many cases, a special permit is required for the rural resident to be able to participate in special hunts. The harvest information is needed in order to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special hunts that are not available to the general public but are provided for by Title VIII of ANILCA. Both reports provide for the collection of the necessary information; however, the Designated Hunter Report is unique in that it allows the reporting of the harvest of multiple animals by a single hunter who is acting for others. The Designated Hunter Application and Permit also serves as a special permit allowing qualified subsistence users to harvest fish or wildlife for others. The collection of information is needed prior to the expiration of time periods established under 5 CFR 1320, and is essential to the missions of the Fish and Wildlife Service and the Federal Subsistence Board. Without this information public harm would occur as a result of the Service's inability to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health and the animal population.

Frequency: On occasion.

Title: Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application.

OMB Approval Number: (not yet assigned).

Service Form Number(s): 7–FW3.

Abstract: Under the Alaska National Interest Lands Conservation Act (ANILCA) allows the taking of fish and wildlife on public lands in Alaska for subsistence use. In order to take fish and wildlife in public lands for subsistence uses, users must possess and comply with the provisions of any pertinent permit, harvest tickets, or tags required by the State, or Federal permits, harvest tickets or tags as required by the Federal subsistence board (Board). All Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in 50 CFR 100. Information on the fisherman, qualified subsistence users fished for, the fish/shellfish harvested, and the location of harvest is needed by the board in making recommendations on subsistence use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence fisherman without adversely impacting the health of existing fish/shellfish populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special fishing opportunities that are not available to the general public but are provided for by Title VIII of ANILCA.

Description of Respondents: Individuals and households.

Estimated Completion Time: The reporting burden is estimated to be .25 hours or 15 minutes each.

Annual Responses: 5,200 (Federal Subsistence Hunt Application and Permit); 700 (Designated Hunter Permit Application and Report); 1,000 (Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application).

Total Annual Burden Hours: 1,725 hours.

Dated; February 2, 2000.

Thomas H. Boyd,

Acting Chairman, Federal Subsistence Board.

[FR Doc. 00–2901 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Impact Statement (EIS) for Nisqually National Wildlife Refuge, Thurston and Pierce Counties, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations to advise other agencies and the public of our intentions.

DATES: Submit comments on or before March 10, 2000.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Nisqually National Wildlife Refuge, 100 Brown Farm Road, Olympia, Washington, 98516.

Submit electronic mail comments to: FW1Public__Comments__Nisqually@fws.gov. See Submitting Comments under **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic commenting.

FOR FURTHER INFORMATION CONTACT: Refuge Manager Jean Takekawa at (360) 753–9467 (see **ADDRESSES** section for mailing address).

SUPPLEMENTARY INFORMATION:

Background

During the Environmental Assessment development process, a further determination was made that an EIS should be prepared to address NEPA requirements for the development of the CCP. A previous notice to prepare a CCP was published in the **Federal Register** (62 FR 52764–52765, Oct. 9, 1997).

It is Service policy to have all lands within the National Wildlife Refuge (NWR) System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Nisqually NWR was established in 1974, "* * * for use as an inviolate sanctuary, or for any other management purposes, for migratory birds" (16 U.S.C. 715d). A CCP is needed to update the 1978 Nisqually NWR Conceptual Plan and facilitate potential changes in habitat management and public uses, with full public participation. The major issues to be addressed in the CCP include habitat protection and enhancement, boundary expansion and completion of the Refuge, riparian and tidal restoration, control of invasive and exotic vegetation, future flooding, compatibility of secondary uses, public access and accessibility, fishing, and waterfowl hunting.

Starting in 1996, issues, goals, and other comments on the CCP were submitted by persons and organizations involved in the scoping process including: the Washington Department of Fish and Wildlife; Ft. Lewis; the Nisqually Indian Tribe; Thurston and Pierce Counties; members of national, state, and local conservation organizations; neighboring landowners; and other interested citizens. Comments and concerns received are being used to draft alternatives.

Five planning updates have been mailed out to approximately 600 addresses. The first two updates soliciting comments were mailed in August and November 1996. The third update, which announced the public open houses, was mailed in November 1997. Comments received were used to develop goals, key issues, and habitat management strategies that were presented at public open houses in the fall of 1997. In addition, more than 600 issues workbooks were mailed or distributed at the open houses. The workbook, offered people a chance to provide input on the CCP, draft Refuge goals, and four main issues, including: (1) Changing the mix of habitat types at the Refuge; (2) trail access and configuration; (3) waterfowl hunting; and (4) Refuge expansion and land protection. Planning update number four, mailed in April 1998, summarized the comments received from the workbook. Update number five was mailed in December 1998, and summarized the results of three workshops which focused on: public use; grasslands; and estuarine and freshwater wetlands restoration and management. Copies of these planning updates may be requested from the Refuge.

Submitting Comments

With the publication of this notice, the public is encouraged to send written comments. Comments already received are on record and need not be resubmitted. All comments received from individuals on a draft EIS become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, Council on Environmental Quality's NEPA regulations 40 CFR 1506.6(f), and other Service and Department policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the author's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

You may submit comments by sending electronic mail (e-mail) to: FW1Public__Comments__Nisqually@fws.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. On the e-mail message title line, please note that your message is in response to the Nisqually NWR Draft CCP and Draft EIS.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations. We estimate that the Draft CCP and Draft EIS will be available by Summer 2000.

Dated: January 28, 2000.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–2871 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE022454–0

Applicant: The Nature Conservancy, Michigan Chapter, East Lansing, Michigan; Helen Taylor, State Director

The applicant requests a permit for the purpose of determining management strategies for the Karner blue butterfly (*Lycaeides melissa samuelis*) in southwestern Newaygo County, Michigan. The applicant proposes to complete the following activities which may take the Karner blue butterfly: (1) Control and eliminate invasive alien plants, particularly spotted knapweed (*Centaurea maculosa*), by the initiation of a proposed burn regime, hand-pulling and spot-burning, (2) research and monitoring of the species to determine the impacts of the management regime described above, and (3) to expand and restore suitable habitat for occupation by the species. Take (kill, harass) is expected to occur in association with proposed activities. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5350); FAX: (612/713–5292).

Dated: February 3, 2000.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–2986 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Construction of a Raised Boardwalk and Improvements to Wildlife Viewing Areas at Dyke Marsh Wildlife Preserve

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the proposed construction of a raised boardwalk and improvements to wildlife viewing areas at Dyke Marsh Wildlife Preserve (Dyke Marsh).

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of an Environmental Assessment for the proposed construction of a raised boardwalk and improvements to wildlife viewing opportunities at Dyke Marsh Wildlife Preserve, within the George Washington Memorial Parkway (Parkway). The Environmental Assessment examines several alternatives for the specific location, size, and configuration of the boardwalk. The National Park Service is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act (NEPA).

DATES: The Environmental Assessment will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than March 10, 2000.

ADDRESSES: Comments on this Environmental Assessment should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The Environmental Assessment will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at GWMP Headquarters, Turkey Run Park, McLean, VA, on the National Park Service Website *www.nps.gov/gwmp/Dmcons.html* and at several libraries in Alexandria, Fairfax and Arlington, Virginia.

SUPPLEMENTARY INFORMATION: The National Park Service proposes to construct a raised boardwalk and viewing platform at the end of the "Haul Road" trail in Dyke Marsh, now called Dyke Marsh trail, an area that is currently difficult to access because of persistent wet conditions. The intent of the proposed raised boardwalk is to provide better access and viewing opportunities than the current proliferation of informal social trails currently afford, and to encourage visitor use patterns that are more consistent with protection of the area's sensitive ecosystem. Specifically, the proposed action aims to:

- Provide enhanced opportunities to view wildlife and the environs of Dyke Marsh by improving access to the area, and affording a slightly elevated vantage point from which visitors may view wildlife and enjoy the surroundings.
- Enhance the protection of the area's natural resources by providing appropriate facilities (*i.e.*, a raised boardwalk and interpretive waysides) that encourage visitor use patterns and activities that are consistent with responsible management of the Dyke Marsh ecosystem.
- Provide for increased educational opportunities and public understanding of Dyke Marsh and wetland ecology.

The proposed action is based on longstanding observations by National Park Service staff, general park visitors, and members of the Friends of Dyke Marsh. The current trail system neither provides adequate access to the marsh, nor is appropriate for the protection of vegetation and wildlife, including migratory and nesting bird species. While the Dyke Marsh trail provides reasonably good access to a point somewhat beyond the existing wooden footbridge, beyond that point the trail simply degenerates into a network of poorly defined, muddy social trails, many of which are inundated at high tide. While the social trails suggest a desire by visitors to be able to access the area, it is clear that there is no well defined or officially provided trail to meet that need. The existing conditions are insensitive to protection of vegetation and wildlife, and encourage the inappropriate and unmanaged development of more social trails. In addition, tidal fluctuations effectively limit opportunities to access some of the most scenic and interesting portions of the marsh, since much of the area is inundated or excessively muddy much of the time.

Increasingly, Dyke Marsh serves as a venue for environmental education and science programs for local school systems. The Parkway's expanding Parks-As-Classrooms program, as well as a multi-park science oriented program brings elementary and high school aged students to Dyke Marsh for educational programs. Construction of the boardwalk and viewing platform would enhance educational opportunities by making the marsh more easily accessible and improving wildlife viewing opportunities.

All interested individuals, agencies, and organizations are urged to provide comments on the Environmental Assessment. The National Park Service in making a final decision regarding this matter will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Truesdell, (703) 289–2530.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 00–2883 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of major changes to a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes major changes to a notice describing a system of records managed by the Bureau of Reclamation. The system of records notice "Individual Records of Issue, BOR–11" is being revised and renamed "Identification/Security Cards, WBR–11." The system description is published in its entirety below.

DATES: This action will be effective without further notice on March 10, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Bureau of Reclamation, Attn: Mr. Casey Snyder, D–7924, Privacy Act Officer, PO Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Rayleen Cruz, Manager, Property and Office Services at (303) 445–2023.

SUPPLEMENTARY INFORMATION: The original system of records notice "Individual Records of Issue, BOR–11," was published in the **Federal Register** on February 22, 1985, (50 FR 7391). The original system of records notice also covered Government parking spaces and keys issued, which are now covered under "Employee Administrative Records, DOI–58.

Murlin Coffey,

Manager Property and Office Services.

INTERIOR/WBR–11

SYSTEM NAME:

Identification/Security Cards.

SYSTEM LOCATION:

All Bureau of Reclamation (Reclamation) offices or facilities which manage an identification (ID)/security system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have access to Reclamation's buildings and facilities. These include, but are not limited to, the following: Current and former agency employees and contractors, persons authorized to perform or to use services provided by Reclamation (*e.g.*, credit unions, fitness centers, etc.), volunteers, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on current and former agency employees and contractors may include the following data fields: Name; Social Security Number (or other personal identifier); date of birth; signature; image (photograph); hair color; eye color; height; weight; organization/office of assignment; telephone number of emergency contact; date and time of entry; time of exit; security access category; number of ID/security cards issued; and ID/security card issue date, expiration date, and serial number.

Records maintained on all other individuals covered by the system may include any or all of the following data: Name; Social Security Number (or one of the following: driver's license number, "Green Card" number, Visa/Passport number, or other personal identifier); date and time of entry; time of exit; purpose for entry; agency point of contact; security access category; number of ID/security cards issued; and ID/security card issue date, expiration date, and serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 40 U.S.C. 486; 44 U.S.C. 3101; Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

PURPOSE(S):

(1) To ensure the safety and security of Reclamation's buildings, facilities, and occupants. (2) To verify that all persons entering the buildings are authorized to enter.

(3) To track and control ID/security cards issued to persons entering Reclamation buildings or facilities. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosures outside Reclamation may be made:

(1) To security service companies that provide monitoring and maintenance support for the system. (2) To the Federal Protective Service and appropriate Federal, State, and local law enforcement agencies to investigate emergency response situations or to investigate and prosecute the violation of law, statute, rule, regulation, order, or license. (3) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains. (4) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information. (5) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license. (6) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, microfiche, or computer files.

RETRIEVABILITY:

Records are retrievable by name; Social Security Number (or other personal identifier); image (photograph); organization/office of assignment; agency point of contact; security access; category; date and time of entry; time of exit; and ID/security card issue date, expiration date, and serial number.

SAFEGUARDS:

The records are maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records relating to persons covered by the system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific ongoing security investigations, records are disposed of in accordance with appropriate Reclamation, Departmental, and General Records Schedules.

SYSTEM MANAGER AND ADDRESS:

Manager, Property and Office Services (D–7900), Reclamation Service Center, PO Box 25007, Denver, Colorado 80225–0007.

NOTIFICATION PROCEDURES:

Individuals requesting notification of the existence of records on themselves should address their request to the appropriate administrative office or facility of Reclamation in which the individual is (or was) employed, the office or facility maintaining the records, or the system manager listed above. The request must be in writing and signed by the requester (see 43 CFR 2.60).

RECORD ACCESS PROCEDURES:

Individuals requesting access to records maintained on themselves should address their request to the appropriate administrative office or facility of Reclamation in which the individual is (or was) employed, the office or facility maintaining the records, or the system manager listed above. The request must be in writing and signed by the requester (see 43 CFR 2.63).

CONTESTING RECORDS PROCEDURES:

A petition for amendment must be in writing and signed by the requester. It should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors, and designated management officials.

[FR Doc. 00–2905 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 11, 2000 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–864–867 (Preliminary)(Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 14, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3021 Filed 2–4–00; 4:30 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 15, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–302 and 731–TA–454 (Review)(Fresh and Chilled Atlantic Salmon from Norway)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 24, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3022 Filed 2–4–00; 4:25 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing: Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection COPS Problem-Solving Management Survey.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by February 11, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same period a regular review of this information/collection is also being undertaken. In addition to comments and/or questions pertaining to this pending request for emergency approval, written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the emergency approval request, estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave., NW, Washington, DC 20530–0001; Attention: Karen Beckman. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, Attention: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy

Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Problem-Solving Management Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS PPSE/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Captains, Chiefs, Detectives/Sergeants, and Crime Analysts from 75 large police agencies that have received COPS 1999 School Based Partnership Grants will be asked to respond (approximately 300). The Problem-Solving Management Survey will collect basic information about the capacity of police agencies to prioritize problems, their knowledge of agency resources, and their understanding of problem-solving information as it relates to problem-oriented policing.

The COPS office will use the information collected to identify the information necessary for police executives to effectively utilize resources as it relates to problem-solving and to examine existing problem-oriented policing tracking systems for the purpose of identifying best practices in problem-solving management. Data from the surveys will be used to produce a final Problem-Solving Knowledge Management Model. A brochure and video of the Problem-Solving Knowledge Model will assist agencies in problem prioritization, and the allocation of resources in support of problem-oriented policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by telephone to approximately 300 position-specific law enforcement officials within 75 large police agencies who have been awarded COPS 1999 School Based Partnership Grants. The four specific positions that will be questioned in each agency are Captains, Chiefs, Detectives or Sergeants, and Crime Analysts. Administrative preparation and survey completion will take approximately 0.75 hours per respondent (there is no record burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 225 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: February 3, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–2898 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration;

By Notice dated August 17, 1999, and published in the **Federal Register** on August 27, 1999, (64 FR 46953), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basis classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methadone (9250)	II
Levo-alphacetylmethadol (9648)	II

The firms plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of B.I. Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 30, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2873 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56226), Glaxo Wellcome, Inc., Attn: Jeffrey A. Weiss, 1011 North Arendell Avenue, PO Box 1217, Zebulon, North Carolina 27597–2309, made application to the Drug Enforcement Administration to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The remifentanil is being imported for the production of Ultiva dosage forms and for research and new product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and 952(a), and determined that the registration of Glaxo Wellcome, Inc. to import remifantanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2874 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 6, 1999, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dihydromorphine (9145), a basic class of controlled substance listed in Schedule I.

Mallinckrodt, Inc. plans to isolate dihydromorphine as a step in a multistep synthesis of hydromorphone.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (April 10, 2000).

Dated: January 28, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–2872 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Community Restorative Justice Outcomes/Measurements and Evaluation

AGENCY: U.S. Department of Justice, National Institute of Corrections.

ACTION: Solicitation for a Cooperative Agreement—Community Restorative Justice Outcomes/Measurements and Evaluation.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2000 for a cooperative agreement to establish and develop "community restorative justice" performance outcome, measurement and evaluation protocols. This solicitation if for phase I and II of a "three-phase" project.

Background/Purpose: Restorative Justice has emerged as a critical issue for the future of Criminal Justice Systems. Because it is new it requires a unique set of skills, competencies and perspectives from corrections agencies and other justice professionals. Victims and citizens have become increasingly frustrated with the justice system with a belief that the justice system does not represent their interest and does not provide them any value in terms of enhanced public safety, quality of life in communities, and a legitimate voice and role in the justice process. Restorative and community oriented practices show promise for being more responsive to victims and communities, and holding offenders accountable for understanding the harmful impact of their behavior, and for repairing the harm that they have caused. Many activities and efforts have taken place over the past four years to assist agencies in developing and implementing systems, protocols and practices related to Restorative Justice. Likewise, the effectiveness and evaluation of these new systems and programs has come into question and has become a central issue among professionals and criminal justice agencies. In some instances, restorative justice programs have been evaluated against traditional measures that focus exclusively on offender recidivism. Proponents argue that restorative justice is a radically different paradigm and so too needs to be our measures and methods of evaluating restorative justice. It is also argued that restorative justice is more than just a certain program (mediation, conferencing, boards, restitution, etc.), rather it is an operating framework driven and grounded by different values and principles. It requires us to look beyond offender focused measures and adopt measures that account not only for impact on offenders, but also on victim health and satisfaction, community safety and vitality, community problem-solving capacity and other variables grounded in these new set of principles and values. By identifying a host of new, or non-traditional evaluation measures to evaluate restorative justice initiatives, agencies will be able to evaluate the relative effectiveness of restorative justices initiatives, and defend and make informed decisions on the purpose and use of such initiatives and programs. Additionally, the project will assist criminal justice agencies in evaluating the effective design and implementation of restorative justice programs.

Project Goal and Objectives: The goal of this project is to provide criminal justice agencies the capability to evaluate the design, implementation, and impact of programs and initiatives being conducted under auspices of community and restorative justice.

The objective of this project are to:

1. Identify outcome and impact measures to evaluate the effectiveness of restorative justice programs and initiatives.
2. Identify process measures to guide and evaluate the implementation of restorative justice programs.
3. Develop an evaluation methodology for the collection and analysis of restorative justice data.
4. Design and create a tool(s) and protocols incorporating restorative measures that agencies can use to evaluate the both the process (implementation) and the outcome/impact of restorative justice programs.
5. Produce a document for wide dissemination in the criminal justice field on restorative justice measures and evaluation using the results from the first four objectives.
6. Develop and deliver a pilot training curriculum for correctional practitioners on the use restorative justice evaluation measures, tools and protocols.

Scope of Work Deliverables

Phase I: The desired outcome and product for Phase I is "the identification of specific process, outcome and impact measures for evaluating restorative justice programs and initiatives." Intended work activities include assembly of a focus/work group to participate in the identification of restorative measures.

Phase II: The desired outcome and deliverables for Phase II is the "actual design and development of an evaluation tool/instrument and protocol, the pilot application and revision of the tool at two jurisdictional sites, and the development of a document for broad public dissemination containing the results from phase I and II activities." The process tool should take the form of an inventory (or checklist) consisting of measurable items that can provide direction and feedback on the extent to which programs and initiatives are more or less restorative in their design and implementation. The site used in a pilot application of the evaluation design must be inclusive of a publicly funded correctional agency as a primary administrator of the program or initiative being evaluated, and shall be subject to consideration and approved by the NIC project coordinator. The document should provide correctional

and other criminal justice professionals a theoretical and conceptual framework, a practical and empirical methodology, and a practical set of tools and protocols for both a process and impact evaluation of restorative justice programs and initiatives. This document shall provide a basis for Phase III of the project, a training curriculum development and pilot delivery in restorative justice evaluation techniques. It is the intent that based on satisfactory completion of Phase I and II products and outcomes, the approval of a cooperative agreement proposal for phase III (development and delivery of a training curriculum) and the availability of funds, an award will be made to the successful applicant from this solicitation for the third phase of the project.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $41,000 ($17,000 for Phase I and $24,000 for Phase II, and includes direct and indirect costs). Project activity for both phases must be completed within 8 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division. All products from this funding effort will be in the public domain and available to interested agencies through the National Institute of Corrections.

Eligibility To Apply: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. Eastern time on Thursday, March 30, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement and application forms may also be obtained through the NIC web site: http://www.nicic.org (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to Mike Dooley at the NIC Academy, 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429 or 303–682–0382, ext. 132, or by E-mail via *mdooley@bop.gov*.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00A14 This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Catalog of Federal Domestic Assistance Number: 16.602.

Dated: January 31, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–2891 Filed 2–8–00; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[00–016]

Proposed Information Collection Activity; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

DATES: All comments should be submitted on or before April 10, 2000.

ADDRESSES: All comments should be addressed to Mr. Paul A. Boellner, Code Q, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Extension.

Need and Uses: NASA employees and contractors can voluntarily and confidentially report to an independent agent, any safety concerns or hazards pertaining to any NASA program or project, which have not been resolved through the normal process.

Affected Public: Federal Government.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Hours Per Request: ¼ hr.

Annual Burden Hours: 19 hrs.

Frequency of Report: As needed.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–2868 Filed 2–8–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [00–017]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before March 10, 2000.

ADDRESSES: All comments should be addressed to Mr. Karl Beisel, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Security Requirements for Unclassified Information Technology.

OMB Number: 2700-Type of Review: New.

Need and Uses: NASA must safeguard its unclassified Information Technology hardware, software and data. Respondents will be NASA contractors and subcontractors involved in IT.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Responses Per Respondent: 2.

Estimated Annual Responses: 400.

Estimated Hours Per Request: 470 hrs.
Estimated Annual Burden Hours: 188,000.
Frequency of Report: Semi-annually.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.
[FR Doc. 00–2869 Filed 2–8–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.
ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received pursuant to the Antarctic Conservation Act of 1978. This is the required notice.
DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications on or before March 10, 2000. The permit applications may be inspected by interested parties at the Permit Office, address below.
ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.
FOR FURTHER INFORMATION CONTACT: Joyce Jatko, Environmental Officer, at the above address or (703) 306–1032.
SUPPLEMENTARY INFORMATION: Raytheon Polar Services Company, a business unit of Raytheon Technical Services Company, is in the phase-in period for assuming responsibility for the contract to provide operations support to the United States Antarctic Program. As part of that support, Raytheon personnel will be required to engage in activities that require permitting under the Antarctic Conservation Act. Five separate permit applications have been submitted, as follows:

1. Entry into Antarctic Specially Protected Area 113, Litchfield Island, Arthur Harbor, Palmer Archipelago, for inspection and re-supply of the survival cache;
2. Entry into Antarctic Specially Protected Area 137, Northwest White Island, McMurdo Sound, for access to and maintenance of Black Island INMARSAT transmitting and receiving equipment;
3. Entry into Antarctic Specially Protected Area 128, Western Shore of Admiralty Bay, King George Island, for movement of personnel and supplies to and from the U.S. research station known as Copacabana;
4. Taking associated with removing penguins, seals and skuas from McMurdo Station and associated airfields to ensure safety of operations and protection of the animals;
5. Taking associated with removing penguins, seals and other birds from the Palmer Station pier to ensure safety of operations and protection of the animals.

The permit applicant is: Raytheon Polar Services Company, 16800 E. CentreTech Parkway, Aurora, CO 80011–9646. The proposed duration of each permit is from April 1, 2000 through March 31, 2005.

Joyce A. Jatko,
Acting Permit Officer.
[FR Doc. 00–2926 Filed 2–8–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modifications Issued Under the Antarctic Conservation Act of 1978, Public Law 95–541

SUMMARY: The National Science Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541).
FOR FURTHER INFORMATION CONTACT: Joyce Jatko, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
DESCRIPTION OF PERMIT AND MODIFICATION: On September 25, 1998, the National Science Foundation issued a permit (ACA #99–010) to Dr. Rennie S. Holt after posting a notice in the August 27, 1998 **Federal Register**. No public comments were received. A request to modify the permit was posted in the **Federal Register** on December 23, 1999. No public comments were received. The modification, issued by the Foundation on January 27, 2000, allows for tooth extraction from up to 100 adult Antarctic fur seals (Arctocephalus gazella) per year for age determination. The tooth extractions will be taken from animals already captured for other permitted procedures. This is part of an ongoing study of Antarctic fur seals by the U.S. Antarctic Marine Living Resources (AMLR) Program.
LOCATION: Cape Shirreff, Livingston Island (ASPA #149), the South Shetland Islands, Antarctic Peninsula.
DATES: January 10, 2000–April 1, 2001.

Joyce Jatko,
Acting Permit Officer.
[FR Doc. 00–2925 Filed 2–8–00; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request.

AGENCY: U.S. Nuclear Regulatory Commission (NRC).
ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* "Reports Concerning Possible Non-Routine Emergency Generic Problems".
2. *Current OMB approval number:* 3150–0012.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* Nuclear power plant and materials applicants and licensees.
5. *The number of annual respondents:* 203 (103 reactor licensees: 100 materials licensees).
6. *The number of hours needed annually to complete the requirement or request:* 43,260 (420 hours per reactor licensee respondent); 10,000 (100 hours per materials licensee respondent).
7. *Abstract:* NRC is requesting approval authority to collect information concerning non-routine, emergency generic problems which would require prompt action from NRC to preclude potential threats to public health and safety.

Submit, by April 10, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated

collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html).

The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2928 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 60—"Disposal of High-Level Radioactive Wastes in Geologic Repositories".

2. *Current OMB approval number:* 3150–0127.

3. *How often the collection is required:* The information need only be submitted one time.

4. *Who is required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository.

5. *The number of annual respondents:* Two.

6. *The number of hours needed annually to complete the requirement or request:* An average of 40 hours per response for consultation requests, 80 hours per response for license application review participation proposals, and 1 hour per response for statements of representative authority. The total burden for all responses is estimated to be 242 hours.

7. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. On February 22, 1999, the Commission proposed to modify its generic criteria for disposal of spent nuclear fuel and high-level radioactive wastes in geologic repositories at 10 CFR part 60 to make clear that they will not apply, nor be the subject of litigation, in any NRC licensing proceeding for a repository at Yucca Mountain (64 FR 8639). Information collection requirements applicable to the licensing of a geologic repository at Yucca Mountain were proposed at that time, in 10 CFR part 63, and will be issued later this year.

Submit, by April 10, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of February , 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2931 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Comment on the Allegations Program Under the New Regulatory Oversight Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has proposed significant revisions to its process for overseeing the safety performance of commercial nuclear power plants that include the inspection, assessment, and enforcement program. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The NRC also has a long established allegation program to provide a mechanism for individuals to identify safety and regulatory issues directly to the NRC. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens as to the functioning of the allegation process under the new reactor regulatory oversight program. The NRC staff will consider comments it receives in determining how the agency will pursue structuring the allegation program under the new reactor oversight process. At the conclusion of

the public comment period, the NRC will schedule a public meeting to be held at the NRC Headquarters at 11545 Rockville Pike, Rockville, Maryland, to discuss the comments and options for revising the allegation program.

DATES: The comment period expires April 10, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC. 20555. Electronic comments may be submitted via email to: NRCREP@NRC.gov

Copies of the Commission Paper dated November 23, 1999, entitled, "Impact of Changes to the Inspection Program for Reactors on Implementing the Allegation Program" (SECY–99–273) may be obtained at the following web site: http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html. The Commission's direction to the staff may be obtained at: http://www.nrc.gov/NRC/COMMISSION/SRM/index.html. Information on the revised reactor oversight process may be obtained at: http://www.nrc.gov/NRR/OVERSIGHT/index.html.

Additional information on the inspection pilot program may be obtained from the NRC's Public Document Room at 2120 L St., NW, Washington, DC 20003–1527, telephone 202–634–3272.

FOR FURTHER INFORMATION CONTACT: Edward Baker, Agency Allegation Advisor, or Carl Mohrwinkel, Assistant Agency Allegation Advisor, Mail Stop: O–5 E7, Office of the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone Mr. Baker at 301–415–8529, or Mr.Mohrwinkel at 301–415–1293.

SUPPLEMENTARY INFORMATION:

Background

To encourage individuals to identify safety concerns, the allegation program includes provisions to protect the identity of the individual, to provide timely resolution of the issue(s), and to communicate the staff's understanding of the issue(s), status of the staff's review, and ultimate resolution of the issue(s) in a timely manner. For individuals who do not want the licensee or employer to know they raised an issue to the NRC, the agency's policy is to take all reasonable measures to protect the identity of the individual. Under the current program, an allegation is defined as "A declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established." Historically, the staff has interpreted this definition very broadly and not set a threshold for placing issues in the allegation program, as long as the issues involve an area regulated by the NRC, were not already known by the staff to be true or valid, and were not covered by another process, *e.g.*, petitions processed under Section 2.206 of Title 10 of the Code of Federal Regulations (2.206 petitions).

In developing the revised reactor oversight process, the staff integrated the use of performance indicators and inspections. Using a risk-informed approach, the staff was able to focus the baseline inspection program on inspecting risk-significant areas that are not adequately covered by performance indicators. The overall objective of the program is to assure licensee performance meets the objectives for each of the associated cornerstones of safety. Within the baseline inspection program there are three basic types of inspection. Inspections are (1) used to verify performance in areas that are not measured by a performance indicator, (2) augment the information provided by performance indicators that do not sufficiently measure performance in a cornerstone area, and (3) verify the accuracy and completeness of the data used as the basis for performance indicators used to fully measure performance of a cornerstone area. The end result is that the scope of activities being inspected is more clearly defined and risk informed. There is also less flexibility within the baseline inspection program to inspect issues that emerge from allegations if they do not relate to a stated inspectable area objective.

Conducting an inspection or an evaluation to quickly resolve a safety significant allegation is consistent with the risk informed approach of the revised reactor oversight process. However, the allegation program's emphasis on timely resolution places a similar, and only slightly lesser, burden on the staff for timely resolution of issues with less safety or risk significance. For these issues, staff resolution is driven by the timeliness goal, which was established to be responsive to the alleger, rather than being risk-informed. For those allegations requiring inspection, this often results in revising inspection schedules or scheduling additional inspections to meet the timeliness goal, when the safety or risk significance associated with the issue doesn't warrant that kind of response, even if the issue is assumed to be valid. For those allegations that are referred to other agencies or to licensees for evaluation and response back to the NRC, this may result in redirecting resources from work activities involving higher safety or risk significance in order to meet NRC's requested response date.

Another consequence of implementing the baseline inspection program is that there is a greater potential the reactor licensees will know when an inspection is allegation-related. For allegations that involve issues outside the inspectable areas or are reviewed during inspections that were not on the inspection schedule, it is likely that the licensee or employer will question why the staff is conducting the inspection, unless there has been an event that warrants a reactive inspection. While the staff intends to continue its policy of not informing the licensee when inspections are allegation-related, it is likely the licensee or employer will be able to determine when that is the case. This may increase the potential that a licensee or employer will be able to identify who submitted an allegation to the NRC, based on the area being inspected and its similarity to issues previously raised within the licensee's organization. As a result, individuals may be less inclined to provide safety or regulatory issues to the NRC or they may provide issues to the NRC without first raising the issue internally. Neither of these outcomes is desirable.

Scope of the Public Comment Period and Questions

This public comment period will focus on obtaining industry and public views on the allegation program as it may exist under the new oversight process. To assist respondents the following questions are included as a guide. Comments should be as specific as possible and the use of examples is encouraged.

- Which of the four Options contained in the Commission paper will strike the best balance between the

efficient use of agency resources and the need for allegers to feel the NRC will address their issue(s) and protect their identity, if they so desire?

- Does one of the Options for implementing the allegation program provide more adequate assurance that the NRC can be more certain that through information provided by allegers, plants are being operated safely?
- Does one of the Options for implementing the allegation program under the new oversight process enhance public confidence by increasing the predictability, consistency, clarity and objectivity of the NRC's allegation process?
- Does one of the Options for implementing the allegations program under the new oversight process improve the efficiency and effectiveness of the regulatory process focusing agency resources on those issues with the most safety significance?
- Does one of the Options for implementing the allegation program under the new oversight process reduce unnecessary regulatory burden on licensees?
- What Options, beyond those stated in the Commission paper, should be considered?
- Should the Commission implement any changes in the allegation program for all reactor licensees or should any changes be implemented in a pilot program before being implemented at all reactor facilities?

Dated at Rockville, Maryland, this 3rd day of February 2000.

For the Nuclear Regulatory Commission.

Edward T. Baker III,

Agency Allegations Advisor, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2929 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

Private Fuel Storage, L.L.C., Independent Spent Fuel Storage Installation, Skull Valley Indian Reservation, Tooele County, UT; Notice of Intent To Cooperate in the Preparation of an Environmental Impact Statement

Private Fuel Storage, L.L.C. (PFS or the applicant) proposes to construct and operate an independent spent fuel storage installation (ISFSI) at the reservation of the Skull Valley Band of Goshute Indians, which is bordered on all sides by Tooele County, Utah. The proposed Private Fuel Storage Facility (PFSF) would be constructed on an 820-acre site that would store spent nuclear fuel (SNF) received from commercial U.S. nuclear power plants. The applicant proposes to transport SNF from the reactor sites to the PFSF via rail. Currently the rail line stops approximately 25 miles north of the proposed site. The applicant has proposed the following two methods to transport the SNF the last 25 miles:

(1) Construct an intermodal transfer facility on land managed by the U.S. Department of Interior's Bureau of Land Management (BLM). At the intermodal transfer facility, SNF would be transferred from rail to heavy/haul vehicles for transport to the site via Skull Valley Road, or

(2) Construct a rail line on the western side of Skull Valley, along the base of the Cedar Mountains. The rail line would be constructed on land managed by BLM.

Of the two methods identified above, construction of the rail line is the applicant's preferred approach.

The project as proposed, requires approval from four Federal agencies, the U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and BLM, and the Surface Transportation Board (STB). The applicant must obtain a license from NRC, a right-of-way (ROW) from BLM for either the proposed rail line or the proposed intermodal transfer facility, approval from BIA for a proposed lease agreement between the Skull Valley Band of Goshute Indians and PFS, and approval from the STB to construct the proposed rail line.

On June 20, 1997, pursuant to 10 CFR part 72, PFS submitted an application to NRC for a license to receive, possess, store, and transfer SNF at an ISFSI to be constructed and operated on the Reservation of the Skull Valley Band of Goshute Indians. A notice of consideration of issuance of an NRC materials license for the proposed PFSF and notice of opportunity for hearing were published in the **Federal Register** on July 31, 1997 (62 FR 41099). By letter dated August 28, 1998, PFS submitted a revision to its application for an NRC license to reflect its proposal to construct and utilize a rail line over public lands managed by BLM for the transportation of SNF to its site.

The applicant executed a lease agreement with the Skull Valley Band of Goshute Indians to permit construction and operation of its proposed facility on the Skull Valley Band Reservation. On May 23, 1997, BIA conditionally approved the lease agreement, contingent upon the completion of an Environmental Impact Statement (EIS), the inclusion of mitigation measures identified in the Record of Decision, and the issuance of an NRC license to construct, maintain, and operate the PFSF. The lease includes 820 acres of land where the PFSF is proposed to be located, a 202-acre utility and road ROW from the Skull Valley Road to the PFSF, and a buffer zone adjacent to the PFSF to the south and east, including five sections of land (one section of land consists of one square mile or 640 acres).

By letter dated August 28, 1998, PFS applied to BLM for a ROW to construct a rail line and related facilities for a distance of approximately 32 miles on the western side of Skull Valley, along the base of the Cedar Mountains from Skunk Ridge, Utah, to the PFSF. PFS also applied for a separate ROW to construct and operate an intermodal transfer facility 1.8 miles west of the intersection of Interstate 80 and Skull Valley Road. The rail line would traverse land that is included within the BLM Pony Express Resource Management Plan (RMP). The current Pony Express RMP does not allow for major ROWs such as a rail line in this area, and the PFS proposal would, therefore, require an amendment to the RMP prior to granting the requested ROW. BLM published a notice of intent to prepare a RMP amendment in the **Federal Register** on April 15, 1999 (64 FR 18633).

On January 5, 2000, PFS filed an application with STB to construct and operate the proposed rail line from Skunk Ridge, Utah, to the proposed storage facility. The application was filed in STB Finance Docket No. 33824, *Great Salt Lake & Southern Railroad, L.L.C.—Construction and Operations in Tooele County, Utah.*

The National Environmental Policy Act of 1969 requires all Federal agencies to consider the environmental impacts of their actions. Because the NRC, BIA, BLM, and STB required actions for the construction and operation of the PFSF are related, the agencies have agreed to cooperate in the preparation of an EIS. In preparing the EIS, NRC will serve as the lead agency, and BLM, BIA, and STB will serve as cooperating agencies.

NRC published a notice of intent to prepare an EIS and conduct a scoping process in the **Federal Register** on May 1, 1998 (63 FR 24197). As a part of the scoping process, a public scoping meeting was conducted on June 2, 1998, in Salt Lake City, Utah. The scoping process also provided interested parties with an opportunity to provide written comments. At the conclusion of that

initial scoping process, NRC issued a scoping report in September 1998.

NRC's initial scoping process was based on the description of the PFSF contained in the applicant's submittal of June 20, 1997, which did not include the proposed rail line on public land administered by BLM. This rail line proposal was submitted to NRC on August 28, 1998, as an amendment to the PFS application. Similarly, BIA's conditional approval of the proposed lease agreement was issued prior to the applicant's proposal of the rail line.

As a result of the applicant's August 28, 1998, revision of its transportation proposal, NRC, BIA, and BLM determined that additional scoping meetings should be conducted. Additional scoping meetings were held on April 29, 1999, in Salt Lake City, and Tooele City, Utah. The meetings were noticed in the **Federal Register** on April 14, 1999 (64 FR 18451). Primarily, the scoping meetings focused on environmental issues associated with the rail line proposed in the applicant's August 28, 1998, license application amendment, the request for issuance of a ROW over public lands managed by BLM, and environmental concerns associated with the proposed lease agreement that may not have been addressed in the NRC's initial scoping process. In addition, interested parties were also provided the opportunity to submit written comments. Following the additional scoping meetings and comment period, a supplemental scoping report was issued in November 1999.

Although STB was not identified as a cooperating agency during the scoping process, the environmental issues related to its federal action (*i.e.*, approving the construction and operation of the proposed rail line) were discussed during the scoping process. STB has determined that these scoping activities provided sufficient opportunity for the public to comment on the proposed action and the scope of the EIS. Interested parties will have an opportunity to provide comments on the draft EIS.

Dated at Rockville, Maryland, this 27th day of January 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–2930 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 14, 2000, through January 28, 2000. The last biweekly notice was published on January 26, 2000 (65 FR 4268).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 10, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the

Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Dated of amendments request: January 25, 2000.

Description of amendments request: The proposed amendment requests a revision to the definition of Response Time Testing (RTT) for the Reactor Protective System (RPS) and Engineered Safety Features Actuation System (ESFAS). The revision allows use of either an allocated sensor response time or a measured sensor response time for pressure sensors used in channels of RPS and ESFAS. The request is based on Combustion Engineering NPSD–1167, Revision 1, "Elimination of Pressure Sensor Response Time Testing Requirements—CEOG Task 1070."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed licensing basis change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the safety analysis report.

This change to the licensing basis does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same Reactor Protective System and Engineered Safety Features Actuation System instrumentation is being used; the time response allocations/modeling assumptions in Updated Final Safety Analysis Report Chapter 14 analyses remain the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the Updated Final Safety Analysis Report. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. The proposed licensing basis change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the safety analysis report.

This change does not alter the performance of the pressure and differential pressure sensors used in the plant protection systems. These sensors will still have their response time verified before they are placed in operational service and after any maintenance to them that could affect their response time. Changing the method of periodically verifying instrument response for certain sensor (assuring equipment

operability) from time response testing to calibration, use of actual data, and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the sensor response characteristic. Implementation of the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed licensing basis change does not involve a significant reduction in margin of safety.

The total Reactor Protective System and Engineered Safety Features Actuation System response time assumed in the safety analysis is not affected by this change. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow the use of allocated data based on actual test results or other verifiable response time data. Verification methods and calibration tests assure that any degradation sufficient to significantly affect sensor response time will be detected before the total system response time exceeds that defined in the safety analysis. Therefore, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Marsha Gamberoni, Acting.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Dated of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment would remove license condition 3.H, "Long Term Program," from Facility Operating License DPR–35 for the Pilgrim Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical changes to the facility will occur as a result of this amendment. Work activities will continue to receive the appropriate level of review in accordance with Pilgrim procedures and practices. The organizational structure and processes that control and manage these activities ensure activities are prioritized and performed in a manner consistent with plant safety. The proposed amendment removes an administrative burden that is no longer required.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes to the physical design and operation of the plant will occur as a result of this amendment. The processes by which activities are planned, prioritized, and controlled are not affected. The appropriate level of technical review and management oversight will continue to be performed in accordance with existing procedures and practices to ensure activities are performed in a manner consistent with plant safety.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. As stated earlier, no changes to the physical design and/or operation of any plant systems will occur as a result of this amendment; therefore, there is no reduction in any margins of safety. Work activities will continue to receive the appropriate technical review and management oversight to ensure activities are prioritized and performed in a manner consistent with plant safety. The proposed amendment removes an administrative burden that is no longer required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Dated of amendment request: November 29, 1999

Description of amendment request: The proposed amendment would relocate the requirements associated with the high-steam-generator-level trip functions of the Reactor Protective System from the Technical Specifications to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The Steam Generator Level—High function of the RPS [Reactor Protection System] is not credited in any accident analyses nor does it correspond to any TS [Technical Specification] Safety Limit. The high-level function acts to protect the Main Turbine from excessive moisture carryover during feedwater transient events. Protection of the Main Turbine is not required to adequately assure continued reactor safety or the health and safety of the public. Although this function may also serve to limit water intrusion into the main steam lines and consequential overcooling events, its role in this capacity is insignificant, as it does not directly act to secure feedwater from the steam generators. This Steam Generator Level—High function acts only to isolate the Main Turbine from the steam generators by causing a reactor trip, which in turn actuates a turbine trip. This function does not meet any of the criterions listed in 10 CFR 50.36(c)(2) (ii) for inclusion into the technical specifications for ANO–2 [Arkansas Nuclear One, Unit 2], and, therefore, may be excluded from the TSs. Since no changes are made that affect the current operation of this function during its relocation to the ANO–2 TRM [Technical Requirements Manual], and because this function is not credited in any accident analyses, no increase in the probability or consequences of an accident previously evaluated is evident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes relocate affected TS requirements associated with the Steam Generator Level—High Functions of the RPS from the ANO–2 TSs to the ANO–2 TRM. Future revisions to the setpoints and values associated with this function will be established within the requirements of 10 CFR 50.59 to ensure that excessive moisture carryover is prevented in order to protect the turbine and steam line loads. The Steam Generator Level—High Trip setpoint is not credited in any accident analyses and performs only an equipment protection function. The setpoint continues to protect the Main Turbine from damage and preserves operating margin to accommodate excessive feedwater flow prior to trip.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The Steam Generator Level—High Trip setpoint is not credited in any accident analyses and performs only an equipment protection function. The setpoint continues to protect the Main Turbine from damage and preserves operating margin to accommodate excessive feedwater flow prior to trip. In addition, turbine failure has been previously evaluated at ANO–2 as not to be a significant threat to the health and safety of the public.

Events that may result from water intrusion into the main steam lines have been previously evaluated and found not to rely upon the Steam Generator Level—High Trip function. The relocation of the requirements associated with the Steam Generator Level—High function from the TSs to the ANO–2 TRM does not change the current values and requirements. Since no technical change in the setpoint or allowable value is proposed by this submittal and because the Steam Generator Level—High function does not meet any of the four criterion of 10 CFR 50.36(c)(2)(ii), no significant change to the margin of safety is evident.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Dated of amendment request: November 29, 1999 .

Description of amendment request: The proposed amendment would revise selected Technical Specifications (TSs), Bases, and portions of the Safety Analysis Report (SAR) to maintain consistency with the transient and accident analyses which evaluated the impact of the replacement steam generators (SGs) that are being used for Cycle 15 operation. TS changes are proposed for the Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) low pressurizer pressure setpoints, the RPS and ESFAS low SG pressure setpoints, the RPS and ESFAS low SG level setpoints, the reactor coolant flow rate limit, and the high linear power trip setpoints with inoperable main steam safety valves (MSSVs). SAR changes would support the new TS values and would also include small increases in calculated offsite radiological doses using newer, more conservative methods, for some non-loss-of-coolant accident events. The doses would remain within the 10 CFR Part 100 acceptance criteria. The proposed amendment would also make changes to the TSs and Bases that are not directly related to the replacement SGs. These changes would revise the allowed outage time of the MSSVs in Modes 1 and 2 to allow up to 12 hours to reduce the high linear power level-high trip setpoint when one or more MSSVs are inoperable, and would revise the action statement in Mode 3 to maintain at least two MSSVs operable on each SG.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed changes to the ANO–2 [Arkansas Nuclear One, Unit 2] TSs are analytically based which change setpoints and procedure limits. No physical modifications are required as a result of the proposed changes. The RPS/ESFAS setpoint changes provide functionally equivalent protection with the RSGs [replacement steam generators] as the previous setpoint values provided with the OSGs [original steam generators]. Proposed changes in regard to RCS [reactor coolant system] flow rate and High Linear Power Trip setpoints associated with conditions where MSSVs are inoperable represent appropriate restrictions that have resulted from the various analyses performed in support of RSG installation. An Emergency Core Cooling System (ECCS) performance analysis was performed to demonstrate conformance to 10 CFR 50.46 for operation with RSGs. For the large break Loss of Coolant Accident (LOCA), the most limiting single failure of the ECCS [is no failure to the ECCS]. The small break LOCA analysis was reanalyzed using the existing Supplement 2 Model (S2M) of the ABB CENP [ABB Combustion Engineering Nuclear Power] small break LOCA evaluation model. The analysis was performed for 0.03 ft^2, 0.04 ft^2, and 0.05 ft^2 in the reactor coolant pump (RCP) discharge leg. The results of both analyses demonstrate continued conformance to the ECCS acceptance criteria of 10 CFR 50.46. Non-LOCA analyses intended to confirm the Chapter 15 events in the ANO–2 SAR were also performed. The analyses were performed considering the proposed Safety Limits and the Limiting Safety Settings of the TSs and were confirmed to be bounding for the affected safety analyses. The results of the non-LOCA analyses indicate that operation with the RSGs in service is acceptable. As a result of the analyses and evaluations performed in support of the RSGs, the ANO specific safety parameters and regulatory limits are protected. Therefore, the proposed TS changes will not significantly increase the probability of an accident previously analyzed.

Loss of Coolant Accidents (LOCAs) and non-LOCA safety analyses supporting the proposed changes have been performed and have demonstrated conformance with all applicable Licensing Basis acceptance criteria. Although calculated radiological doses using newer, more conservative methods increase for some non-LOCA events (requiring a revision to Chapter 15 of the SAR), the results are within the acceptance criteria of 10 CFR 100. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes to the ANO–2 TSs are analytically based and require changing plant setpoints and procedural limits. No physical modifications are required as a result of the proposed changes. The RPS/ESFAS setpoint changes provide functionally equivalent protection with the RSGs as the previous setpoint values provided with the OSGs. Proposed changes in regard to RCS flow rate and High Linear Power Trip setpoints associated with conditions where MSSVs are inoperable represent appropriate restrictions that have resulted from the various analyses performed in support of RSG installation. The additional 8 hours provided for reducing the High Linear Power Level trip setpoints is acceptable due to the low probability of an event occurring within this period, based on operating experience which indicates such a time period is reasonable to complete the changes, and to provide consistency with the RSTS [Revised Standard Technical Specifications]. Therefore, the proposed TS changes will not create the possibility of a new or different kind of accident than previously analyzed.

A review of both LOCA and non-LOCA events was performed which confirms that existing licensing basis methodologies have been considered and that a new accident event has not been created.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

LOCA and non-LOCA safety analyses supporting the proposed changes have been performed and have demonstrated conformance within applicable acceptance criteria. With the increased size of the RSGs and the change in design characteristics, the bases for the setpoints in the ANO–2 TSs are affected. However, based on the new analyses and evaluations conducted in support of this license amendment, the new TS setpoints provide adequate margin to protect established safety and regulatory limits. Although calculated offsite radiological doses increase slightly for some non-LOCA events documented in Chapter 15 of the ANO–2 SAR, the increases are not considered to be significant in that the results remain within the 10 CFR 100 acceptance criteria.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dated of amendment request: July 29, 1999, as supplemented by letters dated August 8 and August 24, 1999 (NPF–38–220).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.8.1.1 and associated Bases by extending the Emergency Diesel Generator allowed outage time from 72 hours to ten days. Additionally, this proposed change adds Section 6.16, "Configuration Risk Management Program" to the Administrative Controls of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The emergency diesel generators (EDGs) are backup alternating current power sources designed to power essential safety systems in the event of a loss of offsite power. EDGs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The EDGs provide backup power to components that mitigate the consequences of accidents. The proposed changes to allowed outage times (AOTs) do not affect any of the assumptions used in deterministic safety analyses.

In order to fully evaluate the EDG AOT extension, probabilistic safety analysis methods were utilized. The results of these analyses indicate no significant increase in the risk of an accident previously evaluated. These analyses are detailed in CE NPSD–996, Combustion Engineering Owners Group "Joint Application Report for Emergency Diesel Generators AOT Extension."

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.8.1.1 ACTION b does not affect the probability or the consequences of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed change does not change the design or configuration of the plant. No new method of plant operation is involved.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes do not affect the Technical Specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety. Evaluations used to support the requested Technical Specification changes have been demonstrated to be either risk neutral or risk beneficial depending on precise plant conditions. These evaluations are detailed in CE NPSD–996.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dated of amendment request: July 29, 1999, as supplemented by letter dated August 24, 1999 (NPF–38–221).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.6.2.1 to extend the allowable outage time to seven days for one Containment Spray System (CSS) train inoperable. A new ACTION has been added to provide a shutdown requirement for the inoperability of two CSSs. Additionally, the APPLICABILITY is being changed to provide an end state of MODE 4. Associated TS Bases changes are included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The Containment Spray System (CSS) is part of the Containment Depressurization and Cooling System. Inoperable CSS components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The CSS system is primarily designed to mitigate the consequences of a Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB). These proposed changes do not affect any of the assumptions used in the deterministic LOCA or MSLB analyses. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the CSS AOT [Allowed Outage Time] extension, probabilistic safety assessment (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. These analyses are detailed in report CE NPSD–1045, "Modifications To The Containment Spray System, and Low Pressure Safety Injection System Technical Specifications."

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.6.2.1 does not affect the probability or the consequences of an accident.

Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing an extended AOT or changing the APPLICABILITY does not increase the probability that a failure leading to an analyzed event will occur. The CSS components are passive until an actuation signal is generated. This change does not increase the failure probability of the CSS components. As such, the probability of occurrence for a previously analyzed accident [is] not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change

will only provide the plant some flexibility in the AOT and chang[es] the APPLICABILITY. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analysis to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes involve no significant increase in risk. These evaluations are detailed in report CE NPSD–1045. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 7 days with components inoperable in one CSS train, is acceptable based on the remaining CSS components providing 100% of the required CSS flow. The reduced potential for a self-induced plant transient resulting from unit shutdown required for a second inoperable CSS train is minimized. Therefore, the change does not involve a significant reduction in the margin of safety, and is offset by minimizing the potential for a self-induced plant transient.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 18, 1999.

Description of amendment request: The proposed change modifies Technical Specification (TS) 3.6.2.2 Limiting Condition for Operation to allow Waterford Steam Electric Station, Unit 3 to operate with two independent trains of containment cooling, consisting of one cooler per train, operable during modes 1, 2, 3, and 4. Associated changes to the TS Bases have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with these proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: The proposed change to Technical Specification (TS) 3.6.2.2 reduces the number of Containment Fan Coolers (CFC) from two to one required to be operable in each train of the Containment Cooling System for modes 1, 2, 3, and 4. This change does not create any new system interactions and has no impact on operation or function of any system or equipment in a way that could cause an accident. The CFCs are not an initiator of any events nor affect any accident initiators of any events analyzed in Chapter 15 of the UFSAR [Updated Final Safety Analysis Report]. Therefore this change will not impact the probability of occurrence of an accident.

The results of the reanalysis of the limiting Loss of Coolant Accident (LOCA) and Main Steam Line Break (MSLB) accidents show that the consequences of an accident previously evaluated are not increased by the change in the required number of operable CFCs. The limiting accidents affected by the proposed changes are identified below:

The peak containment pressure following the limiting LOCA (Double Ended Hot Leg Slot Break with minimum safety injection flow) was determined to be 35.2 psig [pounds per square inch, gauge] as compared to the current licensing basis limiting LOCA (Double Ended Suction Leg Slot Break with minimum safety injection flow) peak pressure of 43.1 psig.

The peak containment pressure at 24 hours following the start of the limiting LOCA (Double Ended Discharge Leg Slot Break with minimum safety injection flow) and the operation of one containment spray train and one partially flooded CFC operable was determined to be 15.5 psig with a peak pressure of 33.27 psig as compared to the current licensing basis of 14.9 psig with a peak pressure of 42.9 psig. The current licensing basis limiting LOCA is the Double Ended Suction Leg Slot Break with maximum safety injection flow and the operation of one containment spray train and two operable CFCs.

The peak containment pressure following the limiting MSLB (102% power with failure of one containment heat removal train consisting of one containment spray pump and one CFC operable) was determined to be 42.68 psig as compared to the current licensing basis peak pressure of 42.9 psig. The current licensing basis limiting MSLB is 75% power with the failure of one train of containment heat removal system consisting of one containment spray train and two operable CFCs.

The peak containment equipment qualification temperature following the limiting MSLB (102% power with the failure of one MSIV to close) was determined to be 397.4 °F as compared to the current licensing basis peak temperature of 409.1 °F. The current licensing basis limiting MSLB is 102% power with two CFCs per train operable and the failure of one train of containment spray.

These values above demonstrate that the containment design basis pressure and equipment qualification temperature of 44 psig and 413.5 °F, respectively, are not exceeded and the containment pressure at 24 hours after start of the limiting LOCA is less than 50% of the peak pressure.

The results of the containment response analysis discussed above satisfy the following NRC Staff Standard Review Plan (SRP) section 6.2.1.1.A guidance document acceptance criteria for a PWR [Pressurized Water Reactor] dry containment.

The peak calculated containment pressure following a Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB) should be less than the containment design pressure.

To satisfy the requirements of GDC [General Design Criteria] 38 to rapidly reduce the containment pressure, the containment pressure should be reduced to less than 50% of the peak calculated pressure for the design basis LOCA within 24 hours after the postulated accident.

Thus, revising the containment cooling system TS to require only one operable CFC per train results in acceptable containment response and therefore, will not adversely impact the consequences of accidents previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the operation of the facility in accordance with these proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change to reduce the number of operable Containment Fan Coolers (CFC) from two to one in each train of the Containment Cooling System for modes 1, 2, 3, and 4 does not alter the operation of the CFCs. Although only one of the two CFCs per train is required to be operable, the manner in which the CFCs perform their safety function is not changed. All four CFCs (two per train) will be maintained operable to the extent possible to provide the greatest defense in depth and operating flexibility.

This proposed change does not involve a change in plant design, nor does it involve any potential initiating events that would create any new or different kind of accident. This proposed change does not alter the way in which the plant is operated in a manner that would create a new or different accident. Therefore, since no hardware modifications will be made, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the operation of the facility in accordance with these proposed changes involve a significant reduction in a margin of safety?

Response: The proposed change revises TS 3.6.2.2, Containment Cooling System. This change revises the required number of fan coolers from two fan coolers per train to one fan cooler per train. As described in the containment depressurization and cooling

system Technical Specification Bases, the containment cooling system is designed to maintain the post accident containment peak pressure below its design value of 44 psig. The system is also designed to reduce the containment pressure by a factor of [two] from its post-accident peak within 24 hours.

The analyses that have been performed to support this Technical Specification change have shown that the peak containment pressure remains below 44 psig, the 24-hour containment pressure is less than half the peak pressure, and the containment peak temperature remains below the maximum temperature of 413.5 °F provided in the Bases for Technical Specifications 3.6.2.1 and 3.6.2.2. In comparison of the current safety margins to the safety margins that would exist if the proposed changes were in effect, the results of the analyses, illustrated below, show an increase in the margin of safety for containment pressure and equipment qualification temperature following the associated limiting LOCA and MSLB.

The peak containment pressure following the limiting LOCA was determined to be 35.2 psig as compared to the current licensing basis limiting LOCA peak pressure of 43.1 psig.

The peak containment pressure at 24 hours following the start of the limiting LOCA was determined to be 15.5 psig with a peak pressure of 33.27 psig as compared to the current licensing basis of 14.9 psig with a peak pressure of 41.9 psig.

The peak containment pressure following the limiting MSLB was determined to be 42.68 psig as compared to the current licensing basis peak pressure of 42.9 psig.

The peak containment equipment qualification temperature following the limiting MSLB was determined to be 397.4 °F as compared to the current licensing basis peak temperature of 409.1 °F.

This proposed change does not adversely impact a margin of safety, involve a change in plant design, or have any affect on the plant protective barriers. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 13, 1999.

Description of amendment request: The licensee proposes to change the license to delete an expired license condition and to make some editorial and administrative changes to correct or clarify the license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient or accident conditions nor do they change any of the procedures related to operations of the plant. The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative and editorial in nature and only correct, update and modify the Operation License.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and only correct, update and clarify the Seabrook Station Operating License. The proposed changes do not modify the facility nor do they modify the manner in which the plant will be operated nor do they affect the plant's response to normal, transient or accident conditions. The changes do not introduce a new mode of plant operation. The plant's design basis are not revised and the current safety analyses will remain in effect and the plant will continue to be operated in accordance with the existing Technical Specifications. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial changes to the Seabrook Station Operating License that do not revise the Technical Specifications or the bases for the Technical Specifications. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes. Since there will be no changes to the physical design or operation of the plant, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Omaha Public Power District, Docket No 50–285, For Calhoun Station, Unit No. 1, Washington County, Nebraska.

Date of amendment request: March 18, 1998.

Description of amendment request: The proposed amendment would revise the Technical Specifications 2.15(4) and 2.15(5) to identify (1) all indication functions and control functions required for the alternate (remote) shutdown system (alternate shutdown panel and auxiliary feedwater panel), (2) panel locations of the functions, and (3) the number of channels required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications Section 2.15(4) and 2.15(5) identify functions, instruments, and controls along with their location and the number of required channels. The new Technical Specifications section addresses the regulatory requirements for equipment required for Alternative and Dedicated Shutdown Capability per 10 CFR Part 50 Appendix R. It will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the Alternate Shutdown Panel and the Auxiliary Feedwater Panel or related systems. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the Alternate Shutdown Panel or the Auxiliary Feedwater Panel, or any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications retain requirements for the Alternate Shutdown Panel and the Auxiliary Feedwater Panel. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the Alternative and Dedicated Shutdown Capability as defined by 10 CFR Part 50, Appendix R. The proposed changes will not alter any physical or operational characteristics of the Alternate Shutdown Panel and the Auxiliary Feedwater Panel and their associated systems and equipment. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 29, 1999.

Description of amendment request: The amendment would adopt the "Standard Test Method for Nuclear Grade Activated Carbon" for charcoal filter laboratory testing with certain exceptions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The adoption of the new test method and acceptance criteria of ASTM [American Society for Testing and Materials] D3803–1989, with the exceptions as identified in the Technical Specifications, for activated charcoal filters does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Adoption of these provisions ensures compliance with the new test standard of ASTM D 3803–1989. Adoption of new test method will not cause an accident and therefore cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The adoption of the new test method and acceptance criteria of ASTM D 3803–1989, with the exceptions as identified in the Technical Specifications, for activated charcoal filters does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Adoption of new test method will not cause an accident and therefore cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: The proposed license amendment does not involve a significant reduction in a margin of safety. The use of outdated test protocols or inappropriate test conditions can lead to an overestimation of the charcoal filters' ability to adsorb radioiodine following an accident. The adoption of the new test method and testing criteria of ASTM D 3803–1989, with the exceptions as identified in the Technical Specifications, for activated charcoal filters would ensure at least a safety factor of two is maintained. Thus, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 19, 1999.

Description of amendment request: The proposed amendment would revise Sections 4.7.A and 4.11.B of the Appendix A Technical Specifications (TSs) to the James A. FitzPatrick Operating License to adopt the surveillance test methods and performance criteria detailed in NRC Generic Letter 99–02 for laboratory testing of nuclear-grade charcoal. The proposed amendment also would reduce the minimum allowable Standby Gas Treatment System (SGTS) and Control Room Emergency Ventilation Air Ventilation Supply System (CREVASS) charcoal filter efficiencies specified in the TSs to those assumed in the updated radiological dose calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92(c) since it would not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated.

These changes are not modifications to the plant. They will not require changes to how the plant is operated, nor will they affect the operation of the plant.

Changes to these test methods will not cause an accident and therefore cannot increase the probability of an accident.

Calculated radiological doses increase as a result of reductions in assumed charcoal efficiencies, but remain within regulatory limits. Radiological doses at the site boundary and low population zone are less than 25 percent of 10 CFR 100 criteria. Post-accident doses to control room operators are also within regulatory limits.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are not modifications to the plant, nor will they require changes to how the plant is operated. Changes to these test methods will not cause an accident, and therefore cannot create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

Evidence has been presented which contend that activated charcoal testing performed to test standards other than ASTM [American Society for Testing and Materials] D3803–1989 may be inaccurate and may overestimate its adsorption capabilities. The adoption of ASTM D3803–1989 charcoal performance standards and plant-specific test parameters ensures adequate safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 20, 1999.

Description of amendment request: This application for an amendment to the James A. FitzPatrick Technical Specifications (TS) proposes a change to the Main Steam Isolation Valve (MSIVs) closure scram setpoint. The proposed amendment changes the MSIV closure scram Trip Level Setting from ≤10% to ≤15% valve closure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not significantly increase the probability or consequences of any previously evaluated accidents.

This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change to the MSIV scram trip setpoint from 90% open to 85% open results in the MSIV closure scram event having a slight delay in the initiation of the reactor scram. The MSIV scram event is not an accident initiator and will not increase the probability or consequence of any accident previously evaluated. An evaluation of events concluded that the MSIV direct scram remains a relatively low consequence event and has no effect on any operating limits. The limiting event analyzed for the reactor vessel overpressure event in the James A. FitzPatrick Updated Final Safety Analysis Report (UFSAR) is the MSIV closure terminated by a high neutron flux scram, which does not take credit for the MSIV closure valve position scram. In addition, an evaluation of the Main Steam Line Break outside containment event concludes that there is no impact on PCT [Peak Clad Temperature] or break flow and that the results presented in the UFSAR are bounding. An evaluation of the impact on containment was also made. The containment response is evaluated for much more severe events such as a Loss of Coolant Accident (LOCA) or stuck open Safety Relief Valve (SRV), thus the change in MSIV scram setpoint has no impact on the containment analysis. Therefore, changing the MSIV closure scram setpoint from 90% open to 85% open does not significantly increase the probability or consequences of any previously evaluated accidents.

2. The proposed change will not create the possibility of a new or different kind of accident.

This proposed change to the MSIV scram trip setpoint from 90% open to 85% open results in the MSIV closure scram event having a slight delay in the initiation of the reactor scram, and does not introduce a new or different kind of accident previously analyzed. An evaluation of the event determined that the MSIV closure scram remains a relatively low consequence event and has no effect on any operating limits. The limiting event analyzed for the reactor vessel overpressure event in the UFSAR is the MSIV closure terminated by a high neutron flux scram, which does not take credit for the MSIV closure valve position scram. The proposed change will not create the possibility of a new or different kind of accident.

3. The proposed change will not involve a significant reduction in a margin of safety.

This proposed change to the MSIV scram trip setpoint from 90% open to 85% open results in the MSIV closure scram event having a slight delay in the initiation of the reactor scram. An evaluation of the event determined that the MSIV closure scram remains a relatively low consequence event and has no effect on any operating limits. In addition, an evaluation of the Main Steam Line Break outside containment event concludes that there is no impact on PCT or break flow and that the results presented in the UFSAR are bounding. An evaluation of the impact on containment was also made. The containment response is evaluated for much more severe events such as a LOCA or stuck open SRV, thus the change in MSIV scram setpoint has no impact on the containment analysis. Changing the MSIV valve position scram setpoint from ≤10% to ≤15% of valve closure will allow the limit switches to be positioned such that both scram and indicating limit switches can be coordinated and provide accurate and reliable valve position indication in the control room. Therefore, changing the MSIV closure scram setpoint from 90% open to 85% open does not involve a significant reduction in a margin of safety and provides a net benefit to plant operations.

The proposed change will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident previously evaluated, or significantly reduce existing margin to safety. Therefore, the proposed license amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia.

Date of amendment request: August 30, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 5.2.2 in order to raise the level of the approval authority for deviations from the guidelines provided to minimize unit staff overtime.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed license amendment would strengthen the administrative controls that permit plant personnel to work beyond those limits outlined in the TS's. As a result, there will be greater scrutiny on the amount of overtime being utilized to perform safety-related function. Therefore, it has been determined that operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

There will be no physical changes to the systems, components or structure of the facility as a result of this proposed license amendment. The initial assumptions of the design accident analyses will be unaffected. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

This amendment raises the administrative level of management approval required for overtime in excess of the limits outlined in the TS. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders,

NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: October 4, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 5.5.6, "Prestressed Concrete Containment Tendon Surveillance Program" to incorporate three exceptions to Regulatory Guide (RG) 1.35, Revision 2, 1976. The exceptions concern the number of tendons detensioned, inspection of concrete adjacent to vertical tendons, and the time during which areas adjacent to tendons are inspected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change only clarifies TS requirements for the containment tendon surveillance program. The proposed clarification has been previously reviewed and approved by the NRC staff with Amendments 23 and 4, and is consistent with current regulatory guidance. As such, the proposed change is essentially administrative in nature. The containment tendon surveillance program has no impact on the probability of any accident initiators; and it will continue to ensure containment structural integrity. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed change only clarifies TS requirements for the containment tendon surveillance program. The proposed clarification has been previously reviewed and approved by the NRC staff with Amendments 23 and 4, and is consistent with current regulatory guidance. As such, the proposed change is essentially administrative in nature. Plant design and operation will not be changed, and no other safety related or important to safety equipment is affected by the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The proposed change only clarifies TS requirements for the containment tendon surveillance program. The proposed clarification has been previously reviewed and approved by the NRC staff with Amendments 23 and 4, and is consistent with current regulatory guidance. As such, the proposed change is essentially administrative in nature. The containment prestressing system will continue to perform its function to ensure containment structural integrity. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 25, 1999 (TS 98–016).

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) and TS Bases to reflect application of the Westinghouse generic Best Estimate Large Break Loss-of-Coolant Accident Analysis methodology using the WCOBRA/TRAC computer code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve use of the Best Estimate Large Break loss-of-coolant accident (LOCA) analysis methodology and associated technical specification changes. Accumulator water level set points will be revised from [greater than or equal to] 7717 gallons and [less than or equal to] 8004 gallons to [greater than or equal to] 7630 gallons and [less than or equal to] 8000 gallons to provide the plant with an increased operating range. The plant conditions assumed in the analysis, including the accumulator water level instrumentation changes, are bounded by the design conditions for all equipment in the plant.

Therefore, there will be no increase in the probability of a LOCA. The consequences of a LOCA are not being increased, since it is shown that the emergency core cooling system (ECCS) is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, Paragraph b. The small break LOCA analysis assumes only a nominal accumulator water level which is the same nominal value assumed in this analysis, therefore, the small break LOCA analysis is unaffected by the increase in the accumulator range. Also, the increased safety analysis range in accumulator water volume (+/−15 cubic feet) has an insignificant effect on the containment related analyses.

The post-LOCA containment sump boron calculation assumes a minimum accumulator volume which bounds (is smaller than) the 1005 cubic feet (7518 gallons) value supported by the Best Estimate Large Break LOCA analysis. Also, the hot leg switchover calculation models a maximum accumulator volume which is not bounded by the 1095 cubic feet (8191 gallons) maximum value supported by the Best Estimate Large Break LOCA analysis. However, an evaluation concludes that the Watts Bar hot leg switchover time is unaffected by the difference in maximum volumes.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new modes of plant operation are being introduced by the new analysis or by the changes in instrumentation setpoints for accumulator water level. The parameters assumed in the analysis are within the design limits of existing plant equipment. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

It has been shown that the analytic technique used in the analysis realistically describes the expected behavior of the WBN Unit 1 reactor system during a postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. The physical setpoint changes to accumulator water level instrumentation are bounded by the uncertainty evaluation addressing accumulator water level. A sufficient number of loss of coolant accidents with different break sizes, different locations, and other variations in properties have been considered to provide assurance that the most severe postulated LOCAs were evaluated. It has been shown by the analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46, Paragraph b are met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 14, 1999.

Description of amendment request: This proposed change would revise the Vermont Yankee (VY) Technical Specifications (TS) by relocating the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM). The TS would also be revised to relocate procedural details associated with solid radioactive wastes to the Process Control Program (PCP). In addition, the TS definition for "solidification" would be relocated to the VY Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Implementation of programmatic controls for RETS already in TS will assure that the applicable regulatory requirements pertaining to the control of radioactive effluents will continue to be maintained. Since there are no changes to previous accident analysis, the radiological consequences associated with these analyses remain unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for Vermont Yankee.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation, and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. A comparable level of administrative controls will continue to be applied to those specifications being relocated to the ODCM, PCP, or TRM.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 28, 1999, as supplemented December 21, 1999.

Description of amendment request: The proposed changes will remove the operability and surveillance requirements of Technical Specifications (TS) Section 3/4.6.4.3, "Waste Gas Charcoal Filter System" from the TS and relocate them to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A waste gas decay tank rupture is highly unlikely, as the waste gas decay tanks are designed and constructed to stringent quality control standards, are provided with pressure relief valves to prevent overpressurization, are missile-shielded by installation below grade, and have their gaseous contents controlled to prevent potentially explosive mixtures. The entire gaseous content of the waste gas decay tank is assumed to be released to the atmosphere as a ground-level release * * *. The waste gas charcoal filter system is not credited for any mitigation of the release in the accident analysis for a waste gas decay tank rupture. In addition, the releases associated with a waste gas decay tank rupture are bounded by the existing LOCA [loss-of-coolant accident] releases. Specifically, operation of the North Anna Power Station in accordance with the proposed Technical Specification changes will not:

[1.] Involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocating the operability and surveillance requirements for The Waste Gas Charcoal System to the TRM [Technical Requirements Manual] does not change the operation of the plant. The plant and the radioactive gas waste system will not be operated differently. No new accident initiators are established as a result of the proposed changes. Therefore, the probability of occurrence is not increased for any accident previously evaluated.

Relocating the operability and surveillance requirements for The Waste Gas Charcoal Filter to the TRM does not [a]ffect the gaseous releases to the environment, which are controlled by the ODCM [Offsite Dose Calculation Manual]. Additionally, no credit for these filters is taken in the accident analysis for Waste Gas Decay Tank rupture. Therefore, there is no increase in the consequences of any accident previously analyzed.

[2.] Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the operation of the plant. The gaseous waste systems will not be operated differently as a result of the proposed changes. No new accident or event initiators are created moving the operability and surveillance requirements for The Waste Gas Charcoal Filter to the TRM. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type.

[3.] Involve a significant reduction in the margin of safety as defined in the bases on any Technical Specifications.

The proposed changes have no effect on any safety analyses assumptions. The waste gas charcoal filters are not used to mitigate the consequence[s] [of] a Waste Gas Decay Tank rupture. The accident analysis assumes total release of the radioactiv[ity] in the Waste Gas Decay Tank in the accident analysis. Therefore, the proposed changes do not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch Jr.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Dated of amendment request: November 29, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications in Section 4.7.7.1 for the Control Room Emergency Habitability System and Section 4.7.8.1 for the Safeguards Area Ventilation System. The changes will require laboratory testing of the charcoal filter carbon to be consistent with American Society for Testing and Materials (ASTM) Standard D3803–1989.

Basis for proposed no significant hazards consideration determination: In 10 CFR 50.92 three criteria are provided to determine whether a proposed license amendment involves a significant hazards consideration. No significant hazards consideration is involved if operation of the facility with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed changes for the North Anna Units 1 and 2 and determined that a significant hazards consideration is not involved. The proposed Technical Specification changes adopt the nuclear-grade charcoal testing requirements of ASTM D3803–1989 and do not affect the design or operation of the plant. The changes also do not involve any physical modification to the plant or result in a change in a method of system operation. The adoption of the 1989 edition of ASTM D3803 provides assurance that testing of nuclear-grade activated charcoal of ventilation systems is being performed with a suitable standard to ensure that charcoal adsorbers are capable of performing their required safety function and that the regulatory requirements regarding onsite and offsite dose consequences continue to be satisfied. The changes do not create an unreviewed safety question.

(a) The proposed changes modify surveillance testing requirements and do not affect plant systems or operation and therefore do not increase the probability or the consequences of an accident previously evaluated. The proposed surveillance requirements adopt ASTM D3803–1989 as the laboratory method for testing samples of the charcoal adsorber in response to NRC's Generic Letter 99–02. This method of testing charcoal adsorbers has been approved by the NRC as an acceptable method for determining methyl iodide removal efficiency. Since the charcoal adsorbers are used to mitigate the consequences of an accident, the more accurate the test, the better assurance we have that we remain within our accident analysis assumptions. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle. There is no change in the method of plant operation, system performance or system design. (b) The proposed changes do not create the possibility of an accident or malfunction of a different type than any evaluated previously.

The proposed changes modify surveillance testing requirements and do not impact plant systems or operations and therefore do not create the possibility of an accident or malfunction of a different type than evaluated previously. The proposed surveillance requirements adopt ASTM D3803–1989 as the laboratory method for testing samples of the charcoal adsorber. This change is in response to NRC's request in response to their Generic Letter 99–02. There is no change in the method of plant operation or system design. There are no new or different accident scenarios, transient precursors, nor failure mechanisms that will be introduced.

(c) The proposed changes modify surveillance test requirements and do not impact plant systems or operations and therefore do not significantly reduce the margin of safety. The revised surveillance requirements adopt ASTM D3803–1989 as the laboratory method for testing samples of the charcoal adsorber. The 1989 edition of this standard imposes very stringent requirements for establishing the capability of new and used activated carbon to remove radio-labeled methyl iodide from air and gas streams. The results of this test provide a more conservative estimate of the performance of nuclear-graded activated carbon used in all nuclear power plant HVAC [heating, ventilation, and air conditioning] systems for the removal of radioiodine. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle.

This analysis demonstrates that the proposed amendment to The North Anna Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch Jr.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dated of amendment request: April 11, 1996, as supplemented April 6, 1998, March 22 and July 29, 1999 (PCN–460).

Brief description of amendment request: The proposed amendments would revise the San Onofre Units 2 and 3 Technical Specification (TS) related to the containment isolation valves. Specifically, the licensee proposed a revision to TS 3.6.3 to extend the completion times for Section D.1 and D.2 valves from 4 hours to the applicable limiting condition for operation time pertaining to the engineered safety feature system in which the valve is installed.

Dated of publication of individual notice in **Federal Register:** January 19, 2000 (65 FR 2993), as corrected January 26, 2000 (65 FR 4265).

Expiration date of individual notice: February 18, 2000.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 2, 1998, as supplemented December 13, 1999 (PCN–482).

Brief description of amendment request: The proposed amendments would revise the San Onofre Units 2 and 3 Technical Specification (TS) relating to the Auxiliary Feedwater (AFW) System. Specifically, the licensee proposed to revise TS 3.7.5 to add a note that states: "The steam driven AFW pump is OPERABLE when running and controlled manually to support plant start-ups, plant shut-downs, and AFW pump and valve testing."

Date of publication of individual notice in **Federal Register**: January 19, 2000 (65 FR 2991), as corrected January 26, 2000 (65 FR 4265).

Expiration date of individual notice: February 18, 2000.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 11, 1999, as supplemented November 29, 1999 (PCN–499).

Brief description of amendment request: The proposed amendments would revise the San Onofre Units 2 and 3 Technical Specification (TS) 3.7.6, "Condensate Storage Tank (CST T–121 and T–120)" to change the minimum inventory of water maintained in the condensate storage tank (T–120) from 280,000 gallons to 360,000 gallons during plant operation Modes 1, 2 and 3.

Date of publication of individual notice in **Federal Register**: January 18, 2000 (65 FR 2648).

Expiration date of individual notice: February 17, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: September 28, 1999.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 3.7.6.2 "Component Cooling Water (CCW) System" to change the CCW pump automatic start actuation signal basis from Engineered Safety Feature Actuation Signal to Loss-of-Power Diesel Generator.

Date of issuance: January 21, 2000.

Effective date: January 21, 2000.

Amendment No.: 186.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59798).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 2000.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: May 11, 1999, as supplemented June 3 and July 28, 1999.

Brief description of amendment: This amendment deletes from the Defueled Technical Specifications (DTS) subsection 1.16, "SITE BOUNDARY," Figure 5.1–1, the Big Rock Point (BRP) Site Map, and DTS 5.1.1 paragraph numbering and removes certain site-specific information from DTS 5.1, which describes the BRP site. The amendment also makes editorial changes to DTSs 6.6.2.5. g, h, and j, and 6.6.2.6.b. because of the changes associated with DTSs 1.16 and 5.1 and Figure 5.1–1 described above. Most of the information removed or deleted from the DTSs can be found in the BRP Final Hazards Summary Report.

Date of Issuance: January 13, 2000.

Effective Date: January 13, 2000, to be implemented within 45 days from date of issuance. Implementation includes incorporation of the site boundary information, as discussed in the staff's safety evaluation enclosed with this amendment, into the next Final Safety Analysis Report (*i.e.* the updated Final Hazards Summary Report for the Big Rock Point Nuclear Plant) update in accordance with the schedule in 10 CFR 50.71(e).

Amendment No.: 121.

Facility Operating License No. DPR–6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 16, 1999 (64 FR 32288).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: April 5, 1999 as supplemented by letters dated May 27, July 6, October 7, and November 22, 1999.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate Topical Report DPC–NE–3005–P, "Thermal Hydraulic Transient Analysis Methodology."

Date of Issuance: January 18, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–309; Unit 2–309; Unit 3–309.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35202), November 3, 1999 (64 FR 59801).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of application of amendments: September 29, 1999.

Brief description of amendments: The amendments revise the Containment Inservice Inspection Program Technical Specifications related to the containment leakage testing program and the pre-stressed concrete containment tendon surveillance program.

Date of Issuance: January 18, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—310; Unit 2—310; Unit 3—310.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 17, 1999 (64 FR 62707).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 2000.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1999.

Brief description of amendment: The license amendment revises the River Bend Station Technical Requirements Manual, Section TR 3.9.14, and adds a temporary exception to the current prohibition for travel of loads in excess of 1200 pounds over fuel assemblies in the spent fuel storage pool. The exception allows the licensee to move the spent fuel pool (SFP) watertight gates, which separate the SFP from the cask and lower transfer pools, in order to perform repairs on the gates and watertight seals prior to the end of Refueling Outage 9. Updated Safety Analysis Report (USAR) Sections 9.1.2.2.2 and 9.1.2.3.3 are also changed to reflect the proposed exception.

Date of issuance: January 13, 2000.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented in the next periodic update to the USAR and TRM in accordance with 10 CFR 50.71(e). Implementation of the amendment is the incorporation into the USAR and TRM update, the changes to the description of the facility as described in the licensee's application dated December 16, 1999, as supplemented by letters dated December 21, 1999, and January 10, 2000, and evaluated in the staff's Safety Evaluation attached to this amendment.

Amendment No.: 108.

Facility Operating License No. NPF–47: The amendment revises the Technical Requirements Manual and Updated Safety Analysis Report.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 71511 dated December 21, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 20, 2000, but indicated that if the Commission made a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final NSHC determination are contained in a Safety Evaluation dated January 13, 2000.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2000.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: December 16, 1999

Brief description of amendment: The proposed change would amend Technical Specification 4.18.5.b to allow tube 110/60 to remain in service through the current operating cycle (cycle 16) with two axial indications that have potential through-wall depths greater than the plugging limit. The axial indications are located in the roll transition region and are contained within the upper tubesheet.

Date of issuance: January 13, 2000.

Effective date: As of the date of issuance.

Amendment No.: 203.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 73080 dated December 29, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 28, 2000, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final NSHC determination are contained in a Safety Evaluation dated January 13, 2000.

Attorney for Licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc.,Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 20, 1998, as supplemented by letter dated June 29, 1999.

Brief description of amendment: The amendment incorporates the Technical Specification changes necessary for implementation of the Boiling Water Reactor Owners' Group Reactor Stability Long-Term Solution, Enhanced Option 1–A.

Date of issuance: January 19, 2000.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No: 141.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: August 25, 1999 (64 FR 46432).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 12, 1999.

Brief description of amendments: The amendments would revise the Technical Specifications (TSs) Surveillance Requirement 4.6.2.2.d for the spray additive system to relocate the details associated with the acceptance criteria and test parameters to the associated TSs Bases. Additionally, certain administrative text format changes were made.

Date of issuance: January 19, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 240 and 221.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59804).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 11, 1998, as supplemented by letters dated January 14, and August 5, 1999.

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise TS 6.8.4f., "Containment Polar and Turbine Building Cranes," to control the operation of the containment polar cranes in jet impingement zones during Modes 1, 2, 3, and 4.

Date of issuance: January 12, 2000.

Effective date: January 12, 2000.

Amendment Nos.: Unit 1–137; Unit 2–137.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19561).

The August 5, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 29, 1999, as supplemented December 7, 1999.

Brief description of amendment: This amendment revises the Technical Specifications to allow, on a one-time basis only, the Power Authority of the State of New York to extend the allowed out-of-service time for the Residual Heat Removal Service Water (RHRSW) System from 7 days to 11 days. This amendment is only applicable during installation of Modification 99–095 to the "A" RHRSW Strainer.

Date of issuance: January 28, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 259.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 20, 1999 (64 FR 56532).

The December 7, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 25, 1999.

Brief description of amendments: The amendments authorize the licensee to perform single-cell charging of operable safety-related batteries by using non-Class 1E single-cell battery chargers, with proper electrical isolation. The single-cell chargers would be used to restore individual cell float voltage to the normal TS limit.

Date of issuance: January 24, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 226 and 207.

Facility Operating License Nos. DPR–70 and DPR–75.: Amendments revised the licenses.

Date of initial notice in **Federal Register**: September 22, 1999 (64 FR 51349).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 24, 2000.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: June 28, 1999.

Brief description of amendment: The amendment revises the Ginna Station Improved Technical Specifications associated with the Reactor Coolant System Leakage Detection Instrumentation.

Date of issuance: January 19, 2000.

Effective date: January 19, 2000.

Amendment No.: 76.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 11, 1999 (64 FR 43778)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 19, 1999, as supplemented by letter dated November 1, 1999.

Brief description of amendments: The amendments revised the Technical Specifications Surveillance Requirement (SR) 3.3.5.2 and associated Bases to allow the loss of voltage and degraded voltage trip setpoints to be treated as "nominal" values.

Date of issuance: January 19, 2000

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 111—Unit 1; 89—Unit 2.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 1, 1999 (64 FR 67340).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 2000.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999, as supplemented November 9, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.8.1, "A.C. Sources, Operating," and associated Bases, by deleting the 18-month surveillance to subject the standby diesel generator to inspections in accordance with procedures prepared in conjunction with its manufacturer's recommendations. The surveillance requirements have been relocated to the Technical Requirements Manual.

Date of issuance: January 14, 2000.

Effective date: January 14, 2000, to be implemented within 30 days.

Amendment Nos.: Unit 1—121 ; Unit 2—109

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 1, 1999 (64 FR 67341).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2000.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999, as supplemented by letter dated November 9, 1999.

Brief description of amendments: The amendments revised Technical Specification (TS) 3/4.8.1, "A.C. Sources, Operating," and associated Bases, by eliminating the requirement for accelerated testing of the standby diesel generators and the associated reporting requirements. The TS Index was also revised to reflect these changes.

Date of issuance: January 14, 1999.

Effective date: January 14, 1999.

Amendment Nos.: Unit 1—122 ; Unit 2—110.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59806).

The November 9, 1999, supplement provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2000.

No significant hazards consideration comments received: No

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 21, 1999.

Brief description of amendment: The amendment corrects two textual errors and changes the designation of a referenced figure.

Date of Issuance: January 11, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 183.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 17, 1999 (64 FR 62717).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 11, 2000.

For the Nuclear Regulatory Commission.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nulcear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2835 Filed 2–8–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form S–2, SEC File No. 270–60, OMB Control No. 3235–0072
Form F–1, SEC File No. 270–249, OMB Control No. 3235–0258
Form F–2, SEC File No. 270–250, OMB Control No. 3235–0257
Form F–3, SEC File No. 270–251, OMB Control No. 3235–0256
Form F–7, SEC File No. 270–331, OMB Control No. 3235–0383
Form F–8, SEC File No. 270–332, OMB Control No. 3235–0378
Form F–X, SEC File No. 270–336, OMB Control No. 3235–0379
Form 10–SB, SEC File No. 270–367 OMB Control No. 3235–0419
Form DF, SEC File No. 270–430, OMB Control No. 3235–0482
Form T–1, SEC File No. 270–121, OMB Control No. 3235–0110
Form T–2, SEC File No. 270–122, OMB Control No. 3235–0111
Form T–3, SEC File No. 270–123, OMB Control No. 3235–0105
Form T–4, SEC File No. 270–124, OMB Control No. 3235–0107
Schedule 13E–4F, SEC File No. 270–340, OMB Control No. 3235–0375
Schedule 14D–1F, SEC File No. 270–338, OMB Control No. 3235–0376
Schedule 14D–9F, SEC File No. 270–339, OMB Control No. 3235–0382
Rule 14f–1, SEC File No. 270–127, OMB Control No. 3235–0108
Rule 12d1–3, SEC File No. 270–116, OMB Control No. 3235–0109

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (Commission) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Form S–2 is used for registration of securities of certain issuers. The Form S–2 provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be public companies. The information collected must be filed with the Commission. All information is provided to the public upon request. Form S–2 takes 470 burden hours to prepare and is filed by 101 respondents for a total of 47,470 burden hours.

Form F–1 is a registration statement of securities of certain foreign private issuers. Form F–1 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–1 is mandatory. All information on Form F–1 is reported to the public upon request. Form F–1 takes approximately 1,868 burden hours to prepare and is filed by 170 respondents. It is estimated that 25% of the 317,560 total burden hours (79,390 hours) would be prepared by the company.

Form F–2 is a registration statement of securities of certain foreign private issuers. Form F–2 provides the public with the necessary information to make

informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–2 is mandatory. All information on Form F–2 is provided by the public upon request. Form F–2 takes approximately 559 hours to prepare and is filed by 5 respondents. It is estimated that 25% of the 2,795 total burden hours (699 hours) would be prepared by the company.

Form F–3 is a registration statement of securities of certain foreign issuers offered pursuant to certain types of transaction. Form F–3 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–3 is mandatory. All information on Form F–3 is mandatory. All information on Form F–3 is provided on the public upon request. Form F–3 takes approximately 166 burden hours to prepare and is filed by 150 respondents. It is estimated that 25% of the 24,900 total burden hours (6,225 hours) would be prepared by the company.

Form F–7 is a registration statement of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders. Form F–7 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public. The information provided on Form F–7 is mandatory. All information is provided to the public upon request. It takes approximately 1 burden hour to prepare and is filed by 5 respondents.

Form F–8 is a registration statement of securities of certain Canadian issuers to be issued in exchange offers or a business combination. Form F–8 provides the public with the necessary information to make informed investment decisions. The information provided on Form F–8 is mandatory. All information on Form F–8 is provided on the public upon request. Form F–8 takes one burden hour to prepare and is filed by 16 respondents. It is estimated that 25% of the 16 total burden hours (4 hours) would be prepared by the company.

Form F–X is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40–F under the Exchange Act of 1934 (Exchange Act). The information required on Form F–X provides investors with the necessary information when considering investing in Canadian companies. Form F–X takes 2 burden hours to prepare and is filed by 129 respondents. It is estimated that 25% of the 258 total burden hours (64.5 hours) would be prepared by the company.

Form 10–SB is used to register classes of securities pursuant to Section 12 of the Exchange Act to provide material information necessary for informed investment decisions. The information provided on Form 10–SB is mandatory. All information on Form 10–SB is provided to the public upon request. Form 10–SB takes 23 burden hours to prepare and is filed by 162 respondents. It is estimated that 25% of the 3,726 total burden hours (932 hours) would be prepared by the company.

Form DF is used to allow registrants to identify a filing that was filed late because of electronic filing difficulties in order to preserve the timeliness of the filing. This form is required by all issuers who are required to file on EDGAR. In addition, Form DF is required to be filed on occasion. All information provided on Form DF is provided to the public upon request. Form DF takes 12 minutes to prepare and is filed by 500 respondents for a total of 100 burden hours.

Form T–1 is a statement of eligibility and qualification for corporate trustee under the Trust Indenture Act. Form T–1 is filed on occasion. The information required by Form T–1 is mandatory. All information is provided to the public upon request. Form T–1 takes 15 burden hours to prepare and is filed by 180 respondents for a total of 2,700 burden hours.

Form T–2 is a statement of eligibility under the Trust Indenture Act of an individual designated to act as trustee. The information required by Form T–2 is mandatory. All information is provided to the public upon request. Form T–2 takes 9 burden hours to prepare and is filed by 36 respondents for a total of 324 burden hours.

Form T–3 is used as an application for qualification of indentures pursuant to the Trust Indenture Act, but only when securities to be issued thereunder are not required to be registered under the Securities Act of 1933. The information required by Form T–3 is mandatory. All information is provided to the public upon request. T–3 takes 43 burden hours to prepare and is filed by 55 respondents for a total of 2,365 burden hours.

Form T–4 is used to apply for an exemption from certain provisions of the Trust Indenture Act. The information required by Form T–4 is mandatory. All information is provided to the public upon request upon request. Form T–4 takes 5 burden hours to prepare and is filed by 3 respondents for a total of 15 burden hours.

Schedule 13E–4F may used by any issuer incorporated or organized under the laws of Canada making a tender offer for the issuer's own securities, where less than 20% of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents. The information required by Schedule 13E–4F must be filed with Commission. All information is provided to the public upon request. Schedule 13E–4F takes 2 burden hours to prepare and is filed by 3 respondents for a total of 6 burden hours.

Schedule 14D–1F may be used by any person making a cash tender or exchange offer for securities of any issuer incorporated or organized under the laws of Canada that is a foreign private issuer, where less than 40% of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The information required by Schedule 14D–1F must be filed with the Commission. All information is provided to the public upon request. Schedule 14D–1F takes 2 burden hours to prepare and is filed by 5 respondents for a total of 10 burden hours.

Schedule 14D–9F is used by any issuer incorporated or organized under the laws of Canada, or by any director or officer of such issuer, where the issuer is the subject of a tender offer for a class of its securities filed on Schedule 14D–1F. The information required by Schedule 14D–9F must be file with the Commission. All information is provided to the public upon request. Schedule 14D–1F takes 2 burden hours to prepare and is filed by 5 respondents for a total of 10 burden hours.

Rule 14f–1 requires issuers to disclose a change in a majority of issuer directors. The information filed under Rule 14f–1 must be filed with the Commission. All information submitted is provided to the public upon request. It takes 18 burden hours to prepare the necessary information and is filed by 44 respondents for a total of 792 burden hours.

Rule 12d1–3 requires a certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Exchange Act to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission. All information filed with the Commission is available to the public upon request. It takes one-half hour to prepare the necessary information and is filed by 688 respondents for a total of 344 burden hours.

Written comments are invited on: (a) Whether the proposed collection of

information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: January 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2877 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27129]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 2, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by February 24, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 24, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Vectren Corporation, 70–9585

Vectren Corporation ("Vectren"), an Indiana Corporation, 20 N.W. Fourth Street, Evansville, Indiana 47741, has filed an application under sections 9(a)(2) and 10 of the Act.

Under the Agreement and Plan of Merger, dated as of June 11, 1999 ("Merger Agreement"), Vectren will acquire all of the issued and outstanding common stock of SIGCORP, Inc. and Indiana Energy, Inc., both Indiana corporations and public-utility holding companies exempt under section 3(a)(1) by rule 2 from all provisions of the Act except section 9(a)(2) ("Transaction" or "Merger")[1]. Upon completion of the proposed Transaction, SIGCORP and Indiana Energy will be merged with and into Vectren and Vectren will be the sole surviving corporation. Following the consummation of the Merger, Vectren will become a holding company and claim an exemption from all provisions of the Act under rule 2.

Each share of SIGCORP common stock shall be converted into 1.333 shares of Vectren Common stock. Each share of Indiana Energy common stock shall be converted into one share of Vectren common stock. No fractional shares will be issued. Instead, each holder of SIGCORP common stock who would otherwise receive a fractional share of Vectren common stock will receive cash in payment for that fractional share based on the prevailing price on the New York Stock Exchange.

SIGCORP is a holding company located in Evansville, Indiana and owns one public-utility subsidiary, Southern Indiana Gas and Electric Company ("SIGECO") and ten non-utility subsidiaries. SIGECO is located in Evansville, Indiana and is engaged in the generation, transmission, distribution and sale of electricity and the distribution and sale of natural gas in a service area covering ten counties in southwestern Indian. As of September 30, 1999 SIGECO served 125,546 retail electric customers and supplied natural gas to 107,268 customers.[2] For the nine months ended September 30, 1999, SIGECO had operating revenues of $185,683,040 and net income of $38,264,322.

SIGECO owns approximately 33% of the outstanding common stock of Community Natural Gas Company, Inc. ("Community"), a small Indiana gas distribution company. Community has several service territories in southwestern Indiana that are adjacent to or near the gas service territory of SIGECO. Community has 6,638 natural gas customers and approximately 470 miles of distribution mains.

The non-utility subsidiaries of SIGCORP include: (1) Southern Indiana Properties, Inc., which invests in real estate and equipment; (2) Energy Systems Group, Inc., which is a partner in an energy-related performance contracting firm; (3) Southern Indiana Minerals, Inc., which processes and market coal combustion by-products; (4) SIGCORP Energy Services., Inc., which is an energy marketer; (5) SIGCORP Capital, Inc., which is the financing vehicle for SIGCORP's non-regulated subsidiaries; (6) SIGCORP Fuels, Inc., which owns and operates coal mining properties; (7) SIGCORP Power Marketing, Inc., which is not currently active; (8) SIGCORP Communications Services., Inc., which was formed to undertake communication-related initiatives; (9) SIGECO Advanced Communication, Inc., which holds SIGCORP's investment in several communications partnerships; and (10) SIGCORP Environmental Services, Inc., which holds SIGCORP's investment in Air Quality Services.

Indiana Energy is a holding company that owns one public-utility subsidiary, Indiana Gas Company, Inc. ("Indiana Gas"), and three non-utility subsidiaries. Indiana Gas is engaged in the business of providing gas utility service in the State in Indiana. In 1999, Indiana Gas supplied gas to approximately 500,000 consumers in 48 of the 92 counties in Indiana.[3] For the

[1] Vectren proposes to account for the Merger on a "pooling-of-interests" basis under generally accepted accounting principles.

[2] SIGECO is a party to an interconnection agreement under which it provides firm power to the City of Jasper, Indiana. It also has an agreement with Hoosier Energy Rural Electric Cooperative, Inc. for the sale of firm peaking power during the annual winter heating season. SIGECO is interconnected with Louisville Gas and Electric. Co., Cinergy Services, Inc., Indianapolis Power & Light Co., Hoosier Energy, Big Rivers Electric Corporation, Wabash Valley Power Association and the City of Jasper.

SIGECO's gas transmission system includes 359 miles of transmission mains, and the gas distribution system includes 2,520 miles of distribution mains. SIGECO currently purchases nearly 100% of its supply gas requirements from the Gulf Coast production basin, particularly in the on-shore and off-shore Texas and Louisiana producing regions.

[3] Indiana Gas owns 10,948 miles of distribution mains. Indiana Gas purchases 50% of its total system gas supply requirements from the Gulf Coast production basin and approximately 48% from

Continued

nine months ended September 30, 1999, Indiana Gas had operating revenues of approximately $419,061,000 and net income of approximately $31,377,000.

Indiana Gas is also a holding company because it owns all of the voting securities of Richmond Gas Corporation ("Richmond Gas") and Terre Haute Gas Corporation ("Terre Haute"), both public-utility companies. While Richmond Gas and Terre Haute technically exist as separate corporate entities, in accordance with an order issued by the Indiana Utility Regulatory Commission ("IURC"), Indiana Gas, Richmond Gas and Terre Haute have combined their operations for all purposes and are transacting business under the name of "Indiana Gas Company, Inc."[4]

The non-utility subsidiaries of Indiana Energy include: (1) IEI Services, LLC, which provides support services to Indiana Energy and its subsidiaries; (2) IEI Capital Corp., which was formed to carry out the financing activities of Indiana Energy; and (3) IEI Investments, Inc., which was formed to separate the non-regulated businesses and investments of Indiana Energy.

Vectren states that the merger will create a company that is better positioned to compete in the energy industry and expects the long-term value to shareholders to be enhanced while providing customers with reliable service at more stable and competitive prices.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2878 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24276; 812–11458]

Scudder Global Fund, Inc., et al.; Notice of Application

February 3, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies and certain entities that are excluded from the definition of investment company by section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act to invest uninvested cash in (a) affiliated money market funds and/or short-term bond funds or (b) one or more affiliated entities that operate as cash management investment vehicles and that are excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act.

APPLICANTS: Scudder Global Fund, Inc., Scudder International Fund, Scudder New Asia Fund, Inc., Scudder Global High Income Fund, Inc., The Argentina Fund, Inc., The Brazil Fund, Inc., The Korea Fund, Inc., The Japan Fund, Inc., Scudder California Tax Free Trust, Scudder Cash Investment Trust, Scudder Fund, Inc., Scudder Funds Trust, Scudder GNOME Fund, Scudder Investment Trust, Scudder Municipal Trust, Scudder Mutual Funds, Inc., Scudder Pathway Series, Scudder Portfolio Trust, Scudder Securities Trust, Scudder State Tax Free Trust, Scudder Tax Free Money Fund, Scudder Tax Free Trust, Scudder US Treasury Money Fund, Scudder Variable Life Investment Fund, CARP Growth Trust, CARP Income Trust, CARP Managed Investment Portfolios Trust, CARP Tax Free Income Trust, CARP Cash Investment Funds, Kemper Equity Trust, Kemper Global/International Series, Inc., Kemper Securities Trust, Kemper Europe Fund, Investor Fund Series (collectively, the "Investment Companies"), Scudder Cash Management Investment Trust ("SCMIT") (together with the Investment Companies, the "Funds"), Scudder Trust Company ("STC"), and Scudder Kemper Investments, Inc. ("SKI").

FILING DATES: The application was filed on January 8, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Philip H. Newsman, Esq., Goodwill, Proctor & Oar LPL, Exchange Place, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Investment Company is organized as a Massachusetts business trust or a Maryland corporation and is registered under the Act as a management investment company.[1] SCMIT is a New Hampshire investment trust that is relying on section 3(c)(1) of the Act. STC, a New Hampshire banking corporation, is the trustee of SCMIT and is controlled by SKI. SKI is registered under the Investment Advisers Act of 1940 and serves as the investment adviser to the Funds (SKI and all entities controlling, controlled by, or under common control with SKI, collectively, "SKI").[2]

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production in the Mid-continent basin. Approximately 2% of Indiana Gas's gas supplies are accessed through the Chicago market hub giving supply choice from the western Canadian Basin, Michigan production basin or the Mid-continent basin.

[4] Under the order of the IURC, accounting records and financial reports are maintained and presented on a consolidated basis.

[1] The following Investment companies are registered under the act as closed-end companies: The Argentina Fund, Inc.; The Brazil Fund, Inc.; The Korea Fund, Inc.; Scudder Global High Income Fund, Inc.; and Scudder New Asia Fund, Inc. The other Investment Companies are registered under the Act as open-end companies.

[2] Applicants also request relief for all other existing or future registered investment companies and series thereof that are advised by SKI and all other trusts or other entities excluded from the definition of "investment company" under section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act now existing or hereafter established for which SKI acts as trustee or investment adviser. All Funds that currently intend to rely on the relief have been named as applicants, and any other existing or future Fund that relies on the relief will comply with the terms and conditions of the application.

2. Each Investment Company that is not a money market fund (a "Registered Participating Fund") has, or may be expected to have, cash balances that have not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions's and dividend payments, and new cash received from investors. Currently, the Participating Funds can invest Uninvested Cash directly in money market instruments or other short-term debt obligations.[3] Applicants state that certain other entities that are excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act for which SKI acts as trustee or investment adviser (the "Private Participating Funds") also may have uninvested cash.

3. Applicants request an order to permit: (i) Registered Participating Funds and Private Participating Funds (collectively, "Participating Funds") to use their Uninvested Cash to purchase shares of one or more of the Investment Companies that are money market funds or short-term bond funds (the "Registered Central Funds") and shares of SCMIT or one or more future entities for which SKI acts as trustee or investment adviser that operate as cash management investment vehicles and that are excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act (the "Private Central Funds") (the Registered Central Funds and the Private Central Funds, collectively, the "Central Funds");[4] (ii) the Central Funds to sell their shares to and purchase (redeem) such shares from the Participating Funds; (iii) certain of the Participating Funds and Central Funds to engage in Interfund purchase and sale transactions ("Interfund Transactions"); and (iv) SKI to effect the above transactions.

4. The investment by each Registered Participating Fund in shares of the Central Funds will be in accordance with that Registered Participating Fund's investment policies and restrictions as set forth in its registration statement. Certain of the Registered Central Funds are or will be taxable or tax-exempt money market funds that comply with rule 2a–7 under the Act. The other Registered Central Funds are or will be short-term bond funds that invest in fixed-income securities and maintain a dollar weighted average maturity of three years or less. The Private Central Funds will comply with rule 2a–7 under the Act.

Applicant's Legal Analysis

I. Investment of Uninvested Cash by the Participating Funds in the Central Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that an investment company may not acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Any entity that is excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for the purposes of the 3% limitations specified in section 12(d)(1)(A) and (B) with respect to purchases by and sales to such company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) of the Act to permit the Participating Funds to purchase shares of the Registered Central Funds in excess of the limits of section 12(d)(1)(A) and the Registered Central Funds to sell their shares to the Participating Funds in excess of the limits of section 12(d)(1)(B).

3. Applicants maintain that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that each of the Registered Central Funds will be managed specifically to maintain a highly liquid portfolio, and access to them will enhance each Participating Fund's ability to manage Uninvested Cash. Applicants state that there will not be an inappropriate layering of fees because shares of the Registered Central Funds sold to or redeemed by the Participating Funds will not be subject to a sales charge load, redemption fee, asset-based distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or a service fee. In addition, if SKI collects a fee from Registered Central Fund for acting as its investment adviser with respect to assets invested by a Registered Participating Fund, when approving an investment advisory contract under section 15 of the Act, the Board of the Registered Participating Fund will consider to what extent the advisory fees paid by the Registered Participating Fund to SKI should be reduced to account for the reduced services provided to the Registered Participating Fund as a result of Uninvested Cash being invested in the Registered Central Fund. Each Registered Participating Fund also will invest Uninvested Cash in Central Funds only to the extent that the Registered Participating Fund's aggregate investment in the Central Funds does not exceed 25% of its total assets in shares of the Central Funds. Applicants also state that no Central Fund will acquire securities of any investment company in excess of the limits of section 12(d)(1)(A).

B. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and, in the case of an investment company, its investment adviser.

2. Because SKI serves as, or will serve as, each Fund's investment adviser or trustee exercising investment discretion, the Funds may be deemed to be under common control and therefore affiliated persons, or affiliated persons of an affiliated person, of each other. In

[3] Certain of the applicants also have received an order under section 17(d) and rule 17d–1 under the Act which permits them to establish one or more joint trading accounts for purposes of engaging in joint repurchase agreement transactions. Scudder Global Fund, Inc. *et al.*, Investment Company Act Release Nos. 10828 (October 7, 1998) (order) and 23525 (November 5, 1998) (order).

[4] SCMIT is the only currently existing Non-Registered Central Fund.

addition, certain Investment Companies could be deemed to be under common control by virtue of the fact that they share a common board of directors or trustees ("Board"). In addition, if a Participating Fund purchases more than 5% of the voting securities of a Central Fund, the Participating and Central Funds would be affiliated persons of each other. Accordingly, applicants state that the sale and redemption of shares of the Central Funds by the Registered Participating Funds may be prohibited by section 17(a)(1) and (a)(2).

3. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions, or classes of persons or transactions, from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Registered Participating Funds to purchase and redeem shares of the Central Funds. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b) of the Act. Applicants state that the consideration paid and received on the sale and redemption of shares of the Central Funds will be based on the net asset value per share of the Central Funds. Applicants also state that the Participating Funds will retain their ability to invest their Uninvested Cash directly in money market instruments and other short term obligations if they believe they can obtain a higher rate of return or for any other reason. Each of the Central Funds also reserves the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board determines that the sales would adversely affect the Central Fund's management and operations. In addition, applicants state that the investment of assets of the Registered Participating Funds in shares of the Central Funds, and the issuance of shares of the Central Funds, will be effected in accordance with each Registered Participating Fund's investment guidelines and will be consistent with each Registered Participating Fund's policies as set forth in its registration statement. Applicants also state that the Non-Registered Central Funds will comply with the provisions of the Act relating to prohibitions on affiliated transactions, leveraging, the issuance of senior securities, and rights of redemption.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission has approved the joint arrangement by an order. Applicants state that the Participating Funds and Central Funds, by participating in the proposed transactions, and SKI, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise for the purposes of section 17(d) of the Act and rule 17d–1 under the Act.

2. In passing on applications for orders under section 17(d), rule 17d–1 requires that the Commission consider whether an investment company's participation in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants state that, for the reasons discussed above, the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that they currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, of each other or between a registered investment company and a person which is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers, and/or common directors. Applicants state that the Participating Funds may become affiliated persons of the Central Funds by virtue of a Participating Fund owning 5% or more of the outstanding voting securities of a Central Fund. Thus, applicants state that certain Funds may not be able to rely on rule 17a–7 to effect Interfund Transactions. The Interfund Transactions for which relief is requested are transactions between Registered Participating Funds and Private Central Funds and between Private Participating Funds and Registered Central Funds.

2. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the registered investment company and the affiliated person thereof (or the affiliated person of such person) be affiliated solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors, solely because a Participating Fund and a Central Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act. Applicants state that the additional affiliation does not effect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in Section 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

2. If SKI collects a fee from a Central Fund for acting as its investment adviser with respect to assets invested by a Registered Participating Fund, before the next meeting of the Board of the Registered Participating Fund that invests in the Central Funds is held for the purpose of voting on an advisory contract pursuant to section 15 of the Act, SKI will provide the Board with specific information regarding the approximate cost to SKI for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Registered Participating Fund that can be expected to be invested in the Central Fund. Before approving any advisory contract pursuant to section 15 of the Act, the Board of the Registered Participating Fund, including a majority of the directors or trustees who are not

"interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by SKI should be reduced to account for the reduced services provided to the Registered Participating Fund by SKI as result of Uninvested Cash being invested in the Central Fund. The minute books of the Registered Participating Fund will fully record the Board's consideration in approving the advisory contract, including the fees referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Registered Participating Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Fund that may rely on the order shall be advised by SKI or will have SKI as its trustee.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act.

7. The Private Central Funds will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Central Funds were registered open-end investment companies. With respect to all redemption requests made by a Participating Fund, the Private Central Funds will comply with section 22(e) of the Act. SKI as sole trustee of each Private Central Fund has or will adopt procedures designed to ensure that each Private Central Fund complies with sections 17(a), (d), and (e), 18, and 22(e) of the Act. SKI will also periodically review and update as appropriate such procedures and maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

8. Each Private Central Fund will comply with rule 2a–7 under the Act. With respect to such Private Central Fund, SKI will adopt and monitor the procedures described in rule 2a–7(c)(7) and will take such other actions as are required to be taken under those procedures. A Participating Fund may only purchase shares of a Private Central Fund if SKI determines on an ongoing basis that the Fund is in compliance with rule 2a–7. SKI will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

9. Each Participating Fund will purchase and redeem shares of any Private Central Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of such Private Central Fund. A separate account will be established in the shareholder records of each Private Central Fund for the account of each Participating Fund that invests in such Private Central Fund.

10. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors solely because a Participating Fund and a Central Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. The net asset value per share with respect to shares of a Private Central Fund will be determined separately for each Private Central Fund by dividing the value of the assets belonging to that Private Central Fund, less the liabilities of that Private Central Fund, by the number of shares outstanding with respect to that Private Central Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2965 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24275; 812–11680]

Ark Funds, et al.; Notice of Application

February 2, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit a pension plan to transfer its assets to certain registered open-end management investment companies in exchange for shares of the companies.

APPLICANTS: ARK Funds, Allfirst Financial Inc. Pension Plan ("Allfirst Plan"), Allied Investment Advisers, Inc. ("AIA"), Allfirst Trust Company, N.A. ("Allfirst Trust") and Allfirst Financial Inc.

FILING DATES: The application was filed on July 1, 1999. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Alan C. Porter, Esq., Piper Marbury Rudnick & Wolfe LLP, 1200 Nineteenth Street, NW, Washington, DC 20036–2412.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. ARK Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and offers twenty series (the "ARK Portfolios"). AIA is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each ARK Portfolio. Allfirst Trust acts as custodian and sub-administrator for the ARK Portfolios. AIA and Allfirst Trust are wholly-owned subsidiaries of Allfirst Bank, which is a wholly-owned subsidiary of Allfirst Financial Inc., a bank holding company (Allfirst Financial Inc. and its direct and indirect subsidiaries, collectively "Allfirst").

2. The Allfirst Plan is a defined benefit pension plan qualified under section 401 of the Internal Revenue Code of 1986, as amended. The Allfirst Plan is maintained for the benefit of employees of Allfirst and is exempt from the definition of "investment company" under section 3(c)(11) of the Act. Allfirst Trust is trustee of and AIA is investment adviser to the Allfirst Plan.

3. Currently, the Allfirst Plan has approximately 36.8% of its assets invested in the ARK Portfolios, with the remainder invested directly in individual securities. The Allfirst Plan holds more than 5% of the outstanding voting securities of four of the ARK Portfolios. Applicants propose to transfer in-kind of the assets of the Allfirst Plan, other than shares of the ARK Portfolios, to various ARK Portfolios for which the securities are appropriate investments, in exchange for Institutional Class shares of the respective ARK Portfolios having an aggregate net asset value equal to that of the securities transferred (the "Proposed Exchange"). Pursuant to procedures adopted by each ARK Portfolio's board of directors ("Board"), AIA has determined that the individual securities held by the Allfirst Plan are appropriate investments for the participating ARK Portfolios. The securities of the Allfirst Plan to be transferred will be valued in accordance with the provisions of rule 17a–7(b) under the Act. Institutional Class shares of the ARK Portfolios do not have a front-end or deferred sales charge, redemption fee, or distribution fee. Allfirst will pay any expenses incurred in connection with the Proposed Exchange. Applicants request relief to effect the Proposed Exchange.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated persons of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the investment company. Section 2(a)(3) of the Act, in relevant part, defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (c) if the other person is an investment company, any investment adviser of that company. Applicants state that, because the Allfirst Plan may be viewed as acting as principal in the Proposed Exchange and because the Allfirst Plan and the ARK Portfolios may be viewed as being under the common control of Allfirst, within the meaning of section 2(a)(3)(C) of the Act, the Proposed Exchange may be subject to the prohibitions of section 17(a) of the Act.

2. Rule 17a–7 under the Act exempts from the prohibitions of section 17(a) certain purchase and sale transactions if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the securities. Applicants state that rule 17a–7 may not be available for the Proposed Exchange because the Allfirst Plan owns 5% or more of the outstanding voting shares of certain ARK Portfolios and Allfirst has an indirect pecuniary interest in the performance of the assets held by the Allfirst Plan. As a result, the affiliation between the Allfirst Plan and the ARK Portfolios is not solely by reason of having a common investment adviser, common directors, and/or common officers. In addition, applicants state that the Proposed Exchange is to be effected as an in-kind transfer, rather than in cash.

3. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of assets of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each investment company makes certain determinations. Applicants state that rule 17a–8 is not available for the Proposed Exchange because Allfirst is not transferring "substantially all" of its assets to the ARK Portfolios, because the Allfirst Plan is not a registered investment company and because the Allfirst Plan and the ARK Portfolios are affiliated other than solely by reason of having a common investment adviser, common director and/or common officers.

4. Section 17(b) of the Act provides that the Commission may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act to permit the Proposed Exchange. Applicants submit that the Proposed Exchange satisfies the standards for relief under section 17(b) of the Act. Applicants state that the securities to be acquired from the Allfirst Plan are consistent with the investment objectives, policies and restrictions of the participating ARK Portfolios. Applicants also state that the Proposed Exchange will meet all of the conditions of rules 17a–8 (with respect to the ARK Funds) and that the Proposed Exchange will occur in accordance with procedures respectively adopted by the Board, pursuant to rule 17a–7(e), and that the provisions of rule 17a–7(b), (c), (d) and (f) will be satisfied. Applicants state that the Proposed Exchange will take place as an in-kind transfer from the Allfirst Plan to the ARK Portfolios, rather than on the basis of cash as required by rule 17a–7(a). The Proposed Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the ARK Portfolios in the Proposed Exchange is in the best interests of each ARK Portfolio and that the interests of existing shareholders of the ARK Portfolio will not be diluted as a result of the transaction.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Proposed Exchange will comply with the terms of rule 17a–7(b) through (f).

2. The Proposed Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the ARK Portfolios in the Proposed Exchange is in the best interests of each ARK Portfolio and that the interests of existing shareholders of the ARK Portfolio will not be diluted as a result of the transaction. These findings, and the basis upon which they are made, will be recorded fully in the minute books of ARK Funds.

3. The Proposed Exchange will not occur unless and until AIA, as investment manager and fiduciary of the Allfirst Plan, has determined in accordance with its fiduciary duties that the Proposed Exchange is in the best interests of the Allfirst Plan.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2879 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42372; File No. SR–CHX–99–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

January 31, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on December 27, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 31, 2000, the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a three-month extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program proposes to amend Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The current pilot expires on January 31, 2000. The Exchange proposes to extend the rules governing trading of Nasdaq/NM securities on the Exchange through May 1, 2000.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[5] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the "MAX" system).[6]

On January 3, 1997, the Commission approved,[7] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to Exchange Act Rule 11Ac1–1 (the "NBBO"). When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[8] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, to give the Commission adequate time to approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[9] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[10] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CHX requested that the Commission approve extension of the pilot program through May 1, 2000 instead of December 31, 2000 as initially proposed. Amendment No. 1 also removed proposed rule language that is currently being considered in another Exchange filing (SR–CHX–99–27). *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 28, 2000.

[4] *See* Amendment No. 1, *supra* note 3.

[5] See Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also*, Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expending the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1,000).

[6] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, by MAX system handling rules remain applicable.

[7] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[8] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

[9] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[10] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

30, 1999.[11] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[12] The Exchange now requests another extension of the current pilot program, through May 1, 2000.[13] On December 22, 1999, the Exchange also submitted to the Commission a report identical in format to the Exchange's report of January 30, 1998, to enable the Commission to continue its review of the pilot program.

Under the pilot program, specialists must continue to accept agency [14] market orders or marketable limit orders, but only for orders of 100 to 1,000 shares of Nasdaq/NM securities rather than the 2,099 share limit previously in place. Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO when the order was received.

The pilot program requires the specialists to set the MAX auto-execution threshold at 1,000 shares or greater for Nasdaq/NM securities.[15] When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold designated by the specialist are executed automatically (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1,000 shares, depending on the issue.[16]

When the specialist is not quoting a Nasdaq/NM security at the NNBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO, provided that the auto-execution threshold is less than or equal to the NBBO. If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[17] In particular, the proposed rule is consistent with Section 6(b)(5) [18] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The CHX's proposal is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide executions reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any unnecessary or inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–27 and should be submitted by March 1, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) [20] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

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[11] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[12] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[13] *See* Amendment No. 1, *supra* note 3.

[14] The term "agency order" means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[15] The Exchange currently is seeking Commission approval of a rule amendment that would lower the auto-execution minimum to 300 shares in the case of Nasdaq/NM securities. *See* SR–CHX–99–21.

[16] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with Exchange Act Rule 11Ac1–4 on or prior to February 24, 1997 to 1,000 shares for other issues.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 USC 78c(f).

[20] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11A(a)(1)(C)[21] and 11A(a)(1)(D)[22] of the Act. The proposal is consistent with section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions. Moreover, the proposal is consistent with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[23] In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for 90 days so that the Exchange may compile this data for the Commission's review.

At the conclusion of this pilot's extension, the Commission requests that the Exchange rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders. Thus, the Commission's approval of the pilot extension has several ramifications. Approval will: (1) Allow the Exchange to operate without interruption; (2) provide a period for compilation of additional data; and (3) allow the Exchange to revise the language of the existing rules for clarity and ease of understanding in the public interest and for protection of investors.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

It Is Therefore Ordered, pursuant to section 19(b)(2)[24] of the Act that the proposed rule change (SR–CHX–99–27) be, and hereby is, approved through May 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2882 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

[21] 15 U.S.C. 78k–1(a)(1)(C).

[22] 15 U.S.C. 78k–1(a)(1)(D).

[23] 23 *See* 1997 Order, *supra* note 7.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42374; File No. SR–MSRB–99–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board to Amend Rule G–36

February 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 1999, the Municipal Securities Rulemaking Board ("MSRB" or the "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change to amend Rule G–36, on delivery of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the Board or its designee. The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Rule G–36—Delivery of Official Statements, Advance Refunding Documents and Forms G–36(OS) and G–36(ARD) to Board or its Designee

(a)–(b) No Change.

(c) Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2–12.

(i) Subject to paragraph (iii) below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to Securities Exchange Act Rule 15c2–12 *for which an official statement in final form is prepared by or on behalf of the issuer* shall send to the Board or its designee, by certified or registered mail, or some other equally prompt means that provides a record of sending, [within] *by the later of* one business day [of] *after* delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer *or one business day after receipt of the official statement in final form from the issuer or its designated agent,* the following documents and written information: two copies of the official statement in final form[, if prepared by or on behalf of the issuer]; and[, if an official statement in final form is prepared,] two copies of completed Form G–36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii)–(iii)[3] No change.

(d)–(f) No change.

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II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[3] Filing amended to clarify text of proposed rule change by including (iii). Phone conversation between Ernesto A. Lanza, Associate General Counsel, MSRB, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission on January 24, 2000.

may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–36 requires, among other things, that a broker, dealer or municipal securities dealer (a "dealer") acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G–36(OS). The rule was adopted by the Board for the purpose of creating a repository for official statements that would function much like a public library that stores, indexes and provides copies of official statements.[4] This library, known as the Municipal Securities Information Library® (or MSL®) system,[5] is intended to serve as a central source for information regarding municipal securities trading in the primary and secondary markets. As originally adopted by the Board and approved by the Commission, Rule G–36 applied to all primary offerings of municipal securities regardless of principal amount, other than primary offerings that qualified for exemption under paragraph (d)(1) of Rule 15c2–12 under the Act.[6] The Board subsequently amended Rule G–36 to subject to its requirements certain categories of primary offerings that are exempt under Rule 15c2–12(d)(1), thereby further extending the reach of Rule G–36 beyond the scope of Rule 15c2–12.[7] The Board felt that expanding the scope of the rule to include such offerings would result in a more complete collection of disclosure documents and the overall integrity, efficiency, and liquidity of the municipal securities market would be increased.

For any primary offering subject to Rule G–36(c)(i), the underwriter currently is required to send two copies of the official statement, if one is prepared, in final form with two copies of Form G–36(OS), to the board by the business day after the issuer delivers the municipal securities to the underwriter (the "bond closing"). The Board reviewed certain information included by underwriters on Forms G–36(OS) submitted to the Board's MSIL® system in 1998, including approximately 2,000 such forms submitted in connection with primary offerings subject to Rule G–36(c)(i).[8] For these offerings, the Board found that 96% of the official statements in final form were reported to have been delivered by issuers to underwriters within one business day after closing. The 4% of official statement deliveries by issuers to underwriters that were reported as being made more than one business day after closing and therefore too late to permit underwriters to comply with Rule G–36(c)(i) constituted more than half (approximately 54%) of all underwriter failures to meet the time frame of that section.[9]

The Board believes that there is significant room for improvement with respect to underwriter compliance with Rule G–36(c)(i) in those situations in which the official statement is received in sufficient time to send to the Board on a timely basis. Underwriters experiencing problems in this area should review their internal procedures for ensuring that official statements delivered by issuers are handled in a manner that permits the accurate completion and the prompt sending of Form G–36(OS) and the official statement to the Board.

However, the Board is concerned that more than half of the instances in which underwriters have not met the time frame of Rule G–36(c)(i) resulted from official statements that were reported to have been delivered by issuers more than one business day after closing. Of course, the Board has no authority to require that an issuer prepare an official statement or that any official statement that is prepared be delivered to underwriters within a specified time frame. In addition, the Commission excepted those primary offerings that are subject to Rule G–36(c)(i) from Rule 15c2–12. Therefore, the MSRB believes that no regulatory framework exists to compel, directly or indirectly, the preparation and delivery of an official statement in such offerings.

The Board notes that in approximately 36% of the offerings subject to Rule G–36(c)(i) the number of business days between the sale date and the business day following closing is less than ten. As a result, for these offerings, the requirement in Rule G–36(c)(i) that the underwriter send the official statement to the Board within one business day after the bond closing provides the underwriter with less time to comply with its official statement submission requirement than the ten business day outside time frame of Rule G–36(c)(i), were such a time frame

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[4] *See* Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990); "Delivery of Official Statement to the Board: Rules G–36 and G–8," *MSRB Reports*, Vol. 9, No. 3 (November 1989) at 3.

[5] Municipal Securities Information Library and MSIL are registered trademarks of the Board.

[6] In primary offerings subject to Rule 15c2–12, the underwriter is required under paragraph (b)(3) of the Rule to contract with the issuer to receive the final official statement within seven business days after any final agreement to purchase, offer or sell the municipal securities (the "sale date") and in sufficient time to accompany any confirmation that requests payment from any customer. Rule 15c2–12 does not apply to primary offerings with an aggregate principal amount of less than $1,000,000 ("Small Issue Securities"). In addition, paragraph (d)(1) of the Rule exempts primary offerings in authorized denominations of $100,000 or more if the securities (i) are sold to no more than 35 persons with knowledge and experience in financial and business matters, capable of evaluating the merits and risks of the investment and not purchasing for more than one account or with a view to distribution ('Limited Offering Securities"); (ii) have a maturity of nine months or less ('Short-Term Securities"); or (iii) at the option of the holder may be tendered to the issuer or its agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by the issuer or its agent ("Puttable Securities"). Thus, as originally adopted, Rule G–36 applied to all primary offerings subject to Rule 15c2-12 as well as to Small Issue Securities for which an official statement in final form was prepared, but did not apply to Limited Offering Securities, Short-Term Securities and Puttable Securities.

[7] *See* Securities Exchange Act Release No. 32086 (March 31, 1993), 58 FR 18290 (April 8, 1993); "Delivery of Official Statements to the Board: Rule G–36," *MSRB Reports*, Vol. 12, No. 3 (September 1992) at 11. Thus only primary offerings exempt from Rule 15c2–12 for which no official statement in final form is prepared and Limited Offering Securities remain exempt from Rule G–36. Those offerings that currently are subject to Section (c)(i) of Rule G–36 consist of Small Issue Securities, Short-Term Securities and Puttable Securities, if an official statement in final form has been prepared by or on behalf of the issuer.

[8] The Board reviewed all Forms G–36(OS) for primary offerings having sale dates in 1998 received in acceptable form by the MSIL® system on or prior to December 31, 1998. Excluded from this review were any Forms G–36(OS) that omitted the sale date, date of receipt by the underwriter of the official statement from the issuer or date that the underwriter sent the official statement to the MSIL® system. Information provided by underwriters on Form G–36(OS) is not independently verified by the Board but is provided to the appropriate enforcement agency on a regular basis. Underwriters are required to certify that all information contained in each Form G–36(OS) submitted to the MSIL® system is true and correct. Inaccuracies in the information reported by underwriters on Form G–36(OS) could subject such underwriter to appropriate enforcement action. The results of the Board's review could be affected by any such inaccuracies. The full results of this review, including results relating to other provisions of Rule G–36 and to the provisions of Rule G–32 and Rule 15c2–12, were published in "Official Statement Deliveries Under Rules G–32 and G–36 and Exchange Act Rule 15c2–12," *MSRB Reports*, Vol. 19, No. 3 (Sept. 1999) at 29 (the '"Board Notice").

[9] The remaining failures consisted of situations where the issuer was reported to have delivered the official statement to the underwriter in sufficient time for the underwriter to comply with Rule G–36(c)(i) but the underwriter delayed sending the official statement to the Board until later than the business day after the bond closing.

applicable to these offerings.[10] At the same time, however, issuers in these offerings generally have not contracted with underwriters to deliver official statements within seven business days of the sale date, as provided in paragraph (b)(3) of Rule 15c2–12, since such offerings are exempt from that rule. Thus, in more than one-third of all offerings subject to Rule G–36(c)(i), underwriters are required to act more quickly than they would under Rule G–36(b)(i) even though there is no concomitant obligation on the part of issuers to deliver an official statement within any particular time frame.

As a result, the Board published the Board Notice seeking comment on, among other things, a draft amendment to Rule G–36(c)(i) which the Board believed would address this situation. After reviewing the comments received on the Board Notice, the Board determined to adopt the draft amendment, with a minor clarifying change.[11] As amended, the rule would provide that an underwriter in a primary offering subject to Rule G–36(c)(i) for which an official statement in final form is prepared by the issuer must send two copies of the official statement in final form, together with two copies of Form G–36(OS), to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer.[12] The proposed rule change is intended solely to provide relief to underwriters that face violation of Rule G–36(c)(i) as a result of circumstances beyond their control and is not intended to imply that underwriters and other dealers may ignore their continuing obligation to deliver official statements for new issue municipal securities to customers by settlement, as required under rule G–32.

2. Statutory Purpose

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[13] of the Act, which provides, in part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just an equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Act in that it removes an impediment to a free and open market in municipal securities without adversely affecting the protection of investors and of the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all municipal underwriters.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In the Board Notice, the Board sought comment on a draft amendment to Rule G–36(c)(i) that would require an underwriter in a primary offering subject to Rule G–36(c)(i) for which an official statement in final form has been prepared to send the official statement to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer. The Board received two comment letters in response to the Board Notice, only one of which addressed the draft amendment.[14]

The Bond Market Association (TBMA) states that it "strongly supports" the draft amendment. TBMA further states that the change in the timing requirement "means that underwriters and issuers could schedule closings on the basis of the needs of the transaction, rather than for the purpose of allowing a sufficient number of days to increase the odds that the official statement will be ready in time for the closing."

The Board strongly believes that this second statement of TBMA demonstrates a misunderstanding of the nature of the proposed rule change, the purpose of official statements in the municipal securities market and the other obligations of dealers with respect to delivery of official statements. In the Board Notice, the Board observed that for new issue municipal securities, dealers typically seek, and customers generally expect, to settle their trades on the same day as the closing of the underwriting. As a result, underwriters need to receive the official statement from the issuer in sufficient time to ensure that the official statement can be delivered to customers by settlement of their transactions, as required under Rule G–32. If an issuer prepares an official statement in final form but does not deliver it to the underwriter by the bond closing, dealers would continue to be prohibited from settling their transactions with customers until they have delivered the official statement to the customers, with certain very limited exceptions.[15] Thus, other than offerings falling within the narrow exceptions provided under Rule G–32, the only offerings in which "the needs of the transaction" would not include delivery of the official statement by closing would be those in which underwriters expect to hold the securities in inventory until the official statement is in fact delivered and therefore made available for redelivery to customers.

The completion and delivery of an official statement by the closing of the underwriting is not a technical requirement imposed by the Board. If an official statement serves no purpose in an offering that is exempt from Rule 15c2–12, then the issuer need not prepare one. Unless an issuer is preparing an official statement for reasons entirely unrelated to the offering that it describes, it is difficult to understand how completion of an official statement after the underwriters and initial customers have received delivery of their securities can be rationalized.[16]

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[10] Section (b)(i) of Rule G–36 requires the underwriter of a primary offering subject to Rule 15c2–12 to send two copies of the final statement, together with two copies of Form G–36(OS), to the Board within one business day after receipt of the final official statement from the issuer but no later than 10 business days after the sale date.

[11] The change in language makes clearer the fact that Section (c)(i) will continue to apply to a primary offering only if an official statement in final form is prepared.

[12] In contrast, Rule G–36(c)(i) currently requires that the underwriter send the official statement to the Board by the business day after the bond closing, regardless of whether the underwriter has in fact received the official statement by such day.

[13] 15 U.S.C. 78o–4(b)(2)(C).

[14] TBMA's letter addressed the draft amendment as well as certain other issues relating to Board Rules G–36 and G–32 and Rule 15c2–12. The comment letter from Charles Schwab & Co. Inc. ("Schwab") addressed certain issues relating to Rule G–32. The Board is considering the comments received on these other matters but has not determined to take any rulemaking action with respect to Rule G–32 or any provisions of Rule G–36, other than Section (c)(i), at this time.

[15] Commercial paper is wholly exempt from the Rule G–32 customer delivery requirement and preliminary official statements may be delivered by settlement (with official statements in final form sent when they become available) for Puttable Securities.

[16] Of course, the Board believes that there is significant value to the secondary market in having official statements available throughout the life of the issue. Nonetheless, the Board sees no way of justifying the existence of an official statement based on the needs of the secondary market while ignoring the needs of the primary market.

Although the submission requirement under current Rule G–36(c)(i) may influence an issuer to give completion of the official statement in final form a higher priority, this requirement also may serve as a disincentive to prepare the official statement in final form, since an underwriter currently can avoid a Rule G–36(c)(i) violation by prevailing upon the issuer not to prepare an official statement in final form at all (*e.g.*, an underwriter that has purchased an issue based on a preliminary official statement could advise an issuer that it need not finalize the official statement). Changing the time frame of the Rule G–36(c)(i) submission requirement would eliminate this disincentive while providing relief for underwriters that may face a potential rule violation for reasons beyond their control. The official statement delivery requirement under Rule G–32 would continue to provide a powerful incentive to underwriters to urge issuers to complete the official statement in final form in sufficient time to permit the underwriters and the other dealers to which they sell such new issue municipal securities to deliver the official statement to customers by settlement.

Although TBMA supports the draft amendment to Rule G–36(c)(i), it suggests that the Board further amend Rule G–36(c)(i) to extend the one-business day time frame to two-business days. TBMA argues that "it is often logistically difficult to meet the one-day requirement" and that the MSIL® systems serves "archival rather than real-time disclosure purposes."[17] In adopting Rule G–36(c)(i) and creating the MSIL® system, the Board undertook to make available to the industry a comprehensive repository of official statements for use in both the primary and secondary markets. In addition to serving the vital archival purpose of ensuring that information regarding municipal securities is available throughout the life of the securities, the MSIL® system serves an important function in the primary market as an alternate source (through its subscribers) of official statements for dealers seeking to fulfill their Rule G–32 customer delivery obligation. Delaying the submission of official statements to the Board could impair the MSIL® system's usefulness in the primary market.[18] Without a more substantial showing of hardship to the dealer community, the Board believes that extension of the time frame for underwriters to turn the official statement around to the Board is not justified at this time. The ability to meet this requirement is entirely within the control of dealers, and they should review their procedures to ensure that this task is assigned to the appropriate personnel having a clear understanding of the procedural and substantive requirements of Rule G–36. To the extent that dealers experience difficulty in coordinating the actions of various personnel involved in the handling of official statements, they should consider whether they have instituted procedures that adequately provide for compliance with the rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the MSRB consents, the Commission will:

a. by order approve the proposed rule change, or

b. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–99–11 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[17] TBMA states "that it is difficult to ensure the desirable level of coordination between the underwriter personnel who are best-positioned to authenticate the official statement as the final official statement and the personnel who are responsible for filing with the Board."

[18] Schwab notes that it has 'found that if the dealers [from which it purchases new issue municipal securities] do not have copies of the final official statement, such copies are also generally unavailable from the managing underwriter financial printer. Bloomberg or another Nationally Recognized Municipal Securities Information Repository." Delays in receiving official statements by the MSIL® system would further reduce their availability from these other sources.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42376; File No. SR–NASD–99–77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Mutual Fund Quotation Service

February 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7090 to change the annual listing fees for the Mutual Fund Quotation Service ("MFQS" or "Service"). Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7090. Mutual Fund Quotation Service

(a) Funds included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of [$275] *$400* per fund authorized for the News Media

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Lists and [$200] *$275* per fund authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proportion of these fees but no credit or refund shall accrue to funds terminated during an annual billing period. In addition, there shall be a one-time application processing fee of $250 for each new fund authorized.

(b) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to change the annual listing fees for the MFQS. The MFQS was created to collect and to disseminate data pertaining to the value of open-end and closed-end funds. Currently, the MFQS disseminates the valuation data for over 11,000 funds. The Service facilitates this process by providing for the automated entry, through a browser-based application, of pricing data by a fund and a fund's pricing agent.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[3] The MFQS has two "lists" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements.[4] If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in newspaper fund tables and is also eligible for dissemination over Nasdaq's Level 1 Service[5], which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[6] Currently, funds included in the News Media List pay an annual fee of $275, and funds included in the Supplemental List pay an annual fee of $200.

The original MFQS was built as a DOS-based application. In recent years, technology has progressed and user needs for the MFQS have increased. Responding to requests made by users of the MFQS, the mutual fund industry, and the Investment Company Institute ("ICI"), Nasdaq performed market research to determine which enhancements MFQS users would prefer in a redesigned Service. Since the last fee increase in 1996,[7] the MFQS software application has been rewritten, and notable technology enhancements have been implemented to support the Service's functionality.

Specifically, in 1998, Nasdaq took the list of enhancements requested by MFQS users and developed and implemented an entirely new MFQS application, using browser-based technology. The MFQS now permits funds included in the Service (or pricing agents designated by such funds) to use the browser-based technology to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price. Out of the approximately 27 enhancements suggested by the industry, Nasdaq has incorporated 20 into the new MFQS application, and two more are scheduled for implementation in early 2000.

The new browser-based MFQS upgrade became fully-operational in May 1999. Due to the significant costs for development, maintenance, and support of the new MFQS product, however, additional revenue is needed to (1) sustain the quality of the MFQS; and (2) make future product enhancements to the MFQS, to improve efficiency and accuracy of price reporting. In addition, the MFQS is operating at a yearly loss in light of the recent technology enhancements to the Service. Accordingly, Nasdaq proposes to increase its current fees for the Supplemental List from $200 to $275, and for the News Media List from $275 to $400.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[8] of the Act which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. Nasdaq believes that the increased user fee is a fair means of recovering the cost related to the development and maintenance of the enhanced MFQS system requested by users of the Service and the ICI. The proposal is consistent with Section 15A(b)(5)[9] because the fees will be imposed directly and only on those who benefit from the recently enhanced MFQS. The proposed fee is designed to cover the costs related to the development and maintenance of the enhanced MFQS system and development costs associated with future enhancements that will improve efficiency and accuracy in the collection of pricing information.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve the proposed rule change, or

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[3] *See* NASD Rule 6800.

[4] *Id.*

[5] Nasdaq Level 1 Service is a subscription-based data service that "includes the following data: (1) Inside bid/ask quotations calculated for securities listed in the Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series." NASD Rule 7010(a).

[6] *See* NASD Rule 7090.

[7] *See* Securities Exchange Act Release No. 37014 (March 22, 1996), 61 FR 14182 (File No. SR–NASD–96–05).

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78o–3(b)(5).

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–77 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2967 Filed 2–8–00; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42364; File No. SR–NYSE–99–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to the Listed Company Manual

January 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 25, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 16, 1999, the Exchange submitted Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Listed Company Manual ("Manual") to: (1) Implement regulatory reviews of key personnel associated with listing applicants; (2) codify the Exchange's procedures regarding supplemental listing applications for companies identified as being below continued listing standards; and (3) amend its disclosure requirements for listed companies late in filing their form 10–K or annual report. The text of the proposed rule change follows. New text is italicized. Deleted text is bracketed.

NYSE Listed Company Manual

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Section 3

Corporate Responsibility

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315.00 Regulatory Review of Listing Candidates and their Significant Related Individuals and Entities

Each listing applicant must provide the Exchange with a letter from counsel representing that, to the company's knowledge, no officer, board member, no non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues (e.g., embezzlement, fraud, theft) in the past ten years. In addition, the Exchange will review background materials available to its regarding the aforementioned individuals as part of the eligibility review process.*

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Section 7

Listing Applications

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703.11 Supplemental Listing Process

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(C) No supplemental listing applications will be approved for companies that have been identified as being below the Exchange's continued listing standards (see Para. 802.01) for issuances to new shareholders unless such issuance is determined to be consistent with an Exchange-approved plan (or its goals) pursuant to Para. 802.02 or Para. 802.03 as applicable.

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Section 2

Disclosure and Reporting Material Information

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203.00 Annual and Interim Reporting Requirements

203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and [submit] *distribute* to shareholders an annual report containing financial statements of the company and its *consolidated* subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than [three months] *120 days (225 days for non-US issuers)* after the close of each fiscal year. [, but] *Notwithstanding the foregoing, domestic issuers must make this distribution* at least fifteen days in advance of the annual meeting.)*Non-US issuers are encouraged to do so when possible.*) When the annual report is mailed to shareholders, two copies should be sent to the Exchange together with advice as to the date of mailing to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to share holders, or by distributing to shareholders to Form 10–K (or Form 20–F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10–K or Form 20–F) is mailed to shareholders, two copies should be sent to the

[3] In Amendment No. 1, the NYSE made several clarifications to the proposed rule change, incorporated appropriate provisions for Non-US issuers, and revised the procedures for the annual report requirement. *See* Letter to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 22, 1999 ("Amendment No. 1").

[4] In Amendment No. 2, the NYSE made several technical changes to the text of the proposed rule change and clarified that the supplemental listing application ("SLAP") provision applies to Non-U.S. issuers. *See* Letter to Richard Strasser, Assistant Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated December 14, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange also requested accelerated approval of the proposed rule change. The Exchange withdrew this request as per telephone conversation between Amy Bilbija, Counsel, NYSE, and Terri Evans, Special Counsel, and Heather Traeger, Attorney, Division, SEC, on January 4, 2000.

* *As such term is defined by the Securities and Exchange Commission in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.*

Exchange together with advice as to the date of mailing to shareholders. Distribution by electronic means (including by posting on the company's web site) will be effective only as to beneficial holders who have given their prior consent to receiving the report in that form. Such consent must be in writing, which may be in the form of electronic mail.

A company that is unable to timely file its Form 10–K or Form 20–F with the SEC must notify the Exchange prior to the SEC filing deadline, explaining the reason for the delay and the anticipated filing date. The Exchange will evaluate the circumstances and the continued listing status of the company, and at a minimum will require the company to issue a press release indicating the delay, the reason for the delay and the anticipated filing date. In making its evaluation, the Exchange will consider whether the company has released or plans to release to the press information regarding its financial results for the fiscal year. Once the company does file its Form 10–K (Form 20–F) with the SEC, it must then distribute to shareholders an annual report or a Form 10–K (Form 20–F) in lieu thereof no later than 15 days (30 days for a non-US issuer) after the filing.

(A)–(E) Unchanged.

* * * * *

[(F) Availability of Form 10–K When Annual Report is Delayed If distribution of the annual report to shareholders to be delayed more than two weeks even though the Form 10–K has been filed, the company should release to the financial press copies of the Form 10–K together with a statement advising that the annual report has been delayed and the reason for the delay, specifying the date when the annual report will be mailed and indicating that a copy of the Form 10–K is available to shareholders on request.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement several enhancements to the Exchange's procedures and oversight of listed companies. First, the Exchange proposes to institute a regulatory review procedure for listing applicants whereby Exchange staff would access media outlets, run Central Registration Depository checks, and consult with staff in the SEC's Division of Enforcement to identify any potential issues of concern regarding the applicant company's board members, officers (as the term "Officer" is defined in Section 16 of the Act), and non-institutional shareholders with an interest in excess of 10 percent. In addition, the Exchange will require each applicant company to submit a letter from inside or outside counsel representing that, to the company's knowledge, no officer, board member, or non-institutional shareholder with more than 10 percent ownership in the company has been convicted of a felony or misdemeanor relating to financial issues (*e.g.*, embezzlement, fraud, or theft) in the past 10 years.

Second, the Exchange proposes to amend its procedures for processing SLAPs submitted for consideration by companies that have been identified as being below the Exchange's continued listing criteria.[5] Upon receipt of a SLAP from such a company, Exchange staff would first determine whether or not the SLAP is for an issuance to current shareholders (*e.g.*, a stock split). If so, the application would be authorized. If, however, the SLAP is for an issuance to new shareholders, the application will be reviewed against the plan pursuant to which the company is operating to return to financial compliance with the Exchange's listing standards. If the proposed issuance is within the scope of the plan, or furthers the goals of the plan, it will be approved. Conversely, the Exchange will deny authorization if the proposed issuance is outside the scope of the plan or contradicts its goals. In this context, the Exchange recognizes that employee stock option plans, although rarely a specific element of a financial plan, are customarily in furtherance of the company's objectives in that they are adopted to facilitate equity-based compensation to employees and thus provide incentive to employees to further the financial health of the company—a goal that is by its nature consistent with any approved plan.

Third, the Exchange proposes to amend its annual report requirements. The Exchange proposes to require that a company mail to shareholders by the specified date either an annual report or a Form 10–K (Form 20–F for Non-U.S. issuers) with an indication that is in lieu of the annual report.[6] Due to longer mailing and processing time, international companies will have a maximum period following the SEC filing deadlines of 45 days to mail either the annual report or Form 20–F (with an indication that it is in lieu of the annual report), where domestic issuers have 30 days.[7]

For companies that are unable to timely file a Form 10–K (or Form 20–F), the Exchange proposes to consider why the filing cannot be made, evaluate the continued listing status of the company in light of the specific facts presented, and require that the company issue a press release. Once the Form 10–K (or Form 20–F) is filed, the Exchange proposes to require a mailing of the Form 10–K (or Form 20–F) or an annual report to shareholders within 15 days (30 days for a Non-U.S. issuer).[8]

Additionally, the Exchange proposes to permit companies to distribute the annual reports or SEC forms electronically to beneficial holders who give prior written consent. Such consent must be in writing, which may be in the form of electronic mail.[9]

Failure to comply with these requirements will result in presentation of the company's situation to Exchange staff for appropriate action. Such action could include the determination to proceed with suspension of trading and application to the SEC to delist the security.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5)[10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market

[5] This provision will apply to both U.S. and Non-U.S. issuers.

[6] *See* Amendment No. 1, *supra* note 3. Domestic companies are required to submit their annual filings on Form 10–K to the SEC within 90 days of the fiscal year end. International companies are required to submit their annual filings on Form 20–F within 180 days of the fiscal year end.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] 15 U.S.C. 78f(b)(5).

and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–14 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2881 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42377; File No. SR–Phlx–99–24]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Fee to Members for Receiving On-Line Options Information

February 2, 2000.

On June 29, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to adopt a fee for the transmission to members of option trade information on a real-time trade basis. Notice of the proposed rule change was published on August 12, 1999, in the **Federal Register,** to solicit comments from interested persons.[3] On December 28, 1999, the Exchange withdrew the proposed rule change.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2966 Filed 2–8–00; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of finalized policy development agenda.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission proposed, in December 1999, certain priorities as the focus of its policy development work, including amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2000. The Commission was reconstituted in November 1999, in the middle of that amendment cycle. Due to the resulting constraints of an abbreviated amendment cycle, the Commission has proposed as its priorities for the amendment cycle ending May 1, 2000 only those items the Commission might be able to conclude by its statutory deadline of May 1.

The Commission published a notice of these proposed priorities in the **Federal Register** on December 8, 1999. See 64 FR 68,715, Dec. 8 ,1999. After reviewing public comment received pursuant to this notice, the Commission has decided to limit its current policy development priorities principally to the following areas: (i) Implementation of legislative directives and other high priority crime legislation enacted by the 105th Congress for which guideline amendments were not developed or finalized by the previous Commission; and (ii) resolution of a limited number of high priority circuit conflicts in guideline interpretation, with the goal of enhancing the consistency with which the guidelines are applied.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Priorities."The specific policy development issues that comprise the Commission's finalized agenda are as follows—

I. Legislative Directives

The Commission has identified the implementation of the following directives as a priority for this amendment cycle:

(A) The No Electronic Theft (NET) Act of 1997—Congress directed the Commission, under emergency amendment authority, to ensure that: (1) The guideline penalties for intellectual property offenses are sufficiently stringent to deter those crimes; and (2) the guidelines pertaining to intellectual property offenses provide for consideration of the retail value and quantity of infringed items.

(B) The Telemarketing Fraud Prevention Act of 1998—Congress

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41711 (August 5, 1999), 64 FR 44073.

[4] *See* Letter from John Dayton, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated December 23, 1999.

[5] 17 CFR 200.30–3(a)(12).

directed the Commission, under emergency authority, to provide: (1) Substantially increased penalties for persons convicted of telemarketing offenses; (2) an additional sentencing enhancement if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts; and (3) an additional sentencing enhancement for cases in which a large number of vulnerable victims are affected by a fraudulent scheme or schemes. The Commission promulgated emergency amendments in September 1998 in response to this directive, but they must be re-promulgated in this amendment cycle to be made permanent.

(C) The Wireless Telephone Protection Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for offenses involving the fraudulent cloning of wireless telephones.

(D) The Identity Theft and Assumption Deterrence Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for each offense under 18 U.S.C. 1028 (fraud in connection with identification documents).

(E) The Protection of Children from Sexual Predators Act of 1998—Congress directed the Commission to: (1) Provide a sentencing enhancement for offenses relating to the transportation of individuals for illegal sexual activity; (2) provide a sentencing enhancement if the defendant used a computer in connection with a sexual offense against a minor; (3) provide a sentencing enhancement if the defendant knowingly misrepresented the defendant's identity in connection with a sexual offense against a minor; (4) increase the penalties in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; and (5) amend the guidelines to clarify that the term "distribution of pornography" in the guidelines relating to distribution of child pornography applies to distribution for monetary remuneration or for a non-pecuniary interest.

II. Other High Priority Crime Legislation

The Commission will consider amendments to the sentencing guidelines to implement the following additional high priority crime legislation:

(A) The Methamphetamine Trafficking Control Act of 1998—This Act does not contain a directive, but it increased the penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one-half the quantity of methamphetamine required to trigger the various mandatory minimum sentences in the drug statutes.

(B) Firearms Legislation—In Public Law 105–386, Congress amended 18 U.S.C. § 924(c) to: (1) Create a tiered system of sentencing enhancement ranges, each with a mandatory minimum and presumed life maximum, in cases in which a firearm is involved in a crime of violence or drug trafficking offense (the pertinent minimum sentence being dependent on whether the firearm was possessed, brandished, or discharged); (2) change the mandatory minimum for second or subsequent convictions under § 924(c) from 20 to 25 years; and (3) broadly define the term "brandish."

In Public Law 105–277 (section 121 of the General Provisions), Congress amended 18 U.S.C. 922 to prohibit an alien who is lawfully present in the United States under a non-immigrant visa from possessing or otherwise being involved in a firearms offense.

III. Circuit Conflicts

As it has in the past, the Commission has also identified as a priority the resolution of a number of conflicts among the circuit courts on sentencing guideline issues. *See Braxton* v. *United States*, 500 U.S. 344 (1991). The Commission, working with the Criminal Law Committee of the Judicial Conference, the United States Department of Justice, and other interested participants in the federal criminal justice system, has identified the following circuit conflict issues as priorities for this amendment cycle:

(A) Whether for purposes of downward departure from the guideline range a "single act of aberrant behavior" (Chapter 1, Part A, § 4(d)) includes multiple acts occurring over a period of time. Compare *United States* v. *Grandmaison*, 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word "single" to refer to the crime committed; therefore, "single acts of aberrant behavior" include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); with *United States* v. *Marcello*, 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning).

(B) Whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only when the defendant is convicted of an offense referenced to that guideline or, alternatively, whenever the defendant's relevant conduct included drug sales in a protected location or involving a protected individual. Compare *United States* v. *Chandler*, 125 F.3d 892, 897–98 (5th Cir. 1997) ("First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section 'most applicable to the offense of conviction.'" Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); with *United States* v. *Clay*, 117 F.3d 317 (6th Cir.), cert. denied, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 (but not convicted of any statute referenced to § 2D1.2) based on underlying facts indicating defendant involved a juvenile in drug sales).

(C) Whether the fraud guideline enhancement for "violation of any judicial or administrative order, injunction, decree, or process" (§ 2F1.1(b)(4)(B)) applies to falsely completing bankruptcy schedules and forms. Compare *United States* v. *Saacks*, 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of § 2F1.1(b)(3)(B)); with *United States* v. *Shadduck*, 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust).

(D) Whether sentencing courts may consider post-conviction rehabilitation while in prison or on probation as a basis for downward departure at resentencing following an appeal. Compare *United States* v. *Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may consider it as a possible ground for downward departure at resentencing); with *United States* v. *Sims*, 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits.).

(E) Whether a court can base an upward departure on conduct that was dismissed or uncharged as part of a plea

agreement in the case. Compare *United States* v. *Figaro*, 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct) with *United States* v. *Ruffin*, 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement).

IV. Technical and Conforming Amendments

The Commission expects to consider several minor technical or conforming amendments necessary for maintaining the technical accuracy Guidelines Manual.

Miscellaneous

Reports, proposed amendments, and other information pertaining to the final policy development priorities described in this notice may be accessed through the Commission's website at www.ussc.gov.

The Commission received and considered public comment concerning other issues that the Commission should include in its priorities for this amendment cycle. The Commission may address these issues in the future.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 00–2984 Filed 2–8–00; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3236]

Commonwealth of Pennsylvania

Cumberland County and the contiguous counties of Adams, Dauphin, Franklin, Perry, and York in the Commonwealth of Pennsylvania constitute a disaster area as a result of damages caused by a fire that occurred on December 18, 1999 in the Borough of Carlisle. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 24, 2000, and for economic injury until the close of business on October 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.500%
Homeowners without credit available elsewhere: 3.750%
Businesses with credit available elsewhere: 8.000%
Businesses and non-profit organizations without credit available elsewhere: 4.000%
Others (including non-profit organizations) with credit available elsewhere: 6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The numbers assigned to this disaster are 323605 for physical damage and 9G6200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 24, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–2949 Filed 2–8–00; 8:45 am]

BILLING CODE 8025–01–U

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974; System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of revised description of Privacy Act system of records.

SUMMARY: The Office of Special Counsel (OSC) published a notice in the **Federal Register** on November 19, 1999, relating to the system of records maintained in connection with the agency's program responsibilities. The notice announced administrative changes to prior system notices, as well as a proposed revision of the system notice for the system of records, by amendment of the description of two existing routine uses, and the addition of a new routine use. This notice revises the description of the system of records as published in November to correct a technical error in the numbering of certain routine uses shown in that notice.

DATES: The revision made by this notice will be effective Febraury 9, 2000.

FOR FURTHER INFORMATION, CONTACT: Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, at (202) 653–8971, or the address shown below.

ADDRESSES: U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036–4505.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(4) and (11), the OSC published a notice appearing at 64 FR 63359 (November 19, 1999), relating to the system of records known as OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files. This system of records is maintained in connection with the agency's program responsibilities.

The notice announced administrative changes to prior system notices, to update information about individuals covered by the system, records in the system, authority for maintenance of the system, the system manager, retrievability of records, access controls, and records source categories; to update legal citations; and to make technical corrections. The notice also announced a proposed revision of the system notice for OSC/GOVT–1, by amendment of the description of two existing routine uses, and the addition of a new routine use.

The November 19th notice also advised that the revised and new routine uses would become effective 30 days after publication, unless comments received in writing by the OSC before then warranted further changes. Since the OSC received no comments on the proposed revised and new routine uses, they became effective on December 20, 1999.

Pursuant to 5 U.S.C. 552a(e)(4), this notice is to correct a technical error in the numbering of certain routine uses described in the November 19th notice. Specifically, the routine use identified as "h" inadvertently combined the text of two separate routine uses, which should have been denominated as routine uses "h" and "i."

The description published at 64 FR 63359 (November 19, 1999) of the system of records known as OSC/GOVT–1 is hereby incorporated by reference, and is revised as incorporated to reflect the correct numbering and text of routine uses "h" and "i," as follows:

"h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A–19;"

Dated: February 2, 2000.

Elaine Kaplan,

Special Counsel.

[FR Doc. 00–2876 Filed 2–8–00; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF STATE

[Public Notice No. 3214]

Notice of Meeting; International Telecommunication Advisory Committee Development Sector

The Department of State announces an open meeting for the purpose of preparing for and forming the U.S. Delegation to the upcoming March 2–3, 2000 meeting of the ITU-Development Sector Telecommunications Development Advisory Group (TDAG). The meeting will also prepare for additional ITU–D meetings that includes the following: February 28: Gender Issues; February 29 Private Sector Subgroup of the TDAG; March 1: ITU–D Study Groups 1&2 Management Team and TDAG Chairpersons and Vice-Chairs. The meeting will be held from 9:30–11:30 on Thursday, February 10, 2000, in Room 3524, Main State. Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend this meeting should send a fax to 202–647–7407 no later than 24 hours before the meeting. This fax should provide the name of the meeting, (TDAG Prep Meeting) and date of the meeting, your name, social security number, date of birth, and organizational affiliation one of the following valid photo identifications will be required for admittance: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not later than 15 minutes before the meeting begins.

Dated: February 3, 2000.

Doreen F. McGirr,

Chair, ITAC–D, U.S. Department of State.

[FR Doc. 00–3083 Filed 2–7–00; 12:40 pm]

BILLING CODE 4710–45–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation, Marine and Land Radionavigation Users Conference

AGENCY: Office of the Assistant Secretary for Transportation Policy, DOT.

ACTION: Notice of conference.

SUMMARY: The U.S. Department of Transportation and the U.S. Department of Defense are conducting an open meeting for all users of U.S. Government-provided radionavigation systems. The purpose of the meeting is to obtain user perspectives on Federal policies and plans for these systems. Systems to be covered include the Global Positioning System (GPS); differential GPS and other GPS augmentations; Loran-C; VOR/DME; TACAN; Radiobeacons; and ILS/MLS. Input on all applications of these systems is welcome, including navigation, positioning, surveying and mapping, timing, network synchronization, and resource management. All users, equipment manufacturers, service providers, Federal, State, and local government personnel, and any others with an interest in these systems are encouraged to attend. There is no registration fee to attend this conference.

The meeting will be held in conjunction with the Civil GPS Service Interface Committee meeting on March 28, 29, and 30, 2000, at the Fair Oaks Holiday Inn in Fairfax, Virginia. Federal Government radionavigation policies and plans will be presented on March 28 followed by reports on international and timing GPS activities on March 29, and State and Locality GPS activities on the morning of March 30. The afternoon of March 30, beginning at 1 p.m. is reserved exclusively for questions and answers regarding current and future U.S. Government policies and plans in the Federal Radionavigation Plan.

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: To obtain an information/registration package, please contact Carol-Ann Courtney at the Volpe National Transportation Systems Center; Conference Office (DTS–930); 55 Broadway, Cambridge, MA 02142. Tel: (617) 494–2686. Fax: (617) 494–2569.

Issued in Washington, DC on February 3, 2000.

Joseph F. Canny,

Deputy Assistant Secretary for Navigation Systems Policy.

[FR Doc. 00–2951 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6780]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) for the renewal of Information Collection Requests (ICRs). These ICRs comprise: (1) Security of Passenger Vessels and Passenger Terminals, (2) Plan/Drawing Approval and Records for Safety Valves—46 CFR part 162, (3) Vital System Automation—46 CFR parts 52, 56, 58, 61, 62, 110, 111, and 113, and (4) Marine Occupational Health and Safety Standards for Benzene. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before April 10, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) (USCG–2000–6780), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document (USCG–2000–6780) and the specific ICR to which each comment applies, and

give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Security of Passenger Vessels and Passenger Terminals.

OMB Control Number: 2115–0622.

Summary: The purpose of the rules on the security of passenger vessels and passenger terminals is to deter, or mitigate the results of, terrorism and other unlawful acts against such vessels and terminals. The rules should reduce the likelihood of such acts and should reduce the damage to property and injury to persons, if such acts occur.

Need: 33 U.S.C. 1231 authorizes the Coast Guard to issue rules for the program in ports and waters safety. 33 CFR, parts 120 and 128, contain the rules for the security for passenger vessels and passenger terminals regulations.

Respondents: Certain owners of passenger vessels and passenger terminals.

Frequency: On occasion.

Burden: The estimated burden is 1,811 hours annually.

2. *Title:* Plan/Drawing Approval and Records for Safety Valves—46 CFR part 162.

OMB Control Number: 2115–0525.

Summary: Requirements for submission of plans and drawings and test reports for safety equipment and materials are necessary so the Coast Guard can determine whether items meet minimum levels of safety and performance and whether they serve to identify the approved items.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate rules for the safety of personnel and property on board vessels. Sections of 46 CFR part 162 contain rules on approval of plans and drawings for of safety valves.

Respondents: Equipment manufacturers.

Frequency: On occasion.

Burden: The estimated burden is 58 hours annually.

3. *Title:* Vital System Automation—46 CFR parts 52, 56, 58, 61, 62, 110, 111, and 113.

OMB Control Number: 2115–0548.

Summary: This collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate rules for the safety of personnel and property on board vessels. Sections of 46 CFR parts 52, 56, 58, 62, 110, 111, and 113 contain rules on the automation of vital systems.

Respondents: Vessel designers, shipyards, manufacturers, and vessel owners.

Frequency: On occasion.

Burden: The estimated burden is 57,375 hours annually.

4. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR part 197, subpart C.

OMB Control Number: 2115–0586.

Summary: To protect marine workers from exposure to toxic Benzene vapor, the Coast Guard implemented 46 CFR part 197, subpart C.

Need: This information collection is vital to verifying compliance.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden: The estimated burden is 59,775 hours annually

Dated: February 1, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 00–2895 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for International Slots for the Winter 2000/2001 Scheduling Season

AGENCY: Department of Transportation, FAA.

ACTION: Notice of submission deadline.

SUMMARY: On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports as a result of the "Open Transborder" Agreement between the Government of the United States and the Government of Canada. One element of this final rule established that the deadline for submission of requests for international slots will be published in a Federal Register notice for each scheduling season. The purpose of the amendment is for the FAA deadline for international slots requests to coincide with the International Air Transport Association deadline for submission of international requests. In accordance with this amendment, the FAA announces in this notice that the deadline for submitting requests for international slots for allocation under 14 CFR 93.217 is May 10, 2000.

DATES: Requests for international slots must be submitted no later than May 10, 2000.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–230, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7668; ARING: DCAYAXD; email address: 9–A WA-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, Airspace and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073.

Issued in Washington, DC on February 3, 2000.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 00–2957 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 10, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must

include a self-addressed stamped postcard stating, "Comments on OMB control number __. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49, part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words "Dedicated Service" must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. See 49 CFR 215.5 (c)(2), 215.5 (d).

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 6.

Estimated Annual Burden: 6 hours.

Status: Regular Review.

Title: Remotely Controlled Railroad Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for fifteen days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
Blue Signal Protection	350	3,600,000 records	4	240,000	$6,240,000
Camp cars	800	4,000 notifications	4	267	6,942

Total Estimated Annual Burden: 240,267 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.
Affected Public: Businesses.
Frequency of Submission: On occasion.
Respondent Universe: 685 railroads.
Total Responses: 50,000 tags.
Average Time per Response: 10 minutes.
Estimated Total Annual Burden: 8,333 hours.
Status: Regular Review.

Title: Stenciling Reporting Mark on Freight Cars.
OMB Control Number: 2130–0520.
Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.
Form Number(s): N/A.
Affected Public: Businesses.
Frequency of Submission: On occasion.
Respondent Universe: 685 railroads.
Total Responses: 35,000 cars stencilled.
Average Time per Response: 45 minutes.
Estimated Total Annual Burden: 26,250 hours.
Status: Regular Review.

Title: Disqualification Proceedings.
OMB Control Number: 2130–0529.
Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, Subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.
Form Number(s): N/A.
Affected Public: Businesses.
Frequency of Submission: On occasion/recordkeeping.
Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
Provide copy of disqualification order to new or prospective employer.	685	3 orders	30	1.5	$23
Provide copy of disqualification order to prospective employer.	685	1 notification	30	.5	8
Request copy of disqualification order from previous employer.	685	Usual and customary procedure.	N/A	N/A	N/A

Total Estimated Burden: 2 hours.
Status: Regular Review.

Title: Grade Crossing Signal System Safety Regulations.
OMB Control Number: 2130–0534.
Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.
Form Number(s): FRA-F–6180.83.
Affected Public: Businesses.
Frequency of Submission: On occasion; recordkeeping.
Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
234.7—Telephone notification	685	4 phone calls	15	1	$35
234.9—Grade crossing signal system failure rpts	685	800 reports	15	200	7,000
234.9—Notification to train crew and highway traffic control authority.	685	800 notifications	15	200	7,000
234.9—Recordkeeping	685	800 records	15	200	7,000

Total Estimated Burden: 601 hours.

Status: Regular Review.

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Abstract: Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for "bridge safety equipment'such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce the Federal regulations. The information that is maintained at the job site also promotes safe bridge worker practices.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 6 certifications.

Average Time per Response: 20 minutes.

Estimated Total Annual Burden: 2 hours.

Status: Regular Review.

Title: Two-Way End-of-Train Devices.

OMB Control Number: 2130–0540.

Abstract: Section 20141 of the United States Code amended the Federal Rail Safety laws by adding certain statutory mandates related to power brake safety, specifically regarding two-way end-of-train telemetry devices (two-way EOTs). This Section required two-way-end-of-train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The information collected enhances rail safety by ensuring that the locomotive engineer is notified if someone other than a train crew member tests the two-way end-of-train devices at the initial terminal or other point of installation to confirm that the device is capable of initiating an emergency power brake application from the rear of the train. The information collected is also used by FRA to verify that the end-of-train telemetry equipment is properly calibrated for accuracy according to the manufacturer's specifications at least every 365 days. Additionally, the information collected verifies that two-way-end-of-train device standards—such as the front unit having a manually operated switch that is labeled "Emergency" which can initiate an emergency brake transmission command to the rear unit (when activated)—are met.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
232.25(C)—Notification that test was performed	245	450,000 tests	30 seconds	3,750	$168,750
232.25(d)—End-of-train Telemetry Equip.	245	35,000 stickers	1 minute	583	168,750
232.25(d)—Two-way end-of-train device Stds.	245	17,571 stencils	5 minutes	1,464	58,880

Total Estimated Burden: 5,797 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 1, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–2836 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 (64 FR 57924–57925).

DATES: Comments must be submitted on or before March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Henrietta Spinner at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–32), 202–366–4802. 400 Seventh Street, SW, Room 5320E, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 575 Consumer Information Regulations (Sections 103 and 105).

OMB Number: 2127—0049.

Type of Request: Extension of a currently approved collection.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR Part 575, Consumer Information Regulation Part 575.103—Truck-camper loading and Part 575.105—Utility Vehicles. Part 575.103, requires that manufacturers of light trucks that are capable of accommodating slide-in campers to provide information on the cargo weight rating and the longitudinal limits within

which the center of gravity for the cargo weight rating should be located. Part 575.105, requires that manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Estimated Total Annual Burden: 300.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–2952 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4029; Notice 5]

Pipeline Safety: Damage Prevention "Path Forward"

AGENCY: Research and Special Programs Administration (RSPA); Office of Pipeline Safety (OPS).

ACTION: Notice of public meeting.

SUMMARY: This notice is to announce the next public meeting of RSPA's continuing efforts to prevent damage to underground facilities. Last year, RSPA assembled a study team of over 160 industry and government stakeholders to identify best practices for one call centers and damage prevention programs. Their findings were issued in a report titled "Common Ground." To help implement the recommendations of the Common Ground Study, RSPA is facilitating the establishment of an organization to advance underground facility damage prevention. To achieve this, four teams have been established: by-laws, finance, membership, and nominating. The purpose of this meeting is to provide a forum for these organizational teams and interested public to begin the development of the organization.

DATES: The public meeting will be held on Thursday, February 17, 2000, from 9:00 a.m. to 4:30 p.m. This meeting is open to the public.

ADDRESSES: The public meeting will be held at the Sheraton International Hotel at BWI, 7032 Elm Road BWI Airport, MD. For Reservations, call 410–859–3300. A block of rooms is being held until February 7, 2000, under "DOT Damage Prevention Meeting."

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail at *eben.wyman@rspa.dot.gov*, regarding the subject matter of this notice.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Eben Wyman at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21) authorized a comprehensive study of damage prevention and one call center practices. In response to TEA–21, RSPA initiated the Common Ground study, which provided industry and government stakeholders the opportunity to work cooperatively to address the many issues of underground damage prevention. This study team produced an unprecedented collection of best practices in one call and damage prevention programs. The final Common Ground Study was presented to the Secretary of Transportation at a public meeting held on June 30, 1999.

On October 28, 1999, RSPA held a public meeting in Baltimore, MD, to plan for the establishment of an organization to advance underground facility damage prevention building on the spirit of cooperation developed by Common Ground. RSPA collected comments regarding elements of a mission statement, goals, functions, and organizational structure needed for an effective organization. Guiding principles were proposed, and interested individuals offered to participate on teams to facilitate the planning of the organization.

As a result of the October 28th meeting, the following organizational teams were formed:

(1) A By-laws Team to: Develop charter, mission statement and goals for the organization; define the scope and boundaries of the organization; establish organizational structure; and identify organizational functions, including public education possible data analyses and serving as a clearing house for research and development.

(2) A Finance Team to: develop a business plan, including costs of operations, sources of revenue, mechanisms for funding, contributory levels for different participants; processes for receiving income and accounting; identification of major financial contributors, charter members, donors, staff and other resources needed to support the organization.

(3) A Membership Team to: determine protocol and criteria for nominating and selecting members; determine appropriate types of representation to serve in the organization; and establish membership recruitment procedures and policies.

(4) A Nominating Team may be formed to identify representatives for the executive board. This group would be formed once the organization's by-laws have been established.

An executive team, known as the Evolution Team, oversees the four organizational teams. These teams have initiated their work via conference calls, and will meet for the first time at the February 17th meeting, which is open to the public.

The February 17th public meeting will consist of a plenary session with all team representatives as well as other interested parties, followed by breakout sessions to provide each team the opportunity to meet and begin their work. The organizational teams will report-out to all meeting attendees at the end of the day, time permitting.

RSPA welcomes all interested parties to attend and participate in this public meeting to continue the development of this organization to promote and encourage underground facility damage prevention.

Issued in Washington, DC on February 3, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–2924 Filed 2–8–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Milwaukee, Wisconsin.

DATES: The meeting will be held Thursday, February 24, 2000, and Friday, February 25, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a working meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, February 24, 2000, from 9:00 a.m. to 5:00 p.m. and Friday, February 25, 2000, from 9:00 a.m. to Noon at Courtyard Marriott, Meeting Room B, 300 W. Michigan Street, Milwaukee, WI. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. The Agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 1, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–2964 Filed 2–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0121]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0121."

SUPPLEMENTARY INFORMATION:

Title: Obtaining Supplemental Information from Hospital or Doctor, VA FL 29–551b.

OMB Control Number: 2900–0121.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: This form letter is used to request medical evidence from an insured's attending physician or hospital in connection with continuing disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 20, 1999, at pages 50866–50867.

Affected Public: Individuals or Households.

Estimated Annual Burden: 61 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 244.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0121" in any correspondence.

Dated: December 23, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–2969 Filed 2–8–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 27

Wednesday, February 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: "Therapeutic Methods to Treat Tumor Cells--Mutated Anthrax Toxin Protective Antigen Proteins That Specifically Target Cells Containing High Amounts of Cell-Surface Metalloproteinases or Plasminogen Activators"

Correction

In notice document 00–1423 appearing on page 3466 in the issue of Friday, January 21, 2000, make the following correction:

In the second column, in the second full paragraph, in the first line, "60/155,061" should read "60/155,961".

[FR Doc. C0–1423 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D54724

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

[Docket No. FR-4115-F-03]

RIN 2435-AA24

HUD Acquisition Regulation; Miscellaneous Revisions

Correction

In rule document 00–532 beginning on page 3572 in the issue of Friday, January 21, 2000, make the following correction:

2432.114 [Corrected]

On page 3573, in the second column, in designated paragraph 9., in 2432.114, in the second line, "had" should read "head".

[FR Doc. C0–532 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42210; File No. SR-MSRB-9910]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Amending Rule A-4(d), "Action Without a Meeting"

December 9, 1999.

Correction

In notice document 99–32473, beginning on page 70099, in the issue of Wednesday, December 15, 1999, make the following correction:

On page 70099, in the third column, the date line is corrected to read as set forth above.

[FR Doc. C9–32473 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42328; File No. SR-OPRA-00-01]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

January 11, 2000.

Correction

In notice document 00–1170 beginning on page 2998, in the issue of Wednesday, January 19, 2000, make the following correction:

On page 2998, in the third column, the date line is corrected to read as set forth above.

[FR Doc. C0–1170 Filed 2-8-00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-7789; 34-42327; 35-27123; 39-2380; IC-24235]

RIN 3235-AG96

Adoption of Updated EDGAR Filer Manual

Correction

In rule document 00–1123, beginning on page 3123, in the issue of Thursday, January 20, 2000, make the following correction:

On page 3124, in the first column, in footnote 7, in the third line, "omcide" should read "include".

[FR Doc. C0–1123 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-133-AD; Amendment 39-11536; AD 2000-02-18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

Correction

In rule document 00–2085 beginning on page 5238 in the issue of Thursday, February 3, 2000, make the following correction:

§39.13 [Corrected]

On page 5240, in the second column, in §39.13, under *Applicability:*, in the 5th line, "(P/N) 65–44861–(D)" should read "(P/N) 65–44861–( )".

[FR Doc. C0–2085 Filed 2–8–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday
February 9, 2000

Part II

Department of Transportation

Office of the Secretary

14 CFR Parts 200, 211, 213, etc.
Rules of Practice in Proceedings; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 200, 211, 213, 216, 291, 300, 302, 303, 305, 377, 385, and 399

[Docket No. OST–97–2090]

RIN 2105–AC48

Rules of Practice in Proceedings

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule

SUMMARY: The Department is finalizing, with certain exceptions, a Notice of Proposed Rulemaking (NPRM) (62 FR 5094, Feb. 3, 1997) to revise 14 CFR part 302 in order to eliminate unnecessary verbiage and obsolete provisions and to make technical changes to make the rules current. The final rule also includes certain changes implementing the electronic filing component of the Department's Docket Management System (DMS). All reserved subparts are being removed, and the remaining subparts are being reorganized and renumbered to make their arrangement more logical and to emphasize procedures applicable to the much more commonly used written (as opposed to oral) proceedings. The rulemaking also adds procedures for slot exemptions at high-density airports. The NPRM proposed a number of changes in the time periods for filing responsive documents in licensing cases, which we are adopting. A number of commenters proposed further changes to the filing periods. Based on these comments, we have decided to re-evaluate all of the prescribed time periods in part 302 and will issue a supplemental notice of proposed rulemaking on this matter. In addition, as noted in the preamble to the NPRM, we are also amending those rules in 14 CFR Chapter II containing now incorrect references to specific sections in part 302. Finally, one provision in part 302 is being relocated to part 300, Rules of Conduct in DOT Proceedings Under This Chapter.

EFFECTIVE DATE: The rule shall become effective on March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas or Carol A. Woods, Office of Aviation Analysis, X–56, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Background

14 CFR part 302, Rules of Practice in Proceedings, contains the regulations that govern the conduct of all aviation economic proceedings before the Department of Transportation. These rules had not been comprehensively reviewed and updated since 1985 when the aviation economic functions of the Civil Aeronautics Board (CAB) were transferred to the Department as a result of the CAB's "sunset."

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." In response to that directive, the Department undertook a review of its aviation economic regulations as contained in 14 CFR chapter II. Not unexpectedly in reviewing part 302, we identified a number of provisions and references that were obsolete, requiring technical and editorial revisions to make them current, and areas where changes were needed to bring the rules into conformance with the Department's current needs and practices and to facilitate their use by the public. Toward that end, the Department issued a Notice of Proposed Rulemaking (NPRM) (62 FR 5094, February 3, 1997) to revise part 302.

The Changes

Except as otherwise discussed below in the section summarizing and resolving issues raised in the comments received, we are adopting the changes as proposed in the NPRM. Because of the extent and number of changes being made, we are reissuing part 302 in its entirety. Unless noted, as with statutory re-codifications, no changes in the wording or organization of part 302 are intended to make a substantive change in the rules affected. The most noteworthy of the substantive revisions being adopted are as follows:

General

Part 302 is extensive, with different subparts governing different types of proceedings. In general, the changes include eliminating redundancies, obsolete provisions and wordiness; resequencing sections within subparts to place them in a more logical order to "track" the course of a particular type of proceeding; and reorganizing and renumbering subparts to place a greater emphasis on procedures used in written proceedings (*i.e.*, non-oral evidentiary proceedings) which are used in the majority of cases handled. Some sections are being separated or combined and titles added or revised for clarity and ease in locating specific provisions.

A number of the subparts are being reordered so that the rules of general applicability (revised Subpart A) come first, followed by rules pertaining to the Department's "permanent" licensing functions, *i.e.*, issuance of U.S. air carrier certificates and foreign air carrier permits (new Subpart B, current Subparts I and Q), rules pertaining to "temporary" licensing functions, *i.e.*, exemptions (new Subpart C, current Subpart D), rules on enforcement of those licenses and other Department regulations (new Subpart D, current Subpart B), and rules on rates, fares, and charges, *i.e.*, prices for foreign air transportation (revised Subpart E), airport fees (revised Subpart F), and mail rates and contracts (new Subpart G, current Subparts C and O).

Current Subpart J, Rules Applicable to Proceedings Involving Charter Air Carriers, is being removed. This subpart contains procedural rules for the immediate suspension of a charter air carrier's certificate. To our knowledge, this rule has never been used and is redundant with respect to other authority and procedures.

Subparts G, H, K, L, M, N, and P, which are currently "reserved," are also being removed.

Subpart A—Rules of General Applicability currently sets forth the general rules that apply to all proceedings before the Department. The changes to Subpart A include the addition of a definitions section (§ 302.2) which include definitions drawn from other sections of the current rule (*e.g.*, DOT decisionmaker) as well as new definitions (*e.g.*, party, non-hearing case) or revised definitions. The final rule also includes certain changes implementing the electronic filing component of the Department's Docket Management System (DMS).

Some sections in Subpart A are being reorganized. For example, requirements for filing documents (§ 302.3) are being revised to include provisions on the prohibition and dismissal of certain documents, and the discussion on motions for leave to file otherwise unauthorized documents, presently contained in the general requirements for documents (§ 302.4), is being relocated to the section on responsive documents (§ 302.6(c)).

Provisions are being added to specify when an application may be amended when the application has not been set for hearing—e.g., prior to the issuance of an order establishing further procedures or disposing of the application (§ 302.5).

Service of documents (new § 302.7) is being revised to allow for service by

facsimile and other electronic means. We are also deleting the reference in proposed § 302.7(h) to the Department's Alaska Field Office, since that office has been closed.

A provision is being added in the section on requests for confidential treatment of information (new § 302.12) to allow limited disclosure to the parties in a proceeding upon submission of affidavits by those parties agreeing to protect the confidentiality of the documents in accordance with a Department order.

All of the paragraphs that pertain only to oral evidentiary hearings are being moved to the end of the subpart (new §§ 302.17–302.37) to alleviate confusion over the procedures that are applicable only to those types of proceedings and those applicable to non-hearing cases, which now comprise the bulk of the proceedings that the Department handles.

The section on administrative law judges (new § 302.17) is being revised to specify the powers of the judges and to include the delegation of authority to the judges to make decisions in hearing proceedings (current § 302.27(a)).

The section on the DOT decisionmaker (new § 302.18) is being revised to reorder the text to eliminate duplication and to reflect that the majority of cases are decided by using non-hearing proceedings.

The list of officially noticeable documents, included in the evidence section (§ 302.24), is being updated and reorganized so that documents filed with or compiled by the Department, including the Federal Aviation Administration, are listed first followed by documents filed with or compiled by other government agencies and then private organizations (§ 302.24(g)).

A new section specifying the actions that can be taken by administrative law judges after a hearing, including issuing initial or recommended decisions (which would be defined in the rule) or certifying the record to the DOT decisionmaker is being added (§ 302.31). A provision is being added stating that, in the case of a recommended decision, unless a petition for discretionary review, exceptions, or a notice by the DOT decisionmaker taking review was filed, the judge's decision would be forwarded to the President for review under 49 U.S.C. 41307 as the Department's final order.

Some sections are being removed from this subpart if they pertain only to specific types of cases (e.g., § 302.13, joinder of complaints or complainants, is being moved to new Subpart D concerning enforcement proceedings), or if they more logically belong in other rules (e.g., § 302.18(a–1)—motions to disqualify DOT employees in review of hearing matters—is being redesignated § 300.18 in part 300 of this chapter, which covers rules of conduct in DOT proceedings).

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings replaces and revises current Subparts I and Q with respect to licensing procedures for new U.S. certificated and foreign air carriers and the conduct of international route proceedings.

The new Subpart B is being organized to indicate more clearly what evidence requirements and filing and review procedures will be followed in each type of licensing case. Thus, current § 302.1720, which applies to certificate cases in general, contains provisions on filing conforming applications or motions to modify the scope of a proceeding that are applicable to international route cases but not applicable to initial fitness cases. Provisions pertaining solely to international route cases are being combined in new § 302.212; those pertaining to initial or continuing fitness cases for U.S. carriers are being placed in new § 302.211; and those pertaining to foreign air carrier permit cases are being included in new § 302.213.

A provision is being added (new § 302.202(a)) stating that, in those cases involving the initial or continuing fitness of a U.S. air carrier, any application filed should also contain the supporting fitness information required by part 204 of this chapter.

The requirement to serve copies of pleadings on other parties is being revised for proceedings involving foreign air carrier permit applications to conduct scheduled operations to include the airport authority of any U.S. airport that the applicant initially proposes to serve (new § 302.203(b)(2)(C)). Service on such parties is already required and is being retained in U.S. air carrier certificate application proceedings (new § 302.203(b)(1)).

We are also eliminating the separate regulatory procedures and time periods for responsive pleadings for certificate restriction removal cases (current §§ 302.1730). Such cases are rare and can be handled under the same rules and timeframes as international route award cases. If different procedures or timetables are required in a specific case, the Department can establish those in a procedural order at the outset of such proceeding.

We are adding a provision to allow specifically for the filing of replies to answers in licensing cases (new § 302.204(b)). Replies are routinely filed in such cases (accompanied by a motion for leave to file), are permitted in response to answers to show-cause orders issued in such proceedings, and are of benefit to the Department in analyzing the information and allegations in any filed answer.

We are adding a provision to specify that, in U.S. air carrier certificate cases, the order establishing further procedures will be issued in 90 days after a *complete* application is filed (new §§ 302.211(b) and 302.212(e)). This clarification, which reflects the provision in current § 302.1713 (new § 302.209) that the time periods contained in the subpart would not begin to run until the application is complete, is intended to alleviate any confusion over when a DOT order taking action on an application would be issued, since many certificate applications are not complete when submitted and must be deferred pending receipt of supplementary information.

The section on the disposition of applications (new § 302.210) is being reorganized to reflect the current practices employed in the majority of application cases of using show-cause procedures or final orders, rather than instituting an oral evidentiary hearing.

A provision is being added to current § 302.1757 (new § 302.220(b)(2)) to clarify that if the DOT decisionmaker does not act within 90 days of the issuance of an initial decision by an administrative law judge, that decision becomes the final decision of the Department.

Current § 302.1760, which pertains to internal procedures of the Department, is being eliminated as unnecessary.

Subpart C—Rules Applicable to Exemption Proceedings replaces and revises current Subpart D, which sets forth procedural rules for U.S. and foreign air carriers to follow in applying for exemption authority under section 40109 of Subtitle VII of Title 49 of the United States Code ("the Statute"). It adds proceedings for slot exemptions at high-density airports under section 41714 of the Statute to its scope. It also gives guidance to U.S. and foreign air carrier applicants on the specific information they must file.

New § 302.302(b) revises the names of the offices where exemption applications are to be filed to the U.S. Air Carrier Licensing Division or Foreign Air Carrier Licensing Division, as appropriate, in the Office of International Aviation. New § 302.302(b)(4) is being revised to permit the filing of exemption requests by facsimile and electronic mail (when

available), and new § 302.302(e) (current § 302.401(e)) is being revised to reflect our present practice of omitting applicants' addresses when publishing notices of exemption applications filed. Also, the word "undue" is being changed to "unreasonable" in paragraphs (3) and (4) of new § 302.303(d) to reflect a change in this language in section 40109(g)(1)(C) of the Statute.

Subpart D—Rules Applicable to Enforcement Proceedings replaces and revises current Subpart B, which contains the specific rules governing actions or proceedings by which the Department enforces the aviation economic provisions of the Statute and the rules, orders, and other requirements the Department issues under those provisions. These rules also inform the public how to lodge complaints and detail the procedures that the Department and the parties will follow in the event the Department takes enforcement action.

A definitions section is being added to new Subpart D (new § 302.402).

In addition, various sections are being combined, separated or retitled for purposes of clarity. Thus, a separate section on informal complaints is being established (new § 302.403), and the section on formal complaints is being expanded to include current §§ 302.203 and 302.13 and separated into paragraphs pertaining to, among others things, the filing, amendment, and service of such complaints (new § 302.404).

The term "third-party complaint" used throughout is being replaced with "formal complaint," and the "saving clause" from Subpart A (current § 302.40) is being moved to Subpart D as new § 302.420 and modified to include provisions of the Statute and orders and other requirements of the Department.

Subpart E—Rules Applicable to Proceedings with Respect to Rates, Fares and Charges for Foreign Air Transportation revises current Subpart E, which contains special rules for proceedings relating to rates and fares and their related rules, classifications and practices applied in foreign air transportation. These proceedings are instituted at the Department's discretion in response to a third-party complaint, or upon the Department's own initiative. Historically, most such proceedings involved complaints against tariffs by competitors.

The title of the subpart is being amended to add "for Foreign Air Transportation" to clarify that these rules do not apply to rates, fares and charges in interstate transportation.

Current § 302.506 is being eliminated. That section places the burden of going forward with the evidence (i.e., making at least a *prima facie* case of lawfulness) upon the carrier proposing a tariff change. Under deregulation pricing policies and procedures, fare decreases or rule liberalizations do not need any justification.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees contains the specific rules that apply to a complaint filed by one or more U.S. or foreign air carriers for a determination of the reasonableness of a fee increase or a newly established fee imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination.

Since Subpart F was adopted in February 1995, we had not proposed any changes to it in the NPRM except to make the provisions internally consistent with the rest of revised part 302, such as by changing section reference numbers (e.g., in § 302.617, the reference to § 302.28(a) is being changed to § 302.32(a)), and to include references to the subpart in the index in Appendix A.

However, we have decided to take this opportunity to revise Subpart F in order to eliminate redundancies, renumber the paragraphs to conform with the numbering system in the rest of part 302, and make editorial changes for purposes of clarity. In addition, because the procedures for determining the reasonableness of airport fees are identical regardless of whether the proceeding has been instituted by a complaint from an air carrier or by a request from an airport, those procedures, which are now contained in separate sections (current §§ 302.611 and 302.613), are being combined into new § 302.606.

Specifically, the following changes are being made:

In the third sentence of paragraph (a) of § 302.601, the words "is considered to have" are being added after "An airport owner or operator" and before "imposed a fee on an air carrier or foreign air carrier" to make clear that fees that have been set, regardless of whether they have been collected, are covered by the rule. A new paragraph (c) is being added to that section to state that "Except as modified by this subpart, the provisions of subpart A of this part apply" to conform to revisions in the other subparts.

Current § 302.603 is being renumbered as § 302.602. In paragraph (a) of that section, a reference to § 302.4 is being added after the reference to § 302.3 to reflect the changes being made in those sections. In paragraph (b) of new § 302.602 and throughout the rest of the subpart, the reference to "an air carrier or foreign air carrier" is being simplified to "carrier".

Also to conform to the rest of the part, any references to numbers of days in numerical form, e.g., 7, will now also include the word for that number, e.g., "seven (7)".

References to other numbered sections in the subpart are being updated to reflect the new section numbers, e.g., the reference to §§ 302.611 and 302.613 will now be § 302.606.

Current § 302.605 is being renumbered as § 302.603. In the second sentence of paragraph (a) of that section, the statement that the complaint or request shall include a copy of "all supporting testimony and exhibits available to the carrier on which the filing party intends to rely" is being revised to eliminate the reference to "available to the carrier" since such documents available to the airport should also be included. In paragraph (b), the reference to the "Chief of the Economic and Financial Analysis Division" is being dropped for the more generic "Office of Aviation Analysis" and the reference to filing several copies of diskettes containing exhibits with Department of Transportation Dockets, the administrative law judge, and the Office of Aviation Analysis is being revised to indicate that all 3 copies can be submitted to Department of Transportation Dockets instead of directly with each of the other two offices. The latter change is being made at the suggestion of the Airports Council International (see following section on comments received on the NPRM). The provisions in subparagraphs (c)(1) and (c)(2) concerning service of complaints are being combined, and the remaining subparagraphs renumbered. Similarly, the provisions in subparagraphs (d)(1) and (d)(2) concerning service of requests for determinations are being combined. In new subparagraph (d)(1), a reference is being included to new § 302.603(c)(1) to indicate the manner of service and to eliminate excess verbiage.

Current § 302.607 is being renumbered § 302.604. In paragraph (d) of that section, a reference is being included to new § 302.603(b) to indicate the format to be used for diskettes and to eliminate excess verbiage. The provisions in subparagraphs (e)(1) and (e)(2) concerning service of answers are being combined.

Current § 302.609 is being renumbered § 302.605. In paragraph (d), a reference to new paragraph

§ 302.603(b) is being included to indicate the format to be used for diskettes and to eliminate excess verbiage. In paragraph (e), a reference to certifying that the parties served with a reply have actually received it is being added to conform to the rules on service of other types of documents in these proceedings.

Current § 302.611 is being renumbered § 302.606 and combined with current § 302.613 so that the procedures for review of complaints or requests for determination are in the same section. Thus, the provisions of paragraphs (a) and (e) of current § 302.613 are being combined with current § 302.611(a) into new § 302.606(a); current §§ 302.611(b) and 302.613(b) are being combined into new § 302.606(b); current §§ 302.611(c) and 302.613(c) are being combined into new § 302.606(d); and current §§ 302.611(d) and 302.613(d) are being combined into new § 302.606(c). The heading of this section is also being retitled to reflect this change.

Current § 302.615 is being renumbered as § 302.607.

Current § 302.617 is being renumbered as § 302.608. In that section, subparagraphs (b)(1) and (b)(2) relating to service of petitions for review are being combined into new subparagraph (b)(1).

Current § 302.619 is being renumbered as § 302.609. Paragraphs (a) and (b) of that section are being combined into new paragraph (a), and paragraph (c) is being renumbered as paragraph (b).

Current § 302.621 is being renumbered as § 302.610. In paragraph (c) of that section, a reference is being added to a request for a determination to indicate that if the Secretary does not issue a final decision within 120 days after the filing of such a request, the decision of the administrative law judge will be deemed the final order of the Secretary.

Subpart G—Rules Applicable to Mail Rate Proceedings and Contracts combines, replaces and revises subparts C and O.

Current Subpart C—Rules Applicable to Mail Rate Proceedings sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department in accordance with section 41901 of the Statute. These are the rates paid by the United States Postal Service to U.S. air carriers for the transportation of mail within Alaska and between the U.S. and foreign countries.

Current Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation sets forth procedures applicable to certain contractor arrangements for the carriage of mail between the U.S. Postal Service and certificated air carriers pursuant to 39 U.S.C. 5402(a).

Certain sections are being revised to allow the DOT decisionmaker additional flexibility in dealing with specific cases. Thus, current § 302.305(a) provides that a notice of objection to the rates proposed in a show-cause order is due within ten (10) days and, if such a notice is properly filed, written answers and any supporting documents are due within thirty (30) days. Subsequent to the issuance of the NPRM, the Department eliminated the provision for notices of objection and extended the answer period to forty-five (45) days, or within such other period as the order may specify. (See Orders 97–9–37, 97–11–20, and 98–6–16.) We are adopting these changes in new § 302.704(a). In addition, current § 302.307 is being revised to allow the decisionmaker to authorize the filing of additional pleadings or establish further procedural steps in lieu of instituting an oral hearing (new § 302.705(b)) and to allow the issues in any hearing that is instituted to be formulated by the instituting order (new § 302.706(a)).

The provisions of current § 302.306 and certain provisions of § 302.307 concerning the filing of answers are being combined into new § 302.705 covering further procedures, and current §§ 302.301, 302.302, and 302.308, and certain provisions of § 302.307 are being combined into new § 302.706 entitled "Hearing."

The provisions of paragraphs (a) and (b) of current § 302.1503 are being eliminated as unnecessary, and new § 302.719 refines and condenses the data required to reflect current practice.

The subject index contained in Appendix A—Index to Rules of Practice is being updated to include additional references (such as to Fitness Cases and Airport Fee cases), and to eliminate obsolete references. Also, to assist users in locating the newly renumbered sections, the revised Appendix lists for each subject both the current section number(s) and the corresponding new section number(s).

Comments and Their Resolution

Comments on the proposed changes were received from Airports Council International ("ACI"); American Airlines, Inc. ("American"); Continental Airlines, Inc. ("Continental"); Dade County (Florida) Aviation Department ("Dade"); Mr. Richard J. Fahy, Jr., an aviation attorney ("Mr. Fahy"); and United Air Lines, Inc. ("United"). The comments will be discussed and resolved in the order in which their subject matter appears in the proposed rule.

Subpart A

Section 302.3(c)(1) Number of Copies

The NPRM proposed to continue the current rule, as amended in a 1996 rulemaking (Docket OST–96–1436, 61 FR 29284, June 10, 1996), which sets forth the number of copies, ranging from three to nine, to be filed in each of 19 types of aviation proceedings.

Comments: Mr. Fahy recommends that the Department standardize the number of copies to be filed in proceedings so that the rule will not have to be consulted each time a different type of filing is made.

Resolution: After reviewing our needs in the various types of aviation proceedings, we have decided not to change the rule at this time.

Section 302.7(e)(2) Electronic service of documents

The NPRM proposed that adequate proof of service of a document would include "a certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile number or electronic mail address to which the document was sent."

Comments: Continental and United request a clarification of the term "successful transmission." They contend that it should be sufficient to certify that the document was transmitted by the method stated and is presumed to have been received unless the sender receives notice of an unsuccessful transmission. United further recommends that, in the case of a transmission failure, a party should be allowed to employ another means of service without having to inform the Department.

Resolution: We agree with the commenters that requiring persons who are electronically serving documents to obtain signed statements or certificates acknowledging receipt is overly burdensome. Upon reconsideration, we believe that adequate proof of electronic service would consist of a certificate of successful transmission by the sender, including the facsimile number or electronic mail address, and a statement that the sender has not received any indication that the electronic transmission was unsuccessful. Moreover, if an electronic transmission should fail, parties should be allowed to choose another authorized means of service without being required to notify

the Department. Therefore, we are amending proposed § 302.7(e) by deleting paragraph (3) and adding the following language at the end of paragraph (2): "and stating that no indication was received that any transmission had failed. In the event of an electronic transmission failure, any other authorized means of service may be substituted and the appropriate proof of service provided."

Section 302.12(d)(1)(i) Confidentiality motions

The present rule (§ 302.39(e)(2)(i)), the text of which is unchanged in the NPRM, states that motions for confidential treatment shall include "a description of the information sought to be withheld, sufficient for identification of the same."

Comments: Continental suggests that the rule should require such motions to contain an index of the material requested to be held confidential, including a title, description of the document, document number, and number of pages.

Resolution: Upon review, we consider the instructions for identifying the material ("a description of the information sought to be withheld, sufficient for identification of the same") to be vague, especially in cases where confidentiality is requested for multiple documents, or portions of documents, or for documents that appear similar. Therefore, we believe confidentiality motions should include an index of the documents covered by the motion. The rule is being amended to require "an index listing each document by an identifying number, and including its title, description and number of pages, and, if relevant, the specific location within a document."

Section 302.28(b) Cost of daily transcript

The NPRM retains the language in the current rule (§ 302.24(l)(2)) except for the addition of a fourth factor—the cost to the Department—to be considered by the administrative law judge in determining whether ordinary or daily transcripts are needed in a particular proceeding. The rule states that if the administrative law judge determines that an ordinary transcript is adequate, any party to the proceeding may make arrangements with the reporting firm to provide a daily transcript to the Department, for which extra service the requesting party will pay.

Comments: United believes that, with respect to daily transcripts, the Department should make certain that its contracts with reporting firms are enforced with respect to reasonable prices for both the Department and other parties, and that transcripts requested on a daily basis by non-Department parties are provided daily. Dade advocates that the Department should ensure that (1) both the ordinary and daily rates are reasonable, (2) "cost to the Department" is removed as a factor to be considered by the administrative law judge in deciding upon the necessity of a daily transcript, (3) daily transcripts shall be required in all proceedings involving airport fees (Subpart F), (4) the Department shares the cost equally with other parties who decide to order daily transcripts, and (5) parties are allowed to choose a different reporting firm if its rates for daily transcripts are more reasonable. ACI also recommends that the Department seek more inexpensive official reporting services for hearing cases.

Resolution: Among the criteria for determining whether an ordinary or daily transcript is required in any particular proceeding, we included "cost to the Department" (§ 302.28(b)(3)) because that factor is presently taken into account by the administrative law judges. Adoption of the commenters' recommendations would inevitably lead to extensive, complex contract negotiations, including lengthy negotiations about what is "reasonable" under certain circumstances. While we appreciate the concern about costs, and the need to reduce costs for all parties including the government, procedural rulemakings are not the proper place to resolve contract costs and availability issues on this matter. In addition, we do not believe that a specific requirement for daily transcripts in subpart F proceedings should be included in the rule and will continue to leave that decision to the discretion of the presiding administrative law judge. We also see no reason to change the rule to require the Department to share equally in the cost of daily transcripts ordered by another party if the administrative law judge has determined that ordinary transcripts are adequate. In addition, we do not agree that parties should be allowed to select a court reporter different from the one selected by the administrative law judge because multiple versions of the "official" transcript may result. Therefore, we will adopt the rule as proposed.

Subpart B

Section 302.202(a) Maps and illustrative data

The NPRM, like the present rule (§ 302.4(a)), requires applicants for certificate authority to provide the data called for in part 201 of this chapter.

Comments: Continental observes that adherence to part 201 filing requirements would obligate applicants to provide a map and illustrative data in all cases. These should be required only of applicants for certificate authority "as directed by the Department."

Resolution: The requirements that applicants must provide a map showing the proposed points of service and mileages, and an illustrative service proposal, formerly found in § 201.4(c)(4) and § 201.4(e)(1), respectively, were removed in a 1992 rulemaking (see 57 FR 38765, August 27, 1992). Therefore, no change in the proposed rule is required.

Section 302.202(d) Energy statement

Comments: United and Continental urge the Department to remove the requirement that each application must be accompanied by an energy statement in accordance with part 313 of this chapter. [The NPRM inadvertently referred to this statement as an "Environmental Evaluation" which is incorrect and has been changed in the Final Rule.] Section 313.4(a) of that part requires applicants to file an energy statement if the air service for which authority is sought would result in a near-term net annual increase in fuel consumption of 10 million gallons or more. The objectors state that the fuel crisis of the 1970s, which prompted the issuance of this rule, is no longer relevant, and that such a statement is costly to prepare and seldom used.

Resolution: Concerns about fuel consumption that arose in the 1970s have not disappeared. Today, when a proposal involves a substantial increase in fuel usage, we must conclude that the public benefits derived from the proposed service outweigh the disadvantages. Thus, it is not appropriate to remove the provision from the rule. Moreover, the part 313 requirements implementing the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) have been progressively qualified and narrowed until they have been minimal in the few cases in which they have been triggered. Elaborate calculations rarely have been required, and certificate applications "where no determination of public convenience and necessity is required" are specifically excluded from this requirement (§ 313.4(b)(5)). In addition, proposed § 302.202(d) now contains the qualifier "Where required," reflecting that, in many circumstances, information on substantial changes in fuel usage may be omitted. Therefore, no change in the proposed rule will be made, except to correct the reference to "energy statement" in place of

"environmental evaluation" as noted above.

Section 302.203(a)(2) Service on the FAA

A new provision would require an applicant to serve a complete copy of its certificate application on the Manager of the Federal Aviation Administration Flight Standards District Office processing any FAA authority needed to conduct the proposed operations.

Comments: United suggests that the Department clarify which carriers would be subject to this requirement since many would only require minor amendments to their FAA Operations Specifications.

Resolution: The proposed requirement—that an applicant should serve a complete copy of its certificate application on the Manager of the FAA Flight Standards District Office processing any FAA authority needed to conduct the proposed operations—was added to enhance the information-sharing process between the Office of the Secretary and the FAA regarding an applicant's proposed new services. Even minor amendments in certificate authority could require FAA action. Therefore, we believe it is appropriate, and not unduly burdensome, for the applicant's local FAA office to be served with a copy of any application seeking a change in the applicant's certificate authority. No change in the proposed rule will be made.

Section Verification (under 18 U.S.C. 1001)

Current § 302.4(b) requires that every authorized or required document filed with the Department must be signed by the party filing that document or by a duly authorized representative of that party, certifying that he or she has read the document and believes every statement contained therein to be true and not misleading. In addition, current § 302.1707 requires that the facts contained in pleadings filed under current Subpart Q (new Subpart B) be attested to in an affidavit signed by persons who are knowledgeable about the facts and who would be called as witnesses to substantiate the facts if an oral hearing became necessary. New § 302.206 would require a certification in accordance with 18 U.S.C. 1001, to be signed by a knowledgeable individual (as described in § 302.1707), that, under penalty of fine and/or imprisonment, he or she has not knowingly or willfully falsified or concealed any material fact or made any false statement, or knowingly used any document containing such a statement, in connection with the preparation, filing or prosecution of the pleading. Similar certifications are required for electronic filings in accordance with instructions at the Dockets DMS internet web site.

Comments: American recommends that the required certification be moved to Subpart A and amended to provide that the certification requirement applies to all pleadings, and that the certification is deemed to be incorporated in all pleadings signed by an attorney. Continental and United maintain that the requirement of an additional certification to be signed by an officer of the company is redundant to the certification presently required in § 302.4(b). United adds that the proposed verification is only needed in the rare event of a hearing case, and that, for non-hearing cases, the certification required in § 302.4(b) is sufficient. Mr. Fahy recommends that the proposed certification requirement be limited to applicants for initial certificate authority.

Resolution: It has been our concern that the "subscription" required in § 302.4(b) and the "verification" required in current § 302.1707 do not sufficiently bind the applicant in all cases. We have experienced a number of proceedings in which an outside attorney or other person engaged to prepare and file the application has signed a subscription attesting to the veracity of the statements and other material in the documents filed when in actuality that individual was attesting only to the fact that the information had been represented by his or her client as being accurate.

We believe that a certification of veracity is more reliable when signed by a principal of the applicant. The current subscription in § 302.4(b), which requires a certification to be signed by "the [filing] party, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person so authorized" is not as broad as the verification in current § 302.1707, which requires an attestation of the "facts asserted in any pleading" by "persons having knowledge of them." In § 204.3(v) of this chapter, applicants filing information in support of a fitness determination are required to include a verification in accordance with 18 U.S.C. 1001 to be signed by the person signing the pleading, "who shall be a principal owner, senior officer, or internal counsel of the applicant." In our experience, the contents of pleadings covered by the latter attestation have been found to be the most truthful and accurate. For these reasons, we disagree with American's view that the certification should be deemed to be incorporated in all pleadings signed by an attorney, but we agree with its recommendation that the certification should apply to all types of pleadings and should be relocated to subpart A. We also agree with Continental and United that two such certifications (§ 302.4(b) and § 302.206) are superfluous. We appreciate United's argument that the verification as proposed in § 302.206, which is to be signed by "someone who will appear as a witness to substantiate the facts asserted if an oral hearing becomes necessary," is misleading inasmuch as hearing cases are now rare events.

Therefore, we have decided to change § 302.206 so that it merely refers readers to § 302.4(b), which is being amended to read as follows: "*Verification*: The following certification shall be included with every pleading filed under this part: 'Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be a principal owner, senior officer, or internal counsel of the pleader*], in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.' " We believe that restating the sanctions for violating 18 U.S.C. 1001 will serve as a visual reminder to the signer of the gravity of his or her attestation.

Section 302.212 International route cases—applicability

In the NPRM, the provisions in current §§ 302.1701(a) and 1720(c) would be combined to provide that any person may file an application for the same authority as sought in an application to obtain, renew, amend, or transfer a certificate authorizing air transportation over an international route.

Comments: United points out that, by combining language from the two current sections, the Department seems to be inviting applications from competing carriers seeking authority that is the subject of a transfer application, although the Department's policy has been not to entertain competing applications relating to certificate transfers.

Resolution: The proposed combining of the provisions of current

§§ 302.1701(a) and 1720(c) into new § 302.212(a) would not result in a change in the current policy. As United notes, the proposed rule allows the filing of applications from competing carriers for authority that is the subject of a transfer application, despite the Department's general policy of not entertaining such applications (*see* Orders 92–3–49 at 7 and 91–8–1). We agree with United and have removed certificate transfers from the provisions of § 302.212(c) which allows for the filing of conforming applications in other types of certificate cases.

Subpart C

Section 302.301 Exemptions

This section states that Subpart C contains the rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including emergency exemptions.

Comments: American, United, and Continental propose that the rules for exemptions also apply to applications for frequency allocations under international agreements.

Resolution: We agree with the commenting air carriers that the rules for exemptions in new subpart C should also apply to applications for frequency allocations under international agreements. Indeed, the carriers' suggestion can usefully be applied to other proceedings in which the Department must allocate limited bilateral rights, such as third-country code-sharing, charters, or designation to exercise other limited opportunities. While we often will issue a notice or order to establish procedures in such cases, it will be helpful to identify exemption procedures in this subpart as the "default" process to be followed unless or until we specify otherwise. We will amend § 302.301 accordingly and revise the title of the subpart to "Rules Applicable to Exemption and Certain Other Proceedings."

Section 302.304(a)(2)—Service of notices of exemptions

The proposed rule (formerly § 302.403(b)), requires that persons filing an application for an exemption shall serve a notice that the application has been filed.

Comments: United argues that the exemption itself, not a notice, should be served since the answer period is short and the exemptions are usually not voluminous.

Resolution: We concede United's point that it is more expedient when interested parties in an exemption proceeding are served with the entire exemption application, rather than merely a notice. We have found that most applicants already serve complete applications voluntarily. Moreover, if such "full service" were the rule, it would eliminate the need for the Department to make a determination in each case whether the proceeding is likely to be contested and then ordering service of the complete application. Such a rule also would likely reduce the number of late-filed comments. After consideration, we believe that the added burden on applicants of serving complete applications (which are generally not lengthy) is not so substantive as to outweigh the benefit to interested parties in terms of more timely access to the entire application and to the Department in terms of facilitated procedures. Therefore, we will amend § 302.304(a)(2) accordingly.

Section 302.304(b)(4) Service of documents in slot exemptions

This new provision requires applicants for slot exemptions under section 41714 of the Statute to serve the manager of the affected airport, the mayor of the city that it serves, and the Governor of the State in which it is located.

Comments: American, United and Continental advocate that slot exemption applications should also be served on all U.S. carriers that publish schedules in the Official Airline Guides for the airport in question.

Resolution: We appreciate the rationale of the responding airlines in asserting that U.S. carriers providing scheduled service to an airport at which an applicant is seeking a slot exemption are "interested parties" and should be served copies of the exemption application. Consequently, we will amend § 302.304(b)(4) to provide for service to such carriers by applicants for slot exemptions.

Section 302.308 Replies to answers

This rule (former § 302.407) provides that an applicant may file a reply to answers to an exemption application within seven days of the last day of the answer period.

Comments: American, United, and Continental contend that, not only applicants, but any interested party, should be allowed to file a reply in exemption proceedings, as is allowed in certificate and licensing cases, so that other parties will not need to request leave to file their replies.

Resolution: We agree with the responding airlines that any interested party should be allowed to file a reply in exemption proceedings. Liberalizing the rule in this way will save parties the burden of having to file, and the Department of having to rule on, motions for leave to file unauthorized documents. Therefore, we will amend § 302.308 accordingly.

Subpart D

Section 302.403 Informal complaints

Comments: Continental argues that the information and allegations contained in an informal complaint and the identity of the complainant should be kept confidential.

Resolution: What Continental proposes reflects our existing practice with respect to maintaining the confidentiality of the contents of an informal complaint and the identity of the complainant. We plan to continue this practice in the future. However, in the course of conducting an informal investigation, we may at times have to reveal this information to the investigated party if necessary to obtain its response to the complaint. Our experience is that this existing practice is an effective use of limited resources, expedites the investigation, and increases accuracy without unduly prejudicing the rights of the parties involved.

Section 302.406 Action time on formal enforcement complaints

The rule (adapted from the existing practice under current § 302.205(a)) allows the Assistant General Counsel a "reasonable time" after the filing of an answer to a formal complaint to either issue a notice instituting a formal enforcement proceeding or an order dismissing the complaint.

Comments: United recommends the retention of the existing rule, which requires Department staff to process or dismiss an enforcement complaint within 60 days, which will avoid indefinite delays. United notes that no reason was given in the NPRM for the proposed change.

Resolution: We disagree with United and will adopt the rule as proposed. We have found that most third-party complaints require considerable time-consuming follow-up investigation by the Office of Aviation Enforcement and Proceedings, and this proposed change would reflect the current Department and industry practice in dealing with third-party complaints. Our experience is that the 60 days set forth in the existing rule rarely, if ever, permits enough time to conduct an investigation and satisfactorily resolve issues that may be raised. We are, however, sensitive to United's concerns about indefinite delays, and will endeavor to ensure that investigations are conducted as promptly as possible. We note that a

complainant or respondent retains the right under the rules as revised to move that the Deputy General Counsel require the Assistant General Counsel to act if he or she finds there to be an unreasonable delay in acting on a formal complaint.

Subpart E

Sections 302.501–302.507 Rates, Fares and Charges in Foreign Air Transportation

Comments: United points out that a related rulemaking proposes to eliminate the requirement that rates and charges for certain foreign air transportation be filed in tariffs (see NPRM 97–1, issued in Docket OST–97–2070 (62 FR 10758, March 10, 1997)). United asserts that elimination of the requirement to file tariffs would be problematical since the procedures for complaining against foreign rates, fares, and charges are linked to the submission of the matter in a tariff. United urges that the Department determine how the tariff changes in the rulemaking cited above will affect Subpart E and consolidate the two actions.

Resolution: Under the NPRM issued in Docket OST–97–2070, current part 302 procedures would continue in force for complaints against tariffs in those markets where we require that tariffs be filed. Since these markets are restrictive, we expect that most, if not all, complaints against carrier pricing would arise in just these markets. However, there are other remedies that U.S. carriers may take in the unlikely event that a foreign carrier or government pricing practice adversely affects their interests in the markets where tariffs are no longer filed. For example, U.S. carriers can bring the matter to the attention of the Department which can address the matter through direct contact with foreign officials, or, under the terms of the proposed rule, could require the foreign carrier to file its tariffs. Once the tariff was filed, normal complaint procedures would apply. No change in the proposed rules will be made.

Subpart F

Section 302.605 Service of documents

The proposed rule (current § 302.605(b)) requires parties filing a complaint about airport fees to submit a copy of each diskette to Department of Transportation Dockets, the Office of the Chief Administrative Law Judge (M–50), and to the Chief of the Economic and Financial Analysis Division of the Office of Aviation Analysis (X–55).

Comments: ACI notes that, due to security procedures, persons filing diskettes with M–50 and X–55 have difficulty gaining entrance to the DOT building, and recommends that the Department make other arrangements for the latter two offices to receive the diskettes.

Resolution: To facilitate service of diskette copies of complaints about airport fees, we will amend § 302.605(b) to indicate that service of all of the diskettes will be acceptable if made at Department of Transportation Dockets. Parties may also use the electronic document filing system available through the DOT Dockets DMS internet web site. In addition, because of certain organizational changes made at the Department, we will remove the reference to the Chief of the Economic and Financial Analysis Division and refer only to the Office of Aviation Analysis (X–50), and change the reference to the Office of Chief Administrative Law Judge to Office of Hearings (M–20).

General

Comments: Continental suggests that, since applicants may petition for reconsideration of final Department actions, intermediate review procedures are unnecessary; therefore, the Department should consider eliminating tentative decisions of the DOT decisionmaker and show-cause orders.

Resolution: We appreciate Continental's suggestion with respect to intermediate actions and concede that the matter is deserving of review. However, such an evaluation would be a significant undertaking and would require the issuance of a separate NPRM, since the issue would generate considerable interest. For the present, since our current procedures fulfill our obligations under the Administrative Procedures Act, we will not modify them at this time.

Changes to Filing Time Periods

The NPRM proposed to decrease a number of the time periods for filing responsive pleadings in U.S. and foreign air carrier licensing cases in an effort to expedite those proceedings. For example, in new §§ 302.204 and 302.212, we proposed to shorten the period allowed for answers to U.S. air carrier certificate applications from twenty-eight (28) to twenty-one (21) days.

A number of comments to the NPRM suggested further changes to the current and proposed filing periods in part 302. We believe that the commenters' proposals have merit to the extent that they suggest reducing filing periods for a number of items, which, in turn, will enable us to expedite proceedings even further. Some of the comments also suggest other changes, such as eliminating separate dates for filing exceptions and briefs in hearing cases. Except for the changes to the filing periods in licensing cases proposed in the NPRM, most of the time periods in part 302 have not been comprehensively reviewed in a number of years. Moreover, as we have already noted, the Department's own practices and procedures have changed dramatically in recent years with the overwhelming majority of cases being handled on the written record rather than through oral evidentiary proceedings. As a result, we have decided to re-evaluate all of the time periods in part 302 to determine whether any changes are warranted. We have decided to issue a Supplemental Notice of Proposed Rulemaking to deal with this issue, and we will consider the additional changes proposed by some of the commenters in that Supplemental Notice.

The following discussion identifies the various references to filing periods for which we did propose changes in the NPRM, summarizes and evaluates relevant comments received about them, if any, and indicates whether the changes are being adopted as proposed or with revisions.

Licensing Cases

Section 302.204 Responsive documents in certificate/permit proceedings

The NPRM proposed to shorten the answer period to U.S. air carrier certificate applications (both initial fitness and international route awards) and in foreign air carrier permit cases (current § 302.1720(d)) from twenty-eight (28) to twenty-one (21) days after the original or amended application is filed, and added a reply period of fourteen (14) days.

Comments: American proposes a further shortening of the answer period to ten (10) days. American, United, and Continental also advocate shortening the newly proposed period for replies from fourteen (14) to seven (7) days. Mr. Fahy opposes the additional shortening urged by the air carriers, stating that additional time is often needed, particularly by small firms, to prepare the responses.

Resolution: After considering the matter further, we have decided to adopt the proposed twenty-one (21)-day period for answers and fourteen (14)-day period for replies. We will consider the suggested additional changes in the supplemental rulemaking.

Section 302.208 Petitions for oral presentation or judge's decision

The current rule (§ 302.1712(c)) allows for petitions requesting an oral evidentiary proceeding, oral argument or the issuance of an administrative law judge decision to be filed in certificate cases fifty-two (52) days after the application is filed; in restriction removal cases thirty-five (35) days after the application is filed; and in foreign permit cases fourteen (14) days after the due date for answers. The proposed rule (§ 302.208) replaces and is almost identical to the current rule, except for the timing of the filing of the petitions. Proposed § 302.208(b) provides that petitions shall be filed no later than the due date for answers in proceedings governed by proposed § 302.211, § 302.212, and § 302.213, which is proposed to be twenty-one (21) days.

In addition, proposed § 302.208(a) provides that such petitions shall be supported by a detailed explanation of: "(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs; (2) which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision; (3) an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and (4) if cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it."

Comments: Mr. Fahy argues that the proposed rule would require petitions asking for oral hearing to be filed at the same time answers are due to certificate/permit applications. Included in the petition must be witness names, issues to be examined, subject matter of cross-examination—information that may not yet be known at the time of the objection. Mr. Fahy recommends replacing these data requirements with "a good cause showing" of why a hearing is necessary. If the Department applies the proposed conditions in certificate cases, he contends, it may apply the same standards in other cases, e.g., foreign code-share arrangements.

Resolution: After evaluating the comments, we have decided to adopt the proposal that petitions be due at the same time as answers to applications, which we have now set at twenty-one (21) days. However, we agree with Mr. Fahy that information on potential witnesses and time required for oral presentations would unlikely be known at the time the petition is filed. Therefore, we are amending the rule to require the petition to contain items (1) and (2) as part of the petition itself, with items (3) and (4) to be filed at a later time if the Department decides to have or is leaning toward having an oral hearing.

Section 302.212 Procedures in certificate cases involving international routes

The proposed rule shortens the period in current § 302.1720(c) for filing conforming applications [for the same authority as sought in an application to obtain, renew, or amend a certificate] and requests to modify the issues to be decided and to consolidate applications, from twenty-eight (28) to twenty-one (21) days after filing of the original application. Answers would continue to be due within fourteen (14) days after the filing of the conforming application or motion.

Comments: American advocates shortening the period for filing conforming applications even further, to ten (10) days, and both American and Continental suggest adopting a seven (7)-day answer period. Mr. Fahy opposes any further shortening of these periods.

Resolution: We have decided that the filing time for conforming applications and motions to modify scope should be set at twenty-one (21) days as proposed so that the dates for filing objections, requests for hearing, conforming applications, and motions to modify scope would all be due on the same date. In this way, the parties and the Department would be presented with one set of filings. Generally, our experience has been that, if one air carrier objects to the application for an international route submitted by another air carrier, it is likely that the objector expects to apply for the authority being requested; therefore, the objector would save the effort of a separate filing by accompanying its objection with its request for the authority. We will, however, consider the additional changes proposed by the commenters in the supplemental rulemaking.

Mail Rate Cases

Section 302.704 Objections and answers to order to show cause

The proposed rule, which is identical to current § 302.305, provides that a notice of objection to the rates proposed in an order to show cause is due within ten (10) days of issuance or the order or within such other period as the order may specify. If such a notice is properly filed, written answers and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause or within such other period as the order may specify.

Comments: American argues that separate dates for objections and answers are unnecessary and recommends that the rule require that fully supported objections be filed within ten (10) days of service of the order to show cause.

Resolution: Subsequent to the issuance of the NPRM, the Department, in Order 97–9–37, served October 3, 1997, proposed to eliminate the provision for notices of objection and to extend the answer period to forty-five (45) days after the service date of the show cause order for Alaska bush and mainline mail rates. Order 97–11–20, served November 19, 1997, made final this proposed change to the procedural schedule for Alaska mail rate orders. In addition, in Order 98–6–16, served June 23, 1998, the Department, among other things, proposed identical procedural changes for international mail rates. No objections to this proposed change were received. After reviewing the matter, we are eliminating the provision for separate filing dates and amending the rule to require only answers to be filed within forty-five (45) days of the date of service of the order to show cause, unless otherwise stated in that order.

Correction of References to Sections in Part 302 Throughout Chapter II

The following table contains the changes that are being made throughout Chapter II to correct what are now obsolete references to sections in part 302.

Location of rule to be changed	Current reference to part 302	Revised reference to part 302
§ 200.2	§ 302.2	§ 302.1(c)
§ 211.12	Subpart Q	Subpart B
§ 213.2	Rule 37	Rule 14
§ 213.5(c)	Rule 37	Rule 14
§ 216.4(a)	§§ 302.3(b), 302.4(b), (c)	§§ 302.3(b), 302.4(a), (b)

Location of rule to be changed	Current reference to part 302	Revised reference to part 302
§ 216.4(b)	§ 302.8	§ 302.7
§ 291.10	Subpart Q	Subpart B
§ 300.2(b)(2)	§ 302.22a	§§ 302.2, 302.18
§ 300.2(b)(4)	§ 302.24	§§ 302.17–302.38
§ 300.2(c)(10)	§ 302.18	§ 302.11
§ 300.2(d)	§§ 302.14, 302.18	§ 302.11(e)
§ 300.20(c)	Subpart B	Subpart D
§ 303.4(b)	§ 302.19	§ 302.25
§ 303.45(c)	§ 302.15	§ 302.20
§ 305.7(b)	§§ 302.8, 302.21	§§ 302.7, 302.27(c)
§ 305.10	§§ 302.19(g), 302.39	§§ 302.25(g), 302.12
§ 305.11	Subpart B	Subpart D
§ 305.12	§ 302.202	§§ 302.4(b)
§ 377.10(c)(4)	§ 302.909	Removed
§ 385.10(b)	Subpart B	Subpart D
§ 385.11(b)	Subpart B	Subpart D
§ 385.11(d)	§ 302.215	§ 302.417
§ 385.19(i)	§ 302.39	§ 302.12
§ 385.31(c)	§§ 302.3(a), (b), (c), 302.4	§§ 302.3, 302.4
§ 399.18	§ 302.909	Removed

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the amendment and has determined that they are not "significant" within the meaning of Executive Order 12866. The amendment will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. This rule does not impose any unfunded mandates.

DOT Regulatory Policies and Procedures

The amendment is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather, it is being made solely for the purposes of eliminating or correcting obsolete requirements and reorganizing the presentation of the regulations used by the Department to administer its aviation economic regulatory functions. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities, i.e., those air carriers operating small aircraft (as defined in 14 CFR 298.2) in strictly domestic service. The changes to the Department's Rules of Practice in Proceedings merely eliminate unnecessary and obsolete verbiage, reorganize the provisions and bring them up to date with our current practice, and place no new requirements on applicants. Therefore, the Department certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism)

The amendment has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This amendment will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

National Environmental Policy Act

The Department has also analyzed the amendment for the purposes of the National Environmental Policy Act. The amendment will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the amendment.

List of Subjects

14 CFR Part 200

Air transportation.

14 CFR Part 211

Administrative practice and procedure, Air carriers, Pacific Islands Trust Territory, Reporting and Recordkeeping requirements.

14 CFR Part 213

Air carriers, Reporting and Recordkeeping requirements.

14 CFR Part 216

Air carriers.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and Recordkeeping requirements.

14 CFR Part 300

Administrative practice and procedure, Conflict of interests.

14 CFR Part 302

Administrative practice and procedure, Air carriers, Foreign air carriers.

14 CFR Part 303

Administrative practice and procedure, Air carriers, Antitrust, Reporting and Recordkeeping requirements.

14 CFR Part 305

Administrative practice and procedure, Air carriers, Investigations.

14 CFR Part 377

Administrative practice and procedure, Air carriers.

14 CFR Part 385

Administrative practice and procedure, Organization and functions (Government Agencies).

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

1. The authority citation for part 200 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 419, 461.

§ 200.2 [Amended]

2. In § 200.2, remove the reference "§ 302.2" and add, in its place, the reference "§ 302.1(c)".

PART 211—[AMENDED]

3. The authority citation for part 211 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 211.12 [Amended]

4. In § 211.12, remove the reference "Subpart Q" and add, in its place, the reference "Subpart B".

PART 213—[AMENDED]

5. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 213.2 [Amended]

6. In § 213.2, remove the reference "Rule 37" and add, in its place, the reference "Rule14 ".

§ 213.5 [Amended]

7. In § 213.5(c), remove the reference "Rule 37" and add, in its place, the reference "Rule 14".

PART 216—[AMENDED]

8. The authority citation for part 216 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 413, 417.

§ 216.4 [Amended]

9. In § 216.4(a), remove the references "302.4(b) and (c)" and add, in their place, the references "302.4(a) and (b)".

10. In § 216.4(b), remove the reference "§ 302.8" and add, in its place, the reference "§ 302.7".

PART 291—[AMENDED]

11. The authority citation for part 291 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 415, 417.

§ 291.10 [Amended]

12. In § 291.10, remove the reference "subpart Q" and add, in its place, the reference "subpart B".

PART 300—[AMENDED]

13. The authority citation for part 300 is revised to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465.

§ 300.2 [Amended]

14. In § 300.2(b)(2), remove the reference "302.22a" and add, in its place, the references "302.2 and 302.18".

15. In § 300.2(b)(4)(i), remove the reference "§ 302.24" and add, in its place, the references "§§ 302.17–302.38".

16. In § 300.2(c)(10), remove the reference "§ 302.18" both times it occurs, and add, in its place, the reference "§ 302.11" both times it occurs.

17. In § 300.2(d), remove the references "Rules 14 and 18, §§ 302.14 and 302.18" and add, in their place, the references "Rule 11, § 302.11".

§ 302.18 [Redesignated in part and revised]

18. Paragraph (a–1) of § 302.18 is redesignated as § 300.18 and revised to read as follows:

§ 300.18 Motions to disqualify DOT employee in review of hearing matters.

In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification in the form and within the periods prescribed in § 302.11 of this chapter. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions must be filed on or before the date answers are due pursuant to § 302.32. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions must be filed on or before the date briefs are due pursuant to § 302.35 or § 302.218, as applicable. Failure to file a timely motion will be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee must be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

§ 300.20 [Amended]

19. In § 300.20(c), remove the reference "subpart B", and add, in its place, the reference "subpart D".

PART 303—[AMENDED]

20. The authority citation for part 303 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 413, 417.

§ 303.04 [Amended]

21. In § 303.04(b), remove the reference "302.19" and add, in its place, the reference "302.25".

§ 303.45 [Amended]

22. In § 303.45(c), remove the reference "§ 302.15" and add, in its place, the reference "302.20".

PART 305—[AMENDED]

23. The authority citation for part 305 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 417, 461; 5 U.S.C. 555, 556.

§ 305.7 [Amended]

24. In § 305.7(b), remove the references "§ 302.21" both times it occurs, and "§ 302.8" both times it occurs, and add, in their place, the references "§ 302.7" and "§ 302.27(c)", respectively.

§ 305.10 [Amended]

25. In § 305.10, remove the references "§§ 302.19(g) and 302.39" and add, in their place, the references "§§ 302.25(g) and 302.12".

§ 305.11 [Amended]

26. In § 305.11, remove the reference "subpart B" and add, in its place, the reference "subpart D".

§ 305.12 [Amended]

27. In § 305.12, remove the reference "Rule 202" and add, in its place, the reference "Rule 4(b)".

PART 377—[AMENDED]

28. The authority citation for part 377 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 461; 5 U.S.C. 558, 559.

§ 377.10 [Amended]

29. In § 377.10(c)(4), remove the references "§§ 302.909 and 399.18" and add, in their place, the reference "§ 399.18".

PART 385—[AMENDED]

30. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. subtitle I, chapters 401, 411, 413, 415, 417.

§§ 385.10, 385.11 [Amended]

31. In §§ 385.10(b) and 385.11(b), remove the reference "Subpart B" and add, in its place, the reference "Subpart D".

§ 385.19 [Amended]

32. In § 385.19(i), remove the reference "§ 302.39" and add, in its place, the reference "§ 302.12".

§ 385.31 [Amended]

33. In paragraphs (a) and (e) of § 385.31, remove the words "ten (10)" and add, in their place, the words "seven (7)"; in § 302.31(c), remove the references "(a), (b), and (c),".

PART 399—[AMENDED]

34. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

§ 399.18 [Amended]

35. In § 399.18, remove the words "§ 302.909 of this chapter (Procedural Regulations) and".

36. Part 302 is revised to read as follows:

PART 302—RULES OF PRACTICE IN PROCEEDINGS

Sec.

302.1 Applicability and description of part.
302.2 Definitions.

Subpart A—Rules of General Applicability

302.3 Filing of documents.
302.4 General requirements as to documents.
302.5 Amendment of documents.
302.6 Responsive documents.
302.7 Service of documents.
302.8 Computation of time.
302.9 Continuances and extensions of time.
302.10 Parties.
302.11 Motions.
302.12 Objections to public disclosure of information.
302.13 Consolidation of proceedings.
302.14 Petitions for reconsideration.

Non-Hearing Proceedings

302.15 Non-hearing procedures.

Rulemaking Proceedings

302.16 Petitions for rulemaking.

Oral Evidentiary Hearing Proceedings

302.17 Administrative law judges.
302.18 DOT decisionmaker.
302.19 Participation by persons not parties.
302.20 Formal intervention.
302.21 Appearances.
302.22 Prehearing conference.
302.23 Hearing.
302.24 Evidence.
302.25 Subpoenas.
302.26 Depositions.
302.27 Rights of witnesses; attendance fees and mileage.
302.28 Transcripts of hearings.
302.29 Argument before the administrative law judge.
302.30 Briefs to the administrative law judge.
302.31 Initial and recommended decisions; certification of the record.
302.32 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.
302.33 Tentative decision of the DOT decisionmaker.
302.34 Exceptions to tentative decisions of the DOT decisionmaker.
302.35 Briefs to the DOT decisionmaker.
302.36 Oral argument before the DOT decisionmaker.
302.37 Waiver of procedural steps after hearing.
302.38 Final decision of the DOT decisionmaker.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

302.201 Applicability.
302.202 Contents of applications.
302.203 Service of documents.
302.204 Responsive documents.
302.205 Economic data and other facts.
302.206 Verification.

Disposition of Applications

302.207 Cases to be decided on written submissions.
302.208 Petitions for oral presentation or judge's decision.
302.209 Procedures for deferral of applications.
302.210 Disposition of applications; orders establishing further procedures.
302.211 Procedures in certificate cases involving initial or continuing fitness.
302.212 Procedures in certificate cases involving international routes.
302.213 Procedures in foreign air carrier permit cases.
302.214 Oral evidentiary hearing.
302.215 Briefs to the administrative law judge.
302.216 Administrative law judge's initial or recommended decision.
302.217 Exceptions to administrative law judge's initial or recommended decision.
302.218 Briefs to the DOT decisionmaker.
302.219 Oral argument before the DOT decisionmaker.
302.220 Final decision of the Department.

Subpart C—Rules Applicable to Exemption and Certain Other Proceedings

302.301 Applicability.
302.302 Filing of applications.
302.303 Contents of applications.
302.304 Service of documents.
302.305 Posting of applications.
302.306 Dismissal or rejection of incomplete applications.
302.307 Answers to applications.
302.308 Replies to answers.
302.309 Requests for hearing.
302.310 Exemptions on the Department's initiative.
302.311 Emergency exemptions..

Subpart D—Rules Applicable to Enforcement Proceedings

302.401 Applicability.
302.402 Definitions.
302.403 Informal complaints.
302.404 Formal complaints.
302.405 Responsive documents.
302.406 Procedure for responding to formal complaints.
302.407 Commencement of enforcement proceeding.
302.408 Answers and replies.
302.409 Default.
302.410 Consolidation of proceedings.
302.411 Motions to dismiss and for summary judgment.
302.412 Admissions as to facts and documents.
302.413 Evidence of previous violations.
302.414 Prehearing conference.
302.415 Hearing.
302.416 Appearances by persons not parties.
302.417 Settlement of proceedings.
302.418 Motions for immediate suspension of operating authority pendente lite.
302.419 Modification or dissolution of enforcement actions.
302.420 Saving clause.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

302.501 Applicability.
302.502 Institution of proceedings.
302.503 Contents and service of petition or complaint.
302.504 Dismissal of petition or complaint.
302.505 Order of investigation.
302.506 Complaints requesting suspension of tariffs; answers to such complaints.
302.507 Computing time for filing complaints.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

302.601 Applicability.
302.602 Complaint by a carrier; request for determination by an airport owner or operator.
302.603 Contents of complaint or request for determination.

302.604 Answers to a complaint or request for determination.
302.605 Replies.
302.606 Review of complaints or requests for determination.
302.607 Decision by administrative law judge.
302.608 Petitions for discretionary review.
302.609 Completion of proceedings.
302.610 Final order.

Subpart G—Rules Applicable to Mail Rate Proceedings and Mail Contracts

302.701 Applicability.

Final Mail Rate Proceedings

302.702 Institution of proceedings.
302.703 Order to show cause or instituting a hearing.
302.704 Objections and answers to order to show cause.
302.705 Further procedures.
302.706 Hearing.

Provision for Temporary Rate

302.707 Procedure for fixing temporary mail rates.

Informal Mail Rate Conference Procedure

302.708 Invocation of procedure.
302.709 Scope of conferences.
302.710 Participants in conferences.
302.711 Conditions upon participation.
302.712 Information to be requested from an air carrier.
302.713 DOT analysis of data for submission of answers thereto.
302.714 Availability of data to the U.S. Postal Service.
302.715 Post-conference procedure.
302.716 Effect of conference agreements.
302.717 Waiver of participant conditions.

Processing Contracts for the Carriage of Mail in Foreign Air Transportation

302.718 Filing.
302.719 Explanation and data supporting the contract.
302.720 Service.
302.721 Complaints.
302.722 Answers to complaints.
302.723 Further procedures.
302.724 Petitions for reconsideration.

Appendix A to Part 302—Index to Rules of Practice

Authority: 39 U.S.C. 5402; 42 U.S.C., 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, 471.

§ 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all aviation economic proceedings before the Department whether instituted by order of the Department or by the filing with the Department of an application, complaint, petition, motion, or other authorized or required document. This part also contains delegations to administrative law judges and to the DOT decisionmaker of the Department's function to render the agency decision in certain cases and the procedures for review of those decisions. This part applies unless otherwise specified by order of the Department.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to Subtitle VII of Title 49 of the United States Code (Transportation) ("the Statute"), and to the substantive rules, regulations and orders of the Department relating to the proceeding. Wherever there is any conflict between one of the general rules in subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

(c) *Reference to part and method of citing rules.* This part may be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, may be referred to as a "Rule". The number of each rule need include only the numbers and letters at the right of the decimal point. For example, "302.7 *Service of documents*", may be referred to as "Rule 7":

§ 302.2 Definitions.

Administrative law judge as used in this part means an administrative law judge appointed pursuant to 5 U.S.C. 3105.

DOT Decisionmaker as used in this part is the official authorized to issue final decisions of the Department as set forth in § 302.18. This includes the Assistant Secretary for Aviation and International Affairs, the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, the Deputy Secretary, and the Secretary.

Hearing case or *oral hearing case* means any proceeding that the Department has determined will be conducted on the record using oral evidentiary procedures subject to 5 U.S.C. 556 and 557.

Non-hearing case means any proceeding not involving oral evidentiary procedures.

Party as used in this part includes the person initiating a proceeding, such as an applicant, complainant, or petitioner; any person filing an answer to such filing; and any other persons as set forth in § 302.10.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* (1) Documents required by any section of this part to be filed with the Department must be filed with Department of Transportation Dockets at the Department's offices in Washington, DC. Documents may be filed either on paper or by electronic means using the process set at the DOT Dockets Management System (DMS) internet website.

(2) Such documents will be deemed to be filed on the date on which they are actually received by the Department. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays. Electronic filings may be made at any time under the process set by the Department. Electronic filings that are received after the specified Dockets Facility hours shall be deemed to be constructively received on the next Dockets Facility business day.

(b) *Formal specifications of documents.* (1) Documents filed under this part must be on white paper not larger than 8½ by 11 inches, including any tables, charts and other documents that may be included. Ink must be black to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations which may be single-spaced) using type not smaller than 12 point. The left margin must be at least 1½ inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date and all subsequent pages must bear a page number and abbreviated heading. In order to facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.35 contains additional requirements as to the contents and style of briefs.

(2) Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes

or other indications must be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original, along with the number of true copies set forth below for each type of proceeding, must be filed with Department of Transportation Dockets. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature. Electronic filers need only submit one copy of the document, which must conform to the submission requirements given in the electronic filing instructions at the specified DOT DMS internet website and in this part, as applicable.

	Number of copies
Airport Fees	9
Agreements:	
International Air Transport Association (IATA)	6
Other (under 49 U.S.C. 41309)	9
Complaints:	
Enforcement	5
Mail Contracts	4
Rates, Fares and Charges in Foreign Air Transportation	6
Unfair Practices in Foreign Air Transportation	7
Employee Protection Program (14 CFR 314)	7
Exemptions:	
Computer Reservations Systems (14 CFR 255)	8
Slot Exemptions (under 49 U.S.C. 41714)	7
Tariffs (under 49 U.S.C. Chapter 415 or 14 CFR 221)	5
Other (under 49 U.S.C. 40109)	7
Foreign Air Carrier Permits/Exemptions	7
International Authority for U.S. Air Carriers (certificates, exemptions, allocation of limited frequencies, designations, or charters)	7
Mail Rate Proceedings	4
Name Change/Trade Name Registrations	4
Suspension of Service (14 CFR 323)	4
Tariff Justifications to exceed Standard International Fare Level	6
U.S. Air Carrier Certificates (involving Initial or Continuing Fitness)	6
Other matters	3

(d) *Prohibition and dismissal of certain documents.* (1) No document that is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters will be accepted for filing by the Department, and will not be physically incorporated in the docket of the proceeding, unless:

(i) Such document and its filing by the person submitting it have been expressly authorized or required in the Statute, any other law, this part, other Department regulations, or any order, notice or other document issued by the DOT decisionmaker, the Chief Administrative Law Judge or an administrative law judge assigned to the proceeding, and

(ii) Such document complies with each of the requirements of this paragraph and 302.7, and for those electronically filed, the requirements specified at the DOT DMS internet website, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication; *Provided, however,* That for good cause shown, pleadings of any public body or civic organization or comments concerning tariff agreements that have not been docketed, may be submitted in the form of a letter.

(2) If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own initiative, or on motion of any party, may reject, strike or dismiss such document, or require its amendment.

(e) *Official docket copy.* With respect to all documents filed under this part, the electronic record produced by the Department shall thereafter be the official docket copy of the document and any subsequent copies generated by the Department's electronic records system will be usable for admission as record copies in any proceeding before the Department.

(f) *Retention of documents by the Department.* All documents filed with or presented to the Department Dockets will be retained in the permanent docket of the Department of Transportation.

§ 302.4 General requirements as to documents.

(a) *Contents.* (1) In case there is no rule, regulation, or order of the Department that prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required, such document shall be accompanied by an Energy Statement, in conformity with the provisions of part 313 of this chapter.

(2)(i) Each document must include with or provide on its first page:

(A) The docket title and subject;

(B) The relevant operating administration before which the application or request is filed;

(C) The identity of the filer and its filing agent, if applicable;

(D) The name and mailing address of the designated agent for service of any documents filed in the proceeding, along with the telephone and facsimile numbers and, if available, electronic mail address of that person; and

(E) The title of the specific action being requested.

(ii) Department of Transportation Dockets has an Expedited Processing Sheet that filers can use to assist in preparing this index for submission of paper documents, and an electronic registration for electronic filing at the DOT DMS internet website.

(3) All documents filed under this part consisting of twenty (20) or more pages must contain a subject index of the matter in such document, with page references.

(b) *Verification:* The following certification shall be included with every pleading filed under this part: "Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be a principal owner, senior officer, or internal counsel of the pleader*], in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both." In addition, electronic subscription requirements shall be those specified at the DOT DMS internet website.

§ 302.5 Amendment of documents.

(a) An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to the issuance of an order establishing further procedures, disposing of the application, or setting the case for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.11.

(b) Except as otherwise provided, if properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) *Answers.* Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any person. In hearing cases, answers may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required.

(b) *Further responsive documents.* Except as otherwise provided, a reply to an answer, reply to a reply, or any further responsive document is not authorized.

(c) *Motions for leave to file otherwise unauthorized documents.* (1) The Department will accept otherwise unauthorized documents for filing only if leave has been obtained from the DOT decisionmaker or, if applicable, the administrative law judge, on written motion and for good cause shown.

(2) Such motions shall contain a concise statement of the matters relied upon as good cause and shall be attached to the pleading or other document for which leave to file is sought, or the written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(3) Where unauthorized responsive documents are not permitted, all new matter contained in an answer filed pursuant to paragraph (a) of this section shall be deemed controverted.

(d) *Time for filing.* Except as otherwise provided, an answer, motion, or other further responsive document shall be filed within seven (7) days after service of any document, order, or ruling to which the proposed filing is responsive and must be served on all parties to the proceeding.

§ 302.7 Service of documents.

(a) *Who makes service.* (1) *The Department.* Formal complaints, notices, orders, and similar documents issued by the Department will be served by the Department upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with the Department shall be served by such party or other person upon all parties to the proceeding in which it is filed; including, where applicable, all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are filed. The Department may require additional service of any document(s).

(b) *How service may be made.* Service may be made by first class mail, express mail, priority mail, registered or certified mail, facsimile transmission, personal delivery, or by electronic mail. The Department may prescribe other means of service by order or notice. The means of service selected must be done in such manner so as to have the same attributes as section 46103 of the Statute, which provides for service of notices and processes in a proceeding by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4(a)(2)(iv) once a proceeding has been commenced.

(d) *Where service may be made.* Service shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, or at the post office or electronic address or facsimile number stated for a person designated to receive service pursuant to § 302.4(a)(2)(iv).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) A certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile numbers or electronic mail address to which the document was sent, and stating that no indication was received that any transmission had failed. In the event of an electronic transmission failure, any other authorized means of service may be substituted and the appropriate proof of service provided.

(f) *Date of service.* The date of service by post office or electronic mail is the date of mailing. Whenever proof of service by personal delivery or facsimile transmission is made, the date of such delivery or facsimile transmission shall be the date of service.

(g) *Freely Associated State Proceedings.* In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved. This requirement shall apply to all

proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

§ 302.8 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Department, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or fewer, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation, unless otherwise specified by the DOT decisionmaker or the administrative law judge assigned to the proceeding, as the case may be.

§ 302.9 Continuances and extensions of time.

(a) Whenever a party has the right or obligation to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker or the administrative law judge assigned to the proceeding, as appropriate, may:

(1) Before the expiration of the prescribed period, with or without notice, extend such period, or

(2) Upon motion, permit the act to be done after the expiration of the specified period, where good cause for the failure to act on time is clearly shown.

(b) Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.10 Parties.

(a) In addition to the persons set forth in § 302.2, in hearing cases, parties shall include Department staff designated to participate in the proceeding and any persons authorized to intervene or granted permission to participate in accordance with §§ 302.19 and 302.20. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these governments or their designated authorities shall be a party.

(b) Upon motion and for good cause shown, the Department may order a substitution of parties, except that in case of the death of a party, substitution may be ordered without the filing of a motion.

(c) An association composed entirely or in part of air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply if the association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department. Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the grounds of significant divergence of interest or position within the association.

§ 302.11 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. If an administrative law judge is assigned to a proceeding and before the issuance of a recommended or initial decision or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times, motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein. This paragraph should not be construed as authorizing motions in the nature of petitions for reconsideration.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state their grounds and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers to them, and rulings on them, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except where incorporation of a motion in another document is specifically authorized by the Department, or where a document is filed that requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately titled and identified to indicate that it incorporates a motion; otherwise, the motion will be disregarded.

(c) *Answers to motions.* Within seven (7) days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Requests for expedition.* Any interested person may by motion request expedition of any proceeding or file an answer in support of or in opposition to such motions.

(f) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time to take action fixed by this part or by any order of the Department or of an administrative law judge (or any extension granted thereunder).

(g) *Disposition of motions.* The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if the administrative law judge finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, the administrative law judge may refer such motion to the DOT decisionmaker for decision.

(h) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative

law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on a motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding or at any other appropriate time irrespective of the filing of an appeal or any action taken on it.

§ 302.12 Objections to public disclosure of information.

(a) *Generally.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR 7.1 *et seq.*)

(b) *Information contained in written documents.* Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to the provisions of the Statute, or any Department rule, regulation, or order, shall segregate, or request the segregation of, such information into a separate submission and shall file it separately in a sealed envelope, bearing the caption of the enclosed submission, and the notation "Confidential Treatment Requested Under § 302.12." At the time of filing such submission (or, when the objection is made by a person who is not the filer, within five (5) days after the filing of such submission), the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) or (f) of this section, as appropriate. Notwithstanding any other provision of this section, copies of the filed submission and of the motion need not be served upon any other party unless so ordered by the Department.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and representative of each party as the administrative law judge or the person before whom the deposition is being taken shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Confidential Treatment Requested Under § 302.12 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Department.

(d) *Form of motion.* Motions to withhold from public disclosure information covered by paragraphs (b) and (c) of this section shall be filed with the Department in accordance with the following procedure:

(1) The motion shall include:

(i) An index listing the information or document sought to be withheld by an identifying number, and including its title, description and number of pages, and, if relevant, the specific location within a document;

(ii) A statement explaining how and why the information falls within one or more of the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)–(9)); and

(iii) A statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(2) Such motion shall be filed with the person conducting the proceeding, or with the person with whom said application, report, or submission is required to be filed. Such motion will be denied when the complete justification required by this paragraph is not provided.

(3) During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue.

(e) *Conditions of disclosure.* The order, notice or other action of the Department containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which ruling shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the Department's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by the Department, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the Department's order.

(f) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department or agency, or representative thereof, under paragraph (b) or (c) of this section, the department or agency making such objection shall be exempted from the provisions of paragraphs (b), (c), and (d) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, agency, or representative thereof may, if it so desires, file a memorandum setting forth the reasons why it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

§ 302.13 Consolidation of proceedings.

(a) *Initiation of consolidations.* The Department, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although the Department may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and the Department will not undertake to search its docket for all applications that might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless the Department has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed within 21 days of the original application in the case of international route awards under section 41102 of the Statute (*see* § 302.212), or, where a proceeding has been set for hearing before an administrative law judge, not later than the prehearing conference in the proceeding with which consolidation or

contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or consideration of issues that enlarge, expand, or otherwise change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion that is not timely filed, or that does not relate to an application pending at such time, shall be dismissed unless the movant shall clearly show good cause for failure to file such motion or application on time.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with the Department, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

§ 302.14 Petitions for reconsideration.

(a) *Department orders subject to reconsideration; time for filing.* (1) Unless an order or a rule of the Department specifically provides otherwise:

(i) Any interested person may file a petition for reconsideration of any interlocutory order issued by the Department that institutes a proceeding; and

(ii) Any party to a proceeding may file a petition for reconsideration, rehearing, or reargument of final orders issued by the Department (*See* § 302.38), or an interlocutory order that defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department.

(2) Unless otherwise provided, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for the movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto that exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by Department of Transportation Dockets.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition that has been considered or denied will not be entertained.

Non-Hearing Proceedings

§ 302.15 Non-hearing procedures.

In cases where oral evidentiary hearing procedures will not be used, § 302.17 through § 302.37, relating to hearing procedures, shall not be applicable except to the extent that the DOT decisionmaker shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the public interest. References in these and other sections of this part to powers or actions by administrative law judges shall not apply.

Rulemaking Proceedings

§ 302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 *et seq.*).

Oral Evidentiary Hearing Proceedings

§ 302.17 Administrative law judges.

(a) *Powers and delegation of authority.* (1) An administrative law judge shall have the following powers, in addition to any others specified in this part:

(i) To give notice concerning and to hold hearings;

(ii) To administer oaths and affirmations;

(iii) To examine witnesses;

(iv) To issue subpoenas and to take or cause depositions to be taken;

(v) To rule upon offers of proof and to receive relevant evidence;

(vi) To regulate the course and conduct of the hearing;

(vii) To hold conferences before or during the hearing for the settlement or simplification of issues;

(viii) To rule on motions and to dispose of procedural requests or similar matters;

(ix) To make initial or recommended decisions as provided in § 302.31;

(x) To take any other action authorized by this part or by the Statute.

(2) The administrative law judge shall have the power to take any other action authorized by part 385 of this chapter or by the Administrative Procedure Act.

(3) The administrative law judge assigned to a particular case is delegated the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without an initial or recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 41307 of the Statute. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters that have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.11.

(4) The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(b) *Disqualification.* An administrative law judge shall withdraw

from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

§ 302.18 DOT decisionmaker.

(a) *Assistant Secretary for Aviation and International Affairs.* Except as provided in paragraphs (b) and (c) of this section, the Assistant Secretary for Aviation and International Affairs is the DOT decisionmaker. The Assistant Secretary shall have all of the powers set forth in § 302.17(a)(1) and those additional powers delegated by the Secretary. The Assistant Secretary may delegate this authority in appropriate non-hearing cases to subordinate officials.

(b) *Oral hearing cases assigned to the senior career official.* Carrier selection proceedings for international route authority that are set for oral hearing and such other oral hearing cases as the Secretary deems appropriate will be assigned to the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, who will serve as the DOT decisionmaker. In all such cases, the administrative law judge shall render a recommended decision to the senior career official, who shall have all of the powers set forth in § 302.17(a)(1) and those additional powers delegated by the Secretary.

(1) Decisions of the senior career official are subject to review by, and at the discretion of, the Assistant Secretary for Aviation and International Affairs. Petitions for discretionary review of decisions of the senior career official will not be entertained. A notice of review by the Assistant Secretary will establish the procedures for review. Unless a notice of review is issued, the decision of the senior career official will be issued as a final decision of the Department and will be served fourteen (14) days after it is adopted by the senior career official.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to § 302.14. Such a petition shall state clearly the basis for requesting reconsideration and shall specify any questions of national transportation policy that may be involved. The Assistant Secretary will either grant or deny the petition.

(3) Upon review or reconsideration, the Assistant Secretary may either affirm the decision or remand the decision to the senior career official for further action consistent with such order of remand.

(4) Subject to the provisions of paragraphs (b)(1) through (3) of this section, final decisions of the senior career official will be transmitted to the President of the United States when required under 49 U.S.C. 41307.

(c) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise any authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

§ 302.19 Participation by persons not parties.

Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence that is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements shall be filed and served on all parties prior to the close of the hearing.

§ 302.20 Formal intervention.

(a) *Who may intervene.* Any person who has a statutory right to be made a party to an oral evidentiary hearing proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the public interest and will not unduly delay the conduct of such proceeding may be permitted to intervene.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered and will be liberally interpreted to facilitate the effective participation by members of the public in Department proceedings:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order that may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issues or delay the proceeding.

(c) *Petition to intervene.* (1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by the Department:

(i) A petition to intervene shall be filed with the Department prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(ii) A petition to intervene filed by a city, other public body, or a chamber of commerce shall be filed with the Department not later than the last day prior to the beginning of the hearing.

(iii) A petition to intervene that is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Department that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

§ 302.21 Appearances.

(a) Any party to a proceeding may appear and be heard in person or by a designated representative.

(b) No register of persons who may practice before the Department is maintained and no application for admission to practice is required.

(c) Any person practicing or desiring to practice before the Department may, upon hearing and good cause shown, be suspended or barred from practicing.

§ 302.22 Prehearing conference.

(a) *Purpose and scope of conference.* At the discretion of the administrative law judge, a prehearing conference may be called prior to any hearing. Written notice of the prehearing conference shall be sent by the administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define the issues and the scope of the proceeding, to secure statements of the positions of the parties and amendments to the pleadings, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters that the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuineness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing; and

(8) Use of electronic media as a basis for exchange of briefs, hearing transcripts and exhibits, etc., in addition to the official record copy.

(b) *Actions during prehearing conference.* The administrative law judge may require a further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to a hearing by subpoena issued in accordance with the provisions of § 302.25 as though at a hearing. Applications for the production prior to hearing of documents in the Department's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.25(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also, on his or her own initiative or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(c) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection that has not been met by a revision of the report if the exceptions are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.23 Hearing.

The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

§ 302.24 Evidence.

(a) *Presenting evidence.* Presenting evidence at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice, and shall not be unduly repetitious. Evidence shall be presented in such form by all parties as the administrative law judge may direct.

(b) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(c) *Exhibits.* When exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing. Copies of exhibits may, at the discretion of the administrative law judge or the DOT decisionmaker, be furnished by use of electronic media in lieu of or in addition to a paper record copy.

(d) *Substitution of copies for original exhibits.* In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(e) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such submission will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the submission, and to offer in evidence in like manner other portions of the exhibit.

(f) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified;

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker;

(3) The parties represented at the hearing stipulate upon the record that

such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (f)(1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the requirement in paragraph (f)(3) of this section with the consent of the parties.

(g) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and the administrative law judge to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to subpart D of this part. Each such category shall include any document antedating the final Department decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

(i) Air carrier certificates or applications therefor, together with any requests for amendment, and pleadings responding to applications when properly filed.

(ii) All Form 41 reports required to be filed by air carriers with the Department.

(iii) Reports of Traffic and Financial Data of all U.S. Air Carriers issued by the Civil Aeronautics Board (CAB) or the Department.

(iv) Airline Traffic Surveys and Passenger Origin-Destination Surveys, Domestic and International, compiled by the CAB or the Department and published and/or made available either to the public or to parties in proceedings.

(v) Compilations of data relating to competition in the airline industry and made available to the public by the CAB or the Department, such as the 1990 Airline Competition Study.

(vi) Passenger, mail, express, and freight data submitted to the CAB or the Department as part of ER–586 Service Segment Data by U.S. carriers, or similar data submitted to the Department by U.S. air carriers (T–100) or by foreign air carriers (T–100F) that is not confidential.

(vii) All tariffs, including the electronic versions, and amendments thereof, of all air carriers, on file with the Department.

(viii) Service Mail Pay and Subsidy for U.S. Certificated Air Carriers published by the CAB and any supplemental data and subsequent issues published by the CAB or the Department.

(ix) Airport Activity Statistics of Certificated Air Carriers compiled and published by the Federal Aviation Administration (FAA) or the Department.

(x) Air Traffic Activity Data issued by the FAA.

(xi) National Plan of Integrated Airport Systems (NPIAS) issued by the FAA.

(xii) Airport Facilities Directory, Form 5010, issued by the FAA.

(xiii) The Airman's Information Manual issued by the FAA.

(xiv) ICAO Statistical Summary, Preliminary Issues and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by ICAO, Montreal, Canada, with all changes and additions.

(xv) Monthly, quarterly and annual reports of the Immigration and Naturalization Service, U.S. Department of Justice.

(xvi) All forms and reports required by the U.S. Postal Service to be filed by air carriers authorized to transport mail.

(xvii) All orders of the Postmaster General designating schedules for the transportation of mail.

(xviii) Publications of the Bureau of the Census of the U.S. Department of Commerce (DOC) relating, but not necessarily limited, to population, manufacturing, business, statistics, and any yearbooks, abstracts, or similar publications published by DOC.

(xix) ABC World Airways Guide and all Official Airline Guides, including the North American, Worldwide, All-Cargo and quick reference editions, including electronic versions.

(xx) Official Guide of the Railways and Russell's Official National Motor Coach Guide.

(xxi) The Rand McNally Commercial Atlas and Marketing Guide, and the Rand McNally Road Atlas, United States, Canada, and Mexico.

(xxii) Survey of Buying Power published by Sales Management Magazine.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (g)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (g)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters that have been noticed.

(h) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge or the DOT decisionmaker.

(i) *Exceptions.* Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(j) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence that counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 302.25 Subpoenas.

(a) An application for a subpoena requiring the attendance of a witness at a hearing or the production of documentary evidence may be made without notice by any party to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge, for action.

(b) An application for a subpoena shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge.

(c) All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpoena sought that,

in the case of evidence, shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible, or, in the case of a witness, the name of the witness and a general description of the matters concerning which the witness will be asked to testify.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpoena shall issue the subpoena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpoena.

(e) Where it appears during the course of a proceeding that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge, Chief Administrative Law Judge or DOT decisionmaker may issue on his or her own initiative a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpoenas issued under this section shall be served upon the person to whom directed in accordance with § 302.7(b). Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the administrative law judge or, in the event an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge for action. If the person to whom the motion to modify or quash the subpoena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the Chief Administrative Law Judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. The attendance of DOT employees and the production of documentary evidence in their custody are governed by 49 CFR Parts 9 and 7, respectively.

§ 302.26 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned to a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing,

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or Chief Administrative Law Judge, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the administrative law judge, the DOT decisionmaker, or the Chief Administrative Law Judge, as the case may be, may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the designated officer shall include argument or debate. Objections to questions or evidence shall be noted by the designated officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the designated officer shall not be deemed waived unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the designated officer, or under his or her direction, after which the deposition shall be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the designated officer. If the deposition is not signed by the witness, the designated officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to Department of Transportation Dockets and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will be authorized only if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories as he or she desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a reporter, and the designated officer shall be present at the examination of the witness, which fact shall be certified by the designated officer, who shall ask the interrogatories and cross-interrogatories to the witness

in their order and reduce the testimony to writing in the witness's own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the reporter, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.27 Rights of witnesses; attendance fees and mileage.

(a) Any person appearing as a witness in any proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by that counsel after other questioning.

(b) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may retain, or, on payment of lawfully prescribed costs, procure, a copy of any document so submitted or a copy of any transcript made of such testimony.

(c) No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraphs (c)(1) and (2) of this section; *Provided,* That a witness summoned at the instance of the Department or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same per diem, subsistence, and mileage fees paid to witnesses for like service in the courts of the United States that are in effect at the time of travel; *Provided, That* no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 41511 of the Statute shall be entitled to any fees or mileage; *And provided further,* That such fees and mileage shall not be applicable for witnesses summoned to testify in Alaska, and that, in Alaska, where permitted by section 41511 of the Statute, the witness may, at his or her option, accept a pass for travel by air. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence, and mileage from the Government before the close of the proceedings that they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence, or mileage from the Government.

(2) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

§ 302.28 Transcripts of hearings.

(a) Hearings shall be recorded and transcribed under supervision of the administrative law judge, by a reporting firm under contract with the Department. Copies of the transcript that may, at the discretion of the administrative law judge, be furnished by use of electronic media in addition to the official copy, shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(b) The administrative law judge shall determine whether "ordinary transcript" or "daily transcript" (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and the Department will pay the reporting firm the cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(1) The nature of the proceeding itself;

(2) The DOT decisionmaker's needs as well as the reasonable needs of the parties;

(3) The cost to the Department; and

(4) The requirements of a fair hearing.

(c) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with the Department, the reporting firm will be obligated to furnish to the Department daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(d) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which the Department currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(e) Copies of transcripts ordered by parties other than the Department shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, electronic media, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(f) Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with Department of Transportation Dockets, within ten (10) days after receipt of the completed transcript by the Department. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the reporter's record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

§ 302.29 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral argument, and may impose such time limits on the argument as he or she may determine appropriate. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Department decisionmaker for consideration in deciding the case.

§ 302.30 Briefs to the administrative law judge.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs which may include proposed findings of fact and conclusions of law that shall contain exact references to the record and authorities relied upon.

§ 302.31 Initial and recommended decisions; certification of the record.

(a) *Action by administrative law judge after hearing.* Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of briefs which may include proposed findings of fact and conclusions of law, if any, the administrative law judge shall take the following action:

(1) *Initial decision.* If the proceeding does not involve foreign air transportation, the administrative law judge shall render an "initial decision." Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(2) *Recommended decision.* In cases where the action of the Department involves foreign air transportation and is subject to review by the President of the United States pursuant to section 41307 of the Statute, the administrative law judge shall render a "recommended decision." Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render a decision but shall make a recommendation to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act (5 U.S.C. 558(a)) unless advised by the DOT decisionmaker that he or she intends to issue a tentative decision.

(c) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every such decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (d) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file with the DOT decisionmaker briefs which may include proposed findings of fact and conclusions of law.

(d) Unless a petition for discretionary review is filed pursuant to § 302.32, exceptions are filed pursuant to § 302.217, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department thirty (30) days after service thereof; in the case of a recommended decision, that decision shall be transmitted to the President of the United States under 49 U.S.C. 41307. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision or the transmission of the recommended decision is stayed until the further order of the DOT decisionmaker.

§ 302.32 Petitions for discretionary review of initial or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but is at the sole discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within twenty-one (21) days after service thereof, unless the DOT decisionmaker sets a different period for filing.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, the Department's rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but that the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker, petitions shall not exceed twenty (20) pages including appendices and other papers physically attached to the petition.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answers.* Within fifteen (15) days after service of a petition for discretionary review, any party may file and serve an answer of not more than fifteen (15) pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than twenty (20) pages.

(c) *Orders declining review.* The DOT decisionmaker's order declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of the Department. A petition for reconsideration of a Department

order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Department in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may take review of an initial or recommended decision upon petition or on his or her own initiative or both. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review that will:

(i) Specify the issues to which review will be limited. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.35, and considered by the DOT decisionmaker;

(ii) Specify the portions of the administrative law judge's decision, if any, that are to be stayed as well as the effective date of the remaining portions thereof; and

(iii) Designate the parties to the review proceeding.

§ 302.33 Tentative decision of the DOT decisionmaker.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any briefs submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision and briefs, if any, in support of or in opposition to the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed, it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) The DOT decisionmaker may, in his or her discretion, omit a tentative decision in proceedings under subpart B. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.18.

§ 302.34 Exceptions to tentative decisions of the DOT decisionmaker.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto; *Provided, however,* That exceptions shall specify any matters of law, fact, or policy that were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion that is not expressly made the subject of an exception in compliance with the provisions of this section; *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.35 Briefs to the DOT decisionmaker.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.32(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within thirty (30) days after date of service of the order granting discretionary review unless otherwise specified in the order. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs.* (1) *Contents.* Each brief shall discuss every point of law, fact, or precedent that the party submitting it is entitled to raise and that it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed five (5) pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations, or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved. Copies of briefs may be furnished by use of electronic media in a format acceptable to the Department and the parties.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading; *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with Department of Transportation Dockets a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length.* Except by permission or direction of the DOT decisionmaker, briefs shall not exceed fifty (50) pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case "map" means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation.

§ 302.36 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he or she shall request leave to make such argument in his or her exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and, if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be offered to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued and shall be served on all parties to the proceeding with four (4) copies transmitted to Department of Transportation Dockets at least five (5) calendar days in advance of the argument.

§ 302.37 Waiver of procedural steps after hearing.

The parties to any proceeding may agree to waive any one or more of the procedural steps provided in § 302.29 through § 302.36.

§ 302.38 Final decision of the DOT Decisionmaker.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order that will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed "final orders" within the purview of § 302.14(a), in the manner provided by § 302.18.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

§ 302.201 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings on:

(1) U.S. air carrier certificates of public convenience and necessity and U.S. all-cargo air service certificates under Chapter 411 of the Statute, including renewals, amendments, modifications, suspensions and transfers of such certificates.

(2) Foreign air carrier permits under Chapter 413 of the Statute, including renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.202 Contents of applications.

(a) Certificate applications filed under this subpart shall contain the information required by part 201 of this chapter and, where applicable, part 204 of this chapter, and foreign air carrier permit applications shall contain the information required by part 211 of this chapter, along with any other information that the applicant desires the Department to notice officially.

(b) Applications shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) Applications shall include a list of the names and addresses of all persons who have been served in accordance with § 302.203.

(d) Where required, each application shall be accompanied by an Energy Statement in conformity with part 313 of this chapter.

§ 302.203 Service of documents.

(a) *General requirements.* (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and supporting documents. The notice must clearly state the authority sought and the due date for other pleadings.

(2) Applicants shall serve a complete copy of the application on the Manager of the FAA Flight Standards District Office responsible for processing the application for any FAA authority needed to conduct the proposed operations.

(3) After an order under § 302.210 has been issued, parties need only serve documents on those persons listed in the service list accompanying the order.

(4) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a)(1) of this section on all persons served by the original applicant.

(b) *Persons to be served—*

(1) *U.S. air carriers.* (i) In certificate proceedings, except for those proceedings that involve charter-only authority under §section 41102(a)(3) of the Statute:

(A) Applicants for certificates to engage in interstate air transportation and other persons who file a pleading in the docket shall serve:

(*1*) The airport authority of each airport that the applicant initially proposes to serve, and

(*2*) Any other person who has filed a pleading in the docket.

(B) Applicants for certificates to engage in foreign air transportation and other persons who file a pleading in the docket shall serve:

(*1*) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(*2*) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(*3*) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings involving charter-only authority under 41102(a)(3) of the Statute, applicants and other persons who file a pleading in the docket shall serve any other person who has filed a pleading in the docket.

(2) *Foreign air carriers.* (i) In permit proceedings, except for those proceedings involving charter-only authority, applicants and other persons who have filed a pleading in the docket shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(B) The U.S. Department of State,

(C) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(D) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority,

applicants and other persons who file a pleading in the docket shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) *Additional service.* The Department may, at its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved.

§ 302.204 Responsive documents.

(a) Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Except as otherwise provided in § 302.212(d), answers shall be filed within twenty one (21) days of the original or amended application and shall be served in accordance with § 302.203.

(b) Replies to answers shall be filed within fourteen (14) days after the filing of the answer.

(c) Persons having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.205 Economic data and other facts.

Whenever economic data and other facts are provided in any pleading, such information shall include enough detail so that final results can be obtained without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.206 Verification.

Any pleading filed under this subpart shall include a certification as provided in § 302.4(b).

Disposition of Applications

§ 302.207 Cases to be decided on written submissions.

(a) Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition as provided in § 302.208 or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required because:

(1) Use of written procedures will prejudice a party;

(2) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(3) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

(b) The standards employed in deciding cases under § 302.210(a)(1) or (5) shall be the same as the standards applied in cases decided under § 302.210(a)(4). These are the standards set forth in the Statute as interpreted and expanded upon under that Statute.

§ 302.208 Petitions for oral presentation or judge's decision.

(a) Any person may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.207 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision;

(3) An estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and

(4) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(b) Petitions for an oral hearing, oral argument, or an administrative law judge's decision shall be filed no later than the due date for answers in proceedings governed by § 302.211, § 302.212 and § 302.213, and be accompanied with the information specified in paragraphs (a)(1) and (a)(2) of this section. Filing of the information required in paragraphs (a)(3) and (a)(4) of this section may be deferred until the DOT decisionmaker has decided to hold a formal proceeding.

(c) Where a stipulation of disputed facts would eliminate the need for an oral presentation or an administrative law judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.209 Procedures for deferral of applications.

Within twenty-eight (28) days after the filing of an application under this subpart, the DOT decisionmaker may defer further processing of the application until all of the information necessary to process that application is submitted. The time periods contained in this subpart with respect to the disposition of the application shall not begin to run until the application is complete. In addition, the DOT decisionmaker may defer action on a foreign air carrier permit application for foreign policy reasons.

§ 302.210 Disposition of applications; orders establishing further procedures.

(a) *General requirements.* The DOT decisionmaker will take one of the following actions with respect to all or any portion of each application:

(1) Issue an Order to Show Cause why the application should not be granted, denied or dismissed, in whole or in part.

(2) Issue a Final Order granting the application if the DOT decisionmaker determines that there are no material issues of fact that warrant further procedures for their resolution.

(3) Issue a Final Order dismissing or rejecting the application for lack of prosecution or if the application does not comply with this subpart or is otherwise materially deficient.

(4) Issue an order setting the application for oral evidentiary hearing. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. All of the procedures set forth in § 302.214 through § 302.218 will apply unless the DOT decisionmaker decides otherwise.

(5) Begin to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker may indicate which, if any, of the procedural steps set forth in § 302.215 through § 302.219 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(b) *Additional evidence.* An order establishing further procedures under paragraph (a)(1), (4) or (5) of this section may provide for the filing of additional evidence.

(c) *Petitions for reconsideration.* Petitions for reconsideration of an order issued under this section will not be entertained except to the extent that the order dismissed or rejected all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in § 302.220 will be calculated from the date of the order reinstating the application.

§ 302.211 Procedures in certificate cases involving initial or continuing fitness.

(a) *Applicability.* This section applies to cases involving certificate authority under sections 41102 and 41103 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such certificates, where the issues involve a determination of the applicant's fitness to operate. Where such applications propose the operation of scheduled service in limited entry international markets, the provisions of § 302.212 also apply.

(b) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will take action as provided in § 302.210.

§ 302.212 Procedures in certificate cases involving international routes.

(a) *Applicability.* This section applies to cases involving certificates under section 41102 of the Statute that involve international routes, including applications to obtain, renew, amend, transfer, or remove restrictions in such certificates.

(b) *Answers to applications.* Answers shall be filed within twenty one (21) days after the filing of the original application.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application to obtain, renew, or amend a certificate filed under paragraph (a) of this section. Requests to modify the issues to be decided and to consolidate applications filed in other dockets shall be filed as a "motion to modify scope." Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within twenty one (21) days after the original application is filed. Later-filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) *Answers to conforming applications or motions to modify scope.* Answers to conforming applications and motions to modify scope filed in accordance with paragraph (b) of this section shall be filed within fourteen (14) days after the filing of the conforming application or motion. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and includes the information prescribed in § 302.202. Answers and applications shall not, however, propose the consideration of additional markets.

(e) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.213 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to cases involving foreign air carrier permits under section 41302 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) *Executive departments.* In addition to the standards set forth in § 302.207(b), the views of other executive agencies, such as the Department of State, and the Federal Aviation Administration's evaluation of the applicant's operational fitness, may be sought in determining the appropriate action on applications filed under this section.

(c) *Order establishing further procedures.* As soon as possible after the date that answers are due and all information needed to reach a decision is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.214 Oral evidentiary hearing.

If the DOT decisionmaker determines under § 302.210(a)(4) that an oral evidentiary hearing should be held, the application or applications will be set for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures. The procedures in § 302.17 to § 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.215 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) Fourteen (14) days after the close of the oral evidentiary hearing, unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) Fourteen (14) days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the DOT decisionmaker determines that some other period should be allowed.

§ 302.216 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within one hundred thirty-six (136) days after the issuance of the order establishing further procedures unless:

(1) The DOT decisionmaker, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than thirty (30) days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case, the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge fourteen (14) days after it is served. Unless exceptions are filed under § 302.217 or the DOT decisionmaker issues an order to review on his or her own initiative, an initial decision shall become effective as the final order of the Department the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.31 shall apply.

§ 302.217 Exceptions to administrative law judge's initial or recommended decision.

(a) Within seven (7) days after service of any initial or recommended decision

of an administrative law judge, any party may file exceptions to the decision with the DOT decisionmaker.

(b) If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

(c) In all other respects, the provisions of § 302.34 shall apply.

§ 302.218 Briefs to the DOT decisionmaker.

(a) In a case in which an initial or recommended decision has been served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within fourteen (14) days after service of the initial or recommended decision.

(b) In a case in which no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review of the initial or recommended decision on his or her own initiative and has specifically provided for the filing of such briefs.

(c) In all other respect, the provisions of § 302.35 shall apply.

§ 302.219 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be notified of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.36(b) shall also apply.

§ 302.220 Final decision of the Department.

In addition to the provisions of § 302.38, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.210(a)(4), the Department will issue its final order within ninety (90) days after the initial or recommended decision is issued. If an application has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section:

(1) in the case of an application for a certificate to engage in foreign air transportation, the recommended decision shall be transmitted to the President of the United States under 49 U.S.C. 41307; or

(2) in the case of an application not subject to review by the President of the United States, the initial decision shall become effective as the final order of the Department.

(c) In the case of a certificate application that has been processed under § 302.210(a)(1) or (5), the Department will issue its final order within one hundred eighty (180) days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

Subpart C—Rules Applicable to Exemption and Certain Other Proceedings

§ 302.301 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including the granting of emergency exemptions, as well as applications for frequency allocations and other limited authority under international agreements. Except as modified by this subpart, the provisions of subpart A of this part apply.

(b) Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

§ 302.302 Filing of applications.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§ 302.3 and 302.4.

(b) Applications for exemption from section 41101 or 41301 of the Statute (including those that incorporate an exemption from section 41504) that involve ten (10) or fewer flights may be submitted to the U.S. Air Carrier Licensing Division or the Foreign Air Carrier Licensing Division (as appropriate), Office of International Aviation, on OST Form 4536. However, that form may not be used for:

(1) Applications filed under section 40109(g) of the Statute;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from the Department, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the Department for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than ten (10) flights; or

(4) Any other application for which the Department decides the requirements of §§ 302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such telephonic requests must be confirmed by written application within three (3) business days of the original request.

(c) Applications for exemption from Chapter 415 of the Statute, from tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or from Department regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to Department of Transportation Dockets. Upon a showing of good cause, the application may also be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such requests must be confirmed by written application within three (3) business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The Department may require such applications to be docketed if appropriate. The Department will publish a notice of such applications in its Weekly List of Applications Filed.

§ 302.303 Contents of applications.

(a) *Title.* An application filed under § 302.302(a) shall be entitled "Application for . . ." (followed by the type of authority request, e.g., exemption, frequency allocation) and, where applicable, shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Statute or the rule, regulation, term, condition, or limitation from which the exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 41101 or 41301 of the Statute should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations that the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed

service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Department to officially notice;

(ii) Affidavits, or statements under penalty of 18 U.S.C. 1001, establishing any other facts the applicant wants the Department to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 41101 or 41301 of the Statute (except exemptions under section 40109(g)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Department and cite the pertinent finding. If the fact of reciprocity has not been established by the Department, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 40109(g) of the Statute shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 41102 of the Statute;

(2) All possible efforts have been made to accommodate the traffic by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by air carriers; and

(4) In any case where an inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an unreasonable advantage to any party in the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption or other limited authority under this subpart that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by § 302.304.

§ 302.304 Service of documents.

(a) *General requirements.* (1) An application for exemption and responsive pleadings shall be served as provided by § 302.7.

(2) Applicants shall serve on the persons listed in paragraph (b) of this section a complete copy of the application and any supporting documents. Responsive pleadings shall be served on the same persons as applications.

(b) *Persons to be served.* (1) Applicants for scheduled interstate air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the city-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute. However, applicants that file fewer than sixteen (16) days prior to the proposed start of service must also serve:

(i) Those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and

(ii) Those persons who may be presumed to have an interest in the subject matter of the application.

(4) Applicants for slot exemptions under section 41714 of the Statute shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the airport(s) specified in the application,

(ii) The manager of each of the affected airports,

(iii) The mayor of the city that each affected airport serves,

(iv) The Governor of the State in which each affected airport is located, and

(v) Any other person who has filed a pleading in a related proceeding under section 41714 of the Statute.

(5) *Additional service.* The Department may, in its discretion, order additional service upon any other person.

§ 302.305 Posting of applications.

A copy of every docketed application for exemption shall be posted in Department of Transportation Dockets and listed in the Department's Weekly List of Applications Filed. A copy of every undocketed application shall be posted in the Licensing Division's lobby of the Office of International Aviation.

§ 302.306 Dismissal or rejection of incomplete applications.

(a) *Dismissal or rejection.* The Department may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Department may require the filing of additional data with respect to any application for exemption, answer, or reply.

§ 302.307 Answers to applications.

Within fifteen (15) days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Department is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§ 302.308 Replies to answers.

Within seven (7) days after the last day for filing an answer, any interested party may file a reply to one or more answers.

§ 302.309 Requests for hearing.

The Department will not normally conduct oral evidentiary hearings concerning applications for exemption. However, the Department may, in its discretion, order such a hearing on an application. Any applicant, or any person opposing an application, may request an oral evidentiary hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Department orders an oral evidentiary hearing, the procedures in subpart A of this part shall apply.

§ 302.310 Exemptions on the Department's initiative.

The Department may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§ 302.311 Emergency exemptions.

(a) *Shortened procedures.* When required by the circumstances and consistent with the public interest, the Department may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Department may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b)(1) *Applications.* Applications for emergency exemption need not conform to the requirements of this subpart or of subpart A of this part (except as provided in this section and in § 302.303(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Department may require additional information from any applicant before acting on an application.

(2) *Oral requests.* The Department will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three (3) business days of the original request.

(c) *Notice.* Except when the Department decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in § 302.304(b) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Department.

Subpart D—Rules Applicable to Enforcement Proceedings

§ 302.401 Applicability.

This subpart contains the specific rules that apply to Department proceedings to enforce the provisions of Subtitle VII of the Statute, and the rules, regulations, orders and other requirements issued by the Department, as well as the filing of informal and formal complaints. Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.402 Definitions.

Assistant General Counsel, when used in this subpart, refers to the Assistant General Counsel for Aviation Enforcement and Proceedings.

Complainant refers to the person filing a complaint.

Parties, when used in this subpart, include the Office of the Assistant General Counsel, the respondent, the complainant, and any other person permitted to intervene under § 302.20.

Respondent refers to the person against whom a complaint is filed.

§ 302.403 Informal Complaints.

Any person may submit in writing to the Assistant General Counsel an informal complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Statute or any requirement established thereunder. Such informal complaints need not otherwise comply with the provisions of this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of an enforcement proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.404 Formal complaints.

(a) *Filing.* Any person may make a formal complaint to the Assistant General Counsel about any violation of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3 and § 302.4, concerning the form and filing of documents. The filing of a complaint shall result in the institution of an enforcement proceeding only if the Assistant General Counsel issues a notice instituting such a proceeding as to all or part of the complaint under § 302.406(a) or the Deputy General Counsel does so under § 302.406(c).

(b) *Amendment.* A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.11.

(c) *Insufficiency of formal complaint.* In any case where the Assistant General Counsel is of the opinion that a complaint does not sufficiently set forth matters required by any applicable rule, regulation or order of the Department, or is otherwise insufficient, he or she may advise the complainant of the deficiency and require that any additional information be supplied by amendment.

(d) *Joinder of complaints or complainants.* Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Assistant General Counsel may separate or split complaints if he or she finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of the Department's business or the ends of justice.

(e) *Service.* A formal complaint, and any amendments thereto, shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel.

§ 302.405 Responsive documents.

(a) *Answers.* Within fifteen (15) days after the date of service of a formal complaint, each respondent shall file an answer in conformance with and subject to the requirements of § 302.408(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for good cause shown.

(b) *Offers to satisfy.* A respondent in a formal complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the

complaint shall not excuse the filing of an answer.

(c) *Motions to dismiss.* Motions to dismiss a formal complaint shall not be filed prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.406 Procedure for responding to formal complaints.

(a) Within a reasonable time after an answer to a formal complaint is filed, the Assistant General Counsel shall either:

(1) Issue a notice instituting a formal enforcement proceeding in accordance with § 302.407 or (2) Issue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) An order dismissing a complaint issued pursuant to paragraph (a)(2) of this section shall become effective as a final order of the Department thirty (30) days after service thereof.

(c) Whenever the Assistant General Counsel has failed to act on a formal complaint within a reasonable time after an answer is due, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute an enforcement proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(d) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.407 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel there are reasonable grounds to believe that any economic regulatory provision of the Statute, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that efforts to satisfy a complaint as provided by § 302.405 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel may issue a notice instituting an enforcement proceeding before an administrative law judge.

(b) The notice shall incorporate by reference the formal complaint submitted pursuant to § 302.404 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant.

(c) The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures that it may deem necessary or proper.

(d) Whenever the Assistant General Counsel seeks an assessment of civil penalties in an enforcement proceeding, he or she shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting a formal enforcement proceeding or in a separate document.

(e) In any proceeding in which civil penalties are sought, any decisions issued by the Department shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§ 302.408 Answers and replies.

(a) Within fifteen (15) days after the date of service of a notice issued pursuant to § 302.407, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.405. Any requests for extension of time for filing of an answer to such complaint shall be filed in accordance with § 302.11.

(b) All answers shall be served in accordance with § 302.7 and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the respondent is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted. Any answer to a complaint, or response to a notice, proposing the assessment of civil penalties shall specifically present any matters that the respondent intends to rely upon in opposition to, or in mitigation of, such civil penalties.

(c) The DOT decisionmaker or the administrative law judge may, in his or her discretion, require or permit the filing of a reply in appropriate cases; otherwise, no reply may be filed..

§ 302.409 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by § 302.408 shall be deemed to authorize the DOT decisionmaker or administrative law judge, as a matter of discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting a formal enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, as a matter of discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order; *Provided*, that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.410 Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge may, upon his or her own initiative, or upon motion of any party, consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings that involve substantially the same parties or issues that are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.411 Motions to dismiss and for summary judgment.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within seven (7) days after service of the motion.

(b) Parties may petition the DOT decisionmaker to review any action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.32.

§ 302.412 Admissions as to facts and documents.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or administrative law judge and serve upon the opposing

side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters.

(c) Service of such request and answering statement shall be made as provided in § 302.7. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

§ 302.413 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the Statute or any requirement thereunder found by the Department or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.414 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.22.

§ 302.415 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge shall give the parties reasonable written notice of the time and place of the hearings. Except as may be modified by the provisions of this subpart, the procedures in § 302.17 to § 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.416 Appearances by persons not parties.

With consent of the administrative law judge, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with the consent of the administrative law judge, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be asked witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.417 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision is issued by the DOT decisionmaker. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within ten (10) days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.418 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by, the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.11. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.419 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

§ 302.420 Saving Clause.

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

§ 302.501 Applicability.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified by this subpart, the provisions of subpart A apply.

§ 302.502 Institution of proceedings.

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing

of a petition or complaint by any person, or by the issuance of an order by the Department.

§ 302.503 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under § 302.506, shall be filed within seven (7) working days after the complaint is filed.

§ 302.504 Dismissal of petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.505 Order of investigation.

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except as modified by this subpart, the provisions of § 302.17 through § 302.38 of this part shall apply.

§ 302.506 Complaints requesting suspension of tariffs; answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to:

(1) The issued or posting date,

(2) The effective date,

(3) The name of the publishing carrier or agent,

(4) The Department number, and

(5) Specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits herein provided, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§ 302.507 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.506, with respect to tariffs that do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.8.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

§ 302.601 Applicability.

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers ("carriers"), pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator is considered to have imposed a fee on a carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to—

(1) A fee imposed pursuant to a written agreement with a carrier using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or

(3) Any other existing fee not in dispute as of August 23, 1994.

(c) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.602 Complaint by a carrier; request for determination by an airport owner or operator.

(a) Any carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport owner or operator may also request such a determination with respect to a fee it has imposed on one or more carriers. The complaint or request for determination shall conform to the requirements of this subpart and §§ 302.3 and 302.4 concerning the form and filing of documents.

(b) If a carrier has previously filed a complaint with respect to the same airport fee or fees, any complaint by another carrier and any airport request for determination shall be filed no later than seven (7) calendar days following the initial complaint. In addition, all complaints or requests for determination must be filed on or before the sixtieth (60th) day after the carrier receives written notice of the imposition of the new fee or the imposition of the increase in the fee.

(c) To ensure an orderly disposition of the matter, all complaints and any request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in § 302.606.

§ 302.603 Contents of complaint or request for determination.

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator's written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. The disk submission must be in one of the following formats, in the latest two versions, or in such other format as may be specified by notice in the **Federal Register**: Microsoft Word (or RTF), Word Perfect, Ami Pro, Microsoft Excel, Lotus 123, Quattro Pro, or ASCII tab-delineated files. Parties should submit three copies of each diskette to Department of Transportation Dockets: one copy for the docket, one copy for the Office of Hearings, and one copy for the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also certify:

(1) That it has served on the airport owner or operator and all other carriers serving the airport the complaint, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the complaint is filed. Such service shall be by hand, by electronic transmission, or by overnight express delivery. (Unless a carrier has informed the complaining carrier that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) That the carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(3) That when there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier's request for information from the airport owner or operator; and

(4) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also certify:

(1) That it has served on all carriers serving the airport the request, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the request is filed. Such service shall be in the same manner as provided in § 302.603(c)(1).

(2) That the airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

(3) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.604 Answers to a complaint or request for determination.

(a)(1) When a carrier files a complaint under this subpart, the owner or operator of the airport and any other carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to § 302.602(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen (14) calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen (14) calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in § 302.603(b).

(e) The answering party must also certify that:

(1) it has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination, and that those parties have received or will receive these documents no later than the date the answer is filed; and

(2) that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.605 Replies.

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two (2) calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in § 302.603(b).

(e) The carrier or airport owner or operator submitting the reply must certify that it has served the reply and all supporting testimony and exhibits on the party or parties submitting the answer to which the reply is directed, and that those parties have received or will receive these documents no later than the date the reply is filed, and that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.606 Review of complaints or requests for determination.

(a) Within thirty (30) days after a complaint or request for determination is filed under this subpart, the Secretary will determine whether the complaint or request meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section. When both a complaint and a request for determination have been filed with respect to the same airport fee or fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists

within thirty (30) days after the complaint is filed.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint or request for hearing before an administrative law judge. The instituting order will—

(1) Establish the scope of the issues to be considered and the procedures to be employed;

(2) Indicate the parties to participate in the hearing;

(3) Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and

(4) Include any special provisions for exchange or disclosure of information by the parties.

(c) If the Secretary determines that the complaint or request does not meet the procedural requirements of this subpart, the complaint or request for determination will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint or request may be filed.

(d) If the Secretary finds that no significant dispute exists—

(1) If the proceeding was instituted by a complaint, the Secretary will issue an order dismissing the complaint, which will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(2) If the proceeding was instituted by a request for determination, the Secretary will either issue a final order as provided in § 302.610 or set forth the schedule for any additional procedures required to complete the proceeding.

§ 302.607 Decision by administrative law judge.

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within sixty (60) days after the date of the instituting order, unless a shorter period is specified by the Secretary.

§ 302.608 Petitions for discretionary review.

(a) Within five (5) calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with § 302.32(a). The petitioner must also certify that it has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding and that those parties have received or will receive the petition no later than the date it is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within four (4) calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in § 302.32(b).

§ 302.609 Completion of proceedings.

(a) When a complaint or a request for determination with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint or request is filed.

(b) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees and have not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

§ 302.610 Final order.

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

Subpart G—Rules Applicable to Mail Rate Proceedings and Mail Contracts

§ 302.701 Applicability.

(a) This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department for foreign air transportation and air transportation between points in Alaska, and certain contractual arrangements between the U.S. Postal Service and certificated air carriers for the carriage of mail in foreign air transportation entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772.

(b) Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than five (5) percent, based on weight, of the international mail transported under any such contract may consist of letter mail.

Final Mail Rate Proceedings

§ 302.702 Institution of proceedings.

(a) Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the U.S. Postal Service, or upon the issuance of an order by the DOT decisionmaker.

(b) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rates, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(c) In any case where an air carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the DOT decisionmaker, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(d) All petitions, amended petitions, and documents relating thereto shall be served upon the U.S. Postal Service by sending a copy to the Assistant General Counsel, Transportation Division, Washington, DC 20260–1124, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the U.S. Postal Service shall consist of a statement in the document that the person filing it has served a copy as required by this section.

(e) Answers to petitions shall be filed within twenty (20) days after service of the petition.

§ 302.703 Order to show cause or instituting a hearing.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT decisionmaker may issue an order directing the respondent to show cause why it should not adopt such findings and conclusions and such final rates as may be specified in the order to show cause, or may issue an order setting the matter for hearing before an administrative law judge.

§ 302.704 Objections and answers to order to show cause.

(a) Where an order to show cause is issued, any person having objections to the rates specified in such order shall file with the DOT decisionmaker an answer within forty-five (45) days after the date of service of such order or within such other period as the order may specify.

(b) An answer to an order to show cause shall contain specific objections, and shall set forth the findings and conclusions, the rates, and the supporting exhibits that would be substituted for the corresponding items in the findings and conclusions of the show cause order, if such objections were found valid.

(c) An answer filed by a person who is neither a party nor a person ultimately permitted to intervene in an oral evidentiary hearing if such proceeding is established shall be treated as a memorandum filed under § 302.706.

§ 302.705 Further procedures.

(a) If no answer is filed within the designated time, or if a timely filed answer raises no material issue of fact, the DOT decisionmaker may, upon the basis of the record in the proceeding, enter a final order fixing the rate or rates.

(b) If an answer raising a material issue of fact is filed within the time designated in the Department's order, the DOT decisionmaker may then issue an order authorizing additional pleadings and/or establishing further procedural steps, including setting the matter for oral evidentiary hearing before an administrative law judge.

§ 302.706 Hearing.

(a) If a hearing is ordered under § 302.705, the issues at such hearing shall be formulated in accordance with the instituting order, except that at a prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to make a full determination of a fair and reasonable rate.

(b)(1) The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the U.S. Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom the DOT decisionmaker or administrative law judge permits to intervene in accordance with § 302.20.

(2) In addition to participation in hearings in accordance with § 302.19, persons other than parties may, within the time fixed for filing an answer to an order to show cause as provided in § 302.704, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

(c) All direct evidence shall be in writing and shall be filed in exhibit form within the times specified by the DOT decisionmaker or by the administrative law judge.

(d) Except as modified by this subpart, the provisions of § 302.17 through § 302.38 of this part shall apply.

Provision for Temporary Rate

§ 302.707 Procedure for fixing temporary mail rates.

At any time during the pendency of a proceeding for the determination of final mail rates, the DOT decisionmaker, upon his or her own initiative, or on petition by the air carrier whose rates are in issue or by the U.S. Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

Informal Mail Rate Conference Procedure

§ 302.708 Invocation of procedure.

(a) Conferences between DOT employees, representatives of air carriers, the U.S. Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

(b) At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conference shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

§ 302.709 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers they have in the processing of rate cases not involving a rate conference. The employees' function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employees's analyses and recommendations.

§ 302.710 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the U.S. Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deem his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.711 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for ninety (90) days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust;

(2) Shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the DOT decisionmaker; and

(3) Shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. (The term "information", as used in this section, shall refer only to information obtained at the conference regarding the future course of action or position of the

Department or its employees with respect to the facts or issues discussed at the conference.)

(b) *Signed statement required.* Every representative of an air carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the U.S. Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any air carrier that has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential, every participant, as defined in paragraph (e) of this section, shall file a verified compliance report with Department of Transportation Dockets stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include:

(1) Any representative of any air carrier and any representative of the U.S. Postal Service actually present at the conference;

(2) The directors and the officers of any air carrier that had a representative at the conference;

(3) The members of any firm of attorneys or consultants that had a representative at the conference; and

(4) The members of the U.S. Postal Service staff who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.

§ 302.712 Information to be requested from an air carrier.

When an air carrier is requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment that will be required to perform the operations for a future period, full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the air carrier's experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the air carrier shall be certified by a responsible officer.

§ 302.713 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the air carrier a statement of exceptions showing areas of differences. Where practicable, the air carrier may submit an answer to these exceptions. Conferences will then be scheduled to resolve the issues and facts in accordance with sound ratemaking principles.

§ 302.714 Availability of data to the U.S. Postal Service.

The representatives of the U.S. Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the air carrier, and a reasonable time shall be allowed to review the facts and issues and to make any presentation deemed necessary; *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the U.S. Postal Service pursuant to section 41901 of the Statute, representatives of the U.S. Postal Service shall be furnished with copies of data under this provision only upon their written request.

§ 302.715 Post-conference procedure.

No briefs, argument, or any formal steps will be entertained by the DOT decisionmaker after the rate conferences. The form, content and time of the staff's presentation to the DOT decisionmaker are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The DOT decisionmaker will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the Statute and this part.

§ 302.716 Effect of conference agreements.

No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that a rate conference was held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that, upon the filing of an answer by any party to the rate proceeding, all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.22.

§ 302.717 Waiver of participant conditions.

After the termination of a mail rate conference hereunder, the air carrier whose rates were in issue may petition the DOT decisionmaker for a release from the obligations imposed upon it and all other persons by § 302.711. The DOT decisionmaker will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the DOT decisionmaker will grant or deny the request without being required to assign reasons therefor.

Processing Contracts for the Carriage of Mail in Foreign Air Transportation

§ 302.718 Filing.

Any air carrier that is a party to a contract to which this subpart is applicable shall file three (3) copies of the contract in the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, not later than ninety (90) days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.720 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the secretary or other duly authorized officer of the filing air carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.719 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent, estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.720 Service.

A copy of each contract filed pursuant to § 302.718, and a copy of all material and data filed pursuant to § 302.719, shall be served upon each of the following persons:

(a) Each certificated and commuter (as defined in § 298.2 of this chapter) air carrier, other than the contracting carrier, that is actually providing scheduled mail services between any pair of points between which mail is to be transported pursuant to the contract; and

(b) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260–1124.

§ 302.721 Complaints.

Within fifteen (15) days of the filing of a contract, any interested person may file with the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, a complaint with respect to the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.720.

§ 302.722 Answers to complaints.

Answers to the complaint may be filed within ten (10) days of the filing of the complaint, with service being made as provided in § 302.720.

§ 302.723 Further procedures.

(a) In any case where a complaint is filed, the DOT decisionmaker shall issue an order dismissing the complaint, disapproving the contract, or taking such other action as may be appropriate. Any such order shall be issued not later than ten (10) days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the DOT decisionmaker may issue a letter of notification to all persons upon whom the contract was served indicating that the Department does not intend to disapprove the contract.

(c) Unless the DOT decisionmaker disapproves the contract not later than ten (10) days prior to its effective date, the contract automatically becomes effective.

§ 302.724 Petitions for reconsideration.

Except in the case of a Department determination to disapprove a contract, no petitions for reconsideration of any Department determination pursuant to this subpart shall be entertained.

Appendix A to Part 302—Index to Rules of Practice

Appendix A shows the subjects covered by part 302 and the section numbers used before and after the final rule revising part 302, published in the **Federal Register** on February 9, 2000 and became effective on March 10, 2000.

Subject	Old rule	New rule
ADMINISTRATIVE LAW JUDGES:		
Actions after hearings	§ 302.27(b)	§ 302.31(a)
Actions during prehearing conference	§ 302.23(a)	§ 302.22(b)
Arguments before	§ 302.25	§ 302.29
Briefs	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
Certification for decision	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22(a)	§ 302.2
Delegation of authority	§ 302.27(a)	§ 307.17(a)(3)
Exceptions	§ 302.27(a)	§ 307.17(a)(3)
Interlocutory matters	§ 302.27(a)	§ 307.17(a)(3)
Disqualification	§ 302.22(b)	§ 302.17(b)
Exceptions	§ 302.24(e)	§ 302.24(i)
Licensing cases	§ 302.1754	§ 302.217
Hearings before	§ 302.24	§ 302.23
Initial decision (*see* Initial Decision)		
Powers	§ 302.22(c)	§ 302.17(a)
Prehearing conference report	§ 302.23(b)	§ 302.22(c)
Recommended decision (*see* Recommended Decision)		
Termination of authority	§ 302.22(c)	§ 307.17(a)(4)
ADMISSIONS:		
Enforcement proceeding	§ 302.212	§ 302.412
Limitation on use	§ 302.212	§ 302.412(c)
AIRPORT FEES:		
Administrative law judge decision	§ 302.615	§ 302.607
Complaints by U.S. or foreign air carriers	§ 302.603(a)	§ 302.602(a)
Answers	§ 302.607	§ 302.604
Additional complaints	§ 302.603(b)	§ 302.602(b)
Contents	§ 302.605	§ 302.603
Format of exhibits and briefs	§ 302.605(b)	§ 302.603(b)
Service	§ 302.605(c)(1)	§ 302.603(c)(1)
Replies	§ 302.609	§ 302.605
Consolidation of proceedings	§ 302.603(c)	§ 302.602(c)
Dismissal	§§ 302.611(c), (d)	§§ 302.606(c), (d)
Final order	§ 302.621	§ 302.610
Timing	§ 302.619	§ 302.609
Instituting order	§ 302.611(b)	§ 302.606(b)
Petitions for discretionary review	§ 302.617	§ 302.608

Subject	Old rule	New rule
Answers	§ 302.617(c)	§ 302.608(c)
Request for determination by airport owner/operator	§ 302.603(a)	§ 302.602(a)
Answers	§ 302.607	§ 302.604
Contents	§ 302.605	§ 302.603
Format of exhibits and briefs	§ 302.605(b)	§ 302.603(b)
Service	§ 302.605(d)(1)	§ 302.603(d)(1)
Replies	§ 302.609	§ 302.605
Review procedures	§ 302.611	§ 302.606
Significant dispute determination	§ 302.611(b)	§ 302.606(b)
AMENDMENTS OF DOCUMENTS (*see* Documents)		
ANSWERS (*see also* Replies):		
Airport fees	§ 302.607	§ 302.604
Certificate applications:		
Initial fitness	§ 302.1730(c)	§ 302.204
International route awards		
Conforming applications	§ 302.1720(d)	§ 302.212(d)
Motions to modify scope	§ 302.1720(e)	§ 302.212(d)
New authority	§ 302.1720(d)	§ 302.212(b)
Complaints		
Air mail contracts	§ 302.1506	§ 302.722
Airport fees	§ 302.607	§ 302.604
Enforcement matters	§ 302.204(b)	§ 302.405
Suspension of tariffs	§ 302.505	§ 302.506
Consolidation of proceedings	§ 302.12(c)	§ 302.13(c)
Enforcement proceeding, notice instituting	§ 302.207	§ 302.408
Exemption applications	§ 302.406	§ 302.307
Foreign air carrier permit applications	§ 302.1740(c)	§ 302.204
Generally	§ 302.6	§ 302.6
Mail rate proceedings show cause orders	§ 302.305	§ 302.704
Motions, generally	§ 302.18(c)	§ 302.11(c)
Motions to consolidate	§ 302.12(c)	§ 302.13(c)
Motions to dismiss and for summary judgment	§ 302.212	§ 302.411
Motions for modification/dissolution of enforcement proceedings	§ 302.218	§ 302.419
Petitions for discretionary review	§ 302.28(b)	§ 302.32(b)
Petitions for final mail rates	§ 302.303	§ 302.702(e)
Petitions for intervention	§ 302.15(c)(3)	§ 302.20(c)(3)
Petitions for reconsideration	§ 302.37a	§ 302.14
Requests for determination of airport fees	§ 302.607	§ 302.607
APPEALS:		
Administrative Law Judge's ruling	§ 302.18(f)	§ 302.11(h)
Enforcement complaints	§ 302.206(b)	§ 302.406(c)
APPEARANCES:		
Generally	§ 302.11	§ 302.21
Application for admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Copy of transcript	§ 302.11(c)	§ 302.27(b)
Retention of counsel	§ 302.11(b)	§ 302.27(a)
Enforcement proceedings	§ 302.214	§ 302.416
APPLICATIONS:		
Admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Suspension from practicing before DOT	§ 302.11(a)	§ 302.21(c)
Amendment	§ 302.5	§ 302.5
Certificates for international route awards	§§ 302.1701–1713, 1720	§§ 302.201–206
Conforming applications	§ 302.1720(c)	§ 302.212(c)
Certificates involving initial fitness	§§ 302.1701–1713, 1730	§§ 302.201–206
Consolidation	§ 302.12	§ 302.13
Exemptions	§§ 302.401–405	§§ 302.302–304
Exemptions, emergency	§§ 302.410(b), (c)	§ 302.311
Foreign Air Carrier Permits	§§ 302.1701–1713, 1740	§§ 302.201–206
Licensing cases	§§ § 302.1701–1790	§ 302.201–206
ARGUMENT:		
Before Administrative Law Judge	§ 302.25	§ 302.29
Oral (*see* Oral Arguments)		
ATTENDANCE FEES AND MILEAGE	§ 302.21	§ 302.27(c)
BRIEFS:		
Accompanying motions or answers	§ 302.18(d)	§ 302.11(d)
Failure to restate objections	§ 302.31(b)	§ 302.35(b)
Filing time	§ 302.31(a)	§ 302.35(a)
Formal specifications	§ 302.31(c)	§ 302.35(c)
Incorporation by reference	§ 302.31(b)	§ 302.35(c)(2)
Licensing cases	§§ 302.302.1752, 1755	§§ 302.215, 218
To Administrative Law Judge	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
To DOT decisionmaker	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218

Subject	Old rule	New rule
CERTIFICATE CASES FOR U.S. AIR CARRIERS:		
Application:		
Answers to	§§ 302.1720(d) 1730(d)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers		§ 302.204(b)
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§§ 302.202(a), 205
Verification	§ 302.1707	§ 302.206
Continuing Fitness	§ 302.1730	§ 302.211
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1790	§§ 302.201–220
Initial Fitness	§ 302.1730	§ 302.211
International Route Awards	§ 302.1720	§ 302.212
Oral evidentiary hearing proceedings	§§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
CERTIFICATION:		
Documents	§ 302.4(b)	§ 302.4(b)
Record	§§ 302.22(d), 27, 29	§ 302.31(b)
CHARGES (*see* Rates, Fairs, and Charges; Airport Fees)		
CITATION OF RULES	§ 302.2	§ 302.1(c)
CIVIL PENALTIES	§ 302.206(a)	§§ 302.407(d), (e)
COMPLAINANTS, JOINDER	§ 302.13	§ 302.404(d)
COMPLAINTS:		
Airport fees	§§ 302.603–605	§§ 302.602–603
Contracts for transportation of mail	§§ 302.1505–1507	§ 302.721
Enforcement proceedings	§§ 302.200–204	§§ 302.403–404
Joinder	§ 302.13	§ 302.404(d)
Rates, fares, and charges	§§ 302.501–508	§§ 302.501–507
Suspension of tariffs	§§ 302.505–508	§ 302.506
COMPUTATION OF TIME (*see also* Time)	§ 302.16	§ 302.8
CONSOLIDATION OF PROCEEDINGS	§ 302.12	§ 302.13
Airport fees	§ 302.603(c)	§ 302.602(c)
Answer to motion for	§ 302.12(c)	§ 302.13(c)
Enforcement proceedings	§ 302.210(a)	§ 302.410
Filing time	§ 302.12(b)	§ 302.13(b)
Initiation of	§ 302.12(a)	§ 302.13(a)
CONTINUING FITNESS CERTIFICATE CASES	§ 302.1701–1713	§ 302.212
CONTRACTS (*see* Mail Contracts)		
DECISIONS:		
Final	§ 302.36	§§ 302.38, 220
Initial (*see* Administrative Law Judges)		
Recommended (*see* Administrative Law Judges)		
Tentative	§ 302.29	§ 302.33
Exceptions to	§ 302.30	§ 302.34
DEFINITIONS	NA	§§ 302.2, 402
DELEGATION OF AUTHORITY	§ 302.27	§§ 302.17(a), 18(a)
DEPOSITIONS:		
Application by party for	§ 302.20(b)	§ 302.26(b)
Criteria for order to issue	§ 302.20(a)	§ 302.26(a)
Evidential status	§§ 302.20(h)	§ 302.26(h)
Objections to questions or evidence	§ 302.2(d)	§ 302.26(d)
Specifications	§ 302.20(g)	§ 302.26(g)
Subscription by witness	§ 302.20(e)	§ 302.26(e)
Written interrogatories	§ 302.20(f)	§ 302.26(f)
DISCRETIONARY REVIEW:		
Initial and Recommended decisions	§ 302.28	§ 302.32
Answers in opposition or support	§ 302.28(b)	§ 302.32(b)
Formal requirements	§ 302.28(a)(3)	§§ 302.32(a)(3), (4)
Grounds for	§ 302.28(a)(2)	§ 302.32(a)(2)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Petitions for	§ 302.28(a)(1)	§ 302.32(a)(1)
Review proceedings	§ 302.28(d)	§ 302.32(d)
DISSOLUTION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
DOCUMENTS:		
Amendments	§ 302.5	§ 302.5
Leave of Department	§ 302.5	§ 302.5(a)
Timing of	§ 302.5	§ 302.5(b)
Answers (*see* Answers)		
Briefs (*see* Briefs)		
Dismissal	§ 302.5	§ 302.3(d)
Electronic filing	NA	§ 302.3(c)
Exhibits	§§ 302.24(g)	§ 302.24(c)

Subject	Old rule	New rule
Filing	§ 302.3	§ 302.3
Address	§ 302.3(a)	§ 302.3(a)
Date	§ 302.3(a)	§ 302.3(a)
Improper filing	§ 302.4e	§ 302.3(d)
Formal specifications	§ 302.3(b)	§ 302.3(b)
General requirements	§ 302.4	§ 302.4
Contents	§ 302.4(a)	§ 302.4(a)(2)
Designation of person to receive service	§ 302.4(c)	§ 302.4(a)
Subscription	§ 302.4(b)	§ 302.4(b)
Memoranda of opposition or support	§ 302.6(c)	§ 302.706(b)(2)
Number of copies	§ 302.3(c)	§ 302.3(c)
Objections to public disclosure	§ 302.39(b)	§ 302.12
Official Notice of facts	§ 302.24(n)	§ 302.24(g)
Partial relevance of	§ 302.24(l)	§ 302.24(e)
Presented at oral argument	§ 302.32(b)	§ 302.36(b)
Receipt after hearing	§ 302.24(k)	§ 302.24(h)
Responsive	§ 302.6	§ 302.5
Retention	§ 302.7	§ 302.3(f)
Service (*see* Service)		
Table of contents/Index	§ 302.3(d)	§ 302.4(a)(3)
Unauthorized	§ 302.4(f)	§ 302.6(c)
DOT DECISIONMAKER:		
Briefs to	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218
Certification of record to	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22a	§§ 302.2, 18
Final decision	§ 302.36	§ 302.38
Licensing cases	§ 302.1757	§ 302.220
Oral argument	§ 302.32	§ 302.36
Licensing cases	§ 302.1756	§ 302.219
Petitions for reconsideration	§ 302.37	§ 302.14
Review of Administrative Law Judge decision	§ 302.38	§ 302.32
Tentative decision	§ 302.29	§ 302.33
Exceptions	§ 302.30	§ 302.34
ENFORCEMENT PROCEEDINGS:		
Admissions as to facts and documents	§ 302.212	§ 302.412
Complaints:		
Formal	§ 302.201	§ 302.404
Informal	§ 302.200	§ 302.403
Insufficiency of	§ 302.203	§ 302.404(c)
Consolidation of proceedings	§ 302.210a	§ 302.410
Evidence of previous violations	§ 302.216	§ 302.413
Generally	§§ 302.200–217	§§ 302.401–420
Hearings	§ 302.213	§ 302.415
Modification or dissolution of enforcement action	§ 302.218	§ 302.419
Motions to dismiss	§ 302.212	§ 302.411
Motions for summary judgment	§ 302.212	§ 302.402
Settlement proceedings	§ 302.215	§ 302.417
EVIDENCE:		
Exhibits	§§ 302.24(g), (h)	§§ 302.24(c), (d)
Generally	§ 302.24(c)	§ 302.24(a)
Objections to	§ 302.24(d)	§ 302.24(b)
Offers of proof	§ 302.24(f)	§ 302.24(j)
Official notice of facts in certain documents	§ 302.24(n)	§ 302.24(g)
Partial relevance of	§ 302.24(l)	§ 302.24(e)
Previous violations	§ 302.216	§ 302.413
Records in other proceedings	§ 302.24(j)	§ 302.24(f)
EXAMINERS (*see* Administrative Law Judges)		
EXCEPTIONS:		
Administrative Law Judge's rulings	§ 302.24(e)	§ 302.24(i)
Initial decisions	§ 302.30	§ 302.31(c)
Licensing cases	§ 302.1754	§ 302.217
Recommended decisions	§ 302.30	§ 302.31(c)
Request for oral argument	§ 302.32	§ 302.36
Tentative decisions	§ 302.30	§ 302.34
Waiver	§ 302.33	§ 302.37
EXEMPTION PROCEEDINGS:		
Application:		
Answers to	§ 302.406	§ 302.307
Contents of	§ 302.402	§ 302.303
Filing of	§ 302.401	§ 302.302
Incomplete	§ 302.405	§ 302.306
Posting of	§ 302.404	§ 302.305
Service of	§ 302.403	§ 302.304

Subject	Old rule	New rule
Reply to answer	§ 302.407	§ 302.308
Supporting evidence	§ 302.402(c)	§ 302.302(c)
DOT's initiative	§ 302.409	§ 302.310
Emergencies	§ 302.410	§ 302.311
Cabotage	§ 302.402(d)	§ 302.303(d)
Hearing request	§ 302.408	§ 302.309
EXHIBITS (*see also* Evidence):		
Generally	§ 302.24(g)	§§ 302.24(c), (d)
FARES (*see* Rates, Fares, and Charges)		
FEE (*see* Airport Fees)		
FINAL MAIL RATE PROCEEDINGS (*see* Mail Rate Proceedings)		
FINAL ORDERS (*see* Orders)		
FITNESS CASES (*see* Certificate Cases)		
FOREIGN AIR CARRIER PERMIT CASES:		
Application:		
Answers to	§ 302.1740(c)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers		§ 302.204(b)
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§§ 302.202(a), 205
Verification	§ 302.1707	§ 302.206
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1713, 1740–1790.	§§ 302.201–220
Oral evidentiary hearing proceedings	§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
HEARINGS:		
Airport fee dispute proceedings	§ 302.611(b)	§ 302.606(b)
Argument before Administrative Law Judge	§ 302.25	§ 302.29
Change in rates, fares, or charges	§ 302.506	§ 302.706
Consolidated (*see* Consolidation of Proceedings)		
Documents of partial relevance	§ 302.24(i)	§ 302.24(e)
Enforcement proceedings	§ 302.213	§ 302.415
Evidence (*see* Evidence)		
Expedition of	§ 302.14(a)	§ 302.11(e)
Generally	§ 302.24	§ 302.23
Intervention	§ 302.15	§ 302.20
Licensing cases	§ 302.1751	§ 302.214
Notice	§ 302.24(b)	§ 302.23
Offers of proof	§ 302.24(f)	§ 302.24(j)
Official notice of facts in certain documents	§ 302.24(n)	§ 302.24(g)
Participation by non parties	§ 302.14(b)	§ 302.19
Receipt of documents after hearing	§ 302.24(k)	§ 302.24(h)
Records in other proceedings	§ 302.24(j)	§ 302.24(f)
Request for, on application for exemption	§ 302.408	§ 302.309
Shortened procedure	§ 302.35	§ 302.15
Transcripts	§§ 302.24(l), (m)	§ 302.28
INITIAL DECISION		
Answer in support or opposition	§ 302.28(b)	§ 302.32(b)
Contents	§ 302.27(b)	§ 302.31(c)
Effect of	§ 302.27(c)	§ 302.31(d)
Licensing cases	§ 302.1753	§ 302.216
Exceptions to	§ 302.1754	§ 302.217
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Petitions for discretionary review	§ 302.28	§ 302.32
Service	§ 302.27(b)	§ 302.31(c)
Scope	§ 302.27(a)	§ 302.31(a)(1)
INITIAL FITNESS CERTIFICATE CASES (*see* Certificate Cases)		
INSTITUTING ORDERS (*see* Orders)		
INTERROGATORIES (*see* Depositions)		
INTERVENTION:		
Generally	§ 302.15	§ 302.20
JOINDER OF COMPLAINTS OR COMPLAINANTS	§ 302.13	§ 302.404(d)
JOINT PLEADINGS:		
Enforcement cases	§ 302.13	§ 302.404(d)
Licensing cases	§ 302.1708	§ 302.204(c)
LAW JUDGE (*see* Administrative Law Judges)		
LICENSING CASES (*see* Certificate Cases; Foreign Air Carrier Permit Cases		
MAIL CONTRACTS:		
Complaint against contract	§§ 302.1505–1507	§§ 302.721–723
Data supporting contract	§ 302.1503	§ 302.719
Explanation of contract	§ 302.1503	§ 302.719

Subject	Old rule	New rule
Filing of contract	§ 302.1502	§ 302.718
Petition for reconsideration	§ 302.1508	§ 302.724
Service of contract	§ 302.1504	§ 302.720
MAIL RATE CONFERENCES:		
Availability of data to Postal Service	§ 302.317	§ 302.714
Conditions upon participation	§ 302.314	§ 302.711
Compliance report	§ 302.314(d)	§ 302.711(d)
Non-disclosure of information	§ 302.314(a)	§ 302.711(a)
Signed statement required	§ 302.314(b)	§ 302.711(b)
DOT analysis of data for submission of answers	§ 302.316	§ 302.713
Effect of conference agreements	§ 302.319	§ 302.716
Information to be requested from carrier	§ 302.315	§ 302.712
Participants in conferences	§ 302.313	§ 302.710
Post conference procedure	§ 302.318	§ 302.715
Scope of conferences	§ 302.312	§ 302.709
Time of commencing and terminating conference	§ 302.321	§ 302.708(b)
Waiver of participant conditions	§ 302.320	§ 302.717
MAIL RATE PROCEEDINGS:		
Evidence	§ 302.308	§ 302.706(c)
Further procedures	§ 302.306, 307	§ 302.705
Hearing	§ 302.309	§ 302.706
Institution of proceedings	§ 302.302	§ 302.702
Objections and answers to show cause order	§ 302.305	§ 302.704
Order to show cause	§ 302.303	§ 302.703
Parties and persons other than parties	§ 302.301, 302	§ 302.706(b)
MILEAGE FEES	§ 302.21	§ 302.27(c)
MODIFICATION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
MOTIONS (*see also* Petitions):		
Answers to	§ 302.18(c)	§ 302.11(c)
Appeals from rulings of Administrative Law Judges	§ 302.18(f)	§ 302.11(h)
Briefs	§ 302.18(d)	§ 302.11(d)
Consolidation of proceedings	§ 302.12	§ 302.13
Enforcement cases	§ 302.210a	§ 302.410
Continuances and extension of time	§ 302.17	§ 302.9
Disposition of	§ 302.18(e)	§ 302.11(g)
Effect of pendency	§ 302.18(g)	§ 302.11(f)
Expedition of case	§ 302.14(a)	§ 302.11(e)
For suspension of operating authority pendente lite	§ 302.217	§ 302.418
For modification or dissolution of orders	§ 302.218	§ 302.419
Form and contents	§ 302.18(b)	§ 302.11(b)
Generally	§ 302.18	§ 302.11(a)
Oral arguments	§ 302.18(d)	§ 302.11(d)
Substitution of parties	§ 302.10	§ 302.10(b)
To correct transcripts	§ 302.24(m)	§ 302.28(f)
To dismiss and for summary judgment	§ 302.212	§ 302.411
To dismiss formal complaint	§ 302.204	§ 302.405(c)
To file unauthorized documents	§ 302.4(f)	§ 302.6(c)
To modify scope in Licensing cases	§ 302.1720(c)	§ 302.212(b)
To quash or modify subpoena	§ 302.19(f)	§ 302.25(f)
To whom motions addressed	§ 302.18(a)	§ 302.11(a)
To withhold information from public disclosure	§§ 302.39(b), (e), (f)	§§ 302.12(d), (e)
NON-HEARING PROCEDURES	§ 302.35	§ 302.15
Licensing cases	§ 302.1712(a)	§ 302.207
OBJECTIONS (*see also* Answers):		
To Public Disclosure of Information	§ 302.39	§ 302.12
OFFERS OF PROOF	§ 302.24(f)	§ 302.24(j)
OFFICIAL NOTICE	§ 302.24(n)	§ 302.24(g)
ORAL ARGUMENTS:		
Before DOT decisionmakers	§ 302.32	§ 302.36
Request for leave	§ 302.32(a)	§ 302.36(a)
Rules on documentary evidence	§ 302.32(b)	§ 302.36(b)
Before Administrative Law Judges	§ 302.25	§ 302.29
Discretionary review	§ 302.28(a)(5)	§ 302.32(a)(5)
Licensing cases	§ 302.1756	§ 302.219
Waivers	§ 302.33	§ 302.37
ORAL EVIDENTIARY HEARINGS (*see* Hearings)		
ORDERS:		
Declining review of initial decisions	§ 302.28(c)	§ 302.32(c)
Dismissal:		
Airport fee dispute proceedings	§§ 302.611(c), (d)	§§ 302.606(c), (d)
Enforcement complaints	§ 302.205	§ 302.406
Licensing cases	§ 302.1750(a)(2)	§ 302.210(a)(3)
Establishing further procedures (Licensing cases)	§ 302.1750	§ 302.210
Final	§ 302.36	§ 302.38

Subject	Old rule	New rule
Airport fee dispute proceedings	§ 302.621	§ 302.610
Licensing cases	§ 302.1750	§ 302.210
Mail contracts	§ 302.1507(a)	§ 302.723(a)
Mail rate proceedings	§ 302.306	§ 302.705
Instituting oral evidentiary hearing:		
Airport fee dispute proceedings	§ 302.611(b)	§ 302.606(b)
Licensing cases	§ 302.1750(a)(1)	§ 302.210(a)(4)
Mail rate proceedings	§§ 302.307, 309	§§ 302.703, 705(b)
Instituting investigation of rates, fares, and charges	§ 302.504	§ 302.505
Show cause:		
Licensing cases	§ 302.1730(d)	§ 302.210(a)(1)
Mail rate proceedings	§ 302.304	§ 302.703
PARTIES:		
Appearances of	§ 302.11	§ 302.21(a)
Defined	§ 302.9	§ 302.2, 10(a)
Enforcement proceedings	§ 302.210	§ 302.402
Licensing cases	§ 302.1709	§ 302.210(a)(4)
Mail rate proceedings	§ 302.301	§ 302.706(b)
Participation by Air Carrier Associations	§ 302.10(a)	§ 302.10(c)
Persons other than parties	§ 302.14	§ 302.19
Substitution of	§ 302.10	§ 302.10(b)
PETITIONS:		
Determination of rates, fares, or charges	§ 302.502(a)	§ 302.502–503
Discretionary review (*see* Discretionary Review)		
Filing Time	§ 302.37(a)	§ 302.14(a)
Institution of mail rate proceedings	§ 302.303	§ 302.302
Intervention	§ 302.15(c)	§ 302.20
Orders subject to reconsideration	§ 302.37(a)	§ 302.14(a)
Repetitive	§ 302.37(c)	§ 302.14(c)
Reconsideration	§ 302.37	§ 302.14
Rulemaking	§ 302.38	§ 302.16
PREHEARING CONFERENCE	§ 302.23	§ 302.22
Actions during	§ 302.23(a)	§ 302.22(b)
Enforcement proceeding	§ 302.211	§ 302.414
Purposed § 302.23(a)	§ 302.23(a)	§ 302.22(a)
Report of	§ 302.23(b)	§ 302.22(c)
Scope	§ 302.23(a)	§ 302.22(a)
PROCEEEDINGS:		
Airport fee dispute proceedings	§§ 302.601–621	§§ 302.601–610
Consolidation of (*see* Consolidation)		
Contemporaneous consideration (*see* Consolidation)		
Enforcement	§§ 302.200–217	§ 302.401–420
Exemption	§§ 302.400–410	§ 302.301–311
Licensing cases	§§ 302.1701–1790	§ 302.201–220
Mail rate	§§ 302.300–321	§ 302.701–717
Rates, fares, and charges	§§ 302.500–508	§ 302.501–507
PUBLIC DISCLOSURE OF INFORMATION:		
Documents	§ 302.39(b)	§ 302.12(b)
Generally	§ 302.39(a)	§ 302.12(a)
Objection to by government	§ 302.39(d)	§ 302.12(f)
Oral testimony	§ 302.39(c)	§ 302.12(c)
RATES, FARES, AND CHARGES—PROCEEDINGS (*see also* Mail Rate Proceedings; Airport Fees):		
Institution of	§ 302.501	§ 302.502
Order of investigation	§ 302.504	§ 302.505
Petition	§ 302.501	§ 302.503
Contents	§ 302.502(a)	§ 302.503(a)
Dismissed	§ § 302.503	§ 302.504
Service	§ 302.502(b)	§ 302.503(b)
Suspension of tariffs	§ 302.505	§ 302.506
Answers	§ 302.505	§ 302.506(e)
Complaints	§ 302.505	§ 302.506
Time for filing complaint	§ 302.508	§ 302.507
RECOMMENDED DECISIONS (*see* Decisions)		
Answer in support or opposition	§ 302.28(b)	§ 302.32(b)
Contents	§ 302.27(b)	§ 302.31(c)
Effect of	§ 302.27(c)	§ 302.31(d)
Licensing cases	§ 302.1753	§ 302.216
Exceptions to	§ 302.1754	§ 302.217
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Petitions for discretionary review	§ 302.28	§ 302.32
Service	§ 302.27(b)	§ 302.31(c)
Scope	§ 302.27(a)	§ 302.31(a)(2)

Subject	Old rule	New rule
RECONSIDERATION, REHEARING, REARGUMENT (*see* Petitions for Reconsideration):		
RECORD, CERTIFICATION	§§ 302.22(d), 27(a), 29(a)	§ 302.31(b)
REPLIES:		
Airport fee dispute proceedings	§ 302.609	§ 302.605
Exemption cases	§ 302.407	§ 302.308
Generally	§ 302.6(b)	§ 302.6(b)
Licensing cases		§ 302.204(b)
Motions	§ 302.18(c)	§ 302.11(c)
Enforcement proceedings	§ 302.209	§ 302.408
RESPONSIVE DOCUMENTS (*see* Answers; Replies):		
REVIEW (*see* Discretionary Review):		
ROUTE PROCEEDINGS (*see also* Certificate Cases):		
International route awards	§§ 302.1701–1790	§ 302.201–220
RULEMAKING PETITIONS	§ 302.38	§ 302.16
SERVICE:		
Airport fee dispute proceedings	§§ 302.605(c)(1), (d)(1)	§§ 302.603(c)(1), (d)(1)
By the Department	§ 302.8(a)(1)	§ 302.7(a)(1)
Date of	§ 302.8(f)	§ 302.7(f)
Enforcement complaints	§ 302.204(a)	§ 302.404(e)
Exemption cases	§ 302.403	§ 302.304
Generally	§ 302.8	§ 302.7
Licensing cases	§ 302.1705	§ 302.203
Mail rate petitions	§ 302.303(c)	§ 302.702(d)
Persons eligible for service	§ 302.8(c)	§ 302.7(c), (g), (h)
Procedures	§ 302.8(b)	§ 302.7(b)
Proof of	§ 302.8(e)	§ 302.7(e)
Rates, fares, and charges complaints	§ 302.502(b)	§ 302.503(b)
Where to be made	§ 302.8(d)	§ 302.7(d)
SETTLEMENT OFFERS:		
Enforcement proceedings	§ 302.215	§ 302.417
Public disclosure	§ 302.215(d)	§ 302.417(d)
SHORTENED PROCEDURE	§ 302.35	§ 302.15
SHOW CAUSE ORDERS (*see* Orders):		
SUBPOENAS	§ 302.19	§ 302.25
SUSPENSION OF PRACTICE BEFORE DOT	§ 302.11(a)	§ 302.25(f)
TARIFFS:		
Complaints requesting suspension	§ 302.505	§ 302.506
TEMPORARY RATE PROCEEDINGS	§ 302.310	§ 302.707
TENTATIVE DECISIONS (*see* Decisions):		
TESTIMONY (*see* Witnesses):		
TIME:		
Computation of	§ 302.16	§ 302.8
Continuances of	§ 302.17	§ 302.9
Extensions of	§ 302.17	§ 302.9
Licensing cases	§§ 302.1706, 1711	§ 302.209
TRANSCRIPTS OF HEARINGS	§ 302.24(l)	§ 302.28
U.S. AIR CARRIER CERTIFICATION (*see* Certificate Cases):		
VERIFICATION:		
Licensing cases	§ 302.1707	§ 302.206
WAIVERS OF PROCEDURAL STEPS	§ 302.33	§ 302.37
WITNESSES:		
Attendance fees and mileage	§ 302.21	§ 302.27(c)
Cross-examination by nonparties	§ 302.14(b)	§ 302.19
Depositions	§ 302.20	§ 302.26
Objections to public disclosure of testimony	§ 302.39(c)	§ 302.12(c)
Represented by counsel	§ 302.11(a)	§ 302.27(a)
Subpoenas	§ 302.19	§ 302.25
VIOLATIONS—EVIDENTIAL STATUS IN ENFORCEMENT PROCEEDINGS	§ 302.216	§ 302.413

Issued in Washington, DC, on January 24, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

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Part III

Department of Transportation

Coast Guard

46 CFR Parts 2, 30, et al.
Frequency of Inspection; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 30, 31, 52, 61, 71, 90, 91, 98, 107, 110, 114, 115, 125, 126, 132, 133, 134, 167, 169, 175, 176, 188, 189, 195, and 199

[USCG–1999–4976]

RIN 2115–AF73

Frequency of Inspection

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its vessel inspection regulations to introduce a 5-year Certificate of Inspection cycle in accordance with the Coast Guard Authorization Act of 1996 to harmonize our inspections with most internationally required certificates. This rulemaking is necessary for the following reasons: to align inspection schedules with international protocols; to establish an examination process giving industry additional latitude in scheduling inspections; and to create a parity between small passenger vessels and all other Coast Guard-inspected vessels. The Coast Guard expects this rule to result in a reduction in the time and paperwork associated with Coast Guard vessel inspections for certification.

DATES: This final rule is effective February 4, 2000.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–4976 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Lieutenant Commander Don Darcy, Office of Standards Evaluation and Development (G–MSR–2), Coast Guard, telephone 202–267–1200. For questions on viewing the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 15, 1999, we published a notice of proposed rulemaking (NPRM) entitled "Frequency of Inspection, Alternate Hull Examination Program for Certain Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels" in the **Federal Register** (64 FR 62018). We received 49 letters commenting on the proposed rule. Several comments requested a public hearing, mainly concerning the provisions of the Alternate Hull Examination and Underwater Survey Programs. We do not plan to hold a public hearing on the frequency of inspection requirements in this rule.

Background and Purpose

Our review of the comments to the NPRM revealed strong public interest in the Alternate Hull Examination and Underwater Survey portions of this rulemaking. As a result of this public interest, we have decided to create a new docket (USCG–2000–6858) entitled, "Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels," and re-examine the provisions concerning the Alternate Hull Examination and Underwater Survey programs. Comments to the NPRM concerning the Alternate Hull Examination and Underwater Survey Programs will be included in the new docket. Therefore, you do not need to resubmit any comments already submitted to the NPRM.

This final rule only establishes a 5-year Certificate of Inspection cycle to harmonize our inspections with internationally required certificates. We are publishing the final rule to establish the frequency of inspection requirements to meet the International Convention for the Safety of Life at Sea, 1974 and the International Convention on Load Line compliance date of February 3, 2000.

Frequency of Inspection

On October 31, 1988, the International Maritime Organization (IMO) convened the International Conference on the Harmonized Systems of Survey and Certification to adopt the Protocol of 1988 relating to the International Convention for Safety of Life at Sea (SOLAS), 1974, and the Protocol of 1988 relating to the International Convention on Load Lines, 1966. By adopting these 1988 Protocols, IMO standardized the term of validity for certificates and intervals for vessel inspections required by the Conventions. These 1988 Protocols will enter into force as international law on February 3, 2000. As party to the SOLAS Convention, and the International Convention on Load Lines, the U.S. ratified the 1988 Protocol on July 1, 1991. Section 605 of the Coast Guard Authorization Act of 1996, Public Law 104–324, codified at Title 46 of the United States Code (U.S.C.) section 3307 was amended to require vessel inspections for certification once a year or once every 5 years, depending on vessel type. Previously, vessels were inspected for certification once a year, or once every 2 or 3 years, depending on vessel type.

This rulemaking aligns the term of validity for a Certificate of Inspection (COI) and the type of inspections required during the term of the COI with the standards prescribed in the 1974 SOLAS Convention. Adopting a 5-year COI, with interval annual inspections, and a periodic inspection will ensure that U.S. vessels meet international standards and comply with international law. These changes will also provide vessel owners and operators with more flexibility to schedule required inspections and reduce paperwork associated with these inspections.

Discussion of Comments and Changes

The following is a summary of the comments we received concerning the frequency of inspection section to the NPRM, and the changes made to the regulatory text in response to those comments.

General

(1) Six comments expressed support for the Coast Guard initiative to bring certification and inspection requirements in line with international standards. Three comments pointed out that the changes make good economic sense and go a long way to eliminating inspection creep.

(2) One comment stated that issuing 5-year certificates will minimize the number of vessels operating on temporary certificates and eliminate burdensome paperwork.

We envisioned a reduction in the use of temporary certificates as a result of the changes in this rule. However, we may initially have to issue COIs with a validity of less than 5 years to coincide with the dates of the 5-year SOLAS and the International Convention on Load Lines documents.

(3) Two comments stated that the 45-day comment period was too short and leaves the Coast Guard with little time to evaluate public comment. One comment noted the short amount of time between the end of the comment period and the February 3, 2000, compliance date for international requirements.

We agree that the 45-day comment period may have been too optimistic for proposed changes concerning the Alternate Hull Examination and Underwater Survey programs. For this reason, we are taking additional time to evaluate the provisions on these programs. However, we have thoroughly considered all comments for the frequency of inspection provisions. We determined that harmonizing our inspections with internationally required certificates will lessen the burden and create greater flexibility for industry.

(4) One comment opposed the extension of the inspection period for small passenger vessels. The comment recommended increasing frequency of inspections or providing better training to Coast Guard inspectors. The comment suggests that increasing the period between inspections reduces the time inspectors are on the boats and increases the risk of catastrophic failure.

The changes in this rule will not extend the inspection period. Inspections of vessels will continue to be conducted annually. Only the issuance of the COI and term of validity is being changed by this project. In addition, annual inspections can be as extensive as the attending marine inspector deems necessary. Annual inspections could be more extensive due to the condition of the vessel or problems found with the vessel. The issue of training for Coast Guard inspectors is outside the scope of this rulemaking.

(5) One comment pointed out that the NPRM did not mention how the Coast Guard would phase-in the new inspection cycle. The comment asks whether all COI renewals after the effective date of the final rule will reflect the new requirements.

A NVIC is being developed in conjunction with this rulemaking to provide guidance on how to transition a vessel from the current survey and certification system to the harmonized system. The date of introduction of the harmonized system of survey and certification for a specific U.S. flag vessel should be agreed upon between the owner or operator and the cognizant Officer in Charge, Marine Inspection (OCMI). This agreed upon date may be the date of drydocking or the date of repairs or renovation. In any case, the date would not be later than the latest expiration date of the vessel's SOLAS, International Convention on Load Lines, or International Convention for the Prevention of Pollution from Ships (MARPOL) certificates. (As of February 3, 2000, MARPOL certificates will be issued with a 5-year term of validity.) Vessels with 2 or 3-year COIs, not required to have SOLAS certificates, will be issued a 5-year COI when their current COI expires and upon completion of that inspection for certification.

Anniversary Date

(6) One comment suggested that a constant anniversary date will make harmonization with the new COI schedule and drydock dates very difficult. The comment emphasizes that regulatory events should meld with the business cycle of vessels, which includes a credit drydock. The comment also requests the Coast Guard to clarify whether a vessel will retain its anniversary date when it has been taken out of service and then brought back into service.

This rulemaking only affects the anniversary date of the COI to harmonize with international standards. The vessel owner or operator should discuss harmonizing drydock dates with COIs when they speak with the OCMI to establish the COI anniversary date. For vessels taken out of service, their anniversary date will not change unless their deactivation extends beyond the validity of SOLAS, International Convention on Load Lines, or International Convention for the Prevention of Pollution from Ships (MARPOL) certificates or COIs.

Applicability

(7) One comment pointed out that oil spill response vessels (OSRVs) and oil spill response barges are not included in the regulations. The comment recommended that these vessels be addressed in some manner.

OSRVs are inspected under subchapter I, Cargo and Miscellaneous Vessels. The revisions to subchapter I in this final rule apply to OSRVs.

(8) One comment stated that the Coast Guard should include offshore supply vessels (OSVs) into the regulations.

Offshore supply vessels are addressed in 46 CFR subchapter L of the Coast Guard's regulations. This final rule amends the inspection and certification requirements for OSVs in 46 CFR 126.50, 126.420, 126.510, 126.520, and 126.530.

Equipment and System Inspections

(9) Four comments pointed out the importance of aligning equipment and system inspections with the 5-year inspection cycle. One comment stated that the alignment of pressure vessel inspections with the 5-year inspection for certification is a welcomed change.

(10) Three comments noted that in § 61.05–10 the regulations still require boiler inspections every 2.5 years and would prevent an owner from selecting the third anniversary option for a periodic inspection.

In Table 61.05–10, Inspection Intervals for Boilers, footnote number 2 explains that an entry of 2.5 in the table means "two tests or inspections must occur within any 5-year period, and no more than 3 years may elapse between any test or inspection and its immediate predecessor." Footnote number 2 allows owners or operators to select the third anniversary options for boiler inspections.

Inspection Creep

(11) One comment recommended that the Coast Guard should not grant a 3-month extension beyond the anniversary date without the approval of the OCMI. The OCMI needs the ability to disqualify substandard vessels from automatic 3-month extensions.

The 3-month extension is actually a 3-month window on either side of the anniversary date for the annual or periodic inspections. This extension does not apply beyond the validity of the COI. In addition, the OCMI retains the authority to limit the operations or require corrective action due to the condition of the vessel at anytime during the validity of the COI.

(12) One comment suggested that, in order to completely eliminate inspection creep, the wording in §§ 31.05–10, 91.01–10, 107.211, 126.250, 169.207, and 189.01–10 should be changed to permit the new COI to be dated "5 years from the date of the previous COI," instead of from the date of inspection.

We determined that the effect the proposed change in the comment would keep vessels out of harmonization with international standards. For vessels not wishing to harmonize with the international standards, their COIs will be dated 5 years from the date of the previous COI. In order to harmonize with SOLAS certificates, the period of validity will be based on the current COI date to eliminate inspection creep. The flexibility of establishing an anniversary date is discussed in the response to comment 5 and in a NVIC we are currently developing.

(13) Another comment recommended that owners have a one-time opportunity to "reset" the expiration date by renewing the current COI early or by requesting a period of validity of less than 5 years on an initial COI.

We agree that a one-time opportunity to "reset" the expiration date or to request a COI for less than 5-years will allow for harmonization and eliminate inspection creep. As previously stated,

the Coast Guard is developing policy guidance in a NVIC on the transition from the current survey and certification system to the harmonized system.

(14) Two comments recommended expressing the expiration date with the month and year only. One comment suggested that there is still a problem if an operator renews a COI before the expiration date of the last COI. The new date would still be earlier than the last COI date.

We disagree. The possibility of inspection creep still exists with only the month and year as the expiration date of the COI.

Mobile Offshore Drilling Units (MODUs)

(15) One comment recommended that the Coast Guard modify the inspection interval of load tests for cranes in § 107.361 to 5 years to conform to IMO and Coast Guard policy.

We agree that load tests for cranes should coincide with IMO and Coast Guard inspection intervals. Title 46 CFR 107.260 contains the requirements for the load test for cranes. We are amending 46 CFR 107.260(c)(2) to extend the interval for the load test for cranes from 48 months to 60 months.

Periodic Inspections

(16) One comment recommended that the Coast Guard eliminate periodic inspections and require four annual inspections during each 5-year cycle for COI. The comment also noted that periodic inspections are not required by SOLAS or U.S. law.

We disagree. Period inspections are part of the SOLAS system and the newly adopted 1988 protocols. Periodic inspections are an integral part of standardizing the term of validity for certificates and intervals for vessel inspections required by the IMO.

Streamlined Inspection Program (SIP) and Alternate Compliance Program (ACP)

(17) Six comments noted that the NPRM did not discuss the impact of the proposed changes on the Alternate Compliance Program (ACP) and the Streamlined Inspection Program (SIP). These comments requested that the Coast Guard clarify how the proposed rule would impact vessels in the SIP and ACP programs. One comment recommended that vessels enrolled in these programs should not be required to undergo annual inspections, only the inspection for certification.

Vessels enrolled in the ACP and SIP programs will be able to have a third party complete their inspections. The changes in this rule will have no effect on the ACP and SIP program. We disagree that vessels in the ACP and SIP programs should be allowed to avoid annual inspections.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

This rulemaking affects a total of 10,973 vessels. Of these, 5,531 vessels are required to change from a 2-year to a 5-year inspection interval. The following types of vessels have 2-year certificates: freight barges, freight ships, mobile offshore drilling units (MODUs), industrial vessels, oceanographic research vessels, offshore supply vessels, sailing school vessels, seagoing towing vessels, tank barges, and tank ships. The remaining vessels (5,442) are small passenger vessels that will change from a 3-year to a 5-year inspection interval.

Potential benefits of the frequency of inspection changes include—

- A harmonized inspection system enabling vessel owners and operators to receive their COI, SOLAS certificates, and Load Line Certificates simultaneously;
- Increased flexibility for vessel owners and operators by establishing up to a 3 month window on either side of the COI anniversary date in which to conduct inspections; and
- A reduction in the burden placed on vessel owners decreasing the time expended on required inspections. For the next 30 years, we estimate an annual burden reduction of 35 minutes per vessel for those in the previous 2-year COI cycle, and for vessels with previous 3-year COIs we expect an annual burden reduction of 13.5 minutes per vessel.

We considered whether this rule would have an impact on the currently assessed annual vessel inspection fees. The Coast Guard considers the impact to be minimal; and therefore, will have a negligible effect on the annual vessel inspection fee schedule. Accordingly, this rule does not change annual vessel inspection fees. However, we will initiate a rulemaking later this year that will reassess annual vessels inspection fees, and will account for all market condition changes.

Although this rulemaking restructures the inspection process, vessels will continue to be inspected once per year.

Potential benefits of changes made to load test for cranes include a reduction in the burden placed on MODU owners. MODUs will load test their cranes every five years instead of every four years. We estimate that the 132 MODUs will have an annual burden reduction of 1 hour 12 minutes per MODU for the next 20 years. MODUs usually contract a company to perform the load tests for cranes.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule does not increase costs to any of the affected vessels and, therefore, does not increase cost to small entities. We estimate this rule slightly reduces their burden by requiring less time expended on inspections. The anticipated benefits of this rulemaking to small entities are as follows:

- Requiring a COI certificate once every 5 years instead of every 2 or 3 years reduces the collection-of-information burden for all portions of the affected populations of the industry, including small entities. We determined that this rule reduces the collection-of-information burden over a 30-year period.
- The inspection cycle aligns better with international standards, enabling vessel owners and operators to complete several major inspections and surveys at the same time. This allows small businesses to reduce their inspection cost and increase their productivity.
- Requiring annual inspections that are less time consuming reduces the number of total inspection hours per vessel. The purpose of annual inspections is to examine specific areas of concern on vessels between the COI and periodic inspections.
- The inspection cycle for small passenger vessels (changing from a 3-year to a 5-year inspection for certification interval) will not include a periodic inspection. After careful consideration, we determined that periodic inspections for small passenger vessels increase industry's burden for each inspection by an estimated 7 minutes per vessel annually. Therefore,

the rule only requires COI and annual inspections, reducing the inspection burden from for all small passenger vessels.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for two collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collection requirements of the rule are addressed in the previously approved OMB collections 2115–0007 and 2115–0133.

OMB Collection 2115–0007

Title: Application for Vessel Inspection and Waiver.

Summary of the Collection of Information: The rule requires vessel owners and operators to change the frequency in which they send an "Application for Inspection of U.S. Vessel (CG–3752)". These changes revise the previously approved OMB Collection 2115–0007. This collection of information is affected by changes in the following sections: 46 CFR 31.01–15, 91.25–5, 126.420, 169.205, and 189.25–5.

Need for Information: This rulemaking reduces the paperwork burden for affected vessels. Vessel owners or operators are required to send an application (CG–3752) to schedule an inspection for renewal of a Certificate of Inspection once every 5 years, rather than every 2 or 3 years.

Proposed Use of Information: The application provides the Coast Guard with basic vessel information which is necessary for the initial planning and scheduling of inspection.

Description of the Respondents: This rule affects respondents who previously had 2- or 3-year inspection intervals for their vessel's Certificate of Inspection (COI). This rule implements a 5-year inspection interval. Previous 2-year COI vessel classes include freight barges, freight ships, industrial vessels, mobile offshore drilling units, oceanographic research vessels, offshore supply vessels, seagoing tows, tank barges, and tank ships. Previous 3-year COI vessel classes include small passenger vessels.

Number of Respondents: The regulation affects 10,973 respondents that currently have 2- or 3-year inspection intervals.

Frequency of Response: Vessel owners need to respond once per COI period. Completing and mailing the application constitutes a response. The Coast Guard anticipates that 2,195 vessels per year will get new COIs under the new 5-year inspection interval (10,973 respondents affected by this rule/5 years).

Burden of Response: The annual hour burden created by the posting of COIs for vessels with 5-year COIs is 549 hours (2,195 COI/Year × 0.25 hours). We expect operators to need 15 minutes at most to complete and mail the application.

Estimate of Total Annual Burden: The annual burden attributed to this collection for vessels with a 5-year COI is $21,960 (549 hours × the private industry wage rate of $40 per hour).

OMB Collection 2115–0133

Title: Various Forms and Posting Requirements Under Title 46 CFR Concerning Vessel Inspections.

Summary of the Collection of Information: This rule requires vessel owners and operators to change the frequency in which they post COIs on vessels. This change revises and amends the previously approved OMB Collection 2115–0133.

This collection of information is affected by the changes in the following sections: 46 CFR 31.05–10, 91.01–10, 107.211, 115.107, 126.250, 169.207, 176.107, and 189.01–10.

Need for Information: This rulemaking reduces the paperwork burden for affected vessels. Vessel owners or operators will renew Certificates of Inspection once every 5 years, rather than every 2 or 3 years. An application for a Certificate of Inspection is necessary to allow a Coast Guard inspector to evaluate the condition of a specific vessel and to ensure it is fit for the service for which it is intended.

Proposed Use of Information: The Coast Guard uses the inspection for certification to evaluate the condition of a specific vessel and to ensure it is fit for the service for which it is intended. The COI attests to that fitness.

Description of the Respondents: This rule affects respondents who currently have 2-year and 3-year COI interval. The rule implements a 5-year inspection interval. Previous 2-year COI vessel classes include freight barges, freight ships, industrial vessels, MODUs, oceanographic research vessels, offshore supply vessels, seagoing tows, tank barges, and tank ships. Previous 3-year COI vessel classes include small passenger vessels.

Number of Respondents: The regulation affects 10,973 respondents that currently have 2- or 3-year inspection intervals.

Frequency of Response: Vessel owners need to respond once per COI period. The posting of the certificate constitutes a response. The Coast Guard anticipates that 2,195 vessels will get new COIs per year under the new 5-year inspection interval (10,973 respondents/5 years).

Burden of Response: The estimated annual hour burden created by this regulation is 1,098 hours (2,195 COI per year × 0.5 hours). We expect operators to need 30 minutes to post the certificate on each ship.

Estimate of Total Annual Burden: The annual burden attributed to this rulemaking is $43,920 (1,098 hours times the private industry wage rate of $40 per hour).

Public Comments on Collection of Information: As required by 44 U.S.C. 3507(d), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. The sections are 46 CFR 31.01–15, 31.05–10, 91.01–10, 91.25–5, 107.211, 115.107, 126.250, 126.420, 169.205, 169.207, 176.107, 189.01–10, and 189.25–5 46; and the corresponding approval numbers from OMB are OMB Control Numbers 2115–0007 and 2115–0133.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

We have analyzed this rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically

required by law. In particular, the Act addresses actions that may result in expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rule deals exclusively with changing inspection intervals and providing voluntary dry-docking alternatives for certain passenger vessels. We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 52

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 132

Fire prevention, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 133

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 134

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Provisions for liftboats, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 195

Marine Safety, Navigation (water), Oceanographic research vessels.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 2, 30, 31, 52, 61, 71, 90, 91, 98, 107, 110, 114, 115, 125, 126, 132, 133, 134, 167, 169, 175, 176, 188, 189, 195, and 199 as follows:

PART 2—VESSEL INSPECTIONS

1. Revise the authority citation for part 2 to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3307, 3703; E.O. 12334, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Staf. 1120 (see 46 U.S.C. App. note prec. 1).

§ 2.01–3 [Amended]

2. In § 2.01–3(a), remove the words, ", but less than 60 days,".

§ 2.01–5 [Amended]

3. In § 2.01–5(a), remove paragraphs (a)(3) and (4).

§ 2.01–8 [Amended]

4. In § 2.01–8(b), remove "§ 176.35–1" and add, in its place, "§§ 115.900 and 176.900".

5. In § 2.01–25—

a. Remove paragraph (a)(1)(v) and redesignate paragraphs (a)(1)(vi) through (viii) as paragraphs (a)(1)(v) through (vii), respectively;

b. In paragraph (b)(1), immediately following the words "subchapter I (Cargo and Miscellaneous Vessels)," add the words "subchapter K (Small Passenger Vessels Carrying more than 150 Passengers or with overnight accommodations for more than 49 Passengers), subchapter L (Offshore Supply Vessels),"; and

c. Revise paragraphs (a)(4), (b)(2), (e)(2), and (f) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(4) The Federal Communications Commission will issue the following certificates:

(i) Cargo Ship Safety Radio Certificate.

(ii) Exemption Certificate.

* * * * *

(b) * * *

(2) For vessels other than passenger vessels, you must contact the local office of the Federal Communications Commission to apply for the inspection concerning the issuance of a Cargo Ship Safety Radio Certificate.

* * * * *

(e) * * *

(2) The Federal Communications Commission issues the Exemption Certificate, which modifies the Cargo Ship Safety Radio Certificate.

(f) *Availability of Certificates.* The Convention certificates must be on board the vessel and readily available for examination at all times.

* * * * *

PART 30—GENERAL PROVISIONS

6. Revise the authority citation for part 30 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

7. Add § 30.10–2a to read as follows:

§ 30.10–2a Anniversary date—TB/ALL.

The term *anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

PART 31—INSPECTION AND CERTIFICATION

8. Revise the authority citation for part 31 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 588013 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.01–1 [Amended]

9. In § 31.01–1(a), remove the words "biennially, annually," and add, in their place, the words "every 5 years".

10. In § 31.01–15, revise the section heading and paragraph (a) to read as follows:

§ 31.01–15 Application for a Certificate of Inspection—TB/ALL.

(a) You must submit a written application for an inspection for certification to the cognizant OCMI. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current Certificate of Inspection. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

* * * * *

11. In Section 31.05–10, revise the section heading and paragraph (a) to read as follows:

§ 31.05–10 Period of validity for a Certificate of Inspection—TB/ALL.

(a) A Certificate of Inspection is valid for 5 years.

* * * * *

12. In § 31.10–15, revise paragraph (a) and add paragraph (c) to read as follows:

§ 31.10–15 Inspection for Certification—TB/ALL.

(a) After receiving an application for inspection, the OCMI will inspect a tank vessel in his or her jurisdiction once every 5 years. The OCMI will ensure that every tank vessel is of a structure suitable for the carriage of flammable and/or combustible liquids in bulk and for the proper grade or grades of cargo the vessel carries while in service. If the OCMI deems it necessary, he or she may direct the vessel to be put in motion, and may adopt any other suitable means to test the tank vessel and its equipment.

* * * * *

(c) If the vessel passes the inspection for certification, the OCMI will issue a new Certificate of Inspection.

13. Revise § 31.10–17 to read as follows:

§ 31.10–17 Annual and periodic inspections—TB/ALL.

(a) *Annual inspection.* Your vessel must undergo an annual inspection within 3 months before or after each anniversary date, except as specified in paragraph (b) of this section.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the annual inspection is the same as the inspection for certification but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your vessel's current Certificate of Inspection.

(3) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(b) *Periodic inspection.* Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 31.10–15(b). The OCMI will ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your vessel's current Certificate of Inspection.

(3) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

14. Add § 31.10–17a to read as follows:

§ 31.10–17a Certificate of inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in § 31.10–17 (a) and (b) and your Certificate of Inspection must be endorsed.

§ 31.10–18 [Amended]

15. In § 31.10–18—

a. In paragraph (d), remove the words "biennially by" and add, in their place, the words "at the inspection for certification and the periodic inspection by" and remove the words "Prior to the biennial inspection" and add, in their place, the words "Before the inspection for certification and periodic inspection";

b. In paragraph (e), immediately following the words "inspection for certification" add the words ", periodic inspection,"; and

c. In paragraph (h), immediately following the words "inspection for certification" add the words ", periodic inspection,".

§ 31.40–1 [Amended]

16. In § 31.40–1, immediately following the words "international voyage." add the words "(See § 30.01–6 of this chapter.)".

17. Revise § 31.40–15 to read as follows:

§ 31.40–15 Cargo Ship Safety Radio Certificate—T/ALL.

Every tankship equipped with a radio installation on an international voyage must have a Cargo Ship Safety Radio Certificate. Each radio installation must meet the requirements of the Federal Communication Commission and the International Convention for Safety of Life at Sea.

18. Revise § 31.40–35 to read as follows:

§ 31.40–35 Availability of Certificates.

The Convention certificates shall be on board the vessel and readily available for examination at all times.

19. Revise § 31.40–40 to read as follows:

§ 31.40–40 Duration of Convention certificates—T/ALL.

(a) The following certificates are valid for a period of not more than 60 months.

(1) A Cargo Ship Safety Construction Certificate.

(2) A Cargo Ship Safety Equipment Certificate.

(3) A Safety Management Certificate.

(4) A Cargo Ship Safety Radio Certificate.

(b) An Exemption certificate must not be valid for longer than the period of the certificate to which it refers.

(c) A Convention certificate may be withdrawn, revoked, or suspended at any time when it is determined that the vessel is no longer in compliance with applicable requirements. (See § 2.01–70 of this chapter for procedures governing appeals.)

PART 52—POWER BOILERS

20. Revise the authority citation for part 52 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 52.01–50 [Amended]

21. § 52.01–50(k)(1), immediately following the words "inspection for certification" add the words ", periodic inspection".

PART 61—PERIODIC TESTS AND INSPECTIONS

22. Revise the authority citation for part 61 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

§ 61.05–10 [Amended]

23. In § 61.05–10, in Table 61.05–10, remove the letters "COI", wherever they appear, and add, in their place, the number "2.5"; and, in Table 61.05–10, in footnote number 1, remove the words "; where COI is used, the intervals coincide with the applicable vessel's inspection for certification".

24. In § 61.10–5, revise paragraphs (c), (h), and (i) to read as follows:

§ 61.10–5 Pressure vessels in service.

* * * * *

(c) *Special purpose vessels.*

(1) If your vessel's Certificate of Inspection is renewed annually, the following must be examined under operating conditions at each inspection for certification: all tubular heat exchangers, hydraulic accumulators, and all pressure vessels used in refrigeration service.

(2) If your vessel's Certificate of Inspection is renewed less often than annually, the following must be examined under operating conditions twice every 5 years: all tubular heat exchangers, hydraulic accumulators, and all pressure vessels used in refrigeration service.

(3) No more than 3 years may elapse between any examination and its immediate predecessor.

* * * * *

(h) *Pneumatic tests.*

(1) Pressure vessels that were pneumatically tested before being stamped with the Coast Guard Symbol must be examined internally twice every 5 years and examined externally at each Inspection for Certification. No more than 3 years may elapse between any external examination and its immediate predecessor.

(2) For tanks whose design precludes a thorough internal or external examination, the thickness must be determined by a nondestructive method acceptable to the Officer in Charge, Marine Inspection.

(3) If (due to the product carried) your vessel's inspection intervals are prescribed in subchapter D (Tank Vessels), subchapter I (Cargo and Miscellaneous Vessels), or subchapter I–A (Mobile Offshore Drilling Units), you must comply with the pneumatic test regulations there, instead of the ones in this section.

(i) *Safety or relief valves on pressure vessels.*

(1) If your vessel's Certificate of Inspection is renewed annually, the marine inspector must check the settings of the safety or relief valves on all pressure vessels, except cargo tanks, at each inspection for certification.

(2) If your vessel's Certificate of Inspection is renewed less often than annually, the marine inspector must check the settings of the safety or relief valves on all pressure vessels, except cargo tanks, twice every 5 years. No more than 3 years may elapse between any check and its immediate predecessor.

(3) Cargo tank safety or relief valves must be checked at the interval required in subchapter D (Tank Vessels) or subchapter I (Cargo and Miscellaneous Vessels) of this chapter.

§ 61.15–5 [Amended]

25. In § 61.15–5(c), immediately following the words "inspection for certification" add the words "for vessels whose Certificates of Inspection are renewed each year. For other vessels, the setting must be checked twice within any 5-year period, and no more than 3 years may elapse between any check and its immediate predecessor".

§ 61.15–10 [Amended]

26. In § 61.15–10(a), remove the words "and at each inspection for

certification" and add, in their place, the words ", at each inspection for certification, and at each periodic inspection".

§ 61.15–12 [Amended]

27. In § 61.15–12(a), immediately following the words "inspection for certification" add the words "and periodic inspection".

28. Revise § 61.20–1(a) to read as follows:

§ 61.20–1 Steering gear.

(a) The marine inspector must inspect the steering gear at each inspection for certification for vessels whose Certificate of Inspections are renewed each year. For other vessels, the marine inspector must inspect the steering gear twice within a 5-year period, and no more than 3 years may elapse between any inspection and its immediate predecessor. The marine inspector may inspect the steering gear more often, if necessary.

* * * * *

§ 61.20–3 [Amended]

29. In § 61.20–3, in paragraph (a), immediately following the words "inspection for certification" add the words "and periodic inspection"; and, in paragraph (b), immediately following the words "inspection for certification" add the words "and periodic inspection".

§ 61.30–15 [Amended]

30. In § 61.30–15, immediately following the words "inspection for certification" add the words ", periodic inspection".

§ 61.30–20 [Amended]

31. In § 61.30–20, immediately following the words "inspection for certification" add the words ", periodic inspection".

PART 71—INSPECTION AND CERTIFICATION

32. Revise the authority citation for part 71 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

33. Add § 71.25–5(b) to read as follows:

§ 71.25–5 When made.

* * * * *

(b) You must submit your application for the annual inspection at least 30 days before your current certificate of inspection expires.

PART 90—GENERAL PROVISIONS

34. Revise the authority citation for part 90 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§§ 90.10–1 and 90.10–2 [Redesignated as §§ 90.10–2 and 90.10–3]

35. Redesignate §§ 90.10–1 and 90.10–2 as §§ 90.10–2 and 90.10–3 respectively and add § 90.10–1 to read as follows:

§ 90.10–1 Anniversary date.

The term *anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

PART 91—INSPECTION AND CERTIFICATION

36. Revise the authority citation for part 91 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 91.01–10 [Amended]

37. In § 91.01–10—

a. In the section heading, immediately following the word "validity" add the words "for a Certificate of Inspection";

b. In paragraph (a), remove the words "periods of either 1 or 2 years" and add, in their place, the words "a period of 5 years"; and

c. In paragraph (c)(2), remove the words "2 years" and add, in their place, the words "5 years".

38. Revise § 91.25–5 to read as follows:

§ 91.25–5 Application for a Certificate of Inspection.

You must submit a written application for an inspection for certification to the cognizant Officer in Charge, Marine Inspection. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current certificate. You must use Form CG–3752, Application for Inspection of U.S. Vessel, and submit it to the Officer in Charge, Marine Inspection at, or nearest to, the port where the vessel is located. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

39. Revise § 91.25–20(a) introductory text to read as follows:

§ 91.25–20 Fire-extinguishing equipment.

(a) At each inspection for certification, periodic inspection and at other times necessary, the inspector will determine that all fire-extinguishing equipment is in suitable condition and may require any tests necessary to determine the condition of the equipment. The inspector will determine if the tests and inspections required by § 91.15–60 of this subchapter have been conducted. At each inspection for certification and periodic inspection, the inspector will check fire-extinguishing equipment with the following tests and inspections:

* * * * *

§ 91.25–25 [Amended]

40. In § 91.25–25(a), immediately following the words "inspection for certification" add the words "and periodic inspection".

§ 91.25–38 [Amended]

41. In § 91.25–38, immediately following the words "inspection for certification" add the words "and periodic inspection".

§ 91.25–40 [Amended]

42. In § 91.25–40, immediately following the words "inspection for certification" add the words "and periodic inspection".

§ 91.25–45 [Amended]

43. In § 91.25–45, immediately following the words "inspection for certification" add the words "and periodic inspection".

Subpart 91.27—Annual and Periodic Inspections

44. In subpart 91.27, revise the subpart heading to read as set forth above.

45. Revise § 91.27–1 to read as follows:

§ 91.27–1 Annual and periodic inspections.

(a) *Annual inspection.* Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date, except as required in paragraph (b) of this section.

(1) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the annual inspection is the same as the inspection for certification as specified in § 91.25–10 but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has

occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(b) *Periodic inspection.* Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(1) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 91.25–10. The Officer in Charge, Marine Inspection will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(4) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

46. Revise § 91.27–5 to read as follows:

§ 91.27–5 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in § 91.27–1 (a) and (b) and your Certificate of Inspection must be endorsed.

§ 91.27–10 [Removed]

47. Remove § 91.27–10.

48. Revise § 91.27–13 to read as follows:

§ 91.27–13 Alternative annual inspection for offshore supply vessels less than 400 gross tons in foreign ports.

(a) The owner or operator of an offshore supply vessel of less than 400 gross tons, except liftboats as defined in § 90.10–20 of this chapter, may request authorization to conduct an alternative annual inspection in place of the annual inspection described in § 91.27–1(a) of this chapter. You must submit your request to the Officer in Charge, Marine Inspection responsible for conducting inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative annual inspection, you must meet the following requirements:

(1) The request for authorization must be in writing and received by the cognizant Officer in Charge, Marine Inspection before the end of the twelfth month of each COI anniversary year.

(2) The vessel is expected to be continuously employed outside of the United States during the 3 months before and after each anniversary date of the issuance of the COI.

(b) In determining whether to grant authorization for the alternative annual inspection, the Officer in Charge, Marine Inspection will consider the following:

(1) Information contained in previous inspection and drydock examination reports, including the Officer in Charge, Marine Inspection's recommendation for participation in the alternative midperiod examination program, and the alternative annual inspection program.

(2) The nature, number, and severity of any marine casualties or accidents, as defined in § 4.03–1 of this chapter, which the vessel has experienced in the last 3 years.

(3) The nature, number, and severity of any outstanding inspection requirements for the vessel.

(4) The owner or operator's history of compliance and cooperation in the alternative midperiod examination program and the alternative annual inspection program, which includes—

(i) The prompt correction of deficiencies;

(ii) The reliability of previously submitted alternative examination and annual inspection reports; and

(iii) The reliability of representations that the vessel under consideration will be, and other vessels previously examined under this section were, employed outside of the United States for the 3 month period before and after each anniversary date.

(c) If authorization is granted, the officer in Charge, Marine Inspection must provide the applicant written authorization to proceed with the alternative annual inspection, including special instructions when appropriate.

(d) The following conditions must be met for the alternative annual inspection to be accepted by the Coast Guard in lieu of conducting an annual inspection in accordance with § 91.27–1(a) of this subpart.

(1) The alternative annual inspection must be conducted within 3 months before and after each anniversary date.

(2) The alternative annual inspection must be of the scope detailed in § 91.27–1(a) of this subpart and must be conducted by the vessel's master, operator, or a designated representative of the owner or operator.

(3) Upon completion of the alternative annual inspection, the person or persons conducting the inspection must prepare a comprehensive report describing the conditions found. This inspection report must contain sufficient detail to allow an evaluation to be made by the Officer in Charge, Marine Inspection to whom the report is submitted that the vessel is fit for the service and route specified on the certificate of inspection. The report must include reports and receipts documenting the servicing of lifesaving and fire protection equipment, and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing the report must sign it and certify that the information contained therein is complete and accurate.

(4) Unless the vessel's master participated in the alternative annual inspection and the preparation of the inspection report, the master must review the report for completeness and accuracy. The master must sign the report to indicate review and forward it to the vessel's owner or operator who requested authorization to conduct the inspection.

(5) The owner or operator of an offshore supply vessel inspected under this subpart must review and submit the report required by paragraph (d)(3) of this section to the Officer in Charge, Marine Inspection who authorized the owner or operator to conduct the alternative annual inspection. The inspection report must be received by the cognizant Officer in Charge, Marine Inspection before the first day of the fifth month following the anniversary date. The forwarding letter or endorsement must be certified and contain the following information—

(i) That the person or persons who conducted the inspection acted on behalf of the vessel's owner or operator;

(ii) That the inspection report was reviewed by the owner or operator;

(iii) That the discrepancies noted during the during the inspection have been corrected or will be corrected within a stated time frame; and

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the inspection or has made necessary inquiries to justify forming a belief that the inspection report is true and correct.

(e) The form of certification required under this subpart is as follows:

I certify that the above is true and complete to the best of my knowledge and belief.

(f) Deficiencies and hazards discovered during an alternative annual inspection conducted pursuant to this section must be corrected or eliminated, if practical, before the inspection report is submitted to the Officer in Charge, Marine Inspection in accordance with paragraph (d)(5) of this section. Deficiencies and hazards that are not corrected or eliminated by the time the inspection report is submitted must be listed in the report as "outstanding." Upon receipt of an inspection report indicating outstanding deficiencies or hazards, the Officer in Charge, Marine Inspection will inform the owner or operator of the vessel in writing of the time period in which to correct or eliminate the deficiencies or hazards and the method for establishing that the corrections have been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection will initiate appropriate enforcement measures.

(g) Upon receipt of the report required by paragraph (d)(3) of this section, the Officer in Charge, Marine Inspection must evaluate it and make the following determination:

(1) Whether the alternative annual inspection is accepted in lieu of the annual inspection required by § 91.27–1(a) of this subpart.

(2) Whether the vessel is in satisfactory condition.

(3) Whether the vessel continues to be reasonably fit for its intended service and route. The Officer in Charge, Marine Inspection may request any additional information needed to make the determinations required by this section. The Officer in Charge, Marine Inspection will inform the owner or operator in writing of the determinations required by this section.

(h) If the Officer in Charge, Marine Inspection determines, in accordance with paragraph (g) of this section, that the alternative annual inspection is not accepted in lieu of the annual inspection required by § 91.27–1(a) of this subpart, the vessel must be reinspected by the cognizant Officer in Charge, Marine Inspection as soon as practical.

(i) If the Officer in Charge, Marine Inspection determines, in accordance with paragraph (g) of this section, that the alternative annual inspection is accepted in lieu of the annual inspection required by § 91.27–1(a) of this subpart, the master must complete the applicable COI endorsement.

§ 91.60–1 [Amended]

49. In § 91.60–1, immediately following the words "international voyage." add the words "(See § 91.05–10 of this chapter.)".

50. Revise § 91.60–15 to read as follows:

§ 91.60–15 Cargo Ship Safety Radio Certificate.

Every vessel equipped with a radio installation on an international voyage must have a Cargo Ship Safety Radio Certificate. Each radio installation must meet the requirements of the Federal Communication Commission and the International Convention for Safety of Life at Sea.

51. Revise § 91.60–35 to read as follows:

§ 91.60–35 Availability of Certificates.

The Convention certificates must be on board the vessel and readily available for examination at all times.

52. Revise § 91.60–40 to read as follows:

§ 91.60–40 Duration of Convention certificates.

(a) The following certificates are valid for a period of not more than 60 months.

(1) A Cargo Ship Safety Construction Certificate.

(2) A Cargo Ship Safety Equipment Certificate.

(3) A Safety Management Certificate.

(4) A Cargo Ship Safety Radio Certificate.

(b) An Exemption certificate must not be valid for longer than the period of the certificate to which it refers.

(c) A Convention certificate may be withdrawn, revoked, or suspended at any time when it is determined that the vessel is no longer in compliance with applicable requirements. (See § 2.01–70 of this chapter for procedures governing appeals.)

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

53. Revise the authority citation for part 98 to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 98.25–95 [Amended]

54. In § 98.25–95(a)(2), remove the words "biennial inspection" and add, in their place, the words, "inspection for certification and periodic inspection".

PART 107—INSPECTION AND CERTIFICATION

55. Revise the authority citation for part 107 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3307; 46 U.S.C. 3316; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

56. In § 107.111, add, in alphabetical order, the definition for "anniversary date" to read as follows:

§ 107.111 Definitions.

* * * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

§ 107.201 [Amended]

57. In § 107.201, in paragraph (b) remove the word "Biennial", capitalize the word "inspection" the first time it appears, and in paragraph (c) remove the word "Reinspection" and add, in its place, the words "Annual and periodic inspections".

58. Revise § 107.211(d) to read as follows:

§ 107.211 Original Certificate of Inspection.

* * * * *

(d) A Certificate of Inspection is valid for 5 years.

59. In § 107.215—

(a) Revise the section heading to read as set forth below;

(b) In paragraph (a), remove the words "a biennial" and add, in their place, the word "an";

(c) In paragraph (b), remove the words "60 days" and add, in their place, the words "30 days";

(d) In paragraph (c) remove the words "biennial inspection" and add, in their place, the words "inspection for certification"; and

(e) Add new paragraph (d) to read as follows:

§ 107.215 Renewal of Certificate of Inspection.

* * * * *

(d) A Certificate of Inspection is valid for 5 years.

§ 107.260 [Amended]

60. In § 107.260(c)(2), remove the number "48" and add, in its place, the number "60".

61. Revise § 107.269 to read as follows:

§ 107.269 Annual inspection.

(a) Your mobile offshore drilling unit (MODU) must undergo an annual inspection within the 3 months before or after each anniversary date, except as specified in § 107.270.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the annual inspection is the same as the inspection for certification as specified in § 107.231, except § 107.231(x) and (y), but in less detail unless the cognizant OCMI finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the MODU has occurred, the OCMI will conduct an inspection more detailed in scope to ensure that the MODU is in satisfactory condition and fit for the service for which it is intended. If your MODU passes the annual inspection, the OCMI will endorse your current Certificate of Inspection.

(d) If the annual inspection reveals deficiencies in your MODU's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

62. Add § 107.270 to read as follows:

§ 107.270 Periodic inspection.

(a) Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 107.231 except § 107.231(x) and (y). The OCMI will insure that the MODU is in satisfactory condition and fit for the service for which it is intended. If your MODU passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the periodic inspection reveals deficiencies in your MODU's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

63. In § 107.279, revise paragraphs (b), (c) and (d) to read as follows:

§ 107.279 Certificate of Inspection: Failure to meet requirements.

* * * * *

(b) Withhold renewal of the Certificate of Inspection until the MODU meets the requirements of § 107.231, except § 107.231(x) and (y).

(c) Suspend a valid Certificate of Inspection after an annual or periodic inspection until the MODU meets the requirements of § 107.231, except § 107.231(x) and (y).

(d) Revoke a valid Certificate of Inspection after an annual or periodic inspection if the unit operates without complying with Coast Guard orders to correct unlawful conditions.

64. Add § 107.283 to subpart B to read as follows:

§ 107.283 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in §§ 107.269 and 107.270 and your Certificate of Inspection must be endorsed.

§ 107.405 [Amended]

65. In § 107.405(b), remove the words "24 months" and add, in their place, the words "60 months".

PART 110—GENERAL PROVISIONS

66. Revise the authority citation for part 110 to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

67. Revise § 110.30–5 to read as follows:

§ 110.30–5 Inspection for certification.

Electric installations and electric equipment must be inspected at the inspection for certification and periodic inspection to determine mechanical and electrical condition and performance. Particular note must be made of circuits added or modified after the original issuance of the Certificate of Inspection.

PART 114—GENERAL PROVISIONS

68. Revise the authority citation for part 114 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Section 114.900 also issued under 44 U.S.C. 3507.

69. In § 114.400(b), add, in alphabetical order, the definition for "anniversary date" to read as follows:

§ 114.400 Definition of terms used in this subchapter.

* * * * *

(b) * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

PART 115—INSPECTION AND CERTIFICATION

70. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 115.105 [Amended]

71. In § 115.105(e), in the second sentence, remove the word "periodic".

72. Revise § 115.107 to read as follows:

§ 115.107 Period of validity for a Certificate of Inspection.

(a) A Certificate of Inspection is valid for 1 year for vessels carrying more than 12 passengers on international voyages.

(b) A Certificate of Inspection is valid for 5 years for all other vessels.

(c) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter.

73. In § 115.404, redesignate existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 115.404 Subsequent inspections for certification.

* * * * *

(b) You must submit your written application for renewal of a Certificate of Inspection to the OCMI at least 30 days prior to the expiration date of the

your current COI, as required in § 115.105.

74. Revise § 115.500 to read as follows:

§ 115.500 When required.

(a) Vessels carrying more than 12 passengers on international voyages must undergo an inspection for certification each year as specified in § 115.404.

(b) All other vessels must undergo an inspection for certification as specified in § 115.404 and an annual inspection as specified in paragraph (b)(1) of this section.

(1) *Annual inspection.* Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date.

(i) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(ii) The scope of the annual inspection is the same as the inspection for certification, as specified in § 115.404 but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(iii) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(iv) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(2) [Reserved]

75. Revise § 115.502 to read as follows:

§ 115.502 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual inspections within the periods specified in § 115.500 and your Certificate of Inspection must be endorsed.

§ 115.812 [Amended]

76. Section 115.812(a), remove the words "; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter".

PART 125—GENERAL

77. The authority citation for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

§ 125.160 [Amended]

78. In § 125.160, add, in alphabetical order, the definition of "anniversary date" to read as follows:

§ 125.160 Definitions.

* * * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

PART 126—INSPECTION AND CERTIFICATION

79. Revise the authority citation for part 126 to read as follows:

Authority: 46 U.S.C. 3205, 3306, 3307; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 126.250 [Amended]

80. In § 126.250, in the section heading, immediately following the word "validity" add the words "for a Certificate of Inspection"; and in paragraph (a), remove the number "2" and add, in its place, the number "5".

81. Revise § 126.420 to read as follows:

§ 126.420 Application for Certificate of Inspection.

You must submit a written application for an inspection for certification to the cognizant OCMI. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current certificate. You must use Form CG–3752, Application for Inspection of U.S. Vessel, and submit it to the OCMI at, or nearest to, the port where the vessel is located. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

82. Revise subpart E to read as follows:

Subpart E—Annual, Periodic, and Alternative Annual Inspections

Sec.

126.510 Annual and periodic inspections.
126.520 Certificate of Inspection: Conditions of validity.
126.530 Alternative annual inspection for offshore supply vessels less than 400 gross tons in foreign ports.

§ 126.510 Annual and periodic inspections.

(a) *Annual inspection.* Your vessel must undergo an annual inspection within 3 months before or after each anniversary date, except as required in paragraph (b) of this section.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the annual inspection is the same as the inspection for certification as specified in § 126.430, but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from making such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(b) *Periodic inspection.* Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(1) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(2) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 126.430. The OCMI will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(3) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(4) Nothing in this subpart limits the marine inspector from conducting such

tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

§ 126.520 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in § 126.510 (a) and (b) and your Certificate of Inspection must be endorsed.

§ 126.530 Alternative annual inspection for offshore supply vessels less than 400 gross tons in foreign ports.

(a) The owner, master or operator of an OSV of less than 400 gross tons may request authorization to conduct an alternative annual inspection in place of the annual inspection described in § 126.510(a) of this subpart. The request must go to the cognizant OCMI assigned responsibility for inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative annual examination, the vessel must meet the following requirements:

(1) The request must be in writing and be received by the OCMI not later than the anniversary date.

(2) The vessel is likely to be continuously employed outside of the United States during the 3 months before and after each anniversary date.

(b) In determining whether to authorize the alternative annual inspection, the OCMI considers the following:

(1) Information contained in previous examination reports on inspection and drydock, including the recommendation of the then cognizant OCMI for participation in the alternative midperiod program and alternative annual examination.

(2) The nature, number, and severity of marine casualties or accidents, as defined in § 4.03–1 of this chapter, involving the vessel in the 3 years preceding the request.

(3) The nature, number, and gravity of any outstanding inspection requirements for the vessel.

(4) The owner's or operator's history of compliance and cooperation in such alternative midperiod examinations and annual inspections, including:

(i) The prompt correction of deficiencies.

(ii) The reliability of previously submitted reports on such alternative midperiod examinations and annual inspections.

(iii) The reliability of representations that the vessel would be, and was, employed outside of the United States during the 3 months before and after each anniversary date.

(c) This OCMI provides the applicant with written authorization, if any, to proceed with the alternative annual inspection, including, when appropriate, special instructions.

(d) The following conditions must be met for the alternative annual inspection to be accepted instead of the annual inspection required by §126.510 of this subpart:

(1) The alternative annual inspection must occur within the 3 months before or after each anniversary date.

(2) The alternative annual inspection must be of the scope detailed by § 126.510(a) of this subchapter and must be conducted by the master, owner or operator of the vessel, or by a designated representative of the owner or operator.

(3) Upon completion of the alternative annual inspection, the person or persons making the examination must prepare a comprehensive report describing the conditions found. This report must contain sufficient detail to let the OCMI determine whether the vessel is fit for the service and route specified on the Certificate of Inspection. This report must include all reports and receipts documenting the servicing of lifesaving equipment and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing this report must sign it and certify that the information contained therein is complete and accurate.

(4) Unless the master of the vessel participated in the alternative annual inspection and the preparation of the comprehensive report, the master will review the report for completeness and accuracy. The master must sign the report to indicate his or her review and validation and must forward it to the owner or operator of the vessel.

(5) The owner or operator of a vessel examined under this section must review and submit the comprehensive report, required by paragraph (d)(3) of this section, to the OCMI. The report must reach the OCMI before the first day of the fifth month following the anniversary date. The forwarding letter or endorsement must be certified to be true and must contain the following information:

(i) That the person or persons who made the alternative annual inspection acted on behalf of the vessel's owner or operator.

(ii) That the report was reviewed by the owner or operator.

(iii) That the discrepancies noted during the reinspection have been corrected, or will be within a stated time.

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the reinspection, or has conducted inquires necessary to justify forming a belief that the report is complete and accurate.

(e) The form of certification required under this section, for the alternative annual inspection, is as follows:

I certify that to the best of my knowledge and belief the information contained in the report is complete and accurate.

(f) Deficiencies and hazards discovered during the alternative annual inspection conducted pursuant to this section must be corrected or eliminated, if practical, before the examination report is submitted to the OCMI in accordance with paragraph (d)(5) of this section. Deficiencies and hazards that are not corrected or eliminated by the time the examination report is submitted must be listed in the report as "outstanding." Upon receipt of an examination report indicating outstanding deficiencies or hazards, the OCMI must inform the owner or operator in writing of the time period within which to correct or eliminate the deficiencies or hazards and the method for establishing that the corrections have been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection must initiate appropriate enforcement measures.

(g) Upon receipt of the report, the OCMI will evaluate it and determine the following:

(1) Whether the cognizant OCMI accepts the alternative annual inspection instead of the annual inspection required by § 126.510(a) of this subpart.

(2) Whether the vessel is in satisfactory condition.

(3) Whether the vessel continues to be reasonably fit for its intended service and route.

(h) The OCMI may require further information necessary for the determinations required by this section. The OCMI will inform the owner or operator in writing of these determinations.

(i) If the OCMI, in compliance with paragraph (g) of this section, does not accept the alternative annual inspection instead of the annual inspection required by § 126.510(a) of this subpart, he or she will require reinspection of the vessel as soon as practicable. He or she will inform the vessel owner or operator in writing that the alternative examination is not acceptable and that a reinspection is necessary. The owner, master, or operator must make the

vessel available for the reinspection at a time and place agreeable to this OCMI.

(j) If the OCMI determines, in accordance with paragraph (g) of this section, that the alternative annual inspection is accepted in lieu of the annual inspection required by § 126.510(a) of this subpart, the master must complete the applicable COI endorsement.

PART 132—FIRE-PROTECTION EQUIPMENT

83. Revise the authority citation for part 132 to read as follows:

Authority: 46 U.S.C. 3306, 3307; 449 CFR 1.46.

§ 132.350 [Amended]

84. In § 132.350(a)(2), after the words "inspection for certification" add the words "and periodic inspection".

PART 133—LIFESAVING SYSTEMS

85. Revise the authority citation for part 133 to read as follows:

Authority: 46 U.S.C. 3306, 3307; 449 CFR 1.46.

§ 133.45 [Amended]

86. In § 133.45(b), after the words "inspection for renewal of certification" add the words "and periodic inspection".

PART 134—ADDED PROVISIONS FOR LIFTBOATS

87. Revise the authority citation for part 134 to read as follows:

Authority: 46 U.S.C. 3306, 3307; 449 CFR 1.46.

§ 134.120 [Amended]

88. In § 134.120, after the words "inspection for certification" add the words "and periodic inspection".

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

89. Revise the authority citation for part 167 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

90. In § 167.15–20, designate existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 167.15–20 Inspections of nautical school ships.

* * * * *

(b) To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the vessel's current certificate.

PART 169—SAILING SCHOOL VESSELS

91. Revise the authority citation for part 169 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3307, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

92. In § 169.107, redesignate paragraphs (a) through (y) as paragraphs (b) through (z), respectively, and add new paragraph (a) to read as follows:

§ 169.107 Definitions.

(a) *Anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

93. In § 169.205, revise section heading and paragraph (d) to read as follows:

§ 169.205 Obtaining or renewing a Certificate of Inspection.

* * * * *

(d) You must submit a written application for an inspection for certification to the cognizant Officer in Charge, Marine Inspection. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the vessel's current certificate. Applications are available at any U.S. Coast Guard Marine Safety Office or Marine Inspection Office. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

* * * * *

94. In § 169.207, revise section heading and paragraph (a) to read as follows:

§ 169.207 Period of validity for a Certificate of Inspection.

(a) A Certificate of Inspection is valid for 5 years.

* * * * *

95. Revise § 169.225 to read as follows:

§ 169.225 Annual inspection.

(a) Your vessel must undergo an annual inspection within 3 months before or after each anniversary date, except as specified in § 169.226.

(b) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the annual inspection is the same as the inspection for certification as specified in § 169.222 but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

96. Add § 169.226 to read as follows:

§ 169.226 Periodic inspection.

(a) Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(b) You must contact the cognizant Officer in Charge, Marine Inspection to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 169.222. The Officer in Charge, Marine Inspection will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the Officer in Charge, Marine Inspection.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

97. Revise § 169.227 to read as follows:

§ 169.227 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in §§ 169.225 and 169.226 respectively and your Certificate of Inspection must be endorsed.

§ 169.239 [Amended]

98. In § 169.239, after the words "inspection for certification" add the words "and periodic inspection".

99. Revise § 169.241(a) introductory text to read as follows:

§ 169.241 Machinery.

(a) At each inspection for certification and periodic inspection, the marine inspector will examine and test the following items to the extent necessary, to determine that they are in proper operating condition and fit for the service for which they are intended:

* * * * *

100. Revise the introductory text in § 169.243 to read as follows:

§ 169.243 Electrical.

At each inspection for certification and periodic inspection, the marine inspector will examine and test the following items to the extent necessary, to determine that they are in proper operating condition, in safe electrical condition, and fit for the service for which they are intended:

* * * * *

101. Revise the introductory text in § 169.245 to read as follows:

§ 169.245 Lifesaving equipment.

At each inspection for certification and periodic inspection the following tests and inspections of lifesaving equipment will be conducted:

* * * * *

§ 169.247 [Amended]

102. In § 169.247(a), after the words "inspection for certification" add the words "and periodic inspection".

§ 169.251 [Amended]

103. In § 169.251, after the words "inspection for certification" add the words "and periodic inspection".

§ 169.253 [Amended]

104. In § 169.253(a), after the words "inspection for certification" add the words "and periodic inspection".

§ 169.255 [Amended]

105. In § 169.255, after the words "inspection for certification" remove the words "and reinspection" and, in their place, add the words ", periodic inspection, and annual inspection".

§ 169.257 [Amended]

106. In § 169.257(a) remove the word ", reinspection" and in § 169.257(a) and (b), after the words "inspection for certification" add the words ", periodic inspection, annual inspection,".

PART 175—GENERAL PROVISIONS

107. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

108. In § 175.400, add, in alphabetical order, the definition for "anniversary date" to read as follows:

§ 175.400 Definition of terms used in this subchapter.

* * * * *

Anniversary date means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

109. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

110. Revise § 176.107 to read as follows:

§ 176.107 Period of validity for a Certificate of Inspection.

(a) A Certificate of Inspection is valid for 1 year for vessels carrying more than 12 passengers on international voyages.

(b) A Certificate of Inspection is valid for 5 years for all other vessels.

(c) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter.

111. In § 176.404, redesignate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 176.404 Subsequent inspections for certification.

* * * * *

(b) You must submit your written application for renewal of a Certificate of Inspection to the OCMI at least 30 days prior to the expiration date of the Certificate of Inspection, as required in § 176.105 of this part.

112. Revise § 176.500 to read as follows:

§ 176.500 When required.

(a) Vessels carrying more than 12 passengers on international voyages must undergo an inspection for certification each year as specified in § 176.404.

(b) All other vessels must undergo an inspection for certification as specified in § 176.404 and annual inspection as specified in paragraph (b)(1) of this section.

(1) *Annual inspection.* Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date.

(i) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(ii) The scope of the annual inspection is the same as the inspection for certification but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(iii) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(iv) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

(2) [Reserved]

113. Revise § 176.502 to read as follows:

§ 176.502 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual inspection within the periods specified in § 176.500(b)(1) and your Certificate of Inspection must be endorsed.

§ 176.812 [Amended]

114. In § 176.812, in paragraph (a), remove the words "; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter"; and, in paragraph (b), remove the number

"§ 61.10" and add, in its place, the number "§ 61.05".

PART 188—GENERAL PROVISIONS

115. Revise the authority citation for part 188 to read as follows:

Authority: 46 U.S.C. 2113, 3306, 3307; 49 U.S.C. App. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 188.10–1 [Redesignated as § 188.10–2]

116. Redesignate § 188.10–1 as § 188.10–2 and add new § 188.10–1 to read as follows:

§ 188.10–1 Anniversary date.

The term *anniversary date* means the day and the month of each year, which corresponds to the date of expiration of the Certificate of Inspection.

PART 189—INSPECTION AND CERTIFICATION

117. Revise the authority citation for part 189 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 189.01–10 [Amended]

118. In § 189.01–10—

a. In the section heading, immediately following the word "validity" add the words "for a Certificate of Inspection";

b. In paragraph (a), remove the first sentence and add, in its place, the sentence "A Certificate of Inspection is valid for 5 years."; and

c. In paragraph (c)(2), remove the words "in no case to exceed 2 years" and add, in their place, the words "not to exceed 5 years".

119. Revise § 189.25–5 to read as follows:

§ 189.25–5 Application for a Certificate of Inspection.

You must submit a written application for an inspection for certification to the cognizant OCMI. To renew a Certificate of Inspection, you must submit an application at least 30 days before the expiration of the tank vessel's current certificate. You must use Form CG–3752, Application for Inspection of U.S. Vessel, and submit it to the OCMI at, or nearest to, the port where the vessel is located. When renewing a Certificate of Inspection, you must schedule an inspection for certification within the 3 months before the expiration date of the current Certificate of Inspection.

§ 189.25–20 [Amended]

120. In § 189.25–20(a) introductory text, in the first sentence, remove the words "inspection for certification and" add, in their place, the words "inspection for certification, periodic inspection, and"; and, in the last sentence, immediately following the words "inspection for certification" add the words "and periodic inspection".

§ 189.25–25 [Amended]

121. In § 189.25–25(a), after the words "inspection for certification" add the words "and periodic inspection".

§ 189.25–38 [Amended]

122. In § 189.25–38, after the words "inspection for certification" add the words "and periodic inspection".

§ 189.25–40 [Amended]

123. In § 189.25–40, after the words "inspection for certification" add the words "and periodic inspection".

§ 189.25–45 [Amended]

124. In § 189.25–45, remove the designation for paragraph (a), and after the words "inspection for certification" add the words "and periodic inspection".

§ 189.25–47 [Amended]

125. In § 189.25–47(a) and (b), after the words "inspection for certification." add the words "and periodic inspection.".

Subpart 189.27—Annual and Periodic Inspections

126. In subpart 189.27, revise the subpart heading to read as set forth above.

127. Revise § 189.27–1 to read as follows:

§ 189.27–1 Annual inspection.

(a) Your vessel must undergo an annual inspection within the 3 months before or after each anniversary date, except as specified in § 189.27–5.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the annual inspection is the same as the inspection for certification, as specified in § 189.25–10, but in less detail unless the cognizant marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If deficiencies are found or a major change to the vessel has occurred, the marine inspector will conduct an inspection more detailed in scope to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the annual inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the annual inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

128. Revise § 189.27–5 to read as follows:

§ 189.27–5 Periodic inspection.

(a) Your vessel must undergo a periodic inspection within 3 months before or after the second or third anniversary of the date of your vessel's Certificate of Inspection. This periodic inspection will take the place of an annual inspection.

(b) You must contact the cognizant OCMI to schedule an inspection at a time and place which he or she approves. No written application is required.

(c) The scope of the periodic inspection is the same as that for the inspection for certification, as specified in § 189.25–10. The OCMI will insure that the vessel is in satisfactory condition and fit for the service for which it is intended. If your vessel passes the periodic inspection, the marine inspector will endorse your current Certificate of Inspection.

(d) If the periodic inspection reveals deficiencies in your vessel's maintenance, you must make any or all repairs or improvements within the time period specified by the OCMI.

(e) Nothing in this subpart limits the marine inspector from conducting such tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness.

129. Revise § 189.27–10 to read as follows:

§ 189.27–10 Certificate of Inspection: Conditions of validity.

To maintain a valid Certificate of Inspection, you must complete your annual and periodic inspections within the periods specified in §§ 189.27–1 and 189.27–5 respectively, and your Certificate of Inspection must be endorsed.

130. Revise § 189.60–15 to read as follows:

§ 189.60–15 Cargo Ship Safety Radio Certificate.

Every vessel equipped with a radio installation on an international voyage must have a Cargo Ship Safety Radio Certificate. Each radio installation must meet the requirements of the Federal Communication Commission and the International Convention for Safety of Life at Sea.

131. Revise § 189.60–35 to read as follows:

§ 189.60–35 Availability of Certificates.

The Convention certificates must be on board the vessel and readily available for examination at all times.

132. Revise § 189.60–40 to read as follows:

§ 189.60–40 Duration of Convention certificates.

(a) The following certificates are valid for a period of not more than 60 months (5 years).

(1) A Cargo Ship Safety Construction Certificate.

(2) A Cargo Ship Safety Equipment Certificate.

(3) A Safety Management Certificate.

(4) A Cargo Ship Safety Radio Certificate.

(b) An Exemption certificate must not be valid for longer than the period of the certificate to which it refers.

(c) A Convention certificate may be withdrawn, revoked, or suspended at any time when it is determined that the vessel is no longer in compliance with applicable requirements. (See § 2.01–70 of this chapter for procedures governing appeals.)

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

133. Revise the authority citation for part 195 to read as follows:

Authority: 46 U.S.C. 2113, 3306, 3307; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

134. Revise § 195.11–15 (a) to read as follows:

§ 195.11–15 Plan approval and inspection.

(a) Accommodation, power and chemical stores vans are subject to normal plan submission procedures of subpart 189.55 and to initial construction inspection. They must be inspected at each inspection for certification and periodic inspection.

* * * * *

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

135. Revise the authority citation for part 199 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; 46 CFR 1.46.

§ 199.45 [Amended]

136. In § 199.45(b), immediately following the words "renewal of certification" add the words "and periodic inspection".

Dated: February 2, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–2812 Filed 2–4–00; 3:40 pm]

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Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Mental Health and Juvenile Justice: Building a Model for Effective Service Delivery; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1259]

RIN 1121–ZB93

Mental Health and Juvenile Justice: Building a Model for Effective Service Delivery

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice. ,

ACTION: Announcement of Discretionary Competitive Assistance Grant

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, pursuant to Public Law 105–277, October 19, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, is issuing a solicitation for applications from public or private agencies or organizations to engage in a variety of interrelated research activities designed to (1) improve knowledge about the nature and prevalence of mental health and co-occurring substance abuse disorders among youth in the juvenile justice system and (2) support the development of a comprehensive model for the provision of mental health services to this population.

DATES: Applications must be received no later than 5 p.m. ET on April 10, 2000.

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about/html#kit.

FOR FURTHER INFORMATION CONTACT: Karen Stern, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention (phone: 202–514–9395; e-mail: sternk@ojp.usdoj.gov). Douglas Dodge, Senior Policy Advisor, Office of Juvenile Justice and Delinquency Prevention (phone: 202–616–3652; e-mail: doug@ojp.usdoj.gov).

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this initiative is to substantially improve knowledge about the nature and prevalence of mental health and co-occurring substance abuse disorders among youth in the juvenile justice system and to develop and test a service delivery model based on theoretical and empirical information regarding best practices for meeting the needs of this population.

Overview

With this program announcement, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) initiates an effort to build on existing research and knowledge in the area of mental health and juvenile justice. This multi year research and development effort will examine current research and theoretical literature on mental health and related substance abuse issues among juvenile offenders; the relationship between mental health and juvenile delinquency; and best practices in the delivery of mental health treatment to the juvenile offender population. This initiative will also examine the prevalence of mental health disorders among youth who enter the juvenile justice system, particularly those in detention and secure corrections. Although juvenile justice administrators and practitioners typically—and understandably—concern themselves with the most severely disordered youth, the intention of this initiative is to address the needs of youth with a broad range of mental disorders. This includes conditions, such as conduct disorder and post-traumatic stress disorder (PTSD), that are common in the juvenile justice population, but it also includes less frequently recognized conditions such as anxiety and depression. It is important to keep in mind that mild and easily treated conditions may evolve into severe and intractable disorders if left untreated. Although the focus of this initiative is on mental disorders, OJJDP recognizes that mental health and substance abuse disorders frequently co-occur, particularly in the delinquent population (Cocozza, 1992; Neighbors, Kempton, and Forehand, 1992). Therefore, information will also be obtained on the prevalence of substance abuse disorders that co-occur with mental health diagnoses. When the initial survey work has been completed, OJJDP will fund multiple demonstration sites to implement and evaluate a service delivery model derived from current theory and best practices. The demonstration program will be evaluated using an experimental design.

This program announcement seeks applications for the first phase of this effort and will fund an organization that can effectively conduct the literature review described above, a survey of mental health and related substance abuse needs among juvenile justice youth in several jurisdictions, and a survey of selected juvenile justice system responses to meet those needs. The organization will then use the information gathered through these three strategies to develop a model of mental health service delivery for youth in the juvenile justice system. The information gathered during this process will be used to support a subsequent program announcement that will solicit sites for model demonstration and evaluation. The successful applicant for the first phase will also assist with the development of a research design for the demonstration sites.

Background

After increasing for a number of years, the juvenile crime rate has been declining since 1995. "Although the juvenile violent crime arrest rate increased more than 60 percent between 1988 and 1994, it decreased 23 percent between 1994 and 1997. Similarly, the juvenile homicide arrest rate increased substantially between 1988 and 1993 but declined 39 percent between 1993 and 1997" (1998 *OJJDP Annual Report*, 1999, p. 3). Although these trends are encouraging, juvenile offending continues to occur at a very high rate. A substantial portion of youth who are brought before the juvenile court are detained or placed in secure corrections. In 1996, 58 percent (983,100) of the youth referred to juvenile court were adjudicated delinquent. Twenty-eight percent (275,000) of these youth were sent to residential placement, an increase of 51 percent between 1987 and 1996. OJJDP's *Census of Juveniles in Residential Placement* (OJJDP, 1997) reported that on October 29, 1997, there were 105,790 juveniles committed by the court to out-of-home placements.

Very little is known about the mental health needs of these youth. There has been no large-scale national investigation of mental disorders among juvenile offenders and the lack of methodological consistency across smaller prevalence studies often produces inconsistent results. A review of studies (Cocozza, 1992) found that between 14 percent and 20 percent of youth in the general population suffer from a diagnosable mental disorder at any given time. It is likely that the prevalence rates among the approximately 1.8 million youth who enter the juvenile justice system each year are even higher. In adult studies, the presence of both substance abuse and mental health problems increases the likelihood that an individual will engage in criminal and violent behavior. Although this correlation has not been clearly demonstrated in youth, many of the causes and correlates of juvenile

delinquency are similar to risk factors for developing mental health and substance abuse disorders.

Since the mid-1990's, OJJDP has recognized the critical role that mental health problems play in the lives of youth caught up in the juvenile justice system. As a result, OJJDP has been working for several years on a number of efforts to increase knowledge and improve services in this area.

OJJDP is supporting the GAINS Center on Co-Occurring Disorders in preparing an update of Cocozza's 1992 monograph *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*. This update will provide important information on rates and trends of mental health and substance abuse disorders in the juvenile justice population, and identify programs and strategies for addressing these issues. OJJDP is also supporting the GAINS Center's efforts to provide training and technical assistance to States and localities on juveniles with comorbid substance abuse and mental health disorders through an interagency agreement with the National Institute of Corrections.

OJJDP is providing support for two studies of mental health disorders in the juvenile justice population. Linda Teplin's longitudinal study of 1,800 detained youth in the Cook County (Chicago) Juvenile Detention Center is yielding important information on the prevalence and severity of mental health and substance abuse disorders among detained juveniles. Gail Wasserman is working with incarcerated youth in Illinois and New Jersey to test the utility of a self-administered assessment instrument for identifying mental health disorders among youth in correctional settings.

For the past 2 years, OJJDP has explored the potential value of the Community Assessment Center (CAC) concept. CAC's provide a 24-hour centralized point of intake and assessment for juveniles entering the juvenile justice system. Early identification of mental health and substance abuse disorders can enhance placement and treatment decisions for youth at the "front end" of the juvenile justice system.

As part of OJJDP's Performance-Based Standards Demonstration Program, health/mental health standards and outcomes have been developed for the use of participating sites. The overall goal of the standards is to identify and effectively respond to the health and mental health needs of juveniles in confinement, using appropriate diagnostic, treatment, and prevention protocols.

For several years, OJJDP has been working closely with other agencies in the Federal Government to increase capacity for meeting the mental health needs of juvenile offenders. OJJDP has been active in the Federal Partnership for Children's Mental Health, organized by the Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration (SAMHSA) in the U.S. Department of Health and Human Services. For the past 2 years, through an interagency agreement with CMHS, OJJDP has supported the provision of training and technical assistance to the Comprehensive Community Mental Health Services for Children and Their Families sites. The goal of this training is to assist the sites in ensuring that their comprehensive systems of care include youth in the juvenile justice system. OJJDP continued this support in FY 1999 as CMHS rebid its training and technical assistance contract. CMHS' 45 sites, dedicated to developing comprehensive mental health services for seriously emotionally disturbed youth and their families, present an excellent opportunity for improving mental health service delivery to all children, including delinquent and at-risk youth.

If there is a gap in the continuum of services being delivered under current programs funded by CMHS and others, it is the lack of mental health programming for juvenile offenders, particularly those in detention and secure corrections. In addition, for these incarcerated juveniles, the lack of aftercare or reentry programming is of particular concern. Although the lack of services may be most acute for juveniles in detention, secure corrections, and aftercare, OJJDP believes that the best strategy for closing these gaps is to develop a comprehensive model that will address the mental health needs of youth at every point in the juvenile justice system. To that end, OJJDP proposes to address these gaps by developing a research and demonstration effort that will (1) review what is known about theory and best practices in this area, (2) examine the prevalence of mental health and co-occurring substance abuse disorders in a sample of youth in the juvenile justice system, (3) document what services are available to meet the needs of this population, and (4) develop a model that incorporates existing theory and best practices to provide comprehensive mental health services to youth in the juvenile justice system. The model developed under this initiative will subsequently be used in a demonstration and evaluation project that will replicate and evaluate the model at several sites. The model will be evaluated using a variety of outcome measures to determine whether services are being provided in an appropriate, effective, and cost-efficient manner.

Goal

The goal of this initiative is to improve knowledge about the nature and prevalence of mental health and co-occurring substance abuse disorders among youth in the juvenile justice system and to develop a model for the exemplary provision of mental health services for this population. The model will incorporate both current theory and best practices in the areas of screening, assessment, service provision, and quality assurance. The model should include youth at all stages of the juvenile justice system, including, but not limited to, arrest, intake, adjudication, detention, secure corrections, probation, and community-based treatment. Ideally, this model will be used in a subsequent demonstration and evaluation project, which will replicate the model at two to five sites.

Objectives

The objectives of this initiative are:

- To explore the research and theoretical literature related to the delivery of mental health services to youth in the juvenile justice system.
- To enhance the understanding of mental health service needs of youth involved in the juvenile justice system, including gender-specific differences in service needs.
- To increase the knowledge base regarding existing mental health service delivery systems in different parts of the country.
- To improve access to mental health services for youth in the juvenile justice system and to improve the quality and coordination of the services provided.
- To identify or create a model for the delivery of comprehensive mental health services to youth in the juvenile justice system.
- To identify model approaches to service delivery that will overcome interdisciplinary differences by fostering true collaboration between mental health and juvenile justice professionals.
- To increase the quality and cost-effectiveness of organizational structures for providing mental health services to youth at all levels of the juvenile justice system.

Program Strategy

Melton and Pagliocca (1992) note that emotionally disturbed youth in the

juvenile justice system have many of the same mental health needs as emotionally disturbed youth in the general population. However, the identification of needs and the delivery of services to meet those needs pose unique challenges for the juvenile justice system. When designing and selecting programs for youth, juvenile justice administrators must consider a host of goals, including community safety, accountability, incapacitation, and retribution. Some of these goals may complicate or even conflict with the more traditional goals of mental health and substance abuse service delivery. For example, even if a juvenile's mental health needs might be better served by a community-based program, a judge may consider only residential options because of the severity of the youth's offense.

In addition, treatment decisions may be inextricably linked to decisions about such weighty matters as diversion, incarceration, and juvenile transfer. It is also clear that processing by the juvenile justice system can be a traumatizing experience in and of itself. Some youth with no previous history of mental health problems may experience anxiety and depressive symptoms severe enough to require treatment as a result of detention or incarceration.

Although "the treatment needs of youth do not become magically transformed when they walk through the courthouse door" (Melton and Pagliocca, 1992, p. 107), meeting those needs will require changes in the ways that both mental health and juvenile justice systems operate. Treatment and sanctions will need to be combined into a seamless system that provides both support and accountability. True interagency collaboration will be essential; these youth do not "belong" to one agency or another but are the shared responsibility of juvenile justice, mental health, education, child welfare, and any other institutions that serve the needs of children. Both mental health and juvenile justice practitioners will require training and assistance to understand and accept each other's views, goals, and practices.

With this initiative, OJJDP will provide support to a grantee willing to engage in far-reaching efforts to gather empirical and theoretical information with the goal of developing an exemplary model of service delivery. The model ultimately created should encompass a wide variety of services, including, but not limited to, the following: psychological and psychiatric evaluation, psychotherapy, medication management, treatment planning, intensive case management, home-based treatment, family support services, day treatment, crisis intervention services, acute inpatient and residential psychiatric care, therapeutic group homes or foster care, and respite care. Ongoing quality assurance measures should be incorporated. The successful applicant will also need to address the issue of cultural sensitivity in both assessment and treatment. Assessments and treatments that are not performed in a culturally competent manner can produce misdiagnoses and lead to ineffective service provision.

The system should be designed with the ultimate goal of reintegrating youthful offenders into the community. Successful reintegration will require that youth who leave the juvenile justice system continue to receive any necessary services (e.g., mental health, special education, vocational). Therefore, the model will need to address the design of linkages between the juvenile justice system and essential aftercare components. An important aspect of these linkages is how sensitive information can be transferred in a manner that fosters continuity of care while maintaining the youth's right to confidentiality. In addition, meeting the goal of effective reintegration will require high levels of family involvement. Family support—or its absence—contributes strongly to a youth's success or failure once he or she returns from incarceration.

An applicant seeking funding under this initiative must address in the application and be willing to undertake, at a minimum, the tasks described below. Specific tasks may be contracted by the applicant to other agencies or individuals, but only with the express approval of OJJDP. An applicant that plans to use contractors in this manner should (1) clearly spell out the terms of the contract in the application and (2) address the qualifications of the contractor(s) selected to perform each task.

Task I: Literature Review

The applicant must review the relevant literature from the fields of juvenile justice and mental health and any related fields such as substance abuse, criminology, sociology, etc. The purpose of this review is to identify and evaluate both research and theoretical publications related to the mental health needs of youth in the juvenile justice system. Articles addressing the provision of mental health and related substance abuse services to this population are especially pertinent. The applicant may also want to consult literature from the educational and child welfare fields. Like juvenile justice, these fields have also struggled to recognize and address the mental health needs of children and adolescents. Because of the over representation of minority youth in the juvenile justice system, the literature review will also need to address the issue of cultural sensitivity in providing services to this population. Additionally, because of the different needs of females in the juvenile justice system, the literature review should also address the issue of gender-specific services.

The applicant should provide a report, suitable for publication as an OJJDP Bulletin, that synthesizes the relevant literature. Emphasis should be placed on any publications that can contribute to the development of a service delivery model. Gaps in the existing literature should also be identified.

Task II: Survey of Mental Health Needs and Services

Although many researchers have speculated that youth in the juvenile justice system are an under served population with a high level of need, few studies have provided hard data to support or contradict this contention. Linda Teplin in Chicago and Gail Wasserman in New York are currently studying this issue. However, their data are limited to populations in large urban centers. Several States, including Colorado and Virginia, have gathered additional data during brief (1 week), intensive surveys, with the goal of informing State policy and legislation.

For the purposes of this initiative, the applicant should be prepared to conduct three similar surveys in the understudied areas of the South, Southwest, and rural Northwest. Surveys should be conducted within some naturally occurring boundary such as a State, county, district, or parish. Surveys should involve a variety of juvenile justice facilities within that boundary; at a minimum, a juvenile detention center, a secure correctional facility, and a community-based program. For each facility, the applicant will examine (1) the mental health status of youth in the facility, (2) the mental health and related substance abuse services available to these youth, and (3) the number of youth actually receiving these services. The applicant should also explore the continuity of care provided. For example: Do youth who receive psychological assessment also receive treatment based on identified needs? Do those receiving therapy within the institution also have written plans for aftercare? The applicant may also wish to examine

youth and family satisfaction with the services received.

To obtain this information, the applicant will need to review both individual and facility records. However, as noted in *Mental Health Needs of Youth in Virginia's Juvenile Detention Centers* (U.S. Department of Justice, 1994), information contained in detention center records is often "abysmally weak," underestimating both the number of youth in need of services as well as the number of youth who have previously received services. Therefore, in assessing a youth's mental health status, the applicant will want to consider the use of structured interviews or self-administered diagnostic inventories. Given financial and time constraints, it is understood that in-depth psychiatric interviews or psychological assessments may not be possible. For an example of a well-constructed study of this nature, the applicant is encouraged to obtain a copy of the Virginia report from the National Criminal Justice Reference Service at 800–851–3420.

For the purposes of the application, the applicant should identify and discuss the following: (1) Where the surveys will be conducted; (2) what methods will be used to collect data (e.g., self-report inventories, interviews, record reviews); and (3) what information will be obtained. Copies of all instruments or recording forms that will be used to collect data should be included in the application. The applicant should justify the selection of particular sites and the choice of instruments. If the applicant decides to create its own instruments for the site visits, a detailed description of the instrument development process should be included.

The applicant should also be prepared to document the research results in a report suitable for publication as an OJJDP Bulletin.

Task III: Identification of Best Practices

The applicant should be prepared to make between six and nine site visits to localities that are focusing their efforts on meeting the mental health needs of youth in the juvenile justice system. Locations might include CMHS Comprehensive Community Mental Health Services for Children and Their Families Program sites such as "WrapAround Milwaukee", which incorporates delinquent youth into its system of care. Alternatively, the applicant could visit one of the three juvenile sites under the Center for Substance Abuse Treatment's Criminal Justice Treatment Networks, a program which seeks to forge a seamless system of juvenile justice, substance abuse, mental health, health, and human services. The applicant should also consider visiting sites that are not part of a Federal demonstration project but have mobilized State and local resources in innovative and effective ways.

OJJDP recommends that the applicant visit a combination of large and small sites, preferably in several different areas of the country. It is possible that some appropriate sites may be identified through the literature review described in Task I. Therefore, the applicant may choose to provide only a partial list of sites in the initial application. If the applicant chooses this approach, it should clearly specify the criteria that will be used to select additional sites. A final list of sites should be submitted to OJJDP for approval within 3 months of receipt of the grant award.

In addition to the list of sites, the application should include a site visit protocol. The protocol should identify individuals who will be interviewed (*e.g.*, agency directors, program directors, key program staff, juvenile court judges, probation officers, family members, etc.) and the type of information that will be obtained. Consideration should be given to tours of facilities and collection of written program materials. Areas which should be explored include, but are not limited to, history of the program; legislation that has positively or adversely affected the program; interdisciplinary barriers that were identified and overcome; program goals and objectives; program structure, components, and operations; program implementation; characteristics of youth (and families) served by the program; costs and funding sources; information-sharing protocols; management information system (MIS) support; quality assurance measures; outcome data; barriers to full and effective implementation; keys to program success; and future planning efforts.

The purpose of these site visits is to identify extant models for delivering mental health and related substance abuse services to youth in the juvenile justice system. The applicant should provide a report of the site visit results, highlighting the strengths and weaknesses of the service systems reviewed.

The applicant should also be prepared to document the site visit results in a report suitable for publication as an OJJDP Bulletin.

Task IV: Model Development

Using the information gathered during Tasks I, II, and III, the applicant will construct a detailed, comprehensive model for delivering a broad array of mental health services to youth in the juvenile justice system. The model should be flexible enough to be readily adapted to a variety of sites. However, any limitations on the model's adaptability should be identified. (For example, the model may not be applicable to very young offenders, i.e., those under 12 years old.)

Applicants should consider the delivery of services at various key points in the juvenile justice system, including (but not necessarily limited to) arrest, detention, adjudication, disposition, secure corrections, community placement, and probation. Applicants should outline the steps necessary to implement the model, giving some consideration to issues of resource acquisition, development, and maintenance; collaboration among existing agencies, institutions, and programs; and the need for political support. Applicants should present possible strategies for sustaining the model under changing political or financial conditions. Relevant legislation that might promote or inhibit implementation of the model should be cited.

The model ideally will involve a high degree of coordination and integration, so that the needs of youth are appropriately met as they move through the different levels of the juvenile justice system. In order to accomplish this goal, it may be necessary for sensitive information to be shared among various service providers. The applicant should address how confidentiality will be appropriately maintained throughout this process. One traditional way of coordinating care is to assign an intensive case manager who will follow the youth throughout his or her time in the juvenile justice system. However, there may be other, equally effective ways of accomplishing the same purpose, and applicants are encouraged to think creatively.

It should be kept in mind that the ultimate goal of providing services is to reintegrate the youth back into the community and ensure that he or she becomes a healthy, productive, and successful member of society. Therefore, the model should address how continuity will be maintained between services provided within the juvenile justice system and those provided once a youth is no longer involved with the system. In linking services within and outside the juvenile justice system, it will also be important to consider how the confidentiality of the youth and family can be maintained without

unnecessarily impeding the continuity of treatment.

Task V: Expert Panel and Model Refinement

Once an initial draft of the model has been prepared, the applicant will convene a panel of relevant subject matter experts to review and evaluate the model. The applicant should include a proposed list of experts in the application. In addition to subject matter experts, the panel should include at least one youth who has been involved in the juvenile justice system and family members of youth in the juvenile justice system. If possible, résumés of agreement from the proposed panelists should be included in an appendix. All panel members must be approved by OJJDP, and the agency may recommend additional panel members at the time of the grant award. The applicant will need to include in the budget the costs associated with convening the expert panel.

Based on the recommendations of the expert panel, the applicant will revise the model as necessary. The final version of the model will be presented in a report suitable for OJJDP publication.

Products

The grantee will produce the following deliverables, as described in Tasks I, II, III, and V, above, all of which must be suitable for publication by OJJDP:

- A report that synthesizes the relevant literature from the fields of juvenile justice and mental health and any related fields such as substance abuse, criminology, sociology, etc. (Task I)
- A report that documents the results of the surveys described in Task II. In addition, this report should compare the data obtained from this project with similar data reported in the literature. (Task II)
- A report that documents the results of the site visits described in Task III. This report should highlight the strengths and weaknesses of the service systems visited. (Task III)
- A report that describes in detail the comprehensive model for delivery of mental health and substance abuse services to youth in the juvenile justice system. This report should also describe how the work of Tasks I through V contributed to the development of the model. In addition, any recommendations or concerns regarding the implementation of the model should be clearly spelled out.

The application should contain a description of all products that will derive from the project, including, but not necessarily limited to, the reports described above. The grantee should also be prepared to produce a final report that provides an overview of the entire project. Applicants are also strongly encouraged to consider submitting their results for publication in refereed journals.

Eligibility Requirements

OJJDP invites applications from public or private agencies or organizations with a demonstrated capacity to carry out the requirements of this initiative. Private, for-profit organizations must agree to waive any profit or fee. The organization must have demonstrated experience in conducting extensive literature reviews, conducting in-depth sample surveys of juvenile or criminal justice offenders and facilities, carrying out research and program development, and writing reports. Funding will not be provided at this stage for demonstration sites or for sites whose primary function is the provision of mental health and substance abuse services. In the case of joint applications, one applicant must be clearly indicated as primary (for correspondence and award purposes) and the other(s) listed as coapplicants. If contractors will be used for specific project tasks, evidence of their qualifications and willingness to undertake the specified task(s) should be provided.

Selection Criteria

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits.

Problem(s) To Be Addressed (10 points)

Applicants must include in the project narrative a clear description of the problem(s) to be addressed by the development of a comprehensive model for mental health service delivery within the juvenile justice system. Applicants should provide a discussion of any previous or current efforts in this area and any relevant research.

Goals and Objectives (10 points)

The application must include goals and objectives that are clear, concrete, and relevant to the field of juvenile justice. Goals should derive directly from the problems to be addressed. Objectives should consist of clearly defined, measurable tasks that will enable the applicant to achieve the goals of the project.

Project Design (20 points)

The application should present in detail the design and methodology of the project. Design elements should follow directly from the project's goals and objectives. Applicants should address the requirements of the solicitation, particularly Tasks I through V as described under "Program Strategy." Applicants should also describe how the work undertaken in the various tasks fits together and contributes to the overall goals of the project.

Where data collection is anticipated, the applicant should describe in detail the research strategy, demonstrating adequate understanding of reliability and validity issues.

Project Implementation Plan (20 points)

The application must include a detailed time/task outline that indicates when specific tasks will be initiated and completed. This time line must include, at a minimum, significant milestones in the project and product due dates. The time line should be referenced as appropriate in the narrative but should also be placed in appendix A of the application.

Project Management (15 points)

Applicants must demonstrate the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. In particular, applicants must ensure that the tasks delineated in the project time line (see "Project Implementation," above) are adequately staffed. Applicants must also demonstrate that staff members have sufficient substantive expertise and technical experience to perform the tasks associated with the project.

Résumés for key staff members, including any contractors, should be included in appendix B.

Organizational Capability (15 points)

Applicants should also demonstrate the organizational capacity to complete the work described in the "Project Design" section. The applicant should include a description of any similar projects it has undertaken previously. Applicants should also demonstrate knowledge and experience related to juvenile justice and mental health issues. In addition, applicants should provide evidence of their ability to work collaboratively with juvenile justice system practitioners and service

providers, ideally in the context of research investigations. Any applicable letters of cooperation or support should be included in appendix C.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. All budgeted costs should be directly related to the achievement of project goals and objectives. A brief budget narrative should be included in this section.

Award Period

The project period and budget period will be 18 months.

Award Amount

Up to $1 million is available for an 18-month award to one grantee to develop a model of mental health service delivery for youth in the juvenile justice system. The applicant selected for this award will not be eligible to compete for any subsequent demonstration and evaluation grants associated with implementation of the model.

Format

Applicants must submit a program narrative of no more than 30 pages. This page limit does not include the abstract, budget narrative, appendixes, application forms, or assurances. Appendix A should contain the project's time line with dates for initiation and completion of critical project tasks. Appendix B should contain the résumés for the principal investigator and key staff members. Appendix C should include all necessary letters of cooperation or support.

The narrative portion of the application must be submitted on 8½- by 11-inch paper using a standard 12-point font. The application should be double spaced and printed on one side of the paper only. Single-spaced (or 1½-spaced) applications will not be accepted. Margins should be at least 1 inch on the top, bottom, and sides of each page. The narrative should be preceded by an abstract with a maximum length of 400 words.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will be rejected without further review.

Catalog of Federal Domestic Assistance (CFDA) Number

The CFDA number, required on Standard Form 424, "Application for Federal Assistance," is 16.542. Standard Form 424 is included in OJJDP's Application Kit, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The Application Kit is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding requested in this application. For each Federal award, applicants must include the program or project title, the Federal granting agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed project would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. *Note:* In the lower left-hand corner of the envelope, the applicant must clearly write "Mental Health and Juvenile Justice: Building a Model for Service Delivery."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on April 10, 2000.

Contact

For further information, call Karen Stern, Program Manager, Research and Program Development Division, 202–514–9395 or send an e-mail inquiry to STERNK@ojp.usdoj.gov. Alternatively, you may contact Douglas Dodge, Senior Policy Advisor, 202–616–3652, or send an e-mail inquiry to DOUG@ojp.usdoj.gov.

References

Cocozza, J. J., ed. 1992. *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

Melton, G.B., and Pagliocca, P.M. 1992. Treatment in the juvenile justice system: Directions for policy and practice. In *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*, edited by J.J. Cocozza. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

Neighbors, B., Kempton, T., Forehand, R. 1992. Co-Occurrence of substance abuse with conduct, anxiety and depression disorders in juvenile delinquents. *Addictive Behaviors* 17:379–386.

Office of Juvenile Justice and Delinquency Prevention. 1998. *Census of Juveniles in Residential Placement 1997*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Office of Juvenile Justice and Delinquency Prevention. 1999. *OJJDP Annual Report* [1998]. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Report of the Policy Design Team. 1994. *Mental Health Needs of Youth in Virginia's Juvenile Detention Centers*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Dated: February 2, 2000.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–2927 Filed 2–8–00; 8:45 am]

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VOL

65

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27

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Federal Register

Wednesday,
February 9, 2000

Part V

Department of Education

Office of Educational Research and Improvement; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Years 2000 and 2001

DEPARTMENT OF EDUCATION

[CFDA No. 206A]

Office of Educational Research and Improvement, Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Years 2000 and 2001

Purpose of Program: To provide grants to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students; to encourage the development of rich and challenging curricula for all students; and to supplement and make more effective the expenditures of State and local funds for the education of gifted and talented students.

For fiscal years (FY) 2000 and 2001 the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian organizations.

Applications Available: March 13, 2000.

Deadline for Receipt of Applications: April 24, 2000.

Note: We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C.) 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for Educational Research and Improvement has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: June 23, 2000.

Estimated Available Funds: $1,000,000.

Estimated Range of Awards: $100,000–$215,000.

Estimated Average Size of Awards: $166,000.

Maximum Award: We will reject any application that proposes a budget exceeding $215,000 for a single budget period of 12 months.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total project period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 25 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch.).

The page limit does not apply to the cover sheet, the budget section, including the narrative budget justification, the assurances and certifications; the one page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in one section.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR parts 299 and 700.

Supplementary Information: It is the Department's intent to fund two cycles of awards from this competition. The first cycle of awards will be made from FY 2000 funds. If applications of high quality remain unfunded, additional awards will be made in the second cycle in 2001, pending availability of FY 2001 funds.

Priorities: This competition focuses on projects designed to meet the priorities in the notice of final priorities for this program, published in the **Federal Register** on April 24, 1996 (61 FR 18214) and repeated in this notice.

Absolute Priority—Model Programs

Under 34 CFR 75.105(c)(3) we consider only applications that meet this absolute priority.

Projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Projects must include students who may not be served by traditional gifted and talented programs, including economically disadvantaged students, limited English proficient students, and students with disabilities. The projects must incorporate high-level content and performance standards in one or more of the core subject areas as well as utilize innovative teaching strategies.

The projects must provide comprehensive ongoing professional development opportunities for staff. The projects must incorporate training for parents in ways to support their children's educational progress. There must also be comprehensive evaluation of the projects' activities.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Under 34 CFR 75.105(c)(2)(i), we give preference and award five (5) points to an application that meets this competitive priority.

Projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community or that primarily serve students who reside in the EZ or EC. Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community program.

For Applications and Further Information Contact: Kelley Berry or Liz Barnes, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502, Washington, DC 20208–5645. *Facsimile machine:* (202) 219–2053. *Telephone:* (202) 219–2096 or (202) 219–2210, respectively. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting either person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 8031–8036.

Dated: February 4, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–2947 Filed 2–8–00; 8:45 am]

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VOL
65
SS
27
FE
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Federal Register

Vol. 65, No. 27

Wednesday, February 9, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3
5407–5732	4
5733–5992	7
5993–6304	8
6305–6522	9

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219
Administrative Orders:
Directive of January 31, 2000 5727
Directive of January 31, 2000 5727
Presidential Determination:
No. 2000–10 of January 31, 2000 5407

5 CFR

581 4753
582 4753
1201 5409
1208 5410
Proposed Rules:
630 6339

7 CFR

1 5414
301 ..... 4865, 5221
905 5733
916 6305
917 6305
944 5733
955 5736
981 4867
985 6308
3418 5993
Proposed Rules:
54 4780
245 5791
457 6033
718 5444
989 6341

9 CFR

1 6312
77 5998
Proposed Rules:
94 6040

10 CFR

708 6314
Proposed Rules:
50 6044

12 CFR

272 6319
936 5738
960 5418
Proposed Rules:
Ch. I 4895
611 5286
951 5447
997 5447

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428, 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761, 6444
71 ..... 4871, 4872, 4873, 4874, 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770, 5999, 6000, 6320
91 ..... 5396, 5936
93 5396
97 ..... 4875, 4877, 4879, 6321, 6324
121 5396
135 5396
200 6446
211 6446
213 6446
216 6446
291 6446
300 6446
302 6446
303 6446
305 6446
377 6446
385 6446
399 6446
Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459, 6046
71 ..... 4910, 4911, 5804
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

17 CFR

232 6444

18 CFR

Proposed Rules:
270 6048
375 6048
381 6048
382 5289

19 CFR

132 5430
163 5430
Proposed Rules:
12 6062
113 6062

21 CFR

876.....4881
1308.....5024
Proposed Rules:
1310.....4913

23 CFR

Proposed Rules:
645.....6344

24 CFR

206.....5406

26 CFR

1 .....5432, 5772, 5775, 5777, 6001
35.....6001
602 .....5775, 5777, 6001
Proposed Rules:
1 .....5805, 5807, 6065, 6090
602.....5807

27 CFR

Proposed Rules:
9.....5828

29 CFR

Proposed Rules:
1910.....4795

30 CFR

938.....4882
946.....5782

33 CFR

117 .....5785, 6325, 6326
Proposed Rules:
100.....5833
110.....5833
165.....5833

34 CFR

676.....4886

Proposed Rules:
694.....5844

36 CFR

Proposed Rules:
217.....5462
219.....5462
242.....5196
1234.....5295

38 CFR

21.....5785

Proposed Rules:
21.....4914

39 CFR

111.....4864, 5789

Proposed Rules:
111.....4918

40 CFR

52 .....4887, 5245, 5252, 5259, 5262, 5264, 5433, 6327
62.....6008
300.....5435
761.....5442

Proposed Rules:
52 .....5296, 5297, 5298, 5462, 5463, 6091
62.....6102
130.....4919
300.....5465, 5844

42 CFR

412.....5933
413.....5933
483.....5933
485.....5933

Proposed Rules:
36.....4797

43 CFR

11.....6012

Proposed Rules:
2560.....6259

44 CFR

65 .....6014, 6018, 6023, 6025
67 28, 6031

Proposed Rules:
67.....6103, 6105

45 CFR

1303.....4764

Proposed Rules:
96.....5471

46 CFR

2.....6494
30.....6494
31.....6494
52.....6494
61.....6494
71.....6494
90.....6494
91.....6494
98.....6494
107.....6494
110.....6494
114.....6494
115.....6494
125.....6494
126.....6494
132.....6494
133.....6494
134.....6494
167.....6494
169.....6494
175.....6494
176.....6494
188.....6494
189.....6494
195.....6494
199.....6494

Proposed Rules:
15.....6350
110.....6111
111.....6111

47 CFR

Ch. I.....5267
1.....4891

Proposed Rules:
1.....6113
73 .....4798, 4799, 4923
76.....4927
95.....4935

48 CFR

203.....4864
209.....4864
225.....4864
249.....4864
2432.....6444
9903.....5990

Proposed Rules:
30.....4940

49 CFR

195.....4770
571.....6327

Proposed Rules:
567.....5847
568.....5847

50 CFR

17 .....4770, 52680, 6332
18.....52750
679 .....4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442

Proposed Rules:
17 .....4940, 5298, 5474, 5848, 5946, 6114
100.....5196
622.....5299
648.....4941, 5486
660.....6351

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 9, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Peanuts, domestically produced and imported; published 1-10-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Pork and pork products; importation; published 1-10-00

AGRICULTURE DEPARTMENT
Import quotas and fees:
Dairy tariff-rate quota licensing; published 1-10-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
Wyoming; published 1-10-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Interconnection—
Wireline services offering advanced telecommunications capability; deployment; published 1-10-00
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Horizontal ownership limts; published 12-1-99
Telecommunications Act of 1996; Cable Act reform provision; cable attribution rules review; published 12-1-99

FEDERAL RESERVE SYSTEM
Procedure rules:
Federal Open Market Committee; technical amendment; published 2-9-00

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Massachusetts; published 2-9-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 1-25-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Personal Responsibility and Work Opportunity Reconcilation Act; implementation—
Personal responsibility provisions; comments due by 2-15-00; published 12-17-99

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99
Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99
Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99
Telecommunication loans:
Guaranteed and insured loans; post-loan policies and procedures; comments due by 2-14-00; published 12-15-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-14-00; published 12-29-99
Pollock; comments due by 2-17-00; published 2-2-00
Atlantic highly migratory species—
Pelagic longline management; comments due by 2-14-00; published 12-15-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-15-00; published 12-17-99

ENERGY DEPARTMENT
Nuclear waste repositories:
Yucca Mountain Site, NV; suitability guidelines
Hearings; comments due by 2-14-00; published 12-15-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Dishwashers; test procedures; comments due by 2-14-00; published 1-13-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-18-00; published 1-19-00
Connecticut; comments due by 2-14-00; published 12-16-99
Delaware; comments due by 2-14-00; published 12-16-99
District of Columbia, Maryland, and Virginia; comments due by 2-14-00; published 12-16-99
Florida; comments due by 2-18-00; published 1-19-00
Georgia; comments due by 2-14-00; published 12-16-99
Illinois; comments due by 2-14-00; published 12-16-99
Indiana; comments due by 2-14-00; published 12-16-99
Maryland; comments due by 2-14-00; published 12-16-99
Massachusetts; comments due by 2-14-00; published 12-16-99
New Jersey; comments due by 2-14-00; published 12-16-99
New York; comments due by 2-14-00; published 12-16-99
Pennsylvania; comments due by 2-14-00; published 12-16-99
Tennessee; comments due by 2-18-00; published 1-19-00
Texas; comments due by 2-14-00; published 12-16-99
Wisconsin; comments due by 2-14-00; published 12-16-99
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; comments due by 2-18-00; published 1-19-00
Hazardous waste program authorizations:
North Dakota; comments due by 2-18-00; published 1-19-00
Hazardous waste:
Cement kiln dust; management standards; comments due by 2-17-00; published 10-28-99
Identification and listing—
Mixture and derived-from rules; treatment, storage or disposal; comments due by 2-17-00; published 11-19-99
Mixed waste; storage, treatment, transportation, and disposal; comments due by 2-17-00; published 11-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metsulfuron methyl; comments due by 2-14-00; published 12-16-99

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 2-15-00; published 11-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 2-17-00; published 12-15-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Cowhead Lake tui chub; comments due by 2-16-00; published 2-2-00
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-14-00; published 1-12-00
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 2-14-00; published 1-14-00

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Group health plans; access, portability, and renewability requirements:
National Medical Support Notice; child support orders; health care coverage provisions; comments due by 2-14-00; published 11-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Elements; elimination as category in evaluation; comments due by 2-14-00; published 12-16-99
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Technical amendments; hearing; comments due by 2-16-00; published 1-12-00

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 2-15-00; published 1-21-00
Rulemaking petitions:
Quigley, Barry; comments due by 2-14-00; published 12-1-99

SECURITIES AND EXCHANGE COMMISSION
Regulatory Flexibility Act:
Rules to be reviewed; list; comments due by 2-15-00; published 1-21-00

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles; comments due by 2-17-00; published 11-19-99
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; comments due by 2-14-00; published 12-14-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 2-18-00; published 12-20-99
Bell; comments due by 2-14-00; published 12-16-99
Boeing; comments due by 2-14-00; published 12-29-99
Bombardier; comments due by 2-14-00; published 1-14-00
Cessna; comments due by 2-14-00; published 12-29-99
Fokker; comments due by 2-14-00; published 1-14-00
Learjet; comments due by 2-14-00; published 12-29-99
McDonnell Douglas; comments due by 2-18-00; published 12-20-99
New Piper Aircraft, Inc.; comments due by 2-17-00; published 12-14-99
Transport airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input; comments due by 2-14-00; published 12-16-99
Class E airspace; comments due by 2-16-00; published 1-12-00

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety enforcement procedures:
Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 2-14-00; published 1-12-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Interior trunk releases; comments due by 2-15-00; published 12-17-99

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
National banks; financial subsidiaries and operating subsidiaries; comments due by 2-14-00; published 1-20-00

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Generation-skipping transfer tax issues; comments due by 2-16-00; published 11-18-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

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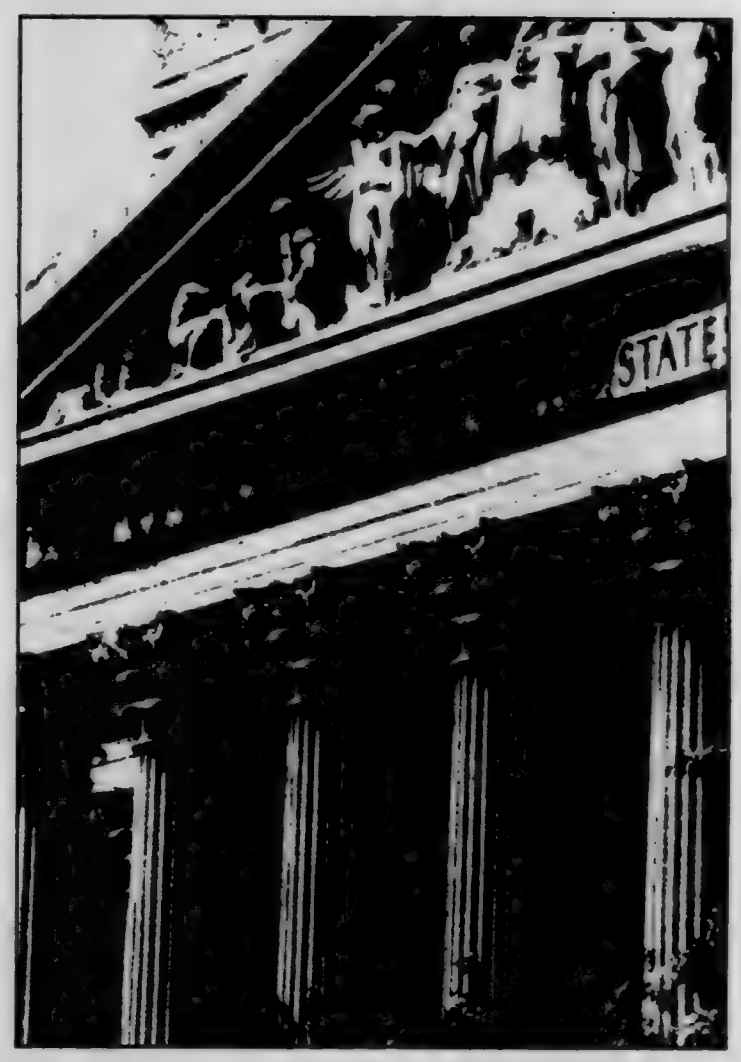

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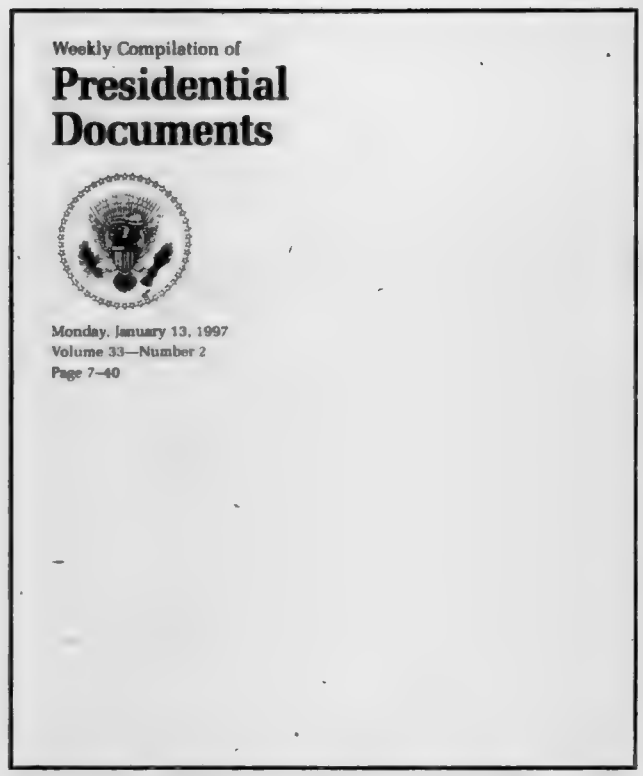

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Contents

Federal Register

Vol. 65, No. 28

Thursday, February 10, 2000

Agricultural Marketing Service
RULES
Spearmint oil produced in Far West, 6528–6531

Agricultural Research Service
RULES
National Agricultural Library; loan and copying fees, 6526–6528

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Housing Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Gypsy moth, 6525–6526

Antitrust Division
NOTICES
National cooperative research notifications:
Digital Imaging Group, Inc., 6631
OBI Consortium, Inc., 6631
Ohio Aerospace Institute Federated Intelligent Product Environment Consortium, 6631
Salutation Consortium, Inc., 6632
Southwest Research Institute, 6632
Telematics Suppliers Consortium, Inc., 6632
UOP LLC et al., 6632–6633
VSI Alliance, 6633

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6602–6606
Submission for OMB review; comment request, 6606–6607
Grants and cooperative agreements; availability, etc.:
Childhood Lead Poisoning Prevention Programs, 6607–6613

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 6585

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Minimum financial requirements for futures commission merchants and introducing brokers, 6569–6573
NOTICES
Contract market proposals:
Minneapolis Grain Exchange—
Durum wheat; quality specifications, 6591–6592

Copyright Office, Library of Congress
PROPOSED RULES
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition, 6573–6574

Customs Service
NOTICES
Automation program test:
Prototype conclusion, 6688

Defense Department
See Navy Department
RULES
Acquisition regulations:
Class deviation authority delegation, 6551–6552
Government-unique specifications and standards; offeror alternatives (OMB Circular A-119), 6553
Mentor-protege program improvements, 6554–6561
People's Republic of China, 6553–6554
PROPOSED RULES
Acquisition regulations:
Contract drawings, maps, and specifications, 6574–6575
Profit policy, 6574
NOTICES
Meetings:
Science Board task forces, 6592

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
2000 aggregate, 6635–6637
Applications, hearings, determinations, etc.:
Cedarburg Laboratories, Inc., 6633
Chattem Chemicals, Inc., 6633
Chirex Technology Center, Inc., 6634
Ganes Chemicals Inc., 6634
High Standard Products, 6634
Irix Pharmaceuticals, Inc., 6634–6635
LifePoint, Inc., 6635

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6593–6594
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Advanced Placement Incentive Program, 6872–6873
Meetings:
Federal Interagency Coordinating Council, 6594
Postsecondary Education Improvement Fund National Board, 6594–6595

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Tier 2 motor vehicle emission standards and gasoline sulfur control requirements, 6698–6870

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 6534–6535
General Electric Co., 6533–6534
Class C airspace, 6535–6536
PROPOSED RULES
Airworthiness directives:
Airbus, 6563–6564, 6566–6569
Bombardier, 6565–6566
NOTICES
Meetings:
Controller Pilot Data Link Communications Industry Day, 6686–6687
RTCA, Inc., 6687

Federal Communications Commission
RULES
Radio services, special:
Amateur services—
Operator license structure simplification, etc., 6548–6551
Television broadcasting:
Digital television spectrum; ancillary or supplementary use; fees, 6544–6548
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6600
Submission for OMB review; comment request, 6600–6601

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Cook Inlet Energy Supply L.P. et al., 6596–6598
Environmental statements; notice of intent:
Trans-Union Interstate Pipeline, L.P., 6598–6599
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 6595
Maritimes & Northeast Pipeline, L.L.C., 6595
Midwestern Gas Transmission Co., 6595
Pacific Gas & Electric Co., 6595–6596
Petal Gas Storage Co., 6596
Williston Basin Interstate Pipeline Co., 6596

Federal Reserve System
RULES
Extensions of credit by Federal Reserve banks (Regulation A):
Discount rate change, 6531–6533
NOTICES
Banks and bank holding companies:
Change in bank control, 6601
Formations, acquisitions, and mergers, 6601
Permissible nonbanking activities, 6601–6602

Federal Trade Commission
NOTICES
Meetings:
Online Access and Security Advisory Committee, 6602

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 6618–6619
Marine mammals:
Incidental taking; authorization letters, etc.—
King and Kittitas Counties, WA; Plum Creek Timber Co.; habitat conservation plan, 6590

Food and Drug Administration
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 6613
Meetings:
Pharmaceutical Science Advisory Committee, 6613–6614

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6579–6580
Environmental statements; notice of intent:
Bitterroot National Forest, MT, 6580–6581
Umatilla National Forest, OR, 6582–6583
Wasatch-Cache National Forest, UT, 6583–6584
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 6584

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6614

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6616–6618
Submission for OMB review; comment request, 6618

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6688–6695

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon-quality steel plate products from—
Various countries, 6585–6587
Countervailing duties:
Cut-to-length carbon-quality steel plate products from—
Various countries, 6587–6589
Export trade certificates of review, 6589–6590

International Trade Commission
NOTICES
Import investigations:
Cold-rolled steel products from—
Various countries, 6624

Cut-to-length steel plate from—
Various countries, 6624–6625
Excimer laser systems for vision correction surgery and components and methods for performing such surgery, 6625–6626
Heavy forged handtools from—
China, 6626–6627
Industrial belts from—
Various countries, 6627–6628
Magnesium from—
Canada, 6628–6629

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Anthony Dell'Aquila Enterprises et al., 6630
Cornell University, 6630
Raymark Industries, Inc., 6630–6631

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Sonoran Pronghorn Forage Enhancement Project, AZ, 6619
Meetings:
Resource Advisory Councils—
John Day-Snake, 6620
Western Montana, 6619–6620

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Postlease operations safety; update and clarification; correction, 6536

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 6637

National Council on Disability
NOTICES
Committees; establishment, renewal, termination, etc.:
Youth Advisory Committee, 6637

National Credit Union Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6637–6638

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 6561–6562
Pollock; steller sea lion protection measures; correction, 6561
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic herring, 6575–6577
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 6577–6578
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
King and Kittitas Counties, WA; Plum Creek Timber Co.; habitat conservation plan, 6590
Meetings:
International Commission for Conservation of Atlantic Tunas, U.S. Section Advisory Committee, 6591

National Park Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Native American Graves Protection and Repatriation Review Committee, 6620
Meetings:
Going-to-the-Sun Road Advisory Committee, 6620–6621
Native American Graves Protection and Repatriation Review Committee, 6621
Native American Graves Protection and Repatriation Review Committee; findings and recommendations, 6621–6622
Native American human remains and associated funerary objects:
Virginia Department of Historic Resources, VA; inventory from Rockbridge County, VA, 6622–6623

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Iowa, 6584

Navy Department
NOTICES
Base realignment and closure:
Surplus Federal Property—
Naval Air Station, Key West, FL, 6592–6593
Meetings:
Naval Postgraduate School Board of Advisors to Superintendent, 6593

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 6643
Regulatory guides; issuance, availability, and withdrawal, 6644
Applications, hearings, determinations, etc.:
Consumers Energy Co., 6638
Hydro Resources, Inc., 6638
Indiana Michigan Power Co., 6638–6640
Northeast Nuclear Energy Co. et al., 6640–6641
Northern States Power Co., 6641–6643

Postal Rate Commission
RULES
Practice and procedure:
Proceedings; efficiency and effectiveness improvement; electronic filing, etc., 6536–6544

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Genetic information; prohibiting discrimination in Federal employment (EO 13145), 6875–6880

ADMINISTRATIVE ORDERS
Soviet Union, Independent States of the Former; assistance (Presidential Determination No. 2000-11 of February 1, 2000), 6523

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6644

Reclamation Bureau
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Amortec, 6623

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Section 538 Guaranteed Rural Rental Housing Program; correction, 6585

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6644–6645
Investment Company Act of 1940:
Exemption applications—
First American Investment Funds, Inc., et al., 6645–6647
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 6647–6665
Chicago Board Options Exchange, Inc., 6665–6669
Municipal Securities Rulemaking Board, 6669–6673
New York Stock Exchange, Inc., 6673–6675
Pacific Exchange, Inc., 6675–6680
Philadelphia Stock Exchange, Inc., 6680–6684

Small Business Administration
NOTICES
Disaster and emergency areas:
Kentucky, 6684

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection and submission for OMB review; comment request, 6684–6685

State Department
NOTICES
Meetings:
2000 International Telecommunication Union World Radiocommunication Conference; preparatory meeting, 6685
Cultural Property Advisory Committee, 6685–6686

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6614–6615
Meetings:
Grant programs technical assistance workshops, 6615–6616

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6623–6624

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Pennsylvania Lines LLC, 6687–6688

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 6686

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 6697–6870

Part III
Department of Education, 6871–6873

Part IV
The President, 6875–6880

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 2000–11 of February 1, 2000 6523

Executives Orders:

13145 6523

7 CFR

301 6525

505 6526

985 6528

12 CFR

201 6531

14 CFR

39 (2 documents) 6533, 6534

71 6535

Proposed Rules:

39 (3 documents) 6563, 6565, 6566

17 CFR

Proposed Rules:

1 6569

30 CFR

250 6536

37 CFR

Proposed Rules:

201 6573

39 CFR

3001 6536

40 CFR

80 6698

85 6698

86 6698

47 CFR

73 6544

97 6548

48 CFR

CH. 2 6554

201 6551

211 6553

212 6553

219 6554

225 (2 documents) 6551, 6553

252 6553

Proposed Rules:

215 6574

252 6574

50 CFR

679 (2 documents) 6561

Proposed Rules:

648 6575

660 6577

VOL

65

SS

28

FE

10

000

MI

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–11 of February 1, 2000

Assistance Program for the Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection 517(b) in title V of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (Public Law 106–113), I hereby determine that it is in the national security interest of the United States to make available funds appropriated under the heading "Assistance for the Independent States of the Former Soviet Union" in title II of that Act without regard to the restriction in that subsection.

You are directed to report this determination to the Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 1, 2000.

[FR Doc. 00–3289
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Billing code 4710–10–M

VOL

65

SS

28

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Rules and Regulations

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–042–2]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the gypsy moth regulations by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list of generally infested areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

EFFECTIVE DATE: The interim rule became effective on July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne E. O'Hern, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on July 27, 1999 (64 FR 40509–40511, Docket No. 99–042–1), we amended the gypsy moth regulations in 7 CFR part 301 by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list in § 301.45–3(a) of generally infested areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

Comments on the interim rule were required to be received on or before September 27, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the gypsy moth regulations by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list of generally infested areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

The following analysis addresses the economic effect of the interim rule on small entities, as required by the Regulatory Flexibility Act.

This action affects the interstate movement of regulated articles and outdoor household articles (OHA's) from and through areas in Indiana, Michigan, Ohio, Virginia, and Wisconsin that are newly regulated for gypsy moth. There are several types of restrictions that apply to the newly regulated areas. These restrictions will have their primary effect on persons moving OHA's, nursery stock, Christmas trees, logs and wood chips, and mobile homes interstate from a generally infested area to any area that is not generally infested.

Under the regulations, OHA's may not be moved interstate from a generally infested area into or through a noninfested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of all life stages of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State-certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

Generally, regulated articles (such as logs, pulpwood, wood chips, mobile homes, nursery stock, and Christmas trees) may only be moved interstate from a generally infested area if they are accompanied by a certificate or limited permit issued by an inspector. However, logs, wood chips, and pulpwood may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of all life stages of the gypsy moth. This exception minimizes the costs of moving logs, pulpwood, and wood chips interstate. Regulated articles may also be moved interstate from a generally infested area without a certificate if they are moved by the U.S. Department of Agriculture for experimental or scientific purposes and they are accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service.

Persons moving regulated articles interstate from a generally infested area may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Certificates for interstate movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHA's reveals gypsy moth, treatment is often necessary. The preferred treatment, scraping egg masses and spraying caterpillars, costs $10 to $30 per shipment on average. Fumigation is another alternative, but it is more expensive, at $75 to $100 per shipment, and it may damage the shipment. Treatment is done by qualified certified applicators, most of which are small businesses. These businesses might

experience a slight increase in income as a result of the interim rule.

Nurseries and Christmas tree growers that move a substantial number of shipments interstate from the generally infested areas would be able to minimize treatment costs by treating their premises for gypsy moths under a compliance agreement with USDA. Treatment would cost businesses between $10 and $20 per acre. This alternative would enable nurseries and Christmas tree growers to issue their own certificates for interstate shipments and would be less costly than treating individual shipments. The entities that would be most likely to choose this alternative are nurseries that move a substantial number of shipments interstate from the generally infested areas and that treat their premises for other pests in addition to the gypsy moth. Producers that do not operate under a compliance agreement with APHIS, but that treat their premises under this option, would receive certification for each shipment from an inspector.

There are approximately 687 entities in the newly regulated areas that will incur costs from the interim rule. These entities include 286 nurseries, 179 Christmas tree growers, 85 loggers, and 41 sawmills. The vast majority of these entities are small businesses.

Approximately 100 of the affected entities are in Indiana. These entities include 70 nurseries, 20 loggers, and 10 Christmas tree growers. Nurseries in Indiana sold an average of $127,206 worth of crops in 1997, and Christmas tree growers had average sales of $16,332. Average sales figures for loggers and sawmills in Indiana are not available, but nationwide, loggers and sawmills averaged sales of $3.3 million in 1992. Only about 10 percent of the affected entities' shipments are expected to leave the generally infested area, and only half of those, or 5 percent overall, will require treatment.

Approximately 187 of the affected entities are in Michigan. There are approximately 19 nurseries and 168 Christmas tree growers in the newly regulated areas. We do not expect that any treatments will be necessary for shipments from the newly regulated areas in Michigan because gypsy moth populations are low in those areas due to climatic conditions. However, time, salary, and recordkeeping costs for self-inspections will be incurred for shipments leaving the regulated areas. We estimate that 50 percent of the Christmas trees, 20 percent of the logs, and less than 2 percent of the nursery stock produced in the newly regulated areas are shipped interstate to noninfested areas. Nurseries and Christmas tree growers will also incur a $30 per acre fee for gypsy moth inspections, which are mandated by the State as a licensing requirement. This inspection fee represents about 1.5 percent of the average per-acre value of sales of harvested cut Christmas trees in Michigan in 1997.

Approximately 240 of the affected entities are in Ohio, including 135 nurseries, at least 96 Christmas tree growers, and 9 sawmills. Nurseries in the newly regulated areas had average sales of $19,218 in 1997, while Christmas tree growers averaged $22,505. Sawmills averaged $1.7 million in shipments in 1992, indicating that at least some of them are not small businesses. We do not know how many shipments are likely to be shipped out of the newly regulated areas in Ohio.

There are approximately 98 affected entities in Virginia and 62 affected entities in Wisconsin. However, we do not anticipate any additional costs for entities in the newly regulated areas in Virginia and Wisconsin since they do not send shipments interstate from the generally infested areas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 40509–40511 on July 27, 1999.

Authority: 7 U.S.C.147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 4th day of February, 2000.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–3076 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 505

National Agricultural Library Fees for Loans and Copying

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is establishing a fee schedule for loans of materials, and establishing a fee schedule for copying of materials from the collections of the National Agricultural Library. Fees generated will be used to defray costs of document delivery and maintenance of the collection.

DATES: Effective April 1, 2000.

ADDRESSES: Address all correspondence to Eileen McVey, Access Services Librarian, Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351. Telephone: 301–504-6503. Email: userfees@nal.usda.gov

FOR FURTHER INFORMATION CONTACT: Carol Ditzler, Head Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rule for comment on August 16, 1999. Two comments were received. One comment indicated that fee changes were reasonable and that the price increase was viewed as having a positive effect upon the ability of patrons to obtain materials. The second comment viewed the increase in fees as excessive in terms of photocopying. The National Agricultural Library believes the fees are comparable to those of other research libraries. A random sampling of 15 academic and research libraries that do charge flat fees indicated a photocopy charge that ranged from a low of $8.00 when using OCLC IFM service to a high of $25.00 for non-IFM requests. (IFM is a service provided by the Online Computer Library Center (OCLC) in Dublin, Ohio, which credits and debits charges for libraries that participate resulting in a reduction of costs for invoicing.) The library, therefore, considers a flat fee of $13.00 for photocopies on the low side of a median cost for such services.

Classification

This rule has been reviewed under Executive Order 12866, and it has been

determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlement, grants or user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the Presidents's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96-534, as amended (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and record keeping requirements that will be imposed in implementation of this proposed rule have been submitted to OMB. This collection was approved by OMB on September 30, 1999, with OMB NO.: 0518–0027 and an expiration date of 09/30/2002.

Background

Section 1410A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3125a), as added by section 1606(a) of Pub. L. 101–624, expanded existing statutory authorities for the NAL. In particular, section 1410A(e) authorized the NAL Director to make copies of NAL bibliographies, to make microforms and other reproductions of books and other library materials in USDA, to provide any other library and information products and services, and to sell those products and services at such price (not less than the total costs of disseminating the products and services) as the Secretary of Agriculture deems appropriate. Receipts from such sales must be deposited to the credit of appropriations available to the NAL and remain available until expended.

Currently, USDA regulations (7 CFR part 1, Appendix A) supply a fee schedule for copying of NAL materials requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. NAL in this regulation adopts a fee schedule for copying of NAL materials pursuant to interlibrary loan or other research requests, and to cover the costs of interlibrary loans of materials from NAL collections.

Fee Schedule for Loans of Materials From the NAL Collection

The NAL will charge fees for interlibrary loans of original materials from the NAL collection to other non-Federal and non-USDA libraries and institutions in the United States and Canada. By original materials, it is meant that NAL will provide loans of original works, and not copies, except in rare instances where works are too fragile or valuable for shipment. Libraries are encouraged to obtain materials locally and to view the NAL as a library of last resort. Loans directly to individuals are not permitted.

A flat fee per loaned item will be charged. Fees generated will be used to recover actual processing costs and to offset general wear and tear on the collection when items are loaned. The amount is based on a study of current library costs and market comparisons. There will be no charge for renewals.

Costs for replacement of lost or damaged materials will be the actual cost to purchase a replacement or a flat fee if the exact cost cannot be determined. A processing cost will be added to all lost or damaged materials.

Fee Schedule for Paper Copying, Duplication, and Reproduction Services from the NAL Collection

The NAL will charge a fee for photocopying and reproduction services separate from the fee schedule applicable to FOIA requests under 7 CFR part 1, Appendix A, for paper copying, duplication, and reproduction services provided to non-USDA and non-federal libraries and institutions in the United States. These services will be provided only in response to an interlibrary loan request from a library. Use of the interlibrary loan system ensures that NAL receives the request in an appropriate form and format for response. In some exceptions, services will be provided for requests from individuals who have not been able to obtain materials through their local resources or who have made special arrangements with the Special Collections section using their forms.

Copying of articles is subject to a maximum limitation of 50 pages per article for purposes of copyright compliance. This is based on CONTU Guidelines (National Commission on New Technological Uses of Copyright Works), and the Code of Federal Regulations (Title 17, and Title 37, Volume 1).

The NAL will charge in its schedule of fees for photocopying of paper materials and paper copying of microfiche or microfilm. NAL is switching from a per page-based charge to a per item flat fee because, historically, the average request is between 10 and 20 pages. Establishing a flat fee allows the customer to estimate their costs more effectively and allows the library to eliminate the cost of multiple steps currently necessary in determining pro-rated fees. Fees established are based on actual costs (staffing, contract costs, supplies, copier maintenance, normal wear and tear on the collection, delivery costs, etc.) as well as based on a review of comparable fees across the nation charged by other research and academic libraries. All fees will apply to non-USDA and non-federal library requests that meet standard interlibrary loan format requirements and apply to copying of materials from the NAL collections only.

NAL also will charge a flat rate for the costs of duplication of NAL owned microfiche and microfilm. Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product, plus a flat rate for preparation costs.

Payment Submission Requirements

The National Technical Information Service (NTIS) within the United States Department of Commerce provides a number of services to Federal Agencies, one of which is billing and collection services. NAL uses NTIS as the preferred method for invoicing and payment of fees under this fee schedule. Use of NTIS by NAL is preferred because it is the only agency currently providing this service to Federal offices. NAL encourages institutional users to establish deposit accounts with NTIS if needed. Payment for services will be made by check, money order or credit card in U.S. funds directly to the NTIS upon receipt of an invoice from NTIS. Subject to service charges for the actual costs of performing the invoicing service, funds received by NTIS will be returned to NAL to the credit of the appropriation account charged with the costs of providing the loan or copying service.

List of Subjects in 7 CFR Part 505

Agricultural research, Agriculture, Libraries, Research, User fees.

For the reasons set out in the preamble, chapter V of Title 7 of the Code of Federal Regulations is amended as set forth below:

Part 505 is added to read as follows:

PART 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.

505.1 Scope and purpose.
505.2 Fees for loans of materials in library collections.
505.3 Fees for copying, duplicating, and reproduction of materials in library collections.
505.4 Reserved.
505.5 Reserved.
505.6 Payment of fees.

Authority: 5 U.S.C. 301; 7 U.S.C. 3125a.

§ 505.1 Scope and purpose.

These regulations establish fees for loans, paper copying, duplication, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

§ 505.2 Fees for loans of materials in library collections.

(a) NAL will make loans of original materials from its collections, and charge fees for such loans, to other non-Federal and non-USDA libraries and institutions in the United States and Canada only. Loans will not be made directly to individuals.

(b) Loans will be made at a flat fee of $15.00 per loaned item.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if the cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item, plus a $50.00 processing fee.

(d) All services in this section will incur a billing surcharge per invoice generated in addition to the above fees which may change as vendor's charges change. This fee, currently $10.00, is billed as a direct cost recovery based on charges to the library by the billing vendor. Interlibrary loan requests submitted by participants in the ILL Fee Management (IFM) program under the Online Computer Library Center, Inc. (OCLC) will not incur the billing surcharge as their activities will not generate an invoice.

§ 505.3 Fees for paper copying, duplicating, and reproduction of materials in library collections.

(a) Photocopy reproduction of paper copy will be set as a flat fee of $13.00 for domestic requests and $16.00 for international requests for each document requested with a maximum of 50 pages per article for copyright compliance. Materials delivered to international addresses via the Internet will be charged at the domestic rate. Photocopy reproduction of paper copy that requires special handling due to size or condition will incur special handling fees to recover costs at $20.00 per half hour or fraction thereof.

(b) Paper copies of microfilm or microfiche will be produced at a flat fee of $13.00 for requests delivered domestically and $16.00 for requests requiring delivery to a international address. This charge is for each document requested with a maximum of 50 pages per article for copyright compliance.

(c) Duplication of NAL owned microfiche will be charged a flat fee of $13.00 per each 5 microfiche duplicated or fraction thereof. Duplication of NAL owned microfilm will be charged a flat fee of $20.00 for each reel produced.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.) plus a preparation fee of $25.00 per half hour or fraction thereof.

(e) All services in this section will incur a billing surcharge, currently $10.00, per invoice generated in addition to the above fees. This fee is a direct cost recovery based on charges to the library by the billing vendor and is subject to change. Interlibrary loan requests submitted by participants in the IFM program on OCLC will not incur the billing surcharge as their activities will not generate an invoice.

§ 505.4 Reserved.

§ 505.5 Reserved.

§ 505.6 Payment of fees.

Charges which include billing and handling will be invoiced quarterly by the National Technical Information Service (NTIS) of the United States Department of Commerce. The NAL encourages users to establish deposit accounts with NTIS. Payment for services will be made by check, money order or credit card in U.S. funds directly to the NTIS upon receipt of invoice from NTIS. Subject to a reduction for the actual costs of performing the invoicing service by NTIS, all funds received will be returned to NAL for credit to the appropriations account charged with the cost of processing the loan or copying request.

Done at Washington, D.C.

Edward B. Knipling,

Acting Administrator, Agricultural Research Service.

[FR Doc. 00–2875 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–3 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. This interim final rule increases the Native spearmint oil salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

DATES: Effective on February 11, 2000 through May 31, 2000; comments received by April 10, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which ends on May 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which ends on May 31, 2000. This rule increases the salable quantity from 1,125,755 pounds to 1,128,066 pounds and the allotment percentage from 55 percent to 60 percent for Native spearmint oil for the 1999–2000 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year were recommended by the Committee at its October 7, 1998, meeting. The Committee recommended salable quantities of 1,199,190 pounds and 1,125,755 pounds, and allotment percentages of 65 percent and 55 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the November 17, 1998, issue of the **Federal Register** (63 FR 63804). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year was published in the January 19, 1999, issue of the **Federal Register** (64 FR 2799).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its January 13, 2000, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1999–2000 marketing year be increased by 5 percent from 55 percent to 60 percent. Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 1999–2000 marketing year salable quantity of 1,125,755 pounds will therefore be increased to 1,228,066 pounds.

The original total industry allotment base for Native spearmint oil for the 1999–2000 marketing year was established at 2,046,828 pounds and was revised during the year to 2,046,214 pounds to reflect a loss of 614 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,046,214 pounds is applied to the originally established allotment percentage of 55, the 1999–2000 marketing year salable quantity of 1,125,755 pounds is effectively modified to 1,125,418 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the 5 percent allotment percentage increase allows each producer to take up to an amount equal to 5 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 5 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 10,020 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than 102,311 additional pounds, this action effectively makes an additional 92,291 pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 1999–2000 Allotment Base—2,046,828 pounds. This is the figure the original 1999–2000 salable quantities and allotment percentages were based on.

(B) Revised 1999–2000 Allotment Base—2,046,214 pounds. This is 614

pounds less than the estimated allotment base. This is less because some producers failed to produce all of their previous year's allotment.

(C) Initial 1999–2000 Allotment Percentage—55 percent.

(D) Initial 1999–2000 Salable Quantity—1,125,755 pounds. This figure is 55 percent of 2,046,828 pounds.

(E) Initial Adjustment to the 1999–2000 Salable Quantity—1,125,418 pounds. This figure reflects the salable quantity available after the beginning of the 1999–2000 marketing year due to the 614 pound reduction in the industry allotment base to 2,046,214 pounds.

(F) Increase in Allotment Percentage—5 percent. This percentage increase was recommended by the Committee at its January 13, 2000, meeting.

(G) Revised 1999–2000 Allotment Percentage—60 percent. This figure is derived by adding the 5 percent increase to the initial 1999–2000 allotment percentage of 55 percent.

(H) Computed Increase in the 1999–2000 Salable Quantity—102,311 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 and the 5 percent increase.

(I) Revised 1999–2000 Salable Quantity—1,228,066 pounds. This figure is 60 percent of the estimated 1999–2000 allotment base of 2,046,214 pounds.

(J) Effective Increase in the 1999–2000 Salable Quantity—92,291 pounds. This figure represents the amount of Native spearmint oil actually being made available by this action based on the adjustments described herein.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1999–2000 marketing year began on June 1, 1999. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 2000. Without the increase, the Committee believes the industry would not be able to meet market needs. As of January 13, 2000, approximately 25,000 pounds of Native spearmint oil was available for market. The average for sales of Native spearmint oil from January 1 to May 31 over the past 5 years is 208,994 pounds. However, average sales for the period June 1 through December 31 for the past 5 years are 953,978 pounds. The Far West spearmint oil industry has sold 1,206,290 pounds of Native spearmint oil through January 13, 2000. Therefore, based on past history the industry may require at least about 40,000 additional pounds of Native to meet the five year average annual market demand. This action has the effect of adding 92,291 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period January 13 through May 31, 2000, up to approximately 117,300 pounds.

The Department, based on its analysis of available information, has determined that the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year should be increased to 1,228,066 and 60 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of section 985.50 of the order. During its discussion of revising the 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers

generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage larger producers may have, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns.

Based on projections available at the meeting, the Committee considered alternatives to the 5 percent increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 1 percent to 15 percent. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of January 13, 2000, approximately 25,000 pounds of Native spearmint oil was available for market. The past 5-year average of Native spearmint oil sales from January 1 to May 31 is 208,994 pounds, whereas the 5-year average for the period June 1 through December 31 is 953,978 pounds. The Far West spearmint oil industry has sold 1,206,290 pounds of Native spearmint oil this season through January 13, 2000. Therefore, based on historical sales the industry may require about 40,000 additional pounds of Native oil to meet the five-year average annual market demand. This action has the effect of adding 92,291 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period January 13 through May 31, 2000, up to approximately 117,300 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.218 (42 FR 2799) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year. A 60–day comment period is provided. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2000; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the season, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.218 is amended by republishing the introductory text and revising paragraph (b) to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

§ 985.218 Salable quantities and allotment percentages–1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,288,066 pounds and an allotment percentage of 60 percent.

Dated: February 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–3041 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective February

2, 2000. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259; for users of Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In increasing the basic discount rate from 5 percent to 5.25 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 25-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate approved by the Federal Open Market Committee and announced at the same time.

The Board and the Reserve Banks remain concerned that over time increases in demand will continue to exceed the growth in potential supply, even after taking account of the pronounced rise in productivity growth. Such trends could foster inflationary imbalances that would undermine the economy's record economic expansion.

Against the background of their long-run goals of price stability and sustainable economic growth and of the information currently available, the Board and the Reserve Banks believe the risks are weighted mainly toward conditions that may generate heightened inflation pressures in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.25	February 2, 2000.
New York	5.25	February 2, 2000.
Philadelphia	5.25	February 2, 2000.
Cleveland	5.25	February 2, 2000.
Richmond	5.25	February 2, 2000.
Atlanta	5.25	February 2, 2000.
Chicago	5.25	February 2, 2000.
St. Louis	5.25	February 2, 2000.
Minneapolis	5.25	February 3, 2000.
Kansas City	5.25	February 2, 2000.
Dallas	5.25	February 4, 2000.
San Francisco	5.25	February 2, 2000.

By order of the Board of Governors of the Federal Reserve System, February 4, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–3031 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–79–AD; Amendment 39–11561; AD 2000–03–04]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This amendment requires removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts. This amendment is prompted by recent component test data. The actions specified by this AD are intended to prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

EFFECTIVE DATE: April 10, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone 513–672–8400, fax 513–672–8422. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7742, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines was published in the **Federal Register** on October 26, 1999 (64 FR 57608). That action proposed to require removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts. That action was prompted by recent component test data. That condition, if not corrected, could result in fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters concur with the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 1,796 engines of the affected design in the worldwide fleet. The FAA estimates that 230 engines installed on aircraft of US registry will be affected by this AD and that required parts will cost approximately $90,085 per engine. Based on these figures, the total cost impact of the AD on US operators is estimated to be $20,719,600.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under EO 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–03–04 General Electric Company: Amendment 39–11561. Docket 98–ANE–79–AD.

Applicability: General Electric Company (GE) CF6–80C2 series turbofan engines, with fan mid shafts, part number (P/N) 9326M74P04 or P/N 9326M74P05, installed. These engines are installed on but not limited to Airbus Industrie A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service affected fan mid shafts and replace with a serviceable part, as follows:

Note 2: GE CF6–80C2 Service Bulletin (SB) No. 72–958, dated December 10, 1998, contains information on this subject.

(1) For fan mid shafts that have accumulated 9,000 or more cycles-since-new (CSN) on the effective date of this AD, remove from service within 3,500 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 15,000 CSN, whichever occurs first.

(2) For fan mid shafts that have accumulated 1,800 CSN or more, but less

than 9,000 CSN on the effective date of this AD, remove from service within 5,000 CIS after the effective date of this AD, or prior to accumulating to 12,500 CSN, whichever occurs first.

(3) For fan mid shafts that have accumulated less than 1,800 CSN on the effective date of this AD, remove from service prior to accumulating 6,800 CSN.

Note 3: GE CF6–80C2 SB 72–750, Revision 2, dated September 4, 1998, contains information on reworking fan mid shafts that results in changing the P/N. After that rework, this AD would not apply to engines containing the reworked fan mid shaft.

New Life Limits

(b) Except for the provisions of paragraph (a) of this AD, no fan mid shafts, P/N 9326M74P04 or 9326M74P05, may remain in service beyond 6,800 CSN.

Alternate Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on April 10, 2000.

Issued in Burlington, Massachusetts, on February 2, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2988 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–226–AD; Amendment 39–11562; AD 2000–03–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 Series Airplanes Modified in Accordance with Supplemental Type Certificate (STC) ST00969AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–200 series airplanes that requires removal of the existing emergency floor path lighting system and replacement with an FAA-approved emergency floor path lighting system. This amendment is prompted by information indicating that the existing emergency floor path lighting system does not provide adequate lighting and cueing for safe evacuation of the airplane in the event of an emergency. The actions specified by this AD are intended to prevent such inadequate lighting and cueing, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency.

EFFECTIVE DATE: March 16, 2000.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Eugene Evans, Aerospace Engineer, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6081; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 series airplanes was published in the **Federal Register** on June 23, 1999 (64 FR 33443). That action proposed to require removal of the existing emergency floor path lighting system and replacement with an FAA-approved emergency floor path lighting system. That proposal was prompted by information indicating that the existing emergency floor path lighting system does not provide adequate lighting and cueing for safe evacuation of the airplane in the event of an emergency. The actions specified by that proposal are intended to prevent such inadequate lighting and cueing, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the proposed rule.

Another commenter requests that the compliance time be extended to six months so that it will have adequate time to integrate the affected airplanes into the maintenance cycle.

The FAA concurs. The FAA has determined that such an extension of the compliance time to within 6 months after the effective date of the AD will not adversely affect safety. The final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 40 Boeing Model 737–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the removal of the system, and that the average labor rate is $60 per work hour. It will take approximately 40 work hours per airplane to accomplish the required replacement with an FAA-approved system. Required parts for the replacement will cost approximately $10,000 for a new system, per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $524,800, or $13,120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–03–05 Boeing: Amendment 39–11562. Docket 96–NM–226–AD.

Applicability: Model 737–200 series airplanes equipped with SAF–T–GL0 Aerospace Limited emergency floor path lighting systems installed in accordance with Supplemental Type Certificate (STC) ST00969AT, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadequate lighting and cueing of the emergency floor path lighting system, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency, accomplish the following:

(a) Within 6 months after the effective date of this AD, remove the existing photoluminescent emergency floor path lighting system from the airplane. Replace it with an emergency floor path lighting system in accordance with Supplemental Type Certificate ST01829AT, dated February 11, 1999, or an FAA–approved emergency floor path lighting system that is installed in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 16, 2000.

Issued in Renton, Washington, on February 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3131 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–12]

RIN 2120–AA66

Revision to the Legal Description of the Burlington International Class C Airspace Area; VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal description of the Burlington, VT, Class C airspace area by changing the operating hours to be consistent with the current operational requirements. Specifically, the Class C airspace area will be designated effective during the specific days and hours of operation of the Burlington Tower and Approach Control facility as established in advance by a Notice to Airmen (NOTAM). The effective dates and times thereafter will be continuously published in the Airport/Facility Directory. This action will not change the actual dimensions, configuration, or operating requirements of the Burlington Class C airspace area.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Burlington Airport Traffic Control Tower is reducing its hours of operation. The Burlington Class C airspace area remains an essential safety measure in support of the ongoing airport operation requirements.

On November 15, 1999, the FAA published an NPRM (64 FR 61803) that proposed to revise the legal description of the Burlington, VT, Class C airspace area by changing the operating hours to be consistent with the current operational requirements. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. However, one error was found in the coordinates of the legal description in the notice for the Burlington International Airport, VT. Except for the change in the coordinates, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of The Federal Aviation Regulations (14 CFR part 71) revises the legal description of the Burlington Class C airspace area located at Burlington, VT. The legal description will use the operating hours for the Class C airspace area which are consistent with the current requirements. The Class C airspace area is designated effective during the specific days and hours of operation of the Burlington facility as established in advance by a NOTAM. This action is a technical amendment to the legal description and will not change the actual dimensions, configuration, or operating requirements of the Burlington Class C airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this Regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "Significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 4000–Subpart C—Class C Airspace

* * * * *

Burlington International Airport, VT [Revised]

Burlington International Airport, VT (lat. 44°28′23″ N., long. 73°09′01″ W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5–mile radius of the Burlington International Airport, and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10–mile radius of Burlington International Airport from the 360° bearing from the airport clockwise to the 180° bearing from the airport, excluding the airspace within Restricted Area R–6501; and that airspace extending upward from 1,500 feet MSL to 4,400 feet MSL within a 10–mile radius of the airport from the 180° bearing from the airport clockwise to the 360° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC on February 3, 2000.

Reginald C. Matthews,

Manager; Airspace and Rules Division.

[FR Doc. 00–3077 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to Final Regulations.

SUMMARY: This document contains corrections to the final rule titled "Postlease Operations Safety" that was published Tuesday, December 28, 1999 (64 FR 72756). We are correcting a section title and adding a word in the section that was inadvertently omitted.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede 30 CFR 250, subpart A, General, regulations on the effective date and affect all operators and lessees on the Outer Continental Shelf.

With respect to the corrections, the title of § 250.142 is inaccurate and the word "District" was omitted inadvertently in the section.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on December 28, 1999, of the final regulations, which were the subject of FR Doc. 99–31869, is corrected as follows:

§ 250.142 [Corrected]

On page 72783, in the first column, the title of and the language in § 250.142 are corrected to read :

§ 250.142 How do I receive approval for departures?

We may approve departures to the operating requirements. You may apply for a departure by writing to the District or Regional Supervisor.

Dated: January 31, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–3109 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–MR–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM98–3; Order No. 1284]

Revisions to Rules of Practice; Final Rule

AGENCY: Postal Rate Commission.

ACTION: Final Rule.

SUMMARY: This rule adopts final changes in Commission rules of practice. These changes adopt certain special rules of practice on a permanent basis, make several other procedural improvements, and make minor technical corrections and conforming changes. Adoption of these rules will aid in effective administration of Commission proceedings.

DATES: February 10, 2000.

ADDRESSES: Send correspondence concerning this document to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–001, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

Initial notice of proposed rule: 63 FR 46732 (September 2, 1998).

Supplementary notice of proposed rule: 64 FR 72622 (Dec. 28, 1999).

Introduction

The Commission initiated this rulemaking to amend its rules of

practice and procedure (rules or rules of practice) to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. 3624. See order no. 1218 (63 FR 46732, Sept. 2, 1998). The initial order encouraged comments on any topic covered in 39 CFR 3001.1–92, with the exception of library references and confidential information, which were to be addressed in separate rulemakings. In particular, comments were solicited regarding the extent to which electronic filing requirements or options could be added to the current rules, and on the incorporation of all (or most) of the special rules of practice into the rules. The special rules were originally designed for use in omnibus rate proceedings and recently have been employed in several classification and complaint dockets. These rules encompass five discrete areas: evidence, discovery, service, cross-examination and "general," which in part addresses the use of library references. The rules generally provide both detailed procedures designed for complex omnibus rate cases with numerous participants, and pleading deadlines which are more accelerated than those in the existing rules.

Five sets of comments suggesting improvements were received. Commenters generally supported the integration of the special rules into the current rules of practice and procedure, but gave a mixed response to the possibility of electronic filing requirements. Some commenters suggested that several technical and procedural rules were outdated in light of current technology and practice. Certain "streamlining" measures also were proposed.

In order no. 1274, the Commission proposed specific changes in the rules which address the aforementioned areas of interest, as well as commenters' remarks. See order no. 1274 (64 FR 72622, Dec. 28, 1999). Proposed modifications included the incorporation of most of the special rules and minor updates of several current rules to reflect internal Commission changes since the rules were first promulgated. The proposed rules generally have been tested in numerous Commission proceedings, and have proven to be effective and efficient.

The Commission narrowed the scope of the rulemaking by limiting its consideration to Subpart A—Rules of General Applicability (rules 1–43). Thus, to the extent commenters' remarks encompassed Subparts B through F (rules 51–92), which include regulations pertaining to the initiation of dockets, they were deferred for consideration to a later rulemaking.

Response to Order No. 1274

Three sets of comments were received in response to order no. 1274. The comments are available for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov. The comments essentially support the proposed revisions as reasonable and appropriate. However, there are some concerns with regard to the revised filing deadlines for various pleadings in Commission proceedings. Also, commenters suggest that clarification of some rules may be necessary. Finally, several minor technical amendments to the Commission's rules are proposed. Each comment will be addressed in turn.

Deadlines

Reversion of the Proposed 7-day Deadline to the Current 10-day Deadline for Objections to Interrogatories, Requests for Production of Documents or Things, and Requests for Admissions (Rules 26(c), 27(c) and 28(c), Respectively)

One commenter maintains that the shortened deadline for objections to discovery requests which the Commission proposes in rules 26(c), 27(c) and 28(c) is too severe and may result in "increased motions practice and other inefficiencies." According to the commenter, a backlog of responses to interrogatories during extensive discovery in an omnibus rate case has been experienced frequently under the current 10-day deadline. This situation would be exacerbated if the period for responses was shortened. Moreover, the proposed 7-day deadline does not reflect incorporation of the special rules, but rather is an untested proposal.

The commenter presents a valid argument. The shortened time period for objections to discovery was proposed in conjunction with the abbreviated pleading periods prescribed by the special rules. However, the Commission recognizes that the special rules have been tested and proven successful in numerous Commission proceedings, whereas the proposal at issue is untried. As such, the Commission will not implement this shortened deadline as a final rule, and the current 10-day deadline will remain in effect. The proposed abbreviated deadline may instead be considered for implementation as a special rule during the docket no. R2000–1 omnibus rate case or other Commission proceeding.

Implementation of a Shortened Time Period for Filing Motions to Compel Responses To Discovery in Revised Rules 26(d), 27(d) and 28(d)

One commenter suggests that the period for participants to file motions to compel responses to discovery be shortened from the current 14 days to 10 days. The commenter argues that the abbreviated time period will effectively reduce those outstanding discovery disputes pending against a participant both during and after the hearing stage of its case-in-chief. Further, the shortened deadline would be consistent with the current, somewhat analogous 10-day period for response to a motion provided by rule 21(b).

The Commission declines to modify rules 26(d), 27(d) and 28(d) as proposed by the commenter. While the commenter's proposal has merit, the shortened time frame has never been tested as a special rule to gauge its effectiveness. The Commission therefore would be inclined to direct that the proposal first be applied in a particular case to determine its feasibility prior to any promulgation of a rule.

Reversion of the Proposed 7-day Deadline for Responses to Motions in Rule 21 to the Current 10-day Deadline

One commenter argues against the adoption of the Commission's proposal to shorten the deadline for responses to motions from 10 to seven days. According to the commenter, this abbreviated period is not a special rule and has not been tested in the course of a major rate proceeding. The commenter maintains that the shortened deadline would be difficult to meet and would likely result in numerous filings for extension of time to reply.

While not a special rule, the abbreviated time frame nonetheless has been imposed in a number of instances where motions have been seriously contested, and met with success. Additionally, the special rules require responses to motions to compel discovery in seven days, and applying this time period to all motions practice will eliminate confusion. In light of these considerations, the Commission is not persuaded by the commenter's arguments. The Commission's proposal will be implemented.

Exhibits

Inclusion of Special Rule 1–B, Exhibits

One commenter notes that the Commission did not incorporate the special rule addressing exhibits in its revised rules. That special rule specifies what information must be included in each exhibit, such as cross-references

for multi-part exhibits. The commenter maintains that the special rule on exhibits ensures the provision of those citations and references to sources necessary for a meaningful review of a particular exhibit, and therefore should be a part of the Commission's rules of practice and procedure. It is suggested that the special rule be inserted after the first sentence of rule 31(b), which pertains to documentary materials.

The Commission agrees that the special rule on exhibits merits inclusion in the rules of practice and procedure. That rule was not proposed for incorporation in order no. 1274 based on the Commission's assessment that the current rules and the revised rule on library references sufficiently addressed the filing of exhibits. See order no. 1273 (64 FR 67487, Dec. 2, 1999). However, it is possible that the special rule on exhibits would provide more comprehensive guidance on the matter. As suggested, this special rule is incorporated into current rule 31(b), documentary material.

Filing Option Terms

Clarification of Proposed Rule 10 (Form and Number of Copies of Documents)

One commenter questions whether it is the intention of the Commission to amend rule 10 to allow pleadings to be filed either in hardcopy form or on computer diskettes on a document-by-document basis.

The proposed amendment to rule 10 does allow participants to select the medium of filing on a document-by-document basis. Under the proposed rule, a participant is not required to select only one form of filing for all of that participant's documents in a given proceeding.

Number of Copies

Reduction in the Number of Hardcopy Documents Requested for Filing Under Rule 10(d)

Under rule 10, any participant filing a hardcopy document must present an original and 24 copies of the document. One commenter proposes that the number of required hard copies be reduced, given the availability of such documents on the Commission's web site and the potential time savings associated with a reduced filing requirement.

The Commission declines to amend rule 10 as requested, but notes that an alternative option was proposed by the Commission in order no. 1274. The proposed rule 10 allows for the electronic filing of documents, with a reduced number of hard copies. Thus, participants may submit a filing on computer diskette (in compliance with rule 10(c) specifications), accompanied by only one printed original and three hard copies of that filing.

Internet-Based Service List

Clarification of Rule 12(d) Regarding the Appropriate Service List for Compliance With Service Requirements

One commenter suggests that Commission rule 12(d) (service list) be modified to designate the service list on the Commission's web site as the current service list for effective service of documents. Such a modification would decrease the likelihood of participants utilizing out-of-date service lists, as is possible with reliance on a hardcopy service list, particularly in complex, multi-party cases.

The Commission finds this proposal reasonable, and will so amend rule 12(d). Each participant is responsible for ensuring that its listing on the Commission's web site (www.prc.gov) is accurate, and should promptly notify the Commission of any errors.

Postal Service Street Address

Inclusion of Postal Service Street Address in Rule 12(e)

The Postal Service suggests that rule 12(e), which describes the method of service of documents, be amended to include the Postal Service's street address. The Commission finds this proposal reasonable, and therefore amends rule 12(e) to read, in relevant part, ". . . Chief Counsel, Rates and Classification, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 6536, Washington, DC 20260–1137."

Suggested Change to Rule 18

Amendment of Rule 18 Regarding Participants' Right To Request a Hearing

One commenter notes that the current rule 18 (nature of proceedings) essentially allows participants the right to request a hearing without specifying the grounds for the request. In this regard, rule 18 is inconsistent with other Commission rules which require that the underlying purpose for a hearing request be cited. The commenter suggests that the phrase "Except as otherwise provided in these rules" be added to rule 18 to eliminate this inconsistency.

The Commission is in favor of eliminating any perception of inconsistency in its rules of practice and procedure. To this end, rule 18(a) (proceedings to be set for hearing) will be modified as proposed.

Suggested Change to Rule 21(b)

Modification of Rule 21(b) Regarding Answers to Motions

A commenter suggests that language be added to the rule to better signal the reader that the deadline imposed for responses to motions to strike, in the new rule 21(c), varies from the deadlines otherwise imposed in rule 21.

The Commission finds no compelling reason to add such language to rule 21(b). In the first instance, the same 7-day day deadline is imposed for responses to motions to strike in rule 21(c) and for answers to motions in rule 21(b). Furthermore, the potential for different deadlines for responses already is highlighted, as the revised rule 21(b) provides, in relevant part: "Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant may file and serve an answer. . . ."

Suggested Change in Numbering

Renumbering of Proposed New Rule 25

One commenter suggests that the new rule 25 be renumbered as "25a," thereby eliminating the need to renumber the current discovery rules. In this manner, confusion regarding the renumbered rules may be avoided in future cases, when the rules pertaining to discovery are researched, and past Commission documents referring to the current rule numbers are cited.

While the Commission understands this concern, it declines to act on this suggestion, as the **Federal Register** Document Drafting Handbook (DDH) states that numbers with alpha characters (such as part 25a) are not permitted in designating units within the Code of Federal Regulation (CFR) system. See **Federal Register** DDD, Section 1.12 at 1–22 (October 1998 Revision). The Commission is confident that the renumbering of the discovery rules, as proposed in order no. 1274, will not significantly impact either the Commission or the participants in future proceedings.

Rule 25 Clarification

Clarification of Proposed Rule 25 With Regard to the Extended Period of Discovery on the Postal Service

The proposed rule 25 provides, in relevant part, that "[d]iscovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony." One commenter suggests that the Commission's intent to limit the extended discovery period for

the sole purpose of rebuttal testimony development may be more fully realized by adding the word "only" to the provision.

It is agreed that modification of rule 25 as suggested is consistent with the intent of the rule and Commission precedent. The Commission therefore modifies rule 25 to read as follows, in relevant part: "Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony."

Minor Corrections and Conforming Changes

Several minor technical amendments to the Commission's rules of practice and procedure are now made. In rule 12(d), the phrase "by each participating with the address" is changed "by each participant with the address." In rule 12(e), which provides for the method of service of documents in Commission proceedings, the word "persons" is changed to "individuals" to conform with the inserted special rules. In rule 26(c), the phrase "service of interrogatories" is substituted for the phrase "the request for production," as that rule addresses interrogatories for the purpose of discovery. In rule 26(g), the word "party" is changed to "participant," in accordance with Commission terminology. Likewise, in rule 27(c), all references to "party" are changed to "participant." In rule 27(e), "[s]uch compelled documents or things shall be made available to the participants making the motion * * *" is changed to "[s]uch compelled documents or things shall be made available to the participant making the motion * * *" In rule 30(e)(1), the phrase "including the Postal Service" is deleted, as the term "participant" used in the sentence in question encompasses the Postal Service. Finally, the Commission notes that a minor typographical error and some superfluous text in order no. 1274 which was highlighted by a commenter was, in fact, corrected in the associated **Federal Register** notice. See 64 FR 72622 (Dec. 28, 1999).

Text of Amended Revisions

For the reasons discussed above, the Commission hereby amends Subpart A of its rules of practice and procedure as set forth in the attachment to this order. [Note: material in the attachment appears below, conformed to Office of the Federal Register style requirements.]

Ordering Paragraphs

The first ordering paragraph states that the Commission adopts the provisions set out in the attachment as the final rules amending 39 CFR 3001.1–43. The second paragraph states that the rules are effective upon publication in the **Federal Register**. The third paragraph states that the Secretary shall cause this order to be published in the **Federal Register**.

Margaret P. Crenshaw,
Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission amends 39 CFR part 3001—Rules of Practice and Procedure Subpart A—Rules of General Applicability as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662, 3663.

2. Revise § 3001.4 to read as follows:

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 *Prehearing conferences*" shall be referred to as "section 24" or "rule 24."

3. Amend § 3001.5 by revising paragraph (e) and adding paragraph (q) to read as follows:

§ 3001.5 Definitions.

* * * * *

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

* * * * *

(q) *Office of the Consumer Advocate* or *OCA* means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

4. Amend § 3001.7 by revising paragraph (d)(1) to read as follows:

§ 3001.7 Ex parte communications.

* * * * *

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

* * * * *

5. Amend § 3001.9 by revising paragraph (b) to read as follows:

§ 3001.9 Filing of documents.

* * * * *

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and the presiding officer in the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

6. Amend § 3001.10 as follows:

a. Redesignate paragraph (c) as (d),

b. Revise redesignated paragraph (d); and

c. Add new paragraph (c) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer diskette.* Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, in lieu of the other requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of one printed original and three hard copies. Attachments will be accepted in their native format (i.e., Excel, Lotus, etc.). Documents must be submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate to assist with optical character recognition (OCR).

(d) *Number of copies.* Except for correspondence, computer diskette filing as provided for in paragraph (c) of this section, or as otherwise permitted by the Commission, the Secretary or the presiding officer in any proceeding, all persons shall file with the Secretary an original and 24 fully conformed copies of each document required or permitted to be filed under this part. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto.

7. Amend § 3001.12 as follows:

a. Revise paragraph (b),

b. Revise paragraph (d), and

c. Revise paragraph (e) to read as follows:

3001.12 Service of documents.

* * * * *

(b) *Service by the participants.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.26(a) and (c), 3001.27(a) and (c), and 3001.28(a) and (c), and except for designations for written cross-examination, notices of intent to conduct oral cross-examination and notices of intent to participate in oral argument, which need be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Also, discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 26–28 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant with the address and, if possible, a telephone number and facsimile number designated in the participant's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c). The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. The Secretary's current service list for a particular proceeding may be found on the Commission's web site, www.prc.gov. Each participant is responsible for ensuring that its listing on the Commission's web site is accurate, and should promptly notify the Commission of any errors. Service on the Secretary's service list in any proceeding, as directed by the Commission or the presiding officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by First-Class Mail or personal delivery to the address shown for the individuals designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Chief Counsel, Rates and Classification, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 6536, Washington, DC 20260–1137. Service via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.

* * * * *

8. Amend § 3001.17 by redesignating paragraphs (a–1), (b) and (c) as paragraphs (b), (c) and (d).

9. Amend § 3001.18 by revising paragraph (a) to read as follows:.

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

* * * * *

10. Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a) the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding involved. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

11. Amend § 3001.20 by revising paragraph (a) to read as follows:

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

* * * * *

12. Amend § 3001.20a by revising the introductory text to read as follows:

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions;

* * * * *

13. Amend § 3001.21 as follows:

a. Revise paragraph (b), and

b. Add new paragraph (c) to read as follows:.

§ 3001.21 Motions.

* * * * *

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to

an answer or any further responsive document shall be filed.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

§ 3001.28 [Removed]

14. Remove § 3001.28.

§ 3001.25, 3001.26 and 3001.27 [Redesignate as §§ 3001.26, 3001.27 and 3001.28, respectively]

15. Redesignate §§ 3001.25, 3001.26 and 3001.27 as §§ 3001.26, 3001.27, 3001.28.

16. Revise redesignated § 3001.26 to read as follows:

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall also serve the Postal Service and the OCA. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall serve the answers on the participant who served the interrogatories within 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. Answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within 10 days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory, the Postal Service, and the OCA within 10 days of service of interrogatories. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the participant who moved to compel the answer within seven days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

(f) *Supplemental answers.* The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a participant or person from undue annoyance, embarrassment, oppression, or expense.

17. Revise redesignated § 3001.27 to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of

admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests shall serve the objections on the participant requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA within 10 days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced also shall be filed pursuant to § 3001.9 and served pursuant to § 3001.12(b). The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

18. Revise redesignated § 3001.28 to read as follows:

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests for admissions shall serve the objections on the participant requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within 10 days of the request. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to requests for admissions.* Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the participants who moved to compel the answers within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants pursuant to § 3001.12(b). If the

Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

19. Add § 3001.25 to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

20. Amend § 3001.30 by revising paragraph (e) to read as follows:

§ 3001.30 Hearings.

* * * * *

(e)(1) *Presentations by participants.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

21. Amend § 3001.31 as follows:

a. Revise paragraph (b)(1),

b. Revise paragraph (c),

c. Revise paragraph (e), and

d. Revise paragraph (f).

e. Revise paragraphs (k)(3)(i)(*d*) through (*f*), (k)(3)(i)(*i*) and paragraph (k)(4) to read as follows:

§ 3001.31 Evidence.

* * * * *

(b) *Documentary material.*—(1) *General.* Documents and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or

the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of evidence from other Commission dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*d*) A hard copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(*f*) The source code in hardcopy form;

* * * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

22. Amend § 3001.43 as follows:

a. Revise paragraphs (e)(4) introductory text and (e)(4)(i),

b. Revise paragraph (g)(1)(iii), and

c. Revise paragraph (g)(2)(iii).

§ 3001.43 Public attendance at Commission meetings.

* * * * *

(e) * * *

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1) * * *

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary 10 working days after the meeting.

* * * * *

(2) * * *

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

[FR Doc. 00–3026 Filed 2–7–00; 1:08 pm]

BILLING CODE 7710–FW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–247; FCC 99–362]

Fees for Ancillary or Supplementary Use of Digital Television Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies Petitions for Reconsideration of the Report and Order in this proceeding. It reaffirms the previously established fee of five percent of gross revenues received from feeable ancillary or supplementary services provided by DTV stations. It also reaffirms the conclusion that home shopping, infomercial, and direct marketing services are not feeable.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, Policy and Rules Division, Mass Media Bureau (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, (*"MO&O"*), FCC 99–362, adopted November 19, 1999 and released November 24, 1999. The full text of this

Commission *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC, 20554. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Synopsis of Report and Order

I. Introduction

1. In our Report and Order ("*R&O*") in this proceeding, (63 FR 69208, December 14, 1998), we implemented Section 201 of the Telecommunications Act of 1996 ("1996 Act") which adopted Section 336 of the Communications Act of 1934, requiring broadcast television licensees to pay a fee if they provide certain types of ancillary or supplementary services on their digital television ("DTV") bitstream. Based on the criteria set forth in Section 201, we adopted rules to require DTV licensees to pay a fee of five percent of the gross revenues received from the provision of such "feeable" ancillary or supplementary services. We also provided guidance on which services are subject to this fee and specifically concluded that home shopping, infomercial, and direct marketing services would not be feeable.

2. The National Association of Broadcasters and the Association for Maximum Service Television have filed a joint petition (the "NAB/MSTV Petition") asking us to set the fee at two percent of gross revenues rather than five percent. The Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project have filed a joint petition (the "UCC, *et al.* Petition") asking us to hold that home shopping, infomercials, and direct marketing services are subject to fees. We deny both petitions for reconsideration.

II. Background

3. Pursuant to the 1996 Act, the Commission has assigned each existing broadcast television station an additional channel to convert to digital technology. We are requiring broadcasters to provide on their DTV bitstream at least one over-the-air video program signal at no direct charge to viewers. 47 CFR 73.624(b). Aside from this requirement, we have given broadcasters great flexibility in the services they provide over their DTV bitstream. They may offer a wide range of ancillary or supplementary services such as computer software distribution, data transmission, teletext, interactive materials, aural messages, paging services, audio signals, and subscription video.

4. The 1996 Act requires broadcasters to pay a fee to the U.S. Treasury to the extent they use their DTV bitstream to provide ancillary or supplementary services—

(A) For which the payment of a subscription fee is required in order to receive such services, or

(B) For which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such a third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). 47 U.S.C. 336(e)(1).

The 1996 Act directed the Commission to establish a program to assess and collect this fee based on the following three objectives:

- "To recover for the public a portion of the value of the public spectrum resource made available for such commercial use";
- "To avoid unjust enrichment through the method employed to permit such uses of that resource";
- To "recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to [the competitive bidding process.]" 47 U.S.C. 336(e)(2).

5. In the *R&O*, we established a fee program that requires broadcasters to pay a fee of five percent of the gross revenues they receive from feeable ancillary or supplementary services offered on their DTV bitstream. We reasoned that this fee is consistent with the three objectives set forth in the Act. It also represented a reasonable fee in light of the record in the proceeding, in which some parties argued for a very low or nominal fee and others for a fee of more than ten percent.

III. The NAB/MSTV Petition

6. NAB/MSTV argue that we failed to consider two studies they submitted that they believe call for a fee of two percent of gross revenues rather than five percent. The first study, prepared by Jerry Hausman, purports to establish "the low and declining value of comparable spectrum," and also that digital ancillary or supplementary services "face significant business and technological uncertainty." The second study, prepared by Kent Anderson, describes several surveys of technology licensing fees in the private sector. The Association of Local Television Stations ("ALTV") submitted comments supporting the NAB/MSTV Petition. The National Cable Television Association ("NCTA") filed an opposition to the petition.

7. Contrary to NAB/MSTV's suggestion, we did consider the two studies in reaching our decision in the *R&O*. Indeed, consistent with a recommendation in the Hausman Study, we declined to impose an upfront or hybrid fee on DTV licensees that provide feeable services. Although we rejected arguments based on the two studies to set the fee lower than five percent, we explained in the *R&O* our reasons for doing so. We reaffirm this decision and amplify our reasons below.

8. The Anderson Study describes several surveys of royalty rates used in licensing various technologies in the private sector. Although we did not cite the Anderson Study explicitly and our discussion of the issue was brief, the *R&O* did reject arguments that we should set a lower fee based on analogies to copyright royalty rates. We declined to do so because the policy concerns and economic considerations involved in setting a fee for ancillary or supplementary services appear to be different from the considerations involved in negotiations over private licensing rights. We have more closely examined the Anderson Study and are not persuaded that we should alter our decision. Indeed, the Anderson Study itself acknowledges that "[e]ach licensing negotiation has unique characteristics, making it very difficult to demonstrate that the royalty observed for any one licensing agreement reasonably applies to another." This statement confirms our reluctance in the *R&O* to directly base the fee required under Section 336(e) on analogies to private licensing arrangements.

9. Aside from this concern, the Anderson Study can actually be read to *support* a fee of five percent of gross revenues. The NAB/MSTV Petition, at 5, argues that the Anderson Study "found that licensing rates for unproven technologies without 'highly favorable economics' tended to be very low." But the full sentence in the Anderson Study that is cited to support this statement states: "For 'minor' innovations the range [of running royalty rates] is 1 to 5 percent, and for 'major' innovations it is 3 to 8 percent. Only in the case of innovations characterized as 'revolutionary' (*i.e.*, suggesting highly favorable economics) do the rates rise to the 5 to 10 percent range." The five percent fee we have established thus falls somewhere in the middle of these reported ranges and could even be

characterized as falling within the range of royalty rates for "minor innovations." More generally, Anderson summarizes the overall results of his research as "show[ing] that some technologies earn royalties on the order of 2 to 3 percent or less, most earn royalties of 5 percent or less, and only those technologies with unusually favorable economics receive rates of more than 10 percent." Again, this places a five percent fee squarely in the average range, which we believe is reasonable. This is especially the case since we are not imposing an upfront or hybrid fee on DTV licensees. By comparison, a fair number of the royalty arrangements described in the Anderson Study appear to involve upfront payments in addition to royalty fees. Taking these upfront payments into account suggests that the five percent fee we have established may actually fall toward the low end of the total licensing payments (royalties plus upfront fees) surveyed in the Anderson Study.

10. We now turn to the Hausman Study. Based on an econometric study of the FCC's previous auctions, Hausman reports that prices for spectrum auctioned by the Commission have been decreasing over time on a per megahertz per population basis. He also posits that there will be significant sunk cost investments required to provide DTV ancillary or supplementary services, and also significant business and technological uncertainty facing these services. Hausman concludes that "the combination of overall declining auction results over time and the significant business and technological uncertainty with respect to sunk costs would lead to an expected outcome of relatively low auction results for spectrum used for ancillary services." Noting that the *Notice* had sought comment on setting the fee in the range of one to ten percent, Hausman recommends "that the Commission initially begin with a fee toward the low end of the range."

11. As an initial matter, we question a number of the underlying assertions made in the Hausman Study. Even assuming it is true that there is a downward trend in per megahertz, per population prices for the spectrum auctions the Commission has previously held, this does not necessarily mean that an auction of the spectrum used for DTV ancillary or supplementary services would follow this trend. As we stated in the *R&O*, the auction values realized by the Commission in conducting a particular spectrum auction reflect factors that are specific to the particular spectrum being auctioned. These factors include the anticipated demand for the telecommunications services provided using the particular spectrum and the technological uncertainty associated with the application. The *R&O* pointed to evidence that suggests that the broadcast spectrum that will be used to provide DTV ancillary or supplementary services could command higher prices than predicted by the trend described in the Hausman Study. In particular, we noted that the sales values of broadcast properties have increased sharply over the past several years, reflecting the increasing value of their spectrum licenses. The NAB/MSTV Petition faults the *R&O* for focusing on this evidence and for not placing greater weight on the value of *non*-broadcast spectrum because most ancillary or supplementary services will be non-broadcast in nature. But we think it is reasonable to expect that the prices investors pay for television stations reflect not only the anticipated profits from providing broadcast video programming on the station but also the projected profits from "non-broadcast" ancillary or supplementary services that they can now provide on the station's DTV bitstream. The recent sales prices for television stations thus shed some light on the value of the spectrum used to provide the ancillary or supplementary services.

12. In addition, we question the Hausman Study's assertions regarding the degree of uncertainty and sunk costs DTV licensees will face in providing ancillary or supplementary services. Whether or not they choose to provide ancillary or supplementary services, DTV licensees will need to invest in DTV facilities in order to provide a free, over-the-air digital broadcast service. Given this, it would appear that the incremental or marginal cost of providing any feeable ancillary or supplementary services may not be as significant as Hausman and NAB/MSTV suggest. The most substantial costs incurred by broadcasters, such as transmitters and towers, will be sunk or fixed costs that are already incurred in connection with the provision of nonfeeable services, thus minimizing the additional investment required to provide feeable services. We consequently agree with NCTA that the risk associated with offering ancillary or supplementary services will be diminished by the fact that DTV licensees will be providing nonfeeable broadcast services.

13. We also think Hausman and NAB/MSTV overstate the level of uncertainty broadcasters face in developing ancillary or supplementary services. We fully recognize developing and implementing these services will entail challenges and risks. But broadcasters are not venturing into completely uncharted territory. They have been authorized to provide ancillary services on parts of their analog signals for years, although these services have been limited due to the lack of capacity on analog channels. Broadcasters have also become increasingly involved over the years in developing and selling programming carried on cable networks, and they can translate this experience into providing subscription programming over their DTV bitstream should that appear profitable to them. More recently, a number of broadcasters have invested in internet-related companies, suggesting that the internet's interactive and datacasting applications, which potentially could also be offered over the DTV bitstream, may prove profitable.

14. Aside from the questions we have about some of the Hausman Study's underlying assertions, we have a more fundamental objection to the conclusion NAB/MSTV seek to draw from it. In particular, neither NAB/MSTV nor Hausman provides a persuasive basis to conclude that Hausman's assertions, even taken at face value, require us to set the fee at two percent rather than five percent of gross revenues. The Hausman Study seems to acknowledge this in that it has no firm recommendation on the level of the fee, only suggesting that the FCC initially set the fee "toward the low end of the range" and that the Commission "might consider" initially setting the fee at one percent or less. For its part, the NAB/MSTV Petition argues that the studies it has submitted "provide [ ] strong support for the Commission to set a low initial fee" and concludes that the fee should be two percent of gross revenues, yet it provides no rationale why a "low fee" necessarily means a fee of two percent as opposed to five percent.

15. We continue to think that a fee of five percent of gross revenues is reasonable in light of the criteria set forth in Section 336(e). A central theme underlying NAB/MSTV's arguments and the studies they have submitted is that we should set the fee so as not "to discourage the development of new ancillary and supplementary services" and to "promote [ ] the efficient use of digital spectrum." We agree that this is a worthy goal and, indeed, Section 1 of the Communications Act states that one of the Act's purposes is to promote an "efficient" radio communication service. 47 U.S.C. 151. But this general policy cannot trump the specific statutory criteria set forth in Section 336(e)(2) for establishing the fee, none

of which require that the fee be designed to maximize efficiency. Indeed, taken to its logical conclusion, the goal of maximizing efficiency and encouraging ancillary or supplementary services would mean that the fee should be set at zero or some nominal percentage rate as this would eliminate any influence the fee would have on a DTV licensee's decision to provide ancillary or supplementary services as opposed to nonfeeable broadcast video programming. But clearly this is not what Congress intended. A fee system that raised no or only nominal revenue from licensees that provide "feeable" ancillary or supplementary services would (quite literally) make Congress's enactment of Section 336(e) all for naught.

16. In the end, implementing Section 336(e) is not, to paraphrase one of the parties, an exact science. NAB/MSTV acknowledge that the Commission has "broad discretion under the Act in setting the fee level." In exercising this discretion, we have sought to promote the efficient use of the spectrum and the development of innovative ancillary or supplementary services by DTV licensees. But this discretion is bounded by Section 336(e), which requires us to design the fee not only to approximate the revenue that would have been received had these services been licensed through an auction, but also to recover a portion of the value of the spectrum used for these services and avoid "unjust enrichment" of DTV licensees who have been given the exclusive right to apply for DTV channels without having to bid for them at an auction. Weighing these factors and the comments submitted in the proceeding—some of which argued for a fee of less than one percent while others argued for a fee of over ten percent—we established a fee of five percent of gross revenues generated from feeable ancillary or supplementary services. The amount raised by this fee will vary with the gross revenues from these services, *i.e.*, with the willingness of consumers to pay for such services. As a consequence, if the consumer value for these services is low, the fee payment will be small. Given this, and the record in this proceeding and the criteria set forth in Section 336(e), we continue to believe this is a reasonable fee and consistent with the statute, and therefore deny the NAB/MSTV Petition.

IV. The UCC, et al. Petition

17. In the *R&O*, we decided not to impose fees on revenues received from home shopping, infomercial or direct marketing services. We reasoned that:

> [t]he purpose of this proceeding is not to exact fees from existing broadcasters for existing services but, rather, to design a program for the assessment of fees on ancillary or supplementary services which will be provided on the DTV bitstream. We agree with the commenters who argued that home shopping and infomercials are commercial advertisements, excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee. [Footnote omitted.] We therefore find that home shopping channels and infomercials are free, over-the-air television services, supported by commercial advertisements, and not subject to a fee.

18. UCC, *et al.* ask the Commission to reconsider this decision. They interpret the 1996 Act as requiring us to impose fees on home shopping, infomercial, and direct marketing services. NAB, MSTV, ALTV, and Home Shopping Network ("HSN") and ValueVision International ("ValueVision") have opposed UCC, *et al.'s* petition for reconsideration and argue that the Commission was correct in concluding that these services are not subject to fees.

19. UCC, *et al.* interpret the *R&O* as basing this conclusion on two rationales: (1) That home shopping, infomercials, and direct marketing services are "existing" services, and therefore grandfathered from the fee requirements in the Act; and (2) that these services are "commercial advertisements" rather than programming services, and consequently fall within Section 336(e)(1)(B), which exempts from fees "commercial advertisements used to support broadcasting for which a subscription fee is not required." As to the first rationale, UCC, *et al.* argue that the 1996 Act does not give the Commission authority to grandfather existing services from the new statutory fee requirements. As to the second rationale, UCC, *et al.* maintain that it is arbitrary and capricious to categorize home shopping and similar services as "commercial advertisements" exempt under Section 336(e)(1)(B) because Congress, the Commission, and the broadcast industry have consistently characterized these services as *programming* not as commercial advertisements.

20. We think UCC, *et al.* have misconstrued the *R&O* on these points. Our decision was not intended to grandfather existing services. Nor was it based on whether home shopping and similar services should be categorized as "commercial advertisements" or "programming." We recognize that the *R&O*, may have been unclear on this point in that it referred to these services as "commercial advertisements." But we did not intend this characterization to be the basis for our decision not to impose fees on these services. Rather, we based this decision on what we see as a threshold criterion in the statute: only *ancillary or supplementary* services are subject to fees under the Act. Because traditional home shopping, infomercial and direct marketing services are free, over-the-air, video services and therefore do not qualify as ancillary or supplementary services as we have defined that term in our rules, 47 CFR 73.624(c), they are not subject to fees. Or, as we put it in the *R&O*, these services are "excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee." We take this opportunity to elaborate on this reasoning.

21. Section 336(e)(1), which defines the "services to which fees apply," speaks only in terms of "ancillary or supplementary services" in delineating in subsections (A) and (B) the two types of such services that are subject to fees. In doing so, it necessarily excludes from the fees requirement services that are not "ancillary or supplementary" to begin with. Although the Act does not define the phrase "ancillary or supplementary services," the Commission did so in implementing Section 336 in its DTV rulemaking proceeding, Fifth *R&O* in MM 87–268, (62 FR 26966, May 16, 1997). In that proceeding, we adopted § 73.624(c) of our rules, which provides an illustrative list of ancillary or supplementary services: they include, but are not limited to, "computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations" to "transmit at least one over-the-air video program signal at no direct charge to viewers." 47 CFR 73.624 (b) and (c). Section 73.624(c) goes on to state "that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary."

22. Traditional home shopping, infomercial, or direct marketing services are video broadcast signals and are offered at no direct charge to viewers. As such, they fall outside the scope of our definition of "ancillary or supplementary services," and therefore are not subject to fees under Section 336(e)(1) of the Act. We think this is consistent with Congress's intent in enacting Section 336(e)(1). To be sure, we adopted our definition of "ancillary or supplementary services" after

enactment of the 1996 Act. But as HSN and ValueVision state, "the Act's specific instruction that fees were to be assessed only on 'ancillary and supplementary' digital services was arrived at in the context of the Commission's contemporaneous consideration of [its then pending DTV rulemaking proceeding], in which the Commission repeatedly and consistently made clear that 'ancillary and supplementary' services are separate and distinct from existing, traditional over-the-air broadcast services.' We believe Congress drew the same distinction in enacting Section 336, excluding free, over-the-air broadcast video programming service from fees. Traditional home shopping, infomercials, and direct marketing services have long been a free, over-the-air broadcast service, or, in § 73.624(c)'s rubric, a "video broadcast signal provided at no direct charge to viewers." It follows that in enacting Section 336 Congress did not intend to include these existing services within the phrase "ancillary or supplementary services" and subject them to fees.

23. Further evidence of this can be found in Section 336(b)(3), which states, among other things, that "no ancillary or supplementary service shall have any rights to carriage under section 614 or 615," *i.e.*, the statutory "must carry" rights broadcast television stations have to be carried on cable systems in their local area. 47 U.S.C. 336(b)(3). If a free, over-the-air home shopping broadcast service is considered an "ancillary or supplementary service," stations carrying such programming would be rendered ineligible for must carry rights under Section 336(b)(3). We do not think Congress could have intended such a result given that, in Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), it directed the FCC to determine whether home shopping stations served the public interest and were entitled to must carry rights. It would make little sense for Congress to charge us with this duty, and then four years later preclude home shopping stations from must carry rights under Section 336(b)(3) without a mention, either in the 1996 Act or its legislative history, of Section 4(g) of the 1992 Cable Act. A basic principle of statutory construction is to seek to construe statutory provisions so that they are consistent with each other. We think the most reasonable way to square Section 336 and Section 4(g) of the 1992 Cable Act is not to treat traditional home shopping, infomercials, and direct marketing services as ancillary or supplementary services.

24. We do not agree with UCC, *et al.*'s suggestion that our decision not to apply fees to home shopping, infomercials and direct marketing services means any service provided without charge to the viewer is exempt from fees regardless of whether a third party compensates a broadcaster for carriage. Nor do we agree with UCC, *et al.*'s argument that our decision effectively nullifies Section 336(e)(1)(B), which requires us to impose fees on ancillary or supplementary services "for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required)." Our decision today does not exempt, for example, payments made to a DTV licensee by a stock broker to transmit stock quote data to the broker's clients even though the clients pay no direct fee for this service. This clearly would be an "ancillary or supplementary service" that is feeable under Section 336(e)(1)(B).

25. But where, as here, the service is a video broadcast signal provided at no direct charge to viewers, it is not feeable, even though the broadcaster may be receiving compensation from a third party to carry the service. As HSN and ValueVision point out, to hold otherwise would mean that "all the affiliates of the ABC, CBS and NBC broadcast television networks arguably would be subject to fees for their free, over-the-air broadcast services because they receive compensation from their networks for airing network programming." These are video broadcast signals provided to viewers at no direct charge, and therefore are not ancillary or supplementary services and are not subject to fees. We consequently deny UCC, *et al.*'s Petition.

26. We make one final note. Our decision in the *R&O*, like our decision today, applies only to traditional home shopping, infomercials, direct marketing and similar services with no interactive or "clickable" elements and which can entail viewers purchasing products by calling a telephone number identified during the broadcast. We recognize that it may be possible in the future for these purchases to be made via an interactive system provided by the licensee on its DTV bitstream. For example, a DTV viewer may be able to purchase a product shown on a home shopping program by clicking a special icon displayed on the screen and transmitting a purchase order via the licensee's DTV bitstream. In reply comments submitted in the initial round of comments of this proceeding, ValueVision and HSN stated that such an interactive purchase order system was being explored and argued that revenues generated from this sort of system should be exempt from fees. Because such services are only at a nascent stage and the particular circumstances are unclear at this point, we decline to decide whether they would constitute an ancillary or supplementary service subject to a fee under Section 336(e)(1)(B).

V. Administrative Matters

27. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record-keeping requirements or burdens on the public. In addition, the Final Regulatory Flexibility Act Analysis set forth in the *R&O* in this proceeding remains unchanged.

28. Accordingly, pursuant to the authority granted by 47 U.S.C. 4(i), 303, 336(e), and 47 CFR 1.429, the Petition for Reconsideration filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television, and the Petition for Reconsideration filed jointly by the Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project, are both hereby *denied*.

1. This proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television, television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–3068 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 98–143, RM–9148, RM–9150, RM–9196; FCC 99–412]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Amateur Radio Service rules to simplify the Amateur Radio Service operator license structure; streamlines the

number of examination elements; and reduces the emphasis on telegraphy that underlies the current license structure to the greatest extent possible, consistent with the international radio regulations. This action will allow current Amateur Radio Service licensees to contribute more to the advancement of the radio art; reduce the administrative costs that the Commission incurs in regulating this service and streamline our licensing processes; eliminate unnecessary requirements that may discourage or limit individuals from becoming trained operators, technicians, and electronic experts; and promote efficient use of spectrum allocated to the Amateur Radio Service.

DATES: Effective April 15, 2000.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, WT Docket No. 98–143, FCC 99–412, adopted December 22, 1999, and released December 30, 1999. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC's Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC. The complete text of this *Report and Order* may also be obtained from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., NW, Washington, DC 20036, telephone (202) 857–3800. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0620 (voice) or (202) 418–2555 (TTY), or at mcontee@fcc.gov. The complete (but unofficial) text is also available on the Commission's Internet site at >http://www.fcc.gov/Bureaus/Wireless/Orders/1999< under the file name "fcc99412.txt" in ASCII text and "fcc99412.wp" in WordPerfect format.

Summary of Report and Order

1. In the *Notice of Proposed Rule Making (Notice)* (63 FR 49059, September 14, 1998) in WT Docket No. 98–143, the Commission initiated the instant proceeding to examine the Amateur Radio Service rules in an effort to streamline its licensing processes and eliminate unnecessary and duplicative rules.

2. By this action, the Commission simplifies the Amateur Radio Service operator license structure; streamlines the number of examination elements; and reduces the emphasis on telegraphy that underlies the current license structure to the greatest extent possible, consistent with the international Radio Regulations. Specifically, the Commission amends the rules to reduce the number of operator license classes from six to three, reduce the number of telegraphy examination elements from three to one, reduce the number of written examination elements from five to three, authorize Advanced Class amateur radio operators to prepare and administer examinations for the General Class amateur radio operator license, and eliminate Radio Amateur Civil Emergency Service (RACES) station licenses.

3. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). In the *Notice*, the Commission certified that the proposed rule amendments, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined in Section 601(3) of the RFA because the rule amendments do not apply to small business entities. Rather, the rules apply to individuals who are interested in radio technique solely with a personal aim and without pecuniary interest. No comments were received concerning this certification. The Commission now affirms this certification with respect to the rules adopted in this *Report and Order*. Accordingly, the Commission certifies, pursuant to Section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio, Volunteer examiners.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.9 is amended by revising paragraph (b) to read as follows:

§ 97.9 Operator license.

(a) * * *

(b) The person named in an operator license grant of Novice, Technician, Technician Plus, General or Advanced Class, who has properly submitted to the administering VEs a FCC Form 605 document requesting examination for an operator license grant of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

3. Section 97.13 is amended by revising paragraphs (b) and (c)(2) to read as follows:

§ 97.13 Restrictions on station location.

* * * * *

(b) A station within 1600 m (1 mile) of an FCC monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the amateur station by a District Director pursuant to § 97.121 of this part. Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.

(c) * * *

(2) If the routine environmental evaluation indicates that the RF electromagnetic fields could exceed the limits contained in § 1.1310 of this chapter in accessible areas, the licensee must take action to prevent human exposure to such RF electromagnetic fields. Further information on evaluating compliance with these limits can be found in the FCC's OET Bulletin Number 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields."

4. Section 97.17 is amended by revising paragraph (a) to read as follows:

§ 97.17 Application for new license grant.

(a) Any qualified person is eligible to apply for a new operator/primary station, club station or military recreation station license grant. No new license grant will be issued for a Novice, Technician Plus, or Advanced Class operator/primary station or a RACES station.

* * * * *

5. Section 97.21 is amended by revising paragraph (a)(3) introductory text and (a)(3)(iii) to read as follows:

§ 97.21 Application for a modified or renewal license.

(a) * * *

(3) May apply to the FCC for renewal of the license grant for another term in accordance with § 1.913 of this chapter. Application for renewal of a Technician Plus Class operator/primary station license will be processed as an application for renewal of a Technician Class operator/primary station license.

* * * * *

(iii) For a club station or military recreation station license grant showing a call sign obtained through the sequential call sign system, and for a club or military recreation station license grant showing a call sign obtained through the vanity call sign system but whose grantee does not want to have the vanity call sign reassigned to the station, the application must be presented in document form to a Club Station Call Sign Administrator who must submit the information thereon to the FCC in an electronic batch file. The Club Station Call Sign Administrator must retain the collected information for at least 15 months and make it available to the FCC upon request. RACES station license grants will not be renewed.

* * * * *

6. Section 97.301 is amended by removing paragraph (f) and revising paragraph (e) to read as follows. The frequency tables in 97.301 (a), (b), (c), and (d) remain unchanged.

§ 97.301 Authorized frequency bands.

* * * * *

(e) For a station having a control operator who has been granted an operator license of Novice Class or Technician Class and who has received credit for proficiency in telegraphy in accordance with the international requirements.

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements (see § 97.303 paragraph)
HF	*MHz*	*MHz*	*MHz*	
80 m	3.675–3.725	3.675–3.725	3.675–3.725	(a)
40 m	7.050–7.075	7.10–7.15	7.050–7.075	(a)
15 m	21.10–21.20	21.10–21.20	21.10–21.20	
10 m	28.10–28.50	28.10–28.50	28.10–28.50	
VHF	*MHz*	*MHz*	*MHz*	
1.25 m		222–225		(a)
UHF	*MHz*	*MHz*	*MHz*	
23 cm	1270–1295	1270–1295	1270–1295	(h)(i)

7. Section 97.307 is amended by revising paragraph (f) (10) to read as follows:

§ 97.307 Emission standards.

* * * * *

(f) * * *

(10) A station having a control operator holding a Novice Class operator license or a Technician Class operator license and who has received credit for proficiency in telegraphy in accordance with the international requirements may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

* * * * *

8. Section 97.313 is amended by revising paragraphs (c)(2) and (f) to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(c) * * *

(2) The 28.1–28.5 MHz segment when the control operator is a Novice Class operator or a Technician Class operator who has received credit for proficiency in telegraphy in accordance with the international requirements; or

* * * * *

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in footnote US7 to § 2.106 of Part 2, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the District Director of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (−3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

* * * * *

9. Section 97.407 is amended by revising paragraph (b) introductory text to read as follows:

§ 97.407 Radio Amateur Civil Emergency Service (RACES).

* * * * *

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. 606, RACES stations and amateur stations participating in RACES may only transmit on the following frequency segments:

* * * * *

10. Section 97.501 is revised to read as follows:

§ 97.501 Qualifying for an amateur operator license.

Each applicant must pass an examination for a new amateur operator license grant and for each change in operator class. Each applicant for the class of operator license grant specified below must pass, or otherwise receive examination credit for, the following examination elements:

(a) Amateur Extra Class operator: Elements 1, 2, 3, and 4;

(b) General Class operator: Elements 1, 2, and 3;

(c) Technician Class operator: Element 2.

11. Section 97.503 is amended by removing paragraph (c) and revising paragraphs (a) and (b) to read as follows:

§ 97.503 Element standards.

(a) A telegraphy examination must be sufficient to prove that the examinee has the ability to send correctly by hand and

to receive correctly by ear texts in the international Morse code at not less than the prescribed speed, using all the letters of the alphabet, numerals 0–9, period, comma, question mark, slant mark, and prosigns AR, BT, and SK. Element 1: 5 words per minute

(b) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:

(1) Element 2: 35 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 26 questions answered correctly.

(2) Element 3: 35 questions concerning the privileges of a General Class operator license. The minimum passing score is 26 questions answered correctly.

(3) Element 4: 50 questions concerning the privileges of an Amateur Extra Class operator license. The minimum passing score is 37 questions answered correctly.

12. Section 97.505 is amended by revising paragraph (a) to read as follows:

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following license grants or license documents:

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 1, 2, and 3.

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 1, 2, and 3.

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license grant: Elements 1 and 2.

(4) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Class operator license grant: Element 2.

(5) An expired or unexpired FCC-granted Novice Class operator license grant: Element 1.

(6) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(7) An unexpired (or expired less than 5 years) FCC-issued commercial radiotelegraph operator license or permit: Element 1.

(8) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

(9) An expired or unexpired FCC-issued Technician Class operator license document granted before February 14, 1991: Element 1.

* * * * *

13. Section 97.507 is amended by revising paragraph (a) to read as follows:

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A telegraphy message or written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

(1) Element 3: Advanced Class operator.

(2) Elements 1 and 2: Advanced, General, or Technician (including Technician Plus) Class operators.

* * * * *

14. Section 97.509 amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 97.509 Administering VE requirements.

(a) Each examination for an amateur operator license must be administered by a team of at least 3 VEs at an examination session coordinated by a VEC. Before the session, the administering VEs or the VE session manager must ensure that a public announcement is made giving the location and time of the session. The number of examinees at the session may be limited.

(b) * * *

(3) Be a person who holds an amateur operator license of the class specified below:

(i) Amateur Extra, Advanced or General Class in order to administer a Technician Class operator license examination;

(ii) Amateur Extra or Advanced Class in order to administer a General Class operator license examination;

(iii) Amateur Extra Class in order to administer an Amateur Extra Class operator license examination.

* * * * *

[FR Doc. 00–2983 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 225

[DFARS Case 99–D027]

Defense Federal Acquisition Regulation Supplement; Delegation of Class Deviation Authority

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize the senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, to approve certain class deviations from the Federal Acquisition Regulation (FAR) and the DFARS.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fenk, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; telefax (703) 602–0350. Please cite DFARS Case 99–D027.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Parts 201 and 225 to authorize the senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, to approve certain class deviations from the FAR and the DFARS. The rule also contains amendments to reflect the title change of the "Under Secretary of Defense for Acquisition and Technology" to the "Under Secretary of Defense for Acquisition, Technology, and Logistics."

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comment should cite DFARS Case 99–D027.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 201 and 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 201 and 225 are amended as follows:

1. The authority citation for 48 CFR Parts 201 and 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.201–1 is amended in paragraph (d)(i) introductory text by removing the parenthetical "(A&T)" and adding in its place "(AT&L)", and by revising paragraph (d)(i)V. to read as follows:

201.201–1 The two councils.

* * * * *

(d)(i) * * *

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of 201.402(2). The justification should be in the form of a memorandum for the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

* * * * *

201.301 [Amended]

3. Section 201.301 is amended in paragraph (b) by removing "USD (A&T)" and adding in its place "Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L))".

4. Section 201.304 is amended as follows:

a. In paragraph (1)(i) introductory text by removing "Under Secretary of Defense (Acquisition and Technology) (USD (A&T))"; and adding in its place "USD (AT&L)";

b. In paragraph (1)(ii) by removing the parenthetical "(A&T)" both places it appears and adding in its place "(AT&L)";

c. In paragraph (2)(ii) by removing the parenthetical "(A&T)" and adding in its place "(AT&L)"; and

d. By revising paragraphs (3) through (5) to read as follows:

201.304 Agency control and compliance procedures.

* * * * *

(3) Contracting activities must obtain the appropriate approval (see 201.404) for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.

(4) Each department and agency must develop and, upon approval by USD(AT&L)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments and agencies must submit requests for the Secretary of Defense, USD(AT&L), and USD(AT&L)DP approvals required by this section through the Director of the DAR Council.

* * * * *

5. Section 201.402 is amended by revising paragraph (1); removing paragraph (2); redesignating paragraph (3) as paragraph (2); and revising newly designated paragraph (2) introductory text to read as follows:

201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)DP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity;

(ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(iii) FAR part 30, Cost Accounting Standards Administration, or DFARS part 230, Cost Accounting Standards Administration;

(iv) FAR subpart 31.1, Applicability, or DFARS subpart 231.1, Applicability (contract cost principles);

(v) FAR subpart 31.2, Contracts with Commercial Organizations, or DFARS subpart 231.2, Contracts with Commercial Organizations; or

(vi) FAR part 32, Contract Financing (except subparts 32.7 and 32.8 and the payment clauses prescribed by subpart 32.1), or DFARS part 232, Contract Financing (except subparts 232.7 and 232.8).

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403, or 201.404, as appropriate. Submit deviations that require USD(AT&L)DP approval through the Director of the DAR Council. At a minimum, each request must—

* * * * *

6. Sections 201.403 and 201.404 are revised to read as follows:

201.403 Individual deviations.

(1) Individual deviations, except those described in 201.402(1) and paragraph (2) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(2) Contracting officers outside the United States may deviate from prescribed nonstatutory FAR and DFARS clauses when—

(i) Contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations; and

(ii) Such governments or organizations will not agree to the standard clauses.

201.404 Class deviations.

(b)(i) Except as provided in paragraph (b)(ii) of this section, USD(AT&L)DP is the approval authority within DoD for any class deviation.

(ii) The senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, may approve any class deviation, other than those described in 201.402(1), that does not—

(A) Have a significant effect beyond the internal operating procedures of the department or agency;

(B) Have a significant cost or administrative impact on contractors or offerors;

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business Administration and the Department of Labor.

PART 225—FOREIGN ACQUISITION

225.970 [Amended]

7. Section 225.970 is amended by removing "201.402(2)" and adding in its place "201.403(2)".

[FR Doc. 00–2945 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 211

[DFARS Case 99–D024]

Defense Federal Acquisition Regulation Supplement; OMB Circular A–119

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address use of a Federal Acquisition Regulation (FAR) provision that invites offerors to propose alternatives to Government-unique standards. This DFARS rule instructs DoD contracting officers not to use the FAR provision, since DoD uses the Single Process Initiative to encourage offerors to propose alternatives to Government-unique specifications and standards.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3061. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D024.

SUPPLEMENTARY INFORMATION:

A. Background

This final DFARS rule supplements the final FAR rule that was published at 64 FR 51834 on September 24, 1999 (Federal Acquisition Circular 97–14, Item V) to implement Office of Management and Budget Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. The FAR rule added a provision at FAR 52.211–7 to permit offerors to propose voluntary consensus standards as alternatives to Government-unique standards included in a solicitation. In accordance with the prescription at FAR 11.107(b), use of the provision is optional for agencies that use the categorical method of reporting their use of voluntary consensus standards to the National Institute of Standards and Technology. DoD uses the categorical method of reporting. In addition, DoD uses the Single Process Initiative procedures at DFARS 211.273 and 252.211–7005 to encourage offerors to propose industry standards as alternatives to Government-unique specifications and standards. Therefore, this DFARS rule specifies that the provision at FAR 52.211–7 will not be used in DoD solicitations.

DoD published a proposed rule at 64 FR 61056 on November 9, 1999. One source submitted comments in response to the proposed rule. DoD considered those comment in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, is optional, and DoD already has implemented procedures for encouraging offerors to propose alternatives to Government-unique specifications and standards through the Single Process Initiative.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 211

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 211 is amended as follows:

1. The authority citation for 48 CFR Part 211 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. Subpart 211.1 is added to read as follows:

Subpart 211.1—Selecting and Developing Requirements Documents

Sec.
211.107 Solicitation provision.

211.107 Solicitation provision.

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, in DoD solicitations.

[FR Doc. 00–2944 Filed 2–10–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, and 252

[DFARS Case 98–D305]

Defense Federal Acquisition Regulation Supplement; People's Republic of China

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8120 of the DoD Appropriations Act for fiscal year 1999, as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Section 8120 places restrictions on the award of contracts to companies in which the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 98–D305.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes the interim rule that was published at 64 FR 8727 on February 23, 1999. DoD received no public comments on the interim rule.

The interim rule implemented Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Public Law 105–262). Section 8120 places restrictions on the award of contracts to companies owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China. This final rule also incorporates the provisions of Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277). Section 144 of Public Law 105–277 amended Section 8120 of Public Law 105–262 to restrict contract award only if the Secretary of Defense determines that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest in a company. The Secretary of Defense has delegated the authority for such determinations to the Director of Defense Procurement.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to companies in which the Director of Defense Procurement has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 64 FR 8727 on February 23, 1999, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Sections 225.771–2 through 225.771–4 are revised and section 225.771–5 is added to read as follows:

225.771–2 Legal authority.

This section implements Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Pub. L. 105–262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277).

225.771–3 Prohibition on contract award.

If using fiscal year 1999 funds made available by Title III (Procurement) or Title IV (Research, Development, Test and Evaluation) of Pub. L. 105–262, do not award or renew a contract with any company in which the Director of Defense Procurement has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

225.771–4 Procedures.

(a) Forward any information that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest in a company, through the head of the agency, to the Director, Defense Procurement, ATTN: OUSD (AT&L) DP/FC, 3060 Defense Pentagon, Washington, DC 20301–3060.

(b) Upon verification of the information, the Director of Defense Procurement will ask the General Services Administration to list the company as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

225.771–5 Solicitation provision.

Use the provision at 252.225–7017, Prohibition on Award to Companies Owned by the People's Republic of China, in solicitations for contracts that will use fiscal year 1999 funds made available by Title III or IV of Pub. L. 105–262.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7017 is revised to read as follows:

252.225–7017 Prohibition on Award to Companies Owned by the People's Republic of China.

As prescribed in 225.771–5, use the following provision:

Prohibition on Award to Companies Owned by the People's Republic of China (FEB 2000)

(a) *Definition.* "People's Republic of China," as used in this provision, means the government of the People's Republic of China, including its political subdivisions, agencies, and instrumentalities.

(b) *Prohibition on award.* Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105–262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

(c) *Representation.* By submission of an offer, the offeror represents that the People's Republic of China or the People's Liberation Army of the People's Republic of China does not own more than 50 percent interest in the offeror.

(End of provision)

[FR Doc. 00–2943 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 99–D307]

Defense Federal Acquisition Regulation Supplement; Mentor-Protege Program Improvements

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program.

DATES: *Effective date:* February 10, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 10, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D307 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99–D307 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS Subpart 219.71 and Appendix I to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program. The amendments revise the procedures for reimbursement

of costs to mentor firms for assistance provided to protege firms; require both mentor and protege firms to submit progress reports; require the Defense Contract Management Command to conduct annual performance reviews of mentor-protege agreements; extend the period for entering into mentor-protege agreements until September 30, 2002; and extend the period during which mentor firms may incur costs under the Program until September 30, 2005.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule changes procedures for administering and monitoring the Mentor-Protege Program, but maintains the primary objective of providing incentives for major DoD contractors to assist small disadvantaged business concerns and qualified organizations employing the severely disabled in enhancing their capabilities to satisfy Government and commercial contract requirements. Therefore, DoD has not performed and initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D307.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the interim rule contains new information collection requirements. Under the emergency processing provisions of 44 U.S.C. 3507(j) as implemented at 5 CFR 1320.13, the Office of Management and Budget (OMB) has granted emergency approval of the information collection requirements through July 31, 2000, under OMB Clearance Number 0704–0412. DoD will obtain the OMB approval required by 44 U.S.C. 3507(a)(2) prior to publication of the final rule.

1. *Comments:* Comments are invited. Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

2. *Title, Associated Form, and OMB Number:* DoD Pilot Mentor-Protege Program, Defense Federal Acquisition Regulation Supplement Appendix I; OMB Number 0704–0412.

3. *Needs and Uses:* The new information collection required by Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program, is required by Section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). DoD will use the information to assess whether the purposes of the Pilot Mentor-Protege Program have been attained and to prepare the reports to Congress required by Section 811 of Public Law 106–65.

4. *Affected Public:* Businesses or other for-profit entities.

5. *Annual Burden Hours:* 435.

6. *Number of Respondents:* 145.

7. *Responses Per Respondent:* 1.

8. *Number of Responses:* 145.

9. *Average Burden Per Response:* 3 hours (1 reporting hour; 2 recordkeeping hours).

10. *Frequency:* Annually.

11. *Supplementary Information:* DFARS Appendix I requires a protege firm to report on its progress under a mentor-protege agreement by concurring with or rebutting its mentor firm's year-end report. The protege firm also must provide data on its employment, revenues, and participation in DoD contracts. The report is required annually during the protege firm's Program participation term and for 2 fiscal years after the expiration of the Program participation term.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program. Section 811 became effective on October 5, 1999. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 219 and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Part 219 and Appendix I to Subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Subpart 219.71 is revised to read as follows:

Subpart 219.71—Pilot Mentor-Protege Program

Sec.

219.7100 Scope.
219.7101 Policy.
219.7102 General.
219.7103 Procedures.
219.7103–1 General.
219.7103–2 Contracting officer responsibilities.
219.7104 Developmental assistance costs eligible for reimbursement or credit.
219.7105 Reporting.
219.7106 Performance reviews.

219.7100 Scope.

This subpart implements the Pilot Mentor-Protege Program established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts. Qualified organizations employing the severely disabled, as defined in Section 8064A of Pub. L. 102–172, are also eligible to participate as protege firms.

219.7101 Policy.

DoD policy and procedures for implementation of the Program are contained in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program.

219.7102 General.

The Program includes—

(a) Mentor firms that are prime contractors with at least one active subcontracting plan negotiated under FAR Subpart 19.7.

(b) Protege firms that are small disadvantaged business (SDB) concerns as defined at 219.001(1), or qualified organizations employing the severely disabled, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements that establish a developmental assistance program for a protege firm.

(d) Incentives that DoD may provide to mentor firms, including:

(1) Reimbursement for developmental assistance costs through—

(i) A separately priced contract line item on a DoD contract; or

(ii) A separate contract, upon written determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) SADBU, OUSD (AT&L)), that unusual circumstances justify reimbursement using a separate contract; or

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR Subpart 19.7, for developmental assistance costs that are not reimbursed.

219.7103 Procedures.

219.7103–1 General.

The procedures for application, acceptance, and participation in the Program are in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program. The Director, SADBU, OUSD (AT&L), approves contractors as mentor firms, approves mentor-protege agreements, and forwards approved mentor-protege agreements to the contracting officer when program funding is available through a DoD program manager.

219.7103–2 Contracting officer responsibilities.

Contracting officers must—

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for either credit or reimbursement if the mentor firm proposes such an agreement, or delegate authority to negotiate to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, when a mentor firms provides advance payments to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if a mentor firm provides such payments to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs if—

(1) A DoD program manager has made funds available for that purpose; and

(2) The contractor has an approved mentor-protege agreement.

(e) Negotiate and award a separate contract for reimbursement of developmental assistance cost if—

(1) A DoD program manager has made funds available for that purpose;

(2) The contractor has an approved mentor-protege agreement; and

(3) The Director, SADBU, OUSD (AT&L), has made a determination in accordance with 219.7102(d)(1)(ii).

(f) Authorized reimbursement for costs of assistance furnished to a protege firm in excess of $1,000,000 in a fiscal year only after receipt of a written determination from the Director, SADBU, OUSD (AT&L).

(g) Advise contractors of reporting requirements in Appendix I.

(h) Provide a copy of the approved Mentor-Protege agreement to the Defense Contract Management Command administrative contracting officer responsible for conducting the annual performance review (see Appendix I, Section I–112).

219.7104 Developmental assistance costs eligible for reimbursement or credit.

(a) Development assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. The mentor firm must accumulate and charge costs associated with the latter in accordance with its approved accounting practices. Mentor firm costs that are eligible for reimbursement are set forth in Appendix I.

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, the mentor firm must incur the costs before October 1, 2005.

(c) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(d) Developmental assistance costs incurred by a mentor firm before October 1, 2005, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in Appendix I.

219.7105 Reporting.

Mentor and protege firms must report on the progress made under mentor-protege agreements as indicated in Appendix I, Section I–111.

219.7106 Performance reviews.

The Defense Contract Management Command will conduct annual performance reviews of all mentor-protege agreements as indicated in Appendix I, Section I–112.

3. Appendix I to Chapter 2 is revised to read as follows:

Appendix I—Policy and Procedures for the DOD Pilot Mentor-Protege Program

I–100 Purpose.
I–101 Definitions.
I–101.1 Emerging SDB concern.
I–101.2 Historically Black college or university.
I–101.3 Minority institution of higher education.
I–102 General procedures.
I–103 Program duration.
I–104 Eligibility requirements for a protege firm.
I–105 Selection of protege firms.
I–106 Approval process for companies to participate in the Program as mentor firms.
I–107 Mentor-protege agreements.
I–108 Reimbursement procedures.
I–109 Credit for unreimbursed developmental assistance costs.
I–110 Advance agreements on the treatment of developmental assistance costs.
I–111 Reporting requirements.
I–112 Agreement reviews.

I–100 Purpose.

(a) This Appendix I to 48 CFR Chapter 2 implements the Pilot Mentor-Protege Program (hereinafter referred to as the "Program") established under Section 831 of Pub. L. 101–510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note). The purpose of the Program is to—

(1) Provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency, to assist small disadvantaged business (SDB) concerns or qualified organizations employing the severely disabled (hereinafter referred to as "protege firms") in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of protege firms as subcontractors and suppliers under DoD contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protege firms and such contractors.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protege agreements with eligible protege firms to provide appropriate developmental assistance to enhance the capabilities of the protege firms to perform as subcontractors and suppliers. According to the law, DoD may provide the mentor firm with either cost reimbursement or credit against SDB subcontracting goals established under contracts with DoD or other Federal agencies.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the dollar value of subcontracts awarded to protege firms by mentor firms under DoD contracts;

(2) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the Program until 2 years after the conclusion of the agreement;

(3) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(4) An increase in subcontracting with SDB concerns in industry categories where SDBs traditionally have not participated within the mentor firm's vendor base;

(5) The involvement of emerging SDBs in the Program; and

(6) An increase in the employment level of protege firms from the date of entry into the Program until 2 years after the completion of the agreement.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving—

(1) Reimbursement through a separate contract line item in a DoD contract or a separate contract with DoD; or

(2) Credit toward SDB subcontracting goals for costs incurred under the Program.

I–101 Definitions.

I–101.1 Emerging SDB concern.

A small disadvantaged business whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial code for the supplies or services that the protege firm provides or would provide to the mentor firm.

I–101.2 Historically Black college or university.

An institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

I–101.3 Minority institution of higher education.

An institution meeting the definition of "Minority Institution" at FAR 26.301.

I–102 General procedures.

(a) At any time between October 1, 1991, and September 30, 2002, companies interested in becoming mentor firms that want to take credit toward SDB subcontracting goals for costs incurred for providing developmental assistance to one or more protege firms must apply to DoD for participation in the Program pursuant to the application process set forth at I–106(a).

(b) At any time between October 1, 1991, and September 30, 2002, companies interested in becoming mentor firms that are able to identify funding from a DoD program manager(s) to provide developmental assistance to one or more protege firms must apply to DoD for participation in the Program, pursuant to the application process set forth at I–106(d).

I–103 Program duration.

Activities under the Program may occur only during the following periods:

(a) From October 1, 1991, until September 30, 2002, companies that have been approved for participation in the Program as mentor firms pursuant to I–102, General Procedures, may enter into mentor-protege agreements, pursuant to I–107, Mentor Protege Agreements.

(b) From October 1, 1991, until September 30, 2005, DoD may reimburse a mentor firm's costs of providing developmental assistance to its protege firm only if a DoD program manager has identified the funding for such costs and—

(1)(i) For mentor-protege agreements entered into prior to October 1, 1999, the mentor firm incurs such costs after DoD and the mentor firm enter into a separate contract, cooperative agreement, or other agreement; or

(ii) For mentor-protege agreements entered into on or after October 1, 1999, the mentor firm incurs such costs after DoD and the mentor firm enter into a separate contract based upon a determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (SADBU, OUSD (AT&L)), that unusual circumstances justify using a separate contract; or

(2) The mentor firm incurs such costs pursuant to the execution of a separately priced contract line item added to a DoD contract(s).

(c) From October 1, 1991, until September 30, 2005, a mentor firm may receive credit toward the attainment of its goals for subcontract awards to SDBs, for unreimbursed costs incurred in providing developmental assistance to its protege firms, only it such costs are incurred pursuant to an approved mentor-protege agreement.

I–104 Eligibility requirements for a protege firm.

(a) An entity may qualify as a protege firm if it is—

(1) An SDB concern as defined at 219.001, paragraph (1) of the definition of "small disadvantaged business concern," that is—

(i) Eligible for the award of Federal contracts; and

(ii) A small business according to the Small Business Administration (SBA) size standard for the Standard Industrial Classification (SIC) code that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm; or

(2) A qualified organization employing the severely disabled as defined in Pub. L. 102–172, section 8064A.

(b) A protege firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraph (a)(1) or (2) of this section. Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a)(1) or (2) of this section, except for a protege's status as a small disadvantaged business concern (see FAR 19.703(b)).

(c) A protege firm may have only one active DoD mentor-protege agreement.

I–105 Selection of protege firms.

(a) Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select protege firms that are defined as emerging SDB concerns.

(b) The selection of protege firms by mentor firms may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or disadvantaged status of an entity selected to be a protege firm as defined in I–104(a)(1), the mentor firm must refer the protest to the SBA to resolve in accordance with 13 CFR Part 121 (with respect to size) or 13 CFR 124 (with respect to disadvantaged status).

(d) For purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm, pursuant to a mentor-protege agreement, any form of developmental assistance described in I–107(f).

(e) If at any time pursuant to paragraph (c) of this section, the SBA determines that an SDB protege firm is not an SDB concern, assistance that the mentor firm furnishes to such a concern after the date of the determination may not be considered assistance furnished under the Program.

I–106 Approval process for companies to participate in the Program as mentor firms.

(a) On or after October 1, 1991, a company that is interested in becoming a mentor firm that is seeking credit toward SDB subcontracting goals for costs incurred under the Program must submit a request to the Director, SADBU, OUSD (AT&L), for approval as a mentor firm under the Program. The Director will evaluate the request based on the extent to which the company's proposal addresses the items listed in paragraphs (b) and (c) of this section. To the maximum extent possible, a company should limit its request to not more than 10 pages, single-spaced. A company may identify more than one protege in its request for approval under the Program. The request must include the information required in paragraphs (b) and (c) of this section and may cover one or more proposed mentor-protege relationships.

(b) A company must indicate whether it is interested in participating in the Program pursuant to I–100(d)(1) or (2) and must submit the following information:

(1) A statement that the company is currently performing under at least one

active approved subcontracting plan negotiated with DoD or another Federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of Federal contracts.

(2) The number of proposed mentor-protege relationships covered by the request for approval as a mentor firm.

(3) A summary of the company's historical and recent activities and accomplishments under its SDB program.

(4) The total dollar amount of DoD contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(6) The total dollar amount of subcontracts that the company awarded under DoD contracts during the 2 preceding fiscal years.

(7) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the 2 preceding fiscal years.

(8) The total dollar amount and percentage of subcontracts that the company awarded to all SDB firms under DoD contracts and other Federal agency contracts during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the company presently is required to submit a Standard Form (SF) 295, Summary Subcontract Report, the request must include copies of the final reports for the 2 preceding fiscal years.

(9) The number and total dollar amount of subcontracts that the company awarded to the identified protege firm(s) during the 2 preceding fiscal years (if any). (Show DoD subcontract awards and other Federal agency subcontract awards separately.)

(c) In addition to the information required in paragraph (b) of this section, companies must submit the following information for each proposed mentor-protege relationship:

(1) Information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities in industry categories where SDBs are not dominant in the company's vendor base.

(2) A letter of intent indicating that both the mentor firm and the protege firm will negotiate a mentor-protege agreement. The letter of intent must be signed by both parties and must contain the following information:

(i) The name, address, and telephone number of both parties.

(ii) The protege firm's business classification, based upon the SIC code(s) that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

(iii) A statement that the protege firm meets the eligibility criteria in I–104(a)(1) or (2).

(iv) A preliminary assessment of the developmental needs of the protege firm, and the proposed developmental assistance the mentor firm envisions providing the protege firm to address those needs and enhance the protege firm's ability to perform successfully under contracts or subcontracts with DoD and other Federal agencies and commercial contracts.

(v) an estimate of the dollar amount and type of subcontracts that the mentor firm will award to the protege firm, and the period of time over which the mentor firm will make those awards.

(vi) Information as to whether the protege firm's development will be concentrated on a single major system, a service or supply program, research and development programs, initial production, or mature systems, or in the mentor firm's overall contract base.

(3) An estimate of the cost of the developmental assistance program and the period of time over which the mentor firm will provide assistance.

(4) A statement from the protege firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 2 years thereafter.

(d) A company that has identified Program funds to be made available through a DoD program manager must provide the information in paragraphs (b) and (c) of this section through the appropriate program manager and the cognizant Director, SADBU, to the Director, SADBU, OUSD(AT&L), with a letter signed by the appropriate program manager indicating the amount of funding that has been identified for the developmental assistance program. The company must submit a justification and endorsement from the cognizant Director, SADBU, when requesting—

(1) Reimbursement of developmental costs in excess of $1,000,000;

(2) Reimbursement through a separate contract; or

(3) A Program participation term greater than 3, but not more than 5, years.

(e) Companies seeking credit toward SDB subcontracting goals for the cost of developmental assistance, or reimbursement with funds made available by a DoD program manager, must submit four copies of the information specified in paragraphs (b) and (c) of this section to the Director, SADBU, OUSD(AT&L), ATTN: Pilot Mentor-Protege Program Manager, 1777 North Kent Street, Suite 9100, Arlington, VA 22209. Upon receipt of this information, the Director, SADBU, OUSD(AT&L), will review and evaluate each request and, to the maximum extent possible, within 30 days advise each applicant of approval or rejection of its request to become a mentor firm.

(f) A company approved as a mentor firm, either for credit or for reimbursement through funds made available by a DoD program manager, proceed with the negotiation of the mentor-protege agreement with the identified protege firm(s).

(g) Companies that apply for participation in the Program pursuant to paragraph (e) of this section, and are not approved, will be provided the reasons and an opportunity to submit additional information for reconsideration.

(h) A company may not be approved for participation in the Program as a mentor firm if, at the time of requesting participation in the Program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4.

(i) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm—

(1) May continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed or take credit for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Must promptly give notice of its suspension or debarment to its protege firm and the Director, SADBU, OUSD (AT&L).

I–107 Mentor-protege agreements.

(a) A signed mentor-protege agreement for each mentor-protege relationship identified under I–106(b)(2) must be submitted to the Director, SADBU, OUSD (AT&L), and approved before developmental assistance costs may be incurred. To the maximum extent possible, such mentor-protege agreements will be approved within 5 business days of receipt.

(b) Each signed mentor-protege agreement submitted for approval under the Program must include—

(1) The name, address, and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protege firm, if an SDB concern, does not exceed the size standard for the appropriate SIC code;

(3) A developmental program for the protege firm specifying the type of assistance identified in paragraph (f) of this section that will be provided. The developmental program also must include—

(i) Factors to assess the protege firm's developmental progress under the Program, including milestones for providing the identified assistance;

(ii) The anticipated number, dollar value, and type of subcontracts to be awarded the protege firm consistent with the extent and nature of the mentor firm's business, and the period of time over which the subcontracts will be awarded; and

(iii) The dollar value of the technical assistance program, broken out per year;

(4) A program participation term for the agreement that does not exceed 3 years. Requests for an extension of the agreement for a period not to exceed an additional 2 years are subject to the approval of the Director, SADBU, OUSD (AT&L), and are contingent upon the endorsement and submission of justification for such an extension from the cognizant Director, SADBU. The justification must detail the unusual circumstances that warrant a term in excess of 3 years;

(5) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protege agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protege agreement for cause;

(6) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement;

(7) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide that—

(i) The mentor firm must furnish the protege firm a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination;

(ii) The protege firm must have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program;

(iii) Upon prompt consideration of the protege firm's response, the mentor firm must either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination; and

(iv) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, will be final and is not reviewable by DoD; and

(8) Additional terms and conditions as may be agreed upon by both parties.

(c) Mentor firms must send a copy of any termination notices to the Director, SADBU, OUSD (AT&L), and the Defense Contract Management Command administrative contracting officer responsible for conducting the annual performance review, and, where funding is made available through a DoD program manager, must provide a copy to the program manager and to the contracting officer.

(d) Termination of a mentor-protege agreement will not impair the obligations of the mentor firm to perform pursuant to its contractual obligations under Government contracts and subcontracts. Termination of all or part of the mentor-protege agreement will not impair the obligations of the protege firm to perform pursuant to its contractual obligations under any contract awarded to the protege firm by the mentor firm.

(e) Only developmental assistance provided after DoD approval of the mentor-protege agreement may be reimbursed.

(f) The mentor-protege agreement may provide for the mentor firm to furnish any or all of the following types of developmental assistance:

(1) Assistance by mentor firm personnel in—

(i) General business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

(ii) Engineering and technical matters such as production inventory control and quality assurance; and

(iii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a noncompetitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance of the subcontract. Provision of progress payments by a mentor firm to an SDB protege firm at a rate other than the customary rate for SDBs must be implemented in accordance with FAR 32.504(c).

(4) Advance payments under such subcontracts. The mentor firm must administer advance payments in accordance with FAR subpart 32.4.

(5) Loans.

(6) Investment(s) in the protege firm in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest. Investment may include, but are not limited to, cash, stock, and contribution in kind.

(7) Assistance that the mentor firm obtains for the protege firm from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black colleges and universities.

(iv) Minority institutions of higher education.

(g) A mentor firm may not require a protege firm to enter into a mentor-protege agreement as a condition for award of a contract by the mentor firm, including a subcontract under a DoD contract awarded to the mentor firm.

I–108. Reimbursement procedures.

(a) DoD will reimburse a mentor firm only for the cost of developmental assistance incurred by the mentor firm and provided to a protege firm under I–107(f)(1) and (7), and pursuant to an approved mentor-protege agreement. For agreements entered into prior to October 1, 1999, DoD will provide reimbursement only through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, awarded for the purpose of providing developmental assistance to one or more protege firms; a separately priced contract line item in a DoD contract; or inclusion of program costs in indirect expense pools. For agreements entered into on or after October 1, 1999, DoD will provide reimbursement only through a separately priced contract line item in a DoD contract; or through a separate contract if the Director, SADBU, OUSD(AT&L), determines the unusual circumstances justify reimbursement using a separate contract. No other means for the reimbursement of the costs of developmental assistance provided under I–107(f)(1) and (7) are authorized under the Program.

(b) Costs included in indirect expense pools will be reimbursed only to the extent that the costs are otherwise reasonable, allocable, and allowable.

(c) Assistance provided in the form of progress payments to SDB protege firms in excess of the customary progress payment rate for SDBs, will be reimbursed only if implemented in accordance with FAR 32.504(c).

(d) Assistance provided in the form of advance payments will be reimbursed only if the payments have been provided to a protege firm under subcontract terms and conditions similar to those in the clause at FAR 52.232.12, Advance Payments. Reimbursements of any advance payments will be made pursuant to the inclusion of the clause at FARS 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, in appropriate contracts. In requesting reimbursement, the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protege firm to repay any unliquidated advance payments will be the sole responsibility of the mentor firm.

(e) No other forms of developmental assistance are authorized for reimbursement under the Program.

(f) The total amount reimbursed to a mentor firm for costs of assistance furnished to a protege firm in a fiscal year may not exceed $1,000,000 unless the Director, SADBU, OUSD(AT&L), determines in writing that unusual circumstances justify reimbursement at a higher amount. Request for authority to reimburse in excess of $1,000,000 must detail the unusual circumstances and must be endorsed and submitted by the program manager and the cognizant Director, SADBU.

I–109 Credit for unreimbursed developmental assistance costs.

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protege firm pursuant to an approved mentor-protege agreement, that have not been reimbursed through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, may be credited as if it were a subcontract award for determining the performance of the mentor firm in attaining an SDB subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) For crediting purposes only, costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor firm in attaining an SDB subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9. However, costs that have not

been reimbursed because they are not reasonable, allocable, or allowable under I–108(b), will not be recognized for crediting purposes.

(c) Other costs that are not eligible for reimbursement pursuant to I–108(a) may be recognized for credit only if requested, identified, and incorporated in an approved mentor-protege agreement.

(d) The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs must be equal to—

(1) Four times the total amount of such costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

(e) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal for each subcontract awarded for a product or a service by the mentor firm to an entity that qualifies as a protege firm pursuant to I–104(a). With respect to a former SDB protege firm(s), a mentor may take credit for awards to such concern(s) that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

(1) The size of such business concern is not more than two time the appropriate size standard;

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause; and

(3) The credit is taken not later than October 1, 2005.

(f) Amounts credited toward the SDB goal(s) for unreimbursed costs under the Program must be separately identified from the amounts credited toward the goal resulting from the award of actual subcontracts to protege firms. The combination of the two must equal the mentor firm's overall accomplishment toward the SDB goal(s).

(g) Adjustments may be made to the amount of credit claimed under paragraphs (a) and (b) of this section if the Director, SADBU, OUSD(AT&L), determines that—

(1) A mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause; and

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for the mentor firm's participation in the Program.

(h) The mentor firm must be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the Director, SADBU, OUSD (AT&L), must consider—

(1) The mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the 2 fiscal years prior to the firm's admission to the Program;

(2) The mentor firm's aggregate prime contract awards during the prior 2 fiscal years and the total amount of subcontract awards under such contracts; and

(3) Such other information the mentor firm may wish to submit.

(i) The decision of the Director, SADBU, OUSD (AT&L), regarding the imposition of a limitation on credit will be final.

(j) Any prospective limitation on credit imposed by the Director, SADBU, OUSD (AT&L), must be expressed as a percentage of otherwise eligible credit, will apply beginning on a specific date in the future, and will continue until a date certain during the current fiscal year.

(k) Any retroactive limitation on credit imposed by the Director, SADBU, OUSD (AT&L), must reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed).

(l) For purposes of calculating any incentives to be paid to be a mentor firm for exceeding an SDB subcontracting goal pursuant to the clause at FAR 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, incentives will be paid only if an SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs (i.e., excluding credit under paragraphs (a), (b), and (c) of this section).

(m) Developmental assistance costs that are incurred pursuant to an approved mentor-protege agreement, and have been charged to, but not reimbursed through, a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, will not be otherwise reimbursed, as either a direct or indirect cost, under any other DoD contract, irrespective of whether the costs have been recognized for credit against SDB subcontracting goals.

(n) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for either credit or reimbursement under the Program.

I–110 Advance agreements on the treatment of developmental assistance costs.

Pursuant to FAR 31.109, approved mentor firms seeking either reimbursement or credit are strongly encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the developmental assistance pursuant to the mentor-protege agreement prior to the incurring of any costs by the mentor firm. An advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protege agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed or credited.

I–111 Reporting requirements.

(a) Mentor firms must report on the progress made under active mentor-protege agreements semiannually for the periods ending March 31st and September 30th. The September 30th report must address the entire fiscal year. Reports are due 30 days after the close of each reporting period. The report must include—

(1) Data on performance under the mentor-protege agreement, including dollars obligated, expenditures, credit taken under the Program, SDB subcontract awards under DoD contracts, developmental assistance provided, impact of the agreement, and progress of the agreement (A recommended format and guidance for this submission are available via the Internet at http://www.acq.osd.mil/sadbu/mentor_protege); and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 15 identifying—

(i) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program; and

(ii) The number and dollar value of subcontracts awarded to the protege firm(s), broken out per protege.

(3) In addition to the reporting requirements of paragraph (a)(1) of this section, for commercial companies and companies participating in the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, indicate in Block 15 of the SF 295—

(i) The total dollars credited to the SDB goal as a result of developmental assistances provided to a protege firm(s) under the Program; and

(ii) The total dollar amount of subcontracts awarded to the protege firm(s), broken out per protege.

(b) The protege firm must report on progress made under the mentor-protege agreement annually by October 31st. The protege firm must concur with or rebut its mentor's report that covers the period ending September 30th and must provide data on the firm's employment, annual revenue, and annual participation in DoD contracts. The report is required annually during the protege firm's Program participation term and for 2 fiscal years after the expiration of the Program participation term.

(c) Progress reports must be submitted as follows:

(1) For agreements that provide credit toward SDB subcontracting goals for costs incurred under the Program, to the Director, SADBU, OUSD (AT&L), and the Defense Contract Management Command (DCMC) administrative contracting officer.

(2) For agreements that provide for reimbursement of costs incurred under the Program, to the Director, SADBU, OUSD (AT&L), the contracting officer, the DCMC administrative contracting officer, the program office, and the cognizant Director, SADBU.

I–112 Agreement reviews.

The Defense Contract Management Command will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protege agreements. These reviews must verify data provided on the semiannual reports and must provide information as to—

(a) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protege firm in accordance with the mentor-protege agreement and applicable regulations and procedures;

(b) Whether the mentor firm and protege firm accurately reported progress made by the protege firm in employment, revenues, and participation in DoD contracts during the Program participation term and for 2 fiscal years following the expiration of the agreement; and

(c) The amount of reimbursement, if any, that the mentor firm is eligible to receive in the remaining Program participation term of the agreement.

[FR Doc. 00–2946 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000119015–0015–01; I.D. 010500A]

RIN 0648–AM32

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the emergency interim rule to implement reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat that was published in the **Federal Register** on January 25, 2000.

DATES: Effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650.

SUPPLEMENTARY INFORMATION: An emergency interim rule was published in the **Federal Register** on January 25, 2000 (65 FR 3892), implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat.

Correction

PART 679—[CORRECTED]

On page 3902, in Table 20 to 50 CFR part 679, titled Steller Sea Lion Protection Areas in the Aleutian Islands Subarea:

In the entry for "Seguam Island", in the fifth column of the table, remove the Longitude "172 33.06 W", and add in its place "172 33.60 W".

Dated: February 3, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3004 Filed 2–4–00; 4:46 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223348–9348–01; I.D. 020700A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 7, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(2)(i), the interim Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area was established as 473 metric tons (mt), by the Interim 2000 Harvest Specifications of Groundfish for the GOA (65 FR 65, January 3, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 450 mt, and is setting aside the remaining 23 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the interim amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the

GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 7, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3111 Filed 2–7–00; 4:37 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–07–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that currently requires a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. This action would require repetitive performance of the operational test. This action would also limit the applicability to airplanes installed with certain FSOV's. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 24, 1998, the FAA issued AD 98–16–09, amendment 39–10685 (63 FR 40811, July 31, 1998), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, to require a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–16–09, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that the unsafe condition identified in that AD may continue to exist for certain affected airplanes despite compliance with the one-time requirements of that AD. Based on the results of the one-time operational test of the FSOV's, the manufacturer has determined that certain FSOV's, identified by part number series, have a high failure rate. Because of the high failure rate of those FSOV's, the manufacturer has recommended, and the DGAC has mandated, that the operational test be repetitively performed on airplanes equipped with those FSOV's.

Explanation of Relevant Service Information

Airbus issued A300/A310/A300–600 All Operator Telex (AOT) 29–22, dated November 24, 1997, which was referenced and described in AD 98–16–09 as the appropriate source of service information for accomplishment of the actions of that AD. Accomplishment of the actions specified in the AOT is intended to adequately address the identified unsafe condition. The DGAC issued French airworthiness directive 98–356–259(B), dated September 9, 1998, to mandate repetitive performance of the operational test on airplanes incorporating certain FSOV's determined to have a high failure rate in order to ensure the continued

airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–16–09 to require repetitive accomplishment of the actions specified in the AOT described previously. This proposed AD would also limit the applicability to airplanes installed with certain FSOV's identified to have a high failure rate.

Cost Impact

There are approximately 103 airplanes of U.S. registry that would be affected by this proposed AD.

The operational test that is currently required by AD 98–16–09, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required test on U.S. operators is estimated to be $60 per airplane, per test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10685 (63 FR 40811, July 31, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–07–AD. Supersedes AD 98–16–09, Amendment 39–10685.

Applicability: Model A300, A310, and A300–600 series airplanes; on which any fire shut-off valve (FSOV) having part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10) is installed; certificated in any category.

NOTE 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire, accomplish the following:

Repetitive Operational Tests

(a) Within 600 flight hours after the effective date of this AD, perform an operational test of the 4 FSOV's on the airplane, in accordance with Airbus All Operator Telex (AOT) 29–22, dated November 24, 1997. If any FSOV fails the test, prior to further flight, replace the FSOV with a new or serviceable FSOV, in accordance with the AOT. Repeat the operational test thereafter at intervals not to exceed 600 flight hours.

Spares

(b) As of the effective date of this AD, no person shall install an FSOV, part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10), on any airplane, unless a successful operational test has been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–356–259(B), dated September 9, 1998.

Issued in Renton, Washington, on February 3, 2000.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2987 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–371–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. This proposal would require a one-time detailed visual inspection to detect damage of the ladder plates and access cover areas of the upper surface of the wings, repair, if necessary, and installation of new O-ring seals. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage of the upper wing ladder plates, which could result in displacement of the adjacent channel seals and consequent reduced lightning strike protection of the fuel tanks.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–371–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–371–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–371–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCCA advises that, during maintenance, a sealing problem was detected in the access panels of the upper wing fuel tanks. Investigation revealed that the diameter of the O-ring seals installed during manufacture on certain airplanes may be too large for the grooves of the access panels of the upper wing fuel tanks. The large diameter O-ring seals can prevent the fuel tank access panels from fitting properly to the upper wing ladder plates. This improper fit could lead to fretting and corrosion damage of the upper wing ladder plates. Such damage, if not detected and corrected, could result in displacement of the adjacent channel seals and consequent reduced lightning strike protection of the fuel tanks.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Service Bulletin S.B. 8–57–41, Revision 'A', dated July 28, 1999, which describes procedures for a one-time detailed visual inspection to detect damage (i.e., fretting and/or corrosion) of the ladder plates and access cover areas of the upper surface of the wings. The service bulletin also describes procedures for installing new 0.103 inch diameter O-ring seals. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–99–20, dated July 20, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the Bombardier service bulletin specifies that the manufacturer may be

contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Additionally, operators should note that, the Bombardier service bulletin does not provide procedures for repair of damage within certain limits. However, this proposed AD would require the repair of damage that is determined to be within certain limits; the repair would be required to be accomplished in accordance with the Structure Repair Manual (SRM).

Cost Impact

The FAA estimates that 235 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspection and installation and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $84,600, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99-NM–371-AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, having serial numbers 003 through 528 inclusive and 531; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage of the upper wing ladder plates, which could result in displacement of the adjacent channel seals and consequent reduced lightning strike protection of the fuel tanks, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time detailed visual inspection to detect damage (i.e., fretting and/or corrosion) of the ladder plates and access cover areas of the upper surface of the wings in accordance with paragraph III.A., III.B., or III.C., as applicable, of the Accomplishment Instructions of Bombardier Service Bulletin S.B. 8–57–41, Revision 'A', dated July 28, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no damage is detected, prior to further flight, install new 0.103-inch diameter O-ring seals in accordance with paragraph III.A., III.B., or III.C., as applicable, of the Accomplishment Instructions of the service bulletin.

(2) If any damage is detected that is within the limits specified in the Structure Repair Manual (SRM), prior to further flight, repair the damage in accordance with the SRM, and install new 0.103-inch diameter O-ring seals in accordance with paragraph III.A., III.B., or III.C., as applicable, of the Accomplishment Instructions of the service bulletin.

(3) If any damage is detected that is outside the limits specified in the SRM, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, and install new 0.103–inch diameter O–ring seals.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–20, dated July 20, 1999.

Issued in Renton, Washington, on February 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3133 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain Airbus Model A320 series airplanes, that currently require modification of the rear spar web of the wing and cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG). This proposed action would add a requirement for repetitive inspections to detect fatigue cracking in certain areas of the rear spar of the wing, and corrective action, if necessary. This proposed action would also provide for optional terminating action for the requirements of this AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which may lead to reduced structural integrity of the wing and the MLG.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–99–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 26, 1993, the FAA issued AD 93–08–15, amendment 39–8563 (58 FR 27923, May 12, 1993), applicable to certain Airbus Model A320 series airplanes, which requires modification of the rear spar web of the wing.

On December 21, 1993, the FAA issued AD 93–25–13, amendment 39–8777 (59 FR 1903, January 13, 1994), applicable to certain Airbus Model A320 series airplanes, which requires cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG).

Those actions were prompted by the results of fatigue testing conducted by the manufacturer. The requirements of those ADs are intended to prevent fatigue cracking, which may lead to reduced structural integrity of the wing and MLG.

Actions Since Issuance of Previous Rules

Since the issuance of AD 93–08–13 and AD 93–25–13, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness autority for France, has advised the FAA that cracks were found on a Model A320 series airplane despite compliance with the requirements of those ADs. Investigation by the manufacturer provided further indication that an airplane on which the modifications required by that AD were installed could experience cracking prior to reaching the design life limits of the airplane. In response to these findings, the DGAC mandated repetitive ultrasonic inspections to detect fatigue cracks on the rear spar to ensure the structural integrity of the airplane.

Subsequent analysis of the results of the ultrasonic inspections indicated that reducing the inspection threshold for selected holes would ensure the structural integrity of the area and prevent the need for extensive repairs of the wing inner rear spar.

Explanation of Relevant Service Information

Airbus issued Service Bulletin A320–57–1088, dated September 30, 1996; Revision 01, dated September 17, 1997; and Revision 02, dated July 29, 1999. This service bulletin describes procedures for repetitive ultrasonic inspections to detect cracking of the rear spar of the wing in the area of holes for the attachment of the gear rib, the forward pintle fitting, and the MLG actuating cylinder anchorage. Revision 02 specifies a reduced threshold for the initial inspection of certain holes [holes 52 through 55 (actuating cylinder anchorage) and holes 82, 83, 87, and 88 (gear support rib)]; the compliance time for the initial inspection of the remaining 32 holes is unchanged.

Accomplishment of the actions specified in the service bulletin described previously is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A320–57–1088 as mandatory and issued French airworthiness directive 1999–264–135(B), dated June 30, 1999, in order to ensure the continued airworthiness of these airplanes in France.

Airbus also issued Service Bulletin A320–57–1089, dated December 22, 1996, Revision 01, dated April 17, 1997; and Revision 02, dated November 6, 1998. This service bulletin describes a modification of all affected fastener holes in the rear spar of the wing. The modification involves a cold re-expansion of the holes in the rear spar of the wing for the attachment of gear rib 5, the forward pintle fitting, and the actuating cylinder anchorage; cold expansion of the pintle fitting and gear rib 5; and installation of interference fit fasteners into the rear spar and gear rib 5 while maintaining a clearance fit in the actuating cylinder anchorage and pintle fitting. This service bulletin specifies that the modification would

eliminate the need for the repetitive ultrasonic inspections specified by Airbus Service Bulletin A320–57–1088. It would also eliminate the need for the modification specified by Airbus Service Bulletin A320–57–1004 and the cold expansion specified by Airbus Service Bulletin A320–57–1060, if accomplished prior to the accumulation of 12,000 total flight cycles.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–08–15 and AD 93–25–13 to continue to require modification of the wing rear spar web and cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the MLG. The proposed AD would add a requirement for repetitive ultrasonic inspections to detect fatigue cracking in certain areas of the wing rear spar, and repair of cracking. This proposed AD also would provide for optional terminating action for the inspections proposed by this AD.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although Service Bulletin A320–57–1088 specifies that the manufacturer may be contacted for a repair if cracks are found, this proposal would require the repair of those cracks to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

There are approximately 126 airplanes of U.S. registry that would be affected by this proposed AD.

Subsequent to the issuance of AD 93–08–15 and AD 93–25–13, the FAA reviewed the figure it used in calculating the labor rate relevant to the required AD activities. In order to account for various inflationary costs in the airline industry, the FAA has found it appropriate to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

It takes approximately 60 work hours per airplane to accomplish the modification of the rear spar web of the wing, as required by AD 93–08–15 and retained in this AD, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $3,600 per airplane.

It takes approximately 600 work hours per airplane to accomplish the cold expansion of certain holes associated with the MLG, as required by AD 93–25–13 and retained in this AD, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the cold expansion on U.S. operators is estimated to be $36,000 per airplane.

The inspection that is proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $181,440, or $1,440 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action specified in this proposed AD, it would take approximately 750 work hours, at an average labor rate of $60 per work hour. The required parts would cost $27,036; $30,595; or $32,727; depending on the airplane configuration. Based on these figures, the cost per airplane of the optional terminating action proposed by this AD is estimated to be $72,036; $75,595; or $77,727.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–8563 (58 FR 27923, May 12, 1993) and 39–8777 (59 FR 1903, January 13, 1994) and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–99–AD. Supersedes AD 93–08–15, Amendment 39–8563; and AD 93–25–13, Amendment 39–8777.

Applicability: Model A320 series airplanes, certificated in any category, except those on which Airbus Modification 24591 (Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; or Revision 02, dated November 6, 1998) has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in certain areas of the rear spar of the wing, which may lead to reduced structural integrity of the wing and the main landing gear (MLG), accomplish the following:

Restatement of Actions Required by AD 93–08–15

(a) For airplanes having manufacturer's serial numbers (MSN) 003 through 008 inclusive, and 010 through 021 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 500 flight cycles after June 11, 1993 (the effective date of AD 93–08–15, amendment 39–8563), whichever occurs later, modify the inner rear spar web of the wing in accordance with Airbus Industrie Service Bulletin A320–57–1004, Revision 01, dated September 24, 1992, or Revision 02, dated June 14, 1993.

Restatement of Actions Required by AD 93–25–13

(b) For airplanes having MSN's 002 through 051 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after February 14, 1994 (the effective date of AD 93–25–13, amendment 39–8777), whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Airbus Industrie Service Bulletin A320–57–1060, dated December 8, 1992; or Revision 02, dated December 16, 1994.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

Note 2: Accomplishment of the cold expansion in accordance with Airbus Service Bulletin A320–57–1060, Revision 01, dated April 26, 1993, is also acceptable for compliance with the requirements of paragraph (b) of this AD.

New Actions Required by This AD

(c) For all airplanes: Perform an ultrasonic inspection to detect cracking of the rear spar of the wing, in accordance with Airbus Service Bulletin A320–57–1088, Revision 02, dated July 29, 1999; at the applicable time specified by paragraph (c)(1) or (c)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,600 flight cycles.

(1) For airplanes on which the actions specified by Airbus Service Bulletin A320–57–1004, Revision 02, dated June 14, 1993, or earlier version; and Airbus Service Bulletin A320–57–1060, Revision 02, dated December 16, 1994, or earlier version; have been accomplished: Perform the inspection of all applicable fastener holes within 12,000 flight cycles after accomplishment of the service bulletins, or within 750 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the actions specified by Airbus Modification 20740 and Airbus Service Bulletin A320–57–1060, Revision 02, dated December 16, 1994, or earlier version, have been accomplished; or on which Airbus Modifications 20740, 20741, and 20796 have been accomplished: Perform the inspections at the locations and applicable times specified by paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Perform the inspection of left and right fastener holes 52 to 55, 82, 83, 87, and 88; located in the rear spar of the wing; prior to the accumulation of 17,300 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later. If any cracking is found, prior to further flight, accomplish the requirements of paragraph (c)(2)(ii) of this AD.

(ii) Except as required by paragraph (c)(2)(i) of this AD: Perform the inspection of all fastener holes located in the rear spar of the wing that are not identified in paragraph (c)(2)(i) of this AD prior to the accumulation of 20,000 total flight cycles, or within 200 flight cycles after the effective date of this AD, whichever occurs later.

Note 3: Accomplishment of the actions specified by Airbus Service Bulletin A320–57–1088, dated September 30, 1996, or Revision 01, dated September 17, 1997, prior to the effective date of this AD is acceptable for compliance with the requirements of the initial inspection required by paragraph (c) of this AD.

(d) If any crack is found during any inspection required by paragraph (c) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(e) Modification of all specified fastener holes in the rear spar of the wing in accordance with Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; or Revision 02, dated November 6, 1998; constitutes terminating action for the ultrasonic inspections required by this AD. Such modification, if accomplished prior to the accumulation of 12,000 total flight cycles, constitutes terminating action for the actions required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 93–25–13; amendment 39–8777, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–264–135(B), dated June 30, 1999.

Issued in Renton, Washington, on February 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3132 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB51

Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendments to the Restrictions on the Withdrawal of Equity Capital from a Futures Commission Merchant and to the Percentage Deduction (i.e., Haircut) Applied to the Value of Equity Securities Collateralizing Secured Demand Notes Included in Adjusted Net Capital by a Futures Commission Merchant or Introducing Broker

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend several provisions of its Regulation 1.17, which governs the minimum financial requirements imposed upon futures commission merchants ("FCMs") and introducing brokers ("IBs"). The proposal would: ease the restrictions

imposed upon the withdrawal of equity capital from an FCM; increase the percentage deduction (*i.e.*, "haircut") applied to the value of equity securities pledged as collateral for secured demand notes that are included in the adjusted net capital of an FCM or IB; and delete a reference to a section of the Securities and Exchange Commission's ("SEC") capital rule that has been repealed.

The Commission believes that the current restriction on the withdrawal of equity capital that is based on a percentage of the amount of funds an FCM is required to segregate or set aside for customers may be unnecessary in light of other early warning capital standards and the degree of surveillance carried out by SROs over their member FCMs. The proposed amendment increasing the haircut applied to equity securities pledged as collateral for secured demand notes would provide greater conformity between the Commission's capital rules and the capital rules of the SEC.

DATES: Comments must be received on or before March 13, 2000.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to "Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers—Equity Capital."

FOR FURTHER INFORMATION CONTACT: Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov:* or Gary C. Miller, Associate Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5461; electronic mail *gmiller@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Restrictions on the Withdrawal of Equity Capital From a Futures Commission Merchant

A. Background

Commission Regulation 1.17(e)[1] prohibits the withdrawal of equity capital from an FCM[2] to redeem or to repurchase shares of stock of the FCM, to pay dividends, or to make an unsecured advance or loan to a stockholder, partner, sole proprietor or employee of the FCM if, after giving effect to the withdrawal and to certain other specified withdrawals and payments, the FCM's adjusted net capital would be less than the greatest of:

(1) $300,000 (120 percent of the $250,000 minimum adjusted net capital requirement);

(2) Seven percent of the customer funds required to be segregated or set aside pursuant to the Commodity Exchange Act ("Act") and Commission regulations,[3] (hereinafter collectively referred to as the "customer segregated and secured amount");

(3) 120 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

(4) For an FCM that is also a securities broker or dealer registered with the Securities and Exchange Commission ("SEC"), the amount of net capital specified in SEC Rule 15c3–1(e) (17 CFR 240.15c3–1(e)).

The Joint Audit Committee ("JAC") has petitioned the Commission to amend the restriction in (2) above to permit the withdrawal of equity capital from an FCM provided that, after giving effect to the withdrawal, the FCM's adjusted net capital is in excess of six percent of the customer segregated and secured amount.[4] The JAC's petition did not address the other withdrawal restrictions listed above.

In its petition, the JAC stated that prohibiting capital withdrawals that result in an FCM having adjusted net capital that is less than seven percent of the customer segregated and secured amount is an unnecessary regulatory burden. In support of its position, the JAC claimed that other provisions of the Commission's regulations also impose effective restraints on the excessive withdrawal of capital from an FCM by an equity holder. Specifically, the JAC noted that: (1) FCMs are required to maintain minimum adjusted net capital of at least four percent of the customer segregated and secured amount funds requirements in order to operate and to handle customer positions and funds; (2) the Commission's "early warning" notice and financial reporting requirements provide the Commission and the FCMs' designated self-regulatory organizations ("DSRO") with the ability to monitor the financial condition and operations, including capital withdrawals, of an FCM that fails to maintain adjusted net capital at a level that exceeds six percent of the customer segregated and secured amount; and (3) the Commission's debt-equity ratio requirement imposes an effective restraint on the excessive withdrawal of equity capital.

Furthermore, the JAC stated that the changes it requested would provide greater harmony between the Commission's capital rules and the capital rules of the SEC. In this regard, the JAC noted that the SEC's capital rules permit withdrawals of capital from a broker or dealer provided that, after giving effect to the withdrawal, the broker's or dealer's net capital equals or exceeds the SEC's early warning level. Each of the reasons set forth by the JAC is discussed below.

B. Proposed Rule Amendments

After careful consideration of the JAC's petition and the issues that the petition presents, the Commission is proposing to amend Regulation 1.17(e) to permit equity capital withdrawals provided that, after giving effect to the withdrawals, the FCM's adjusted net capital is in excess of six percent of the customer segregated and secured amount. The Commission is not proposing to amend any of the other capital withdrawal restrictions set forth in the regulation.

An FCM is required to maintain minimum adjusted net capital of the greatest of: (A) $250,000; (B) four percent of the customer segregated and secured amount; (C) the amount of adjusted net capital required by a registered futures association of which it is a member; or (D) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a) (17 CFR

[1] Commission rules cited herein can be found at 17 CFR Ch. I (1999).

[2] The prohibition against withdrawal of equity capital set forth in Regulation 1.17(e) applies to both FCMs and IBs. The restriction requires consideration of both the minimum dollar amount of net capital required for both types of registrants ($250,000 for FCMs and $30,000 for IBs) and, just for FCMs, the amount of funds required to be segregated and set aside for FCMs' customers. For purposes of this proposal, only the restriction on FCMs need be addressed since the change relates only to the percentage applied to the amount of funds required to be segregated and set aside for customers.

[3] Before applying the percentage capital factor, the amount required to be segregated or set aside is reduced by the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: provided, however, that the option premium deduction for each customer is limited to the amount of customer funds and the foreign futures and foreign options secured amounts in such customer's account(s).

[4] The JAC is comprised of representatives of the audit and compliance departments of the self-regulatory organizations ("SROs") and National Futures Association. The JAC coordinates the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

240.15c3–1(a)). FCMs that are members of commodity exchanges must comply with the net capital requirements of those exchanges, which are required to be at least as stringent as the Commission's.[5] Generally, FCMs that handle customer accounts are required to maintain adjusted net capital in excess of four percent of the customer segregated and secured amount.

An FCM that is not in compliance with the minimum net capital requirement must transfer all customer accounts and immediately cease doing business as an FCM.[6] Therefore, each FCM must ensure that a capital withdrawal does not cause the FCM's adjusted net capital to fall below four percent of the customer segregated and secured amount.

In addition, the Commission's "early warning" notice and financial reporting requirements deter excessive equity withdrawals. Commission Regulation 1.12(b)(2) requires an FCM to notify its DSRO and the Commission in writing if its adjusted net capital does not equal or exceed six percent of the customer segregated and secured amount. These early warning notices must be filed within five business days of the FCM's adjusted net capital falling below the early warning level. Moreover, Commission Regulation 1.12(g)(2) requires an FCM to give the Commission written notice at least two business days prior to a planned withdrawal of equity capital if the withdrawal would reduce excess net capital by 30 percent or more from that most recently reported in a financial report filed with the Commission.

An FCM that hits the early warning trigger is also required to file a financial report on Form 1–FR–FCM with the Commission and its DSRO as of the close of the month during which its adjusted net capital does not exceed the early warning level and for each month thereafter until three successive months have elapsed during which its adjusted net capital is at all times equal to or in excess of the early warning level.[7] This early warning notice is intended to bring to the Commission's and DSRO's attention firms that should be subjected to closer monitoring because of their minimal regulatory capital.

Furthermore, the Commission's "debt-equity ratio" requirement also limits the amount of capital that may be withdrawn from an FCM. Commission Regulation 1.17(d) prohibits the withdrawal of capital from an FCM if, after giving effect to the withdrawal, the FCM's equity capital would be less than 30 percent of its debt-equity total.[8]

Finally, setting the capital withdrawal limit at the Commission's early warning level is supported by the capital withdrawal rules adopted by the SEC for securities brokers or dealers that compute their minimum net capital requirement in accordance with the SEC's "alternative" method.[9] SEC Rule 15c3–1(e)(2)(vi) (17 CFR 240.15c3–1(e)(2)(vi)) prohibits a capital withdrawal from a broker or dealer that computes its minimum net capital requirement under the alternative method if, after giving effect to the withdrawal, the broker's or dealer's minimum net capital would be less than five percent of the aggregate debit items as determined by the Reserve Formula. The SEC's early warning requirement for such brokers and dealers is also set at five percent of aggregate debit items.[10]

II. Equity Securities Pledged as Collateral for Secured Demand Notes

A. Background

Commission Regulation 1.17(h) sets forth the minimum requirements for satisfactory subordination agreements. An FCM or IB may enhance its regulatory capital by borrowing cash pursuant to subordinated loan agreements or by accepting secured demand notes. A secured demand note must be collateralized by cash or readily marketable securities.[11] The securities collateralizing a secured demand note are subject to percentage deductions (*i.e.*, haircuts) to provide protection against a potential decrease in the market values of the securities. Commission regulations, however, do not specify the specific haircuts to be applied. Instead, the Commission's regulations provide that an FCM or IB must apply the haircuts that are set forth in SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240. 15c3–1(c)(2)(vi)), which are the haircuts that a broker or dealer must apply to securities that it includes in its capital computation.

When the Commission adopted its current capital rules in September 1978, the haircut for an equity security under SEC Rule 15c3–1(c)(2)(vi) was 30 percent. Therefore, an FCM or IB was required to apply a 30 percent haircut to an equity security collateralizing a secured demand note.[12]

In December 1992, the SEC amended its capital rules. As part of these amendments, the SEC amended Rule 15c3–1(c)(2)(vi) by reducing the haircut on equity securities from 30 percent to 15 percent.[13] Since the Commission's capital rules incorporated the haircuts in SEC Rule 15c3–1(c)(2)(vi), the Commission's capital rules were effectively amended and the haircut applied to equity securities collateralizing a secured demand note was reduced from 30 percent to 15 percent. In the December 1992 amendments, however, the SEC also explicitly retained the 30 percent haircut on equity securities collateralizing secured demand notes included in adjusted net capital by brokers or dealers. Thus, an unintended difference developed between the Commission's capital rules and the capital rules of the SEC. The difference stems from the Commission incorporating the SEC's regulation imposing haircuts on securities that a broker or dealer includes in its capital computation (Rule 15c3–1(c)(2)(vi)) as opposed to the regulation imposing haircuts on securities that a broker or dealer receives as collateral for a secured demand note that was contributed as capital (Rule 15c3–1d) (17 CFR 240.15c3–1(d)).

B. Proposed Rule Amendment

The Commission attempts to maintain, to the extent practicable, uniformity between its capital rules and those of the SEC. Uniform capital rules more readily permit dually-registered FCMs (*i.e.*, FCMs that are also SEC-registered securities brokers or dealers) that comply with the Commission's

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[5] See Regulations 1.17(a)(2)(i) and 1.52.

[6] See Regulation 1.17(a)(4).

[7] See Regulation 1.12(b)(4).

[8] Equity capital is defined by Regulation 1.17(d)(1) to include certain loans subject to qualifying satisfactory subordination agreements and the following:

(1) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts;

(2) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodity interest and securities accounts subject to the provisions of Rule 1.17(e) concerning restrictions on withdrawals of equity capital), and unrealized profit and loss; and

(3) In the case of a sole proprietorship, the sum of its capital accounts and unrealized profit and loss.

"Debt-equity total" is defined by Regulation 1.17(d)(2) and encompasses equity capital as defined above plus loans subject to satisfactory subordination agreements that do not qualify as equity capital under Regulation 1.17(d)(1).

[9] SEC Rule 15c3–1(a)(1)(ii) (17 CFR 240.15c3–1(a)(1)(ii)) requires a securities broker or dealer computing its minimum net capital requirement under the alternative method to maintain minimum net capital of not less than the greater of $250,000 or 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers (Exhibit A to Rule 15c3–3).

[10] 17 CFR 240.17a–11(c)(2).

[11] The value of the collateral, after applicable haircuts, must exceed the full outstanding face amount of the secured demand note.

[12] 43 FR 39956 (September 8, 1978).

[13] 57 FR 56984 (December 2, 1992).

capital rules to comply with the SEC's capital rules. As set forth above, the Commission's capital rules were originally consistent with the SEC's capital rules with respect to the haircuts to be applied to equity securities collateralizing secured demand notes and the current difference is unintended. Accordingly, in order to provide greater uniformity between the Commission and SEC capital rules, the Commission proposes increasing to 30 percent from 15 percent the haircut on the market value of equity securities pledged as collateral for a secured demand note.

III. Technical Amendment

Commission Regulation 1.17(c)(5)(v) requires an FCM or IB, in computing its adjusted net capital, to apply haircuts to securities positions carried in the FCM's or IB's proprietary accounts and to securities purchased with customer funds that are required to be segregated or set aside in separate accounts. The regulation directs the FCM or IB to apply the specific haircut percentages that are set forth in SEC Rule 15c3–1(c)(2)(vi) for equity securities and Rule 15c3–1(c)(2)(vii) (17 CFR 240.15c3–1(c)(2)(vii)) for non-marketable securities, or Rule 15c3–1(f) (17 CFR 240. 15c3–1(f)) for dually registered securities brokers or dealers and FCMs that compute their minimum net capital requirements in accordance with the SEC's "alternative, or aggregate debit items," method.

In December 1992, the SEC amended its capital rules by, among other things, revising the securities haircuts that a broker or dealer subject to the alternative capital method had to apply to securities positions in the broker's or dealer's proprietary accounts. Specifically, the amendments made the haircuts consistent regardless of the method that a broker or dealer used in computing its minimum net capital. The SEC effected the revisions by consolidating the haircuts in Rule 15c3–1(f) into Rules 15c3–1(c)(2)(vi) and 15c3–1(c)(2)(vii) and repealing15c3–1(f). Accordingly, the Commission proposes deleting the reference to Rule 15c3–1(f) in its Rule 1.17(c)(5)(v).

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed rule amendments discussed herein would affect FCMs and IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[14]

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[15] The proposed technical amendment to Regulation 1.17(c)(5)(v) and the proposed amendment to Regulation 1.17(e) easing the restriction on the withdrawal of equity capital from an FCM do not impose additional requirements on an IB. The proposed amendment to Regulation 1.17(h)(1)(iii) increasing the haircut on equity securities submitted as collateral for a secured demand note may impact an IB's financial operations. The proposal, however, conforms the Commission's rules to those of the SEC and restores the haircut to its previous level prior to the SEC amendment of its capital rules in December 1992. Thus, on behalf of the Commission, the Chairman certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities. The Commission, however, invites comments from registered FCMs or IBs who believe that the proposed amendments would have a significant impact on their operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* (Supp. I 1995), requires federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that paragraphs (c)(5)(v), (e)(1)(ii), and (h)(1)(iii) of Rule 1.17, as proposed, do not impose an information collection burden on the public.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

[14] 47 FR 18618, 18619–18620 (April 30, 1982).

[15] 48 FR 35248, 35275–78 (August 3, 1983).

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is amended by revising paragraphs (c)(5)(v), (e)(1)(ii), and (h)(1)(iii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to Section 4d(2) of the Act and these regulations which were not deposited by customers, the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) ("securities haircuts") and 100 percent of the value of "nonmarketable securities" as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii));

* * * * *

(e) * * *

(1) * * *

(ii) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(h) * * *

(1) * * *

(iii) The term "collateral value" of any securities pledged to secure a secured demand note means the market value of such securities after giving effect to the percentage deductions specified in Rule 240.15c3–1d(a)(2)(iii) of the Securities

and Exchange Commission (17 CFR 240.15c3–1d(a)(2)(iii)).

* * * * *

Issued in Washington D.C. on February 3, 2000 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 00–2917 Filed 2–9–00; 8:45 am]

BILLING CODE 8351–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99–7A]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of initial comment period and reply comment period. Expansion of file formats acceptable for electronic submission of comments.

SUMMARY: The Copyright Office is extending the comment period and the reply comment period in the rulemaking on possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. The Office is also expanding the list of formats in which acceptable comments may be submitted electronically.

DATES: Written comments are due February 17, 2000. Reply comments are due March 20, 2000.

ADDRESSES: Submissions by electronic mail should be made to "1201@loc.gov". *See* **SUPPLEMENTARY INFORMATION** section for file formats and other information about electronic filing. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, DC. If delivered by mail, comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. *See* **SUPPLEMENTARY INFORMATION** section for information about formats of submissions.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, Charlotte Douglass, Principal Legal Advisor, or Robert Kasunic, Senior Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On November 24, 1999, the Copyright Office published a Notice of Inquiry seeking comment in connection with a rulemaking pursuant to section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. 64 FR 66139 (November 24, 1999). Comments were due on February 10, 2000; reply comments were due on March 13, 2000.

The Office has, however, received a request for a one-week extension of the filing deadline for initial comments. Moreover, the Office has already received a number of comments submitted in electronic form, and a number of those comments have not met the format requirements for electronic submissions. The Office has, therefore, decided to extend the deadlines for filing of initial and reply comments by one week in order to accommodate the request for additional time and in order to provide those persons who have submitted comments in unacceptable formats an opportunity to correct their submissions.

The new deadlines are: February 17, 2000 for initial comments and March 20, 2000 for reply comments.

As stated in the Notice of Inquiry, the Office will be placing all comments and reply comments that are submitted in electronic form on its website (http://lcweb.loc.gov/copyright/1201). Because of this, the Office prefers that comments and reply comments be submitted in electronic form. The Office has already received a large number of comments in this form, and many have not been in acceptable formats. The Notice of Inquiry required that comments sent by e-mail must be sent in the form of a MIME attachment to an e-mail message, and the attachment must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; or (3) WordPerfect 7 or earlier. It also stated that comments may be submitted in electronic form on 3.5-inch write-protected diskettes or in traditional written (hard copy print) form.

The Office has received some complaints that restricting electronic comments to these three proprietary formats (Adobe PDF, Microsoft Word and WordPerfect) has created difficulties for some persons who wish to submit comments electronically. The Office is, therefore, expanding the list of acceptable formats for comments in electronic form. If submitted by e-mail, such comments must still be submitted as MIME file attachments to e-mail messages. Whether submitted by e-mail or on diskettes, comments may also be submitted in ASCII text file format or RTF (Rich Text File) format.

Concern has also been expressed about the requirement that comments include not only the name of the person making the submission, but also the submitter's mailing address, telephone number, telefax number and e-mail address. All comments submitted in electronic form will be posted on the Office's website, and some persons making comments may prefer that such personal information not be made available on the Internet. The Office is, therefore, amending the requirements relating to identifying information that must be included in a comment. At the same time it is affirming that the filer's name must be on a comment. Persons submitting electronic comments in electronic form must also include, in the e-mail message to which the comment is attached or in a cover letter accompanying the diskette, all such identifying information. Persons submitting comments in traditional written form should note that the Office may post some or all of those comments on its website; therefore, such persons who do not wish to have such identifying information made available on the website should include that information in a separate cover letter accompanying the comments.

The Office is amending its instructions concerning formats for comments as follows:

Comments and reply comments may be submitted in electronic form, in one of the following formats:

1. *If by electronic mail:* Send to "1201@loc.gov" a message containing the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect 7 or earlier; (4) ASCII text file format; or (5) Rich Text File (RTF) format.

2. *If by regular mail or hand delivery:* Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette,

labeled with the name of the person making the submission and, if applicable, his or her title and organization. Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect Version 7 or earlier; (4) ASCII text file format; or (5) Rich Text File (RTF) format.

3. *If by print only:* Anyone who is unable to submit a comment in electronic form should submit an original and fifteen paper copies by hand or by mail to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

All written comments (in electronic or nonelectronic form) should contain the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). All written comments must at a minimum contain the name of the person making the submission.

The Office has already received some comments designated as "reply comments." Persons submitting comments should note that a comment should not be designated as a "reply comment" unless submitted in response to one or more initial comments made by other persons. Moreover, reply comments, which are now due on March 20, 2000, should not be submitted until after the February 17, 2000 deadline for submission of initial comments.

Dated: February 8, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–3200 Filed 2–9–00; 8:45 am]

BILLING CODE 1410–DG–P

DEPARTMENT OF DEFENSE

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Profit Policy

AGENCY: Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Acting Director of Defense Procurement is soliciting comments from both government and industry personnel regarding potential changes to the profit policy specified in the Defense Federal Acquisition Regulation Supplement (DFARS). The changes would increase the emphasis placed on technical risk as a factor in developing objective profit amounts. DoD will conduct a public meeting to discuss the potential changes as well as the comments received in response to this notice.

DATES: *Public Meeting:* The public meeting will be conducted at the address shown below on February 23, 2000, from 9:00 a.m. to 12:00 p.m., local time.

Submission of Names of Expected Attendees: The names of individuals expected to attend the public meeting should be submitted to the point of contact shown below no later than February 18, 2000, 4:00 p.m., local time.

Submission of Comments: Written comments on the potential DFARS changes should be submitted to the address shown below no later than February 17, 2000.

ADDRESSES: *Public Meeting:* The public meeting will be conducted at the Headquarters, Defense Logistics Agency, Command Conference Room (Room 2419), 8725 John J. Kingman Road, Fort Belvoir, Virginia.

Submission of Names of Expected Attendees: The names of individuals expected to attend the public meeting should be submitted to Mr. Robert Bemben, by telephone, FAX, mail, or e-mail at the phone number or address specified below. Walk-in attendance will be accommodated. However, pre-registration is desired, as the names of pre-registrants will be provided to building security to facilitate building access.

Submission of Comments: Interested parties should submit written comments to: Mr. Robert Bemben, PDUSD (AT&L) DP/CPF, 3060 Defense Pentagon, Washington, DC 20301–3060. E-mail comments should be sent to bembenrj&acq.osd.mil. Comments should be accompanied by supporting rationale for any proposed changes.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bemben, by telephone at (703) 695–9764; by FAX at (703) 693–9616; or by e-mail at bembenrj&acq.osd.mil.

SUPPLEMENTARY INFORMATION:

A. Draft Materials

The potential changes to the DFARS are available in draft form electronically in Microsoft Word 6.0 text format at the Cost, Pricing, and Finance Office Internet Home Page: http://www.acq.osd.mil/dp/cpf.

Note: The draft changes do not reflect a proposed rule; they are provided for information and discussion purposes only.

Paper copies may be obtained from the point of contact specified herein.

B. Background

Section 813 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) directed the Secretary of Defense to review the DoD profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.

Section 813 further required the Secretary of Defense to make any changes to the profit guidelines that the Secretary determines to be necessary and to report to Congress on the results of the review.

A review of the DoD profit policy has identified potential changes to the DFARS that would increase the emphasis placed on technical risk as a factor in developing objective profit amounts. The purpose of this notice is to provide the public with a preliminary indication of changes under consideration, and to solicit comments and suggestions on those changes. After consideration of the comments submitted in writing and those offered at the public meeting, the Director of Defense Procurement may submit a draft proposed rule to the Defense Acquisition Regulations (DAR) Council for consideration. The DAR Council will publish any resulting proposed rule for additional public comments.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–3141 Filed 2–9–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 99–D025]

Defense Federal Acquisition Regulation Supplement; Contract Drawings, Maps, and Specifications

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement is proposing to

amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause used in construction contracts. The revised clause would explicitly allow the Government to furnish drawings and specifications to construction contractors in electronic form and would require construction contractors to reproduce and print contract drawings and specifications as needed.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 10, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D025 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 99–D025 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the clause at DFARS 252.236–7001, Contract Drawings, Maps, and Specifications, in fixed-price construction contracts. The clause presently states that the Government will provide five sets (unless another quantity is specified) of large-scale drawings and specifications to the contractor without charge; or, at the Government's option, may furnish the contractor with one set of reproducibles, or half-size drawings. This rule proposes to revise the clause to specify that the Government will provide one set of large-scale drawings and specifications to the contractor in electronic or paper media, as chosen by the contracting officer, and that the contractor will reproduce and print contract drawings and specifications as needed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the reproduction and printing of contract drawings and specifications normally does not constitute a significant cost, and the contractor can include this cost in the contract price. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D025.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.236–7001 is revised to read as follows:

252.236–7001 Contract Drawings, Maps, and Specifications.

As prescribed in 236.570(a), use the following clause:

Contract Drawings, Maps, and Specifications (XXX 2000)

(a) The Government—

(1) Will provide to the Contractor, without charge, one set of large-scale contract drawings and specifications, except publications incorporated into the technical provisions by reference; and

(2) Will provide the drawings and specifications in electronic or paper media, as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title
File
Drawing No.
(End of clause)

[FR Doc. 00–2942 Filed 2–09–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020200A]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Fishery Management Plan (FMP) for Atlantic Herring (*Clupea harengus*) and to prepare an SEIS, if necessary, to analyze the impacts of any proposed management measures. The Atlantic States Marine Fisheries Commission (Commission), under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, may also prepare an amendment to its Interstate Fishery Management Plan for Atlantic Sea Herring. The Council and the Commission also formally announce a public process to determine the scope of alternatives to be addressed in the SEIS. The purpose of this notification is to alert the interested public of the commencement of the scoping process

and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council and the Commission will discuss and take scoping comments at public meetings in February 2000. For specific dates and times, see **SUPPLEMENTARY INFORMATION.** Written scoping comments must be received on or before 5:00 pm., local time, March 13, 2000.

ADDRESSES: The Council and the Commission will take scoping comments at public meetings in Maine, Massachusetts, Rhode Island, and New Jersey. For specific locations, see **SUPPLEMENTARY INFORMATION.** Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950, telephone (978) 465–0492, or to Jack Dunnigan, Executive Director, Atlantic States Marine Fisheries Commission, 1444 Eye Street NW., Sixth Floor, Washington, DC 20005, telephone (202) 289–6400. The scoping document is accessible electronically via the Internet at http://www.nefmc.org (Council) and http://www.afmsc.org (Commission). Comments may also be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic herring fishery is managed as one stock complex along the east coast from Maine to Cape Hatteras, North Carolina, although evidence suggests that at least two separate biological stocks exist. Generally, the resource has been divided into an inshore-Gulf of Maine and an offshore Georges Bank/Nantucket Shoals component. Individual spawning aggregations have been identified, such as the Jeffreys Ledge component of the Gulf of Maine stock, but quantitative data on the relative size of the aggregations are lacking. A peer-reviewed assessment of the Atlantic herring coastal stock complex was last conducted in 1998. This assessment indicated that the stock complex was at a high biomass level but was underexploited in 1997. An update of the assessment based on 1998 landings suggests that these conditions still exist in the fishery.

The Council and the Commission adopted management measures for the herring fishery in state and Federal waters in 1999 and NMFS approved most of the management measures contained in the Federal FMP on October 27, 1999. While the Commission's measures have been adopted by the states, the proposed rule to implement the Federal Atlantic Herring FMP will be published in the **Federal Register** for public comment in the near future. A final rule to implement the Federal FMP will be published shortly after the close of the comment period on the proposed rule. The two management plans contain similar management measures. The plans establish total allowable catches (TACs) levels in each of four management areas. In state waters there are spawning area restrictions (under the Commission plan). Both plans include limits on the size of vessels that can take, catch, or harvest herring. Each plan includes administrative elements such as requirements for vessel, dealer, and processor permits and reporting requirements. A control date of September 16, 1999, was established for the Atlantic herring fishery in Federal waters (64 FR 50266, September 16, 1999). The potential impacts of the control date are discussed in the control date announcement.

While the overall TAC level for herring is more than twice the recent landing levels, the proposed TAC for the inshore Gulf of Maine component is about 60 percent of the landings from this area in 1996 and 1997. Some fishermen believe that harvesting capacity in this area should be restricted to avoid problems that result from excess fishing capacity. One of these problems could be an inefficient "race to fish" as increasing numbers of vessels try to catch herring before the TAC is reached. Additionally, the available TAC in this area will likely be taken before the 2000 fishing year is over. This could disrupt the supply of herring for various markets. As more vessels enter the fishery, more fishermen would likely fish for shorter periods of time in this area. In other management areas, recent catches have not approached the proposed TACs. One objective of the management plan is to distribute fishing effort to all management areas. Catches in Management Area 2 (Cape Cod and south) have been relatively stable over recent years. Catches in Management Area 3 (Georges Bank) increased rapidly to 40 percent of the proposed TAC from 1997 to 1998. These areas could absorb more fishing effort.

Management of many fisheries in the Northeast is complicated by excess fishing capacity, which makes it difficult to reduce fishing mortality to levels necessary for stock rebuilding. The development of a controlled access system for the Atlantic herring fishery that would allow new harvesting capacity to target the offshore areas but would prevent (and for one area slow) the development of excess capacity might solve the problems experienced in these fisheries.

Options Under Consideration

The Council and the Commission are considering a wide range of options for the fishery, from—

(1) Continuing open access in each of the four areas in which the fishery takes place and continuing with the area-specific TACs as the primary control on fishing mortality (the No Action Alternative); to

(2) Introducing one of a variety of controlled access systems in one or more of these areas, coupled with related controls on fishing mortality.

The capacity controls under consideration may work in the following ways: The number of vessels permitted to fish in one or more or all of the Atlantic herring fishery zones could be limited. This may occur gradually as the number of vessels fishing in each area and their catches in that area approach its TAC. Other options that will be examined include closing one or more or all areas to new participants before fishing harvest capacity develops that exceeds the TAC for a given area.

The elements that make up a controlled access system will also be open for comment. One or more kinds of permits may be issued to one or more of the management areas. Qualification criteria will be established to determine who gets a permit to fish in one or more areas. The criteria can take many different forms. For example, it could be based on catches over a period of time, on possession of another permit, or on future performance.

A controlled access system may also contain other means of managing fishing mortality, for example, implementing such limits on fishing effort as the number of days vessels can fish, catch limits, or gear restrictions, each with or without the TACs now in place. Another alternative is to establish an individual quota system. Under this system, a specific share of the TAC is assigned to a vessel, person, or community; in some systems, these shares can be purchased or traded. Because of possible different objectives for each management area, some elements of a controlled access system

for one area might be different from those in another area.

Comments Requested

The Council and the Commission are particularly interested in answers to the following questions:

(1) Should there be a limited entry or controlled access system in the Atlantic herring fishery?

(2) If there is a limited entry or controlled access system, should it be adopted for the entire fishery or only for certain management areas?

(3) When should the limited entry or controlled access system become effective? Should it become effective on different dates in different areas?

(4) In a limited entry or controlled access system, what type of qualification criteria should be used to determine who receives a limited entry permit? For example, should permits be issued based on past landings or on a vessel holding another permit?

(5) If past landings are used to determine who qualifies for a permit, what should the level of landings be to qualify? What is the appropriate time period to be examined?

(6) What types of permit categories should be considered? For example, should there be directed fishery permits and incidental catch permits, or different permits for different gear types?

(7) Should permits be freely transferable, or should they be subject to limits?

(8) Should there be upgrading restrictions on permits?

(9) What other management measures, if any, should be included in the limited entry or controlled access system? For example, should days-at-sea limits, trip limits, or gear restrictions be used to further control effort?

(10) Should an individual quota system be part of the controlled access program? (Under current law, an individual quota system may not be submitted to the Secretary for approval and implementation before October 1, 2000.) If an individual quota system is considered,—

(a) How should individual fishing quotas be allocated?

(b) Should they be allocated to vessels, individuals, or communities?

(c) Should there be limits on the transferability of individual fishing quotas?

(d) Should there be limits on how much quota can be obtained by one permit holder?

(e) How should present and historical participation in the fishery be considered?

(f) If an individual fishing quota program is developed, how should effective enforcement, management, and observer coverage be provided, and how should fees to recover actual enforcement and management costs be structured?

(g) If an individual fishing quota is developed, how should a portion of the annual harvest be allocated to entry level fishermen, small vessel owners, and crew members who do not qualify for individual quotas?

(11) What communities do you think would be most affected by a limited entry program for Atlantic herring? How would they be affected?

(12) What social and/or cultural factors within these communities should the Council consider when developing a limited access program for Atlantic herring?

(13) What do you think are the potential social impacts (negative and/or positive) of a limited access program for Atlantic herring?

Scoping Process

All persons affected by or otherwise interested in herring fisheries management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the scoping hearings. Scope consists of the range of actions, alternatives, and impacts to be considered. Alternatives include the following: Not amending the management plan (taking no action), developing an amendment that contains such management measures as the ones previously mentioned in this notice, or other reasonable courses of action. Impacts may be direct, individual, or cumulative. The scoping process will also identify and eliminate from detailed study issues that are not significant. If, after the scoping process is completed, the Council proceeds with the development of an amendment to the FMP, the Council will prepare an SEIS or Environmental Assessment, as appropriate, depending on the nature of the amendment to be developed. The Council and the Commission will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts on the human environment.

Public Hearing Schedule

The Council and the Commission will discuss and take scoping comments at public meetings as follows:

Tuesday, February 22, 2000, 7 p.m., Cape May County Extension Office, 355 Courthouse–South Dennis road, Cape May Courthouse, New Jersey. Telephone (609) 465–5115.

Wednesday, February 23, 2000, 1 p.m., Trade Winds Hotel, 2 Park Drive, Rockland, ME 04841. Telephone (207) 596–6661.

Thursday, February 24, 2000, 3 p.m., Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886. Telephone (401) 739–3000.

Tuesday, February 29, 2000, 3 p.m. King's Grant Inn, Trask Road, Route 128, Exit 21N, Danvers, MA 01923. Telephone (978) 774–6800.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to this meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3005 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000124016–0018–01; I.D. 122999A]

RIN 0648–AN38

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking to Establish a Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) is considering management measures to reduce harvest capacity in the open access portion of the Pacific Coast groundfish fishery in Federal waters off Washington, Oregon, and California. NMFS has previously made a similar announcement relating to the limited entry and recreational portions of the fishery. This document announces a control date for the open access portion of November 5, 1999, and is intended to promote awareness of potential eligibility criteria for future access to the

open access portion of the Pacific Coast groundfish fishery. The announcement is intended to discourage new entries into this fishery and increased fishing effort based on economic speculation while the Council contemplates whether and how access should be controlled.

Vessels entering the fisheries after November 5, 1999, may be subject to restrictions different from those that apply to vessels in the fishery prior to November 5, 1999. If catch history is used as a basis for future participation or allocation, it is likely that participation in the fishery after November 5, 1999, would not count toward future allocations or participation in a limited access scheme. Because potential eligibility criteria for future management measures may be based on historical participation, fishery participants may need to preserve records that substantiate and verify their participation in the groundfish fishery in Federal waters.

DATES: Comments may be submitted in writing by March 13, 2000.

ADDRESSES: Comments may be mailed to Jim Lone, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland OR 97201.

FOR FURTHER INFORMATION CONTACT: The Pacific Fishery Management Council at 503–326–6352; or Bill Robinson at 206–526–6140; or Svein Fougner at 562–980–4000.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5 1982), and has been amended 11 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR Part 660. On November 16, 1992, NMFS published final regulations implementing Amendment 6 to the FMP. Amendment 6 and its implementing regulations established a license limitation program and divided the Pacific Coast commercial groundfish fishery into limited entry and open access segments. The limited entry fishery is comprised of permitted vessels using trawl, longline and/or trap (pot) gear. The open access fishery is comprised of unpermitted vessels that use all other gear, as well as vessels that do not have limited entry permits endorsed for use of longline or trap gear but make small landings with longline or trap gear.

NMFS had previously made an announcement that the Council is considering additional management measures to further limit harvest capacity or to allocate between or within the limited entry commercial and the recreational groundfish fisheries. In order to discourage fishers from intensifying their fishing efforts for the purpose of amassing catch history for any allocation or additional limited access program developed by the Council, the Council announced on April 9, 1998, that any program would not include consideration of catch landed after that date. NMFS announced that the Council was planning to consider catch history through the 1997 season (63 FR 53637, October 6, 1998).

At its April 1999 meeting, the Council reviewed a proposal to create a limited entry program to limit new entrants into the open access fishery. At this same meeting, the Council's Groundfish Advisory Subpanel (GAP) encouraged the Council to move toward the development of an individual quota (IQ) program for the limited entry and open access fisheries as a means of managing harvest capacity. Under Section 303(d)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Council cannot submit recommendations for an IQ program to the Secretary of Commerce before October 1, 2000, however, the Council is not prohibited from developing such a program.

At its June 1999 meeting, the Council further examined the proposal to create a limited entry program to limit new entrants into the open access fishery. Members of the Council expressed concerns that restricting new entrants into the fishery would not adequately address harvest capacity concerns. Even though the need to limit new entrants into the open access fleet was recognized, this measure did not go forward for further development. Limited access and participation in the open access fisheries were further discussed at the November 1999 Council meeting, resulting in this document.

Because the document published on October 6, 1998, refers specifically to management measures to restrain harvest capacity in the limited entry fishery, the Council saw a need to establish a control date for the open access fishery while management measures to restrain harvest capacity throughout the entire groundfish fishery are being considered. At its November meeting, the Council unanimously recommended that a control date of November 5, 1999, be established and the public be notified that the Council is considering the need to impose additional management measures to restrain harvest capacity in the open access fishery. The Council announced this control date for the open access portion of the Pacific Coast groundfish fishery in its November 1999 newsletter. The newsletter was distributed to the public in the middle of November.

Vessels entering the fishery after November 5, 1999, may be subject to restrictions different from those that apply to vessels in the fishery prior to November 5, 1999. If catch history is used as a basis for participation or allocation, it is likely that participation in the fishery after the control date would not count toward future allocations in a limited access scheme. Fishers are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery.

This action does not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date.

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP, and may require amending the FMP. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3150 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Youth Conservation Corps Employment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate a previously approved information collection. The collected information will help the Forest Service evaluate the employment eligibility of youth 15 to 18 years old through the Youth Conservation Corps Program. Under this Program, the Forest Service cooperates with other Federal agencies to provide seasonal employment for youth.

DATES: Comments must be received in writing on or before April 10, 2000.

ADDRESSES: All comments should be addressed to Director, Youth Conservation Corps, Senior, Youth and Volunteer Programs, (Mail Stop 1136), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (703) 605–5115 or by e-mail to syvp/wo@fs.fed.us.

The public may inspect comments at the Office of the Director, Senior, Youth and Volunteer Programs, Forest Service, USDA, Room 1010, 1621 North Kent Street, Arlington, Virginia 22209. Visitors are asked to call ahead to facilitate entrance into the office.

FOR FURTHER INFORMATION CONTACT: Ransom Hughes, Youth Conservation Corps, Senior, Youth and Volunteer Programs at (703) 605–4854.

SUPPLEMENTARY INFORMATION:

Background

Under the Youth Conservation Corps Act of August 13, 1970, as amended (U.S.C. 18701–1706), the Forest Service, U.S. Department of Agriculture and the Fish and Wildlife Service and National Park Service, U.S. Department of Interior cooperate to provide seasonal employment for eligible youth 15 to 18 years old.

These youth, who seek training and employment with the Forest Service through the Youth Conservation Corps, must complete the following forms: FS–1800–18, Youth Conservation Corps Application, and FS–1800–3, Youth Conservation Corps Medical History. Forest Service employees use the information to evaluate the eligibility of each applicant.

The Youth Conservation Corps stresses three important objectives:

- Accomplish needed conservation work on public lands;
- Provide gainful employment for 15 to 18 year old males and females from all social, economic, ethnic, and racial backgrounds; and
- Foster, on the part of the 15 to 18 year old youth, an understanding and appreciation of the Nation's natural resources and heritage.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–1800–18, Youth Conservation Corps (YCC) Application.

OMB Number: 0596–0084.

Expiration Date of Approval: October 31, 1997.

Type of Request: Reinstatement of an information collection previously approved by the Office of Management and Budget.

Abstract: Employees of the Forest Service, U.S. Department of Agriculture and the Fish and Wildlife Service and National Park Service, U.S. Department of Interior will evaluate the data and determine the eligibility of each youth for employment with the Youth Conservation Corps. To be considered for employment with the Corps, each youth must complete FS–1800–18, Youth Conservation Corps Application Form. Applicants are asked to answer questions that include their name, social security number, date of birth, mailing address, and telephone number. The applicant's parent or guardian must sign the form.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 6 minutes.

Type of Respondents: Youth 15 to 18 years old.

Estimated Annual Number of Respondents: 18,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1800 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–1800–3, Youth Conservation Corps Medical History.

OMB Number: 0596–0084.

Expiration Date of Approval: October 31, 1997.

Type of Request: Reinstatement of an information collection previously approved by the Office of Management and Budget.

Abstract: To be considered for employment through the Youth Conservation Corps Program, all youth must complete FS–1800–3, Youth Conservation Corps Medical History Form. Applicants are asked to answer questions regarding their personal health. The purpose of FS–1800–3 is to certify the youth's physical fitness to work in the seasonal employment Program. The applicant's parent or guardian must sign the form.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 14 minutes.

Type of Respondents: Youth 15 to 18 years old.

Estimated Annual Number of Respondents: 18,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4200 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget.

Dated: February 3, 2000.

Gloria Manning,

Associate Deputy Chief, for Business Operations.

[FR Doc. 00–3011 Filed 2–9–00; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Meadow Tolan Vegetation Management Project; Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of management activities proposed in the Meadow-Tolan area on the Sula Ranger District of the Bitterroot National Forest. Proposed management activities include management ignited prescribed fire, timber harvest, reforestation, pre-commercial thinning, aspen restoration, and road reconstruction. The Meadow-Tolan area is located in Ravalli County, Montana, approximately 40 miles southeast of Hamilton. The Meadow-Tolan area includes the Meadow and Tolan Creek drainages and several other tributary drainages between them.

A variety of management activities proposed in the project are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are (1) To restore fire and its associated ecological benefits, (2) to harvest merchantable timber, (3) to reduce fuel accumulations, especially in an area adjacent to a rural subdivision, (4) to modify forest stand structure and species composition in order to maintain or restore ecosystem diversity, (5) to reduce motorized travel to comply with Forest Plan standard, (6) to amend the Forest Plan motorized access standards in an area where other resource benefits outweigh the benefits of restricting travel, (7) to thin young stands that are overstocked, and (8) to restore aspen clones that show signs of deterioration. This project level EIS will tier to the Bitterroot National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (September 1987), which provides overall guidance for all land management activities on the Bitterroot National Forest.

DATES: Written comments and suggestions should be received by March 24, 2000.

ADDRESSES: The Responsible Official is Rodd Richardson, Forest Supervisor, Bitterroot National Forest, 1801 North First, Hamilton MT 59840.

FOR FURTHER INFORMATION CONTACT: Written comments and suggestions concerning the scope of the analysis or a request to be included on the project mailing list should be sent to John Ormiston, Acting Resource Team Leader, Sula Ranger District, Bitterroot National Forest, Phone (406) 821–3201.

SUPPLEMENTARY INFORMATION: The project area encompasses approximately 45,000 acres of land in west-central Montana on the Bitterroot National Forest. The Meadow-Tolan area includes the Meadow and Tolan Creek drainages and several other tributary drainages of the East Fort Bitterroot River, including Vapor Creek, Swift Creek, Bugle Creek, Kerlee Creek, Springer Creek, Mink Creek, and Bruce Creek. A map and legal descriptions are available on request.

An analysis of the Meadow-Tolan area reveals changes in how the forest vegetation currently looks and functions compared to the past. Natural patterns and stand structures have changed, largely due to the absence of fire during the 1900's in this fire dependent ecosystem. The result is notable changes in plant species composition and density, stand structures, fuels, seral species regeneration, and the health and vigor of forest stands. The primary purposes of prescribed fire and timber harvest in the Meadow-Tolan area is to maintain or restore ecosystem diversity, function, and health. There is also an opportunity to address ecological trends and at the same time utilize surplus biomass for forest products. Maintaining plant community diversity will promote the range of habitats that native plants and animals evolved in. Management prescriptions to promote diversity include low to moderate intensity management ignited prescribed fire; and on some sites prescribed fire in combination with silvicultural treatments. Silvicultural treatments proposed include pre-commercial thinning, timber harvest, and reforestation.

Managing fuels using fire and silvicultural practices would decrease the risk of uncharacteristically intense fires and associated undesirable effects. These activities could also increase the ability of the Forest Service to allow more naturally occurring fires to burn in the adjoining Anaconda-Pintler Wilderness Area by reducing fuels near private property at lower elevations. This would to some degree reduce the risks to private property from natural fires allowed to burn in the wilderness.

Vegetation treatments with commercial timber harvest and management ignited prescribed fire are proposed on approximately 2530 acres and 1430 acres, respectively. Proposed management ignited fire and harvest activities focus primarily on low- to mid-elevations and dry aspects; those considered at ecological risk due to fire absence.

The prescribed fire would focus on the ponderosa pine/Douglas-fir community, which have been most altered due to fire absence. Most of these treated acres will also include slashing of undesired and unmerchantable trees.

Big game forage, including some winter range areas, would be improved in the areas to be understory burned. Intermediate harvests will also be prescribed on about 1100 acres in the ponderosa pine/Douglas-fir communities to open forest canopies, reduce Douglas-fir encroachment, improve overall productivity and health. Following harvest, all areas would be treated with understory burning in order to reduce fuels, prepare sites for regeneration, rejuvenate the shrub component, and maintain fire as an ecosystem process.

Pre-commercial thinning is also needed on about 320 acres of densely stocked submerchantable trees in order to enhance tree growth and vigor. One area of approximately 20 acres will be treated with hand thinning and piling for the purpose of fuel reduction.

Approximately 1210 acres in the moist Douglas-fir forest community would be treated using intermediate harvests to reduce stand densities, increase health and vigor of the residual stand, salvage dead and dying trees from Douglas-fir bark beetle caused mortality or root rot, and increase resilience to other insects and diseases. Approximately 160 acres would be

treated with a regeneration harvest where heavy mortality exists due to the Douglas-fir bark beetle. Douglas-fir beetles have been particularly active on north slopes in the area in the last few years and have reached epidemic population levels on the Sula Ranger District. Because of the uncertainty of future beetle populations, some of the area prescribed for intermediate harvests may require regenerating. About half the area would be understory burned following harvest. Activity fuels in remainder would be limbed and lopped or yarded to the landing to burn.

Due to the current level of beetle caused mortality and the expected future mortality, there are two units needing regeneration that will exceed 40 acres.

Eleven aspen stands on about 60 acres have matured and are showing signs of deterioration in the absence of fire. We propose to remove encroaching conifers by girdling or harvest and apply prescribed fire to restore aspen vigor and presence on the landscape.

We propose to establish a defensible perimeter around a cluster of private dwellings in the Echo Gulch area; thinning, pruning and prescribing fire to reduce fuels and therefore the risk of fire moving rapidly through the perimeter.

The Bitterroot Forest Plan provides guidance for management activities through its goals, objectives, standards, and management area direction. The areas of proposed management activities occur in Management Areas 1, 2, and 3a. Prescribed burning is proposed on lands within Forest Plan Management Areas 1, 2, 3a, and 3b. The management direction for these areas are briefly described, as follows. Management Area 1 emphasizes timber management, livestock and big game forage production, and roaded dispersed recreation activities. Management Area 2 emphasizes elk winter range habitat, allows for timber management and provides roaded dispersed recreation opportunities. Management Area 3a emphasizes visual quality, allows timber management, and provides roaded dispersed recreation opportunities. Management Area 3b emphasizes protection of riparian habitat and water quality and provides for water-related recreation.

Public scoping meetings and opportunities for interested parties to review and comment on the proposals for management were provided in Fall, 1998. Comments received have been retained and will be considered during the preparation of the Meadow Tolan EIS. Public participation is an important part of this analysis, continuing with additional scoping (40 CFR 1501.7), in February and March, 2000. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to identify issues and alternatives to the proposed action. Some public comments have already been received in conjunction with scoping documented in the Meadow-Tolan Project File. The following issues have already been identified: 1. What effects would the proposed timber harvest, road construction, and prescribed fire have on the water and fishery resources in the area? 2. What effects would the proposed actions have on ecosystem health, productivity and forest products. 3. How would road construction, timber harvesting, and prescribed burning affect wildlife species in the area? 4. How would the proposed actions affect the Tolan roadless area and adjacent undeveloped lands? 5. How would the proposed actions affect recreation and motorized access opportunities? 6. How would visual quality be affected? This list may be verified; expanded, or modified based on continued public scoping.

The Forest Service will consider a range of alternatives in the EIS. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and scheduled activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in July, 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Meadow-Tolan area participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible. The Final EIS is scheduled to be completed in December, 2000.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the Environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages* v. *Harris*, 490 F. Supp.–1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for this environmental impact statement is Rodd Richardson, Forest Supervisor, Bitterroot National Forest, 1801 North First, Hamilton, MT 59840. He will decide which, if any, of the proposed actions will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: February 1, 2000.

Rodd Richardson,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 00–3101 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–85–M

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Desolation Vegetation Recovery Projects Umatilla National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposed action to implement vegetative recovery projects, designed to restore forest stand structure and composition, within the subwatersheds of the Desolation Creek Watershed and adjacent subwatersheds of surrounding watersheds which were affected by the Bull and Summit Fires of 1996. The project area is located on the North Fork John Day Ranger District, approximately 25 air miles southeast of Ukiah, Oregon.

Proposed project activities consist of planting forest and riparian vegetation; fuels treatments to establish a more natural mosaic of fuel types across the landscape; hydrologic stability projects (road obliteration and road reconstruction); reduction of hazards along open roads; and restoration of forest stand structure and composition through precommercial thinning, commercial thinning, and salvage of timber damaged or killed in the fires. The proposed action is designed to prevent additional degradation of watershed and forest health, accelerate movement toward achieving Forest Plan goals and an ecologically sustainable and resilient system, and provide some economic return to local economies. The proposed projects will be in compliance with the 1990 Land and Resource Management Plan FEIS for the Umatilla National Forest, as amended, which provides overall guidance for management of this area.

DATE: Written comments concerning the scope of the analysis should be received on or before March 13, 2000.

ADDRESS: Send written comments and suggestions to the Responsible Official, Craig Smith-Dixon, North Fork John Day District Ranger, P.O. Box 158, Ukiah, OR 97880.

FOR FURTHER INFORMATION CONTACT: Tim Davis, Project Team Leader, North Fork John Day Ranger District, Phone: (541) 427–3231.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 59,700 acres with the Umatilla National Forest in Grant County, Oregon. It includes subwatersheds that were affected by the Bull and Summit Fires of 1996. The Bull Fire burned approximately 8,300 acres, and the Summit Fire burned approximately 8,000 acres on the Umatilla National Forest. Affected subwatersheds include those in the upper part of the Desolation Creek Watershed, and those in the adjacent North Fork John Day River and Granite Creek Watersheds. The legal description of the decision area is as follows: T.7S. R.33 and 34E., T.8S. R.33 and 34E., T.9S. R.33 and 34E., and T.10S. R.34E., W.M. surveyed. All proposed activities are outside the boundaries of any roadless of wilderness areas.

Originally, two separate analyses were proposed for salvage and restoration projects within the Bull and Summit Fire areas. These were: Bull Fire Restoration Project EA and the Olive Salvage CE. In January 1998, the Big Tower Fire Recovery Projects Decision Notice and Environmental Assessment was challenged in court. This analysis was concerned with the salvage and restoration of the 1996 Tower Fire. The outcome of this litigation was that the U.S. 9th Circuit Court of Appeals instructed the Forest Service to conduct an Environmental Impact Statement (EIS) for any further projects within the Tower Fire area. Based on this ruling, the North Fork John Day Ranger District determined that an EIS would be the most appropriate environmental analysis to conduct for restoration efforts on the Bull and Summit Fires.

Planting projects include reforestation in areas proposed for salvage harvest of fire damaged and killed timber, some areas proposed for fuels treatments, previously planted areas burned in the fires, and riparian areas affected by the fires. Fuels treatments could included broadcasting burning, piling and burning, jackpot burning, or mechanical slash treatments on harvested and precommercially thinned areas; as well as cutting, slashing, and burning stands of non-merchantable lodgepole pine killed in the fires. Proposed hydrologic stability projects include 1.5 miles of road obliteration and 7.0 miles of road reconstruction. Roadside hazards would be removed from along approximately 3.0 miles of Forest Road 1010. Stand structure and composition treatments include approximately 1050 acres of salvage harvest, 490 acres of commercial thinning, and 330 acres of precommercial thinning. Approximately 1.1 miles of temporary road construction is proposed to access timber harvest areas (all temporary roads would be obliterated following completion of sale activities).

An estimated 7.3 million board feet of timber would be commercially harvested, using ground based harvesting systems (tractor and harvested/forwarder). Proposed silvicultural treatments are as follows:

Precommercial Thinning: Saplings (generally up to 7 inch dbh) would be thinned to a tree per acre variable spacing to promote growth and provide a more sustainable species composition.

Commercial Thinning: Stand densities would be reduced to a residual square foot of basal area per acre based on recommended stocking levels appropriate for the plant association to restore a more ecologically sustainable structure and species composition. All stands would remain fully stocked upon completion of harvest activities.

Salvage Harvest: Timber damaged or killed in the fires would be removed to facilitate reforestation of these areas and reduce the build-up of fuels. Harvested areas would be reforested with an ecologically sustainable species composition.

Activities which would occur concurrently or in association with timber harvest include subsoiling to mitigate soil compaction, waterbarring, erosion control seeding of skid trails and landings to restore soil productivity, burning of some slash, and treatment of noxious weeds.

Preliminary issues include: effects of proposed activities on water quality; effects of proposed activities on fish and habitat and aquatic Threatened, Endangered, and Sensitive (TES) species; effects of proposed activities on lynx; and ability of proposed activities to restore historic vegetation composition, structure, and pattern.

The Forest Service will consider a full range of alternatives, including a "no-action" alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scooping, the action alternatives will vary in (1) the number, type and location of projects, (2) the silvicultural and post-harvest treatments prescribed, and (3) the amount and location of harvest and thinning. Tentative action alternatives are: the proposed action, a modified proposed action which only treats fire affected stands, and an alternative which excludes any commercial harvest.

Public participation will be especially important at several points during the analysis, beginning with the scooping process (40 CFR 1501.7). Initial scoping began with the project listing in the 2000 Winter Edition of the Umatilla National Forest's Schedule of Proposed Activities. This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to

the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations that may be interested in, or affected by the proposal. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Considering additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by April, 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of the Umatilla National Forest participate at that time.

The Final EIS is scheduled to be completed by June, 2000. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service is the lead agency. Craig Smith-Dixon, District Ranger, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed projects will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: February 1, 2000.

Craig Smith-Dixon,

District Ranger.

[FR Doc. 00–3056 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Rich Allotment Management Plan, Wasatch-Cache National Forest, Logan Ranger District, Cache and Rich Counties, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Logan Ranger District, of the Wasatch-Cache National Forest, will prepare an EIS on a proposal to authorize grazing on the North Rich Allotment at a level and in a manner consistent with direction set forth in the Forest Plan, the Rangeland Health EIS, and other applicable laws.

DATES: Comments concerning the scope of the analysis should be received in writing by March 10, 2000.

ADDRESSES: Send written comments to Brian Ferebee, District Ranger, 1500 East Highway 89, Logan, Utah 84321.

FOR FURTHER INFORMATION CONTACT: Evelyn Sibbernsen, Environmental Coordinator, Logan Ranger District, (435) 755–3620.

SUPPLEMENTARY INFORMATION: The Logan Ranger District proposes to authorize grazing on the North Rich Allotment at a level and in a manner consistent with direction set forth in the Forest Plan, the Wasatch-Cache Rangeland Health EIS, and other applicable laws and guidelines. In conjunction, the District proposes to revise the Allotment Management Plan (AMP) and adjust the resource management of lands within the North Rich Allotment to reflect information developed since the Forest Plan (approved in 1985) and to improve resource conditions as needed in several areas.

In an effort to continue moving present rangeland conditions toward desired conditions, select improvement and restoration projects are being proposed. Livestock grazing would be managed under a rotation system, to provide for the longterm health and sustainability of rangeland and riparian ecosystems.

Environmental analysis on the proposal began in the fall of 1998. Preliminary analysis indicated an Environmental Impact Statement would not be required. A scoping letter was mailed to more than 70 individuals, organizations, and local and state government agencies in January, 1999. An open house was held in January and a field trip was held in July, 1999. Data collection and analysis continued through the fall of 1999. In January of 2000, the responsible official and the Forest Service interdisciplinary team decided that an Environmental Impact Statement should be prepared because there may be significant environmental effects associated with the proposal.

Preliminary issues identified by the interdisciplinary team include the effects of grazing on riparian conditions, watershed health, threatened, endangered, and sensitive species, and the effects on dispersed recreation in the area.

A range of alternatives for the allotment will be considered. One of these, no action from the current situation, will be to authorize grazing under the current regime (number and type of livestock, grazing system, and maintenance of improvements). Another alternative will consider no grazing on

this allotment (current permits would be terminated as they expire). Other alternatives will consider grazing under other combinations of number and type of livestock, grazing systems (including a rotation system), season and timing of use, and associated improvements, mitigation, and monitoring.

A decision will be made on whether or not to continue authorizing grazing on the North Rich Allotment, and if so, under what management system and with what improvements. If the decision is made to continue authorizing grazing, term grazing permits, issued by the Logan Ranger District, would authorize this use.

The public is invited to submit comments or suggestions at the address above. Comments from the January 1999 scoping will be incorporated into the analysis and need not be resubmitted. The responsible official is Brian Ferebee, District Ranger. A Draft EIS is expected to be filed in April of 2000 and the final EIS is scheduled to be filed in September of 2000.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate during that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that the reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Dated: January 28, 2000.

Brian Ferebee,

District Ranger.

[FR Doc. 00–3100 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on March 7, 2000, at the Convention Center, Harrah's Lake Tahoe, Highway 50, Stateline, NV. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held March 7, 2000, beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the Convention Center, Harrah's Lake Tahoe, Highway 50, Stateline, NV.

FOR FURTHER INFORMATION CONTACT: Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Budget Subcommittee, Communications Subcommittee & Watershed Assessment Subcommittee Reports; (2) California, Nevada and Federal Land Acquisition Processes; (3) Status of Renewing the Charter; (4) Washoe Lake Access; (5) Updating the Environmental Improvement Program (EIP); (6) Open Public Comment; (7) Vehicle Miles Traveled, US Postal Service Master Plan; (8) Status Report on the Lake Tahoe Science Advisory Team; (9) Lake Tahoe Watershed Assessment, Adaptive Management. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: February 4, 2000.

Maribeth Gustafson,

Acting Deputy Forest Supervisor.

[FR Doc. 00–3130 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 4 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4, Practice Standards and Specifications #600, Terrace and #620, Underground Outlet to account for improved technology. These practices can be used in systems that treat highly erodible land.

DATES: Comments will be received on or before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: January 19, 2000.

Leroy Brown,

State Conservationist.

[FR Doc. 00–3102 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–18–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published December 21, 1999 (64 FR 71601). This action is taken to correct the closing date of the "early selection pool" of $40 million from 4:00 Eastern Standard Time on February 21, 2000 to 4:00 Eastern Standard Time on February 22, 2000. This action is being taken because there will be no mail delivery on February 21, 2000 due to the Federal Holiday.

Accordingly, the notice published December 21, 1999 (64 FR 71601), is corrected as follows:

On page 71601 in the second column, in the first sentence under the heading "DATES," the text "4:00 PM Eastern Time on February 21, 2000" should read "4:00 PM Eastern Standard Time on February 22, 2000."

On page 71602 in the second column, Item III., in the first paragraph, the text "4 p.m. Eastern Standard Time, February 21, 2000" should read "4:00 PM Eastern Standard Time on February 22, 2000."

On page 71602 in the second column, Item III., in the second paragraph, the text "4:00 PM, Eastern Standard Time on February 21, 2000" should read "4:00 PM Eastern Standard Time on February 22, 2000."

Dated: February 2, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–3042 Filed 2–9–00; 8:45 am]

BILLING CODE 3410–XV–U

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights

DATE AND TIME: Friday, February 18, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of January 14, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Report
- Unequal Justice: African Americans In the Virginia Criminal Justice System (Virginia)

VI. Review GPRA Draft Report
VII. Future Agenda Items
10:30 a.m.—Briefing on Zero Tolerance

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–3226 Filed 2–8–00; 2:23 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–427–816, A–533–817, A–560–805, A–475–826, A–588–847, A–580–836]

Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–5193, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations at 19 CFR Part 351 (1999).

Amendment to the Final Determination

On December 13, 1999, the Department made its final determinations that certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan and the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France*, 64 FR 73143, (*India*) 64 FR 73126, (*Indonesia*) 64 FR 73164, (*Italy*) 64 FR 73234, (*Japan*) 64 FR 73215, and the (*Republic of Korea*) 64 FR 73196 (December 29, 1999) ("Final Determinations"). In December 1999, the Department disclosed its calculations for the final determinations to all interested parties. In December 1999, and January 2000, the Department received timely allegations of ministerial errors in its margin calculations for certain respondents. Specifically, the Department received ministerial error allegations in the final determinations for France, Indonesia, Italy, and the Republic of Korea. After analyzing the ministerial error allegations in accordance with 19 CFR 351.224, we have determined the following:

France

In calculating the final margin for the respondent Usinor S.A., the Department improperly calculated the constructed export price ("CEP") offset where U.S. sales were compared to constructed value. Specifically, the Department failed to include home market inventory carrying costs in the indirect selling expenses used to calculate the CEP offset. For a detailed discussion of the ministerial error allegations for France and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II, from the France Team, dated January 28, 2000. In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from France. Correcting the ministerial error changes the final weighted-average dumping margin for Usinor S.A. and the "All Others" rate from 10.43 percent to 10.41 percent.

Indonesia

In calculating the final margin for the respondent PT Gunawan Dianjaya Steel ("Gunawan")/ PT Jaya Pari Steel Corporation ("Jaya Pari"), the Department (1) incorrectly calculated the indexed, weighted-average costs; (2) failed to incorporate certain adjustments to Gunawan's and Jaya Pari's U.S. sales in the margin calculation; (3) failed to include all of Jaya Pari's U.S. sales in the margin calculation; (4) incorrectly calculated December 1998 current costs by using the incorrect wholesale price

indices for three months; and (5) incorrectly revised the factory overhead expense for certain control number models. For a detailed discussion of the ministerial error allegations for Indonesia and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Louis Apple, Office Director, from the Indonesia Team, dated January 7, 2000. In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from Indonesia. Correcting the ministerial errors changes the final weighted-average dumping margin for Gunawan/Jaya Pari and the "All Others" rate from 42.36 percent to 50.80 percent.

Italy

In calculating the final margin for the respondent Palini and Bertoli S.p.A., the Department incorrectly revised home market credit expense. For a detailed discussion of the ministerial error allegation for Italy and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II, from the Italy Team, dated January 20, 2000. In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from Italy. Correcting the ministerial error changes the final weighted-average dumping margin for Palini and Bertoli S.p.A. and the "All Others" rate from 8.97 percent to 7.85 percent.

The Republic of Korea

The petitioners alleged that the Department made certain ministerial errors in calculating costs for Dongkuk Steel Mill, Ltd., in the final determination We do not agree that the items identified by the petitioners constitute clerical errors. Thus, we are not amending the final determination of the antidumping duty investigation of certain cut-to-length carbon-quality steel plate products from the Republic of Korea. For a detailed discussion of the ministerial error allegations for the Republic of Korea and the Department's analysis thereof, *see* the Memorandum, *Ministerial Error Allegations Regarding the Final Determination*, to Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II, from the Korea Team, dated January 20, 2000.

Scope of Orders

The products covered by these antidumping duty orders are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy ("HSLA") steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Antidumping Duty Orders

On February 2, 2000, in accordance with section 735(d) of the Act, the ITC notified the Department that a U.S. industry is materially injured by reason of imports of certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to section 735(b)(1)(A) of the Act. In addition, with respect to imports of subject merchandise from Japan, the ITC found that critical circumstances do not exist.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service ("U.S. Customs") to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of certain cut-to-length carbon-quality steel plate products from each of the countries named in the above-referenced antidumping duty investigations. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or

withdrawn from warehouse, for consumption on or after July 29, 1999, the date of publication of the preliminary determinations in the **Federal Register**. Because the ITC did not find that critical circumstances exist with respect to imports of subject merchandise from Japan, the Department will direct U.S. Customs to refund all cash deposit amounts collected on imports of certain cut-to-length carbon-quality steel plate products from Japan entered, or withdrawn from warehouse, during the 90-day period prior to the publication of the preliminary antidumping duty determination for Japan (*i.e.*, from April 30, 1999 through July 28, 1999). Moreover, because the Department found a *de minimis* final weighted-average margin for ILVA S.p.A., a respondent in the Italian investigation which received a margin in excess of *de minimis* in the preliminary determination, the Department has directed U.S. Customs to terminate the suspension of liquidation for shipments of certain cut-to-length carbon-quality steel plate products produced/exported by ILVA S.p.A. entered, or withdrawn from warehouse, for consumption on or after July 29, 1999, and to release any bond or other security, and refund any cash deposit obtained in connection with the antidumping duty investigation. Finally, because the Department found a *de minimis* final weighted-average margin for Pohang Iron & Steel Co., Ltd. ("POSCO"), a respondent in the Korean investigation which also received a *de minimis* margin in the preliminary determination, there are no cash deposit requirements for POSCO.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below. Where applicable, the Department will reduce the cash deposit rates listed below by the export subsidy rate found in the companion final determination of the countervailing duty investigation.

Exporter/manufacturer	Margin percentage
France:	
Usinor	10.41
All Others	10.41
India:	
SAIL	72.49
All Others	72.49
Indonesia:	
Gunawan/Jaya Pari	50.80
PT Krakatau Steel	52.42
All Others	50.80
Italy:	
Palini and Bertoli S.p.A	7.85
All Others	7.85
Japan:	
Kawasaki Steel Corporation	10.78
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	10.78
Republic of Korea:	
Dongkuk Steel Mill Co., Ltd.	2.98
All Others	2.98

This notice constitutes the antidumping duty orders with respect to certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 3, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3119 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817, C–533–818, C–560–806, C–475–827, C–580–837]

Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai at (202) 482–4087 (France), Robert Copyak at (202) 482–2209 (India), Eva Temkin at (202) 482–1167 (Indonesia), Kristen Johnson at (202) 482–4406 (Italy), and Stephanie Moore at (202) 482–3692 (Korea), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1999).

Scope of Orders

The products covered by these antidumping duty orders are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy ("HSLA") steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of

lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Amended Final Determinations

India

On December 29, 1999, the final determination in the countervailing duty investigation of certain cut-to-length carbon-quality steel plate from India was published in the **Federal Register** (64 FR 73131). On January 10, 2000, petitioners in the investigation alleged that the Department made ministerial errors in calculating the estimated net countervailable subsidy rate. We agree with petitioners and have corrected our calculations. As a result, the estimated net countervailable subsidy rate attributable to the Steel Authority of India ("SAIL") increased from 11.25 percent *ad valorem* to 12.82 percent *ad valorem*; this rate also serves as the "all others" rate. These corrections are explained in the memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Import Administration ("Allegations of Ministerial Errors in the Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India"). The memorandum is on file in public version form in the Central Records Unit ("CRU"), (room B–099 of the Main Commerce Building).

Republic of Korea

On December 29, 1999, the final determination in the countervailing duty investigation of certain cut-to-length carbon-quality steel plate from South Korea was published in the **Federal Register** (64 FR 73176). On January 10, 2000, petitioners and respondents in the investigation alleged that the Department made ministerial errors in calculating the estimated net countervailable subsidy rates applicable to certain respondents. We agree that certain ministerial errors were made and we have corrected our calculations. As a result, the estimated net countervailable subsidy rate attributable to Pohang Iron and Steel Company ("POSCO") decreased from 0.95 percent *ad valorem* to 0.82 percent *ad valorem*, and the estimated net countervailable subsidy rate attributable to Dongkuk Steel Mill, Ltd, ("DSM") increased from 2.21 percent *ad valorem* to 3.26 percent *ad valorem*; this rate also serves as the "all others" rate. These corrections are explained in the memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Import Administration ("Ministerial Errors in the Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Korea"). The memorandum is on file in public version form in the CRU.

Countervailing Duty Orders

In accordance with section 705(d) of the Act, on December 29, 1999, the Department published its final determinations in the countervailing duty investigations of certain cut-to-length carbon-quality steel plate from France (64 FR 73277), India (64 FR 73131), Indonesia (64 FR 73155), Italy (64 FR 73244), and Korea (64 FR 73176). On February 2, 2000, the International Trade Commission ("ITC") notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea.

Therefore, countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date on which the Department published its preliminary affirmative countervailing duty determinations in the **Federal Register**, and before November 23, 1999, the date the Department instructed the U.S. Customs Service to discontinue the suspensions of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals of subject merchandise made on or after the date of publication of these countervailing duty orders in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of certain cut-to-length carbon-quality steel plate made on or after November 23, 1999, and prior to the date of publication of these orders in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective November 23, 1999, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute the suspension of liquidation effective the date of publication of this notice in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rates apply to all producers and exporters of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea not specifically listed below. The cash deposit rates are as follows:

	Net Subsidy Rate
Producer/Exporter: France	
Usinor Group	5.56 percent ad valorem.
GTS Industries S.A.	6.86 percent ad valorem.
All Others	6.80 percent ad valorem.
Producer/Exporter: India	
Steel Authority of India (SAIL)	12.82 percent ad valorem.
All Others	12.82 percent ad valorem.
Producer/Exporter: Indonesia	
P.T. Krakatau Steel	47.71 percent ad valorem.
All Others	15.90 percent ad valorem.
Producer/Exporter: Italy	
ILVA S.p.A. and ILVA Lamiere e. Tubi S.p.A	26.12 percent ad valorem.
All Others	26.12 percent ad valorem.
Producer/Exporter: Korea	
Dongkuk Steel Mill, Ltd.	3.26 percent ad valorem.
All Others	3.26 percent ad valorem.

The Indonesian steel producers P.T. Gunawan Steel and P.T. Jaya Pari are excluded from the Indonesian order because they received a *de minimis* net subsidy of 0.00 percent *ad valorem*. The Italian steel producer Palini and Bertoli S.p.A is excluded from the Italian order because it received a *de minimis* net subsidy of 0.12 percent *ad valorem*. The Korean steel producer POSCO is excluded from the Korean order because it received a *de minimis* net subsidy rate of 0.82 percent *ad valorem*.

This notice constitutes the countervailing duty orders with respect to certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea, pursuant to section 706(a) of the Act. Interested parties may contact the CRU, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders and amended final determinations are published in accordance with section 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: February 3, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3120 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 99–00007.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to John L. Koenig. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1999).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All goods and services.

2. Technology Rights

All intellectual property rights associated with Products, including, but not limited to: Patents, trademarks, service marks, copyrights, trade secrets and know-how.

3. Export Trade Facilitation Services (as they Relate to the Export of Products and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation, trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; taking title to goods; professional services in areas of government relations and assistance with state and federal programs and foreign trade and business protocol.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

John L. Koenig may engage in the following activities with respect to the Export Markets:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities as they relate to exporting Products to the Export Markets;

3. Enter into exclusive and non-exclusive export sales agreements with Suppliers regarding sales of Products in the Export Markets; such agreements may prohibit Suppliers from exporting independently of John L. Koenig;

4. Enter into exclusive and non-exclusive sales and/or territorial agreements with distributors in the Export Markets;

5. Establish the price of Products for sale in the Export Markets;

6. Allocate export orders among Suppliers;

7. Obtain information from individual Suppliers regarding their inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors; and

8. Enter into exclusive or non-exclusive agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, John L. Koenig will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. John L. Koenig will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that John L. Koenig's Export Trade, Export Trade Activities, and Methods of Operation continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product.

Protection Provided by Certificate

This Certificate protects John L. Koenig and any employee acting on his behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: February 4, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–3006 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 020200D]

Availability of the Record of Decision for the Proposed Modification of a Habitat Conservation Plan With Respect to a Permit Allowing Incidental Take of Threatened and Endangered Species for Plum Creek Timber Company Lands in the Interstate-90 Corridor of King and Kittitas Counties, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of decision.

SUMMARY: This notice advises the public that NMFS and FWS (the Services) have decided to approve a request by Plum Creek Timber Company (Plum Creek) to modify the Plum Creek Cascades Habitat Conservation Plan (HCP) incidental take permit (PRT–808398), issued pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, by incorporating the results of the Interstate-90 Land Exchange Act (I–90LXA). The public is also notified that the Record of Decision for this action is available upon request.

FOR FURTHER INFORMATION CONTACT: Individuals wishing copies of the Record of Decision, or other supporting documents regarding this action, should contact William Vogel; U.S. Fish and Wildlife Service; 510 Desmond Drive; Suite 102; Lacey, Washington 98503; telephone (360) 753–9440.

SUPPLEMENTARY INFORMATION:

Background

Plum Creek has requested modification of the HCP to accommodate the new land-base resulting from enactment of the I–90LXA. The Services' decision is to adopt the Preferred Alternative, as described in the Final Supplemental Environmental Impact Statement (FSEIS). This decision is based on a thorough review of the alternatives and their environmental consequences. By adopting the Preferred Alternative with its assurances that the mitigation program and enforcement measures be implemented, all practicable means to avoid or minimize harm have been adopted.

The Proposed HCP Modification, as described in the proposed Modification Document and analyzed in the FSEIS, provides the most comprehensive package of conservation prescriptions and activities of all of the alternatives. None of the other alternatives provide as integrated and comprehensive a package of habitat conservation as the Proposed HCP Modification. The Proposed HCP Modification accommodates the new land-base and applies the prescriptive conservation measures to the newly acquired lands within the HCP Planning Area.

Dated: December 23, 1999.

William B. Zimmerman,

Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

Dated: February 4, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–3002 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020100C]

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to ICCAT announces its spring meeting with its Species Working Groups on March 6 and 7, 2000.

DATES: The open sessions of the Committee meeting will be held on March 6, 2000, from 9:15 a.m. to 2:30 p.m., and on March 7, 2000, from 9:00 a.m. to 10 a.m. and from 11:30 a.m. to 5 p.m. Closed sessions will be held on March 6, 2000, from 2:30 p.m. to approximately 6:00 p.m., and on March 7, 2000, from 10 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker at (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and to discuss information on (1) 1999 ICCAT meeting results and U.S. implementation of ICCAT decisions, (2) NMFS and ICCAT research and monitoring activities, (3) the Food and Agriculture Organization's work related to illegal, unregulated, and unreported fishing, (4) the second meeting of ICCAT's Working Group on Allocation Criteria, (5) Advisory Committee operational issues, (6) consultation regarding the identification of countries that are diminishing the effectiveness of ICCAT, (7) the results of the meetings of the Committee's Species Working Groups, and (8) other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

Sessions of the Advisory Committee's Species Working Groups will not be open to the public, but, as noted earlier, the results of the working group discussions will be reported to the full Advisory Committee during the Committee's afternoon open session on March 7.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: February 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3003 Filed 2–9–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange: Proposed Amendments to the Quality Specifications of the Durum Wheat Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Minneapolis Grain Exchange (MGE or Exchange) has proposed amendments to the Exchange's durum wheat futures contract. The proposed amendments would revise the futures contract's quality specifications. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on February 24, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 25, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the MGE durum wheat futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: The futures contract currently calls for the delivery of durum wheat meeting specified quality requirements. These existing requirements, with one exception, meet or exceed the standards for U.S. grade No. 2 hard amber durum wheat. In addition, the contract sets forth standards for protein content, falling number, moisture content, dockage, and hard vitreous amber kernels which are not specified in the official U.S. standards for grain. The proposed amendments would make the contract's standards conform to the requirements for U.S. No. 2 hard amber durum wheat and would reduce the contract's standards for protein content, falling number, and hard vitreous kernels. The proposed and current quality specifications are shown in the table below.

Grade factor or quality standard	Current specification	Proposed specification
Minimum Test Weight	60 lbs. per bushel	58 lbs. per bushel
Maximum Heat Damaged Kernels	0.2%	0.2%
Maximum Total Damaged Kernels	2.0%	4.0%
Maximum Foreign Material	1.0%	0.7%
Maximum Shrunken and Broken Kernels	3.0%	5.0%
Maximum Total Defects	5.0%	5.0%
Maximum Total Other Classes	2.0%	2.0%

Grade factor or quality standard	Current specification	Proposed specification
Minimum Protein Content	13.0% (12% moisture basis)	12.5%
Minimum Falling Number	325	300
Maximum Moisture Content	13.5%	13.5%
Maximum Dockage	1.5%	1.5%
Minimum Hard Vireous Amber Kernels * * *	85%	80.0%

The MGE intends to apply the proposed amendments to existing contract months, commencing with the July 2000 contract month and to all newly listed contract months.

In support of the proposed amendments, the Exchange stated that:

[t]the purpose for amending the rule is to modify the deliverable Durum Wheat contract grade to more closely correspond to the standards for U.S. number 2 Hard Amber Durum Wheat. The Exchange believes the change in par commodity specifications is necessary to enhance participation and trade activity in the contract as well as to expand the available supply for delivery.

The Commission is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 7, 2000.

Richard Shilts,

Acting Director.

Bldg. 8449, Fort Polk
Property #:21199640539
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

[FR Doc. 00–3163 Filed 2–09–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board (DSB) Task Force on Impact of DoD Acquisition Policies and Practices on the Health and Competitiveness of U.S. Defense Companies will meet in closed session on February 22, 2000; March 7, 2000; and tentatively on March 21–22, 2000; April 5–7, 2000; and April 20–21, 2000. All meetings will be held at TRW Inc., 1001 19th Street North, Suite 800, Arlington, VA 22209.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition. Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review the Department of Defense's acquisition policies and regulations governing the primary vendors of military equipment; determine whether these acquisition policies, processes and regulations have supported or weakened rational and economical business practices within the primary vendors of military equipment; and assess the impact of those policies, practices and regulations on the health and competitiveness of U.S. defense companies. The Task Force plans to hold sensitive programmatic discussions with the primary vendors during the course of this effort.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c) (1) and (4) (1994), and that accordingly these meetings will be closed to the public.

Dated: February 4, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–3070 Filed 2–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Withdrawal of Surplus Land at Military Installations Designated for Realignment: Naval Air Station, Key West, Florida

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This Notice provides information on withdrawal of surplus property at the Naval Air Station, Key West, Florida.

FOR FURTHER INFORMATION CONTACT: For further information, contact Richard A. Engel, Head, BRAC Real Estate Section, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203, or E. R. Nelson, Jr., Director, Real Estate Division, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 820–7494.

SUPPLEMENTARY INFORMATION: In 1995, the Naval Air Station, Key West, Florida was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, in April of 1996, approximately 168.14 acres of land and related facilities at this installation were declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize

conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended. Approximately 35 acres of land improved with 10 buildings have been requested for transfer by other federal agencies and was not included within the 168.14 acres. On July 3, 1997, a second determination was made to withdraw approximately 16 acres of improved and unimproved fee simple land at the Naval Air Station, Key West, FL known as the Trumbo Point Annex Tank Farm. A third determination was made on December 20, 1999, to withdraw land and facilities previously reported as surplus that are now required by the federal government. This withdrawal is required to satisfy new military requirements and security concerns. For clarification purposes, the following is a description of land and facilities at the Naval Air Station, Key West that are withdrawn from surplus by the federal government: approximately 3.54 acres of improved and unimproved fee simple land at the Naval Air Station, Key West, FL known as Seminole Battery. Approximately 0.584 of an acre of the Seminole Battery will remain as surplus property. The following is a summary of the improvements located on the above described land. Improvements consist of an above ground 10,000 square foot earthen berm.

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the withdrawal of previously reported surplus property at the Naval Air Station, Key West, FL is published in the **Federal Register**.

Dated: February 1, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–3103 Filed 2–9–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet to elicit the advice of the board on the Navy's Postgraduate Education Program. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, February 16, and Thursday, February 17, 2000, from 8:30 a.m. to 5 p.m.

ADDRESS: The meeting will be held at the Sheraton Crystal City Hotel, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA 93943–5000, telephone number (831) 656–2514.

SUPPLEMENTARY INFORMATION: The board examines the effectiveness with which the Navy's Postgraduate Education School is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

Dated: February 1, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–3104 Filed 2–9–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 10, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 4, 2000.

William Burrow,

Leader Information Management Group Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: First and Second Year Annual Progress Reports for the European Community/US Joint Consortia Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 20, Burden hours: 400.

Abstract: First and Second-Year Annual Progress Report Forms: The forms will enable staff to collect information that will promote better program management and allow for better communications among US and European partner institutions. These forms provide the formats for a web-based collection of information from the annual reports.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional

Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3055 Filed 2–9–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC), and invites people to participate. Notice of this meeting is required under section 644(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities. The FICC will attend to ongoing work including reports from committees and task forces. A Policy Forum on Assessment of Children with Special Needs sponsored by the Maternal and Child Health Bureau (MCH), will be held on Thursday morning from 9 a.m.–12 noon in the Rm 1E110 of US Department of Education, 400 Maryland Ave., SW; Washington, DC 20202. The meeting is open to the Public.

DATE AND TIME: FICC Meeting: Thursday, March 2, 2000 from 2 to 5 p.m.

ADDRESSES: U.S. Dept. of Education; Barnard Auditorium; 400 Maryland Avenue, SW; Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance—U.S. Department of Education, 330 C Street, SW—Room 3080; Switzer Building; Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Obral Vance at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–3001 Filed 2–9–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education; Notice of Meeting

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: February 24, 2000, 9:30 a.m. to 4:00 p.m.

ADDRESSES: Marriott at Metro Center, 775 12th Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sandra Newkirk, U.S. department of Education, 1990 K Street N.W., Washington, D.C. 20006–8544. Telephone: (202) 502–7500. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under title VII, Part B, Section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Friday, February 24 from 9:30 a.m. to 4:00 p.m. to provide an overview of the Fund's program status and special initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or

service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street N.W., Washington, D.C. 20006–8544 from the hours of 8:00 a.m. to 4:30 p.m.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–3129 Filed 2–9–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP00–176–000]

ANR Pipeline Company; Notice of Reconciliation Report

February 4, 2000.

Take notice that on January 31, 2000, ANR Pipeline Company (ANR) tendered for filing this reconciliation report as required by Section 28.1 (a)(3) of the General Terms and Conditions (GT&C) of its Second Revised Volume No. 1 FERC Gas Tariff.

ANR states that the reconciliation report is regarding the recovery of transition costs ANR incurred pursuant to Order NO. 636. ANR reports that it has experienced a slight underrecovery of transition costs ($22,520), which it does not propose to collect from its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–3048 Filed 2–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–177–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

February 4, 2000.

Take notice that on February 1, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, following tariff sheet, to become effective on February 1, 2000:

First Revised Sheet No. 9

Maritimes states that it is filing the above tariff sheet to implement four negotiated rate agreements pursuant to Rate Schedule MN365 and Section 24 of the General Terms and Conditions of Maritimes' FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–3049 Filed 2–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–175–000]

Midwestern Gas Transmission Company; Notice of Cashout Report

February 4, 2000.

Take notice that on January 31, 2000, Midwestern Gas Transmission Company (Midwestern) tendered for filing its sixth annual cashout report for the September 1998 through August 1999 period.

Midwestern states that the cashout report reflects a cashout gain during this period of $5,742. Midwestern's cumulative losses from its cashout mechanism are thereby reduced to $191,532. Midwestern states that it will roll forward this loss into its next annual cashout report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–3047 Filed 2–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meeting

February 4, 2000.

Take notice the Ecological Resources subgroup of the Mokelumne Relicensing Collaborative will meet on Thursday, February 10, 2000, from 9 a.m. to 6 p.m.; February 23–25, March 1–2, and March 22–23, 2000, from 9 a.m. to 4 p.m.

Take notice the Recreation subgroup will meet on Monday, February 14, and March 21–23, 2000, from 9 a.m. to 4 p.m. The meetings of the Ecological Resources and Recreation subgroups will be held at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–3044 Filed 2–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–000]

Petal Gas Storage Company; Notice of Meeting

February 4, 2000.

On February 10, 2000, the Commission staff will meet with Petal Gas Storage Company (Petal). This meeting is in response to Petal's February 2, 2000 letter requesting a meeting with Commission staff to discuss a proposed amendment to Petal's pending application in the above referenced proceeding. In its letter Petal states that the proposed amendment would reduce the amount of facilities to be constructed. The meeting will commence at 2:00 PM, in room 72–76 at the Commission's headquarters, 888 First Street NE, Washington, DC.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–3043 Filed 2–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–73–000]

Williston Basin Interstate Pipeline Company; Notice of Application

February 4, 2000.

Take notice that on January 27, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed in Docket No. CP00–73–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), for an order permitting and approving the abandonment of a delivery tap, located in Carbon County, Montana, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us* Call (202) 208–2222 for assistance.

Williston Basin states that on December 29, 1999, a fire destroyed the Carbon County Machine Shop (Shop), near Bridger, Montana. Williston Basin owned a delivery tap and riser located approximately eight inches from the outside wall of the shop. this delivery tap had not been used in several years and the shop was served by the local distribution company. Carbon County authorities requested Williston Basin to remove its tap and riser immediately in order to ensure the safety of the Carbon County demolition crew when the building was being demolished and removed. On January 4, 2000, Williston Basin removed the tap, riser and approximately 20 feet of 1-inch diameter pipeline.

Any questions regarding this application should be directed to Keith A. Tiggelaar, Manager, Regulatory Affairs for Williston Basin, P.O. Box 5601, Bismarck, North Dakota 58506–5601, at (701) 530–1560.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 25, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a protest or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed with the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a protest or motion for leave to intervene is timely field, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–3046 Filed 2–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–52–000, et al.]

Cook Inlet Energy Supply Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

February 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Cook Inlet Energy Supply Limited Partnership

[Docket No. EC00–52–000]

Take notice that on January 28, 2000, Cook Inlet Energy Supply Limited Partnership (Cook Inlet) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transfer of interests in Cook Inlet and the conversion of Cook Inlet into a limited liability company.

Comment date: February 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Panda Leesburg Power Partners, L.P.

[Docket No. EG00–87–000]

Take notice that on January 28, 2000, Panda Leesburg Power Partners, L.P. (Panda), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda is a Delaware limited partnership, which will construct, own and operate a nominal 1,000 MW natural gas-fired generating facility within the region governed by the Florida Reliability Coordinating Council (FRCC) and sell electricity at wholesale.

Comment date: February 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Panda Midway Power Partners, L.P.

[Docket No. EG00–88–000]

Take notice that on January 28, 2000, Panda Midway Power Partners, L.P. (Panda), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda is a Delaware limited partnership, which will construct, own and operate a nominal 1,000 MW natural gas-fired generating facility within the region governed by the Florida Reliability Coordinating Council and sell electricity at wholesale.

Comment date: February 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CNG Power Services Corporation

[Docket No. ER94–1554–024]

Take notice that on January 24, 2000, CNG Power Services Corporation filed their quarterly report for the quarter ending December 31, 1999, for information only.

5. Phibro Power LLC

[Docket No. ER95–430–023]

Take notice that on January 20, 2000, Phibro Power LLC filed their quarterly report for the quarter ending December 31, 1999, for information only.

6. Potomac Electric Power Company

[Docket No. ER00–1256–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Cinergy Capital & Trading, Inc.

An effective date of May 27, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Potomac Electric Power Company

[Docket No. ER00–1257–000]

Take notice that on January 27, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Allegheny Power.

An effective date of May 27, 1999 is requested for this service agreement.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. First Electric Cooperative Corporation

[Docket No. ER00–1258–000]

Take notice that on January 27, 2000, First Electric Cooperative Corporation (First Electric) tendered for filing its Initial Rate Filing for jurisdictional wheeling services that it provides within the State of Arkansas.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Louisiana Generating LLC

[Docket Nos. ER00–1259–000 and EL00–38–000]

Take notice that on January 27, 2000, Louisiana Generating LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller also requests waiver of Order Nos. 888 and 889 as to certain interconnection facilities Seller intends to acquire. Seller, an indirect subsidiary of Northern States Power Company, is acquiring the non-nuclear generating assets and other miscellaneous assets of Cajun Electric Power Cooperative, Inc.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Kentucky Utilities Company

[Docket No. ER00–1260–000]

Take notice that on January 27, 2000, Kentucky Utilities Company (KU) tendered for filing addenda to existing contracts between KU and its wholesale requirements customers.

KU requests an effective date of January 1, 2000 for these contracts.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. New Century Services, Inc.

[Docket No. ER00–1261–000]

Take notice that on January 27, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

The Companies request that the Agreement be made effective on January 1, 2000.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Alliant Energy Corporate Services, Inc., Consolidated Water Power Company, GEN–SYS Energy, Florida Power & Light Company, Public Service Electric and Gas Company

[Docket Nos. ER00–1265–000, ER00–1266–000, ER00–1267–000, ER00–1268–000, ER00–1269–000]

Take notice that on January 24, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company, Riverside Canal Power Company, Monmouth Energy, Inc., Mountainview Power Company, Western Resources, Inc., PP&L, Inc., PDI—New England & PDI—Canada, Southern Companies, Montana Power Company, South Eastern Electric Development Company, Montaup Electric Company

[Docket Nos. ER00–1270–000, ER00–1272–000, ER00–1273–000, ER00–1274–000, ER00–1275–000, ER00–1276–000, ER00–1277–000, ER00–1278–000, ER00–1279–000, ER00–1280–000, ER00–1281–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Wolverine Power Supply Cooperative, Inc., Deseret Generation & Transmission Co-operative, GS Electric Generating Cooperative, Inc., Tucson Electric Power Company, Tucson Electric Power Company, Archer-Daniels-Midland Company, El Paso Electric Company, Indeck-Olean Limited Partnership, Golden Spread Electric Cooperative, Inc., Virginia Electric and Power Company, Delmarva Power & Light Company, Mobile Energy Services Company, L.L.C.

[Docket Nos. ER00–1282–000, ER00–1283–000, ER00–1284–000, ER00–1285–000, ER00–1286–000, ER00–1287–000, ER00–1288–000, ER00–1289–000, ER00–1290–000, ER00–1291–000, ER00–1292–000, ER00–1293–000]

Take notice that on January 27, 2000. the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Bridgeport Energy, L.L.C., Casco Bay Energy Company, L.L.C., Central Illinois Light Company, Allegheny Power

[Docket Nos. ER00–1294–000, ER00–1295–000, ER00–1296–000, ER00–1302–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 23, 2000, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3074 Filed 2–9–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–47–000]

Trans-Union Interstate Pipeline, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Trans-Union Interstate Pipeline Project, Request for Comments on Environmental Issues, and Notice of Site Visit

February 4, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Trans-Union Interstate Pipeline Project involving construction and operation of facilities by Trans-Union Interstate Pipeline, L.P. (Trans-Union) in Claiborne and Union Parishes, Louisiana and Union County, Arkansas.[1] These facilities would consist of about 41.7 miles of 30-inch-diameter pipeline, two mainline values, and launcher/receiver facilities at the beginning and end of the pipeline.

If you are a landowner on Trans-Union's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" was attached to the project notice Trans-Union provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners along Trans-Union's proposed route; Federal, state, and local government agencies; elected officials; regional environmental, and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and Commission's service list and parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Trans-Union's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

Trans-Union proposes to construct 41.7 miles of 30-inch-diameter pipeline to transport natural gas from the Sharon Hub in Claiborne Parish, Louisiana to the proposed nonjurisdictional electric power generation facility being developed by Union Power Partners (UPP) in Union County Arkansas. The pipeline would supply 430,000 decatherms per day of natural gas to UPP.

The general location of Trans-Union's proposed facilities is shown on the map attached as appendix 1.[2]

Land Requirements for Construction

Construction Of the Trans-Union's proposed facilities would affect about 538 acres of land. Following construction, about 186 acres would be retained as permanent right-of-way. The remaining 352 acres of temporary work space would be restored and allowed to revert to its former use.

Trans-Union proposes to use a pipeline construction right-of-way of 95 feet, including 50 feet which would become permanent right-or-way and 45

[1] Trans-Union's application was filed with the Commission on December 10, 1999, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

feet of temporary extra work space. There also would be about 22.4 acres used as additional temporary extra work spaces at stream, utility, and road crossings.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues.

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already indentified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Trans-Union. This preliminary list of issues may be changed based on your comments and our analysis.

- Nonjurisdictional Facilities
  - —Gulf States Pipeline Company's proposal to construct 31.5 miles of 20-inch diameter pipeline in Claiborne County, Louisiana under Section 311(a)(2) of the Natural Gas Policy Act.
- Soils
  - —Crossing about 15.2 miles of soils having a poor revegetation potential.
  - —Crossing about 12.3 miles of erosion prone soils.
- Water Resources and Wetlands
  - —Crossing 32 perennial streams.
  - —Crossing 52 areas classified as wetlands.
- Biological Resources
  - —Impacts on about 360 acres of forest or woodlands.
  - —Impacts on the red-cockaded woodpecker, a Federally listed endangered species.
- Land Use
  - —Permanent loss of timber land as permanent maintained right-of-way.
- Alternatives
  - —Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation and Site Visit

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–47–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 6, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you may be removed from the environmental mailing list.]

On March 9, 2000, the Office of Energy Projects staff will conduct a precertification site visit of the project route and possible reroutes. All parties may attend. Those planning to attend must provide their own transportation.

For further information on attending the site visit, please contact Paul McKee at (202) 208–1088.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket # from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–3045 Filed 2–9–00; 8:45 am]

BILLING CODE 6717–01–M

[3] "Us," "we," and "our" refer to the environment staff of the FERC's Office of Pipeline Regulation.

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 3, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form No.: Not applicable.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 760.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 6,080 hours.

Total Annual Cost: $500.

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 (?1992 Cable Act?) requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming service and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The price survey is intended to collect data needed to prepare this report.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–3008 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 31, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0732.

Title: Consumer Education Concerning Wireless 911.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 2,500.

Estimate Time Per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,563 hours.

Total Annual Costs: $375,000.

Needs and Uses: This information will be used by consumers to determine rationally and accurately the scope of their options in accessing 911 services from mobile handsets.

OMB Control Number: 3060–0454.

Title: Regulation of International Accounting Rates.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour (38 responses/yr.).

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 760 hours.

Total Annual Cost: $5,700.

Needs and Uses: The information will be used by the FCC staff to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the public interest. The information also enables the Commission to preclude one-way bypass and to safeguard its international settlements policy. Carriers also use the information to monitor accounting and settlement rates for international telecommunications.

OMB Control Number: 3060–0901.

Title: Reports of Common Carriers and Affiliates.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit Institutions.

Number of Respondents: 20.

Estimated Time Per Response: 5 hours (20–212 responses/yr.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,900 hours.

Total Annual Cost: None.

Needs and Uses: This information will be used by the FCC staff to monitor the operating agreements of U.S. carriers and their foreign correspondents that possess market power, and, in particular, to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the public interest. The information also enables the Commission to preclude one-way by-pass and safeguard its international settlements policy.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–3007 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Hinton W. and Virginia S. Swearingen, Sedalia, Missouri; to acquire additional voting shares of 1889 Bancshares, Inc., Nevada, Missouri, and thereby indirectly acquire additional voting shares of First National Bank of Nevada, Nevada, Missouri.

Dated: Board of Governors of the Federal Reserve System, February 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3027 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

2. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of UB Bancshares, Inc., Greenville, Ohio, and thereby indirectly acquire United Bank, National Association, Greenville, Ohio.

Board of Governors of the Federal Reserve System, February 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3028 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Summit Bank Corporation, Atlanta, Georgia; to engage *de novo* through its subsidiary, CashMart, Inc., Atlanta, Georgia (in organization) in providing check cashing services, selling money orders and other consumer-type payment instruments, including prepaid phone cards, pursuant to section 225.28(b)(13) of Regulation Y. See also *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990) and *Popular, Inc.*, 84 Federal Reserve Bulletin 481 (1998).

Board of Governors of the Federal Reserve System, February 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3029 Filed 2–9–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Advisory Committee on Online Access and Security

AGENCY: Federal Trade Commission.

ACTION: Notice of meeting on February 25, 2000.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. § 10(a)(2), and 16 CFR 16.9(a), notice is hereby given that the Federal Trade Commission Advisory Committee on Online Access and Security will hold a meeting on Friday, February 25, 2000, from 9 a.m. to 5 p.m. in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The meeting is open to the public and will include a period for public comment. The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them, and maintaining adequate security for that information. Interested parties may submit comments concerning any matter to be considered at the meeting by following the procedures described below.

DATES: The Advisory Committee will meet on Friday, February 25, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Laura Mazzarella, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3424, email lmazzarella@ftc.gov; or Hannah Stires, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3178, email hstires@ftc.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 41 *et seq.*; 5 U.S.C. App. §§ 1–15; 16 CFR part 16.

The second meeting of the Federal Trade Commission Advisory Committee on Online Access and Security will be held on Friday, February 25, 2000, in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC from 9 a.m. to 5 p.m.

The Advisory Committee will consider the costs and benefits, to both consumers and businesses, of implementing the fair information practices of access and security with respect to personal information collected for and about consumers online. The Advisory Committee will further consider the parameters of reasonable access to personal information and adequate security and will present options for implementation of these information practices in a report to the Commission.

The tentative agenda for the second meeting is as follows:

1. Administrative matters.
2. Discussion of preliminary draft outlines submitted by subgroups on issues relating to "reasonable access".
3. Discussion of preliminary draft outlines submitted by subgroups on issues relating to "adequate security".
4. Public Comment.
5. Discussion of tasks and assignments.

The meeting is open to the public.

Submission of Documents

Interested parties who wish to submit comments on the meeting agenda or questions for consideration by the Advisory Committee should send an original and two copies in advance of the meeting to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All comments and questions should be captioned "Advisory Committee on Online Access and Security—Comment, P004807." To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document.

Alternatively, comments or questions may be submitted to the following email address: advisorycommittee@ftc.gov; if submitted by email, only one copy of the comment or question is required. The email should contain the name of the submitter, the Advisory Committee caption, and, if a document is attached, the name and version of the word processing program used to create the document.

To ensure that comments are processed properly, individuals submitting comments should be sure to use the above addresses. All comments will be posted on the Advisory Committee's Web page at www.ftc.gov/acoas as soon as reasonably possible, and likely within 5 business days of receipt.

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. 00–3085 Filed 2–9–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Preventing Latex Allergy Among Non-Healthcare Workers—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote "safety and

health at work for all people through research and prevention." In order to carry out this goal effectively and efficiently, NIOSH and the occupational safety and health community implemented the National Occupational Research Agenda (NORA) in 1996. NORA is the first step in an ongoing, synergistic effort by the various institutions of the occupational safety and health community to identify and research the most important workplace safety and health issues. In order to accomplish the NORA objectives in preventing latex allergy, NIOSH is conducting health communication research to determine the most effective means of communicating the NIOSH recommendations for preventing latex allergy.

Allergy to natural rubber latex (NRL) has become a significant health risk among healthcare workers and other persons using latex gloves in the course of their work [NIOSH 1997; Turjanmaa *et al.* 1996; Watts *et al.* 1998]. A number of studies indicate that levels of latex sensitization in healthcare workers ranges from 5–12% [Liss and Sussman 1999]. One study indicated that the prevalence of latex sensitivity among 1,351 healthcare workers was 12.1%; and of that same 1,351 workers, 60% reported work-related symptoms [Liss *et al.* 1997]. Despite the numerous studies performed in this population, little is known about the non-healthcare worker occupations. Occupational asthma and symptoms of latex allergy have been reported in select groups including hairdressers, workers at a latex glove manufacturing plant, and workers at a latex doll manufacturing plant. Prevalence rates up to 11% have been reported in these studies (11% and 9%, respectively, in the latter two studies) [Orfan *et al.* 1994; Tarlo *et al.* 1990; van der Walle and Brunsveld 1995). Although the prevalence rate for other non-healthcare worker populations is unknown, these studies indicate that workers exposed to latex gloves or products containing latex may also be at risk for latex allergy.

In 1997, NIOSH published an ALERT concerning the risk of latex allergy in the workplace [NIOSH 1997]. This Alert provided specific recommendations to workers for the prevention of latex allergy and was distributed to workplaces most likely to contain latex exposure (*i.e.*, care establishments). Since occupations reporting less frequent use of latex gloves or exposure to latex-containing products may also be at risk for latex allergy, it is important to design appropriate health interventions for these occupational groups as well. Therefore, the overall objective of this study is to develop a health intervention that (1) effectively communicates the NIOSH recommendations for preventing latex allergy to the appropriate, at-risk non-healthcare worker occupations and (2) promotes the use of the recommendations through corresponding attitude and behavior change.

To accomplish this task, we propose to conduct a systematic, communication theory-based set of studies with a brochure adapted from the NIOSH Alert on latex allergy as the primary attitude concept. These experiments will be targeted at five non-healthcare worker occupational groups (hair dressers, daycare workers, police officers, food handlers, and housekeeping personnel). The framing postulate of the Prospect Theory and the Elaboration Likelihood Model will serve as the basis of the study [Tversky and Kahneman 1981; Petty and Cacioppo 1986] in which the combined effect of message framing and message expectancy on elaboration likelihood will be assessed. Specifically, participants will be randomly assigned to the conditions of a 2′ (message framing: positive vs. negative) ′ 2 (message expectancy: positive vs. negative) ′ 2 (argument quality: strong vs. stronger) factorial design and given a pretest, brochure with the appropriate test variables, and post test. In addition, the participants will be surveyed for a history of latex glove usage, allergy, latex allergy, or dermatitis in either themselves or their family members to determine if a history of allergy or glove usage predisposes them to be highly involved with the subject of latex allergy. Finally, the effect of the intervention on receiver attitude toward latex allergy and corresponding use of NIOSH recommendations one month following the intervention will be determined. The study will include several phases. First, effective communication variables will be identified in the pretesting phase and incorporated into test brochures. In addition, pre-test and post-test surveys will be pretested. A total of 160 participants will be recruited for the pretesting phase. In the second phase, the pilot test, the effect of message framing and message expectancy on elaboration likelihood will be assessed in a small scale, laboratory study. This pilot test will be conducted with a sample of university students (N = 300) who occasionally to intermittently wear latex gloves. Conducting the first study in the laboratory setting allows for consistent control over external variables during message pretesting, implementation, and testing. The knowledge obtained from this study will be used to improve the versions of the brochure to be used in the last phase, one study for each of the five occupational groups (a total of five studies). The goal of each study will be to determine the effect of message framing and message expectancy manipulations in increasing the receiver's elaboration about latex allergy prevention among five different occupational groups (N = 300 per group or 1,500 total participants). In addition, change in attitude and behavior will be assessed one month after exposure to the brochure. These combined studies will test the use of message framing and contrasts in message expectancy in applied health communication research. Specifically, the studies will assess the effectiveness of these communication variables in influencing attitude, intentions, and behavior concerning the prevention of latex allergy. The results and conclusions drawn from this project will be used to develop a health communication template based on message framing and increased systematic message processing.

Overall, this study will contribute significantly to the knowledge concerning application of the message framing theory, provide NIOSH with specific recommendations for effective health communication, and provide a template for future health interventions. In addition, this study will identify effective methods of communicating health and safety messages to those populations not normally reached by NIOSH.

Based on an average hourly wage of $10.00 among all occupational groups combined, the total cost to respondents is $17,450.

Respondents	Phases	Number of respondents	Number of responses/ respondents	Avg. burden per response (in hours)	Total burden (in hours)
Hairdressers, food service personnel, housekeeping personnel, daycare workers, police officers.	Pretesting Phase I	150	1	.5	75

Respondents	Phases	Number of respondents	Number of responses/ respondents	Avg. burden per response (in hours)	Total burden (in hours)
Hairdressers, food service personnel, housekeeping personnel, daycare workers, police officers.	Pretesting Phase II	10	1	2	20
University students	Pilot Testing Phase	300	1	.5	150
Hairdressers, food service personnel, housekeeping personnel, daycare workers, police officers.	Combined Studies	1,500	2	.5	1,500
Totals		1,960			1,745

Dated: February 2, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3057 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–21]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

The Role of Positive and Negative Emotion in Promoting Hearing Conservation Behaviors Among Coal Miners—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote "safety and health at work for all people through research and prevention." NIOSH investigates and identifies occupational safety and health hazards and conducts a variety of activities, including educational programs with workers, to help prevent work-related illness and injury.

One of the most widespread, but often overlooked, occupational hazards is noise. As a result, hearing loss is the most common occupational disease in the United States today. More than 30 million workers are exposed to hazardous noise levels.

The risk of hearing loss is particularly high in certain occupations. Research shows that more than 90 percent of coal miners will experience moderate to significant hearing loss by the time they reach retirement. This level of hearing loss has a number of negative implications for both the affected individual and others: (1) Impaired communication with family members, friends, and coworkers can result in social isolation; (2) unrelenting tinnitus (ringing in the ears) can significantly lower one's quality of life; (3) a diminished ability to monitor the work environment (including warning signals, etc.) increases the risk of accidents and further injury at the workplace; and, finally, (4) there are economic costs that result from workers' compensation and lower productivity.

New noise standards for the mining environment have recently been issued by the Department of Labor and will go into effect in September 2000. The new rules require that mine operators take necessary action to protect miners' hearing when noise levels reach 85 dBA or more over an eight-hour period with additional actions required at 90 dBA. While the new standard establishes mandatory behaviors, such as the wearing of both ear plug and earmuff-type hearing protectors at noise levels of 105 dBA or more over an eight-hour period, there are also voluntary behaviors associated with the new rules. The wearing of hearing protectors at levels below 90 dBA and getting hearing tests as part of a hearing conservation program are both voluntary on the part of the individual miner.

This study is designed to ascertain factors that can be used to encourage adoption of voluntary behaviors among coal miners. The choice of this subset of miners is based upon research that indicates they experience significantly more hearing loss than metal and nonmetal miners. NIOSH proposes working with the United Mine Workers of America and experts in health communication to test the effectiveness of several innovative approaches to communicating hearing loss risk and promoting self-protective behaviors. Different messages will be sent to four different groups of coal miners, and there will be one control group that receives no message. The researchers will follow up with these groups at two different points in time to assess the relative effectiveness of the messages.

The central purpose of this study is to promote hearing conservation among coal miners and encourage the adoption of the voluntary components of the new noise standard. However, NIOSH believes that the results of this study will help in similar efforts with other worker populations. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent (in hrs.)	Ave. burden per response (in hrs.)	Total burden (in hrs.)
Coal miners in pretest	80	1	30/60	40

Respondents	Number of respondents	Number of responses/respondent (in hrs.)	Ave. burden per response (in hrs.)	Total burden (in hrs.)
Coal miners in study	300	2	30/60	300
Total				340

Dated: February 2, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3058 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–24]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Developing Communication to Reduce Workplace Violence and Assault Against Taxicab Drivers—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote "safety and health at work for all people through research and prevention." In order to carry out this goal effectively and efficiently, NIOSH and the occupational safety and health community implemented the National Occupational Research Agenda (NORA) in 1996. NORA is the first step in an ongoing, synergistic effort by the various institutions of the occupational safety and health community to identify and research the most important workplace safety and health issues. In order to accomplish the NORA objectives in preventing violence and assault in the workplace, NIOSH is conducting health communication research to determine the most effective means of promoting preventive behavior among taxicab drivers, a high risk occupational group. This research is based upon the following NIOSH publications: "Alert: Preventing Homicide in the Workplace" (NIOSH, 1993) and "Violence in the Workplace—Risk Factors and Prevention Strategies" (NIOSH, 1996).

Workplace violence is a significant cause of injury and death in the workplace. It was the second leading cause of death in 1997, accounting for approximately 18% of worker fatalities during that year (BLS, 1998). Approximately 85% of occupational homicides involved robberies, and approximately four-fifths of the homicides were the result of shootings. An increased risk of workplace homicide was clustered within certain occupational areas including sales occupations, protective service occupations, and taxicab drivers. Furthermore, 60% of occupational fatalities within taxicab drivers were due to homicide (BLS, 1998). Although these statistics are significant, a limited amount of information is known concerning the level of worker awareness about the risk of workplace violence. In addition, little is known about the level of worker self-efficacy in regard to recommended preventive measures or the current status of the prevention strategies utilized by both the worker and employer. Therefore, the goal of this study is to identify those communication variables that are most effective in increasing the following in regard to workplace violence prevention: worker awareness, comprehension, and use of recommendations in the workplace.

To achieve this goal, this project will assess the combined effect of message framing (gain or loss) and highly involving messages on the elaboration likelihood of the receiver, and the subsequent attention, intention, and behavior change that result (Maheswaran & Levy, 1990; Smith & Petty, 1996). A study will be conducted in which message framing (gain, loss), issue involvement (high, low), and argument quality (strong, stronger) are varied. First, three phases of Message Pretesting will be done (N = 175) to determine the appropriate version of these communication variables to be used in the studies: (1) Selecting appropriate written versions of communication variables; (2) test several formats of the brochure to determine the most effective graphics, design, and presentation; and (3) pretest the combination of the print and visual variables for clarity and manipulation accuracy. Second, a Pilot Study will be conducted with a sample of taxicab drivers (N >> 300). The Pilot Study will be a small scale study in which participants are randomly assigned to the conditions of a 2 (message framing: gain, loss) ′ 2 (issue involvement: high, low) ′ 2 (argument quality: strong, stronger) factorial design. The effect of each variable on elaboration, attitude, and intentions will be determined through pre- and post-surveys. The knowledge obtained in this Pilot Test will be used to improve the version of the brochure to be used in the main Study. The Study will be conducted with taxicab drivers (N >> 1,500 total) in a major US city. The goal of the Study will be to determine the effect of message framing, issue involvement, and argument quality on the participant's level of elaboration, attitude, and intentions. In addition, a follow-up survey at 1, 3, and 6 months will assess any corresponding behavior change over time.

These combined studies will assess the use of message framing and issue involvement in applied health communication research. Specifically, the studies will assess the effectiveness

of incorporating message framing into health interventions and the importance of promoting issue involvement through occupation-specific messages. At an average wage of $10.00/hour, the total cost to respondents is $22,800.

Respondents	Phase	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Taxicab drivers	Pretesting Phase I	60	1	1	60
Taxicab drivers	Pretesting Phase II	60			60
Taxicab drivers	Pretesting Phase III	15	1	2	30
Taxicab drivers	Pilot Test	300	1	.5	150
Taxicab drivers	Study	1,500	4	.33	1,980
Total					2,280

Dated: February 4, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3061 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–15–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. *National Vital Statistics Report Forms (0920–0213)—Revision—National Center for Health Statistics (NCHS).* The compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 USC 242k. The National Vital Statistics Report (renamed from the Monthly Vital Statistics Report in January 1998) provides counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces following the end of each month. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form are registration officials in each State and Territiory, the District of Columbia, and New York City; in addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities. Earlier OMB approvals of this data collection involved four separate forms, all of which are combined into a single multi-purpose form for this current approval request. The total annual burden hours are 418.

Respondents	Number of respondents	Responses/ respondent	Avg. burden/response (in hrs.)
State and Territory Registration Officials	57	12	0.2
New Mexico County Officials	60	12	0.1

Dated: February 2, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3059 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–14–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Coal Workers' Autopsy Study Consent Release and History Form—(0920–0021)—Extension—National Institute for Occupational Safety and Health (NIOSH)—Under the Federal Coal Mine Health & Safety Act of 1977, PL91–173 (amended the

Federal Coal Mine & Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. The study is a service program to aid surviving relatives in establishing eligibility for black lung compensation. Because a basic reason for the post-mortem exam is research (both epidemiological and clinical), included are a minimum of essential information regarding the deceased miner, his occupational history, and his smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and will be correlated with pathologic changes and x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete form CDC/NIOSH 2.6. In as much as an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report. The total annual burden hours are 62.5.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden of response (in hrs.)
Pathologist:			
Invoice	150	1	5/60
Report	150	1	5/60
Next-of-Kin	150	1	15/60

Dated: February 2, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3060 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00033]

Childhood Lead Poisoning Prevention Programs (CLPPP); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for new State and competing continuation State and local programs to develop and improve Childhood Lead Poisoning Prevention activities which include building Statewide capacity to conduct surveillance of blood lead levels in children. This program addresses the "Healthy People 2000" priority area of Environmental Health.

The purpose of this program is to provide the impetus for the development, implementation, expansion, and evaluation of State and local childhood lead poisoning prevention program activities which include Statewide surveillance capacity to determine areas at high risk for lead exposure. Also, this cooperative agreement is to carry out the core public health functions of Assessment, Policy Development, and Assurance in childhood lead poisoning prevention programs.

Funding for this program will be to:

1. Develop and/or enhance a surveillance system that monitors all blood lead levels.

2. Assure screening of children who are potentially exposed to lead and follow-up care for children who are identified with elevated blood lead levels (BLLs).

3. Assure awareness and action among the general public and affected professionals in relation to preventing childhood lead poisoning.

4. Expand primary prevention of childhood lead poisoning in high-risk areas in collaboration with other government and community-based organizations.

As programs shift emphasis from providing direct screening and follow-up services to the core public health functions, cooperative agreement funds may be used to support and emphasize health department responsibilities to screen high risk children and provide appropriate follow-up services. This includes improving coalitions and partnerships; conducting better and more sophisticated assessments; developing and evaluating policies, program performance, and effectiveness based on established goals and objectives.

B. Eligible Applicants

Applicant eligibility is divided into Part A (New Applicants), Part B (Competing Continuation), and Part C (Supplemental Funding for Alternative Surveillance Assessment/Screening Recommendation Evaluation) defined in the following section. In the future, CDC plans to shift its program emphasis toward State funding for childhood lead poisoning prevention activities. However, the top five metropolitan statistical areas (SMSAs)/largest cities will be eligible for direct funding for childhood lead poisoning prevention activities indefinitely. They are New York City, Los Angeles, Chicago, Philadelphia, and Houston.

Part A: Eligible applicants are State health departments or other State health agencies or departments not currently funded by CDC and any eligible SMSA not currently receiving direct funding from CDC for childhood lead poisoning prevention activities. Also eligible are health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all federally-recognized Indian tribal governments. Please note: Local health departments are not eligible to apply for cooperative agreement funding under Part A of this program announcement.

Applicants encouraged to apply under Part A are: Alaska; Arkansas; Georgia; Hawaii; Idaho; Kansas; Kentucky; Mississippi; Nevada; North Dakota; Oklahoma; South Dakota; Tennessee; Texas and Wyoming.

Part B: Eligible applicants are those currently funded by the Centers for Disease Control and Prevention whose project period will expire June 30, 2000. These applicants are: Alabama; Arizona; California; Delaware; Detroit, MI; Houston, TX; Indiana; Iowa; Maine; Marion County, IN; Michigan; New Hampshire; Pinellas County, FL; Salt

Lake City, UT; Virginia and Westchester, NY. In the future, CDC plans to shift its program emphasis towards State and large metropolitan statistical areas (SMSAs) which includes Houston, TX funding for childhood lead poisoning prevention activities. Consequently, local applicants eligible for Part B will only receive funding for a two-year project period based on satisfactory program performance. These are Detroit, MI; Marion County, IN; Pinellas County, FL; Salt Lake City, UT; and Westchester, NY.

Part C: Eligible applicants are those State applicants that apply under Part B. Funding under Part C will only be considered if the Part B application: (1) Is successful and chosen for funding and (2) has met the program requirement of submitting data to CDC's national surveillance database.

Additional information for all State applicants. If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided (for example, the State environmental health agency).

C. Availability of Funds

Part A: New Applicants

Up to $2,500,000 will be available in FY 2000 to fund up to 8 new applicants. CDC anticipates that awards for the first budget year will range from $75,000 to $800,000.

Part B: Competing Continuations

Up to $8,000,000 will be available in FY 2000 to fund up to 17 competing continuation applicants. CDC anticipates that awards for the first budget year will range from $75,000 to $1,500,000.

Part C: Supplemental Studies

Up to $400,000 will be awarded in FY 2000 to fund up to 4 assessment/evaluation studies with a three-year project period. These funds will be awarded to support the development of alternative surveillance assessments and/or to conduct evaluation of the impact of lead screening recommendations. Awards are expected to range from $70,000 to $100,000, with the average award being approximately $85,000. Funds will be awarded for assessment/evaluation studies that address one of the following:

1. Alternative Surveillance Assessment—Assessment of lead exposure in a jurisdictional population or sub-population using an approach to surveillance that differs from the Statewide CBLS system described in this announcement.

2. Screening Recommendation Evaluation—Evaluation of the impact of lead screening recommendations on screening for high-risk children.

Funding for State applicants: To determine the type of program activities and the associated level of funding for an individual State applicant for Part A or Part B, please refer to the table below. These are suggested funding guidelines and should not be regarded as absolute funding limits. Addendum 2 in the application package provides an explanation of the factors used to develop categorical funding recommendations. Addendum 3 provides an explanation of the program activities required for each funding category.

Suggested Funding Categories Based on Projected Level of Effort Required To Provide Prevention and Surveillance Activies to a State Population

Alabama—2
Alaska—3
Arizona—3
Arkansas—2
California*—1
Colorado—3
Connecticut—2
Delaware—3
Florida*—3
Georgia—2
Hawaii—3
Idaho—3
Illinois—1
Indiana*—3
Iowa—2
Kansas—2
Kentucky*—3
Louisiana—2
Maine—3
Maryland—2
Massasschusette—2
Michigan*—2
Minnesota—2
Mississippi—2
Missouri—2
Montana—3
Nebraska—2
Nevada—3
N. Hampshire—3
New Jersey—2
New Mexico—3
New York*—2
N. Carolina—2
North Dakota—3
Ohio—1
Oklahoma—2
Oregon—3
Pennsylvania—1
Rhode Island—2
S. Carolina—2
South Dakota—2
Tennessee—2
Texas*—1
Utah*—3
Vermont—3
Virginia—2
Washington—2
West Virginia—2
Wisconsin—2
Wyoming—3

*Projected level of effort adjusted to account for currently funded locales.

Funding State Applicants—Part A or Part B: Determine your funding category (Category 1, 2, or 3) according to the table below. The range and average of awards for each funding category follows:

Category 1: $800,000–$1,500,000, average award $1,000,000
Category 2: $250,000–$800,000, average award $520,000
Category 3: $75,000–$250,000, average award $150,000

Awards for Local Applicants (under Part B only): The suggested range of awards for local applicants is $250,000 to $450,000.

Additional Information on Funding for all Applicants for Part A, Part B, and Part C New awards are expected to begin on or about July 1, 2000, and are made for 12-month budget periods within project periods not to exceed 2-years for local programs or 3-years for State programs. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. Awards cannot supplant existing funding for CLPP or Supplemental Funding Initiatives. Funds should be used to enhance the level of expenditures from State, local, and other funding sources.

Note: Funds may not be expended for medical care and treatment or for environmental remediation of sources of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out.

Not more than 10 percent (exclusive of Direct Assistance) of any cooperative agreement or contract through the cooperative agreement may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

D. Program Requirements

Special Requirement regarding Medicaid provider status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by Sec. 303 of the "Preventive Health Amendments of 1992" (Public Law 102–531), applicants AND current grantees must meet the

following requirements: For CLPP program services which are Medicaid-reimbursable in the applicant's State:

Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.

Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers. An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

In order to satisfy this program requirement, please provide a copy of a Medicaid provider certificate or Statement as proof that you meet this requirement. Failure to include this information would result in your application being returned. Please place this information immediately behind the budget and budget justification pages.

Cooperative Activities

Part A and Part B: New and Competing Continuations

To achieve the purpose of this cooperative agreement program, the recipient will be responsible for the activities listed under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Establish, maintain, or enhance a Statewide surveillance system in accordance with CDC guidance. For local applicants (under Part B), enhance a data management system that links with the State's surveillance system or develop an automated data management system to collect and maintain laboratory data on the results of blood lead analyses and data on follow-up care for children with elevated BLLs. State recipients should ensure receipt of data from local programs. Local recipients should transfer relevant data to the appropriate State entity in a timely manner for annual submission to CDC.

b. Manage, analyze and interpret individual State surveillance data, and present and disseminate trends and other important public health findings.

c. Develop, implement and evaluate a Statewide/jurisdiction-wide childhood blood lead screening plan consistent with CDC guidance provided in "Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials". For local applicants, participate in the Statewide planning process. Make screening recommendations and appropriate local screening strategies available and known to health care providers.

d. Assure appropriate follow-up care is provided for children identified with elevated blood lead levels.

e. Establish effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (*e.g.*, housing authorities; environmental agencies; maternal and child health programs; State Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 330(i) of the PHS Act; State and local epidemiology programs; State and local housing rehabilitation programs; schools of public health and medical schools; and environmental interest groups).

f. For State Programs, provide managerial, technical, analytical, and program evaluation assistance to local agencies and organizations in developing or strengthening their CLPP programs activities.

2. CDC Activities

a. Provide technical, and scientific assistance and consultation on program development, implementation and operational issues.

b. Provide technical assistance and scientific consultation regarding the development and implementation of all surveillance activities including data collection methods and analysis of data.

c. Assist with data analysis and interpretation of individual State surveillance data and release of national reports. Reports will include analysis of national aggregate data as well as State-specific data.

d. Assist cooperative agreement recipients with communication and coordination among Federal agencies, and other public and private agencies and organizations.

e. Conduct ongoing assessment of program activities to ensure the use of effective and efficient implementation strategies.

Part C: Supplemental Studies

To achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement a study protocol to include the following: methodology, sample selection, field operation, and statistical analysis. Applicants must provide a means of assuring that the results of the study will be published.

b. Revise, refine, and carry out the proposed methodology for conducting Supplemental Funding Studies.

c. Monitor and evaluate all aspects of the assessment activities.

d. Conduct and evaluate public health programs and/or have access to professionals who are knowledgeable in conducting such activities.

2. CDC Activities

a. Provide technical and scientific consultation on activities related to overall program requirements of supplemental funding activities.

b. Provide technical assistance to program manager and/or principal investigator regarding revision, refinement, and implementation of study design and proposed methodology for conducting supplemental funding activities.

c. Assist program manager and/or principal investigator with data interpretation and analysis issues.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan:

Applications must be developed in accordance with PHS Form 5161–1.

Part B applicants also competing for Part C funds must submit separate applications.

Application pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two copies of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, printed on one side only, with unreduced font (10 or 12 point font only) on 8½″ by 11″ paper, and at least 1″ margins and heading and footers. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, project title, organization, name and address, project director, telephone number, facsimile number, and e-mail address.

The main body of the CLPP program application (Parts A or B) must include the following: budget/budget justification; Medicaid certification; progress report (Part B applicants only); understanding the problem; surveillance/data-management activities; Statewide/jurisdiction-wide planning and collaboration; core public health functions; goals and objectives; program management and staffing; and program evaluation.

The main body of the supplemental funding project application (Part C) must include the following: study protocol, project personnel, and project management.

Each application should not exceed 75 pages. The abstract, budget narrative, and budget justification pages are not included in the 75 page limit. Supplemental information should be placed in appendices and is not to exceed 25 pages.

Part B applicants must submit a progress report no longer than 10 pages in their competing continuation application. This report should be placed immediately after the budget and budget justification.

Provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting cooperative agreement supported positions must provide assurances that such positions will be authorized to be filled by the applicant's personnel system.

F. Submission and Deadline

Submit the original and two copies of the PHS 5161–1 (OMB Number 0937–0189) on or before April 12, 1999. Forms are in the application kit.

Submit the application to: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 00033, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date, or (2) sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

The review of applications will be conducted by an objective review panel as they relate to the applicant's response to either Part A, Part B, or Part C. The applications will be evaluated according to the following criteria:

Part A: New Applicants

1. Understanding of the Problem (15 points)

The extent to which the applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators, including a description of the Medicaid population.

2. Surveillance Activities (20 points)

The applicant's ability to develop a childhood blood lead surveillance system that includes; (a) a flow chart that describes data transfer, (b) a mechanism for tracking lead screening services to children, especially Medicaid children, and (c) a mechanism for reporting data annually to the CDC's national surveillance database. The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which the proposed time table for accomplishing each activity and methods for evaluating each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report Blood Lead Levels (BLLs), including ability to identify and assure reporting from private laboratories which perform lead testing.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated on a regular basis (*i.e.*, newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Plans to convert paper-based components of the system to electronic data manipulation.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

3. Statewide Planning and Collaboration (20 points)

The applicant's ability to develop Statewide screening recommendations with appropriate local strategies. The following elements will be specifically evaluated:

a. The proposed approach to developing and carrying out an inclusive Statewide screening plan as outlined in "Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials".

b. The extent to which the applicant plans to utilize surveillance and program data to produce a Statewide screening recommendation, with specific attention given to the Medicaid population.

c. The ability of the applicant to involve collaborators in the development of a screening plan and implementation of strategies to strengthen childhood lead poisoning prevention activities.

d. The applicant's demonstrated ability to collaborate with principal partners, including managed-care organizations, State Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real estate, and property-owner interests, must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships.

4. Capacity To Carry Out Public Health Core Functions (10 points)

The applicant's ability to describe the approach and activities necessary to achieve a balance among health department roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all necessary components of a comprehensive CLPP activities within their respective categories.

5. Goals and Objectives (15 points)

The extent to which the applicant's goals and objectives relate to the CLPP activities in their respective categories. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods, a timetable and program staff responsible for accomplishment of each objective, and the evaluation of each proposed objective.

6. Project Management and Staffing (10 points)

The extent to which the applicant has documented the skills and ability to develop and carry out a comprehensive

CLLP program. Specifically, the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and assure that requested positions have been or will be approved by applicant's personnel system.

b. Describe the plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (10 points)

The extent to which the applicant proposes to measure the overall impact of health department CLPP activities. Specific criteria should include:

a. The plan for evaluating the impact or outcome of CLPP activities, including evaluation design, methods, and activities.

b. Description of how the project will assess changes in public policy and measure the effectiveness of collaborative activities.

c. Progress made in childhood lead poisoning prevention which resulted from planned health department strategies.

8. Budget justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part B: Competing Continuations

1. Understanding of the Problem (15 points)

The extent to which the applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators, including a description of the Medicaid population.

2. Surveillance Activity (20 points)

For State Applicants: The applicant's ability to expand its childhood blood lead surveillance system that includes tracking lead screening for Medicaid children, evaluating the existing system, and reporting data to the CDC's national surveillance database. The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which the proposed time table for accomplishing each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report BLLs, including ability to identify and assure reporting from private laboratories which perform lead testing.

b. How data are collected and managed.

c. How quality of data and completeness of reporting are assured.

d. How and when data are analyzed.

e. How summary data are reported and disseminated on a regular basis (*i.e.*, newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Process used to convert paper-based components of the system to electronic data.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

For local applicants (Part B only): The applicant's ability to expand their data management system, including the approach to participating in the State CBLS, if applicable. The clarity, feasibility, and scientific soundness of the approach to data management. Also, the extent to which the proposed schedule for accomplishing each activity and method for evaluating each activity are clearly defined and appropriate. The following elements will be specifically evaluated:

a. How laboratories report Blood Lead Levels (BLL), including ability to identify and assure reporting from private laboratories which perform lead testing.

b. How data are collected and managed.

c. How quality of data and completeness of reporting are assured.

d. How and when data are analyzed.

e. How summary data are reported and disseminated on a regular basis (*i.e.*, newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Process used to convert paper-based components of the system to electronic data.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

3. Statewide/Jurisdiction-wide Planning and Collaboration (20 points)

The applicant's ability to develop Statewide/jurisdiction-wide screening recommendations with appropriate local strategies. The following elements will be specifically evaluated:

a. The approach to developing and carrying out an inclusive State-or jurisdiction-wide screening plan as outlined in "Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials".

b. The extent to which the applicant utilized surveillance and program data to produce Statewide/jurisdiction-wide screening recommendations and target the Medicaid population.

c. Description of how collaborations facilitated the development of a screening plan and strengthened childhood lead poisoning prevention strategies.

d. Evidence of collaboration with principal partners, including managed-care organizations, State Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests. These collaborations must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships.

Note: For applicants under Part B, describe progress in developing and implementing the screening plan based upon each of the elements listed above.

4. Capacity to Carry Out Public-Health Core Functions (10 points)

The ability to describe the approach and activities taken to achieve a balance among health-department roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all CLPP activities within their respective categories (for example, Category 3 requires screening plans, surveillance systems, assure follow-up care, and evaluation).

5. Goals and Objectives (10 points)

The extent to which the applicant's goals and objectives relate to the CLPP activities in their respective categories under which they applied. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods and a timetable and program staff responsible for accomplishment of each objective.

6. Project Management and Staffing (10 points)

The extent to which the applicant has the skills and ability to develop and carry out a comprehensive CLLP program. Specifically the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and assure that requested positions have been or will be approved by the applicant's personnel system.

b. Describe the plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (10 points)

The extent to which the applicant measures the overall impact of health department CLPP activities. Specific criteria should include:

a. Description of the progress made to evaluate the impact and outcome of collective CLPP activities, including the evaluation design, methods, and tasks.

b. Description of the changes in the effectiveness of collaborative activities.

c. Progress made in childhood lead poisoning prevention which resulted from planned health department strategies.

8. Budget Justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part C: Supplemental Funding—Factors To Be Considered

1. Study Protocol (45 points)

The applicant's ability to develop a scientifically sound protocol (including adequate sample size with power calculations), quality, feasibility, consistency with project goals, and soundness of the evaluation plan (which should provide sufficient detail regarding the way the protocol will be implemented). The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) the proposed plan to include of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a Statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a Statement as to whether the plans for recruitment and outreach for study participants includes establishing partnerships with community-based agencies and organizations. Benefits of the partnerships should be described.

2. Project Personnel (20 points)

The extent to which personnel involved in this project are qualified, including experience in conducting relevant studies. In addition, the applicant's ability to commit appropriate staff time needed to carry out the study.

3. Project Management (35 points)

The applicant's ability to implement and monitor the proposed study to include specific, attainable, and realistic goals and objectives, and evaluation plan.

4. Budget Justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Human Subjects (not scored)

The extent to which the applicant complies with the Department of Health and Human Services regulations (45 CFR Part 46) on the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Quarterly progress reports, which are required of all grantees. The quarterly report narrative should not exceed 25 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each quarter.

2. Calendar year surveillance data and a written surveillance summary report must be submitted annually to CDC in the approved OMB format to be disseminated to State and local public health officials and congressional personnel. Data must be submitted to CDC by March 31st in the required format for analysis.

3. Financial Status Reports, are due within 90 days of the end of the budget period.

4. Final financial reports and performance reports are due within 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Note: Data collection initiated under this cooperative agreement program has been approved by the Office of Management and Budget under OMB number (0920–0337), "National Childhood Blood Lead Surveillance System", Expiration Date: March 31, 2001.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 in the application package.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act [42 U.S.C. 241(a), 247b–1, and 247b–3], as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b. The Catalog of Federal Domestic Assistance number is 93.197.

J. Pre-Application Workshop for New and Competing Continuation Applicants

In addition, for interested applicants, a telephone conference call for pre-application technical assistance will be held on Wednesday, February 16, 2000, from 1:30 p.m. to 3:30 p.m, Eastern Standard Time. The bridge number for the conference call is 1–800–311–3437, and the pass code is 350892. For further information about all workshops, please contact Claudette Grant-Joseph at 404–639–2510.

K. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov. Please refer to program announcement number 00033 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name, address, and phone number and will need to refer to Announcement 00033. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2718, Internet address mij3.@cdc.gov

For programmatic technical assistance, contact: Claudette A. Grant-Joseph, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–25, Atlanta, GA 30333, telephone (404) 639–2510, Internet address cag4@cdc.gov

Dated: February 4, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3062 Filed 2–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2250]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 4, 1999 (64 FR 60212), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0336. The approval expires on January 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 3, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–3013 Filed 2–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0407]

Agency Information Collection Activities; Announcement of OMB Approval; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Reclassification Petitions for Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1999 (64 FR 69270), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0138. The approval expires on January 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 3, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–3015 Filed 2–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science (formerly the Generic Drugs Advisory Committee).

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 9, 2000, 8:30 a.m. to 5:30 p.m.

Location: Center for Drug Evaluation and Research conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, 301–827–7001, e-mail: TOPPERK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee meeting will discuss collaborative approaches to scientific research issues of common interest to the pharmaceutical industry, universities, the public, and FDA. Specific areas of focus will be in the nonclinical studies areas of: (1) Interspecies biomarkers of toxicity and (2) noninvasive imaging.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 25, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 25, 2000, and

submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 2, 2000.

Linda A. Suydam,

Senior Associate Commissioner for Policy.

[FR Doc. 00–3014 Filed 2–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–566]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare, Managed Care Disenrollment Form;

Form No.: HCFA–566 (OMB# 0938–0507);

Use: This form is used to disenroll from managed care plans. This is to be used in Social Security Field Offices to allow Medicare beneficiaries to disenroll from a managed care plan.;

Frequency: On occasion;

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, and Federal Government;

Number of Respondents: 85,000;

Total Annual Responses: 85,000;

Total Annual Hours: 2,805.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 3, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–3105 Filed 2–9–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

The Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services (0930–0093, extension, no change)—The Census, which is conducted by SAMHSA's Center for Mental Health Services (CMHS), is a complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within CMHS for assessing de-institutionalization practices of State and county mental hospitals. The annual burden estimate is shown in the table below.

	Number of respondents	Responses/ respondent	Burden/ response (hrs.)	Annual burden (hrs.)
State Statisticians and Superintendents of State Mental Hospitals	52	1	2	104

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 3, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–3063 Filed 2–9–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Mandatory Guidelines for Federal Workplace Drug Testing Programs (0930–0158, revision)—SAMHSA will request OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908) dated June 9, 1994, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP). The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The Federal Drug Testing Custody and Control Form is being revised. Major changes include eliminating the split specimen copy, simplifying the chain of custody requirements, revising the outcomes for the laboratory test results, revising the collection instructions, and ensuring that the form follows the sequence of events. Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures to allow inspectors to become familiar with a laboratory's procedures before arriving at the laboratory.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements is 1,790,664 Hours, as shown below:

Form/respondent	Burden/response (hrs.)	Number of responses	Total annual burden (hrs.)
Custody and Control Form:			
Donor	.083	7,093,000	588,719
Collector	.067	7,093,000	475,231
Laboratory	.050	7,093,000	354,650
Medical Review Officer	.050	7,093,000	354,650
Laboratory Application	3.000	2	6
Laboratory Inspection Checklist	3.000	136	405
Laboratory Recordkeeping	250.000	55	17,000
Total			1,790,664

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 3, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–3064 Filed 2–9–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Center for Mental Health Services; Center for Substance Abuse Prevention; Center for Substance Abuse Treatment; Substance Abuse and Mental Health Services Administration, HHS; Notice of Technical Assistance Workshops

Notice is hereby given of the following workshops for the provision of technical assistance to potential applicants for SAMHSA grants.

The Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT), are offering a series of three, two-day regional Technical Assistance Workshops for prospective applicants. These workshops will be conducted jointly by the three SAMHSA Centers to provide support to prospective applicants in preparing their applications in response to published grant announcements.

It is anticipated that several SAMHSA grant announcements will be featured at the workshop, including:

Center for Substance Abuse Prevention

Community-Initiated Prevention Interventions

Cooperative Agreements for Parenting and Family Strengthening Prevention Interventions

The Center for Application of Prevention Technologies
State Incentive Grants

Center for Substance Abuse Treatment

Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need
Community Action Grants for Service Systems Change
Grants for the Evaluation of Treatment Models for Persons with Co-occurring Substance Abuse and Mental Health Disorders
Comprehensive Community Treatment Program for the Development of New and Useful Knowledge
Targeted Capacity Expansion —HIV/AIDS

Center for Mental Health Services

Community Action Grants for Service Systems Change
Violence Prevention/Resilience Development School and Community Action Grants

These GFAs can be found at the SAMHSA Web Site at www.SAMHSA.gov following publication in the **Federal Register**. Potential participants are strongly encouraged to check these resources and be familiar with the GFAs in which they are interested prior to attending the workshop.

The Technical Assistance Workshops will be held at the following locations: Workshop I—March 2 & 3, Ritz Carlton Hotel Atlanta, GA, 404–659–0400 or 800–241–3333; Workshop II—March 7 & 8, Westin Hotel, Kansas City, MO, 816–474–4400 or 800–228–3000; and Workshop III—March 9 & 10, The Wyndham Emerald, San Diego, CA, 619–239–4500.

Registration and check-in at each site will be at 7:30 a.m.; workshop hours on the first day are 8:30 a.m.–5:00 p.m. On the second day, the grant writing session will take place from 8:30 a.m.–3:30 p.m.

Preliminary Agenda Highlights for the TA Workshops include: (1) Review of SAMHSA programs and priorities; (2) Provision of related resource materials; (3) Technical/practical aspects of the grants application process including application requirements, improving applications, instruction in completing required forms, submission, review, and award procedures; (4) Separate breakout sessions for discussion of specific grant announcements; and (5) Opportunity for questions and answers. Plans are underway to include a brief overview at each of the workshops on the Health Resources and Services Administration and the Centers for Disease Control and Prevention programs. On the second day, there will be a session designed to provide further assistance with grant writing and application preparation.

TA Workshop Arrangements and Contacts

There is no registration fee for the workshops. Preregistration is strongly encouraged.

Registrants will be responsible for costs associated with their own travel, meals, and lodging. Workshop confirmation will be faxed. For logistical assistance please contact Lisa Wilder by phone at (301) 984–1471, x–361 or by fax at (301) 984–4416. For information regarding the content of the TA Workshops, please contact Ms. C. Danielle Johnson at (301) 443–1249. SAMHSA suggests that the attendees be those persons having the responsibility for conceptualizing and writing the application.

Hotel Information

Participants are responsible for making their own hotel reservations. When calling the hotel, at the numbers listed above, reference the SAMHSA Grantee Workshop. Registrants are urged to make their reservations as soon as possible.

Dated: February 3, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–3012 Filed 2–9–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4562–N–01]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Public comments on the subject proposal are being solicited.

DATES: *Comments Due Date: April 10, 2000.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 7th Street, Washington, DC 20410; telephone (202) 708–1537 (this is not a toll-free number). Copies of the proposed forms and other available documents to be submitted to OMB may be obtained from Ms. Karadbil.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Action of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriated technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Alaska Native/Native Hawaiian Institutions Assisting Communities program (AN/NHIAC).

Description of the need for the information and proposed use: The information is being collected to select grantees in this statutorily-created competitive grant program. The information is also being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

Members of the affected public: Alaska Native/Native Hawaiian institutions of higher education undertaking community development activities: 18 applicants and 6 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be

submitted once. Information pursuant to grantee monitoring requirements will be semi-annually and at the completion of the grant.

The following chart details the respondent burden on an annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	18	18	80	1,440
Semi-annual Reports	6	12	16	192
Final Reports	6	6	16	96
Recordkeeping	6	6	16	96
Total				1,824

Status of proposed information collection: OMB approved an emergency paperwork clearance for this information collection and assigned it OMB Control No. 2528–0206, expiration date March 31, 2000.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 3, 2000.

Lawrence L. Thompson,

Deputy Assistant for Policy Development.

[FR Doc. 00–3139 Filed 2–9–00; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4564–N–01]

Notice of Proposed Information Collection: Notice of Funding Availability (NOFA) for Research To Improve the Evaluation and Control of Residential Lead-Based Paint Hazards

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Notice of Funding Availability (NOFA) for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Eugene A. Pinzer, (202) 755–1785 ext. 120 (this is not a toll-free number) for available documents regarding this proposal.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability (NOFA) for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards.

OMB Control Number: 2539–0010.

Need for the Information and Proposed Use: This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately $1,500,000 for grants for Lead-Based Paint Hazard Research. Grants are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, Section 1011(g) and other legislation.

Results from this research will be used to update the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. It is anticipated that this targeted research will also increase both the accuracy of residential lead hazard evaluation and the effectiveness of residential lead hazard reduction interventions, while improving the cost-effectiveness of the entire process. This research should contribute to an eventual reduction in the national prevalence of childhood lead poisoning.

Agency Form Numbers: None.

Members of Affected Public: Potential applicants include academic and not-for profit institutions located in the U.S., State and local governments, and for-profit firms.

Total Burden Estimate (first year):

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	25	1	103	2,575
Award of Grant	5	1	25	125
Total Estimated Burden Hours				2,700

Status of the Proposed Information Collection: This is a renewal of an existing approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is amended.

Dated: February 2, 2000.

David E. Jacobs,

Director, Office of Lead Hazard Control.

FR Doc. 00–3410 Filed 2–9–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–01]

Submission for OMB Review—HUD Conditions and Appraisal Report, Fee or Roster Designation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 13, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0538) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HUD Conditions and Appraisal Report, Fee or Roster Designation.

OMB Approval Number: 2502–0538.

Form Numbers: HUD 92563, 92564–VC, 92564–HS, 92564–CN, Fannie May Forms 1004 and 1004B.

Description of the Need for the Information and its Proposed Use: The information collection is essential so that HUD can ensure that appraisals of HUD-insured single family properties are conducted by individuals who are qualified, trained and knowledgeable in the real estate appraisal field and that the appraisals of HUD-insured single family properties or prospective insured properties are thorough and independent.

Respondents: Individuals or households, Not-for-Profit Institutions, State, Local or Tribal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
VC Forms	15,000		00		.41		502,500

Total Estimated Burden Hours: 502,500.

Status: Reinstatement, with change.

Contact: Maynard Curry, HUD (202) 708–2700.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 3, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–3138 Filed 2–9–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–022015

Applicant: The Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import and export one captive-born male cheetah (*Acinonyx jubatus*) from and to the Toronto Zoo, Toronto, Ontario, Canada, for the purpose of enhancement of the survival of the species through propagation.

PRT–022132

Applicant: Triple S Game Farm, Edmond, OK

The applicant requests a permit to import one captive-hatched male Cabot's tragopan (*Tragopan caboti*) from Glen Howe, Ontario, Canada, for the purpose of enhancement of the survival of the species through propagation.

PRT–022370

Applicant: International Center for Gibbons Studies, Santa Clarita, CA

The applicant requests a permit to import one captive-born female Java gibbon (*Hylobates moloch*) from the Perth Zoo, Perth, Australia, for the purpose of enhancement of the survival of the species through propagation.

PRT–022426

Applicant: Zoological Society of Cincinnati, Cincinnati, OH

The applicant requests a permit to export semen samples collected from one captive-bred Sumatram orangutan (*Pongo oygmaeus abelii*) to the Singapore Zoo, for the purpose of enhancement of the survival of the species through scientific research and propagation.

PRT–022092

Applicant: University of Wisconsin Zoological Museum, Madison, WI

The applicant requests a permit to re-export the salvaged skeleton of a brown pelican (*Pelecanus occidentalis*) to the Catholic University, Quito, Ecuador, for the purpose of enhancement of the survival of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–022027

Applicant: Horst J. Baier, Miami, Fl

The applicant requests a permit to import a sport-hunted polar bear (*Ursus maritimus*) taken in March 1999 from the Beaufort Sea-Poulatuk polar bear population, Northwest Territories, Canada, for personal use.

Written data, comments or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 4, 2000.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–3081 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1150–JB; 6636]

Arizona: Availability of the Draft Sonoran Pronghorn Forage Enhancement Project Environmental Assessment (EA), Yuma and Phoenix Field Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft Sonoran Pronghorn Forage Enhancement Project Environmental Assessment (EA), Yuma and Phoenix Field Offices.

SUMMARY: The draft Sonoran Pronghorn Forage Enhancement Project Environmental Assessment (EA) evaluates the environmental impacts of a proposed project to improve habitat for the endangered Sonoran pronghorn on the Barry M. Goldwater Air Force Range. The Sonoran pronghorn was listed as an endangered subspecies in 1967. Since that time, numbers of the animal in the United States have been estimated to fluctuate between 100 and 400 animals. The population appears to be limited by low recruitment of fawns into the population. Most fawns die each year in late June and early July when the availability of green forage decreases. The proposed forage enhancement project would provide forage for pronghorn on up to 14 plots. The plots would provide native forage for pronghorn and a source of free water to aid in digestion. The plots would not be permanently established and are not meant to interfere with the normal seasonal movements of pronghorn. The project would be jointly carried out by the Arizona Game and Fish Department, Luke Air Force Base, Marine Corps Air Station, Yuma, and the Bureau of Land Management.

DATES: Comments on the draft Environmental Assessment will be accepted through March 24, 2000.

ADDRESSES: Copies of the Environmental Assessment are available upon request to: Field Manager, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona 85365. There are also copies available for review at that location and at the Yuma County Library, 350 South Third Avenue, Yuma, Arizona, 85364.

FOR FURTHER INFORMATION CONTACT: Wildlife Biologist Susanna Henry, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona, 85365, telephone (520) 317–3211.

Dated: January 31, 2000.

Gail Acheson,

Field Manager.

[FR Doc. 00–3106 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–00–1020–XQ]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene at 9 a.m., Wednesday, March 1, 2000, at the Butte Field Office, 106 North Parkmont, Butte, Montana. Issues will include the statewide weed management steering committee, the Elkhorns Westslope Cutthroat Restoration Plan, an update on the Montana/Dakotas Off-Highway Vehicle environmental impact statement, and sage grouse habitat management.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Acting Butte Field Manager Tim Bozorth or Jean Nelson-Dean at the above address or telephone number.

Dated: January 28, 2000.

Tim Bozorth,

Acting Field Manager.

[FR Doc. 00–3107 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–ON–P–55

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–1020–XU: GPO–0108]

Notice of Meeting of John Day/Snake Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Meeting of John Day/Snake Resource Advisory Council: Pendleton, Oregon; March 30 & 31, 2000.

SUMMARY: A meeting of the John Day/Snake Resource Advisory Council will be held on March 30, 2000 from 8:00 a.m. to 5:00 p.m. and on March 31, 2000 from 7:30 a.m. to 3:00 p.m. at the Red Lion (formerly Doubletree) Inn, 304 SE Nye Avenue, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 10:00 a.m. on March 31, 2000. Topics to be discussed by the council will include: John Day River Plan update; Social Circle Map; Hells Canyon Subgroup update; ICBEMP update; status of roadless area review, range program status report for BLM & Forest Service offices; T&E presentation on listing process of lynx, wolf and sage grouse; discuss the need for or benefits of a future joint meeting of the three Oregon/Washington councils; and a 15 minute round table for general issues.

FOR FURTHER INFORMATION CONTACT: Juan Palma, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Juan Palma,

District Manager.

[FR Doc. 00–3108 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service

ACTION: Native American Graves Protection and Repatriation Review Committee; Notice of Nomination Solicitation

SUMMARY: The Native American Graves Protection and Repatriation Review Committee [P.L. 101-601] became law on November 16, 1990. Section 8 of the Act establishes a review committee to monitor implementation of the statute, facilitate the resolution of disputes, consult with the Secretary of the Interior in the development of regulations, and report to Congress on the status of implementation. The National Park Service is soliciting nominations for two members on this review committee.

DATES: Nominations should be received by June 19, 2000.

ADDRESSES: Nominations should be sent to the Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW- 350 NC, Washington, DC 20240. Nominations should include a brief biography with home and business addresses and telephone number of each nominated individual.

FOR FURTHER INFORMATION CONTACT: Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW- 350 NC, Washington, DC 20240; telephone 202/343-3387. A copy of the charter for this review committee is available upon request.

SUPPLEMENTARY INFORMATION: Section 8 (b) of the Act stipulates that the review committee is composed of seven members appointed by the Secretary of the Interior as follows:

a. Three members appointed from nominations by Indian tribes, Native Hawaiian organizations, and traditional religious leaders, with at least two such persons being traditional religious leaders. The term traditional religious leader means:

1. a person who is recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe; or

2. a person who has or is exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe's or organization's cultural, ceremonial, or religious practices.

b. Three members appointed from nominations submitted by national museum organizations and scientific organizations; and

c. One member appointed from a list of persons developed and consented to by all of the other members.

The Secretary of the Interior will appoint one member from nominations received from Indian tribes and Native Hawaiian organizations. This particular appointee is not required to be a traditional religious leader.

The Secretary of the Interior will appoint one member from nominations received from national museum organizations and scientific organizations. The Secretary of the Interior may not appoint Federal officers or employees to the review committee.

Dated: February 2, 2000,

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–3052 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Going-to-the-Sun Road Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of Going-to-the-Sun Road Advisory Committee.

SUMMARY: This notice announces a scheduled meeting of the Going-to-the-Sun Road Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Tuesday, February 29, 2000 (8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.); Wednesday, March 1, 2000 (8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.); and Thursday, March 2, 2000 (8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.)

MEETING LOCATION: Cavanaughs at Kalispell Center, 20 N. Main Street, Kalispell, Montana 59901, 406–752–6660.

AGENDA: On February 29 National Park Service Regional Director Karen Wade will address the Committee. The rest of the morning will focus on the Committee's purpose and related organizational and procedural matters and desired outcomes. The second two days will be devoted to the Going-to-the-Sun Road including the legislated engineering study and economic analysis based on the desired outcomes discussed the previous day. Project scope, schedule, and responsibilities will be part of these discussions.

The Committee may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Committee meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Committee a written statement concerning matters to be discussed. The Committee may also permit attendees to address the Committee, but may restrict the length of the presentations, as necessary to allow the Committee to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Dayna Hudson, Office of the Superintendent, Glacier National Park, P.O. Box 128, West Glacier, MT 59936 (telephone 406–888–7972).

Draft minutes of the meeting will be available for public information 30 days after the meeting in the Project Manager's Office, Park Headquarters, Glacier National Park, West Glacier, MT.

Dated: February 2, 2000.

Michael D. Snyder,

Acting, Director Intermountain Region.

[FR Doc. 00–2884 Filed 2–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Review Committee will be held on April 2, 3, and 4, 2000, in Juneau, Alaska.

The committee will meet at the Centennial Hall Convention Center; telephone: 907/586–5283, fax: 907/586–1135, located at 101 Egan Drive, Juneau, Alaska. Meetings will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

The agenda for this meeting will include: recommendations for disposition of culturally unidentifiable human remains, 1999 Report to Congress, discussion of Federal agency compliance, and implementation of the statute in Alaska.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Persons wishing to make a presentation to the committee should submit a request to do so by March 3, 2000. Please submit a written abstract of your presentation and your contact information. Any member of the public may also file a written statement for consideration by the committee by March 13, 2000. Both written requests and statements should be addressed to the committee in care of the Assistant Director, Cultural Resources Stewardship and Partnerships.

A block of lodging rooms has been set aside at the Westmark Baranof (800/764–0017) and the Goldbelt Hotel (888/478–6909) at a significantly reduced rate. Reservations must be booked with these hotels by March 4, 2000, to guarantee the reduced rate. Please reference the National Park Service and mention that you are attending the NAGPRA Review Committee Meeting.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C St. NW—350 NC, Washington, DC 20240; telephone: 202/343–3387; fax: 202/343–5260. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Assistant Director, Cultural Resources Stewardship and Partnerships, 800 North Capitol St., NW, Suite 350, Washington, DC 20013.

Dated: February 2, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–3051 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Findings

AGENCY: National Park Service, Department of the Interior.

ACTION: NAGPRA Review Committee Advisory Findings and Recommendations Regarding Human Remains and Associated Funerary Objects in the Control of Chaco Culture National Historical Park.

After full and careful consideration of the information and statements submitted and presented by representatives of the Hopi Tribe and Chaco Culture National Historical Park at its meetings on May 3–5, 1999 and November 18–20, 1999, the Native American Graves Protection and Repatriation Review Committee (Review Committee) considers that:

1. On May 12, 1999, Chaco Culture National Historical Park published a Notice of Inventory Completion regarding 265 Native American human remains and 743 funerary objects. The park determined the human remains and funerary objects to be culturally affiliated with the Hopi Tribe of Arizona; Navajo Nation of Arizona, New Mexico, and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of Zuni Reservation, New Mexico.

2. The Hopi Tribe disputed the park's determinations of cultural affiliation, arguing that:

a. Proper tribe-by-tribe consultation was not performed by the park;

b. The park did not apply a rigorous standard in weighing the evidence in making determinations of cultural affiliation; and

c. Determinations of cultural affiliation must be made on an object-by-object basis, rather than globally for the park as a whole.

3. Chaco Culture National Historical Park answered these objections by pointing to a nine-year record of tribal consultations. The park also argued that there is cultural continuity within Chaco Canyon dating to the Archaic Period (pre 1 AD) and that as such, there was no value in assessing cultural affiliation for each site individually. The park defended its determinations of cultural affiliation on the grounds that a broad range of both scientific and traditional evidence had been used. It was also noted that given the complex history of Chaco Canyon, and the strong

traditional attachment that the place held for many tribes, it was not surprising that many groups should be considered culturally affiliated.

On hearing all of the evidence presented, the Review Committee finds that the complaints made by the Hopi Tribe have merit. While the Review Committee recognizes the efforts made in the area of tribal consultation, tribes were not given adequate opportunity to consult on a one-to-one basis and to make their concerns known outside of a public forum. The Review Committee also agrees with the Hopi Tribe that more is needed in the evaluating and weighing of the evidence for establishing cultural affiliation. Rather than a rigorous determination of cultural affiliation, the park seems to have applied a much looser criterion of cultural relationship to geographical place, as a basis for determining culturally affiliated tribes. The park's global approach to the assessment Chaco archeological sites, effectively precluded any realistic assessment of cultural affiliation based on specific site features, dates, or cultural practices. Likewise, sites with virtually no contextual information were treated as culturally affiliated. The global approach to site assessment and affiliation resulted in a determination of cultural affiliation for all Chaco Canyon remains with all groups expressing cultural relationship to the region.

It is the recommendation of the Review Committee that the Chaco Culture National Historical Park withdraw its published Notice if Inventory Completion and reassess its determination of cultural affiliation. The Review Committee recommends that this reassessment specifically consider the following issues:

1. Determination of cultural affiliation should be made on a site-by-site basis, assessing each site based on the specific data available;

2. While collective consultation can be useful, it should not be used in lieu of individual tribal consultation when requested by an Indian tribe;

3. A proper determination of cultural affiliation necessarily requires the critical evaluation and careful weighing of all available evidence. This weighing should emphasize group identity, time period, specific cultural practices, and traceable cultural continuity;

4. The park should take steps to ensure the objective character of the determinations of cultural affiliation of the human remains and other cultural items in the control of the park. The process the park follows in making cultural affiliation determinations also must be seen by others to have been objective. For example, the Review Committee believes that the park should engage a qualified independent contractor to re-evaluate the information from the Chaco sites and offer specific recommendation for cultural affiliation.

Review Committee member James Bradley did not participate in the Review Committee's deliberations nor in the formulation of these advisory findings and recommendations.

These advisory findings and recommendations do not necessarily represent the views of the National Park Service or the Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

Dated: January 10, 2000.

Martin Sullivan,

Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 00–3053 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From Rockbridge County, VA in the Possession of the Virginia Department of Historic Resources, Richmond, VA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Rockbridge County, VA in the possession of the Virginia Department of Historic Resources, Richmond, VA.

A detailed assessment of the human remains was made by Virginia Department of Historic Resources professional staff in consultation with representatives of the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Monacan Indian Nation, the Nansemond, the Pamunkey, the United Rappahannock, the Upper Mattaponi, all non-Federally recognized Indian groups which are formally recognized by the Commonwealth of Virginia.

In 1901, human remains representing a minimum of 105 individuals were excavated from the Hayes Creek Mound, Rockbridge County, VA by Edward P. Valentine, an amateur archeologist with the Valentine Museum, Richmond, VA. In 1989, these human remains were donated to the Virginia Department of Historic Resources by the Valentine Museum. No known individuals were identified. No associated funerary objects are present.

Based on material culture and archeological evidence, the Hayes Creek Mound site has been identified as a Late Woodland (c. 900–1600 A.D.) occupation. Based on the material culture and condition of the human remains, these individuals have been identified as Native American. Archeological and ethnohistoric research indicates the Monacan and Mannahoac were loosely confederated with each other and linked to the earlier mound-building peoples in the Virginia piedmont and eastern mountain regions generally known as the Lewis Creek Mound Culture. Consultation evidence presented by the present-day Monacan indicates a direct lineal connection with the Monacan and related tribes occupying Rockbridge County in the early 17th century. Based on continuities of mound construction and site arrangement, there appears to be a shared ideology and cultural continuity which underlayed and defined not only the Monacan east of the Blue Ridge, but also includes related groups on the immediate west side of the Blue Ridge.

On October 29, 1999, the Virginia Department of Historic Resources requested a finding from the NAGPRA Review Committee concerning the Monacan Indian Nation's request for repatriation for these 105 individuals listed as "culturally unidentifiable" on the Department's NAGPRA inventory. At its November 18–20, 1999 meeting, the NAGPRA Review Committee recommended that the Department proceed with repatriation of these Native American human remains to the Monacan Indian Nation following publication of this Notice of Inventory Completion in the Federal Register.

Based on the above mentioned information, officials of the Virginia Department of Historic Resources have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 105 individuals of Native American ancestry. Officials of the Virginia Department of Historic Resources have determined that, pursuant to 25 U.S.C. 3001 (2), no relationship of shared group identity can be reasonably traced between these Native American human remains and a Federally recognized Indian tribe. However, officials of the Virginia Department of Historic Resources have determined that a relationship of shared group identity can be reasonably traced between these Native American human remains and the Monacan Indian

Nation, a non-Federally recognized Indian group.

This notice has been sent to officials of the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Monacan Indian Nation, the Nansemond, the Pamunkey, the United Rappahannock, the Upper Mattaponi. Representatives of any other Federally recognized Indian tribe or other valid claimant under NAGPRA that believes itself to be culturally affiliated with these human remains should contact M. Catherine Slusser, State Archaeologist, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221; telephone: (804) 367-2323, before March 13, 2000. Repatriation of the human remains to the Monacan Indian Nation may begin after that date if no Federally recognized Indian tribes or other valid claimant under NAGPRA makes a claim.

The National Park Service is not responsible for the determinations within this notice.

Dated: January 19, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–3054 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent License

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,544,973 titled "Concrete Step Embankment Protection". The exclusive license is to be granted to Lee Masonary Products, L.L.C., DBA Armortec, having a place of business in Bowling Green, Kentucky. The patent rights in this invention has been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the invention listed above, it also serves to publish the availability of this invention for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

DATES: Written evidence and arguments against granting the prospective license must be received by May 10, 2000.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7620, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Donald Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The present invention relates to a dam spillway system for embankment dam overtopping protection comprising a layer of freedraining, angular, gravel filter material, a plurality of rows of overlapping, tapered, concrete blocks assembled over the filter material in shingle-fashion, from the toe of the dam, up the slope to the top of the dam, and a plurality of fixed concrete toe blocks located at the toe of the dam, usually beneath the tailwater, and supporting each of the rows of concrete blocks. The invention has particular application to providing erosion protection for embankment dams that may be subject to overtopping flows.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: January 12, 2000.

Stanley L. Ponce,

Director, Research and Technology Transfer.

[FR Doc. 00–3110 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before March 13, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 783, which is 1029–0038.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on November 30, 1999 (64 FR 66932). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information. Where appropriate, OSM has revised burden

estimates to reflect current reporting levels and adjustments based on reestimates of the burden or number of respondents.

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once at time of application submission.

Description of Respondents: Underground coal mining applicants, and State regulatory authorities.

Total Annual Responses: 105.

Total Annual Burden Hours: 16,918 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington DC 20240.

Dated: February 7, 2000.

Richard G. Bryson, Chief,

Division of Regulatory Support.

[FR Doc. 00–3069 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–393 and 731–TA–829, 830, 833, 834, 836, and 838 (Final)]

Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: Date of commission action.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On December 1, 1999, the Commission established a schedule for the conduct of the final phase of the subject investigations (**Federal Register** 64 FR 67307, December 1, 1999). The Commission received notification of the Department of Commerce's final determinations in these investigations on January 27, 2000. The Commission, therefore, is revising its schedule to conform with Commerce's notification.

The Commission's new schedule for the investigations is as follows: the Commission will release the staff report to parties on February 18, the final release of information will be on February 25; and final party comments are due on February 29.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 2, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3018 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–387–391 and 731–TA–816–821 (Final)]

Certain Cut-to-Length Steel Plate From France, India, Indonesia, Italy, Japan, and Korea

Determinations [1]

On the basis of the record [2] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from France,[3] India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the respective governments. The Commission also determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of such imports from France,[3] India, Indonesia, Italy, Japan, and Korea that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to such imports from Japan.

Background

The Commission instituted these investigations effective February 16, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Tuscaloosa Steel Co., Tuscaloosa, AL; and the United Steelworkers of America, Pittsburgh, PA.[4] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain cut-to-length steel plate from France, India, Indonesia, Italy, and Korea were being

[1] Commissioner Okun not participating.

[2] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[3] Commissioner Askey dissenting.

[4] Gulf States is not a petitioner with respect to the investigations on France. Tuscaloosa is not a petitioner with respect to the investigations on France and Italy.

subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports from France, India, Indonesia, Italy, Japan, and Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 15, 1999 (64 FR 50104). The hearing was held in Washington, DC, on December 14, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 1, 2000. The views of the Commission are contained in USITC Publication 3273 (January 2000), entitled Certain Cut-to-length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea: Investigations Nos. 701–TA–387–391 and 731–TA–816–821 (Final).

By order of the Commission.

Issued: February 2, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3016 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Commission Decision To Review Portions of an Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination ("ID") issued on December 6, 1999, by the presiding administrative law judge ("ALJ") in the above-captioned investigation finding that there was no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. ("VISX"), 64 Fed. Reg. 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 ("the '418 patent") and 5,711,762 ("the '762 patent"). An evidentiary hearing was held from August 18, 1999 to August 27, 1999.

On December 6, 1999, the presiding administrative law judge ("ALJ") issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

Having examined the record in this investigation, the final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ID's findings with respect to the '418 patent. The Commission has determined to review the ID's findings with respect to the '762 patent. Review questions and a briefing schedule will be issued following the issuance of this notice.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

Copies of the public versions of the subject IDs, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: February 2, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3019 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–00–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Schedule for the Filing of Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Briefing Questions

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the schedule for filing written submissions on the issues under review in the above-captioned investigation in connection with the Commission's review-in-part of the final initial determination ("ID") issued on December 6, 1999, by the presiding administrative law judge ("ALJ") in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. ("VISX"), 64 FR 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 ("the '418 patent") and 5,711,762 ("the '762 patent"). An evidentiary hearing was held from August 18, 1999, to August 27, 1999.

On December 6, 1999, the presiding administrative law judge ("ALJ") issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

On February 2, 2000, the Commission determined not to review the ID's findings with respect to the '418 patent and determined to review all the ID's

findings with respect to the '762 patent. The Commission is particularly interested in receiving briefing on the following points:

(1) The construction of the claimed laser delivery system means element of claim 1 of the '762 patent.

(2) The construction of claim 10 of the '762 patent and the ramifications of that construction under the doctrine of claim differentiation as it relates to claims 1 and 10.

(3) A discussion, including a detailed engineering description, of how VISX's STAR, STAR S2, 20/20A, and 20/20B systems function, and whether those systems practice claims 1, 10, or 12 of the '762 patent, both as those claims are construed by the ALJ and if claim 1 is construed as not requiring a proximity mask.

(4) Whether the accused Nidek device infringes claim 1 of the '762 patent literally or under the doctrine of equivalents if claim 1 is construed as not requiring a proximity mask.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues under review, and on remedy, the public interest, and bonding. Such submissions should address the January 31, 2000, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on February 14, 2000. Reply submissions must be filed no later than the close of business on February 18, 2000. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See § 201.6 of the Commission's rules of practice and procedure, 19 CFR § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.45 of the Commission's rules of practice and procedure, 19 CFR § 210.45.

Copies of the public version of the subject ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: February 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3020 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–457 A–D (Review)]

Heavy Forged Handtools From China [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on heavy forged handtools from China.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on heavy forged handtools from China would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S.

[1] Investigation No. 731–TA–457 A covers hammers and sledges with heads over 1.5 kg (3.33 pounds) ("hammers and sledges"); investigation No. 731–TA–457 B covers bars over 18 inches in length, track tools, and wedges ("bars and wedges"); investigation No. 731–TA–457 C covers picks and mattocks ("picks and mattocks"); and investigation No. 731–TA–457 D covers axes, adzes, and similar hewing tools ("axes and adzes").

International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 55958, October 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on April 26, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 16, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 8, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 11, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is May 5, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 25, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 25, 2000. On June 23, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 27, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: February 4, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3025 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–413–415 and 419 (Review)]

Certain Industrial Belts From Germany, Italy, Japan, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and

Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Joanna Bonarriva (202–708–4083), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 50106, September 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on June 7, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on June 27, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 19, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 23, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing *testimony in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is June 16, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 7, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before July 7, 2000. On July 28, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 1, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: February 4, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3023 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–309–A–B (Review) and 731–TA–528 (Review)]

Magnesium From Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order and antidumping duty order on magnesium from Canada.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 62690, November 17, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on April 28, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 31, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 23, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 26, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is May 16, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 9, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 9, 2000. On July 3, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 6, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 4, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3024 Filed 2–9–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 25, 2000, a proposed consent decree with respect to defendants Harry Grant and Sandalwood Construction Company in *United States* v. *Anthony Dell'Aquila Enterprises and Subsidiaries, Harry Grant, and Sandalwood Construction Company,* Civil Action No. 88–3232 (JCL), was lodged with the United States District Court for the District of New Jersey. The United States' complaint sought injunctive relief and civil penalties under the Clean Air Act ("CAA") against Anthony Dell'Aquila Enterprises and Subsidiaries ("Dell'Aquila"), Harry Grant, and Sandalwood Construction Company in regard to violations of the National Emission Standards for Hazardous Air Pollutants for asbestos ("asbestos NESHAP") at a facility that was owned by Dell'Aquila in Hoboken, New Jersey ("Dell'Aquila site"). The consent decree is signed on behalf of Harry Grant and Sandalwood Construction Company. The claim against Dell'Aquila was settled through a previous consent decree entered in the United States District Court for the District of New Jersey.

The consent decree provides that the defendants Harry Grant and Sandalwood Construction Company shall pay a civil penalty of $60,000. The consent decree also provides, *inter alia,* that each of the defendants shall conduct all demolition or renovation operations that either of them may become involved with in the future in compliance with the asbestos NESHAP. In connection with any such demolition or renovation operations, the defendants are required to engage an accredited building inspector and obtain a thorough asbestos identification survey prior to demolition or renovation to determine the presence of asbestos containing materials and to provide EPA with a copy of each survey at least twenty days prior to the commencement of any demolition or renovation.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Anthony Dell'Aquila Enterprises and Subsidiaries, Harry Grant, and Sandalwood Construction Co.,* D.J. Ref. 90–5–2–1–1288.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., Room 502, Newark, NJ 07102 and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $4.25 payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 00–3113 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to The Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *Cornell University,* Civ. No. 00–CV–0121 (NAM), DOJ # 90–11–2–2/3, was lodged in the United States District Court for the Northern District of New York on January 21, 2000. The Consent Decree resolves the liability of defendant under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), relating to the Pollution Abatement Services Superfund Site in Oswego, New York (the "Site").

Under the proposed consent decree, Cornell will cash out its liability for the Site, subjects to reopeners, by paying to the United States the sum of $30,000 in partial reimbursement of EPA's past response costs and paying $335,500 toward future operable unit 3 ("OU3") Site costs to the responsible parties who are performing OU3 under an earlier consent decree. In exchange for the work and payment of response costs, Defendants will receive a covenant not to sue for response actions at the Site subject to certain reservations of rights.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Cornell University,* Civ. No. 00–CV–0121 (NAM), DOJ # 90–11–2–2/3.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, James Foley U.S. Courthouse, 445 Broadway, Room 231, Albany, New York 12207; and at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278. Copies of the Consent Decree may be obtained by mail from the consent Decree Library, United States Department of Justice, PO Box 7611 Ben Franklin Station, Washington, DC 20044, (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–3114 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice Of Lodging of Settlement Agreement

Notice is hereby given that on January 18, 2000, a proposed settlement agreement ("Settlement Agreement") in *In re Raymark Industries, Inc.,* Case No. 98–51540, was lodged with the United States Bankruptcy Court for the District of Connecticut. This proposed Settlement Agreement resolves certain claims among the United States, the Trustee of Raymark Industries, Inc., and Leach Family Holdings, Inc. ("Leach") with respect to a Site known as the Raymark Industries, Inc. Supefund Site located in Stratford, Connecticut.

The Settlement Agreement provides for a payment, under the conditions specified in the Agreement, to Leach in the amount of up to $ 1.5 million from the proceeds of the sale of the portion of the Raymark Site owned by Raymark Industries, Inc.

The proposed Settlement Agreement may be examined at the office of the United States Attorney for the District of Connecticut, 915 Lafayette Blvd., Room 309, Bridgeport, Ct. 06604; and at the Region I office of the Environmental Protection Agency, 1 Congress St., Boston, Mass. 02114–2023. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611,

Washington, DC 20044. When requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $3.50 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–3112 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.

Notice is hereby given that, on August 19, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Digital Imaging Group, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Photoloft.com, Campbell, CA; PhotoHighway.com, Monterey, CA; ACD Systems, Victoria, BC, CANADA; Lightsurf Technologies, Inc., Scotts Valley, CA; Seattle Film Works, Seattle, WA; Digitella Technology, Inc., Irvine, CA; Signafy, Inc., Princeton, NJ; Intellectual Protocols, Nannet, NY; RCO, Los Angeles, CA; MediaSec Technologies, Essen, GERMANY; and CNS Development, Colleyville, TX have been added as parties to this venture. Also, PictureVision, Inc., Herndon, VA; AccuSoft, Westborough, MA; Digital Zone International A/S, Aarhus C, DENMARK; and Samsung Electronics Co. Ltd., Suwon, Kyungki-D, SOUTH KOREA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this joint venture remains open, and Digital Imaging Group, Inc. intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on June 10 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3122 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium, Inc.

Notice is hereby given that, on August 23, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OBI Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Management Systems, Fairfax, VA; GEIS (GE Information Systems), Gaithersburg, MD; and Trilogy Buying Chain, Austin, TX have been added as parties to this venture. Also, Texas Instruments, Dallas, TX; and Open Market, Burlington, MA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OBI Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On Saturday 10, 1997, OBI Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60531).

The last notification was filed with the Department on May 27, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3121 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ohio Aerospace Institute Federated Intelligent Product Environment Consortium ("FIPER")

Notice is hereby given that, on July 17, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ohio Aerospace Institute Federated Intelligent Product Environment Consortium ("FIPER") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Ohio Aerospace Institute, Cleveland, OH; BFGoodrich Aerospace, Aerostructures Group, Chula Vista, CA; Engineous Software, Inc., Morrisville, NC; GE Aircraft Engines, Cincinnati, OH; Ohio University, Athens, OH; and Parker Hannifin Corporation, Mentor, OH. The nature and objectives of the venture are to conduct research and development directed at reducing design time by intelligently automating elements of the design process in a linked associative environment. The participants are joining together to collaborate to accelerate the development of technology to provide true concurrency between design and manufacturing. Information regarding participation in The Federated Intelligent Product Environment "FIPER" Consortium may be obtained from Jake Breland, Ohio Aerospace Institute (OAI), 22800 Cedar Point Rd., Cleveland, Ohio 44142.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3127 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on August 12, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kobe Steel, Ltd., Hyogo-ken, JAPAN; Brother Industries, Ltd., Aichiken, JAPAN; Komatsu Ltd., Kanagawa-ken, JAPAN; Sun Microsystems, Inc., Palo Alto, CA; Cisco Systems, Inc., San Jose, CA; and Adobe Systems, San Jose, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on May 6, 1999. A notice has not been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3113 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI")—Durability and Life Assessment of GTD–111 Buckets

Notice is hereby given that, on April 5, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI")—Durability and Life Assessment of GTD–111 Buckets has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aramco Services Company, Houston, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute ("SwRI")—Durability and Life Assessment of GTD–111 Buckets intends to file additional written notification disclosing all changes in membership.

On October 31, 1995, Southwest Research Institute ("SwRI")—Durability and Life Assessment of GTD–111 Buckets filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 17, 1996 (61 FR 54222).

The last notification was filed with the Department on October 21, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1999 (64 FR 13606).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3124 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telematics Suppliers Consortium, Inc. ("Telematics")

Notice is hereby given that, on August 19, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Telematics Suppliers Consortium, Inc. ("Telematics") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Auvo Inc., Schaumburg, IL; Clarion Co., Ltd., Saitama, JAPAN; ComCARE Alliance, Washington, DC; InfoMove.com, Inc., Redmond, WA; Intelligent Transportation Society of America, Washington, DC; Microsoft, Inc., Redmond, WA; Navigational Technologies, Rosemont, IL; Qualcomm Inc., San Diego, CA; Sony Group, Menlo Park, CA; The Automobile Association, Basingstoke, UNITED KINGDOM have been added as parties to this venture. In addition, the initial notification made by the Consortium is amended to include Alpine Electronics Inc., Tokyo, JAPAN (parent company of Alpine Electronics of America, Inc., Torrence, CA); Tyco International Ltd., Hamilton, BERMUDA (parent company of AMP Inc., Harrisburg, PA); and Lear Corporation, Southfield, MI (parent company of United Technologies Corporation, Hartford, CT) as members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Telematics Suppliers Consortium, Inc. ("Telematics") intends to file additional written notification disclosing all changes in membership.

On March 12, 1999, Telematics Suppliers Consortium, Inc. ("Telematics") filed its original notification pursuant to Section 6(a) of the Act. The last notification was filed with the Department on May 26, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1999 (64 FR 69801).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3125 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Combinatorial Tools and Advanced Data Analysis Methods for Heterogeneous Catalysis

Notice is hereby given that, on July 20, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), UOP LLC and Nonlinear Dynamics Incorporated (NDI) have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and

objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Nonlinear Dynamics Incorporated (NDI), Ann Arbor, MI; and UOP LLC, Des Plaines, IL. The nature and objectives of the venture are to conduct research for "Combinatorial Tools and Advanced Data Analysis Methods for Heterogeneous Catalysis".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3126 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 20, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Prakash Bare (individual membership), San Jose, CA; EnThink, Inc., Santa Clara, CA; Hantro Products Oy, Oulu, FINLAND; Korea Electronic Technology Institute, Pyung Taek-Si, Kyung Gi-Do, SOUTH KOREA; Massana, Inc., Campbell, CA; TAEUS, Colorado Springs, CO; The Silicon Group, Inc., Austin, TX; and Worldwide Semiconductor Manufacturing Corp., Hsinchu, TAIWAN have been added as parties to this venture. Also, Ambit Design Systems, Inc., Austin, TX; Beijing Intelligent Electronics Co., Ltd., Beijing, PEOPLES REPUBLIC OF CHINA; CAE Plus, Inc., Austin, TX; Cygnus Solutions, Sunnyvale, CA; Duet Technologies, Inc., San Jose, CA; Exemplar Logic, Inc., Fremont, CA; FFC Limited (Fuji Facom Control), Tokyo, JAPAN; Lockheed Martin Advanced Technology Labs, Camden, NJ; LTX Corp., Westwood, MA; Neuw Intellectual Property, Oldham, Lancs., UNITED KINGDOM; SIS Microelectronics, Inc., Longmont, CO; Spinnaker Systems, Inc., Tokyo, JAPAN; Vantis, Sunnyvale, CA; Wipro Ltd., Santa Clara, CA; and Yokogawa Electric Corp., Tokyo, JAPAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on February 11, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–3123 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56225), Cedarburg Laboratories, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm will manufacture propiram in the process of manufacturing other targeted test compounds for another firm.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cedarburg Laboratories, Inc. to manufacture propiram is consistent with the public interest at this time. DEA has investigated the company to ensure that the company's registration is coninspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 4, 2000.

John H. King,

Deputy, Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3142 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1999, and published in the **Federal Register** on October 13, 1999, (64 FR 55489), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chatanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed Schedule II.

The firm plans to bulk manufacture methamphetamine to produce products for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture methamphetamine is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR § 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 24, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3143 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 52266), Chirex Technology Center, Inc., DBA Chirex Cauldron, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and 952(a), and determined that the registration of Chirex Technology Center, Inc., DBA Chirex Cauldron to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated the company to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 27, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3144 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 29, 1999, Ganes Chemicals Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 10, 2000.

Dated: February 2, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3147 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 24, 1999, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 10, 2000.

Dated: February 2, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3148 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1999, and published in the **Federal Register** on October 13, 1999, (64 FR 55490), Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for demonstration purposes and for dosage form development and stability studies.

DEA has considered the factors in Title 21, United States Code, Section

823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3145 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56227), LifePoint, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, which has been changed to 10400 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firms plans to use gram quantities of the listed controlled substances to manufacture drug abuse test kits.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of LifePoint, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–3146 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 186I]

Controlled Substances: Established Initial Aggregate Production Quotas for 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2000.

SUMMARY: This notice establishes initial 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). This notice replaces and supersedes the final order dated December 21, 1999 and published in the **Federal Register** (64 FR 72686). Since the aggregate production quotas listed herein are the same as those published in 64 FR 72686, except as noted below, this will not effect individual manufacturing quotas or procurement quotas previously issued by DEA. Further, this notice corrects two errors in the notice published in 64 FR 72686 as follows: the aggregate production quota of 2 grams for the Schedule I substance codeine-N-oxide was inadvertantly deleted from the notice; and, the aggregate production quotas for hydrocodone (for conversion) and hydromorphone were inadvertantly listed twice. These two corrections are incorporated into the list of aggregate production quotas below.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The 2000 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2000 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On October 21, 1999, a notice of the proposed initial 2000 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (64 FR 56809). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 22, 1999.

Six companies commented on a total of 16 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for alfentanial, amphetamine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methamphetamine (for sale), methamphetamine (for conversion), methylphenidate, noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), sufentanil and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

In addition, one comment was received after the published comment

period had ended. This comment requested that the aggregate production quota for dihydromorphone be increased to provide for an intermediate in a current manufacturing process. This comment was taken into consideration in determining the established initial 2000 aggregate production quota for dihydromorphine.

DEA has taken into consideration the above comments along with the relevant 1999 manufacturing quotas, current 1999 sales and inventories, 2000 export requirements and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for alfentanil, dihydromorphine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methaphetamine (for conversion), noroxymorphone (for conversion), osycodone (for sale), sufentanil and thebaine to meet the legitimate needs of the United States. Significant portions of the increases for alfentanil, diphenoxylate, fentanyl, hydromorphone, levorphanol, noroxymorphone (for conversion) and sufentanil are due to a change in the manner in which manufacturing losses are accounted for by a bulk manufacturer.

In addition, one company requested a hearing to address the aggregate production quota for oxycodone (for sale) or hydromorphone if the aggregate production quotas were not increased sufficiently. The DEA, based on the data provided, has increased the aggregate production quotas for both oxycodone (for sale) and hydromorphone and has determined that a hearing is not necessary.

Regarding amphetamine, methamphetamine (for sale), methylphenidate and oxycodone (for conversion), the DEA has determined that the proposed initial 2000 aggregate production quotas are sufficient to meet the current 2000 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2000, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1999 year-end inventory and actual 1999 disposition data supplied by quota recipients for each basic class of Schedules I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 2000 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 2000 quotas
Schedule I	
2,5-Dimethoxyamphetamine	10,001,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30
3,4-Methylenedioxymethamphetamine (MDMA)	20
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2–CB)	2
4-Methoxyamphetamine	201,000
4-Methylaminorex	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	2
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	2
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Codeine-N-oxide	2
Diethyltryptamine	2
Difenoxin	2
Dihydromorphine	10,000
Dimethyltryptamine	508,000
Heroin	3
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	2
Mescaline	2
Methaqualone	17
Methcathinone	9
Morphine-N-oxide	2
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	101,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	8,000
Alphaprodine	2
Amobarbital	12
Amphetamine	9,007,000
Cocaine	251,000
Codeine (for sale)	54,504,000
Codeine (for conversion)	52,384,000
Dextropropoxyphene	114,078,000
Dihydrocodeine	268,000
Diphenoxylate	931,000
Ecgonine	36,000
Ethylmorphine	12
Fentanyl	300,000
Glutethimide	2
Hydrocodone (for sale)	20,208,000
Hydrocodone (for conversion)	20,700,000
Hydromorphone	1,239,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	201,000
Levomethorphan	2
Levorphanol	27,000
Meperidine	11,335,000
Metazocine	1
Methadone (for sale)	8,347,000
Methadone (for conversion)	600,000
Methadone Intermediate	9,503,000
Methamphetamine	2,049,000
750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,225,000 grams for methamphetamine for conversion to a Schedule III product; and 74,000 grams for methamphetamine (for sale)	
Methylphenidate	14,957,000
Morphine (for sale)	14,706,000
Morphine (for conversion)	97,160,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	3,813,000
Opium	720,000
Oxycodone (for sale)	29,826,000

Basic class	Established initial 2000 quotas
Oxycodone (for conversion)	271,000
Oxymorphone	166,000
Pentobarbital	22,037,000
Phencyclidine	41
Phenmetrazine	2
Phenylacetone	10
Secobarbital	22
Sufentanil	1,700
Thebaine	41,300,000

The Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: February 3, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–3149 Filed 2–9–00; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The U.S. National Commission on Libraries and Information Science (NCLIS); Sunshine Act Meeting

Correction Notice

CLOSED MEETING: (Closing this meeting is taken in accordance with the exemption provided under Title 45, CFR, Part 1703.202(a)(9)), Los Angeles Times Building, 145 South Spring Street, Los Angeles, CA.

DISCUSSION TOPIC: The National Award for Library Service.

The time of the closed meeting on February 17, 2000 has been extended.

The meeting will be closed from 8:30 to 11:30 a.m.

For additional information, see Sunshine Meeting Notice published 01/25/00 @ 65 FR 3980.

Dated: January 28, 2000.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 00–3201 Filed 2–8–00; 1:45 pm]

BILLING CODE 7527–01–M

NATIONAL COUNCIL ON DISABILITY

Establishment of Advisory Committee

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice announces the establishment of NCD's Youth Advisory Committee.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), mquigley@ncd.gov (e-mail).

Agency Mission

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Youth Advisory Committee

The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We are seeking a balanced, culturally diverse membership representing a variety of disabling conditions and from across the United States. One member will be chosen from each of the 10 federal regions.

Region I states include Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II states include New Jersey, New York, Puerto Rico, and the Virgin Islands.

Region III states include Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV states include Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V states include Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI states include Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII states include Iowa, Kansas, Missouri, and Nebraska.

Region VIII states include Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX states include Arizona, California, Guam, Hawaii, and Nevada.

Region X states include Alaska, Idaho, Oregon, and Washington.

Signed in Washington, DC, on February 2, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–3073 Filed 2–9–00; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for New Collection Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: New Collection of Information.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was originally published on

November 26, 1999 (Vol. 64, No. 227, p. 66507) Five comment letters were received.

DATES: Comments will be accepted until March 13, 2000.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: Not applicable.

Form Number: Not applicable.

Type of Review: New collection.

Title: Survey on Service to People of Modest Means.

Description: NCUA is considering policy changes which could result in substantial impact on credit unions. The results of the survey will be used to guide NCUA in the policy making process.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 6,700.

Estimated Burden Hours Per Response: .5 hours.

Frequency of Response: One-time.

Estimated Total Annual Burden Hours: 3,350.

Estimated Total Annual Cost: $55,844.50.

By the National Credit Union Administration Board on February 3, 2000.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–3039 Filed 2–9–00; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Energy Company (the licensee) to withdraw its November 9, 1998, application for proposed amendment to Facility Operating License No. DPR–20 for the Palisades Plant, located in Covert, Michigan.

The proposed amendment would have revised the Technical Specifications by deleting the chemical and volume control system (CVCS) operability and surveillance requirements, which the licensee had incorporated into the facility's Operating Requirements Manual (ORM). In its letter of January 13, 2000, the licensee stated that the proposed amendment was no longer needed because (1) the CVCS repairs anticipated at the time of the application for amendment were completed during a subsequent forced outage, and (2) the NRC's subsequent approval of the Improved Technical Specifications (Amendment 189, dated November 30, 1999) deleted the CVCS requirements that the licensee had incorporated into the ORM.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 16, 1998 (63 FR 69337). However, by letter dated January 13, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 9, 1998, and the licensee's letter dated January 13, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 2d day of February 2000.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3095 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Hydro Resources, Inc.; Notice of Reconstitution

[Docket No. 40–8968—ML; ASLBP No. 95–706–01–ML]

Pursuant to the authority contained in 10 CFR §§ 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR Part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Thomas S. Moore as Presiding Officer in place of Administrative Judge Peter B. Bloch.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR § 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Thomas S. Moore, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

This Board reconstitution order is issued pursuant to the authority of the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel.

Issued at Rockville, Maryland, this 3rd day of February 2000.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–3098 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316; License Nos. DPR–58, DPR–74]

Indiana Michigan Power Company (Donald C. Cook Nuclear Plant, Units 1 and 2); Confirmatory Order Modifying Post-Three Mile Island Requirements Pertaining to Containment Hydrogen Monitors

I

Indiana Michigan Power Company (IM or the licensee) is the holder of Facility Operating License Nos. DPR–58, and DPR–74 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part

50. The licenses authorize the operation of Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, located in Berrien County, Michigan.

II

As a result of the accident at Three Mile Island, Unit 2 (TMI–2), the NRC issued NUREG–0737, "Clarification of TMI Action Plan Requirements," in November 1980. Generic Letters 82–05 and 82–10, issued on March 17 and May 5, 1982, respectively, requested licensees of operating power reactors to furnish information pertaining to their implementation of specific TMI Action Plan items described in NUREG–0737. Orders were issued to licensees confirming their commitments made in response to the generic letters. The Confirmatory Order that was issued to IM on March 14, 1983, required the licensee to implement and maintain the various TMI Action Plan Items, including Item II.F.1, Attachment 6 pertaining to monitoring of the hydrogen concentration in the containment following a safety injection.

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potential severe accidents at nuclear power plants. Recent insights pertaining to plant risks and severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing, and perhaps enhancing, the ability of licensees to respond to severe accidents. The NRC's efforts to understand the risks associated with commercial nuclear power plant operations more effectively and to reduce unnecessary regulatory burden on licensees and the public have prompted the NRC's decision to revise the post-TMI requirement to monitor containment hydrogen concentration.

The Confirmatory Order of March 14, 1983, imposed requirements upon the licensee to have continuous monitoring of containment hydrogen concentration provided in the control room, as described by TMI Action Plan Item II.F.1, Attachment 6. Information about hydrogen concentration supports the licensee's assessments of the degree of core damage and whether a threat to the integrity of the containment may be posed by hydrogen gas combustion. TMI Action Item II.F.1, Attachment 6, states:

> If an indication is not available at all times, continuous indication and recording shall be functioning within 30 minutes of the initiation of safety injection.

This requirement to have monitoring of the hydrogen concentration in the containment within 30 minutes following the start of safety injection has defined both design and operating characteristics for hydrogen monitoring systems at nuclear power plants since the implementation of NUREG–0737. In addition, the technical specifications of most nuclear power plants and NRC regulation 10 CFR 50.44, "Standards for combustible gas control system in light-water-cooled power reactors," require availability of hydrogen monitors.

By letter dated December 22, 1999, IM used the Oconee and Arkansas Nuclear One confirmatory orders of November 29, 1999, and September 28, 1998, respectively, as guidance to request relief for the two CNP units from the requirement to have indication of hydrogen concentration in the containment within 30 minutes of the initiation of safety injection. Specifically, the licensee requested that risk-informed insights be used to determine the functional requirements for monitoring of containment hydrogen concentration that would allow extending the monitoring requirement to more than 30 minutes following initiation of safety injection. The basis for this request was that the additional time would allow the operators to complete their initial accident assessment and mitigation duties before redirecting their attention to the relatively longer-term recovery actions, such as actuating the hydrogen recombiners, that are not needed for at least 24 hours.

Based on the staff's evaluation of the justification provided by the licensee, and improved understanding of insights pertaining to plant risks, severe accident assessment, and emergency planning since the TMI–2 accident, the staff has concluded that the licensee's request should be approved. Giving the licensee the flexibility and responsibility for determining the appropriate time limit for establishing monitoring of containment hydrogen concentration will preclude control room personnel from being distracted from various important tasks in the early phases of accident mitigation, while allowing cognizant personnel, mostly outside the control room, to be aware of hydrogen concentration based on a risk-informed functional assessment at a reasonable time following an accident. Because the appropriate balance between control room activities and longer-term management of the response to severe accidents can best be determined by the licensee, the NRC staff has determined that the licensee may elect to adopt a risk-informed functional requirement in lieu of the current 30-minute time limit for establishing monitoring of the hydrogen concentration as imposed by the Order dated March 14, 1983, and as described by TMI Action Item II.F.1, Attachment 6, in NUREG–0737. The appropriate functional requirement is as follows:

> Procedures shall be established for ensuring that monitoring of hydrogen concentration in the containment atmosphere is available in a sufficiently timely manner to support the implementation of the Donald C. Cook Nuclear Plant Emergency Plan (and related procedures) and related activities such as guidance for severe accident management. Hydrogen monitoring will be initiated based on: (1) the appropriate priority for establishing monitoring of hydrogen concentration within the containment in relation to other activities in the control room, (2) the use of the monitoring of hydrogen concentration by decision makers for severe accident management and emergency response, and (3) insights from experience or evaluation pertaining to possible scenarios that result in significant generation of hydrogen that would be indicative of core damage or a potential threat to the integrity of the containment building. Affected licensing basis documents and other related documents will be appropriately revised and/or updated in accordance with applicable NRC regulations.

The licensee's Post Accident Monitoring Instrumentation Technical Specifications and 10 CFR 50.44 require the licensee to maintain the ability to monitor hydrogen concentration in the containment. However, the details pertaining to design and manner of operation of the hydrogen monitoring system are determined by the licensee.

III

Accordingly, pursuant to Sections 103, 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED that:

NRC License Nos. DPR–58 and DPR–74 are modified as follows:

> The licensee may elect to either maintain the 30-minute time limit for monitoring of hydrogen in the containment, as described by TMI Action Plan Item II.F.1, Attachment 6, in NUREG–0737 and required by the Confirmatory Order of March 14, 1983, or modify the time limit in the manner specified in Section II of this Order.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within

20 days of its issuance. Where good cause is shown, consideration will be given to extend the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Deputy Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to David W. Jenkins, Esquire, Indiana Michigan Power Company, Nuclear Generation Group, One Cook Place, Bridgman, MI 49106, attorney for the licensee. If such a person requests a hearing, that person will set forth with particularity the manner in which his interest is adversely affected by this Order and will address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing will be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above will be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV will be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 4th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3094 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 3); Order Approving Application Regarding Proposed Merger (Acquisition of CMP Group, Inc., by Energy East Corporation)

I

Northeast Nuclear Energy Company is authorized to act as agent for the joint owners of the Millstone Nuclear Power Station, Unit 3 (Millstone 3), and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License No. NPF–49. Central Maine Power Company (Central Maine), one of the joint owners, holds a 2.5-percent possessory interest in Millstone 3. The U.S. Nuclear Regulatory Commission (NRC) issued Facility Operating License No. NPF–49 on January 31, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in New London County, on the southern coast of the State of Connecticut.

II

By letter dated October 6, 1999, through counsel, Central Maine informed the NRC of a proposed merger involving the acquisition of Central Maine's parent, CMP Group, Inc. (CMP), by Energy East Corporation (Energy East). Central Maine requested that the NRC determine that the proposed merger and acquisition would not, in fact, constitute a transfer of Facility Operating License NPF–49 for Millstone 3, to the extent held by Central Maine in regard to Central Maine's 2.5-percent ownership interest in Millstone 3. Central Maine also requested if the NRC does find that the proposed acquisition of CMP would constitute an indirect transfer of Facility Operating License NPF–49 to the extent it is held by Central Maine, that the NRC consent to the indirect transfer of Central Maine's license to Energy East. The NRC determined that an indirect transfer of the license, to the extent that it is held by Central Maine, would be involved and that approval pursuant to 10 CFR 50.80 would be required. The NRC informed Central Maine of this decision in a letter dated November 15, 1999.

III

Central Maine is an electric utility primarily engaged in the transmission, sale, and distribution of electricity in the State of Maine and is incorporated in Maine. CMP holds all the common stock of Central Maine and also is incorporated in the State of Maine. Energy East is an investor-owned holding company incorporated in New York. Through its subsidiaries, Energy East is an energy delivery, products, and services company with operations in New York and several other northeastern States.

According to Central Maine's October 6, 1999, submittal (the "application"), on June 14, 1999, CMP and Energy East signed a definitive merger agreement for the acquisition of CMP by Energy East. To accomplish the acquisition, EE Merger Corporation, a Maine corporation that is a wholly owned subsidiary of Energy East, will merge with and into CMP, with CMP being the surviving corporation. Upon completion of the merger, CMP will become a wholly owned subsidiary of Energy East, with Energy East acquiring all of CMP's common stock. CMP will continue its corporate existence under the laws of the State of Maine, and CMP will continue to own all of Central Maine's common stock. The application notes, however, that in the event that the Securities and Exchange Commission does not permit Energy East to maintain CMP as an intermediate holding company, Energy East plans to hold Central Maine directly.

Whether Central Maine becomes directly or indirectly held by Energy East, Central Maine will continue to hold and to be the licensee for its 2.5-percent ownership interest in Millstone 3. In the case of either direct or indirect ownership by Energy East, an indirect transfer of the license to the extent it is held by Central Maine will occur as a result of the merger.

Approval of the indirect license transfer was requested pursuant to 10 CFR 50.80. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on November 16, 1999 (64 FR 62230). No hearing requests or written comments were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, the NRC staff has determined that the subject merger will not affect the qualifications of Central Maine to hold the Millstone 3 license to the extent currently held, and that the indirect transfer of the license, to the extent effected by the proposed merger,

is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth below. The foregoing findings are supported by a safety evaluation dated February 4, 2000.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the AEA, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the license transfer referenced above is approved, subject to the following conditions:

(1) Central Maine shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Central Maine to its current or proposed direct or indirect parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Central Maine's consolidated net utility plant, as recorded on Central Maine's books of account.

The foregoing condition shall supersede Condition (1) of the Order dated June 2, 1998, which approved the application regarding the restructuring of Central Maine by establishment of a holding company.

(2) Should the proposed merger of CMP and Energy East not be completed by January 30, 2001, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated October 6, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov*.

Dated at Rockville, Maryland, this 4th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3093 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Northern States Power Company, Monticello Nuclear Generating Plant; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–22 for the Monticello Nuclear Generating Plant currently held by Northern States Power Company (NSP) as owner and licensed operator of Monticello. The transfer would be to a newly formed company (referred to herein as "New NSP"). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated October 29, 1999, the Commission was informed that NSP entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). Under the agreement, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. (Xcel). At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and responsibility and control over operations to New NSP, which will be a wholly owned subsidiary of Xcel. New NSP would assume title to the facilities following approval of the proposed license transfer, and would become responsible for the operation, maintenance, and eventual decommissioning of Monticello. No physical changes to the facility or operational changes other than the transfer of operating authority to New NSP are being proposed in the application.

The proposed amendment would add a footnote to the license to reflect its transfer from NSP to the newly formed, wholly owned subsidiary.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2)

Requests for a hearing and petitions for leave to intervene should be served upon Jay Silberg, Esq., counsel for NSP, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202–663–8063; fax: 202–663–8007; e-mail: jay.silberg@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 13, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated October 29, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 7th day of February 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3096 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282; 50–306; 72–10]

Northern States Power Company Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Materials License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the transfer of Facility Operating Licenses Nos. DPR–42 and DPR–60 for the Prairie Island Nuclear Generating Plant, Units 1 and 2, and Materials License No. SNM–2506 for the Prairie Island Independent Spent Fuel Storage Installation (ISFSI) currently held by Northern States Power Company (NSP), as owner and licensed operator of Prairie Island, Units 1 and 2, and Prairie Island ISFSI. The transfer would be to a newly formed company (referred to herein as "New NSP"). The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

By application dated October 29, 1999, the Commission was informed that Northern States Power Company entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). Under the agreement, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and responsibility and control over operations to New NSP. New NSP would assume title to the facilities following approval of the proposed license transfers, and would become responsible for the operation, maintenance, and eventual decommissioning of Prairie Island, Units 1 and 2, and Prairie Island ISFSI. No physical changes to the Prairie Island, Units 1 and 2, or Prairie Island ISFSI facilities or operational changes other than the transfer of operating authority to New NSP are being proposed in the application.

The proposed amendment would add a footnote to the licenses to reflect their transfer from NSP to the newly formed, wholly owned subsidiary.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an independent spent fuel storage installation which does no more than conform the license to reflect the transfer action, involves respectively, "no significant hazards consideration" or "no genuine issue as to whether the health and safety of the public will be significantly affected." No contrary determination has been made with respect to this specific license amendment application. In light of the generic determinations reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In

addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jay Silberg, Esq., counsel for NSP, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202–663–8063; fax: 202–663–8007; e-mail: jay.silberg@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 13, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated October 29, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 7th day of February 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3097 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 7, 14, 21, and 28, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 7

Tuesday, February 8

9:30 a.m.
Discussion of Nuclear Issues in the Former Soviet Union (Closed-Ex. 1 & 9)

Wednesday, February 9

10:00 a.m.
Briefing on Status of Research Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Thursday, February 10

9:25 a.m.
Affirmation Session (Public Meeting) a: INTERNATIONAL URANIUM (USA) CORP. Commission Review of LBP–99–5 (Contact: Ken Hart, 301–415–1659)

9:30 a.m.
Briefing on Status of CFO Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

Friday, February 11

9:30 a.m.
Briefing on Status of NMSS Programs, Performance, and Plans (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

Week of February 14—Tentative

There are no meetings scheduled for the Week of February 14.

Week of February 21—Tentative

Tuesday, February 22

9:00 a.m.
Briefing on Threat Environment Assessment (Closed-Ex. 1)

11:00 a.m.
Briefing by the Executive Branch (Closed-Ex. 1)

Wednesday, February 23

8:55 a.m.
Affirmation Session (Public Meeting) (if needed)

9:00 a.m.
Briefing on Status of Spent Fuel Projects (Public Meeting) (Contact: William Brach, 301–415–8500)

10:45 a.m.
Discussion of Intragovernmental Issues (Closed-Ex. 9)

Week of February 28—Tentative

Tuesday, February 29, 2000

1:30 p.m.
Briefing on Draft 50.59 Regulatory Guide (Public Meeting) (Contact: Eileen McKenna, 301–415–2189)

Wednesday, March 1, 2000

9:00 a.m.
Briefing on Improvements in the Plant Assessment Process (Public Meeting) (Contact: Bill Dean, 301–415–1257)

Thursday, March 2, 2000

9:25 a.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

9:30 a.m.
Meeting with ACRS on Risk Informing Part 50 (Public Meeting) (Contact: John Larkins, 301–415–7360)

Friday, March 3, 2000

9:30 a.m.
Briefing on Calvert Cliffs License Renewal (Public Meeting) (Contact: Chris Grimes, 301–415–1183)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 4, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–3192 Filed 2–8–00; 12:20 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.180, "Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference in Safety-Related Instrumentation and Control Systems," endorses design, installation, and testing practices acceptable to the NRC staff for addressing the effects of electromagnetic interference, radio-frequency interference, and power surges on safety-related instrumentation and control systems in a nuclear power plant. The guide endorses, with certain conditions, the design and installation practices described in the Institute of Electrical and Electronics Engineers standard, IEEE Std 1050–1996, "IEEE Guide for Instrumentation and Control Equipment Grounding in Generating Stations." Electromagnetic compatibility testing practices from military and commercial standards are endorsed to address electromagnetic emissions, electromagnetic and radio-frequency interference immunity, and power surge withstand capability.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's Public Electronic Reading Room at <www.nrc.gov>. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 21st day of January 2000.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 00–3092 Filed 2–9–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Employee Representative's Status and Compensation Reports; OMB 3220–0014.

Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term "employee" includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railway labor organization other than a labor organization included in the term "employer," as defined in the RRA, who before or after August 29, 1935, was in the service of an employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR 209.10.

The RRB utilizes Forms DC–2a, Employee Representative's Status Report, and DC–2, Employee Representative's Report of Compensation to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

Minor editorial changes are proposed to Form DC–2a and Form DC–2. The completion time for Form DC–2 is estimated at 30 minutes per response. The RRB estimates that approximately 65 Form DC–2's are received annually. The RRB estimates that less than 10 Form DC–2a's are received annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–3128 Filed 2–9–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension: Rule 6e–2, SEC File No. 270–177, OMB Control No. 3235–0177.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment.

Rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 ("Act") is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration

requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of Rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to Rule 6e–2.

Since 1997, there have been no filings under paragraph (b)(9) of Rule 6e–2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1997, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e–2.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549.

Dated: February 3, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3032 Filed 2–9–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24278; 812–11562]

First American Investment Funds, Inc., et al.; Notice of Application

February 4, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c), 10(f), and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from sections 10(f) and 17(a)(1) of the Act.

SUMMARY OF THE APPLICATION: The requested order would permit certain registered management investment companies to purchase certain securities from an affiliated underwriter and through group orders placed with an underwriting syndicate that includes the affiliated underwriter.

APPLICANT: First American Investment Funds, Inc. ("FAIF"); Minnesota Municipal Income Portfolio, Inc.; Minnesota Municipal Term Trust, Inc.; Minnesota Municipal Term Trust, Inc.-II.; U.S. Bank National Association ("U.S. Bank"); and U.S. Bancorp Piper Jaffray Inc. ("Piper Jaffray").

FILING DATES: The application was filed on April 2, 1999 and was amended on December 22, 1999. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 29, 2000 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. FAIF is an open-end management investment company registered under the Act. FAIF offers its shares in several series, including the Minnesota Intermediate Tax Free Fund and the Minnesota Tax Free Fund. Minnesota Municipal Income Portfolio, Inc., Minnesota Municipal Term Trust, Inc., and Minnesota Municipal Term Trust, Inc.-II are closed-end management investment companies registered under the Act. The two named series of FAIF, together with the three closed-end investment companies, collectively are referred to in this notice as the "Funds." The Funds invest primarily in debt securities of the State of Minnesota, its political subdivisions, authorities, agencies, instrumentalities and corporations, the interest on which is exempt from federal and Minnesota personal income taxes ("Minnesota Tax-Exempt Securities").

2. U.S. Bank, which is exempt from registration as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") pursuant to section 202(a)(11) of the Advisers Act, serves as investment adviser to each Fund. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp.

3. Piper Jaffray, a registered broker-dealer and investment banking firm, is a wholly-owned indirect subsidiary of U.S. Bancorp. Applicants state that Piper Jaffray is one of the leading underwriters of most types of Minnesota Tax-Exempt Securities based on both dollar volume and number of new issues. In 1998, Piper Jaffray served as underwriter of approximately $2.4 billion in principal amount of Minnesota Tax-Exempt Securities. According to applicants, this amount

represented approximately 46% of the total dollar amount, and approximately 24% of the total number, of new issues of Minnesota Tax-Exempt Securities during that year.

4. Applicants request relief under section 10(f) from section 10(f) and under sections 6(c) and 17(b) from section 17(a)(1) to permit the Funds to purchase Minnesota Tax-Exempt Securities from Piper Jaffray, when Piper Jaffray is the sole underwriter of these securities or these securities are unavailable from other members of an underwriting syndicate. Applicants also request relief under these sections to permit the Funds to purchase Minnesota Tax-Exempt Securities through group orders placed with an underwriting syndicate of which Piper Jaffray is a member.[1] The requested order would not permit transactions between Piper Jaffray and the Funds in other securities or in Minnesota Tax-Exempt Securities sold in the secondary market.

5. Applicants request that any relief granted pursuant to the application also apply to all current and future series of FAIF and to any other registered management investment companies organized in the future that are advised or subadvised by U.S. Bank (or a person controlling, controlled by, or under common control with U.S. Bank) and that invest primarily in Minnesota Tax-Exempt Securities (collectively, "Future Funds").[2]

Applicants' Legal Analysis

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from purchasing securities from an underwriting syndicate in which an affiliated person of the company's investment adviser acts as a principal underwriter. Under section 2(a)(3) of the Act, Piper Jaffray is an affiliated person of U.S. Bank because both entities are under the control of U.S. Bancorp.

2. Section 10(f) further provides that the Commission, by rule or order, may exempt any transaction or class of transactions from section 10(f) to the exempt that the exemption is consistent with the protection of investors. Rule 10f–3 under the Act permits a registered investment company to make purchases otherwise prohibited by section 10(f) under certain conditions. Under the rule, the company may not purchase the securities being offered directly or indirectly from its affiliated underwriter, and purchases of municipal securities may not be designated as group sales or otherwise allocated to the account of the affiliated underwriter.

3. Section 17(a)(1) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling securities to the investment company. Under section 17(b) of the Act, the Commission will exempt a transaction from the provisions of section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants assert that the supply of newly-issued Minnesota Tax-Exempt Securities has remained relatively stable over the past several years, while the demand for these securities has been increasing. Applicants state that, in their experience, group orders generally are given priority over designated orders and member orders in underwritings of Minnesota Tax-Exempt Securities.[3] Due to the priority given to group orders, the Funds may not be able to purchase Minnesota Tax-Exempt Securities through designated orders or member orders in an offering that is oversubscribed. Applicants assert that the Funds therefore may be precluded from making purchases in any oversubscribed offering where Piper Jaffray is a member of the underwriting syndicate. As noted above, applicants assert that Piper Jaffray is one of the leading underwriters of most types of Minnesota Tax-Exempt Securities.

5. Applicants assert that the Funds are largely dependent upon the new issue market for Minnesota Tax-Exempt Securities in order to meet their portfolio needs. According to applicants, the availability of Minnesota Tax-Exempt Securities in the secondary market is unpredictable because, among other reasons, a substantial portion of these securities are held to maturity by their original purchasers. Applicants also assert that prices may be higher in the secondary market because of dealer markups and, because secondary market purchases are often made at a discount to par, a portion of the return on the securities purchased may be treated as taxable income.

6. Applicants state that permitting the Funds to buy Minnesota Tax-Exempt Securities directly from Piper Jaffray when the securities are unavailable from another underwriter, or through group orders when Piper Jaffray is a member of the underwriting syndicate for the securities, would benefit the shareholders of the Funds by providing the Funds with adequate access to the new issue market for Minnesota Tax-Exempt Securities. Applicants assert that, as a condition to the requested relief, the Funds, together with all other persons for whom U.S. Bank and its affiliates have investment discretion (collectively, "Related Purchasers") would be prohibited from purchasing a majority or more of any class of an issue of Minnesota Tax-Exempt Securities when Piper Jaffray is an underwriter of the securities. This condition would operate in addition to the requirement in rule 10f–3(b)(7)(i) that the aggregate amount of securities of any class of Minnesota Tax-Exempt Securities purchased by the Funds, together with all other investment companies advised by U.S. Bank, may not exceed 25% of the principal amount of the offering of that class. According to applicants, these two requirements would protect the Funds against the dumping of unmarketable securities.

7. Applicants note that, as a further condition to the requested relief, the aggregate value of Minnesota Tax-Exempt Securities held by a fund and acquired pursuant to the order may not exceed 50% of the Fund's total net assets. According to applicants, this condition should ensure that no Fund is operated primarily as a vehicle for purchasing securities in transactions permitted by the order. Applicants state that the order also would be conditioned on certain procedural safeguards designed to protect the independence of U.S. Bank in making investment decisions on behalf of the Funds and to ensure appropriate oversight of all transactions effected in reliance on the order. Applicants further state that the requested order meets the standards for relief set forth in sections 6(c), 10(f), and 17(b) of the Act.

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[1] A group order is an order that is allocated to all members of an underwriting syndicate in proportion to their relative participations.

[2] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

[3] In a designated order, the purchaser designates one or more syndicate members to receive the credit for sale. In a member order, the purchaser places an order directly with a member of the syndicate that retains that portion of the commission not retained by the manager.

Applicant's Conditions

Applicants agree that the order will be subject to the following conditions:

1. Transactions effected pursuant to the order will be effected in accordance with all of the provisions of rule 10f–3, other than paragraph (b)(8). At least a majority of any class of an issue of Minnesota Tax-Exempt Securities purchased pursuant to the order must be purchased by persons who are not Related Purchasers. If the aggregate number of securities the Related Purchasers wish to acquire exceeds the permitted amount, the securities acquired will be allocated to each Related Purchaser in the proportion that the number of securities that such Related Purchaser wishes to acquire bears to the total number of securities that all Related Purchasers wish to acquire.

2. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales may be effected only in Minnesota Tax-Exempt Securities that, at the time of purchase, have one of the following investment grade ratings from at least one nationally recognized statistical rating organization: (i) One of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less, or (ii) one of the three highest investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales will be limited so that no such transaction will be effected if, as a result, the aggregate value of Minnesota Tax-Exempt Securities held by a Fund and acquired pursuant to the order would exceed 50% of the total net assets of that Fund.

4. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales will be effected only when the Minnesota Tax-Exempt Securities to be acquired are otherwise unavailable for purchase. If Piper Jaffray is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When Piper Jaffray is a member of an underwriting syndicate, U.S. Bank will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, U.S. Bank will determine the aggregate number of securities that the Related Purchasers wish to acquire. Next, U.S. Bank will attempt to purchase as much of this number as possible from members of the syndicate other than Piper Jaffray. After acquiring as many securities as possible from such other members, U.S. Bank will attempt to purchase from Piper Jaffray the number of securities that the Related Purchasers wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Funds to the extent of the number of securities the Funds wish to acquire, or the number of securities the Funds are entitled to acquire based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from Piper Jaffray, whichever is less.

5. When the Funds purchase Minnesota Tax-Exempt Securities from a syndicate manager of an underwriting syndicate of which piper Jaffray is a member, the Funds will not: (i) Submit designated orders to a syndicate manager that are allocated to Piper Jaffray; (ii) submit group orders to a syndicate manager that designate Piper Jaffray to receive any portion of the commission; or (iii) otherwise allocate orders to Piper Jaffray.

6. The exemption will be valid only so long as U.S. Bank and Piper Jaffray operate as separate entities and independent profit centers within the holding company framework of U.S. Bancorp, with separate officers and employees, separate capitalizations, and separate books and records. Employees of Piper Jaffray will not participate with, or seek to influence, U.S. Bank in its investment decisions as investment adviser to the Funds, other than in the normal course of sales activities of the same nature that are being carried out simultaneously with respect to unaffiliated clients of Piper Jaffray. Senior executives of U.S. Bancorp with responsibility for overseeing the operations of various subsidiaries are not precluded from exercising those functions over U.S. Bank because they oversee Piper Jaffray as well, provided that such persons will not have any involvement with respect to transactions effected pursuant to the exemption and will not attempt to influence or control the purchase of securities by the Funds from Piper Jaffray or an underwriting syndicate of which Piper Jaffray is a member.

7. U.S. Bank and Piper Jaffray will adopt a set of guidelines for their respective personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application and that the parties maintain arm's length relationships. Compliance officers of U.S. Bank and Piper Jaffray will periodically monitor the activities of their respective companies for compliance with such guidelines and with the conditions set forth in the application.

8. The board of directors of each Fund, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act and have no direct or indirect financial interest in the transaction (other than through ownership of Fund shares), will review, no less frequently, each purchase of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales since the last review and will determine that the terms of such transaction were reasonable and fair to the shareholders of the Fund and did not involve overreaching of the Fund or its shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3086 Filed 2–9–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42378; File No. SR–Amex–99–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Certain Listing Standards

February 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act" [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on September 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendments No. 1,[3] 2,[4] and 3,[5] to the proposed rule change on December 14, 1999, January 4, 2000, and January 19, 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provision of its listing standards to simplify the listing process, eliminate certain outdated processes, and to clarify the Exchange's alternative listing guidelines for domestic companies. The text of the proposed rule change is as follows. Proposed new language is in italic; deletions are in brackets.

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Listing Standards, Policies and Requirements

PART 1. Original Listing Requirements—Listing Fees (§§ 101–146)

CRITERIA FOR ORIGINAL LISTING (§§ 101–118)

Sec. 101. GENERAL

The approval of an application for the listing of securities is a matter solely within the discretion of the Exchange. To assist companies interested in applying for listing, the Exchange has established certain numerical guidelines, outlined below, which will be considered in evaluating listing eligibility. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook.

The fact that an applicant may meet the Exchange's numerical guidelines does not necessarily mean that its application will be approved. On the other hand, an application may be approved even though the company does not meet all of the numerical guidelines.

[The Exchange will furnish, without charge, a confidential preliminary opinion as to the eligibility of an applicant for listing as described in § 202.]

See §[§'s] 110 [and 115] for special criteria relating to foreign issuers [and member corporations] *and Rules 1000, 1000A, and 1200 for rules relating to portfolio deposit receipts, Index Fund Shares, and Trust Issued Receipts.*

(a) REGULAR LISTING CRITERIA

([a]*1*) *Size*—Stockholders' equity of at least $4,000,000.

([b]*2*) *Income*—Pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120–125.

(b) ALTERNATE LISTING CRITERIA [FOR DOMESTIC COMPANIES

It is recognized that certain financially sound companies are unable to meet fully the Exchange's regular listing criteria because, for example, of the nature of their business, or because of continuing large expenditures of funds for research and development. Such companies may, however, qualify for listing provided they meet the numerical criteria outlined below, have sufficient financial resources to continue operations over an extended period of time, and are otherwise regarded as suitable for Exchange listing.

Among the factors considered by the Exchange in determining a company's listing eligibility are the following:

(a) the nature and scope of the applicant's operations, including its demonstrated ability to acquire or discover and develop new products or properties, the potential or proven market for existing or future products and the company's plans for future development and expansion of its existing resources;

(b) the applicant's financial condition and accounting practices, its ability to service existing debt and other obligations, the availability of financing for currently committed programs and future expansion, and the size of its development expenses in relation to its equity and revenues;

(c) the composition of the applicant's assets including its reserves, royalties, or other rights and patents;

(d) the experience and reputation of the applicant and its management; and

(e) the nature and effect of governmental policies or restrictions on the company's products or properties and the extent of competition and economic conditions within the particular industry.

Numerical Criteria:]

([a]*1*) *History of Operations*—Three years of operations.

([b]*2*) *Size*—Stockholders' equity of at least $4,000,000.

([c]*3*) *Distribution*—See Section 102(a).

([d]*4*) *Aggregate Market Value of Publicly Held Shares*—$15,000,000.

Sec. 102. EQUITY ISSUES

(a) *Distribution*—Minimum public distribution * of 500,000, together with a minimum of 800 public shareholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders.

Footnotes: * The terms "public distribution" and "public shareholders" as used in the Company Guide include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.* [5]*10*% or greater, affiliated or family holdings.

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Sec. 103. PREFERRED STOCK

(a)–(c) no change

[(d) *Redeemable Issues*—Redeemable issues, if subject to redemption in part, must be redeemable only pro rata or by lot. (See § 902.)]

Sec. 104. BONDS AND DEBENTURES

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[Redeemable Issues

Redeemable issues, if subject to redemption in part, must be redeemable only pro rata or by lot. (See § 902)]

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Issuer or Bond Rating Status

For the Exchange to list a debt security, the security must be characterized by one of the following conditions:

(A) the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange *or on the Nasdaq National Market*);

(B) an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange *or on the Nasdaq National Market*) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security;

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Jack P. Drogin, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 13, 1999 ("Amendment No. 1"). Amendment No. 1 revises Section 1101 of the *Amex Company Guide* to add references to forms filed with the Commission by unit investments trusts and open-end management investment companies.

[4] Letter from Michael J. Ryan, Jr., Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated December 31, 1999 ("Amendment No. 2"). As originally filed, the proposed rule change eliminated the requirement to submit with an original listing application certain corporate documents and an opinion of counsel regarding the legality of the organization, existence of the issuer, and the validity of the securities to be issued. Amendment No. 2 reinstates the requirement to submit these documents. Amendment No. 2 also makes certain technical changes to the proposed rule change.

[5] Letter from Michael J. Ryan, Jr., Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated January 18, 2000 ("Amendment No. 3"). Amendment No. 3 eliminates the requirement to file certain documents with an original listing application, including an issuer's charter and by-laws, as well as an opinion of counsel. In lieu of requiring these documents to be submitted, Amendment No. 3 states that the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. In addition, Amendment No. 3 states that the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Finally, Amendment No. 3 reinstates Section 125 of the *Amex Company Guide*, relating to remedies available to bondholders upon default.

(C) an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange *or on the Nasdaq National Market*) has guaranteed the debt security;

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Sec. 105. WARRANTS

The listing of warrant issues is concerned on a case by case basis. The Exchange will not consider listing the warrant issue of a company unless the common stock or other securities underlying the warrants are listed and in good standing either on the American or New York Stock Exchanges *or on the Nasdaq National Market* and there are at least 200,000 warrants publicly held by not less than 100 public warrantholders. In addition, to be listed, warrant issues are expected to meet the following criteria:

(a) no change

[(b) *Redeemable (callable) Issues*—Warrant, if subject to redemption in part, must be redeemable only pro rata or by lot. The Exchange requires advance notice of the Call Date (if any) as defined in its Warrant Agreement with the warrant agent(s). (See § 902.)]

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[Sec. 112. EXPLORATION AND DEVELOPMENT COMPANIES

The Exchange generally will not list the securities of companies organized for the exploration and development of natural resources until they have reached the production stage and meet the criteria set forth in § 101.]

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[Sec. 115. MEMBER CORPORATIONS

The following requirements and procedures will apply to the original listings of securities of publicly-owned member corporations:

Minimum Standards:

(a) Size-Stockholders' equity of at least $10 million. In determining a listing applicant's ability to meet this standard, the Exchange will value securities owned by the applicant at less than market value, depending upon the ready marketability of such securities. The applicant shall include in its listing application a list and the amounts of the securities owned by it, the names of the exchanges on which they are listed, and whether there are any restrictions against their sale as in the case of securities acquired for investment ("letter stock").

(b) Earnings-Pre-tax income of at least $1.5 million for the latest fiscal year.

(c) Historical Operations—A history of satisfactory operations for at least 3 years prior to listing in order to demonstrate the applicant's ability to operate profitability under normal conditions. As in the case of all other listing applicants, all relevant factors regarding a member corporation's operations will be carefully considered, including the period of time in which present management has conducted the corporation's operations and the changes, if any, in management during the three year period under review.

(d) Capital Ratios—A regular capital ratio which has not exceeded 10-to-1 (or an alternate capital ratio which has not been less than 5%) for any period of 15 consecutive days during the six-month period preceding filing of the applicant's listing application.

Procedures:

In addition to the usual review procedures applicable to other types of corporations, the following special procedures will apply in reviewing member corporations for listing:

(a) Reports received by the Exchange under FOCUS filing requirements will be reviewed and any problems indicated by such reports will be required to be satisfactorily resolved before listing. FOCUS reports will be required of any member corporation listing applicant not already filing them for a three-month period before consideration of the listing application.

(b) In the case of an applicant which is also a member of the New York Stock Exchange, a copy of the report of the most recent examination by the New York Stock Exchange will be reviewed and any problems disclosed in such report must be satisfactorily resolved before listing.

Disclosure:

Any member corporation, which intends to list its securities on the Exchange, will be required to include in its prospectus additional disclosures with respect to certain regulatory actions which the Exchange (or the New York Stock Exchange) may take and which may have an adverse impact on the firm's future income and prospects. Among the actions which such Exchanges may take are:

(a) limiting the opening of new offices, employment of new registered representatives, or opening of new accounts;

(b) requiring an organization to cease business as a clearing organization and become solely an introducing broker;

(c) restricting the types of activities which a member organization performs;

(d) requiring an organization to reorganize or even to liquidate its business; and

(e) requiring a listed member corporation to make timely disclosure of material information concerning its business, financial situation or prospects, or other matters which might have a bearing on its operations.

In addition to publishing quarterly statements of revenues and earnings as required by the rules and regulations of the Exchange, a listed member corporation shall be required to distribute copies of such statements to its stockholders. Such quarterly reports, as well as the annual report, shall also contain a statement regarding the corporation's net capital position in relation to the standards of the Exchange and the New York Stock Exchange.

A listed member corporation shall be required to file with the Exchange copies of its financial statements and questionnaires which it files with the New York Stock Exchange.]

[Sec. 116. COMPANIES ENGAGED IN GAMING OPERATIONS

In addition to the many factors considered in the evaluation of any application for original listing (see § 101), the Exchange will give particular attention to the historical record, operating procedures and management personnel of any applicant company which is engaged, to any substantial extent, in gaming operations. An applicant of this nature will be required to demonstrate that it has adequate procedures and management capabilities to detect and appropriately control any of the following:

(a) the association with any person having a criminal background or who would not qualify for a license under any Federal, state or local regulatory requirements under which the applicant company operates;

(b) any misuse of the company's funds or misappropriation of its receipts from gaming operations; or

(c) any activities by persons associated either directly or indirectly with the company designed to promote the company's securities in contravention of the securities laws or to evade the disclosure requirements of the Exchange.

Any of the following factors may be considered by the Exchange as a basis for refusing to approve the application of a company engaged in gaming operations:

(a) if the company (or any predecessor organization that has been responsible for operating such gaming facilities), or any officer, director, controlling stockholder or managerial or supervisory employee of the company or of any such predecessor, or any other person having an association or relationship with the company or such predecessor whereby such person was, or is, in a position to influence management decisions with respect to, or to receive benefits from, the operation of such gaming facilities, has been convicted of any criminal offense relating to gaming or to any other business of the company or such predecessor, or relating to fraud, violation of the securities laws or violation of any Federal or state anti-racketeering or similar statutes, at any time during a period ten (10) years preceding the date of the application for listing;

(b) if any person described in the preceding paragraph has been indicted or cited for violation of any Federal, state or local statute or ordinance relating to gaming or fraud, or has been denied a license or had his license revoked by any Federal, state, or local agency having jurisdiction over gaming operations, or any such person has been identified by an appropriate Federal or state agency as being associated with organized crime or with other persons conspiring to violate gaming or anti-racketeering statutes, at any time during a period of five (5) years preceding the date of the application for listing;

(c) if any investigation (by any appropriate Federal, state or local agency) of the company, or of any predecessor or other person described in the first paragraph above, has disclosed any material violations of any law, rule or regulations applicable to the gaming operations of the company, during a period of five (5) years preceding the date of the application for listing;

(d) if the company has in its employ, or has associated with it in any capacity, any person who, if required to be licensed in any Federal, state or local agency having jurisdiction over gaming operations, is not so licensed or has been denied a license or has been found to be unsuitable to receive a license;

(e) if the company, or any predecessor or other person described in the first paragraph

above, shall have been finally determined to be liable for any income or other tax deficiency based upon an understatement of revenues or income from gaming activities, during a period of five (5) years preceding the date of the application for listing; or

(f) if the company, or any predecessor described in the first paragraph above, shall have failed to received an unqualified opinion of an independent public accountant with respect to the balance sheet and statement of operations of the company or any such predecessor for each of the five (5) fiscal years preceding the date of the application for listing.

In connection with the subsequent filing of any listing application by a company seeking to issue additional securities, the purpose of which is to enable the company to become engaged to a substantial degree in gaming or related activities, the Exchange will apply all of the above standards to the same extent as though the application were for original listing. Moreover, the Exchange will consider the suspension of trading in, or removal from listing or unlisted trading of, the securities of any company which, after the effective date of this policy, takes steps to become engaged in gaming operations to any substantial degree, unless the company can demonstrate that it meets all of the above special requirements for original listing of companies engaged in gaming operations.]

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Sec. 118. INVESTMENT TRUSTS

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A. INVESTMENT TRUSTS BASED ON SECURITIES OF INDIVIDUAL ISSUERS

(a)–(d) no change

[(e) *Trustees*—The requirements of paragraphs (a), (c) and (d) of § 811 of the Guide apply.]

([f]*e*) *Voting*—no change

([g]*f*) *Shareholder Communications*—no change

([h]*g*) *Listing Agreement*—In addition to the above, an investment Trust applying for listing under this section of the Guide shall sign a listing agreement with the Exchange which, among other things, requires compliance with the following Exchange Rules and Regulations regarding:

(i) Additional Listing—(see Part 3 of the Guide);

(ii) Dividends, Stocks Splits and Distributions (see §§ 501–507 and 509 of the Guide);

(iii) [Transfer Facilities, Certificates—(see §§ 801–841 of the Guide);

(iv)] Notification—comply with existing notification requirements of the Exchange.

B. INVESTMENT TRUSTS BASED ON STOCK INDEXES OR DEBT INSTRUMENTS

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The eligibility of a Trust for listing is subject to the following:

(a) no change

(b) no change

(c) [Trustees—See § 118A(a).

(d)] Voting—When a share or unit has been divided into separate components, any voting rights accorded the share or unit may be divided between the component securities as specified in the Trust prospectus.

([e]*d*) Listing Agreement—See § 118A([h]g).

CONFLICTS OF INTEREST

Sec. 120. POLICIES—CONFLICTS OF INTEREST, INDEPENDENT DIRECTORS AND VOTING RIGHTS (§§ 120–126)

[The existence of material conflicts of interest between companies and their officers, directors or principal shareholders (or members of their families or concerns controlled by, or affiliated with, them) will be reviewed by the Exchange in considering the eligibility of companies for original listing. In many cases, companies are able to eliminate conflict situations prior to listing or within a reasonable period after listing, and may be asked to do so. Where a conflict cannot be resolved promptly for sound business reasons, the Exchange will consider all pertinent factors.]

Each company shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate.

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Sec. 125. REMEDIES AVAILABLE TO BONDHOLDERS UPON DEFAULT

no change

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OTHER REQUIREMENTS (§§ 130–134)

Sec. 130. ORIGINAL LISTING APPLICATIONS

Applicants must register the security to be listed under Section 12(b) of the Exchange Act (§ 210) and submit an original listing application (§ 211). [Before doing so, they should first obtain a preliminary opinion as to eligibility (§ 202) which the Exchange will furnish without charge.]

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Sec. 132. LISTING AGREEMENTS

In addition to meeting the foregoing criteria, companies applying for listing enter into agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies.

Among other things, listed companies are required to:

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(e) [*Transfer Facilities*, Certificates—Establish facilities or agencies for the transfer and registry of stock and the payment of principal and interest on, and the registry or exchange of, bond or debenture issues (§§ 801–841.) Requirements for engraving and the form of certificates for listed securities are also described in these sections;

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(g)]) *Additional Information*—upon request, furnish to the Exchange such information concerning the Company as the Exchange may reasonable require.

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LISTING FEES (§§ 140–146)

Sec. 140. ORIGINAL LISTING FEES

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Special Shareholder Rights Plans

[A processing fee of $1,000 will be charged for special shareholder rights plans in lieu of the fees set forth in the above schedules, so long as such rights are neither exercisable nor tradable as a separate security.]

Upon the shareholder rights becoming exercisable and tradabale separately:

- an original fee will be charged based on the number of shareholder rights then outstanding and on additional issuance of rights[, less the $1,000 processing fee;]
- shareholder rights will be subject to the Exchange's continuing annual fee schedule.

Sec. 141. ANNUAL FEES

Stock Issues

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The annual fee is payable in January of each year and is based on the total number of all classes of shares ([including] *excluding* treasury shares) and warrants [outstanding at] *according to information available on Exchange records as of* December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable in December based on the total number of outstanding shares of all classes of stock at the time of original listing.

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Sec. 144. REFUNDS OF LISTING FEES (see also § 141 above)

(a) *Applications Withdrawn or Not Approved*—If a listing application is not approved by the Exchange or is withdrawn by the applicant, a service charge of $[250]*1,000* is deducted by the Exchange from the listing fee previously paid by the applicant, and the balance is refunded to it. [If an applicant refiles an application after such a service charge has been deducted, the amount deducted is applied as a credit to the listing fee payable on the refiling, with the understanding that if the application is again withdrawn or not approved, a further service charge of $250 will be deducted. This procedure applies to all further refilings.]

(b) *Credits After Approval*—No cash refund of a listing fee is made where an application has been finally approved by the Exchange. If additional unissued shares are authorized for addition to the list "upon official notice of issuance" and all of such shares are not issued for the purpose specified in the application, a credit is allowed. The credit may be applied in full or partial payment of fees payable for future listing applications of the same company. The amount of the credit is the difference between the fee paid for the listing of such authorized shares and the fee which would have applied had the applications been initially submitted for the number of shares, which were actually issued and added to the list under the same listing authorization. If a company cancels all listing authorization pursuant to any single application (see § 350), without the issuance

of any such shares, the Exchange makes a minimum charge of $[250]*1,000*.

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PART 2. Original Listing Procedures (§§ 201–222)

GENERAL (§§ 201–207)

Sec. 201. STEPS

There are normally [eight] *seven* steps in the listing process:

(a) [company request preliminary listing eligibility opinion and receives favorable opinion;]

(b)–(h) reclassified as (a)–(g)

[Sec. 202. PRELIMINARY OPINION PRIOR TO PREPARATION OF COMPLETE LISTING APPLICATION

An applicant should obtain an informal and confidential opinion as to the eligibility of a particular issue for listing before preparing and filing a complete listing application. There is no charge for such opinion. The opinion may be obtained by sending the following data to the Exchange:

(a) three copies of the latest prospectus and proxy statement of the company (if available);

(b) three copies of printed annual reports distributed to shareholders for the last fiscal year and one copy of the annual report for preceding two years (if available) or financial statements for such years; five copies of SEC Form 10–K for latest fiscal year (if available); five copies of SEC Form 10–Q (if available) for interim periods since end of latest fiscal year; and one copy of each SEC Form 8–K filed since the latest Form 10–K;

(c) a certificate showing the extent of the public distribution of the stock, to be furnished on a printed form (Listing Form 2) supplies by the Exchange;

(d) information with respect to personal interests of any officers, directors or principal shareholders in any business arrangements involving the company such as the leasing of property to or from the company, interests in minority-held subsidiaries, interests in businesses that are competitors, suppliers or customers of the company, loans to or from the company, if not included in Form 10–K prospectus or proxy statement; and

(e) information concerning material pending litigation if not included in Form 10–K, prospectus, or proxy statement.]

[Sec. 203. TIME SCHEDULE

A preliminary listing eligibility opinion is normally rendered within one to two weeks after the opinion is requested. An additional two weeks is normally required for the complete processing of an application.]

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Sec. 207. [Corporate Relations Manager] Listing Qualifications Analyst

Each company is assigned to a [Corporate Relations Manager] *Listing Qualifications Analyst*, who serves as the principal liaison between the Exchange and the company on all regulatory and disclosure-related matters.

PREPARATION OF ORIGINAL LISTING APPLICATIONS (§§ 210–218)

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Sec. 211. ORIGINAL LISTING APPLICATION—GENERAL

(a) [*Initial Submission*] form—[No prepared or blank forms are available for the listing application itself. The applicant prepares its own application, in typewritten narrative form, following the instructions outlined below. The Exchange will provide an appropriate sample application and assist in its preparation.]

A [preliminary] typewritten [draft of the] listing application (signed by an executive officer of the applicant), together with all appropriate attachments, as outlined below, and one copy only of each of the required exhibits, should be [initially] filed with the Exchange for examination. If any deficiencies are noted, or any changes are considered necessary in the form or contents of the application and exhibits, the applicant will be notified.

(b) *Incorporation by Reference*—A copy of the following documents should be attached to each original listing application submitted and the information contained therein may be incorporated by reference (see § 212, Item 2):

(i) no change

(ii) no change

(iii) no change

(iv) [a certificate showing the extent of the public distribution of the stock, to be furnished on a printed form (Listing Form 2) supplied by the Exchange; and

(v) information concerning material pending litigation if not included in Form 10–K, prospectus, or proxy statement; and

(vi) a statement that there have been no material developments since the date of the latest SEC filing; and

(vii)] such other information, documents or materials as may be deemed appropriate by the Exchange for inclusion in the applicant's listing application.

(c) *Listing Fee*—A check drawn to the order of "American Stock Exchange" should accompany the [initial] submission. (See § 140 for computation of amount.)

(d) *Accounting Review*—no change

[(e) *Final Application*—The listing application need not be printed. Three (3) final copies of the application (with attachments listed in (b) above) shall be submitted with each copy manually signed by a duly authorized officer of the applicant.]

Sec. 212. CONTENT OF ORIGINAL LISTING APPLICATION—STOCK

[An application for original listing of a stock issue shall recite, in substantially the order given below, the following:

Item 1. Title Page, showing:

(a) name of the applicant, address and telephone number of principal executive officer; and

(b) date of application and formal request for listing; specifying the amount, class and par value of the security applied for.

Application shall be made to list only that part of an issue which is actually issued, including both outstanding and treasury shares. If an additional unissued amount is reserved for issuance for a specific purpose, application may also be made for authority to add that amount to the list, upon official notice of issuance for that specific purpose. The request for authority to list such additional amount should state briefly, but specifically, the purpose of issuance, and that the listing authorization of such shares is effective only if they are issued for that purpose. No additional unissued amount may be applied for, which is not reserved for issuance for a specific purpose by the Board of Directors.

If the applicant has any other classes of stock which are not being listed, the application should indicate how many such shares are outstanding, how many such shares are reserved for future issuance and the purpose thereof.

Item 2, Attachments. A statement listing the appropriate documents which are attached to the listing application and incorporated therein by reference (see § 211) and a statement that there have been no material developments since the date of the latest SEC filing.

Item 3. Certificate. Certificate and signature of duly authorized officer of the applicant.]

Each company must submit an application for original listing, in the form prescribed by the Exchange, together with supporting exhibits specified in § 306 (See sample application in Appendix).

Sec. 213. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION-STOCK

[The following exhibits must be filed i] *In* support of the original listing application, *a company must file:*

[**1. Listing Agreement.** O] one copy of *the Listing* Agreement, executed by an executive officer of the applicant, on Listing Form 1 supplied by the Exchange. *In addition,*

[**2. Certificate of Distribution.** One copy, signed by an executive officer of the applicant, as of a recent date, prepared on Listing Form 2 supplied by the Exchange.

3. Charter. One copy each of charter and all amendments to date, with (manually signed) certificate(s) of Secretary of State or corresponding authority covering filing of the original charter and each amendment. In lieu of the foregoing, the applicant may submit a copy of the charter as amended to date, with (manually signed) certificate(s) of Secretary of State or corresponding authority with respect thereto. Photostatic copies are acceptable.

4. By-Laws. One copy of the by-laws, as amended to date of application, certified by the secretary or other executive officer of the applicant.

5. Specimen Certificates. One specimen copy of each denomination of certificate of class to be listed. If transfer agents(s) and registrar(s) are located in more than one city, furnish one specimen of each denomination of certificates used in each city. Specimens should he accompanied by certificate and agreement of the banknote company as specified under requirements for "Form of Securities-Engraving" in the attached Appendix.

6. Opinion of Counsel. One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance (or

proposed issuance) of the securities applied for; (c) whether the securities are (or will be) fully paid and non-assessable, and whether personal liability attaches to ownership; and (d) whether the outstanding securities were registered or issued pursuant to an exemption under the Securities Act.

If counsel, or any partner of such counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.

7. Contract With Transfer Agent. One copy of contract with each transfer agent relative to the issuance of additional shares. (Use printed Listing Form 3 supplied by the Exchange.)

8. Contract With Registrar. One copy of contract of each registrar relative to the registration of additional shares. (Use printed Listing Form 4 supplied by the Exchange.)

9. Other Information. T] the Exchange may request copies of such other documents as are necessary to complete its review of an issuer's eligibility for listing.

Sec. 214. OIL AND GAS AND MINING COMPANIES—ADDITIONAL PAPERS TO BE FILED

Oil and Gas Companies—In addition to *the* [E] *e*xhibits [1 to 9] required of all applicants, companies which have an interest in oil and gas properties as a material part of their business must submit the following:

[**10.**] **Engineer's Reserve Report.** Report of recent date, of qualified engineer, including estimate of proven reserves. The report shall be accompanied by a signed statement of the engineer's qualifications. The Exchange recommends and may, in fact, require the submission of the report of a qualified independent engineer not in the regular employ of the company.

Mining Companies—In addition to *the* [E] *e*xhibits [1 to 9] required of all applicants, companies which own or operate mines as a material part of their business must submit the following:

[**11.**] **Table of Lands.** A tabular list of mineral and other lands (separate lists for producing and non-producing properties), each property designated by number or claim name. If any property is held under lease, specify terms. Submit separate lists for properties held directly and those held through subsidiaries.

[**12.**] **Engineer's Mining and Reserve Report.** Report, of recent date, of qualified engineer. The report shall be accompanied by a signed statement of the engineer's qualifications. (In certain cases, the Exchange may require the submission of the report of a qualified independent engineer not in the regular employ of the applicant.)

In the case of mines which are developing, the engineer's report must contain:

(a) recommendations regarding the development program; (by estimate as to amount of additional funds which will be required to complete the development program as outlined; and (c) estimate of length of time required to complete such development program.

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[Sec. 216. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION—DEBT SECURITIES

Applicants with *no* securities currently listed on the Exchange should submit all exhibits specified in § 213, except for Exhibits 2, 6, 7 and 8, in lieu of which the following should be submitted:

13. Opinion of Counsel. One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance of the bonds; (c) the legal, valid and binding nature of the obligations enforceable against the applicant in accordance with the terms of the instrument creating such bonds, with remedies exceptions, if appropriate; and (d) whether the Indenture is qualified under the Trust Indenture Act of 1939. If the bonds are convertible into equity securities of the applicant, an opinion should be given that the securities in to which the bonds are convertible have been duly and validly authorized and reserved for issuance and that they will, when issued, be fully paid and non-assessable, and that no personal liability will attach to ownership. The opinion should also indicate whether the bonds and, if applicable, the securities into which they are convertible, will be registered or issued pursuant to an exemption under the Securities Act.

If counsel, or any partner of such counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.

14. Indenture. One copy of the mortgage, indenture, or equivalent instrument, certified by the trustee.

15. Trustee's Certificate. A certificate from the trustee showing acceptance of the trust. (See Appendix for suggested form.)

Applicants with securities already listed on the Exchange should file supporting Exhibits 13–15 above, as well as Exhibits 1 and 5 set forth in § 213.]

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[Sec. 218. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION—WARRANTS

Applicants with *no* securities currently listed on the Exchange should submit all Exhibits specified in §§ 213–214, except for Exhibits 6, 7 and 8, in lieu of which the following should be submitted:

16. Opinion of Counsel. One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance of the warrants; and (c) the legal, valid and binding nature of the obligations enforceable against the applicant in accordance with the warrant agreement, with remedies and exceptions, if appropriate. An opinion should be given that the securities for which the warrants are exercisable have been validly authorized and reserved for issuance and that they will, when issued in accordance with the warrant agreement, he validly issued, fully paid and non-assessable, and that no personal liability will attach to ownership. The opinion should also indicate whether the warrants and the securities into which they are exercisable will be registered or issued pursuant to an exemption under the Securities Act.

If counsel, or a partner of such counsel, is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.

17. Contract with Warrant Agent. One copy of contract from warrant agent(s) on printed Listing Form 5.

18. Warrant Agreement. One certified copy of warrant agreement between the issuer and warrant agent(s).

In the case of applicants with securities already listed on the Exchange, the supporting Exhibits shall consist of 16, 17, and 18 referred to above, plus Exhibits 1, 2 and 5 specified in § 213.]

FOREIGN LISTINGS (§§ 220–222)

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Sec. 222. EXHIBITS TO BE FILED WITH ORIGINAL LISTING APPLICATION—FOREIGN ISSUERS

Generally, the exhibits to be filed in support of an original listing application of a foreign issue will be substantially the same as those pertaining to an equivalent domestic issue. [See §§ 213, 216 and 219.)]

Where an application is made to list ADRs, rather than the underlying securities, a copy of the Deposit Agreement and a specimen ADR certificate should also be filed in support of the listing application.

PART 3. Additional Listings-Requirements and Procedures—Subscription Rights—Possible Application of Original Listing

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Sec. 304. LISTING OF SHARES PURSUANT TO A STOCK DIVIDEND OR FORWARD SPLIT

Stock to be issued in a forward split or dividend must be listed prior to the distribution date of such action. A company must complete the Reconciliation Sheet provided in the Exchange's form of application, as of the record date of the scheduled distribution.

If fractional shares are to be paid in cash and the exact number of shares cannot be determined in advance, the company should list the maximum number of shares that can be issued and subsequently request cancellation of the listing of the balance of shares not issued.

[**EXHIBITS**—Exhibits A–2 and A–3 (described in § 306) must be submitted in connection with a stock dividend or forward split listing application.]

Sec. 305. LISTING OF SHARES PURSUANT TO A REVERSE SPLIT/SUBSTITUTION LISTING

A substitution listing application is necessary whenever a company engages in a reverse stock split, re-incorporates, proposes to list a new class of securities in substitution for a previously listed class of securities or otherwise engages in a transaction which would require it to file a new Form 8–A [or Form 8–B] with SEC in regard to a previously listed security.

[**EXHIBITS**—Exhibits A–2, A–3, A–4, A–7, If applicable). A–8 and –9 (except in the case of a reverse split) (described in § 306) must be submitted in connection with a reverse split or substitution listing application. In addition, if a company is changing its transfer agent and/or registrar a new Listing Form 3 (Agreement With Transfer Agent) and/or Listing Form 4 (Agreement With Registrar) must be executed and filed with the Exchange (see forms in Appendix).

If a company is listing debt securities in substitution for a previously listed debt issue, it is also required to submit: (i) a specimen certificate of each denomination of security to be listed, with certification from the banknote company as specified in § 823; (ii) a copy of the mortgage, indenture, or equivalent instrument (or amendments thereto) certified by the trustee with amendments; and (iii) a certificate from the trustee showing acceptance of the trust (see Sample Trustee's Certificate in Appendix).

If a company is listing warrants in substitution for a previously listed warrant class, it is also required to submit: (i) a specimen certificate of each denomination of security to be listed, with certification from the banknote company as specified in § 823; (ii) a copy of the contract with each warrant agent on Listing Form 5 (see form in Appendix); and (iii) a certified copy of the warrant agreement.]

Sec. 306. EXHIBITS TO BE FILED WITH ADDITIONAL LISTING APPLICATIONS

A–1 Contract. A copy of each executed contract, plan or agreement pursuant to which the additional securities applied for are to be issued.

A–2 [Opinion of Counsel. An opinion of counsel of satisfactory standing addressed to the Exchange as to the following: (a) the validity of authorization and issuance (or proposed issuance) of the securities applied for; (b) whether the securities are (or will be) fully paid and non-assessable, and whether personal liability attaches to ownership; and (c) whether the securities to be listed will be registered or issued pursuant to an exemption under the Securities Act. If such counsel, (or, if a firm, any member thereof) is an officer, director or stockholder of the applicant, this fact must be disclosed in the opinion.

A–3 Board Resolutions. One certified copy of each resolution of the Board of Directors authorizing the issuance for which the listing application is being made, and

A–4. Amendments to Charter. One copy of each amendment to the charter not previously filed with the Exchange, or, at the applicant's option, one copy of the charter as amended to date, certified by the Secretary of State or corresponding authority of the state of incorporation.

A–5] Financial Statements of Acquired Company. If the securities to be listed are to be issued in connection with the acquisition of a controlling interest in, or of substantially all of the assets subject to the liabilities of, another company, the most recent audited financial statements, supplemented by the latest interim statements. In cases where independently audited financial statements are not available, a manually signed statement certified by the chief accounting officer of such other company must be submitted.

A–[6]3. Engineering Report. If the securities applied for are to be issued in acquisition of a stock interest in another company, or properties or other assets, furnish one copy of any engineering, geological or appraisal report which may have been obtained in connection with the proposed acquisition.

[A–7. Amendments to By-Laws. One certified copy of each amendment to the by-laws not previously filed with the Exchange. If desired, there may be filed in lieu of such amendments, one certified copy of the by-laws as amended to date.

A–8. Stock Certificates. If the form of stock certificate for the listed class of stock has been or is to be changed, furnish one specimen of each denomination of the changed form, with a certification from the banknote company that the security has been prepared in accordance with the printing and engraving requirements of the Exchange, as specified in § 823.]

A–[9]4. Listing Agreement. A company must execute a new listing agreement (see Listing Form 1) in support of every substitution listing except in the case of a reverse split.

* * * * *

SUBSCRIPTION RIGHTS, BACKDOOR LISTING AND PAIRED SECURITIES (§§ 340–343)

Sec. 340. SUBSCRIPTION RIGHTS

A listed company must promptly disclose any action taken by it with respect to the allotment of rights to subscribe or rights or benefits pertaining to the ownership of its listed securities. It is further required to give prompt notice of any such action to the Exchange to afford the holders of such securities a proper period within which to record their interests and exercise their rights. These requirements are further explained in paragraphs (a) through (h) below.

The Exchange will not admit subscription rights to dealings unless the underlying security is or will be listed on the Exchange.

(a) No change

(b) *Establishment of Record, Mailing, and Expiration Dates*—The record date should be no earlier than one day prior to the time the registration statement or offering circular becomes effective.

The mailing of the subscription rights to shareholders should occur as soon after the record date as possible. Most companies have their transfer agents mail the rights on the same date as the record date or, at the latest, on the business day following the record date.

The subscription period should be for at least 14 calendar days following the mailing date. [provided the subscription agent is located in New York City. If the transfer agent (which usually also acts as the subscription agent) is not located in New York City or does not have a New York City "drop" (see § 801), such additional number of days as is equal to the mailing distance between New York City and the location of the subscription agent should be added to the 14 day period. For example, if the sole subscription agent is located in Boston, without "drop" facilities in New York City, the subscription period should be at least 15 days; in Chicago 16 days; and on the Pacific Coast 18 days. Companies not having a New York City transfer agent (or the equivalent thereof) should consider the advisability of appointing a New York City banking institution to act as subscription agent or co-subscription agent to facilitate the handling of subscriptions in relationship to the minimum subscription period involved.] (See §§ 510–522 for further explanation of "ex-rights" rule.)

(c) No change

(d) No change

(e) *Dealings in Rights*—No application is required to be filed with the Exchange for the listing of subscription rights or with the SEC for their registration under the Exchange Act. Under SEC Rule 12a–4, subscription rights are exempt from registration under the Exchange Act. [Listed companies must, however, issue all transferable rights or benefits pertaining to listed securities in a form approved by the Exchange and make the same assignable, exercisable and deliverable in the Borough of Manhattan, City of New York.]

Transferable rights may be admitted to dealings on the Exchange as soon as notice is received that the company's Securities Act registration statement or offering circular has become effective. The normal procedure is to admit the rights to dealings at 10:00 a.m. on the day following the day the registration statement or offering circular has become effective. Accordingly, the company should arrange to have the registration statement or offering circular declared effective as of 4:00 p.m. on the date preceding the anticipated trading date. The company or its attorneys should notify the Exchange *by telephone* as soon as they learn of SEC clearance.

Trading in rights on the Exchange will cease at the close of business on the business day preceding the expiration date thereof, if such rights are exercisable in the New York City metropolitan area, and at such time in advance of the expiration date as may be announced by the Exchange, if such rights are exercisable outside such area. (Exchange Rule 17.) This facilitates open contracts to be settled and rights to be exercised on the final day.

(f) *Ex-Rights Date*—As specified at § 513(a), in general, stocks are quoted "ex-rights" the day following the date on which the rights are admitted to dealings. (Exchange Rule 830.) This arrangement allows one full day's trading to take place in the rights to establish their market value for "ex-rights" purposes. On the day the stock is quoted "ex-rights" all open orders to buy and open stop orders to sell (pursuant to Exchange Rule 132, as amended) on the books of the specialist are reduced by the cash value of the rights as determined by the price of the last sale in the rights the day before the stock sells ex-rights. Purchasers of the stock beginning the fourth business day preceding the record date for a stock transferring in New York City [(and earlier if the stock transfers only outside of New York City)] and to and including the day

before the "ex-rights" date for the stock have been paying prices for their stock which include the value of the rights. Since it is not possible for such purchasers to become holders of record on the books of the company by the record date for the offering, the Exchange rules that the purchasers in such transactions (having paid a "rights on" price for their stock, i.e., a price including the value of the rights) are entitled to the rights and are, therefore, entitled to receive a due bill for the rights from the sellers of the stock. Such due bills are redeemed by the sellers when they receive their rights from the company.

This arrangement is between the brokers for the purchasers and the sellers of the stock, and does not involve the company. For a further explanation, see §§ 510–522.

(g) No change

(h) No change

* * * * *

[Sec. 343. SPECIAL SHAREHOLDER RIGHTS PLANS

The Exchange should be consulted prior to the submission of any application involving securities with special shareholder rights. (See § 140 for discussion of the fee.)]

* * * * *

PART 4. Disclosure Policies (§§ 401–405)

DISCLOSURE (§§ 401–405)

Sec. 401. OUTLINE OF EXCHANGE DISCLOSURE POLICIES

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following six specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in § 402:

(a) *Immediate Public Disclosure of Material Information*—A listed company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances. When such disclosure is to be made during trading hours, it is essential that the [company's Corporate Relations Manager] *Stock Watch Department* be notified prior to the announcement.

(b)–(f) no change

Sec. 402. EXPLANATION OF EXCHANGE DISCLOSURE POLICIES

(a) *Immediate Public Disclosure of Material Information*

* * * * *

Q. When may a company properly withhold material information?

A. Occasionally, circumstances such as those discussed below may arise in which-provided that complete confidentiality is maintained-a company may temporarily refrain from publicly disclosing material information. These situations, however, are limited and constitute an infrequent exception to the normal requirement of immediate public disclosure. Thus, in cases of doubt, the presumption must always be in favor of disclosure.

(i) no change

(ii) When the facts are in a state of flux and a more appropriate moment for disclosure is imminent.

Occasionally, corporate developments give rise to information which, although material, is subject to rapid change. If the situation is about to stabilize or resolve itself in the near future, it may be proper to withhold public disclosure until a firm announcement can be made, since successive public statements concerning the same subject (but based on changing facts) may confuse or mislead the public rather than enlighten it.

For example, in the course of a successful negotiation for the acquisition of another company, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly thereafter, it may become apparent to the parties that it is likely an agreement can be reached. Finally, agreement in principle may be reached on specific terms. In such circumstances (and assuming the maintenance of strict confidentiality), a company need not issue a public announcement at each stage of the negotiations, describing the current state of constantly changing facts, but may await agreement in principle on specific terms. If, on the other hand, progress in the negotiations should stabilize at same other point, disclosure should then be made if the information is material.

Whenever material information is being temporarily withheld, the strictest confidentiality must be maintained, and the company should be prepared to make an immediate public announcement, if necessary. During this period, the market action of the company's securities should be closely watched, since unusual market activity frequently signifies that a "leak" may have occurred. This is one reason why it is important to keep the company's [Corporate Relations Manager] *Listing Qualifications Analyst* fully apprised of material corporate developments.

Note: Federal securities laws may restrict the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. In such circumstances (as more fully discussed below), a company should discuss the disclosure of material information in advance with the Exchange and the Securities and Exchange Commission. It is the Exchange's experience that the requirements of both the securities laws and regulations and the Exchange's disclosure policy can be met even in those instances where their thrust appears to be different.

Q. What action is required if rumors occur while material information is being temporarily withheld?

A. If rumors concerning such information should develop, immediate public disclosure becomes necessary. (See also "Clarification or Confirmation of Rumors and Reports" on page 4–7.)

Q. What action is required if insider trading occurs while material information is being temporarily withheld?

A. Immediate public disclosure of the information in question must be effected if the company should learn that insider trading, as defined in section 402(f), has taken or is taking place. In unusual cases, where the trading is insignificant and does not have any influence on the market, and where measures sufficient to halt insider trading and prevent its recurrence are taken, exemptions might be made following discussions with the Exchange. The company's [Corporate Relations Manager] *Listing Qualifications Analyst*, through the facilities of the Exchange's Stock Watch Department, can provide current information regarding market activity in the company's securities and help assess the significance of such trading.

* * * * *

(b) *Thorough Public Dissemination*

Q. What specific disclosure techniques should a company employ?

A. The steps required are as follows:

(i) *Prior to Public Disclosure.* The Exchange expects a company to notify [its Corporate Relations Manager] *the Exchange's Stock Watch Department* in advance of public disclosure of information which is non-routine or is expected to have an impact on the market for its securities. The Exchange, with the benefit of all the facts provided by the company, will be able to consider whether a temporary halt in trading, pending an announcement, would be desirable. A temporary halt in trading is not a reflection on the company or its securities, but provides an opportunity for disseminating and evaluating the information released. Such a step frequently helps avoid rumors and market instability, as well as the unfairness to investors that may arise when material information has reached part, but not yet all, of the investing community. Thus, in appropriate circumstances, the Exchange can often provide a valuable service to investors and listed companies by arranging for such a halt.

(ii) *At Time of Public Disclosure.* As a minimum, any public disclosure of material information should be made by an announcement released simultaneously to: [(A)] the national business and financial news-wire services [(Dow Jones, Reuters, and Bloomberg), (B) the national news-wire services (Associated Press and United Press International), (C) The New York Times and The Wall Street Journal, and (D) Moody's Investors Service and Standard & Poor's Corporation. The New York telephone numbers and addresses of these organizations are as follows:

Dow Jones & Company, Inc. (The Wall Street Journal), World Financial Center, 200 Liberty Street, New York, N.Y. 10281, (212) 416–2471

Reuters Ltd., 1700 Broadway, New York, N.Y. 10019, (212) 603–3300

Bloomberg Business News, 499 Park Avenue, New York, N.Y. 10022, (212) 318–2000

Associated Press, 50 Rockefeller Plaza, New York, N.Y. 10020, (212) 621–1500

United Press International, Five Penn Plaza, New York, N.Y. 10001, (212) 560–1100

The New York Times, 229 W. 43rd Street, New York, N.Y. 10036, (212) 556–1234

Standard & Poor's Corporation, 25 Broadway, New York, N.Y. 10004, (212) 208–8377
Moody's Investors Service, Inc., 99 Church Street, New York, N.Y. 10007, (212) 553–0300

Concerns that distribute press releases over private [teletype] networks may be extremely helpful in gaining news coverage. Two such organizations are PR Newswire, [150 E. 58th St., New York, N.Y. 10022 [(212) 832–9400 or (800) 832–5522 (outside New York)],] and Business Wire [, 1133 Avenue of the Americas, New York, N.Y. 10036 [(212) 575–8822 or (800) 221–2462 (outside New York)]].

Companies may also wish to broaden their distribution to other news or broadcast media, such as those in the location of the company's plants or offices, and to trade publications. The information in question should always be given to the media in such a way as to promote publication by them as promptly as possible, i.e., by telephone, telecopy, or in writing (by hand delivery), on an "immediate release" basis. Companies are cautioned that some of these media may refuse to publish information given by telephone until it has been confirmed in writing or may require written confirmation after its publication.

Whenever difficulty is encountered or anticipated in having an announcement about a material development published, a company should contact [its Corporate Relations Manager who may frequently] *The Exchange's Stock Watch Department, which may* be able to provide assistance. Finally, if despite all reasonable efforts, the announcement has not been published by one of the national news-wire services or one of the above-mentioned newspapers, the company should attempt to have the announcement disseminated through other media, such as trade, industry or business publications, or local newspapers (especially those in the area where the company's principal offices or plants are located or where its stockholders are concentrated). In cases where the announcement is of particular importance, or where unusual difficulty in dissemination is encountered, the company should consider the use of paid advertisements, a letter to stockholders, or both.

Companies may also disseminate information over the Internet. Information should not be made available over the Internet before the same information is transmitted to, and received by, the traditional news vendor services.

Three copies of all public announcements should be sent to the Exchange. [Announcements can be telecopied to the Exchange at (212) 306–1488.]

Q. How does the policy on thorough public dissemination apply to meeting with securities analysts, journalists, stockholders, and others?

* * * * *

(c) *Clarification or Confirmation of Rumors and Reports*

no change

(d) *Response to Unusual Market Action*

Q. What is the significance of unusual market activity from the standpoint of disclosure?

A. Where unusual market action (in price movement, trading activity, or both) occurs without any apparent publicly available information which would account for the action, it may signify trading by persons who are acting either on unannounced material information or on a rumor or report, whether true or false, about the company. Most often, of course, unusual market activity may not be traceable either to insider trading or to a rumor or report. Nevertheless, the market action itself may be misleading to investors, who are likely to assume that a sudden and appreciable change in the price of a company's stock must reflect a parallel change in its business or prospects. Similarly, unusual trading volume, even when not accompanied by a significant change in price, tends to encourage rumors and give rise to speculative trading activity which may be unrelated to actual developments in the company's affairs.

Generally, unusual market activity will first be detected by either the Specialist in the company's securities or the Exchange's Stock Watch Department[. This information will then be passed on to the company's Corporate Relations Manager, who], *which* in turn, will contact company officials to apprise them of the activity.

* * * * *

Sec. 403. CONTENT AND PREPARATION OF PUBLIC ANNOUNCEMENTS

(a) *Exchange Requirements*

no change

(b) *Securities Laws Requirements*—The requirements of the Federal securities laws must also be carefully considered in the preparation of public announcements. In particular, these laws may impose special restrictions on the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. Generally, in such circumstances, while the restrictions of the securities laws may affect the character of disclosure, they do not prohibit the timely disclosure of material factual information. Thus, it is normally possible to effect the disclosure required by Exchange policy.

[Whenever a conflict arises, the company should discuss the matter with the Securities and Exchange Commission, as well as with its Exchange Corporate Relations Manager, who can frequently assist in evaluating the problem.]

(c) *Preparation of Announcements*—The following guidelines for the preparation of press releases and other public announcements should help companies to ensure that the content of such announcements will meet the requirements discussed above:

(ii) no change

(iii) Since skill and experience are important to the preparation and editing of accurate, fair and balanced public announcements, the Exchange recommends that a limited group of individuals within the company be given this assignment on a continuing basis. (Since a press announcement usually must be prepared and released as quickly as possible, however, the group charged with this assignment should be large enough to handle problems that arise suddenly and unexpectedly.) The [company's Corporate Relations Manager] *Exchange's Stock Watch Department* can assist in assessing whether the release satisfies the Exchange's disclosure requirements.

(iv) no change

Sec. 404. EXCHANGE SURVEILLANCE PROCEDURES

[As previously noted, the Corporate Relations Managers are primarily responsible for the day-to-day relations with listed companies. They are familiar with the affairs of their assigned companies and are connected by direct wire to the trading floor of the Exchange. They also maintain close contact with the Exchange's Stock Watch Department, which is responsible for monitoring unusual market situations.]

In many cases, when unusual market action occurs, [it is reported to the assigned Corporate Relations Managers. In many cases, by checking with] Stock Watch[, the Corporate Relations Managers] is able to trace the reason for the action to a specific cause, such as recently disclosed information, recommendations by advisory services, or rumors. In certain instances, the Exchange's Market Surveillance Department may also be asked to check brokerage firms as to the source and reasons for activity stemming from their particular firms. (This latter information, it should be noted, must remain confidential to the Exchange.) If no explanation of the unusual activity is revealed, [the Corporate Relations Managers] *Stock Watch* may call officials of the company to determine whether the cause of the action is known to them. If the action appears to be attributable to a rumor or report, or to material information that has not been publicly disseminated, the company is requested to take appropriate corrective action, and it may be advisable, after consultation with trading floor officials, to halt trading until such action has been taken.

[Sec. 405. CONSULTATION WITH EXCHANGE CORPORATE RELATIONS MANAGERS

A company expecting to make a material corporate announcement should first contact its Corporate Relations Managers who is in a unique position to evaluate disclosure problems as they arise and explain their effect on the public, the company and the Exchange. By means of such advance consultation, effective liaison between companies and the Exchange is maintained, and a company can obtain the benefit of the Representative's experience in the day-to-day application of the Exchange's policies relating to corporate disclosure.]

PART 5. Dividends and Stock Splits (§§ 501–522)

NOTICES, RECORD DATE (§§ 501–509)

Sec. 501. NOTICE OF DIVIDEND

no change

Sec. 502. RECORD DATE

A company is not permitted to close its stock transfer books for any reason, including the declaration of a dividend. Rather, it must establish a record date for shareholders entitled. To a dividend which is at least ten days after the date on which the dividend is declared (declaration date). [However, in the

case. Of stock issues that do not have transfer facilities in the New York City metropolitan area, the record date shall not be less than such number of additional days (in excess of ten) after the declaration date as is equal to the mailing time (regular mail) between New York City and the city in which the Transfer Agent is located.

Note: *The requirement for additional time between the declaration date and the record date would also apply in cases where there is an intervening holiday or where the record date falls on a weekend.*]

A company is also required to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

Sec. 503. FORM OF NOTICE

Immediately after the board of directors has declared a cash or stock dividend, the company should: (a) release the news to the newspapers and news services, including the news-ticker services operated by Dow Jones & Company, Inc., and Reuters Ltd., (see § 402); and (b) notify the Exchange by telephone[, telegram] or [telecopier] *facsimile* and confirm by letter. The announcement and notice should specify the name of the company, date of declaration, amount (per share) of the dividend, and the record and payment dates.

* * * * *

EX-DIVIDEND-EX-RIGHTS (§§ 501–522)

Sec. 512. EX-DIVIDEND PROCEDURE

[In the establishment and announcement of ex-dividend dates, the Exchange proceeds as follows:

Transfer Facilities Located in New York City] Transactions in stocks (except those made for "cash") [(for which there exist transfer facilities in New York City (see § 801)] are ex-dividend on the second business day preceding the record date. If the record date selected is not a business day, the stock will be quoted ex-dividend on the third preceding business day. "Cash" transactions are ex-dividend on the business day following the record date.

* * * * *

[Sec. 520. SCHEDULE FOR CUSTOMARY EX-DIVIDEND DATES

The "ex-dividend" date established by the Exchange is based on the location of the transfer facilities either in, or nearest to, New York City. Thus, if an issue transfers both in New York City and outside of New York City, the "ex" date is based on the New York City transfer facilities. If an issue does not transfer in New York City, but transfers in two or more cities outside of that area, the "ex" date is based on the location of the transfer facilities closest to New York City.

To avoid unnecessary claims for dividends, members receiving deliveries of stocks against "dividend on" transactions, are urged to provide for the early mailing of such stocks which transfer out of town, in order to ensure receipt by the transfer agent by the record date.]

Sec. 521. SPECIAL EX-DIVIDEND RULINGS

(a) no change

(b) no change

(c) *"Cash" Transactions*—The Ex-Dividend Rule of the Exchange specifies that "cash" transactions (in which delivery of the security must be made on the date of the transaction) [in the case of stocks transferring in the New York City Metropolitan area,] shall be "ex-dividend" on the business day following the record date[, and in the case of stocks transferring only outside of that area shall be "ex-dividend" on the business day following the "equivalent New York record date"].

* * * * *

PART 6. According; Annual and Quarterly Reports (§§ 603–624)

ACCOUNTING (§ 603, § 604)

Sec. 603. CHANGE IN ACCOUNTANTS

A listed company is required to notify its [Corporate Relations Managers] *Listing Qualifications Analysis* promptly (prior to filing its 8-K) if it changes independent accountants; and must state the reason for such change.

* * * * *

INTERIM REPORTS (§§ 622–624)

[Sec. 622. REQUESTS FOR EXTENSION

A company should immediately notify its Corporate Relations Manager whenever it files with the SEC a request for extension of time for the filing of its interim statements on SEC Form 12b-25.]

* * * * *

PART 7. Shareholders' Meetings, Approval and Voting of Proxies (§§ 701–726)

SHAREHOLDERS' APPROVAL (§§ 701–706)

* * * * *

[Sec. 702. CHARTER AND BY-LAW AMENDMENTS

A listed company is required to file with the Exchange a copy of any amendment to its charter or by-laws (or equivalent documents), as soon as it becomes effective. Such filing must include:

(a) *in the case of a charter amendment*—a certification by the Secretary of State (or similar authority) that the filing is a true and complete copy of the amendments; and

(b) *in the case of a by-law amendment*—a resolution of the board of directors (certified by an officer of the company) authorizing the by-law amendment.]

* * * * *

SHAREHOLDERS' APPROVAL (§§ 710–713)

* * * * *

Sec. 713. OTHER TRANSACTIONS

The Exchange will require shareholder approval (pursuant to a proxy solicitation conforming to SEC proxy rules) as a prerequisite to approval of applications to list additional shares to be issued in connection with:

(a) a transaction involving:

(i) the sale, [or] issuance, *or potential issuance* by the company of common stock (or securities convertible into common stock) at a price less than the greater of book or market value which together with sales by officers, directors or principal shareholders of the company equals 20% or more of presently outstanding common stocks; or

(ii) the sale, [or] issuance, *or potential issuance* by the company of common stock (or securities convertible into common stock) equal to 20% or more of presently outstanding stock for less than the greater of book or market value of the stock; or

(b) a transaction which would involve the application of the Exchange's original listing guidelines as described in § 341.

VOTING BY EXCHANGE MEMBERS, TRANSMISSION OF PROXY MATERIALS (§§ 720–726)

* * * * *

Sec. 726. VOTING BY SPECIALISTS (SEE EXCHANGE RULE 186)

[An] Exchange specialists [is] *are* prohibited from soliciting, directly or indirectly, any proxy on behalf of [himself] *themselves* or any other person in respect of a security in which [he is] *they are* registered as a specialist. [A specialist is] *Specialists are* also prohibited from voting in any proxy contest any such security in which [he has] *they have* a beneficial interest.

[PART 8. Transfer Facilities; Certificate Requirements (§§ 801–841)

TRANSFER AGENTS, REGISTRARS, TRUSTEES (§§ 801–811)

Sec. 801. TRANSFER AND REGISTRY FACILITIES

Listed companies are required to maintain transfer and registry facilities (including facilities for conversion or exchange) for their listed securities, which are satisfactory to the Exchange. Such transfer and registry facilities may be located in New York City or outside of New York City provided, in each case, that the requirements of Rule 891 of the Board of Governors of the Exchange, set forth below, are met.

Board of Governors Rule 891:

Requirements in order to qualify as a Transfer Agent for securities listed on the American Stock Exchange (where the listed Company does not act as its own Transfer Agent) in respect of (i) all Transfer Agents located in New York City, and (ii) Transfer Agents located out-of-town where the listed Company has no Transfer Agent in New York City.

1. Office facilities (hereinafter referred to as the "office") satisfactory to the Exchange and the issuer to receive and redeliver securities must be located south of Chambers Street in the Borough of Manhattan, City of New York.

2. Routine transfers are to be processed and available for pick-up at the office under normal conditions within 48 hours, *e.g.*, if received before Noon on Monday must be available for pick-up no later than immediately after 1:00 P.M. on Wednesday.

3. The Transfer Agent must assume total responsibility and liability for securities from the time of deposit at the office until delivery at the window. The Transfer Agent must maintain insurance coverage of a least $10,000,000 to protect securities while in transit or in process of transfer, and it must

be in a position to demonstrate that it has a substantial new worth. If the Transfer Agent does not have capital, surplus (both capital and earned), undivided profits and/or capital reserves aggregating at least $3,000,000, it will be required to furnish additional evidence of its ability to meet financial obligations and it may be required to maintain insurance coverage in excess of $10,000,000. In this regard, all relevant factors will be considered such as its past record of operations as a transfer agent, the experience of its management and supervisory personnel, its security and record-keeping procedures, the nature and scope of any other activities in which it is engaged and the amount of its capital in relation to its overall business activities.

4. Out-of-town agents having a drop in New York must make appropriate arrangements to pick up from and deliver to Depositary Trust Company normally within the 48-hour period and framework mentioned above.

5. Personnel at the office must have sufficient experience to respond promptly to inquiries regarding transfers, including legal items.

6. Securities received before the close business at the office on a record date or any other date involving the rights of a security holder must be recorded as of the date so as to establish the transferee's rights.

7. Facilities should be available for expediting transfer service when needed. No objection will be made if a reasonable charge is made for such special service.

8. The Exchange reserves the right to request a company with securities listed on the Exchange to terminate the appointment of its transfer agent in the event of failure of such transfer agent to conform to all of the foregoing requirements.

Sec. 802. AGREEMENT WITH TRANSFER AGENT

A company is required to cause its transfer agent or agents to enter into an agreement with the Exchange (Listing Form 3 for common stock and Listing Form 5 for warrants) whereby the transfer agent must notify the Exchange 10 days after the close of each calendar quarter of the number of shares outstanding as of the last business day of the calendar quarter for each security listed on the Exchange. The transfer agent must also notify the Exchange if its services are discontinued.

Sec. 803. AGREEMENT WITH REGISTRAR

A company is also required to cause its registrar or registrars to enter into an agreement with the Exchange (Listing Form 4) whereby the registrar agrees to notify the Exchange 10 days after the close of each calendar quarter of the number of shares registered for each security listed on the Exchange. A registrar must also notify the Exchange if its services are discontinued.

Sec. 804. ADDITIONAL TRANSFER AND REGISTRY FACILITIES

Transfer and registry agencies maybe maintained in more than one city. However, when shares are transferred in more than one transfer office, the combined amounts of stocks registered in all transfer offices shall not exceed the amount authorized for listing (See also § 829.)

Sec. 805. ACTING IN DUAL CAPACITY

A qualified bank, trust company, listed company or other qualified organization may act in the dual capacities of transfer agent and registrar, provided that it countersigns stock certificates in both capacities. All entities which act in the dual capacity of transfer agent and registrar are required to assure the Exchange that such functions are maintained separately and distinctly with appropriate internal controls, subject to an annual review by the agent's independent auditors which shall be provided to the entity's board of directors.

A listed company acting in the dual capacity of transfer agent and registrar for its own securities shall be required to sign an appropriate agreement with the Exchange to, among other things:

1. maintain offices, staffed by qualified personnel, with adequate facilities for the safekeeping of securities in its possession where transfer and registration may be completed within forty-eight hours;

2. be responsible to indemnify purchasers for any loss arising out of over/under issuance of all securities delivered to, or picked up by, it as agent, until such securities are delivered pursuant to instructions; and

3. maintain the transfer agent and registrar functions as separate and distinct with appropriate internal controls, such controls to be reviewed annually by the company's independent auditors.

Sec. 806. COMPANY ACTING AS OWN TRANSFER AGENT AND/OR REGISTRAR

If a security is transferred and/or registered at the company's office, the persons who shall be authorized to sign certificates in the capacity of registrar and transfer agent shall be appointed by specific authority of the board of directors and shall not be an officer who is otherwise authorized to sign certificates on the company's behalf.

Note: A listed company which acts as transfer agent and/or registrar for the securities of another issuer must comply with Exchange rules pertaining to unaffiliated banks, trust companies or other organizations (see Amex Rule 891).

Sec. 807. APPOINTMENT OF NEW AGENT

A company is not permitted to appoint a transfer agent, registrar, or other fiscal agent of a security of the company listed on the Exchange without prior notice to and approval of the Exchange. A registrar must, at the time of its appointment, be acceptable to the Exchange as a registrar for securities listed on the Exchange.

Sec. 808. SPLIT-UP OF CERTIFICATES AFTER CLOSING TRANSFER BOOKS

If the transfer books of a company should be closed permanently, the company is required to continue to split-up certificates into smaller denominations in the same name so long as such stock remains listed on the Exchange.

Sec. 809. AGENT FOR REGISTRATION ON BONDS OR DEBENTURES

A company applying for the listing (or having listed) registered bonds or debentures on the Exchange is required to maintain in New York City (See § 801) an office or agency, satisfactory to the Exchange, where such bonds or debentures are registerable. In the case of bonds or debentures issued in bearer form, such office or agency must provide for the payment of principal and interest on such indebtedness.

Sec. 810. AGENT FOR PAYMENT OF DIVIDENDS, INTEREST AND PRINCIPAL

A listed company is permitted to designate an agent, satisfactory to the Exchange, located in or outside New York City, for the payment of dividends, interest and principal (on bonds or debentures), and other payments with respect to a listed security. If, however, checks for such payments are drawn on a bank located outside New York City, additional arrangements must be made for payment against such checks at a bank, trust company or agency located in New York City; and the details of those arrangements disclosed to the payee.

Sec. 811. TRUSTEES FOR BOND ISSUES

(a) *Trustee to be a bank or trust company*—The trustee of a bond issue must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(b) *Separate trustee for each issue*—If the company, either at the time of listing or subsequently, should have bonds or other evidences of indebtedness outstanding under more than one mortgage, indenture or deed or trust, each issue shall be represented by a different trustee; provided, however, that separate trustee shall not be required in the case of several issues of bonds issued under one or more indentures that have been qualified under the Trust Indenture Act of 1939, as amended.

(c) *Persons not acceptable as trustees*—The Exchange does not regard as satisfactory to act as a trustee for a listed issue any: (i) officer or director of the issuing company; (ii) trust company, banking institution, or other organization in which an officer of the issuing company is an executive officer; or (iii) organization controlled by, under common control with, or which itself controls, the issuing company.

(d) *Changes in trustees*—No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

FORM OF SECURITIES-ENGRAVING (§ § 820–830)

Sec. 820. REVIEW BY THE EXCHANGE

In addition to complying with the requirements set forth below, companies should submit the following to the Exchange for review and approval:

(a) proofs of a security prior to final printing; and

(b) specimens of the security in final form, printed on the bond paper to be used for the definitive security, accompanied by the banknote company agreement described in § 823. No change in the form of a certificate should be made without the approval of the Exchange.

Sec. 821. ENGRAVED BORDER

The face of listed securities (stocks and bonds) must be printed from at least one engraved steel border plate produced by a banknote company whose work is acceptable to the Exchange. The company may, at its option, use a second steel engraved face plate.

Sec. 822. BORDER PLATE ORIGINAL

The engraved border plate (and engraved face plate, if used) must be original to the banknote company which prepared the security, and the name of such banknote company must appear on the face of all securities and also on the face of coupons and filing panel of each bond.

The border plate shall remain in the permanent possession of the banknote company which produced it. The plate may be used by such banknote company in the production of "controlled stock" securities of more than one company, provided that such securities are prepared in their entirety on the premises of such banknote company, which shall furnish the Exchange with the certificate and agreement described in § 823.

Sec. 823. AGREEMENT OF BANKNOTE COMPANY

The final specimen submitted to the Exchange must be accompanied by:

(a) a certificate of the banknote company that:

(i) the security has been prepared in accordance with the printing and engraving requirements of the American Stock Exchange; and

(ii) all work done in connection with the preparation and manufacture of the dies, rolls, plates and certificates has been and will be done entirely on the premises of the banknote company, except as may be specifically noted (if there are any exceptions, full details must be given);

(b) an agreement by the banknote company (by its terms binding upon the banknote company, its successors and assigns) that all dies, rolls, plates and other engravings used in connection with the manufacture of certificates of the particular issue will, at all times, be and remain in the possession of the banknote company and, when not actually being used in connection with the manufacture and preparation of certificates, will be kept in a vault on the premises of the banknote company, and all completed certificates of the issue and all certificates in process will, prior to delivery to or upon the order of the issuing company (except when in actual process of manufacture), be kept in such vault. (See Appendix for suggested format.)

Sec. 824. COLOR

The printing of securities must be in distinctive colors to make classes and denominations readily distinguishable.

Sec. 825. PAPER-SIZE

All paper used for securities must be of an excellent grade of bond paper, of adequate weight and strong enough to withstand the strains and stresses of frequent handling. Stock certificates shall be of the standard size of 8 × 12 inches.

Sec. 826. DENOMINATIONS

The Exchange has no requirements as to denominations of stock certificates and permits either the sole use of single (unlimited) denomination certificates, or certificates for 100 shares, less than 100 shares and unlimited denominations.

The denomination of 100 shares, less than 100 shares and more than 100 share certificates should be appropriately indicated on the certificate by engraving or surface printing at the option of the company. Companies which do not have a separate certificate for more than 100 shares may alter the certificate for 100 shares or for less than 100 shares by over-printing.

Certificates for other than 100 shares should indicate the exact number of shares by the use of a macerating machine that breaks the paper or a matrix. A company may also use a punchout panel in addition to one of the methods noted above.

Sec. 827. PAR VALUE

The par value of common stock may be eliminated from common stock certificates, except where required by law. Par value may also be eliminated from preferred stock certificates, except where the dividend rate is expressed as a percentage of par value. Where a company elects to eliminate par value from its stock certificates, an opinion of counsel as to legality under applicable state law and the company's charter should be filed with the Exchange. Where par value is shown on certificates, either as the result of legal requirements or a company's preference, it may be surface printed rather than engraved.

Sec. 828. PREFERENCES

If the stock certificates of a company do not recite the preference of all classes of its stock, the company is required to furnish to its shareholders, upon request and without charge, a printed copy of preferences of all classes of its stock. A reference to the availability of such copy should appear on such certificates.

Sec. 829. CERTIFICATES TRANSFERRED IN MORE THAN ONE TRANSFER OFFICE

When shares are transferred in more than one transfer office, certificates should be interchangeably transferable and identical in color and form, except as to names of transfer agent and registrar, and the certificates shall bear a legend naming all cities in which they may be transferred.

Sec. 830. SUPPLY OF CERTIFICATES

A company is required to have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

LOST CERTIFICATES, CUSIP NUMBERS (§§ 840, 841)

Sec. 840. REPLACEMENT OF LOST CERTIFICATES

A company is required to issue new certificates for securities listed on the Exchange replacing lost ones immediately upon notification of loss and receipt of proper indemnity.

In the event of the issuance of any duplicate bond to replace a bond which has been alleged to be lost, stolen or destroyed and the subsequent appearance of the original bond in the hands of an innocent bondholder, either the original or the duplicate bond will be taken up and canceled and the company must deliver to such holder another bond theretofore issued and outstanding.

Sec. 841. CUSIP IDENTIFICATION NUMBER

Certificates for listed securities are required to have imprinted thereon the appropriate CUSIP identification number which is provided by Standard & Poor's Corp.

PART 9. Treasury Shares; Additional Matters (§§ 901–994)

TREASURY SHARES, REDEMPTIONS AND REPURCHASES (§§ 901–903)

* * * * *

Sec. 901. ACQUISITION OR DISPOSITION OF TREASURY SHARES

A company is required to report to the Exchange, within ten days after the close of each fiscal quarter, any reacquisition or disposition of its previously issued shares listed on the Exchange made during the quarter. Such reports are to include treasury share transactions for the account of the company, whether direct or indirect, and are to show separate totals for acquisitions and dispositions and the number of treasury shares held by it at the end of the quarter.

A sample form of report is shown below:

American Stock Exchange

86 Trinity Place
New York, N.Y. 10006–1881

Dear Sirs: Pursuant to section 901 of the Company Guide, this is to report that the company effected transactions in shares of its previously issued common stock, $1 par value, during the quarter ended (date), as follows:

Treasury shares held as of (date): 60,000
Shares reacquired during quarter ended (date):
Total: 60,000
Shares disposed of during quarter ended (date):
(Date)—Exercise of option: 2,000
(Date)—Exercise of option: 8,000
Total shares disposed of: 10,000
Balance as of (date): 50,000

Very truly yours,
XYZ COMPANY

Sec. 902. REDEMPTION, CANCELLATION, RETIREMENT

A company is not permitted to select any of its listed securities for redemption

otherwise than pro rata or by lot, and is required to notify the Exchange at least 15 days in advance of any redemption and to furnish it promptly with any information requested in connection with the redemption.

Bonds, debentures or preferred stocks issued, or to be issued, under an indenture or charter provision not conforming to this requirement are not eligible for listing on the Exchange.

A company is also required to notify the Exchange promptly of any corporate action which will result in the redemption, cancellation or retirement, in whole or in part, of any of its securities listed on the Exchange, and to notify the Exchange as soon as the company has notice of any other action which will result in any such redemption, cancellation or retirement.

Notices under this section should be directed to the attention of the company's Corporate Relations Manager.

Sec. 903. REPURCHASES OF LISTED COMPANY SECURITIES

(a) *Private Transactions—Purchase Above Market*—A company is required to notify the Exchange promptly of all facts relating to the purchase, direct or indirect, of any of its securities listed on the Exchange at a price in excess of the market price of such security prevailing on the Exchange at the time of purchase. Such reports should be made by telephone or telex and confirmed by letter.

Since such transactions may involve state and Federal legal considerations, it is recommended that company counsel and officials of the Exchange be consulted prior to effecting a proposed repurchase of listed securities above the market.

It is the policy of the Exchange to make such reports available to the public in its library. In addition, the Exchange may require the company to issue a public announcement and a notice to its shareholders regarding such repurchase.

(b) *Open Market Purchases.*—Rule 10b–18 under the Exchange Act provides a "safe harbor" for issuer repurchases of up to 25% of the average daily volume for the preceding four weeks of exchange-traded securities when certain timing, price and broker-dealer conditions are met. Part (c) of such Rule specifically provides, however, that compliance with the conditions is not the exclusive method available to listed companies to effect repurchases in the marketplace.

Companies planning to repurchase their securities in the marketplace, should consult with their Corporate Relations Manager (whether or not they plan to rely on the safe harbor of the Rule) to ascertain the appropriate disclosure necessary for the maintenance of a fair and orderly market.

Note: Companies should be aware of the prohibitions on purchases contained in Rule 10b–6 under the Act when they are involved in a non-technical distribution of their securities.

(c) *Purchases on behalf of certain employee plans*—Rule 10b–6 under the Exchange Act exempts purchases by independent agents, as defined, on behalf of certain employee and shareholder plans.

(d) *Tender Offer*—A listed company contemplating the making of a tender offer for any or all of its securities should structure the offer so as to comply with all applicable Federal and state securities laws.

Inasmuch as a tender offer may significantly affect the market for or the continued listing eligibility of the security, the company should consult with its Corporate Relations Manager prior to the announcement and commencement of such offer.

(e) *Odd-lot Tender Offers*—A company intending to make a tender offer to its odd-lot (1 to 99 shares) holders may find the following guidelines helpful:

(i) the use of a retroactive record date (*i.e.*, a date immediately preceding the date of announcement) will enable the company to restrict the offer to existing odd-lot holders.

(ii) the tender offer should remain open for a sufficient period of time to provide all odd-lot holders with ample opportunity to participate; and

(iii) since many odd-lot holdings are in "street" or nominee names, the company should provide a mechanism which allows its beneficial holders to participate equally with record holders. In this connection, a company may wish to consider the following:

(A) a "broker guarantee" provision which permits the tender of odd-lot holdings that are not readily available for physical delivery within the tender period;

(B) a requirement that holders of record tendering on behalf of a beneficial owner confirm to the company that the securities tendered represent the beneficial owner's entire holdings of that security.]

RELATIONSHIP WITH SPECIALIST (§ 910)

Sec. 910. PROCEDURES, RULES AND REGULATIONS

From time to time, company officials inquire about Exchange rules or regulations affecting their relationship to the registered specialist in their securities.

(a) *Specialist's Function*—[The specialist is a] *Specialists are* members of the Exchange who performs two basic functions regarding the issues in which [he] *they* specialize[s]. As [a] brokers, [he *they* hold[s] and execute[s] orders entrusted to [him] *them* by other brokers on behalf of their customers. As [a] dealers, [he is] *they are* obliged, insofar as reasonably practicable, to purchase and sell securities for [his] *their* own account in order to help maintain a fair and orderly market. [His] *Their* aim is to provide a continuous auction market throughout the trading day, with minimum price changes between transactions. [The specialist does] *Specialists do* not by [his] *their* own activities determine the trend of stock prices. Rather, the price at any given moment is determined fundamentally by the balance of public buy and sell orders.

(b) *Liaison*—The Exchange recognizes that periodic communication between company officials and their specialists, if appropriately conducted, can be beneficial to both parties. Such communication may provide company officials with a better understanding of the auction market, the specialist system and their own specialist's role in relation to the company's securities. From the specialist's viewpoint, an awareness and understanding of the company and its affairs may aid [him] *specialists* in discharging [his] *their* responsibility for maintaining a fair and orderly market in the company's securities.

(c) *Scope of Permissible Disclosure*—In view of the specialist's central and sensitive role in the auction market, it is essential that Federal securities laws, Exchange rules and a responsible code of conduct be observed in all communications between specialists and company officials. The following summary may serve as a guide as to the scope of permissible disclosure in such communications.

A company may make available to the specialist whatever information it has provided to its stockholders, security analysts or the general public, such as specific data and information concerning general trends relating to the company's business, as well as industry and general economic developments that may influence the company's welfare. It is improper, however, to furnish to the specialist any material information not previously released to the public regarding such matters as earnings, forecasts, anticipated dividend action, a proposed stock split, merger negotiations or any other undisclosed matter which is likely to have a significant effect on the price of the company's securities or influence investment decisions.

While it is not contemplated that a company will be in continuous contact with its specialist, the specialist may from time to time inform company officials of unusual market problems and respond to broad questions about the market in the company's stock. The restrictions imposed on [a] specialists concerning the information [he] *they* may disclose are set forth in paragraph (d)(i) below.

Within this framework, company officials and specialists should feel free to call upon each other so that a mutually beneficial understanding of the problems encountered by each is fostered.

(d) *Exchange Rules Governing Specialist's Activities*—In addition to certain provisions of the Securities Exchange Act of 1934, a number of Exchange regulations place clearly defined limits on a specialist's activities. An awareness of both the intent and spirit of Exchange rules, and the responsibilities the Exchange places on the specialist, will help ensure that contacts between company officials and the specialist are conducted within the framework provided for above.

With respect to any security in which a specialist is registered, Exchange rules prohibit [the] specialists (and, with respect to paragraphs iii through ix, the member firm or member corporation of which the specialist is a member) from:

(i) disclosing, at any time, to any person other than a Floor Official or authorized Exchange Official, any information in regard to orders entrusted to the specialist or the name of a buyer or seller except as may be necessary solely for the purpose of processing a transaction; however, that when requested by a member, member organization, or representative of the issuer of the security involved, [the] specialists shall, to the best of [his] *their* ability, disclose

to such parties the names of buying and selling member organizations in completed Exchange transactions unless specifically directed to the contrary by the member organizations involved;

(ii) effecting transactions for [his] *their* own account, unless such dealings are reasonably necessary to permit [him] *them* to maintain a fair and orderly market;

(iii) acquiring, holding or granting an option in any such security;

(iv) being an officer or director of the issuer of any such security;

(v) nominating, directly or indirectly, any person to be on the board of directors of the issuer of any such security;

(vi) effecting, directly or indirectly, any business transaction with the issuer of any such security or any officer, director or 10% stockholder of any such issuer;

(vii) accepting an order for the purchase or sale of any stock directly from the company issuing such stock; from any officer, director or 10% stockholder of that company; from any pension or profit-sharing fund; or from any bank, trust company, insurance company, investment company, or similar institution;

(viii) soliciting any proxy, directly or indirectly, on behalf of [himself] *the specialist* or any other persons in respect of any such security; and

(ix) voting, directly or indirectly, in any proxy contest involving any such security in which [he] *the specialist* has a beneficial interest.

With respect to any security in which a specialist is registered, Exchange rules require the specialist to report to the Exchange:

(i) unusual activity or price change:

(ii) information which may materially affect the business or financial structure of the issuer of, or the market for, such security;

(iii) the existence of options or selling agreements;

(iv) any unusual transaction in which the specialist participates as a broker or dealer; and

(v) each purchase and sale for the specialists' own account.

[(e) *Corporate Relations Manager*—A company's Corporate Relations Manager may serve as a communications link between a company and the specialist and can be helpful whenever questions about activity in a company's stock or other matters arise (see §§ 207 and 405)] *Director—The company will be assigned a day-to-day contact (Director) who will:*

(i) respond to questions concerning performance of the company stock;

(ii) assist the company in developing customized investor relations programs;

(iii) keep company officials abreast of industry—related issues and rule changes; and

(iv) serve as liaison between company officials and specialist and generally provide guidance to the company concerning its Exchange listing.

* * * * *

CHANGE OF NAME (§ 930, § 931)

Sec. 930. CHANGE OF NAME

A company proposing to change its name should:

* * * * *

(c) As soon as the change in name has been approved by shareholders, notify the Exchange [(by telephone or telex)] of the time when the amendment to the charter will be filed and the change in name will become effective. Confirm this advice by letter.

* * * * *

(e) Notify the Exchange [(by telephone or telex)] as soon as the amendment has actually been filed and confirm this advice by letter.

[(f) As soon as available, furnish the Exchange with a copy of the amendment to the charter covering the change in name certified as to its filing by the office of the Secretary of State. A specimen copy of each denomination of the stock certificates on which the change in name is reflected (in the form in which such certificates will be issued against transfers after the effective date of the change in name) should also be furnished.]

* * * * *

CHANGE IN PAR VALUE (§ 940)

Sec. 940. CHANGE IN PAR VALUE

A company that changes the par value of a stock issue listed on the Exchange, *without an increase or decrease in the number of shares listed*, is required to follow the procedures and file the papers specified below:

* * * * *

[(d) Immediately after the filing of the charter amendment, the company must furnish the Exchange with the following documents:

(i) A copy of the Certificate of Amendment of the charter effecting the change in par value, certified by the Secretary of State or corresponding authority.

(ii) Specimens of all denominations of the new or changed form of stock certificates reflecting the change in par value. It is advisable to furnish these prior to the filing of the charter amendment.

(iii) Opinion of counsel of satisfactory standing: (A) as to the legality of authorization of the change and the validity of the new par value shares resulting from such change; (B) that the new par value shares are validly issued, fully-paid and non-assessable; and (C) that no personal liability attaches to ownership thereof. If such counsel or any partner of such, counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the company, this fact should be stated in the opinion.]

* * * * *

APPLICATION AND INTERPRETATION OF REQUIREMENTS (§§ 90–994)

* * * * *

Sec. 994. NEW POLICIES

Copies of new or revised rules, policies, or forms, adopted subsequent to the date of this Guide, will be distributed, following their adoption. Questions concerning new materials, as well as materials contained in this Guide, should be directed to a company's assigned [Corporate Relations manager] *Listing Qualifications Analyst.*

* * * * *

PART 11. Guide To Filing Requirements (§ 1101, § 1102)

Sec. 1101. GENERAL

A company having a security listed on the Exchange and registered under Section 12(b) of the Securities Exchange Act of 1934 is required to file information, documents and reports with the SEC (or other appropriate regulatory agency) on a timely basis and file original or conformed copies with the Exchange. With the exception of annual reports to shareholders, which must continue to be filed with the Exchange in hard copy, a company which submits such material electronically to the SEC will be deemed to have satisfied this requirement.

The Exchange also requires timely notice and written confirmation of certain additional information, including proposed amendments to and certified copies of the Certificate of Incorporation, By-laws or other similar organization documents and all material sent to shareholders or released to the press. A summary guide to the Exchange's filing requirements following:

* * * * *

[Treasury Stock Changes	Within ten days after the end of a quarter in which a change occurred.	1	901]
* * * * * * *			
[Charter or By-Law Amendments	As soon as effective	1	702]
* * * * * * *			
Form N–SAR (for unit investment trusts and open-end management investment companies).	*Concurrently with SEC filing*	**1*	*1101*
Form N–30D (for unit investment trusts and open-end management investment companies).	*Concurrently with SEC filing*	*3*	*1101*
Form 24F–2; Form S–6; Form N–8B–2 (for unit investment trusts).	*Concurrently with SEC filing*	**1*	*1101*
497 (for open-end management investment companies)	*Concurrently with SEC filing*	*3*	*1101*

Form 24F–2 NT (for open-end management investment companies).	*Concurrently with SEC filing*	*1	*1101*

* * * * * * * *

Supplement

Emerging Company Marketplace

The Exchange established the Emerging Company Marketplace to accommodate the listing of companies, domestic or foreign, which are too small to qualify for regular listing. In May 1995 the Exchange determined to discontinue the list of new companies on the ECM. Companies which were listed on the ECM at that time were permitted to continue listed there, subject to all the rules applicable to ECM issues.

[NUMERICAL CRITERIA

A. Common Stock

	Regular	Alternate
Companies Traded in NASDAQ:		
Total Assets	$2 million	$2 million.
Stockholders' Equity	$1 million	$2 million.
Aggregate Market Value	$2.5 million	$2.5 million.
Public Float*	250,000 shares	250,000 shares.
Public Shareholders*	300	300.
Minimum Price	$1	Below $1.
Companies Not Traded in NASDAQ:		
Total Assets	$4 million	$3 million.
Stockholders' Equity	$2 million	$2 million.
Aggregate Market Value	$2.5 million	Above $10 million.
Public Float*	250,000 shares	400,000 shares.
Public Shareholders*	300	3,300.
Minimum Price	$3	$2.

*These terms include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated (*i.e.* 5 or grater), affiliated or family holdings.

B. Preferred Stock

In addition to satisfying the assets, equity and price criteria set forth in A above, the company must (i) appear to be in a financial position sufficient to satisfactorily service the dividend requirements for the issue, and (ii) have at least 100,000 preferred shares publicly held (as defined in A above) with an aggregate market value of at least 2,000,000.

The Exchange will not list convertible preferred issues containing a provision which gives the company the right, as its discretion, to reduce the conversion price for periods of time, or from time to time, unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.* The Exchange also will not consider listing a convertible preferred issue unless the underlying common stock meets all the criteria set forth in Part A above.

The Exchange strongly recommends that each preferred issue listed on the ECM be structured so as to comply with the voting requirements of Section 124 of the Company Guide.

C. Warrants

The listing of warrant issues is subject to all of the numerical criteria set forth in Part A, except for those with respect to price and market value. However, the Exchange will not consider listing warrants exercisable into common stock unless such common stock meets all the criteria set forth in Part A above.*

The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants, unless the company establishes a minimum period of ten business days within which such price reduction will be in effect. This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established.

Whenever a company having warrants listed on the Exchange effects a split of 3-for-2 or greater in the underlying shares, the Exchange requires that a corresponding split be made in the warrants.

D. Debt Issues

Companies applying for listing of bonds or debenture issues are expected to meet the following criteria:

(a) The company appears to be in a financial position sufficient to satisfactorily service the debt issue to be listed and meets the assets and stockholders' equity criteria set forth in A above.

(b) Listing will be limited to debt securities of at least $5 million in principal amount/aggregate market value.

(c) The Exchange will not list convertible debt issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time, or from time to time, unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.* The Exchange also will not consider listing a convertible debt issue unless the underlying common stock meets all the criteria set forth in Part A above.

E. Units

The Exchange may list units comprised of one or more of the securities enumerated above provided that each of the component parts of the unit would otherwise separately satisfy the applicable listing requirements.

F. Redemption, Cancellation, Retirement

A company is not permitted to select any of its listed securities for redemption otherwise than pro rata or by lot, and is required to notify the Exchange at least 15 days in advance of any redemption and to furnish it promptly with any information requested in connection with the redemption.

G. Listing Procedures

A company which satisfies the original listing criteria may apply for a confidential preliminary listing eligibility opinion which will be furnished without charge as described in § 202.

Footnotes: *The Exchange will not consider listing warrants, convertible preferred or convertible debt issues of a company unless current last sale information is available with respect to the underlying security.]

* * * * *

[LISTING FEES

There is a one-time original listing fee of $5,000 which is inclusive of all issues which become listed on the ECM. In addition, an annual fee shall be payable, as provided by § 141.]

* * * * *

CONTINUED LISTING CRITERIA

Continued listing on the Exchange is dependent upon compliance with the following numerical criteria:

A. Common Stock

no change

[B. Preferred Stock

In addition to satisfying the assets, equity, market value and price criteria set forth in A above, the company will be subject to

delisting if it does not have at least 50,000 preferred shares publicly held (as defined in A above).

C. Warrants

Warrant issues must satisfy all the numerical criteria set forth in Part A, except those with respect to price and market value. In addition if the warrants are exercisable into common stock, the warrants are subject to delisting if the common stock is not in compliance with the numerical criteria set forth in A above.

D. Debt Issues

Continued listing on the Exchange for bond and debenture issues is dependent upon compliance with the criteria specified in §§ 1003 (b)(iii) and (e) of the *Company Guide*.

E. Units

Continued listing on the Exchange of units comprised of one or more of the securities enumerated above is dependent upon compliance by each component part of the unit with the applicable criteria enumerated above.

F. Additional Requirements

Companies with a deficiency in market value or price for 10 consecutive trading days shall have 90 days thereafter in which to comply with the continued listing requirements. Companies with a deficiency in any other criteria shall be immediately subject to delisting in accordance with the procedures set forth in § 1010 of the Company Guide.

In addition, the Exchange shall delist any issue which "ceases to be an Eligible Security" pursuant to Section VI(c)(iii) of the Consolidated Tape Plan, and the issues of any company which fails to take appropriate steps to ensure that no ECM-listed securities are sold in its behalf in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange.

Appendix: Listing Forms

* * * * *

Listing Form 1

Listing Agreement

—(the "Company"), in consideration of the listing of its securities, hereby agrees with the American Stock Exchange, Inc. (the "Exchange"), that it will:

(1) Comply with all Exchange rules, policies and procedures which apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the company's organization documents would allow for a different result.

(2) Notify the Exchange, at least 20 days in advance, of any change in the form or nature of any listed security or in the rights, benefits and privileges of the holders of such security.

(3) File with the Exchange (i) proposed amendments to and certified copies of the Certificate of Incorporation; By-Laws or other similar organization documents; (ii) all SEC filings; and (iii) all material sent to shareholders or released to the press.]

Listing Form 2

Distribution and Trading Information

DELETED

Listing Form 3

Agreement With Transfer Agent

DELETED

Listing Form 4

Agreement With Registrar

DELETED

Listing Form 5

Agreement With Warrant Agent

DELETED

Sample Trustee's Certificate

DELETED

Sample Agreement of Banknote Company

DELETED

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Due to the merger between the National Association of Securities Dealers ("NASD") and the Amex, the qualifications functions for the Nasdaq Stock Market ("Nasdaq") and the Amex have been centralized in the Nasdaq-Amex Listing Qualifications Department ("Listing Qualifications"). As a result of this centralization, a number of Exchange rules have been reviewed with the goal of modernizing the Exchange's initial and continued listing process, creating consistent rules and processes across all of the NASD's marketplaces, and reflecting the current business practices and procedures used by Listing Qualifications. This filing addresses those goals and makes other non-substantive changes to reflect changed job titles[6] and responsibilities following the merger, and clarifies the application of certain Exchange rules.

Application Process

Currently, Exchange rules encourage issuers to obtain an informal opinion from Amex staff, known as the Preliminary Listing Eligibility Opinion ("PLEO"), as to whether the issuer is eligible to list before formally applying to the Exchange. Because of the time involved for the issuer to prepare for this extra review and for staff to conduct this extra review, the PLEO process causes a delay in the time it takes for a final determination to be made on an issuer's application for listing on the Exchange. This process is also inconsistent with the Nasdaq process in which an application is filed at the outset of the process. As a result, when an issuer initially pursues listing on both markets, the issuer faces a delay in its ability to make a decision as to where to list. In order to streamline the application process, the Exchange proposes to eliminate the PLEO process. Accordingly, the Exchange proposes to delete Sections 202 and 203 of the Listing Standards, Policies and Requirements and modify Sections 101, 130, 201 and 211 to eliminate references to the PLEO process. Under the proposed revision, issuers will only file their completed listing application with the Exchange's staff.

In addition, Exchange rules currently require a number of documents to be submitted with an original listing application. The Exchange proposes to eliminate certain requirements, including the Exchange's Listing Form 2 (Certificate of Distribution), Charter, By-Laws, Specimen Certificates, Trustee Certificates, Form for Indenture, Board Resolutions and certain contracts. Many of these documents are electrically available through an Issuer's public filings, or they are generally available to Listing Qualifications through other means (or upon request by Exchange staff from the issuer). Therefore, the Exchange proposes to remove these general requirements and instead request specific documents as necessary.[7] Specifically, the Exchange proposes to modify Sections 213, 216, 218, 305, 306, and 702 to reflect these changes.

Similarly, the Exchange proposes that issuers no longer be required to obtain an opinion of counsel which, among other things, relates to the legality of the organization and existence of the issuer and the validity of the securities to be listed. These rules were originally enacted to prevent unauthorized securities from entering into the market and to protect the Exchange from legal liability, which might arise from the listing and trading of such securities. Today, however, such concerns are unwarranted. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit and, generally, legal comfort is provided to market participants with respect to most securities issuances, including public offerings. Furthermore, the Exchange is largely protected from legal claims against it by its status as a self-regulatory organization and no

[6] Changes to Part 4 of the Listing Standards reflect the elimination of the Corporate Relations Manager job function and the function and the division of the responsibilities of the former Corporate Relations Manager among the Listing Qualifications, Stock Watch, and Issuer Service Departments.

[7] In the standard comment letter that the Exchange sends issuers after Exchange staff has reviewed the issuer's listing application, the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

recent case has been brought alleging invalid issuance of an Exchange security. Accordingly, the Exchange proposes to delete requirements related to opinions of counsel in Sections 213, 216, 218, and 306 of the Listing Standards.[8]

The Exchange currently requires an application to be submitted by an issuer whenever a shareholder rights plan is established and the underlying rights are registered with the Commission. These rights, commonly known as "poison pills," technically constitute a separate security but trade in tandem with an as part of the issuer's common stock. Upon the occurence of a "triggering" such as the announcement of a hostile takeover or the acquisition of a specified percentage of the company's outstanding common stock, the rights would detached from the common stock and become freely tradable as separate securities. At that point, under Exchange rules, the issuer is required to file a listing application with respect to those new securities. Given the listing application requirement upon the occurrence of a triggering event and the fact that until that time the securities are not traded as separate securities, the Exchange believes the requirements of Section 343 are not necessary.

Criteria for Original Listing

Sections 104 and 105 of the Listing Standards allow the listing of debt and warrants on the Amex, but only if the issuer is listed on the Amex or the New York Stock Exchange ("NYSE". This rule is no longer necessary or appropriate, given the level of the listing standards on Nasdaq in comparison to those of the Amex and the NYSE. The Exchange therefore proposes to expand the issues which may be listed on Amex to include debt and warrants of issuers listed on Nasdaq.

Sections 112, 115, and 116 of the Listing Requirements impose more stringent standards on specific types of issuers: exploration and development companies, member corporations, and companies engaged in gaming operations. These rules arose when such companies generally remained private and the listing of companies in such sectors was fairly unusual. The Exchange proposes to eliminate these sector-specific sections since the listing of securities of issuers in these sectors is now fairly common across all markets and issuers in these sectors now operate in highly regulated environments. Specifically, with respect to exploration and development companies, the Exchange notes that detailed disclosures about the issuer's stage of development and prospects are provided to potential investors in required, publicly filed reports. Accordingly, the Exchange does not believe it is appropriate to discriminate against such exploration stage companies seeking to raise capital on the Exchange. With respect to member corporations, the Exchange notes that these issuers are regulated by both the Commission and the membership organization to which the issuer belongs. Finally, with respect to companies engaged in gaming operations, the Exchange notes that these issuers operate in a highly regulated environment and are subject to substantial state and/or federal regulation. Furthermore, the Exchange notes that under its discretionary authority over all issuers, pursuant to Section 101, it has authority to deny listing to issuers based on sector-specific issues in appropriate situations. Accordingly, the Exchange does not believe that the specific rules relating to issuers in these sectors are necessary or appropriate.

The Exchange also proposes to clarify that the alternate listing guidelines contained in Section 101 of the Listing Standards are not limited to issuers in certain sectors. The alternate guidelines were first adopted in 1977 and then modified in 1986 to allow a broader range of companies to qualify. The guidelines referenced as examples, companies that were unable to satisfy the basic criteria due to significant research and development or other similar business development costs. The Exchange proposes changes to Section 101 to clarify that the numerical aspects of the alternate guidelines apply to all issuers, regardless of industry. This change would be consistent with the approach used on Nasdaq, SmallCap Market, and the NYSE, where alternative listing requirements are available to all issuers that meet the quantitative requirements.

Fees

Section 144 of the Listing Standards currently imposes a $250 non-refundable service charge that is subtracted from any refund otherwise due an issuer that is not approved for listing or that withdraws after completing the application process. Given the cost incurred by the Exchange in reviewing an application, the Exchange proposes to raise the non-refundable portion of the initial inclusion fee from $250 to $1,000 and to require the payment of this amount in advance of processing the application, in order to timely recoup such costs, especially in situations where these costs are incurred by the Exchange and the application is then withdrawn. The Exchange notes that this proposed change will not affect the listing fees paid by issuers who ultimately list on the Exchange and that this practice is consistent with that followed by Nasdaq. In addition, the Exchange notes that if an issuer applies for listing on both the Exchange and on Nasdaq, only a single $1,000 non-refundable fee would be collected for review of both applications.

The Exchange also proposes to modify the treatment of treasury shares for fee purposes. Under existing Section 141, Amex listing fees are based on all shares outstanding, including treasury shares. The Exchange proposes to modify Section 141 to exclude treasury shares when calculating shares outstanding for fee purposes[9] and to clarify that annual fees billed based on shares outstanding information refers to information available on Exchange records as of December 31, and not shares outstanding information sent to the Exchange by issuers some time in February. This proposed change will result in a decrease in fees for issuers with treasury shares and will not affect other issuers.

Finally, as discussed above, because the Exchange proposes to eliminate Section 343, requiring the submission of an application upon the creation of a shareholder rights plan, the Exchange also proposes to modify Section 140, to eliminate the $1,000 fee associated with the shareholder rights plan application.

Schedule for Dividends

The Exchange proposes to eliminate several archaic rules that require additional time between the declaration and dividend date for dividends of issuers that do not have transfer facilities in the New York City area. Given the current state of communication networks and electronic interaction between issuers, transfer agents and investors, these additional time periods are no longer necessary. Accordingly, the Exchange proposes to modify Sections 502, 512, and 521 and to eliminate Section 520 to implement this proposed change.

Transfer Facilities

Likewise, the Exchange proposes to remove a variety of rules concerning the qualification of Transfer Agents, Registrars, and Bond Trustees presently contained in Sections 801–811. The Commission regulates the transfer agent industry and, since 1976, has imposed a series of rules over the industry[10] that make many of the Exchange's rules unnecessary. Other Exchange rules relating to transfer agents (as well as Agents for Payment) are archaic, as they limit the ability of agents with physical locations outside of New York to perform these functions. The Exchange also proposes to eliminate the requirements relating to Trustees for Bond Issues in Section 811. The Exchange has never experienced a problem with respect to the qualification of a Bond Trustee and believes that these matters are better left to the individual issuers and applicable state law. Accordingly, the Exchange proposes to delete Sections 801–811 and to make conforming changes to other sections that refer to those sections.

Certificate Requirements

The Exchange also proposes to remove requirements relating to the form of securities and lost security holders. The rules relating to the form of securities are antiquated and may impede the use of innovations in this area, such as DTC holdings and book entry methods. Furthermore, the Exchange notes that there are no comparable rules on Nasdaq. Accordingly, the Exchange proposes

[8] Through its standard comment letter, the Exchange will require issuers to (i) furnish the Exchange with copies of opinion of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

[9] This is consistent with the approach taken on the Nasdaq, resulting in identical application across all of the NASD's marketplaces.

[10] *See* Exchange Act Rules 17Ad–1 through 17Ad–21T, 17 CFR 240.17Ad–1 through 17 CFR 240.17A21T.

to delete existing Sections 820 through 830, inclusive, and Section 841 of the Listing Standards. Likewise, the Exchange rules governing the replacement of lost certificates in Section 840 are no longer necessary in light of current practices followed by issuers and transfer agents.

Treasury Shares

Existing Exchange rules require an issuer to report changes in the number of treasury shares. Given the changes proposed to the fee calculation for issuers, resulting in the exclusion of treasury shares from the fee base, the Exchange no longer needs this information. Accordingly, the Exchange proposes to eliminate Section 901 of the Listing Standards. Furthermore, Section 903, on repurchases of listed company securities, in unnecessary because it does not impose any Exchange requirements, but merely refers issuers to federal securities laws. Finally, the Exchange notes that Section 902 allows an issuer to redeem securities only in a *pro rata* fashion or by lot. The Exchange notes that issuers are governed by state law requirements in the redemption of securities and that as a practical matter, one of these methods is invariably applied. Therefore, the Exchange believes that Section 902 is unnecessary and proposes its deletion and conforming amendments to Sections 103(d), 104, and 105(b).

Other Changes to the Exchange's Listing Requirements

The Exchange proposes certain changes to the listing requirements for issuers listed on the Amex. The Exchange proposes to change the definition of "public distribution" and "public shareholders" as defined in Section 102. Currently, in determining the number of shares in the public, Exchange rules exclude concentrated holdings of 5% or greater. The comparable rules on Nasdaq, as well as the NYSE, only exclude holdings of 10% or greater. The Exchange believes that it is appropriate to exclude holdings of between 5% and 10% from the definition of public distribution and accordingly, proposes to modify Section 102.

Next, the Exchange proposes to modify Section 120, relating to conflicts of interest. The existing Exchange rule states that the Exchange will consider conflicts situations in connection with the original listing of an issuer. The Exchange believes that a broader, ongoing review of related party transactions is appropriate and that the issuer's Audit Committee (or a comparable body) is an appropriate body for conducting such a review. Furthermore, the Exchange notes that under the proposed change, as in all cases, it may review a transaction using the Exchange's general discretionary authority if a transaction involved a conflict that raised public interest concerns. Accordingly, the Exchange proposes to adopt this revised listing requirement to better protect investors.[11]

The Exchange also proposes to amend its rules relating to shareholder approval contained in Section 713 to clarify that shareholder approval is required prior to issuance of a security that has the *potential* to result in the issuance of 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock. While the present language of the rule does not include the word potential, it is fairly implied and Exchange staff has consistently applied the rule to require approval in cases where an issuance may potentially exceed the state threshold. Accordingly, the Exchange proposes to modify the existing rule to clarify that an issuance is not permissible without shareholder approval when there is the potential to issue more than 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock.

Emerging Company Marketplace

In May 1995, the Exchange determined to discontinue the listing of new companies on the Emerging Company Marketplace and subsequently received Commission approval.[12] Accordingly, the Exchange proposes to delete from the Supplement the criteria for new listing on the Emerging Company Marketplace given that no new issues are permitted to be listed on that market. Furthermore, the Exchange proposes to delete from the Supplement the continued listing criteria with respect to all issues other than common stock because no existing issuers rely on these provisions and no new issuers can be listed that would rely on these provisions. This conforming change is consistent with the SEC's order approving the elimination of the Energing Company Market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–39 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3034 Filed 2–9–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42383; File No. SR–Amex–99–35)

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change To Rescind Exchange Rule 106, "Substitute Principals"

February 3, 2000.

I. Introduction

On September 1, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or 'Commission") pursuant to Section

[11] The Exchange notes that this proposed change is consistent with the rules relating to conflicts of interest that apply to Nasdaq issuers and NYSE issuers. *See* NASD Rules 4310(c)(25)(G) and 4460(h) and NYSE Listed Company Manual Section 307.00.

[12] *See* Exchange Act Release No. 36079 (Aug. 9, 1995), 60 FR 42926 (Aug. 17, 1995) (SE–Amex–95–23). Companies that were listed at the time the Emerging Company Marketplace was discontinued were permitted to continue their listing, subject to all the rules applicable to issuers on that Emerging Company Marketplace.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

19(b)(1) of the Securities Exchange Act of 1934 ('Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Exchange Rule 106. The proposed rule change was published for comment in the **Federal Register** on October 22, 1999.[3] The Commission did not receive any comment letters with respect to the proposal. This order approves the Exchange's proposal.

II. Description of the Proposal

The Amex proposes to delete Exchange Rule 106, "Substitute Principals." Exchange rule 106 currently provides that: "No party to a contract shall be compelled to accept a substitute principal unless the name proposed to be substituted was declared in, and as part of, the bid or offer giving rise to the contract." Rule 106 dates back to the 1921 Constitution of the New York Curb market,[4] a predecessor of the Exchange. The Rule's original purpose appears to be related to the clearance and settlement of trades, specifically, the terms of contracts and the creditworthiness of counterparties. The proposed rule change was filed in response to a recent dispute where an Exchange member invoked Rule 106 in an attempt to renege on a contract. Apparently, the Exchange member's counterparty provided an incorrect give-up at the time of the trade, and later sought to correct the error by substituting the correct clearing member.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[6] The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by rescinding Rule 106, which provides a potential basis for parties to Exchange contracts to break trades without appropriate justification.

Since Exchange Rule 106 was adopted in 1921 the process of clearance and settlement has evolved. Broker-dealers no longer compare individual trades as was the case at the time of the inception of Exchange Rule 106. Today, trades executed on the Amex are required to be cleared and settled through a registered clearing agency.[7] Typically, clearing agencies guarantee the completion of a transaction by becoming the counterparty to each side of the transaction. This has substantially reduced the risk of trade default and made concerns about counterparty identity largely irrelevant.

Clearing agencies perform comparison, clearance, and settlement of trades. Clearance activities confirm the identity and quantity of the security being bought or sold, the transaction price and date, and the identity of the buyer and the seller, Settlement is the fulfillment, by the parties to the transaction, of the obligations of the trade.

The largest clearing agency is the National Securities Clearing Corporation ("NSCC"), which acts as the contraside to every trade it processes. The NSCC guarantees the trades of its member participants and incurs the risk of default from the time of the guarantee until the settlement of obligations and payments. Thus, it is the NSCC and not the Exchange member—as was the case in 1921—who assumes counterparty risk. When the NSCC guarantees a trade, it becomes the buyer to every seller and the seller to every buyer. As a result, the clearing corporation incurs the risk that a counterparty to a transaction might default on its obligations.

Rule 106 was adopted in another era, prior to the utilization of modern clearing practices. The total assumption of default risk by clearing agencies has obviated the need for Exchange members to maintain strict control over the identify of trading counterparties. Because clearing corporations like NSCC eliminate the risk of trade default, trades are guaranteed irrespective of the identity of a counterparty. Thus, in light of clearance corporations and modern clearance and settlement practices, Rule 106 no longer serves the purpose of protecting a counterparty from the default risks associated with a trade.

Furthermore, Rule 106 may have the disruptive effect of permitting parties to Exchange contracts to break trades without appropriate justification. This kind of action is contrary to the goals of preserving the public's interest and protecting investors. The Commission therefore believes it is appropriate for the Exchange to rescind Rule 106.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–99–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3036 Filed 2–9–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42010 (Oct. 14, 1999), 64 FR 57167.

[4] Section 7 of the Article XXIV of the 1921 Constitution of the New York Curb Market stated: "No party to a contract shall be compelled to accept a substitute principal, unless the name proposed to be substituted shall be declared in marking the offer and as a party thereof."

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] *See* American Stock Exchange Constitution, Article X, Section 2.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42379; File No. SR–CBOE–98–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 6 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Enhancements to the Exchange's Processing of Live Ammo Orders

February 2, 2000.

I. Introduction

On June 16, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its rule governing the execution of orders on the "live ammo" screen. On June 23, 1998, the CBOE submitted Amendment No. 1 to the proposed rule change to the Commission.[3] On July 15, 1998, the CBOE submitted Amendment No. 2 to the proposed rule change to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated June 23, 1998 ("Amendment No. 1").

Commission.[4] On July 21, 1998, the CBOE submitted Amendment No. 3 to the proposed rule change to the Commission.[5] On August 6, 1998, the proposal was published in the **Federal Register.**[6] On August 11, 1998, the CBOE submitted Amendment No. 4 to the proposed rule change to the Commission.[7] On August 18, 1998, the CBOE submitted Amendment No. 5 to the proposed rule change to the Commission.[8] On January 21, 2000, the CBOE submitted Amendment No. 6 to the proposed rule change to the Commission.[9]

[4] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated July 10, 1998 ("Amendment No. 2").

[5] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated July 20, 1998 ("Amendment No. 3").

[6] Exchange Act Release No. 40283 (July 30, 1998), 63 FR 42085.

[7] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Associate Director, Division, SEC, dated August 7, 1998 ("Amendment No. 4"). In Amendment No. 4, the Exchange proposed to implement the proposed rule change on a pilot basis for 90 days and requested accelerated approval of the proposed rule change, as amended. In addition, the Exchange supplemented the record with data to demonstrate the purpose of the proposed rule change.

[8] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Associate Director, Division, SEC, dated August 17, 1998 ("Amendment No. 5"). In Amendment No. 5, the Exchange proposed that the proposed rule change be approved on a pilot basis for six months during which time the Exchange would submit a monthly report on the progress of the implementation of the proposal. The Exchange further proposed to distribute a Regulatory Circular to its members describing the parameters of the live ammo to Retail Automatic Execution System ("RAES") system.

[9] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated January 20, 2000 ("Amendment No. 6"). In Amendment No. 6, the CBOE proposed a nine-month pilot. In addition, the CBOE committed to submit a report to the SEC by August 31, 2000, analyzing the degree to which orders accumulate on the live ammo screen during the pilot period. During the pilot period, the Exchange will work on a further systems change that will route live ammo orders directly to RAES without manual intervention. The CBOE further committed to distribute a Regulatory Circular to its members describing the parameters of the "Live Ammo to RAES" system and how the proposed changes will be implemented on the floor. The Exchange amended the proposed rule by deleting the phrase that stated that the system may only be used "when the OBO or the DPM believes that there are unusual market conditions or when there is a large influx of orders to the electronic book screen" and replaced it with the statement that the system should be used "when the OBO or the DPM believes there are more orders on the live ammo screen than can be expeditiously handled in open outcry." In Amendment No. 6, the Exchange also described its plan to roll out the proposed change over a period of a few weeks to ensure that there are no unforeseen capacity or operational problems. Finally, the CBOE withdrew Amendment Nos. 4 and 5 to the proposed rule change.

The Commission received two comments on the proposed rule change.[10] This notice and order solicits comments from interested persons on Amendment No. 6 and approves the proposal, as amended, on a pilot basis until October 31, 2000.

II. Description of the Proposal

The CBOE proposes to amend its rule governing the execution of orders by order book officials ("OBO") or designated primary market makers' ("DPM") book staff to provide for the electronic execution of certain orders on the "live ammo" screen. The proposal will allow an OBO or a DPM to designate orders to be electronically executed against market makers standing in the crowd.

Currently, an OBO or a DPM, acting in his or her capacity as an OBO,[11] represents in the trading crowd the orders that have been placed in the customer limit order book (also known as the Electronic Book or the EBook), which displays all pre-open market orders[12] and customer limit orders. Orders placed in the EBook are represented individually when they become marketable and are traded with the market makers standing in the crowd.

The "live ammo" screen, which is an undisplayed portion of the EBook, receives for further processing orders that are market orders or limit orders that improve the market. An order may be routed to the live ammo screen under a number of circumstances. First, if a customer submits a cancel/replace market order to cancel and replace an order already displayed by the Book, the replacement market order will automatically be routed to the live ammo screen rather than returning directly to the displayed portion of the EBook. Second, if a customer submits a cancel/replace limit order and the replacement order has a limit price that betters the same-side market quote for an order displayed on the EBook, the replacement order will automatically be routed to the live ammo screen. Third, market orders received through the Exchange's "order shoe" that are manually booked are automatically routed to the live ammo screen. Fourth, limit orders that better the same-side market quote that are received through the order shoe and that are manually booked are automatically routed to the live ammo screen. Fifth, limit orders that better the same-side market quote and that are routed directly to the book when the routing parameters have been set at "O" are automatically sent to the live ammo screen.[13] Finally, marketable limit order that are electronically booked from a floor broker's PAR workstation are automatically routed to the live ammo screen.[14]

Orders sent to the live ammo screen are either traded manually in open outcry or sent to the EBook if book eligible, by either the OBO or the DPM, as the case may be.[15] When the live ammo screen experiences a large influx of orders it becomes difficult. according to the Exchange, for the OBO (or the DPM) to represent and execute these orders in a timely fashion, which can cause orders on the live ammo screen to queue. According to the Exchange, these backlogs usually had occurred during the opening rotations when a large number of orders can build up on the live ammo screen,[16] but they also can occur throughout the day during busy trading times.

To address this problem and accelerate the process of executing orders that are on the live ammo screen, the Exchange proposes to implement a new feature created for the live ammo screen, which will allow the OBO (or DPM) to send RAES-eligible orders on the live ammo screen to RAES for automatic execution. Under the proposal, the OBO (or DPM) may select all or any portion of the orders displayed on a live ammo page to be routed to RAES.[17] If fewer than all orders are selected, those orders will be routed based on time priority, pursuant to CBOE Rule 6.45. Orders selected for automatic execution must satisfy RAES requirements. Currently, RAES accepts market and marketable limit orders that meet the applicable size

[10] Letter from David Miller, Managing Director, Salomon Smith Barney, Chairman, CBOE Member Firm Committee, to Michael Walinskas, Associate Director, Division, SEC, dated August 7, 1998; and letter from Jim Brophy, A.G. Edwards, *et al.* to Michael Walinskas, Associate Director, Division, SEC, dated August 13, 1998.

[11] Pursuant to CBOE Rule 8.80, a DPM acts as a market maker, floor broker and OBO in its allocated options classes. Currently, equity options on the CBOE floor have been allocated to DPMs. Index options still utilize OBOs.

[12] After the Exchange opens, the EBook does not display market orders.

[13] The "O" parameter is an order routing parameter that may be implemented under high volume situations to route all limit orders to the EBook.

[14] According to the Exchange, approximately 90 percent of orders routed to the live ammo screen are cancel/replacement orders.

[15] A "book all" button is currently available to send book eligible orders on the live ammo screen to the EBook.

[16] Since submitting this filing, the Exchange has implemented the Rapid Opening System ("ROS"), which has significantly reduced the opening rotation time period.

[17] A live ammo screen page may contain up to thirteen orders.

requirements.[18] Any market maker who is signed on to RAES at the time the OBO (or DPM) routes the order or orders to RAES for automatic execution will be eligible to be electronically assigned as the contra-party on the trade. Orders on the live ammo screen that are not RAES-eligible will be manually represented.

As proposed, there may be instances when a RAES-eligible live ammo order may be executed before a non-RAES-eligible live ammo order that was received earlier. Therefore, the Exchange proposes to implement this live ammo to RAES feature notwithstanding the provisions of CBOE Rule 6.45. CBOE Rule 6.45 gives priority to some bids and offers, because they were made earlier in time, over other bids and offers.[19] In addition, if CBOE's best bid or offer on the limit order book equals the prevailing market quote, orders on the live ammo screen will be crossed with the orders in the Ebook.[20]

III. Summary of Comments

The Commission received two comments on the proposal both of which expressed their support.[21] The comment letter from the CBOE Member Firm Committee described the problems caused by backlogs of orders accumulating on the live ammo screen. The comment letter described how it could take the book staff up to 30 minutes to trade orders on the live ammo screen. The commenter detailed how many live ammo backlogs occur during the opening rotation and their belief that the ROS would alleviate some of the problems.[22] The commenter believed that the proposal would be an interim fix until the implementation of ROS. The comment letter from the CBOE member firm community also expressed its strong support for the proposal. The commenter believed that the proposal would be in their best interests as well as the best interests of their customers, who they believed, would receive better service than was currently available.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[24] which provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest.

The Commission believes that the proposed rule change should help in providing timely executions of orders on the live ammo screens of the CBOE's EBook. Currently, the OBO (or DPM) must individually represent orders that are displayed on the live ammo screen in the crowd. In periods of high volume or volatility, the OBO (or DPM) may not be able to manually represent these live ammo orders in a timely fashion. According to the Exchange, these marketable orders may stay on the live ammo screen for up to 30 minutes, during which time the market could move significantly away from the market that was quoted at the time the order was routed to the live ammo screen. Thus, investors currently may not be receiving the best price on the CBOE floor when their orders are placed on the live ammo screen.[25]

To address this problem, the Exchange is proposed to implement a new mechanism of the live ammo screen, which will allow the OBO (or DPM) to send RAES-eligible orders to RAES for automatic execution. This feature should help to address the problem of orders being left on the live ammo screen for long periods of time when the OBO (or DPM) is unable to manually represent the live ammo orders in a timely fashion. As a result, customer orders routed to the live ammo screen should receive more timely executions during periods of high volume or volatility on the Exchange. Although non-RAES eligible orders may be executed out of time priority under the proposal, the Commission is hopeful that the proposed rule change will enhance the timely processing of all live ammo orders. That having been said, however, the Commission is concerned that the continued use of the live ammo screen may unfairly disadvantage customer orders. As a result, the Commission is approving this proposal as an interim measure to provide the Exchange with the time to make modifications to its order processing systems to improve the handling of customer orders that currently are routed to the live ammo screen. In particular, the Commission expects that the Exchange will make the necessary systems enhancements to ensure that a maximum number of customer orders in the CBOE system are matched against one another.

Moreover, the Commission expects that the Exchange will develop the necessary systems enhancements to ensure that when there are no opportunities for matching customer orders in the CBOE system, RAES-eligible orders will be routed directly to RAES without the interim step of appearing first on the live ammo screen. The Commission requests that the Exchange submit any proposed rule changes to implement these enhancements by August 31, 2000. The Commission also notes that the Exchange has agreed to provide the Commission with an analysis of the

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[18] Most equity option classes have an eligible order size for RAES of 50 contracts. *See* Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999).

[19] For the reasons discussed below, the Exchange believes that instances where the priority of orders would be executed out of sequence would be infrequent. First, the non-RAES-eligible order must be for the same series as the RAES-eligible order that is traded for there to be an interruption of the normal priority principles. Second, for the RAES-eligible order to trade ahead of the non-RAES-eligible order, the limit price of the non-RAES-eligible order must be at the CBOE's quoted market because that is the price at which the RAES-eligible order will be executed. When the limit price for the larger non-RAES-eligible order is at the market, the CBOE book staff will act to execute the order promptly. *See* Amendment No. 3.

[20] The CBOE's Automated Book Priority ("ABP") system allows orders in live ammo to cross with orders held in the EBook. If the live ammo order is for a size greater than the limit order size displayed on the EBook, the ABP will cross the live ammo order with the EBook and any balance will be routed to RAES (provided it is RAES-eligible) for execution against the market makers signed on to RAES at the book price. Telephone call between Timonthy Thompson and Anthony Montesano, CBOE and Kelly Riley and Heather Traeger, SEC, dated January 14, 2000.

[21] *See* note 10.

[22] The Commission notes that since this proposal was filed the ROS has been implemented on the Exchange. ROS provides for the automated opening of options classes on the Exchange and has significantly shortened the length of time needed for opening each option class. While ROS has mitigated the problems during the opening rotations, it has not had an impact on intraday trading volatility. *See* Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999.) Telephone call between Timothy Thompson and Anthony Montesano, CBOE and Kelly Riley and Heather Traeger, SEC, on January 14, 2000.

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] Delayed execution of customer orders could implicate a broker-dealer's best execution responsibilities. *See* letter from Chairman Arthur Levitt to Michael Kelly, President, First Options of Chicago, Inc., dated April 13, 1999 ("While price is certainly a key element in a quality execution, other factors, such as the ability to obtain a complete and timely fill * * *-may also be considered in determining whether a customer is receiving best execution.")

degree to which live ammo orders accumulate on the live ammo screens during the pilot period.

The Commission finds good cause for approving Amendment No. 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 6, CBOE requests that the proposal be approved on a pilot basis for a nine-month period. Amendment No. 6 also would remove the requirement that the live ammo to RAES feature may only be used in unusual market conditions or when there is a large influx of orders to the Book. As amended, the proposal would permit the OBO (or DPM) to employ the live ammo to RAES feature at any time when the OBO (or DPM) determines that there are more orders on the live ammo screen than can be expeditiously handled in open outcry.[26] The Commission finds good cause for accelerating approval of Amendment No.6 to allow the Exchange to address immediately the order processing problems caused by the live ammo system while developing the needed systems enhancements to eliminate these problems in the future.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 6, including whether Amendment No. 6 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–27 and should be submitted by March 2, 2000.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change, as amended, (SR–CBOE–98–27) is approved on a pilot basis until October 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[26] In Amendment No. 6, the Exchange committed to distribute a Regulatory Circular to announce the changes to its members. The Regulatory Circular will also remind members of the priority principles under CBOE Rule 6.45(a) and (b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42382; File No. SR–CBOE–99–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Market-Maker Surcharge Fee Schedule

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1[3] to the proposed rule change on January 23, 2000. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE rule 2.40,[4] entitled "Market-Maker Surcharge for Brokerage."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, on September 1, 1999, the Exchange's Equity Floor Procedure Committee ("EFPC") approved the following fees for the following option classes:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, dated January 21, 2000 ("Amendment No. 1"). Amendment No. 1 states that all option classes on Friede Goldman International (FGI), Northwest Airlines Corporation (NAQ), Open Market, Inc. (OQM), Orbital Science Corp. (ORB), Onsale, Inc. (QOL), Prime Medical Services, Inc. (QSI), Synovous Financial Corp. (SNV), Wackenhut Corrections Corp. (WHC), and Zebra Technologies Corp. (ZBQ) were designated to Designated Primary Market-Makers ("DPMs") on September 7, 1999 and all option classes on The Boeing Company (BA) were designated to DPMs on September 13, 1999. Amendment No. 1 also states that no market-maker surcharges were assessed on these options after their designation to DPMs.

[4] *See* Securities Exchange Act Release No. 41121 (Feb. 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40). The Exchange imposes a market-maker surcharge to allow the Exchange and its member firms to better compete with other exchanges in floor brokerage and order book rates. The surcharge is used to (i) reimburse the Exchange to the extent that the order book official ('OBO") brokerage rate is reduced if the reduction is based upon a recommendation of resident market-makers, and (ii) pay stationary floor brokers ("SFBs") to induce them to reduce the brokerage rates they charge their customers. A resident market-maker is defined under CBOE Rule 2.40(a)(ii) as a market-maker who transacted at least 80% of his market-maker contracts in option classes traded in the trading crowd where the particular option class is traded in the prior calendar month. An SFB is defined under CBOE Rule 2.40(a)(i) as a floor broker who (i) has established a busines in the trading crowd for an option class of accepting and executing orders for members or registered broker-dealers and (ii) transacted at least 80% of his orders for the previous month in the trading crowd at which a particular option class is traded.

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) [5]
The Boeing Company (BA)	0.14	$0.00
Friede Goldman International (FGI)	0.02	0.00
Northwest Airlines Corporation (NAQ)	0.02	0.00
Open Market, Inc. (OQM)	0.02	0.00
Orbital Science Corp. (ORB)	0.02	0.00
Onsale, Inc. (QOL)	0.02	0.00
Prime Medical Services, Inc. (QSI0	0.02	0.00
Synovous Financial Corp. (SNV)	0.02	0.00
Wackenhut Corrections Corp. (WHC)	0.02	0.00
Zebra Technologies Corp. (ZBQ)	0.02	0.02

[5] The market-maker surcharge will be used in reimburse the Exchange for the reduction in the OBO brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to SFBs as proved in Exchange Rule 2.40.

These fees went into effect on Thursday, September 2, 1999. All of the option classes above are currently multiple listed on at least one other exchange. The most recent certification for multiple listing relates to options on The Boeing Company (BA) ("Boeing"), which were listed on the Pacific Exchange ("PCX") beginning on September 2, 1999. All of the market-maker surcharge fees, except those applicable to Boeing, reflect reductions in former market-maker surcharge fees imposed pursuant to Exchange Rule 2.40.

With respect to options on Boeing, CBOE Rule 2.40(e) requires that an option be listed for trading on another exchange before a market-maker surcharge fee can be assessed. Boeing has been certified by the Options Clearing Corporation to be listed on the PCX. Therefore, the CBOE began assessing the market-market surcharge on September 2, 1999, when Boeing was first listed on the PCX.[6]

The CBOE represents that the market-maker surcharge fees were effective from September 2, 1999 until the options at issue were designated to DPMs—September 7, 1999 for FGI, NAQ, OQM, QOL, QSI, SNV, WHC, and ZBQ, and September 13, 1999 for BA. The fees were eliminated when the options were designated to DPMs.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–99–52 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[6] The Exchange interprets Rule 2.40 to allow the EFPC to vote on market-maker surcharge before a class has been listed for trading on another exchange. Rule 2.40, however, provides that the market-maker surcharge may not actually be assessed until the class has been listed for trading on another exchange.

[7] Telephone conversation between Stephanie Mullins, Attorney, CBOE, and Gordon Fuller, Special Counsel, Division, Commission (December 10, 1999).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 15 CFR 240.19b–4(f)(2).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42385; File No. SR–MSRB–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Supervision of Correspondence With the Public

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed proposed amendments to MSRB Rules G–8, on books and records, G–9, on record retention, and G–27, on supervision (hereinafter referred to as the "proposed rule change"). The proposed rule change will revise the Board's supervision and record retention rules to provide dealers with flexibility in developing reasonable procedures for the review of correspondence with the public. The amendments are intended to recognize the growing use of correspondence sent and received in electronic format while still providing for effective supervision. The Board has also filed with the Commission a draft notice that will provide guidance to dealers on how to implement these rule changes. The proposed rule change and accompanying notice are modeled after and designed to conform to the rules and guidance of the National Association of Securities Dealers ("NASD"). The text of the proposed rule change is set forth below. Additional are italicized and deletions are bracketed.

* * * * *

Rule G–8: Books and Records to be made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extend applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xix) No Change.

(xx) *Records Concerning Compliance with Rule G–27. Each broker, dealer and municipal securities dealer shall maintain the records required under G–27(c) and G–27(d).*

(b)–(f) No Change.

Rule G–: Preservation of Records

(a) No Change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i)–(vii) No Change.

(viii) the following records, to the extent made or received by such broker, dealer or municipal securities dealer in connection with its business as such broker, dealer or municipal securities dealer and not otherwise described in this rule:

(A)–(B) No Change.

(C) all written *and electronic* communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such broker, dealer or municipal securities dealer with respect to municipal securities;

(D)–(E) No Change.

(ix)–(xiii) No Change.

(xiv) the records to be maintained pursuant to Rule G–8(a)(xx).

Rule G–27: Supervision

(a)–(b) No change

(c) Written supervisory procedures. Each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance as required in section (a) of this rule. Such procedures shall codify the dealer's supervisory system for ensuring compliance and, at a minimum, shall establish procedures

(i)–(vi) No change

(vii) for the prompt review and written approval by a designated principal of:

(A) the opening of each customer account introduced or carried by the dealer in which transactions in municipal securities may be effected; *and*

(B) each transaction in municipal securities on a daily basis, including each transaction in municipal securities effected with or for a discretionary account introduced or carried by the dealer [; and

(C) all correspondence pertaining to the solicitation or execution of transactions in municipal securities].

(d) Review of Correspondence

(i) Supervision of Municipal Securities Representatives. Each dealer shall establish procedures for the review by a designated principal of incoming and outgoing written (i.e., non-electronic) and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of such dealer. Such procedures must be in writing and be designed to reasonably supervise each municipal securities representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available, upon request, to a registered securities association or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act.

(ii) Review of correspondence. Each dealer shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its municipal securities activities. Procedures shall include the review of incoming, written correspondence directed to municipal securities representatives and related to the dealer's municipal securities activities to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for the education and training of associated persons as to the dealer's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(iii) Retention of correspondence. Each dealer shall retain correspondence of municipal securities representatives relating to its municipal securities activities in accordance with rules G–8(a)(xx) and G–9(b)(viii) and (xiv). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records and the retained records shall be readily available, upon request, to a registered securities association or the appropriate regulatory agency as defined in section 3(a)(34) of the Act.

[(d)] *(e)* Deputy to update and review written procedures. Each dealer shall revise and update its written supervisory procedures as necessary to respond to changes in Board or other applicable rules and as other circumstances require. In addition, each dealer shall review, at least on an annual basis, its supervisory system and written supervisory procedures adopted under sections (c) *and (d)* of this rule to determine whether they are adequate and up-to-date and shall ensure that the dealer is in compliance with this rule.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

i. Background

In May 1996, the Commission issued an Interpretive Release on the use of Electronic Media by the Broker-Dealers,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Transfer Agents, and Investment Advisors for Delivery of Information.[3] That release expressed the views of the Commission with respect to the delivery of information through electronic media in satisfaction of requirements in the federal securities laws, but did not address the applicability of any self-regulatory organization ("SRO") rules. In the release the Commission did, however, strongly encourage the SROs to work with broker-dealer firms to adopt SRO supervisory review requirements governing communications with customers to accommodate the use of electronic media.[4]

On December 31, 1997, the Commission approved proposed rule changes filed by the NASD[5] and New York Stock Exchange ("NYSE")[6] to update rules governing supervision of communication with the public. NASD Notice to Members ("NTM") 98–11 announced approval of the proposed rule change and provided implementation guidance to dealers.

Most of these rules became effective on April 7, 1998.[7] In response to public comment and certain Commission concerns, the NASD subsequently proposed further changes to these rules which were approved by the Commission and became effective on March 15, 1999.[8] NASD NTM 99–03 provided guidance on the further changes.[9]

As amended, NASD Rule 3010(d)(1) provides that procedures for review of correspondence with the public relating to a member's investment banking of securities business be designed to provide reasonable supervision for each registered representative, be described in an organization's written supervisory procedures, and be evidenced in an appropriate manner.

NASD Rule 3010(d)(2), as amended, requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. These procedures must also include the review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with dealer's procedures.

The Board has determined to adopt substantially similar rule changes. The Board believes that conforming its rule language to the language in the NASD rules will help ensure a coordinated regulatory approach to the supervision of correspondence. In addition, in connection with Commission approval of the proposed rule change, the Board will issue a notice to dealers to provide guidance to dealers on how to implement the proposed rule changes. This guidance has been coordinated with NASD NTM 98–11 and NASD NTM 99–03 and is described below.

ii. Description of the Rule as Revised

Supervision of Municipal Securities Representatives

The proposed amendments to MSRB Rule G–27(d), provide, among other things, that a dealer must establish procedures for the review by a designated principal of each municipal securities representative's incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence with the public relating to the municipal securities activities of such dealer. The procedures must be designed to provide reasonable supervision of each municipal securities representative and must be described in the dealer's written supervisory procedures. Implementation and execution of these procedures must be clearly evidenced, and the evidence must be maintained and be made available upon request to a registered securities association or the appropriate regulatory agency as defined in section 3(a)(34)[10] of the Act.

Procedures for Review of Correspondence

Currently, MSRB Rule 27(c)(vii)(C) provides that each dealer shall establish procedures for the review and written approval by a designated principal of all correspondence pertaining to the solicitation or execution of transactions in municipal securities. Under the proposed MSRB Rule G–27(d)(ii), a review of each item of correspondence will no longer be required. Dealers will be allowed flexibility in developing procedures for the review of correspondence relating to the dealer's municipal securities activities—both incoming and outgoing, written or electronic—tailored to the nature and size of the dealer's business and customers.

With respect to incoming, written (*i.e.*, non-electronic) correspondence directed to municipal securities representatives and related to the municipal securities activities of the dealer, the proposal would require review of the correspondence to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. The proposed rule change does not require review of all correspondence prior to use or distribution. However, any dealer that does not conduct electronic or manual pre-use review of each item of correspondence will be required to regularly educate and train its associated persons as to the dealer's procedures governing review of correspondence, document such education and training, and monitor to ensure compliance with such procedures.

Retention of Correspondence

The proposed rule change will include amendments to MSRB Rules G–8(a)(xx), G–9(b)(viii) and (xiv), and G–7(d)(i), (ii), and (iii) requiring each dealer to preserve correspondence of municipal securities representatives relating to the municipal securities activities and maintain the records of written supervisory procedures, education and training required under Rule G–27(c) and (d) for three years. The proposed rule change also requires that the names of the persons who prepared and reviewed correspondence must be ascertainable from the retained records and the records must be made available, upon request, to the appropriate enforcement agency (*i.e.*, NASD or federal bank regulatory agency).

Draft Notice-Guidelines for Supervision and Review

The notice to dealers will provide guidance on how to implement the proposed rule change. In particular, the notice states that in adopting review procedures pursuant to Rule G–27(d)(i), dealers must:

- Specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence;
- Identify how supervisory reviews will be conducted and documented;
- Identify what types of correspondence will be pre- or post-reviewed;
- Identify the organizational position(s) responsible for conducting review of the different types of correspondence;

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[3] *See* Securities Act Release No. 7288, Exchange Act Release No. 37182, Investment Company Act Release No. 21945, Investment Advisor Act Release No. 1562 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7–13–96).

[4] *Id.*

[5] *See* Exchange Act Release No. 39510 (December 31, 1997), 63 FR 1131 (January 8, 1998).

[6] *See* Exchange Act Release No. 39511 (December 31, 1997), 63 FR 1135 (January 8, 1998).

[7] *See* Exchange Act Release No. 39866 (April 14, 1998), 63 FR 19778 (April 21, 1998).

[8] *See* Exchange Act Release No. 40372 (August 27, 1998), 63 FR 47059 (September 3, 1998).

[9] *See* NTM 99–03 (January 1999).

[10] 15 U.S.C. 78c(a)(34).

- Specify the minimum frequency of the reviews for each type of correspondence;
- Monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and
- Periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The notice also states that in conducting reviews, dealers may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the dealer's municipal securities activities may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public pursuant to Rule G–27(d)(ii), the notice states that each dealer must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform firm-wide procedures or tailored procedures (*i.e.*, by specific function, office/location, individual, or group of persons).

The notice also provides guidance on adopting review procedures pursuant to Rule G–27(d)(ii), and states that dealers must, at a minimum:

- Specify procedures for reviewing municipal securities representatives' recommendations to customers;
- Require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers;
- Consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
- Consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

In addition, the notice provides that supervisory and procedures must also:

- Provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained;
- Describe any dealer standards for the content of different types of correspondence; and
- Prohibit municipal securities representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the dealer. For example, the Board would expect dealers to prohibit correspondence with customers from employees' home computers or through third party systems unless the dealer is capable of monitoring such communications.

The notice also states that the method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the dealer's office structure. Where the office structure permits review of all correspondence, dealers should designate a municipal securities representative or other appropriate person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the municipal securities representative whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and funds would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence [11] prior to use or distribution, appropriate procedures that could be adopted include the following:

- Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis;
- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis;
- Communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

2. Statutory Basis

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) [12] of the Act, which requires, in pertinent part, that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

In particular, the Board believes that the proposed rule change is consistent with the Act in allowing dealers to use new technology, such as e-mail and the Internet, while still providing for appropriate supervision and review. In addition, the proposed rule change will make the Board's rules on supervision and record retention substantially similar to the NASD rules. The Board believes that such similar rules by the self-regulatory organizations should facilitate dealer compliance with these requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in the furtherance of the Act's purposes because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

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[11] Amended language per telephone conservation between Carolyn Walsh, Assistant General Counsel, MSRB, and Ira L. Brandriss, the Commission, February 3, 2000.

[12] 15 U.S.C. 78*o*–4(b)(2)(c).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Board. All submissions should refer to File No. SR–MSRB–00–01 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3038 Filed 2–9–00; 8:45am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42381; File No. SR–NYSE–99–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 134, Governing Error Accounts, and New Rule 407A, Concerning Floor Member Account Disclosure

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. On December 13, 1999, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to existing rules governing error accounts (Rule 134) and a new rule regarding Floor member account disclosure (Rule 407A).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a series of initiatives to strengthen the regulation of activities of members on the Floor. The initiatives proposed herein consist of amendments to existing rules governing error accounts and a new rule regarding Floor member account disclosure.[4]

Error Accounts. The Exchange is proposing to revise NYSE Rule 134(d) to require that each member maintain an error account. Under the proposed rule change, if a member does not maintain an error account, he or she will not be permitted to transact business on the Floor. Only one error account will be permitted for each member. The error account may be maintained in the member's name or in the name of his or her member organization, or the member may participate in an error account established for a group of members.

At present there is no requirement that a member maintain an error account. The Exchange believes that the amendment to Rule 134 will enhance its ability to monitor and detect potential abuses such as on-Floor trading by members. Error account transaction information will be localized to one place for each member, and not scattered among several accounts which, at present, could be held in the name of another member or member organization.

Housing Error Accounts. The proposed rule change, as amended, would require that a member's error account be maintained at a broker or dealer registered in accordance with Section 15(b)[5] of the Act. The Exchange believes that this provision would enable it to use its oversight authority to review error records for the brokers or dealers which are members or member organizations of the Exchange. If the error account is maintained at a non-member broker or dealer, the Exchange represents that it will work through the Intermarket Surveillance Group ("ISG") to obtain information on errors. The Exchange believes this requirement is necessary to enable review of situations involving errors in an expedited fashion.

Error Transaction Procedures. The proposed rule change would require that if a member or member organization acquires or assumes a security position resulting from an error transaction, or initiates a transaction to offset an error transaction, such transaction must be recorded and cleared in the member's or his or her member organization's error account, or in an error account established for a group of members.

This would include situations where the execution was wrong (*e.g.*, wrong side of the market, wrong stock) and where the member "missed the market" by failing to execute the order in the prevailing market. If the error can be corrected at a better price at the time the error is discovered, the better price must be offered to the customer. If the customer refuses the superior execution, a record of this must be maintained by the member.

Alternatively, a customer could accept the error, in which case the transaction would be placed in the customer's account. An error transaction could also be accepted by the specialist in the security into his or her organization's account as a trade "on account of error."

When a customer accepts an error transaction, a monetary settlement (a "difference check") may be made by the member or member organization. If the difference check is for more than $500, the member or member organization involved would be required under the proposal to maintain records detailing the transaction. In some instances, a customer may accept an error, but not wish to receive a difference check for bookkeeping or other reasons. The member or member organization involved would be required to maintain records in these situations, as well.

The proposal further prescribes the way a member would be required to

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The substance of Amendment No. 1 is incorporated into this notice.

[4] *See* Exchange Act Release No. 41706 (August 4, 1999), 64 FR 44069 (August 12, 1999) (File No. SR–NYSE–98–25) relating to proposed adoption by the NYSE of new provisions for recording the details of an order in an electronic system prior to representing or executing an order on the Floor. The two rule changes proposed in this filing replace the equivalent proposals that were deleted by amendment from SR–NYSE–98–25. *See* note 4, *id.*

[5] 15 U.S.C. 78*o*(b).

handle an error that is not accepted by a customer. Where the member is representing an order that cannot be executed pursuant to its term,[6] the member would be required to issue an execution report covering the customer's order at the missed market price from his or her error account, the member organization's error account or the specialist's account if the specialist agreed to take in the error. The member would be permitted to confirm such report as an Exchange transaction as long as the position in the error account or specialist's account is liquidated.

The Exchange stipulates that if the order can be executed on its original terms or on better terms, the member or member organization is expected to execute the order pursuant to its terms, as would typically be the case with a "not held" order. A member representing a "not held" order is not permitted to "miss the market." and must execute the order pursuant to its terms. The member would not be permitted to simply issue a report out of his or her error account.

Recordkeeping. The proposed rule change would require the member of his or her member organization to maintain records with respect to all errors. These records would include the audit trail data elements prescribed in NYSE Rule 132, as well as the nature and amount of error, how the member resolved the error with the member or member organization, including a specialist, which cleared the error trade on the member's behalf, and the aggregate amount of liability that the member has incurred and has outstanding as of the time the error is recorded. The Exchange could also require that additional data elements be recorded in circumstances where the Exchange believe that such additional information is necessary for all error transactions, or in particular situations. The Exchange believes that the recordkeeping requirement would enable the Exchange to review and analyze error transactions on a current and consistent basis.

Profitable Errors. The Proposal would also establish reporting requirements with respect to certain "profitable" errors. These are errors which can be liquidated at a price that is favorable to the position acquired in the member or member organization's error account. Under the proposal, every member not associated with a member organization and every member associated with a member organization that derives at least 75% of its revenue from floor brokerage would be required to report to the Exchange error transactions that result in a profit of more than $500 for any transaction or more than $3,000 in any calendar week. The Exchange believes this will enable it to quickly review these situations for possible violations of Floor Trading rules or procedures.

The Exchange notes that all members and member organizations would be required under the proposal to maintain details of all errors, profitable or not. For members and member organizations that do not act primarily as a Floor broker, these records would be reviewed in connection with the normal oversight activities of the Exchange.

Reports of Closed Error Accounts. The proposed rule change would also require each clearing member organization to report to the Exchange whenever it ceases to carry an error account. The notice would be requried in writing immediately, but no later than the opening of the Exchange on the following business day.

Member Account Disclosure. Proposed new Rule 407A would provide the Exchange with information on accounts of members. The provision would require a member to report to the Exchange any securities account in which the member has a direct or indirect financial interest or over which the member has discretionary authority. This would include any account at a non-member broker-dealer, investment adviser, bank or other financial institution. In addition, the member would be required to notify the financial institution that carries or services his or her account or an account over which the member has discretionary authority that he or she is a member of the Exchange.

Purchases of securities of a publicly-traded registered investment company directly from the issuer or principal underwriter would not be considered a reportable securities account. However, interests in a non-publicly-traded investment vehicle, including hedge funds, would be reportable.

The Exchange believes that these reporting requirements would provide it with current information on where members carry securities accounts and enhance its ability to investigate quickly the trading of securities by members of the Exchange.

2. Statutory Basis

The Exchange bases the proposed rule change on Section 6(b)(5)[7] of the Act, which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will help accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[6] An example of such an order is a "held" order to buy with a limit of 20, which cannot be executed pursuant to its terms if the member missed the market and the stock is now trading above 20.

[7] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–NYSE–99–25 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3035 Filed 2–9–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42384; File No. SR–PCX–99–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Amending Its Disciplinary Procedures

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On June 25, 1999, the PCX filed with the Commission Amendment No. 1 to the proposed rule change.[3] On January 18, 2000, the PCX filed with the Commission Amendment No. 2 to the proposed rule change.[4] On January 19, 2000, the PCX filed with the Commission Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules on disciplinary proceedings at the Exchange,[6] and in particular, to add new rules to codify the independent function of PCX Regulatory Staff; to clarify what communications are improper in the context of pending investigations or disciplinary proceedings; to provide PCX Regulatory Staff with the ability to issue formal complaints for the alleged violation of Exchange rules; to permit qualified persons who are not members to serve on hearing panels; and otherwise to codify procedures relating to hearing panelists' conflicts of interest. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Rule 10

Disciplinary Jurisdiction and Appeals

¶6061 Disciplinary Jurisidiction

Rule 10.1—No change.

¶6067 Investigations *and Regulatory Cooperation*

Rule 10.2(a). The Exchange *Regulatory Staff will function independently of the commercial interests of the Exchange members and will have the sole discretion to investigate, and will* [shall] investigate, possible violations within the disciplinary jurisdiction of the Exchange. [upon order of the Board of Governors, the Executive Committee, the Ethics and Business Conduct Committee, or the Floor Trading Committees or upon receipt of a complaint alleging such violations filed by a member or by any other person.] *No member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.* [All such complaints should specify in reasonable detail the facts constituting the violation, including the specific statutes, Exchange Constitutional provisions, Rules, commentaries, resolutions, policies or procedures allegedly violated. A member or person associated with a member is entitled to be represented by counsel during any Exchange investigation.

(b) No member or person associated with a member shall impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange nor refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange shall be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.]

(b) Any person, any Exchange committee, the Board of Governors or the Executive Committee may submit for investigation a complaint alleging possible violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific federal statute, rule, regulation or Exchange constitutional provision, rule, commentary, resolution, policy or procedure allegedly violated.

[(c) A member or member organization shall submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Exchange. Failure to submit such data in the required format shall be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.]

(c) A member, member organization or associated person is entitled to be represented by counsel during any Exchange investigation.

[(b)] *(d)* No member, *member organization,* [or person associated with a member] *associated person or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) may* [shall] impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange nor refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange [shall] *will* be

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[6] 17 CFR 200.3–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated June 24, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange withdrew proposed PCX Rule 10.8, *Hearing Panels,* and renumbered two of the proposed rules.

[4] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Jennifer Colihan, Attorney, Division of Market Regulation, Commission, dated January 7, 2000 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed to delete PCX Rule 10.4(f) among other things.

[5] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Kelly Riley, Attorney, Division of Market Regulation, Commission, dated January 14, 2000 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposed to make minor word change and change the heading for proposed Rule 10.4(c) from "Summary Proceedings" to "Summary Determinations" among other things.

[6] The Commission notes that the Exchange has proposed a similar disciplinary structure and procedures for the Pacific Equities, Inc. *See* Exchange Act Release No. 42178 (Nov. 24, 1999) 64 FR 68136 (Dec. 6, 1999) (File No. SR–PCX–99–39).

considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

[(c)] *(e)* A member or member organization [shall] *must* submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Exchange. Failure to submit such data in the required format [shall] *will* be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

Commentary:

.01—No change.

[Regulatory Cooperation]

[(d)] *(f)* No member, member organization, *associated person* [person associated with a member or member organization], or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b), [shall] *may* refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Exchange pursuant to Rule 14.1 The requirements of this Rule [10.2(d)] *10.2(f)* [shall] *will* apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule [10.3] *10.5*.

Commentary:

.01 The terms "exchange" and "self-regulatory organization," as used in Rule [10.2(d)] *10.2(f)*, [shall] *will* include, but are not limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person or entity required to furnish information or testimony pursuant to Rule [10.2(d)] *10.2(f)* [shall] *will* be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

Ex Parte Communications

10.3(a) Prohibited Communications. Unless on adequate notice and reasonable opportunity for all parties to participate:

(1) No person who is a subject of a pending Exchange investigation ("Subject") or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, with knowledge of a pending Exchange invesgitation or disciplinary proceeding, may make or knowlingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member or Exchange Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; or (e) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.

(2) No person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange Regulatory Staff; or (e) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.

(3) No person who is a member of the Board of Governors or the Executive Committee, or any person who advises the Board of Governors or the Executive Committee, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of Exchange Regulatory Staff; (b) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (c) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.

(b) Disclosure of Prohibited Communications. Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses and memoranda stating the substance of any oral responses to such communications.

(c) Remedies. Any member, member organization or associated person who made or knowingly caused to be made a communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, an Exchange disciplinary committee, to the extent consistent with the interests of justice, may issue to the member, member organization or associated person responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the member, member organization or associated person should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and Exchange Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.

(d) Permitted Communications. Nothing in this Rule prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

Commentary:

.01 "Ex parte communication" means an oral or written communication made without notice to all parties, i.e., Exchange Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral

communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

.02 A disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.5 until the proceeding, including any appeals, becomes final.

¶6073 Complaints [and Answers]

[Rule 10.4] (Note—Rule 10.4 has been renumbered as Rule 10.5)

Rule [10.3]*10.4(a)* [Whenever it shall appear to the Board of Governors, the Executive Committee, or any standing committee designated by the Board of Governors to review disciplinary proceedings that] *Any standing committee designated by the Board of Governors to review disciplinary proceedings, and Exchange Regulatory Staff designated by the Exchange, has the authority to determine whether* there is probable cause for finding *that* a violation within the disciplinary jurisdiction of the Exchange *has occurred* and that further proceedings are warranted[, the]. *If* the Exchange ("the Complainant") determines that further proceedings are warranted, then the Exchange [shall] *will* initiate a *formal* disciplinary action by preparing a statement of charges ("the Complaint") against [the] *any* [person or] *member, member* organization *or associated person* alleged to have committed a violation ("the Respondent") specifying the acts in which the Respondent is [charged] *alleged* to have engaged in, or which the Respondent is alleged to have omitted, and [setting forth] *alleging* the specific provisions of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, Exchange constitutional provisions, rules, commentaries, resolutions, policies or procedures, of which such acts or omissions are *alleged to be* in violation.

(b) At any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. After service of the written answer, the hearing panel may allow amendment of the Complaint upon submission of a written motion by the Exchange and a showing of good cause.

The Respondent shall have fifteen business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of his answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

The time period to file any answer may be extended for such further periods as may be granted by the Exchange, if such request for extension of the filing period is received by the Exchange within five business days prior to the date on which the answer is due.

Summary Determinations

(c) [Rule 10.5] Notwithstanding the provisions of Rule 10.5, the disciplinary committee with jurisdiction over the proceeding may make a determination without a hearing and may impose a penalty as to such charges which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent.

Commentary:

.01 The term "probable cause" means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

Hearing

[Rule 10.5] (Note: Rule 10.5 has been renumbered as Rule 10.4(c))

[Rule 10.4] *Rule 10.5*(a) Upon Respondent's filing an answer, the Respondent may request a hearing. An appropriate Committee of the Exchange ("the Hearing Committee") shall appoint one or more members to hear the matter ("the Panel"). Parties shall be given at least 15 calendar days notice of the time and place of the hearing and a statement of the matters to be considered therein.

(b) Prior to the hearing, the Parties shall be notified of the composition of the Panel. Any objection to the composition of the Panel must be submitted to the Hearing Administrator within five business days of receipt of the notification regarding the composition of the Panel.

(c) At least five business days prior to the hearing the parties shall submit to the Hearing Administrator a list of witnesses and any documentary evidence or other materials to be presented at the hearing. The Hearing Administrator shall immediately furnish such list of witnesses, documentary evidence or other materials to the other parties.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by one or more representatives of the Exchange, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Panel and other parties. The Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No member or person associated with a member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript for the hearing shall be made and shall become part of the record.

(e) Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Panel that he has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede his ability to protect that interest. Also, the Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[(f) Except in writing, with copies to the other parties, neither the Complainant, the Respondent, nor any interested party may discuss with the Panel any matter concerning the facts or allegations in the complaint unless the other parties to the action are given

sufficient notice and an opportunity to be heard.]

Rules 10.6–10.14—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Independence of Regulatory Staff. The Exchange is proposing to modify PCX Rule 10.2 so that it will include new provisions on the independence of PCX Regulatory Staff and its separation from the Exchange's commercial interests. Specifically, the rule is being modified to state that the Exchange's Regulatory Staff will function independently of the commercial interests of the Exchange members and will have the sole discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Exchange. The proposed rule further states specifically that no member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere within or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

Investigations. The Exchange is proposing to reorganize the provisions on Exchange investigations and to make various technical and housekeeping changes to the text of PCX Rule 10.2, which will now cover both Exchange investigations and regulatory cooperation.[7]

Ex Parte Communications. The Exchange is proposing to adopt new PCX Rule 10.3 to codify specific provisions on ex parte communications.[8] This rule change codifies what communications regarding pending investigations and disciplinary proceedings are improper. The Exchange believes that this rule change will serve to assure that the integrity and independence of the Exchange's regulatory function will be protected.

More specifically, proposed Exchange Rule 10.3(a)(1) provides that unless on adequate notice and reasonable opportunity for all parties to participate, no person who is a subject of a pending Exchange investigation ("Subject") or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, with knowledge of a pending Exchange investigation or disciplinary proceeding, may make or knowingly cause to be made an *ex parte* communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; or (e) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.[9]

Proposed PCX Rule 10.3(a)(2) provides that unless on adequate notice and reasonable opportunity for all parties to participate, no person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) A member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange Regulatory Staff; or (e) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.[10]

Proposed Rule 10.3(a)(3) provides that unless on adequate notice and reasonable opportunity for all parties to participate, no person who is a member of the Board of Governors or the Executive Committee, or any person who advises the Board of Governors or the Executive Committee, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) Any member of Exchange Regulatory Staff; (b) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (c) a member of a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.[11]

With respect to the disclosure of prohibited communications, proposed PCX Rule 10.3(b) provides that any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding: (1) All such written communications; (2) memoranda stating the substance of all such oral communications; and (3) all written responses and memoranda stating the substance of any oral responses to such communications.[12]

Proposed Exchange Rule 10.3(c) sets forth remedies applicable to situations in which prohibited communications have been made. Specifically, the rule provides that any member, member organization or associated person who made or knowingly caused to be made a communication prohibited by subsection (a) will be subject to disciplinary action. The rule further provides that an Exchange disciplinary committee, to the extent consistent with the interests of justice, may issue to the member organization or associated person responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the member, member organization or associated person should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. The rule further provides that all parties to a disciplinary proceeding and Exchange Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the

[7] The current provisions on regulatory cooperation are set forth in PCX Rule 10.2(d).

[8] These provisions were, in large part, adapted from the NASD Manual—Code of Procedure ("NASD Code of Proc.") Rule 9143, *Ex Parte Communications*.

[9] *Cf.* NASD Code of Proc. Rule 9143(a)(1).

[10] *Cf.* NASD Code of Proc. Rule 9143(a)(2).

[11] *Cf.* NASD Code of Proc. Rule 9143(a)(1)–1(2)

[12] *Cf.* NASD Code of Proc. Rule 9143(b).

investigation or disciplinary proceeding.[13]

Proposed PCX Rule 10.3(d) clarifies that nothing in the rule on ex parte communications prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

Proposed Commentary .01 to Exchange Rule 10.3 defines an "ex parte communication" as an oral or written communication made without notice to all parties, *i.e.*, Exchange Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. The Commentary further states that a written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. It further provides that an oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.[14]

Finally, proposed Commentary .02 to PCX Rule 10.3 states that a disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.5 until the proceeding, including any appeals, becomes final. This provision will serve to clarify the scope of statements prohibited by PCX Rule 10.3.[15]

Complaints. PCX Rule 10.3, which the PCX proposes to renumber as Rule 10.4, currently provides that formal complaints for alleged violations of Exchange rules (and other provisions) may be authorized by the PCX Board of Governors, by the Executive Committee of the Exchange, or by any standing committee designated by the Board of Governors to review disciplinary proceedings. The Exchange is proposing to modify that provision so that only Exchange Regulatory Staff designated by the Exchange and any standing committee designated by the Board of Governors to review disciplinary proceedings has the authority to determine whether there is probable cause to issue a formal complaint, *i.e.*, probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted. The PCX also proposes to make certain technical changes to the text of current Exchange Rule 10.3 for clarification purposes, *e.g.*, changing the term "charged" to "alleged."

With regard to amending outstanding Complaints, proposed PCX Rule 10.4(b) provides that at any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. It further provides that after service of the written answer, the hearing panel may allow amendment of the Complaint upon submission of a written motion by the Exchange and a showing of good cause.

Finally, the Exchange is proposing to adopt new Commentary .01 to new PCX Rule 10.4 to provide that the term "probable cause" means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

Summary Determinations. The Exchange proposes to renumber PCX Rule 10.5 to Rule 10.4(c).

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b)[16] of the Act, in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The PCX also believes that the proposal is consistent with Section 6(b)(6)[18] of the Act in that it is designed to assure that Exchange members and persons associated with Exchange members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–99–10 and should be submitted by March 2, 2000.

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[13] *Cf.* NASD Code of Proc. Rule 9143(c).

[14] *Cf.* Chicago Board Options Exchange ("CBOE") Rule 17.4, Interpretation and Policy .01.

[15] *See, e.g.*, proposed PCX Rule 10.3(a)(1) ("No person who is * * * a Respondent in a *pending disciplinary proceeding*, may make * * * and *ex parte* communication. * * *" (emphasis added)). *Cf.* CBOE Rule 17.14, Interpretation and Policy .01(i).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3087 Filed 2–9–00; 9:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42386; File No. SR–Phlx–99–55]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.: Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to an Increase in Position and Exercise Limits for Certain Broad-Based Index Options

February 4, 2000.

I. Introduction

On December 21, 1998 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase broad-based ("market") index option position and exercise limits on the Value Line Composite Index ("VLE"), the US Top 100 Index ("TPX"), and the National Over-the-Counter Index ("XOC").[3]

The proposed rule change was published for comment in the **Federal Register** on April 2, 1999.[4] No comments were received on the proposal. On November 10, 1999, the Phlx filed an amendment to the proposed rule change.[5] This order approves the proposal, as amended.

II. Description

The Phlx proposed to amend Phlx Rule 1001A(a)(i)–(ii) by increasing market index option position limits on the VLE, the TPX, and the XOC.[6] Specifically, the Phlx proposed to triple the current levels of 25,000 contracts total and 15,000 contracts in the nearest expiration month for the VLE and the TPX to 75,000 contracts total and 45,000 contracts in the nearest expiration month. The Phlx also proposed to triple position and exercise limits for the XOC from 25,000 contracts total to 75,000 contracts total.

Exchange exercise limits,[7] which are expressed in Phlx Rule 1002A, are established by reference to position limits, such that any increase in position limits would also increase exercise limits. Accordingly, the Phlx proposed to increase exercise limits to correspond to the proposed increases in position limits.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 of the Act.[8] Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits.[10] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[11]

The Commission has carefully considered the Phlx's proposal. At the outset, the Commission notes that it still believes that the fundamental purposes of position and exercise limits are being served by their existence. Nevertheless, the Commission believes that the Phlx's current experience with the trading of market index options[12] make it

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[4] *See* Exchange Act Release No. 41216 (March 26, 1999), 64 FR 16019.

[5] *See* Letter from John Dayton, Phlx, to Nancy Sanow, Commission, dated November 9, 1999 ("Amendment No. 1").

[6] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[7] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[8] *See* 15 U.S.C. 78f(b). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[9] Exchange Act Release Nos. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and exercise limits); 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–92–13) (order approving an increase in Institutional Index Options position and exercise limits).

[10] Position and exercise limits for the XOC were raised from 17,000 to 25,000 contracts in 1996. Position and exercise limits for the VLE were raised from approximately 13,000 contracts, based on a position limit based on monetary value, to 25,000 contracts in 1988. The US Top 100 Index was created with limits of 25,000 contracts in 1995. *See* Exchange Act Release No. 36745 (January 19, 1996), 61 FR 2561 (January 26, 1996) (SR–Phlx–95–38) (establishing XOC position and exercise limits); Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (SR–Phlx–95–07) (establishing TPX position and exercise limits); Exchange Act Release No. 25644 (May 3, 1988), 53 FR 16829 (May 11, 1988) (SR–Phlx–88–06) (establishing VLE position and exercise limits). *See also* Exchange Act Release Nos. 37676 (September 13, 1996), 61 FR 49508 (September 20, 1996) (order approving SR–CBOE–96–01, increasing position limits for the SPX from 45,000 to 100,000 contracts); 39789 (December 24, 1997), 63 FR 276 (January 5, 1998) (order approving SR–CBOE–97–11, increasing position limits for the OEX from 75,000 to 150,000 contracts). *See also infra* note 19.

[11] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[12] The Phlx has been trading market index options sionce 1985. *See* Exchange Act Release No.

permissible to increase position and exercise limits for certain market index options while still ensuring that large positions in such index options will not unduly disrupt the options or underlying cash markets.

The Commission believes that an increase in position and exercise limits for certain market index options is appropriate for several reasons. The Commission notes first that the proposal is limited to options on three market indexes, the VLE, TPX and XOC. The Commission believes that the capitalization of, and relatively deep, liquid markets for, the underlying securities contained in these indexes significantly reduces concerns regarding market manipulation or disruption in the underlying market.[13] Increasing position and exercise limits for these index options may also bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.

Second, increasing position and exercise limits for these specific indexes should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy (*e.g.* delta hedges, OTC vs. listed hedges).

Third, the Commission believes that financial requirements imposed by Phlx and by the Commission adequately address concerns that a Phlx member or its customer may try to maintain an inordinately large unhedged position in a market index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[14] Phlx also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines that market conditions so warrant. Monitoring accounts maintaining large positions should provide the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and Phlx's margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[15] The Commission also notes that the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

Fourth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that increasing position and exercise limits for the VLE, TPX, and XOC options will better allow Phlx to compete with the OTC market.

Fifth, the Commission believes that Phlx's surveillance procedures will adequately allow it to detect and deter potential trading abuses arising from the increased position and exercise limits for VLE, TPX and XOC options. The absence of any discernible manipulative problems for broad-based index options at existing levels leads the Commission to conclude that the proposed increases are reasonable and that they can be safely implemented. The Commission believes that the Phlx's surveillance program is adequate to detect and deter violations of position and exercise limits, as well as to detect and deter attempted manipulation and other trading abuses through the use of such illegal positions by market participants.[16] In addition, the Phlx has submitted to the Commission a detailed description of enhanced surveillance procedures the Exchange will implement in order to monitor accounts maintaining large positions. The Commission believes that Phlx's new surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage. Although it is inappropriate to discuss the details of Phlx's enhanced surveillance program, the Commission notes that these enhanced procedures were critical in its determination to approve the proposed rule change.[17]

Sixth, the Commission believes that the enhanced reporting requirements should allow Phlx to detect and deter trading abuses arising from the elimination of position and exercise limits for VLE, TPX, or XOC. These reports should also allow Phlx to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. Specifically, Phlx will subject VLE, TPX, and XOC to a 60,000 contract reporting requirement. Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account or for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position. Exchange Registered Option Traders would be exempt from this reporting requirement.[18]

Seventh, the Commission notes that it recently approved proposed rule changes from the Chicago Board Options Exchange ("CBOE") and the American Stock Exchange ("Amex"), which were even less restrictive than the Phlx's current proposal. Specifically, those proposed rule changes eliminated position and exercise limits on a pilot basis for certain market index options traded on

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22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (order approving SR–Phlx–84–28, establishing the XOC index option).

[13] VLE is an equally weighted, arithmetically averaged index based on the approximately 1,700 listed and over-the-counter stocks followed and published by Value Line, Inc. in the Value Line Investment Survey. As of September 29, 1999, the total market capitalization for VLE was $14.5 trillion. Telephone call between John Dayton, Phlx, and Christine Richardson, Commission, September 30, 1999. TPX is a capitalization-weighted index composed of the 100 most highly capitalized U.S. corporations, including both listed and Nasdaq National Market System traded securities. As of October 14, 1999, the total market capitalization for TPX was $7.5 trillion. XOC is capitalization-weighted and composed of the common stocks of the 100 largest capitalized corporations whose stocks are traded over-the-counter. As of October 14, 1999, the total market capitalization for XOC was $2.2 trillion. *See* Phlx website at http://www.Phlx.com.

[14] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a + (−) 10% market move. Exchange margin rules require margin on naked index options, which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[15] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) Adopting Risk-Based Haircuts); and Phlx Rule 722 *Margins.*

[16] The Commission emphasizes that the Phlx must closely monitor compliance with position and exercise limits and impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

[17] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[18] *See* Amendment No. 1.

the CBOE and Amex.[19] Although Phlx's VLE, TPX and XOC options are not identical to CBOE's or Amex's, the Commission believes that, given its approval of these proposed rule changes, the Phlx's proposed increase in position and exercise limits to three times their current level is appropriate.

Finally, the Commission believes it appropriate for the Exchange to eliminate language contained in Phlx Rule 1001A and 1101A, concerning the Big Cap Index ("MKT") since MKT is no longer traded on the Exchange. The Commission also believes it is appropriate for the Exchange to delete all references to options on the Super Cap Index, as these options were delisted from the Exchange on September 29, 1999.[20]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides for a reporting requirement for member firms that should aid the Exchange in monitoring accounts with large positions in VLE, TPX, and XOC. Amendment No. 1 also makes certain minor technical changes. Accordingly, the Commission finds that, consistent with Sections 6(b) and 19(b)(2) of the Act, there is good cause to approve Amendment No. 1 to the proposed rule changes on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the amendments are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Phlx–98–55 and should be submitted by March 2, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–98–55) be approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3088 Filed 2–9–00; 8:45 am]

BILLING CODE 8010–01–M

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[19] *See* Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving File No. SR–Amex–98–38, eliminating position and exercise limits on a two year pilot basis for Institutional Index Options and Major Market Index Options and FLEX options on those index options); 40969 (January 22, 1999), 64 FR 4911 (February 2, 1999) (order approving File No. SR–CBOE–98–23, eliminating position and exercise limits on a two year pilot basis for the S&P 500 Index, the S&P 100 Index, and the Dow Jones Industrial Average Index, and FLEX options on those indexes).

[20] *See* Amendment No. 1. This includes references in Phlx Rules 1079(d)(1), 1000A(b)(11), (c); 1047A(a)(i), (d), (f)(iv); and 1101A Commentary .01.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42388; International Series Release No. 1213; File No. SR–Phlx–99–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Respecting Non-Customized Cross-Rate Foreign Currency Option Margin Levels

February 4, 2000.

I. Introduction

On August 5, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its method of calculating initial and maintenance customer margin requirements for non-customized cross-rate foreign currency options ("Cross-Rate FCOs"). The Exchange amended the proposal on October 26, 1999.[3]

The Commission published notice of the proposed rule change in the **Federal Register** on November 12, 1999.[4] The Exchange filed a second amendment to the proposal on January 19, 2000.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to determine the add-on margin levels for all non-customized Cross-Rate FCOs using the methodology outlined in Commentary .16 to Phlx Rule 722, in lieu of the fixed four percent rate that the Exchange currently uses.

In 1991, the Commission approved the Exchange's proposal to list and trade three non-customized Cross-Rate FCOs—German mark/Japanese yen, British pound/German mark and British pound/Japanese yen options.[6] The Commission's 1991 order approved a four percent add-on margin level for the non-customized Cross-Rate FCOs for a one-year period only, because these products were new products and the Commission was concerned that the volatility in the underlying currencies could change significantly. Accordingly, the Commission stated that the Exchange should further analyze the add-on margin adequacy, and, within nine months, submit the analysis along with a proposed rule change to retain the margin level or establish a new level.

Based on the 1991 Order, the Exchange's customer margin

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[1] 15 U.S.C. 8s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested that the Commission approve the existing 4% add-on margin for all non-customized cross-rate foreign currency options until February 4, 2000, prior to the thirtieth day after the publication of the notice thereof in the **Federal Register**; provided statistical data to substantiate the proposed rule change; and made substantive changes to the proposed rule text. *See* Letter from Nandita Yagnik, Counsel, Phlx, to Hong-anh Tran, Attorney, Division of Market Regulation ("Division"), Commission, dated October 25, 1999 ("amendment No. 1").

[4] Securities Exchange Act Release No. 42093 (November 3, 1999), 64 FR 61682 (November 12, 1999) (File No. SR–Phlx–99–30).

[5] In Amendment No. 2, the Exchange made technical changes to the proposed rule text. Specifically, the Exchange proposes to modify the introductory portion of Commentary .16 to Phlx Rule 722 to clarify that the Commentary .16 methodology applies to non-customized Cross-Rate FCOs, but not to customized Cross-Rate FCOs. The Exchange also proposes replacing the word "currency" with the term "currency pair" throughout Paragraph (c) of Commentary .16, and adding the word "the" before the word "base currency" in Paragraph (a) of the same commentary. *See* Letter from Nadita Yagnik, Counsel, Phlx, to Hong-anh Tran, Attorney, Division of Market Regulation ("Division"), Commission, dated January 18, 2000 ("Amendment No. 2").

[6] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991) ("1991 Order"). Although the Exchange received approval for the British pound/Japanese yen Cross-rate FCO, the Exchange has not listed such a contract.

requirements for short positions for non-customized Cross-Rate FCOs equaled the add-on margin of four percent of the current market value of the foreign currency underlying the FCO contract, plus 100 percent of the market value of the FCO contract, reduced by any "out-of-the-money amounts"[7] but in no event be less than 100 percent of the market value of the FCO contract plus a "minimum add-on margin amount"[8] The Exchange represented that this add-on margin level was sufficient to cover each non-customized cross-rate product's historical price volatility over seven-day intervals (for the July 30, 1990 to July 30, 1991 time period) with a confidence level of at least 96 percent.

Due to an oversight, the Exchange did not file the required analysis of the adequacy of the add-on margin nor the proposed rule change within nine months of the 1991 Order. Following this discovery, the Exchange in 1999 filed a proposed rule change to temporarily codify the four percent add-on margin level while it considered a method of determining add-on margin, on a permanent basis, for all non-customized Cross-Rate FCOs.[9] The Commission's order approving that proposed rule change permitted the Exchange to apply a four percent add-on margin level for all non-customized Cross-Rate FCOs for a six-month period until November 4, 1999.

On August 5, 1999, the Exchange filed the current proposed rule change to determine the add-on margin levels for non-customized Cross-Rate FCOs using the methodology outlined in Commentary .16 to Phlx Rule 722, in lieu of the four percent rate that the Exchange currently uses.

The Exchange currently uses the Commentary .16 methodology to calculate the add-on margin for standardized FCOs (where the base currency is denominated in U.S. dollars). The Commentary .16 methodology bases the add-on margin percentage for a foreign currency option on the volatility of the foreign currency underlying the option (the "underlying currency") relative to the "trading currency."[10] To implement this change, the Exchange proposes to amend the text of Commentary .16, and the chart in Rule 722, to clarify that the Exchange will set the add-on margin for Cross-Rate FCOs based on all five-day price movements of the base currency vis-à-vis the underlying currency for the contract.

In particular, the Exchange proposes to review five day price movements of the base currency relative to the underlying currency over the most recent three year period and would set the add-on margin level at a level sufficient to cover those price changes at least 97.5 percent of the time. If subsequent quarterly reviews show that the existing add-on margin level for any non-customized cross-rate FCO currency pair provides a confidence level below 97 percent, the Exchange would increase the add-on margin requirement for that currency pair to a level that would have covered those price movements at a 98 percent confidence level. If a subsequent quarterly review shows a confidence level between 97 percent and 97.5 percent, the add-on margin level would remain the same but would be subject to monthly follow-up reviews until the confidence level exceeds 97.5 percent for two consecutive months (then the Exchange would put it back on the quarterly review cycle). If a monthly follow-up review showed that the confidence level dropped below 97 percent, the Exchange would increase the add-on margin level to a 98 percent confidence level. Generally, if any review shows that the confidence level exceeds 98.5 percent, the Exchange would reduce the add-on margin level to a 98 percent confidence level. But to account for the possibility of unexpectedly large price movements, if any review show that a Cross-Rate FCO currency paid had a five-day price movement, either positive or negative, greater than two times the existing add-on margin level, the Exchange would set the add-on margin requirement for that currency pair to a 99 percent confidence level ("Extreme Outlier Test"). In addition to the routine reviews described above, the Exchange would continue to have authority to impose a higher margin level at any time, if market conditions so warrant.

The Exchange filed an amendment to the proposed rule change on October 26, 1999. The amendment requested that the Commission grant accelerated approval to the amendment so that the Exchange could continue to apply the four percent add-on margin for all Cross-Rate FCO products until February 4, 2000. This would provide additional time for the Commission to consider the proposed rule change, while ensuring that trading of these products would continue following November 4, 1999, when the existing four percent add-on margin would have expired.

Based on the data supplied by the Exchange on October 26, 1999 for the three-year period of July 16, 1996 through July 15, 1999, the Commentary .16 methodology would produce add-on margins for British pound/Deutsche mark and Deutsche mark/Japanese yen non-customized Cross-Rates (which are currently listed on the Exchange) of 3.5 percent and 4 percent, respectively, covering 99 percent and 97.5 percent confidence level, respectively. The British pound/Deutsche mark FCO contract would have been margined at a 99 percent confidence level because the extreme outlier test would have applied. The British pound/Japanese yen Cross-Rate contract, which is currently not listed on the Exchange, would have an add-on margin of 5 percent, covering 97.5 percent confidence level.

III. Discussion

Upon careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, *inter alia*, that the rules of an exchange promote just and equitable principles of trade and facilitate transactions in securities.[12] In particular, the proposed rule change will make the required margin on non-customized Cross-Rate FCOs better reflect existing economic circumstances and therefore will better correlate the margin requirement with the risk associated with holding a short position in a non-customized Cross-Rate FCO.

The Exchange proposes to set the add-on margin based on the five-day price movements (excluding weekends) of the underlying currency relative to the base currency over the most recent three-year period, by setting the add-on margin percentage at a level that would cover those price movements at a specified confidence level, typically 97.5 percent.

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[7] For foreign currency put options, "out-of-the-money-amounts" equal the aggregate exercise price of the option minus the product of units per foreign currency contract and the closing spot price. *See* Phlx Rule 722(d).

For foreign currency call options, "out-of-the-money-amounts" equal the product of units per foreign currency contract and the closing spot price minus the aggregate exercise price of the option. *See id.*

[8] The minimum add-on margin on any call carried "short" in a customer's account is equal to ¾% of the current market value of the underlying FCO contract; the minimum add-on margin on any such put option contract is equal to ¾% of the option's aggregate exercise price amount. *See id.*

[9] *See* Securities Exchange Act Release No. 41365 (May 4, 1999), 64 FR 25946 (May 13, 1999) SR–Phlx–99–12) ("1999 Order").

[10] The underlying currency is the currency in which a foreign currency option settles. The base currency is the currency in which premiums are quoted and paid.

The Commission finds that the use of the Commentary .16 methodology to set add-on margins for non-customized Cross-Rate FCOs, in lieu of the fixed four percent requirement the Exchange currently uses, potentially provides a more economically meaningful margin. The currencies involved in the non-customized Cross-Rate FCOs that the Exchange is authorized to list and trade—the British pound, Deutsche mark, and Japanese yen—are all relatively stable currencies and it is reasonable to assume that those currencies' future volatility will be linked to their past volatility. Also, the Exchange has the authority to apply a higher add-on margin than required by the Commentary .16 methodology, when appropriate.[11] Use of the Commentary .16 methodology further would promote efficiency because the Exchange will not have to file a proposed rule change with the Commission each time Commentary .16 methodology changes the add-on margin levels.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the Exchange made two general technical changes to Commentary .16 to Phlx Rule 722, by clarifying that Commentary .16 was applicable to non-customized Cross-Rate FCOs but not to customized Cross-Rate FCSs, and by clarifying that paragraph (c) of Commentary .16 focuses on currency pairs, *i.e.*, movements of currencies vis-à-vis each other. The amendment did not raise any new regulatory issues. Accordingly, the Commission believes that there is good cause to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–30 and should be submitted by March 2, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–99–30) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3089 Filed 2–9–00; 8:45 am]

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[11] In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Phlx Rule 722(i)(8).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3232, Amdt. 2]

State of Kentucky

In accordance with a notice received from the Federal Emergency Management Agency dated January 24, 2000, the above-numbered Declaration is hereby amended to include Hancock and Henderson Counties in the State of Kentucky as a disaster area due to damages caused by tornadoes, severe storms, torrential rains, and flash flooding that occurred on January 3–4, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Breckinridge, Kentucky, and Perry, Posey, and Vanderburgh Counties in Indiana may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is March 10, 2000 and for economic injury the deadline is October 10, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 2, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–3075 Filed 2–9–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Claimant's Medications—0960–0289. The Social Security Administration (SSA) uses Form HA–4632 to request that applicants for disability benefits provide information to facilitate processing their title II, Old-Age, Survivors and Disability Insurance (OASDI) and Title XVI, Supplemental Security Income (SSI) claims. The form elicits from the claimants an updated list of medications used by the claimants. It enables the Administrative Law Judge hearing the case to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant's medical impairments. The respondents are applicants for OASDI and SSI benefits.

Number of Respondents: 171,939.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 42,985 hours.

2. Statement of Employer—0960–0030. The information collected on Form SSA–7011 is needed by SSA to substantiate allegations of wages paid to workers when those wages do not appear in SSA's records of earnings and the worker does not have proof that payment was made. This information is

used to process claims for social security benefits and to resolve discrepancies in earnings records. The respondents are certain employers who can verify allegations of wages made by the wage earner.

Number of Respondents: 925,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 308,333 hours.

3. Request for SSI Benefit Estimate—0960–0492. SSA uses Form SSA–3716 for an SSI beneficiary who wishes to request a 5-month estimate of what their benefits would be if they should return to work in the future. The respondents are SSI recipients.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 4,167 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Vocational Rehabilitation "301" Program Development—0960–0282. The information on Form SSA–4290 is used by the Social Security Administration (SSA) to determine an individual's continued entitlement to disability benefits when that individual has medically recovered while allegedly participating in a State or alternate Vocational Rehabilitation (VR) program. The respondents are State or alternate VR agencies serving such beneficiaries.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 2,000 hours.

2. Certificate of Election for Reduced Spouse's Benefits—0960–0398. SSA uses the information collected on Form SSA–25 to pay a qualified spouse who elects to receive a reduced benefit at an earlier age. The respondents are entitled spouses seeking reduced benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 1,000 hours.

3. Statement of Funds You Provided to Another, Statement of Funds You Received–0960–0481. Forms SSA–2854 & SSA–2855 are used by SSA to collect information in situations where the SSI claimant alleges that money was borrowed on an informal basis from a noncommercial lender, *e.g.*, a relative or friend, etc. These statements are completed by the borrower/claimant and the lender and are required to determine whether the proceeds from the transaction are/are not income to the borrower/claimant. If the transaction constitutes a bona fide loan, the proceeds are not income to the SSI borrower/claimant. The respondents are applicants for and recipients of SSI payments who borrow money on an informal (noncommercial) basis and individuals who lend money informally to SSI applicants and recipients.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

(SSA Address): Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address): Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: February 3, 2000.

Frederick W. Brickenkamp,

Reports Clearance Office, Social Security Administration.

[FR Doc. 00–3010 Filed 2–9–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice No. 3212]

Preparatory Meeting for the 2000 International Telecommunication Union World Radiocommunication Conference (WRC–2000); Meeting

The Department of State announces an open meeting for the purpose of forming the United States delegation to the 2000 International Telecommuication Union (ITU) World Radiocommunication Conference (WRC–2000). This meeting will solicit expressions of interest in participating as a member of the U.S. Delegation to WRC–2000 and convey information regarding planned U.S. preparatory activities in advance of the WRC. The meeting will be held from 9:30 to noon on February 16, 2000 in the Dean Acheson Auditorium at the Department of State. Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend any of these meetings should send a fax to 202–647–7407 not later than 24 hours before the meeting. This fax should provide the name of the meeting, (WRC–2000 Preparatory Meeting) and date of the meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admittance: US driver's license, US passport, US Government identification card. Enter from the 23rd Street entrance lobby; in view of escorting requirements, non-Government attendees should plan to arrive not later than 15 minutes before the meeting begins.

Dated: January 28, 2000.

Richard C. Beaird,

Acting, U.S. Coordinator for International Communications & Information Policy, U.S. Department of State.

[FR Doc. 00–3082 Filed 2–9–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3218]

Meeting of the Cultural Property Advisory Committee

AGENCY: United States Department of State.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Monday, March 13, 2000, from approximately 9 a.m. to 5 p.m., and on Tuesday, March 14, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW, Washington, DC. During its meeting the Committee will continue its review and investigation of a foreign government request submitted by the Government of the Republic of Bolivia to the Government of the United States of America filed under Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Notification of receipt of this request appeared in the **Federal Register** on October 8, 1999. A second notice pertaining to this request appeared in the **Federal Register** on December 10,

1999. These notices may be found at *http://e.usia.gov/education/culprop.*

Bolivia believes its cultural patrimony to be in jeopardy from pillage. It seeks U.S. import restrictions on Pre-Columbian archaeological material such as artifacts made of stone, metal, ceramic, shell, bone, wood, textiles, featherwork, basketry, and Pre-Columbian human remains; and Colonial period and indigenous ethnological materials such as folklore costumes, textiles, featherwork, stonework, leatherwork, woodwork, metalwork, ceramics, religious imagery, musical instruments, and paintings.

The Committee's review of the request is carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). A copy of the Act may be found at the web address posted above.

During its meeting on March 13, the Committee will hold an open session, 1:30–3:30 p.m., to receive public comment on the Bolivia request. The Committee also invites written comment and requests that both oral and written comments address the determinations that must be made about the Bolivia request pursuant to 19 U.S.C. 2602, Convention on Cultural Property Implementation Act. Other portions of the meeting on March 13–14 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW, Rm. 247, Washington, DC 20547; or faxed to (202) 619–5177. Persons wishing to attend the open portion of the meeting on March 13, must notify the Cultural Property Office, (202) 619–6612, no later than 5 p.m., Thursday, March 9, 2000, to arrange for admission.

Dated: February 3, 2000.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

Determination to Close the Meeting of the Cultural Property Advisory Committee, March 13–14, 2000

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that portions of the meeting of the Cultural Property Advisory Committee on March 13–14, at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed.

Dated: February 3, 2000.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–3084 Filed 2–9–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 7, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–2000–6723.
Date Filed: January 4, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0559 dated 4 January 2000; Mail Vote 056 Resolution 011b—(Amending); Global Indicators; Intended effective date: 1 April 2000; for implementation 1 September 2000.

Docket Number: OST–2000–6730.
Date Filed: January 5, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0086 dated 14 December 1999; Expedited Europe-South East Asia Resolution 002o; Intended effective date: 1 February 2000.

Docket Number: OST–2000–6742.
Date Filed: January 6, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0102 dated 26 November 1999 r1–r2; PTC31 N&C/CIRC 0108 dated 10 December 1999 r3–r9; PTC31 N&C/CIRC 0109 dated 10 December 1999 r10–r27; PTC31 N&C/CIRC 0110 dated 10 December 1999 r28–r43; Minutes—PTC31 N&C/CIRC 0013 dated 23 December 1999; Tables—PTC31 N&C/CIRC Fares 0047 dated 26 November 1999; PTC31 N&C/CIRC Fares 0048 dated 17 December 1999; PTC31 N&C/CIRC Fares 0050 dated 17 December 1999; Intended effective date: 1 April 2000.

Docket Number: OST–2000–6743.
Date Filed: January 6, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0111 dated 10 December 1999; TC31 North & Central Pacific—TC3–Central America, South America r1–r17; Tables—PTC31 N&C/CIRC Fares 0050; dated 17 December 1999; Intended effective date: 1 April 2000.

Docket Number: OST–2000–6754.
Date Filed: January 7, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC12 MATL–EUR 0042 dated 3 December 1999; Mid Atlantic-Europe Resolutions r1–r32; Minutes—PTC12 MATL–EUR 0043; dated 21 December 1999; Tables—PTC12 MATL–EUR Fares 0012; dated 17 December 1999; Intended effective date: 1 March 2000.

Docket Number: OST–2000–6755.
Date Filed: January 7, 2000.
Parties: Members of the International Air Transport Association.
Subject: Part 1 PTC2 EUR 0286 dated 7 December 1999 r1–r38; PTC2 EUR 0287 dated 7 December 1999 r39–r42; PTC2 EUR 0288 dated 7 December 1999 r43; PTC2 EUR 0289 dated 7 December 1999 r44–r48; TC2 Within Europe Resolutions r1–r48; Minutes—PTC2 EUR 0284 dated 12 November 1999; Part 2 Tables—PTC2 EUR Fares 0038, Part I dated 10 December 1999; Part 3 PTC2 EUR Fares 0038, Part II dated 10 December 1999; Part 4 PTC2 EUR Fares 0038, Part III dated 10 December 1999; Part 5 PTC2 EUR Fares 0038 Attachment B: Notes dated 10 December 1999; Intended effective date: 1 March, 26 March, 31 March and 1 April 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–2555 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Controller Pilot Data Link Communications Industry Day

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), (5 U.S.C., Appendix 2), notice is hereby given of an Industry Day to discuss Controller Pilot Data Link Communications (CPDLC), to be held February 29, 2000 from 8:30 a.m. to 3:30 p.m., at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC., in the third floor auditorium. This meeting is sponsored by the FAA Office of Communications, Navigation, and Surveillance Systems.

Presentations will include an overview of the CPDLC project from government and industry representatives. These presentations will provide the aviation community with current information about the status of CPDLC. There will be a panel discussion in the afternoon and time

will be allocated to questions, answers, and general discussions.

Attendance is open to the interested public but limited to space availability. With the approval of the Product Lead for Aeronautical Data Link, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Mr. James H. Williams, FAA, at (202) 493–4693. Members of the public may present a written statement to the Product Lead at any time.

Issued in Washington, DC, on February 2, 2000.

Carl P. McCullough,

Director, Office of Communications, Navigation and Surveillance Systems.

[FR Doc. 00–3078 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 147 meeting to be held February 29–March 1, 2000, starting at 9 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: February 29: (1) Requirements Working Group Meeting. March 1: 9 a.m.–1 p.m. (2) Requirements Working Group Meeting continues; 1 p.m.–5 p.m. (3) Plenary Session: (a) Welcome and Introductory Remarks: (b) Review and Approve Previous Meeting; (c) Report and Discuss Requirements Working Group Activities; (d) Discuss Future SC–147 Activities and Plans; (4) Other Business; (5) Date and Location of Next Meeting; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–3079 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Joint Special Committee 190 (Application Guidelines for DO–178B (Software) /EUROCAE Working Group 52

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee (SC)–190 /EUROCAE Working Group (WG)–52 meeting to be held March 6–10, 2000, starting at 9:00 am. on Monday, March 6. The meeting will be held at The Boeing Long Beach Division, 3855 Lakewood Blvd., Long Beach, California.

The agenda will include the following: March 6: 9 a.m.–3 p.m. (1) Plenary Session; (a) Welcome and Introductory Remarks; (b) Review and Approve Minutes of Previous Meeting; (c) Review New Process; (d) Review Status of Certification Authorities Software Team (CAST) & FAA Notices; (e) Review Reports of Editorial and Executive Committees, Issue List and Matrix, Subgroup Executive Summaries, and CNS/ATM; (f) Preliminary Assessment of Papers (Stand-up Plenary Model); (g) Subgroup working sessions begin. March 7: 8:30 a.m. (2) Subgroup working sessions. March 8: 8:30 a.m. (3) Plenary Session reconvenes: (a) Plenary Approval Vote on Frequently Asked Questions (FAQ) & Discussion Papers (DP) seen Monday: (b) Plenary Assessment of New FAQs & DPs; 1 p.m. (4) Subgroup working sessions reconvene. March 9: (5) Subgroup working sessions continue. March 10: (6) Plenary Approval Process begins; (7) New Business; (8) Review Action Items and Plans; (9) Date and Location of Next Meeting; (10) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site) or point of contact on-site: Mr. E.W. Piper at (562) 593–1029 (phone); *elmo.w.piper@boeing.com* (email). Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on February 4, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–3080 Filed 2–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33831]

Wisconsin Chicago Link Ltd.—Lease Exemption—Pennsylvania Lines LLC

Wisconsin Chicago Link Ltd. (WCLL), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from Pennsylvania Lines LLC (PRR) approximately 1.9 miles of rail line (the Panhandle Line) of the former Pittsburgh Cincinnati, Chicago & St. Louis Railroad Company (PCC&StL) in Chicago, Cook County, IL.[1] The Panhandle Line extends between (1) A connection with CSX Transportation, Inc. (CSXT) via the Altenheim Subdivision of The Baltimore and Ohio Chicago Terminal Railroad Company at Ogden Junction near Rockwell Street (approximately PCC&StL milepost 309.8), and (2) A point (approximately PCC&StL milepost 307.9) 600 feet north of the north bank of the Chicago Sanitary and Ship Canal, near the Ash Street Interlock. WCLL will also obtain incidental, overhead trackage rights extending south from PCC&StL milepost 307.9, a distance of approximately 2 miles, to present or future connections with the rail lines of NS, Canadian National/Grand Trunk Western Railroad, Inc., Illinois Central Railroad Company, Chicago, Central & Pacific

[1] Applicants report that the lease of the rail line was the subject of an October 17, 1997 settlement agreement between Norfolk Southern Corporation and Norfolk Southern Railway Company (NS), which now control and operate PRR, and Wisconsin Central Transportation Corporation (WCTC) and its then-existing carrier affiliates. The Panhandle Line was formerly owned by Consolidated Rail Corporation. Pursuant to a transaction approved by the Board, and consummated by the parties on June 1, 1999, PRR was assigned assets designated to be operated as part of the NS rail system (the PRR-Allocated Assets). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Applicants further report that the lease provides for WCLL's acquisition of a leasehold interest in the Panhandle Line, a portion of the associated right-of-way, and certain incidental overhead trackage rights.

Railroad Company and The Burlington Northern and Santa Fe Railway Company.

WCLL states that the Panhandle Line is currently out of service and that WCLL intends to reconstruct the line and add additional capacity. WCLL further states that, initially, operations on the line will be conducted by NS, CSXT, and Wisconsin Central Ltd. pursuant to trackage rights. WCLL indicates that it anticipates that CSXT will dispatch a portion of the Panhandle Line.

This transaction is related to STB Finance Docket No. 33811, *Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd.*, wherein WCTC has filed a petition for exemption from the requirements of 49 U.S.C. 11323 to control WCLL. The stock of WCLL has been placed in an independent voting trust pursuant to 49 CFR 1013 pending a Board decision in STB Finance Docket No. 33811.

The transaction is scheduled to be consummated on or shortly after February 4, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33831, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, Esq., Oppenheimer Wolff & Donnelly (Illinois), 180 North Stetson Avenue, Two Prudential Plaza, 45th Floor, Chicago, IL 60601–6710.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: February 3, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–2970 Filed 2–9–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Conclusion of the National Customs Automation Program Prototype

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces Customs conclusion of the National Customs Automation Program Prototype (NCAP/P). Prototype operations must be discontinued due to the cessation of funding for the NCAP/P automated system. Upon prototype conclusion, NCAP/P participants must cease entering goods and transmitting data under NCAP/P procedures. This document also provides instructions to participants on procedures for processing prototype entries using non-NCAP/P systems.

DATE: Termination of the NCAP/P will be effective as of March 13, 2000. No new applications for participation will be accepted as of February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Comments and requests regarding NCAP/P termination may be directed to Keith Fleming, U.S. Customs Service at (202) 927–1049, or Virginia Noordewier, U.S. Customs Service at (202) 927–3296.

SUPPLEMENTARY INFORMATION:

Background

The vision of the Automated Commercial Environment (ACE) is to establish a Trade Compliance Process that achieves high levels of compliance and reduces the cycle time required for imports to clear Customs. NCAP/P is the prototype for the first implementation of this automated process.

Customs first announced its intention to implement the NCAP/P in the **Federal Register** on March 27, 1997 (62 FR 14731); the test was modified with updated procedures in a notice published in the **Federal Register** on August 21, 1998 (63 FR 44949) which replaced the previous notice. Customs also published a notice in the **Federal Register** on October 15, 1998 (63 FR 55426), announcing the proposed expansion of the prototype to five additional ports of entry.

The NCAP/P plan called for a four-stage implementation of new cargo processing features over a period of up to three years. The NCAP/P commenced on April 27, 1998 with the implementation of the cargo release stage. Customs implemented the second stage on October 13, 1998, which provided for cargo release with examination. At the time of this termination, the third and fourth stages—entry summary/periodic payment and reconciliation—have not been implemented.

Procedures

Upon prototype conclusion, participants must immediately revert to non-NCAP/P processing for all cargo shipments.

A. As of the date 30 days from the date of publication of this document in the **Federal Register**, cargo release must be obtained through existing non-NCAP/P systems or procedures.

B. Cargo releases previously obtained through NCAP/P must be followed up by summary data and payments transmitted through existing non-NCAP/P systems, *e.g.*, the Automated Commercial System.

Prototype Evaluation

Upon the conclusion of the NCAP/P, an evaluation of the entire test will be conducted and the results published in the **Federal Register** and the Customs Bulletin.

Dated: February 4, 2000.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–3050 Filed 2–9–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–MSA, MSA or Medicare+Choice MSA Information.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: MSA or Medicare+Choice MSA Information.

OMB Number: 1545–1518.

Form Number: 5498–MSA.

Abstract: This form is used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 41,105.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 6,988.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2989 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Revenue Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 500.

Estimated Time Per Response: 6 hr., 22 min.

Estimated Total Annual Burden Hours: 3,180.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2990 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4684

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 3 hr., 1 min.

Estimated Total Annual Burden Hours: 906,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2991 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MSA, Distributions From an MSA or Medicare+Choice MSA.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From an MSA or Medicare+Choice MSA.

OMB Number: 1545–1517.

Form Number: 1099–MSA.

Abstract: This form is used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 25,839.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 4,134.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2992 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2163(c)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2163(c), Employment—Reference Inquiry.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employment—Reference Inquiry.

OMB Number: 1545–0274.

Form Number: 2163(c).

Abstract: Form 2163(c) is used by the Internal Revenue Service to verify past employment history and to question listed and developed references as to the character and integrity of current and potential Internal Revenue Service employees. The information received is incorporated into a report on which a security determination is based.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, non-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 mins.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 27, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2993 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6765

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6765, Credit for Increasing Research Activies.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activities.

OMB Number: 1545–0619.

Form Number: 6765.

Abstract: IRC section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 23,947.

Estimated Time Per Respondent: 22 hours, 22 minutes.

Estimated Total Annual Burden Hours: 535,694.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2994 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5304-SIMPLE, Form 5305-SIMPLE, and Notice 98–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules), Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (for Use With a Designated Financial Institution), and Notice 98–4, SIMPLE IRA Plan Guidance.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collections should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules) (Form 5304–SIMPLE); Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (for Use With a Designated Financial Institution) (Form 5305–SIMPLE); SIMPLE IRA Plan Guidance (Notice 98–4).

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institution. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes being made to the information collections at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 3 hr., 33 min.

Estimated Total Annual Burden Hours: 2,127,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2995 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–16, Employee Plans Compliance Resolution System.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Resolution System.

OMB Number: 1545–1673.

Revenue Procedure Number: Revenue Procedure 2000–16.

Abstract: The information requested in Revenue Procedure 2000–16 is required to enable the Internal Revenue Service to make determinations regarding the issuance of various types

of closing agreements and compliance statements. The issuance of closing agreements and compliance statements allows individual plans to continue to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 4,242.

Estimated Time Per Respondent: 14 hours, 32 minutes.

Estimated Total Annual Burden Hours: 61,697.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 27, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2996 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–20, Master and Prototype Plans.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Master and Prototype Plans.

OMB Number: 1545–1674.

Revenue Procedure Number: Revenue Procedure 2000–20.

Abstract: The master and prototype revenue procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 401(a) of the Internal Revenue Code. The issuance of the opinion letter allows the sponsor to make retroactive changes to the form of the plan to conform with recent changes in statutory requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 266,530.

Estimated Time Per Respondent: 1 hour, 32 minutes.

Estimated Total Annual Burden Hours: 408,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2997 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–116–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–116–90, Allocation of Charitable Contributions (§ 1.861–8).

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Charitable Contributions.

OMB Number: 1545–1240.

Regulation Project Number: INTL–116–90.

Abstract: Section 1.861–8(e) of the regulation provides guidance concerning the allocation and apportionment of deductions for charitable contributions. It would require a taxpayer to allocate a deduction for charitable contributions solely to United States source gross income or solely to foreign source gross income in certain cases. The required records will be used on audit to verify the United States allocation of these deductions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2998 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–485–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–485–89 (TD 8400), Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (Sections 1.988–0 through 1.988–5).

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Regulation Project Number: INTL–485–89.

Abstract: Internal Revenue Code sections 988(c)(1) (D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–2999 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–8, Negative Elections in Section 401(k) Plans.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Negative Elections in Section 401(k) Plans.

OMB Number: 1545–1605.

Revenue Ruling Number: Revenue Ruling 2000–8.

Abstract: Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee. Generally, before an employer can automatically include its employees in the employer's section 401(k) plan, the employees must be notified by the employer that they can elect out and they must be given a reasonable period of time in which to do so.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 1 hour, 10 minutes.

Estimated Total Annual Burden Hours: 1,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–3000 Filed 2–9–00; 8:45 am]

BILLING CODE 4830–01–U

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Federal Register

Thursday,
February 10, 2000

Part II

Environmental Protection Agency

40 CFR Parts 80, 85, and 86
Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, and 86

[AMS–FRL–6516–2]

RIN 2060–AI23

Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action finalizes a major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. These reductions will provide for cleaner air and greater public health protection, primarily by reducing ozone and PM pollution. The program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. A list of major highlights of the program appears at the beginning of the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

The program we are finalizing today will phase in a single set of tailpipe emission standards that will, for the first time, apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. This set of "Tier 2 standards" is feasible and the use of a single set of standards is appropriate because of the increased use of light trucks for personal transportation. The miles traveled in light trucks is increasing and the emissions from these vehicles are thus an increasing problem. This approach builds on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program.

To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, we are also requiring reduced gasoline sulfur levels nationwide. The reduction in sulfur levels will also contribute directly to cleaner air in addition to its beneficial effects on vehicle emission control systems. Refiners will generally install additional refining equipment to remove sulfur in their refining processes. Importers of gasoline will be required to import and market only gasoline meeting the sulfur standards. Today's action also introduces an averaging, banking, and trading program to provide flexibility for refiners and ease implementation of the gasoline sulfur control program.

The overall program focuses on reducing the passenger car and light truck emissions most responsible for causing ozone and particulate matter problems. Without today's action, we project that emissions of nitrogen oxides from these vehicles will represent as much as 40 percent of this ozone-forming pollutant in some cities, and almost 20 percent nationwide, by the year 2030.

Today's program will bring about major reductions in annual emissions of these pollutants and also reduce the emissions of sulfur compounds resulting from the sulfur in gasoline. For example, we project a reduction in oxides of nitrogen emissions of at least 856,000 tons per year by 2007 and 1,236,000 by 2010, the time frame when many states will have to demonstrate compliance with air quality standards. Emission reductions will continue increasing for many years, reaching at least 2,220,000 tons per year in 2020 and continuing to rise further in future years. In addition, the program will reduce the contribution of vehicles to other serious public health and environmental problems, including VOC, PM, and regional visibility problems, toxic air pollutants, acid rain, and nitrogen loading of estuaries.

Furthermore, we project that these reductions, and their resulting environmental benefits, will come at an average cost increase of less than $100 per passenger car, an average cost increase of less than $200 for light trucks, and an average cost increase of about $350 for medium-duty passenger vehicles, and an average increase of less than 2 cents per gallon of gasoline (or about $120 over the life of an average vehicle).

DATES: This rule is effective April 10, 2000.

The incorporation by reference of certain publications contained in this rule are approved by the Director of the Federal Register as of April 10, 2000.

ADDRESSES: *Comments:* All comments and materials relevant to today's action have been placed in Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214–4349, FAX (734) 214–4816, E-mail connell.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

Highlights of the Tier2/Gasoline Sulfur Program

For cars, and light trucks, and larger passenger vehicles, the program will—

- Starting in 2004, through a phase-in, apply for the first time the same set of emission standards covering passenger cars, light trucks, and large SUVs and passenger vehicles. These emission levels ("Tier 2 standards") are feasible for these vehicles. The Tier 2 standards are also appropriate because of the increased use of light trucks for personal transportation—the miles traveled in light trucks is increasing and the emissions from these vehicles are thus an increasing problem.
- Introduce a new category of vehicles, "medium-duty passenger vehicles," thus bringing larger passenger vans and SUVs into the Tier 2 program.
- During the phase-in, apply interim fleet emission average standards that match or are more stringent than current federal and California "LEV I" (Low-Emission Vehicle, Phase I) standards.
- Apply the same standards to vehicles operated on any fuel.
- Allow auto manufacturers to comply with the very stringent new standards in a flexible way while ensuring that the needed environmental benefits occur.
- Build on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program and improve the performance of these vehicles through lower sulfur gasoline.
- Set more stringent particulate matter standards.
- Set more stringent evaporative emission standards.

For commercial gasoline, the program will—

- Significantly reduce average gasoline sulfur levels nationwide as early as 2000, fully phased in in 2006. Refiners will generally add refining equipment to remove sulfur in their refining processes. Importers of gasoline will be required to import and market only gasoline meeting the sulfur limits.

- Provide for flexible implementation by refiners through an averaging, banking, and trading program.
- Encourage early introduction of cleaner fuel into the marketplace through an early sulfur credit and allotment program.
- Apply temporary gasoline sulfur standards to certain small refiners and gasoline marketed in a limited geographic area in the western U.S.
- Enable the new Tier 2 vehicles to meet the emission standards by greatly reducing the degradation of vehicle emission control performance from sulfur in gasoline. Lower sulfur gasoline also appears to be necessary for the introduction of advanced technologies that promise higher fuel economy but are very susceptible to sulfur poisoning (for example, gasoline direct injection engines).
- Reduce emissions from NLEV vehicles and other vehicles already on the road.

Regulated Entities

This action will affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It will also affect you if you produce, distribute, or sell gasoline motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. But because these are only examples, you should carefully examine these and existing regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes[a]	SIC Codes[b]	Examples of potentially regulated entities
Industry	336111	3711	Motor Vehicle Manufacturers.
	336112		
	336120		
Industry	336311	3592	Alternative fuel vehicle converters.
	336312	3714	
	422720	5172	
	454312	5984	
	811198	7549	
	541514	8742	
	541690	8931	
Industry	811112	7533	Commercial Importers of Vehicles and Vehicle Components.
	811198	7549	
	541514	8742	
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of this preamble and regulatory language as well as the Response to Comments document, the Regulatory Impact Analysis and other documents associated with today's final rule are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

Federal Register Web Site: http://www.epa.gov/docs/fedrgstr/epa-air/ (Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site: http://www.epa.gov/oms/ (Look in "What's New" or under the "Automobiles" topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Outline of This Preamble

I. Introduction
A. What Are the Basic Components of the Program?
1. Vehicle Emission Standards
2. Gasoline Sulfur Standards
B. What Is Our Statutory Authority for Today's Action?
1. Light-Duty Vehicles and Trucks
2. Gasoline Sulfur Controls
C. The Tier 2 Study and the Sulfur Staff Paper
D. Relationship of Diesel Fuel Sulfur Control to the Tier 2/Gasoline Sulfur Program
II. Tier 2 Determination
A. There Is a Substantial Need for Further Emission Reductions in Order To Attain and Maintain National Ambient Air Quality Standards
B. More Stringent Standards for Light-Duty Vehicles and Trucks Are Technologically Feasible
C. More Stringent Standards for Light-Duty Vehicles and Trucks Are Needed and Cost Effective Compared to Available Alternatives
III. Air Quality Need For and Impact of Today's Action
A. Americans Face Serious Air Quality Problems That Require Further Emission Reductions
B. Ozone
1. Background on Ozone Air Quality
2. Additional Emission Reductions Are Needed To Attain and Maintain the Ozone NAAQS.
a. Summary
b. Ozone Modeling Presented in Our Proposal and Supplemental Notice
c. Updated and Additional Ozone Modeling
d. Results and Conclusions
e. Issues and Comments Addressed
f. 8-Hour Ozone
3. Cars and Light-Duty Trucks Are a Big Part of the NO_X and VOC Emissions, and Today's Action Will Reduce This Contribution Substantially
4. Ozone Reductions Expected From This Rule
C. Particulate Matter
1. Background on PM
2. Need for Additional Reductions to Attain and Maintain the PM_{10} NAAQS
3. PM_{25} Discussion
4. Emission Reductions and Ambient PM Reductions
D. Other Criteria Pollutants: Carbon Monoxide, Nitrogen Dioxide, Sulfur Dioxide
E. Visibility

F. Air Toxics
G. Acid Deposition
H. Eutrophication/Nitrification
I. Cleaner Cars and Light Trucks Are Critically Important to Improving Air Quality
IV. What Are the New Requirements for Vehicles and Gasoline?
A. Why Are We Proposing Vehicle and Fuel Standards Together?
1. Feasibility of Stringent Standards for Light-Duty Vehicles and Light-Duty Trucks a. Gasoline Fueled Vehicles i. LDVs and LDT1s–LDT4s ii. Medium-Duty Passenger Vehicles (MDPVs) b. Diesel Vehicles
2. Gasoline Sulfur Control Is Needed To Support the Proposed Vehicle Standards a. How Does Gasoline Sulfur Affect Vehicle Emission Performance? b. How Large Is Gasoline Sulfur's Effect on Emissions? c. Sulfur's Negative Impact on Tier 2 Catalysts d. Sulfur Has Negative Impacts on OBD Systems
B. Our Program for Vehicles
1. Overview of the Vehicle Program a. Introduction b. Corporate Average NOx Standard c. Tier 2 Exhaust Emission Standard "Bins' d. Schedules for Implementation i. Implementation Schedule for Tier 2 LDVs and LLDTs ii. Implementation Schedule for Tier 2 HLDTs e. Interim Standards i. Interim Exhaust Emission Standards for LDV/LLDTs ii Interim Exhaust Emission Standards for HLDTs iii. Interim Programs Will Provide Reductions Over Previous Standards f. Generating, Banking, and Trading NOx Credits
2. Why Are We Finalizing the Same Set of Standards for Tier 2 LDVs and LDTs?
3. Why Are We Finalizing the Same Standards for Both Gasoline and Diesel Vehicles?
4. Key Elements of the Vehicle Program a. Basic Exhaust Emission Standards and "Bin" Structure i. Why Are We Including Extra Bins? b. The Program Will Phase In the Tier 2 Vehicle Standards Over Several Years i. Primary Phase-in Schedule
ii. Alternative Phase-in Schedule
c. Manufacturers Will Meet a "Corporate Average" NO_X Standard
d. Manufacturers Can Generate, Bank, and Trade NO_X Credits
i. General Provisions
ii. Averaging, Banking and Trading of NO_X Credits Fulfills Several Goals
iii. How Manufacturers Can Generate and Use NO_X Credits
iv. Manufacturers Can Earn and Bank Credits for Early NO_X Reductions
v. Tier 2 NO_X Credits Will Have Unlimited Life
vi. NO_X Credit Deficits Can Be Carried Forward
vii. Encouraging the Introduction of Ultra Clean Vehicles
e. Interim Standards
i. Interim Exhaust Emission Standards for LDV/LLDTs
ii. Interim Exhaust Emission Standards for HLDTs
f. Light-Duty Evaporative Emission Standards
g. Passenger Vehicles Above 8,500 Pounds GVWR
C. Our Program for Controlling Gasoline Sulfur
1. Gasoline Sulfur Standards for Refiners and Importers
a. Standards and Deadlines That Refiners/Importers Must Meet
i. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in 2004 and Beyond?
ii. What Standards Must Refiners/Importers Meet on a Corporate Average Basis?
iii. What Standards Must Be Met by Individual Refineries/Importers?
b. Standards and Deadlines for Refiners/Importers Which Provide Gasoline to the Geographic Phase-in Area (GPA)
i. Justification for Our Geographic Phase-in Approach
ii. What Is the Geographic Phase-in Area and How Was It Established?
iii. Standards/Deadlines for Gasoline Sold in the Geographic Phase-in Area
iv. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in the Phase-in Area?
v. How Do Refiners/Importers Account for GPA Fuel in Their Corporate Average Calculations?
vi. How Do Refiners/Importers Apply for the Geographic Phase-in Area Standards?
vii. How Will EPA Establish the GPA in Adjacent States?
c. How Does the Sulfur Averaging, Banking, and Trading Program Work?
i. Generating Allotments Prior to 2004
ii. Generating Allotments in 2004 and 2005
iii. Using Allotments in 2004 and 2005
iv. How Long Do Allotments Last?
v. Establishing Individual Refinery Sulfur Baselines for Credit Generation Purposes
vi. Generating Sulfur Credits Prior to 2004
vii. Generating Sulfur Credits in 2004 and Beyond
viii. Using Sulfur Credits
ix. How Long Do Credits Last?
x. Conversion of Allotments Into Credits
d. How are State Sulfur Programs Affected by EPA's Program?
2. Hardship Provision for Qualifying Refiners
a. Hardship Provision for Qualifying Small Refiners
i. How Are Small Refiners Defined?
ii. Standards That Small Refiners Must Meet
iii. How Do Small Refiners Apply for Small Refiner Status?
iv. How Do Small Refineries Apply for a Sulfur Baseline?
v. Volume Limitation on Use of a Small Refinery Standard
vi. Extensions Beyond 2007 for Small Refiners
vii. Can Small Refiners Participate in the ABT Program?
b. Temporary Waivers From Low Sulfur Requirements in Extreme Unforeseen Circumstances
c. Temporary Waivers Based on Extreme Hardship Circumstances
3. Streamlining of Refinery Air Pollution Permitting Process
a. Brief Summary of Proposal
b. Significant Comments Received
c. Today's Action
i. Major New Source Review
ii. Environmental Justice
D. What Are the Economic Impacts, Cost Effectiveness and Monetized Benefits of the Tier 2 Program?
1. What Are the Estimated Costs of the Vehicle Standards?
2. Estimated Costs of the Gasoline Sulfur Standards
3. What Are the Aggregate Costs of the Tier 2/Gasoline Sulfur Final Rule?
4. How Does the Cost-Effectiveness of This Program Compare to Other Programs?
a. Cost Effectiveness of this Program
b. How Does the Cost Effectiveness of This Program Compare With Other Means of Obtaining Mobile Source NO_X+NMHC Reductions?
c. How Does the Cost Effectiveness of This Program Compare With Other Known Non-Mobile Source Technologies for Reducing NO_X+NMHC?
5. Does the Value of the Benefits Outweigh the Cost of the Standards?
a. What Is the Purpose of This Benefit-Cost Comparison?
b. What Was Our Overall Approach to the Benefit-Cost Analysis?
c. What Are the Significant Limitations of the Benefit-Cost Analysis?
d. How Was the Benefit-Cost Analysis Changed From Proposal?
e. How Did We Perform the Benefit-Cost Analysis?
f. What Were the Results of the Benefit-Cost Analysis?
V. Other Vehicle-Related Provisions
A. Final Tier 2 CO, HCHO and PM Standards
1. Carbon Monoxide (CO) Standards
2. Formaldehyde (HCHO) Standards
3. Use of NMHC Data To Show Compliance With NMOG Standards; Alternate Compliance With Formaldehyde Standards.
4. Particulate Matter (PM) Standards
B. Useful Life
1. Mandatory 120,000 Mile Useful Life
2. 150,000 Mile Useful Life Certification Option
C. Supplemental Federal Test Procedure (SFTP) Standards
1. Background
2. SFTP Under the NLEV Program
3. SFTP Standards for the Interim and Tier 2 LDVs and LDTs: As Proposed
4. Final SFTP Standards for Interim and Tier 2 LDVs and LDTs
5. Adding a PM Standard to the SFTP Standards
6. Future Efforts Relevant to SFTP Standards
D. LDT Test Weight
E. Test Fuels
F. Changes to Evaporative Certification Procedures to Address Impacts of Alcohol Fuels
G. Other Test Procedure Issues
H. Small Volume Manufacturers
1. Special Provisions for Independent Commercial Importers (ICIs)
2. Hardship Provision for Small Volume Manufacturers
I. Compliance Monitoring and Enforcement

1. Application of EPA's Compliance Assurance Program, CAP2000
2. Compliance Monitoring
3. Relaxed In-Use Standards for Vehicles Produced During the Phase-in Period
4. Enforcement of the Tier 2 and Interim Corporate Average NO_X Standards.
J. Addressing Environmentally Beneficial Technologies Not Recognized by Test Procedures
K. Adverse Effects of System Leaks
L. The Future Development of Advanced Technology and the Role of Fuels
M. Miscellaneous Provisions
VI. Gasoline Sulfur Program Compliance and Enforcement Provisions
A. Overview
B. Requirements for Foreign Refiners and Importers
1. Requirements for Foreign Refiners With Individual Refinery Sulfur Standards or Credit Generation Baselines
2. Requirements for Truck Importers
C. What Standards and Requirements Apply Downstream?
D. Testing and Sampling Methods and Requirements
1. Test Method for Sulfur in Gasoline
2. Test Method for Sulfur in Butane
3. Quality Assurance Testing
4. Requirement to Test Every Batch of Gasoline Produced or Imported
5. Exceptions to the Every-Batch Testing Requirement
6. Sampling Methods
7. Gasoline Sample Retention Requirements
E. Federal Enforcement Provisions for California Gasoline and for Use of California Test Methods to Determine Compliance
F. Recordkeeping and Reporting Requirements
1. Product Transfer Documents
2. Recordkeeping Requirements
3. Reporting Requirements
G. Exemptions for Research, Development, and Testing
H. Liability and Penalty Provisions for Noncompliance
I. How Will Compliance With the Sulfur Standards Be Determined?
VII. Public Participation
VIII. Administrative Requirements
A. Administrative Designation and Regulatory Analysis
B. Regulatory Flexibility
1. Potentially Affected Small Businesses
2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives
C. Paperwork Reduction Act
D. Intergovernmental Relations
1. Unfunded Mandates Reform Act
2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
3. Executive Order 13132 (Federalism)
E. National Technology Transfer and Advancement Act
F. Executive Order 13045: Children's Health Protection
G. Congressional Review Act
IX. Statutory Provisions and Legal Authority

I. Introduction

Since the passage of the 1990 Clean Air Act Amendments, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks. The National Low-Emission Vehicle (NLEV) and Reformulated Gasoline (RFG) programs are important examples of control programs that are in place and will continue to help reduce car and light-duty truck emissions into the near future.

Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light trucks will continue to be significant contributors to air pollution inventories well into the future. In fact, the emission contribution of light trucks and sport utility vehicles now matches that of passenger cars. (This is occurring because of the combination of growth in miles traveled by light trucks and the fact that their emission standards are currently less stringent than those of passenger cars). The program we describe below builds on the NLEV and RFG Phase II programs to develop a strong new national program to protect public health and the environment well into the next century. The program, while reducing VOC and other emissions, focuses especially on NO_X, because that is where the largest air quality gains can be achieved.

We have followed several overarching principles in developing this final rule:

- Design a strong national program that will assist states in every region of the country to meet their air quality objectives and that will ensure that cars and trucks continue to contribute a fair share to our nation's overall air quality solutions;
- View vehicles and fuels as an integrated system, recognizing that only by addressing both can the best overall emission performance be achieved;
- Establish a single set of emission standards that apply regardless of the fuel used and whether the vehicle is a car, a light truck, or a larger passenger vehicle;
- Provide compliance flexibilities that allow vehicle manufacturers and oil refiners to adjust to future market trends and honor consumer preferences;
- Not preclude the development of advanced low emission or fuel efficient technologies such as lean-burn engines; and
- Ensure sufficient leadtime for phase-in of the Tier 2 and gasoline sulfur program.

With these principles as background, we turn now to an overview of the vehicle and fuel aspects of the program. Sections I and II of this preamble will give you a brief overview of our program and our rationale for implementing it. Subsequent sections will expand on the air quality need, technological feasibility, economic impacts, and provide a detailed description of the specifics of the program. A public participation section reviews the process we followed in soliciting and responding to public comment. The final sections deal with several administrative requirements. You may also want to review our Final Regulatory Impact Analysis (RIA) and our Response to Comments document, both of which are found in the docket and on the Internet. They provide additional analyses and discussions of many topics raised in this preamble.

A. What Are the Basic Components of the Program?

The nation's air quality, while certainly better than in the past, will nevertheless continue to expose tens of millions of Americans to unhealthy levels of air pollution well into the future in the absence of significant new controls on emissions from motor vehicles. EPA is therefore finalizing a major, comprehensive program designed to reduce emission standards for passenger cars, light trucks, and large passenger vehicles (including sport-utility vehicles, minivans, vans, and pickup trucks) and to reduce the sulfur content of gasoline. Under the program, automakers will produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners will provide that much cleaner gasoline nationwide. In this preamble, we refer to the comprehensive program as the "Tier 2/ Gasoline Sulfur program."

1. Vehicle Emission Standards

Today's action sets new federal emission standards ("Tier 2 standards") for passenger cars, light trucks, and larger passenger vehicles. The program is designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles—nitrogen oxides (NO_X) and non-methane organic gases (NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). The program will also, for the first time, apply the same set of federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles. Light trucks include "light light-duty trucks" (or LLDTs), rated at less than 6000 pounds gross vehicle weight and "heavy light-duty trucks" (or HLDTs), rated at more than 6000

pounds gross vehicle weight).[1] "Medium-duty passenger vehicles" (or MDPVs) form a new class of vehicles introduced by this rule that includes SUVs and passenger vans rated at between 8,500 and 10,000 GVWR. The program thus ensures that essentially all vehicles designed for passenger use in the future will be very clean vehicles.

The Tier 2 standards finalized today will reduce new vehicle NO_X levels to an average of 0.07 grams per mile (g/mi). For new passenger cars and light LDTs, these standards will phase in beginning in 2004, with the standards to be fully phased in by 2007.[2] For heavy LDTs and MDPVs, the Tier 2 standards will be phased in beginning in 2008, with full compliance in 2009.

During the phase-in period from 2004–2007, all passenger cars and light LDTs not certified to the primary Tier 2 standards will have to meet an interim average standard of 0.30 g/mi NO_X, equivalent to the current NLEV standards for LDVs and more stringent than NLEV for LDT2s (e.g., minivans).[3] During the period 2004–2008, heavy LDTs and MDPVs not certified to the final Tier 2 standards will phase in to an interim program with an average standard of 0.20 g/mi NO_X, with those not covered by the phase-in meeting a per-vehicle standard (i.e., an emissions "cap") of 0.6 g/mi NO_X (for HLDTs) and 0.9 g/mi NO_X (for MDPVs). The average standards for NO_X will allow manufacturers to comply with the very stringent new standards in a flexible way, assuring that the average emissions of a company's production meet the target emission levels while allowing the manufacturer to choose from several more- and less-stringent emission categories for certification.

We are also setting stringent particulate matter standards that will be especially important if there is substantial future growth in the sales of diesel vehicles. Before 2004, we are establishing more stringent interim PM standards for most light trucks than exist now under NLEV. With higher sales of diesel cars and light trucks, they could easily contribute between one-half and two percent of the PM10 concentration allowed by the NAAQS, with some possibility that the contribution could be as high as 5 to 40 percent in some roadside situations with heavy traffic. These increases would make attainment even more difficult for 8 counties which we already predict to need further emission reductions even without an increase in diesel sales, and would put at risk another 18 counties which are now within 10 percent of a NAAQS violation. Thus, by including a more stringent PM standard in the program finalized today, we help address environmental concerns about the potential growth in the numbers of light-duty diesels on the road—even if that growth is substantial. The new requirements also include more stringent hydrocarbon controls (exhaust NMOG and evaporative emissions standards). We will also monitor the progress of the development of advanced technologies and the role of fuels.

2. Gasoline Sulfur Standards

The other major part of today's action will significantly reduce average gasoline sulfur levels nationwide. We expect these reductions could begin to phase in as early as 2000, with full compliance for most refiners occurring by 2006. Refiners will generally install advanced refining equipment to remove sulfur during the production of gasoline. Importers of gasoline will be required to import and market only gasoline meeting the sulfur limits. Temporary, less stringent standards will apply to a few small refiners through 2007. In addition, temporary, less stringent standards will apply to a limited geographic area in the western U.S. for the 2004–2006 period.

This significant new control of gasoline sulfur content will have two important effects. The lower sulfur levels will enable the much-improved emission control technology necessary to meet the stringent vehicle standards of today's rule to operate effectively over the useful life of the new vehicles. In addition, as soon as the lower sulfur gasoline is available, all gasoline vehicles already on the road will have reduced emissions—from less degradation of their catalytic converters and from fewer sulfur compounds in the exhaust.

Today's action will encourage refiners to reduce sulfur in gasoline as early as 2000. The program requires that most refiners and importers meet a corporate average gasoline sulfur standard of 120 ppm and a cap of 300 ppm beginning in 2004. By 2006, the cap will be reduced to 80 ppm and most refineries must produce gasoline averaging no more than 30 ppm sulfur. The program builds upon the existing regulations covering gasoline composition as it relates to emissions performance. It includes provisions for trading of sulfur credits, increasing the flexibility available to refiners for complying with the new requirements. We intend for the credit program to ease compliance uncertainties by providing refiners the flexibility to phase in early controls in 2000–2003 and use credits gained in these years to delay some control until as late as 2006. As finalized today, the program will achieve the needed environmental benefits while providing substantial flexibility to refiners.

B. What Is Our Statutory Authority for Today's Action?

1. Light-Duty Vehicles and Trucks

We are setting motor vehicle emission standards under the authority of section 202 of the Clean Air Act. Sections 202(a) and (b) of the Act provide EPA with general authority to prescribe vehicle standards, subject to any specific limitations otherwise included in the Act. Sections 202(g) and (h) specify the current standards for LDVs and LDTs, which became effective beginning in model year 1994 ("Tier 1 standards").

Section 202(i) of the Act provides specific procedures that EPA must follow to determine whether standards more stringent than Tier 1 standards for LDVs and certain LDTs[4] are appropriate beginning between the 2004 and 2006 model years.[5] Specifically, we are required to first issue a study regarding "whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required * * *" (the "Tier 2 Study"). This study "shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards." It is also to consider: (1) The availability of technology to meet more stringent standards, taking cost, lead time, safety, and energy impacts into consideration; and (2) the need for, and cost effectiveness of, such standards, including consideration of alternative methods of attaining or maintaining the national ambient air quality standards. A certain set of "default" emission

[1] A vehicle's "Gross Vehicle Weight Rating," or GVWR, is the curb weight of the vehicle plus its maximum recommended load of passengers and cargo.

[2] By comparison, the NO_X standards for the National Low Emission Vehicle (NLEV) program, which will be in place nationally in 2001, range from 0.30 g/mi for passenger cars to 0.50 g/mi for medium-sized light trucks (larger light trucks are not covered). For further comparison, the standards met by today's Tier 1 vehicles range from 0.60 g/mi to 1.53 g/mi.

[3] There are also NMOG standards associated with both the interim and Tier 2 standards. The NMOG standards vary depending on which of various individual sets of emission standards manufacturers choose to use in complying with the average NO_X standard. This "bin" approach is described more fully in section IV.B. of this preamble.

[4] LDTs with a loaded vehicle weight less than or equal to 3750 pounds, called LDT1s and LDT2s.

[5] Section 202(b)(1)(C) forbids EPA from promulgating mandatory standards more stringent than Tier 1 standards until the 2004 model year.

standards for these vehicle classes is among those options for new standards that EPA is to consider.

After the study is completed and the results are reported to Congress, EPA is required to determine by rulemaking whether: (1) There is a need for further emission reductions; (2) the technology for more stringent emission standards from the affected classes is available; and (3) such standards are needed and cost-effective, taking into account alternatives. If EPA answers "yes" to these questions, then the Agency is to promulgate new, more stringent motor vehicle standards ("Tier 2 standards").

EPA submitted its report to Congress on July 31, 1998. Today's final rule makes affirmative responses to the three questions above (see Section II below) and sets new standards that are more stringent than the default standards in the Act.

EPA is also setting standards for larger light-duty trucks and MDPVs under the general authority of Section 202(a)(1) and 202(b) and under Section 202(a)(3) of the Act, which requires that standards applicable to emissions of hydrocarbons, NO_X, CO and PM from heavy-duty vehicles [6] reflect the greatest degree of emission reduction available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety. We are also setting standards for formaldehyde under our authority in sections 202(a) and (l).

2. Gasoline Sulfur Controls

We are adopting gasoline sulfur controls pursuant to our authority under Section 211(c)(1) of the Clean Air Act.[7] Under Section 211(c)(1), EPA may adopt a fuel control if at least one of the following two criteria is met: (1) The emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare; or (2) the emission products of the fuel will significantly impair emissions control systems in general use or which will be in general use were the fuel control to be adopted.

We are adopting gasoline sulfur controls based on both of these criteria. Under the first criterion, we believe that sulfur in gasoline used in Tier 1 and LEV technology vehicles contributes to ozone pollution, air toxics, and PM. Under the second criterion, we believe that gasoline sulfur in fuel will significantly impair the emissions control systems expected to be used in Tier 2 technology vehicles, as well as emissions control systems currently used in LEVs. Please refer to Section IV.C. below and to the Final Regulatory Impact Analysis (RIA) for more details of our analysis and findings. The RIA includes a more detailed discussion of EPA's authority to set gasoline sulfur standards, including a discussion of our conclusions relating to the factors required to be considered under Section 211(c).

C. The Tier 2 Study and the Sulfur Staff Paper

On July 31, 1998, EPA submitted its report to Congress containing the results of the Tier 2 study.[8] The study indicated that in the 2004 and later time frame, there will be a need for emission reductions to aid in meeting and maintaining the National Ambient Air Quality Standards (NAAQS) for both ozone and PM. Air quality modeling showed that in the 2007–2010 time frame, when Tier 2 standards will become fully effective, a number of areas will still be in nonattainment for ozone and PM even after the implementation of existing emission controls. The study also noted the continued existence of carbon monoxide (CO) nonattainment areas. It also found ample evidence that technologies will be available to meet more stringent Tier 2 standards. In addition, the study provided evidence that such standards could be implemented at a similar cost per ton of reduced pollutants as other programs aimed at similar air quality problems. Finally, the study identified several additional issues in need of further examination, including the relative stringency of car and light truck emission standards, the appropriateness of identical versus separate standards for gasoline and diesel vehicles, and the effects of sulfur in gasoline on catalyst efficiency. Section IV of this preamble describes the steps we have taken to follow up on the Tier 2 Study.

In addition, on May 1, 1998, EPA released a staff paper presenting EPA's understanding of the impact of gasoline sulfur on emissions from motor vehicles and exploring what gasoline producers and automobile manufacturers could do to reduce sulfur's impact on emissions. The staff paper noted that gasoline sulfur degrades the effectiveness of catalytic converters and that high sulfur levels in commercial gasoline could affect the ability of future automobiles—especially those designed for very low emissions—to meet more stringent standards in use. It also pointed out that sulfur control will provide additional benefits by lowering emissions from the current fleet of vehicles.

D. Relationship of Diesel Fuel Sulfur Control to the Tier 2/Gasoline Sulfur Program

In the NPRM, we raised the question of what if any changes to diesel fuel may be needed to enable diesel vehicles to meet the Tier 2 standards or any future heavy-duty diesel engine standards. Specifically, we raised the question of whether diesel sulfur levels need to be controlled. Since diesel fuel controls of any kind would have an impact on the refinery as a whole, and since in some cases (including potential diesel sulfur limits) could have implications for gasoline sulfur control, we requested comment on this issue in our proposal. We also indicated that we planned to release an Advance Notice of Proposed Rulemaking to solicit more information on this subject.

We published the ANPRM on May 13, 1999 (64 FR 26142). We are in the process of considering all of the comments received in response to the ANPRM and plan to issue a Notice of Proposed Rulemaking (NPRM) in early spring of 2000. We received many comments on the subject of diesel fuel control along with the comments submitted on the proposed Tier 2/Gasoline Sulfur regulations. We have prepared brief responses to some of these comments in the Response to Comments document, and will deal fully with these comments as part of the forthcoming NPRM on diesel fuel. We are taking no action on diesel fuel as part of today's action.

II. Tier 2 Determination

Based on the statutory requirements described above and the evidence provided in the Tier 2 Study and since its release, as described elsewhere in this preamble, EPA has determined that new, more stringent emission standards are indeed needed, technologically feasible, and cost effective.

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[6] LDTs that have gross vehicle weight ratings above 6000 pounds are considered "heavy-duty vehicles" under the Act. See section 202(b)(3). For regulatory purposes, we refer to these LDTs as "heavy light-duty trucks" made up of LDT3s and LDT4s.

[7] We currently have regulatory requirements for conventional and reformulated gasoline adopted under Sections 211(c) and 211(k) of the Act, in addition to the "substantially similar" requirements for fuel additives of Section 211(f). These requirements have the effect of limiting sulfur levels in gasoline to some extent. See the Final RIA for more details.

[8] On April 28, 1998, EPA published a notice of availability announcing the release of a draft of the Tier 2 study and requesting comments on the draft. The final report to Congress included a summary and analysis of the comments EPA received.

A. There Is a Substantial Need for Further Emission Reductions in Order to Attain and Maintain National Ambient Air Quality Standards

EPA finds that there is a clear air quality need for new emission standards, based on the continuing air quality problems predicted to exist in future years. As the discussion in Section III.B. illustrates, 26 metropolitan areas are each certain or highly likely to need additional reductions. These areas are distributed across most regions of the U.S., and have a combined population of over 86 million. Section III.B. also shows that an additional 12 areas each has a moderate to significant probability of needing additional reductions, representing another 25 million people. This provides ample evidence that further emission reductions are needed to meet the 1-hour ozone NAAQS.

In addition to these ozone concerns, our analysis of PM_{10} monitoring data and PM_{10} projections indicates that 15 PM_{10} nonattainment counties violated the PM_{10} NAAQS in recent years, and that 8 of them with a 1996 population of almost 8 million have a high risk of failing to attain and maintain without more emission reductions. Eighteen other counties, with a population of 23 million have a significant risk of failing or are within 10 percent of violating the PM_{10} NAAQS. It is also important to recognize that nonattainment areas remain for other criteria pollutants (*e.g.*, CO) and that non-criteria pollution (*e.g.*, air toxics and regional haze) also contributes to environmental and health concerns.

B. More Stringent Standards for Light-Duty Vehicles and Trucks Are Technologically Feasible

We find that emission standards significantly more stringent than current Tier 1 and National Low Emission Vehicle (NLEV) levels are technologically feasible. This is true both for the LDVs and LDTs specifically covered in section 202(i) and for the medium-duty passenger vehicles also included in today's final rule. Manufacturers are currently producing NLEV vehicles that meet more stringent standards than similar Tier 1 models. Our analysis shows that mainly through improvements in engine control software and catalytic converter technology, manufacturers can build and are building durable vehicles and trucks, including heavy light-duty trucks, which have very low emission levels.[9] Section IV.A. below discusses our feasibility conclusions in more detail.

Many current production vehicles are already certified at or near the Tier 2 standards. For year 2000 certification (although not yet complete), over 50 vehicle models have emissions at or below Tier 2 levels. In addition, we performed a demonstration program at our EPA laboratory that showed that even large vehicles, which would be expected to face the toughest challenges reaching Tier 2 emission levels, can do so with conventional technology. Others, including the Manufacturers of Emission Controls Association (MECA) and the State of California, have also performed demonstration programs, with similar results. Manufacturers have also certified LDVs and LDTs to NMOG and CO levels as much as 80 percent below Tier 1 standards. Furthermore, for passenger vehicles greater than 8500 lbs GVWR, we believe that by using technologies and control strategies similar to what will be used on lighter vehicles, manufacturers will be able to meet the Tier 2 emission standards.

Thus, we believe that, by the 2004–2009 time frame, manufacturers will be fully able to comply with the new Tier 2 emission standard levels. In addition, to facilitate manufacturers' efforts to meet these new standards, the Tier 2 regulations include a phase-in over several years and a corporate fleet average NO_X standard, which will allow manufacturers to optimize the deployment of technology across their product lines with no loss of environmental benefit. Our analysis of the available technology improvements and the very low emission levels already being realized on these vehicles leads us to find that the standards adopted today are fully feasible for LDVs and LDTs.

C. More Stringent Standards for Light-Duty Vehicles and Trucks Are Needed and Cost Effective Compared to Available Alternatives

In this action, we also find that more stringent motor vehicle standards are both necessary and cost effective. As discussed above, substantial further reductions in emissions are needed to help reduce the levels of unhealthy air pollution to which millions of people are being exposed; in particular, we expect that a number of areas will not attain or maintain compliance with the National Ambient Air Quality Standards for ozone and PM_{10} without such reductions. (We describe this further in Section III below and in the RIA.)

Furthermore, mobile sources are important contributors to the air quality problem. As we will explain more fully later in this preamble, in the year 2030, the cars and light trucks that are the subject of today's final rule are projected to contribute as much as 40 percent of the total NO_X inventory in some cities, and almost 20 percent of nationwide NO_X emissions. This situation would have been considerably worse without the NLEV program created by vehicle manufacturers, EPA, the Northeastern states, and others.

These emission reductions are clearly necessary to meet and maintain the 1-hour ozone NAAQS. We project that while the emission reductions of this program will lead to substantial progress in meeting and maintaining the NAAQS, many areas will still not come into attainment even with this magnitude of reductions.

We find that the Tier 2/Gasoline Sulfur program is a reasonable, cost-effective method of providing substantial progress towards attainment and maintenance of the NAAQS, costing about $2000 per ton of NO_X plus hydrocarbon emissions reduced. This program will reduce annual NO_X emissions by about 2.2 million tons per year in 2020 and 2.8 million tons per year in 2030 after the program is fully implemented. By way of comparison, when EPA established its 8-hour NAAQS for ozone, we identified several types of emission control programs that were reasonably cost effective. If all of the controls identified in that analysis costing less than $10,000/ton were implemented nationwide, they would produce NO_X emission reductions of about 2.9 million tons per year. (That is, to achieve about the same emission reductions as the Tier 2/Gasoline Sulfur program, other alternative measures would have a significantly higher cost per ton). These emission reductions are clearly necessary to meet and maintain the one-hour ozone NAAQS. We project that while the emission reductions of this program will lead to substantial progress in meeting and maintaining the NAAQS, many areas will still not come into attainment even with this magnitude of reductions.

In addition, the magnitude of emission reductions that can be achieved by a comprehensive national Tier 2/Gasoline Sulfur program will be difficult to achieve from any other source category. Given the large contribution that light-duty mobile source emissions make to the national emissions inventory and the range of control programs ozone-affected areas

[9] The Final RIA contains a more detailed analysis, and Section IV.A. below has further discussion of the technological feasibility of our standards including detailed discussions of the various technology options that we believe manufacturers may use to meet these standards.

already have in place or would be expected to implement, we believe it will be very difficult, if not impossible, to meet (and maintain) the ozone NAAQS in a cost-effective manner without large emission reductions from LDVs and LDTs. We expect emissions from MDPVs to also play an increasing role.

Furthermore, we project that the Tier 2/Gasoline Sulfur program will significantly reduce direct and secondary particulate matter coming from LDVs, LDTs, and MDPVs—by about 36,000 tons per year of direct PM alone by 2030; large secondary PM reductions from significantly lower NO_X and SO_X emissions will add to the overall positive impact on airborne particles. These reductions will be very cost-effective compared to other measures to reduce PM pollution. Because direct PM emissions from gasoline vehicles are related the presence of sulfur in gasoline, no new emission control devices, beyond what manufacturers are expected to install to meet the NO_X and NMOG standards, will be necessary to provide the reductions expected for these pollutants under the program. The standards will provide valuable insurance against increases in PM emissions from LDVs, LDTs, and MDPVs.

Finally, the Tier 2/Gasoline Sulfur program will significantly reduce CO emissions from LDVs, LDTs, and MDPVs. (See Chapter III of the RIA for an analysis of these reductions.) The technical changes needed to meet the NMOG standards will also result in CO reductions sufficient to meet the CO standards. Thus, these CO reductions will be very cost-effective since they will not require any new emission control devices beyond what manufacturers are expected to install to meet the NO_X and NMOG standards.

We conclude, then, that today's final rule is a major source of ozone precursor, PM, and CO emission reductions when compared to other available options. The discussions of cost and cost effectiveness later in this preamble and in the RIA explain the derivation of cost effectiveness estimates and compares them to the cost effectiveness of other alternatives. That discussion indicates that this program will have a cost effectiveness comparable to both the Tier 1 and NLEV standards and will also be cost effective when compared to non-mobile source programs.

III. Air Quality Need For and Impact Of Today's Action

In the absence of significant new controls on emission, tens of millions of Americans would continue to be exposed to unhealthy levels of air pollution. Emissions from passenger cars and light trucks are a significant contributor to a number of air pollution problems. Today's action will significantly reduce emissions from cars and light trucks and hence will significantly reduce the health risks posed by air pollution. This section summarizes the results of the analyses we performed to arrive at our determination that continuing air quality problems are likely to exist, that these air quality problems would be in part due to emissions from cars and light trucks, and that the new standards promulgated by today's final rule will improve air quality and mitigate other environmental problems.

A. Americans Face Serious Air Quality Problems That Require Further Emission Reductions

Air quality in the United States continues to improve. Nationally, the 1997 air quality levels were the best on record for all six criteria pollutants. [10] In fact, the 1990s have shown a steady trend of improvement, due to reductions in emissions from most sources of air pollution, from factories to motor vehicles. Despite great progress in air quality improvement, in 1997 there were still approximately 107 million people nationwide who lived in counties with monitored air quality levels above the primary national air quality standards. [11] There are also people living in counties outside of the air monitoring network where violations of the NAAQS could have also occurred during the year. Moreover, unless there are reductions in overall emissions beyond those that are scheduled to be achieved by already committed controls, many of these Americans will continue to be exposed to unhealthy air.

Ambient ozone is formed in the lower atmosphere through a complex interaction of VOC and NO_X emissions. Cars and light trucks emit a substantial fraction of these emissions. Ambient PM is emitted directly from cars and light trucks; it also forms in the atmosphere from NO_X, sulfur oxides (SO_X), and VOC, all of which are emitted by motor vehicles. When ozone exceeds the air quality standards, otherwise healthy people often have reduced lung function and chest pain, and hospital admissions for people with respiratory ailments like asthma increase; for longer exposures, permanent lung damage can occur. Similarly, fine particles can penetrate deep into the lungs. Results of studies suggest a likely causal role of ambient PM in contributing to reported effects, such as: premature mortality, increased hospital admissions, increased respiratory symptoms, and changes in lung tissue. When either ozone or PM air quality problems are present, those hardest hit tend to be children, the elderly, and people who already have health problems.

The health effects of high ozone and PM levels are not the only reason for concern about continuing air pollution. Ozone and PM also harm plants and damage materials. PM reduces visibility and contributes to significant visibility impairment in our national parks and monuments and in many urban areas. In addition, air pollution from motor vehicles contributes to cancer and other health risks, acidification of lakes and streams, eutrophication of coastal and inland waters, and elevated drinking water nitrate levels. These problems impose a substantial burden on public health, our economy, and our ecosystems.

In recognition of this burden, Congress has passed and subsequently amended the Clean Air Act. The Clean Air Act requires each state to have an approved State Implementation Plan (SIP) that shows how an area plans to meet its air quality obligations, including achieving and then maintaining attainment of all of the National Ambient Air Quality Standards (NAAQS), such as those for ozone and PM. The Clean Air Act also requires EPA to periodically re-evaluate the NAAQS in light of new scientific information. Our most recent re-evaluation of the ozone and PM NAAQS led us to revise both standards (62 FR 38856, July 18, 1997 and 62 FR 38652, July 18, 1997). These revised standards reflected additional information that had become available since the previous revision of the ozone and PM standards, respectively.

On May 14, 1999, a panel of the United States Court of Appeals for the District of Columbia Circuit reviewed EPA's revisions to the ozone and PM NAAQS and found, by a 2–1 vote, that sections 108 and 109 of the Clean Air Act, as interpreted by EPA, represent unconstitutional delegations of Congressional power. *American Trucking Ass'n., Inc. et al.*, v. *Environmental Protection Agency*, 175 F.3d 1027 (D.C. Cir. 1999). Among other things the Court remanded the record

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[10] National Air Quality and Emissions Trend Report, 1997, Air Quality Trends Analysis Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., December 1998 (available on the World Wide Web at http://www/epa.gov/oar/aqtrnd97/).

[11] U.S. Environmental Protection Agency, *Latest Findings on National Air Quality: 1997 Status and Trends*. December 1998.

for the 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS to EPA. On October 29, 1999, EPA's petition for rehearing by the three judge panel was denied, with the exception that the panel modified its prior ruling regarding EPA's authority to implement a revised ozone NAAQS under Part D subpart 2 of Title I. EPA's petition for rehearing en banc by the full Circuit was also denied, although five of the nine judges considering the petition agreed to rehear the case.

As a result of the Court's decision, requirements on the States to implement the new 8-hour ozone standard have been suspended although the standard itself is still in force and the science behind it has generally not been contradicted. The court also did not question EPA's findings regarding the health effects of PM_{10} and $PM_{2.5}$. However, due to the uncertainty regarding the status of the new NAAQS, we will rely on the preexisting NAAQS in determining air quality need under section 202(i) of the Act.

Carbon monoxide (CO) can cause serious health effects for those who suffer from cardiovascular disease, such as angina pectoris. There has been considerable progress in attaining the longstanding NAAQS for carbon monoxide, largely through more stringent standards for CO from motor vehicles. This progress has been made despite large increases in travel by vehicle. In 1997, there were about 9 million people living in three counties with CO concentrations above the level of the CO NAAQS. In the recent past, this figure has fluctuated up and down. At the present time there are 15 counties classified as serious CO nonattainment areas, all with a recent history of NAAQS violations. At this time, prospects for these areas attaining by the serious CO area attainment deadline of December 31, 2000 are uncertain. While violations of the NAAQS have not occurred recently in most of the other 33 counties still classified as nonattainment, even these must demonstrate that they will remain safely below the NAAQS for ten years despite expected growth in vehicle travel and other sources of CO emissions before they can be reclassified to attainment. Because of the large role of motor vehicles in causing high ambient CO concentrations, where there is reason to be concerned about CO attainment and maintenance, local areas look to national emission standards for most of the solution.

As discussed below, EPA has also finalized regulations that regions and states implement plans for protecting and improving visibility in the 156 mandatory Federal Class I areas as defined in Section 162(a) of the Clean Air Act. These areas are primarily national parks and wilderness areas.

To accomplish the goal of full attainment in all areas according to the schedules for the various NAAQS, and to achieve the goals of the visibility program, the federal government must assist the states by reducing emissions from sources that are not as practical to control at the state level as at the federal level. Vehicles and fuels move freely among the states, and they are produced by national or global scale industries. Most individual states are not in a position to regulate these industries effectively and efficiently. The Clean Air Act therefore gives EPA primary authority to regulate emissions from the various types of highway vehicles and their fuels. Our actions to reduce emissions from these and other national sources are a crucial and essential complement to actions by states to reduce emissions from more localized sources.

If we were not to adopt new standards to reduce emissions from cars and light trucks, emissions from these vehicles would remain a large portion of the emissions burden that causes elevated ozone and continued nonattainment with the ozone NAAQS, which in turn would affect tens of millions of Americans. Because the contribution of cars and light trucks to both local emissions and transported pollution would be so great, and the expected emission reduction shortfall in many areas is so large, further reductions from cars and light trucks will be an important element of many attainment strategies, especially for ozone in the 2007 to 2010 time frame. The contribution of these vehicles to PM exposure and PM nonattainment would also remain significant, and would increase considerably if diesel engines are used in more cars or light trucks. Furthermore, without new standards, steady annual increases in fleet size and miles of travel would outstrip the benefits of current emission controls, and would cause ozone-forming emissions from cars and trucks to grow each year starting about 2013.

The standards being promulgated by today's actions will reduce emissions of ozone precursors and PM precursors from cars and light trucks greatly. However, even with this decrease, many areas will likely still find it necessary to obtain additional reductions from other sources in order to fully attain the ozone and PM NAAQS. Their task will be easier and the economic impact on their industries and citizens will be lighter as a result of the standards promulgated by today's actions. Following implementation of the Regional Ozone Transport Rule, states will have already adopted emission reduction requirements for nearly all large sources of VOC and NO_X for which cost-effective control technologies are known. Those that remain in nonattainment therefore will have to consider their remaining alternatives. Many of the state and local programs states may consider as alternatives are very costly, and the emissions impact from each additional emissions source subjected to new emissions controls would be considerably smaller than the emissions impact of the standards being promulgated today. Therefore, the emission reductions from these standards for gasoline, cars, and light trucks will ease the need for states to find first-time reductions from the mostly smaller sources that have not yet been controlled, including area sources that are closely connected with individual and small business activities. The emission reductions from the standards being promulgated today will also reduce the need for states to seek even deeper reductions from large and small sources already subject to emission controls.

We project that today's actions will also have important benefits for carbon monoxide, regional visibility, acid rain, and coastal water quality.

For these and other reasons discussed in this document, we have determined that significant emission reductions will still be needed by the middle of the next decade and beyond to achieve and maintain further improvements in air quality in many, geographically dispersed areas. We also believe that a significant portion of these emission reductions will be obtained by reducing emissions from cars and light trucks as a result of today's actions. We believe that such reductions are necessary (since cars and light trucks are such large contributors to current and projected ozone problems) and reasonable (since these reductions can be achieved at a reasonable cost compared to other alternative reductions).

The remainder of this section describes the health and environmental problems that today's actions will help mitigate and the expected health and environmental benefits of these actions. Ozone is discussed first, followed by PM, other criteria pollutants, visibility, air toxics, and other environmental impacts. The emission inventories and air quality analyses are explained more fully in the Regulatory Impact Analysis for today's actions.

B. Ozone

1. Background on Ozone Air Quality

Ground-level ozone is the main harmful ingredient in smog.[12] Ozone is produced by complex chemical reactions when its precursors, VOC and NO_X, react in the presence of sunlight.

Short-term (1–3 hours) and prolonged (6–8 hours) exposures to ambient ozone at levels common in many cities have been linked to a number of health effects of concerns. For example, increased hospital admissions and emergency room visits for respiratory causes have been associated with ambient ozone exposures at such levels. Repeated exposures to ozone can make people more susceptible to respiratory infection, result in lung inflammation, and aggravate pre-existing respiratory diseases such as asthma. Other health effects attributed to ozone exposures include significant decreases in lung function and increased respiratory symptoms such as chest pain and cough. These effects generally occur while individuals are engaged in moderate or heavy exertion.

Children active outdoors during the summer when ozone levels are at their highest are most at risk of experiencing such effects. Other at-risk groups include adults who are active outdoors (*e.g.*, outdoor workers), and individuals with pre-existing respiratory disease such as asthma and chronic obstructive lung disease. In addition, longer-term exposures to moderate levels of ozone present the possibility of irreversible changes in the lungs which could lead to premature aging of the lungs and/or chronic respiratory illnesses.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests, and other environmental stresses (*e.g.*, harsh weather). In long-lived species, these effects may become evident only after several years or even decades, thus having the potential for long-term effects on forest ecosystems. Ground-level ozone damage to the foliage of trees and other plants also can decrease the aesthetic value of ornamental species as well as the natural beauty of our national parks and recreation areas.

Many areas which were classified as nonattainment when classifications were made under the 1990 Clean Air Act Amendments have not experienced violations more recently. However, 50 metropolitan areas had ozone design values above the NAAQS in either or both of the 1995–1997 and the 1996–1998 monitoring periods. In many urban areas, the downward trend in ozone that prevailed earlier has become less strong or stopped in the last few years, even when adjustments are made for meteorological conditions. We believe that one factor that has worked against ozone improvement in the last few years has been the growing use of light trucks with higher emissions than the cars used formerly. The predictions of future ozone concentrations used in developing today's action take account of this growing use of light trucks.

2. Additional Emission Reductions Are Needed To Attain and Maintain the Ozone NAAQS

a. Summary

We have determined that additional emission reductions are needed to attain and maintain the 1-hour ozone NAAQS. This overall conclusion is based on our prediction that 26 metropolitan areas are each certain or highly likely to need additional reductions, and that an additional 12 areas each have a moderate to significant probability of needing them.

To determine whether additional reductions are needed in order to attain and maintain the ozone NAAQS, we used ozone modeling to predict what areas would not attain the NAAQS in the future. We accounted for the emission reductions that have already been achieved, those that will be achieved in the future by actions already underway, and increases in emissions expected from increased use of sources of pollution.

In our May 13, 1999 proposal, we presented information from photochemical modeling we performed to predict what areas would meet the ozone NAAQS in 2007. The year 2007 falls after the expected date of most emission reductions which states are required to achieve or have otherwise committed to achieve, and near the attainment deadline for many ozone nonattainment areas. We presented additional information from the same photochemical modeling work in two supplemental notices, on June 30, 1999 (to better explain the basis for our proposal in light of the Court's ruling on the 8-hour ozone NAAQS), and October 25, 1999 (to explain the implications for our Tier 2/Gasoline Sulfur proposal from our more recent proposal, which we expect to make final shortly, to re-instate the 1-hour ozone NAAQS in many areas). In Response to Comments on these Federal Register notices, we made revisions to our own ozone modeling. We also obtained ozone modeling results from a number of state air planning agencies and from members of the automobile manufacturing industry. We have considered all of this information as part of our determination that the regulations promulgated in this rule are needed and appropriate.

Based on the available ozone modeling and other information, we project that there are 26 metropolitan areas which will be unable to attain and maintain the NAAQS, in the absence of additional reductions. These areas had a combined population of over 86 million in 1996, and are distributed across most regions of the U.S. We have concluded that each is certain or very likely to require additional reductions to attain the NAAQS. Taken together and considering their number, size, and geographic distribution, these areas establish the case that additional reductions are needed in order to attain and maintain the 1-hour standard.

In addition, our analysis suggests there will be other areas that will have problems attaining and maintaining compliance with the one-hour ozone standard in the future. There are 12 additional metropolitan areas with a total 1996 population of over 25 million people in this category. EPA's ozone modeling for 2007 predicts exceedances for each of these areas. However, for six of them local recent monitoring information is not indicating nonattainment. Given how close to nonattainment these areas are, EPA believes it is likely that at least a significant subset of this group of areas will face compliance problems by 2007 or beyond if additional actions to lower air emissions are not taken. This belief is based on historical experience with areas that will undergo economic and population growth over time and that are in larger regions that are also experiencing growth. The other six areas in this group are nonattainment now, and local modeling shows them reaching attainment by 2005 or 2007. Modeling uncertainties and growth beyond the attainment date make it likely that at least some of these areas will also face compliance problems if additional actions to lower air emissions are not taken. This situation further supports our determination that additional reductions in mobile source emissions are needed for attainment and maintenance.

We would like to emphasize that the advantages of the Tier 2/Gasoline Sulfur program will be enjoyed by the whole country. There are important advantages for approximately 30 more metropolitan

[12] Total column ozone, a large percentage of which occurs in the stratosphere and a smaller percentage of which occurs in the troposphere, helps to provide a protective layer against ultraviolet radiation.

areas, with close to 30 million people residing in them, whose ozone levels are now within 10 percent of violating the 1-hour NAAQS.[13] Most of these areas have been in nonattainment in the past. We believe the emission reductions from the Tier 2/Gasoline Sulfur program are an important component of an overall EPA-state approach to enable these areas to continue to maintain clean air given expected growth. EPA believes that the long term ability of the states to continue to meet the NAAQS is extremely important. In the future, EPA will be considering additional approaches for assisting in maintenance of the NAAQS. Also, we believe that the Tier 2/Gasoline Sulfur program has important benefits for other nonattainment areas which our modeling and local modeling show to be on a path to come into attainment in the next eight years. For these areas, the extra emission reductions from the program will take some of the uncertainty out of their plan to attain the standard and give them a head start on developing their plan to stay in attainment.

In every area of the country, the new standards will give transportation planning bodies and industrial development leaders more options within the area's overall emissions constraints. This will allow local and state officials to better accommodate local needs and growth opportunities. With these new standards for vehicles and gasoline, unusually adverse weather or strong local economic growth will be less likely to cause ozone levels high enough to trigger the planning requirements of the Clean Air Act. In addition, by reducing emissions and ozone levels across the nation as a whole, there will be less transport of ozone between areas, reducing the amount of ozone entering downwind areas. This will give the downwind areas a better opportunity to maintain and attain the NAAQS through local efforts.

All of our determinations presented here about the need for the Tier 2/Gasoline Sulfur program take into account the prior NO_X reductions we expect from the Regional Ozone Transport Rule. This rule is now in litigation. If the outcome of that litigation reduces the NO_X reductions that will be achieved, the need for the Tier 2/Gasoline Sulfur program will be even greater.

[13] As measured by ozone design value.

b. Ozone Modeling Presented in Our Proposal and Supplemental Notices

The ozone modeling we presented in our proposal and the two supplemental notices was originally conducted as part of our development of the Regional Ozone Transport Rule. The "revised budget" emission control scenario we modeled for the Regional Ozone Transport Rule contained the right set of existing and committed emission controls for it to serve as the starting point for making our determination on the need for additional emission reductions. We added a new "control case" to represent the effects of our proposed vehicle and gasoline standards.

This ozone modeling provided predictions of ozone concentrations in 2007 across the eastern U.S., under certain meteorological conditions. Predictions of attainment or nonattainment are based on these predicted ozone concentrations. Two approaches to making attainment predictions have been used or advocated in the past: a rollback approach and an exceedance approach. In the NPRM of May 13, 1999, we presented predictions of attainment and nonattainment using a rollback approach. For the 1-hour standard, we reported that 8 metropolitan areas and two rural counties were predicted to be in nonattainment in 2007 under the rollback method. In the first supplemental notice of June 30, 1999 we presented a prediction that 17 areas would be nonattainment based on the exceedance method, and invited comment on all aspects of the modeling and its interpretation. Our second and last notice on October 27, 1999, presented predictions of violations using the exceedance method for additional areas which we had previously excluded because the 1-hour standard did not apply to them. This was in anticipation of the reinstatement of the 1-hour standard to these areas, which we proposed on October 25, 1999 and expect to complete very soon. 64 FR 57524. We also announced that we were conducting another round of modeling, described below. See the Response to Comments document for more discussion of the rollback and exceedance approaches.

c. Updated and Additional Ozone Modeling

We have updated and expanded our ozone modeling. We updated the ozone modeling so that it is now based on estimates of vehicle emissions that reflect the most recent data and our best understanding of several aspects of emissions estimation.[14] We also changed most of the episodes for which we modeled ozone concentrations, with all of our final episode days coming from a single calendar year. By selecting days from within a single year, we responded to a comment that the original episode periods might together contain an atypically high number of days favorable to ozone formation for some parts of the country. The new episodes are also better at representing conditions that lead to high ozone in areas along the Gulf Coast, whose ozone-forming conditions were not well represented in the episodes used for the original modeling.

While we considered these improvements necessary and appropriate in light of comments and other information available to us, the actual results of the two rounds of modeling with regard to the need for additional reductions have turned out to be similar. The latest round of modeling provided us ozone predictions for 2007 and 2030 in the eastern U.S., and for 2030 in the western U.S. There are some differences in specific results, where and when the two models can be directly compared. However, the same conclusion would be reached from either, namely that there is a broad set of areas with predicted ozone concentrations in 2007 above 0.124 ppm, in the baseline scenario without additional emission reductions.

We have compared and supplemented our own ozone modeling with other modeling studies, either submitted to us as comments to this rulemaking, as state implementation plan (SIP) revisions, or brought to our attention through our consultations with states on SIP revisions that are in development. The ozone modeling in the SIP revisions has the advantage of using emission inventories that are more specific to the area being modeled, and of using meteorological conditions selected specifically for each area. Also, the SIP revisions included other evidence and analysis, such as analysis of air quality and emissions trends, observation based models that make use of data on concentrations of ozone precursors, alternative rollback analyses, and information on the responsiveness of the air quality model. For some areas, we decided that the predictions of attainment or nonattainment from our

[14] While the use of these emissions estimates was new to our baseline ozone modeling in the latest ozone modeling, they were not new to this rulemaking, having already been used in calculations of cost-effectiveness in the draft RIA. We therefore were able to consider public comments on these estimates prior to using them in the latest ozone modeling

modeling were less reliable than conclusions that could be drawn from this additional evidence and analysis. For example, in some areas our episodes did not capture the meteorological conditions that have caused high ozone, while local modeling did so.

d. Results and Conclusions

As discussed in detail below, it is clear that the NO_X and VOC reductions to be achieved through the Tier 2/ Gasoline Sulfur program are needed to attain and maintain compliance with the 1 hour ozone NAAQS. Although the general pattern observed in our modeling indicates improvements in the near term, growth in overall emissions will lead to worsening of air quality over the long term.

Based on our ozone modeling, we have analyzed ozone predictions for 52 metropolitan areas for 1996, 2007, and 2030. In addition, we reviewed ozone attainment modeling and other evidence covering 15 of these areas, from SIP submittals or from modeling underway to support SIP revisions. This local modeling addressed only the current or requested attainment date in each area. We then made attainment and nonattainment predictions from this information.

The general pattern we observed with the baseline scenario, i.e., without new emission reductions, is a broad reduction between 1996 and 2007 in the geographic extent of ozone concentrations above the NAAQS, and in the frequency and severity of exceedances. This is consistent with the national emissions inventory trend between these two years. At the same time, we also found that peak ozone concentrations and the frequency of exceedances in 2030 were generally somewhat higher than in 2007 for most areas analyzed. This too is consistent with our analysis of emission inventory trends, which shows that the total NO_X inventory from all sources will decline from 2007 to about 2015 and then begin to increase due to growth in the activity of emission sources. In 2030, our analysis predicts that NO_X emissions from all sources will be about one percent higher than in 2007. While we did not model ozone concentrations for years between 2007 and 2030, we expect that they would track the national emissions trend by showing a period of improvement after 2007 and then deterioration, although individual areas will vary due to local source mix and growth rates.[15]

Within this general pattern of ozone attainment changes between 1996 and 2030, we have determined that 26 metropolitan areas are certain or highly likely to need additional reductions to attain and maintain the 1-hour ozone NAAQS. These 26 areas are those that have current violations of the 1-hour ozone NAAQS and are predicted by the best ozone modeling we have available to still be in violation without a new federal vehicle program in 2007.[16] Based on the general trends described above, without further emissions reductions many of these areas may also have violations continuously throughout the period from 2007 to 2030, while others may briefly attain and then return to nonattainment on or before 2030. These 26 metropolitan areas are listed in Table III.B–1, along with their 1996 population which totals over 86 million. The sizes of these areas and their geographical distribution strongly support an overall need for additional reductions in order to attain and maintain under section 202(i). Because ozone concentration patterns causing violations of the 1-hour NAAQS are well established to endanger public health or welfare, this determination also supports our actions today under the general authority of sections 202(a)(1), 202(a)(3), and 202(b).

As indicated above, in reaching this conclusion about these 26 areas, we examined local ozone modeling in SIP submittals. These local analyses are considered to be more extensive than our own modeling for estimating whether there would be NAAQS nonattainment without further emission reductions, when interpreted by a weight of evidence method which meets our guidance for such modeling. One of the areas which submitted a SIP revision was a special case. We have recently proposed to approve the 1-hour ozone attainment demonstration for the nonattainment area of Washington, D.C. (but not Baltimore). We have nevertheless included this area on the list of 26 that are certain or highly likely to require further reductions to attain and maintain, because its SIP attainment demonstration assumed emission reductions from vehicles meeting the National Low Emissions Vehicle (NLEV) standards.

However, by its own terms, the NLEV standards would not extend beyond the 2003 model year if we did not promulgate Tier 2 vehicle standards at least as stringent as the NLEV standards. See 40 CFR 86.1701–99(c). Thus, the emission reductions relied upon from 2004 and later model year NLEV vehicles are themselves "further reductions" for the purposes of CAA section 202(i).[17] The local modeling indicating attainment with these reductions is therefore strong evidence that further reductions are needed past 2003, beyond those provided by the Tier 1 program. Based on this, and on the fact that our own ozone modeling showed the Washington, DC area to violate the NAAQS in 2007 even with full NLEV emission reductions, we have concluded that it should be included with areas that do require further reductions to attain and maintain the 1-hour ozone NAAQS.

The 1-hour ozone NAAQS presently does not apply in 12 of the 26 areas listed in Table III.B–1, but we have proposed to re-instate it and expect to complete that action shortly. These areas are indicated in the table. Our decision to include these areas on this list is based on the contingency that we will re-instate the 1-hour standard in these areas. However, even if we considered only the 14 areas where the 1-hour standard applies as of the signature date of this notice, we have concluded that our determination would be the same.

TABLE III.B–1.—TWENTY-SIX METROPOLITAN AREAS WHICH ARE CERTAIN OR HIGHLY LIKELY TO REQUIRE ADDITIONAL EMISSION REDUCTIONS IN ORDER TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS

Metropolitan area	1996 Population (millions)
Atlanta, GA MSA	3.5
Barnstable-Yarmouth, MA MSA[a]	0.2
Baton Rouge, LA MSA	0.6
Beaumont-Port Arthur, TX MSA	0.4
Birmingham, AL MSA	0.9
Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA[a]	5.6
Charlotte-Gastonia-Rock Hill, NC–SC MSA[a]	1.3

[15] EPA's modeling presumed that cars and light trucks will continue to meet the emission levels of the National Low Emissions Vehicle (NLEV) program after model year 2003, even though the program will end in model year 2003 or shortly thereafter. Had our modeling not included such levels in its inventory assumptions, trends for ozone concentrations would have shown earlier increases in ozone concentrations.

[16] The date of the predicted violation was 2007 for most areas, 2010 in the case of Los Angeles, CA, and 2030 in the case of Portland-Salem, OR.

[17] With regard to eventual final action on the 1-hour attainment demonstration for Washington, DC, the issue of the continuation of the NLEV standards is mooted by the promulgation of the Tier 2/ Gasoline Sulfur program. A portion of the emission reductions from this program will replace the post-2003 model year NLEV reductions assumed in the SIP.

TABLE III.B–1.—TWENTY-SIX METROPOLITAN AREAS WHICH ARE CERTAIN OR HIGHLY LIKELY TO REQUIRE ADDITIONAL EMISSION REDUCTIONS IN ORDER TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS—Continued

Metropolitan area	1996 Population (millions)
Cincinnati-Hamilton, OH–KY–IN CMSA	1.9
Dallas-Fort Worth, TX CMSA	4.6
Houma, LA MSA [a]	0.2
Houston-Galveston-Brazoria, TX CMSA	4.3
Huntington-Ashland, WV–KY–OH MSA [a]	0.3
Indianapolis, IN MSA [a]	1.5
Los Angeles-Riverside-San Bernardino CA CMSA	15.5
Louisville, KY–IN MSA	1.0
Macon, GA MSA [a]	0.3
Memphis, TN–AR–MS MSA [a]	1.1
Nashville, TN MSA [a]	1.1
New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA	19.9
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA	6.0
Pittsburgh, PA MSA	2.4
Portland-Salem, OR–WA CMSA [a]	2.1
Providence-Fall River-Warwick, RI–MA MSA [a]	1.1
Richmond-Petersburg, VA MSA [a]	0.9
St. Louis, MO–IL MSA	2.5
Washington-Baltimore, DC–MD–VA–WV CMSA	7.2
Total Population	86.3

Notes:
[a] The 1-hour ozone NAAQS does not currently apply, but we have proposed and expect to re-instate it shortly.

There are 12 additional metropolitan areas, with another 25.3 million people in 1996, for which the available ozone modeling suggests significant risk of failing to attain and maintain the 1-hour ozone NAAQS without additional emission reductions. Table III.B–2 lists the areas we put in this second category. Our own ozone modeling predicted these 12 areas to need further reductions to avoid violations in 2007. For six of these areas, recent air quality monitoring data indicate violation, but we have reviewed local ozone modeling and other evidence indicating attainment in 2007.[18] Based on this evidence, we have kept these areas separate from the previous set of 26 areas which we consider certain or highly likely to need additional reductions. However, we still consider there to be a significant risk of failure to attain and maintain in these six areas because this local modeling has inherent uncertainties, as all ozone modeling does. Moreover, the local modeling did not examine the period after initial attainment.

For the other six of the 12 areas, the air quality monitoring data shows current attainment but with less than a 10 percent margin below the NAAQS. This suggests these areas may remain without violations for some time, but we believe there is still a moderate risk of future violation of the NAAQS because meteorological conditions may be more severe in the future.

It is highly likely that at least some of these 12 areas will violate the NAAQS without additional reductions, and it is a distinct possibility that many of them will do so. We consider the situation in these areas to support our determination that, overall, additional reductions are needed for attainment and maintenance. However, we reiterate that our predictions for the 26 areas listed in Table III.B–1, and even our predictions for only the 14 of those 26 for which the 1-hour standard now applies, are a sufficient basis for our determination of an overall need for additional reductions and for our actions today.

TABLE III.B–2.—TWELVE METROPOLITAN AREAS WITH MODERATE TO SIGNIFICANT RISK OF FAILING TO ATTAIN AND MAINTAIN THE 1-HOUR OZONE NAAQS WITHOUT ADDITIONAL EMISSION REDUCTIONS

Metropolitan area	1996 Population (millions)
Benton Harbor, MI MSA [a]	0.2
Biloxi-Gulfport-Pascagoula, MS MSA [a]	0.3
Chicago-Gary-Kenosha, IL–IN–WI CMSA	8.6
Cleveland-Akron, OH CMSA [a]	2.9
Detroit-Ann Arbor-Flint, MI CMSA [a]	5.3
Grand Rapids-Muskegon-Holland, MI MSA [a]	1.0
Hartford, CT MSA	1.1
Milwaukee-Racine, WI CMSA	1.6
New London-Norwich, CT–RI MSA [a]	1.3
New Orleans, LA MSA [a]	0.3
Pensacola, FL MSA [a]	0.4
Tampa, FL MSA [a]	2.2
Total Population	25.3

Notes:
[a] The 1-hour ozone NAAQS does not currently apply, but we have proposed and expect to re-instate it shortly.

e. Issues and Comments Addressed

We received detailed comments from the automobile industry related to ozone modeling and the need for additional emission reductions in order to attain and maintain. These were of three types.

Accuracy of modeling ozone concentrations.—The automobile industry commenters pointed out that in the modeling presented with our proposal, the ozone model and exceedance predicted violations of the NAAQS in 1995 in areas where monitoring data indicated no violations. They cited these cases as examples of model inaccuracy. We have made improvements to our emissions estimates, our episodes, and other aspects of the modeling system. These changes have improved the accuracy of the predicted ozone concentrations. Also, as stated above, our list of 26 areas that support our finding that additional reductions are needed does not include any areas where recent monitoring data shows no violations. The final RIA addresses issues of model accuracy in more depth.

As explained in the final RIA, our very latest estimates of car and light truck emissions without the benefits of our new standards are actually somewhat higher than the estimates used in the final round of ozone modeling, because the most recent data indicate even more serious adverse emissions effects from sulfur in

[18] The SIP revisions for Chicago and Milwaukee demonstrated that these two areas as well as Benton Harbor and Grand Rapids areas in Michigan (which are maintenance areas but have experienced ozone NAAQS violations recently) would not experience NAAQS violations in 2007, with a strategy that relied only on Tier 1 vehicle emission standards. We have also recently proposed to approve the 1-hour attainment demonstration for Greater Connecticut, covering the Hartford and New London areas, which assumed full NLEV emission reductions. However, Connecticut is committed in its SIP to adopt California vehicle standards if NLEV does end with the 2003 model year if a more stringent federal program is not promulgated. The California standards are more stringent than NLEV. The case of one additional area whose attainment demonstration we recently proposed to approve, Western Massachusetts (Springfield), should be explained here to avoid possible confusion. Our own ozone modeling predicted that Springfield would attain the NAAQS in 2007. Massachusetts has adopted the California vehicle emission standards, so there is no issue of the continuation of the NLEV standards.

gasoline. Thus, we think our predictions of ozone nonattainment using emission estimates prepared before this most recent data on sulfur was considered, may be conservative. This topic is discussed in more detail in section III.B.3.

Prediction of attainment/nonattainment.—For most areas, we predicted 2007 or 2030 attainment or nonattainment based on the exceedance method. The exceedance method predicts an area to be in attainment only if there are no predicted exceedances of the NAAQS during any episode day. However, for the areas for which we have received 1-hour attainment demonstrations in SIP revisions, our predictions were based on a larger and more robust set of data. When a state's modeling shows an exceedance that would otherwise indicate nonattainment, we allow the state to submit a variety of other evidence and analysis, such as locality specific meteorological conditions, analysis of air quality and emissions trends, observational based models that make use of data on concentrations of ozone precursors, a rollback analysis, and information on the responsiveness of the air quality model. We then make a weight-of-evidence determination of attainment or nonattainment based on consideration of all this local evidence. We did this in forming the set of 26 areas we consider certain or highly likely to need additional reductions to attain or maintain, in some cases concluding that attainment was demonstrated and in others that it was not.

The auto industry commenters recommended the use of rollback as the single method for making attainment and nonattainment predictions from predicted ozone concentrations. They stated that the rollback method would be more consistent than the exceedance method with the NAAQS's allowance of three exceedances in a three year period. They also believed that the rollback method would compensate for what they considered to be model over predictions of ozone concentrations. We believe that the rollback method is not appropriate for use as the sole, or even a primary, test of 1-hour ozone attainment or nonattainment. A rollback analysis may overlook violations that occur away from ozone monitors, and it may inappropriately project the effect of a recent period of favorable weather into the prediction of future attainment. In determining the attainment and maintenance prospects of numerous areas, as here, it is not possible to assemble and consider the full set of local evidence that should accompany any consideration of a rollback analysis. In such a situation, we believe that the exceedance method is the appropriate choice. A fuller explanation of our reasons for considering the exceedance method more appropriate than rollback is given in our Response to Comments document.

We have not completely excluded the rollback approach from the determinations in this rulemaking. We have considered it for those areas for which we had enough information to allow us to consider it in its proper context, i.e., for those areas covered by recent 1-hour SIP submissions. Of these areas, we concluded that some will not attain without additional reductions and some will.

While we disagree with the use of the rollback method, we have conducted a hypothetical analysis of 2007 attainment in all areas based only on our own ozone modeling, applying the rollback method recommended by the commenters. We calculated in this analysis that 15 metropolitan areas and three other counties with nearly 56 million in population in 1996 would violate the NAAQS in 2007. Moreover, these 15 metro areas are geographically spread out [19]. We believe that this result using the rollback method does not fully capture the likely nonattainment that would exist in 2007 in the absence of additional emission reductions. However, even if we were to consider the use of rollback valid, we consider this set of areas to also be an adequate basis for making the same determinations we have made based on the more appropriate exceedance-based analysis. The details of our hypothetical analysis using the rollback method are given in the final RIA and the technical support document for our ozone modeling analyses.

Ozone modeling and predictions.—Members of the automobile manufacturing industry submitted two modeling studies: (1) a repetition of our first round of modeling of the 37-state eastern U.S. domain but with their recommendations regarding estimates of motor vehicle emissions in 2007 and with the rollback method used to predict 2007 nonattainment, and (2) finer grid modeling for three smaller domains, also with their recommended estimates of emissions and with nonattainment predicted using a rollback method. Both modeling efforts showed less widespread nonattainment than we have determined and described here. Taken together, these studies predicted 2007 violations by the rollback method in or downwind of New York City, Chicago, Milwaukee, western Michigan, Baton-Rouge, and Houston.

The main difference between the automobile industry's ozone modeling and ours is in the emission estimates. We have reviewed the emissions estimates used in the industry studies. We concluded that the industry's emissions estimates employ inappropriate analytical steps in the calculation. Among the problems are that the adjustments for the benefits of inspection and maintenance programs were not consistent with the base estimate of in-use emissions, and the sales trend towards light trucks and SUVs was not properly captured. Also, as stated, we disagree with the use of the rollback approach as the sole test of attainment. As a consequence, we conclude that the industry's ozone modeling is not an appropriate basis for making predictions of future attainment or nonattainment. The final RIA explains in detail how we have addressed these and other emissions modeling issues in a manner which is more technically consistent and correct,[20] and how we have considered the results from rollback analyses but only as part of broad weight-of-evidence determinations for areas for which this was possible at this time. Our point-by-point review is given in our Response to Comments document.

The material on ozone modeling submitted by the commenters, having been prepared by the rollback method, was difficult to re-interpret according to our preferred exceedance method. However, it appears that if this modeling were interpreted by the exceedance method, it would indicate 2007 nonattainment in Baltimore and Washington, D.C. in addition to New York City, Chicago, Milwaukee, western Michigan, Baton-Rouge, and Houston. Overall, we conclude that the material submitted by the automobile industry does not contradict the facts we have used to make our determinations or the actions we are taking today.

f. 8-Hour Ozone

The predictions of ozone concentrations from the ozone modeling

[19] We did not include the Los Angeles-Riverside-San Bernardino area in this analysis, since it was not covered by our 2007 modeling, but we do believe it is rightly part of the basis for a determination on the need for additional reductions.

[20] As explained in the final RIA, our very lastest estimates of car and light truck emissions without the benefits of our new standards are actually somewhat higher than the estimates used in the final round of ozone modeling, because more recent data indicate even more serious adverse emissions effects from sulfur in gasoline. Thus, we think our predictions of ozone nonattainment may be conservative.

can be used to make predictions of attainment or nonattainment with the 8-hour ozone NAAQS. In our draft RIA, we estimated that 28 metropolitan areas and 4 rural counties with a combined population of 80 million people would violate the 8-hour ozone NAAQS in 2007 without additional emission reductions. Commenters noted differences between exact rollback procedure we had used in this projection and the steps specified in recent draft guidance we have issued on 8-hour ozone modeling. We agree with the commenters that the steps specified in our guidance are the correct ones to use. However, since we are not basing our promulgation of the Tier 2/Gasoline Sulfur Program on the 8-hour ozone NAAQS, we have not made any new predictions of 8-hour ozone nonattainment areas in 2007. Based on our findings in previous analyses of this sort, however, we believe that in the absence of the Tier 2/Gasoline Sulfur program there would be 8-hour nonattainment areas that are not also areas which we have concluded are certain or highly likely to violate the 1-hour NAAQS. If we considered it appropriate to proceed with implementation of the 8-hour standard, these areas would support our determination on the need for emission reductions, and the appropriateness and necessity of the vehicle and gasoline standards we are establishing.

3. Cars and Light-duty Trucks Are a Big Part of the NO_X and VOC Emissions, and Today's Action Will Reduce This Contribution Substantially

Emissions of VOCs and NO_X come from a variety of sources, both natural and man-made. Natural sources, including emissions that have been traced to vegetation, account for a substantial portion of total VOC emissions in rural areas. The remainder of this section focuses on the contribution of motor vehicles to emissions from human sources. Man-made VOCs are released as byproducts of incomplete combustion as well as evaporation of solvents and fuels. For gasoline-fueled cars and light trucks, approximately half of the VOC emissions come from the vehicle exhaust and half come from the evaporation of gasoline from the fuel system. NO_X emissions are dominated by man-made sources, most notably high-temperature combustion processes such as those occurring in automobiles and power plants. Emissions from cars and light trucks are currently, and will remain, a major part of nationwide VOC and NO_X emissions. In 1996, cars and light trucks comprised 25 percent of the VOC emissions and 21 percent of the NO_X emissions from human sources in the U.S.[21] The contribution in metropolitan areas was generally larger.

We have made significant improvements in the analysis used to estimate the emission inventory impacts of this action, including improving the emission factor modeling, using more detailed local modeling input, and using a more conservative (lower) estimate of VMT growth. These changes are detailed in the Regulatory Impact Analysis for this rule. The following discussion is based on this improved analysis.

In addition to the improvements which are incorporated in this analysis, we also made further improvements in the emission factor modeling after analyzing comments which we did not have time to incorporate into the detailed inventory analysis described here. The most notable change is related to data which indicates that NO_X and NMOG emissions are even more sensitive to gasoline sulfur than previously thought. This change and others are described in detail in the Response to Comments. Our early analysis of these changes indicates that incorporating them into this analysis would provide further support for this action because these changes result in both increases in the baseline emissions without Tier 2 and in the reductions that would result from Tier 2. For example, in the detailed inventory analysis we report below, we project nationwide Tier 2/Gasoline Sulfur control NO_X reductions from cars and light trucks of 856,471 tons per year in 2007. Using the version of the emission factor model that incorporates these additional changes increases the estimated Tier 2 reductions to approximately 1.0 million tons per year in 2007 (estimated baseline emissions without Tier 2 increase from 3.1 million tons per year in 2007 to approximately 3.7 million tons per year using the version of the emission factor model that incorporates these additional changes). Therefore, the estimates of the inventory reductions given here (and used as the basis for the ozone air quality analysis) are clearly conservative.

Motor vehicle emission controls have led to significant improvements in emissions released to the air (the "emission inventory") and will continue to do so in the near term[22]. In the current analysis, we continue to find that total emissions from the car and light truck fleet would continue to decline for a period, even if we were not establishing the Tier 2/Gasoline Sulfur program. This decline would result from the introduction of cleaner reformulated gasoline in 2000, the introduction of National Low Emission Vehicles (NLEVs) and vehicles complying with the Enhanced Evaporative Test Procedure and Supplemental Federal Test Procedures, and the continuing removal of older, higher-emitting vehicles from the in-use vehicle fleet. On a per mile basis, VOC and NO_X emissions from cars and light trucks combined would have continued to decline well beyond 2015, reflecting the continuing effect of fleet turnover under existing emission control programs. However, projected increases in vehicle miles traveled (VMT) will cause total emissions from these vehicles to increase. With this increase in travel and without additional controls, we project that combined NO_X and VOC emissions for cars and light trucks without the Tier 2/Gasoline Sulfur program would increase starting in 2013 and 2016, respectively, so that by 2030 they would return to levels above or nearly the same as they will be in 2000. In cities experiencing rapid growth, such as Charlotte, North Carolina, the near-term trend towards lower emissions tends to reverse sooner.[23] With additional improvements in the modeling done in Response to Comments, we now estimate that without the Tier 2/Gasoline Sulfur program, there will be a constant increase in these emission over time.

Figure III–1 illustrates this expected trend in car and light truck NO_X emissions in the absence of today's action. The figure also allows the contribution of cars to be distinguished from that of light trucks. The figure clearly shows the impact of steady growth in light truck sales and travel on overall light-duty NO_X emissions; the decrease in overall light-duty emission levels is due solely to reductions in LDV emissions. In 2000, we project that

[21] Emission Trend Report, 1997.

[22] The auto manufacturer and northeastern state commitments to the NLEV program are scheduled to end in 2004 without further EPA action on Tier 2 standards, although continued voluntary compliance by automobile manufacturers and the affected states is a possibility. Our analysis of emission trends and the emission benefits expected from today's action assumes for the base scenario a continuation of the NLEV program past 2004. If the NLEV program does not continue beyond 2004, the reductions resulting from Tier 2 would be larger than what is shown here. It also includes all other control measures assumed to be implemented in local areas, such as reformulated gasoline in all required and opt-in areas and enhanced I/M where required.

[23] Also, if the NLEV program ends in model year 2004 or shortly thereafter, as scheduled, this trend would reverse more quickly in all areas.

trucks will produce about 50 percent of combined car and light truck NO_X emissions. We project that truck emissions would actually increase after 2000, and over the next 30 years, trucks would grow to dominate light-duty NO_X emissions. By 2010, we project trucks would make up two-thirds of light-duty NO_X emissions; by 2020, nearly three-quarters of all light-duty NO_X emissions would be produced by trucks.

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Figure III-1.

Light-Duty NOx Emissions Without Tier 2 (tons per year)

[Estimates exclude California, Alaska, and Hawaii, although reductions will occur in all three states.]

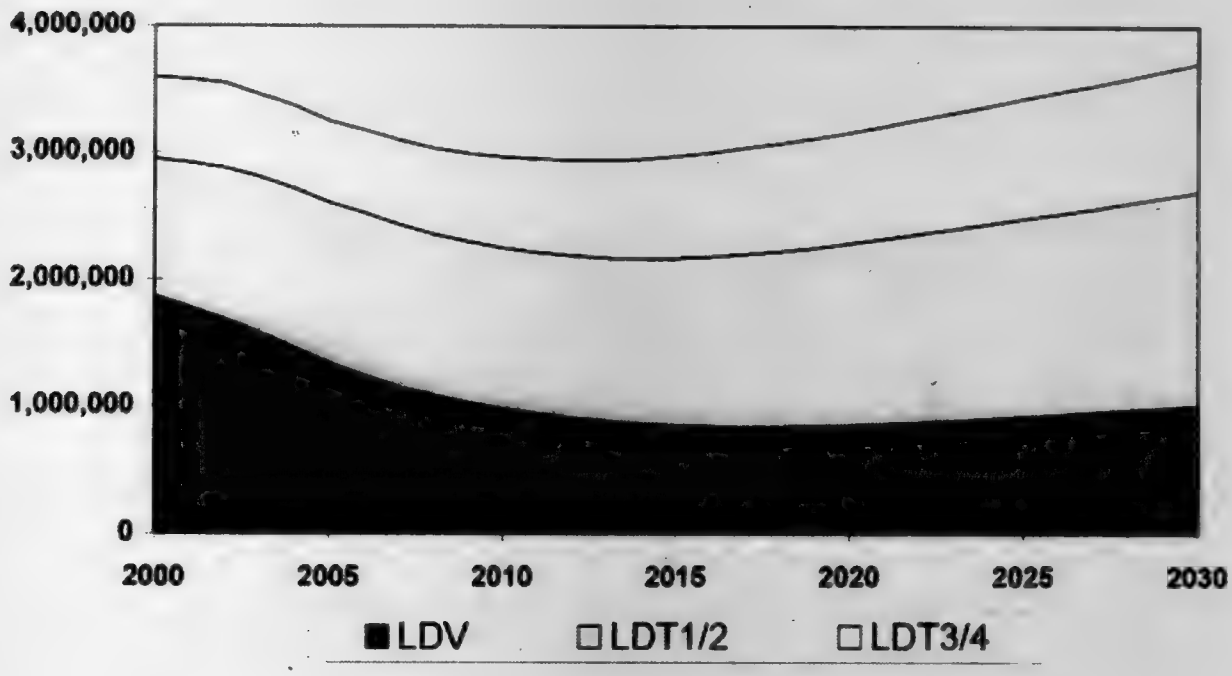

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Today's action will significantly decrease NO_X and VOC emissions from cars and light trucks, and will delay the date by which NO_X and VOC emissions will begin to increase due to continued VMT growth. With Tier 2/Gasoline Sulfur control, light-duty vehicle NO_X and VOC emissions are projected to continue their downward trend past 2020. Table III.B–3 shows the annual tons of NO_X that we project will be reduced by today's action.[24] These projections include the benefits of low sulfur fuel and the introduction of Tier 2 car and light truck standards.

TABLE III.B–3.—NO_X EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/GASOLINE SULFUR CONTROL (TONS PER YEAR) [a]

Year	Light-duty tons— without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2 [c,c]
2007	3,095,698	16	856,471
2010	2,962,093	16	1,235,882
2015	2,968,707	17	1,816,767
2020	3,160,155	17	2,220,210

[24] Today's action for both vehicles and fuels will apply in 49 states and the U.S. territories, excluding only California. There will also be emissions reductions in California from vehicles that relocate or visit from other states. However, much of the emissions inventory analysis for this action was made for a 47-state region which excludes California, Alasks, and Hawaii. The latter two states were not included in the scope of ozone, PM and economic benefits modeling.

TABLE III.B–3.—NO_X EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/GASOLINE SULFUR CONTROL (TONS PER YEAR) [a]—Continued

Year	Light-duty tons— without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2 [b, c]
2030	3,704,747	19	2,795,551

Notes:
[a] Estimates exclude California, Alaska, and Hawaii, although reductions will occur in all three.
[b] Does not include emission reductions from heavy-duty gasoline vehicles.
[c] These numbers represent a conservative estimate of the benefits of the Tier 2/Sulfur program. Based on the updated emission factor model developed in response to comments, the program will result in significantly larger benefits. For example, our new model projects NO_X reductions of 1,100,000 tons in 2007.

The lower sulfur levels in today's action will produce large emission reductions on pre-Tier 2 vehicles as soon as low-sulfur gasoline is introduced, in addition to enabling Tier 2 vehicles to achieve lower emission levels. Among the pre-Tier 2 vehicles, the largest per vehicle emission reductions from lower sulfur in gasoline will be achieved from vehicles which automobile manufacturers will have sold under the voluntary National Low Emission Vehicle program. These vehicles are capable of substantially lower emissions when operated on low sulfur fuel. Older technology vehicles experience a smaller but significant effect.

In 2007, when all gasoline will meet the new sulfur limit and when large numbers of 2004 and newer vehicles meeting these standards will be in use, the combined NO_X emission reduction from vehicles and fuels will be over 850,000 tons per year. After 2007, emissions will be reduced further as the fleet turns over to Tier 2 vehicles operating on low sulfur fuel. By 2020, NO_X emissions will be reduced by 70% from the levels that would occur without today's action. This reduction equals the NO_X emissions from over 164 million pre-Tier 2 cars and light trucks. This reduction represents a 12 percent reduction in NO_X emissions from all manmade sources.

VOC emissions will also be reduced by today's action, with reductions increasing as the fleet turns over. We estimate that the reductions as a percent of emissions from cars and light trucks will be 7 percent in 2007 and grow to 17 percent in 2020.

As discussed earlier, in California, smaller but still substantial reductions in both NO_X and VOC will be achieved because vehicles visiting and relocating to California will be designed to meet these standards. Also, vehicles from California visiting other states will not be exposed to high sulfur fuel. California Air Resources Board staff have estimated that Tier 2/Sulfur will reduce NO_X emissions in the South Coast Air Quality Management District by approximately 4 tons per day in 2007.[25] CARB staff plan to incorporate these reductions in their revised attainment plan for this district, which includes most of the Los Angeles-Long Beach region.

These estimates of emission reductions reflect a mixture of urban, suburban, and rural areas. However, cars and light trucks generally make up a larger fraction of the emission inventory for urban and suburban areas, where human population and personal vehicle travel is more concentrated than emissions from other sources such as heavy-duty highway vehicles, power plants, and industrial boilers. We have estimated emission inventories for three cities using the same methods as were used to project the nationwide inventories, and we present the results for 2007 below in Table III.B–4.

These results confirm that light-duty vehicles make up a greater share of the NO_X emission inventories in urban areas than they do in the nationwide inventory. While these vehicles' share of national NO_X emissions in 2007 is about 16 percent, it is estimated to be about 34 percent in the Atlanta area. There is also a range in VOC contributions, with Atlanta again being the area with the largest car and light truck contribution at 17 percent. In metropolitan areas with high car and light truck contributions, today's action will represent a larger step towards attainment since it will have a larger effect on total emissions.

TABLE III.B–4—Proportion of the Total Urban Area NO_X and VOC Inventory in 2007 Attributable to Light-Duty Vehicles[a]

Region	NO_X (percent)	VOC (percent)
Nationwide	16	13
New York urban area	18	6
Atlanta urban area	34	17
Charlotte urban area	24	15

Notes:
[a] The estimates reflect continuation of NLEV beyond 2004.

Another useful perspective from which to view the magnitude of the emission reductions from today's proposal is in terms of the additional emission reductions from all human sources that areas will need to attain the 1-hour ozone standard. For this analysis, we reviewed our proposals for action on the 1-hour attainment demonstrations submitted by the states. With these proposals, EPA identified estimates of additional emission reductions (measures in addition to those submitted by the state in their plans) necessary for attainment for some

[25] California Air Resources Board, Executive Order G–99–037, May 20, 1999, Attachment A, 6–7, 10. These NO_X reductions represent a small fraction of the emission reductions needed in the South Coast to attain the NAAQS.

of the areas. These estimates of additional emission reductions are documented in the individual **Federal Register** Notices. Using these estimates and the estimates of Tier 2 reductions developed for today's action, we have determined what portion of these additional emission reductions would be accounted for by today's action. These estimates are reported in Table III.B–5, which shows the contribution of Tier 2/Sulfur NO_X reductions to the additional emission reduction necessary for attainment for three metropolitan areas. For example, for the New York nonattainment area, 89% of the additional NO_X emission reductions needed for attainment are provided for with today's action. This leaves 11% of the additional NO_X emission reductions to be addressed by the State through other local sources.

EPA and the States already have significant efforts underway to lower ozone precursor emissions through national regulations and State Implementation Plans. Table III.B–5 shows the contribution of Tier 2 to the substantial State-led efforts to provide attainment with the ozone NAAQS. Since the Tier 2 program has evolved in the past year after much of the States' efforts were completed, many of the States were unable to estimate the benefits of Tier 2 in their areas. EPA's proposal actions on these SIPs for the ozone NAAQS addresses the need for Tier 2 in many areas. More specifically, Tier 2 is being used to help States identify additional measures, in addition to those in their plans, necessary for attainment.

These estimates are subject to change as the states review and comment on our proposed action on the SIPs. These figures show that today's proposal would make a very substantial contribution to these cities' attainment programs, but that there will still be a need for additional reductions from other sources. The emission reductions from today's proposal would clearly not exceed the reductions needed from an air quality perspective for these areas.

TABLE III.B–5.—CONTRIBUTION OF TIER 2/SULFUR NO_X REDUCTIONS TO OZONE ATTAINMENT EFFORTS OF SELECTED NONATTAINMENT AREAS

Nonattainment area (attainment date)	Percent of additional NO_X reductions necessary for attainment	
	From tier 2	Needed after tier 2
Baltimore (2005)	100	0
New York (2007)	89	11
Philadelphia (2005)	87	13

4. Ozone Reductions Expected From This Rule

The large reductions in emissions of ozone precursors from today's standards will be very beneficial to federal and state efforts to lower ozone levels and bring about attainment with the current one-hour ozone standard. The air quality modeling for the final rule shows that improvements in ozone levels are expected to occur throughout the country because of the Tier 2/Gasoline Sulfur program.[26] EPA found that the program significantly lowers model-predicted exceedances of the ozone standard. In 2007 the number of exceedances in CMSA/MSAs is forecasted to decline by nearly one-tenth and in 2030, when full turnover of the vehicle fleet has occurred, the program lowers such exceedances by almost one-third. In these same areas, the total amount of ozone above the NAAQS is forecasted to decline by about 15 percent in 2007 and by more than one-third in 2030. In the vast majority of areas, the air quality modeling predicts that the program will lower peak summer ozone concentrations for both 2007 and 2030. The reduction in daily maximum ozone is nearly 2 ppb on average in 2007 and over 5 ppb on average in 2030. These reductions contribute to EPA's assessment that the program will provide the large set of public health and environmental benefits summarized in Section IV.D of the Preamble. The forecasted impacts of the program on ozone in 2007 and 2030 are further described in the Tier 2 Air Quality Modeling Technical Support Document.

During the public comment period on the proposed rule, EPA received several comments that expressed concern about potential increases in ozone that might occur as a result of this rule. As indicated above, the air quality modeling results indicate an overall reduction in ozone levels in 2007 and 2030 during the various episodes modeled. In addition to ozone reductions, a few areas had predicted ozone increases in portions of the area during parts of the episodes modeled. In most of these cases, we observed a net reduction in ozone levels in these areas due to the program. In the very small number of exceptions to this, the Agency did find benefit from reduction of peak ozone levels. Based upon a careful examination of this issue, including EPA's modeling results as well as consideration of the modeling and analyses submitted by commenters, it is clear that the significant ozone reductions from this rule outweigh the limited ozone increases that may occur. Additional details on this issue are provided in the Response to Comments document and in the Tier 2 Air Quality Modeling Technical Support Document.

Taken together, EPA believes these results indicate that it will be much easier for States to develop State Implementation Plans which will attain and maintain compliance with the one-hour ozone standard. EPA will work with States conducting more detailed local modeling of their specific ozone situation, to ensure that their SIPs will provide attainment. Notably, there are also other upcoming federal measures to lower ozone precursors that will aid these efforts. If the State modeling of local programs shows a need, the Agency will work with states to plan further actions to produce attainment with the NAAQS in order to protect the public's health and the environment. Further details on EPA's modeling results can be found in the Agency's Response to Comments and technical support documents.

C. Particulate Matter

The need to control the contribution of cars and light trucks to ambient concentrations of particulate matter (PM) is the basis for our adoption of the new PM emission standards for vehicles. PM is also a supplemental consideration in our promulgation of

[26] EPA assessment of air quality changes for 2007 and 2030 focused on 37 states in the East because these states cover most of the areas with 1-hour nonattainment problems.

the vehicle emission standards for NO_X and VOC, and for the limits on sulfur in gasoline, because SOx, NO_X, and VOC are PM precursors.

For cars and for light trucks under 3750 pounds loaded vehicle weight, we are establishing new emission standards under the provisions of CAA section 202(i), which ties our action to the need for additional emission reductions in order to attain and maintain the NAAQS. The NAAQS relevant to the PM emission standards is the PM_{10} NAAQS. The PM_{10} NAAQS also provides additional but not essential support to our promulgation of the NO_X and VOC standards, since these standards are fully supportable on the basis of the 1-hour ozone NAAQS.

For the vehicles not subject to CAA 202(i), and for the gasoline sulfur limits, our actions are tied to determinations regarding public health and welfare risks more broadly, under CAA sections 202(a), 202(b), and 211(c). The role of NO_X, VOC, and PM emissions in contributing to atmospheric concentrations of PM_{10} is an important element of the risk that these emissions pose to public health and welfare.

PM also poses risks to public health not fully reflected in the PM_{10} NAAQS. Though EPA has not relied on the adverse health impacts of fine PM to promulgate this rule, it is well established that such impacts exist. A summary of these effects is given in the next section. In addition, based on the available science, EPA's Office of Research and Development has recently submitted to a committee of our Science Advisory Board a draft assessment document which contains a proposed conclusion that diesel exhaust is a likely human cancer hazard and is a potential cause of other nonmalignant respiratory effects. The scientific advisory committee has met to discuss this document, and we are awaiting written review comments from the committee. We expect to submit a further revision of the document to the advisory committee before we make the document final.

1. Background on PM

Particulate matter (PM) represents a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. The NAAQS that regulates PM addresses only PM with a diameter less than or equal to 10 microns, or PM_{10}. The coarse fraction of PM_{10} consists of those particles which have a diameter in the range between 2.5 and 10 microns, and the fine fraction consists of those particles which have a diameter less than or equal to 2.5 microns, or $PM_{2.5}$. These particles and droplets are produced as a direct result of human activity and natural processes, and they are also formed as secondary particles from the atmospheric transformation of emissions of SO_X, NO_X, ammonia, and VOCs.

Natural sources of particles in the coarse fraction of PM_{10} include windblown dust, salt from dried sea spray, fires, biogenic emanation (*e.g.*, pollen from plants, fungal spores), and volcanoes. Fugitive dust and crustal material (geogenic materials) comprise approximately 80% of the coarse fraction of the PM_{10} inventory as estimated by methods in use today.[27] Manmade sources of these coarser particles arise predominantly from combustion of fossil fuel by large and small industrial sources (including power generating plants, manufacturing plants, quarries, and kilns), wind erosion from crop land, roads, and construction, dust from industrial and agricultural grinding and handling operations, metals processing, and burning of firewood and solid waste. Coarse-fraction PM_{10} remains suspended in the atmosphere a relatively short period of time.

Most of the emission sources listed for coarse particles also have a substantial fine particle fraction. Their share of the $PM_{2.5}$ inventory is somewhat smaller, however, because of the role of other sources that give rise primarily to $PM_{2.5}$. The other sources of $PM_{2.5}$ include carbon-based particles emitted directly from gasoline and diesel internal combustion engines, sulfate-based particles formed from SO_X and ammonia, nitrate-based particles formed from NO_X and ammonia, and carbonaceous particles formed through transformation of VOC emissions. $PM_{2.5}$ particles from fugitive dust and crustal sources comprise substantially less than their share of coarse PM emissions, approximately one-half of the directly emitted $PM_{2.5}$ inventory as estimated by methods in use today. The presence and magnitude of crustal $PM_{2.5}$ in the ambient air is much lower even than suggested by this smaller inventory share, due to the additional presence of secondary PM from non-crustal sources and the removal of a large portion of crustal emissions close to their source. This near-source removal results from crustal PM's lack of inherent thermal buoyancy, low release height, and interaction with surrounding vegetation (which acts to filter out some of these particles).

Secondary PM is dominated by sulfate particles in the eastern U.S. and parts of the western U.S., with nitrate particles and carbonaceous particles dominant in some western areas. Mobile sources can reasonably be estimated to contribute to ambient secondary nitrate and sulfate PM in proportion to their contribution to total NO_X and SO_X emissions.

The sources, ambient concentration, and chemical and physical properties of PM_{10} vary greatly with time, region, meteorology, and source category. A first step in developing a plan to attain the PM_{10} NAAQS is to disaggregate ambient PM_{10} into the basic categories of sulfate, nitrate, carbonaceous, and crustal PM, and then determine the major contributors to each category based on knowledge of local and upwind emission sources. Following this approach, SIP strategies to reduce ambient PM concentrations have generally focused on controlling fugitive dust from natural soil and soil disturbed by human activity, paving dirt roads and controlling soil on paved roads, reducing emissions from residential wood combustion, and controlling major stationary sources of PM_{10} where applicable. The control programs to reduce stationary, area, and mobile source emissions of sulfur dioxide, oxides of nitrogen, and volatile organic compounds in order to achieve attainment with the sulfur dioxide and ozone NAAQS also have contributed to reductions in the fine fraction of PM_{10} concentrations. In addition, the EPA standards for PM emissions from highway and nonroad engines are contributing to reducing PM_{10} concentrations. As a result of all these efforts, in the last ten years, there has been a downward trend in PM_{10} concentrations, with a leveling off in the later years.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter in contributing to a series of health effects. The key health effects categories associated with particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), changes in lung function and increased respiratory symptoms, changes to lung tissues and structure, and altered respiratory defense

[27] U.S. EPA (1998) National Air Pollutant Emission Trends Update, 1970–1997. EPA–454/E–98–007. There is evidence from ambient studies that emissions of these materials may be overestimated and/or that once emitted they have less of an influence on monitored PM concentrations (of both PM_{10} and $PM_{2.5}$) than this inventory share would suggest.

mechanisms. PM also causes damage to materials and soiling. It is a major cause of substantial visibility impairment in many parts of the U.S.

Motor vehicle particle emissions and the particles formed by the transformation of motor vehicle gaseous emissions tend to be in the fine particle range. Fine particles are a special health concern because they easily reach the deepest recesses of the lungs. Scientific studies have linked fine particles (alone or in combination with other air pollutants), with a series of significant health problems, including premature death; respiratory related hospital admissions and emergency room visits; aggravated asthma; acute respiratory symptoms, including aggravated coughing and difficult or painful breathing; chronic bronchitis; and decreased lung function that can be experienced as shortness of breath.

These effects are discussed further in EPA's "Staff Paper" and "Air Quality Criteria Document" for particulate matter.[28]

EPA first established primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards for PM_{10} in 1987. The annual and 24-hour primary PM_{10} standards were set at 50 $\mu g/m^3$[33], and 150 $\mu g/m^3$, respectively.[29] In July 1997, the primary standards were revised to add two new $PM_{2.5}$ standards. At the same time, we changed the statistical form of the primary PM_{10} standard and set all the secondary standards to be the same as the primary.

On May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit reviewed EPA's revisions to the ozone and PM NAAQS and found, by a 2–1 vote, that sections 108 and 109 of the Clean Air Act, as interpreted by EPA, represent unconstitutional delegations of Congressional power. *American Trucking Ass'ns, Inc., et al.*, v. *Environmental Protection Agency*, 175 F.3d 1027 (D.C. Cir. 1999). Among other things the Court remanded the record for the 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS to EPA. On October 29, 1999, EPA's petition for rehearing by the three judge panel was denied, with an exception regarding the revised ozone NAAQS. EPA's petition for rehearing en banc by the full Circuit was also denied, although five of the nine judges considering the petition agreed to rehear the case.

The pre-existing PM_{10} NAAQS remains in effect (except for one area—Boise, ID—where prior to the court's decision we had determined it no longer to apply). We believe that given the uncertain status of the new $PM_{2.5}$ NAAQS, it is most appropriate to rely primarily on the pre-existing PM_{10} NAAQS in establishing the Tier 2/Gasoline Sulfur program's vehicle emission standards and limits on sulfur in gasoline. However, because we believe, and the Court did not dispute, that there are very substantial public health risks from $PM_{2.5}$ and substantial health and economic benefits from reducing $PM_{2.5}$ concentrations, we have conducted analyses of the $PM_{2.5}$ changes likely to occur from the Tier 2/Gasoline Sulfur program. These analyses are summarized in the section of this preamble dealing with the economic benefits of the new standards, section IV.D.5, and corresponding sections of the final RIA.

There is additional concern regarding the health effects of PM from diesel vehicles, apart from the health effects which were considered in setting the NAAQS for PM_{10} and $PM_{2.5}$. Diesel PM contains small quantities of chemical species that are known carcinogens, and diesel PM as a whole has been implicated in occupational epidemiology studies. EPA's Office of Research and Development has considered these studies, and has recently submitted to a committee of our Science Advisory Board a draft conclusion that diesel exhaust is a "highly likely" human cancer hazard.[30] Because we are awaiting a formal response from our advisory committee before revising and finalizing our assessment document, we are not relying on the conclusions in this document as formal support for our action today. More information about this aspect of PM air quality is given in section III.F of this preamble.

2. Need for Additional Reductions to Attain and Maintain the PM_{10} NAAQS

The most recent PM_{10} monitoring data indicates that 15 designated PM_{10} nonattainment counties, with a population of almost 9 million in 1996, violated the PM_{10} NAAQS in the period 1996–1998. The areas that are violating do so because of exceedances of the 24-hour PM_{10} NAAQS. No areas had monitored violations of the annual standard in this period. Table III.C–1 lists the 15 counties. The table also indicates the classification for each area and the status of our review of the State Implementation Plan.

TABLE III.C–1.—FIFTEEN PM_{10} NONATTAINMENT AREAS VIOLATING THE PM_{10} NAAQS IN 1996–1998[a]

Area	Classification	SIP approved?	1996 Population (millions)
Clark Co., NV	Serious	No	0.93
El Paso, TX	Moderate	Yes	0.67
Gila, AZ	Moderate	No	0.05
Imperial Co., CA	Moderate	No	0.14
Inyo Co., CA	Moderate	No	0.02
Kern Co., CA	Serious	No	0.62
Mono Co., CA	Moderate	No	0.01
Kings Co., CA	Serious	No	0.11
Maricopa Co., AZ	Serious	No	2.61
Power Co., ID	Moderate	No	0.01
Riverside Co., CA	Serious	No	1.41
San Bernardino Co., CA	Serious	No	1.59
Santa Cruz Co., AZ	Moderate	No	0.04
Tulare Co., CA	Serious	No	0.35

[28] U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF. Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452 R–96–013, July 1996.

[29] The annual average PM10 NAAQS is based on a three-year average, and the 24-hour NAAQS is based on expected exceedances over a three-year period.

[30] Health Assessment Document for Diesel Emissions. SAB Review Draft EPA/600/8–90/057D. November 1999. The document is available electronically at http://www.epa.gov/ncea/diesel.htm.

TABLE III.C–1.—FIFTEEN PM_{10} NONATTAINMENT AREAS VIOLATING THE PM_{10} NAAQS IN 1996–1998 [a]—Continued

Area	Classification	SIP approved?	1996 Population (millions)
Walla Walla Co., WA	Moderate	Yes	0.05
Total Population			8.61

[a] Although we do not believe that we are limited to considering only designated nonattainment areas in implementing CAA section 202(i), we have focused on the designated areas in the case of PM_{10}. An official designation of PM_{10} nonattainment indicates the existence of a confirmed PM_{10} problem that is more than a result of a one-time monitoring upset or a results of PM_{10} exceedances attributable to natural events. In addition to these designated nonattainment areas, there are 15 unclassified counties in 12 geographically spread out states, with a 1996 population of over 4 million, for which the state has reported PM_{10} monitoring data for this period indicating a PM_{10} NAAQS violation. We have not yet excluded the possibility that a one-time monitoring upset or a natural event(s) is responsible for the monitored violations in 1996–1998 in the 15 unclassified counties. We adopted a policy in 1996 that allows areas whose PM_{10} exceedances are attributable to natural events to remain unclassified if the state is taking all reasonable measures to safeguard public health regardless of the source of PM_{10} emissions. Areas that remain unclassified areas are not required to submit attainment plans, but we work with each of these areas to understand the nature of the PM_{10} problem and to determine what best can be done to reduce it. The Tier 2/Gasoline Sulfur program will reduce PM_{10} concentrations in these 15 unclassified counties, because all have car and light truck travel that contributes to PM_{10} and precursor emissions loadings. This reduction will assist these areas in reducing their PM_{10} nonattainment problem, if a problem is confirmed upon closer examination of each local situation. Boise, ID, had also been classified as a PM_{10} nonattainment area at one time and was monitored to have a PM_{10} NAAQS violation in 1996–1998. However, the pre-existing PM_{10} NAAQS does not presently apply in Boise, ID, because in the period between our revision of the old PM_{10} NAAQS and the Court's decision to vacate the revised PM_{10} NAAQS, we determined that Boise was in attainment with the old PM_{10} NAAQS and that it therefore no longer applied in that area.

Because the types and sources of PM_{10} are complex and vary from area to area, the best projections of future PM_{10} concentrations are the local emission inventory and air quality modeling analyses that states have developed or are still in the process of developing for their PM_{10} attainment plans. We do employ a modeling approach, known as the source-receptor matrix approach, for relating emission reductions to PM_{10} reductions on a national scale. This approach is one of our established air quality models for purposes of quantifying the health and welfare related economic benefits of PM reductions from major regulatory actions. One application of this modeling approach was for the Regulatory Impact Analysis for the establishment of the new PM NAAQS [31]. This model is also the basis for the estimates of PM_{10} (and $PM_{2.5}$) concentrations reductions we have used to estimate the economic benefits of the Tier 2/Gasoline Sulfur program in 2030. Its use for this purpose is described in the final RIA. In both applications, we modeled an emissions scenario corresponding to controls currently in place or committed to by states. As such, this scenario is an appropriate baseline for determining if further reductions in emissions are needed in order to attain and maintain the PM_{10} NAAQS.

In the RIA for the establishment of the PM NAAQS, we projected that in 2010 there will be 45 counties not in attainment with the original PM^{10} NAAQS . We cited these modeling results in our proposal for the Tier 2/ Gasoline Sulfur program and in our first supplemental notice. After reviewing public comments on our presentation of these modeling results, we have concluded that while the source-receptor matrix approach is a suitable model for estimating PM concentration reductions for economic benefits estimation, it is not a tool we can use with high confidence for predicting that individual areas that are now in attainment will become nonattainment in the future. However, we believe the source-receptor matrix approach is appropriate for, and is a suitable tool for, determining that a current designated nonattainment area has a high risk of remaining in PM_{10} nonattainment at a future date. Therefore, we have cross-matched the results for 2030 from our final RIA for Tier 2 and the list of current PM_{10} nonattainment areas with monitored violations in 1996 to 1998 shown in Table III.C–1.[32] Based on this, we conclude that the 8 areas shown in Table III.C–2 have a high risk of failing to attain and maintain without further emission reductions. These areas have a population of nearly 8 million. Included in the group are the counties that are part of the Los Angeles, Phoenix, and Las Vegas metropolitan areas, where traffic from cars and light trucks is substantial. California areas will benefit from the Tier 2/Gasoline Sulfur program because of travel within California by vehicles originally sold outside the state, and by reduced poisoning of catalysts from fuel purchased outside of California.

TABLE III.C–2.—EIGHT AREAS WITH A HIGH RISK OF FAILING TO ATTAIN AND MAINTAIN THE PM_{10} NAAQS WITHOUT FURTHER REDUCTIONS IN EMISSIONS

Area	1996 population (millions)
Clark Co., NV	0.93
Imperial Co., CA	0.14
Kern Co., CA	0.62
Kings Co., CA	0.11
Maricopa Co., AZ	2.61
Riverside Co., CA	1.41
San Bernardino Co., CA	1.59
Tulare Co., CA	0.35
Total population	7.76

Table III.C–2 is limited to designated PM_{10} nonattainment areas which both had monitored violations of the PM_{10} NAAQs in 1996–1998 and are predicted to be in nonattainment in 2030 in our PM_{10} air quality modeling. This gives us high confidence that these areas require further emission reductions to attain and maintain, but does not fully

[31] Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., July 16, 1997.

[32] We used the more recent modeling for 2030 rather than the earlier modeling for 2010, because the modeling the 2030 incorporates more recent estimates of emissions inventories. Our emission estimates in our final RIA indicate that PM_{10} emissions under the basline scenario increase steadily between 1996 and 2030, for 47 states combined and for four specific cities, suggesting that areas in nonattainment in both 1996–1998 and 2030 will be in nonatainment in the intermediate years as well assuming no further emission reductions. A factor tending to make Table III.C–2 shorter is that we have not relied on the source-receptor matrix model's prediction of 24-hour nonattainment, as those predictions on an individual areas basis are less reliable than the predictions of annual average nonattainment.

consider the possibility that there are other areas which are now meeting the PM_{10} NAAQS which have at least a significant probability of requiring further reductions to continue to maintain it. Our air quality modeling predicted 2030 violations of the annual average PM_{10} NAAQS in five additional counties that in either 1997 or 1998 had single-year annual average monitored PM_{10} levels of at least 90 percent of the NAAQS, but did not exceed the formal definition of the NAAQS over the three-year period ending in 1998 [33]. These areas are shown in Table III.C–3. They have a combined population of almost 17 million, and a broad geographic spread. Unlike the situation for ozone, for which precursor emissions are generally declining over the next 10 years or so before beginning to increase, we estimate that emissions of PM_{10} will rise steadily unless new controls are implemented. The small margin of attainment which these areas currently enjoy will likely erode; the PM air quality modeling suggests that it will be reversed. We therefore consider these areas to each individually have a significant risk of failing to maintain the NAAQS without further emission reductions. There is a substantial risk that at least some of them would fail to maintain without further emission reductions. The emission reductions from the Tier 2/Gasoline Sulfur program will help to keep them in attainment.

TABLE III.C–3.—FIVE AREAS WITH A SIGNIFICANT RISK OF FAILING TO ATTAIN AND MAINTAIN THE PM_{10} NAAQS WITHOUT FURTHER REDUCTIONS IN EMISSIONS

Area	1996 population (millions)
New York Co., NY	1.33
Cuyahoga Co., OH	1.39
Harris, Co., TX	3.10
San Diego Co., CA	2.67
Los Angeles Co., CA	8.11
Total population	16.6

Taken together and considering their number, size, and geographic distribution, these 13 areas are sufficient to establish the case that additional reductions are needed in order to attain and maintain the PM_{10} NAAQS. This determination provides additional support for the NOx and VOC standards and for the limits on gasoline sulfur, which are also fully supported on ozone attainment and health effects considerations. The sulfate particulate, sulfur dioxide, NO_X, and VOC emission reductions from the Tier 2/Gasoline Sulfur program will help the 8 areas in Table III.C–2 and the 5 areas in Table III.C.–3 to attain and maintain the PM_{10} NAAQS. The new PM standards for gasoline and diesel vehicles are also supported by this PM_{10} determination.

We are also establishing the new PM emissions standard today to avoid the possibility that PM_{10} concentrations in these and other areas do get even worse due to an increase in sales of diesel vehicles, which could create a need for further reductions which would be larger and would affect more areas of the country. At the present time, virtually all cars and light trucks being sold are gasoline fueled. The ambient PM_{10} air quality data for 1996 to 1998 reflects that current situation, and this data was an important factor in what areas are listed in Tables III.C–2 and III.C–3. Also, the predictions of future PM_{10} air quality, used to develop the Tables III.C–2 and III.C–3 lists of areas with high or significant risk of being unable to attain and maintain, are based on an assumption that this will continue to be true. However, we are concerned over the possibility that diesels will become more prevalent in the car and light-duty truck fleet, since automotive companies have announced their desire to increase their sales of diesel cars and light trucks. Because current diesel vehicles emit higher levels of PM_{10} than gasoline vehicles, a larger number of diesel vehicles could dramatically increase levels of exhaust PM_{10}, especially if more stringent PM emissions standards are not in place. The new PM emissions standards will ensure that an increase in the sales of diesel cars and light trucks will not increase PM emissions from cars and light trucks so substantially as to endanger PM_{10} attainment and maintenance on a more widespread basis. Given this potential, it is appropriate to establish the new PM emissions standards now on the basis of the increase in sales of diesel vehicles being a reasonable possibility without such standards. Establishing the new PM emissions standards now avoids the public health impact and industry disruption that could result if we waited until an increase in sales of diesels with high PM emissions had already occurred.

In order to assess the potential impact of increased diesel sales penetration on PM emissions, we analyzed the increase in PM_{10} emissions from cars and trucks under a scenario in which the use of diesel engines in cars and light trucks increases. We used projections developed by A.D. Little, Inc. as part of a study conducted for the American Petroleum Institute. The "Most Likely" case projected by A.D. Little forecasts that diesel engines" share of the light truck market will grow to 24 percent by the 2015 model year. Diesel engines' share of the car market would grow somewhat more slowly, reaching 9 percent by 2015. The A.D. Little forecasts did not address the period after 2015; we have assumed that diesel sales stabilize at the level reached in 2015, with the fraction of in-use vehicles with diesel engines continuing to increase through turnover. We believe these projections are more realistic than the scenario of even higher sales of diesels described in the notice for the proposed Tier 2/Gasoline Sulfur program, though the A.D. Little forecasts still show much higher percentages of diesel vehicles in the light-duty fleet than have ever existed historically in the U.S.

The A.D. Little scenario of increased diesels, and even more so the scenario described in our proposal, would result in dramatic increases in direct PM_{10} emissions from cars and light trucks, if there were no change in these vehicles' PM standards. The increase in diesel exhaust PM_{10} emissions would more than overcome the reduction in direct PM_{10} attributable to the sulfur reduction in gasoline. With no change in the existing PM standards for cars and light trucks, our analysis of this scenario shows that direct PM_{10} emissions in 2020 would be approximately 98,000 tons per year, which is nearly two times the 50,000 tons projected if diesel sales do not increase. The portion of ambient PM_{10} concentrations attributable to cars and light trucks would climb steadily. The final RIA presents alternative estimates of the amount by which future PM_{10} concentrations could increase due to such an emissions increase, based on extrapolations from several studies' estimates of the contribution that heavy-duty diesel vehicles have made to recent or PM_{10} concentrations. The increase is estimated to range from 0.6 to 20 μg/m3.

The added PM_{10} emissions from cars and trucks due to an increase in diesel sales without action to reduce PM_{10} from new diesel vehicles would exacerbate the PM_{10} nonattainment problems of the areas listed in Tables

[33] In fact, in two of these areas, New York Co., NY and Harris Co., TX, the average PM_{10} level in 1998 was above the 50 $\mu g/m^3$ value of the NAAQS. These two areas are not included in the Table III.C–2 list of areas with a high risk of failing to attain and maintain because lower PM_{10} levels in 1996 and 1997 caused their three-year average PM_{10} level to be lower than the NAAQS. Official nonattainment determinations for the annual PM_{10} NAAQS are made based on the average of 12 quarterly PM_{10} averages.

III.C–2 and III.C–3, for which our air quality modeling predicted future nonattainment even without an increase in diesel sales. Moreover, it might cause PM_{10} nonattainment in additional areas. In addition to the counties already listed in Tables III.C–2 and III.C–3, there are other areas for which 1997 and 1998 data indicate that maintenance of the PM_{10} NAAQS is at risk if diesel sales of cars and light truck increase. Table III.C–4 lists additional counties for which either 1997 or 1998 monitoring data, or both, indicated a second-high PM_{10} concentration for the single year within 10 percent of the PM_{10} 24-hour NAAQS or an annual average PM_{10} concentration within 10 percent of the annual average PM_{10} NAAQS. Only counties which are part of metropolitan statistical areas are listed in Table III.C–4, in order to focus on those in which traffic densities are high. Considering both the annual and 24-hour NAAQS, there were 13 areas within 10 percent of the standard. Increases in PM_{10} emissions from more diesel vehicles would put these areas in greater risk of violating the PM_{10} NAAQS, especially if growth in other sources is high or meteorological conditions are more adverse than in the 1996 to 1998 period.

TABLE III.C–4.—THIRTEEN METROPOLITAN STATISTICAL AREA COUNTIES WITH 1997 AND/OR 1998 AMBIENT PM_{10} CONCENTRATIONS WITHIN 10 PERCENT OF THE ANNUAL OR 24-HOUR THE PM_{10} NAAQS [a]

	1996 population (millions)
Areas within 10 percent of the annual PM_{10} NAAQS:	
Lexington Co., SC	0.20
Union Co., TN	0.02
Washoe Co., NV	0.30
Madison Co., IL	0.26
Dona Ana Co., NM	0.16
El Paso Co., TX	0.68
Ellis Co., TX	0.97
Fresno Co., CA	0.74
Philadelphia Co., PA	1.47
Areas within 10 percent of the 24-hour PM_{10} NAAQS:	
Lexington Co., SC	0.20
El Paso Co., TX	0.68
Union Co., TN	0.02
Mobile Co., AL	0.40
Dona Ana Co., NM	0.16
Lake Co., IN	0.48
Philadelphia Co., PA	1.47
Pennington Co., SD	0.09
Ventura Co., CA	0.71
Total Population of all 13 areas	6.48

Notes:

[a] These areas are listed based on their second high 24-hour concentration and annual average concentration in 1997, 1998, or both. Official nonattainment determinations are made based on three years of data, and on estimates of expected exceedances of the 24-hour standard.

Fortunately, the standards included in today's actions will result in a steady decrease in total direct PM_{10} from cars and light trucks even if this increase in the use of diesel engines in these vehicles were to occur. If the A.D. Little "Most Likely" scenario for increased diesel engines in light trucks were to occur, today's actions would reduce diesel PM_{10} from cars and light trucks by over 75 percent in 2020. Stated differently, by 2030 today's actions would reduce 98,000 tons of the potential increase in PM_{10} emissions from passenger cars and light trucks. The result would be less direct PM_{10} than is emitted today, because the increase in diesel PM_{10} would be more than offset by the reduction in PM_{10} emissions from gasoline vehicles resulting from lower gasoline sulfur levels.

We are establishing tighter PM standards for cars and light trucks to help avoid the adverse impact of greater diesel PM emissions on PM_{10} attainment and public health and welfare if diesel sales increased in the future without the protection of the tighter standards. Because diesel vehicles will essentially be performing the same functions as the gasoline vehicles they will replace, it is appropriate for the new PM standards to also apply equally to gasoline and diesel vehicles. We expect that gasoline vehicles will need little or no redesign to meet the new PM standards when free of defects and properly operating. However, the new vehicle and gasoline sulfur standards may achieve some reduction in real world PM emissions from gasoline vehicles by encouraging more durable designs and by ensuring that these vehicles are operated on lower-sulfur fuel. The new standards for PM will also prevent any changes in gasoline engine design which would increase PM emissions. These changes would otherwise be possible because the current PM standard is so much higher than the current performance on the gasoline vehicles.

3. $PM_{2.5}$ Discussion

We are not basing our promulgation of the Tier 2 vehicle standards on a finding on the need for additional emission reductions in order to attain and maintain the NAAQS for $PM_{2.5}$. We are providing this information to explain that this program will result in substantial benefit in reduction of $PM_{2.5}$ concentrations, to an even broader set of geographic areas than will benefit in terms of PM_{10} attainment.

The annual and 24-hour $PM_{2.5}$ NAAQS set in 1997 are numerically much lower than the corresponding PM_{10} standards: 15 versus 50 $\mu g/m^3$ for the annual average standards and 65 versus 150 $\mu g/m^3$ for the 24-hour average standards. While geographically broad $PM_{2.5}$ monitoring is just now reaching the end of the first of three years of operation needed to determine compliance, our best analysis from the more limited $PM_{2.5}$ conducted in some areas indicates that many areas that are in compliance with the PM_{10} standards will be found to be in violation of the annual average $PM_{2.5}$ standard. Violations of the 24-hour $PM_{2.5}$ standard appear to be infrequent.

Therefore, if we considered it appropriate to proceed with implementing the $PM_{2.5}$ NAAQS, we are confident that there would be a larger set of areas for which we would determine that further reductions in emissions are needed in order to attain and maintain the NAAQS.

Moreover, gasoline and diesel cars and light trucks have a more important contributing role for ambient $PM_{2.5}$ concentrations, and other emission sources that play a major role in ambient PM_{10} concentrations will be relatively less important. Cars and light trucks contribute essentially the same absolute amount to ambient concentrations of PM_{10} and of $PM_{2.5}$. However, most other sources contribute much more to PM_{10} than to $PM_{2.5}$, so the relative contribution from cars and light trucks is larger. In addition, the absolute contribution from cars and light trucks is larger in relationship to the numerically lower $PM_{2.5}$ standard, making them more important to attainment and maintenance. This is also true for the potential contribution that more diesel cars and light trucks would make to ambient $PM_{2.5}$ concentrations.

4. Emission Reductions and Ambient PM Reductions

The NO_X and VOC emission reductions from the Tier 2/Gasoline Sulfur program are presented in the ozone section above. The SO_X and PM reductions are presented in our final RIA, and are essentially unchanged from those presented in our proposal, except for the revision of the diesel sales scenario discussed above.

Because virtually all of the PM reduction from the Tier 2/Gasoline

Sulfur program is in the fine fraction of PM_{10}, our estimates of the $PM_{2.5}$ and PM_{10} reductions are essentially the same. Estimates of the ambient PM reductions in 2030 in different parts of the nation, after full phase in of the vehicle standards, are presented in the final RIA. The reductions in ambient PM are largest in the parts of the country with more vehicle travel, i.e, larger in the east than in the west and larger in urban areas than in rural areas. In the eastern half of the nation, the reductions in annual average PM concentrations range from 0.2 to over 1.2 micrograms per cubic meter.

D. Other Criteria Pollutants: Carbon. Monoxide, Nitrogen Dioxide, Sulfur Dioxide

The standards being promulgated today will help reduce levels of three other pollutants for which NAAQSs have been established: carbon monoxide (CO), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). As of 1998, every area in the United States has been designated to be in attainment with the NO_2 NAAQS. As of 1997, one area (Buchanan County, Missouri) did not meet the primary SO_2 short-term standard, due to emissions from the local power plant. There are currently 20 designated CO nonattainment areas, with a combined population of 33 million. There are also 24 designated maintenance areas with a combined population of 22 million. However, the broad trends indicate that ambient levels of CO are declining. In 1997, 6 of 537 monitoring sites reported ambient CO levels in excess of the CO NAAQS.

The reductions in SO_2 precursor emissions from today's actions are essentially equal to the SO_X reductions described in Section III.B. and III.C., respectively. The impact of today's actions on NO_2 emissions depends on the specific emission control technologies used to meet the Tier 2 vehicle emission standards. However, essentially all of the NO_X emitted by cars and light trucks converts to NO_2 in the atmosphere; therefore, it is reasonable to assume that today's actions will substantially reduce ambient NO_2 levels by the same proportion. Today's rule also will require light trucks to meet more stringent CO standards. These more stringent standards will help extend the trend towards lower CO emissions from motor vehicles and thereby help the remaining CO nonattainment areas reach attainment while helping other areas remain in attainment with the CO NAAQS. Our analysis of CO reductions from today's program is found in Chapter III of the RIA. The analysis of economic benefits and costs found in Section IV.D.–5. does not account for the economic benefits of the CO reductions expected to result from today's proposal.

E. Visibility

Visibility impairment occurs as a result of the scattering and absorption of light by particles and gases in the atmosphere. It is most simply described as the haze that obscures the clarity, color, texture, and form of what we see. The principal cause of visibility reduction is fine particles between 0.1 and 1 μm in size. Of the pollutant gases, only NO_2 absorbs significant amounts of light; it is partly responsible for the brownish cast of polluted skies. While the contribution of NO_2 to visibility impairment varies from area to area, it is generally responsible for less than ten percent of visibility reduction.

The CAA requires EPA to protect visibility, or visual air quality, through a number of programs. These programs include the national visibility program under Sections 169a and 169b of the Act, the Prevention of Significant Deterioration program for the review of potential impacts from new and modified sources, and the secondary NAAQS for PM_{10} and $PM_{2.5}$. The national visibility program established in 1980 requires the protection of visibility in 156 mandatory federal Class I areas across the country (primarily national parks and wilderness areas). More than 65 million visitors travel each year to these parks and wilderness areas. The CAA established as a national visibility goal, "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory federal Class I areas in which impairment results from manmade air pollution." The Act also calls for state programs to make "reasonable progress" toward the national goal. In addition, a recent national opinion poll on the state of the national parks found that more than 80 percent of Americans believe air pollution affecting these parks should be cleaned up for the benefit of future generations.[34]

There has been improvement in visibility in the western part of the country over the last ten years. However, visibility impairment remains a serious problem in Class I areas. Visibility in the East does not seem to have improved. As one part of addressing this national problem, EPA has required states to adopt and implement effective plans for protecting and improving visibility in Class I federal areas (64 FR 35714, July 1, 1999).

Today's actions will result in visibility improvements due to the reduction in local and upwind PM and PM precursor emissions. Since mobile source emissions contribute to the formation of visibility-reducing PM, control programs that reduce the mobile source emissions of direct and secondary PM would have the effect of improving visibility. The Grand Canyon Visibility Transport Commission's final recommendations report[35] found that reducing total mobile source emissions is an essential part of any program to protect visibility in the Western U.S. The Commission found that motor vehicle exhaust is responsible for about 14 percent of human-caused visibility reduction (excluding road dust). A substantial portion of motor vehicle exhaust comes from cars and light trucks. In light of that impact, the Commission's recommendations in 1996 supported federal Tier 2/Gasoline Sulfur standards, as EPA is proposing today. More recently, a number of Western Governors noted the importance of controlling mobile sources as part of efforts to improve visibility in their comments on the Regional Haze Rule and on the need to protect the 16 Class I areas on the Colorado Plateau. In their joint letter dated June 29, 1998, they stated that, "* * * the federal government must do its part in regulating emissions from mobile sources that contribute to regional haze in these areas. * * *" and called on EPA to make a "binding commitment * * * to fully consider the Commission's recommendations related to the * * * federal national mobile source emission control strategies." These recommendations included Tier 2 vehicle standards and reductions in gasoline sulfur levels.

The recent Northern Front Range Air Quality Study provides another indication of how important car and light truck emissions can be to fine PM and visibility. This study reported findings that indicate that cars and light trucks are responsible for 39 percent of fine PM at a site within the metropolitan Denver area, and for 40 percent at a downwind rural site. This contribution includes both direct PM and indirect PM formed from sulfur dioxide and NO_X from these vehicles.

[34] "National Parks and the American Public: A National Public Opinion Survey on the National Park System," Summary Report, National Parks and Conservation Association, June 1998.

[35] "Recommendations for Improving Western Vistas," Report of the Grand Canyon Visibility Transport Commission to the United States Environmental Protection Agency, June 10, 1996.

The analysis of economic benefits and costs found in Section IV.D.5. accounts for the economic benefits of the visibility improvements expected to result from today's actions.

F. Air Toxics

Section 202(a) provides that EPA may promulgate standards regulating any air pollutants that in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 202(l) provides specific provisions for regulation of hazardous air pollutants from motor vehicles and fuels, and states that at a minimum such regulations should apply to emissions of benzene and formaldehyde.

Emissions from cars and light trucks include a number of air pollutants that are known or suspected human or animal carcinogens or that are known or suspected to have other, non-cancer health impacts. These pollutants include benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate matter. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are present in exhaust emissions; benzene is also found in evaporative emissions from gasoline-fueled vehicles.

The health effects of diesel particulate matter are of particular relevance to today's actions, because of the possibility for increased diesel-powered truck sales and the more stringent PM standard that will apply to these trucks as a result of today's actions. While we have not finalized our decision about the carcinogenicity of diesel exhaust, we are in the process of addressing this question. The Agency's recently released draft assessment [36] concludes that diesel exhaust is a highly likely human lung cancer hazard, but that the data are currently unsuitable to make a confident quantitative statement of risk. The draft report concludes, however, that this risk is applicable to ambient exposures and that the risk may be in the range of regulatory interest (greater than one in a million over a lifetime). Several other agencies and governing bodies have designated diesel exhaust or diesel PM as a "potential" or "probable" human carcinogen.[37] The California Air Resources Board (ARB), for example, found that diesel particulate matter constituted a toxic air contaminant and estimated a potency range of 1.3×10^{-4} to 2.4×10^{-3} per $\mu g/m^3$.[38] The ARB's findings suggest that 130 to 2400 persons in one million exposed to 1 $\mu g/m^3$ of diesel exhaust particulate continuously for their lifetime (70 years) would develop cancer as a result of their exposure.

Because our assessment for diesel exhaust is not complete, we are not presenting absolute estimates of how potential cancer risks from diesel particulate matter could be affected by today's rule. However, we can offer a qualitative or relative discussion of these risks. Diesel engines used in nonroad equipment and heavy-duty highway vehicles currently constitute a far larger source of diesel PM than cars and light-duty trucks, since diesel engines are used in a very small portion of the cars and light-duty trucks in service today. However, engine and vehicle manufacturers have projected that diesel engines are likely to be used in an increasing share of cars and light trucks, and some manufacturers have announced capital investments to build such engines.

If these projections are valid, then the proportion of cars and light trucks powered by diesel engines, and the associated potential health risks from diesel PM, could increase substantially. We modeled the most likely level of increase in light duty diesel engine sales developed for the American Petroleum Institute.[39] We found that the greater diesel engine usage in cars and light trucks resulted in an 80 percent increase in emissions from all diesel-powered highway vehicles by 2020—emissions that have been implicated in potential cancer risks—assuming no change in the current light-duty diesel PM standards.

Today's rule would limit the increase in the potential cancer risks from cars and light trucks associated with any potential increase in light-duty diesel engines. Using the same sales projections discussed above, we have estimated that today's rule would limit the increase in total highway diesel PM emissions in 2020 due to growth in light duty diesels to under 10 percent, in contrast to the 80 percent increase projected to occur without the Tier 2 PM standards. An analogous analysis that accounted for exposure patterns, but that assumed even more widespread use of diesels in the car and light truck fleet, found that today's rule would limit the increase in total highway diesel PM exposure to about 8 percent. This analysis is discussed more fully in Chapter III.F.2 of the Regulatory Impact Analysis. In addition, the VOC emission reductions resulting from today's rule would reduce the potential cancer risk posed by air pollutants other than diesel PM emitted by cars and light trucks, since many of these pollutants are themselves VOCs. Furthermore, the rule would align the formaldehyde standards for all Tier 2 LDVs and LDTs with the formaldehyde standards for LDVs and LDT1s from the NLEV program, thereby helping to harmonize the Federal and California formaldehyde standards.

The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of the reduction in cancer risk from air toxics that could result from today's rule. Although we have completed a peer reviewed assessment of the impact of today's rule on exposure to toxic emissions, we have not engaged in a peer-reviewed assessment of the baseline air toxics risks (including a final quantitative risk assessment of the diesel particulate risks) or of the reductions that would be achieved by today's rule.

We plan to complete our analysis of air toxics risks as part of our responsibilities under section 202(l)(2) of the Clean Air Act, which requires EPA to establish regulations for the control of hazardous air pollutants from motor vehicles. The regulations may address vehicle emissions or fuel properties that influence emissions, or both. We plan to issue a proposal to address this requirement in April 2000, and a final rule in December 2000.

[36] EPA's diesel health assessment (Health Assessment Document for Diesel Emissions, SAB Review Draft, U.S. Environmental Protection Agency, Washington, DC. EPA/600/8–90/057D, November 1999) can be found at the following EPA website: *http://www.epa.gov/ncea/diesel.htm.*

[37] National Institute for Occupational Safety and Health (1988) Carcinogenic effects of exposure to diesel exhaust. NIOSH Current Intelligence Bulletin 50. DHHS (NIOSH) Publication No. 88–116. Centers for Disease Control, Atlanta, GA.

International Agency for Research on Cancer (1989) Diesel and gasoline engine exhausts and some nitroarenes, Vol. 46. Monographs on the evaluation of carcinogenic risks to humans. World Health Organization, International Agency for Research on Cancer, Lyon, France.

World Health Organization (1996) Diesel fuel and exhaust emissions: International program on chemical safety. World Health Organization, Geneva, Switzerland.

California Environmental Protection Agency, Office of Environmental Health Hazard Assessment: Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part B Health Risk Assessment for Diesel Exhaust. April 22, 1998.

[38] California Environmental Protection Agency, Office of Environmental Health Hazard Assessment: Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part B Health Risk Assessment for Diesel Exhaust. April 22, 1998.

[39] "U.S. Light-Duty Dieselization Scenarios—Preliminary Study", report to the American Petroleum Institute, July 2, 1999. Prepared by Arthur D. Little, Inc.

G. Acid Deposition [40]

Acid deposition, or acid rain as it is commonly known, occurs when SO_2 and NO_X react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles. It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $61 million per year if applied to all new cars and trucks sold in the U.S. The general economic and environmental effects of acid rain are discussed at length in the RIA.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

The SO_X and NO_X reductions from today's actions will help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the U.S. These reductions will help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels will also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition, also will be reduced, and the costs borne to prevent acid-related damage may also decline.

While the reduction in sulfur and nitrogen acid deposition will be roughly proportional to the reduction in SO_X and NO_X emissions, respectively, the precise impact of today's vehicle and fuel standards will differ across different areas. Each area is affected by emissions from different source regions, and the mobile source contribution to the total SO_X and NO_X emission inventory will differ across different source regions. Nonetheless, the projected impact of today's actions on SO_X and NO_X emission inventories provides a rough indicator of the likely effect of the Tier 2/Gasoline Sulfur standards on acid deposition. Our analysis indicates that today's actions will reduce SO_X emissions by 1.8 percent and NO_X emissions by 14.5 percent in 2030.

The analysis of economic benefits and costs found in Section IV.D.5. did not account for the economic benefits of the reduction in acid deposition expected to result from today's actions.

H. Eutrophication/Nitrification

Nitrogen deposition into bodies of water can cause problems beyond those associated with acid rain. The Ecological Society of America has included discussion of the contribution of air emissions to increasing nitrogen levels in surface waters in a recent major review of causes and consequences of human alteration of the global nitrogen cycle in its Issues in Ecology series [41]. Long-term monitoring in the United States, Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds. These nitrogen inputs are dominated by fertilizers and atmospheric deposition.

Human activity can increase the flow of nutrients into those waters and result in excess algae and plant growth. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations. This problem is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the "overproduced" algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Collectively, these effects are referred to as eutrophication, which the National Research Council recently identified as the most serious pollution problem facing the estuarine waters of the United States (NRC, 1993). Nitrogen is the primary cause of eutrophication in most coastal waters and estuaries [42]. On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Airborne NO_X contributes from 12 to 44 percent of the total nitrogen loadings to United States coastal water bodies. For example, approximately one-quarter of the nitrogen in the Chesapeake Bay comes from atmospheric deposition.

Excessive fertilization with nitrogen-containing compounds can also affect terrestrial ecosystems [43]. Research suggests that nitrogen fertilization can alter growth patterns and change the

[40] Much of the information in this section was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act. Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC, November 1995.

[41] Vitousek, Peter M., John Aber, Robert W. Howarth, Gene E. Likens, et al. 1997. Human Alteration of the Global Nitrogen Cycle: Causes and Consequences. Issues in Ecology. Published by Ecological Society of America, Number 1, Spring 1997.

[42] Much of this information was taken from the following EPA documents: Deposition of Air Pollutants to the Great Waters-Second Report to Congress, Office of Air Quality Planning and Standards, June 1997, EPA–453/R–97–011.

[43] Terrestrial nitrogen deposition can act as a fertilizer. In some agricultural areas, this effect can be beneficial.

balance of species in an ecosystem. In extreme cases, this process can result in nitrogen saturation when additions of nitrogen to soil over time exceed the capacity of the plants and microorganisms to utilize and retain the nitrogen. This phenomenon has already occurred in some areas of the U.S.

Deposition of nitrogen from cars and light trucks contributes to these problems. As discussed in Section III.B. above, today's actions will reduce total NO_X emissions by 4.5 percent in 2007 and by 14.5 percent in 2030. The NO_X reductions should reduce the eutrophication problems associated with atmospheric deposition of nitrogen into watersheds and onto bodies of water, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings. Since air deposition accounts for 12–44 percent of total nitrogen loadings in coastal waters, the reduction in NO_X from today's actions is projected to reduce nitrogen loadings by 0.5–2.0 percent in 2007 and 1.7–6.4 percent in 2030. To put these reductions in perspective, the reductions expected in the Chesapeake Bay area would amount to about 9 percent of the total reduction in nitrogen loading needed to maintain the reduction in nutrient loads agreed to by the signatory states in the Chesapeake Bay Agreement (40 percent of "controllable nutrient loads" by the year 2000).

The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of reduced eutrophication or reduced terrestrial nitrogen deposition expected to result from today's actions.

I. Cleaner Cars and Light Trucks Are Critically Important to Improving Air Quality

Despite continued progress in reducing ozone and PM levels, tens of millions of Americans are still exposed to levels of these pollutants that exceed the National Ambient Air Quality Standards. Our projections show that without further action to reduce these pollutants, tens of millions of Americans will continue to breathe unhealthy air for decades to come. Our projections also show that emissions from cars and light trucks will continue to contribute a substantial share of the ozone and PM precursors in current and projected nonattainment areas, and in upwind areas whose emissions contribute to downwind nonattainment, unless additional measures are taken to reduce their emissions. Cars and light trucks also contribute substantially to ambient concentrations of CO. These vehicles will also continue to contribute to the ambient PM that affects visibility in Class I federal areas and some urban areas. Emissions from cars and light trucks also play a significant role in a wide range of health and environmental problems, including known and potential cancer risks from inhalation of air pollutants (a problem that could become more significant if sales of diesel-powered cars and light trucks were to increase), health risks from elevated drinking water nitrate levels, acidification of lakes and streams, and eutrophication of inland and coastal waters.

Today's actions will reduce NO_X, VOC, CO, PM, and SO_X emissions from these vehicles substantially. These reductions will help reduce ozone levels nationwide and reduce the extent and severity of violations of the 1-hour ozone standard. These reductions will also help reduce PM levels, both by reducing direct PM emissions and by reducing emissions that give rise to secondary PM. The CO reductions will help extend the downward trend in carbon monoxide levels, thereby helping the remaining CO nonattainment areas attain the CO standard and helping other areas stay in attainment with the CO standard despite continued increases in vehicle miles traveled. The NO_X and SO_X reductions will help reduce acidification problems, and the NO_X reductions will help reduce eutrophication problems and drinking water nitrate levels. The PM standards included in today's actions will help improve visibility and would help mitigate adverse health effects in the event of increases in light-duty diesel engine sales.

IV. What Are the New Requirements for Vehicles and Gasoline?

A. Why Are We Proposing Vehicle and Fuel Standards Together?

1. Feasibility of Stringent Standards for Light-Duty Vehicles and Light-Duty Trucks.

a. Gasoline Fueled Vehicles

We believe that the standards being promulgated today for gasoline-fueled vehicles are well within the reach of existing control technology. Our determination of feasibility is based on the use of catalyst-based strategies that are already in use and are well proven on the existing fleet of vehicles. In fact, as you will see below, many current engine families are already certified to levels at or below the new final Tier 2 requirements. All of the certification and research testing discussed below was performed on low-sulfur test fuel (nominally 30 ppm).

i. LDVs and LDT1s–LDT4s

Certainly, larger vehicles and trucks, which are heavier and have larger frontal areas, will face the biggest challenges in meeting the final Tier 2 standards. However, conventional technology will be sufficient for even these vehicles, especially in light of the extra leadtime we have provided before LDT3s and LDT4s have to meet Tier 2 levels. We are also changing the test conditions for these trucks from "adjusted loaded vehicle weight" to "loaded vehicle weight." Adjusted loaded vehicle weight, suitable for commercial truck operation, loads the truck to half of its full payload. Loaded vehicle weight, on the other hand, represents curb weight plus 300 pounds. This change more accurately reflects how these vehicles are used and makes heavy LDT testing consistent with passenger car and light LDT testing. This change is consistent with treating these vehicles as they were designed, *i.e.*, for light-load use.

Emission control technology has evolved rapidly in recent years. Emission standards applicable to 1990 model year vehicles required roughly 90 percent reductions in exhaust HC and CO emissions and a 75 percent reduction in NO_X emissions compared to uncontrolled emissions. Today, some vehicles currently in production are well below these levels, showing even greater overall emissions reductions of all three of these pollutants. These vehicles' emissions are well below those necessary to meet the current federal Tier 1 and even California Low-Emission Vehicle (LEV–I) standards. The reductions have been brought about by ongoing improvements in engine air-fuel management hardware and software plus improvements in catalyst designs, all of which are described fully in the RIA.

The types of changes being seen on current vehicles have not yet reached their technological limits, and continuing improvement will allow both LDVs and LDTs to meet the final standards. The RIA describes a range of specific techniques that we believe could be used. These range from improved computer software and engine air-fuel controls to increases in precious metal loading and other exhaust system/catalyst system improvements. All of these technologies are currently used on one or more production vehicle models. There is no need to invent new approaches or technologies. The focus of the effort is primarily development,

application, and optimization of these existing technologies.

We can gain significant insight into the difficulty of meeting the final new standards by looking at current full-life certification data. There are at least 48 engine family-control systems combinations, out of approximately 400, certified in 1999 at levels below the Tier 2 NO_X standard of 0.07 g/mi. Of these, 35 also have hydrocarbon levels of 0.09 g/mi or below. Looking at a somewhat higher threshold to identify vehicles certified near the final standard, there are an additional 113 car and light truck families certified at levels between 0.07 g/mi and 0.10 g/mi NO_X. Although not yet complete at this time, we also examined the 2000 model year certification data and found that there are at least 60 engine family-control systems combinations certified at levels below the Tier 2 NO_X standard of 0.07 g/mi and of those, 52 also have hydrocarbon levels of 0.09 g/mi or below.

All of the above vehicles are already able, or close to being able, to certify to our final standards. The further reductions needed are those to provide a compliance margin, or cushion, between the certified level and the emission standard. The degree of compliance margin required is a function of a variety of factors designed to provide the manufacturer a high confidence that production vehicles will meet the standards in-use over their useful life. Historically, these determinations are manufacturer specific, with cushions generally growing smaller as standards decline (reflecting more precision and repeatability in vehicle performance as more sophisticated controls are developed). The certification data reflects compliance cushions from as little as 20 percent below the standard to as high as 80 percent below the standard.

The manufacturers commented that the most difficult vehicles to bring into compliance with the Tier 2 standards would be the larger light-duty trucks, specifically those trucks currently certified under the LDT3 and LDT4 weight categories. Because of this, we undertook a technology demonstration program aimed at lowering the emissions of several large 1999 light-duty trucks. Two LDT3 Chevrolet Silverado pick-up trucks were tested, one internally and one under contract. Two LDT4 Ford Expedition sport-utility vehicles were also tested, also with one tested internally and one under contract. Both types of vehicles were tested with optional high horsepower engines (270 hp for the Silverado and 230 hp for the Expedition) and were equipped with four-wheel drive. The vehicles had curb weights of 4,500 pounds (GVWR of 6,100 lbs) for the Silverados and 5,800 pounds (GVWR of 7,200 lbs) for the Expeditions.

Figures IV.A.–1 and IV.A.–2 show the results to date of the emissions tests performed during this demonstration program at our National Vehicle and Fuel Emissions Laboratory (NVFEL) and also for emissions tests conducted in parallel by and under contract at Southwest Research Institute (SwRI) using similar Ford Expeditions and GM Chevrolet Silverados. During the evaluation, the trucks were equipped with a variety of catalysts that typically featured higher volume, higher precious metal loading, and higher cell-densities than the original hardware used by the vehicles to meet California LEV–I standards. Details of the catalysts tested are included in the RIA. Different exhaust manifolds featuring an insulating air-gap and low thermal mass were also evaluated. Finally, calibration changes were made to the powertrain control modules [44] to better match engine operating characteristics to the new catalyst systems, and to lower engine-out NOx emissions. The Silverado and Expedition had very similar results. Similar results were also achieved by us and SwRI, but by fairly different methods. The SwRI work on both trucks relied primarily on engine calibration changes and secondary air injection. The advanced catalyst systems used by SwRI contained advanced washcoat formulations with only minor changes to catalyst volume and precious metal content compared to the manufacturer's original configuration. The work we conducted on the Expedition also relied primarily on engine calibration changes with no secondary air injection. The catalyst system also contained advanced washcoat formulations with modest changes to catalyst volume and precious metal content. The work we conducted on the Silverado relied primarily on an advanced catalyst system with volume and precious metal content changes, with only minor changes to engine calibration.

As can be seen in the charts, the emissions of the vehicles tested clearly show the feasibility of the Tier 2 standards on the most difficult to certify vehicle categories. All vehicles reached emission levels well below the Tier 2 full-life NOx and NMOG standards. At the same time, there were no significant impacts on either fuel economy or performance of the vehicles.

Compared to the intermediate (50,000 mile) standards, the Ford Expedition tested at NVFEL consistently emitted NOx at less than one-third of the intermediate useful life standard.[45] NMHC/NMOG emissions were slightly below the intermediate standard level with no use of secondary-air-injection for cold-start hydrocarbon control. The Silverado tested at NVFEL met the intermediate standards with primarily hardware (catalyst) changes and only very minor calibration changes. The trucks tested at SwRI differed from those tested at NVFEL in their combination of emissions control hardware and calibration strategies, but achieved approximately the same emissions levels.

The above results point out that not only are the Tier 2 standards feasible for larger trucks, but there are multiple means that can be taken in order to achieve the necessary emissions levels. All of those paths involve fairly simple enhancements to current technology systems. Furthermore, the testing was conducted with a very limited budget over a limited amount of time. With the interim program for heavy trucks under Tier 2, the manufacturers will have 9 years from the publishing of the Tier 2 rule to bring the largest trucks into compliance with the Tier 2 standards. Manufacturers will also have considerably more resources with respect to calibration changes and hardware design to bring trucks of this type within compliance than were available within this limited, but successful, demonstration.

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[44] Powertrain control modules are computers used to control engine, transmission, and other vehicle functions on newer automobiles and trucks. The changes involved software changes in the case of the EPA-NVFEL work, or the use of alternate means of engine control in the case of the SwRI work.

[45] Although this testing was done on vehicles with catalysts aged to 50,000, we belive the overall experiments also strongly suggest that the Tier 2 full-life standards would be achieved by high-mileage vehicles.

Figure IV.A.-1:

Emissions After an Equivalent of 50,000 Miles for Various Tested Configurations of Ford Expedition LDT4 SUVs with 5.4L V8 Engines

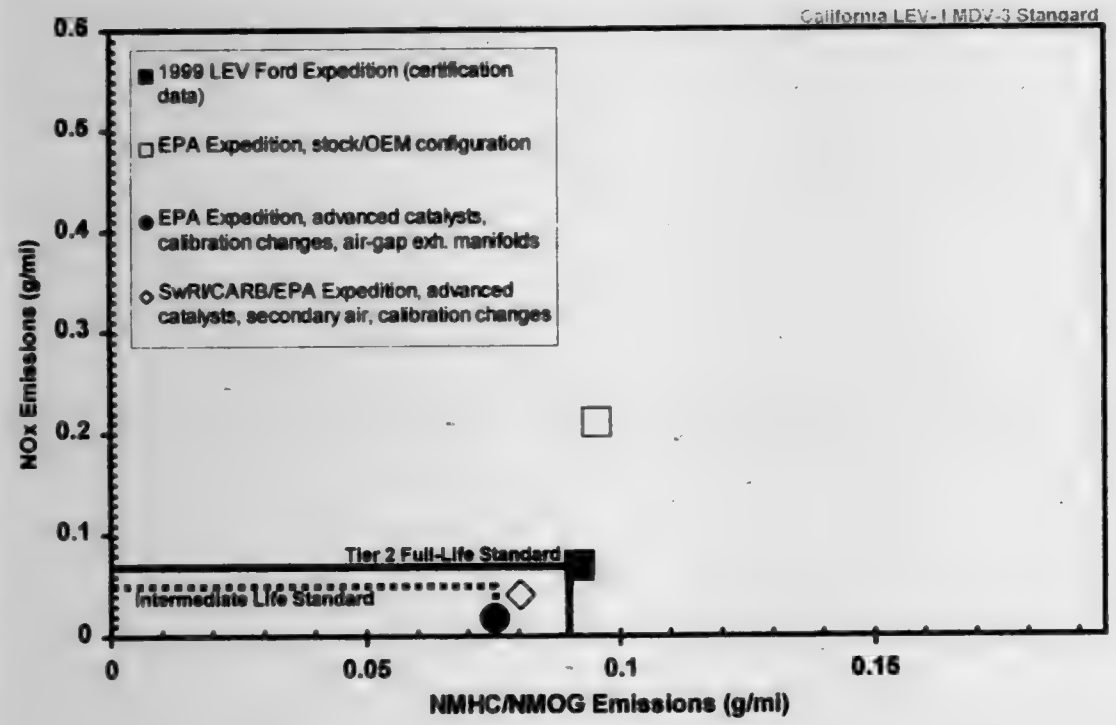

Figure IV.A.-2:

Emissions After an Equivalent of 50,000 Miles for Various Tested Configurations of 1999 GM Chevrolet Silverado LDT3 Pickups with 5.3L V8 Engines.

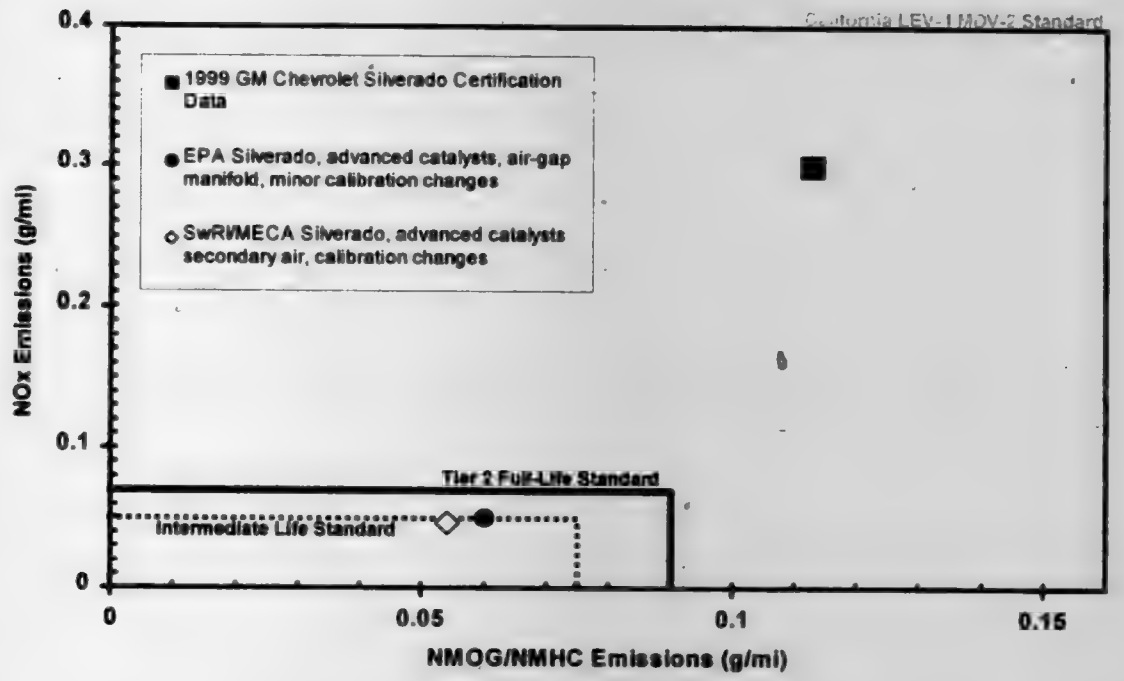

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The Manufacturers of Emission Controls Association (MECA) sponsored a program that took two LDVs (a Crown Victoria and a Buick LeSabre) and one LDT2 (a Toyota T100) certified to the federal Tier 1 standards and replaced the original catalytic converter systems with more advanced catalytic converters, thermally aged to approximately 50,000 miles. With these systems and some related emission control modifications, the LeSabre and T100 emissions were well below our intermediate (50,000 mile) useful life standards, and the Crown Victoria was well below the NMOG standard and very close to the NO_X standard.

Finally, the California Air Resources Board (ARB) tested five different production LEV light-duty vehicle models. Three of the five models met the Tier 2 standards for NMOG and NO_X prior to any modifications. After installing low mileage advanced catalytic converters and making some minor adjustments to fuel bias, air injection, and spark timing, all of the vehicles had emission levels well below the Tier 2 intermediate useful life NMOG and NO_X standards. ARB also tested several Ford Expeditions (LDT4) equipped with advanced catalytic converters. By adjusting several parameters, they were able to reduce NO_X emissions to 0.06 g/mi and NMOG to 0.07 g/mi with a catalyst aged to 50,000 miles of use.

A more expanded analysis of the feasibility of the Tier 2 standards for gasoline fueled vehicles can be found in the RIA, considering the types of changes that will allow manufacturers to extend effective new controls to the entire fleet of affected vehicles. That analysis includes discussion of gasoline direct-injection engines, as well as the feasibility of the CO, formaldehyde and evaporative emission standards. The conclusion of all of our analyses is that the standards are feasible for gasoline-fueled vehicles. As gasoline-fueled vehicles represent the overwhelming majority of the LDV and LDT population (*i.e.*, over 99%), EPA concludes that the Tier 2 standards are feasible overall for LDVs and LDTs under 8500 lbs GVWR.

ii. Medium-Duty Passenger Vehicles (MDPVs)

The technologies and emission control strategies that will be used for LDT3 and LDT4 vehicles with a GVWR less than 8,500 pounds should apply directly to MDPV vehicles that have a GVWR greater than 8,500 pounds. In our LDT technology demonstration program discussed above, we found that a combination of calibration changes and improvements to the catalyst system resulted in emission levels for NO_X well below and NMHC/NMOG approximately at the Tier 2 intermediate useful life standards. The catalyst improvements consisted of increases in volume and precious metal loading, and higher cell-densities than those found in the original hardware. We are confident that the use of secondary-air-injection will greatly help cold-start hydrocarbon control, making the NMOG standards achievable.

The most significant difference between LDT4s less than 8,500 pounds GVWR and MDPVs greater than 8,500 pounds GVWR is that MDPVs have a vehicle weight up to 800 pounds more than LDT4s. MDPVs will also be typically equipped with larger displacement engines. The potential impact of these differences is higher engine-out emissions than LDT4s due to the larger engine displacement and

greater load that the engine will be operated under due to the extra weight. However, neither of these preclude manufacturers from applying the same basic emission control technologies and strategies as used by LDVs and LDTs. The only difference will likely be the need for larger catalysts with higher precious metal loading than found in LDT4s. We are confident that MDPVs will be capable of meeting the final Tier 2 standards.

We are currently testing a Ford Excursion as part of our LDT technology demonstration program. Preliminary baseline results with a 'green" (*i.e.*, nearly new) catalyst indicate that emission levels are higher than baseline emissions for the Ford Expedition. These results, although with a green catalyst, are well below our interim Tier 2 upper bin standards. In fact, the majority of these vehicles certified on the chassis dynamometer in California have certification levels well below our interim upper bin standards. While this testing is ongoing, we feel that the preliminary results are encouraging since they suggest that the difference in emissions between the Excursion and Expedition suggest that the strategies used on the Expedition can be successful with the Excursion. Therefore, we believe that by using technologies and control strategies similar to what will be used by LDVs and LDTs, combined with larger catalysts, MDPVs will be able to meet our Tier 2 emission standards.

b. Diesel Vehicles

As discussed above, the Tier 2 standards are intended to be "fuel neutral." In today's document, we establish that the Tier 2 standards are technologically feasible and cost-effective for LDVs and LDTs overall, based on the discussion in Section IV.A.1.a. above. Under the principle of fuel neutrality, all cars and light trucks, including those using diesel engines, will be required to meet the Tier 2 standards. Contrary to some of the comments received on our proposal, given that the overwhelming majority of vehicles in these classes are gasoline-fueled, we do not believe it is appropriate to provide less stringent standards for diesel-fueled vehicles. Manufacturers of LDVs and LDTs today provide consumers with a wide choice of vehicles that are overwhelmingly gasoline-fueled. Less stringent standards for diesels would create provisions that could undermine the emission reductions expected from this program, especially given the expectation that some manufacturers may intend to greatly increase their diesel sales.

As with gasoline engines, manufacturers of diesels have made abundant progress over the past 10 years in reducing engine-out emissions from diesel engines. In heavy trucks and buses, PM emission standards, which were projected to require the use of exhaust aftertreatment devices, were actually met with only engine modifications. Indeed, emissions and performance of lighter diesel engine are rapidly approaching the characteristics of gasoline engines, while retaining the durability and fuel economy advantages that diesels enjoy. Against this background of continuing progress, we believe that the technological improvements that would be needed could be made in the time that would be available before diesels would have to meet the new Tier 2 standards.

Manufacturers may take advantage of the flexibilities in today's rulemaking to delay the need for diesel LDVs and LDTs to meet the final Tier 2 levels until late in the phase-in period (as late as 2007 for LDVs/LLDTs and 2009 for HLDTs), giving manufacturers a relatively large amount of leadtime. In a recent public statement, Cummins Engine Company has indicated that the interim Tier 2 standards in effect for vehicles and trucks in the early years of the Tier 2 program are feasible for diesel equipped models through further development of currently available engine and exhaust aftertreatment technology.[46]

While reductions in "engine-out" emissions, including incorporation of EGR strategies, may continue to be made, increasing emphasis is being placed on various aftertreatment devices for diesels. We believe that the use of aftertreatment devices will allow diesels to comply with the Tier 2 standards for NO_X and PM.

For NO_X emissions, potential aftertreatment technologies include lean NO_X catalysts, NO_X adsorbers and selective catalytic reduction (SCR). Lean NO_X catalysts are still under development, but generally appear capable of reducing NO_X emissions by about 15–30%. This efficiency is not likely to be sufficient to enable compliance with the final Tier 2 standards, but it could be used to meet the interim standards that would begin in 2004, with current diesel fuel.

NO_X adsorbers appear capable of reaching efficiency levels as high as 90%. Efficiency in this range is likely to be sufficient to enable compliance with the proposed Tier 2 standards. NO_X adsorbers temporarily store the NO_X and thus the engine must be run periodically for a brief time with excess fuel, so that the stored NO_X can be released and converted to nitrogen and oxygen using a conventional three-way catalyst, like that used on current gasoline vehicles.

There is currently a substantial amount of development work being directed at NO_X adsorber technology. While there are technical hurdles to be overcome, progress is continuing and it is our judgement that the technology should be available by the time it would be needed for the final Tier 2 standards.

One serious concern with current NO_X adsorbers is that they are quickly poisoned by sulfur in the fuel. Some manufacturers have strongly emphasized their belief that, in order to meet the final Tier 2 levels, low sulfur diesel fuel would also be required to mitigate or prevent this poisoning problem. In its comments on the NPRM, Navistar indicated that the Tier 2 standards may be achievable given low sulfur fuel and other programmatic changes such as those included in this Final Rule. Navistar has also been quoted publically as describing the Tier 2 standards as "challenging but achievable" given appropriate low sulfur fuel.[47] We intend to issue a Notice of Proposed Rulemaking early in the year 2000 intended to reduce sulfur in highway diesel fuel as a step to enable the technology most likely to be used to meet the Tier 2 standards.

SCR has been demonstrated commercially on stationary diesel engines and can reduce NO_X emissions by 80–90%. This efficiency would be sufficient to enable compliance with the proposed Tier 2 standards. However, SCR requires that the chemical urea be injected into the exhaust before the catalyst to assist in the destruction of NO_X. The urea must be injected at very precise rates, which is difficult to achieve with an on-highway engine, because of widely varying engine operating conditions. Otherwise, emissions of ammonia, which have a very objectionable odor, can occur. Substantial amounts of urea are required, meaning that vehicle owners would have to replenish their vehicles' supply of urea frequently, possibly as often as every fill-up of fuel. As the engine and vehicle would operate satisfactorily without the urea (only NO_X emissions would be affected), some mechanism would be needed to ensure that vehicle owners maintained their supply of urea. Otherwise, little NO_X emission reduction would be expected in-use.

[46] "Cummins Sees Diesel Feasible for Early Years of Tier 2". Hart Diesel Fuel News, Sept. 20, 1999, p.2.

[47] Harts Diesel Fuel News, August 9, 1999, p4.

Regarding PM, applicable aftertreatment devices tend to fall into two categories: Oxidation catalysts and traps. Diesel oxidation catalysts can reduce total PM emissions by roughly 15–30%. They would need to be used in conjunction with further reductions in PM engine-out emissions in order to meet the proposed Tier 2 standards. Diesel particulate traps, on the other hand, can eliminate up to 90% of diesel PM emissions. However, some of the means of accomplishing the regeneration of particulate traps involve catalytic processes that also convert sulfur dioxide in the exhaust to sulfate. These techniques, if used, would also require a low sulfur fuel.

In summary, we believe that the structure of our final program, including the available bins and phase-in periods, will allow the orderly development of clean diesel engine technologies. We believe that the interim standards are feasible for diesel LDV/LDTs, within the bin structure of this rule and without further reductions in diesel fuel sulfur levels. And, as indicated earlier, at least one major diesel engine manufacturer (Cummins) has publicly agreed with this assessment. We further believe that in the long-term, the final standards will be within reach for diesel-fueled vehicles in combination with appropriate changes to diesel fuel to facilitate aftertreatment technologies. Manufacturers have argued that low sulfur diesel fuel will be required to permit diesels to meet the final Tier 2 standards, and we agree. At least one major manufacturer (Navistar) has indicated its belief that the final Tier 2 standards may be achievable for diesel engines with low sulfur diesel fuel.

2. Gasoline Sulfur Control Is Needed to Support the Proposed Vehicle Standards

As we discussed in the previous section, we believe that the stringent standards in this final rule are needed to meet air quality goals and are feasible for LDVs and LDTs. At the same time, we believe that for these standards to be feasible for gasoline LDVs and LDTs, low sulfur gasoline must be made available. The following paragraphs explain why we think gasoline sulfur control must accompany Tier 2 vehicle standards.

Catalyst manufacturers generally use low sulfur gasoline in the development of their catalyst designs. Vehicle manufacturers then equip their vehicles with these catalysts and EPA certifies them to the exhaust emission standards, usually based on testing the manufacturer does using low sulfur gasoline. However, fundamental chemical and physical characteristics of exhaust catalytic converter technology generally result in a significant degradation of emission performance when these vehicles use gasoline with sulfur levels common in most of the country today. This sensitivity of catalytic converters to gasoline sulfur varies somewhat depending on a number of factors, some better understood than others. Clearly, however, as we discuss in the following paragraphs, gasoline sulfur's impact is large, especially in vehicles designed to meet very low emission standards.

This is the reason EPA has decided to adopt a comprehensive approach to addressing emissions from cars and light trucks, including provisions to get low sulfur gasoline into the field in the same time frame needed for Tier 2 vehicles.

a. How Does Gasoline Sulfur Affect Vehicle Emission Performance?

We know that gasoline sulfur has a negative impact on vehicle emission controls. Vehicles depend on the catalytic converter to reduce emissions of HC, CO, and NO_X. Sulfur and sulfur compounds attach or "adsorb" to the precious metal catalysts that are required to convert these emissions. Sulfur also blocks sites on the catalyst designed to store oxygen that are necessary to optimize NO_X emissions conversions. While the amount of sulfur contamination can vary depending on the metals used in the catalyst and other aspects of the design and operation of the vehicle, some level of sulfur contamination will occur in any catalyst.

Sulfur sensitivity is impacted not only by the catalyst formulation (the types and amounts of precious metals used in the catalyst) but also by factors including the following:

- The materials used to provide oxygen storage capacity in the catalyst, as well as the general design of the catalyst,
- The location of the catalyst relative to the engine, which impacts the temperatures inside the catalyst,
- The mix of air and fuel entering the engine over the course of operation, which is varied by the engine's computer in response to the driving situation and affects the mix of gases entering the catalyst from the engine, and
- The speeds the car is driven at and the load the vehicle is carrying, which also impact the temperatures experienced by the catalyst.

Since these factors vary for every vehicle, the sulfur impact varies for every vehicle to some degree. There is no single factor that guarantees that a vehicle will be very sensitive or very insensitive to sulfur. We now believe that there are not (and will not be in the foreseeable future) emission control devices available for gasoline-powered vehicles that can meet the proposed Tier 2 emission standards that would not be significantly impaired by gasoline with sulfur levels common today.

b. How Large Is Gasoline Sulfur's Effect on Emissions?

High sulfur levels have been shown to significantly impair the emission control systems of cleaner, later technology vehicles. The California LEV standards and Federal NLEV standards, as well as California's new LEV–II standards and our Tier 2 standards, require catalysts to be extremely efficient to adequately reduce emissions over the full useful life of the vehicle. In the NPRM we estimated that, based on data from test programs conducted by EPA and the automotive and oil industries, LEV and ULEV vehicles could experience, on average, a 40 percent increase in NMHC and 134 percent increase in NO_X emissions when operated on 330 ppm sulfur fuel (our estimate in the NPRM of the current national average sulfur level) compared to 30 ppm sulfur fuel. New data generated since the NPRM on similar LEVs and ULEVs show that when these vehicles were driven on high sulfur (330 ppm) fuel for a few thousand miles (as opposed to less than 100 miles for the previous data), the NMHC and NO_X emission increase due to high sulfur fuel increased by 149 percent and 47 percent, respectively. In other words, instead of the previous estimated 40 percent and 134 percent increases in NMHC and NO_X emissions, respectively, more realistic estimates would be 100 percent and 197 percent, respectively.[48] Also, new data generated since the NPRM for late model LEV and ULEV vehicles that meet the federal and California supplemental federal test procedure (SFTP) standards and also have very low FTP emission levels, indicate that, on average, a 51 percent increase in NMHC and a 242 percent increase in NO_X emissions when operated for a short period of time on 330 ppm compared to 30 ppm could be realized.

This level of emissions increase is significant enough on its own to cause a vehicle to exceed the full useful life emission standards when operated on sulfur levels that are substantially higher than the levels required by today's rule, even with the margin of

[48] The air quality impacts discussed above under Section III above do not reflect these new estimates.

safety that auto manufacturers generally include. Average sulfur levels in the U.S. are currently high enough to significantly impair the emissions control systems in new technology vehicles, and to potentially cause these vehicles to fail emission standards required for vehicles up through 100,000 miles (or more) of operation.

For older vehicles designed to meet Tier 0 and Tier 1 emission standards, the effect of sulfur contamination is somewhat less. Still, testing shows that gasoline sulfur increases emissions of NMHC and NO_X by almost 17% when one of these vehicles is operated on gasoline for less than 100 miles containing 330 ppm sulfur compared to operation on gasoline with 30 ppm sulfur. Thus, Tier 0 and Tier 1 vehicles can also have higher emissions when they are exposed to sulfur levels substantially higher than the proposed sulfur standard. This increase is generally not enough to cause a vehicle to exceed the full useful life emission standards in practice, but it can result in in-use emissions increases since the vehicle could emit at levels higher than it would if it operated consistently on 30 ppm sulfur gasoline.

As discussed in the RIA, NLEV and Tier 2 vehicles are significantly more sensitive to sulfur poisoning than Tier 1 and Tier 0 vehicles. Because of this, even in the absence of Tier 2 standards, gasoline sulfur control to 30 ppm would achieve about 700,000 tons of NO_X reductions per year from LDVs and LDTs by 2020. This represents about a third of the national NO_X emission reductions otherwise available from these vehicles. Without these potential emission reductions, many states would face the potentially unmeetable challenge of finding enough other cost-effective sources of NO_X emission reductions to address their ozone nonattainment and maintenance problems.

Sulfur reductions will result in reductions of other pollutants as well. For example, the increase in CO emissions at 330 ppm compared to 30 ppm were very similar to the results above for NMHC. Thus, sulfur reductions would greatly reduce CO emissions. Another example is sulfur reductions will help reduce emissions of particulate matter, providing some benefit to PM nonattainment areas (which may or may not coincide with ozone nonattainment areas) as well as with visibility problems. Sulfur reductions will also have benefits for areas across the country with acid deposition problems. Furthermore, sulfur reduction, by enabling tighter Tier 2 standards and by improving emissions performance of the vehicles already on the road, will lead to fewer NMOG emissions, since, as explained in the RIA, NMOG emissions are also impacted by gasoline sulfur (although to a lesser extent than NO_X emissions). Some of the NMOG emissions reduced are air toxics. As described in Section III above, air toxics, also known as hazardous air pollutants, or HAPs, contribute to a variety of human health problems.

c. Sulfur's Negative Impact on Tier 2 Catalysts

As we discussed in the last section, sulfur contaminates the catalyst. In addition, essentially all vehicles that have been tested show that this effect is not reversible for one or more pollutants. The ability to reverse sulfur's negative effect on catalyst performance is dependent on a number of factors. The same factors that impact sulfur sensitivity also impact the irreversibility of the sulfur effect. For example, the location of the catalyst relative to the engine, the materials used to provide oxygen storage capacity in the catalyst, and the general design of the catalyst and the mix of air and fuel (A/F) entering the engine over the course of operation affect irreversibility, to name a few.

Perhaps the most significant factors for reversibility are the mixture of air and fuel entering the engine and catalyst temperature. The results of numerous studies and test programs show that rich exhaust (absence of oxygen) mixtures in addition to high catalyst temperatures (in excess of 700°C) can remove sulfur from the catalyst. Rich exhaust mixtures can occur intentionally and unintentionally, depending on the level of sophistication of the fuel control system. An intentional rich exhaust mixture is known as fuel "enrichment." There are different types of enrichment. For example, there is "commanded" enrichment, which is used to provide extra power when the engine is under a load (*e.g.*, accelerations), as well as a means to cool the catalyst. Also, there is enrichment which results from the normal fluctuations in A/F that occur during typical "closed-loop" FTP operating conditions. The amount of enrichment necessary for sulfur removal is a function of several factors: the "magnitude" of the enrichment event, the duration of the enrichment event, and the frequency of which the enrichment event occurs.

While the amount of fuel enrichment is critical in the removal of sulfur from the catalyst, high catalyst temperature is equally as important. In order to meet strict Tier 2 standards, manufacturers are going to have to balance tight A/F control with improved catalyst performance, with an eye towards better catalyst thermal management. Many manufacturers are going to have to depend more on the precious metal palladium for oxidation of NMOG and CO emissions, as well as the reduction of NO_X, because palladium is more tolerant to high temperatures. Since the vast majority of emissions still occur immediately following a cold start when the catalyst is still cool, further reductions to cold start emissions can be achieved by locating the catalysts very close to the engine. The closer proximity to the engine helps to activate the catalyst sooner by taking advantage of the additional heat supplied to the catalyst by the exhaust manifolds. Palladium is very sensitive to sulfur and, consequentially, catalyst systems that rely heavily on this metal tend to be more sensitive to sulfur and less reversible. The precious metal platinum, although usually a little more effective at oxidizing NMOG and CO and slightly less sensitive to sulfur than palladium, is too sensitive to high temperature to survive the close proximity to the engine and is not anticipated to be used for close-coupled applications.

As discussed above, manufacturers will need to make modifications to their emission system calibrations by optimizing fuel control, spark timing, EGR and other parameters in conjunction with improvements to catalyst systems, in order to meet Tier 2 emission standards. This combination of emission control strategies can result in significant trade-offs between NMOG and NO_X control. There can be considerable uncertainty associated with balancing these trade-offs at very low emissions levels if the vehicle is periodically operated on high sulfur fuels.

Our federal supplemental federal test procedure (SFTP) standards, as well as California's SFTP standards, both of which take effect in the 2001 model year, can further exacerbate this problem. The SFTP standards are intended to better address and control emissions under driving conditions not captured when compliance with our FTP-based exhaust emissions standards is demonstrated, such as operation with the air conditioning turned on or driving at very high rates of acceleration and vehicle speeds (hereafter referred to simply as aggressive driving). This is an important factor in assessing sulfur irreversibility, because Tier 2 vehicles will have to meet more stringent exhaust emission standards and will have to meet these standards over the wider variety of operating conditions

included in the SFTP provisions. Hence, they will have to be designed to meet the emission standards under all such operating conditions; these design changes may influence how irreversible the sulfur effect will be, as explained below.

Since wide variations in the A/F ratio help to remove sulfur from the catalytic surface, there is concern that vehicles which meet the SFTP standards, when driven aggressively, will experience insufficient enrichment to purge sulfur from the catalyst. Currently, when driven aggressively, the A/F ratio for most vehicles (those not certified to SFTP standards) is quite variable. Meeting the SFTP standards will ensure that manufacturers carefully control the A/F ratio over essentially all in-use driving conditions. This absence of widely varying A/F could therefore inhibit the removal of sulfur from the catalyst once operation on high sulfur fuel ceased.

In order to quantify how irreversible the sulfur effect would be when catalysts exposed to high sulfur fuel are then exposed to lower sulfur fuel, several test programs were developed by EPA and industry. The vehicles in these test programs consisted of LDVs and LDTs that met either EPA Tier 1 or California LEV and ULEV emission standards. All of the vehicles were first tested at a low sulfur level (*e.g.*, 30 or 40 ppm) to establish a baseline. The vehicles were then re-tested with high sulfur fuel (*e.g.*, 350 to 540 ppm). After emission results had stabilized, the vehicles were again re-tested with low sulfur fuel. Prior to each of the second series of low sulfur tests, the vehicles were operated over a short driving cycle to help purge (*i.e.*, remove) sulfur from the catalyst. Two different cycles were used to purge sulfur, representing different types of driving: moderate urban conditions and aggressive conditions. The FTP cycle, which represents moderate urban driving, and the REP05 [49] cycle, which represents very aggressive driving (*e.g.*, hard accelerations, high speed cruises), were the two cycles used.

The vehicles tested exhibited a wide range of irreversibility, for reasons that are not fully understood. The data published in the NPRM, showed that the effect of operation on high sulfur fuel was irreversible on one or more pollutants after operation on low sulfur fuel. NO_X emissions were 15 percent irreversible. None of the vehicles were designed or modified to meet either the California or federal SFTP emissions standards. The only data used in an attempt to quantify the effect of aggressive operation on sulfur reversibility was from a catalyst manufacturer that performed some vehicle testing with catalysts which were bench aged with low and high sulfur fuel that appeared to closely approximate the impact aggressive operation would have on sulfur irreversibility. It was this data on which we based our projection of sulfur irreversibility for Tier 2 vehicles at 50 percent for NMHC and NO_X emissions. Subsequent comments on the validity of these estimates after the publishing of the NPRM prompted several additional test programs on sulfur irreversibility.

The sulfur irreversibility test programs that followed the NPRM focused on vehicles that had emission levels that met or were close to Tier 2 emission standards and also met the US06 or aggressive driving portion of the SFTP emission standards. Although numerous vehicles were tested, only four met both of the above criteria. (We had tried to supplement the data base, but we were only able to add a limited number of vehicles.) We also decided to quantify irreversibility for NMHC and NO_X emissions together instead of independently, because per our discussion above, sensitivity and irreversibility of either pollutant appears to be very dependent on the particular strategy chosen to reduce these emissions (particularly engine calibration and catalyst loading of precious metals and oxygen storage).

The new data exhibited a range of variability among vehicles and pollutants, similar to the data presented in the NPRM. The most important distinction between the new FRM data and the old NPRM data was that the new data showed that, on average, NMHC+NO_X emissions in three out of four vehicles were not fully reversible after aggressive driving. Based on this data, we project that NMHC+NO_X emissions will be 20 to 65 percent irreversible for Tier 2 vehicles under typical in-use driving, including aggressive driving.

As discussed above, the combination of calibration changes and emission system hardware modifications needed to meet our stringent Tier 2 emissions standards, can result in significant trade-offs between NMHC/NMOG and NO_X control. There can be considerable uncertainty associated with balancing these trade-offs at very low emissions levels if the vehicle is periodically operated on high sulfur fuels, making the ability to remove sulfur from the catalyst highly uncertain. For example, a given catalyst today may be fully reversible for one pollutant and only partially reversible for another. However, because of the trade-off in NMOG and NO_X performance, the modifications necessary to get that vehicle to meet both emission standards may result in the opposite effect for reversibility; *i.e.*, full reversibility for NMOG and partial reversibility for NO_X. There is no technical certainty that both the NMOG and NO_X emission standards can be met without compromising reversibility performance. Therefore, we continue to believe that sulfur's negative impact on Tier 2 catalysts is a substantial concern.

The preceding discussion focused on the irreversibility of the sulfur impact on emissions from current gasoline engine technologies. There are new technologies under development, which could be sold in the U.S. in the middle of the next decade (the same time that Tier 2 vehicles are being introduced), which also appear to be very sensitive to sulfur and largely unable to reverse this sulfur impact. One of these technologies is the direct injection gasoline (GDI) engine. These engines utilize much more air than is needed to burn the fuel, unlike conventional gasoline engines that operate under conditions where only just enough air to completely burn the fuel is introduced into the engine. This GDI technology allows these engines to be up to 25% more fuel efficient than current gasoline engines and to emit up to 20% less carbon dioxide. GDI engines are currently being introduced in both Japan and Europe (which have or will soon require low sulfur gasolines). Because of the significant operating differences with GDI engines, these vehicles will likely require emission control technology substantially different from that used on conventional gasoline engines. For example, a GDI engine may require a NO_X adsorber to meet the proposed Tier 2 NO_X standard. High fuel sulfur levels quickly and permanently degrade the performance of these NO_X adsorbers. Thus, to enable the sale of advanced, high efficiency GDI engines in the U.S. under the Tier 2 standards, it appears that low sulfur gasoline would have to be available nationwide by the time this technology becomes available.

The fuel cell is another promising propulsion system that is being developed for possible introduction to

[49] The FTP (Federal Test Procedure) is the basic driving cycle used for federal emissions testing; the LA4 cycle is a component of the FTP. The REP05 cycle developed by EPA is representative of all driving that occurs outside the LA4 or FTP cycle. All but one of the aggressive accelerations found in the US06 cycle were taken from the REP05. While each segment of the US06 cycle was taken from actual in-use driving, the timing and combination of these segments is not representative of in-use driving in the way REP05 is representative.

consumers early in the next century. Fuel cells are being designed to operate on a variety of fuels, including gasoline and diesel fuel. The basic fuel cell technology is highly sensitive to sulfur. Almost any level of sulfur in the fuel will disable the fuel cell. One possible solution is to install a technology that essentially filters out the sulfur before it enters the fuel cell. However, such sulfur "guards" are costly and could not practically be used like a disposable filter (requiring the vehicle owner to change the sulfur guard frequently, much like changing an oil filter) in situations where constant exposure to high sulfur levels occurs. (Even exposure to relatively low sulfur levels will likely require periodic replacement of the sulfur guard to ensure adequate protection for the fuel cell.) Therefore, the amount of sulfur in the fuel must be limited to that which can be removed by one or at most two sulfur guards over the life of the vehicle. Thus, in order for fuel cells operating on gasoline to be feasible in the U.S., low sulfur fuels would have to be available nationwide by the time this technology becomes available.

d. Sulfur Has Negative Impacts on OBD Systems

As discussed in more detail in the RIA, EPA believes that sulfur in gasoline can adversely impact the onboard diagnostic (OBD) systems of current vehicles as well as vehicles meeting the Tier 2 standards. This is an important factor supporting the need for a national sulfur control program. EPA's onboard diagnostics (OBD) regulations require that all vehicles be equipped with a system that monitors, among other things, the performance of the catalyst and warns the owner if the catalyst is not functioning properly. The OBD catalyst monitor is designed to identify those catalysts with pollutant conversion efficiencies that have been reduced to the extent that tailpipe emissions would exceed a specified multiple of the applicable hydrocarbon emissions standard. For California LEV and federal NLEV vehicles, that multiple is 1.75 times the applicable hydrocarbon emissions standard; for federal Tier 1 vehicles, that multiple is 1.5 times the applicable hydrocarbon standard added to the 4,000 mile emission level.

We want to ensure that OBD systems operate correctly, and thus the possibility that gasoline sulfur may interfere with these systems was another consideration when evaluating the need for a national sulfur program. Our evaluation of sulfur's effect on OBD systems was summarized in a staff paper in 1997.[50] We concluded that sulfur can affect the decisions made by the OBD systems. Sulfur appears to affect the oxygen sensor downstream of the catalyst, which is used in the OBD systems, and it is not clear that the conditions that seem to reverse sulfur's effect on the catalyst will also reverse any sulfur impact on the downstream oxygen sensors. Indirectly, sulfur impacts OBD systems because it can impair a catalyst that would otherwise be operating satisfactorily, thereby triggering the OBD warning lights. While this would indicate a properly operating OBD system, auto manufacturers have expressed the concern that consumers using high sulfur fuel may experience OBD warnings much more frequently than they would if operating on low sulfur gasoline, and that this could lead to a loss of consumer confidence in or support for OBD systems. Consumers may then ignore the OBD warning system and drive a potentially high emitting vehicle (which may have nothing to do with exposure to sulfur), contributing even more to air quality problems. Another possible scenario is that the OBD system may be impaired by sulfur in such a way that it does not register an improperly functioning catalyst, even if the catalyst is impaired for reasons unrelated to exposure to sulfur. This would defeat the purpose of OBD systems.

The reduction of sulfur levels for gasoline should resolve any concerns over the ability of the OBD system to make proper decisions. The use of low sulfur fuel should ensure that the OBD warning light goes on when it is supposed to and is not influenced by sulfur contamination of the catalyst and/or OBD system.

B. Our Program for Vehicles

The program we are establishing today for cars, light trucks, and large passenger vehicles will achieve the same large NO_X reductions that we projected for the proposed program. The program is very similar to our proposed program in all major respects. We have been able to retain the general structure, stringency, and emissions benefits of the proposal in this final rule. Where we have made adjustments to the proposed program, we have done so in ways that improve the implementation of the program without changing the overall environmental benefits that the program will achieve. And by creating a new category of vehicles subject to the Tier 2 standards, medium-duty passenger vehicles, the final rule will ensure that all passenger vehicles expected to be on the road in the foreseeable future will be very clean.

We have seriously considered the input of all stakeholders in developing our final rule and believe the program finalized below balances the concerns of all stakeholders while achieving the needed air quality benefits. In general, the adjustments we have made are aimed at improving the implementation efficiency of the program by better aligning the federal Tier 2 program with the NLEV program and with California's program especially during the interim program.[51] Extensive comments from manufacturers led us to conclude that better harmony between the two programs would reduce the engineering, testing and certification workload related to our interim program. Where we could make changes to increase the overlap of the two programs while maintaining the NO_X reductions of the proposal, we have done so. These changes are discussed in detail in this section IV.B. and in sections V.A. and V.B.

Our final rule also includes provisions to regulate complete heavy-duty passenger vehicles (primarily SUVs and passenger vans) of less than 10,000 pounds GVWR within the Tier 2 program. Standards for these vehicles were not included in the Tier 2 NPRM, but were proposed in a subsequent NPRM on October 29, 1999 (64 FR 58472). The final provisions for these vehicles are addressed in section IV.B.4.g. These heavier vehicles have been recategorized as medium duty passenger vehicles (MDPVs). They are included in the Tier 2 program starting with model year 2004 and will be treated similarly to HLDTs, unless otherwise noted.

The next sections of the preamble describe our final program in detail and include changes and adjustments from the NPRM that we believe address many concerns raised by the Alliance and others. While these changes ease the burden on manufacturers, they have little or no impact on the air quality benefits of the Tier 2 program.

[50] U.S. EPA, "OBD & Sulfur Status Report: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles," March 1997, updated September 1997.

[51] In this section and also in section V, we make various references to the Tier 2 program, the interim program (or standards) and the final Tier 2 standards. The Tier 2 program includes the interim program (or standards) and the final Tier 2 standards. Some discussion is applicable to the entire Tier 2 program, some to the interim program (or standards) only and some is only applicable to the final Tier 2 standards. As the program is complex, we advise you to read carefully to discern the applicability of the text to the proper model years and categories of vehicles.

In a number of places in the following text, we mention that changes are being made "in response to comments". For a full summary of the comments and for our responses to those comments, we refer you to the Response to Comments document contained in the docket for this rulemaking or available from the Office of Mobile Sources web site (see web address at the beginning of this document).

1. Overview of the Vehicle Program

The vehicle-related part of today's final rule covers a wide range of standards, concepts, and provisions that affect how vehicle manufacturers will develop, certify, produce, and market Tier 2 vehicles. This Overview subsection provides readers with a broad summary of the major vehicle-related aspects of the rule. Readers for whom this Overview is sufficient may want to move on to the discussion of the key gasoline sulfur control provisions (Section IV.C.). Readers wishing a more detailed understanding of the vehicle provisions can continue beyond the Overview to deeper discussions of key issues and provisions (Sections IV.B.–2, 3, and 4) as well as discussions of additional provisions (Section V.A.). Readers should refer to the regulatory language found at the end of this preamble for a complete compilation of the requirements.

To understand how the program will work, it is useful to review EPA's classification system for light-duty vehicles and trucks. The light-duty category of motor vehicles includes all vehicles and trucks at or below 8500 pounds gross vehicle weight rating, or GVWR (*i.e.*, vehicle weight plus rated cargo capacity). Table IV.B.–1 shows the various light-duty categories and also shows our new medium-duty passenger vehicle (MDPV) category, discussed in section IV.B.4.g.. In the discussion below, we make frequent reference to two separate groups of light vehicles: (1) LDV/LLDTs, which include all LDVs and all LDT1s and LDT2s; and (2) HLDTs, which include LDT3s and LDT4s. We also make mention of MDPVs although the details of our program for those vehicles are deferred to IV.B.4.g. at the end of section IV.B.

TABLE IV.B.—1 LIGHT-DUTY VEHICLES AND TRUCKS AND MEDIUM-DUTY PASSENGER VEHICLES; CATEGORY CHARACTERISTICS

	Characteristics
LDV	A passenger car or passenger car derivative seating 12 passengers or less.
Light LDT (LLDT)	Any LDT rated at up through 6,000 lbs GVWR. Includes LDT1 and LDT2.
Heavy LDT (HLDT).	Any LDT rated at greater than 6,000 lbs GVWR. Includes LDT3 and LDT4s.
MDPV	A heavy-duty passenger vehicle rated at less than 10,000 lbs GVWR. (The inclusion of MDPVs is discussed primarily in Section IV.B.4.g.)

a. Introduction

Today's final rule incorporates concepts from the federal NLEV program which began phase-in in the 1999 model year for LDV/LLDTs.[52] The program in today's rule takes the corporate averaging concept and other provisions from NLEV but changes the focus from NMOG to NO_X and applies them to all LDVs and LDTs. The final rule is compatible with the California LEV II (CalLEV II) program scheduled to take effect in 2004. The emission standard "bins" used for this average calculation are different in several respects from those of the CalLEV II program, yet still allow harmonization of federal and California vehicle technology.

The Tier 2 corporate average NO_X level to be met through these requirements ultimately applies to all of a manufacturer's LDVs and LDTs (subject to two different phase-in schedules) regardless of the fuel used. Meanwhile, until the final Tier 2 standards are completely phased in, separate interim standards apply to LDV/LLDTs and HLDTs.

As proposed in the NPRM and finalized in today's document, the Tier 2 program will take effect in 2004, with full phase in occurring by 2007 for LDV/LLDTs and 2009 for HLDTs. During the phase-in years of 2004–2008, vehicles not certified to Tier 2 requirements will meet interim requirements also using a bins system, but with less stringent corporate average NO_X standards.

[52] The NLEV program is a voluntary program, adopted by all major LDV and LDT manufacturers. It applies only to LDVs, LDT1s and LDT2s. It does not apply to HLDTs.

In the discussions below, we set forth different Tier 2 phase-in schedules for the two different groups of vehicles (LDV/LLDTs and HLDTs) as well as two different interim fleet average NO_X standards for 2004 and later model year vehicles awaiting phase-in to the Tier 2 standards.

In the NPRM, we set forth separate tables of full life standard bins for the interim programs and the final Tier 2 program, but we proposed that manufacturers could use all bins for interim or Tier 2 vehicles during the phase-in years.[53] We also proposed similar sets of tables for intermediate life standards. In this final rule, for simplicity and to accommodate additional bins, including some suggested by the Alliance, we have combined all of the full life bins into one table and all of the intermediate life bins into one table. The bins system and the choice of the individual bins is discussed in detail below.

References to California LEV II Program

Throughout this preamble, we make reference to California's LEV II program and its requirements. The LEV II program was approved by the California ARB at a hearing of November 5, 1998. Numerous draft documents were prepared by ARB staff in advance of that hearing and made available to the public. Those documents were referenced in our NPRM and included in the docket. Some of those documents were modified as a result of changes to the proposed program made at the hearing and due to comments received after the hearing. ARB prepared final documents without significant change. The final program was approved by California's Office of Administrative Law on October 28, 1999 and filed with the Secretary of State to become effective on November 27, 1999.

We have placed copies of the latest available documents, some of which we used in the preparation of this final rule, in the docket. You may also obtain these documents and other information about California's LEV II program from ARB's web site: (www.arb.ca.gov/regact/levii/levii.htm).

In the regulatory text that follows this preamble, we incorporate by reference a number of documents related to LEVII and California test procedures under

[53] Throughout this text, the term "full life" is used in reference to vehicle standards to mean "full useful life" which is currently 10 years/100,000 miles for LDVs and LLDTs, but 11 years/120,000 miles for HLDTs. Similarly, "intermediate life" refers to intermediate useful life standards which apply for the period of 5 years/50,000 miles. In this rulemaking we are retaining the current full useful life period for interim LDVs and LLDTs, but raising it for Tier 2 vehicles to 10 years/120,000 miles.

LEVII. These documents are available in the docket for today's rulemaking.

b. Corporate Average NO_X Standard

The program we are finalizing today will ultimately require each manufacturer's average full life NO_X emissions over all of its Tier 2 vehicles to meet a NO_X standard of 0.07 g/mi each model year. Manufacturers will have the flexibility to certify Tier 2 vehicles to different sets of exhaust standards that we refer to as "bins," but will have to choose the bins so that their corporate sales weighted average full life NO_X level for their Tier 2 vehicles is no more than the 0.07 g/mi. (We discuss the bins in the next subsection.)

A corporate average standard enables the program's air quality goals to be met while allowing manufacturers the flexibility to certify some models above and some models below the standard. Manufacturers can apply technology to different vehicles in a more cost-effective manner than under a single set of standards that all vehicles have to meet.

Each manufacturer will determine its year-end corporate average NO_X level by computing a sales-weighted average of the full life NO_X standards from the various bins to which it certified any Tier 2 vehicles. The manufacturer will be in compliance with the standard if its corporate average NO_X emissions for its Tier 2 vehicles meets or falls below 0.07 g/mi. In years when a manufacturer's corporate average is below 0.07 g/mi, it can generate credits. It can trade (sell) those credits to other manufacturers or use them in years when its average exceeds the standard (i.e. when the manufacturer runs a deficit). The averaging program is described in detail in later text.

c. Tier 2 Exhaust Emission Standard "Bins"

We are finalizing a Tier 2 bin structure having eight emission standards bins (bins 1–8), each one a set of standards to which manufacturers can certify their vehicles. Table IV.B.–2a shows the full useful life standards that will apply for each bin in our final Tier 2 program, i.e. after full phase-in occurs for all LDVs and LDTs. Two additional bins, bins 9 and 10, will be available only during the interim program and will be deleted before final phase-in of the Tier 2 program. Table IV.B.–2b shows all the bins from Table IV.B.–2a and also shows extra bins and higher available standards for certain pollutants that are available prior to full Tier 2 phase-in. An eleventh bin, only for MDPVs is discussed in section IV.B.4.g.

Many bins have the same values as bins in the California LEV II program as a means to increase the economic efficiency of the transition to as well as model availability. Further, we added bins that are not a part of the California program to modestly increase the flexibility of the program for manufacturers without compromising air quality goals. As discussed in Section IV.B.4. below, we believe these extra bins will help provide incentives for manufacturers to produce vehicles with emissions below 0.07 g/mi NO_X. The two highest of the ten bins shown in Table IV.B.2b. are designed to provide flexibility only during the phase-in years and will terminate after the standards are fully phased in, leaving eight bins in place for the duration of the Tier 2 program.

The NPRM full life standards contained seven Tier 2 bins as well as two separate tables of bins for interim vehicles. We proposed that manufacturers would be able to use all the bins during the phase in years regardless of whether they were certifying Tier 2 vehicles or interim vehicles.

The program we are finalizing today:

- Combines the bins from the NPRM;
- Omits two bins that were included in the NPRM for harmony with California but which are unlikely to be used; [54];
- Adds 2 bins to increase compliance flexibility without reducing environmental benefits;
- Adds a temporary bin only for MDPVs that expires after 2008. This bin is in addition to the 10 bins shown in tables of bins in this preamble;
- Establishes a PM value for the highest bin available during the interim program (bin 10) that is more stringent than the corresponding standard in the NLEV program;
- Provides temporary higher NMOG standards that expire after 2006 for certain interim LDT2s and LDT4s produced by qualifying manufacturers.

Tables IV.B.–2a and 2b show the bins for full life standards. Table IV.B.–2b is repeated later in the text where intermediate life standards are also shown. These tables omit the temporary bin for MDPVs. This bin is usable only by MDPVs and is addressed separately in section IV.B.4.g.

TABLE IV.B.–2A.—FINAL TIER 2 LIGHT-DUTY FULL USEFUL LIFE EXHAUST EMISSION STANDARDS

[Grams per mile]

Bin No.	NO_X	NMOG	.CO	HCHO	PM
8	0.20	0.125	4.2	0.018	0.02
7	0.15	0.090	4.2	0.018	0.02
6	0.10	0.090	4.2	0.018	0.01
5	0.07	0.090	4.2	0.018	0.01
4	0.04	0.070	2.1	0.011	0.01
3	0.03	0.055	2.1	0.011	0.01
2	0.02	0.010	2.1	0.004	0.01
1	0.00	0.000	0.0	0.000	0.00

[54] These bins are unlikely to be used in the Federal program because they contain the same NO_X standard as the Federal bins, but contain more stringent NMOG standards than the Federal bins. These bins, which provide extra opportunity for a manufacturer to gain NMOG credits in California are not needed or useful in the Federal program where there is no NMOG corporate average standard. The two deleted bins are bin 4 from the proposed Tier 2 bins and bin 3 from the proposed interim bins for LDV/LLDTs. Dropping these bins does not affect harmonization with California standards because the federal program includes bins having the same NO_X standard with higher NMOG standards.

TABLE IV.B.–2B.—TIER 2 LIGHT-DUTY FULL USEFUL LIFE EXHAUST EMISSION STANDARDS—INCLUDING BINS APPLICABLE DURING INTERIM PROGRAM ONLY

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM	Comments
10	0.6	0.156/0.230	4.2/6.4	0.018/0.027	0.08	[a][b][c][d]
9	0.3	0.090/0.180	4.2	0.018	0.06	[a][b][c]
8	0.20	0.125/0.156	4.2	0.018	0.02	[b][f]

Notes:
[a] Bin deleted at end of 2006 model year (2008 for HLDTs).
[b] The higher of the two temporary NMOG, CO and HCHO values apply only to HLDTs.
[c] An additional higher temporary bin restricted to MDPVs is discussed in section IV.B.4.g.
[d] Optional temporary NMOG standard of 0.280 g/mi applies for qualifying LDT4s and MDPVs only, see text.
[e] Optional temporary NMOG standard of 0.130 g/mi applies for qualifying LDT2s only, see text.
[f] Higher temporary NMOG value of 0.156g/mi deleted at end of 2008 model year.

The corporate average concept using bins will provide a program that gets essentially the same emission reductions we would expect from a straight 0.07 g/mi standard for all vehicles because all NO_X emissions from Tier 2 vehicles in bins above 0.07 g/mi will need to be offset by NO_X emissions from Tier 2 vehicles in bins below 0.07 g/mile. This focus on NO_X allows NMOG [55] emissions to "float" in that the fleet NMOG emission rate depends on the mix of bins used to meet the NO_X standard. However, as you can see by examining the bins, any combination of vehicles meeting the 0.07 g/mi average NO_X standard will have average NMOG levels below 0.09 g/mi. The actual value will vary by manufacturer depending on the sales mix of the vehicles used to meet the 0.07 g/mi average NO_X standard. In addition, there will be overall improvements in NMOG since Tier 2 incorporates HLDTs, which are not covered by the NLEV program. Tier 2 also imposes tighter standards on LDT2s than the NLEV program by making them average with the LDVs and LDT1s. NLEV has separate, higher standards for LDT2s. We did not adopt any bins for LDVs and LDTs with standards higher than we proposed.

[55] In the NPRM, we proposed that hydrocarbon standards would be measured in terms of "non-methane organic gases" (NMOG) regardless of fuel. For reasons explained elsewhere in this preamble we will permit non-methane hydrocarbons (NMHC) as an option in the final rule for all fuels except alcohol fuels and compressed natural gas . NMHC and NMOG are very similar for gasoline and diesel fuel emissions.

d. Schedules for Implementation

We recognize that the Tier 2 standards pose greater technological challenges for larger light duty trucks (HLDTs) than for LDVs and smaller trucks (LDT1s and LDT2s). We believe that additional leadtime is appropriate for HLDTs. HLDTs have historically been subject to less stringent vehicle-based standards than lighter trucks and LDVs. Also, HLDTs were not subject to the voluntary emission reductions implemented for LDVs, LDT1s and LDT2s in the NLEV program. Consequently we are finalizing as proposed, separate phase-in programs for HLDTs and LDV/LLDTs . Our phase-in approach will provide HLDTs with extra time before they need to begin phase-in to the final Tier 2 standards and will also provide two additional years for them to fully comply. Table IV.B–3 provides a graphical representation of how the phase-in of the Tier 2 program will work for all vehicles. This table shows several aspects of the program:

- Phase-in of the Tier 2 standards;
- Phase-in/phase-out requirements of the interim programs;
- Phase-in requirements of new evaporative standards;
- Years that can be included in alternative phase-in schedules;
- Years in which manufacturers can bank NO_X credits through "early banking" and
- "Boundaries" on averaging sets in the Tier 2 and interim programs.
- Averaging provisions for MDPVs (see section IV.B.4.g. for discussion)

We discuss each of these topics in detail below and make numerous references to Table IV.B–3.

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Table IV.B-3
TIER 2 AND INTERIM NON-TIER 2 PHASE-IN AND EXHAUST AVERAGING SETS
(Bold lines around shaded areas indicate averaging sets)

	2001	2002	2003	2004 %	2005 %	2006 %	2007 %	2008 %	2009+ later %	NOx STD. (g/mi)
LDV/LLDT (INTERIM)	NLEV	NLEV	NLEV	75 max	50 max	25 max				0.30 avg
LDV/LLDT (TIER 2 +evap)	*early banking*[b]			25	50	75	100	100	100	0.07 avg
HLDT (TIER 2 +evap)	*early banking*[b]							50	100	0.07[d] avg
HLDT (INTERIM)	TIER 1[b]	TIER 1[b]	TIER 1[b]	25 c,e	50 e	75 e	100 e	50 max		0.20[a,d] avg
MDPVs (INTERIM)	HDE	HDE	HDE							
MDPVs (TIER 2 + evap)	*early banking*[b]							50	100	0.07[d] avg

NOTES

a. 0.6 NOx cap applies to balance of LDT3s/LDT4s, respectively, during the 2004-2006 phase-in years

b. Alternative phase-in provisions permit manufacturers to deviate from the 25/50/75% 2004-2006 and 50% 2008 phase-in requirements and provide credit for phasing in some vehicles during one or more of these model years.

c. Required only for manufacturers electing to use optional NMOG values for LDT2s or LDT4s and MDPV flexibilities during the applicable interim program and for vehicles whose model year commences on or after the fourth anniversary date of the signature of this rule. See discussion in preamble text.

d. HLDTs and MDPVs must be averaged together.

e. Diesels may be engine-certified through the 2007 model year. See discussion in preamble text.

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As described in detail in the Response to Comments document, the Alliance proposal would have delayed final implementation of Tier 2 standards until 2011. We are not adopting the Alliance's time schedule, because we believe the shorter schedule we proposed is feasible and that there is no reason to delay the final benefits of the Tier 2 standards. In fact, numerous commenters representing state, environmental and health groups argued that our original proposal gave manufacturers too much time to bring the HLDTs into line with LDVs and LLDTs. We believe the two extra years proposed in the NPRM remain appropriate. HLDTs will face greater challenges than LDVs/LLDTs because their emission control systems will need to be durable under potentially heavier loads and tougher operating conditions than LDV/LLDTs. Their sales are small relative to the rest of the light duty fleet (they will comprise about 14% of the light duty fleet in 2004), and they will benefit from industry experience with the lighter vehicles. In addition, HLDTs will not remain at high Tier 1 levels until they phase-in to Tier 2. Rather, they will have to meet interim standards that impose a NO_X cap of 0.60 g/mi and phase-in a corporate average NO_X standard of 0.20 g/mi. These standards represent a significant reduction from

applicable Tier 1 standards.[56] Interim standards are discussed in detail later in this preamble.

i. Implementation Schedule for Tier 2 LDVs and LLDTs

We are finalizing the implementation schedule for the Tier 2 standards as proposed in the NPRM. Thus, the standards will take effect beginning with the 2004 model year for light duty vehicles and trucks at or below 6000 pounds GVWR (LDV/LLDTs). Manufacturers will phase their vehicles into the Tier 2 standards beginning with 25 percent of LDV/LLDT sales that year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. Manufacturers will be free to choose which vehicles are phased-in each year. However, in each year during (and after) the phase-in, the manufacturer's average NO_X for its Tier 2 vehicles must meet the 0.07 g/mi corporate average standard. This phase-in schedule, which is consistent with that of the California LEV II program, provides between four and seven years of leadtime for the manufacturers to bring all of their LDV/LLDT production into compliance. These vehicles constitute about 86 percent of the light duty fleet.

To increase manufacturer flexibility and provide incentives for early introduction of Tier 2 vehicles, we are also finalizing provisions from the NPRM that permit manufacturers to use alternative phase-in schedules that will still require 100 percent phase-in by 2007, but recognize the benefits of early introduction of Tier 2 vehicles, and allow manufacturers to adjust their phase-in to better fit their own production plans. (See section IV.B.4.b.ii. below.)

ii. Implementation Schedule for Tier 2 HLDTs

The Tier 2 phase-in schedule for HLDTs is also being finalized as proposed. The phase-in for final Tier 2 standards for HLDTs will start later and end later than that for LDVs and LLDTs. Fifty percent of each manufacturer's HLDTs must meet Tier 2 standards in 2008, and 100 percent must meet Tier 2 standards in 2009. As with the LDV/LLDTs, the Tier 2 HLDTs must meet a corporate average NO_X standard of 0.07 g/mi. This delayed phase-in schedule:

- Provides significant interim emission reductions starting in 2004 (discussed separately below);
- Recognizes the relatively high emission standards that currently apply to HLDTs;
- Provides manufacturers with adequate lead time before they must bring HLDTs into compliance with final Tier 2 standards;
- Provides manufacturers the opportunity to apply and evaluate Tier 2 technology on LDV/LLDTs before having to apply it to HLDTs; and
- Provides manufacturers the opportunity to apply and evaluate Tier 2 technology on HLDTs on a relatively small scale to meet California LEV II requirements before having to apply it to HLDTs nationwide.

As with the LDV/LLDTs above, to encourage early introduction of Tier 2 HLDTs and to provide manufacturers with greater flexibility, we are finalizing provisions to permit manufacturers to generate early Tier 2 NO_X credits and to use alternative phase-in schedules that still result in 100% phase-in by 2009. (See sections IV.B.4.d.iv. and IV.B.4.b.ii, respectively, below.)

e. Interim Standards

The interim standards discussed below are a major source of emission reductions in the early years of the vehicle control program. The NO_X emission standards for LDT2s and LDT4s, which comprise about 40 percent of the fleet, are more stringent than the corresponding standards in the NLEV and CAL LEV I programs. These standards also are important because they set the stage for a smooth transition to the final Tier 2 standards.

The two groups of vehicles (LDV/LLDTs and HLDTs) will be approaching the Tier 2 standards from quite different emission "backgrounds". LDV/LLDTs will be at NLEV levels, which require NO_X emissions of either 0.3 or 0.5g/mi on average,[57] while HLDTs will be at Tier 1 levels facing NO_X standards of either 0.98 or 1.53 g/mi, depending on truck size. These Tier 1 NO_X levels for HLDTs are very high (by a factor of 14–22) relative to our 0.07 g/mi Tier 2 NO_X average. To address the disparity in emission "backgrounds", while gaining air quality benefits from vehicles during the phase-in period, we proposed and are finalizing separate interim average NO_X standards for the two vehicle groups during the phase-in period. The provisions described below will apply in 2004 for all LDVs and LDTs not certified to Tier 2 standards. The relationship of the interim programs to the final Tier 2 standards is shown in Table IV.B–3.

Interim vehicles will certify to the same bins as Tier 2 vehicles. As described earlier in this preamble, we have merged the tables of bins from the NPRM for simplicity and added a few bins. Bins 9 and 10 were drawn from the tables of interim bins in the NPRM, and are intended only for use during the phase-in years. Therefore, these two bins will be discontinued after 2006 (2008 for HLDTs).

i. Interim Exhaust Emission Standards for LDV/LLDTs

Beginning with the 2004 model year, all new LDVs, LDT1s and LDT2s not incorporated under the Tier 2 phase-in will be subject to an interim corporate average NO_X standard of 0.30 g/mi. This is effectively the LEV NO_X emission standard for LDVs and LDT1s under the NLEV program.[58] This interim program will hold LDVs and LLDTs to NLEV levels if they are not yet subject to Tier 2 standards during the phase-in. By implementing these interim standards for LDVs and LLDTs we will ensure that the accomplishments of the NLEV program continue. Additionally, this program will bring about substantial and important NO_X emission reductions from LDT2s in the early years of the program. LDT2s will be held to a 0.3 g/mi NO_X average in contrast to a 0.5 g/mi average in the NLEV program.

Because the Tier 2 standards are phased-in beginning in the 2004 model year, the interim standards for LDVs and LLDTs apply to fewer vehicles each year, *i.e.*, they are "phase-out" standards. Table IV.B–2 shows the maximum percentage of LDVs and LLDTs subject to the interim standards each year— 75% in 2004, 50% in 2005, 25% in 2006 and 0% in 2007.

As mentioned above, the interim program for LDV/LLDTs is designed to hold these vehicles to the NLEV NO_X level for LDVs and LDT1s, and a few of our bins are derived from the NLEV program. Our proposal to bring LDT2s into line with the LDVs and LDT1s during the interim program by requiring all LDVs, LDT1s and LDT2s to meet the same average NO_X standard (0.30) g/mi was of concern to industry commenters. In the final rule, we are retaining this requirement, but we are providing an optional NMOG standard of 0.130 for LDT2s certified to bin 9 when the manufacturers of those LDT2s elect to bring all of their 2004 model year

[56] Under Tier 1 standards, LDT3s are subject to a 0.98 g/mi NO_X standard while LDT4s are subject to an even higher NO_X standard of 1.53 g/mi.

[57] The NLEV program imposes NMOG average standards that translate into full useful life NO_X levels of about 0.3 g/mi for LDV/LDT1s and 0.5 g/mi for LDT2s.

[58] The NLEV program does not impose average NO_X standards, but the NMOG average standards that it does impose will lead to full useful life NO_X levels of about 0.3 g/mi for LDV/LDT1s.

HLDTs under our interim program and phase 25% of those HLDTs into the 0.20 g/mi average NO_X standard. (See ii. below). These provisions are discussed in detail below and also in the Response to Comments document.

ii. Interim Exhaust Emission Standards for HLDTs

Our interim standards for HLDTs will begin in the 2004 model year similar to our proposal in the NPRM. The Interim Program for HLDTs will require compliance with a corporate average NO_X standard of 0.20 g/mi that will be phased in between 2004 and 2007. The interim HLDT standards, like those for LDV/LLDTs will make use of the bins in Tables IV.B. –4 and –5. We believe that our interim standards, which start in 2004, will produce significant emission reductions from HLDTs produced during the interim period. For example, HLDTs will have to reduce emissions in the interim program relative to the NLEV program. These standards, by themselves, represent a major reduction in emission standards and we believe it is likely that some manufacturers will apply their Tier 2 technology to HLDTs in order to comply with the interim standards.

As shown in Table IV.B.–3, the phase-in schedule for HLDTs to the 0.20 g/mi corporate average NO_X standard will be 25 percent in the 2004 model year (except as noted below), 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. As for the Tier 2 standards, alternative phase-in schedules (see Section IV.B.4.b.ii.) will be available. The interim program will remain in effect through 2008 to cover those HLDTs not yet phased into the Tier 2 standards (a maximum of 50%). Interim HLDTs not subject to the interim corporate average NO_X standard during the applicable phase-in years (2004–2006 or 2005–2006) will be subject to the least stringent bins so their NO_X emissions will be effectively capped at 0.60 g/mi. These vehicles will be excluded from the calculation to determine compliance with the interim 0.20 g/mi average NO_X standard.

This approach will allow more time for manufacturers to bring the more difficult HLDTs to Tier 2 levels while achieving real reductions from those HLDTs that may present less of a challenge.

Due to statutory leadtime considerations, we were not able to finalize the HLDT standards to be in effect by the time the 2004 model year begins. For this reason, we are providing incentives for HLDTs to comply with the Tier 2 standards for all 2004 model year HLDTs. This change and the leadtime issue are discussed further under section IV.B.4.e. below and also in the Response to Comments document.

iii. Interim Programs Will Provide Reductions Over Previous Standards

As is the case with the primary Tier 2 standard structure, the interim programs will focus on NO_X but will also provide reductions in NMOG beyond the NLEV program. This is because the interim programs will reduce emissions from LDT2s and HLDTs compared to their previous standards. Without the interim standards, HLDTs could be certified to the Tier 1 NMHC levels (0.46 g/mi or 0.56 g/mi). With the interim standards, however, exhaust NMOG [59] should average approximately 0.09 g/mi for all non-Tier 2 LDV/LLDTs and 0.24 g/mi or less for HLDTs. CO under Tier 1 could be as high as 7.3 g/mi for LDT4s. Under the interim program, CO standards for most bins will be well below 7.3 g/mi.

f. Generating, Banking, and Trading NO_X Credits

As proposed in the NPRM and finalized in this notice, manufacturers will be permitted to average the NO_X emissions of their Tier 2 vehicles and comply with a corporate average NO_X standard. In addition, when a manufacturer's average NO_X emissions fall below the corporate average NO_X standard, it can generate NO_X credits for later use (banking) or to sell to another manufacturer (trading). NO_X credits will be available under the Tier 2 standards, the interim standards for LDVs and LLDTs, and the interim standards for HLDTs. These NO_X credit provisions will facilitate compliance with the fleet average NO_X standards and be very similar to those currently in place for NMOG emissions under California and federal NLEV regulations.

A manufacturer with an average NO_X level for its Tier 2 vehicles in a given model year below the 0.07 gram per mile corporate average standard can generate Tier 2 NO_X credits that it can use in a future model year when its average NO_X might exceed the 0.07 standard. Manufacturers must calculate their corporate average NO_X emissions at year end and then compute credits generated based on how far below 0.07 g/mi the corporate average falls.

Manufacturers will be free to retain any credits they generate for future use or to trade (sell) those credits to other manufacturers. Credits retained or purchased can be used by manufacturers with corporate average Tier 2 NO_X levels above 0.07 g/mi. Under provisions described in Section IV.B.4.d.iv., manufacturers can implement NO_X emission reductions as early as the 2001 model year and earn early Tier 2 NO_X credits to help LDVs and LLDTs meet Tier 2 standards. Similarly, manufacturers can earn early credits for HLDTs as early as the 2001 model year. In model years up through 2005, manufacturers can earn extra credits when they certify vehicles to bins 1 or 2.

Banking and trading of NO_X credits under the interim non-Tier 2 standards will be similar to that under the Tier 2 standards, except that a manufacturer must determine its credits based upon the 0.30 or 0.20 gram per mile corporate average NO_X standard applicable to vehicles in the interim programs. As we proposed in the NPRM, interim credits from LDVs/LLDTs and interim credits from HLDTs will not be permitted to be used interchangeably due to the differences in the interim corporate average NO_X standards. As proposed in the NPRM, there will be no provisions for early banking under the interim standards and manufacturers will not be allowed to use interim credits to address the Tier 2 NO_X average standard. This is because we remain concerned that credits can be generated relatively easily under less stringent standards (the Tier 1 or interim standards) and then used in such a way to delay implementation of the Tier 2 standards.

Banking and trading of NO_X credits and related issues are discussed in greater detail in Section IV.B.4.d. below.

2. Why Are We Finalizing the Same Set of Standards for Tier 2 LDVs and LDTs?

Before we provide a more detailed description of the vehicle program, we want to review two overarching principles of today's rule. The first is our goal to bring all LDVs and LDTs under the same set of emission standards. Historically, LDTs—and especially the heavier trucks in the LDT3 and LDT4 categories—have been subject to less stringent emission standards than LDVs (passenger cars). In recent years the proportion of light truck sales has grown to approximately 50 percent. Many of these LDTs are minivans, passenger vans, sport utility vehicles and pick-up trucks that are used primarily or solely for personal transportation; *i.e.*, they are used like passenger cars.

As vehicle preferences have increasingly shifted from passenger cars to light trucks there has been an

[59] In the Tier 1 program, exhaust hydrocarbon standards are in terms of NMHC, not NMOG. However, as we have explained elsewhere in this preamble, NMHC and NMOG results are very similar for gasoline and diesel-fueled vehicles.

accompanying increase in emissions over what otherwise would have occurred because of the increase in miles traveled by LDTs and the less stringent standards for LDTs as compared to LDVs. As Section III. above makes clear, reductions in these excess emissions (and in other mobile and stationary source emissions) are seriously needed. Since both LDVs and LDTs are within technological reach of the standards in the Tier 2 bin structure, and since none of the comments have been persuasive that manufacturers can not meet the standards, we are finalizing our proposal to equalize the regulatory useful life mileage for LDVs and LDTs and apply the same Tier 2 exhaust emission standard bins to all of them. This program will ensure that substantial reductions occur in all portions of the light-duty fleet and that the movement from LDVs to LDTs will not counteract these reductions.

Once the phase in periods end for all vehicles in 2009, manufacturers will include all LDVs and LDTs together in calculating their corporate average NO_X levels.[60] As mentioned above and described in more detail in Section IV.B.–4. below, manufacturers can choose the emission bin for any test group of vehicles provided that, on a sales weighted average basis, the manufacturer meets the average NO_X standard of 0.07 g/mi for its Tier 2 vehicles that year.

Some manufacturers have suggested that a program with different requirements is needed for heavy LDTs. Recognizing that compliance will be most challenging for HLDTs, the delay in the start of the phase-in and the additional phase-in years for those vehicles will allow manufacturers to delay the initial impact of the Tier 2 standards until the 2008 model year. This represents four additional model years of leadtime beyond the time when passenger cars and LDT1s and LDT2s will achieve Tier 2 standards in substantial numbers. We believe this phase-in and other provisions of this rule respond to these concerns. Note that in the NPRM, we requested comments on the need for different hydrocarbon standards for these vehicles recognizing that a tradeoff often exists between HC and NO_X emissions. We also proposed that several bins have higher hydrocarbon standards for HLDTs during the interim program. We are finalizing these bins as proposed. Also, as an option, we are permitting the use of NMOG values similar to those in the NLEV program for bins 9 and 10 only for certain LDT2s and LDT4s during the interim program (see section IV.B.1.e.ii. above for details).

We are not adopting the Alliance's proposed phase-in schedule which would have provided a phase-in lasting until 2011. At the end of the Alliance's proposed phase-in, all vehicles would comply with an average NO_X standard of 0.07 g/mi. A fixed 0.09 NMHC standard would apply to LDVs and LLDTs while a fixed 0.156 NMHC standard would apply to HLDTs.[61] Our final program provides HLDTs until 2008 before any have to meet 0.07 g/mi on average and permits them to be averaged with LDV/LLDTs beginning in 2009, when all must meet 0.07 g/mi NO_X on average. We believe that eight years is a significant amount of leadtime to apply Tier 2 technology. We heard clearly from the public hearings and written comments that the public sees no justification for and does not want even more time provided for HLDTs. Furthermore, we see no technological need for more time than we proposed. Indeed, many believe that HLDTs should meet the Tier 2 standards in step with the LDV/LLDTs.

We are not promulgating the fixed NMHC standards suggested by the Alliance, but are sticking with the concept of bins containing lower NMOG standards connected to lower NO_X (and other) standards. We believe that providing final exhaust emission standards for HLDTs that deviate from those for LDV/LLDTs would violate one of the overarching principles of the Tier 2 program, i.e. that all LDVs and LDTs should be subject to the same exhaust emission standards. Further, the idea of NMOG values that differ from California's runs counter to other arguments raised by the Alliance that EPA should align bins with California's to promote 50 state certification of test groups.

3. Why Are We Finalizing the Same Standards for Both Gasoline and Diesel Vehicles?

The second overarching principle of our vehicle program is the use of the same Tier 2 standards for all LDVs and LDTs, regardless of the fuel they are designed to use. The same exhaust emission standards and useful life periods we are finalizing today will apply whether the vehicle is built to operate on gasoline or diesel fuel or on an alternative fuel such as methanol or natural gas. Diesel powered LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and thus we believe they should meet the same standards. Less stringent standards for diesels could create incentives for manufacturers to build more diesel vehicles, thus endangering the emission reductions expected by this program.

Manufacturers have expressed concerns that diesel-fueled vehicles would have difficulty meeting NO_X and particulate matter levels like those contained in today's rule. Clearly, these standards will be challenging. As discussed in Section IV.A.–1. above, we expect that the Tier 2 NO_X and NMOG standards will be challenging for gasoline vehicles, but that major technological innovations will not be required. For diesels, however, the final Tier 2 NO_X and PM standards will likely require applications of aftertreatment, most likely accompanied by changes in diesel fuel as such devices are sensitive to diesel fuel quality, particularly sulfur content. We do not believe such devices will be necessary to meet the top bin for our interim standards.[62] Given the small percentage of diesel vehicles and the phase-in of the standards, that bin should be sufficient for any manufacturer to market diesels and still comply with the interim program. We anticipate that manufacturers that choose to build diesel vehicles for the final Tier 2 standards will adopt aftertreatment technologies such as NO_X adsorber catalysts and continuously regenerating particulate traps to meet Tier 2 requirements. We issued an Advanced Notice of Proposed Rulemaking to seek input on potential diesel fuel quality changes on May 13, 1999 (64 FR 26142). We anticipate issuing a Notice of Proposed Rulemaking to reduce the sulfur limit on diesel fuel in the spring of 2000 followed by a final rule in late 2000. Our goal in that rulemaking is to have low sulfur diesel fuel available which will allow diesel vehicles to meet the Tier 2 standards, within the bin structure, by the time the Tier 2 standards are required for the entire fleet.

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[60] Because of the different phase-in percentages and phase-in schedules for the two groups, during the duration of the phase-in (through 2008), manufacturers will average Tier 2 LDV/LLDTs separately from HLDTs.

[61] The Alliance proposed NMHC standards in lieu of the NMOG standards we proposed and are finalizing today. We are including a provision in the final rule to accept NMHC results, subject to an adjustment factor, to demonstrate compliance with NMOG standards, although we are not adopting the fixed standards proposed by the Alliance.

[62] The interim PM standard in this new bin, which represents a reduction from the NLEV PM standards, should be feasible without aftertreatment. The technologies needed to meet the PM standard we proposed for this bin would likely have required low sulfur diesel fuel, which may not be widely available during the interim program. This change is also discussed in section V.A.

Today, diesels comprise less than one-half of one percent of all LDV/LDT sales. While this is a small fraction, the potential exists for diesels to gain a considerable market share in the future. All one need do is review the dramatic increase in recent years of diesel engine use in the lightest category of heavy duty vehicles (8500–10,000 pounds GVWR) to see the potential for significant diesel engine use in LDTs, and perhaps LDVs, in the future. Just ten years ago, diesels made up less than 10 percent of this class of vehicles. In 1998, this fraction approached 50 percent.

The potential impact of large-scale diesel use in the light-duty fleet underscores the need for the same standards to apply to diesels as other vehicles. Given the health concerns associated with diesel PM emissions (see Section III. above), we believe that it is prudent to address PM emissions from diesel LDVs and LDTs while their numbers are relatively small. In this way the program can minimize the PM impact that would accompany significant growth in this market segment while allowing manufacturers to incorporate low-emission technology into new light-duty diesel engine designs.

4. Key Elements of the Vehicle Program

The previous subsections IV.B.–1.2. and 3. provide an overview of the Tier 2 vehicle program and the two key principles it is built on. This subsection elaborates on the major vehicle-related elements of today's rule. Later in this preamble, Section V.A. discusses the rest of the vehicle provisions.

a. Basic Exhaust Emission Standards and "Bin" Structure

Our final Tier 2 program contains a basic requirement that each manufacturer meet, on average, a full useful life NO_X standard of 0.07 g/mi for all its Tier 2 LDVs and LDTs. Manufacturers will have the flexibility to choose the set of standards that a particular test group [63] of vehicles must meet. For a given test group of LDVs or LDTs, manufacturers will select a set of full useful life [64] standards from the same row ("emission bin" or simply "bin") in Table IV.B.–4. below. Each bin contains a set of individual NMOG, CO, HCHO, NO_X, and PM standards. For technology harmonization purposes, our proposed emission bins include or otherwise cover all of those adopted in California's LEV II program.[65,66]

In the NPRM, we proposed that interim vehicles and Tier 2 vehicles (except for those Tier 2 vehicles in the lowest bins) would also have to meet intermediate useful life standards, *i.e.*, standards that apply for 5 years or 50,000 miles. We are finalizing these intermediate useful life standards as proposed. Where we have added new full life bins, we have included corresponding intermediate life bins as appropriate. Our intermediate life standards are generally aligned with California's, they only impact the higher bins, and we do not believe they add substantial burden to the program. Further, they provide a check on the allowed emission deterioration during the life of the vehicle. For the final rule, we have made two changes involving intermediate life standards. First, we are providing that diesel vehicles, which will likely certify to bin 10 during the interim program, may opt not to meet the intermediate life standards associated with this bin. Low sulfur diesel fuel may be needed for diesels to meet our interim intermediate life standards and it is not likely to be widely available during the time frame of the interim program. Secondly, for all vehicles, we are finalizing a provision that will make intermediate life standards optional for any test group that is certified to a full useful life of 150,000 miles. This provision is described in more detail with other useful life issues in section V.B.

TABLE IV.B–4.—TIER 2 LIGHT–DUTY FULL USEFUL LIFE EXHAUST EMISSION STANDARDS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM	Comments
10	0.6	0.156/0.230	4.2/6.4	0.018/0.027	0.08	(a,b,c,d)
9	0.3	0.090/0.180	4.2	0.018	0.06	(a,b,e)
The above temporary bins expire in 2006 (for LDVs and LLDTs) and 2008 (for HLDTs)						
8	0.20	0.125/0.156	4.2	0.018	0.02	(b,f)
7	0.15	0.090	4.2	0.018	0.02	
6	0.10	0.090	4.2	0.018	0.01	
5	0.07	0.090	4.2	0.018	0.01	
4	0.04	0.070	2.1	0.011	0.01	
3	0.03	0.055	2.1	0.011	0.01	
2	0.02	0.010	2.1	0.004	0.01	
1	0.00	0.000	0.0	0.000	0.00	

Notes:
[a] Bin deleted at end of 2006 model year (2008 for HLDTs).
[b] The higher temporary NMOG, CO and HCHO values apply only to HLDTs and expire after 2008.
[c] An additional temporary higher bin restricted to MDPVs is discussed in section IV.B.4.g.
[d] Optional temporary NMOG standard of 0.280 g/mi applies for qualifying LDT4s and MDPVs only.
[e] Optional temporary NMOG standard of 0.130 g/mi applies for qualifying LDT2s only, see text.
[f] Higher temporary NMOG standard is deleted at end of 2008 model year.

[63] A "test group" is the basic classification unit for certification of light-duty vehicles and trucks under EPA certification procedures for the CAP2000 program. "Test group" is a broader classification unit than "engine family" used prior to the implementation of the CAP2000 program. We discuss the CAP2000 program in more detail in section V.A.9. of this preamble.

[64] The regulatory "useful life" value for Tier 2 vehicles is specifically addressed in Section V.A.2. of this preamble. Full useful life will be 10 years or 120,000 miles for all vehicles except LDT3s and LDT4s, for which it is 11 years or 120,000 miles. Intermediate useful life, where standards are applicable, is 5 years or 50,000 miles.

[65] EPA's current standards for Clean Fuel Vehicles are less stringent than the Tier 2 standards. *See* 40 CFR 88.104–94. The Tier 2 standards will supercede the current CFV standards, and the Agency intends to undertake a rulemaking to revise the CFV standards accordingly.

[66] In some cases our bins do not match California's exactly, because they have higher NMOG standards. These bins "cover" the California bin in that a vehicle certified to the California standards will comply with the standards in these bins.

TABLE IV.B.–5.—LIGHT-DUTY INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST EMISSION STANDARDS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM	Comments
10	0.4	0.125/0.160	3.4/4.4	0.015/0.018		(a,b,c,d,f,h)
9	0.2	0.075/0.140	3.4	0.015		(a,b,e,h)
The above temporary bins expire in 2006 (for LDVs and LLDTs) and 2008 (for HLDTs)						
8	0.14	0.100/0.125	3.4	0.015		(b,g,h)
7	0.11	0.075	3.4	0.015		(h)
6	0.08	0.075	3.4	0.015		(h)
5	0.05	0.075	3.4	0.015		(h)

Notes:
[a] Bin deleted at end of 2006 model year (2008 for HLDTs).
[b] The higher temporary NMOG, CO and HCHO values apply only to HLDTs and expire in 2008.
[c] An additional higher temporary bin restricted to MDPVs is discussed in section IV.B.4.g.
[d] Optional temporary NMOG standard of 0.195 g/mi applies for qualifying LDT4s and MDPVs only.
[e] Optional temporary NMOG standard of 0.100 g/mi applies for qualifying LDT2s only, see text.
[f] Intermediate life standards are optional for diesels certified to bin 10.
[g] Higher temporary NMOG value deleted at end of 2008 model year.
[h] Intermediate life standards are optional for any test group certified to a 150,000 mile useful life (if credits are not claimed).

Under a "bins" approach, a manufacturer may select a set of emission standards (a bin) to comply with, and a test group must meet all standards within that bin. Ultimately, the manufacturer must also ensure that the emissions of a targeted pollutant—NO_X in this case—from all of its vehicles taken together meet a "corporate average" emission standard. This corporate average emission standard ensures that a manufacturer's production yields the required overall emission reductions. (See Section IV.B.–4.c. below for more discussion of the corporate average NO_X standard.)

In addition to the Tier 2 standards described above, we are also finalizing an interim average NO_X standard derived from the LDV/LDT1 NLEV program to cover all non-Tier 2 LDVs and LLDTs during the Tier 2 phase-in. We are finalizing a separate interim average NO_X standard for HLDTs. As in the Tier 2 program, manufacturers will select bins from Table IV.B.–4 to use to comply with the interim standards. Bins with NO_X values at or above 0.07 g/mi also have associated intermediate life standards which are shown in Table IV.B.–5. (We describe the interim standards in detail in Section IV.B.4.e. below.)

i. Why Are We Including Extra Bins?

Compared to the CalLEV II program, our Tier 2 proposal included additional bins. The California program contains no bins that will allow NO_X levels above the 0.07 g/mi level. Therefore, under the California program, no engine family can be certified above 0.07 g/mi, even with the application of offsetting credits. We proposed to add two bins (with NO_X values of 0.15 and 0.20) above the 0.07 bin and another below (with a NO_X value of 0.04) to provide manufacturers with additional flexibility. Based upon comments received from the Alliance and others that additional bins provide important added flexibility, we are finalizing a total of three bins above the LEV level (the additional bin has a NO_X value of 0.10 g/mi) and are adding one more below the LEV level (this additional bin has a NO_X value of 0.03 g/mi). Due to the NO_X averaging requirement of this rule, these bins will not result in any increase in NO_X emissions. Further, these bins will address concerns raised by some that a wider variety of bins, and bins with higher NO_X values, are needed to avoid a situation where the Tier 2 program discourages the development of advanced technology high fuel economy vehicles, which may, at least in their earliest years, have NO_X emissions higher than more conventional vehicles.

In our NPRM we proposed that during the Tier 2 phase-in years (through 2006 for LDV/LLDTs and 2008 for HLDTs), bins from the applicable interim program would be available to enhance the flexibility of the program by providing manufacturers with additional bins having NO_X standards above 0.07 g/mi. In the NPRM, we showed the interim bins in separate tables for LDV/LLDTs and HLDTs. There was considerable overlap across the two tables and with the Tier 2 bins. In this final rule, we have consolidated the interim bins and the Tier 2 bins into one table for simplicity and ease of reference. The interim programs for non-Tier 2 vehicles are described in detail in section IV.B.4.e.

While some commenters were concerned about the existence of bins above NO_X = 0.07 g/mi, we believe that the additional higher bins actually provide incentive for manufacturers to produce vehicles below 0.07 g/mi of NO_X. We believe this incentive exists because manufacturers will have some vehicles (especially larger LDTs) that they might find more cost effective to certify to levels above the 0.07 g/mi average standard. However, to do this they will have to offset those vehicles in our NO_X averaging system with vehicles certified below 0.07 g/mi. The bins at NO_X = 0.04 g/mi and NO_X = 0.03 g/mi will provide greater opportunity to do this. Thus, the extra bins serve two purposes; they provide additional flexibility to manufacturers to address technological differences and costs, and they provide those manufacturers with incentives to produce cleaner vehicles and thus advance emission control technology.

We are finalizing a bins approach with the bins shown in Tables IV.B.4 and 5 to provide adequate and appropriate emission reductions and manufacturer flexibility. This structure will help to accelerate technological innovation. We requested comment on whether we should include up to two additional bins between NO_X = 0.07 and NO_X = 0.15. Based upon manufacturer comment, we have added an additional bin (bin 6) with NO_X = 0.10. This bin will provide greater flexibility for manufacturers who may find it more cost-effective to produce some vehicles slightly above 0.07 but have difficulties meeting a 0.07 g/mi average NO_X standard if they must certify them to a NO_X level of 0.15 g/mi.

We requested comment on whether our Tier 2 bin in the NPRM with NO_X = 0.20 (our final bin 8) should be eliminated when the Tier 2 phase-in is completed (after 2007 for LDV/LLDTs

and after 2009 for HLDTs). Numerous commenters argued that our highest bins were too lenient. Comments from manufacturers were opposed to eliminating bin 8 and we see little downside to having bins higher than the 0.07 NO_X standard, given that, for all of the vehicles that will use this bin, manufacturers will have to offset the excess emissions by selling vehicles certified below 0.07 g/mi NO_X under the averaging requirement. Thus, we are retaining bin 8.

b. The Program Will Phase in the Tier 2 Vehicle Standards Over Several Years

i. Primary Phase-In Schedule

We are finalizing as proposed our plan to phase in the Tier 2 standards for LDV/LLDTs over a four year period beginning in 2004 and we are also finalizing as proposed a delayed two year phase-in beginning in 2008 for HLDTs. These phase-in schedules are shown in Table IV.B.–2 and are also shown separately in Tables IV.B.–6 and 7. We believe the flexibility of this dual phase-in approach is appropriate because the Tier 2 program will encompass all light-duty vehicles and trucks and will result in widespread applications of upgraded and improved technology across the fleet. The program will require research, development, proveout, and certification of all light-duty models, and manufacturers may need longer lead time for some vehicles, especially HLDTs. Also, manufacturers may wish to time compliance with the Tier 2 standards to coincide with other changes such as the roll out of new engines or new models. In order to begin the introduction of very clean vehicles as soon as possible while avoiding imposing unnecessary inefficiencies on vehicle manufacturers, we believe this practical but aggressive phase-in schedule effectively balances air quality, technology, and cost considerations.

In each year, manufacturers will have to ensure that the specified fraction of their U.S. sales:[67]

- Meets Tier 2 standards for exhaust emissions, including Supplemental Federal Test Procedure (SFTP) standards (discussed in Section V.A.–3. below);
- Meets Tier 2 standards for evaporative emissions (discussed in Section IV.B.–4.f. below); and
- Meets the corporate average Tier 2 NO_X standard.

[67] For Tier 2 vehicles (and for interim vehicles), the term "U.S. sales" means, for a given model year, those sales in states other than California and any states that have adopted the California program.

Manufacturers will have to meet the Tier 2 exhaust requirements (i.e., all the standards of a particular bin plus the SFTP standards) using the same vehicles. Vehicles not covered by the Tier 2 standards during the phase-in years (2004–2008) will have to meet interim standards described in Section IV.B.4.e. below and the existing evaporative emission as well as the applicable SFTP standards.

Manufacturers can elect to meet the percentage phase-in requirements for evaporative and exhaust emissions using two different sets of vehicles. We believe that because of interactions between evaporative and exhaust control strategies, manufacturers will generally address the Tier 2 evaporative phase-in with the same vehicles that they use to meet the exhaust phase-in. However, the primary focus of today's proposal is on exhaust emissions, and the flexibility for manufacturers to use different sets of vehicles in complying with the phase-in schedule for evaporative standards and for the exhaust standards will have no environmental down side that we are aware of. It is possible that some exhaust emission improvements might even occur sooner than they otherwise would if a manufacturer is able to move ahead with the roll-out of a model with cleaner exhaust emissions without having to wait for the development of suitable evaporative controls to be completed for that model.

TABLE IV.B.–6.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 LDVS AND LLDTS

Model year	Required percentage of light-duty vehicles and light light-duty trucks (percent)
2004	25
2005	50
2006	75
2007	100

TABLE IV.B.–7.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 HLDTS

Model year	Required percentage of heavy light-duty trucks (percent)
2008	50
2009	100

We are finalizing our proposed phase-in approach, in which vehicle sales will be determined according to the "point of first sale" method outlined in the NLEV rule. Vehicles with points of first sale in California or a state that has adopted the California LEV II program (if any) will be excluded from the calculation. The "point of first sale" method recognizes that most vehicle sales will be to dealers and that the dealers' sales will generally be to customers in the same geographic area. While some sales to California residents (or residents of states that adopt California standards) may occur from other states and vice-versa, we believe these sales will be far too small to have any significant impact on the air quality benefits of the Tier 2 program or the manufacturers' ability to demonstrate compliance.

ii. Alternative Phase-In Schedule

We are finalizing, as proposed, that manufacturers may introduce vehicles earlier than required to earn the flexibility to make offsetting adjustments, on a one-for one basis, to the phase-in percentages in later years. However, they will still need to reach 100% of sales in the 2007 model year (2009 for HLDTs). Manufacturers will have the option to use this alternative to meet phase-in requirements for LDV/LLDTs and/or HLDTs. They can use separate alternative phase-in schedules for exhaust and evaporative emissions, or an alternative phase-in schedule for one set of standards and the primary (25/50/75/100% or 50%/100%) schedule for the other.

Under these alternative schedules, manufacturers will have to introduce vehicles that meet or surpass the 0.07 g/mi Tier 2 NO_X average standard before they are required to do so, or else introduce vehicles that meet or surpass the 0.07 standard in greater quantities than required. Alternative phase-in schedules essentially credit the manufacturer for its early or accelerated efforts and allow the manufacturer greater flexibility in subsequent years during the phase-in. Thus, the alternative phase-in schedule provisions provide incentive and flexibility to manufacturers to introduce Tier 2 vehicles before 2004 (or 2008 for HLDTs).

As outlined in the NPRM, an alternative phase-in schedule will be acceptable if it passes a specific mathematical test. We have designed the test to provide manufacturers benefit from certifying to the Tier 2 standards early while ensuring that significant numbers of Tier 2 vehicles are introduced during each year of the alternative phase-in schedule. To test an alternative schedule, a manufacturer

must sum its yearly percentages of Tier 2 vehicles beginning with model year 2001 and compare the result to the sum that results from the primary phase-in schedule. If an alternative schedule scores as high or higher than the base option, then the alternative schedule is acceptable. The mathematical technique to evaluate alternative phase-in schemes is somewhat similar to that used in our NLEV rule and in California rules.

For LDV/LLDTs, the final sum of percentages must equal or exceed 250—the sum that results from a 25/50/75/100 percent phase-in. For example, a 10/25/50/65/100 percent phase-in that begins in 2003 will have a sum of 250 percent and is acceptable. In this example, assuming constant levels of production, each Tier 2 vehicle sold early (*i.e.* in 2003) will permit the manufacturer to sell one less Tier 2 vehicle in the last phase-in year (2006). A 10/20/40/70/100 percent phase-in that begins the same year has a sum of 240 percent and is not acceptable. For HLDTs, the sum must equal or exceed 150 percent.

To ensure that significant numbers of Tier 2 vehicles are introduced in the 2004 time frame, manufacturers will not be permitted to use alternative phase-in schedules that delay the implementation of the Tier 2 LDV/LLDT requirements, even if the sum of the phase-in percentages meets or exceeds 250. Such a situation could occur if a manufacturer delayed implementation of its Tier 2 production until 2005 and began a 75/85/100 percent phase-in that year. To protect against this possibility, we are finalizing the proposed requirement that for any alternative phase-in schedule, a manufacturer's phase-in percentages from the 2004 and earlier model years sum to at least 25%. In the final rule we are including an additional measure of flexibility to the requirements for alternative phase-in schedules. We will permit manufacturers to achieve a 2004 phase-in of less than 25%, but no less than 20%, provided that in 2005 they make up the shortfall in a two-for-one manner. So, as an example, a manufacturer that phased in 5% in 2003 and 15% in 2004 would achieve a total of 20% through the 2004 model year and would need to comply with Tier 2 requirements for at least 60% of its LDV/LLDTs in 2005. We believe that this flexibility is appropriate because the required response for 2005 model year vehicles more than makes up for the environmental loss from the 2004 model year vehicles.

We requested comment on whether alternative phase-in schedules should be structured to permit manufacturers to extend phase in past the final year of the primary phase-in schedule (2007 or 2009). While the Alliance proposal and comments clearly support phase-ins that run past 2007 and 2009, other commenters were opposed to any extensions of the phase-in period. In fact most commenters who addressed the length of the phase-in indicated, as previously discussed, that the phase-in for HLDTs should be moved ahead to 2007 to coincide with LDV/LLDTs. We are not finalizing any provisions that will permit alternative phase-in schedules to provide additional time for manufacturers to meet any final 100% compliance year.

In the NPRM, we pointed out that phase-in schedules, in general, add little flexibility for manufacturers with limited product offerings because a manufacturer with only one or two test groups can not take full advantage of a 25/50/75/100 percent or similar phase-in. For manufacturers meeting EPA's definition of "small volume manufacturer," we proposed to exempt those manufacturers from the phase-in schedules and require them to simply comply with the final 100% compliance requirement. We are finalizing this provision for small volume manufacturers. This provision is only intended to apply to small volume manufacturers and not to small test groups of larger manufacturers.

For larger manufacturers having a limited product line, we recognize that our phase-in schedule may lack flexibility, however, we are not including any provisions to address this issue as we are for small volume manufacturers because we do not believe these manufacturers need the relief and we do not want to sacrifice any air quality benefits of the program.

c. Manufacturers Will Meet a "Corporate Average" NO_X Standard

While the manufacturer will be free to certify a test group to any applicable bin of standards in Table IV.B.–2, it will have to ensure that the sales-weighted average of NO_X standards from all of its test groups of Tier 2 vehicles meet a full useful life standard of 0.07 g/mi.[68] Using a calculation similar to that for the NMOG corporate average standard in the California and NLEV programs, manufacturers must determine their compliance with the corporate average NO_X standard at the end of the model year by computing a sales weighted average of the full useful life NO_X standards from each bin. Manufacturers must use the following formula:

$$\text{Corporate Average } NO_X = \frac{\sum(\text{Tier 2 } NO_X \text{ std for each bin}) \times (\text{sales for each bin})}{\text{total Tier 2 sales}}$$

Manufacturers must exclude vehicles sold in California or states adopting California LEV II standards from the calculation. As indicated above, manufacturers must compute separate NO_X averages for LDV/LLDTs and HLDTs through model year 2008.

The corporate average NO_X standards of the primary Tier 2 program and the interim programs for LDV/LLDTs and HLDTs will ensure that expected fleet-wide emission reductions are achieved. At the same time, the corporate average standards allow us to permit the sale of some vehicles above the levels of the average standards to address the greater technological challenges some vehicles face and to reduce the overall costs of the program. We discuss how manufacturers can generate, use, buy and sell NO_X credits under the interim and Tier 2 programs in the next subsection.

Given the corporate average NO_X standards, we do not believe a corporate average NMOG standard as used by California is essential because meeting the corporate average NO_X standard will automatically bring the NMOG fleet average to approximately 0.09 g/mi or below.

d. Manufacturers Can Generate, Bank, and Trade NO_X Credits

i. General Provisions

As mentioned in the Overview above, we are finalizing our proposal that manufacturers with year-end corporate average NO_X emissions for their Tier 2 vehicles below 0.07 g/mi can generate Tier 2 NO_X credits. Credits can be saved (banked) for use in a future model year

[68] For interim vehicles, this average NO_X standard will be 0.20 for HLDTs and 0.30 for LDV/LLDTs. Compliance with these interim average standards will be calculated in the same manner as compliance with the 0.07 standard.

or for trading (sale) to another manufacturer. Manufacturers can use credits if their corporate average NO_X emissions are above 0.07 g/mi.

As proposed, the Tier 2 standards will apply regardless of the fuel the vehicle is designed for, and there will be no restrictions on averaging, banking or trading of credits across vehicles of different fuel types. Consequently, a gasoline fueled LDV might help a manufacturer generate NOx credits in one year that could be banked for the next year when they could be used to average against NO_X emissions of a diesel fueled LDT within the appropriate averaging structure.

Because of the split phase-in and the different interim programs we are finalizing for the two different groups of vehicles (LDV/LLDTs and HLDTs), we are also finalizing the proposed requirement that manufacturers compute their corporate Tier 2 NO_X averages separately for LDV/LLDTs and HLDTs through 2008. As we proposed, credit exchanges between LDVs/LLDTs and HLDTs will not be allowed nor will credit exchanges across the interim programs or between the interim programs and the final Tier 2 program be allowed. These restrictions will end with the 2009 model year at which time both phase-ins and all interim standards will have ended and the program will permit free averaging across all Tier 2 vehicles. As noted in the NPRM, we are concerned that allowing cross-trading between interim and Tier 2 vehicles will reduce the expected benefits of the program and delay fleet turnover to Tier 2 emission levels. For this reason we did not propose and are not finalizing to permit such exchanges.

ii. Averaging, Banking, and Trading of NO_X Credits Fulfills Several Goals

We explained in the NPRM why we believe the provisions for averaging, banking, and trading of NO_X credits (ABT) will be valuable. In short:

- An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 202 of the Clean Air Act. ABT allows us to consider a more stringent emission standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard;
- ABT enhances the technological feasibility and cost effectiveness of the proposed standard and allows the standard to be attainable earlier than might otherwise be possible;
- ABT provides manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines;
- ABT creates incentive for early introduction of new technology, allowing certain engine families to act as trail blazers for new technology;

We view the ABT provisions in today's rule as environmentally neutral because the use of credits by some vehicles is offset by credits generated by other vehicles. However, when coupled with the new standards, ABT will have environmental benefits because it allows the new standards to be implemented earlier than would otherwise be appropriate.

iii. How Manufacturers Can Generate and Use NO_X Credits

Manufacturers will determine their year-end corporate average NO_X emission level by computing a sales-weighted average of the NO_X standard from each bin to which the manufacturer certifies any LDVs or LDTs. Tier 2 NO_X credits will be generated when a manufacturer's average is below the 0.07 gram per mile corporate average NO_X standard, according to this formula:

NO_X Credits=(0.07 g/mi − Corporate Average NO_X)×Sales

The manufacturer can use these NO_X credits in future years if its corporate NO_X average is above 0.07, or it can trade (sell) the credits to other manufacturers. Tier 2 credits can be generated via this mechanism beginning in the first phase-in year, *i.e.*, 2004 for LDV/LLDTs and 2008 for HLDTs. The use of NO_X credits will not be permitted to address Selective Enforcement Auditing or in-use testing failures.

The enforcement of the NO_X averaging standard will occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity will be conditioned upon compliance with the averaging provisions. The certificate will be void *ab initio* if a manufacturer fails to meet the corporate average NO_X standard and does not obtain appropriate credits to cover its shortfall in that model year or in the next three model years (see deficit carryforward provision below). Manufacturers will need to track their certification levels and sales unless they produce only vehicles certified to bins containing NO_X levels of 0.07 g/mi or below and do not plan to bank NO_X credits.

iv. Manufacturers Can Earn and Bank Credits for Early NO_X Reductions

In the NPRM, we proposed that to the extent a manufacturer's corporate average NO_X level of its "early Tier 2" vehicles was below 0.07 g/mi, the manufacturer could bank NO_X credits for later use. We recognize (and the comments assert) that this provision may be lightly used, because it requires a large reduction from prior standards to produce any credits. However, our goal is to bring vehicles to Tier 2 levels as quickly as possible and we are concerned that any other approach could provide credits for reductions manufacturers would make relatively easily from previous, higher standards. Such credits would then be used to delay the impact of the 0.07 g/mi NO_X standard. Further, we believe that our provision for alternative phase-in schedules provides what is essentially a supplemental, or perhaps even primary, early banking program, in that it permits manufacturers to trade-off earlier phase-in percentages for later phase-in percentages. To provide manufacturers with greater flexibility and with incentives to certify, produce and sell Tier 2 vehicles as early as possible, we are finalizing the alternative phase-in provisions. (See IV.B.4.b.ii above.) Under such schedules, a manufacturer can certify vehicles to an average NO_X level of 0.07 g/mi or below in years prior to the first required phase-in year and then phase its remaining vehicles in over a more gradual phase-in schedule that will still lead to 100% compliance by 2007 (2009 for HLDTs).

Thus, we are finalizing our provision for early NO_X credits essentially as proposed. To the extent that a manufacturer's corporate average NO_X level of its "early Tier 2" vehicles is below 0.07 g/mi, the manufacturer can bank NO_X credits for later use. Manufacturers will compute these early credits by calculating a sales-weighted corporate average NO_X emission level of their Tier 2 vehicles, as in the basic Tier 2 program described above. In section IV.B.4.d.vii. below, we describe provisions we are adding to the final rule that will enable manufacturers to generate extra credits from vehicles certified to very low levels. In addition to encouraging production of very clean vehicles, these provisions, which apply beginning in 2001, will enhance the abilities of manufacturers to generate early credits.

Early Tier 2 credits will have all the same properties as credits generated by vehicles subject to the primary phase-in schedule. We proposed that these credits could not be used in the NLEV, Tier 1 or interim program for non-Tier 2 vehicles in any way. We are finalizing this restriction as proposed. We are also finalizing as proposed that the NMOG emissions of these vehicles (LDVs and LLDTs only) can be used in the

calculation of the manufacturer's corporate average NMOG emissions under NLEV through 2003.

To provide manufacturers with maximum flexibility in the period prior to 2004, when LDV/LLDT useful lives will still be at 100,000 miles, we proposed and are finalizing that manufacturers may choose between the Tier 2 120,000 mile useful life or the current 100,000 mile useful life requirement for early Tier 2 LDV/LLDTs. (HLDTs already have a 120,000 mile useful life.) Early LDV/LLDT NO_X credits for 100,000 mile useful life vehicles will have to be prorated by 100,000/120,000 (5/6) so that they can be properly applied to 120,000 mile Tier 2 vehicles in 2004 or later.

We proposed to restrict early banking of HLDT Tier 2 NO_X credits to the four year period from 2004–2007. This restriction was due to a concern about excessive credits generation if a longer credit generation period was available. Based on our review of the comments and from reconsideration of the restrictive nature of our approach for early credits, we are much less concerned that allowing generation of early HLDT Tier 2 credits in years prior to 2004 will result in excessive credits. Prior to 2004, manufacturers will only be required to meet the Tier 1 standards which are much higher than the final Tier 2 standards. Manufacturers will have to make large cuts in emissions to bank the small amount of credits offered by our early banking provision. Further, we recognize that vehicles that meet the Tier 2 standards early provide an environmental benefit, and the earlier that benefit occurs, the earlier that areas can use such benefits to reach or come close to attainment. Lastly, we believe it is appropriate to match the period of early credit generation with the years in which we will permit alternative phase-in schedules. Consequently, we are finalizing our provisions for early banking such that manufacturers may bank early Tier 2 NO_X credits in model years 2001–2007.

We recognize that vehicles generating early Tier 2 NO_X credits may be doing so without the emissions benefit of low sulfur fuel, and thus these vehicles may not achieve the full in-use emission reduction for which they received credit. When these credits are used to permit the sale of higher-emitting vehicles, there may be a net increase in emissions. For the most part, this is a problem anyway, since NLEV vehicles are also sensitive to gasoline sulfur. We believe that the benefits of early introduction of Tier 2 technology described above are significant enough that they are worth the risk of some emission losses that might occur if and when the early credits are used. Also, we believe that some fuel sulfur reductions will occur prior to 2004 as refiners upgrade their refineries or bring new refining capacity on stream in anticipation of the 2004 requirements and take advantage of the phase-in proposed in the gasoline sulfur ABT program (described in Section IV.C. below).

v. Tier 2 NO_X Credits Will Have Unlimited Life

We discussed in the preamble to the NPRM why we did not propose to apply the California schedule of discounting unused credits adopted for NMOG credits in the NLEV program. This schedule serves to limit credit life throughout the program by reducing unused credits to 50, 25 and 0 percent of their original number at the end of the second, third and fourth year, respectively, following the year in which they were generated. We agree that such a scheme may be appropriate in the California program with its declining NMOG average standard, but in the federal program, once the phase-in period ends in model year 2009, all LDVs and LDTs will comply on average with a fixed Tier 2 NO_X standard.

Credits allow manufacturers flexibility to meet standards cost effectively and to address unexpected shifts in sales mix. When matched with a NO_X average standard, credits provide flexibility constrained by the requirement that all vehicles, on average, must comply with a fixed standard. Defined bins of standards prevent any one vehicle from having extremely high emissions, while the need to offset higher vehicles with lower vehicles to meet an average NO_X standard prevents large numbers of vehicles from utilizing the higher bins.

We requested comment in the NPRM on the need for discounting of credits or limits on credit life and what those discount rates or limits, if any, should be. The 0.07 NO_X emission standard in the Tier 2 program is quite stringent and does not present easy opportunities to generate credits. The degree to which manufacturers invest the resources to achieve extra NO_X reductions provides environmental benefit for years to come and it is appropriate that the manufacturer get credits. We do not want to take measures to reduce the incentive for manufacturers to bank credits nor do we want to take measures to encourage unnecessary credit use. Consequently we are finalizing our proposal that Tier 2 NO_X credits, including early credits, have unlimited lives.

vi. NO_X Credit Deficits Can Be Carried Forward

When a manufacturer has a NO_X deficit at the end of a model year—that is, its corporate average NO_X level is above the required corporate average NO_X standard—we proposed that the manufacturer could carry that deficit forward into the next model year. Such a carry-forward could only occur after the manufacturer used any banked credits. If the deficit still existed and the manufacturer chose not to or was unable to purchase credits, the deficit could be carried over. At the end of that next model year, according to our proposal, the deficit would need to be covered with an appropriate number of NO_X credits that the manufacturer generated or purchased. Any remaining deficit would be subject to an enforcement action. To prevent deficits from being carried forward indefinitely, the manufacturer would not be permitted to run a deficit for two years in a row.[69]

Manufacturers made the persuasive case that by the time they can tabulate their average NO_X emissions for a particular model year, the next model year is likely well underway and it is too late to make calibration, marketing or sales mix changes to adjust that year's credit generation. Therefore, based upon comments, we are finalizing a modified approach to credit deficits such that a manufacturer having a credit deficit in the interim or Tier 2 program can carry that deficit forward for a total of three years, but the manufacturer must apply all its available credits to that deficit on a one-for-one basis in each of the first two succeeding model years. If the deficit is not covered by the third model year, the manufacturer must apply credits at a rate of 1.2:1. No deficit may be carried into the fourth year. In order to accommodate this modification to our proposal, we must also modify our proposed provision that would have prevented manufacturers from running a deficit in two consecutive model years so that deficits can not be shifted from one year to the next and thus carried forward indefinitely. Because we are permitting, in this final rule, deficits to be carried forward for as long as three years we are finalizing that manufacturers can not run a deficit in any year in which it is paying off a deficit from a previous year. The effect of this provision is the same as that in

[69] Because of the limited duration of the interim programs, we proposed that a manufacturer could carry a credit deficit in the interim program forward until the 2006 model year (2008 for HLDTs). The interim program, in its entirety, lasts only five years and therefore we saw little risk of prolonged deficits.

the NPRM— to keep manufacturers from shifting deficits forward indefinitely.

We note that under our modified final approach, manufacturers will have the flexibility to carry deficits from the interim program forward into the final Tier 2 program. This feature is likely to be used only in an extreme situation since the Tier 2 credits needed to offset the interim credit deficit will be more difficult to generate. Consequently, we do not believe this provision is inconsistent with our approach of segregating interim and Tier 2 credits. In fact, manufacturers electing to cover an interim credit deficit with Tier 2 credits will likely have to accelerate the introduction of Tier 2 vehicles to get the necessary credits to cover the deficit.

We are finalizing that small volume manufacturers may not use the credit deficit carryforward provision until they have been in compliance with the relevant average NO_X standard for one model year. In section V of this preamble we explain that we are not requiring small volume manufacturers to comply with intermediate phase-in requirements under our interim or Tier 2 phase-ins. Rather, they will just have to comply for all of their vehicles in the last phase-in year. Because they do not have to comply with intermediate phase-in requirements, small volume manufacturers effectively get more time to comply (as much as three years). We do not want to create a situation where they could get even more time to comply by using the credit deficit carryforward provision.

vii. Encouraging the Introduction of Ultra-Clean Vehicles

We requested comment in the NPRM as to whether we should provide additional NO_X credits for vehicles that certify to very low levels. We stated in the NPRM that we believe it is appropriate to provide inducements to manufacturers to certify vehicles to very low levels and that these inducements may help pave the way for greater and/or more cost effective emission reductions from future vehicles. We believe it is important in a rule of this nature to provide extra incentive to encourage manufacturers to produce and market very clean vehicles. We believe this is especially important in the earliest years of the program when manufacturers must make resource commitments to technologies and vehicle designs that will have multi-year life spans. We believe this program provides a strong incentive for manufacturers to maximize their development and introduction of the best available vehicle/engine emission control technology, and this in turn provides a stepping stone to the broader introduction of this technology soon thereafter. Early production of cleaner vehicles enhances the early benefits of our program and vehicles certified to these lowest bins produce not just lower NO_X but also lower NMOG, CO and HCHO emissions. If a manufacturer can be induced to certify to a lower bin by the promise of reasonable extra credits, the benefits of that decision to the program may last for many years.

We are finalizing provisions to permit manufacturers, at the beginning of the program, to weight LDV/Ts certified to the lowest two bins more heavily when calculating their fleet average NO_X emissions. Under this provision, which applies through the 2005 model year, manufacturers may apply a multiplier to the number of LDV/Ts sold that are certified to bins 1 and 2 (ZEVs and SULEVs in California terms). This adjusted number will be used in the calculation of fleet average NO_X emissions for a given model year and will allow manufacturers having vehicles certified to these bins to generate additional credits (or use fewer credits) that year.

The multipliers that manufacturers may use are found in Table IV.B.–8 below:

TABLE IV.B.–8.—MULTIPLIERS FOR ADDITIONAL CREDITS FOR BIN 1 AND 2 LDV/T

Bin	Model year	Multiplier
2	2001, 2002, 2003, 2004, 2005	1.5
1	2001, 2002, 2003, 2004, 2005	2.0

e. Interim Standards

i. Interim Exhaust Emission Standards for LDV/LLDTs

The NLEV program referenced throughout this discussion is a voluntary program in which all major manufacturers have opted to produce LDVs and LLDTs to tighter standards than those required by EPA's Tier 1 regulations. Under the NLEV program, manufacturers must meet an NMOG average outside of California that is equivalent to California's current intermediate-life LEV requirement—0.075 g/mi for LDVs and LDT1s (0.10 g/mi for LDT2s). NLEV requirements apply only to LDVs and LLDTs, not to HLDTs.

The NLEV program is effective beginning in the northeastern states in 1999 and in the remaining states in 2001, except that the program does not apply to vehicles sold in California or in states that adopted California's LEV program. The program runs at least through model year 2003 and can run through model year 2005.

Under the Tier 2 phase-in we are finalizing today, not all LDV/LLDTs covered under NLEV will be subject to Tier 2 standards in the 2004 to 2006 period. Without a program for full Tier 2 compliance in 2004 (*i.e.*, because of the phase-in), these vehicles could revert to Tier 1 standards. The NLEV program, moreover, is a voluntary program that contains several provisions that restrict EPA's flexibility and that could lead to a manufacturer or a covered Northeastern state leaving the program in or prior to 2004. To resolve these concerns we are finalizing the proposed interim program for all non-Tier 2 LDV/LLDTs for the 2004–2006 model years. Our interim program will replace the NLEV program, which will terminate at the end of 2003. The transition from NLEV to the interim program should be smooth because the interim program will employ several bins derived from the NLEV standards for LDVs, LDT1s and LDT2s. The interim program will ensure that all LDVs, LDT1s and LDT2s that are not certified to Tier 2 levels during the 2004–2006 phase-in period remain at levels at least as stringent, on average, as NLEV levels. The interim program will also bring the emission standards for LDT2s more into line with those for the LDVs and LDT1s by requiring that they be averaged under the same NO_X standard rather than under separate standards as is the case in the NLEV program.

In the NPRM, we included separate sets of bins for the interim program and Tier 2 program. However, we indicated that manufacturers could use either set for interim vehicles. In today's final rule we have combined all bins into one table for simplicity. We have also added two new bins having NO_X values of 0.03 g/mi and 0.10 g/mi.

In the NPRM, we proposed that, for LDV/LLDTs, all bins with NO_X values over 0.20 g/mi would expire at the end of the 2006 model year when there are no longer any interim LDV/LLDTs. Table IV–B.–4 shows that the two highest bins, bins 9 and 10, which were derived from NLEV and included to smooth the transition from NLEV to the interim program will be unuseable for LDV/LLDTs after 2006—the last year of the LDV/LLDT phase-in. Otherwise all bins will remain viable for the duration of the Tier 2 program unless altered by another rulemaking.

We proposed to align the useful life periods for interim standards with those of the Tier 2 standards (full useful life of 120,000 miles), as discussed in Section V.B. below. The end result of this proposal would have been that all LDV/LLDTs—whether in the Tier 2 program or interim program—would go from 100,000 mile useful lives to 120,000 mile useful lives in 2004. However, manufacturers were extremely concerned about the certification workload burden for 2004. They commented that they would be unable to carry any of their LDV/LLDTs over from 2003 and that they would have to recertify all of their vehicles in 2004 and then likely recertify them again as they were phased into the Tier 2 standards. Therefore, based upon comments, we are finalizing that useful lives of the interim LDV/LLDTs may remain at 100,000 miles. Our reasons for this change are discussed in greater detail in Section V.B.

We are finalizing as proposed a corporate average full useful life NO_X standard of 0.30 g/mi for this interim program. This standard is derived from the NLEV program and represents the full useful life NO_X standard in NLEV that is associated with LEV LDVs and LDT1s. LDVs and LDT1s will already be at this level, on average, under the NLEV program. LDT2s are subject to standards that effectively impose a NO_X average standard of 0.5 g/mi under NLEV, but we believe they should readily be able to meet the 0.30 g/mi average especially since they can be averaged with the LDVs and LDT1s. To aid LDV/LLDTs in meeting the 0.30 g/mi corporate average NO_X standard in the interim program, we are providing an optional NMOG value for LDT2s certifying to bin 9 (where the NO_X standard=0.3 g/mi). This option is only for LDT2s, and only for those produced by manufacturers that elect to comply with the interim requirements for all of their HLDTs for the 2004 model year (see next section). The optional NMOG values for qualifying LDT2s are 0.130 g/mi at full useful life and 0.100 at intermediate useful life.

The 0.30 g/mi corporate average NO_X standard will apply only to non-Tier 2 (interim) LDV/LLDTs and only for the 2004–2006 model years. Manufacturers will compute, bank, average, trade, account for, and report interim NO_X credits via the same processes and equations described in this preamble for Tier 2 vehicles, substituting the 0.30 g/mi corporate average standard for the 0.07 g/mi corporate average standard in the basic program. Also, EPA will condition the certificates of conformity on compliance with the corporate average standard, as described for Tier 2 vehicles. These NO_X credits will be good only for the 2004–2006 model years and will only apply to the interim non-Tier 2 LDV/LLDTs. Credits will not be subject to any discounts, and credit deficits can be carried forward as described under Section IV.B.4.d.vi. above.

NMOG credits from the NLEV program can not be used in this interim program in any way. NO_X credits generated under this interim program will not be applicable to the Tier 2 NO_X average standard of 0.07 g/mi because of our concern that a windfall credit situation could occur. This could happen because credits are relatively easy to generate under a 0.30 g/mi standard compared to generating credits under a 0.07 g/mi standard. As we indicated in the preamble to the NPRM we believe the application of credits earned under the interim standard to the Tier 2 standards could significantly delay the fleet turnover to Tier 2 vehicles. We do not believe there is a need or that it would be appropriate to allow such a delay. The requirements of the interim program will be monitored and enforced in the same fashion as for Tier 2 vehicles.

For the reasons cited above, we believe it is appropriate to extend interim, NLEV-like standards beyond 2003 as a mandatory program and to bring all LDVs and LLDTs within its scope. Manufacturers have already demonstrated their ability to make LDVs and LLDTs that comply at levels well below these standards. As the interim standards for LDV/LLDTs are essentially 'phase-out'' standards, we did not propose and are not finalizing early banking provisions for the interim LDV/LLDTs.

ii. Interim Exhaust Emission Standards for HLDTs

We believe these interim standards are necessary and reasonable for HLDTs. While these trucks make up a fairly small portion of the light-duty fleet (about 14%), their current standards under Tier 1 are far less stringent than the NLEV standards that apply to current model year LDVs and LLDTs. Given the delayed phase-in we are finalizing for HLDTs, we believe it is appropriate to require some interim reductions from these vehicles. Further, manufacturers have already demonstrated their ability to meet these interim standards with HLDTs. These standards are a reasonable first step toward the Tier 2 program and will provide meaningful reductions in the near term relative to current certification levels under the Tier 1 emission standards.

We also proposed interim standards to begin in 2004 for HLDTs. These vehicles are not included in the NLEV program and will be subject only to the Tier 1 standards prior to today's rule taking effect. Tier 1 standards permit NO_X emissions of 0.98 g/mi for LDT3s and 1.53 g/mi for LDT4s. We are finalizing these standards generally as proposed; to address statutory lead time requirements, we are offering two options for the phase-in of HLDTs to the interim standards. Manufacturers can choose between either of these two options:

(Option 1) Like we proposed in the NPRM, manufacturers must bring their entire production of 2004 model year HLDTs under the interim requirements and phase 25% of them into the 0.20 g/mi fleet average NO_X requirement, followed by 50% in 2005, 75% in 2006, and then 100% in 2007; or

(Option 2) We are including this option to address statutory lead time requirements for HLDTs. In the case of 2004 model year test groups whose model years commence *before the fourth anniversary* of the signature date of today's rule, the manufacturer may exclude those test groups from the interim HLDT provisions of the rule. In the case of 2004 model year test groups whose model years commence *on or after the fourth anniversary* of this rule's signature, the manufacturer must bring all such HLDTs under the requirements of our interim program, and all such vehicles or 25% of the manufacturer's sales of 2004 model year HLDTs, whichever is less, must comply with the corporate average NO_X standard of 0.20 g/mi. The manufacturer must then bring all of its HLDTs into the interim requirements beginning with the 2005 model year including a 50%, 75%, 100% phase-in to the 0.20 g/mi fleet average NO_X standard beginning that year. The beginning of a test group's model year is determined under section 202(b)(3) of the Act and 40 CFR Part 85 Subpart X.

Our final rule is consistent with the requirements of the Act because manufacturers won't have to phase-in HLDTs until the model year that commences four years from the signature of this rule if they don't want to. However, to provide incentive for manufacturers to comply with the interim requirements for all of their HLDTs beginning with the 2004 model year, *i.e.* to elect Option 1, we are finalizing a provision to permit those manufacturers to use higher NMOG values in two situations. Manufacturers electing to meet the interim requirements for all of their 2004 model year HLDTs including the 25% phase-in number must so declare in their 2004 model year HLDT certification applications. They may then:

- Use a full useful life NMOG value, through the 2008 model year, of 0.280 g/mi for LDT4s certified to bin 10 (0.195 g/mi at intermediate life); and
- Use a full useful life NMOG value, through the 2006 model year, of 0.130 g/mi for LDT2s certified to bin 9 (0.100 g/mi at intermediate life).[70]

In the case of the LDT4s, the optional NMOG standard will enable manufacturers to more easily meet our interim HLDT NO_X standards, the highest of which (0.6 g/mi) is one-third tighter than what will be required in California under Cal LEV I through 2006. For the LDT2s, the optional NMOG standard will help manufacturers certify more LDT2s to bin 9 (0.3 g/mi) than they likely would otherwise (they would probably certify some LDT2s to bin 10 where NO_X=0.6 g/mi). Therefore, both of these optional standards are consistent with our goal to achieve important early NO_X benefits from our program.

Except for the application of the new option described above, the interim standards for HLDTs will apply as proposed, and will phase-in through the 2007 model year, as shown in Table IV.B.–2. We are finalizing the proposed corporate average full-life NO_X standard of 0.20 g/mi for interim HLDTs.

[70] Manufacturers must cite this declaration in their LDT2 certification applications for the 2004–2006 model years and in their LDT4 applications for the 2004–2008 model years. If manufacturers employ alternate phase-in schedules that begin prior to 2004, they must also make the declaration in each applicable year before 2004.

Manufacturers will comply with the corporate average HLDT NO_X standard by certifying their interim HLDTs to any of the full useful life bins shown in Table IV–B.–4. Where applicable, manufacturers will also comply with the intermediate useful life standards shown in Table IV.B.–5. Interim HLDTs not needed to meet the phase-in percentages during model years 2004–2006 will have to be certified to the standards of one of the bins in Table IV.B.–4 (and –5), and NO_X will thus be capped at 0.60 g/mi. These trucks will not be included in the calculation to demonstrate compliance with the 0.20 g/mi average.

At the end of each model year, manufacturers will determine their compliance with the 0.20 NO_X standard by calculating a sales weighted average of all the bins to which they certified any interim HLDTs, excluding those not needed to meet the applicable phase-in requirements during 2004–2006. The excluded trucks must comply with the standards from one of the bins in Table IV-B–4 (and –5) which effectively caps their emissions at 0.60 g/mi.

For HLDT test groups that are not subject to the phase-in in model year 2004 under Option 2 above, the same requirements as described above apply except that there are no new standards for these vehicles in the 2004 model year. Also, the optional higher NMOG values for LDT2s and LDT4s do not apply for any manufacturer that uses Option 2.

Given that the interim HLDT standards are "phase-in" standards through 2007 (as opposed to the interim LDV/LLDT standards, which are "phase-out" standards), we are including provisions that manufacturers may employ alternative phase-in schedules as proposed for the Tier 2 standards and described in detail in section IV.B.4.b.ii. of this preamble. These schedules provide manufacturers with greater flexibility and we believe they also provide incentive for manufacturers to introduce advanced emission control technology at an earlier date. Alternative phase-in schedules will have to provide 100% phase-in by the same year as the primary phase-in schedule (2007). Manufacturers will be eligible for alternate phase-in schedules to the extent that they produce HLDTs that meet or surpass the NO_X average standard for interim HLDTs of 0.20 g/mi in 2001–2003 or to the extent that they produce more HLDTs than required that meet the 0.20 average standard in 2004 or later.

Where manufacturers elect not to meet the phase-in requirements for all of their 2004 model year HLDTs, as discussed above under Option 2, they may still employ alternate phase-in schedules, but the sum of 225 percent is required rather than the 250 percent required for alternate phase-ins described in section IV.B.4.b.ii. In this case, the sum of phase-in percentages up through the 2005 model year must total to at least 50%. Also, manufacturers must raise the 225% value to the extent that any of their 2004 HLDTs' model years commence on or after the fourth anniversary of the signature date of this rule and are brought into compliance with the 0.20 g/mi average NO_X standard.

Lastly, note that for bin 10, which is only usable during the interim program, we have established a PM standard of 0.08 g/mi, which is more stringent than the Tier 1 standard previously in effect for these vehicles. We do not expect low sulfur diesel fuel to be widely available during the time frame of the interim program but we expect that bin 10 levels can be reached by diesel technology on current diesel fuel. As a part of this overall approach, we are making the intermediate life standards optional for diesels for this bin.

f. Light-Duty Evaporative Emission Standards

We are finalizing as proposed a set of more stringent evaporative emission standards for all Tier 2 light-duty vehicles and light-duty trucks. The standards we are finalizing are shown in Table IV.B.–9 and represent, for most vehicles, more than a 50% reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. The higher standards for HLDTs provide allowance for greater non-fuel emissions related to larger vehicle size.

TABLE IV.B.–9.—FINAL EVAPORATIVE EMISSION STANDARDS

[Grams per test]

Vehicle class	3 day diurnal +hot soak	Supplemental 2 day diurnal +hot soak
LDVs and LLDTs	0.95	1.2
HLDTs	1.2	1.5

Evaporative emissions from LDVs and LDTs represent nearly half of the light duty VOC inventory projected for the 2007–2010 time frame, according to MOBILE5 projections. Manufacturers are currently certifying to levels that are, on average, about half of the current standards, and in many cases, much less than half the standards. Thus, meeting these standards appears readily feasible. Even though manufacturers are already certifying at levels much below the current standard, we believe that reducing the standards will result in emission reductions as all manufacturers seek to certify with adequate margins to allow for in-use deterioration. Further, we believe that tighter standards will prevent "backsliding" toward the current standards as manufacturers pursue cost reductions.

As mentioned in section IV.B.–4.b above, we will phase in the Tier 2 evaporative standards by the same mechanism as the Tier 2 exhaust standards; *e.g.*, 25/50/75/100 percent beginning in 2004 for LDV/LLDTs and 50/100 percent beginning in 2008 for HLDTs (as shown in Table IV.B.–2). As for the exhaust standards, alternative phase-in plans will also be available.

The evaporative emission standards we proposed and are finalizing today are the same as those that manufacturers' associations proposed during the development of California's LEV II proposal. California ultimately opted for more stringent standards; we believe that our standards are appropriate for federal vehicles certified on higher-volatility federal test fuel.

g. Passenger Vehicles Above 8,500 Pounds GVWR

Historically, we have categorized all vehicles above 8,500 pounds GVWR as heavy-duty vehicles regardless of their application and they have been subject to standards and test procedures designed for vehicles used in heavier work applications. [71] In the Tier 2 NPRM, we requested comment on whether some portion of vehicles above 8,500 pounds GVWR should be included in the Tier 2 program, based on vehicle use or design characteristics. The Tier 2 proposals, however, applied to light-duty vehicles and light-duty trucks and did not cover any vehicles above 8,500 pounds GVWR.

On October 29, 1999, after carefully considering all of the comments on this issue, we proposed to include all personal use passenger vehicles (both gasoline and diesel fueled) between 8,500 and 10,000 pounds GVWR in the Tier 2 program. This group of vehicles would include large SUVs and passenger vans and may include other types of "crossover" multipurpose vehicles in the future, depending on new vehicle designs. We proposed this Tier 2 program change in our NPRM concerning emissions standards for 2004 and later heavy-duty vehicles and engines, (64 FR 58472).

Specifically, we proposed to revise the definition of light-duty truck to include any complete vehicle between 8,500 and 10,000 pounds GVWR that is designed primarily for the transportation of persons and has a capacity of not more than 12 persons. We expected that this definition would exclude vehicles that have been designed for a legitimate work function as their primary use, such as the largest pick-up trucks, the largest passenger vans, and cargo vans; these vehicles would continue to be categorized as heavy-duty and would be subject to applicable heavy-duty standards. We requested comment on whether the proposed definition would adequately exclude these vehicles, or whether additional criteria may be needed and how that criteria might be used.

Today, we are finalizing Tier 2 standards for passenger vehicles above 8,500 pounds GVWR. These vehicles are included in the Tier 2 program beginning in 2004 and are required to meet the final Tier 2 standards in 2009 and later. As we intended in the proposal, these vehicles will generally be subject to the same requirements as HLDTs. We have made modifications to the program, primarily in response to comments we received in two areas: (1) Changing the definition of light-duty truck and (2) the interim program requirements.

New Vehicle Category: Medium-Duty Passenger Vehicles (MDPVs)

The mechanism we proposed to bring the passenger vehicles over 8,500 pounds into the Tier 2 program, was to modify the definition of light-duty truck to include those vehicles. The objective of this proposal was to have these vehicles treated as HLDTs within Tier 2. We are finalizing requirements which remain consistent with our objective of including these vehicles in Tier 2 beginning in 2004. However, the approach we are finalizing is somewhat different than that proposed.

Rather than finalizing the revised definitions for light-duty truck as we proposed, we are creating a new category of heavy-duty vehicles termed "medium-duty passenger vehicles" (MDPVs). These vehicles will generally be grouped with and treated as HLDTs in the Tier 2 program. The MDPV category is defined along the lines of the proposed definition change for the LDT category, with some modification, as described below. Our decision to create a new sub-category of heavy-duty vehicles rather than modify the existing LDT definition does not, in and of itself, change the way in which Tier 2 standards are applied to the vehicles.

We decided upon the above approach because section 216 of the CAA establishes the definition for LDT as having the meaning contained in the CFR as of 1990. We received several comments that EPA may not change the definition and must instead devise a way to categorize the vehicles for purposes of Tier 2 which does not change the definition of light-duty truck. Rather than adopt a change to the LDT definition that would be questionable from a legal perspective, we are adopting an approach that we believe is clearly legally acceptable. Under this approach (as with the proposed approach), the standards for these vehicles are promulgated under

[71] The heavy-duty definition also includes vehicles that weigh over 6000 lbs curb weight regardless of their GVWR. We are not aware that any vehicles currently produced have curb weights above 6,000 lbs, but GVWRs of 8,500 lbs or less. Nevertheless, this discussion and our requirements includes such vehicles.

section 202(a)(3), which applies to heavy-duty vehicles/engines.

We are defining medium-duty passenger vehicles as any complete heavy duty vehicle less than10,000 pounds GVWR designed primarily for the transportation of persons including conversion vans (*i.e.*, vans which are intended to be converted to vans primarily intended for the transportation of persons. The conversion from cargo to passenger use usually includes the installation of rear seating, windows, carpet, and other amenities). We are not including any vehicle that (1) has a capacity of more than 12 persons total or, (2) that is designed to accommodate more than 9 persons in seating rearward of the driver's seat or, (3) has a cargo box (*e.g.*, a pick-up box or bed) of six feet or more in interior length. We would consider vehicles designed primarily for passenger use to be those that have seating available behind the driver's seat. We have added the rear passenger seating capacity criterion to exclude large passenger vehicles which are primarily used in heavy-load passenger applications. We do not believe vehicles designed primarily for personal use passenger transportation would be equipped with rear seating for more than 9 passengers.[72]

We have added the pick-up bed length criterion to the definition to clearly distinguish standard pick-ups from other vehicles meeting the GVWR and seating capacity criteria. We received several comments that although the proposal clearly states our intention not to include heavy-duty pick-up trucks in the Tier 2 program, the proposed regulatory definition was unclear. Currently, heavy-duty pick-ups have beds in excess of six feet. Any future offerings of vehicles that are equipped with significantly shorter beds would be included in the MDPV category, if the vehicle also met the weight and seating capacity criteria. EPA is making a distinction based on bed length because a vehicle introduced with a shorter bed would have reduced cargo capacity and would likely have increased seating capacity relative to current pick-ups, making it more likely to be used primarily as a passenger vehicle.

Interim Standards

As noted above, the MDPVs and HLDTs must meet the final Tier 2 standards by 2009 at the latest. Prior to 2009, HLDTs and MDPVs are required to meet interim standards. The interim standards, as described earlier in section IV.B.4, are based on a corporate average full life NO_X standard of 0.20 g/mile which is phased in 25/50/75/100 percent in 2004–2007. MDPVs must be grouped with HLDTs for the interim standards phase-in.

We received several comments from manufacturers that requiring these larger vehicles to meet a new, unique standard prior to phase-in to the interim program would worsen the workload burden created by the Tier 2 program. Manufacturers do not currently have facilities available for chassis-testing diesel vehicles and there is not enough time to fold diesel vehicles into a chassis-based program by 2004.[73]

To address this situation, we are providing the following temporary additional flexibilities for MDPVs. We are finalizing an additional upper bin for MDPVs for the interim program (effective in model years 2004 through 2008). This bin would only be available for MDPVs. The bin, shown in Table IV.B–10, is equivalent to the California LEV I standards that are applicable to these vehicles prior to 2004. Vehicles certified to this bin must be tested at adjusted loaded vehicle weight (ALVW), consistent with California program testing requirements.[74] Including this upper bin provides manufacturers with the ability to carry over their California vehicles to the federal program prior to their phase-in to the interim and final Tier 2 standards. Once phased in to the interim standards manufacturers may continue to use the upper bin but the vehicles must be included in the 0.20 g/mi NO_X average. The upper bin is not available to manufacturers for the final Tier 2 program.

TABLE IV.B.–10.—TEMPORARY INTERIM EXHAUST EMISSION STANDARDS BIN FOR MDPVS[a]

	NO_X	NMOG	CO	HCHO	PM
Full Useful Life (120,000 mile)	0.9	0.280	7.3	0.032	0.12

Notes:
[a] Bin expires after model year 2008.

We proposed that HLDTs not needed to meet the phase-in percentages for the interim program during model years 2004—2006 would be required to meet one of the interim bins. Such vehicles, however, would not be included in the calculation to demonstrate compliance with the 0.20 g/mile average. Thus, we proposed that the emissions of all interim HLDTs would be capped at a NO_X value of 0.6 g/mile. We are retaining the bin structure and requirements which effectively cap NO_X emissions at 0.6 g/mile for all HLDTs below 8,500 pounds GVWR, as described in section IV.B. Similarly, for MDPVs, the 0.9 g bin described above is the highest bin available and acts as the cap for vehicles not yet phased-in to the interim standards.

In addition, for diesel MDPVs prior to 2008, we are allowing manufacturers the option of meeting the heavy-duty engine standards in place for the coinciding model year. Diesels meeting the engine-based standards would be excluded from the interim program averaging pool. In 2008, the manufacturers must chassis certify diesel vehicles and include them either in the interim program or in the final Tier 2 program. In 2009 and later, all MDPVs, including diesels, must be brought into the final Tier 2 program. As with the higher bin of chassis-based standards, the purpose of this diesel provision is to provide the option of carry-over of vehicles until they are brought into the Tier 2 program. We believe these modifications to the program will substantially ease the workload concerns of manufacturers in the interim years by allowing them to carry-over vehicle models and engine families. The provisions also remain consistent with EPA's goal of including the vehicles in the overall Tier 2 program structure.

[72] Vehicles that are "designed" to accommodate more than nine passengers in the rearward seating area in their standard configuration but that have some of the standard rear seating removed to accommodate two or more wheel chair tie downs would usually not be considered MDPVs.

[73] Currently, diesel heavy-duty engines are certified to heavy-duty engine standards rather than vehicle standards.

[74] ALVW is the average of curb weight and GVWR. The test weight is sometimes refered to as "half payload".

For diesel engines that are engine certified and used in MDPVs, as allowed through model year 2007, we are requiring those engines to comprise a separate averaging set under the averaging, banking and trading requirements applicable to heavy-duty diesel engines. We are permitting engine-based certification for these diesel vehicles to provide time and flexibility for manufacturers who may have limited experience with chassis certifying vehicles containing such engines. However, we do not want to create a situation where engines above applicable engine standards could be used in these vehicles, when other MDPVs are being brought under stringent standards. Therefore we believe it is appropriate to constrain the application of credits to these engines. We note that we are not permitting credits from other programs (like NLEV) to be applied in any way to Tier 2 or interim vehicles.

For LDT4s, we have finalized an optional higher NMOG level of 0.280 g/mile for bin 10 (0.6 g/mile NO_X), as described in section IV.B.4.a of the preamble. MDPVs placed in bin 10 may also certify to the higher NMOG level of 0.280 g/mile. This provision provides manufacturers with the incentive of selecting the lower NO_X bin for MDPVs, since the NMOG level is not an obstacle to compliance.

As described in section IV. B.4.e.ii., manufacturers have two options for the start of the program requirements. In Option 1, the program begins with the 2004 model year for 25 percent all vehicles. In Option 2, manufacturers can exempt 2004 model year vehicle test groups whose model years begin on or after the fourth anniversary of this rule's signature. These options are also available for MDPVs for the same reasons we are providing them for HLDTs. However, the additional 0.9 g bin contained in Table IV.B.–10, the optional higher NMOG standard of 0.280 g/mile for bin 10, and the option of certifying to the engine-based standards for diesels are available only with Option 1.

Other Emission Control Requirements

We are requiring all non-diesel MDPVs to be OBDII compliant beginning in 2004. California requires OBDII for their LEV I program and therefore, the new OBDII requirements are consistent with the approach of allowing vehicles to be carried over from California.[75] Diesel vehicles which are carried over from the California program are required to be equipped with the OBD system as the system is certified in California. Diesel vehicles not carried over from California are not required as part of this rulemaking to be equipped with OBDII. However, we have proposed OBDII requirements for heavy-duty diesel engines in our heavy-duty engines NPRM (64 FR 58472). If OBDII requirements are finalized for heavy-duty engines and vehicles as part of that rulemaking the OBDII requirements would likewise apply to diesels in the MDPV category.

As proposed, we are applying Tier 2 evaporative emissions standards and existing HLDT ORVR requirements to MDPVs. MDPVs must be grouped with HLDTs for purposes of phasing in to the Tier 2 evaporative emission standards contained in this rule. We have added somewhat higher standards for the MDPVs to account for their larger fuel tanks and vehicle sizes.[76] However, the stringency of the standards remains similar to that for HLDTs. These standards are described in section IV.B.4.f of the preamble. ORVR requirements currently exist for HLDTs and are to be phased-in through model years 2004–2006.[77] We proposed to apply the same standards and phase-in requirements to vehicles over 8,500 pounds GVWR. We are finalizing these ORVR requirements for MDPVs, which must be grouped with HLDTs for purposes of phased-in to the ORVR requirements.

For those manufacturers electing option 2, OBD is required when the vehicle family is covered under these new requirements (*i.e.*, 2004 or 2005 depending on when certification occurs). For ORVR, the situation is similar. The phase-in is 40 percent of any 2004 certifications which occur four years after this rule is promulgated, 80 percent in 2005, and 100 percent in 2006. As before, the vehicles covered by these phase-ins must be combined with those in the LDT3/4 phase-in for purposes of calculating compliance.

We are finalizing Cold CO and Certification Short Test requirements for Tier 2 MDPVs. However, we are not finalizing SFTP standards for MDPVs in today's rulemaking. Currently, SFTP standards do not apply to any vehicles above 8,500 pounds GVWR, including those in the California LEV I and LEV II programs. We are concerned, therefore, that finalizing SFTP requirements in today's rulemaking would prevent manufacturers from carrying over vehicle models during the phase-in years of the program. We are currently contemplating a new SFTP rulemaking which would consider "Tier 2" SFTP standards for all vehicles, including MDPVs. California is also interested in developing more stringent SFTP standards within the context of their LEV II program and we are coordinating with California on these new SFTP standards.

Sustained Severe Use; In-Use Testing of MDPVs

While we are confident that MDPVs can comply in-use with the standards we are finalizing, manufacturers are concerned about in-use liability for MDPVs that are in sustained severe-use. In our in-use emission testing program, we generally screen vehicles for proper maintenance and use and delete vehicles that we believe may have been misused or malmaintained. Also, in the regulations for manufacturer in-use testing, we permit manufacturers to delete vehicles from samples if they have been used for "severe duty (trailer towing for passenger cars, snow plowing, racing)", and we provide that vehicles may be deleted for other reasons upon EPA approval.

We recognize that MDPVs will be marketed and used for carrying many passengers, carrying heavy loads and trailer towing. While it is not our intention to exempt vehicles from in-use liability that have been used for their intended purposes, we understand that some MDPVs may be subject to sustained severe service applications, such as frequent overloading or frequent towing beyond manufacturer's advertised capacity and could not be considered to be representative of properly maintained and used vehicles. Furthermore, we would not necessarily consider to be representative MDPVs which are routinely or regularly used in heavy-load hauling application or towing even within the manufacturers limits. Thus, for example, an SUV MDPV used on a daily basis to haul a work crew and tow equipment to a distant work site may not be representative while the same SUV used to haul the family and tow a boat to the lake on weekend excursions would be representative. MDPVs in sustained severe operations should not be included in manufacturer or EPA in-use test programs, while those that see less frequent severe operation should be included.

[75] As with HLDTs, the California OBDII compliance option is available for MDPVs.

[76] For Tier 2 MDPVs, evaporative standards will be 1.4 g/test for the 3 day diurnal+hot soak test and 1.75 g/test for the supplemental 2 day diurnal+hot soak test.

[77] ORVR requirements are phased in for HLDTs, at 40/80/100 percent in 2004–2006 (see 40 CFR 86.1810–01 (k)).

C. Our Program for Controlling Gasoline Sulfur

As with our program for vehicles, the program we are establishing today for reducing sulfur levels in commercial gasoline will achieve the same large NO_X reductions that we projected for the proposed program. Here, too, the final program is very similar to our proposed program. Adjustments we have made to the proposed program will smooth the refining industry's transition to the low-sulfur requirements and encourage earlier introduction of cleaner fuel.

With today's action, we are requiring substantial reductions in gasoline sulfur levels nationwide. As we explained in Section IV.A, because sulfur significantly inhibits the ability of automotive catalysts to control emissions, we had to consider sulfur's impact in setting the Tier 2 standards. We knew at the time of proposal that newer catalysts were more sensitive to sulfur than older technologies, and projected that Tier 2 catalysts would be as or even more sensitive than those used in today's NLEV vehicles. Furthermore, we believed that the sulfur build-up on Tier 2 catalysts may be irreversible. Since the proposal, additional data we've collected have confirmed and strengthened our concerns. It now appears that the catalysts expected to be used in Tier 2 vehicles will be even more sensitive to sulfur than we originally estimated, and that this sulfur impact will be approximately 45 percent irreversible under typical driving conditions. Thus, the gasoline sulfur standards we finalize today will enable the stringent tailpipe emission standards we're implementing for Tier 2 vehicles and will help to ensure that these low emission levels will be realized throughout the life of the vehicle. Furthermore, since vehicles already on the road, including NLEV vehicles, are in many cases quite sensitive to sulfur, gasoline sulfur control will also help to reduce emissions of pollutants that endanger public health and welfare from these vehicles.

In developing this gasoline sulfur control program, we gave substantial consideration to the ability of the refining industry to meet these requirements. We proposed a set of standards applying to refiners and to individual refineries combined with a sulfur averaging, banking, and trading (ABT) program intended to provide flexibility in meeting the standards. We concluded that our proposal was reasonable and cost-effective based on our projections regarding the number of refineries that would (1) need to reduce sulfur levels each year as the standards tightened, (2) need sulfur ABT credits to meet the 30 ppm refinery average standard in 2004 and/or 2005 to defer installation of desulfurization equipment, and (3) install desulfurization equipment prior to 2004, generating the needed sulfur credits. This analysis formed our picture of the industry's investment stream—a year-by-year estimate of how many refineries would be constructing new equipment and what technologies these refineries would choose. We assumed that any investments would be in the new, lower cost technologies, and that these technologies would be available and adequately demonstrated to allow refiners to select them as early as the year 2000 to begin operation (and thus, credit generation) as early as 2002. Based on these assumptions, our analysis showed that sufficient credits would be generated before 2004 to enable a number of refineries to delay construction and use credits to meet the 30 ppm standard in 2004, and in some cases, even in 2005. Overall, we believed our analysis represented a reasonable and balanced rate of investment by the industry over a several year time period.

In response to our proposal, we received many comments which raised concerns about the feasibility of our program. Some comments suggested that our proposed declining cap (300 ppm cap for 2004 and a reduced cap of 180 ppm for 2005) could be an additional and burdensome expense for most refiners to meet. Specifically, these commenters believed that the declining cap would be more constraining than compliance with the corporate average or even the refinery average standards (as long as the ABT program produced sufficient credits). Because refiners probably would not make multiple investments in such a short time, the 180 ppm cap could force some refiners to install the equipment needed to get to the 80 ppm cap earlier than otherwise needed. The commenters argued that this would force all of the industry's investments into the first years of the program rather than allowing for a smoother transition over several years as we had originally envisioned. Many comments also suggested that since there have not been long-term commercial demonstrations of the newer gasoline desulfurization technologies, refiners would not consider these technologies to be viable and, if faced with our proposed 30 ppm standard in 2004, may select the more traditional, higher cost sulfur reduction processes. Some of these commenters suggested that we should delay the 30 ppm standard, and recommended a range of suggested deadlines (2005–2007).

We also received many comments which suggested that the ABT program restricted the generation of credits, and provided no certainty that credits would be generated prior to 2004. Commenters stated that two features in particular—the delay in establishing each refinery's sulfur baseline due to 1997–98 data review and the strict 150 ppm "trigger" for generating credits—caused them to question whether adequate sulfur credits would be available. If credits could not be guaranteed early enough to forestall investment decisions, refiners would be forced to begin construction earlier than we had projected. Under such a scenario, the costs of the program would be substantially greater, and many commenters suggested that, regardless of cost, it would be impossible for the entire industry to meet the deadline (due to limitations on engineering design and construction resources as well as the time required to obtain permits).

Finally, we received many comments which argued that not all refineries would be able to concurrently comply with the proposed standards in the time period provided, given the competition for engineering resources and the time needed for construction of desulfurization equipment. These comments focused specifically on small refineries (owned by both small and large corporations) and refineries that were relatively isolated geographically (such as many refineries in the Rocky Mountain region) which had little access to other sources of gasoline should they have difficulty in complying with our requirements. The commenters generally argued that these refiners needed more time than the rest of the industry to meet our proposed standards. Some of the commenters also argued that the standards applicable to many of these refiners should be less stringent because of their belief that the environmental needs of the states where these refineries were located and/or marketed gasoline were small relative to the needs of other states. Suggestions for temporary and permanent regional programs which provided less stringent control in the Western half of the country were included with many of these comments.

Based on what we've learned from the comments received and additional information we've gathered, we have revised our analysis of when refiners will invest in desulfurization equipment and how the sulfur ABT program can

best help to distribute these investments over several years while maintaining the original goals of the program. The following is a brief summary of our new analysis; a more complete explanation of our assumptions can be found in the RIA.

About 15 percent of current domestic gasoline production already meets the gasoline sulfur standard, or can do so with very little additional capital investment, and at most a small increase in operating cost. The remainder of the industry—the majority of U.S. refineries—will have to install at least one desulfurization processing unit to lower gasoline sulfur to the required levels. Furthermore, many of these refineries will need to make changes to their operations in advance of 2004 simply to comply with the 300 ppm cap standard, even if they can obtain sufficient ABT credits to delay compliance with the 30 ppm refinery average standard. Refiners facing this situation will need to make their decisions within a year or at most two from today's action. From the comments we received and discussions we've had with refiners and technology vendors, we acknowledge that some of the newer, more promising processes may not be in operation for sufficient time to gain valuable operating experience (one to two years of operation) until 2002 or later. Hence, we now believe that some refiners may choose from one of the traditional, commercially-demonstrated desulfurization processes, even though these technologies may be more costly, to meet our standards.

However, we continue to believe that the majority of refiners will delay construction (taking advantage of the sulfur ABT program and perhaps making modest operational changes in the interim) and will have a wide range of technological options to choose from, at reduced capital investment and operating costs compared to the more traditional approaches. Examples of these technologies are CDHydro and CDHDS (licensed by the company CDTECH), Octgain 125 and Octgain 220 (licensed by Mobil Oil), S Zorb (licensed by Phillips), IRVAD (licensed by Black & Veatch), and others. These technologies generally use conventional refining processes combined in new ways, with improved catalysts and other design changes that minimize the undesirable impacts (such as a substantial loss in octane) and maximize the effectiveness of the desulfurization approach. Since these processes provide less costly ways to reduce gasoline sulfur, we have based our economic assessment (summarized in Section IV.D. below) on the presumption that the majority of refiners will elect to use one of these processes to meet the 30 ppm standard, even if it requires delaying compliance (through the purchase of ABT program credits) until 2006.

However, after considering the data available to us about current refinery sulfur levels and the ability of refiners to reduce sulfur levels to meet the standards, we have made several modest changes to the program. These changes will not affect the environmental performance of the proposed program. We agree that the declining cap had the unintended consequence of forcing investments earlier than desired for an orderly transition to the 80 ppm cap. Thus, we have changed the program from the proposal, establishing a 300 ppm per-gallon cap in 2004 and 2005. We do not expect this change to have an impact on the environment (or on the Tier 2 vehicles that will be introduced in this interim period) since average sulfur levels will be required to decrease due to the declining corporate average, which begins in 2004. We kept the corporate average standards proposed for 2004 and 2005, but are permitting inter-company trading around these standards. We believe this change will provide further flexibility to the industry in allowing some refineries to delay construction and encourage others to move forward sooner. Having now concluded that many refiners would benefit from an additional year to evaluate and consider the technological options before having to install equipment to meet the 30 ppm standard, we have delayed this standard for one year. In acknowledgment that some areas of the country have less urgent environmental needs for the emissions reductions that this program will bring, and that many of the refiners that supply gasoline to these areas are ones which will have the most difficulty in meeting the standards, we have finalized a geographic phase-in of the standards to complement the temporal phase-in applicable to the rest of the industry. Thus, in certain states in the West, refiners have the option of meeting interim standards while delaying compliance with the 30 ppm average until 2007. Finally, we have made changes to the sulfur baseline requirements and the credit trigger to help ensure that the sulfur ABT program functions as we originally envisioned it would.

These changes will encourage reductions in gasoline sulfur levels beginning as early as 2000, while providing enough flexibility to require the majority of refineries to meet a 30 ppm average sulfur standard by 2006. Overall, the industry will be able to spread the needed investments over several years rather than having to comply as a whole by 2004, and will be able to maximize the use of the most efficient and lowest cost technologies. While we have provided additional flexibility for the industry, we have done so without compromising the environmental benefits of the program in 2004 and beyond when compared to our proposal.

The following sections summarize the requirements for gasoline refiners and importers, including our geographic phase-in requirements; special provisions for small refiners, and our plans to facilitate the construction permitting process to enable refiners to install gasoline desulfurization technology in a timely manner. Section VI provides additional information about the compliance and enforcement provisions that will accompany these requirements. More detailed information in support of the conclusions presented here is found in the RIA and in our RTC document.

1. Gasoline Sulfur Standards for Refiners and Importers

This section explains who must comply with the gasoline sulfur control requirements, the standards and deadlines for compliance, and how refiners can use the ABT program to meet the standards. The last section discusses how individual state gasoline sulfur programs are affected by today's action. Standards specific to eligible small refiners are presented in Section IV.C.2.

a. Standards and Deadlines that Refiners/Importers Must Meet

Anyone who produces gasoline for sale in the U.S. must comply with these regulations. This includes anyone meeting our definition of a refiner (including blenders, in most instances) and importers. Certain refiners may qualify for temporarily less stringent standards and deadlines because these companies either (1) market gasoline in the temporary geographic phase-in area (explained in section b below), or (2) they qualify under our definition of small refiner (explained in section IV.C.2 below). Foreign refiners may also have separate requirements, if they qualify as small refiners.

These requirements will apply to all gasoline sold in the U.S., including Alaska, Hawaii, Puerto Rico, American Samoa, the Virgin Islands, Guam, and

the Northern Mariana Islands.[78] This national approach is appropriate, based on our conclusions that vehicle emissions must be reduced nationwide to adequately protect public health and the environment and Tier 2 vehicles require protection from the harmful impacts of gasoline sulfur regardless of where they are operated.

Table IV.C.–1. summarizes the standards for gasoline refiners and importers. There are three standards which refiners and importers must meet. In 2004 and beyond, every gallon of gasoline produced is limited by a per-gallon maximum or "cap." The cap standard becomes effective January 1, 2004 (and January 1 of subsequent years as the cap standard changes). Also, in 2004 and 2005, each refiner must meet an annual-average standard for its entire corporate gasoline pool. Finally, each individual refinery is subject to a refinery average standard, beginning in 2005. Refineries that do not take advantage of the sulfur ABT program will have actual sulfur levels averaging 30 ppm beginning in 2005. Additional details about the requirements for meeting these standards is found in the following sections.

TABLE IV.C.–1.—GASOLINE SULFUR STANDARDS FOR REFINERS, IMPORTERS, AND INDIVIDUAL REFINERIES

[Excluding Small Refiners and GPA Gasoline]

Compliance as of—	2004[a]	2005	2006+
Refinery Average, ppm[b]	.....	30	30
Corporate Pool Average, ppm[c]	120	90	.....
Per-Gallon Cap,[d] ppm	300	300	80

NOTES:

[a] We project that the pool averages will actually be below 120 ppm in 2004. For a discussion of how the program gets early sulfur reductions before 2004, see section IV.C.1.c.

[b] The refinery average standard can be met through the use of sulfur credits or allotments from the sulfur ABT program, as long as the applicable corporate pool average and per-gallon caps are not exceeded, as explained in Section IV.C.1.c.viii.

[c] The corporate pool average standard can be met through the use of corporate allotments obtained from other refiners, if necessary, as explained in Section IV.C.1.c.iii.

[d] In 2004, exceedances up to 50 ppm beyond the 300 ppm cap are allowed. However, in 2005, the cap for all batches will be reduced by the magnitude of the exceedance.

i. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in 2004 and Beyond?

To reduce the potential for permanent damage to the emission controls of Tier 2 vehicles and later NLEV vehicles, we are implementing caps on the sulfur content of every batch of gasoline produced or imported into the country beginning in 2004. As shown in Table IV.C.–1, a cap of 300 ppm is first implemented in 2004. This cap remains in 2005. In 2006 and beyond, the cap is lowered to 80 ppm. These caps apply at the refinery gate. Sulfur caps are also applied to gasoline downstream of the refinery; see Section VI for additional discussion of downstream cap standards. These downstream caps will facilitate compliance and enforcement without changing the way the distribution system currently functions.

Several commenters suggested the rule should also include a provision to address the occasions when refiners must temporarily take processing units out of operation so that planned, recurring maintenance can be performed, commonly termed "turnarounds," or if processing units are unexpectedly taken out of operation due to accident or malfunction, commonly termed "upsets." These commenters expressed particular concern that the gasoline produced at a refinery may not meet the sulfur cap standards when a refinery's desulfurization unit is not operating. These commenters contended that the regulations should allow refiners to produce gasoline that exceeds the cap standard for a limited time where the excess sulfur is due to a turnaround or upset. However, they also suggested that the refiner should be required to meet the refinery average standard with the high sulfur gasoline included in its average calculation in order to create an incentive for refiners to limit the volume and sulfur content of high sulfur gasoline.

Today's rule does not grant relief to refiners because of turnarounds or upsets. While the concern raised by the commenters is reasonable, the solution they suggested would nevertheless result in distribution of gasoline exceeding the cap standards. The cap standards are necessary because gasoline with higher sulfur levels will significantly harm or destroy the emission controls used in Tier 2 vehicles.

We believe there are strategies refiners can use to mitigate or eliminate the difficulties associated with turnarounds and upsets. For example, some refiners schedule turnarounds for a number of refinery processing units at the same time when the refinery largely stops producing gasoline, thereby avoiding the need to produce any high sulfur gasoline. In other situations it may be possible for a refiner to store high sulfur products until the desulfurization unit is operating or to transfer high sulfur products to a neighboring refinery for desulfurization.

We commit to continue evaluating the turnaround issue especially as new technologies are introduced. Based on our evaluation, if a problem is evident and if an appropriate solution can be devised, we will act at that time.

In 2004, if any batch of gasoline[79] exceeds the 300 ppm cap (up to 350 ppm), then the cap for all batches produced by the refinery in 2005 will be reduced by the magnitude of the exceedance. For example, if any given batch of gasoline has a cap of 325 ppm (a 25 ppm exceedance) in 2004, then the cap becomes 275 ppm for all batches of gasoline produced by that refinery in 2005. However, at no time in 2004 can a batch be higher than 350 ppm sulfur. We have made this adjustment to accommodate those refiners who would have to invest in control technologies to meet the 300 ppm cap in 2004 (perhaps at a higher cost than they would incur if they could delay the investment a year) but could otherwise meet a slightly higher cap through operational changes which would not require new equipment.

[78] Gasoline sold in California is exempt from meeting these Federal standards, due to our belief that California gasoline already meets or exceeds these requirements. See Section VI for more discussion on this issue.

[79] Including gasoline produced for use in the geographic phase-in area and small refiner gasoline.

ii. What Standards Must Refiners/Importers Meet on a Corporate Average Basis?

Refiners and importers must meet annual-average, volume-weighted sulfur standards for their entire corporate gasoline pool in 2004 and 2005. In 2004, this standard is 120 ppm; in 2005, it is reduced to 90 ppm. In 2006 and beyond, there will no longer be a corporate pool average standard, since each refinery and importer will be held to its own single refinery average standard, as discussed in the next section.

These standards represent the maximum allowable sulfur levels, on an annual average basis, for each refiner/importer, volume-weighted across all refineries owned and operated by that refiner (or all gasoline imported by the importer in the calendar year), rather than at each individual refinery or by each batch of gasoline. Thus, a refiner's gasoline may exceed the average standard of 120 ppm at one refinery, if sufficient gasoline below that standard is produced at its other refinery(ies), such that its corporate, volume-weighted average sulfur level does not exceed 120 ppm. Alternatively, allotments may be used to meet this requirement. This requirement does not apply to small entities or to corporations that do not have to meet the pool average standard in the GPA program. For compliance with this corporate averaging requirement, as well as with the other requirements of this subpart, we consider a parent corporation owning wholly-owned subsidiaries that also own refineries to be the refiner of these facilities. Thus, the parent corporation must comply with refiner corporate average requirements. In its compliance calculations, the refiner must include the gasoline produced at the refineries it owns, plus the gasoline produced at the refineries owned by its wholly-owned subsidiaries.

For purposes of compliance, we proposed that a joint venture, in which two or more refiners collectively own and operate one or more refineries, be treated as a separate refining corporation under the gasoline sulfur requirements. Hence, a refinery owned by a joint venture would have been included in the corporate pool calculations of the joint venture, and could not have been included in calculations with other refineries solely owned by one of the parties to the joint venture. Based on comments we received on this issue which argued that a company with majority ownership in the joint venture should be allowed to count the jointly held refinery in its corporate average, we have revised our treatment of refineries owned by joint ventures. Each joint venture must separately meet the corporate pool average standard, whether the joint venture owns one or multiple refineries. If a joint venture fails to meet the corporate pool average standard, then each partner in the joint venture is jointly and severally liable for the violation. However, if one partner to a joint venture refinery includes the joint venture refinery in its corporate pool, and that corporate pool meets the corporate pool average standard, then the joint venture will be considered by EPA to be in compliance (if the joint venture owns only the one refinery). If the joint venture owns multiple refineries and only one or some of the refineries is included in the corporate pool calculations of one partner, compliance by the joint venture with the corporate pool average standard will be judged based on the average sulfur levels of the remaining refinery(ies) owned by the joint venture.

In meeting the corporate average stds in 2004 and 2005, refiners and importers may use allotments as discussed in IV.C.1.c below.

iii. What Standards Must be Met by Individual Refineries/Importers?

Beginning in 2005, every refinery must meet an average standard of 30 ppm sulfur at the refinery gate on an annual, volume-weighted basis. Similarly, every importer must meet the 30 ppm average standard beginning in 2005. (These requirements do not apply to small entities or to GPA gasoline). In meeting this standard, individual refineries and importers may use credits generated or purchased under the provisions of the sulfur ABT program discussed below in Section IV.C.1.c, and/or, in 2005 (only), sulfur allotments (as described in the previous section) obtained from a refiner who has excess allotments to sell, if they are unable to comply based on their actual gasoline sulfur levels. Hence, the actual average sulfur levels for gasoline produced at some refineries can be higher than 30 ppm in 2005, but only if refiners use (1) credits generated from cleaner gasoline produced early and/or (2) allotments generated by a refiner which produces gasoline averaging, on a corporate basis, lower than 90 ppm in 2005. However, the corporate pool average standards and per-gallon caps will limit the degree to which gasoline can exceed 30 ppm on average.

We allow refiners to use either sulfur allotments or ABT credits to meet the 30 ppm standard in 2005 for several reasons. First, this is an environmentally neutral approach because the national pool in 2005 will still average no greater than 90 ppm, since every refiner must meet the corporate average standard before applying allotments to the compliance of any refineries with the 30 ppm standard. Second, it provides refiners who have excess allotments in 2005 an additional market for those allotments, thus giving refiners an incentive to exceed the 90 ppm corporate average standard in 2005. In either case, the reductions will have occurred and thus the allotments and credits have very similar purposes and thus should be interchangeable.

In 2006 and beyond, the 30 ppm refinery average standard continues to be a requirement for every refinery or importer. The sulfur credits generated in the ABT program may be used by refineries or importers to comply with this requirement. However, because of the 80 ppm cap in these years, we expect that the majority of refiners/importers will average 30 ppm, although some individual refineries/importers could average slightly more or less (if the refineries/importers bank, sell, or purchase credits to meet this standard, as explained in the ABT discussion below). Furthermore, the majority of credits will expire at the end of 2006.

b. Standards and Deadlines for Refiners/Importers Which Provide Gasoline to the Geographic Phase-In Area (GPA)

As indicated above, certain refiners may qualify for temporarily less stringent standards and deadlines for some or all of their gasoline because these companies either (1) produce gasoline to be sold in the temporary geographic phase-in area (GPA) or (2) qualify under our definition of small refiner. In this section, we explain the geographic phase-in area of our program and the interim standards and deadlines for compliance in that area. The provisions that apply to qualifying small refiners are described in section IV.C.2., below.

i. Justification for Our Geographic Phase-In Approach

In addition to phasing in our national gasoline sulfur program temporally from 2004–2006, we are phasing in our program geographically. In response to our proposal, we received many comments from the refining industry regarding timely implementation of our proposed gasoline sulfur program. Commenters argued that not all refineries would be able to concurrently comply with the proposed standards in the time period provided, given the competition for engineering resources and the time needed for construction of

desulfurization equipment. In consideration of these comments, we have made some modifications to enhance the timing of our program without compromising the environmental benefits we expected from our proposal.

As part of our assessment we also examined other phase-in approaches which might enhance the orderly introduction of refining technology without jeopardizing the environmental benefits of our program. As a result of this assessment, we have concluded that many states in the Great Plains and Rocky Mountain areas of the United States have a somewhat less urgent environmental need for ozone precursor reductions in the near term. Moreover, their gasoline supply is dominated by that produced by small capacity, geographically-isolated refineries located therein. As a general rule, refineries in this area will have the most difficult time of all refineries nationwide in competing for the vendor, supply, engineering, and construction resources needed to modify their refineries to comply with the standards. Based on 1998 Department of Energy data, over 80 percent of the gasoline sold in this area is produced by the relatively small refineries located within the region.[80] Similarly, Alaska faces a less urgent environmental need for reductions in ozone precursors and has refineries which are challenged and geographically isolated.

A more orderly and cost-efficient phase-in of the 30 ppm standard could be achieved if all gasoline sold in this area was subject to somewhat less stringent standards than those in the rest of the country for a short time. This approach will allow the refineries producing gasoline for use in this area more compliance flexibility, more time to install and prove out the equipment needed for compliance, and thus a greater opportunity to reduce their overall costs. As described below, this approach results in only a minimal loss in emission reduction benefits. By stretching out demand for design, engineering, construction and other related services during the 2000–06 period, these provisions should also help to reduce the overall costs of the gasoline sulfur program.

The remainder of this section is divided into two parts. The first describes the rationale for development of this approach and how we identified the appropriate area, and the second provides a description of the requirements for refiners and importers that produce fuel for sale in the area.

ii. What Is the Geographic Phase-in Area (GPA) and How Was it Established?

As we considered the geographic phase-in approach, we aimed to minimize the environmental losses which could occur from exposing Tier 2, NLEV, (and other) vehicles to higher gasoline sulfur levels when the gasoline sulfur standards are being phased in nationwide. We used two criteria to develop and evaluate this approach: (1) relative environmental need and (2) the ability of U.S. refiners and the distribution system to provide compliant gasoline.

The states we have identified for the GPA are shown in Figure IV.C–1.[81]

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Figure IV.C.-1:

Geographic Phase-In Area (GPA)

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The first and primary criterion we considered in defining this area was environmental need. In defining the GPA, we identified those states that have somewhat less urgent environmental need in the near term for reductions in ozone precursors and whose emissions are less important in terms of ozone transport concerns. This area includes some states that are located in the Great Plains and the Rocky Mountains, as well as Alaska. Most states within the Rocky Mountains and Great Plains do not have a compliance problem with the 1-hour ozone standard in the near term, although they do have concerns in terms of maintaining compliance with the particulate matter standard. However, there are two states (Arizona and Nevada) in the Rocky Mountain vicinity that do have ozone air quality concerns. These states have instituted local fuel quality programs (in Phoenix, AZ and Las Vegas, NV) to reduce ozone precursor emissions. In addition, as shown in Table III.C–2, Arizona and Nevada are projected to have concerns with PM10 compliance in the future. Given these factors, we excluded them

[80] Much of this gasoline is produced by small volume refineries that are not owned by small businesses, and are therefore not afforded the flexibility of the small refiner provisions described in Section IV.C.2.

[81] Alaska, Colorado, Idaho, Montana, New Mexico, North Dakota, Utah, and Wyoming

from the phase-in area and its temporarily less stringent standards except as described below in Section IV.C.1.b.vii for counties and tribal lands in adjacent states.

We also defined the phase-in area based on the relative difficulty of producing or obtaining complying gasoline. The refining industry in the GPA is dominated by relatively low capacity, geographically-isolated refineries many of which are owned by independent companies. Such refineries face special challenges in complying with the requirements of the national program by 2004 because their crude capacity, corporate size, and location make it difficult for them to compete for the design, engineering, and construction resources needed to comply by 2004.

Furthermore, an assessment of 1998 gasoline production and use data and information on the products pipeline system shows that states in the GPA and portions of several adjoining states are solely or predominantly dependent on gasoline produced by these refineries and have limited or no access to gasoline from other parts of the country. Based on this analysis, we concluded that several states and portions of other states meeting our first criterion (less urgent environmental need for ozone precursor emission reductions) also face the likelihood of a supply shortage of low sulfur gasoline. Providing low sulfur gasoline to these states and adjoining areas is expected to be more difficult and costly in the near term. Section IV.C.1.b.vii below, discusses how the adjoining areas (counties/tribal lands) will be identified.

Thus, we believe it is appropriate to phase in the 30 ppm average, 80 ppm cap standards in these areas by allowing an additional year compared to the rest of the country, rather than delaying implementation of the standards nationwide to accommodate these states. Under this approach, the areas with the most urgent need for the ozone reduction benefits associated with low sulfur gasoline will realize them as soon as is feasible, and other areas will experience them shortly thereafter.

On the other hand, much of the area in the adjoining states has significant pipeline, rail, barge, and truck access to gasoline which will be capable of meeting the standards in Table IV.C–1 beginning in 2004. Even if these states have less environmental need in the near term, there are health benefits (particulate and air toxic emission reductions) as well as performance benefits for vehicle emission control systems (including avoidable irreversible sulfur effects) which need not be foregone. Therefore, we concluded that since it will not be more difficult to send gasoline to these adjoining areas through the distribution system, the significant environmental benefits of requiring low sulfur gasoline as early as is feasible justifies excluding these states from the GPA.

Some might argue that there are other states which should be considered under this program. However, based on our criteria of environmental need (including ozone transport and irreversibility concerns) challenged refineries, and limited access to complying gasoline we could identify no other states or territories which to include.

iii. Standards/Deadlines for Gasoline Sold in the Geographic Phase-in Area

While the states in the GPA may have less of an environmental need for ozone precursor reductions in the near term, there are significant environmental reasons to make the program as stringent as possible, still enabling a smooth transition to low sulfur gasoline nationwide. Toward that end, we are establishing the following requirements for gasoline sold in the GPA, which we view as the appropriate balance between these two factors.

The GPA provision covers all gasoline produced or imported for use in the GPA, whether refined there or brought in by pipeline, truck, rail, etc.[82] Foreign refiners are involved in this program through the importers, who are, in fact, the regulated entities. Refineries and importers must meet a 150 ppm average and a 300 ppm cap for all gasoline produced or imported for the GPA under this program beginning January 1, 2004. However, if a refinery's/importer's 1997–98 average sulfur level is less than 150 ppm, then that refinery's/importers gasoline has a standard of its baseline plus 30 ppm but in no case greater than 150 ppm. For example, a refinery with a baseline of 100 ppm would have a sulfur standard of 130 ppm for its GPA gasoline, a refinery with a baseline sulfur level of 140 ppm would have a standard of 150 ppm for its GPA gasoline, and a refinery with a baseline of 200 ppm would have a standard of 150 ppm for its GPA gasoline. Furthermore, if under the ABT provisions discussed below and in section IV.C.1.c, a refinery/importer generates credits (in 2000–2003) and/or allotments (in 2003) by dropping its refinery/imported gasoline average below 150 ppm then the baseline for that refinery is set at the new level and the standard becomes baseline plus 30 ppm but not greater than 150 ppm. This is to ensure that refineries and importers who already are lower than the 150 ppm standard on average maintain current sulfur levels. The 30 ppm factor is intended to allow some flexibility for refineries and importers whose 1997 and 1998 levels are an aberration from normal operations or who face changes in crude slates in future years.

Corporate pool average standards apply in the national gasoline sulfur program for calendar years 2004 and 2005. Most refiners/importers producing gasoline for use in the GPA market the majority of their gasoline outside of the GPA where they compete with many other refineries. Since the phase-in of the national program expects compliance with the 120/90 ppm corporate pool average standards in 2004 and 2005, we are requiring that refiners/importers who market the majority (greater than 50 percent of production volume) of their gasoline outside of the GPA to account for the sulfur levels of their GPA gasoline in their calculation for compliance with the corporate pool average standards.

To provide additional flexibility during this phase-in, refiners may use sulfur ABT credits and allotments (as explained in IV.C.1.c) to meet these standards. Refineries producing GPA gasoline can generate credits beginning in 2000 under the provisions of the national program (described in section IV.C.1.c). Also, refineries/importers marketing gasoline in the GPA may through extraordinary measures be able to generate credits in 2004–2006. To qualify they must achieve levels below 150 ppm or their more stringent baseline levels as discussed above whichever is less. Under these circumstances, these refineries/importers can earn credits for the GPA gasoline they produce during 2004–06. Credits generated under the GPA program are fully fungible with national credits and are subject to the same regulatory requirements.

The national program includes provisions which permit refiners/importers to generate allotments for use in 2004 and 2005. Refiners and importers marketing gasoline in the GPA may only generate sulfur allotments in 2004 or 2005 if their corporate average sulfur level meets the corporate pool average standards for each year (as indicated in Table IV.C.1), including gasoline produced for the GPA, if applicable. Refiners not compelled to meet the corporate pool

[82] As discussed below, refiners can supply gasoline not designated as GPA gasoline to the GPA, provided it meets the standards in Table IV.C.–2. Also, the GPA standards do not apply to gasoline produced by small refiners that is used in the GPA.

average standards under the GPA may not generate allotments.

The temporary provisions for the GPA apply for three years, 2004 through 2006. Since the low sulfur standards for the rest of the country require compliance with a 30 ppm refinery average standard and an 80 ppm gallon cap in 2006, the geographic phase-in provides an additional year to reach those standards. This extra year and the somewhat less stringent standards during the phase-in will provide the refining industry the opportunity for more orderly transition to the 30/80 ppm standards by 2007.

Requirements for gasoline sold in the GPA are summarized in Table IV.C.–2, below. Gasoline produced by refiners subject to the small refiner standards described in Section IV.C.2. of this notice is not subject to the provision of the geographic phase-in, since the small refiner provisions apply to eligible refiners regardless of geographic location. Gasoline produced by such refiners can be sold nationwide, including in the GPA.

TABLE IV.C.–2.—GASOLINE SULFUR STANDARDS FOR THE GEOGRAPHIC PHASE-IN AREA

[Excludes Small Refiners]

Compliance as of—	2004	2005	2006
Refinery GPA Gasoline Average[a], ppm	150	150	150.
Corporate Pool Average[b], ppm	120	90	Not Applicable.
Per-Gallon Cap[c], ppm	300	300	300.

Notes:

[a] The refinery average standard for GPA gasoline is the more stringent of: 150 ppm; the refinery 1997–1998 baseline plus 30 ppm; or the sulfur level from which early credits were generated plus 30 ppm. Refiners can use credits or allotments to meet the average.

[b] Applies only to refiners/importers which sell >50% of their gasoline outside the GPA.

[c] As discussed above, in 2004 both GPA and Non-GPA gasoline may have a sulfur content as high as 350 in which case the refinery or importer becomes subject to a correspondingly more stringent cap standard in 2005.

iv. What Are the Per-Gallon Caps on Gasoline Sulfur Levels in the Phase-in Area?

The sulfur level caps for gasoline sold in the phase-in area and the rest of the nation are the same in 2004 and 2005, but in 2006 the cap remains at 300 ppm in this area while it declines to 80 ppm for the rest of the country. To assure that compliance at the refinery gate is correct regardless of where the gasoline is ultimately sold, as gasoline intended for the GPA moves in the distribution system to or through the geographic area it must be identified as phase-in area gasoline in product transfer documents and must remain segregated from gasoline intended for use outside this area. In addition, use of phase-in area gasoline is prohibited outside the GPA, but the converse is allowed, i.e., gasoline designated for use outside the GPA can be used in this area. For all three years, refiners and importers must meet the requirements described in Tables IV–C.1 and IV–C.2, as applicable, and therefore must maintain refinery or import records as applicable as to where a gasoline batch is sold. [83]

We recognize that this higher standard/cap for one year could create the incentive for those not marketing gasoline in the GPA today to seek a market to sell higher sulfur gasoline and for others to seek to increase market share. While this is indeed allowable under our program and is perhaps to be anticipated in a free market system, in all likelihood the incentives are small. Such refiners/importers would still have to meet the 150 ppm average and would perhaps face increased shipping and marketing costs. Nonetheless, we plan to monitor market developments to assess whether such a provision creates significant market shifts or the potential for increases in average sulfur levels in the GPA gasoline.

v. How Do Refiners/Importers Account for GPA Fuel in Their Corporate Average Calculations?

Those refiners or importers that sell all of their gasoline to the GPA (*i.e.*, they produce no fuel for use outside the GPA), regardless of whether they are located within or outside of the area, have refinery/importer standards that are equal to the least of 1) 150 ppm, 2) the refinery's or importer's 1997–98 average sulfur level plus 30 ppm or 3) the refinery's or importer's lowest actual annual sulfur level plus 30 ppm in any year 2000–2003 if credits are generated. Because the refiners produce *all* of their fuel for use in the GPA, they are exempt from the corporate average standards in Table IV.C–1.

Furthermore, any refiner/importer which certifies 50 percent or more of its gasoline production volume for sale as GPA gasoline in 2004 and 2005 is not required to meet the corporate pool average for that year for its entire gasoline pool. Not only would it be difficult to comply on average (if it were assumed that the GPA gasoline was 150 ppm and non-GPA gasoline was 30 ppm), but also it would undermine the achievement of the basic goal of a more orderly and efficient phase-in of low sulfur gasoline since the flexibility afforded by the GPA could be diminished.

Otherwise, those who produce less than 50 percent of their gasoline for the GPA (which is the majority of those refiners which market in both locations), must meet the corporate pool average standards in 2004 and 2005 for their entire gasoline pool. Thus, such refiners must compensate for the higher sulfur levels of their GPA gasoline by producing non-GPA gasoline that averages sufficiently less than 120 ppm in 2004 and 90 ppm in 2005 to ensure that their corporate average meets the corporate pool average standard for each year. Importers who provide less than 50 percent of their gasoline to the GPA must also include their GPA gasoline in their overall corporate pool average calculation. Alternatively, the refiner can use sulfur allotments to meet the corporate pool average standard for its total gasoline production, including gasoline sold inside and outside the phase-in area. Since most refiners which sell gasoline both in and outside the GPA sell the vast majority outside the GPA the additional flexibility provided for gasoline sold in the phase-in area should not significantly affect compliance with the corporate pool average standard for a refiner's nationwide production.

vi. How Do Refiners/Importers Apply for the Geographic Phase-in Area Standards?

As part of program administration, we are requiring that any refiner/importer

[83] These segregation and designation requirements do not apply to gasoline produced by refiners subject to the small refiner standards described in Section IV.C.2. This is because small refiner gasoline can be sold anywhere in the country, and is not subject to different standards depending on where it is sold.

expecting to sell gasoline in this area during the phase-in period (2004–2006) make application to EPA in writing by December 31, 2000. This application would provide the minimum information needed by EPA to characterize a refiner's/importer's participation, establish the applicable standards if the 1997–98 average is less than 150 ppm, and establish our enforcement program for refiners/importers in this area for gasoline entering or leaving the area. Participation on the part of any refinery or importer is voluntary. At any time, a refiner/importer who previously opted into the GPA program may produce gasoline meeting the standards in Table IV.C–1 in the GPA, or may cease producing gasoline for the GPA (and produce gasoline meeting the standards in Table IV.C–1 solely outside of the GPA). Such a decision would affect the averages/caps which apply to the gasoline sold in the GPA. Gasoline sold in the GPA that is not designated as GPA gasoline is considered Non-GPA gasoline for purposes of compliance with the corporate pool average requirement and refinery average requirements.

vii. How Will EPA Establish the GPA in Adjacent States?

EPA is establishing a geographic phase-in area that encompasses eight states (MT, ND, ID WY, CO, UT, NM, AK). In addition, counties and tribal lands in states immediately adjacent to these which received a majority of their gasoline in calendar year 1999 from a refinery(ies) located within the GPA will be covered by the phase-in area provisions. The criteria to identify these additional counties and tribal areas are designed to identify areas whose gasoline distribution system is closely tied to the eight states such that they share the same characteristics of gasoline supply. Therefore, dispensing outlets (retail and private) in such areas will continue to have access to that gasoline in most cases. Distribution and production of gasoline in these additional areas will be subject to the same standards and requirements as gasoline in the eight states identified above.

At this time, EPA is not able to identify all the counties and tribal lands that would be included in the phase in area. In light of the air quality benefits of introducing low sulfur gasoline as quickly as possible, we want to ensure that the phase-in area is accurately identified and that including any areas outside these eight states will not have a significant adverse air quality impact on any counties or tribal lands that are included in the phase-in area. EPA will be working with interested stakeholders will to conduct an assessment to determine which counties/tribal lands within the immediately adjacent states meet the criteria as described in the regulatory text. EPA expects to complete action on this assessment by December 31, 2000. c. How Does the Sulfur Averaging, Banking, and Trading Program Work?

The sulfur ABT program provides flexibility to refiners by giving them more time to bring all of their refineries into compliance with the corporate averages in 2004 and 2005 as well as the 30 ppm individual refinery standard in 2005 and beyond. ABT will provide the opportunity for reduced costs by allowing the industry the flexibility to average sulfur levels among different refineries, between companies, and across time. With ABT, some refineries will be able to delay installation of desulfurization equipment, because other refineries will generate sulfur allotments and credits through early sulfur reductions. In this way, installation of desulfurization technology will be spread out over a longer period of time than would be the case without ABT. Since, with the banking provisions, reductions in annual average sulfur levels which occur as early as 2000 have a value during program implementation, the ABT program provides an incentive for technological innovation and the early implementation of refining technology.

The ABT program also provides the opportunity for meaningful emissions reductions in 2004 because it allows the Tier 2 standards to be implemented earlier than might otherwise have been possible (if the Tier 2 standards were delayed to provide the refining industry more time to comply), and because it provides direct environmental benefits even in the years before Tier 2 vehicles are introduced. One benefit is related to the effect of gasoline sulfur on exhaust emissions, as discussed in the Regulatory Impact Analysis. This benefit will result both from older vehicles on the road (Tier 0 and Tier 1 emission control technologies, which have some degree of sulfur sensitivity and will benefit from sulfur reductions which occur prior to implementation of the refiner and refinery standards summarized in Table IV.C–1) and from NLEV vehicles (which are more sensitive to sulfur than earlier technologies) which will continue to be sold while Tier 2 vehicles are phased-in. Another environmental benefit is the reduction in atmospheric sulfur loads as a direct result of reduced gasoline sulfur levels, leading to reduced emissions of sulfur-containing compounds from motor vehicles.

The following sections explain the requirements for participation in the sulfur ABT program for allotments and credits.

Sulfur Allotment Program

i. Generating Allotments Prior to 2004

To provide additional incentive for early sulfur reductions and to enhance the overall feasibility and cost effectiveness of the gasoline sulfur control program, we are implementing a sulfur allotment program. While few commenters supported the sulfur allotment concept in the NPRM, a number suggested that greater flexibility for compliance in the early years would be helpful. The program described below is in addition to the early sulfur credit program described elsewhere.

For 2003, refineries can generate sulfur allotments (in ppm-gallons) by producing gasoline containing less than 60 ppm sulfur on an annual-average basis. This 60 ppm "trigger" was chosen to reward refineries who demonstrate compliance using technology designed to meet the 30 ppm standard before 2005. Once this 60 ppm trigger is reached, allotments will be calculated based on the amount of reduction from 120 ppm.[84] However, these allotments may be discounted depending on the actual sulfur level. If a refinery fully demonstrates compliance by producing gasoline with an annual average sulfur level of 0 to 30 ppm, the allotments retain their full value—they are not discounted at all. For actual sulfur levels of 31–60 ppm, which are indicative of a partial demonstration of compliance with the ultimate low sulfur standard, the allotments are discounted 20 percent. For example, consider a refinery that has an average sulfur level of 50 ppm at the end of 2003. That refinery would have generated 56 sulfur allotments [(120 ppm − 50 ppm) × 0.8 × Volume (in gallons)] to be used or sold in 2004. If that same refinery instead produced fuel with an average sulfur level of 20 ppm at the end of 2003, then it would have generated 100 sulfur allotments [(120 ppm − 20 ppm) × volume (in gallons)] to be used or sold in 2004.

ii. Generating Allotments in 2004 and 2005

For 2004 and 2005, refiners or importers (but not individual refineries)

[84] If a refinery has a baseline sulfur level higher than 120 ppm (as described below in IV.C.1.c.v.), then credits are generated from the baseline to 120 ppm and allotments from 120 ppm to the new sulfur level (and discounted 20 percent if applicable).

can generate allotments by producing gasoline that has a sulfur level below the annual corporate average standard (120 ppm and 90 ppm). The number of allotments generated is equal to the difference between 120 ppm (or 90 ppm) and the corporate average sulfur level. Allotments generated by refiners or importers in 2004 and 2005 are not discounted, unlike some of those that are generated by refineries in 2003. Refiners that sell fuel to the GPA may also generate allotments by producing fuel that is cleaner than the corporate average standards, regardless of the volume of fuel that is produced for use in the GPA. On the other hand, as explained in Section IV.C.2., gasoline produced by small refiners who are complying with the standards in Table IV.C.–3 cannot be used to generate sulfur allotments since these producers are not required to meet a corporate average standard.

iii. Using Allotments in 2004 and 2005

Refiners and importers can use sulfur allotments that they generate or purchase from other refiners/importers to demonstrate compliance with the 120 ppm corporate standard in 2004 and the 90 ppm corporate standard in 2005. Each refiner's sulfur allotment for 2004 and 2005 will be calculated based on the total volume of gasoline imported and produced at their refineries (or only imported gasoline in the case of companies that only import gasoline) and the corporate pool average standard for that year. In anticipation of exceeding or falling short of the standard for any one year, companies may trade sulfur allotments, either in the compliance year or earlier (as early as the year 2000). For example, a refiner that expects to produce a total of 2.5 billion gallons of gasoline in 2004 has a sulfur allotment of 300 billion ppm-gallons (120 ppm × 2.5 billion gallons). If its corporate pool average is actually 200 ppm in 2004, it will exceed its 2004 allotment by 200 billion ppm-gallons (since 200 ppm × 2.5 billion gallons = 500 ppm-gallons), and must obtain sulfur allotments from another refiner to offset this increase. Similarly, if this refiner expects to average 80 ppm in 2004, it has an excess of 100 billion ppm-gallons to trade to other refiners. However, if a refiner trades away part of its allotment, the refiner must still comply with the corporate standard, just as another refiner has to do if it does not trade allotments.

In 2005, refiners must comply both with the corporate average standard and the refinery average standard for each of their refineries. Once a refiner has established compliance with the 90 ppm corporate average standard (with or without the use of allotments), each of its refineries can then establish compliance with the 30 ppm refinery standard through actual production of 30 ppm gasoline or through the use of *excess* allotments and/or sulfur credits. Once compliance with the 90 ppm corporate pool average standard is established, the refiner would use 90 ppm as each of its refineries actual sulfur level, then apply an appropriate number of credits or allotments to meet the 30 ppm refinery average standard for each refinery. (See discussion below for an explanation of how a refiner can use both sulfur ABT credits and allotments to comply with the refinery average standard in 2005.)

iv. How Long Do Allotments Last?

We expect most refiners will trade sulfur allotments well before the end of each compliance year so they will have the needed certainty of compliance with the corporate average standard. Our program allows such trades to occur at any time during the year, although the refiner is liable for any shortfall in compliance resulting from having traded away too many allotments. A refiner may also carry over excess 2004 allotments (those generated in 2003 or 2004) for compliance with the 90 ppm corporate standard for 2005. However, those allotments must be discounted by 50 percent. This 50 percent discount factor is needed to equalize the emission impact of sulfur control between 2004 and 2005. In 2005, there is an extra model year of NLEV/Tier 2 vehicles relative to 2004. In addition, the NLEV/Tier 2 fleet is one year older in 2005 than 2004. This increased age translates into higher vehicle emissions due to general deterioration. Since sulfur acts on a percentage basis, the absolute emission increase due to sulfur impacts on vehicle emission control systems in 2005 is higher than in 2004.

As discussed below in section IV.C.1.c.x, a refiner or importer may convert allotments into credits in 2004 and 2005 for compliance with the refinery average standards in 2005 and beyond. All transactions between refiners involving sulfur allotments must conclude by the last day of February in the calendar year following the compliance year in which the allotments are to be used.[85]

[85] Allotments used for GPA gasoline compliance may be retained until February 2007. Allotments used for small refiner gasoline compliance may be retained until February 2008.

Sulfur Credit Program

v. Establishing Individual Refinery Sulfur Baselines for Credit Generation Purposes

The purpose of establishing a sulfur baseline for each refinery is to provide a starting point for determining sulfur credits for reductions in gasoline sulfur levels. We proposed that refiners would have to establish a sulfur baseline for each individual refinery, by submitting to us data establishing their annual average gasoline sulfur level based on the average of their 1997 and 1998 operations. We would review the data and, barring any discrepancies, approve a sulfur baseline for each refinery. We received comments supporting this option as well as comments stating that the time involved for this application and approval process would delay the refiner's ability to plan for and begin construction of gasoline desulfurization technology. Refiners would want the certainty of an approved sulfur baseline before making investment decisions, and thus would wait to obtain EPA's approval before proceeding. We also received comments about what year(s) would be most appropriate to use to establish a sulfur baseline. Some of these comments argued for the use of existing, approved 1990 baselines, or some adjusted version of 1990 baselines, rather than new data, to expedite the process of establishing sulfur baselines.

We also proposed a different sulfur baseline for reformulated gasoline (RFG) produced in the summer for those refineries which produce reformulated gasoline. While the conventional gasoline sulfur baseline (and the baseline for winter RFG) was proposed to be tied to current sulfur levels, the baseline for summer reformulated gasoline was proposed to be 150 ppm, the approximate level we expect summer reformulated gasoline to contain in 2000 and beyond because of the Phase II reformulated gasoline requirements, which take effect in 2000. We argued that winter RFG did not have any de facto sulfur restrictions, and thus winter RFG should be counted with conventional gasoline for the purpose of credit generation relative to the refinery's conventional gasoline sulfur baseline.

Since the proposal, we have learned that overall gasoline sulfur levels (conventional plus reformulated) are significantly lower than they were in 1990. As explained in the Regulatory Impact Analysis, national average sulfur levels when both conventional and reformulated gasolines are considered dropped to 306 ppm in 1997 and 268 ppm in 1998, compared to the 1990

national gasoline sulfur average of 339 ppm, decreases of 10 and 21 percent, respectively. The substantial drop between 1997 and 1998 seems to be related to the mandatory use of the Complex Model, which began in 1998 and had implications for both reformulated and conventional gasoline compliance. Thus, we have become convinced that the most appropriate sulfur baseline would be based on data which establish current sulfur levels, not on data which are nearly ten years old. We considered reducing all 1990 baselines by 21 percent to reflect the national average decrease since 1990, but determined that this approach would be inappropriate because some refiners have reduced levels substantially more than 10–21 percent since 1990, and would thus be eligible to generate a very large number of credits for reductions that have already been made.

Furthermore, as we proposed, and some commenters argued, we have concluded that averaging data from two years is the most appropriate approach, because averaging over two years will help to account for any unusual variations in operations that may have occurred at individual refineries in either of these years. We concluded that averaging data from 1998 and 1999 is not feasible, because the 1999 data will not be fully available to EPA until after the reporting deadline of May 2000. Hence, we believe it is preferable to use 1997 and 1998 data, rather than delaying the time baselines are established. We do not expect significant changes in 1999 sulfur levels relative to 1998 levels, so we believe the use of the 1997–1998 data provides a reasonable representation of current sulfur levels.

We have also learned that summer reformulated gasoline is already averaging close to our expected sulfur level for the year 2000. Winter RFG does not show this same decrease, presumably because refiners are shifting high sulfur blendstocks out of RFG in the summer but back into RFG in the winter to maintain compliance with the conventional gasoline antidumping requirements. Thus, it appears that if we held summer RFG to a lower baseline, as proposed, we would have to raise the winter RFG baseline commensurately to reflect actual refinery operations. The net environmental impact would be no different than if we had a single sulfur baseline applying to all RFG, or to all gasoline produced at the refinery, since the annual pool sulfur levels are constant even while there may be seasonal variations. Therefore, we are not finalizing a separate sulfur baseline for summer RFG, but rather combined conventional and reformulated gasoline sulfur levels.

Having considered the comments we received and the new data available to us, we have concluded that refiner sulfur baselines should be established from 1997 and 1998 operating data. Hence, we are requiring refiners which wish to generate sulfur credits prior to 2004 to establish a 1997–98 sulfur baseline for each refinery at which they intend to generate credits. We believe the process we have defined will minimize the burden to the industry and the time it will take for us to review and approve the sulfur baselines. Specifically, refiners which plan to generate sulfur credits must submit to us information which establishes the batch report numbers, sulfur levels, and volumes of each batch of gasoline produced in 1997 and 1998, as well as the annual average sulfur level calculated from these data. Within 60 days, we will review the application and notify the refiner of approval or of any discrepancies we find in the data submitted. If we do not respond within 60 days, the baseline should be considered to be approved.

While we expect most refiners will apply for a sulfur baseline in the near future (to maximize the time that they can generate credits before 2004), there is no cut-off date for applying for a sulfur baseline. However, if the refiner wishes to generate credits for a given calendar year, we must receive his baseline application no later than September 30 of that year to provide us adequate time to review the baseline prior to the end of the year (at which time any credits generated in that year would be assessed and reported by the refiner). We believe that this approach for establishing sulfur baselines meets our goal of providing a workable ABT program that refiners can take advantage beginning in the year 2000, without sacrificing the environmental benefits of the sulfur standards.

Foreign refiners which have already established an individual refinery baseline with us, and thus have submitted reports on all batches of gasoline sent to the U.S. in 1997 and 1998, may follow this same procedure if they wish to generate sulfur credits prior to 2004. Foreign refiners which have not reported 1997–98 gasoline qualities to us must follow an alternate approach. Specifically, they must follow the general requirements of our protocol for establishing individual refinery baselines (see §§ 80.91–94 and also § 80.410) by providing sufficient data to establish the volume of gasoline imported to the U.S. from each refinery in 1997–98 and the annual average sulfur level of that gasoline. If the test method used to identify the sulfur level differs from the one specified in today's action, the refiner must provide sufficient information about the test method to allow us to evaluate the appropriateness of the alternative. Because this information will be new to us, we may require more time to review and approve their 1997–98 sulfur baseline. But, consistent with our previous handling of foreign refiner submissions, once we have determined that the submission is complete and the protocol has been followed, they may use the baseline while waiting for our formal approval. However, the refiner will be held to the baseline that is ultimately approved. A foreign refiner who is unable to generate adequate data to establish a 1997–98 sulfur baseline will not be permitted to generate sulfur credits in 2000–2003.

Small refiners that plan to request small refiner standards (as provided in Section IV.C.2 below) which also want to generate early sulfur ABT credits will use the same data required to define their small refiner baseline to determine their baseline for the ABT program. In other words, if a refiner becomes a small refiner under our definition and procedures, credits generated by that refinery would be calculated relative to the refinery's actual 1997–98 sulfur average. The trigger for generating sulfur credits under the ABT program (discussed in the next section) would still apply for small refiners generating credits prior to 2004 relative to their 1997–98 sulfur average. In addition, the applicable interim sulfur standard for small refiners who generate credits through sulfur reductions prior to 2004 will be calculated based on the reduced sulfur level, rather than the 1997–98 baseline level, as explained below in Section IV.C.2.

Importers and gasoline blenders will not be assigned a sulfur baseline because they are not eligible to generate early credits (prior to 2004) under the ABT program. This includes gasoline refiners who are also importers; such parties cannot generate sulfur credits prior to 2004 on the basis of their imported gasoline but may only generate credits based on the gasoline produced by their refinery(ies). It also includes oxygenate blenders, who, as discussed in Section VI below, are not subject to the sulfur standards but are responsible for compliance with the downstream provisions.[86] For importers

[86] Refiners may, however, include oxygen added downstream of the refinery when determining

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and most gasoline blenders, this represents a change from our proposal, but one we believe is appropriate and necessary to ensure that the environmental benefits of the ABT program are maintained. The ABT program allows the refining industry to trade off early sulfur reductions (2000–2003) for slight delays in complying with the 30 ppm refinery average standard in 2005–2006.[87] We have designed the ABT program to ensure that sufficient credits can be generated by refiners (domestic or foreign) to enable a smooth transition to the 30 ppm standard. Importers and blenders do not have the same need for the ABT program that refiners have because they will not have to make the same level of investment in desulfurization technology and thus do not need credits generated before 2004 to help their transition to the 30 ppm average standard after 2004. Furthermore, credits could be generated by importers without the overall pool of imported gasoline becoming incrementally cleaner. For example, say that Importer A had a 1997/98 sulfur baseline of 600 ppm and Importer B had a sulfur baseline of 100 ppm. In 2002, Importer B could transfer/sell its 100 ppm gasoline to Importer A prior to unloading the fuel at the port of entry. Once the import transaction was completed, Importer A will have generated 500 ppm (multiplied by the fuel volume) credits without any fuel becoming incrementally cleaner. We are concerned that if importers and blenders were allowed to generate early credits, they would generate far more credits than needed to make the ABT program work, without necessarily achieving early environmental benefits—credits which either importers or refiners would be able to use to delay compliance with the 30 ppm standard in 2005 and beyond. This would delay the environmental benefits of our program by prolonging the industry's transition to the 30 ppm standard.

In the proposal, we also discussed the need for a baseline gasoline volume as well as a baseline sulfur level. This stemmed from the design of our current conventional gasoline anti-dumping program, which requires a baseline volume so that we can confirm that conventional gasoline is no dirtier now than it was in 1990. However, for the gasoline sulfur ABT program, we have determined that there is no need to restrict refineries' sulfur baselines (against which they can generate sulfur credits) to a specific volume of gasoline. The purpose of the ABT program is to encourage early sulfur reductions by some refineries, and we see no need to limit the amount of credits such a refinery can generate on the basis of a historic volume of gasoline production. In fact, additional volumes of cleaner gasoline should achieve additional early environmental benefits.

vi. Generating Sulfur Credits Prior to 2004

In our proposal, we discussed a credit generation trigger of 150 ppm for early credit generation (2000–2003), arguing that we wanted to encourage investment in desulfurization technologies that refineries ultimately need to get to a 30 ppm average. Many comments we received argued that the 150 ppm trigger was too restrictive, requiring capital investments that most refiners could not make earlier than 2004 (due to construction limitations, among other reasons). Thus, few credits would be generated, and without sufficient certainty that credits would be generated, refiners would not be able to count on the flexibility that the ABT program was intended to provide when planning their compliance strategies for 2004 and beyond.

Having considered these comments and reanalyzed the ability of the industry to comply with the standards in 2004 (as we discussed above at the introduction to section IV.C.1), we have concluded that the proposed 150 ppm trigger would inappropriately limit the credits available. While we want to encourage refiners to make reductions early, we do not want to preclude refiners from making less capital intensive sulfur reductions in the short term while they prepare to reach the 30 ppm average in the long term. At the same time, we believe that a refinery should be required to demonstrate that the sulfur reduction was real and not just a consequence of national variations from year to year. Hence, we are establishing a trigger which we believe represents a sulfur reduction that requires action above and beyond simple annual or even seasonal fluctuations in crude oil sulfur level or product slate variations that could have a very small impact on annual sulfur average.

During the period 2000–2003, credits can be generated annually by any refinery that produces gasoline averaging at least 10 percent lower than that refinery's baseline sulfur level. In other words, to generate credits, the refinery's annual average sulfur level for all of its gasoline on average must be 0.9 × (baseline sulfur level). Once this "trigger" is reached, credits will be calculated based on the amount of reduction from the refinery's sulfur baseline. For example, if in 2002 a refinery reduced its annual average sulfur level from a baseline of 450 ppm to 150 ppm (well below the trigger of 0.9×450=405 ppm), its sulfur credits will be determined based on the difference in annual sulfur level (450–150=300 ppm) multiplied by the volume of gasoline produced in 2002. Similarly, foreign refineries with an individual sulfur baseline can generate credits in these years as long as the annual average sulfur level of the gasoline imported to the U.S. from that refinery is lower than 90 percent of the baseline sulfur level.

Although by adopting a more modest trigger for credit generation we are enabling more credits to be generated, the environment will still benefit from our program. Although the use of a more modest trigger keyed to each refinery's sulfur baseline may allow more credits to be generated, we believe this will only occur because the credit program is providing incentives to refineries to reduce sulfur levels earlier than they would have otherwise, particularly with a strict 150 ppm trigger. Thus, more lower sulfur gasoline will be in the marketplace prior to 2004 than would otherwise have occurred, given our understanding of the state of desulfurization technologies and the likely pattern of investments by the industry. With our corporate average and cap standards, sulfur levels will continue to decrease after 2004, even if individual refineries take an added year or two to meet the 30 ppm standard.

We had also proposed that credit generation prior to 2004 would be different for reformulated gasoline than for conventional gasoline, because reformulated gasoline's assigned sulfur baseline was proposed to be 150 ppm. Thus, we proposed that credits could only be generated from reformulated gasoline if the sulfur level averaged below 150 ppm, and that the credits would be calculated based on the difference between 150 ppm and the new, lower average. Since we have not finalized a separate baseline for reformulated gasolines, we are not adopting a different process for generating credits from reformulated gasoline. All gasoline produced at the refinery in 2000 (and beyond) is considered in calculating the annual average sulfur level, compliance with the 90 percent trigger, and the sulfur credits earned, if any.

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compliance with the sulfur standards and the provisions of the ABT program. This is consistent with existing provisions for reformulated and conventional gasolines.

[87] As explained in Section IV.C.1.c.ix, credits generated before 2004 expire in 2006, except for small refiners and credits used for GPA gasoline compliance.

Several states have adopted or are considering adopting gasoline sulfur control programs (see discussion at section IV.C.1.d below on state sulfur programs). While we had proposed to exclude this gasoline from sulfur credit generation, we have reconsidered our position. Gasoline produced in response to state[88] requirements can be included in the refinery's calculation of sulfur credits generated in a given year. However, this gasoline will be included in the total volume of gasoline produced by that refinery, requiring the annual average sulfur level for total gasoline produced at that refinery to exceed the trigger specified above to generate any credits at all.

vii. Generating Sulfur Credits in 2004 and Beyond

In 2004 and beyond, refineries, blenders, and importers can generate credits, but only if the actual annual sulfur level of all gasoline produced or imported averages below 30 ppm, and only for the difference between the standard and the actual annual sulfur average. (For example, a refinery producing gasoline in 2005 that averages 25 ppm can generate 30–25=5 ppm sulfur credits on the total volume of gasoline produced at that refinery.) However, since in 2004 and beyond importers are the regulated party responsible for ensuring that imported gasoline meets the sulfur standards, foreign gasoline would in effect generate sulfur credits through the importer beginning in 2004. Foreign refineries which want to send gasoline containing less than 30 ppm sulfur to the U.S. would still benefit from doing so by making appropriate arrangements with importers, which are subject to all of our standards.

viii. Using Sulfur Credits

Refineries, blenders, and importers can use sulfur credits to demonstrate compliance with the 30 ppm annual average refinery standard in 2005 and beyond, if they are unable to meet the standard with actual gasoline production. During 2005 and 2006 only, refineries may use credits banked by that refinery in 2000–2003 as a result of early sulfur reductions, or credits purchased from other refineries which have banked early sulfur credits. Blenders and importers can purchase credits from refiners (including any foreign refiners which generated early credits), or use credits they generated in 2004 and beyond. All transactions will have to be concluded by the last day of February after the close of the annual compliance period (2005, 2006, etc.).

As discussed above, 2005 is the only year when averaging and trading against the corporate average and averaging, banking, and trading against the refinery average are both allowed. In that year, sulfur credits may only be used against the 30 ppm standard for each refinery once the refiner has demonstrated compliance with the corporate pool average standard. The refiner must meet his corporate average based on actual sulfur levels or through a trade for sulfur allotments if it falls short of the 90 ppm corporate average standard. At that point, each of his refineries is evaluated for compliance with the 30 ppm refinery average standard. Those refineries that are not producing gasoline averaging 30 ppm sulfur must obtain sulfur credits generated in 2005 or earlier and/or sulfur allotments to bring the refinery's sulfur average from the actual level (a maximum of 90 ppm for each refinery, since by meeting the corporate average, even if in part through the use of allotments, each refinery in the company will be considered to average no more than 90 ppm) down to 30 ppm.

Refineries or importers which sell some or all of their gasoline in the GPA (and which have elected to participate in the phase-in) may also use sulfur credits to meet their refinery averages in 2004–2006. However, because this gasoline must be designated for sale in the GPA, they must account separately for compliance with the 150 ppm refinery average for gasoline sold in the phase-in area and with the 30 ppm refinery average for gasoline sold outside of that area. Thus, in 2004, such refiners/importers may use sulfur credits to establish compliance with the 150 ppm standard for gasoline sold in the phase-in area, if required. In 2005 and 2006, they may use credits to meet the 150 ppm standard for gasoline sold in the area and/or use credits to meet the 30 ppm standard for gasoline sold outside of the area.

As explained in section IV.C.1.b., some of the refiners participating in the GPA are exempt from the corporate average standards, but may use either sulfur credits or sulfur allotments in 2004–2006 to establish compliance with the 150 ppm refinery average standard. Those that are not exempt from the corporate average standards may use sulfur allotments only to meet the corporate average standards. For such refiners, compliance with the corporate average standard will be measured first (using allotments if needed), then compliance with the refinery average standard (using credits and/or allotments as needed) in the same manner as described above for refiners who sell all of their gasoline outside of the GPA.

Foreign refineries are not required to comply with the 30 ppm refinery standard in 2005 and beyond; instead, compliance for foreign gasoline is required by the importer. Sulfur credits generated by foreign refineries prior to 2004 will still have value, since these refineries can sell sulfur credits to U.S. refineries, blenders, or importers who need credits to meet the standard in 2005 or beyond. In fact, foreign refiner's credits could simply be transferred to the importer which is importing that refinery's gasoline into the U.S. For example, a foreign refiner could send gasoline exceeding 30 ppm on average to an importer and transfer the appropriate amount of sulfur credits it generated prior to 2004 to allow the importer to meet the 30 ppm standard. Similarly, after 2004 a foreign refiner may send gasoline containing less than 30 ppm to the U.S. through an importer, and the importer would benefit from generating credits (and presumably would include the value of these credits in the financial transaction with the foreign refinery).

As explained in Section IV.C.3.b. above, in 2005 no batch of domestically produced or imported gasoline can exceed 300 ppm, and a refiner's/importer's annual corporate pool average sulfur level cannot exceed 90 ppm, except for gasoline sold in the GPA or by small refiners complying with the standards in Table IV.C.–3. In 2006 and beyond, sulfur is capped at 80 ppm and there is no longer a corporate pool average standard. These standards (as well as the 300 ppm cap and corporate pool averages) cannot be met through the use of credits generated under the ABT program. As described above, credits may only be applied to demonstrate compliance with the 30 ppm refinery standard, not to the corporate pool average or the cap. Given the limitations that the 80 ppm cap places on sulfur levels in 2006 and beyond, we do not expect many sulfur credits to be used in future years of this program (since, even with the use of credits, no gasoline may exceed 80 ppm in these years).

We allow an individual refinery that does not meet the 30 ppm standard in a particular year to carry forward the credit debt one year. Under this provision, the refinery will have to make up the credit deficit and come into compliance with the 30 ppm standard the next calendar year, or face penalties. This provision will in no way absolve the refiner from having to meet the

[88] Excluding California.

applicable per-gallon cap standard or, when applicable, the corporate average standard. This provision will provide some relief for refiners faced with an unexpected shutdown or that otherwise were unable to obtain sufficient credits to meet the 30 ppm standard. This provision is only available through 2010. After that time, we expect many refineries to be able to consistently operate below 30 ppm, generating a pool of credits which other refineries could purchase in the event of an unforeseen upset. However, in no circumstances after 2005 can the refinery produce gasoline exceeding the 80 ppm per-gallon cap standard (with the exception of small refiners, as discussed in Section IV.C.2 below). The carry-forward provision does not apply to compliance with the 150 ppm refinery average standard applicable in the GPA.

We have some concern that the potential exists for credits to be generated by one party and subsequently purchased or used in good faith by another, and later found to have been calculated or created improperly or otherwise determined to be invalid. For this reason, we proposed that both the seller and purchaser would have to adjust their sulfur calculations to reflect the proper credits and either party (or both) could be deemed in violation of the standards and other requirements if the adjusted calculations demonstrate noncompliance with an applicable standard. One commenter, representing a number of refiners, objected to this approach.

Nevertheless, our strong preference is to hold the credit or allotment seller liable for the violation, as opposed to the credit or allotment purchaser. As a general matter we would expect to enforce a shortfall in compliance calculations (caused by the good faith purchase of invalid credits) against a good faith purchaser only in cases where we are unable to recover valid credits from the seller to cover the compliance shortfall. Moreover, in settlement of such cases we would strongly encourage the seller to purchase credits to cover the good faith purchaser's credit shortfall. Under the deficit provisions of section 80.205(e), for compliance periods through 2010, a credit shortfall may be corrected if the conditions of that section are met. EPA will consider covering a credit deficit through the purchase of valid credits a very important factor in mitigation of any case against a good faith purchaser, whether the purchase of valid credits is made by the seller or by the purchaser.

Some commenters stated that sulfur credits should be transferred directly from the refiner or importer that generated them to the party that will use them, as we had proposed. We believe that this helps to ensure that parties purchasing credits will be better able to assess the likelihood that the credits will be valid, and aids compliance monitoring. Therefore, the final rule adopts this provision, with the exception that where a credit generator transfers credits to a refiner or importer who cannot use all the credits, that transferee may transfer the credits to another refiner or importer. That second transferee cannot again transfer the credits; they must either be used or terminated by the second transferee. Nevertheless, there is nothing in the final rule that would prevent a person who is not a refiner or importer from facilitating the transfer of credits from parties that have generated them to parties who need them for compliance, *e.g.*, a broker who would act like a real estate broker. Therefore, under today's rule, any person may act as a credit or allotment broker, whether or not such person is a refiner or importer, so long as the title to the credits or allotments are transferred directly from the generator to the user. Furthermore, any party (*e.g.*, refiner, importer, or blender) who can generate and hold credits may also resell them.

ix. How Long Do Credits Last?

The ABT program is designed to encourage sulfur reductions earlier than the standards require, by providing a market for credit generation. The emissions benefits of these early reductions are most valuable in the early years of the ABT program when national average levels remain substantially higher than the final 30 ppm average standard. At the same time, these emissions reductions are offset in time by higher emissions incurred by later vehicles which use gasoline with a higher sulfur level. Because the overall intention of the gasoline sulfur program is to enable and protect Tier 2 vehicles and provide time for refiners to select and construct desulfurization equipment, sulfur credits should have a limited life to limit the degree to which later Tier 2 vehicles are exposed to higher sulfur levels.

The ABT program is also designed to ease implementation of the new standards, particularly the refinery average standard, and the credits will be of their greatest value to refineries during the first few years of the program. ABT is not intended to permit a refinery to operate substantially above the standard for a protracted time period. While limiting credit life may reduce the incentive to generate credits for some refineries, the credit program will be of relatively small value to any refinery/importer that held credits for a protracted period of time and did not need to use them. This is particularly true in 2006 and beyond, when the 80 ppm cap limits the need for and value of any credits the refinery may possess.

Hence, we are finalizing limitations on the life of credits which differ somewhat from our proposal. Credits generated prior to 2004 must be used for compliance purposes and calculations with respect to gasoline produced on or before December 31, 2006. These credits can be used to meet the 30 ppm standard in 2005 or 2006. This expiration date applies to credits used by the refinery which generated the credits, as well as credits transferred to another refinery. While the proposal presented a life through 2007 for credits generated early, we have shortened this life span one year to reflect the fact that early credits are intended to enable and ease compliance with the 30 ppm standard in the first years of the program, allowing refiners to spread out investments without compromising the environmental benefits of the program. At the beginning of 2006, all gasoline (except that produced by small refiners and that marketed in the GPA) will be capped at 80 ppm, and by the end of 2006, every refinery should be capable of producing gasoline that meets the 30 ppm standard. Hence, the value of the early credits diminishes greatly. It should be noted that early credits can be used for GPA certified gasoline through 2006 and for small refiner gasoline through 2007.

Credits generated in 2004 and beyond will have to be used within five years of the year in which they were generated. If these credits are traded to another party during that five year period, they will have to be used by the new owner within that same five years, regardless of when the transfer occurs. This is a change from our proposal, which provided for a potential maximum ten-year life for credits that were generated and then traded in the fifth year to another party. However, we believe this approach is more consistent with our environmental goals of keeping sulfur levels averaging 30 ppm in 2006 and beyond. With the 80 ppm cap, refiners will be able to use only very few credits if they are unable to meet the 30 ppm average in 2006 or beyond. Therefore, limiting credit life to five years will likely have minimal impact on the actual use of credits. A longer credit life will make tracking and enforcement difficult, and could have negative environmental consequences. Hence, we have limited credit life to

five years. Consistent with our other recordkeeping and reporting requirements, the five-year expiration date will be assessed as of the last day of February after the five year deadline. Hence, for example, credits generated in 2005 will expire as of the last day of February, 2011. Again, no third-party transfers are allowed.

x. Conversion of Allotments Into Credits

A refiner or importer may convert allotments into credits for compliance with the refinery average standards in 2005 and beyond. Allotments that are generated by reducing gasoline sulfur levels to 30 ppm or higher (defined as Type "A" allotments) are equivalent to credits generated in 2000–2003. These allotments may be (1) used as allotments by a refiner for compliance with the corporate average standard in 2004 and 2005 or (2) converted into credits to be used by the refiner's refineries for compliance with the refinery average standard in 2005 and 2006.

Allotments that are generated by reducing gasoline sulfur levels to lower than 30 ppm (defined as Type "B" allotments) are equivalent to credits generated in 2004 and beyond (by producing gasoline with less than 30 ppm sulfur). Similar to Type "A" allotments, these allotments may be (1) used as allotments by a refiner for compliance with the corporate average standard in 2004 and 2005 or (2) converted into credits to be used by the refiner's refineries for compliance with the refinery average standard in 2005 and beyond.

Allotments or credits that are used by refiners for compliance with the GPA gasoline standards must be used by the last day of February 2007. Allotments or credits used by small refiners for compliance with the small refiner standards must be used by the last day of February 2008. Any allotments, whether Type "A" or "B", that are carried over for compliance with the corporate and refinery average standards for 2005 must be discounted by 50 percent as discussed in above. Any allotments that are converted to credits (*e.g.*, in 2004) and then carried over to 2005 are not discounted. However, once the conversion and carry-over has taken place (such that the allotments have become credits), the conversion cannot be reversed without applying the discount factor. That is to say, once a 2003 or 2004 allotment is converted to a credit and carried over to 2005, the credit can only be re-converted into an allotment that is discounted 50 percent.

d. How Are State Sulfur Programs Affected by EPA's Program?

Section 211(c)(4)(A) of the CAA prohibits states [89] from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1). This preemption applies to all states except California, as explained in section 211(c)(4)(B). For states other than California, the Act provides two mechanisms for avoiding preemption. First, section 211(c)(4)(A)(ii) creates an exception to preemption for state prohibitions or controls that are identical [90] to the prohibition or control adopted by EPA. Second, states may seek EPA approval of SIP revisions containing fuel control measures, as described in section 211(c)(4)(C). EPA may approve such SIP revisions, and thereby "waive" preemption, only if it finds the state control or prohibition "is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."

We are adopting the sulfur standards pursuant to our authority under section 211(c)(1). Thus, we believe that today's action results in the clear preemption of future state actions to prescribe or enforce fuel sulfur controls. [91] States with fuel sulfur control programs not already approved into their SIPs will therefore need to obtain a waiver from us under the provisions described in section 211(c)(4)(C) for all state fuel sulfur control measures, unless the state standard is identical to our sulfur standard.

Section 211(c)(4)(A) preempts state fuel controls if EPA has "prescribed" federal controls. We read this language to preempt non-identical state standards on the date of promulgation of the standards, as opposed to the date the standards become enforceable. Thus, today's action preempts state actions as of December 21, 1999, even though the standards will not require sulfur reductions until 2004. This interpretation is consistent with EPA actions applying other federal fuel measures. *See* 54 Fed. Reg. 19173 (May 4, 1989) (noting preemption of Massachusetts state RVP measure before start of first control period for federal RVP). We also believe this interpretation is consistent with the intent behind section 211(c)(4)(A). Though the standards are not immediately enforceable, they will have an immediate impact on refiners' investment decisions. We believe, by adopting 211(c)(4)(A), Congress intended to limit state fuel controls that differ from the federal programs, for example, in the judgments as to level of the standard or its stringency. The lead time to implement a standard should be treated the same way.

Aside from the explicit preemption in Section 211(c)(4)(A), a court could also consider whether a state sulfur control is implicitly preempted under the Supremacy Clause of the U.S. Constitution. Courts have determined that a state law is preempted by federal law where the state requirement actually conflicts with federal law by preventing compliance with both federal and state requirements, or by standing as an obstacle to accomplishment of Congressional objectives. A court could thus consider whether a given state sulfur control is preempted, notwithstanding waiver of preemption under 211(c)(4)(C), if it places such significant cost and investment burdens on refiners that refiners cannot meet both state and federal requirements in time, or if the state control would otherwise meet the criteria for conflict preemption.

2. Hardship Provision for Qualifying Refiners

This section describes various provisions for certain qualifying refiners who may face hardship circumstances.

a. Hardship Provision for Qualifying Small Refiners

In developing our gasoline sulfur program, we evaluated the need and the ability of refiners to meet the 30/80 standards as expeditiously as possible. This analysis is described in detail in the RIA. As a part of this analysis, we found that while the majority of refiners would be able to meet the needed air quality goals in the 2004–2006 time frame, there would be some refiners who would face particularly difficult circumstances which would cause them to have more difficulty, in comparison

[89] The term "state" or "states" includes political subdivisions thereof.

[90] In evaluating whether a state fuel prohibition or control is "identical" to a prohibition or control adopted by EPA, EPA might consider but is not limited to the following factors in comparing the measures: (1) The level of an emission reduction or pollution control standard; (2) the use of "per gallon" or "averaged" amounts in setting that level; (3) the effect on that level (if averaged) of the use of different averaging pools; (4) the lead time allowed to the affected industry for compliance; and (5) the test method(s) and sampling requirements used in determining compliance.

[91] In addition, EPA notes that there are existing federal NO_X performance standards which apply to RFG and conventional gasoline and that state controls respecting NO_X performance are also preempted under 211(c)(4)(A).

to the industry as a whole, in meeting the standards.

In order to ensure that the vast majority of the program could be implemented reasonably quickly in order to achieve the air quality benefits sooner, rather than basing the time frame on the lowest common denominator we have provided an extended phase-in for a small group of refiners that represents less than four percent of the overall gasoline volume, and a much smaller percentage in the areas of greatest environmental need. As described in more detail below, and in Chapter VIII of the RIA, we concluded that refineries owned by small businesses face unique hardship circumstances, compared to larger companies.

The primary reason for this consideration is that small businesses lack the resources available to large companies which enable the large companies (including those large companies that own small volume refineries) to raise capital for investing in desulfurization equipment. The small businesses are also likely to have insufficient time to secure loans, compete for engineering resources, and complete construction of the needed desulfurization equipment in time to meet the standards adopted today which begin in 2004.

The emissions benefits of low sulfur gasoline are needed as soon as possible, for two primary reasons: (1) To reduce ozone and other harmful air pollutants, and (2) to enable vehicle emissions control technology for Tier 2 vehicles. Since our analysis showed that small businesses in particular face hardship circumstances, we are adopting temporary, interim standards that will provide refineries owned by small businesses additional time to meet the ultimate 30 ppm refinery average and 80 ppm per gallon cap standards. This approach allows us to achieve the needed emission reductions in the 2004–2007 time frame because hardship circumstances are expected to be faced by only a small portion of the refining industry.

We believe that these temporary, interim standards are an effective way to phase in the low sulfur standards as expeditiously as is feasible thereby achieving significant air quality benefits in an expeditious manner. This section describes the special provisions we are offering small businesses to mitigate the impacts of our program on them and generally explains the process we undertook to analyze those impacts. Please refer to the RTC document for a detailed discussion of comments received on these provisions, and to the RIA for a more detailed discussion of our analysis of small refiner circumstances.

As explained in the regulatory flexibility analysis in Section VIII.B. of this document and in Chapter 8 of the RIA, we considered the impacts of our proposed regulations on small businesses. We have historically, as a matter of practice, considered the potential impacts of our regulations on small businesses, as discussed in more detail in Section IV.C.2.a.ii., below. The analysis of small business impacts conducted for this rulemaking was performed in conjunction with a Small Business Advocacy Review (SBAR) Panel we convened, pursuant to the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). We believe that the temporary, interim standards we are adopting for small refiners contributed to our development of a framework to achieve significant environmental benefits from lower sulfur gasoline in the most expeditious manner that is reasonably practicable. In the SBREFA amendments, Congress stated that "uniform Federal regulatory * * * requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses * * * with limited resources[,]" and directed agencies to consider the impacts of certain actions on small entities. The final report of the Panel is available in the docket. Through the SBREFA process, the Panel provided information and recommendations regarding:

- The significant economic impact of the proposed rule on small entities;
- Any significant alternatives to the proposed rule which would ensure that the objectives of the proposal were accomplished while minimizing the economic impact of the proposed rule on small entities;
- The projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and,
- Other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition to our participation in the SBREFA process, we conducted our own outreach, fact-finding, and analysis of the potential impacts of our regulations on small businesses. Many of the small refiners with whom we and the Panel met indicated their belief that their businesses may close due to the substantial costs, capital and other, of meeting the 30/80 standard without additional time. Based on these discussions and our data analysis, the Panel and we agree that small refiners would likely experience a significant and disproportionate economic hardship in reaching the objectives of our gasoline sulfur reduction program. However, the Panel also noted that the undue burden imposed upon the small refiners by our sulfur requirements could be alleviated with additional time for compliance. We agree with the Panel on both of these points.

For today's action, we have structured a temporary, interim compliance flexibility for qualifying small refiners, both domestic and foreign, based on the factors described below. Specifically, we structured this provision to address small refiner hardship while achieving air quality benefits expeditiously and ensuring that the reductions needed in gasoline sulfur coincide with the introduction of Tier 2 vehicles.

First, the compliance deadlines in the program, combined with flexibility for small refiners, will achieve the air quality benefits of the program quickly, while ensuring that small refiners will have adequate time to raise capital for infrastructure changes. Many, if not most, small refiners have limited, if any, additional sources of income beyond their refinery for financing the equipment necessary to produce low sulfur gasoline. Because these small refiners typically do not have the financial backing that larger and generally more integrated companies have, they need additional time to secure capital financing from their lenders.

Second, we believe that allowing time for sulfur-reduction technologies to be proven-out by larger refiners before small refiners have to put them in place would reduce the risks incurred by small refiners who utilize these technologies to meet the standards. The added time would likely allow for costs of these desulfurization units to decrease, thereby limiting the economic consequences for small refiners. Small refiners are disadvantaged by the economies of scale that exist for the larger refining companies—capital costs and per-barrel fixed operating costs are generally higher for them.

Finally, providing small refiners more time to comply would ensure that adequate engineering and construction resources would be available. Since most large and small refiners will need to install additional processing equipment to meet the sulfur requirements, there will be a tremendous amount of competition for technology services, engineering manpower, and construction management and labor. Our analysis

shows that there are limitations to the elasticity of these resources. In addition, vendors will be more likely to contract their services with the major companies first, as their projects will offer larger profits for the vendors.

Providing this flexibility to allow small refiners to deal with hardship circumstances enables us to go forward with the phase-in of the 30 ppm sulfur standard beginning in 2004. Without this flexibility, it is possible that the benefits of the 30 ppm standard would not be achieved as quickly. By providing temporary relief to those refiners that need additional time, we are able to adopt a program that reduces gasoline sulfur levels expeditiously and in a way that is feasible for the industry as a whole.

In addition, we believe the volume of gasoline that will be eligible for the interim standards is small. We estimate that small refiners produce approximately four percent of all gasoline used in the U.S., excluding California. In most cases, gasoline produced by refiners is mixed with substantial amounts of other gasoline prior to retail distribution (due to the nature of the gasoline distribution system). This mixing generally results in only marginal increases in overall sulfur levels. Thus, the sulfur level of gasoline actually used by Tier 2 vehicles should generally be much lower than that produced by individual small refineries under this provision.

i. How Are Small Refiners Defined?

How We Defined "Small" Refiner in the Proposal

In identifying the small refiners most susceptible to the economic challenge of meeting the low-sulfur requirements, we closely examined the Small Business Administration's (SBA) definition of small refiner for the purposes of regulation. In that assessment we concluded that the SBA definition provided a reasonable metric for identifying small refiners that would be significantly impacted by the sulfur program requirements. By adopting the SBA definition we could expeditiously provide certainty of small refiner status to refiners who applied for the temporary compliance flexibility. Specifically, we proposed a definition where any petroleum refining company having no more than 1,500 employees throughout the corporation as of January 1, 1999 could apply for the temporary compliance flexibilities. This proposed employee limit included any subsidiaries, regardless of the number of individual gasoline-producing refineries owned by the company or the number of employees at any given refinery.

While we proposed a definition based on corporate employment, in light of the SBA definition and the SBAR Panel's recommendations, we also sought comment on alternative definitions of a small refiner. Such alternatives included definitions based on volume of crude oil processed (at a given refinery and/or corporate-wide) or volume of gasoline produced, with the understanding that any relief offered to refiners must not substantially reduce the program's environmental benefits.

Our Revised Small Refiner Definition

Based on comments received on the proposal, we are making two changes to our definition of a small refiner: we are (1) revising the employee number criterion; and, (2) adopting a cap on the corporate crude oil capacity for a refining company to qualify as a small business under today's regulations.

In regard to the employee number criterion, we are modifying how the employee number is determined, based on comments received from SBA. As mentioned above, our proposed definition applied to any petroleum refining company having no more than 1,500 employees throughout the corporation as of January 1, 1999. We selected that date to prevent companies from "gaming" the system. However, as SBA pointed out in its comments, the Small Business Act regulations specify that, where the number of employees is used as a size standard, as we proposed for small refiners, size determination is based on the average number of employees for all pay periods during the preceding 12 months.

Since we intended to use SBA's size standard in our proposal, we are incorporating that definition correctly in today's action. It is also worth mentioning that SBA shares our concerns about preventing companies from gaming the system and that it solved this problem specifically by using the average employment over 12 months. In effect, this approach helps to prevent companies from applying for and receiving small refiner status in bad faith. An example of an inappropriate application for small refiner status would be a refiner that temporarily reduced its workforce from 1600 employees to 1495 employees immediately before January 1, 1999 and then immediately rehired those employees after that cutoff date. Furthermore, the averaging concept was designed to properly address firms with seasonal fluctuations, according to SBA.

Second, we're amending the small refiner definition to include a corporate crude oil capacity cap. We believe such a corporate volume limitation is necessary to ensure that only truly small businesses benefit from the relaxed interim standards. Refineries that process large amounts of crude are likely to be better able to install desulfurization equipment to meet the national standards in 2004. In addition to ensuring that the interim standards target the appropriate group of refiners that need additional time, the volume limit also serves to ensure that the volume of gasoline subject to such standards is not significant. In addition, we received many comments that we should adopt a threshold based on crude capacity as specified in the Clean Air Act and used in past EPA fuel programs.

In the lead phase-down program for gasoline, we used a definition of "small refinery" that Congress adopted in 1977 specifically for the lead phase-down program. The definition was based on crude oil or feedstock capacity at a particular refinery (less than or equal to 50,000 barrels per calendar day (bpcd)), combined with total crude oil or feed stock capacity of the refiner that owned the refinery (less than or equal to 137,500 bpcd). In 1990, the lead phase-down program was complete and Congress removed this provision from the Act.

Shortly before the Act was amended in 1990, we set standards for sulfur content in diesel fuel, including a two-year delay for small refineries. We used the same definition of small refinery as we used in the lead phase-down program. This two-year delay, like many of the small business flexibilities in our gasoline sulfur proposal, was aimed at problems that small refineries faced in raising capital and in arranging for refinery construction.

In the 1990 amendments to the Clean Air Act, Congress rejected this small refinery provision, and instead allocated allowances to small diesel refineries under the Title IV Acid Rain program. (See CAA Section 410(h).) This approach was also aimed at helping small refineries solve the problem of raising the capital needed to make investments to reduce diesel sulfur. Congress provided allowances to small refineries that met criteria similar to that used in the lead phase-down provision—based on the crude oil throughput at a particular refinery, combined with the total crude oil throughput of the refiner that owned the refinery.

As mentioned above, the CAA definition was based on crude oil or feedstock capacity at a particular refinery, combined with total crude oil

or feed stock capacity of the refiner that owned the refinery (less than or equal to 137,500 bpcd). However, given the mergers, acquisitions, and other changes that have transpired throughout the refining industry in the past few years, we believe the appropriate boundary today is a corresponding corporate crude capacity less than or equal to 155,000 bpcd.

Therefore, in consideration of the above, a refiner must meet both of the following criteria to qualify for the special small refiner provisions described in the next section:

- No more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1998 to January 1, 1999; and
- A corporate crude capacity less than or equal to 155,000 bpcd for 1998.

ii. Standards That Small Refiners Must Meet

Upon careful review of the comments received on the proposal as well as the recommendations of the SBAR Panel, we have determined that regulatory relief in the form of delayed compliance dates is appropriate to allow small refiners, both foreign and domestic, to comply with our regulations without disproportionate burdens. From 2004 to 2007, when U.S. refiners must meet the 30/80 standard or the standards listed in Table IV.C–1 if they are participating in our ABT program, refiners meeting the corporate employee and capacity limits prescribed above are allowed to comply with somewhat less stringent requirements. These interim annual-average standards for qualifying small refiners are shown in Table IV.C–3 below.

TABLE IV.C–3.—TEMPORARY GASOLINE SULFUR REQUIREMENTS FOR SMALL REFINERS IN 2004–2007

Refinery baseline sulfur level (ppm)	Temporary Sulfur Standards (ppm)	
	Average	Cap
0 to 30	30 ppm	300 ppm.
31 to 200	Baseline Level	300 ppm.
201 to 400	200 ppm	300 ppm.
401 to 600	50% of baseline	Factor of 1.5 times the average standard.
601 and above	300	450.

The cap standards for the first two "bins" of refineries (that is those with baseline sulfur levels from zero to 30 and 31 to 200) have been relaxed somewhat from the proposal based on comments that the proposed standards for these two bins were more stringent than the options under discussion for all other refiners. We believe that these small refiners should be able to meet the average standards without much, if any, change to their operations but the more lenient cap will give them some flexibility for turnarounds or unexpected equipment "upsets".

Compliance with the standards in Table IV.C–3 is based on a refiner's demonstration that it meets our specific small refiner criteria. Refiners who qualify as a small refiner under our definition must establish a sulfur baseline for each of their participating refineries. The following sections explain these requirements in more detail to supplement the information presented above. We also explain how small refiners can apply for an extension of up to two additional years of the applicable small refiner standards, based on a variety of factors such as technology availability or financial hardship.

iii. How Do Small Refiners Apply for Small Refiner Status?

Refiners seeking small refiner status under our gasoline sulfur program must apply to us in writing no later than December 31, 2000, requesting this status. This application for small refiner status must contain the information described below.

Companies [92] seeking small refiner status must provide us with the following information:

Employment Information

- A listing of the name and address of each location where any employee of the company worked during the 12 months preceding January 1, 1999.
- The average number of employees at each location based upon the number of employees for each of the company's pay periods for the 12 months preceding January 1, 1999.
- The type of business activities carried out at each location.

Crude Capacity Information

- The total corporate crude oil capacity of the refiner as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE).

For refineries owned by joint ventures, the total employment of both (all) companies must be considered in determining whether the 1,500 employee limit is met. In addition, a refiner who reactivates a refinery that was shut down or non-operational between January 1, 1998 and January 1, 1999, may apply for small refiner status no later than June 1, 2002. In this case, we will consider the information provided to determine the correct period for judging compliance with the 1500 threshold. Where appropriate we will look at the most recent 12 months of employment information.

Refiners seeking small refiner status must also provide us with the total crude capacity of their corporation (the sum of all individual refinery capacities for multiple-refinery companies, including any and all subsidiaries) as reported to EIA for 1998 (published by EIA in 1999). The information submitted to EIA is presumed to be correct. However, in cases where a company disputes this information, we will allow 60 days after the company submits its application for small refiner status for that company to petition the Agency with the appropriate data to correct the record. For reactivated refineries owned by a small refiner, we will consider the information provided to determine the correct period for judging compliance with the corporate capacity threshold. Where appropriate, we will look at the most recent year of crude capacity information.

If a refiner with approved small refiner status later exceeds the 1,500 employee threshold without merger or acquisition or the corporate capacity of 155,000 bpcd, its refineries could keep their individual refinery standards. This is to avoid stifling normal company growth and is subject to our finding that the company did not apply for and receive the small refiner status in bad faith.

[92] Company means the business structure of the refinery whether privately or publicly owned.

iv. How Do Small Refineries Apply for a Sulfur Baseline?

A qualifying small refiner, domestic or foreign, may apply for an individual sulfur baseline by December 31, 2000 for any refinery owned by the company by providing the following information:

- A calculation of the refinery's sulfur baseline using its average gasoline sulfur level based on 1997 and 1998 production data,[93] and
- The average volume of gasoline (including conventional and reformulated) produced in these two years.

As we proposed, baseline sulfur levels and gasoline volumes are averaged over two years (1997 and 1998) to account for any production-related anomalies that may have occurred in 1997 or 1998. For the overall program, however, we are only using 1997 and 1998 data for the reasons described in Section IV.C.1, above. For any refiner who reactivates a refinery that was shut down or non-operational between January 1, 1998 and January 1, 1999, we will use the most recent information available for baseline establishment purposes.

The regulations specify the information to be submitted to support the baseline application. The baseline calculations should include any oxygen added to the gasoline at the refinery. This application would be submitted at the same time the refiner applies for small business status; confirmation of small business status would not be required to apply for an individual sulfur baseline. Pending refinery baseline approval, we will assign standards to each of the company's refineries in accordance with Table IV.C.–3.

Oxygenate blenders, regardless of their size, are not eligible for the small refiner individual baselines and standards because they would not experience circumstances similar to those of small refining companies. That is, oxygenate blenders do not have the burden of capital costs to install desulfurization equipment, which is the primary reason for allowing small refiners to have a relaxed compliance schedule.

v. Volume Limitation on Use of a Small Refinery Standard

Except as noted below, the volume of gasoline subject to a small refinery's individual standards is limited to the average volume of gasoline the refinery produced from crude oil during the baseline years (1997 and 1998), excluding the volume of gasoline produced using blendstocks produced at another refinery and exports.[94] Under this approach, the baseline volume for a small refinery would reflect only the volume of gasoline produced from crude oil during the 1997 and 1998 baseline years.

However, to ensure that the overall sulfur in gasoline from small refiners does not greatly increase under the terms of the small refiner extension and result in overall gasoline pool sulfur levels higher than anticipated, the volume would be limited beginning in 2004 to the volume of gasoline that is the lesser of: (1) 105 percent of the baseline volume, or (2) the volume of gasoline produced during the year from crude oil. Any volume of gasoline produced during an averaging period in excess of this limitation is subject to the corporate average standards that apply to all other refiners (*i.e.*, the corporate average standards listed in Table IV.C.–1).

In 2006 and 2007, the refinery averages of Table IV.C.–1 will apply. In this case, the small refinery's annual average standard will be adjusted based on the excess volume in a manner similar to the compliance baseline equation for conventional gasoline under Section 80.101(f) of Part 40 of the Code of Federal Regulations. However, the small refinery's per-gallon cap standard will not be adjusted.

This limitation assures that small refineries receive relief only for gasoline produced from crude oil, that is the portion of the refinery operation requiring capital investment to meet lower sulfur standards.

vi. Extensions Beyond 2007 for Small Refiners

Beginning January 1, 2008, all small companies' refineries must meet the national sulfur standard of 30 ppm on average and the 80 ppm cap, except small refineries under IV.C.2.i. that apply for and receive an extension of their small refiner status and unique standards. An extension will provide a given small refinery up to an additional two years to comply with the national standards. An extension must be requested in writing and must specify the factors that demonstrate a significant economic hardship to qualify the refinery for such an extension. Factors considered for an extension could include, but are not limited to, the refinery's financial position; its efforts to procure necessary equipment and to obtain design and engineering services and construction contractors; the availability of desulfurization equipment, and any other relevant factors.

In order for us to consider an extension, a refiner must submit a detailed request for an extension by January 1, 2007, demonstrating that it has made best efforts to obtain necessary financing, and must provide detailed information regarding any lack of success in obtaining financing. This information shall include, but may not be limited to copies of loan applications for the necessary financing for the construction of appropriate sulfur reduction technology as well as the application of financing for other equipment procurements or improvements in this time frame. If financing has been disapproved or is otherwise unsuccessful, the refiner shall provide documents supporting the basis for that disapproval and evidence of efforts to pursue other means of financing. If we determine that the refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008, but has been unsuccessful for reasons beyond its control, we will consider granting the hardship extension initially for the 2008 averaging period. If further relief is appropriate for good reasons, we will consider a further extension through the 2009 averaging period but in no case will this relief be provided unless the refiner can demonstrate conclusively that it has financing in place and that it will be able to complete construction and meet the national gasoline sulfur standards no later than December 31, 2009.

Compliance Plans for Demonstrating a Commitment To Produce Low Sulfur Gasoline

This final rule includes a compliance plan provision for those refiners who may seek a hardship extension of their approved interim standards. This provision requires that those refiners with approved interim standards who seek a hardship extension must submit a series of reports to EPA discussing and describing their progress toward producing gasoline that meets the 30/80 ppm standards by January 1, 2008. We expect that small refiners will need to begin preparations to meet the national standards in 2008 by 2004. However, we understand that the potential exists for some small refiners to face additional hardship circumstances that will warrant more time to meet the standards. For this reason, we have adopted provisions (see above) allowing

[93] Includes batch number, volume, and sulfur content for each batch of gasoline produced in 1997 and 1998.

[94] In addition to gasoline produced from crude oil, a small refinery's baseline volume would include gasoline produced from purchased blendstocks where the blendstocks are substantially transformed using a refinery processing unit.

refiners subject to the interim standards to petition us and make a showing that additional time is needed to meet the national standards. To properly evaluate these hardship applications, we are requiring demonstrations of good faith efforts towards assessing the economic feasibility, along with the business and technical practicality of ultimately producing low sulfur gasoline. Such progress reports must be submitted for a refiner to receive consideration in any future determinations regarding hardship extensions. However, these reports are not required from refiners who will not be seeking a hardship extension.

By June 1, 2004, such refiners would need to submit preliminary information in the form of a report outlining its time line for compliance and a project plan discussing areas such as permits, engineering plans (*e.g.*, design and construction), and capital commitments for making the necessary modifications to produce low sulfur gasoline. Documents showing activities and progress in these areas should be provided if available.

By no later than June 1, 2005, these small refiners would need to submit a report to us stating in detail progress to date based on their time line and project plan. This should include copies of approved permits for construction of the equipment, contracts for design and construction, and any available evidence of having secured the necessary financing to complete the required construction. If any difficulties in meeting this requirement are anticipated, the refiner must submit a detailed report of all efforts to date and the factors that may cause delay, including costs, specification of engineering or other design work still needed and reasons for delay, specification of equipment needed and any reasons for delay, potential equipment suppliers and history of negotiations, and any other relevant information. If unavailability of equipment is a factor, the report must include a discussion of other options considered, and the reasons these other options are not feasible.

In addition, the small refiner would need to provide evidence by June 1, 2006, that on-site construction has begun at its refinery(s) and that absent unforeseen circumstances or problems, they will be producing complying gasoline (30/80 ppm) by January 1, 2008. While the submission of these progress reports is evidence of a refiner's good faith efforts to comply by 2008, it does not bind the refiner to make gasoline in 2008. There are several reasons why a refiner may choose to exit the gasoline-production business in 2008 that go beyond the low sulfur gasoline requirement.

As a result of a refiner's efforts in moving toward compliance with the 2008 standards, for market, economic, business, or technical reasons, the company could choose not to make gasoline in 2008. Although we do not believe this will be the likely outcome for small refiners, we cannot preclude it. Any refiner that makes such a determination in its progress reports will have until 2008 to transition out of gasoline production, but will not be considered for a extension of hardship relief.

vii. Can Small Refiners Participate in the ABT Program?

As described in IV.C.1.c.i above, any refinery (including those owned by small refiners) can generate sulfur allotments (in ppm-gallons) in 2003 by producing gasoline containing less than 60 ppm sulfur on an annual-average basis. Once this 60 ppm trigger is reached, allotments will be calculated based on the amount of reduction from 120 ppm [95]. However, these allotments may be discounted depending on the actual sulfur level. If a refinery fully demonstrates compliance by producing gasoline with an annual average sulfur level of 0 to 30 ppm, the allotments retain their full value—they are not discounted at all. For actual sulfur levels of 31–60 ppm, which are indicative of a partial demonstration, the allotments are discounted 20 percent.

During the period 2000–2003, refineries owned by small refiners can also generate credits by producing gasoline averaging at least 10 percent lower than that refinery's baseline sulfur level. In other words, to generate credits, the refinery's annual average sulfur level for all of its gasoline on average must be 0.9 × (baseline sulfur level). Once this "trigger" is reached, credits will be calculated based on the amount of reduction from the refinery's sulfur baseline. For example, if in 2002 a refinery reduced its annual average sulfur level from a baseline of 450 ppm to 150 ppm (well below the trigger of 0.9 × 450 = 405 ppm), its sulfur credits would be determined based on the difference in annual sulfur level (450—150 = 300 ppm) multiplied by the volume of gasoline produced in 2002. Similarly, small foreign refiner-owned refineries with an individual sulfur baseline can generate credits in these years as long as the annual average sulfur level of the gasoline exported to the U.S. from that refinery is lower than 90 percent of the baseline sulfur level.

During the period 2004–2007, refineries owned by small refiners will be permitted to generate credits but only if their actual annual sulfur level of all gasoline produced or imported averages below their refinery standard, and only for the difference between the standard and the actual annual sulfur average.

A refinery (owned by a small refiner) wishing to participate in the ABT program can sell credits beginning as soon as January 1, 2000 but may wait until December 31, 2000 to apply for small refiner status. However, the standards assigned to that refinery (as presented in Table IV.C–3 above) will be based on the sulfur level from which credits were generated, not the baseline sulfur level, since the refiner would have already demonstrated the ability to meet the lower sulfur level. For compliance purposes and to give refineries certainty regarding the gasoline sulfur standards to which they will be held during 2004–2007, the standards for a small refiner refinery participating in ABT will be set based on the refinery's lowest sulfur average for any year between 1999 and 2003.

Using the example above, a refinery (owned by a refiner with small refiner status) with a 1997–98 baseline sulfur level of 450 ppm would have an interim average standard of 450/2 = 225 ppm and a cap of 225 × 1.5 = 338 ppm. If that refinery generated 300 sulfur credits in 2002 by producing gasoline with 150 ppm sulfur, then that refinery's average sulfur standard for 2004–2007 would be ratcheted down to 150 ppm with a cap of 300 ppm. However, that refinery would still be able to use the 300 credits that it had generated and banked in 2002 for compliance with its 150 ppm standard.

Based on the comments received on our proposal, we are allowing small refineries to use credits and/or allotments that they generated and/or to purchase credits and/or allotments from another refinery to meet their average standard during 2004–2007. We solicited comment on whether small refiners subject to the interim standards should be permitted to use credits towards meeting those standards, and several small refiners who already produce very clean gasoline commented that the special small refiner standards do not benefit them in any way. These refiners argued that if they could generate sufficient sulfur credits in 2000–2003, or could obtain such credits

[95] If a refinery has a baseline sulfur level higher than 120 ppm (as described below in IV.C.1.c.v.), then credits are generated from the baseline to 120 ppm and allotments from 120 ppm to the new sulfur level (and discounted 20 percent if applicable).

through purchases from other refiners, they would not participate in the small refiner program but would instead participate in the sulfur ABT program. But since they are not positioned to generate credits (due to their already low sulfur levels), and have little certainty of being able to purchase credits, they need the relief provided by the small refiner provisions. We concur with these concerns and thus permit small refiners to use ABT credits and allotments. Small refiners may only use ABT credits and/or allotments to comply with their refinery average standard, not the per-gallon caps applied to their gasoline.

At any time, a small refiner can choose to "opt out" of the small refiner program and, beginning the next calendar year, comply with the standards in Table IV.C–2. The refiner would have to notify us of this change in its compliance program. Once a small refiner leaves the small refiner program, however, it would not be eligible to re-enter the small refiner program.

b. Temporary Waivers From Low Sulfur Requirements in Extreme Unforeseen Circumstances

In the final rule, EPA is adopting a provision permitting refiners to seek a temporary waiver from the sulfur standards in certain circumstances. Such waivers will be granted at EPA's discretion. Under this provision a refiner may seek permission to distribute gasoline that does not meet the applicable low sulfur standards for a brief time period, based on the refiner's inability to produce complying gasoline because of extreme and unusual circumstances outside the refiner's control that could not have been avoided through the exercise of due diligence. This provision is similar to a provision in EPA's RFG regulations, and is intended to provide refiners short-term relief in unanticipated circumstances such as an accidental refinery fire or a natural disaster. The short-term waiver provision is intended to address unanticipated circumstances that cannot be reasonably foreseen at this time or in the near future

The conditions for obtaining such a waiver that are similar to those in the RFG regulations. These conditions are necessary and appropriate to ensure that any waivers that are granted are limited in scope, and that refiners do not gain economic benefits from a waiver. Therefore, refiners seeking a waiver must show that the waiver is in the public interest, that the refiner was not able to avoid the nonconformity, that it will make up the air quality detriment associated with the waiver, as well as any economic benefit from the waiver, and that it will meet the applicable sulfur standards as expeditiously as possible.

c. Temporary Waivers Based on Extreme Hardship Circumstances

In addition to the provision for short-term relief in unanticipated circumstances, we are adopting a provision for relief based on extreme hardship circumstances. In developing our sulfur program, we considered whether any refiners would face particular difficulty in complying with the standards in the lead time provided. As described in Section IV.C.2.a., we concluded that refineries owned by small businesses would experience more difficulty in complying with the standards on time because, as a group, they have less ability to raise capital necessary for refinery investments, face proportionately higher costs because of economies of scale, and are less able to successfully compete for limited engineering and construction resources. However, it is possible that other refiners who do not meet our criteria for the interim standards also face particular difficulty in complying with the sulfur standards on time. Therefore, we are including in the final rule a provision allowing us, at our discretion, to grant temporary waivers from the sulfur standards based on a showing of extreme hardship circumstances. We do not anticipate, nor do we expect there is a need for, granting temporary waivers that apply to more than approximately one percent of the national gasoline pool in any given year. This provision would allow refiners (domestic and foreign) to request a waiver from the sulfur standards based on a showing of unusual circumstances that result in extreme hardship and significantly affect the ability to comply by the applicable date. As with the small refiner interim standards, this provision furthers our overall environmental goals of achieving low sulfur gasoline nationwide as soon as possible. By providing short-term relief to those refiners that need additional time because they face hardship circumstances, we can adopt a program that reduces gasoline sulfur beginning in 2004 for the majority of the industry that can comply by then.

As described above, EPA understands that this program will require significant economic investments by the refining industry. We have adopted a program with sufficient flexibilities (including an ABT program, allotment trading, a geographic phase-in, and interim standards for qualifying small refiners) to make these investments reasonable and feasible over the time frame in which the standards are phased in. Because the refining industry encompasses a wide variety of individual circumstances, and our program phases in based on the lead time we believe is reasonable for the industry as a whole, there may be unusual circumstances that impose extreme hardship and significantly affect an individual refinery's ability to comply in the lead time provided. However, we do not intend for this waiver provision to encourage refiners to delay planning and investments they would otherwise make in anticipation of receiving relief from the applicable requirements. In addition, we want to limit the environmental impact of any hardship waivers from compliance with the standards. Thus, we anticipate that hardship waivers will only be granted in rare circumstances.

Because of the significant environmental benefits of lowering sulfur in gasoline, we will administer this provision in a manner consistent with continuing to ensure the environmental objectives of the regulation. In our analysis of the interim small refiner standards, we concluded that only a minimal portion of the national gasoline pool would potentially be impacted by the less stringent interim standards, due to the relatively small production volume of these facilities. To limit the potential environmental impact of this hardship provision, we reserve the discretion to deny applications where we find that granting a waiver would result in an unacceptable environmental impact. While this determination will be made on a case-by-case basis, we do not expect there is a need for, nor do we anticipate, granting waivers that apply to more than approximately one percent of the total national pool of gasoline in any given year, or to more than a minimal percentage of the gasoline supply of an area known to have significant air quality problems.

There are several factors we will consider in evaluating a petition for additional time to comply. This could include refinery configuration, severe economic limitations, and other factors that prevent compliance in the lead time provided. Applications for a waiver must include information that will allow us to evaluate all appropriate factors. EPA will consider whether the refinery configuration or operation is unique or atypical, how much of a refinery's gasoline is produced using an FCC unit, its hydrotreating capacity relative to its total crude capacity, total reformer unit throughput capacity relative to total production, gasoline

production in proportion to other refinery products, and other relevant factors. A refiner may also face severe economic limitations that result in a demonstrated inability to raise capital to make necessary investments to comply in time, which can be shown by an unfavorable bond rating, inadequate resources of the refiner and its parent and/or subsidiaries, or other relevant factors. In addition, we will look at the total crude capacity of the refinery and its parent corporation. Finally, we will consider where the gasoline will be sold in evaluating the environmental impacts of granting a waiver.

This provision is intended to address unusual circumstances that we expect will be foreseeable now or in the immediate future, such as unique and atypical gasoline refinery operations or a demonstrated inability to raise capital. These kinds of circumstances should be apparent at this time or in the near future, so refiners seeking additional time under this provision must apply for relief by September 1, 2000. A refiner seeking a waiver must show that unusual circumstances exist that impose extreme hardship and significantly affect its ability to meet the standards on time, and that it has made best efforts to comply with the standards, including efforts to obtain credits and/or allotments towards compliance. Applicants for a hardship waiver must also submit a plan demonstrating how the standards will be achieved as expeditiously as possible. In submitting the plan, it must include a timetable for obtaining the necessary capital, contracting for engineering and construction resources, and obtaining permits. EPA will review and act on applications, and, if a waiver is granted, will specify a time period, not to extend beyond January 1, 2008 (the date by which all gasoline is expected to meet the 30 ppm refinery average and 80 ppm per gallon cap standards), for the waiver.

If a waiver is granted, EPA will impose as a condition of the waiver other reasonable requirements, including antibacksliding requirements to ensure no deterioration in the sulfur level of gasoline and interim sulfur standards that the refiner must meet. This is appropriate since some refiners who may qualify for a waiver can achieve some sulfur reductions, and even reductions to levels above 30 ppm will result in some environmental benefits. While this provision allows EPA to waive the per gallon standards as well as the average standards, EPA would not allow gasoline sulfur to exceed the highest per gallon cap applicable to a refiner under the interim small refiner standards described in Section IV.C.2. Once all applications have been received, EPA will consider the appropriate process to follow in reviewing and acting on applications, including whether to conduct a notice and comment decision-making process.

3. Streamlining of Refinery Air Pollution Permitting Process

a. Brief Summary of Proposal

Industry commenters expressed concern over the ability to obtain permits to construct and operate the facility modifications needed to meet the Tier 2 rule requirements by the end of 2004. As part of the preamble to the proposed rule, we outlined possible approaches to provide greater certainty and to expedite potentially applicable permit processes. In general, we solicited comments on whether and how policy options might be designed so as to exempt Tier 2 projects from major New Source Review (NSR) and/or to expedite the processing of permits where such requirements would apply. In particular, we solicited comment on whether the major NSR process could be expedited if: (1) EPA provided guidance on Lowest Achievable Emission Rate (LAER) requirements or Best Available Control Technology (BACT) determinations; (2) emissions reductions could be made available or designated for offsetting Tier 2 activities; (3) EPA developed model permits, or (4) EPA assisted the States in resolving source-specific permitting issues as they would arise. The Agency also solicited comments on how the title V operating permit requirements, where applicable, might need to be integrated with the relevant NSR process.

In proposing various mechanisms to expedite the permitting of Tier 2 projects, we recognized that a combination of measures might be needed, since the situations could vary widely among individual refineries due to differences in such factors as available equipment capacity, amount of sulfur in the crude oil, and applicable State regulations. Source-specific analyses are also necessary to establish what sulfur reduction techniques can be applied, to determine the applicable permitting requirements, and to evaluate what controls will be necessary as a result of these requirements. We indicated our intent to offer assistance where needed.

b. Significant Comments Received

The most significant comments received on the proposal concerning the timing impacts due to air permit requirements are presented below. These commenters focused exclusively on the requirements to obtain a preconstruction permit under the NSR program. Generally, commenters only concerns regarding the title V operating permit program were that the States' ongoing efforts to issue these permits might create a backlog which could delay the issuance of NSR permits for Tier 2 projects. A more detailed discussion of comments received on the proposal and EPA's response are contained in the Response To Comments document and is filed in the Docket for this action.

We received written and oral comments from refineries about the permit requirements associated with Tier 2 projects. Refiners emphasized the need for certainty. They pointed out the need to secure preconstruction permits within 18 months (*e.g.*, 6 months to prepare and file NSR applications and another 12 months to issue the permit) and the need for permitting authorities to commit appropriate resources to meet this time frame. State and local air pollution control agencies did not support providing exemptions from emissions control and permitting requirements. Rather, agency commenters stated that they could accomplish the permitting requirements in the necessary time frames, provided that complete permit applications were received in a timely manner and refiners conferred with their regulatory agencies soon after the Tier 2 requirements are promulgated. They also indicated that the major NSR process could be expedited and have more certainty (i.e., permits could be processed in 6 to 9 months) if EPA would provide guidance on emissions controls, emissions monitoring, and offsets. In general, environmental and community groups pointed out that the remedies under traditional permitting practices should be exhausted before additional flexibility is granted for Tier 2 projects.

c. Today's Action

Based on the comments and other information received in response to the proposal, EPA believes that it is not necessary or appropriate to explore further the development of possible options which would exempt Tier 2 projects from the normally applicable preconstruction review process. This position is supported by: (1) The comments of States that industry can, in general, apply and receive NSR permits in time to comply with Tier 2; and (2) the recognition of industry's potential ability to use emissions reductions to net Tier 2 projects out of major NSR which would otherwise be applicable. Nonetheless, we believe that actions

should be taken to facilitate early compliance, to add certainty to the anticipated permitting actions and schedules, and to minimize the possibility of delay. Accordingly, EPA is taking two types of actions to promote these objectives.

First, as previously discussed, we have structured the final gasoline sulfur program to allow additional lead time for many refiners (i.e., certain refineries would be able to make desulfurization changes later than the proposed 2004 compliance date to meet Tier 2 requirements). This approach will help address the concerns over the availability of necessary new equipment and permitting backlogs caused by many refineries acting to obtain permits and order equipment within relatively the same time period.

Second, we intend to take several actions (described in more detail below) to expedite and impart greater certainty in obtaining necessary major NSR permits. As a result of comments received on the proposal, and the lead time provided in the final gasoline sulfur program, we believe that the vast majority of permits can be issued within the necessary time frames, provided that refineries submit their preconstruction applications in a timely manner and regulatory authorities prioritize the issuance of these permits. We also intend to assist States and refiners on a case-by-case basis in their efforts to address any unique permitting problems that might arise and, thus, remedy potential problems that could cause unanticipated delays. In the unlikely event permitting delays occur, EPA will work with refiners and the state/local permitting agencies on a case-by-case basis, where a refinery has unique circumstances that necessitate unique treatment.

While today's strategy will help expedite the permitting process, refineries that trigger major NSR as a result of producing low sulfur gasoline will still have to install the stringent level of emissions control technology required by the Act. However, we intend to issue guidance to assist states in making decisions about the levels of control technology, as described more below. In addition, the Agency wishes to clarify that, in our efforts to provide greater certainty and to facilitate more expeditious permitting, we are in no way shortcutting existing opportunities for public participation. We recognize the importance of public participation in making permitting decisions and intend that the measures adopted to address permitting concerns will not diminish the opportunities for public participation.

i. Major New Source Review

The major NSR program, as it applies to existing major stationary sources of air pollution, requires that a preconstruction permit be issued before a source makes a physical change or change in its method of operation of any project that would result in a significant net emissions increase. As described in the proposal, the steps taken by certain refineries to implement gasoline sulfur reductions to meet today's rule could result in emissions increases in one or more pollutants which may trigger the requirements for this type of preconstruction permit. A number of the refineries are located in areas designated as nonattainment for at least one pollutant. The nonattainment NSR requirements pursuant to part D of the Act would apply to any such refinery undergoing a major modification. For those refineries located in attainment or unclassifiable areas, permit requirements for the prevention of significant deterioration (PSD) of air quality must be met for major modifications.

The EPA recognizes the importance of timely major NSR (as applicable) permit actions for refineries to proceed with necessary changes to meet the new low sulfur gasoline standard. We encourage refineries to begin discussions with permitting authorities and to submit permit applications—as early as possible. In addition, based on comments received, we believe that there are a few key areas in which assistance would be useful toward helping States issue timely permits to the applicable refineries:

• *Federal guidance on emissions control technology requirements.*

Refineries subject to major NSR review will be required to undergo a source-specific evaluation to apply either BACT or LAER, depending upon the applicable program requirements. For example, the evaluation for BACT is case-by-case and takes into account the alternative technologies available to control pollution from a particular emissions unit or process, and considers the energy, environmental, economic and other costs associated with each technology. We intend to issue guidance setting out a level of emissions that, in our view, would be expected to satisfy the requirements for BACT for certain emissions units associated with refinery desulfurization projects. While States would not be required to use the results to establish BACT for a particular refinery subject to review and EPA's guidance on a control technology may not be appropriate where there exists unusual site-specific circumstances, such guidance would add the certainty of EPA's expectations.

Since negotiation of an appropriate BACT level often is one of the most time consuming aspects of permitting, we believe this EPA guidance will significantly expedite the process. The federal guidance on BACT, by including an evaluation of the most stringent control levels currently being achieved or required, will also provide federal guidance on LAER. The EPA plans to make a draft of this guidance available for public review and comment in January 2000. Final guidance would then be prepared, after relevant comments are considered, in time for States, refiners, and the public to consider in preparing and reviewing permit applications and proposed permits.

• *Availability of offsets.*

Refineries located in nonattainment areas must offset any proposed significant emissions increases with an equal or greater amount of emissions reductions from other sources, usually coming from within the same nonattainment area. We believe that vehicle emissions reductions resulting from the use of low sulfur gasoline can be used as offsets for the refineries, as long as the statutory and regulatory criteria for creditable offsets are satisfied and States decide to provide for this opportunity in their SIP attainment demonstration. We believe generally that this option should be available to States since only a small fraction of the total vehicle emissions reductions in any county would be needed to offset refinery emissions increases resulting from implementation of gasoline desulfurization projects. Generally, the reductions must also occur in the same nonattainment area as the location of the refinery for which the offsets are required. The EPA plans to issue the appropriate guidance early in the year 2000 to help a State to determine whether and to what extent it may wish to use vehicle emissions reductions as offsets for Tier 2 projects.

• EPA refinery permitting teams.

We intend to assemble special EPA teams, comprised of Headquarters and Regional Office experts, that will track the overall progress in permit issuance and will be available to assist State and local permitting authorities, refineries, and the public upon request to resolve site-specific permitting issues. These teams will be comprised of persons who are knowledgeable about permitting programs and refinery operations and can provide expert assistance to troubleshoot permitting issues that may arise. As appropriate, the teams will work with stakeholders on a case-by-

case basis to evaluate site-specific approaches to regulatory compliance within existing policy and regulations.

ii. Environmental Justice

The Tier 2/gasoline sulfur rule will help achieve significant nationwide reductions in the emissions of nitrogen oxides (NOx), volatile organic compounds (VOC), particulate matter (PM), and sulfur dioxide (SO_2). These reductions will improve air quality across the country and will provide increased protection to the public against a wide range of health effects, including chronic bronchitis, respiratory illnesses, and aggravation of asthma symptoms. Furthermore, the Tier 2/gasoline sulfur rule will achieve environmental benefits in the local areas where refineries are located, due to reductions in tail pipe emissions from vehicles driven in those areas. Although we expect residual emissions increases at some refineries even after installing the stringent level of emissions controls required under the Act, for the vast majority of areas, we believe that these potential refinery emissions increases will be very small compared to the Tier 2 benefits in those same local areas.

We believe it is important to understand and address concerns relating to potential localized emissions increases from refineries that make significant process changes to meet the requirements of the Tier 2 rule. We believe that, among other things, the keys to addressing any potential concerns are as follows:

- Providing meaningful community involvement early and throughout the process;
- Determining what information and actions would eliminate concerns; and
- Determining what EPA, States, and industry can do to make the permitting process smoother by ensuring ongoing community involvement in the decision making process and by building trust among stakeholders.

To this end, the Agency has already taken some actions to try to mitigate potential environmental justice concerns. First, EPA's Office of Air and Radiation and the Alternative Dispute Resolution Team within EPA's Office of the Administrator implemented a national convening process which was designed to bring together a broad spectrum of stakeholders to explore with them their perceptions and views of issues associated with Tier 2 permitting and to assess the potential for a collaborative process to address specific implementation issues at some time in the future. The convening was carried out by an outside neutral party who conducted interviews with representatives from selected EPA offices, States, industry, environmental groups, and environmental justice organizations. Second, EPA held informational briefings and provided background materials to the National Environmental Justice Advisory Council's (NEJAC) [96] Air and Water Subcommittee and Enforcement Subcommittee to provide an opportunity for them to provide feedback and recommendations to the Agency. Finally, in October 1999, we met with both national environmental groups and environmental justice advocacy representatives, to discuss their views on the permitting aspects of the proposed rule.

The EPA is committed to continue working with all stakeholders to resolve specific Environmental Justice issues if and when they arise. To fulfill this commitment, we plan to undertake additional actions in the future, including providing education and outreach about the rule and its impacts in local communities, developing permitting guidance through a public process and addressing Title VI petitions if they arise.

D. What Are the Economic Impacts, Cost Effectiveness and Monetized Benefits of the Tier 2 Program?

Consideration of the economic impacts of new standards for vehicles and fuels has been an important part of our decision making process for this final rule. The following sections describe first the costs associated with meeting the new vehicle standards and the new fuel standards. This will be followed with a discussion of the cost effectiveness of the rule. Lastly, we will discuss the results of a benefit-cost assessment that we have prepared.

Full details of our cost analyses, including information not presented here, can be found in the RIA associated with this rule. Also, our response to comments on the cost, cost effectiveness, and monetized benefits analyses are contained in the Response to Comments document for this rule.

1. What Are the Estimated Costs of the Vehicle Standards?

To perform a cost analysis for the standards, we first determined a package of likely technologies that manufacturers could use to meet the standards and then determined the costs of those technologies. In making our estimates we have relied on our own technology assessment which included publicly available information, such as that developed by California, as well as confidential information supplied by individual manufacturers, and the results of our own in-house testing.

In general, we expect that the Tier 2 standards will be met through refinements of current emissions control components and systems rather than through the widespread use of new technology. Furthermore, smaller lighter-weight vehicles and trucks will generally require less extensive improvements than larger vehicles and trucks. More specifically, we anticipate a combination of technology upgrades such as the following:

- Improvements to the catalyst system design, structure, and formulation plus in some cases an increase in average catalyst size and loading;
- Air and fuel system modifications including changes such as improved microprocessors, improved oxygen sensors, leak free exhaust systems, air assisted fuel injection, and calibration changes including improved precision fuel control and individual cylinder fuel control;
- Engine modifications, possibly including an additional spark plug per cylinder, an additional swirl control valve, or other hardware changes needed to achieve cold combustion stability;
- Increased use of fully electronic exhaust gas recirculation (EGR); and
- Increased use of secondary air injection for 6 cylinder and larger engines.

The costs for MDPVs have been included here with the LDT4 cost estimates. We expect that the technologies needed to meet the Tier 2 standards for the MDPVs will be very similar to those for LDT4s. However, the MDPVs cost estimates are somewhat higher than for LDT4s. Vehicles over 8,500 pounds GVWR are currently certified to heavy-duty engine emissions standards using the heavy-duty test procedures. This, at least in part, has led to differences in baseline technologies compared to current LDT4s. Vehicles above 8,500 pounds, for example, are currently equipped with technologies such as close coupled catalysts and secondary air injection to a lesser extent. Therefore, we expect higher incremental costs for the MDPVs compared to LDT4s. There is further information on the costs for MDPVs in the RIA.

[96] The NEJAC was chartered in 1993 expressly to give the EPA Administrator independent advice, consultation, and recommendations on environmental justice matters. NEJAC members come from state, tribal, and local governments; tribal and indigenous citizen's organizations; business and industry; academia; and environmental advocacy and grassroots community groups.

Using a typical mix of changes for each group, we projected costs separately for LDVs, the different LDT classes, and for different engine sizes (4, 6, 8, 10-cylinder) within each class. For each group we developed estimates of both variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification).

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near-term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, since fixed costs are assumed to be recovered over a five-year period, these costs disappear from the analysis after the fifth model year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production and use, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[97] These reductions in production costs are typically associated with every doubling of production volume. Our analysis incorporates the effects of this "learning curve" by projecting that the variable costs of producing the Tier 2 vehicles decreases by 20 percent starting with the third year of production. We applied the learning curve reduction only once since, with existing technologies, there would be less opportunity for lowering production costs than would be the case with the adoption of new technology.

We have prepared our cost estimates for meeting the Tier 2 standards using a baseline of NLEV technologies for LDVs, LDT1s, and LDT2s, and Tier 1, or current technologies for LDT3s, LDT4s and MDPVs. These are the standards that vehicles would be meeting in 2003.[98] We have not specifically analyzed smaller incremental changes to technologies that might occur due to the interim standards between the baseline and Tier 2. In most cases, we believe these changes will not be significant based on current certification levels and manufacturers will maximize carry-over. For others, manufacturers can use averaging and other program flexibilities to avoid redesigning vehicles twice within a relatively short period of time. We believe this is likely to be an attractive approach for manufacturers due to the savings in R&D and other resources.

For the total annual cost estimates, we projected that manufacturers will start the phase-in of Tier 2 vehicles with LDVs in 2004 and progress to heavier vehicles until all LDT2s meet Tier 2 standards in 2007. For LDT3s and LDT4s, we projected some sales of Tier 2 LDT3s prior to 2008 for purposes of averaging in the interim program and that the phase-in of Tier 2 vehicles would end with LDT4s and MDPVs in 2009.

Finally, we have incorporated what we believe to be a conservatively high level of R&D spending at $5,000,000 per vehicle line (with annual sales of 100,000 units per line). We have included this large R&D effort because calibration and system optimization is likely to be a critical part of the effort to meet Tier 2 standards. However, we believe that the R&D costs may be generous because the projection ignores the carryover of knowledge from the first vehicle lines designed to meet the standard to others phased-in later.

The evaporative emissions standards we are finalizing today for LDVs, LDTs and MDPVs are feasible with relatively small cost impacts. We estimate the cost of system improvements to be about $4 per vehicle, for all vehicle classes. This incremental cost reflects the cost of moving to low permeability materials, improved designs or low-loss connectors. R&D for the evaporative emissions standard is included in the R&D estimates given above for the tailpipe standards. We have included no projections of learning curve reductions for the evaporative standard.

Table IV.D.–1 provides our estimates of the per vehicle increase in purchase price for LDVs, LDTs, and MDPVs. The near-term cost estimates in Table IV.D.–1 are for the first years that vehicles meeting the standards are sold, prior to cost reductions due to lower productions costs and the retirement of fixed costs. The long-term projections take these cost reductions into account. We have sales weighted the cost differences for the various engine sizes (4-, 6-, 8-, 10-cylinder) within each category.

TABLE IV.D.–1.—ESTIMATED PURCHASE PRICE INCREASES DUE TO TIER 2 TAILPIPE STANDARDS

	LDV	LDT1	LDT2	LDT3	LDT4/ MDPVs[a]
Tailpipe standards:					
Near-term (year 1)	$78	$70	$125	$245	$256
Long-term (year 6 and beyond)	49	45	97	199	208
Evaporative Standard	4	4	4	4	4

Notes:
[a] Weighted average.

We did not receive comments disagreeing with the technology projections or technology cost estimates contained in the proposal. We have, however, revised our cost estimates somewhat based on new information available since the proposal. We moderately lowered our cost estimates due to adjustments we have made in our technology projections. Based on the results of our vehicle testing program described above in section IV.A.1., we now believe that a few of the hardware changes we had anticipated are not likely to be needed to meet the standards. Albeit there is always fluctuation, the spot prices of precious metals have increased somewhat since the proposal and we have adjusted our analysis to reflect those changes.

Overall, the cost estimates are within 5 percent of those in the proposal for LDVs and LLDTs. The changes noted above moderately lowered the costs for HLDTs compared to the proposal. The cost increase due to the inclusion of MDPVs offsets most of the lowered costs

[97] "Learning Curves in Manufacturing," Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924.

[98] Even though the NLEV program ends in the Tier 2 timeframe, we have not included the NLEV program costs or benefits in our analysis, since EPA analyzed and adopted NLEV previously.

for the LDT4 category. The resulting cost estimate for the LDT4/MDPVs tailpipe standards is also within 5 percent of the cost estimates for LDT4s contained in the proposal. The detailed technology and cost analyses are available in the RIA.

We are also finalizing OBD II requirements and onboard vapor recovery (ORVR) requirements for MDPVs. We have estimated that OBD II will cost about $80, which includes the costs of additional sensors and system improvements. We have estimated ORVR system costs to be about $10. The $10 cost for ORVR does not include any fuel cost savings over the life of the vehicles due the recover of fuel vapor during refueling. ORVR provides a fuel cost savings because the vapors are captured, and burned in the engine, rather than escaping to the atmosphere. We estimate the savings over the life of the vehicle to be about $6. These costs are not reflected in Table IV.D.–1.

2. Estimated Costs of the Gasoline Sulfur Standards

As we explained at the beginning of Section IV.C, we expect that most refiners will have to install capital equipment to meet the gasoline sulfur standard. Presuming that refiners will want to minimize the cost involved, the majority of refiners are expected to desulfurize the gasoline blendstock produced by the fluidized catalytic cracker (FCC) unit, although a few may choose to desulfurize the feed to the FCC unit. Recent advances have led to significant improvements in the hydrotreating technologies used for FCC gasoline desulfurization. Since these improved technologies represent the lowest cost options and are expected to be used by most refiners needing to install desulfurization equipment, we have based our cost estimates primarily on their use. However, in acknowledgment that some refiners, particularly those which make investment decisions in the near term, are likely to select more traditional approaches using proven technologies, we have included the costs for currently proven desulfurization technologies in our analysis, as well. This is different from the analysis we did in support of our proposal, where we assumed that all refiners would take advantage of the most improved technologies we were aware of at that time.

For our analysis of the costs of controlling gasoline sulfur, we estimated the costs in five different regions of the country (Petroleum Administration Districts for Defense, or PADDs) for reductions from the current PADD average gasoline sulfur level down to a 30 ppm average. We then combined the regional costs to develop an average national individual refinery cost, and used this figure to calculate national aggregate capital and operating costs. In our proposal we estimated a single cost for desulfurizing gasoline, using as an assumption for the purpose of analysis that all refiners would upgrade their refineries by 2004 and that all would choose one of two improved technologies we knew of at the time. We then reduced this cost over time to reflect expected cost reductions due to further technology advancements and reduced operating costs due to improved understanding of the technologies and refinery debottlenecking. Based on improved information about the availability of technologies, we have now analyzed the costs of controlling sulfur on a year-by-year basis beginning with 2004, to be consistent with our analysis of the rate at which the industry would invest in desulfurization technologies over the first years of the program and the changing technology selections (and costs) that would accompany this phase-in (discussed in Section IV.C.1 above). A detailed description of our calculations can be found in the Regulatory Impact Analysis; the reader can refer to the draft RIA released with the proposed rule for more information on our prior analysis.

We estimate that, on average, refineries which install equipment to meet the 30 ppm average standard will invest about $44 million for capital equipment and spend about $16 million per year for each refinery to cover the operating costs associated with these desulfurization units. Since this average represents many refineries diverse in size and gasoline sulfur level as well as a mix of desulfurization technologies, some refineries will pay more and others less than the average costs. When the average per-refinery cost is aggregated for all the gasoline expected to be produced in this country in 2008 (the first year that all refiners will be required to meet the 30 ppm standard, unless any small refiners are granted a extension of hardship relief), the total investment for desulfurization processing units (spread between 2003 and 2007) is estimated to be about $4.3 billion, and operating costs for these units is expected to be about $1.3 billion per year.

Using our estimated capital and operating costs for domestic refineries, we calculated the average per-gallon cost of reducing gasoline sulfur down to 30 ppm for each year as the program is implemented. Using a capital cost amortization factor (based on a seven percent rate of return on investment) and including no taxes, we estimated the average national cost for desulfurizing gasoline to be about 1.7–1.9 cents per gallon as the program is phased in. This cost is the cost to society of reducing gasoline sulfur down to 30 ppm that we used for estimating cost effectiveness. Table IV.D.–2 below summarizes our estimates of per-gallon gasoline cost increases for select years.

TABLE IV.D.–2.—ESTIMATED PER-GALLON COST FOR DESULFURIZING GASOLINE IN FUTURE YEARS

Year	Cost (cents/gallon)
2004	1.9
2005	1.9
2006	1.7
2007	1.7
2008–2018	1.7
2019+	1.3

Although the costs shown here are slightly higher than we projected in the proposal, overall, we believe our revised costs are consistent with those in the proposal and that our improved methodology and information are the source of the differences. As stated earlier in this section, we believe this analysis more accurately reflects the actual investment decisions of individual refiners over the years in which the industry is phasing down sulfur levels. Furthermore, we have also made a number of other adjustments to our analysis of capital and operating costs for each individual technology based on new information received from the technology vendors and information we obtained during the comment period. For example, we now include eight different technologies in our analysis, including some more traditional approaches, whereas in the proposal we only considered two new technologies. Hence, the range of costs is broader. In addition, as explained in the RIA, we now believe we underestimated the capital costs of desulfurization slightly in the proposal based on our calculation of the costs of providing hydrogen to the processes. We believe our analysis now reflects the most up-to-date information about the costs of installing and operating the various desulfurization technologies included in our analysis. These adjustments are explained in detail in the Regulatory Impact Analysis.

We still believe that over time, particularly in 2006–8 when the last refineries will be making investments, the costs of gasoline desulfurization equipment will be significantly lower

than it is today. Some of the technologies expected to be selected in this time frame (specifically, the new adsorption technologies which we didn't know about when we proposed these requirements) are projected to cost about half of what the older technologies cost. Furthermore, with time refiners will have to replace existing desulfurization equipment (as equipment ages), and by then they will have a number of low cost alternatives to choose from. Thus, as Table IV.D.–2 shows, the long term estimated costs for gasoline desulfurization are lower than those we projected in our proposal.[99]

3. What Are the Aggregate Costs of the Tier 2/Gasoline Sulfur Final Rule?

Using current data for the size and characteristics of the vehicle fleet and making projections for the future, the per-vehicle and per-gallon fuel costs described above can be used to estimate the total cost to the nation for the emission standards in any year. Figure IV.D.–1 portrays the results of these projections.[100]

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Figure IV.D. -1

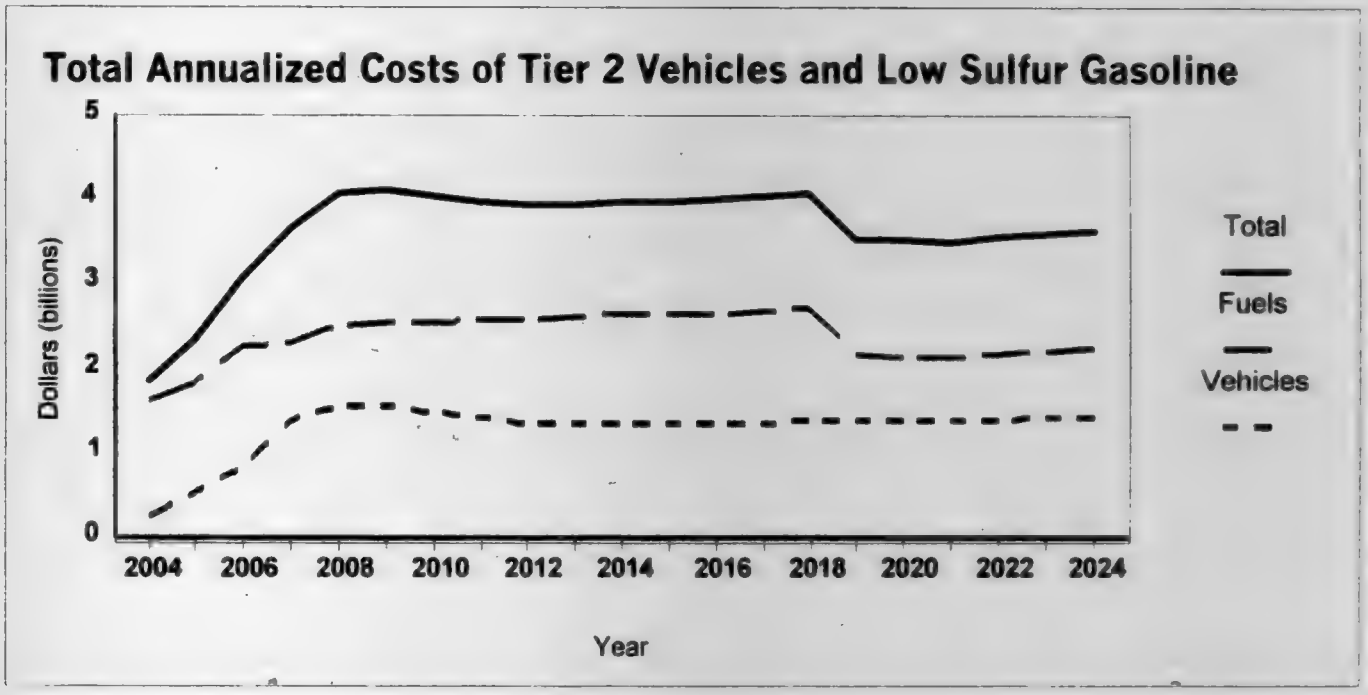

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As can be seen from the figure, the annual cost starts out at about $1.9 billion per year and increases over the phase-in period to about $4.1 billion in 2008. Total annualized costs are projected to remain at about $4 billion through 2018. After 2018, annualized fuel costs are projected to decrease somewhat due to the use of new technologies which would enable refiners to produce low sulfur fuel at a lower cost. The gradual rise in costs long term is due to the effects of projected growth in vehicle sales and fuel consumption. The RIA provides further detail regarding these cost projections.

4. How Does the Cost-effectiveness of This Program Compare to Other Programs?

This section summarizes the cost-effectiveness analysis conducted by EPA and its results. The purpose of this analysis is to show that the reductions from the vehicle and fuel controls being finalized today are cost-effective in comparison to alternative means of attaining or maintaining the NAAQS. This analysis involves a comparison of our program not only to past measures, but also to other potential future measures that might be employed to attain and maintain the NAAQS. Both EPA and states have already adopted numerous control measures, and remaining measures tend to be more expensive than those previously employed. As we employ the most cost-effective available measures first, more expensive ones tend to become necessary over time.

The emission reductions used to calculate the cost-effectiveness levels reported here are based on those reductions used for our air quality analysis modeling and benefits analysis. This was done to maintain consistency in the analyses. As noted in Section III.B. above, we have updated our inventory model since the air quality modeling inventories were calculated. In Chapter III of our RIA, Table III.A.–3 compares the updated Tier 2 model with the air quality analysis modeling and shows that the emission reductions expected from Tier 2/gasoline sulfur will be substantially greater than the amounts originally calculated. If the

[99] For a sensitivity analysis of our cost estimates using alternative assumptions, please see Chapter V of the RIA.

[100] Figure IV.D.–1 is based on the amortized costs from Tables IV.D.–1 and IV.D.–2. Actual capital investments, particularly important for fuels, would occur prior to and during the initial years of the program, as described above in section IV.D.2.

updated numbers were incorporated into our cost-effectiveness we would expect the results to be improved over those shown in this section.

We received a number of comments on our cost-effectiveness analysis in response to our NPRM. Our responses to these comments can be found in the Response To Comments document.

a. Cost-Effectiveness of This Program

We have calculated the cost-effectiveness of the exhaust emission/gasoline sulfur standards and the evaporative emission standards, based on two different approaches. The first considers the net present value of all costs incurred and emission reductions generated over the life of an average Tier 2 vehicle. This per-vehicle approach focuses on the cost-effectiveness of the program from the point of view of the Tier 2 vehicles which will be used to meet the new requirements, and is the method used in our proposal. However, the per-vehicle approach does not capture all of the costs or emission reductions from the Tier 2/gasoline sulfur program since it does not account for the use of low sulfur gasoline in pre-Tier 2 vehicles. Therefore, we have also calculated an aggregate cost-effectiveness using the net present value of costs and emission reductions for all in-use vehicles over a 30-year time frame.

As described earlier in the discussion of the cost of this program, the cost of complying with the new standards will decline over time as manufacturing costs are reduced and amortized capital investments are recovered. To show the effect of declining cost in the per-vehicle cost-effectiveness analysis, we have developed both near term and long term cost-effectiveness values. More specifically, these correspond to vehicles sold in years one and six of the vehicle and fuel programs. Vehicle cost is constant from year six onward. Fuel costs per gallon continue to decline slowly in the years past year six; however, the overall impact of this decline is small and we have decided to use year six results for our long term cost-effectiveness. Chapter VI of the RIA contains a full description of this analysis, and you should look in that document for more details of the results summarized here.

The aggregate approach to calculating the cost-effectiveness of our program involves the net present value of all nationwide emission reductions and costs for a 30-year period beginning with the start of the program in 2004. This timeframe captures both the early period of the program when very few Tier 2 vehicles will be in the fleet, and the later period when essentially all vehicles in the fleet will meet Tier 2 standards. We have calculated the aggregate cost-effectiveness using the net present value of the nationwide emission reductions and costs for each calendar year. These emission reductions and costs are summarized in Sections III.B, III.C, and IV.D.3, and are given for every calendar year in the RIA. For more information on how the aggregate cost-effectiveness was calculated please refer to the RIA.

Our per-vehicle and aggregate cost-effectiveness values are given in Tables IV.D.–3 and IV.D.–4. Table IV.D.–3 summarizes the per-vehicle, net present value lifetime costs, NMHC+NO_X emission reductions, and resulting cost-effectiveness results for our Tier 2/gasoline sulfur program using sales weighted averages of the costs (both near term and long term) and emission reductions of the various vehicle classes affected. Table IV.D.–4 provides the same information from the program aggregate perspective. It includes the net present value of the 30-year stream of vehicle and fuel costs, NMHC+NO_X emission reductions, and the resulting aggregate cost-effectiveness. For simplicity, we have used the midpoint of our estimated range of 20 to 65 percent for the irreversibility effect. The full range of irreversibility would only cause the cost-effectiveness values to differ from those in Table IV.D–3, for example, by $60/ton to $100/ton. Note that, even though we are setting new standards for PM, those standards are already being met, so there is no cost associated with the new PM standard and therefore no separate cost-effectiveness analysis for PM.

Tables IV.D.–3 and IV.D.–4 also display cost-effectiveness values based on two approaches to account for the reductions in SO_2 and tailpipe emitted sulfate particulate matter (PM) associated with the reduction in gasoline sulfur. While these reductions are not central to the program and are therefore not displayed with their own cost-effectiveness, they do represent real emission reductions due to our program. The first set of cost-effectiveness numbers in the tables simply ignores these reductions and bases the cost-effectiveness on only the NMHC+NO_X reductions from Tier 2/gasoline sulfur. The second set accounts for these ancillary reductions by crediting some of the cost of the program to SO_2 and PM reduction. The amount of cost allocated to SO_2 and PM is based on the cost-effectiveness of SO_2 and PM emission reductions that could be obtained from alternative, potential future EPA programs.

TABLE IV.D–3.—PER-VEHICLE COST-EFFECTIVENESS OF THE STANDARDS

Cost basis	Discounted lifetime vehicle & fuel costs	Discounted lifetime NMHC + NO_X reduction (tons)	Discounted lifetime cost-effectiveness per ton	Discounted lifetime cost-effectiveness per ton with SO_2 and direct PM credit [a]
Near term cost (production year 1)	$243	0.110	$2,211	$1,717
Long term cost (production year 6)	205	0.110	1,863	1,368

Notes:
[a] $51 credited to SO_2 ($4,800/ton), $4 to direct PM ($10,000/ton).

TABLE IV.D–4.—AGGREGATE COST-EFFECTIVENESS OF THE STANDARDS

Discounted aggregate vehicle & fuel costs	Discounted aggregate NMHC + NO_X reduction (tons) (millions)	Discounted aggregate cost-effectiveness per ton	Discounted aggregate cost-effectiveness per ton with SO_2 and direct PM credit [a]
$48.1 billion	23.5	$2,047	$1,311

Notes:
[a] $13.8 billion credited to SO_2 ($4,800/ton), $3.5 billion to direct PM ($10,000/ton).

b. How Does the Cost-Effectiveness of This Program Compare With Other Means of Obtaining Mobile Source NO_X + NMHC Reductions?

In comparison with other mobile source control programs, we believe that our program represents the most cost-effective new mobile source control strategy currently available that is capable of generating substantial NO_X + NMHC reductions. This can be seen by comparing the cost-effectiveness of today's program with a number of mobile source standards that EPA has adopted in recent years. Table IV.D.–5 summarizes the cost-effectiveness of several recent EPA actions.

TABLE IV.D.–5.—COST-EFFECTIVENESS OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS

Program	$/ton [a] NO_X+NMHC
2004 Highway HD Diesel stds	204–399
Nonroad Diesel engine stds	410–650
Tier 1 vehicle controls	1,980–2,690
NLEV	1,859
Marine SI engines	1,128–1,778
On-board diagnostics	2,228

Notes: [a] Costs adjusted to 1997 dollars.

We can see from the table that the cost-effectiveness of the Tier 2/gasoline sulfur standards falls within the range of these other programs. Engine-based standards (the 2004 highway heavy-duty diesel standards, the nonroad diesel engine standards and the marine spark-ignited engine standards) have generally been less costly than Tier 2/gasoline sulfur. Vehicle standards, most similar to today's program, have values comparable to or higher than Tier 2/gasoline sulfur.

The values in Table IV.D.–5 might imply that further reductions in NO_X and VOC from heavy-duty engines could be more cost-effective than the reductions that will be produced from our Tier 2/gasoline sulfur program. However, we do not believe that to be the case. While we are indeed developing a proposal for further control from heavy-duty engines, we expect that substantial further emission reductions will require advanced after-treatment devices. These devices will be more costly than methods used to meet our past standards, and will have difficulty functioning properly without changes to diesel fuel. We therefore expect that the cost effectiveness of future heavy-duty standards is not likely to be significantly less than the cost effectiveness of today's rule.

On the light-duty vehicle side, the last two sets of standards were Tier 1 and NLEV, which had cost-effectiveness comparable to or higher than Tier 2/gasoline sulfur. Compared to engines, these levels reflect the advanced (and more expensive) state of vehicle control technology, where standards have been in effect for a much longer period than for engines. Considering the increased stringency of the Tier 2 standards, it is noteworthy that the cost-effectiveness of Tier 2/gasoline sulfur is in the same range as these actions. Based on these results, Tier 2/gasoline sulfur is a logical and consistent next step in vehicle control.

In conclusion, we believe that the Tier 2/Gasoline Sulfur program is a cost-effective program for mobile source NO_X + NMHC control. We are unable to identify another mobile source control program that would be more cost-effective than Tier 2/gasoline sulfur while also producing equivalent reductions in NO_X and NMHC emissions in the same timeframe as our program.

c. How Does the Cost-Effectiveness of This Program Compare With Other Known Non-Mobile Source Technologies for Reducing NO_X + NMHC?

In evaluating the cost-effectiveness of the Tier 2/Gasoline Sulfur program, we also considered whether our program is cost-effective in comparison with alternative means of attaining or maintaining the NAAQS other than mobile source programs. As described below, we have concluded that Tier 2/Gasoline Sulfur is cost-effective considering the anticipated cost of other technologies that will be needed to help attain and maintain the NAAQS.

In the context of the Agency's rulemaking to revise the ozone and PM NAAQS,[101] the Agency compiled a list of additional known technologies that could be considered in devising new emission reductions strategies.[102] Through this broad review, over 50 technologies were identified that could reduce NO_X or VOC. The cost-effectiveness of these technologies averaged approximately $5,000/ton for VOC and $13,000/ton for NO_X. These values clearly indicate that not only are future emission control strategies likely to be more expensive (less cost-effective) than past strategies, but the cost-effectiveness of our Tier 2/Gasoline Sulfur program falls at the lower end of the range for potential future strategies.

In addition, our Tier 2/Gasoline Sulfur program will deliver critical further reductions that are not readily obtainable by any other means known to the Agency. If all of the technologies modeled in the NAAQS analysis costing less than $10,000/ton were implemented nationwide, they would produce NO_X emission reductions of about 2.9 million tons per year. The Tier 2/Gasoline Sulfur program by itself will generate about 2.8 million tons per year once fully implemented. Given the continuing need for further emission reductions, we believe that Tier 2/Gasoline Sulfur control is clearly a cost-effective approach for attaining and maintaining the NAAQS.

We recognize that the cost-effectiveness calculated for Tier 2/Gasoline Sulfur is not strictly comparable to a figure for measures targeted at nonattainment areas, since Tier 2/Gasoline Sulfur is a nationwide program. However, there are several additional considerations that have led us to conclude that Tier 2/Gasoline Sulfur is cost-effective considering

[101] This rulemaking was remanded by the D.C. Circuit Court on May 14, 1999. However, the analyses completed in support of that rulemaking are still relevant, since they were designed to investigate the cost-effectiveness of a wide variety of potential future emission control strategies.

[102] "Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule," Appendix B, "Summary of control measures in the PM, regional haze, and ozone partial attainment analyses," Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

alternative means of attaining and maintaining the NAAQS.

First of all is the fact that the cost effectiveness of Tier 2/Gasoline Sulfur is so much better than the numbers developed for the NAAQS analysis. It is only 20 percent as costly per ton as the $10,000 per ton upper limit employed in that analysis for selecting suitable strategies even though, as noted above, Tier 2/Gasoline Sulfur will produce almost the same level of emission reduction. Furthermore, as a national program, Tier 2/Gasoline Sulfur can be implemented as a single unified rule without the need for individual action by each of the states.

In dealing with the question of comparing local and national programs, it is also relevant to point out that, because of air transport, the need for NO_X control is a broad regional issue not confined to non-attainment areas only. To reach attainment, future controls will need to be applied over widespread areas of the country. In the analyses supporting the recent NO_X standards for highway diesel engines,[103] we looked at this question in some detail and concluded that the regions expected to impact ozone levels in ozone nonattainment areas accounted for over 85% of total NO_X emissions from a national heavy-duty engine control program. Similarly, NO_X emissions in attainment areas also contribute to particulate matter nonattainment problems in downwind areas. Thus, the distinction between local and national control programs for NO_X is less important than it might appear.

Finally, the statute indicates that in considering the cost-effectiveness of Tier 2/Gasoline Sulfur EPA should consider not only attainment, but also maintenance of the standards. Tier 2/Gasoline Sulfur—unlike nonattainment area measures—will achieve attainment area reductions that, among other effects, will help to maintain air quality that meets the NAAQS. These reductions relate not only to the ozone and PM NAAQS, but also to SO_2 and NO_2, and to CO.

In summary, given the array of controls that will have to be implemented to make progress toward attaining and maintaining the NAAQS, we believe that the weight of the evidence from alternative means of providing substantial NO_X + NMHC emission reductions indicates that the Tier 2/Gasoline Sulfur program is cost-effective. This is true from the perspective of other mobile source control programs or from the perspective of other stationary source technologies that might be considered.

[103] Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines, September 16, 1997.

5. Does the Value of the Benefits Outweigh the Cost of the Standards?

While relative cost-effectiveness is the principal economic policy criterion established for these standards in the Clean Air Act (see CAA § 202(i)), further insight regarding the merits of the standards can be provided by benefit-cost analysis. The purpose of this section is to summarize the methods we used and results we obtained in conducting an analysis of the economic benefits of the Tier 2 program, and to compare these economic benefits with the estimated costs of the rule. In summary, the results of our analysis using the EPAs preferred approach to valuing premature mortality indicate that the economic benefits of the Tier 2/gasoline sulfur standards will likely exceed the costs of meeting the standards by about $20 billion (1997$).

a. What Is the Purpose of This Benefit-Cost Comparison?

Benefit-cost analysis (BCA) is a useful tool for evaluating the economic merits of proposed changes in environmental programs and policies. In its traditional application, BCA estimates the economic "efficiency" of proposed changes in public policy by organizing the various expected consequences and representing those changes in terms of dollars. Expressing the effects of these policy changes in dollar terms provides a common basis for measuring and comparing these various effects. Because improvement in economic efficiency is typically defined to mean maximization of total wealth spread among all members of society, traditional BCA must be supplemented with other analyses in order to gain a full appreciation of the potential merits of new policies and programs. These other analyses may include such things as examinations of legal and institutional constraints and effects; engineering analyses of technology feasibility, performance and cost; or assessment of the air quality need.

In addition to the narrow, economic efficiency focus of most BCAs, the technique is also limited in its ability to project future economic consequences of alternative policies in a definitive way. Critical limitations on the availability, validity, or reliability of data; limitations in the scope and capabilities of environmental and economic effect models; and controversies and uncertainties surrounding key underlying scientific and economic literature all contribute to an inability to estimate the economic effects of environmental policy changes in exact and unambiguous terms. Under these circumstances, we consider it most appropriate to view BCA as a tool to inform, but not dictate, regulatory decisions such as the ones reflected in today's rule.

Despite the limitations inherent in BCA of environmental programs, we consider it useful to estimate the potential benefits of today's action both in terms of physical changes in human health and welfare and environmental change, and in terms of the estimated economic value of those physical changes.

b. What Was Our Overall Approach to the Benefit-Cost Analysis?

The basic question we sought to answer in the BCA was: "What are the net yearly economic benefits to society of the reduction in mobile source emissions likely to be achieved by the final Tier 2 program?" In designing an analysis to answer this question, we selected a future year for analysis (2030) that is representative of full-implementation of the program (*i.e.*, when the U.S. car and light truck population is virtually only Tier 2 vehicles). We also adopted an analytical structure and sequence similar to that used in the "section 812 studies" [104] to estimate the total benefits and costs of the entire Clean Air Act. Moreover, we used many of the same models, and assumptions actually used in the section 812 studies, and other Regulatory Impact Analyses (RIA's) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIA's, we have largely relied on methods which have already received extensive review by the independent Science Advisory Board, by the public, and by other federal agencies.

c. What Are the Significant Limitations of the Benefit-Cost Analysis?

Every BCA examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic

[104] The "section 812 studies" refers to (1) US EPA, Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the "section 812 Retrospective); and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act (see EPA report number: EPA–410–R–99–001, November 1999).

studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified, such as changes in visibility in residential areas. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties which have a bearing on the results of the BCA of today's action are:

- The exclusion of potentially significant benefit categories (*e.g.*, health and ecological benefits of incidentally controlled hazardous air pollutants),
- Errors in measurement and projection for variables such as population growth,
- Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations.

In addition to these uncertainties and shortcomings which pervade all analyses of criteria air pollutant control programs, a number of limitations apply specifically to the BCA of today's action. Though we used the best data and models currently available, we were required to adopt a number of simplifying assumptions and to use data sets which, while reasonably close, did not match precisely the conditions and effects expected to result from implementation of the standards. For example, to estimate the effects of the program at full implementation we projected vehicle miles traveled and populations in the year 2030. These assumptions may play a significant role in determining the magnitude of the benefits estimate. In addition, although the emissions data sets used for this analysis have been updated from those used in the proposal, they may not anticipate the emissions reductions realized by other future actions and by expected near-future control programs. For example, it is possible that the Tier 2/gasoline sulfur standards will not be the governing vehicle emissions standards in 2030. In the years before 2030, the benefits from the Tier 2 program will be less than those estimated here (significantly less in the early years), because the Tier 2 fleet will not be fully phased in.

Finally, the implementation period for phasing-in the rule requirements is a critical period that deserves careful evaluation. The benefit-cost analysis for 2030 is not significantly affected by alternative phase-in decisions, the primary impact of which will occur in the 2005–2015 time frame. As a result, the analysis of phase-in alternatives must rely on other types of analysis (*e.g.*, cost-effectiveness analysis).

The key limitations and uncertainties unique to the BCA of the final rule, therefore, include:

- Uncertainties in the estimation of future year emissions inventories and air quality,
- Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on affected populations, and
- Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, which are discussed in more detail or referenced in the RIA, we believe the BCA provide a reasonable indication of the expected economic benefits of the Tier 2 program in 2030 under one set of assumptions. This is because the analysis focuses on estimating the economic effects of the *changes* in air quality conditions expected to result from today's action, rather than focusing on developing a precise prediction of the *absolute* levels of air quality likely to prevail in 2030. An analysis focusing on the changes in air quality can give useful insights into the likely economic effects of emission reductions of the magnitude expected to result from today's rule.

d. How Has the Benefit-Cost Analysis Changed From Proposal?

We significantly improved the analysis that was presented at proposal. For the final rule, EPA updated the emissions inventory from 1990 to 1996 using updated models, refined the projections of the effects of the rule when it is fully implemented, and updated our air quality modeling to reflect new programs issued since 1990. In addition, we also updated our assumptions for estimating physical effects and monetary benefits based on recommendations from the EPA's Science Advisory Board (SAB) during the summer of 1999. Details on these recommendations can be found in the advisory statements published by the SAB.[105] All of the changes made since the analysis at proposal serve to update and improve the analysis.

e. How Did We Perform the Benefit-Cost Analysis?

The analytical sequence begins with a projection of the mix of technologies likely to be deployed to comply with the new standards, and the costs incurred and emissions reductions achieved by these changes in technology. The Tier 2 program has various cost and emission related components, as described earlier in this section. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits. This is especially true for the vehicle control portions of the program, where the full vehicle cost would be incurred at the time of vehicle purchase, while the fuel cost along with the emission reductions and benefits would occur throughout the lifetime of the vehicle.

To develop a benefit-cost number that is representative of a fleet of Tier 2 vehicles, we need to have a stable set of cost and emission reductions to use. This means using a future year where the fleet is fully turned over and there is a consistent annual cost and annual emission reduction. For the Tier 2 program, this stability would not occur until well into the future. For this analysis, we selected the year 2030. The resulting analysis represents a snapshot of benefits and costs in a future year in which the light-duty fleet consists almost entirely of Tier 2 vehicles. As such, it depicts the maximum emission reductions (and resultant benefits) and among the lowest costs that would be achieved in any one year by the program on a "per mile" basis. (Note, however, that net benefits would continue to grow over time beyond those resulting from this analysis, because of growth in population and vehicle miles traveled.) Thus, based on the long-term costs for a fully turned over fleet, the resulting benefit-cost ratio will be close to its maximum point (for those benefits which we have been able to value).

To present a BCA, we designed the cost estimate to reflect conditions in the same year as the benefit valuation. Costs are, therefore, developed for the year 2030 fleet. For this purpose we used the long term cost once the capital costs have been recovered and the manufacturing learning curve

[105] Full documentation of the SAB recommendations can be found at their website (*www.epa.gov/sab*) under the following references: EPA–SAB–COUNCIL–ADV–98–003, 1998; EPA–SAB–COUNCIL–ADV–99–05, 1999; EPA–SAB–COUNCIL–ADV–99–012, 1999; EPA–SAB–COUNCIL–ADV–00–001, 1999; and EPA–SAB–COUNCIL–ADV–00–002, 1999.

reductions have been realized, since this will be the case in 2030.

We also made adjustments in the costs to account for the fact that there is a time difference between when some of the costs are expended and when the benefits are realized. The vehicle costs are expended when the vehicle is sold, while the fuel related costs and the benefits are distributed over the life of the vehicle. We resolved this difference by using costs distributed over time such that there is a constant cost per ton of emissions reduction and such that the net present value of these distributed costs corresponds to the net present value of the actual costs.

The resulting adjusted costs are somewhat greater than the expected actual annual cost of the program, reflecting the time value adjustment. Thus, the costs presented in this section do not represent expected actual annual costs for 2030. Rather, they represent an approximation of the steady-state cost per ton that would likely prevail in that time period. The benefit cost ratio for the earlier years of the program would be expected to be lower than that based on these costs, since the per-vehicle costs are larger in the early years of the program while the benefits are smaller.

In order to estimate the changes in air quality conditions which would result from these emissions reductions, we developed two separate, year 2030 emissions inventories to be used as inputs to the air quality models. The first, baseline inventory, reflects the best available approximation of the county-by-county emissions for NO_X, VOC, and SO_2 expected to prevail in the year 2030 in the absence of the standards. To generate the second, control case inventory, we first estimated the change in vehicle emissions, by pollutant and by county, expected to be achieved by the 2030 control scenario described above. We then took the baseline emissions inventory and subtracted the estimated reduction for each county-pollutant combination to generate the second, control case emissions inventory. Taken together, the two resulting emissions inventories reflect two alternative states of the world and the differences between them represent our best estimate of the reductions in emissions which would result from our control scenario.

With these two emissions inventories in hand, the next step was to "map" the county-by-county and pollutant-by-pollutant emission estimates to the input grid cells of two air quality models and one deposition model. The first model, called the Urban Airshed Model (UAM), is designed to estimate the tropospheric ozone concentrations resulting from a specific inventory of emissions of ozone precursor pollutants, particularly NO_X and NMHC. The second model, called the Climatological Regional Dispersion Model Source-Receptor Matrix model (S–R Matrix), is designed to estimate the changes in ambient particulate matter and visibility which would result from a specific set of changes in emissions of primary particulate matter and secondary particulate matter precursors, such as SO_2, NO_X, and NMHC. Also, nitrogen loadings to watersheds were estimated using factors derived from previous modeling from the Regional Acid Deposition Model (RADM). By running both the baseline and control case emissions inventories through these models, we were able to estimate the expected 2030 air quality conditions and the changes in air quality conditions which would result from the emissions reductions expected to be achieved by the Tier 2 program.

After developing these two sets of year 2030 air quality profiles, we used the same health and environmental effect models used in the section 812 studies to calculate the differences in human health and environmental outcomes projected to occur with and without the proposed standards. Specifically, we used the Criteria Air Pollutant Modeling System (CAPMS) to estimate changes in human health outcomes, and the Agricultural Simulation Model (AGSIM) to estimate changes in yields of a selected few agricultural crops. In addition, the impacts of reduced visibility impairment and estimates of the effect of changes in nitrogen deposition to a selection of sensitive estuaries were estimated using slightly modified versions of the methods used in the section 812 studies. Several air quality-related health and environmental benefits, however, could not be calculated for the BCA of today's proposed standards. Changes in human health and environmental effects due to changes in ambient concentrations of carbon monoxide (CO), gaseous sulfur dioxide (SO_2), gaseous nitrogen dioxide (NO_2), and hazardous air pollutants could not be included. In addition, some health and environmental benefits from changes in ozone and PM could not be included in our analysis (*i.e.*, commercial forestry benefits).

To characterize the total economic value of the reductions in adverse effects achieved across the lower 48 states,[106] we used the same set of economic valuation coefficients and models used in the section 812 studies, as approved by the SAB. The net monetary benefits of the Tier 2 program were then calculated by subtracting the estimated costs of compliance from the estimated monetary benefits of the reductions in adverse health and environmental effects.

The last step of the analysis is to characterize the uncertainty surrounding our estimate of benefits. Again, we follow the recommendations of the SAB for the presentation of uncertainty. They recommend that a primary estimate should be presented along with a description of the uncertainty associated with each endpoint. At proposal, our characterization of uncertainty was based on an estimated range of benefits which might occur if important but uncertain underlying factors were allowed to vary. This approach, however, is criticized by the SAB because while the low- or high-end estimates provided for individual endpoints was "plausible," the probability of all of the assumptions in these estimates occurring simultaneously was likely to be small.

Therefore, for the final Tier 2/gasoline sulfur rule, the benefit analysis adopts an approach similar to the section 812 study. Our analysis first presents our estimate for a primary set of benefit endpoints followed by a presentation of "alternative calculations" of key health and welfare endpoints to characterize the uncertainty in this primary set. However, the adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity on this issue, we provide estimates reflecting two alternative approaches for mortality benefits: the EPAs preferred approach using the value of a statistical life, and an alternative approach using the value of a statistical life years. These are discussed further in section f. of this presentation. The presentation of the alternative calculations for certain endpoints seeks to demonstrate how much the overall benefit estimate might vary based on the value EPA has given to a parameter (which has some uncertainty associated with it) underlying the estimates for human health and environmental effect incidence and the economic valuation

[106] Though California is included based on the expectation that reductions in surrounding states will achieve some benefits in California, this analysis does not assume additional reductions in California emissions beyond those already achieved by prevailing standards.

of those effects. These alternative calculations represent conditions that are possible to occur, however, EPA has selected the best supported values based on current scientific literature for use in the primary estimate. The alternate calculations include:

- Presentation of an estimated confidence interval around the Primary estimate of benefits to characterize The standard error in the C-R and valuation studies used in developing benefit estimates for each endpoint;
- Valuing PM-related premature mortality based on a different C-R study;
- Value of avoided premature mortality incidences based on statistical life years;
- Consideration of reversals in chronic bronchitis treated as lowest severity cases;
- Value of visibility changes in all Class I areas;
- Value of visibility changes in Eastern U.S. residential areas;
- Value of visibility changes in Western U.S. residential areas;
- Value of reduced household soiling damage; and
- Avoided costs of reducing nitrogen loadings in east coast estuaries.

For instance, the study by Dockery, et al. estimates of the relationship between PM exposure and premature mortality is a plausible alternative to the Pope, et al. study used for the Primary estimate of benefits. The SAB has noted that "the study had better monitoring with less measurement error than did most other studies" (EPA–SAB–COUNCIL–ADV–99–012, 1999). The Dockery study had a more limited geographic scope (and a smaller study population) than the Pope, et al. study and the Pope study appears more likely to mitigate a key source of potential confounding. The Dockery study also covered a broader age category (25 and older compared to 30 and older in the Pope study) and followed the cohort for a longer period (15 years compared to 8 years in the Pope study). For these reasons, the Dockery study is considered to be a plausible alternative estimate of the avoided premature mortality incidences associated with the final Tier 2/gasoline sulfur rule. The alternative estimate for mortality can be substituted for the valuation component in our primary estimate of mortality benefits to observe how the net benefits of the program may be influenced by this assumption. Unfortunately, it is not possible to combine all of the assumptions used in the alternate calculations to arrive at different total benefit estimates because, it is highly unlikely that the selected combination of alternative values would all occur simultaneously. Therefore, it is better to consider each alternative calculation individually to assess the uncertainty in the estimate.

In addition to the estimate for the primary set of endpoints and alternative calculations of benefits, our RIA also presents an appendix with supplemental benefit estimates and sensitivity analyses of other key parameters in the benefit analysis that have greater uncertainty surrounding them due to limitations in the scientific literature. Supplemental estimates are presented for premature mortality associated with short-term exposures to PM and ozone, asthma attacks, occurrences of moderate or worse asthma symptoms, and an estimate of the avoided incidences of premature mortality in infants.

Even with our efforts to fully disclose the uncertainty in our estimate, this uncertainty presentation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. This approach, as implemented in this BCA, does not reflect important uncertainties in earlier steps of the analysis, including estimation of compliance technologies and strategies, emissions reductions and costs associated with those technologies and strategies, and air quality and deposition changes achieved by those emissions reductions. Nor does this approach provide a full accounting of all potential benefits associated with the Tier 2/gasoline sulfur standards, due to data or methodological limitations. Therefore, the uncertainty range is only representative of those benefits that we were able to quantify and monetize.

f. What Were the Results of the Benefit-Cost Analysis?

The BCA for the Tier 2 program reflects a single year "snapshot" of the yearly benefits and costs expected to be realized once the standards have been fully implemented and non-compliant vehicles have all been retired. Near-term costs will be higher than long-run costs as vehicle manufacturers and oil companies invest in new capital equipment and develop and implement new technologies. In addition, near-term benefits will be lower than long-run benefits because it will take a number of years for Tier 2-compliant vehicles to fully displace older, more polluting vehicles. However, as described earlier, we have adjusted the cost estimates upward to compensate for some of this discrepancy in the timing of benefits and costs and to ensure that the long-term benefits and costs are calculated on a consistent basis. The resulting adjusted long-term cost value is given in Table IV.D.–5a. Because of the adjustment process, the cost estimates should not be interpreted as reflecting the actual costs expected to be incurred in the year 2030. Actual program costs can be found in Section IV.D.3.

TABLE IV.D.–5A.—ADJUSTED COST OF THE TIER 2/GASOLINE SULFUR RULE FOR COMPARISON TO BENEFITS

Cost basis	Adjusted cost (billions of dollars)
Long term[a]	5.3

Notes:
[a] Note that this estimate of cost is only for purposes of comparing with our 2030 benefits estimate. See Figure IV.D.–1 for our portrayal of total annualized cost of the rule.

With respect to the benefits, several different measures of benefits can be useful to compare and contrast to the estimated compliance costs. These benefit measures include (a) the tons of emissions reductions achieved, (b) the reductions in incidences of adverse health and environmental effects, and (c) the estimated economic value of those reduced adverse effects. Calculating the cost per ton of pollutant reduced is particularly useful for comparing the cost-effectiveness of the new standards or programs against existing programs or alternative new programs achieving reductions in the same pollutant or combination of pollutants. The cost-effectiveness analysis presented earlier in this preamble provides such calculations on a per-vehicle basis. Considering the absolute numbers of avoided adverse health and environmental effects can also provide valuable insights into the nature of the health and environmental problem being addressed by the rule as well as the magnitude of the total public health and environmental gains potentially achieved by the rule. Finally, when considered along with other important economic dimensions —including environmental justice, small business financial effects, and other outcomes related to the distribution of benefits and costs among particular groups— the direct comparison of quantified economic benefits and economic costs can provide useful insights into the potential magnitude of the estimated net economic effect of the rule, keeping in mind the limited set of effects we are able to monetize.

Table IV.D.–6 presents the EPAs preferred approach to estimate the benefits of both the estimated reductions in adverse effect incidences and the estimated economic value of

those incidence reductions. Specifically, the table lists the avoided incidences of individual health and environmental effects, the pollutant associated with each of these endpoints, and the estimated economic value of those avoided incidences. For several effects, particularly environmental effects, direct calculation of economic value in response to air quality conditions is performed, eliminating the intermediate step of calculating incidences. As the table indicates, we estimate that the Tier 2 program will produce 2300 fewer cases of chronic bronchitis, and we also see significant improvements in minor restricted activity days (with an estimated 6,255,500 fewer cases). Our estimate also incorporates significant reductions in impacts on children's health, showing reductions of 7,900 cases of acute bronchitis, 87,200 fewer cases of lower respiratory symptoms, and 86,600 fewer cases of upper respiratory symptoms in asthmatic children.

Total monetized benefits, however, are driven primarily by the estimated 4300 fewer premature fatalities. The adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity on this issue, we provide estimates reflecting two alternative approaches. The first approach—supported by some in the above community and preferred by EPA—uses a Value of a Statistical Life (VSL) approach developed for the Clean Air Act Section 812 benefit-cost studies. This VSL estimate of $5.9 million (1997$) was derived from a set of 26 studies identified by EPA using criteria established in Viscusi (1992), as those most appropriate for environmental policy analysis applications.

An alternative, age-adjusted approach is preferred by some others in the above community both within and outside the Administration. This approach was also developed for the Section 812 studies and addresses concerns with applying the VSL estimate—reflecting a valuation derived mostly from labor market studies involving healthy working-age manual laborers—to PM-related mortality risks that are primarily associated with older populations and those with impaired health status. This alternative approach leads to an estimate of the value of a statistical life year (VSLY), which is derived directly from the VSL estimate. It differs only in incorporating an explicit assumption about the number of life years saved and an implicit assumption that the valuation of each life year is not affected by age.[107] The mean VSLY is $360,000 (1997$); combining this number with a mean life expectancy of 14 years yields an age-adjusted VSL of $3.6 million (1997$).

Both approaches are imperfect, and raise difficult methodological issues which are discussed in depth in the recently published Section 812 Prospective Study, the draft EPA Economic Guidelines, and the peer-review commentaries prepared in support of each of these documents. For example, both methodologies embed assumptions (explicit or implicit) about which there is little or no definitive scientific guidance. In particular, both methods adopt the assumption that the risk versus dollars trade-offs revealed by available labor market studies are applicable to the risk versus dollar trade-offs in an air pollution context.

EPA currently prefers the VSL approach because, essentially, the method reflects the direct, application of what EPA considers to be the most reliable estimates for valuation of premature mortality available in the current economic literature. While there are several differences between the labor market studies EPA uses to derive a VSL estimate and the particulate matter air pollution context addressed here, those differences in the affected populations and the nature of the risks imply both upward and downward adjustments. For example, adjusting for age differences may imply the need to adjust the $5.9 million VSL downward as would adjusting for health differences, but the involuntary nature of air pollution-related risks and the lower level of risk-aversion of the manual laborers in the labor market studies may imply the need for upward adjustments. In the absence of a comprehensive and balanced set of adjustment factors, EPA believes it is reasonable to continue to use the $5.9 million value while acknowledging the significant limitations and uncertainties in the available literature. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristic of the adult population.

[107] Specifically, the VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This annual average value of a life-year is then multiplied times the number of years of remaining life expectancy for the affected population (in the case of PM-related premature mortality, the average number of $ life-years saved is 14.

Those who favor the alternative, age-adjusted approach (i.e. the VSLY approach) emphasize that the value of a statistical life is not a single number relevant for all situations. Indeed, the VSL estimate of $5.9 million (1997 dollars) is itself the central tendency of a number of estimates of the VSL for some rather narrowly defined populations. When there are significant differences between the population affected by a particular health risk and the populations used in the labor market studies—as is the case here—they prefer to adjust the VSL estimate to reflect those differences. While acknowledging that the VSLY approach provides an admittedly crude adjustment (for age though not for other possible differences between the populations), they point out that it has the advantage of yielding an estimate that is not presumptively biased. Proponents of adjusting for age differences using the VSLY approach fully concur that enormous uncertainty remains on both sides of this estimate—upwards as well as downwards—and that the populations differ in ways other than age (and therefore life expectancy). But rather than waiting for all relevant questions to be answered, they prefer a process of refining estimates by incorporating new information and evidence as it becomes available.

In addition to the presentation of mortality valuation, this table also indicates with a "B" those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table IV.D.–8. For instance, visibility is expected to improve in all areas of the country, with the largest improvements occurring in heavily populated residential areas (*e.g.*, 21% of the metropolitan areas show an improvement of 0.5 deciviews or more). However, due to limitations on sources to value these effects, we include a "B" in the primary estimate table for this category. Likewise, the Tier 2/gasoline sulfur rule will also provide progress for some estuaries to meet their goals for reducing nitrogen deposition (*e.g.*, nitrogen loadings for the Albemarle/Pamlico Sound are reduced by 27% of their reductions goal), however, this endpoint is also displayed with a "B" in the table. A full appreciation of the overall economic consequences of the Tier 2/gasoline sulfur standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and

costs which could be expressed here in dollar terms.

In summary, the VSL approach—the approach EPA prefers—yields a monetized benefit estimate of $25.2 billion in 2030. The alternative, age-adjusted VSLY approach (presented in Table IV.D.7) yields monetary benefits of approximately $13.8 billion in 2030.

TABLE IV.D.–6.—EPA PREFERRED ESTIMATE OF THE ANNUAL QUANTIFIED AND MONETIZED BENEFITS ASSOCIATED WITH IMPROVED AIR QUALITY RESULTING FROM THE TIER 2/GASOLINE SULFUR RULE IN 2030

Endpoint	Pollutant	Avoided incidence[c] (cases/year)	Monetary benefits[d] (millions 1997$)
Premature mortality[a, b] (adults, 30 and over)	PM[b]	4,300	$23,380
Chronic asthma (adult males, 27 and over)	Ozone	400	10
Chronic bronchitis	PM	2,300	730
Hospital Admissions from Respiratory Causes	Ozone and PM	2,200	20
Hospital Admissions from Cardiovascular Causes	Ozone and PM	800	10
Emergency Room Visits for Asthma	Ozone and PM	1,200	<1
Acute bronchitis (children, 8–12)	PM	7,900	<1
Lower respiratory symptoms (LRS) (children, 7–14)	PM	87,100	<5
Upper respiratory symptoms (URS) (asthmatic children, 9–11)	PM	86,500	<5
Shortness of breath (African American asthmatics, 7–12)	PM	17,400	<1
Work loss days (WLD) (adults, 18–65)	PM	682,900	70
Minor restricted activity days (MRAD)/Acute respiratory symptoms	Ozone and PM	5,855,000	270
Other health effects[c]	Ozone, PM, CO, HAPS	$U_1+U_2+U_3+U_4$	$B_1+B_2+B_3+B_4$
Decreased worker productivity	Ozone		140
Recreational visibility (86 Class I Areas)	PM		370
Residential visibility	PM		B_5
Household soiling damage	PM		B_6
Materials damage	PM		B_7
Nitrogen Deposition to Estuaries	Nitrogen		B_8
Agricultural crop damage (6 crops)	Ozone		220
Commercial forest damage	Ozone		B_9
Other welfare effects[e]	Ozone, PM, CO, HAPS		$B_{10}+B_{11}+B_{12}+B_{13}$
Monetized Total[f, g]			$25,220+B

Notes:

[a] Premature mortality associated with ozone is not separately included in this analysis. It is assumed that the Pope, et al. C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants. Also note that the valuation assumes the 5 year distributed lag structure described earlier.

[b] PM reductions are due to reductions in NO_X and SO_2 resulting from the Tier 2/Gasoline Sulfur rule.

[c] Incidences are rounded to the nearest 100.

[d] Dollar values are rounded to the nearest 10 million.

[e] The Ui are the incidences and the Bi are the values for the unquantified category i. A detailed listing of unquantified PM, ozone, CO, and HAPS related health and welfare effects is provided in Table IV.D.–8.

[f] B is equal to the sum of all unmonetized categories, i.e. $B_1+B_2+ * * * +B_{13}$.

[g] These estimates are based on the EPA preferred approach for valuing reductions in premature mortality, the VSL approach. This approach and an alternative, age-adjusted approach—the VSLY approach—are discussed more fully in section f above.

TABLE IV.D.–7.—TIER 2/GASOLINE SULFUR RULE: 2030 MONETIZED BENEFITS ESTIMATES FOR ALTERNATIVE PREMATURE MORTALITY VALUATION APPROACHES

[Millions of 1997 dollars]

Premature mortality valuation approach	PM mortality benefits	Total benefits
Value of statistical life (VSL) ($5.9 million per life saved)[a]	$23,380	$25,220 + B
Value of statistical life-years (VSLY) ($360,000 per life-year saved, which implies $3.6 million per life saved, based on the mean of 14 life years saved)[a,b]	11,900	13,790 + B

Notes:

[a] Premature mortality estimates are determined assuming a 5 year distributed lag, which applies 25 percent of the incidence in year 1 and 2, and then 16.7 percent of the incidence in years 3, 4, and 5.

[b] The VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies used to obtain the VSL estimate. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This approach is discussed more fully in section f above.

TABLE IV.D.–8.—ADDITIONAL, NON-MONETIZED BENEFITS OF THE TIER 2/GASOLINE SULFUR STANDARDS

Pollutant	Unquantified effects
Ozone Health	Premature mortality.[a]
	Increased airway responsiveness to stimuli.
	Inflammation in the lung
	Chronic respiratory damage
	Premature aging of the lungs
	Acute inflammation and respiratory cell damage
	Increased susceptibility to respiratory infection
	Non-asthma respiratory emergency room visits
	Reductions in screening of UV–b radiation
Ozone Welfare	Decreased yields for commercial forests
	Decreased yields for fruits and vegetables
	Decreased yields for non-commercial crops
	Damage to urban ornamental plants
	Impacts on recreational demand from damaged forest aesthetics
	Damage to ecosystem functions
PM Health	Infant mortality
	Low birth weight
	Changes in pulmonary function
	Chronic respiratory diseases other than chronic bronchitis
	Morphological changes
	Altered host defense mechanisms
Nitrogen and Sulfate Deposition Welfare	Impacts of acidic sulfate and nitrate deposition on commercial forests
	Impacts of acidic deposition to commercial freshwater fishing
	Impacts of acidic deposition to recreation in terrestrial ecosystems
	Reduced existence values for currently healthy ecosystems
	Impacts of nitrogen deposition on commercial fishing, agriculture, and forests
	Impacts of nitrogen deposition on recreation in estuarine ecosystems
CO Health	Premature mortality.[a]
	Behavioral effects
	Hospital admissions—respiratory, cardiovascular, and other
	Other cardiovascular effects
	Developmental effects
	Decreased time to onset of angina
	Non-asthma respiratory ER visits
HAPS Health	Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde)
	Anemia (benzene)
	Disruption of production of blood components (benzene)
	Reduction in the number of blood platelets (benzene)
	Excessive bone marrow formation (benzene)
	Depression of lymphocyte counts (benzene)
	Reproductive and developmental effects (1,3-butadiene)
	Irritation of eyes and mucus membranes (formaldehyde)
	Respiratory irritation (formaldehyde)
	Asthma attacks in asthmatics (formaldehyde)
	Asthma-like symptoms in non-asthmatics (formaldehyde)
	Irritation of the eyes, skin, and respiratory tract (acetaldehyde)
HAPS Welfare	Direct toxic effects to animals
	Bioaccumlation in the food chain

[a] Premature mortality associated with ozone and carbon monoxide is not separately included in this analysis. It is assumed that the Pope, et al. C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants.

In addition, in analyzing the present rule, we recognized that the benefits estimates were subject to a number of uncertainties with other parameters. In Table IV D–9, we present alternative calculations representing the effect of different assumptions on individual elements of the benefits analysis and on the total benefits estimate. For example, this table can be used to answer questions like "What would total benefits be if we were to use the Dockery, et al. C–R function to estimate avoided premature mortality?" This table also displays some assumptions that can be made to value some of the categories that are indicated with a "B" in the primary estimate. Overall, this table provides alternative calculations both for valuation issues (e.g., the correct value for a statistical life saved) and for physical effects issues (e.g., how reversals in chronic illnesses are treated). We show how the alternative assumption being valued would change the resulting total primary estimate, and the percentage change from the primary estimate associated with the alternative calculation. This table is not meant to be comprehensive. Rather, it reflects some of the key issues identified by EPA or commenters as likely to have a significant impact on total benefits.

TABLE IV.D.–9.—ALTERNATIVE BENEFITS CALCULATIONS FOR THE TIER 2 GASOLINE SULFUR RULE IN 2030

Alternative calculation	Impact on primary benefit estimate (million 1997$)
5th percentile of "measurement" uncertainty distribution	–$20,300 (–81%)
95th percentile of "measurement" uncertainty distribution	+33,900 (+134%)
PM-related premature mortality based on Dockery et al.	+30,200 (+120%)
Value of avoided premature mortality incidences based on statistical life years.	–11,500 (–46%)
Reversals in chronic bronchitis treated as lowest severity cases	+280 (+1%)
Value of visibility changes in all class I areas	+180 (+1%)
Value of visibility changes in eastern U.S. residential areas	+420 (+2%)
Value of visibility changes in western U.S. residential areas	+130 (+1%)
Household soiling damage	+110 (+1%)
Avoided costs of reducing nitrogen loadings in east coast estuaries	+160 (+1%)

The estimated adjusted cost of implementing the final Tier 2 program is $5.3 billion (1997$), while the estimate of monetized benefits using EPA's preferred approach for monetizing reductions in PM-related premature mortality—the VSL approach—are $25.2 billion (1997$). Monetized net benefits using EPA's preferred method for valuing avoided incidences of premature mortality are approximately $19.9 billion (1997$). Using the alternative, age-adjusted approach—the VSLY approach—total monetized benefits are projected to be around $13.8 billion (1997$). Monetized net benefits using this approach are approximately $8.5 billion (1997$). Therefore, implementation of the Tier 2 program will provide society with a net gain in social welfare. Tables VI.D.–10a and IV.D.–10b summarize the costs, benefits, and net benefits for the two alternative valuation approaches.

TABLE IV.D.–10A.—2030 ANNUAL MONETIZED COSTS, BENEFITS, AND NET BENEFITS FOR THE FINAL TIER 2/GASOLINE SULFUR RULE: EPA PREFERRED ESTIMATE USING THE VALUE OF STATISTICAL LIVES SAVED APPROACH TO VALUE REDUCTIONS IN PREMATURE MORTALITY [a]

	Billion 1997 (dollars)
Adjusted compliance costs	$5.3
Monetized PM-related benefits [b].	24.7+B_{PM}
Monetized Ozone-related benefits [b].	0.5+B_{Ozone}
Monetized net benefits [c,d]	19.9+B

Notes:

[a] For this section , all costs and benefits are rounded to the nearest 100 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[b] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table IV.D.–8. Unmonetized PM-and ozone-related benefits are indicated by B_{PM}. And B_{Ozone}, respectively.

[c] B is equal to the sum of all unmonetized benefits, including those associated with PM, ozone, CO, and HAPS.

[d] These estimates are based on the EPA preferred approach for valuing reductions in premature morality, the VSL approach. This approach and an alternative, age-adjusted approach—the VSLY approach—are discussed more fully in section f above.

Table IV.D.–10b.—2030 Annual Monetized Costs, Benefits, and Net Benefits for the Final Tier 2/ Gasoline Sulfur Rule: Alternative Estimates Using the Value of Statistical Life Years Saved Approach to Value Reductions in Premature Mortality [a]

	Billion 1997 (dollars)
Adjusted compliance costs	$5.3
Monetized PM-related benefits [b].	$13.3+$B^{PM}$
Monetized Ozone-related benefits [b].	$0.5+$B^{Ozone}$
Monetized net benefits [c, d]	$8.5+B

Notes:

[a] For this section, all costs and benefits are rounded to the nearest 100 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[b] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table IV.D.–8. Unmonetized PM-and ozone-related benefits are indicated by B_{PM}. And B_{Ozone}, respectively.

[c] B is equal to the sum of all unmonetized benefits, including those associated with PM, ozone, CO, and HAPS.

[d] The VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies used to obtain the VSL estimate. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This approach is discussed more fully in section f above.

V. Other Vehicle-Related Provisions

The section describes several additional provisions of today's final rule that were not previously discussed in this preamble.[108]

A. Final Tier 2 CO, HCHO and PM Standards

Tables IV.B.–4 and –5 in Section IV.B.4.a. above presented the Tier 2 standards for carbon monoxide (CO), formaldehyde (HCHO), and particulate matter (PM). The following paragraphs discuss our selection of these specific standards.

1. Carbon Monoxide (CO) Standards

Beyond aligning carbon monoxide (CO) standards for all LDVs and LDTs, and harmonizing with California vehicle technology, reduction in CO emissions is not a primary goal of the Tier 2 program. However, we note that more than three-fourths of CO emissions in 1997 came from mobile sources and that there are currently 20 officially designated CO nonattainment areas in the U.S. These areas include 47 counties with a combined population of 34 million. In addition, there are 23 officially designated maintenance areas also with a combined population of 34 million. Further, CO is a deadly gas that leads to accidental poisoning fatalities and injuries. Also, CO may play a role in ozone formation by increasing the reactivities of VOCs in the atmosphere.

Although there remain many areas of nonattainment and maintenance for the

[108] Generally the provisions of this section V that apply to HLDTs also apply to MDPVs. See section IV.B.4.g for a thorough discussion of the main program elements and how they impact MDPVs.

CO NAAQS, and those areas include large populations, the broad trends indicate that ambient levels are being reduced and the amount of further reductions needed to meet the CO NAAQS will not be as substantial as for the ozone NAAQS. The reductions in this program will help ensure that emissions and ambient levels of CO continue to decline, which will contribute to the attainment and maintenance of the CO NAAQS in current nonattainment areas. These standards will also ensure that CO levels do not increase in the future, which could exacerbate any CO attainment and maintenance concerns. Our analysis estimating of the tons of CO reduction due to the Tier 2/Gasoline Sulfur program is found in Chapter III of the RIA.

Thus the CO standards we are finalizing for all Tier 2 LDVs and LDTs are essentially the same as those from the NLEV program for LDV/LLDTs. These standards will harmonize with CalLEV II CO standards except at California's SULEV level (EPA Bin 2). This lone divergence will not pose additional burden to manufacturers because the federal Tier 2 CO standards for these vehicles will be less stringent than California's. Bins applicable during the interim programs will include CO values from the NLEV program for LDV/LLDTs and from the Cal LEV I program for HLDTs.[109] In our NPRM, we proposed tighter CO standards than California for certain higher bins. Based upon comment, we are aligning our CO standards with those of California to help ensure that carry over between the two programs can occur.[110] This alignment is consistent with our goal of bringing all LDVs and all categories of LDTs under common standards that allow for technology to be harmonized to the extent possible with California. Despite these minor changes, we still expect the standards in today's rule to lead to CO reductions.

2. Formaldehyde (HCHO) Standards

Similar to our approach to CO standards, we are aligning all Tier 2 LDVs and LDTs under the formaldehyde standards from the NLEV program or CalLEV II program. HLDTs, which are not subject to the NLEV program, will become subject to federal formaldehyde standards for the first time under the provisions of this rulemaking.

Formaldehyde is a hazardous air pollutant and EPA is required to regulate motor vehicle formaldehyde under section 202(l) of the Act. The standards finalized today are primarily of concern for methanol and methane (compressed natural gas or CNG)-fueled vehicles, because formaldehyde is chemically similar to methanol and methane and is likely to be produced when methanol or methane are not completely burned in the engine. HLDTs are not included under the NLEV program and will therefore not face formaldehyde standards as LDVs and LLDTs will in 2001 (1999 in the northeast states). We believe it is appropriate to bring HLDTs under HCHO standards in this rulemaking. Applying formaldehyde standards to HLDTs will be consistent with our goals of aligning standards for all LDVs and LDTs regardless of fuel type and harmonizing technologically with California standards wherever possible and reasonable and the burden will be minimal. Consequently, we are including formaldehyde standards for HLDTs under the Tier 2 program as well as under the interim programs.

3. Use of NMHC Data To Show Compliance with NMOG Standards; Alternate Compliance With Formaldehyde Standards

In response to comments, we are finalizing a provision to allow manufacturers to demonstrate compliance with the interim and Tier 2 NMOG standards using NMHC data (non-methane hydrocarbons) for gasoline and diesel vehicles. For these vehicles, NMOG and NMHC emissions are very similar and testing for NMHC is considerably simpler and cheaper than measuring NMOG. Data available to us show that NMHC emissions at levels expected from interim and Tier 2 LDVs and LDTs can be adjusted to represent NMOG emissions by a small multiplicative factor. We are finalizing to accept NMHC test results to demonstrate compliance with the NMOG standards, but are requiring that the NMHC results be multiplied by 1.04. We will permit the use of other adjustment factors based upon comparative testing.

A drawback to NMHC testing is that NMHC testing does not yield formaldehyde results as NMOG testing does. We noted in the NPRM that HCHO is actually a component of NMOG and that we expect that all vehicles able to meet the proposed Tier 2 or interim standards (including methanol and CNG-fueled vehicles) will readily comply with the HCHO standards. In fact, based upon a review of certification data, we believe that gasoline and diesel vehicles will be far below the HCHO standards, perhaps by as much as 90%. (See the Response to Comments document for details)

To reduce testing costs while harmonizing with the CalLEV II standards we are finalizing a provision that will permit manufacturers of gasoline and diesel vehicles to demonstrate compliance with the formaldehyde standards based on engineering judgement. This provision will apply only to diesel and gasoline fueled vehicles and will require manufacturers to make a demonstration in their certification application that vehicles having similar engine and vehicle size and engine and aftertreatment technologies have been shown to exhibit compliance with the applicable formaldehyde standard for their full useful life. This demonstration will be similar to that currently required for gasoline vehicles to demonstrate compliance with the particulate matter standard (see 40 CFR 86.1829(b)(1)), and should be readily available from California vehicles where NMOG testing is required and formaldehyde data is routinely generated.

4. Particulate Matter (PM) Standards

We proposed to adopt tighter PM standards. For Tier 2 vehicles, we proposed PM bin values such that PM would consistently be 0.01 g/mi or less. To provide manufacturers with flexibility, we proposed a 0.02 g/mi PM standard for vehicles that certify to the highest Tier 2 bins. As we have indicated elsewhere in this preamble, we anticipate that low sulfur diesel fuel will be available by 2007 to enable diesel vehicles to utilize advanced diesel technologies and meet these PM standards.

For the interim standards we proposed a PM standard of 0.06 g/mi for the highest bins. We received considerable comment from manufacturers and others about the PM standards we proposed. In the final rule, we are raising the PM standard to 0.08 g/mi for bin 10. For HLDTs, manufacturers would likely have had to use advanced diesel technologies to attain our proposed interim standards and these technologies require low sulfur diesel fuel. Since we do not expect that fuel to be widely available until the 2006–2007 timeframe, we are raising the PM standard so that diesels are not barred from the interim program by a fuel situation beyond their manufacturers' control.

PM standards are primarily a concern for diesel-cycle vehicles, but they also apply to gasoline and other otto-cycle

[109] We recognize that the standards we are finalizing for interim LDT4s are more stringent than for equivalent vehicles (MDV3s) under Cal LEV I. Still our interim HLDT standards harmonize with Cal LEV I standards applicable to MDV2s.

[110] Ibid.

vehicles. We will continue to permit otto-cycle vehicles to certify to PM standards based on representative test data from similar technology vehicles.

B. Useful Life

The "useful life" of a vehicle is the period of time, in terms of years and miles, during which a manufacturer is formally responsible for the vehicle's emissions performance. For LDVs and LDTs, there have historically been both "full useful life" values, approximating the average life of the vehicle on the road, and "intermediate useful life" values, representing about half of the vehicle's life. We proposed and are finalizing several changes to the current useful life provisions for LDVs and LDTs.

1. Mandatory 120,000 Mile Useful Life

We are finalizing our proposal to equalize full useful life values for all Tier 2 LDVs and LDTs at 120,000 miles. Congress, in directing EPA to perform the Tier 2 study, also directed EPA to consider changing the useful lives of LDVs and LDTs. Manufacturers have made numerous advances in quality, materials and engineering that have led to longer actual vehicle lives and data show that each year of a vehicle's life, people are driving more miles. Current data indicate that passenger cars are driven approximately 120,000 miles in their first ten years of life. Trucks are driven further. Current regulatory useful lives are 10 years/100,000 miles for LDV/LLDTs and 11 years/120,000 miles for HLDTs. We project, based on our Tier 2 model, that approximately 13 percent of light-duty NO_X and 11 percent of light-duty VOCs is produced between 100,000 and 120,000 miles. Given the trend toward longer actual vehicle lives and increases in annual mileage, we believe that it is reasonable to extend the regulatory useful life requirements California, in its LEV II program, has adopted full useful life standards for all LDVs and LDTs of 10 years or 120,000 miles, whichever occurs first. The time period for federal LDV/LLDTs will be 10 years, but will remain at 11 years for HLDTs consistent with the Clean Air Act. Intermediate useful life values, where applicable, will remain at 5 years or 50,000 miles, whichever occurs first. Where manufacturers elect to certify Tier 2 vehicles for 150,000 miles to gain additional NO_X credits, as discussed below, the useful life of those vehicles will be 15 years and 150,000 miles. We are not harmonizing with California on the mandatory useful life for evaporative emissions of 15 years and 150,000 miles, but rather this useful life will be mandatory for evaporative emissions only when a manufacturer elects optional 150,000 mile exhaust emission certification.

We proposed to extend the useful life of interim LDV/LLDTs to 10 years/120,000 miles beginning in 2004. Based upon extensive comment, we are not finalizing that provision and the useful lives of interim LDV/LLDTs will remain unchanged to help facilitate their carryover from the NLEV program into the interim program. Commenters provided persuasive argument that the proposed provision, along with others, would impose a large workload burden on manufacturers because they would be unable to carry over certification data from 2003 and would have to recertify virtually all of their LDV/LLDTs in 2004. Manufacturers stressed that this would be an especially unproductive use of their resources because these vehicles would all have to be recertified again as they were phased into the Tier 2 standards between 2005 and 2007. This change in the final rule will have only minimal impact on the benefits of our program.

2. 150,000 Mile Useful Life Certification Option

We are adopting as proposed a provision to provide additional NO_X credit in the fleet average calculation for vehicles certified to a useful life of 150,000 miles. A manufacturer certifying a test group to a 150,000 mile useful life will incorporate those vehicles into its corporate NO_X average as if they were certified to a full useful life standard 0.85 times the applicable 120,000 mile NO_X standard. To use this option, the manufacturer will have to agree to (1) certify the engine family to the applicable 120,000 mile exhaust and evaporative standards at 150,000 miles for all pollutants; and (2) increase the mileage on the single extra-high mileage in-use test vehicle from a minimum of 90,000 miles to a minimum of 105,000 miles.

Today's vehicles are lasting longer and being driven farther than those built in past years and we believe it is reasonable to encourage the development of more durable emission control systems. Consequently we believe it is appropriate to provide incentives to manufacturers to certify their vehicles to extended useful lives beyond 120,000 miles. This is why we proposed and are today finalizing additional NO_X credits for Tier 2 vehicles certified to a useful life of 150,000 miles.

In the final rule we are adding an option that, for a test group certified to a 150,000 mile useful life, the manufacturer may choose between the additional credits or a waiver of intermediate life standards. Commenters suggested that some vehicles would be discriminated against by our intermediate life standards, because they might have flat deterioration curves, and could meet our full life standards, but not the lower intermediate life standards. We are reluctant to give up our intermediate life standards, because we believe they provide an additional measure of certainty that vehicles will meet standards. Nonetheless, we believe that certification to a longer useful life is an important goal and that manufacturers who do so will likely use technologies that have very flat deterioration curves. This option provides manufacturers with the flexibility to certify vehicles without having to comply with intermediate life standards. In exchange they must comply with full life standards for considerably longer mileage.

C. Supplemental Federal Test Procedure (SFTP) Standards [111]

1. Background

Supplemental Federal Test Procedure (SFTP) standards require manufacturers to control emissions from vehicles when operated at high rates of speed and acceleration (the US06 test cycle) and when operated under high ambient temperatures with air conditioning loads (the SC03 test cycle). The existing light duty SFTP requirements begin a three year phase-in in model year 2000 for Tier 1 LDV/LLDTs.[112] For HLDTs, SFTP requirements begin a similar phase-in in 2002. Intermediate and full useful life SFTP standards exist for all categories of Tier 1 vehicles except that SFTP standards do not apply to diesel fueled LDT2s and HLDTs. Table V.A.–1 shows the full useful life federal SFTP requirements applicable to Tier 1 vehicles.

[111] SFTP requirements do not apply to MDPVs. We plan to address the applicability of SFTP standards and test procedures to MDPVs in a future rulemaking.

[112] For vehicles included in the NLEV program, this phase-in becomes a four year phase-in beginning in 2001.

TABLE V.A.–1.—FULL USEFUL LIFE FEDERAL SFTP STANDARDS APPLICABLE TO TIER 1 VEHICLES

Vehicle category	NMHC + NO_X (weighted g/mi)[a]	CO (g/mi)[b]		
		US06	SC03	Weighted
LDV/LDT1 (gasoline)	0.91	11.1	3.7	4.2
LDV/LDT1 (diesel)	2.07	11.1	—	4.2
LDT2	1.37	14.6	5.6	5.5
LDT3	1.44	16.9	6.4	6.4
LDT4	2.09	19.3	7.3	7.3

Notes:
[a] Weighting for NMHC+NO_X and optional weighting for CO is 0.35x(FTP)+0.28x(US06)+0.37x(SC03).
[b] CO standards are stand alone for US06 and SC03 with option for a weighted standard.

2. SFTP Under the NLEV Program

The NLEV program includes SFTP requirements for LDVs, LDT1s and LDT2s. These requirements impose the Tier 1 intermediate and full useful life SFTP standards on Tier 1 and TLEV vehicles, but impose only 4000 mile standards adopted from California LEV I program on LEVs and ULEVs.[113]

NLEV SFTP standards for LEVs and ULEVs are shown in Table V.A.–2. Table V.A.–2 also includes the California LEV I SFTP standards for LDT3s and 4s. The standards in that table do not provide for a weighted standard for NMHC+ NO_X or for CO, but rather employ separate sets of standards for the US06 and SC03 tests. Also, while the NLEV and CAL LEV I SFTP standards apply to gasoline and diesel vehicles, they do not include a standard for diesel particulates (PM).

TABLE V.A.–2.—SFTP STANDARDS FOR LEVS AND ULEVS IN THE NLEV/CAL LEV I PROGRAM

[4000 Mile Standards]

	US06		SC03	
	NMHC+NO_X (g/mi)	CO (g/mi)	NMHC+NO_X (g/mi)	CO (g/mi)
LDV/LDT1	0.14	8.0	0.20	2.7
LDT2	0.25	10.5	0.27	3.5
LDT 3 (Calif MDV 2)	0.4	10.5	0.31	3.5
LDT 4 (Calif MDV 3)	0.6	11.8	0.44	4.0

3. SFTP Standards for Interim and Tier 2 LDVs and LDTs: As Proposed

Since no significant numbers of vehicles certified to SFTP standards will enter the fleet until 2001, manufacturers raised concerns during the development of the NPRM regarding significant changes to the SFTP program before its implementation. We stated in the NPRM that it was reasonable not to increase SFTP stringency beyond NLEV/CalLEV I levels for the Tier 2 program, but we proposed to include SFTP standards adjusted for intermediate and full useful life deterioration where there are currently only 4000 mile standards.

Full useful life standards for Tier 2 vehicles are consistent with our mandate under the Clean Air Act. We derived the full and intermediate useful life standards in the NPRM by applying deterioration allowances from our draft MOBILE 6 model to the existing 4000 mile standards for LDVs and LLDTs. For HLDTs we applied similarly derived deterioration allowances to California's LEV I SFTP standards for MDV2s and MDV3s, which are the corresponding categories to LDT3s and LDT4s in the California LEV I program. The full and intermediate useful life SFTP standards we proposed would have applied to all Tier 2 vehicles including Tier 2 LDT3s and LDT4s. Further, since our interim standards are derived from NLEV and Cal LEV I standards, we proposed that our full life SFTP standards would apply to all interim LDV/LLDTs beginning in 2004.[114]

4. Final SFTP Standards for Interim and Tier 2 LDVs and LDTs

Based upon extensive comment from manufacturers, we are persuaded that our proposed intermediate and full life SFTP standards need more review and should possibly be reexamined in a separate rulemaking. Manufacturers were quite concerned that the technique we used to obtain the intermediate and full life SFTP standards led to standards that were overly stringent. They argued that they have little experience with SFTP compliant vehicles given the current infancy of the program and they do not know whether SFTP emissions can be reasonably be expected to deteriorate like FTP emissions. Consequently, in today's notice, we are finalizing a program that will adopt the existing NLEV/Cal LEV I 4000 mile standards and utilize adjusted full life standards from the Tier 1 program, instead of values derived by applying the draft MOBILE 6 model.

These standards will apply to all Tier 2 vehicles and to all interim LDV/LLDTs. We proposed and are finalizing that interim HLDTs meet Tier 1 SFTP standards which do not finish their phase-in until the 2004 model year.

With regard to intermediate and full life SFTP standards, the preamble to the final rule implementing the SFTP program for the Tier 1 SFTP emission standards (61 FR 54856) provided a formula for computing SFTP standards to apply under more stringent future

[113] This disparity arose because neither EPA nor CARB had full useful life SFTP standards for LEVs or ULEVs when the NLEV program was adopted. Since a major requirement of the NLEV program was harmony with California standards, EPA adopted the California SFTP standards in place for the NLEV time frame (2001 and later).

[114] Except that, we proposed to permit TLEV vehicles (EPA interim Bin 10 in Table IV.B.–4), which are not subject to new SFTP standards under NLEV, to continue to meet Tier 1 SFTP standards, and to permit HLDTs under the interim programs to continue to meet Tier 1 SFTP standards that do not fully phase in until the 2004 model year.

FTP standards. In the Tier 1 program, SFTP standards represent a weighted average of FTP, US06 and SC03 standards. The three components are weighted by factors of 0.35, 0.28, and 0.37 respectively. The formula simply adjusts the Tier 1 *SFTP* weighted average standards downward to reflect the decrease in the component *FTP* standards. The weighting factors remain the same and the US06 and SC03 standards remain the same, but the SFTP standard becomes tighter because the FTP component becomes smaller. These standards will take effect for all LDV/LLDTs beginning in 2004 and will phase in with the Tier 2 standards for HLDTs in 2008 and 2009. The formula is as follows:

New SFTP Standard = Old SFTP Standard − [0.35 × (Tier 1 FTP standard − New FTP Standard)]

In today's final rule, we will employ this formula to compute full useful life SFTP standards for all Tier 2 vehicles and for interim LDV/LLDTs. Because we are also adopting the California 4000 mile SFTP standards for these vehicles, we are not adopting intermediate life SFTP standards, so as to avoid the burden of three sets of SFTP standards.

LDT3 and LDT4 SFTP standards do not currently apply to diesels. Further, the standards applicable to Tier 1 diesel LDVs and LDT1s are less stringent than gasoline standards and do not apply to the SC03 cycle. There are no SFTP standards under Tier 1 for diesel LDT2s. In this final rule, we are applying the same approach we are using with other standards in this document to the Tier 2 and interim SFTP standards. Consequently, we are finalizing that Tier 2 vehicles and interim LDV/LLDTs with diesel or gasoline engines must comply with the same NMHC+NO_X and CO SFTP limits. Thus, in computing Tier 2 SFTP full life standards for diesel LDVs and LDT1s from Tier 1 values, the values for diesels must be determined from the standards applicable to gasoline vehicles of the same category.

Because we lack certainty as to whether diesel vehicles can comply with the 4,000 mile SFTP standards for gasoline vehicles that we are adopting from the NLEV and Cal LEV I programs, we are providing an option that diesel LDV/LLDTs may comply with intermediate life SFTP standards instead.[115] Manufacturers must calculate intermediate life standards using the same approach described for full life standards, but must substitute appropriate intermediate life values in the equation above. This provision will only apply through model year 2006, and thus will likely only impact interim non-Tier 2 vehicles, given the very small market share that diesels occupy and given our expectation that they will be the last LDV/LLDTs phased into Tier 2 standards. We noted above that interim non-Tier 2 HLDTs will have the option of meeting Tier 1 SFTP standards. Thus diesel HLDTs will not have to comply with the 4,000 mile standards in the interim years and the option we are providing for LDV/LLDTs is not needed for HLDTs.

5. Adding a PM Standard to the SFTP Standards

We requested comment on the appropriate SFTP PM standards for diesel vehicles. We suggested it would be appropriate to establish a margin above the applicable FTP PM standard to serve as the SFTP standard. EPA has implemented such margins in recent consent decrees, under which heavy-duty engine manufacturers have agreed not to exceed emission levels 1.25 times the applicable exhaust standards (including PM standards) when engines are operated over a wide range of operating conditions. We received comments in favor of an SFTP PM standard of 1.25 times the FTP standard and we received many comments from manufacturers against setting any SFTP PM standard until more data become available.

We believe it is reasonable to include an SFTP standard for PM. However, we are uncertain as to the technical appropriateness of the 1.25 value for passenger vehicles. Further, the 1.25 value would lead to an SFTP standard for PM that would not match the stringency of the other SFTP standards we are finalizing. Consequently, we are finalizing a procedure for computing diesel PM standards that is nearly identical to the procedure for computing weighted SFTP standards for NMHC+NO_X and CO described above. We believe standards computed in this way will be readily feasible for both gasoline and diesel vehicles.

To compute the SFTP PM standards, manufacturers will use the same formula described above for NMHC+NO_X and CO. Where that formula calls for the Tier 1 *SFTP* standard to be inserted, manufacturers must insert the Tier 1 *FTP* standard. This is because, under Tier 1 standards, there is no SFTP standard for PM. However, the Tier 1 weighted SFTP standards are equal to the Tier 1 FTP standards (or the sum of the Tier 1 FTP standards in the case of NMHC+NO_X). Using the Tier 1 FTP PM standards in this way will lead to a Tier 2 SFTP PM standard whose stringency is appropriately matched to the other pollutants.

For HLDTs , we proposed and are finalizing that Tier 1 SFTP standards would apply through the interim program. because of the late start of SFTP phase-in for Tier 1 vehicles. We see no reason to impose SFTP PM standards on these vehicles during the interim period when their manufacturers will be under pressure to develop diesel vehicles to comply with the Tier 2 standards. Also, if we were to impose an FTP PM standard on the interim vehicles, it would likely be matched to the interim phase in for HLDTs and manufacturers would simply defer compliance for diesels until the last phase-in year (2007). The manufacturers would then have to recertify to the Tier 2 standards by 2009. Given the relatively small number of diesel vehicles, we believe the most reasonable approach is to defer SFTP PM standards for HLDTs until the Tier 2 phase-in. Consequently, we are finalizing that Tier 2 HLDTs will have to comply with an SFTP PM standard computed as described above.

For LDV/LLDTs we are also including the SFTP PM standard for the Tier 2 vehicles. There are only a few diesel LDV/LLDTs currently produced and no large increase in their numbers is expected. We see little environmental benefit in imposing the SFTP PM standard on interim vehicles.

6. Future Efforts Relevant to SFTP Standards

We are very concerned about "off cycle" emissions, *i.e.* those emissions that occur under vehicle operational modes that are not captured in the FTP. SFTP standards help to address our concerns and we believe that they should apply to all vehicles, regardless of fuel. Our final rule essentially promulgates Tier 1 SFTP standards that are reduced to represent the reduction in the FTP component standards. As we indicate under our discussion of SFTP for medium duty passenger vehicles (see section IV.B.4.g) we expect to conduct a rulemaking to establish appropriate "Tier 2" SFTP standards for all Tier 2 vehicles. In that rule, we expect to reexamine the US06 and SC03 test cycles and their applicability to vehicles using different fuels and technologies,

[115] The 4,000 mile standards under NLEV are phased-in in such a way that diesels would not likely be subject to them until the 2004 model year, given their very small market share. Today's rulemaking effectively supercedes the NLEV program beginning with the 2004 model year. In other words, while NLEV contains 4,000 mile SFTP standards for diesels, they are not likely to ever impact diesel LDV/LLDTs.

including whether these cycles are the most appropriate ones for diesels. We will also examine whether it is necessary to have different sets of standards for different vehicle sizes or whether it is possible to establish one set of standards for all vehicles.

D. LDT Test Weight

Historically, HLDTs (LDT3s and LDT4s) have been emission tested at their adjusted loaded vehicle weight (ALVW), while LDVs, LDT1s, and LDT2s have been tested at their loaded vehicle weight (LVW). ALVW is equivalent to the curb weight of the truck plus half its maximum payload, while LVW is equivalent to the curb weight of the truck plus a driver and one adult passenger (300 pounds). As we are equalizing standards and useful lives across LDVs and all categories of LDTs, we believe it is appropriate to test all the vehicles under the same conditions. Therefore, we are finalizing as proposed to test HLDTs at their loaded vehicle weight. We believe this is appropriate because the standards we are imposing on HLDTs under Tier 2 are considerably more stringent than the Tier 1 standards. Further, one of our reasons for bringing HLDTs under the same standards as passenger cars is that these trucks include many vans and sport utility vehicles that are often used as passenger cars with just one or two passengers. Lastly, we note that testing HLDTs at LVW is consistent with the way they have been tested for fuel economy purposes for many years. Consequently, we believe it is appropriate to test them at LVW.

The NPRM proposed that all HLDTs would certify using LVW beginning in the 2004 model year. Based upon comments, the final rule will allow the certification of HLDTs based on ALVW until those vehicles are phased into the Tier 2 standards in 2008 and 2009 at which time they must be tested at LVW. This will enhance carryover of California vehicles to the Federal interim program in cases where the California vehicles meet our interim standards.

E. Test Fuels

As discussed elsewhere in this preamble, the NLEV program was adopted virtually in its entirety from California's program. Because California's standards were developed around the use of California Phase II reformulated gasoline (RFG) as the exhaust emission test fuel, we adopted California Phase II test fuel as the exhaust emission test fuel for gasoline-fueled vehicles in the federal NLEV program, although we recognized at the time that vehicles outside of California would be unlikely to operate on that fuel in use. In the NPRM we proposed interim programs that were derived from NLEV (for LDV/LLDTs) and the CAL LEVI program (for HLDTs), and we proposed to accept certification test results generated on California fuel, but indicated that we might test or require in-use testing on federal fuel.

Based upon comment we are finalizing provisions to permit, for interim vehicles, that if a test group has been certified to the exhaust emission standards using California fuel and is being carried into the interim program from NLEV or is being carried across from California LEV I certification, then we will not test or require in-use exhaust testing on federal fuel. This change is intended to help address recertification workload concerns raised by manufacturers. For new certification not carried across from California LEV I or carried over from NLEV, and for any Tier 2 vehicles, we will accept exhaust certification test results based on California fuel for 50 state vehicles only, but we will reserve the right to perform or require certification confirmatory testing and in-use testing on federal test fuel.

We recognize that manufacturers may want to perform calibration changes on vehicles carried across from the California LEV I program or carried over from NLEV program. These calibration changes will likely be aimed at certifying the test group to the lowest possible NO_X value. We believe that these calibration changes would be appropriate, provided they can still be covered by the existing worst case durability data vehicle. We will perform or require certification confirmatory testing and in-use emission testing on these vehicles using California fuel.

Because differences exist between the California and federal evaporative emission testing procedures, we proposed to continue to require the use of federal certification fuel as the test fuel in evaporative emission testing. Under current programs, where California and federal evaporative emission standards are essentially the same, California accepts evaporative results generated on the federal procedure (using federal test fuel), because available data indicates the federal procedure to be a "worst case" procedure. The evaporative standards California has adopted for their LEV II program are more stringent than those we are finalizing in this document. In the NPRM, we requested comment and supporting emission test data on whether vehicles certified to CalLEV II evaporative standards using California fuels will necessarily comply with the federal Tier 2 evaporative standards, including ORVR standards, when tested with federal test fuel. While we got comments from manufacturers advocating that we accept the results of California evaporative testing to demonstrate compliance with the federal evaporative standards, we received no supporting data. Still, given the fairly large difference between California and federal evaporative standards, it seems reasonable that a vehicle meeting the California standards under California fuels and test conditions might also meet federal standards under federal fuels and conditions. We believe it may be possible for manufacturers to establish a relationship between the two sets of standards, fuels and conditions that would enable us to grant federal certification based upon data showing conformity with the California standards under California fuels and conditions. Consequently, we are including a provision in the certification regulations to enable manufacturers to obtain federal evaporative certification based upon California results, if they obtain advance approval from EPA. EPA will review test data from manufacturers to establish whether it is appropriate to accept California data to demonstrate compliance with federal standards.

F. Changes to Evaporative Certification Procedures To Address Impacts of Alcohol Fuels

Current certification procedures, including regulations under the new CAP2000 program,[116] allow manufacturers to develop their own durability process for calculating deterioration factors for evaporative emissions. The regulations (§ 86.1824–01) permit manufacturers to develop service accumulation (aging) methods based on "good engineering judgement". The manufacturer's durability process must be designed to predict the expected evaporative emission deterioration of in-use vehicles over their full useful lives. We proposed and are finalizing requirements that these aging methods include the use of alcohol fuels to address concerns that alcohol fuels increase the permeability and thus the evaporative losses from hoses and other evaporative components. Based upon comment, we are also finalizing an option to the requirement that the manufacturer use the alcohol fuel. Under this option, the manufacturer may demonstrate to EPA using good engineering judgement

[116] The Compliance Assurance Program, (64 FR 23906) takes effect in the 2000 model year.

acceptable to EPA that its durability process for calculating evaporative emission deterioration factors accurately predicts deterioration under prolonged exposure to alcohol fuels.

We have reviewed data indicating that the permeability, and therefore the evaporative losses, of hoses and other evaporative components can be greatly increased by exposure to fuels containing alcohols.[117] Alcohols have been shown to promote the passage of hydrocarbons through a variety of different materials commonly used in evaporative emission systems. Data from component and fuel line suppliers indicate that alcohols cause many elastomeric materials to swell, which opens up pathways for hydrocarbon permeation and also can lead to distortion and tearing of components like "O" ring seals. Ethers such as MTBE and ETBE have a much smaller effect. Alcohol-resistant materials such as fluoroelastomers are available and are currently used by manufacturers to varying extents.

Alcohols do not impact evaporative components and hoses immediately, but rather it may take as long as one year of exposure to alcohol fuels for permeation rates to stabilize. The end result is higher permeation and increased in-use evaporative emissions.[118]

Today, roughly 10% of fuel sold in the U.S. contains alcohol, mainly in the form of ethanol, and such fuels are often offered in ozone nonattainment areas. We believe it is appropriate to ensure that evaporative certification processes expose evaporative components to alcohols and do so long enough to stabilize their permeability. Therefore, we are finalizing our proposal to the evaporative certification requirements to require manufacturers to develop their deterioration factors using a fuel that contains the highest legal quantity of ethanol available in the U.S.

To implement this change, we are modifying the Durability Demonstration Procedures for Evaporative Emissions found at § 86.1824–01. The amendments will require manufacturers not using an approved option, to age their systems using a fuel containing the maximum concentration of alcohols allowed by EPA in the fuel on which the vehicle is intended to operate, *i.e.*, a "worst case" test fuel. (Under current requirements, this fuel would be about 10% ethanol, by volume.) We are also modifying the Durability Demonstration Procedures to require manufacturers to ensure that their aging procedures are of sufficient duration to stabilize the permeability of the fuel and evaporative system materials. These modifications will take place as vehicles are phased into the evaporative emission standards contained in this final rule.

We requested comment on alternative ways by which manufacturers could document or demonstrate that their components are made of materials whose permeability is not significantly affected by alcohols. We received no comments responsive to this request, but we did receive comments that EPA should not change the CAP2000 provision allowing manufacturers to develop their own durability process for calculating evaporative emission deterioration factors "using good engineering judgement". We do not wish to foreclose the possibility that an alternative method may exist or may arise in the future. Consequently, in the final rule we will permit manufacturers to use an optional method based on good engineering judgement acceptable to EPA. As an example, one method would be for the manufacturer to show that it is exclusively using materials documented in the technical literature to have low permeability in the presence of alcohols.

G. Other Test Procedure Issues

California's LEV II program implements a number of minor changes to exhaust emissions test procedures. We have evaluated these changes and found that, for tailpipe emissions, the California test procedures fall within ranges and specifications permitted under the Federal Test Procedure.

With regard to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs), we believe that these vehicles will be predominantly available in California, or that they will typically be first offered for sale in California, because of California's ZEV requirement, which promotes the sale of HEVs and ZEVs. Where manufacturers market HEVs or ZEVs outside of California, it is likely that they will market the same vehicles in California. Consequently, we are finalizing our proposal to incorporate by reference California's exhaust emission test procedures for HEVs and ZEVs.[119]

In the NLEV program, we provided a specific formula used by California that could be used to compute an HEV contribution factor to NMOG emissions. This formula took into consideration the range without engine operation of various types of HEVs and had the effect of reducing the NMOG emission standard for a given emission bin (for HEV vehicles only). This would have obvious beneficial effects on a manufacturer's calculation of its corporate NMOG average.

The technology of HEVs is under rapid change and we do not believe that we can design a formula now that will accurately predict the impact of HEVs on corporate average NO_X emissions in the Tier 2 time frame. Consequently, we are finalizing the proposed provision by which manufacturers could propose HEV contribution factors for NO_X to EPA. If approved, these factors can be used in the calculation of a manufacturer's fleet average NOx emissions and will provide a mechanism to credit an HEV for operating with no emissions over some portion of its life.

These factors will be based on good engineering judgement and will consider such vehicle parameters as vehicle weight, the portion of the time during the test procedure that the vehicle operates with zero emissions, the zero emission range of the vehicle, NO_X emissions from fuel-fired heaters and any measurable NO_X emissions from on-board electricity production and storage.

The final NLEV rule (*See* 62 FR pg 31219, June 6, 1997) incorporated by reference California's NMOG measurement procedure and adopts California's approach of using Reactivity Adjustment Factors (RAFs) to adjust vehicle emission test results to reflect differences in the impact on ozone formation between an alternative-fueled vehicle and a vehicle fueled with conventional gasoline. As has been discussed elsewhere in this preamble, the NLEV program is a special case in which California standards and provisions were adopted virtually in their entirety. In the preamble to the final NLEV rule (*See* 62 FR 31203), we expressed our reservations about the use of RAFs. We also addressed our reservations about the use of reactivity factors developed in California in a program that spans a range of climates and geographic locations across the United States in the final rule on reformulated gasoline (RFG) (see 59 FR 7220). We continue to be concerned about the validity of RAFs to predict ozone formation nationwide and asked the National Academy of Sciences to

[117] Numerous SAE papers examine the permeability of fuel and evaporative system materials as well as the influence of alcohols on permeability. See, for example SAE Paper #s 910104, 920163, 930992, 970307, 970309, 930992, and 981360, copies of which are in the docket for this rulemaking.

[118] *Ibid.*

[119] California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles. In the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes; adopted August 5, 1999.

look at the scientific evidence in support of the use of these factors nationwide. While we have recently received a report from NAS,[120] we have not yet developed a final position on how RAFs should be treated in federal regulations. We are finalizing as proposed not to permit the use of RAFs in the Tier 2 program.

The issue of RAFs is relevant primarily to alcohol and CNG-fueled vehicles. RAFs are not relevant at all if a manufacturer elects to use NMHC data to show compliance with the NMOG standards. While, in our final rule, alcohol and CNG vehicles will have to comply with NMOG standards beginning in 2004 and while we desire to harmonize with California when practical and reasonable, we will not permit the use of RAFs for Tier 2 vehicles and interim non-Tier 2 vehicles. We note that we are finalizing a provision from the NPRM that permits dual fueled and flexible fueled vehicles to elect an NMOG value from the next higher bin when they are tested on an alternative fuel. This provides flexibility in compliance with applicable NMOG standards for these vehicles. We do not believe that dedicated alcohol or CNG vehicles should have any problems complying with the NMOG standards we are finalizing and consequently the relief these vehicles might get when RAFs are employed is unnecessary.

In its LEV II program, California is also implementing a number of changes to evaporative emission test procedures.[121] Many of these changes address the evaporative emission testing of hybrid electric vehicles. We proposed not to adopt California's changes, because California uses different test temperatures and different test fuel in its evaporative emission testing of gasoline vehicles than we use in the federal program. The preamble to the final NLEV rule (*See* 62 FR 31227) explains that California and EPA are reviewing an industry proposal to streamline and reconcile the California and federal procedures. That work has not been completed. However, where California adopts procedures specific to HEVs and ZEVs, we are adopting those procedures, except that our testing will occur at lower temperatures, and use a fuel determined by EPA to be representative of federal usage (for HEVs only).

[120] Ozone-Forming Potential of Reformulated Gasoline, May 1999. National Academy of Sciences; National Academy Press. Available from the NAS web site: http://www.nap.edu.

[121] California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles. Adopted August 5, 1999.

H. Small Volume Manufacturers

Our final rule includes the following flexibilities intended to assist all manufacturers in complying with the stringent proposed standards without harm to the program's environmental goals as presented in the NPRM:

- A four year phase-in of the standards for LDV/LLDTs;
- A delayed phase-in for HLDTs;
- The freedom to select from specific bins of standards;
- A standard that can be met through averaging, banking and trading of NO_X credits;
- Provisions for NO_X credit deficit carryover; and,
- Provisions for alternative phase-in schedules.

These flexibilities apply to all manufacturers, regardless of size, and in general we believe they eliminate the need for more specific provisions for small volume manufacturers.[122] However, we proposed and are finalizing one additional flexibility for small volume manufacturers. Today's rule exempts small volume manufacturers from the 25%, 50% and 75% Tier 2 phase-in requirements applicable to the 2004, 2005 and 2006 LDV/LLDTs and the 50% phase-in requirement applicable to 2008 HLDTs. Instead, small volume manufacturers will simply comply with the appropriate Tier 2 100% requirement in the 2007 and 2009 model year. In the phase-in years, small volume manufacturers will simply comply with the appropriate interim standards for all of their vehicles, except that we will also exempt small volume manufacturers from the 25%, 50% and 75% phase-in requirements for the 0.20 g/mi corporate average NO_X standard applicable to interim HLDTs in 2004–2006. Small volume HLDT manufacturers must simply comply with the interim standards, including the corporate average NO_X standard, in 2007 for 100% of their vehicles. During model years 2004–2006, these same small volume manufacturers must comply with any of the applicable bins of standards for 100% of their HLDTs.[123, 124] Provisions to deal with the leadtime issue related to HLDTs and outlined in section IV.B. apply to small volume manufacturers. Therefore unless the small volume manufacturer wants to use the optional NMOG standards for interim LDT2s and LDT4s, it may optionally meet the Tier 1 standards for its 2004 model year HLDTs, provided it commences its model year for those vehicles before the fourth anniversary date of today's rulemaking.

As explained in the NPRM, we will continue to apply the federal small volume manufacturer provisions, which provide relief from emission data and durability showing and reduce the amount of information required to be submitted to obtain a certificate of conformity. In addition, the CAP2000 program contains reduced in-use testing requirements for small volume manufacturers.

Exempting small volume manufacturers from the Tier 2 and interim HLDT phase-in requirements eliminates a dilemma that phase-in percentages can pose to a manufacturer that has a limited product line, *i.e.*, how to address percentage phase-in requirements if the manufacturer makes vehicles in only one or two test groups. We have implemented similar provisions for small entities in other rulemakings. Approximately 15–20 manufacturers that currently certify vehicles, many of which are independent commercial importers (ICIs), will qualify. These manufacturers represent just a fraction of one percent of LDVs and LDTs produced. We do not believe that this provision will have any measurable impact on air quality.

1. Special Provisions for Independent Commercial Importers (ICIs)

We requested comment in the NPRM as to whether ICIs should be exempted from the interim and Tier 2 fleet average NO_X standards. We explained that ICIs may not be able to predict their sales and control their fleet average emissions because they may be dependent upon vehicles brought to them by individuals attempting to import uncertified vehicles. We noted that the NLEV program is optional for ICIs and that ICIs are specifically prohibited, under existing regulations, from complying with the fleet average NMOG standard under the NLEV program. (*See* 40 CFR 85.1515(c)). Also, the existing regulations specifically bar ICIs from participating in any emission related averaging, banking or trading program. (*See* 40 CFR 85.1515(d)). We expressed our concern that if we do not amend this provision, ICIs would likely just pick the least stringent bin available to certify their vehicles. This would create an inequity for other manufacturers,

[122] We define small volume manufacturers to be those with total U.S. sales of less than 15,000 highway units per year. Independent commercial importers (ICIs) with sales under 15,000 per year are included under this term.

[123] For a graphical illustration of the phase-ins through time, see Table IV.B.–2.

[124] 2005–2006 for vehicles where the small volume manufacturer commences its 2004 model year for all its 2004 vehicles before the fourth anniversary date of the signature of this rule.

especially other small volume manufacturers that must comply with the fleet average NO_X standards.

Since we do not believe it is wise to finalize a provision that could lead to an inequity like this, and since averaging may not be workable for ICIs, we are finalizing that ICIs must comply with the standards from the bin that contains the relevant fleet average NO_X standard, *e.g.*, in model years 2007 and later an ICI would have to use bin 5 or below for all of its LDV/LLDTs. However, if an ICI is able to purchase credits or to certify to bins below the one containing the fleet average NO_X standard, we will permit the ICI to bank credits for future use. Where an ICI desires to certify to bins above the fleet average standard, we will permit them to do so if they have adequate and appropriate credits. Where an ICI desires to certify to bins above the fleet average standard and does not have adequate or appropriate credits to offset the vehicles, we will permit the manufacturer to obtain a certificate for vehicles using those bins, but will condition the certificate such that the manufacturer can only produce vehicles if it first obtains credits from other manufacturers or from other vehicles certified to lower bins during that model year.

We do not believe that ICIs can predict or estimate their sales of various vehicles well enough to participate in a program that will allow them leeway to produce some vehicles to higher bins now, knowing that they will sell vehicles from lower bins later. We also do not believe that we can reasonably assume that an ICI that certifies and produces vehicles one year, will certify or even be in business the next, consequently, we are also not permitting ICIs to utilize the deficit carryforward provisions of the rule.

Essentially, ICIs will be allowed the major benefits of the averaging, banking and trading program, but will be constrained from getting into a situation where they can ever produce vehicles to higher bins that they can not cover with credits at the time they produce the vehicles.

2. Hardship Provision for Small Volume Manufacturers

The panel convened under the Small Business Regulatory Enforcement Fairness Act recommended that we seek comment on the inclusion of a hardship provision. We requested comment on whether we should include such a provision in the NPRM. Based upon comment, we are including a limited hardship provision in the final rule that will be applicable to small volume manufacturers.

Small volume manufacturers include companies that independently import motor vehicles (Independent Commercial Importers or ICIs), companies that modify vehicles to operate on alternative fuels, companies that produce specialty vehicles by modifying vehicles produced by others, and companies that produce small quantities of their own vehicles, but rely on major manufacturers for engines and other vital emission related components. In these businesses, predicting sales is difficult and it is often necessary to rely on others for technology.

This provision will provide limited relief in the case where a small volume manufacturer is unable to comply with the phase-in dates or average NO_X standard. The manufacturer will need to provide evidence that, despite its best efforts, it cannot meet implementation dates or required NO_X averages.

Appeals for hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply and must include evidence that severe economic hardship will be faced by the company if the relief is not granted. Hardship relief will only be granted for the first year after a new standard is finally implemented. For small volume manufacturers, which are already exempted from the phase-in schedules for the interim and Tier 2 programs, this means that relief would be available for the final phase-in year for the LDV/LLDT Tier 2 phase-in (2007), for the final phase-in year for the interim HLDT phase-in (2007), and the final phase-in year for the Tier 2 HLDT phase-in (2009). Relief will also be available for manufacturers that did not opt into NLEV and must meet our interim standards for all their LDV/LLDTs in 2004, and relief will be available for HLDTs and MDPVs which must be brought under our interim program in the 2004 model year.

We will work with the applicant to ensure that all other remedies available under this rule, e.g., use of banked or purchased credits, are exhausted before granting additional relief, and will limit the period of relief to one year. Note that in our discussion of the credit deficit carryforward provision in section IV.B.4.d.vi, we indicate that we are not permitting small volume manufacturers to carry deficits forward until they have demonstrated compliance with the NO_X averaging provisions for one year. This is to prevent small volume manufacturers, that have already received additional time due to the waiver of the phase-in requirements, from gaining even more time to finally comply through the credit deficit carryforward provisions.

To avoid this provision creating a self-implementing problem, by which the very existence of the hardship provision prompts small volume manufacturers to delay development, acquisition and application of new technology, we want to make clear that we expect this provision to be rarely used. Our final rule contains numerous flexibilities for all manufacturers and it waives the phase-in steps for small volume manufacturers, which effectively provides them more time. We expect small manufacturers, to prepare for the applicable implementation dates in today's rule.

I. Compliance Monitoring and Enforcement

1. Application of EPA's Compliance Assurance Program, CAP2000

The CAP2000 program (64 FR 23905, May 14, 1999) streamlines and simplifies the procedures for certification of new vehicles and will also require manufacturers to test in-use vehicles to monitor compliance with emission standards. The CAP2000 program was developed jointly with the State of California and involved considerable input and support from manufacturers. As the name implies, it can be implemented as early as the 2000 model year.

We are finalizing our proposal that the Tier 2 and the interim requirements will be implemented subject to the requirements of the CAP2000 program. Certain CAP2000 requirements are being slightly modified to reflect changes to useful lives, standard structure and other aspects of the Tier 2 program, but we proposed no major changes to fundamental principles of the CAP2000 program, and we are not adding any major changes with today's final rule.

Although we proposed changes to useful lives, we did not propose to amend the 50,000 mile minimum mileage used in manufacturer in-use verification testing or in-use confirmatory testing under the CAP2000 program at this time. The CAP2000 in-use program is not yet implemented and we believe it is appropriate to allow manufacturers to gain experience with procuring and testing vehicles at the 50,000 mile level before making significant changes. However, where one vehicle from each in-use test group would have a minimum mileage of 75,000 miles under the CAP2000 program, we proposed and are finalizing, consistent with California, to

change that figure to 90,000 miles for Tier 2 vehicles.

We may, in our own in-use program, procure and test vehicles at mileages higher than 50,000 and pursue remedial actions (e.g., recalls) based on that data. We may also use that data as the basis to initiate a rulemaking to make changes in the CAP2000 in-use requirements, if the data indicate significant non-conformity at higher mileages.

We are finalizing certification test fuel specifications consistent with our final fuel sulfur requirements. Given the phase-in for low sulfur fuel we are finalizing in this rulemaking, we recognize that 2004 to 2007 vehicles (and vehicles certified in earlier model years to bank early NO_X credits) may be exposed to higher sulfur levels early in their lives. Because of this sulfur exposure, these vehicles could experience problems with OBD indicator light illuminations.

Consistent with our approach under the NLEV program, we will consider requests from manufacturers to permit OBD systems that function properly on low sulfur fuel, but exhibit sulfur-induced passes when operated on higher sulfur fuel. For OBD systems that exhibit sulfur-induced indicator light illumination, we will consider requests to modify such vehicles on a case-by-case basis.

2. Compliance Monitoring

We plan no new compliance monitoring activities or programs for Tier 2 vehicles. These vehicles will be subject to the certification and manufacturer in-use testing provisions of the CAP2000 rule. Also, we expect to continue our own in-use testing program for exhaust and evaporative emissions. We will pursue remedial actions when substantial numbers of properly maintained and used vehicles fail any standard in either in-use testing program.

Consistent with our approach under NLEV we will consider requests, prior to manufacturer or EPA in-use testing to permit preconditioning procedures designed solely to remove the effects of high sulfur gasoline on vehicles produced through the 2007 model year.

We retain the right to conduct Selective Enforcement Auditing of new vehicles at manufacturer's facilities. In recent years, we have discontinued SEA testing of new LDVs and LDTs, because compliance rates were routinely at 100%. We recognize that the need for SEA testing may be reduced by the low mileage in-use testing requirements of the CAP2000 program. However, we expect to re-examine the need for SEA testing as standards tighten under the NLEV, interim, and Tier 2 programs.

We have established a data base to record and track manufacturers' compliance with NLEV requirements including the corporate average NMOG standards. We expect to monitor manufacturers' compliance with the Tier 2 and interim corporate average NO_X standards in a similar fashion and also to monitor manufacturers' phase-in percentages for Tier 2 vehicles.

3. Relaxed In-Use Standards for Vehicles Produced During the Phase-in Period

The Tier 2 standards will be challenging for manufacturers to achieve, and some vehicles will pose more of a challenge than others. Not only will manufacturers be responsible for assuring that vehicles can meet the standards at the time of certification, they will also have to ensure that the vehicles comply when self-tested in-use under the provisions of the CAP2000 program, and when tested by EPA under its in-use ("Recall") test program.

With any new technology, or even with new calibrations of existing technology, there are risks of in-use compliance problems that may not appear in the certification process. In-use compliance concerns may discourage manufacturers from applying new technologies or new calibrations. Thus, we proposed and are finalizing, relaxed in-use standards for those bins most likely to require the greatest applications of effort, to provide assurance to the manufacturers that they will not face recall if they exceed standards by a specified amount.

For the first two years after a test group meeting a new standard is introduced, that test group will be subject to more lenient in-use standards. These "in-use standards" will apply only to bin 5 and below, only for the pollutants indicated, and only for the first two model years that a test group is certified under that bin. The in-use standards will not be applicable to any test group first certified to a new standard after 2007 for LDV/LLDTs or after 2009 for HLDTs.

The temporary in-use standards are shown in Table V.A.–3 below.

TABLE V.A.–3.—IN-USE COMPLIANCE STANDARDS (G/MI)

[Certification standards shown for reference purposes]

Bin	Durability period (miles)	NO_X in-use	NO_X certification	NMOG in-use	NMOG certification
5 ..	50,000	0.05		n/a	0.075
5 ..	120,000	0.10	0.07	n/a	0.090
4 ..	120,000	0.06	0.04	n/a	0.070
3 ..	120,000	0.05	0.03	0.09	0.055
2 ..	120,000	0.03	0.02	0.02	0.010

Because we are concerned that diesel vehicles may require low sulfur fuel to comply with our interim requirements and that such fuel may not be widely available until the 2006–2007 timeframe, we are providing in-use standards specifically for diesel vehicles certified to bin 10 standards. These standards will be determined by multiplying the applicable NO_X and PM certification standards by factors of 1.2 and 1.35, respectively. These multipliers can be used only for years during which bin 10 is viable, only for diesels and only for the pollutants indicated.

We believe manufacturers should and will strive to meet certification standards for the full useful lives of the vehicles, but we recognize that the existence of such in-use standards poses some risk that a manufacturer might aim for the in-use standard in its design efforts rather than the certification standard, and thus market less durable designs. We do not believe that risk to be significant. We believe that such risks are more than balanced by the gains that can result from earlier application of new technology or new calibration techniques that might occur in a scenario where in-use liability is slightly reduced. Further, we believe that the in-use standards will be of short enough duration that any risks are minimal.

4. Enforcement of the Tier 2 and Interim Corporate Average NO_X Standards

We are finalizing, as proposed, that manufacturers can either report that they meet the relevant corporate average NO_X standard in their annual reports to the Agency or they can show via the use of NO_X credits that they have offset any exceedance of the corporate average NO_X standard. Manufacturers will also have to report their NO_X credit balances or deficits.

The averaging, banking and trading program will be enforced through the certificate of conformity that the manufacturer must obtain in order to introduce any regulated vehicles into commerce. The certificate for each test group will require all vehicles to meet the applicable Tier 2 emission standards from the applicable bin of the Tier 2 program, and will be conditioned upon the manufacturer meeting the corporate average NO_X standard within the required time frame. If a manufacturer fails to meet this condition, the vehicles causing the corporate average NO_X exceedance will be considered to be not covered by the certificate of conformity for that engine family. A manufacturer will be subject to penalties on an individual vehicle basis for sale of vehicles not covered by a certificate. These provisions will also apply to the interim corporate average standards.

As outlined in detail in the preamble to the final NLEV rule, EPA will review the manufacturer's sales to designate the vehicles that caused the exceedance of the corporate average NO_X standard. We will designate as nonconforming those vehicles in those test groups with the highest certification emission values first, continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. In a test group where only a portion of vehicles are deemed nonconforming, we will determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers will be liable for penalties for each vehicle sold that is not covered by a certificate.

During phase in years, the certificates will also require manufacturers to meet the applicable phase-in requirements. Compliance with the phase-in requirements will be enforced in the same manner as for the corporate average NO_X standard. For the optional phase-in requirement for HLDTs for model year 2004, manufacturers must declare in their application for certification whether they intend to comply with the interim requirements for all of their HLDTs and initiate phase-in to the interim corporate average NO_X standard in 2004 and receive the benefits of that phase-in (less stringent NMOG standards for certain LDT2s and LDT4s). Compliance with this phase-in requirement and the fleet average NO_X standard will be enforced just like compliance with any other average NO_X standard and phase-in requirement of today's program.

We will also condition certificates to enforce the requirements that manufacturers not sell NO_X credits that they have not generated. A manufacturer that transfers NO_X credits it does not have will create an equivalent number of debits that it must offset by the reporting deadline for the same model year. Failure to cover these debits with NO_X credits by the reporting deadline will be a violation of the conditions under which EPA issued the certificate of conformity, and nonconforming vehicles will not be covered by the certificate. EPA will identify the nonconforming vehicles in the same manner described above.

In the case of a trade that results in a negative credit balance that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, we proposed, and are finalizing, to hold both the buyer and the seller liable. This is consistent with other mobile source rules, except for the NLEV rule as discussed below. We believe that holding both parties liable will induce the buyer to exercise diligence in assuring that the seller has or will be able to generate appropriate credits and will help to ensure that inappropriate trades do not occur.

In the NLEV program we implemented a system in which only the seller of credits would be liable. In the preamble to the final NLEV rule (*See* 62 FR 31216), we explained that a multiple liability approach would be unnecessary in the context of the NLEV program given that the main benefit to a multiparty liability approach would be to "protect against a situation where one party sells invalid credits and then goes bankrupt, leaving no one liable for either penalties or compensation for the environmental harm." Our preamble stated further that EPA would not necessarily take the same approach for "other differently situated trading programs."

The NLEV program was implemented to be a relatively short duration program, during which time we could expect relative stability in the industry. Also, given that NLEV is a voluntary program of lower than mandated standards, we did not expect that the smallest manufacturers would opt in. These are the companies whose stability is most in jeopardy in a dynamic and very competitive worldwide business.

We currently believe that the Tier 2 program and its framework will remain for many years. We note that the program is not scheduled for complete phase-in for almost nine years after the publication of today's rule. All manufacturers, large and small, will ultimately have to meet the Tier 2 standards. We cannot predict that in the Tier 2 timeframe there will not be companies that leave the market or are divided between other companies in mergers and acquisitions. Thus we believe it is prudent to implement a program to provide inducements to the seller to assure the validity of any credits that it purchases or contracts for.

J. Addressing Environmentally Beneficial Technologies Not Recognized by Test Procedures

Compliance with the current and proposed EPA motor vehicle emission standards is based on the emission performance of a vehicle over EPA's prescribed test procedure. While this test procedure addresses many of the aspects of a vehicle's impact on air quality, it does not address all such impacts. EPA is aware of two developing technologies which have potential to improve ozone-related air quality, but that would not do so over the current EPA test procedure.

The first example is a device that removes ozone from the air as the vehicle is driven. A major producer of automotive catalysts, Englehard, has developed a catalytic coating for vehicle radiators (called PremAir) that converts ambient ozone to oxygen. ARB has been working with Englehard for some time to develop a procedure which would grant PremAir and other direct ozone reducing technologies a NMOG credit under its LEV I and LEV II programs. ARB issued on December 20, 1999 a Manufacturers Advisory Circular outlining procedures for establishing such a NMOG credit.

Englehard submitted substantial comments to the Tier 2 NPRM, including ozone modeling results for five cities (Los Angeles, Houston, Atlanta, New York City, and Chicago). This ozone modeling compared the ozone reductions from reduced exhaust VOC and NO_X emissions to that from using PremAir. As a result of this modeling, Englehard requested that EPA grant a typical PremAir system a NMOG or NO_X emission credit of 0.015 g/mi. This credit would be adjusted based the exact design and performance of the system and vehicle being certified.

The second example is an insulated catalyst. The insulation retains heat for extended periods of time, increasing the catalyst temperature when the engine is started and reducing the time required for the catalyst to reach an operational temperature. This technology can reduce cold start emissions for engine off times (called soaks) of 24 hours or less. The vast majority of engine soaks in-use are less than 24 hours. However, EPA's test procedure only tests emissions at two fairly extreme soak times: 10 minutes and 12–36 hours. The 10 minute soak is so short that even an uninsulated catalyst is warm enough to quickly begin working upon restart. The 36 hour soak is beyond the practical limit of cost-effective insulating techniques. As a result of the Tier 2 NPRM, EPA received a number of inquiries from potential manufacturers of insulated catalysts, requesting further information about emission credits, test procedures and certification requirements.

EPA believes that both of these technologies, as well as other potential technologies, will reduce regulated emissions and/or ambient ozone levels, as long as they operate as designed in-use. EPA will work with the developers of such technologies to establish regulatory procedures to determine whether it is appropriate to grant emission credit for particular technologies. This process will involve the opportunity for public notice and comment.

With regard to Englehard's PremAir technology, EPA specifically requested comments on ARB's proposed approach to determining an NMOG credit and received no adverse comment on granting this type of technology a VOC emission credit. Thus, EPA is promulgating today procedures very similar to ARB's for certifying such technologies and determining the appropriate VOC emission credit. The only difference between EPA's and ARB's procedures involve assessing the effectiveness of VOC emission reductions and ozone reducing devices in areas outside of California.

In summary, the ozone reductions associated by both the ozone reducing technology, such as PremAir, and exhaust VOC emission reductions will be estimated using urban airshed modeling, using up-to-date chemical and meteorological simulation techniques. Four local areas shall be modeled: New York City, Chicago, Atlanta and Houston. The ozone episodes to be modeled shall be those selected by the states for use in their most recent ozone SIPs. Emissions shall be projected for calendar year 2007. Baseline emissions will include the benefits of the Tier 2 and sulfur standards being promulgated today, as well as all other emission controls assumed in EPA's ozone modeling of the benefits of the Tier 2 and sulfur standards described above. The ozone benefit of VOC emission reductions will be modeled by assuming that Tier 2 LDVs and LDTs meet a 0.055 g/mi exhaust NMOG standard instead of a 0.09 g/mi NMOG standard. The relationship between changes in exhaust NMOG emission standards and in-use VOC emissions shall be determined by modeling LDV+LDT emission in 2030 assuming that all Tier 2 vehicles meet a 0.055 g/mi exhaust NMOG standard instead of a 0.09 g/mi NMOG standard. All emission modeling shall utilize the updated Tier 2 emission model developed by EPA as part of this rule, or MOBILE6, once it is available. The measure of ozone to be used in calculating VOC emission equivalency will be the peak one-hour ozone level anywhere in the modeled region on the day when ozone is at its highest. The NMOG credit will be determined by averaging the NMOG credit determined in each of the four local areas.

Simulation of the benefits of the direct ozone reducing device will assume that ozone levels immediately around the roadway will be 40% less than that existing in the broader grid. The performance aspects of the direct ozone reducing device can be simulated by any reasonable values, since the appropriate NMOG credit for any specific application of this technology will be scaled to the performance of the specific application.

The manufacturer wishing to obtain an NMOG credit for use of this technology must demonstrate its effectiveness to EPA as part of the certification process. This will involve demonstrating the air flow through the device, its ozone destruction capability under conditions analogous to those photochemically modeled, the durability of this capability over the useful life of the vehicle and the method to be used to diagnose its effectiveness in-use.

Regarding the insulated catalyst technology, less information has been received to date on its performance. We are not promulgating regulations for determining the appropriate credit for such technology today. However, when we were developing our SFTP standards, EPA developed a methodology to assess the emission benefits of insulated catalysts or other techniques which reduced emissions after the vehicle soaks between 10 minutes and 12–36 hours. Thus, EPA expects to use this methodology as a starting point in assessing the benefit of insulated catalysts and will continue to assess development of options in this area. Because an insulated catalyst operates essentially like a typical catalyst, we do not expect that the test procedures for its certification would differ from those applicable to typical Tier 2 vehicles. The primary difference will be an assessment of its effectiveness relative to conventional catalyst technology over a range of vehicle soak times between 10 minutes and 36 hours. Then, it will be necessary to estimate the average effectiveness in-use relative to conventional technology using the in-use frequency of vehicle soak times.

K. Adverse Effects of System Leaks

The standards set forth in today's final rule are very stringent. They require extremely tight control of air/fuel ratios and also tight control of the inputs to the catalyst(s). A sealed exhaust system is crucial to the proper operation and emission control of current vehicles and even more so to the expected Tier 2 vehicles. Because a given point in the exhaust system intermittently sees negative pressure, exhaust leaks can permit air to enter the exhaust system. Even tiny amounts of air entering this way can have large impacts on the output of the oxygen sensor. If the output of the oxygen sensor is affected, then the exhaust output of the cylinders will be affected. Consequently, an exhaust leak can lead to both excess NO_x and NMOG emissions. Air entering through exhaust leaks can also impact the NO_x conversion efficiency of catalysts.

In the preamble to the NPRM, we expressed our concerns about the impact of small exhaust leaks and requested comment on design or on-board monitoring measures we could finalize to ensure that exhaust systems were manufactured and installed in such a way that leaks are prevented. We also asked for comment on whether we should implement a provision that would require manufacturers to demonstrate through engineering analysis or design that the possibilities of exhaust leaks have been addressed.

Manufacturers indicated in their comments that they believe addressing exhaust leaks is unnecessary. We believe otherwise. Data we have seen suggest that very large emission effects can occur due to very small leaks. Consequently, we are finalizing a provision in today's rule that will require, as part of the certification process, for manufacturers to indicate that they have conducted an engineering analysis of the exhaust system. This

analysis must cover the entire exhaust system, including air injection systems, from the engine block exhaust manifold gasket surface to a point beyond the last catalyst or oxygen sensor. This analysis must determine whether the exhaust system has been designed to facilitate leak-free assembly, installation, repair and operation for the full useful life of the vehicle.

With regard to the concept of "facilitating leak-free repair", we intend that manufacturers should ascertain that the exhaust system can be removed in a dealership or repair shop for repairs to the exhaust system itself or to other components of the vehicle and be able to be reassembled and reinstalled in a leak free manner using commonly available tools. It is not our intention that the concept of "facilitating leak-free repair" apply to situations of gross misuse, tampering or serious vehicle damage.

L. The Future Development of Advanced Technology and the Role of Fuels

The EPA staff will continue to assess the emission control potential of vehicles powered by technologies such as lean-burn and/or fuel-efficient technologies, including diesel engines equipped with advanced aftertreatment systems, gasoline direct injection engines, and other technologies that show promise for significant advances in fuel economy and meeting the Tier 2 standards in the post-2004 time frame. In this assessment, we will maintain a "systems" perspective, considering the progress of advanced vehicle technologies in the context of the role that sulfur in fuels plays in enabling the introduction of these advanced technologies or maximizing their effectiveness.

M. Miscellaneous Provisions

We are finalizing, as proposed, to continue existing emission standards from Tier 1 and NLEV that apply to cold CO, certification short testing, refueling, running loss, and highway NO_X. We are discontinuing, as proposed, the 50 degree (F) standards and testing included in the NLEV program. The 50 degree standards are a part of the NLEV program because that national program adopted California requirements virtually in their entirety. These standards had not previously been part of any federal program. We are also discontinuing idle CO standards for LDTs, based upon comment. These standards are adequately covered by the certification short test standards.

VI. Gasoline Sulfur Program Compliance and Enforcement Provisions

A. Overview

The gasoline sulfur program promulgated today has many of the same features as the reformulated gasoline/conventional gasoline (RFG/CG) program, including refinery averaging, refinery and downstream level caps, and the generation and use of credits. These features raise similar compliance issues for both programs. As a result, the enforcement mechanisms of the gasoline sulfur rule generally track those of the RFG/CG rule, where applicable. Because low sulfur gasoline is necessary to avoid significant impairment of Tier 2 motor vehicle emissions technology, we believe measures are needed to assure that gasoline meets the standards promulgated in today's rule at the time the gasoline leaves the refinery gate or is imported, and to assure that the quality of the gasoline is maintained downstream of the refinery.

More specifically, today's rule includes the following provisions:

- Refiners and importers must test each batch of gasoline produced or imported for sulfur content and maintain testing records and retain test samples;
- Refiners and importers must submit reports regarding compliance with the average standards and credit provisions;
- Attest procedures [125] similar to those of the RFG/CG rule will be applied to the sulfur standards and credit provisions;
- Refiners and importers are prohibited from using, selling or purchasing invalid sulfur credits, and are required to adjust compliance calculations if invalid credits have been used, sold or purchased;
- Small foreign refiners subject to the small refiner standards described in section IV.C. above must comply with the rule's small refiner compliance requirements and other requirements to ensure the separation of such foreign gasoline from all other gasoline to the U.S. port of entry; any foreign refiners participating in the early credit generation program must also meet certain provisions concerning credit generation, including reporting and recordkeeping;
- All regulated parties in the gasoline distribution system who are downstream from the refiner or importer must comply with downstream sulfur cap standards;
- Regulated parties are subject to presumptive liability for violations at a party's own facility and for violations at other facilities that could have been caused by the regulated party; branded refiners are subject to liability for violations occurring at branded facilities.
- Refiners and distributors may implement downstream quality assurance testing to assure compliance and to establish an element of defense against presumptive liability.

As in other fuels programs, the sulfur standards apply to all motor vehicle fuel that meets the definition of gasoline, except for aviation fuel and racing gasoline, as was proposed in the NPRM. See 40 CFR 80.2(c). Gasoline sulfur standards apply, however, to gasoline that is ultimately used in nonroad equipment or marine engines.

As we noted in the NPRM, we are aware there are certain fuels, such as aviation fuel and racing fuel, that are generally segregated from gasoline throughout the distribution system. Where such fuels are segregated from motor vehicle gasoline and not made available for use in motor vehicles, the fuel is not subject to sulfur rule standards. However, if such fuels are not segregated throughout the distribution system, but are used as motor vehicle gasoline or are commingled with motor vehicle gasoline, then any person who introduces such fuels into the gasoline distribution system is a refiner, subject to all the refiner requirements of today's regulations, including registration, reporting, testing and meeting the national refiner average and cap standards for the volume of gasoline that person added to the distribution system. Today's rule adopts the provisions concerning fuel used for racing vehicles as proposed.

One commenter suggested that racing gasoline or aviation gas should be allowed to be used as motor vehicle gasoline by downstream parties so long as the racing gasoline or aviation gas does not exceed the applicable downstream cap standard. We disagree. Racing gas that meets the applicable downstream sulfur cap would nevertheless not be subject to the refinery gate cap or averaging standards, and may not meet such standards. Allowing such fuels to be distributed for motor vehicle use would thus circumvent the intent of the rule.

The rule promulgated today clarifies the definition of "refinery" at 40 CFR 80.2(h), as was proposed in the NPRM. We received no comments on this clarifying change. Specifically, section 80.2(h) now provides that "refinery"

[125] 40 CFR Part 80, subpart F.

means any facility, including a plant, tanker truck or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel. This is consistent with all current EPA fuels rules, interpretations, policies and question and answer documents.

Oxygenate Blenders

In the NPRM we proposed that oxygenate blenders [126] would not be subject to the refiner sulfur standard like other blenders, because we felt it unlikely that oxygenates will have sulfur levels that will raise the sulfur content of the gasoline. This approach also was proposed because gasoline is the denaturant normally used to produce denatured ethanol. However, we received comments that denatured ethanol may contain as much as 50 ppm sulfur, which could result in significant increases in sulfur content from ethanol blending alone.

While it is true that some of today's gasoline has a sulfur content as high as 1,000 ppm which if used as an ethanol denaturant results in ethanol having a sulfur content of 50 ppm, the average sulfur content of gasoline is about 300 ppm which if used as an ethanol denaturant results in ethanol with a sulfur content of 15 ppm. In addition, when the gasoline sulfur standards being promulgated today are in effect, the average sulfur levels of gasoline will be significantly reduced, which will further reduce the sulfur content of denatured ethanol to very low levels. For this reason, we are finalizing the regulation as proposed that oxygenate blenders are not subject to refiner sulfur standards.

However, if gasoline blendstock instead of finished gasoline is used as a denaturant for ethanol the oxygenate blender who adds the ethanol would become a "refiner," who is required to demonstrate compliance with the sulfur standards for the denatured ethanol added to gasoline. This is because the oxygenate blender would be adding a blendstock along with the ethanol, which subjects the blendstock blender to refiner standards and requirements. Moreover, if the blendstock has a high sulfur content the denatured ethanol could have a sulfur content greater than 30 ppm, or even greater than 80 ppm, which could make compliance by such a "refiner" difficult or impossible. In addition, as discussed above, in certain cases ethanol is included in the refinery compliance calculations of the refiner who produced the gasoline or RBOB with which the ethanol is blended. Refiners assume this ethanol has no sulfur content, an assumption that could be incorrect if high sulfur blendstock is used as the denaturant.

For these reasons we believe it is important that ethanol blenders use denatured ethanol with a sulfur content of 30 ppm or less, which would occur if the current practice of using finished gasoline as ethanol denaturant continues. In order to ensure this result, the regulations include a provision that prohibits ethanol blenders from using denatured ethanol with a sulfur content greater than 30 ppm. We believe ethanol blenders can comply with this requirement through commercial arrangements with their ethanol suppliers, that specify the maximum sulfur content of denatured ethanol. In addition, ethanol blenders can assure compliance with this requirement by testing to determine the sulfur content of denatured ethanol received.

Gasoline Treated as Blendstock (GTAB)

One commenter suggested that the Agency policy under the RFG/CG rule that allows certain imported gasoline to be treated as a blendstock by importer-refiners should be applied to today's rule. The GTAB policy was originally issued in the RFG Question and Answer document, and was subsequently published as part of a proposed RFG rulemaking in 1997.[127] We intend to address GTAB issues in that RFG rulemaking, including issues regarding compliance with today's rule.

Transmix

We are aware that when gasoline meeting the requirements finalized in today's rule is transported through pipelines, there will be some situations where adjacent distillate product in the pipeline will mix with a portion of the gasoline to create an interface product, commonly referred to as transmix. This transmix may not be blended into the diesel fuel because the gasoline in the transmix may result in diesel fuel performance problems. Historically, this type of transmix product has either been blended into the gasoline, in limited concentrations, or the transmix has been separated into its gasoline and distillate components at a reprocessing plant. However, the practice of blending the transmix into gasoline may result in violations of the downstream standards for RFG, and such blending could violate the downstream sulfur caps finalized in today's rule, because many distillates have a very high sulfur content. Therefore, we believe regulatory provisions are needed to resolve these issues. We have not addressed transmix issues in today's rule because we have already proposed regulations regarding transmix blending and processing in another rulemaking.[128] We plan to address transmix issues, including issues regarding compliance with today's rule, in that rulemaking, which we plan to finalize in the near future.

Inability To Produce Conforming Gasoline in Extraordinary Circumstances

Several commenters suggested the rule should include a provision, similar to the RFG rule provision at 40 CFR 80.73, to address situations where, due to extraordinary circumstances, a refiner or importer cannot produce or distribute conforming gasoline. Section 80.73 applies to refiners, importers and oxygenate blenders. Today's rule has adopted the provisions of section 80.73 for RFG and CG, for importers and refiners, but not for oxygenate blenders. This is because the gasoline sulfur program does not include provisions that would be expected to require oxygenate blender relief.

In the remainder of this section we discuss enforcement issues regarding today's rule that are not covered in this Overview or in section IV.C., above.

B. Requirements for Foreign Refiners and Importers

In the NPRM we proposed that standards for gasoline produced by foreign refineries that are not subject to small refiner individual refinery standards would be met by the importer. Standards for gasoline produced by a foreign refinery subject to an individual sulfur rule standard would be met by the foreign refinery, with certain limited exceptions as provided in the foreign refinery provisions. The rule promulgated today adopts the provisions as proposed, except for several changes aimed at clarifying the proposed requirements, changes relating to the temporary relief provision, and changes relating to foreign refiners' participation in the early credit program. These provisions are very similar to the foreign refinery provisions of the RFG/CG rule.

[126] The term "oxygenate blenders" includes "ethanol blenders."

[127] Reformulated Gasoline and Anti-dumping Questions and Answers, (11/12/96); Proposed Rule for Modifications to Standards and Requirements for Reformulated and Conventional Gasoline; 62 FR 37337 et seq. (July 11, 1997).

[128] 62 FR 37337 et seq. (July 11, 1997) (proposed 40 CFR 80.84).

1. Requirements for Foreign Refiners With Individual Refinery Sulfur Standards or Credit Generation Baselines

Under the RFG/CG rule, EPA promulgated regulations [129] addressing the establishment and implementation of individual baselines for CG produced by certain foreign refiners. The purpose of these regulations is to ensure the compliance of gasoline supplied from foreign refineries with individual compliance baselines. It includes comprehensive controls, requirements and enforcement mechanisms to monitor the movement of gasoline from the foreign refinery to the U.S., to monitor gasoline quality and to provide for enforcement as necessary.

In the NPRM, we proposed similar requirements for compliance with the applicable sulfur standards that would apply to any foreign refiner who demonstrates that it meets the sulfur program's small refiner criteria. We proposed that foreign refinery baselines would be based on annual average sulfur levels and the volume of gasoline imported to the U.S. during the same baseline period as would be applicable to domestic small refiners. In today's final rule we have also adopted provisions for foreign refiners to establish baselines to participate in the early credit generation program, and to request temporary relief. Any foreign refiner who obtains a foreign refinery gasoline sulfur baseline would be subject to the same requirements as domestic refiners with individual refinery baselines under today's rule. Additionally, provisions similar to the provisions at 40 CFR 80.94 would apply, which include:

- Segregating gasoline produced at the small refinery until it reaches the U.S.;
- Refinery registration;
- Controls on product designation;
- Load port and port of entry testing;
- Attest requirements; and
- Requirements regarding bonds and sovereign immunity.

The rationale for these enforcement provisions is discussed more fully in the Agency's preamble to the final RFG/CG foreign refineries rule (62 FR 45533 (Aug. 28, 1997)).

Several commenters suggested that the rule should have even stronger enforcement provisions concerning foreign refiners, including criminal provisions against foreign individuals who violate the requirements of the rule. While we agree that the rule's enforcement provisions pertaining to foreign refiners must be effective, we believe the proposed enforcement provisions are sufficient, and that attempts to further strengthen them would not significantly increase their overall effectiveness. Today's rule imposes various requirements on foreign refiners not required of domestic refiners, as noted above, which we believe are more effective for ensuring environmental compliance than criminal provisions would be for foreign individuals, in light of the potential difficulties of enforcing sanctions against foreign individuals. EPA's experience to date with the similar RFG/CG requirements under section 80.94 of the RFG/CG rule does not indicate the provisions are inadequate.

Therefore, today's rule generally retains these provisions as proposed. The final rule makes several technical changes, including changes regarding baselines for foreign refiners, to be consistent with the requirements for domestic small refiners and refiners generating early credits finalized in today's rule. The rule's foreign refiner enforcement provisions now also apply to foreign refiners participating in the early credits program, and to the use of credits by foreign small refiners.

One commenter stated that the language of the proposed § 80.410(n) would be too broad in that prohibiting any "person" from combining certified small foreign refiner gasoline with non-certified small foreign refiner gasoline or with certified small foreign refinery gasoline produced at a different refinery would prohibit even retail level commingling of such products. This was not intended and today's rule clarifies that such commingling can occur subsequent to importation.

Under the proposal, when the small refiner standards sunset (and additionally under today's rule, when the temporary refiner relief provisions sunset),[130] all gasoline would be subject to a single national averaged standard and one national refinery level cap. Thereafter, standards for all imported gasoline would be met by U.S. importers. We have retained this provision as proposed. With a single national average standard and cap standard, gasoline sulfur content can most readily be monitored at the U.S. importer level, since there will no longer be a special class of gasoline with different standards that would need to be monitored.

2. Requirements for Truck Importers

Today's final rule adopts the proposed requirement for importers to sample and test each batch of gasoline imported. However, as noted in the preamble to the NPRM, for parties that import gasoline into the U.S. by truck, the every-batch testing requirement would include testing the gasoline in each truck compartment, or if the gasoline is homogeneous, testing the gasoline in the truck.

In the NPRM we recognized that this every-batch testing requirement may not be feasible for truckers hauling many small loads of gasoline, and we therefore proposed a limited alternative approach for truck importers in lieu of every-batch testing. The proposed alternative approach is based on the importer meeting the 30 ppm sulfur standard on a per-gallon basis. Under this alternative approach, the importer would be allowed to rely on the sulfur results based on sampling and testing conducted by the operator of the foreign truck loading terminal. Because, in most cases, the terminal operator will not be subject to United States laws, we also proposed safeguards intended to ensure that the gasoline in fact meets the applicable standard. This includes the requirement that the importer conduct a quality assurance sampling and testing program independent from the sampling and testing conducted by the terminal. Under this approach the reporting requirements would be minimized since no averaging would be required. The environmental consequences of this approach would be neutral, because by meeting the 30 ppm sulfur standard on an every-gallon basis the standard also would be met on average.

One commenter stated that the 30 ppm per-gallon standard would be difficult for truck importers to meet due to the fact that Canadian terminals may not always have gasoline with a sulfur content no greater than 30 ppm. The commenter suggested that truck importers be allowed to rely on testing conducted by the foreign gasoline terminal, as discussed above, to meet the average and cap standards like other importers.

We agree that truck importers may have difficulty obtaining gasoline that meets the 30 ppm sulfur standard on a per-gallon basis. Under Canadian regulations, Canadian refiners will be subject to a 150 ppm average standard and a 300 ppm cap in 2004, and in 2005 Canadian refiners will be subject to a 30 ppm average standard and an 80 ppm

[129] 40 CFR 80.94.

[130] Small refiner and temporary refiner hardship individual refinery standards sunset January 1, 2008, except for any small refineries that receive a hardship extension not to exceed two years.

cap.[131] This means that truck importers should be able to meet the standards applicable to other importers, including the ultimate average standard and cap standard under today's rule (30 ppm average and 80 ppm cap), without great difficulty. However, meeting a per-gallon cap of 30 ppm might be difficult since the sulfur content of gasoline in the storage tanks of Canadian terminals, like those of U.S. terminals, will likely exceed 30 ppm at times, even after the 30/80 standards are implemented. We have concluded that we can address this concern by providing additional flexibility to truck importers, and still assure compliance.

While today's rule retains the proposed alternative, with some modifications, it also provides a second alternative approach. Under this second approach, truckers are allowed to meet the national average and cap applicable to other importers, and rely on testing conducted by the foreign gasoline terminal so long as all the other requirements applicable to the proposed alternative approach are complied with. In addition, truckers using this second alternative approach will be subject to more extensive reporting than required for the proposed alternative, since the importer will have to demonstrate compliance with the annual average sulfur standard applicable to other importers.

One commenter urged that truckers should be subject only to the national downstream cap. We cannot agree to this approach as it is not environmentally neutral relative to the national standards in effect for other importers and refiners. If truck importers were required to meet only the downstream cap, sulfur levels for their imported gasoline could be substantially higher than for other importers, which could have a detrimental environmental consequence.

One commenter stated that the 30 ppm per-gallon standard for truck importers should not go into effect until the 30 ppm standard becomes the national average standard for refineries and other importers. We agree. Under today's rule, the per-gallon standards applicable to truck importers under the proposed alternative will be the same sulfur level as the sulfur average standard that applies to other importers (in 2004 there is no average standard; however, truck importers using this alternative compliance approach must meet the corporate pool standard on a per-gallon basis).[132] Under the second alternative approach, the truck importer will be subject to the same average standard and cap standard applicable to other importers.[133]

Similar provisions as provided above apply to truck importers for gasoline subject to the geographic phase-in area (GPA) standards (see section IV.C. of this preamble for a discussion of GPA standards). However, because of the small volumes of truck-imported gasoline, and the consequent difficulty in meeting corporate pool averages for a trucker who imports gasoline into both the GPA and areas outside the GPA, today's rule requires that for truck importers using the averaging option, the corporate pool average does not have to be met. The 150 ppm average standard and the 300 ppm cap standard apply to gasoline imported by truck into the GPA in 2004 through 2006. For truck importers meeting the per-gallon standard option for gasoline imported into the GPA, the per-gallon standards are 150 ppm for 2004 through 2006.

Truck Import of Foreign Small Refiner Gasoline

The NPRM addressed issues associated with gasoline produced by a foreign small refinery with an individual baseline and certified as subject to the refinery's individual interim standard (S–FRGAS), and imported by truck. The proposed requirements for S–FRGAS included segregating the gasoline from all other gasoline from the refinery gate to the U.S., so that compliance with standards can be tracked. For ordinary, non-truck importers, each batch of certified S–FRGAS must be tested at the load port and port of entry. Today's rule finalizes these proposed requirements for S–FRGAS.

However, in the case of gasoline imported by truck, the NPRM acknowledged that the testing and other procedures proposed for certified S–FRGAS may not be feasible. As a result, we proposed an alternative to the requirement for testing every truckload of imported certified S–FRGAS, and to other importer requirements. This alternative approach includes a requirement that small foreign refiners producing any S–FRGAS that will be imported by truck submit a petition to EPA that includes a plan which is designed to ensure that certified S–FRGAS remains segregated from all other gasoline from the refinery to the U.S. Rather than specifying the precise requirements of such a plan in the regulations, we proposed to allow the refiner to develop its own procedures for ensuring that S–FRGAS remains segregated. However, the plan must contain certain elements, such as product transfer documents which identify the origin of the gasoline and prohibit its commingling with any product other than certified S–FRGAS from that refinery.

This approach also requires the refiner of such truck-imported gasoline to receive and maintain all such product shipment documents, including U.S. import documents, for five years and review these to ensure that segregation is maintained until reaching the U.S. To ensure that refiners conduct this review, we proposed to require the refiner's plan to include attest audit procedures to be conducted annually by an independent third party.

We received no comments on this proposal for ensuring the integrity of S–FRGAS imported by truck. Today's final rule adopts the petitioning provision to permit alternative segregation procedures for S–FRGAS imported by truck as proposed since we continue to believe that it will provide flexibility to foreign refiners and to importers and will adequately assure enforceability.

C. What Standards and Requirements Apply Downstream?

We proposed per-gallon cap standards that would apply to all parties in the distribution system downstream of the refinery and importer level, including pipelines, terminals, oxygenate blenders, distributors, carriers, retailers and wholesale purchaser-consumers. We believe that downstream cap standards and compliance monitoring based on downstream standards are needed to ensure that the sulfur level of gasoline remains below the cap level when dispensed for use in motor vehicles, to avoid adverse emissions consequences that would be caused by the use of gasoline having a sulfur content above the cap level. The following discussion addresses downstream standards generally, downstream standards and requirements for gasoline produced by refineries subject to standards under § 80.240 and 80.270, and downstream standards and requirements for gasoline produced or imported for the geographic phase-in area (GPA).

[131] Vol. 133 2/6/99 C. Gaz. II, 23 June 99 (pp. 1469 *et seq.*)

[132] In 2004, a 120 ppm cap; In 2005 and beyond, a 30 ppm cap. See Table IV.C.–1.

[133] In 2004, a 120 ppm average standard and a 300 ppm cap; In 2005, a 30 ppm average standard, a corporate pool average no greater than 90 ppm, and a 300 ppm cap; In 2006 and beyond, a 30 ppm average standard and a 80 ppm cap. See Table IV.C.–1.

Determination of Downstream Cap Standards

We proposed that the downstream standards would be more lenient than the refinery-level cap standards so that refiners and importers can produce gasoline that equals the refinery-level cap standard. We did so because it has been EPA's experience that if a refiner produces gasoline that equals, or almost equals a standard, that gasoline may be shown to violate the standard when subsequently tested at a location downstream of the refinery due to testing variability. As a result, parties downstream of the refinery (primarily pipelines) set commercial specifications for the quality of the gasoline they will accept that are more stringent than the standard that applies to the downstream party. This, in effect, forces refiners to produce gasoline that is "cleaner" than the refinery-level standard.

In other fuels programs (for example, the benzene per-gallon standard for RFG) we resolved this concern by announcing enforcement tolerances for fuels standards that apply downstream of the refinery-level, thereby reducing the need for pipelines to set specifications more stringent than the refinery level standards. We believe that having more lenient downstream standards will have the same effect as enforcement tolerances.

In the NPRM we proposed that the values of the downstream cap standards would reflect the testing variability that could reasonably be expected when different laboratories test gasoline for sulfur content; that is, lab-to-lab variability, or reproducibility. Industry commenters supported this approach, and today's rule adopts this approach. For gasoline subject to the 80 ppm refinery-level sulfur cap, the downstream maximum standard is 95 ppm. This difference reflects the reproducibility established by the American Society for Testing and Materials (ASTM).[134] For gasoline subject to refinery-level sulfur caps higher than 80 ppm, which will be the case for gasoline produced before 2006 and for gasoline produced by certain small refineries through 2007, the downstream cap is similarly established by using ASTM reproducibility data. The national downstream cap is 378 in 2004, when the refinery level cap can be as high as 350 ppm. The national downstream cap in 326 in 2005, when the refinery level cap is 300.

[134] ASTM standard method D 2622–98, entitled 'Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry."

Because these downstream caps are based on sulfur test reproducibility, we intend to amend the rule in the future if improvements in test precision are made for the designated method. We may also consider amending the rule to make some other method the designated method if a more precise method is available in the future.

The Proposed Downstream Standards Compliance Scheme

Under the proposal, if gasoline produced by a small refiner with a less stringent cap standard is mixed in the distribution system with gasoline subject to the national cap standard, the entire mixture would then be subject to the higher cap standard, even though most of the gasoline, at the refinery level, would be subject to the more stringent national cap standard. We proposed that during the period that small refinery individual standards are in effect, for gasoline that is comprised, in whole or in part, of small refiner gasoline with a higher sulfur cap standard than the national cap standard, product transfer documents (PTDs) would specify that the gasoline is small refiner gasoline and the level of the downstream cap applicable to the gasoline.

The purpose of the proposed provisions was to make it possible to determine the standard that applies to any gasoline downstream of the refinery. If the gasoline contains no small refiner gasoline, the downstream standard would be based on the national cap. If the gasoline is comprised, in whole or in part, of small refiner gasoline subject to a less stringent cap standard, the downstream standard would be based on this less stringent cap standard. As gasoline is mixed and remixed in the fungible distribution system, the percentage of gasoline that is small refinery gasoline will progressively diminish until the fungibly mixed gasoline meets the national downstream cap. Therefore, we proposed in the NPRM that a downstream party may no longer classify gasoline as containing small refiner gasoline if a test result shows the sulfur content of the gasoline is below the applicable national (i.e., not small refiner) downstream cap.

Several commenters suggested that this tracking scheme would be unworkable. Some of these comments were based on the belief that the proposal intended to require segregation of the small refiner gasoline through the distribution system. The proposal was not intended to require that small refiner gasoline must be segregated, and under today's final rule there is no requirement that small refiner gasoline must be segregated from gasoline produced by other refiners. Some commenters also believed that testing by downstream parties would be required under the proposed rule. These commenters were concerned that a downstream testing requirement could be costly and could delay distribution of gasoline. This latter point is addressed later in this discussion. Some commenters stated that the proposed PTD provisions of the downstream enforcement scheme were too complex and that some means other than changing PTD designations should be found to track small refiner gasoline.

Other commenters, including automobile manufacturer trade associations, stated they believed that EPA enforcement and testing downstream of the refinery is necessary to assure that gasoline complies with standards at the retail gasoline pump.

We have carefully considered the comments and we have concluded that the tracking scheme as proposed would not be effective because most pipeline shipments are expected to include some small refiner gasoline (although the amount of small refiner gasoline may comprise less than 1% of the shipment) and therefore, most of the gasoline in the nation might be classified as small refiner gasoline, even though only a small fraction of the supply will actually be small refiner gasoline. Therefore, a downstream cap much less stringent than the national downstream cap would attach to most gasoline produced to meet the national refinery standards, and the scheme would not be effective in monitoring whether the quality of most gasoline is maintained after it enters the gasoline distribution system.

The proposed scheme could lead to other unintended results. The gasolines contained in a fungible mixture in the distribution system may not be fully mixed and homogenous. As a result, a distinct, unmixed, portion of gasoline within a fungible mixture could be small refiner gasoline with a sulfur content above the national downstream cap, while other parts of the fungible mixture would meet the national downstream cap. This is especially true for fungible mixtures in pipelines and could also be true for gasoline in storage tanks. If a test result for a sample collected from part of such a fungible mixture in a pipeline shows compliance with the national downstream cap, under the proposed rule the entire mixture would become subject to the national downstream cap, and the pipeline PTDs could not classify the gasoline as small refiner gasoline. Thus,

under the proposal, parties downstream of the pipeline could be subject to liability because they might receive small refiner gasoline not meeting the national standard even where a pipeline PTD does not represent that the gasoline is small refiner gasoline. That was not intended by the proposal.

Because of these difficulties, we concluded that the proposed scheme must be modified to address these concerns, in order for there to be effective enforcement of the downstream standards. We are concerned that the quality of gasoline will be affected downstream of the refinery. Gasoline may be contaminated with high sulfur blendstocks or other high sulfur products such as distillates after it leaves the refinery gate. There is likely to be an economic incentive for some downstream parties to sell or use gasoline or blendstocks that have a higher sulfur content than the national downstream standard. The inability to monitor downstream compliance would result in environmental degradation that is not intended by the rule, and in an inability to assure a level playing field for all parties in the gasoline distribution industry.

Tracking Gasoline Downstream of the Refinery

We believe that an effective downstream compliance and enforcement scheme is necessary in order to achieve the full emissions reduction benefits of the rule. Today's rule modifies the proposed tracking scheme so that compliance with the program can be monitored.

Under today's rule, all gasoline downstream of the refiner or importer is subject to the national downstream standard unless a different downstream standard, based on the highest sulfur content of any small refiner/temporary refiner relief gasoline in the gasoline mixture (as determined by the small refiners' batch testing), is supported by PTDs and a test result confirming the presence of small refiner/temporary refiner relief gasoline. The test result must be for gasoline sampled from the downstream facility classifying the gasoline as small refiner gasoline, unless the facility is a trucker, retailer or wholesale purchaser-consumer. We have concluded that this requirement is necessary to monitor compliance with the downstream standards during the period that small refiner/temporary refiner relief standards are in effect, because the vast majority of the gasoline transported by pipelines will be gasoline produced to comply with the national cap,[135] even though most of those pipeline shipments will be classified as small refiner gasoline.[136]

We believe that the ability to track small refiner gasoline is made even more important due to the geographic phase-in area (GPA) gasoline provisions finalized today.[137] GPA gasoline is subject to less stringent refiner/importer standards than gasoline produced for use in other parts of the country. Therefore, its use is limited to the GPA states. However, it may be produced or imported at any location in the country before it is transported for use in the GPA. EPA would have little ability to assure GPA-designated gasoline is only being used in the GPA if it cannot determine if gasoline at a downstream location outside the GPA that exceeds the applicable downstream cap for non-small refiner gasoline, is in fact small refiner gasoline or if it may include gasoline that was designated for use in the GPA but has been diverted for use elsewhere. The tracking requirements for small refiner gasoline will help us to make that determination.

The only parties required to perform testing in order to demonstrate that a shipment, or tank, of gasoline contains small refiner gasoline are gasoline pipelines and terminals. Where a terminal properly classifies gasoline in its storage tank as small refiner gasoline, and subsequently receives a load of gasoline into that tank, it may not continue to classify the gasoline as small refiner gasoline unless the tank is sampled, and a test demonstrates that the tank still contains small refiner gasoline and the gasoline sulfur content exceeds the national refinery level cap. In 2004 the test result would have to exceed 350 ppm; in 2005, 300 ppm; and starting with 2006, 80 ppm. In the GPA, the test result would have to exceed 350 ppm in 2004, and 300 ppm in 2005 and 2006.

We have concluded that the pipeline and terminal testing provisions are necessary for effective enforcement. We believe that terminals and pipelines will be able to perform sampling and testing that will enable them to identify the presence of small refiner gasoline in a cost-effective manner. These parties have knowledge regarding the mixing of gasoline as it moves from the pipeline and into the terminal tank, and knowledge of the distribution system, that will enable them to make judgments regarding the extent of testing that may be needed to demonstrate whether gasoline meets the national downstream cap. Further, a terminal operator may take additional tests if it believes a tank may contain a stratified portion of small refiner gasoline, despite a test result showing the tank complies with the national downstream cap.

Many terminals may have sufficient reason to believe they are receiving only gasoline meeting the national cap such that they will not normally test each receipt of gasoline. Additionally, even for terminals who receive small refiner gasoline, we do not believe the sampling and testing will be burdensome. This is partly because many terminals already conduct periodic sampling, or even sampling after every delivery of gasoline into storage tanks, at least in the summer VOC or RVP season, to test gasoline for various parameters, which may already include sulfur testing in RFG areas. Field test instruments already exist that are adequate for this testing in 2004 and 2005 when the national downstream cap is 378 ppm and 326 ppm, respectively. Moreover, we believe that because of today's rule, better field test instruments for sulfur analysis at lower levels are likely to be developed in the next few years. Therefore, it will not be necessary for quality assurance samples to be sent to a laboratory for testing. Thus, we do not believe shipments will be held up while terminals await a test result. We also believe that it is likely that these instruments will be available for a cost that will be far less than most laboratory instruments available today.

Under today's rule, retailers are not required to conduct testing. The retailer can demonstrate that the gasoline is properly designated small refiner gasoline subject to a less stringent downstream standard by maintaining PTDs from its suppliers that demonstrate a terminal classified gasoline supplied to the retailer's storage tank as small refiner gasoline.

Downstream Standards and Requirements for GPA Gasoline

Consistent with the way today's rule sets downstream sulfur standards for other gasoline, the GPA program downstream standard is determined by adding the ASTM reproducibility applicable to the refinery level sulfur

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[135] For example, most pipeline shipments are expected to contain small refiner gasoline in the two U.S. pipelines that carry the highest volume of gasoline. However, in most shipments the small refiner gasoline is expected to account for substantially less than 5% of the total volume of gasoline in the shipment.

[136] For purposes of this discussion, "small refiner gasolne" includes any gasoline from a refiner to whom EPA grants relief based on a showing of extreme hardship.

[137] See section IV.C. of this preamble for refiner/importer standards and the discussion below regarding downstream compliance and enforcement provisions.

cap to that refinery level cap, which for GPA gasoline is as high as 350 ppm in 2004, and 300 ppm in 2005 and 2006. This results in downstream standards for GPA gasoline of 378 ppm in 2004, and 326 ppm in 2005 and 2006.

Because GPA gasoline must be used only within the GPA states,[138] today's rule requires that refiners and importers producing or importing gasoline subject to the GPA standards must designate each such batch of gasoline as GPA gasoline and segregate such batches from all other gasoline. Product transfer documents must identify the gasoline as GPA gasoline so that all downstream parties will be aware that it must be sold or distributed for use only in the GPA.

Gasoline produced for use in all areas of the country outside the GPA may be sold for use in the GPA, including gasoline subject to small refiner standards under section 80.240 of today's rule.

Where GPA gasoline is commingled with other gasoline, the commingled gasoline must be classified as GPA gasoline and used only in the GPA states. Where GPA gasoline is commingled with S–RGAS, the applicable downstream sulfur standard for that gasoline is the greater of the GPA downstream standard or the applicable small refiner/temporary refiner relief standard as determined under section 80.210 of the rule.

Lead-Time for Downstream Compliance With New Standards

Some commenters stated that there should be a lead-time of several months between the implementation date of a new refinery level sulfur standard and the implementation date of the corresponding downstream standard. Based on our experience with other fuels programs, we believe that a one-month lead time will be adequate for gasoline at the terminal level to meet new standards. An additional one month for retailers will give them ample time to comply. Therefore, under today's rule, the 378 ppm downstream sulfur standard (or any applicable small refiner downstream cap standard) is effective February 1, 2004 at the terminal level and March 1, 2004 at the retail level. The 326 ppm downstream sulfur standard is effective February 1, 2005 at the terminal level and March 1, 2005 at the retail level. The 95 ppm downstream standard is effective February 1, 2006 at the terminal level and March 1, 2006 at the retail level (or February 1, 2007, and March 1, 2007, respectively, in the case of gasoline at facilities in the GPA).

Retail Gasoline Pump Labeling

EPA believes gasoline advertised as being "low sulfur gasoline" when sold at retail outlets should have a sulfur content of no more than 95 ppm because this is the maximum sulfur level of gasoline at retail outlets that would protect the emission controls of Tier 2 vehicles. We are stating this to inform refiners and other regulated parties, when making advertisement decisions regarding gasoline, that it is EPA's position that effective January 1, 2004, if any retailer represents that gasoline is low sulfur gasoline, or representations to the same effect, the gasoline sulfur content should be no greater than 95 ppm.

D. Testing and Sampling Methods and Requirements

1. Test Method for Sulfur in Gasoline

We proposed ASTM standard method D 2622–98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry," as the primary method for testing sulfur in gasoline by refiners and importers. This is the designated method under the RFG/CG rule.[139] We also requested comment on adopting other methods as the primary method, in particular, ASTM method D 5453–93, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence," and ASTM D 4045, "Standard Test Method for Sulfur in Petroleum Products by Hydrogenolysis and Rateometric Colorimetry," which is used under the California fuels program for sulfur levels below 10 ppm. We also proposed ASTM D 5453 as an alternative method for determining the sulfur content of gasoline and we requested comment on this proposal.

Most comments supported the continued use of ASTM D 2622 as the designated method for testing sulfur in gasoline under the various fuels rules, including today's rule. Commenters indicated that most refineries outside of California are currently using ASTM D 2622. Under the California fuels regulations, California refineries currently use ASTM D 5453, as well as ASTM D 2622 and ASTM D 4045. Comments were generally favorable to the proposed use of ASTM D 5453 as an alternate method. However, one California refinery, an automobile manufacturers association and a manufacturer of analytical equipment stated that ASTM D 5453 should be the primary method, primarily due to its greater precision at low sulfur levels. Favorable comments were received to the use of ASTM D 4045, especially for gasoline sulfur content of 10 ppm or less. One commenter suggested that ASTM D 5623–94 should be allowed; one commenter suggested that ASTM D 3120 should be allowed, and one commenter suggested that ASTM D 6428 should be allowed. Several commenters stated that we should utilize a performance based criteria system to determine what test methods can be used.

We have considered the comments carefully. We believe there are a number of test methods for determining the sulfur content of gasoline that may eventually be shown to be as good as, or better than, ASTM D 2622. We also considered that the Agency is likely to issue a proposed rulemaking for a performance-based test method approach that would apply to motor vehicle fuel parameters. This rule, once promulgated, would set forth criteria for determining whether an alternative analytical test method could be used instead of the designated analytical test method for a given fuel parameter and would set forth criteria for correlating alternative analytical test methods to the designated analytical test method.

We believe it is appropriate that alternate analytical methods should be qualified and correlated to the regulatory method according to standardized criteria. Today's rule therefore provides that ASTM D 2622, the recognized standard analytical method for determining sulfur in gasoline, is the sole regulatory method, anticipating that a performance-based testing rule may be issued before 2004, and that under its terms anyone will be able to qualify and correlate additional testing methods. We do not believe this will result in undue hardship for several reasons. First, our current fuels rules already provide that ASTM D 2622 is the sole regulatory method for determining the sulfur content of gasoline. Second, California refiners currently using ASTM D 5453 or ASTM D 4045 will not face any hardship because today's rule allows the use of approved California test methods by California refiners.[140] Third, today's rule allows continued use of composite samples for sulfur testing for CG during the period of early credit generation, and therefore refiners currently using outside labs to test composite samples,

[138] As stated in section IV.C. of this preamble, the GPA states are Alaska, Idaho, Montana, North Dakota, Wyoming, Utah, Colorado and New Mexico.

[139] See 40 CFR 80.46(a). Today's rule updates the former designated test method, ASTM D 2622–94.

[140] See preamble discussion in section VI.E., below.

but who may elect to conduct testing in-house when the every-batch sulfur testing requirement is implemented, will not need to determine whether a less expensive alternative to ASTM D 2622 is available for several years. Last, if a performance-based test method rule is not issued by the Agency in the near future, then we may reconsider this issue in a subsequent rulemaking.

We also believe that a standardized approach for determining the appropriateness of alternate test methods, correlation methodology and quality control criteria for alternate test methods would be the most fair approach to the test equipment manufacturers and to the purchasers of testing equipment. It should result in a level playing field for competition among manufacturers of test equipment. We already know that ASTM D 5453 can be purchased for about half the price of ASTM D 2622 equipment, and competition may result in even less expensive equipment.

Some commenters suggested that where a refiner or importer uses ASTM D 2622 to test gasoline, and where the test result is less than 10 ppm, the refiner or importer should be able to report a test result of zero or perhaps use a default value of 5 ppm. This sort of approach has been allowed under the RFG and Anti-dumping Question and Answer Document. However, we disagree with the commenters that this practice is appropriate under the sulfur rule. Under the sulfur rule, with a refiner average standard of 30 ppm, it is important whether a bias is consistently drawn in favor of zero ppm as opposed to 10 ppm. This could artificially increase the number of credits earned or could allow more batches to be produced by the refiner that are near the 80 ppm cap. We believe that any imprecision of sulfur values derived from analysis using ASTM D 2622, will, over the course of numerous batches, average out to near zero. Further, we believe that the precision of ASTM D 2622 is likely to be improved by 2004. Also, by 2004 there may be other methods that will be shown to be precise at low sulfur levels that may be made available for use under a performance-based test method rule. Under today's rule the refiner or importer must report the test result that the test method provides, so long as the result is not less than zero (in which case a result of zero would be reported).

If alternative methods are ultimately made available for use under a performance based rule, refiners and importers who are producing or importing gasoline with low levels of sulfur may desire to use an alternative test method for low sulfur levels, especially if ASTM D 2622 is less precise at such levels. Under today's rule, if any approved alternative method is used for this purpose, a party could not choose to use the test result from ASTM D 2622 when its result is lower, and the test result from the alternative method when its result is lower. For any alternative test method that is eventually approved, if the party uses it for a certain range of sulfur concentrations, and ASTM D 2622 for another range, it must be consistent in such use. For example, if the alternate method were used for test results below 10 ppm, its result would always have to be used for sulfur levels below 10 ppm and ASTM D 2622 would always have to be used for sulfur levels greater than 10 ppm.

2. Test Method for Sulfur in Butane

We proposed the use of ASTM standard test method D 5623–94[141] as the designated method for testing the sulfur content of butane and requested comment on whether this method should be the designated method. Although some butane suppliers or refiners currently use this method, several commenters stated that many refiners do not have ready access to ASTM D 5623 and that it is not necessarily the most precise method for determination of low levels of sulfur in butane. Commenters suggested at least three other methods are equal to ASTM D 5623. These are ASTM D 2784, ASTM D 4468, and ASTM D 3246.[142] One commenter also suggested that ASTM D 3227–92,[143] should be allowed. Several commenters requested that EPA at least allow alternative test methods for quality assurance testing.

We have reviewed the suitability of ASTM D 5623 and agree that it is not the best method for testing for sulfur content in butane. ASTM D 5623 measures sulfur compounds rather than total elemental sulfur, and the current ASTM 5623 method is specified for liquid fuels, not gaseous fuels.

ASTM D 2784 does not seem to be a better method than ASTM D 5623. Commenters stated that ASTM D 2784 is not the most precise method and that it is not widely used. We believe there may be some difficulty in even obtaining the apparatus for ASTM D 2784. ASTM D 3227 is not appropriate since it is designed for measuring a single sulfur compound, and it is currently designated for testing liquid samples.

We believe that ASTM D 4468 appears to be a good method for testing butane for sulfur levels below 20 ppm. However, dilution would be necessary to test for sulfur levels above 20 ppm. This may be problematical, since it may be difficult to dilute a gaseous fuel. We expect that under today's rule, butane being tested will frequently have sulfur content in excess of 20 ppm. Several other methods exist that might work well for testing for sulfur content of gaseous fuels, but their current scope does not include determination of sulfur in gaseous fuels.

ASTM D 3246–96, which was suggested by API and NPRA as a suitable method, is an appropriate method for measuring gaseous compounds and provides test results for total elemental sulfur. Its range is 1.5 to 100 ppm, which is ideal for testing for the alternative 30 ppm butane sulfur standard applicable to butane blenders promulgated in today's rule.[144]

After considering the strengths and weaknesses of all the available options we believe ASTM D 3246 is the best currently-available method. Therefore, today's rule makes ASTM D 3246 the designated method for testing the sulfur content of butane or other gaseous blendstocks. As discussed above, we anticipate that a performance-based test method rule for motor vehicle fuel parameters may be promulgated before 2004, and that the efficacy of other methods would be demonstrable under that rule. However, if that is not the case, the Agency may reconsider the issue of appropriate alternate test methods in a future rulemaking.

3. Quality Assurance Testing

Several commenters urged that alternate test methods be allowed for quality assurance test purposes. Under today's rule, the use of alternate test methods for quality assurance testing for purposes of establishing a defense to liability, for butane quality assurance testing under section 80.340(b)(4), and for determination of whether gasoline is small refiner gasoline, is allowed, so long as the alternate test method is correlated to the regulatory test method, the method is ASTM approved, and the

[141] ASTM D 5623, entitled "Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection."

[142] ASTM D 2784, entitled "Standard Test Method for Sulfur in liquefied Petroleum Gases"; ASTM D 4468–85(1995), entitled "Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry"; and ASTM D 3246–96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry."

[143] ASTM D 3227, entitled "Mercaptan sulfur in Gasoline, Kerosine, Aviation Turbine, and Distillate Fuels". The commenter suggested it should be allowed with the use of the x-ray finish.

[144] Discussed in section VI.D.3.

protocols under the method are followed. However, the regulatory method is required for the truck importer quality assurance testing under section 80.350(c).

4. Requirement To Test Every Batch of Gasoline Produced or Imported

We proposed in the NPRM that refiners and importers[145] would be required to sample each batch of gasoline produced or imported and perform a test on each sample to determine the sulfur content prior to the gasoline leaving the refinery gate or importer facility. We received comments on several aspects of this proposed requirement.

Several commenters urged that we continue to allow composite sampling and testing for sulfur. Some refiners commented that the requirement to test each batch would raise testing costs. However, one refiner commented that every-batch testing for sulfur would not be a substantial burden so long as every-batch testing for other CG parameters is not required.[146] This commenter stated that testing for sulfur content is much less complex than testing for certain other CG parameters.

We believe that with a refinery gate sulfur cap combined with refinery averaged standards, there is no realistic alternative to every-batch testing. The Agency has no way to know whether a composite sample that is tested and found to meet the applicable refinery cap included a sample from an individual batch of gasoline that was introduced into commerce that exceeded the cap by a factor of 2 or 3. Further, we believe that with averaged standards for refiners and importers, and with multiple cap standards in effect during the phase-in period, monitoring compliance without every-batch testing would be impossible even if we could somehow be assured that no individual batch significantly exceeded the applicable refinery level cap.

We realize that there will be an additional cost associated with testing every batch of CG—for sulfur content (this is already required for RFG). However, we believe less expensive test methods for sulfur content already exist, and may continue to be developed, that will likely be acceptable as alternative methods in the future, as discussed above. Therefore, today's rule retains the requirement for every-batch testing. Under today's final rule, the test results for each batch of gasoline will be used to determine compliance with the applicable refiner/importer cap standard and to calculate the refiner's or importer's annual average sulfur level. Any batch of gasoline that exceeds the applicable sulfur cap cannot be distributed or sold in the U.S. (unless it is exempted from the standards under today's rule, as described in section VI.G., below).

Refiners who use computerized in-line blending methods objected to the proposed requirement for a batch test before the gasoline is released from the refinery. These commenters stated that refiners using the sophisticated in-line blending practice cannot produce a complete batch test until a portion of the batch is already past the refinery gate. These commenters did not urge that we eliminate the requirement for every-batch testing, but urged that the sulfur rule adopt the RFG rule provisions for in-line blending found at 40 CFR 80.65(f)(4), for both RFG and CG.

We believe that the importance of assuring compliance with the refinery level cap is such that the rule must generally require that gasoline must be tested for sulfur content before it leaves the refinery. Based on experience under the RFG rule, we do not believe that the requirement to test each batch before it is released will substantially increase the cost of testing or cause delays in shipments.

However, today's rule recognizes the unique circumstances involved in computerized in-line blending. We believe that with appropriate safeguards, compliance with sulfur standards for gasoline produced by refineries using in-line blending can be assured. Therefore, today's rule incorporates the RFG rule provisions for in-line blending at 40 CFR 80.65(f)(4). Such provisions will be applicable to RFG and CG. However, refineries presently having an in-line blending waiver will be asked to submit additional information under the auditing procedures included in approvals of in-line blending petitions already in place. We will contact individual holders of in-line blending approvals to request information on how sulfur is monitored and how streams of gasoline are distributed in the in-line blending process. If we cannot conclude that the monitoring procedures will assure compliance with sulfur standards, we will revoke the in-line blending approval for that purpose. We believe it is important to ensure that the in-line analyzer technology and the refiner's methodology and procedures are sufficient for the gasoline sulfur levels the refinery will have after this rule is implemented, for both RFG and CG.

Several commenters stated that the proposed rule's requirement to test every batch of CG for sulfur is unnecessary during the period of early credit generation because there is no cap standard in effect during this period, even for those refiners generating credits. We agree that every-batch testing is not essential for CG until the refinery gate per-gallon cap standards go into effect. Thus, today's final rule allows composite sample testing for CG to continue during the period of early credits generation, until January 1, 2004, when a cap standard for sulfur is first imposed on gasoline.

5. Exceptions to the Every-Batch Testing Requirement

Under the RFG rule, refiners who blend butane or other blendstocks to previously certified gasoline (PCG) must determine the volume and parameter values of the blendstock, including sulfur content, by testing the gasoline before and after blending, and calculating the properties of the blendstock by subtracting the volume and parameter values of the PCG. For CG only, under certain conditions, we have allowed butane blenders to use the parameter specifications of butane as tested by the butane producer. We have allowed this alternative to every-batch testing because of the costs of testing each load of butane. We proposed a similar alternative to every-batch testing for butane blenders in the NPRM, which allows butane blenders to use the sulfur test result of their suppliers, if the butane contains no more than 30 ppm sulfur and if the butane blender undertakes a quality assurance program of periodic sampling and testing to ensure that the supplier's sampling and testing is accurate.

We also proposed to allow refiners that blend other blendstocks into PCG to meet an alternative testing requirement in lieu of testing every batch of gasoline. Provided that the refiner's test result for the sulfur content of each of the blendstocks is less than the national refinery level per-gallon cap standard, a refiner can sample and test each blendstock when received at the refinery, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard.

Today's rule adopts these provisions. Several commenters urged us to delay the 30 ppm per-gallon cap standard until other refiners must meet a 30 ppm average standard. The proposed 30 ppm per gallon standard was intended to be environmentally neutral in relation to

[145] Except for certain truck importers, as noted above.

[146] As noted above, we are not requiring every batch testing for CG parameters other than sulfur.

the standard applicable to other refiners. Therefore, today's final rule makes clear that for the alternative compliance approach for butane blenders, the 30 ppm per-gallon cap is not applicable until January 1, 2005. The per-gallon cap starting January 1, 2004 is 120 ppm.[147] For GPA gasoline the per-gallon cap under this alternative compliance option is 150 ppm in 2004 through 2006.

6. Sampling Methods

Sampling methods apply to all parties who conduct sampling and testing under the rule. We proposed to require the use of sampling methods that were proposed in the July 11, 1997 **Federal Register** notice for the RFG/CG rule (62 FR 37338, at 37341–37342, 37375–37376). These sampling methods include ASTM D 4057–95 (manual sampling), ASTM D 4177–95 (automatic sampling from pipelines/in-line blending), and ASTM D 5842 (this sampling method is primarily concerned with sampling where gasoline volatility is going to be tested, but it would also be an appropriate sampling method to use when testing for sulfur). There were no adverse comments to the proposed sampling provisions. Today's rule adopts the methods as proposed.

7. Gasoline Sample Retention Requirements

In the NPRM, we proposed a refiner and importer (collectively referred to in this section as "refiner") sampling and testing program to establish the sulfur compliance of each batch of gasoline produced or imported. We were aware that there were possible drawbacks to a self-testing scheme. For example, a party might sample or test gasoline in a manner that is inconsistent with the required procedures, or employees might inaccurately record the test results by mistake or otherwise. Parties might also attempt to conceal a discovered violation or to save money by not correcting a violation.

To address our concerns about self-testing, we considered an alternative option of requiring independent sampling and testing for all gasoline, including conventional gasoline. We did not propose this requirement for independent sampling and testing for all gasoline because of the costs of such a requirement,[148] and we are not adopting such a program in today's final rule. Instead, we proposed in the NPRM a different strategy to complement the self-testing program that would help ensure refinery sulfur compliance. This strategy would have required refiners to retain for thirty days a representative sample from each batch of gasoline produced, and to provide such samples to the Agency upon request. We believed that, by means of this option, EPA could verify the refiner test results. We believe that this would create an incentive for refiners to sample, test, and record their sulfur results in an accurate and truthful manner. We also proposed that refiners be required to certify annually that the samples have been collected in the manner required under the sulfur rule. In addition, we proposed that specific procedures be followed by refiners to properly collect, retain, and ship the samples in a manner consistent with requirements already imposed or proposed under the RFG program. Under the proposal, a minimum representative sample of 330 ml of each gasoline batch would need to be retained (and submitted to EPA upon request).[149]

Although there were few comments on this proposal, one commenter, the National Petrochemical & Refiners Association ("NPRA"), did comment extensively on it, and strongly urged the Agency not to finalize it. One of the points raised by the NPRA was that the RFG regulations have their own sample retention and submission requirements, (40 CFR 80.65), so that a sulfur rule provision for RFG batches was not necessary. The Agency continues to believe that sample and retention requirements are useful to ensure compliance with the sulfur standards, but we agree with NPRA that the sample retention and submission requirements found in the RFG rule will serve equally as well for the sulfur rule. Therefore, the final sulfur rule requires all refiners, including those producing RFG, to comply with the sulfur rule's retention requirements. However, any refiner of RFG using an independent laboratory pursuant to 40 CFR 80.65(f), either under the 100% Option or the 10% Option, will be considered to be in compliance with the sulfur rule's retain requirements provided the refiner ensures that the independent laboratory conducting the retain program for the refiner, is in compliance with these requirements. In particular, the refiner must ensure that its independent laboratory sends the appropriate certificate of analysis along with any sample forwarded to EPA. Under the RFG program's 100% Option, the refiner must ensure that its independent laboratory sends the independent lab's certificate of analysis; and under the 10% Option, the refiner must ensure that its independent laboratory sends the refiner's certificate of analysis.

In addition to urging EPA not to finalize the sample retention and submission requirements for RFG gasoline, NPRA urged us not to finalize these requirements for CG as well. NPRA argued that these requirements would not prove useful in deterring non-compliance with the sulfur requirements for this product, primarily because false samples could be forwarded to EPA. The Agency disagrees with NPRA's argument. First, the goal of these requirements is not only to deter cheating but also to reveal inadequacies that exist in refiners' sulfur testing procedures. We do not expect that most non-compliance with the sulfur standards will occur through cheating, but rather through operational problems. Agency enforcement experience under the RFG rule reveals that some refiners' testing procedures are not always accurate in measuring parameters and thus detecting noncompliance. EPA verification testing will expose such testing inaccuracy, enabling the refiner to improve its testing procedures and thus improve its ability to detect, and correct, its own compliance problems. To ensure the effectiveness of these sulfur sample retention and submission requirements, the final rule requires all refiners to provide EPA with the sulfur test result the refiner has obtained for the sample, along with each sample the refiner provides to the Agency under this rule.

EPA will use these retained samples in compliance determinations. Gasoline samples that are forwarded to EPA under the sample retention requirements that are found to be in violation of a refinery cap, will be considered by EPA to be evidence of violations of the cap standard, regardless of the refiner's own test result. In addition, EPA testing of these samples may establish that the refiners' test results are generally incorrect, *i.e.*, are biased. EPA will evaluate whether such a bias constitutes evidence of a violation of the sulfur average standards applicable to the refiner, including whether the bias extends to other sulfur tests conducted by the refiner during the current or previous averaging periods. Further, evidence of testing bias could constitute evidence a refiner has not met the requirement to conduct sulfur testing in accordance with specified

[147] See Table IV.C.–1.

[148] See the discussion on this subject in the preamble to the reformulated gasoline program's final rule, 59 FR 7765 (Feb. 16, 1994).

[149] See 40 CFR 80.65(f)(3)(F)(ii), and the Proposed Rule for Modifications to Standards and Requirements for Reformulated and Conventional Gasoline, 62 FR 37337 *et seq*, proposed 40 CFR 80.101(i)(1)(i)(C)(iii).

procedures, and any reports submitted to EPA that reflect the bias could be evidence a refiner has not met the requirement to properly report the sulfur content of gasoline produced.

While it is true that a party can submit false samples to EPA in order to prevent the Agency from discovering what in actuality is a non-compliant batch of gasoline, we do not believe that there will be many examples of such flagrant cheating. Our enforcement experience indicates that the great majority of parties regulated under the fuels programs work to comply with the regulatory requirements. We believe that the potential penalties for the submission of false samples to the government, and the potential criminal liability which such conduct would subject parties to under to section 113 of the Clean Air Act, will act as significant deterrents to this cheating. Last, to further decrease perceived incentives for such cheating, the regulation specifically requires that the refinery official signing and submitting the refinery's annual sulfur report must make inquiries to verify the correctness of the sampling collection and retention procedures and include with the annual sulfur report a personal certification of the correctness of the procedures used to collect the retained samples. If such certification cannot be made, then the report cannot be timely filed.

NPRA further commented that CG being counted to create early credits under the sulfur rule's ABT program should not be subject to the proposed sample retention and submission requirements. NPRA argues that the lack of a sulfur cap during the early credit timeframe makes such retention and submission unnecessary. The Agency disagrees. During the early credit generation timeframe, refiners participating in the credit program must comply with sulfur averaging requirements, even though sulfur caps are not required to be met. Accurate determination of compliance with the averaging requirements necessitates accurate sulfur testing in the early credit period, just as it does during implementation of the full sulfur program, even though sulfur testing of CG composite samples will be permitted. Hence, the sample retention and submission requirements, whose purpose is to ensure accurate testing and compliance determination, continue to be necessary for the early credit period. The final rule retains the sample retention requirements for CG during the early credit time frame.

NPRA also suggested that in place of the proposed 30 day sample retention requirement, EPA instead should require refiners to maintain samples only from the last three batches of gasoline produced. NPRA argued that this alternative requirement would prove more economical for the refiners, yet would still provide EPA with the ability to test some samples itself. Although the Agency believes that the proposed 30 day retention period would provide a valuable amount of samples to be retained and thus available for testing by EPA, the Agency agrees that a more limited sample retention requirement could provide an acceptable means of confirming refiner testing accuracy and sulfur compliance, while being less burdensome to refiners. We do not believe, however, that retention of samples from only three batches of gasoline would be effective in accomplishing the goal of producing greater testing accuracy. Three samples would not be a great enough number to realistically demonstrate if a pattern of testing irregularities exists or to demonstrate that a significant volume of the refiner's production is covered by the testing verification process. Consequently, instead of the three batch sample retention requirement proposed by this commenter, the Agency has instead required in the final rule that at least the last 20 samples be retained, and that each sample be retained for a minimum of 21 days. The Agency believes this amended requirement addresses NPRA's concern that the amount of days of sample retention be reduced from thirty days, while also providing the Agency with an effective means of assuring a reasonable number of samples, representing a significant period of refining activity, will be available for accuracy testing. We believe the retention requirement is not burdensome given the limited number of samples that must be retained. Further, many refineries already retain samples.

A final comment by NPRA about the sample retention and submission requirements is addressed in the final rule. NPRA raised a concern about the required retention and submission of samples of pressurized blendstock, particularly butane, which would require the use of specialized high-pressure containers. The Agency agrees that there is legitimate concern about the handling, storing and shipping of such samples. We also believe that the final rule's quality assurance testing requirements and the testing requirements for blendstock suppliers provides adequate assurance of the compliance of these blendstocks. Hence, the final sulfur rule does not contain a requirement that samples of pressurized blendstock must be retained.

E. Federal Enforcement Provisions for California Gasoline and for Use of California Test Methods To Determine Compliance

Requirements to Segregate Gasoline and to Use Product Transfer Documents for Certain California gasoline; Definition of California Gasoline

In the NPRM, the Agency proposed to generally exempt from the requirements of the federal sulfur rule certain gasoline sold or intended for sale in California. For the purpose of program consistency, the gasoline to be exempt in the sulfur rule would meet the same definition of California gasoline as found in the RFG rule (40 CFR 80.81(a)(2)). The exempt gasoline would include all gasoline sold, intended for sale, or made available for sale in California that was also either: produced within California; imported into California from outside the U.S.; or imported into California from another state, provided that the out-of-state refinery did not also produce federal RFG.

Although the NPRM proposed to exempt California gasoline from compliance with the proposed sulfur standards (for reasons discussed elsewhere in this preamble), we did propose two requirements that would apply to some exempt California gasoline. The first would require exempt gasoline produced outside of California but intended for use in California, to be segregated from non-exempt gasoline at all points in the distribution system. The second would require out-of-state producers of exempt gasoline intended for sale in California to create PTDs identifying the product as California gasoline, and would require such PTDs to be provided to all transferees of this gasoline in the distribution system. Requiring such documentation is intended to facilitate enforcement and compliance by identifying gasoline that is not federally regulated. The same PTD requirements currently apply under the RFG program.[150]

One commenter expressed a reservation about the sulfur rule's proposed segregation requirement. The commenter was concerned that the segregation requirement for exempt California gasoline might interfere with the ability of California importers to import into California, non-exempt, federal RFG gasoline that happened to comply with California Air Resources Board (ARB) sulfur requirements, but had not been kept segregated by its out-

[150] See 40 CFR 80.81(g).

of-state refiner from the refiner's federal RFG product. Out of a concern about potential gasoline supply problems in California, the commenter asked for assurances from the Agency that such gasoline would not be prohibited from sale in California because of the sulfur rule's segregation requirement.

The Agency agrees that it would not be beneficial to restrict the flow of complying gasoline into California. However, since the federal and the ARB sulfur control programs provide for differing calculations of standard compliance, and since the standards themselves are not always consistent between the two programs, EPA does not believe that the compliance of gasoline produced for federal purposes will necessarily assure its compliance with ARB program requirements, and vice-versa. Therefore, we believe it is necessary to require the physical segregation of the gasolines produced for the different programs in order to best ensure compliance with our uniquely determined federal sulfur standards. To ensure segregation, it is necessary that refiners and importers designate gasoline batches destined for California as California gasoline and that PTDs identify the gasoline as being for use only in California.

Further, one of the purposes of creating the California exemption in the federal sulfur rule is to ensure the exclusion of California gasoline from the refiner's compliance calculations under the federal rule. This exclusion is necessary to prevent gasoline that is produced to comply with the strict California standards from unfairly effecting the refiner's compliance with the federal requirements, thereby facilitating the production of higher sulfur gasoline for use in a federal market supplied by the refiner. EPA believes that segregation of the two gasolines is necessary because it facilitates accurate identification of the product to be included solely in the federal compliance calculations.

EPA does not believe that requiring the segregation of California gasoline from gasoline produced for the federal market should create a significant restriction in the flow of gasoline to California. The Agency believes that if a California marketer needs to acquire ARB-complying gasoline from out-of-state, the marketer should generally be able to satisfy that need by ordering a batch of California gasoline to be created for it by out-of-state producers. Under this circumstance of the creation of a unique batch of California gasoline, segregation of the gasoline will typically be assured.

In analyzing the above comment on segregation of California gasoline, the Agency realized that the sulfur rule's proposed definition of exempted California gasoline, which paralleled the definition existing in the RFG rule, was not as complete as it should be to properly address the unique needs of the sulfur program. Specifically, the exclusion from the sulfur rule's exemption of out-of-state gasoline sold or intended for sale in California solely because it happens to be produced at a refinery that produces federal RFG gasoline, is not appropriate. Basing an exemption on whether or not an out-of-state refinery produces federal RFG is relevant to the RFG program, but it has no relevance to the sulfur control program. To ensure effective determination of compliance with federal sulfur standards, the final sulfur rule deletes any reference to RFG production in the rule's definition of exempt California gasoline. Hence, the example presented in the comment, in which out-of-state gasoline for sale in California could be considered non-exempt gasoline, would not arise under the expanded definition of California gasoline.

Use of California Test Methods and Off-Site Sampling Procedures for 49 State Gasoline

Under the NPRM and the final rule, refineries and importers located in California would be required to meet the federal sulfur standards and other requirements with regard to their "federal" gasoline to be used outside of California. However, we proposed that gasoline produced in California for sale outside of California could be tested for compliance under the federal sulfur rule using the methodologies approved by the ARB, provided that the producer complies with the procedures for such testing as already required under 40 CFR 80.81(h), which permits California test methods not identical to federal test methods to be used for conventional gasoline. Today's rule adopts this provision, as well as the corollary proposed provision that gasoline produced by California refiners for use out-of-state may be tested at off-site testing as already permitted pursuant to 40 CFR 80.81(h) for CG purposes. Both provisions in today's rule should alleviate duplicate testing burdens on California refiners subject to both the federal and California programs, since the test methods acceptable under these alternative provisions in today's rule are also currently used to comply with California requirements. No comments were received on these provisions.

F. Recordkeeping and Reporting Requirements

1. Product Transfer Documents

Small Refiner Gasoline Transfers

The NPRM proposed that the business practice PTDs that accompany each transfer of custody or title of gasoline that includes gasoline produced by any small refiner subject to sulfur rule individual refinery standards would be required to identify the gasoline as such, including the applicable downstream cap, as an aid to enforcing the national downstream cap. Today's rule adopts the proposed PTD requirement, with modifications regarding how the PTD requirement relates to testing, as described in section VI.C. The requirement for printing information on PTDs has been simplified in the final rule. All parties may use brief codes to identify the small refiner status of the gasoline and to identify the small refiner downstream standard it is subject to. This small refiner gasoline PTD provision is also applied to gasoline subject to individual refinery standards under the temporary refiner relief provision of today's rule.

GPA Gasoline Transfers

Under the geographic phase-in program finalized today, gasoline produced or imported for use in the GPA may be used only in the GPA states. Therefore, it is necessary for PTDs for gasoline that is comprised in whole, or in part, of GPA gasoline, to identify the gasoline as such and state that the gasoline may not be distributed or sold for use outside the GPA. Product codes may be used to provide this information, except in the case of transfers to truck carriers, retailers and wholesale purchaser-consumers.

2. Recordkeeping Requirements

Under today's rule, refiners and importers will be required to keep and make available to EPA certain records that demonstrate compliance with the sulfur program standards and requirements. This includes records pertaining to the generation, use and transfer of credits and allotments. The RFG/CG regulations currently require refiners and importers to retain records that include much of the information required in the sulfur rule. Where this is the case, there is no requirement for duplication of records or information.

Under the final rule, all parties in the gasoline distribution system, including refiners, importers, oxygenate blenders, retailers, and all types of distributors will be required to retain PTDs and records of quality assurance programs (including, where applicable, sulfur test

results) that parties conduct to establish a defense to downstream violations. All parties in the gasoline distribution system currently are required to keep PTDs for RFG. However, since there are no downstream CG standards under the anti-dumping regulations, only refiners and importers are required to retain PTDs for conventional gasoline under the current regulations. Because the sulfur rule, like the RFG rule, includes downstream standards, we believe that a requirement to retain PTDs for all parties in the gasoline distribution system is appropriate under the sulfur rule. The PTD information will help us identify the source of any gasoline found to be in violation of the sulfur standards, and will provide downstream parties with information regarding the applicable downstream standard.

Parties are required to keep records for a period of five years,[151] with additional requirements for records pertaining to credits and allotments. Records pertaining to credits or allotments that were banked and never transferred to another party are required to be retained for five years after the credits or allotments are used for compliance purposes. Records pertaining to credits or allotments that were transferred are required to be retained by the transferor for five years after the year the credits or allotments were transferred, and by the transferee for five years after use.

We received comment that the regulations should allow records to be maintained in non-hard copy formats, such as photographic or electronic means. We do not believe that the recordkeeping requirements, as proposed, disallow the retention of records in electronic or photographic form. However, parties that electronically generate and/or maintain records must make available to EPA the hardware and software necessary to review the records, or if requested by EPA, electronic records shall be converted to paper documents.

The sulfur rule, like the RFG/CG rule, requires regulated parties to keep the results of tests conducted on the gasoline. A number of parties previously have asked EPA to clarify whether, under the RFG/CG rule, this recordkeeping requirement requires parties to keep copies of all documents that contain test results. To clarify what the recordkeeping requirements require with regard to test data, we proposed for the RFG/CG rule to add language which specifies that the test result as originally printed by the testing apparatus is required to be kept, or, where no printed result is generated by the testing apparatus, the results as originally recorded by the person who performed the tests. Today's action incorporates this clarification in the sulfur rule. Under this provision, where the test data is initially recorded into a database system and there are no prior written recordings of the data, the information in the database system may serve as the original record of the test data. The final rule also specifies that any record that contains results for a test that are not identical to the results as originally printed by the testing apparatus or recorded by the person who performed the test must also be kept. Although this language was not included in the NPRM, we have concluded it is a logical outgrowth of the proposal regarding recordkeeping for test data, and that it will make the regulation clearer with regard to this requirement. As a result, it is appropriate to include this language in the final rule.

3. Reporting Requirements

Refiners and importers will be required to submit an annual report that demonstrates compliance with the applicable sulfur standards and data on individual batches of gasoline, including batch volume and sulfur content. The rule requires that refiners and importers report on the generation, use and transfer of credits and allotments. The RFG/CG programs contain similar reporting requirements. Based on our experience with these programs, we believe that requiring an annual sulfur report and batch information will provide an appropriate and effective means of monitoring compliance with the average standards under the sulfur program. The batch data also will serve to verify that each batch of gasoline met the applicable sulfur cap standard when it left the refinery or import facility. The batch data must also show which batches were designated as GPA gasoline, as appropriate.

For the 2004 and 2005 annual averaging periods, refiners will be required to submit a report for the refiner's gasoline production (RFG and conventional gasoline) for all refineries during the averaging period, which demonstrates compliance with the applicable corporate average and per-gallon cap standards. For the 2005 annual averaging period, refiners will also be required to submit a separate report for each refinery, which demonstrates compliance with the refinery average standard. For the 2004 and 2005 annual averaging periods, importers will be required to submit a report for all of the gasoline they import during the averaging period, which demonstrates compliance with the applicable corporate average and per-gallon cap standards. The importer's report for 2005 must also demonstrate compliance with the refinery average (30 ppm) standard. Any refiner who is also an importer must aggregate the refining and importing activities for the purpose of demonstrating compliance with the applicable corporate average standards. Importers of gasoline produced by foreign refiners with individual baselines have additional reporting requirements. For the 2006 averaging period and beyond, corporate average reports are no longer required for either refiners or importers. Refiners will be required to submit an annual report for each refinery (importers for the gasoline they import), which demonstrates compliance with the refinery average and per-gallon cap standards. Refiners or importers producing both GPA gasoline and gasoline for the remainder of the country, must separately report compliance with the different standards. Annual reports, on forms provided by the Agency, must be received by EPA by the last day of February for the prior calendar year.

The annual reports will also provide a vehicle for accounting for any sulfur allotments or credits created, sold or used to achieve compliance during the averaging period. (See Section IV.C. for a discussion of the sulfur allotment and ABT credit programs.) Each refiner or importer choosing to participate in the ABT program will be required to report to the Agency on an annual basis (refiners for each refinery, and importers for the gasoline they import) the applicable sulfur baseline and the annual average gasoline sulfur level produced at that refinery or by that importer (in ppm sulfur) during the averaging period. Credit calculations will be reported, along with an accounting of credits banked, used, traded, acquired or terminated. The credits will be in units of ppm-gallons. The identity of the refiners/refineries and importers involved in these transactions will be reported, along with the registration numbers assigned to them by the Agency under the RFG/CG program (40 CFR 80, subparts D, E, and F).

For years 2000 through 2003, parties who generate early ABT credits will be required to report information relating to the generation of these credits. These early credit reports will only cover credits banked and traded. Beginning in 2004 and beyond, refiners and importers

[151] Five years is the applicable statute of limitations for the RFG and other fuels programs. See 28 U.S.C. 2462.

who generate and/or use ABT credits will be required to submit information relating to the generation and use of the credits as part of their annual compliance reports, including any credit debit that is carried over to the subsequent year. For each purchase of ABT credits, as reported on the buyer's annual report, there must be a corresponding entry on the seller's annual report. The annual report must also indicate any credits that are used to achieve compliance with the refinery average standard.

As discussed above, during the 2004 and 2005 annual averaging periods, refiners for the combined production from all their refineries, and importers for the gasoline they import, will also be required to demonstrate compliance with the applicable corporate average standard. In addition, refiners and importers must demonstrate compliance with the requirements for the generation, use, transfer and termination of allotments. Refiners and importers who trade sulfur allotments to meet the corporate average standard will be required to submit information relating to these transactions. All sulfur allotment transactions must be concluded by the last day of February of the calendar year following the year the allotments were used to meet the corporate average. Information relating to such transactions, including the identity of the refiners and importers involved in the transactions and their EPA registration numbers, must be reported by both parties to the transaction as part of their annual compliance reports.

As discussed in Section IV.C., above, parties that only blend oxygenates into gasoline are not treated as refiners under the sulfur rule, and, as a result, are not subject to the reporting requirements under § 80.370.

Refiners and importers are also required to arrange for a certified public accountant or certified internal auditor to conduct an annual review of the company's records that form the basis of the annual sulfur compliance report (called an "attest engagement"). The purpose of the attest engagement is to determine whether representations by the company are supported by the company's internal records. Attest engagements are already required under the RFG/CG regulations. The refiner's attest engagement under the RFG/CG rule partially encompasses sulfur rule compliance since the attest auditors are already required to verify sulfur results for both CG and RFG. However, the RFG/CG attest engagements do not require the attest auditor to review sulfur credit generation, credit purchases, credit trading or small refiner issues. Because of the complexity of the sulfur credit program and small refiner program, sulfur attest engagement provisions have been adopted by today's rule that require the attest auditor to review sulfur credit generation, credit trading, credit purchasing, credit selling, corporate pool averaging, and small refiner issues. Consistent with the RFG regulations, the attest reports for sulfur are to be included in the presently required attest engagement submitted by May 31 of each year.

G. Exemptions for Research, Development, and Testing

The final rule provides for an exemption from the sulfur requirements for gasoline used for research, development and testing purposes. We recognize that there may be legitimate research programs that require the use of gasoline with higher sulfur levels than those allowed under the sulfur rule. As a result, the final rule includes provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling or dispensing gasoline that exceeds the standards, where such gasoline is necessary to conduct a research, development or testing program. Parties are required to submit to EPA an application for exemption that describes the purpose and scope of the program and the reasons why use of the higher sulfur gasoline is necessary. In approving any application, EPA will impose reasonable conditions such as recordkeeping, reporting, volume limitations and possible requirements to repair vehicles.

We received comment that the regulations should clarify that suppliers of gasoline used for R&D purposes are exempt from the prohibitions and penalties under the sulfur rule. To clarify this point, we have added a provision which explicitly states that gasoline subject to an R&D exemption is exempt from the provisions of subpart H, so long as the gasoline is used in a way that complies with the terms of the memorandum of exemption. If the R&D exemption is shown to be based on false information or is not properly maintained, parties will be liable for violations of the provisions under subpart H regarding any gasoline covered under the exemption.

We also received comment that the regulations should ensure that vehicles which have been used for testing with high sulfur test fuels are not later returned to the general fleet, or if they are, the vehicles should be required to be restored to their original condition. EPA agrees that it would be improper to permit such vehicles to be used in general use if their emission controls have been rendered inoperative through fueling with high sulfur gasoline. This issue may be effectively addressed through the anti-tampering requirements of section 203(a)(3) of the Clean Air Act, 42 U.S.C. § 7522(a)(3), and is also addressed in today's rule, which provides the Administrator with the power to include appropriate conditions when granting R&D exemptions.

H. Liability and Penalty Provisions for Noncompliance

The liability and penalty provisions under the sulfur rule are similar to the liability and penalty provisions of the RFG and other fuels regulations.[152] Regulated parties will be liable for committing certain prohibited acts, such as selling or distributing gasoline that does not meet the sulfur standards, or causing others to commit prohibited acts. In addition, parties will be liable for a failure to meet certain affirmative requirements, such as the recordkeeping or PTD requirements, or causing others to fail to meet such requirements.

The sulfur rule, like other EPA fuels regulations, includes a presumptive liability scheme for violations of prohibited acts. Under this approach, the party in the gasoline distribution system that controls the facility where the violation occurred, and other parties in that gasoline's distribution system (such as the refiner, reseller, and distributor), are presumed liable for the violation.[153] The sulfur rule explicitly includes causing another person to commit a prohibited act and causing the presence of non-conforming gasoline to be in the distribution system as prohibitions. The final rule clarifies that causing the presence of non-conforming gasoline to be in the distribution system includes gasoline that does not conform to the applicable average standard, as well as gasoline that does not conform to the cap standard. Affirmative defenses are provided for each party that is deemed presumptively liable for a violation, and all presumptions of liability are refutable. The defenses under the sulfur rule are similar to those

[152] See section 80.5 (penalties for fuels violations); section 80.23 (liability for lead violations); section 80.28 (liability for volatility violations); section 80.30 (liability for diesel violations); section 80.79 (liability for violation of RFG prohibited acts); section 80.80 (penalties for RFG/CG violations).

[153] An additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

available to parties for violations of the RFG regulations.

The final sulfur rule, like the proposal, applies the provisions of section 211(d)(1) of the Clean Air Act (Act) for the collection of penalties. The penalty provisions subject any person who violates any requirement or prohibition of the sulfur rule to a civil penalty of up to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of the applicable average sulfur standard constitutes a separate day of violation for each day in the averaging period. A violation of a sulfur cap standard constitutes a separate day of violation for each day the gasoline giving rise to the violation remained in the gasoline distribution system. The length of time the gasoline in question remained in the distribution system is deemed to be twenty-five days unless there is evidence that the gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days. The penalty provisions are similar to the penalty provisions for violations of the RFG regulations.

After consideration of the comments received, the Agency is adopting regulations that specify the regulated parties who may be subject to liability for causing a violation of the sulfur rule. As proposed, the regulation would have applied to any person, not limited to the parties in the gasoline distribution system whose actions could logically have caused the nonconformity. This provision would have potentially broadened the range of liable parties under the sulfur rule beyond the range established under other fuel programs. EPA believes that the presumptive liability schemes of current fuels regulations have generally been effective and finds no compelling reason to apply the regulatory provision at issue to "any person" rather than to specific parties. Therefore, in the final sulfur rule, the liability sections for the causation violations will specify the regulated parties subject to the liability, and will not encompass unspecified parties. The final rule clarifies that oxygenate blenders are among the specified parties potentially subject to liability. Today's final rule also clarifies that parent corporations are liable for violations of subsidiaries. This is consistent with our interpretation of the RFG rule, as stated in the RFG and Anti-dumping Question and Answer document. Finally, the final rule clarifies that each partner to a joint venture will be jointly and severally liable for the violations at a joint venture facility or by a joint venture operation.

We received several comments on the proposal. Some commenters believe that the Act does not authorize EPA to establish prohibitions against causing another person to commit a prohibited act or causing the presence of non-conforming gasoline to be in the distribution system. These commenters believe that these prohibitions are a departure from the liability scheme under the existing fuels regulations and that they constitute double jeopardy by imposing liability for multiple violations for a single act. The commenters also believe that imposing liability for causing another person to commit a prohibited act extends the limits that Congress placed on liability under section 211 of the Act, since sections 211(d) and 211(k)(5) do not expressly mention imposing liability for causing another person to violate regulations. The commenter also noted that, had Congress intended for such actions to be prohibited, it could have expressly included such a prohibition in section 211. This commenter cites section 211(g) as an example of a statutory provision with such a prohibition. One commenter said that, rather than clarify the presumptive liability scheme, the rule provides no guidance regarding what it means to cause someone to violate a prohibition or cause non-conforming gasoline to be in the distribution system. A commenter also stated that these proposed prohibitions are unnecessary, since EPA has issued violations to multiple parties under current fuels regulations.

EPA disagrees with the comment that the sulfur rule's proposed liability scheme is a marked departure from the liability schemes typically found in the other fuels programs promulgated pursuant to section 211 of the Act and with the comment that the regulations constitute double jeopardy (the double jeopardy issue is addressed in the Response to Comment document). The majority of these programs, including the proposed sulfur rule, contain presumptive liability enforcement structures which impose liability on parties who, through their actions, could logically have caused the fuel nonconformity. The sulfur rule's presumptive liability scheme is thus consistent with the liability schemes of typical prior fuels programs. While EPA has issued notices of violations to multiple parties for violations under current fuels regulations, the Agency believes it is appropriate to clarify that the act of causing another party to violate the regulations is a prohibited act. Therefore, the regulatory language in the sulfur regulations explicitly addresses this issue.

EPA also disagrees with the comment that this provision is inconsistent with Section 211(d) of the Act because Section 211(d) does not mention imposing liability for causing another person to violate the regulations promulgated under Section 211(c). For the reasons described above, EPA is adopting a provision in today's regulations that prohibits causing another entity to violate the standards. This prohibition is a reasonable exercise of EPA's discretion under Section 211(c), and the penalty provision of Section 211(d) apply to violations of the prohibition. The fact that Section 211(d) does not specifically mention causing another person to violate the regulations is therefore irrelevant, such action is itself a violation of the regulations. Moreover, Section 211(d) does not mention any specific violations for which penalties may be assessed, but rather states generally that violations shall result in penalties. Thus, the absence of specific mention of causing another entity to violate the regulations is irrelevant, since all other specific prohibitions in regulations subject to Section 211(d) penalties are similarly not mentioned.

The Agency also disagrees with the comment that the Clean Air Act does not give EPA the authority to establish causation violations under the sulfur rule. We believe that the Act gives us ample authority to categorize the sulfur rule's causative acts, *i.e.*, the causing of another party to commit a violation, and the causing of nonconforming gasoline to be present in the distribution system, as prohibited acts. Section 211(c) of the Act authorizes the Agency to promulgate regulations for the purpose of prohibiting or controlling the manufacture, introduction into commerce, sale, or offering for sale of fuels or fuel additives where the fuel or additive causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare, or where the fuel or additive will impair to a significant degree the performance of emission control devices that are or will be in general use. Today's gasoline sulfur rule is promulgated pursuant to this authority.

Section 211(c) gives EPA broad discretion to fashion regulations to control or prohibit the manufacture, introduction into commerce, sale, or offering for sale of fuels once the Agency has made the requisite findings regarding contribution to harmful air pollution or impairment of vehicle emissions control system performance. This includes the discretion to adopt

reasonable regulatory provisions that are necessary and appropriate to ensure that the controls or prohibitions are effective. To effectively regulate sulfur in gasoline under section 211, it is necessary for the Agency to regulate the actions of those parties who do the manufacturing, introducing into commerce, and selling of gasoline subject to the sulfur requirements.

When one or several of these regulated parties causes another regulated party to violate the rule (or causes nonconforming gasoline to be present in the system), such an act could logically result in the high sulfur gasoline contributing to harmful air pollution or to the impairment of vehicle emission control device performance, which are the adverse impacts that legislative authority under section 211(c) was created to control. Examples of such upstream causative acts include the scenario where a refiner produces high sulfur gasoline which it sells to a distributor. That distributor then resells the nonconforming product to a variety of retail outlets which, in their turn, also violate the rule by selling the high sulfur gasoline to owners of motor vehicles. Another example occurs where a distributor has created high sulfur gasoline by blending high sulfur blendstock into his gasoline. This distributor then makes several different sales of this noncomplying product to a variety of retail outlets, which, in their turn, also violate the rule by selling the product to numerous motor vehicle owners. A third upstream causation scenario could occur if several refiners happen to make nonconforming gasoline. Each then sells its nonconforming product to a different distributor, and a retail outlet which is a customer of both distributors, purchases some of the noncomplying gasoline from both distributors. The retailer then commits a violation by offering this product for sale to its customers.

In some cases, an upstream action has more severe environmental impacts through causing a downstream violation than would occur if the violation was corrected upstream. For example, a refiner may violate the sulfur regulations by shipping gasoline that exceeds the applicable standards when it leaves the refinery. If that violation is corrected before the gasoline reaches the retail outlets, the adverse environmental impacts could be mitigated or avoided. However, if the refiner's violation is not corrected and ultimately causes a number of violations of the standards at retail outlets, the environmental impact would be more severe, since high sulfur gasoline would be introduced into vehicles and impair catalyst performance. Therefore, it is reasonable to consider causing a downstream violation by another party to be a separate violation, since an upstream party's actions can have more severe environmental consequences if they cause downstream parties to violate applicable requirements. For these reasons, it is reasonable to conclude that section 211(c) authorizes the Agency to prohibit and control such causative acts in order to ensure that gasoline ultimately introduced into vehicles meets the low sulfur standards.

Our approach is also reasonable under section 211(c) even though section 211(c) does not expressly prohibit causing another party to violate standards adopted under this subsection. In fact, section 211(c) itself does not contain any express prohibitions, but rather provides EPA authority to regulate fuels and fuel additives, based on certain findings. In contrast, other provisions of section 211, such as section 211(g), do include express prohibitions against certain actions. Thus, under section 211(g), the specified actions are prohibited even in the absence of EPA adopting regulations to codify the prohibitions. In section 211(g), Congress indicated a clear intent to prohibit a specific action (misfueling), without requiring EPA to adopt regulations to implement that prohibition. However, section 211(c) authorizes EPA to establish regulations with certain controls and prohibitions, and, as described above, EPA has the discretion to adopt reasonable measures to ensure that the requirements of such regulations are met.

Moreover, the commenters' assertion that this provision is inconsistent with other subsections of section 211 of the Act is misplaced. First, while the sulfur standards do apply to all gasoline, including gasoline subject to the reformulated gasoline requirements, the sulfur standards are being adopted pursuant to EPA's authority under section 211(c)(1), not under section 211(k). Therefore, section 211(k)(5)'s prohibitions, which describe actions that are violations of section 211(k), are not relevant to the sulfur standards. In addition, the enumeration of specific prohibitions in section 211(k) does not mean that EPA may establish no other prohibited acts with respect to reformulated gasoline; rather, it simply identifies certain actions that "shall be" violations of section 211(k), but does not preclude establishment of other appropriate prohibited acts pursuant to EPA's authority under the Act.

The Agency also disagrees with the argument that the proposed causation violations under the sulfur rule would impose unjustifiable, multiple liability for the commission of a single prohibited act. The Agency is generally not in the best position to know the exact cause of a gasoline nonconformity since so many parties and actions are involved with the sale and transfer of the gasoline. Therefore, for effective enforcement, we must have the ability to assert the liability of all the parties in the system who were connected with the nonconforming gasoline because they each could have caused the violation. Similarly, we must also have the ability to assert upstream liability for the full number of downstream violations a party may be responsible for causing, even if the multiple downstream violations may all ultimately be found to stem from one gasoline sale or transfer on the part of the upstream party. The enforcement possibility exists that the separate downstream violations may each have stemmed from separate actions by that party.

Any party may rebut the presumption of liability for each asserted violation by establishing through affirmative defenses that it did not cause the violation. Moreover, any party against whom EPA institutes an enforcement action may raise equitable factors about its own conduct as part of settlement of the violation enforcement action. In settling fuels matters, the Agency typically takes into account such matters as the volume of nonconforming product that a party was connected with, and the severity and the amount of proscribed activity that the party was actually involved with in causing the violation. We do not believe that either the sulfur rule's liability scheme or its future implementation will be arbitrary or unjustified.

To further alleviate commenters' concern about potential liability for multiple violations under the sulfur rule, we want to clarify that the Agency does not ordinarily attempt to collect separate penalties from an entity for the array of possible standard violations (*e.g.*, both for the manufacturing and the selling of noncomplying product), that a party might be liable for in respect to the same gasoline. In addition, we do not intend to seek penalties from a single party for violating regulatory standard requirements while also seeking penalties for that party's causing of other entities to violate regulatory standard requirements, where both violations involve the same gasoline, unless very unusual circumstances exist which would warrant such action, such as egregious conduct on the part of the party.

In a similar fashion, we do not expect to collect penalties from one party for both types of causation violations for the same amount of gasoline under normal circumstances. A primary Agency purpose in defining the causation violations as two separate prohibited acts (*i.e.*, causing another to commit a violation, and causing the presence of nonconforming product in the distribution system), was not to collect a double penalty, but to address different scenarios of evidence collection. For example, if the Agency finds a sulfur rule standard violation in a sample from a retail outlet supplied by a certain distributor, but we do not have a nonconforming sample from the distributor, the evidence would most easily permit us to assert that the distributor was responsible for causing the retailer violation that we do have evidence for. It is reasonable for us to assert the causation violation against the distributor in spite of our lack of a sample from the distributor, because any distributor who transfers gasoline to a retailer, which gasoline is found to be noncompliant, could logically have caused the noncompliance of the gasoline when it was under the distributor's control, such as by blending high sulfur blendstock into the gasoline.

On the other hand, if we have a violation sample from a distributor, but no samples from its downstream customers, we may assert that the distributor caused the presence of nonconforming gasoline in the distribution system, rather than assert that the distributor caused another party to sell nonconforming product, since we don't have a nonconforming sample from another party's facility. It would be reasonable for us to assert that the distributor caused the presence of nonconforming gasoline in the distribution system since we do have a sample of nonconforming gasoline from the distributor, and provided also that there is evidence that the distributor had sold, transferred, etc. this product to downstream customers.

In summary, the Agency intends to enforce the liability scheme of the sulfur rule in the same reasonable manner that we have enforced the similar liability schemes in our prior fuels regulations. This does not include attempting to penalize a party for multiple variations of noncompliance in regard to the same gasoline unless unusual circumstances make such action appropriate.

I. How Will Compliance With the Sulfur Standards Be Determined?

We have often used a variety of evidence to establish non-compliance with the requirements imposed under our current fuels regulations. Test results of the content of gasoline have been used to establish violations, both in situations where the sample has been taken from the facility at which the violation occurred, and where the sample has been obtained from other parties' facilities when such test results have had probative value of the gasoline's characteristics at points upstream or downstream. The Agency has also commonly used documentary evidence to establish non-compliance or a party's liability for non-compliance. Typical documentary evidence has included PTDs identifying the gasoline as inappropriate for the facility it is being delivered to, or identifying parties having connection with the non-complying gasoline.

EPA proposed that compliance with the sulfur standards would be determined based on the sulfur level of the gasoline, as measured using the regulatory testing methodologies. We further proposed that any evidence from any source or location could be used to establish the gasoline sulfur level, provided that such evidence is relevant to whether the level would have been in compliance if the regulatory sampling and testing methodology had been correctly performed. In today's action, EPA is adopting the proposed regulatory provision.

Several commenters interpreted this proposed language as evidencing the Agency's intent to make all evidence, including evidence not derived from regulatory test methods, equal in probative value to that from the regulatory test methods. One commenter also stated that the proposed provision is inconsistent with other parts of the proposal because it undercuts the benefits of having clearly defined regulatory test methodologies. EPA disagrees that the regulatory language indicates such an intent, or has such an effect. The regulations provide that compliance with the standards is to be determined using specified test methodologies. While other information may be used, including test results using different test methods, such other information may only be used if it is relevant to determining whether the sulfur level would meet applicable standards had compliance been properly measured using the specified test methodologies. Thus, the regulation adopted today does not result in a situation where any and all evidence carries equal weight in an enforcement action. In fact, the regulation establishes the regulatory test method as the standard against which other evidence is measured. Moreover, since any evidence other than regulatory test results must be relevant to compliance using the test method, EPA disagrees with the commenter who stated that the validity of the sulfur standards can be challenged in any enforcement action because neither EPA nor regulated entities will be able to rely on measurements taken using the regulatory test methods. Rather than causing more confusion regarding compliance with the standard, this provision clarifies that the regulatory test method defines compliance, since other evidence can only be used if it relates to compliance using that test method.

The following is an example of how the Agency believes evidence of standard non-compliance not based on regulatory test results might be used for compliance purposes under today's rule provisions. Under a first scenario, the Agency might not have sulfur results derived from regulatory test methods for a certain amount of gasoline sold by a terminal, yet the terminal's own test results, based on testing using methods other than those specified in the regulations, show an exceedance of the sulfur standard. Under the requirements of today's rule, the evidence from the non-regulatory test method could only be used to establish noncompliance if the terminal's test results are relevant to the determination of the gasoline's sulfur level that would have resulted if the regulatory test method had been used. Thus, the Agency would have to present evidence to link the results of the alternative test method to sulfur levels as measured using the regulatory test method.

Another commenter has suggested that, if the Agency decides to finalize a "credible evidence" provision, it use the language in the current RFG regulations which establishes a presumption that the regulatory testing methods prevail, except in exceptional circumstances. Other commenters also opposed the proposed provision in part because it differs from that in EPA's current fuels regulations. As described above, EPA believes that the provision adopted today does not undercut the importance of the regulatory testing methodologies, since other evidence may be used only as relevant to compliance as measured using the regulatory methods. In addition, as is consistent with the RFG scheme, EPA believes it is appropriate to use such other evidence even in some circumstances where test results using the regulatory test methods do exist, and the provision adopted today clarifies this. EPA also notes that it intends to undertake rulemaking in the near future to revise the current fuels regulations to

include the same language for use of other evidence as adopted today in the final sulfur rule.

The provision adopted today also clarifies that any probative evidence obtained from any source or location may be used to establish non-compliance with requirements other than the sulfur standards, such as recordkeeping requirements and requirements to properly calculate sulfur credits and averages, as well as to establish which parties have facility control or some other basis for liability for sulfur rule non-compliance. Since proof of these elements is not predicated on establishing sulfur levels, whether or not regulatory test methods are used is not significant. Therefore commenters' concern about the use of other evidence undercutting the primacy of the regulatory test methods is not germane to this part of the regulation which is not directed toward standards. This provision is being included in the final sulfur rule to clarify that this rule, as is consistent with our interpretation of our other fuels rules, contemplates the full use of all relevant evidence to establish non-standard violations and rule liability.

EPA disagrees with the commenters who stated that EPA lacks authority under the Clean Air Act to permit the use of any evidence of non-compliance of the sulfur standards other than test results using the regulatory test methods. One commenter notes that the only explicit reference in the Act to the use of "credible evidence" is in section 113(e), which applies only to stationary sources, and that neither section 211 nor section 205 mention "credible evidence." Finally, the commenter states that the proposed provision is inconsistent with the directive of section 211(k) that EPA determine appropriate measures of and methods for ascertaining the emissions of air pollutants.

EPA disagrees with the comments asserting that the Agency lacks authority to promulgate this provision. While section 113(e) does refer to "credible evidence," that provision is not relevant to EPA's action today. Moreover, the absence of the explicit use of the term "credible evidence" in sections 205 and 211 does not compel a conclusion that EPA lacks authority to allow the consideration of relevant evidence in determining compliance with the sulfur standards. EPA believes that section 211(c) provides sufficient authority to adopt such a provision. Section 211(c) authorizes the Agency to promulgate regulations for the purpose of prohibiting or controlling the manufacture, introduction into commerce, sale, or offering for sale of fuels or fuel additives where the fuel or additive causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare, or where the fuel or additive will impair to a significant degree the performance of emission control devices that are or will be in general use. As described in other sections of this preamble and in the RIA, today's regulation is promulgated pursuant to this authority. Section 211(c) gives EPA broad discretion to fashion regulations to control or prohibit the manufacture, introduction into commerce, sale, or offering for sale of fuels once the Agency has made the requisite findings regarding contribution to harmful air pollution or impairment of vehicle emissions control system performance. This includes the discretion to adopt reasonable regulatory provisions that are necessary and appropriate to ensure that the controls or prohibitions are effective and can be enforced.

To ensure the effectiveness and the ability to adequately enforce the sulfur standards, it is reasonable for EPA to consider evidence other than actual test results using the regulatory test method, where such evidence can be related to the test results. As described above, test results using the regulatory test method are often not available. In such circumstances, it is reasonable to consider other evidence of compliance, such as test results using other methods or commercial documents, if such evidence can be shown to be relevant to determining whether the gasoline would meet the standard if tested using the regulatory methods. This provision would not permit the use of other evidence that is not relevant to such a determination, and is therefore reasonably limited to allow for effective enforcement, without creating uncertainty about compliance.

Finally, EPA disagrees with the commenter's assertion that this provision is inconsistent with section 211(k). First, while the sulfur standards do apply to all gasoline, including gasoline subject to the reformulated gasoline requirements, the sulfur standards are being adopted pursuant to EPA's authority under section 211(c)(1), not under section 211(k). In any case, the directive of section 211(k)(4) that EPA determine through regulation appropriate measures of and methods for ascertaining the emissions of air pollutants explicitly applies only for purposes of section 211(k), and applies for determining the emissions levels of VOCs and toxic air pollutants from baseline vehicles when operating on baseline gasoline, as defined by section 211(k). Thus, the commenter's reference to section 211(k)(4) as inconsistent with the provision adopted today is misplaced, particularly in light of the limited applicability of the language in section 211(k)(4).[154]

As described in the NPRM, the Agency frequently uses a variety of evidence to establish compliance with fuel programs' regulatory requirements and liability for non-compliance. Such evidence has included test results obtained from a variety of sources, including bills of lading, delivery records, manifests, and other commercial documents. The compliance determination provisions included in today's final rule are created to provide the most effective Agency capability to enforce the rule's requirements.

VII. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. The formal comment period and four public hearings associated with the NPRM provided additional opportunities for public input. EPA also met with a variety of stakeholders, including environmental and public health organizations, oil company representatives, auto company representatives, emission control equipment manufacturers, and states at various points in the process.

We have prepared a detailed Response to Comments document that describes the comments received on the NPRM and presents our response to each of these comments. The Response to Comments document is available in the docket for this rule and on the Office of Mobile Sources internet home page. Comments and our responses are also included throughout this preamble for several key issues.

VIII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

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[154] The commenter references section 211(k)(5) as support for its assertion, but quotes language from section 211(k)(4). EPA assumes that the commenter intended to cite section 211(k)(4) rather than section 211(k)(5).

• Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

• Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

• Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

• Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is a "significant regulatory action" because the vehicle standards, gasoline sulfur standards, and other regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, we have prepared a Final Regulatory Impact Analysis (RIA) which is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB on today's action and any responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. EPA has identified industries subject to this rule and has provided information to, and received comment from, small entities and representatives of small entities in these industries. We have prepared a Final Regulatory Flexibility Analysis (RFA) to evaluate the economic impacts of today's proposal on small entities.[155] The key elements of the RFA include:

• The number of affected small entities;

• The projected reporting, record keeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;

• Other federal rules that may duplicate, overlap, or conflict with the proposed rule; and

• Any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize significant economic impacts of the proposed rule on small entities.

The Agency convened a Small Business Advocacy Review Panel (the Panel) under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel was to collect the advice and recommendations of representatives of small entities that could be affected by today's proposed rule and to report on those comments and the Panel's findings as to issues related to the key elements of the Regulatory Flexibility Analysis under section 603 of the Regulatory Flexibility Act. The report of the Panel has been placed in the docket for this rulemaking.[156]

The contents of today's final rule and the Final Regulatory Flexibility Analysis reflect the recommendations in the Panel's report. We summarize our outreach to small entities and our responses to the recommendations of the Panel below.

1. Potentially Affected Small Businesses

The Regulatory Flexibility Analysis identifies small businesses from the industries in the following table as subject to the provisions of today's rule:

TABLE VIII.1.—INDUSTRIES CONTAINING SMALL BUSINESSES POTENTIALLY AFFECTED BY TODAY'S RULE

Industry	NAICS[a] codes	SIC[b] codes	Defined by SBA as a small business if:[c]
Motor Vehicle Manufacturers	336111 336112 336120	3711	< 1000 employees.
Alternative Fuel Vehicle Converters	336311	3592	< 500 employees.
	541690	8931	
	336312	3714	< 750 employees.
	422720	5172	< 100 employees.
	454312	5984 7549	< $5 million annual sales.
	811198	8742	
	541514		
Independent Commercial Importers of Vehicles and Vehicle Components.	811112	7533 7549	< $5 million annual sales.
	811198	8742	
	541514		
Petroleum Refiners	324110	2911	< 1500 employees.
Petroleum Marketers and Distributors	422710 422720	5171 5172	< 100 employees.

[a] North American Industry Classification System.
[b] Standard Industrial Classification system.
[c] According to SBA's regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

The Final RFA identifies about 15 small petroleum refiners, several hundred small petroleum marketers, and about 15 small certifiers of covered vehicles (belonging to the other categories in the above table) that would be subject to the rule.

[155] The Final RFA is contained in Chapter 8 of the Regulatory Impact Analysis.

[156] Report of the Small Business Advocacy Panel on Tier 2 Light-Duty Vehicle and Light-Duty Truck Emission Standards, Heavy-Duty Gasoline Engine Standards, and Gasoline Sulfur Standards, October 1998.

2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives

The Small Business Advocacy Review Panel was convened by EPA on August 27, 1998. The Panel consisted of representatives of the Small Business Administration (SBA), the Office of Management and Budget (OMB), and EPA. During the development of the proposal, EPA and the Panel were in contact with representatives from the small businesses that would be subject to the provisions of the rule. In addition to verbal comments from industry noted by the Panel at meetings and teleconferences, we received written comments from each of the affected industry segments or their representatives. These comments, alternatives suggested by the Panel to mitigate adverse impacts on small businesses, and issues the Panel requested EPA take additional comment on are contained in the report of the Panel and are summarized below. Today's final rule incorporates the major recommendations of the Panel.

Fuel-Related Small Business Issues

Most of the small refiners stated that if they were required to achieve 30 ppm sulfur levels on average with an 80 ppm per-gallon cap without some regulatory relief, they would be forced out of business. Thus, the Panel devoted much attention to regulatory alternatives to address this concern. Most small refiners strongly supported delaying mandatory compliance for their facilities. On the other hand, most small refiners stated that a phase-in of gasoline sulfur standards would not be helpful because it would be more cost-effective for them to install the maximum technology required for the most stringent sulfur levels that would ultimately be imposed.

The Society of Independent Gasoline Marketers of America (SIGMA) commented that EPA should consider giving relief not only to refiners that meet the SBA definition of small refiner but also to refineries with relatively small production capacity that are owned by large refining companies. This was because a refinery with a small production capacity would operate essentially as an SBA-defined small refiner would. SIGMA also noted that small gasoline marketers would be affected by the closure of any refinery with small production capacity, whether it was owned by a large company or an SBA-defined small refining company.

The Panel recommended that small refiners be given a four to six year period of relief during which less stringent gasoline sulfur requirements would apply. The Panel also advised that EPA specifically request comment on an alternative duration of ten years for the relief period. Small refiners would be assigned interim sulfur standards during this relief period based on their current individual refinery sulfur levels. Following this relief period, small refiners would be required to meet the industry-wide standard, although temporary hardship relief would be available on a case-by-case basis. The Panel concluded that additional time provided to small refiners before compliance with the industry-wide standard was required would allow (1) new sulfur-reduction technologies to be proven-out by larger refiners, (2) the costs of advanced technology units to drop as the volume of their sales increases, (3) industry engineering and construction resources to be freed-up, and (4) the acquisition of the necessary capital by small refiners.

The Panel also concluded that adding gasoline sulfur to the fuel parameters already being sampled and tested by gasoline marketers would likely result in little, if any, additional burden. Therefore, the Panel did not recommend any special provision for gasoline marketers.

EPA's final action on this issue closely follows the Panel's recommendations. You can find a description of the small refiner provisions of today's final rule in Section IV.C.2. above. Comments and our responses on related issues are collected in the Response to Comments document.

Vehicle-Related Small Business Issues

Independent commercial importers of vehicles (ICIs) suggested that the new emissions standards be phased-in with the phase-in schedule based on the small vehicle manufacturer's annual production volume. Secondly, the ICIs requested that small testing laboratories be permitted to use older technology dynamometers than proposed for use by the Agency. Finally, the ICIs commented that the certification process should be waived for certain foreign vehicles. Small-volume vehicle manufacturers (SVMs) stated that a phase-in of Tier-2 emissions standards is essential. They further stated that SVMs should not be required to comply until the end of the phase-in period, which should not be before model year 2007. The SVMs also stated that a case-by-case hardship relief provision should be provided for their members. SVMs requested that a credit program be established with incentives for larger manufacturers to make credits available to SVMs in meeting their compliance goals.

Based on the above comments, the Panel advised that EPA consider several alternatives, individually or in combination, for the potential relief that they might provide to small certifiers of vehicles.

The Final Regulatory Flexibility Analysis evaluates the financial impacts of the proposed vehicle standards and fuel controls on small entities. EPA believes that the regulatory alternatives incorporated in today's final rule will provide substantial relief to small business from the potential adverse economic impacts of complying with today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements (ICRs) associated with today's rule belong to two distinct categories: (1) those that pertain to amendments to the vehicle certification requirements, and (2) those that pertain to requirements for the control of gasoline sulfur content. These information collection requirements are contained in two separate ICR documents according to the category to which they belong.

The ICR in this final rule that pertains to the amendments to the vehicle certification requirements has been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Copies of this ICR [157] can be obtained from Sandy Farmer, Office of Environmental Information, Collections Strategy Division, U.S. Environmental Protection Agency (Mail Code 2822), 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–2740. Please refer to ICR #783.40 in any correspondence. Copies may also be downloaded from the internet at *http://www.epa.gov/icr.*

The ICR in this final rule that pertains to the requirements for the control of gasoline sulfur will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The submission to OMB of the ICR document that contains this ICR and its availability to the public will be announced in a subsequent **Federal Register** notice.

[157] The information collection requirements associated with the amendments to the requirements for vehicle certification are contained in the Information Collection Request entitled "Amendments to the Reporting and Recordkeeping Requirements for Motor Vehicle Certification Under the Tier 2 Rule", OMB No. 2060–0114, EPA ICR # 783.40.

The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The OMB control numbers for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** notice after OMB approves the ICRs.

The Paperwork Reduction Act stipulates that ICR documents estimate the burden of activities required of regulated parties within a three year time period. Consequently, the ICR documents associated with today's final rule contain burden estimates for the activities that will be required under the first three years of the program.

ICRs Pertaining to the Amendments to Vehicle Certification Requirements: The information collection burden to vehicle certifiers associated with the amendments to the vehicle certification requirements in today's notice pertain to the fleet-average NO_X standard and emission credits provisions. These requirements are very similar to those under the voluntary National Low Emission Vehicle (NLEV) program, which includes a fleet-average standard for nonmethane hydrocarbon organic gases (NMOG) and associated emission credits provisions. The hours spent annually by a given vehicle certifier on the information collection activities associated with the these recordkeeping and reporting requirements depends upon certifier-specific variables, including: the scope/variety of their product line as reflected in the number of test groups and strategy used to comply with the fleet-average NO_X standard, the extent they utilize emissions credits provisions, and whether they opted into the NLEV program. Vehicle certifiers that use the provisions for early banking of emission credits will be subject to the associated information collection requirements as early as September 1, 2000.[158] All vehicle certifiers will be required to comply with the information collection requirements associated with the amendments to the vehicle certification program beginning September 1, 2003.[159] The ICR document for the amendments to the vehicle certification program in this final rule provides burden estimates for all of the associated information collection requirements. The total information collection burden associated with the amendments to the vehicle certification requirements is estimated at 8,406 hours and $567,217 annually for the certifiers of light-duty vehicles, medium-duty passenger vehicles, and light-duty trucks.

ICRs Pertaining to the Requirements for Gasoline Sulfur Control: The information collection burden to gasoline refiners, importers, marketers, distributors, retailers and wholesale purchaser-consumers (WPCs), and users of research and development (R&D) gasoline pertain to the gasoline sulfur control program in today's rule. The scope of the recordkeeping and reporting requirements for each regulated party, and therefore the cost to that party, reflects the party's opportunity to create, control, or alter the sulfur content of gasoline. As a result, refiners and importers have significant requirements, which are necessary both for their own tracking, and that of downstream parties, and for EPA enforcement. Parties downstream from the gasoline production or import point, such as retailers, have minimal burdens that are primarily associated with the transfer and retention of product transfer documents. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline currently exist under EPA's Reformulated Gasoline (RFG) and Anti-Dumping programs. The ICR for the RFG program covered start up costs associated with reporting gasoline sulfur content under the RFG program. Consequently, much of the cost of the information collection requirements under the gasoline sulfur control program has already been accounted for under the RFG program ICR. In addition, many of the information collection burdens associated with the sulfur program are the result of provisions designed to provide refiners with flexibility in demonstrating compliance with the sulfur standards in the early years of the program, such as the credit trading and small refiner programs.

The information collection requirements under the sulfur control program evolve over time as the program is phased-in. Beginning July 1, 2000, certain requirements apply to parties that voluntarily opt to generate credits for early sulfur reduction under the average banking and trading (ABT) provisions. Many of the requirements do not become applicable until the beginning of the sulfur control program on October 1, 2003, when all refiners are required to meet the sulfur standards. The information collection requirements under the sulfur control program become stable after January 1, 2008, when the optional small refiner provisions expire.[160]

The ICR document for the sulfur control program in this final rule will provide burden estimates for the activities required under the first three years of the program, from July 1, 2000, through June 30, 2003. The burden associated with activities required after June 30, 2003, will be estimated in later ICRs. The initial ICR for the gasoline sulfur control program, however, will provide a qualitative characterization of all of the required activities and associated burdens for the various regulated parties as they develop, and until they become stable after January 1, 2008.

In the ICR associated with the NPRM for this final rule, we estimated that the total burden of the information collection requirements that would be applicable during the first three years of the proposed gasoline sulfur control program would be 42,479 hours and $2,149,865 annually.[161] Annual burden estimates for the various regulated entities under the initial three year period of the gasoline sulfur control program were also provided in the NPRM ICR as follows:

- Refiners: 31,231 hours; $1,879,822.
- Importers: 40 hours; $2,067.
- Pipelines: 65 hours; $2,785.
- Terminals: 1,700 hours; $55,700.
- Truckers: 3,333 hours; $118,000.
- Retailers/WPCs: 6,087 hours; $91,298.
- R&D Gasoline Users: 3 hours; $193.

We received few comments on the ICR burden estimates in the proposed sulfur rule. Most regulated parties have been fulfilling reporting, recordkeeping and testing requirements under the reformulated and conventional gasoline regulations. The only negative comments we received related to the batch testing for sulfur content and sample retention for conventional gasoline. We believe the estimated cost of complying with these requirements is somewhat higher than the actual

[158] These ICRs will become effective on the date that model year 2001 vehicles are introduced into commerce. EPA assumes that September 1, 2000 is the earliest date that model year 2001 vehicles will be marketed.

[159] Assuming model year 2004 vehicles are introduced into commerce on this date.

[160] A refiner can petition EPA for an extension of the small refiner provisions beyond January 1, 2008, based on hardship.

[161] The information collection requirements associated with the proposed gasoline sulfur control program are contained in the Information Collection Request that accompanied the Tier 2 NPRM which is entitled "Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Proposed Rule", ICR #1907.01. Copies of this ICR can be obtained as discussed earlier in this section.

burdens industry will realize. The ICR for this final rule will be adjusted accordingly.

We estimate that there will be some additional costs and hourly burdens over those estimated in the NPRM associated with certain changes made to the sulfur program from the NPRM to this final rule. In particular, this final rule includes a program which provides for relaxed standards in the early years of the program for refiners and importers who produce or import gasoline for use in certain states in the western U.S. This program requires some additional reporting and recordkeeping burdens for those refiners and importers who participate in the program, since they will be required to submit an application for the program, including a baseline for purposes of establishing their sulfur standard. This program requires gasoline intended for use in the geographic area to be identified on product transfer documents and segregated from other gasoline in the distribution system. This final rule also includes provisions for trading sulfur allotments to provide refiners and importers additional flexibility in meeting the corporate pool average standards. This program requires additional reporting and recordkeeping to track allotment trading activity. In addition, the final rule requires small refiners to submit information regarding their crude oil capacity in order to qualify for the small refiner standards under the rule. Small refiners are also required to submit reports of their progress toward compliance with the sulfur standards. The additional total annual cost and hourly burden over the first three years of the program, as a result of changes made to the program in the final rule, are estimated to add less than one percent to the overall burden estimates contained in the NPRM ICR for the sulfur control program.

Total Burden of the ICRs: In the NPRM, we estimated that the total burden of the recordkeeping and reporting requirements associated with the proposed vehicle certification and gasoline sulfur control requirements would be 50,840 hours and $2,714,037 annually over the first three years that these requirements would be in effect. In the ICR document for this final rule which covers the ICRs for the vehicle certification program, the burden estimates were increased by 45 hours and $3,045 over the burden estimates in the NPRM ICR. This increase reflects changes from the NPRM in the final rule associated the inclusion of the medium-duty passenger vehicles (MDPVs) under the program. As discussed above, we anticipate that changes to the ICR document for this final rule which covers the ICRs for the sulfur control program will have burden estimates less than one percent higher than the estimates contained in the NPRM. Adding these increased costs to the burden estimates presented in the NPRM, we arrive at an estimate of the total burden of the recordkeeping and reporting requirements associated with the vehicle certification and gasoline sulfur control requirements in this final rule of less than 51,350 hours and $2,742,000 annually over the first three years that these requirements will be in effect. These burden estimates will be more precisely stated in the forthcoming **Federal Register** notice which announces the submission to OMB of the ICR document for this final rule that covers the ICRs for the sulfur control program and the availability of this ICR document to the public.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that today's final rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The cost-benefit analysis required by the UMRA is discussed in Section IV.D. above and in the Draft RIA. See the "Administrative Designation" and Regulatory Analysis' section in today's preamble (VIII.A.) for further information regarding these analyses.

2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The motor

vehicle emissions, motor vehicle fuel, and other related requirements for private businesses in today's rule would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this preamble are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule adopts national emissions standards for certain categories of motor vehicles and national standards to control gasoline sulfur. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition, EPA provided state and local officials an opportunity to comment on the proposed regulations. A summary of concerns raised by commenters, including state and local commenters, and EPA's response to those concerns, is found in the Response to Comments document for this rulemaking.

This final rule preempts State and local controls or prohibitions respecting gasoline sulfur content, pursuant to Section 211(c)(4) of the Clean Air Act. The basis and scope of preemption is described in Section IV.C.1.d of this notice. Although this rule was proposed before the November 2, 1999 effective date of Executive Order 13132, EPA provided State and local officials notice and an opportunity for appropriate participation when it published the proposed rule, as described above. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's proposal are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, the Agency is using the existing EPA-developed standards found in 40 CFR Part 86 for the measurement of motor vehicle emissions

F. Executive Order 13045: Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is subject to the Executive Order because it is an economically significant regulatory action as defined by Executive Order 12866 and it concerns in part an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

This rulemaking will achieve significant reductions of various emissions from passenger cars and light trucks, primarily NO_X, but also NMOG

and PM. These pollutants raise concerns regarding environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children, such as impacts from ozone, PM and certain toxic air pollutants. See Section III of this preamble and the RIA for a further discussion of these issues.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and we are not revisiting those issues here. We believe, however, that the emission reductions from the strategies established in this rulemaking will further reduce air toxics and the related adverse impacts on children's health. We will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that we will initiate in the near future under section 202(l) of the Act. That rulemaking will address the emissions of hazardous air pollutants from vehicles and fuels, and the appropriate level of control of HAPs from these sources.

In this final rule, we have evaluated several regulatory strategies for reductions in emissions from passenger cars and light trucks. (See sections IV, V, and VI of this preamble as well as the RIA.) For the reasons described there, we believe that these strategies are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives that we considered for purposes of reducing emissions from these sources (as a way of helping areas achieve and maintain the NAAQS for ozone and PM). Moreover, we believe that we have selected for proposal the most stringent and effective control reasonably feasible at this time, in light of the technology and cost requirements of the Act.

G. Congressional Review Act

The congressional review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

IX. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls set in today's final rule can be found in sections 202, 206, 207, 208, and 301 of the Clean Air Act (CAA), as amended, 42 U.S.C. sections 7521, 7525, 7541, 7542 and 7601.

Statutory authority for the fuel controls set in today's final rule comes from section 211(c) of the CAA (42 U.S.C., section 7545(c)), which allows EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Both criteria are satisfied for the gasoline sulfur controls we are establishing today. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's final rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 21, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 80, 85 and 86 of title 40, of the Code of Federal Regulations are amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.2 is amended by removing and reserving paragraph (aa), adding paragraph (d), and revising paragraphs (h), (s) and (gg) to read as follows:

§ 80.2 Definitions.

* * * * *

(d) *Previously certified gasoline* means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards for reformulated gasoline, conventional gasoline or gasoline sulfur, as appropriate.

* * * * *

(h) *Refinery* means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

* * * * *

(s) *Gasoline blending stock, blendstock, or component* means any liquid compound which is blended with other liquid compounds to produce gasoline.

* * * * *

(gg) *Batch of gasoline* means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline.

* * * * *

3. Section 80.46 is amended by revising paragraphs (a) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) *Sulfur.* Sulfur content of gasoline and butane must be determined by use of the following methods:

(1) The sulfur content of gasoline must be determined by use of American Society for Testing and Materials (ASTM) standard method D 2622–98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry."

(2) The sulfur content of butane must be determined by the use of ASTM standard method D 3246–96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry."

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 2622–98, D 3246–96, D 3606–92, D 1319–93, D 4815–93, and D 86–90 with the exception of the degrees Fahrenheit figures in Table 9 of D 86–90, are incorporated by reference. These

incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

4. Subpart H is added to part 80 to read as follows:

Subpart H—Gasoline Sulfur

General Information

Sec.
80.180 [Reserved]
80.185 [Reserved]
80.190 Who must register with EPA under the sulfur program?

Gasoline Sulfur Standards

80.195 What are the gasoline sulfur standards for refiners and importers?
80.200 What gasoline is subject to the sulfur standards and requirements?
80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?
80.210 What sulfur standards apply to gasoline downstream from refineries and importers?
80.211 [Reserved]
80.212 What requirements apply to oxygenate blenders?
80.213–80.214 [Reserved]

Geographic Phase-In Program

80.215 What is the scope of the geographic phase-in program?
80.216 What standards apply to gasoline produced or imported for use in the GPA?
80.217 How does a refiner or importer apply for the GPA standards?
80.218 [Reserved]
80.219 Designation and downstream requirements for GPA gasoline.
80.220 What are the downstream standards for GPA gasoline?

Hardship Provisions

80.225 What is the definition of a small refiner?
80.230 Who is not eligible for the hardship provisions for small refiners?
80.235 How does a refiner obtain approval as a small refiner?
80.240 What are the small refiner gasoline sulfur standards?
80.245 How does a small refiner apply for a sulfur baseline?
80.250 How is the small refiner sulfur baseline and volume determined?
80.255 Compliance plans and demonstration of commitment to produce low sulfur gasoline.
80.260 What are the procedures and requirements for obtaining a hardship extension?
80.265 How will the EPA approve or disapprove a hardship extension application?
80.270 Can a refiner seek temporary relief from the requirements of this subpart?

Allotment Trading Program

80.275 How are allotments generated and used?

Averaging, Banking and Trading (ABT) Program—General Information

80.280 [Reserved]
80.285 Who may generate credits under the ABT program?
80.290 How does a refiner apply for a sulfur baseline?

ABT Program—Baseline Determination

80.295 How is a refinery sulfur baseline determined?
80.300 [Reserved]

ABT Program—Credit Generation

80.305 How are credits generated during the time period 2000 through 2003?
80.310 How are credits generated beginning in 2004?

ABT Program—Credit Use

80.315 How are credits used and what are the limitations on credit use?
80.320 [Reserved]
80.325 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

80.330 What are the sampling and testing requirements for refiners and importers?
80.335 What gasoline sample retention requirements apply to refiners and importers?
80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?
80.345 [Reserved]
80.350 What alternative sulfur standards and requirements apply to importers who transport gasoline by truck?
80.355 [Reserved]

Recordkeeping and Reporting Requirements

80.360 [Reserved]
80.365 What records must be kept?
80.370 What are the sulfur reporting requirements?
80.371–80.373 [Reserved]

Exemptions

80.374 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?
80.375 What requirements apply to California gasoline?
80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Violation Provisions

80.385 What acts are prohibited under the gasoline sulfur program?
80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
80.395 Who is liable for violations under the gasoline sulfur program?
80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?
80.405 What penalties apply under this subpart?

Provisions for Foreign Refiners With Individual Sulfur Baselines

80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

Attest Engagements

80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?

Subpart H—Gasoline Sulfur

General Information

§ 80.180 [Reserved]

§ 80.185 [Reserved]

§ 80.190 Who must register with EPA under the sulfur program?

(a) Refiners and importers who are registered by EPA under § 80.76 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the standards in § 80.195 who are not registered by EPA under § 80.76 must provide to EPA the information required by § 80.76 by November 1, 2003, or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

(c) Refiners with any refinery subject to the small refiner standards under § 80.240, or refiners subject to the geographic phase-in area (GPA) standards under § 80.216, who are not registered by EPA under § 80.76 must provide to EPA the information required under § 80.76 by December 31, 2000.

(d) Any refiner who plans to generate credits or allotments under § 80.305 or § 80.275 in any year prior to 2004 who is not registered by EPA under § 80.76 must register under § 80.76 no later than September 30 of the year prior to the first year of credit generation. Any refiner who plans to generate credits in 2000 who is not registered by EPA under § 80.76 must register under § 80.76 no later than May 10, 2000.

Gasoline Sulfur Standards

§ 80.195 What are the gasoline sulfur standards for refiners and importers?

(a)(1) The gasoline produced by small refiners subject to the standards at § 80.240, and gasoline designated as GPA gasoline under § 80.219(a), are as follows:

	Gasoline sulfur standards for the averaging period beginning:		
	January 1, 2004	January 1, 2005	January 1, 2006 and subsequent
Refinery or Importer Average	(1)	30.00	30.00
Corporate Pool Average	120.00	90.00	(1)
Per-Gallon Cap	300	300	80

[1] Not applicable.

(2) The sulfur standards and all compliance calculations for sulfur under this subpart are in parts per million (ppm) and volumes are in gallons.

(3) The averaging period is January 1 through December 31 of each year.

(4) The standards under this paragraph (a) for all imported gasoline shall be met by the importer.

(b)(1) The refinery or importer annual average gasoline sulfur standard is the maximum average sulfur level allowed for gasoline produced at a refinery or imported by an importer during each calendar year starting January 1, 2005.

(2) The annual average sulfur level is calculated in accordance with § 80.205.

(3) The refinery or importer annual average gasoline sulfur standard may be met using credits as provided under § 80.275 or § 80.315.

(4) In 2005 only, the refinery or importer annual average sulfur standard may be met using credits or allotments as provided under § 80.275 or credits as provided under § 80.315.

(c)(1) The corporate pool average gasoline sulfur standards applicable in 2004 and 2005 are the maximum average sulfur levels allowed for a refiner's or importer's gasoline production from all of the refiner's refineries or all gasoline imported by an importer in a calendar year. The corporate pool average standards for a party that is both a refiner and an importer are the maximum average sulfur levels allowed for all the party's combined gasoline production from all refineries and imported gasoline in a calendar year.

(2) The corporate pool average is calculated in accordance with the provisions of § 80.205.

(3) The corporate pool average standard may be met using sulfur allotments under § 80.275.

(4) The corporate pool average standards do not apply to approved small refiners subject to the small refiner gasoline sulfur standards under § 80.240.

(5)(i) Joint ventures, in which two or more parties collectively own and operate one or more refineries, will be treated as a separate refiner under this section.

(ii) One partner to a joint venture may include one or more joint venture refineries in its corporate pool for purposes of complying with the corporate pool average standards. The joint venture will be in compliance for such joint venture refinery(ies) if the partner's corporate pool average meets the corporate pool average standards. The joint venture entity must demonstrate compliance with the corporate pool average standards for any refinery(ies) owned by the joint venture that are not included in one partner's corporate pool.

(d)(1) The per-gallon cap standard is the maximum sulfur level allowed for each batch of gasoline produced or imported starting January 1, 2004.

(2) In 2004 only, a refiner or importer may produce or import gasoline with a per-gallon sulfur content greater than 300 ppm, to a maximum of 350 ppm, provided the following conditions are met:

(i) The refinery or importer becomes subject to an adjusted per-gallon cap standard in 2005, calculated using the following formula:

$ACS = 300 - (S_{max} - 300)$

Where:

ACS=Adjusted cap standard.

S_{max}=Maximum sulfur content of any gasoline produced at a refinery or imported by an importer during 2004.

(ii) The adjusted cap standard calculated under paragraph (d)(2)(i) of this section applies to all gasoline produced at a refinery or imported by an importer during 2005.

(iii) The refinery or importer remains subject to the 30.00 average standard under paragraph (a) of this section for 2005.

(iv) The provisions of this paragraph (d)(2) apply to gasoline designated as GPA gasoline under § 80.219(a).

(v) The provisions of this paragraph (d)(2) do not apply to small refiners as defined in § 80.225.

§ 80.200 What gasoline is subject to the sulfur standards and requirements?

For the purpose of this subpart, all reformulated and conventional gasoline and RBOB, collectively called "gasoline" unless otherwise specified, is subject to the standards and requirements under this subpart, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) California gasoline as defined in § 80.375.

(c) Gasoline that is exported for sale outside the U.S.

§ 80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?

(a) The annual refinery or importer average and corporate pool average gasoline sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

S_a=The refinery or importer annual average sulfur value, or corporate pool average sulfur value, as applicable.

V_i=The volume of gasoline produced or imported in batch i.

S_i=The sulfur content of batch i determined under § 80.330.

n=The number of batches of gasoline produced or imported during the averaging period.

i=Individual batch of gasoline produced or imported during the averaging period.

(b) All annual refinery or importer average or corporate pool average calculations shall be conducted to two decimal places.

(c) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the sulfur content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(d) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Sulfur-FRGAS;

(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.200.

(e)(1) A refiner or importer may exceed the refinery or importer annual average sulfur standard specified in § 80.195 for a given averaging period for any calendar year through 2010, creating a compliance deficit, provided that in the calendar year following the year the standard is not met, the refinery or importer shall:

(i) Achieve compliance with the refinery or importer annual average sulfur standard specified in § 80.195; and

(ii) Use additional sulfur credits sufficient to offset the compliance deficit of the previous year.

(2) No refiner or importer may have a compliance deficit in any year after 2010. Any deficit that exists in 2010 must be made up in 2011.

(f) For refiners subject to the corporate pool average who produce some GPA gasoline, the refinery average sulfur value for its GPA gasoline shall be the average sulfur value after applying credits.

§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

The sulfur standard for gasoline at any point in the gasoline distribution system downstream from refineries and import facilities, including gasoline at facilities of distributors, carriers, oxygenate blenders, retailers and wholesale purchaser-consumers ("downstream location"), shall be determined in accordance with the provisions of this section.

(a) *Definition. S–RGAS* means gasoline that is subject to the standards under § 80.240 or § 80.270, including Certified Sulfur-FRGAS as defined in § 80.410, except that no batch of gasoline may be classified as S–RGAS if the actual sulfur content is less than the applicable per-gallon refinery cap standard specified in § 80.195.

(b) *Standards for gasoline that does not qualify for S–RGAS downstream standards.* The following standards apply to any gasoline that does not qualify for S–RGAS downstream standards under in paragraph (d) of this section:

(1) Starting February 1, 2004 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2004 the sulfur content of gasoline at any downstream location, shall not exceed 378 ppm.

(2) Except as provided in § 80.220(a), starting February 1, 2005 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2005 the sulfur content of gasoline at any downstream location, shall not exceed 326 ppm.

(3) Except as provided in § 80.220(a), starting February 1, 2006 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2006 the sulfur content of gasoline at any downstream location, shall not exceed 95 ppm.

(c) *Standards for gasoline that qualifies for S–RGAS downstream standards.* In the case of any gasoline that qualifies for S–RGAS downstream standards under paragraph (d) of this section, the sulfur standard shall be the downstream standard for the gasoline calculated under paragraph (f) of this section. In the case of mixtures of gasoline that qualify for different S–RGAS downstream standards, the sulfur standard shall be the highest downstream standard applicable to any of the S–RGAS in the mixture.

(d) *Gasoline that qualifies for S–RGAS downstream standards.* Gasoline qualifies for S–RGAS downstream standards if all of the following conditions are met:

(1) The gasoline must be comprised in whole or part of S–RGAS.

(2) Product transfer documents applicable to the gasoline when received at that location must represent that the gasoline contains S–RGAS.

(3) Except as provided in paragraph (d)(4) of this section, the gasoline must have been sampled and tested at that location subsequent to the most recent receipt of gasoline at that location, and the test result must show a sulfur content greater than:

(i) 350 ppm starting February 1, 2004;

(ii) 300 ppm starting February 1, 2005; and

(iii) 80 ppm (or in the GPA, 300 ppm) starting February 1, 2006.

(4) This sampling and testing condition does not apply for gasoline at any retail outlet, wholesale purchaser-consumer facility, or contained in any transport truck.

(e) *Product transfer document information for S–RGAS.* (1) On each occasion when any refiner or importer of S–RGAS transfers custody or title to such gasoline, the refiner or importer shall provide to the transferee documents that include the following information:

(i) Identification of the gasoline as being S–RGAS; and

(ii) The downstream standard applicable to the batch of gasoline under paragraph (f) of this section.

(2) Where gasoline in whole or part is classified as S–RGAS when received by the transferor, and where the gasoline transferred meets the conditions under paragraph (d) of this section, the transferor shall provide to the transferee, on each occasion when custody or title to gasoline is transferred, documents that include the following information:

(i) Identification of the gasoline as S–RGAS; and

(ii) The applicable downstream standard under paragraph (c) of this section. This does not apply when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility.

(3) No person shall classify gasoline as being S–RGAS except as provided in paragraphs (e)(1) and (e)(2) of this section.

(4) Product codes may be used to convey the information required by paragraphs (e)(1) and (e)(2) of this section if such codes are clearly understood by each transferee.

(f) *Downstream standards applicable to S–RGAS when produced or imported.* (1) The downstream standard applicable to any gasoline classified as S–RGAS when produced or imported shall be calculated using the following equation:

$$D=S+105\times((S+2)/10^4)^{0.4}$$

Where:

D=Downstream sulfur standard.
S=The sulfur content of the refiner's batch determined under § 80.330.

(2) Where more than one S–RGAS batch is combined, prior to shipment, at the refinery or import facility where the S–RGAS is produced or imported, the downstream standard applicable to the mixture shall be the highest downstream standard, calculated under paragraph (f)(1) of this section, for any S–RGAS contained in the mixture.

§ 80.211 [Reserved]

§ 80.212 What requirements apply to oxygenate blenders?

Effective January 1, 2004, oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline, but are subject to the requirements and prohibitions applicable to downstream parties and the prohibition specified in § 80.385(e).

§§ 80.213–80.214 [Reserved]

Geographic Phase-In Program

§ 80.215 What is the scope of the geographic phase-in program?

(a) *Geographic phase-in area.* (1) The following states comprise the geographic phase-in area (GPA) subject to the provisions of the geographic phase-in program: North Dakota, Montana, Idaho, Wyoming, Utah, Colorado, New Mexico, and Alaska.

(2) Additional counties or tribal lands in states adjacent to the states identified in paragraph (a) of this section will be included in the GPA if any of the following criteria is met:

(i) Approximately 50% or more of the total volume of gasoline in the county or tribal land in 1999, as measured at the terminal(s) and bulk station(s) in the county or tribal land, was received from a refinery or refineries located in the area specified in paragraph (a)(1) of this section; or

(ii) Approximately 50% or more of the total volume of gasoline dispensed in the county or tribal land in 1999 was received from a refinery or refineries located in the area specified in paragraph (a)(1) of this section; or

(iii) Approximately 50% or more of the total commercial and private dispensing outlets in the county or tribal land in 1999 were supplied by gasoline produced by a refinery or refineries located in the area specified in paragraph (a)(1) of this section.

(3) The criteria of paragraphs (a)(2)(i), (ii) and (iii) of this section are without regard to the method of gasoline delivery (e.g, pipeline, truck, rail or barge). The criteria of paragraphs (a)(2)(ii) and (a)(2)(iii) of this section are without regard to whether the gasoline was transported directly from the refinery to the dispensing outlet or distributed through a terminal or bulk station.

(b) *Duration of the program.* The geographic phase-in program applies to the 2004, 2005, and 2006 annual averaging periods.

(c) *Persons eligible.* Any refiner or importer who produces or imports gasoline for use in the geographic area under paragraph (a) of this section is eligible to apply for the geographic phase-in program. The provisions of the geographic phase-in program shall apply to imported gasoline through the importer.

§ 80.216 What standards apply to gasoline produced or imported for use in the GPA?

(a)(1) The refinery or importer annual average sulfur standard for gasoline produced or imported for use in the geographic area under § 80.215 shall be the lesser of:

(i) 150 ppm; or

(ii) The refinery's or importer's 1997/1998 average sulfur level, calculated in accordance with § 80.295, plus 30 ppm.

(2) In the case of any refinery whose actual annual sulfur average decreases to a level lower than the refinery's annual average sulfur standard established under paragraph (a)(1) of this section during the period 2000 through 2003, the standard applicable to that refinery from 2004 through 2006 shall be the lowest average sulfur content for any year in which the refinery generated allotments or credits under § 80.275(a) or § 80.305 plus 30 ppm, not to exceed 150 ppm.

(b) The per-gallon cap standard for gasoline produced or imported for use in the GPA under paragraph (a) of this section shall be 300 ppm, except as specified in § 80.195(d).

(c) The refinery or importer annual average sulfur level is calculated in accordance with the provisions of § 80.205.

(d) The refinery or importer annual average standard under paragraph (a) of this section may be met using sulfur allotments or credits as provided under §§ 80.275 and 80.315.

(e) Gasoline produced by approved small refiners subject to the standards under § 80.240 is not subject to the standards under paragraphs (a) and (b) of this section.

(f)(1) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of ≥50% of gasoline designated as GPA gasoline under § 80.219 shall not be required to meet the corporate pool average standards under § 80.195 for its gasoline production or imported gasoline during the applicable averaging period.

(2) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of less than 50% of gasoline designated as GPA gasoline under § 80.219 must meet the corporate pool average standards under § 80.195 for all the refiner's gasoline production or the importer's volume of imported gasoline during the applicable averaging period.

(g) The provisions for compliance deficits under § 80.205(e) do not apply to gasoline subject to the standards under paragraphs (a) and (b) of this section.

§ 80.217 How does a refiner or importer apply for the GPA standards?

(a) To apply for the GPA standards under § 80.216, a refiner or importer must submit an application in accordance with the provisions of § 80.290.

(b) Applications under paragraph (a) of this section must be submitted by December 31, 2000.

(c)(1) If approved, EPA will notify the refiner or importer of each refinery's or the importer's annual average sulfur standard for gasoline produced for use in the GPA for the 2004 through 2006 annual averaging periods.

(2) If disapproved, the refiner or importer must comply with the standards in § 80.195 for gasoline produced for use in the GPA.

(d) If EPA finds that a refiner or importer provided false or inaccurate

information on its application under this section, upon notice from EPA, the refiner's or importer's application will be void *ab initio*.

§ 80.218 [Reserved]

§ 80.219 Designation and downstream requirements for GPA gasoline.

The requirements and prohibitions specified in this section apply during the period January 1, 2004 through December 31, 2006.

(a) *Designation.* Any refiner or importer shall designate any gasoline produced or imported that is subject to the standards under § 80.216 as "GPA" gasoline.

(b) *Product transfer documents.* (1) On each occasion that any person transfers custody or title to gasoline designated as GPA gasoline, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents that include the following information:

(i) Identification of the gasoline as being GPA gasoline;

(ii) A statement that the gasoline may not be distributed or sold for use outside the geographic phase-in area.

(2) Except for transfers to truck carriers, retailers and wholesale purchaser-consumers, product codes may be used to convey the information required by paragraph (b)(1) of this section if such codes are clearly understood by each transferee.

(3) The requirements under paragraph (b)(1) of this section are in addition to the requirement under § 80.210(e), where appropriate, to identify gasoline as being S–RGAS.

(c) *GPA gasoline use prohibitions.* (1) All parties in the distribution system, including refiners, importers, distributors, carriers, oxygenate blenders, retailers and wholesale purchaser-consumers, are prohibited from:

(i) Selling, offering for sale, dispensing, distributing, storing or transporting GPA gasoline for use outside the geographic phase-in area; and

(ii) Commingling GPA gasoline with gasoline not designated as GPA gasoline unless the mixture is classified as GPA gasoline.

(2) Gasoline not designated as GPA gasoline may be distributed or sold for use in the geographic phase-in area.

§ 80.220 What are the downstream standards for GPA gasoline?

(a) *GPA gasoline.* (1) During the period February 1, 2004 through January 31, 2005, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and during the period March 1, 2004 through February 28, 2005, the sulfur content of GPA gasoline at any downstream location shall not exceed 378 ppm.

(2) During the period February 1, 2005 through January 31, 2007, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and during the period March 1, 2005 through February 28, 2007, the sulfur content of GPA gasoline at any downstream location shall not exceed 326 ppm.

(b) *GPA gasoline mixed with S–RGAS.* Notwithstanding the requirements in paragraph (a) of this section, the sulfur standard applicable to a mixture of GPA gasoline and S–RGAS gasoline at a downstream location shall be the greater of the standard under paragraph (a) of this section or the standard determined under § 80.210.

Hardship Provisions

§ 80.225 What is the definition of a small refiner?

(a) A *small refiner* is defined as any person, as defined by 42 U.S.C. 7602(e), who: (1)(i) Produces gasoline at a refinery by processing crude oil through refinery processing units;

(ii) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1998, to January 1, 1999; and

(iii) Had an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1998.

(2) For the purpose of determining the number of employees and crude capacity under paragraph (a)(1) of this section, the refiner shall include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners.

(b) The definition under paragraph (a) of this section applies to domestic and foreign refiners. For any refiner owned by a governmental entity, the number of employees as specified in paragraph (a) of this section shall include all employees of the governmental entity.

(c) If, without merger with, or acquisition of, another business unit, a company with approved small refiner status under § 80.235 exceeds 1,500 employees, or a corporate crude capacity of 155,000 bpcd after January 1, 1999, it will be considered a small refiner for the duration of the small refiner program.

(d) Notwithstanding the definition in paragraph (a) of this section, refiners who acquire a refinery after January 1, 1999, or reactivate a refinery that was shutdown or was non-operational between January 1, 1998, and January 1, 1999, may apply for small refiner status in accordance with the provisions of § 80.235.

§ 80.230 Who is not eligible for the hardship provisions for small refiners?

(a) The following are not eligible for the hardship provisions for small refiners:

(1) Refiners of refineries built after January 1, 1999;

(2) Refiners who exceed the employee or crude oil capacity criteria under § 80.225(a) on January 1, 1999, but who meet these criteria after that date, regardless of whether the reduction in employees or crude capacity is due to operational changes at the refinery or a company sale or reorganization;

(3) Importers; and

(4) Refiners who produce gasoline other than by processing crude oil through refinery processing units.

(b)(1) Refiners who qualify as small under § 80.225, and subsequently employ more than 1,500 people as a result of merger with or acquisition of or by another entity, are disqualified as small refiners. If this occurs the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(2) Any refiner who qualifies as small under § 80.225 may elect to meet the standards under § 80.195 by notifying EPA in writing no later than November 15 prior to the year the change will occur.

(3) Any refiner whose status changes under paragraph (b)(1) or (2) of this section shall meet the standards under § 80.195 beginning with the first averaging period subsequent to the status change.

§ 80.235 How does a refiner obtain approval as a small refiner?

(a) Applications for small refiner status must be submitted to EPA by December 31, 2000, except for applications submitted pursuant to § 80.225(d), which must be submitted by June 1, 2002.

(b) Applications for small refiner status must be sent to: U.S. EPA, Attn: Sulfur Program (6406J), 401 M Street, SW, Washington, DC 20460. For commercial delivery: U.S. EPA, Attn: Sulfur Program (6406J), 501 3rd Street, NW, Washington, DC 20001.

(c) The small refiner status application must contain the following information for the company seeking

small refiner status, plus any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners:

(1)(i) A listing of the name and address of each location where any employee worked during the 12 months preceding January 1, 1999; the average number of employees at each location based upon the number of employees for each pay period for the 12 months preceding January 1, 1999; and the type of business activities carried out at each location; or

(ii) In the case of a refiner who acquires a refinery after January 1, 1999, or reactivates a refinery that was shutdown between January 1, 1998, and January 1, 1999, a listing of the name and address of each location where any employee of the refiner worked since the refiner acquired or reactivated the refinery; the average number of employees at any such acquired or reactivated refinery during each calendar year since the refiner acquired or reactivated the refinery; and the type of business activities carried out at each location.

(2) The total corporate crude capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE). The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record within 60 days after the company submits its application for small refiner status.

(3) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address (if available) of a corporate contact person.

(d) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(e) For government-owned refiners, the total employee count includes all government employees.

(f) Approval of small refiner status for refiners who apply under § 80.225(d) will be based on all information submitted under paragraph (c) of this section. Where appropriate, the employee and crude oil capacity criteria for such refiners will be based on the most recent 12 months of operation.

(g) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(1) If approved, EPA will notify the refiner of each refinery's applicable baseline standard and volume, and per-gallon cap under § 80.240.

(2) If disapproved, the refiner must comply with the standards in § 80.195.

(h) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from EPA the refiner's small refiner status will be void ab initio.

(i) Upon notification to EPA, an approved small refiner may withdraw its status as a small refiner. Effective on January 1 of the year following such notification, the small refiner will become subject to the standards at § 80.195.

§ 80.240 What are the small refiner gasoline sulfur standards?

(a) The gasoline sulfur standards for an approved small refiner are as follows:

Refinery baseline sulfur level	Temporary sulfur standards for small refiners applicable from January 1, 2004 through December 31, 2007	
	Annual average	Per gallon cap
0 to 30	30.00	300
31 to 200	Baseline level	300
201 to 400	200.00	300
401 to 600	50% of baseline	Factor of 1.5 times the average standard.
601 and above	300.00	450

(b) The refinery annual average sulfur standards must be met on an annual calendar year basis for each refinery owned by a small refiner. The refinery annual average sulfur level is calculated in accordance with the provisions of § 80.205.

(c)(1) The refinery annual average standards specified in paragraph (a) of this section apply to the volume of gasoline produced by a small refiner's refinery up to the lesser of:

(i) 105% of the baseline gasoline volume as determined under § 80.250(a)(1); or

(ii) The volume of gasoline produced at that refinery during the averaging period by processing crude oil.

(2) If a refiner exceeds the volume limitation in paragraph (c)(1) of this section during any averaging period, the annual average sulfur standard applicable to the refiner for that averaging period is calculated as follows:

$$S_{sr} = \frac{(V_b \times S_b) + (AF \times (V_a - V_b))}{V_a}$$

Where:

S_{sr}=Small refiner annual average sulfur standard.

V_b=Applicable volume under paragraph (c)(1) of this section.

V_a=Averaging period gasoline volume.

S_b=Small refiner sulfur baseline as determined under § 80.250.

AF=Adjustment factor (120 in 2004; 90 in 2005; and 30 in 2006 and thereafter).

(3) The small refiner average standards under paragraph (a) of this section may be met using sulfur allotments or credits as provided under § 80.275 or § 80.315.

(4) The provisions for compliance deficits under § 80.205(e) do not apply to small refiners subject to the standards under this section.

(d) In the case of any refiner with small refiner status who generates sulfur allotments or credits pursuant to § 80.275(a) or § 80.305, the baseline applicable to that refiner's refinery for purposes of establishing the standard for the refinery under paragraph (a) of this section beginning in 2004 shall be the lowest annual average sulfur content for any year during the period in which the refiner generated allotments or credits.

§ 80.245 How does a small refiner apply for a sulfur baseline?

(a) Any refiner seeking small refiner status must apply for a refinery sulfur baseline by the deadline under § 80.235 for each of the refiner's refineries by providing the following information:

(1) A sulfur baseline and baseline volume for every refinery calculated in accordance with § 80.250.

(2) The following information for each batch of gasoline produced in 1997–1998:

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Sulfur content.

(3) For any refiner who acquires a refinery after January 1, 1999, or reactivates a refinery that was shut down or non-operational between January 1, 1998, and January 1, 1999, the average sulfur level and average volume of gasoline produced during each year the refinery was in operation after the refinery was acquired or reactivated. Where appropriate, the baseline sulfur level and volume for such refineries will be determined based on the annual average for the most recent year of operation.

(b) The sulfur baseline application must be submitted to the address specified in § 80.235(b).

§ 80.250 How is the small refiner sulfur baseline and volume determined?

(a)(1) The small refiner baseline volume is determined for each refinery as follows:

$$V_b = \frac{\sum_{i=1}^{n}(V_i)}{2}$$

Where:

V_B=Baseline volume.

V_i=Volume of gasoline batch i.

n=Total number of batches of gasoline produced from January 1, 1997, through December 31, 1998.

i=Individual batch of gasoline produced from January 1, 1997, through December 31, 1998.

(2) The small refiner sulfur baseline is determined for each refinery as follows:

$$S_b = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

S_b=Small refiner sulfur baseline.

V_i=Volume of gasoline batch i.

S_i=Sulfur content of batch i.

n=Total number of batches of gasoline produced from January 1, 1997, through December 31, 1998.

i=Individual batch of gasoline produced from January 1, 1997, through December 31, 1998.

(b) Foreign refiners who do not have an approved refinery baseline under § 80.94 must follow the procedures specified in § 80.410(b).

(c) If at any time a small refinery baseline is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards and cap standards are deemed to be those applicable under the corrected information.

§ 80.255 Compliance plans and demonstration of commitment to produce low sulfur gasoline.

The requirements of this section apply to any refiner approved for small refiner standards who wishes to be eligible for a hardship extension under § 80.260.

(a) *Compliance commitment.* By no later than June 1, 2004, any refiner who is approved for small refinery standards must submit a preliminary report to EPA which outlines the refiner's timeline for compliance and a project plan which discusses permits, capital commitments and engineering plans for making the necessary modifications to produce gasoline that meets the 30 ppm refinery average and 80 ppm per-gallon cap sulfur standards under § 80.195 on or before January 1, 2008. Documents showing activities and progress in these areas should be provided, if available.

(b) *Demonstration of Progress.* (1)(i) By no later than June 1, 2005, the small refiner must submit a report to EPA that states in detail the progress toward compliance with the 30 ppm refinery average and 80 ppm cap sulfur standards to date based on their timeline and project plan. The report must include:

(A) Copies of approved permits for construction of the equipment, or the permit application if approval is still pending;

(B) Copies of contracts for design and construction; and

(C) Any available evidence of having secured the necessary financing to complete the required construction;

(ii) If the refiner anticipates any difficulties in meeting its compliance commitments under this section, the refiner must submit a detailed report of all efforts made to date and the factors that may cause delay, including costs, specification of engineering or other design work needed and reasons for delay, specification of equipment needed and any reasons for delay, potential equipment suppliers and history of negotiations, and any other relevant information. If unavailability of equipment is a factor, the report must include a discussion of other options considered and the reasons these other options are not feasible.

(2) By no later than June 1, 2006, the small refiner must submit to EPA evidence that on-site construction has begun and that, absent unforeseen difficulties, the small refiner will be producing complying gasoline by January 1, 2008. If construction has not begun, the refiner must demonstrate that it has made all reasonable efforts to begin construction, that substantial progress is being made to begin construction as soon as possible, and that construction can be completed in time to begin production of gasoline that complies with the standards of § 80.195 by January 1, 2008.

(c) *Additional information.* The Administrator may request any additional information necessary to determine a refiner's commitment and/or progress toward meeting the standards in § 80.195 by 2008.

(d) *Failure to comply with requirements.* Any small refiner who fails to submit the progress reports required under this section will not be eligible for a hardship extension under § 80.260.

§ 80.260 What are the procedures and requirements for obtaining a hardship extension?

(a) An approved small refiner who has filed the reports specified in § 80.255 may apply to EPA for a hardship extension of the small refiner standards for calendar years 2008 and 2009. The application must be submitted in writing no later than January 1, 2007, to U.S. EPA, Attn: Sulfur Program (6406J), 401 M Street, SW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Sulfur Program, 501 3rd Street NW, Washington, DC 20001.

(b) The application must specify the factors that demonstrate a significant economic hardship and must provide a detailed discussion regarding the inability of the refinery to produce gasoline meeting the requirements of § 80.195. Such an application must include, at a minimum, the following information:

(1) Documentation of efforts made to obtain necessary financing, including:

(i) Copies of loan applications for the necessary financing of the construction of appropriate sulfur reduction technology and other equipment procurements or improvements; and

(ii) If financing has been disapproved or is otherwise unsuccessful, documents supporting the basis for that disapproval and evidence of efforts to pursue other means of financing;

(2) A detailed analysis of the reasons the refinery is unable to produce gasoline meeting the standards of

§ 80.195 in 2008, including costs, specification of equipment still needed, potential equipment suppliers, and efforts already completed to obtain the necessary equipment;

(3) If unavailability of equipment is part of the reason for the inability to comply, a discussion of other options considered, and the reasons these other options are not feasible;

(4) If relevant, a demonstration that a needed or lower cost technology is immediately unavailable, but will be available in the near future, and full information regarding when and from what sources it will be available;

(5) Schematic drawings of the refinery configuration as of January 1, 1999, and as of the date of the hardship extension application, and any planned future additions or changes;

(6) If relevant, a demonstration that a temporary unavailability exists of engineering or construction resources necessary for design or installation of the needed equipment;

(7) If sources of crude oil lower in sulfur than what the refiner is currently using are available, full information regarding the availability of these different crude sources, the sulfur content of those crude sources, the cost of the different crude sources over the past five years, and an estimate of gasoline sulfur levels achievable by the refinery if the lower sulfur crude sources were used;

(8) A discussion of any sulfur reductions that can be achieved from current levels;

(9) The date the refiner anticipates compliance with the standards in § 80.195 can be achieved at its refinery;

(10) An analysis of the economic impact of compliance on the refiner's business (including financial statements from the last 5 years, or for any time period up to 10 years, at EPA's request); and

(11) Any other information regarding other strategies considered, including strategies or components of strategies that do not involve installation of equipment, and why meeting the standards in § 80.195 beginning in 2008 is infeasible.

(c) The hardship extension application must contain a letter signed by the president or the chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

§ 80.265 How will the EPA approve or disapprove a hardship extension application?

(a) EPA will evaluate each application for hardship extension on a case-by-case basis. The factors considered for a hardship extension may include: The refiner's financial position and efforts to obtain capital funding; the refiner's efforts to procure necessary equipment, obtain design and engineering services and construction contractors; the availability of desulfurization equipment; and any other relevant factor. An extension will be granted for a refinery for the 2008 averaging period if the small refiner who owns the refinery adequately demonstrates that severe economic hardship would result if compliance with the standards in § 80.195 is required in 2008, or that compliance with the standard in 2008 is not feasible for reasons beyond the refiner's control, and that the refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008. Upon reapplication by the refiner, if EPA determines that further relief is appropriate, EPA may grant a further extension through the 2009 averaging period. In no case will a further extension for the 2009 averaging period be granted unless the refiner demonstrates conclusively that it has financing in place and that it will be able to complete construction and meet the national gasoline sulfur standards no later than December 31, 2009.

(b) EPA may request more information, if necessary, for evaluation of the application. If requested information is not submitted within the time specified in EPA's request, or any extensions granted, the application may be denied.

(c) EPA will notify the refiner of approval or disapproval of hardship extension by letter.

(1) If approved, EPA will also notify the refiner of the date that full compliance with the standards specified at § 80.195 must be achieved or what interim sulfur levels or schedules apply, if any.

(2) If disapproved, beginning January 1, 2008, the refinery is subject to the requirements in § 80.195. Refiners who receive an extension for the 2008 averaging period shall meet the standards in § 80.195 beginning on January 1, 2009, unless EPA grants an extension of the hardship relief for an additional year. If such an additional extension is granted, the refiner shall meet the standards in § 80.195 on January 1, 2010.

(d) Refiners who receive a hardship extension may be required to meet more stringent standards than those which apply to them during 2007, and/or could be required to offset excess sulfur levels. EPA may impose reasonable conditions on an extension, such as requiring segregation of the small refiner's gasoline or requiring the gasoline to be sold for use in older vehicles only.

§ 80.270 Can a refiner seek temporary relief from the requirements of this subpart?

(a) EPA may permit a refiner to produce and distribute gasoline which does not meet the requirements of this subpart if the refiner demonstrates that:

(1) Unusual circumstances exist that impose extreme hardship and significantly affect ability to comply by the applicable date; and

(2) It has made best efforts to comply with the requirements of this subpart (including making efforts to obtain credits and/or allotments).

(b) Applications must be submitted to EPA by September 1, 2000. Relief may be granted from some or all of the requirements of this subpart, at EPA's discretion; however, EPA reserves the right to deny applications for appropriate reasons, including unacceptable environmental impact. Approval to distribute gasoline which does not meet the requirements of this subpart may be granted for such time period as EPA determines is appropriate, but shall not extend beyond January 1, 2008.

(c)(1) Applications must include a plan demonstrating how the refiner will comply with the requirements of this subpart as expeditiously as possible. The plan shall include a showing that contracts are or will be in place for engineering and construction of desulfurization equipment, a plan for applying for and obtaining any permits necessary for construction, a description of plans to obtain necessary capital, and a detailed estimate of when the requirements of this subpart will be met.

(2) Applications must include a detailed description of the refinery configuration and operations, including, at a minimum, the following information:

(i) The portion of gasoline production that is produced using an FCC unit;

(ii) The refinery's hydrotreating capacity;

(iii) The refinery's total reformer unit throughput capacity;

(iv) The refinery's total crude capacity;

(v) Total crude capacity of any other refineries owned by the same entity;

(vi) Total volume of gasoline production at the refinery;

(vii) Total volume of other refinery products; and

(viii) Geographic location(s) in which gasoline will be sold.

(3) Applications must include, at a minimum, the following information:

(i) Detailed description of efforts to obtain capital for refinery investments;

(ii) Bond rating of entity that owns the refinery; and

(iii) Estimated capital investment needed to comply with the requirements of this subpart by the applicable date.

(4) Applicants must also provide any other relevant information requested by EPA.

(d) EPA may impose any reasonable conditions on waivers granted under this section.

Allotment Trading Program

§ 80.275 How are allotments generated and used?

(a) *Generation of allotments and credits in 2003.* (1) During 2003 only, any domestic or foreign refiner may have the option to generate credits in accordance with the provisions of § 80.305 or generate allotments and credits under paragraph (a)(2) of this section.

(2) If the average sulfur content of the gasoline produced at a refinery is less than the refinery's baseline as determined under § 80.295 and is 60 ppm or less, allotments and credits may be generated using the following procedures. This paragraph (a) does not apply to importers.

(i) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is greater than 120, the following procedures apply:

$SA_{TypeB} = (30 - Sa_a) \times V$

$SA_{TypeA} = (V \times 90) \times 0.8$

$CR = (S_{Base} - 120) \times V$

(ii) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is greater than 30 but less than or equal to 120, the following procedures apply:

$SA_{TypeB} = (30 - S_a) \times V$

$SA_{TypeA} = ((S_{Base} - 30) \times V) \times 0.8$

(iii) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is less than or equal to 30, the following procedures apply:

$SA_{TypeB} = (S_{Base} - S_a) \times V$

(iv) If the average sulfur content of the gasoline produced at a refinery is greater than 30, and the refinery's sulfur baseline is greater than 120, the following procedures apply:

$SA_{TypeA} = ((120 - S_a) \times V) \times 0.8$

$CR = (S_{Base} - 120) \times V$

(v) If the average sulfur content of the gasoline produced at a refinery is greater than 30, and the refinery's sulfur baseline is less than or equal to 120, the following procedures apply:

$SA_{TypeA} = ((S_{Base} - Sa) \times V) \times 0.8$

(vi) For purposes of the equations under paragraphs (a)(2)(i) through (v) of this section, the following definitions apply:

SA_{TypeB} = Type B sulfur allotments generated.

SA_{TypeA} = Type A sulfur allotments generated.

CR = Credits generated.

S_{Base} = Refinery's sulfur baseline value under § 80.295.

S_a = Average sulfur content of the gasoline produced at the refinery during 2003 (or for a foreign refinery, all gasoline produced during 2003 that was imported into the U.S.).

V = Volume of gasoline produced at the refinery during 2003 (or for a foreign refinery, all gasoline produced during 2003 that was imported into the U.S.).

(b) *Generation of allotments in 2004 and 2005.* During 2004 and 2005 only, refiners and importers that have corporate pool average sulfur levels below the corporate pool average standards under § 80.195 may generate sulfur allotments separately for each year using the following procedures.

(1) If the average sulfur content of the gasoline produced or imported is less than 30 the following procedures apply:

$SA_{TypeB} = (30 - S_a) \times V_a$

$SA_{TypeA} = (S_{PS} - 30) \times V_a$

(2) If the average sulfur content of the gasoline produced or imported is equal to or greater than 30 the following procedures apply:

$SA_{TypeA} = (S_{PS} - S_a) \times V_a$

(3) For purposes of the equations under paragraphs (b)(1) and (2) of this section, the following definitions apply:

SA_{TypeB} = Type B sulfur allotments generated.

SA_{TypeA} = Type A sulfur allotments generated.

S_a = Corporate pool average sulfur level for the year.

S_{PS} = Corporate pool average standard (120 in 2004; 90 in 2005).

V_a = Total volume of gasoline produced and/or imported during the year.

(c) *Use of sulfur allotments to meet standards.* (1) Refiners and importers may use Type A and Type B sulfur allotments to meet the corporate pool average standards under § 80.195, except that if allotments generated in 2003 or 2004 are used to meet the corporate pool standard in 2005 the allotments generated in 2003 or 2004 shall be reduced in value by 50%.

(2) Small refiners subject to the standards under § 80.240, and refiners and importers of gasoline designated as GPA gasoline under § 80.219(a), may use sulfur allotments to meet their annual average refinery or importer standards.

(d) *Transfers of sulfur allotments.* Sulfur allotments generated under this section may be transferred, provided that:

(1) No allotment may be transferred more than twice: The first transfer by the refiner or importer who generated the allotment may only be made to a refiner or importer who intends to use the allotment; if the transferee cannot use the allotment, it may make the second, and final, transfer only to a refiner or importer who intends to use the allotment. In no case may an allotment be transferred more than twice before being used or terminated.

(2) The allotment transferor must apply any allotments necessary to meet the transferor's corporate pool average standard before transferring allotments to any other refiner or importer or before converting allotments into credits.

(3) The transferor must supply to the transferee records indicating the year of generation and type of the allotments, the identity of the refiner or importer who generated the allotments, and the identity of the transferring party, if it is not the same part that generated the allotments.

(4) The transferor must inform the transferee whether any transferred allotments are Type A allotments or Type B allotments, as defined in paragraphs (a) and (b) of this section.

(5) In the case of allotments that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid allotments cannot be used to achieve compliance with the transferee's corporate pool average standard or be converted to credits, regardless of the transferee's good faith belief that the allotments were valid.

(ii) The refiner or importer who used the allotments, and any transferor of the allotments, must adjust their allotment records and reports and sulfur calculations as necessary to reflect the proper allotments.

(iii) Any allotments remaining after correcting for the improperly created allotments must first be applied to correct the invalid transfers before the transferor may transfer any other allotments or before converting allotments into credits.

(e) *Conversion of allotments into credits.* A refiner or importer may convert allotments into credits using the following procedures:

(1) Type A allotments may be converted into credits with the same requirements and limitations on use that

apply under § 80.315 to credits generated in 2000 through 2003.

(2) Type B allotments may be converted into credits with the same requirements and limitations on use that apply under § 80.315 to credits generated in 2004 and later, based on the year of creation of the allotment.

(f) *Small refiners.* Small refiners subject to the standards under § 80.240 may not generate sulfur allotments under paragraph (b) of this section.

(g) *GPA gasoline.* GPA gasoline that is included in the refiner's or importer's corporate pool average under § 80.216(f)(2) must be included in the calculations under paragraph (b) of this section. No refiner or importer may generate allotments in 2004 or 2005 who is not required to meet the corporate pool average standards.

Averaging, Banking and Trading (ABT) Program—General Information

§ 80.280 [Reserved]

§ 80.285 Who may generate credits under the ABT program?

(a) *Credit generation in 2000 through 2003.* (1) Credits may be generated in 2000 through 2003 under § 80.305 by refiners who produce gasoline from crude oil, and are:

(i) Refiners who establish a sulfur baseline under § 80.295;

(ii) Foreign refiners with approved baselines under § 80.94, or baselines established in accordance with § 80.410; or

(iii) Small refiners for any refinery subject to the standards under § 80.240, using their small refiner baseline established under § 80.250.

(2) Importers and oxygenate blenders may not generate credits under § 80.305.

(b) *Credit generation beginning in 2004.* (1) Credits may be generated beginning in 2004 under § 80.310 by:

(i) Refiners and importers subject to the standards under § 80.195;

(ii) Refiners and importers of gasoline designated as GPA gasoline under § 80.219, using the lesser of: 150 ppm; or the refiner's or importer's baseline calculated under § 80.295; or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refiner generated credits (for any party generating credits under both paragraph (b)(1)(i) of this section and this paragraph (b)(1)(ii), such credits must be calculated separately); or

(iii) Small refiners for any refinery subject to the standards under § 80.240, using refinery's standard established under § 80.240.

(2) Generation of credits for all imported gasoline shall be through the importer.

(3) Oxygenate blenders may not generate credits under § 80.310.

§ 80.290 How does a refiner apply for a sulfur baseline?

(a) The refiner must submit an application to EPA which includes the information required under paragraph (c) of this section no later than September 30 of the year in which the refiner plans to begin generating credits, or the refiner or an importer plans to sell gasoline in the geographic phase-in area in accordance with § 80.217.

(b) The sulfur baseline request must be sent to: U.S. EPA, Attn: Sulfur Program (6406J), 401 M Street SW., Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Sulfur Program, 501 3rd Street NW., Washington, DC 20001.

(c) The sulfur baseline application must include the following information:

(1) A listing of the names and addresses of all refineries owned by the corporation for which the refiner is applying for a sulfur baseline.

(2) The annual average gasoline sulfur baseline for gasoline produced in 1997–1998, for each refinery for which the refiner is applying for a sulfur baseline, calculated in accordance with § 80.295.

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the sulfur baseline determination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a corporate contact person.

(5) The following information for each batch of gasoline produced in 1997–1998:

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Sulfur content.

(d) Foreign refiners who do not have an approved refinery baseline under § 80.94 must follow the procedures specified in § 80.410(b).

(e) Within 60 days of receipt of an application under this section, EPA will notify the refiner of approval of the refinery's baseline or of any deficiencies in the application.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner of the corrected baseline.

(g) Any refiner that seeks temporary relief under § 80.270 shall apply for a refinery sulfur baseline in accordance with the provisions of this section and § 80.295, and if applicable, § 80.410(b), no later than September 1, 2000.

ABT Program—Baseline Determination

§ 80.295 How is a refinery sulfur baseline determined?

(a) A refinery's gasoline sulfur baseline for the purpose of generating credits during years 2000 through 2003 is calculated using the following equation:

$$S_{Base} = \frac{\sum_{i=1}^{n}(Vi \times Si)}{\sum_{i=1}^{n} Vi}$$

Where:

S_{Base}=Sulfur baseline value.

V_i=Volume of gasoline batch i.

S_i=Sulfur content of gasoline batch i.

n=Total number of batches of gasoline produced during January 1, 1997 through December 31, 1998.

i=Individual batch of gasoline produced during January 1, 1997 through December 31, 1998.

(b) Any refiner who, under § 80.65 or § 80.101(d)(4), included oxygenate blended downstream in compliance calculations for 1997–1998 must include this oxygenate in the baseline calculations for sulfur content under paragraph (a) of this section.

§ 80.300 [Reserved]

ABT Program—Credit Generation

§ 80.305 How are credits generated during the time period 2000 through 2003?

(a) Credits must be calculated as follows:

$CR_a = V_a \times (S_{Base} - S_a)$

Where:

CR_a=Credits generated for the averaging period.

V_a=Total volume of gasoline produced during the averaging period at the refinery.

S_{Base}=Sulfur baseline value for the refinery established under § 80.250 or § 80.295.

S_a=Actual annual average sulfur level for gasoline produced during the averaging period by the refinery exclusive of any credits.

(b) The refiner may include any oxygenates included in its RFG or conventional gasoline volume under §§ 80.65 and 80.101(d)(4), respectively, for the purpose of generating credits.

(c) Credits under this program are in units of "ppm-gallons".

(d) Refiners may generate credits for gasoline produced during an averaging period only if the annual average sulfur level for the gasoline produced during the averaging period is less than 0.90 of the refiners baseline under § 80.250 or § 80.295.

(e) Credits generated in accordance with paragraph (a) of this section must be identified by the year of creation.

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner for any refinery, or an importer, may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than the applicable refinery or importer annual average sulfur standard for that refinery or importer in that year.

(b) Credits are calculated as follows:

$$CR_a = V_a \times (S_{Std} - S_a)$$

Where:

CR_a=Credits generated for the averaging period.

V_a=Total annual volume gasoline produced at a refinery or imported during the averaging period.

S_{std}=30 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the lesser of 150 ppm, the refinery's or importer's baseline calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

S_a=Actual annual average sulfur level of gasoline produced at a refinery or imported during the averaging period exclusive of any credits.

(c) Credits generated in accordance with this section must be identified by the year of creation.

ABT Program—Credit Use

§ 80.315 How are credits used and what are the limitations on credit use?

(a) *Credit use.* Credits may be used to meet the applicable refinery or importer annual average sulfur standards under § 80.195, § 80.216, or § 80.240, provided that:

(1) Sulfur credits used were generated pursuant to the requirements of this subpart; and

(2) The requirements of paragraphs (b) and (c) of this section are met.

(b) *Credit transfers.* (1) Credits obtained from other persons may be used to meet the annual average standards specified in § 80.195, § 80.216, or § 80.240 if all the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart.

(ii) The credits are used in compliance with the limitations regarding the appropriate periods for credit use in this subpart.

(iii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iv) No credit may be transferred more than twice: The first transfer by the refiner or importer who generated the credit may only be made to a refiner or importer who intends to use the credit; if the transferee cannot use the credit, it may make the second, and final, transfer only to a refiner or importer who intends to use the credit. In no case may a credit be transferred more than twice before being used or terminated.

(v) The credit transferor must apply any credits necessary to meet the transferor's applicable average standard before transferring credits to any other refiner or importer.

(vi) No credits may be transferred that would result in the transferor having a negative credit balance.

(vii) Each transferor must supply to the transferee records indicating the years the credits were generated, the identity of the refiner or importer who generated the credits, and the identity of the transferring party, if it is not the same party that generated the credits.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Where a refiner's baseline has been determined to be incorrect under § 80.250(c) or § 80.290(f), any credits generated, banked, used or traded must be adjusted to reflect the corrected baseline.

(ii) Invalid credits cannot be used to achieve compliance with the transferee's averaging standard, regardless of the transferee's good faith belief that the credits were valid.

(iii) The refiner or importer who used the credits, and any transferor of the credits, must adjust their credit records and reports and sulfur calculations as necessary to reflect the proper credits.

(iv) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the average standard at the end of the compliance year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(c) *Limitations on credit use.* (1) Credits generated prior to 2004 may only be used for demonstrating compliance with the refinery or importer annual average standards under § 80.195 during the 2005 and 2006 averaging periods. Such credits may be used to demonstrate compliance with the standards under § 80.216 during the 2004 through 2006 averaging periods, and with the standards under § 80.240 during the 2004 through 2007 averaging periods, and the 2008 and 2009 averaging periods, if allowed under the terms of a hardship extension under § 80.265.

(2) Credits generated in 2004 or later may only be used for demonstrating compliance with standards during an averaging period within five years of the year of generation.

(3) A refiner or importer possessing credits must use all credits prior to falling into compliance deficit under § 80.205(e).

(4) Credits may not be used to meet corporate pool average standards under § 80.195.

§ 80.320 [Reserved]

§ 80.325 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

§ 80.330 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its sulfur content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) Except as provided in paragraph (a)(3) of this section, the requirements of this section apply beginning January 1, 2004, or January 1 of the first year of allotment or credit generation under § 80.275 or § 80.305, whichever is earlier.

(3) Prior to January 1, 2004, for purposes of meeting the sampling and testing requirements of this section for conventional gasoline, any refiner may, prior to analysis, combine samples of gasoline from more than one batch of gasoline or blendstock and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of § 80.101(i)(2).

(4) Any refiner who produces reformulated gasoline or conventional gasoline using computer-controlled in-line blending equipment may meet the testing requirement of paragraph (a)(1) of this section under the terms of an exemption granted under § 80.65(f)(4).

(b) *Sampling methods.* For purposes of paragraph (a) of this section, refiners and importers shall sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057–95, entitled "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(ii) Samples collected under the applicable procedures in ASTM method D 5842–95, entitled "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement," may be used for measuring sulfur content if there is no contamination present that could affect the sulfur test result.

(2) Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products."

(c) *Test method for measuring the sulfur content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(a)(1) to measure the sulfur content of gasoline they produce or import.

(2) Except as provided in § 80.350 and in paragraph (c)(1) of this section, any ASTM sulfur test method for liquefied fuels may be used for quality assurance testing under § 80.400, or to determine whether gasoline qualifies for a S–RGAS downstream standard, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(a)(1).

(d) *Test method for sulfur in butane.* (1) Refiners and importers shall use the method provided in § 80.46(a)(2) to measure the sulfur content of butane when the butane constitutes a batch of gasoline.

(2) Except as provided in paragraph (d)(1) of this section, any ASTM sulfur test method for gaseous fuels may be used for quality assurance testing under §§ 80.340(b)(4) and 80.400, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(a)(2).

(e) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95 and D 5842–95 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

§ 80.335 What gasoline sample retention requirements apply to refiners and importers?

(a) *Sample retention requirements.* Beginning January 1, 2004, or January 1 of the first year allotments or credits are generated under §§ 80.275 and 80.305, whichever is earlier, any refiner or importer shall:

(1) Collect a representative portion of each sample analyzed under § 80.330(a), of at least 330 ml in volume;

(2) Retain sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater;

(3) Comply with the gasoline sample handling and storage procedures under § 80.330(b) for each sample portion retained; and

(4) Comply with any request by EPA to:

(i) Provide a retained sample portion to the Administrator's authorized representative; and

(ii) Ship a retained sample portion to EPA, within 2 working days of the date of the request, by an overnight shipping service or comparable means, to the address and following procedures specified by EPA, and accompanied with the sulfur test result for the sample determined under § 80.330(a).

(b) *Sample retention requirement for samples subject to independent analysis requirements.* (1) Any refiner or importer who meets the independent analysis requirements under § 80.65(f) for any batch of reformulated gasoline or RBOB will have met the requirements of paragraph (a) of this section, provided the independent laboratory meets the requirements of paragraph (a) of this section for the gasoline batch.

(2) For samples retained by an independent laboratory under paragraph (b) of this section, the test results required to be submitted under paragraph (a) of this section shall be the test results determined under § 80.65(e).

(c) *Sampling compliance certification.* Any refiner or importer shall include with each annual report filed under § 80.370, the following statement, which must accurately reflect the facts and must be signed and dated by the same person who signs the annual report:

I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under 40 CFR 80.330.

§ 80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirements of § 80.330 to sample and test every batch of gasoline as follows:

(1)(i) Sample and test to determine the volume and sulfur content of the PCG prior to blendstock blending.

(ii) Sample and test to determine the volume and sulfur content of the gasoline subsequent to blendstock blending.

(iii) Calculate the volume and sulfur content of the blendstock, by subtracting the volume and sulfur content of the PCG from the volume and sulfur content of the gasoline subsequent to blendstock blending. The blendstock is a batch for purposes of compliance calculations and reporting. For purposes of this paragraph (a), compliance with the applicable cap standard under § 80.195(a) shall be determined based on the sulfur content of the gasoline subsequent to blendstock blending.

(2) In the alternative, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and sulfur content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard and for reporting. This alternative applies only if every batch of blendstock used at a refinery during an averaging period has a sulfur content that is equal to, or less than, the applicable per-gallon cap standard under §§ 80.195 or 80.216.

(b) Refiners who blend only butane into PCG may meet the sampling and testing requirements by using sulfur test results of the butane supplier, provided that the following requirements are also met:

(1) The sulfur content of the butane received from the butane supplier must not exceed the following sulfur standards on a per-gallon basis as follows:

(i) 120 ppm in 2004, and 30 ppm for 2005 and any subsequent year;

(ii) Except that the per-gallon sulfur content of butane blended to PCG that is designated as GPA gasoline shall not exceed 150 ppm from January 1, 2004, through December 31, 2006.

(2) The refiner obtains test results from the butane supplier that demonstrate that the sulfur content of

each load of butane supplied does not exceed the applicable per-gallon sulfur standard under paragraph (b)(1) of this section through test results of samples of the butane contained in the storage tank from which the butane blender is supplied.

(i) Testing for the sulfur content of the butane by the supplier must be subsequent to each receipt of butane into the supplier's storage tank, or the testing must be immediately before transfer of butane to the butane blender.

(ii) The testing must be performed by the method specified in § 80.46(a)(2).

(iii) The butane blender must obtain a copy of the butane supplier's test results, at the time of each transfer of butane to the butane blender, that reflect the sulfur content of each load of butane supplied to the butane blender.

(3) The sulfur content and volume of each batch of gasoline produced is that of the butane the refiner blends into gasoline for purposes of calculating compliance with the standards in §§ 80.195 and 80.216.

(4) The refiner must conduct a quality assurance program of sampling and testing for each butane supplier that demonstrates the butane sulfur content does not exceed the applicable per-gallon sulfur standard in paragraph (b)(1) of this section. The frequency of butane sampling and testing, for each butane supplier, must be one sample for every 500,000 gallons of butane received, or one sample every 3 months, whichever results in more frequent sampling.

(5) If any of the requirements of this section are not met, in whole or in part, for any butane blended into gasoline, that butane is deemed in violation of the gasoline sulfur standards in § 80.195 or § 80.216, as applicable.

§ 80.345 [Reserved]

§ 80.350 What alternative sulfur standards and requirements apply to importers who transport gasoline by truck?

Importers who import gasoline into the United States by truck may comply with the following requirements instead of the requirements to sample and test every batch of gasoline under § 80.330, and the annual sulfur average and per-gallon cap standards otherwise applicable to importers under §§ 80.195 and 80.216:

(a) *Alternative standards.* The imported gasoline must comply with the standards in paragraph (a)(1) or (a)(2) of this section as follows:

(1) The applicable average standards, corporate average standards and per-gallon standards under § 80.195(a)(1), except that imported gasoline designated for use in the geographic phase-in area from January 1, 2004, through December 31, 2006 must comply with an average standard of 150 ppm and a per-gallon standard of 300 ppm; or

(2) In 2004, a per-gallon standard of 120 ppm, and in 2005 and subsequent years a per-gallon standard of 30 ppm, except that imported gasoline designated for use in the geographic phase-in area from January 1, 2004, through December 31, 2006 must comply with a per-gallon standard of 150 ppm.

(b) *Terminal testing.* The importer may use test results for sulfur content testing conducted by the terminal operator, for gasoline contained in the storage tank from which trucks used to transport gasoline into the United States are loaded, for purposes of demonstrating compliance with the standards in paragraph (a) of this section, provided the following conditions are met:

(1) The sampling and testing shall be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing shall be performed using the methods specified in § 80.330(b) and 80.46(a)(1), respectively.

(3) At the time of each transfer of gasoline to the importer's truck for import to the U.S., the importer must obtain a copy of the terminal test result that indicates the sulfur content of the truck load.

(c) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in §§ 80.330(b) and 80.46(a)(1), respectively.

(3) The quality assurance test results for sulfur must differ from the terminal test result by no more than the ASTM reproducibility of the terminal's test results, as determined by the following equation:

$$R = 105 \times ((S+2)/10^4)^{0.4}$$

Where:

R = ASTM reproducibility.
S = Sulfur content based on the terminal's test result.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) *Party required to conduct quality assurance testing.* The quality assurance program under paragraph (c) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives, no later than 21 days after the sample was taken, copies of all results of tests conducted.

(e) *Assignment of batch numbers.* The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.365, and reporting under § 80.370.

(f) *EPA inspections of terminals.* EPA inspectors or auditors, and auditors conducting attest engagements under § 80.415, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) *Certified Sulfur-FRGAS.* This section does not apply to Certified Sulfur-FRGAS.

(h) *Reporting requirements.* Any importer who elects to comply with the alternative standards in paragraph (a) of this section shall comply with the following requirements:

(1) All importer recordkeeping and reporting requirements under §§ 80.365 and 80.370, except as provided in paragraph (h)(2) of this section.

(2) An importer who elects to comply with the alternative standards in paragraph (a)(2) of this section must certify in the annual report whether it is in compliance with the applicable per-gallon batch standard set forth in paragraph (a)(2) of this section, in lieu of providing the information required by § 80.370(a) regarding annual average sulfur content and compliance with the average standard under § 80.195.

(i) *Effect of noncompliance.* If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline sulfur average and per-gallon cap standards in § 80.195 or § 80.216, as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation and,

if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.330.

§ 80.355 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.360 [Reserved]

§ 80.365 What records must be kept?

(a) *Records that must be kept.* Beginning January 1, 2004, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, shall keep records that contain the following information:

(1) The product transfer document information required under §§ 80.77, 80.106, 80.210 and 80.219; and

(2) For any sampling and testing for sulfur content required under this subpart:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the test;

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test; and

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(2)(iii) of this section.

(b) *Additional records that refiners and importers must keep.* Beginning January 1, 2004, or January 1 of the first year allotments or credits are generated under § 80.275 or § 80.305, whichever is earlier, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) For each batch of gasoline produced or imported:

(i) The batch volume;

(ii) The batch number assigned under § 80.65(d)(3) and the appropriate designation under paragraph (b)(1)(i) of this section; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(iii) The date of production or importation; and

(iv) If appropriate, the designation of the batch as GPA gasoline under § 80.219, California gasoline under § 80.375, exempt gasoline for research and development under § 80.380, or for export outside the United States.

(2) Information regarding credits and allotments, separately kept for credits and for allotments; separately kept according to the year of creation for the credits and for the allotments; and for credit generation or use starting in 2004, separately kept for GPA gasoline and other gasoline. Information shall be kept separately for different types of allotments and credits generated under §§ 80.275(e)(1), 80.275(e)(2), 80.305 and 80.310:

(i) The number in the refiner's or importer's possession at the beginning of the averaging period;

(ii) The number generated;

(iii) The number used;

(iv) If any were obtained from or transferred to other parties, for each other party its name, its EPA refiner or importer registration number, and the number obtained from, or transferred to, the other party;

(v) The number that expired at the end of the averaging period;

(vi) The number of allotments, by type, that were converted into credits under § 80.275(e);

(vii) The number in the refiner's or importer's possession that will carry over into the subsequent averaging period; and

(viii) Contracts or other commercial documents that establish each transfer of credits and allotments from the transferor to the transferee.

(3) The calculations used to determine the applicable refiner baseline under § 80.250 or § 80.295.

(4) The calculations used to determine compliance with the applicable sulfur average standards of § 80.195, § 80.216, § 80.240, or § 80.270.

(5) The calculations used to determine the number of credits or allotments generated under § 80.305, § 80.310 or § 80.275.

(6) The calculations used to determine any applicable adjusted cap standard under § 80.195(d).

(7) A copy of all reports submitted to EPA under § 80.370.

(c) *Additional records importers must keep.* Any importer shall keep records that identify and verify the source of each batch of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.410(o).

(d) *Length of time records must be kept.* The records required in this section shall be kept for five years from the date they were created; except that:

(1) *Transfers of credits and allotments.* Records relating to credit and allotment transfers, except as provided in paragraph (d)(2) of this section, shall be kept by the transferor for 5 years from the date the credits or allotments are transferred, and shall be kept by the transferee for 5 years from the date the credits or allotments were transferred, used or terminated, whichever is later.

(2) *Early credits.* (i) Where the party generating the credits does not transfer the credits, records must be kept for 5 years from the date of creation, use or termination whichever is later.

(ii) Where early credits are transferred, records relating to such credits shall be kept by both parties for 5 years from the date the credits were transferred, used or terminated, whichever is later.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or if requested by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

§ 80.370 What are the sulfur reporting requirements?

Beginning with the 2004 averaging period, or the first year credits or allotments are generated under § 80.275 or § 80.305, whichever is earlier, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information, and in the case of a refiner or importer producing or importing both GPA gasoline and other gasoline, the information shall be separately reported:

(1) The EPA importer, or refiner and refinery facility registration numbers;

(2) The applicable baseline, average standard, and adjusted cap standard as follows:

(i) For the years 2000 through 2003, the applicable baseline under § 80.250 or § 80.295.

(ii) For the 2004 averaging period and subsequent averaging periods:

(A) All applicable average standards under § 80.195, § 80.216, § 80.240 or § 80.270;

(B) All applicable adjusted cap standards under § 80.195(d), with the 2005 report identifying both the 2004 and 2005 applicable adjusted cap standards;

(3) The total volume of gasoline produced or imported;

(4) The annual average sulfur content of the gasoline produced or imported;

(5) The annual average sulfur level after inclusion of any credits and allotments;

(6) Information, separately provided, for credits and allotments, and separately by year of creation, as follows:

(i) The number of credits and allotments at the beginning of the averaging period;

(ii) The number of credits and allotments generated;

(iii) The number of credits and allotments used;

(iv) If any credits or allotments were obtained from or transferred to other parties, for each other party its name and EPA refiner or importer registration number, and the number of credits or allotments obtained from or transferred to the other party;

(v) The number of credits and allotments that expired at the end of the averaging period;

(vi) The number of credits and allotments that will carry over into the subsequent averaging period; and

(vii) The number of each type of allotments converted to credits;

(7) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under § 80.65(d)(3) and the appropriate designation under § 80.365; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The sulfur content of the batch as determined under § 80.330; and

(8) When submitting reports under this paragraph (a), any importer shall exclude certified Sulfur-FRGAS.

(b) *Additional reporting requirements for importers.* Any importer shall report the following information for Sulfur-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the certified Sulfur-FRGAS was produced; and

(2) The total gallons of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported from each foreign refiner and refinery.

(c) *Corporate pool average reports.* (1) Annual reports filed under this section for the 2004 and 2005 averaging periods must include the party's corporate pool average as determined under § 80.205.

(2) If the party submitting the annual report under paragraph (c)(1) of this section is a refiner with more than one refinery or is a refiner who also imports gasoline, then for the purposes of this paragraph, the party shall report the information required for individual refineries and for importers under paragraph (a) of this section, also in the aggregate for all the gasoline produced and imported during the calendar year.

(3) Refiners and importers exempted from corporate pool standards under § 80.216 or § 80.240 are exempt from reporting the information required under paragraphs (c)(1) and (c)(2) of this section.

(d) *Report submission.* Any annual report required under this section shall be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(f) *Attest reports.* Attest reports for refiner and importer attest engagements required under § 80.415 shall be submitted to the Administrator by May 31 of each year for the prior calendar year averaging period.

§§ 80.371—80.373 [Reserved]

Exemptions

§ 80.374 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

In appropriate extreme and unusual circumstances (*e.g.*, natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to distribute gasoline which does not meet the requirements of this subpart provided the refiner or importer meets all the criteria, requirements and conditions contained in § 80.73 (a) through (e).

§ 80.375 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart *California gasoline* means any gasoline designated by the refiner as for use in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) *Requirements for California gasoline.* The requirements are:

(1) Each batch of California gasoline must be designated as such by its refiner or importer;

(2) Designated California gasoline must be kept segregated from gasoline that is not California gasoline, at all points in the distribution system;

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere;

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under § 80.81(g); and

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

(d) *Use of California test methods and off site sampling procedures.* In the case of any gasoline that is not California gasoline and that is either produced at a refinery located in the State of California or is imported from outside the United States into the State of California, the refiner or importer may, with regard to such gasoline:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations instead of the sampling and testing methods required under § 80.330; and

(2) Determine the sulfur content of gasoline at off site tankage as permitted in § 80.81(h)(2).

§ 80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing ("R&D") purposes by submitting to EPA an application that includes all the information listed in paragraph (b) of this section.

(a) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(b) *Information required to be submitted.* To demonstrate each of the four elements in paragraphs (a)(1) through (4) of this section, the application required under this section must include the following information:

(1) A statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.385.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's beginning and ending dates;

(ii) An estimate of the maximum number of vehicles and engines involved in the program, and the number of miles and engine hours that will be accumulated on each;

(iii) The sulfur content of the gasoline expected to be used in the program; and

(iv) The quantity of gasoline that exceeds the applicable sulfur standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

(i) A description of the technical and operational aspects of the program;

(ii) The site(s) of the program (including street address, city, county, State, and ZIP code);

(iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to EPA;

(iv) The manner in which results of the program will be recorded and made available to EPA;

(v) The manner in which information on the gasoline used in the program (including quantity, sulfur content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to EPA;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline where appropriate;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(c) *Additional requirements.* (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be designated by the refiner or importer as exempt R&D gasoline.

(3) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in the distribution system of the gasoline.

(4) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(d) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of motor vehicle emissions control systems. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void ab initio.

(e) *Effects of exemption.* Gasoline that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the gasoline is used in a manner that complies with the memorandum of exemption granted under paragraph (d) of this section.

Violation Provisions

§ 80.385 What acts are prohibited under the gasoline sulfur program?

No person shall:

(a) *Averaging violation.* Produce or import gasoline that does not comply with the applicable sulfur average standard under § 80.195, § 80.216 or § 80.240.

(b) *Cap standard violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standard under § 80.195, § 80.216, § 80.210, § 80.220 or § 80.240.

(c) *Causing an averaging, cap standard, or geographic phase-in area (GPA) use violation.* Cause another person to commit an act in violation of paragraph (a), (b), or (f) of this section.

(d) *Causing violating gasoline to be in the distribution system.* Cause gasoline to be in the distribution system which does not comply with an applicable sulfur cap standard under § 80.195, § 80.210, § 80.216, § 80.220 or § 80.240; a sulfur average standard under § 80.195, § 80.216 or § 80.240; or a GPA use prohibition under § 80.219(c).

(e) *Denatured ethanol violation.* Blend into gasoline denatured ethanol with a sulfur content higher than 30 ppm.

(f) *GPA use violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with a GPA use prohibition under § 80.219(c).

§ 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the sulfur standards of this subpart shall be determined based on the sulfur level of the gasoline, measured using the methodologies specified in §§ 80.330(b) and 80.46(a). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline if the evidence or information is relevant to whether the sulfur level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.330(b) and 80.46(a), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the sulfur standards, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.* (1) *Averaging violation.*

Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(a), is liable for a violation of § 80.385(c).

(3) *Cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385 (b) occurred, is deemed in violation of § 80.385(b).

(4) *Causing a cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(b), is deemed in violation of § 80.385(c).

(5) *GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offer for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(f).

(6) *Causing a GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(f), is deemed liable for a violation of § 80.385(c).

(7) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.385(b) or (f) occurred, is deemed in violation of § 80.385(b) or (f), as applicable.

(8) *Causing violating gasoline to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, or oxygenate blender, who owned, leased, operated, controlled or supervised a facility from which gasoline was released into the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is deemed in violation of § 80.385(d).

(9) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(2), (4), (6), or (8) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(10) *Denatured ethanol violation.* Any oxygenate blender who violates § 80.385(e) is liable for the violation.

(11) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(12) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

§ 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395 (a)(3) through (8), will not be deemed in violation if the person demonstrates that:

(1) The violation was not caused by the person or the person's employee or agent; and

(2) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) and (2) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of gasoline, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) Under paragraph (a) of this section for any person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* To demonstrate an acceptable quality assurance and testing program under paragraph (a)(2) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the gasoline the person sold, dispensed, supplied, stored, or transported, meets the applicable sulfur standard; and

(2) On each occasion when gasoline is found not in compliance with the applicable sulfur standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(3) For any carrier who transports gasoline in a tank truck, the quality assurance program required under this paragraph (d) need not include periodic sampling and testing of gasoline in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart

relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

§ 80.405 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.395 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.395(a)(1) or (2) for a violation of the applicable sulfur averaging standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.395(b) for a failure to fulfill any requirement for credit or allotment generation, transfer, use, banking, or deficit correction, is subject to a separate day of violation for each and every day in the averaging period in which invalid credits or allotments are generated or used.

(c)(1) Any person liable under § 80.395(a)(3), (4), (5), or (6) for a violation of an applicable sulfur per gallon cap standard under § 80.195, § 80.210, § 80.216, § 80.220 or § 80.240, a GPA use prohibition under § 80.219(c), or of causing another party to violate a cap standard or a GPA use prohibition, is subject to a separate day of violation for each and every day the non-complying gasoline remains any place in the gasoline distribution system.

(2) Any person liable under § 80.395(a)(8) for causing gasoline to be in the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is subject to a separate day of violation for each and every day that the non-complying gasoline remains any place in the gasoline distribution system.

(3) For purposes of paragraph (c) of this section, the length of time the gasoline in question remained in the gasoline distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days.

(d) Any person liable under § 80.395(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

Provisions for Foreign Refiners With Individual Sulfur Baselines

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

(a) *Definitions.* (1) A foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States").

(2) A foreign refiner is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) A small foreign refiner is a refiner that meets the definition of a small refiner under § 80.225.

(4) "Sulfur-FRGAS" means gasoline produced at a foreign refinery that has been assigned an individual refinery sulfur baseline under §§ 80.250 or 80.295, or has been granted temporary relief under § 80.270, and that is imported into the United States.

(5) "Non-Sulfur-FRGAS" means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery sulfur baseline, gasoline produced at a foreign refinery with an individual refinery sulfur baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual sulfur baseline during a year when the foreign refiner has opted to not participate in the Sulfur-FRGAS program under paragraph (c)(3) of this section.

(6) "Certified Sulfur-FRGAS" means Sulfur-FRGAS the foreign refiner intends to include in the foreign refinery's sulfur compliance calculations under § 80.205 pursuant to § 80.240 or § 80.270 or credit calculations under §§ 80.305 or 80.310 and allotment calculations under § 80.275(a), and does include in these compliance calculations when reported to EPA.

(7) "Non-Certified Sulfur-FRGAS" means Sulfur-FRGAS that is not Certified Sulfur-FRGAS.

(b) *Baseline establishment.* Any foreign refiner who does not have an approved refinery baseline under § 80.94 may submit a petition to the Administrator for an individual refinery sulfur baseline pursuant to §§ 80.245 and 80.250, a baseline for generating credits or allotments under §§ 80.290 and 80.295, or a baseline for temporary refinery relief under §§ 80.270 and 80.295.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish the volume and sulfur content of gasoline that was produced at the foreign refinery and imported into the United States during 1997 and 1998 for purposes of establishing baselines under § 80.250 or § 80.295.

(2) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery sulfur baseline.

(c) *General requirements for foreign refiners with individual refinery sulfur baselines.* A foreign refiner of a refinery that has been assigned an individual sulfur baseline under § 80.250 or § 80.295 must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Sulfur-FRGAS, the foreign refiner must meet all provisions that apply to refiners under this subpart H.

(2) In the case of Non-Certified Sulfur-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall substitute the name Non-Certified Sulfur-FRGAS for the names "reformulated gasoline" or "RBOB" wherever they appear in the following provisions:

(i) The designation requirements in this section;

(ii) The recordkeeping requirements under § 80.365;

(iii) The reporting requirements in § 80.370 and this section;

(iv) The product transfer document requirements in this section;

(v) The prohibitions in this section and § 80.385; and

(vi) The independent audit requirements under § 80.415, paragraph (h) of this section, §§ 80.125 through

80.127, § 80.128(a),(b),(c),(g) through (i), and § 80.130.

(3)(i) Any foreign refiner that generates sulfur credits under § 80.305 during the period 2000 through 2003, or allotments under § 80.275(a) during 2003, and any small refiner generating credits under § 80.310, shall designate all Sulfur-FRGAS as Certified Sulfur-FRGAS for any year that such credits are generated.

(ii) Any foreign refiner that has been assigned an individual sulfur baseline for a foreign refinery under § 80.250 or § 80.295 may elect to classify no gasoline imported into the United States as Sulfur-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(iii) An election under paragraph (c)(3)(ii) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual sulfur baseline must designate each batch of Sulfur-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Sulfur-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Sulfur-FRGAS prior to its being imported into the United States, it must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Sulfur-FRGAS was produced.

(3) On each occasion when Sulfur-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Sulfur-FRGAS that meets the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Sulfur-FRGAS;

(B) The identification of the gasoline as Certified Sulfur-FRGAS or Non-Certified Sulfur-FRGAS;

(C) The volume of Sulfur-FRGAS being transported, in gallons;

(D) In the case of Certified Sulfur-FRGAS:

(*1*) The sulfur content as determined under paragraph (f) of this section; and

(*2*) A declaration that the Sulfur-FRGAS is being included in the compliance calculations under § 80.205 or credit calculations under § 80.305 or allotments under § 80.275(a) for the refinery that produced the Sulfur-FRGAS.

(ii) The certification shall be made part of the product transfer documents for the Sulfur-FRGAS.

(e) *Transfers of Sulfur-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Sulfur-FRGAS is imported into the United States. A foreign refiner may remove the Sulfur-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance calculations under § 80.205; and

(B) In the case of Certified Sulfur-FRGAS, the volume and sulfur content of the gasoline from the compliance calculations under § 80.205 or credit calculations under § 80.305.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the sulfur content and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Sulfur-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Sulfur-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for sulfur using the methodology specified in § 80.330 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Review original documents that reflect movement and storage of the certified Sulfur-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Sulfur-FRGAS was produced; and

(B) That the Sulfur-FRGAS remained segregated from:

(*1*) Non-Sulfur-FRGAS and Non-Certified Sulfur-FRGAS; and

(*2*) Other Certified Sulfur-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to

compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Sulfur-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the sulfur value.

(ii) Where a vessel transporting Certified Sulfur-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The sulfur value determined at the port of entry is higher than the sulfur value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Sulfur-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline sulfur compliance calculations under § 80.205.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of Sulfur-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.415:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Sulfur-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Sulfur-FRGAS, and of Non-Certified Sulfur-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Sulfur-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Sulfur-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Sulfur-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Sulfur-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Sulfur-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Sulfur-FRGAS was mixed with any Non-Certified Sulfur-FRGAS, Non-Sulfur-FRGAS, or any Certified Sulfur-FRGAS produced at a different refinery.

(5)(i) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified and Non-Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(ii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel. Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Sulfur-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under paragraph (h)(6) of this section where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130, § 80.415 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery sulfur baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Sulfur-FRGAS is stored or transported between the foreign refinery

and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and sulfur content, and transfers of title or custody, of any gasoline or blendstocks, whether Sulfur-FRGAS or Non-Sulfur-FRGAS, produced at the foreign refinery during the period January 1, 1997 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and sulfur content of Sulfur-FRGAS;

(C) The proper classification of gasoline as being Sulfur-FRGAS or as not being Sulfur-FRGAS, or as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS;

(D) Transfers of title or custody to Sulfur-FRGAS;

(E) Sampling and testing of Sulfur-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.415 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart H.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery sulfur baseline, producing and exporting gasoline under an individual refinery sulfur baseline, and all other actions to comply with the requirements of this subpart H relating to the establishment and use of an individual refinery sulfur baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. section 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart H, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Sulfur-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Sulfur-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery sulfur baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart H, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery sulfur baseline.

(l) The foreign refiner shall post a bond of the amount calculated using the following equation:

Bond=G×$ 0.01

where:

Bond=amount of the bond in U. S. dollars.

G=the largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart H, including where such conduct violates Title 18 U.S.C. section

1001 and Clean Air Act section 113(c)(2);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" (Available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, Md. 20782. Also available on the internet at http://www.fms.treas.gov/c570/c570.html); and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this Subpart H.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by an foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Sulfur-FRGAS with any Non-Certified Sulfur-FRGAS or Non-Sulfur-FRGAS, and no person may combine Certified Sulfur-FRGAS with any Certified Sulfur-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Sulfur-FRGAS or as Non-Sulfur-FRGAS, and each batch classified as Sulfur-FRGAS shall be further classified as Certified Sulfur-FRGAS or as Non-certified Sulfur-FRGAS.

(2) Gasoline shall be classified as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Sulfur-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Sulfur-FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Sulfur-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Sulfur-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Sulfur-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Sulfur-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the sulfur value using the methodologies specified in § 80.330, by:

(*1*) The third party analyzing the sample; or

(*2*) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Sulfur-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5)(i) Any United States importer shall meet the requirements specified in § 80.195 for any imported gasoline that is not classified as Certified Sulfur-FRGAS under paragraph (o)(2) of this section.

(p) *Truck imports of Certified Sulfur-FRGAS produced at a small refinery.* (1) Any refiner whose Certified Sulfur-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures must ensure Certified Sulfur-FRGAS remains segregated from Non-Certified Sulfur-FRGAS and from Non-Sulfur-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Sulfur-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Sulfur-FRGAS, that prohibit the commingling of Certified Sulfur-FRGAS with any of the following:

(A) Other Certified Sulfur-FRGAS from other refineries;

(B) All Non-Certified Sulfur-FRGAS; or

(C) All Non-Sulfur-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Sulfur-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States; and

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Sulfur-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery sulfur baseline and standards under § 80.240 and this section.

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart H; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, ab initio, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the conventional gasoline requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.250 or § 80.295, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator; and

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR. Part 80, subpart H, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR Part 80, subpart H, including 40 CFR 80.410 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.410, the attest engagements for importers and refiners must include the following procedures and requirements each year.

(a) *Baseline.* (1) Obtain the EPA sulfur baseline approval letter for the refinery to determine the refinery's applicable sulfur baseline and baseline volume under §§ 80.250 or 80.295.

(2) If the year being reviewed is 2004 through 2006 (2007 for refineries with small refiner status) and the refinery or importer produced or imported any GPA gasoline under § 80.216 or the refiner has approved status for a small refinery:

(i) Obtain the refinery's annual sulfur reports for 2000 through 2003; and

(ii) Determine whether the annual average sulfur level for any year credits were generated for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section.

(3) If the annual average sulfur content for any year credits were created for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section, report as a finding the lowest annual sulfur level as the new baseline value. For GPA gasoline add 30 ppm to obtain the GPA standard, not to exceed 150 ppm.

(4) If the refinery being reviewed is a small refinery and the annual volume under paragraph (b)(2) of this section is greater than the baseline volume, calculate the applicable standard in accordance with § 80.240(c).

(5) Obtain a written representation from the company representative stating the sulfur value that the company used as its baseline and agree that number to paragraphs (a)(1) through (a)(4) of this section and to the reports to EPA.

(b) *EPA reports.* (1) Obtain and read a copy of the refinery's or importer's annual sulfur reports filed with EPA for the year.

(2) Agree the yearly volume of gasoline reported to EPA in the sulfur reports with the inventory reconciliation analysis under § 80.128.

(3) For the years 2004 through 2006, calculate the annual volume and average sulfur level for gasoline classified as GPA gasoline under §§ 80.216 and 80.219, and calculate the annual volume and average sulfur level for gasoline not classified as GPA gasoline, and agree these values with the values reported to EPA.

(4) Except as provided in paragraph (b)(3) of this section, calculate the annual average sulfur level for all gasoline and agree that value with the value reported to EPA.

(5) Obtain and read a copy of the refinery's or importer's sulfur credit report.

(c) *Credit generation before 2004.* In the case of a refinery that only generates credits during 2000 through 2003:

(1) Obtain a written representation from the company representative stating the refinery produces gasoline from crude oil.

(2) Compute and report as a finding the sulfur baseline from paragraph (a) of this section multiplied by 0.9.

(3) Obtain the annual average sulfur level from paragraph (b)(4) of this section.

(4) If the sulfur value under paragraph (c)(3) of this section is less than the sulfur value under paragraph (c)(2) of this section, compute and report as a finding the difference between the annual average sulfur level and the refinery's sulfur baseline from paragraph (a) of this section.

(5) Compute and report as a finding the total number of sulfur credits generated by multiplying the value in paragraph (c)(4) of this section by the volume of gasoline in paragraph (b)(2) of this section, and agree this value with the value reported to EPA.

(d) *Credit generation in 2004 and thereafter.* The following procedures shall be completed for a refinery or importer that generates credits in 2004 and thereafter:

(1) Obtain the annual average sulfur level for gasoline not classified as GPA from paragraph (b)(3) of this section.

(2) If the sulfur value under paragraph (d)(1) of this section is less than 30 ppm, compute and report as a finding the difference between the sulfur level under paragraph (d)(1) of this section and 30 ppm.

(3) Compute and report as a finding the total number of sulfur credits generated by multiplying the value calculated in paragraph (d)(2) of this

section by the volume of gasoline not classified as GPA in paragraph (b)(3) of this section, and agree this number with the number reported to EPA.

(4) Obtain the annual average sulfur level for gasoline classified as GPA from paragraph (b)(3) of this section.

(5) If the sulfur value under paragraph (d)(4) of this section is less than the applicable level under § 80.310, compute and report as a finding the difference between the sulfur level under paragraph (d)(4) of this section and the appropriate level in § 80.310 .

(6) Compute and report as a finding the total number of sulfur credits generated by multiplying the value calculated in paragraph (d)(5) of this section by the volume of gasoline classified as GPA in paragraph (b)(3) of this section, and agree this number with the number reported to EPA.

(7) If the refiner has an approved status as a small refinery, obtain the annual average sulfur level for gasoline from paragraph (b)(4) of this section.

(8) If the sulfur value under paragraph (d)(7) of this section is less than the applicable standard under § 80.240, compute and report as a finding the difference between the sulfur level under paragraph (d)(7) of this section and the appropriate standard under § 80.240.

(9) Compute and report as a finding the total number of sulfur credits generated by multiplying the value calculated in paragraph (d)(8) of this section by the volume of gasoline in paragraph (b)(4) of this section, and agree this number with the number reported to EPA.

(e) *Credit purchases and sales.* The following attest procedures shall be completed for a refinery or importer that is a transferor or transferee of credits during an averaging period:

(1) Obtain contracts or other documents for all credits transferred to another refinery or importer during the year being reviewed; compute and report as a finding the number and year of creation of credits represented in these documents as being transferred away; and agree with the report to EPA.

(2) Obtain contracts or other documents for all credits received during the year being reviewed; compute and report as a finding the number and year of creation of credits represented in these documents as being received; and agree with the report to EPA.

(f) *Credits required for non-GPA gasoline.* The following attest procedures shall be completed for refineries and importers in 2005 and thereafter (2004 and thereafter for refineries having standards under § 80.240):

(1) Obtain the annual average sulfur level for gasoline not classified as GPA from paragraph (b)(3) of this section.

(2) If the value in paragraph (f)(1) of this section is greater than 30 ppm (or greater than the small refinery standard), compute and report as a finding the difference between 30 ppm (or the standard under § 80.240) and the value in paragraph (f)(1) of this section.

(3) Compute and report as a finding the total sulfur credits required by multiplying the value in paragraph (f)(2) of this section times the volume of gasoline not classified as GPA in paragraph (b)(3) of this section, and agree with the report to EPA.

(4) Obtain the refiner's or importer's representation as to the portion of the deficit under paragraph (f)(3) of this section that was resolved with credits, the portion that was resolved with allotments in 2005 only or that was carried forward as a deficit under § 80.205, and agree with the report to EPA (refineries subject to standards under § 80.240 cannot carry deficits forward).

(g) *Credits required for GPA gasoline.* The following attest procedures shall be completed in 2004 through 2006 for a refinery or importer that produces gasoline subject to the geographic phase-in area standards under § 80.216:

(1) Obtain the annual average sulfur level for the refinery's or importer's GPA gasoline from paragraph (b)(3) of this section.

(2) If the value in paragraph (g)(1) of this section is greater than the refinery's or importer's baseline plus 30 ppm under § 80.216, as determined in paragraph (a) of this section or 150 ppm, whichever is less, compute and report as a finding the difference between the annual average sulfur level and the baseline level plus 30 ppm, or 150 ppm, whichever is less.

(3) Compute and report as a finding the total sulfur credits and/or allotments required by multiplying the value in paragraph (g)(2) of this section times the volume of GPA gasoline from paragraph (b)(3) of this section.

(4) Obtain the refiner's or importer's representation as to the portion of the deficit under paragraph (g)(3) of this section that was resolved with credits, or the portion that was resolved with allotments in 2004 or 2005 only (compliance deficits for GPA gasoline cannot be carried forward.

(h) *Credit expiration.* The following attest procedures shall be completed for a refinery or importer that possesses credits during an averaging period:

(1) Obtain a list of all credits in the refiner's or importer's possession at any time during the year being reviewed, identified by the year of creation of the credits.

(2) If the year being reviewed is 2006 and thereafter, except in the case of gasoline produced for use in the GPA and gasoline produced by small refiners, determine whether any credits identified in paragraph (h)(1) of this section or Type A sulfur allotments created under paragraph (i) of this section and converted to credits were created before 2004, and if so, report as a finding this number of expired credits.

(3) If the year being reviewed is 2008 and thereafter, determine whether any credits identified in paragraph (h)(1) of this section or Type B sulfur allotments created under paragraph (i) of this section and converted to credits were created more than 5 years before the year being reviewed, and if so, report as a finding this number of expired credits (for example, unused credits created during the 2004 averaging period expire at the end of the 2009 averaging period).

(i) *Optional credit and allotment generation in 2003.* The following requirements apply to any refinery that generates credits and allotments in 2003 under § 80.275(a):

(1) Obtain a written representation from the company representative stating the refinery produces gasoline from crude oil.

(2) Obtain the refinery baseline value from paragraph (b)(1) of this section, the annual volume from paragraph (b)(2) of this section and the annual average sulfur level from paragraph (b)(4) of this section.

(3) Based on the annual sulfur level and refinery baseline, determine which equation under § 80.275(a)(2) applies.

(4) Using the applicable equations under § 80.275(a)(2), recalculate the sulfur allotments, by type, and credits and report as a finding.

(j) *Credit reconciliation.* The following attest procedures shall be completed each year credits were in the refiner's or importer's possession at any time during the year:

(1) Obtain the credits remaining or the credit deficit from the previous year from the refiner's or importer's report to EPA for the previous year.

(2) Compute and report as a finding the net credits remaining at the conclusion of the year being reviewed by totaling:

(i) Credits remaining from the previous year; plus

(ii) Credits generated under paragraphs (c), (d) and (i) of this section; plus

(iii) Allotments generated under paragraph (i) of this section which are converted to credits; plus

(iv) Credits purchased under paragraph (e) of this section; minus

(v) Credits sold under paragraph (e) of this section; minus

(vi) Credits used under paragraphs (f) and (g) of this section; minus

(vii) Credits expiring under paragraph (h) of this section; minus

(viii) Credit deficit from the previous year.

(3) Agree the credits remaining or the credit deficit at the conclusion of the year being reviewed with the report to EPA.

(4) If the refinery or importer had a credit deficit for both the previous year and the year being reviewed, report this fact as a finding.

(k) *Sulfur allotments in 2004 and 2005.* The following requirements apply to any refinery or importer that is subject to corporate pool average standards under § 80.195:

(1) *Corporate pool average.* (i) Obtain the annual average sulfur level for the refiner or importer from the sulfur report filed with EPA for all gasoline subject to corporate pool standards (all gasoline produced and imported, except that if 50% or greater of the gasoline volume was GPA gasoline the refiner or importer is not subject to the corporate pool average).

(ii) Compute and report as a finding the company's gasoline volume subject to corporate pool standards and average sulfur level for gasoline subject to corporate pool standards, and agree with the values reported to EPA.

(2) *Allotment generation.* (i) For 2004, if the corporate pool average is less than 120 ppm, compute and report as a finding the number and type of sulfur allotments generated in accordance with the applicable provisions under § 80.275(b).

(ii) For 2005, if the corporate pool average is less than 90 ppm, compute and report as a finding the number and type of sulfur allotments generated in accordance with the applicable provisions under § 80.275(b).

(iii) If the refiner or importer produced and imported 50% or more of its gasoline for GPA use in 2004 or 2005, no allotments can be generated in that year.

(3) *Allotment purchases and sales.* (i) Obtain contracts or other documents for all allotments transferred to another company during the year being reviewed; compute and report as a finding the number of allotments represented in these documents as being transferred away; and agree with the report to EPA.

(ii) Obtain contracts or other documents for all allotments received during the year being reviewed; compute and report as a finding the number of allotments represented in these documents as being received; and agree with the report to EPA.

(4) *Allotments required.* (i) For 2004, if the corporate pool average is greater than 120 ppm, compute and report as a finding the number of allotments required by multiplying the amount the corporate pool average is above 120 ppm times the corporate pool volume, and agree with the report to EPA.

(ii) For 2005, if the corporate pool average is greater than 90 ppm, compute and report as a finding the number of allotments required by multiplying the amount the corporate pool average is above 90 ppm times the corporate pool volume, and agree with the report to EPA.

(iii) Obtain the number of allotments used to meet standards for GPA gasoline determined in paragraph (g) of this section.

(5) *Allotment reconciliation.* (i) Compute and report as a finding the net allotments remaining at the conclusion of the year being reviewed by totaling allotments:

(A) Generated under paragraphs (i)(4) and (k)(2) of this section; plus

(B) Purchased under paragraph (k)(3) of this section; minus

(C) Sold under paragraph (k)(3) of this section; minus

(D) Used under paragraph (k)(4) of this section for demonstrating compliance with the corporate pool average.

(ii) Report as a finding any allotments generated in 2003 or 2004 that are used to meet the corporate pool standards in 2005 that were not reduced to 50% of their original value.

(iii) If the company's net allotments remaining are less than zero, report this fact as a finding.

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

5. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7601(a).

6. Section 85.1515 is amended by:

a. redesignating the existing paragraph (c) as paragraph (c)(1),

b. adding new paragraphs (c)(2), (c)(3), (c)(5), (c)(6) and (c)(7), and adding and reserving paragraph (c)(4), and

c. revising paragraph (d).

The revisions and additions read as follows:

§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.

* * * * *

(c)(1) * * *

(2)(i) The provisions of paragraph (c)(1) of this section notwithstanding, nonconforming light-duty vehicles and light light-duty trucks (LDV/LLDTs) modified in model years 2004, 2005 or 2006 must meet the FTP exhaust emission standards of bin 9 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the evaporative emission standards for light-duty vehicles and light light-duty trucks specified in 40 CFR 86.1811–04(e)(5).

(ii) Nonconforming LDT3s and LDT4s (HLDTs) and medium-duty passenger vehicles (MDPVs) modified in model years 2004 through 2006 must meet the FTP exhaust emission standards of bin 10 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the applicable evaporative standards specified in 40 CFR 86.1811–04(e)(5). For 2004 model year HLDTs and MDPVs where modifications commence on the first vehicle of a test group before December 21, 2003, this requirement does not apply to the 2004 model year. ICIs opting to bring all of their 2004 model year HLDTs and MDPVs into compliance with the exhaust emission standards of bin 10 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04, may use the optional higher NMOG values for their 2004–2006 model year LDT2s and 2004–2008 LDT4s.

(iii) Nonconforming LDT3s and LDT4s (HLDTs) and medium-duty passenger vehicles (MDPVs) modified in model years 2007 and 2008 must meet the FTP exhaust emission standards of bin 8 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the applicable evaporative standards specified in 40 CFR 86.1811–04(e)(5).

(iv) Nonconforming LDV/LLDTs modified in model years 2007 and later and nonconfoming HLDTs and MDPVs modified in model years 2009 and later must meet the FTP exhaust emission standards of bin 5 in Tables S04–1 and S04–2 of 40 CFR 86.1811–04, and the evaporative standards specified in 40 CFR 86.1811(e)(1) through (e)(4).

(v) ICIs are exempt from the Tier 2 and the interim non-Tier 2 phase-in intermediate percentage requirements for exhaust, evaporative and refueling emissions described in 40 CFR 86.1811–04.

(3)(i) As an option to the requirements of paragraph (c)(2) of this section, independent commercial importers may elect to meet lower bins in Tables S04–1 and S04–2 of 40 CFR 86.1811–04 than

specified in paragraph (c)(2) of this section and bank or sell credits as permitted in 40 CFR 86.1860–04 and 40 CFR 86.1861–04. An ICI may not meet higher bins in Tables S04–1 and S04–2 of 40 CFR 86.1811–04 than specified in paragraph (c)(2) of this section unless it demonstrates to the Administrator at the time of certification that it has obtained appropriate and sufficient NO_X credits from another manufacturer, or has generated them in a previous model year or in the current model year and not transferred them to another manufacturer or used them to address other vehicles as permitted in 40 CFR 86.1860–04 and 40 CFR 86.1861–04.

(ii) Where an ICI desires to obtain a certificate of conformity using a bin higher than specified in paragraph (c)(2) of this section, but does not have sufficient credits to cover vehicles produced under such certificate, the Administrator may issue such certificate if the ICI has also obtained a certificate of conformity for vehicles certified using a bin lower than that required under paragraph (c)(2) of this section. The ICI may then produce vehicles to the higher bin only to the extent that it has generated sufficient credits from vehicles certified to the lower bin during the same model year.

(4) [Reserved]

(5) Except for the situation where an ICI desires to bank, sell or use NO_X credits as described in paragraph (c)(3) of this section, the requirements of 40 CFR 86.1811–04 related to fleet average NO_X standards and requirements to comply with such standards do not apply to vehicles modified under this subpart.

(6) ICIs using bins higher than those specified in paragraph (c)(2) of this section must monitor their production so that they do not produce more vehicles certified to the standards of such bins than their available credits can cover. ICIs must not have a credit deficit at the end of a model year and are not permitted to use the deficit carryforward provisions provided in 40 CFR 86.1860–04(e).

(7) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to paragraph (c) of this section comply with the appropriate average NO_X standard for each model year.

(d) Except as provided in paragraph (c) of this section, ICI's must not participate in emission-related programs for emissions averaging, banking and trading, or nonconformance penalties.

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

7. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

8. In § 86.1 the table in paragraph (b)(4) is amended by revising the entry for "California Regulatory Requirements Applicable to the 'LEV II' Program" in alphabetical order and by revising the entry for "California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October 1996", to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(4) * * *

Document No. and name	40 CFR part 86 reference
California Regulatory Requirements Applicable to the "LEV II" Program, including:.	
1. California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes. August 5, 1999.	86.1806–01; 86.1811–04; 86.1844–01.
2. California Non-Methane Organic Gas Test Procedures. August 5, 1999.	86.1803–01; 86.1810–01; 86.1811–04.
California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October 1996.	86.113–004; 86.612–97; 86.1012–97; 86.1702–99; 86.1708–99; 86.1709–99; 86.1717–99; 86.1735–99; 86.1771–99; 86.1775–99; 86.1776–99; 86.1777–99; Appendix XVI; Appendix XVII.

* * * * *

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline-Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy-Duty Vehicles

9. Section 86.004–11 is amended by adding paragraph (e) to read as follows:

§ 86.004–11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.

* * * * *

(e) The standards described in this section do not apply to diesel-fueled medium-duty passenger vehicles (MDPVs) that are subject to regulation under subpart S of this part, except as specified in subpart S of this part. The standards described in this section also do not apply to diesel engines used in such MDPVs, except as specified in the regulations in subpart S of this part. The term "medium-duty passenger vehicle". is defined in § 86.1803.

10. Section 86.099–10 is amended by adding paragraph (e) to read as follows:

§ 86.099–10 Emission standards for 1999 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(e) The standards described in this section do not apply to Otto-cycle medium-duty passenger vehicles (MDPVs) that are subject to regulation under subpart S of this part, except as specified in subpart S of this part. The standards described in this section also do not apply to Otto-cycle engines used in such MDPVs, except as specified in subpart S of this part. The term "medium-duty passenger vehicle" is defined in § 86.1803.

10a. The heading of Subpart B is revised to read as follows:

Subpart B—Emission Regulations for 1977 and Later Model Year New Light-duty Vehicles, New Light-duty Trucks and New Medium-Duty Passenger Vehicles; Test Procedures

11. Section 86.113–04 is added to read as follows:

§ 86.113–04 Fuel specifications.

This section includes text that specifies requirements that differ from § 86.113–94. Where a paragraph in § 86.113–94 is identical and applicable to this section, this will be indicated by specifying the corresponding paragraph

and the statement "[Reserved]. For guidance see § 86.113–94.".

(a) *Gasoline fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles, except that the Administrator will not use gasoline having a sulfur specification higher than 0.0045 weight percent. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, must be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply:

Item	ASTM test method No.	Value
Octane, Research, Min.	D 2699	93
Sensitivity, Min.		7.5
Lead (organic), max. g/U.S. gal. (g/liter)	D 3237	0.050 (0.013)
Distillation Range:	D 86	
IBP[1]:deg. F (deg. C)		75–95 (23.9–35)
10 pct. point: deg.F (deg.C)		120–135 (48.9–57.2)
50 pct. point: deg.F. (deg.C)		200–230 (93.3–110)
90 pct. point: deg.F (deg.C)		300–325 (148.9–162.8)
EP, max: deg.F (deg.C)		415 (212.8)
Sulfur, weight pct.	D 1266	0.0015–0.008
Phosphorous, max. g/U.S. gal (g/liter)	D 3231	0.005 (0.0013)
RVP [2,3]	D 3231	8.7–9.2 (60.0–63.4)
Hydrocarbon composition:	D 1319	
Olefins, max. pct.		10
Aromatics, max, pct.		35
Saturates		Remainder

[1] For testing at altitudes above 1,219 m (4000 feet), the specified range is 75–105 deg. F (23.9–40.6 deg. C).
[2] For testing which is unrelated to evaporative emission control, the specified range is 8.0-9.2 psi (55.2–63.4 kPa).
[3] For testing at altitudes above 1,219 m (4000 feet), the specified range is 7.6–8.0 psi (52-55 kPa).

(2) For light-duty vehicles, light-duty trucks and medium-duty passenger vehicles certified for 50 state sale, and for Tier 2 and interim non-Tier 2 vehicles whose certification is carried over from the NLEV program or carried across from the California LEV I program, "California Phase 2" gasoline having the specifications listed in the table in this section may be used in exhaust emission testing as an option to the specifications in paragraph (a)(1) of this section. If a manufacturer elects to utilize this option, the manufacturer must conduct exhaust emission testing with gasoline having the specifications listed in the table in this paragraph (a)(2) and in the case of interim non-Tier 2 LDV/Ts and interim non-Tier 2 MDPVs whose certification is carried over from the NLEV program or carried across from California LEV I program certification the Administrator must also conduct exhaust emission testing with gasoline having the specifications listed in the table in this paragraph (a)(2) . However, the Administrator may use or require the use of test fuel meeting the specifications in paragraph (a)(1) of this section for certification confirmatory testing, selective enforcement auditing and in-use testing for all other vehicles. All fuel property test methods for this fuel are contained in Chapter 4 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These requirements are incorporated by reference (see § 86.1). The table follows:

Fuel property	Limit
Octane, (R+M)/2 (min)	91
Sensitivity (min)	7.5
Lead, g/gal (max) (No lead added)	0–0.01
Distillation range, °F.	
10 pct. point,	130–150
50 pct. point,	200–210
90 pct. point,	290–300
EP, maximum	390
Residue, vol% (max)	2.0
Sulfur, ppm by wt.	15–40, except that administrator may use and approve for use, lower ranges where such ranges are consistent with current California requirements.
Phosphorous, g/gal (max)	0.005
RVP, psi	6.7–7.0
Olefins, vol%	4.0–6.0
Total aromatic hydrocarbons (vol%)	22–25
Benzene, vol%	0.8–1.0
Multi-substituted alkyl Aromatic hydrocarbons, vol%	12–14
MTBE, vol %	10.8–11.2
Additives:	See chapter 4 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These procedures are incorporated by reference (see § 86.1).

Fuel property	Limit
Copper corrosion	No. 1.
Gum, washed, mg/100 ml (max)	3.0
Oxidation stability, minutes (min)	1000
Specific gravity	No limit; report to purchaser required.
Heat of combustion	No limit; report to purchaser required.
Carbon, wt%	No limit; report to purchaser required.
Hydrogen, wt%	No limit; report to purchaser required.

(3)(i) Unless otherwise approved by the Administrator, unleaded gasoline representative of commercial gasoline that will be generally available through retail outlets must be used in service accumulation. For model years 2004 and later, and unless otherwise approved by the Administrator, this gasoline must have a minimum sulfur content of 15 ppm. Unless otherwise approved by the Administrator, where the vehicle is to be used for evaporative emission durability demonstration, such fuel must contain ethanol as required by § 86.1824–01(a)(2)(iii). Leaded gasoline must not be used in service accumulation.

(ii) Unless otherwise approved by the Administrator, the octane rating of the gasoline used must be no higher than 1.0 Retail octane number above the lowest octane rating that meets the fuel grade the manufacturer will recommend to the ultimate purchaser for the relevant production vehicles. If the manufacturer recommends a Retail octane number rather than a fuel grade, then the octane rating of the service accumulation gasoline can be no higher than 1.0 Retail octane number above the recommended Retail octane number. The service accumulation gasoline must also have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used must be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(4) The specification range of the gasoline to be used under this paragraph (a) must be reported in accordance with §§ 86.094–21(b)(3) and 86.1844–01.

(b) through (g) [Reserved]. For guidance see § 86.113–94.

12. Section 86.129–00 is amended by adding a new paragraph (f)(1)(ii)(C) to read as follows:

§ 86.129–00 Road load power, test weight, and inertia weight class determination.

* * * * *

(f)* * *

(1)* * *

(ii)* * *

(C) Regardless of other requirements in this section relating to the testing of HLDTs, for Tier 2 HLDTs, the test weight basis for FTP and SFTP testing (both US06 and SC03), if applicable, is the vehicle curb weight plus 300 pounds. For MDPVs certified to standards in bin 11 in Tables S04–1 and 2 in § 86.1811–04, the test weight basis must be adjusted loaded vehicle weight (ALVW) as defined in this part.

* * * * *

12.a. The heading of Subpart C is revised to read as follows:

Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-Duty Vehicles, New Light-Duty Trucks and New Medium-Duty Passenger Vehicles; Cold Temperature Test Procedures

13. Section 86.213–04 is added to read as follows:

§ 86.213–04 Fuel specifications.

Gasoline having the following specifications will be used by the Administrator except that the Administrator will not use gasoline having a sulfur specification higher than 0.0045 weight percent. Gasoline having the specifications set forth in the table in this section, or substantially equivalent specifications approved by the Administrator, may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–04 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased must be maintained by the manufacturer and must be made available to the Administrator upon request. The table listing the cold CO fuel specifications described in the text in this section follows:

TABLE—COLD CO FUEL SPECIFICATIONS

Item	ASTM test	Cold CO low octane value or range	Cold CO high octane [1] value or range
(RON+MON)/2, min	D 2699	87.8±.3	92.3±0.5
Sensitivity, min	D 2699	7.5	7.5
Distillation range:			
IBP, deg.F	D 86	76–96	76–96
10% point, deg.F.	D 86	98–118	105–125
50% point, deg.F.	D 86	179–214	195–225
90% point, deg.F.	D 86	316–346	316–346
EP, max, deg.F	D 86	413	413
Sulfur, wt. %	D 3120	0.0015–0.008	0.0015–0.008
Phosphorous, g/U.S gal, max	D 3231	0.005	0.005
Lead, g/gal, max		0.01	0.01
RVP, psi	D 4953	11.5±.3	11.5±.3
Hydrocarbon composition	D 1319		
Olefins, vol. pct		12.5±5.0	10.0±5.0
Aromatics, vol. pct		26.4±4.0	32.0±4.0
Saturates		Remainder	Remainder.

[1] Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

Subpart R—General Provisions for the Voluntary National Low Emission Vehicle Program for Light-Duty Vehicles and Light-Duty Trucks

14. Section 86.1701–99 is amended by adding paragraph (f) to read as follows:

§ 86.1701–99 General applicability.

* * * * *

(f) The provisions of this subpart are not applicable to 2004 or later model year vehicles, except where specific references to provisions of this subpart are made in conjunction with provisions applicable to such vehicles.

14.a. The title of subpart S is revised to read as follows:

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-use Light-Duty Vehicles, Light-Duty Trucks and Medium Duty Passenger Vehicles

15. Section 86.1801–01 is amended by:

a. revising the first sentence of paragraph (a),

b. adding one sentence to the end of paragraph (c)(1),

c. revising the first sentence of paragraph (e), and

d. adding paragraphs (f), (g) and (h).

These revisions and additions read as follows:

§ 86.1801–01 Applicability.

(a) Except as otherwise indicated, the provisions of this subpart apply to new 2001 and later model year Otto-cycle and diesel cycle light-duty vehicles, light-duty trucks and medium-duty passenger vehicles, including multi-fueled, alternative fueled, hybrid electric, and zero emission vehicles.

* * *

* * * * *

(c) * * * (1) * * * A 2004 or later model year heavy-duty vehicle optionally certified as a light-duty truck under this provision must comply with all provisions applicable to MDPVs including exhaust and evaporative emission standards, test procedures, on-board diagnostics, refueling standards, phase-in requirements and fleet average standards under 40 CFR Part 85 and this part.

* * * * *

(e) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 2001–2003 model year light-duty vehicles and light light-duty trucks (LDV/LLDTs) to the provisions of the National Low Emission Vehicle Program contained in Subpart R of this part. * * *

(f) *"Early" Tier 2 LDVs, LDTs and MDPVs.* Any LDV/LLDT which is certified to Tier 2 FTP exhaust standards prior to the 2004 model year, or any HLDT or MDPV which is certified to the Tier 2 FTP exhaust standards prior to the 2008 model year, to utilize alternate phase-in schedules and/or for purposes of generating and banking Tier 2 NO_X credits, must comply with all the exhaust emission requirements applicable to Tier 2 LDV/LLDTs or HLDT/ MDPVs, as applicable, under this subpart.

(g) *Interim non-Tier 2 LDVs, LDTs and MDPVs.* Model year 2004–2008 LDVs, LDTs and MDPVs, that do not comply with the Tier 2 FTP exhaust emission requirements (interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDT/MDPVs) as permitted under the phase-in requirements of § 86.1811–04(k) must comply with all applicable interim non-Tier 2 exhaust emission requirements contained in this subpart, including FTP exhaust emission requirements for all interim non-Tier 2 LDV/LLDTs and HLDT/MDPVs found at § 86.1811–04(l). Additional emission bins and separate fleet average NO_X emission standards and other provisions are provided for interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDT/MDPVs.

(h) *Applicablity of provisions of this subpart to LDVs, LDTs and MDPVs.* Numerous sections in this subpart provide requirements or procedures applicable to a "vehicle" or "vehicles". Unless otherwise specified or otherwise determined by the Administrator, the term "vehicle" or "vehicles" in those provisions apply equally to LDVs, LDTs and MDPVs.

16. Section 86.1803–01 is amended by adding the following definitions in alphabetical order to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Bin or *emission bin* means a set of emission standards applicable to exhaust pollutants measured on the Federal Test Procedure (FTP). A bin is equivalent to a horizontal row of FTP standards in Tables S04–1 and S04–2 shown in this subpart. Manufacturers are generally free to choose the bin of standards that will apply to a certain test group of vehicles, provided that on a sales weighted average of those bins, all of their vehicles meet a specified fleet average standard for a particular pollutant.

* * * * *

CalLEV II or *California LEV II* refers to California's second phase of its low emission vehicle (LEV) program. This program was adopted at the hearing of the California Air Resources Board held on November 5, 1998 and became effective on November 27, 1999.

* * * * *

Fleet average NO_X standard means, for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles, a NO_X standard imposed over an individual manufacturer's total U.S. sales (or a fraction of total U.S. sales during phase-in years), as 'U.S. sales" is defined in this subpart, of a given model year. Manufacturers determine their compliance with such a standard by averaging, on a sales weighted basis, the individual NO_X standards they choose for the fleet of light-duty vehicles, light-duty trucks and medium-duty passenger vehicles they sell of that model year.

* * * * *

Interim non-Tier 2 vehicle, interim non-Tier 2 LDV/LLDT, interim non-Tier 2 HLDT/MDPV, or *interim vehicle* refer to 2004 or later model year light-duty vehicles, light-duty trucks or MDPVs, or a specific combination thereof, not certified to Tier 2 FTP exhaust emission standards during the Tier 2 phase-in period. Model year 2004 HLDTs belonging to test groups whose model year commences before December 21, 2003, are not interim non-Tier 2 HLDTs unless their manufacturer chooses to comply with the interim requirements applicable to HLDTs for all of its 2004 model year HLDTs as permitted in this subpart. Similarly 2004 model year heavy-duty vehicles whose model year commences before December 21, 2003, are not interim non-Tier 2 MDPVs unless their manufacturer chooses to comply with the interim requirements applicable to MDPVs for all of its 2004 model year MDPVs as permitted in this subpart. The terms *interim non-Tier 2 vehicle, interim non-Tier 2 LDV, interim non-Tier 2 LDT, interim non-Tier 2 HLDT, interim non-Tier 2 MDPV,* etc. have the same meaning without the words "non-Tier 2".

* * * * *

LDV/T means light-duty vehicles and light-duty trucks collectively, without regard to category.

* * * * *

Medium-duty passenger vehicle (MDPV) means any heavy-duty vehicle

(as defined in this subpart) with a gross vehicle weight rating (GVWR) of less than 10,000 pounds that is designed primarily for the transportation of persons. The MDPV definition does not include any vehicle which:

(1) Is an "incomplete truck" as defined in this subpart; or

(2) Has a seating capacity of more than 12 persons; or

(3) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(4) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

* * * * *

Non-methane organic gases (NMOG) means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample as measured in accordance with the California Non-Methane Organic Gas Test Procedures. These requirements are incorporated by reference (see § 86.1)

* * * * *

Periodically regenerating trap oxidizer system means a trap oxidizer that utilizes, during normal driving conditions, an automated regeneration mode for cleaning the trap, the operation of which can be easily detected.

* * * * *

Point of first sale means the location where the completed vehicle is first purchased. This term is synonymous with final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which purchases a vehicle from a manufacturer. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

Round, rounded or *rounding* means, unless otherwise specified, that numbers will be rounded according to ASTM–E29–93a, which is incorporated by reference in this part pursuant to § 86.1.

* * * * *

Tier 2 HLDT/MDPV means any heavy light-duty truck or medium-duty passenger vehicle, including HEVs and ZEVs, of the 2008 or later model year certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04 including the 0.07 g/mi fleet average NO_X standard. The term Tier 2 HLDT/MDPV also includes any heavy light-duty truck or medium-duty passenger vehicle, of any model year, which is certified to Tier 2 FTP exhaust standards for purposes of generating or banking early NO_X credits for averaging under Tier 2 requirements, or utilizing alternate phase-in schedules, as allowed in this subpart.

Tier 2 LDV/LLDT means any light-duty vehicle or light light-duty truck, including HEVs and ZEVs, of the 2004 or later model year certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04 including the 0.07 g/mi fleet average NO_X standard. The term Tier 2 LDV/LLDT also includes any light-duty vehicle or light light-duty truck, of any model year, which is certified to Tier 2 FTP exhaust standards for purposes of generating or banking early NO_X credits for averaging under Tier 2 requirements, or utilizing alternate phase-in schedules as allowed in this subpart.

Tier 2 standards means those FTP exhaust emission standards *including the 0.07 g/mi full useful life fleet average NO_X standard*, applicable to new light-duty vehicles and light light-duty trucks that begin a phase-in in the 2004 model year, and those exhaust emission standards *including the 0.07 g/mi full useful life fleet average NO_X standard*, applicable to heavy light-duty trucks and medium-duty passenger vehicles that begin a phase-in in the 2008 model year. These standards are found in § 86.1811–04 of this subpart.

Tier 2 vehicle means any vehicle certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04 including the 0.07 g/mi fleet average NO_X standard.

* * * * *

U.S. sales means, unless otherwise specified, sales in any state of the United States except for California or a state that has adopted California motor vehicle standards for that model year pursuant to section 177 of the Clean Air Act. This definition applies only to those regulatory requirements addressing Tier 2 and interim non-Tier 2 vehicles.

* * * * *

17. Section 86.1804–01 is amended by adding the following acronyms and abbreviations, in alphabetical order, to read as follows:

§ 86.1804–01 Acronyms and abbreviations.

* * * * *

HCHO—Formaldehyde.

HEV—Hybrid electric vehicle.

* * * * *

HLDT—Heavy light-duty truck. Includes only those trucks over 6000 pounds GVWR (LDT3s and LDT4s).

HLDT/MDPV—Heavy light-duty trucks and medium-duty passenger vehicles.

* * * * *

LDV/LLDT—Light-duty vehicles and light light-duty trucks. Includes only those trucks rated at 6000 pounds GVWR or less (LDT1s and LDT2s).

LDV/T—Light-duty vehicles and light-duty trucks. This term is used collectively to include, or to show that a provision applies to, all light-duty vehicles and all categories of light-duty trucks, i.e.

LDT1, LDT2, LDT3 and LDT4.

LEV—Low Emission Vehicle.

* * * * *

MDPV—Medium-duty passenger vehicle.

* * * * *

NLEV—Refers to the National Low Emission Vehicle Program. Regulations governing this program are found at subpart R of this part.

* * * * *

NMOG—Non-methane organic gases.

* * * * *

RAF—Reactivity adjustment factor.

* * * * *

SULEV—Super Ultra Low Emission Vehicle.

* * * * *

TLEV—Transitional Low Emission Vehicle.

* * * * *

ULEV—Ultra Low Emission Vehicle.

* * * * *

ZEV—Zero Emission Vehicle.

18. Section 86.1805–04 is added to read as follows:

§ 86.1805–04 Useful life.

(a) Except as required under paragraph (b) of this section or permitted under paragraphs (d), (e) and (f) of this section, the full useful life for all LDVs, LDT1s and LDT2s is a period of use of 10 years or 120,000 miles, whichever occurs first. For all HLDTs and MDPVs, full useful life is a period of 11 years or 120,000 miles, whichever occurs first. This full useful life applies to all exhaust, evaporative and refueling emission requirements except for standards which are specified to only be applicable at the time of certification.

(b) Manufacturers may elect to optionally certify a test group to the Tier 2 exhaust emission standards for 150,000 miles to gain additional NO_X credits, as permitted in § 86.1860–04(g), or to opt out of intermediate life standards as permitted in § 86.1811–04(c). In such cases, useful life is a period of use of 15 years or 150,000 miles, whichever occurs first, for all exhaust, evaporative and refueling emission requirements except for cold CO standards and standards which are applicable only at the time of certification.

(c) Where intermediate useful life exhaust emission standards are

applicable, such standards are applicable for five years or 50,000 miles, whichever occurs first.

(d) Where cold CO standards are applicable, the useful life requirement for compliance with the cold CO standard only, is 5 years or 50,000 miles, whichever occurs first.

(e) Where LDVs, LDT1s and LDT2s of the 2003 or earlier model years are certified to Tier 2 exhaust emission standards for purposes of generating early Tier 2 NO_X credits, manufacturers may certify those vehicles to full useful lives of 100,000 miles in lieu of the otherwise required 120,000 mile full useful lives, as provided under § 86.1861–04(c)(4).

(f) For interim non-Tier 2 LDV/LLDTs, the useful life requirement for exhaust, evaporative and refueling emissions is 10 years or 100,000 miles, whichever occurs first.

19. Section 86.1806–01 is amended by:

a. revising paragraph (a);

b. adding paragraph (b)(8);

c. redesignating the text of paragraph (d) after the paragraph heading as (d)(1); and

d. adding paragraph (d)(2).

The revisions and additions read as follows:

§ 86.1806–01 On-board diagnostics.

(a)(1) Except as provided by paragraph (a)(2) of this section, all light-duty vehicles, light-duty trucks and MDPVs must be equipped with an onboard diagnostic (OBD) system capable of monitoring, for each vehicle's useful life, all emission-related powertrain systems or components. All systems and components required to be monitored by these regulations must be evaluated periodically, but no less frequently than once per Urban Dynamometer Driving Schedule as defined in Appendix I, paragraph (a), of this part, or similar trip as approved by the Administrator.

(2) Diesel fueled chassis-certified MDPVs and engine-certified diesel engines used in MDPVs, are subject to the requirements of this section only if the exhaust emission certification of the applicable test group is being carried across from a California configuration to which California OBD–II requirements are applicable.

(b) * * *

(8) *For Tier 2 and interim non-Tier 2 hybrid electric vehicles (HEVs) only.* Unless added to HEVs in compliance with other requirements of this section, or unless otherwise approved by the Administrator:

(i) The manufacturer must equip each HEV with a maintenance indicator consisting of a light that must activate automatically by illuminating the first time the minimum performance level is observed for each battery system component. Possible battery system components requiring monitoring are: battery water level, temperature control, pressure control, and other parameters critical for determining battery condition.

(ii) The manufacturer must equip "off-vehicle charge capable HEVs" with a useful life indicator for the battery system consisting of a light that must illuminate the first time the battery system is unable to achieve an all-electric operating range (starting from a full state-of-charge) which is at least 75 percent of the range determined for the vehicle in the Urban Driving Schedule portion of the All-Electric Range Test (see the California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes. These requirements are incorporated by reference (see § 86.1).

(iii) The manufacturer must equip each HEV with a separate odometer or other device subject to the approval of the Administrator that can accurately measure the mileage accumulation on the engines used in these vehicles.

* * * * *

(d) *MIL illumination.* (1) * * *

(2)(i) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, vehicles produced through the 2007 model year, upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system during the certification process, that functions properly on low-sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, if vehicles produced through the 2007 model year exhibit illuminations of the emission control diagnostic system malfunction indicator light due to high sulfur gasoline, EPA will consider, upon a manufacturer's written request, allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur induced illumination.

* * * * *

20. Section 86.1807–01 is amended by revising paragraph (a)(3)(vi) to read as follows:

§ 86.1807–01 Vehicle labeling.

(a) * * *

(3) * * *

(vi) The exhaust emission standards to which the test group is certified, and for test groups having different in-use standards, the corresponding exhaust emission standards that the test group must meet in use. In lieu of this requirement, manufacturers may use the standardized test group name designated by EPA;

* * * * *

21. Section 86.1809–01 is amended by adding paragraph (e) to read as follows:

§ 86.1809–01 Prohibition of defeat devices.

* * * * *

(e) For each test group of Tier 2 LDV/LLDTs and HLDT/MDPVs and interim non-Tier 2 LDV/LLDTs and HLDT/MDPVs the manufacturer must submit, with the Part II certification application, an engineering evaluation demonstrating to the satisfaction of the Administrator that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 degrees F. For diesel vehicles, the engineering evaluation must also include particulate emissions.

22. Section 86.1810–01 is amended by:

a. adding two new sentences to the end of the introductory text;

b. adding one new sentence to the end of paragraph (f);

c. adding a new sentence to the end of paragraph (i)(6); and

d. adding new paragraphs (i)(13), (i)(14), (o) and (p).

The additions read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

* * * For Tier 2 and interim non-Tier 2 vehicles, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

* * * * *

(f) * * * Interim non-Tier 2 LDV/Ts may be certified to applicable Tier 1 exhaust emission standards at high altitude as set forth in §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–02 and 86.1815–02. Requirements to meet emission standards at high altitude are optional for interim non-Tier 2 MDPVs.

* * * * *

(i) * * *

(6) * * * For Tier 2 and interim non-Tier 2 vehicles, this provision does not

apply to enrichment that occurs upon cold start, warm-up conditions and rapid-throttle motion conditions ("tip-in" or "tip-out" conditions).

* * * * *

(13) *A/C-on specific calibrations.* (i) For Tier 2 and interim non-Tier 2 vehicles, A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters).

(ii) Such calibrations must not unnecessarily reduce the NMHC+NO_X emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use.

(iii) If reductions in control system NMHC+NO_X effectiveness do occur as a result of such calibrations, the manufacturer must, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness.

(iv) A/C-on specific "open-loop" or "commanded enrichment" air-fuel enrichment strategies (as defined below), which differ from A/C-off "open-loop" or "commanded enrichment" air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. Other than these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters must use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. "Open-loop" or "commanded" air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, "closed-loop biasing," defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, must not be considered an "open-loop" or "commanded" air-fuel enrichment strategy. In addition, "transient" air-fuel enrichment strategy (or "tip-in" and "tip-out" enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, must not be considered an "open-loop" or "commanded" air-fuel enrichment strategy.

(14) *"Lean-on-cruise" calibration strategies.* (i) For Tier 2 and interim non-Tier 2 vehicles, the manufacturer must state in the Application for Certification whether any "lean-on-cruise" strategies are incorporated into the vehicle design. A "lean-on-cruise" air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph. "Lean-on-cruise" air-fuel calibration strategies must not be employed during vehicle operation in normal driving conditions, including A/C usage, unless at least one of the following conditions is met:

(A) Such strategies are substantially employed during the FTP or SFTP;

(B) Such strategies are demonstrated not to significantly reduce vehicle NMHC+NO_X emission control effectiveness over the operating conditions in which they are employed; or

(C) Such strategies are demonstrated to be necessary to protect the vehicle occupants, engine, or emission control hardware.

(ii) If the manufacturer proposes to use a "lean-on-cruise" calibration strategy, the manufacturer must specify the circumstances under which such a calibration would be used, and the reason or reasons for the proposed use of such a calibration.

* * * * *

(o) Unless otherwise approved by the Administrator, manufacturers must measure NMOG emissions in accordance with the California Non-Methane Organic Gas Test Procedures. These procedures are incorporated by reference (see § 86.1).

(p) For gasoline and diesel-fueled Tier 2 and interim non-Tier 2 vehicles, manufacturers may measure non-methane hydrocarbons (NMHC) in lieu of NMOG. Manufacturers must multiply NMHC measurements from gasoline vehicles by an adjustment factor of 1.04 before comparing with the NMOG standard to determine compliance with that standard. Manufacturers may use other factors to adjust NMHC results to more properly represent NMOG results. Such factors must be based upon comparative testing of NMOG and NMHC emissions and be approved in advance by the Administrator.

23. Section 86.1811–01 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1811–01 Emission standards for light-duty vehicles.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

24. Section 86.1811–04 is added to read as follows:

§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

(a) *Applicability.* (1) This section contains regulations implementing emission standards for all LDVs, LDTs and MDPVs. This section applies to 2004 and later model year LDVs, LDTs and MDPVs fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels, except as noted. Additionally, this section contains provisions applicable to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs). Multi-fueled vehicles must comply with all requirements established for each consumed fuel.

(2) This section also applies to LDVs, LDTs and MDPVs of model years prior to 2004, when manufacturers certify such vehicles to Tier 2 exhaust emission requirements to utilize alternate phase-in schedules, as allowed under paragraph (k)(6) of this section, and/or to earn early NO_X credits for use in complying with the Tier 2 fleet average NO_X standard which takes effect in the 2004 model year for LDV/LLDTs and 2008 for HLDT/MDPVs.

(3) Except where otherwise specified, this section applies instead of §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–01, 86.1814–02, 86.1815–01, and 86.1815–02.

(4) Except where otherwise specified, the provisions of this section apply equally to LDVs and all categories of LDTs, and to all MDPVs. Numerous provisions are applicable equally to HLDTs and MDPVs, as reflected by the term HLDT/MDPV. Numerous provisions apply equally to LDVs and LLDTs as reflected by the term LDV/LLDT.

(5) The exhaust emission standards and evaporative emission standards of this section apply equally to certification and in-use LDVs, LDTs and MDPVs, unless otherwise specified.

(b) *Test weight.* (1) Except as required in paragraphs (b)(2) and (b)(4) of this section, or permitted under paragraph (b)(3) of this section, emission testing of all LDVs, LDTs and MDPVs to

determine compliance with any exhaust or evaporative emission standard set forth in this Part must be on a loaded vehicle weight (LVW) basis, as that term is defined in this subpart.

(2) Interim non-Tier 2 HLDTs tested to Tier 1 SFTP standards, must be tested on an adjusted loaded vehicle weight (ALVW) basis, as that term is defined in this subpart, during the SC03 element of the SFTP.

(3) Except as required in paragraphs (b)(2) and (b)(4) of this section, interim non-Tier 2 HLDT/MDPVs may be tested on an ALVW basis or an LVW basis to demonstrate compliance with any exhaust or evaporative emission standard set forth in this Part.

(4) MDPVs certified to bin 11 standards from Tables S04–1 and –2 must be tested on an ALVW basis to demonstrate compliance with any exhaust emission standard set forth in this part.

(c) *Tier 2 FTP exhaust emission standards.* Exhaust emissions from Tier 2 vehicles must not exceed the standards in Table S04–1 of this section at full useful life when tested over the Federal Test Procedure (FTP) described in subpart B of this part. Exhaust emissions from Tier 2 vehicles must not exceed the standards in Table S04–2 of this section at intermediate useful life, if applicable, when tested over the FTP.

(1) For a given test group a manufacturer desires to certify to operate only on one fuel, the manufacturer must select a set of standards from the same bin (line or row) in Table S04–1 of this section for non-methane organic gases (NMOG), carbon monoxide (CO), oxides of nitrogen (NO_X), formaldehyde (HCHO) and particulate matter (PM). The manufacturer must certify the test group to meet those standards, subject to all the applicable provisions of this subpart. The manufacturer must also certify the test group to meet the intermediate useful life standards (if any) in Table S04–2 of this section having the same EPA bin reference number as the chosen full useful life standards.

(2) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles when operated on the alcohol or gaseous fuel they are designed to use, manufacturers must select a bin of standards from Table S04–1 of this section and the corresponding bin in Table S04–2, if any. When these flexible-fueled, bi-fuel or dual fuel vehicles are certified to operate on gasoline or diesel fuel, the manufacturer may choose to comply with the next numerically higher applicable NMOG standard, if any, above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(3)(i) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles certified to bin 10 in Table S04–1, when operated on the alcohol or gaseous fuel they are designed to use, manufacturers may choose to comply with a NMOG standard of 0.230 for LDV/LLDTs or 0.280 g/mi for HLDT/MDPVs at full useful life and corresponding intermediate life standards of 0.160 g/mi and 0.195 g/mi, respectively.

(ii) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles certified to bin 8 in Table S04–1, when operated on the alcohol or gaseous fuel they are designed to use, manufacturers may choose to comply with a NMOG standard of 0.156 g/mi for LDV/LLDTs and 0.180 for HLDT/MDPVs at full useful life and corresponding intermediate life standards of 0.125 g/mi and 0.140 g/mi, respectively.

(4)(i) For bins where intermediate life standards are applicable, a manufacturer may elect not to comply with such standards. Except as permitted in paragraph (c)(4)(iv) of this section, the manufacturer must certify such vehicles to a useful life of 15 years or 150,000 miles, whichever occurs first, for LDV/LLDTs and HLDT/MDPVs.

(ii) A manufacturer electing not to comply with intermediate life standards, as permitted in paragraph (c)(4)(i) of this section, may not generate additional NO_X credits as described under § 86.1860–04 (g), except as permitted in paragraph (c)(4)(iii) of this section.

(iii) For bins where intermediate life standards are not applicable, or are specified to be optional by paragraph (c)(4)(iv) of this section, a manufacturer may generate additional NO_X credits subject to the provisions in § 86.1860–04 (g).

(iv) For diesel vehicles certified to bin 10, intermediate life standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

(5) In a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program.

(6) Tables S04–1 and S04–2 follow:

TABLE S04–1.—TIER 2 AND INTERIM NON-TIER 2 FULL USEFUL LIFE EXHAUST MASS EMISSION STANDARDS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM	Notes
11	0.9	0.280	7.3	0.032	0.12	a, c
10	0.6	0.156/0.230	4.2/6.4	0.018/0.027	0.08	a, b, d
9	0.3	0.090/0.180	4.2	0.018	0.06	a, b, e
8	0.20	0.125/0.156	4.2	0.018	0.02	b, f
7	0.15	0.090	4.2	0.018	0.02	
6	0.10	0.090	4.2	0.018	0.01	
5	0.07	0.090	4.2	0.018	0.01	
4	0.04	0.070	2.1	0.011	0.01	
3	0.03	0.055	2.1	0.011	0.01	
2	0.02	0.010	2.1	0.004	0.01	
1	0.00	0.000	0.0	0.000	0.00	

Notes:

[a] This bin and its corresponding intermediate life bin are deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs).

[b] Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.

[c] This bin is only for MDPVs.

[d] Optional NMOG standard of 0.280 g/mi applies for qualifying LDT4s and qualifying MDPVs only.

[e] Optional NMOG standard of 0.130 g/mi applies for qualifying LDT2s only.

[f] Higher NMOG standard deleted at end of 2008 model year.

TABLE S04–2.—TIER 2 AND INTERIM NON-TIER 2 INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST MASS EMISSION STANDARDS

[grams per mile]

Bin No.	NO_x	NMOG	CO	HCHO	PM	Notes
11	0.6	0.195	5.0	0.022		a c f h
10	0.4	0.125/0.160	3.4/4.4	0.015/0.018		a b d f g h
9	0.2	0.075/0.140	3.4	0.015		a b c f h
8	0.14	0.100/0.125	3.4	0.015		b f h i
7	0.11	0.075	3.4	0.015		f h
6	0.08	0.075	3.4	0.015		f h
5	0.05	0.075	3.4	0.015		f h

Notes:
[a] This bin deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs).
[b] Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.
[c] This bin is only for MDPVs.
[d] Optional NMOG standard of 0.195 g/mi applies for qualifying LDT4s and qualifying MDPVs only.
[e] Optional NMOG standard of 0.100 g/mi applies for qualifying LDT2s only.
[f] The full useful life PM standards from Table S04–1 also apply at intermediate useful life.
[g] Intermediate life standards of this bin are optional for diesels.
[h] Intermediate life standards are optional for vehicles certified to a useful life of 150,000 miles.
[i] Higher NMOG standard deleted at end of 2008 model year.

(d) *Fleet average NO_x Standards.*
(1)(i) For a given individual model year's sales of Tier 2 vehicles, including model years during the phase-in years of the Tier 2 standards, manufacturers must comply with a fleet average oxides of nitrogen (NO_x) standard of 0.07 grams per mile. The manufacturer must calculate its fleet average NO_x emission level(s) as described in § 86.1860–04. Up through and including model year 2008, manufacturers must calculate separate fleet average NO_x emission levels for LDV/LLDTs and for HLDT/MDPVs as described in § 86.1860–04.

(ii) During a phase-in year, the manufacturer must comply with the 0.07 g/mi fleet average standard for the required phase-in percentage for that year as specified in paragraph (k)(1) of this section, or for the alternate phase-in percentage as permitted under paragraph (k)(6) of this section.

(2) *For Early Tier 2 LDV/LLDTs.* For model years prior to 2004, where the manufacturer desires to bank early Tier 2 NO_x credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 LDV/LLDTs. Manufacturers must determine compliance with the NO_x fleet average standard according to regulations in § 86.1860–04 of this subpart.

(3) *For Early Tier 2 HLDT/MDPVs.* For model years prior to 2008, where the manufacturer desires to bank early Tier 2 NO_x credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 HLDT/MDPVs. Manufacturers must determine compliance with the NO_x fleet average standard according to regulations in § 86.1860–04.

(e) *Evaporative emission standards.* Consistent with the phase-in requirements in paragraph (k) of this section, evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled vehicles must not exceed the standards in this paragraph. The standards apply equally to certification and in-use vehicles, except that the spitback standard applies only to newly assembled vehicles.

(1) *Diurnal-plus-hot soak evaporative hydrocarbon standards.* Hydrocarbons for LDV/LLDTs, HLDTs and MDPVs must not exceed the diurnal plus hot soak standards shown in Table S04–3 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. Table S04–3 follows:

TABLE S04–3.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS

[grams per test]

Vehicle category	3 day diurnal+hot soak	Supplemental 2 day diurnal+hot soak
LDV/LLDTs	0.95	1.2
HLDTs	1.2	1.5
MDPVs	1.4	1.75

(2) *Running loss standard.* Hydrocarbons for LDVs, LDTs and MDPVs measured on the running loss test must not exceed 0.05 grams per mile.

(3) *Refueling emission standards.* Refueling emissions must not exceed the following standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled LDVs, LDTs and MDPVs: 0.20 grams hydrocarbon per gallon (0.053 grams per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled LDV, LDTs and MDPVs: 0.15 grams hydrocarbon per gallon (0.04 grams per liter) of fuel dispensed.

(iii) Refueling standards for HLDTs are subject to the phase-in requirements found in § 86.1810–01(k). MDPVs must also comply with the phase-in requirement in § 86.1810–01(k) and must be grouped with HLDTs to determine phase-in compliance.

(4) *Spitback standards.* For gasoline and methanol fueled LDV/Ts and MDPVs, hydrocarbons measured on the fuel dispensing spitback test must not exceed 1.0 grams hydrocarbon (carbon if methanol-fueled) per test.

(5) *Evaporative emission requirements for interim vehicles.* (i) LDV/Ts not certified to meet the evaporative emission standards in this paragraph (e) as permitted under the phase-in schedule of paragraph (k) of this section, must meet applicable evaporative emission standards in §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–02 or 86.1815–02 except that all LDV/Ts must meet the refueling emission standards in paragraph (e)(3) of this section.

(ii) MDPVs not certified to meet the evaporative emission standards in this paragraph (e) as permitted under the phase-in schedule of paragraph (k) of this section, must meet applicable evaporative emission standards for heavy-duty vehicles in § 86.099–10.

(6) In cases where applicable California emission standards are as stringent or more stringent than applicable standards specified under this paragraph (e), the Administrator may accept data indicating compliance with California standards to

demonstrate compliance for certification purposes with the standards required under this paragraph (e). The Administrator may require manufacturers to provide comparative test data to show that a vehicle meeting California standards under California test conditions and procedures will also meet the standards under this paragraph (e) when tested under test conditions and procedures in this Part 86.

(f) *Supplemental exhaust emission standards for LDV/Ts.* (1) Supplemental exhaust emission standards are applicable to gasoline and diesel-fueled LDV/Ts but are not applicable to MDPVs, alternative fueled LDV/Ts, or flexible fueled LDV/Ts when operated on a fuel other than gasoline or diesel. Except as otherwise specified in this paragraph (f), manufacturers must comply with 4000 mile and full useful life SFTP standards as determined in this paragraph (f). The 4000 mile SFTP standards must be taken from Table S04–4 and the full life SFTP standards must be calculated using the formula in paragraph (f)(2) of this section. Table S04–4 follows:

TABLE S04–4.—4000 MILE SFTP STANDARDS FOR TIER 2 AND INTERIM NON-TIER 2 LDVS AND LDTS

	US06		SC03	
	NMHC+NO_X (g/mi)	CO (g/mi)	NMHC+NO_X (g/mi)	CO (g/mi)
LDV/LDT1	0.14	8.0	0.20	2.7
LDT2	0.25	10.5	0.27	3.5
LDT3	0.4	10.5	0.31	3.5
LDT4	0.6	11.8	0.44	4.0

(2)(i) Manufacturers must calculate their applicable full useful life SFTP standards for NMHC+NO_X, PM and for CO, if using the weighted CO standard. If not using the weighted CO standard, manufacturers may use the full useful life standalone Tier 1 standards for US06 and SC03. To calculate the applicable full useful life weighted NMHC+NO_X, PM and CO standards, manufacturers must use the following formula and values from Table S04–1 in paragraph (c) of this section and values from Tables S04–5 and S04–6 which follow:

SFTP Standard = SFTP $Standard_1$ − [0.35 x (FTP $Standard_1$—Current FTP Standard)]

Where:

SFTP Standard = Applicable full life weighted SFTP standard for NMHC+NO_X, PM or CO. This standard must be rounded to two decimal places.

SFTP $Standard_1$ = Applicable full life Tier 1 SFTP standard for NMHC+NO_X or CO from Table S04–5. For PM only, use FTP $Standard_1$ for SFTP $Standard_1$.

FTP $Standard_1$ = Applicable full life Tier 1 FTP standard from Table S04–6 in this paragraph (f). For the Tier 1 NMHC+NO_X standard, add the applicable NMHC and NOx standards.

Current FTP Standard = Applicable full life FTP standard from Table S04–1 in paragraph (c) of this section. For the current NMHC+NO_X standard, add the NMOG and NO_X standards from the applicable bin.

TABLE S04–5.—TIER 1 FULL USEFUL LIFE SFTP STANDARDS

Vehicle category	NMHC + NO_X (weighted g/mi)[a, c]	GO (g/mi)[b, c]		
		US06	SC03	Weighted
LDV/LDT1	0.91 (0.65)	11.1 (9.0)	3.7 (3.0)	4.2 (3.4)
LDT2	1.37 (1.02)	14.6 (11.6)	4.9 (3.9)	5.5 (4.4)
LDT3	1.44	16.9	5.6	6.4
LDT4	2.09	19.3	6.4	7.3

[a] Weighting for NMHC+NO_X and optional weighting for CO is 0.35x(FTP) +0.28x(US06)+0.37x(SC03).
[b] CO standards are stand alone for US06 and SC03 with option for a weighted standard.
[c] Intermediate life standards are shown in parentheses for diesel LDV/LLDTs opting to calculate intermediate life SFTP standards in lieu of 4,000 mile SFTP standards as permitted under paragraph (f)(6) of this section.

TABLE S04–6.—TIER 1 FULL USEFUL LIFE FTP STANDARDS (G/MI)

Vehicle category	NMHC[a]	NO_X[a]	CO[a]	PM
LDV/LDT1	0.31 (0.25)	0.6 (0.4)	4.2 (3.4)	0.10
LDT2	0.40 (0.32)	0.97(0.7)	5.5 (4.4)	0.10
LDT3	0.46	0.98	6.4	0.10
LDT4	0.56	1.53	7.3	0.12

[a] Intermediate life standards are shown in parentheses for diesel LDV/LLDTs opting to calculate intermediate life SFTP standards in lieu of 4,000 mile SFTP standards as permitted under paragraph (f)(6)of this section.

(ii)(A) Manufacturers must determine compliance with NMHC+NO_X, CO and PM weighted SFTP standards calculated in paragraph (f)(2)(i) of this section by weighting their emission results as follows:

0.35×(FTP)+0.28×(US06)+0.37×(SC03).

(B) The results of the calculation in paragraph (f)(2)(ii)(A) of this section must be rounded to one more decimal place than the applicable standard calculated in paragraph (f)(2)(i) of this section and then compared with that standard.

(3) For interim non-Tier 2 gasoline, diesel and flexible-fueled LDT3s and LDT4s, manufacturers may, alternatively, meet the gasoline-fueled vehicle SFTP standards found in §§ 86.1814–02 and 86.1815–02, respectively.

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04–1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at § 86.1811–01(b).

(5) SFTP standards for PM are not applicable to interim non-Tier 2 LDV/Ts. For Tier 2 LDV/Ts, the 4000 mile PM standard is equal to the full life PM standard calculated under paragraph (f)(2) of this section. The requirements of this paragraph (f)(5) also apply to Tier 2 flexible fuel vehicles when operated on gasoline or diesel fuel. (See regulations in § 86.1829-01(b)(1)(iii)(B) regarding data submittal for PM results for gasoline vehicles.)

(6)(i) In lieu of complying with 4000 mile SFTP standards described in this paragraph, diesel LDV/LLDTs through model year 2006, may comply instead with intermediate life SFTP standards derived from Tier 1 intermediate life SFTP standards for gasoline vehicles.

(ii) To calculate intermediate life SFTP standards, substitute intermediate life Tier 1 FTP and SFTP values from Tables S04–5 and S04–6 in this paragraph (f), as appropriate, for the full life values in the equation in paragraph (f)(2)(i) of this section. Substitute the applicable intermediate life standards for the full life current FTP standard. If there is no applicable intermediate life standard use the full life current FTP standard.

(iii) A manufacturer of diesel LDV/LLDTs must declare which option it will use (4,000 mile or intermediate life standards) in Part I of its certification application.

(g) *Cold temperature exhaust emission standards.* These standards are applicable only to gasoline fueled LDV/Ts and MDPVs. For cold temperature exhaust emission standards, a useful life of 50,000 miles applies.

(1) For LDVs and LDT1s, the standard is 10.0 grams per mile CO.

(2) For LDT2s, LDT3s and LDT4s, and MDPVs the standard is 12.5 grams per mile CO.

(3) These standards do not apply to interim non-Tier 2 MDPVs.

(h) *Certification short test exhaust emission standards.* Certification short test emissions from all gasoline-fueled otto cycle LDV/Ts and MDPVs must not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane, for certification and SEA testing; 220 ppm as hexane, for in-use testing.

(2) Carbon monoxide: 0.5% for certification and SEA testing; 1.2% for in-use testing.

(3) These standards do not apply to interim non-Tier 2 MDPVs.

(i) Idle CO standards and references to such standards in this subpart, do not apply to any 2004 or later model year LDV, LDT, or MDPV or to any LDV, LDT or MDPV certified to Tier 2 standards before model year 2004 for purposes of generating early NO_X credits or meeting the requirements of an alternative phase-in schedule that begins prior to the 2004 model year.

(j) *Highway NO_X exhaust emission standard.* The maximum projected NO_X emissions measured on the federal Highway Fuel Economy Test in 40 CFR part 600, subpart B, must not be greater than 1.33 times the applicable FTP NO_X standard to which the manufacturer certifies the test group. Both the projected emissions and the product of the NO_X standard and 1.33 must be rounded to the nearest 0.01 g/mi before being compared. This standard is not applicable to MDPVs.

(k) *Phase-in of the Tier 2 FTP exhaust and evaporative requirements; small volume manufacturer flexibilities.* (1) Manufacturers must comply with the phase-in requirements in Tables S04–7 and S04–8 of this paragraph (k) for the Tier 2 FTP exhaust emission requirements specified in paragraph (c) of this section. Separate phase-in schedules are provided for LDV/LLDTs and for HLDT/MDPVs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT and HLDT/MDPV U.S. sales, by model year, that must meet the Tier 2 requirements, including the applicable fleet average standard, for their full useful lives. As the terms LDV/LLDT and HLDT/MDVP imply, LDVs and LLDTs must be grouped together to determine compliance with these phase-in requirements and HLDTs and MDPVs must also be grouped together to determine compliance with these phase-in requirements. Tables S04–7 and S04–8 follow:

TABLE S04–7.—PHASE-IN PERCENTAGES FOR LDV/LLDT TIER 2 REQUIREMENTS

Model year	Percentage of LDV/LLDTs that must meet tier 2 requirements
2004	25
2005	50
2006	75
2007 and subsequent	100

TABLE S04–8.—PHASE-IN PERCENTAGES FOR HLDT/MDPV TIER 2 REQUIREMENTS

ModeL year	Percentage of HLDT/MDPVs that must meet tier 2 requirements
2008	50
2009 and subsequent	100

(2) Manufacturers must also comply with the phase-in requirements in Tables S04–7 and S04–8 of this paragraph (k) for the evaporative emission requirements contained in paragraph (e) of this section.

(3) Manufacturers may opt to use different LDV/LLDTs and HLDT/MDPVs to meet the phase-in requirements for evaporative emissions and FTP exhaust emissions, provided that the manufacturer meets the minimum applicable phase-in requirements in Table S04–7 and Table S04–8 of this paragraph (k) for both FTP exhaust and evaporative emissions. A LDV, LDT or MDPV counted toward compliance with any phase-in requirement for FTP exhaust or evaporative standards, must comply with all applicable Tier 2 exhaust requirements or all applicable evaporative requirements, respectively, described in this section.

(4) LDVs, LDTs and MDPVs not certified to meet the Tier 2 FTP exhaust requirements during model years 2004–2008, as allowed under this subpart, are subject to the provisions of paragraph (l) of this section.

(5) *Provisions for small volume manufacturers* (i) Small volume manufacturers, as defined in this part, are exempt from the Tier 2 LDV/LLDT exhaust and evaporative emissions phase-in requirements for model years 2004, 2005 and 2006 in Table S04–7 of this paragraph (k), but must comply with the 100% requirement for the 2007 and later model years for exhaust and evaporative emissions. If not complying with Tier 2 requirements during 2004, 2005 and 2006, small volume

manufacturers must comply with the requirements for interim non-Tier 2 LDV/LLDTs.

(ii) Small volume manufacturers, as defined in this part, are exempt from the HLDT/MDPV exhaust and evaporative phase-in requirement for model year 2008 in Table S04–8 of this section but must comply with the 100% requirement for the 2009 model year. Small volume manufacturers are also exempt from the HLDT/MDPV interim fleet average NO_X standard (0.20 g/mi) and its phase-in for the 2004, 2005 and 2006 model years.

(iii) Small volume manufacturers must comply with the FTP exhaust emission standards from Tables S04–1 and 2 of paragraph (c) of this section for all HLDT/MDPVs of model years 2004 and later, except that 2004 model year HLDTs may comply with Tier 1 exhaust emission standards subject to the provisions of paragraph (l)(2)(vii) of this section, and 2004 model year MDPVs may comply with heavy-duty vehicle standards subject to the provisions of paragraph (l)(2)(viii) of this section. Small volume manufacturers must also comply with the 0.20 g/mi fleet average NO_X standard for 2007 and 2008 model year HLDT/MDPVs; the Tier 2 0.07 g/mi fleet average NO_X standard for the 2009 and later model year HLDT/MDPVs; and the evaporative emission standards in Table S04–3 of this section for the 2009 and later model years.

(6)(i) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for LDV/LLDTs by 2007. Alternate phase-in schedules must produce a sum of at least 250% when the percentages of LDV/LLDTs certified to Tier 2 requirements for each model year from 2001 through 2007 are summed. As an example, a 10/25/50/65/100 percent phase-in that began in 2003 would have a sum of 250 percent and would be acceptable. However, a 10/25/40/70/100 percent phase-in that began the same year would have a sum of 245 percent and would not be acceptable.

(ii) A manufacturer electing this option for LDV/LLDTs may calculate its compliance with the evaporative standards in paragraph (e)(1) of this section separately from its compliance with Tier 2 exhaust standards, provided that the phase-in schedules for each separately produce a sum of at least 250 percent when calculated as described in paragraph (k)(6)(i) of this section. A vehicle counted towards compliance with any phase-in requirement for the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section, must comply with all applicable Tier 2 exhaust standards or all evaporative standards, as applicable, described in this section.

(iii) In addition to the requirements of paragraphs (k)(6)(i) and (ii) of this section, except as permitted in paragraph (k)(6)(vii) of this section, a manufacturer of LDV/LLDTs electing to use an alternate phase-in schedule for compliance with the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section must ensure that the sum of the percentages of vehicles from model years 2001 through 2004, meeting such exhaust or evaporative standards, as applicable, is at least 25%.

(iv) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for HLDT/MDPVs by 2009. The requirements of paragraphs (k)(6)(i) through (k)(6)(ii) of this section apply, except that for HLDT/MDPVs, the calculation described in paragraphs (k)(6)(i) and (k)(6)(ii) of this section may cover model years 2001 through 2009 and must produce a sum of at least 150%.

(v) A manufacturer electing to use any alternate phase-in schedule permitted under this section must provide in its Application for Certification for the first year in which it intends to use such a schedule, and in each succeeding year during the phase-in, the intended phase-in percentages for that model year and the remaining phase-in years along with the intended final sum of those percentages as described in this paragraph (k)(6). This information may be included with the information required under § 86.1844–01(d)(13). In its year end annual reports, as required under § 86.1844–01(e)(4) the manufacturer must include sufficient information so that the Administrator can verify compliance with the alternative phase-in schedule established under paragraph (k)(6) of this section.

(vi) Under an alternate phase-in schedule, the projected phase-in percentage is not binding for a given model year, provided the sums of the actual phase-in percentages that occur meet the appropriate total sums as required in paragraph (k)(6) of this section, and provided that 100% actual compliance is reached for the appropriate model year, either 2007 or 2009, as described in paragraph (k)(6) of this section.

(vii) A manufacturer unable to meet the 25% requirement in paragraph (k)(6)(iii) of this section, must:

(A) Ensure that the sum of the percentages of vehicles for model years 2001 through 2004, meeting such exhaust or evaporative standards, as applicable, is at least 20%.

(B) Subtract that sum of percentages for model years 2001 through 2004 from 25%, and multiply the unrounded result by 2.

(C) Round the product from paragraph (k)(6)(vii)(B) of this section to the nearest 0.1% and add that to 50%. That sum becomes the required phase-in percentage for the 2005 model year.

(D) Comply with the phase-in percentage for the 2005 model year determined in paragraph (k)(6)(vii)(C) of this section.

(E) Comply with a minimum phase-in percentage for the 2006 model year determined by the following equation:

$$\text{minimum phase-in percentage for 2006} = [75\% - (2005_{api} - 2005_{rpi})]$$

Where:

2005_{rpi} = the required phase-in for the 2005 model year as determined in paragraph (k)(6)(vii)(C) of this section; and

2005_{api} = the manufacturer's actual phase-in quantity for the 2005 model year.

(7)(i) Sales percentages for the purpose of determining compliance with the phase-in of the Tier 2 requirements and the phase-in of the evaporative standards in paragraph (e)(1) of this section, must be based upon projected U.S. sales of LDV/LLDTs and HLDT/MDPVs of the applicable model year by the manufacturer to the point of first sale. Such sales percentages must be rounded to the nearest one tenth of a percent, and must not include vehicles and trucks projected to be sold to points of first sale in California or a state that has adopted California requirements for that model year as permitted under section 177 of the Act.

(ii) Alternatively, the manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of projected U.S. sales for purposes of determining compliance with the phase-in percentage requirements under this section. The manufacturer must submit its petition within 30 days of the end of the model year to the Vehicle Programs and Compliance Division. For EPA to approve the use of actual volume produced for U.S. sales, the manufacturer must establish to the satisfaction of the Administrator, that actual production volume is functionally equivalent to actual sales volume of LDV/LLDTs and HLDT/MDPVs sold in states other than California and states that have adopted California standards.

(iii) Manufacturers must submit information showing compliance with all phase-in requirements of this section

with its Part I application as required by § 86.1844(d)(13).

(l) *FTP exhaust standards for interim non-Tier 2 vehicles.*—(1) *FTP exhaust emission standards for interim non-Tier 2 LDV/LLDTs.* (i) LDV/LLDTs that are not used to meet the Tier 2 phase-in requirements including the Tier 2 fleet average NO_X requirement during the Tier 2 phase-in period (model years 2004–2006) must comply with the full useful life FTP exhaust emission standards listed in Table S04–1 of paragraph (c) of this section and the corresponding intermediate useful life standards, if any, in Table S04–2 of paragraph (c) of this section. Manufacturers may choose the bin of full useful life standards to which they certify a test group of vehicles, subject to the requirements in paragraph (l)(3)(i) of this section. In a given model year, an individual vehicle may not be used to comply with both the Tier 2 fleet average NO_X standard and the applicable interim fleet average NO_X standard although vehicles from the same test group may be separated and the vehicles counted toward compliance with either program.

(ii) The provisions of paragraphs (c)(1), (2) and (3) of this section apply to flexible-fueled, dual fuel and multi-fuel interim non-Tier 2 LDV/LLDTs.

(iii) Only manufacturers that comply with the applicable FTP standards in Tables S04–1 and 2 of paragraph (c) of this section for all of their 2004 model year HLDTs and declare their intention to comply with the 2004 model year 25% phase-in requirement to the 0.20 g/mi interim fleet average NO_X standard for HLDTs (or HLDT/MDPVs) described in this paragraph (l) may use the optional higher NMOG values for interim LDT2s certified to bin 9 standards that are shown in Tables S04–1 and 2. Manufacturers must declare their intention to comply with the full 2004 model year 25% phase-in requirement in Part I of their HLDT or their HLDT/MDPV, as applicable, certification applications.

(iv) The provisions of paragraph (c)(4) of this section apply to interim non-Tier 2 vehicles.

(2) *FTP exhaust emission standards for interim non-Tier 2 HLDTs and interim non-Tier 2 MDPVs.* (i) Except as permitted under paragraphs (l)(2) (vii) and (viii) of this section, HLDTs and MDPVs of model years 2004–2008 that are not used to meet the Tier 2 FTP phase-in requirements including the Tier 2 fleet average NO_X requirement must comply with the full useful life FTP exhaust emission standards listed in Table S04–1 of paragraph (c) of this section and, the corresponding intermediate useful life standards, if any, in Table S04–2 of paragraph (c) of this section. Manufacturers may choose the bin of full useful life standards to which they certify a test group of vehicles, subject to the requirements in paragraph (l)(3)(ii) of this section.

(ii) Except as permitted under paragraphs (l)(2) (vii) and (viii) of this section, HLDTs and MDPVs of model years 2004–2008 that are not used to meet the Tier 2 FTP phase-in requirements including the Tier 2 fleet average NO_X requirement must comply with the fleet average NO_X standard described in paragraph (l)(3)(ii) of this section subject to the phase-in schedule in paragraph (l)(2)(iv) of this section, i.e. 25 percent of the HLDT and MDPVs must meet the fleet average standard of 0.20 g/mi in 2004, 50 percent in 2005, and so on.

(iii) Manufacturers may choose the bin of full useful life standards and corresponding intermediate life standards to which they certify test groups of HLDTs and MDPVs, subject to the requirements in paragraph (l)(3)(ii) of this section. Manufacturers may include HLDT/MDPVs in the interim program that are not used to meet the Tier 2 fleet average NO_X standard or the phase-in percentage requirements in the Tier 2 program or to generate Tier 2 NO_X credits. In a given model year, an individual vehicle may not be used to comply with both the Tier 2 fleet average NO_X standard and the applicable interim fleet average NO_X standard although vehicles from the same test group may be separated and the vehicles counted toward compliance with either program.

(iv) *Phase-in schedule for interim non-Tier 2 HLDT/MDPVs.* Table S04–9 of this paragraph (l) specifies the minimum percentage of the manufacturer's interim non-Tier 2 HLDT/MDPV U.S. sales, by model year, that must comply with the fleet average NO_X standard described in paragraph (l)(3)(ii) of this section. Table S04–9 follows:

Table S04–9.—Phase-in Percentages for Compliance With Interim Non-Tier 2 Fleet Average NO_X Standard for HLDT/MDPVs

Model year	Percentage of non-tier 2 HLDT/MDPVs that must meet interim non-tier 2 fleet average NO_X standard
2004	25
2005	50
2006	75

Table S04–9.—Phase-in Percentages for Compliance With Interim Non-Tier 2 Fleet Average NO_X Standard for HLDT/MDPVs—Continued

Model year	Percentage of non-tier 2 HLDT/MDPVs that must meet interim non-tier 2 fleet average NO_X standard
2007 and 2008	100

(v)(A) A manufacturer may elect an alternate phase-in schedule, beginning as early as the 2001 model year, that results in 100% compliance by 2007 with the fleet average NO_X standard for interim non-Tier 2 HLDT/MDPVs described in paragraph (l)(3)(ii) of this section. The requirements of paragraph (k)(6) of this section apply to the selection of an alternate phase-in schedule.

(B) If a manufacturer elects not to bring all of its HLDT/MDPVs into compliance with the interim requirements in 2004 as permitted under paragraphs (l)(2)(vii) and

(viii) of this section, it may still use an alternate phase-in schedule to attain 100% compliance with the interim fleet average NO_X standard for HLDT/MDPVs, but the sum of phase-in percentages it must meet will be 225% rather than 250%. If the manufacturer commences its 2004 model year on or after December 21, 2003, for any HLDT/MDPVs, the manufacturer must increase the 225% by the fraction of its 2004 model year HLDT/MDPVs whose model year commenced on or after that date and which were brought into compliance with the 0.20 g/mi corporate average NO_X standard as required under paragraph (l)(2)(ix) of this section. The manufacturer must ensure that the sum of the percentages of vehicles up through model year 2005 complying with the interim fleet average NO_X standard is at least 50%.

(vi) The provisions of paragraphs (c)(1), (2) and (3) of this section apply to flexible-fueled, dual fuel and multi-fuel interim non-Tier 2 HLDT/MDPVs.

(vii) For 2004 model year HLDT test groups whose model year commences before December 21, 2003, the manufacturer may exempt such HLDTs from compliance with any requirements applicable to interim non-Tier 2 HLDTs, and such HLDTs must be produced in accordance with standards and requirements in §§ 86.1814–02 and §§ 86.1815–02. Such HLDTs must also meet the refueling emission standards

contained in paragraph (e)(3) of this section.

(viii) For 2004 model year heavy-duty vehicles whose model year commences before December 21, 2003, the manufacturer may exempt such vehicles from compliance with any requirements applicable to interim non-Tier 2 MDPVs. Exempted vehicles will not be considered MDPVs and must be produced in accordance with standards and requirements in § 86.099–10. Exempted vehicles are also exempted from refueling emission standards.

(ix) For 2004 model year HLDT and MDPV test groups whose model year commences on or after December 21, 2003, the manufacturer must comply with all interim non-Tier 2 requirements in this section.

(A) All such vehicles, but not more than 25% of the manufacturer's total sales of 2004 model year HLDT/MDPVs must meet the interim non-Tier 2 fleet average NO_X standard as described in paragraph (l)(3)(ii) of this section.

(B) All such vehicles but not more than 40% of the manufacturer's 2004 model year HLDT/MDPVs must comply with the refueling requirements in paragraph (e)(3) of this section.

(x) Only those manufacturers that comply with the interim non-Tier 2 FTP standards for all of their 2004 model year HLDTs and declare their intention to comply with the 2004 model year 25% phase-in requirement to the fleet average interim NO_X standard for HLDTs or HLDT/MDPVs of 0.20 g/mi described in paragraph (l) of this section may use the optional higher NMOG values for interim LDT4s certified to bin 10 standards that are shown in Tables S04–1 and 2 of paragraph (c) of this section. Manufacturers must declare their intention to comply with the 2004 model year 25% phase-in requirement in Part I of their HLDT certification applications.

(xi) Only those manufacturers that comply with the interim non-Tier 2 FTP standards for all of their 2004 model year MDPVs, and declare their intention to comply with the 2004 model year 25% phase-in requirement to the fleet average interim NO_X standard for MDPVs or HLDT/MDPVs of 0.20 g/mi described in paragraph (l) of this section may:

(A) Use the exhaust emission standards of bin 11 in Tables S04–1 and S04–2 of paragraph (c) in this section for MDPVs through model year 2008;

(B) For diesel-fueled vehicles, certify the engines in such vehicles, through model year 2007, to provisions in this part 86 applicable to diesel-fueled heavy-duty engines of the appropriate model year. Such diesel fueled vehicles must not be included in any count or determination of compliance with the phase-in requirements applicable to interim non-Tier 2 MDPVs; and

(C) Use the optional higher NMOG values for interim LDT4s certified to bin 10 standards that are shown in Tables S04–1 and 2.

(xii) Manufacturers electing to comply with the provisions of paragraph (l)(2)(xi) of this section must declare their intention to comply with the 2004 model year 25% phase-in requirement to the fleet average interim NO_X standard for MDPVs or HLDT/MDPVs of 0.20 g/mi in Part I of their MDPV certification applications.

(xiii) Where diesel-fueled heavy-duty engines are used as permitted under paragraph (l)(2)(xi)(B) of this section, such engines must be treated as a separate averaging set—MDPV HDDEs—under the averaging, banking and trading provisions applicable to heavy-duty diesel engines. Only NO_X credits generated by engine-certified diesel engines that are used in other MDPVs can be applied to these engines. Manufacturers wishing to average, bank or trade credits for MDPV HDDEs must comply with the requirements in this paragraph and with all requirements applicable to heavy-duty engine averaging, banking and trading in this part.

(3) *Fleet average NO_X standards for interim non-Tier 2 LDV/Ts and MDPVs.* (i) Manufacturers must comply with a fleet average full useful life NO_X standard for their interim non-Tier 2 LDV/LLDTs, on an annual basis, of 0.30 grams per mile.

(ii) Manufacturers must comply with a fleet average full useful life NO_X standard for their interim non-Tier 2 HLDT/MDPVs, excluding those HLDTs and MDPVs not yet covered by the phase-in requirement described in paragraph (l)(2)(ii) of this section, on an annual basis, of 0.20 grams per mile.

(iii) Manufacturers must determine their compliance with these interim fleet average NO_X standards for each model year by separately computing the sales weighted average NO_X level of all interim non-Tier 2 LDV/LLDTs and all interim non-Tier 2 HLDT/MDPVs (excluding those not yet phased in as described in paragraph (l)(2)(ii) of this section), using the methodology in § 86.1860.

(iv) Manufacturers may generate, bank, average, trade and use interim non-Tier 2 NO_X credits based on their NO_X fleet average as determined under paragraph (l)(3)(iii) of this section. Unless waived or modified by the Administrator, the provisions of § 86.1861 of this part apply to the generation, banking, averaging, trading and use of credits generated by interim non-Tier 2 vehicles. NO_X credits generated by interim non-Tier 2 vehicles are not subject to any discount except as required by § 86.1861–04(e).

(m) *NMOG standards for diesel, flexible fueled and dual-fueled LDV/Ts and MDPVs.* (1) For diesel fueled LDV/Ts and MDPVs, the term "NMOG" in both the Tier 2 and interim non-Tier 2 standards means non-methane hydrocarbons.

(2) Flexible-fueled and dual-fuel Tier 2 and interim non-Tier 2 vehicles must be certified to NMOG exhaust emission standards both for operation on gasoline and on any alternate fuel they are designed to use. Manufacturers may measure NMHC in lieu of NMOG when flexible-fueled and dual-fuel vehicles are operated on gasoline, subject to the requirements of § 86.1810(p).

(n) *Hybrid electric vehicle (HEV) and Zero Emission Vehicle (ZEV) requirements.* For FTP and SFTP exhaust emissions, and unless otherwise approved by the Administrator, manufacturers must measure emissions from all HEVs and ZEVs according to the requirements and test procedures found in the document entitled California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes. This document is incorporated by reference (see § 86.1) . Requirements and procedures in this document that are relevant only to complying with the California ZEV mandate, computing partial and full ZEV allowance credits, or generating and using ZEV credits, are not relevant to the federal program and may be disregarded. Discussion in that document relevant to fleet average NMOG standards and NMOG credits may also be disregarded.

(o) *NMOG measurement.* (1) Manufacturers must measure NMOG emissions in accordance with Part G of the California Non-Methane Organic Gas Test Procedures. These requirements are incorporated by reference (see § 86.1).

(2) Manufacturers must not apply reactivity adjustment factors (RAFs) to NMOG measurements. See § 86.1841.

(p) *In-use standards.* (1) Table S04–10 of this paragraph (p) contains in-use emission standards applicable only to vehicles certified to the bins shown in the table. These standards apply to in-use testing performed by the manufacturer pursuant to regulations at §§ 86.1845–01, 86.1845–04 and 86.1846–01 and to in-use testing

performed by EPA. These standards do not apply to certification or Selective Enforcement Auditing.

(2) These standards apply only to LDV/LLDTs produced up through the 2008 model year, and HLDT/MDPVs produced up through the 2010 model year. These standards are subject to other limitations described in paragraph (p)(3) of this section.

(3) For the first model year and also for the next model year after that, in which a test group of vehicles is certified to a bin of standards to which it has not previously been certified, the standards in Table S04–10 of this paragraph (p) apply for purposes of in-use testing only. The standards apply equally to all LDV/Ts and MDPVs subject to the model year limitation in paragraph (p)(2) of this section. Table S04–10 follows:

TABLE S04–10—IN-USE COMPLIANCE STANDARDS (G/MI)

[Certification standards shown for reference purposes]

Bin number	Durability period (miles)	NO_X In-use	NO_X certification	NMOG In-use	NMOG certification
5	50,000	0.07	0.05	n/a	0.075
5	120,000	0.10	0.07	n/a	0.090
4	120,000	0.06	0.04	n/a	0.070
3	120,000	0.05	0.03	0.09	0.055
2	120,000	0.03	0.02	0.02	0.010

(4) For diesel vehicles certified to bin 10, separate in-use standards apply for NO_X and PM emissions. These standards are determined by multiplying the applicable NO_X and PM certification standards by factors of 1.2 and 1.35, respectively, and then rounding the result to one more decimal place than contained in the certification standard. The resultant standards do not apply for certification or selective enforcement auditing.

(q) *Hardship provision for small volume manufacturers.* (1) A small volume manufacturer may apply for relief from any applicable final phase-in model year contained in this section. Relief will only be available to defer required compliance with a completely new set of standards, a fleet average NO_X standard, and/or evaporative emission standard for 100% of affected vehicles for one model year. Thus, a small volume manufacturer that obtains relief may:

(i) Defer 100% compliance with the fleet average NO_X standard for interim LDV/LLDTs (0.30 g/mi) until 2005;

(ii) Defer 100% compliance with the evaporative emission standards and/or fleet average NO_X standard for Tier 2 LDV/LLDTs (0.07 g/mi) until 2008;

(iii) Defer 100% compliance with the requirements that interim HLDTs and MDPVs comply with applicable emission standards shown in Tables S04–1 and S04–2, until 2005;

(iv) Defer 100% compliance with the fleet average NO_X standard for interim HLDT/MDPVs (0.20 g/mi) until 2008; and

(v) Defer 100% compliance with the the evaporative emission standards and/or fleet average NO_X standard for Tier 2 HLDT/MDPVs (0.07 g/mi) until 2010.

(2) Applications for relief must be in writing and must:

(i) Be submitted before the earliest date of noncompliance;

(ii) Include evidence that the manufacturer will incur severe economic hardship if relief is not granted;

(iii) Include evidence that the noncompliance will occur despite the best efforts of the manufacturer to comply; and

(iv) Include evidence that the manufacturer has made every reasonable effort to purchase credits to address the noncompliance, where applicable.

(r) *NMOG standard adjustment for direct ozone reducing devices.* (1) A manufacturer may obtain NMOG credit for use in certifying to the exhaust NMOG standards listed in paragraph (c) of this section and for use in complying with the in-use standards of paragraph (p) of this section, where applicable. This credit effectively allows the manufacturer to increase the exhaust NMOG emission standards listed in these paragraphs by the amount of the applicable credit. For example, if the applicable NMOG credit was 0.01 g/mi, and the vehicle was being certified in Bin 5, as described in Table S04–1 of paragraph (c) of this section, exhaust NMOG emissions must be no greater than 0.10 g/mi, as opposed to the normal NMOG certification standard of 0.09 g/mi in Bin 5.

(2) The NMOG credit must be determined through a two-step process.

(i) The first step must determine the ozone reduction potential of the direct ozone reducing device, the ozone reduction potential of exhaust NMOG reductions beyond Bin 5 of the Tier 2 standards, and the ratio of the two methods of reducing ambient ozone levels. The requirements for this step are described in paragraph (r)(3) of this section.

(ii) The second step must demonstrate and certify the relevant performance characteristics of the specific ozone reducing device. The requirements for this step are described in paragraph (r)(4) of this section.

(3) The ozone reduction potential of the direct ozone reducing device and the ozone reduction potential of exhaust NMOG reductions beyond Bin 5 of the Tier 2 standards must be estimated using procedures which are approved by the Administrator in advance. At a minimum:

(i) The modeling must utilize an urban airshed model using up-to-date chemical and meteorological simulation techniques;

(ii) Four local areas must be modeled: New York City, Chicago, Atlanta and Houston;

(iii) The ozone episodes to be modeled must meet the selection criteria established by EPA for State ozone SIPs;

(iv) Photochemical and dispersion modeling must follow that used by EPA to project the ozone impacts of this rule, or its equivalent;

(v) Emission projections must be made for calendar year 2007 and be consistent with those used by EPA in support of this final rule, or reflect updates approved by EPA;

(vi) Baseline emissions (emissions prior to use of the direct ozone reducing device or the VOC emission reductions) must include the benefits of the Tier 2 emission and sulfur standards; as well as all other emission controls assumed in EPA's ozone modeling of the benefits of the Tier 2 and sulfur standards, as described in the Final Regulatory Impact Analysis to the Tier 2 and Sulfur Rule;

(vii) The ozone benefit of the direct ozone reducing device must assume a radiator area of 0.29 square meters, an air flow velocity through the radiator of 40% of vehicle speed, and an ozone reduction efficiency of 80%, or other

values as approved by the Administrator;

(viii) The ozone level of the air entering the direct ozone reducing device must be assumed to be 40% less than that existing in the grid cell where the vehicle is located;

(ix) The ozone benefit of VOC emission reductions must be modeled by assuming that all Tier 2 LDVs, LDTs and MDPVs meet an exhaust NMOG standard of 0.055 g/mi or lower instead of a 0.09 g/mi NMOG standard;

(x) The ozone reducing device must be assumed to be present on all of the Tier 2 LDVs, LDTs and MDPVs modeled as meeting the more stringent NMOG standard described in paragraph (r)(3)(ix) of this section;

(xi) The relationship between changes in exhaust NMOG emission standards and in-use VOC emissions must be determined sufficiently far in the future to ensure that the change in ozone being modeled is sufficiently large to allow comparison with the impact of the ozone reducing device;

(xii) LDV, LDT and MDPV emissions must be modeled using the updated Tier 2 emission model developed by EPA as part of the Tier 2 rulemaking (available from EPA upon request) or MOBILE6, once this model is available;

(xiii) The ozone benefit of the direct ozone reducing device must be the reduction in the peak one-hour ozone level anywhere in the modeled region on the day when ozone is at its highest;

(xiv) The NMOG credit in each local area must be the reduction in peak one hour ozone associated with use of the direct ozone reducing device divided by the reduction in peak one hour ozone associated with the more stringent exhaust NMOG emission standard multiplied by the reduction the exhaust NMOG standard (in g/mi) modeled in paragraph (r)(3)(ix) of this section; and

(xv) The NMOG credit applicable to the generic direct ozone reducing device modeled in paragraph (r)(3)(vii) of this section must be determined by arithmetically averaging the NMOG credit determined in paragraph (r)(3)(xiv) of this section for each of the four local areas.

(4) The manufacturer must submit data, using procedures which have been approved by the Administrator in advance, that demonstrate the following aspects of the device being certified:

(i) The air flowrate through the device as a function of vehicle speed;

(ii) The ozone reduction efficiency of the device over the useful life of the vehicle for a range of vehicle speeds and ozone levels;

(iii) The method through which the onboard diagnostic system will detect improper performance.

(5) The NMOG credit for the specific application of this technology tested under the provisions of paragraph (r)(4) of this section is the four-area NMOG credit determined in paragraph (r)(3)(xv) of this section scaled based on the performance of the specific application tested under the provisions of paragraph (r)(4) of this section relative to those assumed in paragraph (r)(3)(vii) of this section. This scaling must assume a linear relationship between the NMOG credit and three aspects of the direct ozone reducing device: radiator area, average air flow through the radiator relative to vehicle speed, and ozone reduction efficiency and the NMOG credit. The NMOG credit must be rounded to the nearest 0.001 g/mi. For example, if the NMOG credit determined in paragraph (r)(3)(xv) of this section was 0.01 g/mi and the specific direct ozone reducing device being certified had an area of 0.20 square meters, an air flow velocity of 30% of vehicle speed and an ozone reducing efficiency of 70%, and the generic ozone reducing device simulated in the ozone model under paragraph (r)(3)(vii) of this section had an area of 0.29 square meters, an air flow velocity of 40% of vehicle speed and an ozone reducing efficiency of 80%, the NMOG credit applicable to the specific device being certified would be:

0.01 g/mi * (0.20/0.29) * (30%/40%) * 70%/80%) = 0.005

25. Section 86.1812–01 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1812–01 Emission standards for light-duty trucks 1.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

26. Section 86.1813–01 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1813–01 Emission standards for light-duty trucks 2.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

27. Section 86.1814–02 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1814–02 Emission standards for light-duty trucks 3.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

§ 86.1814–04 [Removed]

28. Section 86.1814–04 is removed.

29. Section 86.1815–02 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1815–02 Emission standards for light-duty trucks 4.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

§ 86.1815–04 [Removed]

30. Section 86.1815–04 is removed.

31. Section 86.1824–01 is amended by revising the first sentence of the introductory text and adding paragraphs (a)(2)(iii), (a)(2)(iv) and (a)(2)(v) to read as follows:

§ 86.1824–01 Durability demonstration procedures for evaporative emissions.

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled LDV/Ts and MDPVs.

* * *

(a) * * *

(2) * * *

(iii) For gasoline fueled vehicles certified to meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any service accumulation method for evaporative emissions must employ gasoline fuel for the entire service accumulation period which contains ethanol in, at least, the highest concentration permissible in gasoline under federal law and that is commercially available in any state in the United States. Unless otherwise approved by the Administrator, the manufacturer must determine the appropriate ethanol concentration by selecting the highest legal concentration commercially available during the calendar year before the one in which the manufacturer begins its service accumulation. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to the service accumulation fuel constituents.

(iv) For flexible-fueled, dual-fueled, multi-fueled, ethanol-fueled and methanol-fueled vehicles certified to

meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any service accumulation method must employ fuel for the entire service accumulation period which the vehicle is designed to use and which the Administrator determines will have the greatest impact upon the permeability of evaporative and fuel system components. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to service accumulation fuel constituents.

(v) A manufacturer may use other methods, based upon good engineering judgment, to meet the requirements of paragraphs (a)(2) (iii) and (iv) of this section, as applicable. These methods must be approved in advance by the Administrator and meet the objectives of paragraphs (a)(2) (iii) and (iv) of this section, as applicable: to provide assurance that the permeability of all non-metallic fuel and evaporative system components will not lead to evaporative emission standard exceedance under sustained exposure to commercially available alcohol-containing fuels for the useful life of the vehicle.

* * * * *

32. Section 86.1827–01 is amended by adding paragraph (e) to read as follows:

§ 86.1827–01 Test group determination.

* * * * *

(e) Unless otherwise approved by the Administrator, a manufacturer of hybrid electric vehicles must create separate test groups based on both the type of battery technology employed by the HEV and upon features most related to their exhaust emission characteristics.

33. Section 86.1829–01 is amended by adding paragraphs (b)(1)(iii)(E) and (d) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b) * * * (1) * * *

(iii) * * *

(E) In lieu of testing a gasoline or diesel fueled Tier 2 or interim non-Tier 2 vehicle for formaldehyde emissions when such vehicles are certified based upon NMHC emissions, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

* * * * *

(d)(1) Beginning in the 2004 model year, the exhaust emissions must be measured from all LDV/T exhaust emission data vehicles tested in accordance with the federal Highway Fuel Economy Test (HWFET; 40 CFR part 600, subpart B). The oxides of nitrogen emissions measured during such tests must be multiplied by the oxides of nitrogen deterioration factor computed in accordance with § 86.1823–01 and subsequent model year provisions, and then rounded and compared with the applicable emission standard in § 86.1811–04. All data obtained from the testing required under this paragraph (d) must be reported in accordance with the procedures for reporting other exhaust emission data required under this subpart.

(2) In the event that one or more emission data vehicles fail the applicable HWFET standard in § 86.1811–04, the manufacturer may submit to the Administrator engineering data or other evidence showing that the system is capable of complying with the standard. If the Administrator finds, on the basis of an engineering evaluation, that the system can comply with the HWFET standard, he or she may accept the information supplied by the manufacturer in lieu of the test data.

(3) The provisions of paragraphs (d)(1) and (d)(2) of this section do not apply to MDPVs.

34. Section 86.1837–01 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 86.1837–01 Rounding of emission measurements.

* * * * *

(b) Fleet average NO_X value calculations, where applicable, must be rounded before comparing with the applicable fleet average standard and calculating credits generated or needed as follows: manufacturers must round to the same number of significant figures that are contained in the quantity of vehicles in the denominator of the equation used to compute the fleet average NO_X emissions, but to no less than one more decimal place than that of the applicable fleet average standard.

35. Section 86.1838–01 is amended by revising paragraphs (b)(1)(i) and (c)(2)(iii) to read as follows:

§ 86.1838–01 Small volume manufacturer certification procedures.

* * * * *

(b) * * *

(1) * * *

(i) The optional small-volume manufacturers certification procedures apply to LDV/Ts and MDPVs produced by manufacturers with U.S. sales, including all vehicles and engines imported under provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (LDV/Ts, MDPVs, heavy-duty vehicles and heavy-duty engines combined).

* * * * *

(c) * * *

(2) * * *

(iii) The provisions of § 86.1845–01(c)(2) and § 86.1845–04(c)(2) that require one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75 percent of the full useful life mileage for Tier 1 and NLEV LDV/Ts, or 90,000 (or 105,000) miles for Tier 2 and interim non-Tier 2 vehicles, do not apply.

* * * * *

36. Section 86.1840–01 is amended by adding paragraphs (c) and (d) to read as follows:

§ 86.1840–01 Special test procedures.

* * * * *

(c) Manufacturers of vehicles equipped with periodically regenerating trap oxidizer systems must propose a procedure for testing and certifying such vehicles including SFTP testing for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal, sufficient documentation and data for the Administrator to fully evaluate the operation of the trap oxidizer system and the proposed certification and testing procedure.

(d) The provisions of paragraphs (a) and (b) of this section also apply to MDPVs.

37. Section 86.1841–01 is amended by revising paragraph (a)(1)(iii) and adding paragraph (e) to read as follows:

§ 86.1841–01 Compliance with emission standards for the purpose of certification.

(a) * * *

(1) * * *

(iii) For the SFTP composite standard of NMHC+NO_X, the measured results of NMHC and NO_X must each be adjusted by their corresponding deterioration factors before the composite NMHC+NO_X certification level is calculated. Where the applicable FTP exhaust hydrocarbon emission standard is an NMOG standard, the applicable NMOG deterioration factor must be used in place of the NMHC deterioration

factor, unless otherwise approved by the Administrator.

* * * * *

(e) Unless otherwise approved by the Administrator, manufacturers must not use Reactivity Adjustment Factors (RAFs) in their calculation of the certification levels of any pollutant, regardless of the fuel used in the test vehicle.

38. Section 86.1844–01 is amended by adding new paragraphs (d)(15), (d)(16), (e)(6) and (i) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(15) For HEVs, unless otherwise approved by the Administrator, the information required by the "California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-duty Vehicle Classes" must be supplied. These procedures are incorporated by reference (see § 86.1).

(16) (i) For Tier 2 and interim non-Tier 2 vehicles beginning with the 2004 model year, a statement indicating that the manufacturer has conducted an engineering analysis of the complete exhaust system to ensure that the exhaust system has been designed:

(A) To facilitate leak-free assembly, installation and operation for the full useful life of the vehicle; and

(B) To facilitate that such repairs as might be necessary on a properly maintained and used vehicle can be performed in such a manner as to maintain leak-free operation, using tools commonly available in a motor vehicle dealership or independent repair shop for the full useful life of the vehicle.

(ii) The analysis must cover the exhaust system and all related and attached components including the air injection system, if present, from the engine block manifold gasket surface to a point sufficiently past the last catalyst and oxygen sensor in the system to assure that leaks beyond that point will not permit air to reach the oxygen sensor or catalyst under normal operating conditions.

(iii) A "leak-free" system is one in which leakage is controlled so that it will not lead to a failure of the certification exhaust emission standards in-use.

(iv) The provisions of paragraphs (d)(16)(i) and (ii) do not apply to vehicles whose certification is carried over from the NLEV program or carried across from the Cal LEV I program.

(e) * * *

(6) The NMOG/NMHC and HCHO to NMHC ratios established according to § 86.1845–04.

* * * * *

(i) For exhaust emission testing for Tier 2 and interim non-Tier 2 vehicles, if approved by the Administrator in advance, manufacturers may submit exhaust emission test data generated under California test procedures to comply with any certification and in-use testing requirements under this subpart. The Administrator may require supporting information to establish that differences between California and Federal exhaust testing procedures and fuels will not produce significant differences in emission results. The Administrator may require that in-use testing be performed using Federal test fuels as specified in § 86.113–04(a)(1).

39. Section 86.1845–04 is amended by:

a. revising paragraph (a),

b. revising paragraph (c)(2), and

c. adding paragraph (f).

The revisions and additions read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements

(a) *General requirements.* (1) A manufacturer of LDVs, LDTs and/or MDPVs must test, or cause to have tested, a specified number of LDVs, LDTs and MDPVs. Such testing must be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty vehicles.

(2) Unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

(3) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA.

* * * * *

(c) * * *

(2) Vehicle mileage:

(i) All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75 percent of the full useful life mileage. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements; or

(ii) For engine families certified for a useful life of 150,000 miles, at least one vehicle must have a minimum odometer mileage of 105,000 miles. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

* * * * *

(f)(1) A manufacturer may conduct in-use testing on a test group by measuring NMHC exhaust emissions rather than NMOG exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the adjustment factor used for certification of the test group, or another adjustment factor acceptable to the Administrator, to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the emission bin to which the test group was certified.

(2) For flexible-fueled LDVs, LDTs and MDPVs certified to NMOG standards, the manufacturer may request from the Administrator the use of a methanol (M85) or ethanol (E85) NMOG exhaust emission to gasoline NMHC exhaust emission ratio which must be established during certification for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator in the Part II application for certification. After approval by the Administrator, the measured gasoline NMHC exhaust emissions must be multiplied by the M85 or E85 NMOG to gasoline NMHC ratio submitted in the application for certification for the test group to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the vehicle emission standard bin to which the test group was certified.

(3) If the manufacturer measures NMOG it must also measure and report HCHO emissions. As an alternative to measuring the HCHO content, if the manufacturer measures NMHC as permitted in paragraph (f)(1) of this section, the Administrator may approve,

upon submission of supporting data by a manufacturer, the use of HCHO to NMHC ratios. To request the use of HCHO to NMHC ratios, the manufacturer must establish during certification testing the ratio of measured HCHO exhaust emissions to measured NMHC exhaust emissions for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator with the Part II application for certification. Following approval of the application for certification, the manufacturer may conduct in-use testing on the test group by measuring NMHC exhaust emissions rather than HCHO exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the HCHO to NMHC ratio submitted in the application for certification for the test group to determine the equivalent HCHO exhaust emission values for the test vehicle. The equivalent HCHO exhaust emission values must be compared to the HCHO exhaust emission standard applicable to the test group.

40. Section 86.1846–01 is amended by revising paragraph (a) to read as follows:

§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.

(a) *General requirements.* (1) A manufacturer of LDVs, LDTs and/or MDPVs must test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under § 86.1845–01 exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year starting with model year 2001.

(2) Except for vehicles certified under the NLEV provisions of subpart R of this part or unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

(3) For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty vehicles.

(4) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA.

* * * * *

41. Section 86.1848–01 is amended by adding paragraph (c)(7) to read as follows:

§ 86.1848–01 Certification.

* * * * *

(c) * * *

(7) For Tier 2 and interim non-Tier 2 vehicles, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–04, 86.1860–04, 86.1861–04 and 86.1862–04 both during and after model year production.

(i) Failure to meet the fleet average NO_X requirements of 0.07g/mi, 0.30 g/mi or 0.20 g/mi, as applicable, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average NO_X standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that it has not generated or that are not available, as specified in § 86.1861–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold which do not comply with Tier 2 or interim non-Tier 2 requirements, up to the number needed to comply, will not be covered by the certificate(s).

(iv) For paragraphs (c)(7)(i) through (iii) of this section:

(A) The manufacturer must bear the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied.

(B) For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the vehicles.

* * * * *

42. Sections 86.1854 through 86.1859 are added and reserved.

43. Section 86.1860–04 is added to read as follows:

§ 86.1860–04 How to comply with the Tier 2 and interim non-Tier 2 fleet average NO_X standards.

(a) The fleet average standards referred to in this section are the corporate fleet average standards for FTP exhaust NO_X emissions set forth in: § 86.1811–04(d) for Tier 2 LDV/Ts and MDPVs (0.07 g/mi); § 86.1811–04(l)(3) for interim non-Tier 2 LDV/LLDTs (0.30 g/mi); and, § 86.1811–04(l)(3) for interim non-Tier 2 HLDT/MDPVs (0.20 g/mi). Unless otherwise indicated in this section, the provisions of this section apply to all three corporate fleet average standards, except that the interim non-Tier 2 fleet average NO_X standards do not apply to a manufacturer whose U.S. LDV/T and MDPV sales are 100% Tier 2 LDV/Ts and MDPVs.

(b)(1) Each manufacturer must comply with the applicable fleet average NO_X standard, or standards, on a sales weighted average basis, at the end of each model year, using the procedure described in this section.

(2) During a phase-in year, the manufacturer must comply with the applicable fleet average NO_X standard for the required phase-in percentage for that year as specified in § 86.1811–04(k)(1), or for the alternate phase-in percentage as permitted under § 86.1811–04(k)(6).

(c)(1)(i) Each manufacturer must separately compute the sales weighted averages of the individual NO_X emission standards to which it certified all its Tier 2 vehicles, interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDT/MDPVs of a given model year as described in § 86.1804(l)(2).

(ii) For model years up to and including 2008, manufacturers must compute separate NO_X fleet averages for Tier 2 LDV/LLDTs and Tier 2 HLDT/MDPVs.

(2)(i) For model years up to and including 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 or interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDT/MDPVs, to full useful life bins having NO_X standards at or below the applicable fleet average NO_X standard, that manufacturer may elect not to compute a fleet average NO_X level for that category of vehicles. A manufacturer making such an election must not generate NO_X credits for that category of vehicles for that model year.

(ii) For model years after 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 vehicles to full useful life bins having NO_X standards at or below 0.07 gpm, that manufacturer may elect not to compute a fleet average NO_X level for its Tier 2 vehicles. A manufacturer

making such an election must not generate NO_X credits for that model year.

(d) The sales weighted NO_X fleet averages determined pursuant to paragraph (c) of this section must be compared with the applicable fleet average standard; 0.07 g/mi for NO_X for Tier 2 LDV/Ts and MDPVs, 0.30 g/mi for NO_X for interim non-Tier 2 LDV/LLDTs, and 0.20 g/mi for NOx for interim non-Tier 2 HLDT/MDPVs. Each manufacturer must comply on an annual basis with the fleet average standards by:

(1) Showing that its sales weighted average NO_X emissions of its LDV/LLDTs, HLDT/MDPVs or LDV/Ts, as applicable, are at or below the applicable fleet average standard; or

(2) If the sales weighted average is not at or below the applicable fleet average standard, by obtaining and applying sufficient Tier 2 NO_X credits, interim non-Tier 2 LDV/LLDT NO_X credits or interim non-Tier 2 HLDT/MDPV NO_X credits, as appropriate, and as permitted under § 86.1861–04.

(i) Manufacturers may not use NMOG credits generated under the NLEV program in subpart R of this part to meet any Tier 2 or interim non-Tier 2 NO_X fleet average standard.

(ii) Tier 2 NO_X credits may not be used to meet any fleet average interim non-Tier 2 NO_X standard except as permitted by § 86.1860–04(e)(1).

(iii) Interim non-Tier 2 NO_X credits may not be used to meet the Tier 2 fleet average NO_X standard.

(iv) Interim non-Tier 2 NO_X credits from HLDT/MDPVs may not be used to meet the fleet average NO_X standard for interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 credits from LDV/LLDTs may not be used to meet the fleet average NO_X standard for interim non-Tier 2 HLDT/MDPVs.

(e) (1) Manufacturers that cannot meet the requirements of paragraph (d) of this section, may carry forward a credit deficit for three model years, but must not carry such deficit into the fourth year. When applying credits to reduce or eliminate a deficit under the fleet average standard for interim LDV/LLDTs or interim HLDT/MDPVs, that has been carried forward into a year subsequent to its generation, a manufacturer may apply credits from Tier 2 LDV/LLDTs or Tier 2 HLDT/MDPVs, respectively, as well as from the appropriate group of interim vehicles. A manufacturer must not use interim credits to reduce or eliminate any NO_X credit deficit under the Tier 2 fleet average standard.

(2) A manufacturer carrying a credit deficit into the third year must generate or obtain credits to offset that deficit and apply them to the deficit at a rate of 1.2:1, (i.e. deficits carried into the third model year must be repaid with credits equal to 120 percent of the deficit).

(3) A manufacturer must not bank credits for future model years or trade credits to another manufacturer during a model year into which it has carried a deficit.

(f) *Computing fleet average NO_X emissions.* (1) Manufacturers must separately compute these fleet NO_X averages using the equation contained in paragraph (f)(2) of this section:

(i) Their Tier 2 LDV/LLDT and Tier 2 HLDT/MDPV fleet average NO_X emissions for each model year through 2008;

(ii) Their combined Tier 2 LDV/T and MDPV fleet average NO_X emissions for each model year after 2008;

(iii) Their interim non-Tier 2 LDV/LLDT fleet average NO_X emissions for each model year through 2006; and

(iv) Their interim non-Tier 2 HLDT/MDPV fleet average NO_X emissions for each model year through 2008.

(2) The equation for computing fleet average NO_X emissions is as follows:

$$\frac{\sum(N \times NO_X \text{ emission standard})}{\text{Total number of vehicles of the appropriate category (e.g., all LDV/Ts and MDPVs, or interim non-Tier 2 HLDT/MDPVs, etc.) sold including HEVs and ZEVs}}$$

Where:

N = The number of vehicles sold in the applicable category that were certified for each corresponding NO_X emission bin. N must be based on vehicles counted to the point of first sale.

Emission standard = The individual full useful life NO_X emission standard for each bin for which the manufacturer had sales.

(3) The results of the calculation in paragraph (f)(2) of this section must be rounded as required by § 86.1837–01.

(4) When approved in advance by the Administrator, the numerator in the equation in paragraph (f)(2) of this section may be adjusted downward by the product of the number of HEVs from each NO_X emission bin times a HEV NO_X contribution factor determined through mathematical estimation of the reduction in NO_X emissions over the test procedure used to certify the HEVs. The reduction in NO_X emissions must be determined using good engineering judgement and reflect the relation in actual full useful life NO_X emissions to the full useful life NO_X standards for the certification bin applicable to the vehicles. The Administrator may require that calculation of the HEV NO_X contribution factor include vehicle parameters such as vehicle weight, portion of time during the test procedure that the HEV operates with zero exhaust emissions, zero emission range, NO_X emissions from fuel-fired heaters and NO_X emissions from electricity production and storage.

(g) *Additional credits for vehicles certified to 150,000 mile useful lives.* (1) A manufacturer may certify any test group to an optional useful life of 15 years or 150,000 miles, whichever occurs first.

(2)(i) For any test group certified to the optional 15 year/150,000 mile useful life, the manufacturer may generate additional NO_X credits, except as prohibited in paragraph (g)(3) of this section.

(ii) The manufacturer must calculate these extra NO_X credits, where permitted, by substituting an adjusted NO_X standard for the applicable NO_X standard from the full useful life certification bin when it calculates the applicable fleet average NO_X emissions by the procedure in paragraph (f) of this section. The adjusted standard must be equal to the applicable full useful life NO_X standard multiplied by 0.85 and rounded to the same number of decimal places as the applicable full useful life NO_X standard.

(3) A manufacturer electing not to comply with applicable intermediate life standards as permitted under § 86.1811–04(c)(4) may not generate additional credits from vehicles certified to a useful life of 15 years/150,000 miles; except that, for bins where such intermediate life standards do not exist or are specifically deemed to be optional in § 86.1811–04(c)(4), the manufacturer may generate additional

NO_X credits from vehicles certified to a useful life of 15 years/150,000 miles.

(h) *Additional credits for vehicles certified to low bins.* A manufacturer may obtain additional NO_X credits by certifying vehicles to bins 1 and/or 2 in model years from 2001 through 2005 subject to the following requirements:

(1) When computing the fleet average Tier 2 NO_X emissions using the formula in paragraph (f)(2) of this section, the manufacturer may multiply the number (N) of vehicles certified to bins 1 and 2 by the applicable multiplier shown in Table S04–11. These multipliers may not be used after model year 2005. The table follows:

TABLE S04–11—MULTIPLIERS FOR ADDITIONAL TIER 2 NO_X Credits for Bin 1 and 2 LDV/Ts.

Bin	Model year	Multiplier
2	2001, 2002, 2003, 2004, 2005.	1.5
1	2001, 2002, 2003, 2004, 2005.	2.0

(2) [Reserved]

44. Section 86.1861–04 is added to read as follows:

§ 86.1861–04 How do the Tier 2 and interim non-Tier 2 NO_X averaging, banking and trading programs work?

(a) *General provisions for Tier 2 credits and debits.* (1) A manufacturer whose Tier 2 fleet average NO_X emissions exceeds the 0.07 g/mile standard must complete the calculation at paragraph (b) of this section to determine the size of its NO_X credit deficit. A manufacturer whose Tier 2 fleet average NO_X emissions is less than or equal to the 0.07 g/mile standard must complete the calculation in paragraph (b) of this section if it desires to generate NO_X credits. In either case, the number of credits or debits determined in the calculation at paragraph (b) of this section must be rounded to the nearest whole number.

(2) Credits generated according to the calculation in paragraph (b)(1) of this section may be banked for future use or traded to another manufacturer.

(3) NO_X credits are not subject to any discount or expiration date except as required under the deficit carryforward provisions of § 86.1860–04(e)(2).

(4) If a manufacturer calculates that it has negative credits (debits or a credit deficit) for a given model year, it must obtain sufficient credits, as required under § 86.1860–04(e)(2), from vehicles produced by itself or another manufacturer in a model year no later than the third model year following the model year for which it calculated the credit deficit. (Example: if a manufacturer calculates that it has a NO_X credit deficit for the 2008 model year, it must obtain sufficient NO_X credits to offset that deficit from its own production or that of other manufacturers' 2011 or earlier model year vehicles.)

(5) A small volume manufacturer that has opted not to meet all phase-in requirements as permitted under § 86.1811–04(k)(5), must:

(i) Demonstrate compliance or obtain appropriate credits to comply with the 0.30 g/mi. fleet average NO_X standard for interim LDV/LLDTs for 100% of its LDV/LLDTs in 2004, in order to carry forward a credit deficit for later model year interim LDV/LLDTs; and

(ii) Demonstrate compliance or obtain appropriate credits to comply with the 0.07 g/mi. fleet average NO_X standard for 100% of its LDV/LLDTs in 2007, in order to carry forward a credit deficit for later model year Tier 2 LDV/LLDTs; and

(iii) Demonstrate compliance or obtain appropriate credits to comply with the 0.20 g/mi. fleet average interim NO_X standard for 100% of its HLDT/MDPVs in 2007, in order to carry forward a credit deficit for later model year interim HLDT/MDPVs.

(6)(i) Manufacturers may not use NO_X credits to comply with the NLEV requirements of subpart R of this part.

(ii) Manufacturers may not use NMOG credits generated by vehicles certified to the NLEV requirements of subpart R of this part to comply with any NO_X requirements of this subpart.

(iii) Manufacturers may not use NO_X credits generated by interim non-Tier 2 vehicles to comply with the fleet average NO_X standard for Tier 2 vehicles.

(iv) Manufacturers may not use NO_X credits generated by Tier 2 vehicles to comply with any fleet average NO_X standard for interim non-Tier 2 vehicles, except as permitted under § 86.1860–04(e).

(v) Manufacturers may not use NO_X credits generated by interim non-Tier 2 LDV/LLDTs to comply with the fleet average NO_X standard for interim non-Tier 2 HLDT/MDPVs.

(vi) Manufacturers may not use NO_X credits generated by interim non-Tier 2 HLDT/MDPVs to comply with the fleet average NO_X standard for interim non-Tier 2 LDV/LLDTs.

(vii) Manufacturers may not use NO_X credits generated by Tier 2 LDV/LLDTs to comply with the Tier 2 NO_X average standard for HLDT/MDPVs before the 2009 model year.

(viii) Manufacturers may not use NO_X credits generated by Tier 2 HLDT/MDPVs to comply with the Tier 2 NO_X average standard for LDV/LLDTs before the 2009 model year.

(7) Manufacturers may bank Tier 2 NO_X credits for later use to meet the Tier 2 fleet average NO_X standard or trade them to another manufacturer. Credits are earned on the last day of the model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(8) There are no property rights associated with NO_X credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this Part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(b) *Calculating Tier 2 credits and debits.* (1) Manufacturers that achieve fleet average NO_X values from the calculation in § 86.1860–04(f), lower than the applicable fleet average NO_X standard, may generate credits for a given model year, in units of vehicle-g/mi NO_X, determined in this equation:

[(Fleet Average NO_X Standard) – (Manufacturer's Fleet Average NO_X Value)] + (Total number of Tier 2 Vehicles Sold, Including ZEVs and HEVs)

Where: The number of Tier 2 vehicles sold is based on the point of first sale and does not include vehicles sold in California or a state that adopts, and has in effect for that model year, California emission requirements.

(2) Where the result of the calculation in paragraph (b)(1) of this section is a negative number, the manufacturer must generate negative NO_X credits (debits).

(c) *Early banking.* (1)(i) Manufacturers may certify LDV/LLDTs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2003 in order to bank credits for use in the 2004 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811–04.

(ii) Manufacturers may certify HLDT/MDPVs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2007 in order to bank credits for use in the 2008 and later model years. Such vehicles must also meet applicable SFTP exhaust emission standards specified in § 86.1811–04.

(iii) This process is referred to as "early banking" and the resultant credits are referred to as "early credits". In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to Tier 2 LDV/LLDTs and/or HLDT/MDPVs, as applicable, except as allowed under paragraph (c)(4) of this section.

(2) To generate early credits, a manufacturer must separately compute

the sales weighted NO_X average of the LDV/LLDTs and HLDT/MDPVs it certifies to the Tier 2 exhaust requirements and separately compute credits using the calculations in this section and in § 86.1860–04.

(3) Early HLDT/MDPV credits may not be applied to LDV/LLDTs before the 2009 model year. Early LDV/LLDT credits may not be applied to HLDT/MDPVs before the 2009 model year.

(4) Manufacturers may generate early Tier 2 credits from LDVs, LDT1s and LDT2s that are certified to a full useful life of 100,000 miles, provided that the credits are prorated by a multiplicative factor of 0.833 (the quotient of 100,000/120,000). Where a manufacturer has both 100,000 and 120,000 mile full useful life vehicles for which it desires to bank early credits, it must compute the credits from each group of vehicles separately and then add them together.

(5) Manufacturers may bank early credits for later use to meet the Tier 2 fleet average NO_X standard or trade them to another manufacturer subject to the restriction in paragraph (c)(3) of this section.

(6) Early credits must not be used to comply with the fleet average NO_X standards for interim non-Tier 2 vehicles.

(7) Nothing in this section prevents the use of the NMOG values of 2003 and earlier model year LDV/LLDTs from being used in calculations of the NMOG fleet average and subsequent NMOG credit generation, under subpart R of this part.

(d) *Reporting and recordkeeping for Tier 2 NO_X credits including early credits.* Each manufacturer must comply with the reporting and recordkeeping requirements of § 86.1862–04.

(e) *Fleet average NO_X debits.* (1) Manufacturers must offset any debits for a given model year by the fleet average NO_X reporting deadline for the third model year following the model year in which the debits were generated as required in § 86.1860.04(e)(2). Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section and of this paragraph (e), within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying vehicles not covered by the certificate must be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average NO_X standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average NO_X standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the vehicles for which the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest certification NO_X emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(3) If a manufacturer ceases production of LDV/Ts and MDPVs or is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (e)(1) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraph (e)(2) of this section.

(4) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (e)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (e)(1) of this section.

(f) *NO_X credit transfers.* (1) EPA may reject NO_X credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (a)(2) and (a)(7) of this section.

(3) In the event of a negative credit balance resulting from a transaction, both the buyer and seller are liable, except in cases involving fraud. EPA may void *ab initio* the certificates of conformity of all engine families participating in such a trade.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (e) of this section.

(g) *Interim non-Tier 2 NO_X credits and debits; Interim non-Tier 2 averaging, banking and trading.* Interim non-Tier 2 NO_X credits must be generated, calculated, tracked, averaged, banked, traded, accounted for and reported upon separately from Tier 2 credits. The provisions of this section applicable to Tier 2 NO_X credits and debits and Tier 2 averaging banking and trading are applicable to interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDT/MDPVs with the following exceptions:

(1) Provisions for early banking under paragraph (c) of this section do not apply.

(2) The fleet average NO_X standard used for calculating credits is 0.30 grams per mile for interim non-Tier 2 LDV/LLDTs and 0.20 g/mi for interim non-Tier 2 HLDT/MDPVs. (The interim non-Tier 2 NO_X standard of 0.30 (or 0.20) g/mi replaces 0.07 in the text and calculation in this section.)

(3) Interim non-Tier 2 NO_X credit deficits may be carried forward for three years subject to the requirements of § 86.1860–04(e).

45. Section 86.1862–04 is added to read as follows:

§ 86.1862–04 Maintenance of records and submittal of information relevant to compliance with fleet average NO_X standards.

(a) *Maintenance of records.* (1) The manufacturer producing any light-duty vehicles and/or light-duty trucks subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each model year:

(i) Model year;

(ii) Applicable fleet average NO_X standard: 0.07g/mi for Tier 2 LDV/Ts; 0.30 g/mi for interim non-Tier 2 LDV/LLDTs; or 0.20 g/mi for interim non-Tier 2 HLDT/MDPVs;

(iii) Fleet average NO_X value achieved; and

(iv) All values used in calculating the fleet average NO_X value achieved.

(2) The manufacturer producing any LDV/Ts or MDPVs subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each LDV/T or MDPV subject to this subpart:

(i) Model year;

(ii) Applicable fleet average NO_X standard;
(iii) EPA test group;
(iv) Assembly plant;
(v) Vehicle identification number;
(vi) NO_X standard to which the LDV/T or MDPV is certified; and
(vii) Information on the point of first sale, including the purchaser, city, and state.

(3) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion to require the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(6) EPA may void *ab initio* a certificate of conformity for a vehicle certified to emission standards as set forth or otherwise referenced in this subpart for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) *Reporting.* (1) Each covered manufacturer must submit an annual report. Except as provided in paragraph (b)(2) of this section, the annual report must contain, for each applicable fleet average NO_X standard, the fleet average NO_X value achieved, all values required to calculate the NO_X value, the number of credits generated or debits incurred, and all the values required to calculate the credits or debits. The annual report must contain the resulting balance of credits or debits.

(2) When a manufacturer calculates compliance with the fleet average NO_X standard using the provisions in § 86.1860–04(c)(2), then the annual report must state that the manufacturer has elected to use such provision and must contain the fleet average NO_X standard as the fleet average NO_X value for that model year.

(3) For each applicable fleet average NO_X standard, the annual report must also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report. Information for each transaction must include:
(i) Name of credit provider;
(ii) Name of credit recipient;
(iii) Date the transfer occurred;
(iv) Quantity of credits transferred; and
(v) Model year in which the credits were earned.

(4) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.1844–01(e) and subsequent model year provisions, a manufacturer must submit an annual report for each model year after production ends for all affected vehicles and trucks produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports must be submitted to: Director, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

(5) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles and trucks subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act for each subject vehicle and truck produced by that manufacturer.

(6) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless transferred, and must adjust erroneous debits. In the case of transferred erroneous credits, EPA must adjust the selling manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(c) *Notice of opportunity for hearing.* Any voiding of the certificate under paragraph (a)(6) of this section will be made only after EPA has offered the manufacturer concerned an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or § 86.1014 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

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February 10, 2000

Part III

Department of Education

Office of Elementary and Secondary Education—Advanceed Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330]

Office of Elementary and Secondary Education—Advanced Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Advanced Placement Incentive Program provides grants to States, including consortia of States, to enable them to pay advanced placement test fees on behalf of eligible low-income individuals, and to undertake activities designed to increase the participation of low-income students in advanced placement courses and tests. For FY 2000, we encourage applicants to design projects that meet the invitational priority in the PRIORITIES section of this application notice.

Eligible Applicants: State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Deadline for Transmittal of Applications: March 27, 2000.

Deadline for Intergovernmental Review: April 26, 2000.

Applications Available: February 10, 2000.

Estimated Available Funds: $15,000,000.

Estimated Range of Awards: $50,000 to $1,200,000 per year.

Estimated Average Size of Awards: $375,000 per year.

Estimated Number of Awards: 40.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Allowable Activities

States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test. In addition, SEAs in States in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use grant funds for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas (hereinafter referred to as "section 810(d)(1) activities"). Examples of section 810(d)(1) activities may include, but are not limited to, projects that provide student access to advanced placement courses online, and professional development institutes designed to prepare teachers to teach advanced placement courses. An SEA may apply for funds under this program both to assist it in meeting the requirement that no eligible low-income student in the State be required to pay more than a nominal fee to take advanced placement tests in core subjects and for section 810(d)(1) activities.

Priorities

(a) *Absolute Priority.* The Department is establishing an absolute priority for proposals to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. We have chosen this priority from the allowable activities specified in the program statute (*see* 34 CFR 75.105(b)(2)(v) and section 810(a) of Title VIII, Part B of the Higher Education Amendments of 1998 (20 U.S.C. 1070a–11, note)).

To implement this priority, the Department intends to fund, at some level, all applications (1) meeting the minimum REQUIREMENTS FOR APPROVAL OF APPLICATIONS described in the application package; and (2) proposing to use grant funds for the purpose of paying part or all of the cost of advanced placement test fees on behalf of eligible low-income individuals in the State. For applications that propose to use grant funds to pay advanced placement test fees and to support section 810(d)(1) activities, the section of the application proposing to use grant funds for section 810(d)(1) activities will be evaluated based on the SELECTION CRITERIA described in the application package (*see* 34 CFR 75.105(c)(3)).

(b) *Invitational Priority.* The Department is particularly interested in applications from consortia, or groups, of States to undertake section 810(d)(1) activities. The consortium may be comprised of SEAs from any combination of States. Under 34 CFR 75.105(c)(1), the Department does not give an application that meets this invitational priority a competitive or absolute preference over applications that do not meet the invitational priority.

Allocation of Funds

The Department intends to allocate approximately $4 million of the funds available under this program to States for the purpose of paying advanced placement test fees on behalf of eligible low-income individuals. The Department intends to allocate approximately $11 million to States to support section 810(d)(1) activities. In determining grant award amounts, the Department will consider, among other things, the number of children in the State eligible to be counted under section 1124(c) of the Elementary and Secondary Education Act of 1965, in relation to the number of such children in all States.

Selection Criteria

The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate the section of the application that proposes to use grant funds to support section 810(d)(1) activities. The application package includes the SELECTION CRITERIA and the points assigned to each criterion.

Applicable Regulations and Statute

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, and 99. Title VIII, Part B of the Higher Education Amendments of 1998 (1998 Amendments), 20 U.S.C. 1070a–11, note.

The following definitions and other provisions are taken from the Advanced Placement Incentive Program authorizing statute, in Title VIII, Part B of the 1998 Amendments. They are repeated in this application notice for the convenience of the applicant.

Definitions

As used in this section:

(a) The term *advanced placement test* includes only an advanced placement test approved by the Secretary of Education for the purposes of this program.

Note: To date, the Secretary has approved advanced placement tests administered by The College Board and International Baccalaureate Organisation. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *low-income individual* has the meaning given the term in section 402A(g)(2) of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1070a-11(g)(2)).

Note: Under section 402A(g)(2) of the HEA, the term *low-income individual* means an

individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census (20 U.S.C. 1070a–11(g)(2)).

Information Dissemination

The SEA shall disseminate information regarding the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors (20 U.S.C. 1070a–11, note (b)).

Supplement, Not Supplant, Rule

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees (20 U.S.C. 1070a–11, note (d)(2)).

For Applications or Information Contact: Frank B. Robinson, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW., Room 3C153, Washington, DC 20202–6140. Telephone (202) 260–2669. Internet address: frank—robinson@ed.gov

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Program Authority: 20 U.S.C. 1070a–11, note.

Dated: February 7, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–3090 Filed 2–9–00; 8:45 am]
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VOL

65

SS

28

FE

10

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Federal Register

Thursday,
February 10, 2000

Part IV

The President

Executive Order 13145—To Prohibit Discrimination in Federal Employment Based on Genetic Information

VOL

65

SS

28

FE

10

000

MI

Federal Register
Vol. 65, No. 28
Thursday, February 10, 2000

Presidential Documents

Title 3—

The President

Executive Order 13145 of February 8, 2000

To Prohibit Discrimination in Federal Employment Based on Genetic Information

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. *Nondiscrimination in Federal Employment on the Basis of Protected Genetic Information.*

1–101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1–102. The head of each Executive department and agency shall extend the policy set forth in section 1–101 to all its employees covered by section 717 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16).

1–103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

Sec. 2. *Requirements Applicable to Employing Departments and Agencies.*

1–201. Definitions.

(a) The term "employee" shall include an employee, applicant for employment, or former employee covered by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16).

(b) Genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, respond to the effects of, or control adverse environmental exposures in the workplace.

(c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.

(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of "genetic tests" when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual's genetic tests;

(B) information about the genetic tests of an individual's family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1–202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by an employee except:

(1) to the employee who is the subject of the information, at his or her request;

(2) to an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under part 46 of title 45, of the Code of Federal Regulations;

(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

Sec. 3. *Exceptions.*

1–301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1–202.

(a) The employing department or agency may request or require information defined in section 1–201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1–201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1–301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1–202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);

(4) such information is not used in violation of sections 1–202(a) or 1–202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

Sec. 4. *Miscellaneous.*

1–401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1–402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1–403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
February 8, 2000.

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Federal Register

Vol. 65, No. 28

Thursday, February 10, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3
5407–5732	4
5733–5992	7
5993–6304	8
6305–6522	9
6523–6880	10

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219

Executive Orders:
13145 6523

Administrative Orders:
Directive of January 31, 2000 5729
Directive of January 31, 2000 5731

Presidential Determinations:
No. 2000–10 of January 31, 2000 5407
No. 2000–11 of February 1, 2000 6523

5 CFR

581 4753
582 4753
1201 5409
1208 5410

Proposed Rules:
630 6339

7 CFR

1 5414
301 ..... 4865, 5221, 6525
505 6526
905 5733
916 6305
917 6305
944 5733
955 5736
981 4867
985 ..... 6308, 6528
3418 5993

Proposed Rules:
54 4780
245 5791
457 6033
718 5444
989 6341

9 CFR

1 6312
77 5998

Proposed Rules:
94 6040

10 CFR

708 6314

Proposed Rules:
50 6044

12 CFR

201 6531
272 6319
936 5738
960 5418

Proposed Rules:
Ch. I 4895
611 5286
951 5447
997 5447

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428, 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761, 6444, 6533, 6534
71 ..... 4871, 4872, 4873, 4874, 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770, 5999, 6000, 6320, 6535
91 ..... 5396, 5936
93 5396
97 ..... 4875, 4877, 4879, 6321, 6324
121 5396
135 5396
200 6446
211 6446
213 6446
216 6446
291 6446
300 6446
302 6446
303 6446
305 6446
377 6446
385 6446
399 6446

Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459, 6046, 6563, 6565, 6566
71 ..... 4910, 4911, 5804
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

17 CFR

1 6569
232 6444

18 CFR

Proposed Rules:
270 6048
375 6048
381 6048

382.....5289

19 CFR

132.....5430
163.....5430

Proposed Rules:

12.....6062
113.....6062

21 CFR

876.....4881
1308.....5024

Proposed Rules:

1310.....4913

23 CFR

Proposed Rules:

645.....6344

24 CFR

206.....5406

26 CFR

1 .....5432, 5772, 5775, 5777, 6001
35.....6001
602 .....5775, 5777, 6001

Proposed Rules:

1 .....5805, 5807, 6065, 6090
602.....5807

27 CFR

Proposed Rules:

9.....5828

29 CFR

Proposed Rules:

1910.....4795

30 CFR

250.....6536
938.....4882
946.....5782

33 CFR

117 .....5785, 6325, 6326

Proposed Rules:

100.....5833
110.....5833
165.....5833

34 CFR

676.....4886

Proposed Rules:

694.....5844

36 CFR

Proposed Rules:

217.....5462
219.....5462
242.....5196
1234.....5295

37 CFR

Proposed Rules:

201.....6573

38 CFR

21.....5785

Proposed Rules:

21.....4914

39 CFR

111.....4864, 5789
3001.....6536

Proposed Rules:

111.....4918

40 CFR

52 .....4887, 5245, 5252, 5259, 5262, 5264, 5433, 6327
62.....6008
80.....6698
85.....6698
86.....6698
300.....5435
761.....5442

Proposed Rules:

52 .....5296, 5297, 5298, 5462, 5463, 6091
62.....6102
130.....4919
300.....5465, 5844

42 CFR

412.....5933
413.....5933
483.....5933
485.....5933

Proposed Rules:

36.....4797

43 CFR

11.....6012

Proposed Rules:

2560.....6259

44 CFR

65 .....6014, 6018, 6023, 6025
67 28, 6031

Proposed Rules:

67.....6103, 6105

45 CFR

1303.....4764

Proposed Rules:

96.....5471

46 CFR

2.....6494
30.....6494
31.....6494
52.....6494
61.....6494
71.....6494
90.....6494
91.....6494
98.....6494
107.....6494
110.....6494
114.....6494
115.....6494
125.....6494
126.....6494
132.....6494
133.....6494
134.....6494
167.....6494
169.....6494
175.....6494
176.....6494
188.....6494
189.....6494
195.....6494
199.....6494

Proposed Rules:

15.....6350
110.....6111
111.....6111

47 CFR

Ch. I.....5267
1.....4891
73.....6544
97.....6548

Proposed Rules:

1.....6113
73 .....4798, 4799, 4923
76.....4927
95.....4935

48 CFR

Ch. 2.....6554
201.....6551
203.....4864
209.....4864
211.....6553
212.....6553
219.....6554
225 .....4864, 6551, 6553
249.....4864
252.....6553
2432.....6444
9903.....5990

Proposed Rules:

30.....4940
215.....6574
252.....6574

49 CFR

195.....4770
571.....6327

Proposed Rules:

567.....5847
568.....5847

50 CFR

17 .....4770, 52680, 6332
18.....52750
679 .....4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442, 6561

Proposed Rules:

17 .....4940, 5298, 5474, 5848, 5946, 6114
100.....5196
622.....5299
648 .....4941, 5486, 6575
660.....6351, 6577

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 10, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Federal Seed Act:
Noxious-weed seeds; prohibition of shipment of agricultural and vegetable seeds containing them; published 1-11-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Pork and pork products
Imports from Sonora and Yucatan, Mexico; published 1-11-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; published 2-3-00
Northeastern United States fisheries—
Spiny dogfish; published 1-11-00

DEFENSE DEPARTMENT
Acquisition regulations:
Class deviation authority delegation; published 2-10-00
Government-unique specifications and standards; offeror alternatives (OMB Circular A-119); published 2-10-00
Mentor-protege program improvements; published 2-10-00
People's Republic of China; published 2-10-00

ENVIRONMENTAL PROTECTION AGENCY
Toxic substances:
Preliminary assessment information and health and safety data reporting—
Nonylphenol ethoxylates added, etc.; published 1-11-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public Housing Assessment System; amendments; published 1-11-00

POSTAL RATE COMMISSION
Practice and procedure:
Proceedings; efficiency and effectiveness improvement; electronic filing, etc.; published 2-10-00

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Oregon; published 1-11-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; published 1-26-00
CFE Co.; published 1-6-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Personal Responsibility and Work Opportunity Reconcilation Act; implementation—
Personal responsibility provisions; comments due by 2-15-00; published 12-17-99

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

Telecommunication loans:
Guaranteed and insured loans; post-loan policies and procedures; comments due by 2-14-00; published 12-15-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-14-00; published 12-29-99
Pollock; comments due by 2-17-00; published 2-2-00
Atlantic highly migratory species—
Pelagic longline management; comments due by 2-14-00; published 12-15-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-15-00; published 12-17-99

DEFENSE DEPARTMENT
Acquisition regulations:
Profit policy; comments due by 2-17-00; published 2-10-00

ENERGY DEPARTMENT
Nuclear waste repositories:
Yucca Mountain Site, NV; suitability guidelines
Hearings; comments due by 2-14-00; published 12-15-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Dishwashers; test procedures; comments due by 2-14-00; published 1-13-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-18-00; published 1-19-00
Connecticut; comments due by 2-14-00; published 12-16-99
Delaware; comments due by 2-14-00; published 12-16-99
District of Columbia, Maryland, and Virginia; comments due by 2-14-00; published 12-16-99
Florida; comments due by 2-18-00; published 1-19-00
Georgia; comments due by 2-14-00; published 12-16-99
Illinois; comments due by 2-14-00; published 12-16-99
Indiana; comments due by 2-14-00; published 12-16-99
Maryland; comments due by 2-14-00; published 12-16-99
Massachusetts; comments due by 2-14-00; published 12-16-99
New Jersey; comments due by 2-14-00; published 12-16-99
New York; comments due by 2-14-00; published 12-16-99
Pennsylvania; comments due by 2-14-00; published 12-16-99
Tennessee; comments due by 2-18-00; published 1-19-00
Texas; comments due by 2-14-00; published 12-16-99
Wisconsin; comments due by 2-14-00; published 12-16-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; comments due by 2-18-00; published 1-19-00

Hazardous waste program authorizations:
North Dakota; comments due by 2-18-00; published 1-19-00

Hazardous waste:
Cement kiln dust; management standards; comments due by 2-17-00; published 10-28-99
Identification and listing—
Mixture and derived-from rules; treatment, storage or disposal; comments due by 2-17-00; published 11-19-99
Mixed waste; storage, treatment, transportation, and disposal; comments due by 2-17-00; published 11-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metsulfuron methyl; comments due by 2-14-00; published 12-16-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 2-15-00; published 11-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 2-17-00; published 12-15-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Cowhead Lake tui chub; comments due by 2-16-00; published 2-2-00
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-14-00; published 1-12-00
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 2-14-00; published 1-14-00

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Group health plans; access, portability, and renewability requirements:
National Medical Support Notice; child support orders; health care coverage provisions; comments due by 2-14-00; published 11-15-99

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-17-00; published 2-10-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Elements; elimination as category in evaluation; comments due by 2-14-00; published 12-16-99
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Technical amendments; hearing; comments due by 2-16-00; published 1-12-00

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 2-15-00; published 1-21-00
Rulemaking petitions:
Quigley, Barry; comments due by 2-14-00; published 12-1-99

SECURITIES AND EXCHANGE COMMISSION
Regulatory Flexibility Act:
Rules to be reviewed; list; comments due by 2-15-00; published 1-21-00

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles; comments due by 2-17-00; published 11-19-99
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; comments due by 2-14-00; published 12-14-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 2-18-00; published 12-20-99
Bell; comments due by 2-14-00; published 12-16-99
Boeing; comments due by 2-14-00; published 12-29-99
Bombardier; comments due by 2-14-00; published 1-14-00
Cessna; comments due by 2-14-00; published 12-29-99
Fokker; comments due by 2-14-00; published 1-14-00
Learjet; comments due by 2-14-00; published 12-29-99
McDonnell Douglas; comments due by 2-18-00; published 12-20-99
New Piper Aircraft, Inc.; comments due by 2-17-00; published 12-14-99
Transport airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input; comments due by 2-14-00; published 12-16-99
Class E airspace; comments due by 2-16-00; published 1-12-00

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety enforcement procedures:
Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 2-14-00; published 1-12-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Interior trunk releases; comments due by 2-15-00; published 12-17-99

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
National banks; financial subsidiaries and operating subsidiaries; comments due by 2-14-00; published 1-20-00

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Generation-skipping transfer tax issues; comments due by 2-16-00; published 11-18-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

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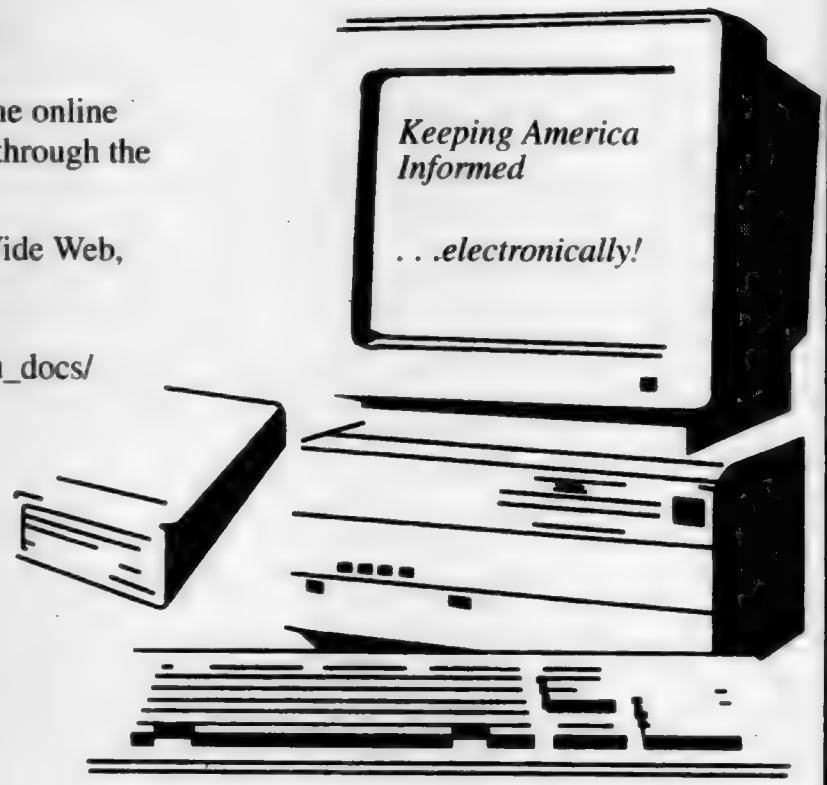

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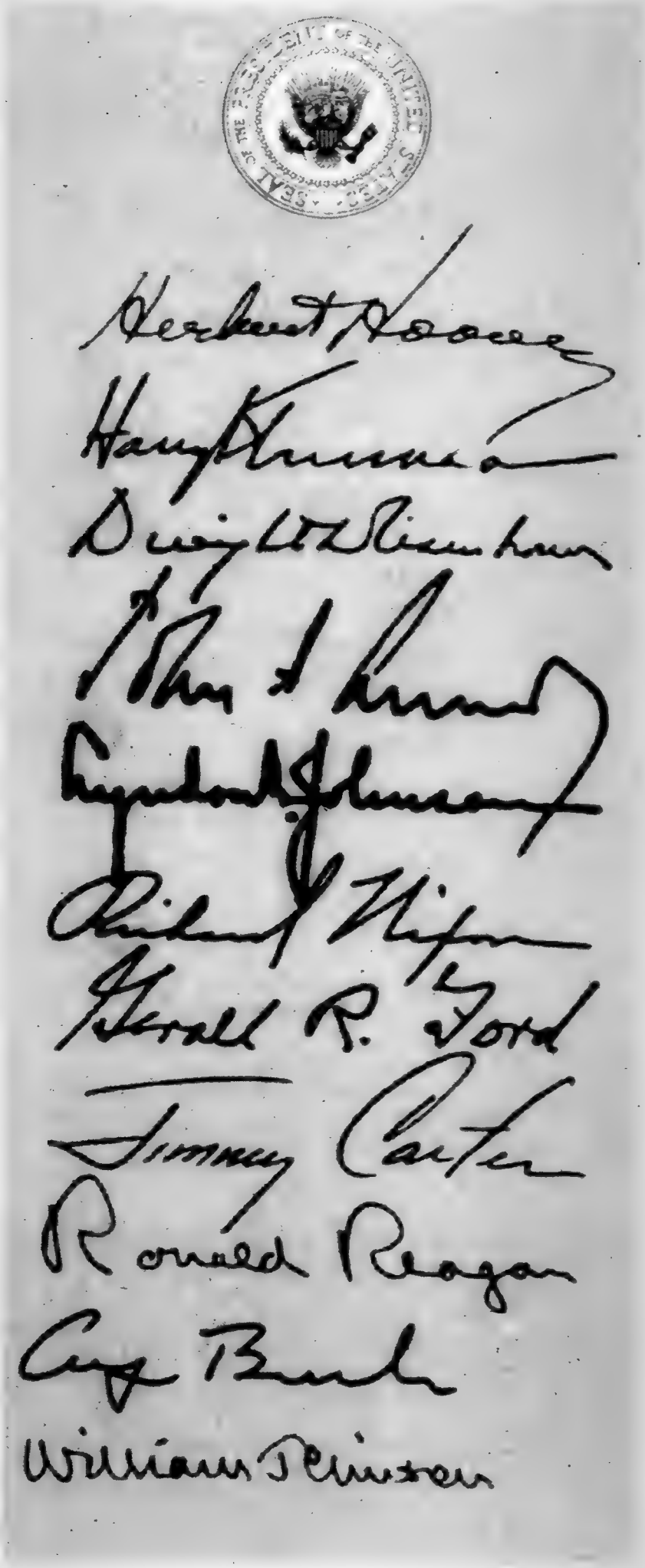

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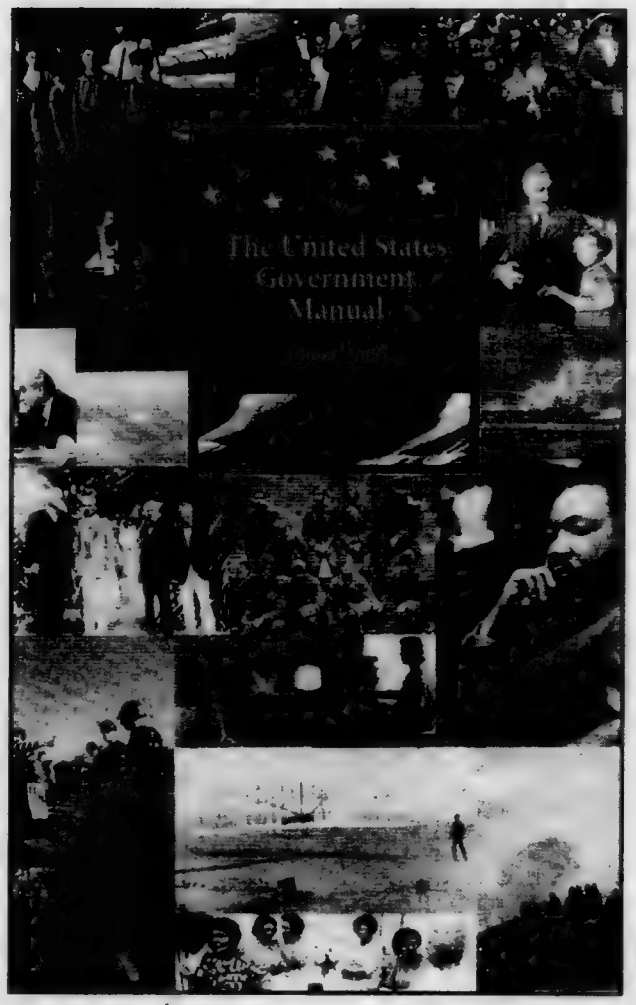

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Contents

Federal Register

Vol. 65, No. 29

Friday, February 11, 2000

Agriculture Department
See Food Safety and Inspection Service
See Forest Service
See Rural Utilities Service
NOTICES
Federal Activities Inventory Reform Act; commercial inventory; availability, 6979

Army Department
See Engineers Corps
RULES
Privacy Act; implementation, 6894–6895

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Intimate partner violence and sexual violence prevention—
Extramural injury research, 7018–7022
Meetings:
Childhood Lead Poisoning Prevention Advisory Committee, 7022

Children and Families Administration
NOTICES
Meetings:
President's Committee on Mental Retardation, 7022

Coast Guard
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7094–7095
Submission for OMB review; comment request, 7095–7096

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 6981–6983

Community Development Financial Institutions Fund
NOTICES
Meetings:
Community Development Advisory Board, 7102

Copyright Office, Library of Congress
PROPOSED RULES
Cable compulsory licese:
Network station definition, 6946–6950

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 6998–6999

Education Department
PROPOSED RULES
Postsecondary education:
Teacher Quality Enhancement Grants Program, 6936–6946
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7001–7002
Submission for OMB review; comment request, 7002–7003
Meetings:
National Commission on Mathematics and Science Teaching for the 21st Century, 7003–7004

Emergency Oil and Gas Guaranteed Loan Board
RULES
Emergency Oil and Gas Guarantee Loan program; implementation:
Application deadline, 6888–6889

Emergency Steel Guarantee Loan Board
RULES
Emergency Steel Guarantee Loan program; implementation:
Application deadline, 6888

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 7060–7071

Energy Department
NOTICES
Reports and guidance documents; availability, etc.:
Pantex plant; safe storage of pits; implementation plan, 7004

Engineers Corps
RULES
Water resources development projects; public use, 6896–6903

Environmental Protection Agency
PROPOSED RULES
Water pollution; effluent guidelines for point source categories:
Metal products and machinery point source category; meeting, 6950
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 7004–7005
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 7005–7006

Weekly receipts, 7006
Meetings:
Gulf of Mexico Program Policy Review Board, 7006
Scientific Counselors Board Executive Committee, 7006–7007
Pesticide, food, and feed additive petitions:
Bayer Corp. et al., 7008–7012
Pesticide programs:
Treated articles exemption; clarification, 7007–7008
Reports and guidance documents; availability, etc.:
Hazardous waste combustion facilities; screening level ecological risk assessment protocol, 7012–7013
Superfund; response and remedial actions, proposed settlements, etc.:
Surrette America Battery Removal Site, NH, 7013

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Eurocopter Deutschland GmbH, 6925–6927
Eurocopter France, 6927–6929

Federal Communications Commission
RULES
Common carrier services:
Wireline services—
Advanced telecommunications capability; deployment, 6912–6915
PROPOSED RULES
Common carrier services:
Satellite communications—
2 GHz mobile satellite service systems; authorization, 6950–6952

Federal Emergency Management Agency
RULES
Disaster assistance:
Hurricane Floyd property acquisition and relocation grants, 7270–7274
NOTICES
Disaster and emergency areas:
Georgia, 7013–7014
North Carolina, 7014–7015
South Carolina, 7015–7016

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
Obion and Dyer Counties, KY, 7096

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 7071

Federal Reserve System
PROPOSED RULES
Bank holding companies and change in bank control (Regulation Y):
Tying restrictions; revisions, 6924–6925
NOTICES
Banks and bank holding companies:
Change in bank control, 7016–7017
Formations, acquisitions, and mergers, 7017
Permissible nonbanking activities, 7017
Meetings; Sunshine Act, 7017

Federal Trade Commission
NOTICES
Prohibited trade practices:
DBC Financial, Inc., 7017–7018

Federal Transit Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7096–7097

Fish and Wildlife Service
RULES
Endangered and threatened species:
Habitat conservation plans, safe harbor agreements, and candidate conservation agreements with assurances, 6916–6921
PROPOSED RULES
Endangered and threatened species:
Ohlone tiger beetle, 6952–6960
NOTICES
Endangered and threatened species:
Quino checkerspot butterfly; scientific research permit modification, 7050
Environmental statements; availability, etc.:
Incidental take permits—
Sacramento County, CA; habitat conservation plan for Metro Air Park Project, 7050–7052

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Bayer Corp., 6892
Food additives:
Adjuvants, production aids and sanitizers—
1,2-dibromo-2,4-dicyanobutane et al., 6889–6892
Medical devices:
Peripheral iridotomy; neodymium: yttrium: aluminum: garnet (Nd:YAG) laser; reclassification and codification, 6893–6894
NOTICES
Meetings:
Useful written prescription drug information for patients, 7022–7023
Patent extension; regulatory review period determinations—
Wallstent Coronary Endoprosthesis, 7023–7024
Reports and guidance documents; availability, etc.:
International Conference on Harmonization; M4 common technical document, 7024–7027
Reprocessing and reuse of single-use devices; review prioritization scheme; and enforcement priorities for single-use devices reprocessed by third parties and hospitals, 7027–7029

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Federal Meat Inspection and Poultry Products Inspection Acts; State designations—
Minnesota, 6886–6888
Meetings:
E. coli in beef products; risk assessment; policy and regulatory changes, 6881–6886

Forest Service
NOTICES
Environmental statements; notice of intent:
White River National Forest, CO, 6979–6981

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 6998–6999

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Meetings:
Childhood Vaccines Advisory Commission, 7029

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 7106–7150
Mortgagee Review Board; administrative actions, 7036–7050

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7059–7060

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Acknowledgement petitions; internal processing changes, 7052–7053
Liquor and tobacco sale or distribution ordinance:
Concow Maidu Tribe of Mooretown Rancheria, CA, 7054–7057

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Solid fertilizer grade ammonium nitrate from—
Russian Federation, 6983–6984
Structural steel beams from—
Japan, 6992–6995
South Korea, 6984–6992
Applications, hearings, determinations, etc.:
University of—
Florida, 6996
Hawaii, 6995–6996

International Trade Commission
NOTICES
Import investigations:
Certain integrated circuit chipsets and products containing same from—
Intel Corp., 7059

Justice Department
See Immigration and Naturalization Service

Labor Department
See Employment Standards Administration
See Pension and Welfare Benefits Administration
RULES
Nationwide employment statistics system; election process for State agency representatives for DOL consultation, 7194–7196

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Marigold mine expansion project, NV, 7057
Opening of public lands:
Montana, 7057–7058
Oregon, 7058
Survey plat filings:
Minnesota, 7058–7059

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Reports and guidance documents; availability, etc.:
Costs and benefits of Federal Regulations; report to Congress, 7198–7267
Social insurance accounting standards, 7076–7077

Maritime Administration
RULES
Coastwise trade laws; administrative waivers, 6905–6912

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Export controlled technology; standard clause, 6915–6916
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 6998–6999

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 7097–7098

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 7030
National Heart, Lung, and Blood Institute, 7030–7031
National Institute of Allergy and Infectious Diseases, 7031

National Institute of Dental & Craniofacial Research, 7032–7033
National Institute of Diabetes and Digestive and Kidney Diseases, 7032
National Institute of Neurological Disorders and Stroke, 7031–7032
National Institute on Deafness and Other Communication Disorders, 7031
Scientific Review Center, 7029–7030, 7033–7036

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 6921
PROPOSED RULES
Endangered and threatened species:
Marine and anadromous species—
West coast steelhead in California et al., 6960–6975
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop and deep-sea red crab, 6975–6976
West Coast States and Western Pacific fisheries—
Western Pacific Fishery Management Council; meetings, 6976
Western Pacific Fishery Management Council; public meeting, 6976–6978
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 6996
Pacific Fishery Management Council, 6996–6997
Permits:
Marine mammals, 6997–6998

Navy Department
NOTICES
Environmental statements; availability, etc.:
Marine Corps Air Station, Yuma, AZ; improved ordnance storage, 6999–7001

Nuclear Regulatory Commission
NOTICES
Production and utilization facilities; domestic licensing:
Public workshop, 7075–7076
Applications, hearings, determinations, etc.:
Amergen Energy Co., LLC, 7071–7072
Commonwealth Edison Co., 7072–7074
Entergy Operations, Inc., 7074
Hydro Resources, Inc., 7074
Portland General Electric Co., 7074–7075

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
RULES
Employee Retirement Income Security Act:
Civil penalties; assessment, 7181–7191
Medical care to employees of two or more employers; multiple employer welfare arrangements and other entities providing coverage; reporting requirements, 7152–7180

Postal Service
RULES
Domestic Mail Manual:
Nonprofit standard mail rate; eligibility requirements, 6903–6905
PROPOSED RULES
Domestic Mail Manual:
Plant Verified Drop Shipment (PVDS); loading requirements, 6950

Presidential Documents
ADMINISTRATIVE ORDERS
Soviet Union; Independent States of the Former; assistance (Presidential Determination No. 2000-11 of February 1, 2000), 6523 [**Editorial Note:** In the **Federal Register** issue of February 10, 2000, the page number for Presidential Determination No. 2000-11 should have appeared as "6523" instead of "1".

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7102–7103

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Rural Utilities Service
PROPOSED RULES
Telecommunications loans:
General policies, types of loans, and loan requirements, 6922–6924

Securities and Exchange Commission
NOTICES
Securities:
Suspension of trading—
Lifekeepers International, Inc., 7078
Self-regulatory organizations; proposed rule changes:
MBS Clearing Corp., 7078–7080
Applications, hearings, determinations, etc.:
Public utility holding company filings, 7077–7078

Sentencing Commission, United States
See United States Sentencing Commission

Social Security Administration
PROPOSED RULES
Social security benefits:
Federal old age, survivors, and disability insurance—
Medical criteria for disability determinations, 6929–6936

State Department
NOTICES
Meetings:
International Communications and Information Policy Advisory Committee, 7093
Shipping Coordinating Committee, 7094

Surface Transportation Board
NOTICES
Household Goods Carriers Bureau Committee; rate bureau agreement, 7098–7099
Motor carriers:
Finance applications—
EC-MAC Motor Carriers Service Association, Inc., et al., 7099
National Motor Bus Traffic Association, Inc., 7099
National Classification Committee; agreement, 7098

Rail carriers:
Waybill data; release for use, 7099–7100

Tennessee Valley Authority
NOTICES
Committees; establishment, renewal, termination, etc.:
Regional Reource Stewardship Council, 7094

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Community Development Financial Institutions Fund
See Public Debt Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 7100–7102

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 7080–7093

Veterans Affairs Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless providers grant and per diem program, 7103–7104

Separate Parts in This Issue

Part II
Department of Housing and Urban Development, 7105–7150

Part III
Department of Labor, Pension and Welfare Benefits Adminisitration, 7151–7191

Part IV
Department of Labor, 7193–7196

Part V
Office of Management and Budget, 7197–7267

Part VI
Federal Emergency Management Agency, 7269–7274

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
1735 6922

9 CFR
Ch. III 6881
381 6896

12 CFR
Proposed Rules:
225 6924

13 CFR
400 6888
500 6888

14 CFR
Proposed Rules:
39 (2 documents) 6925, 6927

20 CFR
Proposed Rules:
404 6929
416 6929

21 CFR
175 6889
522 6892
886 6893

29 CFR
44 7194
2520 7152
2560 7181
2570 7185

32 CFR
505 6894

34 CFR
Proposed Rules:
611 6936

36 CFR
327 6896

37 CFR
Proposed Rules:
201 6946

39 CFR
111 6903
Proposed Rules:
111 6950

40 CFR
Proposed Rules:
445 6950

44 CFR
209 7270

46 CFR
388 6905

47 CFR
51 6912
Proposed Rules:
25 6950

48 CFR
1825 6915
1852 6915

50 CFR
13 6916
17 6916
679 6921
Proposed Rules:
17 6952
223 6960
648 6975
660 (2 documents) 6976

Rules and Regulations

Federal Register
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Friday, February 11, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 99–060N]

Recent Developments Regarding Beef Products Contaminated With *Escherichia coli* O157:H7; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on February 29, 2000, to discuss FSIS' policy regarding *Escherichia coli* (*E. coli*) O157:H7 and new information concerning the pathogen and its relation to human health. At this meeting, FSIS and other groups will present new data concerning the pathogen and new developments that may affect the Agency's policy. The purpose of this meeting is not to debate the policy that the Agency announced in January of 1999 (64 FR 2803) on the status of certain beef products contaminated with *E. coli* O157:H7 but to ensure that that policy is implemented based on the best available information and in a manner that will best protect public health. In addition, FSIS will allow time for comments and discussion regarding FSIS' testing procedures and other issues on *E. coli* O157:H7.

DATES: The meeting will be held February 29, 2000, from 9:00 a.m. to 5:00 p.m. Written comments must be received by April 11, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, telephone number: (703) 807–2000. To register for the meeting, contact Ms. Mary Gioglio by telephone at (202) 501–7244 or by FAX at (202) 501–7642. If a sign language interpreter or other special accommodation is necessary, contact Ms. Gioglio at the above numbers by February 18, 2000. If you are planning to present an oral comment at the meeting, please submit one original and two copies of the prepared comment to the FSIS Docket Clerk, Docket No. 99–060N, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Send one original and two copies of all other comments to the Docket Clerk at the address listed above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW, Washington, DC 20250. Telephone number (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

1. January 1999 Federal Register Notice

On January 19, 1999, FSIS published a policy statement, "Beef Products Contaminated with *E. coli* O157:H7" (64 FR 2803). This statement explained the Agency's policy governing beef products that contain *E. coli* O157:H7. The Agency stated that, in evaluating beef products contaminated with *E. coli* O157:H7, it would distinguish intact cuts of muscle (*e.g.*, steaks and roasts) distributed for consumption from non-intact products (*e.g.*, beef that has been mechanically tenderized by needling or cubing) and from intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption. The Agency stated that, if the latter two types of products are found to be contaminated with *E. coli* O157:H7, they must be processed into ready-to-eat product, or they would be deemed to be adulterated. FSIS explained that pathogens, including *E. coli* O157:H7, may be introduced below the surfaces of non-intact products as the result of the processes by which they are made. As a result, customary cooking of these products may not be adequate to kill the pathogens. In contrast, the meat interior of intact products remains essentially protected from pathogens migrating below the exterior surfaces. Consequently, customary cooking of these products will destroy any *E. coli* O157:H7. FSIS requested comments and recommendations relevant to the Agency's policy and to any regulatory requirements appropriate to prevent the distribution of beef products adulterated with this pathogen.

On March 8, 1999, FSIS held a public meeting to discuss the policies addressed in its January 19, 1999, policy statement. The meeting provided the public with an additional opportunity to comment and discuss the policy announced in this statement and the public health risks associated with beef products contaminated with *E. coli* O157:H7. The meeting also provided an opportunity for participants to discuss a set of questions and answers that FSIS had developed regarding the *E. coli* O157:H7 policy. At this meeting, a group of companies described a plan for testing carcasses for *E. coli* O157:H7. The group stated that they would submit their testing protocol to FSIS. In addition, individuals from Kansas State University presented preliminary findings of research on *E. coli* O157:H7 in blade tenderized beef steaks.

In its March 15, 1999, Constituent Update, FSIS explained that the Agency would not act on its January 19, 1999, policy statement until it had an opportunity to consider the comments received. On April 5, the American Meat Institute (AMI) submitted a protocol on behalf of the group of companies participating in the study on carcass testing for *E. coli* O157:H7 discussed above. The protocol called for testing 1 in 300 carcasses slaughtered by approximately 12 plants, before and after hide removal, as well as after processing interventions and at the trimmings stage, for *E. coli* O157:H7. In its May 14, 1999, Constituent Update, FSIS announced the availability of the protocol and the Agency's response to it and invited comments on these documents.

2. Draft White Paper

FSIS recently developed a draft White Paper on *Escherichia coli* O157:H7. FSIS announced the availability of this document in its November 5, 1999,

Constituent Update. The document is currently available over the Internet (URL: http://www.fsis.usda.gov/OA/update/110599_att.htm).

The White Paper discusses new information and developments that will have a bearing on the Agency's *E. coli* O157:H7 policy. The paper explains that new information indicates that *E. coli* O157:H7 is not as rare as previously thought. In September 1999, FSIS began using a method for analyzing samples of products for *E. coli* O157:H7 that is four times more sensitive than the previous method. Of the total number of positive samples found by FSIS since the testing program began in 1994, 40 percent (21 out of 53) have been found using the new test method. The recent increase in positive samples suggests that the low rate of positive findings in the past may have had more to do with the sensitivity of the method being used than with the rarity of the pathogen.

In addition to the FSIS testing data, the White Paper explains that the Centers for Disease Control and Prevention (CDC) recently released estimates of foodborne illness that show a much higher rate of illness from *E. coli* O157:H7 than the CDC had previously reported. The CDC increased its estimates for illnesses associated with *E. coli* O157:H7 because recent surveillance data allowed a more detailed estimation of mild illnesses not resulting in physician consultation (Mead, Paul S., *et al.*, "Food-Related Illness and Death in the United States," *Journal of Emerging Infectious Diseases*, Vol. 5, No. 5, 1999). Although not all of these illnesses are attributable to beef, the increase in illnesses associated with *E. coli* O157:H7 indicates that this pathogen occurs more frequently than was previously thought.

The White Paper also discusses recent research and studies concerning *E. coli* O157:H7. The paper explains that the data from the industry study discussed above are being analyzed and should soon be available. This study should provide further insight into whether *E. coli* O157:H7 is a rare pathogen and whether it occurs on hides and freshly slaughtered carcasses of beef with some regularity. Under the study's protocol, 1 in 300 carcasses were tested for *E. coli* O157:H7 before hide removal, after hide removal, and after pathogen reduction interventions have been applied. The study was to run for 30 days, starting in early September. Twelve plants were involved in the study.

The White Paper also notes that the Agricultural Research Service (ARS), in Clay Center, Nebraska, is conducting research related to prevalence, and that FSIS plans to conduct some sampling to assess the feasibility of identifying *E. coli* O157:H7 on carcasses and of establishing a routine, Agency-directed sampling program to supplement or replace FSIS' ongoing ground beef testing.

The White Paper explains that FSIS' risk assessment for *E. coli* O157:H7 in ground beef will better enable both the Agency and industry to identify interventions that can lead to public health improvements and to weigh available options. The Agency hopes that the risk assessment will be completed by spring 2000. When the risk assessment on ground beef is complete, FSIS expects to expand it to cover all meat products, as well as other products that may be affected by *E. coli* O157:H7.

The White Paper also addresses data concerning blade tenderized roasts and steaks. As discussed above, during the March 8, 1999, public meeting, individuals from Kansas State University presented preliminary findings of research on *E. coli* O157:H7 in blade tenderized beef steaks. The researchers stated that the blade tenderization process transfers approximately three to four percent of surface contamination to the interior of the muscle. The researchers pointed out that proper cooking to a specified time/temperature combination resulting in rare steaks could reliably result in safe product. In addition, industry members have stated that muscle systems from which steaks are derived could be removed from larger primal or sub-primal cuts hygienically. The beef industry has been persistent in encouraging FSIS to exempt blade tenderized product, especially when derived hygienically or with reduced possibilities for becoming contaminated, from the scope of products considered adulterated when contaminated with *E. coli* O157:H7.

As of fall 1999, FSIS has tentatively determined that there is insufficient information regarding the hygienic processing of muscle systems to narrow the scope of products affected by the *E. coli* O157:H7 policy. FSIS expects its planned effort to broaden the risk assessment will address some of the issues raised by the industry. Meanwhile, FSIS has encouraged industry to label their intact and non-intact primal and sub-primal cuts with appropriate cooking statements. The 1999 Food Code (section 3–401.11) prescribes appropriate cooking instructions for intact versus non-intact steaks for destruction of organisms of public health concern.

The White Paper recognizes that interventions other than cooking may be available to address *E. coli* O157:H7 in product under FSIS control. For example, irradiation offers the possibility of treating raw meat products to eliminate *E. coli* O157:H7. The final rule on irradiation published on December 23, 1999, and will become effective on February 22, 2000. In addition to irradiation, FSIS is willing to consider whether other alternatives to cooking product within an FSIS-inspected establishment could be used to address a positive finding.

The paper notes that several other considerations are likely to be important as the Agency reviews its policy on *E. coli* O157:H7. For example, since January 25, 2000, all meat and poultry plants have been operating under the pathogen reduction and hazard analysis and critical control point (PR/HACCP) systems rule. This will likely improve food safety and may affect the Agency's *E. coli* O157:H7 policy. In reviewing this policy, FSIS will also consider the meat industry's efforts to reduce the pathogen at the production level.

Finally, the White Paper lists areas for consideration concerning FSIS' *E. coli* O157:H7 policy. FSIS has revised the questions in the White Paper to read as follows:

1. If FSIS finds that *E. coli* O157:H7 occurs with some regularity on hides and carcasses of cattle raised using certain production practices (*e.g.*, feedlot cattle) but not on cattle raised under different production practices (*e.g.*, cull dairy cows), should the pathogen be considered a hazard "reasonably likely to occur" only in slaughter and processing operations that use the former types of cattle? Should *E. coli* O157:H7 be addressed in the HACCP plans of those operations? Is *E. coli* O157:H7 a hazard that is reasonably likely to occur in the production of beef products? If so, what is the best HACCP-related guidance that FSIS can provide to such plants for use in their reassessment of their HACCP plans, and what actions should be taken by the Agency?

2. Should FSIS re-design its testing program? Specifically:

- Are any changes needed in the proportion of samples taken in-plant and at retail?
- Should FSIS alter its policy that 15 consecutive samples be negative after a positive finding?
- Should FSIS continue selecting a sample if a plant has a positive finding within the last 6 months, or should the Agency defer to plant routine testing completely and remove the 6-month restriction? If FSIS sampling is continued under these circumstances,

should the rules for the random selection of samples be changed?

• Should FSIS sampling of carcasses replace or supplement ground beef sampling at slaughter plants?

• Should FSIS develop additional sampling schemes, including increasing its testing of ground beef and other beef products (*e.g.*, carcasses, trimmings, and non-intact cuts)?

• What alternatives to the FSIS testing program would best encourage the regulated industry to better ensure that pathogen reduction interventions specifically for *E. coli* O157:H7 are instituted?

3. Should FSIS consider a plant's generic *E. coli* and *Salmonella* results in making its decision on whether to target a plant's products for *E. coli* O157:H7 sampling?

4. What effect should a plant's testing or verification program have on whether and how FSIS targets its testing in that plant? Should the plant's testing or verification program only be considered sufficient if included as part of HACCP validation?

5. How should FSIS treat non-intact product? Specifically, should blade-tenderized beef steaks and roasts—with specific cooking instructions for destroying the pathogen and handling instructions for preventing cross-contamination and temperature abuse—be treated the same as other non-intact beef with regard to the FSIS policy?

6. How effective are voluntary producer actions in providing animals with reduced levels of E. coli O157:H7 to plants, and should these voluntary activities, if effective, affect slaughter plants' strategies and FSIS' policy?

3. FSIS Plans

The Agency intends to consider all information that is ultimately developed from the sources of information discussed in the White Paper, as well as all information presented in response to this notice, the January 1999 notice, and the May 1999 Constituent Update, and to use that information in deciding how best to address *E. coli* O157:H7. At the February 29, 2000, public meeting, FSIS plans to discuss the issues raised in its White Paper, including the significance of the findings with its new testing method that the Agency is using to detect *E. coli* O157:H7, of the final regulations on irradiation, and of the FSIS risk assessment for *E. coli* O157:H7. ARS will present the results of a survey it performed to estimate the frequency of *E. coli* O157:H7 in feces and on hides within lots of fed cattle and the frequency of carcass contamination during processing from cattle within the same lots. The industry group will present the results of the industry study, and Kansas State University will present data concerning *E. coli* O157:H7 in blade tenderized steaks. There will be presentations on interventions available to industry and on new technology. Finally, consumer groups will present information. The public meeting also will provide an opportunity for comments and discussion regarding FSIS' *E. coli* O157:H7 policy and the course it should take, the Agency's testing and sampling methods, new issues related to the pathogen, and issues that arise during the public meeting.

The purpose of the meeting is to move forward with the January 1999 policy. The Agency has accumulated some information that suggests that a hazard resulting from *E. coli* O157:H7 in the production of beef may be more likely to occur than previously thought and that the regulated industry may not be reassessing its HACCP plans accordingly. Since all Federally inspected meat and poultry establishments are now operating under HACCP, and since a yearly reassessment of the HACCP plans (9 CFR 417.4(a)(3)) is required, FSIS hopes to use this public meeting as a means to ensure that the most current information is available to interested persons as the Agency arrives at a policy that will best protect the public health.

4. Comments Received

FSIS received a total of 81 comments in response to requests for comments in the January 19, 1999, **Federal Register** (64 FR 2803) and in the May 14, 1999, Constituent Update. FSIS received one comment in response to the March 8, 1999, public meeting notice. Comments addressed issues including the policy discussed in the January 19, 1999, policy statement, related documents, testing for *E. coli* O157:H7, and the industry's protocol. A summary of comments and the Agency's responses to these comments follow.

Consumer Support

Several consumers supported the policy and suggested that it be expanded to include *Listeria monocytogenes* and *Campylobacter jejuni*. Several consumer groups also supported the policy. Several groups argued that the policy should be expanded to include intermediate products, such as those produced from advanced meat recovery systems and other products that are added to raw ground beef. One animal welfare organization stated that even intact steaks and roasts and other cuts of muscle with surface contamination should not be distributed.

. At this time, FSIS does not intend to expand its *E. coli* O157:H7 policy to cover additional products. Once FSIS' risk assessment on ground beef is completed, FSIS intends to expand the risk assessment to cover all meat products and other products that may be affected by *E. coli* O157:H7. Depending upon the results of the risk assessment for *E. coli* in these products, FSIS may consider expanding the policy to cover additional products. Also at this time, FSIS does not believe that raw product contaminated with *Listeria monocytogenes* or *Campylobacter* is adulterated within the meaning of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) or Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). *E. coli* O157:H7 is a particularly virulent pathogen. Based on epidemiological data, low numbers of *E. coli* O157:H7 may be injurious to health, especially among vulnerable consumers. FSIS is not aware of any data that suggest that customary cooking of these beef products does not reduce *Listeria monocytogenes* and *Campylobacter* to levels that are not injurious to health, even among vulnerable consumers.

Products Covered by the Policy

Numerous industry commenters did not support the policy that non-intact products contaminated with *E. coli* O157:H7 must either be processed into ready-to-eat product or deemed adulterated. Several industry commenters supported the policy with regard to beef trimmings. Several other industry commenters stated that trimmings contaminated with *E. coli* O157:H7 should not be considered adulterated. One of these commenters stated that the policy should only be applied to trimmings that will be used in raw ground products.

Numerous industry commenters also stated that FSIS has no data to support the policy that products other than ground beef that are contaminated with *E. coli* O157:H7 should be considered adulterated. Specifically, many of these commenters discussed the lack of data concerning non-intact products and the risk associated with blade tenderized steaks. One commenter from an academic institution stated that its study demonstrated that there is no difference in risk between intact and non-intact steaks cooked at temperatures resulting in rare to well-done levels of doneness.

Several industry commenters suggested that FSIS should not implement its new policy until after completion of a risk assessment or the

industry pilot program for carcass testing, or until available data show that there is a need for the policy, especially with regard to non-intact product.

In evaluating the public health risk presented by *E. coli* O157:H7-contaminated beef products, FSIS carefully considered the deliberations of the National Advisory Committee on Microbiological Criteria for Foods and its Meat and Poultry Subcommittee. As noted in the January 19, 1999, policy statement, in 1998, this Committee concluded that intact muscle should be safe if the external surfaces are exposed to temperatures sufficient to effect a cooked color change and additional heat to effect a complete sear across the cut surfaces (64 FR 2803–2804). The Committee's definition of "Intact Beef Steak" limited the applicability of this conclusion to muscle that has not been injected, mechanically tenderized, or reconstructed.

FSIS has tentatively determined that there is insufficient information regarding the processing of muscle systems to narrow the scope of products affected by the *E. coli* O157:H7 policy. When the risk assessment on ground beef is complete (see 63 FR 44232), FSIS expects to expand it to cover all meat products, as well as other products that may be affected by *E. coli* O157:H7. The Agency's efforts to broaden its risk assessment for *E. coli* O157:H7 may also address some of the issues raised by the industry with regard to non-intact product. Meanwhile, FSIS has encouraged industry to label their intact and non-intact primal and sub-primal cuts with appropriate cooking statements. The 1999 Food Code (section 3–401.11) prescribes appropriate cooking instructions for intact versus non-intact steaks for destruction of organisms of public health concern. The 1999 Food Code recommends these products be cooked to 145 °F for 15 seconds.

FSIS has received the results of the study referred to in the comments. The study confirmed that *E. coli* O157:H7 can be translocated to the interior of a non-intact steak. Therefore, FSIS will continue to recommend that non-intact product be cooked to 145 °F for 15 seconds, consistent with the Food Code.

Procedural Questions

Several commenters, including industry groups and a government Agency, stated that FSIS should have issued a proposed rule, and that FSIS' policy change should be subject to the requirements of the Administrative Procedures Act (APA).

The January 19, 1999, policy statement was an interpretive rule and therefore was not subject to the notice-and-comment rulemaking requirements in section 553(b) of the APA. It was intended to elucidate the policy that FSIS announced in 1994. Under section 552 of the APA, FSIS is required to publish interpretive rules in the **Federal Register**. FSIS complied with that requirement.

Effect on Industry

Several industry commenters stated that the new policy could put companies out of business and could be disproportionately burdensome on small businesses. Two industry commenters stated that the new policy could result in less voluntary testing by industry.

Experience has shown that these predictions were wrong, at least for the short-term. The policy resulted in the important carcass testing that the industry is currently conducting. FSIS' future direction in testing will be determined in large measure based on the information that FSIS has gathered since the publication of the January 19, 1999, policy statement and on the information that FSIS receives in response to this notice.

Consumer Responsibility

Several industry commenters stated that consumers should assume more responsibility for their safety and expressed the need for consumer awareness programs regarding the importance of cooking beef products thoroughly.

Industry can reduce or eliminate risk associated with *E. coli* O157:H7 through various controls and interventions, such as steam pasteurization and irradiation, that can be incorporated into HACCP systems. Because industry has the means to reduce or eliminate the hazard, consumers should not be expected to assume all the responsibility for preventing foodborne illness associated with *E. coli* O157:H7.

FSIS has informed consumers of the risk of foodborne illness from products contaminated with *E. coli* O157:H7. For example, on May 27, 1998, FSIS held a public meeting to discuss safe handling measures consumers should take in cooking hamburgers. During the meeting, participants discussed the food safety issues presented by premature browning, including the question of whether color is an appropriate indicator that ground beef is cooked to a safe internal temperature.

In addition, the Food Safety Education and Communications Staff within FSIS provides information to the public concerning numerous food safety issues, including information on cooking beef products. This office provides food safety education information through USDA's Toll-Free Meat and Poultry Hotline (1–800–535–4555), through public service announcements, printed materials, and a variety of communication channels. In addition, FSIS makes this information available over the Internet (URL: http://www.fsis.usda.gov/). Industry and consumers are invited to present information on how best to communicate the need for proper handling of non-intact products that are contaminated with *E. coli* O157:H7 at the public meeting.

Definition of Adulteration

Several commenters, including industry groups, an academic organization, and an inspection association, were opposed to the concept that beef that tests positive for *E. coli* O157:H7 be considered adulterated because the organism may be inherent in raw meat and poultry when produced under current technology.

Under the FMIA, a product is "adulterated" if "it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health * * *." (21 U.S.C. § 601(m)(1)). Because beef products contaminated with *E. coli* O157:H7 are often cooked in a manner that may not prevent illness, this pathogen is a substance that renders "injurious to health" even products that many consumers consider to be properly cooked (see *Texas Food Industry Association, et. al.* v. *Espy, et. al.*, Civ. No. A–94–CA–748 JN.)

Testing for E. coli O157:H7

Several industry commenters recommended carcass sampling rather than end-product testing or combo bin sampling. In contrast, one industry organization and one consumer group opined that carcass testing would not ensure the safety of a carcass that tests positive for *E. coli* O157:H7. One consumer group specifically supported testing raw product, rather than carcasses, at both the processing and retail levels.

Several industry commenters expressed general concerns regarding testing for *E. coli* O157:H7. Several commenters noted that testing is not a means of eliminating or reducing pathogens. Other commenters noted that the likelihood of finding a pathogen

such as *E. coli* O157:H7 through testing is minimal.

Numerous industry commenters stated that FSIS should not expand its sampling and testing program. Numerous commenters that submitted the same letter stated that rather than expand the program, the Agency should refocus the program on verifying that processes are in control. Several consumer groups stated that the Agency should expand the sampling and testing program.

Effective system controls, such as through HACCP, are the appropriate means of preventing *E. coli* O157:H7 in ground beef from entering commerce. FSIS is interested in encouraging industry to conduct sampling and testing for *E. coli* O157:H7, as well as microbiological testing for appropriate non-pathogenic organisms, to allow verification and validation of HACCP systems. Microbiological sampling, as part of HACCP systems monitoring, verification, and validation, is an effective operational indicator. FSIS agrees that end-product testing alone is ineffective for ensuring process control. However, FSIS began its testing program for ground beef, an end-product testing program, as a means of spurring establishments into taking more aggressive action to control their processes. Establishments can incorporate sampling and testing for *E. coli* O157:H7 and appropriate non-pathogenic organisms into their HACCP plans to reduce risk and can ensure that they are effectively controlling the pathogen through their monitoring, verification, and validation activities. The safety of ground products will likely improve as a result of these activities at Federal establishments.

Guidance is available to industry for developing sampling and testing programs for beef. The American Meat Science Association report entitled, "The Role of Microbiological Testing in Beef Food Safety Programs," published in 1999, provides guidance for microbiological testing within a HACCP system. At this time, FSIS believes that some of the assumptions concerning the prevalence and distribution of *E. coli* O157:H7 in this report may not reflect recent data; however, the guidance for sampling and testing for appropriate organisms within a HACCP system continues to be useful to industry.

FSIS considers its end-product testing as one means of preventing adulterated product from reaching consumers. Currently, FSIS is scheduling more sampling at Federal establishments than at retail stores because more product is accessible for testing.

Control at Farm

Several commenters, including industry organizations and an animal welfare organization, stated that FSIS or another entity within the Department of Agriculture should promote efforts to control the incidence of *E. coli* O157:H7 on the farm.

FSIS agrees that there should be a farm-to-table approach to reducing or preventing the risk of *E. coli* O157:H7. At the animal production level, FSIS encourages research, applied studies, and educational activities to enhance adoption of food safety practices. FSIS' Animal Production Food Safety Staff supports research to develop voluntary, science-based food safety practices and verification procedures for food animal production that will reduce the risk of microbial hazards, such as *E. coli* O157:H7, entering the food chain. This staff also provides information to the animal production community to assist them in meeting reasonable, science-based requirements for animals at the receiving stage of processing. Finally, this staff works with outside organizations to promote adoption of food production practices by producers and suppliers that result in safe and high quality animals being presented to meat and poultry slaughtering establishments.

Interventions

Several industry commenters emphasized the importance of microbial interventions, such as thermal carcass washing and irradiation, in producing safe product. Several industry commenters urged FSIS to publish its final regulations on irradiation, noting that irradiation should ensure the elimination of *E. coli* O157:H7.

FSIS agrees with commenters that interventions are integral features of any process for reducing or eliminating *E. coli* O157:H7 in beef products. However, FSIS has data that show that not all interventions are effective, and that interventions must be implemented properly to be effective. Establishments using interventions to prevent or reduce the risk of *E. coli* O157:H7 should incorporate these interventions into their HACCP plans and validate the effectiveness of the interventions.

The final rule on irradiation published on December 23, 1999, and will become effective on February 22, 2000. Therefore, this intervention will soon be available to establishments producing raw beef products.

Other Meat and Poultry Products

One industry commenter stated that this policy discriminates against beef processors, because the pork and poultry industries are similarly faced with pathogens that contribute to foodborne illnesses, but this broadened policy interpretation would not apply to them.

FSIS does not consider raw pork or poultry products to be adulterated when they are contaminated with bacteria, because these products are customarily cooked in a manner that will ensure that any pathogenic microorganisms are eliminated.

Exporting Countries

Two government organizations representing countries that export meat to the United States did not support the policy with regard to non-intact beef products. One commenter stated that any testing required of product shipped to the U.S. would cause numerous problems. The commenter explained that producers do not know whether beef cuts will be used for making non-intact product, such as reformed steaks, at the time of shipment.

The other commenter did not believe that end-product testing is the best means to ensure consumer protection against *E. coli* O157:H7 because of its low prevalence. This commenter also stated that the policy explained in the January 19, 1999, policy statement would be difficult to implement. As an alternative, the commenter recommended that any beef used to manufacture ground beef should be subject to compliance action if it is contaminated with *E. coli* O157:H7. Further, the commenter stated that appropriate compliance action should be determined based on the level of generic *E. coli* in the contaminated product.

One FSIS bargaining unit employee stated that millions of pounds of block frozen beef enter the United States daily from countries such as Australia. This commenter further stated that Australia has practically eliminated its government inspection program, and that U.S. import inspectors are allowed to sample only an insignificant amount of the product.

In response to the first comment discussed above, FSIS notes that product testing is not mandatory. With regard to the statement that exporting producers do not know whether beef cuts will be used for making non-intact product at the time of shipment, the HACCP regulations require that establishments identify the intended use or consumers of the finished product (§ 417.2(a)(2)). Countries exporting product to the United States are required to operate according to HACCP systems (§ 327.2(a)(2)(ii)(H)). Therefore,

the exporting producer should make an effort to determine whether the beef will be used to produce intact or non-intact product. If the shipping company does, and it conducts any testing and finds *E. coli* O157:H7 on the beef, that company could ensure that the beef is handled appropriately once it is shipped.

In response to the second commenter above, as discussed under *Testing for E. coli O157:H7*, FSIS agrees that end-product testing alone is ineffective for ensuring process control. However, FSIS began its testing program for ground beef, an end-product testing program, as a means of spurring establishments into taking more aggressive action to control their processes. Also, at this point, FSIS does not intend to narrow the scope of products affected by the *E. coli* O157:H7 policy. With regard to this commenter's suggestion that appropriate compliance action should be determined based on the level of generic *E. coli* in the contaminated product, data show that levels of generic *E. coli* are not necessarily indicative of the levels of *E. coli* O157:H7 in product.

In response to the comments from the FSIS bargaining unit employee, FSIS ensures that products exported to the United States are produced under inspection requirements equivalent to those in the Federal meat inspection regulations. In addition, FSIS schedules sample collection for imported ground beef product. These samples are collected and tested for *E. coli* O157:H7 according to the same procedures as are used for domestic product.

Comments on Related Documents

FSIS received comments recommending changes to FSIS Directive 10,010.1, "Microbiological Testing Program For *Escherichia coli* O157:H7 in Raw Ground Beef." FSIS also received comments regarding the questions and answers it developed shortly before the March 8, 1999, public meeting.

FSIS is currently considering whether and how to revise these documents. In considering revisions to these documents, FSIS will take into account the comments submitted and information from the risk assessment on ground beef. Further, FSIS soon expects to receive the results from the industry carcass testing study and will consider modifying the directive based on its review of the results of the study.

Industry Protocol

Two consumer groups objected to FSIS' decision to delay implementation of the policy discussed in the January 19, 1999, policy statement. One of these commenters stated that FSIS should not await the results of the industry study before implementing the policy. The other expressed concerns with regard to FSIS' interest in comments to the industry protocol. For example, the commenter questioned what bearing comments from the public will have on the study. In addition, this commenter expressed doubt that the industry study would be carried out in an unbiased manner.

Another consumer group stated that data from the industry's study could offer valuable insight into both the prevalence of the pathogen and the ability of existing intervention technologies to eliminate it from beef carcasses. However, the commenter suggested that certain changes should be made to the protocol. For example, the commenter stated that FSIS' recommended changes should be incorporated into the study, and that industry should ensure that the plants involved in the study are representative of the variations that exist among plants that produce raw ground and non-intact beef products.

FSIS delayed implementation of the policy discussed in the January 19, 1999, policy statement because it was waiting for the results of the risk assessment for *E. coli* O157:H7 in ground beef and needed time to consider comments received concerning the policy, not because of the industry study. With regard to the industry study, FSIS reviewed the protocol and provided suggested changes to the industry. In addition, FSIS made the comments discussed above available to the industry through the FSIS docket room. Although FSIS reviewed and provided suggested changes to the industry, this study is an industry study; therefore, the industry was not required to revise its protocol based on comments from FSIS or from the public. FSIS has not yet received the results of the study. When reviewing the results, FSIS will take into account any shortcomings in the protocol.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice of public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: February 7, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–3197 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 99–059DF]

Termination of Designation of the State of Minnesota with Respect to the Inspection of Poultry and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations by terminating the designation of the State of Minnesota under sections 1 through 4, 6 through 11, and 12 through 22 of the Poultry Products Inspection Act.

DATES: This final rule is effective February 11, 2000.

ADDRESSES: Authorizing letters from Minnesota State officials are on file in the FSIS Docket Room, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. The Docket Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service; telephone (202) 418–8900 or fax (202) 418–8834.

SUPPLEMENTARY INFORMATION:

Background

Section 5(c) of the Poultry Products Inspection Act (PPIA; 21 U.S.C. 454(c)) authorizes the Secretary of Agriculture to designate a State as one in which the provisions of sections 1–4, 6–11, and 12–22 of the PPIA will apply to operations and transactions wholly within the State after the Secretary has determined that requirements at least equal to those imposed under the Act have not been developed and effectively enforced by the State.

On January 2, 1971 and May 16, 1972, the Secretary of Agriculture designated the State of Minnesota under section 5(c) of the PPIA (21 U.S.C.) and section 301(c) (21 U.S.C. 661(c)) of the Federal Meat Inspection Act (FMIA) as a State in which the U.S. Department of Agriculture (USDA) is responsible for providing meat and poultry products inspection at eligible establishments and otherwise enforcing the applicable provisions of PPIA and FMIA with regard to intrastate activities in the State.

In addition, on January 31, 1975 (40 FR 4646), a document was published in the **Federal Register** announcing that effective on that date, USDA would assume the responsibility of administering the authorities provided under sections 202, 203, and 204 (21 U.S.C. 642, 643, and 644) of the FMIA and sections 11(b) and (c)(21 U.S.C. 460(b) and (c)) of the PPIA regarding certain categories of processors of meat and poultry products.

These designations were undertaken by USDA when it was determined that the State of Minnesota was not in a position to enforce meat and poultry inspection requirements under State laws for products in intrastate commerce that were at least "equal to" the requirements of the PPIA and FMIA as enforced by USDA.

In 1998, the Governor of the State of Minnesota informed FSIS that Minnesota will be in a position to administer a State meat inspection program that includes requirements at least "equal to" those imposed under the Federal meat inspection program for products in interstate commerce. Therefore, the designations of Minnesota under Titles I, II, and IV of FMIA were terminated, effective December 28, 1998. However, the designation of the State of Minnesota under the appropriate provisions of the PPIA has remained in effect since that time.

Section 5(c) of the PPIA provides that, whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State meat inspection requirements at least "equal to" those imposed by USDA under the PPIA, with regard to intrastate operations and transactions within the State, the Secretary will terminate the designation of such State. The Secretary has determined that the State of Minnesota has developed and will enforce such a State poultry products inspection program in accordance with applicable provisions of the PPIA. In addition, the Secretary has determined that the State of Minnesota also is in a position to enforce effectively the provisions of sections 1–4, 6–11, and 12–22 of the PPIA. Therefore, the designations of the State of Minnesota under these sections are terminated.

Because it does not appear that public participation in this matter would make additional relevant information available to the Secretary under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined not to be a major rule. It will not result in an annual effect on the economy of $100 million or more. It will not cause a major increase in costs or prices for consumers, individual industries, governments, or geographic regions. Terminating the designation of the State of Minnesota will provide for the State to assume the responsibility, previously limited to USDA, of administering a poultry products inspection program for intrastate operations and transactions and for ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. Qualifying businesses will have the option to operate under State inspection as an alternative to Federal inspection. The State of Minnesota will be required to administer the poultry products inspection program in a manner that is at least "equal to" the inspection program administered by USDA.

Effect on Small Entities

The Administrator has made an initial determination that this final rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). As stated above, the State of Minnesota is assuming a responsibility, previously limited to USDA, of administering the poultry products inspection program for intrastate poultry operations and transactions.

Additional Public Notification

FSIS has considered the potential civil rights impact of this final rule on minorities, women, and persons with disabilities. FSIS anticipates that this final rule will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, final rules generally are designed to provide information and receive public comments on issues that may lead to new or revised Agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

Accordingly, Part 381 of the poultry products inspection regulations (9 CFR Part 381) is amended as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.221 [Amended]

2. Section 381.221 is amended by removing "Minnesota" from the States column and by removing the corresponding date.

§ 381.224 [Amended]

3. Section 381.224 is amended by removing "Minnesota" from the "State" column in two places and by removing the corresponding dates.

Done at Washington, DC, on February 4, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–3164 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–09–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3003–ZA00

Loan Guarantee Decision: Application Deadline

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Final rule.

SUMMARY: In order to provide additional time for filing applications, the Emergency Steel Guarantee Loan Board is reopening the application window for the submission of guarantee applications.

DATES: This rule is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In order to provide additional time for submission of completed applications, the deadline for the submission of applications has been reopened until February 28, 2000.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined not to be a significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Loan Program—Steel, Reporting and recordkeeping requirements.

Jay E. Dittus,

Executive Director, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, the Emergency Steel Guarantee Loan Board amends 13 CFR part 400 as follows:

1. The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 400.205 is amended by revising paragraphs (a) to read as follows:

§ 400.205 Application Process

(a) Application process. An original application and three copies must be received by the Board no later than 5 P.M. EST, February 28, 2000, in the US Department of Commerce, 1401 Constitution Avenue NW., Room H–2500, Washington, DC 20230. Applications which have been provided to a delivery service on or before February 27, 2000, with "delivery guaranteed" before 5 P.M. on February 28, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of February 27, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

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[FR Doc. 00–3290 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–17–M

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Loan Guarantee Decision; Application Deadline

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Final rule.

SUMMARY: In order to provide additional time for filing applications, the Emergency Oil and Gas Guaranteed Loan Board is reopening the application window for the submission of guarantee applications.

DATES: This rule is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, US Department of Commerce, Washington, D.C. 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In order to provide additional time for the submission of completed applications, the deadline for the submission of applications has been reopened until February 28, 2000.

Administrative Law Requirements:

Executive Order 12866

This final rule has been determined not to be a significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and

an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. § 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. § 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Loan Program—Oil and Gas, Reporting and recordkeeping requirements.

Charles E. Hall,

Executive director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, the Emergency Oil and Gas Guaranteed Loan Board amends 13 CFR part 500 as follows:

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.205 is amended by revising paragraphs (a) to read as follows:

§ 500.205 Application Process

(a) *Application process.* An original application and three copies must be received by the Board no later than 5 P.M. EST, February 28, 2000, in the U.S. Department of Commerce, 1401 Constitution Avenue, NW., room H–2500, Washington, DC 20230. Applications which have been provided to a delivery service on or before February 27, 2000, with "delivery guaranteed" before 5 P.M. on February 28, 2000, will be acceptabled for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of February 27, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

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[FR Doc. 00–3291 Filed 2–10–00; 8:45 am]

BILLING CODE 3610–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 92F–0443]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane (DBDCB) and a mixture of 5-chloro-2-methyl-4-isothiazolin-3-one (CMI) and 2-methyl-4-isothiazolin-3-one (MI), optionally containing magnesium nitrate, as antimicrobial agents in emulsion-based silicone coating formulations. This action responds to a petition filed by Dow Corning Corp.

DATES: This regulation is effective February 11, 2000. Submit written objections and requests for a hearing by March 13, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 12, 1993 (58 FR 8290), FDA announced that a petition (FAP 3B4346) had been filed by Dow Corning Corp., P.O. Box 994, Midland, MI 48686–0994. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300), § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320), and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen-containing polysiloxane and dimethylmethylhydrogen polysiloxane polymers using a platinum catalyst. It also proposed that the food additive regulations be amended to provide for the safe use of 3,5-dimethyl-1-hexyne-3-ol, 1-ethynylcyclohexene, bis(methoxymethyl)ethyl maleate and methylvinyl cyclosiloxane as optional polymerization inhibitors. Additionally, the petition proposed that the regulations be amended to provide for the safe use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture, optionally containing magnesium nitrate, as an antimicrobial agent for emulsion-based silicone coating formulations.

However, subsequent to the filing of the petition, the petitioner requested that tetramethyltetravinylcyclotetrasiloxane be included in the petition. Therefore, in a notice published in the **Federal Register** of July 2, 1998 (63 FR 36246), FDA announced that it was amending the filing notice of February 12, 1993, to indicate that the petitioner was also proposing that the food additive regulations be amended to provide for the safe use of tetramethyltetravinylcyclotetrasiloxane as an optional polymerization inhibitor in the manufacture of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen-containing polysiloxane and dimethylmethylhydrogen polysiloxane polymers using a platinum catalyst.

Also, subsequent to the filing of the petition, the petitioner requested that 1,2-dibromo-2,4-dicyanobutane be included in the petition. Therefore, in a notice published in the **Federal Register** of December 24, 1998 (63 FR 71294), FDA announced that it was amending the filing notice of July 2, 1998, to indicate that the petitioner was also proposing that the food additive regulations be amended to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as an antimicrobial agent in the manufacture of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen-containing polysiloxane and dimethylmethylhydrogen polysiloxane polymers using a platinum catalyst.

A partial response to the petition published in the **Federal Register** of December 23, 1998 (63 FR 71016). That document responded to the petitioner's request to amend the food additive regulations to provide for the safe use of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen polysiloxane and dimethylmethylhydrogen polysiloxane using a platinum catalyst. In that document, FDA also amended the food additive regulations to provide for the safe use of 3,5-dimethyl-1-hexyne-3-ol, 1-ethynylcyclohexene, bis(methoxymethyl)ethyl maleate, methylvinyl cyclosiloxane, and tetramethyltetravinylcyclotetrasiloxane as optional polymerization inhibitors.

Also in the December 23, 1998, document, the agency stated that in 1996, Congress enacted the Food Quality Protection Act (the FQPA). As a result of that law, antimicrobial formulations used in or on food contact articles became subject to regulation as pesticide chemicals by the U.S. Environmental Protection Agency (EPA). Thus, the petitioned antimicrobial use of 1,2-dibromo-2,4-dicyanobutane (DBDCB) and of 5-chloro-2-methyl-4-isothiazolin-3-one (CMI) and 2-methyl-4-isothiazolin-3-one (MI) mixture, optionally containing magnesium nitrate were, at that time, subject to regulation by EPA. Subsequently, Congress passed the Antimicrobial Regulation Technical Corrections Act of 1998 (the ARTCA) (Public Law 105–324) that returned some of the regulatory authority for regulating antimicrobials in or on food contact articles to FDA. As a result of ARTCA, these petitioned antimicrobial uses are once again subject to regulation by FDA under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) and are not subject to regulation as pesticide chemicals under section 408 of the act (21 U.S.C. 346a). Although these antimicrobial uses are regulated under section 409 of the act as food additives, nevertheless, the intended uses may be subject to regulation as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, persons intending to market these food additives for such antimicrobial uses should contact the EPA to determine whether such uses require a pesticide registration under FIFRA.

In this document, the agency is responding to the petitioner's request to amend the food additive regulations to provide for the safe use of: (1) DBDCB, and (2) a mixture of CMI and MI, optionally containing magnesium nitrate, as antimicrobial agents in emulsion-based silicone coating formulations.

I. Evaluation of the Additive DBDCB

FDA has evaluated the data in the petition and other material relevant to the safety of DBDCB. The agency's conclusion on the safe use of DBDCB is contained in section III of this document.

II. Evaluation of the Mixture of CMI and MI

In its evaluation of the safety of the mixture of CMI and MI, optionally containing magnesium nitrate, FDA has reviewed the safety of each component of the mixture and the chemical impurities that may be present in the mixture resulting from its manufacturing process. Although the components themselves have not been shown to cause cancer, the mixture of CMI and MI, optionally containing magnesium nitrate, has been found to contain residual amounts of dimethylnitrosamine (DMNA), a carcinogenic impurity resulting from the manufacture of the mixture. Residual amounts of reactants and manufacturing aids, such as DMNA, are commonly found as contaminants in chemical products, including food additives.

A. Determination of Safety

Under the general safety standard of the act (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348 (c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

B. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the CMI and MI mixture, optionally containing magnesium nitrate, as an antimicrobial agent in emulsion-based silicone coatings, will result in exposure to no greater than 0.2 parts per billion of the mixture in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 600 nanograms per person per day (ng/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the mixture of CMI and MI and concludes that the estimated small dietary exposure resulting from the petitioned use of this mixture is safe.

FDA has evaluated the safety of the CMI and MI mixture under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by DMNA, the carcinogenic chemical that may be present as an impurity in the mixture. The risk evaluation of DMNA has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the mixture, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

1. Dimethylnitrosamine

FDA has estimated the exposure to DMNA from the petitioned use of the mixture of CMI and MI, optionally containing magnesium nitrate, as an antimicrobial agent in emulsion-based silicone coating formulations, to be no more than 0.1 part per quintillion in the daily diet (3 kg), or 0.3 femtograms per

person per day (fg/p/d) (Ref. 1). The agency used data from a carcinogenesis bioassay on DMNA conducted by R. Peto et al. (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the mixture. The authors reported that DMNA was carcinogenic for male and female rats under the conditions of the study, causing liver tumors in the rats.

Based on the agency's estimate that exposure to DMNA will not exceed 0.3 fg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of a mixture of CMI and MI, optionally containing magnesium nitrate, is 1×10^{-14} or 1 in 100 trillion (Refs. 1 and 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to DMNA is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to DMNA would result from the petitioned use of the mixture of CMI and MI, optionally containing magnesium nitrate.

2. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of DMNA present as an impurity in the mixture of CMI and MI. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which DMNA may be expected to remain as an impurity following production of the CMI and MI mixture, the agency would not expect this impurity to become a component of food at other than extremely low levels, and (2) the upper-bound limit of lifetime risk from exposure to this impurity from the petitioned use is very low, 1 in 100 trillion.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed uses of DBDCB, and of the mixture of CMI and MI, optionally containing magnesium nitrate, as antimicrobial agents in silicone coating formulations are safe, (2) each additive will achieve its intended technical effect, and therefore, that the regulations in §§ 175.300 and 175.320 should be amended as set forth below.

In the previous response to this petition (63 FR 71016, December 23, 1998), the agency noted that the petition proposed to amend § 176.170 to list the two antimicrobials; however, because the petitioned additives will be listed under § 175.300(b)(3), by cross-reference they may be used under § 176.170(b)(1). Therefore, this action does not include an amendment that would establish a separate listing for the additives under § 176.170(b)(1). (FDA inadvertently referred to § 176.170(b)(2) in the earlier document.)

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has previously considered the environmental effects of this action as announced in the amended notices of filing for FAP 3B4346 published in the **Federal Register** of July 2, 1998 (63 FR 36246) and December 24, 1998 (63 FR 71294). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 13, 2000 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated March 10, 1999, from The Division of Product Manufacture and Use, Chemistry Review Team (HFS–246), to the Division of Petition Control (HFS–215) entitled "FAP 3B4346 (MATS 675, 2.8.1)—Dow Corning Corporation (DC). Request dated 2–10–99 from Division of Petition Control (DPC) for an exposure estimate to nitrosamine impurities in 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one."

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis; published by S. Karger, New York, NY, pp. 24–33, 1985.

3. Peto, R. et al., "Nitrosamine Carcinogenesis In 5120 Rodents: Chronic Administration Of Sixteen Different Concentrations Of NDEA, NDMA, NPYR And NPIP In The Water of 4440 Inbred Rats, With Parallel Studies On NDEA Alone Of The Effect Of Age Of Starting (3, 6 or 20 Weeks) And Of Species (Rats, Mice or Hamsters)," *IARC Science Publications*, 57:627–665, 1984.

4. Memorandum, dated March 25, 1999, from the Division of Petition Control (HFS–215), to Executive Secretary, Quantitative Risk Assessment Committee (QRAC), (HFS–308), entitled "Estimation of upper-bound lifetime risk from dimethylnitrosamine, an impurity in 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one, the subject of Food Additive Petition 3B4346 (Dow Corning Corporation)."

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii), under the heading "Miscellaneous materials" by alphabetically adding two entries to read as follows:

§ 175.300 Resinous and polymeric coatings

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

List of substances	Limitations
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172–55–4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2628–20–4) mixture, at a ratio of 3 parts to 1 part, respectively, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935–90–2) and optionally containing magnesium nitrate (CAS Reg. No. 10377–60–3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent in emulsion-based silicone coatings at a level not to exceed 50 milligrams per kilogram (based on isothiazolone active ingredient) in the coating formulation.
1,2-Dibromo-2,4-dicyanobutane (CAS Reg. No. 35691–65–7)	For use as an antimicrobial agent at levels not to exceed 500 milligrams per kilogram in emulsion-based silicone coating.

* * * * *

3. Section 175.320 is amended in the table in paragraph (b)(3) by alphabetically adding two entries in item (iii) under the headings "List of Substances" and "Limitations" to read as follows:

§ 175.320 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *

(3) * * *

List of substances	Limitations
(iii) * * *	
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172–55–4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2628–20–4) mixture, at a ratio of 3 parts to 1 part, respectively, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935–90–2) and optionally containing magnesium nitrate (CAS Reg. No. 10377–60–3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent in emulsion-based silicone coatings at a level not to exceed 50 milligrams per kilogram (based on isothiazolone active ingredient) in the coating formulation.
1,2-Dibromo-2,4-dicyanobutane (CAS Reg. No. 35691–65–7)	For use as an antimicrobial agent at levels not to exceed 500 milligrams per kilogram in emulsion-based silicone coating.

* * * * *

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3195 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Bayer Corp., Agriculture Division, Animal Health to Schering-Plough Animal Health Corp.

DATES: This rule is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201 has informed FDA that it has transferred ownership of, and all rights and interests in NADA 113–645 (cloprostenol sodium) to Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083. Accordingly, the agency is amending the regulations in 21 CFR 522.460 to reflect the transfer of ownership.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.460 [Amended]

4. Section 522.460 *Cloprostenol sodium* is amended in paragraphs (a)(2) and (b)(2) by removing "000859" and adding in its place "000061".

Dated: January 24, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–3194 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 93P–0277]

Medical Devices; Reclassification and Codification of Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) Laser for Peripheral Iridotomy

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to Intelligent Surgical Lasers, Inc. (ISL), (now doing business as Escalon Medical Corporation), reclassifying the Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) Laser for use in peripheral iridotomy from class III to class II (special controls). Accordingly, the order is now being codified in the Code of Federal Regulations (CFR) as described below.

DATES: This rule is effective March 13, 2000. The reclassification was effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Morris Waxler, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Devices Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the act, formerly 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDAMA added paragraph (f)(2) in section 513 to the act, which also addresses classification of postamendments devices. New paragraph (f)(2) in section 513 of the act provides that, upon receipt of a "not substantially equivalent" determination, a 510(k) applicant may request FDA to classify a postamendments device into class I or class II. Within 60 days from the date of such a written request, FDA must classify the device by written order. If FDA classifies the device into class I or II, the applicant has then received clearance to market the device and it can be used as a predicate device for other 510(k)'s. It is expected that this process will be used for low risk devices. This process does not apply to devices that have been classified by regulation into class III—i.e., preamendments class III devices, or class III devices for which a PMA is appropriate.

Under section 513(f)(3)(B)(i) of the act, formerly section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a classification panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

On July 27, 1993, FDA filed the reclassification petition submitted by ISL, requesting reclassification under section 513(f)(3) of the act, of the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy from class III to class II. This is a postamendments device that was automatically classified into class III.

FDA consulted with the Ophthalmic Devices Panel (the Panel). During an open public meeting on October 28, 1993, the Panel recommended that FDA reclassify the Nd:YAG laser for peripheral iridotomy from class III to class II. The Panel considered clinical studies of Nd:YAG iridotomy that report few risks to health and those that are reported have been clearly identified. The incidence rates for iridotomy closure, vision loss due to progression of laser-induced lens or corneal damage, focal corneal opacities, mild iritis, and hyphema are either lower than those for argon laser surgery or conventional surgical iridotomy, or are self-limiting and not persistent. A few rare complications (malignant glaucoma, lens-induced endophthalmitis,

monocular glaucoma, lens rupture) have been reported. The risks of damage to the corneal endothelium, the lens, and the retina are slight. The Panel believes these risks can be kept minimal by ensuring proper device design of laser beam accuracy and precision.

FDA considered the Panel's recommendations and tentatively agreed that the generic type of device, Nd:YAG laser for peripheral iridotomy, be reclassified from class III to class II. FDA recommended that the generic designation of the device be changed from Nd:YAG laser for posterior capsulotomy to ND:YAG laser for posterior capsulotomy and peripheral iridotomy.

Subsequently, in the **Federal Register** of March 8, 1996 (61 FR 9373), FDA issued the Panel's recommendation for public comment.

After reviewing the data in the petition and presented before the Panel, and after considering the Panel's recommendation, FDA, based on its and the Panel's review, issued an order to the petitioner on August 13, 1999, reclassifying the Nd:YAG laser for posterior capsulotomy, and substantially equivalent devices of this generic type, from class III to class II, with design parameters as the special controls. Additionally, FDA changed the generic designation of the device from Nd:YAG laser for posterior capsulotomy to Nd:YAG laser for posterior capsulotomy and peripheral iridotomy. FDA believes the risks mentioned above can be kept minimal by ensuring proper device design of the laser beam accuracy and precision, and through proper device labeling disclosures whereby the surgeon can control the risk of intraocular pressure rise through available, established medical treatments.

Accordingly, as required by § 860.134(b)(6) and (b)(7) of the regulations, FDA is announcing the reclassification of the generic Nd:YAG laser for posterior capsulotomy and peripheral iridotomy from class III into class II. In addition, FDA is issuing the notice to codify the reclassification of the device by revising 21 CFR 886.4392.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Enforcement Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The Commissioner of Food and Drugs therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this notice will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information to the public. Therefore, no burden is placed on the public.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 886.4392 is revised to read as follows:

§ 886.4392 Nd:YAG laser for posterior capsulotomy and peripheral iridotomy.

(a) *Identification.* The Nd:YAG laser for posterior capsulotomy and peripheral iridotomy consists of a mode-locked or Q-switched solid state Nd:YAG laser intended for disruption of the posterior capsule or the iris via optical breakdown. The Nd:YAG laser generates short pulse, low energy, high power, coherent optical radiation. When the laser output is combined with focusing optics, the high irradiance at the target causes tissue disruption via optical breakdown. A visible aiming system is utilized to target the invisible Nd:YAG laser radiation on or in close proximity to the target tissue.

(b) *Classification.* Class II (special controls). Design Parameters: Device must emit a laser beam with the following parameters: wavelength = 1064 nanometers; spot size = 50 to 100 micros; pulse width = 3 to 30 nanoseconds; output energy per pulse = 0.5 to 15 millijoules (mJ); repetition rate = 1 to 10 pulses; and total energy = 20 to 120 mJ.

Dated: January 24, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–3173 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is administratively amending an

existing exemption rule for a Privacy Act system of records. The Army is providing reasons from which information maintained within this system of records may be exempt. These were administratively omitted when last published.

EFFECTIVE DATE: February 11, 2000.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060-5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390.

SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 505

Privacy.

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5, is amended by revising paragraph (e)(18) as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records. * * *

(18) *System identifier:* A0025 JDIM

(i) *System name:* HQDA Correspondence and Control/Central Files System.

(ii) *Exemptions:* Documents within this system of records are generated by other elements of the Department of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this system of records, and since the introduction of documents is largely unregulatable, specific portions or documents that may require an exemption can not be predetermined. Therefore, and to the extent that such material is received and maintained, selected individual documents may be exempt.

(A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(D) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(E) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(F) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(G) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(H) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a (k)(1) through (k)(7) from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1) through (k)(7).

(iv) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation. It could permit the subject of an investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection of apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to active case or matter. In the interest of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(2) of the Privacy Act of 1974.

(E) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

* * * * *

Dated: February 4, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 00–3071 Filed 2–10–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

36 CFR Part 327

Public Use of Water Resources Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers has amended the rules and regulations governing public use of water resources development projects administered by the Chief of Engineers. This final rulemaking supersedes the regulation dated September 3, 1985 and is designed to ensure safe, enjoyable and environmentally sound visitation on the public lands, free from unwarranted disturbances. This is accomplished by setting minimum standards of conduct for individuals using the public lands and establishing penalties that may be imposed for failure to obey the regulations.

These rules and regulations apply to water resources development projects completed or under construction, which are administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects, which are under the administrative jurisdiction of the Chief of Engineers.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Austin, Outdoor Recreation Planner, 202–761–1796.

SUPPLEMENTARY INFORMATION:

I. Comments on the Proposed Rule

Thirteen responses were received pertaining to the following six paragraphs of the regulation:

36 CFR 327.1(e) Policy. One commentator questioned the use of the word "outgranted", stating that it should not be used since it is not included in the Webster Collegiate Dictionary.

The word outgranted is an appropriate and legally acceptable term as defined in Army Regulation 405–80 (10 October 1997) as "a legal document which conveys or grants the right to use Army-controlled real property". No changes are necessary to this paragraph.

36 CFR 327.3(k) Vessels. One commentator expressed concern as to whether the Corps would still have authority to enforce boating regulations under the proposed new language.

Enforcement responsibility will remain unchanged under the revised regulation. The language is essentially the same as the previous edition (Sept. 3, 1985) and is exactly the same as paragraph 327.2h (Vehicles) which also specifies that the operation of a vehicle must be "in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in Sec. 327.26." No changes are necessary to this paragraph.

36 CFR 327.7(c). Camping. One commentator questioned the elimination of the "overnight occupancy" requirement, stating that the new language could allow reserved sites to be unoccupied for up to 14 days without penalty.

The intent of Corps policy is to encourage the actual occupancy of all reserved campsites. Based on this comment, the phrase "without daily occupancy" has been inserted between the words "campsite" and "for the purpose."

One commentator also questioned the use of the word "unauthorized", stating that the word could be interpreted to mean that authorized placement of equipment or personal appearance (for the purposes of reserving a campsite) is acceptable.

The term "unauthorized" acknowledges that there may be instances where there are "authorized" placement of equipment at a site depending on local management policies. For example, when an entrance station is closed, many projects place a sign in the window instructing the camper to select an unoccupied site, set up camp and report back when the entrance station reopens. Eliminating the term "unauthorized" would cause this management practice to be in violation of 36 CFR 327. The term "unauthorized" will remain in this paragraph.

36 CFR 327.7(e) Camping. One commentator suggested that the words "is posted" be removed from the paragraph, stating that this phrase could be interpreted to mean that campsites must be physically posted by a sign, site marker, etc.

For the safety and convenience of all visitors, a method of indicating that a site has been reserved (either by physical posting or by other means) is necessary to avoid possible user conflicts. As a result of this comment, the phrase "or otherwise marked or indicated" has been inserted between the phrase "is posted" and before the phrase "as reserved".

36 CFR 327.20 Unauthorized Structures. Several commentators expressed concern about adding the words "hunting stands or blinds" to the list of items that can only be placed on project lands or waters with a prior permit or other appropriate written authorization by the District Commander.

As a result of these comments, the language has been changed to allow for the use of *portable* hunting stands or blinds without having to obtain a permit or other written approval by the District Commander. The term "non-portable" will be inserted between the words "signs" and "hunting stands". A second sentence will be added to state, "Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of the day's hunt may be used".

36 CFR 327.21(a). Special Events. Several commentators expressed concern over adding "fishing tournaments" to the list of special events items that are prohibited unless written permission has been granted by the District Commander. Some of these commentators requested that a size limit be set, allowing tournaments under 30 boats to be conducted without a permit. Upon further review, fishing tournaments will remain in the regulation as stated due to the size and other variations of Corps projects nationwide. However, to increase flexibility, the following sentence has been added after the first sentence of the paragraph: "Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects".

II. Amendments

The following amendments to 36 CFR Chapter III Part 327, as further revised based on the comments received through the Proposed Rule process, are necessary to clarify and strengthen selected regulations for more effective management and to enhance public safety and enjoyment of Corps water resource development projects. Some of the sections have been reworded and/or have had information added or deleted to clarify the regulations. These minor changes are editorial in nature and have been made to express the intent of the regulation more concisely, and to maintain consistency with existing Public Laws.

Discussion of Specific Rule Changes

In Part 327, Secs. 327.1 through 327.26, all references to "District Engineer" have been changed to read "District Commander."

36 CFR 327.0 Applicability

Section 327.0 is republished with no changes.

36 CFR 327.1 Policy

Section 327.1, paragraph (h), is revised to better define the responsibility of an operator or owner of any vehicle, vessel, or aircraft. Paragraph (i) is added to define the responsibility of a registered user of a campsite, picnic area, or other facility.

36 CFR 327.2 Vehicles

Section 327.2, paragraphs (b) and (d), is edited for consistency. A portion of a sentence has been moved from paragraph (d) into a new paragraph (h) to emphasize the laws and regulating authority for the operation of vehicles. Paragraph (e) is revised by removing the word "project" and paragraph (f) is revised by using the word "designated" to define the recreation area.

36 CFR 327.3 Vessels

Section 327.3, paragraph (a), is revised to substitute the term "personal watercraft" for "jetskis" and to add navigation on ice. A portion of a sentence has been moved from paragraph (c) into a new paragraph (k) to emphasize the laws and regulating authority for the operation of vessels. Paragraph (d) is rewritten for ease of readability and to include environmental features. Paragraph (e) has been edited for clarity and to include requirements of enforcement for non-compliance. Paragraph (h) has been modified to include a restriction about mooring vessels to project structures.

36 CFR 327.4 Aircraft

Section 327.4 is revised to include environmental features in paragraph (c), and the retrieval of person or material or equipment from project lands, and the use of balloons in paragraph (e). Paragraph (f)(3) is revised to be consistent with other sections, and to more concisely define navigation rules. Paragraph (f)(6) is revised to remove repetitiveness.

36 CFR 327.5 Swimming

Section 327.5, paragraph (a), is updated to include wading and public docks, and the last sentence is removed to eliminate repetitiveness with paragraph (c) of this section. Paragraph (b) is revised to include appropriate terminology. Paragraph (c) is revised to include the activity of swinging, and to include trees and structures which are adjacent to project waters.

36 CFR 327.6 Picnicking

Section 327.6 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.7 Camping

Section 327.7 is revised to comply with the National Recreation Reservation Service.

36 CFR 327.8 Hunting, Fishing, and Trapping

Section 327.8 is revised by breaking out each activity into separate paragraphs for better clarification.

36 CFR 327.9 Sanitation

Section 327.9, paragraph (a), is revised to include gray water. Paragraph (b) is revised to clarify the responsibility of the owner of garbage as defined in this section. Paragraph (c) is revised to include disposal of wastes for consistency with other paragraphs in this section.

36 CFR 327.10 Fires

Section 327.10, paragraph (b), is revised to include floatation materials and to clarify the regulation of open burnings for environmental considerations.

36 CFR 327.11 Control of Animals

Section 327.11, paragraph (a), is revised to include waters adjacent to developed recreation areas; to include a sentence which provides enforcement for animals which unreasonably disturb other people; to include the prohibition of animals and pets on playgrounds; and to include a sentence on the prohibition of abandoning any animal on project lands or waters. Paragraph (b) is revised to remove the words, "in sanitary facilities". The word "trails" is added to paragraph (c) for clarification on the types of recreation areas at Corps projects. Paragraph (g) is added to this section to restrict the presence of wild or exotic pets and animals, or any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance on project lands and waters unless authorized by the District Commander.

36 CFR 327.12 Restrictions

Section 327.12 is revised by adding resource protection to the list of reasons that a District Commander may close or restrict the use of a project or portion of a project. Paragraph (c) has been modified by changing the phrase "the safety of another person" to "the safety of any person". The list of audio producing devices has been removed in paragraph (d) and is now generalized to read as a "sound producing device" and generators have been added to the examples of motorized equipment. Paragraph (e) is added to clarify the potential prohibition of alcohol on project lands. Paragraph (f) is added to reflect requirements in E.O. 13058, August 9, 1997.

36 CFR 327.13 Explosives, Firearms, Other Weapons and Fireworks

Section 327.13 is revised by adding the words "other weapons" to paragraph (a). Information on explosives and fireworks is moved from paragraph (a) into a new paragraph (b) for clarification purposes.

36 CFR 327.14 Public Property

Section 327.14 is revised to include paleontological resources, and boundary monumentation or markers in paragraph (a). Paragraph (c) is revised to include clarification on site specific prohibitions. Paragraph (d) is added for clarification on metal detectors and is in conformance with existing Corps regulations.

36 CFR 327.15 Abandonment and Impoundment of Personal Property

Section 327.15, paragraph (a), is revised to include public safety or resource protection to the reasons for closure of a public use area. Paragraphs (b) and (c) are switched for better readability. Paragraph (b) is revised to include private facilities, and to include the impoundment of property for consistency with paragraph (c). Paragraph (c) is revised to increase the fair market value of property which may be disposed of after 90 days, and to correct the word "covered" to "conveyed."

36 CFR 327.16 Lost and Found Articles

Section 327.16 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.17 Advertisement

Section 327.17 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.18 Commercial Activities

Section 327.18 is revised by adding the words "project lands or waters", to clarify where the solicitation of business is prohibited.

36 CFR 327.19 Permits

Section 327.19, paragraph (b), is revised for consistency with current Corps of Engineers terminology. The words "Rivers and Harbors" are added to paragraph (c) for clarification of the

referenced Act. The words "Water Quality" are added to paragraph (d) for clarification on the type of required certification.

36 CFR 327.20 Unauthorized Structures

Section 327.20 is revised to include non-portable hunting stands or blinds, buoys, and docks in the list of structures for purposes of clarification. The section is also revised by changing the word "agreement" to "authorization" for consistency within the document.

36 CFR 327.21 Special Events

Section 327.21, paragraph (a), is revised to include fishing tournaments in the list of special events. The following sentence has been added to the paragraph: "Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects". Paragraph (b) is revised to include the restoration of an area to pre-event conditions for consistency with Corps of Engineers regulations.

36 CFR 327.22 Unauthorized Occupation

Section 327.22 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.23 Recreation Use Fees

Section 327.22 is revised by removing paragraph (b) and incorporating the information contained in this paragraph into paragraph (a) for better readability. Paragraph (c) is redesignated as paragraph (b) and a new paragraph (c) is added to include a prohibition on the failure to pay day use fees and to properly display the day use pass. A prohibition about the fraudulent use of a Golden Age or Golden Access Passports is added to paragraph (d). Paragraph (e) is removed for consistency with the National Recreation Reservation Service.

36 CFR 327.24 Interference With Government Employees

Section 327.24, paragraph (a), is revised to include the words "attempt to kill, or kill," for consistency with Title 18, United States Code. Paragraph (b) is revised to include the words "information deemed necessary for," to provide clarification on type of other identification which may be required by a Federal employee in the performance of issuing citations.

36 CFR 327.25 Violations of Rules and Regulations

Section 327.25 is revised to increase the amount of the maximum fine in accordance with 18 USC, section 3571, and to remove duplicate words.

36 CFR 327.26 State and Local Laws

Section 327.26 is revised to include the "possession" of firearms or other weapons, and "alcohol or other controlled substances" to the list of examples which are governed by state and local laws and ordinances. The paragraphs in this section have been renumbered for consistency and better readability.

36 CFR 327.30 and 327.31

These sections are not amended in this proposed rule.

III. Required Determinations

Executive Order 12291

This final rule is not a major rule as defined by Executive Order 12291.

Regulatory Flexibility Act Determination (5 U.S.C. 601 et seq.)

As required by the Regulatory Flexibility Act, the U.S. Army Corps of Engineers certifies that these regulatory amendments will not have a significant impact on small business entities. This rule is an update to the current regulations governing public use on Corps of Engineers Water Resources Development Projects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.)

This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more on State, local, or tribal governments or private entities.

Dated: February 3, 2000.

Approved:

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director for Civil Works.

List of Subjects in 36 CFR Part 327

Natural resources, Penalties, Public lands, Recreation and recreation areas, Resource management, Water resources.

For the reasons set forth in the preamble, amend Part 327 of Title 36 of the Code of Federal Regulations as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for Part 327 is revised to read as follows:

Authority: 16 U.S.C. 460d; 16 U.S.C. 4601–6a; Sec. 210, Pub. L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.

2. Sections 327.0 through 327.26 are revised to read as follows:

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, state and local laws and regulations remain in full force and effect where applicable to those water resources development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated in this part, the term "District Commander" shall include the authorized representatives of the District Commander.

(c) The term "project" or "water resources development project" refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.

(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal,

state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Commander by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the operator of any vehicle, vessel or aircraft as described in this part, shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel, or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25.

(i) For the purposes of this part 327, the registered user of a campsite, picnic area, or other facility shall be presumed to be responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such facilities as provided for in § 327.25.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, and trailers, campers, bicycles, or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Commander. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier is prohibited.

(d) Vehicles shall be operated in accordance with posted restrictions and regulations.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(f) At designated recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Commander, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(h) Vehicles shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, personal watercraft, and any other such equipment capable of navigation on water or ice, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations and restrictions, including buoys. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is on project waters.

(d) No person shall operate any vessel or other watercraft in a careless, negligent, or reckless manner so as to endanger any person, property, or environmental feature.

(e) All vessels, when on project waters, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with boating safety laws issued and enforced by the state in which the vessel is located. Owners or operators of vessels not in compliance with this section may be requested to remove the vessel immediately from project waters until such time as items of non-compliance are corrected.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any person, property or environmental feature.

(h) Vessels shall not be attached or anchored to structures such as locks, dams, buoys or other structures unless authorized by the District Commander. All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Commander. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92–75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Commander, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(k) All vessels or other watercraft shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultra-light aircraft, motorized hang gliders, hot air

balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Commander is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Commander or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(d) Nothing in this section bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means onto or from project lands or waters without written permission of the District Commander is prohibited.

(f) In addition to the provisions in paragraphs (a) through (e) of this section, seaplanes are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, in this part called seaplanes, at the risk of owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Commander (pursuant to part 328 of this title) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with U.S. Coast Guard navigation rules for powerboats or vessels and § 327.3.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Commander. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Commander, for periods less than 24 hours providing:

(i) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public, and

(ii) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Commander following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless approved by the District Commander.

§ 327.5 Swimming.

(a) Swimming, wading, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and public docks, or other areas so designated by the District Commander.

(b) An international diver down, or inland diving flag must be displayed during underwater activities.

(c) Diving, jumping or swinging from trees, bridges or other structures which cross or are adjacent to project waters is prohibited.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Commander.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Commander.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Commander.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite without daily occupancy for the purpose of reserving that campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Commander is prohibited.

(e) Occupying or placement of any camping equipment at a campsite which is posted or otherwise marked or indicated as "reserved" without an authorized reservation for that site is prohibited.

§ 327.8 Hunting, fishing, and trapping.

(a) Hunting is permitted except in areas and during periods where prohibited by the District Commander.

(b) Trapping is permitted except in areas and during periods where prohibited by the District Commander.

(c) Fishing is permitted except in swimming areas, on boat ramps or other areas designated by the District Commander.

(d) Additional restrictions pertaining to these activities may be established by the District Commander.

(e) All applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, gray water, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Commander. For the purposes of this section, the owner of any garbage, trash, rubbish, debris, dead animals or litter of any kind shall be presumed to be responsible for proper disposal. Such presumption will be sufficient to issue a citation for violation.

(c) The spilling, pumping, discharge or disposal of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resources development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping

equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Commander.

(b) Fires shall be confined to those areas designated by the District Commander, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic and other floatation materials or treated wood products is prohibited. The District Commander may prohibit open burning of any type for environmental considerations.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas or adjacent waters unless penned, caged, on a leash under six feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. No person shall allow animals to bark or emit other noise which unreasonably disturbs other people. Animals and pets, except properly trained animals assisting those with disabilities (such as seeing-eye dogs), are prohibited in sanitary facilities, playgrounds, swimming beaches and any other areas so designated by the District Commander. Abandonment of any animal on project lands or waters is prohibited. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas or on trails except in areas designated by the District Commander.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Commander.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Commander, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

(g) Wild or exotic pets and animals (including but not limited to cougars, lions, bears, bobcats, wolves, and snakes), or any pets or animals displaying vicious or aggressive behavior or otherwise posing a threat to public safety or deemed a public nuisance, are prohibited from project lands and waters unless authorized by the District Commander, and are subject to removal in accordance with Federal, state and local laws.

§ 327.12 Restrictions.

(a) The District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Commander may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, resource protection or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Commander. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of any person is prohibited. Individuals who are boisterous, rowdy, disorderly, or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any sound producing or motorized equipment, including but not limited to generators, vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) The possession and/or consumption of alcoholic beverages on any portion of the project land or waters, or the entire project, may be prohibited when designated and posted by the District Commander.

(f) Unless authorized by the District Commander, smoking is prohibited in Visitor Centers, enclosed park buildings and in areas posted to restrict smoking.

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:

(1) In the possession of a Federal, state or local law enforcement officer;

(2) Being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(3) Being used at authorized shooting ranges; or

(4) Written permission has been received from the District Commander.

(b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with §§ 327.15 and 327.16 except for non-identifiable items such as coins of value less than $25.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or

waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area or for the purpose of providing public safety or resource protection, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Commander, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) Personal property placed on Federal lands or waters adjacent to a private residence, facility and/or developments of any private nature for more than 24 hours without permission of the District Commander shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to impound the property and/or issue a citation as provided for in § 327.25.

(c) The District Commander shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of $100 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Commander. The net proceeds from the sale of property shall be conveyed into the Treasury of the United States as miscellaneous receipts.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Commander. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

(a) The engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited.

(b) It shall be a violation of this part to refuse to or fail to comply with any terms, clauses or conditions of any lease, license or agreements issued by the District Commander.

§ 327.19 Permits.

(a) It shall be a violation of this part to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Commander under the authority of this section. District Commanders will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Manager's office.

(c) Permits for non-floating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resources development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR parts 320 through 330.)

(d) Permits for non-floating structures (issued under the authority of § 327.30) of any kind in waters of water resources development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States, shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR parts 320 through 330). Water quality certification may be required pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).

(e) Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of § 327.30) may be issued in accordance with the project Shoreline Management Plan. Failure to comply with the permit conditions issued under § 327.30 is prohibited.

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs, non-portable hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit, lease, license or other appropriate written authorization has been issued by the District Commander. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license, or other written authorization is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Commander. Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of a day's hunt may be used.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Commander has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Commander shall have authority to revoke permission, require removal of any equipment, and require restoration of an area to pre-event condition, upon failure of the sponsor to comply with terms and conditions of the permit/

permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full-or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88–578, 78 Stat. 897, as amended (16 U.S.C. 460l–6a), is prohibited and is punishable by a fine of not more than $100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas. Fraudulent use of a Golden Age or Golden Access Passport is prohibited.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out the regulations in this part are violation of such regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to the regulations in this part shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.

§ 327.25 Violations of rules and regulations.

(a) Any person who violates the provisions of the regulations in this part, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than $5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of the regulations in this part, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.

§ 327.26 State and local laws.

(a) Except as otherwise provided in this part or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

(1) Operation and use of motor vehicles, vessels, and aircraft;

(2) Hunting, fishing and trapping;

(3) Use or possession of firearms or other weapons;

(4) Civil disobedience and criminal acts;

(5) Littering, sanitation and pollution; and

(6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

[FR Doc. 00–3185 Filed 2–10–00; 8:45 am]
BILLING CODE 3710–41–P

POSTAL SERVICE

39 CFR Part 111

Substantially Related Eligibility Requirements for Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to clarify "substantially related" eligibility requirements for mail matter entered by authorized nonprofit customers.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202)268–5188.

SUPPLEMENTARY INFORMATION: On May 5, 1995, the Postal Service published a final rule in the **Federal Register** (60 FR 22270–22274) implementing provisions of Public Laws 103–123 and 103–329. Those laws restrict the eligibility of certain mailings for the Nonprofit Standard Mail rates to those containing advertisements for products and services that are substantially related to the nonprofit customer's qualifying purpose.

On two occasions in the early 1990s, Congress enacted laws that place limitations on the content of advertising matter eligible for the nonprofit rates. The first of these, codified to a large extent as 39 U.S.C. 3626(j)(1)(A–C), limited solicitations for credit cards and similar financial instruments, insurance, and travel. The second, codified as 39 U.S.C. 3626(j)(1)(D), limited solicitations for all other products and services. This notice concerns the second limitation, specifically the standards regarding substantially related advertisements.

The standards implementing 39 U.S.C. 3626(j)(1)(D) are contained in Domestic Mail Manual (DMM) section E670. Section E670.5.4d provides that the Nonprofit Standard Mail rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends,

describes, or announces the availability of any product or service (other than restricted advertisements for travel arrangements, insurance, and financial instruments such as credit cards) unless the sale of the product or the providing of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates.

The statute directs the Postal Service to standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513(a) and (c) of the Internal Revenue Code to determine whether the sale of an advertised product or service is substantially related to the qualifying purposes of an organization.

Based on the past several years of experience administering the standard, and considering requests from customers seeking guidance, and after further consultation with the IRS, the Postal Service believes it appropriate to refine and clarify its policy by way of revising the standards. The goal of these revisions is to promote certainty for customers and USPS personnel in making accurate determinations of an advertisement's eligibility for the preferred rates based on IRS standards in the tax code and its implementing regulations and court precedents.

The controlling tax law provides that if the products and services sold by a nonprofit organization are substantially related to the organization's exempt purposes, the income derived from their sale is exempt from the Unrelated Business Income Tax (UBIT). See 26 U.S.C. sections 511, 512, 513(a). Accordingly, the amendment at section E670.5.4.d.1 of the DMM explains that the Postal Service will accept mailings at the Nonprofit Standard Mail rate that contain advertisements for products or services so long as the authorized nonprofit organization certifies that the income derived from the sale of the products or services is exempt from UBIT and those products or services are substantially related to the organization's qualifying nonprofit purposes. See 39 U.S.C. section 3626(j)(1)(D)(i).

The certification, which is incorporated as part of the Nonprofit Standard Mail (A) postage statement, is shown here for emphasis. There is no substantive change. However, the mailer's certification of eligibility of substantially related advertisements is specifically emphasized. The Postal Service reserves the right to pursue appropriate remedies if the certification is untrue. The revised certification reads as follows:

The signature of a mailer certifies that: (1) the mailing does not violate DMM E670; (2) the income derived from the sale of any products or services advertised in the mailing is not subject to the Unrelated Business Income Tax (UBIT) and any products and services advertised is substantially related to the nonprofit organization's authorized purpose within the meaning of 39 U.S.C. section 3626(j)(1)(D)(ii)(I) and 26 U.S.C. section 513(a); (3) only the mailer's matter is being mailed; (4) this is not a cooperative mailing with other persons or organizations that are not authorized to mail at Nonprofit Standard Mail rates at this office; (5) this mailing has not been undertaken by the mailer on behalf of or produced for another person or organization not authorized to mail at Nonprofit Standard Mail rates at this office; (6) this mailing, if made by a voting registration official, is required or authorized by the National Voter Registration Act of 1993; and (7) it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing, whether due to a finding that the mailing is cooperative or for other reasons. (If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the nonprofit mailer, and that both the nonprofit mailer and the agent will be liable for and agree to pay any deficiencies.)

Mailers are encouraged, but not required, to begin using this certification statement immediately. The revised nonprofit postage statements will be published in the Postal Bulletin and are posted on USPS.com. Copies have been given to presort software vendors to incorporate into future software releases. Mailers will be required to use this new certification statement at some point in the future, probably when the USPS implements new rates and revises and distributes a whole new set of postage statements. These amendments to the DMM are being published without a notice and comment provision in accordance with 5 U.S.C. 553(b)(B), since no customers are burdened by the rule change. Editorial revisions have been made for clarity and references to related tax law provisions, and regulations are included for customers' convenience in consulting them.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise part E670 of the Domestic Mail Manual to include additional section 5.6(f) and to read as follows:

E Eligibility

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E800 Standard Mail

* * * * *

E670 Nonprofit Standard Mail

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5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.4 Prohibitions and Restrictions

Nonprofit Standard Mail rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

* * * * *

d. Any other product or service unless one of these exceptions is met:

(1) The sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at Nonprofit Standard Mail rates. The criteria in IRS regulations at 26 CFR section 1.513–1(d), supplemented by the definitions in 5.6, are used to determine whether an advertisement, promotion, or offer for a product or service is for a substantially related product or service and, therefore, eligible for Nonprofit Standard Mail rates.

(2) The product or service is advertised in Standard Mail (A) material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the Standard Mail (A) material meets the content requirements for a periodical publication.

* * * * *

5.6 Definitions, Substantially Related Advertising Products

For the standard in 5.4d:

a. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 USC 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or

provision of an advertised product or service, whether sold or offered by the organization or by another party, is substantially related to the qualifying purposes of an organization. (Advertisements in Standard Mail (A) material that meet the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the Nonprofit Standard Mail rates. See 5.4d(2) and 5.8.)

b. To be substantially related, the sale of the product or the provision of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the Nonprofit Standard Mail rates is based. The sale of the product or providing of the service must have a causal relationship to the achievement of the exempt purposes (other than the production of income) of the authorized organization. (Income produced from selling an advertised product or providing a service does not make such action a substantially related activity, even if the income will be used to accomplish the purpose or purposes of the authorized organization.) See 26 CFR section 1.513–1(d).

(1) If an organization pays Unrelated Business Income Tax (UBIT) on the income from the sale of a product or the provision of a service, that activity is by IRS definition not substantially related. See 26 U.S.C. section 512. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related because other criteria may exempt the organization from payment. See 26 CFR section 1.513–1(e).

(2) Third-party paid advertisements may be included in material mailed at the Nonprofit Standard Mail rates if the products or services advertised are substantially related to one or more of the purposes for which the organization is authorized to mail at the Nonprofit Standard Mail rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the Nonprofit Standard Mail rates, unless it is part of material that meets the content requirements described in 5.8 and is not disqualified from using the Nonprofit Standard Mail rates under another provision.

c. Announcements of activities (*e.g.*, bake sale, car wash, charity auction, oratorical contest) are considered substantially related if substantially all the work is conducted by the members or supporters of an authorized organization without compensation. See 26 U.S.C. section 513(a)(1); 26 CFR section 1.513–1(e)(1).

d. Advertisements for products and services, including products and services offered as prizes or premiums, are considered substantially related if the products and services are received by an authorized organization as gifts or contribution. See 26 U.S.C. section 513(a)(3); 26 CFR section 1.513–1(e)(3).

e. An advertisement, promotion, offer, or subscription order form for a periodical publication meeting the eligibility criteria in E211 and published by one of the types of nonprofit organizations listed in 2.0 is mailable at the Nonprofit Standard Mail rates.

f. Unless the mailing is ineligible for the Nonprofit Standard Mail rates for other reasons, mailings will be accepted at the Nonprofit Standard Mail rates upon certification that income derived from the sale of products or services advertised in the mailing is not subject to the Unrelated Business Income Tax (UBIT) described at 26 U.S.C. section 512, and that each of the products or services is substantially related to the nonprofit organization's qualifying purpose.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–3157 Filed 2–10–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD–1999–5915]

RIN 2133–AB39

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is publishing this final rule to implement Title V of the Coast Guard Authorization Act of 1998. This final rule implements regulations that, under certain circumstances, will waive the U.S.-build and other requirements of the Passenger Services Act and section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This administrative process will improve the responsiveness of the Federal Government in meeting the needs of many vessel-operating small businesses.

DATES: The effective date of the final rule is February 11, 2000.

FOR FURTHER INFORMATION CONTACT: You may call Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, at (202) 366–0760, or you may write to him at the following address: Maritime Administration, MAR–832, Room 7201, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Title V of the Coast Guard Authorization Act of 1998 authorizes the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade. In order to carry out the provisions of the law, MARAD developed a procedure (i.e., this rule) for: accepting applications from the public, providing public notice of the intent to issue waivers to foreign built vessels for use in the coastwise passenger trade, a set of criteria to test the merits of the applications, a decision process, and a review and revocation process. The application process requires a $300 non-refundable fee, an "adverse affect" assessment on the U.S.-flag shipping and vessel building community, and a requirement that the vessel must meet U.S. Coast Guard documentation standards. After the decision process is completed and the waiver is approved, MARAD will issue a waiver document that becomes a permanent part of the vessel's coastwise endorsement. The document will set limits on the vessel's geographic use and will require MARAD's prior approval for all significant changes in the vessel's operation. With regard to overall processing, MARAD has also prepared a revocation procedure for use if necessary and a review process where the Maritime Administrator may review the waiver granting and revocation decisions of the MARAD staff.

One portion of the law requires public notice prior to rulemaking. Accordingly, on July 8, 1999 MARAD published a 60-day notice in the **Federal Register** (64

FR 36831) soliciting comments on a proposed rule and information collection to administer a program implementing the above law. In response to our notice, we received three letters expressing opinions and recommending changes. MARAD has considered these comments and has made changes to the regulation as necessary. The comments and our responses follow.

MARAD, at its own initiative, made several changes to the proposed text. None of these changes are substantive. By way of examples: definitions of "Administrator" and "MARAD" are added to reduce the length of the regulation (Sec. 388.2); the wording of the Act is followed more closely, such as "certification" being replaced with "certificate of documentation with appropriate endorsement" (Sec. 388.2 (c) (2)); corrections are made, as in making singular "Applications; fees" (Sec. 388.3 Title) and "origins" (Sec. 388.3 (a) (4)); changed the organization that the check should be made out to (Sec. 388.3 (c)); and the wording "vessel builders" has been used instead of "shipbuilders" in several places.

Comments on the Proposed Rule

"3 Mates' MIMI Connection Inc."

The first letter, from "3 Mates" MIMI Connection Inc.", was an affirmation that MARAD was serving all interests. No further action on the part of MARAD is required with regard to this input.

Classic Sailing Adventures

The second letter, from the president of Classic Sailing Adventures, contained three recommendations. In summary, the recommendations were that MARAD: (1) Should not place geographic restrictions on where a waived vessel can operate; (2) should eliminate the "adverse assessment" consideration on U.S.-flag industries, and, (3) should not require an application fee. MARAD's response is that because of the requirements of the law, and previously enacted legislation, we will not implement any of these recommendations. The reasons for keeping these provisions in the regulation are threefold. The geographic restriction allows MARAD to more closely focus on who might be affected by a waiver. To eliminate the "adverse affect" assessment on U.S. operators and shipbuilders would violate enabling legislation, which specifically requires an "adverse affect" determination. Lastly, the application fee is necessary to recoup estimated direct costs incurred in the processing of each application as required by law.

Passenger Vessel Association

The third letter, containing 20 specific recommendations, was received from the Passenger Vessel Association (PVA), which represents U.S.-flag passenger vessel owners, operators and builders. In order to present the recommendations and MARAD's decisions in a clear and concise manner, we have set up our response in the following format:

Each recommendation is provided a number, followed by the section where the rule has been (or might have been) changed. "Proposed" means the text as originally proposed in MARAD's notice of proposed rulemaking. "Recommendation" means the recommendation of the Passenger Vessel Association, and "Decision" is the action taken by MARAD. Specific word changes are underlined in the recommendation for clarity.

1. Section 388.2 Definitions

Proposed: In paragraph (2) of the definition of eligible vessel "If rebuilt, was rebuilt outside of the United States at least 3 years before the certificate of documentation with appropriate endorsement would become effective."

Recommendation: The PVA requests the inclusion of *"if granted"* in the sentence: "If rebuilt, was rebuilt outside of the United States at least 3 years before the certificate of documentation with appropriate endorsement, *if granted,* would become effective." The words "if granted" ensure applicants know that waivers are not guaranteed.

Decision: MARAD accepts the requested recommendation.

2. Section 388.3 Application; Fee

Proposed: In paragraph (a) "(a) *You* may apply in writing to the Secretary, Maritime Administration* * *"

Recommendation: Change *"You"* in paragraph (a) to read: "(a) *An owner of a vessel* may apply in writing to the Secretary, Maritime Administration* * *"

The recommendation would insert the new words *"an owner of a vessel"* in place of the word *"you"* in order to ensure only vessel owners apply for waivers. The PVA could not see any other rationale for a person other than an owner applying for a waiver.

Decision: MARAD accepts the requested recommendation.

3. Section 388.3 Application; Fee

Proposed: Paragraph (a), question number (5) on the application: "Name, address, and telephone number of the applicant and vessel owner if different from the applicant."

Recommendation: Change paragraph (a), question number (5) on the application to read: "Name, address, and telephone number of the *vessel owner.*"

The recommendation would delete the words *"applicant"* and *"vessel owner if different than applicant"* in order to accept applications only from owners.

Decision: MARAD accepts the recommendation.

4. Section 388.3 Application; Fee

Proposed: This requirement was not covered in the proposed rule.

Recommendation: The PVA recommends a new requirement to the waiver application that would read as a new question (8):

(8) A statement explaining the duration of the applicant's ownership of the vessel, his cost of purchasing or otherwise obtaining the vessel, the person or source from whom he obtained the vessel, and the uses to which he has put the vessel since obtaining it.

The PVA justifies this requirement as better enabling the government to determine if the waiver will have an effect on an industry.

Decision: MARAD believes this question to be intrusive and unnecessary to carry out MARAD's responsibilities and does not accept the change recommendation.

5. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (a) General criteria:

(1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an eligible vessel if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

Recommendation: It is recommended that the words *"only if"* be inserted in paragraph (a) General criteria, (1):

(1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an eligible vessel *only if* we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

The PVA would like to ensure that MARAD would interpret the two industry areas of consideration for adverse impact separately such that an adverse impact on operators *or* vessel builders would be seen to be an adverse impact subject to rejection.

Decision: MARAD agrees with this logic and will follow this interpretation. The words "only if" are added in the final rule.

6. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (a) General criteria, (1):

(1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not *unduly* adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

Recommendation: In paragraph (a) General criteria, (1) The PVA recommends the deletion of the word *unduly* from the phrase as this sets too high of a standard for adverse impact.

Decision: MARAD believes that to remove the word "unduly" would require the rejection of a waiver request for the smallest and most frivolous of adverse conditions. The recommendation is not accepted.

7. Section 388.4 Criteria for Grant of a Waiver

Proposed: This issue was not covered in the proposed rule.

Recommendation: At the end of paragraph (a) General criteria (1), the PVA requests the following statement be inserted to allow larger passenger cruise vessel operators to claim adverse affect.

The determination of unduly adverse affect on a coastwise operator or a U.S. shipbuilder should not be limited to operators or builders of vessels carrying 12 or fewer passengers.

Decision: MARAD will use the following sentence instead:

We may not limit the determination of 'unduly adverse affect' on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.

This is a reasonable recommendation, as it will allow MARAD to gauge impact on U.S.-flag vessels of all sizes. MARAD accepts the recommendation with the changed language.

8. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (a) General criteria, (2) "We may evaluate the expected impact of the proposed waiver on the basis of information received from all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate."

Recommendation: In paragraph (a) General criteria, (2) The PVA recommends that the word *"may"* be replaced with the word *"will"* in the sentence; and that the evaluation will take into account *"all"* the information received from all sources.

We *will* evaluate the expected impact of the proposed waiver on the basis of *all* the information received * * *

Decision: MARAD accepts the premise and changes the wording from "may" to "will" and from "and" to "or" in order to maintain flexibility as to the information needed to make a decision.

We *will* evaluate the expected impact of the proposed waiver on the basis of *all* the information received from all sources, including public comment, internal investigation and analysis, *or* any other sources of information deemed appropriate.

9. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (b) Impact on U.S. vessel builders:

We *may* use the following criteria to determine the effect on U.S. vessel builders.

Recommendation: The recommended change is to delete the word *"may"* and replace it with the word *"will"* in the sentence:

We *will* use the following criteria to determine the effect on U.S. vessel builders.

Decision: MARAD prefers to maintain the flexibility that "may" provides in as much as there may need to be more than one criteria weighed in making a decision.

10. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (c) Impact on coastwise trade operators:

We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and the vessel(s) of an existing operator(s) (or the vessel(s) of an operator that can demonstrate it has taken definite steps to begin operation):

(i) Are of similar size;

(ii) Are of similar characteristics;

(iii) Would provide similar commercial service; and

(iv) Would operate in the same geographic area.

Recommendation: In paragraph (c) Impact on coastwise trade operators, the PVA commented that the original phrasing was too narrow. MARAD's original phrasing would not allow a vessel owner to claim adverse effect if the U.S.-built vessel was a different size, although employed in similar commercial service as a foreign proposed vessel.

Decision: MARAD agrees with the premise of the comment and has changed the final rule to read:

We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.

This new language eliminates the previous criterion that in order to be adversely affected, the impacted vessel must be of similar size and similar characteristics.

11. Section 388.4 Criteria for Grant of a Waiver

Proposed: This issue was not covered in the proposed rule.

Recommendation: PVA proposes a new paragraph (d) as follows:

(d) Advance notice and approval needed for changes.

When we approve a waiver application, we will notify the applicant that no substantial change in the employment of the vessel in the coastwise trade may be made without prior notice to MARAD. Failure to provide advance notice of a proposed change in employment creates a presumption that the waiver should be revoked under section 388.5.

Decision: MARAD has reviewed this proposal and has added the following in the final rule:

(d) *Advance notice and approval needed for changes.*

When we approve a waiver application, we will notify the applicant that the applicant may not make substantial changes in the employment of the vessel in the coastwise trade without prior notice to MARAD. If the applicant fails to provide advance notice of substantial changes to MARAD, we may immediately revoke the waiver under section 388.5.

The change is accepted with MARAD's modifications.

12. Section 388.5 Criteria for Revocation of a Waiver

Proposed: In paragraph (a):

(a) We *may* revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

Recommendation: In paragraph (a), the PVA recommends changing the first sentence to read as follows, deleting the word *"may"* and replacing it with *"will"*.

(a) We *will* revoke a waiver previously granted under this paragraph if we determine

that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement.

Decision: This recommendation is not acceptable to MARAD as "will" is mandatory and requires unconditional revocation. Since the change in employment of the vessel may be a positive impact on the merchant marine with no adverse impact, we do not want to have to automatically revoke a waiver.

13. Section 388.5 Criteria for Revocation of a Waiver

Proposed: In paragraph (a)(3):

(3) The employment of the vessel *unduly* adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States."

Recommendation: In paragraph (a)(3), the change recommendation from the PVA is to remove the word "*"unduly"*" from the phrase "unduly adversely affects" as it sets too high a standard for adverse impact on industry.

Decision: MARAD believes that to remove "unduly" would require the revocation of a waiver request for the smallest and most frivolous of adverse conditions. MARAD does not accept the recommendation.

14. Section 388.5 Criteria for Revocation of a Waiver

Proposed: In paragraph (b):

(b) We *may* evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources * * *

Recommendation: In paragraph (b), similar to other recommendations, PVA requested that the word *"may"* be changed to *"will"* in the following context:

(b) We *will* evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources * * *

Decision: MARAD accepts the premise and changes the wording from "may" to "will" and from "and" to "or" in order to maintain flexibility as to the information needed to make a decision. We also made the change to indicate that we will evaluate * * * on the basis of *all* the information received * * *

(b) We *will* evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of all the information received from all sources, including public comment, internal investigation and analysis, *or* any other sources of information deemed appropriate.

15. Section 388.6 Process

Proposed: These issues were not covered in the proposed rule.

(a) *Recommendation:* The PVA would like additional public notice of federal actions with regard to passenger vessel waivers and recommended the following three changes:

The notice of the waiver application should be printed at least once a week for three weeks in one or more newspapers of general circulation for the geographic area in which the vessel will be operated. The notice should be published by MARAD, and be of one-quarter page newspaper size.

Decision: Because MARAD is an agency of the Federal Government, MARAD considers the **Federal Register** the appropriate public forum for the announcement of proposed waiver actions and will not require the publication of proposed waivers in local newspapers. MARAD does not accept this recommendation.

(b) *Recommendation:* Notice of federal waiver action should be distributed by e-mail to interested parties.

Decision: MARAD actions will be available publicly on the electronic docket provided by DOT. MARAD does not believe that any additional electronic notification is necessary.

(c) *Recommendation:* MARAD should maintain a proposed waiver listing on its website.

Decision: MARAD will post its notices and all comments received on the electronic docket. This activity and the notice in the **Federal Register** will meet our public notice requirements.

16. Section 388.6 Process

Proposed: In paragraph (a) Initial process:

In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will *assume* that there will be no adverse effect.

Recommendation: In paragraph (a) Initial process, the PVA objects to the word "*assume*" as it implies favoritism towards an application for waiver. No specific rewording was recommended.

Decision: MARAD has reviewed this section and is changing the word "assume" to "conclude" in the final rule as this is how MARAD will base its adverse impact decision. The new text will read:

In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will *conclude* that there will be no adverse effect.

17. In Section 388.6 Process

Proposed: In paragraph (a):

The decision will be communicated to the applicant, those who have submitted written comments, and the Coast Guard.

This issue was not covered in paragraph (c).

Recommendation: In paragraph (c), The PVA recommended in paragraph (c) a revision to require notification *in writing* of MARAD actions, such as in the phrase:

Each decision to grant, deny, or revoke a waiver will be *made in writing, and a copy of the written decision* will be provided to each applicant and other parties to the decision.

Decision: MARAD accepts the recommendation that decisions will be in writing and has added that language to both paragraph (a) and (c).

18. Section 388.6 Process

Proposed: In Paragraph (c): certain parties may ". . . petition the Maritime Administrator to review a waiver, waiver denial, or waiver revocation within *five (5) days* of such determination."

Recommendation: In paragraph (c): *Review of determinations,* PVA recommends that the time limits on petitioning should run from the date of a person's receipt of the written notice (not the date of determination). The PVA believes to do otherwise would frustrate a distant party's ability to seek a review or appeal.

Decision: MARAD understands this condition and changes to the following wording:

Applicants and persons who submitted comments in response to a **Federal Register** may petition the Administrator to review a waiver, waiver denial, or waiver revocation *within five (5) business days after MARAD files the decision in the docket.*

This revision by MARAD provides added flexibility for interested parties by making the time limit five business days instead of calendar days. Similarly, making the time limits effective based on when the decision is filed in the docket provides further flexibility. Further, all time references have been changed to business days in the final rule.

19. Under Section 338.7 Sunset Provision

Proposed: In the first sentence: "We will grant no waivers after September 30, 2002 unless the statutory authority to grant waivers is extended beyond that date."

Recommendation: The PVA recommends the deletion of the phrase "unless the statutory authority to grant

waivers is extended beyond that date" as it implies a prediction of Congressional action.

Decision: MARAD accepts the recommendation and has deleted this phrase in the final rule.

20. Section 338.7 Sunset Provision

Proposed: The second sentence reads: "Any waiver granted prior to September 30, 2002 will continue in effect until otherwise invalidated or revoked under chapter 121 of title 46, United States Code."

Recommendation: The PVA claims that this sentence may not have a legal basis.

Decision: MARAD has conducted a legal review of this remark and has decided to rephrase the statement as follows: "We will grant no waivers on or after September 30, 2002."

Therefore, with the public comments having been considered, and the appropriate changes made to the regulation a program description follows:

Program Description: Within the Department of Transportation there are two agencies with responsibilities related to the coastwise trade laws. The U.S. Coast Guard issues the vessel documents and endorsements that authorize vessels to engage in the coastwise trade. However, the Secretary of Transportation has delegated to MARAD the authority to process applications for waivers of the coastwise laws and to determine the effect of waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses. We are outlining the procedures to be followed in processing applications for waivers, or revoking waivers previously granted. Upon grant of a waiver, MARAD will notify the applicant and the U.S. Coast Guard. Thereafter, you may register the vessel so waived with the U.S. Coast Guard under the U.S. Coast Guard's normal procedures, provided the vessel is otherwise eligible.

Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign-built or foreign rebuilt small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Vessels of unknown origin will be considered foreign built. Additionally, vessels requested for consideration must be greater than three (3) years old. We will not grant waivers in instances where such waiver activity will have an unduly harmful impact on U.S. shipyards or U.S.-flag ship operators. Specifically, and in order to meet the public comment provisions of Title V, it is our intention to publish waiver requests for comment in the **Federal Register**. After a period of time to evaluate comments and assess the impact that the proposed waivers will have on the U.S.-flag shipping and shipbuilding industry, we will issue a determination.

In assessing the adverse effect of grant of a particular waiver, we may consider sales of vessels of the same type and size and for the same trade by domestic shipbuilders. As an example, the grant of a waiver for a motor vessel might not have an adverse effect on sales by a builder of sailboats. As for adverse affects on coastwise trade businesses, we may look at the type of service and geographic location of the applicant and the objector. An intended service providing day trips for whale watching might not affect a service providing weeklong trips on a sailing ship. A charter service in Maine might not affect a charter service in California. Each decision will be made on the facts of the individual circumstances, including the degree of competition in a proposed market.

We do not have the authority to waive citizenship requirements for vessel ownership and documentation. The U.S. Coast Guard will ascertain whether the shipowner is qualified as a citizen to register a vessel. In addition, the U.S. Coast Guard, not MARAD, will determine whether a particular vessel will be considered a small passenger vessel or an uninspected passenger vessel. However, we may refuse to process an application if the vessel is not the type eligible for a waiver. Prospective applicants for a coastwise trade law waiver may wish to consult with the U.S. Coast Guard prior to initiating the waiver application process with MARAD.

Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, substantially changes that service and the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel or the vessel is having an unduly harmful impact on U.S.-vessel builders or persons who employ U.S.-built vessels in the domestic trade. The procedure for revocation of a MARAD waiver will include the publication of a notice in the **Federal Register** seeking public comments on the proposed revocation. Secondly, we will determine the extent of the allegedly detrimental activity and, if an undue impact is found, we will issue a formal letter of waiver revocation with an appropriate grace period. This determination will be sent to the U.S. Coast Guard for revocation of the vessel's coastwise endorsement.

MARAD's decisions to grant or deny a waiver and to revoke or not revoke a waiver will not be final until after time for review has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Maritime Administrator to review a waiver determination, or request the Maritime Administrator not to review a waiver determination. Relatively short time periods are provided for this review process.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign re-built small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than (3) years old. We will not grant waivers in instances where such waiver activity will have an unduly adverse affect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, substantially changes that service and the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel or the vessel is having an unduly adverse affect on U.S. vessel builders or persons who employ U.S.-built vessels in the domestic trade.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations

herein have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small entities. After analysis of this final rule MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small businesses. Although we expect many applicants for vessel waivers to be small businesses, we do not believe that the economic impact will be significant. This regulation allows MARAD to waive the U.S.-build and other requirements for eligible vessels and adds a small economic benefit to applicants. This regulation will only allow vessels to carry the statutory maximum of 12 passengers. As a consequence, MARAD estimates that a vessel applicant who receives a waiver may earn a few hundred dollars per year for localized operations (geographic restrictions apply) such as whale watching and personalized fishing expeditions. Also, the economic impact of this rule is limited because it precludes vessel operators from participating in other economic activities such as carrying cargo and commercial fishing.

Environmental Assessment

This rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program would have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking establishes a new requirement for the collection of information. The Office of Management and Budget (OMB) has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) Comments received on this information collection are discussed in the "Comments on the Proposed Rule" section of this notice of final rule. The OMB approval number is 2133–0529.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Consultation and Coordination With Indian Tribal Governments

MARAD believes that regulations in this final rule will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and record keeping requirements.

Accordingly, the Maritime Administration adds a new part 388 to 46 CFR chapter II, subchapter J, to read as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS FOR ELIGIBLE VESSELS

Sec.

388.1 Purpose.
388.2 Definitions.
388.3 Application; fee.
388.4 Criteria for grant of a waiver.
388.5 Criteria for revocation of a waiver.
388.6 Process.
388.7 Sunset provision.

Authority: 46 App. U.S.C. 1114(b); 49 U.S.C. 322; Public Law 105–383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66(cc).

§ 388.1 Purpose.

This part prescribes regulations implementing the provisions of Title V of Public Law 105–383,112 Stat. 3445, which grants the Secretary of Transportation authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than 12 passengers for hire on vessels, which are three years old or more, built or rebuilt outside the United States, and grants authority for revocation of those waivers.

§ 388.2 Definitions.

For the purposes of this part:

(a) Administrator means the Maritime Administrator.

(b) Coastwise Trade Laws include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19,1886 (46 App. U.S.C. 289); and

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Eligible Vessel means a vessel otherwise eligible for a U.S. Coast Guard certificate of documentation (i.e. of five or more tons) that is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement, if granted, would become effective.

(d) MARAD means the Maritime Administration, U.S. Department of Transportation.

(e) Secretary means the Secretary of Transportation.

(f) The terms, small passenger vessel, uninspected passenger vessel, and passenger for hire have the meaning given such terms by 46 2102 U.S.C.

§ 388.3 Application; fee.

(a) An owner of the vessel may apply in writing to the Secretary, MARAD, MAR–120, Room 7210, 400 7th St., SW., Washington, DC 20590, for an administrative waiver of the coastwise trade laws of the United States for an eligible vessel to carry no more than 12 passengers for hire. The application need not be in any particular format, but must be signed and contain the following information:

(1) Name of vessel and owner for which waiver is requested.

(2) Size, capacity and tonnage of vessel (state whether tonnage is measured pursuant to 46 U.S.C. 14502, or otherwise, and if otherwise, how measured).

(3) Intended use for vessel, including geographic region of intended operation and trade.

(4) Date and place of construction and (if applicable) rebuilding. (If applicant is unable to determine the origin of the vessel, foreign construction will be assumed).

(5) Name, address, and telephone number of vessel owner.

(6) A statement on the impact this waiver will have on other commercial passenger vessel operators, including a statement describing the operations of existing operators.

(7) A statement on the impact this waiver will have on U.S. shipyards.

(b) MARAD may ask additional questions of the applicant as part of the application review.

(c) You must enclose a non-refundable application fee for each waiver requested, in the form of a check or money order for $300, made out to the order of "Maritime Administration—Transportation."

§ 388.4 Criteria for grant of a waiver.

(a) General criteria. (1) We will waive the foreign build and/or foreign rebuild prohibition in the coastwise trade laws for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

(2) We may not limit the determination of "unduly adverse affect" on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.

(3) We will evaluate the expected impact of the proposed waiver on the basis of all the information received from all sources, including public comment, internal investigation and analysis, or any other sources or information deemed appropriate.

(b) Impact on U.S. vessel builders. We may use the following criteria to determine the effect on U.S. vessel builders: Whether a potentially impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.

(c) Impact on coastwise trade operators. We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.

(2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market.

(d) Advance notice and approval needed for changes. When we approve a waiver application, we will notify the applicant that the applicant may not make substantial changes in the employment of the vessel in the coastwise trade without prior notice to MARAD. If the applicant fails to provide advance notice of substantial changes to MARAD, we may immediately revoke the waiver under § 388.5.

§ 388.5 Criteria for revocation of a waiver.

(a) We may revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

(1) The vessel is employed other than as a small passenger vessel or an uninspected passenger vessel; or

(2) The employment of the vessel unduly adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States.

(b) We will evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources, including public comment, internal investigation and analysis, or any other sources of information deemed appropriate.

§ 388.6 Process.

(a) Initial process. We will review each application for completeness as received. We will notify the applicant if additional information is necessary or if the application does not meet the initial eligibility requirements for a waiver. All applications that pass the initial screening will be available for public inspection in the Department of Transportation Docket Room following publication in the **Federal Register**. We will publish a notice of such applications in the **Federal Register**. Interested parties will be given an opportunity to comment on whether introduction of any of the proposed vessels would adversely affect them. In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will conclude that there will be no adverse effect. If an objection to an application is received, additional information may be sought from the objector. The applicant will be given a sufficient amount of time to respond. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or may, as a matter of discretion, hold a hearing on the application. The decision will be communicated in writing to the applicant, those who have submitted written comments, and the Coast Guard. If MARAD grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation, provided the vessel and its owner, otherwise qualify.

(b) Revocation. We may, upon the motion of an interested party, or upon our own motion, publish a notice in the **Federal Register**, proposing to revoke a waiver granted under this part. We may request additional information from any respondent to the notice. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and additional publicly available information or may, as a matter of discretion, refer the request for the revocation to a hearing. MARAD will communicate its decision in writing to the waiver recipient, the requestor (if any), each respondent to the proposed revocation notice; and the Coast Guard. If MARAD revokes a waiver, the Coast Guard shall revoke the vessel's coastwise endorsement.

(c) Review of determinations. (1) The decisions by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver, or revoke a waiver will not be final until after time for discretionary review by the Administrator has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Administrator to review a waiver, waiver denial, or waiver revocation within five (5) business days after MARAD files the decision in the docket. Each petition for review should state the petitioner's interest and the reasons review is being sought, clearly pointing out any alleged errors of fact or misapplied points of law. Within three (3) business days of submission of a petition for review, applicants for a waiver and persons who submitted comments in response to a **Federal Register** notice may request the Administrator not to review a waiver, waiver denial, or waiver revocation.

(2) Such petitions and responses may be sent by facsimile to the Secretary, Maritime Administration, at (202) 366–9206. To the extent possible, each petitioner or respondent should send a copy of their petition or response to other interested parties by facsimile at the same time the submission is made to MARAD. The Administrator will decide whether to take review within

two (2) business days following the time for submission of a request that the Administrator not take review. If the Administrator takes review, the determination by the Director, Office of Ports and Domestic Shipping, will be stayed until final disposition. If review is not taken, the determination by the Director, Office of Ports and Domestic Shipping, will become final two (2) business days after the time for submission of requests that the Administrator not take review. If the last day of a time limit falls on a Saturday, Sunday, or Federal holiday, the time is extended to the next business day. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping will become final within ten (10) business days. Each decision to grant, deny, or revoke a waiver will be made in writing, and a copy of the written decision will be provided to each applicant and other parties to the decision. The Secretary, MARAD, may extend any of the time limits for good cause shown.

§ 388.7 Sunset provision.

We will grant no waivers on or after September 30, 2002.

Dated: February 7, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–3176 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 99–330]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document addresses whether the discounted resale obligation of section 251(c)(4) applies to incumbent LEC provision of advanced services without regard to their classification as telephone exchange or exchange access. The Commission determines that analysis of section 251(c)(4) requires a fact-specific evaluation of the features and characteristics of a particular transaction, and concludes that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. The Commission, however, reaches a different result as to advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering, concluding that these advanced services are inherently different from advanced services made available directly to business and residential end-users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).

DATES: Effective March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Staci Pies, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (Second R&O), in CC Docket No. 98–147, adopted November 2, 1999, and released November 9, 1999. This Second Report and Order addresses the issue raised in the Notice of Proposed Rulemaking in this docket (*Advanced Services Order and NPRM*), 63 FR 45246, August 25, 1998. On December 22, 1999, the Commission released an Errata correcting various ministerial errors in the Second R&O. The complete text of the Second R&O and the Errata is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS Inc.), CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Second Report and Order

I. Introduction

1. The Second R&O concludes, based on an examination of the statutory language, the Act's purpose, and the specific facts, that advanced services sold to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. Moreover, the Second R&O concludes that advanced services sold to Internet Service Providers under volume and term discount plans are inherently and substantially different from advanced services made available directly to business and residential end-users, and as such, are not retail services and are not subject to the discounted resale obligations of section 251(c)(4).

II. Discussion

2. The Second R&O finds that advanced services are telecommunications services that predominantly are offered to residential and business end-users and to Internet Service Providers—all subscribers that are not telecommunications carriers. Moreover, advanced services made available directly to business and residential end-users are provided "at retail."

3. The Second R&O finds that although Congress used the term "at retail" to identify the types of transactions that are subject to a wholesale discount, it is not clear how the Commission should interpret the term. The Act does not define the term "at retail," and the legislative history on section 251(c)(4) provides only minimal clarification of Congress' intentions with regard to the appropriate definition and application of the term. Although the legislative history suggests that the Commission should interpret section 251(c)(4) in such a way so as to create affordable resale opportunities in order to stimulate the development of local competition, while still allowing incumbents to recover their costs for providing these services, there is no indication in the legislative history that Congress considered how "at retail" should be construed in the context of the sale of data services to Internet Service Providers as an input component to their information service offerings to the ultimate end-user.

4. Webster's Unabridged Dictionary defines the term "retail" as "the sale of commodities, goods, articles, etc. individually or in small quantities or parcels directly to the consumer." Similarly, Black's Law Dictionary defines retail as "[a] sale for final consumption in contrast to a sale for further sale or processing (*i.e.*, wholesale) * * * to the ultimate consumer." Based on these definitions, the Second R&O finds that retail transactions necessarily involve direct sales of a product or service to the ultimate consumer for her own personal use or consumption.

5. The Second R&O concludes that an Internet Service Provider is purchasing the DSL service for the sole purpose of combining the telecommunications service with its own information service and offering a new retail service, *i.e.*, high-speed Internet service, to the ultimate end-user. In this process, the Internet Service Provider adds value to the bulk DSL telecommunications service by dividing that service for individual consumer use and adding the Internet service, thus enabling the

Internet Service Provider to offer and sell the newly created information service to the ultimate consumer: the residential or business subscriber. For these reasons, the Internet Service Provider is not the ultimate end-user.

6. Further, the DSL services that incumbents are offering to Internet Service Providers specifically contemplate that the Internet Service Provider will be the entity providing to the ultimate end-user many services typically associated with retail sales, thus reinforcing the conclusions of the Second R&O that the bulk DSL services are not retail services offered to the ultimate end-users. Any Internet Service Provider that purchases a bulk DSL service must itself, rather than the incumbent, provide these typical retail services to the ultimate consumer. These facts underscore that bulk DSL services sold to Internet Service Providers are markedly different from the retail DSL services designed for individual end-user consumption.

7. In contrast, the Second R&O finds that some incumbent LECs are selling single lines of DSL service directly to residential and business end-users. These customers buy the DSL service to meet their own internal telecommunications needs. The Second R&O concludes that an incumbent LEC DSL offering to residential and business end-users is clearly a retail offering designed for and sold to the ultimate end-user. Accordingly, the Second R&O finds that DSL services designed for and sold to residential and business end-users are subject to the discounted resale obligations of section 251(c)(4). The Second R&O concludes, however, that section 251(c)(4) does not apply where the incumbent LEC offers DSL services as an input component to Internet Service Providers who combine the DSL service with their own Internet service.

8. The Second R&O notes that the conclusions therein do not change the regulatory status of the Internet Service Provider, which the Commission previously has concluded to be an information service provider rather than a telecommunications carrier.

9. The Second R&O finds that its conclusions are consistent with the Commission's decision regarding the scope of section 251(c)(4) as set forth in the *Local Competition First Report and Order*, 61 FR 45476, August 29, 1996, where the Commission resolved that the type of exchange access services predominantly offered to interexchange carriers are not subject to the discounted resale obligations of section 251(c)(4). Nonetheless, the Second R&O clarifies that advanced telecommunication services sold directly to residential and business end-users are not exempt from these obligations, even though such services may be classified as exchange access services.

III. Final Regulatory Flexibility Analysis (FRFA)

1. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. section 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Advanced Services Order and NPRM*. The Commission sought written public comment on the proposals in the *Advanced Services Order and NPRM*, including comment on the IRFA. This present FRFA conforms to the RFA.

A. Need for and Objectives of This Second Report and Order and the Rules Adopted Herein

2. In order to encourage competition among carriers to develop and deploy new advanced services, it is critical that the marketplace for these services be conducive to investment, innovation, and meeting the needs of consumers. In this Second Report and Order, we seek to ensure that all carriers have economic incentives to innovate and invest in new technologies.

3. We amend our rules to clarify that advanced services sold to Internet Service Providers as an input component to the Internet Service Providers' own retail Internet service offering are not subject to the discounted resale obligations of section 251(c)(4). We also amend our rules to clarify that, notwithstanding the fact that advanced services sold to Internet Service Providers are excluded from the residential resale obligations of section 251(c)(4), advanced telecommunication services sold directly to residential and business end-users are not exempt from these obligations, even though such services may be classified as exchange access services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In the IRFA, we stated that any rule changes would impose minimum burdens on small entities. We indicated that the IRFA solicited comment on alternatives to our proposed rules that would minimize the impact they may have on small entities. The comments we received did not respond directly to the issue addressed in this Order.

C. Description and Estimates of the Number of Small Entities Affected by the Second Report and Order

5. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

6. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,604 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

7. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

8. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules of the present action.

9. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules of the present action.

10. *Local Exchange Carriers, Resellers and Internet Service Providers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), competitive local exchange carriers (CLECs), resellers, or Internet Service Providers (ISPs). The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, there are 1,410 LECs, 129 CLECs, and 351 resellers.

11. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 129 CLECs, and 351 resellers that may be affected by the decisions and rules of the present action.

12. *Internet Service Providers.* SBA has developed a small business size standard for "Information Retrieval Services," SIC code 7375. This category includes establishments primarily engaged in providing online database information retrieval services, on a contract or fee basis. According to SBA regulations, a small business under this category is one having annual receipts of $18 million or less. Based on firm size data provided by the Bureau of the Census, 3,123 firms are small under SBA's $18 million size standard for SIC code 7375. Although some of these ISPs might not be independently owned and operated, we are unable at this time to estimate with greater precision the number of ISPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 3,123 or fewer small entity ISPs that may be affected by the decisions and rules of the present action.

D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. We require incumbent LECs to make available at a wholesale discount advanced services sold at retail to residential and business end-users, without regard to their classification as telephone exchange service or exchange access service. We determine that complying with these rules may require use of operational, accounting, billing, and legal skills. We believe, however, that incumbent LECs will already have these skills.

14. The burden of compliance with this requirement is minimal because, pursuant to section 251(c), incumbent LECs already must comply with state mandated wholesale discount requirements for all telecommunications services they provide at retail to subscribers who are not telecommunications carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

15. Section 251(c)(4) imposes on all incumbent LECs, including small incumbent LECs, the duty to offer for resale at wholesale rates "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The Commission's conclusions in this order clarify this statutory obligation. The order imposes no additional obligations on incumbent LECs.

F. Report to Congress

16. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Procedural Matters

17. Accordingly, *It is ordered that,* pursuant to sections 1 through 4, 10, 201, 202, 251 through 254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 251–254, 256, 271, and 303(r), the Second Report and Order is hereby *Adopted.* The requirements adopted in this Second Report and Order shall be effective March 13, 2000.

18. The actions contained in this Second Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

List of Subjects in 47 CFR Part 51

Communications, Common carriers, Telecommunications

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 51 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

1. The authority for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. Section 51.605 is amended by revising paragraph (b), and adding paragraphs (c), (d) and (e) to read as follows:

§ 51.605 Additional obligations of incumbent local exchange carriers.

* * * * *

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(c) For purposes of this subpart, advanced telecommunications services sold to Internet Service Providers as an input component to the Internet Service Providers' retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(d) Notwithstanding paragraph (b) of this section, advanced telecommunications services that are classified as exchange access services are subject to the obligations of paragraph (a) of this section if such services are sold on a retail basis to residential and business end-users that are not telecommunications carriers.

(e) Except as provided in § 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

2. Section 51.607 is revised to read as follows:

§ 51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

[FR Doc. 00–3196 Filed 2–10–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CFR 48 Parts 1825 and 1852

Standard Clause for Export Controlled Technology

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to add a contract clause the purpose of which is to assure contractors (and offerors) understand that they are responsible for export compliance in accordance with law and regulation, and that they should not rely on NASA to obtain necessary licenses in execution of the contracted work. This clause complies with performance based contacting principles. It notifies the contractor of its responsibilities under the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) during contract performance. Additional, tailored clauses may be required when specific exemptions or licenses are applicable, as, for example, with the International Space Station. These clauses would be developed on a case-by-case basis.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0460.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on October 28, 1999 (64 FR 58031–58032). No comments were received. This final rule adopts the proposed rule without change.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1825 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1825 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1825 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1825—FOREIGN ACQUISITION

2. Sections 1825.970, 1825.970–1, and 1825.970–2 are added to read as follows:

1825.970 Export control.

1825.970–1 Background.

(a) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii).)

(b) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its

use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

1825.970–2 Contract clause.

Insert the clause at 1852.225–70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.225–70 is added to read as follows:

1852.225–70 Export Licenses.

As prescribed in 1825.970–2, insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

ALTERNATE 1 (FEB 2000)

As prescribed in 1825.970–2, add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[FR Doc. 00–3009 Filed 2–10–00; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

RIN 1018–AD85

Additional Comments Sought on Permit Regulations Relating to Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for additional comment on final rule amending general permitting regulations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) published a final rule on June 17, 1999, amending parts 13 and 17 of title 50 of the Code of Federal Regulations (CFR). The final rule, among other things, contained a number of changes to existing Service regulations that apply to permits issued under the authority of the Endangered Species Act of 1973, as amended (Act). The changes were designed to alter the applicability of the Service's general permitting regulations in 50 CFR part 13 to permits issued under section 10 of the Act for Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances. We are seeking additional public comment on a number of the regulatory changes finalized in the June 17, 1999, rule. During the period in which additional public comments are solicited, the regulations published in the final rule of June 17, 1999, will remain in full force and effect. Based on public comments received, we will decide whether portions of the June 17, 1999 final rule should be reproposed. Aspects of the June 17, 1999 final rule that are not included in this document are unaffected.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Send any comments or materials concerning this document to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C., 20240 (Telephone 703/358–2171, Facsimile 703/358–1735). You may examine comments and materials received during normal business hours in room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species (Telephone 703/358–2171, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION: This notice of request for additional comment on the final rule, including the background information for the rule, that amended the general permitting regulations applies to the U.S. Fish and Wildlife Service only. Therefore, the use of the terms Service and "we" in this notice refers exclusively to the U.S. Fish and Wildlife Service. The final rule was published on June 17, 1999, at 64 FR 32706. We published a correction document September 30, 1999, at 64 FR 52676 to correct certain errors that appeared in the final regulations.

Background

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, we published 50 CFR part 13 to consolidate the administration of various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. We intended the general part 13 permitting provisions to be in addition to, and not in lieu of, other more specific permitting requirements of Federal wildlife laws.

Subsequent to the 1974 publication of part 13, we added many wildlife regulatory programs to title 50 of the CFR. For example, we added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the Endangered Species Act, and added part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

In most instances, the combination of part 13's general permitting provisions and part 17's specific permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the "one size fits all" approach of part 13 has been inappropriately

constraining and narrow. These three areas involve Habitat Conservation Planning, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Congress amended section 10(a)(1) of the Act in 1982 to authorize incidental take permits associated with Habitat Conservation Plans (HCP). Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit or longer. We negotiate such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this system as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this arrangement as a problem so long as we can easily transfer incidental take authorization from one purchaser to another.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its citizens. We do not view this activity as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

The above HCP scenarios have not been easily reconcilable with certain sections of part 13. For example, 50 CFR sections 13.24 and 13.25 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they have imposed inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP have foreseen the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could have arisen in attempting to apply the general part 13 permitting requirements to permits issued under part 17 to implement Safe Harbor or Candidate Conservation Agreements with Assurances. A major incentive for property owner participation in the Safe Harbor or Candidate Conservation Agreements with Assurances programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land if it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could have viewed the limitations in several sections (*e.g.*, sections 13.24 and 13.25) as impediments to the development of these Agreements.

Because we believed that it was appropriate to address the potential conflicts between parts 13 and 17 of the regulations, we promulgated revisions to the regulations that specifically identify in which instances the permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits will differ from the general part 13 permit procedures.

Description/Overview of the Notice Requesting Additional Comments

This notice seeks additional public comment on the specific amendments to parts 13 and 17, promulgated in the June 17, 1999, final rule, that dictate when the permitting requirements for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits will vary from the general part 13 requirements. We believe specific regulatory amendments will achieve the purpose of avoiding potential conflicts between these permits and the general part 13 requirements, while more clearly informing potential applicants and the interested public of the ways in which the requirements for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits differ from the general permit requirements. The specific changes on which we seek additional public comment are as follows:

1. Section 13.21(b)(4) generally prevents the Service from issuing a permit for an activity that "potentially threatens a wildlife or plant population." This provision is unnecessary and might even be confusing for issuance criteria for permits under HCPs, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances, since the HCP and Candidate Conservation Agreements with Assurances issuance criteria already incorporate a requirement that the permitted activity cannot be likely to jeopardize the continued existence of a species and since Safe Harbor Agreement permits must meet a net benefit test. The final rule therefore revised the HCP permit issuance criteria in sections 17.22(b)(2) and 17.32(b)(2) to except HCP permits from section 13.21(b)(4) and included in the final Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permit regulations a similar exception from section 13.21(b)(4) (sections 17.22(c)(2) and (d)(2) and 17.32(c)(2) and (d)(2)).

2. Section 13.23(b) generally reserves to the Service the right to amend permits "for just cause at any time." The final rule revised this provision to clarify that the Service's reserved right to amend HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits must be exercised consistently with the assurances provided to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit holders in their permits and in the HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit regulations.

3. The final rule revised section 13.24 to provide a more streamlined approach to rights of succession for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits, and revised section 13.25 to provide for greater transferability of these permits. The restrictions that sections 13.24 and 13.25 previously imposed on permit succession and transferability were justified for most wildlife permitting situations, but they were inappropriate and unnecessary for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. These permits may involve substantial long-term conservation commitments, and the Service negotiates such long-term permits recognizing that there may be succession or transfer in ownership during the term of the permit. Revised sections 13.24 and 13.25 allow this transfer as long as the successor or transferor owners meet the general qualifications for holding the permit and agree to the terms of the HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances. Under revised section 13.25(d), any person is under the direct control of a State or local governmental entity that has been issued a permit and may carry out the activity authorized by the permit if (1) that person is under the jurisdiction of the governmental entity and the permit provides that the person may carry out the authorized activity, or (2) the person has been issued a permit by the governmental entity or executed a written instrument with the governmental entity pursuant to the terms of an implementing agreement.

4. The final rule added a new subparagraph (7) to sections 17.22(b) and 17.32(b) to make clear that HCP permittees remain responsible for mitigation required under the terms of their permits even after surrendering their permits. We have required this approach in many HCPs. The general provision in section 13.26 was silent on

this issue and could have been interpreted as not requiring any further actions after surrender of an incidental take permit, even if mitigation were owed under the terms of the permit for take that had already occurred.

5. The final rule modified the permit revocation criteria in section 13.28(a) to provide that the section 13.28(a)(5) criterion shall not apply to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. The Service determined that it would be more appropriate to refer instead to the statutory issuance criterion in 16 U.S.C. 1539(a)(2)(B)(iv) that prohibits the issuance of an incidental take permit unless the Service finds the permit is not likely to jeopardize the continued existence of the species. The final rule therefore included in the specific regulations for HCP permits a provision (sections 17.22(b)(8) and 17.32(b)(8)) that allows a permit to be revoked if continuing the permitted activity would be inconsistent with 16 U.S.C. 1539(a)(2)(B)(iv). The final rule also included similar provisions for the Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits (sections 17.22(c)(7) and (d)(7), and sections 17.32(c)(7) and (d)(7)).

In keeping with the "No Surprises" rule (sections 17.22(b)(5)–(6) and 17.32(b)(5)–(6)), these provisions would allow the Service to revoke an HCP permit as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit and the Service has not been successful in remedying the situation through other means. The Service is firmly committed, as required by the No Surprises rule, to utilizing its resources to address any such unforeseen circumstances. These principles also apply to Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits.

6. The final rule revised section 13.50 to allow more flexibility where the permittee is a State or local governmental entity and has thus taken a leadership role and is assisting in implementation of the permit program.

7. The final rule added a new subparagraph (5) to sections 17.22(c) and (d) and 17.32(c) and (d) to provide the same "No Surprises" assurances for Safe Harbor Agreement and Candidate Conservation Agreement with Assurance permits that already apply to HCPs.

To ensure that we have promulgated the most effective regulations possible, we seek additional comment on the above described amendments of June 17, 1999, to Title 50, Chapter I, subchapter B of the CFR, as set forth below for the convenience of the reader. The amendments contain the corrected language included in the September 30, 1999 correction document. Bear in mind that these changes are currently in effect, and no new revision to the CFR will result from this document.

§ 13.23 Amendment of permits.

* * * * *

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter shall be consistent with the requirements of §§ 17.22(b)(5), (c)(5), and (d)(5) or 17.32(b)(5), (c)(5), and (d)(5) of this subchapter, respectively.

* * * * *

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or

(2) A receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

(d) In the case of permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter to a State or local governmental entity, a person is under the direct control of the permittee where:

(1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or

(2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

§ 13.50 Acceptance of liability.

Except as otherwise limited in the case of permits described in § 13.25 (d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

§ 17.22 Permits for scientific purposes, enhancements of propagation or survival, or for incidental taking.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an

implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5)(ii) of this section apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in § 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

* * * * *

§ 17.32 Permits—general.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the

general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), * * *

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 10, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in §§ 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in §§ 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures

would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: February 1, 2000.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife, and Parks, Department of the Interior.

[FR Doc. 00–2870 Filed 2–10–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331–0017–02; I.D. 102899B]

RIN 0648–AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the American Fisheries Act (AFA); Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS published in the **Federal Register** of February 3, 2000, a document implementing an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands (BS/AI) directed fishing allowance under section 206(b)(1) of the AFA. The fee system provides the means of repaying a $75 million loan to reduce fishing capacity in that fishery. Fees are first due and payable under the inshore fee system on February 10, 2000. Although the fee system provisions were established in a separate subpart G of part 679, the section numbering was duplicated inadvertently in another recently published BS/AI rule. The intent of this rule is to correct that error by renumbering the sections of Subpart G as §§ 679.70–679.76.

DATES: Effective February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION: NMFS published a document in the **Federal Register** of February 3, 2000, (65 FR 5278)establishing a new subpart G consisting of §§ 679.60–679.66 to implement an inshore fee system for all pollock harvested under the IC of the BS/AI directed fishing allowance. Less than a week earlier, NMFS had published a document in the **Federal Register** of January 28, 2000, (65 FR 4520) establishing a new subpart F consisting of §§ 679.59–679.64 to implement major provisions of the AFA including sideboard directed fishing closures. Thus, §§ 679.60–679.64 of the rule published on January 28, 2000, would be replaced by the unrelated rule published on February 3, 2000. This correction renumbers the new subpart G as §§ 679.70–679.76. In addition, the reference to the definitions section of part 679 is corrected from § 679.01 to § 679.02.

In rule FR Doc. 00–2284, published on Thursday, February 3, 2000 (65 FR 5278) make the following corrections:

1. On page 5279, in the third column, fourth complete paragraph, second line, correct "§ 679.64" to read "§ 679.74".

2. On page 5279, in the third column, sixth complete paragraph, second line, correct "§ 679.63" to read "§ 679.73".

3. On page 5279, in the third column, eighth complete paragraph, third line, correct "§ 679.60" to read "§ 679.70".

4. On page 5280, in the first column, fourth complete paragraph, fourth line, correct "§ 679.64" to read "§ 679.74".

5. On page 5280, in the first column, eighth complete paragraph, first line, correct "§ 679.60" to read "§ 679.70".

6. On page 5280, in the first column, ninth complete paragraph, first line, correct "§ 679.61" to read "§ 679.71".

7. On page 5280, in the first column, tenth complete paragraph, first line, correct "§ 679.63" to read "§ 679.73".

8. On page 5280, in the first column, eleventh complete paragraph, first line, correct "§ 679.64" to read "§ 679.74".

9. On page 5281, in the first column, correct the section numbers in the table of contents for subpart G from §§ 679.60–679.66 to §§ 679.70–679.76.

10. Sections 679.60 through 679.66 appearing on pages 5281 through 5283 are correctly designated as §§ 679.70 through 679.76.

11. On page 5281, in the first column, in corrected §679.70, second line, correct "§ 679.1" to read "§ 679.2".

12. On page 5282, in the second column, in corrected §679.73(c), last line, correct "§ 679.62(b)(1)" to read "§ 679.72(b)(1)".

Dated: February 8, 2000.

Don Knowles,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3214 Filed 2–9–00; 9:10 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 29
Friday, February 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB53

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to provide that applicants may seek financial assistance to provide mobile telecommunications service without regard to whether the applicant is providing basic local exchange service in the territory to be served. RUS is also clarifying its regulations with regard to the application of nonduplication provisions and state telecommunications modernization plans to mobile telecommunications services. In addition, RUS has included criteria for determining "reasonably adequate service" levels for mobile telecommunications service. This proposed rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: Written comments on this proposed rule must be received by RUS or carry a postmark or equivalent by March 13, 2000.

ADDRESSES: Written comments on this proposed rule should be addressed to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700.4). All comments received will be available for public inspection in room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This proposed rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal Mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule

is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Public Law 104–104) and regulatory actions by the Federal Communications Commission are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

RUS regulations currently stipulate that an entity must provide or propose to provide the basic local exchange telephone service needs of rural areas to be eligible for RUS financing (7 CFR 1735.14, Borrower Eligibility) and that loans cannot be made for facilities to serve subscribers outside the borrower's local exchange service area (7 CFR 1735.17, Facilities Financed). The Telecommunications Act of 1996, however, made the term "basic local exchange service" obsolete. The law mandates that universally available and affordable telecommunications services, including access to advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telephone services to rural areas is to make certain providers of services, in addition to providers of local exchange services, eligible for RUS financing. Mobile telecommunications services are included among the telephone services financeable under the Rural Electrification Act (RE Act) and contemplated in the Telecommunication Act of 1996. Mobile telecommunications service is fundamentally different from wireline service and RUS believes that, in addition to wireline service, mobile telecommunications services should be made available in all rural areas. Therefore, RUS is deleting its requirement that all borrowers provide local exchange service. Since mobile telecommunications services do not and cannot serve the same function as contemplated in state telecommunications modernization plans (TMPs) for wireline services (see 7 CFR 1751.106), RUS policy is to consider a borrower receiving a loan to finance such services to be participating in the state's plan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals set forth in the plan. RUS will continue to follow this policy regardless of whether the borrower provides any local exchange services. In addition, RUS has included criteria for determining "reasonably adequate service" levels for mobile telecommunications service.

RUS regulations are also utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's (the Bank) loan program; therefore, these policy revisions would apply to loans made by the Bank, as well.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, the following definitions are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Mobile telecommunications service means the transmission of a radio communication voice service between mobile and land or fixed stations, or between mobile stations.

* * * * *

Public switched network means any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile telecommunications service providers, that use the North American Numbering Plan in connection with the provision of switched services.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

* * * * *

3. Amend § 1735.10 by:

A. Revising paragraph (b);

B. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

C. Add a new paragraph (c).

The revision and addition read as follows:

§ 1735.10 General.

* * * * *

(b) RUS will not make hardship loans, RUS cost-of-money loans, or RTB loans for any wireline local exchange service or similar fixed-station voice service that, in RUS' opinion, is inconsistent with the borrower achieving the requirements stated in the State's telecommunication modernization plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless RUS has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

(c) A borrower applying for a loan to finance mobile telecommunication services shall be considered to be a participant in the State's telecommunication modernization plan so long as the loan funds are not used in a manner that, in the opinion of the Administrator, is inconsistent with the borrower achieving the goals set forth in the plan.

* * * * *

4. Amend § 1735.12 by:

A. Revising paragraph (c) introductory text; and

B. Adding new paragraphs (d) and (e).

The revision and addition read as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service in determining whether such service is reasonably adequate:

* * * * *

(d) RUS shall consider the following criteria for any of mobile telecommunications service in determining whether such service is reasonably adequate:

(1) The extent to which area coverage is being provided as described in 7 CFR 1735.11.

(2) Clear and reliable call transmission is provided with sufficient channel availability.

(3) The mobile telecommunications service signal strength is at least—85dBm (decibels expressed in miliwatts).

(4) The mobile telecommunications service is interconnected with the public switched network.

(5) Mobile 911 service is available to all subscribers, when requested by the

local government entity responsible for this service.

(6) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Mobile telecommunications service is not provided at rates which render the service unaffordable to a majority of the rural persons.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

(e) RUS does not consider mobile telecommunications service facilities a duplication of existing wireline local exchange service or similar fixed-station voice facilities. RUS may finance mobile telecommunications systems designed to provide eligible services in rural areas under the Rural Electrification Act even though the services provided by the system may incidentally overlap services of existing mobile telecommunications providers.

5. Amend § 1735.14 by:

A. Removing paragraph (c)(1);

B. Redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2), respectively; and

C. Adding paragraph (d).

The addition reads as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an existing RUS telecommunications borrower providing such service.

§ 1735.17 [Amended]

6. Amend § 1735.17 by:

A. Removing paragraph (c)(3); and

B. Redesignating paragraphs (c)(4) and (c)(5) as (c)(3) and (c)(4), respectively.

Dated: February 2, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–3040 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1060]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is seeking public comment on a proposed exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the Board's Regulation Y. The proposed amendment would establish a "safe harbor" permitting a bank to offer a credit card that can be used to make purchases from a retailer affiliated with the bank.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Comments should refer to Docket No. R–1060, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW) at any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information (12 CFR 261.14).

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Andrew S. Baer, Attorney (202/452–2246), Legal Division. Users of Telecommunication Device for Deaf (TTD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying the availability or price of a product or service to the purchase by a customer of another product or service offered by the bank or any of its affiliates. A bank engages in a tie for purposes of section 106 by conditioning the availability of, or offering a discount on, one product or service (the "tying product") on the condition that the customer obtain some additional product or service (the "tied product") from the bank or from any of its affiliates. Violations of section 106 can be addressed by the Board through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other party through an action for damages. 12 U.S.C. 1972, 1973, and 1975.

Section 106 contains an explicit exception (the "statutory traditional bank product exception") that permits a bank to tie a product or service to a loan, discount, deposit, or trust service ("a traditional bank product") offered by that bank. The Board has extended this exception by providing that a bank may condition the availability of, or vary the consideration for, any product or service on the condition that the customer obtain a traditional bank product from an affiliate of the bank (the "regulatory traditional bank product exception").[1] The Board adopted the regulatory traditional bank product exception in its present form because inter-affiliate transactions do not appear to pose any greater risk of anti-competitive behavior than intra-bank transactions, and because Congress had extended the statutory traditional bank product exception to cover inter-affiliate transactions for savings associations and their affiliates.[2]

Section 106 authorizes the Board to grant exceptions to its restrictions by regulation or order. On December 7, 1999, the General Counsel of the Board issued a legal interpretation indicating the Board's view that section 106 does not prohibit a credit card bank from issuing a credit card that may be used to make purchases from a retailer affiliated with the credit card bank ("private-label credit card").[3] The Interpretation did not address the situation where a bank or its retailer affiliate offer discounts on their respective products in connection with a private-label credit card arrangement, as that situation was not presented by the request for an interpretation. The proposed exception also does not cover that situation.

Proposed Rule

The Board is proposing to use its statutory authority to grant a regulatory exemption to section 106 for private-label credit cards that may be used at a retailer affiliated with the issuing bank. The Board is proposing the exception in order to disseminate the Board's view, as reflected in the Interpretation, that such arrangements are not as a general matter anticompetitive, and to create a rule of more general applicability not limited to the facts on which the Interpretation was based.

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[1] *See* 12 CFR 225.7(b)(1).

[2] *See* 62 FR 9289, 9314 (February 18, 1997), and 12 U.S.C. 1464(q)(1)(A).

[3] *See* Letter from J. Virgil Mattingly, Jr., to William S. Eckland, Esq., dated December 7, 1999 (the "Interpretation").

Applicability of Section 106

Because section 106 prohibits a bank from offering or discounting a product or service on the condition that the customer obtain some additional product or service from the bank or from any of its affiliates, the question arose as to whether a private-label credit card arrangement violates that restriction when credit is extended only when a customer makes a purchase from a retailer affiliated with the issuing bank. Although the extension of credit through the private-label credit card is not conditioned on any particular product being purchased, or on purchases being made from any particular retailer, the lack of a network with other retailers limits the ability of the customer to access that credit other than by purchasing a product or service from the affiliated retailer. In the private-label credit card arrangement described in the Interpretation, there is no contractual limitation on where the card can be used to make purchases. The reason why the private-label credit card can only be used at the affiliated retailer is that the retailer is the only merchant able to communicate with the issuing bank regarding whether credit should be extended on the card.

Exception

The Interpretation reflects the Board's belief that private-label credit cards issued by a bank affiliated with the relevant retailer do not generally involve the type of anticompetitive activity that section 106 was intended to address. Section 106 was intended to prevent banks from using their market power in banking products to gain an unfair competitive advantage in markets for non-banking products and services. The type of private-label credit card arrangements described in the Interpretation do not raise such concerns, however, because they do not involve a banking organization's attempt to expand into retailing, but rather a retailer's attempt to provide an additional convenience for its customers. Additionally, because the same products and services can be purchased from the retailer for the same price using payment methods other than the private-label credit card, customers wishing to purchase those products and services are not coerced into using the private-label credit card. The Interpretation also noted that such transactions are driven by the customer's desire to purchase the product or service, not by the availability or nonavailability of credit from the affiliated bank.

For these reasons, the Board is proposing to establish, through a regulatory exception, a safe harbor for private-label credit card arrangements where such cards may only be used to make purchases from a retailer affiliate of the issuing bank. The proposed safe harbor is consistent with the concerns of section 106 about anticompetitive behavior. The proposal requires that the products or services be available for purchase at the same price by means other than the private-label credit card, such as cash or credit cards issued by a third party. Furthermore, the issuing bank may not discount the credit it offers through the private-label credit card to customers who use the card to make purchases at the bank's retailer affiliate. Because a customer could purchase any product or service from the retailer for the same price, regardless of the payment method, the only incentive for the customer to use the private-label credit card is the convenience it offers as an alternative source of credit for use in making purchases from the retailer affiliate. For this reason, the Board does not believe that the proposed rule would allow coercive or anticompetitive practices, or otherwise contravene the purposes of section 106.

Finally, the Board believes that the proposed rule would benefit the public by providing consumers with alternative sources of consumer credit.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

Regulatory Flexibility Act

This proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is intended to allow affected businesses to expand the services they may offer to customers.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.7, a new paragraph (b)(4) is added to read as follows:

§ 225.7 Exceptions to tying restrictions.

(b) * * *

(4) *Safe harbor for retailer-affiliated credit card banks.* Issue credit cards that may be used to purchase products or services from a retailer affiliated with the bank, if:

(i) The products or services may be purchased from the retailer affiliate using other payment methods, including credit cards issued by other banks;

(ii) The bank does not discount the credit it offers through the credit card to customers of its retailer affiliate; and

(iii) The retailer affiliate of the bank does not discount its products or services when purchased using credit cards issued by the bank.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 7, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–3162 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–05–AD]

Airworthiness Directives; Eurocopter Deutschland GmbH (Eurocopter) Model EC 135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter Model EC 135 helicopters. This proposal would require replacing a certain oil cooler fan splined drive shaft (shaft) with a different airworthy shaft and re-identifying the part numbers on the oil cooler fans. This proposal is prompted by two incidents in which the shaft broke. The actions specified by the proposed AD are intended to prevent

failure of the shaft, loss of oil cooling, and a subsequent engine shutdown during flight.

DATES: Comments must be received on or before April 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–05–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 135 helicopters. The LBA advises that breakage of fan drive shafts, which occurred on two helicopters, resulted in failure of the fan and reduced oil cooling.

Eurocopter has issued Eurocopter Alert Service Bulletin No. EC 135–79A–001, dated January 23, 1998 (ASB), which specifies replacing the "shafts with spline" with new reinforced shafts. The LBA classified this ASB as mandatory and issued AD No. 1998–109, dated February 26, 1998, in order to assure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model EC 135 helicopters of the same type design registered in the United States, the proposed AD would require replacing each shaft, part number (P/N) L 792M3004 225, with an airworthy shaft, P/N L 792M3004 235; re-identifying the left oil cooler fan, P/N L792M3004 102 with P/N L 792M3004 103, and right oil cooler fan, P/N L792M3005 102 with P/N L 792M3005 103, and reflecting these changes in the gearbox component history card or equivalent record. Replacing, re-identifying, and recording these changes would be considered terminating actions for the requirements of this AD.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to replace and re-identify the affected parts and record these actions in the gearbox history card or equivalent record, and that the average labor rate is $60 per work hour. The manufacturer has stated in Alert Service Bulletin EC 135–79A–001, dated January 23, 1998, that required parts would be provided at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,160 to accomplish the proposed actions on all the U.S. fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter Deutschland GmbH: Docket No. 99–SW–05–AD.

Applicability: Model EC 135 helicopters, serial numbers 0005 through 0071, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopter that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 50 hours time-in-service, unless accomplished previously.

To prevent failure of an oil cooler fan splined drive shaft (shaft), loss of oil cooling, and a subsequent engine shutdown during flight, accomplish the following:

(a) Replace each shaft, part number (P/N) L 792M3004 225, with an airworthy shaft, P/N L 792M3004 235.

(b) Re-identify the P/N on each oil cooler fan (fan) using a rubber stamp or smudge-proof paint or equivalent as follows:

(1) On the left fan, change the P/N from L 792M3004 102 to L 792M3004 103.

(2) On the right fan, change the P/N from L 792M3005 102 to L 792M3005 103.

(c) Change the P/N on the gearbox component history card or equivalent record to reflect the revised part numbers.

Note 2: Eurocopter Alert Service Bulletin No. EC 135–79A–001, dated January 23, 1998, pertains to the subject of this AD.

(d) Replacing the shaft, re-identifying the fans, and recording this on the gearbox component history card or equivalent record constitute terminating actions for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD No. 1998–109, dated February 26, 1998.

Issued in Fort Worth, Texas, on February 7, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–3224 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–39–AD]

Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, that currently requires inspecting the main gearbox suspension bi-directional cross-beam (cross-beam) for cracks, and replacing the cross-beam if a crack is found. This action would require the same inspections as the existing AD but would add the time intervals for performing repetitive dye-penetrant inspections on cross-beams with 5,000 or more hours time-in-service (TIS). This proposal is prompted by the discovery that time intervals for performing the required dye-penetrant inspections are not included in the existing AD. The actions specified by the proposed AD are intended to prevent failure of the cross-beam that could cause the main gearbox to pivot resulting in severe vibrations and a subsequent forced landing.

DATES: Comments must be received on or before April 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–39–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–39–AD, 2601

Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 19, 1998, the FAA issued AD 98–14–01, Amendment 39–10635 (63 FR 35128, June 29, 1998), to require visual and dye-penetrant inspections of the cross-beam for cracks and replacement with an airworthy cross-beam if a crack is found. That action was prompted by several reports of cracks in the cross-beam. The requirements of that AD are intended to provide a terminating action to prevent failure of the cross-beam that could cause the main gearbox to pivot resulting in severe vibrations and a subsequent forced landing.

Since the issuance of that AD, the FAA has discovered that the time intervals for performing the required repetitive dye-penetrant inspections on cross-beams with 5,000 or more hours TIS were not included. The initial dye-penetrant inspection for cracks must be performed when the cross-beams attain 5,000 hours TIS or 2,750 cycles, whichever occurs first. Thereafter, repetitive dye-penetrant inspections for cracks must be performed at intervals not to exceed 550 hours TIS or 2,750 operating cycles, whichever occurs first.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters of the same type design, the proposed AD would supersede AD 98–14–01 to require, at specified time intervals or cycles, repetitive visual and dye-penetrant inspections of the cross-beam for cracks, and replacing, if necessary, the cross-beam with an airworthy cross-beam.

The FAA estimates that 454 helicopters of U.S. registry would be affected by this proposed AD; that it would take approximately 0.5 work hour per helicopter to accomplish each visual inspection, with an estimated average of 150 visual inspections per helicopter, 3 work hours per helicopter to accomplish a dye-penetrant inspection, with an estimated average of 3 dye-penetrant inspections per helicopter, and 6 work hours per helicopter to replace the cross-beam, if necessary; and that the average labor rate is $60 per work hour. Parts would cost approximately $6,000 per cross-beam. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,175,600 to perform 150 visual inspections and an average of 3 dye-penetrant inspections per helicopter and to replace the cross-beam on all 454 helicopters.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10635 (63 FR 35128, June 29, 1998) and by adding a new airworthiness directive (AD) to read as follows:

Eurocopter France: Docket No. 99–SW–39–AD. Supersedes AD 98–14–01, Amendment 39–10635, Docket No. 97–SW–25–AD.

Applicability: Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, with main gearbox suspension bi-directional cross-beam (cross-beam), part number (P/N) 350A38–1018–all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cross-beam that could lead to rotation of the main gearbox resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For cross-beams having 2,000 or more hours time-in-service (TIS) or 10,000 or more operating cycles, whichever occurs first:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Within 30 hours TIS, and thereafter at intervals not to exceed 30 hours TIS or 150 operating cycles, whichever occurs first, visually inspect the cross-beam for cracks in accordance with paragraph 2.B.1 of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997.

(2) If a crack is found remove the cross-beam and replace it with an airworthy cross-beam.

(b) For cross-beams having 5,000 or more hours TIS:

(1) In addition to continuing the repetitive inspections of paragraph (a)(1), before further flight, and thereafter at intervals not to exceed 550 hours TIS or 2,750 operating cycles, whichever occurs first, perform a dye-penetrant inspection in accordance with paragraph 2.B.2) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1996.

(2) If a crack is found remove the cross-beam and replace it with an airworthy cross-beam.

(c) Prior to installing any replacement cross-beams, regardless of TIS or operating cycles, inspect the replacement cross-beam in accordance with paragraph (b)(1) of this AD.

(d) Modifying the helicopter in accordance with paragraph 2.B of the Accomplishment Instructions in Eurocopter Service Bulletin No. 63.00.07, applicable to Model AS–350B, BA, B1, B2, and D helicopters, or Eurocopter Service Bulletin No. 63.00.13, applicable to Model AS–355E, F, F1, F2, and N helicopters, both dated April 7, 1997, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–156–071(B)R1 and AD 96–155–053(B)R1, both dated June 4, 1997.

Issued in Fort Worth, Texas, on February 4, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–3225 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE99

Technical Revisions to Medical Criteria for Determinations of Disability

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We are proposing to make a number of technical revisions to the Listing of Impairments (the listings). We use the listings to adjudicate claims for disability under titles II and XVI of the Social Security Act (the Act) when we evaluate claims of individuals at steps 3 of our sequential evaluation processes for adults and children. The proposed changes reflect advances in medical knowledge, treatment, and terminology, clarify certain listing criteria, remove listings that we rarely use or that are redundant, and add new listings consistent with current medical practice.

These proposed revisions are technical changes that are intended to clarify or modify current language to improve understanding and usability. They are not intended to be a comprehensive update of the listings.

DATES: To be sure that your comments are considered, we must receive them no later than April 11, 2000.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703, sent by telefax to (410) 966–2830, sent by e-mail to "regulations@ssa.gov", or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Carolyn Kiefer, Social Insurance Specialist, Office of Disability, Social Security Administration, 3–B–9 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–9104 or TTY (410) 966–5609.

SUPPLEMENTARY INFORMATION:

Background

Title II of the Act provides for the payment of disability insurance benefits to workers insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, title XVI of the Act provides for Supplemental Security Income (SSI) payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, "disability" means that an impairment(s) results in an inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) results in "marked and severe functional limitations." Under both title II and title XVI, disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

The process for determining whether an individual (except for an individual under age 18 claiming SSI benefits based on disability) is disabled based on the statutory definition is set forth in our longstanding regulations at §§ 404.1520 and 416.920. These regulations provide for a sequential evaluation process for evaluating disability. There is a separate sequential evaluation process described in regulations at § 416.924 for individuals under age 18 claiming SSI benefits based on disability. At step 3 of both sequential evaluation processes we ask the same question: Whether an individual who is not engaging in substantial gainful activity and who has an impairment(s) that is severe, has an impairment(s) that meets or equals in severity the criteria of an impairment listed in appendix 1 of subpart P of part 404, the listings. The listings describe, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity (or in the case of a child under age 18 claiming SSI benefits based on disability, to cause marked and severe functional limitations). Although the listings are contained only in part 404, they are referenced by subpart I of part 416.

The listings are divided into Part A and Part B. The criteria in Part A are applied in evaluating impairments of persons age 18 or over. The criteria in Part A may also be used to evaluate impairments in persons under age 18 if the disease processes have a similar effect on adults and children. In evaluating disability for a person under age 18, we first use the criteria in Part B and, if the criteria in Part B do not apply, we use the criteria in Part A (see §§ 404.1525 and 416.925).

These changes are not intended to be a comprehensive update and revision of the listings. We continue to review each of the body system listings to determine appropriate revisions and updates of a more substantive nature. If we determine that more substantive revisions are necessary, we will publish a notice in the **Federal Register** describing those proposed revisions and requesting public comments. Therefore, we are now requesting comments only on the specific technical changes we are

proposing in this notice of proposed rulemaking.

The following is a detailed summary of the proposed revisions and our reasons for proposing these changes.

Explanation of Proposed Revisions

We propose to revise the language throughout all listings regarding references to "X-ray(s)," roentgenograms (which is another word for X-rays), and radiographic studies (which is another process similar to roentgenography), to include "other appropriate medically acceptable imaging" as satisfactory medical evidence. The proposed changes occur in the following sections and/or listings:

Sections 1.00A, 1.00B and 1.00C of the preface to the musculoskeletal body system and Listings 1.03, 1.04, 1.05, 1.08, 1.09, and 1.11;

Section 2.00B2 of the preface to the special senses and speech body system;

Section 4.00C3 of the preface to the cardiovascular system;

Section 5.00C of the preface to the digestive system and Listings 5.03, 5.04, and 5.05;

Listing 6.02C1 of the genito-urinary system;

Listing 7.16A of the hemic and lymphatic system;

Listing 9.08A of the endocrine system;

Listing 14.08M6 of the immune system;

Section 100.00B of the preface to growth impairments;

Listings 101.02A3 and 101.08 of the musculoskeletal system;

Listing 103.04B3 of the respiratory system;

Section 104.00E of the preface to the cardiovascular system;

Section 105.00B of the preface to the digestive system and Listings 105.05A and 105.05C;

Section 113.00B of the preface to the neoplastic diseases; and,

Listing 114.08N6 of the immune system.

We are proposing these changes to recognize that there have been significant advances in medical imaging, such as (but not limited to) computerized axial tomography (CAT scan) and magnetic resonance imaging (MRI), and to increase the types of evidence that can be used to meet the listings. Under §§ 404.1525 and 416.925 of our regulations, an individual's impairment "meets" the criteria of a given listing only by showing the same findings that are required in the listing. Because of this, an individual who has all of the findings required by a listing except X-ray evidence but who has the same or better information from a CAT scan, MRI, or other medically acceptable modern imaging technique than can be gotten from X-ray cannot meet the listing; instead, we must find that the individual's impairment medically equals the listing. The proposed changes would allow us to find that such individuals have impairments that meet these listings. We also made the proposed phrase nonspecific to allow for flexibility in the use of the use of the listings should new medically appropriate imaging techniques be developed in the future.

We are also proposing to add a brief explanation in the prefaces of the musculoskeletal adult and childhood listings (in paragraphs 1.00B and 101.00B, respectively) to explain what we mean by appropriate medically acceptable imaging techniques, and to explain that we will not purchase such expensive tests as CAT scans or MRIs in the course of obtaining documentation, but we will consider the results of these tests if they are available.

1.01 and 101.01 Category of Impairments, Musculoskeletal

We are making a correction to Listing 1.09 to move the word "of" to its proper placement following the parenthetical text that describes what we mean by "Amputation or anatomical deformity." The "of" is currently incorrectly placed after the word "deformity," and before the explanatory parenthetical language.

We are proposing to amend childhood Listing 101.08, *Chronic osteomyelitis*, to make it consistent with the language and criteria of adult Listing 1.08, which addresses osteomyelitis or septic arthritis. Since the adult listing is more complete and comprehensive, we are amending the childhood listing to be consistent with the adult listing.

2.00 and 102.00 Special Senses and Speech

We propose to revise the heading of 2.00A to read "*Disorders of Vision*" because the term currently used, "*Ophthalmology*," is most commonly used to define the branch of medicine that deals with the anatomy, physiology, and pathology of the eye, whereas these listings, in fact, address visual disorders.

We propose to remove the word "central" in referring to vision and visual acuity throughout 2.00 and 102.00 because it is redundant. "Central vision" is medically synonymous with "visual acuity." We propose to revise 2.00A1 to explain that diseases or injury of the eyes may result in loss of visual acuity or loss of the peripheral field. It is the loss of visual acuity that results in inability to distinguish detail and prevents reading and fine work, while the loss of the peripheral field restricts the ability of an individual to move about freely. We propose to clarify this section by stating that the extent of impairment of sight should be determined by visual acuity and peripheral field testing. Likewise, in 2.00A2, with the removal of the word "central," we also propose to revise the opening sentence to clarify that loss of visual acuity may result in impaired distant and/or near vision (not "caused by" impaired vision).

Thus, we are proposing to remove the word "central" from the following: 2.00A1, 2.00A2, 2.00A5, 2.00A6, 2.02, Table No. 1 and its footnotes 2 and 3, 102.00A, and 102.02.

Also, we propose to further revise Table No. 1 by adding the word "acuity" to the first line of the chart, "Percent visual acuity efficiency," and also to the title, "Percentage of Visual Acuity Efficiency Corresponding to Visual Acuity Notations * * *".

Additionally, we propose clarifying the language of Listing 2.04 by replacing the phrase "central visual efficiency" with the phrase "visual acuity efficiency."

We propose to revise 2.00B3 by removing the word "organic" from its title, removing the first sentence of the section, and amending the second sentence to clarify that the ability to produce speech by any means includes the use of mechanical or electronic devices that improve voice or articulation. Also in this section, we propose to correct the reference to "neurologic" disorders by appropriately calling them "neurological" disorders.

We propose to remove Listing 2.05, *Complete homonymous hemianopsia* (with or without macular sparing) because the language of 2.05 now directs that this disorder should be evaluated under Listing 2.04. Since we are not proposing to change Listing 2.04 in any substantive way, we will still use this listing to evaluate complete homonymous hemianopsia and there is no need to retain the separate listing.

We propose to revise Listing 2.09, *Organic loss of speech*, to remove the word "organic" because we believe that the cause of loss of speech (*i.e.*, whether it is or is not "organic") should be immaterial for purpose of applying this listing. We also propose to change the word "and" to "or" to clarify that the inability to produce speech that can be heard, understood, *or* sustained will meet the listing, instead of the requirement under the current language that all three of these factors be present. We believe that any one of these factors is sufficient to establish that an

individual has a listing-level impairment.

3.00 and 103.00 Respiratory System

In the listing preface, we propose to revise some of the technical language dealing with the requirements for spirometry calibration and testing for diffusing capacity of the lungs for carbon monoxide (DLCO) to comply with the standards of current medical practice.

In 3.00E and 103.00B, *Documentation of pulmonary function testing,* we propose to revise the last sentence of the third paragraph of each section to explain that the testing device must have a daily recorded calibration of volume units performed sometime prior to the pulmonary function study. This revises the current requirement for separate calibration tracings to be performed at the time each pulmonary function test is performed. We believe a single daily calibration of the testing device is sufficient to provide accurate pulmonary measurements for purposes of our listings.

In 3.00F1, *Diffusing capacity of the lungs for carbon monoxide (DLCO),* fifth paragraph, fourth and fifth sentences, we are proposing the deletion of the reference to the algorithm used to calculate test results and the language regarding "independent calculation of results." We believe this algorithm no longer needs to be provided in the documentation of DLCO since adjudicators are not expected to recompute the test results. Rather, we are asking that the file include documentation of the source of the predicted equation to permit adjudicators to verify that the test was performed adequately.

3.01 and 103.01 Category of Impairments, Respiratory System

We propose to add a new listing addressing lung transplants for both adults and children. Listing 3.11 for adults and Listing 103.05 for children, *Lung transplant,* is proposed to be consistent with other organ transplant listings and to provide that an individual undergoing a lung transplant will be considered under a disability for 12 months following the date of surgery with evaluation of any residual impairment thereafter.

4.00 and 104.00 Cardiovascular System

In 4.00A, *Introduction,* fourth paragraph, second sentence, and 104.00A, *Introduction,* sixth paragraph, second sentence, we propose to revise the language to change the word "make" to the word "consider" in the clause referring to making a medical equivalence determination in the case of an adult, and for children, a medical or functional equivalence determination. The current language could be misinterpreted to mean that, when an individual has a medically determinable impairment that is not listed, or a combination of impairments no one of which meets a listing, we will find that his or her impairment is medically equivalent to a listing, or for children, medically or functionally equivalent to a listing. Our intent has always been to indicate only that we will consider whether the impairment or combination of impairments is medically equivalent (or for children medically or functionally equivalent) to a listing. This is only a clarification of what we have always intended by the language in these sections.

5.00 and 105.00 Digestive System

As discussed above, we are proposing to amend Listings 5.05A and 105.05C to allow for documentation of esophageal varices by X-rays, endoscopy, or other appropriate medically acceptable imaging. This will allow for changes in medical technology over time and will eliminate the current unnecessary language differences in the parenthetical portion of these listings.

We propose to add a new listing to both the adult and childhood listings for the digestive system to address liver transplantation in keeping with our other organ transplantation listings. For adults, the new listing will be 5.09, *Liver transplant;* for children, it will be 105.09, *Liver transplant.*

Also, we are correcting a typographical error in 5.00C.

7.00 and 107.00 Hemic and Lymphatic System

We propose to add T-cell lymphoblastic lymphoma to the discussion of acute leukemia in sections 7.00E and 107.00C as well as in Listings 7.11 and 107.11. This disorder follows the same course and requires the same treatment as acute leukemia and is just as serious. By including this disorder in the preface and as a listed impairment in both the adult and childhood listings, we believe evaluation will be simplified by specifically directing adjudicators to the criteria for evaluating this disease.

We propose to amend the reference to bone marrow transplantation in Listing 7.17, *Aplastic anemias or hematologic malignancies (excluding acute leukemia),* to "bone marrow or stem cell transplantation" to add the new medical technique of stem cell transplantation which is comparable to bone marrow transplantation.

8.01 Category of Impairments, Skin

We are correcting a spelling error in Listing 8.06. The correct name of this impairment is *Hidradenitis suppurative, acne conglobata.*

9.01 Category of Impairments, Endocrine System

We propose to revise Listing 9.02, *Thyroid Disorders,* to remove paragraph A, which refers to "Progressive exophthalmos as measured by exophthalmometry," because this complication now rarely occurs due to advances in treatment for thyroid disease.

11.00 and 111.00 Neurological

We are proposing changes in the language that we currently use for epilepsy and its treatment throughout these listings to make our listing language consistent with current medical terminology. For example, we propose changing the term "convulsive disorders" in 11.00A to "epilepsy," and changing the references to "anticonvulsive" treatment and drugs to "antiepileptic" treatment and drugs to reflect current medical terminology. In keeping with these changes in terminology, we are also proposing changing the descriptions of the categories of epilepsy under Listings 11.02 and 11.03 in Part A, and Listings 111.02 and 111.03 in Part B. In place of the term major motor seizures (11.02 and 111.02) we are proposing "convulsive epilepsy," and for the term minor motor seizures (11.03 and 111.03), we are proposing "nonconvulsive epilepsy." These terms are in keeping with current medical terminology.

We also propose to remove the requirement for electroencephalogram (EEG) evidence to support the existence of epilepsy throughout the neurological listings with the exception of cases involving nonconvulsive epilepsy in children. This is the only category of epilepsy in which an EEG is the definitive diagnostic tool; in all other situations of epilepsy, it is rare for an EEG to confirm the presence of a seizure disorder.

We propose to amend the language of Listing 111.02B3 by changing it from "significant emotional disorder" to "significant mental disorder." This clarifies the nature of the impairment identified, *i.e.,* a defined mental impairment, and is consistent with other listing terminology.

We propose to remove Listing 11.15, *Tabes dorsalis,* because the availability of effective screening tests and treatment have markedly reduced the

incidence of this disorder. With the capability to do early identification and treatment in cases of syphilis, the disease that leads to Tabes dorsalis, we believe this listing is no longer needed.

With the proposal to remove Listing 11.15, we are also proposing to remove the reference to 11.15B currently in Listing 11.17A, which deals with disorganization of motor function in degenerative diseases such as Huntington's chorea and Friedreich's ataxia. The disorganization of motor function described in Listing 11.04B includes disturbances of gait as described in 11.15B, so we believe that the reference to 11.04B is sufficient to address the manifestations of the degenerative diseases covered by Listing 11.17.

12.01 and 112.01 Category of Impairments, Mental

We are proposing to highlight a portion of the language in the capsule definition of Listing 12.05 by italicizing it. Listing 12.05 deals with mental retardation and autism. Mental retardation is defined as a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). To draw the user's attention to the portion dealing with the time period for the manifestations of these deficits, we propose to italicize the text *initially manifested during the developmental period (before age 22).*

We are proposing to correct an error in Listing 112.05F1 and 112.05F2. The word "limitations" should be "limitation." This is consistent with the wording of the adult Listing 12.05C, "imposing additional and significant work-related limitation of function."

13.01 Category of Impairments, Neoplastic Diseases—Malignant

We propose to amend Listing 13.08, *Thyroid gland*, adding another criterion, "Anaplastic carcinoma of the thyroid." This would be designated as 13.08B, and the current listing language would become 13.08A. Anaplastic carcinoma of the thyroid is a distinct type of carcinoma that can be specified as part of this listing because it is of the same level of severity as the current listing and has a poor prognosis. We believe that identifying it separately will assist adjudicators in evaluating thyroid neoplasms.

Clarity of These Proposed Rules

Executive Order 12866 and the President's memorandum of June 1, 1998, (63 F.R. 31885), require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in these rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make these rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make these rules easier to understand?

Electronic Versions

The electronic file of this document is available on the internet at http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the internet site for SSA (i.e., "SSA Online") at *http://www.ssa.gov/.*

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: January 28, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are proposing to amend part 404, subpart P, and part 416, subpart I of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P [Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

2. Appendix 1 to subpart P of part 404 is amended as follows:

a. Section 1.00 in part A of appendix 1 is amended:

(1) By revising the last sentence of paragraph A;

(2) By revising the first sentence in the second paragraph of paragraph B;

(3) By adding a new eighth paragraph to paragraph B; and,

(4) By revising paragraph C;

b. Section 1.03 in part A of appendix 1, paragraph A is revised.

c. Section 1.04 in part A of appendix 1 is amended by revising the introductory text.

d. Section 1.05 in part A of appendix 1 is amended by revising the introductory text in paragraphs A and B.

e. Section 1.08 in part A of appendix 1 is amended by revising the heading.

f. Section 1.09 in part A of appendix 1 is amended by revising the heading.

g. Section 1.11 in part A of appendix 1 is revised.

h. Section 2.00 in part A of appendix 1 is amended:

(1) By revising the heading of paragraph A;

(2) By revising paragraph A1, the first two sentences of paragraph A2, and paragraph A5;

(3) By amending paragraph A6 to remove the word "central" in the first, fourth, fifth, and sixth sentences;

(4) By revising the last sentence in the third paragraph of paragraph B2;

(5) By revising paragraph B3;

(6) By amending Table No. 1 by revising the heading to read, "Percentage of visual acuity efficiency corresponding to visual acuity notations for distance in the phakic and aphakic eye (better eye)" by revising the heading of the right column on the first line of the table to read, "Percent visual acuity efficiency"; and by amending footnotes 2 and 3 to Table No. 1 by removing the word "central."

i. Section 2.02 in part A of appendix 1 is amended by removing the word "central" in the heading.

j. Section 2.04 in part A of appendix 1 is revised.

k. Section 2.05 in part A of appendix 1 is removed and reserved.

l. Section 2.09 in part A of appendix 1 is revised.

m. Section 3.00 in part A of appendix 1 is amended by revising the last sentence in the third paragraph of paragraph E, and by amending paragraph F1 by revising the fourth and fifth sentences of the fifth paragraph.

n. Section 3.11 in part A of appendix 1 is added.

o. Section 4.00, paragraph A, in part A of appendix 1 is amended in the second sentence of the fourth paragraph by revising "make" to read "consider", and in paragraph C3 by amending the third sentence of the first paragraph.

p. Section 5.00, paragraph C, in part A of appendix 1 is amended in the fourth sentence by revising "roentgenograms" to read "X-rays or other appropriate medically acceptable imaging," and by revising "impairmentich" to read "impairment which."

q. Section 5.03 in part A of appendix 1 is revised.

r. Section 5.04 in part A of appendix 1 is amended by revising the heading and by revising paragraph C.

s. Section 5.05 in part A of appendix 1 is amended by revising the first sentence in paragraph A.

t. Section 5.09 in part A of appendix 1 is added.

u. Section 6.02 in part A of appendix 1 is amended by revising paragraph C1.

v. Section 7.00 in part A of appendix 1 is amended by revising the heading and the first sentence of the first paragraph of paragraph E.

w. Section 7.11 in part A of appendix 1 is amended by revising the heading.

x. Section 7.16 in part A of appendix 1 is amended by revising paragraph A.

y. Section 7.17 in part A of appendix 1 is amended by revising the first sentence.

z. Section 8.06 in part A of appendix 1, the heading is amended by revising "Hydradenitis" to read "Hidradenitis."

aa. In section 9.02 in part A of appendix 1, the word "With:" following the heading and paragraph A are removed and the paragraph designation "B" is removed from paragraph B.

bb. Section 9.03, paragraph A, in part A of appendix 1 is revised.

cc. Section 11.00, paragraph A, in part A of appendix 1 is amended by revising the heading, by revising the first sentence in the first paragraph, by removing the second paragraph, by redesignation the third paragraph as the second paragraph and by amending the first, second and third sentences in the redesignating second paragraph to revise the word "anticonvulsive" to read "antiepileptic."

dd. Section 11.02 in part A of appendix 1 is amended by revising the heading.

ee. Section 11.03 in part A of appendix 1 is amended by revising the heading.

ff. Section 11.15 in part A of appendix 1 is removed and reserved.

gg. Section 11.17, paragraph A, in part A of appendix 1 is amended by removing the words "or 11.15B".

hh. Section 12.05 in part A of appendix 1 is amended by revising the first sentence of the introductory text.

ii. Section 13.08 in part A of appendix 1 is revised.

jj. Section 14.08 in part A of appendix 1 is amended by revising paragraph M6.

kk. Section 100.00, paragraph B, in part B of appendix 1 is revised.

ll. Section 101.00, paragraph B, in part B of appendix 1 is amended by adding a second paragraph.

mm. Section 101.02, paragraph A3, in part B of appendix 1 is revised.

nn. Section 101.08 in part B of appendix 1 is revised.

oo. Section 102.00 in part B of appendix 1, is amended by removing the word "central" from the first and second sentences of paragraph A.

pp. Section 102.02 in part B of appendix 1 is amended by removing the word "central" from the heading.

qq. Section 103.00, paragraph B, in part B of appendix 1 is amended by revising last sentence of the third paragraph.

rr. Section 103.04, paragraph B3, in part B of appendix 1 is revised.

ss. Section 103.05 in part B of appendix 1 is added after Table III.

tt. Section 104.00, paragraph A, in part B of appendix 1 is amended in the last sentence of the sixth paragraph by revising "make a determination" to read "consider," and paragraph E is amended by revising the first sentence of the third paragraph.

uu. Section 105.00 in part B of appendix 1, is amended to revise the first sentence in paragraph B.

vv. Section 105.05, paragraphs A and C, in part B of appendix 1 are revised.

ww. Section 105.09 in part B of appendix 1 is added.

xx. Section 107.00, paragraph C, in part B of appendix 1 is amended by revising the heading and by revising the first sentence of the first paragraph.

yy. Section 107.11 in part B of appendix 1 is amended by revising the heading.

zz. Section 111.00 in part B of appendix 1, paragraph A is revised and paragraph B is amended by revising the heading, and by removing the second sentence.

aaa. Section 111.02 in part B of appendix 1 is amended by revising the headings of paragraphs A and B; by revising the first sentence of the introductory text of paragraphs A and B; and by revising paragraph B3.

bbb. Section 111.03 in part B of appendix 1 is amended by revising the heading.

ccc. Section 112.05, paragraphs F1 and F2, in part B of appendix 1 are amended by revising "limitations" to read "limitation."

ddd. Section 113.00 in part B of appendix 1, is amended by revising the third sentence in paragraph B.

eee. Section 114.08, paragraph N6, in part B of appendix 1, paragraph N6 is revised.

The added and revised text is as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

1.00 Musculoskeletal System

A. * * * Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and abnormalities as shown by X-ray or other appropriate medically acceptable imaging.

B. * * *

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms or other appropriate medically acceptable imaging. * * *

* * * * *

Medically acceptable imaging includes, but is not limited to, X-ray imaging, computerized axial tomography (CAT scan), magnetic resonance imaging (MRI), with or without contrast material, and radionuclear bone scans. While any appropriate medically

acceptable imaging is useful in establishing the diagnosis of musculoskeletal impairments, some tests, such as CAT scans and MRIs are quite expensive and some, such as myelograms, are invasive and may involve significant risk. If the results of these tests are available from the claimant or other sources at no or minimal cost to the agency, they will be considered in the evaluation of the claim. However, expensive tests and tests that may involve significant risk to the claimant, such as myelograms, will not be ordered.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12) or soft tissue injuries of a lower or upper extremity (see 1.13), *i.e.*, there have been no significant changes in physical findings or findings as shown by x-rays or other appropriate medically acceptable imaging techniques for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

* * * * *

1.03 Arthritis of a major weight-bearing joint (due to any cause):

* * * * *

A. Gross anatomical deformity of hip or knee (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) supported by x-ray or other appropriate medically acceptable imaging evidence showing either significant joint space narrowing or significant bony destruction, and markedly limiting ability to walk or stand; or,

* * * * *

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause):*

With history of persistent joint pain and stiffness, signs of marked limitation of motion of the affected joints on current physical examination, and X-ray or other appropriate medically acceptable imaging evidence of either significant joint space narrowing or significant bony destruction. With:

* * * * *

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray or other appropriate medically acceptable imaging evidence of:

* * * * *

B. Osteoporosis, generalized (established by X-ray or other appropriate medically acceptable imaging) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray or other appropriate medically acceptable imaging evidence of either:

* * * * *

1.08 *Osteomyelitis or septic arthritis (established by X-ray or other appropriate medically acceptable imaging):*

* * * * *

1.09 *Amputation or anatomical deformity (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray or other appropriate medically acceptable imaging evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability) of:*

* * * * *

1.11 *Fracture of the femur, tibia, tarsal bone or pelvis* with solid union not evident on X-ray or other appropriate medically acceptable imaging, and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

* * * * *

2.00 Special Senses and Speech

A. Disorders of Vision

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of visual acuity or loss of the peripheral field. Loss of visual acuity results in inability to distinguish detail and prevents reading and fine work. Loss of the peripheral field restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual acuity and peripheral field testing.

2. *Visual acuity.* Loss of visual acuity may result in impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. * * *

* * * * *

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in reduction of visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of visual acuity efficiency and the percentage of visual field efficiency. (See tables no. 1 and 2, following 2.09.)

* * * * *

B. * * *

2. * * *

* * * * *

* * * When polytomograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained in addition to reports of skull and temporal bone X-rays or other appropriate medically acceptable imaging.

3. *Loss of speech.* In evaluating the loss of speech, the ability to produce speech by any means includes the use of mechanical or electronic devices that improve voice or articulation. Impairment of speech due to neurological disorders should be evaluated under 11.00—11.19.

* * * * *

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining visual acuity efficiency and the percent of remaining visual field efficiency.)

2.05 [Removed and reserved]

* * * * *

2.09 *Loss of speech* due to any cause with inability to produce by any means speech which can be heard, understood, or sustained.

* * * * *

3.00 Respiratory System

* * * * *

E. *Documentation of pulmonary function testing.*

* * * * *

* * * If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the testing device must have had a recorded calibration performed previously on the day of the spirometric measurement.

* * * * *

F. *Documentation of chronic impairment of gas exchange.*

1. * * *

* * * * *

* * * The percentage concentrations of inspired O_2 and inspired and expired CO and He for each of the maneuvers should be provided. Sufficient data must be provided, including documentation of the source of the predicted equation, to permit verification that the test was performed adequately, and that, if necessary, corrections for anemia and/or carboxyhemoglobin were made appropriately.

* * * * *

3.11 *Lung transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

4.00 Cardiovascular System

* * * * *

C. * * *

3. * * * In selected cases, these tests may be purchased after a medical history and physical examination, report of chest x-rays or other appropriate medically acceptable imaging, ECGs, and other appropriate tests have been evaluated, preferably by a program physician with experience in the care of patients with cardiovascular disease. * * *

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging)* with weight loss as described under listing 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging).* With:

* * * * *

C. Recurrent obstruction demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging; or,

* * * * *

5.05 *Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* * * *

A. Esophageal varices (demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging) with a documented history of massive hemorrhage attributable to these varices. * * *

* * * * *

5.09 *Liver transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

* * * * *

6.02

* * * * *

C. * * *

1. Renal osteodystrophy manifested by severe bone pain and abnormalities shown by

appropriate radiographic or other medically acceptable imaging (*e.g.*, osteitis fibrosa, marked osteoporosis, pathologic fractures); or

* * * * *

7.00 Hemic and Lymphatic System

* * * * *

E. *Acute leukemia or T-cell lymphoblastic lymphoma.* Initial diagnosis of acute leukemia or T-cell lymphoblastic lymphoma must be based upon definitive bone marrow pathologic evidence. * * *

* * * * *

7.11 *Acute leukemia or T-cell lymphoblastic lymphoma.*

* * * * *

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic or other appropriate medically acceptable imaging evidence of bony involvement with intractable bone pain; or

* * * * *

7.17 *Aplastic anemias or hematologic malignancies (excluding acute leukemia):* With bone marrow or stem cell transplantation. * * *

* * * * *

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray or other appropriate medically acceptable imaging study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

* * * * *

11.00 Neurological

A. *Epilepsy.* In epilepsy, regardless of etiology degree of impairment will be determined according to type, frequency, duration, and sequelae of seizures. * * *

* * * * *

11.02 *Epilepsy-convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.*

* * * * *

11.03 *Epilepsy-nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.*

* * * * *

12.05 *Mental Retardation and Autism:* Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior *initially manifested during the developmental period (before age 22).* * * *

* * * * *

13.08 *Thyroid gland:*

A. Carcinoma with metastases beyond the regional lymph nodes, not controlled by prescribed therapy; or

B. Anaplastic carcinoma of the thyroid.

* * * * *

14.08 *Human immunodeficiency virus (HIV) infection.*

* * * * *

M. * * *

6. Sinusitis documented by radiography or other appropriate medically acceptable imaging.

* * * * *

100.00 Growth Impairment

* * * * *

B. *Bone age determinations* should include a full descriptive report of roentgenograms or other medically acceptable imaging specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms or other appropriate medically acceptable imaging must be obtained currently as a basis for adjudication under 100.03, views or scans of the left hand and wrist should be ordered. In addition, roentgenograms or other appropriate medically acceptable imaging of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

* * * * *

101.00 Musculoskeletal System

* * * * *

B. * * *

Medically acceptable imaging includes, but is not limited to, X-ray imaging, computerized axial tomography (CAT scan), magnetic resonance imaging (MRI), with or without contrast material, and radionuclear bone scans. While any appropriate medically acceptable imaging is useful in establishing the diagnosis of musculoskeletal impairments, many tests, such as CAT scans and MRIs are quite expensive and some, such as myelograms, are invasive and may involve significant risk. If the results of these tests are available from the claimant or other sources at no or minimal cost to the agency, they will be considered in the evaluation of the claim. However, expensive tests and tests that may involve significant risk to the claimant, such as myelograms, will not be ordered.

* * * * *

101.02 *Juvenile rheumatoid arthritis.*

* * * * *

A. * * *

3. Radiographic or other appropriate medically acceptable imaging evidence showing joint narrowing, erosion, or subluxation; or

* * * * *

101.06 *Osteomyelitis or septic arthritis* (established by X-ray or other appropriate medically acceptable imaging):

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory and systemic signs and laboratory findings (e.g., heat, redness, swelling, leucocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or

B. Multiple localizations and systemic manifestations as in A. above.

* * * * *

103.00 Respiratory System

* * * * *

B. * * *

* * * *

* * * If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the testing device must have had a recorded calibration performed previously on the day of the spirometric measurement.

* * * * *

103.04 *Cystic fibrosis.*

* * * * *

B. * * *

3. Radiographic or other appropriate medically acceptable imaging evidence of extensive disease, such as thickening of the proximal bronchial airways or persistence of bilateral peribronchial infiltrates; or

* * * * *

103.05 *Lung transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

* * * * *

104.00 Cardiovascular System

* * * * *

E. * * *

Findings of cardiomegaly shown by chest x-ray or other appropriate medically acceptable imaging evidence must be accompanied by other evidence of chronic heart failure or ventricular dysfunction.

* * *

* * * * *

105.00 Digestive System

* * * * *

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic or other appropriate medically acceptable imaging studies, endoscopy, and biopsy reports.

* * *

* * * * *

105.05 *Chronic liver disease.* * * *

A. Inoperable billiary atresia demonstrated by X-ray or other appropriate medically acceptable imaging or surgery; or

* * * * *

C. Esophageal varices (demonstrated by X-rays, endoscopy, or other appropriate medically acceptable imaging); or

* * * * *

105.09 *Liver transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

* * * * *

107.00 Hemic and Lymphatic System

* * * * *

C. *Acute leukemia or T-cell lymphoblastic lymphoma.* Initial diagnosis of acute leukemia or T-cell lymphoblastic lymphoma must be based upon definitive bone marrow pathologic evidence. * * *

* * * * *

107.11 *Acute leukemia or T-cell lymphoblastic lymphoma.* * * *

* * * * *

111.00 Neurological

A. *Convulsive epilepsy* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include a neurological examination with frequency of episodes and any associated phenomena substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that epilepsy be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of epilepsy when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, an epileptic disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that convulsive episodes have persisted more than three months after prescribed therapy began.

B. *Nonconvulsive epilepsy.* * * *

* * * * *

111.02 *Major motor seizure disorder.*

A. *Convulsive epilepsy.* In a child with an established diagnosis of epilepsy, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. * * *

* * * * *

B. *Convulsive epilepsy syndrome.* In a child with an established diagnosis of epilepsy, the occurrence of at least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. * * *

* * * * *

3. Significant mental disorder; or

* * * * *

111.03 *Nonconvulsive epilepsy.* * * *

* * * * *

113.00 Neoplastic Diseases, Malignant

* * * * *

B. *Documentation.* * * * If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports or reports from other appropriate medically acceptable imaging.* * *

* * * * *

114.08 *Human immunodeficiency virus (HIV) infection*

* * * * *

N. * * *

6. Sinusitis documented by radiography or other appropriate medically acceptable imaging.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902 (a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

§ 416.926 [Amended]

4. Section 416.926a is amended by removing paragraphs (d) (8) and (9), and redesignating paragraph (d) (10), (11), and (12) as paragraphs (d) (8), (9), and (10).

[FR Doc. 00–2867 Filed 2–10–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF EDUCATION

34 CFR Part 611

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes regulations for the three grant programs included in the Teacher Quality Enhancement Grant Programs, sections 202–204 of the Higher Education Act of 1965 (HEA), as amended. These proposed regulations contain selection criteria that would be used to select applicants for awards under the State Program, Partnership Program, and Teacher Recruitment Program. These proposed regulations also contain certain other requirements that would apply to the programs.

DATES: We must receive your comments on or before March 13, 2000.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, Office of Policy, Planning, and Innovation, 1990 K Street, NW, Washington, DC 20006–8525: Telephone: 202–502–7763. Comments also may be sent by e-mail to: Louis__Venuto@ed.gov or by FAX to; (202) 502–7699. If you prefer to send your comments through the Internet use the following address: comments@ed.gov. You must include the term "Teacher Quality" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, Office of Policy, Planning, and Innovation, 1990 K Street, NW, 6th floor, Washington, DC. Telephone: (202) 502–7763. Inquiries also may be sent by e-mail to: Louis__Venuto@ed.gov or by FAX to: (202) 260–9272. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in the Department of Education, Teacher Quality Program Office, 1990 K Street NW, 6th floor, Washington, DC. Comments are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

In order to ensure sufficient time to prepare and review grant applications submitted for FY 2000, the Department will need to publish final regulations for these programs as soon as possible after the expiration of the public comment period. For this reason, while you have 30 days to submit public comment, we urge you to submit comments to us on or before February 25, 2000. In addition, we also urge those who wish to comment on the information collection requirements contained in the program application packages to send written comment on or before February 25, 2000. See the discussion in the section entitled "Paperwork Reduction Act of 1995" and the addressee identified in that section to whom comments should be sent.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to

review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General

Background

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). This law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the Higher Education Act (HEA), the Teacher Quality Enhancement Grants for States and Partnerships (Teacher Quality Programs). The new Teacher Quality Enhancement Grants Program provides an historic opportunity to effect positive change in the recruitment, preparation, licensing, and on-going support of teachers in America.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation, and recruitment; (2) the Partnership Grants for Improving Teacher Preparation Program, which is designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs), and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom; and (3) the Teacher Recruitment Grants Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. Together, these programs are designed to increase student achievement by supporting comprehensive approaches to improving teacher quality.

State Grants Program (State Program)

The State Grants Program offers a unique opportunity to support far-reaching efforts to redesign teacher education. Through the policy leadership of Governors, State legislatures, and other important partners, the program can assure the statewide support so essential to bringing about the important policy changes needed in teacher recruitment, preparation, licensing and certification, and retention. States are in the position to increase the expectations for newly state-certified and licensed teachers as well as test for and reward high-quality teaching.

Under the program, each State may develop a program application that focuses on activities it chooses to conduct in one or more areas that are key to improving the quality of new teachers. In this regard, areas in which a State may propose to focus include:

- Teacher licensure, certification, and preparation policies and practices, including rigorous alternative routes to certification;
- Reforms that hold institutions of higher education (IHE) with teacher preparation programs accountable for preparing teachers who are highly competent in academic content areas and possess strong teaching skills;
- Wholesale redesign of teacher preparation programs, in collaboration with the schools of arts and sciences, in ways that promote stronger academic content and subject-matter knowledge of students in those programs;
- Improved linkages between IHEs and K–12 schools, with more time spent by college faculty and teacher education students in K–12 classrooms, and greater use of technology in the teacher education programs;
- Use of new strategies to attract, prepare, support, and retain highly competent teachers in high-poverty urban and rural areas;
- Redesign and improvement of existing teacher professional development programs to improve the content knowledge, technology skills, and teaching skills of practicing teachers;
- Improved accountability for high-quality teaching through performance-based compensation and the expeditious removal of incompetent or unqualified teachers while ensuring due process; and
- Efforts to address the problem of social promotion and to prepare teachers to deal with the issues raised by ending social promotion.

Partnership Grants for Improving Teacher Education (Partnership Program)

The purpose of the Partnership Program is to improve student learning by bringing about fundamental change and improvement in traditional teacher education programs. Through multi-year awards to a limited number of highly-committed partnerships, the Partnership Program is intended to ensure that new teachers have the content knowledge and teaching skills they need when they enter the classroom. Section 203(a) and (b) of the HEA provides that partnerships eligible for awards must comprise, at a minimum, a partnership institution, a school of arts and science, and a high-need LEA as the law defines these terms. Partnerships also may include other entities that can contribute expertise, resources or both to the teacher preparation project. A key aspect of the program is the active participation of all members of the partnership in the design and implementation of project activities.

By law, successful applicants must propose to implement certain activities:

- The reform of teacher preparation programs so that these programs become accountable for producing teachers who are highly competent in the academic content areas in which they pan to teach;
- The provision of high quality and sustained pre-service clinical experiences and mentoring for new teachers, together with a substantial increase in the interaction between teachers, principals, and higher education faculty; and
- The creation of opportunities for enhanced and ongoing professional development that improves the academic content knowledge of teachers in fields in which they are or will be certified to teach.

Beyond these minimum requirements, the Partnership program supports activities that propose to educate teachers in ways that reflect best research and practice, and embody high teaching standards. These activities include the preparation of teachers to work with diverse student populations so that *all* students they will teach can achieve to high State and local content and performance standards, and implementation of instructional programs whose effectiveness has been demonstrated through research.

The Partnership Program also seeks to—

- Offer alternative routes into teaching to individuals who may have had careers in other professions, in the military or in other fields, and to educational paraprofessionals;
- Prepare teachers to successfully integrate technology into teaching and learning;
- Require prospective teachers to participate in intensive, structured, and clinically-based experiences with master teachers;
- Offer continuous assistance to graduates during their initial years in the classroom; and
- Prepare school principals, superintendents, and other school administrators to employ strong

management and leadership skills that can help increase student achievement.

Teacher Recruitment Grants Program (Teacher Recruitment Program)

The Teacher Recruitment Program is designed to address the challenge of America's teacher shortage by making significant and lasting systemic changes to the ways that teachers are recruited, prepared, and supported as new teachers in high-need schools. The Teacher Recruitment Program supports projects that use funds to—

- Award scholarships to help students pay the costs of tuition, room, board, and other expenses of completing a teacher training program;
- Provide support services, if needed, to enable scholarship recipients to complete postsecondary education programs; and
- Provide for follow-up services to former scholarship recipients during their first three years of teaching.

Alternatively, funds may be used to develop and implement effective mechanisms to ensure that high-need LEAs and schools are able to effectively recruit highly qualified teachers.

Both States and eligible partnerships may receive awards under the Teacher Recruitment Program. For both States and partnerships, effective relationships and partnerships among all those who will implement project activities are keys to effective Teacher Recruitment Program activities. In particular, out of these partnerships and relationships will come (1) the recruitment strategies that are so vital to meeting the severe teaching needs of the high-need LEAs, (2) the kind of teacher preparation programs, which are built around effective support from both schools of education and schools of arts and science and other areas of the IHE, that recruited individuals will need in order to be effective teachers to the diverse student populations in those LEAs, and (3) the support services these individuals will need once they begin to teach.

The Teacher Recruitment Program also anticipates that projects will provide prospective teachers with high-quality teacher preparation and induction programs that—

- Set high standards for teaching;
- Reflect the best research and practice known across the country; and
- Prepare teachers to use technology in their classrooms.

Finally, all three of the Teacher Quality Enhancement Grant Programs anticipate that when program funding ceases, the work that States and partnerships have begun will continue and be sustained. Therefore, the ability of grantees to sustain activities after the end of the project is a key determinant of success.

Need to Regulate

Regulations are needed in order to establish appropriate selection criteria and a small number of other requirements for Fiscal Year (FY) 2000 and subsequent year competitions under the Teacher Quality programs. As explained in the following discussion, new program-specific selection criteria for competitions conducted under the three Teacher Quality Programs are needed to promote better quality applications and greater consistency among reviewers and across review panels.

On February 8, 1999, the Department published final regulations to govern competitions conducted under the Teacher Quality Enhancement Grant Programs for fiscal year (FY) 1999 (64 FR 6189). In doing so, the Department used its authority under section 437(d) of the General Education Provisions Act to waive rulemaking requirements for regulations governing the first grant competition under a new or substantially revised program. This notice of proposed rulemaking establishes the proposed regulations for the FY 2000 and subsequent year competitions.

The State, Partnership, and Teacher Recruitment Programs are key elements in the Federal government's strategy to support State efforts to improve teacher quality and recruit, prepare, and support new teachers in high-need schools and school districts. The success of these programs depends upon the preparation of applications that are of the highest possible quality, and the ability of reviewers to identify those applicants with the most promise of success. In order to guide the preparation and identification of high-quality applications under any of these three Programs, application selection criteria need to be established.

As a new program in FY 1999, the Teacher Quality Program relied upon general selection criteria in § 75.210 of the Education Department General Administrative Regulations (EDGAR) to evaluate applications submitted under the State and the Teacher Recruitment Programs. The EDGAR criteria were used for these two programs because we believed that program-specific regulations would not be needed to generate high-quality applications and permit reviewers a ready means to evaluate them. However, those reviewing applications under these programs found that, notwithstanding guidance in the program application packages on what high-quality applications likely would contain, submitted applications generally not only lacked sufficient specificity, but also were difficult to evaluate under these general selection criteria.

Hence, the Department's experience with applications submitted under the State and Teacher Recruitment Programs now convinces us that program-specific criteria—rather than those in EDGAR—would assist applicants to write better, more specific proposals that focus more closely on how they would address Title II program goals. We also are convinced that the use of program-specific selection criteria in these two programs would substantially help reviewers to make better judgments as they read, score proposals, and make evaluative comments. Regulations therefore are needed to establish program-specific criteria that reflect the goals and objectives of the Title II statute.

The Department did use program-specific selection criteria rather than general criteria in EDGAR to evaluate both pre-applications and full applications submitted for the initial competition conducted in FY 1999 under the Partnership Program. However, difficulties that reviewers had evaluating those pre-applications and full applications have convinced us that they, too, need to be modified. We now see that, in some respects, those criteria were too general. They helped applicants to sketch a broad vision of their projects, but reviewers often had difficulty finding enough specific detail in the pre-applications and full applications to score them with precision. Reviewers also found that the generality of the program-specific criteria inhibited their ability to make fine distinctions among applications. We believe that revised, more specific, selection criteria for the Partnership Program are needed to improve the quality of applications and the review process.

For the FY 2000 Title II competition, therefore, new program-specific selection criteria have been drafted for all three Teacher Quality Program components. It is expected that these new criteria will provide clearer guidance to proposal writers, and will give reviewers a more reliable scoring system. By using the revised selection criteria, the complete selection process should result in funding strong projects likely to achieve key Title II goals. (Consistent with § 75.210 of EDGAR, the application packages for these three programs will inform the public the total possible score for all criteria that apply to a program, and the assigned

weight or maximum possible score for all criteria that apply to a program, and the assigned weight or maximum possible score for each criterion or factor under that criterion).

Finally, regulations are needed in two other areas. First, all three programs require applicants to develop strategies in comprehensive areas related to teacher preparation, licensure, certification, or recruitment. The experience with the initial grants competition conforms that both reviewers and successful applicants would benefit from having applications include detailed workplans that contain project objectives, activities, benchmarks, responsible parties, time lines, and outcomes. In addition, regulations are needed to clarify over what period of time States are to meet the 50 percent matching requirement in section 205(c) of the statute.

The remainder of this section of this notice explains in more detail the regulations that we are proposing to adopt for the three Teacher Quality Enhancement Grant Programs.

Section 611.2 Pre-Application and Application

Under § 611.2, an applicant for a grant under the Teacher Quality Enhancement Grants Program would be required to submit with its application a proposed multiyear workplan. At a minimum, the applicant would have to specifically identify, for each year of the project, the project's overall objectives, activities the applicant proposes to implement to promote each program objective, benchmarks and time lines for conducting project activities and achieving the project's objectives, who would be responsible for conducting and coordinating each activity, measurable program outcomes that are tied to each program objective, and the evidence by which success in achieving these objectives would be measured. Applicants for grants under subpart C (the Partnership Program) and subpart D (the Teacher Recruitment Program) would only have to provide a workplan if they are invited, based on their pre-applications, to submit a full application.

Finally, § 611.2 would also require any applicant that submits a pre-application for a grant under the Partnership or Teacher Recruitment Program to submit any budgetary information that the Secretary may require in the program's application package.

These workplans are necessary for two reasons. Section 75.112(b) of EDGAR requires all applicants to include a narrative that describes how and when, for each budget year of the project, the applicant plans to meet each project objective. However, for the 1999 grants competition, the submitted applications did not contain the specificity that reviewers desired for making the most informed decisions about the quality of applicants' multiyear plans. This regulation is needed both to address this problem and to ensure that, for those applicants receiving awards, the Department has the information it needs to work with applicants over the life of their projects so that the projects can succeed.

Section 611.3 Procedures for Grant Selection

Section 611.3 sets out the procedures that we would use to select grants for the Teacher Quality Program. In general, we would use the procedures in 34 CFR 75.200–75.222. However, § 611.3 would establish our use of program-specific selection procedures identified in §§ 611.12–611.32 to evaluate applications for each of the three programs, including the use of a competitive priority for the State and Partnership Programs.

In addition, § 611.3 would establish a two-stage application process for both the Partnership and Teacher Recruitment Programs. The proposed regulations would require applicants under either of these Programs to submit a pre-application. We would use the selection criteria established for these pre-applications to determine which applicants should be invited to submit full applications.

A two-stage process was used successfully during the 1999 initial competition under the Partnership Program. We received substantial feedback from applicants who favored this process. They told us that it permitted them to spend more time planning their projects than they would have had under the normal, single-stage, process, and saved those applicants whose pre-applications were not of sufficiently high quality the time and resources needed to prepare a full program application. We also believe that the quality of the full applications likely benefited from the applicants' receipt of reviewers' comments on their pre-applications, and reviewers told us that they appreciated being able to focus their time evaluating a limited number of full applications that reflected sound conceptual thinking. Therefore, we have decided to make the pre-application process a permanent feature of the Partnership Program.

In addition, reviewers of applications submitted under the initial Teacher Recruitment Program grants competition found that many applications lacked the vision and specificity that the Program needs. Given the importance of successful Teacher Recruitment Program projects, we believe that the quality of applications for these projects likewise would be enhanced by use of a pre-application process. For this reason, we are proposing to use this two-step process for both the Partnership and Teacher Recruitment Programs.

In the event that two or more applicants are ranked equally for the last available award under any of the three programs, the proposed regulations would continue a tie-breaking procedure used during the FY 1999 competition. Under this procedure, the Secretary would select the applicant whose activities would focus (or have the most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

Finally, for the initial grant competition under these three programs, we developed program-specific selection criteria only for the Partnership Program. For reasons discussed in the "Need to Regulate" section of this preamble, we are proposing program-specific selection criteria for applications submitted under the State and Teacher Recruitment Program, and revised program-specific criteria for applications submitted under the Partnership Program.

Selection Criteria to Govern the State Program

Section 611.11 would establish the selection criteria for the State Program. The criteria would focus on the quality of the project design, the significance of the project, the quality of the resources, and the quality of the management plan and workplan. Section 611.12 would establish selection criteria, which would be used in addition to the selection criteria in § 611.11, for any State Program applicant that proposed teacher recruitment activities. Although teacher recruitment is not required for the State Program, applicants may choose to incorporate teacher recruitment into their projects. If they do so, additional selection criteria would be needed because of the requirements governing use of funds for teacher recruitment activities in sections 202 and 204(d) of the HEA. We therefore have added selection criteria that would specifically address teacher recruitment, so that peer reviewers can judge the quality of the teacher recruitment activities within a State program.

Section 611.13 would establish a competitive preference for the State

Program. As required by section 205(b)(2)(A) of the HEA, the Secretary would determine the extent to which the State's proposed activities in any one or more of three statutory priorities are likely to yield successful and sustained results. The statutory priorities are (1) initiatives to reform State teacher licensure and certification requirements so that current and future teachers possess strong teaching skills and academic content knowledge in the subject areas they will be certified or licensed to teach; (2) innovative reforms to hold IHEs with teacher preparation programs accountable for preparing teachers who are highly competent in the academic content areas and have strong teaching skills, and (3) innovative efforts to reduce the teacher shortage (including the high turnover) of highly competent teachers in high-poverty urban and rural areas.

Selection Criteria to Govern the Partnership Program

Section 611.21 would establish the selection criteria for the pre-application for the Partnership Program. The selection criteria would address project goals and objectives, the level of commitment to the partnership, the quality of key project components, and the anticipated specific outcomes of the project. As with the State Program, because of the requirements governing use of funds for teacher recruitment activities in sections 203 and 204(d) of Title II, the Partnership Program, in § 611.22, would establish additional criteria that would apply to any pre-application that proposes teacher recruitment activities.

Sections 611.23 and 611.24 would establish the selection criteria for the full application. Section 611.23 would apply to all applicants for Partnership program grants, and § 611.24 would apply to those applications that include teacher recruitment activities. The selection criteria for full applications are similar to those we used to evaluate applications in 1999 for the initial competition under the program. They focus on quality of project design, significance of project activities, quality of resources, and the quality of the management plan and workplan.

As required by section 205(b)(2)(B) of the statute, § 611.25 would establish a competitive preference for Partnership Program applications that involve businesses. Under this section, the Secretary would award up to ten additional points on the basis of how well the application includes a significant role for private business in the design and implementation of the project.

Selection Criteria for the Teacher Recruitment Program

Sections 611.31 and 611.32 would establish the selection criteria for the pre-application and the full application, respectively. The selection criteria for pre-applications would address the same general areas as those for Partnership Program pre-applications, but would be tailored to matters related to teacher recruitment. Similarly, the selection criteria to govern full applications submitted under the Teacher Recruitment Program would address the same general areas as those for the State Program, but would be tailored to matters related to teacher recruitment.

Other Program Requirements

Section 611.61 would limit the indirect costs that a recipient may charge to Teacher Quality Program funds to the maximum of either eight percent or the amount determined through operation of a negotiated indirect cost rate. We are proposing this regulation so that the indirect cost limitation is applicable to all recipients of program funds. By regulation published in the **Federal Register** on August 6, 1999 (64 FR 42837), this limitation (formerly established in § 611.41) already applies to States and LEAs. Regulations published in the **Federal Register** on February 8, 1999 (64 FR 6189) applied this same indirect cost limitation to IHEs and nonprofit organizations that receive program funds on the basis of the initial Teacher Quality Program grant competitions. However, through an oversight, the Department had not previously proposed to apply this limitation on indirect costs to IHEs and nonprofit agencies and that receive program funds under the second and succeeding grant competitions.

We recognize the legitimacy of a grant recipient's indirect costs. However, for reasons presented in the May 19, 1999 NPRM that proposed this indirect cost limitation for States and LEAs (64 FR 27403), we believe that having IHEs and nonprofit organizations apply large, generally applicable negotiated indirect cost rates to compensate themselves out of program funds for general overhead and related expenses is inconsistent with the purpose of the Teacher Quality Programs and the expectations that Congress and the Nation have for their success. Therefore, given (1) the privotal significance of the Teacher Quality Programs, (2) the national need that these programs have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that these programs are competitive, the Secretary has determined that a reasonable limitation on the indirect cost rate that IHEs and nonprofit organizations may charge to their Teacher Quality Program funds is appropriate. Section 611.61 would make all recipients of program funds—States, LEAs, IHEs, nonprofit organizations, and other entities—subject to the same limitation on indirect costs they may charge to program funds.

Finally, § 611.62 would detail a grantee's matching requirements. As required by section 205(c)(1) of the statute, each State receiving a grant under either the State Program or the Teacher Recruitment Program would have to provide, from non-Federal sources, an amount equal to 50 percent of the amount of the grant to carry out the activities supported by the grant. Section 611.52(a) would clarify that the 50 percent match would need to be made annually during the project period, with respect to each grant a State receives. In addition, § 611.52(b) repeats the requirement in section 205(c)(2) of the statute that each partnership receiving a grant under the Partnership Program or the Teacher Recruitment Program be required to provide, from non-Federal sources, an amount equal to 25 percent of the grant for the first year of the program, 35 percent of the grant for the second year of the program, and 50 percent of the grant for the third through fifth year of the program.

We interpret these requirements, that grantees provide each year a specified percentage "of the grant" from non-federal sources, to mean a specified percentage of the amount of the federal funds the Department annually awards. Therefore, for example, a partnership that is awarded $1 million per year in federal funds would need to provide the project $250,000 from non-federal funds for the first year of project activities. The required match from non-Federal sources required by this section could be made in cash or in kind.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that the Nation's teaching force will

have the content knowledge and teaching skills needed to instruct all American students for the next century.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 611.21 What are the selection criteria for pre-applications?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are IHEs and LEAs. The information burden on each of these groups consists only of the time and resources needed to submit grant applications. Hence, the regulations would not have a significant impact on any entity because they would not impose excessive regulatory burden or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

Proposed §§ 611.2–611.25 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this notice and these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information

Teacher Quality Enhancement Grant Programs.

Applicants for funds under the State Grants program, the Partnership Program for Improving Teacher Effectiveness, and the Teacher Recruitment Grants Program would need to submit program applications and, for the Partnership Program and Teacher Recruitment Program, pre-applications that respond to the selection criteria announced in this notice. Applicants also would need to include a detailed workplan with their applications.

State Program

We collect information once for applicants for State Program grant awards. We estimate annual reporting and recordkeeping burden for this collection of information to average 200 hours for each application for 20 State respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection on those preparing application under the State Program to be 4,000 hours.

Partnership and Teacher Recruitment Programs

For both the Partnership Program and Teacher Recruitment Program, all applicants must submit a pre-application; those with the highest quality pre-applications would then be invited to submit full applications. We estimate annual reporting and recordkeeping burden for this collection of information to average 54 hours for each of the 150 respondents expected to submit pre-applications under the Partnership Program, and 54 hours for each of the 150 respondents expected to submit pre-applications under the Teacher Recruitment Program. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden related to the preparation of pre-applications to be 8,100 hours for each of the two programs, or a total of 16,200 hours.

We estimate that of those applicants who submitted pre-applications for Partnership Program and Teacher Recruitment Program grant awards, 25 under each program will be invited to submit full program applications. We estimate annual reporting and recordkeeping burden for this collection of information to average 200 hours for each of the applications, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection on those preparing application under the Partnership Program to be 5,000 hours, and under the Teacher Recruitment Program also to be 5,000 hours.

Summary

Finally, as discussed in the preceding discussion, we estimate that the total annual reporting and recordkeeping burden for this collection as it relates to all three Teacher Quality Enhancement Grant Programs to be 30,200 hours. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60

days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Requests for copies of the proposed application packages for any or all of the Teacher Quality Programs may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the Internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html. To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of these sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at 1–888–293–6448, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1021 *et seq.* and 1024(e)

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

List of Subjects in 34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

Dated: February 1, 2000.

A. Lee Fritschler,

Assistant Secretary For Postsecondary Education.

For the reasons stated in the preamble, the Secretary proposes to amend part 611 of Chapter VI of title 34 of the Code of Federal Regulations as follows:

PART 611—[AMENDED]

1. The authority citation for part 611 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

2. Sections 611.2 and 611.3 are added to Subpart A to read as follows:

§ 611.2 What must be included in a Partnership or Teacher Recruitment Program pre-application?

(a) In addition to a description of the proposed multiyear project, timeline, and budget information required by 34 CFR 75.112 and 75.117 and other applicable law, an applicant for a grant under this part must submit with its application a proposed multiyear workplan. At a minimum, this workplan must identify, for each year at the project—

(1) The project's overall objectives;

(2) Activities that the applicant proposes to implement to promote each project objective;

(3) Benchmarks and timelines for conducting project activities and achieving the project's objectives;

(4) Who will conduct and coordinate these activities; and

(5) Measurable program outcomes that are tied to each program objective, and the evidence by which success in achieving these objectives will be measured;

(b)(1) In any application for a grant under the Partnership Program, or under the Teacher Recruitment Program that is submitted on behalf of a partnership, the workplan must identify which partner will be responsible for which activities.

(2) In any application for a grant under the Teacher Recruitment Program that is submitted on behalf of a State, the workplan must identify which entity in the State will be responsible for which activities.

(c) An applicant that submits a pre-application for a Partnership Program grant under § 611.3(b) (3) must also submit any budgetary information that the Secretary may require in the program application package.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.3 What procedures does the Secretary use to award a grant?

The Secretary uses the selection procedures in 34 CFR 75.200 through 75.222 except that—

(a)(1) For the State Grants Program, the Secretary evaluates applications for new grants on the basis of the selection criteria and competitive preference contained in §§ 611.11 through 611.13.

(2) For the Partnership Grants Program, the Secretary—

(i) Uses a two-stage application process to determine which applications to fund;

(ii) Uses the selection criteria in §§ 611.21 through 611.22 to evaluate the pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(iii) For those applicants invited to submit full applications, uses the selection criteria and competitive preference in §§ 611.23 through 611.25 to evaluate the full program applications.

(3) For the Teacher Recruitment Grants Program, the Secretary—

(i) Uses a two-stage application process to determine which applications to fund;

(ii) Uses the selection criteria in §§ 611.31 to evaluate the pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(iii) For those applicants invited to submit full applications, uses the selection criteria in §§ 611.32 to evaluate the full program applications; and

(b) In the event that two or more applicants are ranked equally for the last available award under any program, the Secretary selects the applicant whose activities will focus (or have most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

(Authority: 20 U.S.C. 1021 *et seq.*)

3. Subpart B, consisting of §§ 611.11 through 611.13, is added, reading as follows:

Subpart B—State Grants Program

§ 611.11 What are the program's general selection criteria?

In evaluating the quality of applications, the Secretary uses the following selection criteria.

(a) *Quality of project design.* (1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the extent to which—

(i) The project design will result in systemic change in the way that all new teachers are prepared, and includes partners from all levels of the education system;

(ii) The Governor and other relevant execution and legislative branch officials, the K–16 education system or systems, and the business community are directly involved in and committed to supporting the proposed activities;

(iii) Project goals and performance objectives are clear, measurable outcomes are specified, and a feasible plan is presented for meeting them;

(iv) The project is likely to initiate or enhance and supplement systemic State reforms in one or more of the following areas; teacher recruitment, preparation, licensing, and certification;

(v) The applicant will ensure that a diversity of perspectives are incorporated into operation of the project, including those of parents, teachers, employers, academic and professional groups, and other appropriate entities; and

(vi) The project design in based on up-to-date knowledge from research and effective practice.

(b) *Significance.* (1) The Secretary considers the significane of the project.

(2) In determining the significance of the project, the Secretary considers the extent to which—

(i) The project involves the development or demonstration of promising new strategies or exceptional approaches in the way new teachers are recruited, prepared, certified, or licensed;

(ii) Project outcomes lead directly to improvements in teaching quality and student achievement as measured against rigorous academic standards;

(iii) The State is committed to institutionalize the project after federal funding ends; and

(iv) Project strategies, methods, and accomplishments are replicable, thereby permitting other States to benefit from them.

(c) *Quality of resources.* (i) The Secretary considers the quality of the project's resources.

(2) In determining the quality of the project design, the Secretary considers the extent to which—

(i) Support available to the project, including personnel, equipment, supplies, and other resources, is sufficient to ensure a successful project;

(ii) Budgeted costs that are reasonable and justified in relation to the design, outcomes, and potential significance of the project; and

(iii) The applicant's matching share of the budgeted costs demonstrates a significant commitment to successful completion of the project and to project continuation after federal funding ends.

(d) *Quality of management plan and workplan.* (1) The Secretary considers the quality of the project's management plan and workplan.

(2) In determining the quality of the management plan and workplan, the Secretary considers the following factors:

(i) The extent to which the management plan and workplan are designed to achieve goals and objectives of the project, and include clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The adequacy of procedures to ensure feedback and continuous improvements in the operation of the project.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.12 What additional selection criteria are used for an application proposing teacher recruitment activities?

In reviewing applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.11(a) ("Quality of project design"), the Secretary considers the extent to which the project addresses—

(1) Systemic changes in the ways that new teachers are to be recruited, supported and prepared; and

(2) Systemic efforts to recruit, support, and prepare prospective teachers from disadvantaged and other underrepresented backgrounds.

(b) In addition to the elements contained in § 611.11(b), ("Significance"), the Secretary considers the applicant's commitment to continue recruitment activities, scholarship assistance, and preparation and support of additional cohorts of new teachers after funding under this part ends.

(c) In addition to the elements contained in § 611.11(c) ("Quality of resources"), the Secretary considers the impact of the project on high-need LEAs and high-need schools based upon—

(1) The amount of scholarship assistance the project will provide students from federal and non-federal funds;

(2) The number of students who will receive scholarships; and

(3) How those students receiving scholarships will benefit from high-quality teacher preparation and an effective support system during their first three years of teaching.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.13 What competitive preference does the Secretary provide?

The Secretary provides a competitive preference on the basis of how well the State's proposed activities in any one or more of the following statutory priorities are likely to yield successful and sustained results:

(a) Initiatives to reform State teacher licensure and certification requirements so that current and future teachers possess strong teaching skills and academic content knowledge in the subject areas they will be certified or licensed to teach.

(b) Innovative reforms to hold higher education institutions with teacher preparation programs accountable for preparing teachers who are highly competent in the academic content areas and have strong teaching skills.

(c) Innovative efforts to reduce the shortage (including the high turnover) of highly competent teachers in high-poverty urban and rural areas.

(Authority: 20 U.S.C. 1021 *et seq.*)

4. Subpart C, consisting of §§ 611.21 through 611.25, is added, reading as follows:

Subpart C—Partnership Grants Program

§ 611.21 What are the program's selection criteria for pre-applications?

In evaluating the quality of pre-applications, the Secretary uses the following selection criteria.

(a) *Project goals and objectives.* (1) The Secretary considers the goals and objectives of the project design.

(2) In determining the quality of the project goals and objectives, the Secretary considers the following factors:

(i) The partnership's vision for producing significant and sustainable improvements in teacher education.

(ii) The needs the partnership will address.

(iii) How the partnership and its activities would be sustained once federal support ends.

(b) *Partnering commitment.* (1) The Secretary considers the partnering commitment embodied in the project.

(2) In determining the quality of the partnering commitment, the Secretary considers the following factors:

(i) Evidence of how well the partnership would be able to accomplish objectives working together that its individual members could not accomplish working separately.

(ii) The significance of the roles given to each principal partner in implementing project activities.

(c) *Quality and comprehensiveness of key project components.* (1) The Secretary considers the quality and comprehensiveness of key project components in the process of preparing new teachers.

(2) In determining the quality and comprehensiveness of key project components in the process of preparing new teachers, the Secretary considers the extent to which—

(i) Specific activities are designed and would be implemented to ensure that students preparing to be teachers are adequately prepared, including activities designed to ensure that they have adequate content knowledge, are able to use technology effectively to promote instruction, and participate in extensive, supervised clinical experiences;

(ii) Specific activities are designed and would be implemented to ensure adequate support for those who have completed the teacher preparation program during their first years as teachers; and

(iii) The project design reflects best research and practice.

(d) *Specific project outcomes.* (1) The Secretary considers the specific outcomes the project would produce in the preparation of new teachers.

(2) In determining the specific outcomes the project would produce in the preparation of new teachers, the Secretary considers the following factors:

(i) The extent to which important aspects of the partnership's existing teacher preparation system would change.

(ii) The quality of the performance measures to be used to demonstrate success.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.22 What additional selection criteria are used for a pre-application that proposes teacher recruitment activities?

In reviewing pre-applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.21(a) ("Project goals and objectives"), the Secretary considers the extent to which—

(1) The partnership's vision responds to LEA needs for a diverse and high quality teaching force, and will lead to reduced teacher shortages in these high need LEAs; and

(2) The partnership will sustain its work after federal funding has ended by recruiting, providing scholarship assistance, training and supporting additional cohorts of new teachers.

(b) In addition to the elements contained in § 611.21(c) ("Quality and comprehensiveness of key project components"), the Secretary considers the extent to which the project will—

(1) Significantly improve recruitment of new students, including those from disadvantaged and other underrepresented backgrounds; and

(2) Provide scholarship assistance and adequate training to preservice students, as well as induction support for those who become teachers after graduating from the teacher preparation program.

(c) In addition to the elements contained in § 611.21(d) ("Specific project outcomes"), the Secretary considers the extent to which the project addresses the number of new teachers to be produced and their ability to teach effectively in high-need schools.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.23 What are the program's general selection criteria for full applications?

In evaluating the quality of applications, the Secretary uses the following selection criteria.

(a) *Quality of project design.* (1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent of evidence of institution-wide commitment to high quality teacher preparation that includes significant policy and practice changes supported by key leaders, and which result in permanent changes to ensure that preparing teachers is a central mission of the entire university.

(ii) The extent to which the partnership creates and sustains collaborative mechanisms to integrate professional teaching skills, including skills in the use of technology in the classroom, with strong academic content from the arts and sciences.

(iii) The extent of well-designed and extensive preservice clinical experiences for students, including mentoring and other forms of support, implemented through collaboration between the K–12 and higher education partners.

(iv) Whether a well-planned, systematic induction program is established for new teachers to increase their chances of being successful in high-need schools.

(v) The strength of linkages within the partnership between higher education and high need schools or school districts so that all partners have important roles in project design, implementation, governance and evaluation.

(vi) Whether the project design is based on up-to-date knowledge from research and effective practice, especially on how students learn.

(b) *Significance of project activities.* (1) The Secretary considers the significance of project activities.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) How well the project involves promising new strategies or exceptional approaches in the way new teachers are recruited, prepared and inducted into the teaching profession.

(ii) The extent to which project outcomes include preparing teachers to teach to their State's highest K–12 standards and that are likely to result in improved K–12 student achievement.

(iii) The extent of the partnership's commitment to institutionalize the project after federal funding ends.

(iv) The extent to which the partnership is committed to disseminating effective practices to others and is willing to provide technical assistance about ways to improve teacher education.

(v) How well the partnership will integrate its activities with other education reform efforts underway in the State or communities where the partners are located, and will coordinate its work with local, State or federal teacher training, teacher recruitment, or professional development programs.

(c) *Quality of resources.* (1) The Secretary considers the quality of resources of project activities.

(2) In determining the quality of resources, the Secretary considers the extent to which—

(i) Support available to the project, including personnel, equipment, supplies, and other resources, is sufficient to ensure a successful project;

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project; and

(iii) The applicant's matching share of the budgeted costs demonstrates a significant commitment to successful completion of the project and to project continuation after federal funding ends.

(d) *Quality of management plan and workplan.* (1) The Secretary considers the quality of the management plan and workplan.

(2) In determining the quality of the management plan, the Secretary considers the following factors:

(i) The extent to which the management plan and workplan are designed to achieve goals and objectives of the project, and include clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The extent to which the management plan and workplan reflect an effective, inclusive, and responsive governance and decision-making structure that will permit all partners to participate in and benefit from project activities, and to use evaluation results to ensure continuous improvements in the operations of the project.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.24 What additional selection criteria are used for a full application that proposes teacher recruitment activities?

In reviewing full applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.23(a) ("Quality of project design"), the Secretary considers the extent to which the project reflects—

(1) A commitment to recruit, support and prepare additional well-qualified new teachers for high need schools;

(2) Appropriate academic and student support services; and

(3) A well-considered strategy for addressing shortages of well-qualified and well-trained teachers in high-need LEAs, especially teachers from disadvantaged and other unrepresented backgrounds.

(b) In addition to the elements contained in § 611.23(b) ("Significance of project activities"), the Secretary considers the extent to which the project promotes the recruitment, scholarship assistance, preparation, and support of additional cohorts of new teachers.

(c) In addition to the elements contained in § 611.23(c) ("Quality of resources"), the Secretary considers the impact of the project on high-need LEAs and high-need schools based upon—

(1) The amount of scholarship assistance the project will provide students from federal and non-federal funds;

(2) The number of students who will receive scholarships; and

(3) How those students receiving scholarships will benefit from high-quality teacher preparation and an effective support system during their first three years of teaching.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.25 What competitive preference does the Secretary provide?

The Secretary provides a competitive preference on the basis of how well the project includes a significant role for private business in the design and implementation of the project.

(Authority: 20 U.S.C. 1021 *et seq.*)

5. Subpart D, consisting of §§ 611.31 and 611.32, is added, reading as follows:

Subpart D—Teacher Recruitment Grants Program

§ 611.31 What are the program's selection criteria for pre-applications?

In evaluating pre-applications, the Secretary considers the following criteria:

(a) *Project goals and objectives.* (1) The Secretary considers the goals and objectives of the project design.

(2) In determining the quality of the project goals and objectives, the Secretary considers how the partnership or State applicant intends to—

(i) Produce significant and sustainable improvements in teacher recruitment, preparation, and support.

(ii) Reduce teacher shortages in high-need LEAs and schools, and improve student achievement in the schools in which teachers who participate in its project will teach.

(b) *Partnership commitment.* (1) The Secretary considers the partnering commitment embodied in the project.

(2) In determining the quality of the partnering commitment, the Secretary considers the following factors:

(i) What the partnership, or State and its partners, can accomplish by working together that could not be achieved by working separately.

(ii) How the project proposed by the partnership or State is driven by the needs of LEA partners.

(c) *Quality of key project components.* (1) The Secretary considers the quality of key project components.

(2) In determining the quality of key project components, the Secretary considers the following factors:

(i) The extent to which the project would make significant and lasting systemic changes in how the applicant recruits, trains, and supports new teachers, and reflect knowledge gained from research and practice.

(ii) The extent to which the project would be implemented in ways that significantly improve recruitment, scholarship assistance to preservice students, training, and induction support for new entrants into teaching.

(d) *Specific project outcomes.* (1) The Secretary considers the specific outcomes the project would produce in the recruitment, preparation, and placement of new teachers.

(2) In determining the specific outcomes the project would produce in the recruitment, preparation, and placement of new teachers, the Secretary considers the following factors:

(i) The number of teachers to be produced and the quality of their preparation.

(ii) The partnership's or State's commitment to sustaining the work of the project after federal funding has ended by recruiting, providing scholarship assistance, training, and supporting additional cohorts of new teachers.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.32 What are the program's general section criteria?

In evaluating the quality of full applications, the Secretary uses the following selection criteria.

(a) *Quality of the project design.* (1) The Secretary considers the quality of the project design for ensuring that activities to recruit and prepare new teachers are a central mission of the project.

(2) In considering the quality of the project design for ensuring that activities to recruit and prepare new teachers are a central mission of the project, the Secretary considers the extent to which the project design—

(i) Shows evidence of institutional or (in the case of a State applicant) State-level commitment both to recruitment of additional new teachers, and to high-quality teacher preparation that includes significant policy and practice changes supported by key leaders that result in permanent changes to current institutional practices;

(ii) Creates and sustains collaborative mechanisms to integrate professional

teaching skills, including skills in the use of technology in the classroom, with academic content provided by the school of arts and sciences;

(iii) Includes well-designed academic and student support services as well as carefully planned and extensive preservice clinical experiences for students, including mentoring and other forms of support, that are implemented through collaboration between the K–12 and higher education partners;

(iv) Includes establishment of a well-planned, systematic induction program for new teachers that increases their chances of being successful in high-need schools;

(v) Includes strong linkages among the partner institutions of higher education and high-need schools and school districts (or, in the case of a State applicant, between the State and these entities in its project), so that all those who would implement the project have important roles in project design, implementation, governance, and evaluation;

(vi) Responds to the shortages of well-qualified and well-trained teachers in high-need school districts, especially from disadvantaged and other underrepresented backgrounds; and

(vii) Is based on up-to-date knowledge from research and effective practice.

(b) *Significance.* (1) The Secretary considers the significance of the project.

(2) In determining the significance of the project, the Secretary considers the extent to which—

(i) The project involves promising new strategies or exceptional approaches in the way new teachers are recruited, prepared, and inducted into the teaching profession;

(ii) Project outcomes include measurable improvements in teacher quality and in the number of well-prepared new teachers, and that are likely to result in improved K–12 student achievement;

(iii) The project will be institutionalized after federal funding ends, including recruitment, scholarship assistance, preparation, and support of additional cohorts of new teachers;

(iv) The project will disseminate effective practices to others, and to provide technical assistance about ways to improve teacher recruitment and preparation; and

(v) The project will integrate its activities with other education reform activities underway in the State or communities in which the project is based, and will coordinate its work with local, State, and federal teacher recruitment, training, and professional development programs.

(c) *Quality of resources.* (1) The Secretary considers the quality of the project's resources.

(2) In determining the quality of the project's resources, the Secretary considers the extent to which—

(i) The amount of support available to the project, including personnel, equipment, supplies, student scholarship assistance, and other resources is sufficient to ensure a successful project.

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project.

(iii) The applicant's matching share of budgeted costs demonstrates a significant commitment to successful completion of the project, and to project continuation after federal funding ends.

(d) *Quality of management plan and workplan.* (1) The Secretary considers the quality of the project's management plan and workplan.

(2) In determining the quality of the management plan and workplan, the Secretary considers the following factors:

(i) The extent to which the management plan and workplan are designed to achieve goals and objectives of the project, and include clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The extent to which the project has an effective, inclusive, and responsive governance and decisionmaking structure that will permit all partners to participate in and benefit from project activities, and to use evaluation results to continuously improve project operations.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Authority: 20 U.S.C. 1021 *et seq.*)

6. Subpart F is revised to read as follows:

Subpart F—Other Grant Conditions

§ 611.61 What is the maximum indirect cost rate that applies to a recipient's use of program funds?

Notwithstanding 34 CFR 75.560 through 75.562 and 34 CFR 80.22, the maximum indirect cost rate that any recipient of funds under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.62 What are a grantee's matching requirements?

(a)(1) Each State receiving a grant under the State Grants Program or Teacher Recruitment Grants Program must provide, from non-federal sources, an amount equal to 50 percent of the amount of the grant to carry out the activities supported by the grant

(2) The 50 percent match required by paragraph (a)(1) of this section must be made annually during the project period, with respect to each grant award the State receives.

(b) Each partnership receiving a grant under the Partnership Grant Program or the Teacher Recruitment Grant Program must provide, from non-federal sources, an amount equal to—

(1) 25 percent of the grant award for the first year of the grant;

(2) 35 percent of the grant award for the second year of the grant; and

(3) 50 percent of the grant award for each succeeding year of the grant.

(c) The match from non-federal sources required by paragraphs (a) and (b) of this section may be made in cash or in kind.

(Authority: 20 U.S.C. 1021 *et seq.*)

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BILLING CODE 4000–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–2]

Cable Compulsory License; Definition of a Network Station

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is opening a rulemaking proceeding to determine the scope and application of the definition of a network station under the cable statutory license of the Copyright Act.

DATES: Initial comments should be received no later than April 11, 2000. Reply comments are due by May 11, 2000.

ADDRESSES: If sent by mail, an original and twelve copies of comments and reply comments should be addressed to: Office of the Copyright General Counsel, PO Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and twelve copies of comments and reply comments should be brought to: Office of the

Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

When is a television station a network station? That is the question for which Paxson Communications Corp. ("Paxson") has petitioned the Copyright Office for an answer and to which this rulemaking proceeding is directed.

The cable statutory license of the Copyright Act, 17 U.S.C. 111, provides a licensing regime for the retransmission of broadcast stations by cable systems. Whether a particular station is a "network" station or not is critical to the calculation of royalty payments by cable systems for retransmission of that station because the cable statutory license only gathers royalties for the retransmission of nonnetwork broadcast programming. In applying the royalty payment formula, cable systems pay a full distant signal equivalent ("DSE") for retransmission of an independent, nonnetwork station because it is presumed that all the programming contained on the signal of that station is not network-provided programming. However, cable systems must only pay one-quarter of a DSE for retransmission of a network station, because it is presumed that only one-quarter of the programming contained on the signal of a network station is nonnetwork programming. Consequently, as a general principle, a cable system can carry four network stations for the cost of one independent station.[1] This distinction in the classification of stations is important to both cable systems and copyright owners: cable systems, because it affects their costs; and copyright owners because it determines how much money will be in the cable royalty pool.

Whether a station is a "network station" also affects matters related to cable carriage. Most cable systems throughout the United States have filled their quotas of permitted distant signals. If a new independent station seeks carriage on a typical cable system, such carriage will trigger the 3.75% royalty fee for nonpermitted distant signals which cable systems are reluctant to pay. Consequently, the signal will not be carried. However, if the station is designated as a network station, carriage of the station becomes considerably more attractive to a cable system because the associated royalty fees are considerably lower.

The issue of what is a network station has arisen intermittently through the years on an informal basis. When the Copyright Act passed in 1976, it was clear that the only stations that qualified as network stations under the section 111 license were those owned and operated, or affiliated with, the "Big 3" networks: ABC, CBS, and NBC. The Copyright Office received several informal inquiries from cable systems during the early 1990's regarding the status of the Fox network, but the Office declined to rule that Fox was a network for purposes of the section 111 license. Paxson is the first broadcaster to come forward and formally petition the Office for a ruling.

Definition of a Network Station

Section 111(f) of title 17 contains the statutory definition of a network station. It provides:

> A "network station" is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

17 U.S.C. 111(f).

Examination of this definition reveals that there are three critical elements to the qualification of a broadcast station as a network station. The broadcast station must be owned and operated by, or affiliated with, one or more of the U.S. television networks that provide nationwide transmissions; must transmit a substantial portion of the programming supplied by the network; and the programming supplied by the network must constitute a substantial portion of the station's typical broadcast day. There has never been any question that stations of the Big 3 networks satisfy these requirements, and the Copyright Office has always treated a station of one of these networks as a network station for purposes of section 111.

Nevertheless, the specific meaning of these three elements is far from clear. For example, what are "nationwide" transmissions? Does there have to be a station of a particular "network" in every state or television market in order to qualify that organization as a network, or is something less than that sufficient? What constitutes transmitting a "substantial" portion of the programming offered by a network? Is fifty percent enough, or is more or less required? Does the programming supplied by the network have to be first-run or original programming, or is syndicated programming permissible? What constitutes a "substantial" portion of a station's typical broadcast day? It is these questions, and the ones described below, to which the Copyright Office seeks public comment in this Notice of Inquiry.

Petition of Paxson

Paxson provides television programming over the PaxTV Television Network ("PaxTV") to over sixty owned and operated and affiliated television broadcast stations. According to Paxson, its owned and operated and affiliate stations satisfy all three of the criteria for a "network station" under section 111.

First, Paxson submits that PaxTV is a television network because it provides nationwide transmissions of PaxTV programming. PaxTV is carried on stations in 34 states and the District of Columbia, all of which are either owned and operated by, or are primary affiliates of, PaxTV.

Second, Paxson asserts that its stations carry a substantial portion of the programming provided by PaxTV because its contracts with these stations require that PaxTV programming be broadcast a minimum of 18 hours daily. And third, as a result of this requirement, Paxson submits that each of its stations meets the requirement of transmitting PaxTV programming for a "substantial part" of each station's "typical broadcast day."

In addition to meeting the three criteria, Paxson notes that the Copyright Office has previously stated that, in addition to the Big 3, there could be a fourth network for purposes of the section 111 license provided that the statutory criteria were met. Letter from Dorothy Schrader, General Counsel, to Thomas Hendrickson (November 13, 1981). Paxson also cites a passage from the 1976 House report accompanying the Copyright Act as further proof that networks in addition to the Big 3 were contemplated under section 111:

> To qualify as a network station, all of the conditions of the definition must be met. Thus, the retransmission of a Canadian station affiliated with a Canadian network would not qualify under the definition. Further, a station affiliated with a regional network would not qualify, since a regional network would not provide nationwide transmissions. However, a station affiliated with a network providing nationwide

[1] The actual cost of such carriage can vary depending upon the royalty rate applicable to carriage of each station.

transmissions that also occasionally carries regional programs would qualify as a "network station," if the station transmits a substantial part of the programming supplied by the network for a substantial part of the station's typical broadcast day.

H.R. Rep. No. 94–1476, at 101 (1976).

In conclusion, Paxson requests that the Copyright Office declare that stations owned and operated by, or affiliated with, PaxTV be declared network stations under section 111, and that cable systems carrying PaxTV stations be permitted to report and pay for such stations as network stations.

This Proceeding

Since the implementation of the section 111 license in 1978, the Copyright Office has treated a broadcast station that is owned and operated by, or affiliated solely with, one of the Big 3 networks as a "network station" for section 111 purposes. All other stations have been treated as independents, including those that have dual affiliations with broadcasters other than the Big 3.[2] As a matter of policy, the Office has never questioned the network status of a broadcast station identified as a CBS, ABC, or NBC station. It has always been assumed that such a station automatically took a substantial portion of the network's programming and that that programming made up a substantial portion of the station's typical broadcast day. There could be cases, however, where such a station does not take a sufficient amount of network programming. The Office has never inquired and has accepted the delineation of network station at face value for stations in the CBS, ABC, and NBC networks. It appears now that with the changing television marketplace, and with the petition of Paxson, the Office must reevaluate its approach before it can declare whether there are any new networks and network stations.

To that end, the Office is opening this rulemaking proceeding to consider what makes a broadcast station a "network station" for purposes of section 111. As noted above, there are considerable questions related to the three criteria of the definitional provision which require resolution before the Office can determine whether there are more or less network stations under section 111. The first criterion of the definition focuses on the status of the television network, as opposed to that of the individual station. In order for there to be a television network, there must be nationwide transmissions by stations associated with that network. What is the meaning of "nationwide"? Does it mean coverage in a certain number of television markets, or is it solely a geographical matter? For example, would coverage of the top twenty television markets constitute "nationwide" transmissions because cities on both coasts and a portion of the interior of the United States are covered? Or does "nationwide" mean greater, or perhaps even less, coverage? Does the section 119 definition of a network station, which provides that the network must offer an interconnected program service with at least 15 hours per week of network programming to at least 25 stations in 10 or more states, offer any guidance, and, if so, on what grounds?

The second and third criteria refer to the individual station and both contain the word "substantial." The second criterion states that the broadcast station must transmit a substantial part of programming supplied by the network. The obvious question is, what is a "substantial" amount? Is it 50 percent, or something more or perhaps even less? The definition of a "full network station" in the Federal Communications Commission's 1976 cable rules provides that a full network must transmit 85 percent of the weekly prime time hours offered by the network. 47 CFR 76.5. Does this provision offer any guidance, and, if so, on what grounds?

The third criterion provides that the amount of network programming taken by the station must constitute a "substantial" portion of the station's typical broadcast day. Once again, what does "substantial" mean? Can some percentage or number of hours be determined to provide a bright-line test as to what is substantial and what is not? Furthermore, can a station which carries all or most of the prime time programming offered by a network satisfy the "substantial" requirement, regardless of what it carries at other hours of the day?

If, after reviewing the responses to these questions, the Copyright Office is able to fashion a test for determining when a particular station is a network station, how should such a test be implemented? Can the Office continue to assume that a station that is solely affiliated with, or owned and operated by, one of the Big 3 networks is still a network station for section 111 purposes, or will such stations be required to individually satisfy the new test? If the latter, how should the Office implement the test, and to what extent should broadcasters and cable operators have input as to the determination?

Finally, there is the matter of the Paxson petition, which is the source of this rulemaking proceeding. We do not believe that the question of PaxTV's network status can be reached until a method for determining when a station is a network station is established. Nevertheless, the Paxson petition is useful to creating such a methodology, and PaxTV stations will undoubtably be the first to which the new regulation is applied. The Office has already identified above the number of hours of network programming carried daily by PaxTV stations. The Appendix to this Notice contains a list (provided by Paxson) identifying the stations of the Paxson network, their market location, and Paxson's ownership interest. Commenters are encouraged to use this information in addressing the fundamental issue of when is a television station a network station.

In addition, after rules have been adopted for determining network station status, there is the matter of how the Office should treat other putative broadcast networks, such as the Fox, United Paramount, and Warner Brothers networks? One possible approach is a case-by-case basis whereby each of these networks is afforded the opportunity to petition the Office for a determination of network status, such as Paxson has done. Is this appropriate, or should cable operators who carry such stations be allowed to petition the Office as well? Must each petition be addressed through a notice and comment rulemaking proceeding, or is there some other procedure that is permissible or desirable?

The Office encourages responses to the questions posed in this Notice of Inquiry, as well as any other comments relevant to the issues raised.

Dated: February 4, 2000.

Marybeth Peters,

Register of Copyrights.

Note: This Appendix will not be Codified in Title 37, Part 201, of the Code of Federal Regulations.

The following table lists the owned, operated or affiliated stations airing PAX TV programming.

[2] For example, a station that is affiliated with ABC and Fox would not be considered a network station because the Office has not determined that Fox is a network under section 111.

PAX TV DISTRIBUTION

Rank and market name	Call letters	Station ownership interest
1 New York	WPXN	Owned & Operated.
1 New York	WBPT	Do.
2 Los Angeles	KPXN	Do.
3 Chicago	WCPX	Do.
4 Philadelphia	WPPX	Do.
5 San Francisco-Oakland	KKPX	Do.
6 Boston	WBPX	Affiliated.
6 Boston	WPXB	Owned & Operated.
7 Dallas-Ft.Worth	KPXD	Do.
8 Washington, D.C.	WPXW	Do.
8 Washington, D.C.	WWPX	Affiliated.
9 Detroit	WPXD	Owned & Operated.
10 Atlanta	WPXA	Do.
11 Houston	KPXB	Do.
12 Seattle-Tacoma	KWPX	Do.
13 Cleveland	WVPX	Do.
14 Tampa-St. Petersburg	WXPX	Do.
15 Minneapolis-St. Paul	KPXM	Do.
16 Miami-Ft. Lauderdale	WPXM	Do.
17 Phoenix	KBPX	Do.
17 Phoenix	KPPX	Affiliate—Pending Owned & Operated.
18 Denver	KPXC	Owned & Operated.
20 Sacramento-Stockton-Modesto	KSPX	Pending Owned & Operated.[1]
21 St. Louis	WPXS	Affiliated.
22 Orlando-Daytona Beach	WOPX	Owned & Operated.
23 Portland, OR	KPXG	Do.
25 Indianapolis	WIPX	Affiliated.
27 Hartford & New Haven	WHPX	Do.
29 Raleigh-Durham	WRPX	Do.
29 Raleigh-Durham	WFPX	Owned & Operated.
30 Nashville	WNPX	Do.
32 Cincinnati		
33 Kansas City	KPXE	Do.
36 Salt Lake City	KUPX	TBA—Pending Owned & Operated.[1]
36 Salt Lake City	KUWB	Owned & Operated.
37 Grand Rapids-Kalamazoo	WZPX	Affiliated.
38 San Antonio	KPXL	Pending Owned & Operated.[1]
39 Birmingham-Tuscaloosa	WPXH	Owned & Operated.
40 Norfolk-Portsmouth	WPXV	Do.
41 New Orleans	WPXL	Pending Owned & Operated.[1]
42 Buffalo		
43 Memphis	WPXX	Pending Owned & Operated.
44 West Palm Beach-Ft. Pierce	WPXP	Owned & Operated.
45 Oklahoma City	KOPX	Owned & Operated.[1]
47 Greensboro-H. Point	WGPX	Owned & Operated.
48 Louisville		
49 Albuquerque-Santa Fe	KAPX	Do.
50 Providence-New Bedford	WPXQ	Do.
51 Wilkes-Barre-Scranton	WQPX	Do.
53 Albany-Schenectady-Troy	WYPX	Do.
54 Dayton	WDPX	Do.
55 Fresno-Visalia	KPXF	Do.
57 Little Rock-Pine Bluff	KYPX	Pending Owned & Operated.[1]
58 Charleston-Huntington	WLPX	Owned & Operated.
59 Tulsa	KTPX	Do.
62 Mobile-Pensacola		
63 Knoxville	WPXK	Do.
67 Lexington		
68 Roanoke-Lynchburg	WPXR	Do.
69 Green Bay-Appleton	WPXG	Do.
70 Des Moines-Ames	KFPX	Do.
71 Honolulu	KPXO	Do.
74 Syracuse	WSPX	Do.
75 Shreveport	KPXJ	Do.
82 Champaign & Springfield	WPXU	Do.
88 Cedar Rapids-Waterloo	KPXR	Do.
105 Greenville-N. Bern-Washington	WEPX	Do.
NR San Juan/Ponce/San Sebastian, Puerto Rico	WJPX	Do.

[1] To be acquired.

[FR Doc. 00–3237 Filed 2–10–00; 8:45 am]
BILLING CODE 1410–31–P

POSTAL SERVICE

39 CFR Part 111

Loading Requirements for PVDS Mailings

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (64 FR 72044–45) a proposed revision to the Domestic Mail Manual to require that if Periodicals mail is on the same vehicle as Standard Mail prepared for Plant Verified Drop Shipment (PVDS), then the Periodicals mail must be loaded toward the tail end of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first. The Postal Service is extending the comment period for this proposed rule.

DATES: Comments must be received on or before March 15, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. Fax: (202) 268–4336. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC 20260–1540 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268–6351 or Anne Emmerth, (202) 268–2363.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–3158 Filed 2–10–00; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 445

[FRL 6535–5]

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting.

SUMMARY: EPA will conduct a public meeting on the upcoming Metal Products and Machinery proposed rulemaking on March 3, 2000, from 9:30 a.m. to 12:30 p.m.

The Office of Science and Technology within EPA's Office of Water is holding the public meeting in order to inform all interested parties of the current status of the Metal Products and Machinery (MP&M) effluent guideline. EPA intends to propose effluent limitations guidelines and standards for the MP&M industrial category in October 2000. The meeting is intended to be a forum in which EPA can report on the status of the rulemaking and interested parties can provide information and ideas to the Agency on key technical, economic, and implementation issues.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. For information on the location and directions, see the **ADDRESSES** section below.

DATES: EPA will conduct a public meeting on the upcoming Metal Products and Machinery proposed rulemaking on March 3, 2000, from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The Metal Products and Machinery public meeting will be held at the National Wildlife Visitor Center Auditorium of the Patuxent Research Refuge, 10901 Scarlet Tanager Loop, Laurel, MD (301) 497–5760; "http://www.prr.r5.fws.gov/vclocation.html". Directions are as follows: *From Washington, D.C.* take Baltimore-Washington Parkway North (I–295N) to the Powder Mill Road exit. Turn right (East) onto Powder Mill Road. Go 1.9 miles and turn right into Visitor Center entrance (Scarlet Tanager Loop). Go 1.3 miles to parking lot. *From Baltimore* take Baltimore/Washington Parkway South (I–295S) to the Powder Mill Road exit. Turn left (East) onto Powder Mill Road. Go 1.9 miles and turn right into Visitor Center entrance (Scarlet Tanager Loop). Go 1.3 miles to parking lot.

FOR FURTHER INFORMATION CONTACT: Shari Barash, Office of Water (4303), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–7130; email: barash.shari@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is developing proposed effluent limitations guidelines and standards for the MP&M Point Source Category under authority of the Clean Water Act (33 U.S.C. 1251 et. seq.). The MP&M effluent limitations guidelines and standards proposal will apply to facilities that manufacture, rebuild, or maintain finished metal parts, products, or machines. The 18 industrial sectors which are being examined for the MP&M regulation include the following: Aerospace; Aircraft; Bus & Truck; Electronic Equipment; Hardware; Household Equipment; Instruments; Metal Finishing and Electroplating Job Shops; Mobile Industrial Equipment; Motor Vehicles; Office Machines; Ordnance; Precious and Non-precious Metals; Railroad; Ships & Boats; Stationary Industrial Equipment; Printed Circuit Boards; and Other Metal Products. The meeting will provide an update on the development of the proposed rule to interested parties. EPA will provide an overview of the development of the regulation including a discussion of the data collection efforts, the potential treatment technology options, the potential subcategorization of industry segments, and the schedule for the MP&M rulemaking. The meeting will not be recorded by a reporter or transcribed for inclusion in the record for the MP&M rulemaking.

Documents related to the topics mentioned above and a more detailed agenda will be available at the meeting. For those unable to attend the meeting, a document summary will be available following the meeting and can be obtained by an e-mail or telephone request to Shari Barash at the previously mentioned address.

Dated: February 7, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–3215 Filed 2–10–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[DA 00–222; Docket No. 99–81; RM–9328]

Authorization of 2 GHz Mobile Satellite Service Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed Rules: Supplemental Comments.

SUMMARY: By this Public Notice, the Chief of the Federal Communications Commission's International Bureau seeks supplemental comment on authorizing 2 GHz Mobile Satellite Service (MSS) systems using a processing alternative that combines elements of the traditional band arrangement with the negotiated entry approach. This alternative is intended to provide incentives for MSS operators to expedite implementation of their

systems, while maximizing their flexibility during the incumbent relocation process.

DATES: Supplemental Comments on or before February 17, 2000.

ADDRESSES: Send Supplemental Comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554. See Supplementary Information for information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Chris Murphy, Satellite Policy Branch, (202) 418–2373, or Howard Griboff, Satellite Policy Branch, at (202) 418–0657.

SUPPLEMENTARY INFORMATION: In the *2 GHz MSS Notice*, the Commission sought comment on four spectrum assignment methodologies that could accommodate all nine Mobile Satellite Service (MSS) systems proposed in the 1990–2025/2165–2200 MHz frequency bands (2 GHz MSS).[1] The first is a "flexible band arrangement," in which the Commission would grant each proposed system 2.5 MHz in uplink and downlink spectrum, group systems in segments based on the particular technology used, and provide expansion spectrum between the assigned segments for additional system requirements.[2] In the second option, called the "negotiated entry" approach, the Commission would license all proposed systems across the entire band and allow the operators themselves to coordinate their operations, with the Commission being available to resolve disputes.[3] In the third proposal, the "traditional band arrangement," the Commission would divide the spectrum equally and assign or designate the spectrum blocks to the proposed systems using system design as a function of spectrum allocation (*i.e.*, a CDMA–NGSO block, a TDMA–GSO block, etc.).[4] The fourth option proposed to auction licenses in the event that none of the preceding three options is viable.[5] The Commission also reserved the option of adopting a hybrid solution arising from the options described.[6]

The Commission received significant comment on the four proposed methodologies. By this Public Notice, the International Bureau seeks to augment the record on certain issues not directly addressed by commenters. Specifically, we seek additional comment on a hybrid processing alternative, combining elements of the traditional band arrangement with the negotiated entry approach. This new alternative is intended to provide incentives for MSS operators to expedite implementation of their systems, while maximizing their flexibility during the incumbent relocation process.[7]

In this alternative methodology, the Commission would subdivide the 2 GHz MSS uplink and downlink bands into distinct segments of equal bandwidth, with each segment representing an operator's "home" spectrum assignment in the band. Rather than assigning each segment according to system design, as proposed in the traditional band arrangement, each operator would be permitted to select from the then-available spectrum segments by submitting a request for its desired assignment once the first satellite in its system reaches its intended orbit. This mechanism is designed to provide market-based incentives for MSS operators to implement service quickly, since early entry may determine whether a system can choose its preferred "home" segment.

In addition to authorizing each system to a "home" spectrum segment, the Commission would authorize each satellite operator to provide service anywhere in the 2 GHz MSS spectrum, subject to inter-system coordination. In this regard, this part of the proposal is similar to the negotiated entry approach proposed in the *2 GHz MSS Notice*. The primary differences, however, are that under the new approach, operators would be permitted to use spectrum outside their "home" assignment only on a secondary basis with respect to other MSS operators, and an operator's total spectrum use would be limited to the same amount of spectrum that is authorized in the "home" segment. In the event that a later entrant selects spectrum for its "home" assignment that is being used by an earlier entrant, the earlier entrant would be required to move to other available spectrum or return to its "home" spectrum assignment. This part of the proposal is designed to allow systems to begin providing service in any available frequencies of the 2 GHz MSS band during the incumbent relocation process, and facilitate inter-system coordination in the band when later systems implement.

We seek comment on these modifications to the traditional band arrangement and negotiated entry approach, and on implementing this hybrid spectrum assignment methodology. We also seek comment on whether these modifications would serve the public interest by providing additional incentives for MSS operators to expedite implementation of their systems.

Procedural Matters

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file Supplemental Comments limited to the issues addressed in this Public Notice no later than February 17, 2000. In view of the pendency of this proceeding, we expect to adhere to the schedule set forth in this Public Notice and do not contemplate granting extensions of time. Supplemental Comments should reference IB Docket No. 99–81 and should include the DA number shown on this Public Notice. Supplemental Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[8] Supplemental Comments filed through the ECFS can be sent as an electronic file via Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, IB Docket No. 99–81.

In the *2 GHz MSS Notice*, the Commission presented an Initial Regulatory Flexibility Analysis,[9] as required by the Regulatory Flexibility Act (RFA).[10] If commenters believe that the proposals discussed in this Public Notice require additional RFA analysis, they should include a discussion of these issues in their Supplemental Comments.

For *ex parte* purposes, this proceeding continues to be a "permit-but-disclose" proceeding, in accordance with § 1.1200(a) of the Commission's rules, and is subject to the requirements set forth in § 1.1206(b) of the Commission's rules.

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[1] *The Establishment of Policies and Service Rules for the Mobile Satellite System in the 2 GHz Band*, IB Docket No. 99–81, Notice of Proposed Rulemaking, 14 FCC Rcd 4843, 4857–64 paras. 26–48 (1999); 64 FR 16880 (April 7, 1999) (*2 GHz MSS Notice*).

[2] *Id.* at 4858–61 paras. 31–39.

[3] *Id.* at 4861–62 paras. 40–43.

[4] *Id.* at 4863 paras. 44–45.

[5] *Id.* at 4863–64 paras. 46–48.

[6] *Id.* at 4858 paras. 30.

[7] *See id.* at 4892 paras. 112–113 (seeking comment on how incumbent relocation may affect the ultimate choice of 2 GHz MSS spectrum assignment methods).

[8] *See Electronic Filing of Documents in Rulemaking Proceeding*, 63 FR 24121 (May 1, 1998).

[9] *2 GHz MSS Notice*, 14 FCC Rcd at 4895–97, Section V.B.

[10] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

For further information, please contact: Chris Murphy, Satellite Policy Branch, (202) 418–2373, or Howard Griboff, Satellite Policy Branch, at (202) 418–0657.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Anna M. Gomez,

Deputy Chief, International Bureau.

[FR Doc. 00–3332 Filed 2–10–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF89

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Ohlone Tiger Beetle (Cicindela ohlone)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the Ohlone tiger beetle (*Cicindela ohlone*). This species is endemic to Santa Cruz County, California, and is threatened by habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of nonnative vegetation, and vulnerability to local extirpations from random natural events. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this species.

DATES: Comments from all interested parties received by April 11, 2000 will be considered. Public hearing requests must be received by March 27, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may submit written comments to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

(2) You may send comments by e-mail to ohlonetigerbeetle@r1.fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN 1018–AF89]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 805/644–1766.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, invertebrate biologist, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Ohlone tiger beetle (*Cicindela ohlone*) is a member of the Coleopteran family Cicindelidae (tiger beetles), which includes over 2,000 species worldwide and over 100 species in the United States (Pearson and Cassola 1992). Tiger beetles are day-active, predatory insects that prey on small arthropods. Because many tiger beetles often feed on insect species that are injurious to man and crops, they are regarded as beneficial (Pearson and Cassola 1992; Nagano 1982). Adult tiger beetles are medium-sized, elongate beetles characterized by their usually brilliant metallic green, blue, red, and yellow coloration highlighted by stripes and spots. Adults are ferocious, swift, and agile predators that seize small prey with powerful sickle-shaped jaws.

Tiger beetle larvae are also predatory. They live in small vertical or slanting burrows from which they lunge and seize passing invertebrate prey (Essig 1926; Essig 1942; Pearson 1988). When a prey item passes near a burrow, the larva grasps the prey with its strong mandibles (mouthparts) and pulls it into the burrow, and once inside the burrow, the larva will feed on the captured prey (Essig 1942; Pearson 1988). Tiger beetles share similar larval body forms throughout the world (Pearson and Cassola 1992). The larvae, either white, yellowish, or dusky in coloration, are grub-like and fossorial (subterranean), with a hook-like appendage on the fifth abdominal segment that anchors the larvae inside their burrows.

Tiger beetle larvae undergo three instars (larval development stages). This period can take 1 to 4 years, but a 2-year period is the most common (Pearson 1988). After mating, the tiger beetle female excavates a hole in the soil and oviposits (lays) a single egg (Pearson 1988; Kaulbars and Freitag 1993; Grey Hayes, University of California, Santa Cruz, pers. comm. 1998). Females of many species of *Cicindela* are extremely specific in choice of soil type for oviposition (egg laying) (Pearson 1988). It is not known at this time how many eggs the Ohlone tiger beetle female lays, but other species of *Cicindela* are known to lay between 1 and 14 eggs per female (mean range 3.7 to 7.7), depending on the species (Kaulbars and Freitag 1993). After the larva emerges from the egg and becomes hardened, it enlarges the chamber that contained the egg into a tunnel (Pearson 1988). Before pupation (transformation process from larva to adult), the third instar larva will plug the burrow entrance and dig a chamber for pupation. After pupation, the adult tiger beetle will dig out of the soil and emerge. Reproduction may either begin soon after emergence or be delayed (Pearson 1988).

Tiger beetles are a well-studied taxonomic group with a large body of scientific literature; the journal *Cicindela* is devoted exclusively to tiger beetles. Scientists have studied the diversity and ecological specialization of tiger beetles, and amateur collectors have long been attracted by their bright coloration and swift movements. Tiger beetle species occur in many different habitats including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988; Knisley and Hill 1992). A common habitat component appears to be open sunny areas for hunting and thermoregulation (an adaptive behavior to use sunlight or shade to regulate body temperature) (Knisley *et al.* 1990; Knisley and Hill 1992). Individual species of tiger beetle are generally highly habitat-specific because of oviposition and larval sensitivity to soil moisture, composition, and temperature (Pearson 1988; Pearson and Cassola 1992; Kaulbars and Freitag 1993).

The Ohlone tiger beetle is endemic to Santa Cruz County, California, where it is known only from coastal terraces supporting remnant patches of native grassland habitat. Specimens of this species were first collected northwest of the City of Santa Cruz, California, in 1987, and were first described in 1993 (Freitag *et al.* 1993). Both male and female specimens have been collected.

The adult Ohlone tiger beetle is a relatively small beetle measuring 9.5 to 12.5 millimeters (mm) (0.37 to 0.49 inches (in)) long. The adults have large, prominent eyes and metallic green elytra (leathery forewings) with small light spots (Freitag *et al.* 1993). Their legs are long, slender, and coppery-green. Freitag *et al.* (1993) describe features that distinguish this species from closely related species of *Cicindela purpurea* and other *purpurea* group taxa.

Two principal distinguishing features of the Ohlone tiger beetle are its early seasonal adult activity period and its disjunct distribution. While other tiger beetle species, such as *Cicindela purpurea*, are active during spring, summer, or early fall (Nagano 1982; Freitag *et al.* 1993), the Ohlone tiger beetle is active from late January to early April (Freitag *et al.* 1993). The Ohlone tiger beetle is the southernmost of *purpurea* group species in the Pacific coast region; its distribution is allopatric (geographically separated) to those of similar species (Freitag *et al.* 1993).

Ohlone tiger beetle larvae are currently undescribed. However, tiger beetle burrows, measuring 4 to 6 mm in diameter (0.16 to 0.23 in), were found in the same habitat areas where adult Ohlone tiger beetles were collected (David Kavanaugh, California Academy of Sciences, pers. comm. 1997; V. Cheap, *in litt.* 1997). The surface openings of these burrows are circular and flat with no dirt piles or mounds surrounding the circumference (Kim Touneh, Service, pers. obs. 1997). These burrows are similar to larval burrows belonging to other tiger beetle species. Larvae and inactive adults have been excavated from these burrows, and the inactive adults collected from these burrows were fully mature and easily identified as Ohlone tiger beetles (D. Kavanaugh, pers. comm. 1997; V. Cheap, *in litt.* 1997). Based on these collections, Kavanaugh (pers. comm. 1997) concluded that the larvae found in these burrows were Ohlone tiger beetle larvae. Further investigations of these recently collected larvae are being conducted to scientifically characterize and document the morphology of the Ohlone tiger beetle larvae (D. Kavanaugh, pers. comm. 1997).

Ohlone tiger beetle habitat is an open native grassland, with California oatgrass (*Danthonia californica*) and purple needlegrass (*Stipa pulchra*), on level or nearly level slopes. The substrate is shallow, pale, poorly drained clay or sandy clay soil that bakes to a hard crust by summer, after winter and spring rains cease (Freitag *et al.* 1993). Ohlone tiger beetle habitat is associated with specific soil types in Santa Cruz County, either Watsonville loam or Bonnydoon soil types. Soil core analyses were conducted for three out of the five known population sites; the soil types for these three sites were determined to be either Watsonville loam or Bonnydoon (Richard Casale and Ken Oster, U.S. Department of Agriculture, Natural Resources Conservation Service, pers. comm. 1997).

Adult Ohlone tiger beetles have been observed in remnant patches of native grassland on coastal terraces where bare areas occur among low or sparse vegetation. Trails (*e.g.*, foot paths, dirt roads, and bicycle paths) are also used. When disturbed, adults will fly to more densely vegetated areas (Freitag *et al.* 1993; Richard Arnold, private consultant, pers. comm. 1995). Oviposition by females and subsequent larval development also occur in this coastal prairie habitat (*i.e.*, open areas among native vegetation) (D. Kavanaugh, pers. comm. 1997; V. Cheap, *in litt.* 1997). The density of larval burrows decreases with increasing vegetation cover (G. Hayes, *in litt.* 1997).

The historic range of the Ohlone tiger beetle cannot be precisely assessed because the species was only recently discovered, and no historic specimens or records are available. The earliest specimen recorded was collected from a site northwest of the City of Santa Cruz in 1987 (Freitag *et al.* 1993). Based on available information on topography, substrates, soils, and vegetation, it is likely that suitable habitat for the Ohlone tiger beetle was more extensive and continuous prior to the increase in urban development and agriculture. Historically, potentially suitable habitat may have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). However, we have no evidence or data indicating that this species occurred beyond the present known occupied areas of Santa Cruz County. Currently, the extent of potentially suitable habitat for the Ohlone tiger beetle is estimated at 81 to 121 hectares (ha) (200 to 300 acres (ac)) in Santa Cruz County, California (Freitag *et al.* 1993).

The available data indicate a restricted range and limited distribution of the Ohlone tiger beetle. This finding is supported by the following considerations. First, many tiger beetle species are known to be restricted to specific habitats (Pearson 1988; Knisley and Hill 1992; Pearson and Cassola 1992), such as the open native grassland occupied by the Ohlone tiger beetle. Second, tiger beetles are widely collected and well studied, yet no historic specimens were found in the extensive collections of the California Academy of Sciences (Freitag *et al.* 1993). The Ohlone tiger beetle's specialized habitat and restricted range may account for the absence of collection records prior to 1987. Because *Cicindela* is a very popular insect genus to collect (Chris Nagano, Service, pers. comm. 1993), and because entomologists commonly collect out of season and out of known ranges in order to find temporally and spatially outlying specimens, one would expect more specimens to have been collected if the Ohlone tiger beetle were more widespread and common.

Only five populations of Ohlone tiger beetles are known to exist. All known populations are located on coastal terraces supporting remnant stands of native grassland. One population occurs northwest of the City of Soquel at 60 to 90 meters (m) (200 to 295 feet (ft)) elevation. A second population is located in the City of Scotts Valley at 210 m (690 ft) elevation; a third is located west of the City of Santa Cruz at 110 m (360 ft) elevation on property owned by the County of Santa Cruz; a fourth population is found in a preserve northwest of the City of Santa Cruz and owned by the City and occurs at about 110 m (360 ft) elevation; and the fifth population is found northwest of the City of Santa Cruz on properties owned by the University of Santa Cruz (University) and the California Department of Parks and Recreation, at about 340 m (1115 ft) elevation (Freitag *et al.* 1993; R. Morgan, *in litt.* 1994; G. Hayes, *in litt.* 1997). The abundance of individuals in each population is unknown. However, each population is localized to areas of less than 2 ha (5 ac) (G. Hayes, pers. comm. 1995).

Researchers conducted two separate surveys to assess the current distribution and status of the Ohlone tiger beetle. Between 1990 and 1994, researchers surveyed 14 sites with native grassland habitat from southwestern San Mateo County to southern Santa Cruz County for Ohlone tiger beetles. Six additional locations supporting nonnative grasslands, but which appeared otherwise suitable, were also surveyed. Surveys were conducted from February to April, when Ohlone tiger beetles are active. This work documented four of the five known populations (R. Morgan, *in litt.* 1994); the preserve population was not known or found during this survey effort.

A second survey effort, conducted during the 1995 activity season, surveyed for populations of Ohlone tiger beetles in coastal grasslands from southern San Mateo County to northern Monterey County. Researchers visited sites repeatedly through the Ohlone tiger beetle's season of activity. These surveys confirmed the four previously known populations and discovered the fifth population at the city-owned preserve (G. Hayes, *in litt.* 1997). All five known populations are located within the urban areas of the City of

Santa Cruz and surrounding communities.

Based on the results of the two survey efforts and the above considerations, we conclude that the Ohlone tiger beetle is restricted to remnant patches of native grassland on coastal terraces in the mid-county portion of coastal Santa Cruz County, California.

Previous Federal Action

On February 18, 1993, we received a petition from Randall Morgan of Soquel, California, requesting that we add the Ohlone tiger beetle to the list of threatened and endangered species pursuant to the Act. The petition contained information indicating that the Ohlone tiger beetle has a limited distribution and specialized habitat requirements and is threatened by proposed development projects and recreational activities. Our 90-day petition finding, published on January 27, 1994, in the **Federal Register** (59 FR 3330), determined that substantial information was presented in the petition indicating that listing may be warranted. Our 12-month petition finding, published on March 1, 1996, in the **Federal Register** (61 FR 8014), concluded a not-warranted determination due to inadequate life history information and survey data to conclusively determine that the beetle is restricted to the described habitat.

On April 30, 1997, we received a second petition from Grey Hayes of Santa Cruz, California, to emergency-list the Ohlone tiger beetle as an endangered species under the Act. The petition specified endangered status because of the beetle's limited distribution and threats from proposed development projects, invasion of nonnative plants, and recreational activities. Based on the information provided by the petitioner and additional information gathered since the first petition in 1993, we determined that emergency-listing the Ohlone tiger beetle was not justified but that listing of this species as endangered is warranted. Therefore, in our most recent Notice of Review, published on October 25, 1999 (64 FR 57534), we included the Ohlone tiger beetle as a candidate species. Candidate species are those species for which listing is warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

The processing of this proposed rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This proposed rule is a Priority 3 action and is being completed in accordance with the current Listing Priority Guidance.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for the Ohlone tiger beetle. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Ohlone tiger beetle (*Cicindela ohlone*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Loss of habitat is the principal threat to insect species worldwide because of their close associations with, and dependence on, specific habitats (Pyle *et al.* 1981). The effects of habitat destruction and modification on tiger beetle species have been documented by Knisley and Hill (1992) and Nagano (1982). The Ohlone tiger beetle is restricted to remnant patches of native grassland on coastal terraces where low and sparse vegetation provide space for foraging, reproduction, and thermoregulation, and support a prey base of other invertebrate species. The poorly drained clay or sandy clay substrate of the coastal terraces provides the soil moisture, composition, and temperature conditions necessary for oviposition and larval development (Pearson 1988; Kaulbars and Freitag 1993).

The five known populations of the Ohlone tiger beetle are threatened by habitat destruction by urban development and/or habitat modification by invasive nonnative vegetation. Disturbance of the substrate and removal or elimination of vegetation by urban development kills or injures individuals and precludes others from feeding, sheltering, or reproducing. Historically, potentially suitable habitat is believed to have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). Most of this habitat has been modified or destroyed by human actions such as urbanization and agriculture (Freitag *et al.* 1993).

About 6,060 to 8,080 ha (15,000 to 20,000 ac) of native grassland remain in Santa Cruz County, and not more than 81 to 121 ha (200 to 300 ac) contain the proper combination of substrate, slope, and exposure (bare areas between patches of grasses) to be considered suitable habitat for the Ohlone tiger beetle (Freitag *et al.* 1993). Nearly all of this suitable habitat is located within or adjacent to urbanized areas in the coastal mid-county area of Santa Cruz. Much of the City of Santa Cruz and its adjacent towns were built on these marine terrace grassland habitats (Freitag *et al.* 1993). Within suitable habitat, the beetle occupies only sparsely vegetated areas and bare areas, which are artifacts of trails or past grazing sites. The total extent of the area occupied by the beetle is estimated to be 10 ha (25 ac) or less.

The Ohlone tiger beetle population northwest of the City of Soquel is threatened by a proposed 21-lot residential development. The preferred alternative of the proposed project would completely extirpate the Ohlone tiger beetle population by eliminating all of the known occupied habitat and most of the extant grassland habitat found on this site. One alternative in the final environmental impact report for the project does propose that the majority of suitable habitat for the Ohlone tiger beetle be set-aside and managed to reduce nonnative vegetation and enhance habitat quality. The county is currently waiting for the applicant to submit design reviews in a supplemental environmental impact

report, which would then be available for public review. When this report will be available for review or whether the alternatives will contain changes that might affect the Ohlone tiger beetle is not known (Kim Tschantz, County of Santa Cruz, pers. comm. 1999).

The population site located in the City of Scotts Valley was proposed for development of 233 residential homes and an open park containing two ballfields. This proposed project would have set aside most of the beetle's occupied habitat by fencing a 30-m (100-ft) wide area between the two ballfields, but construction would still have occurred on adjacent occupied areas and known grassland habitat would have been eliminated. The adjacent development could have led to potential disturbance, such as pesticide drift, soil erosion, and vegetation alteration. In addition, the isolated population would have been more vulnerable to random extinction (see Factor E of this section). A final environmental impact report for this project was completed in the summer of 1998 (Impact Sciences, Inc. 1998). However, this proposed development was voted down in a referendum, thus halting the development of this property for the present time. The landowner is now considering both alternative development plans and the sale of the land. Local agencies and conservation groups are interested in purchasing the land as open space, but funding sources have not been identified. The future plans for the site are not known (Laura Kuhn, City of Scotts Valley, pers. comm. 1999).

A portion of the third population site for the Ohlone tiger beetle, located west of the City of Santa Cruz, was proposed as a residential housing development. The property was originally zoned as part of the Santa Cruz Greenbelt. However, that designation expired in 1994, and the property owners began to consider developing the property. In the spring of 1999, the City of Santa Cruz purchased the property, and it will be managed as open space by the City. The State of California will hold a conservation easement on the land. A management plan will be developed by the City of Santa Cruz, and the Ohlone tiger beetle will be considered in the plan. At the present time, the site is closed to public use except for officially escorted hikes (Susan Harris, City of Santa Cruz, pers. comm. 1999).

The rest of the third population site is still on private land. In September 1998, the property owners tilled up a large percentage of the area the Ohlone tiger beetle occupied, in preparation for converting the land from livestock grazing to a vineyard (G. Hayes, pers. comm. 1998). Whether the species has been completely extirpated from this site is not known.

The fourth population of Ohlone tiger beetles occurs northwest of Santa Cruz on land managed as a preserve by the California Department of Parks and Recreation (CDPR). The CDPR wants to develop their property and has a proposal for the opening of existing trails and the construction of a vehicle entrance road and parking area. The entrance road would be developed over a portion of occupied habitat. The vehicle parking area would be constructed adjacent to the Ohlone tiger beetle's occupied habitat. However, in the public works plan for this site, CDPR established a policy that road maintenance or other activities will be scheduled to minimize impacts on burrows, larval habitat, foraging activities, or other aspects of the population (CDPR 1997).

Property adjacent to the CDPR land is managed by the University of California, Santa Cruz (University), and a population of the beetle is known to occur on this property. Areas that the Ohlone tiger beetle inhabit are designated in the University's Long Range Development Plan for Site-Specific Research, Campus Resource Lands, and Environmental Reserve (University of California 1992). Although some development is possible in site-specific research areas and campus resource lands, no development projects are anticipated at this time (Graham Bice, University of California, pers. comm. 1995; G. Hayes, pers. comm. 1997).

In addition to the development threats to the Ohlone tiger beetle, the invasion of nonnative vegetation threatens the already reduced extent of suitable habitat for this species. Despite being relatively free of development threats, the fifth population site, located northwest of the City of Santa Cruz and owned by the City, is threatened by habitat degradation due to the invasion of nonnative plant species into the coastal prairie. Nonnative vegetation and forest vegetation are encroaching into grassland habitats and out-competing native grassland habitats and out-competing native grassland vegetation (S. Harris, pers. comm. 1998). The City is attempting to maintain the species' habitat by mowing parts of it to provide bare ground, and trails near where the Ohlone tiger beetle occurs will be closed to bicycles (S. Harris, pers. comm. 1999).

The other four populations of Ohlone tiger beetle are also threatened by invasion of nonnative vegetation (*e.g.*, French broom (*Cytisus monspessulanus*), velvet grass (*Holcus* spp.), filaree (*Erodium* spp.), and *Eucalyptus* spp.) (R. Morgan, *in litt.* 1992; G. Hayes, *in litt.* 1997; G. Hayes, pers. comm. 1997). These nonnative plants are aggressive invaders that convert sunny, native grassland needed by Ohlone tiger beetles to habitat dominated by an overstory that shades the bare areas among the low or sparse native vegetation, thus covering the open sunny areas required by the Ohlone tiger beetle to thermoregulate, forage, and oviposit. In addition to shading these areas used by the beetle, the nonnative vegetation fills in the open spaces among the low or sparse vegetation creating an unsuitable densely vegetated habitat. Nonnative vegetation may also affect the numbers and diversity of the beetle's prey, predators, and parasites (see Factor C of this section). Increased vegetation encroachment is the primary factor attributed to the extirpation of several populations of other *Cicindela* species (*e.g., C. abdominalis* and *C. debilis*) (Knisley and Hill 1992). Without management efforts to reduce and control nonnative species, the populations of Ohlone tiger beetle will likely decline because of habitat degradation.

Areas that may once have been suitable for Ohlone tiger beetles have been converted to nonnative grasslands, or have been developed because the firm, level substrate of the coastal terraces afforded good building sites with scenic views of the Pacific Ocean. For the same reasons that other terraces have already been developed, remaining areas of suitable habitat are under great development pressure.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Members of the genus *Cicindela* may be the subject of more intense collecting and study than any other single insect genus. Tiger beetle specimens are highly sought by amateur collectors (C. Nagano, pers. comm. 1993). In light of the recent discovery of the Ohlone tiger beetle, and concerns regarding its continued existence, the desirability of this species to private collectors may increase, leading to increased collection of specimens. The original petitioner for the Ohlone tiger beetle has been contacted by several people from such places as France, Wisconsin, and California, looking for Ohlone tiger beetle specimens they can add to their private collections, as well as those asking where the colonies are located and indicating they want to collect the species at those locations (R. Morgan, pers. comm. 1998). Listing this

species as endangered will likely increase its attractiveness to private collectors. Unrestricted collecting is considered a threat to the species. Although the reproductive rate for the Ohlone tiger beetle is unknown, females of other species of *Cicindela* produce between 3.7 and 7.7 (mean range) eggs (Kaulbers and Freitag 1993). If the Ohlone tiger beetle has a similarly low reproductive rate, even limited collecting could have harmful effects on its reproductive or genetic viability and lead to extinction of the species.

The Ohlone tiger beetle is not likely to be used as a model organism for general research projects because it is a rare and limited species. It may be the subject of studies intended to improve understanding of the species' ecology and to improve management strategies for its conservation. Although such studies would directly benefit the recovery of the Ohlone tiger beetle, they may contribute cumulatively to other threats to the species.

C. *Disease or Predation.* No diseases are known to threaten the Ohlone tiger beetle. However, the Ohlone tiger beetle may be affected by any of several predators and parasites known to prey upon, and afflict, other tiger beetle species. The parasites are considered to have greater effects than predators (Nagano 1982; Pearson 1988). Known tiger beetle predators include birds, shrews (Soricidae), raccoons (Procyon lotor), lizards (Lacertilia), toads (Bufonidae), ants (Formicidae), robber flies (Asilidae) and dragonflies (Anisoptera) (Lavigne 1972; Nagano 1982; Pearson 1988). Known tiger beetle parasites include ant-like wasps of the family Typhiidae, especially the genera Mathoca, Karlissa, and Pterombrus, and the Bombyliid flies of the genus Anthrax (Nagano 1982; Pearson 1988). These insect parasites are distributed worldwide and specialize on tiger beetle larvae.

Predators and parasites play important roles in the natural dynamics of populations and ecosystems. However, the effects of predation and parasitism may pose substantial threats to Ohlone tiger beetle populations already affected by other factors, especially limited distribution and small, isolated populations. At this time, the magnitude of predation and parasitism on the Ohlone tiger beetle is not known.

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not provide adequate protection for the Ohlone tiger beetle and its habitat. Federal agencies are not legally required to consider and manage for species of concern.

At the State and local levels, regulatory mechanisms are also inadequate. The California Endangered Species Act does not allow for the listing of invertebrate species. State and local agencies may consider the Ohlone tiger beetle when evaluating certain activities for compliance with the California Environmental Quality Act (CEQA) and local zoning regulations. If an activity is identified as having a significant impact on this species, mitigation measures may be required by State and local regulatory agencies to offset these impacts. However, CEQA and local regulations do not provide specific protection measures to ensure the continued existence of the Ohlone tiger beetle. In addition, CEQA provisions for "Statements of Overriding Considerations" can allow projects to proceed despite unmitigated adverse impacts.

Ohlone tiger beetle habitat occurs on properties owned by the University, the CDPR, and the City of Santa Cruz. The University does not have a management plan that specifically protects the Ohlone tiger beetle or its habitat (G. Hayes, pers. comm. 1997). The CDPR has an existing Public Works Plan that calls for surveys to verify the occupied habitat boundary of the Ohlone tiger beetle and proposes to minimize the impacts of disturbance to the Ohlone tiger beetle during road maintenance and other scheduled activities in the plan (G. Gray, CDPR, pers. comm. 1997). However, a local citizen has expressed concern that surveys and minimization measures are not being adequately carried out (G. Hayes, *in litt.* 1999). For the site northwest of Santa Cruz, the City of Santa Cruz Parks and Recreation Department's Proposed Master Plan for the preserve proposes increased usage of existing trails, but identifies the Ohlone tiger beetle and its habitat as sensitive resources. The proposed master plan includes a management program for Ohlone tiger beetle habitat; however, implementation of any management actions will depend on future funding (S. Harris, per. comm. 1999).

For the site west of the City of Santa Cruz, a management plan will eventually be developed since this property has been purchased as open space. The property is officially closed to public use except for officially escorted hikes. However, the enforcement of this closure may not be adequate.

Because the Ohlone tiger beetle is not listed at the State or Federal levels, nothing prohibits importing, exporting, sale, or trade of the species.

E. *Other natural or manmade factors affecting its continued existence.* The five populations of the Ohlone tiger beetle are isolated and restricted to relatively small patches of habitat. Because a direct correlation exists between increased extinction rates with the reduction of available habitat area and increased distances between small populations (Gilpin 1987), the small, isolated populations of the Ohlone tiger beetle are more vulnerable to local extinction from random genetic and demographic events or environmental catastrophes. The small sizes of occupied habitat also reduce the ability of the habitats to buffer against edge effects and other influences from adjacent developed areas, such as pesticide drift, soil erosion, and vegetation alteration.

Although some species of tiger beetles are known to disperse over sizable distances (Pearson 1988), species from the *purpurea* group of the genus *Cicindela* typically do not disperse widely, usually 12 to 18 m (40 to 60 ft) (David Pearson, Arizona State University, pers. comm. 1997). The dispersal capabilities of Ohlone tiger beetles are unknown; however, because the Ohlone tiger beetle belongs to the *purpurea* group, its dispersal distance is most likely narrow. Assuming individuals to be capable of dispersing distances comparable to those between populations, the likelihood of successful emigration or colonization is greatly reduced by the small size of suitable habitat patches and the unavailability of even marginal habitat among the extensive urban development in the region.

Some recreational uses of Ohlone tiger beetle habitat (i.e., off-road motor vehicle use or heavy bicycling) may pose a threat to the Ohlone tiger beetles. The beetles require open ground to maneuver, take prey, and lay eggs. They use the hard-packed bicycle trails for foraging, thermoregulation, and laying their eggs (R. Morgan, pers. comm. 1998). Bicycle traffic on a trail through the University site has been observed to result in the crushing of several individual beetles (R. Morgan, *in litt.* 1993). Similar mortality has been observed in the species' habitat west of the City of Santa Cruz (R. Morgan, *in litt.* 1993) and may occur in other Ohlone tiger beetle populations. Also, bicycle and foot traffic could potentially collapse larval tunnels and crush the larvae. The significance of such mortality for population viability is not known at this time, but is considered a potential threat to the Ohlone tiger beetle, particularly if bicycle traffic through the habitat increases. Heavy

vehicular traffic in areas with extensive use of public trails, such as on Santa Cruz University, City of Santa Cruz, and CDPR land, may also create soil compaction and rutting, damaging potential oviposition sites. Populations of another tiger beetle species found in the northeastern United States, *Cicindela dorsalis dorsalis*, were extirpated in several localities that were subjected to heavy recreational use (*i.e.*, heavy pedestrian foot traffic and vehicular use) but survived at other sites that had received little or no recreational disturbance (Knisley and Hill 1992).

Pesticides could pose a threat to the Ohlone tiger beetle. The effects of insecticides on other tiger beetle species are referenced by Nagano (1982). Local land owners may use pesticides to control targeted invertebrate species around their homes and gardens. These pesticides may drift aerially or be transported by water runoff into Ohlone tiger beetle habitat where they may kill nontargeted organisms including the Ohlone tiger beetle or its prey species. As urban development increases near or in Ohlone tiger beetle habitat, negative impacts from pesticides may become more frequent. The significance of pesticide effects is not known at this time, but they are recognized as a substantial potential threat to the species.

In making this proposed rule determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Ohlone tiger beetle. Threats to the five populations of Ohlone tiger beetle, including habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of nonnative vegetation, vulnerability to random local extirpations, and potential threats due to collection, pesticides, and recreational use of habitat, imperil the continued existence of this species. Much of the habitat of this species is suitable for development and is unprotected from these threats. The Ohlone tiger beetle is known from only five populations. This species is in danger of extinction "throughout all or a significant portion of its range" (section 3(6) of the Act) and, therefore, meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of the Ohlone tiger beetle, the preferred action is to list this species as endangered.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states, that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 1999 and FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for the Ohlone tiger beetle. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g.*, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for the Ohlone tiger beetle.

Due to the small number of populations, Ohlone tiger beetle is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for Ohlone tiger beetle of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating

critical habitat may also produce some educational or informational benefits. Therefore, we propose that critical habitat is prudent for Ohlone tiger beetle. However, the deferral of the critical habitat designation for Ohlone tiger beetle will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of Ohlone tiger beetle without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for Ohlone tiger beetle. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for Ohlone tiger beetle as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal involvements are not known to exist within the habitat of the Ohlone tiger beetle. If any Federal agency were to fund or issue permits for a project that may affect the Ohlone tiger beetle, that agency would be required to consult with us. Possible nexuses include the Department of Housing and Urban Development and the Department of Commerce's Small Business Administration for funding, and the U.S. Army Corps of Engineers for permits authorized under section 404 of the Clean Water Act.

Listing the Ohlone tiger beetle as endangered will provide for the development of a recovery plan. Such a plan will bring together Federal, State, and local efforts for its conservation. The plan will establish a framework for cooperation and coordination in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also will describe site-specific management actions necessary to achieve the conservation and survival of the Ohlone tiger beetle.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), it is our policy to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

We believe that, based on the best available information, if the Ohlone tiger beetle is listed under the Act, the following actions are not likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of a final regulation adding this taxon to the list of endangered species; and (2) Activities conducted in accordance with reasonable and prudent measures identified by us in a biological opinion issued pursuant to section 7 of the Act, and activities authorized under section 10 of the Act.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Collection of specimens of this taxon for private possession or deposition in an institutional collection;

(2) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) The unauthorized release of biological control agents that attack any life stage of this taxon; and

(4) Noncompliance with the California Department of Parks and Recreation management plans that restrict recreational uses (*i.e.*, biking and foot traffic) of areas designated as occupied habitat by the Ohlone tiger beetle.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

To request copies of the regulations concerning listed wildlife or to inquire about prohibitions of section 9, contact our Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of regulations for issuing permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

Our intent is for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Ventura Fish and Wildlife Office by April 11, 2000. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning threat (or lack thereof) to the Ohlone tiger beetle.

(2) The location of any additional populations of Ohlone tiger beetle and the reasons why any habitat should or should not be determined to be critical habitat for this species pursuant to section 4 of the Act.

(3) Additional information concerning the essential habitat features (biotic and abiotic), range, distribution, population size of this taxon, and information relating to the distributions of genetically distinct individuals within the population.

(4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on Ohlone tiger beetle will take into consideration any comments and any additional information we receive during the comment period, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor of the Service's Ventura, Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered wildlife species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Colleen Sculley, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201—4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
*	*	*	*	*	*	*	
Beetle, Ohlone tiger	*Cicindela ohlone*	U.S.A. (CA)	NA	E	NA	NA	
*	*	*	*	*	*	*	

Dated: January 20, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–3277 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000202022–0022–01; I.D. 012100F]

RIN 0648–AN58

Endangered and Threatened Species: Threatened Status for One Evolutionarily Significant Unit of Steelhead in California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Based on a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations throughout Washington, Oregon, Idaho, and California, NMFS proposed to list 10 Evolutionarily Significant Units (ESUs) as threatened or endangered under the Endangered Species Act (ESA) in 1996. One of these steelhead ESUs, the Northern California ESU, was proposed for listing as a threatened species. Because of scientific disagreements, NMFS deferred its final listing determination for five of these steelhead ESUs, including the Northern California ESU, in August 1997. After soliciting and reviewing additional information to resolve these disagreements, NMFS issued a final determination in March 1998 that the Northern California ESU did not warrant listing under the ESA because available scientific information and conservation measures indicated the ESU was at a lower risk of extinction than at the time of the proposed rule. Because the State of California has failed to implement conservation measures that NMFS considered critically important in its decision not to list the Northern California steelhead ESU, NMFS completed an updated status review and has reconsidered the status of this ESU under the ESA.

Based on this review, NMFS has determined that the Northern California steelhead ESU warrants listing as a threatened species at this time. Accordingly, NMFS is now issuing a proposed rule to list this ESU as threatened under the ESA.

DATES: A public hearing on this proposal will be held on March 15, 2000, from 6:30 p.m.–9:00 p.m. Requests for additional public hearings must be received by March 27, 2000. Comments on this proposal must be received at the appropriate address or fax number (See **ADDRESSES**), no later than 5 p.m. pacific standard time, on April 11, 2000. Comments will not be accepted if submitted via e-mail or Internet.

ADDRESSES: The public hearing will be held at the Eureka Inn, 518 Seventh St., Eureka, California. Comments on this proposed rule and requests for additional public hearings or reference materials should be sent to the Chief, Protected Resources Division, NMFS, Southwest Region, 401 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments may also be sent via facsimile (fax) to 562–980–4027.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, 562–980-4021, or Chris Mobley, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions NMFS has received regarding west coast steelhead is summarized in a final rule and notice of determination for five steelhead ESUs (Lower Columbia River; Central Valley, California; Oregon Coast; Klamath Mountains Province; and Northern California ESUs) that was published on March 19, 1998 (63 FR 13347). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California, and convened a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the U.S. Geological Survey Biological Resources Division (formerly the National Biological Service) to conduct a coast-wide status review for west coast steelhead (Busby *et al.*, 1996).

Based on the results of the BRT's status review, an analysis of Federal, state, and local conservation measures, and other information which NMFS determined constituted the best scientific and commercial data available, NMFS published a proposed listing determination (61 FR 41541, August 9, 1996) that identified 15 ESUs of steelhead in the states of Washington, Oregon, Idaho, and California. Ten of these ESUs, including the Northern California ESU, were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened and endangered under the ESA (62 FR 43937, August 18, 1997). In a separate document published on the same day, NMFS determined substantial scientific disagreement remained for five proposed ESUs, including the Northern California steelhead ESU (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these five steelhead ESUs for 6 months for the purpose of soliciting additional data. During this 6-month period of deferral, NMFS received new scientific information regarding the status of these proposed steelhead ESUs. This new information was evaluated by NMFS' BRT which prepared both an updated status review for these five ESUs [Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead (NMFS, 1997a), and a review of the associated hatchery populations [Memorandum to William Stelle and William Hogarth from Michael Schiewe, January 13, 1998, Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations (NMFS, 1998a).

Based on a review of the updated scientific information for these ESUs, as well as a review and evaluation of Federal, State, and local conservation measures reducing the threats to these ESUs, NMFS issued a final rule (63 FR 13347, March 19, 1998) listing two ESUs as threatened (Lower Columbia River and Central Valley California), and a notice of determination that three ESUs (Oregon Coast, Klamath Mountains Province, and Northern California) did not warrant listing. NMFS' determination that these three ESUs did not warrant listing was based on the best available scientific and commercial data, which indicated these ESUs were at a lower risk of extinction than at the time of the proposed listing determination. Even though the risks confronting these ESUs had been reduced to a point at which listing was not warranted, NMFS still expressed concerns about the status of these three ESUs in the notice of determination,

and therefore, identified them as candidate species which the agency would continue to monitor.

Rationale for Reconsideration of Northern California ESU

NMFS's March 19, 1998 (63 FR 13347), decision not to list the Northern California steelhead ESU was based largely on a determination that sufficient Federal and state conservation measures were in place to reduce threats to the ESU such that the proposed threatened listing was unnecessary. The Federal and state conservation measures upon which NMFS based this determination included: (1) implementation of a March 11, 1998, Memorandum of Agreement (MOA) between NMFS and the State of California (NMFS/California MOA, 1998), with particular importance given to implementation of those provisions in the MOA which were intended to improve non-Federal forest land protections in the ESU (81 percent of land ownership is non-Federal land); (2) implementation of more restrictive in-river harvest regulations by California which were intended to reduce mortality and increase the viability of naturally reproducing steelhead populations; and (3) improved protections to habitat and naturally reproducing steelhead from expanded habitat protection and restoration efforts, improvements in the management of hatchery steelhead stocks, and expanded population monitoring.

At the time of its decision not to list the Northern California ESU, NMFS considered the protection and restoration of freshwater spawning, rearing, and migratory habitat on non-Federal lands to be essential for the long-term survival and recovery of this ESU because non-Federal lands represented such a large portion of the available habitat (81 percent) (63 FR 13347, March 19, 1998). Because of NMFS' concerns regarding the preponderance of private timber lands and timber harvest in the Northern California ESU, the NMFS/California MOA contained several provisions calling for the review and revision of California's forest practice rules (FPRs), and a review of their implementation and enforcement by January 1, 2000. NMFS considered full implementation of these critical provisions within the specified time frame to be essential for achieving properly functioning habitat conditions for steelhead in this ESU.

In accordance with the NMFS/California MOA, a scientific review panel was established by the state to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the State's Board of Forestry with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and CalEPA jointly presented the Board of Forestry with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

Although NMFS' March 19, 1998, decision not to list the Northern California ESU concluded that improvements in steelhead harvest and hatchery management would provide immediate conservation benefits to this ESU, an essential component of the decision was based on NMFS' expectation that changes in the State's FPRs would be implemented by January 1, 2000. Because these critical conservation measures are not being implemented by the State of California and, therefore, are not reducing threats to this ESU that were anticipated at the time of its March 19, 1998, decision not to list the ESU, NMFS determined that a formal reconsideration of the status of this ESU was warranted (December 3, 1999, Memorandum from Rodney R. McInnis and William Stelle, Jr. to Penelope D. Dalton (NMFS, 1999).

Steelhead Life History and Background

Biological information for west coast steelhead (*Oncorhynchus mykiss*) and the Northern California ESU in particular, can be found in steelhead status assessments conducted by NMFS (Busby *et al.*, 1996; NMFS, 1997a; NMFS, 2000) and in previous **Federal Register** documents (61 FR 41541, August 9, 1996; 63 FR 13347, March 19, 1998). A summary of steelhead life history follows.

O. mykiss exhibits one of the most complex suites of life history traits of any salmonid species. Individuals may exhibit anadromy (meaning they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning they reside their entire life in fresh water). Resident forms are usually referred to as "rainbow" or "redband" trout, while anadromous life forms are termed "steelhead." Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss*, and as a result, the relationship between these two life forms is poorly understood. The scientific name for the biological species that includes both steelhead and rainbow trout has been changed from *Salmo gairdneri* to *O. mykiss*. This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4- or 5-year-olds. Unlike other Pacific salmon, steelhead are iteroparous, meaning they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990; Busby *et al.*, 1996). Depending on water temperature, steelhead eggs may incubate in "redds" (nesting gravels) for 1.5 to 4 months before hatching as "alevins" (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, young juveniles or "fry" emerge from the gravel and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as "smolts."

Biologically, steelhead can be divided into two reproductive ecotypes, based on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed "stream maturing" and "ocean maturing." Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (*i.e.*, summer (stream maturing) and winter steelhead (ocean maturing)). The Northern California ESU contains populations of both winter and summer steelhead.

Two major genetic groups or "subspecies" of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins approximately by the Cascade crest (Huzyk & Tsuyuki, 1974; Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck *et al.*,

1986; Reisenbichler *et al.*, 1992). Behnke (1992) proposed classifying the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri*. These genetic groupings apply to both anadromous and nonanadromous forms of *O. mykiss*. Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead. The Northern California steelhead ESU is part of the coastal grouping.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan & Jackson, 1996). In 1999, juvenile *O. mykiss* suspected of being the progeny of steelhead were reported from San Mateo Creek which is in northernmost San Diego County, just north of the Santa Margarita River. Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified by Nehlsen *et al* (1991) as being at moderate or high risk of extinction.

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of steelhead must be considered "species" under the ESA. The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." NMFS published a policy (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of "species" to anadromous salmonid species. This policy provides that a salmonid population will be considered distinct, and hence a species, under the ESA, if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in Waples (1991), a NOAA Technical Memorandum entitled "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon," which are available upon request (see **ADDRESSES**). The genetic, ecological, and life history characteristics, as well as human-induced genetic changes that NMFS assessed to identify the number and geographic extent of steelhead ESUs on the west coast, including the Northern California steelhead ESU, are discussed in detail in Busby *et al.* (1996) and in the August 9, 1996, proposed listing determination for west coast steelhead (61 FR 41541).

Northern California Steelhead ESU Determination

The Northern California steelhead ESU has been described in previous **Federal Register** documents (61 FR 41541, 62 FR 43937 and 63 FR 13347) based on analyses conducted by NMFS and summarized in the following documents: "Status Review for West Coast Steelhead from Washington, Idaho, Oregon, and California" (Busby *et al.*, 1996) and "Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California" (NMFS, 1997). The relationship between hatchery steelhead populations and naturally spawned steelhead within this ESU was also assessed in: "Status Review Update Deferred ESUs of West Coast Steelhead: Hatchery Populations" (NMFS, 1998a). Copies of these NMFS documents are available upon request (see **ADDRESSES**). NMFS has received no new scientific information indicating that a change in the Northern California ESU definition is warranted.

This Northern California coastal steelhead ESU occupies river basins from Redwood Creek in Humboldt County, CA to the Gualala River, inclusive, in Mendocino County, CA. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures (greater than 20° C) are a factor in some of the larger river basins, but not to the extent that they are in river basins farther south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100–200 cm of rainfall annually (Donley *et al.*, 1979). With the exception of major river basins such as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

The Northern California ESU includes both winter and summer steelhead, including what is presently considered to be the southernmost population of summer steelhead, in the Middle Fork Eel River. Half-pounder juveniles also occur in this geographic area, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer *et al.* (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers which are located in the Klamath Mountains Province ESU, some of the larger rivers in this ESU have migrating steelhead year-round, and seasonal runs have been named. River entry ranges from August through June and spawning from December through April, with peak spawning in January in the larger basins and in late February and March in the smaller coastal basins.

Based on the review of steelhead hatchery programs in this ESU (NMFS, 1998a), NMFS' steelhead BRT concluded that the following steelhead hatchery stocks are part of this ESU because they were established from indigenous natural populations and there is limited impact from the inclusion of out-of-basin fish in the broodstock: Van Arsdale Fisheries Station stock (Eel River), the Yager Creek stock (Eel River tributary), Ten Mile River stock, and North Fork Gualala River stock. The BRT concluded that the Mad River hatchery summer steelhead stock is not part of the ESU based on its origin from out-of-basin steelhead populations combined with the mixing of Eel River summer steelhead in the broodstock. Rearing of this stock was terminated at the Mad River hatchery in 1996. The majority of the BRT concluded that the Mad River hatchery winter steelhead stock is not part of this ESU although a minority of

the BRT was uncertain regarding its relationship to the naturally spawning population. This stock was founded from South Fork Eel River steelhead (within the ESU, but out of the Mad River basin) and some local Mad River steelhead.

Status of Northern California Steelhead ESU

Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. In its previous status reviews for west coast salmon and steelhead, NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

Based on these factors and the best available scientific information, NMFS' BRT first reviewed the status of the Northern California ESU in its original coast-wide status review for steelhead (Busby *et al.*, 1996). The BRT concluded that the Northern California steelhead ESU was likely to become endangered in the foreseeable future. Population abundance was determined to be very low relative to historical estimates (1930's dam counts), and recent trends were downward in stocks for which data were available with the exception of two summer steelhead stocks. Summer steelhead abundance in particular was very low in this ESU. The BRT expressed particular concern regarding sedimentation resulting in part from poor land management practices and channel restructuring due to floods. The abundance of the pikeminnow as a predator in the Eel River was also identified as a significant concern. For the Mad River, in particular, the BRT was concerned about the influence of hatchery stocks both in terms of genetic introgression and the potential for ecological interactions between introduced stocks and native stocks.

The status of the Northern California ESU was reassessed by NMFS' BRT in an updated status review following the 6-month period of deferral because of scientific disagreements (NMFS, 1997a). Based on this updated status review, NMFS' BRT once again concluded that Northern California steelhead ESU was likely to become endangered in the foreseeable future. The BRT reported that there was very limited abundance data available for this ESU, particularly for winter-run steelhead. The most complete data set available in this ESU is a time series of winter steelhead dam counts on the Eel River at Cape Horn Dam. The updated abundance data (through 1997) showed moderately declining long-term and short-term trends in abundance, and the vast majority of these fish were believed to be of hatchery origin. These data show a strong decline in abundance prior to 1970, but no significant trend thereafter. Additional winter steelhead data are available for Sweasy Dam on the Mad River which show a significant decline, but that data set ends in 1963. For the seven populations where recent trend data were available, the only runs showing recent increases in abundance in the ESU were the relatively small populations of summer steelhead in the Mad River which has had high hatchery production, and winter steelhead in Prairie Creek where the increase may be due to increased monitoring or mitigation efforts.

As in its original assessment, the BRT continued to be concerned about the risks associated with interactions between naturally spawning populations and hatchery steelhead in this ESU. Of particular concern to the BRT was the potentially deleterious impact to wild steelhead from past hatchery practices at the Mad River hatchery, primarily from transfers of non-indigenous Mad River hatchery fish to other streams in the ESU and the production of non-indigenous summer steelhead. These potentially deleterious hatchery practices for summer steelhead ended in 1996.

Habitat degradation and other factors were also of concern to the BRT in its reassessment of the long-term risks to this ESU. Specific factors which the BRT identified included dams on the upper Eel and Mad Rivers, the likely existence of minor blockages throughout the ESU, continuing impacts of catastrophic flooding on the 1960s, and reductions in riparian and instream habitat and increased sedimentation from timber harvest activities. The BRT also cited poaching of summer steelhead and predation from pikeminnow in the Eel River as factors for concern. NMFS' supplemental review of factors affecting west coast steelhead also identified water diversion and extraction, agriculture, and mining as factors affecting habitat conditions for steelhead in this ESU (NMFS, 1996).

In conjunction with this reconsideration of the Northern California steelhead ESU, NMFS' Southwest Fisheries Science Center (SWFSC) recently completed another updated status review for this ESU (January 2000 Memorandum from Pete Adams, Southwest Fisheries Science Center (SWFSC) to Rodney R. McInnis, Regional Administrator, Southwest Region (NMFS, 2000)). Based on a review of updated abundance and trend information that was available for this ESU, the SWFSC concluded that the current status of the ESU has not changed significantly since it was last evaluated by NMFS' BRT in December 1997 (NMFS, 1997a). Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is well below estimates in the 1980s and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960's levels.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

NMFS has prepared a report that summarizes the factors leading to the decline of steelhead on the west coast entitled: "Factors for Decline: A supplement to the notice of determination for west coast steelhead"

(NMFS 1996). This report, available upon request (see **ADDRESSES** section), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast. NMFS (1996) identified several factors that were considered to have contributed to its decline of the Northern California steelhead ESU including: impacts from historic flooding (principally in 1964), predation, water diversions and extraction, minor habitat blockages, poaching, timber harvest, agriculture, and mining. NMFS's steelhead BRT also identified the potentially adverse impacts of the release of non-indigenous hatchery-produced steelhead in this ESU as an important factor, and expressed concerns regarding the lack of reliable abundance and trend data for assessing the status of steelhead in this ESU (NMFS, 1997a). Finally, NMFS was also concerned about the impacts of recreational angling because of the depressed status of steelhead populations and the uncertainty regarding the status of this ESU (March 11, 1998, Memorandum from William Hogarth to Rolland Schmitten (NMFS, 1998e)). The following discussion briefly summarizes findings regarding factors for decline across the range of west coast steelhead, including the Northern California ESU.

The Present or Threatened Destruction, Modification, or Curtailment of Steelhead Habitat or Range

Steelhead on the West Coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes have greatly reduced or eliminated historically accessible habitat. Among other factors, NMFS (1996) specifically identified timber harvest, agriculture, mining, habitat blockages, and water diversions as important factors for the decline of steelhead in the Northern California ESU. NMFS (1998a) discussed these factors in more detail. Studies estimate that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded (Dahl 1990; Tiner 1991). Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91–percent loss of its wetland habitat (Dahl, 1990; Jensen *et al.*, 1990; Barbour *et al.*, 1991; Reynolds *et al.*, 1993). Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58–percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large wood (FEMAT, 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from land use activities is recognized as a primary cause of habitat degradation in the range of west coast steelhead, including the northern California steelhead ESU.

Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Steelhead are not generally targeted in commercial fisheries. High seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades.

Steelhead support an important recreational fishery throughout most of their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flows when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened.

Although harvest of steelhead in the Northern California ESU was not originally identified as a major factor for decline (NMFS 1996), NMFS is concerned about the impacts of recreational angling because of depressed steelhead population levels and the lack of reliable abundance and trend data for accurately assessing the status of individual populations and the ESU as a whole. Because of NMFS' concerns about recreational angling impacts to naturally reproduced steelhead populations in coastal watersheds in California north of the Russian River, the California Department of Fish and Game (DFG) proposed and the California Fish and Game Commission adopted new steelhead angling regulations in 1998 for all watersheds in the Northern California ESU. These new regulations prohibited retention of naturally spawned adult steelhead; eliminated fishing for juvenile steelhead in tributary streams; minimized impacts on juvenile steelhead in mainstem rearing and migratory areas through a combination of gear restrictions and delayed seasonal openings; prohibited retention of summer steelhead during their upstream migration and prohibited fishing in their summer holding areas; and provided for directed harvest and retention of hatchery-produced steelhead which are fully marked statewide. NMFS (1998b,c,d) analyzed these new regulations and concluded that they would substantially reduce fishing effort and reduce mortality to that associated with catch-and-release of naturally produced steelhead in the Northern California ESU. These regulations remain in effect and are enforced by DFG.

Disease or Predation

Infectious disease is one of many factors that can influence adult and juvenile steelhead survival. Steelhead are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environments. Specific diseases such as bacterial kidney disease, ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect steelhead and salmon (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.*, 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for steelhead. However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992).

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. In the Northern California steelhead ESU, predation from Sacramento pikeminnow that were released into the Eel River is a major problem. Predation from pikeminnow is discussed in more detail in NMFS (1996). DFG is engaged in an aggressive campaign to control pikeminnow predation in the Eel River. Ongoing efforts to implement improved downstream flow releases from the Potter Valley hydroelectric project in the upper Eel River may assist the State in its efforts to control pikeminnow predation.

Predation by marine mammals is also of concern in some areas experiencing dwindling steelhead run sizes. NMFS (1997b) reviewed the available literature concerning the impacts of California sea lion and Pacific harbor seal predation on west coast anadromous salmonids, and concluded that there was insufficient data in all but one instance (i.e., Ballard Locks in Puget Sound) to conclude that pinnipeds were having a significant impact on wild salmon or steelhead populations. For this reason, and because of the high likelihood that impacts might be occurring, the study concluded that substantial additional research was needed to address this issue further. Based on this research recommendation, NMFS has initiated several field studies in coastal watersheds on the west coast designed to assess the magnitude of pinniped predation on individual salmon or steelhead populations. In California, these studies are being conducted in the lower Klamath River, Scott Creek, and the San Lorenzo River.

Inadequacy of Existing Regulatory Mechanisms

1. Federal Land and Water Management

The Northwest Forest Plan (NFP) is a Federal land management policy with important benefits for west coast steelhead. While the NFP covers a very large area, the overall effectiveness of the NFP in conserving steelhead is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds that comprise individual ESUs. The extent and distribution of Federal lands limits the ability of the NFP to achieve its aquatic habitat restoration objectives at watershed and river basin scales, and highlights the importance of complementary salmon habitat conservation measures on non-federal lands within the subject ESUs.

Federal land ownership and management in the Northern California steelhead ESU is very limited; representing only 19 percent of the total land area. Federal lands (i.e., Redwood National Park, portions of Mendocino National Forest, and the Kings Range National Conservation Area) that do occur in this ESU are also highly fragmented, unlike some other steelhead ESUs (e.g., Klamath Mountains Province and Snake River Basin). Although Federal lands are limited in extent and fragmented in this ESU, NMFS believes that implementation of the NWFP on Mendocino National Forest lands (upper reaches of Eel and Mad Rivers) and implementation of other habitat protections in Redwood National Park (lower reach of Redwood Creek) will provide some limited benefits to steelhead. Nevertheless, long-term habitat protection and the key to achieving properly functioning habitat conditions in this ESU continues to be improvement in non-Federal land management, particularly those lands used for timber harvest.

Because listed coho salmon occur on Federal lands in the Northern California steelhead ESU, NMFS routinely engages the U.S. Forest Service, Bureau of Land Management, and Redwood Creek National Park in ESA section 7 consultations to ensure that ongoing or proposed activities do not jeopardize coho salmon or adversely modify its critical habitat. Through this section 7 consultation process, NMFS ensures that the NFP and other protective measures are fully implemented on Federal lands that occur in this ESU. These measures are also expected to benefit steelhead.

The Pacific Gas and Electric Company's (PG&E) Potter Valley hydroelectric project is a major diverter of water from the mainstem Eel River, which is located in the Northern California ESU. This water is diverted into the Russian River basin to generate hydroelectric power and provide water for agriculture and urban uses. Pursuant to a Federal Energy Regulatory Commission (FERC) licensing requirement, PG&E implemented a 10-year monitoring program in the Eel River for the purpose of developing recommendations for modifying the flow release schedule and other project facilities and/or operations necessary to protect and maintain fishery resources, including steelhead. This study was completed in 1996, as was construction of a $14 million dollar fish screen facility at the Van Arsdale Dam diversion on the Eel River. Based on the results of the monitoring study, PG&E has developed a proposal for project operations that, along with several others, are the subject of National Environmental Policy Act review for ongoing FERC license amendment proceedings. FERC is currently conducting environmental review of this proposal with input from NMFS, DFG and the U.S. Fish & Wildlife Service (USFWS). Implementation of an alternative that provides additional instream flows in the Eel River, and provides for Sacramento pikeminnow control, in conjunction with the new fish screening facility, would be expected to improve habitat quality and benefit steelhead in this ESU by increasing survival.

On March 1, 1999, the Pacific Lumber Company, the State of California, the Department of the Interior, and the Department of Commerce entered into a complex land purchase, land exchange and Habitat Conservation Plan (PALCO HCP) transaction covering the Headwaters Forest, Elk Head Springs Forest and the remainder of Pacific Lumber Company's land holdings in Humboldt County California. The Federal and state governments acquired approximately 10,000 acres of conifer and hardwood forest, over 3,000 acres of which is ancient redwoods, some of which are over 1,000 years old. This land is now subject to Federal and state control under conservation easements.

The PALCO HCP, which has a 50-year term, covers 211,000 acres of non-Federal land timber lands in several drainages that occur in the northern portion of Northern California steelhead ESU. These include portions of several tributaries to Humboldt Bay (Elk River, Jacoby Creek, Freshwater Creek, and Salmon Creek), and portions of the Van Duzen River (including Yager Creek), Eel River, Bear River, Salt River, and Mattole River watersheds. The PALCO HCP affects the following federally listed and candidate anadromous salmonid ESUs: (1)Southern Oregon/ Northern California coho salmon (threatened), (2) Northern California steelhead (candidate), and (3) California Coastal Chinook salmon (threatened). The HCP also covers numerous terrestrial species listed under the ESA and California Endangered Species Act.

The PALCO HCP's Operating Conservation Program (Program) contains the conservation and management measures and prescriptions necessary to minimize, mitigate, and monitor the impacts of take of the covered species resulting from timber operations. The Program incorporates specific conservation plans for all terrestrial and aquatic species covered under the HCP, along with measures to conserve habitat diversity and structural components.

An Aquatics Conservation Plan (ACP) is an integral part of the overall Program. The goal of the ACP is to maintain or achieve over time properly functioning aquatic habitat conditions, which are essential to the long-term survival of salmonids. The reduction in land management impacts and habitat improvement that will be realized through implementation of the ACP will also benefit other species.

Monitoring for implementation, effectiveness, and trends is a critical component of the Program. The monitoring component includes an independent third-party monitor to determine if the provisions of the aquatics plan are effective and whether

the aquatic habitat is responding as expected. There is also a provision for adaptive management if the results are not as predicted.

NMFS believes that the conservation measures contained in the HCP will protect and provide for long-term conservation of steelhead populations occurring on PALCO lands in the Northern California ESU.

2. Land Management

The California Department of Forestry and Fire Protection (CDF) enforces California's forest practice rules (FPRs) on non-Federal (private and State managed forests) lands. These rules are promulgated through the State Board of Forestry (BOF). Timber harvest activities have been documented to result in adverse effects on streams and stream side zones including the loss of large woody debris, increased sedimentation, loss of riparian vegetation, and the loss of habitat complexity and connectivity (NMFS 1996).

The vast majority of freshwater habitat in the Northern California steelhead ESU (approximately 81 percent of total land) is on non-Federal lands, with the majority being privately owned. For the major river basins in this ESU (i.e. Redwood Creek, Mad River, Eel River, Mattole River, Ten Mile River, Noyo River, Big River, Albion River, Navarro River, Garcia River, and Gualala River), private forest lands average about 75 percent of the total acreage, with a range of 42 percent (Eel River) to 94 percent (Gualala River).

NMFS reviewed the California FPRs as part of its listing determination for the Northern California steelhead ESU (53 FR 13347; March 19, 1998). That review concluded that although the FPRs mandate protection of sensitive resources such as anadromous salmonids, the FPRs and their implementation and enforcement do not accomplish this objective. Specific problems with the FPRs include: (1) protective provisions that are not supported by scientific literature; (2) provisions that are scientifically inadequate to protect salmonids including steelhead; (3) inadequate and ineffective cumulative effects analyses; (4) dependence upon registered professional foresters that may not possess the necessary level of multi-disciplinary technical expertise to develop timber harvest plans (THPs) protective of salmonids; (5) dependence by CDF on other State agencies to review and comment on THPs; (6) failure of CDF to incorporate recommendations from other agencies; and (7) inadequate enforcement due to staffing limitations. NMFS further concluded that until a comprehensive scientific peer review process was implemented and appropriate changes to the FPRs and the THP approval process were made, properly functioning habitat conditions would not be ensured on non-Federal lands in the Northern California steelhead ESU.

The NMFS/California MOA which was entered into in March 1998 to ensure the conservation of north coast steelhead in California contained specific provisions to address NMFS' concerns over the California FPRs. In the NMFS/California MOA, the State committed to: (1) conduct a scientific review of the State's FPRs, including their implementation and enforcement; (2) make appropriate changes in implementation and enforcement of the FPRs based on this review; and (3) make recommendations to the BOF for changes in the FPRs if they were found to be necessary for the conservation of Northern California coastal anadromous salmonids. Full implementation of these provisions in the NMFS/California MOA, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision to not list this ESU.

In accordance with these provisions, a subcommittee of the state's scientific review panel for its Watershed Protection Program was appointed to undertake an independent review of the FPRs. The subcommittee's review and recommendations were completed and presented to the BOF in June 1999. The scientific review panel concluded that California's FPRs, including their implementation through the timber harvest plan process, do not ensure protection of anadromous salmonid populations. Based in part on the scientific review panel report and findings in July 1999, the California Resources Agency and CalEPA jointly presented the BOF with a proposed rule change package designed to address shortcomings in the state's existing FPRs. The BOF circulated the proposed rule package for public review, held several meetings and two public hearings on the proposals from July until October 1999, but failed to take action to adopt any of the proposed FPR changes.

As a result of the listing of coho salmon in coastal watersheds in northern California, the counties of Del Norte, Siskiyou, Trinity, Humboldt, and Mendocino developed and have implemented a multi-county, regional approach to assessing and improving county-controlled activities in order to enhance the quality and increase the quantity of salmonid habitat that is potentially affected by those county activities. NMFS and the State of California have contributed funding to this multi-county planning effort.

This county-level conservation planning approach involves a thorough review of general plans, ordinances, procedures, practices, and policies developed and implemented at the county level. Through the assessment and evaluation of these county-controlled mechanisms, a process is being developed that will enable the counties to exert control at the local level over human activities that can adversely affect anadromous salmonid populations and habitat. This multi-county planning effort culminated in a Memorandum of Agreement (Multi-County MOA) which was signed by all five counties in late 1997. Under the terms of the Multi-County MOA, the counties agreed to embark on a cooperative planning and restoration effort; assess the adequacy of existing general plans, county policies and practices, zoning and other land use ordinances; review county management procedures that affect anadromous salmonid habitat in each county; recommend changes to specific county ordinances and/or practices as necessary; develop a watershed-based education and technical assistance/training program for local agencies and decision-makers that will foster better understanding of the linkages between land use and county maintenance practices and salmonid habitat; and seek to establish some form of regulatory recognition at the state and/or Federal level.

This multi-county assessment is being used to document the effectiveness of existing regulations. Where the assessment identifies areas for improvement, the planning effort will develop alternative policies, ordinances and practices that are suitable for maintaining or enhancing anadromous salmonid habitat. The assessment will address the need to focus public works projects on sites that improve fisheries habitat. A watershed-based approach will be used, even where watersheds cross county boundaries, to ensure that enhancement efforts are complementary to natural ecosystem processes.

The outcome of this county-level effort is expected to be a comprehensive and coordinated analysis of local land use regulations. Where it is found that development standards such as subdivision restrictions, zoning, and capital improvement programs may not adequately maintain or restore salmonid habitat, model ordinances will be developed for consideration by each of the participating counties. Conversely,

innovative approaches for land use (such as density modifications and standards that preserve habitat functions) developed by some counties will be presented as options for the other counties. This collaborative, regionally based planning effort is designed to be complementary with state and national salmonid recovery efforts. The planning process encourages public participation through direct contact with interested public agencies, landowners, community organizations, environmental groups, industry representatives, and others. The public process is being implemented through public hearings, meetings, scoping sessions, forums and other avenues.

Agricultural activity has had multiple and often severe impacts on salmonid habitat. These include depletion of needed flows due to irrigation withdrawals; blocking of fish passage by diversion or other structures; destruction of riparian vegetation and bank stability by grazing or cultivation practices; and channelization resulting in loss of side-channel and wetland-related habitat (NMFS, 1996).

Impacts from agricultural and grazing practices have not historically been closely regulated in California. This is an important concern to NMFS because a significant portion of the acreage in the Northern California ESU is comprised of farmland. For example, farmland constitutes approximately 25–30 percent of the total acreage of Humboldt and Mendocino counties, which in turn constitutes much of the Northern California ESU. Private lands, and public lands not administered by the Federal government, are now being addressed by the California Rangeland Water Quality Management Program (CRWQMP), which was adopted by the State Water Resources Control Board and CDF in 1995. The CRWQMP is a water quality improvement program based on the voluntary participation of landowners for compliance with state and federal non-point source pollution reduction requirements. The CRWQMP was initiated as a cooperative effort among the livestock industry, conservation organizations, and state and Federal agencies, to address the impacts of grazing and land use practices on water quality in streams that flow through private property. Through this program, private landowners will be able to maintain rangeland productivity and enhance landowners' abilities to manage these lands in a manner that maintains water quality standards necessary for the survival and recovery of listed salmonids.

Between 1995–1998, rangeland plans were developed under the CRWQMP for more than 250,000 acres on the north coast, ranging from San Francisco to the Oregon border. The State plans to review the implementation status of these plans at intervals of 3,5 and 10 years, provided that sufficient resources are available. NMFS is encouraged by these ongoing efforts. Plans that are consistent with this guidance are likely to result in meeting state water quality standards, but the program is voluntary and it is uncertain to what extent their implementation will contribute to improved habitat conditions and riparian function.

The USDA Natural Resources Conservation Service (NRCS), NMFS, USFWS, the U.S. Environmental Protection Agency (EPA), the California Association of Resource Conservation Districts (CARCD), and the State of California have recently developed a joint approach that is expected to encourage the voluntary use of improved conservation management practices for agriculture on private land. Recognizing that recovery of listed and other at-risk salmonid populations depends on the willing participation of private landowners, these agencies have the goal of providing an incentive to landowners to enhance the quality and quantity of habitat needed by species of concern. To accomplish this goal, the agencies have agreed to support cooperative approaches and consensus-building activities, foster communication among agencies and private landowners, share resources and information, and establish strong, effective working relationships that instill trust and promote sound stewardship.

This agreement is the subject of a draft Memorandum of Understanding (MOU) among the partner agencies. Through the procedures described in the MOU, practices contained in the NRCS Field Office Technical Guides (FOTG) will undergo ESA section 7 review by NMFS and USFWS. For those practices that NMFS and USFWS determine are not likely to adversely affect listed species or critical habitat, the landowner should have confidence that those practices, if implemented in accordance with the FOTG standards and specifications, will not result in any additional permitting requirement or penalties under the ESA. The objective of this MOU is to encourage the adoption of protective land use practices on private lands, to provide some regulatory assurance for landowners, to improve habitat conditions for sensitive species, to continue sustainable economic production on private lands, to facilitate better coordination among the partner agencies, and to foster better awareness and support for conservation programs throughout the State.

The next step in the NRCS MOU process will be to incorporate the specific interests of the State of California. The current draft MOU lacks language describing the roles and responsibilities of the State. The draft MOU is under review by the state and upon completion is expected to be formally signed by all parties.

3. Dredge, Fill, and In-water Construction Programs

The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would "cause or contribute to significant degradation of the waters of the United States." One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative impacts or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

The COE, state, and local governments have developed and implemented procedures reviewing, approving, and monitoring gravel mining activities in Del Norte and Humboldt counties which are authorized under a Letter of Permission (LOP) process. This process regulates gravel mining in a substantial portion of the Northern California ESU (including the Mad, Eel and Van Duzen Rivers) where listed coho salmon and chinook salmon populations also occur. These procedures are designed to provide substantially improved protection for anadromous salmonids and their habitats, including steelhead. Important elements of the process include: a prohibition on gravel mining in the active channel and on trenching except in limited instances, a restriction on gravel operations to the dry season, monitoring of channel cross sections to detect changes in channel morphology and habitat conditions, fisheries monitoring, and gravel mining on a sustained yield basis. An additional element of the process in Humboldt County is the participation of an independent scientific review committee, which makes annual recommendations on gravel extraction limits and site design features in order to minimize adverse impacts.

Additionally, any channel crossings must be designed to allow for fish passage. NMFS participated in the development of these procedures and has concluded, through section 7 consultation with the COE, that these procedures will not jeopardize the continued existence of coho salmon or steelhead. NMFS recently reinitiated formal consultation with the COE on the LOP process to address the final critical habitat designation for coho salmon and the recent listing of California Coastal chinook salmon as threatened.

Section 1603 of the California Fish and Game Code requires that any person who proposes a project that will substantially divert or obstruct the natural flow or substantially change the bed, channel or river bank of any river, stream or lake, or use materials from a streambed, notify the DFG before beginning any work. The authorization for these activities under section 1603 is called a Lake or Streambed Alteration Agreement. Beginning May 1, 1999, the 1603 process was significantly modified to require a higher level of review by DFG that is in compliance with the California Environmental Quality Act (CEQA). Any proposed project that DFG determines may substantially adversely affect existing fish and wildlife resources will need to comply with the CEQA standard of mitigating project impacts to the level of insignificance. The new standard for project review has resulted in increasing the time needed for project approval from 2 weeks to 60–120 days.

Although the state has substantially improved the level of project review under the 1603 process to comply with the new CEQA standard, the state has not submitted the program to NMFS for review to determine whether it adequately protects anadromous salmonids. The state currently issues 1603 streambed alteration agreements to project applicants with the disclosure that the applicant may still need to obtain incidental take authorization from NMFS. In most cases, however, where a project proposes a stream or watercourse modification and listed species are present, a Clean Water Act, section 404 permit from the COE is required. Within the geographic area encompassing the Northern California steelhead ESU, the presence of listed coho and chinook salmon populations requires the COE to consult with NMFS under section 7 of the ESA prior to the issuance of 404 permits.

4. Water Quality Programs

Under Clean Water Act section 303(d), states, territories, and authorized Tribes are required to establish lists of impaired water bodies, set priorities for addressing the pollutant source, and write pollutant control plans to achieve and maintain water quality standards. These plans, Total Maximum Daily Loads (TMDLs), provide an effective mechanism for determining the causes of water body impairment, quantifying the various pollutant sources, and setting targets for reducing pollutant discharges. Generally, states are responsible for developing TMDLs and related implementation plans, which are subject to EPA review and approval. If the EPA disapproves a TMDL or if a state fails to establish one, the EPA is required to step in and establish the TMDL. The TMDL is then implemented through existing regulatory and non-regulatory programs to control, reduce, or eliminate pollution from both point and non-point sources.

The TMDL process provides a flexible assessment and planning framework for identifying load reductions or other actions needed to attain water quality standards such as protection of aquatic life, provision of safe drinking water, etc. The TMDL should address all significant stressors (e.g., chemicals, temperatures, sediment loads) that cause or threaten to cause deleterious effects to water quality. The TMDL assessment is the sum of the individual waste load allocations from point sources, non-point sources, natural sources, and an appropriate margin of safety to account for uncertainty. The TMDL may address single or multiple pollutants but must clearly identify the links between the water quality impairment (or threat) of concern, the causes of the threat or concern, and the load reductions or conservation actions needed to remedy or prevent the impairment.

As TMDL assessments and implementation plans are developed and approved, the State of California, through the State Water Resources Control Board and the nine Regional Water Quality Control Boards, will adopt and implement the TMDLs. The TMDL contains a problem statement, numeric targets, source analysis, allocations of loads or controls, and a monitoring plan. The implementation component includes descriptions of land management practices, remediation activities, and restoration projects necessary to attain the goals established in the TMDL assessment. It is through the implementation plan that necessary controls and restoration actions are assigned to specific parties and attainment schedules are promulgated.

In coastal watersheds of northern California, 38 water body segments have been identified as impaired and have been scheduled for development of TMDLs. The schedule for development of TMDLs in northern California extends to the year 2011 (Russian River and Lake Pillsbury). The schedule in this area is driven in part by a consent decree *(Pacific Coast Federation of Fishermen's Associations, et al.* v. *Marcus*, No. 95–4474 MHP, March 11, 1997). Under this consent decree, EPA agreed to oversee the development of TMDLs on 18 rivers on the north coast of California, 12 of which are located within the Northern California steelhead ESU.

The consent decree establishes a schedule for developing TMDL criteria for listed rivers. Under this schedule, seven river basins in the Northern California ESU would have TMDLs developed within the next 2 years, with the remaining rivers having TMDLs developed by 2002. This legally-binding schedule is expected to result in significant progress on improving the beneficial uses of these watersheds, where the beneficial use has been identified as habitat for salmonids.

On May 28, 1998, the North Coast Regional Water Quality Control Board approved a TMDL for the Garcia River. The TMDL contains the following elements: (1) Findings that the Garcia River is impaired due to sediment and temperature impacts resulting from land use practices, primarily timber operations and related activities; (2) adoption of the Water Quality Attainment Strategy as part of the Water Quality Control Plan for the North Coast Region (Basin Plan) that would eliminate 90 percent of total controllable road-related sediment sources within 20 years and 50 percent of controllable upslope sediment sources within 40 years; (3) numeric targets including specified numerical values for percent fine sediments, frequency of pools in stream habitat profiles, and improving trends in large woody debris; (4) an implementation plan which specifies that either default prescriptions be observed or a site-specific plan be implemented that provides assurances that source reduction targets will be met; (5) assurances that sediment reduction or control goals are capable of being met and that site-specific planning and implementation by landowners provides a flexible framework; and (6) a monitoring plan to verify that conservation practices are implemented and are effective.

The TMDL process provides a flexible, adaptive management approach that relies on substantial public input and participation to set targets, identify protection measures, and implement

and monitor corrective practices. The completion of the Garcia River TMDL, and the initiation of TMDLs for the other listed rivers, represents a significant step forward in improving watershed health for steelhead and other salmonids on the north coast of California. In the long-term, the development and implementation of these TMDLs should be beneficial for steelhead. However, their development and implementation will be difficult and it will take many years to assess their efficacy in protecting steelhead habitat. Furthermore, it is essential that the EPA consults with NMFS on the formulation of TMDLs in waters that contain listed salmonids. Such consultations will help ensure that TMDLs adequately address the needs of these species.

5. State Hatchery and Harvest Management

In an attempt to mitigate the loss of habitat and enhance fishing opportunities, extensive hatchery programs have been implemented throughout the range of steelhead on the west coast. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally reproducing stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing steelhead (NMFS, 1996). Collection of native steelhead for hatchery broodstock purposes often harms small or dwindling natural populations. On the other hand, when properly managed, hatcheries can play an important role in steelhead recovery through carefully controlled supplementation programs.

In the past, non-native steelhead stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in California (Bryant, 1994; Busby *et al.*, 1996; NMFS, 1997a). Because of problems associated with this practice, DFG has developed and implemented a Salmon and Steelhead Stock Management Policy. This policy recognizes that mixing of non-native stocks with native stocks is detrimental, and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as to minimize interactions between hatchery and natural populations.

NMFS's BRT identified the potentially adverse impacts of interactions between hatchery (Mad River hatchery) and wild steelhead as an important concern with regard to the Northern California ESU (NMFS, 1997a). As part of its strategic management plan for this ESU, DFG has implemented several changes in its hatchery practices. In addition, DFG has implemented several additional measures pursuant to the 1998 NMFS/California MOA. These hatchery management measures include: (1) marking of all hatchery steelhead released from the Mad River hatchery and all cooperative rearing facilities in the Northern California ESU; (2) continuation of long-standing hatchery management practices aimed at minimizing hatchery and wild steelhead interactions including prohibitions on stocking of resident trout in anadromous waters; releasing hatchery steelhead only at times, sizes and places that minimize impacts on naturally produced fish; only releasing hatchery fish that are determined to be healthy; (3) initiation of monitoring efforts intended to measure hatchery fish stray rates; and (4) a joint NMFS/DFG review of the Mad River hatchery including its stocking history, analysis of current broodstock, and its consistency with the strategic management plan for the Northern California ESU.

In conjunction with the improved hatchery management practices, in-river sport fisheries in the Northern California ESU now focus on harvest of marked, hatchery-produced steelhead, and sport fishing regulations have been modified to protect wild adult and juvenile steelhead.

Other Natural or Human-Made Factors Affecting Continued Existence of Steelhead

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996a).

Efforts Being Made to Protect West Coast Steelhead

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have lead to the decline of the species. NMFS then assesses conservation measures to determine if they ameliorate risks to the species.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) The substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such efforts will be reliably implemented; and (3) the presence of monitoring provisions that determine effectiveness and that permit adaptive management (NMFS, 1996b). In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure that intended conservation benefits are realized.

As part of its west coast steelhead status review, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled "Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act" (NMFS, 1996c). NMFS also reviewed conservation measures being implemented by the State of California for steelhead at the time of its final listing determination for the Northern California, Klamath Mountains Province, and Central Valley steelhead ESUs (63 FR 13347). The following sections update the current status of the State of California's conservation efforts for steelhead with particular emphasis on the Northern California steelhead ESU.

The State of California's conservation efforts that address steelhead in the Northern California ESU include: (1) development of the state's Watershed Protection Program, which includes funding and implementation of an expanded watershed planning and habitat restoration program; (2) implementation of the DFG's strategic management plan for the Northern California ESU; and (3) implementation of the 1998 NMFS/California MOA which addresses management of coastal steelhead in northern California. The status of these conservation efforts is discussed in more detail here.

California Watershed Protection Program and Implementation of SB 271

In July 1997, California's Governor created the state's Watershed

Restoration and Protection Council (WPRC) for the purpose of: (1) overseeing all state activities aimed at watershed protection and enhancement, including the conservation and restoration of anadromous salmonids in California; and (2) directing the development of a California Watershed Protection Program that would provide for the conservation of anadromous salmonids in the State of California. A working group of the WPRC issued a detailed report in December 1998 entitled "Protecting California's Anadromous Fisheries." The Executive Order that established this program expired in January 1999. However, continued coordination of the program is occurring under the auspices of the California Biodiversity Council. NMFS is encouraged that the State initiated a comprehensive, watershed-based approach to salmon management and restoration, but the California Watershed Protection Program is still under development and has not been implemented as originally envisioned.

To support the Governor's WPRC and its efforts to develop a Watershed Protection Program, DFG implemented a $3 million Watershed Initiative in 1997–98 for coastal watershed projects north of San Francisco, through its Fishery Restoration Grants Program. These projects focused on watershed and riparian habitat restoration, instream habitat restoration, and watershed evaluation, assessment, planning, restoration project maintenance, and monitoring. Beginning in 1998–1999, DFG funded additional staff positions to assist in watershed planning efforts and grant proposal development.

A key element of the state's Watershed Protection Program that is also specified in the 1998 NMFS/California MOA is DFG's implementation of an expanded habitat restoration program for coastal salmonids, including steelhead. In 1997, the California legislature enacted Senate Bill 271 which provided DFG with $43 million over 6 years for habitat restoration and watershed planning to benefit anadromous salmonids in coastal watersheds, including the geographic area which encompasses the Northern California steelhead ESU. The program was initiated in 1997–98 and has expanded since that time. Based on the SB 271 legislation, funding is expected to continue through at least 2002. Substantial funding from this program has been committed to habitat restoration, enhancement, and watershed planning efforts within the Northern California steelhead ESU since 1997–98. Throughout Humboldt and Mendocino counties, which constitute much of the geographic area comprising the Northern California steelhead ESU, DFG has funded over 200 projects costing in excess of $7.5 million during the past 3 years (1997–98 through 1999–2000). NMFS participates as an ex-officio member of the Advisory Committee that reviews the distribution of SB 271 grant funding, to help ensure that available funds are spent on projects that will contribute to the conservation of listed salmonids, including north coast steelhead. In addition to the expanded habitat restoration program funded by SB 271, DFG has added additional staff positions to assist in administering the program, provide technical support in the development of watershed plans and habitat restoration projects, and implement a new steelhead monitoring and adaptive management program throughout coastal northern California.

Northern California Steelhead ESU Strategic Plan

In February 1998, DFG completed its strategic management plan for steelhead stocks in the Northern California ESU (DFG 1998). In March 1998, the state and DFG formally committed to implement this plan as part of the NMFS/California MOA. The plan describes existing and new management measures for recreational steelhead angling, steelhead hatchery programs, and steelhead monitoring, assessment, and adaptive management efforts in this ESU. In addition, the plan describes DFG's ongoing efforts to protect and enhance steelhead habitat within this ESU. These management measures were intended to provide immediate protection for steelhead populations in this ESU, while longer-term measures were implemented to protect anadromous fish habitat on non-federal lands through the Watershed Protection Program and the SB 271 habitat restoration program. The main elements of the Northern California steelhead strategic management plan are briefly discussed here.

(a) Harvest Measures

The strategic management plan includes several harvest management actions which are intended to reduce impacts on adult and juvenile steelhead in the Northern California ESU. These include: (1) no retention of unmarked (i.e., naturally produced) adult and juvenile steelhead in all rivers and streams; (2) fishing closures in steelhead rearing tributaries to protect juveniles; (3) expanded closures in mainstem rivers through May to protect outmigrating juvenile steelhead; and (4) various gear and bait restrictions designed to reduce mortality associated with incidental hooking of steelhead.

In February and March 1998, the California Fish and Game Commission (Commission) adopted emergency changes to the State's inland fishing regulations which were intended to implement the harvest regulation changes contained in the Northern California steelhead strategic management plan. In conjunction with the final listing determination for this ESU in March 1998(63 FR 13347), NMFS reviewed these regulatory changes and concluded that they would substantially reduce impacts to adult and juvenile steelhead and also assist in the conservation of the ESU (NMFS 1998). These emergency regulations were formally enacted by the Commission in June 1998 following public review and comment, and they currently remain in place. NMFS believes that these angling regulations continue to provide the reduction in impacts and conservation benefits that were expected at the time the decision was made not to list this ESU in March 1998.

(b) Hatchery Measures

The strategic plan for the Northern California ESU contains a wide range of existing and new hatchery management measures that are intended to reduce the impacts of hatchery steelhead programs on wild steelhead populations in this ESU. Measures incorporated into the plan include: (1) release strategies that require a minimum 6 inches (15.2 cm) size and release at the hatchery rather than off-site; (2) marking of all hatchery-produced fish that are released and the implementation of spawner surveys to assess the extent to which hatchery fish stray into natural spawning areas; (3) a commitment to reduce hatchery releases or implement other changes in hatchery practices if significant straying of hatchery fish is found to occur; (4) a cap on hatchery production to current levels, regular health checks during each rearing cycle, and the destruction of diseased fish that cannot be effectively treated; (5) a review of the existing operating procedures for all cooperative rearing facilities permitted by the state; and (6) adoption of a requirement that all cooperative facilities develop and submit 5-year management plans to the State for approval. NMFS previously reviewed these existing and new hatchery management measures and concluded that they would substantially reduce potential impacts to wild steelhead (NMFS 1998d). Because of NMFS concerns regarding the operations of the the Mad River Hatchery which is

located in this ESU, DFG also committed in the 1998 NMFS/California MOA to: (1) undertake a comprehensive review of the hatchery program, including its stocking history and genetic analysis of current broodstock; and (2) develop a plan to eliminate any adverse impacts of hatchery operations on Northern California steelhead if necessary.

DFG implemented a statewide mass-marking program for its hatchery steelhead programs beginning in 1997 which includes the hatchery steelhead programs in the Northern California steelhead ESU. DFG is also requiring all cooperative rearing programs that produce steelhead in this ESU to mark all released fish. This marking program has continued since its implementation in 1997 and DFG is committed to continuing this program into the future. DFG and the NMFS have also initiated a comprehensive review of DFG's hatchery programs in this ESU (Mad River Hatchery and cooperative rearing programs), with the objective of ensuring that these programs are compatible with the conservation of naturally produced steelhead. This review is expected to be completed in 2000. Comprehensive monitoring of stray rates for hatchery produced fish has not been implemented in this ESU, but DFG expects to begin a north coast steelhead stray rate monitoring program in 2000.

(c) Steelhead Monitoring and Adaptive Management

The strategic management plan for the Northern California ESU identifies ongoing and expanded monitoring programs to assess steelhead abundance. A commitment to implement these programs is contained in the 1998 NMFS/California MOA. A key element of this monitoring program was a commitment to establish a joint scientific and technical team including representatives from DFG and NMFS to design appropriate detailed monitoring programs for steelhead in this ESU. NMFS considered these monitoring efforts critically important given the uncertain status of steelhead populations in these ESUs, and indicated that adequate State funding was critical to implementing the program (63 FR 13347). As part of the NMFS/California MOA, both DFG and NMFS committed to seek adequate funding for this program. The DFG has taken significant steps to implement this expanded steelhead monitoring program in the Northern California steelhead ESU, but the full program has not yet been fully developed or implemented. The DFG has committed significant fiscal resources to hire and redirect existing staff resources to create a north coast steelhead monitoring team and program that will address the Northern California steelhead ESU as well as areas further north in California, and has established a scientific and technical team to guide development of this effort. Comprehensive monitoring proposals have been developed and are under review by the scientific and technical team. NMFS expects the finalized monitoring program for this ESU to be implemented in early 2000.

NMFS/California Memorandum of Agreement

NMFS evaluated a wide range of conservation efforts that California had adopted or was in the process of developing in conjunction with its decision not to list the Northern California steelhead ESU (63 FR 13347). NMFS concluded that DFG's harvest and hatchery programs for this ESU would contribute to increasing escapement of adults, substantially reduce impacts on juveniles resulting in increased survival, and reduce adverse impacts of hatchery populations on wild fish. In the near-term, NMFS expected these measures would contribute to improved survival and population stability for steelhead. In addition, DFG's monitoring and adaptive management programs were expected to provide state and Federal managers with the ability to assess the status of steelhead populations and their response to harvest and hatchery management changes. However, NMFS was also concerned that California's habitat protection efforts, (*e.g.*, development of a Watershed Protection Program and implementation of the expanded habitat restoration program established by SB 271), were not adequate to secure properly functioning habitat conditions for this ESU over the long-term. To address these concerns, NMFS entered into a MOA with the State (NMFS/California MOA 1998).

Under the terms of the NMFS/California MOA, the State committed to a broad range of measures including: (1) compliance with existing State regulations, with particular emphasis on the management measures contained in the strategic management plans for north coast steelhead; (2) implementation of harvest and hatchery management measures contained in the strategic management plan for Northern California steelhead; (3) implementation of a monitoring evaluation and adaptive management program for steelhead, including those elements contained in the strategic management plan for Northern California steelhead; (4) continued implementation of a California Watershed Protection Program, including the SB 271 watershed planning and habitat restoration program in coastal watersheds, and the joint review and revision of the State's forest practice rules (FPRs), in conjunction with a scientific review panel to ensure that the revised FPRs were adequate to conserve anadromous salmonids, including steelhead. As previously discussed, because of the preponderance of private timber lands and timber harvest activity in the Northern California ESU, NMFS considered this to be a critically important provision in the MOA.

Many of the provisions in the NMFS/California MOA relating to the Northern California steelhead ESU have been or are being implemented by the state; however, critically important provisions related to revision of the FPRs have not been implemented. The current status of the State's effort to implement the MOA, with particular regard to the Northern California steelhead ESU, is discussed here.

(a) Compliance with Existing State Regulations

In accordance with section 4 of the NMFS/California MOA, DFG made recommendations to the Fish and Game Commission to implement detailed angling regulation changes contained in the strategic management plan for Northern California steelhead. The Commission adopted these recommendations on an emergency basis in February 1998 and permanent regulations became effective in August 1998. Within this ESU, these regulations specifically prohibit retention of naturally spawned adult steelhead, prohibit fishing for naturally produced juvenile steelhead in tributary streams, minimize the angling impacts on juvenile steelhead in mainstem rearing areas through gear/bait restrictions, prohibit retention of summer steelhead and prohibit fishing in their summer holding areas, and provide for the retention of marked, hatchery-produced steelhead.

(b) Harvest and Hatchery Management

In accordance with section 6 of the NMFS/California MOA, two provisions have been implemented. First, the DFG recommended and the Fish and Game Commission adopted permanent regulations that provide only for the retention of non-listed, hatchery-produced steelhead. Second, the DFG has implemented a statewide mass marking program for hatchery produced steelhead. This program was initiated

with brood year 1997 steelhead released in winter 1998, and the marking program has continued annually since that time. This program has resulted in complete marking of all steelhead produced at the Mad River Hatchery which is located in this ESU. In addition, DFG is requiring that all cooperative rearing programs that produce steelhead mark them prior to release.

Three additional provisions contained in section 6 of the NMFS/California MOA have not yet been implemented, but are either in progress or will be initiated shortly. To date, DFG has not implemented a process for establishing recovery and strategic goals for north coast steelhead, including this ESU, nor has it initiated a monitoring program to measure stray rates of hatchery produced steelhead. However, the DFG has established a North Coast Steelhead Monitoring Program to develop and implement a monitoring program, which will include the Northern California steelhead ESU, and a joint scientific and technical team to provide guidance to the program. DFG has developed a preliminary monitoring program and is consulting the joint scientific and technical team to refine that program, and is exploring options for establishing recovery and strategic goals within this ESU. NMFS anticipates that this program will commence in 2000. Although the monitoring program specified in the NMFS/California MOA has not been fully implemented, DFG has continued to carry out several monitoring and research programs on the north coast, primarily in the Klamath Mountains Province ESU, which have provided data useful for the management of steelhead. Finally, NMFS and DFG have recently undertaken a state-wide review of the state's hatchery programs, including the Mad River Hatchery which in located in this ESU, as well as the state's cooperative rearing program which has a small number of projects within this ESU. This review is expected to be completed by June 2000.

(c) Monitoring, Evaluation, and Adaptive Management

In accordance with section 7 of the NMFS/California MOA, the DFG has implemented, at least in part, two key provisions. First, DFG has established a joint scientific and technical team to assist it with the development of a comprehensive monitoring program for steelhead on the north coast, including the Northern California ESU. The NMFS/California MOA called for this program to be developed by June 1998; however, as discussed in the preceding section, DFG has not yet completed development of the study plan or initiated a comprehensive monitoring program. Second, DFG has secured the necessary funding to establish a north coast steelhead monitoring program, including the dedication of professional staff and the acquisition of necessary equipment and facilities. A preliminary monitoring program plan has been developed by the monitoring program staff and this plan is currently under review by the joint scientific and technical team.

(d) California's Watershed Protection Program

Section 9 of the NMFS/California MOA commits the State to continue development of its Watershed Protection Program, with a specific element addressing salmonid conservation, and to coordinate with NMFS in establishing a scientific review panel that would advise the State in its development of this program. In addition, Section 9 commits the state to direct personnel and fiscal resources to implement an expanded habitat restoration program in coastal watersheds using SB 271 funds. Details of the state's Watershed Protection Program and DFG's efforts to implement expanded watershed planning and habitat restoration in coastal watersheds were described previously (see Efforts Being Made to Protect West Coast Steelhead).

Section 9 of the NMFS/California MOA contains several measures relating to the review and revision of the State's FPRs because of NMFS's concerns regarding the effects of State-regulated timber harvest on freshwater habitat conditions for anadromous salmonids, including steelhead in the Northern California ESU. Specifically, the NMFS/California MOA calls for: (1) a joint review of the FPRs by NMFS and the State, including their implementation and enforcement; (2) the State to make appropriate changes in implementation and enforcement, if necessary; (3) the state, in consultation with NMFS, to make recommendations to the BOF for changes in the FPRs necessary to conserve anadromous salmonids; and (4) the BOF to complete action on the recommended changes in the FPRs by January 2000. Full implementation of these NMFS/California MOA provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision to not list the Northern California steelhead ESU.

In accordance with these provisions, the state established a subcommittee of the scientific review panel for its Watershed Protection Program to undertake an independent review of the State's FPRs. In June 1999, this subcommittee submitted a report to the BOF which concluded that the state's FPRs, including their implementation through the timber harvest plan process, do not ensure protection of anadromous salmonid populations. Based in part on the scientific review panel's findings, the Secretaries of the California Resources Agency and CalEPA jointly presented a proposed package of FPR revisions to the BOF in July 1999 that was designed to address shortcomings identified by the scientific review committee. At its October 6–7, 1999, meeting, the BOF failed to take action to adopt the proposed rule changes, thereby eliminating to possibility of implementing improvements in California's FPRs by January 1, 2000.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

In December 1997, the NMFS' BRT concluded that the Northern California steelhead ESU was likely to become endangered within the foreseeable future based on a review of the best available biological information (NMFS 1997). Based on a review of updated abundance and trend information that was available for this ESU, NMFS's Southwest Fisheries Science Center (NMFS/Tiburon Lab 1/2000), concluded that the current biological status of the ESU has changed little since it was last evaluated by NMFS' BRT. Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is well below estimates in the 1980s and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960s levels.

After taking into consideration state and Federal efforts for the conservation of steelhead, NMFS previously decided that threats to the ESU were sufficiently reduced that a listing of the Northern California steelhead ESU as threatened was unnecessary. The key Federal and state conservation measures which NMFS concluded reduced threats to this ESU were: (1) implementation of the NMFS/California MOA, with particular emphasis on the provisions intended to improve non-Federal forest land protections because of the predominance of non-Federal lands in the California portion of this ESU (81 percent non-Federal land); (2) substantial changes to in-river harvest regulations by California; and (3) general improvements in the ESU resulting from implementation of the DFG's strategic management plan for this ESU, the State's Watershed Protection Program, and other provisions in the NMFS/California MOA which serve to implement steelhead angling regulation changes, hatchery steelhead management changes, habitat protections and restoration, and expanded steelhead monitoring.

As previously discussed in this document, California has implemented several of the conservation measures that NMFS relied upon in making its decision not to list the Northern California ESU. Specifically, the state has enacted substantial changes to the state's in-river angling regulations in 1998 to protect coastal steelhead populations including steelhead in this ESU. These regulations, with slight modification, remain in effect, and NMFS believes they continue to provide the substantial protection and conservation benefits that were expected to occur at the time of the decision not to list this ESU. The State has also implemented, or begun to implement, several other conservation measures for this ESU, including extensive watershed planning and/or habitat restoration through the SB 271 program, marking of hatchery produced steelhead and other improvements in hatchery practices, and steelhead monitoring. Although implementation of some of these measures has been delayed, as is the case for the steelhead monitoring program, NMFS continues to believe that these efforts will collectively benefit steelhead in this ESU and will eventually contribute to an improved understanding of its status.

Although these conservation efforts are expected to benefit steelhead in this ESU, NMFS continues to believe that improved habitat protection and restoration of properly functioning freshwater habitat conditions for spawning, rearing, and migration are essential to the long-term survival and recovery of this ESU. Because Federal land ownership is both fragmented and limited in this ESU (approximately 19 percent of ESU), the key to achieving habitat protection and properly functioning habitat conditions in this ESU is the improvement of land management activities on non-Federal lands (approximately 81 percent of ESU). To ensure improved protection of habitat on non-Federal lands in this ESU, the NMFS/California MOA contained several provisions for the review and modification of the state's FPRs. Full implementation of these provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's previous decision not to list this ESU. Because the State has failed to implement changes in the FPRs as called for in the NMFS/California MOA, critically important conservation measures are not being implemented to reduce the threats to this ESU from timber harvest activities on non-Federal lands. For this reason, NMFS concludes that the conservation measures fail to provide for the attainment of properly functioning habitat conditions necessary to provide for the long-term protection and conservation of this ESU.

Based on a review of the best available information, therefore, NMFS concludes that the Northern California steelhead ESU warrants listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the December 1997 scientific conclusions of the BRT regarding this ESU, the results of an updated status review for the ESU, and the current status of all Federal, state, and local conservation efforts directed at this ESU, including implementation of provisions for the NMFS/California MOA for steelhead.

NMFS has previously examined the relationship between hatchery and natural populations of steelhead in this ESU, and also assessed whether any hatchery populations are essential for their recovery. At this time, NMFS does not believe any specific hatchery populations warrant listing.

At this time, NMFS is only proposing to list the anadromous life forms of *O. mykiss*.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations it finds necessary and advisable to provide for the conservation of threatened species. Section 9 of the ESA prohibits violations of protective regulations for threatened species promulgated under section 4(d). The 4(d) protective regulations may prohibit, with respect to the threatened species, some or all of the acts which section 9 of the ESA prohibits with respect to endangered species. These section 9 prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS intends to develop and promulgate a 4(d) protective regulation for the Northern California steelhead ESU in a separate rulemaking. The process for completing the 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS has flexibility under section 4(d) to tailor the protective regulations to provide for the conservation of the species. Even though existing conservation efforts and plans are not sufficient to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process, starting with the protective regulations. For example, the interim 4(d) rule for the Southern Oregon/Northern California coho (62 FR 24588, May 7, 1997) does not prohibit habitat restoration activities conducted in accordance with approved plans, nor does it prohibit fisheries conducted in accordance with an approved state management plan. NMFS has recently proposed 4(d) regulations for all threatened ESUs of steelhead (64 FR 73479). Future 4(d) rules may contain limited take prohibitions applicable to activities such as forestry, agriculture, and road construction, when such activities are conducted in accordance with approved conservation plans.

Sections 7(a)(2) and 7(a)(4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or adversely modify critical habitat or proposed critical habitat.

Examples of Federal actions likely to affect steelhead in the Northern California ESU include authorized land management activities of the U.S. Forest Service and Bureau of Land Management, operation of hydroelectric and storage projects permitted by FERC, and activities permitted by the COE. Such activities may include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Other Federal actions,

including the COE section 404 permitting activities under the CWA, COE permitting activities under the River and Harbors Act, FERC licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed chinook salmon and steelhead for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species, so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research not receiving Federal authorization or funding, logging, road building, grazing, and diverting water onto private lands.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS, jointly with USFWS, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Native American tribal groups, Federal and state agencies, and the private sector.

NMFS and USFWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. At the time of the final rule for the Northern California steelhead ESU, NMFS will identify to the extent known specific activities that will not be considered likely to result in violations of section 9 once a 4(d) rule has been adopted, as well as activities that will be considered likely to result in violations. NMFS believes that, based on the best available information, the following actions will not be prohibited in a 4(d) rule and therefore will not result in a violation of section 9:

1. Possession of steelhead from any steelhead ESU listed as threatened which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization, or diversion, for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially harm steelhead in the Northern California ESU and therefore may be prohibited in a 4(d) rule applying section 9 take prohibitions, include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitat in the proposed ESU (e.g., logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).

2. Destruction/alteration of steelhead habitat in the proposed ESU, such as removal of large woody debris and "sinker logs" or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting steelhead in the proposed ESU.

4. Violation of discharge permits.

5. Pesticide applications.

6. Interstate and foreign commerce of steelhead from the proposed ESU and import/export of steelhead from any ESU without a threatened or endangered species permit.

7. Collecting or handling of steelhead from the proposed ESU. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

8. Introduction of non-native species likely to prey on steelhead in the proposed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of steelhead in the Northern California ESU under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the ESA section 9 take prohibitions, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. While NMFS has completed its initial analysis of the biological status of steelhead in the Northern California ESU, it has not performed the full analysis necessary for designating critical habitat at this time. It is NMFS' intent to develop a critical habitat proposal for this ESU within the next year as soon as the analysis can be completed.

Public Comments Solicited

NMFS has exercised its best professional judgement in developing this proposal to list the Northern California steelhead ESU. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. NMFS is interested in any additional information concerning: (1) biological or other relevant data concerning any threats to steelhead in this ESU; (2) the range, distribution, and population size of steelhead in this ESU; (3) current or planned activities in the proposed ESU and their possible impact on steelhead; (4) steelhead escapement, particularly escapement data partitioned into natural

and hatchery components; (5) the proportion of naturally reproducing fish that were reared as juveniles in a hatchery; (6) homing and straying of natural and hatchery fish; (7) the reproductive success of naturally reproducing hatchery fish (i.e., hatchery-produced fish that spawn in natural habitat) and their relationship to proposed ESU; (8) efforts being made to protect native, naturally reproducing populations of steelhead in this ESU; and (9) suggestions for specific regulations under section 4(d) of the ESA that should apply to steelhead in this ESU. Suggested regulations may address activities, plans, or guidelines that, despite their potential to result in the take of listed fish, will ultimately promote the conservation and recovery of threatened steelhead.

NMFS will review all public comments and any additional information regarding the status of the Northern California steelhead ESU and will complete a final rule within 1 year of this proposed rule, as required under the ESA. The availability of new information may cause NMFS to reassess the status of this ESU.

Joint Commerce-Interior ESA implementing regulations state that the Secretary "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list * * * or to designate or revise critical habitat." (see 50 CFR 424.16(c)(3)). A public hearing schedule on this proposal is contained in this notice. A public hearing will provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters. Written comments on the proposed rule should be submitted to NMFS (see **ADDRESSES**).

References

A complete list of all cited references is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). See NOAA Administrative Order 216–6.

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866.

Executive Order 13132—Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with State and local government agencies in the course of assessing the status of the Northern California steelhead ESU, and considered, among other things, state and local conservation measures. State and local governments have expressed support both for the conservation of the Northern California steelhead ESU and for activities that affect this ESU. The history and content of this dialogue, as well as the basis for this proposed action, is described in the **SUPPLEMENTARY INFORMATION** section of this document, and in other **Federal Register** documents preceding this proposed action. (See 61 FR 41541, August 9, 1996; 62 FR 43974, August 18, 1997; and 63 FR 13347, March 19, 1998). NMFS staff have had numerous discussions with various governmental agency representatives regarding the status of this ESU, and have sought working relationships with agencies and others in order to promote salmonid restoration efforts. In addition, NMFS' staff have given presentations to interagency forums and other interested groups considering conservation measures. As the process continues, NMFS intends to continue engaging in informal and formal contacts with affected state, local or regional entities, giving careful consideration to all written or oral comments received. As one part of that continued process, NMFS has scheduled public hearings on this proposed action. NMFS also intends to consult with appropriate elected officials in the establishment of a final rule.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d) or proposing to designate critical habitat. Prior to finalizing 4(d) regulations for this ESU, or proposing to designate critical habitat, NMFS will comply with all relevant NEPA and RFA requirements.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: February 4, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.102, paragraph (a)(22) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(22) Northern California steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in coastal river basins ranging from Redwood Creek in Humboldt County, California to the Gualala River, inclusive, in Mendocino County, California.

* * * * *

[FR Doc. 00–3283 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 012400B, 012900C]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Deep-sea Red Crab Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS), an Environmental Impact Statement (EIS), and notices of scoping processes; requests for comments; extensions of the comment periods.

SUMMARY: The New England Fishery Management Council (Council) recently announced its intention to prepare Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and a Fishery Management Plan for deep-sea crab, and, if necessary, to prepare an SEIS and an EIS, respectively, to analyze the impacts of any proposed management measures for this action. NMFS is extending the comment period for submission of written comments for both actions to ensure opportunity for public comment.

DATES: Written comments on the intent to prepare the SEIS for Amendment 10 to the Atlantic Sea Scallop FMP must be received on or before 5:00 p.m., local time, March 6, 2000. Written scoping comments on the intent to prepare an EIS for the deep-sea red crab fishery must be received on or before 5:00 p.m., local time, March 3, 2000.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–0492. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: On February 4, 2000 (65 FR 5488), NMFS published notification of the Council's intention to prepare Amendment 10 to the Atlantic Sea Scallop FMP. See the February 4, 2000, **Federal Register** notification for background and scoping information related to Amendment 10 and for the public meeting schedule. NMFS is extending the period to submit written comments from March 1, 2000, to March 6, 2000.

On February 2, 2000 (65 FR 4941), NMFS published notification of the Council's intention to prepare an FMP for deep-sea red crab and to prepare an EIS, if necessary. See the February 2, 2000, **Federal Register** notification for background and scoping information related to this action and for the public meeting schedule. NMFS is extending the period for submission of written comments from February 21, 2000, to March 3, 2000.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 7, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3285 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 012800F]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting to give the public an opportunity to comment on a regulatory amendment to be implemented under the framework process of the Council's Pelagics Fishery Management Plan. The measure would establish a 50-nautical mile (nm) closure to pelagic fishing vessels larger than 50 ft (15.24 m) around Tutuila and Manua Islands, and a 30-nm closure around Swain's Atoll.

DATES: The meeting will be held February 17, 2000, from 3:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held in the conference room at the Department of Marine and Wildlife Resources (DMWR) in American Samoa at the address given here. Copies of the background material summarizing the Council's previous deliberations, rationale, and analysis of the preferred alternative may be obtained from the DMWR, P.O. Box 3730, Pago Pago, American Samoa 96799.

FOR FURTHER INFORMATION CONTACT: Ray Tulafono, Director, DMWR; telephone 684–633–4456.

SUPPLEMENTARY INFORMATION: This meeting is being convened to give the public in American Samoa the opportunity to comment on a revised framework measure under the Council's Fishery Management Plan for the Pelagic Fisheries of the Western Pacific region. In December 1997, at its 94th Meeting, the Council voted to recommend a closed area from which large (greater than 50 ft (15.24 m)) pelagic fishing vessels would be excluded to protect the small vessel longline fishery in American Samoa. That proposed revision was adopted under the two-meeting framework process. The measure would have established a 50-nm closure to pelagic fishing vessels larger than 50 ft (15.24 m) around Tutuila and Manua Islands, and a 30-nm closure around Swain's Atoll. The recommended closure was sent to the NMFS Southwest Regional Administrator in October 1998 but was disapproved in March 1999, with the advice that it could be re-submitted if amended to include greater justification for closed areas under National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act.

Subsequently a revision of the framework measure has been drafted that includes a preferred alternative to implement a 50-nm closure to pelagic fishing vessels larger than 50 ft (15.24 m) around Tutuila and Manua Islands, and a 30-nm closure around Swain's Atoll. The Council will take final action on this framework measure at its 102nd meeting which will be held between February 28 and March 2, 2000, in Honolulu, HI.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ray Tulafono, 684–633–4456 (voice), or 684–633–5944 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3213 Filed 2–8–00; 4:34 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 020200B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; public scoping hearing; public hearing.

SUMMARY: The Western Pacific Fishery Council's (Council) will hold its 73rd meeting of its Scientific and Statistical

Committee (SSC) in Honolulu, HI. Also, public scoping hearings will be held on the intent to prepare an Environmental Impact Statement (EIS) for the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (Precious Corals FMP).

The Council also announces its intention to develop amendments to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish and Seamount Groundfish FMP), Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP), and Fishery Management Plan for the Precious Corals FMP.

DATES: The SSC meeting will be held on February 22, 2000, from 9:00 a.m. to 5:00 p.m., and on February 23–24, 2000, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The 73rd SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items listed here. The order in which agenda items will be addressed is subject to change.

8:30 a.m. Tuesday, February 22, 2000

A. Electronic logbooks

B. Fisheries Data Coordinating Committee—Data Workshop 2000

C. Status of the stocks

1. Bottomfish fishery
2. Crustaceans fishery
a. Harvest Guideline
3. Precious corals fishery
4. Location of the catch

D. Draft Coral Reef Ecosystem Fishery Management Plan/Preliminary Draft Environmental Impact Statement (DEIS)

1. Review of Council's preferred alternative
a. Fishing permit and reporting
b. Restrictions of gear and methods
c. Marine Protected Areas
d. Framework provisions
e. Process for Plan Team (PT) coordination
2. Review of comments from region-wide public meetings
3. Federal initiatives
a. Congressional coral reef bills
b. U.S. Coral Reef Task Force action plan
4. Agency research plans for coral reefs
a. Federal (NMFS, Fish and Wildlife Service (FWS))
b. State/territories/Commonwealth of the Northern Mariana Islands (CNMI)

E. Northwestern Hawaiian Islands (NWHI)

1. Concerns regarding existing fisheries
a. Status of monk seals
b. Marine Mammal Commission
c. Monk Seal Recovery Team
d. ECOSIM (ecological simulation) model
e. Agencies (NMFS, Coral Reef Task Force, FWS, Department of Land and Natural Resources, U.S. Navy/U.S. Coast Guard)
2. Hawaii advisory body recommendations
a. Coral Reef Ecosystem PT
b. Ecosystem & Habitat Advisory Panel (AP)
c. Bottomfish PT/AP
d. Crustaceans AP/AP
e. Precious Corals PT/AP
3. Lawsuit to close lobster and bottomfish fisheries

8:30 a.m. Wednesday, February 23, 2000

F. Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) Issues

1. 3rd & 4th quarter 1999 Hawaii and American Samoa longline fishery report
2. American Samoa
a. Framework measure
b. Marine Conservation Plan
3. Shark management
a. Shark catch and disposition in 1999 in Hawaii longline fishery
b. Blue shark stock assessment
c. Report of cultural study of sharks and shark finning in the western Pacific Region
d. National Plan of Action—Sharks
e. Pelagics FMP amendment for shark management
f. Ocean Wildlife Campaign's concern for blue sharks
4. Seabird interactions in the Hawaii longline fishery
a. Status of amendment
b. Short-tailed albatross biological opinion
c. National Plan of Action—seabirds
5. Turtle management
a. Imposition of longline closed area north of Hawaii
b. Status of the lawsuit
6. Pacific Fishery Management Council's Highly Migratory Species Fishery Management Plan
7. Stock assessment of pelagic management unit species
8. International
a. Multilateral High Level Conference
b. International Pelagic Shark Workshop
c. Kiribati-Spain fishing agreement
d. National Plan of Action—fishing capacity
9. Recreational Fisheries Data Task Force

8:30 a.m. Thursday, February 24, 2000

G. Draft Coral Reef Ecosystem FMP/ NWHI Fishery Concerns (conclude discussion and recommendations)

H. Precious corals fishery

1. Status of framework amendment

Review of Public Scoping Comments on EIS Alternatives

1. Bottomfish FMP
2. Crustaceans FMP
3. Precious corals FMP
4. Public scoping hearing on precious corals EIS alternatives

The EIS will discuss the impacts of potential precious coral harvest on the human environment and consider alternatives for a number of management measures. Alternatives will be assessed for impacts on essential fish habitat, target and non-target species of fish, discarded fish, marine mammals (Hawaiian monk seals and cetaceans), and other protected species present in the western Pacific ecosystem. In addition, the environmental consequences section will contain an analysis of socio-economic impacts of the fishery on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market the fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

J. Addition of CNMI and Unincorporated Islands/Atolls to Bottomfish, Crustaceans, and Precious Corals FMPs

1. Review of status
2. Public scoping hearing

The Council intends to develop amendments to the Bottomfish FMP, Crustaceans FMP, and Precious Coral FMP which will consider a range of

alternatives and impacts for management of bottomfish, crustacean and precious coral fisheries in the Pacific Remote Island Areas (PRIAs) and CNMI. The PRIAs are defined as Howland Island, Jarvis Island, Wake Island, Midway Island, Palmyra Atoll, Kingman Reef, and Johnston Atoll.

The Council is evaluating the need to amend the bottomfish, crustacean and precious corals FMPs to better achieve the management objectives of these FMPs. Currently, no Federal regulations are in place to manage the bottomfish, crustacean and precious coral fishery resources in the EEZ waters surrounding the CNMI. There are also no Federal regulations for the bottomfish and crustacean fisheries for the EEZ waters surrounding the Pacific Remote Island Areas (PRIAs). The amendments will consider a wide range of management alternatives to address data shortfalls and possible impacts from the bottomfish, crustacean, and precious coral fisheries in the PRIAs and the CNMI. The Council seeks to solicit public comment and input on a wide range of management alternatives including, but not limited to, the following: Federal permit and data reporting requirements; limited access; vessel monitoring systems; observer program; closed season; closed areas; gear restrictions; size limits; catch quotas; and prohibitions on the use of destructive fishing techniques, including the use of explosives, poisons, bottomset gill-nets, bottom trawls, and tangle nets.

K. Limited Entry Permits for Community Demonstration Projects

L. Other business

Although non-emergency issues not contained in this agenda may come before the SSC for discussion, those issues may not be the subject of formal SSC action during this meeting. SSC action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 1801 *et seq.*

Dated: February 8, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3282 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 29
Friday, February 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Public Listing of Additional Commercial Inventory Added as a Result of a Challenge Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Department of Agriculture, Office of the Chief Financial Officer.

ACTION: Notice of additional commercial inventory added as a result of a challenge.

SUMMARY: The "Federal Activities Inventory Reform Act of 1998" (Pub. L. 105–270) ("FAIR Act") requires that agencies making changes to their inventory as a result of a challenge must make the change available to the public via the publication of a notice in the **Federal Register**

The Department of Agriculture, Office of the Chief Financial Officer hereby announces that additional commercial inventories are available to the public and are listed below: Departmental Administration (DA), Contact: George W. Aldaya, Washington, D.C. 20250, (202) 720–3937

Function code	FTE	State	Reason code	FY first appeared on FAIR list
T804—Architect and Engineering	8	DC	A	1999
W826—System Design & Programming Services	2	DC	A	1999
W999—Other ADP Functions	2	DC	A	1999
W000A—ADP Management	1	DC	A	1999
Grain Inspection, Packers & Stockyards Administration (GIPSA), Contact: Bob Soderstrom, Washington, D.C. 20250, (202) 720–0231.				
A000C—ADP Support	16	DC	B	1999
	2	GA	B	1999
	2	IA	B	1999
	2	CO	B	1999
	1	LA	B	1999
	1	TX	B	1999
	1	OH	B	1999
	3	MO	B	1999

Richard M. Guyer,
FAIR Act Coordinator.
[FR Doc. 00–3264 Filed 2–10–00; 8:45 am]
BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Forest Service

Baylor Park Timber Blowdown Analysis, White River National Forest; Garfield County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Baylor Park Area was affected by a windthrow event that blew down Engelmann spruce, subalpine fir, and aspen trees on about 2,000–3,000 acres, on August 18th, 1999. The affected area is located on the Sopris and Rifle Range Districts of the White River National Forest. The area contains mature and overmature Engelmann spruce and with an endemic population of spruce beetle. The purpose of and need for this project is to treat the blowdown and damaged area to prevent and control insect infestations. The spruce beetle is the most serious pest of Engelmann spruce. It is restricted largely to mature and overmature spruce, and epidemics have occurred throughout history. One of the most damaging outbreaks was in Colorado from 1939 to 1951, when beetles killed nearly 6 billion board feet of standing spruce. Damaging attacks have been largely associated with extensive windthrow, where downed trees provided an ample food supply for a rapid buildup of beetle populations. The beetle progeny then emerge to attack living trees, but if downed material is

not available, then standing trees may be attacked. Large, overmature trees are attacked first, but if an infestation persists, beetles will attack and kill smaller trees after the large trees in the stand are killed.

Proposed Action is to remove and/or treat damaged or windthrown trees, by use of salvage sales and other treatment methods. Other treatment methods include but are not limited to: bark peeling, pile and burning and prescribed fire, to reduce the risk of insect infestation outbreaks. In addition, the proposal would salvage or treat Engelmann spruce trees affected by spruce beetles in the analysis area. The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to determine to what extent, if any, that timber sale salvage operations or other methods of treatment, of Engelmann spruce, sub alpine fir and aspen are to occur.

DATE: Comments concerning the scope of the analysis should be received in writing on or before March 13, 2000.

ADDRESSES: Send written comments to Richard L. Doak, Acting District Ranger, Sopris Ranger District, White River National Forest, PO Box 309, Carbondale, CO 81623. The Forest Supervisor Martha J. Ketelle, P.O. Box 948, Glenwood Springs, CO 81601 is the Responsible Official for the Environmental Impact Statement and Record of Decision.

FOR FURTHER INFORMATION CONTACT: Janice Spencer, Project Coordinator, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81601.

SUPPLEMENTARY INFORMATION: Due to the difficulty in performing cultural surveys, the close proximity of wetlands, and potential of a roadless area entry to treat the down and damaged timber, An Environmental Impact Statement (EIS) is required as per Forest Service Handbook 1909.15, Section 20.6. The intent of the EIS is to determine to what extent, if any, that timber sale salvage operations or other methods of treatment, of Engelmann spruce, subalpine fir and aspen are to occur. These trees were damaged during a wind event that occurred on August 18, 1999 in the Baylor Park area. The blowdown occurred over an area of approximately 2,000–3,000 acres on the Sopris and Rifle Ranger Districts of the White River National Forest. The proposed action will be consistent with programmatic management direction contained in the Rocky Mountain Regional Guide for Standards and Guidelines (1983) and in the Land and Resource Management Plan for the White River National Forest (LMP, 1984). The LMP allocated the proposed timber sale area to wood fiber production and utilization of sawtimber products, with a small portion of the sale area being allocated to be managed for rangeland improvement and livestock grazing. All of the allocations allow for timber harvest to occur.

Based on internal Forest Service scoping, the preliminary issues include the effects of the proposed action on: area wildlife and wildlife habitat, recreation use and visual quality, watershed quality, wetland management, cultural resources, risk of insect infestation outbreaks, wildfire risk, and the transportation system—including possible entry into a roadless area.

Preliminary alternatives include, but are not limited to:

1. No Action, existing management activities under the current Forest Plan will continue.
2. The proposed action is to remove and/or treat damaged or windthrown trees, by use of salvage sales and other treatment methods, such as bark peeling, pile and burning and prescribed fire, in order to reduce the risk of insect infestation outbreaks. In addition, the proposal would salvage or treat Englemann spruce trees affected by spruce beetles in the analysis area.
3. Live timber will be harvested above that which was damaged, to treat all of the stands within the affected blowndown and damaged area for both silvicultural and economic reasons.

Alternatives will be carefully examined for their potential impacts on the physical, biological, and social environments so that tradeoffs are apparent to the decision maker. The decisions to be made by the Forest Supervisor, based on the pending analysis to be documented in this EIS are: Should the blowdown and damaged trees in the Baylor Park area be treated to reduce possible spruce beetle infestation? And, if so: Should road construction be allowed for timber harvest in this area? How will cultural resources be best protected?

Permits and licenses required to implement the proposed action will, or may, include the following: Consultation with U.S. Fish and Wildlife Service for compliance with Section 7 of the Threatened & Endangered Species Act; review from the Colorado Division of Wildlife, consultation with the Army Corps of Engineers, and clearance from the Colorado State Historic Preservation Office. Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested or affected by the proposed action. Public comments received during initial scoping for this project will be incorporated into this EIS. The Forest Service predicts the draft environmental impact statement will be filed during the summer of 2000 and the final environmental impact statement and record of decision during the winter of 2000. The comment period on the draft environmental impact statement will be forty-five days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts, *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: February 2, 2000.

Martha J. Ketelle,

Forest Supervisor.

[FR Doc. 00–3265 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–BW–M

Committee for Purchase From People Who are Blind or Severely Disabled

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 13, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance
Air National Guard Readiness Center
Andrews AFB, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Janitorial/Custodial
U.S. Customs Service
Office of Investigation, East and West Wings
Building 50, JFK Airport
Jamaica, New York
NPA: Goodwill Industries of Greater New York and Northern New Jersey, Inc. Astoria, New York

Mailroom Operation
U.S. Department of State
Office of Foreign Buildings Operations
1701 North Fort Myer Drive
Arlington, Virginia
NPA: Columbia Lighthouse for the Blind, Washington, DC

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–3202 Filed 2–10–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: March 13, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, CrystalGateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 29 and December 17, and 27, 1999, the Committee for Purchase From PeopleWho Are Blind or Severely Disabled published notices (64 F.R. 66611, 70694 and 72312) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Janitorial/Custodial, The Library of Congress, Washington, DC for the following locations: James Madison Memorial, Thomas Jefferson Building, John Adams Building and Little Scholars Child Care Facility.

Comments were received from counsel for two companies: the current contractor for this service, and a new company whose president was until recently the president of the current contractor.

Both companies noted the impact on them of adding this service to the Procurement List, and questioned the capability of the nonprofit agency originally designated to perform the service. The second company also questioned whether this addition to the Procurement List met certain statutory requirements, and the role of a consultant to that nonprofit agency. This service is currently being procured under a small business set-aside, and the contracting officer has stated for the record that, if the Committee does not add the service to the Procurement List, the service will continue to be reserved for small businesses. The current contractor is no longer a small business, so it is not eligible for contracts for the service. Consequently, addition of this service to the Procurement List would not be the cause of any impact the current contractor suffers by not being able to provide the service, regardless of the size of the impact or any dependency the contractor has developed over the five years it has provided the service. Although the current contractor anticipates that its declining sales will return it to the small business category by 2001, the Committee does not consider such speculation as demonstrating severe adverse impact resulting from addition of a service to the Procurement List.

Unlike the current contractor, the other commenting company is a small business. It has not, however, been a current contractor for this service. Losing the ability to compete for the service is not considered by the Committee to constitute severe adverse impact on a company which has not developed a dependence on having the contract for the service.

The current contractor noted that loss of this service would require it to discharge a substantial number of its employees, who would collect unemployment benefits from the company, increasing its indirect rates and making it more difficult for the

company to offer competitive prices in the future. The Committee considers this impact on the company to be too speculative to constitute severe adverse impact. As for the company's employees, the Committee has authorized the nonprofit agency which will provide the service to phase in its workers with severe disabilities, preserving the jobs of the current workers while they seek employment elsewhere in the area, which is currently experiencing very low unemployment for workers without disabilities. In addition, a custodial corporation has offered to provide comparable employment opportunities, with similar pay and benefits, for workers displaced by this Procurement List addition.

On the basis of the Committee's response to a Freedom of Information Act request the current contractor filed early in the addition process, that contractor questioned whether this project would generate jobs for people with severe disabilities. The contractor also noted the lack of a technical or management proposal for the project, and other evidence addressing the capability of the nonprofit agency and its employees with disabilities to perform this service.

The Committee believes that the record now compiled fully supports the determination it has made that this service will eventually create approximately 58 work years of employment for people with severe disabilities. This record does includes a technical proposal for the service. The nonprofit agency has been found capable of performing the service by the Committee based on assessments by the central nonprofit agency concerned and the contracting officer at the Library of Congress, who has reviewed and accepted the technical proposal.

Both commenters noted that the Library of Congress buildings, particularly the Jefferson Building, contain numerous antiques and ornamental items in their elaborate interiors, which require specialized cleaning techniques and expertise. Some of these features of the buildings, however, are not within the statement of work for the service, as cleaning them is the responsibility of the Architect of the Capitol. If other such features are beyond the capability of workers with disabilities to perform, they will be handled by those workers without disabilities which the Committee's statute permits the nonprofit agency to retain on the job.

The current contractor noted that 31 Federal janitorial/custodial services with Washington, DC addresses are already on the Procurement List, some of them substantial in scope. The contractor claimed that it had been substantially impacted by some of these additions. The contractor also claimed that additional people with severe disabilities could be employed at these locations, making the addition of the service at the Library of Congress unnecessary to create jobs for these people.

The continued viability of the current contractor casts serious doubt on any contention that it has been severely impacted by previous Procurement List additions. As noted above, the current contractor would not be eligible for the next contract for this service at the Library of Congress, whether or not the Committee adds it to the Procurement List. Given the large number of people with severe disabilities in the Washington area who remain unemployed, the Committee believes there is a need to add the service at the Library of Congress to the Procurement List and thereby generate additional jobs for such individuals. Incremental addition of workers with severe disabilities to the janitorial/custodial services in Washington which have already been placed on the Procurement List will not fill this need. For the same reason, and given that the nonprofit agency has been found capable of providing the entire service, it would not be appropriate for the Committee to add just a portion of the service to the Procurement List, as the other commenter suggested.

The current contractor claimed that the fact that price proposals it reviewed show variation above and below the current price for the service shows that the nonprofit agency does not understand the work requirements for the service and thus cannot be considered capable of performing it. The Committee, however, considers these proposals to be evidence that the nonprofit agency and the Library of Congress were engaged in price negotiation, which is now the preferred method of setting a fair market price in the Committee's program, and not evidence of a lack of capability on the nonprofit agency's part.

The current contractor also claimed that the nonprofit agency must specifically identify the individuals with disabilities who will be employed on this service and demonstrate how these individuals are capable of performing the work involved in the service. The Committee does not consider this degree of specificity to be appropriate, given that commercial janitorial contractors do not so identify workers before beginning a project, and does not require this level of detail from nonprofit agencies participating in its program.

The other commenter claimed that this service does not meet the Committee's statutory requirement that 75 percent of the direct labor for the service be performed by persons with severe disabilities. The commenter noted that the requirement must be met each year the nonprofit agency performs the services, so a phase-in of people with disabilities would not be permissible. Such a phase-in, according to the commenter, would also lower the nonprofit agency's overall disabled labor percentage below the level the statute requires. The commenter misunderstands the statutory direct labor requirement, which applies to a nonprofit agency's total direct labor, not to the labor used on a specific service. However, the commenter is correct that Ability Unlimited, Inc., the nonprofit agency originally proposed to perform this service, does not currently meet the total direct labor requirement. Another qualified nonprofit agency, The Chimes, Inc., which does meet the total direct labor requirement and has been found capable of providing this service, has been designated to replace Ability Unlimited as the service provider under the Procurement List for at least one year. If Ability Unlimited meets the total direct labor requirement at that time, the service will be transferred to it. The commenter also questioned whether the price established for the service is a true fair market price. The commenter assumed, in accordance with former Committee pricing policies, that the price was based on the current price for the service, which is being provided under a contractual arrangement which is now over five years old. However, in accordance with new Committee pricing policies, the price for this service was set by negotiation between the Library of Congress and the nonprofit agency. Such a price by its nature is a fair market price, as it is an agreement at this time between a knowledgeable buyer and a seller, without regard to the price of the previous contractual arrangement.

The same commenter also questioned the use by Ability Unlimited of a for-profit janitorial firm as a consultant and materials supplier for this service. The commenter claimed that this arrangement violates the statutory requirement that a nonprofit agency's net income not inure to any individual. The commenter also indicated that the consultant firm's performance record on another Government contract made its role in connection with this service inappropriate. Again, the commenter

misinterprets the Committee's statute. The statutory language the commenter mentioned is intended to assure that non-governmental participants in the Committee's program are nonprofit corporations. Ability Unlimited and The Chimes meet that requirement, as well as a Committee policy requirement designed to assure nonprofit status and organizational independence. The Committee has examined the relationship between AbilityUnlimited and the for-profit consultant, and has received information from the president of the consultant firm that demonstrates that the firm will not profit from the relationship. In addition, the consultant's performance on its own janitorial contracts is not a dispositive factor in this instance because of the limited role the consultant would play in providing the service at issue. Furthermore, if Ability Unlimited fails to increase its total direct labor being performed by people with severe disabilities to the level required by the Committee's statute, it will not be performing this service at the Library of Congress under the Committee's program.

The following material pertains to the two services being added to the Procurement List: After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial
The Library of Congress, Washington, DC for the following buildings:
James Madison Memorial
Thomas Jefferson Building
John Adams Building
Little Scholars Child Development Center
Janitorial/Custodial
U.S. Coast Guard
Southwest Harbor Building
Southwest Harbor, Maine

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Paper, Tabulating Machine
7530–00–249–4847
7530–00–057–9487
Pad, Parachutists' Helmet
8470–01–092–8494

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–3203 Filed 2–10–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Notice of Postponement of Final Determination in the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Laurel LaCivita, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408, (202) 482–4243, and (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determination

The Department received a request pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(e)(2) to postpone its final determination to 135 days after publication of the Department's preliminary determination and to extend the imposition of provisional measures from a four-month period to not more than six months from respondent JSC Nevinnomyssky Azot, a producer/exporter of the subject merchandise.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) Our preliminary determination is affirmative, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting respondent's request and are postponing the final determination to no later than May 22, 2000, which is 135 days after the publication of the preliminary determination. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation.* Suspension of

liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3153 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy (Kangwon Industries, Ltd. ("Kangwon")), Brandon Farlander (Inchon Iron & Steel Co., Ltd. ("Inchon")), or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165 (Blozy), (202) 482–0182 (Farlander), or (202) 482–3818 (Johnson).

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR part 351 (1998).

Preliminary Determination

We preliminarily determine that structural steel beams ("structural beams") from South Korea are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On August 3, 1999, the Department initiated antidumping duty investigations of imports of structural beams from Germany, Japan, South Korea, and Spain. *See Initiation of Antidumping Duty Investigations: Structural Steel Beams From Germany, Japan, South Korea, and Spain*, 64 FR 42084 (August 3, 1999) ("*Notice of Initiation*"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On August 17, 1999, Northwestern Steel & Wire Company, Nucor-Yamato Steel Company, and TXI–Chaparral Steel Inc. ("petitioners") submitted comments to the Department requesting that the scope exclude certain forklift truck mast-section non-standard I-beams. In August 1999, the Department also requested comments from petitioners and potential respondents in these investigations regarding the model matching criteria. We received comments from petitioners regarding model matching criteria.

On August 23, 1999, the United States International Trade Commission ("ITC") informed the Department of its affirmative preliminary injury determination on imports of subject merchandise from Japan and South Korea and its negative injury determination on imports of the subject merchandise from Germany and Spain. On August 31, 1999, noting the ITC's negative injury determination concerning Germany, petitioners submitted a letter stating that a scope exclusion of forklift truck mast-section non-standard I-beams was no longer necessary as those products were imported from Germany.

On August 2, 1999, the Department issued Section A of its antidumping questionnaire to Inchon and Kangwon. On August 30, 1999, Inchon and Kangwon submitted responses to Section A of the questionnaire. Also, on August 30, 1999, we issued Sections B, C, D, and E of the antidumping questionnaire. On September 17, 1999, we issued a supplemental questionnaire on Section A. On October 25, 1999, Inchon and Kangwon submitted their Sections B, C, and D responses, and supplemental questionnaire response for Section A. On November 16, 1999, we issued a second supplemental questionnaire to Inchon and Kangwon, and on December 10, 1999, we received responses from both companies. On January 7 and 10, 2000, we issued supplemental questionnaires for Inchon and Kangwon, respectively. On January 18 and 20, 2000, we received Inchon's and Kangwon's supplemental responses, respectively. Petitioners submitted comments on Inchon's and Kangwon's questionnaire responses in September, November, and December 1999.

On September 17 and 21, 1999, Inchon and Kangwon, respectively, requested that they be excused from reporting home market resales of subject merchandise produced by unaffiliated manufacturers. Additionally, on September 17, 1999, Inchon requested that it be excused from reporting home market sales of I-beams and GI-beams. On September 28, 1999, we granted Inchon's and Kangwon's request that they not be required to report home market resales of subject merchandise produced by unaffiliated manufacturers; however, we instructed Inchon to report its home market sales of I-beams and GI-beams.

On November 2, 1999, petitioners submitted a timely request for a postponement of the preliminary determination pursuant to 19 CFR 351.205(e). On November 16, 1999, we postponed the preliminary determination until no later than February 2, 2000. *See Structural Steel Beams From South Korea and Japan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 64 FR 66169 (November 24, 1999).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on January 13, 2000, Inchon and Kangwon requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Inchon and Kangwon also requested a two-month extension of the four-month limit on the imposition of provisional measures. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Inchon and Kangwon account for all known exports of the subject merchandise, and (3) no compelling reason for a denial exists, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of

carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1998 through June 30, 1999.

Affiliation

On January 7, 2000, news reports indicated that Inchon shareholders approved a plan to merge with Kangwon. Under the proposed plan, Inchon will absorb Kangwon. Both respondents have stated that Inchon and Kangwon were separate, independent companies during the POI and that no merger discussions took place during the POI. *See, e.g.*, Kangwon's January 20, 2000 Supplemental Questionnaire Response at pages 20–21 and Inchon's January 18, 2000 Supplemental Questionnaire Response at page 13. Therefore, based on respondents' record statements that they were separate, independent companies during the POI, we preliminarily determine that the companies were unaffiliated during the POI and have treated each as a separate entity for purposes of this investigation.

Fair Value Comparisons

To determine whether sales of structural beams from Korea to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "export price and constructed export price" and "normal value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs (if applicable) for comparison to weighted-average NVs.

Transactions Investigated

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Since both Inchon's and Kangwon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home markets for both companies were viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Date of Sale

Inchon

For both home market and U.S. transactions, Inchon reported the invoice date as the date of sale, *i.e.*, the date when price, quantity, and material specifications are finalized, because Inchon stated that the price, quantity, and material specifications may change until the time of invoicing and shipment. Based on Inchon's reported frequency of changes in the material terms of sale for both its home market and U.S. transactions, which is business proprietary information, the Department preliminarily determines that the invoice date is the most appropriate date to use for the date of sale. This is because the frequency of changes in price and quantity between order confirmation and invoice date indicate that the essential terms of sale are not fixed until the invoice date. For a further discussion, see *Analysis for the Preliminary Determination in the Investigation of Structural Steel Beams from South Korea—Inchon Iron & Steel Company ("Preliminary Analysis Memo: Inchon")*, February 2, 2000. We note that for U.S. sales categorized as either EP or CEP transactions, it is the Department's practice to use the date of the invoice to the first unaffiliated purchaser in the United States. However, the date of sale cannot occur after the date of shipment. Therefore, when date of shipment to the first unaffiliated purchaser in the United States precedes the date of the invoice, we will use shipment date as the date of sale (*see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12935 (March 16, 1999), *citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998). Thus, for U.S. sales through: (1) Channel one (Inchon to its affiliated trading company in South Korea, Hyundai Corporation to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, to the U.S. unaffiliated customer), we used Hyundai U.S.A.'s invoice date; (2) channel two (Inchon to Hyundai Corporation to the U.S. unaffiliated customer), we used Hyundai Corporation's invoice date; and (3) channel three (Inchon to the U.S. unaffiliated customer), we used Inchon's invoice date, unless shipment occurs prior to issuing the invoice. When shipment occurs prior to issuing the invoice, we used the shipment date as the date of sale, as noted above.

Kangwon

For its direct home market transactions as well as its home market transactions through Sampyo Corporation, Kangwon's affiliated distributor, Kangwon has reported the date of shipping invoice as the date of sale, *i.e.*, the date when price and quantity are finalized. In its Supplemental Section A Questionnaire Response, Kangwon provided an estimate that for a certain percentage of sales, the material terms of sale (*i.e.*, price and quantity) change between the date of the customer's purchase inquiry and the date of shipment. Additionally, Kangwon noted that shipping invoice date is recorded as the date of sale in Kangwon's and Sampyo Corporation's accounting records. *See also Analysis for the Preliminary Determination in the Antidumping Duty Investigation of Structural Steel Beams from South Korea—Kangwon Industries, Ltd. ("Analysis Memorandum: Kangwon")*, February 2, 2000. Based on Kangwon's record statements, which are subject to verification, we preliminarily determine that shipping invoice date is the

appropriate date of sale for home market sales.

With respect to the date of sale for Kangwon's U.S. transactions, in its original Section A Questionnaire Response, Kangwon stated that because the final terms of sale remain subject to change until time of shipment and because it does not record the date when a commercial invoice is issued in its sales records, it reported bill of lading date as the date of sale for all of its U.S. sales. However, in its Supplemental Section A Questionnaire Response, Kangwon clarified that the date of the tax invoice is the appropriate date of sale for U.S. channel three sales transactions. Moreover, in its Section C Questionnaire Response, despite its claims that it did not record date of commercial invoice in its sales records, Kangwon reported date of commercial invoice for its U.S. channel one and two sales transactions. Based on business proprietary information provided by Kangwon regarding the frequency of changes in material terms of sale up to the invoice date, which is subject to verification, we find that the material terms of sale are subject to change until invoice date and preliminarily determine that the appropriate date of sales are: commercial invoice date (U.S. sales channels one and two) and tax invoice date (U.S. sales channel three). *See also Analysis Memorandum: Kangwon.* Additionally, in keeping with the Department's practice (see above), where date of shipment to the first unaffiliated purchaser in the United States precedes the date of the invoice, we have used shipment date as the date of sale.

C. Home Market Sales of ASTM Grade Steel

Both respondents made a certain percentage of home market sales of structural beams manufactured to U.S. ASTM grade specifications during the POI. Petitioners allege that ASTM grade home market sales are outside the ordinary course of trade and should be excluded from the Department's analysis. *See* petitioners' December 21, 1999 submissions for Inchon and Kangwon. Petitioners maintain that in its analysis of whether sales are outside of the ordinary course of trade, the Department has weighed a variety of factors, including: the significance of the quantities sold, the existence of a ready market, the comparative volume of sales and number of buyers of the product types in question, and whether the merchandise in question was primarily destined for domestic or foreign markets, citing *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 64753 (December 12, 1991) and *Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part*, 54 FR 13403, 13404 (April 3, 1998). Petitioners note that in *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review* (*"Indian Pipe and Tube"*), 57 FR 54360, 54362 (November 18, 1992), the Department examined such factors as identified above and found that the Indian respondent's home market ASTM grade pipe sales were outside of the ordinary course of trade. Petitioners assert that a similar fact pattern exists for Inchon's and Kangwon's home market sales of ASTM grade merchandise and, consequently, argue that the Department should exclude respondents' home market sales of ASTM-grade subject merchandise. In response to petitioners' arguments, Kangwon and Inchon have argued that their sales of ASTM grade merchandise are within the ordinary course of trade because of the considerable number of buyers, the specific requests for ASTM grade merchandise, and the insignificant price differences between ASTM grade and non-ASTM grade merchandise, citing *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand;* Final Results of Antidumping Duty Administrative Review*("Thai Pipe and Tube")*, 61 FR 1328, 1330–1331 (January 19, 1996).

Consistent with *Indian Pipe and Tube* and *Thai Pipe and Tube*, for this preliminary determination, we have examined: (1) The different standards and product uses of ASTM and JIS structural beams; (2) the comparative volume of sales and number of buyers of ASTM and JIS structural beams in the home market; (3) the price differentials between ASTM and JIS structural beams sold in the home market; and (4) whether ASTM structural beams sold in the home market consisted of production overruns or seconds. We find insufficient information to suggest that ASTM grade structural steel beams sold in the Korean home market are outside the ordinary course of trade.

Regarding the different standards and product uses of ASTM and JIS structural beams, we find that they generally possess the same mechanical and physical characteristics, and are used for the same applications. The only difference, as noted by petitioners, is the weight tolerance. However, this difference has minimal to no effect on the application or the desirability of either product. While respondents have stated that the majority of ASTM structural beams purchased in the home market were used to construct products for export, the fact that ASTM structural beams purchased in the home market are ultimately destined for use outside of Korea is not, in this case, of import to our analysis of whether these sales have been made within the ordinary course of trade, given the other circumstances of these sales as discussed below. In fact, the record indicates that ASTM structural beams are consumed in the home market, indicating that there is a ready market for ASTM structural beams in the home market. Regarding the comparative volume of sales and number of buyers of ASTM and JIS structural beams in the home market, we do not find that the relatively small number of sales of ASTM structural beams in the home market (as a percentage, in comparison to respondents' total volume of structural beams in the home market) alone suggests that the circumstances surrounding respondents' sales of ASTM structural beams in the home market are outside the ordinary course of trade. For both respondents, there was a significant level of ASTM sales activity as evidenced by the fact that there were a significant number of actual sales of ASTM structural beams to multiple customers in the home market. This differs from *Indian Pipe and Tube*, in which ASTM grade material was sold to only two customers. Regarding the price differentials between ASTM and JIS structural steel beams sold in the home market, we find there is a minimal difference between ASTM and JIS structural steel beams sold in the home market, while in *Indian Pipe and Tube* we noted that there was a wide disparity in sales prices between ASTM and Indian Standard pipe. Regarding whether ASTM structural steel beams sold in the home market consisted of production overruns, we find no evidence that the ASTM grade structural steel beams sold in the home market are production overruns. Whereas in *Indian Pipe and Tube*, regarding overruns, the respondent stated, in the original investigation, that the ASTM sales were cost overruns, and no additional evidence had been offered to counter this information for the review segment of that proceeding. Therefore, based on the facts of the record, for both respondents, we preliminarily determine that the ASTM sales in question are within the ordinary course of trade. *See also Preliminary Analysis*

Memo: Inchon and *Analysis Memorandum: Kangwon.*

D. Home Market Sales of Merchandise Supplied by an Unaffiliated Producer

In their original Section A Questionnaire responses, Inchon and Kangwon reported that they resold subject merchandise in the home market purchased from an unaffiliated manufacturer and requested that they be excused from reporting these resales. Based on respondents' statements on the record, including the statement that neither company sold subject merchandise produced by an unaffiliated manufacturer in the United States during the POI, we determined that respondents should be excused from reporting home market resales of subject merchandise produced by an unaffiliated manufacturer. *See Memorandum to the File: Request to Not Report Certain Sales* (September 28, 1999).

E. Arm's Length Test

Kangwon and Inchon

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and, for Kangwon, packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). For results of the arm's length test, see *Analysis Memorandum: Kangwon* and *Preliminary Analysis Memo: Inchon.*

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Investigation" section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 2, 1999 questionnaire.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this investigation, both respondents have classified their sales as EP sales.

Notwithstanding the above definitions, there are situations where we have treated certain transactions as EP sales when a U.S. affiliate is involved in the U.S. sales transactions. However, the Department normally treats sales through an agent in the United States as CEP sales unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States*, Slip Op. 98–82 at 6 (CIT June 23, 1998). The Department has stated that, (w)here the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or provides customer support, we treat the transactions as CEP sales," citing, *e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 63 FR 12725, 12738 (March 16, 1998).

Inchon

Inchon identified three channels of distribution for U.S. sales. For U.S. sales channel one (*i.e.*, Inchon sales through Hyundai Corporation, Inchon's affiliated trading company in South Korea, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer), channel two (*i.e.*, Inchon sales through Hyundai Corporation, mentioned above, to an unaffiliated customer in the United States) and channel three (*i.e.*, Inchon sales to an unaffiliated trading customer for export to the United States), we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated.

We note that petitioners have argued that sales through channel one should be treated as CEP sales; however, as noted above, we preliminarily disagree based on the information on the record at this time.

Inchon claimed that all of its U.S. sales of subject merchandise are EP sales, including those sales made prior to importation through Hyundai U.S.A., Hyundai Corporation's wholly-owned U.S. subsidiary (*i.e.*, channel one sales). In looking at the channel one sales, we preliminarily agree that all three factors of our test are met for channel one sales. First, the merchandise is usually shipped directly from Inchon to the U.S. customer without Hyundai U.S.A. taking the merchandise into physical inventory. Moreover, this is the customary commercial channel between the parties. Thus, the first two factors of our test are met. Regarding the third factor, Inchon claims that Hyundai U.S.A. does not have the authority to independently solicit, negotiate, or

approve sales to Inchon's U.S. customers. Also, Inchon claims that Hyundai U.S.A. does not provide customer support to Inchon's U.S. customers. In considering the third of the three factors to determine whether certain sales warrant classification as EP sales, we preliminarily determine that the affiliated purchaser in the United States, Hyundai U.S.A., acted as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer and that its sales activities are merely ancillary.

In examining the third factor of our analysis in detail to determine whether certain sales warrant classification as EP sales, we note the following. First, Inchon states that it solicits and negotiates sales, and approves its U.S. sales prices and that Hyundai U.S.A. does not perform any of these functions. This contrasts with our analysis for Inchon in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea ("Stainless Steel Sheet and Strip in Coil from Korea")*, 64 FR 30664, 30686 (June 8, 1999), where the record contained information that Hyundai U.S.A. had solicited sales, both with and without Inchon employees. The record in the present case indicates that Inchon personnel, and not those of Hyundai U.S.A., call on U.S. customers. Although Hyundai U.S.A. personnel attended meetings with U.S. customers, they only did so in an observational capacity and in the company of Inchon personnel. Thus, Hyundai U.S.A. personnel did not solicit or negotiate any sales, nor did they even independently meet with Inchon's customers. This contrasts with *Stainless Steel Sheet and Strip in Coil from Korea*, where we found that Hyundai U.S.A. employees had made sales calls without Inchon employees. Second, Inchon states that it bears the credit risk if a U.S. customer does not remit payment to Hyundai U.S.A., but that, during the POI, there were no instances of a U.S. customer not paying Hyundai U.S.A. This contrasts with the *Stainless Steel Sheet and Strip in Coil from Korea*, where the record contained specific evidence that Hyundai U.S.A. was bearing the credit risk. Third, we note that Inchon reported post-sale warehousing at the U.S. port prior to delivery to the U.S. customer. We note that warehousing is not automatically indicative that the U.S. sales should be classified as CEP transactions. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*, 63 FR 40422, 40425 (July 29, 1998). Thus, based on the above record, we preliminarily determine that Inchon's U.S. sales of structural steel beams, in which Hyundai U.S.A. was involved in the sales process, reported as EP sales, qualify as EP sales.

We based EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign wharfage, international freight, marine insurance, U.S. warehousing, U.S. loading, U.S. customs duty, and U.S. wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Preliminary Analysis Memo: Inchon.*

Kangwon

Kangwon identified three channels of distribution for U.S. sales. In channel one, Kangwon sold directly to the U.S. customers. In channel two, Kangwon sold to the U.S. customers through its affiliated distributor, Sampyo Corporation. Additionally, for a certain percentage of U.S. channel one and two sales, Kangwon reported that Sampyo America, a subsidiary of Kangwon, relays pricing information and sales order information between Kangwon and its U.S. customers. In channel three, Kangwon sold directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. For U.S. sales channel three, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. channel one and two sales, including those for which Kangwon has reported that Sampyo America had a role in the sales process, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. In determining that channel one and two sales in which Sampyo America had a role should be treated as EP, we applied our three factor test, described above.

In determining that channel one and two sales in which Sampyo America had a role should be treated as EP, we applied our three factor test described above. The record indicates that in all instances Kangwon's channel one and two sales were shipped directly from the manufacturer to the unaffiliated U.S. customer and that the reported U.S. sales were made in the customary commercial channel, thereby satisfying the first two factors for EP sales. In determining, for those U.S. sales for which Kangwon has indicated that Sampyo America participated in the sales process, whether the U.S. affiliate acted solely as a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. customer, we reviewed the selling functions performed by Sampyo America and the sales process for these sales.

Kangwon reported that Sampyo America's only participation in the sales negotiation process for U.S. channel one and two sales is to relay pricing information and sales order information between Kangwon and its U.S. customers. Kangwon maintains that all U.S. sales are negotiated and approved by Kangwon's Export Department. Kangwon reported that for a certain percentage of sales, Kangwon rejected the terms of an order forwarded by Sampyo America. In addition to forwarding inquiries and confirmations to and from the customer and Kangwon, Kangwon stated that employees of Sampyo America also undertook business trips, at the instruction and control of Kangwon and by Kangwon employees, to meet with Kangwon's U.S. customers and provided general market research information for both subject and non-subject merchandise to Kangwon. Consequently, because Sampyo America's function for certain of Kangwon's U.S. channel one and two sales is limited to relaying pricing information and sales order information between Kangwon and its U.S. customers, we preliminarily determine that Kangwon's U.S. sales of structural beams, in which Sampyo America was involved in the sales process, reported as EP sales, qualify as EP sales. For a further discussion of this issue, see *Analysis Memorandum: Kangwon.*

We based EP on the packed prices to unaffiliated purchasers in the United States. Where appropriate, we deducted billing adjustments and price discounts from the gross unit price. We made deductions for foreign inland freight (plant to distribution warehouse), warehousing expense, foreign inland freight (warehouse to port of exportation), brokerage and handling,

ocean freight (where applicable), marine insurance (where applicable), U.S. brokerage charges (where applicable) and U.S. Customs duties (where applicable) in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Analysis Memorandum: Kangwon*.

Normal Value

After testing home market viability and whether home market sales were made at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

Cost of Production ("COP") Analysis

Based on the cost allegations submitted by petitioners in their July 7, 1999 petition, the Department found reasonable grounds to believe or suspect that Inchon and Kangwon had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Inchon and Kangwon made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Notice of Initiation*. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses, including interest expenses, research and development and packing costs. We relied on the COP and CV data submitted by Inchon and Kangwon, except as discussed below, where the submitted costs were not appropriately quantified or valued.

We made company-specific adjustments to the reported COP as follows:

Inchon

1. We adjusted Inchon's general and administrative expense ratio to include or exclude, as appropriate, certain non-operating items.

Kangwon

1. We adjusted Kangwon's reported cost of scrap purchased from affiliated suppliers to account for the differences between the market price of scrap and the transfer price.

2. We recalculated Kangwon's general and administrative ("G&A") expense ratio by excluding gain from assets contributed, bad debt allowance, additional income tax, and miscellaneous gains and losses, and dividing the recalculated G&A expenses by cost of goods sold net of packing expenses.

3. We adjusted Kangwon's interest expense ratio by adding back gain on exemption of debt and dividing the recalculated interest expense by cost of goods sold net of packing expenses.

B. Test of Home Market Sales Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts and rebates, other selling expenses, and, for Kangwon, home market packing.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, G&A expenses, including interest expenses, research and development expenses, U.S. packing costs (for Kangwon), direct and indirect selling expenses, and profit. We made adjustments to each respondent's reported cost as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based selling, general and administrative expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. Both Inchon and Kangwon have reported sales quantities on a theoretical weight basis (as recorded in their internal books) and maintain that actual weight is recorded for only a limited number of sales. However, petitioners argue that the JIS and ASTM standards vary in their level of acceptable weight variances; thus, petitioners argue that respondents have effectively overreported the actual quantity of home market sales by approximately 4 percent and the actual quantity of U.S. sales by only 2.5 percent, thereby distorting reported unit prices. Consequently, petitioners have requested that home market prices be adjusted upwards by 1.5 percent. In the Department's supplemental questionnaires for Inchon and Kangwon (issued in January 2000), we requested that respondents provide actual weights for sample sales of subject merchandise in the home market and U.S. (where available). The data provided by respondents indicate that there are no significant differences between JIS and ASTM actual and theoretical weights. Therefore, we preliminarily determine that no adjustment is warranted.

Inchon

We calculated NV based on prices to unaffiliated home market customers. We made a deduction for inland freight from the plant to the customer. We made billing adjustments, where appropriate. We made circumstance-of-sale ("COS") adjustments based on differences in direct selling expenses (*i.e.*, credit, warranty expense, and interest revenue) incurred on U.S. and home market sales, where appropriate.

Where appropriate, we deducted from NV the amount of home market indirect selling expenses capped by the amount of the U.S. commissions. Normally, we deduct home market packing costs and add U.S. packing costs, in accordance with section 773(a)(6); however, in the instant case, we did not deduct home market packing costs nor add U.S. packing costs because Inchon has stated that there is no difference between its home market and U.S. packing costs, and has included packing costs in its COP.

Kangwon

We calculated NV for comparison to EP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight-plant to distribution warehouse, warehousing expense, inland freight-warehouse to customer. In its questionnaire responses, Kangwon reported that Kangwon pays Sampyo America a set per metric ton fee for all sales by Kangwon through U.S. sales channels one and two regardless of the extent to which Sampyo America was involved in relaying sales information for these sales, up to a set amount. Petitioners have argued that since the fees received by Sampyo America vary with sales levels, the Department should treat the fees as a direct selling expense. We note that the fees in question constitute a type of commission paid by Kangwon to Sampyo America. The Department's questionnaire specifically instructs respondent not to "report commissions paid to affiliated selling agents unless there is a compelling reason that you cannot report an affiliated agent's actual expenses." See Department's August 30, 1999 Questionnaire at page C–28. In this case, Kangwon has reported these fees in its calculation of indirect selling expenses incurred in the United States. Therefore, we preliminarily determine that no COS adjustment is appropriate for the fees in question. We made a COS adjustment based on differences in direct selling expenses (*i.e.*, credit) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In the present review, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses for each respondent.

Inchon

In the home market, Inchon reported two sales channels: (1) To unaffiliated distributors; and (2) to affiliated and unaffiliated end-users. We examined the selling functions performed for both channels. These selling functions included inventory maintenance, freight and delivery arrangements, warranty service, and credit risk. Because there are no differences between the selling functions on sales made to either unaffiliated distributors or affiliated and unaffiliated end-users in the home market, sales to both of these customer categories represent a similar stage of marketing. Therefore, we preliminarily conclude that sales to unaffiliated distributors and affiliated and unaffiliated end-users constitute one LOT in the home market.

For its EP sales in the U.S. market, Inchon reported three sales channels: (1) Channel one—Inchon sales through Hyundai Corporation, Inchon's affiliated trading company, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer; (2) channel two—Inchon sales through Hyundai Corporation, to an unaffiliated customer; and (3) channel three—Inchon sales to an unaffiliated trading company. Inchon's U.S. customers for all three sales channels are trading companies and distributors. We examined the selling functions performed for each of the three U.S. sales channels. These selling functions included warranty service, freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of post-sale warehousing for certain sales in channel one, selling functions performed in the three sales channels were the same. Thus, sales to these customer categories represent a similar stage of marketing. Therefore, we preliminarily determine that Inchon provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Further, we preliminarily conclude that because the U.S. LOT and the home market LOT included similar selling functions, these sales are made at the same LOT. Therefore, a LOT adjustment for Inchon is not appropriate.

Kangwon

Kangwon did not claim a LOT adjustment. Kangwon identified two channels of distribution in the home market: (1) Sales made by Kangwon directly to its customers; and (2) sales made by Kangwon through Sampyo Corporation, to customers. Both Kangwon and Sampyo Corporation made sales to affiliated and unaffiliated industrial end-users and distributors. In addition, Kangwon made a limited quantity of sales to government entities. For both reported channels, Kangwon maintains that the sales process and selling functions performed by Kangwon are identical. Moreover,

Kangwon explained that the only differences between Kangwon's sales to government end-users and its sales to end-users and distributors are that most sales to the latter are made through Sampyo Corporation and that different terms of sale and terms of delivery are offered to government entities. We reviewed the selling functions and services performed by either Kangwon or Sampyo Corporation and preliminarily determined that for both channels of distribution and all classes of customer, the selling functions and services offered are similar. *See Analysis Memorandum: Kangwon.* Consequently, because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we preliminarily determine that there exists one LOT for Kangwon's home market sales.

Kangwon identified three channels of distribution in the U.S. market: (1) Sales made by Kangwon directly to U.S. distributors; (2) sales made by Kangwon to U.S. distributors through Sampyo Corporation; and (3) sales made by Kangwon to unaffiliated Korean trading companies for shipment to the United States. In addition, Kangwon reported that its U.S.-based subsidiary, Sampyo America, was involved in the sales process for certain U.S. channel one and two sales. However, pursuant to our analysis above, such sales were treated as EP sales. Kangwon claimed one LOT in the U.S. market. The Department examined the claimed selling functions performed by Kangwon, Sampyo Corporation, and Sampyo America for all U.S. sales. These selling functions included warranty, freight and delivery arrangements, and invoicing customers.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and EP sales in the U.S. market, we preliminarily find that EP sales to all three channels of distribution are made at the same stage in the marketing process and involve identical selling functions. Therefore, we preliminarily determine that Kangwon, Sampyo Corporation, and Sampyo America provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily determine that there is not a significant difference in the selling functions performed in both markets, and thus, a LOT adjustment is not appropriate. For a further discussion, see *Analysis Memorandum: Kangwon.*

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see* Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

The All-Others Rate

Section 735(c)(5) of the Act provides that the estimated all-others rate is the amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776 of the Act. Therefore, for this preliminary determination, we have calculated the all-other rate based on the weighted average of the estimated weighted average dumping margins for both Kangwon and Inchon.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted average margin (percent)
Inchon	14.95
Kangwon	47.55
All-Others	30.30

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held 57 days after the publication of the preliminary determination, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number;

(2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the date of publication in the **Federal Register** of our preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3260 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita Chen or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0409 and (202) 482–3434, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1998).

Preliminary Determination

We preliminarily determine that Structural Steel Beams ("Structurals") from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. For all the following companies, the Department has used adverse facts available for their estimated margin: Nippon Steel Corporation ("NSC"); Kawasaki Steel Corporation ("Kawasaki"); NKK Corporation ("NKK"); Sumitomo Metals Industries, Ltd. ("Sumitomo"); Toa Steel Co., Ltd. ("Toa"); Tokyo Steel Manufacturing Co., Ltd. ("Tokyo Steel") and Topy Industries, Limited ("Topy"). However, the Department is not assigning a margin to Yamato Kogyo Co. Ltd. *See* Case History section.

Case History

On August 3, 1999, the Department initiated antidumping duty investigations of imports of structural steel beams from Germany, Japan, South Korea, and Spain (Notice of Initiation of Antidumping Investigations: Structural Steel Beams from Germany, Japan, South Korea, and Spain (64 FR 42084 (August 3, 1999)). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On August 8, 1999, Northwestern Steel & Wire Company, Nucor-Yamato Steel Company, TXI-Chaparral Steel Co., and the United Steelworkers of America AFL–CIO) ("petitioners") submitted comments to the Department that proposed model match criteria. Petitioners stated that they provided the factors (i.e., shape, size, grade yield strength, weight, dimension and processing) upon which price distinctions in the foreign market should be based because they reflect the physical differences of the products. The petitioners stated that they listed these products in general order of importance. Also, on August 17, 1999, petitioners submitted comments to the Department requesting that the scope exclude certain forklift truck mast-section non-standard I-beams.

On August 13, 1999, petitioners revised their proposed model matching criteria for Japanese products. In this letter, petitioners provided information purporting to demonstrate that, based on yield strength, the new home market grades of the subject merchandise are a more appropriate match to the products being sold in the United States than the grades identified in the petition. Further, on August 25, 1999, petitioners submitted comments to the Department's draft model match characteristics. First, petitioners stated that the Department should include a classification for "Other Doubly-Symmetric Shapes (i.e., Special Sections)" at the end of the depth section category. Second, petitioners stated that the Department should match beam types in the following order: M beams, wide flange beams, standard beams, H piles and other doubly-symmetric shapes.

On August 23, 1999, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Japan and South Korea and its negative injury determination on imports of subject merchandise from Germany and Spain. On August 31, 1999, noting the ITC's negative injury determination concerning Germany, petitioners submitted a letter stating that a scope exclusion of forklift truck mast-section non-standard I-beams was no longer necessary as those products were imported from Germany. Additionally, on September 1, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being threatened with material injured by reason of imports of the subject merchandise from Japan (64 FR 47866).

On August 2, 1999, the Department issued Section A of its antidumping duty questionnaire to NSC, Kawasaki, NKK, Sumitomo, Toa, Tokyo Steel, Topy, and Yamato Kogyo Co. Ltd. ("Yamato"). On August 11, 1999, the Department received NKK and Toa's joint response to Question 1 of Section A. This response stated that Toa is a subsidiary company of NKK now under liquidation, and that Toa did not make any sales of the subject merchandise during the POI.[1] On August 12, 1999, the Department received Sumitomo's response to Question 1 of Section A. On August 13 and 19, 1999, the Department received Tokyo Steel's response to Question 1 of Section A. Topy submitted its response to Question 1 of Section A on August 16 and 20, 1999. Yamato submitted its response to Question 1 of Section A on August 16, 1999, in which Yamato stated that it did not make any sales of subject merchandise to the United States during the POI. On August 18, 1999, NSC informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 20, 1999, Kawasaki informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 24, 1999, NKK informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 30, 1999, the Department informed Yamato that it will not be part of the investigation because it did not

[1] Based on this information, the Department considers NKK and Toa to be a single entity and will instruct Customs to treat them as such.

have sales of subject merchandise during the POI.

On August 30, 1999, the Department issued Sections B-E of its antidumping duty questionnaire to Sumitomo, Tokyo Steel, and Topy. On September 3, 1999, the Department returned both Tokyo Steel and Topy's Section A response because both companies failed to correctly submit their respective Section A responses in accordance with the Department's regulations. On September 10, 1999, Tokyo Steel resubmitted its Section A response. Topy resubmitted its Section A response on September 13, 1999. On September 14, 1999, we provided additional instructions and filing procedures to both Tokyo Steel and Topy. Additionally, on September 14th, we sent a letter to Tokyo Steel informing it that all submissions must be served to APO parties. Petitioners requested on September 15, 1999 that the Department reject Tokyo Steel's Section A response because of non-conformity with the Department's regulations. Also, on September 15, 1999, Sumitomo informed the Department that it will not be participating in the Structural Steel Beams investigation. On September 21, 1999, petitioners filed comments on Tokyo Steel and Topy's Section A questionnaire response. OnSeptember 30, 1999, we issued supplemental Section A questionnaires to Tokyo Steel and Topy. Additionally, on September 30th, we provided further explanation to Tokyo Steel on the Department's filing procedures.

On October 7, 1999, Tokyo Steel informed the Department by fax that it was not possible to provide all of the data requested in Sections B-E of the questionnaire due to its voluminous nature. We received Tokyo Steel and Topy's supplemental Section A questionnaire responses on October 14, 1999. On October 15, 1999, we extended Tokyo Steel's deadline for submitting its Sections B-E responses from October 7, 1999 to October 22, 1999. On October 20, 1999, we extended Topy's deadline for submitting its Sections B-E responses from October 7, 1999 to October 27, 1999. Petitioners stated on October 20, 1999 that should Tokyo Steel and Topy fail to respond to the Department's questionnaire in its entirety and by the extended deadlines, the Department should cease granting leniency and apply adverse fact available. On October 22, 1999, the Department received Tokyo Steel's responses to Sections B, C, and D of the questionnaire. However, within the response Tokyo Steel again stated that it was impossible to provide the Department with all of the requested data, due to the voluminous nature of the requested data. On October 27, 1999, petitioners submitted a letter requesting that the Department reject the non-conforming and incomplete response of Tokyo Steel to Sections B-E. On November 5, 1999, Tokyo Steel submitted a letter stating that the petitioners' letter of October 27th maligns the company and Tokyo Steel had, to the best of its ability, responded honestly to the Department's questionnaire. Further, on November 12, 1999, petitioners submitted a letter similar to its August 13th letter providing more appropriate price-to-price dumping margin comparisons for certain NSC Japanese products. Moreover, on January 14, 2000, petitioners submitted a letter providing reasons why its revised price-to-price margins are an appropriate basis for facts available.

Scope of Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The Period of Investigation ("POI") is July 1, 1998 through June 30, 1999.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

In this case, NSC, Kawasaki, NKK, and Sumitomo indicated that they would not participate in the Department's investigation and did not provide the Department with information requested and needed to calculate a dumping margin. Therefore, we determine that NSC, Kawasaki, NKK/Toa, and Sumitomo withheld information requested by the Department. Accordingly, the Department finds it necessary to use the facts otherwise available for these respondents in accordance with section 776(a)(2)(A) of the Act.

With respect to Tokyo Steel and Topy, both companies responded to Section A of the Department's questionnaire. However, both companies failed to completely respond to Sections B–D of the Department's questionnaire. On October 7th, Tokyo Steel informed the Department it was not possible to provide all of the requested data for sections B–E of the questionnaire due to the voluminous nature of the request. On October 15, 1999 and October 20, 1999, the Department extended the deadline for submitting sections B–E of its questionnaire for both Tokyo Steel and Topy, respectively. In this letter, pursuant to section 782(d) of the Act, because incomplete responses are considered deficient, the Department warned respondents that such responses could result in use of the facts available. On October 22, 1999, the Department received Tokyo Steel's response to Sections B, C, and D of the questionnaire. However, in that response Tokyo Steel stated that due to the voluminous nature of the requested data it could not provide the Department with all the requested data and instead provided the Department with only selected information. Therefore, the Department determines that Tokyo Steel failed to provide the necessary information in the form or manner requested. Because the

Department is lacking complete information, we find it necessary to use the facts otherwise available for Tokyo Steel in accordance with section 776(a)(2)(B) of the Act.

Lastly, with respect to Topy, on October 20, 1999, the Department extended Topy's deadline for submitting its Sections B–D responses to October 27, 1999. However, Topy completely failed to respond to these sections of the questionnaire. Consequently, the Department finds Topy withheld requested information and that it is necessary to use the facts otherwise available in making its determination in accordance with section 776(a)(2)(A) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) ("SAA"). In this case, NSC, Kawasaki, NKK, and Sumitomo completely failed to respond to the Department's questionnaires. Further, the companies indicated that they would not participate in the Department's investigation. Because of the companies' complete lack of participation in this investigation, we find that the companies failed to cooperate to the best of their abilities. Accordingly, when selecting among the facts available, we find that the use of an adverse inference is warranted in accordance with section 776(b) of the Act.

With respect to Tokyo Steel and Topy while the companies did respond to the Department's section A questionnaires and supplemental section A questionnaires, neither company responded satisfactorily to the Department's Sections B–E questionnaires. Although Tokyo Steel did submit a response to Sections B–E, on October 22, 1999, that response was highly incomplete despite Tokyo Steel's being granted an extension and warned that the Department required a complete response. Tokyo Steel informed the Department that it was not possible to respond to its questionnaire due to the voluminous nature of the requested data, but offered no further explanation for its failure to provide complete data in light of the Department's enlargement of time for Tokyo Steel's response. Further, Topy did not respond to Sections B–E of the Department's questionnaire at all, nor did it provide any reason for its failure to respond. In light of these facts, the Department finds that Tokyo Steel and Topy failed to act to the best of their abilities to comply with the Department's requests for information under section 776(b) of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted for these companies as well.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. As adverse facts become available, the Department is assigning to NSC, Kawasaki, NKK/Toa, Sumitomo, Tokyo Steel, and Topy a dumping margin of 65.21 percent, which represents the highest margin calculated from the information placed on the record by petitioners on August 13, 1999 and November 12, 1999. As explained in detail in the "Corroboration" section below, we are using this information because it is a refinement of information in the petition in that it represents the best price-to-price comparison on the record. Further, the Department determines that use of this margin accomplishes the statute's aim of encouraging participation. As the SAA provides, where a party has not cooperated in a proceeding:

> Commerce * * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. SAA at 870.

In this case, information representing a better price-to-price comparison that was submitted by petitioners during the proceeding demonstrates that the dumping margins estimated in the petition may be lower than in actual practice. Therefore, use of petitioners' updated information, which results in a higher dumping margin, will ensure that parties do not obtain a more favorable result by failing to cooperate in this investigation.

Section 776(c) of the Act provides that, when the Department relies on secondary information (which includes information from the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used as probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See* Import Administration Antidumping Duty ("AD") Investigation Initiation Checklist (July 27, 1999), for a discussion of the margin calculations in the petition. In addition, in order to determine the probative value of the margins in the petition in accordance with section 776(c) of the Act, we examined the key elements of the export price ("EP") and normal value ("NV") calculations on which the margins in the petition were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition are from public sources concurrent, for the most part, with the POI (e.g., interest rates, port fees, and customs duties).

In addition, shortly after the initiation of the investigation, on August 13, 1999, and again on November 12, 1999, the petitioners provided the Department with additional information for the Department's use in potential adverse facts available situations. Specifically, in the August 13th information petitioners provided a more recent price list than the one found in the petition (i.e., April 1999 versus December 1998). This new price list provided home market grades (i.e., SM490A and SM490B) that they contend are more appropriate matches for the U.S. grade (i.e., A572–50) found in the petition. Petitioners stated that the aforementioned home market grades are a more comparable match because both the home market and U.S. products have yield strengths that are more similar to each other than the home market and U.S. grades compared in the petition. Thus, petitioners believed that the new comparisons better reflect the Department's model matching criteria. After reviewing petitioners' new information, the Department agrees that it represents the best match and therefore the best price-to-price comparison currently on the record because it bases the prices used for the comparison on products with characteristics that best reflect the Department's model match criteria. Furthermore, the Department finds that the public price lists on the record do,

in fact, corroborate the prices of the new home market grades presented by petitioners.

With respect to certain other data included in the margin calculations of the petition (e.g., inland freight), neither respondents nor other interested parties provided the Department with further relevant information and the Department is aware of no other independent sources of information that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation for section 776 of the Act, at 19 CFR 351.308(c), states "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Accordingly, we find, for purposes of this preliminary determination, that the information used is sufficiently corroborated.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 21, 1999).

We are basing the "all others" rate on the simple average of margins in the petition and information placed on the record by petitioners on August 13, 1999 and November 12, 1999, which is 31.98 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Kawasaki Steel Corporation	65.21
Nippon Steel Corporation	65.21
NKK Corporation/Toa Steel Co., Ltd.	65.21
Sumitomo Metals Industries, Ltd.	65.21
Tokyo Steel Manufacturing Co., Ltd.	65.21
Topy Industries, Limited	65.21
All Others	31.98

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3261 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Hawaii; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–027. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Low-Level Beta Counter, Model GM–25–5. Manufacturer: Riso National Laboratory, Denmark. Intended Use: See notice at 64 FR 63788. November 22, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Robust design and portability for shipboard operation, (2) one-inch detector windows and (3) a background of 0.178± 0.003 counts per minute. Woods Hole Oceanographic Institution advised January 28, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–3262 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–029. *Applicant:* University of Florida, Gainesville, FL 32611–6200. *Instrument:* Fiber Raman Laser, Model FRL–1480–600. *Manufacturer:* IP Fibre Devices Ltd., United Kingdom. *Intended Use:* See notice at 64 FR 70213, December 16, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) High power output in the 300–600 mW range, (2) continuous working operation, (3) single mode output and (4) frequency output in the 1483–1484.5 nm range with an emission bandwidth between 1.0–1.5 nm. The National Institute of Standards and Technology and a domestic manufacturer of similar equipment advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Dated: February 4, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–3263 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020400A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Charter Vessel/Headboat Advisory Panel (AP).

DATES: The AP meeting is scheduled to begin at 8:00 a.m. on February 28, 2000 and will conclude by 4:00 p.m. on February 29, 2000.

ADDRESSES: The AP meeting will be held at the Radisson Riverwalk Hotel Tampa, 200 North Ashley Drive, Tampa, FL 33602; telephone: 813–223–2222.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director,; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) deferred taking action on a Draft Amendment for a Charter Vessel/Headboat Permit Moratorium (Amendment) at its January 18–21, 2000 meeting. Instead the Council has asked the AP to develop an industry proposal for revision of the current Federal permit system for charter vessels and headboats engaged in reef fish and coastal migratory pelagics fisheries in the Gulf of Mexico. The AP may consider retaining some of the alternatives for management measures considered in the Amendment, and likely will suggest other alternatives that would need to be presented at public hearings in a subsequent amendment. The Council will consider the AP's recommendations at its March 20–23, 2000 meeting in San Antonio, TX.

Copies of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agendas may come before the AP for discussion, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 22, 2000.

Dated: February 7, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3286 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020400B]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet March 6–10, 2000. The Council meeting will begin on Tuesday, March 7, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Wednesday, March 8 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, CA 95815; telephone: (916) 922–8041.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call

2. Approve Agenda
3. Approve September and November Meeting Minutes

B. Salmon Management

1. Review of 1999 Fisheries and Summary of 2000 Stock Abundance Estimates
2. Estimate Procedures and Methodologies
3. Inseason Management Recommendations for Openings Prior to May 1
4. Preliminary Definition of 2000 Management Options
5. Oregon Coastal Natural Coho Management Review—Progress Report
6. Updates on Activities to Restore Natural Stocks
7. Adoption of 2000 Management Options for Analysis
8. Schedule of Public Hearings and Appointment of Hearings Officers
9. Adoption of 2000 Management Measures for Public Review

C. Habitat Issues

D. Coastal Pelagic Species Management

1. Update on Limited Entry Program
2. Pacific Sardine
3. Status of Plan Amendment (Squid Maximum Sustainable Yield and Bycatch)

E. Pacific Halibut Management

1. Status of Implementation of Council Recommendations
2. Results of the International Pacific Halibut Commission Annual Meeting
3. Proposed Incidental Catch in the Troll Salmon Fishery for 2000

F. Highly Migratory Species Management

1. Progress Report on the Fishery Management Plan
2. Report on International Discussions and Actions
3. Control Date for Limited Entry

G. Groundfish Management

1. Status of Federal Regulations (Including Implementation of the Emergency Rule), Exempted Fishing Permit Applications, Research Programs, and other Activities
2. Status Report on Strategic Plan
3. American Fisheries Act Measures
4. Status of Federal Setnet Programs
5. Bycatch Mortality for Rockfish
6. Groundfish Trip Limit for Pink Shrimp Fishery
7. Progress Report on Plan Amendment for Bycatch and Framework Measures

H. Administrative and Other Matters

1. Council Budget
2. Legislative Report
3. Appointments
4. Research and Data Needs and Economic Data Plan
5. Establishment of a Council Operating Procedure for E-mail
6. April 2000 Agenda

Advisory Meetings

The Salmon Advisory Subpanel will convene on Monday, March 6, at 8 a.m. and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Habitat Steering Group meets at 9 a.m. on Monday, March 6, to address issues and actions affecting habitat of fish species managed by the Council.

The Scientific and Statistical Committee will convene on Monday, March 6, at 1 p.m., and on Tuesday, March 7, at 8 a.m. to address scientific issues on the Council agenda.

The Budget Committee meets on Monday, March 6 at 1 p.m. to review the status of the 2000 Council budget and the proposed budget for 2001.

The Salmon Technical Team will convene throughout the week (Monday March 6 through Friday March 10) as necessary to address salmon management items on the Council agenda.

The Coastal Pelagic Species Advisory Subpanel will meet on Tuesday, March 7, at 1 p.m. to address coastal pelagic issues on the Council agenda.

The Enforcement Consultants meet at 6 p.m. on Tuesday, March 7, and will continue to meet as necessary through March 10 to address enforcement issues relating to Council agenda items.

The Highly Migratory Species Advisory Subpanel will meet on Wednesday, March 8 at 10 a.m. to discuss highly migratory species issues relating to Council agenda items.

Comments on Council Agenda Items will not be accepted if submitted via e-mail or internet.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 7, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3287 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020300B]

Marine Mammals; File Nos. 675–1563, 378–1564 and P595

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that Dr. Graham A.J. Worthy (File No. 675–1563), Physiological Ecology and Bioenergetics Laboratory, Department of Marine Biology, Texas A&M University, 5001 Avenue U, Suite 105, Galveston, TX 77551; Alaska Department of Fish and Game (File No. 358–1564), Division of Wildlife Conservation, 1255 W. 8th Street, P.O. Box 25526, Juneau, AK 99802–5526, have each applied in due form for a permit to take marine mammals for purposes of scientific research; and the Whale Conservation Institute (File No. P595), 191 Weston Road, Lincoln, Massachusetts 01773, requests an amendment to Permit No. 1004.

DATES: Written or telefaxed comments must be received on or before March 13, 2000.

ADDRESSES: All applications and related documents are available for review upon written request or by appointment in the Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

File Nos. 675–1563 and 358–1564: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

File No. P595: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

File No. 675–1563: Southeast Region, NMFS, 9721 Executive Center Drive

North, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendment request are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

File No. 675–1563, Dr. Graham Worthy requests authority to take up to 30 northern fur seal (*Callorhinus ursinus*) mother/pup pairs and 30 additional pups over a 3-year period. Animals will be blood and tissue sampled and flipper tagged. Adult females will have a milk sample extracted. Activities will occur on the Pribilof Islands, Alaska.

File No. 358–1564, Alaska Department of Fish and Game (ADF&G) requests authority to take Steller sea lions (*Eumetopias jubatus*) over a 5-year period. Animals of all ages and both sexes will be taken during aerial and land-based surveys, capture and release activities that include tissue and blood sampling, tagging and attachment of scientific instruments, branding, and administering immobilizing drugs. Activities will occur in Alaska and British Columbia.

File No. P595, Whale Conservation Institute, Permit No. 1004 authorizes the Holder to import right whale tissue samples, and samples from other cetaceans, from Argentina, Mexico, Costa Rica, Ecuador, Peru, and Chile. The Holder requests an amendment to: increase the number of samples to be imported; increase the number of locations where samples are taken and imported; and extend the permit one additional year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 3, 2000.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–3284 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Submission for OMB Review; Comment Request Entitled Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Change Order Accounting. A request for public comments was published at 64 FR 68338,December 7, 1999. No comments were received.

DATES: Comments may be submitted on or before March 13, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents, *8,750*; responses per respondent, *18*; total annual responses, *157,500*; preparation hours per response, *.084*; and total response burden hours, *13,230*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *8,750*; hours per recordkeeper, *1.5*; total recordkeeping burden hours, *13,125*; and total burden hours *26,355*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: February 8, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–3279 Filed 2–10–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Submission for OMB Review; Comment Request Entitled Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification. A request for public comments was published at 64 FR 68338, December 7, 1999. No comments were received.

DATES: Comments may be submitted on or before March 13, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA, (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the number the Government uses to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center that collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers shall report a Contractor Identification Number for each successful offeror. A DUNS number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors.The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:Respondents, *50,400*; responses per respondent (rounded), *4.01*; total annual responses, *201,600*; preparation hours per response, *.0205* (averaged); and total response burden hours, *4,147*.

Obtaining Copies of proposals:

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please citeOMB Control No. 9000–0145, Use of Data UniversalNumbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: February 8, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–3280 Filed 2–10–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Improved Ordnance Storage for Marine Corps Air Station (MCAS) Yuma, AZ

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational, environmental and cost implications of improving the ordnance storage at MCAS Yuma, announces its decision to acquire and develop 1,641 acres of agricultural and residential land south of MCAS Yuma.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

Background

The Department of the Navy, pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 USC Section 4331 *et seq.*), and the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures, (40 CFR Parts 1500–1508), hereby announces its decision to acquire 1,641 acres of land south of MCAS Yuma, Arizona, for the improvement of ordnance storage and other support functions. This decision includes the following actions, which are described in more detail in the Environmental Impact Statement. The Department of the Navy will construct and operate:

(1) A Combat Aircraft Loading Area (CALA);

(2) A new station ordnance area (including ordnance loading and unloading facilities, ordnance storage magazines, support buildings, guard shacks, and a security fence);

(3) A fire station; and

(4) Compounds for Marine Wing Support Squadron (MWSS)–371 and Combat Service Support Detachment (CSSD)–16.

These improvements will provide safer handling and storage of ordnance, and less expensive and more efficient ordnance operations. The proposed action is needed to support existing training and other ongoing activities at MCAS Yuma. None of the components of the proposed action are associated with an increase in the number of mission flown at MCAS Yuma or a change in its mission. The level of flight operations is not dependent on ordnance storage capacity. MCAS Yuma's ordnance storage capacity has remained relatively constant over the last several years. All components of the proposed action have been designed based on MCAS Yuma's historic ordnance use and operation levels.

The Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for improved ordnance storage for Marine Corps Air Station Yuma, Arizona, was published in the **Federal Register** on December 17, 1996. Two public scoping meetings were held in January 1997 to allow for public comments.

The public scoping meetings were attended by a total of 20 persons, with only one person providing formal testimony; however, that person made

no specific comments which addressed the scope of the EIS. An additional 13 individuals, state, and local agencies submitted comments via letter, facsimile or electronic mail.

The Draft Environmental Impact Statement (DEIS) was distributed to agencies and officials of federal, state and local governments, citizen groups and organizations, and other interested parties including landowners within the potential acquisition area, during the week of January 25–29, 1999.

The Notice of Availability for the DEIS was published in the **Federal Register** on January 29, 1999. The DEIS was subject to public review during a 60-day public comment period. The Marine Corps also held two public hearings during the public comment period on February 17 and 23, 1999. The public hearings were held at the Ramada Inn at the Chilton Conference Center in Yuma, AZ.

Comments on the DEIS were received by letter, by oral statements provided during the public hearings, and written statements received by facsimile. Written and oral statements were received from a total of 21 commentors, including federal, state, regional, and local agencies, and private individuals. All comments received were reviewed and addressed in the FEIS.

The FEIS was distributed to the public on July 21, 1999. The public review period ended on September 30, 1999. Nineteen comments were received on the FEIS and were considered before issuing this ROD.

Alternatives Considered

NEPA and CDQ regulations require the Department of the Navy to study and evaluate a reasonable range of alternatives for accomplishing the purpose and need underlying the proposed action. The underlying purpose for improved ordnance storage at MCAS Yuma is to: (1) Eliminate the use of safety waivers associated with ordnance handling an storage at MCAS Yuma; (2) provide an ordnance storage capacity able to accommodate MCAS Yuma's annual average ordnance requirement; (3) provide space for the relocation of existing MCAS Yuma facilities; and (4) meet objectives (1) and (2) without increasing staffing requirements at MCAS Yuma.

The EIS process initially identified nine alternatives, including the No Action alternative. These included five alternatives identified in the NOI and four alternatives developed as a result of the public scoping process. Four alternatives were evaluated in detail in the EIS: the 1,641 Acre Alternative, the 1,069 Acre Alternative, the Barry M. Goldwater Range (BMGR) Alternative, and the No Action Alternative.

The 1,641 Acre Alternative involved the acquisition and development of 1,641 acres of land. This alternative was identified as the preferred alternative in the EIS. Under this alternative, the Department of Navy will acquire approximately 1,641 acres of agricultural and residential land to the south of MCAS Yuma and construct and operate the following new facilities in that area: a Combat Aircraft Loading Area (CALA), a new station ordnance area (including ordnance loading and unloading facilities, ordnance storage magazines, support buildings, guard shacks, and a security fence), a fire station, and compounds for MWSS–371 AND CSSD–16.

The new CALA and station ordnance areas are to be constructed in the western portion of the acquisition area. Most land in the acquisition area's central section will be within new Explosive Safety Quantity Distance (ESQD) arcs and will remain in agricultural production. Approximately 1,184 acres of agricultural and vacant lands within the acquisition area will not be cleared for the new military facilities. This land will be out-leased for continued agricultural use. A new fire station, MWSS–371 compound, and CSSD–16 compound will ultimately be located in the eastern third of the acquisition area. The facilities proposed for the eastern third of the acquisition area were addressed for the eastern third of the acquisition area were addressed at a programmatic level in the EIS because specific plans for their construction have not been developed. Additional evaluation under NEPA will be required prior to the construction of a new fire station or new compounds for MWSS–371 or CSSD–16. In the interim, this land will be made available for agricultural out-lease.

This is the only alternative that fully meets the Department's Purpose and Need. The alternative includes significant and unmitigated socioeconomic impacts because it requires the relocation of residents living in eleven homes on the land to be acquired.

The relocation of residents will be accomplished in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.). Compliance with this act will ensure displaced residents are relocated to a decent, safe, and sanitary home. All eligible displaced residents will be entitled to moving expenses. This program cannot substantially mitigate the loss of social ties, upheaval, and sense of loss that may be experienced by the individuals to be relocated. Therefore, while the economic effects of displacement will be reduced through compliance with the Uniform Relocation Assistance and Real Properties Act of 1970, the significant social impacts are considered unmitigable. No other significant impacts were identified for the Preferred Alternative.

The 1,069 Acre Alternative involved the acquisition and development of 1,069 acres of land to the south of MCAS Yuma. The land required for this alternative is encompassed entirely within the acquisition area identified above for the Preferred Alternative. This alternative would utilize the same CALA and ordnance storage magazines that are described for the Selected Alternative. However, the 1,069 Acre Alternative would not provide space for a new fire station or for the relocation of MWSS–371 and CSSD–16.

The BMGR Alternative would require the acquisition of 482 acres of land to the southeast of MCAS Yuma and the construction of a new CALA and associated structures at that location. Ordnance would be stored in new magazines constructed off-station at the BMGR in an approximately 4-square-mile (10-square- kilometer) area. Under this alternative, flat-tailed horned lizards would be significantly affected, and the transportation of ordnance between the BMGR and MCAS Yuma could result in adverse safety impacts to residents located along the route between the two facilities. Additionally, it would not provide space for a new fire station or for the relocation of MWSS–371 and CSSD–16, and it would increase staffing requirements at MCAS Yuma.

The No Action alternative requires no change in existing operations at MCAS Yuma. Ordnance storage would continue to require a waiver and the ESQD arc associated with the storage area would continue to extend off station. Ordnance truck trips would remain at current levels.

The environmentally preferred alternative is generally one that avoids or minimizes environmental impacts or results in a net beneficial environmental effect. In this case, the No Action Alternative is the environmentally preferred alternative because it would not require land acquisition and relocation of homeowners and would not have adverse physical impacts on the environment. The environmentally preferred alternative was not selected because it would not have fulfilled the primary and secondary objectives of the proposed action.

Environmental Impacts

There were no significant environmental impacts associated with the selected alternative. However, the Department of the Navy will initiate measures, described in the EIS, to mitigate impacts resulting from the action being taken. With the adoption of the measures identified in the EIS, the Department of the Navy has exercised all practicable means to avoid or minimize harm from the alternative selected.

Response to Comments

The Department of the Navy made the FEIS available to the public for a a 30-day review period. This review period was extended for an additional 30 days period. During the review period 19 comments were received: eight supporting the action and 11 opposed. The governmental bodies of Yuma City and Yuma County support the selected alternative. Opposition continues from the property owners and citrus and crop growers. No new substantive comments were received that were not previously addressed in the Draft and Final Environmental Impact Statements.

Conclusion

On behalf of the Department of the Navy, I have decided to implement the 1,641 Acre Alternative, as set out in the EIS, to improve ordnance storage at MCAS Yuma. In making this decision, I considered the following: existing assets and capabilities at MCAS Yuma; Marine Corps, Navy, DoD and allied operational and training requirements; ordnance handling and storage requirements; environmental impacts; socioeconomic impacts; costs associated with land acquisition and facility construction, the operation and maintenance of equipment and aircraft, and training of personnel; and comments received during the EIS process.

After carefully weighing all of these factors, I have determined that the Preferred Alternative, acquiring and developing 1,641 acres of agricultural and residential land to the south of MCAS Yuma, best meets the requirements.

Dated: February 1, 2000.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 00–3204 Filed 2–10–00; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 7, 2000.

Patrick Sherrill,

Acting Leader Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.
Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.
Frequency: One time.
Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 263,000;
Burden Hours: 263,000
Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3179 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 7, 2000.

Patrick Sherrill,

Acting Leader Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 2000–01 Teacher Follow-up Survey.

Frequency: Intended to be biennial; clearance is being sought for year 2000 only.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 8,300; Burden Hours: 4,616.

Abstract: This survey of 8,300 public and private elementary and secondary school teachers is the fourth in a series. It is a follow-up to the 1999–2000 Schools and Staffing Survey (SASS) and collects data on public school and private school teachers characteristics and attitudes, as well as the factors affecting their decisions to stay in, or leave, the teaching profession.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3180 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 7, 2000.

Patrick Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Beginning Postsecondary Students Longitudinal Study 1996–2001 (BPS: 1996/2001).

Frequency: On Occasion.

Affected Public: Businesses or other for-profit;Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 569.

Burden Hours: 224.

Abstract: The Beginning Postsecondary Student Longitudinal Study Second Follow-Up will continue the series of longitudinal data collection efforts started in 1996 with the National Postsecondary Student Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the work force, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional

Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy__Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3177 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 7, 2000.

Patrick Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Data Collection for the Program for International Student Assessment (PISA).

Frequency: Full-scale study.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 13,200; Burden Hours: 11,000.

Abstract: PISA will collect policy-oriented and internationally-comparable indicators of student achievement in reading, mathematics, and science at the "end" of secondary school on a timely and regular basis (every three years). For comparability with other education systems around the world, 15-year-old students will be assessed in the U.S. and comparisons of results will be made with approximately 30 countries.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3178 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

AGENCY: National Commission on Mathematics and Science Teaching for the 21st Century, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Mathematics and Science Teaching for the 21st Century (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend.

DATE AND TIME: Monday, March 6, 2000, from 3:30 p.m. to approximately 6:30 p.m. and Tuesday, March 7 from 8:30 a.m. to adjournment at approximately 4:30 p.m.

ADDRESSES: J.W. Marriott Hotel, Capitol Ballroom, 1331 Pennsylvania Avenue, NW, Washington, DC 20004, telephone: (202) 393–2000, toll-free (800) 228–9290, fax: (202) 626–6991.

FOR FURTHER INFORMATION CONTACT: Dr. Linda P. Rosen, Executive Director, The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202, telephone: (202) 260–8229, fax: (202) 260–7216.

SUPPLEMENTARY INFORMATION: The National Commission on Mathematics and Science Teaching for the 21st Century was established by the Secretary of Education and is governed by the provisions of the Federal Advisory Committee Act (FACA) (P.L. 92–463, as amended; 5 U.S.C.A. Appendix 2). The Commission was established to address the pressing need to significantly raise student achievement in mathematics and science by focusing on the quality of mathematics and science instruction in K–12 classrooms nationwide. The Commission will develop a set of recommendations with a corresponding, multifaceted action strategy to improve the quality of teaching in mathematics and science.

The meeting of the Commission is open to the public. On the afternoon of March 6th, the Commission will explore potential technology recommendations and review a draft of initial chapters of their report. Commission members will

work in breakout groups to discuss the draft and then convey their comments in a plenary session.

On March 7th, the meeting will explore potential recommendations for the recruitment, induction, and professional development of teachers of mathematics and science. The day will start with brief presentations on these three topics—recruitment, induction, and professional development. The rest of the morning will be spent in breakout groups. After lunch, the groups will report back to the entire Commission and discuss potential recommendations with commentary from several invited experts.

An agenda will be posted on the Internet at *http://www.ed.gov/americacounts/glenn/toc.html* on or before February 28, 2000.

On March 6 from 8:30 a.m. to approximately 2:30 p.m. Commission members are invited to attend a meeting organized by the Association for Computing Machinery (ACM) on how technology can significantly impact K–12 math and science teaching and learning. The ACM presentations and hands-on demonstrations are open to the public and will be held in the Capitol Ballroom of the J.W. Marriott.

Space for the meeting of the National Commission on Mathematics and Science Teaching for the 21st Century may be limited and you are encouraged to register if you plan to attend. You may register through the Internet at America__Counts@ed.gov or Jamila__Rattler@ed.gov. Please include your name, title, affiliation, complete address (including e-mail, if available), telephone and fax numbers. If you are unable to register through the Internet, you may fax your registration information to The National Commission on Mathematics and Science Teaching for the 21st Century at (202) 260–7216 or mail to The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202. The registration deadline is March 1, 2000. Any individual who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Jamila Rattler at (202) 260–8229 by no later than February 25, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records will be kept of all Commission proceedings, and will be available for public inspection at The National Commission on Mathematics and Science Teaching for the 21st Century, 400 Maryland Avenue, SW, Room 6W252 from the hours of 8:30 a.m. to 5:00 p.m. weekdays, except Federal holidays.

Dated: February 8, 2000.

Frank S. Holleman III,

Deputy Secretary.

[FR Doc. 00–3241 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–04–M

DEPARTMENT OF ENERGY

DOE Implementation Plan for Recommendation 99–1 of the Defense Nuclear Facilities Safety Board, Safe Storage of Pits at Pantex

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 99–1, concerning the safe storage of pits at the Pantex plant, on August 27, 1999 (64 FR 46894). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 99–1 to the Defense Nuclear Facilities Safety Board after acceptance of the Recommendation by the Secretary. The Department's implementation plan was sent to the Safety Board on February 01, 2000, and is available for review in the Department of Energy Public Reading Rooms.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Issued in Washington, DC, on February 7, 2000.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board

The Secretary of Energy

February 1, 2000.

The Honorable John T. Conway
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

Dear Mr. Chairman: We are pleased to forward the Department of Energy implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board Recommendation 99–1, "Safe Storage of Pits at Pantex." Defense Nuclear Facilities Safety Board Recommendation 99–1 is consistent with the Department's focus to develop and implement improved pit storage programs.

The primary objective of this implementation plan is to expeditiously repackage pits into containers that will provide long-term, safe storage. The activities delineated in the plan are aimed at achieving that goal and provide for the development and implementation of a pit container surveillance program so the Department can monitor the AL–R8 Sealed Insert to ensure its continued quality and reliability.

Mr. Dave Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, is the responsible manager for this implementation plan. He can be contacted at 202–586–4879.

Yours sincerely,

Bill Richardson,

Enclosure.

[FR Doc. 00–3281 Filed 2–10–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Drinking Water State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Drinking Water State Revolving Fund Program; EPA ICR No. 1803.03; OMB No. 2040–0185; expiration date June 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1803.03. For technical questions about the ICR, contact Vinh Nguyen at

(202) 260–0715 or via email at nguyen.vinh@epa.gov. Additional information about the DWSRF program can be found at www.epa.gov/safewater/dwsrf.html.

SUPPLEMENTARY INFORMATION:

Title: Drinking Water State Revolving Fund Program; OMB No. 2040–0185; EPA ICR No. 1803.03; expiration date June 30, 2000. This is a request for an extension of a currently approved collection.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104–182) authorize the creation of Drinking Water State Revolving Fund (DWSRF) programs in each State and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of EPA to award capitalization grants to the States and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems (*i.e.,* local respondents).

The information collection activities will occur primarily at the program level through the Capitalization Grant Application and Agreement / State Intended Use Plan, Biennial Report, Annual Audit, and Assistance Application Review.

In order to receive a grant, the State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use funds in the program. The Capitalization Grant Agreement is the principal instrument by which the State commits to manage its revolving fund program in conformity with the requirements of the SDWA.

The State must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The Biennial Report indicates how the State has met its goals and objectives of the previous two fiscal years as stated in the grant agreement, and more specifically in the IUP. The report provides information on loan recipients, loan amounts, loan terms, project categories of eligible costs, and similar data on other forms of assistance.

A State must, at minimum, comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest, and EPA recommends, that a State conduct an annual independent audit of its DWSRF program (including set-asides), which contains an opinion on the financial statements of the DWSRF, a report on its internal controls, and a report on compliance with applicable laws and the SDWA.

Because States provide assistance to local applicants, States assist local applicants in preparing DWSRF loan applications and verify that proposed projects will comply with applicable federal and state requirements.

EPA will use the Capitalization Grant Application / Intended Use Plan, Biennial Report, and Annual Audit to help conduct its oversight responsibilities as mandated by the SDWA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 7, 1999 (64 FR 48615); 11 comments were received from two parties.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,703 hours per State response and 80 hours per local respondent response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments and local respondents.

Estimated Number of Respondents: 1,377.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 192,950 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1803.03 and OMB Control No. 2040–0185 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 2, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–3212 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6250–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements Filed January 31, 2000 Through February 04, 2000 Pursuant to 40 CFR 1506.9

EIS No. 000028, Draft EIS, BLM, NV, Marigold Mine Expansion Project, Implementation, COE Section 404 Permit, Special-Use-Permit, Humboldt County, NV, Due: April 10, 2000, Contact: Gerald Moritz (775) 623–1500.

EIS No. 000029, Final EIS, FHW, IN, IN–641 Terre Haute Bypass, Improve access between US 41 South to I–70 East of Terre Haute, Funding and COE Section 404 Permit, Vigo County, IN, Due: March 13, 2000, Contact: John R. Baxter (317) 226–7425.

EIS No. 000030, Final EIS, FHW, PA, Marshalls Creek Traffic Relief Study, Construction, Connector between PA–209, Business 209 and PA–402, COE Section 404 and NPDES Permits, Monroe County, PA, Due: March 13, 2000, Contact: David C. Lawton (717) 221–3461.

EIS No. 000031, Final EIS, FRC, MT, ID, Cabinet Gorge (No. 2058–014) and Noxon Rapids (No. 2075–014) Hydroelectric Project, Relicensing, MT and ID, Due: March 13, 2000, Contact: Bob Easton (202) 219–2782.

EIS No. 000032, Draft EIS, NPS, MT, Lake McDonald/Park Headquarters

Wastewater Treatment System Rehabilitation, Implementation, COE Section 404 Permit, Glacier National Park, A Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT, Due: March 31, 2000, Contact: Mary Riddle (406) 888–7898.

EIS No. 000033, Draft EIS, AFS, WA, Deadman Creek Ecosystem Management Projects, Implementation, Kettle Falls Ranger District, Colville National Forest, Ferry County, WA, Due: March 30, 2000, Contact: Wade Spang (509) 738–6111.

Dated: February 8, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–3198 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 24, 2000 Through January 28, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR datedApril 09, 1999 (63 FR 17856).

DRAFT EISs

ERP No. D–FHW–F40386–OH Rating EC2, Meigs-124–21.16 Transportation Corridor, Relocating existing OH–124 and US 33, MeigsCounty, OH.

Summary: EPA concerns will be adequately addressed if the project's forthcoming final EIS provides additional detail on the project's purpose and need statement and the conceptual wetlands compensation plan.

ERP No. D–FHW–F40387–OH Rating EC2, Lancaster Bypass (FAI-US 22/US 33–9.59/9.95) Construction, Funding, Greenfield, Hocking, Berne and Pleasant Townships, Fairfield County, OH.

Summary: EPA expressed environmental concerns due to potential noise impacts and wetlands compensation aspects. EPA requested noise mitigation actions and a wetland compensation plan.

ERP No. D–SFW–K64017–CA Rating EC2, Trinity River Mainstream Fishery Restoration, To Restore and Maintain the Natural Production of Anadromous Fish, Trinity and Humboldt Counties, CA.

Summary: While EPA supports the preferred alternative, EPA did express concern that additional mitigation measures are needed to ensure full protection of the environment, such as creation and restoration of cold water pool refugia and other cold water habitats.

ERP No. D–USN–C11017–NY Rating EC2, Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY.

Summary: EPA expressed environmental concerns due to potential issues related to air quality, ground water, and site contamination/ remediation. EPA requested that these issues be clarified in the final EIS.

Dated: February 8, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–3199 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–6]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The PRB meeting will be held on Friday, March 3, 2000 from 8 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency Region 4,Regional Administrator's Conference Room, 61 Forsyth Street, Fourteenth Floor, Atlanta,Georgia 30303, telephone (404) 562–8357.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer,Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Review of GMP Priority Projects Identified by the States for FY 2000, Review of Federal Project Inventory—FY 2000 & FY 2001, and Discussion of Developing Support for the GMP.

The meeting is open to the public.

Dated: February 7, 2000.

Gloria D. Car,

Designated Federal Officer, Gulf of Mexico Program Office.

[FR Doc. 00–3211 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–4]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on February 28–29, 2000. On Monday, February 28, the meeting will begin at 9:00 a.m., and will recess at 4:30 p.m. On Tuesday, February 29, the meeting will reconvene at 8:45 a.m. and adjourn at approximately 1:00 p.m. All times noted are Eastern Time.

ADDRESSES: The meeting will be held at the Ronald Reagan Building, International Trade Center, Meridian D&E Rooms, 1300 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: Discussion on ORD's Particulate Matter $_{2.5}$ Research Program and BOSC Subcommittee Draft Reports on Particulate Matter, and discussion of the SAB and BOSC Subcommittee Review of ORD's Science to Achieve Results (STAR) Program. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue NW., Washington, DC 20460; or by

telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, S.W., Washington, DC 20460, (202) 564–6853.

Dated: February 7, 2000.

Peter W. Preuss,

Director, National Center for Environmental Research and Quality Assurance.

[FR Doc. 00–3209 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00530B; FRL–6489–7]

Pesticides; Clarification of Treated Articles Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of PR Notice 2000–1 clarifying the Agency's policy with respect to the applicability of the "treated articles exemption" in 40 CFR 152.25(a) to antimicrobial pesticides. The notice discusses EPA's past and present guidance on how treated articles and substances qualify for the exemption, as well as the distinction between public health and non-public health antimicrobial claims, by providing specific examples of claims and related terms which the Agency believes are or are not consistent with 40 CFR 152.25(a). This notice also explains the requirement that the pesticide in a treated article be "registered for such use."

FOR FURTHER INFORMATION CONTACT: Debbie Edwards, Senior Advisor, Antimicrobial Division, Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7891; fax: (703) 308–6467; e-mail: edwards.debbie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to manufacturers, distributors, and any other person selling or distributing pesticide treated articles and substances, and to manufacturers, distributors, and any other person selling or distributing pesticides used as preservatives to protect treated articles from microbial deterioration. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document, and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents, from the Internet EPA Home page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand.* You may request a faxed copy of the Pesticide Registration (PR) Notice 2000–1 titled "Applicability of the Treated Articles Exemption to Antimicrobial Pesticides" by using a faxphone to call (202) 401–0527 and selecting item 6110. You may also follow the automated menu.

II. Background

The "treated articles exemption" in 40 CFR 152.25(a) was promulgated in 1988. As provided by 40 CFR 152.25(a), in order to qualify for the "treated articles exemption," (1) a product must be treated with a pesticide registered under FIFRA for incorporation into a specific treated article or substance, and (2) the claims allowed for such treatment must be limited to protection of the treated article only. If these two conditions are met, the product would qualify for the "treated articles exemption" and would be exempt from all FIFRA requirements. Since that time, enforcement actions have been taken by EPA where it deemed necessary. The products involved in these actions were dealt with so as to resolve individual issues arising in each matter. In recent years, however, a large variety of non-exempt antimicrobial treated products and substances with diverse claims have appeared in the marketplace. To address this case-by-case approach and to avoid marketplace confusion, the Agency decided to provide comprehensive guidance as set forth in a PR Notice to clarify EPA policy with respect to the applicability of the "treated articles exemption" and to provide examples of acceptable and unacceptable claims for use on labels and advertisements which the Agency believes are consistent with 40 CFR 152.25(a).

In the **Federal Register** of April 17, 1998 (63 FR 19256) (FRL–5780–7), EPA published a notice of availability of a draft PR Notice soliciting comments on proposed guidance clarifying the criteria considered by EPA for determining whether antimicrobial pesticides are eligible for the "treated articles exemption," as well as to make it clear that the Agency continues to consider any public health claim as not being consistent with the provisions of 40 CFR 152.25(a). Comments were to be received by May 18, 1998. In the **Federal Register** of May 18, 1998 (63 FR 27280) (FRL–00530A), EPA extended the comment period until June 30, 1998. In response, the Agency received 107 comments to the draft PR Notice from a wide spectrum of the antimicrobial community. This **Federal Register** notice announces the availability of PR Notice 2000–1 titled "Applicability of the Treated Articles Exemption to Antimicrobial Pesticides."

III. Comments to the Draft Notice

In developing PR Notice 2000–1, the Agency evaluated 107 comments received in response to the April 17, 1998 draft notice. At the same time, treated article issues were discussed in two antimicrobial workshops and in numerous meetings with individuals and representatives of the antimicrobial pesticide community. Among the principal concerns raised during these dialogs were the Agency's position regarding aesthetic claims and the 60–day time frame for compliance with any new elements of the final notice. In evaluating these concerns, EPA has come to the conclusion that properly worded aesthetic claims continue to fall within the scope of the "treated articles exemption" because mitigation of non-public health related organisms which are responsible for mildew and odors can contribute to the protection of the appearance and maintenance of the intended shelf life of the treated article or substance. EPA has also been made aware of the complexities associated with the manufacture and distribution of treated paint and textile products and believes that February 11, 2001, would be an appropriate time frame for implementing any new elements of the final notice.

Other concerns were raised about the Agency's position regarding the use of terms such as "antibacterial,"

"germicidal," "antimicrobial," and "mildew-resistant" and the need for certain types of qualifying and prominent language displayed in association with these terms. EPA continues to believe that the terms "antibacterial," "germicidal" and similar language imply a public health benefit regardless of the context in which they are used on the labeling and are thus, inappropriate for products intended merely for the non-public health protection of treated articles and substances. On the other hand, the Agency believes that while terms such as "antimicrobial" and "mildew-resistant" have the same potential for misinterpretation, if such terms are properly qualified and are not prominently displayed on the labeling, these terms would be acceptable for articles and substances claiming the exemption.

Throughout its deliberations, EPA has strived to develop clear guidance, consistent with past and present Agency practice, to create a "level playing field" for all affected entities. Furthermore, EPA believes that the provisions of PR Notice 2000–1 will have a minimum impact on small business entities, and the Agency is committed to continue to work closely with the antimicrobial community and other affected parties in cases where compliance with the requirements of this notice might present difficulties which are presently unknown.

IV. Contents of PR Notice 2000–1

PR Notice 2000–1 clarifies the conditions under which the "treated articles exemption" will apply and provides examples of acceptable and unacceptable claims for use on labels and advertisements which the Agency believes are consistent with 40 CFR 152.25(a). PR Notice 2000–1 also discusses the requirement that the pesticide in a treated article be "registered for such use."

V. Effective Date and Procedures

In order to remain in compliance with FIFRA and avoid regulatory or enforcement consequences as described, it is the Agency's position that producers, distributors, and any other person selling or distributing pesticide treated articles and substances not in compliance with the Agency's interpretation of 40 CFR 152.25(a), as clarified by this notice, need to bring their products, labeling and packaging, any collateral literature, advertisements or statements made or distributed in association with the marketing of the treated article or substance into full compliance with the regulation as clarified by this notice as soon as possible.

Because some of the elements of this interpretation may not have been well understood by the regulated community, the Agency expects that some companies may need up to a year in order to comply with those elements that have been clarified by this notice. Therefore, for the present, the Agency is following the approach set forth in the April 17, 1998 **Federal Register**. Although non-public health claims for microbial odor control and mold and mildew claims associated with deterioration, discoloration, and staining were not specifically mentioned in the April 17, 1998 **Federal Register**, such claims are also consistent with the enforcement approach set forth in that notice, as well as with this guidance, provided that they are properly, and very clearly, qualified as to their non-public health use. The Agency will begin to rely on the guidance provided in this notice on February 11, 2001. Products in commerce after that date would risk being considered out of compliance with 40 CFR 152.25(a). The Agency also wants to make it clear that inclusion of this date does not authorize marketing of treated articles which do not comply with EPA's interpretation of the "treated articles exemption" in 40 CFR 152.25(a). The Agency has consistently interpreted and applied this rule to prohibit implied or explicit public health claims for unregistered products and continues to regard any public health claims as not being consistent with the provisions of 40 CFR 152.25(a).

List of Subjects

Environmental protection.

Dated: February 4, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

[FR Doc. 00–3219 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–915; FRL–6487–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–915, must be received on or before March 13, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–915 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5417; e-mail address: perreault.peg@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–915. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–915 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to; *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–915. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BAYER Corporation

PP 8F4940

EPA has received a pesticide petition (PP 8F4940) from BAYER Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of imidacloprid in or on the raw agricultural commodities (RAC): citrus fruit, citrus pulp, dried and the leafy petiole subgroup (4-B) at 0.7, 5.0, and 6.0 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in

section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the imidacloprid residue in plants is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GC/MS) selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromotography using ultra-violet detection (HPLC-UV) which has been validated by EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues*—i. *Citrus.* Forty-three residue crop field trials (23 foliar applications and 20 soil applications) were conducted to evaluate the quantity of imidacloprid expected in citrus from Admire 2, Flowable and Provado 1.6 applications. These trials were conducted in EPA Regions III, VI, and X. Imidacloprid residues in citrus whole fruit (oranges, grapefruit, and lemons) were quantitated by GC using a MS detector. The limit of quantitation (LOQ) was 0.05 ppm. The highest average field trial (HAFT) was 0.61 ppm in oranges. A processing study at 5 times the maximum recommended label use rate was conducted to evaluate the quantity of imidacloprid and metabolite residue in orange processed commodities following treatment of orange trees with Admire 2F. Harvested whole oranges were processed into dried pulp, oil, molasses, and juice using procedures which simulated commercial orange processing practices. Imidacloprid and metabolite residues in orange whole fruit and orange processed commodities were quantitated by GC using a MS detector. Total residue of imidacloprid and metabolites in orange whole fruit was 0.19 ppm. EPA's Table 1 - RAC and processed commodities and feedstuffs derived from crops lists dried pulp, oil, and juice as processed commodities. The processing study showed a total residue for imidacloprid and metabolites of 1.42 ppm (7.5x concentration) in dried pulp and no concentration of total residue of imidacloprid and metabolites in both orange juice and oil (0.05 ppm).

ii. *Leaf petioles subgroup vegetables.* Twelve residue crop field trials on celery were conducted to evaluate the quantity of imidacloprid expected in members of the leaf petiole vegetable subgroup from Admire 2 Flowable applications. These trials, which compared plant drench, soil sidedress and in-furrow at transplant applications, were conducted in EPA Regions III, V, VI, X, and XI. Imidacloprid residues in untrimmed celery stalks were quantitated by using a GC/MC. The LOQ was 0.05 ppm. Total residue values ranged from 0.13 to 5.62 ppm.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 - 475 milligrams/kilograms/body weight (mg/kg/bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was 69 mg/m^3 air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A 2-generation rat reproduction study gave a no-observed adverse effect level (NOAEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* Ninety-day feeding studies were conducted in rats and dogs. The NOAELs for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies, respectively.

5. *Chronic toxicity.* A 2-year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOAEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased bwt gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOAEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and had a NOAEL of 1,000 ppm (208 mg/kg/day). Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The RfD based on the 2–year rat feeding/carcinogenic study with a NOAEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt.

6. *Animal metabolism.* The metabolism of imidacloprid in rats was reported in seven studies. Data in these studies show that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70-80% of the dose) and fecal (17-25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6-chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water from the parent compound.

7. *Metabolite toxicology.* Several metabolites of imidacloprid have been investigated for acute toxicity and genotoxicity. No evidence for genotoxicity was found, and acute toxicity values for all metabolites studied ranged from slightly more toxic to significantly less toxic than parent imidacloprid.

8. *Endocrine disruption.* The toxicology data base for imidacloprid is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For purposes of assessing the potential acute and chronic dietary exposure, Bayer has estimated exposure based on the theoretical maximum residue contribution (TMRC). The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data. The consumption data, based on the NFCS 1989-92 data base, estimates the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups.

a. *Acute.* For acute dietary exposure the model calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOAEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. EPA has determined that a NOAEL of 24 mg/kg/day from a developmental toxicity study in rabbits should be used to assess acute toxicity.

The MOE for imidacloprid derived from previously established tolerances, pending tolerances, plus the proposed use on citrus and the leaf petiole subgroup would be 366 for the U.S. population (48 contiguous States), 323 for non-nursing infants, 101 for children (ages 1–6 years), 420 for children (ages 7–12 years), 622 for males 13+ years, and 554 for females 13+ years at the 99.9 percentile. These MOEs do not exceed EPA's level of concern for acute dietary exposure.

b. *Chronic.* For purposes of assessing the potential chronic dietary exposure, the model uses the RfD which EPA has determined to be 0.057 mg/kg/day. This is based on the 2–year rat feeding/carcinogenic study with a NOAEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor. In conducting this exposure assessment, very conservative assumptions (100% of all commodities contain imidacloprid residues and those residues are at the level of the tolerance) result in a large overestimate of human exposure.

Using these conservative assumptions, the TMRC for imidacloprid derived from previously established tolerances, pending tolerances, plus the proposed use on citrus and leaf petiole subgroup would be 0.008149 mg/kg bwt/day (14.3% of the RfD) for the U.S. population (48 contiguous States) and 0.018367 mg/kg bwt/day (32.2% of the RfD) for the most highly exposed population subgroup, children (1–6 years old). Therefore, chronic dietary exposure from the existing and proposed uses will not exceed the RfD for any subpopulation, including infants and children.

ii. *Drinking water.* EPA has determined that imidacloprid is persistent and could potentially leach into groundwater. However, there is no established maximum contamination level (MCL) or health advisory levels established for imidacloprid in drinking water. EPA's "Pesticides in Groundwater Database" has no entry for imidacloprid. In addition, Bayer is not aware of imidacloprid being detected in any ponds, lakes, streams, etc. from its use in the United States. Groundwater monitoring studies conducted in California, Michigan, and Long Island over the past 2 years have found maximum concentrations to be only 0.0001, 0.0002, and 0.0019 milligrams/liter (mg/L), respectively. Therefore, contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

2. *Non-dietary exposure*—i. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 - 41,546 for 10–year old children and 6,859 - 45,249 for 5–year old children were estimated by comparing dermal exposure doses to the imidacloprid NOAEL of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year old children ranged from 5.6 - 38.2 g/cm^2 and for 5–year old children from 5.1 - 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch (OREB) and Bayer. Data indicate that the MOS for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0 x 107 and 2.4 x 108, respectively; exposure can thus be considered negligible.

iii. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study, only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

No other chemicals having the same mechanism of toxicity are currently registered, therefore, there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described under aggregate exposure and based on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 14.3% of the RfD for the U.S. population from food, water, and non-occupational sources. EPA generally has no concern for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In addition, the MOEs for all population groups does not exceed EPA's level of concern for acute dietary exposure. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the

developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal effects and the completeness of the toxicity data base. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to prenatal and postnatal effects is complete. Further for imidacloprid, the NOAEL of 5.7 mg/kg/bwt from the 2–year old rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOAELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, it is surmised that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above under aggregate exposure, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of imidacloprid ranges from 9.3% for nursing infants up to 32.2% for children (1–6 years old). EPA generally has no concern for exposure below 100% of the RfD. In addition, the MOEs for all infant and children population groups do not exceed EPA's level of concern for acute dietary exposure. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of imidacloprid, including all anticipated dietary exposure and all other non-occupational exposures

F. International Tolerances

No CODEX maximum residue levels have been established for residues of Imidacloprid on any crops at this time.

[FR Doc. 00–3220 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–1]

Notice of Availability: Announcing the availability of a new draft guidance document entitled Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Environmental Protection Agency ("EPA" or "the Agency") is providing notice that the following draft guidance document Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft) is available and an 180-day public review period of the document will begin today.

This document contains the Office of Solid Waste's recommended approach for conducting site-specific ecological risk assessments on hazardous waste combustors regulated under the RCRA program. The document includes specific parameters, pathways and algorithms to evaluate both direct and indirect risks to ecological receptors. The goal of this guidance document is to develop a consistent and credible methodology for conducting ecological risk assessments at hazardous waste combustion facilities. The results of the risk assessments will give an understanding of the potential ecological risks associated with emissions from those facilities.

On October 30, 1998, EPA announced in the **Federal Register** (FR Doc. 98–29157) the availability of this documents' companion document, Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft—EPA530–D–98–001A, B & C). OSW recommends that RCRA permitting authorities consider these documents together when conducting risk assessments on hazardous waste combustor emissions. The results of these risk assessments can provide a basis for risk management decisions in the permitting of hazardous waste combustors and help to ensure that the operation of hazardous waste combustion facilities will be protective of human health and the environment.

This document has undergone extensive internal Agency review. It is Agency policy that documents such as this be subject to peer review as well. EPA expects to have the document reviewed by a group of independent scientists in the future. Information regarding the peer review process will be published in a **Federal Register** notice closer to the date of the review.

All public comments should be received by August 9, 2000, to be considered by the Agency. The public comments will be for the Agency's evaluation only and are not intended to be part of the peer review process. To ensure an efficient public comment review and resolution process, EPA recommends that the comments be supplied in the following format. All comments should be individually identified and a proposed resolution (or action) be recommended. In addition, any supporting information or reference materials which corroborate the comment and or proposed resolution should be furnished as well. All information supplied should be in English or accompanied by an English translation. All comments received from both the public and the peer review will be considered during finalization of this guidance document.

DATES: Public comments on the document Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities should be received by the docket no later than August 9, 2000.

FOR FURTHER INFORMATION CONTACT: For further information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific questions on implementation of the methods described in this document, please contact your RCRA regulatory authority; for other questions contact Karen Pollard, Office of Solid Waste, 5307W U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; phone: (703) 308–3948; e-mail: Pollard.Karen@EPA mail.EPA.gov.

ADDRESSES: Commenters must send the original and two copies of their comments referencing docket number F–1999–SLRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, DC 20460. Comments submitted electronically should be identified by the docket number F–1999–SLRA–FFFFF and submitted to: *RCRA–docket@epamail.epa.gov*. EPA's Office of Solid Waste (OSW) also accepts data on disks in Wordperfect 6.1 file format. EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII

(TEXT) format (with no special characters or any form of encryption) or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency "Paperless Office" campaign.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street S.W., Washington, DC 20460.

Public comment and supporting materials will be made available for viewing from 9 a.m. to 4 p.m., Monday through Friday (except Federal holidays) in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and notice are available electronically. See the "Supplementary Information" section for information on accessing it.

SUPPLEMENTARY INFORMATION: For paper or CD–ROM copies of the guidance document, please contact the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, DC 20460, (703) 603–9230. The document is a three volume set, with document numbers of: EPA530–D–99–001A: Methodologies; EPA530–D–99–001B: Appendices A & B; and EPA530–D–99–001C: Appendices C–H. CD–ROM copies of this document may also be obtained from the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. The document is also available in electronic format on the world wide web at:*http://www.epa.gov/epaoswer/hazwaste/combust/riskhtm*.

Dated: January 19, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–3217 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6534–6]

Proposed CERCLA Administrative Cost Recovery Settlement; Surrette America Battery Removal Site, Northfield, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: In accordance with 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Surrette America Battery Removal Site, Northfield, New Hampshire with the following settling parties: Clark H. Neill, Surrette Storage Battery Co., Inc., and C&J Neill, Inc. The settlement requires the settling parties to pay $10,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the United States Environmental Protection Agency will receive written comments relating to the settlement. The United States Environmental Protection Agency will receive written comments relating to the settlement. The United States Environmental Protection Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States Environmental Protection Agency's response to any comments received will be available for public inspection at Hall's Memorial Library, 18 Park Street, Northfield, New Hampshire, and United States Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114.

DATES: Comments must be submitted on or before March 13, 2000.

ADDRESSES: The proposed settlement is available for public inspection at United States Environmental Protection Agency, EPA-New England, One Congress, Suite 1100, Boston, MA 02114. A copy of the proposed settlement may be obtained from Barbara O'Toole, Responsible Party Coordinator, United States EPA, Region 1, One Congress Street, Suite 1100 (HBS), Boston, MA 02114, (617) 918–1408. Comments should reference the Surrette America Battery Removal Site, Northfield, New Hampshire and EPA Docket No. CERCLA 1–99–0045 and should be addressed to Barbara O'Toole, Responsible Party Coordinator, United States EPA, EPA-New England, One Congress Street, Suite 1100 (HBS), Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Barbara O'Toole, Responsible Party Coordinator, United States EPA, Region 1, One Congress Street, Suite 1100 (HBS), Boston, MA 02114, (617) 918–1408.

Dated: January 27, 2000.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 00–3210 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from a severe winter storm beginning on January 22, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert

T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) including direct Federal assistance under Public Assistance, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, including direct Federal assistance, or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Theodore A. Monette, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Debris removal (Category A) and emergency protective measures, (Category B), including direct Federal assistance, for the counties of Banks, Barrow, Bartow, Chattooga, Cherokee, Cobb, Dawson, DeKalb, Elbert, Fannin, Forsyth, Franklin, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Hart, Lumpkin, Newton, Oconee, Paulding, Pickens, Rabun, Stephens, Union, Walker, White, and Wilkes.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–3227 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 1, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3228 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 28, 2000:

Butts, Clarke, Haralson, Henry, Jackson, Jasper, Lamar, Pike, Spalding, Taliaferro, and Upson counties for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F), under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3229 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1312–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1312–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 31, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from a severe winter storm beginning on January 24, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster

declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos N. Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Debris removal (Category A) and emergency protective measures (Category B) for the counties of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Nash, Northampton, Orange, Person, Randolph, Richmond, Rockingham, Scotland, Stanly, Union, Vance, Wake, and Warren.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–3230 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1312–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1312–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 2, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina is hereby amended to close the incident period and to include Utilities, Category F, under Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 31, 2000:

Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Nash, Northampton, Orange, Person, Randolph, Richmond, Rockingham, Scotland, Stanly, Union, Vance, Wake, and Warren Counties for Utilities, Category F, under Public Assistance (already designated for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance.

The incident period for this disaster is closed effective February 1, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3231 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–1313-DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 31, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from a severe winter storm beginning on January 22, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James L. Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to

have been affected adversely by this declared major disaster:

Debris removal (Category A) and emergency protective measures, (Category B) for the counties of Abbeville, Berkley, Calhoun, Charleston, Collenton, Cherokee, Chester, Chesterfield, Darlington, Dillon, Edgefield, Fairfield, Florence, Greenwood, Kershaw, Lancaster, Laurens, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Spartanburg, Sumter, Union, and York.

All counties within the State of South Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–3232 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–1313–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 1, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3233 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina, (FEMA–1313–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Carolina is hereby amended to include Utilities, Category F, under Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 31, 2000:

Aiken, Allendale, Bamberg, Barnwell, Clarendon, Dorchester, Georgetown, Lee, Lexington, McCormick, and Williamsburg Counties for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

Abbeville, Berkley, Calhoun, Charleston, Collenton, Cherokee, Chester, Chesterfield, Darlington, Dillon, Edgefield, Fairfield, Florence, Greenwood, Kershaw, Lancaster, Laurens, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Spartanburg, Sumter, Union, and York Counties for utilities (Category F) under Public Assistance (already designated for debris removal) (Category A) and emergency protective measures (Category B) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3234 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. John Randall (Randy) Winegard, Burlington, Iowa; Larry Henson, Davenport, Iowa; James Woods, Davenport, Iowa; Gregory Jay Shottenkirk and Toni Marie Shottenkirk, Fort Madison, Iowa; Shottenkirk Partnership L.P.; Lee Capital Corporation, Fort Madison, Iowa; Lynn Crabtree, Fort Madison, Iowa; Charlotte Foster, Davenport, Iowa; Foster Family Partnership, Davenport, Iowa; Robert Charles Fick, Eldridge, Iowa; Ronald Lee Burmeister, Eldridge, Iowa; Winegard Realty Company, Burlington, Iowa; Rob Rick Inc., Davenport, Iowa; and Brian Tugana, Clinton, Iowa; to acquire additional voting shares of River Valley Bancorp, Inc., Eldridge, Iowa, and thereby indirectly acquire additional voting shares of Valley State Bank, Eldridge, Iowa.

Board of Governors of the Federal Reserve System, February 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3273 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Kane.Commerce Co., Davenport, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank of Plymouth, Plymouth, Illinois.

Board of Governors of the Federal Reserve System, February 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3160 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Deutsche Bank Aktiengesellschaft, Frankfurt, Germany; through its wholly owned subsidiary, DB Investments (AXM) Limited, London, United Kingdom, to retain 9 percent of the shares of TP Group LDC, Grand Cayman, Cayman Islands, and through its majority owned subsidiary, Tradepoint Financial Networks, PLC London, United Kingdom, engage in operating a securities exchange, *see J.P. Morgan & Co. Incorporated*, 86 Fed. Res. Bull. 61, (2000).

Board of Governors of the Federal Reserve System, February 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3159 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, February 16, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3366 Filed 2–9–00; 1:15 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 992 3228]

DBC Financial, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATE: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michelle Chua, FTC/S–4429, 600

Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3248.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 4, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from DBC Financial, Inc. ("DBC Financial"). The agreement would settle a complaint by the Federal Trade Commission that DBC Financial engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made by DBC Financial in its advertising of the Delaware Bank Card, an automated teller machine ("ATM") bank card that offers direct deposit services with an affiliated bank. The administrative complaint alleges that DBC Financial violated the FTC Act by falsely representing: (1) that use of the Delaware Bank Card requires no upfront fees, when, in fact, use of the card requires an account setup fee of $19.95, as well as a monthly service fee of $9.95; (2) that the Delaware Bank Card is affiliated with the United States government agency, institution, or program, when in fact it is not; and (3) that use of the Delaware Bank Card automatically provides free overdraft protection services of up to $1,000 a year, when in fact the card charges an overdraft protection fee of $19.95 for every month in which the consumer's account is overdrawn by up to $80.00.

To remedy the violations charged and to prevent respondent from engaging in similar acts and practices in the future, the proposed order contains injunctive provisions and a consumer redress program. Part I of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from making any misrepresentation or material omission concerning the costs, benefits, or conditions of the Bank Card or Bank Card-related service or product, including the following: (1) that use of the Bank Card requires no up-front fees, if in fact DBC Financial is charging an Account Set-up fee or any other initial fee; and (2) that use of the Bank Card provides free of charge any overdraft protection services, if in fact DBC Financial is charging an overdraft protection fee.

Part II of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from misrepresenting that DBC Financial or any of its Bank Card or Bank Card-related service or products are affiliated in any way with any United States governmental agency, institution, or program.

Part III of the order requires respondent to clearly and conspicuously disclose, in connection with any representation about the availability of electronic transfer of funds from any government entity, the following: "NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program." This disclosure is not required, however, to the extent that respondent is promoting a U.S. Treasury-designated ETA on behalf of a financial institution that is participating in the government ETA program.

Part IV of the order requires respondent to pay $250,000.00 for the redress program and administrative costs. The redress program applies to certain consumers who, as of August 31, 1999, had an active Delaware Bank Card account and who were charged an account set-up fee. In addition, Part V of the order requires respondent to waive the account set-up fee of $19.95 for all Delaware Bank Card accounts opened between August 31, 1999 and January 31, 2000.

The proposed order also contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–3236 Filed 2–10–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00042]

Extramural Injury Research Grants for the Prevention of Intimate Partner Violence and Sexual Violence; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Prevention and Control Research Grants (RO1s) for fiscal year (FY) 2000.

This announcement is related to the Healthy People 2000 Priority areas of Violent and Abusive Behavior.

The purposes of this program are to:

1. Promote research to identify and understand the developmental pathways of victimization and perpetration of intimate partner violence and sexual violence.

2. Encourage developmental research that leads to science-based indicators for culturally appropriate intervention and prevention strategies to prevent and control the extent of injuries that result from intimate partner violence and sexual violence.

3. Expand risk-factor and protective-factor research related to the perpetration and victimization of intimate partner violence and sexual violence.

4. Build the scientific base for the prevention of injuries, disabilities, and deaths due to violence.

5. Encourage professionals from a wide spectrum of disciplines such as public health, health care, medicine, criminal justice, and behavioral and social sciences, to work together and undertake research to prevent and control injuries that result from violence.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1.2 million is expected to be available in FY 2000 for injury research grants to fund approximately 4 awards. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, "Programmatic Interests." It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a 3-year project period. The maximum funding level will not exceed $300,000 (including both direct and indirect costs) per year or $900,000 for the 3-year project period. Applications that exceed the funding cap of $300,000 per year will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one-day meeting should be included in the applicant's proposed budget), the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

CDC is soliciting studies that identify the factors which moderate and mediate the association between exposure to violence and/or violence-related behaviors, (*e.g.*, rape, sexual violence, and intimate partner violence, other interpersonal violence, bullying, child abuse and neglect, child sexual abuse) and witnessing violence (*e.g.*, intimate partner violence, sexual violence, other interpersonal violence, and suicidal behavior), and violent outcomes (*i.e.*, subsequent victimization and/or perpetration of intimate partner violence and sexual violence).

Moderating factors include the individual, social, cultural and environmental factors which influence the likelihood that exposure to violence will lead to future violent outcomes. Mediating factors include the proximal consequences of exposure (*e.g.*, hopelessness, learned response to violence, alcohol and drug use, weapon carrying) that result in increased risk of violent outcomes. The context in which violence occurs and potential culturally relevant intervention and prevention strategies relative to moderating and mediating factors should be integral foci of the study.

1. Injury prevention research addressing moderating factors

a. Conduct research to understand how individual, social, cultural and environmental factors which influence the likelihood that exposure to violence will lead to the perpetration and victimization of violence against women, and sexual violence.

b. Conduct research designed to improve understanding of the nature of moderating factors among under served and potentially high-risk populations (*e.g.*, ethnic populations, persons with disabilities, gay, lesbian, trans gender and bisexual populations, or immigrant and refugee populations).

2. Injury prevention research addressing mediating factors

a. Conduct research that further illuminates understanding of the contribution of potential risk factors for violence such as impulsivity, hopelessness, weapon carrying, alcohol/drug use, and other risk taking behavior.

b. Conduct research to elucidate protective factors for intimate partner violence and sexual violence.

c. Conduct research to provide scientific evidence for potentially effective and culturally appropriate intervention or prevention strategies for intimate partner violence and sexual violence.

Funding Preferences

Studies which focus on under served population(s) including ethnic populations, persons with disabilities, gay, lesbian, trans gender and bisexual populations, or immigrant and refugee populations will be given priority. These populations are considered under served because substantial research has not been devoted to determining risk and protective factors or mediating or moderating influences which may affect intimate partner violence or sexual violence in these groups.

D. Program Requirements

The following are applicant requirements:

1. A principal investigator, who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research pertaining to violence in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Addendum 2,(6.a–c).

5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, "Programmatic Interests."

E. Application Content

Applications should follow the PHS–398 (Rev. 4/98) application and Errata sheet, and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2000" and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant. Awards will be made for a project period of up to 3-years.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within 3–5 years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Pre-Application Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter of intent must be submitted on or before March 13, 2000, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. The letter should identify the announcement number, name the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Submit the original and five copies of PHS 398 (OMB Number 0925–0001 and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before April 12, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Applications shall be considered as meeting the deadline if they are received at the above address on or before the deadline date; or sent on or before the deadline date, and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

Late Applications

Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the heading Program Requirements (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the proposal.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be determined by the Director of the National Center for Injury Prevention and Control (NCIPC) based on priority scores assigned to applications by the primary review committee, recommendations by the secondary review committee, consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All proposals will be reviewed for scientific merit by a committee of no less than three reviewers with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the proposal. Factors to be considered will include:

a. Significance. Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator. Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting violence-related research?

e. Environment. Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues: What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with

mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? (Not scored)

g. Study Samples: Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination: What plans have been articulated for disseminating findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Work Group (SPRWG) from the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal ex officio members will be invited to attend the secondary review, will receive modified briefing books, (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal ex officio members will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRWG members will vote on funding recommendations and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The Secondary Review Committee has the latitude to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The match between the application and the solicitation's programmatic interests and funding preferences, *i.e.*, for applications with relatively similar priority scores, preference will be given to those applications that focus on under served population(s).

c. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

d. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2000" and the Institute of Medicine report, "Reducing the Burden of Injury".

e. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2000, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of

1. Progress report annually,

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words) summary highlighting the findings and their implications for research and policy. CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application package.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Carrie Clark, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement #00042, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone (770) 488–2719, Internet address: zri4@cdc.gov.

For program technical assistance, contact: Ted Jones, Program Manager, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–

3724, Telephone (770) 488–4824, Internet address: tmj1@cdc.gov.

Dated: February 7, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3184 Filed 2–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., February 28, 2000. 8:30 a.m.–12 p.m., February 29, 2000.

Place: Wyndham Atlanta Hotel, 160 Spring Street, Atlanta, Georgia 30303, telephone 404/688–8600.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 90 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Childhood Lead Poisoning Prevention activities update, Medicaid issues, Screening and Case Management Working Group updates, and updates on Medical and Environmental Management issues. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Becky Wright, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE, M/S E–25, Atlanta, Georgia 30333, telephone 404/639–1789, fax 404/639–2570.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: February 7, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3333 Filed 2–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation.

ACTION: Notice of meeting.

DATES: Thursday, February 24, 2000 from 9:00 a.m. to 2:00 p.m.

Place: The meeting will be held in the Loews New York Hotel, 569 Lexington Avenue at East 51st Street, New York, New York 10022. Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

FOR FURTHER INFORMATION CONTACT: Jane L. Browning, Executive Director, President's Committee on Mental Retardation, Room 701 Aerospace Building, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 619–0634.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Dated: February 7, 2000.

Jane L. Browning,

Executive Director, PCMR.

[FR Doc. 00–3245 Filed 2–10–00; 8:45 am]

BILLING CODE 4104–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0352]

Status of Useful Written Prescription Drug Information for Patients; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the findings of the interim study of the status of useful written prescription drug information for patients consistent with the criteria specified in the "Action Plan for the Provision of Useful Prescription Medicine Information" (Action Plan). The purpose of this meeting is to present the study methodology and results and seek feedback prior to developing assessment of the year 2000 goals. The meeting will begin with presentations about the report and findings, followed by small group discussions and feedback. FDA encourages interested individuals to attend this meeting or submit comments.

DATES: The public meeting will be held on Tuesday, February 29, 2000, from 1 p.m. to 5:30 p.m. and Wednesday, March 1, 2000, from 8:30 a.m. to 3 p.m. The deadline for registration is February 18, 2000. Early registration is recommended, as space is limited. Registration and dissemination of materials will begin at 11 a.m. on February 29, 2000. Written comments will be accepted until April 28, 2000.

ADDRESSES: The public meeting will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville MD 20852. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the study report as well as registration information can be obtained at http://

www.fda.gov/cder/calendar/meeting/rx2000. A transcript and summary of the meeting may be seen at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Marcia L. Trenter, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301–827–1674, or e-mail: trenterm@cder.fda.gov).

SUPPLEMENTARY INFORMATION: Inadequate access to useful patient information is a major cause of inappropriate use of prescription medicines, leading to serious personal injury and costs to the health care system. While the rate of distribution of written prescription drug information materials has increased somewhat over the past 15 years, the quality of such material has been quite variable.

In the **Federal Register** of August 24, 1995 (60 FR 44182), FDA published a proposed rule that aimed to increase the quality and quantity of written information about prescription medicines given to patients. In the proposed rule, entitled "Prescription Drug Product Labeling; Medication Guide Requirements," FDA encouraged the private sector to develop and distribute patient-oriented written information leaflets for all prescription drugs, and set targets for the distribution of these leaflets. In addition to setting target distribution goals by specific dates, the proposed rule set criteria by which written information would be judged to determine whether it was "useful" and should therefore count toward accomplishment of the target goals.

In August 1996, the U.S. Congress passed Public Law 104–180 mandating that the private sector be given the opportunity to meet distribution and quality goals for written patient prescription medicine information. It also directed that the Secretary of Health and Human Services (the Secretary) facilitate the development of a long-range comprehensive action plan to meet these goals through private-sector efforts.

The Secretary asked the Keystone Center to convene a Steering Committee to collaboratively develop this action plan. The Action Plan accepted by the Secretary in January 1997 reiterated the target goals specified in the Federal legislation. These goals were that by the year 2000 useful written information would be distributed to 75 percent of individuals receiving new prescriptions for medicines, and by the year 2006 to 95 percent of such individuals. The Action Plan generally endorsed the conceptual criteria specified in Public Law 104–180 for defining the usefulness of medication information. Specifically, it stated that such materials should be: (1) Scientifically accurate; (2) unbiased in content and tone; (3) sufficiently specific and comprehensive; (3) presented in an understandable and legible format that is readily comprehensible to consumers; (4) timely and up to date; and (5) useful, that is, enables the consumer to use the medicine properly and appropriately, receive the maximum benefit, and avoid harm. The Action Plan, including descriptions of the criteria, is available on the Internet at http://www.nyam.org/library/keystone.

Consistent with Public Law 104–180, the Action Plan called for the development of a mechanism to periodically assess the quality of written prescription information for patients. To test a methodology for collecting patient information materials and assessing their usefulness, FDA developed a contract with the National Association of Boards of Pharmacy. The contract called for the selection of several State Boards of Pharmacy who would arrange for collecting, from a sample of State pharmacies, medication information materials given with new prescriptions for three commonly prescribed prescription drugs. The contract also called for the development of evaluation materials to assess the usefulness of the information through application of the Action Plan criteria. The medication information materials were collected in 1999, and the final report from the evaluation was completed in December 1999. The report is available on the Internet at http://www.fda.gov/cder/calendar/meeting/rx2000.

FDA is seeking comments on several issues:

- What should be the minimum standard or threshold that must be met for written information to be considered useful?
- Should certain criteria derived from the Action Plan recommendations be given more weight than others? If so, which criteria should be weighted more strongly, and why?
- Are the evaluation forms an accurate translation of the Action Plan's criteria?
- Should the assessment include additional criteria or types of information, and, if so, what?
- Should there be a more detailed assessment of factors affecting readability and legibility for consumers (e.g., type size, style, spacing, contrast)?
- Should the evaluation panel include consumers with varying educational backgrounds? If so, how should they be involved in the evaluation process?
- This report collected patient information from U.S. retail pharmacies. Are there ways to expand sampling to include mail-order or other nonretail pharmacies?

A transcript and summary of the meeting may be seen at the Dockets Management Branch (address above) and they will be available approximately 10 working days after the meeting at a cost of 10 cents per page. Also, received comments may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–3171 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0241]

Determination of Regulatory Review Period for Purposes of Patent Extension; Wallstent Coronary Endoprosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Wallstent Coronary Endoprosthesis and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of

up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Wallstent Coronary Endoprosthesis. Wallstent Coronary Endoprosthesis is indicated for use following suboptimal percutaneous transluminal angioplasty of common and/or external iliac artery stenotic lesions. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Wallstent Coronary Endoprosthesis (U.S. Patent No. 4,954,126) from Boston Scientific Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 9, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Wallstent Coronary Endoprosthesis represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Wallstent Coronary Endoprosthesis is 1,533 days. Of this time, 1,351 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device was begun: July 21, 1994. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective July 21, 1994.

2. The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e): April 1, 1998. The applicant claims March 31, 1998, as the date the premarket approval application (PMA) for Wallstent Coronary Endoprosthesis (PMA P980009) was initially submitted. However, FDA records indicate that PMA P980009 was submitted on April 1, 1998.

3. The date the application was approved: September 29, 1998. FDA has verified the applicant's claim that PMA P980009 was approved on September 29, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 857 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 11, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 9, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–3172 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0186]

International Conference on Harmonisation; M4 Common Technical Document; Request for Comments on Initial Components; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of initial components of a draft guidance [1] entitled "M4 Common Technical Document," which is being developed under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). Because of the large size of the draft guidance, FDA is making some components of the draft guidance available to the public at this time to help explain the overall scheme of the draft guidance and to request comments. When completed, the guidance entitled "M4 Common Technical Document" will describe a harmonized format and content for designated new product applications for submission to the regulatory authorities in the three ICH regions. The agency intends to make the entire draft guidance available to the public for comment once all the components have been drafted.

DATES: Submit written comments on the initial components of the draft guidance by March 13, 2000.

ADDRESSES: Submit written comments on these components of the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. An electronic version of the components is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/publications.htm.

[1] In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), ICH guidance documents are now being called guidances, rather than guidelines.

FOR FURTHER INFORMATION CONTACT: For the safety components: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

For the quality components: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2570, and Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

For the efficacy sections: Robert J. DeLap, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2250.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Therapeutics Products Programme, and the European Free Trade Area.

The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. However, until recently, the application documents in the three ICH regions had not been examined, and there are significantly different requirements in each region for the composition and organization of product applications. As a result, three Expert Working Groups for Quality, Safety, and Efficacy have been developing harmonized guidance for the content and format of common sections of an application, called the "common technical document." Once finalized, the guidance entitled "M4 Common Technical Document" will describe an acceptable format and content for applications for human pharmaceuticals that, once supplemented with regional particulars, can be used with designated new products for submission to the regulatory authorities in the three ICH regions.

The ICH Steering Committee is overseeing the work on the common technical document through the use of milestones that reflect the stages of completion as work proceeds. A key goal is to ensure that the process for developing the common technical document is transparent. As part of this transparency, the ICH Steering Committee agreed, in October 1999, that the components of the draft guidance entitled "M4 Common Technical Document" be made available for public comment as they evolve. The components being made available by this notice are the product of the Quality, Safety, and Efficacy Expert Working Groups of the ICH. Received comments on these components will be considered by FDA and the appropriate expert working group as the draft guidance "M4 Common Technical Document" is finished. Once it is finalized, the guidance entitled "M4 Common Technical Document" will describe the format and content for a common technical document that, when supplemented by regional information, is suitable for submission to the regulatory authorities in the three ICH regions.

II. Organization of the Common Technical Document

The common technical document should be viewed as the common part of a submission for designated new products, presented in a modular fashion with summaries and tables. It is intended that one of the modules in the common technical document be reserved as a region-specific module.

The common technical document modular structure is envisioned as shown in the graphic at the end of this document and includes the following:

Components		
Module I	Regional Administrative Information	(*not part of Common Technical Document*)
Module II	IIA Executive Summaries	Quality (pending) Nonclinical (provided) Clinical (pending)
	IIB Nonclinical Summaries	IIB1 Written Summary (provided) IIB2 Tabulated Summary (provided)
	IIC Clinical Summaries, comprising written and tabulated summaries	(pending)
Module III	Quality	(provided—nine attachments pending)
Module IV	Nonclinical Data Study Reports	(provided)
Module V	Clinical Data Study Reports	(provided)

III. Components Being Made Available at This Time

In addition to the preamble to the draft guidance entitled "M4 Common Technical Document," and an organizational graphic, the following components are being made available in the docket and on the Internet at this time:

1. Module IIA—Nonclinical Executive Summary;
2. Module IIB—Nonclinical Written and Tabulated Summaries;
3. Module III—Quality table of contents and explanatory notes (nine attachments still pending);
4. Module IV—Nonclinical Data Study Reports table of contents and explanatory notes; and
5. Module V—Clinical Data Study Reports table of contents and explanatory notes.

These components detail the tables of contents for Modules III, IV, and V accompanied by explanatory notes. Module III will be supplemented further by a series of nine detailed attachments, which may be available in summer of 2000. (The exact content of Module III may evolve as the Expert Working

Group's discussions progress.) Modules IIA Clinical and Quality and IIC should also be available for consultation in summer 2000. Module IIA/B Nonclinical is being made available at this time.

The ICH Steering Committee and Expert Working Groups are requesting comments on the components being made available by this notice. Once all the components of the draft guidance entitled "M4 Common Technical Document" are ready, a compiled text will be released to complete step 2 of the ICH process. It is anticipated that this will occur in summer 2000.

These components of the draft guidance represent the agency's current thinking on the content and format of a common application for designated new products (i.e., the common technical document). These components do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

IV. Comments

Interested persons may, on or before March 13, 2000, submit to the Dockets Management Branch (address above) written comments on these components of the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The components of the draft guidance, made available by this notice, and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

BILLING CODE 4160-01-F

Diagram 1: Diagrammatic Representation of the ICH Common Technical Document

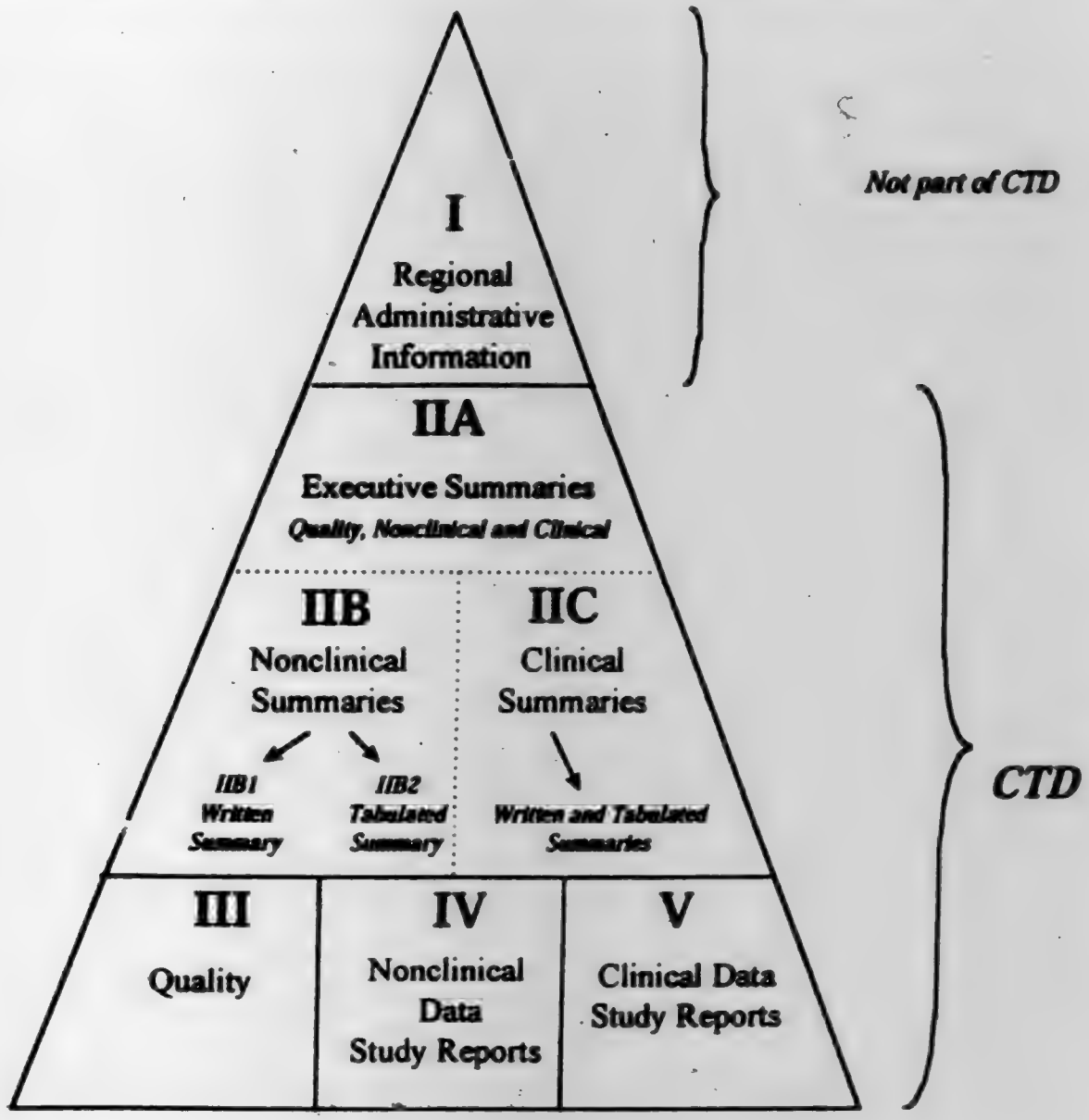

Dated: February 8, 2000.

Margaret Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3343 Filed 2–9–00; 11:32 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0053]

Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme; and Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft guidance documents entitled "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme;" and "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals." These draft guidance documents are neither final, nor are they in effect at this time. The review prioritization scheme guidance document sets forth factors FDA (we) would consider in categorizing a reprocessed single-use device (SUD) as high, moderate, or low risk. The enforcement priorities guidance document sets forth our priorities for various requirements based on the risk categorization of a device.

DATES: Submit written comments concerning either guidance by April 11, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies (on a 3.5 diskette) of the guidance documents entitled "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme" and "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax

your request to 301–443–8818. Submit written comments concerning these guidances to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Regarding "Reprocessing and Reuse Of Single-Use Devices: Review Prioritization Scheme," Barbara C. Zimmerman, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

Regarding "Enforcement Priorities For Single-Use Devices Reprocessed by Third Parties and Hospitals," Larry D. Spears, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4646.

SUPPLEMENTARY INFORMATION:

I. Background

The practice of reprocessing devices that are intended for single-use (SUD's) began in hospitals in the late 1970's. Since that time, the practice has become widespread. We have not regulated original equipment manufacturers (OEM's), third parties, and hospitals that engage in reprocessing SUD's in the same manner. In particular, to date, we have enforced existing premarket submission requirements only against OEM's.

In response to concerns raised by original equipment manufacturers and consumers about safety issues associated with reprocessing SUD's, in the **Federal Register** of November 3, 1999 (64 FR 59782), we announced a proposed strategy on reuse of SUD's. The essence of this proposed strategy was to regulate OEM's, third parties, and hospitals that reprocess SUD's in the same manner.

On December 14, 1999, we held a public meeting to provide the opportunity to interested parties to comment on its proposed strategy. We received comments on the proposed strategy from OEM's, third party reprocessors, health-care professionals, and other interested parties, both during and subsequent to this meeting.

One of the principle components of our proposed strategy was the establishment of agency enforcement priorities concerning regulatory requirements for third party and hospital reprocessors of SUD's. We proposed to prioritize its enforcement activities based on the degree of risk posed by the reprocessing. To accomplish this process, we proposed the following steps:

(1) Develop a list of commonly reused SUD's;

(2) Develop a list of factors to determine the degree of risks associated with reprocessing devices;

(3) Use that list of factors to divide the list of commonly reprocessed SUD's into three categories of risk—high, moderate, and low; and

(4) Develop priorities for enforcement of regulatory requirements for hospitals and third party reprocessors, based on the category of risk (high, moderate, and low).

We received many comments expressing concern that we were proposing to develop a new regulatory system for reprocessed SUD's that was outside of the current classification system under section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) for class I, II, and III devices. We clarified at the meeting that the categorization of devices by risk would be used solely in setting enforcement priorities; it would not entail a process outside of the current classification system.

Under the proposed strategy, devices would still be classified as class I, II, and III and still have premarket notification (510(k)) or premarket approval (PMA) requirements based on that classification. The proposed prioritization scheme would only apply to our enforcement priorities, it would not relate to established premarket submission requirements. For example, if we categorized a certain type of device as high risk under the prioritization scheme, it would mean that we would set the enforcement of regulatory requirements for that device as the highest priority. It would not affect the classification of the device or the type of marketing submission that would be required for that device. If the generic type of that device were class III, we would generally require an approved PMA application before marketing. If the generic type of device were class II, we would require clearance of a 510(k) before marketing. A high risk categorization, therefore, would affect the timing of our enforcement of these requirements rather than the requirements themselves.

We are issuing two companion draft guidance documents that would implement our proposed enforcement strategy:

(1) One draft guidance is entitled "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme." This draft guidance sets forth factors we would consider in categorizing a reprocessed device as high, moderate, or low risk, which we would use in setting our enforcement priorities. An appendix to the guidance lists commonly reprocessed SUD's, and lists what category of risk we believe a particular device falls within if reprocessed.

On December 9, 1999, we published an earlier version of the guidance document on our Internet site. The **Federal Register** document announcing this earlier draft guidance version was published on February 2, 2000 (65 FR 4985).

The revised draft guidance document incorporates comments we received at the December 14, 1999, public meeting and written submissions, and includes the risk category that we believe a particular device falls within if reprocessed. This revised guidance replaces the earlier version, however, it is a draft guidance that is not in effect at this time.

(2) The other draft guidance document is entitled "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals." This draft guidance document sets forth our priorities for enforcing various regulatory requirements, based on the categorization of a device, as described in the risk categorization guidance.

II. Significance of Guidance

These guidance documents represent the agency's current thinking on the factors we would consider in categorizing a reprocessed device as high, moderate, or low risk. They also identify how commonly reprocessed devices might be categorized and how this categorization affects the agency's regulatory priorities.

These guidance documents do not create or confer any rights for or on any person and do not operate to bind us or the public.

The agency has adopted Good Guidance Practices (GGP's), which set forth our policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). These guidance documents are issued as Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive these draft guidance documents via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1156– Reprocessing

and Reuse of Single-Use Devices: Review Prioritization Scheme) or (1029–Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of these guidance documents may do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance documents entitled "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme" and "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme" will be available at http://www.fda.gov/cdrh/ODE. "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals" will be available at http://www.fda.gov/cdrh/OC.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written comments regarding these draft guidance documents by April 11, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 8, 2000,

Margaret Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3345 Filed 2–9–00; 12:28 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2000.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 1, 2000; 9 a.m.–5 p.m.

Place: Parklawn Building,Conference Rooms G&H,5600 Fishers Lane,Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, March 1, 2000, from 9 a.m. to 5 p.m. Agenda items will include, but not be limited to: A presentation on the Government Accounting Office Report, a discussion on exemptions provided under state laws for philosophical and religious reasons in vaccinations; updates from the Department of Justice and the National Vaccine Program Office; and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on March 1, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–1896. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on March 1, 2000. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1896.

Agenda items are subject to change as priorities dictate.

Dated: February 4, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–3170 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Wasington, DC 20007.

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 18, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chase Room, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 27, 2000.

Time: 4:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3253 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Name of Committee: President's Cancer Panel.

Date: February 14, 2000.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review 1999 Annual Report and develop questions and agendas for future meetings in 2000.

Place: National Institutes of Health, 31 Center Drive, Building 31C, Room 4A48, Bethesda, MD 20892–2473 (Telephone Conference Call).

Contact Person: Maureen O'Wilson, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, (301) 496–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the requirement to finalize the 1999 Annual Report and establish future meeting agendas.

(Catalogue of Federal Domestic Assistance Program Nos. 93.293, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3250 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Mechanism of Human Bladder Carcinogenesis.

Date: February 28–March 1, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton Huntington Hotel, 1401 South Oak Knoll Avenue, Pasadena, CA 91106.

Contact Person: Michael B Small, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3251 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: March 23, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3258 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: March 24, 2000.

Open: 8:00 a.m. to 8:30 a.m.

Agenda: Reports from Institute staff.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Closed: 8:30 a.m. to 3:35 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Acting Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3248 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 23, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, N.W., Washington, DC 20008.

Contact Person: Stanley C. Oaks, Jr., Phd, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3249 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: National Institute of Allergy and infectious Diseases Special Emphasis Panel.

Date: March 1, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Room 2156, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Allen C. Stoolmiller, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3252 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amend (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 17, 2000.

Time: 3:30 pm to 5:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3254 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: March 2–3, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: March 9–10, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Room 6AS25S, 9000 Rockville Pike, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 23–24, 2000.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Hagan, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3255 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–25, R 13 Grant.

Date: February 9, 2000.

Time: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 30–00, R13 Review.

Date: February 10, 2000.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–31, Review of R44.

Date: February 25, 2000.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 24–00, Applicant interview P01.

Date: March 1–2, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–23, R01 Review.

Date: March 8, 2000.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–33, Review of grant.

Date: March 21, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–22, Review of R13.

Date: March 29, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3256 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDR Special Grants Review Committee, Review Comm.

Date: February 17–18, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3257 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 10, 2000.

Time: 4:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VR–02.

Date: February 14, 2000.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16, 2000.

Time: 1 p.m to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: February 21–22, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.

Date: February 21–22, 2000.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 22, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23–24, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Lung Biology and Pathology Study Section.

Date: February 23–24, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Preferred Residence, 950 24th St., NW, Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Cardiovascular Study Section.

Date: February 23–24, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802 Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: February 23–24, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Martin L. Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.

Date: February 23–25, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23–24, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: February 23, 2000.

Time: 11:00 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 23, 2000.

Time: 5 pm to 7 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sooja K. Kim, PhD, Chief, Nutritional and Metabolic Sciences Initial Review Group, Center for Scientific Review, Naitonal Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Initial Reveiw Group, Nutrition Study Section.

Date: February 24–25, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW, Washington, DC 20008.

Contact Person: Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.

Date: February 24–25, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.

Date: February 24–25, 2000.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 3.

Date: February 24–25, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: February 24–25, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.

Date: February 24–25, 2000.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Cell Development and Function Initial Review Group, International and Cooperative Projects Study Section.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sandy Warren, MPH, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 435–1220.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.

Date: February 24–25, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Bio-

Organic and Natural Products Chemistry Study Section.

Date: February 24–25, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, radtkem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 9 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street NW., Washington, DC 20007.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 9 am to 5 pm.

Agenda: To provide concept review of proposed grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, banner@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–26, 2000.

Time: 7 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Lee Rosen PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3259 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–01]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 Plaza, 451 7th Street, SW, Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative actions against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from October 1, 1998 through September 30, 1999.

1. Title I Lenders and Title II Mortgagees That Failed To Comply With HUD/FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

ACTION: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

CAUSE: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

TITLE I.—LENDERS WITHDRAWN

Lender name	City	State
AAMES HOME LOAN	LOS ANGELES	CA
ACCESSIBLE MORTGAGE CORP	PITTSFIELD	MA
ACCURATE REALTY SERVICES INC	ENCINO	CA
ADVANTAGE FINANCIAL INC	CORAL SPRINGS	FL
AFFINITY FINANCE LLC	WALNUT CREEK	CA
AHWATUKEE MORTGAGE INVESTMENT	MESA	AZ
AIR GUARD FEDERAL CREDIT UNION	SIOUX FALLS	SD
ALBANY SAVINGS BANK	ALBANY	NY
ALL FLORIDA MORTGAGE INC	DAVIE	FL
AMERICAN BANTRUST MTG SER CORP	PHOENIX	AZ
AMERICAN DISCOUNT MORTGAGE INC	SCOTTSDALE	AZ
AMERICAN FIDELITY MTG SERVICES INC	NAPERVILLE	IL
AMERICAN FINANCIAL MORTGAGE CORPORATION	KING OF PRUSSIA	PA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
AMERICAN HOME MTG AND ASSOCIATES LC	PLANTATION	FL
AMERICAN LENDING CORPORATION	PORT ST LUCIE	FL
AMERICAN LIBERTY CAPITAL CORP	NEWPORT BEACH	CA
AMERICAN MARINE BANK	WINSLOW	WA
AMERICAN MORTGAGE COMPANY	NORTH PLATTE	NE
AMERICAN MORTGAGE FIN SVCS INC	COVINGTON	KY
AMERICAN MORTGAGE-LINE INC	ORANGE	CA
AMERICAN NATIONAL BANK UNION SPRINGS	UNION SPRINGS	AL
AMERICAN PACIFIC FUNDING	COLTON	CA
AMERICAN UNITED LENDERS	MISSION VIEJO	CA
AMERICAS FIRST HOME MORTGAGE CO INC	TUCKER	GA
AMERIFIRST MORTGAGE CORP	HEMPSTEAD	NY
AMERILOAN INC	ENGLEWOOD	CO
AMERIMORT FINANCIAL CORPORATION	SOUTH EL MONTE	CA
AMERIVEST MORTGAGE CORPORATION	TAMPA	FL
AMERUS MORTGAGE INC	WEST DES MOINES	IA
ANEW MORTGAGE INC	BAKERSFIELD	CA
ANTELOPE VALLEY MORTGAGE CO INC	LANCASTER	CA
APEX FINANCIAL GROUP INC	STOCKTON	CA
ASSOCIATED BANK NA	NEENAH	WI
ASSOCIATED LENDERS INC	SAN DIEGO	CA
ATLANTIC RICHFIELD CREDIT UN	PASADENA	TX
ATM MORTGAGE CORPORATION	SACRAMENTO	CA
AURORA NATIONAL BANK	AURORA	IL
AVALON LENDING GROUP INC	ALISO VIEJO	CA
BANCO POPULAR NA	LOS ANGELES	CA
BANK OF ASHLAND	ASHLAND	KY
BANK OF BUFFALO	COCHRANE	WI
BANK OF LAKEWOOD	LAKEWOOD	CA
BANK OF PADEN CITY	PADEN CITY	WV
BANK OF POCAHONTAS	POCAHONTAS	AR
BANK OF WHITMAN	COLFAX	WA
BANKERS MORTGAGE CORPORATION	LOUISVILLE	KY
BANKERS MORTGAGE LENDING GR	DAVIE	FL
BARRON FINANCIAL SERVICE INC	IRVINE	CA
BAS FINANCIAL GROUP INC	FRESNO	CA
BC GROUP INC	ORANGE	CA
BCC CORPORATION	LOUISVILLE	KY
BETHESDA HOSPITAL FEDERAL C U	CINCINNATI	OH
BLAINE STATE BANK	BLAINE	MN
BLUE CHIP MORTGAGE BANKERS CORP	WESTBURY	NY
BLUEFIELDS INTERNATIONAL	DOWNEY	CA
BOATMEN'S NATIONAL BANK CAPE GIRARDEAU	CAPE GIRARDEU	MO
BOATMEN'S NATIONAL BANK HOT SPRINGS	HOT SPRINGS	AR
BOATMEN'S NATIONAL BANK S ARKANSAS	CAMDEN	AR
CAL-STATE LENDERS INC	ANAHEIM	CA
CALIFORNIA FUNDERS MORTGAGE	RANCHO CUCAMONGA	CA
CAPITAL BANK	CARLSBAD	CA
CAROLINA MORTGAGE BROKERS	GREENSBORO	NC
CENTRAL NATIONAL BJ CANAJOHARIE	CANAJOHARIE	NY
CENTRAL WEST END BANK, FSB	ST LOUIS	MO
CENTURY BANK FSB	SANTA FE	NM
CENTURY FINANCIAL GROUP INC	NEWPORT BEACH	CA
CERTIFIED MORTGAGE BANKERS INC	CORAL GABLES	FL
CHEMICAL BANK BAY AREA	BAY CITY	MI
CHEMICAL BANK MICHIGAN	CLARE	MI
CHEMICAL FINANCIAL SER COR LTD	CLEVELAND	OH
CHESAPEAKE MORTGAGE SERV INC	COLUMBIA	MD
CITIFED DIVERSIFIED INC	SANTA ANA	CA
CITIZENS NATIONAL BANK	HOUSTON	TX
COASTLAND MORTGAGE CORPORATION	CARSON	CA
COLORADO CAPITAL FUNDING INC	IRVINE	CA
COMERICA BANK	DETROIT	MI
COMMERCE BANK PA	DEVON	PA
COMMERCIAL FINANCIAL SERVICES INC	TULSA	OK
COMMERCIAL TRUST AND SAVINGS	MITCHELL	SD
COMMERICIAL FEDERAL BANK	OMAHA	NE
COMMUNITY FIRST BANK	APPLETON CITY	MO
COMMUNITY FIRST NATIONAL BANK	CHEYENNE	WY
COMSTOCK BANK	RENO	NV
CONCORD MORTGAGE COMPANY	PHOENIX	AZ
CONSUMER FUNDING INC	RIVERSIDE	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
CONTINENTAL HOME FUNDING CORP	MIAMI	FL
CORE FINANCIAL GROUP INC	COSTA MESA	CA
CORNERSTONE COMMERCIAL MTG LNS	MESA	AZ
CORNERSTONE LENDING CORPORATION	LOS ANGELES	CA
CORONA MORTGAGE	CORONA	CA
CPAC FINANCIAL CORPORATION	CANYON LAKE	CA
CREDIT MORTGAGE INC	SAN DIEGO	CA
CROSSROADS FUNDING CORP	COVINA	CA
CUSTOM FINANCIAL SERVICES	LONGWOOD	FL
CUYAHOGA SAVINGS ASSN	CLEVELAND	OH
D AND E MORTGAGE CORP	TAMPA	FL
DACOTAH BANK	ABERDEEN	SD
DENNIS JOSLIN COMPANY LL LLC	DYERSBURG	TN
DOMINION FINANCIAL SERVICES INC	LAKE WORTH	FL
DULANEY NATIONAL BANK	MARSHALL	IL
DYNAMIC FINANCIAL CORP	HIALEAH	FL
EASTERN BANK	LYNN	MA
EASTERN RESIDENTIAL MORTGAGE	BALTIMORE	MD
EASTLAND MORTGAGE CORPORATION	MISSION VIEJO	CA
EMPIRE MORTGAGE CORPORATION	MEMPHIS	TN
ENVOY CAPITAL CORP	TORRANCE	CA
EPOCH ENTERPRISES INC	SOLANA BEACH	CA
EQUITRUST MORTGAGE CORPORATION	GULFPORT	MS
ERIE SHORE MORTGAGE	ELYRIA	OH
EVERGREEN MORTGAGE CORPORATION	GRAND RAPIDS	MI
EXCEL BANK	EDINA	MN
EXCHANGE BANK	MILLEDGEVILLE	GA
EZ LENDING INC	FT LAUDERDALE	FL
F AND M BANK MASSANUTTEN NA	HARRISONBURG	VA
FAIRMONT FEDERAL CREDIT UNION	FAIRMONT	WV
FAITH FINANCIAL GROUP	MIAMI LAKES	FL
FCM CORPORATION DBA FINANCIAL CENTER MTG	NEWHALL	CA
FEDERAL FINANCE CORPORATION	CHICAGO	IL
FEDERAL MORTGAGE FUNDING	LEMON GROVE	CA
FEDERAL STANDARD MTG BKING CORP	LITTLE NECK	NY
FEDERATED MORTGAGE COMPANY INC	COVINA	CA
FIDELITY BOND AND MORTGAGE COMPANY.	BLUE BELL	PA
FINANCE PLUS MORTGAGE CORP	TEMECULA	CA
FINANCIAL SERV MORTGAGE CORP	IRVINE	CA
FIRST ALLIANCE MORTGAGE COMPANY	BLOOMFIELD HILLS	MI
FIRST BANK	CREVE COEUR	MO
FIRST CAPITAL FINANCIAL CORP	REDONDO BEACH	CA
FIRST CENTURY BANK NA	BLUEFIELD	WV
FIRST CHOICE BANK	GREELEY	CO
FIRST CLASS AMERICAN CU	FORT WORTH	TX
FIRST COMMERCIAL BANK NA	LITTLE ROCK	AR
FIRST FEDERAL SAVINGS BANK-COLORADO	LAKEWOOD	CO
FIRST FINANCIAL MORTGAGE CORP	AKRON	OH
FIRST GOVERNMENT MORTGAGE AND INV CORP	LANDOVER	MD
FIRST GUARANTY MORTGAGE CORPORATION	MCLEAN	VA
FIRST HOME SAVINGS BANK	PENNS GROVE	NJ
FIRST ILLINOIS BANK	E ST LOUIS	IL
FIRST INVESTORS MORTGAGE CORP	MIAMI	FL
FIRST MORTGAGE GROUP LLC	MARIETTA	GA
FIRST NATIONAL BANK	KILLEEN	TX
FIRST NATIONAL BANK	BOWBELLS	ND
FIRST NATIONAL BANK	GLEN HEAD	NY
FIRST NATIONAL BANK	CRYSTAL FALLS	MI
FIRST NATIONAL BANK	TEMPLE	TX
FIRST NATIONAL BANK	PARSONS	KS
FIRST NATIONAL BANK	MISSOURI CITY	TX
FIRST NATIONAL BANK	LAS ANIMAS	CO
FIRST NATIONAL BANK	WILLIAMSOM	WV
FIRST NATIONAL BANK CONWAY	CONWAY	AR
FIRST NATIONAL BANK EVERGREEN PARK	EVERGREEN PARK	IL
FIRST NATIONAL BANK GRAPEVIEW	GRAPEVINE	TX
FIRST NATIONAL BANK IN CANNON FALLS	CANNON FALLS	MN
FIRST NATIONAL BANK OF CENTRAL FLORIDA	LONGWOOD	FL
FIRST NATIONAL BANK-CHICAGO	CHICAGO	IL
FIRST POTOMAC MORTGAGE CORPORATION	FAIRFAX	VA
FIRST PREFERENCE MGT CORP	BALTIMORE	MD
FIRST QUALITY FUNDING INC	WALNUT CREEK	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
FIRST SAVINGS BANK SLA	BAYONNE	NJ
FIRST SECURITY MORTGAGE CORP	COLUMBIA	SC
FIRST SELECT FINANCIAL INC	DOWNEY	CA
FIRST STATE BANK	HONEY GROVE	TX
FIRST STATE BANK	PARAMOUNT	CA
FIRST STORY MORTGAGE CORPORATION	RANCHO CUCAMONGA	CA
FIRST TOWN MORTGAGE CORPORATION	ATLANTA	GA
FIRST TRUST FINANCIAL INC	RANDOLPH	MA
FIRST TRUST OF ILLINOIS	CHICAGO	IL
FIRSTAR BANK NA	OWENSBORO	KY
FIRSTPLUS FINANCIAL INC	DALLAS	TX
FIRSTPLUS INVESTMENT CORP	DALLAS	TX
FIRSTRUST SAVINGS BANK	PHILADELPHIA	PA
FLAGSHIP FEDERAL SAVINGS BANK	SAN DIEGO	CA
FREEDOM LENDING CENTER INCORPORATED	CASSELBERRY	FL
FREMONT INVESTMENT AND LOAN	ANAHEIM	CA
FTF MORTGAGE CORPORATION	IRVINE	CA
FULLERTON MORTGAGE ESCROW CO	OCEANSIDE	CA
GELT FINANCIAL CORPORATION	SOUTHHAMPTON	PA
GERING STATE BANK AND TRUST CO	GERING	NE
GLEN ROCK SAVINGS AND LOAN ASSOC	GLEN ROCK	NJ
GLENDORA MORTGAGE INC	GLENDORA	CA
GML MORTGAGE INC	SACRAMENTO	CA
GOLD COAST FUNDING GROUP INC	DAVIE	FL
GOLDEN INVESTMENTS OF AMERICA INC	SAN MARINO	CA
GOLDENWEST CREDIT UNION	OGDEN	UT
GRACO EMPLOYEES CREDIT UNION	MINNEAPOLIS	MN
GREAT FIVE PERCENT REAL EST CO	COVINA	CA
GREAT PLAINS PROVISIONERS CR U	OMAHA	NE
GUARANTY FEDERAL SAVINGS BANK	DALLAS	TX
GULF FINANCIAL SERVICES INC	BLAIRSVILLE	GA
H AND R MORTGAGE INC	BAKERSFIELD	CA
HALLMARK GOVERNMENT MORTGAGE INC	BELLEVUE	WA
HARBOR FINANCIAL MORTGAGE CORP	HOUSTON	TX
HARBOR VIEW MORTGAGE INC	NEWPORT BEACH	CA
HEALTH EMPLOYEES FEDERAL CR UN	ALBANY.	NY
HERITAGE BANK NA	WILLMAR	MN
HERSHEY STATE BANK	HERSHEY	NE
HOLMGREN AND ASSOCIATES	OAKLAND	CA
HOME LOAN ASSISTANCE CENTER INC	ALTAMONT SPRINGS	FL
HOME LOANS INC	MIAMI	FL
HOME MORTGAGE INC	PHOENIX	AZ
HOMEOWNERS MORTGAGE AND EQUITY INC	AUSTIN	TX
HOMESTEAD REAL ESTATE FINANCING INC	SAN RAMON	CA
HURON NATIONAL BANK	ROGERS CITY	MI
IDEAL FINANCIAL CORPORATION	ELLICOTT CITY	MD
IMAGE MORTGAGE INC	TEMECULA	CA
INDEPENDENT CONSUMER MTG CORP	GAINESVILLE	GA
INTERCOASTAL MORTGAGE CO AND ASSOC INC	ORLANDO	FL
JANDEL GROUP LLC	SCOTTS DALE	AZ
JONATHAN FUNDING GROUP INC	MARINA DEL REY	CA
JP MORTGAGE INC	NORTH MIAMI	FL
JUDITH O SMITH MORTGAGE GROUP INC	FORT WORTH	TX
KENNETT NATIONAL BANK	KENNETT	MO
KENNY FINANCIAL SERVICES INC	WEST CHESTER	PA
KERMIT STATE BANK	KERMIT	TX
KEY MORTGAGE CORPORATION	EDINA	MN
KEYBANK NA	SEATAC	WA
KEYBANK NATIONAL ASSOCIATION	FORT COLLINS	CO
KEYSTONE MORTGAGE CORP INC	KEYSTONE	WV
LAD FINANCIAL.	SAN DIEGO	CA
LBVAMC FEDERAL CREDIT UNION	LONG BEACH	CA
LEHMAN BROTHERS HOLDINGS INC	NEW YORK	NY
LEXINGTON SAVINGS BANK	LEXINGTON	MA
LIBERTY FINANCIAL R E FUNDING CORP	CLEARWATER	FL
LIDD ENTERPRISES INC	PASADENA	CA
LOAN SOURCE ONE FUNDING INC	WALNUT	CA
MAGNUM CAPITAL GROUP INC	MONARCH BEACH	CA
MARATHON HOME LENDING	TUSTIN	CA
MARICOPA SANTA FE FED C U	PHOENIX	AZ
MASTERS FUNDING GROUP INC	RIVERSIDE	CA
MAXIMA FINANCIAL GROUP	TEMPE	AZ

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
MEDALLION MORTGAGE CO	SCOTLAND	CT
MELLON BANK DE NA	WILMINGTON	DE
MERCANTILE BANK ARKANSAS	NORTH LITTLE ROCK	AR
METRO MORTGAGE CORPORATION	COLUMBIA	SC
METROPOLITAN FINANCIAL INC	ORANGE	CA
METROPOLITAN HOME MORTGAGE CORP OF NY	EAST NORWICH	NY
MICAL MORTGAGE	SAN DIEGO	CA
MICHIGAN NATIONAL BANK	FARMINGTON HILLS	MI
MIDAMERICA BANK NORTH	PHILLIPS	WI
MIDAMERICA BANK STOUGHTON	STOUGHTON	WI
MIDWEST AMERICA FINANCIAL CORPORATION	CHICAGO	IL
MINNWEST BANK	DAWSON	MN
MISSION NATIONAL BANK	SAN FRANCISCO	CA
MONEYLINE FINANCIAL SERVICES INC	ST LOUIS	MO
MORNING STAR REAL EST AND MTG FIN CORP	MASSAPEQUA	NY
MORTGAGE CENTER CORPORATION	MILLBRAE	CA
MORTGAGE ENTERPRISES INC	LYONS	IL
MORTGAGE FEDERAL CORPRORATION	CLEVELAND	OH
MORTGAGE NETWORK INC	SALT LAKE CITY	UT
MORTGAGE SERVICE CENTER OF SOUTH FLORIDA	TAMARAC	FL
MOUNTAIN NATIONAL BANK	WOODLAND PARK	CO
MUNDACA FINANCIAL SERVICES LLC	FRANKLIN	TN
MUNICIPAL CREDIT UNION	NEW YORK	NY
MUTUAL FEDERAL SAVINGS BANK	ATLANTA	GA
MUTUAL SAVINGS ASSO	LEAVENWORTH	KS
NATIONAL BANK OF CALIFORNIA.	LOS ANGELES	CA
NATIONAL EQUITY CORPORATION	IRVINE	CA
NATIONAL HOME MORTGAGE BANKING CORP	HAUPPAUGE	NY
NATIONAL SECURITY BANK	PORTLAND	OR
NAVIGATION BANK	HOUSTON	TX
NBD BANK NA	DETROIT	MI
NEIGHBORHOOD HOUSING SERVICES	NEW YORK	NY
NEVADA FEDERAL FINANCIAL CORP	LAS VEGAS	NV
NEW HOMES MORTGAGE INC	SHERMAN OAKS	CA
NOREAST MORTGAGE CORPORATION	ONTARIO	CA
NORTH FORK FINANCIAL INC	NEWPORT BEACH	CA
NORTH PACIFIC BANK	TACOMA	WA
NORTH VIEW MORTGAGE INC	POWAY	CA
NORTHERN FINANCIAL MTG CO.	CHAGRIN FALLS	OH
NORTHERN STATES POWER ST PAUL CU	SAINT PAUL	MN
NORWEST BANK TEXAS NA	SAN ANTONIO	TX
OLD REDWOOD MORTGAGE COMPANY.	SANTA ROSA	CA
ON-LINE MORTGAGE EXPRESS	UPLAND	CA
OREGON FEDERAL CREDIT UNION	COQUILLE	OR
OREGONIAN FEDERAL CREDIT UN	PORTLAND	OR
ORNL FEDERAL CREDIT UNION	OAK RIDGE	TN
P F G INC	ENCINO	CA
PACIFIC BAY BANK	SAN PABLO	CA
PACIFIC EMPIRE FUNDING	LAKE FOREST	CA
PACIFIC MUTUAL FUNDING INC	BREA	CA
PALACE CITY FEDERAL C U	MITCHELL	SD
PARISH BANK TRUST COMPANY	MOMENCE	IL
PENN FEDERAL SAVINGS BANK	WEST ORANGE	NJ
PENNIES TO MILLIONS INC	UPLAND	CA
PEOPLES MORTGAGE CORPORATION	LIVINGSTON	NJ
PERRY STATE BANK	PERRY	MO
PHOENIX HOME LENDING INC	TEMPE	AZ
PIONEER ENTERPRISE CORPORATION	SUGAR LAND	TX
PIONEER FINANCIAL INC	CHATTANOOGA	TN
PIONEER MORTGAGE INC	HADDON HEIGHTS	NJ
PIONEER SAVINGS AND LOAN ASSN FSLA	IRVINE	CA
PLATINUM MORTGAGE INC.	ROSEVILLE	MN
PLAZA CAPITAL CORP	SANTA FE	NM
POLLARI WRIGHT INC	SAN JOSE	CA
PREFERRED CREDIT CORPORATION	IRVINE	CA
PREFERRED FUNDING CORP	FORT LAUDERDALE	FL
PRESERV FINANCIAL INC	DENVER	CO
PRESTIGE FINANCIAL SVCS CORP	DEERFIELD BEACH	FL
PRIME FINANCIAL NETWORK INC	LA JOLLA	CA
QUALITY FINANCING CORP	CHICAGO	IL
QUEEN CITY FEDERAL SAVINGS BANK	VIRGINIA	MN
R K MAGUIRE INC	DANA POINT	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
REFCO MORTGAGE AND FINANCIAL SER INC	CHICAGO	IL
REI INC	ORANGE	CA
REPUBLIC MORTGAGE CORPORATION	NAMPA	ID
RES-COM MORTGAGE CORP	NILES	IL
RESIDENTIAL MORTGAGE NETWORK INC	CEDAR RAPIDS	IA
REV CORP	NORTHBROOK	IL
RICK BAILEY MORTGAGE UNLIMITED INC	ARCATA	CA
ROXBURY-HIGHLAND CO-OPERATIVE	JAMAICA PLAIN	MA
RUSHMORE STATE BANK	RAPID CITY	SD
S MORTGAGE CORPORATION	FAIR OAKS	CA
SACVAL MORTGAGE CORPORATION	CITRUS HEIGHTS	CA
SAND DOLLAR MORTGAGE SER INC	CHINO	CA
SASCO INC	ENCINO	CA
SECURITY BANK	MADISON	SD
SECURITY BANK AND TRUST CO.	LAWTON	OK
SECURITY FIRST FUNDING	COVINA	CA
SECURITY MORTGAGE CORP OF MISS	JACKSON	MS
SOCIETY FINANCIAL CORP	FARMINGTON	CT
SOUTH PLAINS FEDERAL CU	LUBBOCK	TX
SOUTH TEXAS NATIONAL BANK	LAREDO	TX
SOUTHERN STATES FUNDING	WINTER PARK	FL
SOUTHFORK MORTGAGE COMPANY CORP	RIVERSIDE	CA
SOUTHWEST BENEFICIAL FIN INC	DALLAS	TX
SOUTHWEST KANSAS NATIONAL BANK	ULYSSES	KS
SOVEREIGN BANK FSB	WYOMISSING	PA
SPARTAN MORTGAGE INC	SAVANNAH	GA
SPECTRUM MORTGAGE CORP	ENGLEWOOD	CO
STALLION CAPITAL INC	RANCHO CUCAMONGA	CA
STATE CAPITOL FEDERAL CU	SAINT PAUL	MN
STATE CENTER CREDIT UNION	FRESNO	CA
STATEWIDE FUNDING INC	WOODLAND HILLS	CA
STATEWIDE VENTURES	GRASS VALLEY	CA
STELLAR INVESTMENTS FINAN SERV	BREA	CA
STUART-WRIGHT MTG FUNDING CORP	MURRAY	UT
SULLIVAN AND MOCK CORP OF-NEV	LAS VEGAS	NV
SUN COUNTRY BANK	APPLE VALLEY	CA
SUN HARBOR MORTGAGE INC	SAN DIEGO	CA
SUN PACIFIC FUNDING INC	SANTA ANA	CA
SUNTRUST FINANCIAL CORP	HOLLYWOOD	FL
SUNWEST BANK OF SANTA FE	SANTA FE	NM
TAMMAC CORPORATION	WILKES-BARRE	PA
TCS MORTGAGE INC	SAN DIEGO	CA
TENNESSEE BANK AND TRUST	MEMPHIS	TN
THE FEDERAL SAVINGS BANK	WALTHAM	MA
THE FIRST NATIONAL BANK	PORTAGE	WI
THE FIRST NATIONAL BANK	LA JARA	CO
THE-BANK-FIRST CITIZENS BANK	CLEVELAND	TN
THE-NORTHERN TRUST COMPANY	CHICAGO	IL
TMMG INC	LAGUNA HILLS	CA
TOOELE FEDERAL CREDIT UNION	TOOELE	UT
TREASURE COAST MORTGAGE CORP	PORT ST LUCIE	FL
TREO FUNDING	LAKE OSEWGO	OR
TURNER MORTGAGE CORPORATION	MIAMI LAKES	FL
U S EMPLOYEES CREDIT UNION	HOUSTON	TX
U S MORTGAGE INC	LITTLE ROCK	AR
UBS MORTGAGE FINANCE INC	NEW YORK	NY
UNIFED MORTGAGE CORP	ESCONDIDO	CA
UNION FEDERAL MORTGAGE INC	IRVINE	CA
UNION PLANTERS BANK MID-MO.	COLUMBIA	MO
UNITED HOME LENDING SERVICES INC	CHARLESTON	WV
UNITED LENDING COMPANIES INC	RAMSEY	NJ
UNIVERSAL MORTGAGE INC	JACKSONVILLE	FL
UNIVERSITY MORTGAGE INC	CHEVY CHASE	MD
US CREDIT CORP	AURORA	CO
US LENDS	ORANGE	CA
US MORTGAGE CONSULTANTS INC	LAS VEGAS	NV
USA MORTGAGE CORP	ELMWOOD PARK	IL
VANGUARD LENDING GROUP	ATASCADERO	CA
VILLA PARK TRUST AND SAVINGS	VILLA PARK	IL
W D WICKLEY INC	RANCHO CUCAMONGA	CA
WALL STREET FUNDONG GROUP	RANCHO CUCAMONGA	CA
WEALTHWISE INVESTMENT CORP	MILPITAS	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
WESTERN CAPITAL FUNDING INC	WILDOMAR	CA
WESTERN HOME MORTGAGE CORP	IRVINE	CA
WESTERN NATIONAL FUNDING INC	NEWPORT BEACH	CA
WESTMINSTER MORTGAGE CORPORATION	ATLANTA	GA
WESTSTAR FINANCIAL GROUP INC	SAN DIEGO	CA
WESTWIND FINANCIAL CORPORATION	HUNTINGTON BEACH	CA
WOHLETZ ENTERPRISES INC	KIRKLAND	WA

TITLE II.—MORTGAGEES WITHDRAWN

Mortgagee name	City	State
A AND C MORTGAGE CORPORATION	NORTH CHARLESTON	SC
A B C BANK	CHICAGO	IL
A ONE MORTGAGE CORP	MIAMI	FL
A–PAN–AMERICAN MORTGAGE GROUP	CHICAGO	IL
AAACTION MORTGAGE INC	FREMONT	CA
AAMBASSADOR MORTGAGE SVCS CORP	PALOS HEIGHTS	IL
ABSOLUTE ACCEPTANCE FINANCIAL CO LLC	SOUTHFIELD	MI
ABSOLUTE FINANCIAL CORPORATION	BLUE BELL	PA
ACACIA MORTGAGE	GREENWOOD VILLAGE	CO
ACCENT MORTGAGE INC	ZACHARY	LA
ACCURATE REALTY SERVICES INC	ENCINO	CA
ADAM MORGTAGE COMPANY	BRYAN	TX
ADVANCED FINANCIAL INC	ARVADA	CO
ADVANCED HOME LOAN INC	ROUND ROCK	TX
ADVANTAGE FINANCIAL FUNDING CORPORATION	EXTON	PA
ADVANTAGE FINANCIAL INC	TAMATAC	FL
ADVANTAGE REAL ESTATE LOANS INC	ARROYO GRANDE	CA
AHMANSON MORTGAGE COMPANY	TIGARD	OR
AJA FINANCIAL LLC	MIDDLESEX	NJ
ALL STATE MORTGAGE SERVICES INC	COLORADO SPRINGS	CO
ALLEGIANCE MORTGAGE CORP LLC	ATLANTA	GA
ALLIED FINANCIAL SERVICES INC	BIRMINGHAM	AL
ALPHA CAPITAL FINANCIAL INC	WOODLAND HILLS	CA
AMERICAN BANKER DIVERS LENDING	LA CRESCENTA	CA
AMERICAN CHOICE MORTGAGE CORP	MIAMI	FL
AMERICAN EAGLE LENDING SRVS	PROVO	UT
AMERICAN EAGLE MORTGAGE CORP	CLEVELAND	OH
AMERICAN FEDERAL BANK FSB	GREENVILLE	SC
AMERICAN FINANCIAL MORTGAGE CORP	KING OF PRUSSIA	PA
AMERICAN HOME FINANCE INC	PALATINE	IL
AMERICAN HOME LENDERS CORP	SAN MARCOS	CA
AMERICAN LENDING CORPORATION	PORT ST LUCIE	FL
AMERICAN MONEY MARKET INC	HIALEAH	FL
AMERICAN MORTGAGE—FINANCIAL SVCS INC	COVINGTON	KY
AMERICAN MORTGAGE INV SVCS INC	POOLER	GA
AMERICAN MORTGAGE–LINE INC	ORANGE	CA
AMERICAN NATIONAL MORTGAGE CORP	TOTOWA	NJ
AMERICAN NATIONAL SAVINGS ASSO	BALTIMORE	MD
AMERICAN PACIFIC FUNDING	COLTON	CA
AMERICAN RESIDENTIAL FUNDING INC	SANTA ANA	CA
AMERICAN UNITED LENDERS INC	MISSION VIEJO	CA
AMERIFIRST MORTGAGE CORP	HEMPSTEAD	NY
AMPHIBIOUS BASE FEDERAL CR UNION	NORFOLK	VA
AMSTERDAM SAVINGS BANK	AMSTERDAM	NY
APEX MORTGAGE LLC	OREM	UT
APLEND COMPANY	BROOKS	ME
ARBORETUM MORTGAGE CORP	SEATTLE	WA
ARKANSAS FIDELITY MORTGAGE CORP	LITTLE ROCK	AR
ASPEN MORTGAGE BROKERS LC	OGDEN	UT
ASSOCIATED LENDERS INC	SAN DIEGO	CA
ASSURANCE CAPITAL MORTGAGE LLC	TULSA	OK
ATLANTIC STATES FINANCIAL INC	TAMARAC	FL
ATLANTIC TRUST MORTGAGE	MIAMI	FL
BANCO POPULAR NA	LOS ANGELES	CA
BANCTRUST INC	CHICAGO	IL
BANK OF ARIZONA	SCOTTSDALE	AZ
BANK OF ASHLAND	ASHLAND	KY
BANK OF BELFAST—MARSHALL CNTY	LEWISBURG	TN
BANK OF COLORADO WESTERN SLOPE	GRAND JUNCTION	CO

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
BANK OF FRANKLIN	MEADVILLE	MS
BANK OF GWINNETT COUNTY	LAWRENCEVILLE	GA
BANK OF MATTESON	MATTESON	IL
BANK OF NEW MEXICO ALBUQUERQUE	ALBUQUERQUE	NM
BANK OF SANTA MARIA	SANTA MARIA	CA
BANK OF SUMNER	SUMNER	WA
BANK OF UNION	MONROE	NC
BANK OF–SOUTH WINDSOR	SOUTH WINDSOR	CT
BANKERS AFFILIATED MORTGAGE	RIVERSIDE	CA
BANKERS DIRECT MORTGAGE CORP	WEST PALM BEACH	FL
BANKERS MUTUAL MORTGAGE INC	NEWPORT BEACH	CA
BANKERS SAVINGS BANK	CORAL GABLES	FL
BANKFIRST	KNOXVILLE	TN
BCC CORPORATION INC	LOUISVILLE	KY
BELFORD PARTNERS INC	DENVER	CO
BELMONT SAVINGS BANK	BELMONT	MA
BENCHMARK FED SAV BANK	CINCINNATI	OH
BENEFICIAL NATIONAL BANK	WILMINGTON	DE
BENEFIT MORTGAGE CORPORATION	CAMP SPRINGS	MD
BERKSHIRE LIFE INSURANCE CO	PITTSFIELD	MA
BEST MORTGAGE CORPORATION	HARKER HEIGHTS	TX
BEVERLY NATIONAL BANK	WILMINGTON	IL
BLUE CHIP MORTGAGE BANKERS CORP	WESTBURY	NY
BOATMEN'S FIRST NATIONAL BANK–AMARILLO	AMARILLO	TX
BOATMEN'S NATIONAL BANK BATESVILLE	BATESVILLE	AR
BOATMEN'S NATIONAL BANK CAPE GIRARDEAU	CAPE GIRARDEAU	MO
BOATMEN'S NATIONAL BANK N CENTRAL AR	HARRISON	AR
BOATMEN'S RIVER VALLEY BANK	LEXINGTON	MO
BROWARD SCHOOLS DIST CU	LAUDERHILL	FL
BROWNSVILLE DEPOSIT BANK	BROWNSVILLE	KY
BUCKS COUNTY MORTGAGE CORPORATION	NEWTON	PA
BUY OWNER MORTGAGE COMPANY	TAMPA	FL
CAL PLAZA MORTGAGE COMPANY	SAN DIEGO	CA
CALIFORNIA CAPITAL MORTGAGE	SACRAMENTO	CA
CALIFORNIA FUNDERS MTG	ONTARIO	CA
CAPRI MORTGAGE CAPITAL LLC	CHICAGO	IL
CAREY KRAMER CO N FL	TAMPA	FL
CAROLD CORP	NEW YORK	NY
CAROLINA CAPITAL MARKETS LLC	COLUMBIA	SC
CAYUGA MORTGAGE COMPANY	ITHACA	NY
CBS MORTGAGE CORP	HOUSTON	TX
CERRITOS VALLEY BANK	NORWALK	CA
CHANNEL ISLANDS NATIONAL BANK	OXNARD	CA
CHASE MORTGAGE SERVICES INC	TAMPA	FL
CHEMICAL BANK BAY AREA	BAY CITY	MI
CHEYENNE WESTERN BANK	ASHLAND	MT
CHINA TRUST BANK NEW YORK	NEW YORK	NY
CITIFED DIVERSIFIED INC	SANTA ANA	CA
CITIZENS BANK	COLLIERVILLE	TN
CITIZENS BANK	CARTHAGE	TN
CITIZENS BANK AND TRUST CO	HUTCHINSON	MN
CITIZENS CORPORATION MORTGAGE	FRANKLIN	TN
CITIZENS NATIONAL BANK	TELL CITY	IN
CITY NATIONAL BANK OF PITTSBURG	PITTSBURG	KS
CLAYTON NATIONAL INC	SHELTON	CT
COASTAL FEDERAL MORTGAGE CO	MANALAPAN	NJ
COASTAL FEDERAL MORTGAGE INC	MYRTLE BEACH	SC
COASTAL MORTGAGE COMPANY	PARMA	OH
COASTLAND MORTGAGE CORPORATION	CARSON	CA
COLOMBO SAVINGS BANK FSB	BETHESDA	MD
COLONIAL BANK ST LOUIS	DES PERES	MO
COLORADO CAPITAL FUNDING CORP	ENGLEWOOD	CO
COMMERCIAL BANK	SALEM	OR
COMMERCIAL BANK OF NEVADA	LAS VEGAS	NV
COMMERCIAL FINANCIAL SERVICES INC	TULSA	OK
COMMONPOINT MORTGAGE COMPANY	KENTWOOD	MI
COMMUNITY BANK	STAUNTON	VA
COMMUNITY FEDERAL SAVINGS ALA	TUPELO	MS
COMMUNITY FIRST MORTGAGE INC	SAN LUIS OBISPO	CA
COMMUNITY FIRST NATIONAL BANK	CHEYENNE	WY
COMMUNITY LENDERS GROUP	DULUTH	GA
COMMUNITY NATIONAL BANK NJ	MARLTON	NJ

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
COMPASS BANK	SAN ANTONIO	TX
COMPASS BANK FSB	FORT WALTON BEACH	FL
CONCEPT CAPITAL MORTGAGE CORPORATION	CANYON COUNTRY	CA
CONSUMER DIRECT MORTGAGE INC	DALLAS	TX
CONSUMERS CHOICE MORTGAGE CORP	DELRAN	NJ
CONTINENTAL GENERAL MORTGAGE	BALTIMORE	MD
CONTINENTAL HOME FUNDING CORP	MIAMI	FL
CORE FINANCIAL GROUP INC	COSTA MESA	CA
CORNERSTONE LENDING CORP	LOS ANGELES	CA
CREDIT UNION MORTGAGE COMPANY	PORTAGE	MI
CRESCENT CREDIT UNION	BROCKTON	MA
CROSS COUNTY FEDERAL SAVINGS BANK	MIDDLE VILLAGE	NY
CROSSROADS FUNDING CORP	COVINA	CA
D AND E MORTGAGE CORP	TAMPA	FL
DALLAS PLANNING GROUP	WAXAHACHIE	TX
DALLAS POSTAL CREDIT UNION	DALLAS	TX
DEGEORGE CAPITAL CORP	CHESHIRE	CT
DELMAR MORTGAGE INC	BOCA RATON	FL
DENNIS JOSLIN COMPANY LL LLC	DYERSBURG	TN
DEPOSIT GUARANTY MORTGAGE CO	JACKSON	MS
DEPOSIT GUARANTY MORTGAGE SERV	JACKSON	MS
DESERT SERVICES INC	RICHLAND	WA
DESTIN BANK	DESTIN	FL
DEUEL COUNTY NATIONAL BANK	CLEAR LAKE	SD
DIADCO FINANCIAL SERVICES INC	COVINA	CA
DIME SAVINGS BANK	NORWICH	CT
DIME SAVINGS BANK WALLINGFORD	WALLINGFORD	CT
DIMENSIONS MORTGAGE CORP	SAN DIEGO	CA
DIVERSIFIED EQUITIES INC	BATTLEGROUND	WA
DOLPHIN MORTGAGE CO	MIAMI	FL
DRAPER AND KRAMER INC	CHICAGO	IL
DRH MORTGAGE COMPANY LTD	PLANO	TX
DRUMMOND COMMUNITY BANK	CHIEFLAND	FL
DUCHESNE BANK	ST PETERS	MO
DYNAMIC FINANCIAL CORP	HIALEAH	FL
EAGLE MORTGAGE CORPORATION	WOODBURY	MN
EASTERN MORTGAGE SERVICES INC	TREVOSE	PA
EASTERN RESIDENTIAL MORTGAGE	COLUMBIA	MD
EASTON MORTGAGE CORPORATION	SAN FRANCISCO	CA
EDGE FINANCIAL CORPORATION	AURORAE	CO
EINBINDER MANAGEMENT MORTGAGE CORP	MATAWAN	NJ
ELVERSON NATIONAL BANK	ELVERSON	PA
ENTERPRISE MORTGAGE CORPORATION	APOPKA	FL
EPOCH ENTERPRISES INC	SOLANA BEACH	CA
EQUIFUND MORTGAGE CORPORATION	CAPE CANAVERAL	FL
EQUITABLE LIFE ASSUR SOC	ATLANTA	GA
EQUITABLE REAL ESTATE INV MNGT	ATLANTA	GA
EQUITRUST MORTGAGE CORPORATION	GULFPORT	MS
EVERGLADES FEDERAL CU	CLEWISTON	FL
EXECUTIVE FIRST MORTGAGE CORP	FRESNO	CA
EXPERT MORTGAGE BROKERS LLC	VANCOUVER	WA
EZ LENDING INC	LAUDERHILL	FL
FAMILY BANK FSB	PAINTSVILLE	KY
FARMERS AND MERCHANTS BANK	PRAIRIE GROVE	AR
FARMERS AND MERCHANTS BANK	HURON	SD
FARMERS NATIONAL BANK	SCOTTSVILLE	KY
FARMERS NATIONAL BANK	DANVILLE	KY
FEDERAL FINANCE CORPORATION	CHICAGO	IL
FEDERAL SAVINGS BANK	WALTHAM	MA
FEDERATED MORTGAGE COMPANY INC	COVINA	CA
FEDERATION FINANCIAL INSTITUTIONS LLC	ATLANTA	GA
FIDELITY BOND AND MORTGAGE CO	BLUE BELL	PA
FIDELITY NATIONAL FUNDING CORP	RAPID CITY	SD
FINANCE FACTORS LTD	HONOLULU	HI
FINANCIAL NETWORK SERVICES	VAN NUYS	CA
FINANCIAL SERVICES MTG CORP	IRVINE	CA
FIRST BANK	MCKINNEY	TX
FIRST BANK ARKANSAS	JONESBORO	AR
FIRST CAPITAL FINANCIAL CORP	REDONDO BEACH	CA
FIRST CITIZENS BANK	BILLINGS	MT
FIRST COMMERCIAL BANK NA	LITTLE ROCK	AR
FIRST COMMERCIAL BANK NA MEMPHIS	MEMPHIS	TN

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
FIRST EQUITY RESIDENTIAL MORTGAGE INC	CHELSEA	MI
FIRST FEDERAL SAVINGS ALA	LYNCHBURG	VA
FIRST FEDERAL SAVINGS AND LOAN	WOOSTER	OH
FIRST FEDERAL SAVINGS BANK	NEW CASTLE	PA
FIRST GOVERNMENT MORTGAGE AND INVEST COR	LANDOVER	MD
FIRST HOME SAVINGS BANK SLA	PENNSVILLE	NJ
FIRST MANHATTAN FUNDING INC	WESTCHESTER	CA
FIRST MORTGAGE CORPORATION	WACO	TX
FIRST NATIONAL BANK	TEMPLE	TX
FIRST NATIONAL BANK	CONWAY	AR
FIRST NATIONAL BANK	LITTLE FALLS	MN
FIRST NATIONAL BANK	WARSAW	IN
FIRST NATIONAL BANK	PIERRE	SD
FIRST NATIONAL BANK	BREWSTER	MN
FIRST NATIONAL BANK	BERRYVILLE	AR
FIRST NATIONAL BANK	MONTICELLO	MN
FIRST NATIONAL BANK	WORLAND	WY
FIRST NATIONAL BANK EVERGREEN PARK	EVERGREEN PARK	IL
FIRST NATIONAL BANK FOX VALLEY	NEENAH	WI
FIRST NATIONAL BANK OF MICHIGAN	EAST LANSING	MI
FIRST NATIONAL BANK OF ST PETER	SAINT PETER	MN
FIRST NATIONAL BANK ROCHESTER	ROCHESTER	NY
FIRST NATIONAL BK CENTRAL ILL	SPRINGFIELD	IL
FIRST NATIONAL MORTGAGE CORP	MIAMISBURG	OH
FIRST NEW YORK MORTGAGE CORP	NEW YORK	NY
FIRST PATRIOT MORTGAGE INC	REVERE	MA
FIRST POTOMAC MORTGAGE CORP	FAIRFAX	VA
FIRST REPUBLIC MORTGAGE CORP	SANTA ANA	CA
FIRST SAVINGS AND LOAN ASSN ND	ABERDEEN	SD
FIRST SECURITY MORTGAGE CORP	COLUMBIA	SC
FIRST STATE BANK	LEOTI	KS
FIRST STATE BANK OF SO CA	PARAMOUNT	CA
FIRST STATE BANK SAUK CENTRE	SAUK CENTRE	MN
FIRST TEACHERS FEDERAL CU	SCHENECTADY	NY
FIRST TEXAS MORTGAGE COMPANY	SAN ANTONIO	TX
FIRST VOLUNTEER BANK	UNION CITY	TN
FIVE STAR FINANCIAL SERVICES	SCHAUMBURG	IL
FLAGSHIP FEDERAL SAVINGS BANK	SAN DIEGO	CA
FLEET MORTGAGE–FLEET MTG CORP	MILWAUKEE	WI
FORT WAYNE NATIONAL BANK	FORT WAYNE	IN
FRANCES SLOCUM BANK	WABASH	IN
FTF MORTGAGE CORP	IRVINE	CA
FUNDERS MORTGAGE CORP AMERICA	COVINA	CA
GAMS INC	SUTTER CREEK	CA
GATEWAY RESIDENTIAL GROUP LLC	DES PERES	MO
GENTRY CAPITAL MORTGAGE CORPORATION	PINE BUSH	NY
GEORGIA UNION MORTGAGE CO LP	MACON	GA
GESCO SERVICES LLC	LUBBOCK	TX
GLEN ROCK SAVINGS BANK SLA	GLEN ROCK	NJ
GMAC MORTGAGE GROUP INC	HORSHAM	PA
GOLD COAST FUNDING GROUP INC	DAVIE	FL
GOLD KEY MOPRTGAGE CORPORATION	NASHVILLE	TN
GOLDEN BAY CAPITAL CORPORATION	OAKLAND	CA
GOLDSTAR GROUP INC	BETHESDA	MD
GOMEMX MARKETING GROUP INC	POMONA	CA
GRAND NATIONAL BANK	WAUCONDA	IL
GRANTS STATE BANK	GRANTS	NM
GREAT LAKES FUNDING INC	EDINA	MN
GREAT WESTERN BANK	IRVINE	CA
GREATER FUNDING OF NY INC	CANANDAIGUA	NY
GRIFFIN FEDERAL SAVINGS ALA	GRIFFIN	GA
GSL SAVINGS BANK	GUTTENBERG	NJ
GULF FINANCIAL SERVICES INC	BLAIRSVILLE	GA
H AND R BLOCK MORTGAGE CO LLC	KANSAS CITY	MO
H AND R MORTGAGE INC	BAKERSFIELD	CA
HALLMARK GOVERNMENT MORTGAGE	BELLEVUE	WA
HAMMOND MORTGAGE INC	CUMMING	GA
HAMPSTEAD FINANCIAL CORPORATION	FORT LEE	NJ
HAVERHILL COOPERATIVE BANK	HAVERHILL	MA
HEARTLAND COMMUNITY BANK FSB	MONTICELLO	AR
HEARTLAND MORTGAGE INC	TUCSON	AZ
HIGHLAND FEDERAL S L ASSOC	CROSSVILLE	TN

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
HILL COUNTRY BANK	AUSTIN	TX
HOLMGREN AND ASSOCIATES	OAKLAND	CA
HOME AMERICA FINANCIAL SERVICES INC	INDIANAPOLIS	IN
HOME BANK	GUNTERSVILLE	AL
HOME LOANS INC	MIAMI	FL
HOME MORTGAGE FIN SRVS CORP	MIAMI	FL
HOMEOWNERS FINANCIAL SERVICES	NORCROSS	GA
HOMEOWNERS MORTGAGE WHOLESALERS INCORP	MARIETTA	GA
HOMEOWNERS MTG AND EQUITY INC	AUSTIN	TX
HORIZON FEDERAL SAVINGS BANK	OSKALOOSA	IA
HOWARD WEIL MORTGAGE CORP	NEW ORLEANS	LA
HUB MORTGAGE SERVICE INC	MARYSVILLE	CA
HUDSON ADVISORS LLC	DALLAS	TX
HUNTINGTON NATIONAL BANK	COLUMBUS	OH
HYDE PARK BANK AND TRUST CO	CHICAGO	IL
IBJ SCHRODER BANK AND TR CO	NEW YORK	NY
ICI FUNDING CORPORATION	SANTA ANA HEIGHTS	CA
IFS DIRECT INCORPORATED	DENVER	CO
IMAGE MORTGAGE INC	TEMECULA	CA
INDEPENDENT BANK	FT LUPTON	CO
INDUSTRIAL BANK	VAN NUYS	CA
INFINITY FINANCIAL SERVICES INC	PROVO	UT
INTEGRATED FISCAL SERVICES INC	WILTON MANORS	FL
INTER–BORO SAVINGS AND LOAN	CHERRY HILL	NJ
INTERAMERICAN FINAN SER INC	MIAMI	FL
IPSWICH CO–OPERATIVE BANK	IPSWICH	MA
J B CORKLAND MORTGAGE CO	KNOXVILLE	TN
JACOBS BANK	SCOTTSBORO	AL
JEFFERSON MORTGAGE GROUP LTD	OAKTON	VA
JEFFERSON NATIONAL BANK	CHARLOTTESVILLE	VA
JEFFERSON SAVINGS BANK	WEST JEFFERSON	OH
JMJ FINANCIAL GROUP	GARDEN GROVE	CA
JOHNSON–ANDERSON MORTGAGE CO	DENVER	CO
JSM FINANCIAL INCORPORATED	FOLSOM	CA
JVS FINANCIAL GROUP INC	WOODRIDGE	IL
JW RIKER NORTHERN RI INC	WARWICK	RI
KANSAS HOME MTG JUNCT CITY INC	JUNCTION CITY	KS
KEMBA COLUMBUS CREDIT UNION	COLUMBUS	OH
KILGORE FIRST NATIONAL BANK	KILGORE	TX
KITSAP FEDERAL CREDIT UNION	SILVERDALE	WA
KLEBERG FIRST NAT MTG CO INC	KINGSVILLE	TX
KZ MORTGAGE LLC	PUYALLUP	WA
LA BANK NA	SCRANTON	PA
LAD FINANCIAL	SAN DIEGO	CA
LAFAYETTE AMERICAN BANK AND TRUST CO	BRIDGEPORT	CT
LEBANON VALLEY NATIONAL BANK	LEBANON	PA
LENDERS ASSOCIATES CORP	MARIETTA	GA
LEOMINSTER CREDIT UNION	LEOMINSTER	MA
LEXINGTON SAVINGS BANK	LEXINGTON	MA
LIBERTY MORTGAGE SERVICES INC DELAWARE	MORRIS PLAINS	NJ
LOAN COMPANY	ASHEVILLE	NC
LOAN SOURCE CORPORATION	WESTLAKE VILLAGE	CA
LOUISIANA CENTRAL BANK	FERRIDAY	LA
LYON COUNTY STATE BANK	EMPORIA	KS
M JAMES AND CO	YARMOUTH	ME
MADISON COUNTY BANK	MADISON	NE
MAGELLAN MORTGAGE LLC	SALEM	OR
MAGNUM CAPITAL GROUP INC	MONARCH BEACH	CA
MAHONING NATIONAL BANK	YOUNGSTOWN	OH
MAIN AMERICA CAPITOL LC	ATLANTA	GA
MARGARET M BROWN INC	RIVERDALE	GA
MARYLAND BANK AND TRUST COMPANY NA	WALDORF	MD
MASTERS FUNDING GROUP INC	RIVERSIDE	CA
MAXIMA FINANCIAL GROUP	TAMPE	AZ
MAYFLOWER COOPERATIVE BANK	MIDDLEBORO	MA
MBI MORTGAG NINETEEN SIXTY INC	HOUSTON	TX
MCNAIR FINANCIAL GROUP INC	INDIANAPOLIS	IN
MEDICAL AREA FEDERAL CREDIT UNION	BOSTON	MA
MEMBERS FIRST FEDERAL CREDIT UNION	MECHANICSBURG	PA
MERCANTILE BANK W CENTRAL MO	SEDALIA	MO
MERCHANTS AND FARMERS BANK	WEST HELENA	AR
MERCHANTS BANK OF CALIFORNIA NA	LAGUNA HILLS	CA

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
METRO FINANCIAL INC	LAS VEGAS	NV
METROPOLITAN FINANCIAL INC	ORANGE	CA
METROPOLITAN LIFE INS CO	NEW YORK	NY
MEZA GOLD MORTGAGE CORPORATION	RANCHO CUCAMONGA	CA
MICAL MORTGAGE INC	SAN DIEGO	CA
MID AMERICA BANK SOUTH	MANKATO	MN
MID AMERICA MORTGAGE SERVICES	LEAWOOD	KS
MID EAST FINANCIAL SERVICES	NEW YORK	NY
MID FLORIDA FUNDING LTD	LONGWOOD	FL
MIDAMERICA BANK	MAPLEWOOD	MN
MIDDLE TENNESSEE BANK	COLUMBIA	TN
MIDLAND DATA SYSTEMS INC	KANSAS CITY	MO
MIDWEST AMERICA FINANCIAL CORPORATION	CHICAGO	IL
MIDWEST AMERICA MORTGAGE CORPORATION	BROOKLYN PARK	MN
MIDWEST LOAN SERVICES INC	HOUGHTON	MI
MILLENNIUM FUNDING CORP	NORWELL	MA
MINNESOTA'S CREDIT UNION	EAGAN	MN
MINNWEST BANK DAWSON	DAWSON	MN
MISSION NATIONAL BANK	SAN FRANCISCO	CA
MONEYLINE FINANCIAL SERVICE INC	ST LOUIS	MO
MORRIS SMITH FEYH	COLUMBUS	OH
MORTGAGE ACCEPTANCE CORP	CLOSTER	NJ
MORTGAGE ALTERNATIVES INC	SALT LAKE CITY	UT
MORTGAGE ASSOCIATES INC	DIAMOND BAR	CA
MORTGAGE CENTER	WEST SPRINGFIELD	MA
MORTGAGE CENTER CORP	MILLBRAE	CA
MORTGAGE CONSULTANTS INC	SMYRNA	GA
MORTGAGE FINANCIAL SERVICES INC	DALLAS	TX
MORTGAGE MART INC	BLUE BELL	PA
MORTGAGE MATTERS INC	INDIANAPOLIS	IN
MORTGAGE NETWORK INC	SALT LAKE CITY	UT
MORTGAGE NOW INC	SOUTHFIELD	MI
MORTGAGE PLANNING CORPORATION	DENVER	CO
MORTGAGE PROS CORP	MIAMI	FL
MORTGAGE RESOURCES INC	PHOENIX	AZ
MORTGAGE SERVICE CENTER INC	CAMP SPRINGS	MD
MORTGAGE SERVICE CENTER OF S FLORIDA INC	TAMARAC	FL
MORTGAGE STORE	WILLOWBROOK	IL
MUNICIPAL CREDIT UNION	NEW YORK	NY
MURAL COMPANY LLC	PHOENIX	AZ
MUTUAL SAVINGS AND LOAN ASSN	METAIRIE	LA
MUTUAL SAVINGS ASSN	LEAVENWORTH	KS
NATIONAL BANK OF DAINGERFIELD	DAINAGERFIELD	TX
NATIONAL CITY BANK MINNEAPOLIS	MINNEAPOLIS	MN
NATIONAL CITY BANK OF PENNSYLVANIA	PITTSBURGH	PA
NATIONAL HOME FUNDING CORPORATION	CALABASAS	CA
NETWORK LENDERS OF AMERICA INC	LITTLE NECK	NY
NEVADA FEDERAL FINANCIAL CORP	LAS VEGAS	NV
NEXUS FINANCIAL LLC	OAKLAND	NJ
NOREAST MORTGAGE CORPORATION	ONTARIO	CA
NORTH FORK FINANCIAL INC	NEWPORT BEACH	CA
NORTH PACIFIC BANK	TACOMA	WA
NORTHAMERICAN EQUITY CORP	FORT WAYNE	IN
NORTHEAST BANK	MINNEAPOLIS	MN
NORTHERN FINANCIAL MORTGAGE CO	CHAGRIN FALLS	OH
NORTHERN MORTGAGE AND INVESTMENT LTD	FLAGSTAFF	AZ
NORTHWEST LENDING ASSOCIATES	BELLEVUE	WA
NORTHWEST NATIONAL BANK	VANCOUVER	WA
NOVA MORTGAGE CORPORATION	ROCKVILLE	MD
NUNEZ FINANCE CO	MIAMI	FL
OAKWOOD ACCEPTANCE CORPORATION	GREENSBORO	NC
OCALA NATIONAL BANK	OCALA	FL
OCEANMARK FINANCIAL CORP	HOLLYWOOD	FL
OMNI BANK	PONTOON BEACH	IL
ON-SITE MORTGAGE SERVICE	CARMEL	IN
ONE VALLEY BANK—CLARKSBURG	CLARKSBURG	WV
ONE VALLEY BANK OF RONCEVERTE	RONCEVERTE	WV
OZAUKEE BANK	CEDARBURG	WI
PACIFIC EMPIRE FUNDING	LAKE FOREST	CA
PACIFIC NORTHWEST FUNDING GROUP	PALM SPRINGS	CA
PADUCAH BANK AND TRUST COMPANY	PADUCAH	KY
PAINE WEBBER REAL EST SEC INC	NEW YORK	NY

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
PALM BEACH FINANCIAL NETWORK INC	JUPITER	FL
PALMYRA STATE BANK	WEST QUINCY	MO
PAN-AMERICAN LIFE INS CO	NEW ORLEANS	LA
PAWLING SAVINGS BANK	FISHKILL	NY
PENNIES TO MILLIONS INC	UPLAND	CA
PEOPLES BANK	SANDY HOOK	KY
PEOPLES MORTGAGE CORPORATION	UNION	NJ
PERPETUAL SAVINGS BANK FSB	CEDAR RAPIDS	IA
PFG INC	ENCINO	CA
PFI BANCORP INC	INDIANAPOLIS	IN
PHOENIX HOME LENDING INC	TEMPE	AZ
PHOENIX HOME MORTGAGE CORP	ROCKVILLE	MD
PINNACLE FUNDING GROUP	FT MYERS	FL
PIONEER BANK CHATTANOOGA	CHATTANOOGA	TN
PIONEER BANK FSB	CHATTANOOGA	TN
PIONEER CITIZENS BANK	RENO	NV
PIONEER FEDERAL SAVINGS BANK	WINCHESTER	KY
PIONEER SAVINGS AND LOAN ASSOC FSLA	IRVINE	CA
PLATINUM MORTGAGE	ROSEVILLE	MN
PLATTSMOUTH STATE BANK	PLATTSMOUTH	NE
PNC BANK KENTUCKY INC	LOUISVILLE	KY
PNC BANK OHIO NA	CINCINNATI	OH
POINSETT BANK FSB	GREENVILLE	SC
POLICE AND FIRE FEDERAL CU	PHILADELPHIA	PA
POLLARI WRIGHT INC	SAN JOSE	CA
POST OAK FINANCIAL LLC	HOUSTON	TX
PREFERRED EQUITY MORTGAGE CORP	INDIANAPOLIS	IN
PREMIER BANK	JEFFERSON CITY	MO
PRESERV FINANCIAL INC	DENVER	CO
PRESIDENTIAL MTG AND FINAN INC	ORANGE	CA
PRESTIGE MORTGAGE INC	SAN ANTONIO	TX
PRESTIGE MORTGAGE LLC	SOUTHINGTON	CT
PRIME BANK OF CENTRAL FLORIDA	TITUSVILLE	FL
PRIME FINANCIAL NETWORK INC	LA JOLLA	CA
PRIME MORTGAGE INVESTORS	CORAL GABLES	FL
PRIMERCHANT CAPITAL CORPORATION	SHERMAN OAKS	CA
PROVIDENT MUT LIFE INS PHIL	BERWYN	PA
QMD INC	DENVER	CO
R AND J MORTGAGE SERVICE INC	LEDGEWOOD	NJ
R E I INC	ORANGE	CA
RANCHO MORTGAGE CORPORATION	UPLAND	CA
REDLANDS FEDERAL SAVINGS AND LOAN ASSN	REDLANDS	CA
REHABILITATION LOAN CORP	KANSAS CITY	MO
RELOCATION MORTGAGE SERVICE INC	PLYMOUTH	MN
REPUBLIC SECURITY BANK FSB	WEST PALM BEACH	FL
RESIDENTIAL FINANCIAL SRVS INC	HOLLYWOOD	FL
RESIDENTIAL MORTGAGE BANKING	HAUPPAUGE	NY
RESIDENTIAL MORTGAGE LLC	OGDEN	UT
RICHLAND MORTGAGE INC	FORT WORTH	TX
RICK BAILEY MORTGAGE UNLIMITED INC	ARCATA	CA
RIO GRANDE MORTGAGE CORP	ALBUQUERQUE	NM
RIVER VALLEY MORTGAGE INC	ROSEVILLE	MN
RIVERTON STATE BANK	RIVERTON	WY
RMST MORTGAGE INC	NORTH PROVIDENCE	RI
ROCKINGHAM HERITAGE BANK	HARRISONBURG	VA
ROKLOUD FUNDING INC	SARASOTA	FL
ROSLYN SAVINGS BANK	ROSLYN	NY
ROTHSCHILD FINANCIAL GROUP	OCALA	FL
ROYAL MORTGAGE INC	HUNTINGTON WOODS	MI
SAFE RITE CAPITAL CORP	SOLVANG	CA
SANDWICH COOPERATIVE BANK	SANDWICH	MA
SANDY SPRING NATIONAL BANK—MD	SILVER SPRING	MD
SANTIAM MORTGAGE MORTGAGE CORP	LEBANON	OR
SASCO INC	ENCINO	CA
SEABOARD EMPLOYEES CREDIT UNION	JAACKSONVILLE	FL
SECURED LENDERS MORTGAGE	MERCED	CA
SECURITY BANK AND TRUST CO	LAWTON	OK
SECURITY BANK HARRISON	HARRISON	AR
SECURITY MTG AND INVESTMENT CO	INWOOD	WV
SECURITY STATE BANK	ABILENE	TX
SECURITY TRUST AND SAVINGS BANK	SHENANDOAH	IA
SENIOR LOAN CENTER INC	CARMICHAEL	CA

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
SENTINEL MORTGAGE LLC	TUCSON	AZ
SERVE CORPS MORTGAGE INC	NAPERVILLE	IL
SHARON CREDIT UNION	SHARON	MA
SHELTER MORTGAGE SERVICES INC	CHERRY HILL	NJ
SHOPTAW JAMES INC	ATLANTA	GA
SHORE BANK	ONLEY	VA
SHORE BANK AND TRUST	CLEVELAND	OH
SHORELINE FUNDING	LONG BEACH	CA
SILSBEE STATE BANK	SILSBEE	TX
SOUTH CAROLINA FEDERAL SAVINGS BANK	COLUMBIA	SC
SOUTHCOAST FINANCIAL GROUP	NORTH DARTMOUTH	MA
SOUTHERN FINANCIAL MORTGAGE CORP	CUMMING	GA
SOUTHERN HERITAGE MORTGAGE	ATLANTA	GA
SOUTHERN STATES FUNDING	WINTER PARK	FL
SOUTHLAND MORTGAGE FINANCING CORP	FORT WALTON BEACH	FL
SOUTHSIDE BANK	TAPPAHANNOCK	VA
SOUTHWEST FEDERAL SAVINGS AND LOAN ASSN	CHICAGO	IL
SPOKANE RAILWAY CREDIT UNION	SPOKANE	WA
STALLION CAPITAL INC	RANCHO CUCAMONGA	CA
STATE BANK LA CROSSE	LA CROSSE	WI
STATE SAVINGS BANK	DUBLIN	OH
STATE STREET BANK AND TRUST COMPANY NA	NEW YORK	NY
STATE TEACHERS RT BOARD OHIO	COLUMBUS	OH
STOCKMENS NATIONAL BANK	RUSHVILLE	NE
STUART–WRIGHT MTG FUNDING COR	MURRAY	UT
SUBURBAN FEDERAL SAVINGS FSB	HARVEY	IL
SUMMIT BANK	AKRON	OH
SUMMIT FUNDING INC	LAS VEGAS	NV
SUMMIT SAVINGS FSB	ROHNERT PARK	CA
SUN CITY BANK	SUN CITY	AZ
SUN FEDERAL FINANCIAL CORP	MIAMI	FL
SUN PACIFIC FUNDING INC	SANTA ANA	CA
SUN WORLD NA	EL PASO	TX
SUNTRUST BANK SOUTH CENTRAL TN	LAWRENCEBURG	TN
SUNTRUST BANK TALLAHASSEE NA	TALLAHASSEE	FL
SUNTRUST FINANCIAL CORP	HOLLYWOOD	FL
SUNWEST BANK OF FARMINGTON	FARMINGTON	NM
SUPERIOR MORTGAGE SERVICES INC	LANHAM	MD
SUTTER MORTGAGE CORPORATION	WALNUT CREEK	CA
TAG FUNDING CORP	WOODLAND HILLS	CA
TENNESSEE BANK AND TRUST	MEMPHIS	TN
TEXAS CAPITAL MORTGAGE	HOUSTON	TX
THE–HOMETOWN BANK	CLYDE	NC
THIRD FEDERAL SAVINGS BANK	NEWTOWN	PA
TINTON FALLS STATE BANK	TINTON FALLS	NJ
TOM WOOD MORTGAGE INC	INDIANAPOLIS	IN
TOWER FINANCIAL SERVICES LLC	PASADENA	MD
TOWNE CENTER PROPERTIES INCORPORATED	CERRITOS	CA
TOWNE SQUARE MORTGAGE	SAN DIEGO	CA
TOYOTA MOTORS FEDERAL CR UN	TORRANCE	CA
TRANS-MUTUAL MORTGAGE BANKERS	CORAL GABLES	FL
TRANSFINANCIAL BANK	BOWLING GREEN	KY
TRENTON SAVINGS BANK	LAWERENCEVILLE	NJ
TRI COUNTY STATE BANK	CHAMBERLAIN	SD
TRI STAR AMERICA MORTGAGE CORP	TOLEDO	OH
TRI-STAR FUNDING CORPORATION	DALLAS	TX
TRINIDAD MORTGAGE	TRINIDAD	CO
TURNER MORTGAGE CORP	MIAMI LAKES	FL
TWENTIETH CENTURY FOX FCU	LOS ANGELES	CA
U S MORTGAGE CONSULTANTS INC	LAS VEGAS	NV
UBS MORTGAGE FINANCE INC	NEW YORK	NY
UNICOR MORTGAGE INC	BATON ROUGE	LA
UNIFED MORTGAGE CORP	SAN DIEGO	CA
UNIFIRST FEDERAL SAVINGS BANK	HOLLYWOOD	FL
UNION BANK OF MENA	MENA	AR
UNION PLANTERS BANK LAKEWAY AREA	KNOXVILLE	TN
UNITED BANK AND TRUST CO	VERSAILLES	KY
UNITED BANK OF–PHILADELPHIA	PHILADELPHIA	PA
UNITED CENTRAL BANK	GARLAND	TX
UNITED HOME LENDING SERVICES INC	CHARLESTON	WV
UNITED LENDING COMPANIES INC	RAMSEY	NJ
UNITED MORTGAGE INC	TULSA	OK

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
UNITED SECURITY SAVINGS BANK	MARION	IA
UNITED SOUTHERN MORTGAGE CORP ROANOKE	VIRGINIA BEACH	VA
US CREDIT CORP	AURORA	CO
US MORTGAGE INC	LITTLE ROCK	AR
US NEW MEXICO FEDERAL CU	ALBUQUERQUE	NM
USB MORTGAGE COMPANY INC	SPOKANE	WA
VICTORIA STATE BANK	VICTORIA	MN
VICTORY BANK AND TRUST COMPANY	CORDOVA	TN
VIKING MORTGAGE SERVICES INC	PORT ORCHARD	WA
VILLA PARK TRUST AND SAVINGS BANK	VILLA PARK	IL
VILLAGE BANK AND TRUST CO	RIDGEFIELD	CT
VINTAGE BANK	NAPA	CA
W LYMAN CASE AND CO	COLUMBUS	OH
WEALTHWISE INVESTMENT CORP	MILPITAS	CA
WEST ALLIS SAVINGS BANK SA	WEST ALLIS	WI
WESTERN CAPITAL FUNDING INC	WILDOMAR	CA
WESTERN MORTGAGE EXPRESS	EL CENTRO	CA
WESTMONT MORTGAGE SERVICES INC	DENVER	CO
WHITE OAK MORTGAGE	TEXARKANA	TX
WILSHIRE FUNDING CORPORATION	PORTLAND	OR

Dated: January 4, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman,Mortgagee Review Board.

[FR Doc. 00–2893 Filed 2–10–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Announcement of Proposed Change to All Endangered Species Act Section 10(a)(1)(A) Permits Issued for the Quino Checkerspot Butterfly (*Euphydryas editha quino*)

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: The Fish and Wildlife Service (Service) proposes to modify all scientific research permits issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for the Quino checkerspot butterfly to authorize the following activities: survey by pursuit; capture; handle; release; and with prior approval from the Service, purposefully kill for the collection of voucher specimens.

DATES: Written comments on this proposed action must be received on or before March 13, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Jennifer O'Brion, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243.

SUPPLEMENTARY INFORMATION:

Background

Currently all permits issued pursuant to section 10(a)(1)(A) of the Act to conduct presence or absence surveys for the Quino checkerspot butterfly only authorize permittees to pursue the butterfly when conducting surveys, and no capture or handling of individuals is allowed. The Service would like to amend permits to authorize permittees to capture and handle individuals in order to confirm identification and either release individuals at the capture site or potentially kill them for voucher specimens with prior approval from the Service. This amendment will ensure that any changes made to the management of the Quino checkerspot butterfly are based on confirmed new locations.

Dated: February 4, 2000.

Cynthia U. Barry,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–3065 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of a Permit To Incidentally Take Threatened and Endangered Species in Association With a Habitat Conservation Plan for the Metro Air Park Project in the Natomas Basin, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the Fish and Wildlife Service (Service), are considering approval of a Habitat Conservation Plan (Plan) and issuance of an Endangered Species Act Incidental Take Permit under section 10(a)(1)(B) of the Endangered Species Act to the Metro Air Park Property Owners Association (Association), a non-profit mutual benefit corporation representing 138 individual property owners. The permit would authorize incidental take of listed species and unlisted species that may be listed in the future. Incidental taking of listed species could occur as a result of development of the Metro Air Park industrial park project and from rice farming activities.

Pursuant to the National Environmental Policy Act, the Service intends to prepare an Environmental Impact Statement addressing our proposed action of approving the Plan and issuance of an incidental take permit. The Plan covers an area of 1,892 acres within the Metro Air Park Planning Area in the Natomas Basin, Sacramento County, California. The

Plan addresses the federally threatened giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and 10 currently unlisted species and their habitats. The Plan creates a process for the issuance of permits under the Federal Endangered Species Act, and the California Endangered Species Act.

This notice describes the proposed action and possible alternatives, invites public participation in the scoping process for preparing the Environmental Impact Statement, solicits written comments, and identifies the Service's official to whom questions and comments concerning the proposed action and the Environmental Impact Statement may be directed.

DATES: Written comments are encouraged and should be received on or before March 13, 2000.

ADDRESSES: Information, comments, or questions related to preparation of the Environmental Impact Statement and the National Environmental Policy Act process should be submitted to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may also be sent by facsimile to telephone (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Lori Rinek, Fish and Wildlife Biologist, or Vicki Campbell, Division Chief, at the Sacramento Fish and Wildlife Office, telephone (916) 414–6600. Persons wishing to obtain background material should contact Victoria Harris, Thomas Reid and Associates, 560 Waverley Street, Suite 201, P.O. Box 880, Palo Alto, California 94301, telephone (650) 327–0429.

SUPPLEMENTARY INFORMATION

Availability of Documents

Documents will also be available for public inspection by appointment during normal business hours (7:30 a.m. to 4:30 p.m., Monday through Friday) at the Sacramento Fish and Wildlife Office address provided above.

Background

Listed wildlife species are protected against "take" pursuant to section 9 of the Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22 and 17.32.

In accordance with the requirements for obtaining an incidental take permit, the Association has developed a Plan. The goals of the Plan are to conserve listed and unlisted species and their habitat while accommodating otherwise lawful land uses.

The Plan study area comprises 1,892 acres within the Natomas Basin in Sacramento County, California. Agriculture is the dominant land use in the Natomas Basin and on the Metro Air Park site. The predominant crops are rice, corn, sugar beets, grain, tomatoes, and pasture. Natural and uncultivated vegetation types are interspersed throughout the agricultural areas of the Natomas Basin. Natural areas are found primarily along irrigation canals, drainage ditches, pasture, and uncultivated fields. The borders of drainage canals are often associated with narrow strips of emergent vegetation and/or wooded riparian areas.

Portions of the Natomas Basin that are within the jurisdiction of the City of Sacramento are included in the Natomas Basin Habitat Conservation Plan which was completed by the City of Sacramento in November, 1997. The Metro Air Park project is described in the Natomas Basin Habitat Conservation Plan, but because the Metro Air Park project is outside the City limits, the project cannot be covered by the City's incidental take permit. Therefore, the Association is seeking a separate incidental take permit for the Metro Air Park project. Take could occur as a result of urban development of the Metro Air Park industrial park project and from rice farming activities.

Under the Plan, the Association proposes to minimize and mitigate the effects of urban development by participating in the basin-wide conservation program set up for the entire Natomas Basin which is described in the Natomas Basin Habitat Conservation Plan. The focus of this basin-wide conservation program is on the preservation and enhancement of ecological communities that support species associated with wetland and upland habitats. Through the payment of development fees, one-half acre of mitigation land would be established for every acre of land developed within the Plan area. The mitigation land would be acquired and managed by the Natomas Basin Conservancy, a non-profit conservation organization established to implement the Natomas Basin Habitat Conservation Plan. Mitigation fee amounts and the mitigation strategy for the Plan would be subject to the same adjustments required under the Natomas Basin Habitat Conservation Plan. The Plan also includes take avoidance and minimization measures that include the requirement for landowners to conduct pre-construction species surveys and to carry out minimization measures prior to site development.

Although the consultant for the applicant, Thomas Reid and Associates, will prepare the draft Environmental Impact Statement, the Service will be responsible for its content and scope.

The Environmental Impact Statement will consider the proposed action (issuance of a section 10(a)(1)(B) Endangered Species Act permit to the Association) and a reasonable range of alternatives. Potential alternatives may include different entities as the permittee (e.g., the County or individual land owners), and a No Action alternative. If the County were the permittee, then the Association and landowners would delay development of the Metro Air Park project until the County obtained a section 10(a)(1)(B) permit for areas under its jurisdiction in the Natomas Basin. If each individual land owner were the permittee then separate incidental take permits would need to be processed. The No Action alternative would involve the Service not issuing a section 10(a)(1)(B) permit.

Environmental review of the Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement.

Comments and participation in the scoping process are solicited. The Natomas Basin Habitat Conservation Plan, upon which the Metro Air Park project is based, was subject to extensive public review through the City of Sacramento's California Environmental Quality Act process (Initial Study and Negative Declaration, 6/97), and the Federal review process (National Environmental Policy Act Environmental Assessment, December 1997). All of the issues associated with this project have been thoroughly addressed under the California Environmental Quality Act compliance process. The Service's Environmental

Impact Statement will be examining the same issues that have been dealt with under the California Environmental Quality Act as well as any others that may arise.

The primary purpose of the scoping process is to identify rather than to debate the significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives addressed in the draft Environmental Impact Statement.

Dated: February 7, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office

[FR Doc. 00–3181 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–45–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Changes in the Internal Processing of Federal Acknowledgment Petitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA) is changing certain internal procedures for processing petitions for federal acknowledgment as an Indian tribe, and clarifying other procedures. These revised procedures do not change the acknowledgment regulations, 25 CFR Part 83.

DATES: These changes are effective as of February 11, 2000. They are to apply to all future proposed findings, except for Little Shell of Montana petitioner, and to all future final determinations, except for the Cowlitz petitioner, where technical reports have been prepared already.

FOR FURTHER INFORMATION CONTACT: Acting Director, Duane Birdbear, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, MailStop 4660–MIB. (202) 208–3463.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is published in the exercise of authority under 5 U.S.C. 552(a); 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; and under the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.

To reduce the current delays in reviewing petitions for acknowledgment, the AS–IA is changing certain internal procedures for processing acknowledgment petitions, and clarifying other procedures. The current acknowledgment process has a substantial backlog resulting in delays of several years before review is begun of a petition that is ready for active consideration and before there is a final resolution of a petition on its merits. It is essential to change the internal processes so that acknowledgment decisions may be made in a more timely manner.

The acknowledgment process is based on the regulations in 25 CFR Part 83, first issued in 1978 and revised in 1994. No specific legislation established the acknowledgment process. An agency may change its procedures and implementation of its own regulations where these changes do not contradict or alter the regulations. These revised procedures do not change the acknowledgment regulations. Rather, these changes provide a different means of implementing the existing regulations. This **Federal Register** notice is to advise petitioners, interested parties, and the public of these changes. Petitioners and interested parties will be provided a copy of this notice of changes in procedures by first class mail.

After issuance of a proposed finding in Little Shell and a final determination in Cowlitz, the Branch of Acknowledgment and Research (BAR) will still have five active cases awaiting completion of a proposed finding. The BAR has not started the evaluation of four cases awaiting a final determination (two of which have been ready for more than two years), and three cases which are awaiting amended or second proposed findings. In addition, there are now 11 completed petitions awaiting active consideration which have not been reviewed. Six of these have been ready for review for more than three years. New letters of intent and documented petitions are continuing to be received in substantial numbers. There is no reason to believe that the number of requests for acknowledgment received by the Department will decline in the foreseeable future.

At the same time, there are other substantial demands on the time of the BIA's staff which will continue to reduce the proportion of their time available for evaluation of petitions. For example, petitioners and third parties frequently request an independent review of acknowledgment final determinations by the Interior Board of Indian Appeals (IBIA), requiring the BIA to prepare the record and responses to issues referred by the IBIA. In addition, the BIA is currently responding to litigation in at least five lawsuits concerning acknowledgment decisions. Finally, there are substantial numbers of Freedom of Information Act (FOIA) requests which require the BIA to copy the voluminous records of current and completed cases. There is no anticipated decrease in these types of required work in the foreseeable future.

In light of the backlog and other demands on the time of the BIA staff, it is necessary to make whatever procedural changes are possible within the framework of the existing regulations in order to resolve more expeditiously pending petitions for acknowledgment.

Changes in Procedures

Under the regulations, the petitioner has the burden to present evidence that it meets the mandatory criteria. Section 83.5(c) of the acknowledgment regulations, describing the duties of the Department, states that: "the Department shall not be responsible for the actual research on the part of the petitioner."

Section 83.10(a) of the regulations provides that the AS–IA may "initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status." This language makes action on the part of the AS–IA discretionary and does not mandate that any additional research be carried out. In the past, under the authority of this section, substantial additional research often has been conducted by BIA staff to supplement a petitioner's research, especially where deficiencies remained even after extensive technical assistance had been provided to the petitioner. The present demands on BIA staff time and the backlog of cases mandate that this research no longer be done.

The AS–IA is therefore directing the BIA that, in conducting its review of petitions and third party comments, it is not expected or required to locate new data in any substantial way. Staff research is to be limited to that needed to verify and evaluate the materials presented by the petitioner and submitted by third parties. The BIA's review of a petition shall be limited to evaluating the arguments presented by the petitioner and third parties and to determining whether the evidence submitted by the petitioner, or by third parties, demonstrates that the petitioner meets each of the criteria. The BIA is expected to use its expertise and

knowledge of sources to evaluate the accuracy and reliability of the submissions. In cases where petitioners or third parties submit data that they have not analyzed, the BIA shall not itself conduct extensive analysis of these data to demonstrate that the criteria have or have not been met, but shall refer the responsibility for analysis to the petitioner or third parties to be completed during the comment period.

A proposed finding represents the agency's conclusions at the time that finding is made, based on the evidence in the record. One purpose of the comment period on the proposed finding is to give the petitioner and third parties an opportunity to present additional evidence in response to the deficiencies and weaknesses in the petition which were defined by the proposed finding. Submissions by the petitioner and third parties during the comment period, rather than BIA research, is the appropriate means to remedy such deficiencies.

Once the regulatory time frame for active consideration has begun on a proposed finding, the BIA will not consider additional materials submitted by petitioners or third parties. Any such materials received from the petitioner or third parties will be held for review during preparation of the final determination. The staff members evaluating the petition shall not request additional information from the petitioner and third parties during the preparation of the proposed finding. If necessary information and analysis are lacking, the petitioner or third parties may supply it in response to the proposed finding.

The review of a petition is to be conducted by a team of professional BIA researchers working in consultation with each other. The acknowledgment decision is not intended to be a definitive scholarly study of the petitioning group. The scope of the review shall be limited to that necessary to establish whether the petitioner has met its burden to establish by a reasonable likelihood of the validity of the facts that it meets all seven regulatory criteria. Although professional standards of BIA researchers will be applied to the review, these standards shall be applied within the constraints of time established by these procedures and the resources available, and as appropriate to the role of the Government in these procedures, which is to evaluate whether the petitioner has met its burden as defined in the regulations. In conducting its review and preparing its report and recommendation for the decision makers, it is not possible or reasonable to expect the BIA researchers to anticipate all possible court challenges. A court challenge is a reasonable expectation, and anticipating such challenges may require that extensive additional research or analysis be conducted beyond that necessary for the Department to reach a decision. Therefore, the AS—IA is directing the BIA to limit such research and analysis to that necessary for the decision.

The regulations (83.6(a)) state that a petition may be "in any readable form that contains detailed, specific evidence . . ." In some instances, materials submitted by the petitioner or a third party are poorly organized, do not identify the sources or even the nature of the documents provided, or cannot be identified with the source cited in the text submitted by the petitioner or third party. Where documents or exhibits are not, in whole or in part, in a "readable form," BIA researchers shall no longer expend more than a reasonable amount of time attempting to identify the source or sources of documentary materials submitted without such information. Therefore, it is important for the petitioner and third parties to cite the source(s) for each document submitted in order for it to be given appropriate weight as evidence.

The acknowledgment regulations require that the AS–IA "prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision" (83.10(h)). In most instances in the past, one or more technical reports have been prepared in addition to the summary evaluation of the evidence under the criteria. A similar approach has been used for final determinations where there has been a substantial challenge to the proposed finding. The AS–IA is directing that, except for current cases where the technical reports have already been drafted, technical reports such as have been prepared in the past shall no longer be prepared to accompany the summary under the criteria.

Henceforth, the report on the proposed finding called for under the regulations, which is prepared for review by the decision makers, shall consist of a detailed summary evaluation of the arguments and evidence presented by the petitioner and any third parties. The summary evaluation report may be supplemented by a chart, or charts, listing the evidence under each criterion, describing how the evidence has been weighed, and indicating the sections of the regulations and the precedents from past decisions that have been applied to that evidence. The acknowledgment process will continue to apply the precedents established in past decisions, including precedents under 83.6(e). Indeed, the existence of a substantial body of established precedents now makes possible this more streamlined review process.

The AS–IA is directing that the departmental review of recommended decisions, including signature by the AS–IA, is to take no more than six weeks from the time the draft recommendation leaves the Branch of Acknowledgment and Research office and enters the surname process.

Advice to Petitioners

In view of these changes, petitioners are reminded that the petitioner has the burden to show it meets the criteria and the requirements established by the regulations. Under section 83.6(c), a petitioner "must satisfy all of the criteria in paragraphs (a) through (g) of section 83.7 in order for tribal existence to be acknowledged. *Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria*" (emphasis added). Section 83.6(a) states that the petition must contain "detailed specific evidence in support of a request to the Secretary to acknowledge tribal existence." While section 83.6(a) also provides that the "documented petition may be in any readable form," this does not relieve the petitioner of the burden of providing adequate evidence that it meets all seven mandatory criteria. Petitioners are reminded that a petition can and will be turned down for lack of evidence (83.6(d)).

The regulations at 83.5(b) provide that the guidelines for preparation of documented petitions may be updated as necessary. The changes the AS–IA is here making will require minor revisions of the guidelines. Until revised guidelines are issued, petitioners are advised by this notice that the policies and procedures in this memorandum supersede the existing guidelines where they may be in conflict.

Dated: February 7, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–3161 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mooretown Rancheria Alcoholic Beverage Control Law

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953 (Pub. L. 83–277), 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the United States Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). This notice certifies that Ordinance No. 98–16, the Liquor Ordinance of the Concow Maidu Tribe of the Mooretown Rancheria, was duly adopted by the Mooretown Rancheria Tribal Council on July 30, 1998. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Mooretown Rancheria lands under the jurisdiction of the Mooretown Rancheria.

DATES: This ordinance is effective as of February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jim James, Branch of Judicial Services, Division of Tribal Government Services, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Mooretown Rancheria Ordinance No. 98–16 is to read as follows:

Liquor Ordinance of the Concow Maidu Tribe of the Mooretown Rancheria Ordinance 98–16

Chapter I—Introduction

Section 101. *Title.* This ordinance shall be known as the "Liquor Ordinance of the Concow Maidu Tribe of the Mooretown Rancheria."

Section 102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and the Constitution of the Concow Maidu Tribe of the Mooretown Rancheria ("Mooretown Rancheria" or "Rancheria").

Section 103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Mooretown Rancheria. The enactment of a tribal ordinance governing liquor possession and sale on the Rancheria will increase the ability of the tribal government to control Rancheria liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Chapter II—Definitions

Section 201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 202. *Alcohol.* Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

Section 203. *Alcoholic Beverage.* Is synonymous with the term "Liquor" as defined in Section 207 of this Chapter.

Section 204. *Bar.* Means any establishment with special space and accommodations for sale by the glass, can or bottle and for consumption on the premises of liquor, as herein defined.

Section 205. *Beer.* Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."

Section 206. *General Lineal Membership.* Means the general lineal membership of the Mooretown Rancheria, which is composed of the voting membership of the Tribe as a whole.

Section 207. *Liquor.* Includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquor or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 208. *Liquor Store.* Means any store at which liquor is sold and, for the purposes of this ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

Section 209. *Malt Liquor.* Means beer, strong beer, ale stout, and porter.

Section 210. *Package.* Means any container or receptacle used for holding liquor.

Section 211. *Public Place.* Includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purposes of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

Section 212. *Rancheria.* Means land held in trust by the United States Government for the benefit of the Concow Maidu Tribe of the Mooretown Rancheria (see also Section 216, Tribal Land).

Section 213. *Sale* and *Sell.* Include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

Section 214. *Spirits.* Means any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 215. *Tribal Council.* Means the Tribal Council of the Concow Maidu Tribe of the Mooretown Rancheria.

Section 216. *Tribal Land.* Means any land within the exterior boundaries of the Rancheria which is held in trust by the United States for the Tribe as a whole, including such land leased to other parties.

Section 217. *Tribe.* Means the Concow Maïdu Tribe of the Mooretown Rancheria.

Section 218. *Wine.* Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with

wine spirits such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Section 219. *Trust Account.* Means the account designated by the Tribal Council for deposit of proceeds from the tax from the sale of alcoholic beverages.

Section 220. *Trust Agent.* Means the Tribal Chairperson or a designee of the Chairperson.

Chapter III—Powers of Enforcement

Section 301. *Powers.* The Tribal Council, in furtherance of this ordinance, shall have the following powers and duties:

(a) To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Rancheria;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Rancheria;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violation of this ordinance;

(g) To make such reports as may be required by the General Lineal Membership;

(h) To collect taxes and fees levied or set by the Tribal Council and to keep accurate records, books, and accounts; and

(i) To exercise such powers as are delegated by the General Lineal Membership.

Section 302. *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Tribal Council and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

Section 303. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council or its designee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this ordinance are being complied with.

Chapter IV—Sales of Liquor

Section 401. *Licenses Required.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Rancheria, except at a tribally licensed or tribally owned business operated on tribal land within the exterior boundaries of the Rancheria.

Section 402. *Sales Only on Tribal Land.* All liquor sales within the exterior boundaries of the Rancheria shall be on tribal land, including leases thereon.

Section 403. *Sales for Cash.* All liquor sales within the Rancheria boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards such as Visa, American Express, etc.

Section 404. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Rancheria is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Rancheria and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

Chapter V—Licensing

Section 501. *Application for Tribal Liquor License Requirements.* No tribal license shall issue under this ordinance except upon a sworn application filed with the Tribal Council containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of California.

(b) Satisfactory proof that the applicant is of good character and reputation among the people of the Rancheria and that the applicant is financially responsible.

(c) The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.

(d) Agreement by the applicant to accept and abide by all conditions of the tribal license.

(e) Payment of $250 fee as prescribed by the Tribal Council.

(f) Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

(g) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the Tribal Council and has been published at least twice in such local newspaper serving the community that may be affected by the license the Tribal Chairperson or Secretary may authorize. The notice shall state the date, time and place when the application shall be considered by the Tribal Council pursuant to Section 502 of this ordinance.

Section 502. *Hearing on Application for Tribal Liquor License.* All applications for a tribal liquor license shall be considered by the Tribal Council in open session at which the applicant, his attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Council shall determine whether to grant or deny the application based on:

(1) Whether the requirements of Section 501 have been met; and

(2) Whether the Tribal Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Tribal Council member, such members shall not vote on the application or participate in the hearings as a Tribal Council member.

Section 503. *Temporary Permits.* The Tribal Council or their designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed 3 days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 504 of this ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of $25 will be assessed on temporary permits.

Section 504. *Conditions of the Tribal License.* Any tribal license issued under this title shall be subject to such reasonable conditions as the Tribal Council shall fix, including, but not limited to the following:

(a) The license shall be for a term not to exceed 1 year.

(b) The licensee shall at all times maintain an orderly, clean and neat establishment, both inside and outside the licensed premises.

(c) The State of California shall have jurisdiction over offenses and civil causes of action committed on the licensed premises to the same extent that it has jurisdiction over offenses and civil causes of action committed elsewhere within California, and the California criminal laws, and civil laws of general applicability to private persons or private property, shall have

the same force and effect on the licensed premises as they have elsewhere in California.

(d) The licensed premises shall be subject to patrol by the tribal enforcement department, and such other law enforcement officials as may be authorized under federal, California, or tribal law.

(e) The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours.

(f) Subject to the provisions of subsection "g" of this section, no intoxicating beverages shall be sold, served, disposed of, delivered or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the tribal Council, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.

(g) No liquor shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Tribal Council.

(h) All acts and transactions under authority of the tribal liquor license shall be in conformity with the laws of the State of California, and shall be in accordance with this ordinance and any tribal license issued pursuant to this ordinance.

(i) No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

(j) There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

Section 505. *License Not a Property Right.* Notwithstanding any other provision of this ordinance, a tribal liquor license is a mere permit for a fixed duration of time. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Section 506. *Assignment or Transfer.* No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the Tribal Council expressed by formal resolution.

Chapter VI—Rules, Regulations, and Enforcement

Section 601. *Sales or Possession With Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this ordinance, or who shall operate or shall have liquor in his possession with intent to sell or distribute without a permit, shall be guilty of a violation of this ordinance.

Section 602. *Purchases From Other Than Licensed Facilities.* Any person within the boundaries of the Rancheria who buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.

Section 603. *Sales to Persons Under the Influence of Liquor.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this ordinance.

Section 604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

Section 607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

Section 608. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification, which falsely purports to show the individual to be over the age of 21 years, shall be guilty of violating this ordinance.

Section 609. *Violations of This Ordinance.* Any person guilty of a violation of this ordinance shall be liable to pay the Tribe a penalty not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the Tribal Council after 10 days notice to the licensee. The decision of the Tribal Council shall be final.

Section 610. *Acceptable Identification.* Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following issued cards of identification which shows his correct age and bears his signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor vehicles;

(2) United States Active Duty Military; and

(3) Passport.

Section 611. *Possession of Liquor Contrary to This Ordinance.* Alcoholic beverages which are possessed contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Tribal Council to enforce this section shall have the authority to, and shall seize, all contraband.

Section 612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of the ordinance by the Tribal Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Chapter VII—Taxes

Section 701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Rancheria in the amount of 1 percent of the amount actually collected, including payments by major credit cards. The tax imposed by this section shall apply to all retail sales of liquor on the Rancheria and shall preempt any tax imposed on such liquor sales by the State of California.

Section 702. *Payment of Taxes to Tribe.* All taxes from the sale of alcoholic beverages on the Rancheria

shall be paid over to the trust agent of the Tribe.

Section 703. *Taxes Due.* All taxes for the sale of alcoholic beverages on the Rancheria are due within 30 days at the end of the calendar quarter for which the taxes are due.

Section 704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Rancheria. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Tribal Council, such a review or audit is necessary to verify the accuracy of reports.

Chapter VIII—Profits

Section 801. *Disposition of Proceeds.* The gross proceeds collected by the Tribal Council from all licensing provided from the taxation of the sale of alcoholic beverages on the Rancheria shall be distributed as follows:

(a) For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

(b) The remainder shall be turned over to the Trust Account of the Tribe.

Chapter IX—Severability and Miscellaneous

Section 901. *Severability.* If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

Section 902. *Prior Enactments.* All prior enactments of the Tribal Council, which are inconsistent with the provisions of this ordinance, are hereby rescinded.

Section 903. *Conformance with California Laws.* All acts and transactions under this ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

Section 904. *Effective Date.* This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter X—Amendment

Section 1001. This ordinance may only be amended by a majority vote of the Tribal Council.

Chapter XI—Sovereign Immunity

Section 1101. Nothing contained in this ordinance is intended to, nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Dated: February 4, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–3221 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–01]

Marigold Mine Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Glamis Marigold Mining Company's Marigold Mine Expansion Project. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by April 10, 2000.

Public meetings to receive oral and written comments have been scheduled for the dates and places listed below. Meetings will begin at 7 p.m.

March 8, 2000, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada.

March 9, 2000 at the Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office, ATTN: Gerald Moritz, Project Manager, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, Nevada: Humboldt County Library, Winnemucca, Nevada: Lander County Library, Battle Mountain, Nevada: and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manager at the above Winnemucca Field Office address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the continued mining and expansion of the Red Rock and Top Zone pits, mining of two new pits (5–North and 8–North), new heap leach facility, heap leach pad expansion, new waste rock dumps, waste rock dump expansion, tailing impoundment and/or new tailing impoundment, miscellaneous ancillary facilities and exploration disturbance. The document analyzes three alternatives: the Proposed Action, the No Action, and the 8-South Partial Pit Backfill.

Dated: February 2, 2000.

Terry A. Reed,

Field Manager.

[FR Doc. 00–3270 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; SDM 87066]

Opening of Land in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of .25 acre of National Forest System land for the National Park Service for construction of temporary quarters for summer seasonal employees expires on March 19, 2000, after which the land will be open to surface entry and mining, subject to other segregations of record. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 19, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 63 FR 13687, March 20, 1998, which segregated the land described therein for up to 2 years from settlement, sale, location or entry under the general land laws, including

the mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System land or the mineral leasing laws. The 2-year segregation expires March 19, 2000. The withdrawal application will continue to be processed, unless it is canceled or denied. The land is described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,
Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

At 9 a.m. on October 19, 2000, the land will be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: January 27, 2000.

Howard A. Lemm,

Acting Deputy State Director, Division of Resources.

[FR Doc. 00–3267 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–HN; GP0–0105; OR–54394]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 66.24 acres of land to such forms of disposition as may by law be made of National Forest system lands, mining, mineral leasing, and geothermal leasing. The Forest Service exchange proposal has been withdrawn in its entirety.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Jenny Liang, BLMOregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208,503–952–6299.

SUPPLEMENTARY INFORMATION: Under the authority of the General Exchange Act of March 30, 1922, as amended; the Federal Land Policy and Management Act of 1976, and the Federal Land Exchange Facilitation Act of August 20, 1988, the following described Federal land identified in a proposed exchange between the Wallowa-Whitman National Forest and Bill Brown, Ceridwyn Trust, UAD, has been withdrawn in its entirety:

Willamette Meridian

T. 9 S., R. 36 E.,
Sec. 3,

Those portions of unpatented mining claims IBM 56, IBM 62, IBM 63, Midnight and Midnight Extension. Except any portion contained in unpatented mining claim IBM 61; and also excepting any portion contained in the following patented mining claims: Chebogan, Kitchi, Bald Mountain, Saginaw, Albine, Three Star, of MS 477, also La Cross and Pacific, of MS 813.

The area described contains 66.24 acres in Baker County, Oregon.

At 8:30 a.m., on March 20, 2000, the land will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on March 20, 2000, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on March 20, 2000, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on March 20, 2000, the land will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: February 2, 2000.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 00–3099 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9820–BK–ES02] [ES–50588, Group 183, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the subdivision of fractional section 13, and the reestablishment of a portion of the record meander line in Township 146 North, Range 27 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 7, 2000.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., March 7, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: January 21, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–3268 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9820–BK–ES02] [ES–50589, Group 184, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of the south boundary of section 18, Township 146 North, Range 26 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 7, 2000.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard,

Springfield, Virginia 22153, prior to 7:30 a.m., March 7, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: January 21, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–3269 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–428]

Certain Integrated Circuit Chipsets and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 6, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119. A supplemental complaint was filed on January 20, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuit chipsets and products containing same by reason of infringement of claims 1–3 and 15–16 of U.S. Letters Patent 5,333,276, claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, and 49 of U.S. Letters Patent 5,740,385, claims 1–12 and 28–48 of U.S. Letters Patent 5,581,782, and claims 1–31 of U.S. Letters Patent 5,548,733. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplemental complaint, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1999).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 4, 2000, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuit chipsets or products containing same by reason of infringement of claims 1–3 or 15–16 of U.S. Letters Patent 5,333,276, claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, or 49 of U.S. Letters Patent 5,740,385, claims 1–12 or 28–48 of U.S. Letters Patent 5,581,782, or claims 1–31 of U.S. Letters Patent 5,548,733, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

VIA Technologies, Inc., 8F, 533 Chung-Chen Road, Hsin-Tien, Taipei, Taiwan

VIA Technologies, Inc., 1045 Mission Court, Fremont, California 94539

First International Computer, Inc., 6F, Fermosa Plastics Rear Building, 201–24, Tun Hwa North Road, Taipei, Taiwan,First International Computer of America, Inc., 5070 Brandin Court, Fremont, California 94538

Everex Systems, Inc., 5020 Brandin Court, Fremont, California 94538

(c) Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–J, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3243 Filed 2–10–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Request OMB emergency approval; application for benefits under the Family Unity Program.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by February 14, 2000. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503 before February 14, 2000. Comments regarding the emergency submission of this information collection may also be submitted via facimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until April 11, 2000. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Benefits Under the Family Unity Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–817. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This application provides for an automatic stay of deportation and employment authorization for the spouse or unmarried son or daughter of an alien who has been granted either temporary or permanent resident status pursuant to section 210 (SAW) or section 245a (Legalization) of the INA or section 202 of IRCA (Cuban/Haitian Adjustment).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 2 hours and 5 minutes (2.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 52,075 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 7, 2000.

Stephen R. Tarragon,

Acting Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–3154 Filed 2–10–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decision

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basis hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 27a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determinations decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

Connecticut
- CT99–01 (Mar. 12, 1999) (CT00–01)
- CT99–02 (Mar. 12, 1999) (CT00–02)
- CT99–03 (Mar. 12, 1999) (CT00–03)
- CT99–04 (Mar. 12, 1999) (CT00–04)
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- CT99–06 (Mar. 12, 1999) (CT00–06)
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- CT99–08 (Mar. 12, 1999) (CT00–08)

Massachusetts
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Volume II

District of Columbia
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Volume III

Alabama

AL99–01 (Mar. 12, 1999) (AL00–01)
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Volume IV

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Volume VI

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Volume VII

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CA99–27 (Mar. 12, 1999) (CA00–27)
CA99–28 (Mar. 12, 1999) (CA00–28)
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CA99–30 (Mar. 12, 1999) (CA00–30)
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CA99–38 (Mar. 12, 1999) (CA00–38)
CA99–39 (Mar. 12, 1999) (CA00–39)
CA99–40 (Mar. 12, 1999) (CA00–40)
CA99–41 (Mar. 12, 1999) (CA00–41)
Hawaii
HI99–01 (Mar. 12, 1999) (HI00–01)
Nevada
NV99–01 (Mar. 12, 1999) (NV00–01)
NV99–02 (Mar. 12, 1999) (NV00–02)
NV99–03 (Mar. 12, 1999) (NV00–03)
NV99–04 (Mar. 12, 1999) (NV00–04)
NV99–05 (Mar. 12, 1999) (NV00–05)
NV99–06 (Mar. 12, 1999) (NV00–06)
NV99–07 (Mar. 12, 1999) (NV00–07)
NV99–08 (Mar. 12, 1999) (NV00–08)
NV99–09 (Mar. 12, 1999) (NV00–09)

General Wage Determination Publication

General Wage Determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 1st day of February 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–2506 Filed 2–10–00; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 3, 2000.

TIME AND DATE: 10 a.m., Thursday, February 10, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: This Commission meeting is a continuation of the Commission meeting held in closed session on January 27, 2000, to discuss the following:

1. *Pero* v. *Cyprus Plateau Mining Corp.*, Docket No. WEST 97–154–D (Issues include whether substantial evidence supports the judge's finding that the operator did not discriminate against Pero in violation of section 105(c).).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–3365 Filed 2–9–00; 1:15 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Docket No. 50–289

Amergen Energy Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC, (the licensee) to withdraw the October 19, 1998, application, as supplemented by letters dated February 16, and September 2, 1999, filed by GPU Nuclear Inc., (the then-licensee) for proposed amendment

to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pa.

The proposed amendment requested approval of a revised reactor coolant maximum allowable dose equivalent iodine 131 specific activity level of 1.0 microcuries/gram.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 18, 1998 (63 FR 64118). However, by letter dated December 29, 1999, the licensee withdrew the proposed change request.

For further details with respect to this action, see the application for amendment dated October 19, 1998, as supplemented February 16, and September 2, 1999, and the licensee's letter dated December 29, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of February 2000.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Sr. Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3190 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company (Quad Cities Nuclear Power Station,Units 1 and 2);

Exemption

I.

The Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. DPR–29 and DPR–30 which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of boiling water reactors (Units 1 and 2) located on the licensee's Quad Cities site in Rock Island County, Illinois. This exemption refers to both units.

II.

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFRPart 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of the proposed amendments to the technical specification (TS) P–T limits, the licensee requested in its submittal of November 12, 1999, that the staff exempt Quad Cities from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of 2, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits (excluding Code Cases N–588 and N–640) are based on the 1989 edition of the ASME Code.

Code Case N–588

The licensee has proposed an exemption to allow the use of ASME Code Case N–588 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine the P–T limits.

The proposed amendments to revise the P–T limits for Quad Cities rely, in part, on the requested exemption. These proposed P–T limits have been developed using the postulation of a circumferentially-oriented reference flaw as the limiting flaw in a RPV circumferential weld in lieu of an axially-oriented flaw required by the 1989 Edition of ASME Section XI, Appendix G.

Postulating the Appendix G [axially-oriented flaw] reference flaw in a circumferential weld is physically unrealistic and overly conservative, because the length of the flaw is 1.5 times the vessel thickness, which is much longer than the width of the reactor vessel girth weld. Industry experience with the repair of weld indications found during preservice inspection, and data taken from destructive examination of actual vessel welds, confirms that any remaining flaws are small, laminar in nature, and do not transverse the weld bead orientation. Therefore, any potential defects introduced during the fabrication process, and not detected during subsequent nondestructive examinations, would only be expected to be oriented in the direction of weld fabrication. For circumferential welds this indicates a postulated defect with a circumferential orientation.

An analysis provided to the ASME Code's Working Group on Operating Plant Criteria (WGOPC) (in which Code Case N–588 was developed) indicated that if an axial flaw is postulated on a circumferential weld, then based on the stress magnification factors (M_m) given in the Code Case for the inside diameter circumferential (0.443) and axial (0.926) flaw orientations, it is equivalent to applying a safety factor of 4.18 on the pressure loading under normal operating conditions. Appendix G requires a safety factor of 2 on the contribution of the pressure load in the case of an axially-oriented flaw in an axial weld, shell plate, or forging. By postulating a circumferentially-oriented flaw on a circumferential weld and

using the appropriate stress magnification factor, the margin of 2 is maintained for the contribution of the pressure load to the integrity calculation of the circumferential weld. Consequently, the staff determined that the postulation of an axially-oriented flaw on a circumferential RPV weld is a level of conservatism that is not required to establish P–T limits to protect the RCS pressure boundary from failure during hydrostatic testing, heatup, and cooldown.

The staff noted that ASME Code Case N–588 also includes changes to the methodology for determining the thermal stress intensity, K_{IT}, which was incorporated into Section XI of the ASME Code after the 1989 Edition. However, the licensee still used the methodology in the 1989 edition of the ASME Code to calculate K_{IT}. The staff already accepted the use of Code Case N–588 including the modifications made to the K_{IT} methodology for exemption requests by other licensees. Hence, the licensee may use the methodology in the 1989 Edition of ASME Section XI or the methodology contained in Code Case N–588 for determining K_{IT}.

In summary, the ASME Section XI, Appendix G, procedure was developed for axially-oriented flaws, which is physically unrealistic and overly conservative for postulating flaws of this orientation to exist in circumferential welds. Hence, the NRC staff concurs that relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–588 is acceptable and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

Code Case N–640 (Formerly Code Case N–626)

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine P–T limits.

The proposed amendments to revise the P–T limits for Quad Cities rely in part on the requested exemption. These revised P–T limits have been developed using the K_{Ic} fracture toughness curve, in lieu of the K_{Ia} fracture toughness curve, as the lower bound for fracture toughness.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than use of the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{Ia} curve since 1974 when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with ASME Section XI, Appendix G, continued operation of Quad Cities with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that the exemption would be required to approve the use of Code Cases N–588 and N–640. The staff examined the licensee's rationale to support the exemption requests and concurred that the use of the code cases would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G; appendix G of the Code; and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the code cases as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Cases N–588 and N–640 may be used to revise the P–T limits for Quad Cities Nuclear Power Station, Units 1 and 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Commonwealth Edison Company exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for Quad Cities Nuclear Power Station, Units 1 and 2.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (65 FR 5702). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of February 2000.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3187 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1—Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–51 for an Additional Twenty Year Period

The U.S. Nuclear Regulatory Commission has received an application from Entergy Operations, Inc., dated January 31, 2000, filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 54 for renewal of Facility Operating License No. DPR–51, which authorizes the applicant to operate Arkansas Nuclear One, Unit 1 (ANO–1). The current operating license for ANO–1 expires on May 20, 2014. ANO–1 is a pressurized-water reactor designed by Babcock and Wilcox and is located in Pope County, Arkansas. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

A copy of the application is available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C. 20037.

Dated at Rockville, Maryland, this the fourth day of February 2000.

For the Nuclear Regulatory Commission.

Christoper I. Grimes,

Chief, License Renewal and Standarization Branch, Division of Regulatory Improvement Programs.

[FR Doc. 00–3186 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML]

In the Matter of: Hydro Resources, Inc. P.O. Box 15910, Rio Rancho, NM 87174; Notice of Appointment of Adjudicatory Employees

COMMISSIONERS:

Richard A. Meserve, Chairman
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

Pursuant to 10 CFR 2.4, notice is hereby given that Messrs. William Von Till and John Lusher, Commission employees of the Office of Nuclear Material Safety and Safeguards, have been appointed as Commission adjudicatory employees within the meaning of section 2.4. Mr. Von Till will advise the Commission regarding issues related to the pending petition for review of LBP–99–30. Mr. Lusher will advise the Commission regarding issues related to the pending petition for review of LBP–99–19. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Messrs. Von Till and Lusher.

It is so ordered.

Dated at Rockville, Maryland, this 7th day of February, 2000.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–3191 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Company (Trojan Nuclear Plant); Exemption

I.

Portland General Electric Company (licensee) is the holder of Facility Operating License No. NPF–1, which authorizes the licensee to possess the Trojan Nuclear Plant (TNP). The license states, in part, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Columbia County, Oregon. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor.

II.

Section 50.54(p) of Title 10 of the Code of Federal Regulations states that "The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan."

Part 73 of Title 10 of the Code of Federal Regulations, "PHYSICAL PROTECTION OF PLANT AND MATERIALS," states that "This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used." Section 73.55 of Title 10 of the Code of Federal Regulations, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

By letter dated January 27, 1993, the licensee informed the NRC that they no longer intend to operate the Trojan facility and intend to remove all spent nuclear fuel from the 10 CFR part 50 licensed site. By letter dated January 29, 1998, the licensee requested an exemption from the security requirements of 10 CFR 50.54(p) and 10 CFR part 73. 10 CFR 50.54(p) and 10 CFR 73.55 provide security requirements to protect the spent fuel while within the boundary of a licensed power reactor site. The requested exemption from the security requirements for the Trojan Nuclear Plant would be effective after the spent fuel has been removed from the reactor site by the licensee and relocated to the new independent spent fuel storage installation (ISFSI), which is not physically associated with the reactor site. The new ISFSI has been licensed under 10 CFR Part 72 for storage facilities not associated with a reactor site and possesses an approved physical plan as required by 10 CFR 72.180 and 10 CFR 73.51.

Subpart H of 10 CFR Part 72 establishes requirements for physical protection for the independent storage of spent nuclear fuel and high-level radioactive waste and refers to 10 CFR 73.51 to define the requirements for physical protection of spent nuclear fuel stored under a specific license issued pursuant to 10 CFR part 72. The Trojan ISFSI has an NRC-approved security plan to protect the spent nuclear fuel stored there from radiological sabotage and diversion as required by 10 CFR part 72, subpart H.

Pursuant 10 CFR 50.12, "Specific exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of these parts, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Additionally, 10 CFR 50.12 states that the Commission will not consider granting an exemption to 10 CFR part 50 unless special circumstances are present. Special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may grant exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property, and are otherwise in the public interest.

III.

The Commission has determined that the existing 10 CFR part 73 requirements need to be maintained at the Trojan Nuclear Plant until the spent fuel located in the spent fuel pool is physically relocated from the defueled site to the new security area at the ISFSI. With the completion of the spent fuel movement into the ISFSI, there will no longer be any special nuclear material located within the 10 CFR part 50 licensed site. At that time, the potential for radiological sabotage or diversion of special nuclear material at the 10 CFR part 50 licensed site would be eliminated. The security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 license site, presume that the purpose of the facility is to possess and utilize special nuclear material. Therefore, the continued application of the 10 CFR part 73 requirements to the Trojan facility would no longer be necessary to achieve the underlying purpose of the rule. Additionally, with the transfer of the special nuclear material to the ISFSI, the 10 CFR part 50 licensed site would be comparable to a source and byproduct licensee in terms of the level of security needed to protect the public health and safety. The continued application of 10 CFR part 73 security requirements would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities. Therefore, compliance with 10 CFR part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the removal of all special nuclear material from the 10 CFR part 50 licensed site constitutes special circumstances. The security of the special nuclear material will be maintained following relocation of the spent nuclear fuel to the 10 CFR part 72 licensed ISFSI since new assurance objectives and general performance requirements will be in place to protect the spent fuel by the security requirements in 10 CFR part 72. Therefore, protection of the special nuclear material will continue following relocation of the spent nuclear fuel from the 10 CFR part 50 licensed site.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the continued maintenance of appropriate security requirements for the special nuclear material. Additionally, special circumstances are present based on the relocation of the spent nuclear fuel from the 10 CFR part 50 site to the 10 CFR part 72 site. Therefore, the Commission hereby grants Portland General Electric Company an exemption from the requirements of 10 CFR 50.54(p) at the Trojan Nuclear Plant.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the maintenance of appropriate security requirements for the special nuclear material under the 10 CFR part 72 license. Therefore, the Commission hereby grants Portland General Electric Company an exemption from the requirements of 10 CFR part 73 at the Trojan Nuclear Plant.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant on the quality of the human environment (64 FR 46422).

This exemption is effective upon completion of the transfer of the spent nuclear fuel at the Trojan Nuclear Plant to the Trojan independent spent fuel storage installation.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3189 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Risk-Informed Revisions to Technical Requirements of 10 CFR Part 50

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission has instructed its staff to explore changes to specific technical requirements of 10 CFR part 50, to incorporate risk-informed attributes. The staff is studying the ensemble of technical requirements contained in 10 CFR part 50 (and its associated implementing documents, such as regulatory guides and standard review plan sections) to (1) identify individual or sets of requirements potentially meriting change; (2) prioritize which of these requirements (or sets of requirements) should be changed; and (3) develop the technical bases to an extent that is sufficient to demonstrate the feasibility of changing the requirements. This work will result in recommendations to the Commission on specific regulatory changes that should be pursued. Public participation in the development of these recommendations will be obtained via workshops, information on a web site, and other means.

SUPPLEMENTARY INFORMATION: This notice serves as notification of a public workshop to provide for the exchange of information with all stakeholders regarding the staff's efforts to risk-inform the technical requirements of 10 CFR part 50. The subject of the workshop will be to discuss the preliminary work being performed by the NRC staff on risk-informing the technical requirements of 10 CFR part 50. The meeting will focus on the overall framework of the risk-informing process, the criteria used to identify and

prioritize candidate regulations and design basis incidents (DBAs), the results of the staff's initial efforts in risk-informing two trial implementation issues (i.e., 10 CFR 50.44 and special treatment rules), the preliminary results of the selection of additional candidate requirements and DBAs to be examined, and discussion of preliminary issues associated with the development and implementation of the entire process.

Initial documents covering some of the above topics will be available on the part 50 technical requirements web site between one and two weeks prior to the workshop and will be placed in the public document room. Each of these documents will contain a list of preliminary issues for discussion. The address for the Part 50 technical requirements web site is as follows: http://nrc-part50.sandia.gov This web site can also be accessed from the NRC web site (http://www.nrc.gov), by selecting "Nuclear Reactors," and then "Risk-Informed Part 50 (Option 3)."

The part 50 technical requirements web site currently contains some pertinent background information, located under the "Related Sites" page (e.g., SECY–98–300, SECY–99–256 and SECY–99–264).

Workshop Meeting Information

The staff intends to conduct a workshop to provide for an exchange of information related to the risk-informed revisions to the technical requirements of 10 CFR part 50. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

Date: February 24–25, 2000.

Agenda

Preliminary agenda is as follows (a final agenda will be available at the workshop):

Thursday, February 24, 2000 (8:00 a.m.–Noon)

NRC Presentations:
- —Introduction (Background and Objectives)
- —Framework for Risk-Informing Regulatory Requirements and DBAs
- —Process and Criteria for Identifying and Prioritizing Candidate Regulations and DBAs
- —Preliminary Results of Selection of Candidate Regulations and DBAs
- —Trial Implementation of 10 CFR 50.44
- —Trial Implementation of Special Treatment Requirements
- —Future Activities

Thursday, February 24, 2000 (1:00 p.m.–5:00 p.m.)

Stakeholder Presentations
Open Discussion:
- —Framework for Risk-Informing Regulatory Requirements and DBAs
- —Process and Criteria for Identifying and Prioritizing Candidate Regulations and DBAs
- —Preliminary Results of Selection of Candidate Regulations and DBAs
- —Trial Implementation of 10 CFR 50.44
- —Trial Implementation of Special Treatment Requirements

Friday, February 25, 2000 (8:00 a.m.–Noon)

Continued Discussion (as needed)
Future Activities
Wrap-Up/Summary

Location: NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852.

Registration: No registration fee for workshop; however, notification of attendance is requested so that adequate space, materials, etc., for the workshop can be arranged. Notification of attendance should be directed to Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

Dated this 7th day of February 2000.

For the Nuclear Regulatory Commission.

Mark A. Cunningham,

Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–3188 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Accounting for Social Insurance

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of Statement of Federal Financial Accounting Standards (SFFAS) No. 17, "Accounting for Social Insurance." The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB).

ADDRESSES: Copies of SFFAS No. 17, "Accounting for Social Insurance," may be obtained for $12.00 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00540–4.

FOR FURTHER INFORMATION CONTACT: James Short (telephone: 202–395–3124), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the seventeenth Statement of Federal Financial Accounting Standards (SFFAS), "Accounting for Social Insurance." The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB) on November 19, 1999.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon accounting principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, a notice of document availability is published in the **Federal Register** and distributed throughout the Federal Government.

On September 30, the FASAB Principals signed a revised MOU agreeing that future FASAB statements will become final 90 days after FASAB has submitted a proposed standard to each of the three FASAB Principals, so long as no Principal objects during the 90-day period. OMB, GAO, and Treasury would continue to have veto power over any FASAB action and, in addition, they would maintain their statutory authority to establish and adopt accounting standards for the Federal Government.

Under this new agreement, FASAB will be responsible for the **Federal Register** notification process for future statements. Since this statement and one other were undergoing final review by September 30, they will be processed under the previous procedures. The other statement will be forwarded by OMB within the next few weeks for publication in the **Federal Register**.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of

the Treasury, and the Director of OMB decide upon accounting principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, a notice of document availability is published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/WH/EOP/omb, under the caption "**Federal Register** Submissions."

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–3174 Filed 2–10–00; 8:45 am]

BILLING CODE 3110–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27132]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

DATE: February 4, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by February 28, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarations(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a coy of any notice or order issued in the matter. After February 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9513)

Alliant Energy Corporation ("Alliant" 222 West Washington Avenue, Madison, Wisconsin 53703, a registered holding company, and its wholly owned public utility subsidiary, IES Utilities, Inc. ("IES"), Alliant Tower, Cedar Rapid, Iowa 52401 (collectively, "Applicants"), have filed a post-effective amendment under sections 9(a), 10 and 13(b) of the Act, and rules 54, 90 and 91 under the Act, to an application-declaration previously filed under the Act.

By order dated October 26, 1999 (Holding Co. Act Release No. 27096) ("Order"), the Commission authorized, among other things, Alliant to acquire indirectly a 25% membership interest in Nuclear Management Company, LLC ("NMC"). NMC was formed for the purpose of consolidating specialized nuclear power plant employees and resources of IES and certain other unaffiliated nuclear power plant owners(collectively, "NMC Plant Owners").[1]

IES was also authorized in the Order to enter into a service agreement ("Service Agreement") and related employee lease agreement with NMC whereby IES would provide personnel and other resources to NMC, which would provide certain services ("Services")[2] to the NMC Plant Owners, including IES, at cost. In addition, NMC was authorized to offer these Services to parties other than the NMC Plant Owners.

Applicants now seek authorization to enter into a new service agreement ("New Service Agreement") whereby NMC would provide operations, maintenance, capital improvement and decommissioning services ("New Services") to IES and to enter into essentially identical agreements with the other NMC Plant Owners. Applicants also note that NMC may admit additional members and/or offer similar types of operating services at competitive rates to third parties who are not, and whose affiliates are not, members of NMC.

Under the New Service Agreement, NMC will act as agent of IES and each of the other NMC Plant Owners in connection with the operation, management, maintenance, and repair of the nuclear plants owned by the NMC Plant Owners. The NMC Plant Owners will grant NMC, as their agent, the power and authority to execute, modify, amend or terminate any contracts, licenses, purchase orders, or permits relating to the operations of or capital improvements to a unit. In addition, NMC will make capital improvements to the NMC Plant Owner's nuclear plant facilities, and will perform decommissioning work required upon the retirement of such facilities.

In accordance with Nuclear Regulatory Commission ("NRC") regulations, the NMC Plant Owners will transfer operating responsibility for the nuclear plants to NMC. Following the transfer of operating responsibility to NMC by NMC Plant Owners, NMC will be obligated to obtain and maintain all necessary licenses required by the NRC and other governmental bodies. Further, NMC, as supplier of operating services to each NMC Plant Owner, will have authority to make all decisions relating to the public health, safety, and security of the nuclear facilities. The New Service Agreement also provides that a NMC Plant Owner will transfer to NMC its on-site non-union employees and contractors responsible for the licensed obligations of its plant.

These rights and responsibilities notwithstanding, Applicants note that the NMC Plant Owners may have reserved certain rights under the New Service Agreement. For example, NMC may not, without the prior written approval of a NMC Plant Owner sell, encumber or otherwise dispose of any property or equipment which comprises any nuclear plant, except to the extent replaced by similar equipment or property of comparable value. In addition, the NMC Plant Owner has exclusive authority to direct NMC to retire a plant and commence decommissioning activity, to operate a plant at a reduced capacity, and to review and approve contracts that NMC may enter into with respect to acquisitions of equipment, property, materials and inventories. Further, each NMC Plant Owner will remain the owner of, and be entitled to all of, the capacity and energy associated with any plant it owns.

NMC will prepare an annual budget for operating expenses and capital improvements for each plant for the following year. NMC Plant Owners will reimburse NMC for operation costs[3] and capital improvements costs.

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[1] Alliant indirectly owns undivided interest in two nuclear power facilities, the Kewaunee Nuclear Power Plant ("KNPP"), located in the Town of Carlton, Wisconsin, and the Duane Arnold Energy Center ("DAEC"), located in Palo, Iowa.

[2] The Services provided under the Service Agreement include fuel management, procurement and warehousing, licensing, outage support, quality assurance, records management, safety assessment and oversight, security, training and special projects.

[3] Costs of operation of a plant include salaries and employee benefits, the direct cost of contractors

Continued

Applicants state that the New Services will be provided to IES at cost, as determined in accordance with rules 90 and 91 and all cost of operation will be calculated and allocated in accordance with rules 90 and 91 of the Act.

Alliant Energy Corporation, et al. (70–9617)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, and its wholly owned non-utility subsidiary, Alliant Energy Resources, Inc. ("Resources") each with principal executive offices at 222 West Washington Avenue, Madison, Wisconsin 53703, have filed an application under sections 9(a) and 10 of the Act and rule 54 of the Act.

Alliant Energy's public utility subsidiaries are Wisconsin Power & Light Company, South Beloit Water, Gas and Electric Company, Interstate Power Company, and IES Utilities Inc. Collectively, Alliant Energy's public utility subsidiaries provide public utility service to approximately 919,000 electric and 394,000 retail gas customers in parts of Wisconsin, Iowa, Minnesota and Illinois. Resources serves as the holding company for substantially all of Alliant Energy's energy related and non-utility investments and subsidiaries.

Resources is seeking authority to acquire, either directly or indirectly through a subsidiary, up to 6,666,666 shares out of a total of 25,000,000 shares of Series G Senior Preferred Stock, $0.001 par value per share ("Series G Preferred Stock") of Capstone Turbine Corporation ("Capstone"), a privately held California corporation. Capstone designs, fabricates and markets an air-bearing based microturbine that is capable of using various fuels to generate electric power. Capstone's proprietary microturbine technology, referred to as the Capstone Micro Turbine™ ("Micro Turbine"), is designed for use as an alternative power source in the multi-billion dollar worldwide market for distributed power generation. The Micro Turbine is intended for such applications as standby generation, peak load shaving, resources recovery and hybrid electric vehicles.

The aggregate purchase price ot be paid by Resources for the Series G Preferred Stock would be approximately $20 million, or $3.00 per share. In addition, Resources would be contractually bound by the terms of an amended and restated stockholders agreement ("Stockholders Agreement"). Under the terms of the Stockholders Agreement, Resources would be obligated to vote for directors designated by holders of Capstone's common stock and by holders of certain other series of preferred stock. The Stockholders Agreement terminates on the earlier of April 9, 2007 or upon an initial public offering of Capstone meeting certain standards set forth in the Capstone's Articles of Incorporation.

The Series G Preferred Stock and other preferred stock currently outstanding will automatically convert into common stock of Capstone, either on a vote of 75% of Capstone's preferred stockholders or following an initial public offering by Capstone having aggregate gross proceeds of at least $30 million and an initial offering price at least equal to $8.00 per share. The shares of common stock which would be received by Resources upon conversion would represent approximately six percent of the total number of ourstanding Capstone common stock shares.[4]

In conjunction with the proposed transaction, Resources and Capstone also intend to enter into a packaging and distribution agreement ("Distribution Agreement"). Under the Distribution Agreement, Capstone would appoint Resources as a distributor of Capstone products, including completed Micro Turbine assemblies, subassemblies and parts (including controls and software) which are used or will be used by customers in stationary electric power generation applications. Resources would have the right under the Distribution Agreement, directly or through subdistributors (which may be subsidiaries of Resources), to promote, market, sell, install, commission and service Capstone products on either an exclusive or non-exclusive basis. As a condition to its appointment as a distributor of Capstone products, Resources may also agree to purchase a specified number of completed Micro Turbine system assemblies for resale or lease. It is contemplated that Resources would remarket Capstone products to customers and/or package such products with other products and materials manufactured or acquired by Resources (or a subsidiary) for ultimate sale to customers.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3168 Filed 2–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Lifekeepers International, Inc.; Order of Suspension of Trading

February 7, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lifekeepers International, Inc. ("Lifekeepers"), because of questions regarding the accuracy of statements of Lifekeepers and others concerning, among other things, Lifekeepers' financial condition, projected financial condition and the status of Lifekeeper's securities registration statements.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, February 8, 2000 through 11:59 p.m. EST, on February 22, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–3292 Filed 2–8–00; 4:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42390; File No. SR–MBSCC–99–8]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Electronic Pool Notification Service Rules

February 7, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"), notice is hereby given that on October 20, 1999, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission

engaged by NMC, all administrative and overhead costs and an allocable portion of the return on and of the investment by NMC in capital items owned by NMC.

[4] This estimate is based on the number of shares of common stock and preferred stock of Capstone outstanding on January 27, 2000, and assumes no further issuances of preferred stock (other than the currently approved 25 million shares of Preferred Stock to be issued) prior to the conversion date.

[1] 15 U.S.C. 78s(b)(1).

("Commission") and on November 8, 1999, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MBSCC's rules to clarify MBSCC's procedures when there is a disruption in the Electronic Pool Notification ("EPN") service. The proposed rule change will also allow MBSCC members to terminate their EPN service by providing MBSCC with written notice ten days prior to termination instead of thirty days prior to termination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Article VIII, Rule 1, Section 3(d) of MBSCC's Rules requires EPN users to utilize the EPN service for all messages relating to EPN eligible securities except for messages that MBSCC specifically exempts in the EPN procedures and messages that both parties agree not to send through the EPN service. The proposed rule change makes explicit that in the event of an EPN system disruption and an extension of the cut-off times for communicating pool allocation information pursuant to The Bond Market Association Guidelines, EPN users will be relieved of their obligation to process messages through the EPN service until the beginning of the next business day after the EPN system has been recovered. This modification is intended to confirm an EPN's user's ability to revert to phone and fax communication of pool allocation information in the event of an EPN system disruption that results in a pool notification extension. EPN users will be relieved of their obligation to process messages through EPN until the beginning of the next business day after the EPN system has been recovered to give them flexibility in such situations. MBSCC believes, however, that if the EPN system recovers during a pool notification extension, EPN users will choose to utilize EPN rather than phone and fax communication to the extent possible.

The proposed rule change also changes Article VIII, Rule 2 of MBSCC's Rules, which currently provides that an EPN user may cease to maintain an EPN account or withdraw as an EPN user by giving MBSCC thirty days written notice prior to termination. The proposed rule change modifies this provision to require written notice ten days prior to termination. MBSCC believes that written notice ten days prior to termination is appropriate and is consistent with the notice of termination provision contained in MBSCC's rules governing its comparison and clearing services.

The proposed rule change also will:

- Delete references in the cover page and in Article VI, Rule 1 of MBSCC's Rules to the "EPN Division" because while EPN is a separate service from the comparison and clearing service, it is not a separately constituted division.
- Replace references in Article VI, Rule 1 of MBSCC's Rules to "Federal National Mortgage Association" with "Fannie Mae" to reflect the name change of such organization.
- Renumber the rules contained in Article IX that were inadvertently misnumbered and makes corresponding changes to cross-references to such rules and to the table of contents.
- Add Managing Director to Article X, Rules 1 and 3 as a person who may take certain actions with respect to certain actions taken by MBSCC.
- Renumber the EPN portion of MBSCC's Rules with consecutive page numbers throughout rather than page numbers by article for ease of reference.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–MBSCC–99–8 and should be submitted by March 3, 2000.

[2] The Commission has modified the text of the summaries prepared by MBSCC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3169 Filed 2–10–00; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) intent to promulgate a permanent amendment to implement the No Electronic Theft (NET) Act of 1997 after any temporary, emergency guideline amendment is promulgated to implement that Act; and (2) additional proposed permanent amendments to the sentencing guidelines, policy statements, and commentary. Request for comment. Notice of public hearing.

SUMMARY: (1) The Commission is considering making permanent any temporary, emergency guideline amendment that it may promulgate to implement the NET Act. The Commission is required to promulgate an emergency guideline amendment not later than April 6, 2000. It is the intent of the Commission subsequently to make that amendment a permanent amendment to the sentencing guidelines not later than May 1, 2000.

(2) The Commission also gives notice of the following: (A) proposed amendments to §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), 2A3.3 (Criminal Sexual Abuse of a Ward), 2A3.4 (Abusive Sexual Contact), 2G1.1 (Promoting Prostitution or Prohibited Sexual Contact), 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), and 2G3.1 (Importing, Mailing, or Transporting Obscene Matter) in order to implement the directives to the Commission contained in the Protection of Children from Sexual Predators Act of 1998, and issues for comment; (B) proposed amendments to § 2F1.1 (Fraud and Deceit) to implement the directives contained in the Wireless Fraud Protection Act, and issues for comment; (C) proposed amendments to §§ 1B1.1 (Application Instructions), 2K2.4 (Use of Firearms During or in Relation to Certain Crimes), and 4B1.2 (Definitions of Terms Used in Section 4B1.1) to respond to amendments to 18 U.S.C. 924(c) made by Public Law 105–386, and issues for comment; (D) issue for comment regarding whether, and in what manner the Commission should address five issues of circuit conflict; and (E) proposed technical and conforming amendments to various guidelines.

DATES: (1) Proposed Permanent NET Act Amendment.— Public comment supplementary to any public comment already received on the NET Act pursuant to the notice of proposed temporary amendment (see 64 FR 72,129, Dec. 23, 1999) should be received by the Commission not later than March 10, 2000; (2) Additional proposed permanent amendments and issues for comment.—Public comment should be received by the Commission not later than March 10, 2000; (3) Public hearing.—The Commission has scheduled a public hearing for March 23, 2000, at 9:30 a.m., at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002–8002. A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502–4590 not later than March 10, 2000. Written testimony for the hearing must be received by the Commission not later than March 16, 2000. Submission of written testimony is a requirement for testifying at the public hearing.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590. For further information concerning implementation of the NET Act, contact Kenneth Cohen, Director of Legislative Affairs: (202) 502–4523.

SUPPLEMENTARY INFORMATION: (1) Proposed Permanent NET Act Amendment.—The NET Act directs the Commission to: (A) ensure that the applicable guideline range for a crime committed against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime; and (B) ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed. The NET Act, as clarified by the Digital Theft Deterrence and Copyright Damages Improvement Act of 1998, requires the Commission to promulgate a temporary, emergency guideline amendment not later than April 6, 2000.

In December 1999, the Commission published three options for promulgating an emergency amendment to § 2B5.3 (Criminal Infringement of Copyright and Trademark) and accompanying commentary to implement the NET Act directive. See 64 FR 72,129, Dec. 23, 1999. The Commission has received, and is considering, public comment on those three options. The Commission intends to promulgate a temporary, emergency guideline amendment not later than April 6, 2000 (pursuant to the legislation), but not earlier than March 23, 2000 (the date of the public hearing).

An emergency guideline amendment must be re-promulgated as a permanent amendment or it becomes ineffective upon the expiration of the congressional review period of the Commission's next amendment report to Congress (180 days from the day the Commission submits the report to Congress). Accordingly, the Commission also intends to make permanent any temporary, emergency guideline amendment it promulgates to implement the NET Act.

Recognizing that some interested members of the public have already commented on the proposed temporary amendments, the Commission invites any other additional, supplementary comment regarding whether it should make any such amendment permanent. See 64 FR 72,129, Dec. 23, 1999.

(2) Additional Proposed Permanent Amendments.—The proposed amendments are presented in one of two formats. First, the amendments are proposed as specific revisions to the relevant guidelines and accompanying commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

(3) Public Hearing.—The scope of the hearing is expected to include: (A) the proposed amendment options to provide a temporary, emergency amendment to implement the NET Act previously published in the **Federal**

[3] 17 CFR 200.30-3(a)(12).

Register (64 FR 72129, Dec. 23, 1999); and (B) all permanent amendments that are proposed for action in this amendment cycle ending May 1, 2000 (including any emergency NET Act amendment that is proposed to be made permanent). For additional proposed amendments to the sentencing guidelines previously published by the Commission, see 64 FR 72129, Dec. 23, 1999; and 65 FR 2663, Jan. 18, 2000.

(4) Reports and other information pertaining to proposed amendments, including the proposed amendment to implement the NET Act, may be accessed through the Commission's website at *www.ussc.gov*.

Authority: 28 U.S.C. 994 (a), (o), (p); USSC Rules of Practice and Procedure 4.3, 4.4, and 4.5.

Diana E. Murphy,
Chair.

Proposed Permanent Amendment to Implement the Net Act

(1) *Synopsis of Proposed Amendment:* For further information about the Net Act and proposed amendment options to implement the NET Act, see 64 FR 72129 December 23, 1999.

Proposed Amendment: Protection of Children Against Sexual Predators Act

(2) *Synopsis of Proposed Amendment:* This proposed amendment responds to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105–314. The Act contained the following directives to the Commission:

(A) to provide a sentencing enhancement for offenses under Chapter 117 of title 18 (relating to the transportation of minors for illegal sexual activity) while ensuring that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines;

(B) to provide for appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity;

(C) to provide for appropriate enhancement if the defendant knowingly misrepresented his/her actual identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity;

(D) to provide for appropriate enhancement in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; and

(E) to clarify that the term "distribution of pornography" applies to the distribution of pornography for both monetary remuneration and a non-pecuniary interest.

The Act also required the Commission, in carrying out these directives, to ensure reasonable consistency with other guidelines, and avoid duplicative punishment under the guidelines for substantially the same offense. In addition, the Act contained two new crimes: (A) an offense, at 18 U.S.C. 2425, for the transmittal of identifying information about minors for criminal sexual purposes (which carries a 5-year statutory maximum term of imprisonment); and (B) an offense, at 18 U.S.C. 1470, for the transfer of obscene materials to minors (which carries a 10-year statutory maximum term of imprisonment).

This amendment presents options to address the new offense of transferring obscene materials to minors and to implement the directives to account for nonpecuniary distribution of child pornography and to provide enhancements for computer use and misrepresentation of identity. Issues for comment follow on how best to implement the directive to provide an enhancement for Chapter 117 offenses, to implement the directive to provide an enhancement for a pattern of activity of sexual abuse and exploitation, and to address the new offense of using interstate facilities to transmit identifying information about minors for criminal sexual purposes.

Part (A): The New Offense of Prohibiting Transfer of Obscene Materials to a Minor

Synopsis of Proposed Amendment: This amendment addresses the new offense at 18 U.S.C. 1470, which makes it unlawful to transfer obscene materials to a minor. The statutory maximum for the offense is 10 years imprisonment. The amendment proposes to reference the offense in the Statutory Index (Appendix A) to the guideline covering the importing, mailing, or transporting of obscene matter, § 2G3.1.

The amendment proposes to modify the distribution enhancement in § 2G3.1(b)(1) to define distribution of obscene matter to mean any act, including production, transportation, and possession with intent to distribute, related to (i) distribution for pecuniary gain (i.e., for profit); (ii) distribution for the receipt, or expectation of receipt, of anything of value, but not for pecuniary gain; and (iii) any knowing distribution to a minor. An additional 2-level enhancement is proposed if the offense involved the knowing transfer of obscene matter to a minor in order to entice that minor to engage in prohibited sexual conduct.

An issue for comment is presented regarding whether the distribution enhancement in § 2G3.1(b)(1) should include distribution between or among adults that does not involve the receipt, or expectation of receipt, of anything of value. An issue for comment is also presented regarding whether the current enhancement's reference to the loss table in the fraud guideline should be deleted. Currently, the distribution enhancement requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels.

Proposed Amendment:

Section 2G3.1 is amended in the title by adding at the end ", Transferring Obscene Matter to a Minor".

Section 2G3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) (Apply the greatest.) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by [5] levels.

(C) Any distribution to a minor, increase by [5] levels. If the distribution to a minor was intended to persuade, induce, entice, coerce, or facilitate the transport of, the minor to engage in prohibited sexual conduct, increase by an additional [2] levels.".

The Commentary to § 2G3.1 captioned "Statutory Provisions" is amended by inserting ", 1470" after "1466".

The Commentary to § 2G3.1 captioned "Application Note" is amended by striking Application Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to distribution of obscene matter.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who has not attained the age of [18] years.

'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense, including the production of child pornography, as defined in 18 U.S.C. 2256(8).".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 1468" the following new line:

"18 U.S.C. 1470 2G3.1"

Issues for Comment: The Commission invites comment on whether it should include an enhancement in § 2G3.1(b)(1) for distribution of obscene matter that does not involve distribution for pecuniary gain, for anything of value, or to a minor. For example, should an enhancement be provided if an adult gives obscene matter to another adult and receives, or expects to receive, nothing in return? If so, what should be the extent of the enhancement?

The Commission invites comment regarding whether the reference in § 2G3.1(b)(1) to the loss table in the fraud guideline should be deleted. Currently, the enhancement for distribution at § 2G3.1(b)(1) requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels. Should the Commission maintain the minimum 5-level increase for distribution for pecuniary gain and provide an upward departure for especially large-scale commercial enterprises?

Part (B): The New Offense of Prohibiting Transmittal of Identifying Information about a Minor for Criminal Sexual Purposes

Issue for Comment: The Commission invites comment on whether and how it should amend the guidelines to cover the new offense, at 18 U.S.C. 2425, which prohibits the use of the mail or any facility or means of interstate commerce to knowingly transmit identifying information about a minor with the intent to entice, encourage, offer, or solicit anyone to engage in prohibited sexual activity. Should the Commission reference the new offense in the Statutory Index to the guideline covering the promotion of prohibited sexual conduct, § 2G1.1? Are there other guidelines to which the new offense might appropriately be referenced? In addition, is there aggravating and/or mitigating conduct that might be associated with the new offense, and if so, how should the guidelines take this conduct into account?

Part (C): Clarification of the Term "Item" in the Enhancement in § 2G2.4 for Possession of 10 or More Items of Child Pornography

Synopsis of Proposed Amendment: This amendment proposes to add commentary language to the guideline covering possession of child pornography, § 2G2.4, to clarify whether an individual computer file (as opposed to disk on which it and many other files may be located) is an "item" of child pornography for purposes of the enhancement in § 2G2.4(b)(2), which provides a 2-level increase if more than 10 items of child pornography are possessed. Four circuits have held that an individual computer file does qualify as an item for purposes of the enhancement. An issue for comment follows on how items should be quantified for purposes of the enhancement.

Proposed Amendment

The Commentary to § 2G2.4 is amended by adding at the end the following:

"Application Note:

1. A computer file containing a visual depiction involving the sexual exploitation of a minor shall be considered to be one item for purposes of subsection (b)(2). Accordingly, if a computer disk contains, for example, three separate files, each of which contains one or more such visual depictions, then those files would be counted as three items for purposes of that subsection.".

Issue for Comment: The Commission invites comment on how items of child pornography should be quantified for purposes of the enhancement in § 2G2.4(b)(2), which provides a 2-level increase if more than 10 items of child pornography are possessed. Should, for example, a book or computer file containing 300 visual depictions of child pornography be counted as one item, or as three items, or as some other number of items?

Part (D): The Directive to Clarify That "Distribution of Pornography" Applies to the Distribution of Pornography for Both Monetary Remuneration and a Non-Pecuniary Interest

Synopsis of Proposed Amendment: This amendment addresses the Act's directive to clarify that the term "distribution of pornography" applies to the distribution of pornography for both pecuniary gain and any nonpecuniary interest. The amendment modifies the distribution enhancement in the pornography trafficking guideline, § 2G2.2(b)(2), to define distribution of child pornography to mean any act, including production, transportation, and possession with intent to distribute, related to (i) distribution for pecuniary gain (*i.e.*, for profit); (ii) distribution for the receipt, or expectation of receipt, of anything of value, but not for pecuniary gain; and (iii) any knowing distribution to a minor. An additional 2-level enhancement is proposed if the offense involved the knowing transfer of child pornography to a minor in order to entice that minor to engage in prohibited sexual conduct.

An issue for comment is presented regarding whether the distribution enhancement in § 2G2.2(b)(2) should include distribution between or among adults that does not involve the receipt, or expectation of receipt, of anything of value. An issue for comment is also presented regarding whether to delete the current enhancement's reference to the loss table in the fraud guideline, whether to maintain the minimum 5-level increase for distribution for pecuniary gain, and whether to provide for an upward departure for especially large-scale commercial enterprises. Currently, the enhancement for distribution at § 2G2.2(b)(2) requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels.

Proposed Amendment

Section 2G2.2(b) is amended by striking subdivision (2) in its entirety and inserting the following:

"(2) (Apply the greatest.) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by [5] levels.

(C) Any distribution to a minor, increase by [5] levels. If the distribution to a minor was intended to persuade, induce, entice, coerce, or facilitate the transport of, the minor to engage in prohibited sexual conduct, increase by an additional [2] levels.".

The Commentary to § 2G2.2 is amended in Application Note 1 by striking " 'Distribution' includes" and

all that follows through "intent to distribute." and inserting the following:

"'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to distribution of material involving the sexual exploitation of a minor.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who has not attained the age of [18] years.

'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense, including the production of child pornography, as defined in 18 U.S.C. § 2256(8).".

Issues for Comment: The Commission invites comment on whether it should include an enhancement in § 2G2.2(b)(2) for distribution of child pornographic material that does not involve distribution for pecuniary gain, for anything of value, or to a minor. For example, should an enhancement be provided if an adult gives child pornographic material to another adult and receives, or expects to receive, nothing in return? If so, what should be the extent of the enhancement?

The Commission also invites comment regarding whether the reference in § 2G2.2(b)(2) to the loss table in the fraud guideline should be deleted. Currently, the enhancement for distribution at § 2G2.2(b)(2) requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels.

Part (E): The Directives To Provide an Enhancement for the Use of a Computer or the Misrepresentation of the Defendant's Identity

Synopsis of Proposed Amendment: This amendment responds to the Act's directives to: (i) provide for appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity; and (ii) provide for appropriate enhancement if the defendant knowingly misrepresented his/her actual identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual conduct.

The amendment proposes to implement these directives by providing a [2]-level enhancement in the sexual abuse guidelines, §§ 2A3.1–2A3.4, and the prostitution and promotion of prohibited sexual conduct guideline, § 2G1.1, for either the use of a computer, or other means, to contact the minor electronically or the misrepresentation of a criminal participant's identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual conduct. The amendment also contains an option, shown in brackets, to delete the language in the proposed enhancement requiring the motive to "persuade, induce, entice, coerce, or facilitate the transport of, the minor to engage in prohibited sexual activity".

Although the proposed enhancement combines these two factors as alternative triggers for the enhancement, the Commission could choose to provide separate, cumulative enhancements for these two types of offense conduct.

An issue for comment follows regarding whether the Commission should add an enhancement to the child pornography production and trafficking guidelines for misrepresentation of the defendant's identity or the identity of any other participant in the criminal conduct.

Proposed Amendment

Section 2A3.1(b) is amended by adding at the end the following subdivision:

"(6) If [, to persuade, induce, entice, coerce, or facilitate the transport of, a minor to engage in prohibited sexual conduct,] the offense involved: (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by adding at the end the following:

"'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense, including the production of child pornography, as defined in 18 U.S.C. § 2256(8).".

Section 2A3.2(b) is amended by striking "Characteristic" and inserting "Characteristics"; and by adding at the end the following subdivision:

"(2) If[, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved: (A) the use of a computer, or other means, to communicate with the minor electronically, or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.".

The Commentary to § 2A3.2 captioned "Application Notes" is amended by redesignating Notes 1 through 4 as Notes 2 through 5, respectively; and by inserting before Note 2, as redesignated by this Amendment, the following new Note 1:

"1. For purposes of this guideline—

'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse).".

Section 2A3.3 is amended by inserting after subsection (a) the following subsection:

"(b) Specific Offense Characteristic

(1) If[, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved: (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.".

The Commentary to § 2A3.3 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—

'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the

Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in § 2A3.1 (Criminal Sexual Abuse).

'Ward' means a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.".

Section 2A3.4(b) is amended by adding at the end the following subdivision:

"(4) If [, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.".

The Commentary to § 2A3.4 captioned "Application Notes" is amended by redesignating Notes 1 through 5 as Notes 2 through 6, respectively, and inserting before Note 2, as redesignated by this amendment the following as the new Note 1:

"1. For purposes of this guideline—

'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse).".

Section 2G1.1(b) is amended by adding at the end the following subdivision:

"(4) If [, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 1 by inserting after "For purposes of this guideline—" the following:

"'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse).".

Issue for Comment: The Commission invites comment regarding whether the enhancement for use of a computer in subsection (b)(3) of the child pornography production guideline, § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material), should be modified to cover, in addition to the use of a computer, the misrepresentation of a criminal participant's identity to solicit a minor's participation in sexually explicit conduct to produce sexually explicit material. In addition, the Commission invites comment on whether the guideline covering trafficking child pornography, § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor) should also contain an enhancement for misrepresentation of a criminal participant's identity.

The Commission also invites comment regarding the appropriate scope of any enhancement for the use of a computer, or other means, to communicate electronically with a minor. Specifically, the Commission invites comment regarding whether the enhancement should incorporate the definitions of "electronic communication" and/or "wire communication" as those terms are defined in 18 U.S.C. 2510(12) and (1), respectively.

Parts (F) and (G): Issues for Comment on the Directives To Provide an Enhancement for Chapter 117 Offenses and for Sex Offenses Involving a Pattern of Activity

Due to the complexity of the issues involved in implementing the directives described in the following issues for comment, the Commission may not be able to complete all work necessary to promulgate amendments on these issues in this amendment cycle ending May 1, 2000. Recognizing the importance of responding to these directives as soon as possible but also acknowledging the possibility that the Commission may not promulgate amendments on these issues until the next amendment cycle, the Commission invites the public to comment on the following additional issues.

Part (F): Enhancement for Chapter 117 Offenses

Issues for Comment:

(1) The Protection of Children from Sexual Predators Act of 1998 directed the Commission to "provide a sentencing enhancement for offenses under Chapter 117 of Title 18 (relating to the transportation of minors for illegal sexual activity) while ensuring that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines." The Commission invites comment on how to most appropriately implement this directive.

(2) Specifically, the Commission invites comment on whether, and to what extent, it should amend § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct) and the guidelines covering sexual abuse, §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), 2A3.3 (Criminal Sexual Abuse of a Ward), and 2A3.4 (Abusive Sexual Contact), to provide an enhancement if the offense involved the transportation, persuasion, inducement, enticement, or coercion of a child to engage in prohibited sexual conduct. Do enhancements proposed to be added for use of a computer, or other means, to communicate with the minor electronically and/or misrepresentation of a criminal participant's identity sufficiently provide an appropriate enhancement, or is an additional enhancement for other aggravating conduct needed?

(3) The Act also increased statutory penalties, from a maximum term of imprisonment of 10 years to a maximum term of imprisonment of 15 years, for offenses under 18 U.S.C. 2423(a), relating to the transportation of a minor with the intent to engage in illegal sexual activity, and § 2423(b), relating to travel with intent to engage in a sexual act with a juvenile. Convictions under 18 U.S.C. 2423(a) are currently referenced in the Statutory Index to § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct). Convictions under 18 U.S.C. 2423(b) are currently referenced in the Statutory Index to §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), and 2A3.3 (Criminal Sexual Abuse of a Ward). A concern raised by Congress and prosecutors is that sentences under § 2A3.2 do not necessarily reflect the seriousness of the conduct involved and the harm done to minor victims. Although that guideline was originally intended to cover defendants who engage in consensual sex with an underage partner, it is increasingly being used to cover offenses involving more serious conduct, such as those involving force, violent threats, or incapacitating intoxicants.

In light of these concerns and the increased statutory penalties, the Commission invites comment on whether it should amend the base offense level in § 2G1.1 and/or §§ 2A3.1, 2A3.2, 2A3.3, and/or 2A3.4, to provide for an increase of 2 or 4 levels and/or provide an enhancement of 2 or 4 levels

if the offense involved conduct punishable under 18 U.S.C. 2423. Many of the cases prosecuted under 18 U.S.C. 2423 are sentenced under § 2A3.2, either directly or as a result of a cross reference to that guideline in § 2G1.1. In addition, the Commission invites comment on whether it should amend the Statutory Index (Appendix A) to reference 18 U.S.C. 2423(a) and (b) offenses to § 2A3.4 (Abusive Sexual Contact) in addition to the other guidelines currently referenced for those offenses in the Statutory Index. Alternatively, should offenses for 18 U.S.C. 2423(a) and (b) both be referenced to § 2G1.1 (Promoting Prostitution and Prohibited Sexual Conduct)?

(4) The Commission invites comment on whether it should provide an enhancement in § 2A3.2 based on the intimidation or mental coercion of the minor victim by the defendant (or another criminally responsible participant) and/or for cases in which the minor victim's ability to truly consent was affected. The Commission also invites comment on whether it should add an enhancement of 2 or 4 levels or provide for an invited upward departure in § 2A3.2, if the defendant is more than 10 years older than the minor victim, or if the offense involved incest.

(5) The Commission also invites comment on whether it should reconsider the manner in which the guidelines currently cover offenses under Chapter 117 of Title 18 (relating to transportation of minors for illegal sexual activity). Specifically, should those offenses continue to be referenced in the Statutory Index to § 2G1.1 with cross references provided in that guideline for cases more appropriately sentenced under § 2G2.1, the guideline covering production of child pornography, § 2A3.1, the guideline covering criminal sexual abuse, or §§ 2A3.2–2A3.4, the guidelines covering any other prohibited sexual conduct? Should the commentary in § 2G1.1 be amended to clarify how to determine the offense level for cases involving persuasion, inducement, enticement, coercion, and/or transportation of a minor for prohibited sexual conduct that are unaccompanied by underlying prohibited sexual conduct, as well as for cases that are accompanied by such conduct?

Part (G): Sex Offenses Involving a Pattern of Activity

Issues for Comment:

The Protection of Children from Sexual Predators Act of 1998 directed the Commission to provide an enhancement in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. The Commission invites comment on how to most appropriately implement this directive. Specifically, the Commission invites comment on the following issues:

(1) Should the Commission implement the directive through an upward departure provision for a "pattern of activity"? Specifically, should the Commission expand the kind of prior sexual offenses that would warrant application of the encouraged upward departure currently found in the guidelines covering sexual abuse, §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), 2A3.3 (Criminal Sexual Abuse of a Ward), and 2A3.4 (Abusive Sexual Contact)? The Commission could, for example, expand that definition to conform it to the statutory definition of "prior sexual offense conviction" found at 18 U.S.C. 2247. Currently, the upward departure provision permits consideration only of multiple acts that were prior convictions similar to the instant offense. Use of the statutory definition would allow consideration of prior convictions for offenses under Chapter 117 of Title 18 (relating to transportation for illegal sexual activity), Chapter 109A of that title (relating to sexual abuse), Chapter 110 of that title (relating to sexual exploitation of children), and under State law for offenses that would be punishable under those chapters if they had been within the Federal jurisdiction.

If the Commission were to expand the upward departure provision, should it include past conduct of the defendant that did not result in a conviction? Should the Commission include an expanded upward departure provision in § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct)?

(2) Should the Commission implement the directive by amending § 2G1.1, the guidelines covering sexual abuse, §§ 2A3.1–2A2.4, or any other guidelines, to provide an enhancement for "pattern of activity" similar to, or the same as, the 5-level "pattern of activity" enhancement currently found in § 2G2.2, the guideline covering trafficking in child pornography? If the Commission were to adopt such an approach, should the enhancement be the same as, or different from, the enhancement found in § 2G2.2? For example, should the "pattern of activity" enhancement include activity under chapter 117 of title 18 (relating to the transportation of minors for illegal sexual activity) in addition to conduct involving sexual abuse and sexual exploitation? What would be the appropriate extent of the enhancement?

(3) Should the Commission implement the directive by creating a new guideline in Chapter Four (Criminal History) for sexual offenders, similar to § 4B1.3 (Criminal Livelihood), which provides a minimum offense level for defendants who commit the offense as part of a pattern of criminal conduct engaged in as a livelihood? Creation of a guideline in Chapter Four would make the new provision applicable to all defendants sentenced under the guidelines, not just to defendants convicted of offenses relating to sexual abuse, sexual exploitation, or transportation for illegal sexual activity.

(4) Regardless of the approach adopted by the Commission (i.e., regardless of whether the Commission adopts an upward departure provision, an enhancement, or a provision in Chapter Four), should multiple acts of sexual misconduct that are considered for a "pattern of activity" relate to the offense of conviction and the relevant conduct involved in the offense? Should it include acts that formed the basis for prior convictions? Alternatively, should it include other conduct not directly related to the offense of conviction or to the relevant conduct involved in the offense, and should it include conduct that did not form the basis of a prior conviction?

(5) What types of conduct (e.g., rape, production of child pornography, enticing minors to engage in prohibited sexual conduct) should be covered by a "pattern of activity"? Should trafficking in child pornography be covered in light of the revised statutory definition of "prior sexual offense conviction" found at 18 U.S.C. 2247?

(6) Should "pattern of activity" cover only certain types of offenders (e.g., pedophiles who are at a high risk of recidivism)? How should offenders who engage in incest be treated under the enhancement?

Proposed Amendment: Implementation of the Wireless Telephone Protection Act

(3) *Synopsis of Proposed Amendment:* In the Wireless Telephone Protection Act, Pub. L. 105–172, Congress directed the Commission to review and amend the sentencing guidelines, if appropriate, to provide an appropriate penalty for offenses involving the cloning of a wireless telephone (including offenses involving the attempt or conspiracy to clone a

wireless telephone). The Commission was instructed to consider eight specific factors: (A) the range of conduct covered by the offenses; (B) the existing sentences for the offense; (C) the extent to which the value of the loss caused by the offenses (as defined in the federal sentencing guidelines) is an adequate measure for establishing penalties under the federal sentencing guidelines; (D) the extent to which sentencing enhancements within the federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses; (E) the extent to which the federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties; (F) the extent to which federal sentencing guidelines for the offense(s) adequately achieve the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2); (G) the relationship of the federal sentencing guidelines for these offenses to offenses of comparable seriousness; and (H) any other factor the Commission considers to be appropriate.

This proposal presents two amendment options to implement the directive as well as issues for comment related to: (A) the use of a cloned wireless telephone in connection with other criminal activity, and (B) how to address the apparent disparate ways in which loss is determined in cloning offenses.

Option 1 provides an enhancement for possession of cloning equipment and for manufacturing and distributing cloned telephones. The amendment proposes a two-prong enhancement with a sentencing increase of [two] levels. The first prong tracks the relevant statute, 18 U.S.C. 1029(a)(9), by explicitly covering the use or possession of any "cloning equipment," which is defined to include the hardware or software described in the statute. The definition also includes any mechanism or equipment that can be used to clone a wireless telephone. The definition additionally includes a scanning device [if the device was used with the intent to defraud]. The second prong specifically covers manufacture and distribution of a cloned telecommunications instrument. The definition of a cloned telephone also tracks the language of the statute.

Option 2 also proposes a two-prong enhancement with an increase of [two] levels and applies the enhancement to all access devices. The first prong covers possession or use of equipment that is used to manufacture access devices. (The ESN/MIN of a wireless telephone is a type of access device under the statute.) Specifically, this prong provides a [two] level enhancement if the offense involves the use or possession of any "device-making equipment." It broadens the statutory definition of device-making equipment (found in 18 U.S.C. 1029(e)(6)) to include not only equipment that can be used to make an access device, but also the cloning hardware or software described in § 1029(a)(9). Consistent with the statute, the definition also includes a scanning device [if the device was used with the intent to defraud].

The second prong covers distribution of any counterfeit access device, as that term is defined in 18 U.S.C. 1029(e)(2), and includes the distribution of any cloned wireless telephone.

Proposed Amendment

Option 1

Section 2F1.1(b) is amended by redesignating subdivisions (4) through (7) as subdivisions (5) through (8), respectively; and by inserting after subdivision (3) the following new subdivision (4):

"(4) If the offense involved (A) the use or possession of any cloning equipment; or (B) the manufacture or distribution of a cloned telecommunications instrument, increase by [2] levels.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by adding at the end the following:

"21. For purposes of subsection (b)(4)—

'Cloning equipment' means any hardware, software, mechanism, or equipment that has been, or can be, configured to insert or modify any telecommunication identifying information associated with, or contained in, a telecommunications instrument so that such telecommunications instrument may be used to obtain telecommunications service without authorization. A scanning receiver is cloning equipment [if it was used or possessed with the intent to defraud]. 'Scanning receiver,' 'telecommunications service,' and 'telecommunication identifying information' have the meaning given those terms in 18 U.S.C. 1029(e)(8), (e)(9), and (e)(11), respectively.

'Cloned telecommunications instrument' means a telecommunications instrument that has been unlawfully modified, or into which telecommunications identifying information has been unlawfully inserted, to obtain telecommunications service without authorization.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 1 by striking "(b)(4)" and inserting "(b)(5)"; in Note 5 by striking "(b)(4)" and inserting "(b)(5)"; and in Note 6 by striking "(b)(4)" and inserting "(b)(5)".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 15 by striking "(b)(5)" each place it appears and inserting "(b)(6)".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Notes 18 and 20 by striking "(b)(7)" and inserting "(b)(8)".

The Commentary to § 2F1.1 captioned "Background" is amended in the sixth paragraph by striking "(b)(5)" and inserting "(b)(6)"; in the seventh paragraph by striking "(b)(6)" and inserting "(b)(7)"; and in the eighth and ninth paragraphs by striking "(b)(7)" each place it appears and inserting "(b)(8)".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting after the fifth paragraph the following:

"Subsection (b)(4) implements the instruction to the Commission in section 2(e) of Public Law 105–172.".

Option 2

Section 2F1.1(b) is amended by redesignating subdivisions (4) through (7) as subdivisions (5) through (8), respectively; and by inserting after subdivision (3) the following new subdivision (4):

"(4) If the offense involved (A) the possession or use of any device-making equipment; or (B) the distribution of any counterfeit access device, increase by [2] levels.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by adding at the end the following additional note:

"21. For purposes of subsection (b)(4)—

'Device-making equipment' has the meaning given that term in 18 U.S.C. 1029(e)(6) and also includes: (A) any hardware or software that can insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such telecommunications instrument may be used to obtain telecommunications service without authorization; or (B) a scanning device [if it was used or possessed with the intent to defraud]. 'Scanning device,' and 'telecommunication identifying information' have the meaning given those terms in 18 U.S.C. 1029(e)(8) and (e)(11), respectively.

'Counterfeit access device,' has the meaning given that term in 18 U.S.C. 1029(e)(2) and includes a cloned telecommunications instrument. 'Cloned telecommunications

instrument' means a telecommunications instrument that has been unlawfully modified, or into which telecommunications identifying information has been unlawfully inserted, to obtain telecommunications service without authorization.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 1 by striking "(b)(4)" and inserting "(b)(5)"; in Note 5 by striking "(b)(4)" and inserting "(b)(5)"; and in Note 6 by striking "(b)(4)" and inserting "(b)(5)".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 15 by striking "(b)(5)" each place it appears and inserting "(b)(6)".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Notes 18 and 20 by striking "(b)(7)" and inserting "(b)(8)".

The Commentary to § 2F1.1 captioned "Background" is amended in the sixth paragraph by striking "(b)(5)" and inserting "(b)(6)"; in the seventh paragraph by striking "(b)(6)" and inserting "(b)(7)"; and in the eighth and ninth paragraphs by striking "(b)(7)" each place it appears and inserting "(b)(8)".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting after the fifth paragraph the following:

"Subsection (b)(4) implements the instruction to the Commission in section 2(e) of Public Law 105–172.".

Issues for Comment

(1) Option 1 provides a two-pronged enhancement in the fraud guideline, § 2F1.1. The first prong covers the use or possession of any "cloning equipment" (including the hardware or software described in 18 U.S.C. 1029(a)(9), any other mechanism or equipment that can be used to clone a wireless telephone, and a scanning device [if the device was used with the intent to defraud]).

As an alternative to providing this enhancement in the form of a specific offense characteristic whose applicability would have to be (at least potentially) considered in every case sentenced under this guideline (i.e., over 6,000 cases in FY 1998), the Commission invites comments on whether the loss commentary could be amended to provide a presumptive loss amount or a loss amount increase if the specified conduct is proven. More specifically, the commentary could provide that if the conduct involved "cloning equipment," the loss would be not less than a presumptive amount, or that loss will be not less than the presumptive amount plus any loss otherwise determined.

The use of a presumptive loss amount might guarantee a floor offense level if the conduct occurs, even if a specific offense characteristic for that conduct is not added to the guideline. On the other hand, a presumptive loss amount increase could accomplish the same effect as a floor but would have the added advantage of providing some increment over and above the "floor" offense level in some cases. However, because of the way the loss table increases the offense level based on increases in loss amount, a presumptive loss increase would not guarantee a set increase in offense level across the full range of loss amounts.

The Commission invites comment on whether the use of a presumptive loss amount or a presumptive loss increase is preferable to the specific offense characteristics proposed in Option One. If so, what conduct should trigger the provision? Of the presumptive loss amount or the loss increase, which is more appropriate? What is the appropriate dollar amount for the presumptive loss provision?

(2) The second prong of the proposed enhancement in Option 1 covers the manufacture and distribution of a cloned telecommunications instrument. The Commission invites comment on whether the provision should apply to all telecommunications instruments, or whether it should be limited more closely to the provisions of the Wireless Telephone Protection Act and apply only if the applicable offense conduct actually involves cloned wireless telephones.

In addition, the Commission invites comment regarding whether the second prong of the enhancement in Option 1 (relating to manufacturing cloned telecommunications instruments) should be limited to situations that involved manufacturing or distributing cloned telephones. This limitation might be justified because of the potential overlap between the first prong of the enhancement (relating to the use or possession of cloning equipment) and the broader version of the second prong.

(3) Option 2 covers possession or use of equipment that is used to manufacture access devices. (For example, the mobile identification number/electronic serial number ("MIN/ESN") of a wireless telephone is a type of access device under 18 U.S.C. 1029). This proposal provides a [two] level enhancement if the offense involves the use or possession of any "device-making equipment," broadening the statutory definition of device making equipment (found in 18 U.S.C. 1029(e)(6)) to include not only equipment that can be used to make an access device, but also the cloning hardware or software described in 18 U.S.C. 1029(a)(9). Consistent with the statute, the definition also includes a scanning device [if the device was used with the intent to defraud].

The Commission invites comment regarding whether the proposed enhancement should apply to all access devices or to only certain types of access devices.

(4) The Commission invites comment, generally, regarding whether the use of a cloned wireless telephone in connection with other criminal activity should warrant more serious punishment than the commission of the same offense without the involvement of a cloned telephone. The Commission also invites comment regarding whether the possession of a cloned wireless phone should warrant more serious punishment.

If so, the Commission invites comment regarding whether an adjustment should be added to Chapter Three that would apply to the use of a cloned wireless telephone in connection with any other offense or to the possession of a cloned wireless telephone. If so, what should the magnitude of the increase for such an adjustment be (e.g., two or four levels)? Alternatively, should a specific offense characteristic be added to one or more Chapter Two guidelines (such as § 2D1.1 or § 2F1.1)? If so, which guidelines should be amended to include the enhancement? What should the magnitude of the enhancement be (e.g., two or four levels)? If such an amendment were made, how should it affect the proposed enhancement of [two] levels for manufacturing or distribution of cloned wireless telephones in Option One, or for manufacturing or distribution of counterfeit access devices in Option Two?

The Commission also invites comment regarding whether a cross reference should be added to § 2F1.1 (and/or other relevant guidelines) that would sentence the defendant convicted of an offense involving the use or transfer of a cloned wireless telephone at the level for the offense for which the telephone was used. Such a cross reference would create the possibility that a defendant could be convicted of a less serious offense (such as an offense involving a cloned telephone that caused a small loss) but have the sentence increased to the level based on the more serious conduct that was implicated by the telephone use (such as drug trafficking) proven by a preponderance of the evidence. This

option could be implemented on its own, or in combination with some other provision.

(5) The Commission also invites comment regarding: (A) whether language should be added to the definition of loss in the commentary to § 2F1.1 to make clear that unused ESN/MIN pairs (or any or all access devices) are to be considered in determining intended loss; (B) whether a minimum or presumptive value should be established for each ESN/MIN pair or cloned wireless telephone (or any or all access devices) and, if so, (i) which should be established (a minimum or presumptive value), and (ii) what should the minimum or presumptive value be (e.g., [$500, $750, $1,000]) (and whether it should vary depending on the type of access device); and (C) whether the definition of loss should provide more specific guidance (and, if so, what guidance) as to how to determine intended loss in cases involving access devices, in general, and ESN/MIN pairs, in particular. For example, guidance could be provided that when a case involves one or more used ESN/MIN pairs (or access devices) and one or more unused pairs, the losses incurred in connection with the former should be used to determine an average loss per pair; that average loss amount could be multiplied by the number of used and unused pairs to determine the intended loss.

(6) The Commission invites comment on whether any action the Commission might take to implement the directive in the Wireless Telephone Protection Act (such as adopting either of the options described herein) should be coordinated and/or consolidated with action the Commission might take to implement the directive in the Identity Theft and Assumption Deterrence Act (such as adopting either of the options described in the proposed amendment for identity theft which can be found in 65 FR 2265 (January 18, 2000)). Specifically, the Commission invites comment on the potential interactions and/or overlap between the proposed options on identity theft and on telephone cloning. For example, to the extent that an unauthorized identification means can be a counterfeit access device, application of the enhancement proposed in Option 2 and an identity theft enhancement may, in some situations, be double-counting the same conduct. Such double-counting potentially might occur in the case of a defendant who uses device making equipment to make a credit card (an unauthorized identification means) in the name of an individual victim.

Note that there is an issue for comment in the published materials regarding possible amendments in response to the Identity Theft and Assumption Deterrence Act, regarding the possible promulgation of an amendment that would broaden the current rule in the commentary to § 2B1.1 regarding the minimum loss rule for credit cards ($100 each) to access devices, generally, and increase the minimum loss amount to $1,000 for each access device. See 65 FR 2668 (January 18, 2000).

Proposed Amendment: Firearms

(4) *Synopsis of Proposed Amendment:* Public Law 105–386 amended 18 U.S.C. 924(c) to: (A) add "possession in furtherance of the crime" to the list of acts for which a defendant can be convicted under the statute; (B) replace fixed terms of imprisonment (e.g., 5 years) with mandatory minimum terms of imprisonment (e.g., not less than 5 years); (C) provide tiered sanctions depending on how the firearm was used (e.g., brandished or discharged); and (D) provide a statutory definition of "brandish."

The principal parts of this proposed amendment are as follows:

(A) It amends § 1B1.1 (Application Instructions) to provide the definition of "brandish" used in 18 U.S.C. 924(c). There are two major differences between the statutory definition and the guideline definition of "brandish." First, the statutory definition does not require that the firearm be displayed, or even visible, while the current guideline definition does. Second, the statutory definition requires that a firearm actually be present, while the guideline definition, which applies to any dangerous weapon, applies to toys and fakes (because the definition of "dangerous weapon" includes such items). The amendment proposes to apply the definition to any dangerous weapon.

(B) In response to the statutory change from fixed terms of imprisonment to mandatory minimum terms, the proposal amends § 2K2.4 to clarify that the "term required by statute," with respect to 18 U.S.C. 844(h), 924(c), and 929(a), is the minimum term specified by the statute. The proposed amendment also provides for an encouraged upward departure if the minimum term does not adequately address the seriousness of the offense. Examples of when a departure may be warranted are provided.

There is also an issue for comment regarding whether the Commission should provide a cross-reference to the guideline for the underlying offense when there is no conviction for that underlying offense and the offense level for that underlying offense is greater than the minimum term required by statute.

(C) It resolves a circuit conflict regarding whether, when a defendant is convicted of both section 924(c) and the underlying offense, the court can apply a weapon enhancement when imposing the sentence for the underlying offense. Specifically, the proposal amends Application Note 2 of § 2K2.4 to clarify that, with respect to the guideline for the underlying offense, "the underlying offense" includes both the offense of conviction and any relevant conduct for which the defendant is accountable under § 1B1.3. Accordingly, the amended Note instructs the court not to apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm with respect to the guideline for the underlying offense. The proposed amendment also provides examples of when this rule would (and would not) apply.

The legislation also specifically added brandishing to the conduct covered by 18 U.S.C. 924(c). This proposed amendment provides a conforming amendment to Application Notes 2 and 4 and the Background Commentary of § 2K2.4 to add brandishing to the list of specific offense characteristics that are not applied with respect to the sentencing for the underlying offense.

(D) It amends § 4B1.2 to clarify that a section 924 count is not considered an "instant offense" for purposes of the career offender guideline. It also clarifies, in § 2K2.4, that because the sentence in this guideline is determined by the relevant statute and imposed independently, Chapters Three and Four do not apply.

(E) It provides an issue for comment regarding whether the Commission should consider including a section 924(c) count as an instant offense of conviction for purposes of the career offender guideline.

(F) It makes minor technical and conforming amendments to §§ 3D1.1 and 5G1.2 to conform these guidelines to the new mandatory minimum provisions of 18 U.S.C. 924(c).

Proposed Amendment

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(c) by striking "that the weapon was pointed or waved about, or displayed in a threatening manner" and inserting "that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate

that person, regardless of whether the weapon was directly visible to that person".

Section 2K2.4(a) is amended by striking "that" and inserting "the minimum term".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 1 by adding at the end the following paragraphs:

"Sections 924(c) and 929(a) have a statutory maximum of life imprisonment. Accordingly, the court has the authority to impose a sentence above the minimum term specified if the minimum term does not adequately capture the seriousness of the offense. For example, an upward departure may be warranted if (A) the guideline for the underlying offense does not account for an aggravating factor; or (B) the defendant was not convicted of the underlying offense. Examples of factors that may warrant an upward departure include the following:

(A) the offense involved multiple firearms;

(B) the offense involved a stolen firearm or a firearm with an obliterated serial number;

(C) the offense involved serious bodily injury;

(D) the defendant is a prohibited person at the time of the offense. 'Prohibited person' has the same meaning given that term in § 2K2.1, Application Note 6.

(E) the seriousness of the defendant's criminal history is not adequately considered because the defendant was not convicted of the underlying offense.

Do not apply Chapter Three (Adjustments) and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of these chapters because the sentence for each offense is determined by the statute and is imposed independently. See §§ 3D1.1, 5G1.2.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 by striking the first paragraph in its entirety and inserting the following:

"If a defendant is convicted of an underlying offense in conjunction with any of the statutes covered by this guideline, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm with respect to the guideline for the underlying offense. A sentence under § 2K2.4 covers any explosive or weapon enhancement both for the underlying offense of conviction and for any other conduct for which the defendant may be accountable under § 1B1.3 (Relevant Conduct). For example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a different firearm from the one for which the defendant was convicted under section 924(c), do not apply any weapon enhancement in the guideline for the underlying offense; (B) in an ongoing drug trafficking offense, the defendant possessed firearms other than the one for which the defendant was convicted under section 924(c), do not apply any weapon enhancement in the guideline for the underlying offense. However, if a defendant is convicted of two bank robberies involving weapons, but is convicted of a section 924(c) offense in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the section 924(c) offense.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 4 in the third sentence by inserting "brandishing," after "possession,"

The Commentary to § 2K2.4 captioned "Background" is amended by striking "18 U.S.C. §§ " and inserting "Sections" by inserting "of title 18, United States Code," following "929(a)" by striking "penalties for the conduct proscribed." and inserting "terms of imprisonment. A sentence imposed pursuant to any of these statutes must be imposed to run consecutively to any other term of imprisonment." and by inserting "brandishing," after "use,".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 by striking the eighth paragraph in its entirety and inserting:

"A prior conviction under 18 U.S.C. 924(c) is a "prior felony conviction" for purposes of applying § 4B1.1 (Career Offender) if the prior offense of conviction established that the underlying offense was a "crime of violence" or "controlled substance offense." (Note that if the defendant also was convicted of the underlying offense, the two convictions will be treated as related cases under § 4A1.2 (Definitions and Instruction for Computing Criminal History)).".

The Commentary to § 4B1.2 captioned "Application Notes is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively, and by inserting before Note 3, as redesignated by this Amendment, the following new Note 2:

"2. Pursuant to §§ 2K2.4, 3D1.1, and 5G1.2(a), a sentence for a conviction under 18 U.S.C. 924(c) is determined by the statute and is imposed independently of any other sentence. Accordingly, if the instant offense of conviction is a conviction under 18 U.S.C. 924(c), or if the instant offense of conviction includes convictions for both § 924(c) and the underlying offense, § 4B1.1 does not apply to the § 924(c) count.".

The Commentary to § 3D1.1 captioned "Application Notes" is amended in Note 1 by inserting "minimum" after "mandatory" each place it appears.

The Commentary to § 5G1.2 is amended in the fourth paragraph, by striking the second sentence in its entirety and inserting:

See, *e.g.*, 18 U.S.C. 924(c) (specifying mandatory minimum terms of imprisonment, based on the conduct involved, to run consecutively to any other term of imprisonment).".

Issues for Comment

(1) Several guidelines provide an enhancement that applies "if the firearm was brandished, displayed or possessed." See, *e.g.*, § 2B3.1 (Robbery); § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage). Given that the proposed amendment defines "brandished" to mean, in part, that "all or part of the weapon was displayed," the Commission invites comment regarding whether, if the Commission adopts this amendment, it should make a conforming amendment to delete "displayed" from this enhancement as unnecessary.

(2) The Commission invites comment regarding whether it should amend § 2K2.4 to provide a cross reference to the guideline for the underlying offense when the defendant was not convicted of the underlying offense in either state or federal court and the offense level for the underlying offense is greater than the sentence provided in § 2K2.4 (*i.e.*, the minimum term required by statute)? Such amendment would also specify that the cross reference does not apply when the defendant has been convicted of the underlying offense.

(3) The proposed amendment clarifies that under current guideline application: (A) Chapters Three and Four do not apply to any sentence imposed under § 2K2.4 because the sentence is determined by the relevant statute (18 U.S.C. 844(h), 924(c), or 929(a)) and is imposed independently; and (B) because Chapter Four does not apply, the career offender guideline, § 4B1.1, does not apply when the instant offense of conviction is a section 924(c) offense. Notwithstanding current guideline application, the Commission invites comment on whether it should amend the guidelines to provide that a conviction under 18 U.S.C. 924(c) is an instant offense for career offender purposes.

If the Commission should make such an amendment, how should it be

accomplished? The Commission could, for example, develop a new guideline for 18 U.S.C. 924(c) offenses (and similar offenses) which would eliminate the current requirement that the sentence on a section 924(c) count be imposed independently and that the count be excluded from the grouping rules. See § 3D1.1. If a new guideline were developed, what should the Commission consider with respect to specific offense characteristics, cross reference provisions, and departure provisions? As an alternative to a new guideline, the Commission could provide a "special rule" that would apply whenever a section 924(c) defendant is also a career offender. Such a rule could provide that the offense level for the defendant's conduct is to be determined by § 4B1.1. The effect of this rule would be that the defendant's offense level, regardless of whether the defendant also is convicted of the underlying offense, would always begin at offense level 37, with a guideline range of 360-life. To satisfy the statute's requirement that the sentence be imposed consecutively to any other count, the rule could provide any of the following variations when the offense involves multiple count(s): (A) A sentence within the range of 360-life is imposed consecutive to the final guideline sentence for the additional counts; (B) the minimum term required by statute (*e.g.*, 5 years) is imposed consecutive to the final guideline sentence; or (C) the section 924(c) count is grouped with the underlying offense and the final guideline sentence is structured so that a portion of the total punishment, corresponding to the minimum term required by the statute, is imposed consecutive to the remainder of the guideline sentence. (Note that the guidelines currently use the approach in (C) when the offense involves a conviction for failure to appear and for the underlying offense. See § 2J1.6 (Failure to Appear by Defendant), comment. (n. 3).)

Issue for Comment: Circuit Conflicts

(5) *Issue for Comment:* The Commission requests public comment on whether, and in what manner, it should address by amendment the following circuit court conflicts:

(A) Whether for purposes of downward departure from the guideline range a "single act of aberrant behavior" (Chapter 1, Part A, § 4(d)) includes multiple acts occurring over a period of time. Compare *United States* v. *Grandmaison*, 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word "single" to refer to the crime committed; therefore, "single acts of aberrant behavior" include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); *Zecevic* v. *U.S. Parole Comm'n*, 163 F.3d 731 (2d Cir. 1998) (aberrant behavior is conduct which constitutes a short-lived departure from an otherwise law-abiding life, and the best test is the totality of the circumstances); *United States* v. *Takai*, 941 F.2d 738 (9th Cir. 1991) ("single act" refers to the particular action that is criminal, even though a whole series of acts lead up to the commission of the crime); *United States* v. *Pena*, 930 F.2d 1486 (10th Cir. 1991) (aberrational nature of the defendant's conduct and other circumstances justified departure); with *United States* v. *Marcello*, 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning); *United States* v. *Glick*, 946 F.2d 335 (4th Cir. 1991) (conduct over a ten-week period involving a number of actions and extensive planning was not "single act of aberrant behavior"); *United States* v. *Williams*, 974 F.2d 25 (5th Cir. 1992) (a single act of aberrant behavior is generally spontaneous or thoughtless); *United States* v. *Carey*, 895 F.2d 318 (7th Cir. 1990) (single act of aberrant behavior contemplates a spontaneous and seemingly thoughtless act rather than one which was the result of substantial planning); *United States* v. *Garlich*, 951 F.2d 161 (8th Cir. 1991) (fraud spanning one year and several transactions was not a "single act of aberrant behavior"); *United States* v. *Withrow*, 85 F.3d 527 (11th Cir. 1996) (a single act of aberrant behavior is not established unless the defendant is a first-time offender and the crime was a thoughtless act rather than one which was the result of substantial planning); *United States* v. *Dyce*, 78 F.3d 610 (D.C. Cir.), amd on reh. 91 F.3d 1462 (D.C. Cir. 1996) (same).

If the Commission were to adopt the view that a downward departure for aberrant behavior is limited to spontaneous and thoughtless acts, it could, for example, eliminate the suggested departure language from Chapter One of the Guidelines Manual and establish a departure provision in Chapter Five, Part K, Subpart 2 (Other Grounds for Departure) for spontaneous and thoughtless acts that do not include a course of conduct composed of multiple planned criminal acts, even if the defendant is a first-time offender.

The Commission is interested in exploring an alternative approach to the majority and minority views to resolve the circuit conflict regarding departure for a "single act of aberrant behavior." Assuming the guidelines permit a departure for aberrant behavior, what guidance should the Commission give the court in determining the appropriateness of granting a departure in a given case. For example, should such a departure be precluded for a defendant convicted of certain offenses, such as crimes of violence (see 28 U.S.C. 994(j) that provides that "guidelines are to reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.* * *"). What other factors should the Commission articulate to guide the court in determining the appropriateness of a departure in a particular case?

(B) Whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only when the defendant is convicted of an offense referenced to that guideline or, alternatively, whenever the defendant's relevant conduct included drug sales in a protected location or involving a protected individual. Compare *United States* v. *Chandler*, 125 F.3d 892, 897–98 (5th Cir. 1997) ("First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section most 'applicable to the offense of conviction.'" Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); *United States* v. *Locklear*, 24 F.3d 641 (4th Cir. 1994) (In finding that § 2D1.2 does not apply to convictions under 21 U.S.C. 841, the court relied on the fact that the commentary to § 2D1.2 lists as the "Statutory Provisions" to which it is applicable 21 U.S.C. 859, 860, and 861, but not 841. "[S]ection 2D1.2 is intended not to identify a specific offense characteristic which would, where applicable, increase the offense level over the base level assigned by § 2D1.1, but rather to define the base offense level for violations of 21 U.S.C. 859, 860 and 861."); *United States* v. *Saavedra*, 148 F.3d 1311 (11th Cir. 1998) (defendant's uncharged but relevant conduct is actually irrelevant to determining the sentencing guideline applicable to his offense; such conduct is properly considered only after the applicable guideline has been selected when the court is analyzing the various sentencing considerations within the guideline chosen, such as the base offense level, specific offense

characteristics, and any cross-references); with *United States* v. *Clay*, 117 F.3d 317 (6th Cir.), cert. denied, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 (but not convicted of any statute referenced to § 2D1.2) based on underlying facts indicating defendant involved a juvenile in drug sales); *United States* v. *Oppedahl*, 998 F.2d 584 (8th Cir. 1993) (applying § 2D1.2 to defendant convicted of conspiracy to distribute and possess with intent to distribute based on fact that defendant's relevant conduct involved distribution within 1,000 feet of school); *United States* v. *Robles*, 814 F. Supp. 1249 (E.D. Pa), aff'd (unpub.), 8 F.3d 814 (3d Cir. 1993) (court looks to relevant conduct to determine appropriate guideline).

If the Commission were to choose to clarify that the enhanced penalties in § 2D1.2 only apply in circumstances in which the defendant is convicted of an offense referenced to that guideline in the Statutory Index (Appendix A), the Commission could amend the Introduction to the Statutory Index to make clear that, for every statute of conviction, courts must apply the offense guideline referenced for the statute of conviction listed in the Statutory Index (unless the case falls within the limited exception for stipulations set forth in § 1B1.2 (Applicable Guidelines)) and that courts may not decline to use the listed offense guideline in cases that could be considered atypical or outside the heartland. See *United States* v. *Smith*, 186 F.3d 290 (3d Cir. 1999) (determined that fraud guideline, § 2F1.1, was most appropriate guideline rather than the listed guideline of money laundering, § 2S1.1); *United States* v. *Brunson*, 882 F. 2d 151, 157 (5th Cir. 1989) ("It is not completely clear to us under what circumstances the Commission contemplated deviation from the suggested guidelines for an 'atypical' case."); *United States* v. *Hemmington*, 157 F.3d 347 (5th Cir. 1998) (affirmed trial court's departure from the money laundering guidelines to the fraud guideline).

Alternatively, or in combination with this approach, the Commission could delete § 2D1.2 and add an enhancement to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) either (A) for the real offense conduct of making drug sales in protected locations or involving protected individuals; or (B) for a conviction for such conduct.

(C) Whether the fraud guideline enhancement for "violation of any judicial or administrative order, injunction, decree, or process" (§ 2F1.1(b)(4)(B)) applies to falsely completing bankruptcy schedules and forms. Compare *United States* v. *Saacks*, 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of § 2F1.1(b)(3)(B)); *United States* v. *Michalek*, 54 F.3d 325 (7th Cir. 1995) (bankruptcy fraud is a "special procedure"; it is a violation of a specific adjudicatory process); *United States* v. *Lloyd*, 947 F.2d 339 (8th Cir. 1991) (knowing concealment of assets in bankruptcy fraud violates "judicial process"); *United States* v. *Welch*, 103 F.3d 906 (9th Cir. 1996) (same); *United States* v. *Messner*, 107 F.3d 1448 (10th Cir. 1997) (same); *United States* v. *Bellew*, 35 F.3d 518 (11th Cir. 1994) (knowing concealment of assets during bankruptcy proceedings qualifies as a violation of a "judicial order"); with *United States* v. *Shadduck*, 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust).

See also *United States* v. *Carrozella*, 105 F. 3d 796 (2d Cir. 1997) (district court erred in enhancing the sentence for violation of judicial process where the defendant filed false accounts in probate court).

(D) Whether sentencing courts may consider post-conviction rehabilitation while in prison or on probation as a basis for downward departure at resentencing following an appeal. Compare *United States* v. *Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may consider it as a possible ground for downward departure at resentencing); *United States* v. *Core*, 125 F.3d 74, 75 (2d Cir.1997) ("We find nothing in the pertinent statutes or the Sentencing Guidelines that prevents a sentencing judge from considering post-conviction rehabilitation in prison as a basis for departure if resentencing becomes necessary.") cert. denied, 118 S. Ct. 735 (1998); *United States* v. *Sally*, 116 F.3d 76, 80 (3d Cir. 1997) (holding that "post-offense rehabilitations efforts, including those which occur post-conviction, may constitute a sufficient factor warranting a downward departure."); *United States* v. *Rudolph*, 190 F.3d 720, 723 (6th Cir. 1999); *United States* v. *Green*, 152 F.3d 1202, 1207 (9th Cir. 1998) (same); *United States* v. *Brock*, 108 F.3d 31 (4th Cir. 1997) (recognizing extraordinary post-offense rehabilitation as a basis for a downward departure); with *United States* v. *Sims*, 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits.)

The Commission also invites comment on whether to distinguish between departures for post-offense rehabilitation (see §§ 3E1.1, comment. (n. 1(g) and 5K2.0) and post-sentence rehabilitation and, if so, what guidance the Commission should provide. It should be noted that a departure for post-sentencing rehabilitation is only available if there is a resentencing.

(E) Whether a court can base an upward departure on conduct that was dismissed or uncharged as part of a plea agreement in the case. Compare *United States* v. *Figaro*, 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct); *United States* v. *Kim*, 896 F.2d 678 (2d Cir. 1990) (allowing upward departure based on related conduct that formed the basis of dismissed counts and based on prior similar misconduct not resulting in conviction); *United States* v. *Baird*, 109 F.3d 856 (3d Cir.), cert. denied, 118 S. Ct. 243 (1997) (allowing upward departure based on dismissed counts if the conduct underlying the dismissed counts is related to the offense of conviction conduct; cites *United States* v. *Watts*, 519 U.S. 148 (1997)); *United States* v. *Cross*, 121 F.3d 234 (6th Cir. 1997) (allowing upward departure based on dismissed conduct; citing *Watts*); *United States* v. *Ashburn*, 38 F.3d 803 (5th Cir. 1994) (allowing upward departure based on dismissed conduct); *United States* v. *Big Medicine*, 73 F.3d 994 (10th Cir. 1995) (allowing departure based on uncharged conduct) with *United States* v. *Ruffin*, 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement); *United States* v. *Harris*, 70 F.3d 1001 (8th Cir. 1995) (same); *United States* v. *Lawton*, 193 F.3d 1087 (9th Cir. 1999) (court may not accept plea bargain and later consider dismissed charges for upward departure in sentencing).

The Commission also invites comment on whether the Commission should provide more guidance about what conduct can or cannot be considered for departure under the guidelines. More specifically, the Commission invites comment on whether to provide that departures are only permissible for conduct detailed in § 1B1.3(a)(1), (2), and (3). The implication of such a provision would

be that, most significantly, departures would be permissible only with respect to conduct that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, that is not accounted for in a guideline enhancement. Departures would be prohibited for other conduct, such as dismissed or uncharged bank robberies that are not included in relevant conduct because they are not the subject of an offense of conviction.

Proposed Amendment: Technical Amendments Package

(6) *Synopsis of Proposed Amendment*—This proposed amendment makes technical and conforming changes to various guidelines as follows:

(A) It corrects a typographical error in the counterfeiting guideline, § 2B5.1, by inserting a missing word in subsection (b)(2).

(B) It corrects a typographical error in the Chemical Quantity Table at § 2D1.11 regarding certain quantities of Isosafrole and Safrole by changing those quantities from grams to kilograms.

(C) It corrects an omission that was made during the prior Commission's final deliberations on amendments to implement the Comprehensive Methamphetamine Control Act of 1996 (the "Act"), Pub. L. 104–237. Specifically, the proposal amends §§ 2D1.11 (Listed Chemicals) and 2D1.12 (Prohibited Equipment) to add an enhancement for environmental damage associated with methamphetamine offenses. The prior Commission intended to amend these guidelines in this manner, but due to a technical oversight, the final amendment did not implement that intent.

The Act directed the Commission to determine whether the guidelines adequately punish environmental violations occurring in connection with precursor chemical offenses under 21 U.S.C. 841(d) and (g) (sentenced under § 2D1.11), and manufacturing equipment offenses under 21 U.S.C. 843(a)(6) and (7) (sentenced under § 2D1.12). On February 25, 1997, the Commission published two options to provide an increase for environmental damage associated with the manufacture of methamphetamine, the first by a specific offense characteristic, the second by an invited upward departure. See 62 FR 8487 (Feb. 25, 1997). Both options proposed to make amendments to §§ 2D1.11, 2D1.12, and 2D1.13. Additionally, although the directive did not address manufacturing offenses under 21 U.S.C. 841(a), the Commission elected to use its broader guideline promulgation authority under 28 U.S.C. 994(a) to ensure that environmental violations occurring in connection with this more frequently occurring offense were treated similarly. Accordingly, the published options also included amendments to § 2D1.1.

The published options were revised prior to final action by the Commission. However, in the revision that was presented to the Commission for promulgation in late April 1997, amendments to §§ 2D1.11 and 2D1.12 were mistakenly omitted from the option to provide a specific offense characteristic, although that revision did refer to §§ 2D1.11 and 2D1.12 in the synopsis as well as included amendments to these guidelines in the upward departure option. (The revision did not include any amendments to guideline § 2D1.13, covering record-keeping offenses, because, upon further examination, it seemed unlikely that offenses sentenced under this guideline would involve environmental damage.) Accordingly, when the commissioners voted to adopt the option providing the specific offense characteristic for §§ 2D1.1, 2D1.11, and 2D1.12, their vote effectively was limited to what was before them, i.e., an environmental damage enhancement for § 2D1.1 only. This amendment corrects that error.

(D) It updates the Statutory Provisions of the firearms guideline, § 2K2.1, to conform to statutory re-designations made to 18 U.S.C. 924 (and already conformed in Appendix A (Statutory Index)).

(E) It updates the guidelines for conditions of probation, § 5B1.3, and supervised release, § 5D1.3. Effective one year after November 26, 1997, 18 U.S.C. 3563(a) and 3583(a) were amended to add a new mandatory condition of probation requiring a person convicted of a sexual offense described in 18 U.S.C. 4042(c)(4) (enumerating several sex offenses) to report to the probation officer the person's address and any subsequent change of address, and to register as a sex offender in the state in which the person resides. See section 115 of Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–119). Because the effective date of this change was later than the effective date of the last Guidelines Manual (November 1, 1998), the Commission did not amend the relevant guidelines, § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release) to reflect the new condition. However, the Commission did provide a footnote in each guideline setting forth the new condition and alerting the user as to the date on which the condition became effective. This proposal amends §§ 5B1.3 and 5D1.3 to include the sex offender condition as a specific mandatory condition in both guidelines rather than in a footnote.

Proposed Amendment

Section 2B5.1(b)(2) is amended by inserting "level" following "increase to".

Section 2D1.11(d) is amended in subdivision (9) by striking "At least 1.44 G but less than 1.92 KG of Isosafrole;" and inserting "At least 1.44 KG but less than 1.92 KG of Isosafrole;"; and by striking "At least 1.44 G but less than 1.92 KG of Safrole;" and inserting "At least 1.44 KG but less than 1.92 KG of Safrole;".

Section 2D1.11(d) is amended in subdivision (10) by striking "Less than 1.44 G" before "of Isosafrole;" and inserting "Less than 1.44 KG"; and by striking "Less than 1.44 G" before "of Safrole;" and inserting "Less than 1.44 KG".

Section 2D1.11(b) is amended by adding at the end the following subdivision:

"(3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.".

The Commentary to § 2D1.11 captioned "Application Notes" is amended by adding at the end the following:

"8. Under subsection (b)(3), the enhancement applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1

(Restitution) and in fashioning appropriate conditions of supervision under § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release).".

Section 2D1.12(b) is amended by adding at the end the following:

"(2) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.".

The Commentary to 2D1.12 captioned "Application Notes" is amended by adding at the end the following:

"3. Under subsection (b)(2), the enhancement applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release).".

The Commentary to § 2K2.1 captioned "Statutory Provisions" is amended by striking "(e), (f), (g), (h), (j)–(n)" and inserting "(e)–(i), (k)–(o)".

Section 5B1.3(a) is amended by striking the asterisk after "Conditions"; in subdivision (8) by striking the period after "§ 3563(a))" and inserting a semi-colon; and by adding at the end the following:

"(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.";

and by striking the note at the end of the § 5B1.3 in its entirety as follows:

*Note: Effective one year after November 26, 1997, section 3563(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of probation:

(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.".

Section 5D1.3(a) is amended by striking the asterisk after "Conditions"; in subdivision (6) by striking the period after "§ 3013" and inserting a semi-colon; and by adding at the end the following:

"(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.";

and by striking the note at the end of § 5D1.3 in its entirety as follows:

*Note: Effective one year after November 26, 1997, section 3583(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of supervised release:

(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.".

[FR Doc. 00–3274 Filed 2–10–00; 8:45 am]
BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice 3215]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The guest speaker at the meeting will be The Honorable Gregory Rohde, Assistant Secretary and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce. Mr. Rohde will discuss priorities for his agency in the area of telecommunications policy.

This meeting will be held on Wednesday, March 8, 2000, from 9:30 a.m.–12:30 p.m., in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, N.W., Washington, D.C. 20520. (Please note that this meeting is being held in place of the January 20 meeting which had been postponed due to inclement weather.) Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc @state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the StateDepartment building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc @state.gov>.

Dated: February 4, 2000.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 00–3247 Filed 2–10–00; 8:45 am]
BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice No. 3213]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Meeting Notice

The Subcommittee for the Prevention of Marine Pollution, a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, February 29, 2000, at 9:30 AM in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty-fourth session of the Marine Environment Protection Committee (MEPC 44) and the agenda items of the Conference on International Co-operation on Preparedness and Response to Pollution Incidents by Hazardous and Noxious Substances (the Conference) of the International Maritime Organization (IMO). MEPC 44 and the Conference will be held in conjunction with each other from March 6–15, 2000. Proposed U.S. positions on the agenda items for MEPC 44 and the Conference will be discussed.

The major items for discussion for MEPC 44 will begin at 9:30 AM and include the following:

a. Harmful effects of the use of anti-fouling paints for ships;

b. Harmful aquatic organisms in ballast water;

c. Inadequacy of reception facilities;

d. Consideration and adoption of amendments to mandatory instruments;

e. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

f. Prevention of air pollution from ships;

g. Interpretation and amendments of MARPOL 73/78 and related Codes;

h. Promotion of implementation and enforcement of MARPOL 73/78 and related Codes; and

i. Recycling of ships.

At the conclusion of the MEPC 44 discussion, the major item for the Conference, "Consideration and adoption of the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000," will be discussed.

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the meeting, contact Lieutenant Commander John Meehan, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–2714.

Dated: February 3, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–3246 Filed 2–10–00; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Establishment of Regional Resource Stewardship Council

Notice is hereby given that, in consultation with the General Services Administration, it has been determined that the establishment of an advisory committee on the Tennessee Valley Authority's (TVA) public resource management activities is necessary and in the public interest. Accordingly, TVA has chartered the Regional Resource Stewardship Council (RRSC).

The public resource management activities that will be addressed by the RRSC include the operations of TVA's dams and reservoirs, navigation, flood control, the management of public lands, as well as water quality, wildlife, and recreation. As competition for finite natural resources grows, fulfilling TVA's integrated resource stewardship mission will require increased cooperation with the other public agencies and private entities that have responsibilities for and interest in the use and conservation of the region's natural resources. It is in TVA's interest and the interest of the public it serves to establish a mechanism for routinely obtaining the views and advice of the citizens, public agencies, and private entities involved in and affecting natural resources stewardship.

All TVA stewardship activities entail the selection of priorities among competing objectives and values. TVA has many loyal and committed stakeholder groups and private citizens, each dedicated to seeing that TVA provides the public benefits that they have come to expect. TVA anticipates that the RRSC will provide a mechanism to help develop consensus views and resolve competing interests to the benefit of the public.

In order to attain a diverse and balanced membership, the RRSC will consist of up to 20 members appointed by the TVA Board of Directors as follows:

- 7 persons nominated by the Governors of the Tennessee river Valley States (one each by the Governors of Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia);
- At least 4 members representing distributors of TVA power;
- At least 1 member representing each of the following interests: a direct-served customer of TVA, a beneficiary of TVA's navigation program, a beneficiary of TVA's flood control program, a recreational interest, and an environmental interest; and
- Up to 4 additional members to ensure a balanced representative of a broad range of views.

The RRSC will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter is being filed at this time in accordance with approval by the General Service Administration Secretariat pursuant to 41 CFR 101–6.1015(a)(2).

For further information, please contact Kathryn J. Jackson, Executive Vice President, River System Operations and Environment, 400 West Summit Hill Drive, Knoxville, Tennessee, 37902.

Authority: 41 CFR 101–6.1015(a).

Dated: February 3, 2000.

O.J. Zeringue,

President and Chief Operating Officer.

[FR Doc. 00–3271 Filed 2–10–00; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6847]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) for the renewal of Information Collection Requests (ICRs). These ICRs comprise: 1. Request for Designation and Exemption of Oceanographic Research Vessel, 2. Oil Record Book for Ships, and 3. Vessel Identification System. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before April 11, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG–2000–6847], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–2000–6847] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Request for Designation and Exemption of Oceanographic Research Vessels.

OMB Control Number: 2115–0053.

Summary: 46 U.S.C. 2113(2) authorizes the Secretary of Transportation to exempt Oceanographic Research Vessels, by regulation, from provisions of Subtitle II of Title 46, Shipping, of the United States Code, concerning maritime safety and seamen's welfare.

Need: This information is necessary to ensure that a vessel qualifies for the designation.

Respondents: Owner or operator of vessel.

Frequency: On occasion.

Burden: The estimated burden is 29 hours annually.

2. *Title:* Oil Record Book for Ships.

OMB Control Number: 2115–0025.

Summary: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), the Act and the Convention require that information about oil (cargo or fuel) be entered into an Oil Record Book (CG–4602A). The requirement appears at 33 CFR 151.25.

Need: This information serves to verify sightings of actual violations of the APPS to determine the level of compliance with MARPOL 73/78 and as a means of reinforcing the discharge provisions.

Respondents: Operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 35,828 hours annually.

3. *Title:* Vessel Identification System.

OMB Control Number: 2115–0607.

Summary: The Secretary of Transportation must establish a nationwide vessel-identification system (VIS) and centralize certain vessel-documentation functions. VIS provides participating States and territories with access to their own data on numbered vessels. Participation in VIS is voluntary.

Need: 46 U.S.C. 12501 mandates the establishment of a VIS. 33 CFR part 187 prescribe the requirements of VIS.

Respondents: Governments of States and territories.

Frequency: Daily.

Burden: The estimated burden is 5,697 hours annually.

Dated: February 4, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 00–3155 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6334]

Information Collection by Agency Under Review by the Office of Management and Budget (OMB)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 13, 2000.

ADDRESSES: Please send comments to both (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG–1999–6334 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street S.W., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [64 FR 57181 (October 22, 1999)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of

automated collection techniques or other forms of information technology.

Comments to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 1999–6334. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Vessel Reporting Requirement.

OMB Control Number: 2115–0551.

Type of Request: Extension of currently approved collection.

Affected Public: Owners, charterers, managing operators, or agents of U.S. vessels.

Form(s): N/A.

Abstract: The collection of information requires the owner, charterer, managing operator, or agent of a vessel of the United States to immediately notify the Coast Guard if there is a reason to believe that his or her vessel may be lost or imperiled. The person must follow up the report with written communication submitted to the Coast Guard within 24 hours.

Annual Estimated Burden Hours: The estimated burden is 137 hours annually.

2. *Title:* Report of Oil or Hazardous Substance Discharge.

OMB Control Number: 2115–0137.

Type of Request: Extension of a currently approved collection.

Affected Public: Persons in charge of vessels, onshore or offshore facilities.

Forms: N/A.

Abstract: The collection of information requires that any person in charge of a vessel, an onshore or offshore facility report to the National Response Center, as soon as he or she has knowledge of any discharge of oil or a hazardous substance.

Annual Estimated Burden Hours: The estimated burden is 7,917 hours annually.

Dated: February 4, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 00–3156 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Obion and Dyer Counties, Tennessee and Fulton County, Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Obion and Dyer Counties, Tennessee and Fulton County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Doctor, Project Management Engineer, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5788.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation and the Kentucky Transportation Cabinet, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a four-lane divided freeway in Obion and Dyer Counties, Tennessee and Fulton County, Kentucky. The proposed project would involve improvements to existing Highway US 51/State Route (SR) 3 from the interchange with Highway US 412/SR 20 in Dyer County, Tennessee, north to the Purchase Parkway in Fulton County, Kentucky, for a distance of about 74 kilometers (46 miles).

The proposed improvement is a section of independent utility of the Congressionally-designated High Priority Corridor 18, or future Interstate 69. The purpose of the corridor is to improve international and interstate trade and to facilitate economic development. The proposed project would also provide a link between two existing full access-controlled highways and provide for future traffic capacity needs.

Alternatives to be considered are: (1) Taking no action; (2) three build alternatives consisting of upgrading sections of existing US 51/SR 3 and building other sections on new location; and (3) other alternatives that may arise from public and agency input. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 26, 2000.

Charles S. Boyd,

Tennessee Division Administrator, Nashville.

[FR Doc. 00–3272 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–22–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2000–6871]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:49 U.S.C. Section 5312(a) Research, Development, Demonstration and Training Projects

DATES: Comments must be submitted before April 11, 2000.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, CentralDockets Office, PL–401, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: *49 U.S.C. Section 5312(a) Research, Development, Demonstration and Training Projects*—Mr. Henry Nejako, Office of Research, Demonstration and Innovation, (202) 366–0184. *Title:* 49 U.S.C. Section 5312(a) Research,

Development, Demonstration and Training Projects (*OMB Number: 2132–0546*).

BACKGROUND: 49 U.S.C. Section 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, and demonstration projects that will reduce urban transportation needs, improve mass transportation service, or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source.

The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other Federal requirements.

Issued: February 7, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–3135 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–6473 Notice 1]

Registered Importers; Receipt of Applications for Determination of Inconsequential Noncompliance

The following companies, as registered importers under 49 U.S.C. 30141(c), imported passenger cars that failed to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection": Auto Enterprises, Inc., Dickson Motor Sales and Leasing, Inc., JM Motors, Inc., Superior Auto Sales, Inc., Auto Import Services, Inc., Laurek International Trade Service, Inc., Elite Limited Auto Sales and Leasing, Ltd., Champagne Imports, Inc., Potsdam Importers, Inc., International Vehicle Importers, Inc., Auto King, Inc., and Liphardt and Associates, Inc. A registered importer is a firm recognized by the National Highway Traffic Safety Administration (NHTSA) as being capable of modifying vehicles that are imported into the United States to assure that they comply with all applicable FMVSS's. Under Section 30147, registered importers are obligated to notify owners and remedy safety related defects and noncompliances in these vehicles. All of the registered importers involved except for Liphardt and Associates, Inc., filed appropriate reports pursuant to 49 CFR Part 573 "Defect and Noncompliance Reports." These registered reporters have also applied to be exempted from the notification and remedy requirements of Section 30118 and 30120. The basis of the applications is that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of these applications is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the applications.

The following passenger cars ("subject vehicles"), certified by their original manufacturers as complying with all applicable Canadian Motor Vehicle Safety Standards, do not comply in all respects with FMVSS No. 208:

Chrysler LeBaron, 1994 and 1995 MY
Dodge Spirit, 1994 and 1995 MY
Dodge Shadow, 1994 and 1995 MY
Dodge Viper, 1994 and 1995 MY
Plymouth Sundance, 1994 and 1995 MY
Plymouth Acclaim, 1994 and 1995 MY

Description of Noncompliance

The subject vehicles imported by the petitioners were manufactured on or after September 1, 1993, the date on which FMVSS No. 208 first required an automatic restraint for both front outboard seating positions. However, these vehicles are equipped with a driver side air bag and a passenger side type 2, 3-point shoulder/lap belt which met the standard as in effect before September 1, 1993.

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, that the motor vehicle is substantially similar to a motor vehicle of the same model year, originally manufactured for importation into and sale in the United States, and certified under 49 U.S.C. 30115, and the vehicle is capable of being readily altered to conform to all applicable FMVSSs. NHTSA has decided, on its own initiative, that the subject motor vehicles are substantially similar to motor vehicles originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year that they are, and capable of being readily altered to conform to all applicable FMVSS. See 63 FR 41617 (August 4, 1998).

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle has been determined eligible for entry. The subject vehicles were imported from Canada under the VSA–1 eligibility code, assigned to all Canadian vehicles that the Administrator decided to be eligible for importation. Documentation substantiating compliance of the subject vehicles with the FMVSS was submitted to NHTSA after importation. NHTSA then reviewed the submissions and, for the vast majority of the affected vehicles, issued a decision letter advising that the submitted documentation was acceptable. In September 1995, NHTSA informed the importers that the amended requirements of FMVSS No. 208 had not been met. The importers had misunderstood FMVSS No. 208 and had believed the passenger-side restraint could be a manual belt when the driver's side was air bag equipped. This configuration was permissible until September 1, 1993. This provision expired after that date, requiring automatic restraints on both sides. When this matter was brought to the attention of the registered importers, they stopped importing vehicles not meeting FMVSS No. 208.

Arguments by Importers

A detailed chronology of the circumstances leading to this notice is contained in the "Notification of Defect pursuant to 49 CFR 573 and Petition pursuant to 49 CFR 556 for exemption from recall based on inconsequentiality," dated September 14, 1998, submitted by Superior Auto Sales, Inc. Several of the other registered importers affected joined in this petition.

A summary of petitioners' arguments follows:

The remedy for the affected vehicles would be either the installation of an automatic seat belt or passenger side air bag. Both of these options may not increase vehicle safety.

NHTSA has recently revised the passenger side air bag requirements, due to concerns regarding the extensive force of the air bag deployment. Any air bag system installed as a remedy for the affected vehicles would not meet the revised criteria. Thus, the remedy would require installation of old technology air bags. The owners of these vehicles could even petition NHTSA for permission to disable this safety feature.

There have also been considerable arguments that the automatic seat belt system, *as utilized*, only gives an appearance of protection. Many occupants of the passenger seat will not use the manual lap belt, and thus only be protected by the automatic torso belt. In a crash, the protection offered by this two-point system is questionable.

The automatic belts may also be attached to the door. In a crash, the door latch may fail, yielding no protection at all to the passenger.

The passive restraint requirement went into effect when too few states adopted mandatory seat belt laws. These laws have now been adopted in all states but one. All of the affected vehicles were sold in mandatory seat belt usage states. It is against the law in these states to be unbelted. The installation of an automatic seat belt would therefore be redundant, since the passengers are required to be belted.

The subject vehicles are 1994 and 1995 model year vehicles. Therefore, they are at least four years old and have completed at least half of their useful life. This greatly reduces the addition to safety, that might result from the installation of passenger side passive restraints.

For these reasons, the installation of a passive restraint in these few vehicles involved will not result in a significant addition to vehicle safety.

To the best of the importers' knowledge, there have been no accidents, injuries, fatalities, or warranty claims related to the noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 13, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: February 7, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–3193 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 61 (Sub–No. 6)]

National Classification Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for proposals and comments.

SUMMARY: The Surface Transportation Board (Board) seeks suggested methodologies for increasing shipper participation in the classification process, as required by the Board's decisions in *National Classification Committee—Agreement*, Section 5a Application No. 61 (STB served Dec. 18, 1998, and February 11, 2000).

DATES: Opening proposals and comments are due April 11, 2000. Reply comments are due May 11, 2000. Rebuttals are due June 12, 2000.[1]

ADDRESSES: Send an original and 10 copies of proposals, comments, and replies, referring to "Section 5a Application No. 61 (Sub-No. 6)" to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decisions, which are available on the Board's website at "WWW.STB.DOT.GOV".

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3239 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Arguing that the instant proceeding is essentially an investigation, NCC has filed a motion, to which replies were filed by The National Industrial Transportation League and by the Health and Personal Care Distribution Conference, Inc. and National Small Shipments Traffic Conference, Inc., asking for a procedural schedule under which it will be permitted to open and close the record. We understand why NCC might want to open and close in order to seek to limit the debate to whatever proposal it decides to file at the outset. But we have already held extensive proceedings, in which NCC has made several filings, and in which we have already determined that NCC's procedures should be modified. As a result, we believe that parties in addition to NCC should have an opportunity to present their proposals as an initial matter. We are, however, providing all parties with an opportunity to respond to any initial proposals or comments made, and we are providing each party that makes an initial filing with a further opportunity to present rebuttal evidence and argument in response to any comments addressing its initial filing.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 1 (Sub-No. 10)]

Household Goods Carriers Bureau Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board (Board) requests comments on whether approval of the rate bureau agreement of the Household Goods Carriers Bureau Committee (HGB) ought to be conditioned on reductions in "benchmark" rates to prevailing levels of market based rates.

DATES: Comments are due by March 27, 2000; replies are due March 13, 2000.

ADDRESSES: Send an original and 10 copies of comments and replies, referring to "Section 5a Application No. 1 (Sub-No. 10)" to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In our decisions in *EC–MAC Motor Carriers Service Association, Inc., et al.*, Sec. 5a Application No. 118 (Amendment No. 1), *et al.* (STB served Dec. 18, 1998, and February 11, 2000) (*EC–MAC*) (which are available on the Board's website at "WWW.STB.DOT.GOV"), we conditioned renewal of motor carrier rate bureau agreements under 49 U.S.C. 13703 on reductions of collective rates to prevailing competitive rate levels. In its renewal application, HGB does not address how the concerns expressed in *EC–MAC* apply to the traffic carried by its members. It does, however, appear to us that HGB serves as a forum in which members collectively set benchmark rates, from which the actual rates paid by many householders are discounted. Therefore, before acting on HGB's application, we are seeking comment on whether any immunity granted to HGB ought to be conditioned on reductions in benchmark rates to prevailing levels of market based rates and, if so, methodologies that can be used to adjust the collectively set rates to market-based levels.

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3238 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Sec. 5a Application No. 118 (Sub–No. 2), et al.]

EC-MAC Motor Carriers Service Association, Inc., et al.[1]

AGENCY: Surface Transportation Board.

ACTION: Request for proposals and comments.

SUMMARY: The Surface Transportation Board (Board) seeks suggested methodologies that the motor carrier rate bureaus that have applied for renewal of their operating authority can use to adjust the collective rates established by their bureaus to prevailing levels of market based rates, as required by the Board's decisions in *EC-MAC Motor Carriers Service Association, Inc., et al.*, Sec. 5a Application No. 118 (Amendment No. 1), *et al.* (STB served Dec. 18, 1998, and Feb. 11, 2000).

DATES: Opening proposals or comments are due April 11, 2000. Reply comments are due May 11, 2000.

ADDRESSES: Send an original and 10 copies of proposals, comments, and replies, referring to "Section 5a Application No. 118 (Sub–No. 2), *et al.*," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8338.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decisions, which are available on our website at "WWW.STB.DOT.GOV."

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3136 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

[1] This proceeding embraces the following other motorcarrier rate bureau renewal applications: *Pacific Inland Tariff Bureau, Inc.—Renewal of Agreement*, Section 5a Application No. 22 (Sub–No. 8); *The New England Motor Rate Bureau, Inc.*, Section 5a Application No. 25 (Sub–No. 9); *Middlewest Motor Freight Bureau, Inc.—Renewal of Agreement*, Section 5a Application No. 34 (Sub–No. 10); *Niagara Frontier Tariff Bureau, Inc.*, Section 5a Application No. 45 (Sub–No. 16); *Southern Motor Carriers Rate Conference, Inc.*, Section 5a Application No. 46 (Sub–No. 21); *Carriers Traffic Association—Agreement*, Section 5a Application No. 55 (Amendment No. 2); *Machinery Haulers Association Inc.—Agreement*, Section 5a Application No. 58 (Sub–No. 4); *Rocky Mountain Motor Tariff Bureau, Inc.*, Section 5a Application No. 60 (Sub–No. 11); *Nationwide Bulk Trucking Association, Inc.—Agreement*, Section 5a Application No. 63 (Sub–No. 4); *Western Motor Tariff Bureau, Inc—Agreement.*, Section 5a Application No. 70 (Sub–No. 12); and *Willamette Tariff Bureau, Inc.—Renewal of Agreement*, STB Section 5a Agreement No. 116 (Sub–No. 1).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 9 (Amendment No. 8)]

Application of the National Motor Bus Traffic Association, Inc., for Extended Approval of its Conformed Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board (Board) seeks comments on whether the Board should approve the application of the National Motor Bus Traffic Association, Inc. (NBTA), for extended approval of its rate bureau agreement.

DATES: Opening comments are due March 13, 2000. Reply comments are due March 27, 2000.

ADDRESSES: Send an original and 10 copies of comments and replies, referring to "Sec. 5a Application No. 9 (Amendment No. 8)," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In our decision and notice issued today in *EC-MAC Motor Carriers Service Association, Inc., et al.*, Section 5a Application No. 118 (Sub-No. 2), *et al.* (*EC–MAC*) (which are available on the Board's website at "WWW.STB.DOT.GOV"), we expressed concern with the way in which motor freight carrier rate bureaus collectively set "benchmark" class rates, from which discount rates may be offered to many, but not all, shippers. We indicated our intent to approve the rate bureau agreements of the motor freight bureaus only if class rates were reduced to market-based levels, and we requested public input on ways in which to achieve our objective.

NBTA has asked to have its agreement approved. It states that, while it does file tariffs on behalf of its member carriers, its members express their rates in dollars and cents, and not as discounts off of collectively-established bureau rates. Thus, it states that the issues over which we expressed concern in the *EC–MAC* proceeding should not be factors in our consideration of its agreement.

We tend to agree with NBTA that the issues about which we raised concerns in *EC–MAC* should not be of concern here. Nonetheless, any person who believes that we should initiate further proceedings of the sort that we are pursuing in *EC–MAC*, or that the agreement should be disapproved or conditioned for other reasons may file comments.

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary,

[FR Doc. 00–3137 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received requests from Sidley & Austin on behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company (WB568—1/3/2000), from Stephen Brown (WB569—2/1/2000), and from Sidley & Austin on behalf of Canadian Pacific Railway Company, Soo Line Railroad Company, St. Lawrence and Hudson Railway Co. Limited, and Delaware and Hudson Railway Co., Inc. (WB471–5—February 4, 2000) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3240 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; Comment Request

February 4, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 13, 2000, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0002.
Form Number: ATF F 1600.7.
Type of Review: Extension.
Title: ATF Distribution Center Contractor Survey.
Description: Information provided on ATF F 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides the users of ATF forms and publications.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 21,000.
Estimated Burden Hours Per Respondent: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 168 hours.

OMB Number: 1512–0020.
Form Number: ATF F 9 (5320.9).
Type of Review: Extension.
Title: Application and Permit for Permanent Exportation of Firearms.
Description: This form is used to obtain permission to export firearms and services as a vehicle to allow either the removal of the firearm from registration in the national Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit and by ATF to determine and collect taxes.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 70.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1512–0022.
Form Number: ATF F 5320.20.
Type of Review: Extension.
Title: Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.
Description: This form is used to request permission to move certain NFA firearms in interstate or foreign commerce.
Respondents: Individuals or households.
Estimated Number of Respondents: 800.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 400 hours.

OMB Number: 1512–0341.
Recordkeeping Requirement ID Number: ATF REC 5150/8.
Type of Review: Extension.
Title: Stills: Notices, Registration, and Records.
Description: The information collection is used to account for and regulate the distillation of distilled spirits to protect the revenue and to provide for identification of distillers.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 10.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 21 hours.

OMB Number: 1512–0354.
Recordkeeping Requirement ID Number: ATF REC 5170/3.
Type of Review: Extension.
Title: Stills: Retain Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Audit trail records show amount purchased and from whom; complete final audit trail established at distilled spirits plant. Protection of the revenue. The collection of information is contained in 27 CFR 194.234.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 455,000.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0357.
Recordkeeping Requirements ID Number: ATF REC 5170/6.
Type of Review: Extension.
Title: Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (variations in format or preparation of records).
Description: This recordkeeping requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type or place of retention of records of receipt or disposition for alcoholic beverages.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,029.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 515 hours.

OMB Number: 1512–0384.
Recordkeeping Requirement ID Number: ATF REC 5620/2.
Type of Review: Extension.
Title: Airlines Withdrawing Stock from Customs Custody.
Description: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has customs certification; enables ATF to verify that tax is not due; allows spirits and wines to be traced and maintains accountability. Protects tax revenue. The collection of information is contained in 27 CFR 252.80 and 252.81.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 25.
Estimated Burden Hours Per Recordkeeper: 100 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 2,500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860 Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–3165 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–13–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 13, 2000 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems/ Office of Program Services

OMB Number: 1505–0018.
Form Number: International Capital Form BL–2/BL–2(SA).
Type of Review: Extension.
Title: Treasury International Capital Form BL–2/, Custody Liabilities of Reporting Banks, Brokers and Dealers to Foreigners, Payable in Dollars.
Description: Form BL–2/BL–2(SA) as required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on U.S. international capital movements, including data on the custody liabilities of banks, other depository institutions, brokers and dealers vis-a-vis foreigners, payable in dollars.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 125.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: Monthly, Semi-annually.
Estimated Total Reporting Burden: 7,500 hours.
OMB Number: 1505–0020.
Form Number: International Capital Form BQ–2, Parts 1 and 2.
Type of Review: Extension.
Title: Treasury International Capital Form BQ–2:
Part 1: Liabilities to, and Claims on, Foreigners of Reporting Bank, Broker or Dealer; and
Part 2: Domestic Customers' Claims on Foreigners Held by Reporting Bank, Broker or Dealer, Payable in foreign Currencies.
Description: Form BQ–2 is required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on U.S. international capital movements, including data on liabilities and claims, payable in foreign currencies, of banks, other depository institutions, brokers and dealers, and their domestic customers vis-a-vis foreigners.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 225.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 3,600 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 00–3166 Filed 2–10–00; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 13, 2000, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0001.
Form Number: Customs Forms 1302, 1302A, 7509, 7533 and 7533C.
Type of Review: Extension.
Title: Transportation Manifest (Cargo Declaration).
Description: Transportation Manifest (Cargo Declarations) are essential to Customs for the control of cargo and for pre-arrival targeting of shipments for enforcement examination purposes.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 26,000.
Estimated Burden Hours Per Respondent: 34 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,410,000 hours.
OMB Number: 1515–0002.
Form Number: Customs Form 7507.
Type of Review: Extension.
Title: General Declaration.
Description: This collection of information is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: Other (on arrival).
Estimated Total Reporting Burden: 49,950 hours.
OMB Number: 1515–0204.
Form Number: Customs Form 434.
Type of Review: Extension.
Title: North American Free Trade Agreement (NAFTA) Certificate of Origin.
Description: The objects of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25,760 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–3167 Filed 2–10–00; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board which provides advice to the Director of the Community Development Financial Institutions Fund.

DATES: The next meeting of the Community Development Advisory Board will be held on Thursday, February 24, 2000 at 10:00 a.m.

ADDRESSES: The Community Development Advisory Board meeting will be held at the Treasury Executive Institute, 1255 22nd Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund (the "Fund"), U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC, 20005, (202) 622–8662 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board (the "Advisory Board"). The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held at the Treasury Executive Institute, located at 1255 22nd Street, NW, Suite 500, Washington, DC, on Thursday, February 24, 2000 at 10:00 a.m. The room will accommodate 30 members of the public. Seats are available on a first-come, first-served basis. Participation in the discussions at the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the For Further Information Contact section, by 4:00 p.m., Monday, February 21, 2000. The meeting will include a report from director Lazar on the activities of the CDFI Fund since the last Advisory Board meeting, including programmatic, fiscal and legislative initiatives for the years 2000 and 2001.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Ellen Lazar,
Director, Community Development Financial Institutions Fund.
[FR Doc. 00–3367 Filed 2–9–00; 3:21 pm]
BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition-United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

DATES: Written comments should be received on or before April 11, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Dispostion—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 40,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 7, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–3182 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

DATES: Written comments should be received on or before April 11, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By legal Representative(s) of Decedent's Estate, During Administration, Of Authority To Act and Of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Abstract: The information is requested to establish legal representative of a decedent's estate authority to act and request disposition of securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,575.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 7, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–3183 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds of operational assistance under the per diem component of VA's Homeless Providers Grant and Per Diem Program. Specifically, programs or components or programs that have not previously applied for or received per diem in connection with a grant under VA's Homeless Providers Grant and Per Diem Program are eligible. This Notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated per diem application (plus two completed collated copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be received in Mental Health Strategic Healthcare Group, Washington, DC, by 4:00 PM Eastern Time on March 29, 2000. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: The Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule codified at 38 CFR Part 17.700.

SUBMISSION OF APPLICATION: An original completed and collated *per diem application* (plus two copies) must be submitted to the following address: Mental Health Strategic Healthcare Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Applications must be received in the Mental Health Strategic Healthcare Group by the application deadline.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Healthcare Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible programs, established after November 10, 1992, or expanded after November 30, 1999, that have not previously applied for or received per diem in connection with a grant (see 38 CFR 17.716). This program is authorized by Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992, as amended. Funding applied for under this Notice may be used for aid for service centers and supportive housing. Funding will be in the form of per diem payments issued to eligible entities for an expected period not to exceed 24 months, subject to availability of funds. For eligibility criteria please refer to 38 CFR Part 17.716.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by

sections 3 and 4 of Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C 7721 note) and has been extended through fiscal year 2003 by Public Law 106–117. The program is implemented by the final rule codified at 38 CFR Part 17.700. The final rule was published in the **Federal Register** on June 1, 1994, and February 27, 1995, and revised February 11, 1997. The regulations can be found in their entirely in 38 CFR, Volume 1, Sec. 17.700 through 17.731. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation

Approximately $5.0 million is available for the per diem component of this program. This funding is expected to be available for a maximum of 24 months, subject to the availability of funds. Nationally, this funding should create approximately 1,500 additional community-based beds for homeless veterans. In later years, continued payment is subject to availability of funds.

Application Requirements

The specific per diem application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have approximately one month to submit such information. If an applicant is unable to meet any conditions for per diem award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other applicants. Grant recipients need not reapply for per diem for programs covered by the grant. Per Diem for these programs is requested in the grant application and paid at the time of grant project completion. However, if such entities desire per diem for programs not funded by a grant award under VA's Homeless Providers Grant and Per Diem Program, an application responding to this NOFA is required.

Dated: January 31, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–2968 Filed 2–8–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
February 11, 2000

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–06]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 1999 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies are required to notify HUD by December 31, 1999, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 433–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Jeff Holste, CEMP–IP, U.S. Army Corps of Engineers, Installation Support Center, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; Corps of Engineers: Shirley Middlewarth, Army Corps of Engineers, Management and Disposal Division, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; (202) 761–0515; U.S. Navy: Charles C. Cocks, Dept. of Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; U.S. Air Force: Barbara Jenkins, Air Force Real Estate Agency (Area/MI), Bolling AFB, 112 Luke Avenue, Suite 104, Washington, DC 20332–8020; (202) 767–4184; GSA: Brian K. Polly, Office of Property Disposal, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Veterans Affairs: Anatolij Kushnir, Asset & Enterprise Development Service, Dept. of Veterans Affairs, room 419, Lafayette Bldg., 811 Vermont Ave. NW, Washington, DC 20420; (202) 565–5941; Dept. of Energy: Tom Knox, Office of Contract & Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; Dept. of Transportation: Rugene Spruill, Space Management, Transportation Administrative Service Center, DOT, 400 Seventh St. SW, room 2310, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Al Barth, Property Management, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–7283; (These are not toll-free numbers).

Dated: February 3, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V—PROPERTIES REPORTED IN YEAR 1999 WHICH ARE SUITABLE AND AVAILABLE

AIR FORCE

California

Building

Bldg. 604
Property #: 18199010237
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Property #: 18199010238
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Property #: 18199010239
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Property #: 18199010240
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Property #: 18199010241
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Property #: 18199010242
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Property #: 18199010243
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Property #: 18199010244
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized

Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Property #: 18199010245
Point Arena Air Force
Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Property #: 18199010246
Point Arena Air Force
Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—rehab.

Colorado

Building

Bldg. 964
Property #: 18199930016
Former Lowry AFB
Denver Co: CO 80220–
Status: Unutilized
Comment: 14,495 sq. ft., local land use controls, most recent use—child care/ kitchen facility.

Idaho

Building

Bldg. 516
Property #: 18199520004
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices.

Bldg. 2201
Property #: 18199520005
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Maine

Land

Irish Ridge NEXRAD Site
Property #: 18199640017
Loring AFB
Fort Fairfield Co: Aroostock ME 04742–
Status: Unutilized
Comment: 3.491 acres in fee simple.

Massachusetts

Building

Bldg. 001
Property #:18199940001
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 37,557 sq. ft., most recent use—shops/vehicle maintenance

Bldg. 002
Property #:18199940002
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 5,580 sq. ft., most recent use—office/shops

Bldg. 003
Property #:18199940003
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 3,840 sq. ft., most recent use—warehouse

Bldg. 004
Property #:18199940004
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 225 sq. ft., most recent use—shop

Bldg. 005
Property #:18199940005
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 8000 sq. ft., most recent use—warehouse

Land

.07 acre
Property #:18199840007
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022–
Status: Excess
Comment: land, no utilities

Nebraska

Building

Bldg. 20
Property #:18199610004
Offutt Communications Annex
4
Silver Creek Co: Nance NE 68663–
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitoryneeds major repair

Land

Hastings Radar Bomb Scoring
Property #:18199810027
Hastings Co: Adams NE 68901–
Status: Unutilized
Comment: 11 acres

New York

Building

Bldg. 1452 & 297 acres
Property #:18199920030
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Status: Unutilized
Comment: 11,000 sq. ft. on 297 acres (67 acres of wetland), most recent use—electronic research testing, presence of asbestos/lead paint

Bldg. 1453
Property #:18199920031
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Status: Unutilized
Comment: 266 sq. ft., most recent use—generator bldg., presence of asbestos

Bldg. 1454
Property #:18199920032
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Status: Unutilized
Comment: 53 sq. ft., most recent use—switch station, presence of asbestos

South Dakota

Building

West Communications Annex
Property #:18199340051
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

ARMY

Alabama

Building

Bldg. 60101
Property #: 21199520152
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only

Bldg. 60103
Property #: 21199520154
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only

Bldg. 60110
Property #: 21199520155
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 60113
Property #: 21199520156
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only

Alaska

Building

Bldgs. 420, 422, 426, 430
Property #: 21199740276
Fort Richardson
Anchorage AK 99505–6500
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 789
Property #: 21199910084
Fort Richardson
Anchorage Co: AK 99505–6500
Status: Excess
Comment: 19,001 sq. ft., concrete block, most recent use—vehicle maint., off-site use only

Bldg. 263
Property #: 21199930111
Fort Richardson
Ft. Richardson Co: AK 99505–

Status: Excess
Comment: 13050 sq. ft., most recent use—housing, off-site use only
Bldg. 636
Property #: 21199930112
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 33,726 sq. ft., concrete block, most recent use—library, off-site use only
Bldg. 736
Property #: 21199930113
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 7090 sq. ft., most recent use—admin., off-site use only
Bldg. 786
Property #: 21199930114
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 2242 sq. ft., most recent use—driver's testing facility, off-site use only
Bldg. 978
Property #: 21199930116
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 2411 sq. ft., concrete block, most recent use—training, off-site use only
Bldg. 980
Property #: 21199930117
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 11,651 sq. ft., concrete block, most recent use—vehicle maintenance, off-site use only
Bldg. 58780
Property #: 21199930118
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 3230 sq. ft., most recent use—admin., off-site use only

Arizona

Building

Bldg. 30012, Fort Huachuca
Property #: 21199310298
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage
Bldg. S–306
Property #: 21199420346
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only
Bldg. 503, Yuma Proving Ground
Property #: 21199520073
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only
5 Bldgs.
Property #: 21199840129
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 44101, 44102, 44124, 44125, 44201
Status: Excess
Comment: various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only
Bldgs. 87821, 90420
Property #: 21199910087
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 377 and 5662 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. 12521, 13572
Property #: 21199920183
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Status: Unutilized
Comment: 448 sq. ft. & 54 sq. ft., off-site use only
Bldgs. 43101–43109
Property #: 21199940001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 969 sq. ft. per unit, 2-units per bldg., wood/stucco, presence of asbestos/lead paint, most recent use—housing, off-site use only

California

Building

Bldg. 4282
Property #: 21199810378
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Status: Unutilized
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—office
Bldg. 4461
Property #: 21199810379
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—storage
Bldg. 104
Property #: 21199910088
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 8039 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 106
Property #: 21199910089
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 1950 sq. ft., presence of asbestos/lead paint, most recent use—office/storage, off-site use only
Bldg. 125
Property #: 21199910090
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 339
Property #: 21199910092
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 5654 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 340
Property #: 21199910093
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 6500 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 341
Property #: 21199910094
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 4214
Property #: 21199910095
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 3168 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Colorado

Building

Bldg. P–1008
Property #: 21199630127
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Status: Unutilized
Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only
Bldg. P–1007
Property #: 21199730210
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only
Bldg. T–1342
Property #: 21199730211
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.
Bldg. T–6005
Property #: 21199730213
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse

Georgia

Building

Bldg. 2285
Property #: 21199011704
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4491
Property #: 21199014916
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 1252, Fort Benning
Property #: 21199220694
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg 4881, Fort Benning
Property #: 21199220707
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg 4963, Fort Benning
Property #: 21199220710
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

2396, Fort Benning
Property #: 21199220712
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 4882, Fort Benning
Property #: 21199220727
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4967, Fort Benning
Property #: 21199220728
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4977, Fort Benning
Property #: 21199220736
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Property #: 21199220747
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Property #: 21199220752
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Property #: 21199220753
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg 4884, Fort Benning
Property #: 21199220762
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Property #: 21199220763
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4966, Fort Benning
Property #: 21199220764
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Property #: 21199220769
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Property #: 21199220779
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Property #: 21199220780
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 4023, Fort Benning
Property #: 21199310461
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Property #: 21199310462
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4067, Fort Benning
Property #: 21199310465
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only

Bldg. 10501
Property #: 21199410264
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only

Bldg. 11813
Property #: 21199410269
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 70 sq. ft.; 1 story metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Property #: 21199410270
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Property #: 21199410272
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Property #: 21199410273
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg. 4051, Fort Benning
Property #: 21199520175
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 2141
Property #: 21199610655
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only

Bldg. 322
Property #: 21199720156
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Property #: 21199720161
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2593
Property #: 21199720167
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Property #: 21199720168
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldgs. 2865, 2869, 2872

Property #:21199720169
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only
Bldg. 4476
Property #: 21199720184
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.
8 Bldgs.
Property #: 21199720189
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only.
Bldg. 4714
Property #: 21199720191
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only.
Bldg. 4702
Property #: 21199720192
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only.
Bldgs. 4712–4713
Property #: 21199720193
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., need rehab, most recent use—company headquarters bldg., off-site use only.
Bldg. 305
Property #: 21199810268
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only.
Bldg. 318
Property #: 21199810269
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only.
Bldg. 1792
Property #: 21199810274
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only.
Bldg. 1836
Property #: 21199810276
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only.
Bldg. 4373
Property #: 21199810286
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg., off-site use only.
Bldg. 4628
Property #: 21199810287
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only.
Bldg. 92
Property #: 21199830278
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only.
Bldg. 2445
Property #: 21199830279
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only.
Bldg. 4232
Property #: 21199830291
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only.
Bldg. 39720
Property #: 21199930119
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. 492
Property #: 21199930120
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint., off-site use only.
Bldg. 880
Property #: 21199930121
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only
Bldg. 1370
Property #: 21199930122
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only
Bldg. 2288
Property #: 21199930123
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only
Bldg. 2290
Property #: 21199930124
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only
Bldg. 2293
Property #: 21199930125
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only
Bldg. 2297
Property #: 21199930126
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin., off-site use only
Bldg. 2505
Property #: 21199930127
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only
Bldg. 2508
Property #: 21199930628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only
Bldg. 2815
Property #: 21199930129
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only
Bldg. 3815
Property #: 21199930130
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only
Bldg. 3816
Property #: 21199930131
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only
Bldg. 4555
Property #: 21199930132
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 18,240 sq. ft., most recent use—maint. shop, off-site use only
Bldg. 5886
Property #: 21199930134
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only
Bldg. 5974–5978
Property #: 21199930135
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized

Comment: 400 sq. ft., most recent use—storage, off-site use only
Bldg. 5993
Property #: 21199930136
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only
Bldg. 5994
Property #: 21199930137
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Land

Land (Railbed)
Property #: 21199440440
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

Hawaii

Building

P–88
Property #: 21199030324
Aliamanu Military
Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.
Bldg. T–675A
Property #: 21199640202
Schofield Barracks
Wahiawa HI 96786–
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office, off-site use only.
Bldg. T–337
Property #: 21199640203
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Illinois

Building

Bldg. 54
Property #: 21199620666
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.
Bldgs. HP113, 114
Property #: 21199920186
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Status: Unutilized
Comment: 2864 sq. ft. and 3458 sq. ft., most recent use—admin., off-site use only.
Bldgs. HP432–439
Property #: 21199920189
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Status: Unutilized
Comment: 4845 sq. ft. each, presence of asbestos, most recent use—admin/storage, off-site use only.
Bldgs. HP459, 460
Property #: 21199920191
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Status: Unutilized
Comment: 4848 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Kansas

Building

Bldg. 166, Fort Riley
Property #: 21199410325
Ft. Riley Co: Geary K 66442–
Status: Unutilized
Comment:3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.
Bldg. 184, Fort Riley
Property #: 21199430146
Ft. Riley KS 66442–
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.
Bldg. P–390
Property #: 2199740295
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 4713 sq. ft., presence of lead based paint, most recent use—swine house, off-site use only.
Bldg. T–323
Property #: 21199810297
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 720 sq. ft., most recent use—boy scout bldg., off-site use only.
Bldg. T–688
Property #: 21199810298
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 832 sq. ft., possible lead paint, most recent use—girl scout bldg., off-site use only.
Bldg. T–895
Property #: 21199810299
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 228 sq. ft., possible lead paint, most recent use—storage, off-site use only.
Bldg. P–68
Property #: 21199820153
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only.
Bldg. P–69
Property #: 21199820154
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 224 sq. ft., most recent use—storage, off-site use only
Bldg. P–93
Property #: 21199820155
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 63 sq. ft., concrete, most recent use—storage, off-site use only
Bldg. P–128
Property #: 21199820156
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 79 sq. ft., concrete, most recent use—storage, off-site use only
Bldg. P–321
Property #: 21199820157
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only
Bldg. P–347
Property #: 21199820158
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 2135 sq. ft., most recent use—bath house, off-site use only
Bldg. P–397
Property #: 21199820159
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage, off-site use only
Bldg. S–809
Property #: 21199820160
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only
Bldg. S–830
Property #: 21199820161
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only
Bldg. S–831
Property #: 21199820162
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only
Bldg. T–2360
Property #: 21199830310
Fort Riley
Ft. Riley KS
Status: Unutilized
Comment: 4534 sq. ft., needs major rehab, most recent use—aces. fac.
Bldgs. P–104, P–105, P–106
Property #: 21199830313
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage, off-site use only
Bldg. P–108
Property #: 21199830314
Fort Leavenworth
Leavenworth KS 66027–

Status: Unutilized
Comment: 138 sq. ft., most recent use—storage, off-site use only
Bldg. P–147
Property #: 21199830315
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 378 sq. ft., most recent use—storage, off-site use only
Bldgs. P–163, P–166
Property #: 21199830316
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only
Bldg. P–164
Property #: 21199830317
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 145 sq. ft., most recent use—storage, off-site use only
Bldg. P–171
Property #: 21199830318
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only
Bldg. P–172
Property #: 21199830319
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only
Bldgs. P–173, P–174
Property #: 21199830320
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only
Bldg. P–243
Property #: 21199830321
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only
Bldg. P–146
Property #: 21199920198
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 196 sq. ft., most recent use—utility, off-site use only
Bldg. P–149
Property #: 21199920199
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 76 sq. ft., most recent use—utility, off-site use only
Bldg. P–150
Property #: 21199920200
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 96 sq. ft., most recent use—utility, off-site use only
Bldg. P–162
Property #: 21199920201
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 81 sq. ft., most recent use—utility, off-site use only
Bldg. P–242
Property #: 21199920202
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 4680 sq. ft., most recent use—storage, off-site use only
Bldg. T–71
Property #: 21199930139
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only
Bldg. P–75
Property #: 21199930140
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 12,129 sq. ft., most recent use—storage, off-site use only
Bldg. P–76
Property #: 21199930141
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only
Bldgs. P–26, P–97
Property #: 21199930142
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 84 sq. ft., most recent use—utility, off-site use only
Bldgs. P–110, P–114, P–115
Property #: 21199930143
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 85–92 sq. ft., most recent use—utility, off-site use only
Bldg. P–118
Property #: 21199930144
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 117 sq. ft., most recent use—storage, off-site use only
Bldgs. P–160, P–161, P–165
Property #: 21199930145
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 86—88 sq. ft., most recent use—utility, off-site use only
Bldg. P–223
Property #: 21199930146
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 7,174 sq. ft., most recent use—storage, off-site use only
Bldg. T–236
Property #: 21199930147
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 4563 sq. ft., most recent use—storage, off-site use only
Bldg. P–241
Property #: 21199930148
Fort Leavenworth
Leavenworth CO: KS 66027–
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only
Bldg. T–257
Property #: 21199930149
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only
Bldg. P–309
Property #: 21199930150
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 71 sq. ft., most recent use—storage, off-site use only
Bldg. T347
Property #: 21199940012
Fort Riley
Ft. Riley Co: Manhattan KS 66442–
Status: Unutilized
Comment: 2888 sq. ft., most recent use—storage, off-site use only

Louisiana

Building

Bldg. 8405, Fort Polk
Property #: 21199640524
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office
Bldg. 8407, Fort Polk
Property #: 21199640525
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.
Bldg. 8408, Fort Polk
Property #: 21199640526
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.
Bldg. 8414, Fort Polk
Property #: 21199640527
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8423, Fort Polk
Property #: 21199640528
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8424, Fort Polk
Property #: 21199640529
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8426, Fort Polk
Property #: 21199640530
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized

Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8427, Fort Polk
Property #: 21199640531
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8428, Fort Polk
Property #: 21199640532
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8429, Fort Polk
Property #: 21199640533
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8430, Fort Polk
Property #: 21199640534
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8431, Fort Polk
Property #: 21199640535
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8432, Fort Polk
Property #: 21199640536
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8433, Fort Polk
Property #: 21199640537
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8446, Fort Polk
Property #: 21199640538
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8449, Fort Polk
Property #: 21199640539
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Bldg. 8450, Fort Polk
Property #: 21199640540
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8458, Fort Polk
Property #: 21199640542
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8459, Fort Polk
Property #: 21199640543
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8460, Fort Polk
Property #: 21199640544
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8461, Fort Polk
Property #: 21199640545
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8462, Fort Polk
Property #: 21199640546
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8463, Fort Polk
Property #: 21199640547
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8501, Fort Polk
Property #: 21199640548
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1687 sq. ft., most recent use—office

Bldg. 8502, Fort Polk
Property #: 21199640549
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8541, Fort Polk
Property #: 21199640551
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8542, Fort Polk
Property #: 21199640552
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8543, Fort Polk
Property #: 21199640553
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8544, Fort Polk
Property #: 21199640554
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8545, Fort Polk
Property #: 21199640555
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8546, Fort Polk
Property #: 21199640556
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8547, Fort Polk
Property #: 21199640557
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8548, Fort Polk
Property #: 21199640558
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8549, Fort Polk
Property #: 21199640559
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 4960 A–F
Property #: 21199940013
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4412 sq. ft., most recent use—housing, off-site use only.

Bldg. 5143 A–D
Property #: 21199940014
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only.

Bldg. 5179 A–F
Property #: 21199940015
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459—
Status: Underutilized
Comment: 8969 sq. ft., most recent use—housing, off-site only.

Bldg. 5253 A–D
Property #: 21199940016
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459—
Status: Underutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only.

Bldg. 5846 A–E
Property #: 21199940017
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 3919 sq. ft., most recent use—housing, off-site use only.

Bldg. 5903 A–F
Property #: 21199940018
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 5719 sq. ft., most recent use—housing, off-site use only.

Bldg. 5909 A–B
Property #: 21199940019
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2025 sq. ft., most recent use—housing, off-site use only.

Bldg. 6169 A–D
Property #: 21199940020
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2850 sq. ft., most recent use—housing, off-site use only.

Bldg. 6475 A–B
Property #: 21199940021

Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 5100 sq. ft., most recent use—housing, off-site use only.
Bldg. 6477 A–D
Property #: 21199940022
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Unutilized
Comment: 5972 sq. ft., most recent use—housing, off-site use only.
Bldg. 6704 A–D
Property #: 21199940023
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Unutilized
Comment: 5972 sq. ft., most recent use—housing, off-site use only.
Bldg. 6810 A–D
Property #: 21199940024
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Unutilized
Comment: 6193 sq. ft., most recent use—housing, off-site use only.

Maryland

Building

Bldg. 370
Property #: 21199730256
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible abestos/lead paint.
Bldg. 2446
Property #: 21199740305
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 2472
Property #: 21199740306
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 4700
Property #: 21199740309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 6294
Property #: 21199810302
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only.
Bldg. 3176
Property #: 21199810303
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. E5813
Property #: 21199830326
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 69 sq. ft., presence of asbestos/lead paint, most recent use—storage.
Bldg. 00307
Property #: 21199930152
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 4071 sq. ft., most recent use—admin., off-site use only.
Bldg. 00646
Property #: 21199930153
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 880 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 01110
Property #: 21199930154
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 396 sq. ft., most recent use—magazine, off-site use only.
Bldg. 01195
Property #: 21199930115
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only.
Bldg. E3264
Property #: 21199930156
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only.
Bldg. E3333
Property #: 21199930157
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only.
Bldgs. 2454–2457
Property #: 21199940025
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos, most recent use—admin./health clinics, off-site use only.
Bldg. 2478
Property #: 21199940026
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 2534 sq. ft., needs rehab, presence of asbestos, most recent use—health clinic, off-site use only.
Bldg. 2845
Property #: 21199940027
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 6104 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Land

13 acres
Property #: 21199930151
West side of Rt 175
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5111
Status: Underutilized
Comment: small paved area, remainder wooded.

Missouri

Building

Bldg. T599
Property #: 21199230260
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.
Bldg. T2171
Property #: 21199340212
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only.
Bldg. T6822
Property #: 21199340219
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.
Bldg. T1497
Property #: 21199420441
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2139
Property #: 21199420446
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2191
Property #: 21199440334
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2-story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2197
Property #: 21199440335

Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T590
Property #: 21199510110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T2385
Property #: 21199510115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldgs. T2340 thru T2343
Property #: 21199710138
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose.

Bldg. 1226
Property #: 21199730275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1271
Property #: 21199730276
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1280
Property #: 21199730277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1281
Property #: 21199730278
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1282
Property #: 21199730279
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1283
Property #: 21199730280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1284
Property #: 21199730281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1285
Property #: 21199730282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1286
Property #: 21199730283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1287
Property #: 21199730284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1288
Property #: 21199730285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. 1289
Property #: 21199730286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 430
Property #: 21199810305
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only.

Bldg. 758
Property #: 21199810306
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 759
Property #: 21199810307
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 760
Property #: 21199810308
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldgs. 761–766
Property #: 21199810309
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1650
Property #: 21199810311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.

Bldg. 2111
Property #: 21199810312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.

Bldg. 2170
Property #: 21199810313
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2204
Property #: 21199810315
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2225
Property #: 21199810316
Fort Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2271
Property #: 21199810317
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2275
Property #: 21199810318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2291
Property #: 21199810319
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 510 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2318
Property #: 21199810322
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 2579
Property #: 21199810325
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 176 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 2580
Property #: 21199810326
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, most recent use—generator plant, off-site use only.
Bldg. 4199
Property #: 21199810327
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 386
Property #: 21199820163
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4902 sq. ft., presence of asbestos/lead paint, most recent use—fire station, off-site use only.
Bldg. 401
Property #: 21199820164
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 856
Property #: 21199820166
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 859
Property #: 21199820167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1242
Property #: 21199820168
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1265
Property #: 21199820169
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1267
Property #: 21199820170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1272
Property #: 21199820171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1277
Property #: 21199820172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. 2142, 2145, 2151–2153
Property #: 21199820174
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 2150
Property #: 21199820175
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.
Bldg. 2155
Property #: 21199820176
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. 2156, 2157, 2163, 2164
Property #: 21199820177
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 2165
Property #: 21199820178
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.
Bldg. 2167
Property #: 21199820179
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. 2169, 2181, 2182, 2183
Property #: 21199820180
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 2186
Property #: 21199820181
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 2187
Property #: 21199820182
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. 2192, 2196, 2198
Property #: 21199820183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldgs. 2304, 2306
Property #: 21199820184
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 12651
Property #: 21199820186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only.

Bldg. 1448
Property #: 21199830327
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only.

Bldg. 2210
Property #: 21199830328
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 808 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2270
Property #: 21199830329
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 6036
Property #: 21199910101
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Status: Underutilized
Comment: 240 sq. ft., off-site use only.

Bldg. 9110
Property #: 21199910108
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9113, 9115, 9117
Property #: 21199910109
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldg. 493
Property #: 21199930158
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Unutilized
Comment: 26936 sq. ft., concrete, presence of asbestos/lead paint, most recent use—store, off-site use only.

Nevada

Land

Parcel A
Property #: 21199012049
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Property #: 21199012056
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Property #: 21199012057
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.

Parcel D
Property #: 21199012058
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP'S South Magazine Area at western edge of State Route 359.
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

New Jersey

Building

Bldg. 22
Property #: 21199740311
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only.

Bldg. 178
Property #: 21199740312
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only.

Bldg. 642
Property #: 21199740314
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only.

Bldg. 732
Property #: 21199740315
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 1604
Property #: 21199740321
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only.

Bldg. 3117
Property #: 21199740322
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only.

Bldg. 3201
Property #: 21199740324
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only.

Bldg. 3202
Property #: 21199740325
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only.

Bldg. 3219
Property #: 21199740326
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only.

New Mexico

Building

68 Housing Units
Property #: 21199940028
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 1269 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing, off-site use only.

Facility 11230

Property #: 21199940029
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 1620 sq. ft., needs major repair, presence of asbestos, most recent use—housing unit, off-site use only.

3 Facilities
Property #: 21199940030
White Sands Missile Range
#00651, 00637, 00716
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 1509 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing units, off-site use only.

17 Garages
Property #: 21199940031
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 598 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only.

37 Garages
Property #: 21199940032
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 312 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only.

New York

Building

4 Bldgs.
Property #: 21199830336
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location:
#2000, 2002, 2004, 2006
Status: Unutilized
Comment: 35,356 sq. ft., fair possible asbestos/lead paint, most recent use—lodging.

7 Bldgs.
Property #: 21199830339
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location:
#2400, 2402, 2404, 2500, 2506, 2514, 2516
Status: Unutilized
Comment: 21,972 sq. ft., poor, possible asbestos/lead paint, most recent use—storage/admin.

Bldg. T–35
Property #: 21199840143
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1296 sq. ft., most recent use—admin., off-site use only.

Bldg. S–149
Property #: 21199840144
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2488 sq. ft., most recent use—admin., off-site use only.

Bldg. T–250
Property #: 21199840145
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only.

Bldg. T–254
Property #: 21199840146
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only.

Bldg. T–260
Property #: 21199840147
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2371 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–261
Property #: 21199840148
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–262
Property #: 21199840149
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–340
Property #: 21199840150
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only.

Bldg. T–392
Property #: 21199840151
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—storage, off-site use only.

Bldg. T–413
Property #: 21199840152
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only.

Bldg. T–415
Property #: 21199840153
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1676 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–530
Property #: 21199840154
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–840
Property #: 21199840155
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only.

Bldg. T–892
Property #: 21199840156
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–991
Property #: 21199840157
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. P–996
Property #: 21199840158
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 9602 sq. ft., most recent use—storage, off-site use only.

Bldg. S–998
Property #: 21199840159
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1432 sq. ft., most recent use—storage, off-site use only.

Bldg. T–2159
Property #: 21199840160
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1948 sq ft., off-site use only.

Bldg. T–2329
Property #: 21199840163
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2027 sq. ft., most recent use—museum, off-site use only.

Bldg. P–2415
Property #: 21199840164
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 214 sq. ft., most recent use—incinerator, off-site use only.

Bldg. P–21572
Property #: 21199840167
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 240 sq. ft., most recent use—bunker, off-site use only.

Bldg. P–87
Property #: 21199920203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 360 sq. ft., needs rehab, most recent use—admin., off-site use only.

Land

Land—6.965 Acres
Property #: 21199540018
Dix Avenue
Queensbury Co: Warren NY 12801–
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

Ohio

Building

15 Units
Property #: 21199230354
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom 8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only.

7 Units
Property #: 21199230355
Military Family Housing
Garages

Ravenna Army Ammunition
Plant
Ravenna Co: Portage OH 44266–9297
Status: Excess
Comment: 1—4 stall garage and 6—3 stall garages, presence of asbestos, off-site use only.

Oklahoma

Building

Bldg. T–2606
Property #: 21199011273
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
Property #: 21199220609
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property #: 21199240659
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–4050 Fort Sill
Property #: 21199240676
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–3325, Fort Sill
Property #: 21199240681
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T1652, Fort Sill
Property #: 21199330380
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5637 Fort Sill
Property #: 21199330419
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–4226
Property #: 21199440384
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P–1015, Fort Sill
Property #: 21199520197
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–366, Fort Sill
Property #: 21199610740
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–1800,
Property #: 21199710033
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,545 sq. ft., possible asbestos and leadpaint, most recent use—military equipment, off-site use only.

Building T–2952
Property #: 21199710047
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only.

Building P–5042
Property #: 21199710066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only.

6 Buildings
Property #: 21199710085
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.

4 Buildings
Property #: 21199710086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.

Building P–6539
Property #: 21199710087
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Bldg. T–208
Property #: 21199730344
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–214
Property #: 21199730346
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldgs. T–215, T–216
Property #: 21199730347
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6300 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–217
Property #: 21199730348
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–810
Property #: 21199730350
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only.

Bldgs. T–837, T–839
Property #: 21199730351
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–934
Property #: 21199730353
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recenf use—storage, off-site use only.

Bldg. T–1177
Property #: 21199730356
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only.

Bldgs. T–1468, T–1469
Property #: 21199730357
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1470
Property #: 21199730358
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1940
Property #: 21199730360
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized

Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–1954, T–2022
Property #: 21199730362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–2180
Property #: 21199730363
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: possible asbestos/lead paint, most recentuse—vehicle maint. facility, off-site use only.
Bldgs. T–2184
Property #: 21199730364
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–2185
Property #: 21199730365
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–2186, T–2188, T–2189
Property #: 21199730366
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.
Bldg. T–2187
Property #: 21199730367
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–2209
Property #: 21199730368
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–2240, T–2241
Property #: 21199730369
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–2262, T–2263
Property #: 21199730370
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.
Bldgs. T–2271, T–2272
Property #: 21199730371
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–2291, T–2296
Property #: 21199730372
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.
5 Bldgs.
Property #: 21199730373
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–2406
Property #: 21199730374
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
3 Bldgs.
Property #: 21199730376
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–2434
Property #: 21199730377
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.
Bldgs. T–3001, T–3006
Property #: 21199730383
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–3025
Property #: 21199730384
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only.
Bldg. T–3314
Property #: 21199730385
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–3323
Property #: 21199730387
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldgs. T–4021, T–4022
Property #: 21199730389
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 442—869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–4065
Property #: 21199730390
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.
Bldg. T–4067
Property #: 21199730391
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–4281
Property #: 21199730392
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–4401, T–4402
Property #: 21199730393
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–4407
Property #: 21199730395
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.
4 Bldgs.
Property #: 21199730396
Fort Sill
#T–4410, T–4414, T–4415,
T–4418
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
5 Bldgs.
Property #: 21199730397
Fort Sill
#T–4411 thru T–4413, T–4416
thru T–4417
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.
Bldg. T–4421

Property #: 21199730398
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3070 sq. ft. possible asbestos/lead paint, most recent use—dining, off-site use only.
10 Bldgs.
Property #: 21199730399
Fort Sill
#T–4422 thru T–4427, T–4431
thru T–4434
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.
6 Bldgs.
Property # :21199730400
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4445, T–4448, T–4449
Status: Unutilized
Comment: 1311–2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
5 Bldgs.
Property #: 21199730401
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.
Bldg. T–5041
Property #: 21199730409
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–5044, T–5045
Property #: 21199730410
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only.
4 Bldgs.
Property #: 21199730411
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–5420
Property #: 21199730414
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.
Bldg. T–5639
Property #: 21199730416
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldgs. T–7290, T–7291
Property #: 21199730417
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-set use only.
Bldg. T–7775
Property #: 21199730419
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only.
Bldg. T–207
Property #: 21199910130
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 19,531 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldgs. P–364, P–584, P–588
Property #: 21199910131
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.
Bldg. P–599
Property #: 21199910132
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only.
4 Bldgs.
Property #: 21199910133
Fort Sill
P–617, P–1114, P–1386
P–1608
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.
Bldg. P–746
Property #: 21199910135
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. P–1908, P–2078
Property #: 21199910136
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 106 & 131 sq ft., possible asbestos/lead paint, most recent use–utility plant, off-site use only.
Bldg. T–2183
Property #: 21199910139
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 14,530 sq. ft., possible asbestos/lead paint, most recent use—repair shop, off-site use only.
Bldgs. P–2581, P–2773
Property #: 21199910140
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–2582
Property #: 21199910141
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. S–2790, P–2906
Property #: 21199910142
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1602 and 1390 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–2909
Property #: 21199910143
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.
Bldgs. P–2912, P–2944
Property #: 21199910144
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. S–3169
Property #: 21199910145
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6437 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–2914
Property #: 21199910146
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–3469
Property #: 21199910147
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only.
Bldg. S–3559
Property #: 21199910148
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9462 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–4064
Property #: 21199910149
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only.

Bldg. T–4748
Property #: 21199910151
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1896 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–5086
Property #: 21199910152
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only.

Bldg. P–5101
Property #: 21199910153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. P–5638
Property #: 21199910155
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–6430
Property #: 21199910156
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6461
Property #: 21199910157
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6462
Property #: 21199910158
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. P–7230
Property #: 21199910159
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only.

Bldg. S–7960
Property #: 21199930159
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–7961
Property #: 21199930160
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 36 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Pennsylvania

Building

Bldg. T884
Property #: 21199940039
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T889
Property #: 21199940040
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T894
Property #: 21199940041
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1555 sq. ft., needs major repair, presence of asbestos, most recent use—maint. facility, off-site use only.

Bldg. T879
Property #: 21199940042
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1850 sq. ft., needs major repair,presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T895
Property #: 21199940043
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—maint. facility, off-site use only.

South Carolina

Building

Bldg. 3499
Property #: 21199730310
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Property #: 21199820187
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Property #: 21199820188
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage.

Texas

Building

Bldg. P–377, Fort Sam Houston
Property #: 21199330444
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. T–5901
Property #: 21199330486
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. 4480, Fort Hood
Property #: 21199410322
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–6615
Property #: 21199440454
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Bldg. 4201, Fort Hood
Property #: 21199520201
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only.

Bldg. 4202, Fort Hood
Property #: 21199520202
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 5400 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–197
Property #: 21199640220
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. T–230
Property #: 21199640221
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 18102 sq. ft., presence of asbestos/lead paint, most recent use—printing plant and shop, off-site use only.

Bldg. S–3898
Property #: 21199640235
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–3899
Property #: 21199640236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. P–5126
Property #: 21199640240
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 189 sq. ft., off-site use only.

Bldg. P–6201
Property #: 21199640241
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3003 sq. ft., presence of asbestos/lead paint, most recent use—officers family quarters, off-site use only.

Bldg. P–6202
Property #: 21199640242
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1479 sq. ft., presence of lead paint, most recent use—officers family quarters, off-site use only.

Bldg. P–6203
Property #: 21199640243
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1381 sq. ft., presence of lead paint, most recent use—military family quarters, off-site use only.

Bldg. P–6204
Property #: 21199640244
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1454 sq. ft., presence of asbestos/lead paint, most recent use—military family quarters, off-site use only.

Bldg. 7137, Fort Bliss
Property #: 21199640564
El Paso Co: El Paso TX 79916–
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.

Building 4630
Property #: 21199710088
Fort Hood
Fort Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only.

Bldg. T–330
Property #: 21199730315
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only.

Bldgs. P–605A & P–606A
Property #: 21199730316
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only.

Bldg. S–1150
Property #: 21199730317
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only.

Bldgs. S–1440—S–1446, S–1452
Property #: 21199730318
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only.

4 Bldgs.
Property #: 21199730319
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only.

Bldg. P–4115
Property #: 21199730327
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint historic bldg., most recent use—admin., off-site use only.

Bldg. 4205
Property #: 21199730328
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. T–5113
Property #: 21199730330
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—medical clinic, off-site use only.

Bldg. T–5122
Property #: 21199730331
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only.

Bldg. T–5903
Property #: 21199730332
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–5907
Property #: 21199730333
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–6284
Property #: 21199730335
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 120 sq. ft., presence of lead paint, most recent use—pump station, off-site use only.

Bldg. T–5906
Property #: 21199730420
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site only.

Bldg. P–1382
Property #: 21199810365
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. P–2014
Property #: 21199810367
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. P–2015
Property #: 21199810368
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 11,333 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–2016
Property #: 21199810369
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 11,517 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–2017
Property #: 21199810370
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. S–3897
Property #: 21199810371
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. S–1155
Property #: 21199830347
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2100 sq. ft., good, hazard abatement required, most recent use—instruction bldg., off-site use only.

Bldg. S–3896
Property #: 21199830349

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., fair, hazard abatement required, most recent use—training, off-site use only.

Bldg. T–5123
Property #: 21199830350
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance.

Bldg. P–6150
Property #: 21199830351
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—púmphouse, off-site use only.

Bldgs. P–6331, P–6335, P–6495
Property #: 21199830353
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only.

Bldg. P–8000
Property #: 21199830354
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1776 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

9 Bldgs.
Property #: 21199830355
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 8265
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

11 Bldgs.
Property #: 21199830356
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8003, P8011, 8012, 8043, 8202, 8204, 8216, 8235, 8241, 8261
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P–8003C, P–8220C
Property #: 21199830357
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P–8004
Property #: 21199830358
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 21199830359
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, P8101, 8107, 8141, 8146, 8150
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

15 Bldgs.
Property #: 21199830360
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8006, P8007, 8010, 8013, 8015, 8017, 8020, 8029, 8103, 8105, 8201, 8208, 8218, 8225, 8234
Status: Unutilized
Comment: 1703 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 31199830361
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Status: Unutilized
Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830362
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8027C, 8248C, 8256C
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830363
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8016
Property #: 21199830364
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830365
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8223, 8243, 8226
Status: Unutilized
Comment: 246 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–8022
Property #: 21199830366
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

5 Bldgs.
Property #: 21199830367
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8022C, 8023C, 8106C, 8127C, 8206C
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldgs. P8026, P8028
Property #: 21199830369
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1850 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830370
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Status: Unutilized
Comment: 838 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830372
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830375
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8109, P8137
Property #: 21199830376
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8112, P8228
Property #: 21199830378
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830380
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8116, 8151, 8158
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8117
Property #: 21199830381
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000

Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8122, P8123
Property #: 21199830383
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8126
Property #: 21199830384
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830386
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8131C, 8139C, 8203C, 8221C, 8231C, 8243C, 8249C, 8261C
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldgs. P8133, P8134
Property #: 21199830387
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8135, P8136
Property #: 21199830388
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1500 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830389
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location:
#P8144, 8267, 8148, 8149
Status: Unutilized
Comment: approx. 2200 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8171
Property #: 21199830392
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1289 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8172
Property #: 21199830393
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1597 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8173, P8174
Property #: 21199830394
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 2200 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8174C
Property #: 21199830395
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 670 sq. ft., fair hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8175
Property #: 21199830396
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2220 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8200
Property #: 21199830397
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 892 sq. ft., fair hazard abatement required, most recent use—officers quarters, off-site use only.

Bldg P8200C,
Property #: 21199830398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 924 sq. ft., fair hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8205
Property #: 21199830399
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1745 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830400
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8206, 8232, 8233
Status: Unutilized
Comment: approx. 2400 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg P8245
Property #: 21199830401
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2876 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8262C, 8271C
Property #: 21199830403
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1006 sq. ft., fair hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8269
Property #: 21199830404
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2396 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

20 Bldgs.
Property #: 21199830405
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Status: Unutilized
Comment: 2777 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–1374
Property #: 21199840169
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 111,448 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—barracks, off-site use only.

Bldg. P–1980
Property #: 21199840170
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2989 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—radio system, off-site use only.

Bldg. P–1981
Property #: 21199840171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only.

Bldg. P–2396
Property #: 21199840173
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1080 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only.

Bldg. P–4226
Property #: 21199840172
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1809 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—storage, off-site use only.

Bldg. 2842
Property #: 21199840177

Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 2650 sq. ft., most recent use—admin., off-site use only.

Bldg. 2843
Property #: 21199840178
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2845
Property #: 21199840180
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2846
Property #: 21199840181
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 36
Property #: 21199920204
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2250 sq. ft., needs repair,most recent use—ACS center, off-site use only.

Bldg. 37
Property #: 21199920205
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 38
Property #: 21199920206
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2700 sq. ft., needs repair, most recent use—gen. inst., off-site use only.

Bldg. 39
Property #: 21199920207
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 41
Property #: 21199920208
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 1750 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 43–44
Property #: 21199920209
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2750 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 209–212
Property #: 21199920210
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 213
Property #: 21199920211
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 7670 sq. ft., needs repair, most recent use—operations, off-site use only.

Bldg. 919
Property #: 21199920212
Fort Hood
Ft. Hood Co: Coryell 76544–
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only.

Bldg. 923
Property #: 21199920213
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 4440 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 924
Property #: 21199920214
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3500 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3949–3950
Property #: 21199920219
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—Bn. Hq. Bldg., off-site use only.

Bldg. 3951
Property #: 21199920220
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2500 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3952–3953
Property #: 21199920221
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3954–3957
Property #: 21199920222
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 3958
Property #: 21199920223
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 3959
Property #: 21199920224
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3960–3962
Property #: 21199920225
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3964–3965
Property #: 21199920226
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—Bn. Hq., Bldg., off-site use only.

Bldg. 3966
Property #: 21199920227
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2741 sq. ft., needs repair, most recent use—Co. Hq. Bldg., off-site use only.

Bldgs. 3967–3969
Property #: 21199920228
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3970–3971
Property #: 21199920229
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only.

Land

Old-Camp Bullis Road
Property #: 21199420461
Fort Sam Houston
San Antonio Co: Bexar 78234–5000
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Castner Range
Property #: 21199610788
Fort Bliss
El Paso Co: El Paso TX 79916–
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

Virginia

Building

Bldg. 178
Property #: 21199940046
Fort Monroe
Ft. Monroe Co: VA 23651–
Status: Unutilized
Comment: 1180 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. T246
Property #: 21199940047
Fort Monroe
Ft. Monroe Co: VA 23651–
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only.

Washington

Building

13 Bldgs., Fort Lewis
Property #: 21199630199
A0402, CO723, CO726, CO727, CO902
CO907, CO922, CO923, CO926, CO927

Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

7 Bldgs., Fort Lewis
Property #: 21199630200
A0438, A0439, C0901, C0910, C0911
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.

6 Bldgs., Fort Lewis
Property #: 21199630204
C0908, C0728, C0921, C0928, C1008
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. C0909, Fort Lewis
Property #: 21199630205
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C0920, Fort Lewis
Property #: 21199630206
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1249, Fort Lewis
Property #: 21199630207
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1164, Fort Lewis
Property #: 21199630213
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1307, Fort Lewis
Property #: 21199630216
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage., off-site use only.

Bldg. 1309, Fort Lewis
Property #: 21199630217
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage., off-site use only.

Bldg. 2167, Fort Lewis
Property #: 21199630218
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis
Property #: 21199630219
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis
Property #: 21199630220
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404, Fort Lewis
Property #: 21199640570
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1419, Fort Lewis
Property #: 21199640571
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only.

11 Buildings
Property #: 21199710143
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: #EO103–EO106, EO306, EO315–EO316, EO343–EO344 EO353–EO354
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs, EO109, EO350
Property #: 21199710144
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO120, EO321, EO338
Property #: 21199710145
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

5 Bldgs.
Property #: 21199710146
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: #EO127, EO136, EO302, EO204, EO330
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only.

Bldg. EO136
Property #: 21199710147
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO158, EO303
Property #: 21199710148
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1675 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO202
Property #: 21199710149
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO312
Property #: 21199710150
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO322
Property #: 21199710151
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2250 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. EO325
Property #: 21199710152
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3336 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO329
Property #: 21199710153
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO334
Property #: 21199710154
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3779 sq. ft., possible asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. EO355
Property #: 21199710155
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. EO347
Property #: 21199710156
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. EO349, EO110
Property #: 21199710157
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use–office, off-site use only.

4 Bldgs.
Property #: 21199710158

Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: #EO351, EO308, EO207, EO108
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO352, EO307
Property #: 21199710159
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO355
Property #: 21199710160
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only.

Bldg. B1008, Fort Lewis
Property #: 21199720216
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only.

Bldgs. B1011–B1012, Fort Lewis
Property #: 21199720217
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft. and 114 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. CO509, CO709, CO720
Property #: 21199810372
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only.

4 Bldgs.
Property #: 21199810373
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only.

11 Bldgs.
Property #: 21199810374
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only.

Bldg. 1021
Property #: 21199830418
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—carport, off-site use only.

Bldg. 5162
Property #: 21199830419
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. A0631
Property #: 21199830422
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. C1246
Property #: 21199830426
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 7670 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0813
Property #: 21199830427
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0812
Property #: 21199830428
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. B0228
Property #: 21199830429
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2739 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C0409
Property #: 21199830431
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1948 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 9575
Property #: 21199830432
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 17,217 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only.

Bldg. 5224
Property #: 21199830433
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only.

Bldg. 9794
Property #: 21199830435
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—vet. fac., off-site use only.

Bldg. 4540
Property #: 21199840183
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 4541
Property #: 21199840184
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 880 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 4542
Property #: 21199840185
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only.

Bldg. 4549
Property #: 21199840186
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 26220 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—green house heat plant, off-site use only.

Bldg. U001B
Property #: 21199920237
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U001C
Property #: 21199920238
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

10 Bldgs.
Property #: 21199920239
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

6 Bldgs.
Property #: 21199920240
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U004D
Property #: 21199920241
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

Bldg. U005A
Property #: 21199920242
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U006A, U024A
Property #: 21199920243
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U007A, U021A
Property #: 21199920244
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

7 Bldgs.
Property #: 21199920245
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only.

Bldg. U015J
Property #: 21199920246
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U018B
Property #: 21199920247
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U018C
Property #: 21199920248
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U024B
Property #: 21199920249
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U024D
Property #: 21199920250
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only.

Bldg. U027A
Property #: 21199920251
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only.

Bldg. U028A–U032A
Property #: 21199920252
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U031A
Property #: 21199920253
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only.

Bldg. U031C
Property #: 21199920254
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint off-site use only.

Bldg. U040D
Property #: 21199920255
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U052C,UO52H
Property #: 21199920256
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U035A, U035B
Property #: 21199920257
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U035C
Property #: 21199920258
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U039A
Property #: 21199920259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U039B
Property #: 21199920260
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only.

Bldg. U039C
Property #: 21199920261
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

Bldg. U043A
Property #: 21199920262
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U052A
Property #: 21199920263
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U052E
Property #: 21199920264
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. U052G
Property #: 21199920265
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

3 Bldgs.
Property #: 21199920266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U0558A, U103A, U018A
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U059A
Property #: 21199920267
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U093B
Property #: 21199920268
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess

Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

4 Bldgs.
Property #: 21199920269
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U102B
Property #: 21199920270
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1058 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U108A
Property #: 21199920271
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 31,320 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only.

Bldg. U110B
Property #: 21199920272
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

6 Bldgs.
Property #: 21199920273
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only.

Bldg. U112A
Property #: 21199920274
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U115A
Property #: 21199920275
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U507A
Property #: 21199920276
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use4—support, off-site use only.

Bldg. U516B
Property #: 21199920277
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only.

7 Bldgs.
Property #: 21199920278
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0002, F0004, F0003, F0005, F0006, F0008, F0009
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. F0022A
Property #: 21199920279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 4373 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only.

Bldg. F0022B
Property #: 21199920280
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C0120
Property #: 21199920281
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only.

Bldg. A0220
Property #: 21199920282
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only.

18 Bldgs.
Property #: 21199920283
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0337, A0617, B0820, B0821, C0319, C0833, C0310, C0311, C0318, C1019, D0712, D0713, D0720, D0721, D1108, D1153, C1011, C1018
Status: Excess
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only.

Bldg. A0334
Property #: 21199920284
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

7 Bldgs.
Property #: 21199920285
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C0302, C0303, C0306, C0322, C0323, C0326, C0327
Status: Excess
Comment: 2340 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only.

12 Bldgs.
Property #: 21199920287
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C13333, C1334
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. E1010
Property #: 21199920288
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 148 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. D1154
Property #: 21199920289
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only.

Bldg. 01205
Property #: 21199920290
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 01259
Property #: 21199920291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 01266
Property #: 21199920292
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. B1410
Property #: 21199920293
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—motor repair, off-site use only.

Bldg. 1445
Property #: 21199920294
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.

Bldg. 02082
Property #: 21199920295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 03091, 03099
Property #: 21199920296
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldgs. 03100, 3101
Property #: 21199920297
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 4040
Property #: 21199920298
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 8,326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only.

Bldgs. 4072, 5104
Property #: 21199920299
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldgs. 4295
Property #: 21199920300
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 5170
Property #: 21199920301
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only.

Bldgs. 6191
Property #: 21199920303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3,663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only.

Bldgs. 08076, 08080
Property #: 21199920304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3,660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldgs. 08093
Property #: 21199920305
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only.

Bldgs. 8279
Property #: 21199920306
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only.

Bldgs. 8280, 8291
Property #: 21199920307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 8956
Property #: 21199920308
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 9530
Property #: 21199920309
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldgs. 9574
Property #: 21199920310
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 6,005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only.

Bldgs. 9596
Property #: 21199920311
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only.

Bldgs. 9939
Property #: 21199920313
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. E0324
Property #: 21199920314
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

COE

Arkansas

Land

Parcel 01
Property #: 31199010071
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
Property #: 31199010072
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
Property #: 31199010073
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
Property #: 31199010074
DeGray Lake
Sections 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
Property #: 31199010075
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
Property #: 31199010076
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
Property #: 31199010077
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
Property #: 31199010078
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
Property #: 31199010079
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
Property #: 31199010080
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
Property #: 31199010081
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Property #: 31199010083
Sections 7, 8, and 18

Murfreesboro Co: Pike AR 71958–9720
Status: Unutilized
Comment: 46 acres.

Kansas

Building

Project Residence
Property #: 31199940001
Perry Lake Drive
Perry Co: Jefferson KS 66073–9727
Status: Excess
Comment: 1440 sq. ft., off-site use only.

Land

Parcel 1
Property #:31199010064
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Status: Unutilized
Comment: 61 acresl most recent use—recreation.

Kentucky

Building

Green River Lock & Dam #3
Property #:31199010022
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam 3
Property #:31199010060
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Status: Unutilized
Comment: 897 sq. ft.; 2 story frame; structural deficiencies.

Bldg. 1
Property #:311990111628
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Property #:311990111629
Kentucky River Lock and Dam 3
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Property #:31199320002
Moutardrier Recreation Site
Co: Edmonson KY
Status: Unutilized
Comment: 541 sq. ft.; concrete block, off-site use only.

Bldg. 3
Property #:31199920001
Rough River Lake Project
Louisville Co: Breckenridge KY 40232–
Status: Excess
Comment: 496 sq. ft.; concrete block, most recent use—water treatment, off-site use only.

Land

Tract 2625
Property #:31199010025
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Property #:31199010026
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1
Property #:31199010027
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 3.59 acres; rooling and wooded; no utilities.

Tract 2800
Property #:31199010028
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Property #:31199010029
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Property #:31199010031
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Property #:31199010032
Barkley Lake, Kentucky, and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Property #:31199010033
Barkley Lake, Kentucky, and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Property #: 31199010034
Barkley Lake, Kentucky and
Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Property #: 31199010035
Barkley Lake, Kentucky and
Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Property #: 31199010036
Barkley Lake, Kentucky and
Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Property #: 31199010042
Barkley Lake, Kentucky and
Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Property #: 31199010044
Barkley Lake, Kentucky and
Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Property #: 31199010045
Barkley Lake, Kentucky and
Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, Ky
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Property #: 31199010046
Barkley Lake, Kentucky and
Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Property #: 31199010047
Barkley Lake, Kentucky and
Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Property #: 31199010048
Barkley Lake, Kentucky and
Tennessee

Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Property #: 31199010049
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Property #: 31199010050
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Property #: 31199010051
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Property #: 31199010052
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Property #: 31199010053
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Property #: 31199010054
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Property #: 31199010055
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Property #: 31199010056
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tracts 5203 and 5204
Property #: 31199010058
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Property #: 31199010059
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Property #: 31199011621
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Property #: 31199011622
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Property #: 31199011623
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Status: Utilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Property #: 31199011624
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Property #: 311990011625
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Property #: 31199011626
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Property #: 31199011627
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Property #: 31199130002
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Property #: 31199130003
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Property #: 31199130005
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Property #: 31199140009
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Property #: 31199320003
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Status: Unutilized
Comment: Approx. 3.5 acres (sloping) access monitored.

Portion of Lock & Dam No. 2
Property #: 31199320004
Kentucky River
Lockport Co: Henry KY 40036–9999
Status: Underutilized
Comment: Approx. 13.14 acres (sloping), access monitored.

Louisiana

Land

Wallace Lake Dam and Reservoir
Property #: 31199011009
Shreveport Co: Caddo LA 71103–
Status: Unutilized
Comment: 10.81 acres; wildlife/ forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Property #: 31199011010
Location: 35 miles Northeast of Shreveport, La.
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Land

Parcel D

Property #: 31199011038
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Property #: 31199011040
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Property #: 31199011041
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, Mn.
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Land

Parcel 7
Property #: 31199011019
Grenada Lake
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Property #: 31199011020
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 30 acres: no utilities; intermittently used under lease—expires 1994.

Parcel 9
Property #: 31199011021
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Property #: 31199011022
Grenada Lake
Sections 16, 17, 18 T24N
R8E
Grenada Co: Calhoun MS 38901–0903
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Property #: 31199011023
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Property #: 31199011024
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Property #: 31199011025
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Property #: 31199011026
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Sttus: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Property #: 31199011027
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Property #: 31199011028
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Property #: 31199011029
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Property #: 31199011030
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Property #: 31199011031
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 28901–0903
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Property #: 31199011032
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 16
Property #: 31199011033
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 17
Property #: 31199011034
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Yalobusha MS 28901–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 18
Property #: 31199011035
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Yalobusha MS 28902–0903
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 19
Property #: 31199011036
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Yalobusha MS 28901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management;

Missouri

Land

Harry S Truman Dam & Reservoir
Property #: 31199030014
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Ohio

Building

Barker Historic House
Property #: 31199120018
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and sam structure
Status: Underutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab. on Natl Register of Historic Places, no utilities, off-site use only.

Dwelling No. 2
Property #: 31199810005
Delaware Lake, Highway 23
North
Delaware OH 43015–
Status: Excess
Comment: 2-story brick w/basement, most recent use—residential presence of asbestors/lead paint, off-site use only.

Oklahoma

Building

Water Treatment Plant
Property #: 31199630001
Belle Starr, Eufaula Lake
Eufaula Co. McIntosh OK 74432–
Status: Excess
Comment: 16'x16' metal, off-site use only.

Water Treatment Plant
Property #: 31199630002
Gentry Creek, Eufaula Lake

Eufaula Co. McIntosh OK 74432–
Status: Excess
Comment: 12′ x16′ metal, off-site use only.

Land

Pine Creek Lake
Property #: 31199010923
(See County) Co: McCurtain OK
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Building

Mahoning Creek Reservior
Property #: 31199210008
New Bethlehem Co: Armstrong PA 16242–
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

Dwelling
Property #: 31199620008
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Govt. Dwelling
Property #: 31199640002
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential.

Dwelling
Property #: 31199710009
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.

Dwelling #1
Property #: 31199740002
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740003
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #3
Property #: 31199740004
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 1847 sq. ft., most recent use—office, good condition, off-site use only.

Govt Dwelling
Property #: 31199740005
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Status: Underutilized
Comment: Approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1
Property #: 31199740006
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740007
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Property #: 31199740008
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740009
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199830003
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential.

Residence/Office
Property #: 31199940002
Cowanesque Lake Project
Lawrenceville Co: Tioga PA 16929–
Status: Unutilized
Comment: 1653 sq. ft. residence, and 2,640 sq. ft. storage bldg., need major repairs, no operating sanitary facilities.

Land

Mahoning Creek Lake
Property #: 31199010018
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property #: 31199011001
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Property #: 31199011011
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property #: 31199430012
Crooked Creek Lake, LR 03051
Ford City Co.: Armstrong PA 16226–
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Building

Cheatham Lock & Dam
Property #: 31199520003
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Status: Unutilized
Comment: 1100 sq. ft. w/storage blgds on 7 acres, needs major rehab, contamination issues, 1 acre in fldwy, off-site use only modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Land

Tract 6827
Property #: 31199010927
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Property #: 31199010928
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Property #: 31199010929
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
Property #: 31199010930
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Status: Excess
Comment: 14.48 acres; subject to existing easement.

Tract 2227
Property #: 31199010931
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
Property #: 31199010932
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Property #: 31199010933

Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Status: Unutilized
Comment: 11 [illegible]; subject to existing easements.

Tract 1911
Property #: 31199010934
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
Property #: 31199010935
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Property #: 31199010936
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tract 8813, 8814
Property #: 31199010937
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 2½ miles East of Cumberland City.
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Property #: 31199010938
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Property #: 31199010939
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Property #: 31199010940
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Property #: 31199010941
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Property #: 31199010943
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Property #: 31199010944
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Property #: 31199011173
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Property #: 31199130007
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Property #: 31199140006
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Property #: 31199140007
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Property #: 31199140008
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Property #: 31199140010
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Virginia

Building

Metal Bldg.
Property #: 31199620009
John H. Kerr Dam & Reservoir
Co: Boydton VA
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only.

West Virginia

Building

Dwelling 1
Property #: 31199810003
Summersville Lake
Summersville Co: Nicholas WV 26651–9802
Status: Excess
Comment: 1200 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

Dwelling 2
Property #: 31199810004
Sutton Lake
Sutton Co: Braxton WV 26651–9802
Status: Excess
Comment: 1100 sq. ft., most recent use—residential, off-site use only.

Wisconsin

Building

Former Lockmaster's Dwelling
Property #: 31199011524
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 1224 sq. ft., 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 31199011525
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 908 sq. ft., 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property #: 31199011527
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 31199011531
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 31199011533
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Property #: 31199011535
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property #: 31199011536
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

DOT

California

Building

3 Bachelor Enlisted Quarters
Property #: 87199810001
U.S. Coast Guard Station
Humboldt Bay
Samoa CA 95564–9999
Status: Unutilized
Comment: 2550 sq. ft. each, 2-story, wood, most recent use—residential, needs rehab, off-site use only.

Massachusetts

Building

Plymouth Light
Property #: 87199420003
Plymouth Co: Plymouth MA
Status: Unutilized
Comment: 250 sq. ft. tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing.

ENERGY

Missouri

Building

Bldg. 82
Property #: 41199930031
Kansas City Plant
Bannister Road
Kansas City Co: MO 00000–
Status: Excess
Comment: 128 sq. ft., concrete, off-site use only.

Bldg. 83
Property #: 41199930032
Kansas City Plant
Bannister Road
Kansas City Co: MO 00000–
Status: Excess
Comment: 166 sq. ft., concrete, off-site use only.

GSA

California

Building

Calexico Border Patrol Station
Property #: 54199930007
813 Andrade Avenue
Calexico Co: CA 00000–
Status: Excess
Comment: 7420 sq. ft.
GSA Number: 9–J–CA–1539

District of Columbia

Building

William A. White Bldg.
Property #: 54199930006
2700 Martin Luther King Ave., SE
Washington Co: 20032–
Status: Excess
Comment: 150,952 sq. ft. on 2 acres, needs repair, presence of asbestos/lead paint, controlled access, mental hospital campus.
GSA Number: 4–F–DC–479

Florida

Building

Crooked River Lighthouse
Property #: 54199940017
Carrabelle Co: Franklin FL 32322–
Status: Excess
Comment: Lighthouse on 1.29 acres, possible lead base paint, listed on National Register of Historic Places.
GSA Number: 4–U–FL–1165

Illinois

Building

Homewood Natl Guard Facility
Property #: 54199940002
1300 West 187th Street
Homewood Co: Cook IL 60430–
Status: Excess
Comment: 4 old barracks, 5 storage bldgs., 1 guard house, need major repairs.
GSA Number: 5–D–IL–651

Army Reserve Center
Property #: 54199940008
1881 East Fremont Street
Galesburg Co: Know IL 61401–
Status: Excess
Comment: 2 brick buildings (6117 & 1325 sq. ft.), utilities turned off, need repairs, most recent use—storage
GSA Number: 1–D–IL–720

Kentucky

Land

Segments 15–19
Property #: 54199940009
South Williamson Project
S. Williamson Co: Pike KY 41503–
Status: Excess
Comment: 30.4 acres/105 tracts, special floodplain restrictions
GSA Number: 4–D–KY–608

Louisiana

Land

Sulphur Mines Well Site
Property #: 54199930026
Highway 90–W
Sulphur Co: Calcasieu Parish LA 70663–
Status: Surplus
Comment: 68.02 acres w/4 capped brine injection wells, majority of land densely wooded, located on Gulf Coastal Plain
GSA Number: 7–B–UT–431–M

Maryland

Building

Washington Court Apartments
Property #: 54199940005
Maryland Rt. 755
Edgewood Co: Harford MD 21040–
Status: Excess
Comment: 55 bldgs. housing 276 apartments, (2 to 4 bedrooms), need repairs, presence of lead based paint
GSA Number: 4–D–MD–559

Minnesota

Building

GAP Filler Radar Site
Property #: 54199910009
St. Paul Co: Rice MN 55101–
Status: Excess
Comment: 1266 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage, zoning requirements
GSA Number: 1–GR (1)–MN–475

MG Clement Trott Mem. USARC
Property #: 54199930003
Walker Co: Cass MN 56484–
Status: Excess
Comment: 4320 sq. ft. training center and 1316 sq. ft. vehicle maintenance shop, presence of environmental conditions
GSA Number: 1–D–MN–575

Missouri

Building

Hardesty Federal Complex
Property #: 54199940001
607 Hardesty Avenue
Kansas City Co: Jackson MO 64124–3032
Status: Excess
Comment: 7 warehouses and support buildings (540 to 216,000 sq. ft.) on 17.47 acres, major rehab, most recent use—storage/office, utilities easement
GSA Number: 7–G–MO–637

New Jersey

Building

Barnegat Recreation Facility
Property #: 54199930001
Corner 7th St/Longbeach Blvd.
Barnegat Light Co: NJ 08006–
Status: Surplus
Comment: 2700 Sq. Ft. Cottage on 0.69 acres, presence of asbestos/lead paint, eligible for Historic Register, floodplain, endangered species in area
GSA Number: 1–U–NJ–0641

New York

Building

"Terry Hill"
Property #: 541998830008
County Road 51
Manorville NY
Status: Surplus
Comment: 2 block structures, 780/272 sq. ft., no sanitary facilities, most recent use—storage/comm. facility, w/6.19 acres in fee and 4.99 acre easement, remote area
GSA Number: 1–D–NY–864

Binghampton Depot
Property #: 54199910015
Nolans Road
Binghampton Co: NY 00000–
Status: Excess
Comment: 45,977 sq. ft., needs repair, presence of asbestos, most recent use—office
GSA Number: 1–G–NY–760A

Ohio

Building

Lorain Housing
Property #: 54199840006
238–240 Augusta Ave.
Lorain OH 44051–

Status: Excess
Comment: 3000 sq. ft. duplex, 2-story, good condition, possible lead based paint, existing easements
GSA Number: 1–U–OH–814

Land

Jersey Tower Site
Property #: 54199910013
Tract No. 100 & 100E
Jersey Co: Licking OH 00000–
Status: Surplus
Comment: 4.24 acres, subject to preservation of wetlands
GSA Number: 1–W–OH–813

Pennsylvania

Building

Rices Landing
Property #: 54199930009
Tracts A–L; 1–4
Old Lock & Dam #6
Rices Landing Co: Greene PA 15357–
Status: Excess
Comment: 2 residences—1400 sq. ft. ea., need repairs, 1 metal warehouse 1 shed, possible asbestos/lead paint
GSA Number: 4–D–PA–0786

Puerto Rico

Land

Bahia Rear Range Light
Property #: 51499940003
Ocean Drive
Catano Co: PR 00632–
Status: Excess
Comment: 0.167 w/skeletal tower, fenced, aid to navigation
GSA Number: 1–T–PR–508

Tennessee

Building

3 Facilities, Guard Posts
Property #: 51499930011
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 48–64 sq. ft., most recent use—access control
GSA Number: 4–D–TN–594F

4 Bldgs.
Property #: 51499930012
Volunteer Army Ammunition
Plant
Railroad System Facilities
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 144–2,420 sq. ft., most recent use—storage/rail weighing facilities/dock, potential use restrictions
GSA Number: 4–D–TN–594F

8 Bldgs.
Property #: 51499930013
Volunteer Army Ammunition
Plant
Missile Assembly
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: concrete block bldgs. on approx. 100 acres, most recent use—assembly/storage/buffer, potential use restrictions
GSA Number: 4–D–TN–594F

200 bunkers
Property #: 51499930014
Volunteer Army Ammunition
Plant
Storage Magazines
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: approx. 200 concrete bunkers covering a land area of approx. 4000 acres, most recent use—storage/buffer area, potential use restrictions
GSA Number: 4–D–TN–594F

Bldg 232
Property #: 51499930020
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 10,000 sq. ft., most recent use—office, presence of asbestos, approx. 5 acres associated w/bldg., potential use restrictions
GSA Number: 4–D–TN–594F

2 Laboratories
Property #: 51499930021
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 2000–12,000 sq. ft., potential use/lease restrictions
GSA Number: 4–D–TN–594F

3 Facilities
Property #: 54199930022
Volunteer Army Ammunition
Plant
Water Distribution
Facilities
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 256–15,204 sq. ft., 35.86 acres associated w/bldgs., most recent use—water distribution system, potential use/lease restrictions
GSA Number: 4–D–TN–594F

Land

1500 acres
Property #: 54199930015
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: scattered throughout facility, most recent use—buffer area, steep topography, potential use restrictions
GSA Number: 4–D–TN–594F

Texas

Building

Formerly Naval Rsv Center
Property #: 54199940019
1818 N. Confederate St.
Tyler Co: Smith TX 75702–
Status: Surplus
Comment: 11,370 sq. ft. bldg./.96 acres, most recent use—reserve center/office, subject to existing easements
GSA Number: 7–N–TX–984A

Utah

Building

Salt Lake City Admin. Bldg.
Property #: 54199930005
1745 W 1700 S
Salt Lake City Co: UT 84104–
Status: Surplus
Comment: 36,060 sq. ft., 2-story concrete/brick, needs repair, presence of asbestos, most recent use—office/storage
GSA Number: 7–G–UT–429

Land

Monticello Mill Tailings Site
Property #: 54919940020
Monticello Co: San Juan UT 00000–
Status: Excess
Comment: 383.24 acres, listed as an EPA NPL Site—clean up in process, floodplain
GSA Number: 7–B–UT–431–M

Virginia

Building

Army Reserve Center
Property #: 54199930010
1 West Church St.
Martinsville Co: Henry VA 24112–
Status: Excess
Comment: 12,225 sq. ft., 3 stories, most recent use—office, 2,250 sq. ft. leased to Postal Service
GSA Number: 4–D–VA–719

Washington

Building

Moses Lake U.S. Army Rsv Ctr
Property #: 21199630118
Grant County Airport
Moses Lake Co: Grant WA 98837–
Status: Surplus
Comment: 4499 sq. ft./2.86 acres, most recent use—admin., temporary permit from COE granted to an organization, FAA recommended land not be used for residential use due to aircraft noise problem, restriction
GSA Number: 9–D–WA–1141

Wisconsin

Building

Naval Reserve Center
Property #: 541999830002
215 South Eagle Street
Oshkosh Co: Winnebago WI 54903–
Status: Excess
Comment: 16,260 sq. ft., excellent condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–N–WI–596

Army Reserve Center
Property #: 54199940004
401 Fifth Street
Kewaunee Co: WI 54216–1838
Status: Excess
Comment: 2 admin. bldgs. (15,593 sq. ft.), 1 garage (1325 sq. ft.), need repairs
GSA Number: 1–D–WI–597

INTERIOR

Arizona

Land

Harry B. Christman Property
Property #: 61199910012
N. of Missile Base Road
Case No. 91–012
Marana Co: Pinal AZ 85245–
Status: Unutilized
Comment: 2.97 acres of vacant desert

Massachusetts

Building

Crowell Shed
Property #: 61199940010
Tract 41–8673
Chatham Co: Barnstable MA 02633–
Status: Unutilized
Comment: 120 sq. ft. storage shed, access via 4-wheel drive only over sand trail, off-site use only

Katz, Tract 17–2724
Property #: 61199940002
10 Old King's Highway
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 878 sq. ft., cement block, most recent use—residential, off-site use only

Carnelia, Tract 17–2725
Property #: 61199940003
12 Old King's Highway
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 1391 sq. ft., concrete block, most recent use—residential, off-site use only

Simons, Tract 17–2787
Property #: 61199940004
6 Head of Pamet Way
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 1600 sq. ft., most recent use—residential, off-site use only

Moss, Tract 17–2788
Property #: 61199940005
425 Ocean View Drive
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 2496 sq. ft. residence plus 2 outbuildings, off-site use only

Barracks 38, 39
Property #: 61199940006
Off Old Dew Line Road
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 5710 sq. ft., 2-story presence of asbestos, off-site use only

Gips, Tract 21–4837
Property #: 61199940007
188 Way #626
Wellfleet Co: Barnstable MA 02667–
Status: Unutilized
Comment: 2015 sq. ft., concrete block, most recent use—residential off-site use only

Weidlinger 19–4136
Property #: 61199940008
Valley Road
Wellfleet Co: Barnstable MA 02667–
Status: Unutilized
Comment: 1855 sq. ft., most recent use—residential, off-site use only

Mississippi

Building

Quarters 163
Property #: 61199910003
Natchez Trace Parkway
Ridgeland Co: Madison MS 39157–
Status: Excess
Comment: 1121 sq. ft., most recent use—residential, presence of asbestos, off-site use only

Quarters 183
Property #: 61199910004
Natchez Trace Parkway
Kosciusko Co: Attala MS 39090–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

Quarters 190
Property #: 61199910005
Natchez Trace Parkway
Port Gibson Co: Claiborne MS 39050–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

Quarters 194
Property #: 61199910006
Natchez Trace Parkway
Ackerman Co: Choctaw MS 39725–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

Quarters 258
Property #: 61199910007
Natchez Trace Parkway
Carlisle Co: Claiborne MS 39049–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

New Mexico

Building

Roberts, Thomas A
Property #: 61199910017
#70, County Rd. 2900
Aztec Co: San Juan NM 87410–
Status: Excess
Comment: 2895 sq. ft., most recent use—residential, off-site use only.

Tennessee

Building

01–200
Property #: 61199910018
Stones River Natl
Battlefield
Murfreesboro Co: Rutherford TN 37129–
Status: Excess
Comment: 1596 sq. ft., most recent use—residential, off-site use only.

01–201
Property #: 61199910019
Stones River Natl
Battlefield
2042 Mansion Pike
Murfreesboro Co: Rutherford TN 37129–
Status: Excess
Comment: 3196 sq. ft., most recent use—residential, off-site use only.

Texas

Building

Tract 105–79
Property #: 61199910013
9047 Espada Rd,
San Antonio Co: Bexar TX 78214–
Status: Unutilized
Comment: 712 sq. ft., most recent use—residence, off-site use only.

NAVY

California

Building

Bldg. 105QA
Property #: 77199830002
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1000 sq. ft., needs repair, most recent use—water treatment facility, off-site use only.

Bldg. 102QA
Property #: 77199830003
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 6138 sq. ft., needs repair, most recent use—pro shop, off-site use only.

Bldg. 118QA
Property #: 77199830004
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 5635 sq. ft., needs repair, most recent use—coffee shop-grille, off-site use only.

Bldg. 119QA
Property #: 77199830005
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1277 sq. ft., needs repair, most recent use—lockers, off-site use only.

Bldg. 129QA
Property #: 77199830006
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 2832 sq. ft., needs repair, most recent use—patio cover, off-site use only.

Bldg. 140QA
Property #: 77199830007
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1648 sq. ft., needs repair, most recent use—golf cart battery shop, off-site use only.

Bldg. 176QA
Property: #: 77199830008
Naval Station, San Diego Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 5200 sq. ft., needs repair, most recent use—golf cart shelter, off-site use only.

Bldg. 193
Property: #77199830112
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 780 sq. ft., needs major repairs, most recent use—utility plant, off-site use only.

Bldg. 203
Property: #77199830113

Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 360 sq. ft., needs major repairs, most recent use—valve house, off-site use only.

Bldg. 228
Property: #77199830114
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 6142 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 286
Property: #77199830115
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 23,760 sq. ft., needs major repairs, most recent use—shop, off-site use only.

Bldg. 308
Property: #77199830116
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 3400 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 314
Property: #77199830117
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 160 sq. ft., most recent use—use—water treatment facility, off-site use only.

Bldg. 315
Property: #77199830118
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 160 sq. ft., needs major repairs, most recent use—water treatment facility, off-site use only.

Bldg. 335
Property: #77199830119
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 14,000 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 398
Property: #77199830120
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 1530 sq. ft., needs major repairs, most recent use—admin., off-site use only.

Bldg. 3201
Property: #77199830121
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 1750 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Connecticut

Building

Pier 7
Property: #77199710063
Naval Undersea Warfare Center
New London Co: New London CT 06320–5594
Status: Excess
Comment: 700′ long by 30′ wide, rectangular shaped reinforced concrete pier

Bldg. 84, Anx. of Gilmore Hall
Property: #77199830009
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 5400 sq. ft., 2-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 150, McNeil Hall
Property: #: 77199830010
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 27,120 sq. ft., 4-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 437, Fife Hall
Property: #77199830011
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 51,790 sq. ft., 3-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 295
Property: #77199830012
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: presence of asbestos/lead paint, needs rehab, off-site use only.

Facility CH–901
Property #: 77199830045
Naval Submarine Base
Co: New London CT
Status: Excess
Comment: 6161 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—community center, off-site use only.

3 Bldgs
Property #: 77199910019
Naval Submarine Base
R121444, R121458, R121469
Ledyard Co: New London CT 06335–
Status: Unutilized
Comment: Various sq. ft., wood, possible asbestos/lead paint, most recent use—storage, off-site use only.

DG–12, DG–14, DG28–DG46
Property #: 77199930026
Naval Submarine Base New London
Gorton Co: New London CT 06349–
Status: Unutilized
Comment: 19 detached garages, off-site use only.

Hawaii

Building

Bldg. S87, Radio Trans. Facility
Property #: 77199240011
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans. Facility
Property #: 77199310004
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Status: Unutilized
Comment: 3612 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 442
Property #: 77199630088
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only.

Bldg. S180
Property #: 77199640039
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. S181
Property #: 77199640040
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 4248 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. 219
Property #: 77199640041
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 220
Property #: 77199640042
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 160
Property #: 77199840002
Naval Station, Pear Harbor
Pearl Harbor Co: Honolulu HI 96860–
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only.

Facility No. 92
Property #: 77199930076
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 1008 sq. ft., needs rehab, most recent use—storage, off-site use only.

Facility No. 99
Property #: 77199930077
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 544 sq. ft., concrete, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Facility No. 127
Property #: 77199930078
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess

Comment: 198 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Facility No. 227
Property #: 77199930079
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 2240 sq. ft., needs rehab, presence of asbestos, most recent use—weight room, off-site use only.

Facility No. 285
Property #: 77199930080
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 418 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 5175
Property #: 77199940033
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Bldg. 5179
Property #: 77199940034
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Bldg. 5183
Property #: 77199940035
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Bldg. 5187
Property #: 77199940036
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Bldg. 5191
Property #: 77199940037
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96705–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Bldg. 5193
Property #: 77199940038
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Maine

Building

Bldg. 22
Property #: 77199840008
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 2687 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 36
Property #: 77199840009
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 8840 sq. ft., most recent use—storage, off-site use only.

Bldg. 38
Property #: 77199840010
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 19,612 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 234
Property #: 77199840011
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 768 sq. ft., presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.

Bldg. 4
Property #: 77199930005
Naval Air Station
Brunswick Co: 04011–
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only.

Bldg. 8
Property #: 77199930006
Naval Air Station
Brunswick Co: ME 04011–
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only.

Bldg. 12
Property #: 77199930007
Naval Air Station
Brunswick Co: ME 04011–
Status: Excess
Comment: 25,353 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 41
Property #: 77199930008
Naval Air Station
Brunswick Co: ME 04011–
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only.

Bldg. 224
Property #: 77199930009
Naval Air Station
Brunswick Co: Me 04011–
Status: Excess
Comment: 8000 sq. ft., presence of asbestos/lead paint, most recent use—thrift shop, off-site use only.

Bldg. 6
Property #: 77199940039
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1973 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 9
Property #: 77199940040
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 8888 sq. ft., presence of asbestos/lead paint, most recent use—housing office, off-site use only.

Bldg. 28
Property #: 77199940041
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 784 sq. ft., presence of asbestos/lead paint, most recent use—liquid oxygen bldg., off-site use only.

Bldg. 48
Property #: 77199940042
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 3260 sq. ft., presence of asbestos/lead paint, most recent use—carpenter shop, off-site use only.

Bldg. 51
Property #: 77199940043
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1870 sq. ft., presence of asbestos/lead paint, most recent use—paint shop, off-site use only.

Bldg. 73
Property #: 77199940044
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 64 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 74
Property #: 77199940045
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 3072 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 75
Property #: 77199940046
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 332 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 88
Property #: 77199940047
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1462 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 94
Property #: 77199940048
NAS Brunswick

Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 64 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 209
Property #: 77199940049
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—union bldg., off-site use only.

Bldg. 233
Property #: 77199940050
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 24,048 sq. ft., presence of asbestos/lead paint, most recent use—heating plant, off-site use only.

Bldg. 1157
Property #: 77199940051
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1474 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

New Hampshire

Building

Bldg. 246
Property #: 77199820028
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: metal frame structure, off-site use only.

Bldg. 335
Property #: 77199820029
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: 1000 sq. ft., brick, off-site use only.

Bldg. 128
Property #: 77199830015
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 185
Property #: 77199830016
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 314
Property #: 77199830017
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 336
Property #: 77199830018
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only.

Bldg. H–2
Property #: 77199910044
Portsmouth Naval Shipyard
Portsmouth NH Co: 03804–5000
Status: Unutilized
Comment: 1103 sq. ft., possible asbestos, off-site use only.

Bldg. IY44
Property #: 77199910045
Portsmouth Naval Shipyard
Portsmouth NH Co: 03804–5000
Status: Unutilized
Comment: 1100 sq. ft., possible asbestos, most recent use—small arms magazine, off-site use only.

Bldg. 160
Property #: 77199910046
Portsmouth Naval Shipyard
Portsmouth NH Co: 03804–5000
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. 97
Property #: 77199920064
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: 573 sq. ft., most recent use—scale house/storage, off-site use only.

New Jersey

Building

Naval Reserve Center
Property #: 77199930038
53 Hackensack Ave.
Kearny Co: Hudson NJ 07302–
Status: Excess
Comment: 12,180 sq. ft., minor repairs needed on 2.63 acres, most recent use—office.

Bldg. D1–A
Property #: 77199940024
Naval Weapons Station
Colts Neck Co: NJ 07722–
Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only.

Bldg. HA–1A
Property #: 77199940025
Naval Weapons Station
Colts Neck Co: NJ 07722–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only.

New York

Building

101 Housing Units
Property #: 77199810093
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Status: Unutilized
Comment: 422 sq. ft., frame 2-story, presence of asbestos/lead paint, most recent use—residential, off-site use only.

36 Garages
Property #: 77199810094
Mitchel Complex
East Meadow Co: Nassau NY 11554–
Status: Unutilized
Comment: 350 sq. ft., masonary, most recent use—garage, off-site use only.

Naval Reserve Center
Property #: 77199840017
201 Third Avenue
Frankfort NY 13340–1419
Status: Unutilized
Comment: 10,000 sq. ft., most recent use—training facility.

Pennsylvania

Building

Bldg. 76
Property #: 77199730075
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only.

Bldg. 44
Property #: 77199830093
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2154 sq. ft., needs repair, presence of asbestos, most recent use—medical clinic, off-site use only.

Bldg. 48
Property #: 77199830094
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2737 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 49
Property #: 77199830095
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 3263 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 64
Property #: 77199830096
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 3157 sq. ft., needs major repairs, presence of asbestos, most recent use—office, off-site use only

Bldg. 65 U/V
Property #: 77199830097
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 4829 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only

Bldg. 133
Property #: 77199830098
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 27,600 sq. ft., needs repairs, presence of asbestos, most recent use—admin., off-site use only

Bldg. 337
Property #: 77199830099
Philadelphia Naval Shipyard

Philadelphia PA 19112–
Status: Excess
Comment: 1025 sq. ft., needs major repairs, presence of asbestos, most recent use—garage, off-site use only
Bldg. 418
Property #: 77199830100
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2578 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only
Bldg. 570
Property #: 77199830101
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Unutilized
Comment: 9123 sq. ft., needs repair, presence of asbestos, most recent use—tool room, off-site use only
Bldg. 605
Property #: 77199830102
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 1118 sq. ft., needs repair, presence of asbestos, most recent use—garage, off-site use only

Rhode Island

Building

Bldg. 69
Property #: 77199810052
Naval Education and Training Center
Newport Co: Newport RI 02841–
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only
Bldg. A33
Property #: 77199810083
Navy Hospital Gate 5
Newport RI 02841–
Status: Underutilized
Comment: 1512 sq. ft., detached 5 stall garage, needs repair, presence of asbestos, off-site use only
Facility T
Property #: 77199810175
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1610 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only
Facility U
Property #: 77199810176
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility V
Property #: 77199810177
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility W
Property #: 77199810178
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training/office, off-site use only
Facility X
Property #: 77199810179
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only
Facility Y
Property #: 77199810180
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin., off-site use only
Facility 322
Property #: 77199810181
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility 323
Property: #77199810182
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—. shop, off-site use only
Facility 324
Property #: 77199810183
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility 325
Property #: 77199810184
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only
Facility 326
Property #: 771998101825
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only
Facility 327
Property #: 77199810186
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldg. 342
Property #: 77199810259
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 646 sq. ft., presence of asbestos/lead paint, most recent use— storage, off-site use only
Bldg. 340
Property #: 77199810260
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 96 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—heating plant bldg., off-site use only
Bldg. 697
Property #: 77199810262
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use— self help shop, off-site use only
Bldg. 696
Property #: 77199810263
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use— elec/comm maint. shop, off-site use only
Bldg. 35
Property #: 77199810264
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 2880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—auto storage, off-site use only
Bldg. 70
Property #: 77199840018
Naval Station, Newport
Middletown Co: Newport RI 02842–
Status: Unutilized
Comment: 1900 sq. ft., most recent use—storage, off-site use only
Bldg. 111
Property #: 77199840019
Naval Station, Newport
Middletown Co: Newport RI 02842–
Status: Unutilized
Comment: 560 sq. ft., most recent use—storage, off-site use only
Facility 700
Property #: 77199840029
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 6230 sq. ft., most recent use—wastewater treatment plant, off-site use only

Facility 994
Property #: 77199840030
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Facility 449
Property #: 77199840031
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 140 sq. ft., most recent use—chlorination shed, off-site use only

Facility 1324
Property#: 77199840032
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 107 sq. ft., most recent use— lift station control shed, off-site use only

Bldg. 118
Property #: 77199920065
Naval Undersea Warfare
Center
Middletown Co: Newport RI 02841–1708
Status: Excess
Comment: 1604 sq. ft., presence of asbestos/lead paint, most recent use—offices/storage, off-site use only

Bldg. 136
Property #: 77199920066
Naval Undersea Warfare
Center
Middletown Co: Newport RI 02841–1708
Status: Excess
Comment: 882 sq. ft., presence of asbestos/lead paint, most recent use—operations office, off-site use only

Virginia

Building

Bldg. SP–63A
Property #: 77199910017
Naval Base Norfolk
Norfolk Co: VA 23511–
Status: Excess
Comment: 480 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. SP–63
Property #: 77199910018
Naval Base Norfolk
Norfolk Co: VA 23511–
Status: Excess
Comment: 1632 sq. ft., presence of asbestos, off-site use only

Bldg. MCE223
Property #: 77199910053
Norfolk Co: VA 23511–2895
Status: Excess
Comment: 256 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. MCE221
Property #: 77199910054
Naval Station Norfolk
Norfolk Co: VA 23511–2895
Status: Excess
Comment: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Structure NH–201
Property #: 77199920149
Atlantic Fleet Hdgts.
Support Activity
Norfolk Co: VA 23511–
Status: Excess
Comment: 4922 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Structure NH–203
Property #: 77199920150
Atlantic Fleet Hdgts.
Support Activity
Norfolk Co: VA 23511–
Status: Excess
Comment: 1874 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only

Structure NH–213
Property #: 77199920151
Atlantic Fleet Hdgts.
Support Activity
Norfolk Co: VA 23511–
Status: Excess
Comment: 7840 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Washington

Building

149 Duplexes
Property #: 771999820118
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

9 Fourplexes
Property #: 771999820119
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

2 Sixplexes
Property #: 77199820120
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

1 Single Unit
Property #: 77199820121
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

Storage Building
Property #: 77199820122
Navay Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storge, off-site use only

Admin. Building, Structure 001
Property #:77199820123
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

VA

Alabama

Land

VA Medical Center (VAMC)
Property #: 97199010053
Tuskegee Co: Macon AL 36083–
Status: Underutilized
Comment: 40 acres, buffer to VA medical Center, potential utilities, undeveloped.

California

Land

Land
Property #: 97199240001
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Status: Underutilized
Comment: 4 acres; landslide area.

Indiana

Building

Bldg. 105, VAMC
Property #: 97199230006
East 38th Street
Marion Co: Grant IN 46952–
Status: Excess
Comment: 310 sq. ft., 1 story stone structure no sanitary or heating facilities, Natl Register of Historic Places.

Bldg. 140, VAMC
Property #: 97199230007
East 38th Street
Marion Co: Grant IN 46952–
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house.

Bldg. 7
Property #: 97199810001
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use— psychiatric ward, National Register of Historic Places.

Bldg. 10
Property #: 97199810002
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic places.

Bldg. 11

Property #: 97199810003
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 18
Property #: 97199810004
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 25
Property #: 97199810005
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Iowa

Land

40.66 acres
Property #: 97199740002
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Status: Unutilized
Comment: Golf course, easement requirements.

Maryland

Land

VA Medical Center
Property #: 97199010020
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Pennsylvania

Building

Bldg. 25, VA Medical Center
Property #: 97199210001
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Status: Unutilized
Comment: 133 sq. ft., one story bick guard house, needs rehab.

Bldg. 3, VAMC
Property #: 97199230012
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Status: Underutilized
Comment: Portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage; second floor lacks elevator access.

Texas

Land

Land
Property #: 97199010079
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Wisconsin

Building

Bldg. 8
Property #: 97199010056
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land

VA Medical Center
Property #: 97199010054
County Highway E
Tomah Co: Monroe WI 54660–
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

SUITABLE AND UNAVAILABLE

AIR FORCE

Colorado

Building

Bldg. 9023
Property #: 18199730010
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Status: Underutilized
Reason: Utilized.

Bldg. 9027
Property #: 18199730011
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Status: Underutilized
Reason: Utilized.

Idaho

Building

Bldg. 224
Property #: 18199840008
Mountain Home Air Force Co: Elmore ID 83648–
Status: Unutilized
Reason: Extension of runway.

Iowa

Building

Bldg. 00627
Property #: 18199310001
Siox Gateway Airport
Siox City Co: Woodbury IA 51110–
Status: Unutilized
Reason: Will be transferred to Siox City.

Bldg. 00669
Property #: 18199310002
Siox Gateway Airport
Siox City Co: Woodbury IA 51110–
Status: Unutilized
Reason: Will be transferred to Siox City.

Michigan

Building

Bldg. 50
Property #: 18199010790
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 14
Property #: 18199010833
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 16
Property #: 18199010834
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 15
Property #: 18199010864
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Nebraska

Building

Bldg. 64
Property #: 18199720040
Offutt AFB
Silver Creek Co: Nance NE 68663–
Status: Unutilized
Reason: Utilized.

Land

Land/Offutt Comm. Annex No. 4
Property #: 18199720041
Silver Creek Co: Nance NE 68113–
Status: Unutilized
Reason: Asbestos in underground bunker.

New Hampshire

Building

Bldg. 127
Property #: 18199320057
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.

New Mexico

Building

16 Bldgs., Type A
Property #: 18199910013
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.
12 Bldgs., Type B
Property #: 18199910014
Kirtland AFB
Duplex Houses
Kirkland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.
15 Bldgs., Type C
Property #: 18199910015
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.
6 Bldgs., Type D
Property #: 18199910016
Kirtland AFB

Duplex Houses
Kirtland AFB Co: Bernalillo NM 87717–5000
Status: Unutilized
Reason: Under demolition.

9 Bldgs., Type E
Property #: 18199910017
Kirtland AFB
Single Units
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

12 Bldgs.
Property #: 18199940006
Kirtland AFB
#862–867, 869, 870, 873–876
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

Bldgs. 871, 872
Property #: 18199940007
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

ARMY

Alaska

Building

Bldg. 806
Property #: 21199930115
Fort Richardson
Ft. Richardson Co AK 99505–
Status: Excess
Reason: Fully utilized.

Georgia

Building

Bldg. 4090
Property #: 21199930007
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Underutilized
Reason: Plan to utilize as a museum.

Kansas

Building

Bldg. P–295
Property #: 21199810296
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Reason: Reutilized.

New York

Building

Bldg. T–2215
Property #: 21199840161
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Reason: Reutilization.
Bldg. T–2216
Property #: 21199840162
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Reason: Reutilization.

North Carolina

Land

92 Acre—Land
Property #: 21199610728
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Contains well owned by Town; within an explosive buffer zone.

10 Acre—Land
Property #: 21199610729
Militry Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Within an explosives buffer zone.

257 Acre—Land
Property #: 21199610730
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Within an explosvies buffer zone.

24.83 acres—Tract of Land
Property #: 21199620685
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Explosive Buffer Zone.

Texas

Building

Bldg. P–2000, Fort Sam Houston
Property #: 21199220389
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. P–2001, Fort Sam Houston
Property #: 21199220390
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Land

Vacant Land, Fort Sam Houston
Property #: 21199220438
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000.
Status: Unutilized
Reason: Clean-up process.

COE

California

Building

Santa Fe Flood Control Basin
Property #: 31199011298
Irwindale Co: Los Angeles CA 91706–
Status: Unutilized
Reason: Needed for contract personnel.

Illinois

Buildings

Bldg.7
Property #: 31199010001
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 6
Property #: 31199010002
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 5
Property #: 31199010003
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 4
Property #: 31199010004
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 3
Property #: 31199010005
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 2
Property #: 31199010006
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 1
Property #: 31199010007
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Land

Lake Shelbyville
Property #: 31199240004
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Status: Unutilized
Reason: Disposal action initiated.

Kentucky

Land

Portion of Tract 3300
Property #: 31199830002
Fishtrap Lake
Co: Pike KY 41548–
Status: Excess
Reason: Encroachment.

Ohio

Building

Bldg.—Berlin Lake
Property #: 31199640001
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Status: Unutilized
Reason: Utilized as construction office.

Oklahoma

Land

Land
Property #: 31199820002
Lake Texoma
Texoma Co: Bryan OK
Status: Excess
Reason: To be conveyed to Rural Sewer District.

Pennsylvania

Building

Tract 353
Property #: 31199430019
Grays Landing Lock & Dam Project

Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403A
Property #: 31199430021
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403B
Property #: 31199430022
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403C
Property #: 31199430023
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 434
Property #: 31199430024
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract No. 224
Property #: 31199440001
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Status: Unutilized
Reason: Disposal action initiated.

Land

East Branch Clarion River Lake
Property #: 31199011012
Wilcox Co: Elk PA
Status: Underutilized
Reason: Location near damsite.

Dashields Locks and Dam (Glenwillard, PA)
Property #: 31199210009
Crescent Twp. Co: Allegheny PA 15046–0475
Status: Unutilized
Reason: Leased to Township.

Texas

Land

Parcel #222
Property #: 31199010421
Lake Texoma
Co: Grayson TX
Status: Excess
Reason: Landfill to be investigated.

Wisconsin

Building

Former Lockmaster's Dwelling
Property #: 31199011526
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Status: Unutilized
Reason: In negotiation for transfer to the State.

DOT

Alaska

Building

Bldgs. 001A&B
Property #: 87199720001
Spruce Cape Loran Station
Kodiak Co: Kodiak Is. Bor. AK 99615–
Status: Excess
Reason: Currently utilized by Navy.

Georgia

Land

Land—St. Simons Boathouse
Property #: 87199540003
St. Simons Island Co: Glynn GA 31522–0577
Status: Unutilized
Reason: Reversionary clause in deed.

Maine

Building

Mount Desert Rock Light
Property #: 87199240023
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Status: Unutilzied
Reason: No electrical service.

Little River Light
Property #: 87199240026
U.S. Cost Guard
Cutler Co: Washington ME
Status: Unutilized
Reason: Well contamination.

Burnt Island Light
Property #: 87199240027
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Status: Unutilized
Reason: Under a historic lease.

Massachusetts

Building

Keepers Dwelling
Property #: 87199240024
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Status: Unutilized
Reason: Under a license agreement.

Assistant Keepers Dwelling
Property #: 871992400025
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Status: Unutilized
Reason: Under a license agreement.

ENERGY

Idaho

Building

Bldg. CFA–613
Property #: 41199630001
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Status: Unutilized
Reason: Historical issues.

GSA

Alaska

Building

10 Office Buildings
Property #: 54199710002
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

3 Stoage Buildings
Property #: 541999710003
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

1 Hospital
Property #: 54199710004
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

California

Building

112 Bldgs.—Skaggs Island
Property #: 54199730001
Naval Security Group
Skaggs Island Co: Sonoma CA
GSA Number: 9–N–CA–1488
Status: Excess
Reason: Public benefit interest.

Marine Culture Laboratory
Property #: 54199830011
Granite Canyon
34500 Coast Highway
Monterey CA 93940–
Status: Surplus
GSA Number: 9–C–CA–1499
Reason: Wildlife Conservation.

Natl Weather Svc Station
Property #: 54199840007
Blue Canyon Airport
Emigrant Gap CA 95715–
Status: Surplus
GSA Number: 9–C–CA–1521
Reason: Advertised.

Naval & Marine Corps Readiness
Property #: 54199910005
1700 Stadium Way
Los Angeles Co: Los Angeles CA 90012–
Status: Excess
GSA Number: 9–N–CA–1523
Reason: Emergency Service pending.

Eureka Federal Building
Property #: 54199930024
5th & H Streets
Eureka Co: CA 95501–
Status: Excess
GSA Number: 9–G–CA–1529
Reason: Federal need.

Land

Mira Loma Parcel
Property #: 54199910007
March Comm. Annex No. 2
Mira Loma Co: Riverside CA
Status: Excess
GSA Number: 9–G–CA–1505
Reason: Advertised.

Reclamation Unit LC–2, Par. B
Property #: 54199910008
Texas Ave/Old Lewiston Rd
Lewiston Co: Trinity CA
Status: Excess
GSA Number: 9–I–CA–1509
Reason: Advertised.

Redding Reserve Site
Property #: 54199920001
Redding Co: Shasta CA 96049–
Status: Unutilized

GSA Number: 9–D–CA–1524
Reason: City interest.

Delaware

Building

Unaccompanied Pers. Housing
Property #: 54199840009
800 Inlet Road
Rehoboth Beach Co: Sussex DE 19971–2698
Status: Excess
GSA Number: 4–U–DE–462
Reason: Park Interest.

Georgia

Building

Phil Landrum Federal Bldg.
Property #: 54199810008
35 W. Church Street
Jasper Co: Pickens GA 30143–
Status: Surplus
GSA Number: 4–G–GA–854
Reason: Public benefit interest.

Federal Building
Property #: 54199910014
109 N. Main Street
Lafayette Co: Walker GA 30728–
Status: Excess
GSA Number: 4–G–GA–858
Reason: Homeless interest.

Illinois

Building

Radar Communication Link
Property #: 54199820013
½ mi east of 116th St.
Co: Will IL
Status: Excess
GSA Number: 2–U–IL–696
Reason: negotiated sale.

Natl Weather Svc. Meter. Obs.
Property #: 54199820014
Morris Blacktop Rd.
Miller Township Co: LaSalle IL 61341–
Status: Excess
GSA Number: 1–C–IL–708
Reason: homeless interest

Indiana

Building

Vincennes Federal Building
Property #: 54199820015
501 Busseron St.
Vincennes Co: Knox IN 47591–
Status: Excess
GSA Number: 1–G–IN–592
Reason: Historic Interest.

Former Army Reserve Center
Property #: 54199920003
White Oak Park
LaPorte Co: LaPorte IN 00000–
Status: Excess
GSA Number: 1–GR(1)–IN–430E
Reason: Advertised.

Maine

Land

GWEN Site (Patten)
Property #: 18199640018
Loring AFB
Stacyville Co: Herseytown ME 04742–
Status: Excess
GSA Number: 1–D–ME–630
Reason: Advertised.

Maryland

Building

Cheltenham Naval Comm. Dtchmt.
Property #: 77199330010
9190 Commo Rd., AKA 77000
Redman Rd.
Clinton Co: Prince George MD 20397–5520
Status: Excess
GSA Number: 4–N–MD–544A
Reason: Public benefit interest.

Michigan

Building

Detroit Job Corps Center
Property #: 54199510002
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit Co: Wayne MI 42128–
Status: Surplus
GSA Number: 2–L–MI–757
Reason: Education application.

Parcel #1
Property #: 54199730011
Old Lifeboat Station
East Tawas Co: Iosco MI
Status: Excess
GSA Number: 1–UU–MI–500
Reason: Advertised.

S. Haven Keeper's Dwelling
Property #: 54199740012
91 Michigan Ave.
South Haven Co: Van Buren MI 49090–
Status: Excess
GSA Number: 1–U–MI–475C
Reason: Negotiated sale to City.

Land

Parcel 3, Parcel B
Property #: 54199730013
East Tawas Co: Iosco MI
Status: Excess
GSA Number: 1–U–MI–500
Reason: Negotiated sale.

Minnesota

Building

Army Reserve Center
Property #: 54199920007
620 Turill St.
Le Sueur Co: MN 56058–
Status: Excess
GSA Number: 1–D–MN–568
Reason: Homeless interest.

Mississippi

Building

Federal Building
Property #: 54199910004
236 Sharkey Street
Clarksdale Co: Coahoma MS 38614–
Status: Excess
GSA Number: 4–G–MS–553
Reason: Will be leased back to Federal tenants.

New York

Building

Reserve Center
Property #: 21199710239
Sgt. H. Grover H. O'Connor
USARC
303 N. Lackawanna Street
Wayland Co: Steuben NY 14572–
Status: Unutilized
GSA Number: 1–D–NY–866
Reason: Advertised.

Land

Galeville Army Training Site
Property #: 21199510128
Shawangunk Co: Ulster NY 12589–
Status: Excess
GSA Number: 2–D–NY–807
Reason: Park application.

North Carolina

Building

Federal Building
Property #: 54199730022
146 North Main Street
Rutherfordton Co: Rutherford NC 28139–
Status: Excess
GSA Number: 4–G–NC–727
Reason: Homeless interest.

Tarheel Army Missile Plant
Property #: 54199820002
Burlington Co: Alamance NC 27215–
Status: Excess
GSA Number: 4–D–NC–593
Reason: Advertised.

Coinjock Station
Property #: 54199840010
Canal Road
Coinjock Co: Currituck NC 27293–
Status: Excess
GSA Number: 4–U–NC–734
Reason: Homeless Interest.

Bodie Island Lighttower
Property #: 54199910003
Cape Hatteras
Nags Head Co: Dare NC 27959–
Status: Excess
GSA Number: 4–U–NC–733
Reason: Expression of interest from National Park Service.

Land

Greenville Relay Station
Property #: 54199840013
Site C
Greenville Co: Pitt NC
Status: Excess
GSA Number: 4–GR–NC–0721–B
Reason: Education Interest.

Ohio

Building

Zanesville Federal Building
Property #: 54199520018
65 North Fifth Street
Zanesville Co: Muskingum OH
Status: Excess
GSA Number: 2–G–OH–781A
Reason: Public benefit interest from County.

Oklahoma

Building

Fed. Bldg./Courthouse
Property #: 54199820009
N. Washington & Broadway Streets
Ardmore Co: Carter OK 73402–
Status: Excess
GSA Number: 7–G–TX–559
Reason: Federal need.

Oregon

Building

Gus Solomon U.S. Courthouse

Property #: 54199730023
620 SW Main Street
Portland Co: Multnomah OR 97205–
Status: Underutilized
GSA Number: 7–G–OR–724
Reason: Pending lease with County government.

Puerto Rico

Land

La Hueca—Naval Station
Property #: 54199420006
Roosevelt Roads
Vieques PR 00765–
Status: Excess
Reason: Federal interest.

Texas

Building

Fairfield Federal Building
Property #: 54199920006
E. Main & Keechi St.
Fairfield Co: Freestone TX 75840–1556
Status: Excess
GSA Number: 7–G–TX–1051
Reason: Correctional interest.

Washington

Building

Vancouver Info Center
Interstate Rt 5
Property #: 541999740011
Vancouver Co: Clark WA 98663–
Status: Excess
GSA Number: 9–GR–WA–514E
Reason: Homeless interest.

747 Building Complex
805 Goethals Drive
Property #: 54199820005
Richland Co: Benton WA 99352–
Status: Surplus
GSA Number: 9–B–WA–1145
Reason: Educational discount.

West Virginia

Land

Segment 8
Property #: 54199910006
Matewan Redevelopment Site
Matewan Co: Mingo WV
Status: Excess
GSA Number: 4–D–WV–533
Reason: Written expression of interest.

Wisconsin

Building

Wausau Federal Building
Property #: 54199820016
317 First Street
Wausau Co: Marathon WI 54401–
Status: Excess
GSA Number: 1–G–WI–593
Reason: Public Benefit Interest.

Interior

California

Building

Visitor Motel—Upper Kaweah
Property #: 61199720007
Sequoia National Park
Three Rivers CA 93271–
Status: Unutilized
Reason: Scheduled for demolition.

Maryland

Building

Former Physioc Property
Property #: 61199820005
NPS Tract 402–29
Jugtown Co: Washington MD 21713–
Status: Excess
Reason: Scheduled for demolition.

Massachusetts

Building

Ziegler House
Property #: 61199830001
National Park, Virginia Road
Lincoln Co: Middlesex MA 10773–
Status: Unutilized
Reason: Removal by FNP to eliminate damage to historic/natural rsc.

Navy

Florida

Land

13.358 acres
Property #: 77199820141
Naval Air Station
Hwy 98 & Perimeter Drive
Pensacola Co: Escambia FL 32508–
Status: Unutilized
Reason: Federal Aid Project.

Maine

Building

Bldg. 376, Naval Air Station
Property #: 77199320011
Topsham Annex
Topsham Co: Sagadahoc ME
Status: Unutilized
Reason: Federal need.

Bldg. 383
Property #: 77199720025
Topsham Annex, Naval Air Station
Status: Unutilized
Reason: Pending special legislation.

Bldg. 382
Property #: 77199720026
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Bldg. 381
Property 99720027
Topsham Annex, Naval Air Station
Property #: 77199720027
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Ohio

Building

Naval & Marine Corps Res. Cntr
Property #: 77199320012
315 East LaClede Avenue
Youngstown OH
Status: Unutilized
Reason: Returning property to the city.

Puerto Rico

Building

Bldgs. 501 & 502
Property #: 77199530007
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Status: Underutilized
Reason: Department of Defense interest.

Virginia

Building

Naval Medical Clinic
Property #: 77199010109
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Status: Unutilized
Reason: Planned for expansion space.

Land

Naval Base
Property #: 77199010156
Norfolk Co: Norfolk VA 23508–
Status: Unutilized
Reason: Identified for use in developing admin. office space.

Land—CD area
Property #: 77199830022
Naval Base Norfolk
Norfolk VA 23511–2797
Status: Unutilized
Reason: outlease to Federal Credit Union.

VA

Indiana

Building

Bldg. 24, VAMC
Property #: 97199230005
East 38th Street
Marion Co: Grant IN 46952–
Status: Underutilized
Reason: Currently utilized

Bldg. 122
Property #: 97199810006
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Unutilized
Reason: Fully utilized by construction contractor.

Iowa

Land

38 acres
Property #: 97199740001
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Status: Unutilized
Reason: Enhanced-Use Legislation potential.

Michigan

Land

VA Medical Center
Property #: 97199010015
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Status: Underutilized
Reason: Being used for patient and program activities.

New York

Land

VA Medical Center
Property #: 97199010017
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Status: Underutilized
Reason: Portion leased; portion landlocked.

Pennsylvania

Land

VA Medical Center
Property #: 97199010016
New Castle Road
Butler Co: Butler PA 16001–
Status: Underutilized
Reason: Used as natural drainage for facility property.

Land No. 645
Property #: 97199010080
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Status: Unutilized
Reason: Property is essential to security and safety of patients.

Land—34.16 acres
Property #: 97199340001
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Status: Underutilized
Reason: Needed for mission related functions.

Tennessee

Land

44 acres
Property #: 97199740003
VA Medical Center
3400 Lebanon Rd.
Murfreesboro Co: Rutherford TN 37129–
Status: Underutilized
Reason: Enhanced-Use lease agreement pending.

Wisconsin

Building

Bldg. 2
Property #: 97199830002
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Status: Underutilized
Reason: Subject of leasing negotiations.

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Federal Register

Friday,
February 11, 2000

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560, and 2570

Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers; Interim Final Rule

The Assessment of Civil Penalties Under Section 502(c)(5) of ERISA; Interim Final Rule

Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA; Interim Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA54

Interim Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rule with request for comments

SUMMARY: This document contains an interim final rule governing certain reporting requirements under Title I of the Employee Retirement Income Security Act of 1974 for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide coverage for medical care to the employees of two or more employers. The interim final rule requires the administrator of a MEWA, or other entity, to file a form with the Secretary of Labor for the purpose of determining whether the requirements of certain recent health care laws are being met.

DATES: Effective Date: This interim final rule is effective beginning April 11, 2000.

Comment Date: Written comments concerning this interim rule are invited and must be received by the Department of Labor on or before March 13, 2000.

Compliance Dates: Compliance dates are set forth in paragraph (i) of this section. In general, this paragraph states that reports filed pursuant to this interim rule are first due by May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: MEWArpt@pwba.dol.gov.

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), was enacted on August 21, 1996. HIPAA amended the Employee Retirement Income Security Act of 1974 (ERISA or the Act) to provide for, among other things, improved portability and continuity of health insurance coverage. The Mental Health Parity Act of 1996 (Pub. L. 104–204) (MHPA), was enacted on September 26, 1996. MHPA amended ERISA to provide parity in the application of annual and lifetime dollar limits for certain mental health benefits with such dollar limits on medical and surgical benefits. The Newborns' and Mothers' Health Protection Act of 1996 (Pub. L. 104–204) (Newborns' Act) also was enacted on September 26, 1996. The Newborns' Act amended ERISA to provide new protections for mothers and their newborn children with regard to the length of hospital stays in connection with childbirth. The Women's Health and Cancer Rights Act of 1998 (WHCRA) (Pub. L. 105–277) was enacted on October 21, 1998. WHCRA amended ERISA to provide individuals new rights for reconstructive surgery in connection with a mastectomy. All of the foregoing provisions are set forth in Part 7 of Subtitle B of Title I of ERISA.[1] Section 734 of ERISA authorizes the Secretary to promulgate regulations as may be necessary or appropriate to carry out the provisions of Part 7 and to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7.

HIPAA added a new section 101(g){h} to ERISA.[2] This section provides that:

> the Secretary [of Labor] may, by regulation, require *multiple employer welfare arrangements* providing benefits consisting of medical care (within the meaning of section 733(a)(2))[3] which are not group health plans[4] to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 are being carried out in connection with such benefits. (Emphasis added.)

The term *multiple employer welfare arrangement* is defined in section 3(40) of ERISA to mean, in pertinent part:

> (A) * * * an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—
>
> (i) Under or pursuant to one or more agreements which the Secretary [of Labor] finds to be collective bargaining agreements,
>
> (ii) By a rural electric cooperative, or
>
> (iii) By a rural telephone cooperative association.
>
> (B) For purposes of this paragraph—
>
> (i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,
>
> (ii) the term "control group" means a group of trades or businesses under common control,
>
> (iii) the determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in

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[1] Parallel HIPAA, MHPA, and Newborns' Act provisions are also contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). In addition, parallel WHCRA provisions are also contained in the PHS Act. Accordingly, all references to "Part 7" in this document include the relevant parallel provisions of the Code and the PHS Act, unless otherwise specified.

[2] Section 1421(d)(1) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) created a new section 101(g) of ERISA relating to Simple Retirement Accounts. Subsequently, section 101(e)(1) of HIPAA also created a new section 101(g) of ERISA relating to MEWA reporting. Accordingly, when referring to section 101(g) of ERISA relating to MEWA reporting, this document cites section 101(g){h} of ERISA.

[3] Section 733(a)(2) of ERISA defines *medical care* to mean:

"amounts paid for—

(A) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) Amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) Amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B)."

[4] Section 733(a) of ERISA defines a *group health plan* to mean "an *employee welfare benefit plan* to the extent that the plan provides medical care * * * to employees or their dependents * * * directly or through insurance, reimbursement, or otherwise." (Emphasis added.)

Section 3(1) of ERISA defines *an employee welfare benefit plan* to mean, in pertinent part:

Any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, * * * medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services. * * *"

determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent.
* * * [5]

The purpose of this regulation is to provide the Department with information concerning compliance by MEWAs with the requirements of Part 7. In determining how best to obtain this information, the Department considered a number of alternatives, including requiring reporting only by MEWAs that are not ERISA-covered group health plans as described in section 101(g){h} of ERISA. For a number of reasons, explained more fully in the Economic Analysis section of this document, the Department determined that it was necessary to exercise various other regulatory authority in Title I of ERISA (see "Statutory Authority" section, below) to require annual reports from MEWAs that are group health plans and from entities that claim not to be MEWAs because they are established or maintained pursuant to a collective bargaining agreement. An important reason for requiring these groups to file is that the administrator of a MEWA may incorrectly determine that it is a group health plan or that it is established or maintained pursuant to a collective bargaining agreement. A reporting requirement limited only to MEWAs that are not group health plans may not result in reporting by many such MEWAs, thus greatly reducing the value of the data collected.

The Department also believes that imposition of the reporting requirements on MEWAs that are group health plans is appropriate to carry out the provisions of Part 7 because such reporting will provide more complete data on the MEWA universe. Such additional data will support a thorough analysis of the market segment represented by MEWAs. Information regarding compliance by MEWAs with the provisions of Part 7 is particularly important to the Department because it has been the Department's experience that compliance with ERISA by such arrangements, whether or not they claim to be group health plans, has been inconsistent. At the same time, in recent years MEWAs have become more attractive to small employers as a means to pool risks and obtain health benefits at a lower cost. The Department seeks to determine the extent of compliance with the requirements of Part 7 by this important sector of the employee health benefits market.

The Department recognizes that multiemployer plans established by an association of employers and one or more labor organizations are structurally and operationally different from most MEWAs. The Department does not seek reporting by such plans except to the extent appropriate to assure that all MEWAs file a report. The Department is aware that administrators of some MEWAs have sought to avoid State insurance regulation by mischaracterizing their arrangements as being established or maintained pursuant to collective bargaining agreements. In many cases, such mischaracterized entities are not operated in a financially responsible manner and become unable to pay benefits within a short time. *See* GAO/HRD–92–40. Therefore, in order to obtain information on all entities that are MEWAs, the Department has determined that it is appropriate to require reporting by entities that claim the collective bargaining exception unless the entity has been in existence for at least three years.

B. Overview of the Interim Rule

Basis and Scope

Paragraph (a) of the interim rule sets forth the basis and scope for this annual reporting requirement for MEWAs and certain other entities (referred to as Entities Claiming Exception or ECEs) that offer or provide coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

Definitions

Paragraph (b) of the interim rule provides most of the definitions used in the interim rule. This definitions section includes both statutory definitions provided in ERISA, as amended by HIPAA, as well as certain other definitions used in the regulations. In particular, the terms "group health plan," "health insurance issuer," "medical care," and "MEWA" are defined by reference to existing statutory and regulatory provisions. In addition, the term "administrator" is defined as the person specifically designated as the administrator by the terms of the instrument under which the MEWA or ECE is operated. However, if an administrator is not designated and the MEWA or ECE is a group health plan, the plan sponsor [6] is the administrator. Moreover, if an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.[7]

The term "entity claiming exception" or "ECE" is defined as an entity that claims it is not a MEWA due to the exception in section 3(40)(A)(i) of the Act. In general, this exception is for entities that are established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements. In connection with this exception, on August 1, 1995, the Department published a proposed rule for plans established or maintained pursuant to collective bargaining agreements under section 3(40)(A)(i) of ERISA. 60 FR 39208. Subsequently, in September of 1998, the Secretary established the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee. *See* 63 FR 50542. This Committee has negotiated a proposed rule establishing a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40)(A)(i) of ERISA. Upon issuance of a final regulation relating to ERISA section 3(40)(A)(i), this regulation may be modified to reflect the scope of this exception.

Finally, the term "origination" is defined to mean the occurrence of any

[5] This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of ERISA provides that State laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of State regulation depending on whether the MEWA is fully insured. Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

[6] The term *plan sponsor* is defined under section 3(16)(B) of ERISA as:

(i) The employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

[7] In these circumstances, the Department has previously expressed its view that the person or persons with such responsibility is the administrator for purposes of section 3(16) of ERISA. *See* Advisory Opinion Letter 83–43 to Robert J. Tanguay, August 23, 1983.

of the following events (and a MEWA or ECE will be considered to have been "originated" when any of these events occur):

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all MEWAs or ECEs participating in the merger were last originated at least 3 years before the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE and all MEWAs and ECEs that participated in the merger were last originated at least three years before the merger).

Whether a merger triggering a filing occurs is determined based on all the relevant facts and circumstances. However, in general, the addition of a new contributing employer to a MEWA or ECE would not constitute a merger that would trigger a filing. In addition, generally no merger triggering a filing occurs when participants represented by a local union that joins an existing MEWA or ECE begin receiving coverage under the MEWA or ECE.

Persons Required To Report

Paragraph (c) of the interim rule sets forth the persons required to report under the interim rule. First, the administrator of a MEWA that provides benefits consisting of medical care is required to report, whether or not the MEWA is a group health plan. For the reasons discussed above, the Department determined that it was necessary and appropriate to exercise various other regulatory authority in Title I of ERISA (see Statutory Authority, below) to require all MEWAs to report, regardless of whether they are group health plans. In addition, the administrator of an ECE is required to file if the ECE was originated at any time within 3 years before the annual filing due date. (This due date is described in paragraph (e)(2)(i) of the interim rule).

However, because a health insurance issuer, such as an insurance company, fits within the statutory definition of a MEWA, paragraph (c)(2) of the interim rule clarifies that nothing in the interim rule is to be construed to require reporting by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

Accordingly, subject to the exception described above for health insurance issuers, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is only required to file annually for the first three years following an origination. Under the interim rule, whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time that a filing would otherwise be due that the entity is maintained pursuant to one or more collective bargaining agreements, the entity is an ECE, and the ECE would not be required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA (for example, pursuant to regulations developed by the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee), filings would not be required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings would be required for years after the determination that the entity is a MEWA.

This interim rule further provides that, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination, nonetheless, does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the exception is claimed in good faith. However, the claiming of the exception for ECEs under this filing requirement does not preclude States from applying State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

Information To Be Reported.

Paragraph (d) of the interim rule describes the information required to be filed under this interim rule. Specifically, the administrator is required to file a completed copy of the Form M–1.[8] The substance of this form is published at the end of this document.

Also under paragraph (d), the Secretary may reject any filing that the Secretary determines to be incomplete, in accordance with § 2560.502c–5 (published separately in this issue of the **Federal Register**). If the Secretary rejects a filing as incomplete and if the administrator fails to submit a revised filing within 45 days of the rejection, paragraph (c) provides that the administrator may be subject to a civil action for legal and equitable relief, including civil penalties of up to $1,000 per day under section 502(c)(5) of ERISA as amended by HIPAA. (*See* § 2560.502c–5, published separately in this issue of the **Federal Register** for interim rules governing the assessment of civil penalties under section 502(c)(5) of ERISA.)

Timing

Paragraph (e) of the interim rule describes the timing rules applicable to a filing. Generally, a "year to be reported" is any calendar year in which the entity offered coverage. For an annual filing, the Form M–1 is generally required to be filed by the March 1 following any "year to be reported" (unless March 1 is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day). For the year 1999 "year to be reported," however, a transition rule makes clear that a completed copy of the Form M–1 is required to be filed no later than May 1, 2000.

There is, under paragraph (e)(2)(iii), an additional, special filing requirement when a MEWA or ECE is originated. Under this special rule, in general, the administrator of a newly originated MEWA or ECE is required to file a completed copy of a Form M–1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day). (This report is referred to as a 90-Day Origination Report.) However, this special rule does not apply if the origination occurred between October 1 and December 31. Thus, for example, if a MEWA is originated on November 1, 2000, the administrator of the MEWA is not required to file an origination report in February of 2001. Instead, in the year 2001, the administrator is required to

[8] Section 505 of ERISA authorizes the Secretary to "prescribe such regulations as he finds necessary or appropriate to carry out the provisions of [Title I of ERISA]. Among other things, such regulations may * * * prescribe forms * * * "

file only the annual report due March 1, 2001.

In addition, the interim rule provides that no 90-day origination reports are required before May 1, 2000. Therefore, for an entity that is originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90-day origination report is required to be completed and filed no later than June 30, 2000.

In any event, under paragraph (e)(2)(iv), an extension may be granted for filing reports if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

Filing Address

Paragraph (f) provides that the address to be used for filings is set forth in the Instructions to the Form M–1.

Civil Penalties and Procedures; Transition Rule Creating Good Faith Safe Harbor Period

Paragraph (g) contains a cross-reference for civil penalties and procedures. The penalty and procedure regulations are being published separately in this issue of the **Federal Register**.[9] These regulations, and the instructions to the Form M–1 (also being published at the end of this document, make clear that the Department does not intend to assess penalties in cases where there has been a good faith effort to comply with a filing due in the year 2000. During this first year in particular, the Department is focused on educating administrators about this filing requirement and is committed to working with them to help them comply. In this regard, the Department has developed filers' guides which may be helpful in filing the Form M–1. These filers' guides will be made available on the Pension and Welfare Benefits Administration's website at www.dol.gov/dol/pwba and through their toll-free publication hotline at 1–800–998–7542. Also, the Pension and Welfare Benefits Administration's help desk (202–219–8818) is available in case administrators have questions or if they need any assistance in completing the Form M–1.

Compliance Dates

Paragraph (i) provides that reports filed pursuant to this reporting requirement are first due by May 1, 2000. (Therefore, on May 1, 2000, filings are due with respect to MEWAs or ECEs that provided coverage in calendar year 1999.) However, no 90-Day Origination Reports (described in paragraph (e)(2)(ii) of this section) are due before May 1, 2000. Therefore, for an entity that is originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90-day origination report is required to be completed and filed no later than June 30, 2000.

C. Interim Rule with Request for Comments

The principal purpose of these regulations is to determine the extent of compliance by MEWAs with part 7 of ERISA. ERISA Section 734 authorizes the Secretary to issue "any interim final rules as the Secretary deems are appropriate to carry out the provisions of [Part 7]." Thus, the authority in ERISA section 734 to issue interim regulations applies to this rule. As explained below, the Secretary has determined that this regulation should be issued as an interim final rule with requests for comments.

Part 7 was enacted as part of the Health Insurance Portability and Accountability Act of 1996. To implement certain requirements of part 7, the Secretary promulgated interim final regulations in April, 1997. During the period following promulgation of the April, 1997 regulations, the Department carried out an extensive educational campaign to assist all sectors of the regulated community to learn to apply the new requirements and received numerous comments on these regulations.

The Department decided not to promulgate the instant regulations during this period of adapting to the new requirements. Now that the regulated community has had more than two years to become familiar with the part 7 requirements, it is now appropriate, in the Secretary's view, that the instant regulations become effective, on an interim basis, as quickly as possible.

The Secretary believes that a period of interim effectiveness will provide a sound basis for developing a final rule. The Department is seeking comments from all those affected by these regulations and the Department will consider such comments, and will reevaluate these regulations following the comment period in the same way that it would if the regulation had been published as a non-final proposal. Based on such comments and other information obtained through the operation of this interim reporting requirement, the Department will make any necessary modifications to the reporting requirement when the regulation is issued in final.

The Secretary believes that the purpose of the MEWA reporting requirement will be best served if these rules are made effective as quickly as possible, now that the regulated community has had time to familiarize itself with part 7 and the substantive interim regulations. Registration of MEWAs was first recommended in a 1992 Government Accounting Office Report (GAO/HRD–92–40). The problems pointed out in that report continue to this day. To date, the Department has initiated approximately 358 civil and 70 criminal investigations (with 45 criminal convictions) affecting over 1.2 million participants and beneficiaries and involving over $83.6 million in unpaid claims. During each of the past 3 years, the Department has had an average of about 100 MEWA cases under active investigation. Thus, the identification of problem MEWAs and correction of violations remains an important investigative priority and consumes substantial resources.

Obtaining reimbursement for such losses is the greatest challenge the Department faces in pursuing these cases. Too often, when the Department discovers an unsound MEWA, it has already failed and there is no money to cover the participants' unpaid medical claims. In such cases discovered by the Department, where there has been a failure to pay claims, over 90% of the claims are likely to remain unpaid, unless the Department is able to intervene at an early stage of the problem. When the MEWA becomes unable to pay the health benefits it has promised, employees, employers and health care providers may suffer serious financial losses. The reporting requirements of these interim regulations are designed to allow earlier detection of unsound MEWAs and will reduce the risk of financial harm to these parties.

Economic Analysis Under Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition,

[9] Moreover, other relevant criminal penalties may apply. *See, e.g.*, 18 U.S.C. 1021 and 1035.

jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities.

The total cost of this interim final rule is estimated at $437,000 per year, or an average of approximately $163 for each of the 2,678 entities expected to be required to file the annual reporting form for MEWAs. HIPAA amended ERISA to add section 101(g){h}, which authorizes the Secretary of Labor to require reporting by MEWAs which are not group health plans for the purpose of determining the extent of their compliance with Part 7 of ERISA. The principal intent of Congress in enacting this provision was to ensure that all participants and beneficiaries of such arrangements receive the new health care protections incorporated into ERISA by HIPAA, MHPA, the Newborns' Act, and WHCRA.

The reporting requirement implemented by this interim final rule provides the most cost effective means of facilitating compliance with Part 7, as well as with the full range of other federal and State requirements that may apply to MEWAs under ERISA, the Internal Revenue Code, the Public Health Service Act, and State insurance statutes. The data collected as a result of the filing requirement will serve as the only source of uniform and complete information identifying these arrangements that will allow federal and State regulators to evaluate their compliance with all applicable requirements. Evaluations of compliance based on the information reported will be significantly more cost effective for both governmental entities and MEWAs than the alternative of active intervention by compliance examiners.

Increased compliance by these arrangements will be beneficial to participants and beneficiaries who are able to fully realize their rights under these new laws. A greater assurance of compliance by these arrangements will also be beneficial because, due at least in part to the interaction of federal and State requirements, their compliance with the various requirements which apply to them has been shown to be inconsistent. Although the provisions of Title I and IV of ERISA generally supercede State laws that relate to employee benefit plans, the regulation of MEWAs is a joint federal and State responsibility pursuant to ERISA section 514(b)(6). Section 514(b)(6) of ERISA provides, among other things, that State laws that regulate insurance may apply to fully insured MEWAs to the extent that these laws establish rating, solvency, and similar standards, and to other MEWAs to the extent that State insurance laws are not inconsistent with Sections 1 through 513 of ERISA. Knowledge of both federal and State requirements is therefore needed for an arrangement to make an appropriate determination concerning the requirements that apply to it.

Because State insurance statutes are not uniform, an arrangement doing business in more than one State may be required to comply with a range of States' varying requirements. Other legal and factual issues, such as whether an entity is established pursuant to a collective bargaining agreement or whether an arrangement for a staff leasing organization is maintained by more than one employer, may contribute to uncertainty about applicability of regulatory requirements. Identification of these entities and determination of the applicability of State insurance law through this reporting requirement will help ensure that administrators of these arrangements are aware of the requirements that apply, and that the protections intended to be provided under federal and State laws are actually implemented for the benefit of employers and participants who obtain their group health coverage through these arrangements.

Substantial ancillary benefits are expected to result from the public disclosure of this data. Participants with greater access to information about the arrangements through which they obtain group health coverage may better exercise their rights in the event of a dispute with the arrangement. The data collected will also enhance the capability to conduct analysis of the market segment represented by MEWAs, which will be useful to policy makers in evaluating the role of these entities in providing employment-based health benefits. The potential benefits of this interim final rule are, therefore, expected to outweigh its costs.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the information collection request (ICR) included in this interim final rule, which would require reporting by MEWAs and certain other entities on a prescribed form. Respondents are not required to comply with the ICR incorporated in the form unless it displays a currently valid OMB control number. A copy of the ICR may be obtained by contacting the office of the Pension and Welfare Benefits Administration listed below.

The Department has submitted the ICR included in this interim final rule, using emergency review procedures, to OMB for review and clearance in accordance with PRA 95. OMB approval has been requested by February 28, 2000. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments regarding the ICR should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235,

New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through April 11, 2000, OMB requests that comments be received within 30 days of publication of this interim final rule to ensure their consideration.

Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

The ICR implemented with this interim final rule will require administrators of MEWAs, as defined in section 3(40) of ERISA, and certain other multiple employer arrangements that seek to utilize the exception described in section 3(40)(A)(i) of ERISA (referred to in the interim final rule as "Entities Claiming Exception" (ECEs)), to file certain information with the Secretary of Labor. This filing is generally required to be made annually by March 1 for the calendar year just ended. In addition, expedited filing is required following origination of an entity required to file. However, an ECE is required to file for only the first three years following its origination. A form has been prescribed for this filing, the substance of which is published at the end of this document.

The information to be filed includes basic identifying information (names and addresses, telephone numbers, employer identification numbers), and the date of origination of the arrangement. The filer will also be required to identify the States in which the arrangement provides coverage, whether it is licensed as an insurer or otherwise authorized to operate in those States (with the corresponding license or registration numbers), and whether the arrangement, if not licensed, is fully insured by a health insurance issuer in each State. The filer must also state the number of participants in the arrangement and the number of States in which at least 20 percent of the arrangement's business (based on number of participants) is conducted.

The form poses specific questions concerning compliance with Part 7 of ERISA, including yes/no questions about litigation involving Part 7 of ERISA or corresponding provisions of the Internal Revenue Code or Public Health Service Act (with specific additional information to be provided, if there was litigation), and about compliance with provisions of Part 7 and implementing regulations with respect to HIPAA, MHPA, Newborns' Act, and WHCRA. The form must also be signed and dated.

Detailed instructions are supplied with the form, as are compliance worksheets, which are intended to provide filers with convenient summaries of the requirements of the HIPAA, MHPA, Newborns' Act, and WHCRA provisions of Part 7 of ERISA, and references to the statutory requirements. These worksheets are not required to be filed.

The information collected in connection with this filing requirement will be useful to the Department, other federal agencies, and the States, in determining the extent of compliance by MEWAs and ECEs with Part 7 of ERISA and parallel provisions of the Internal Revenue Code and the Public Health Service Act.

The information will be useful to federal and State authorities with oversight responsibilities for these arrangements, and to the public for a variety of reasons. The enforcement activities of the Department and the States have shown that, due at least in part to the complex interaction of State and federal regulatory requirements for multiple employer arrangements providing group health coverage, compliance with all the applicable State and federal rules has been inconsistent. For example, the March, 1992 General Accounting Office (GAO) Report entitled, "EMPLOYEE BENEFITS—States Need Labor's Help Regulating Multiple Employer Welfare Arrangements" (GAO/HRD–92–40) states that "MEWAs have proven to be a source of regulatory confusion, enforcement problems, and in some instances, fraud." This is supported by results of GAO's 1991 survey in which 46 States reported non-compliance by MEWAs with applicable reporting, disclosure, funding, licensing and registration requirements.

MEWAs doing business in several States may be required to comply with licensing and solvency requirements of each State, which often differ significantly. Although ERISA was amended in 1983 to clarify the role of the States in the regulation of MEWAs [10] these arrangements must still make judgments with respect to a number of relatively complex legal and factual issues in order to determine which requirements are applicable. The absence of uniform information as to the identity and location of these entities often prevents both federal and State regulators from taking a proactive approach to ensuring compliance by these arrangements with the full range of requirements imposed upon them.

Although MEWAs which are group health plans under ERISA, and multiemployer group health plans established pursuant to a collective bargaining agreement are generally required to file Form 5500 in accordance with ERISA sections 101(b) and 104(a), these entities will also be required to file the annual report for MEWAs under this interim final rule. This is in part because Form 5500 does not require duplicate reporting with respect to compliance with Part 7. An important reason for requiring these groups to file is to collect uniform information on MEWAs that does not rely on the arrangements' assessments of their status as group health plans or their entitlement to claim an exception based on the existence of a collective bargaining agreement. Arrangements which might mischaracterize themselves as group health plans under ERISA or as multiemployer collectively bargained plans (and thus not MEWAs), or in any number of other ways, would otherwise be omitted from the data that would be available to the Department and the States to assess compliance by these arrangements. At the same time, the Department did not wish to require reporting by well established multiemployer plans that have been in operation for several years. As noted earlier, this interim final rule may be modified in the future if changes are needed as a result of the issuance of further guidance with respect to establishing criteria and a process for a finding by the Secretary that an agreement is a collective bargaining agreement for purposes of section 3(40)(A)(i) of ERISA. [11] At present, however, the Department considers it important to obtain complete data on all entities which may be considered MEWAs, including newly originated multiemployer collectively bargained group health plans in their first years of operation.

An ancillary benefit of the availability of complete data on the multiple employer health plan universe will be a significantly enhanced capability to conduct more thorough analysis of the market segment represented by MEWAs. Risk pooling by groups of employers has been considered to offer potential advantages in the purchase of health care coverage by small employers. Timely and complete information on these entities will be of significant utility in evaluating the effectiveness of existing arrangements in providing

[10] *See* note 5.

[11] *See* note 6.

employment-based health benefits. Greater access to information for participants may assist them in exercising their rights under these arrangements in the event of a dispute.

Estimates of the burdens associated with this filing requirement are based on the number of annual filers and the time assumed to be required to complete the form.

The Filer Universe

The entities that will be required to file the annual reporting form will include multiemployer collectively bargained group health plans (entities claiming exception, or ECEs) originated within three years of the filing date, MEWAs which are group health plans under ERISA, and MEWAs which are not group health plans under ERISA. A description of the Department's methods of estimating the number and characteristics of filers in each group follows.

Multiemployer Collectively Bargained Plans

These plans are generally required to file Form 5500, and as such, information is available concerning the number of such plans originated from year to year. For the purpose of estimating the number of potential filers, the Department reviewed the data collected from Form 5500 filings for the 1991 through 1995 plan years for collectively bargained multiemployer welfare plans which provided medical benefits. A period of longer than three years was examined in order to determine whether the numbers were reasonably consistent from year to year, and whether the data indicated a trend over this period. Individual records in this group were examined and adjusted for the purpose of this count for possible errors in filers' characterization of their filing entity (which is selected from a number of codes in the Form 5500 instructions). The resulting number of such plans originated since 1991 was 41, which amounts to an average of about 8 plans per year. The number of participants in those 41 plans was 78,702. This represents about 2% of the total of all multiemployer collectively bargained group health plan filers in 1995 (2,180 plans with 5,957,946 participants).

Examination of origination in each individual year shows that the number of plans established was reasonably similar from year to year. The Department considers a reasonable estimate of the number of new plans that are originated each year is 12, which is the greatest number originated in any single year during the period examined. This would result in approximately 36 filers in this category for each annual filing cycle, assuming that 12 plans are originated each year, and 12 plans will no longer be required to file the form. The average number of participants per plan in the 41 plans originated since 1990 was 1,900, while the greatest average number per plan in a single year was 3,200. Based on these averages, it could be assumed that participation would total between 23,000 and 38,000 for the 12 plans assumed to originate in any year. For purposes of estimating the number of participants in the affected plans in this category, a midpoint of 30,600 per year (2,550 participants per plan) for the 12 new plans, and 91,800 for all 36 filers has been used.

Certain characteristics of this group may also be estimated, based on the characteristics of both the 1995 filers originated since 1990 and all 1995 multiemployer health plan filers. In both groups, no more than 11 percent of plans had fewer than 100 participants, while less than 1 percent of total participants were covered by plans with fewer than 100 participants.

The methods of funding indicated by the filers on Form 5500 differ somewhat between the groups. The funding method categories are defined in the Form 5500 instructions. "Trust only" is generally used interchangeably with the more commonly understood terms "self-funded" or "self-insured." "Insured" is considered to mean fully insured. Where "Trust and Insurance" is indicated, it is generally not possible to determine without examination of individual records whether the plan is essentially self-funded with stop-loss insurance, or whether the plan is entirely self-funded except to the extent that it includes specific insured benefits such as life or long term disability insurance. Consequently, this category will include a range of funding methods. For purposes of estimates of the burden of the filing requirement, a distinction is made between fully insured arrangements and all other arrangements. While estimates of the number of fully self-funded arrangements may also be of interest, only fully insured arrangements are segregated for purposes of estimates ultimately developed, due to a difference in form completion time for these entities.

The plan funding methods reported on Form 5500 for the 2,180 multiemployer collectively bargained group health plans (with 5,957,946 participants) filing in 1995 were compared with those for the 41 multiemployer collectively bargained group health plans (with 78,702 participants) established since 1990. The comparison showed that about 63 percent of the 41 plans, and 51 percent of the 2,180 plans reported being fully self-funded. Between 2 and 4 percent of both groups of plans reported being fully insured. The remainder (24 percent of the 41 plans, and 41 percent of the 2,180 plans reported funding through a combination of insurance and self-funding. It is assumed that the newly originated multiemployer collectively bargained group health plans will more closely resemble the group of 41 plans originated since 1990.

Multiple Employer Welfare Arrangements Which Are Group Health Plans Under ERISA

The number of filers in this category may be estimated in a manner similar to that used for estimating the ECE count. In general, most ERISA-covered welfare plans which provide medical benefits are required under the statute and regulations to file a Form 5500 annually unless the plan covers fewer than 100 participants and is either unfunded or fully insured. While data from Form 5500 filings will not include information on small plans due to this exemption from filing requirements, multiple employer plans are considered less likely to be excluded on this basis because the affiliation of at least two employers for the formation of a plan increases the likelihood that participation will exceed 100. However, because plans with fewer than 100 participants will be required to file the annual report for MEWAs, an adjustment would need to be made to account for the excluded plans.

Data from Form 5500 filings for 1995 plan years were reviewed with respect to plans indicating they provided medical benefits that were designated as multiemployer collectively bargained plans, multiple employer non-collectively bargained plans, and group insurance arrangements. Because the Department has been made aware of some multiple employer plan filers' uncertainty as to the appropriate entry for this element of the form, the source data in these categories were also examined. While it is not possible to determine the nature of a filing entity with certainty without reference to the facts and circumstances related to its establishment, a number of plans appeared to have been coded in such a way as to limit the usefulness of this data for the purpose of estimating the number of potential filers. For purposes of this estimate, therefore, entity codes were adjusted where a more appropriate choice was apparent. The resulting data, after exclusion of plans that appeared to

be single employer plans or collectively bargained plans, and inclusion of plans originally categorized as group insurance arrangements, were summarized to arrive at the initial estimate of the number and characteristics of filers. On this basis (and without yet adjusting for small plans exempted from Form 5500 filing requirements), 642 plans in this category covering approximately 1,913,000 participants would be expected to file the MEWA annual reporting form. The average number of participants per plan among this group is approximately 3,000. About 14 percent of these plans report self-funding only, while 31 percent report being fully insured. About 49 percent of these plans report a combination of insurance and self-funding.

Although the number of MEWA report filers which are multiple employer group health plans could be estimated by adjusting the number of Form 5500 filers to allow for plans exempted from Form 5500 filing requirements, the Department is unaware of an appropriate basis for such an adjustment. Instead, these exempt filers have been estimated in conjunction with the estimate of MEWA report filers which are not employee benefit plans under ERISA, as explained below.

Multiple Employer Welfare Arrangements Which Are Not Group Health Plans Under ERISA

The potential number of filers in this category is significantly more difficult to estimate because there is no single source of data on such arrangements. The Department therefore relied on three different data sources to develop an estimate of the number of potential filers. Data reported in the previously cited March, 1992 GAO report (GAO/HRD–92–40) were collected in GAO's survey of State insurance officials conducted in 1991. These data showed 1,034 MEWAs which were headquartered in the State in which the information was collected, and 2,213 MEWAs operating in States in which they were not headquartered.[12] Of the 1,034 MEWAs, 264 (25.5 percent) were characterized as "fully insured" and 770 (74.5 percent) were "not fully insured." It was also reported that there were 2,581,438 participants and beneficiaries covered by the 1,034 MEWAs in the respondent States.

The figures may be somewhat understated due to the lack of survey data from a number of large States which reported data for another aspect of the survey indicating that participants has sustained losses as a result of MEWAs' failure to pay claims in the State. The number of these entities may also be expected to have changed during the period since the survey due to small group reforms in the States, the enactment of HIPAA, and a period of relative stability in health care costs that generally reduces economic pressures on employers seeking affordable coverage. It is generally believed that these factors have served to reduce the number of entities that obtain group health coverage through risk pooling arrangements such as MEWAs.

Furthermore, it is unclear whether the survey respondents would have distinguished between MEWAs which are group health plans and those which are not group health plans. Consequently, it is not possible to determine whether the number of MEWAs headquartered in the States may overlap to any degree with the estimate of the number of MEWAs which are ERISA-covered plans. The Department contacted the National Association of Insurance Commissioners and certain State representatives to whom it was subsequently referred to determine whether comparable and more current data were available, and concluded on the basis of these contacts that while several States might maintain certain current data elements, no comparable data set is available to support the updating or refinement of the GAO estimates.

Other more recent sources may serve to shed light on the usefulness of the GAO data in developing a current estimate of potential non-ERISA plan MEWA filers. The Department examined reports published by W.F. Morneau & Associates and the American Society of Association Executives [13] (ASAE) concerning membership surveys conducted in 1992 and 1997. The survey respondents were those associations which reported sponsoring health care plans for their members. The respondents would apparently include sponsors of plans covered by ERISA as well as arrangements not covered by ERISA. Respondents also included professional/individual associations, which would not typically be sponsors of ERISA-covered plans due to lack of an employment basis. Coverage sponsored by these types of associations may, however, be considered non-plan MEWAs based on the facts and circumstances surrounding the establishment and maintenance of the arrangement. The report also states that because the response rate to the 1997 survey was somewhat low (974 of 7,169 surveys distributed were returned), it would be conservative to assume that the survey represents no more than 50 percent of the total number of association health plans. On the basis of the 283 plans reported, then, it could be assumed that the number of association sponsored plans could be estimated at 566. The 1992 data were somewhat different, with 2,648 responses to 6,341 surveys distributed, resulting in 799 association sponsored plans being reported. However, the report on the 1997 survey offers many reasons for a decline in the number of plans sponsored, which supports the credibility of the observed decrease.

A different approach may also be taken to estimating the number of non-respondents which sponsor health plans, which results in a somewhat larger estimate of association plans. If it is assumed that the rate of sponsorship of plans among non-respondents is one-half the rate of sponsorship among respondents, it may be estimated that there are approximately 1,200 association sponsored plans. As noted, this estimate would likely include arrangements that would be considered to be plans under ERISA, as well as those that would not. This estimate would also include both trade/corporate association plans and professional/individual association plans. Other data presented in the Morneau/ASAE report indicate that 66 percent of association health plans are sponsored by trade/corporate associations. While this would tend to support reducing the estimate of association plans which might file the annual reporting form, the degree of imprecision already introduced may not support further refinement of this estimate.

If it is assumed, then, that there are 1,200 association plans to be considered among the universe of potential filers, an assumption concerning the funding mechanisms used is also needed. Assuming 75 percent of these plans are fully insured, as indicated by the 1997 report, 900 plans would be fully insured and 300 would not be fully insured.

Findings of an analysis conducted by the RAND Corporation of data from the 1997 Robert Wood Johnson Foundation

[12] According to GAO, comparison of these totals may give an indication of the number of MEWAs operating across State lines. GAO indicates that the numbers should not be added, because MEWAs operating in more than one State may have been counted in each State of operation.

[13] "Survey of Association Member Health Plans," W.F. Morneau & Associates/ American Society of Association Executives, 1993 and 1997.

Employer Health Insurance Survey [14] offer another basis for the development of an estimate of the number of MEWAs. The findings address the prevalence of pooled purchasing among employer health plans through analysis of survey respondents' assessments of whether their establishment purchases insurance through (1) a purchasing cooperative or alliance, (2) a business coalition, (3) a multiple employer trust (MET) or multiple employer welfare arrangement (MEWA), or (4) a trade or professional association or other membership organization. The report concludes that about 25 percent of establishments participate in pooled purchasing in at least one of the forms described.

The survey data as weighted for purposes of the analysis indicate that a total of 394,000 establishments covering 5.7 million employees report offering insurance through a MEWA/MET or a trade association/membership organization. This includes 118,000 establishments which were pooled through a MEWA/MET and 276,000 establishments pooled through a trade association or membership organization. Employees reported to be covered through a MEWA/MET total 3.3 million, while those reported as covered through an association or membership organization total 2.4 million.

The MEWA/MET and trade association/membership association categories appear to include many of the arrangements that would be required to file the MEWA annual reporting form, including collectively bargained arrangements, without regard to whether the arrangement constitutes a plan for purposes of ERISA. It is also likely that potential filers will be found among the establishments reporting purchase through a purchasing alliance or business coalition. The total number of establishments which report purchasing through pooled purchasing arrangements, including business coalitions and purchasing alliances, but excluding known purchasing alliances, is 836,000. Employees of these establishments number 12 million. Known purchasing alliances are excluded because these are not considered likely to be MEWAs. Because these data are collected and presented on an establishment rather than plan basis, other adjustments are required in order to compare them with data reported in other sources.

One possible approach to imputing a estimated number of different arrangements from the employee counts reported in the pooled arrangements would be to simply divide the number of employees by the average number of participants in the multiple employer group health plans which file Form 5500 (between 2,500 and 3,000). Dividing the 12 million employees in this way results in an estimate of 4,000 to 4,800 separate arrangements. When applied to the trade association segment alone, the imputed number of separate arrangements would be between 800 and 1,000. This analysis, although imprecise, appears to support the comparability of the Morneau/ASAE data and the RAND analysis of the 1997 Robert Wood Johnson Foundation Employer Health Insurance Survey data.

Because a total based on all pooling arrangements will include collectively bargained multiemployer group health plans and multiple employer non-collectively bargained group health plans, the estimate must be reduced to avoid duplication. Reducing the estimated total of 4,800 arrangements by multiemployer and multiple employer group health plans counts results in a total of 2,200 MEWAs not previously counted, which cover an estimated 4 million employees.

The universe of filers, therefore, can be variously estimated as follows:

- 642 non-collectively bargained multiple employer group health plans which file Form 5500 plus 36 newly originated multiemployer collectively bargained group health plans (ECEs) covering a total of 1,943,551 participants (excludes non-plan MEWAs and small fully insured/unfunded plans exempt from filing) (1995 Form 5500 data);
- 1,034 MEWAs including plans and non-plans covering 2,581,438 participants (likely excludes some arrangements the States would recognize as ERISA covered plans) (1992 GAO report);
- 1,200 association plans including ERISA plans and non-ERISA plans (likely excludes both arrangements which are MEWAs not sponsored by associations and collectively bargained multiemployer plans) (1997 Morneau/ASAE survey); and
- 4,000 to 4,800 multiple employer association plans, collectively bargained plans, and MEWAs covering 12,000,000 participants (or 2,000 non-ERISA plan MEWAs covering 4,100,000 employees, after adjustment for multiemployer collectively bargained group health plans and multiple employer non-collectively bargained group health plans) (1997 RWJF Health Insurance Survey).

On the basis of these estimates, the Department believes a conservative assumption as to the number of MEWAs and entities claiming exception that will be required to file the annual reporting form in any year is 2,678. The method of developing the estimate of filers accounts for some arrangements which would be considered group health plans under ERISA but which are exempt from Form 5500 filing requirements, although their number is not separately identified.

Estimating the proportion of these arrangements which are fully insured, funded through a trust, or a combination of these methods is more problematic. The RAND analysis does not provide specific information on the funding method of the pooled arrangements, and the information reported in the other sources varies significantly. For example, 73 percent of the recently originated multiemployer collectively bargained plans were funded through a trust only, while only 4 percent were fully insured. Of the multiple employer non-collectively bargained ERISA plans which filed Form 5500, 14 percent were self-funded and 31 percent were fully insured. Of the MEWAs reported by the States in the GAO study, 25 percent were fully insured, while 75 percent of the association plans in the Morneau/ASAE survey reported being fully insured.

The funding status of the filers that reported their funding method on Form 5500 has been included as reported. In the absence of additional information as to the funding status of the 2,000 non-plan filers, the Department believes it is reasonable to assume that 50 percent (the midpoint between the 25 percent reported by GAO and the 75 percent reported by Morneau/ASAE) are fully insured. Although this assumption is somewhat arbitrary, it is relied on for purposes of the estimates of annual report filer burden only for estimating a variation in the burden expected in completing the form. The Department welcomes comments on the data and assumptions used in developing these estimates.

The resulting breakdown of arrangements between fully insured and not fully insured is shown below:

	Total	Fully insured	Not fully insured
Total	2,678	1,202	1,476
Multiemployer ECE	36	1	35
Multiple employer non-collectively bargained ERISA plans	642	201	441
Other MEWA	2,000	1,000	1,000

[14] "Pooled Purchasing: Who Are the Players?" Stephen H. Long and M. Susan Marquis, "Health Affairs," July—August 1999.

Completing the MEWA Annual Reporting Form

Completion of this two-page form is expected to require between 2 hours and 50 minutes to 3 hours and 35 minutes. This estimate assumes that all filers will require an average of two hours to familiarize themselves with the form and read the instructions, particularly in the first years following implementation of the filing requirement. The identifying information in Parts I and II of the form and the signature block would be expected to require a limited amount of time to complete.

The most variable portion of the form is expected to be Part III, which includes information concerning the locations in which the arrangement does business, and its funding arrangements and licensing status in those locations. The amount of information to be entered here will vary directly with the number of States in which an entity operates. The degree of this variation is expected to be great, as some of the arrangements which will file are known to be State-specific, while others are national in scope.

Time required to complete this segment of the form is also expected to vary with the funding arrangement of the entity in any given State, and with the State's licensing requirements. Entities which are fully insured in the States in which they operate would be expected to require little time to complete the section because those entities are believed to be least likely to require licensure by a State. Those entities which are either partially or fully self-funded and which operate in States in which they are required to be licensed are expected to require the greatest amount of time to complete this section. The range of completion time assumed for this segment (from 30 minutes to an hour) is intended to allow for this variation.

The Department is aware that the States have implemented a range of regulatory requirements for both MEWAs and health plans sponsored by associations which are self-funded and conducting business in their jurisdictions. These requirements range from registration to full compliance with all of the solvency, rating, and other requirements of the State insurance code. The information that could be provided by the States, if collected directly from them, would include only those arrangements which are aware of the requirements in the State or States in which they do business, and which have elected to comply with those requirements. From time to time States still report being unaware of MEWAs operating within their jurisdictions, or in neighboring States but covering consumers in their jurisdictions, until problems are reported.

With respect to Part IV of the form, the Department assumed a 15 to 30 minute completion time depending again on whether or not an arrangement is fully insured. Fully insured arrangements are expected to be readily aware of their compliance with the specified aspects of Part 7 of ERISA because their insurance contracts will in most cases have been amended to bring them into compliance. Those arrangements which may not have considered the status of their compliance with these requirements may require additional time to answer the questions. No estimate of the time to respond to the question concerning litigation or enforcement proceedings is made because rate of litigation among all plans in general is believed to be low. While positive responses to this question are expected to be useful in assessing compliance with Part 7, the frequency of positive responses among the small group of filers is expected to be very low.

Based upon its experience with many types of multiple employer group health plans and other arrangements, the Department has assumed for its estimates of burden under the Paperwork Reduction Act that 90 percent of plans and arrangements will purchase services to meet the filing requirement rather than complete the form in-house. Because these arrangements by definition include at least two employers which are unrelated by ownership and which may or may not be related by trade or industry, an entity which is separate from the arrangement typically handles administrative duties for the arrangement. This may be the association or subsidiary of the association in the case of a plan sponsored by a trade association, or a third party administrator. This entity is commonly compensated for services such as billing employers, processing claims, or marketing the arrangement to other employers, by the plan or by the participating employers, through an assessment to the premium or other contribution collected from the employers. It is believed that the filing would be completed by this separate entity and that the entity would be compensated for this service. This assumption has no implication with respect to the person or entity obligated to file the form. The assumption is intended to provide an estimate of the cost of filing based on the entity expected as a practical matter to perform the tasks required by the form.

In developing the cost of preparation of the form, the Department has assumed a professional rate for a financial manager of approximately $50 per hour. Copying and mailing is estimated to require 1 minute at a clerical rate of $15 per hour plus $0.38 for mailing and materials. Electronic filing of the form is under consideration, but has not been reflected in these estimates. The Department requests comments on the assumptions used in this analysis.

In the Department's view, the filing requirement will not require the maintenance of records which were not already maintained by the MEWA in the ordinary course of its business.

Type of Review: New.

Agency: U.S. Department of Labor, Pension and Welfare Benefits Administration.

Titles: Annual Report for Multiple Employer Welfare Arrangements and Entities Claiming Exception (Form M–1).

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

OMB Number: 1210–NEW.

Frequency of Response: Annually.

Respondents: 2,678.

Responses: 2,678.

Estimated Burden Hours: 874.

Estimated Annual Cost (Operating and Maintenance): $ 394,300.

Comments submitted with respect to this information collection request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice

of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct a regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of this interim rule on small entities, and believes the rule will not have a significant impact on a substantial number of small entities. The reasons for this conclusion are explained in the discussion which follows.

For purposes of this discussion, the Department has deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. For this purpose, it is assumed that arrangements with fewer than 100 participants and which are (1) multiemployer collectively bargained group health plans originated within the last three years, (2) non-collectively bargained multiple employer group health plans, or (3) other multiple employer arrangements which provide medical benefits, are small plans.

PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities as that term is defined in the RFA. As explained earlier, it is estimated that 2,678 plans and arrangements will file the MEWA annual reporting form. Of the total number of Form 5500 filers included in this total, the number of plans with fewer than 100 participants is estimated at 257, or about 11 percent. This number may be slightly understated because data from Form 5500 filings were used to develop the estimate of multiple employer group health plans which fall within the definition of a "welfare plan" for purposes of ERISA. That data generally excludes welfare plans with fewer than 100 participants which are either unfunded or fully insured due to this group's exemption from filing requirements.

Consideration of the number of small plans affected by this filing requirement is more meaningful in the context of the total number of small private group health plans estimated to exist. Based on the health coverage reported in the Employee Benefits Supplement to the 1993 Current Population Survey, and a 1993 Small Business Administration survey of retirement and other benefit coverages in small firms, it is estimated that there are approximately 2.6 million private group health plans with fewer than 100 participants. As such, even if all of the potential filers of this form were small plans, only one-tenth of one percent of small group health plans would be affected by this requirement.

It is expected, however, that a very small number of these arrangements will have fewer than 100 participants. By their nature, the affected arrangements must involve at least two employers, which decreases the likelihood of coverage of fewer than 100 participants. Also, underlying goals of the formation of these arrangements, such as gaining purchasing and negotiating power through economies of scale, improving administrative efficiencies, and gaining access to additional benefit design features, are not as readily accomplished if the group of covered lives remains small. Finally, although an average provides no insight into the number of arrangements which have fewer than 100 participants, it may still be noted that the average number of participants per arrangement in the data examined to estimate the number of potential filers appeared to be between 2,500 and 3,000.

It is known, however, that the *employers* typically involved in these arrangements *are* small (that is, have fewer than 500 employees, which is generally consistent with the definition of small entity found in regulations issued by the Small Business Administration (13 CFR § 121.201)). For example, RWJF data referenced earlier show that 12 million employees at 836,000 establishments indicated they obtained coverage through pooled purchasing arrangements. This averages just over 14 employees per establishment. Further, while some employers of 500 or more employees may be included in multiple employer arrangements providing health benefits, groups of this size are typically considered large enough to realize the advantages of economies of scale on their own. It can generally be assumed, therefore, that nearly all employers participating in these arrangements are small. The number of small employers assumed to be affected is 836,000.

The total annual cost of the filing requirement is estimated at $437,400. The filing requirement applies to the administrator of the estimated 2,678 plans or arrangements, and is expected to cost an average of about $164 per plan or arrangement. If this amount were passed on directly to the employers assumed to participate in these arrangements, their additional cost would amount to about $0.50 per year on average.

It is expected that this requirement will be satisfied by professional staff of an entity that provides administrative services to the group health plan or arrangement under an existing agreement. Entities with expertise in management, accounting, and benefits administration are often either formed by the group of employers for the purpose of managing a group health plan, or are responsible for establishing the plan or arrangement and making it available to the employers.

No federal rules have been identified that duplicate, overlap, or conflict with this interim final rule. The Department has considered a number of reporting formats, and has proposed a form intended to collect only the information necessary to assess compliance with Part 7 of ERISA as simply as possible, given the complexities of these arrangements and the regulatory framework in which they operate. The design of the form, which requires reporting by arrangements rather than employers participating in the arrangements, limits the number of filers which will be required to comply with the requirement. Compliance guides have been made part of the report package for the purpose of lessening the time required to assess compliance, and assisting the arrangements in achieving compliance where additional action is required.

Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Because these rules are issued as interim final rules and not as a notice of proposed rulemaking, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) does not apply. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, this interim final rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

Statutory Authority

Sec. 29 U.S.C. 1024, 1027, 1059, 1132(c)(5), 1135, 1171–1173, 1181–1183, 1191–1194; Sec. 101, Pub. L. 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Multiple Employer Welfare Arrangements, Pension and Welfare Benefit Administration, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

1. The authority for Part 2520 is revised to read:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), 502(c)(5), 505, 701–703, 711–713, 731–734 Pub. L. 93–406, 88 Stat. 840–852 and 894 (29 U.S.C. 1021–1025, 1029–1031, 1135, 1171–1173, 1181–1183, 1191–1194), as amended by Pub. L. 104–191, 101 Stat. 1936 and Pub. L. 104–204, 101 Stat. 2944; Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 are also issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Part 2520 is amended by adding § 2520.101–2 to read:

§ 2520.101–2 Annual reporting by multiple employer welfare arrangements and certain other entities offering or providing coverage for medical care to the employees of two or more employers.

(a) *Basis and scope.* Section 101(g){h} [1] of the Act permits the Secretary of Labor to require, by regulation, multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (within the meaning of section 733(a)(2) of the Act), and that are not group health plans, to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of the Act are being carried out in connection with such benefits. Section 734 of the Act provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of the Act. This section sets out requirements for annual reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of the Act (Entities Claiming Exception or ECEs). These requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

Administrator means—

(1) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(2) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of the Act); or

(3) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

Entity Claiming Exception (ECE) means an entity that claims it is not a MEWA due to the exception in section 3(40)(A)(i) of the Act. (In general, this exception is for entities that are established and maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements).

Group health plan means a *group health plan* within the meaning of section 733(a) of the Act and § 2590.701–2.

Health insurance issuer means a *health insurance issuer* within the meaning of section 733(b)(2) of the Act and § 2590.701–2.

Medical care means *medical care* within the meaning of section 733(a)(2) of the Act and § 2590.701–2.

Multiple employer welfare arrangement (MEWA) means a multiple employer welfare arrangement within the meaning of section 3(40) of the Act.

Origination means the occurrence of any of the following three events (and a MEWA or ECE is considered to have been *originated* when any of the following three events occurs)—

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all of the MEWAs or ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section—

(i) The administrator of a MEWA that offers or provides benefits consisting of medical care, regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE that offers or provides benefits consisting of medical care during the first three years after the ECE is originated.

(2) *Exception.* Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

(3) *Construction.* For purposes of this section, the following rules of construction apply—

(i) Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time when a filing under this section would otherwise be required that the entity is maintained pursuant to one or more collective bargaining agreements, the entity is an ECE, and the administrator of the ECE is not required to file if its most recent origination was more than three years. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were otherwise due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for

[1] Section 1421(d)(1) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) created a new section 101(g) of ERISA relating to Simple Retirement Accounts. Subsequently, section 101(e)(1) of HIPAA also created a new section 101(g) of ERISA relating to MEWA reporting. Accordingly, when referring to section 101(g) of ERISA relating to MEWA reporting, this document cites section 101(g){h} of ERISA.

years after the determination that the entity is a MEWA.

(ii) In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination, nonetheless, does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

(d) *Information to be reported* (1) The annual report required by this section shall consist of a completed copy of the Form M–1 "Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)" (Form M–1) and any additional statements required in the instructions to the Form M–1. This report is available by calling 1–800–998–7542 and on the Internet at http://www.dol.gov/dol/pwba.

(2) The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with § 2560.502c–5.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of the Act and § 2560.502c–5).

(e) *Timing*—(1) *Period to be Reported.* A completed copy of the Form M–1 is required to be filed for each calendar year during all or part of which the MEWA or ECE offers or provides coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

(2) *Filing deadline*—(i) *General March 1 filing due date.* Subject to the transition rule described in paragraph (e)(2)(ii) of this section, a completed copy of the Form M–1 is required to be filed on or before each March 1 that follows a period to be reported (as described in paragraph (e)(1) of this section). However, if March 1 is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(ii) *Transition rule for Year 2000 filings.* For the year 1999 period to be reported, a completed copy of the Form M–1 is required to be filed no later than May 1, 2000.

(iii) *Special rule requiring a 90–Day Origination Report when a MEWA or ECE is originated*—(A) *In general.* Subject to paragraph (e)(2)(ii)(B) of this section, when a MEWA or ECE is originated, the administrator of the MEWA or ECE is also required to file a completed copy of the Form M–1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day).

(B) *Exceptions.* (*1*) Paragraph (d)(2)(ii)(A) of this section does not apply if the origination occurred between October 1 and December 31.

(*2*) Paragraph (d)(2)(ii)(A) of this section does not apply before May 1, 2000. Therefore, for an entity that is originated, for example, on January 1, 2000, no 90–day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90–day origination report is required to be completed and filed no later than June 30, 2000.

(iv) *Extensions.* An extension may be granted for filing a report if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

(f) *Filing address.* A completed copy of the Form M–1 is filed with the Secretary by sending it to the address prescribed in the Instructions to the Form M–1.

(g) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of the Act for persons who fail to file the information required under this section (including a transition rule applicable to filings due in the year 2000), see § 2560.502c–5. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of the Act, see § 2570.90 *et seq.*

(h) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) MEWA *A* began offering coverage for medical care to the employees of two or more employers July 1, 1989 (and continuous to offer such coverage). MEWA *A* does not claim the exception under section 3(40)(A)(i) of ERISA.

(ii) In this *Example 1,* the administrator of MEWA *A* must file a completed copy of the Form M–1 by May 1, 2000. Furthermore, the administrator of MEWA *A* must file the Form M–1 annually by every March 1 thereafter.

Example 2. (i) ECE *B* began offering coverage for medical care to the employees of two or more employers on January 1, 1992. ECE *B* has not been involved in any mergers and in 1999 the number of employees to which ECE *B* provides coverage for medical care is not at least 50 percent greater than the number of such employees on December 31, 1998.

(ii) In this *Example 2,* ECE *B* was originated was on January 1, 1992 has not been originated since then. Therefore, the administrator of ECE *B* is not required to file a Form M–1 on May 1, 2000 because the last time the ECE *B* was originated was January 1, 1992 which more than 3 years prior to May 1, 2000.

Example 3. (i) ECE *C* began offering coverage for medical care to the employees of two or more employers on July 1, 1998.

(ii) In this *Example 3,* the administrator of ECE *C* must file a completed copy of the Form M–1 by May 1, 2000 because the last date *A* was originated was July 1, 1998, which is less than 3 years prior to the May 1, 2000 due date. Furthermore, the administrator of ECE *C* must file a year 2000 annual report by March 1, 2001 (because July 1, 1998 is less than three years prior to March 1, 2001). However, if ECE *C* is not involved in any mergers that would result in a new origination date and if ECE *C* does not experience a growth of 50 percent or more in the number of employees to which ECE *C* provides coverage from the last day of the previous calendar year to any day in the current calendar year, then no Form M–1 report is required to be filed after March 1, 2001.

Example 4. (i) MEWA *D* begins offering coverage to the employees of two or more employers on January 1, 2000. MEWA *D* is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

(ii) In this *Example 4,* the administrator of MEWA *D* is not required to file Form M–1 on May 1, 2000 because it is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

Example 5. (i) MEWA *E* is originated on September 1, 2000.

(ii) In this *Example 5,* because MEWA *E* was originated on September 1, 2000, the administrator of MEWA *E* must file a completed copy of the Form M–1 on or before November 30, 2000 (which is 90 days after the origination date). In addition, the administrator of MEWA *E* must file a completed copy of the Form M–1 annually by every March 1 thereafter.

(i) *Compliance dates*—(1) Subject to paragraph (i)(2) of this section, reports filed pursuant to this reporting requirement are first due by May 1, 2000. (Therefore, on May 1, 2000, filings are due with respect to MEWAs or ECEs that provided coverage in calendar year 1999.)

(2) 90-Day Origination Reports (described in paragraph (e)(2)(ii) of this section) are first due by May 1, 2000. Therefore, for an entity that is

originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90-day origination report is required to be completed and filed no later than June 30, 2000.

Signed at Washington, DC, this 4th day of February 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

BILLING CODE 4510-29-P

1999 Form M-1	Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)	OMB No. 1210-xxxx
MEWA/ECE Form This Form is Open to Public Inspection	This report is required to be filed under section 101(g)(h) of the Employee Retirement Income Security Act of 1974 and 29 CFR 2520.101-2. ➤ See separate instructions before completing this form.	Department of Labor Pension and Welfare Benefits Administration

PART I ANNUAL REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B**, as applicable.

A If this is an annual report, specify whether it is for:
(*1*) ☐ The 1999 calendar year; or
(*2*) ☐ The fiscal year beginning _____. _____ and ending _____. _____.

B If this is a special filing, specify whether it is:
(*1*) ☐ A 90-day origination report;
(*2*) ☐ An amended report; or
(*3*) ☐ A request for an extension.

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE
	1c Employer Identification Number (EIN)
	1d Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator
	2c Employer Identification Number (EIN)
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor
	3c Employer Identification Number (EIN)

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated . . . . . ➤ _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity offers or provides coverage	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no," to **5b**, is the entity fully-insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	

You may attach additional pages if necessary.

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE ..... ➤ _____

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State, federal, administrative litigation or enforcement proceeding, whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) ..... ➤ ☐ Yes ☐ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include: (1) the case number (if any), (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the disposition of the case noted in the upper right corner. If you need additional space, you may attach additional pages.

9 Complete the following. (Note: The instructions to this form contain four detailed worksheets which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a	Is the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department's regulations issued thereunder? (See Worksheet A)	➤ ☐ Yes ☐ No ☐ N/A
9b	Is the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Worksheet B)	➤ ☐ Yes ☐ No ☐ N/A
9c	Is the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Worksheet C)	➤ ☐ Yes ☐ No ☐ N/A
9d	Is the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Worksheet D)	➤ ☐ Yes ☐ No ☐ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, ATTACH ADDITIONAL SHEETS THE SAME SIZE AS THIS FORM.

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of administrator ➤ _____ Date ➤ _____

Type or print name of administrator ➤ _____

Department of Labor
Pension and Welfare Benefits Administration

Instructions for Form M-1

Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

ERISA refers to the Employee Retirement Income Security Act of 1974

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form	Preparing the form
2 hrs.	50 min. - 1 hr and 35 min.

Contents

The instructions are divided into three main sections.

Section 1	Page
1.1 Introduction	1
1.2 Who Must File	1
1.3 When to File	2
1.4 Where to File	2
1.5 Penalties	2
Section 2	
2.1 Year to be Reported	2
2.2 90-Day Origination Report	3
2.3 Signature and Date	3
2.4 Amended Report	3
Section 3	
3.1 Line-By-Line Instructions	3
3.2 Voluntary Worksheets	6

SECTION 1

1.1 Introduction

This form is required to be filed under section 101(g){h}* and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and 29 CFR 2520.101-2.

The Department of Labor, Pension and Welfare Benefits Administration (PWBA) is committed to working together with administrators to help them comply with this filing requirement. Filer's guides, which may be helpful in filing this report are available by calling the PWBA toll-free publication hotline at 1-800-998-7542 and on the Internet at: http://www.dol.gov/dol/pwba. If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the PWBA help desk at (202) 219-8818.

All Form M-1 reports are subject to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

* Both the Small Business Job Protection Act of 1996 (Pub. L. 104-188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

1.2 Who Must File

General rules

The "administrator" (defined below) of a "multiple employer welfare arrangement" (MEWA, defined below) generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an "entity claiming exception" (ECE, defined below) must file the report each year for the three years after the ECE is "originated" (defined below). (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

However, in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

Accordingly, subject to the exception described above for licensed or authorized health insurance issuers, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is required to file for three years following an origination. Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time of the filing that the entity is maintained pursuant to one or more collective bargaining agreements, the entity is an ECE, and the ECE is not required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for years after the determination that the entity is a MEWA.

In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

Definition of "Administrator"

For purposes of this form, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA) is the administrator. Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot

be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.

Definition of "Multiple Employer Welfare Arrangement" or "MEWA"
In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40).

Definition of "Entity Claiming Exception" or "ECE"
For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining agreements (contained in section 3(40)(A)(i) of ERISA).

The administrator of an ECE must file this report each year for the first three years after the ECE is "originated". (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Definition of "Originated"
For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals),

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the transaction have been offering or providing coverage for at least three years prior to the transaction), or

(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once. Each time an ECE is originated, filings are triggered.

1.3 When to File

General Rule
The administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than March 1 following any calendar year for which a filing is required.

*** Transition Rule for Year 2000 Filings:
For the 1999 Year to be Reported, the administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than May 1, 2000.

90-Day Origination Report
In general, an expedited filing is required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

Exceptions to the 90-Day Origination Report Requirement
(1) No 90-Day Origination Reports are due before May 1, 2000. (Therefore, for an entity that is originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity that is originated, for example, on April 1, 2000, a 90-Day Origination Report is required to be completed and filed no later than June 30, 2000.)

(2) No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions
A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must complete and file Parts I and II of the Form M-1 (and check **Box B(3)** in Part I) no later than the normal due date for the report. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of the request for extension must be attached to the completed Form M-1 when filed.

1.4 Where to File

Completed copies of the Form M-1 should be sent to:

Public Documents Room, Pension and Welfare Benefits Administration
Room N-5638, U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

1.5 Penalties

Good Faith Safe Harbor for Filings Due in Year 2000. The Department of Labor, Pension and Welfare Benefits Administration is committed to working together with administrators to help them comply with this filing requirement. In this regard, the Department does not intend to assess penalties in cases where there has been a good faith effort to comply with a filing due in the Year 2000.

However, in instances where there has not been a good faith effort to comply with a filing due in the Year 2000, and for any filing due after the Year 2000 (whether or not the administrator has made a good faith effort to comply), please be aware that ERISA provides for the assessment or imposition of a penalty for failure to file a report, failure to file a completed report, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report. In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported

General rule
The administrator of a MEWA or ECE that is required to file should complete the form using the previous calendar year's information. (Thus, for example, for a filing that is due by May 1, 2000, calendar year 1999 information should be used.)

Fiscal year exception
The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least six continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by May 1, 2000, fiscal year 1999 information may be used if the administrator has at least six continuous months of fiscal year 1999 information to report.) In this case, the administrator should check **Box A(2)** and specify the fiscal year.

2.2 The 90-Day Origination Report

When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there are two exceptions to the 90-Day Origination Report requirement: (1) No 90-Day Origination Reports are due before May 1, 2000. (Nonetheless, for an entity that is originated, for example, on April 1, 2000, a 90-Day Origination Report is required to be completed and filed by June 30, 2000.); and (2) No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date

The administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

2.4 Amended Report

To correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, **Box B(2)** checked and an original signature. When filing an amended report, answer all questions and circle the amended line numbers.

SECTION 3

Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions

Part I - Annual Report Identification Information
Complete either **Item A** or **Item B**, as applicable.

Item A: If this is an annual report, check either box A(1) or box A(2).
Check **box A(1)** if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)
Check **box A(2)** if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 1999 information is being used instead of calendar year 1999 information, specify the date the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Item B: If this is a special filing, check either box B(1), box B(2), or box (B)(3).
Check **box B(1)** if this form is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Reports.)
Check **box B(2)** if this form is an Amended Report. (See Section 2.4 on Amended Reports.)
Check **box B(3)** if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Part II - MEWA or ECE Identification Information

Items 1a through 1d: Enter the name and address of the MEWA or ECE, the telephone number of the MEWA or ECE, and any employer identification number (EIN) and plan number (PN) used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave **Item 1c** blank. If the MEWA or ECE does not have any PNs associated with it, leave **Item 1d** blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not by group health plans or employers that purchase coverage through the MEWA or ECE.

Items 2a through 2e: Enter the name and address of the administrator of the MEWA or ECE, the telephone number of the administrator, and any employer identification number (EIN) used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself.

Items 3a through 3c: Enter the name and address of the entity sponsoring the MEWA or ECE, the telephone number of the sponsor, and any employer identification number (EIN) used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. If the MEWA or ECE is not a group health plan, the administrator should enter the name, address, or telephone number of the entity that establishes or maintains the MEWA or ECE. If there is no such entity, leave **Item 3** blank and skip to **Item 4**.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, a MEWA or ECE is "originated" each time any of the following events occur:
(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);
(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the transaction have been offering or providing coverage for at least three years prior to the transaction); or
(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees during the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with

information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 5a. Under **Item 5a**, enter all States in which the MEWA or ECE offers or provides benefits for medical coverage.

In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, and the pertinent areas and installations of the Canal Zone.

Item 5b. Under **Item 5b**, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in each such State. (A "health insurance issuer" is defined, in pertinent part, in § 2590.701-2 of the Department's regulations, "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan.")

Item 5c. If the answer to Item 5b is "yes," under **Item 5c**, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. If the answer to Item 5b is "no," under **Item 5d** specify whether the MEWA or ECE is fully-insured by a health insurance issuer in each State.

Item 5e. If the answer to Item 5d is "yes," under **Item 5e** enter the name of the insurer and its NAIC number.

Item 5f. Under **Item 5f**, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance.

Item 5g. If the answer to Item 5f is "yes," under **Item 5g** enter the name of the stop-loss insurer and its NAIC number.

If more space is needed to complete **Item 5**, additional pages may be attached. These pages must indicate "Item 5 Attachment" in the upper right corner and must be in a format similar to that of **Item 5**.

Item 6: Of the States identified in **Item 5a**, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 employees of the two employers receive coverage through the MEWA. Three employers are located in State Y and 30 employees of the three employers receive coverage through the MEWA. Finally, one employer is located in State Z and 200 employees of the employer receive coverage through the MEWA. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23⅓% of its business in State X (70÷300 = 23⅓%) and 66⅔% of its business in State Z (200÷300 = 66⅔%). However, the administrator should not specify State Y because the MEWA conducts only 10% of its business in State Y (30÷300 = 10%)

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants eligible to receive coverage for benefits under the MEWA or ECE.

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997 at 62 FR 67687. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997 at 62 FR 66931. Also, regulations implementing the substantive provisions of Newborns' Act were published in the Federal Register on September 9, 1998 at 63 FR 48372 and on October 27, 1998 at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department's summary plan description (SPD) content regulations at 29 CFR 2520.102-3(u), 63 FR 48372 (September 9, 1998). Finally, on November 23, 1998, the Department issued informal guidance on WHCRA in the form of questions and answers. All of the above-mentioned guidance is available on the Department's website at www.dol.gov/dol/pwba and via the Pension and Welfare Benefits Administration's toll-free publications hotline at 1-800-998-7542.

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in the group market. A group health plan means an employee welfare benefit plan to the extent that the plan provides medical care (including items and services paid for as medical care) to employees or their dependents (defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. A health insurance issuer or issuer means an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance. Such term does not include a group health plan. Group market generally means the market for health insurance coverage offered in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if the MEWA or ECE is neither a group health plan nor a health insurance issuer, if the MEWA or ECE offers or provides coverage in the group market, the coverage is required to comply with Part 7 of ERISA.

Relation to Other Laws:
States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to the State Insurance Commissioner's Office.

For More Information: To obtain copies of the Department of Labor's booklet, "Questions and Answers: Recent Changes in Health Care Law," which includes information on HIPAA, MHPA, the Newborns' Act, and WHCRA, you may call the Department's toll-free publication hotline at 1-800-998-7542. This booklet is also available on the Internet at: www.dol.gov/dol/pwba. If you have any additional questions concerning Part 7 of ERISA, you may call the Department of Labor office nearest you or the Department's health care question hotline at 202-219-8776.

Items 8a and 8b: With respect to **Item 8a**, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under **Item 8a**, identify, in **Item 8b**, any such litigation or enforcement proceeding. If you need more space, you may attach additional pages. These pages must read "Item 8b Attachment" in the upper right corner.

Item 9a: The portability requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) comprise sections 701, 702, and 703 of ERISA, sections 9801, 9802, and 9803 of the Internal Revenue Code of 1986 (Code), and sections 2701 and 2702 of the Public Health Service Act (PHS Act).

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that meets the exception for certain small group health plans or if you are the administrator of a MEWA or ECE that offers only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Similarly, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet A may be helpful.

Item 9b: The Mental Health Parity Act of 1996 (MHPA) provisions are in section 712 of ERISA, section 9812 of the Code, and section 2705 of the PHS Act.

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that meets the exception for certain small group health plans or if you are the administrator of a MEWA or ECE that offers only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Second, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Third, if you are the administrator of a MEWA or ECE that does not provide both medical/surgical benefits and mental health benefits, you may answer "N/A." Finally, if you are the administrator of a MEWA or ECE that offers or provides coverage only to small employers (as described in the small employer exemption contained section 712(c)(1) of ERISA and § 2590.712(e) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder) or if the coverage satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and § 2590.712(f) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet B may be helpful.

Item 9c: The Newborns' and Mothers' Health Protection Act of 1996 (Newborn's Act) provisions are in section 711 of ERISA, section 9811 of the Code, and section 2704 of the PHS Act.

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A."

Moreover, if you are the administrator of a MEWA or ECE that does not provide benefits for hospital lengths of stay in connection with childbirth, you may answer "N/A." Finally, if you are the administrator of a MEWA or ECE that is subject to State law regulating such coverage, instead of the federal Newborns' Act requirements, in all States identified in **Item 5a**, in accordance with section 711(f) of ERISA and § 2590.711(e) of the Department's regulations (and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet C may be helpful.

Item 9d: The Women's Health and Cancer Rights Act of 1998 (WHCRA) provisions are in section 713 of ERISA and section 2706 of the PHS Act.

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that meets the exception for certain small group health plans or if you are the administrator of a MEWA or ECE that offers only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations, and the corresponding provisions of the PHS Act and the regulations issued thereunder), you may answer "N/A." Similarly, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Lastly, if you are the administrator of a MEWA or ECE that does not provide medical/surgical benefits with respect to a mastectomy, you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet D may be helpful.

3.2 Voluntary Worksheets

Voluntary worksheets, which may be used to help assess an entity's compliance with Part 7 of ERISA, are included on the following pages of these instructions. These worksheets may also be helpful in answering **Items 9a** through **9d** of the Form M-1.

Worksheet A (Form M-1)	Determining Compliance with the HIPAA Provisions in Part 7 of Subtitle B of Title I of ERISA Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the HIPAA provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to any of the questions below, you should review your entity's operations because the entity may not be in full compliance with the HIPAA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) Does the MEWA or ECE issue certificates of creditable coverage automatically to individuals who lose coverage under the MEWA or ECE and to individuals upon request? ..... ➤ ☐ Yes ☐ No

- Section 701(e) of ERISA and § 2590.701-5 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) require group health plans and group health insurance issuers to issue, free of charge, certificates of creditable coverage automatically to individuals who lose coverage and to any individual upon request.
- In the case of a certificate issued automatically, the certificate should reflect the most recent continuous period of creditable coverage. In the case of a certificate issued upon request, the certificate should reflect all creditable coverage that the individual had in the 24 months prior to the date of request. However, in no event is a certificate required to reflect more than 18 months of creditable coverage.
- Most health coverage is creditable coverage. However, coverage consisting solely of excepted benefits is not creditable coverage. Examples of benefits that may be excepted benefits include limited-scope dental benefits, limited-scope vision benefits, hospital indemnity benefits, and Medicare supplemental benefits.
- If you have a question whether health coverage offered by a MEWA or ECE is creditable coverage or is coverage consisting solely of excepted benefits, contact the Department of Labor office nearest you or call the Department's health care question hotline at 202-219-4377. This is not a toll-free number.

(2) Has the MEWA or ECE made available a procedure for individuals to request and receive certificates? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-5(a)(4)(ii) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) requires group health plans and group health insurance issuers to establish a procedure for individuals to request and receive certificates.

(3) If the MEWA or ECE imposes a preexisting condition exclusion period, does it issue a notice informing individuals of the exclusion, the terms of the exclusion, and the right of individuals to demonstrate creditable coverage to reduce the period of the exclusion? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-3(c) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) requires that a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant before notifying the participant, in writing, of the existence and terms of any preexisting condition exclusion under the plan and of the rights of individuals to demonstrate creditable coverage.
- The description of the rights of individuals to demonstrate creditable coverage includes a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and a statement that the current plan or issuer will assist in obtaining a certificate from any prior plan or issuer, if necessary.

(4) If the MEWA or ECE imposes a preexisting condition exclusion period, does it issue letters of determination and notification of creditable coverage within a reasonable time after the receipt of individuals' creditable coverage information? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-5(d) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) states that, within a reasonable time following receipt of evidence of creditable coverage, a plan or issuer seeking to impose a preexisting condition exclusion with respect to an individual is required to disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual, and the basis for such determination, including the source and substance of any information on which the plan or issuer relied.

- In addition, the plan or issuer is required to provide the individual with a written explanation of any appeal procedures established by the plan or issuer, and with a reasonable opportunity to submit additional evidence of creditable coverage.

(5) If the MEWA or ECE imposes a preexisting condition exclusion period, does it comport with HIPAA's limitations on preexisting condition exclusion periods? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 701(a)(1) of ERISA and § 2590.701-3(a)(1)(i) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that a plan or issuer may impose a preexisting condition exclusion period only if it relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the individual's enrollment date in the plan or coverage. (Therefore, genetic information is not treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.) The enrollment date, for purposes of the HIPAA limitations on preexisting condition exclusion periods, is the first day of coverage or, if there is a waiting period, the first day of the waiting period. (For health insurance issuers, State law may prescribe a shorter period than the 6-month period that generally applies.)

- Section 701(a)(2) of ERISA and section § 2590.701-3(a)(1)(ii) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that any preexisting condition exclusion period is limited to 12 months (18 months for late enrollees) after an individual's enrollment date in the plan or coverage. (For health insurance issuers, State law may prescribe a shorter period.)

- Section 701(a)(3) of ERISA and § 2590.701-3(a)(1)(iii) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that any preexisting condition exclusion period is reduced by the number of days of an individual's creditable coverage prior to his or her enrollment date.

- When determining the number of days of creditable coverage, the plan or issuer is not required to take into account any days that occur prior to a significant break in coverage. The federal law defines a significant break in coverage as a break of 63 days or more. However, State law applicable to health insurance coverage offered or provided by health insurance issuers may provide for a longer period.

- In any case, section 701(d) of ERISA and § 2590.701-3(b) provide that a group health plan, and a group health insurance issuer, may not impose any preexisting condition exclusion period with regard to a child who enrolls in a group heath plan within 30 days of birth, adoption, or placement for adoption and who does not incur a subsequent significant break in coverage. In addition, a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion relating to pregnancy. (For health insurance issuers, State law may further restrict the extent to which a preexisting condition exclusion may be imposed.)

(6) Does the MEWA or ECE issue notices of special enrollment rights to individuals who are eligible to enroll in the plan or coverage? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-6(c) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) requires that, on or before the time an employee is offered the opportunity to enroll in a group health plan or coverage, the plan or issuer provide the employee with a description of the plan's special enrollment rules.

- For this purpose, the plan may use the following model description of special enrollment rules:

> If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

(7) Does the MEWA or ECE provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption? ..... ➤ ☐ Yes ☐ No

- Section 701(f) of ERISA and § 2590.701-6 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) require group health plans, and group health insurance issuers, if certain conditions are met, to permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if the individual loses other coverage or acquires a new dependent through marriage, birth, adoption, or placement for adoption.
- For State laws applicable to health insurance issuers that may provide individuals with additional special enrollment rights, check with an attorney or the Insurance Commissioner's Office in your State.

(8) Do the MEWA's or ECE's rules for eligibility (including continued eligibility) comply with the nondiscrimination requirements that prohibit discrimination against any individual or a dependent of an individual based on any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(a) of ERISA and § 2590.702(a) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that a group health plan, and a group health insurance issuer, may not establish rules for eligibility (including continued eligibility, rules defining any applicable waiting periods, and rules relating to late and special enrollment) of any individual to enroll under the terms of the plan based on a health factor.
- The health factors are: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability.
- However, nothing requires a plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the plan or coverage. In addition, nothing prevents a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

(9) Does the MEWA or ECE comply with the nondiscrimination requirements that prohibit requiring any individual (as a condition of enrollment or continued enrollment) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(b) of ERISA and § 2590.702(b) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that a group health plan, and a group health insurance issuer, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor (defined above).
- However, nothing restricts the amount that an employer may be charged for coverage under a group health plan and nothing prevents a plan or issuer from establishing premium discounts or rebates or modifying applicable copayments or deductibles in return for adherence to bona fide wellness programs.

(10) If the entity is a multiemployer plan or a MEWA, does it comply with the guaranteed renewability requirements, which generally prohibit it from denying an employer whose employees are covered under a group health plan continued access to the same or different coverage under the terms of the plan? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 703 of ERISA (as well as the corresponding provisions in the Code) provides that a group health plan that is a multiemployer plan or a MEWA may not deny an employer whose employees are covered under the plan continued access to the same or different coverage under the terms of the plan, other than for nonpayment of contributions; for fraud or other intentional misrepresentation of material fact by the employer; for noncompliance with material plan provisions; because the plan is ceasing to offer any coverage in a geographic area; in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan acts without regard to the claims experience of the employer or any health factor in relation to those individuals or their dependents; and for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.
- For other laws applicable to health insurance issuers that may provide additional guaranteed renewability requirements, check with an attorney or the Insurance Commissioner's Office in your State.

Worksheet B (Form M-1)	**Determining Compliance with the Mental Health Parity Act (MHPA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the MHPA provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the question below, you should review your entity's operations because the entity may not be in full compliance with the MHPA provisions in Part 7 of ERISA. If you need help answering this question or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

Q. If the MEWA or ECE offers or provides both mental health benefits and medical/surgical benefits, does the MEWA or ECE comply with the requirements of the MHPA provisions, which are contained in section 712 of ERISA (as well as the corresponding provisions of the Code and the PHS Act)? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 712 of ERISA and § 2590.712 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) generally provide for parity in the application of aggregate lifetime dollar limits and in the application of annual dollar limits between benefits for medical and surgical care and benefits for mental health coverage.
- However, these provisions do not require a group health plan or group health insurance coverage to provide any mental health coverage. And, MHPA does not apply to benefits for substance abuse or chemical dependency.
- In addition, there are exemptions for small employers and certain plans or coverage with increased costs.
- Finally, MHPA does not apply to benefits for services furnished on or after September 30, 2001.
- Contact the Department of Labor Office nearest you or call the Department's health care hotline at 202-219-4377 to find out more about these provisions.

Worksheet C (Form M-1)	**Determining Compliance with the Newborns' and Mothers' Health Protection Act (Newborns' Act) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the Newborns' Act provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the questions below, you should review your entity's operations because the entity may not be in full compliance with the Newborns' Act provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides benefits for hospital stays in connection with childbirth and is subject to the Newborns' Act, does the MEWA or ECE comply with the Newborns' Act's substantive requirements, which are contained in section 711 of ERISA (as well as the corresponding provisions of the Code and the PHS Act)? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 711 of ERISA and § 2590.711 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) generally provide that a group health plan, and a group health insurance issuer, that offers benefits for hospital lengths of stay in connection with childbirth may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child, following a vaginal delivery to less than 48 hours, and following a cesarean section to less than 96 hours, unless the attending provider, in consultation with the mother, decides to discharge earlier.

- In addition, such a plan or issuer may not require that the provider obtain authorization from the plan or issuer for prescribing any length of hospital stay up to 48 hours following a vaginal delivery and up to 96 hours following a cesarean section. Nor may such a plan or issuer penalize an attending provider for complying with this law or provide incentives to an attending provider to provide care in a manner that is inconsistent with this law. Nor may such a plan or issuer deny the mother or newborn eligibility or continued eligibility, or provide incentives to mothers to encourage them to accept less than the minimum length of stay required. Nor may such a plan or issuer restrict benefits for any portion of a period within a hospital length of stay required by this law in a manner that is less favorable than the benefits provided for any preceding portion of the stay.

- The Newborns' Act's requirements apply to all self-insured benefits offered in connection with childbirth. However, State law rather than federal law may apply to health insurance coverage offered in connection with childbirth if the State law meets certain criteria specified in section 711(d) of ERISA and § 2590.711(d) of the Department's regulations. (These criteria are also specified in the Code and the PHS Act and the regulations issued thereunder.) Based on a preliminary review of State laws as of July 1, 1998, State law rather than federal law applies to health insurance coverage offered in connection with childbirth in the following States:

  Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia. Health insurance coverage offered in connection with childbirth in other States should also comply with the federal Newborns' Act requirements.

Moreover, the following States appear to have a State law applicable to health insurance coverage that references the federal Newborns' Act provisions:

Delaware, Idaho, and Oregon.

Finally, the following States and other jurisdictions do not appear to have a law regulating coverage for newborns and mothers that would apply to health insurance coverage. Therefore, the federal Newborns' Act provisions appear to apply to health insurance coverage in the following States:

Hawaii, Michigan, Mississippi, Nebraska, Utah, Vermont, Wisconsin, Wyoming, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, and the pertinent areas and installations of the Canal Zone.

(2) If the MEWA or ECE or provides benefits in connection with childbirth and is a group health plan, does the MEWA or ECE comply with the disclosure requirements under the Newborn's Act? ..... ► ☐ Yes ☐ No ☐ N/A

- Section 711(d) of ERISA and § 2520.102-3(u) require group health plans providing maternity benefits to include a statement in their summary plan descriptions advising individuals of the Newborns' Act's requirements.

- For this purpose, a MEWA or ECE that is subject to the Newborns' Act disclosure requirements through ERISA may use the following sample language:

> Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

- MEWAs and ECEs that are nonfederal governmental plans are subject to a similar disclosure requirement. For mandated language required to be used by such plans, see 45 CFR § 146.130(d)(2) (published in the **Federal Register** at 63 CFR 57561 on October 27, 1998).

Worksheet D (Form M-1)	**Determining Compliance with the Women's Health and Cancer Rights Act (WHCRA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the WHCRA provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the questions below, you should review your entity's operations because the entity may not be in full compliance with the WHCRA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides mastectomy coverage, does the MEWA or ECE comply with WHCRA's substantive requirements, which are contained in section 713 of ERISA (as well as the corresponding provisions of the PHS Act)? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713 of ERISA (as well as the corresponding provisions in the PHS Act) generally provides that a group health plan, and a group health insurance issuer, that offers mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas.
- In addition, a plan or issuer may not deny a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of WHCRA. Nor may a plan or issuer penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to furnish care to an individual participant or beneficiary in a manner inconsistent with WHCRA.
- Plans and issuers may impose deductibles or coinsurance requirements for reconstructive surgery in connection with a mastectomy, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.
- State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage for reconstructive breast surgery that is required by WHCRA.

(2) If the MEWA or ECE offers or provides mastectomy coverage, does the MEWA or ECE comply with the disclosure requirements under WHCRA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713(b) of ERISA (as well as the corresponding provisions of the PHS Act) establishes a one-time notice requirement under which group health plans, and their health insurance issuers, must furnish a written description of the benefits that WHCRA requires. This notice is required to be furnished as part of the next general mailing (made after October 21, 1998) by group health plans, and their health insurance issuers, or in the yearly information packet sent out regarding the plan, but, in any event, the one-time notice is required to be furnished not later than January 1, 1999.
- Section 713(a)(3) of ERISA (as well as the corresponding provisions of the PHS Act) establishes a disclosure requirement under which group health plans, and their health insurance issuers, must again describe the benefits required under WHCRA, but the notice is to be provided upon enrollment in the plan and annually thereafter.
- Both notices must indicate that, in the case of a participant or beneficiary who is receiving benefits under the plan in connection with a mastectomy and who elects breast reconstruction, the coverage will be provided in a manner determined in consultation with the attending physician and the patient for reconstruction of the breast on which the mastectomy was performed; surgery and reconstruction of the other breast to produce a symmetrical appearance; and prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas. The notice must also describe any deductibles and coinsurance limitations applicable to such coverage. (Under WHCRA, coverage of breast reconstruction benefits may be subject to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.)

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210–AA54

Interim Rule for the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that describes procedures relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974, (ERISA) as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g){h} of ERISA. The interim final rule clarifies the manner in which the Secretary will assess penalties under ERISA section 502(c)(5), as amended by HIPAA, and the procedures for agency review. Separate documents containing interim final rules implementing the reporting requirement under section 101(g){h} of ERISA and interim final rules relating to procedures for administrative hearings and appeals on assessments of penalties under ERISA section 502(c)(5) appear separately in this issue of the **Federal Register**.

DATES: *Effective date:* This interim final rule is effective April 11, 2000.

Comment date: Written comments are invited and must be received by the Department on or before March 13, 2000.

Applicability date: This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: "MEWApen@pwba.dol.gov" (without the quotation marks).

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains an interim final rule that provides guidance relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), for the failure or refusal to file a report pursuant to section 101(g){h} [1] of ERISA, as amended by HIPAA. This regulation is designed to parallel the procedures set forth in § 2560.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 101(b)(4).

B. Overview of the Interim Final Rule

Section 502(c)(5) provides that the Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the report required to be filed under section 101(g){h}. In order to implement this provision, the Department is publishing this interim final rule, and, in a separate document, interim final rules relating to procedures for administrative hearings and appeals on assessments of civil penalties under ERISA section 502(c)(5).

In general, the interim final rule in § 2560.502c–5, discussed in detail below, addresses:

- The circumstances under which a penalty may be assessed (§ 2560.502c–5(a));
- Factors considered by the Department in determining the amount of a penalty (§ 2560.502c–5(b));
- The provision of notice to the administrator of the Department's intention to assess a penalty (§ 2560.502c–5(c));
- Waiver of all or part of the penalty by the Department upon a showing of reasonable cause and the requirements relating to a showing of reasonable cause (§ 2560.502c–5(d) and (e));
- The effect of a failure to file a statement of reasonable cause (§ 2560.502c–5(f));
- The provision of notice to the administrator of the Department's findings as to reasonable cause and the effect of such notice where a penalty is assessed (§ 2560.502c–5(g));
- The effect of a request for a hearing before an administrative law judge (§ 2560.502c–5(h));
- Service of notices (§ 2560.502c–5(i));
- The liability of the administrator for assessed penalties (§ 2560.502c–5(j));
- A cross-reference to procedural rules relating to administrative hearings (§ 2560.502c–5(k)); and
- An applicability date provision (§ 2560.502c–5(l)).

In general, the assessment of penalties under section 502(c)(5) and § 2560.502c–5 would occur only in those instances where the administrator fails or refuses to file a report within the prescribed time frames or, after notification that the report has been rejected and the reasons therefor, where the administrator fails or refuses to file a corrected report within the 45 day period prescribed in § 2560.502c–5(b)(3). Accordingly, in the case of a report rejected under § 2520.101–2(d)(2), the administrator can avoid the assessment of any penalty under section 502(c)(5) by making the necessary corrections to the filing within the prescribed time frame. Moreover, as reflected in paragraph (g) of the interim final rule, penalties may be waived, in whole or in part, upon the administrator's showing of reasonable cause for the failure to file a complete or timely report.

C. Discussion of the Interim Final Rule

1. Scope

Paragraph (a) of the interim final rule addresses the general application of section 502(c)(5). Paragraph (a)(1) provides that the administrator of a MEWA that is not a group health plan and for which a report is required to be filed under section 101(g){h} of ERISA and § 2520.101–2 is liable for the penalties assessed under section 502(c)(5) for each failure or refusal to file a completed report. Accordingly, if a person is required to file more than

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of EIRSA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

one report because that person serves an administrator with respect to several entities for which a filing is required, separate penalties may be assessed with respect to each instance for which there is a failure or refusal to file the required report. Paragraph (a)(2) defines a failure or refusal to file the report as a failure or refusal to file, in whole or in part, that information described in ERISA section 101(g){h} and § 2520.101–2, at the time and in the manner prescribed for such filings. Accordingly, the filing of an incomplete report will be treated as a failure to file under section 502(c)(5). *See* § 2520.101–2(d)(2).

2. Amount Assessed

Paragraph (b)(1) of the interim final rule provides that the Department shall take into account the degree and/or willfulness of the failure to file the report in determining the amount to be assessed under section 502(c)(5). Consistent with the terms of section 502(c)(5), paragraph (b)(1) provides that the penalty assessed by the Department shall not exceed $1,000 a day. With regard to the period for which a penalty may be assessed, paragraph (b)(1) provides that the penalty generally will be computed from the date of the administrator's failure or refusal to file the report and continue up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101–2, as determined by the Secretary, is filed. Accordingly, under paragraph (b)(1) of this section, liability for penalties under section 502(c)(5) would continue for each day up to the date compliance is achieved. However, under paragraph (b)(2), the interim final rule provides for tolling of the daily penalty where, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c)), the administrator files with the Department a statement of reasonable cause for the failure to file (as described in paragraph (e)). Under paragraph (b)(2), the administrator will not incur liability for penalties for any day beginning with the date the Department serves the administrator a copy of the notice to assess a penalty and ending with the day after the Department issues the notice of determination on the statement of reasonable cause (as described in paragraph(g)). This limited tolling of the penalty will permit MEWA administrators to present arguments to the Department concerning any reasonable cause for the failure to file without incurring penalties for the period of time during which the administrator's statement of reasonable cause is being considered by the Department.

Paragraph (b)(3) defines the date on which an administrator failed or refused to file the report as the date on which the report was due (determined without regard to any extension of time for filing). In this regard, paragraph (b)(3) provides that a report which is rejected under § 2520.101–2(d)(2) shall be treated as a failure to file the report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection.

In those situations where an extension of time is granted for the filing of the report and the administrator fails either to file a timely report or a complete report within the extension period, the administrator should not, for purposes of the section 502(c)(5) penalty, benefit from the requested extension. Accordingly, the interim rule states that for purposes of paragraph (b)(3), the penalty is assessed beginning on the day after the date of the administrator's failure or refusal to file the report.

3. Notice of Penalty

Paragraph (c) of the interim final rule provides that, prior to the assessment of any penalty under section 502(c)(5), the Department shall provide the administrator with a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of the penalty, the period to which the penalty applies, and a statement of the facts and reasons for the penalty. This notice is to be served in accordance with the service of notice provisions of § 2560.502c–5(i) of this interim final rule. Under § 2560.502c–5(f) of this interim final rule, this notice becomes a final order of the Secretary, within the meaning of § 2570.91(g) (*see* interim final rules §§ 2570.90 *et seq.*, published separately in this issue of the **Federal Register**), within 30 days of the service of notice, unless a statement of reasonable cause, described in § 2560.502c–5(e) of the interim final rule, is filed with the Department.

4. Waiver of Penalty

Paragraphs (d), (e), (f), (g) and (h) of the interim final rule generally relate to the waiver of penalties under section 502(c)(5). Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(5) upon a showing of reasonable cause for the failure to file the report. Paragraph (e) provides that, subsequent to the issuance of a notice of the Department's intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice to make an affirmative showing of reasonable cause for the failure to file a complete report or why the penalty, as calculated, should not be assessed. Paragraph (e) requires that the statement of reasonable cause be in the form of a written statement that sets forth all the facts alleged in support of reasonable cause and contains a declaration by the administrator that the statement is made under penalties of perjury.

Paragraph (f) describes the effect of a failure to file the statement of reasonable cause within the prescribed 30 day period. A failure on the part of the administrator to file a timely statement of reasonable cause will constitute a waiver of the right to appear and contest the facts alleged in the Department's notice and an admission of the facts alleged in the notice for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(5). Under paragraph (f), the Department's notice of intent to assess a penalty, described in paragraph (c), then becomes a final order of the Secretary, within the meaning of paragraph (g) of § 2570.91. (*See* §§ 2570.90 *et seq.*, published separately in this issue of the **Federal Register**).

Paragraph (g)(1) of the interim final rule provides that, following a review of the facts alleged in the statement of reasonable cause, the Department, in a notice of determination, shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty and a brief statement of the reasons for assessing the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). In general, paragraph (h) provides that the notice described in paragraph (g) shall not become a final order unless, within 30 days of the date of service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.90 *et seq.* (published separately in this issue of the **Federal Register**), and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.92. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g).

5. Service of Notices

Paragraph (i) of the interim final rule describes the manner in which the notice of intent to assess a penalty, described in paragraph (c), and the

notice of determination on a statement of reasonable cause, described in paragraph (g), will be served. Under paragraph (i) of the interim final rule, service of notice shall be made either: (1) By delivering a copy to the administrator or the administrator's representative; (2) by leaving a copy at the principal office, place of business, or residence of the administrator or the administrator's representative; or (3) by mailing a copy to the last known address of the administrator or the administrator's representative. If service is accomplished by certified mail, service is complete upon mailing. If service is done be regular mail, service is complete upon receipt by the addressee.

6. Liability

Paragraph (j) of the interim final rule clarifies the liability of the parties for penalties assessed under section 502(c)(5). Paragraph (j)(1) provides that if more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable for such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(5) is personally liable for the payment of such penalty. Paragraph (j)(2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(5) is the personal liability of the person against whom the penalty is assessed and not a liability of the MEWA. Accordingly, assets of the MEWA can not be used to pay the penalty.

7. Applicability

Paragraph (l) of the interim rule clarifies that this section generally applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000. Under a transition safe harbor period, however, no civil penalty will be assessed against an administrator that has made a good faith effort to comply with a § 2520.101–2 filing that is due in the Year 2000. This transition rule was created because, during this first year in particular, the Department is focused on educating administrators about this filing requirement and is committed to working with them to help them comply. In this regard, the Department has developed filers' guides which may be helpful in filing the Form M–1. These filers' guides will be made available on the Pension and Welfare Benefits Administration's website at www.dol.gov/dol/pwba and through their toll-free publication hotline at 1–800–998–7542. Also, the Pension and Welfare Benefits Administration's help desk (202–219–8818) is available in case administrators have questions or if they need any assistance with filings.

D. Interim Final Rule With Request for Comments

Section 734 of ERISA (formerly section 707) authorizes the Secretary of Labor, consistent with section 104 of HIPAA, to promulgate any such regulations as may be necessary or appropriate to carry out the provisions of Part 7 of ERISA. In addition, this section specifically authorizes the Secretary to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. The report required to be filed under section 101(g)(h) is for the purpose of determining the extent to which the requirements of Part 7 are being carried out. Accordingly, the Department has determined that issuing this regulation in interim final form is necessary in order for the Secretary to continue to effectively enforce the requirements of section 101(g){h} of ERISA and the implementing regulations under § 2520.101–2. Written comments on these interim rules are invited.

E. Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

F. Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(3).

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA) requires each Federal agency to perform an initial regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this interim final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants. The Department invites comments on the effect of this interim final rule on small entities.

H. Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

I. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Statutory Authority

The interim final rule set forth herein is issued pursuant to the authority contained in section 502(c)(5) of ERISA (Pub. L. 104–191, 110 Stat. 1936, 1952, 29 U.S.C. 1132(c)(5)), section 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135) and section 734 of ERISA (Pub. L. 104–204, 110 Stat. 2874, 2935, 29 U.S.C. 1194c), and under Secretary of Labor's Order 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Multiple Employer Welfare Arrangements, Pension and Welfare Benefits Administration, Reporting and disclosure.

For the reasons set out in the preamble, Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—[AMENDED]

1. The authority for Part 2560 is revised to read:

Authority: 29 U.S.C. 1132, 1135, 1194 and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under 29 U.S.C. 1133.

2. Part 2560 is amended by adding § 2560.502c–5 to read:

§ 2560.502c–5—Civil penalties under section 502(c)(5).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 Pub.L. 93–406, 88 Stat. 840–52, as amended by Pub. L. 104–191, 101 Stat. 1936) (the Act), the administrator of a multiple employer welfare arrangement (MEWA) (within the meaning of section 3(40)(A) of the Act) that is not a group health plan, and that provides benefits consisting of medical care (within the meaning of section 733(a)(2)), for which a report is required to be filed under section 101(g){h} of the Act and § 2520.101–2, shall be liable for civil penalties assessed by the Secretary under section 502(c)(5) of the Act for each failure or refusal to file a completed report required to be filed under section 101(g){h} and § 2520.101–2. The term "administrator" is defined in § 2520.101–2(b).

(2) For purposes of this section, a failure or refusal to file the report required to be filed under section 101(g){h} shall mean a failure or refusal to file, in whole or in part, that information described in section 101(g){h} and § 2520.101–2, on behalf of the MEWA, at the time and in the manner prescribed therefor.

(b) *Amount assessed.*—(1) The amount assessed under section 502(c)(5) shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure to file the report. However, the amount assessed under section 502(c)(5) of the Act shall not exceed $1,000 a day, computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101–2, as determined by the Secretary, is filed.

(2) If, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section), the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the report shall be the date on which the report was due (determined without regard to any extension of time for filing). A report which is rejected under § 2520.101–2 shall be treated as a failure to file a report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection. If a revised report meeting the requirements of this section, as determined by the Secretary, is not submitted within 45 days of the date of the notice of rejection by the Department, a penalty shall be assessed under section 502(c)(5) beginning on the day after the date of the administrator's failure or refusal to file the report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(5), the Department shall provide to the administrator of the MEWA a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of such penalty, the period to which the penalty applies, and a statement of the facts and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(5) on a showing by the administrator that there was reasonable cause for the failure to file the report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to file a statement of reasonable cause for the failure to file a complete report or why the penalty, as calculated, should not be assessed. A showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g).

(g) *Notice of the determination on statement of reasonable cause*—(1) The Department, following a review of all the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.91(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.90 *et seq.*, and files and answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.92. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g).

(i) *Service of notice*—(1) Service of notice shall be made either:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee

(j) *Liability*—(1) If more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(5) pursuant to a final order, within the meaning of § 2570.91(g), shall be personally liable for the payment of such penalty.

(k) Cross-reference. See §§ 2570.90 through 101 of this chapter for procedural rules relating to administrative hearings under section 502(c)(5) of the Act.

(l) *Applicability date*—(1) *In general.* This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

(2) *Transitional safe harbor period.* No civil penalty will be assessed against an administrator that has made a good faith effort to comply with a § 2520.101–2 filing that is due in the Year 2000.

Signed at Washington DC, this 4th day of February, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–2936 Filed 2–10–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

RIN 1210–AA54

Interim Rule Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that describes procedures relating to administrative hearings, in connection with the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) of ERISA authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g){h} of ERISA. Separate documents are also being published today in the **Federal Register** containing interim final rules implementing the reporting requirement under section 101(g){h} of ERISA and interim final rules describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5).

DATES: *Effective date:* This interim final rule is effective April 11, 2000.

Comment date: Written comments are invited and must be received by the Department on or before March 13, 2000.

Applicability Date: This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: "MEWAproc@pwba.dol.gov" (without the quotation marks).

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains an interim final rule that provides guidance relating to the procedures for administrative hearings and appeals regarding the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), for the failure or refusal to file a completed report pursuant to section 101(g){h} [1] of ERISA, as amended by HIPAA. This regulation is designed to parallel the procedures set forth in § 2570.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 104(b)(4).

B. Overview of the Interim Final Rule

Section 502(c)(5) provides that the Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the report required to be filed under section 101(g){h}. In order to implement this provision, the Department is publishing this interim final rule, and in a separate document, an interim final rule describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5). *See* § 2560.502c–5.

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[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

This document contains an interim final rule that establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to an assessment by the Department of Labor (the Department) of a civil penalty under section 502(c)(5), and for appeals of an ALJ decision to the Secretary or the Secretary's delegate. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for the purpose of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary of Labor's Order 1–87, 52 FR 13139 (April 21, 1987).

The Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges in Subpart A of 29 CFR Part 18, 48 FR 32538 (1983). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of Subpart A of 29 CFR Part 18 and a rule or procedure required by statute, executive order, or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of Subpart A of 29 CFR Part 18 to the assessment of civil penalties under ERISA section 502(c)(5) and has decided to adopt many, though not all, of the provisions of Subpart A of 29 CFR Part 18 for these proceedings. Accordingly, adjudications relating to civil penalties under ERISA section 502(c)(5) will be governed by the following sections [2] of Subpart A of 29 CFR Part 18:

§ 18.4 Time computations.
§ 18.5 (c) through (e) Responsive pleadings—answer and request for hearing.
§ 18.6 Motions and requests.
§ 18.7 Prehearing statements.
§ 18.8 Prehearing conferences.
§ 18.11 Consolidation of hearings.
§ 18.12 Amicus curiae.
§ 18.13 Discovery methods.
§ 18.15 Protective orders.
§ 18.16 Supplementation of responses.
§ 18.17 Stipulations regarding discovery.
§ 18.18 Written interrogatories to parties.
§ 18.19 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.
§ 18.20 Admissions.
§ 18.21 Motion to compel discovery.
§ 18.22 Depositions.
§ 18.23 Use of depositions at hearings.
§ 18.24 Subpoenas.
§ 18.25 Designation of administrative law judge.
§ 18.26 Conduct of hearings.
§ 18.27 Notice of hearing.
§ 18.28 Continuances.
§ 18.29 Authority of administrative law judge.
§ 18.30 Unavailability of administrative law judge.
§ 18.31 Disqualification.
§ 18.32 Separation of functions.
§ 18.33 Expedition.
§ 18.34 Representation.
§ 18.35 Legal assistance.
§ 18.36 Standards of conduct.
§ 18.37 Hearing room conduct.
§ 18.38 Ex parte communications.
§ 18.39 Waiver of right to appear and failure to participate or to appear.
§ 18.40 Motion for summary decision.
§ 18.42 Expedited proceedings.
§ 18.43 Formal hearings.
§ 18.44 Evidence.
§ 18.45 Official notice.
§ 18.46 In camera and protective orders.
§ 18.47 Exhibits.
§ 18.48 Records in other proceedings.
§ 18.49 Designation of parts of documents.
§ 18.50 Authenticity.
§ 18.51 Stipulations.
§ 18.52 Record of hearings.
§ 18.53 Closing of hearings.
§ 18.54 Closing the record.
§ 18.55 Receipt of documents after hearing.
§ 18.56 Restricted access.
§ 18.59 Certification of official record.

This interim final rule relates specifically to procedures for assessing civil penalties under section 502(c)(5) of ERISA and are controlling to the extent they are inconsistent with any portion of Subpart A of 29 CFR Part 18. This interim final rule is designed to maintain the maximum degree of uniformity with the rules set forth in Subpart A of 29 CFR Part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(5). For purposes of clarity, where a particular section of the existing procedural rules would be affected by these interim final rules, the entire section of the existing procedural rules (with the appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural rules set forth below involve changes from, or additions to, the rules in Subpart A of 29 CFR Part 18. The specific modifications to the rules in Subpart A 29 CFR Part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

C. Discussion of the Interim Final Rules

1. In General

The applicability of these procedural rules under section 502(c)(5) is set forth in § 2570.90. In this regard, it should be noted that the procedural rules contained herein apply only to adjudicatory proceedings before ALJs of the U.S. Department of Labor. The interim rule in § 2560.502c–5, also being published today, sets forth the procedures relating to issuance by PWBA of notices of intent to assess a penalty under ERISA section 502(c)(5), as well as procedures for agency review of statements of reasonable cause filed by persons against whom a penalty is assessed. Under the interim final rule contained in this notice, an adjudicatory proceeding before an ALJ is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(5) files an answer to a notice of the agency's determination on a statement of reasonable cause. See § 2570.91(c) and (d) below, and § 2560.502c–5(h), published separately in this issue of the **Federal Register**.

The definitional section (§ 2570.91) of these interim final rules incorporates the basic adjudicatory principles set forth in Subpart A of 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(5). In this respect, it differs from its more general counterpart at § 18.2 of this title. In particular, § 2570.91 states that the term "Secretary" means the Secretary of Labor and includes various persons to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority that the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. As noted above, the Secretary of Labor has delegated most of his or her authority under ERISA to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or a properly authorized delegate.

2. Proceedings Before Administrative Law Judges

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(5) (the respondent). However, a respondent must have complied with the procedures relating to agency review set forth in § 2560.502c–5 before

[2] To the extent that any provision of Subpart A of 29 CFR Part 18 is not incorporated, the provisions detailed in this section are intended to govern the rules of practice and procedure for administrative hearings relating to civil penalties under ERISA section 502(c)(5).

initiating adjudicatory proceedings under this section. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in § 2560.502c–5(c), and the notice of determination on a statement of reasonable cause, as described in § 2560.502c–5(g), will be issued by PWBA, the agency responsible for administration and enforcement of ERISA section 502(c)(5), in accordance with the service of notice provisions described in § 2560.502c–5(i). Paragraph (c) of § 2570.91 (relating to respondent's answer), paragraph (d) of § 2570.91 (relating to commencement of proceedings), and paragraph (h) of § 2570.91 (relating to administrative hearings) contemplate that adjudicatory proceedings will be initiated with the filing by a respondent of an answer to a notice of the agency's determination on a statement of reasonable cause.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by § 2570.92 of these interim final rules.

In general, the rules in Subpart A of 29 CFR Part 18 concerning the computation of time, pleadings and motions, and prehearing conferences and statements, are adopted in these procedures for adjudications under ERISA section 502(c)(5). The section on the designation of parties (§ 2570.93) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(5).

Section 2590.94 describes the consequences of default. This section provides that if the respondent fails to file an answer to the Department's notice of determination, described in § 2560.502c–5(g), within the 30-day period provided by § 2560.502c–5(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5). Section 2570.94 clarifies that, in the event of such a failure, the assessment of the penalty becomes final.

Section 2590.95 addresses consent orders or settlements. This section permits parties, up to 5 days prior to a scheduled hearing, to request that a hearing be deferred for a reasonable period of time to permit negotiation of a settlement or agreement resolving the whole or any part of the issues relating to assessment of a penalty under ERISA section 502(c)(5). The section also states that the ALJ's decision shall include the terms and conditions of any consent order or settlement that has been agreed to by the parties. That section also provides that the decision of the ALJ, which incorporates such consent order, shall become a final agency action within the meaning of 5 U.S.C. 704. Finally, this section prescribes rules for the content, submission and disposition of any settlement agreement under this section, and a process for settling the whole or any part of the issues where all parties have not consented to the terms of the proposed settlement.

Section 2570.96 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from Subpart A of 29 CFR Part 18 are to be applied in these proceedings under section 502(c)(5). For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under Subpart A of 29 CFR Part 18 concerning the service and answering of such interrogatories shall apply. The procedures under Subpart A of 29 CFR Part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(5).

The section on summary decisions (§ 2570.97) provides the requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(5). The section concerning the decision of the ALJ (§ 2570.98) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in a section 502(c)(5) case shall become the final decision of the Secretary unless a timely appeal is filed.

3. Review by the Secretary

The procedures for appeals of ALJ decisions under ERISA section 502(c)(5) are governed solely by the rules set forth in §§ 2570.99 through 2570.101, and without any reference to the appellate procedures contained in Subpart A of 29 CFR Part 18. Section 2570.99 establishes a 20-day time limit within which such appeals must be filed, the manner in which the issues for appeal are determined, and the procedures for making the entire record before the ALJ available to the Secretary. Section 2570.100 provides that review by the Secretary shall not be on a *de novo* basis, but rather on the basis of the record before the ALJ, and without an opportunity for oral argument. Section 2570.101 sets forth the procedure for establishing a briefing schedule for such appeals, and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to the Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)), all final decisions of the Department under section 502(c)(5) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

D. Interim Rule With Request for Comments

Section 734 of ERISA (formerly section 707) authorizes the Secretary of Labor, consistent with section 104 of HIPAA, to promulgate any such regulations as may be necessary or appropriate to carry out the provisions of Part 7 of ERISA. In addition, this section authorizes the Secretary to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. The report required to be filed under section 101(g)(h) is for the purpose of determining the extent to which the requirements of Part 7 are being carried out. Accordingly, the Department has determined that issuing this regulation in interim final form is necessary in order for the Secretary to enforce the reporting requirements of section 101(g)(h) of ERISA and the implementing regulations under § 2520.101–2. Written comments on these interim rules are invited.

E. Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant

regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

F. Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(3).

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA) requires each Federal agency to perform an initial regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this interim final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR § 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants. The Department invites comments on the effect of this interim final rule on small entities.

H. Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

I. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Statutory Authority

The interim final rules set forth herein are issued pursuant to the authority contained in section 502(c)(5) of ERISA (Pub. L. 104–191, 110 Stat. 1936, 1952, 29 U.S.C. 1132(c)(5)), section 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135), and section 734 of ERISA (Pub. L. 104–204, 110 Stat. 2874, 2935, 29 U.S.C. 1194), and under Secretary of Labor's Order 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pension and Welfare Benefits Administration, Reporting and disclosure.

For the reasons set out in the preamble, Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2570—[AMENDED]

1. The authority for Part 2570 is revised to read:

Authority: 29 U.S.C. 1132(c)(2), 1132(c)(5), 1132(i), 1135, 1194, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

2. By adding in the appropriate place in Part 2570 the following new Subpart E:

Subpart E " Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(5)

2570.90 Scope of rules.
2570.91 Definitions.
2570.92 Service: Copies of documents and pleadings.
2570.93 Parties, how designated.
2570.94 Consequences of default.
2570.95 Consent order or settlement.
2570.96 Scope of discovery.
2570.97 Summary decision.
2570.98 Decision of the administrative law judge.
2570.99 Review by the Secretary.
2570.100 Scope of review.
2570.101 Procedures for review by the Secretary.

Subpart E—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(5)

§ 2570.90 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(5) civil penalty proceedings" (as defined in § 2570.91(n) of this subpart) under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406, 88 Stat. 840–52, as amended by Pub. L. 104–191, 101 Stat. 1936). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges in Subpart A of Part 18 of this title will apply to matters arising under ERISA section 502(c)(5) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.91 Definitions.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title.

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–5(g);

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final Order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(5) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c–5(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(5);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–5(g), the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) 502(c)(5) civil penalty proceeding means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(5) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(5);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official of the Department of Labor; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.92 Service: Copies of documents and pleadings.

For 502(c)(5) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, N.W., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(5) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings*— (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½×11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.93 Parties, how designated.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term *party* wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may

recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.94 Consequences of default.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondents to file an answer to the notice of determination described in § 2560.502c–5(g) within the 30-day period provided by § 2560.502c–5(h) shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5). Such notice shall then become a final order of the Secretary.

§ 2570.95 Consent order or settlement.

For 502(c)(5) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *In general.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event that a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become a final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether to sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.96 Scope of discovery.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 2570.97 Summary decision.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to 2570.99 through

2570.101 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.98 Decision of the administrative law judge.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and an order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(5) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(5) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become a final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.99 through 2570.101.

§ 2570.99 Review by the Secretary

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.100 Scope of review.

The review of the Secretary shall not be a de novo proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.101 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

3. By revising paragraph (a) of § 2570.3 as follows:

§ 2570.3 Service: Copies of documents and pleadings.

* * * * *

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ regional Office to which the proceedings may have been transferred for hearing. Each document filed shall be clear and legible.

* * * * *

Signed at Washington DC, this 4th day of February, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–2937 Filed 2–10–00; 8:45 am]

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Federal Register

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Part IV

Department of Labor

Office of the Secretary

29 CFR Part 44

Process for Electing State Agency Representatives for Consultations With Department of Labor Relating to Nationwide Employment Statistics System; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 44

RIN 1290–AA19

Process for Electing State Agency Representatives for Consultations With Department of Labor Relating to Nationwide Employment Statistics System

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This document provides for the final text of the regulation establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor relating to the development of an annual employment statistics plan and to address other employment statistics issues. Section 15(d)(2) of the Wagner-Peyser Act, as amended by section 309 of the Workforce Investment Act of 1998, requires the Secretary to establish a process for the election of representatives of each of the 10 Federal regions of the Department. Interim final regulations were published on December 18, 1998. This document provides the Department of Labor's response to the comments on the interim final regulations. In addition, minor technical changes are made to the title of the regulation to clarify that the representatives are State agency employment statistics directors, to clarify references to the Federal regions and to the timing of the initial election, and to clarify the title of the Commissioner of Labor Statistics.

DATES: This final rule is effective on March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Cheryl Kerr, Office of the Commissioner of Labor Statistics, Department of Labor, Room 4044, Postal Square Building, 2 Massachusetts Avenue, N.E. Washington, D.C. 20212, 202–691–7808.

SUPPLEMENTARY INFORMATION: On December 18, 1998 interim final regulations and a request for comments on the Process for Electing State Agency Representatives for Consultations with the Department of Labor Relating to the Nationwide Employment Statistics System were published in the **Federal Register** [63 FR 70260]. Interested persons were afforded the opportunity to submit comments to the Bureau of Labor Statistics within 90 days after the publication of the interim final regulations in the **Federal Register**. Two comments were received from State agency employment statistics directors.

The first comment addressed section 44.2(a) of the regulation that provides for staggered election cycles. Under the regulation, after the initial election in which representatives from each of the ten Federal regions were elected, there are staggered elections with one-half of the regions electing representatives each year for bienniel terms. The regulation specifies the regions that are included in each cycle. The preamble to the interim final regulation explained that the purpose of the staggered cycles is to ensure that at least one-half of the representatives will have the benefit of, and expertise resulting from, the previous year's consultations and that this approach provides important continuity to the consultation process while also allowing for appropriate turnover. The preamble also stated that the five regions identified for each respective cycle were selected to ensure that all turnover does not occur in the same part of the country at the same time. The commenter questioned whether the last objective is accomplished by the regulation. Specifically, the commenter noted that three of the five regions specified for the first staggered election cycle (Regions VII, VIII, and X) contain 13 contiguous States and are thus in the same part of the country. The commenter suggested that the five regions be selected by lot rather than be specified in the regulation. The Department of Labor believes that given the configuration of the ten regions, there inherently will be contiguous regions and States in any grouping of five of the regions. Moreover, the suggestion to determine the five regions by lot does not ensure that there will be fewer contiguous regions and States in each cycle. The Department of Labor therefore believes that the regulation sufficiently advances the objectives of the staggering of the election cycles and has not made any changes in response to this comment.

The second comment addressed section 44.3(a) of the regulation relating to the election process. The regulation requires the Commissioner of Labor Statistics to provide a ballot to each employment statistics director containing the names of all the agency directors in the appropriate region. The commenter suggested that, in order to promote informed decisions, the Department of Labor ask each of the directors to prepare a brief summary of their qualifications and interests, including educational background, work history, and the reasons why they are interested in participating in the consultation process, and that the Department include the summary with the ballots. The Department of Labor believes that each agency director should retain the responsibility and discretion to determine the information, if any, to distribute among the other directors for purposes of these elections and how such information is to be disseminated. The Department of Labor therefore does not believe such information should be a subject of these regulations, and has not made any changes in response to this comment.

The Department of Labor has slightly revised the title of the regulation to refer to State agency employment statistics representatives rather than the State employment statistics agency representatives in recognition of the fact that the employment statistics function may only be one component of a State agency.

The Department of Labor has also made two technical changes to section 44.2(a) that do not affect the substance of the regulation. The first change clarifies that the initial election was to have been held not later than February 17, 1999. The interim final regulation provided that the election was to be held within 30 days of the effective date of the rule. Since the interim final regulation took effect on January 19, 1999, that 30–day period ended on February 17. That initial election was held on January 19, 1999. The second change is to identify the regions by number rather than by the location of the principal office. Since some agencies within the Department of Labor have different regional structures with principal offices located in cities other than the cities identified in the interim final regulation, the references to the locations could cause confusion. In order to avoid that result, the regulation has been modified to refer to the regions by the numbers designated for each region in former OMB Circular A–105.

Finally, in section 44.3(a) of the regulation, the Department has modified the title of the Commissioner from the Commissioner of the Bureau of Labor Statistics to the Commissioner of Labor Statistics, which is the statutory title.

The Department of Labor further notes that two elections have been carried out pursuant to the interim final regulation and the Department believes the regulations have effectively addressed the relevant election process issues. It may also be noted that the consultative group elected through this election process, now referred to as the Workforce Information Council, has been meeting with the Department over the past year and recently issued the first annual employment statistics report entitled "Quality Information, Informed

Choices: New Directions for the Workforce Information System."

Statutory Authority

The Department of Labor is publishing this regulation under the authority provided in section 506(c)(2) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(2)).

Regulatory Flexibility Act

The Department of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule relates only to State Agency representatives and therefore does not affect businesses, large or small, or any other small entities as defined under the Act. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Executive Order 13132

The interim final regulation was published prior to the August 4, 1999 effective date of the Executive Order. However, the Department has reviewed the final regulation in accordance with Executive Order 13132 relating to Federalism, and has determined that the regulation does not impose unfunded mandates on the States and does not preempt any State laws. In addition, the Department did consult with the representatives of the State agency employment statistics directors regarding this regulation.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 and Congressional Notification

The Department has determined that this final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The Department will submit to each House of Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date of the rule that will note that this rule does not constitute a "major rule" for purposes of the Act.

List of Subjects in 29 CFR Part 44

Economic Statistics, Employment.

Signed on this 3rd day of February, 2000.

Alexis M. Herman,

Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor hereby revises part 44 of title 29 of the Code of Federal Regulations to read as follows:

PART 44—PROCESS FOR ELECTING STATE AGENCY EMPLOYMENT STATISTICS REPRESENTATIVES FOR CONSULTATIONS WITH DEPARTMENT OF LABOR

Sec.

44.1 Purpose and scope.
44.2 Election cycle and tenure of representatives.
44.3 Election process.

Authority: 5 U.S.C. 301; 20 U.S.C. 9276(c); 29 U.S.C. 49 1–2.

§ 44.1 Purpose and scope.

This part contains the regulations of the U.S. Department of Labor establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor for purposes of the development of an annual employment statistics plan and to address other employment statistics issues. The representatives are to be elected by and from the State employment statistics directors affiliated with the State agencies designated to carry out the employment statistics responsibilities under the revised section 15 of the Wagner-Peyser Act (29 U.S.C. 49 1–2), as amended by section 309 of the Workforce Investment Act of 1998. The revised section 15(d)(2) of the Wagner-Peyser Act requires the Secretary to establish a process for the election of such representatives from each of the 10 Federal regions of the Department of Labor.

§ 44.2 Election cycle and tenure of representatives.

(a) *Election cycle.* The States located within each Federal region, as defined in this paragraph, shall elect one representative in accordance with the procedures specified in this part. The initial election for representatives of the States from all 10 Federal regions will be held not later than February 17, 1999. For purposes of this section, the Federal regions shall be the Standard Federal regions identified in former OMB Circular A–105 (issued April 4, 1974). This former Circular is available through the Office of the Commissioner of Labor Statistics, telephone number (202) 691–7808. For the representatives elected from the Federal regions II, IV, VII, VIII, and X, the initial term shall terminate on January 1, 2000. Subsequent elections for representatives from such regions shall be held in the last quarter of 1999 and thereafter biennially within the last calendar quarter of the year. For the representatives from the Federal regions I, III, V, VI, and IX, the initial term shall terminate on January 1, 2001.Subsequent elections for representatives from such regions shall be held within the last calendar quarter of 2000 and thereafter, biennially within the last calendar quarter of the year. After the initial election, the terms of all representatives shall terminate on January 1 of the third calendar year after the preceding scheduled election.

(b) *Tenure.* The terms of the representatives elected in the first election shall commence upon election. The terms of representatives elected in subsequent elections shall commence January 1 of the year following the scheduled election. Representatives may serve for an unlimited number of terms.

§ 44.3 Election process.

(a) *Process.* The Commissioner of Labor Statistics of the U.S. Department of Labor (hereafter referred to as "the Commissioner") or his or her designee shall conduct the elections. The Commissioner shall provide a ballot containing the names of the employment statistics directors in the appropriate region to the employment statistics director in each State who is affiliated with the State agency designated pursuant to section 15(e) of the Wagner-Peyser Act. If a State has not

designated an agency, or has not provided the name of the employment statistics director to the Commissioner, the State shall not participate in the election process. Each director may vote for one director to be the regional representative. The Commissioner shall prescribe a time limit that will not be less than one week for the directors to mark and return the ballots. Only votes received by the Commissioner within the prescribed time limit will be counted. The Commissioner will tally the votes from the ballots received within the prescribed time limit and the director receiving the most votes in the region will be the representative for that region. If there is a tie after the first round of votes are counted, the Commissioner shall conduct additional rounds of voting using a ballot containing the names of the directors who tied with the most votes in the previous round until a representative is elected. The Commissioner will prescribe a time limit of not less than one week for each additional round of voting and will tally the votes received within the prescribed time limit. The director with the most votes will be the representative.

(b) *Method of transmission.* The Commissioner may distribute the ballots relating to the election under this part by electronic mail or other methods the Commissioner determines to be appropriate and may specify the methods through which votes are to be cast.

(c) *Vacancies.* If a representative does not complete the term, the Commissioner shall conduct an election to elect a replacement for the remainder of the term using the procedures described in paragraph (a) and (b) of this section.

[FR Doc. 00–2904 Filed 2–10–00; 8:45 am]

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Part V

Office of Management and Budget

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: On January 7, 2000, OMB published a notice of availability of and requested comments on its Draft Report to Congress on the Costs and Benefits of Federal Regulations. On January 27, 2000, OMB extended the public comment period to February 22, 2000. In order to assure the broadest possible public access, we are publishing the draft report in this **Federal Register**.

DATES: *Comment Due Date:* February 22, 2000.

ADDRESSES: Comments on this draft report should be addressed to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

You may submit comments by regular mail, by facsimile to (202) 395–6974, or by electronic mail to jmorrall@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: You can review the report on the Internet at: "*http://www.whitehouse.gov/omb/inforeg/index.html*". You may also request a copy from John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW, Washington, D.C. 20503. Telephone: (202) 395–7316. E-mail: jmorrall@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On January 7, 2000, OMB published in the **Federal Register** (65 FR 1296) a notice of availability of the Draft Report to Congress on the Costs and Benefits of Federal Regulations and posted it on our web site. The comment period on the draft report was scheduled to end January 21, 2000. Members of the public and Congress asked for additional time and better access to the draft report to allow the public a better opportunity to participate in the comment process. Accordingly, OMB extended the public comment period on the draft report to February 22, 2000 by a notice in the **Federal Register** (65 FR 4447) and with this notice is publishing the entire draft report.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

Draft Report to Congress on the Costs and Benefits of Federal Regulations

Introduction

This is a draft for public comment of the Office of Management and Budget's third report to Congress on the costs and benefits of Federal regulations.[1] This report is required by Section 638(a) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (the Act). The Act requires OMB to submit "an accounting statement and associated report" containing:

"(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

(A) in the aggregate;

(B) by agency and agency program; and

(C) by major rule;

"(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

"(3) recommendations for reform.

The Act at Section 638(b), (c), and (d) also specifies how we are to produce the report. We must:

"(b) * * * provide public notice and an opportunity to comment on the statement and report,

"(c) * * * issue guidelines to agencies to standardize (1) measures of costs and benefits and (2) the format of accounting statements, and

"(d) * * * provide for independent and external review of the guidelines and each accounting statement and associated report under this section."

This draft report provides the public with an opportunity to comment on the "statement and report" before we submit it to Congress. We are also asking independent and external experts in the economics of Federal regulation to peer review this draft report. After taking the public comments and peer reviews into account, we will submit the final report to Congress.

In early October 1999 in accordance with the Act, we drafted guidelines for standardizing measures of costs and benefits and the format of the accounting statements. We circulated them for "independent and external review" by nine experts in the field of benefit cost analysis. In late October 1999, we sent the guidelines and format to the agencies for their use in reporting the costs and benefits of their regulations. Using this information as well as other information from the agencies and published literature on the costs, benefits, and impacts of Federal regulation, we prepared this draft report.

Chapter I presents our estimates of total annual costs and benefits of Federal regulation and paperwork in the aggregate, and by agency and agency program. It also presents an analysis of the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. Finally, Chapter I presents estimates of the costs and benefits by agency of the major final regulations issued between April 1, 1995 and March 31, 1999 for which we could quantify and monetize impacts.

Chapter II uses agency regulatory impact analyses to present quantitative estimates and qualitative descriptions of the benefits and costs of the 44 major rules issued by Federal agencies for which we concluded review during the 12-month period between April 1, 1998 and March 31, 1999. This "regulatory year" is the same period we used for the first two reports.

Chapter III presents our estimates of the costs and benefits of major Federal regulations for which we concluded review during the period April 1, 1995 to March 31, 1999. We included only the regulations for which we had quantitative information on both costs and benefits. For these regulations, we applied a uniform format and standardized measures of costs and benefits to produce estimates that could be more readily compared to each other. This information is used in our aggregate and by-agency estimates of the total annual costs and benefits of Federal regulation in Chapter I.

Chapter IV presents ten recommendations for reform of specific Federal regulations.

Chapter I: Estimating the Total Annual Costs, Benefits, and Impacts of Federal Regulations and Paperwork

I. Overview

This chapter presents estimates of the total annual costs and benefits of Federal rules and paperwork in the aggregate and by agency and agency program as required by Sec 638(a)(1)(A) and (B) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (the Act). In this chapter, we build on the information found in Chapter I of the

[1] This report uses the terms "rule" and "regulation" interchangeably.

1998 Report to Congress On the Costs and Benefits of Federal Regulations (OMB 1998) by using data and information newly available during 1999. These data include information:

- On costs and benefits of regulations provided by the agencies at our request pursuant to Sec 638(c) of the Act, which requires us to "issue guidelines to agencies to standardize measures of cost and benefits and the format of accounting statements."
- From the economic impact analyses that agencies prepare for major rules for which we completed review between April 1, 1998 and March 31, 1999.
- From other government reports and sources on the impacts of regulation and paperwork.

This chapter also analyzes the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth—as required by Sec. 638(a)(2) of the Act.

A. Estimation Problems

This is our third report estimating the total annual costs and benefits of Federal regulations. In our previous two reports (OMB 1997 and 1998), we included a detailed discussion of the methodological problems inherent in such an undertaking.[2] We recognize the importance of providing information to the public on the costs, benefits, and impacts of Federal regulations. Such information is useful for policymakers who are designing new regulations or revising existing ones to make them more cost efficient and fair. Nevertheless, any estimate of total annual costs and benefits can only be rough at best.

It is difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with accuracy. We lack good information about the complex interactions between the different regulations and the economy. A variety of estimation problems for individual and aggregate estimates distort the results in different ways. The difficulty of answering the following questions illustrate these problems:

1. What Baseline Should We Use?

In order to estimate the impact of a regulation, we need to know what would have happened if the regulation had not been issued. In other words, what is the baseline against which costs and benefits should be measured? The baseline problem has several dimensions. First, what happens in the absence of regulation is only an educated guess (since it never happened). Moreover, the greater the regulatory change, the less sure we are of the regulatory benefits and costs. The techniques of applied welfare economics, upon which benefit-cost analysis is based, hold only for marginal changes in economic activities. The larger the changes, the less certain we are of the accuracy of these techniques. Thus, we are more confident in our estimates of the costs and benefits of a small change in the level of automobile emissions than in the costs and benefits of all Clean Air Act regulations and especially in estimates of the total costs and benefits of all regulations issued by the Federal Government since the early 1900s.

Even if we disregard the problem of modeling large changes, significant difficulties remain. It is difficult to determine the baseline for the individual regulations that must be added together to get an aggregate estimate for all regulations. Bias is always a problem when surveying firms and other regulated entities on their expected compliance costs. Both regulators and the regulated may have a stake in the survey results. The problem is potentially greater for prospective studies because they must predict both the baseline and the regulatory effects. Retrospective studies concern themselves only with the baseline. In general, the most precise estimates of the costs and benefits of regulation appear in retrospective studies done by individuals who are not interested parties, but who do seek to maintain their reputations as objective professional analysts.

2. What Costs Should We Measure?

Most of the studies of the costs of regulation produced to date measure the direct expenditures required by regulation. It is hard to do more. Yet, as Cropper and Oates (1992) point out, the cost to society of regulation is properly measured by the change in consumer and producer "surplus" [3] associated with the regulation and with any price and/or income changes that may result. At one extreme, ignoring the consumer surplus loss produced by a ban on the sale of a product understates costs to society. Even though compliance costs are zero, consumers are less well off because they can no longer buy the product. At the other extreme, calculating compliance expenditures based on pre-regulation output overstates costs because, if the firm raises prices to cover compliance costs, consumers may shift to other products to compensate partially for the accompanying welfare losses (Cropper and Oats 1992, p. 722). Actually estimating the changes in consumer and producer "surplus" caused by regulation requires data that is usually not easily obtained and assumptions that are at best only educated guesses.

3. What Is the Effect of Technological Change?

Many of the studies on which we must rely for cost and benefit estimates are dated. Over time the dynamic nature of the economy may affect the estimation of both benefits and costs. Technological improvements are often cited as the reason that predicted costs of compliance often turn out to be less than actual costs (Office of Technology Assessment 1995). Less well noted, however, is that technological progress also alters the benefits of regulation over time. Medical progress can reduce the future benefits estimated for health, safety and environmental regulations, just as productivity improvements in manufacturing reduce the costs of compliance of some regulations. New drugs or medical procedures can reduce the benefits of regulations aimed at reducing exposure to certain harmful agents such as an infectious disease. Regulations aimed at increasing the energy efficiency of consumer products or buildings may have their expected benefits reduced by new technology that lowers the cost of producing energy.

Technological change also leads directly to higher incomes, which allow people to demand better health and more safety. Business often responds to these demands by providing safer products and workplaces, even in the absence of regulation. Individuals with rising incomes may purchase or donate land to nature conservancies to provide ecological benefits—not to mention tax writeoffs. Yet, as on the cost side, the baseline that we use is generally the status quo, rather than a best guess as to what is likely to happen in the future.

4. How Do We Determine Causality?

It is often difficult to attribute changes in behavior to specific Federal regulations because there can be many other causal factors. In the

[2] The first two reports also provide background information helpful for understanding and placing in context this third report. Together, the reports contain information on the history of regulation and its reform, the Administration's regulatory review program, the basics of economic analysis of regulations, and several case studies comparing various prospective and retrospective analyses of regulations.

[3] Consumer surplus refers to the incremental value of a product, as perceived by the consumer, over and above the price paid by the consumer for that product. Producer surplus refers to the incremental revenue received by the producer of a product over and above the producer's marginal costs of production.

environmental area, there are regulations from several different Federal agencies—the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), the Department of Energy (DOE), the Department of the Interior (DOI), the Department of Commerce (DOC) and the Department of Transportation (DOT) as well as numerous State and local government entities. The tort system, voluntary standards organizations, and public pressure also may cause firms to provide a certain degree of public protection in the absence of Federal regulation. As the General Accounting Office (GAO) points out, determining how much of the costs and benefits of these activities to attribute solely to Federal regulation is a difficult undertaking (GAO 1996).

5. How Do We Assess Older Regulations?

Once regulations are implemented and compliance has begun, public attitudes about the desirability of mandated actions often change. Regulations that were widely questioned before implementation—for example, airbags and family leave—often find wide acceptance afterwards. If the National Highway Traffic Safety Administration's (NHTSA) regulations were eliminated, the automobile companies are not likely to discontinue all the safety features that NHTSA has mandated. Consumers now expect safer cars and seem willing to pay for them. Indeed, they often demand more safety than NHTSA requires.

This same phenomenon is taking place in the environmental area. Environmentally responsible behavior can be good for the bottom line. Rising per capita income and greater acceptance of regulation encourage such behavior, although their precise impact can be hard to measure. Changes in consumer preferences can create a "rising baseline" phenomenon, which reduces the ongoing significance of health, safety, and environmental regulations. Estimates of the aggregate regulatory costs and benefits that use a pre-regulation baseline as opposed to a post-regulation baseline may thus overestimate the current costs and benefits of those regulations.

6. Is There an "Apples and Oranges" Problem?

Most attempts to summarize the total costs and benefits of Federal regulations have simply added together a diverse set of individual studies. This is an inherently flawed approach. These individual studies vary in the quality, methodology, and type of regulatory impacts they include. They use different assumptions about baselines and time periods, different discount rates, different valuations for the same attribute, and different approaches to dealing with uncertainty. They also are seldom able to analyze the interaction effects among the tens of thousands of regulations. Although we are mindful of, and tried to tried to correct for, these problems in our estimates, our numbers too should be used with caution.

7. Is it Enough To Know the Costs and Benefits?

Accurate assessment of costs and benefits does not necessarily give us information concerning the distribution of such effects. None of the analyses addressed in this report provides quantitative information on the distribution of benefits or costs by income category, geographic region, or any other equity-related factor. As a result, there is no basis for quantifying distributional or equity impacts, which often can be a key reason for regulation.

B. Types of Regulation

Since there are so many different types of Federal regulations, it is useful to break this heterogeneous body up into categories. Three main categories are widely used: social, economic, and process.

- Social Regulation seeks to benefit the public interest in one of two ways. It prohibits firms from producing products in certain ways or with certain characteristics that are harmful to public interests such as health, safety, and the environment. Examples would be OSHA's rule prohibiting firms from allowing in the workplace more than one part per million of Benzene averaged over an eight hour day and the Department of Energy's rule prohibiting firms from selling refrigerators that do not meet certain energy efficiency standards. It also requires firms to produce products in certain ways or with certain characteristics that are beneficial to these public interests. Examples are FDA's requirement that firms selling food products must provide a label with specified information on its package and DOT's requirement that automobiles be equipped with certain kinds of airbags.
- Economic Regulation prohibits firms from charging prices or entering or exiting lines of business that might cause harm to the economic interests of other firms or economic groups. Such regulations usually apply on an industry-wide basis (for example, agriculture, trucking, or communications). In the United States, this type of regulation at the Federal level has often been administered by "independent" commissions such as the Federal Communications Commission (FCC), the Securities and Exchange Commission (SEC), or the Federal Energy Regulatory Commission (FERC). This type of regulation can cause economic loss from the higher prices and inefficient operations that often occur when competition is restrained.
- Process Regulations impose administrative or paperwork requirements such as income tax, immigration, social security, food stamps, or procurement forms. Most process costs result from program administration, government procurement, and tax compliance efforts. Social and economic regulation may also impose paperwork costs due to disclosure requirements and enforcement needs. These costs generally appear in the cost for such rules. Procurement costs generally show up in the Federal budget as greater fiscal expenditures.

1. Measuring the Impacts of the Different Types of Regulation

The impacts of regulation have several dimensions. Regulation either increases or decreases the total welfare or well being of society, or redistributes it among different groups. Usually it does both, but the relative degree varies significantly by type of regulation. The public purpose for a regulation usually takes one of two forms: to maximize society's welfare or to redistribute costs and benefits from one group to another.

Social Regulation often seeks to improve the efficiency of the market by correcting what economists call "market failures"—for example, pollution or public health risks or other unintended consequences on third parties and unequal information between buyers and sellers. Such regulation affects the value of goods and services or welfare enjoyed by society. We measure the impact of a social regulation on society's welfare by estimating its net benefits: social costs subtracted from social benefits.

Redistributive effects or "income transfers" should also be measured, noted, and presented to policymakers to help in forming their decision. OMB has issued recommended procedures or "Best Practices," which are particularly useful for estimating the benefits and costs of social regulations. We have described and discussed these procedures in the two previous Reports to Congress on the Costs and Benefits of Federal Regulation. As mentioned above in the introduction, we have provided additional guidance for the agencies for standardizing the measures of costs and

benefits sent us for this and next year's report.

We can divide social regulation into several categories:

Environmental. The true social cost of regulations aimed at improving the quality of the environment is represented by the total value that society places on the goods and services foregone as a result of resources being diverted to environmental protection. (EPA's Cost of a Clean Environment, pp. 1–2, 1–3.) These social costs include the direct compliance costs of the capital equipment and labor needed to meet the standard. They also include the more indirect consumer and producer surplus losses from lost or delayed consumption and production opportunities that result from the higher prices and reduced output needed to pay for the direct compliance costs. In the case of a product ban or prohibitive compliance costs, almost all of the costs represent consumer and producer surplus losses. Most of the cost estimates used in this report do not include consumer and producer surplus losses because it is difficult and often impractical to estimate the demand and supply curves needed to do this type of analysis.

Further indirect effects on productivity and efficiency result from price and output changes that spread through other sectors of the economy. Estimates of compliance costs may understate substantially the true long-term costs of pollution control.[4] The estimates used in this report do not include these indirect and general equilibrium effects.

The benefits of environmental protection are represented by the value that society places on improved health, recreational opportunities, quality of life, visibility, preservation of ecosystems, biodiversity, and other attributes of protecting or enhancing our environment. This value is best measured by society's willingness-to-pay (WTP) for these attributes. Since most types of improvement in environmental quality are not traded in markets, benefits must be estimated by indirect means using sophisticated statistical techniques or "contingent valuation" survey methods. Such methods often have more difficulty with benefit estimation than cost estimation.

Other Social. This category of regulation includes rules designed to advance the health and safety of consumers and workers, as well as regulations aimed at promoting social goals such as equal opportunity, equal access to facilities, and protection from fraud and deception. These kinds of regulation, as well as environmental regulation, are concerned with controlling or reducing the harmful or unintended consequences of market transactions. Such consequences as air pollution, occupationally induced illness, or automobile accidents are commonly called "negative externalities." Regulations designed to deal with such externalities are said to "internalize" the externalities.

This can be done by regulating the amount of the externality, for example, banning a pollutant or limiting it to a "safe" level, or regulating how a product is produced or used. Social regulation may also require the disclosure of information about a product, service, or manufacturing process where inadequate or asymmetric access to information may place consumers, citizens, or workers at a disadvantage. The techniques and methodological concerns involved in the estimation of the social costs and benefits generated by these rules are similar to those involved in the estimation of costs and benefits of environmental regulation discussed above. In the results reported below, we further break "Other Social" into three categories: transportation, labor and other regulations. The third category includes food and drug safety, energy efficiency, and quality of medical care regulations.

Economic regulation, especially in the past, often served to transfer income among economic groups. In certain circumstances, however, such as when used to regulate natural monopolies, economic regulation can produce net social benefits. In the last twenty years, deregulation and improvements in technology have reduced entry barriers in a variety of sectors, including transportation, communications, energy, and financial services. To a large degree, economic regulation now serves more and more to promote competition, rather than to protect firms from it. The costs of economic regulation are usually measured by modeling or comparing specific regulated sectors with less regulated sectors, estimating the consumer and producer surplus losses that result from higher prices and lack of service, and estimating the excess costs that may result from the lack of competition. These costs are made up of efficiency losses, or costs to society, and income transfers that one group gains at the expense of another. The Hopkins (92) and Hahn and Hird (91) surveys of regulatory costs found that transfer costs were generally about two to three times the social costs of economic regulation.

Economic regulation may produce net social benefits when natural monopolies are regulated to simulate competition. Although Hahn and Hird (1991) argue that the dollar amounts of such efficiency benefits are small and short lasting in a dynamic and technologically vibrant economy, this is a judgment that is not the result of an empirical study. It is, however, based on the increasingly accepted view that the U.S. economy is becoming more competitive over time, with fewer long-lasting natural monopolies, and on evidence that much economic regulation seeks primarily to enhance one group at the expense of another. Even though monopoly power may not be as long lasting in the "new economy" as it was in the old, it can still be important at a given point in time.[5]

Process Regulation mainly serves to collect funds, allocate them among groups of recipients, and establish the conditions under which the government purchases or provides goods and services from and to the public. Although allocating and collecting funds can serve to transfer income between economic groups, the fiscal budget already accounts for these transfers and we do not provide separate estimates below. We do, however, provide estimates of the administrative costs to the public of providing the information needed by the government to collect these funds and provide these services because these estimates are not included in the fiscal budget. These costs are also real burdens to society, not transfers. Government can reduce them streamlining paperwork and red tape.

2. Other Types of Regulatory Impacts

As discussed above, analysts often use estimates of benefits and costs to measure the net impact of regulation on society as a whole. Executive Order No. 12866, Regulatory Planning and Review, issued by President Clinton on September 30, 1993, requires the agencies to measure such impacts (Sect. 1(b)(6)). It also requires that the agencies analyze the effect of a proposed regulation on State, local, and tribal governments and on businesses of differing sizes (Sect.1. (b) ((9) and (11)). As mentioned, Sect. 638 (a)(2) of the Act asks for information on these impacts as well as on wages and economic growth.

Clearly, the impacts of regulation on these sectors are of special interest to policymakers and should be examined

[4] See Jaffe, Peterson, Portney, and Stavins' survey (1995), p. 153.

[5] Note that our definition of economic regulation does not include antitrust activities such as preventing the formation of monopolies through mergers or anticompetitive behavior.

in a full analysis of regulatory impacts. The impacts on State, local, and tribal governments, small businesses, and workers can be measured by distributional analysis, which looks at the transfers of income among groups caused by regulations. Generally the analysis does not make value judgments about the merits of these transfers, leaving that up to policymakers. This approach is in contrast to Benefit Costs Analysis, which generally ignores income transfers and focuses on whether social benefits exceed social costs. Since distributional effects and net benefits are both important, both analyses should be presented to policymakers. Reflecting this philosophy, Executive Order 12866 states that agencies should select regulatory approaches that "maximize net benefits" taking into account distributional impacts and equity.

As required by the Act, we present estimates in section II of the costs and benefits of regulation and paperwork, and in section III present what we know about its distributional impacts.

II. The Costs and Benefits of Regulation and Paperwork

Our estimate of the total annual costs and benefits of Federal rules and paperwork starts with our estimates in last year's report. It then adds new information received from the agencies about previous regulations and about new regulations issued during the last year.

A. Social Regulation

1. Total Annual Costs and Benefits

Tables 1, 2, and 3 document how we estimate the total annual monetized costs and benefits of social regulation as of April 1, 1999.[6]

Table 1 relies on estimates from Hahn and Hird (1991) and EPA's Cost of a Clean Environment (1990) and Section 812 Retrospective Report (1997) to present a range of estimates for costs and benefits as of 1988.[7] The estimates of costs range between $84 billion and $140 billion and the benefits between $56 billion and $1.51 trillion annually.

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[6] Our general approach follows the procedures we used in last year's report which discusses them in more detail. (See OMB 1999, pp 13–18).

[7] We discussed in detail the problems and uncertainties associated with these estimates in the two previous reports. We refer the reader to them for more specific information. The estimation problems discussed earlier in this report explain the general estimation problems with these types of aggregate estimates.

Table 1:
Estimates of Total Annual Monetized Costs and Monetized Benefits of Social Regulation as of 1988
(Billions of 1996 dollars)

	Environment			Transportation	Labor	Other	Total
	Hahn & Hird (1991)	EPA	Combined Ranges (a)				
Costs	76 to 99	54(b)	54 to 99	9 to 12	11 to 12(d)	10 to 15	84 to 140
Benefits	22 to 180	1,450(c)	22 to 1,450	34 to 60	not available(e)	not available(e)	56 to 1,510

Sources: Calculations based on information from Hahn and Hird (1991) unless otherwise noted.
(a) Combined ranges from Hahn and Hird (1991) and EPA section 812 retrospective (1997).
(b) Includes water pollution control costs from Cost of Clean (1990), air pollution control costs from EPA's Section 812 Retrospective Report (1997),less adjustments for 1988-1990 overlap.
(c) Benefits from air pollution control only, based on EPA section 812 retrospective (1997).
(d) Based on total expenditures for safety and health rather than regulation-induced expenditures.
(e) Hahn and Hird (1991).
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs that were not quantified.

Table 2:
Estimates of Total Annual Monetized Costs and Monetized Benefits of Social Regulations Issued Between 1987 and First Quarter of 1999
(Billions of 1996 dollars)

Time Period	Environ-mental	Transpor-tation	Labor	Other	Total
Costs	71	6	7	7	92
Benefits	75 to 145	50	28 to 30	55 to 60	208 to 285

Source: The 1987 to 1994 estimates of costs are from OMB (1996) p. A-5. The 1987 to 1994 estimates of benefits are calculated by taking the benefit/cost ratios for the final rules issued between 1990 and 1995 from Hahn (1996) Table 10-4 and applying them to our costs estimates to derive benefit estimates. (See caveats above and the discussion in OMB (1997) for the rationale for this approach). The benefit/cost ratios are 1.4 for environmental, 9.7 for transportation, 3.8 for labor and 7.9 for other social regulations. The estimates for 1995 through the first quarter of 1999 are derived as described in tables 6 through 17. Note that totals may not add because of rounding.
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs that were not quantified.

Table 3:
Estimates of Total Annual Monetized Costs and Monetized Benefits of Social Regulations
(Billions of 1996 dollars as of 1999, Q1)

	Environ-mental	Transpor-tation	Labor	Other	Total
Costs	$124 to 175	$15 to 18	$18 to 19	$17 to 22	$174 to 234
Benefits	$97 to 1,595	$84 to 110	$28 to 30	$55 to 60	$264 to 1,795
Net Benefits(a)	$-78 to 1,471	$66 to 95	$9 to 12	$33 to 43	$30 to 1,621

Source: Tables 1 and 2.
(a) Lower estimate calculated by subtracting high cost from low benefit. Higher estimate calculated by subtracting low cost from high benefit.
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs that were not quantified.

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The $1.51 trillion upper-range estimate is dominated by EPA's Section 812 Retrospective, which estimates the benefits of the Clean Air Act from 1970 to 1990.

In last year's report we used EPA's upper range estimate for benefits of $3.2 trillion. This estimate engendered considerable public criticism. For example, a panel of regulatory experts convened by GAO expressed considerable scepticism about the magnitude of the estimate (GAO, 1999). EPA points out, however, that this criticism was somewhat misdirected because the $3.2 trillion estimate was the upper bound, 95th percentile estimate generated by the 812 Retrospective Study for the year 1990, a value which EPA itself believes has a very small probability of being the correct estimate (that is, the probability that benefits are equal to or greater than $3.2 trillion is 5%). EPA's expected value for the benefits of 1970 to 1990 programs in the year 1990 is $1.45 trillion (in 1997 dollars). We have amended our report this year to incorporate EPA's expected-value estimate.

GAO (1999) also reported that many of the experts identified specific concerns about some of the assumptions in the Retrospective Report, including: (1) The assumption that air quality would have deteriorated significantly between 1970 and 1990 in the absence of the Clean Air Act, (2) the assumed health effects from limiting exposure to particulate matter, and (3) the methods used to estimate the value that individuals would place on reducing health and mortality risks.[8]

Table 2 provides estimates of the total annual monetized costs and benefits of social regulations issued between 1987 and the first quarter of 1998. As explained in last year's report, the cost estimates are based on the Regulatory Impact Analyses (RIAs) for major rules that agencies submitted to OMB under Executive Order 12866 and its predecessor, Executive Order 12291. To estimate benefits, we used a combination of sources. For the years 1987 to 1995, we assumed that benefits bore the same ratio to our cost estimates for the four categories of regulations shown in Table 2 as they did in a study by Robert Hahn (1996) of major regulations issued between 1990 and mid-1995. We did this because we do not have our own systematic estimates of the benefits for major rules issued before 1995.[9] For the benefit estimates for 1995 through the first quarter of 1999, we used the information from agency-supplied RIAs modified for consistency with Best Practices as appropriate and extended to provide more monetized estimates of benefits and costs using consensus value estimates used by the agencies or found in the literature. These estimates are explained in detail in Chapter III.

Table 3 combines the results from Tables 1 and 2 to present our estimates for the existing costs of social regulation as of the first quarter in 1999. It shows that health, safety and environmental regulation produces between $32 billion and $1,621 billion of net benefits per year.

2. New Estimates for the Clean Air Act Amendments

EPA has also called to our attention its new study, The Benefits and Costs of the Clean Air Act 1990 to 2010, (EPA 1999) to supplement the set of studies that served as the basis for the monetized estimates of benefits and costs in last year's report. This study presents estimates of the benefits and costs of the regulatory program mandated by the 1990 Clean Air Act Amendments (CAAA). It does not, however, cover the benefits and costs of many of EPA's recent major regulations, such as the 1997 final rule setting new Ozone and Particulate Matter National Ambient Air Quality Standards and the recent regional haze final rule. Nor does it include the costs and benefits of the regulations EPA issued during this period pursuant to its Acts other than the CAAA.

EPA's new study estimates total annual costs for the CAAA of about $19 billion and total annual benefits of $71 billion in the year 2000. We note that the adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity of this issue, we provide estimates reflecting two alternative approaches. The first approach—supported by some and preferred by EPA—uses a Value of a Statistical Life (VSL) approach developed for the Clean Air Act Section 812 benefit-cost studies. This VSL estimate of $5.9 million (1997$) was derived from a set of 26 studies identified by EPA using criteria established in Viscusi (1992), as those most appropriate for environmental policy analysis applications.

An alternative, age-adjusted approach is preferred by a number of others both within and outside the Administration. This approach was also developed for the Section 812 studies and addresses concerns with applying the VSL estimate—reflecting a valuation derived mostly from labor market studies involving healthy working-age manual laborers—to PM-related mortality risks that are primarily associated with older populations and those with impaired health status. This alternative approach leads to an estimate of the value of a statistical life year (VSLY), which is derived directly from the VSL estimate. It differs only in incorporating an explicit assumption about the number of life years saved and an implicit assumption that the valuation of each life year is not affected by age.[10] Under this alternative approach, the estimated mean VSLY is $360,000 (1997$); combining this number with a mean life expectancy of 14 years would yield an age-adjusted VSL of $3.6 million (1997$).

Both approaches are imperfect, and raise difficult methodological issues which are discussed in depth in the recently published Section 812 Prospective Study, draft EPA Economic Guidelines, and the peer-review commentaries prepared in support of each of these documents. For example, both methodologies embed assumptions (explicit or implicit) about which there is little or no definitive scientific guidance. In particular, both methods adopt the assumption that the risk versus dollars trade-offs revealed by available labor market studies are applicable to the risk versus dollar trade-offs in the air pollution context.

EPA currently prefers the VSL approach because, essentially, the method reflects the direct application of what EPA considers to be the most reliable estimates for valuation of premature mortality available in the current economic literature. While there are several differences between the labor market studies EPA uses to derive a VSL estimate and the particulate matter air

[8] GAO also points out that these are similar to the concerns expressed by OMB in last year's report. (See OMB 1999, pp. 25–35).

[9] Admittedly this is a crude estimation procedure because Hahn's inventory of rules begins in 1990 and ours extends back to 1987. Consequently, we are assuming that the relationship between costs and benefits that Hahn found for the later period extends back three years. Still, we know of no other approach to fill this gap in the data until RIAs for these years are re-examined. For further details see last year's report (OMB, 1999).

[10] Specifically, the VSLY estimate can be calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies. The resulting estimate, using a 5 percent discount rate, would be $360,000 per life-year saved in 1997 dollars. This annual average value of a life-year can then be multiplied times the number of years of remaining life expectancy for the affected population.

pollution context addressed here, those differences in the affected populations and the nature of the risks imply both upward and downward adjustments. For example, adjusting for age differences may imply the need to adjust the $5.9 million VSL downward, as would adjusting for health differences; but the involuntary nature of air pollution-related risks and the lower level of risk-aversion of the manual laborers in the labor market studies may imply the need for upward adjustments. In the absence of a comprehensive and balanced set of adjustment factors, EPA believes it is reasonable to continue to use the $5.9 million value while acknowledging the significant limitations and uncertainties in the available literature. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristics of the adult population.

Those who favor the alternative, age-adjusted approach emphasize that the value of a statistical life is not a single number relevant for all situations. Indeed, the VSL estimate of $5.9 million (1997$) is itself the central tendency of a number of estimates of the VSL for some rather narrowly-defined populations. When there are significant differences between the population affected by a particular health risk and the populations used in the labor market studies—as is the case here—they prefer to adjust the VSL estimate to reflect those differences. While acknowledging that the VSLY approach provides an admittedly crude adjustment (for age though not for other possible differences between the populations), they point out that it has the advantage of yielding an estimate that is not presumptively biased. Proponents of adjusting for age differences using the VSLY approach fully concur that enormous uncertainty remains on both sides of this estimate —upwards as well as downwards—and that the populations differ in ways other than age (and therefore life expectancy). But rather than waiting for all relevant questions to be answered, they prefer a process of refining estimates by incorporating new information and evidence as it becomes available.

Our estimates of the costs and benefits of environmental regulations in Table 2 above include estimates for CAAA regulations as well as other EPA regulations based on the RIAs EPA prepared at the time. The new CAAA report estimates cannot simply be added to our estimates in Table 2 without adjustments to correct for the overlapping regulations. The CAAA report estimates cannot replace our estimates because they do not include all the regulations EPA issued between 1987 and the first quarter of 1999.

3. Costs and Benefits of Major Rules by Agencies

Table 4 lists the costs and benefits by agency and agency program for major regulations issued over the last four years (April 1, 1995 to March 31, 1999) as estimated by us in Chapter III. During this period, only seven agencies issued major rules. Of these, rules by EPA and HHS had the greatest impact. Those issued by EPA are expected to provide between $17 billion and $84 billion in annual benefits for society at an annual cost of about $28 billion. Those issued by HHS are expected to provide $12 billion to $14 billion in annual benefits at an annual cost of about $800 million.

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Table 4
Estimates of the Total Annual Monetized Benefits and Monetized Costs of Social Regulations by Agency
April 1995 to March 1999
($ millions)

Agency	2000	2005	2010	2015	Annualized	Net Present Value
Dept. of Agriculture Benefits Costs	$2,300-4,900 $1,170-1,190	$2,300-4,900 $1,170-1,190	$2,300-4,900 $1,170-1,190	$2,300-4,900 $1,170-1,190	$2,600-5,300 $1,270-1,290	$35,000-72,000 $17,100-17,400
Dept. of Education Benefits Costs	$580-720 $320-540	$580-720 $320-540	$580-720 $320-540	$580-720 $320-540	$580-720 $320-540	$8,000-10,000 $4,500-7,500
Dept. of Energy Benefits Costs	$670 $300	$750-780 $300	$870-940 $300	$970-1,100 $300	$780-840 $280	$11,000-12,000 $3,900
Dept. of Health and Human Services Benefits Costs	$11,000-13,000 $690-750	$11,000-13,000 $690-750	$11,000-13,000 $680-740	$11,000-13,000 $680-740	$12,000-14,000 $700-770	$170,000-190,000 $10,000-11,000
Dept. of Labor Benefits Costs	$390-810 $230	$390-810 $230	$390-810 $230	$390-810 $230	$890-3000 $250	$12,000-41,000 $3,400
Dept. of Transportation Benefits Costs	$1,200-1,700 $980-2,200	$2100-2500 $1200	$2,100-2,500 $1200	$2,100-2,500 $1,200	$2,000-2,400 $1,200-1,600	$27,000-33,000 $16,000-22,000
Environmental Protection Agency Benefits Costs	$4,300-22,000 $5,500-5,600	$4900-25000 $6400-6600	$27,000-150,000 $17,300-17,500	$31,000-170,000 $61,000-61,100	$17,000-84,000 $27,600-27,700	$220,000-1,200,000 $370,000-380,000

B. Economic Regulation

In our 1997 and 1998 reports, we presented an estimate that the efficiency costs of economic regulation amounted to $71 billion. This is based on an estimate by Hopkins (1992) of $81 billion, which we adjusted downward by $10 billion to account for the deregulation and increase in competition that has occurred in the financial and telecommunications sectors since Hopkins' estimates were made in 1992. In a recent comprehensive report on regulatory reform in the United States by a panel of experts from around world, the OECD estimated that additional reforms in the transportation, energy, and telecommunications sectors would lead to an increase in GDP of 1 percent (OECD, 1999). One percent of the revised first quarter 1999 GDP of $9,073 billion is about $90 billion.

This estimate does not include the costs of international trade protection, which Hopkins included in his estimate of the cost of economic regulation. According to a recent study, the static gains from removing trade barriers existing in 1990 suggested potential gains of about 1.3 percent of GDP (Council of Economic Advisers 1998) or $120 billion for the first quarter of 1999, assuming trade barriers have not changed.[11] These estimates taken together suggest that Hopkins' estimate may be too low.

As we discuss above, economic regulation also results in income transfers from one group to another. In our previous two reports, we used an approach used by Hahn and Hird, and Hopkins, to estimate transfers as a multiple of the efficiency losses. Based on the OECD estimate of efficiency losses, Hopkins' multiple of two (1992) gives rise to an estimate of transfer costs for economic regulation (not counting trade protection) of $180 billion.

C. Process Regulation

The main costs of process regulation consist of the paperwork costs imposed on the public. Sec. 638(a)(1)(A) of the Act calls on OMB to examine the costs and benefits of paperwork. Currently OMB is in the process of revising its guidance on how the agencies should evaluate paperwork burden. OMB issued a notice in the **Federal Register** on October 14, 1999 (64 FR 55788) inviting comments on how best to improve the uniformity, accuracy, and comprehensiveness of agency burden measurement. In this notice, we raise the issue of expanding the reporting of burden to include a monetized value of time, and specifically seek comment on the idea of converting "burden hours" into a dollar measure of burden. If a dollar-equivalent value is calculated for burden hours, agencies and OMB could report a single estimate—in dollar terms—of paperwork burden that would combine monetized burden hours with the "cost burden" calculation. This would estimate out-of-pocket expenses that are not captured by the time-based measure of burden. While this approach has analytical appeal, it does pose significant methodological challenges.

In addition, IRS has begun work on a new model that will estimate the amount of burden incurred by wage and investment taxpayers as a result of complying with the tax system. IRS has undertaken this study to improve our understanding of taxpayer burdens, to enable us to measure both current and future levels of burden, and to help us isolate the burden of particular tax provisions, regulations, or procedures. To help provide input into our consideration of methods to expand the reporting of burden to include monetized burden hours, the IRS paperwork burden study will include the development of a White Paper on the Monetization of Taxpayer Time. This White Paper will examine the issues surrounding monetization, review existing research, identify lessons learned, and discuss the implications for efforts to monetize taxpayer time.

In our Information Collection Budgets, published annually, we calculate paperwork burden imposed on the public using information agencies give us with their requests for information collection approvals.[12] We present below in Table 5 estimates of paperwork burden in terms of the hours the public devotes annually to gathering and providing information for the Federal government. At a future point in time, we hope to be able to provide information on the dollar costs of paperwork. At present we do not know how to estimate the value of the total annual benefits to society of the information the government collects from the public.

Table 5 shows our estimates of the expected paperwork burden hours for FY 1999 by agency. The total burden of 7,202 million hours is made up of 5,912 million hours for the Treasury Department (82%) and 1,290 million hours for the rest of the Federal government (18%). Using the estimate of the average value of time for the individuals and entities that provide information to the government of $26.50 per hour, which we used in the last two reports, we can get an idea of the dollar burden of paperwork on the public: $190 billion. Note, however, that (1) this is a rough average and should not be applied to individual agencies or agency collections, and (2) this estimate should not be added to our estimates of the costs of regulation because it would result in some double counting. Our estimates of regulatory costs already include paperwork costs. Many paperwork costs arise from regulations, often for enforcement and disclosure purposes.

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[11] The CEA report also went on to state that studies of this type only capture static costs, fail to capture value of foregone varieties of products, quality improvements, and productivity enhancements that would take place in the absence of trade barriers, and thus understate the benefits from trade (CEA 1998, p. 238).

[12] The Paperwork Reduction Act of 1995 requires Federal agencies to seek approval from OMB for each information collection sought from ten or more individuals or entities. As part of that request agencies must estimate the burdens that their individual collection requests impose on the public.

Table 5
Information Collection Budget for FY 1999
(millions of hours)

Department/Agency	Expected Total Hour Burden
Agriculture	83.55
Commerce	10.74
nonperiodic	8.74
periodic	2.25
Defense	105.20
Education	35.89
Energy	3.88
Health and Human Services	164.55
Housing and Urban Development	22.33
Interior	4.98
Justice	37.37
Labor	193.20
State	28.90
Transportation	143.20
Treasury	5,912.44
Veterans Affairs	3.87
EPA	120.61
FAR	20.36
FCC	31.72
FDIC	7.57
FEMA	3.82
FERC	4.23
FTC	126.83
NASA	7.33
NSF	4.41
NRC	9.59
SEC	75.41
SBA	3.71
SSA	21.60
Government Total	7,202.59

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III. The Other Impacts of Federal Regulation

Sec. 638(a)(2) of the Act calls on OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth.

A. Impact on State, Local, and Tribal Government

Over the past four years, four rules have imposed costs of more than $100 million on State, local, and Tribal governments (and thus have been classified as public sector mandates under the Unfunded Mandates Act of 1995).[13] All four of these rules were issued by the Environmental Protection Agency. These four rules are described in greater detail below.

1. EPA's Rule on Standards of Performance for Municipal Waste Combustors and Emissions Guidelines (1995): This rule set standards of performance for new municipal waste combustor (MWC) units and emission guidelines for existing MWCs under sections 111 and 129 of the Clean Air Act [42 U.S.C. 7411, 42 U.S.C. 7429]. The standards and guidelines apply to MWC units at plants with aggregate capacities to combust greater than 35 megagrams per day (Mg/day) (approximately 40 tons per day) of municipal solid waste (MSW). The standards require sources to achieve emission levels reflecting the maximum degree of reduction in emissions of air pollutants that the Administrator determined is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements.

EPA estimated the national total annualized cost for the emissions standards and guidelines to be $320 million per year (in constant 1990 dollars) over existing regulations. EPA estimated the cost of the emissions standards for new sources to be $43 million per year. EPA estimated the cost of the emissions guidelines for existing sources to be $277 million per year. The annual emissions reductions achieved through this regulatory actions include, for example, 21,000 Mg. of SO2; 2,800 Mg. of particulate matter (PM); 19,200 Mg of NOX; 54 Mg. of mercury; and 41 Kg. of dioxin/furans.

2. EPA's Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills (1996): This rule set performance standards for new municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills to implement section 111 of the Clean Air Act. The rule addressed non-methane organic compounds (NMOC) and methane emissions. NMOC include volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. Of the landfills required to install controls, about 30 percent of the existing landfills and 20 percent of the new landfills are privately owned. The remainder are publicly owned. The total nationwide annualized costs for collection and control of air emissions from new and existing MSW landfills are estimated to be $94 million per year annualized over 5 years, and $110 million per year annualized over 15 years.

3. National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts (1998): This rule promulgates health based maximum contaminant level goals (MCLGs) and enforceable maximum contaminant levels (MCLs) for about a dozen disinfectants and byproducts that result from the interaction of these disinfectants with organic compounds in drinking water. The rule will require additional treatment at about 14,000 of the estimated 75,000 residential water systems nationwide. The costs of the rule are estimated at $700 million annually. The quantified benefits estimates range from zero to 9,300 avoided bladder cancer cases annually, with an estimated monetized value of $0 to $4 billion. Possible reductions in rectal and colon cancer and adverse reproductive and developmental effects were not quantified.

4. National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment (1998): This rule establishes new treatment and monitoring requirements (primarily related to filtration) for drinking water systems that use surface water as their source and serve more than 10,000 people. The purpose of the rule is to enhance protection against potentially harmful microbial contaminants. The rule is expected to require treatment changes at about half of the 1,400 large surface water systems, at an annual cost of $300 million. All systems will also have to perform enhanced monitoring of filter performance. The estimated benefits include mean reductions of from 110,000 to 338,000 cases of cryptosporidiosis annually, with an estimated monetized value of $0.5 to $1.5 billion, and possible reductions in the incidence of other waterborne diseases.

While these four EPA rules were the only ones over the past four years to require expenditures by State, local and Tribal governments exceeding $100 million, they were not the only rules with impacts on other levels of governments. For example, 18% of rules listed in the April 1999 Unified Regulatory Agenda cited some impact on State, local or Tribal governments. In general, OMB works with the agencies to ensure that the selection of the regulatory option for all final rules fully complies with the Unfunded Mandates Reform Act. For proposed rules, OMB works with the agencies to ensure that they also solicited comment on alternatives that would reduce costs to all regulated parties, including State, local and Tribal governments.

Agencies have also significantly increased their consultation with State, local, and Tribal governments on all regulatory actions that impact them. For example, EPA and the Department of Health and Human Services engaged in particularly extensive consultation efforts over a wide variety of programs, on both formal unfunded mandates as defined by the Unfunded Mandates Reform Act and other rules with intergovernmental impacts. Agencies also made real progress in improving their internal systems to manage consultations better. This has helped them analyze specific rules in ways that reduce costs and increase flexibility for all levels of government and for the private sector, while implementing important national priorities.

This trend toward increased consultation is expected to continue. On August 5, 1999, President Clinton issued Executive Order 13132 entitled "Federalism." This Executive Order emphasizes consultation with State and local governments and greater sensitivity to their concerns. It also establishes specific requirements that Federal agencies must follow as they develop and carry out policies that affect State and local governments.

B. Impact on Small Business

The President explicitly recognized the need to be sensitive to the impact of regulations and paperwork on small business in his Executive Order 12866,

[13] EPA's proposed rules setting air quality standards for ozone and particulate matter may ultimately lead to expenditures by State, local or tribal governments of $100 million or more. However, Title II of the Unfunded Mandates Reform Act provides that agency statements on compliance with Section 202 must be conducted "unless otherwise prohibited by law". The Conference report to this legislation indicates that this language means that the section "does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." EPA has stated, and the courts have affirmed, that under the Clean Air Act, the air quality standards are health-based and EPA is not to consider costs.

"Regulatory Planning and Review," issued September 30, 1993. The Executive Order called on the agencies to tailor their regulations by business size in order to impose the least burden on society, consistent with obtaining the regulatory objectives. It also called for the development of short forms and other streamlined regulatory approaches for small businesses and other entities. The President also supported and signed into law the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In the findings section of SBREFA, Congress stated that ". . . small businesses bear a disproportionate share of regulatory costs and burdens." This is largely attributable to fixed costs—costs that all firms must bear regardless of size. Each firm has to determine whether a regulation applies, how to comply, and whether it is in compliance. As firms increase in size, fixed costs are spread over a larger revenue and employee base resulting in lower unit costs.

This observation is supported by empirical information from a study by the Office of Advocacy of the Small Business Administration (1995). That study found that regulatory costs per employee decline as firm size—as measured by the number of employees per firm—increases. Using data from Hopkins (1995), SBA estimates that the total cost of regulation (environmental, other social, the efficiency costs of economic, the transfer costs of economic, and process regulation) was 50 percent greater per employee for firms with under 20 employees compared to firms with over 500 employees.[14]

These results do not necessarily indicate, however, the extent to which reducing regulatory requirements on small firms would produce more benefits for society at lower costs. That depends in part on the contribution of small firms to the risks being addressed and the benefits produced per dollar of compliance costs by regulating small firms.

C. Impact on Wages

The impact of Federal regulations on wages depends upon how "wages" is defined and on the types of regulations involved. If we define "wages" narrowly as workers' take-home pay, social regulation may have decreased average wage rates, while economic regulation may have increased them, especially for specific groups. If we define "wages" more broadly as the real value or utility of workers' income, the directions of the effects of the two types of regulation are probably reversed.

1. Social Regulation

By a broad measure of welfare, social regulation, regulation directed at improving health, safety, and the environment, can create benefits for workers that outweigh the costs. This is true even if take-home pay does not increase. Compliance costs must be paid for by some combination of workers, business owners, and/or consumers through adjustments in wages, profits, and/or prices. This effect is most clearly recognized for occupational health and safety standards. As one leading text book in labor economics suggests: "Thus, whether in the form of smaller wage increases, more difficult working conditions, or inability to obtain or retain one's first choice in a job, the costs of compliance with health standards will fall on employees." [15]

Viewed in terms of overall welfare, the regulatory benefits of improved health, safety, and environment improvements for workers can outweigh the costs. In the occupational health standards case where the benefits of regulation accrue mostly to workers, workers are likely to be better off if health benefits exceed compliance costs.[16] Although wages may reflect the cost of compliance with health and safety rules, the job safety and other benefits of such regulation can more than compensate for any monetary loss. Workers as consumers benefitting from safer products and cleaner environment may also come out ahead if regulation produces significant net benefits for society.

2. Economic Regulation

For economic regulation, designed to set prices or conditions of entry for specific sectors, these effects may at times be reversed to some degree. Economic regulation can result in increases in income narrowly defined, but decreases in broader measures of income based on utility or overall welfare. Economic regulation is often used to protect industries and their workers from outside competition. Examples include the airline and trucking industries in the 1970's. These wage gains come at a cost in inefficiency from reduced competition, however, which consumers must bear. Moreover, real wages, which depend upon productivity, do not grow as fast without the stimulation of outside competition.[17]

These statements are generalizations for the impact of regulation in the aggregate or by broad categories. Specific regulations can increase or decrease the overall level of benefits accruing to workers depending upon the actual circumstances.

D. Economic Growth

The conventional measurement of GDP does not take into account the market value of improvements in health, safety, and the environment. It does incorporate the direct compliance costs of social regulation. Accordingly, conventional measurement of GDP can suggest that regulation reduces economic growth.[18] In fact, sensible regulation and economic growth are not inconsistent once all benefits are taken into account.

The OECD (1999) estimates that the economic deregulation that occurred in the U.S. over the last 20 years permanently increased GDP by 2 percent. The OECD also estimates that further deregulation of the transportation, energy, and telecommunication sectors would increase U.S. GDP by another 1 percent. Jaffe, Peterson, Portney, and Stavins (1995) summarize their findings after surveying the evidence of the effects of environmental regulation on economic growth as follows: "Empirical analysis of the productivity effects have found modest adverse impacts of environmental regulation." Based on the studies that tried to explain the decline in productivity that occurred in the U.S. during the 1970's, they placed the range attributable to environmental regulation from 8 percent to 16 percent (p. 151). The recent increase in productivity growth in the U.S. coinciding with continued health, safety, and environmental regulation supports the notion that the negative growth effects

[14] SBA estimated that average per employee regulatory costs were $5,106 for firms with under 20 employees compared to $3,404 for firms with over 500 employees. These estimates are based on 1992 conditions using 1995 dollars. Hopkins' own estimates found a 86 percent differential (*See* SBA 1995, pp 39–46).

[15] From Ehrenberg and Smith's Modern Labor Economics, p 279.

[16] Based on a cost benefit analysis of OSHA's 1972 Asbestos regulation by Settle (1975), which found large net benefits, Ehrenberg and Smith cite this regulation as a case where workers' wages were reduced, but they were made better off because of improved health (p. 281).

[17] Winston (1998) estimates that real operating costs declined between 25 and 75 percent in the sectors that were deregulated over the last 20 years—transportation, energy, and telecommunications.

[18] Social regulation reduces growth by diverting resources from the production of goods and services that are counted in GDP to the production or enhancement of "goods and services" such as longevity, health, and environmental quality that generally are not counted in GDP.

of social regulation have been relatively small.[19]

As indicated above, conventionally measured GDP growth does not take into account the market value of the improvements in health, safety, and the environment that social regulation has brought us. If even our lower range estimate of the benefits of social regulation ($266 billion) were added to GDP, then the more comprehensive measure of GDP, one that includes the value of nonmarket goods and services provided by regulation, would be about 3 percent greater.[20] Focusing on the effect of social regulation on economic growth is misleading if it does not take into account the full benefits of regulation.

More important than knowing the impact of regulation in general on growth is the impact of specific regulations and alternative regulatory designs on economic growth. As Jaffe *et al.* put it: "Any discussion of the productivity impacts of environmental protection efforts should recognize that not all environmental regulations are created equal in terms of their costs or their benefits." (p. 152).

In this regard, market-based or economic-incentive regulations will tend to be more cost-effective than those requiring specific technologies or engineering solutions. Under market-based regulation, profit-maximizing firms have strong incentives to find the cheapest way to produce the social benefits called for by regulation. How you regulate can go a long way toward reducing any negative impacts on economic growth and increasing the overall long run benefits to society.

Chapter II: Estimates of Benefits and Costs of This Year's "Major" Rules

In this chapter, we examine the benefits and costs of each "major rule," as required by section 638(a)(1)(C). We have included in our review those final regulations on which OMB concluded review during the 12-month period April 1, 1998, through March 31, 1999. This "regulatory year" is the same calendar period we used for last year's report. It ensures that we cover a full year's regulatory actions as close as practicable to the date our report is due, given the need to compile and analyze data and publish the report for public comment.

The statutory language categorizing the rules we consider for this report differs from the definition of "economically significant" in Executive Order 12866 (section 3(f)(1)). It also differs from similar statutory definitions in the Unfunded Mandates Reform Act and subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996—Congressional Review of Agency Rulemaking. Given these varying definitions, we interpreted section 638(a)(1)(C) broadly to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866;
- Rules designated as "major" under 5 U.S.C. 804(2) (Congressional Review Act); and
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538).

We also include a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Order 12866. This discussion is based on data provided by these agencies to the General Accounting Office (GAO) under the Congressional Review Act.

During the regulatory year selected, OMB reviewed 44 final rules that met the criteria noted above. Of these final rules, HHS submitted 15; EPA eight; DOT six; USDA four; DOI two; and DOL, DOC, SBA, DOJ, PBGC, and Education, one each. Two were Federal Acquisition Regulations rules. In addition, three agencies—DOL, HHS, and Treasury—worked together to issue one common rule. These 44 rules represent about 18 percent of the 255 final rules reviewed by OMB between April 1, 1998, and March 31, 1999, and less than one percent of the 4,752 final rule documents published in the **Federal Register** during this period. Nevertheless, because of their scale and scope, we believe that they represent the vast majority of the costs and benefits of new Federal regulations during this period.

I. Overview

As noted in Chapter II of last year's report, Executive Order 12866 "reaffirms the primacy of Federal agencies in the regulatory decisionmaking process" because agencies are given the legal authority and responsibility for rulemaking under both their organic statutes and certain process-oriented statutes, such as the Administrative Procedure Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act. The Executive order also reaffirms the legitimacy of centralized review generally and, in particular, review of the agencies' benefit cost analyses that are to accompany their proposals. The Executive Order recognizes that in some instances the consideration of benefits or costs is precluded by law. Nevertheless, the Executive Order requires agencies to prepare and submit benefit cost analyses even if those considerations are not a factor in the decisionmaking process. Again, it is the agencies that have the responsibility to prepare these analyses, and it is expected that OMB will review (but not redo) this work. In some cases where the agency has substantial discretion, the costs and benefits identified may be attributable to the regulation. In other cases, where the agency has limited discretion, they may be attributable primarily to the statute.

We found that the benefit cost analyses accompanying the 44 final rules listed in Table 6 vary substantially in type, form, and format of the estimates the agencies generated and presented. For example, agencies developed estimates of benefits, costs, and transfers that were sometimes monetized, sometimes quantified but not monetized, sometimes qualitative, and, most often, some combination of the three.

II. Benefits and Costs of Economically Significant/Major Final Rules (April 1998 to March 1999)

A. Social Regulation

Of the 44 rules reviewed by OMB, 22 are regulations requiring substantial additional private expenditures and/or providing new social benefits,[21] as described in Table 6.[22] EPA issued eight of these rules; HHS and DOT, three each; USDA and DOI, two each; DOC, DOL and Education, one each; and HHS/DOL/Treasury jointly issued one rule. Agency estimates and discussion are presented in a variety of ways, ranging from a purely qualitative discussion,for example, the benefits of the joint HHS/DOL/Treasury rule establishing minimum length-of-stay requirements for mothers and newborns, to a more complete benefit-cost

[19] For the last three years, output per hour in nonfarm business has been growing as rapidly as it did on average during productivity's golden years from 1948 though 1973.

[20] Including the value of increasing life expectancy in the GDP accounts to come up with a more comprehensive measure of the full output of the economy is not as far fetched as it sounds. It was first proposed and estimated in 1973 by D. Usher in "An Imputation to the Measure of Economic Growth for Changes in Life Expectancy" NBER Conference on Research in Income and Wealth.

[21] The other 22 are "transfer" rules.

[22] Note that all dollar figures Table 6 are in 1996 dollars unless otherwise noted.

analysis,for example, EPA's surface water treatment rule.

1. Benefits Analysis

Agencies monetized at least some benefit estimates in a number of cases including: (1) FDA's $5.7 billion over 5 years from the additional transplants resulting from its transplant-related data rule; (2) EPA's estimate of $1.1 to $4.2 billion per year in terms of better air quality from its ozone transport (NO_X SIP Call) rule; and (3) DOT's $360 million over 10 years in highway safety improvements from its reflector rule for trailers.

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TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Solid Wood Packing Material from China	Not Estimated	Not Estimated	USDA estimates that if left unchecked, these pests have the potential to create losses in excess of $41 billion to forest products, commercial fruit, maple syrup, nursery, and tourist industries. The value of imports from China potentially affected is estimated to range between $12 billion and $16 billion. These estimates represent a maximum cost that would occur only if all these imports were lost to U.S. markets. [63 FR 50107]
USDA	Pseudorabies in Swine	Not Estimated	Not Estimated	USDA authorizes the transfer of $80 million in funds for the accelerated pseudorabies eradication program. USDA has determined that this is the most appropriate time to conduct the program because of the depressed market value of swine. This will mean that the indemnity will be paid at considerable savings. [64 FR 2548]
DOC	Endangered and Threatened Species of Salmonids	Not Estimated	Not Estimated	

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS-FDA	Safety and Effectiveness of New Drugs in Pediatric Patients	$76 million/yr.	$47 million/yr.	"FDA could not develop a quantifiable estimate of the benefits of this regulation, although numerous anecdotal examples illustrate the current health problem. To consider some of these potential benefits, the agency examined hospitalization rates for five serious illnesses (asthma, HIV/AIDS, cancer, pneumonia, and kidney infections) and found significantly higher rates for children than for middle-aged adults...the analysis suggests that a 25 percent reduction in the pediatric/adult hospitalization rate differentials would yield annual [medical cost] savings of $76 million for these five illnesses." [63 FR 66666] "This estimate may represent a lower bound on the benefits to pediatric patients, however, because a number of other disease conditions are also common to children and adults, including such life-threatening conditions as hypertensive disease and renal disease. These pediatric populations would also experience significant benefits from increased safety and access to drug treatments currently available only to adult patient. Moreover, the analysis omits any quantification of benefits from reduced pain and suffering and reduced pediatric mortality. Thus the full benefits of the rule could easily exceed $100 million per year." [63FR 66667]

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS-FDA	Over-The-Counter Drug Labeling	$61-80 million/yr.	$18 million/yr.	Monetized benefits are based on the assumption that the rule will reduce hospitalizations resulting from unintentional misuse of drugs by 5 percent. These benefits include avoided direct cost of hospitalizations, and the associated lost work time. They also include the value of time savings in making drug purchase decisions. "Although the agency cannot quantify the value of health improvements that would result, the agency is confident that more informed OTC drug selection and use produced by this rule will increase consumer satisfaction and, at times, reduce health care costs for additional or supplemental medications, doctor visits, and hospitalizations." [64FR 13277] "The new label format will establish a consistent order of presentation and group similar information (such as ingredients, warnings, and directions) together under relevant headings so that it will be easier for consumers to find and read this information, thus helping to reduce the number of [less severe] adverse event occurrences." [64FR 13277-8]
HHS - HCFA	Provision of Transplant-Related Data	$5.7 billion over the first 5 years	$1.4 billion (direct medical costs) plus 399,000 - 752,000 additional paperwork burden hours over the first 5 years	Benefits and costs based on expectation of 4,118 additional non-renal (primarily liver, heart, pancreas, and lung) transplants over first 5 years and assume an average of 12 life-years gained per transplant at a value of $116,000 per life-year. [63 FR 33873] The agency also expects "this regulation will increase tissue and eye donations as well as organ donations," but did not quantify this effect. [63 FR 33872]

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS/ DOL/ Treasury	Group Health Plans Under the Newborns' and Mothers' Health Protection Act	Not estimated	$130-200 million/yr.	"Many believe that the minimum length-of-stay requirements of 48 hours for a vaginal delivery and 96 hours for a cesarean section will have a positive impact on the overall health and well-being of mothers and newborns. The longer stays will allow health care providers sufficient time to assess their ability to care for the newborn. Although some services performed in an inpatient hospital setting may be effectively provided in other settings, such as clinics or physicians' offices, not all women have access to the full range of appropriate follow-up care. [This law] ensures that many women and newborns with health coverage will now be provided an acceptable level of postpartum care." [63FR 57550-1]
DOI	Migratory Bird Hunting (Early Season Frameworks)	$50-192 million/yr.	Not Estimated	Estimates of individual's willingness to pay for an additional duck indicate the size of this benefit. Willingness to pay for generally improved duck hunting in California was $32. Willingness to pay for taking twice as many birds in Montana was $123. Expanding these estimates nationwide, the welfare benefit of the duck hunting frameworks is on the order of $50 to $192 million.
DOI	Migratory Bird Hunting (Late Season Frameworks)	$50-192 million/yr.	Not Estimated	Estimates of individual's willingness to pay for an additional duck indicate the size of this benefit. Willingness to pay for generally improved duck hunting in California was $32. Willingness to pay for taking twice as many birds in Montana was $123. Expanding these estimates nationwide, the welfare benefit of the duck hunting frameworks is on the order of $50 to $192 million.

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOL	Powered Industrial Truck Operator Training	$136 million/yr. (1993 dollars); 11 fatalities and 6,449 non-lost-workday injuries prevented/yr.	$16.9 million/yr. (1993 dollars)	The monetized portion of benefit estimate includes savings in medical costs, the value of lost output, savings in administrative costs of workers' compensation claims, and indirect costs to employer associated with lost-workday injuries [2,973 per year] only. It also includes reduced property damage and reduced litigation costs. It does not include a monetized estimate of loss of life or pain and suffering of injured workers. [63FR 66265]
Education	Education of Children with Disabilities and Early Intervention Program	$577-723 million/yr.	$324-544 million/yr.	The Department's estimates include the benefits and costs of significant statutory changes to the IDEA that have been incorporated in the rule and the benefits and costs of those non-statutory provisions that could be quantified. Estimated savings are attributable to statutory changes regarding the responsibility of private schools to provide services to children with disabilities and the elimination of unnecessary testing and non-statutory changes that reduce the number of meetings of school personnel that are required for children who are being disciplined and the extent of required services for children who have been suspended. These savings would be offset to some extent by the costs associated with the statutory changes requiring the participation of the child's regular education teacher in certain meetings and requiring alternate assessments for children with disabilities not included in general assessments. these estimates also include the cost of the non-statutory requirement for continued services to students who have exited high school without earning a regular high school diploma.
DOT/ FHWA	Lighting Devices, Reflectors, and Electrical Equipment	$360 million (present value) over 10 years	$228 million over 2-year phase-in period	
DOT/	Child Restraint	36-50 fatalities and	$152 million/yr.	

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOT/ NHTSA	Light Truck CAFÉ Model-Year 2001	Not Estimated	Not Estimated	
EPA	Stage 1 Disinfectants/ Disinfection Byproducts	$0 - 3.88 billion/yr.	$626 - 701 million/yr.	Quantified benefits based on potential reductions in fatal and non-fatal bladder cancers. Non-quantified benefits include possible reductions in colon and rectal cancer and possible reductions in adverse reproductive and developmental effects. Regarding colon and rectal cancer, EPA notes that "...the association...while possibly significant, cannot be determined at this time because of limited data..." [RIA, p 4-14] with regard to reproductive and developmental effects, EPA notes that "...the results are inconclusive and do not support quantification of benefits at this time." [RIA p 4-16]
EPA	Enhanced Surface Water Treatment	$348 - 1,603 million/yr.	$287 - 307 million/yr.	Quantified benefits based on reduced illness and death from avoided cases of cryptosporidiosis only. Non-quantified benefits include reduced risks from other pathogens, and avoided costs of averting behavior (by people who would not have gotten cryptosporidiosis) in a major, well-publicized outbreak, such as occurred in Milwaukee in 1993.
EPA	Petroleum Refining Process Waste	See "Other Information"	$30 million/yr.	Recovered oil benefits were identified and netted out of the cost estimate. Risks to exposed populations were assessed. EPA evaluated fifteen waste streams and listed four of these waste streams that it determined to pose potential risks to exposed populations.

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Nitrogen Oxide Emissions from New Fossil-Fuel-Fired Steam Generating Units	46,000 tons of nitrogen oxides in 2000	$81 million in 2000	"Certain simplifying assumptions, such as no fuel switching in response to the rule, may have resulted in a significant overestimation of these costs." [63FR 49450] "Emissions reductions from replacement boilers are not quantified because of difficulties in characterizing emission rates for the boilers being replaced and the inability of the replacement model to predict selection of different types of boilers in both the baseline case and in response to the regulation. A qualitative analysis of industrial boiler replacement raises the possibility that replacement delay due to the revision may keep some boilers continuing to emit at a higher level than they would in the baseline case where they would be replaced by a lower emitting boiler." [63FR 49450]
EPA	Volatile Organic Compound Emission Standards for Architectural Coatings	113,500 tons of volatile organic compounds per year	$26 million/yr.	"The EPA believes the estimates of total cost and associated economic impacts are conservatively high. Since the best available data on VOC content of architectural coatings is from 1990, and the final rule has VOC content requirements similar to State rules which have been enforced since 1990, the EPA believes the estimated number of reformulations and/or their reformulation cost that result from this action may be overstated in that the compliant products developed by manufacturers to comply with various State rules can be used to meet the requirements of the Federal rule." [63FR 48856]

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Non-Road Diesel Engines	768,000 tons of nitrogen oxides; 110,000 tons of hydrocarbons; and 87,000 tons of particulate matter annualized emission reductions (1999-2018)	$298 million/yr. annualized (1999-2018)	
EPA	Regional Transport of Ozone (NOx SIP Call)	$1.1-4.2 billion/yr. (1990 dollars) in 2007	$1.7 billion/yr. (1990 dollars) in 2007	Agency estimates based on analysis of 2007. Actual benefits and costs begin in 2003. The monetized benefits reflect improvements in health, crop yields, visibility, and ecosystem protection. "Due to practical analytical limitations, the EPA is not able to quantify and/or monetize all potential benefits of this action." [63FR 57478]
EPA	New Non-Road Non-Handheld Engines At or Below 19 Kilowatts	194,000 tons of combined hydrocarbons plus nitrogen oxides annualized emission reductions (2001-2020); $200 million/yr. annualized fuel savings (2001-2020)	$132 million/yr. annualized (2001-2020)	

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION

TRANSFER RULES

Dept. of Agriculture (USDA)

Disaster Set-Aside Program
Livestock Assistance Program

Dept. of Health and Human Services (HHS)

Definition of an Unemployed Parent
Clinical Psychologist and Clinical Social Worker Services
Prospective Payment System for Skilled Nursing Facilities
Medicare Coverage and Payment for Bone Mass Measurements
Establishment of the Medicare+Choice Program
Hospital Inpatient Prospective Payment System FY1999
Inpatient Hospital Deductible and Hospital and Extended Care Coinsurance 1999
Monthly Actuarial Rates and Insurance Premium Rate beginning 1/1/99
Physician Fee Schedule for CY1999
Medicare Program: Hospital Wage Data Revisions
Temporary Assistance for Needy Families
Medicare State Allotments for Payment of Medicare Part B Premiums FY 1999

Department of Justice (DOJ)

Immigration Examinations Fee Account

Pension Benefit Guarantee Corporation (PBGC)

Payment of Premiums

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TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
Department of Transportation				
	State Observational Surveys of Belt Use			
	Operation of Motor Vehicles by Intoxicated Persons			
	Incentive Grants for Use of Seat Belts			
Small Business Administration				
	HUBZone Empowerment Contracting Program			
Federal Acquisition Regulation				
	Reform of Affirmative Action In Federal Procurement - Cases 97-004A and B			
	Reform of Affirmative Action In Federal Procurement - Case 97-004C			

Of the 22 (non-transfer) rules listed in Table 6, agencies monetized all the benefit estimates that they were able to quantify in 10 cases. In two cases,

agencies provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important quantified components of benefits. DOL's analysis of its powered industrial truck operator training rule monetized the property damage reductions and out-of-pocket savings associated with injury reductions. DOL, however, did not monetize the other aspects of those injuries (such as pain and suffering) nor the fatalities avoided. EPA's analysis of its non-handheld engines rule monetized the projected fuel savings, but not the estimated hydrocarbon and nitrogen oxide emission reductions.

In four cases, agencies provided quantified benefit estimates but did not provide monetized estimates. These included: (1) DOT's 36 to 50 fatalities and 1,231 to 2,229 injuries prevented per year as a result of child seat rule; (2) EPA's 113,500 tons of volatile organic compound emission reductions per year from its architectural coatings rule; and (3) EPA's annualized emission reductions of 786,000 tons of nitrogen oxides, 110,000 tons of hydrocarbons and 87,000 tons of particulate matter from its nonroad diesel engines rule.

Finally, in six cases, agencies did not report any quantified (or monetized) benefit estimates. In many of these cases, the agency provided a qualitative description of benefits. For example, USDA's wood packing material rule discusses the potential benefits of avoiding the loss of forest products, commercial fruit, maple syrup, and tourism associated with a massive beetle infestation, but does not estimate the probability of such an episode. HHS's analysis of its length-of-stay rule for mothers and newborns includes a qualitative discussion of the rule's positive impact on the overall health and well-being of those affected.

2. Cost Analysis

In 16 of the 22 cases, agencies provided monetized cost estimates. These include such items as HHS's estimate of $1.4 billion over 5 years in direct medical costs for its transplant-related data rule; DOT's estimate of $152 million per year for its child restraint rule; and EPA's estimate of $1.7 billion per year for its ozone transport rule.

For the remaining six rules, the agencies did not estimate costs. These rules included both USDA rules, DOI's two migratory bird hunting rules, DOC's endangered species listing rule and NHTSA's light truck fuel economy rule.

3. Net Monetized Benefits

Ten of the 22 rules provided at least some monetized estimates of both benefits and costs. Of those, eight have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules. For example, DOT's reflector rule will generate an estimated net benefit of about $140 million (present value) over 10 years. EPA's surface water treatment rule will result in an estimated net benefit of between $41 million and $1.3 billion per year. In the case of certain health, safety, and environmental rules, the epidemiologic evidence may indicate, but not establish with certainty, that a causal link exists between the regulated substance and the occurrence of serious illness. Despite the lack of certainty, an agency may decide that regulation is appropriate. In calculating the benefits of such a rule, it is necessary to describe more than one possible outcome, reflecting the current state of knowledge referred to above. Thus, for example, two EPA rules resulted in monetized benefit estimates that included the possibility of both positive or negative net benefits. For example, EPA's disinfection byproducts rule was estimated to generate between $3.18 billion in net benefits and $701 million in net costs. This reflected the lack of certainty as to whether the rule would definitely prevent bladder cancer.

4. Rules With Quantified Effects of Less Than $100 Million per Year

Seven of the rules in Table 6 are classified as economically significant even though their quantified effects do not exceed $100 million in any one year:

USDA—Solid Wood Packing Material from China: Because of a lack of data, the USDA was not able to estimate the benefits and costs associated with regulating solid wood packing materials from China to prevent the importation of wood pests. USDA stated, however, that in the absence of regulatory action, the wood pests could significantly affect the forest products, commercial fruit, maple syrup, nursery, and tourist industries, which have a value of $41 billion.

USDA—Pseudorabies in Swine: In 1999, USDA began implementing a policy to accelerate the Federal eradication program for pseudorabies. Although USDA authorizes a $80 million fund for indemnity payments, the producers of the swine incur other costs such as the cost of cleaning and disinfection. USDA did not estimate these costs because it did not have sufficient information to determine the effect of its actions on the market. USDA believed it was important to act immediately because the severely depressed values of market swine presented a unique opportunity to accelerate significantly pseudorabies eradication in a cost-effective way through depopulation.

DOC—Endangered and Threatened Species of Salmonids: Based upon publicly available information, OMB determined that rules covering these species were major. Citing the Conference Report on the 1982 amendments to the Endangered Species Act, however, the agency did not perform a benefit-cost analysis of the final rules. This report specifically provides that economic impacts cannot be considered in assessing the status of a species.

HHS—Safety and Effectiveness of New Drugs in Pediatric Patients: FDA estimated that this rule will generate benefits of about $76 million per year. FDA also noted, however, that this should be interpreted as a lower bound, since the analysis covered only five illnesses and did not include any estimate for avoided pain and suffering. FDA expressed the belief that the benefits of the rule could easily exceed $100 million.

HHS—Over-The-Counter Drug Labeling: FDA estimated the benefits of this rule at $61 to $80 million/yr. In addition, the agency was unable to quantify several components of benefits that it believes are significant. These include increased consumer satisfaction and a reduction in less-severe adverse health outcomes.

DOT—Light Truck CAFE: For each model year, DOT must establish a corporate average fuel economy (CAFE) standard for light trucks, including sport-utility vehicles and minivans. (DOT also sets a separate standard for passenger cars, but is not required to revisit the standard each year.) For the past four years, however, appropriations language has prohibited NHTSA from spending any funds to change the standards. In effect, it has frozen the light truck standard at its existing level of 20.7 miles per gallon (mpg) and has prohibited NHTSA from analyzing effects at either 20.7 mpg or alternative levels. Although DOT did not estimate the benefits and costs of the standards, the agency's experience in previous years indicates that they may be substantial. Over 5 million new light trucks are subject to these standards each year, and the standard, at 20.7 mpg, is binding on several manufacturers. In view of these likely,

substantial effects, we designated the rule as economically significant even though analysis of the effects was prohibited by law.

EPA—Petroleum Refining Process Waste: EPA estimated the cost of the rule at $20 to $40 million/yr. with an expected value of $30 million/yr. Based on new cost information submitted to EPA after the close of the comment period, OMB determined that the rule as written could impose costs in excess of $100 million/yr. EPA subsequently determined that the higher cost estimates are attributable to waste leachates not intended to be covered by the petroleum listing, and EPA published in the **Federal Register** another rule clarifying that leachates are excluded from this petroleum listing and other listings, and are deferred to Clean Water Act discharge standards. This deferral was in effect when the petroleum rule became effective; consequently, the impacts for the petroleum listing are correctly estimated to be $30 million.

B. Transfer Regulations

Of the 44 rules listed in Table 6, 22 were necessary to implement Federal budgetary programs. The budget outlays associated with these rules are "transfers" to program beneficiaries. Of the 22, two are USDA rules that implement Federal appropriations language regarding disaster aid for farmers; eleven are HHS rules that implement Medicare and Medicaid policy; one is an HHS rule providing assistance to needy families; three are DOT rules regarding grants to states to increase seatbelt usage and reduce intoxicated driving; one is an SBA rule regarding contracting; two are Federal Acquisition Regulation rules; one is a DOJ rule regarding immigration policy; and one is a Pension Benefit Guaranty Corporation (PBGC) rule regarding payment of premiums.

1. Major Rules for Independent Agencies

The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA) require the General Accounting Office (GAO) to submit reports on major rules to the Committees of jurisdiction in both Houses of Congress, including rules issued by agencies not subject to Executive Order 12866 (the "independent" agencies). We reviewed the information on the costs and benefits of major rules contained in GAO reports for the period of April 1, 1998 to March 31, 1999. GAO reported that four independent agencies issued twenty-four major rules during this period. We list the agencies and the type of information provided by them (as summarized by GAO) in Table 7.

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Table 7 Benefit and Cost Information on Independent Agency Rules				
Agency	Total Rules	Rules with Some Information on Costs or Benefits	Monetized Information on Costs	Monetized Information on Benefits
Federal Communications Commission (FCC)	15	0	0	0
Securities and Exchange Commission (SEC)	6	5	2	1
Nuclear Regulatory Commission (NRC)	2	1	0	0
National Credit Union Administration	1	0	0	0
Total	24	6	2	1

In comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of

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the major rules. As Table 7 indicates, six of the twenty-four rules included some discussion of benefits and costs. Only two of the twenty-four regulations had any monetized cost information; only one regulation monetized the benefits associated with the regulation.

The one rule that estimated both benefits and costs was "Registration Form Used by Open-Ended Management Investment Companies and New Disclosure Option for Open-Ended Management Investment Companies" by the Securities and Exchange Commission (SEC). This regulation updated the Form N–1A that is used by mutual funds to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933 [63 FR 13916]. SEC estimated the cost associated with the regulation to be approximately $175 million. The estimated benefits for the small funds was $1.8 million. This was the only rule in which the monetized cost exceeded $100 million.

SEC also estimated the cost associated with a regulation amending Rule 17a–5 to require broker-dealers to report their processes for preparing for the Year 2000. The cost was about $66 million. With respect to the remaining regulations, the twenty-two GAO reports contain no information useful for estimating the aggregate costs and benefits.

Chapter III: Estimates of Benefits and Costs of "Economically Significant" Rules, April 1995—March 1999

This chapter presents the available benefit and cost estimates for individual rules from April 1, 1995 through March 31, 1999. The summary of agency estimates for final rules from the current year (April 1, 1998 to March 31, 1999) is presented in Chapter II, Table 6. The summary of agency estimates for final rules from the preceding three years (April 1, 1995 to March 31, 1998) is presented in Tables 15 through 17 in the Appendix. In this chapter, we also aggregate benefit and cost estimates for those Federal rules with significant quantified benefit and cost estimates.

In assembling agency estimates of benefits and costs, we have:

(1) Applied a uniform format for the presentation of benefit and cost estimates in order to make agency estimates more closely comparable with each other (for example, providing the benefit and cost streams over time and annualizing benefit and cost estimates); and

(2) Monetized quantitative estimates where the agency has not done so (for example, converting tons of pollutant per year to dollars).

Adopting a format that presents agency estimates so that they are more closely comparable also allows, at least for purposes of illustration, the aggregation of benefit and cost estimates across rules. While we have attempted to be faithful to the respective agency approaches, we caution the reader that agencies have used different methodologies and valuations in quantifying and monetizing effects.

As noted in Chapters I and II, the substantial limitations of available data on the benefits and costs for this set of rules raise significant obstacles to the development of a meaningful aggregate estimate of benefits and costs for even a single year's regulations. For example in many cases, agencies identified important benefits of their rules that were not quantifiable. In such cases, we necessarily excluded them from the monetized estimates we develop in this Chapter. To the extent that these benefits are substantial, the monetized estimates will understate the total value of the benefits. The discussion below addresses other limitations in the data and outlines the steps we have taken in an effort to overcome some of them.

I. Monetized Benefit and Cost Estimates for Individual Rules

We have included in this Chapter only those major rules with quantified estimates of both benefits and costs. These include six rules from the 1995/96 period, 15 rules from the 1996/97 period, 13 rules from 1997/98 period, and 14 from 1998/99. We have excluded 17 rules without quantified estimates of either benefits or costs. (See Table 8.)

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Table 8: Major Rules Issued Between April 1, 1995 and March 31, 1999 Without Quantified Estimates of Either Benefits or Costs	
USDA	1996 Farm Bill Farm Program Karnal Bunt, 1996-1997 Solid Wood Packing Material from China Pseudorabies in Swine
DOC	Endangered and Threatened Species of Salmonids
HHS	Substances Prohibited in Animal Feed, 1997-1998
DOI	Migratory Bird Hunting (Early Season), 1995-1996 Migratory Bird Hunting (Fall Season), 1995-1996 Migratory Bird Hunting (Early Season), 1996-1997 Migratory Bird Hunting (Fall Season), 1996-1997 Migratory Bird Hunting (Early Season), 1997-1998 Migratory Bird Hunting (Fall Season), 1997-1998
EPA	Phase III Land Disposal Restrictions
DOT	Light Truck CAFE, 1995-1996 Light Truck CAFE, 1996-1997 Light Truck CAFE, 1997-1998 Light Truck CAFE, 1998-1999

Ten additional rules listed in Table 9 have also been excluded from further discussion because only quantified cost estimates were available and/or there were only relatively small benefit and cost estimates.

Table 9: Small or Missing Estimates, Not Evaluated for Aggregate Estimate	
USDA	Use of the Term "Fresh" for Poultry Labeling Importation of Sonoran Pork Importation of Argentine Beef
DOC	Encryption Items Transferred from U.S. Munitions List to the Commerce Control List
HHS/DOL/Treasury	Group Health Plans Under the Newborns' and Mothers' Health Protection Act
DOI	Migratory Bird Hunting (Early Season), 1998-1999 Migratory Bird Hunting (Fall Season), 1998-1999
EPA	Lead-Based Paint Activities in Target Housing Toxic Release Inventory: Facility Expansion Petroleum Refining Process Waste

For some of the remaining rules, agencies quantified estimates of significant effects but did not assign a monetized value to these effects. Some

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of the quantified effects—for example, small changes in the risk of premature death or serious injury—are identified as outcomes for a variety of rules. In a number of instances, agencies did assign monetized estimates to these outcomes.

Differences in valuation across rules are often critical, particularly in comparisons of individual rules or programs. The different approaches in the quantification and monetization of these effects across agencies can also result in an "apples and oranges" problem in aggregating estimates. Indeed, where effects have been quantified, but not monetized, the different quantitative effects cannot be aggregated because they are not expressed in common units. In order to address this problem, this section takes the additional step of assigning a monetized value in order to provide a more consistent set of estimates in those cases where agencies only quantified significant effects. We have not, however, attempted to quantify or monetize any qualitative effects identified by agencies where the agency did not at least quantify them.

As in the past, agencies continue to take different approaches toward rules that affect small risks of premature death. In some cases, such as FDA's tobacco rule, agencies have quantified and monetized these effects in terms of "quality-adjusted statistical life years." In other cases, such as FRA's roadway worker protection rule, agencies have quantified and monetized these effects in terms of statistical lives. In still other cases, such as DOL's industrial truck operator rule and NHTSA's child restraint rule, agencies have quantified risks of death in terms of life-years or lives, but have not monetized them. Finally, in some cases, such as FDA's animal feed rule, the agency did not develop any quantified estimate of the rule's mortality effects.

Estimates for the value of a statistical life varied across agencies. For the tobacco rule, FDA estimated benefits based on a value of $2.5 million per statistical life. For the roadway worker rule, FRA used $2.7 million per statistical life. For the upper-bound estimates of EPA's ozone and PM NAAQS rules, the agency used $4.8 million per statistical life. For its mammography rule, FDA used $5 million per statistical life.[23] Similarly, agency estimates for the value of a statistical life-year have also varied. FDA used $116,500 per life-year for its tobacco rule. EPA used $120,000 per life-year to produce its lower-bound estimates of benefits in its ozone and PM NAAQS rules. FDA used $368,000 per life-year in its mammography rule. As a general matter, we have deferred to the individual agencies' judgment in this area. In cases where the agency both quantified and monetized fatality risks, we have made no adjustments to the agency's estimate.

In cases where the agency provided only a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates in order to convert these effects into a common unit. For example, in the case of HHS's organ donor rule, the agency estimated, but did not monetize, statistical life-years saved (although it discussed its use of $116,500 per life-year in other contexts). We valued those life-years at $116,500 each. For NHTSA's child restraint rule, we used a value of $2.7 million per statistical life.

In cases where agencies have not adopted estimates of the value of reducing these risks, we used estimates supported by the relevant academic literature. For DOL's industrial truck operator rule, for example, we used $5 million per statistical life.[24] We did not attempt to quantify or monetize fatality risk reductions in cases where the agency did not at least quantify them. As a practical matter, the aggregate benefit and cost estimates are relatively insensitive to the values we have assigned for these rules because the aggregate estimates are dominated by the FDA tobacco rule and EPA's rules revising the ozone and PM primary NAAQS.

II. Valuation Estimates for Other Regulatory Effects

The following is a brief discussion of our valuation estimates for other types of effects which agencies identified and quantified, but did not monetize.

• Injury. For the child restraint rule, we adopted the Department of Transportation approach of converting injuries to "equivalent fatalities." These ratios are based on DOT's estimates of the value individuals place on reducing the risk of injury of varying severity relative to that of reducing risk of death. For the OSHA industrial truck operator rule, we did not monetize injury benefits beyond OSHA's estimate of the direct cost of lost workday injuries.

• Change in Gasoline Fuel Consumption. We valued reduced gasoline consumption at $.80 per gallon pre-tax.

• Reduction in Barrels of Crude Oil Spilled. We valued each barrel prevented from being spilled at $2,000. This reflects double the sum of the most likely estimates of environmental damages plus cleanup costs contained in a recent published journal article (Brown and Savage, 1996).

• Change in Emissions of Air Pollutants. We used estimates of the benefits per ton for reductions in hydrocarbon, nitrogen oxide (NO_X), sulfur dioxide (SO_2), and fine particulate matter (PM) derived from EPA's Pulp and Paper cluster rule (October, 1997). These estimates were obtained from the RIA prepared for EPA's July, 1997 rules revising the primary NAAQS for ozone and fine PM. We note that in this area, as in others, the academic literature offers a number of methodologies and underlying studies to quantify the benefits. There remain considerable uncertainties with each of these approaches. In particular, the derivation and application of per-ton coefficients to value reductions in these pollutants requires significant simplifying assumptions. This is particularly true with respect to the relationship between changes in emitted precursors pollutants and changes in the ambient pollutant concentrations which yield actual benefits. As a result of these simplifying assumptions, the monetary benefit estimates obtained by multiplying tons reduced by benefit estimates per-ton, which we derive from analyses of other rules, should be considered highly uncertain. For each of these pollutants, we used the following values (all in 1996$) for changes in emissions:[25]
Hydrocarbons: $519 to $2,360/ton;
Nitrogen Oxides: $519 to $2,360/ton;
Particulate Matter: $11,539/ton; and
Sulfur Dioxide: $3,768 to $11,539/ton.

EPA has recently recommended that we use an average value of $7,999/ton for nitrogen oxides. EPA based this estimate on the benefits estimate associated with its recent "Tier 2/ gasoline sulfur" final rule (FR cite, when available). We will be considering whether we should use this or some other value instead of the range we currently use and would welcome comment on the subject.

[23] There is a relatively rich body of academic literature on this subject. The methodologies used and the resulting estimates vary substantially across the academic studies. Based on this literature, agencies have made developed estimates they believe are appropriate for their particular regulatory circumstances.

[24] As a result of OSHA's interpretation of the Supreme Court's decision in the "Cotton Dust" case, American Textile Manufacturers Institute v. Donovan, 452 U.S. 491 (1981), OSHA does not conduct cost-benefit analysis or assign monetary values to human lives and suffering.

[25] Where applicable, the lower (higher) end of the value ranges in all of the tables throughout this report reflect the lower (higher) values in these ranges.

In order to make agency estimates more consistent, we developed benefit and cost time streams for each of the rules. Where agency analyses provide annual or annualized estimates of benefits and costs, we used these estimates in developing streams of benefits and costs over time. Where the agency estimate only provided annual benefits and costs for specific years, we used a linear interpolation to represent benefits and costs in the intervening years.[26]

Agency estimates of benefits and costs cover widely varying time periods. While HHS analyzed the effects of providing transplant-related data from 1999 through 2004, other agencies generally examined the effects of their regulations over longer time periods. HHS used a 10-year period for its over-the counter drug labeling rule; DOL also used a 10-year period for its truck operator training rule. EPA's analyses on disinfection and enhanced water treatment rules evaluated the effects over a twenty-year period. The differences in the time frames used for the various rules evaluated generally reflect the specific characteristics of individual rules such as expected capital depreciation periods or time to full realization of benefits.

In order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data. We have not made any changes to agency monetized estimates. To the extent that agencies have adopted different monetized values for effects, for example, different values for a statistical life, or different discounting methods, these differences remain embedded in Tables 10 through 14. Any comparison or aggregation across rules should also consider a number of factors which the presentation in tables 10 through 14 does not address. For example, these rules may use baselines in regulations and controls already in place. In addition, these rules may well treat uncertainty in different ways. In some cases, agencies may have developed alternative estimates reflecting upper- and lower-bound estimates. In other cases, the agencies may offer a midpoint estimate of benefits and costs. In still other cases the agency estimates may reflect only upper-bound estimates of the likely benefits and costs.

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[26] In other words, if hypothetically we had costs of $200 million in 2000 and $400 million in 2020, we would assume costs would be $250 million in 2005, $300 million in 2010, and so forth.

Table 10:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1995 to March 31, 1996
(Millions of $1996, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Health and Human Services (HHS)								
	Hazard Analysis and Critical Control Points (HACCP): Seafood	Benefits	$ 110- 190	$ 110- 190	$ 110- 190	$ 110- 190	$ 110- 200	$ 1,600- 2,800
		Costs	$ 50- 110	$ 50- 110	$ 50- 110	$ 50- 110	$ 50- 120	$ 740- 1,600
Department of Transportation (DOT)								
	Head Impact Protection	Benefits	$ 480- 540	$1,900-2,200	$1,900-2,200	$1,900-2,200	$1,600-1,800	$22,000-25,000
		Costs	$ 170	$ 690	$ 690	$ 690	$ 580	$ 8,000
	Vessel Response Plans	Benefits	$ 40	$ 40	$ 40	$ 40	$ 40	$ 330
		Costs	$ 260	$ 260	$ 260	$ 260	$ 280	$ 3,900
Environmental Protection Agency (EPA)								
	Marine Tank Vessel Loading and Petroleum Refining NESHAP	Benefits	$ 170- 760	$ 170- 760	$ 170- 760	$ 170- 760	$ 170- 760	$ 2,900-10,000
		Costs	$ 120- 160	$ 120- 160	$ 120- 160	$ 120- 160	$ 120- 160	$ 1,700- 2,200
	Air Emissions from Municipal Solid Waste Landfills	Benefits	$ 50- 200	$ 60- 220	$ 70- 230	$ 70- 230	$ 60- 210	$ 820- 2,900
		Costs	$ 90	$ 105	$ 110	$ 110	$ 100	$ 1,400
	Municipal Waste Combustors	Benefits	$ 220- 570	$ 220- 570	$ 220- 570	$ 220- 570	$ 240- 620	$ 3,300- 8,600
		Costs	$ 300	$ 300	$ 300	$ 300	$ 320	$ 4,400

Table 11:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1996 to March 31, 1997
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Agriculture (USDA)								
	Conservation Reserve Program	Benefits	$ 2,000	$ 2,000	$ 2,000	$ 2,000	$ 2,200	$ 30,000
		Costs	$ 900	$ 900	$ 900	$ 900	$ 970	$ 13,000
	Hazard Analysis and Critical Control Points (HAACP): Meat and Poultry	Benefits	$ 70- 2,600	$ 70- 2,600	$ 70- 2,600	$ 70- 2,600	$ 70- 2,800	$ 1,000- 38,000
		Costs	$ 90- 110	$ 90- 110	$ 90- 110	$ 90- 110	$ 100- 120	$ 1,400- 1,700
Department of Health and Human Services (HHS)								
	Food Nutrition Labeling: Small Business Exemption	Benefits	$ 275- 360	$ 275- 360	$ 275- 360	$ 275- 360	$ 300- 390	$ 4,100- 5,400
		Costs	$ 3	$ 2	$ 1	$ 1	$ 2	$ 30
	Restriction on the Sale and Distribution of Tobacco	Benefits	$9,200-10,000	$9,200-10,000	$9,200-10,400	$9,200-10,000	$9,900-11,000	$140,000-150,000
		Costs	$ 180	$ 180	$ 180	$ 180	$ 180	$ 2,500
	Medical Devices: Quality Regulations	Benefits	$ 270- 280	$ 270- 280	$ 270 -280	$ 270- 280	$ 290- 310	$ 4,100- 4,200
		Costs	$ 80	$ 80	$ 80	$ 80	$ 90	$ 1,200
Department of Labor (DOL)								
	Exposure to Methylene Chloride	Benefits	$ 40	$ 40	$ 40	$ 40	$ 90	$ 1,200
		Costs	$ 100	$ 100	$ 100	$ 100	$ 110	$ 1,500

Table 11:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1996 to March 31, 1997
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Transportation (DOT)								
	Airbag Depowering	Benefits	$ 540- 860	$ 0	$ 0	$ 0	$ 170- 270	$ 2,400- 3,800
		Costs	$ 340- 1,600	$ 0	$ 0	$ 0	$ 110- 500	$ 1,500- 7,000
	Roadway Worker Protection	Benefits	$ 30	$ 30	$ 30	$ 30	$ 40	$ 490
		Costs	$ 30	$ 30	$ 30	$ 30	$ 40	$ 480
Environmental Protection Agency (EPA)								
	Accidental Release Prevention	Benefits	$ 170	$ 170	$ 170	$ 170	$ 170	$ 2,400
		Costs	$ 100	$ 100	$ 100	$ 100	$ 100	$ 1,500
	Financial Assurance for Municipal Solid Waste Landfills	Benefits	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
		Costs	-$ 100	-$ 100	-$ 100	-$ 100	-$ 110	-$ 1,500
	Deposit Control Gasoline	Benefits	$ 120- 350	$ 120- 350	$ 120- 350	$ 120- 350	$ 120- 350	$ 1,700- 5,200
		Costs	$ 140	$ 140	$ 140	$ 140	$ 150	$ 2,000
	Acid Rain Phase II NO_x Controls	Benefits	$ 460- 2,100	$ 460- 2,100	$ 460- 2,100	$ 460- 2,100	$ 430- 2,000	$ 6,000- 27,000
		Costs	$ 200	$ 200	$ 200	$ 200	$ 190	$ 2,600
	Federal Test Procedure Revisions	Benefits	$ 140- 820	$ 140- 820	$ 140- 820	$ 140- 820	$ 130- 760	$ 1,700- 11,000
		Costs	$ 200- 250	$ 200- 250	$ 200- 250	$ 200- 250	$ 200- 250	$ 2,600- 3,200

Table 11:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1996 to March 31, 1997
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Environmental Protection Agency (EPA), continued								
Voluntary Standards for Light-Duty Vehicles (NLEV)		Benefits	$ 50- 220	$ 130- 590	$ 260- 1,200	$ 380- 1,800	$ 230- 1,000	$ 3,100- 14,000
		Costs	$ 600	$ 600	$ 600	$ 600	$ 640	$ 8,920
Emission Standards for Marine Engines		Benefits	$ 10- 50	$ 90- 390	$ 180- 810	$ 240- 1,100	$ 150- 680	$ 2,100- 9,400
		Costs	$ 50	$ 310	$ 360	$ 320	$ 270	$ 3,760

Table 12:
Agency Monetized Benefit/Cost Estimates for Final Rules
~~April 1, 1997 to March 31, 1998~~
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Agriculture (USDA)								
	Environmental Quality Incentives Program (EQIP)	Benefits	$ 270	$ 270	$ 270	$ 270	$ 290	$ 4,000
		Costs	$ 180	$ 180	$ 180	$ 180	$ 200	$ 2,700
Department of Health and Human Services (HHS)								
	Organ Procurement and Transplantation Network	Benefits	$ 30- 410	$ 30- 410	$ 30- 410	$ 30- 410	$ 40- 440	$ 510- 6,100
		Costs	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
	Quality Mammography Standards	Benefits	$ 180- 260	$ 180- 260	$ 180- 260	$ 180- 260	$ 200- 280	$ 2,800- 3,900
		Costs	$ 40	$ 40	$ 40	$ 40	$ 40	$ 570
Department of Labor (DOL)								
	Respiratory Protection	Benefits	$ 140- 560	$ 140- 560	$ 140- 560	$ 140- 560	$ 590- 2,700	$ 8,200- 37,000
		Costs	$ 110	$ 110	$ 110	$ 110	$ 120	$ 1,700

Table 12:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1997 to March 31, 1998
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Energy (DOE)								
	Energy Conservation Standards for Refrigerators	Benefits	$ 610	$ 680- 710	$ 790- 860	$ 890- 990	$ 700- 760	$ 9,700- 11,000
		Costs	$ 280	$ 280	$ 280	$ 280	$ 260	$ 3,600
	Energy Conservation Standards for Room Air Conditioners	Benefits	$ 60	$ 70	$ 80	$ 80	$ 80	$ 930- 1,000
		Costs	$ 20	$ 20	$ 20	$ 20	$ 20	$ 300
Environmental Protection Agency (EPA)								
	Emission Standards for New Locomotives	Benefits	$ 250- 970	$ 250- 970	$ 250- 970	$ 250- 970	$ 230- 900	$ 3,200- 13,000
		Costs	$ 90	$ 90	$ 90	$ 90	$ 80	$ 1,900
	Emission Standards for New Highway Heavy-Duty Engines	Benefits	$ 0	$ 310-1,400	$ 310- 1,400	$ 310- 1,400	$ 220- 990	$ 3,000- 14,000
		Costs	$ 0	$ 200	$ 200	$ 200	$ 140	$ 1,900
	Pulp and Paper: Effluent Guidelines	Benefits	$ 10- 160	$ 10- 160	$ 10- 160	$ 10- 160	$ 10- 250	$ 150- 3,400
		Costs	$ 160	$ 160	$ 160	$ 160	$ 250	$ 3,400

Table 12:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1997 to March 31, 1998
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Environmental Protection Agency (EPA), continued								
	Pulp and Paper: National Emission Standards for Hazardous Air Pollutants (NESHAP)	Benefits	-$ 1,000-1,000	-$1,000-1,000	-$ 1,000- 1,000	-$ 1,000- 1,000	-$ 970- 1,100	-$ 13,000- 14,000
		Costs	$ 80	$ 80	$ 80	$ 80	$ 120	$ 1,600
	National Ambient Air Quality Standards (NAAQS): Ozone	Benefits	$ 0	$ 235- 710	$ 470- 2,500	$ 1,800- 10,000	$ 770- 4,300	$ 11,000- 59,000
		Costs	$ 0	$ 470	$ 1,310	$ 11,000	$ 4,500	$ 62,000
	National Ambient Air Quality Standards (NAAQS): Particulate Matter	Benefits	$ 0	$ 0	$22,000-123,000	$24,000-130,000	$11,000-59,000	$148,000-816,000
		Costs	$ 0	$ 0	$ 10,000	$ 44,000	$ 17,000	$ 230,000
	Disposal of Plychlorinated Biphenyls (PCBs)	Benefits	$ 150- 740	$ 150- 740	$ 150- 740	$ 150- 740	$ 160- 790	$ 2,200- 11,000
		Costs	$ 14	$ 14	$ 14	$ 14	$ 14	$ 210

Table 13:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1998 to March 31, 1999
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Education								
	Education of Children with Disabilities and Early Intervention Program	Benefits	$ 580 - 720	$ 580 - 720	$ 580 - 720	$ 580 - 720	$ 580 - 720	$8,000 - 10,000
		Costs	$ 320 - 540	$ 320 - 540	$ 320 - 540	$ 320 - 540	$ 320 - 540	$ 4,500 - 7,500
Department of Health and Human Services (HHS)								
	Safety and Effectiveness of New Drugs in Pediatric Patients	Benefits	$ 74	$ 74	$ 74	$ 74	$ 74	$ 1,000
		Costs	$ 45	$ 45	$ 45	$ 45	$ 45	$ 630
	Over-the-Counter Drug Labeling	Benefits	$ 60 - 78	$ 60 - 78	$ 60 - 78	$ 60 - 78	$ 60 - 78	$ 820 - 1,070
		Costs	$ 18	$ 18	$ 18	$ 18	$ 18	$ 250
	Provision of Transplant-Related Data	Benefits	$ 1,100	$ 1,100	$ 1,100	$ 1,100	$ 1,100	$ 15,000
		Costs	$ 270	$ 270	$ 270	$ 270	$ 270	$ 3,800
Department of Labor (DOL)								
	Powered Industrial Truck Operator Training	Benefits	$ 210	$ 210	$ 210	$ 210	$ 210	$ 2,800
		Costs	$ 18	$ 18	$ 18	$ 18	$ 18	$ 250

Table 13:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1998 to March 31, 1999
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Transportation (DOT)								
	Lighting Devices, Reflectors, and Electrical Equipment	Benefits	$ 53	$ 53	$ 53	$ 53	$ 53	$ 680
		Costs	$ 34	$ 34	$ 34	$ 34	$ 34	$ 430
	Child Restraint Anchorage Systems/Child Restraint System	Benefits	$ 110 - 190	$ 110 - 190	$ 110 - 190	$ 110 - 190	$ 110 - 190	$ 1,500-2,700
		Costs	$ 150	$ 150	$ 150	$ 150	$ 150	$ 2,100
Environmental Protection Agency (EPA)								
	Stage 1 Disinfectants/ Disinfection Byproducts	Benefits	$ 0 - 3,700	$ 0 - 3,700	$ 0 - 3,700	$ 0 - 3,700	$ 0 - 3,700	$ 0- 51,000
		Costs	$ 600 - 670	$ 600 - 670	$ 600 - 670	$ 600 - 670	$ 600 - 670	$ 8,200 - 9,200
	Enhanced Surface Water Treatment	Benefits	$330 - 1,500	$330 - 1,500	$330 - 1,500	$330 - 1,500	$330 - 1,500	$ 4,600- 21,000
		Costs	$ 280-300	$ 280-300	$ 280-300	$ 280-300	$ 280-300	$ 3,800 - 4,000
	Nitrogen Oxide Emission from New Fossil-Fuel-Fired Steam Generating Units	Benefits	$ 24 - 110	$ 24 - 110	$ 24 - 110	$ 24 - 110	$ 24 - 110	$ 330 - 1,500
		Costs	$ 81	$ 81	$ 81	$ 81	$ 81	$ 1,100
	Volatile Organic Compound Emission Standards for Architectural Coatings	Benefits	$ 33 - 300	$ 33 - 300	$ 33 - 300	$ 33 - 300	$ 33 - 300	$ 920 - 4,200
		Costs	$ 29	$ 29	$ 29	$ 29	$ 29	$ 400
	Non-Road Diesel Engines	Benefits	$1,500-3,100	$1,500-3,100	$1,500-3,100	$1,500-3,100	$1,500-3,100	$ 20,000-42,000
		Costs	$ 300	$ 300	$ 300	$ 300	$ 300	$ 4,100

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Table 14:
Estimates of the Total Annual Monetized Costs and Monetized Benefits of Social Regulations by Year, 1995 to March 1999
($ millions)

	2000	2005	2010	2015	Annualized	Net Present Value
1995-96						
Benefits	$ 1,100- 2,300	$ 2,500- 3,900	$ 2,500- 3,900	$ 2,500- 3,900	$ 2,200- 3,600	$ 31,000- 50,000
Costs	$ 1,300- 1,400	$ 1,800- 1,900	$ 1,800- 1,900	$ 1,800- 1,900	$ 1,700- 1,800	$ 23,000- 25,000
1996-97						
Benefits	$13,000-20,000	$13,000-20,000	$13,000- 21,000	$13,000- 22,000	$ 14,000-22,000	$200,000- 310,000
Costs	$ 2,900- 4,200	$ 2,800- 2,900	$ 2,900- 2,900	$ 2,800- 2,900	$ 3,000- 3,500	$ 42,000- 48,000
1997-98						
Benefits	$ 750- 5,100	$ 1,400- 7,300	$24,000-130,190	$27,000-150,000	$ 13,000-71,000	$180,000- 990,000
Costs	$ 980	$ 1,600	$ 13,000	$ 56,000	$ 23,000	$ 310,000
1998-99						
Benefits	$ 5,700-17,000	$ 5,700-17,000	$ 5,700-17,000	$ 5,700-17,000	$ 5,700-17,000	$ 77,000 - 230,000
Costs	$ 4,300-4,600	$ 4,300-4,600	$ 4,300-4,600	$ 4,300-4,600	$ 4,300-4,600	$ 58,000 - 62,000
Total						
Benefits	$21,000-45,000	$23,000-48,000	$46,000-180,000	$49,000-190,000	$36,000-110,000	$490,000-1,500,000
Costs	$10,000-11,000	$10,600-11,000	$21,000- 22,000	$64,000- 66,000	$ 32,000-33,000	$440,000- 450,000

III. Aggregation of Benefit and Cost Estimates Across Rules

In Table 14, we aggregated the estimates for individual rules from Tables 10 through 13 by year. This approach yields prospective estimates of the benefits and costs that Federal agencies expected before they issued major rules over the last three years.

We have several important observations to offer on these aggregate estimates. First, the 1996 HHS rule placing restrictions on the sale of tobacco and EPA's 1997 rules revising the NAAQS for ozone and particulate matter dominate the annualized and present value aggregates presented in Table 13. Changes in estimation methodology for these rules, as reflected by the "plausible range" adopted by the analysis for the EPANAAQS rules for ozone and particulate matter, will have a marked effect on the aggregated benefit and cost estimates for the rules published over the period from April 1, 1995 to March 31, 1998. By the same token, the aggregate estimates are not very sensitive to different approaches for the remaining rules.

The presentation of these aggregates as annualized benefit and cost streams or as net present value estimates may obscure the actual timing of benefits and costs. In the case of the tobacco rule, for example, the annualized benefit estimates were estimated to be $9 to $10 billion per year. The health benefits associated with successfully reducing the number of young tobacco users, however, will not begin to be realized until after 2015 because of the lag in the noticeable, adverse effects associated with tobacco use. In the case of OSHA's methylene chloride standard, our estimate assumes that the reduction in cancer deaths among exposed workers will not occur until the year 2017, based on an average 20 year lag from exposure to death from cancer.[27]

Similarly, the benefits and costs of the revised ozone and particulate matter NAAQS will only be recognized in the years after 2005. These estimates of "out-year" benefits and costs are not certain. EPA will complete its next periodic review of the particulate matter NAAQS, scheduled for 2002, before it begins implementation of the revised particulate matter NAAQS. If this review yields a "mid-course" change in the standard, the estimates of benefits and costs could change. EPA has also expressed a continuing concern with the uncertainty of the full attainment cost estimates because EPA believes technological change over the next decade will yield lower-cost approaches that will achieve the revised NAAQS.

As noted above, there are significant methodological issues that need to be confronted when aggregating estimates from a set of individual rules (as presented in tables 10 through 13) in an effort to obtain an estimate of the total benefits and costs of Federal regulation. These issues include:

(1) Adoption of a reasonable, consistent baseline (it is difficult to patch together a sensible baseline from the differing baseline scenarios adopted across rules).

(2) The use of prospective estimates (versus retrospective estimates) of the benefits and costs of regulation, for example, the reliance on prospective estimates may well fail to reflect important changes in taste, innovation by the private sector, or changes in Federal/State/local regulation.

(3) The "apples and oranges" problem associated with combining estimates from different studies, including different measures of benefits and costs, double-counting of benefits and costs across related rules, differing approaches to uncertainty such as the use of upper- and lower-bound estimates versus the use of an upper-bound only estimate, and different discount rates.

A final reason that any regulatory accounting effort has limits is the lack of information on the effects of regulations on distribution or equity. None of the analyses addressed in this report provides quantitative information on the distribution of benefits or costs by income category, geographic region, or any other equity-related factor. As a result, there is no basis for quantifying distributional or equity impacts.

Chapter IV: Ten Recommendations for Reform

Sec. 638(a)(3) of the Act requires OMB to submit with its report on the costs and benefits and impacts of Federal regulation "recommendations for reform." In seeking to reform and make more efficient the regulatory process, OMB provides guidance to the agencies in regulatory planning and reviews individual regulations as provided by Executive Order 12866. In so doing, we coordinate policy concerns among the agencies and make numerous recommendations to the agencies to ensure that regulations are consistent with applicable law, the President's priorities, and the regulatory reform principles of Executive Order 12866. The results of those recommendations and their consideration by the agencies during the regulatory decisionmaking process are reflected in final regulations and represent the Administration's regulatory reform efforts.

The most comprehensive accounting of the recommendations and regulations that agencies currently have under consideration is published annually in the Administration's Regulatory Plan. The Regulatory Plan contains a description of the most significant regulatory and deregulatory actions that the agencies plan to issue in either proposed or final form during the next fiscal year. The latest Regulatory Plan was published in the **Federal Register** on November 22, 1999 (64 FR 63883). This year, the Regulatory Plan contains 164 entries from 28 agencies.

The 164 regulations under development in the Regulatory Plan may be viewed as specific recommendations for regulatory improvement or reform based on statutory mandates and the Administration's priorities. Four agencies—USDA, HHS, DOL, and EPA—account for 100 of the 164 initiatives. The following is a sample of the Administration's specific regulatory reform efforts that either increase the regulated entities' flexibility, reduce paperwork burden, clarify the regulated entities' responsibilities with plain language, or substitute performance standards for command-and-control:

- The Food Safety and Inspection Service (FSIS) of USDA is reforming its regulations on imported livestock and poultry products by replacing command-and-control regulations with performance standards, which should benefit consumers and producers and expand international trade.
- FSIS also is reforming its egg product inspection regulations to move from a command-and-control and prior approval systems to a performance standard approach based on the Hazard Analysis and Critical Control Point (HACCP) system and pathogen reduction goals.
- The Food and Drug Administration of HHS is also developing a performance-based HACCP program and a labeling system rather than specifying good manufacturing practices to reduce food-borne pathogens in fruit and vegetable juices.
- HUD is developing four year performance goals for Fannie Mae and Freddie Mac requiring them to purchase mortgages for low and moderate-income housing, special affordable housing, and housing in under served areas. This will increase the number of affordable housing units without significantly

[27] OSHA believes that this assumption is unrealistic and that many workers will avoid incurring cancer before 2017 as a result of the reduction in their methylene exposures brought about by the standard.

crowding out traditional portfolio lending.

- The Bureau of Land Management of the Department of the Interior is revising its Federal oil and gas leasing operations regulations. It will use plain language to improve understanding of the rule. The rule will rely on performance standards, rather than prescriptive requirements, to allow greater flexibility to deal with unique geological or engineering circumstances.
- The Office of Federal Contract Compliance Programs of DOL is reforming its nondiscrimination and affirmative action obligations for government contractors under Executive Order 11246. It plans to reduce paperwork burdens, eliminate unnecessary regulations, and simplify and clarify regulations while improving the efficiency and effectiveness of the contract compliance program.
- The Occupational Safety and Health Administration of DOL is revising its injury and illness reporting and recordkeeping requirements to improve the quality and utility of the data, clarify and simplify guidance, and exempt small businesses in low hazard industries.
- The Federal Railroad Administration of DOT is developing a rule using careful analysis weighing the benefits of reduced collision probabilities with the costs imposed on society to determine when and how train whistles must be sounded at grade crossings.
- EPA is streamlining its requirements for revising operating permits issued by State and local permitting authorities for major sources of air pollution under the Clean Air Act. It will simplify the process for minor new source review actions that have little or no environmental impact.
- EPA is streamlining its public notification regulations for violations of drinking water regulations by public water systems. It will seek to give consumers better and more timely notification of the potential health risks from drinking water when violations occur.

These reforms, as well as many other efforts underway, are significantly improving the lives, health, and well-being of the American public.

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APPENDIX: TABLE 15: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/95 - 3/31/96
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Use of the Term "Fresh" on the Labeling of Raw Poultry Products	Not estimated	$7 million/yr	USDA estimated transfers from producers to consumers of $75 - 125 million/yr due to potential price decreases of $.04 - .10/lb. The qualitative benefits of the rule are that consumers would be assured that poultry products are not labeled in a misleading or false manner.
HHS	Hazard Analysis and Critical Control Points (HACCP): Seafood ("Safe and Sanitary Processing and Importation of Seafood")	$1.44 - 2.56 billion (present value)	$677 million - $1,490 million (present value)	FDA believes that there may be ``re-engineering" types of benefits associated with these regulations. For both seafood and other foods for which HACCP has been implemented, FDA has received information that firms have found cost-saving innovations in other areas as they implement HACCP. These innovations are considered trade secrets by firms and thus, their description (actual process innovations) and quantification is impossible as firms have not released this data into the public domain. This phenomenon involves unexpected savings and efficiencies as a result of establishing a new system in a processing operation. The majority of firms that have previously instituted HACCP reported that they believed that the advantages they derived from HACCP were worth the costs to them in terms of better control over their operations, better sanitation, and greater efficiencies, such as reduced waste. Virtually all foresaw long-term benefits from operating under HACCP.
DOI	Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

APPENDIX: TABLE 15: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/95 - 3/31/96
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOI	Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
DOT	Light Truck CAFE Model-Year 1998	Not Estimated	Not Estimated	None reported
DOT	Head Impact Protection	873 - 1,045 fatalities prevented/yr; 675 - 768 serious head injuries prevented/yr	$640 million/yr	None reported
DOT	Vessel Response Plans	22,000 bbls oil prevented from being spilled/yr	$260 million/yr	The U.S. Coast Guard also stated that there are additional benefits which are not quantifiable. Effectiveness of response operations is enhanced both by the training of citizens and hatchery employees so they may assist in nearshore and onshore operations, and by prepositioning containment and cleanup equipment near where it would be utilized. Also, area drills are expected to improve the proficiency of operations.

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Land Disposal Restrictions Phase III	Not Estimated	$30 - 220 million/yr	Qualitative discussion, including possible reduction in individual cancer risks; EPA did not provide quantified estimates of benefits because it was not able to identify the magnitude of the exposed population. The RIA reports that benefits would range from very small to zero.
EPA	Marine Tank Vessel Loading and Unloading Operations	40,000 t HC/yr	$60 - 100 million/yr	EPA also reports a reduction of 4,600 tons per year in emissions of toxic pollutants.
EPA	Petroleum Refinery NESHAP	250,000 t HC/yr	$80-100 million/yr	
EPA	Air Emissions from Municipal Solid Waste Landfills	83,000 t HC/yr; 4,250 Kt methane/yr	$100 million/yr	
EPA	Municipal Waste Combustors	20,000 t SO_2/yr; 3,000 t PM/yr; 20,000 t NO_x/yr; 60 t Hg/yr; 800 grams TCDD TEQ /yr	$320 million/yr	
	ABBREVIATIONS: bbls = barrels, CO = carbon monoxide, HC = hydrocarbons, Hg = mercury, kg = kilograms, Kt = kilotons, NO_x = nitrogen oxides, PM = particulate matter, SO_2 = sulfur dioxide, t = tons, TCDD TEQ = 2,3,7,8 tetrachlorodibenzo-p-dioxin toxicity equivalent.			

APPENDIX: TABLE 15: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/95 - 3/31/96
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
		TRANSFER RULES		
Dept. of Agriculture (USDA)				
	1995 Upland Cotton Program			
	1995 Rice Acreage Reduction Program			
	Disaster Payment Program for 1990 and Subsequent Crops - - Tree Assistance Program			
	1995 Wheat, Feed Grain, and Oilseed Programs			
	General Crop Insurance Regulations (Hybrid Sorghum Seed and Rice)			
	Utility Reimbursement Exclusion			
Dept. of Health and Human Services (HHS)				
	Changes to Hospital Inpatient Prospective Payment System FY 1996			
Dept. of Justice (DOJ)				
	Charging of Fees for Services at Land Border Ports-of-Entry			

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	1996 Farm Bill Farm Program	Not Estimated	Not Estimated	"Net farm income (including crop and livestock sectors) during the 1996-2002 calendar years is expected to be about $15 billion higher under the 1996 Act than under the FY 1997 President's Budget baseline. This largely reflects higher Government payments to farmers under the 1996 Act as production flexibility contract payments exceed projected deficiency payments. Additionally, changes in the timing of payments to farmers provide an additional boost to farm income in the first year of the program--pushing 1996 net income up about $4 billion. However, net farm income is up by less than the increase in Government payments due to changes in the dairy and peanut programs. Crop sector receipts are down slightly under the 1996 Act due to lower plantings and production of the eight major commodities. Livestock sector receipts are lower due primarily to lower dairy sector receipts. Cash production expenses are up slightly due to increases in net cash rents, which offset lower crop production expenses from lower plantings. "Farmland values are higher under the 1996 Act compared with the FY 1997 President's Budget, reflecting the capitalized value of higher income. Land values average about 3 percent higher under the 1996 Act compared with FY 1997 President's Budget estimates. "Consumer costs are expected to be only slightly lower under the 1996 Act. Because grain prices, on average, are expected to be essentially unaffected, no appreciable change in grain-based food product costs, such as cereal and meat products, is expected." 61 FR 37544-5. "Alternatively, the 1996 Act can be compared to a 'no program" baseline. Under the 1996 Act, contract commodity payments represent a large portion of the benefits received by producers and there are few planting restrictions. The major differences between a no-program scenario (if the CRP and export programs were continued) and the 1996 Act are that producers would no longer receive contract commodity payments of about $35.9 billion and would no longer be subject to farm conservation and wetland protection requirements. The loss in farm income would likely entail substantial short-term adjustments and financial stress. However, over the longer term, a no-program scenario is expected to have little or no impact on supply, demand, and prices compared with the 1996 Act for most commodities except for peanuts, sugar, and, in the initial years of the period, dairy.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Conservation Reserve Program	$2 billion/yr, 1997- 2002	$900 million/yr, 1997 - 2002	Other miscellaneous (unquantified) benefits: swimming, boating, wetland conservation, human health impacts, and reduced nutrients in habitats; $5.8 billion/yr in transfers from consumers and taxpayers to farmers.
USDA	Karnal Bunt	Not Estimated	Not Estimated	"This rule is being published on an emergency basis in order to give affected growers the opportunity to make planting decisions for the 1996-97 crop season on a timely basis...This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis, which we will publish in a future Federal Register." 61 FR 52206.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Hazard Analysis and Critical Control Points: Meat and Poultry	$0.71-$26.59 billion present value discounted over 20 years	$0.97-1.16 billion present value discounted over 20 years	"The benefits are based on reducing the risk of foodborne illness due to Campylobacter jejuni/coli, Escherichia coli 0157:H7, Listeria monocytogenes and Salmonella. ... these four pathogens are the cause of 1.4 to 4.2 million cases of foodborne illness per year. FSIS has estimated that 90 percent of these cases are caused by contamination occurring at the manufacturing stage that can be addressed by improved process control. This addressable foodborne illness costs society from $0.99 to $3.69 billion, annually. The high and low range occurs because of the current uncertainty in the estimates of the number of cases of foodborne illness and death attributable to the four pathogens. Being without the knowledge to predict the effectiveness of the requirements in the rule to reduce foodborne illness, the Department has calculated projected health benefits for a range of effectiveness levels, where effectiveness refers to the percentage of pathogens eliminated at the manufacturing stage..." 61 FR 38956. "The link between regulatory effectiveness and health benefits is the assumption that a reduction in pathogens leads to a proportional reduction in foodborne illness. FSIS has presented the proportional reduction calculation as a mathematical expression that facilitates the calculation of a quantified benefit estimate for the purposes of this final RIA. FSIS has not viewed proportional reduction as a risk model that would have important underlying assumptions that merit discussion or explanation. For a mathematical expression to be a risk model, it must have some basis or credence in the scientific community. That is not the case here. FSIS has acknowledged that very little is known about the relationship between pathogen levels at the manufacturing stage and dose, i.e., the level of pathogens consumed." 61 FR 38945-6.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOC	Encryption Items Transferred from the U.S. Munitions List to the Commerce Control List	Not Estimated	$834,000 (govt admin cost FY97), $591,850 (paperwork burden costs)	Unquantified benefits in terms of improved national security, law enforcement and public safety benefits, and economic benefits for industry: "This initiative will support the growth of electronic commerce; increase the security of the global information infrastructure; protect privacy, intellectual property and other valuable information; and sustain the economic competitiveness of U.S. encryption product manufacturers during the transition to a key management infrastructure. 61 FR 68573.
HHS	Food Labeling/ Nutrition Labeling: Small Business Exemption	$275-360 million/yr	$4 million in first year, expected to decline thereafter	None reported.
HHS	Restriction on the Sale and Distribution of Cigarettes and Smokeless Tobacco	$9.2-10.4 billion/yr at 7% discount rate; $28.1-43.2 billion/yr at 3% discount rate	$180 million/yr at 7% discount rate	Unspecified costs of mandatory consumer education program. "These totals do not include the benefits expected from fewer fires (over $160 million annually), reduced passive smoking, or infant death and morbidity associated with mothers' smoking...." "In addition, while FDA could not quantify the benefits that will result from the projected decline in the use of smokeless tobacco, they would be considerable." 61 FR 44396ff.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS	Medical Devices: Quality Systems Regulation	$29 million/yr; 44 deaths avoided/yr; 484 to 677 serious injuries avoided/yr;	$82 million/yr	"The medical device industry would gain substantial economic benefits from the proposed changes to the [Comprehensive Good Manufacturing Practices, "CGMP"] regulation in three ways: Cost savings from fewer recalls, productivity gains from improved designs, and efficiency gains for export-oriented manufacturers who would now need to comply with only one set of quality standards. "These estimates of the public health benefits from fewer design-related deaths and serious injuries represent FDA's best projections, given the limitations and uncertainties of the data and assumptions. The above numbers, however, do not capture the quality of life losses to patients who experience less severe injuries than those reported in [medical device recalls, "MDR's"], who experience anxiety as a result of treatment with an unreliable medical device, or who experience inconvenience and additional medical costs because of device failure. "Medical device malfunctions are substantially more numerous than deaths or injuries from device failures and also represent a cost to society. Malfunctions represent a loss of product and an inconvenience to users and/or patients. Additionally, medical device malfunctions burden medical personnel with additional tasks, such as repeating treatments, replacing devices, returning and seeking reimbursement for failed devices, and providing reports on the circumstances of medical device failures. No attempt was made to quantify these additional costs." 61 FR 52602ff.
DOI	Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
DOI	Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOL	Exposure to Methylene Chloride (MC)	31 cancer cases/yr avoided; 3 deaths/yr avoided from acute central nervous system effects and carboxyhemo-globinemia	$101 million/yr	"MC exposures above the level at which the final rule's STEL is set–125 ppm–are also associated with acute central nervous system effects, such as dizziness, staggered gait, and diminished alertness, all effects that can lead to workplace accidents. OSHA estimates that as many as 30,000 to 54,000 workers will be protected by the final rule's STEL from experiencing CNS effects and episodes of carboxyhemoglobinemia every year. Moreover, exposure to the liquid or vapor forms of MC can lead to eye, skin, and mucous membrane irritation, and these material impairments will also be averted by compliance with the final rule. Finally, contact of the skin with MC can lead to percutaneous absorption and systemic toxicity and thus lead to additional cases of cancer that have not been taken into account in the benefits assessment. " 62 FR 1567-68.
DOT	Airbag Depowering	83-101 fewer fatalities, 5,100 - 8,800 fewer serious injuries over lifetime of one full model-year's vehicles	$0	50 - 431 more fatalities and 171 - 553 more serious/severe chest injuries over lifetime of one full model-year's vehicles; substantial unquantified reduction in minor/moderate injuries.
DOT	Light Truck CAFE Model-Year 1999	Not Estimated	Not Estimated	None reported.
DOT	Roadway Worker Protection	$240 million present value discounted over 10 years	$229 million present value discounted over 10 years	Possible increased capacity of rail lines and improved morale.
EPA	Accidental Release Prevention	$174 million/yr	$97 million/yr	Unspecified value of information made available through disclosure/reporting requirements; efficiency gains, increased technology transfer, indirect cost savings, and increased goodwill; possible damage reductions attributable to offsite consequence analysis and to a reduction in routine emissions.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Financial Assurance for Municipal Solid Waste Landfills	$105 million/yr	$0	None reported.
EPA	Deposit Control Gasoline	AVG EMISSION REDUCTIONS PER YEAR, 1997-2001: 25,000 t HC, 474,000 t CO, 95,000 t NOx	AVG COST/YR, 1997 - 2000: $138 million/yr	Fuel economy benefits are also expected as a result of the detergent program, amounting to nearly 450 million gallons during the 1995-2001 period. The savings associated with this fuel economy benefit are expected to partially offset the costs of the program. This rule should result in increased sales and business opportunities within the fuel additive industry. EPA anticipates that this program may result in significant vehicle maintenance benefits. However, due to uncertainties in their magnitude, and for other reasons, they were not considered quantitatively in the analysis.
EPA	Acid Rain Phase II Nitrogen Oxides Emission Controls	EMISSION REDUCTIONS PER YEAR: 890,000 t NOx	$204 million/yr	None reported.
EPA	Federal Test Procedure Revisions	EMISSION REDUCTIONS: In 2005: 30,994 t NMHC 1,937,114 t CO 164,112 t NOx In 2010: 54,892 t NMHC 3,430,769 t CO 290,655 t NOx In 2015: 72,025 t NMHC	$199-245 million/yr	Analysis does not include potential fuel savings of $13.45 discounted over the lifetime of the average vehicle, or about $202 million/yr.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Voluntary Standards for Light-Duty Vehicles	EMISSION REDUCTIONS (tons/ozone season- weekday): In 2005: 279 t NMOG, 3,756 t CO, 400 t NOx In 2007: 399 t NMOG, 5,302 t CO, 600 t NOx In 2015: 778 t NMOG, 9,723 t CO, 1,249 t NOx	$600 million/yr	None reported.
EPA	Lead-Based Paint Activities in Target Housing	Not Estimated	$1.114 billion present value over 50 years discounted at 3%	Will provide consumers with greater assurance that they will be able to purchase abatement services of reliable quality.

ABBREVIATIONS: CO = carbon monoxide, HC = hydrocarbons, Kt = kilotons, NMHC = non-methane hydrocarbons, NMOG= non-methane organic gases, NOx = nitrogen oxides, t = tons.

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Environmental Quality Incentives Program (EQIP)	$2.41 billion (present value) 1997 - 2012	$1.65 billion (present value) 1997 - 2012	"The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity, maintenance of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The off-farm public benefits associated with on-farm conservation efforts are directly dependent upon the on-farm treatment needs and associated benefits. In the case of non-point source pollution from agricultural sources, for instance, public benefits are not achieved until private land user behavior changes and on-site conservation measures are applied. Some of the off-site benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, and reduced flood damages. Additional benefits are from reduced pollution of surface and groundwater from agrochemical management, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat. EQIP encourages participants to adopt a comprehensive approach to solving natural resource and environmental concerns. Off-site benefits for pasture and rangeland and total benefits for animal waste management were not estimated due to unavailability of data." [62 FR 28258-9]

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Importation of Pork from Sonora, Mexico	$0	$0	"Low-impact scenario: 67k hogs (0.02%), assuming supply elasticity = 0.15 and demand elasticity = -0.44. *Economic impacts on farrow-to-finish swine operators:* output decline≈10k-17k hogs (≤0.02%); price decline≈ $0.05/hundredweight liveweight equivalent.; producers' receipts decline ≈ $10.7 million/yr (0.02%) and are transferred to consumers (as consumer surplus) and Mexican producers (as producer surplus). *Economic Impacts on live-hog dealers/transporters:* 86 trips. High-impact scenario: 134.1k hogs (0.02%), assuming supply elasticity = 0.075 and demand elasticity = -0.44. *Economic impacts on farrow-to-finish swine operators:* output decline≈20k-34k hogs (≤0.02%); price decline≈ $0.11/hundredweight liveweight equivalent; producers' receipts decline≈ $24.5 million/yr (0.2%) and are transferred to consumers (as consumer surplus) and Mexican producers (as producer surplus). *Economic impacts on live-hog dealers/transporters:* 125 trips." [62 FR 25441-15443]

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Importation of Beef from Argentina	$49 million/yr (net of transfers from producers)	$0	"Average wholesale U.S. beef prices estimated to decline by $8.27/MT (from $4,402.17/MT to $4,393.9/MT), less than 0.02%. *Effects on U.S. livestock sector:* producers' receipts decline ≈ $40.15 million/yr and are transferred to consumers (as consumer surplus) and Argentine producers (as producer surplus)." [62 FR 34889-34391] "If Argentina were able to fill its 20 KT quota to the U.S.'s uncooked beef market with nonfed beef product, consumer welfare gains of around $90 million annually are possible. These consumer gains, as well as the likely producer welfare losses, would depend on the type of beef and total quantities received in the U.S. from Argentina. The 20 KT of imports will likely consist mainly of nonfed beef. Consumers would enjoy both lower prices and greater supplies, while producers realize lower returns from lower prices, but not lower quantities produced. These gains, even after taking into account the likely producer losses ... produce a net social welfare gain to the United States of $48.7 million ... "...In the aggregate, producer welfare losses of $40.45 million are distributed between the dairy and beef sectors, the latter sector being composed of cow-calf, feedlot and slaughter operations." [62 FR 34392]

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS	Substances Prohibited in Animal Feed	Not estimated	$53 million/yr	"FDA estimated that, if BSE were to occur in this country, the disease would be associated with approximately $3.8 billion in losses due to the destruction of BSE-exposed livestock and the taking of other measures needed to prevent continued BSE proliferation. While FDA could not quantify the expected additional costs to consumers and producers in the United States that would result from the loss of consumer confidence following a BSE outbreak, the agency found that plausible scenarios indicated that the likely drop in the demand for cattle and beef products could cause billions of dollars in lost market values. In addition, FDA noted, but did not attempt to quantify, the value of the human lives that might be lost or the associated medical treatment costs that might follow a domestic outbreak of BSE." [62 FR 30967] "Additional [benefits] that could not be quantified include the lost human lives and medical treatment costs that could result from BSE-related disease, as well as the consumer and producer losses that would result from the expected decrease in the sales and consumption of beef. Sales of medical products and cosmetics containing cattle-derived components could also be affected." [62 FR 30968]

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS	Organ Procurement and Transplantation Network	297-1,306 additional "life-years"/yr	$0	HHS recognizes in its analysis the difficulty of quantifying the costs and the benefits of the rule. The rule discusses the current costs of transplantation and the analysis concludes that the final rule will not substantially increase the costs. Regarding benefits, HHS discusses difficulties associated with assigning value to a statistical life when quantifying the benefits for this rule. The rule also discusses the benefits that arise from public oversight and accountability of the organ transplant system, which will preserve public trust and confidence. Also, a system of patient-oriented information of transplant performance will allow easier comparison of transplant center performance and the use of performance goals will create equity in the system.
HHS	Quality Mammography Standards	$182-263 million/yr	$38 million/yr (annualized over 10 years)	FDA states that it is difficult to determine the increase in the quality of mammograms which the final rule will cause. However, FDA calculates the following benefits assuming a 5-percent improvement. This degree of improvement would prevent 75 women per year from dying of breast cancer within a 20-year period. At $5 million per life saved, the discounted value of this outcome would be $234 million per year. In addition, fewer false-positive screens and decreased treatment costs add about $29 million in annual benefits. FDA points out that an improvement of quality as low as 2 percent would result in the benefits outweighing the costs of the final rule.
HHS/ DOL/ Treasury	Mental Health Parity	Not estimated	$464 million/yr	None reported.

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOI	Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
DOI	Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOL	Respiratory Protection	4,046 injuries and illnesses/yr avoided; 932 deaths/yr avoided	$111 million/yr	"The Agency estimates that the standard will avert between 843 and 9,282 work-related injuries and illnesses annually, with a best estimate (expected value) of 4,046 averted illnesses and injuries annually. This reduction is estimated to save $18.8 to $218 million per year, with a best estimate of $93.9 million per year. In addition, the standard is estimated to prevent between 351 and 1,626 deaths annually from cancer and many other chronic diseases, including cardiovascular disease, with a best estimate (expected value) of 932 averted deaths from these causes." [63 FR 1173]
DOE	Energy Conservation Standards for Refrigerators and Freezers	$7.62 billion (present value) in energy savings for purchases between years 2000 - 2030	$3.44 billion (present value) for purchases between years 2000 - 2030	"The estimated environmental benefits from today's final rule (based on the 1997 AEO fuel prices) are, over the period from 2000 to 2030, a reduction in emissions of NO_x by 1,362 thousand tons (1,501 thousand short tons), a reduction in emissions of CO_2 by 465 Mt (513 million short tons) and a reduction in the cost of the emission controls roughly equivalent to the cost of reducing SO_2 emissions by 1,545 kt (1,703 thousand short tons)." [62 FR 23110-11]
DOE	Energy Conservation Standards for Room Air Conditioners	$740 million (present value) in energy savings for purchases between years 2000 - 2030	$290 million (present value) for purchases between years 2000 - 2030	"The Department projects the standards to save 0.64 quad of energy through 2030, which is likely to result in a cumulative reduction of emissions of approximately 95,000 tons of nitrogen dioxide and 54 million tons of carbon dioxide." [62 FR 50122]
DOT	Light Truck CAFE Model-Year 2000	Not Estimated	Not Estimated	None reported

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Emission Standards for New Locomotives	385,000 tons of nitrogen oxides; 6,000 tons of hydrocarbons; and 4,000 tons of particulate matter annualized emission reductions (2000 - 2040)	$90 million/yr annualized cost (2000 - 2040)	None reported
EPA	Emission Standards for New Highway Heavy-Duty Engines	593,000 tons of nitrogen oxides annualized emission reductions (2004 - 2023)	$196 million/yr annualized cost (2004 - 2023)	None reported

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Pulp and Paper: National Emission Standard for Hazardous Air Pollutants (NESHAP)	-$1.04 - 1.05 billion/yr	$125 million/yr	Benefit estimate includes benefits ranging from $24 - $1,055 million/yr for reductions in emissions of volatile organic compounds and disbenefits ranging from $1 - $1,065 million/yr for increases in emissions of sulfur dioxide and particulate matter. Other quantified (but not monetized) benefits include annual reductions of 139,000 tons of hazardous air pollutants and 79, 000 tons of Total Reduced Sulfur. Other quantified (but not monetized) disbenefits include annual increases of 5,200 tons of nitrogen oxides and 8,700 tons of carbon monoxide. All estimates are for existing sources only; no benefits or costs were estimated for new sources.
EPA	Pulp and Paper Effluent Guidelines	$12 - 57 million/yr	$263 million/yr	Other quantified (but not monetized) annual benefits include lifting of 19 dioxin/furan-related fish consumption advisories; elimination of 3 exceedences of human health ambient water quality concentration standards (AWQC); and elimination of 19 exceedences of aquatic life AWQCs. Unquantified benefits include non-cancer human health effects and improvements in fish and wildlife habitats. All estimates are for existing sources only; no benefits or costs were estimated for new sources.
EPA	Medical Waste Incinerators	$7 million/yr for particulate matter reductions only	$71 - 146 million/yr	EPA states that it cannot quantify or monetize many of the benefits, such as the reduction in the emission of hazardous air pollutants which include cadmium, hydrogen chloride, lead, mercury, and dioxin/furan. In addition, reductions in emissions of sulfur dioxide, carbon monoxide, and nitrogen oxides are expected.

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98
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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	National Ambient Air Quality Standards (NAAQS): Ozone	$0.4 - 2.1 billion in 2010 (partial attainment) ---------- - $1.5 - 8.5 billion in 2010 (full attainment)	$1.1 billion in 2010 (partial attainment) ---------- - $9.6 billion in 2010 (full attainment)	Benefit estimates do not include anticipated reductions in harmful effects in the following human health areas: airway responsiveness, pulmonary inflammation, increases susceptibility to respiratory infection, acute inflammation and respiratory cell damage, and chronic respiratory damage/premature aging of the lungs. Benefits also do not include effects in the following welfare areas: ecosystem effects in "Class I" areas (e.g., national parks), damage to urban ornamentals, reduced forestry yields, damage to ecosystems, materials damage, nitrates in drinking water, and brown clouds.
EPA	National Ambient Air Quality Standards (NAAQS): Particulate Matter	$19 - 104 billion in 2010 (partial attainment) ---------- $20 - 110 billion/yr (full attainment)	$8.6 billion in 2010 (partial attainment) ---------- $37 billion/yr (full attainment)	Benefit estimates do not include anticipated reductions in harmful effects in the following human health areas: pulmonary function, morphological changes, altered host defense mechanisms, cancer, other chronic respiratory diseases, infant mortality, and mercury emissions. Benefits also do not include effects in the following welfare areas: materials damage (other than cleaning costs), damage to ecosystems, nitrates in water, and brown clouds.
EPA	Toxic Release Reporting ("Community Right-to-Know")	Not estimated	$226 million in the first year and $143 million/yr in subsequent years	This rule will make available to the public information on releases and transfers from these additional facilities of chemicals listed under the Toxic Release Inventory Program.
EPA	Disposal of Polychlorinated Biphenyls (PCBs)	Net cost savings of $150 - $740 million/yr	$14 million/yr	None reported.

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
			TRANSFER RULES	
Dept. of Agriculture (USDA)				
	Improved Targeting of Day Care Home Reimbursements			
	Peanut Poundage Quota Regulations			
Dept. of Health and Human Services (HHS)				
	Coverage of Personal Care Services			
	Inpatient Prospective Payment Systems for 1998			
	Physician Fee Schedule for 1998			
	Limit on the Valuation of a Depreciable Capital Asset			
	Salary Equivalency Guidelines for Physical Therapy			
	Limitations on Home Health Agency Costs			
	State Allotments for Payment of Medicare Part B Premiums for 1998			
Dept. of Justice (DOJ)				
	Affidavits of Support on Behalf of Immigrants			
Dept. of Veterans Affairs (DVA)				
	Schedule for Rating Disabilities, The Cardiovascular System			

VOL

65

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29

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Part VI

Federal Emergency Management Agency

44 CFR Part 209

Hurricane Floyd Property Acquisition and Relocation Grants; Interim Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 209

RIN 3067–AD06

Hurricane Floyd Property Acquisition and Relocation Grants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule with request for comments.

SUMMARY: We, FEMA, announce the immediate availability of $215 million in grants provided under the Consolidated Appropriations Act for FY 2000, for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

DATES: *Effective Date:* This interim final rule is effective February 11, 2000.

Comments: We invite comments on this interim final rule, which should be received by April 11, 2000.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104, or (email) robert.shea@fema.gov.

SUPPLEMENTARY INFORMATION: This interim final rule provides guidance on the administration of grants made under title I, chapter 2 of the Consolidated Appropriations Act for FY 2000, ("Act"), Pub.L. 106–113. The Act provides $215 million for the acquisition and relocation of properties affected by Hurricane Floyd and surrounding events for hazard mitigation purposes.

Recognizing that the overriding aim of the Hurricane Floyd supplemental funds is to clear the floodplain by helping occupants to move out of harm's way, we intend to use the funding to meet the needs of lower income households in the areas that are most affected by flood damage. We are allocating the $215 million among the States that received major disaster declarations due to Hurricane Floyd. The allocation will be based on the number and value of properties meeting the eligibility criteria whose owners express interest in participating in a buyout. We are requesting States by letter to provide this information to the Associate Director for Mitigation by January 31, 2000. As stated in the Act, allocations to States under this authority have no impact on the calculation of available funding under the Stafford Act (42 U.S.C. 5170c), the Hazard Mitigation Grant Program.

Separately, we will request States to provide feedback regarding several important issues related to the implementation of our grant programs that fund buyouts and relocations of floodprone property. We will use this feedback to evaluate the need for modifications to these grant programs.

This rule explains the process for States and us to prioritize projects to ensure funds are used in a cost-effective manner. We describe the program eligibility criteria in the rule to ensure States target properties severely impacted by Hurricane Floyd or surrounding events that would likely flood again in the future.

The rule and the program requirements are structured parallel to our Hazard Mitigation Grant Program (HMGP) program, which also has property acquisition authority. We expect to minimize the differences between the two programs and to simplify the administration of both programs in the field. The Act does contain several provisions that differ from the HMGP that States should note:

(a) Funds are to be used for acquisition/relocation projects only;

(b) To be eligible, projects may only include properties that:

(1) Are located in the Special Flood Hazard Area;

(2) Are the principal residence of the owner; and

(3) Were made uninhabitable by Hurricane Floyd or surrounding natural hazard event.

(c) Subgrantees may pay participating homeowners no more than the fair market value of the property before September 1, 1999.

The HMGP does not have the limitations described above.

We encourage States to implement this program in conjunction with the HMGP to the extent possible. States and applicants may use HMGP guidance materials for acquisition and relocation projects, including the HMGP Interim Desk Reference (FEMA–345) and the Property Acquisition Handbook (FEMA–317) to the extent that the guidance does not conflict with these regulations or the Act. For example, FEMA–345 and FEMA–317 provide model deed restrictions and easements and detailed procedures for avoiding duplication of benefits provided by other programs or insurance. The model deed language and the duplication of benefits review process apply to this special buyout authority as well.

Communities interested in participating should note that properties purchased with this grant funding must remain as open space in perpetuity and may receive no future disaster assistance from any Federal source. For example, public park facilities on purchased open space land are not eligible for our Public Assistance program funding if future flood disasters occur in the area.

States are responsible for measuring both the expected benefits of funded projects and actual program effectiveness after future flood events. This process will assist the State and us in assessing program results and improving future mitigation program implementation.

National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(vii). In addition, we will perform an environmental review under 44 CFR Part 10, Environmental Considerations, on each proposed acquisition project before funding and implementation.

Executive Order 12898, Environmental Justice

This rule will have no disproportionate, adverse impact on low-income or minority populations within the meaning of E.O. 12898. Properties in Special Flood Hazard Areas that have a high risk of flooding are frequently associated with depressed property values and inhabited by low-income residents. This is the case in many communities that were affected by Hurricane Floyd and that this rule targets for buyouts. The rule's effect of offering such populations more than post-event, current fair market value for their damaged residences to relocate voluntarily outside the flood hazard area helps give low-income homeowners the means to move to safer ground, which might not otherwise be available to them. In some cases, where very low-priced residences are acquired, the buyout offer may not be enough to pay for available housing outside the hazard area because the law caps the offer at pre-event value. In such cases we will coordinate with the State to help identify alternative funding sources for those buyouts or to cover the relocation differential.

Executive Order 12866, Regulatory Planning and Review

The rule sets out our administrative procedures for making grants available for acquiring and relocating houses damaged by Hurricane Floyd. Most of the $215,000,000 appropriation will be obligated within one year. As such the rule will have an effect on the economy of more than $100,000,000, the impact of which will promote public health and safety by providing low-income homeowners with the financial means to move voluntarily out of high-risk flood hazard areas. Therefore, this rule is a major rule as defined in 5 U.S.C. 804(2) and is an economically significant rule under Executive Order 12866. The Office of Management and Budget has reviewed this rule under Executive Order 12866.

Paperwork Reduction Act

The Federal Emergency Management Agency is submitting a request for review and approval of a new collection of information, which is contained in this interim rule. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulations 5 CFR 1320.13. FEMA is requesting that this information collection be approved by February 11, 2000, for use through July 2000.

FEMA expects to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). It also seeks comments concerning the collection of information, which is necessary for State and local officials to apply for the Hurricane Floyd Special Buyout Authority. The forms or formats—SF–424, Application for Federal Assistance; FEMA form 20–15, Budget Instructions—Construction Programs; Project Narrative (section 209.8(b)); FEMA form 20–16, 20–16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20–10, Financial Status Report; and the Performance/ Progress Report format—serve as basic screening and referral documents and may be used in determining whether applicants meet the basic eligibility requirements of this Authority.

Supplementary Information. This collection is in accordance with FEMA's responsibilities under 44 CFR section 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance provided helps to alleviate the suffering and damage that result from major disasters and emergencies. Under the Consolidated Appropriations Act of FY2000, FEMA may provide assistance for the acquisition and relocation of properties affected by Hurrricane Floyd or surrounding events for hazard mitigation purposes.

Collection of Information.

Title. Hurricane Floyd Property Acquisition and Relocation Grants.

Type of Information Collection. New.

Form Numbers. SF–424, Application for Federal Assistance; FEMA form 20–15, Budget Information-Construction Programs; FEMA form 20–16, 20–16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20–10, Financial Status Report; and the Performance report format.

Abstract.

(1) *SF–424 facesheet.* This is a standard form used by applicants to accompany applications for Federal assistance. It provides the agency summary information about applicant organization and the type of assistance requested. Local governments may use the SF–424 to provide pertinent applicant profile information with their application. States may submit amendments to their original application by submitting an additional SF–424 that requests a revision to the original.

(2) *Budget forms.* This is a standard form which applicants submit with the application detailing the proposed budget for the grant. For construction projects, applicants complete FEMA form 20–15. FEMA will use this information to determine if the requested funding is reasonable and to perform a benefit-cost analysis on the proposed project (construction projects only).

(3) *Project Narrative.* The narrative statement, more commonly referred to as the project application, identifies the proposed measure to be funded and provides information supporting the projects eligibility. The narrative will contain nine essential elements: the description of the hazard/problem, proposed measures, location of project, proposed work schedule, an itemized list of expected benefits and estimated dollar values, alternative approaches considered to meet the objective, the surrounding environment and possible environmental impacts, existing resources in the project area, provide an analysis of the environmental effects of the proposed project and alternatives on the resources discussed above, provide environmental studies/reviews, if possible.

(4) *Assurances and certifications.* These are standard forms that are completed by the State. FEMA form 20–16 summarizes all assurances and certifications that the State must sign in order to receive grant assistance. FEMA forms 20–16 and 20–16(c) list assurances that the State must provide in order to receive assistance for construction programs. FEMA form 20–16c lists three certifications that the State must make in order to receive Federal assistance: lobbying; debarment, suspension, and other responsibility matters; and drug free workplace requirements.

(5) *Disclosure of Lobbying Activities.* The SF–LLL is a standard form disclosing lobbying activity on the part of grant recipients. These assurances are an integral element of the grant agreement between FEMA and the State, ensuring compliance with all applicable Federal statutes, executive orders, and regulations.

(6) *Financial Status Report.* The FEMA Form 20–10—Financial Status Report Form is used by Grantees, to give an accurate, current and complete disclosure, on a quarterly basis the financial results of financially assisted activities. Reporting must be made in accordance with the financial reporting requirements of the grant or subgrant. Form 20–10 is due thirty (30) days after the expiration or termination of grant support. Grantees are required to submit an original and two copies to the Regional Office. Grantees may use this form in dealing with their subgrantees.

(7) *Performance Report.* The State will use this format to report on the implementation schedule, any delays, projected overruns, and problems encountered.

Affected Public: State, local and tribal governments and Individuals and households. The forms are used to allow State and local officials to apply for the Hurricane Floyd Special Buyout Authority on behalf of their communities and citizens.

Estimated Total Annual Burden Hours.

Type of collection/forms	No. of respondents	Hours per response	Annual burden hours
SF–424 (Application facesheet)	213	.75	160
20–15 Budget—Construction	213	17.2	3,664
Project Narrative (section 209.8(b)	213	15	3,195
20–16 (Summary of assurances & certifications)	213	1.7	362
20–16b (Assurances, non-construction)	.....	included in 20–16	.....
20–16c (lobbying certification)	.....	included in 20–16	.....
SF–LLL (lobbying disclosure)	213	.5	107
Form 20–10—Financial Status Report 213× quarterly = 852	852	8	6,816
Performance Report 213 × quarterly = 852	852	4.2	3,578
Duplication of benefits review.	213	12.62	2,688
Communities Individual homeowners	5,375	1	5,375
Agreement—Settlement/Deeds/Easement	213	6.31	1,344
Communities Individual homeowners	5,375	1	5,375
Individual Homeowners—Initial Meeting/Letters	5,375	2	10,750
Individual Homeowners—Appraisal/Inspection Visit, Review, Offer	5,375	1	5,375
Total Burden	.....		48,789

Estimated Cost. We have not calculated the costs associated with this collection due to the emergency nature of the funding availability and grant approval process. However, we believe there are few additional costs associated with this authority. States may use existing systems for submitting grant applications and reporting.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSEE:

Interested persons should submit written comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 within 30 days of this notice. FEMA will continue to accept comments for an additional 30 days. Send written comments on the collection of information, including the burden estimate to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e-mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Executive Order 12612, Federalism

We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day grant activities required by Pub. L. 106–113, which prescribes how the $215,000,000 appropriation will be transferred through grants to certain States.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control No. 3067–0279. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 209

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

Accordingly, we amend Chapter I, Subchapter D, by adding Part 209 to read as follows:

PART 209— HURRICANE FLOYD PROPERTY ACQUISITION AND RELOCATION GRANTS

Sec.
209.1 Purpose.
209.2 Definitions.
209.3 Roles and responsibilities.
209.4 Allocation and availability of funds.
209.5 Applicant eligibility.
209.6 Project eligibility.
209.7 Priorities for project selection.
209.8 Application and review process.
209.9 Appeals.
209.10 Project implementation requirements.
209.11 Grant administration.
209.12 Oversight and results.

Authority: Pub. L. 106–113, Appendix E—H.R. 3425; Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979

Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

§ 209.1 Purpose.

This part provides guidance on the administration of grants made under the Consolidated Appropriations Act for FY 2000, Pub. L. 106–113, which provides $215 million for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

§ 209.2 Definitions.

Except as noted in this part, the definitions listed at 44 CFR 206.2 apply to the implementation of this part.

§ 209.3 Roles and responsibilities.

We describe specific responsibilities of program participants throughout this part. The following materials describe the general roles of FEMA, the State, and communities or other organizations that receive grant assistance.

(a) *Federal.* The Director will allocate available funding to States that received major disaster declarations resulting from Hurricane Floyd and surrounding events. The Regional Directors will provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State.* The State will be the Grantee to which FEMA awards funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State and provide technical assistance and oversight to subgrantees for project development and implementation. The State will report program progress and results to us. Native American tribes will be the grantee and carry out "state" roles when they apply directly to FEMA.

(c) *Subgrantee.* The subgrantee (a State agency, local government, or private non-profit organization) will coordinate with interested homeowners to complete an application to the State and implement all approved projects. The subgrantee generally takes title to all property and manages it as open space. The subgrantee is accountable to the State for the use of funds.

§ 209.4 Allocation and availability of funds.

(a) The Director will allocate available funds based on the number and value of properties meeting the eligibility criteria whose owners have expressed interest in participating in a buyout.

(b) The Director may reallocate funds for which we do not receive and approve adequate applications. We will obligate all available funds by January 1, 2002, unless extenuating circumstances exists.

§ 209.5 Applicant eligibility.

The following are eligible to apply to the State for a grant:

(a) State and local governments;

(b) Indian tribes or authorized tribal organizations. A tribe may apply either to the State or directly to FEMA.

(c) Private nonprofit organizations with a conservation purpose as qualified under section 170(h) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 170(h), and applicable regulations promulgated thereunder.

§ 209.6 Project eligibility

(a) *Eligible types of project activities.* This grant authority is for projects to acquire and demolish or relocate floodprone properties. Approved projects will meet the following criteria and comply with program requirements.

(b) *Eligibility criteria.* To be eligible, projects must:

(1) Be cost effective. The State will complete a benefit-cost analysis, using a FEMA-approved methodology. We will review the State's analysis.

(2) Include only properties that:

(i) The owner agrees to sell voluntarily;

(ii) Are located in the Special Flood Hazard Area;

(iii) Served as the principal residence for the owner (*i.e.*, meets criteria for owner-occupied, primary residence under our Individual Assistance program); and

(iv) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of Hurricane Floyd or surrounding natural hazard events.

(3) Conform with 44 CFR Part 9, Floodplain Management and Protection of Wetlands; 44 CFR Part 10, Environmental Considerations; and any applicable environmental and historic preservation laws and regulations.

§ 209.7 Priorities for project selection.

States will set priorities in their State Hazard Mitigation Plan (State buyout plan) to use as the basis for selecting projects for funding. The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States may update their Hazard Mitigation Grant Program administrative plan to incorporate administration and project selection under this authority.

§ 209.8 Application and review process.

(a) *Timeframes.* States will set local application deadlines. States must forward all applications by April 30, 2000. We will fund projects as we receive and approve them. The Regional Director may extend the deadline by up to 60 days, upon a State's request, if extenuating circumstances prevent the State from meeting the deadline.

(b) *Format.* The State will forward its application to the Regional Director. The Application will include a Standard Form (SF) 424, Application for Federal Assistance, FEMA Form 20–16B, Assurances for Construction Programs, attached community project applications (buyout plans) selected by the State, and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. Community project applications will include:

(1) Community applicant information, including contact names and numbers;

(2) Summary project information;

(3) Description of the problem addressed by the proposed project;

(4) Description of the applicant's decision-making process, including alternatives considered;

(5) Project description, including property locations and scope of activities;

(6) Project cost estimate and match source;

(7) Open space use description and maintenance assurance;

(8) Cost-effectiveness information, or State's benefit-cost analysis;

(9) Environmental and historic preservation information; and

(10) Attachments as necessary (property site inventory, location map, FIRM, etc);

(c) *FEMA review.* FEMA will review the State's eligibility determination and either approve, deny, or request additional information within 60 days. The Regional Director may extend this timeframe if complicated issues arise.

§ 209.9 Appeals.

The State may appeal decisions by FEMA regarding the eligibility of submitted applications within 60 days of receipt of the decision. The format and timelines for the appeal must conform to 44 CFR 206.440.

§ 209.10 Project implementation requirements.

Subgrantees must enter into an agreement with the State, with the concurrence of the Regional Director, that provides the following assurances:

(a) The subgrantee will administer the grant and implement the project in accordance with program requirements, 44 CFR parts 13 and 14, the grant agreement, and with applicable Federal, State, and local laws and regulations.

(b) Participating property owners may receive assistance up to the fair market

value of their real property as of September 1, 1999 (reduced by any potential duplication of benefits from other sources).

(c) The following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed ("the property"):

(1) The property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(2) No new structure(s) will be built on the property except for the following:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public rest room; or

(iii) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.

(3) After completing the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(4) Any structures built on the property according to paragraph (c)(2) of this section, must be located to minimize the potential for flood damage, be floodproofed, or be elevated to the Base Flood Elevation plus one foot of freeboard.

(5) Every two years on October 1st, the subgrantee will report to the State, certifying that the property continues to be maintained consistent with the provisions of the agreement. The State will report the certification to us.

(d) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, permeable parking lots, and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, or other uses that obstruct the natural and beneficial functions of the floodplain.

§ 209.11 Grant administration.

Cost share. We may contribute up to 75 percent of the total eligible costs. The State must ensure that non-Federal sources contribute not less than 25 percent of the total eligible costs for the grant. The State or any subgrantee cannot use funds that we provide under this Act as the non-Federal match for other Federal funds nor can the State or any subgrantee use other Federal funds as the required non-Federal match for these funds, except as provided by statute.

(b) *Allowable costs.* A State may find guidance on allowable costs for States and subgrantees in Office of Management and Budget (OMB) Circular A–87 and A–122 on the Cost Principles. States may use up to 7% of these funds for costs to manage the grant. The State should include management costs in its application. Subgrantees must include reasonable costs to administer the grant as a direct project cost in their budget.

(c) *Progress reports.* The State must provide a quarterly progress report to us under 44 CFR 13.40, indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, scope of work, or project costs that may result in noncompliance with the approved grant conditions.

(d) *Financial reports.* The State must provide a quarterly financial report to us under 44 CFR 13.41.

§ 209.12 Oversight and results.

(a) *FEMA oversight.* Our Regional Directors are responsible for overseeing this grant authority and for ensuring that States and subgrantees meet all program requirements. Regional Directors will review program progress quarterly.

(b) *Monitoring and enforcement.* Subgrantees, States, and FEMA will monitor the properties purchased under this authority and ensure they are maintained in open space use. FEMA and the State may enforce the agreement by taking any measures they deem appropriate.

(c) *Program results.* The State will review the effectiveness of approved projects after each future flood event in the affected area to monitor whether projects are resulting in expected savings. The State will report to FEMA on program effectiveness after project completion and after each subsequent flood event.

Dated: February 7, 2000.

James L. Witt,

Director.

[FR Doc. 00–3235 Filed 2–10–00; 8:45 am]

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Federal Register

Vol. 65, No. 29

Friday, February 11, 2000

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4753–4864	1
4865–5218	2
5219–5406	3
5407–5732	4
5733–5992	7
5993–6304	8
6305–6522	9
6523–6880	10
6881–7274	11

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7270 5217
7271 5219
Executive Orders:
13145 6877
Administrative Orders:
Directive of January 31, 2000 5729
Directive of January 31, 2000 5731
Presidential Determinations:
No. 2000–10 of January 31, 2000 5407
No. 2000–11 of February 1, 2000 6523

5 CFR

581 4753
582 4753
1201 5409
1208 5410
Proposed Rules:
630 6339

7 CFR

1 5414
301 ..... 4865, 5221, 6525
505 6526
905 5733
916 6305
917 6305
944 5733
955 5736
981 4867
985 ..... 6308, 6528
3418 5993
Proposed Rules:
54 4780
245 5791
457 6033
718 5444
989 6341
1735 6922

9 CFR

1 6312
77 5998
Ch. III 6881
381 6886
Proposed Rules:
94 6040

10 CFR

708 6314
Proposed Rules:
50 6044

12 CFR

201 6531
272 6319
936 5738
960 5418
Proposed Rules:
Ch. I 4895
225 6924
611 5286
951 5447
997 5447

13 CFR

400 6888
500 6888

14 CFR

39 ..... 4754, 4755, 4757, 4760, 4761, 4870, 5222, 5228, 5229, 5235, 5238, 5241, 5243, 5419, 5421, 5422, 5425, 5427, 5428, 5739, 5741, 5743, 5745, 5746, 5749, 5752, 5754, 5757, 5759, 5761, 6444, 6533, 6534
71 ..... 4871, 4872, 4873, 4874, 5762, 5763, 5764, 5765, 5767, 5768, 5769, 5770, 5999, 6000, 6320, 6535
91 ..... 5396, 5936
93 5396
97 ..... 4875, 4877, 4879, 6321, 6324
121 5396
135 5396
200 6446
211 6446
213 6446
216 6446
291 6446
300 6446
302 6446
303 6446
305 6446
377 6446
385 6446
399 6446
Proposed Rules:
21 5224
25 5024
39 ..... 4781, 4782, 4784, 4786, 4788, 4790, 4792, 4793, 4897, 4900, 4902, 4904, 4906, 5453, 5455, 5456, 5459, 6046, 6563, 6565, 6566, 6925, 6927
71 ..... 4910, 4911, 5804
91 5024
108 4912
109 4912
111 4912
121 4912
125 5024
129 4912
191 4912

17 CFR

1 6569
232 6444

18 CFR

Proposed Rules:
270 6048
375 6048
381 6048
382 5289

19 CFR

132 5430
163 5430

Proposed Rules:
12 6062
113 6062

20 CFR

Proposed Rules:
404 6929
416 6929

21 CFR

175 6889
522 6892
876 4881
886 6893
1308 5024

Proposed Rules:
1310 4913

23 CFR

Proposed Rules:
645 6344

24 CFR

206 5406

26 CFR

1 ..... 5432, 5772, 5775, 5777, 6001
35 6001
602 ..... 5775, 5777, 6001

Proposed Rules:
1 ..... 5805, 5807, 6065, 6090
602 5807

27 CFR

Proposed Rules:
9 5828

29 CFR

44 7194
2520 7152
2560 7181
2570 7185

Proposed Rules:
1910 4795

30 CFR

250 6536
938 4882
946 5782

32 CFR

505 6894

33 CFR

117 ..... 5785, 6325, 6326

Proposed Rules:
100 5833
110 5833
165 5833

34 CFR

676 4886

Proposed Rules:
611 6936
694 5844

36 CFR

327 6896

Proposed Rules:
217 5462
219 5462
242 5196
1234 5295

37 CFR

Proposed Rules:
201 ..... 6573, 6946

38 CFR

21 5785

Proposed Rules:
21 4914

39 CFR

111 ..... 4864, 5789, 6903
3001 6536

Proposed Rules:
111 ..... 4918, 6950

40 CFR

52 ..... 4887, 5245, 5252, 5259, 5262, 5264, 5433, 6327
62 6008
80 6698
85 6698
86 6698
300 5435
761 5442

Proposed Rules:
52 ..... 5296, 5297, 5298, 5462, 5463, 6091
62 6102
130 4919
300 ..... 5465, 5844
445 6950

42 CFR

412 5933
413 5933
483 5933
485 5933

Proposed Rules:
36 4797

43 CFR

11 6012

Proposed Rules:
2560 6259

44 CFR

209 7270
65 ..... 6014, 6018, 6023, 6025
67 ..... 28, 6031

Proposed Rules:
67 ..... 6103, 6105

45 CFR

1303 4764

Proposed Rules:
96 5471

46 CFR

2 6494
30 6494
31 6494
52 6494
61 6494
71 6494
90 6494
91 6494
98 6494
107 6494
110 6494
114 6494
115 6494
125 6494
126 6494
132 6494
133 6494
134 6494
167 6494
169 6494
175 6494
176 6494
188 6494
189 6494
195 6494
199 6494
388 6905

Proposed Rules:
15 6350
110 6111
111 6111

47 CFR

Ch. I 5267
1 4891
51 6912
73 6544
97 6548

Proposed Rules:
1 6113
25 6950
73 ..... 4798, 4799, 4923
76 4927
95 4935

48 CFR

Ch. 2 6554
201 6551
203 4864
209 4864
211 6553
212 6553
219 6554
225 ..... 4864, 6551, 6553
249 4864
252 6553
1825 6915
1852 6915
2432 6444
9903 5990

Proposed Rules:
30 4940
215 6574
252 6574

49 CFR

195 4770
571 6327

Proposed Rules:
567 5847
568 5847

50 CFR

13 6916
17 ..... 4770, 52680, 6332, 6916
18 52750
679 ..... 4891, 4892, 4893, 5278, 5283, 5284, 5285, 5442, 6561, 6921

Proposed Rules:
17 ..... 4940, 5298, 5474, 5848, 5946, 6114, 6952
100 5196
223 6960
622 5299
648 ..... 4941, 5486, 6575, 6975
660 ..... 6351, 6577, 6976

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 11, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Walnuts grown in—
California; published 1-12-00

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
State termination designation—
Minnesota; published 2-11-00

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Insured and guaranteed loans; post-loan policies and procedures; published 12-28-99

DEFENSE DEPARTMENT
Army Department
Privacy Act:
Implementation; published 2-11-00

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD
National Environmental Policy Act; implementation:
Loan guarantee decisions; application deadline; published 2-11-00

EMERGENCY STEEL GUARANTEE LOAN BOARD
National Environmental Policy Act; implementation:
Loan guarantee decisions; application deadline; published 2-11-00

FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Hurricane Floyd property acquisition and relocation grants; published 2-11-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Bayer Corp.; published 2-11-00
Biological products:
Blood, blood components, and source plasma requirements; revisions; published 8-19-99
Food additives:
Adjuvants, production aids and sanitizers—
1,2-dibromo-2,4-dicyanobutane et al.; published 2-11-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Export controlled technology; standard clause; published 2-11-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Aircraft Engines; published 1-12-00

TRANSPORTATION DEPARTMENT
Maritime Administration
Coastwise trade laws; administrative waivers; published 2-11-00

RULES GOING INTO EFFECT FEBRUARY 12, 2000

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab; published 12-28-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Personal Responsibility and Work Opportunity Reconciliation Act; implementation—
Personal responsibility provisions; comments due by 2-15-00; published 12-17-99

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99
Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Section 502 Guaranteed Rural Housing Program; administration; comments due by 2-14-00; published 12-15-99
Rural Economic Development Loan and Grant Program; comments due by 2-14-00; published 12-15-99
Telecommunication loans:
Guaranteed and insured loans; post-loan policies and procedures; comments due by 2-14-00; published 12-15-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; comments due by 2-14-00; published 12-29-99
Pollock; comments due by 2-17-00; published 2-2-00
Atlantic highly migratory species—
Pelagic longline management; comments due by 2-14-00; published 12-15-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 2-15-00; published 12-17-99

DEFENSE DEPARTMENT
Acquisition regulations:
Profit policy; comments due by 2-17-00; published 2-10-00

ENERGY DEPARTMENT
Nuclear waste repositories:
Yucca Mountain Site, NV; suitability guidelines
Hearings; comments due by 2-14-00; published 12-15-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Dishwashers; test procedures; comments due by 2-14-00; published 1-13-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-18-00; published 1-19-00
Connecticut; comments due by 2-14-00; published 12-16-99
Delaware; comments due by 2-14-00; published 12-16-99
District of Columbia, Maryland, and Virginia; comments due by 2-14-00; published 12-16-99
Florida; comments due by 2-18-00; published 1-19-00
Georgia; comments due by 2-14-00; published 12-16-99
Illinois; comments due by 2-14-00; published 12-16-99
Indiana; comments due by 2-14-00; published 12-16-99
Maryland; comments due by 2-14-00; published 12-16-99
Massachusetts; comments due by 2-14-00; published 12-16-99
New Jersey; comments due by 2-14-00; published 12-16-99

New York; comments due by 2-14-00; published 12-16-99
Pennsylvania; comments due by 2-14-00; published 12-16-99
Tennessee; comments due by 2-18-00; published 1-19-00
Texas; comments due by 2-14-00; published 12-16-99
Wisconsin; comments due by 2-14-00; published 12-16-99
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; comments due by 2-18-00; published 1-19-00
Hazardous waste program authorizations:
North Dakota; comments due by 2-18-00; published 1-19-00
Hazardous waste:
Cement kiln dust; management standards; comments due by 2-17-00; published 10-28-99
Identification and listing—
Mixture and derived-from rules; treatment, storage or disposal; comments due by 2-17-00; published 11-19-99
Mixed waste; storage, treatment, transportation, and disposal; comments due by 2-17-00; published 11-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metsulfuron methyl; comments due by 2-14-00; published 12-16-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00
National priorities list update; comments due by 2-18-00; published 1-19-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Satellite communications—
2 GHz mobile satellite service systems; authorization; comments due by 2-17-00; published 2-11-00

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 2-15-00; published 11-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health plans, health care clearinghouses, and health care providers:
Administrative data standards and related requirements—
Individually identifiable health information; privacy standards; comments due by 2-17-00; published 12-15-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Cowhead Lake tui chub; comments due by 2-16-00; published 2-2-00
Critical habitat designations—
Spikedace and loach minnow; comments due by 2-14-00; published 1-12-00
Gulf of Maine anadromous Atlantic salmon; comments due by 2-15-00; published 11-17-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 2-14-00; published 1-14-00

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Group health plans; access, portability, and renewability requirements:
National Medical Support Notice; child support orders; health care coverage provisions; comments due by 2-14-00; published 11-15-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 2-17-00; published 2-10-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
Elements; elimination as category in evaluation; comments due by 2-14-00; published 12-16-99
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 2-14-00; published 12-15-99

NORTHEAST DAIRY COMPACT COMMISSION

Over-order price regulations:
Technical amendments; hearing; comments due by 2-16-00; published 1-12-00

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Antitrust review authority; clarification; comments due by 2-15-00; published 1-21-00
Rulemaking petitions:
Quigley, Barry; comments due by 2-14-00; published 12-1-99

SECURITIES AND EXCHANGE COMMISSION

Regulatory Flexibility Act:
Rules to be reviewed; list; comments due by 2-15-00; published 1-21-00

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles; comments due by 2-17-00; published 11-19-99
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; comments due by 2-14-00; published 12-14-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Agusta S.p.A.; comments due by 2-18-00; published 12-20-99
Bell; comments due by 2-14-00; published 12-16-99
Boeing; comments due by 2-14-00; published 12-29-99
Bombardier; comments due by 2-14-00; published 1-14-00
Cessna; comments due by 2-14-00; published 12-29-99
Fokker; comments due by 2-14-00; published 1-14-00
Learjet; comments due by 2-14-00; published 12-29-99
McDonnell Douglas; comments due by 2-18-00; published 12-20-99
New Piper Aircraft, Inc.; comments due by 2-17-00; published 12-14-99
Transport airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input; comments due by 2-14-00; published 12-16-99
Class E airspace; comments due by 2-16-00; published 1-12-00

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety enforcement procedures:
Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 2-14-00; published 1-12-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Interior trunk releases; comments due by 2-15-00; published 12-17-99

TREASURY DEPARTMENT

Comptroller of the Currency

Corporate activities:
National banks; financial subsidiaries and operating

subsidiaries; comments due by 2-14-00; published 1-20-00

TREASURY DEPARTMENT

Internal Revenue Service

Estate and gift taxes:

Generation-skipping transfer tax issues; comments due by 2-16-00; published 11-18-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the Federal Register on December 30, 1999.

Last List December 21, 1999

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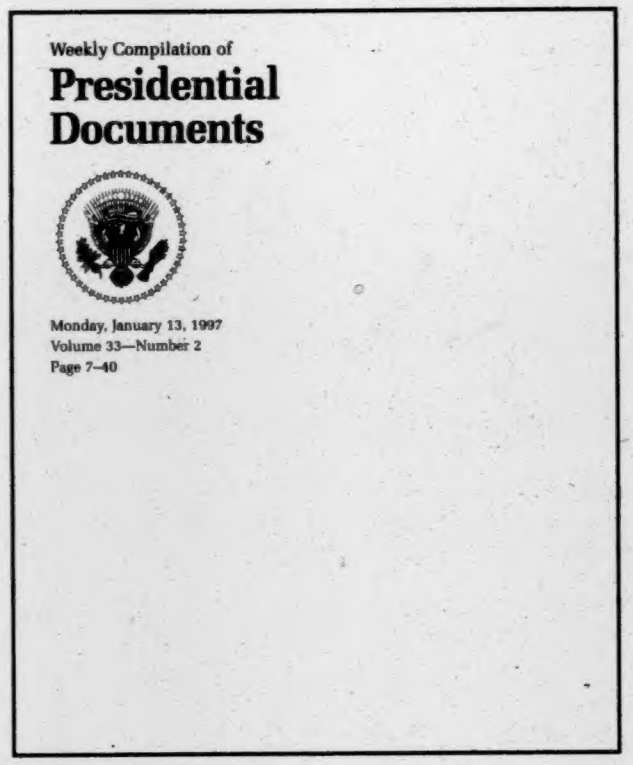

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